

Volume I of II

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Beaufort County

Perry M. Buckner, Circuit Court Judge

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S.C. Supreme Court

RICHARD SIMMONS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-001253

APPENDIX

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STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

COURT OF GENERAL SESSIONS
04-GS-07-1654
04-GS-07-1667

STATE OF SOUTH CAROLINA,)

TRANSCRIPT OF RECORD

-VS-

RICHARD SIMMONS.

NOVEMBER 13-17, 2006
BEAUFORT, SOUTH CAROLINA

BEFORE:

THE HONORABLE ROGER M. YOUNG, SR.

APPEARANCES:

FOR THE PLAINTIFF

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JO RICE
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1 THE COURT: ALL RIGHT. ARE YOU READY, MADAM CLERK?

2 CLERK OF COURT: YES, SIR. JUROR NUMBER 119, RALPH MORRISON.

3 (WHEREUPON, MR. MORRISON, A WHITE MALE, COMES FORWARD)

4 CLERK OF COURT: WHAT SAYS THE STATE?

5 MR. THORNTON: PLEASE PRESENT THIS JUROR.

6 CLERK OF COURT: WHAT SAYS DEFENSE?

7 MR. HOOD: PLEASE SEAT THE JUROR.

8 CLERK OF COURT: PLEASE HAVE A SEAT IN THE JURY BOX, THANK

9 YOU, SIR. JUROR NUMBER 51, CATHRYN DEWITT.

10 (WHEREUPON, MS. DEWITT, A WHITE FEMALE, COMES FORWARD)

11 THE COURT: THE STRIKES ARE FIVE AND TEN, IN CASE I DIDN'T SAY IT

12 BEFORE.

13 CLERK OF COURT: WHAT SAYS THE STATE?

14 MR. THORNTON: PLEASE PRESENT THIS JUROR.

15 CLERK OF COURT: WHAT SAYS DEFENSE?

16 MR. HOOD: PLEASE SEAT THE JUROR.

17 CLERK OF COURT: YOU MAY HAVE A SEAT IN THE JURY BOX, THANK

18 YOU, MA'AM. JUROR NUMBER 39, LARRY CORRELL.

19 (WHEREUPON, MR. CORRELL, A WHITE MALE, COMES FORWARD)

20 CLERK OF COURT: WHAT SAYS THE STATE?

21 MR. THORNTON: PLEASE PRESENT THIS JUROR.

22 CLERK OF COURT: WHAT SAYS DEFENSE?

23 MR. HOOD: PLEASE EXCUSE THIS JUROR.

24 CLERK OF COURT: YOU MAY GO BACK AND HAVE A SEAT, SIR. THANK

25 YOU, SIR. JUROR NUMBER 136 —

1 **THE COURT:** EXCUSE ME. HOLD ON A SECOND. WE HAVE A JUROR
2 THAT NEEDS TO GO TO THE RESTROOM AND SO WE ARE GOING TO BREAK
3 FOR JUST A COUPLE OF MINUTES.

4 **CLERK OF COURT:** YES, SIR.

5 **THE COURT:** IF THERE IS ANYONE ELSE THAT NEEDS TO USE THE
6 RESTROOM. THIS WON'T TAKE BUT ABOUT FIFTEEN MINUTES TOTAL,
7 INCLUDING THE NEXT CASE, IF YOU DO, GO AHEAD AND WE'LL ALL TAKE CARE
8 OF THIS AT ONE TIME. WE'LL TAKE ABOUT A FIVE MINUTE BREAK.

9 **(BRIEF BREAK)**

10 **THE COURT:** ALL RIGHT, MADAM CLERK. YOU MAY RESUME.

11 **CLERK OF COURT:** YES, SIR. JUROR NUMBER 136, RICHARD REICHEL.

12 **(WHEREUPON, MR. REICHEL, A WHITE MALE, COMES FORWARD)**

13 **CLERK OF COURT:** WHAT SAYS THE STATE?

14 **MR. THORNTON:** PLEASE PRESENT THIS JUROR.

15 **CLERK OF COURT:** WHAT SAYS DEFENSE?

16 **MR. HOOD:** PLEASE SEAT THE JUROR.

17 **CLERK OF COURT:** PLEASE HAVE A SEAT IN THE JURY BOX, THANK
18 YOU, SIR. JUROR NUMBER 187, KIRK RUGE.

19 **(WHEREUPON, MR. RUGE, A WHITE MALE, COMES FORWARD)**

20 **CLERK OF COURT:** WHAT SAYS THE STATE?

21 **MR. THORNTON:** PLEASE PRESENT THIS JUROR.

22 **CLERK OF COURT:** WHAT SAYS DEFENSE?

23 **MR. HOOD:** PLEASE SEAT THE JUROR.

24 **CLERK OF COURT:** PLEASE HAVE A SEAT IN THE JURY BOX, THANK
25 YOU, SIR. JUROR NUMBER 86, PATRICIA HOWARD.

1 (WHEREUPON, MS. HOWARD, A WHITE FEMALE COMES FORWARD)

2 CLERK OF COURT: WHAT SAYS THE STATE?

3 MR. THORNTON: PLEASE PRESENT THIS JUROR.

4 CLERK OF COURT: WHAT SAYS DEFENSE?

5 MR. HOOD: PLEASE EXCUSE THE JUROR FROM THIS TRIAL.

6 CLERK OF COURT: YOU MAY GO BACK AND BE SEATED, THANK YOU,

7 MA'AM. JUROR NUMBER 133, DEBRA POWERS.

8 (WHEREUPON, MS. POWERS, A WHITE FEMALE COMES FORWARD)

9 CLERK OF COURT: WHAT SAYS THE STATE?

10 MR. THORNTON: PLEASE PRESENT THIS JUROR.

11 CLERK OF COURT: WHAT SAYS DEFENSE?

12 MR. HOOD: PLEASE SEAT THE JUROR.

13 CLERK OF COURT: PLEASE HAVE A SEAT IN THE JURY BOX, THANK

14 YOU, MA'AM. JUROR NUMBER 141, TRACEY SANDERS.

15 (WHEREUPON, MS. SANDERS, A BLACK FEMALE COMES FORWARD)

16 CLERK OF COURT: WHAT SAYS THE STATE?

17 MR. THORNTON: PLEASE PRESENT THIS JUROR.

18 CLERK OF COURT: WHAT SAYS DEFENSE?

19 MR. HOOD: PLEASE SEAT THE JUROR.

20 CLERK OF COURT: PLEASE HAVE A SEAT IN THE JURY BOX, THANK

21 YOU, SIR. JUROR NUMBER 81, SANDRA HILLIS.

22 (WHEREUPON, MS. HILLIS, A WHITE FEMALE COMES FORWARD)

23 CLERK OF COURT: WHAT SAYS THE STATE?

24 MR. THORNTON: PLEASE PRESENT THIS JUROR.

25 CLERK OF COURT: WHAT SAYS DEFENSE?

1 **MR. HOOD: PLEASE EXCUSE THE JUROR FROM THE TRIAL IN THIS**
2 **CASE.**

3 **CLERK OF COURT: YOU MAY GO BACK AND HAVE A SEAT, THANK YOU,**
4 **MA'AM. JUROR NUMBER 55, ANJOHNENE DRAKE.**

5 **(WHEREUPON, MS. DRAKE, A BLACK FEMALE COMES FORWARD)**

6 **CLERK OF COURT: WHAT SAYS THE STATE?**

7 **MR. THORNTON: PLEASE PRESENT THIS JUROR.**

8 **CLERK OF COURT: WHAT SAYS DEFENSE?**

9 **MR. HOOD: PLEASE EXCUSE THE JUROR FROM THE TRIAL IN THIS**
10 **CASE.**

11 **CLERK OF COURT: YOU MAY GO BACK AND HAVE A SEAT, THANK YOU,**
12 **MA'AM. JUROR NUMBER 166, DAVID TAYLOR.**

13 **(WHEREUPON, MR. TAYLOR, A WHITE MALE COMES FORWARD)**

14 **CLERK OF COURT: WHAT SAYS THE STATE?**

15 **MR. THORNTON: PLEASE PRESENT THIS JUROR.**

16 **CLERK OF COURT: WHAT SAYS DEFENSE?**

17 **MR. HOOD: PLEASE SEAT THE JUROR.**

18 **CLERK OF COURT: PLEASE HAVE A SEAT IN THE JURY BOX, THANK**
19 **YOU, SIR. JUROR NUMBER 66, CHRISTOPHER GIBSON.**

20 **(WHEREUPON, MR. GIBSON, A WHITE MALE COMES FORWARD)**

21 **CLERK OF COURT: WHAT SAYS THE STATE?**

22 **MR. THORNTON: PLEASE PRESENT THIS JUROR.**

23 **CLERK OF COURT: WHAT SAYS DEFENSE?**

24 **MR. HOOD: PLEASE EXCUSE THE JUROR FROM THE TRIAL IN THIS**
25 **CASE.**

1 **CLERK OF COURT:** YOU MAY GO BACK TO YOUR SEAT, SIR, THANK YOU.

2 **JUROR NUMBER 140, KELLY ROSCHE.**

3 (WHEREUPON, MS. ROSCHE, A WHITE FEMALE, COMES FORWARD)

4 **CLERK OF COURT:** WHAT SAYS THE STATE?

5 **MR. THORNTON:** PLEASE PRESENT THIS JUROR.

6 **CLERK OF COURT:** WHAT SAYS DEFENSE?

7 **MR. HOOD:** PLEASE SEAT THE JUROR.

8 **CLERK OF COURT:** PLEASE HAVE A SEAT IN THE JURY BOX, THANK

9 YOU, SIR. **JUROR NUMBER 179, CAROLYN WHITMAN.**

10 (WHEREUPON, MS. WHITMAN, A WHITE FEMALE, COMES FORWARD)

11 **CLERK OF COURT:** WHAT SAYS THE STATE?

12 **MR. THORNTON:** PLEASE PRESENT THIS JUROR.

13 **CLERK OF COURT:** WHAT SAYS DEFENSE?

14 **MR. HOOD:** EXCUSE THE JUROR FROM THE TRIAL IN THIS CASE.

15 **CLERK OF COURT:** YOU MAY GO BACK TO YOUR SEAT, THANK YOU,

16 **MA'AM. JUROR NUMBER 117, KAREN MCGINTY.**

17 (WHEREUPON, MS. MCGINTY, A WHITE FEMALE, COMES FORWARD)

18 **CLERK OF COURT:** WHAT SAYS THE STATE?

19 **MR. THORNTON:** PLEASE PRESENT THIS JUROR.

20 **CLERK OF COURT:** WHAT SAYS DEFENSE?

21 **MR. HOOD:** PLEASE EXCUSE THE JUROR FROM THE TRIAL IN THIS

22 **CASE.**

23 **CLERK OF COURT:** YOU MAY GO BACK AND HAVE A SEAT, THANK YOU,

24 **MA'AM. JUROR NUMBER 96, JULIE KING.**

25 (WHEREUPON, MS. KING, A WHITE FEMALE, COMES FORWARD)

1 CLERK OF COURT: WHAT SAYS THE STATE?

2 MR. THORNTON: PLEASE PRESENT THIS JUROR.

3 CLERK OF COURT: WHAT SAYS DEFENSE?

4 MR. HOOD: PLEASE EXCUSE THE JUROR FROM THE TRIAL OF THIS
5 CASE.

6 CLERK OF COURT: YOU MAY GO BACK AND HAVE A SEAT, THANK YOU,
7 MA'AM. JUROR NUMBER 5, KENNETH ARMSTRONG.

8 (WHEREUPON, MR. ARMSTRONG, A WHITE MALE, COMES FORWARD)

9 CLERK OF COURT: WHAT SAYS THE STATE?

10 MR. THORNTON: PLEASE PRESENT THIS JUROR.

11 CLERK OF COURT: WHAT SAYS DEFENSE?

12 MR. HOOD: PLEASE EXCUSE THE JUROR FROM THE TRIAL IN THIS
13 CASE.

14 CLERK OF COURT: YOU MAY GO BACK TO YOUR SEAT, THANK YOU, SIR.

15 THE COURT: ALL RIGHT, THAT'S NINE.

16 CLERK OF COURT: JUROR NUMBER 129, BARBARA PALMIERI.

17 (WHEREUPON, MS. PALMIERI, A WHITE FEMALE, COMES FORWARD)

18 CLERK OF COURT: WHAT SAYS THE STATE?

19 MR. THORNTON: PLEASE PRESENT THIS JUROR.

20 CLERK OF COURT: WHAT SAYS DEFENSE?

21 MR. HOOD: PLEASE SEAT THE JUROR.

22 CLERK OF COURT: PLEASE HAVE A SEAT IN THE JURY BOX, THANK
23 YOU, MA'AM. JUROR NUMBER 118, THOMAS MCMURRAY.

24 (WHEREUPON, MR. MCMURRAY, WHITE MALE, COMES FORWARD)

25 CLERK OF COURT: WHAT SAYS THE STATE?

1 **MR. THORNTON:** PLEASE PRESENT THIS JUROR.

2 **CLERK OF COURT:** WHAT SAYS DEFENSE?

3 **MR. HOOD:** PLEASE SEAT THE JUROR.

4 **CLERK OF COURT:** PLEASE HAVE A SEAT IN THE JURY BOX, THANK

5 YOU, SIR. JUROR NUMBER 122, STEPHEN NITZ.

6 (WHEREUPON, MR. NITZ, A WHITE MALE, COMES FORWARD)

7 **CLERK OF COURT:** WHAT SAYS THE STATE?

8 **MR. THORNTON:** PLEASE PRESENT THIS JUROR.

9 **CLERK OF COURT:** WHAT SAYS DEFENSE?

10 **MR. HOOD:** PLEASE EXCUSE THE JUROR FROM THE TRIAL OF THIS

11 CASE.

12 **THE COURT:** THAT WAS TEN.

13 **CLERK OF COURT:** YOU MAY GO BACK AND BE SEATED, THANK YOU,

14 SIR. JUROR NUMBER 84, TYWIAN HOLMES.

15 (WHEREUPON, MR. HOLMES, A BLACK MALE, COMES FORWARD)

16 **CLERK OF COURT:** WHAT SAYS THE STATE?

17 **MR. THORNTON:** PLEASE EXCUSE THIS JUROR FROM THE TRIAL IN THIS

18 CASE.

19 **CLERK OF COURT:** YOU MAY GO BACK AND BE SEATED, THANK YOU

20 SIR. JUROR NUMBER 144, EDWARD SCHUMACHER.

21 (WHEREUPON, MR. SCHUMACHER, A WHITE MALE, COMES FORWARD)

22 **CLERK OF COURT:** WHAT SAYS THE STATE?

23 **MR. THORNTON:** PLEASE PRESENT THIS JUROR.

24 **CLERK OF COURT:** WHAT SAYS THE DEFENSE?

25 **MR. HOOD:** PLEASE SEAT THE JUROR.

1 CLERK OF COURT: JUROR NUMBER 23, SUSAN BRAINARD.

2 (WHEREUPON, MS. BRAINARD, A WHITE FEMALE, COMES FORWARD)

3 CLERK OF COURT: WHAT SAYS THE STATE?

4 MR. THORNTON: PLEASE PRESENT THIS JUROR.

5 CLERK OF COURT: WHAT SAYS THE DEFENSE?

6 MR. HOOD: PLEASE SEAT THE JUROR.

7 CLERK OF COURT: THANK YOU. YOU MAY HAVE A SEAT IN THE JURY
8 BOX, MA'AM.

9 THE COURT: ALL RIGHT. THAT'S TWELVE. ONE ALTERNATE -- TWO
10 ALTERNATES, ONE STRIKE, TWO STRIKES.

11 CLERK OF COURT: JUROR NUMBER 157, JO ANNE STAFFA.

12 (WHEREUPON, JO ANNE STAFFA, A WHITE FEMALE, COMES FORWARD)

13 CLERK OF COURT: WHAT SAY YOU FOR THE STATE?

14 MR. THORNTON: PLEASE SEAT THIS JUROR.

15 CLERK OF COURT: WHAT SAYS DEFENSE?

16 MR. HOOD: PLEASE EXCUSE THIS JUROR.

17 CLERK OF COURT: YOU MAY GO BACK AND BE SEATED. THANK YOU,
18 MA'AM. JUROR NUMBER 138, ROSE ROBINSON.

19 (WHEREUPON, MS. ROBINSON, A BLACK FEMALE, COMES FORWARD)

20 CLERK OF COURT: WHAT SAYS THE STATE?

21 MR. THORNTON: PLEASE PRESENT THIS JUROR.

22 CLERK OF COURT: WHAT SAYS DEFENSE?

23 MR. HOOD: PLEASE SEAT THIS JUROR.

24 CLERK OF COURT: PLEASE HAVE A SEAT IN THE JURY BOX. THANK
25 YOU.

1 THE COURT: ALL RIGHT. SECOND ALTERNATE.

2 CLERK OF COURT: JUROR NUMBER 152, DAVID SMITH.

3 (WHEREUPON, DAVID SMITH, A WHITE MALE, COMES FORWARD)

4 CLERK OF COURT: WHAT SAYS THE STATE?

5 MR. THORNTON: PLEASE PRESENT THIS JUROR.

6 CLERK OF COURT: WHAT SAYS THE DEFENSE?

7 MR. HOOD: PLEASE SEAT THE JUROR.

8 CLERK OF COURT: YOU MAY HAVE A SEAT IN THE JURY BOX. THANK

9 YOU, SIR.

10 THE COURT: ALL RIGHT. ANYTHING FROM THE STATE?

11 MR. THORNTON: NOTHING, YOUR HONOR.

12 THE COURT: FROM THE DEFENSE?

13 MR. HOOD: NOTHING, YOUR HONOR.

14 THE COURT: ALL RIGHT. WELL, LADIES AND GENTLEMEN, THEN, YOU

15 ARE OUR JURY FOR OUR FIRST CASE. NOW, WE HAVE GOT SOME THINGS

16 THAT WE HAVE GOT TO DO TO GET THIS CASE READY FOR TRIAL THIS

17 AFTERNOON AND SO I AM GOING TO RELEASE YOU FOR THE AFTERNOON

18 AND HAVE YOU COME BACK TOMORROW MORNING AT 9:30. WE'LL START THE

19 TRIAL AT THAT TIME.

20 NOW, IT IS VERY IMPORTANT THAT WHEN YOU GO HOME TODAY, YOU

21 DON'T DISCUSS THIS CASE WITH ANYONE, DO NOT CONTACT EACH OTHER

22 AND BEGIN DELIBERATIONS, DON'T TALK ABOUT THE CASE AT ALL WITH

23 ANYONE. IF YOU HAVE FAMILY MEMBERS, YOU KNOW, LOVED ONES, SPOUSE,

24 SOMEONE LIKE THAT AND THEY SAY, "DID YOU GET PICKED FOR THE JURY?"

25 THEN YOU SAY, "YES, I DID. I DID GET PICKED FOR A JURY. I'M NOT ALLOWED

1 TO TALK TO YOU ABOUT THE CASE. THE JUDGE SAID THAT IS VERY
2 IMPORTANT." BECAUSE IF THAT DOES HAPPEN, ONE, I'VE GOT TO DEAL WITH
3 YOUR VIOLATION OF MY ORDER AND PLUS WE'D HAVE TO START ALL THIS ALL
4 OVER AGAIN. AND SO, THAT BECOMES QUITE CUMBERSOME AND SO, JUST
5 RESPECT THAT. YOU WILL HAVE PLENTY OF TIME TO DISCUSS THIS CASE
6 WITH EVERYONE YOU WANT TO WHEN IT'S OVER WITH.

7 IT IS ALSO VERY IMPORTANT THAT YOU DON'T READ ABOUT THE CASE
8 IF THERE IS ANYTHING WRITTEN ABOUT IT IN THE NEWSPAPER TOMORROW.
9 JUST IGNORE THE NEWSPAPERS, IGNORE THE TELEVISION. I HAVEN'T SEEN
10 ANY TELEVISION HERE TODAY, BUT DON'T READ ANYTHING IN THE
11 NEWSPAPERS ABOUT IT. THIS IS VERY IMPORTANT, TOO. DON'T GO ON THE
12 INTERNET AND START TRYING TO FIND THINGS ABOUT THE CASE.
13 EVERYTHING THAT YOU NEED TO KNOW, WE WILL TELL YOU ABOUT IN THIS
14 CASE. THAT SOUNDS A LITTLE SILLY TO SAY DON'T GO LOOK ON THE
15 INTERNET, BUT YOU'D BE SURPRISED. THERE IS A REASON I'M TELLING YOU
16 THAT AND THAT'S BECAUSE WE HAVE HAD TO TELL PEOPLE THAT BEFORE.
17 WHEN PEOPLE GET INVOLVED IN A JURY, THEY START WANTING TO DO
18 DETECTIVE WORK AND THINGS LIKE THAT. I DON'T KNOW WHAT IS OUT
19 THERE ON THE INTERNET ABOUT THIS CASE, BUT I KNOW THIS, YOU DON'T
20 NEED TO FIND ANYTHING IF THERE IS ANYTHING OUT THERE ON IT. YOU
21 KNOW, THAT WOULD BE A VIOLATION OF YOUR OATH. WHAT YOU NEED TO
22 KNOW ABOUT THIS CASE AS JURORS WE WILL TELL YOU ABOUT THIS CASE,
23 YOU WILL HEAR EVIDENCE FROM THE JURY BOX AND I WILL TELL YOU THE
24 APPLY AS YOU WILL APPLY TO IT. AND THAT'S ALL YOU NEED TO KNOW.

25 AND SO, YOU HAVE THE REMAINDER OF THE DAY FREE. YOU CAN GO

1 BACK TO WORK, YOU CAN GO HOME, JUST COME BACK TOMORROW
2 MORNING. REPORT BACK TO THE JURY BOX, NOT IN HERE IN THE
3 COURTROOM, BUT THE JURY BOX THAT THE BAILIFF IS GOING TO TAKE YOU
4 TO RIGHT NOW. HE WILL SHOW YOU WHERE IT'S AT, SHOW YOU WHERE TO
5 COME IN, AND YOU JUST BE BACK IN THERE BY 9:30 TOMORROW MORNING.

6 WHEN YOU GET IN THERE AND ALL FOURTEEN OF YOU ARE IN THERE,
7 SPEND A COUPLE OF MINUTES GETTING TO KNOW EACH OTHER. IT'S
8 PERFECTLY FINE TO TALK AND TRY TO PICK A FOREPERSON AMONG
9 YOURSELVES TOMORROW MORNING. THAT WILL BE YOUR FIRST ACT. IF YOU
10 CAN'T FIGURE OUT WHO YOU WANT TO DO IT, I WILL CHOOSE FOR YOU.
11 ANYBODY CAN BE THE FOREMAN EXCEPT THE TWO ALTERNATES, BUT
12 ANYBODY ELSE CAN BE THE FOREPERSON. AND SO, THAT WILL BE YOUR
13 FIRST THING TO DECIDE TOMORROW MORNING. SO, GO WITH THE BAILIFF,
14 HE WILL SHOW YOU WHERE TO REPORT BACK AND WE'LL SEE YOU
15 TOMORROW MORNING. THANK YOU FOR YOUR PATIENCE.

16 (JURY RELEASED AT 1:29 PM)

17 **NOVEMBER 13, 2006 AFTERNOON**

18 THE COURT: ALL RIGHT. LET THE RECORD REFLECT THAT THE
19 DEFENDANT IS IN THE COURTROOM. ALL RIGHT, MR. HOOD, YOU HAVE A
20 MOTION YOU WANT TO MAKE?

21 MR. HOOD: YES, YOUR HONOR, I DO. AT THIS TIME WE WOULD MAKE A
22 MOTION TO DISMISS THE CHARGES PENDING AGAINST THE DEFENDANT
23 BASED ON THE GROUNDS THAT BASICALLY, IT'S DOUBLE JEOPARDY, YOUR
24 HONOR. AT A PREVIOUS TRIAL IN THIS PARTICULAR CASE, THE TRIAL ENDED
25 IN A MISTRIAL DUE TO SOME, I WON'T SAY MISCONDUCT, BUT CONDUCT ON

1 THE PART OF THE JURY IN WHICH THEY PRODUCED, BROUGHT INTO THE
2 JURY ROOM WITH THEM A COPY OF THE MORNING NEWS, WHICH BASICALLY I
3 HAVE A COPY OF HERE, CONCERNING MY CLIENT, CONCERNING THE TRIAL
4 AND CONCERNING THE FACTS OF THE CASE AND RULINGS THAT THE JUDGE
5 HAD MADE AND THINGS OF THAT NATURE AND THAT CAUSED QUITE A BIT OF
6 PROBLEMS FOR THE DEFENSE, OBVIOUSLY. THE JUDGE, AFTER
7 CONDUCTING AN INQUIRY OF EACH OF THE JURORS SEPARATELY,
8 DETERMINED THAT AT LEAST, WE INTERVIEWED, IF I RECALL CORRECTLY,
9 AFTER FIVE. I THINK WE STOPPED AFTER FIVE BECAUSE THREE OF THE FIVE
10 HAD ALREADY INDICATED THAT THEY HAD KNOWLEDGE OF WHAT WAS IN THE
11 ARTICLE AND ONE OF THE JURORS EVEN INDICATED THAT THEY HAD
12 DISCUSSED IT IN THE JURY ROOM WITH THE OTHER JURORS PRESENT, AND
13 SO, AT THAT POINT IN TIME THE JUDGE CAME BACK OUT AND AFTER
14 DISCUSSING THE MATTER WITH THE PROSECUTION AND MYSELF, A MOTION
15 FOR A MISTRIAL WAS GRANTED AND I THINK I MADE THE MOTION OR HE
16 ASKED ME IF I, YOU KNOW, INTENDED UPON MAKING A MOTION, AND
17 OBVIOUSLY I DID AT THAT POINT IN TIME. PRETTY MUCH MY HANDS WERE
18 TIED BECAUSE OF ALL THE INFORMATION THAT HAD BEEN SUPPLIED IN THE
19 NEWS ARTICLE, YOU KNOW. THE JURY, AS YOU WELL KNOW, DETERMINES
20 THE VOLUNTARINESS OF STATEMENTS ALSO. ONCE THE JUDGE HAS RULED
21 ON THE INITIAL VOLUNTARINESS OF A STATEMENT, THAT ISSUE THEN TURNS
22 OVER TO THE JURY AND THE JURY MUST RULE ALSO ON THE
23 VOLUNTARINESS OF THOSE STATEMENTS BEFORE THEY ARE ALLOWED TO
24 USE THOSE STATEMENTS ON THE GUILT OR INNOCENCE OF THE CLIENT. SO,
25 OUR PROBLEM WAS A CATCH-22 AT THAT POINT IN TIME. BECAUSE THE

1 JUDGE, ONCE AGAIN, IS GOING TO TALK TO THE JURY ABOUT SOMETHING
2 THAT HE HAS ALREADY TOLD THEM, THAT I HAVE MADE A DECISION ON,
3 WHICH THEY HAVE IN THE NEWSPAPER. SO, I HAVE NO ALTERNATIVE BUT TO
4 SAY, OKAY, I HAVE TO HAVE A MISTRIAL. NOW, AT THAT POINT IN TIME, AS
5 SEAN, THE SOLICITOR, MR. THORNTON WHO WAS IN THE COURTROOM AT
6 THAT TIME, APPARENTLY, IF I RECALL CORRECTLY, HE HAD ASKED FOR SOME
7 TYPE OF CURATIVE INSTRUCTION OR SOMETHING OF THAT NATURE. THE
8 JUDGE OPTED NOT TO DO THAT. HE SAID YOU KNOW, THAT HE DIDN'T THINK
9 THAT IT WAS POSSIBLE TO CURE IT, BECAUSE OF THE ISSUES THAT I JUST
10 TALKED ABOUT WITH RESPECT TO THE JURY ALSO HAVING TO DETERMINE
11 THE VOLUNTARINESS OF STATEMENTS. SO, AT THAT POINT IN TIME, THE
12 JUDGE DECLARED A MISTRIAL. NOW, IT'S MY OPINION, THAT REGARDLESS OF
13 WHETHER THE DEFENSE ASKS FOR THE MISTRIAL OR NOT, THE JUDGE HAS
14 THE RESPONSIBILITY FOR DETERMINING WHETHER IT IS APPROPRIATE THAT
15 A MISTRIAL BE GRANTED. THE FACT THAT HE DID NOT TRY TO GIVE A
16 CURATIVE INSTRUCTION TO THE JURY IS ONE OF THE AREAS THAT WE
17 ALLEGE, THAT HE SHOULD HAVE GONE FURTHER IN TRYING TO CURE THE
18 PARTICULAR PROBLEM AS I SAW IT EVEN THOUGH I WAS OPPOSED TO THAT.
19 IN THAT I THOUGHT A MISTRIAL WAS NECESSARY UNDER THE
20 CIRCUMSTANCES. I LOOK AT THIS AS BEING, YOU KNOW, THERE ARE
21 SEVERAL CASES, I'M TRYING TO RECALL A CASE RIGHT NOW, I HATE I DON'T
22 HAVE IT IN HERE, WHERE THE JUDGE MADE THE ERROR, NOT THE SOLICITOR.
23 BUT THE JUDGE ACTUALLY SHOULD HAVE DONE SOME THINGS THAT HE
24 DIDN'T DO WHICH, THEREFORE, CAUSED THE MIS-TRAIL TO HAPPEN. SO,
25 WE'RE LOOKING AT IT FROM THE POINT OF THE JUDGE FAILING TO DO IT AND

1 THE ARTICLE ITSELF HAVING QUOTED OFFICERS WHO WERE GOING TO
2 TESTIFY IN THE CASE, WHO'S NAMES HAD BEEN SUBMITTED AS WITNESSES
3 IN THE CASE. WE HAD VARIOUS QUOTES CONCERNING THE EVIDENCE OF
4 THE CASE. AND ALSO, THE SOLICITOR HAD A STATEMENT IN THERE
5 CONCERNING THE CASE AND THEN WE HAVE THE STATEMENTS FROM THE
6 JUDGE. AND SO, I LOOK AT THIS AS BEING, YOU KNOW, THE PROSECUTION,
7 ALL OF THIS IS THE PROSECUTION. IT'S PREVENTING US FROM BEING ABLE
8 TO PROCEED WITH THE TRIAL WITH THE JURY WE WERE SATISFIED WITH.
9 WE HAD PICKED, THEY HAD BEEN SWORN, IF I RECALL CORRECTLY, AND SO
10 EVERYTHING IS READY TO GO UNTIL "BOOM" THIS ARTICLE COMES IN AND
11 PROVIDES THEM WITH A WHOLE BUNCH OF INFORMATION THAT SHOULD
12 HAVE BEEN CONTROLLED BY THE PROSECUTION AND THEY FAILED TO DO
13 THAT.

14 THE COURT: IN WHAT WAY COULD THE STATE CONTROL THE
15 DISSEMINATION OF WHAT THE PRESS WRITES ABOUT IT?

16 MR. HOOD: WELL, I THINK THAT, AGAIN, IT GOES BACK TO WHAT I
17 BELIEVE THE FACTS ARE AND THE FACTS ARE AFTER THE JURY WAS SWORN,
18 THE JUDGE FAILED TO GIVE THEM AN INSTRUCTION ON NOT TO LOOK AT THE
19 NEWSPAPERS, THINGS OF THAT NATURE, NOT TO LISTEN TO RADIO,
20 TELEVISION REPORTS OF HIS PARTICULAR CASE AND ANYTHING OF THAT
21 NATURE. HE DIDN'T DO THAT. THEN, WE HAD AN ARTICLE WHICH APPEARS IN
22 THE NEWSPAPER WHICH QUOTES MEMBERS OF THE PROSECUTION TEAM
23 CONCERNING THIS PARTICULAR CASE AND ALL THE FACTUAL SCENARIO
24 ALONG WITH THE STATEMENTS MADE BY THE JUDGE. AND THAT'S MY
25 THEORY THAT IT IS PART AND PARCEL WITH THE PROSECUTION, YOU KNOW

1 AND THE JUDGE MAKES A MISTAKE, WELL, IT'S STILL THE STATE AND THE
2 JUDGE IS RESPONSIBLE FOR THAT —

3 THE COURT: A BRANCH OF THE STATE.

4 MR. HOOD: WELL, ABSOLUTELY CORRECT. YOU KNOW, THE CLIENT
5 HERE IS BEING FACED AGAIN WITH HAVING TO GO THROUGH THIS SAME
6 PROCEDURE AGAIN, STARTING OVER AGAIN WITH THE SAME ANXIETY THAT
7 HE WENT THROUGH MONTHS AND MONTHS AGO HE'S GOING BACK THROUGH
8 AGAIN AND I CAN ASSURE YOU BETWEEN THE LAST TRIAL AND THIS TRIAL
9 HE'S HAD SOME TREMENDOUS PROBLEMS DEALING WITH US GETTING BACK
10 INTO THIS COURTROOM. AND I THINK THAT THE WHOLE IDEA OF DOUBLE
11 JEOPARDY IS NOT TO PUT A HUMAN BEING IN THAT SAME POSITION OVER
12 AND OVER AND OVER AGAIN WHERE THEY SUFFER THIS TREMENDOUS
13 ANXIETY, WHATEVER, YOU KNOW, TO CONFRONT THEIR YOU KNOW STATE IN
14 THIS PARTICULAR MATTER AND I THINK YOU KNOW AS A RESULT OF THAT WE
15 COULD DO THIS OVER AND OVER AND OVER AGAIN. THERE'S A NEWSPAPER
16 LADY SITTING RIGHT OUT HERE IN THE COURTROOM AND SHE MAY GO OUT
17 THERE AGAIN AND WRITE ANOTHER ARTICLE MAYBE INTERVIEW SOME OF
18 THE PEOPLE IN THIS COURTROOM, YOU KNOW AND STICK THAT STUFF IN THE
19 NEWSPAPER AND "BOOM" WE'RE OFF AND ROLLING AGAIN. AND SO, I SAY I
20 THINK THAT THE JUDGE THEN, ONCE THAT HAPPENS, HAS TO TAKE CONTROL
21 OF IT AND HAS TO FIND A BETTER WAY OF HANDLING THE MATTER OTHER
22 THAN A MISTRIAL. NOW —

23 THE COURT: WHO WAS THE TRIAL COURT JUDGE AT THAT TIME?

24 MR. HOOD: JOHN BREEDEN. JUDGE BREEDEN.

25 THE COURT: OKAY.

1 **MR. HOOD:** NOW, AND YOU'RE PROBABLY STANDING HERE AND YOU'RE
2 SAYING OR THINKING THAT YOU KNOW BECAUSE I MADE THIS MOTION TO
3 HAVE THIS MISTRIAL, THEN I SHOULD BE, THE DEFENSE SHOULD SUFFER THE
4 CONSEQUENCES, WE ASKED FOR IT, WE GOT IT. WELL, THERE ARE CASES,
5 THERE'S A FEDERAL CASE ON POINT OUT OF THE FOURTH CIRCUIT, AS A
6 MATTER OF FACT, WHICH BASICALLY SAYS, "WE DON'T CARE. WE DON'T
7 CARE WHO MADE THE MOTION, WHETHER THEY MADE THE MOTION OR DIDN'T
8 MAKE THE MOTION, THAT DOESN'T CHANGE THE RESPONSIBILITY OF THE
9 JUDGE TO DO THE RIGHT THING." SO, THAT'S THAT'S WHAT I'M ALL ABOUT IN
10 THIS AND THAT'S THE BASIS FOR THE MOTION. NOW, I HAVE NO EARTHLY
11 IDEA WHAT TYPES OF STATEMENTS WERE MADE, YOU KNOW, TO THE
12 REPORTERS, I DON'T KNOW WHO – I DON'T EVEN KNOW WHO, I'VE GOT THE
13 REPORTER'S NAME HERE, LORI AND I THINK THAT'S – ARE YOU LORI? THAT'S
14 LORI SITTING RIGHT OVER THERE. SHE WAS HERE LAST TIME, OBVIOUSLY,
15 AND I NOTICE THIS TIME THERE'S NOTHING IN THE PAPER. MAYBE THAT'S A
16 GOOD OMEN, THEY CHOSE TO PUT YOUR FELONY DUI WITH SEVEN PRIOR
17 CONVICTIONS ACTUALLY, THEY MISQUOTED HIM BECAUSE HE ONLY HAD SIX
18 PRIOR CONVICTIONS IN THE NEWSPAPER THIS MORNING IN THE CASE YOU
19 WERE ABOUT TO TRY AND SO ONCE AGAIN THEY TRIED YOUR CASE IN THE
20 NEWSPAPER AND WHERE THEY GET THEIR INFORMATION FROM IS VITALLY
21 IMPORTANT. THEY SURE DON'T GET IT FROM ME, YOU KNOW AND THEY
22 DIDN'T GET IT FROM SAM BAUER IN HIS CASE. HE IS – TRIED TO CONTACT,
23 NO CONTACT, THEY ARE GETTING THEIR INFORMATION FROM SOMEWHERE
24 THAT HAS TO COME FROM SOMEBODY IN THE PROSECUTORIAL GROUP, AS
25 THEY SAY. AND THAT STARTS OUT WITH THE LAW ENFORCEMENT AGENCIES

1 RIGHT ON UP TO THE GUYS AND GALS WHO ARE PROSECUTING THE CASES.
2 AND WE DON'T TRY OUR CASES IN THE NEWSPAPERS AND THAT'S WHAT WE
3 ARE ATTEMPTING TO DO IN EACH OF THESE SITUATIONS. WE ARE TRYING TO
4 INFLUENCE THE PUBLIC YOU KNOW INTO BELIEVING THAT THESE PEOPLE
5 ARE GUILTY BECAUSE THEY SAY THEY ARE GUILTY. THAT'S EXACTLY WHAT
6 HAPPENED IN THIS NEWSPAPER ARTICLE. OFFICER MADE COMMENTS
7 ABOUT, YOU KNOW, HOW HE WAS A PRIME SUSPECT AND THEY TRACKED HIM
8 AND THEY'VE DONE ALL THIS STUFF AND HE KNEW ONLY THINGS ABOUT THE
9 MURDER THAT NOBODY ELSE KNEW ABOUT AND ALL THIS THAT AND THE
10 OTHER. AND THAT'S ALL VERY WELL AND GOOD, BUT YOU DON'T TELL -- YOU
11 DON'T TRY YOUR CASES IN THE NEWSPAPER BECAUSE THAT TAINTS ALL OF
12 THESE PEOPLE OUT HERE. YOU KNOW, THEY COME IN AND SAY, CAN YOU
13 PUT THAT ASIDE. SURE, I CAN PUT IT ASIDE AND THEN WHEN YOU HEAR IT
14 YOU SAY, "OH, YEAH, I REMEMBER THAT." SO, WHAT I'M SAYING IS, YOU
15 KNOW, THEY HAVE A RESPONSIBILITY TO THESE PEOPLE, THE PEOPLE WHO
16 ARE OUR CLIENTS AND ARE DEFENDANTS IN THESE CASES BECAUSE THESE
17 PEOPLE AREN'T GUILTY YOU KNOW. THEY ARE NOT GUILTY UNTIL THEY ARE
18 PROVEN GUILTY BEYOND A REASONABLE DOUBT BEFORE THEY APPEAR
19 BEFORE THEIR PEERS, I'M NOT GOING TO SAY PEERS, LET'S JUST SAY A JURY
20 OF TWELVE PEOPLE AND/OR A BENCH TRIAL AND SO WE SORT OF SWAPPED
21 THE CART AROUND AND SO NOW WE'RE SAYING, "YOU'RE GUILTY AND NOW
22 WE'RE GOING TO HAVE TO PROVE WE'RE INNOCENT AND ITS BURDEN SHIFTS,
23 YOU KNOW? WE'RE JUST SHIFTING IT AROUND A LITTLE BIT AND SO NOW I
24 CAN COME IN HERE AND HAVE TO PROVE TO THAT JURY THAT EVERYTHING
25 THAT THEY SAID IN THAT NEWSPAPER ABOUT MY CLIENT WAS A LIE. WHICH,

1 YOU KNOW, IS TOTALLY UNFAIR. THAT IS NOT WHAT OUR SYSTEM IS
2 DESIGNED TO DO. AND, THAT'S MY PROBLEM WITH THIS WHOLE THING. IF
3 WE'RE GOING TO TRY CASES, LET'S TRY CASES, BUT DON'T TRY THEM IN THE
4 NEWSPAPERS BECAUSE THAT IS WHERE WE RUN INTO THESE PROBLEMS
5 AND THIS PROBLEM, YOU KNOW, IS NOT CAUSED BY THE DEFENSE. WE
6 DIDN'T GO OUT THERE ASKING FOR ANYBODY TO PROVE AN ARTICLE IN A
7 NEWSPAPER AND MAKE ALL THESE STATEMENTS ABOUT THE EVIDENCE AND
8 THINGS OF THAT NATURE. THAT'S MY ARGUMENT.

9 THE COURT: ALL RIGHT. MR. THORNTON.

10 MR. THORNTON: THANK YOU, JUDGE. JUDGE, A COUPLE OF THINGS.
11 FIRST, I NEVER TRY CASES IN THE MEDIA. MR. HOOD KNOWS THAT AND, LORI
12 FROM THE BEAUFORT GAZETTE, WHO IS SEATED IN THE COURTROOM, WAS
13 THE SAME REPORTER THIS HAPPENED WITH BEFORE AND I'M SURE SHE'LL
14 TELL YOU THAT IF SHE COMES UP TO ME AFTER THIS HEARING IS OVER SHE
15 KNOWS EXACTLY WHAT I'M GOING TO TELL HER WHICH IS, "I CAN'T TALK TO
16 YOU. IT'S A PENDING CASE UNTIL IT GETS RESOLVED." INTERESTINGLY
17 ENOUGH, JUDGE, I UNDERSTAND MR. HOOD IS TALKING ABOUT A CASE, A
18 CASE HE HAS OUT OF THE FOURTH CIRCUIT. THIS ISSUE OF DOUBLE
19 JEOPARDY, WHEN THE DEFENSE ASKS FOR A MISTRIAL, HAS BEEN BROUGHT
20 UP AND I'LL REFERENCE A COUPLE OF CASES. I'VE ALREADY HANDED YOUR
21 HONOR UP A SOUTH CAROLINA CASE FROM 2005, WHICH I BELIEVE IS
22 DIRECTLY ON POINT, WHICH CITES THE SUPREME COURT OF THE UNITED
23 STATES AND CITES A FORMER COURT OF APPEALS CASE WHICH APPLIES
24 THAT STANDARD TO SOUTH CAROLINA. AND THE STANDARD, IN ESSENCE,
25 JUDGE, IS THIS: IF THE DEFENSE MOVES FOR A MISTRIAL, WHICH IS WHAT

1 HAPPENED IN THIS CASE, THE ONLY WAY THEY GET TO USE THE DEFENSE OR
2 THE BAR OF FURTHER PROSECUTION OF DOUBLE JEOPARDY IS WHEN THE
3 MISTRIAL WAS CAUSED BY PROSECUTORIAL MISCONDUCT. BUT NOT ONLY
4 PROSECUTORIAL MISCONDUCT, EVEN THAT, EVEN IF HE HAD THAT AND I
5 CERTAINLY DON'T THINK YOU HAVE THAT HERE AT ALL, THIS WAS
6 SOMETHING THAT THE JUDGE JUST FORGOT TO DO AND HE CAME OUT ON
7 THE RECORD AND TOOK RESPONSIBILITY AND SAID "I FORGOT TO TELL THE
8 JURY, DON'T READ THE NEWSPAPER." AND INCIDENTALLY JUDGE, I DON'T
9 KNOW IF MR. HOOD WILL REMEMBER THIS OR NOT, I ACTUALLY WENT UP TO
10 THE JUDGE AFTERWARDS AND LET HIM KNOW THAT THE REPORTER FROM
11 THE GAZETTE WAS IN THE COURTROOM AND PERHAPS WE COULD REQUEST
12 THAT SHE NOT PUT ANYTHING IN THE PAPER. I DON'T KNOW WHAT MORE I
13 COULD HAVE DONE. I DON'T CONTROL THE NEWSPAPER. THE QUOTES THAT
14 MR. HOOD IS TALKING ABOUT, IS MY UNDERSTANDING, WERE QUOTES THAT
15 WERE MADE SOME TIME BEFORE. I DON'T KNOW THAT ANYONE TALKED TO
16 HER AFTER THE HEARING THAT DAY. BUT REGARDLESS, IN ADDITION TO
17 HAVING TO SHOW PROSECUTORIAL MISCONDUCT, YOU'VE GOT TO SHOW THE
18 MISCONDUCT WAS DONE IN AN ACTUAL ATTEMPT TO SUBVERT DOUBLE
19 JEOPARDY. IN OTHER WORDS, THAT WE COMMITTED THE MISCONDUCT SO
20 THAT WE WOULD GOAD THE DEFENSE INTO COMMITTING MISTRIAL. I SAT
21 BACK IN THE JUDGE'S OFFICE FOR OVER AN HOUR ARGUING THAT A
22 CURATIVE INSTRUCTION WOULD HAVE BEEN SUFFICIENT. MR. HOOD ARGUED
23 THAT IT WOULDN'T BE SUFFICIENT, THAT HE NEEDED A MISTRIAL. SO, I DON'T
24 KNOW HOW YOU CAN ON THE ONE HAND SAY, "NO, THIS IS HORRID, YOU
25 HAVE TO GIVE ME A MISTRIAL." AND THEN COME BACK AND SAY, "YOU

1 KNOW, THE JUDGE REALLY SHOULD HAVE GIVEN A CURATIVE INSTRUCTION
2 INSTEAD." IT, YOU KNOW, IT SEEMS KIND OF RIDICULOUS TO BEGIN WITH,
3 BUT CERTAINLY, JUDGE, THE STANDARD IN THE CASE THAT I PASSED UP TO
4 YOUR HONOR, FOR THE RECORD, JUDGE, IS THE STATE VERSUS COLEMAN,
5 CAESAR AND ADAMSON. MULTIPLE CASES JUDGE. IT WAS OUT OF
6 LANCASTER COUNTY, IF WAS FILED JULY 5, 2005. THAT CASE, JUDGE,
7 QUOTES – I'M SORRY, JUDGE, THE CITE TO THAT IS 356 S.C. 258 AND THE
8 ACTUAL OFFICIAL TITLE WAS STATE V COLEMAN. THAT CASE CITES OREGON
9 V KENNEDY WAS SUPREME COURT ADOPTED THE RULE THAT I JUST TALKED
10 ABOUT AND STATE V MATHIS JUDGE, IS 359 S.C. 450, THAT IS A COURT OF
11 APPEALS CASE THAT APPLIED THE OREGON V KENNEDY STANDARD TO
12 SOUTH CAROLINA AND THE STANDARD IS THIS, AS I'VE ALREADY SAID, JUDGE:
13 YOU'VE GOT TO HAVE PROSECUTORIAL MISCONDUCT THAT CAUSED THE
14 MISTRIAL AND I TORE OUT A QUOTE, THE CORE JUDGE, THE PROSECUTOR'S
15 CONDUCT, GIVING RISE TO THE MISTRIAL WAS INTENDED TO GOAD OR
16 PROVOKE HIM, MEANING THE DEFENDANT, MOVING FOR THE MISTRIAL.
17 UNDER THIS STANDARD, THE DETERMINATION FOR DETERMINING WHETHER
18 DOUBLE JEOPARDY IS ATTACHED DEPENDS ON WHETHER THE
19 PROSECUTORIAL MISCONDUCT WAS UNDERTAKEN WITH A SPECIFIC INTENT,
20 TO SUBVERT THE PROTECTIONS AFFORDED BY THE DOUBLE JEOPARDY
21 CLAUSE. THERE WAS NO PROSECUTORIAL MISCONDUCT. IT WAS SIMPLY AN
22 ERROR, JUDGE. UNFORTUNATELY, THEY DO HAPPEN. THE JUDGE IN THE
23 PREVIOUS CASE FORGOT TO ADMONISH THE JURORS, AS YOUR HONOR DID
24 TODAY, DO NOT READ THE PAPER. AN ARTICLE WAS PRINTED, THEY READ IT,
25 I ARGUED ONE WAY, MR. HOOD ARGUED ANOTHER WAY, THE JUDGE

1 LISTENED TO BOTH SIDES AND HE DECIDED ON A MISTRIAL. IT'S AS SIMPLE
2 AS THAT. AND SO, I CERTAINLY WOULD ASK THE COURT TO DISMISS MR.
3 HOOD'S MOTION WITH ALL DUE RESPECT, I DON'T THINK IT HAS ANY MERIT,
4 YOUR HONOR. THANK YOU.

5 THE COURT: ALL RIGHT --

6 MR. HOOD: JUDGE, I HAVE TWO CASES THAT I WOULD LIKE RECORDED.
7 ONE OF THEM IS STATE VERSUS, I MEAN, UNITED STATES VERSUS WALDRON
8 AND IT'S CITED AS §448 Fed 2nd 925 AND HOLMES VERSUS THE UNITED
9 STATES IS CITED AS §284 Fed 2nd 716. THERE ARE OTHER CASES, JUDGE,
10 WHICH TALK ABOUT IT, BUT THOSE ARE THE TWO THAT TALK ABOUT IT WITH
11 RESPECT TO WHETHER I MADE THE MOTION OR AGREED TO THE MOTION
12 FOR THE MISTRIAL AND THINGS OF THAT NATURE AND ALSO THE MATTER
13 CONCERNING MISCONDUCT. WE CAN --

14 THE COURT: WELL, BASED ON WHAT I'VE HEARD, IT DOESN'T REALLY,
15 IT DOESN'T REALLY SOUND TO ME AT ALL THAT THE SOLICITOR'S OFFICE DID
16 ANYTHING TO PROVOKE OR ANY WAY INITIATE THE CONDUCT WHICH LED TO
17 THE GRANT OF A MISTRIAL. THE CASE LAW SPEAKS IN TERMS OF
18 PROSECUTORIAL MISCONDUCT, NOT IN TERMS OF JUDICIAL MISCONDUCT
19 AND I WOULDN'T EVEN BEGIN TO CHARACTERIZE JUDGE BREEDEN'S ERROR
20 AS MISCONDUCT. HE SIMPLY MISSED IT AND I'M SURE I'VE FORGOTTEN TO
21 DO THE SAME THING A BUNCH OF TIMES. YOU KNOW, WE LIVE IN A
22 DEMOCRACY AND WE HAVE A PRESS AND YOU KNOW I'D RATHER HAVE THEM
23 THAN NOT HAVE THEM. THE ONLY DISCOMFORT THAT I'VE EVER HAD WITH
24 THE PRESS IS THEY HAVE THIS ANNOYING HABIT OF QUOTING ME
25 ACCURATELY AND I USUALLY AM MY OWN WORST ENEMY IN THAT REGARD

1 HAVING HAD SOME EXPERIENCE BACK IN THE DAYS WHEN I WAS IN THE
2 STATE HOUSE. AND, SO, SOMETIMES IT CAUSES SOME DIFFICULTIES
3 BECAUSE THEY WRITE STORIES AND, YOU KNOW, WE HAVE TO WORK
4 AROUND IT THE BEST WE CAN. I DON'T THINK THIS IS ONE OF THOSE CASES
5 WHERE ANYONE MEANT ANY HARM. IT JUST HAPPENED. THE CONDUCT WAS
6 NOT BROUGHT ABOUT BY THE STATE, PARTICULARLY THE PROSECUTION,
7 THEREFORE I AM GOING TO DENY YOUR MOTION. DO YOU HAVE ANY OTHER
8 MOTIONS?

9 MR. HOOD: YOUR HONOR, WE HAVE A MOTION REGARDING THE
10 SUPPRESSION OF CERTAIN TAPES, ACTUALLY THEY ARE STATEMENTS, MADE
11 BY MY CLIENT DURING SOME TAPED UNDER SURVEILLANCE-TYPE CAMERA
12 RECORDINGS DONE BY AN UNDERCOVER SLED AGENT.

13 THE COURT: ALL RIGHT. YOU ALL CAME TO ME IN CHAMBERS AND WE
14 TALKED ABOUT THIS. ARE WE AGREEABLE THAT WE CAN STIPULATE AS TO
15 THE FOUNDATION FOR THE TAPES AND THEN WE JUST AGREE THAT I WILL
16 DO THEM IN CHAMBERS TO DETERMINE WHETHER OR NOT THEY WERE
17 FREELY AND VOLUNTARILY AND INTELLIGENTLY MADE UNDER A JACKSON V
18 DENNO HEARING?

19 MR. HOOD: WE DID, YOUR HONOR, AND YOU KNOW THE ONLY THING
20 THAT WE TALKED ABOUT WAS PERHAPS PUTTING ON THE RECORD SOME
21 MATTERS CONCERNING THE AGENTS BEING ON DUTY DURING THAT TIME AND
22 THINGS OF THAT NATURE WHICH GO TO — A FURTHER ARGUMENT THAT I
23 WAS GOING TO MAKE CONCERNING THE CUSTODIAL NATURE OF THE
24 STATEMENTS THAT WERE BEING MADE AND —

25 THE COURT: WELL, WHY DON'T WE DO THIS — I THINK MR. THORNTON

1 CAN PROBABLY STATE IN SUCH A WAY THAT YOU WOULD AGREE A
2 STIPULATION OF THE FACTS ABOUT HE WAS ON DUTY AND WHAT HE WAS
3 DOING AND IT WAS UNDERCOVER, ET CETERA, AND THEN I WILL TAKE A
4 LISTEN TO THE TAPES IN CHAMBERS TONIGHT AND THEN WE WILL
5 RECONVENE AT 9:00 AM TOMORROW AND YOU CAN MAKE YOUR ARGUMENTS
6 ON IT IF THAT IS SATISFACTORY TO YOU.

7 MR. THORNTON: THAT IS FINE FOR THE STATE AND JUDGE IF YOU'D
8 LIKE, I'LL GO AHEAD AND DO THAT NOW.

9 THE COURT: ALL RIGHT. GO AHEAD.

10 MR. THORNTON: THE FACTS, AS I UNDERSTAND THEM, FOUR, AND THIS
11 IS LIMITED TO YOUR CONSIDERATION UNDER JACKSON V DENNO. JUDGE, IS
12 THAT BRUCE OTTERBACHER WITH THE SOUTH CAROLINA LAW
13 ENFORCEMENT DIVISION WAS THE PERSON IN THE VAN WITH THE
14 DEFENDANT, THAT HE WAS ON DUTY WAS A SLED AGENT ON DUTY AT THE
15 TIME. HE WAS IN A VEHICLE SUPPLIED TO HIM BY THE SOUTH CAROLINA LAW
16 ENFORCEMENT DIVISION THAT HAD BEEN WIRED FOR VIDEO AND SOUND BY
17 THE SOUTH CAROLINA LAW ENFORCEMENT DIVISION. HE DID HAVE A GUN
18 AND A BADGE ON HIM, THOUGH NOT DISPLAYED AT THE TIME. AND HE WAS,
19 AGAIN, ON DUTY AS A SLED AGENT AT THAT TIME, UNDERCOVER, AND
20 NEITHER HIS GUN NOR HIS BADGE, IS MY UNDERSTANDING, WERE
21 DISPLAYED. THAT, I BELIEVE, WOULD BE THE, I THINK THE FOUNDATION, AS
22 FAR AS WHAT HIS CONDUCT WAS THAT EVENING OTHER THAN WHAT YOU
23 CAN SEE FOR YOURSELF ON THE TAPE.

24 THE COURT: ALL RIGHT.

25 MR. HOOD: YOUR HONOR, THE ONLY THING THAT I WOULD ADD IS THAT

1 THE TYPE INFORMATION AS TO YOU KNOW, HIM HAVING HAD CONTACT WITH,
2 NOT ONLY ON THOSE THREE OCCASIONS ON THE TAPES, BUT ALSO
3 PREVIOUS TO THAT HE HAD CONTACT WITH HIM IN WHICH HE PROVIDED HIM
4 MONEY. LET IT ALSO BE UNDERSTOOD THAT THAT AT THAT PARTICULAR
5 TIME, MY CLIENT WAS ADDICTED TO CRACK COCAINE AND THAT HE WAS IN
6 FACT PURCHASING CRACK COCAINE AND THAT THE MONEY, YOU KNOW, IN
7 MY OPINION, AND THAT'S GOING TO BE MY ARGUMENT, THAT WE HAVE AN
8 AGENT WHO IS SUPPLYING THIS INDIVIDUAL KNOWING, BASED ON HIS
9 EXPERIENCE, HIS THIRTY SOMETHING YEARS OF EXPERIENCE WITH SLED,
10 THAT THIS PERSON, AFTER WATCHING HIS COMINGS AND GOINGS, WAS
11 OBVIOUSLY, YOU KNOW, GOING TO BE USING THAT MONEY FOR PURPOSES
12 OF PURCHASING CRACK COCAINE, WHICH IS THE FIRST THING THAT YOU BUY
13 WHEN YOU GIVE MONEY TO A CRACK HEAD OR A PERSON THAT IS ADDICTED
14 TO CRACK OR A PERSON THAT IS ADDICTED TO ANY KIND OF DRUGS. SO,
15 THAT'S SOMETHING THAT HAS TO BE VIEWED, BECAUSE YOU LOOK AT IT IN
16 THE REGARD OF HIM BECOMING DEPENDANT UPON SOMEONE TO SUPPLY
17 THE GOODS IN ORDER FOR HIM TO GET WHAT HE NEEDS WHEN HE'S
18 DEPENDANT UPON, WHICH IS THE CRACK COCAINE. SO, I THINK, IF YOU ADD
19 THOSE FACTS, THEN WE CAN PRETTY MUCH AGREE THAT THAT'S THE TRUTH.

20 THE COURT: OKAY. ALL RIGHT. WITH THAT IN MIND, THEN, WE WILL
21 RECESS UNTIL 9:00 TOMORROW AND MR. THORNTON, IF YOU WILL GET ME
22 THOSE TAPES AND THEN I WILL WATCH THEM SHORTLY.

23 MR. THORNTON: ALL RIGHT, JUDGE. I HAVE THEM RIGHT HERE. I WILL,
24 ONCE YOU RETIRE I WILL BRING YOU THE PLAYER AND WHAT I AM TALKING
25 ABOUT AS FAR AS HOW TO HOOK IT UP TO A TELEVISION.

1 THE COURT: OKAY. THANK YOU.

2 MR. THORNTON: THANK YOU, JUDGE.

3 INTERVIEW OF JURORS IN CHAMBERS

4 (PRESENT IN CHAMBERS IS JUDGE YOUNG, SEAN THORNTON, EUGENE
5 HOOD AND JO RICE)

6 (THE BAILIFF BRINGS IN JUROR, DAVID TAYLOR)

7 THE COURT: HELLO, HOW ARE YOU?

8 MR. TAYLOR: PRETTY GOOD, HOW ABOUT YOU?

9 THE COURT: GOOD, HAVE A SEAT. CAN I GET YOUR NAME?

10 MR. TAYLOR: DAVID TAYLOR.

11 THE COURT: WHAT WAS YOUR LAST NAME?

12 MR. TAYLOR: TAYLOR. T-A-Y-L-O-R.

13 THE COURT: OKAY. MR. TAYLOR, I'VE GOT TO ASK YOU A COUPLE OF
14 QUESTIONS AND I'M GOING TO HAVE TO PUT YOU UNDER OATH. I'M NOT
15 TRYING TO INTIMIDATE YOU OR ANYTHING, AND I KNOW IT'S A LITTLE
16 NERVOUS YOU COME IN HERE AND TALK TO THE JUDGE IN FRONT OF THE
17 LAWYERS AND THE COURT REPORTER, BUT RAISE YOUR RIGHT HAND FOR
18 ME. DO YOU SWEAR OR AFFIRM THE TESTIMONY YOU'RE ABOUT TO GIVE
19 WILL BE THE TRUTH, THE WHOLE TRUTH AND NOTHING BUT THE TRUTH, SO
20 HELP YOU GOD?

21 MR. TAYLOR: YES, SIR.

22 THE COURT: OKAY. LET ME ASK YOU A QUESTION. DID YOU HAPPEN
23 TO SEE TODAY'S NEWSPAPER?

24 MR. TAYLOR: NO, SIR.

25 THE COURT: YOU HAVEN'T SEEN IT AT ALL?

1 **MR. TAYLOR:** NO, SIR.

2 **THE COURT:** I KNOW SOME OF THE JURORS BROUGHT IT IN TODAY AND
3 I NEED TO FIND OUT, YOU KNOW, WHO IT WAS AND IF Y'ALL HAD ANY
4 DISCUSSIONS ABOUT IT. WHEN YOU CAME IN, YOU HADN'T READ THE PAPER
5 AT ALL?

6 **MR. TAYLOR:** NO, SIR.

7 **THE COURT:** DID ANY OF THE JURORS TALK ABOUT THIS NEWSPAPER
8 ARTICLE TODAY?

9 **MR. TAYLOR:** NO, SIR. NOT TODAY. THEY TOOK IT OUT. THEY
10 WOULDN'T LET THEM BRING IT IN.

11 **THE COURT:** OKAY. LET ME ASK YOU THIS. DID EITHER TODAY OR
12 YESTERDAY WHEN YOU WERE LEAVING OR TODAY WHEN YOU WERE COMING
13 IN, DID YOU HEAR ANYBODY DOWNSTAIRS, ANYBODY IN UNIFORM OR
14 ANYBODY IN THE COURTROOM FACILITY, EITHER DOWNSTAIRS OR UPSTAIRS,
15 ANYWHERE, DID YOU OVERHEAR THEM TALKING ABOUT THE CASE?

16 **MR. TAYLOR:** NO, SIR.

17 **THE COURT:** OKAY. AND HAS ANYBODY HAD ANY DISCUSSIONS ABOUT
18 THE CASE SO FAR, THIS MORNING?

19 **MR. TAYLOR:** NO, THEY WERE JUST WONDERING WHAT YOU WERE
20 DELIBERATING ABOUT, JUST WHAT'S GOING ON.

21 **THE COURT:** WELL, THAT'S ALL I NEED TO ASK YOU. OKAY, WHEN YOU
22 GO BACK IN, DON'T TALK ABOUT WHAT WE'VE JUST TALKED ABOUT. OKAY?

23 **MR. TAYLOR:** NO PROBLEM. SEE YOU GUYS LATER.

24 **THE COURT:** ALL RIGHT, NEXT ONE.

25 (THE BAILIFF BRINGS IN JUROR, KIRK RUGE)

1 THE COURT: YES, SIR. GOOD MORNING.

2 MR. RUGE: GOOD MORNING.

3 THE COURT: HOW ARE YOU? HAVE A SEAT. CAN I GET YOUR NAME?

4 MR. RUGE: KIRK, K-I-R-K. RUGE, R-U-G-Y.

5 THE COURT: RUDY?

6 MR. RUGE: RUGE.

7 THE COURT: OKAY. MR. RUGE, I'M GOING TO HAVE TO ASK YOU A
8 COUPLE OF QUESTIONS AND, BECAUSE I HAVE A COURT REPORTER IN HERE,
9 I HAVE TO PUT YOU UNDER OATH, SO WOULD YOU RAISE YOUR RIGHT HAND?
10 DO YOU SWEAR OR AFFIRM THE TESTIMONY YOU'RE ABOUT TO GIVE WILL BE
11 THE TRUTH, THE WHOLE TRUTH AND NOTHING BUT THE TRUTH, SO HELP YOU
12 GOD?

13 MR. RUGE: YES, I DO.

14 THE COURT: OKAY. HAVE YOU HAD A CHANCE TO SEE TODAY'S
15 NEWSPAPER?

16 MR. RUGE: I GLANCED AT IT. I SEEN IT AND I TURNED AWAY.

17 THE COURT: GOOD. YOU GOT IT DELIVERED TO YOU AT THE HOUSE?

18 MR. RUGE: NO, IT WAS AT WORK.

19 THE COURT: AT WORK?

20 MR. RUGE: I WENT IN AND ONE OF THE EMPLOYEES BROUGHT IT IN.

21 THE COURT: OKAY. AND SO, YOU DIDN'T LOOK AT IT?

22 MR. RUGE: I TURNED AWAY, GOT OUT OF THE OFFICE.

23 THE COURT: LET ME ASK YOU THIS, SOME, APPARENTLY, SOME
24 PEOPLE BROUGHT THIS IN TODAY. DID YOU SEE IT WHEN THEY BROUGHT IT
25 IN TODAY?

1 **MR. RUGE:** I JUST SEEN THAT THEY HAD IT.

2 **THE COURT:** OKAY. BUT, YOU DIDN'T READ IT?

3 **MR. RUGE:** NO.

4 **THE COURT:** DID ANYBODY TALK ABOUT IT WHILE Y'ALL WERE
5 WAITING?

6 **MR. RUGE:** NO, JUST TO TELL THEM TO TAKE IT AWAY. EVERY TIME
7 SOMEBODY CAME IN WITH A NEWSPAPER, THEY'D SAY, "WELL, YOU'VE GOT
8 TO GET OUT."

9 **THE COURT:** ALL RIGHT. THAT'S FINE. LET ME ASK YOU THIS. DID YOU
10 OVERHEAR ANYBODY IN THE COURTHOUSE FACILITY EITHER DOWNSTAIRS
11 OR WHEN YOU CAME OR LEFT YESTERDAY OR THIS MORNING OR AT ANY
12 TIME OR ANY PLACE IN THE COURTHOUSE, DID YOU HEAR ANY OF THE
13 COURTHOUSE PEOPLE TALKING ABOUT THE CASE?

14 **MR. RUGE:** NO.

15 **THE COURT:** NO AT ALL?

16 **MR. RUGE:** NO.

17 **THE COURT:** ALL RIGHT. GOOD. ALL RIGHT. WELL, THAT'S ALL I NEED
18 TO ASK YOU AND PLEASE DON'T DISCUSS THIS WHEN YOU GO BACK. ALL
19 RIGHT. THANK YOU.

20 **MR. RUGE:** ALL RIGHT. THANK YOU.

21 (AT THIS TIME, ELIZABETH SMITH, CLERK OF COURT, ENTERED THE
22 ROOM)

23 (THE BAILIFF BRINGS IN JUROR. BARBARA PALMIERI)

24 **THE COURT:** HELLO.

25 **MS. PALMIERI:** HI.

1 THE COURT: HOW ARE YOU DOING?

2 MS. PALMIERI: I'M FINE.

3 THE COURT: COME IN AND HAVE A SEAT. CAN I GET YOUR NAME?

4 MS. PALMIERI: I'M BARBARA PALMIERI.

5 THE COURT: OKAY. MS. PALMIERI, I NEED TO ASK YOU A COUPLE OF
6 QUESTIONS AND I'M GOING TO HAVE TO PUT YOU UNDER OATH WHILE I ASK,
7 OKAY?

8 MS. PALMIERI: FINE.

9 THE COURT: SO, IF YOU WOULD, RAISE YOUR RIGHT HAND. DO YOU
10 SWEAR OR AFFIRM THE TESTIMONY YOU'RE ABOUT TO GIVE WILL BE THE
11 TRUTH, THE WHOLE TRUTH AND NOTHING BUT THE TRUTH, SO HELP YOU
12 GOD?

13 MS. PALMIERI: YES, I DO.

14 THE COURT: OKAY. HAVE YOU HAD A CHANCE TO SEE TODAY'S
15 NEWSPAPER?

16 MS. PALMIERI: NO. THEY WERE TALKING ABOUT IT, BUT I HAVEN'T
17 SEEN IT.

18 THE COURT: ALL RIGHT. WHO WAS TALKING ABOUT IT?

19 MS. PALMIERI: THEY JUST SAID THAT SOMEBODY SAID THAT IT WAS IN
20 THE PAPER. NOBODY SAID THEY HAD ACTUALLY READ IT OR ANYTHING.

21 THE COURT: OKAY. FELLOW JURORS?

22 MS. PALMIERI: YEAH.

23 THE COURT: OKAY. AND THAT WAS JUST A LITTLE BIT AGO?

24 MS. PALMIERI: JUST AS WE WERE COMING IN.

25 THE COURT: OKAY. BUT, YOU HAVEN'T READ IT?

1 MS. PALMIERI: NO.

2 THE COURT: OKAY. DID ANYBODY SAY THEY HAD READ IT?

3 MS. PALMIERI: NO. THEY SAID, AS WE WERE COMING IN, I WASN'T
4 ASKED, BUT THEY WERE ASKED IF THEY HAD A NEWSPAPER AND THAT THEY
5 WEREN'T TO READ IT AND FROM WHAT I UNDERSTAND, I GUESS THE
6 BLUFFTON PAPER HAS IT ON THE FRONT PAGE AND THE HILTON HEAD PAPER
7 AND IT HAD ABOUT THREE PAGES IN IT OR SOMETHING, BUT I HADN'T HEARD
8 ANYBODY SAY THEY READ IT.

9 THE COURT: ALL RIGHT. LET ME ASK YOU THIS, WHEN YOU WERE,
10 EITHER TODAY OR YESTERDAY, AT ANY TIME WHEN YOU WERE IN THE
11 COURTHOUSE EITHER DOWNSTAIRS OR UPSTAIRS, DID YOU OVERHEAR ANY
12 OF THE COURTHOUSE PEOPLE TALKING ABOUT THE CASE?

13 MS. PALMIERI: NO.

14 THE COURT: ANY DEPUTIES, OR BAILIFFS OR ANYTHING LIKE THAT?

15 MS. PALMIERI: NO.

16 THE COURT: OKAY. WELL, THAT'S ALL I NEEDED TO ASK YOU. WHEN
17 YOU GO BACK, DON'T DISCUSS ANY OF THIS. I STILL NEED TO TALK TO THE
18 OTHER ONES.

19 MS. PALMIERI: OKAY. THANK YOU.

20 THE COURT: THANK YOU.

21 (THE BAILIFF BRINGS IN JUROR, EDWARD SCHUMACHER)

22 THE COURT: GOOD MORNING. HOW ARE YOU?

23 MR. SCHUMACHER: I'M ALL RIGHT.

24 THE COURT: COME ON IN AND HAVE A SEAT. COULD I GET YOUR
25 NAME?

1 **MR. SCHUMACHER:** EDWARD SCHUMACHER.

2 **THE COURT:** ALL RIGHT, MR. SCHUMACHER, I NEED TO ASK YOU A
3 COUPLE OF QUESTIONS. I'M ASKING ALL OF THE JURORS, NOT FOCUSING IN
4 ON ANYBODY, BUT I HAVE TO PUT YOU UNDER OATH WHILE I ASK YOU SO,
5 WOULD YOU RAISE YOUR RIGHT HAND? DO YOU SWEAR OR AFFIRM THE
6 TESTIMONY YOU'RE ABOUT TO GIVE WILL BE THE TRUTH, THE WHOLE TRUTH
7 AND NOTHING BUT THE TRUTH, SO HELP YOU GOD?

8 **MR. SCHUMACHER:** YES, SIR.

9 **THE COURT:** OKAY. HAVE YOU SEEN TODAY'S NEWSPAPER?

10 **MR. SCHUMACHER:** YES.

11 **THE COURT:** ALL RIGHT. DID YOU SEE THE ARTICLE THAT WAS ON THE
12 FRONT PAGE ABOUT THIS CASE?

13 **MR. SCHUMACHER:** I DON'T HAVE A BEAUFORT PAPER.

14 **THE COURT:** OH, YOU HAD THE —

15 **MR. SCHUMACHER:** THE ISLAND PACKET.

16 **THE COURT:** THE ISLAND PACKET? OKAY. WAS IT YOU THAT BROUGHT
17 THIS?

18 **MR. SCHUMACHER:** NO.

19 **THE COURT:** DID YOU READ THE ARTICLE ABOUT THE CASE THAT WAS
20 IN THE ISLAND PACKET?

21 **MR. SCHUMACHER:** NO, I JUST SAW THE HEADLINE AND I DIDN'T READ
22 IT.

23 **THE COURT:** OKAY. BECAUSE YOU WERE FOLLOWING MY
24 INSTRUCTIONS, RIGHT?

25 **MR. SCHUMACHER:** YES, SIR.

1 THE COURT: VERY GOOD. LET ME ASK YOU THIS. HAVE YOU
2 OVERHEARD ANY OF THE OTHER JURORS TALKING ABOUT THE CASE TODAY?

3 MR. SCHUMACHER: NO, SIR.

4 THE COURT: HAVE YOU HEARD ANYBODY TALKING ABOUT READING
5 THIS NEWSPAPER ARTICLE?

6 MR. SCHUMACHER: NO, SIR.

7 THE COURT: OKAY. LET ME ASK YOU THIS, EITHER TODAY OR
8 YESTERDAY, AT ANY TIME WHEN YOU WERE EITHER COMING OR LEAVING
9 THE COURTHOUSE, EITHER UPSTAIRS OR DOWNSTAIRS, DID YOU HEAR ANY
10 OF THE COURTHOUSE PERSONNEL TALKING ABOUT THE CASE?

11 MR. SCHUMACHER: NO.

12 THE COURT: DID YOU OVERHEAR ANYBODY TALKING ABOUT IT?

13 MR. SCHUMACHER: NO.

14 THE COURT: ANY OF THE OFFICERS OF ANYTHING?

15 MR. SCHUMACHER: NO.

16 THE COURT: OKAY.

17 MR. SCHUMACHER: I DIDN'T KNOW ANYTHING ABOUT THIS CASE.

18 THE COURT: OKAY, THAT'S FINE. WELL, THEN YOU WERE FOLLOWING
19 MY INSTRUCTIONS ENTIRELY AND ALL I NEED TO ASK YOU.

20 MR. SCHUMACHER: OKAY.

21 THE COURT: WHEN YOU GO BACK, DON'T DISCUSS ANY OF THIS,
22 BECAUSE I STILL HAVE TO TALK TO THE OTHER FOLKS ABOUT IT.

23 MR. SCHUMACHER: OKAY.

24 THE COURT: ALL RIGHT. THANK YOU VERY MUCH.

25 (THE BAILIFF BRINGS IN JUROR, RALPH MORRISON)

1 THE COURT: GOOD MORNING.

2 MR. MORRISON: GOOD MORNING.

3 THE COURT: HOW ARE YOU?

4 MR. MORRISON: GOOD.

5 THE COURT: GOOD. HAVE A SEAT, PLEASE. COULD I GET YOUR NAME?

6 MR. MORRISON: RALPH MORRISON.

7 THE COURT: MR. MORRISON, I'M GOING TO NEED TO ASK YOU A
8 COUPLE OF QUESTIONS AND SO I HAVE TO PLACE YOU UNDER OATH WHILE I
9 ASK THEM. COULD YOU RAISE YOUR RIGHT HAND FOR ME. DO YOU SWEAR
10 OR AFFIRM THE TESTIMONY YOU'RE ABOUT TO GIVE WILL BE THE TRUTH, THE
11 WHOLE TRUTH AND NOTHING BUT THE TRUTH, SO HELP YOU GOD?

12 MR. MORRISON: I DO.

13 THE COURT: OKAY. HAVE YOU HAD A CHANCE TO SEE TODAY'S
14 NEWSPAPER, EITHER THE BEAUFORT GAZETTE OR THE ISLAND PACKET?

15 MR. MORRISON: NO. THE ONLY THING I DID WAS BRING THEM IN FROM
16 THE DRIVEWAY.

17 THE COURT: OKAY. SO, ONE OF THESE IS YOURS?

18 MR. MORRISON: NO.

19 THE COURT: OH. YOU BROUGHT IT IN FROM THE DRIVEWAY TO YOUR
20 HOUSE?

21 MR. MORRISON: AT THE HOUSE.

22 THE COURT: AND YOU DIDN'T LOOK AT IT THIS MORNING AND SO YOU
23 DIDN'T SEE THIS ARTICLE?

24 MR. MORRISON: I DON'T READ THE PAPER. I JUST STACK IT UP FOR MY
25 WIFE.

1 THE COURT: I'VE GOT YOU. LET ME ASK YOU THIS, THIS MORNING
2 HAVE YOU OVERHEARD ANY OF YOUR FELLOW JURORS TALKING ABOUT THE
3 NEWSPAPER ARTICLE?

4 MR. MORRISON: THE - MOST OF THEM - ONE MENTIONED THAT THERE
5 WAS A HEADLINE FOR IT, BUT HE SAID HE HADN'T READ IT.

6 THE COURT: OKAY. LET ME ASK YOU THIS, EITHER TODAY OR
7 YESTERDAY WHEN YOU WERE COMING OR LEAVING, DID YOU OVERHEAR
8 ANYBODY WHO WORKS IN THE COURTHOUSE TALK ABOUT THE CASE, MAYBE
9 OVERHEAR THEM DOWNSTAIRS WHEN YOU WERE COMING IN, ANY OF THE
10 OFFICERS OR ANYTHING LIKE THAT?

11 MR. MORRISON: NO.

12 THE COURT: NONE? OKAY. ALL RIGHT. I JUST NEEDED TO ASK YOU
13 THOSE QUESTIONS. PLEASE DON'T TALK ABOUT THIS BECAUSE I HAVE TO
14 ASK YOUR FELLOW JURORS THE SAME QUESTIONS. THANK YOU.

15 MR. MORRISON: OKAY. THANK YOU.

16 (THE BAILIFF BRINGS IN JUROR, TOM MCMURRAY)

17 THE COURT: GOOD MORNING.

18 MR. MCMURRAY: GOOD MORNING.

19 THE COURT: HOW ARE YOU?

20 MR. MCMURRAY: GOOD.

21 THE COURT: GOOD. HAVE A SEAT. CAN I GET YOUR NAME?

22 MR. MCMURRAY: TOM MCMURRAY.

23 THE COURT: OKAY. LET ME ASK YOU THIS, MR. MCMURRAY, I'VE GOT
24 TO ASK YOU A COUPLE OF QUESTIONS AND I NEED TO PUT YOU UNDER OATH.
25 COULD YOU RAISE YOUR RIGHT HAND. DO YOU SWEAR OR AFFIRM THE

1 TESTIMONY YOU'RE ABOUT TO GIVE WILL BE THE TRUTH, THE WHOLE TRUTH
2 AND NOTHING BUT THE TRUTH, SO HELP YOU GOD?

3 MR. MCMURRAY: YES.

4 THE COURT: OKAY. LET ME ASK YOU, HAVE YOU HAD A CHANCE TO
5 SEE TODAY'S NEWSPAPER?

6 MR. MCMURRAY: NO.

7 THE COURT: OKAY.

8 MR. MCMURRAY: I SAW SOMEONE CARRYING ONE, BUT THAT WAS THE
9 EXTENT OF IT.

10 THE COURT: OKAY. YOU DIDN'T READ IT YOURSELF?

11 MR. MCMURRAY: NO.

12 THE COURT: HAVE YOU OVERHEARD ANYBODY DISCUSSING THE
13 CASE?

14 MR. MCMURRAY: NO.

15 THE COURT: HAVE YOU HEARD THEM DISCUSSING THE NEWSPAPER
16 ARTICLE?

17 MR. MCMURRAY: WELL, THE -- ONLY THAT ONE PERSON SAID THAT
18 THEY READ THE HEADLINE WHEN THEY BOUGHT IT. THAT WAS IT.

19 THE COURT: OKAY.

20 MR. MCMURRAY: AND THEY BOUGHT IT RIGHT BEFORE THEY CAME
21 HERE, BUT THEY DIDN'T KNOW NOTHING. THEY DIDN'T READ ANY FURTHER.

22 THE COURT: OKAY. WHO WAS THAT? DO YOU REMEMBER THEIR
23 NAME?

24 MR. MCMURRAY: NO.

25 THE COURT: LET ME ASK YOU THIS. WHEN YOU WERE COMING IN THIS

1 MORNING OR LEAVING YESTERDAY, DID YOU OVERHEAR ANYBODY
2 DOWNSTAIRS OR MAYBE EVEN UPSTAIRS WORKING IN THE COURTHOUSE
3 THAT WERE TALKING ABOUT THE CASE, DID YOU HEAR ANYBODY TALKING
4 ABOUT, YOU KNOW, MAYBE SOME BAILIFFS OR DEPUTIES OR ANYTHING LIKE
5 THAT?

6 MR. MCMURRAY: NO.

7 THE COURT: NO? OKAY. WELL, THAT'S ALL I NEEDED TO ASK YOU.
8 PLEASE DON'T DISCUSS THIS WHEN YOU GO BACK IN THE ROOM WITH THE
9 OTHER JURORS.

10 MR. MCMURRAY: ALL RIGHT.

11 THE COURT: OKAY? THANK YOU.

12 MR. MCMURRAY: THANK YOU.

13 THE COURT: THANK YOU.

14 (THE BAILIFF BRINGS IN JUROR. KELLY ROSCHE)

15 THE COURT: GOOD MORNING.

16 MS. ROSCHE: HI.

17 THE COURT: HOW ARE YOU? HAVE A SEAT.

18 MS. ROSCHE: YOU LOOK DIFFERENT WITHOUT YOUR ROBE ON.

19 THE COURT: WHAT'S THAT?

20 MS. ROSCHE: YOU LOOK DIFFERENT WITHOUT YOUR ROBE ON.

21 THE COURT: WELL, THANK YOU, I SUPPOSE. CAN I GET YOUR NAME?

22 MS. ROSCHE: KELLY ROSCHE.

23 THE COURT: OKAY. LET ME ASK YOU A QUESTION. I NEED TO PLACE
24 YOU UNDER OATH. WOULD YOU RAISE YOUR RIGHT HAND. DO YOU SWEAR
25 OR AFFIRM THE TESTIMONY YOU'RE ABOUT TO GIVE WILL BE THE TRUTH, THE

1 WHOLE TRUTH AND NOTHING BUT THE TRUTH, SO HELP YOU GOD?

2 **MS. ROSCHE:** YES.

3 **THE COURT:** OKAY. DID YOU HAPPEN TO SEE TODAY'S NEWSPAPER?

4 **MS. ROSCHE:** NO.

5 **THE COURT:** NO?

6 **MS. ROSCHE:** WELL, I TOOK IT OUT OF THE BOX, BUT I THREW IT AT MY
7 HUSBAND BECAUSE I WAS GOING TO WORK.

8 **THE COURT:** OKAY. SO, YOU DIDN'T SEE THE HEADLINE OR READ THE
9 ARTICLE OR ANYTHING IN THE PAPER?

10 **MS. ROSCHE:** NO. I'M DYING, I FEEL OUT OF THE LOOP.

11 **THE COURT:** YOU'RE A NEWSPAPER JUNKY, HUH?

12 **MS. ROSCHE:** UH-HUH.

13 **THE COURT:** I'M MUCH THE SAME WAY MYSELF. HAVE YOU
14 OVERHEARD ANYBODY TALKING ABOUT THE NEWSPAPER ARTICLE IN THE
15 JURY ROOM TODAY?

16 **MS. ROSCHE:** JUST THAT THAT'S WHAT THEY WERE TAKING THE
17 PAPER, BECAUSE OF THE NEWSPAPER. I MEAN, I CAME IN WITH AN OLD
18 PUZZLE, WHICH WAS FROM LAST WEEK, BUT AND SOMEBODY ELSE CAME IN
19 WITH ANOTHER PAPER AND THEY TOOK THE FRONT PAGE OR PAGE TWO OR
20 SOMETHING LIKE THAT.

21 **THE COURT:** OKAY. BUT, NOBODY HAS TALKED ABOUT THE ARTICLE?

22 **MS. ROSCHE:** NO. HUH-UH. I STILL DON'T KNOW ANYTHING.

23 **THE COURT:** WELL, LET ME ASK YOU ANOTHER QUESTION. TOTALLY
24 DIFFERENT SUBJECT. EITHER THIS MORNING OR YESTERDAY AFTERNOON
25 WHEN Y'ALL WERE LEAVING, DID YOU OVERHEAR ANYBODY EITHER

1 DOWNSTAIRS OR UPSTAIRS, COURT PERSONNEL TALKING ABOUT THE CASE?
2 DID YOU, MAYBE, OVERHEAR OFFICERS OR BAILIFFS OR ANYBODY TALKING
3 ABOUT THE CASE?

4 MS. ROSCHE: HUH-UH.

5 THE COURT: NO?

6 MS. ROSCHE: I DON'T KNOW ANYTHING ABOUT THE CASE.

7 THE COURT: OKAY. THAT'S GOOD.

8 MS. ROSCHE: I'M TRYING TO THINK WHAT SHOULD I HAVE HEARD. I
9 DON'T KNOW.

10 THE COURT: NOT A THING. SO, I'M GOING TO SEND YOU BACK AND
11 JUST ASK YOU TO NOT DISCUSS THIS WITH ANYBODY IN THE JURY ROOM.

12 MS. ROSCHE: OKAY.

13 THE COURT: THANK YOU.

14 (THE BAILIFF BRINGS IN JUROR, TRACEY SANDERS)

15 THE COURT: GOOD MORNING.

16 MS. SANDERS: GOOD MORNING.

17 THE COURT: HOW ARE YOU?

18 MS. SANDERS: GOOD. HOW ARE YOU?

19 THE COURT: GOOD. HAVE A SEAT FOR ME. CAN I GET YOUR NAME?

20 MS. SANDERS: TRACEY SANDERS.

21 THE COURT: TRACEY SANDERS, OKAY. AND MS. SANDERS, LET ME ASK
22 YOU TO RAISE YOUR RIGHT HAND. DO YOU SWEAR OR AFFIRM THE
23 TESTIMONY YOU'RE ABOUT TO GIVE WILL BE THE TRUTH, THE WHOLE TRUTH
24 AND NOTHING BUT THE TRUTH, SO HELP YOU GOD?

25 MS. SANDERS: YES.

1 **THE COURT:** OKAY. LET ME ASK YOU A QUESTION. DID YOU HAPPEN
2 TO HAVE A CHANCE TO READ TODAY'S NEWSPAPER ARTICLE?

3 **MS. SANDERS:** NO.

4 **THE COURT:** OKAY. YOU HAVEN'T READ THE NEWSPAPER AT ALL
5 TODAY?

6 **MS. SANDERS:** I KNOW IT'S THERE, SOMEONE TOLD ME, SO I DIDN'T
7 BUY ONE.

8 **THE COURT:** OKAY. WHO TOLD YOU?

9 **MS. SANDERS:** SOMEONE AT SCHOOL, ROBERT SMALLS.

10 **THE COURT:** OKAY. SO, YOU DIDN'T TALK TO THEM ABOUT THE
11 ARTICLE?

12 **MS. SANDERS:** NO.

13 **THE COURT:** AND YOU DIDN'T READ THE ARTICLE?

14 **MS. SANDERS:** NO.

15 **THE COURT:** HAVE YOU OVERHEARD ANY OF YOUR FELLOW JURORS
16 TALK ABOUT THE ARTICLE?

17 **MS. SANDERS:** NO.

18 **THE COURT:** ALL RIGHT. LET ME ASK YOU, EITHER TODAY WHEN YOU
19 CAME IN OR YESTERDAY, MAYBE, WHEN YOU WERE LEAVING, DID YOU
20 OVERHEAR, BY ANY CHANCE, ANYBODY TALKING ABOUT THE CASE LIKE
21 SHERIFF'S DEPUTIES OR BAILIFFS DOWNSTAIRS OR ANYTHING LIKE THAT?

22 **MS. SANDERS:** NO.

23 **THE COURT:** NO?

24 **MS. SANDERS:** NO.

25 **THE COURT:** OKAY. WELL, THAT'S ALL I NEEDED TO ASK YOU. THANK

1 YOU.

2 MS. SANDERS: THANK YOU.

3 THE COURT: DON'T TALK ABOUT THIS WHEN YOU GO BACK IN, OKAY?

4 MS. SANDERS: OKAY.

5 THE COURT: ALL RIGHT. THANK YOU.

6 MS. SANDERS: UH-HUH.

7 (THE BAILIFF BRINGS IN JUROR, DEBRA POWERS)

8 THE COURT: GOOD MORNING.

9 MS. POWERS: GOOD MORNING. HOW ARE YOU?

10 THE COURT: GOOD. GOOD. COULD YOU HAVE A SEAT OVER THERE?

11 MS. POWERS: SURE.

12 THE COURT: COULD I GET YOUR NAME?

13 MS. POWERS: DEBRA POWERS.

14 THE COURT: OKAY, MS. POWERS. COULD I GET YOU TO RAISE YOUR

15 RIGHT HAND. DO YOU SWEAR OR AFFIRM THE TESTIMONY YOU'RE ABOUT TO

16 GIVE WILL BE THE TRUTH, THE WHOLE TRUTH AND NOTHING BUT THE TRUTH,

17 SO HELP YOU GOD?

18 MS. POWERS: YES, SIR.

19 THE COURT: OKAY. LET ME ASK YOU A QUESTION. HAVE YOU HAD A

20 CHANCE TO LOOK AT TODAY'S PAPER?

21 MS. POWERS: NO.

22 THE COURT: ALL RIGHT. SO, YOU DIDN'T SEE THE ARTICLE IN THE

23 PAPER?

24 MS. POWERS: I DIDN'T EVEN KNOW IT WAS IN THE PAPER.

25 THE COURT: ALL RIGHT. HAVE YOU OVERHEARD ANYBODY TALKING

1 ABOUT THE NEWSPAPER ARTICLE?

2 MS. POWERS: NO.

3 THE COURT: ALL RIGHT. LET ME ASK YOU THIS. EITHER TODAY WHEN
4 YOU WERE COMING IN OR YESTERDAY WHEN YOU WERE LEAVING, DID YOU
5 OVERHEAR ANY OF THE COURTHOUSE PEOPLE TALKING ABOUT THE CASE,
6 MAYBE, SHERIFF'S DEPUTIES OR BAILIFFS OR ANYTHING LIKE THAT?

7 MS. POWERS: NO.

8 THE COURT: OKAY. WELL, THAT'S ALL I NEED TO ASK YOU. ALL RIGHT.
9 YOU'RE NOT IN ANY TROUBLE. WOULD YOU JUST PLEASE DON'T TALK ABOUT
10 THIS WHEN YOU GO BACK IN.

11 MS. POWERS: NO, I KNOW. I KNOW.

12 THE COURT: ALL RIGHT. THANK YOU.

13 (THE BAILIFF BRINGS IN JUROR, CATHRYN DEWITT)

14 THE COURT: GOOD MORNING.

15 MS. DEWITT: GOOD MORNING.

16 THE COURT: HOW ARE YOU DOING?

17 MS. DEWITT: GOOD, THANK YOU.

18 THE COURT: WOULD YOU HAVE A SEAT THERE, PLEASE?

19 MS. DEWITT: SURE.

20 THE COURT: COULD I GET YOU YOUR NAME?

21 MS. DEWITT: CATHRYN DEWITT.

22 THE COURT: DEWITT?

23 MS. DEWITT: YES.

24 THE COURT: OKAY. MS. DEWITT, LET ME ASK YOU TO RAISE YOUR
25 RIGHT HAND. DO YOU SWEAR OR AFFIRM THE TESTIMONY YOU'RE ABOUT TO

1 GIVE WILL BE THE TRUTH, THE WHOLE TRUTH AND NOTHING BUT THE TRUTH,
2 SO HELP YOU GOD?

3 MS. DEWITT: I DO.

4 THE COURT: LET ME ASK YOU A QUESTION. HAVE YOU HAD A CHANCE
5 TO LOOK AT TODAY'S NEWSPAPER?

6 MS. DEWITT: NO.

7 THE COURT: OKAY. YOU DIDN'T SEE THE ARTICLE ABOUT THIS CASE?

8 MS. DEWITT: NO. NO. I DON'T READ THE PAPER IN THE MORNING.

9 THE COURT: OKAY. LET ME ASK YOU, HAVE YOU OVERHEARD
10 ANYBODY TALKING ABOUT THIS NEWSPAPER ARTICLE?

11 MS. DEWITT: NO, JUST THE FACT THAT THEY TOOK THEIR
12 NEWSPAPERS AWAY BEFORE THEY GOT INTO THE ROOM.

13 THE COURT: OKAY. WELL, GOOD. LET ME ASK YOU THIS. EITHER THIS
14 MORNING WHEN YOU WERE COMING IN OR YESTERDAY WHEN YOU WERE
15 LEAVING, DID YOU OVERHEAR ANYBODY TALKING ABOUT THE CASE LIKE
16 MAYBE SHERIFF'S DEPUTIES OR THE BAILIFFS OR ANYTHING LIKE THAT?

17 MS. DEWITT: NO.

18 THE COURT: NOBODY TALKING ABOUT IT?

19 MS. DEWITT: NO, NOT AT ALL.

20 THE COURT: OKAY. ALL RIGHT. WELL, THAT'S ALL I NEEDED TO ASK
21 YOU. WHEN YOU GO BACK IN, PLEASE DON'T DISCUSS THIS WITH ANYONE.

22 MS. DEWITT: NO. OKAY.

23 THE COURT: THANK YOU.

24 MS. DEWITT: THANK YOU.

25 (THE BAILIFF BRINGS IN JUROR, SUSAN BRAINARD)

1 **THE COURT:** GOOD MORNING.

2 **MS. BRAINARD:** GOOD MORNING. SUSAN BRAINARD.

3 **THE COURT:** COME IN AND HAVE A SEAT. CAN I GET YOUR NAME,
4 PLEASE?

5 **MS. BRAINARD:** SUSAN G. BRAINARD. BRAINARD, LIKE BRAIN IN YOUR
6 HEAD. B-R-A-I-N-A-R-D.

7 **THE COURT:** OKAY.

8 **MS. BRAINARD:** THE REASON I PUT MY MIDDLE INITIAL IN THERE IS
9 THERE HAPPENS TO BE SOMEONE WHO MOVED DOWN FROM BOSTON WITH
10 THE SAME NAME.

11 **THE COURT:** NO KIDDING. ARE YOU FROM --

12 **MS. BRAINARD:** VERY STRANGE.

13 **THE COURT:** ARE YOU FROM HERE? BECAUSE THAT IS NOT A LOCAL
14 NAME, IS IT?

15 **MS. BRAINARD:** BRAINARD? NO, I'M FROM NEW YORK.

16 **THE COURT:** OKAY.

17 **MS. BRAINARD:** I'M ONE OF THEM "DAMN YANKEES", RIGHT? BUT, I'VE
18 LIVED HERE TWENTY-THREE YEARS, SO...

19 **THE COURT:** WELL, I'VE BEEN -- I WAS BORN IN THE STATE OF
20 MICHIGAN, I'VE LIVED IN SOUTH CAROLINA SINCE I WAS TWO, I MAINTAIN ALL
21 THE YANKEE-TANK HAS BEEN PURGED FROM MY SYSTEM. CAN I GET YOU TO
22 RAISE YOUR RIGHT HAND. DO YOU SWEAR OR AFFIRM THE TESTIMONY
23 YOU'RE ABOUT TO GIVE WILL BE THE TRUTH, THE WHOLE TRUTH AND
24 NOTHING BUT THE TRUTH, SO HELP YOU GOD?

25 **MS. BRAINARD:** YES, I DO.

1 **THE COURT:** MS. BRAINARD, LET ME ASK YOU THIS. HAVE YOU HAD A
2 CHANCE TO SEE THE TODAY'S NEWSPAPER WITH THIS ARTICLE ABOUT THE
3 CASE TODAY?

4 **MS. BRAINARD:** NO, I HAVE NOT.

5 **THE COURT:** ALL RIGHT. HAVE YOU OVERHEARD ANYBODY TALKING
6 ABOUT THE NEWSPAPER ARTICLE?

7 **MS. BRAINARD:** NO, I HAVE NOT.

8 **THE COURT:** ALL RIGHT. LET ME ASK YOU THIS. HAVE – YESTERDAY
9 WHEN YOU WERE LEAVING OR THIS MORNING WHEN YOU WERE COMING IN,
10 DID YOU OVERHEAR ANYBODY TALKING ABOUT THE CASE, LIKE MAYBE
11 SHERIFF'S DEPUTIES OR BAILIFFS OR SOMEBODY LIKE THAT DOWNSTAIRS OR
12 UPSTAIRS EVEN?

13 **MS. BRAINARD:** NO, THEY WERE TALKING ABOUT THE BODIES THAT
14 WERE WASHED UP, AND THAT WAS IT, YOU KNOW.

15 **THE COURT:** OH, OKAY.

16 **MS. BRAINARD:** DOUBLE SUICIDES.

17 **THE COURT:** NOBODY TALKING ABOUT THIS CASE?

18 **MS. BRAINARD:** NO.

19 **THE COURT:** OKAY. GREAT. WELL, THAT'S ALL I NEEDED TO ASK YOU.
20 PLEASE DON'T DISCUSS THIS WITH ANYONE WHEN YOU GO BACK.

21 **MS. BRAINARD:** OKAY.

22 **THE COURT:** OKAY. THANK YOU.

23 (THE BAILIFF BRINGS IN JUROR, RICHARD REICHEL)

24 **THE COURT:** GOOD MORNING.

25 **MR. REICHEL:** GOOD MORNING.

1 THE COURT: HOW ARE YOU?

2 MR. REICHEL: I'M GOOD, THANKS.

3 THE COURT: GOOD TO SEE YOU. HAVE A SEAT THERE. COULD I GET
4 YOUR NAME?

5 MR. REICHEL: RICK REICHEL.

6 THE COURT: OKAY. MR. REICHEL, LET ME ASK YOU A QUESTION.
7 WOULD YOU PLEASE FIRST RAISE YOUR RIGHT HAND. DO YOU SWEAR OR
8 AFFIRM THAT THE TESTIMONY YOU'RE ABOUT TO GIVE WILL BE THE TRUTH,
9 THE WHOLE TRUTH AND NOTHING BUT THE TRUTH, SO HELP YOU GOD?

10 MR. REICHEL: I DO.

11 THE COURT: ALL RIGHT. THANK YOU. HAVE YOU HAD A CHANCE TO
12 SEE TODAY'S NEWSPAPER?

13 MR. REICHEL: NO, SIR.

14 THE COURT: DID YOU SEE THE ARTICLE ABOUT THE CASE IN TODAY'S
15 NEWSPAPER?

16 MR. REICHEL: NO.

17 THE COURT: OKAY. DID YOU OVERHEAR ANYBODY —

18 MR. REICHEL: YOU'RE HOLDING UP THE BEAUFORT GAZETTE?

19 THE COURT: YEAH.

20 MR. REICHEL: I SAW THE ISLAND PACKET THIS MORNING.

21 THE COURT: OKAY. THIS IS YOURS?

22 MR. REICHEL: NO, SIR. THAT'S NOT MY COPY, THOUGH. WHEN IT CAME
23 TO THE HOUSE THIS MORNING, IT HAD THE ARTICLE, I GUESS, FROM
24 YESTERDAY'S MORNING SESSION AND THEN TURNING ON THE NEXT PAGE, I
25 SAW THE EXHIBITS AND I JUST KEPT GOING.

1 **THE COURT:** ALL RIGHT. YOU DIDN'T--

2 **MR. REICHEL:** I THINK THAT WAS ON THE THIRD OR FOURTH PAGE, BUT
3 READ IT, NO.

4 **THE COURT:** OKAY. WELL, LET ME ASK YOU, HAVE YOU OVERHEARD
5 ANYBODY TALKING ABOUT THE NEWSPAPER ARTICLES THIS MORNING? THE
6 JURORS?

7 **MR. REICHEL:** NO. WHEN WE CAME IN THIS MORNING, ALL THE PAPERS
8 WERE CONFISCATED AND BASED ON YOUR INSTRUCTIONS FROM
9 YESTERDAY, THERE WAS NO CONVERSATION.

10 **THE COURT:** EXCELLENT. EITHER THIS MORNING OR YESTERDAY
11 WHEN YOU WERE LEAVING, LIKE DOWNSTAIRS OR EVEN UPSTAIRS, DID YOU
12 OVERHEAR ANYBODY TALKING ABOUT THE CASE IN ANY WAY, LIKE MAYBE
13 THE SHERIFF'S DEPUTIES OR BAILIFFS OR ANYTHING LIKE THAT?

14 **MR. REICHEL:** NO, SIR.

15 **THE COURT:** ANY COURT PERSONNEL?

16 **MR. REICHEL:** NO, I JUST PARKED THE CAR AND CAME RIGHT IN.

17 **THE COURT:** NO. OKAY.

18 **MR. REICHEL:** NO, SIR.

19 **THE COURT:** ALL RIGHT. WELL, THAT'S ALL I NEEDED TO ASK YOU.
20 PLEASE DON'T DISCUSS THIS WHEN YOU GO BACK.

21 **THE COURT:** THANK YOU.

22 **MR. REICHEL:** THANK YOU.

23 (THE BAILIFF BRINGS IN JUROR, ROSE MARIE ROBINSON)

24 **THE COURT:** GOOD MORNING.

25 **MS. ROBINSON:** GOOD MORNING.

1 THE COURT: HOW ARE YOU?

2 MS. ROBINSON: WONDERFUL. HOW ARE YOU?

3 THE COURT: GOOD. GOOD. WOULD YOU HAVE A SEAT OVER THERE
4 FOR ME?

5 MS. ROBINSON: SURE.

6 THE COURT: CAN I GET YOUR NAME, PLEASE?

7 MS. ROBINSON: ROSE MARIE ROBINSON.

8 THE COURT: MS. ROBINSON, WOULD YOU RAISE YOUR RIGHT HAND,
9 PLEASE. DO YOU SWEAR OR AFFIRM THE TESTIMONY YOU'RE ABOUT TO GIVE
10 WILL BE THE TRUTH, THE WHOLE TRUTH AND NOTHING BUT THE TRUTH, SO
11 HELP YOU GOD?

12 MS. ROBINSON: YES, SIR.

13 THE COURT: OKAY. YOU'RE NOT IN TROUBLE. LET ME ASK YOU THIS,
14 HAVE YOU HAD A CHANCE TO SEE TODAY'S NEWSPAPERS?

15 MS. ROBINSON: NO, SIR.

16 THE COURT: ALL RIGHT. HAVE YOU -- YOU HAVEN'T SEEN THE
17 ARTICLES THAT WERE ABOUT THIS CASE IN TODAY'S NEWSPAPERS?

18 MS. ROBINSON: NO, SIR.

19 THE COURT: ALL RIGHT. HAVE YOU OVERHEARD ANY OF YOUR
20 FELLOW JURORS TALKING ABOUT THE NEWSPAPER ARTICLES?

21 MS. ROBINSON: NO, SIR.

22 THE COURT: ALL RIGHT. LET ME ASK YOU THIS. WHEN YOU CAME IN
23 THIS MORNING, DID YOU OVERHEAR ANYBODY TALK ABOUT THE CASE, LIKE
24 MAYBE, DEPUTIES OR BAILIFFS OR ANYTHING LIKE THAT, THIS MORNING OR
25 THIS AFTERNOON?

1 **MS. ROBINSON:** NO, SIR.

2 **THE COURT:** OKAY. THAT'S ALL I NEED TO ASK YOU. YOU CAN GO ON
3 BACK AND PLEASE DON'T DISCUSS THIS WITH ANYONE.

4 **MS. ROBINSON:** OKAY. I THOUGHT YOU WAS GOING TO SEND ME
5 HOME.

6 **THE COURT:** NO. NO. NO. THANK YOU.

7 **MS. ROBINSON:** YOU'RE WELCOME.

8 (THE BAILIFF BRINGS IN JUROR, DAVID SMITH)

9 **THE COURT:** GOOD MORNING. HOW ARE YOU?

10 **MR. SMITH:** ALL RIGHT, SIR.

11 **THE COURT:** GOOD. HAVE A SEAT RIGHT THERE.

12 **MR. SMITH:** CERTAINLY.

13 **THE COURT:** CAN I GET YOUR NAME?

14 **MR. SMITH:** DAVID SMITH.

15 **THE COURT:** DAVID SMITH. ALL RIGHT. MR. SMITH, WOULD YOU RAISE
16 YOUR RIGHT HAND. DO YOU SWEAR OR AFFIRM THE TESTIMONY YOU'RE
17 ABOUT TO GIVE WILL BE THE TRUTH, THE WHOLE TRUTH AND NOTHING BUT
18 THE TRUTH, SO HELP YOU GOD?

19 **MR. SMITH:** I DO.

20 **THE COURT:** MR. SMITH, HAVE YOU HAD A CHANCE TO SEE TODAY'S
21 NEWSPAPER?

22 **MR. SMITH:** I DID.

23 **THE COURT:** DID YOU READ IT?

24 **MR. SMITH:** I READ THE HEADLINE.

25 **THE COURT:** THAT'S ALL?

1 **MR. SMITH:** THAT'S IT.

2 **THE COURT:** DIDN'T READ ANY OF THE BODY OF IT?

3 **MR. SMITH:** NOT A PART OF IT.

4 **THE COURT:** DID YOU BRING ONE OF THESE HERE?

5 **MR. SMITH:** I DID.

6 **THE COURT:** OKAY. YOU JUST BROUGHT ONE?

7 **MR. SMITH:** YES, SIR.

8 **THE COURT:** OKAY. DID YOU DISCUSS THIS WITH ANYONE?

9 **MR. SMITH:** NO, SIR.

10 **THE COURT:** DID YOU OVERHEAR ANY JURORS TALKING ABOUT IT?

11 **MR. SMITH:** NO, SIR.

12 **THE COURT:** ALL RIGHT. LET ME ASK YOU THIS. WHEN YOU CAME IN
13 THIS MORNING, OR MAYBE WHEN YOU LEFT YESTERDAY, DID YOU OVERHEAR
14 ANY OF THE COURT PERSONNEL TALKING ABOUT THE CASE? DID YOU
15 OVERHEAR, MAYBE, SOME OF THE DEPUTIES TALKING ABOUT IT OR SOME
16 BAILIFFS OR ANYBODY THAT LOOKED LIKE THEY WERE HANGING AROUND
17 THE COURTHOUSE TALKING ABOUT THE CASE?

18 **MR. SMITH:** NOT YESTERDAY, NO SIR, BUT THIS MORNING WHEN I WAS
19 BRINGING THE PAPER IN, THEY TRIED TO TAKE IT FROM ME AND I TOLD THEM
20 THAT WE WERE TOLD WE COULD BRING A PAPER AND ONE OF THE DEPUTIES
21 MENTIONED THAT THIS WAS THE REASON THEY HAD A MISTRIAL OR
22 SOMETHING. I HEARD THAT THIS MORNING.

23 **THE COURT:** OKAY. BUT, THEY DIDN'T TALK ABOUT ANY OF THE FACTS
24 OF THE CASE OR ANYTHING LIKE THAT?

25 **MR. SMITH:** NO, SIR.

1 THE COURT: OKAY. ALL RIGHT. WELL, THAT'S ALL I NEEDED TO ASK
2 YOU. YOU CAN GO ON BACK NOW AND DON'T DISCUSS THIS WITH ANYBODY.

3 MR. SMITH: ALL RIGHT.

4 THE COURT: THANK YOU.

5 MR. SMITH: YOU'RE WELCOME.

6 THE COURT: WELL, AT LEAST SOMEBODY SAID THEY BROUGHT A
7 NEWSPAPER IN.

8 MS. SMITH: MR. REICHEL SAID HE BROUGHT ONE IN.

9 THE COURT: WELL, WE CAN ACCOUNT FOR TWO. ALL RIGHT. WELL,
10 LET'S HEAR ARGUMENTS.

11 MR. HOOD: WELL, YOU KNOW, MY ARGUMENT IS STILL THE SAME. HOW
12 CAN YOU -- ONCE YOU SEE IT, I THINK, THEY TALK ABOUT THE SUBTITLE,
13 FRONT PAGE.

14 THE COURT: WELL, IT SAYS, "THE MAN FACES JURY AGAIN AFTER
15 MISTRIAL SIX-MONTHS AGO." IT DOESN'T TALK ABOUT THE CONFESSION OR
16 ANYTHING UNTIL THE VERY LAST ARTICLE, THE VERY LAST PARAGRAPH OR
17 TWO, WHICH IS ON PAGE 7A.

18 MR. HOOD: I JUST -- I GO BACK TO WHAT I SAID BEFORE, YOU KNOW...

19 THE COURT: WELL, GO AHEAD AND SAY IT FOR THE RECORD.

20 MR. HOOD: WHENEVER THAT ARTICLE -- WHENEVER PEOPLE COME IN
21 AND THEY ARE QUESTIONED ABOUT HAVING SEEN SOMETHING, AND PEOPLE
22 CAN TELL YOU WHAT PAGE NUMBER THE ARTICLE WAS ON AND WHICH
23 PAPER IT'S IN AND THINGS OF THAT NATURE, YOU KNOW, THEY WERE TOLD
24 NOT TO DO SOMETHING BY YOU AND NOW WE ARE QUESTIONING THEM
25 ABOUT, DID YOU -- AND PUTTING THEM UNDER OATH AND SAYING, "YOU

1 SWEAR TO TELL THE TRUTH, WHEN I TOLD YOU NOT TO DO SOMETHING,
2 THAT YOU DIDN'T DO THIS."

3 THE COURT: THAT'S NOT THE WAY I PHRASED THAT.

4 MR. HOOD: I AGREE WITH YOU, WHAT I'M SAYING IS, THAT NOBODY IS
5 PROBABLY IS GOING TO ADMIT THAT THEY READ ANYTHING BECAUSE ---

6 THE COURT: WELL, THAT'S WHAT I'M FACED WITH.

7 MR. HOOD: --- THEY WERE TOLD NOT TO AND SO, THEREFORE, ONCE
8 THEY ARE SWORN, THEY ARE THINKING, I'M GOING TO GET INTO TROUBLE
9 FOR THIS, YOU KNOW. IT'S DIFFICULT TO ADMIT THAT THEY DISOBEYED
10 YOUR ORDER WHEN IT'S ASKING THEM, DID YOU OBEY MY ORDER. AND THE
11 ONES THAT SAY, "YES, I SAW THE HEADLINES." THAT'S ENOUGH. YOU KNOW,
12 THEY KNOW THAT SOMETHING EXISTS, WHICH CREATES THE PROBLEM, YOU
13 KNOW, AS FAR AS I'M CONCERNED. AGAIN, YOU KNOW, I'VE GOT TO ASK FOR
14 A MISTRIAL BASED ON THE FACT THAT THEY BROUGHT THE NEWSPAPERS IN
15 WITH THEM, WE STILL DON'T KNOW WHO BROUGHT IN THE OTHERS, YOU
16 KNOW, WE REALLY DON'T HAVE ANY INFORMATION, YOU KNOW, ABOUT ONE
17 SAYS, "WELL SOMEBODY TOLD ME ABOUT IT AT WORK." YOU KNOW, ABOUT
18 WHAT EXACTLY DID THEY TELL THEM? ALL THIS KIND OF STUFF. BUT,
19 ANYWAY, THE ISSUE IS REALLY THAT ALL OF THEM WHO CAME IN WITH THE
20 EXCEPTION OF ONE OR TWO, KNEW ABOUT THE ARTICLE BEING IN THE
21 NEWSPAPER. EITHER THEY SAY, I REALLY DIDN'T READ IT, I JUST GAVE IT TO
22 MY HUSBAND OR SOMETHING OF THAT NATURE. THAT'S MY, YOU KNOW -- I
23 THINK, THE FACT IS THAT WE HAVE PEOPLE THAT COME TO COURT WITH THE
24 ARTICLES IN HAND, YOU KNOW, AND THEY WERE TOLD, YOU KNOW, NOT TO
25 BE INVOLVED WITH THE NEWSPAPERS, TO STAY AWAY FROM THE

1 NEWSPAPERS, AND YET, ON THE FRONT PAGE, WHICH YOU CAN'T MISS, YOU
2 KNOW, THESE PARTICULAR ARTICLES. AND SO, UNFORTUNATELY, IT STILL
3 CREATES THAT APPEARANCE OF AN IMPROPRIETY THAT, YOU KNOW, IS HARD
4 TO OVERCOME AND I WOULD HOPE THAT EVERYBODY WOULD BE HONEST IN,
5 YOU KNOW, STATING WHETHER THEY DID OR DID NOT DO SOMETHING, BUT,
6 YOU KNOW, HUMAN NATURE BEING THE WAY IT IS, WE WOULDN'T BE HERE IF
7 EVERYBODY WERE HONEST. SO, THAT'S THE PROBLEM. IT JUST -- AND I
8 HAVE TO, YOU KNOW, I HAVE TO MAKE SURE THIS IS FAIR AND I DON'T WANT
9 TO RUN THE RISK OF IT BEING NOT FAIR, BECAUSE AS YOU AND I AND SEAN
10 DISCUSSED EARLIER THIS MORNING, THE ISSUE WITH RESPECT TO THE
11 VOLUNTARINESS OF THAT STATEMENT IS THE WHOLE CASE, AS FAR AS I'M
12 CONCERNED. AND THAT'S SOMETHING THAT THE JURY, YOU KNOW -- WE'VE
13 GOT TO MAKE ABSOLUTELY SURE THAT THEY ARE FOLLOWING, AGAIN, YOUR
14 INSTRUCTIONS, THAT IT'S OKAY.

15 THE COURT: WELL, I HAD FOURTEEN PEOPLE THAT ALL SWORE THAT
16 THEY DIDN'T READ THE ARTICLE.

17 MR. HOOD: RIGHT.

18 THE COURT: SO, I HAVE TO BELIEVE THEM.

19 MR. HOOD: THAT'S JUST MY OPINION ANYWAY.

20 THE COURT: OKAY. MR. THORNTON.

21 MR. THORNTON: JUDGE, I, YOU KNOW, YOU DO HAVE -- WHILE I
22 UNDERSTAND MR. HOOD'S CONCERNS THAT, YOU KNOW, THERE ARE THREE
23 NEWSPAPERS AND ONLY TWO PEOPLE THAT ADMITTED THAT THEY BROUGHT
24 THEM IN, YOU DO HAVE FOURTEEN PEOPLE THAT GOT UP AND SAID THAT
25 THEY DIDN'T READ THE ARTICLE AND THAT, YOU KNOW, YOUR INSTRUCTION

1 WAS, I THINK, TO NOT READ IT AND NOT GO ANYWHERE NEAR IT, BUT THEY
2 DID AT LEAST SAY THAT THEY HADN'T READ IT AND I UNDERSTAND MR.
3 HOOD'S CONCERNS AND, YOU KNOW, THE STATE DOESN'T WISH TO END UP
4 WITH AN APPEAL SITUATION EITHER, BUT I THINK, IN THIS CASE, BECAUSE
5 THEY ALL DID COME IN AND SAY THAT THEY DIDN'T READ IT, THAT THE STATE
6 BELIEVES THAT IF THE COURT IS CONVINCED THAT THEY ARE CREDIBLE IN
7 TELLING THE TRUTH, THEN THERE'S NO REASON NOT TO GO FORWARD WITH
8 THIS CASE, THAT THERE SHOULD NOT BE A MISTRIAL GRANTED. WHICH IS
9 FORTUNATE THAT THE JUDGE GETS TO MAKE THAT DECISION AND NOT ME,
10 BECAUSE I REALIZE YOU HAVE TO JUDGE THEIR CREDIBILITY AND NOT JUST
11 WHAT THEY SAID AND NOT JUST WHETHER OR NOT YOU BELIEVE IT, BUT THE
12 STATE'S POSITION, YOUR HONOR IS, THAT THEY CAME IN, THEY TOLD YOU
13 THAT THEY HADN'T READ IT AND IF YOU FIND THEM CREDIBLE, THEN I THINK
14 WE NEED TO MOVE FORWARD WITH THE TRIAL AND RESPECTFULLY, YOU
15 SHOULD DENY MR. HOOD'S MOTION FOR A MISTRIAL.

16 THE COURT: WELL, YOU KNOW, IT'S A TOUGH ONE, BECAUSE, YOU
17 KNOW, I'VE GOT, YOU KNOW, FOLKS THAT SAID THAT THEY LOOKED AT THE,
18 IN SOME CASES, DIDN'T LOOK AT THE PAPER AT ALL. AND THEN, THOSE THAT
19 SAID THAT THEY DID LOOK AT THE PAPER, THEY SAW THE HEADLINE AND
20 FOLLOWED MY INSTRUCTION AND TURNED THEIR HEAD AND DIDN'T READ
21 ANYTHING MORE. I DON'T THINK WE HAVE TO HAVE A JURY THAT IS NOT
22 EXPOSED AT ALL TO THE CASE. YOU KNOW, IF THEY WALK PAST A
23 NEWSPAPER STAND, THEY WERE GOING TO SEE WHAT THEY TESTIFIED TO
24 THIS MORNING THAT THEY SAW. AND EVERY ONE OF THEM WERE UNDER
25 OATH, EVERY ONE OF THEM THAT DID SAY THEY SAW THE ARTICLE SAID, "I

1 SAW THE HEADLINE AND THEN I TURNED MY HEAD AND I FOLLOWED WHAT
2 YOUR INSTRUCTIONS WERE. I DIDN'T READ IT." I DON'T THINK THAT I HAVE
3 TO ASK THEM TO DO ANYTHING MORE THAN THAT. I THINK I WILL MAKE
4 SURE, BEFORE WE START, AND ASK THEM AGAIN IF THERE IS ANYBODY THAT
5 FEELS LIKE THEY COULDN'T PUT ASIDE ANYTHING THAT THEY KNOW ABOUT
6 THE CASE AND JUST BASED ON WHAT THEY SAID, READ THE HEADLINE, IF
7 THEY DIDN'T FEEL LIKE THEY COULD BE A FAIR AND IMPARTIAL JUROR, I'LL
8 DEAL WITH THAT. BUT, YOU KNOW, AND I REALLY THOUGHT WE'D HAVE THE
9 SITUATION WHERE WE WOULD HAVE AT LEAST ONE PERSON OR SO MAYBE
10 COME IN AND SAY, "WELL, I READ THE ARTICLE. I DIDN'T DISCUSS IS WITH
11 ANYBODY, BUT I READ THE ARTICLE." BUT, NOBODY SAID THAT. AND WE
12 ALSO HAD THE COURTHOUSE RUMOR ABOUT OVERHEARING SOME DEPUTIES
13 TALKING ABOUT THE CASE AND NONE OF THEM ADMITTED TO THAT. I MEAN, I
14 THINK YOU'VE GOT ABOUT A GOOD OF A JURY YOU'RE GOING TO GET WITH A
15 CASE THAT'S GOT A LITTLE BIT OF PROFILE ON IT. SO, I DON'T REALLY SEE
16 THE NEED TO DECLARE A MISTRIAL AT THIS POINT, NOT BASED ON WHAT I
17 HEARD TODAY. WE'VE GOT SWORN TESTIMONY FROM FOURTEEN PEOPLE,
18 ALL OF THEM WHO SAID, "I DIDN'T READ THAT ARTICLE." SO, WE'RE GOING TO
19 GO AHEAD AND GO FORWARD WITH IT THEN. ALL RIGHT, SO WHAT WE NEED
20 TO DO IS MOVE BACK INTO THE COURTROOM. YOU WANT TO MAKE AN
21 ARGUMENT ON YOUR MOTION?

22 MR. HOOD: ON THE VOLUNTARINESS DECISION THAT YOU MADE,
23 CORRECT.

24 THE COURT: ALL RIGHT. WELL, LET'S GO OFF THE RECORD THEN.

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1 **THE COURT:** ALL RIGHT. LET THE RECORD REFLECT THAT MR.
2 SIMMONS IS IN THE COURTROOM. ALL RIGHT, MR. HOOD, DO YOU HAVE ANY
3 MOTIONS THAT YOU WANT TO MAKE?

4 **MR. HOOD:** YOUR HONOR, ONCE AGAIN, WE PREVIOUSLY DISCUSSED
5 THIS MATTER IN CHAMBERS, BUT AT THIS TIME, WE WOULD MAKE THE
6 MOTION AGAIN FOR A MISTRIAL IN THIS CASE. AS YOU INSTRUCTED THE
7 JURY YESTERDAY CONCERNING THE NEWSPAPER ARTICLE AND THE THINGS
8 OF THAT NATURE THAT THEY SHOULD NOT READ OR COME INTO CONTACT,
9 KNOWINGLY, OR ANYTHING OF THAT NATURE, THAT WAS YOUR INSTRUCTION
10 TO THEM YESTERDAY. THIS MORNING, APPARENTLY, WE HAD AT LEAST
11 THREE COPIES OF THE NEWSPAPER BROUGHT INTO THE COURTHOUSE.
12 THEY WERE CONFISCATED BY THE BAILIFFS FROM WHAT I UNDERSTAND. WE
13 HAD A FRONT PAGE ARTICLE AGAIN IN THE BEAUFORT GAZETTE
14 CONCERNING THIS TRIAL, CONCERNING THE SAME ISSUES THAT CAUSED THE
15 MISTRIAL THE FIRST TIME AROUND AND SO, IT'S APPARENT, IF THE JURY HAD
16 READ THAT PARTICULAR ARTICLE, THEN WHAT WE WOULD HAVE IS A
17 SITUATION THAT THEY WOULD KNOW THAT A CERTAIN RULING WAS MADE BY
18 THE JUDGE ON VOLUNTARINESS OF THE TAPES WHICH WE ARE GOING TO
19 ARGUE HERE IN A FEW MINUTES. AND THAT DECISION WAS MADE TO ALLOW
20 THOSE TAPES INTO EVIDENCE. AS YOU KNOW AND I KNOW, VOLUNTARINESS
21 IS AN ISSUE BEFORE THE JURY AND THE JURY IS NOT SUPPOSED TO KNOW
22 THAT THE JUDGE HAS ALREADY RULED ON THAT PARTICULAR MATTER AND
23 AS A MATTER OF LAW, DECIDED THAT THEY WERE ADMISSIBLE BECAUSE
24 THEY WERE VOLUNTARY STATEMENTS. SO, THAT'S THE PROBLEM WITH THE
25 NEWSPAPER ARTICLE. NOW, THE FACT IS, WE HAVE THREE JURORS AT

1 LEAST, WHO BROUGHT IN COPIES OF THE VERY NEWSPAPER ARTICLES THAT
2 YOU TOLD THEM TO STAY AWAY FROM. IN OUR CHAMBERS EXAMINATION OF
3 THOSE PARTICULARS, ALL THE JURORS, WE ONLY HAD, I THINK, AND
4 CORRECT ME IF I'M WRONG, I THINK THERE WAS ONLY ONE PERSON WHO
5 ADMITTED BRINGING A NEWSPAPER TO THE COURTHOUSE, IF I RECALL
6 CORRECTLY.

7 THE COURT: WELL, I THINK TWO WERE ASKED THAT SPECIFICALLY IF
8 THEY BROUGHT A NEWSPAPER IN.

9 MR. HOOD: RIGHT. AND WE ONLY HAD ONE THAT ADMITTED TO
10 BRINGING A NEWSPAPER, HOWEVER, WE HAD MORE THAN ONE THAT WE
11 KNOW WAS BROUGHT. SO, WE HAVE FOURTEEN PEOPLE WHO UNDER OATH,
12 WHICH YOU HAD DONE IN CHAMBERS, PUT THEM UNDER OATH, WHO SAID,
13 "WE DIDN'T DO THAT." WE HAD ONE OUT OF THE FOURTEEN THAT SAID, "YES,
14 I DID." AND SO WE HAVE TWO THERE SOMEWHERE WHO SAID, "NO, I DIDN'T,"
15 WHO MUST HAVE. SO, WHETHER OR NOT WE —

16 THE COURT: I DON'T RECALL — MY QUESTION WAS NOT, "DID YOU
17 BRING A NEWSPAPER IN." I ONLY ASKED THAT TO MAYBE ONE WHEN THEY
18 MADE AN INDICATION OF THAT. I ASKED THEM IF THEY READ THE ARTICLE.

19 MR. HOOD: WELL, I AGREE, BUT SOMEHOW, WE ENDED UP WITH THREE
20 NEWSPAPERS AND ONLY ONE PERSON SAYING, "I BROUGHT A NEWSPAPER."
21 SO, THAT'S MY PROBLEM, MY QUANDARY WITH RESPECT TO WHETHER OR
22 NOT WE ARE GETTING TRUTHFUL ANSWERS AND BEING PUT UNDER OATH.
23 THAT'S MY PROBLEM WITH THAT PARTICULAR PROCEDURE. ONCE AGAIN,
24 THEY WERE BROUGHT TO THE COURTHOUSE, THEY WERE IN POSSESSION
25 OF JURORS. THERE WERE ALSO CONVERSATIONS THAT MIGHT HAVE BEEN

1 OVERHEARD CONCERNING SOME COURTHOUSE PERSONNEL DOWNSTAIRS,
2 DEPUTIES OR OTHERWISE, DISCUSSING THIS PARTICULAR CASE. WE ONLY
3 HAD ONE PERSON ADMIT THAT THERE WAS A CONVERSATION WITH A
4 DEPUTY, BUT THE CONVERSATION WAS OVER THE NEWSPAPER THAT HE
5 WAS BRINGING IN AND HE TOLD THE DEPUTY THAT YOU SAID IT WAS ALL
6 RIGHT THAT THEY BROUGHT A NEWSPAPER INTO THE COURTHOUSE. ONCE
7 AGAIN, I RENEW MY MOTION FOR A MISTRIAL IN THIS CASE. I THINK, YOU
8 KNOW, THE APPEARANCE OF IMPROPRIETY, THIS IS A VERY, VERY, VERY
9 SERIOUS CASE AND THE ISSUE THAT WE ARE TALKING ABOUT IS CENTRAL TO
10 THE DEFENSE'S CASE AND THAT PARTICULAR KNOWLEDGE IS SOMETHING
11 THAT, AGAIN, WOULD PREVENT THE DEFENDANT FROM RECEIVING A FAIR
12 TRIAL. IT IS OUR REQUEST THAT, YOU KNOW, A MISTRIAL BE GRANTED. WE
13 KNOW THAT AT LEAST THREE PEOPLE HAD PAPERS. WE DO NOT KNOW
14 POSITIVELY HOW MANY OTHERS WERE INVOLVED IN WHATEVER
15 CONVERSATIONS WERE GOING ON BETWEEN THE DEPUTIES DOWNSTAIRS
16 THAT OTHER PEOPLE MAY OR MAY NOT HAVE HEARD.

17 THE COURT: MR. THORNTON, YOU WANT TO BE HEARD?

18 MR. THORNTON: THANK YOU, JUDGE. BRIEFLY, YOUR HONOR, WE ALL
19 SAT BACK WITH THE COURT REPORTER ON THE RECORD. WE TALKED TO --
20 THE COURT TALKED TO ALL FOURTEEN JURORS. ALL OF THEM INDICATED TO
21 YOU THAT, AT WORST, THEY MIGHT HAVE SEEN THE HEADLINE, BUT THEY DID
22 NOT READ THE ARTICLE. EVERY ONE OF THEM SAID THEY DIDN'T READ THE
23 ARTICLE. EVERY ONE OF THEM SAID THAT THERE WAS NO DISCUSSION OF
24 THE DETAILS OF THE ARTICLE, ONLY THAT SOMEONE HAD A PAPER AND IT
25 WAS TAKEN AWAY. AND THERE WAS NO DISCUSSION OF THE ARTICLE.

1 THEY'VE ALL TESTIFIED TO THAT. THEY DID IT UNDER OATH AND I WOULD
2 ASK THE COURT TO ACCEPT THAT EXPLANATION BY THE JURY AND
3 RESPECTFULLY, DENY MR. HOOD'S MOTION.

4 THE COURT: WELL, WE DISCUSSED THIS IN CHAMBERS AND I DON'T
5 REALLY SEE ANY REASON TO CHANGE MY RULING. THE JURORS WERE
6 BROUGHT IN INDIVIDUALLY, PLACED UNDER OATH AND ASKED IF THEY READ
7 THE ARTICLE, IF THEY HAD SEEN THE NEWSPAPER. A NUMBER OF THEM
8 INDICATED THAT THEY DID NOT EVEN LOOK AT THE NEWSPAPER OR READ
9 THE NEWSPAPER. SEVERAL INDICATED THAT THEY HAD SEEN THE
10 HEADLINE, BUT AFTER THEY HAD SEEN THE HEADLINE, AVERTED THEIR GAZE
11 FROM THE NEWSPAPER ARTICLE AND PER MY INSTRUCTIONS, DID NOT READ
12 THE ARTICLE. I THINK ONE JUROR SAID SHE WAS EVEN TOLD WHEN WE
13 WENT BY WORK THIS MORNING THERE WAS AN ARTICLE IN THE PAPER, BUT
14 DID NOT HAVE ANY DISCUSSIONS WITH ANYBODY ABOUT THE ARTICLE AND
15 DID NOT READ IT. AND SO, EVERYBODY HAS ESSENTIALLY UNDER OATH,
16 TESTIFIED THAT THEY DID WHAT I TOLD THEM TO DO AND THAT WAS NOT
17 READ THE ARTICLE. I DON'T RECALL THAT I SPECIFICALLY SAID, "DON'T
18 TOUCH THE NEWSPAPER." I SAID, "DON'T READ ANY NEWSPAPERS," AND
19 THEY DIDN'T READ THE NEWSPAPERS. AND SO, I WILL ASSURE ANY
20 MISAPPREHENSIONS ANYBODY MIGHT HAVE TONIGHT ABOUT HAVING BEEN
21 IN THEIR POSSESSION, BUT I THINK, CLEARLY, THE ONLY THING, AT BEST,
22 THAT WE HAVE IS A SITUATION WHERE SOME OF THE JURORS ARE AWARE
23 THAT THERE IS A NEWSPAPER ARTICLE IN TODAY'S PAPER AND THAT THERE
24 IS A HEADLINE AND THAT THEY DID NOT READ THE ARTICLE PER MY
25 INSTRUCTION, SO THAT'S ALL WE CAN ASK THEM TO DO AND THAT IS WHAT

1 THEY HAVE DONE AND SO I AM GOING DENY THE MOTION. ALL RIGHT. DO
2 YOU HAVE ANY OTHER MOTIONS?

3 **MR. HOOD:** YOUR HONOR, YESTERDAY, WE MADE A MOTION
4 CONCERNING THE VOLUNTARINESS OF A VIDEO TAPE, STATEMENTS MADE BY
5 MY CLIENT AND APPARENTLY, YOU REVIEWED THOSE LAST NIGHT AND YOU
6 WERE GOING TO RULE TODAY ON THE ADMISSIBILITY OF THOSE PARTICULAR
7 DOCUMENTS AND AT THIS TIME WE WOULD LIKE THE OPPORTUNITY TO MAKE
8 AN ARGUMENT, YOU KNOW, WITH RESPECT TO THE ADMISSIBILITY OF THOSE
9 PARTICULAR VIDEO TAPES.

10 **THE COURT:** THIS IS YOUR OPPORTUNITY. GO AHEAD.

11 **MR. HOOD:** OKAY. YOUR HONOR, IT'S THE DEFENSE'S POSITION THAT
12 THESE STATEMENTS ARE NOT VOLUNTARY. AS YOU CAN TELL FROM THE
13 VIDEOS, THAT THE STATEMENTS THAT WERE MADE BY THE DEFENDANT TO
14 AN UNDERCOVER SLED AGENT, AT THE TIME, WHO HAD BEEN BEFRIENDING
15 THE DEFENDANT, WHO AT THAT TIME WAS HOMELESS ON THE STREETS IN
16 COLUMBIA, SOUTH CAROLINA, AND THAT HE HAD BASICALLY SURVEILLANCE
17 OF HIM FOR A PERIOD OF TIME TO SEE HIS COMINGS AND HIS GOINGS AND
18 WHERE HE WAS STAYING AT AND WHAT HE WAS INVOLVED IN. AS A RESULT
19 OF THAT CONTACT HE WAS ABLE TO OBSERVE THAT: (1) HE WAS HOMELESS
20 AND HE WAS LIVING ON THE STREETS AND (2) HE WAS ADDICTED TO OR
21 USING CRACK COCAINE OR DRUGS. THAT INFORMATION WAS CONFIRMED
22 LATER ON DURING CONVERSATIONS BETWEEN MY CLIENT AND THE
23 UNDERCOVER AGENT. THOSE CONVERSATIONS AND PRIOR CONTACT WITH
24 MY CLIENT ALSO RESULTED WITH THE AGENT PROVIDING MY CLIENT WITH
25 MONEY ON SEVERAL DIFFERENT OCCASIONS. THE DAY AND THE TAPE THAT

1 WE ARE MOST CONCERNED WITH, OBVIOUSLY, ARE THE ONES THAT
2 INDICATE THAT MY CLIENT MADE STATEMENTS CONCERNING HIS
3 KNOWLEDGE OF A MURDER THAT TOOK PLACE HERE IN BEAUFORT COUNTY
4 BACK SOME ELEVEN YEARS AGO. AND, THOSE PARTICULAR CONVERSATIONS
5 WERE WHAT THE AGENT HAD BEEN LOOKING FOR FROM THE TIME HE FIRST
6 MADE CONTACT WITH MY CLIENT. IN OTHER WORDS, HE HAD ALL THE
7 INFORMATION AND THEY WERE TARGETING THIS PARTICULAR INDIVIDUAL
8 BECAUSE THEY SUSPECTED HE MIGHT HAVE INFORMATION CONCERNING
9 THIS PARTICULAR DEATH. THE FACT THAT MY CLIENT MADE STATEMENTS TO
10 THE AGENT BASED ON THE VIDEO WE CAN TELL THAT, IN MY OPINION AND
11 PERHAPS THE COURT'S OPINION, THAT THE DEFENDANT WAS OBVIOUSLY
12 UNDER THE INFLUENCE OF SOME KIND OF STIMULATE, BE IT DRUGS OR BE IT
13 ALCOHOL OR BOTH. WE ALSO NOTE FROM THAT VIDEO THAT MY CLIENT
14 SUPPOSEDLY MADE STATEMENTS CONCERNING THIS PARTICULAR MURDER
15 THAT AT THAT PARTICULAR TIME WHEN MY CLIENT IS PICKED UP BY THE
16 AGENT, THE AGENT OBVIOUSLY KNEW HE WAS UNDER THE INFLUENCE OF
17 SOME TYPE OF DRUGS AND/OR ALCOHOL AND THE FIRST ALMOST WORDS
18 OUT OF THE AGENTS MOUTH WERE, "I SURE COULD USE A BEER. WHAT
19 ABOUT YOU?" SO, HE TAKES AN INTOXICATED PERSON AND GOES OUT AND
20 PURCHASES MORE INTOXICATING SUBSTANCES, BRINGS THEM BACK, BUYS A
21 COOLER, BUYS ICE, THE WHOLE NINE YARDS, PUTS THEM IN THE VAN, YOU
22 CAN HEAR THE ICE DROPPING IN, THE BEERS GOING IN AND ALL OF A
23 SUDDEN YOU HEAR "POP" "POP". YOU SEE MY CLIENT GET INTO THE FRONT
24 SEAT OF THE VEHICLE. HE'S DRINKING BEER. THEY ARE RIDING DOWN THE
25 ROAD. ALL OF THIS WAS DONE BY THE AGENT. MY CLIENT DIDN'T SAY, "I

1 SURE COULD USE A BEER. WOULD YOU BUY ME ONE?" IT WAS THE AGENT'S
2 THOUGHT THAT WHAT WE WANT TO DO IS KEEP HIM LUBRICATED AS MUCH
3 AS WE POSSIBLY CAN SO THAT WE CAN INFLUENCE HIM TO BE ABLE TO GET
4 HIM TO ADMIT SOMETHING THAT THEY BELIEVE THAT HE HAS COMMITTED,
5 YOU KNOW, AS -- THIS CRIME. AND SO, WHAT THEY ARE DOING IS BASICALLY
6 KEEPING HIM LUBRICATED. THEY KNOW HE'S INTOXICATED. WE'RE GOING
7 TO GIVE HIM MORE AND WE'RE GOING TO KEEP ON GOING AND WE'RE GOING
8 TO QUESTION HIM DURING THIS PERIOD OF TIME ABOUT THIS PARTICULAR
9 INCIDENT. THEY GIVE HIM FACTUAL SCENARIOS WHICH PUT HIM, YOU KNOW,
10 IN PARTICULAR POSITIONS. COMMITTING A BURGLARY. "WELL, WHAT WOULD
11 HAPPEN IF THIS HAPPENED? WHAT WOULD HAPPEN IF THAT HAPPENED?"
12 AND EACH TIME THE AGENT IS PUSHING HIM FURTHER AND FURTHER, AND
13 KNOWING THE FACTS OF THE CASE, HE'S BASICALLY TELLING HIM
14 EVERYTHING HE NEEDS TO KNOW ABOUT THIS PARTICULAR INCIDENT.
15 NOW, THE AGENT OBVIOUSLY HAS DISCUSSED THIS MATTER WITH THE LAW
16 ENFORCEMENT OFFICERS WHO INVESTIGATED THIS CASE OR WERE
17 INVESTIGATING THIS CASE AT THE TIME, BECAUSE HE KNEW A LOT OF FACTS
18 ABOUT THE CASE, ABOUT THE FACT THAT THEY BELIEVED THIS PERSON WAS
19 SLEEPING AT THE TIME AND SUDDENLY WOKE UP. IF YOU NOTICE HIS
20 QUESTIONS AND HOW HE TALKED TO THE DEFENDANT, IT WAS, "WHAT
21 HAPPENS IF THE PERSON WAKES UP?" "WHAT ARE YOU GOING TO DO
22 THEN?" "WHAT HAPPENS IF THE PERSON GETS VIOLENT?" "WHAT ARE YOU
23 GOING TO DO THEN?" EACH ONE OF THOSE QUESTIONS, BASICALLY, GIVES
24 HIM MORE FACTS. HE ALREADY KNOWS THAT MR. SIMMONS KNOWS ABOUT
25 THE CASE BECAUSE MR. SIMMONS WAS INTERVIEWED ELEVEN YEARS AGO

1 ABOUT THIS PARTICULAR CASE. MR. SIMMONS ALREADY HAD ALL THE FACTS
2 OF THE CASE. HE KNEW WHO THE PERSON WAS, WHERE IT HAPPENED AT,
3 EVERYTHING ABOUT THE CASE. SO, SURE, MR. SIMMONS KNEW ABOUT THE
4 CASE, BUT HE DIDN'T KNOW, MAYBE, ABOUT THE YAWNING, MAYBE ABOUT
5 THE, YOU NOW, THINGS OF THIS NATURE THAT THEY THOUGHT OCCURRED
6 AND SO THEY GAVE HIM ADDITIONAL INFORMATION. AND SO, MR. SIMMONS IS
7 BASICALLY REGURGITATING EVERYTHING THAT THE OFFICER IS TELLING HIM
8 AND MR. SIMMONS ALREADY KNEW ABOUT IT AND SO, CERTAINLY, MR.
9 SIMMONS CAN TALK ABOUT SOMETHING THAT, YOU KNOW, HE WAS
10 QUESTIONED ABOUT ELEVEN YEARS PRIOR TO THIS. SO, WE HAVE A DRUNK,
11 INTOXICATED PERSON. WE HAD HIM, MR. SIMMONS, WHO IS DEPENDANT
12 UPON THIS PARTICULAR AGENT, BECAUSE THIS PARTICULAR AGENT
13 PROVIDES HIM WITH ONE THING AND THAT IS MONEY AND THAT MONEY
14 PROVIDES MR. SIMMONS WITH THE THING MR. SIMMONS NEEDS MOST WHICH
15 IS CRACK COCAINE. MR. SIMMONS, IF HE GETS MONEY IN HIS HAND, IS GOING
16 TO GO OUT AND PURCHASE CRACK COCAINE. IF THE AGENT WAS
17 CONCERNED WITH HIS WELFARE AND WANTED TO BEFRIEND HIM AND TAKE
18 HIM INTO HIS CONFIDENCE, WHY DIDN'T HE GIVE HIM FOOD, SHELTER OR
19 CLOTHING? NONE OF THOSE THINGS THAT THE AGENT PROVIDED FOR HIM. I
20 WILL ADMIT THAT ON THE LAST DAY, THE DAY THAT THEY ARRESTED HIM, HE
21 DID TAKE HIM BY MACDONALDS OR ONE OF THE DRIVE-THROUGH PLACES TO
22 PURCHASE A HAMBURGER PRIOR TO TAKING HIM AND HAVING HIM
23 ARRESTED. THAT'S THE ONLY TIME THAT HE DIDN'T PHYSICALLY GIVE HIM
24 MONEY TO GO OUT AND CONTINUE WITH HIS HABIT. AND HOW DO WE KNOW
25 THAT? HOW DO WE KNOW THAT THE AGENT KNOWS? BECAUSE THE AGENT

1 TALKS TO HIM ABOUT IT. WHEN ARE YOU GOING TO GET OFF THIS STUFF? I
2 NEED SOME MEDICINE. WHAT KIND OF MEDICINE ARE WE TALKING ABOUT?
3 HE KNOWS. EVERY AGENT KNOWS AND THAT IS HOW HE MANIPULATES HIM
4 BUT PROVIDING HIM MONEY TO KEEP HIM GOING SO THAT HE STAYS IN THIS
5 LUBRICATED STATE. NOW, YOU HAVE THAT AND YOU HAVE THE FACT THAT
6 THE AGENT IS GIVING HIM ALL THIS INFORMATION. MY CLIENT DOESN'T SAY,
7 "I WALKED INTO THIS HOUSE." WE DON'T EVEN KNOW HOW THE HOUSE WAS
8 BROKEN INTO. THERE IS NO INFORMATION AT ALL CONCERNING THAT. WE
9 KNOW THERE IS NOTHING EVEN IN THE VIDEOS ABOUT THAT. WE DON'T
10 EVEN KNOW, YOU KNOW, WHAT WAS TAKEN. IT IS RAMBLING FROM ONE OF
11 THEM BECAUSE THEY TALK ABOUT A BURGLARY THAT MY CLIENT WAS
12 CONVICTED OF A YEAR -- AND THAT'S WHAT HE WAS IN PRISON FOR AND
13 WHY HE WAS HOMELESS OUT ON THE STREETS IN COLUMBIA. THEY TALK
14 ABOUT THAT AND IT'S INTERMINGLED WITH THIS OTHER ONE AND SO AT
15 TIMES WE'RE NOT EVEN SURE WHAT'S BEING TALKED ABOUT, WHICH
16 BURGLARY WE'RE TALKING ABOUT. BUT, THE FACT IS, MY CLIENT IS DOING
17 WHAT THE AGENT WANTS HIM TO DO IN RETURN FOR ONE THING, MONEY,
18 THAT HE IS DEPENDANT UPON IN ORDER TO TAKE CARE OF HIS HABIT, HIS
19 CRACK COCAINE HABIT. SO, HE'S GOING TO DO OR SAY ANYTHING THIS
20 AGENT WANTS HIM TO SAY IN ORDER TO BE ABLE TO GET THAT PARTICULAR
21 SUBSTANCE. AND THE AGENT KNOWS THAT AND HE PLAYS HIM ALL THE WAY
22 THROUGH AND HE'S LEADING, IF YOU NOTICE ON THE TAPE. THE FIRST
23 THING HE DOES IS HE GIVES HIM MONEY AND HE GIVES HIM A BUNCH OF
24 BEER. THAT'S BASICALLY WHAT WE'RE TALKING ABOUT AND WE'RE TALKING
25 ABOUT A PERSON AND WHETHER HIS STATEMENT IS VOLUNTARY. IS IT A

1 PRODUCT OF THIS PERSON'S MIND OR IS IT THE PRODUCT OF THAT
2 PERSON'S MIND? AND I SUBMIT TO THE COURT THAT IT IS A PRODUCT OF
3 THE AGENT'S MIND. AND, THE BAD PART ABOUT THIS IS THE MISCONDUCT
4 THAT GOES ON. YOU KNOW, EVERY TIME THE AGENT HAS A WEAPON IN THE
5 CAR. HE'S GOT A BADGE IN THE CAR. HE'S GOT A BACK-UP UNIT THAT'S
6 FOLLOWING HIM EVERYWHERE HE GOES. HE'S USING A GOVERNMENT
7 VEHICLE. EVERYTHING THERE IS GOVERNMENT. THERE IS NOT ONE THING
8 THAT THE AGENT PROVIDES OF HIS OWN. IT'S ALWAYS THE GOVERNMENT
9 PROVIDING THE INSTRUMENTS. THE MONEY COMES FROM THE
10 GOVERNMENT. ACTUALLY, IT COMES FROM THE TAXPAYERS, YOU AND I ARE
11 PAYING FOR THE AGENT TO PURCHASE CRACK COCAINE FOR MR. RICHARD
12 SIMMONS WHO IS AN ADDICT. AND WHY DO I SAY THAT? WELL, YOU KNOW IF
13 A PERSON IS UNDER -- IS A CRACK COCAINE ADDICT. WE'RE NOT TALKING
14 ABOUT ORDINARY PEOPLE HERE. WE'RE TALKING ABOUT AN AGENT THAT'S
15 BEEN AROUND THIRTY YEARS. WE'RE TALKING ABOUT A GUY WHO KNOWS
16 NARCOTICS. HE KNOWS WHAT HE'S DOING. HE KNOWS THE PEOPLE THAT
17 USE DRUGS. AND HE KNOWS WHAT THEY WILL DO, THE FIRST THING AT THE
18 FIRST INSTANCE THAT THEY GET THEIR HANDS ON MONEY. AND THAT IS,
19 TAKE CARE OF YOUR HABIT FIRST AND THEN ANYTHING ELSE YOU NEED.
20 AND SO, BASICALLY, WHAT WE HAVE IS, THE LAW ENFORCEMENT PEOPLE IN
21 THIS PARTICULAR CASE HAVE JOINED IN A CONSPIRACY WITH MY CLIENT
22 HERE. THE CONSPIRACY IS TO VIOLATE THE DRUG LAWS OF THE STATE OF
23 SOUTH CAROLINA. AND SAY THAT, BECAUSE THEY ARE AIDING AND
24 ABETTING IN THE POSSESSION AND DISTRIBUTION OF CRACK COCAINE WHEN
25 THEY GIVE THIS MAN, WHO IS A DRUG ADDICT, MONEY AND TURN HIM OUT ON

1 THE STREET. THEY KNOW WHAT HE'S GOING TO DO WITH IT, KNEW OR
2 SHOULD HAVE KNOWN. BUT, IN THIS CASE, THEY KNEW WHAT HE WAS
3 GOING TO DO WITH HIS MONEY. HE TELLS THEM WHAT HE DOES WITH HIS
4 MONEY. "WHAT DID YOU DO?" "I SMOKED IT UP." "SMOKED IT UP." YOU
5 KNOW, SO, WHAT WE HAVE IS POLICE MISCONDUCT. WE HAD THESE GUYS
6 VIOLATING THE LAWS, THE DRUG LAWS OF THE STATE OF SOUTH CAROLINA.
7 WE HAD THEM VIOLATING THE ALCOHOL LAWS OF THE STATE OF SOUTH
8 CAROLINA. YOU ARE DRIVING WITH AN OPEN CONTAINER. YOU ARE
9 DRINKING AND DRIVING WITH ALCOHOL. YOU ARE VIOLATING THE LAWS OF
10 THE STATE OF SOUTH CAROLINA. YOU ARE COMMITTING CRIMINAL ACTS TO
11 TRY TO GET THIS SUPPOSED CRIMINAL. AND THAT'S WHAT WE'RE TALKING
12 ABOUT. WE'RE TALKING ABOUT POLICE MISCONDUCT. AND, YOU KNOW,
13 THERE ARE DOZENS OF CASES OUT THERE THAT SAY THE POLICE CAN LIE TO
14 THEM, THEY CAN DECEIVE THEM, THEY CAN DO ALL THESE KINDS OF THINGS,
15 BUT NEVER ONCE DO YOU FIND A CASE THAT SAYS YOU CAN VIOLATE THE
16 LAW IN ORDER TO GET A STATEMENT FROM A CLIENT. UNDER ANY
17 CIRCUMSTANCES, IF THIS OFFICER WERE IN UNIFORM AND BROUGHT MY
18 CLIENT INTO HIS OFFICE, THE FIRST THING HE WOULD HAVE TO DO IS ADVISE
19 HIM OF HIS RIGHTS. DID HE ADVISE HIM OF HIS RIGHTS? NO. DID HE
20 QUESTION HIM? YES. BECAUSE HE PROVIDED HIM WITH ALL THE
21 QUESTIONS. MY CLIENT IS JUST GOING ALONG WITH HIM. WELL, WHAT
22 HAPPENS IF SUCH AND SUCH. WHAT HAPPENS IF THIS? HOW DO YOU DO
23 THAT? THINGS LIKE THAT. THESE AREN'T -- THESE ARE SUGGESTIVE
24 QUESTIONS AND FACTS THAT PUT HIM IN A POSITION TO JUST SIMPLY SAY,
25 "YES, THAT'S WHAT HAPPENED." AND THAT'S WHAT HE DOES. BUT, THE FACT

1 IS, THAT THE PEOPLE WHO STARTED THIS THING HAVE VIOLATED THE LAWS
2 OF THE STATE OF SOUTH CAROLINA, VIOLATED THE LAWS OF THE UNITED
3 STATES IN THAT THEY KNOWINGLY PROVIDED MONEY TO A PERSON THAT
4 THEY KNEW WAS GOING TO PURCHASE CRACK COCAINE. AND SO,
5 THEREFORE, THEY'VE AIDED AND ABETTED IN THE POSSESSION AND THE
6 DISTRIBUTION OF CRACK COCAINE. JUST LIKE THEY VIOLATED THE DRINKING
7 LAWS, THE OPEN CONTAINER LAWS IN THE STATE OF SOUTH CAROLINA BY
8 PROVIDING HIM ALCOHOL. ANOTHER DRUG, ANOTHER SUBSTANCE TO
9 LOOSEN HIM UP, TO LUBRICATE HIM, SO THEY CAN MANIPULATE HIS MIND.
10 THAT'S MY ARGUMENT.

11 THE COURT: ALL RIGHT. MR. THORNTON, YOU WANT TO REPLY?

12 MR. THORNTON: THANK YOU, JUDGE. JUDGE, IN THIS CASE, WE'RE
13 NOT HERE TO TALK ABOUT WHETHER THE AGENT DID SOMETHING THAT MR.
14 HOOD DID OR DID NOT LIKE. WE'RE NOT HERE TO TALK ABOUT MR. HOOD'S
15 MERIT-LESS CONJECTURE ABOUT WHETHER THE OFFICERS INVOLVED
16 VIOLATED THIS LAW OR THAT LAW. THE ONLY THING THAT THIS MOTION WAS
17 SUPPOSED TO BE ABOUT WAS WHETHER OR NOT THE STATEMENT SHOULD
18 BE ADMISSIBLE BASED ON WHETHER OR NOT IT WAS A VOLUNTARY
19 STATEMENT. NOW, JUDGE, THE OFFICER IN QUESTION, MR. OTTERBACHER,
20 DID HAVE A GUN ON, HE DID HAVE A BADGE ON, HE WAS IN A STATE VEHICLE
21 AND HE WAS ON THE CLOCK AT THE TIME. BUT, HE WAS UNDERCOVER. THE
22 DEFENDANT DIDN'T SEE THE GUN, DIDN'T SEE THE BADGE, HE DIDN'T HAVE
23 ON A UNIFORM, HE DIDN'T KNOW IT WAS A STATE VAN, BECAUSE IF HE DID,
24 HE PROBABLY WOULDN'T HAVE CONFESSED TO A MURDER. WHICH IS KIND
25 OF THE WHOLE POINT OF HAVING AN UNDERCOVER OPERATION IN THE FIRST

1 PLACE, YOUR HONOR. THE AGENT WAS NOT THERE TO PROVIDE SHELTER
2 AND BE HIS FRIEND. HE WAS THERE TO INVESTIGATE HIS POSSIBLE
3 PARTICIPATION AND COMMISSION OF A MURDER AND HE DID. MR. HOOD'S
4 ABSOLUTELY RIGHT, THEY SUSPECTED THAT RICHARD SIMMONS DID
5 SOMETHING AND HE TOLD THEM HE DID ON TAPE AND THAT'S WHAT WE'RE
6 HERE ABOUT. THAT'S WHAT THIS MOTION IS ABOUT. WHEN YOU LOOK AT
7 THE TAPE, JUDGE, IF HE'S THAT INTOXICATED HE PROVIDES A STARTLING
8 AMOUNT OF DETAIL ABOUT THE CRIME IN THIS CASE AND THE MURDER OF
9 CHARLES GODLEY. HE APPEARS TO BE COHERENT ON THE TAPE, HE GIVES
10 SEVERAL DETAILS, HE TALKS ABOUT PREVIOUS INCIDENCES, HE TALKS
11 ABOUT WHAT HE'LL DO WHEN HE'S COMMITTING A BURGLARY WITH THE
12 PERSON, WHO AT THE TIME HE DIDN'T KNOW WAS AN UNDERCOVER SLED
13 AGENT, AGENT OTTERBACHER, AND HE DOES SO WITH A CLARITY, JUDGE,
14 THAT IS STARTLING IF HE'S REALLY THAT INTOXICATED. THERE'S NO DOUBT
15 THAT HE WAS DRINKING A BEER AND THE BEER WAS PROVIDED BY THE
16 AGENT. IT'S ON TAPE. STATE'S NOT TRYING TO HIDE THAT, BUT IT'S CLEAR
17 BASED ON, I WOULD HOPE, BASED ON YOUR HONOR'S VIEWING OF THE TAPE,
18 THAT HE IS LUCID ENOUGH TO DISCUSS IN DETAIL THE CRIME, WHAT HE'LL
19 DO THE NEXT TIME, WHAT HE WOULD LIKE TO DO AND THERE IS SIMPLY NO
20 WAY JUDGE, THAT YOU COULD SUCCESSFULLY ARGUE THAT HE WAS SO
21 INTOXICATED THAT HE DIDN'T KNOW WHAT HE WAS SAYING. BECAUSE
22 THAT'S REALLY THE ONLY REASON TO KEEP THESE TAPES OUT, WOULD BE IF
23 THE STATEMENT WAS NOT VOLUNTARY. NO MIRANDA IS REQUIRED BECAUSE
24 HE WASN'T IN CUSTODY AT THE TIME. AS A MATTER OF FACT, EVEN AFTER
25 CONFESSING TO THE CRIME, THEY LET HIM GO. THEY WENT AND GOT HIM

1 ANOTHER DAY. THEY WANTED TO MAKE A DECISION ON WHETHER OR NOT
2 THEY WANTED TO GO FORWARD AND GET ANY MORE INFORMATION. AT NO
3 TIME WAS HE RESTRAINED. BY MR. HOOD'S OWN STATEMENTS, THIS WENT
4 ON OVER A NUMBER OF OCCASIONS. THEY WOULD TALK TO HIM, THEY TRIED
5 TO GAIN HIS TRUST, BUILD A LEVEL OF TRUST AND THEN THEY LET HIM OUT
6 OF THE VAN. HE WAS NEVER IN CUSTODY, THEREFORE, THERE WAS NO
7 CUSTODIAL INTERROGATION. THERE IS NO MIRANDA REQUIRED. SO, THE
8 ONLY OTHER QUESTION, AGAIN, JUDGE IS, WAS HE SO INTOXICATED THAT IT
9 OVERCAME HIS FREE WILL AND HE DID NOT KNOW WHAT HE WAS SAYING?
10 IT'S CLEAR, BASED ON MY REVIEW OF THE TAPES JUDGE, AND I WOULD
11 HOPE, BASED ON THE COURT'S REVIEW OF THE TAPES, HE DID KNOW WHAT
12 HE WAS SAYING. HE SPOKE WITH A GREAT DEAL OF CLARITY AND I WOULD
13 ASK YOU RESPECTFULLY, JUDGE, TO DENY MR. HOOD'S MOTION TO
14 SUPPRESS THE TAPES AND ALLOW THEM TO BE PLACED INTO EVIDENCE.
15 THANK YOU, YOUR HONOR.

16 THE COURT: A VERY BRIEF REPLY? IF YOU DESIRE.

17 MR. HOOD: WELL, THE CUSTODIAL THING, I THINK WE'VE TALKED
18 ABOUT THAT PREVIOUSLY, BUT ANYWAY, THE CUSTODIAL ASPECTS OF IT, IN
19 MY OPINION, ARE THAT, YOU KNOW, MR. SIMMONS, AGAIN, WAS UNDER THE
20 INFLUENCE, HE WAS IN THEIR POSSESSION AND THERE WAS NO PLACE FOR
21 MR. SIMMONS TO GO, YOU KNOW, OTHER THAN STAY WITH THIS PARTICULAR
22 AGENT WHO HE WAS DEPENDANT UPON TO BEGIN WITH BECAUSE THIS IS
23 THE GUY WHO SUPPLIES HIM WITH WHAT HE NEEDS AND THAT'S THE MONEY
24 TO BUY CRACK COCAINE. SO, BASICALLY, HE IS DEPENDANT, HE IS
25 ENTRAPPED, HE IS BASICALLY THERE AND CAN'T BE BECAUSE HE'S

1 DEPENDANT UPON, NOW, THIS GUY, TO PROVIDE HIM WITH EVERYTHING
2 THAT HE NEEDS. AND THAT'S EXACTLY WHAT HE DOES. HE KEEPS HIM
3 THERE WITH THIS MIND, BY TELLING HIM, "I'M GOING TO SAVE YOU. I'M GOING
4 TO PROVIDE THE THINGS THAT YOU NEED IN ORDER TO LIVE." AND THAT'S
5 WHAT HE DOES. THAT'S HOW HE CONTROLS HIM, AND SO IT'S LIKE BEING IN
6 CUSTODY BECAUSE YOU CAN'T GO ANYWHERE BECAUSE THIS IS THE GUY,
7 THE PERSON, WHO PROVIDES YOUR WHEREWITHAL. YOU CAN'T LEAVE, NOT
8 UNTIL YOU GET YOUR MONEY THAT THIS GUY PROVIDES TO YOU BECAUSE
9 THAT'S WHAT YOU NEED. SO, YOU'RE THERE, YOU'RE IN CUSTODY, BECAUSE
10 YOU CAN'T LEAVE, YOU CAN'T LEAVE UNTIL YOU GET WHAT YOU NEED AND
11 HE CAN ONLY PROVIDE THAT AND THAT'S THE MONEY TO BUY THE DRUGS.
12 HE TALKS ABOUT TAKING HIM DOWN THE HILL TO PURCHASE DRUGS,
13 MEDICINE FOR HIS BODY. THE LAST TAPE, AS YOU WELL KNOW, IS GOING OUT
14 TO PURCHASE FOR HIM WHAT? A COOKIE OF CRACK COCAINE. "HOW MUCH
15 DO YOU NEED?" "YOU SURE YOU DON'T WANT A COOKIE?" YOU KNOW, IT'S
16 GOING BACK TO THE MIND. YOU'VE GOT AN ADDICTED PERSON AND YOU USE
17 THAT ADDICTION TO CONTROL HIM AND YOU BASICALLY HAVE HIM IN A
18 CUSTODIAL SITUATION. YOU'VE GOT A GUN, YOU'VE GOT A BADGE, THAT'S
19 OUT THERE WATCHING YOUR EVERY NEEDS IN THE EVENT THIS GUY DOES
20 SOMETHING SQUIRRELLY. THE ONLY THING YOU DON'T GOT IS ANY MIRANDA
21 RIGHTS OR ANY WARNINGS OR ANYTHING OF THAT NATURE BECAUSE THEY
22 DON'T NEED TO BECAUSE THEY'VE GOT HIM LUBRICATED AND THEY'VE GOT
23 CONTROL OF HIS MIND THROUGH THE USE OF NARCOTICS.

24 **THE COURT:** ALL RIGHT. WELL, I HAVE REVIEWED THE TAPES IN THEIR
25 ENTIRETY AND I HAVE MADE A DETERMINATION THAT THE STATEMENTS THAT

1 HE MAKES ON THEM ARE, VIEWING THE CIRCUMSTANCES IN THEIR TOTALITY,
2 FREELY, VOLUNTARILY AND INTELLIGENTLY MADE. ANY ARGUMENTS THAT
3 YOU HAVE MAY BE CERTAINLY SOMETHING YOU CAN ARGUE TO THE JURY,
4 BUT THE STATEMENTS THAT HE MADE, WHILE HE MIGHT BE INTOXICATED AT
5 SOME LEVEL DURING SOME OF THIS, HE CLEARLY POSSESSES ENOUGH OF
6 HIS FACULTIES TO KNOW WHAT HE IS SAYING. HE IS NOT BEING ASKED
7 LEADING QUESTIONS AT THE TIME HE MAKES HIS INCRIMINATING
8 STATEMENTS AND THEY ARE TO THE BEST OF HIS ABILITY AT THAT TIME,
9 FREELY, VOLUNTARILY AND INTELLIGENTLY MADE. I WILL, THEREFORE,
10 ALLOW THOSE STATEMENTS TO BE HEARD BY THE JURY.

11 NOW, SO YOU HAVE ANY OTHER MOTIONS?

12 MR. HOOD: THE ONLY OTHER MOTION I HAVE AT THIS TIME, YOUR
13 HONOR, WOULD BE TO SEQUESTER ALL OF THE WITNESSES.

14 THE COURT: OKAY. WE CAN DO THAT, EXCEPT FOR THE
15 INVESTIGATING OFFICER. WE WILL DO THAT. NOW, IT'S TEN MINUTES TO
16 TWELVE. WHAT I ANTICIPATE DOING NOW, IS LET'S JUST GO AHEAD AND
17 BRING THE JURY IN AND LET'S GET OUR OPENING STATEMENTS IN AND THEN
18 WE WILL BREAK FOR LUNCH. THAT ALL RIGHT?

19 MR. THORNTON: THAT'S FINE WITH THE STATE, JUDGE. IF I CAN HAVE
20 A MOMENT, I'LL GET THE WITNESSES SEQUESTERED NOW OR AT LEAST, TALK
21 TO THEM BRIEFLY, IF I CAN HAVE JUST A MOMENT.

22 THE COURT: ALL RIGHT.

23 (BRIEF BREAK)

24 MR. THORNTON: THANK YOU, YOUR HONOR, IF YOU'LL GIVE MY PEOPLE
25 A MOMENT TO LEAVE, JUDGE. I'VE INSTRUCTED THEM ON WHAT IT MEANS TO

1 SEQUESTER AND I'M GOING TO ASK ONE OF THE BAILIFFS IF WE CAN GET
2 ONE OF THE JURY ASSEMBLY ROOMS OPENED UP AND I'LL HAVE MY
3 WITNESSES MEET OVER THERE.

4 THE COURT: THAT'S FINE.

5 MR. THORNTON: THAT KEEPS THEM PRETTY CLOSE, JUDGE, SO WE
6 CAN GET THEM RIGHT ACROSS THE HALL WHEN WE CALL THEM.

7 THE COURT: ALL RIGHT, LET'S GO AHEAD AND BRING THE JURY IN,
8 THEN.

9 (JURY IN AT 11:59 AM)

10 THE BAILIFF: ALL JURORS PRESENT, YOUR HONOR.

11 THE COURT: THANK YOU. WELL, LADIES AND GENTLEMEN, THANK
12 YOU FOR YOUR PATIENCE THIS MORNING. AS YOU CAN TELL, WE HAD SOME
13 THINGS WE HAD TO TAKE CARE OF AND I TOLD YOU YESTERDAY, YOU KNOW,
14 ABOUT NOT READING THE NEWSPAPER AND THINGS LIKE THAT AND
15 OBVIOUSLY, IT IS AN IMPORTANT PART OF THE PROCESS THAT YOU LISTEN
16 TO WHAT I TELL YOU AND IT SOUNDS LIKE ALL OF YOU DID. I ASKED THAT
17 YOU NOT READ A NEWSPAPER, I GUESS I DIDN'T TECHNICALLY TELL YOU,
18 DON'T PICK ONE UP, BUT I SAID, "DON'T READ THE NEWSPAPER" AND I HAD TO
19 INQUIRE TO MAKE SURE THAT WHEN WE HAD THREE OF THEM SHOW UP
20 TODAY, THAT NOBODY HAD READ IT BECAUSE THAT'S AN IMPORTANT PART
21 OF OUR PROCESS. NOT SO MUCH THAT I'M TRYING TO SUPPRESS ANYTHING
22 THAT THE NEWSPAPER WRITES. IT'S AMERICA AND THEY HAVE THE RIGHT
23 TO DO THAT. IT'S A GREAT COUNTRY BECAUSE OF THE FACT WE HAVE A
24 PRESS. BUT WHAT IS ALSO A GREAT PART OF THIS COUNTRY IS WHEN WE
25 HAVE A TRIAL, WE TRY PEOPLE BASED ON THE EVIDENCE THAT IS

1 PRESENTED IN COURT AND NOT WHAT'S WRITTEN IN THE NEWSPAPERS,
2 BECAUSE OFTEN TIMES NEWSPAPERS DON'T ALWAYS GET IT RIGHT AND
3 SOMETIMES THEY WRITE STUFF ABOUT THE CASE THAT ISN'T ABOUT STUFF
4 THAT'S PRESENTED IN COURT AND SO, IT'S A VERY, VERY IMPORTANT PART
5 OF THE PROCESS AND THAT'S WHY WE HAD TO TAKE SOME TIME THIS
6 MORNING WHEN WE HAD THREE COPIES OF THE NEWSPAPERS SHOW UP
7 WITH ARTICLES ABOUT TODAY'S CASE. WHEN Y'ALL BROUGHT THAT IN, WE
8 HAD TO MAKE SURE THAT NOBODY HAD READ ABOUT THE CASE AND THAT
9 YOU DID FOLLOW MY INSTRUCTIONS ON THAT. AND I VERY MUCH
10 APPRECIATE YOU ALL TAKING THE TIME AND HAVING PATIENCE WITH US THIS
11 MORNING. I DO NEED TO ASK, IS THERE ANYONE THAT FEELS LIKE, BECAUSE
12 OF THE QUESTIONING WE HAD THIS MORNING OR ANYTHING THAT YOU
13 MIGHT HAVE HEARD ABOUT THE CASE, I KNOW SOME OF YOU SAID YOU
14 DIDN'T READ THE ARTICLE -- YOU DON'T READ THE NEWSPAPER AT ALL, MOST
15 TESTIFIED THAT YOU SAW THAT THERE WAS AN ARTICLE, BUT YOU DIDN'T
16 READ, YOU AVERTED YOUR GAZE PER MY INSTRUCTION, BUT IS THERE
17 ANYONE THAT FEELS LIKE BECAUSE OF THAT THAT THEY COULD NOT ACT AS
18 A FAIR AND IMPARTIAL JUROR IN THIS CASE, DISREGARD WHAT WAS SAID OR
19 WHAT THEY READ ABOUT THE HEADLINE IN THE CASE AND YOU COULD NOT
20 ACT AS A FAIR AND IMPARTIAL JUROR IN THIS CASE, IS THERE ANYBODY
21 HERE FEEL LIKE THEY COULDN'T DO THAT? ALL RIGHT. I'M GOING TO LET
22 THE RECORD REFLECT THAT ALL THE JURORS HAVE INDICATED THAT THEY
23 FEEL LIKE THEY COULD GO FORWARD WITH THE CASE. SO, WHAT WE'RE
24 GOING TO DO HERE IS START IN JUST A MINUTE. WE'RE GOING TO HAVE JUST
25 A LITTLE BIT BEFORE WE BREAK FOR LUNCH AND WE'LL HAVE THE OPENING

1 STATEMENTS ABOUT THE CASE AND I'M GOING TO TELL YOU A LITTLE BIT
2 ABOUT THE PROCESS THAT WE WILL FOLLOW. BEFORE I DO THAT, THOUGH,
3 I'M GOING TO PLACE YOU UNDER OATH AS YOUR OATH AS JURORS. WOULD
4 YOU PLEASE STAND AND RAISE YOUR RIGHT HAND WHILE THE CLERK
5 ADMINISTERS YOUR OATH TO YOU.

6 (CLERK OF COURT ADMINISTERS OATH TO JURORS)

7 THE COURT: ALL RIGHT. NOW, I UNDERSTAND THAT Y'ALL HAVE VOTED
8 MR. REICHEL AS FOREPERSON OF THE JURY. IS THAT CORRECT? MR.
9 REICHEL YOU ARE THE FOREPERSON. CONGRATULATIONS. YOU DON'T GET
10 ANY EXTRA PAY, BUT YOU DO GET TO HANDLE THE VERDICT FORM AT THE
11 END OF THE TRIAL.

12 NOW, I JUST WANT TO GO OVER WITH YOU FOR A FEW MINUTES WHAT
13 THE PROCESS IS THAT WE GO THROUGH, A LITTLE BIT ABOUT OUR
14 PROCEDURE, SOME OF THE TERMS, THINGS LIKE THAT YOU MIGHT NOT BE
15 FAMILIAR WITH JUST TO GIVE YOU AN OVERVIEW OF WHAT YOUR NEXT DAY
16 OR SO WILL BE LIKE.

17 NOW, YOU HEARD YESTERDAY THAT THIS CASE IS THE STATE OF
18 SOUTH CAROLINA VERSUS RICHARD SIMMONS, JR. THAT'S MR. SIMMONS
19 SITTING OVER THERE AT THE DEFENSE TABLE WITH HIS LAWYER MR. HOOD.
20 NOW, MR. SIMMONS HAS BEEN CHARGED BY THE STATE OF SOUTH CAROLINA
21 WITH ONE COUNT OF MURDER OF CHARLES GODLEY AND ONE COUNT OF
22 BURGLARY IN THE FIRST DEGREE OF THE RESIDENCE OF MR. GODLEY BACK
23 IN JANUARY OF 1995. THESE CASES ARE BROUGHT TO US BY WAY OF AN
24 INDICTMENT BY THE BEAUFORT COUNTY GRAND JURY AND I HOLD THESE
25 TWO INDICTMENTS IN MY HAND AND IT'S IMPORTANT THAT YOU UNDERSTAND

1 WHAT AN INDICTMENT IS AND WHAT IT IS NOT. AN INDICTMENT IS THE
2 CHARGE INSTRUMENTS THAT WE HAVE. THE GRAND JURY IS A GROUP OF
3 EIGHTEEN PEOPLE AND THEY REVIEW THE CASES THAT THE POLICE BRING
4 BEFORE THEM AND THEY MAKE A PRELIMINARY DETERMINATION IF THERE IS
5 ENOUGH EVIDENCE TO MOVE FORWARD ON THE CASE. THEY ARE NOT
6 MAKING A JUDGMENT ON GUILT OR INNOCENCE, BUT IT IS JUST A
7 SAFEGUARD IN OUR SYSTEM, VERY MUCH NEEDED, LEFT OVER FROM THE
8 DAYS WHEN WE STARTED OUR COUNTRY. WE STARTED THIS COUNTRY
9 BECAUSE OF A LOT OF OPPRESSIONS FROM ENGLAND WHERE WE GET OUR
10 LEGAL SYSTEM AND BACK HUNDREDS OF YEARS AGO, THE KING USED TO BE
11 ABLE TO PULL PEOPLE OFF THE STREET AND CHARGE THEM WITH A CRIME
12 WITHOUT REALLY SHOWING ANYBODY THAT HE HAD ANY EVIDENCE AND SO
13 WE HAVE SAFEGUARDS IN OUR SYSTEM TO PREVENT THOSE ABUSES AND
14 THE GRAND JURY SYSTEM IS ONE OF THOSE WHERE WE HAVE EIGHTEEN OF
15 YOUR FELLOW CITIZENS REVIEW THIS CASE VERY PRELIMINARILY AND THEY
16 PRESENTED THESE INDICTMENTS WHICH PUT MR. SIMMONS ON NOTICE THAT
17 HE HAS BEEN CHARGED WITH MURDER AND CHARGED WITH BURGLARY IN
18 THE FIRST DEGREE. IT IS THE WAY WE GET JURISDICTION OVER THIS CASE
19 AND IT LETS HIM KNOW WHAT HE IS BEING CHARGED WITH.

20 NOW, WHAT IT IS NOT, AND THIS IS VERY IMPORTANT, IS EVIDENCE. IT
21 IS NOT EVIDENCE OF ANYTHING IN THIS CASE. THESE ARE BASICALLY
22 CHARGING INSTRUMENTS. SO, I SAY THAT BECAUSE I'LL SEND THESE BACK
23 WITH YOU AT THE END OF THE TRIAL WHEN YOU BEGIN YOUR
24 DELIBERATIONS, BUT IT'S IMPORTANT THAT YOU UNDERSTAND THAT THESE
25 DOCUMENTS ARE NOT EVIDENCE. AND THE FACT THAT A PERSON IS

1 CHARGED WITH A CRIME IS NOT EVIDENCE OF ANYTHING. SOME PEOPLE DO
2 HAVE A PRECONCEPTION THAT IF YOU ARE CHARGED WITH SOMETHING THAT
3 YOU MUST BE GUILTY OF IT AND THAT IS AN INCORRECT ASSUMPTION. IN
4 THIS COUNTRY YOU ARE INNOCENT UNTIL PROVEN GUILTY. SO, MR.
5 SIMMONS HAS BEEN CHARGED WITH THESE CRIMES, BUT HE IS, IN THE EYES
6 OF THE LAW, NOT GUILTY OF ANYTHING AND HE DOES NOT HAVE TO PROVE
7 HIS INNOCENCE. THE STATE OF SOUTH CAROLINA HAS CHARGED HIM WITH
8 THESE CRIMES AND THE STATE OF SOUTH CAROLINA MUST PROVE HIS GUILT
9 TO YOU, TWELVE JURORS, BEYOND A REASONABLE DOUBT. HE DOESN'T
10 HAVE TO PROVE A THING, HE DOESN'T HAVE TO PUT UP A DEFENSE, HE
11 DOESN'T HAVE TO TESTIFY. AND I WILL INSTRUCT YOU AT THE END OF THE
12 TRIAL THAT IF HE GOES THROUGH THIS TRIAL AND DOESN'T PUT UP ANY
13 EVIDENCE OR DOES NOT TESTIFY, YOU ARE NOT TO HOLD THAT AGAINST
14 HIM. I TELL YOU THAT BECAUSE I DON'T KNOW IF HE'S GOING TO TESTIFY OR
15 PUT UP A DEFENSE AT ALL, BECAUSE I DON'T ASK HIM THAT. AGAIN, HE
16 DOESN'T HAVE TO DO ANYTHING. HE JUST HAS TO SIT THERE. HE HAS TO BE
17 PRESENT. THAT'S ALL HE HAS TO DO. THE STATE HAS THE ENTIRE BURDEN
18 OF PROOF THROUGHOUT THIS CASE FROM THE TIME THEY BEGIN IN A
19 MINUTE TO THE TIME THAT YOU TAKE THIS CASE BACK INTO THE JURY ROOM
20 AND BEGIN YOUR DELIBERATIONS. THE BURDEN OF PROOF RESTS WITH THE
21 STATE AND IT DOES NOT MOVE THROUGHOUT THIS TRIAL. IT DOES NOT
22 MOVE OR SHIFT TO MR. SIMMONS TO PROVE OR DISPROVE ANYTHING AND
23 THAT IS A VERY IMPORTANT AND PRECIOUS CONCEPT IN OUR LEGAL
24 SYSTEM. SO, I STRONGLY EMPHASIZE THAT AT THE BEGINNING OF THE TRIAL
25 AND I'LL PROBABLY EMPHASIZE IT AGAIN THROUGHOUT THE TRIAL.

1 NOW, THE BURDEN OF PROOF IS A CONCEPT YOU MIGHT NOT BE
2 FAMILIAR WITH. IF YOU'VE EVER SERVED IN A CIVIL JURY CASE, YOU MIGHT
3 HAVE HEARD THE CONCEPT OF A PREPONDERANCE OF THE EVIDENCE AND
4 THAT IS A BURDEN OF PROOF. THE PARTY THAT BRINGS THE LAWSUIT HAS
5 TO PROVE WHAT THEY ARE TRYING TO PROVE AND A PREPONDERANCE OF
6 THE EVIDENCE IS NOT A VERY HIGH THRESHOLD AT ALL. IT'S WHATEVER THE
7 PERSON IS TRYING TO PROVE IS MORE LIKELY TRUE THAN NOT TRUE OR THE
8 GREATER WEIGHT OF THE EVIDENCE. IN A CRIMINAL CASE, HOWEVER, THE
9 BURDEN OF PROOF IS ON THE STATE AND IT IS A MUCH HIGHER BURDEN OF
10 PROOF THAN THE PREPONDERANCE OF THE EVIDENCE STANDARD OF
11 PROOF. AND THERE AGAIN, THAT IS IN A CIVIL TRIAL AND DOES NOT APPLY IN
12 THIS CASE. IN A CRIMINAL CASE LIKE THIS THE BURDEN OF PROOF IS ON THE
13 STATE AND A REASONABLE DOUBT IS A CONCEPT THAT BASICALLY, THE
14 STATE HAS TO PROVE TO YOU, OR PRESENT ENOUGH EVIDENCE TO YOU OF
15 PROOF THAT LEAVES YOU FIRMLY CONVINCED OF THE DEFENDANT'S GUILT.
16 THERE AREN'T MANY THINGS IN THIS WORLD THAT WE CAN PROVE WITH
17 ABSOLUTE CERTAINTY AND A LAW DOES NOT REQUIRE THAT THE STATE
18 PROVE ANYTHING TO AN ABSOLUTE CERTAINTY, BUT IF AFTER YOU'VE
19 VIEWED ALL THE EVIDENCE THAT'S IN, IF THE EVIDENCE LEAVES YOU FIRMLY
20 CONVINCED THAT THE DEFENDANT IS GUILTY OF THE CRIME THAT HE IS
21 CHARGED WITH, THEN YOU MUST FIND HIM GUILTY. ON THE OTHER HAND, IF
22 THERE IS A REAL POSSIBILITY IN YOUR MIND THAT HE IS NOT GUILTY, THEN
23 YOU HAVE TO GIVE HIM THE BENEFIT OF THE DOUBT AND FIND HIM NOT
24 GUILTY. NOW, THAT IS A CONCEPT THAT I WILL TALK WITH YOU ABOUT AT
25 THE END OF THE TRIAL. BUT AGAIN, IT IS THE STATE'S BURDEN OF PROOF

1 AND IT RESTS WITH THEM THROUGHOUT THE TRIAL. THE DEFENDANT DOES
2 NOT HAVE TO PROVE OR DISPROVE ANYTHING INCLUDING HIS INNOCENCE.

3 NOW, THE PROCESS THAT WE WILL FOLLOW THROUGH THIS TRIAL, THE
4 STATE, HAVING THE BURDEN OF PROOF, GOES FORWARD WITH THEIR CASE
5 AND IN A MINUTE, THEY WILL GET UP AND HAVE OPENING STATEMENTS.
6 OPENING STATEMENTS ARE SIMPLY THE LAWYERS GETTING UP AND TELLING
7 YOU BRIEFLY WHAT THEY ANTICIPATE WHAT THE EVIDENCE WILL BE THAT
8 THEY WILL HEAR IN THIS CASE. THEY MIGHT TALK TO YOU REAL BRIEFLY
9 ABOUT THE LAW, BUT THEY ARE NOT DOING ANYTHING, THEY ARE NOT EVEN
10 ARGUING THE CASE AT THIS POINT. THEY ARE SIMPLY GIVING YOU AN
11 OVERVIEW SO THAT YOU WILL BE ABLE TO FOLLOW THE EVIDENCE A LITTLE
12 BIT EASIER AS YOU HEAR IT THROUGHOUT THE CASE. WHAT IS IMPORTANT
13 ABOUT THESE OPENING STATEMENTS IS THAT YOU UNDERSTAND THAT THEY
14 ARE NOT EVIDENCE. IN ANY WAY, SHAPE OR FORM ARE YOU TO CONSIDER
15 THE STATEMENTS OF THE LAWYERS AS EVIDENCE. WHATEVER THE
16 LAWYERS SAY ARE NOT EVIDENCE, BECAUSE THEY ARE NOT TESTIFYING.
17 EVIDENCE IS WITNESSES GETTING ON THIS WITNESS STAND AND TESTIFYING
18 TO YOU. THE LAWYERS ASKING A QUESTION, THAT'S NOT EVIDENCE. THE
19 ANSWER TO THE QUESTION IS EVIDENCE. ALL RIGHT? IF YOU SEE A
20 DOCUMENT THAT I ALLOW YOU TO SEE, THAT IS EVIDENCE. IF YOU SEE A
21 PICTURE, THAT IS EVIDENCE. BUT, THE LAWYER'S STATEMENTS AND THE
22 LAWYER'S QUESTIONS ARE NOT EVIDENCE AND YOU ARE NOT TO CONSIDER
23 THEM AS SUCH.

24 NOW, THE STATE WILL GET UP AND THEY WILL MAKE THEIR
25 STATEMENT. THEN, MR. HOOD WILL HAVE THE OPPORTUNITY TO MAKE AN

1 OPENING STATEMENT IF HE SO DESIRES. THIS, AGAIN, MR. SIMMONS
2 DOESN'T HAVE TO PROVE ANYTHING AND SO HE DOESN'T HAVE TO – HE AND
3 HIS LAWYER DON'T HAVE TO TALK THE ENTIRE TRIAL, BUT IF MR. HOOD GETS
4 UP AND HE WANTS TO, HE HAS THE OPPORTUNITY TO THEN MAKE AN
5 OPENING STATEMENT TO YOU AS WELL.

6 WHAT WE ARE GOING TO DO AFTER THE OPENING STATEMENTS, IS
7 BREAK FOR LUNCH SINCE WE ARE GETTING CLOSE TO TIME AND THEN WHEN
8 WE RESUME TODAY AFTER LUNCH, YOU ARE GOING TO START HEARING
9 TESTIMONY FROM THE WITNESSES AND THE STATE WILL HAVE THE
10 OPPORTUNITY TO GO FIRST AND PUT UP THEIR CASE. AFTER THE STATE HAS
11 PUT UP ALL OF THEIR CASE, THEN THE DEFENSE, IF THEY SO DESIRE, HAVE
12 THE OPPORTUNITY TO PRESENT EVIDENCE AS WELL. AGAIN, I REMIND YOU,
13 THEY DON'T HAVE TO PUT UP A CASE, THEY DON'T HAVE TO PRESENT ANY
14 EVIDENCE AND MR. SIMMONS IS NOT REQUIRED TO TESTIFY.

15 AFTER ALL OF THE EVIDENCE HAS BEEN PRESENTED TO YOU THEN WE
16 WILL HAVE CLOSING ARGUMENTS. THEN, THE LAWYERS WILL GET UP, GO
17 OVER THE EVIDENCE THEY HAVE PRESENTED TO YOU, TALK TO YOU ABOUT
18 THE LAW AND PERSUADE YOU TO RENDER A VERDICT IN FAVOR OF THEIR
19 CLIENT. AFTER THEY ARE FINISHED, THEN I WILL PRESENT TO YOU THE LAW
20 THAT YOU ARE TO APPLY TO THE FACTS AS YOU FIND THEM AND THEN YOU
21 WILL RETIRE AND BEGIN YOUR DELIBERATIONS.

22 NOW, YOU AND I HAVE ROLES THAT ARE SOMEWHAT SIMILAR, BUT OUR
23 DUTIES ARE DIFFERENT. WE'RE BOTH JUDGES. I'M THE JUDGE OF THE LAW,
24 YOU FOLKS ARE THE JUDGES OF THE FACTS. MY JOB IS TWO-FOLD. ONE, I
25 HAVE TO MAKE SURE THAT BOTH SIDES GET A FAIR TRIAL. THE STATE IS

1 ENTITLED TO A FAIR TRIAL, MR. SIMMONS IS ENTITLED TO A FAIR TRIAL. I'M
2 THE JUDGE IN THIS CASE BECAUSE, I'M JUST LIKE YOU, I DON'T KNOW
3 ANYTHING ABOUT THE CASE. I DON'T KNOW ANYTHING ABOUT THE PART, I
4 DON'T KNOW THE LAWYERS, I KNOW THEM BECAUSE I'VE BEEN PRESIDING
5 OVER HERE THE LAST FEW MONTHS, BUT I'M NOT ACQUAINTED WITH THEM
6 AND DON'T HAVE ANYTHING OTHER THAN KIND OF A CASUAL RELATIONSHIP.
7 IN OTHER WORDS, I'M A DISINTERESTED PERSON JUST LIKE YOU ARE A
8 DISINTERESTED PERSON. BOTH PARTIES ARE ENTITLED TO HAVE
9 SOMEBODY PRESIDING OVER THE CASE AND DECIDING THEIR CASE OF
10 FOLKS THAT DON'T KNOW ANYTHING ABOUT THE CASE. SO, THAT'S MY FIRST
11 FUNCTION, TO MAKE SURE BOTH SIDES GET A FAIR TRIAL. THE SECOND
12 FUNCTION THAT I HAVE IS TO MAKE SURE THAT YOU HEAR EVIDENCE THAT IS
13 PROPER FOR YOU TO HEAR. LEGALLY COMPETENT EVIDENCE IS OUR BIG
14 FANCY WORD THAT WE SAY IN COURT. SO, SOMETIMES THERE WILL BE
15 TIMES WHEN ONE OF THE LAWYERS MAY STAND UP AND SAY "OBJECTION."
16 THEY ARE NOT TRYING TO HIDE ANYTHING FROM YOU. WE'RE SIMPLY
17 TRYING TO MAKE SURE THAT I DO MY JOB CORRECTLY AND SO, SOMETIMES
18 WHEN LAWYERS SAY "OBJECTION" I MAY UNDERSTAND WHAT THEIR
19 OBJECTION IS IN THE CONTEXT OF WHAT'S BEING SAID AND I CAN RULE ON IT
20 RIGHT THEN. SOMETIMES, HOWEVER, IT IS NECESSARY FOR ME TO BRING
21 THE LAWYERS UP AND HAVE A BRIEF OUT OF YOUR EAR SHOT KIND OF
22 ARGUMENT ABOUT IT SO THAT I CAN RULE WHETHER IT IS PROPER EVIDENCE
23 FOR YOU TO HEAR OR SOMETIMES NOT HEAR. AND THEN, FINALLY, MY JOB IS
24 ALSO TO PRESENT THE EVIDENCE, OR TO PRESENT THE LAW TO YOU THAT
25 YOU ARE TO APPLY TO THE FACTS AS YOU FIND THEM. THE ONLY WAY

1 THERE IS EVER AN APPEAL FROM A CASE LIKE THIS IS IF I MAKE AN ERROR.
2 BECAUSE WE DON'T, IF THERE IS ANY FACTUAL BASIS WHATSOEVER WHAT
3 YOUR VERDICT IS, WE LIVE WITH IT. THE ONLY WAY THERE CAN BE AN
4 APPEAL IS IF I MAKE A MISTAKE SO THAT IS WHY I KIND OF SIT BACK AND GO,
5 "WELL, I MIGHT HAVE TO HEAR A LITTLE BIT ABOUT THIS." AND SO, I MAY
6 HAVE TO SEND YOU OUT OF THE ROOM SOMETIMES TO HEAR WHAT A
7 WITNESS IS GOING TO SAY SO I CAN DETERMINE WHETHER OR NOT IT IS
8 PROPER FOR YOU TO HEAR THAT OR MAYBE NOT HEAR THAT. BECAUSE, IN
9 THE END, IF I MAKE A MISTAKE, WE MIGHT HAVE TO DO IT OVER AGAIN
10 SOMEDAY. IF I DON'T CHARGE YOU ON THE LAW PROPERLY, WE MIGHT HAVE
11 TO DO IT AGAIN SOMEDAY. NOW, WE DON'T WANT TO DO IT BUT ONCE. SO,
12 THAT'S MY JOB AND THAT'S WHY SOMETIMES WE HAVE TO DO SOME OF THE
13 THINGS WE HAVE TO DO. WE'RE NOT TRYING TO HIDE ANYTHING FROM YOU,
14 WE'RE JUST TRYING TO MAKE SURE WE DO IT RIGHT AND WE ONLY HAVE TO
15 DO IT ONE TIME.

16 NOW, THE LAWYERS ARE GOING TO GET UP HERE IN JUST A MINUTE
17 AND BEGIN THEIR OPENING STATEMENTS. THIS IS A VERY IMPORTANT CASE
18 TO BOTH SIDES SO WE ASK THAT YOU PAY ATTENTION. WHAT WE'RE GOING
19 TO FOLLOW IS OUR PROCESS, IS USUALLY WE HAVE ABOUT AN HOUR AND A
20 HALF OF TESTIMONY AND THEN WE TAKE A BREAK. THIS AFTERNOON I
21 ANTICIPATE WE'LL GET STARTED BACK ABOUT 2:00 PM, BECAUSE AT 1:45 PM I
22 HAVE TO HAVE A HEARING ON ANOTHER MATTER ON ANOTHER CASE THAT
23 GOT SCHEDULED IN HERE, AND SO WE'LL GIVE YOU AN OPPORTUNITY TO GO
24 TO LUNCH. SO, WE'LL PROBABLY GO TO ABOUT 3:30 PM AND TAKE A BREAK,
25 WE MIGHT GO A LITTLE BIT QUICKER BECAUSE WE ARE GOING TO BE

1 LISTENING TO SOME VIDEO TAPES THROUGHOUT THIS TRIAL AT SOME TIME.
2 TODAY, WE'RE PROBABLY ONLY GOING TO GO TO ABOUT 4:30 THIS
3 AFTERNOON BECAUSE SOME OF THE LAWYERS HAVE SOME, SOMETHING
4 THAT'S COME UP AND THEY HAVE TO GO. BUT, NORMALLY, WE GO
5 SOMEWHERE TO ABOUT 5:00 PM OR 5:30 PM. IT'S JUST KIND OF A FLOW, WE
6 LISTEN AND WE TAKE IT BY EAR, WHERE WE'RE GOING. BUT, THAT'S WHAT
7 OUR USUAL SCHEDULE IS AND WE DO TRY. AND WHEN I SAY START AT 9:30
8 AM, SOME DAYS IT WORKS AND SOME DAYS IT DOESN'T, BUT I'M MINDFUL
9 AGAIN, OF THE FACT THAT WE ARE TAKING YOU AWAY FROM WHAT YOU ARE
10 NORMALLY DOING AT THIS TIME AND SO, I DON'T LIKE HAVING YOU SITTING
11 BACK THERE LIKE YOU DID THIS MORNING AND IT SEEMS LIKE YESTERDAY
12 MORNING YOU SAT FOR A GOOD LONG TIME, BUT WE'RE WORKING OUT
13 HERE, WE REALLY ARE. THIS HAS BEEN AN UNUSUAL WEEK IN THAT REGARD
14 AND SO I HOPE WE'LL GET BACK ON TRACK AND NOT HAVE TO KEEP YOU
15 SITTING AND WAITING. I COULD TALK ALL DAY LONG, BUT THAT WOULDN'T
16 SERVE ANY PURPOSE AND SO I'M GOING TO GO AHEAD AND TURN IT OVER TO
17 THE LAWYERS AND SO, IF MR. THORNTON, IF YOU ARE READY, YOU MAY
18 BEGIN WITH YOUR OPENING STATEMENT.

19 MR. THORNTON: THANK YOU, JUDGE. MAY IT PLEASE THE COURT.

20 THE COURT: YES, SIR.

21 **OPENING STATEMENT OF MR. THORNTON:**

22 JANUARY 13, 1995. A LADY YOU ARE GOING TO HEAR FROM TODAY,
23 WANDA COOK, CALLED CHARLES GODLEY. SHE WAS TALKING TO HIM ABOUT
24 A HOUSE, ABOUT SELLING HIS HOUSE. SOME TIME BETWEEN FRIDAY THE
25 13th, JANUARY 13, 1995, AND SUNDAY MORNING THE 15th, THE DEFENDANT IN

1 THIS CASE, RICHARD SIMMONS, BEAT CHARLES GODLEY TO DEATH WITH A
2 HAMMER. THAT'S WHAT THIS CASE IS ABOUT. YOU'RE LIKELY TO HEAR FROM
3 A LOT OF WITNESSES. YOU'RE LIKELY TO HEAR FROM WANDA COOK, WHO
4 FOUND THE BODY, THE BODY OF CHARLES GODLEY. YOU'RE LIKELY TO HEAR
5 FROM CHARLES' SISTER, GLORIA. SHE'LL TELL YOU A LITTLE BIT ABOUT HER
6 BROTHER WHO WAS KILLED. YOU'RE GOING TO HEAR FROM DETECTIVES
7 WHO WENT TO THE SCENE, BOTH SUNDAY THE 15th, THE DAY CHARLES' BODY
8 WAS DISCOVERED AND TIMES THEREAFTER. YOU'RE GOING TO HEAR ABOUT
9 HOW THEY COLLECTED EVIDENCE. YOU'RE GOING TO HEAR ABOUT THE
10 RESULTS OF ALL THE THINGS YOU HEAR ABOUT ON C-S-I, THE FORENSICS.
11 YOU'RE GOING TO HEAR ABOUT ALL THOSE THINGS WHILE YOU'RE HERE AS
12 JURORS. BUT, DON'T LOSE SIGHT OF THE FACT THAT THIS CASE IS ABOUT
13 CHARLES GODLEY. AND IT'S ABOUT RICHARD SIMMONS BEATING HIM TO
14 DEATH WITH A HAMMER DURING A BURGLARY. YOU'RE GOING TO HEAR
15 FROM THESE EXPERTS THAT WILL COME DOWN FROM THE SOUTH CAROLINA
16 LAW ENFORCEMENT DIVISION TO TESTIFY. YOU'RE GOING TO HEAR FROM
17 SOMEONE WE REFER TO AS A COLD CASE INVESTIGATOR, CAPTAIN
18 BROMAGE, WHO IS SEATED AT THE TABLE WITH ME. AND YOU'RE ALSO
19 GOING TO HEAR SOME VIDEO TAPES AND YOU'RE GOING TO SEE THEM IN THE
20 COURTROOM. AND ON THESE TAPES, YOU'RE GOING TO HEAR FROM THE
21 ONLY LIVING WITNESS AS TO WHAT HAPPENED THAT NIGHT FROM RICHARD
22 SIMMONS. BECAUSE HE IS GOING TO TELL YOU WHAT HE DID IN HIS OWN
23 WORDS. BECAUSE HE DIDN'T KNOW HE WAS TALKING TO AN UNDERCOVER
24 SLED OFFICER WHEN HE WAS TALKING. BUT, THROUGH ALL THESE
25 WITNESSES YOU HEAR, YOU'RE GOING TO HEAR ABOUT THE SCIENCE,

1 YOU'RE GOING TO HEAR ABOUT ALL THESE THINGS, DON'T FORGET WHAT
2 THIS CASE IS ABOUT. ROUTE 4, BOX 873 ON HIGHWAY 21 IN BEAUFORT
3 COUNTY SOUTH CAROLINA, CHARLES GODLEY WAS BEATEN TO DEATH WITH
4 A HAMMER AND IT WAS DONE BY RICHARD SIMMONS IN THE COURSE OF A
5 BURGLARY. AS THE JUDGE HAS TOLD YOU, NOTHING I TELL YOU IS
6 EVIDENCE. MR. HOOD IS GOING TO GET UP AND DO HIS OPENING AND
7 NOTHING HE SAYS IS EVIDENCE. THE ONLY EVIDENCE THAT YOU ARE GOING
8 TO GET IS ANYTHING THE JUDGE ALLOWS YOU TO LOOK AT, WHETHER IT BE
9 DOCUMENTS, PHOTOGRAPHS, VIDEO TAPES, AND WHAT'S SAID FROM THAT
10 STAND RIGHT THERE. THAT'S THE EVIDENCE IN THIS CASE. AND WHILE WE
11 LIKE TO TELL EVERY JURY EVERY TIME THAT WHAT THEY ARE DOING IS
12 IMPORTANT, AND CERTAINLY IN EVERY CASE IT IS IMPORTANT OR
13 OTHERWISE WE WOULDN'T BE HERE, YOU CANNOT GET ANY MORE
14 IMPORTANT THAN MURDER. THIS IS THE MOST SERIOUS OF CASES. A MAN'S
15 LIFE WAS TAKEN FROM HIM AND THE MAN THAT STOLE IT IS RICHARD
16 SIMMONS. THAT'S WHAT THIS CASE IS ABOUT. THANK YOU.

17 MR. HOOD: MAY IT PLEASE THE COURT.

18 THE COURT: MR. HOOD.

19 MR. HOOD: THANK YOU.

20 OPENING STATEMENT OF MR. HOOD:

21 LADIES AND GENTLEMEN, THE STATE OF SOUTH CAROLINA AND
22 BEAUFORT, IN PARTICULAR, HAS HUNDREDS OF INVESTIGATORS, HUNDREDS
23 OF PEOPLE THAT ARE SUPPORT STAFF, THINGS OF THAT NATURE, OFFICERS,
24 INVESTIGATORS, ALL OVER, NOT ONLY BEAUFORT COUNTY, BUT THEY
25 UTILIZE THEM FROM ALL OVER THE STATE OF SOUTH CAROLINA. RICHARD

1 SIMMONS HAS ME. I'M HIS INVESTIGATOR, I'M HIS EVERYTHING BECAUSE I'M
2 HIS ATTORNEY, BUT, I'M THE ONLY PERSON HE'S GOT. AND I WANT YOU TO
3 KEEP THAT IN MIND, BECAUSE, YOU KNOW, RICHARD SIMMONS IS ON TRIAL
4 FOR MURDER. AND AS THE SOLICITOR INDICATED, IT'S THE MOST SERIOUS
5 CRIME ANYBODY CAN EVER BE ACCUSED OF. BUT, DON'T BE SWAYED BY THE
6 FACT THAT YOU CAN SEE A VIDEO WHERE RICHARD SIMMONS ADMITS TO A
7 CRIME. BECAUSE I'M GOING TO TELL YOU IN A FEW SECONDS HOW THIS
8 HAPPENED AND WHY IT HAPPENED, THE WAY IT HAPPENED, BECAUSE I'M
9 GOING TO TELL YOU EVERYTHING ABOUT THIS CASE. BECAUSE WE ARE NOT
10 TRYING TO HIDE ANYTHING ABOUT THIS CASE. WE'RE GOING TO GIVE YOU
11 EVERYTHING UP FRONT. WE ARE GOING TO TELL YOU EVERYTHING.
12 BECAUSE THAT'S THE IMPORTANT THING, THAT YOU HAVE ALL OF THE FACTS
13 IN ORDER TO MAKE A DECISION ABOUT THIS VERY SERIOUS MATTER. SO,
14 FIRST OFF, I'D LIKE TO SAY THAT MY NAME IS GENE HOOD. SOME OF YOU
15 HEARD ME REFERRED TO AS A PUBLIC DEFENDER OR AS A PRIVATE
16 ATTORNEY. WELL, ACTUALLY, I'M BOTH. I'VE BEEN IN THE PRACTICE OF LAW
17 FOR OVER THIRTY YEARS. I SPENT 20 YEARS IN THE UNITED STATES ARMY,
18 RETIRED, AND HAVE BEEN IN THIS BUSINESS EVER SINCE. BUT, WE DO THE
19 SAME KIND OF LAW THAT WE DID IN THE JAG CORP THAT WE DO HERE IN
20 CIVILIAN, WE REPRESENT EVERYBODY, ROBBERIES, MURDERS, EVERYBODY,
21 THE ONLY DIFFERENCE WAS THE SET OF RULES THAT WE USED, WHETHER IT
22 WAS FEDERAL RULES OR THE STATE RULES OF EVIDENCE. HERE, WE USE
23 THE STATE RULES, THAT'S THE ONLY DIFFERENCE..
24 RICHARD SIMMONS MAY OR MAY NOT TESTIFY. I'M GOING TO TELL YOU
25 UP FRONT, BECAUSE WE'RE GOING TO LISTEN TO THIS WHOLE CASE AND IF

1 IT TURNS OUT THE WAY I THINK IT SHOULD TURN OUT, I'M GOING TO ADVISE
2 MR. SIMMONS THAT HE DOESN'T NEED TO TESTIFY BECAUSE ALL OF IT'S OUT
3 THERE FOR YOU GUYS TO TAKE A LOOK AT AND MAKE A DECISION BASED ON
4 ALL THE INFORMATION, NOT SOME OF THE INFORMATION.

5 SO, WHAT DO WE HAVE? WE HAVE A PERSON WHO'S FOUND DEAD ON
6 THE 15th OF JANUARY IN '95. WE HAVE POLICE OFFICERS WHO ARRIVE. THEY
7 EXAMINE THE SCENE. THEY HAVE E-M-S WHO ARRIVE. THEY EXAMINE THE
8 SCENE, THE BODY AND ALL OF THESE THINGS. THEY HAVE THE CORONER
9 WHO ARRIVES AND DOES THE SAME WHOLE PROCESS AGAIN. EVERYBODY
10 LOOKS AT THE SAME THING. THEY CALL HIS SISTER. THEY INTERVIEW
11 PEOPLE WHO FOUND THE BODY. AND THEY FIND OUT SEVERAL THINGS: (1)
12 THAT MR. GODLEY WAS SUFFERING FROM DEPRESSION. HE WAS LEAVING
13 HIS FAMILY AND HIS HOME THAT HE HAD BEEN IN ALL HIS LIFE. HIS MOTHER
14 LIVED THERE WITH HIM. HIS MOTHER HAD RECENTLY DIED. NOW, HE HAD TO
15 SELL THE HOME. AND HE HAD A SISTER WHO WAS PART OWNER OF THE
16 HOME, INHERITED PART OF IT AND SO MR. GODLEY IS HAVING TO LEAVE HIS
17 HOME. THE REAL ESTATE AGENT CALLS HIM FRIDAY WHO SAYS SHE WANTED
18 HIM TO SIGN THE PAPERWORK ON THE HOUSE AND WANTED TO COME OUT.
19 HE SAYS, "I DON'T FEEL LIKE IT. I DON'T FEEL GOOD TODAY. CHECK WITH ME
20 LATER." "BOOM". MR. GODLEY, ALONG ABOUT 12:00 AT NIGHT, 11:00 OR 12:00,
21 CALLS THE POLICE, SAYS, "THERE IS A PERSON, A LARGE, LARGE BLACK
22 MALE ON MY FRONT PORCH WEARING A DARK FRENCH COAT. HE IS PEEKING
23 IN MY WINDOW. HE'S LEAVING THE PORCH AND IS HEADED IN THIS
24 DIRECTION." OFFICER ARRIVES, TAKES THE INFORMATION. AN HOUR LATER,
25 APPROXIMATELY, WALKING IN THE DIRECTION MR. GODLEY SAYS THE

1 PERSON WAS GOING, IS A LARGE BLACK MALE WEARING A DARK TRENCH
2 COAT. HE IS STOPPED BY THE OFFICER. THE OFFICER GETS HIS NAME. IT'S
3 NOT RICHARD SIMMONS. IT'S HIS NEIGHBOR. HE TELLS HIM, "IF I CATCH YOU
4 PEEKING IN ANYBODY'S WINDOWS I'M GOING TO TAKE YOU IN. GET OUT OF
5 HERE." AND HE LEAVES. "BOOM." SUNDAY MORNING, MS. COOK DISCOVERS
6 THE BODY. ONE DOOR IS OPEN. IT WAS THE DOOR IN THE BACK. THERE
7 WERE SEVERAL DOORS IN THIS HOUSE. APPARENTLY THEY HAD BEEN
8 BROKEN UP AT ONE TIME AND USED AS AN APARTMENT. SO, THE REALTOR
9 GOES AROUND AND FINDS A DOOR THAT IS OPEN. IT'S A DOOR THAT CAN'T
10 BE UNLOCKED OR WHATEVER, FROM THE OUTSIDE. IT'S A DOOR THAT, FROM
11 THE INSIDE IS BOLTED ACROSS, SO IN ORDER TO GAIN ACCESS TO THAT
12 PARTICULAR DOOR, YOU WOULD HAVE TO HAVE SOMEONE EITHER OPEN IT
13 OR BREAK THE LATCH. IN OTHER WORDS, KNOCK DOWN THE DOOR. SO, THE
14 REALTOR GOES IN, FINDS THE BODY, CALLS 9-1-1. "BOOM." ALL THESE
15 PEOPLE ARRIVE. WELL, THAT'S WHAT HAPPENS. REALTOR IS QUESTIONED,
16 QUESTIONED ALL THESE PEOPLE, QUESTIONED HIS SISTER. SHE IS
17 CONTACTED, WE FOUND OUT HE'S SUFFERING FROM DEPRESSION, MR.
18 GODLEY IS. WE ALSO FIND ON THE BED AN EMPTY BOTTLE OF WHISKEY. WE
19 ALSO FIND THAT NOTHING IN THE HOUSE IS DISTURBED. THERE IS NO
20 RUMMAGING THROUGH LIKE A BURGLAR OR PERSON LOOKING FOR
21 SOMETHING, MONEY, GOLD SILVER. NO SIGN OF A DISTURBANCE. NO
22 KNOCKED OVER TABLES, NOTHING. EVERYTHING IS IN ORDER. MR.
23 GODLEY'S BANK CARDS, HIS VOTING CARD, ALL THESE CARDS ARE NEATLY
24 STACKED UP. NOTHING'S TAKEN. NOTHING APPEARS TO BE MISSING. ALL
25 THIS INFORMATION IS GATHERED. THE CORONER SAYS, "SUICIDE." THE

1 OFFICERS, "SUICIDE." UP NEXT TO THE PERSON'S HEAD THEY FIND A
2 BLOODY GUN, A PISTOL, A PELLET GUN. WHEN THEY LIFT UP THE BODY,
3 THEY FIND A BLOODY HAMMER. BUT, HE'S GOT BLOOD ALL OVER HIS TORSO
4 AND BLOOD ON HIS BACK, WHICH COULD HAVE COME FROM THE HAMMER.
5 WHAT DID THEY DO? THEY TAKE ALL THAT INFORMATION AND THEY DECIDE,
6 THE OFFICERS ALSO, SUICIDE. IT'S A SUICIDE. "BOOM." WHAT DO THEY DO
7 NEXT? THEY TURN THE SCENE OVER TO THE FAMILY AND SAY, HERE, IT'S
8 NOT A CRIME SCENE, THIS PERSON COMMITTED SUICIDE, SO THEREFORE,
9 THERE IS NO EVIDENCE THAT WE NEED FROM THIS AREA. FORTUNATELY,
10 THEY DID DO A LITTLE BIT OF WORK BEFORE, YOU KNOW, THEY MADE THAT
11 DECISION. THEY TOOK SOME PICTURES. THEY TOOK SOME PICTURES OF
12 BLOODY SPOTS. THEY TOOK SOME PICTURES OF THINGS THAT WERE ON
13 THE BED. THEY DID SCHEMATICS OF THINGS THAT WERE ON THE BED AND
14 HOW THINGS WERE POSITIONED, WHERE THE BODY WAS POSITIONED, AND
15 ALL THESE THINGS. AND SO THEY DID ALL THAT WORK, A LITTLE BIT OF IT.
16 THEY NOTICED THAT THERE WERE FINGERPRINTS ON MR. GODLEY'S LEGS.
17 THEY NOTICED THERE WAS HAIR, HUMAN HAIR, FOUND IN HIS HAND, IN HIS
18 RIGHT HAND. SO, THEY DID GATHER SOME THINGS. THEY GATHERED THE
19 GUN, IT HAD BLOOD ON IT. THAT GATHERED THE HAMMER, IT HAD BLOOD ON
20 IT. AND ALL THESE PEOPLE, ALL THESE E-M-S PEOPLE, AND ALL OF THESE
21 OTHER PEOPLE, THE REALTORS -- I MEAN, WE DON'T KNOW WHAT
22 HAPPENED AND WHO WAS IN AND OUT OF THERE DURING THAT PERIOD OF
23 TIME BECAUSE THEY SIMPLY SAY IT'S NOT A HOMICIDE, IT'S A SUICIDE, SO
24 THEREFORE, YOU CAN HAVE THE PLACE. AND SO, THE FAMILY TAKES
25 CONTROL OF THE PROPERTY. SEVERAL DAYS LATER, AUTOPSY. WHAT A

1 MINUTE. WE MIGHT HAVE MADE A MISTAKE HERE, GUYS. THIS LOOKS LIKE
2 BLUNT FORCE TRAUMA AND NOT SOMEBODY SHOOTING THEMSELVES,
3 ALTHOUGH IT'S ROUND AND OBVIOUSLY A GUN HAS A ROUND BARREL ON IT,
4 YOU KNOW, THINGS LIKE THAT. SO, WHAT DO THEY DO? THEY SAY,
5 (WHISTLES) "WE BETTER GO BACK BECAUSE THIS APPEARS TO BE A
6 HOMICIDE AND NOT A SUICIDE. WELL, NOW, ANOTHER OFFICER COMES
7 BACK, BECAUSE HE'S THEIR GUY IN CHARGE NOW SINCE THE OTHER GUY IS
8 NO LONGER IN CHARGE. WELL, HE COMES IN. LOW AND BEHOLD, HE FINDS
9 OUT WE HAVE NO CRIME SCENE BECAUSE THEY CLEANED THE PLACE UP.
10 MR. GODLEY'S PROPERTY IS GONE. HIS PROPERTY NOT HERE. AND SO, NOW
11 THEY DECIDE, OKAY, IF IT WAS A MURDER, WHAT DID THE MURDERER WANT?
12 WELL, GENERALLY, PEOPLE WHO KILL PEOPLE, PERHAPS ITS WHEN THEY
13 BREAK INTO HOUSES AND THEY STEAL THINGS. SO, THEY THINK HIS
14 WALLET'S MISSING. WELL, WHEN WAS IT MISSING? WAS IT MISSING THE
15 FIRST DAY WHEN THEY ARRIVED OR DID IT SOMEHOW DISAPPEAR DURING
16 THE NEXT TWO OR THREE DAYS WHEN THEY TURNED THE PROPERTY BACK
17 OVER TO THE FAMILY? THEY KNOW THAT THE FIRST TIME THERE WAS
18 NOTHING DISTURBED. THERE WERE ALL THESE CREDIT CARDS AND THINGS
19 LIKE THAT, THAT PEOPLE WHO ARE IN THE BUSINESS OF STEALING, STEAL,
20 BUT IT'S NOT DISTURBED. WHAT KIND OF MONEY DID HE HAVE? NOBODY
21 KNOWS WHETHER HE HAD ANY MONEY OR NOT. THEY FINALLY DECIDE,
22 WELL, HIS WALLET'S MISSING. WHEN WAS IT MISSING? SO, THERE'S
23 NOTHING. FORENSICS, THEY TALK ABOUT ALL THESE GRAND FORENSICS
24 THE STATE HAS. I WILL TELL YOU, THERE IS NOT ONE, NOT ONE, SHRED OF
25 EVIDENCE THAT PUTS RICHARD SIMMONS IN MR. GODLEY'S HOUSE DURING

1 THAT PERIOD OF TIME. NOT A FINGERPRINT, NOT A PIECE OF BLOOD, NOT
2 ANY SALIVA, NOT ANYTHING THAT CONNECTS RICHARD SIMMONS WITH THAT
3 PLACE. NOTHING. OKAY? SO, THEY'RE GOING TO HAVE ALL THIS GRAND
4 EVIDENCE, BUT I'M GOING TO TELL YOU THIS, IT ISN'T GRAND, BECAUSE THEY
5 DON'T KNOW. THEY EVEN COME UP AND SAY, "WELL, WE EXAMINED SOME OF
6 IT, SOME OF IT WE DIDN'T EXAMINE. WHY? BECAUSE THEY THOUGHT MR.
7 GODLEY COMMITTED SUICIDE, SO THEY DON'T DO A VERY GOOD JOB,
8 OBVIOUSLY, OF DOING THAT. SO, NOW WHAT DO WE HAVE? YEARS PASS.
9 OKAY? WELL, LET ME GO BACK A LITTLE BIT. THERE'S ONE IMPORTANT THING
10 THEY SAY THAT I FORGOT TO TELL YOU, THEY DO FIND OUT FROM THE
11 OFFICER AT THE TIME WHO STOPPED THE LARGE BLACK MALE IN THE
12 TRENCH COAT WHO WAS PEEKING THROUGH MR. GODLEY'S WINDOWS AND
13 THEY SAY WHO WAS THAT PERSON? AND LO AND BEHOLD, THEY HAVE THE
14 NAME OF THE PERSON WHO WAS ON MR. GODLEY'S PORCH, WHO THEY
15 BELIEVE WAS PEEKING IN THE WINDOW. "BOOM." THEY GO OUT AND
16 SNATCH HIM UP AND SAY, HEY MAN, YOU'RE THE MURDERER. YOU KNOW,
17 SO, THEY START TALKING TO HIM. HE SAYS, "WELL, WAIT A MINUTE, YOU
18 KNOW, I WAS JUST OUT WITH MY GIRLFRIEND. I DON'T WANT MY WIFE TO
19 KNOW. LET ME GIVE YOU ALL THESE NAMES. I'VE GOT AN ALIBI. SO, HE
20 GIVES THEM ALL THIS STUFF. WELL, THEY AREN'T SATISFIED WITH THAT,
21 OBVIOUSLY, YOU KNOW, EVEN THOUGH THEY CHECK IT OUT AND THEN,
22 AFTER A WHILE, THEY DECIDE MAYBE HE'S TELLING THE TRUTH, MAYBE IT
23 WASN'T HIM. I DON'T KNOW WHY, BUT I'LL TELL YOU WHY. THEY SAY, "GIVE
24 ME YOUR CLOTHES THAT YOU WERE WEARING THE NIGHT THAT OFFICER
25 CALANDRA STOPPED YOU AND SO HE GIVES THEM THE CLOTHES, HE GIVES

1 THEM SHOES, SHIRT, PANTS, THE UNDERWEAR, ALL THIS STUFF AND THEY
2 ANALYZE ALL THAT STUFF AND GUESS WHAT. THERE ARE BLOOD
3 SPLATTERS IN MR. GODLEY'S ROOM. IF SOMEBODY, THAT ACTUALLY KILLED
4 MR. GODLEY, HIT HIM WITH A HAMMER, THERE WOULD BE BLOOD SPLATTERS
5 ALL OVER THEM. HAD TO, BECAUSE IT WAS SPLATTERED ALL OVER THE
6 CURTAINS AND ON THE WALLS AND ON, YOU KNOW, THINGS OF THAT NATURE
7 AND SO WE KNOW THAT THE PERSON THAT DID THIS HAS GOT TO HAVE
8 BLOOD ON THEM. IF YOU HIT THEM WITH A HAMMER, THERE'S GOT TO BE
9 BLOOD ON THEM. SO, THEY EXAMINE HIS CLOTHING AND LO AND BEHOLD,
10 FIND NO BLOOD. SO, THEY SAY, "WE BELIEVE YOUR ALIBI". WELL, ONE OF MY
11 PROBLEMS IS, THE ONE THING THEY DIDN'T HAVE, THE ONLY THING THEY
12 DIDN'T GET WAS, THE TRENCH COAT WHICH COVERS ALL THE OTHER
13 CLOTHES, WHICH IS THE MOST NATURAL PLACE THAT ANY BLOOD WOULD
14 HAVE BEEN ON THAT PARTICULAR PERSON IF HE WAS WEARING A TRENCH
15 COAT. THEY GOT HIS CLOTHES, BUT THEY DIDN'T GET THAT. THEY GAVE
16 THEM EVERYTHING BUT THE TRENCH COAT. SO, THEY SORT OF SAID, "WELL,
17 HOT DOG," YOU KNOW, THEY DIDN'T EVEN NOTICE, NOBODY, - I JUST
18 HAPPENED TO BE READING SOME REPORTS AND LOOKING AT EVIDENCE, AND
19 WHAT HAPPENED TO THE TRENCH COAT? UH-OH. WELL, NOW WE HAVE A
20 LARGE BLACK MALE WHO THEY SAID, NOPE, WE DON'T BELIEVE HE'S THE
21 GUY, WE BELIEVE HIS ALIBI, HE GAVE US ALL THIS INFORMATION, BUT THE
22 ALIBI IS ONLY GOOD FOR ONE DAY, THAT PARTICULAR NIGHT. THE STATE
23 DOESN'T EVEN KNOW WHEN THE PERSON WAS KILLED. IT COULD HAVE BEEN
24 SATURDAY, SATURDAY NIGHT, SATURDAY DURING DAYLIGHT HOURS, YOU
25 KNOW, EARLY SUNDAY MORNING. YOU KNOW, WE DON'T KNOW, HAVE NO

1 EARTHLY IDEA. BUT, WE DO KNOW WHERE HE WAS ON THIS ONE NIGHT, YOU
2 KNOW, WE THINK. SO, NOW WHAT HAPPENS? WE'VE GOT TO BEAT THE
3 BUSHES OUT HERE AND FIND OUT AND STOP EVERYBODY, ANYBODY WHO
4 WE THINK COULD POSSIBLY HAVE BEEN INVOLVED IN THIS GRISLY CRIME.
5 AND SO, THEY INTERVIEW EVERY BLACK MALE OUT ON ST. HELENA, YOU
6 KNOW, BECAUSE THAT'S WHAT THEY THINK. GUESS WHAT, THEY
7 INTERVIEWED RICHARD SIMMONS. THEY INTERVIEWED HIM. COME OVER
8 HERE, WE WANT TO TALK TO YOU ABOUT THIS MURDER. WHAT MURDER?
9 WHOA, WHOA, YOU'RE TALKING TO YOURSELF HERE. "WHAT WERE YOU
10 WEARING ON THE NIGHT OF..." "BOOM." "BOOM." "BOOM." "HERE'S WHAT I
11 WAS WEARING." "WHERE WERE YOU ON THAT NIGHT?" "THIS IS WHERE I
12 WAS AT." "BOOM." "BOOM." "BOOM." DID THEY CHECK OUT MR. SIMMONS'
13 ALIBI? I SORT OF SUSPECT THAT THEY DID NOT. I SORT OF SUSPECT THAT
14 THEY DIDN'T DO ANYTHING, BECAUSE, AT THAT TIME THEY WERE JUST
15 QUESTIONING EVERY BODY THAT HAD A STORY ABOUT WHERE THEY WERE
16 AT ON THIS PARTICULAR NIGHT. SO, RICHARD SIMMONS NOW KNOWS ALL
17 ABOUT THE MURDER. AND PLUS, RICHARD SIMMONS LIVED THERE, AT
18 ST. HELENA. AND HOW MANY PEOPLE ON ST. HELENA DIDN'T KNOW ABOUT
19 HOW THIS MURDER HAPPENED AND WHEN IT HAPPENED, YOU KNOW, AN
20 HOUR, TWO HOURS, TWO DAYS AFTER THIS EVENT OCCURRED?
21 EVERYBODY. NO DOUBT ABOUT IT. BECAUSE THEY THOUGHT IT WAS A
22 SUICIDE. SO, THEY DIDN'T TELL ANYBODY, "HEY, DON'T DISCUSS ANY OF THIS
23 STUFF ABOUT HAMMERS AND BLOWS AND ALL THIS STUFF, YOU KNOW,
24 DON'T TALK ABOUT IT." EVERYBODY ON THE ISLAND KNOWS EVERYTHING
25 ABOUT IT AND PARTICULARLY IF YOU'VE BEEN QUESTIONED ABOUT THAT

1 PARTICULAR MURDER. SO, YOU'RE GOING TO SEE A VCR -- NOT A VCR -- A
2 VIDEO TAPE WHERE RICHARD SIMMONS TALKS ABOUT IT, HAVING
3 COMMITTED THIS PARTICULAR MURDER, BUT WHAT YOU'VE GOT TO DO IS
4 PUT IT IN CONTEXT WITH WHAT'S GOING ON WITH RICHARD SIMMONS. WHO
5 THIS PERSON IS THAT IS NOT QUESTIONING HIM, BUT QUESTIONING HIM,
6 GIVING HIM FACTS, PUTTING HIM IN A PARTICULAR SCENARIO. "SO, RICHARD,
7 HAVE YOU EVER KILLED ANYBODY?" "I KILLED SOMEONE", SAID THE AGENT.
8 RICHARD DOESN'T KNOW HE'S AN AGENT, BECAUSE THIS MAN'S HERE
9 HELPING HIM WITH BURGLARIES. WHY DID RICHARD HELP HIM WITH
10 BURGLARIES? BECAUSE HE'S PROVIDING HIM WITH CRACK COCAINE. HE'S
11 LIVING HOMELESS ON THE STREETS IN COLUMBIA, HOMELESS. HE'S
12 BEGGING FOR MONEY. HE'S GOT HIM UNDER SURVEILLANCE FOR A LONG
13 PERIOD OF TIME TO WATCH HIM AND SEE WHAT HE DOES, WHERE HE'S
14 SLEEPING AT, COMING AND GOINGS, TIMES, PLACES. SO, THEY KNOW WHAT
15 HE IS. HE'S A CRACK ADDICT, HE'S ADDICTED TO DRUGS. SO THE PLAN IS,
16 LET'S GO AND BEFRIEND THIS PERSON. LET'S GAIN HIS CONFIDENCE. LET'S
17 GET HIM TO BELIEVE THAT WE'RE GOING TO HELP HIM AND WE'RE GOING TO
18 DO THE MOST IMPORTANT THING FOR RICHARD SIMMONS. TO LEAD HIM
19 ALONG, MAKE HIM BELIEVE THAT WE ARE HELPING HIM AND WE'RE GOING TO
20 GIVE HIM MONEY BECAUSE THEY KNOW WHAT RICHARD SIMMONS IS GOING
21 TO DO WITH MONEY, CASH. WHAT'S THE FIRST THING A PERSON ADDICTED
22 TO DRUGS DOES WHEN THEY GET CASH IN THEIR HAND? BUY DOPE.
23 BECAUSE THAT'S THE MOST IMPORTANT THING IN THEIR LIFE, IS DOPE. AND
24 SO, THEY GIVE HIM MONEY. YOU KNOW, "HERE'S A TWENTY." DON'T KNOW
25 HIM. "BOOM." GIVE HIM TWENTY. "BOOM." THEY GIVE HIM TEN, MAYBE

1 TWENTY, DEPENDING UPON HIS NEED. "BOOM." TWO OR THREE TIMES
2 DOING THE SAME THING. NOW WE'VE GOT HIM. SO, WHAT WE DO WITH HIM
3 IS, WE THEN SAY, "LOOK I NEED SOMEBODY TO HELP ME COMMIT SOME
4 CRIMES AND I'M WILLING TO PAY YOU FOR IT. NOTHING SERIOUS, WE'RE
5 GOING TO JUST STAKE OUT A FEW PLACES, YOU KNOW, AND I'M GOING TO
6 SEE HOW IT WORKS. I'LL PAY YOU." I'LL PAY YOU, I WON'T FEED YOU, I WON'T
7 CLOTHE YOU, I WON'T GIVE YOU SHELTER, BUT I'LL TAKE CARE OF YOU. THE
8 MOST IMPORTANT THING IS YOUR DRUG HABIT. I WANT TO KEEP YOU THAT
9 WAY. I WANT TO KEEP YOU LUBRICATED SO YOU WILL DO OR SAY ANYTHING
10 TO GET WHAT I'VE GOT FOR YOU WHICH IS THE CRACK COCAINE. THEN, YOU
11 KNOW WHAT IS GOING TO HAPPEN. THEY'LL SAY, THEY'LL DO ANYTHING
12 THEY CAN TO GET WHAT THEY NEED, TO GET THE MONEY FOR DRUGS. SO,
13 NOW WE HAVE A PERFECT -- RICHARD SIMMONS HAS ALREADY BEEN
14 QUESTIONED ABOUT THE MURDER, KNOWS ALL ABOUT THE MURDER.
15 "BOOM." THEY START QUESTIONING HIM, TALKING TO HIM. YOU'LL SEE THIS
16 VIDEO. YOU'VE GOT TO LISTEN TO IT. YOU'VE GOT TO SEE IT. YOU'VE GOT
17 TO TAKE EACH ONE OF THEM, PUT THEM TOGETHER, AS TO HOW THEY FEED
18 HIM, HOW THEY DRAG HIM ALONG, YOU KNOW, AND FEED HIM LITTLE BITS OF
19 INFORMATION YOU KNOW, MR. SIMMONS DIDN'T COME IN AND SAY, "YOU
20 KNOW, I KILLED SOMEBODY ONE TIME. NO, NO, NO. THE OFFICER SAYS " I
21 NEED TO KNOW IF YOU HAVE YOU EVER KILLED SOMEONE. YOU KNOW WHY?
22 BECAUSE I NEED TO KNOW BECAUSE I KILLED SOMEBODY. I ALSO NEED TO
23 KNOW THAT YOU'RE GOING TO BE A PART OF THIS CRIMINAL SCHEME THAT I
24 HAVE HERE. THESE BURGLARIES THAT WE ARE GOING TO COMMIT
25 TOGETHER, I WANT TO MAKE SURE THAT YOU'RE NOT GOING TO CUT AND

1 RUN ON ME WHEN THINGS GET TOUGH. I WANT TO MAKE SURE THAT YOU'RE
2 GOING TO BACK ME UP. SO, HAVE YOU EVER KILLED ANYBODY?" "YEAH, I
3 KILLED SOMEBODY, TOO." "YOU SURE?" YEAH, WELL, YOU'RE GOING TO
4 HAVE TO LISTEN TO ALL OF THAT AND I'M NOT GOING TO TALK TO YOU ANY
5 MORE THAN THAT, BECAUSE THAT'S THREE HOURS, PLUS, OF TAPES THAT
6 YOU'RE GOING TO, UNFORTUNATELY, HAVE TO LISTEN TO VERY CLOSELY
7 AND UNDERSTAND WHOSE WORDS WE ARE USING AND WHO IS PUTTING
8 WHO IN THE POSITION. BUT, EVEN FOR THAT, JUST FORGET ALL THAT
9 BECAUSE MR. SIMMONS ALREADY KNEW ALL THAT BEFORE HE EVEN TALKED
10 TO THE OFFICER. MANY, MANY YEARS AGO, HE WAS QUESTIONED AND HE
11 SPEAKS VERY KNOWLEDGEABLY ABOUT IT BECAUSE HE KNEW ABOUT IT. HE
12 WAS QUESTIONED ABOUT IT LIKE EVERYBODY ELSE. THAT'S BASICALLY
13 WHAT YOU'RE GOING TO HEAR. THAT'S BASICALLY IT. THERE'S SOME OTHER
14 THINGS AND WE'LL GET INTO TO THOSE MAYBE A LITTLE LATER ON. IT
15 DEPENDS ON WHETHER OR NOT THEY PRESENT ANYTHING FURTHER THAN
16 WHAT THEY'VE TALKED ABOUT HERE TODAY. AND SO, I'M SURE THEY ARE
17 GOING TO PICK AND CHOOSE AND DECIDE WHICH THINGS SOUND BEST TO
18 THEIR SIDE. KEEP IN MIND EVERYTHING THAT I'M TELLING YOU HERE, AGAIN,
19 IS NOT EVIDENCE, BUT I'M JUST TRYING TO TELL YOU WHAT OUR SIDE OF THE
20 STORY IS AND WHAT I BELIEVE THE FACTS AND THE TRUTH TO BE. AND I'M
21 NOT GOING TO HIDE ANYTHING FROM YOU BECAUSE RICHARD SIMMONS, HE
22 DOESN'T WANT TO HIDE ANYTHING BECAUSE IT ALL NEEDS TO BE OUT IN
23 THE OPEN FOR YOU GUYS TO BE ABLE TO MAKE AN INFORMED DECISION AS
24 TO HIS LIFE, AND THAT'S BASICALLY IT, SO I WANT YOU TO KEEP A VERY
25 OPEN MIND WHEN YOU'RE DOING THIS BUT I WANT YOU TO REMEMBER ALL

DIRECT EXAMINATION OF GLORIA PETREVITCH BY MR. THORNTON:

101

1 THESE THINGS AND LISTEN TO THEM AS THEY DEVELOP THROUGH THE
2 COURSE OF THIS CASE. YOU'LL HEAR ALL KINDS OF THINGS AND YOU MAY
3 END UP TALKING ABOUT THEM LATER ON DURING THE COURSE OF THIS
4 TRIAL, BUT I THINK MOST OF YOU, YOU KNOW, CAN RECALL RECENT THINGS
5 THAT HAVE HAPPENED IN YOUR OWN LIVES, BUT REMEMBER JON BENET
6 RAMSEY, "I KILLED JON BENET RAMSEY." WHY DID HE MAKE THAT
7 STATEMENT? WHAT 'S IN IT FOR HIM TO SAY, "I KILLED JON BENET RAMSEY?"
8 "DID YOU DO IT?" "YES, I DID IT." BROUGHT OVER HERE, LO AND BEHOLD,
9 DNA, IMPOSSIBLE FOR HIM TO HAVE KILLED JON BENET RAMSEY. WHY?
10 SURVIVAL. SURVIVAL. I'LL DO ANYTHING ANYBODY ASKS IF YOU'LL HELP ME.
11 THAT'S THE SITUATION HERE. THANK YOU.

12 **THE COURT:** OKAY, FOLKS. WE'RE GOING TO THEN, BREAK FOR LUNCH
13 UNTIL 2:15 PM. WHEN YOU LEAVE AND COME BACK, GO TO THE JURY ROOM.
14 DON'T COME BACK IN HERE. DON'T FORGET, NO DELIBERATIONS OR
15 DISCUSSIONS ABOUT THE CASE AND OF COURSE DON'T GO OUT AND READ
16 ANYTHING ABOUT THE CASE AND IF YOU OVERHEAR ANYBODY TALKING
17 ABOUT THE CASE, PLEASE REPORT IT TO ME. THANK YOU. GO OUT AND
18 ENJOY YOUR LUNCH AND WE'LL SEE YOU AT 2:15 PM.

19 **NOVEMBER 14, 2006 AFTERNOON**

20 (JURY IN AT 2:20 PM)

21 **THE BAILIFF:** ALL PRESENT YOUR HONOR.

22 **THE COURT:** ALL RIGHT. MR. SOLICITOR, YOU MAY CALL YOUR FIRST
23 WITNESS.

24 **MR. THORNTON:** THANK YOU, JUDGE. THE STATE CALLS MS. GLORIA
25 PETREVITCH.

DIRECT EXAMINATION OF GLORIA PETREVITCH BY MR. THORNTON:

102

1 (AFTER BEING DULY SWORN BY THE CLERK OF COURT,

2 GLORIA PETREVITCH TESTIFIES AS FOLLOW:)

3 CLERK OF COURT: PLEASE BE SEATED AND STATE YOUR NAME AND

4 SPELL IT FOR THE COURT , PLEASE.

5 WITNESS: MY NAME IS GLORIA PETREVITCH.

6 CLERK OF COURT: PLEASE SPELL YOUR LAST NAME.

7 WITNESS: P-E-T-R-E-V-I-T-C-H.

8 **DIRECT EXAMINATION OF GLORIA PETREVITCH BY MR. THORNTON:**

9 Q MS. GLORIA, DID I GET YOUR NAME RIGHT THIS TIME?

10 A YES. YOU DID.

11 Q OKAY. MS. GLORIA, WHERE DO YOU LIVE?

12 A I LIVE IN GUYTON, GEORGIA.

13 Q ALL RIGHT. CAN YOU TELL ME WHERE THAT IS?

14 A IT'S ABOUT 30 MINUTES FROM SAVANNAH.

15 Q DO YOU HAVE ANY FAMILY CONNECTIONS TO THE BEAUFORT AREA?

16 A YES. I DO.

17 Q OKAY. AND COULD YOU TELL ME ABOUT THAT PLEASE.

18 A I HAVE COUSINS THAT -- I HAVE RHODA RENTZ AND GERTRUDE

19 McELHANEY AND JOYCE GOLDEN.

20 Q AND DID YOU HAVE A RELATIVE HERE BY THE NAME OF CHARLES

21 GODLEY?

22 A YES. I DID.

23 Q AND HOW WERE YOU RELATED TO MR. GODLEY?

24 A HE WAS MY BROTHER.

25 Q AND AT SOME POINT IN JANUARY, MID-JANUARY, ABOUT JANUARY THE

DIRECT EXAMINATION OF GLORIA PETREVITCH BY MR. THORNTON:

103

1 15th OF 1995, DID YOU RECEIVE ANY INFORMATION ABOUT YOUR
2 BROTHER?

3 A YES.

4 Q CAN YOU TELL ME WHAT INFORMATION YOU RECEIVED?

5 A I HEARD -- A FRIEND OF OURS SAID THEY COULDN'T GET IN TOUCH
6 WITH HIM AND I TRIED TO CALL HIM DURING THE WEEK-END AND I
7 COULDN'T GET HIM AND I THOUGHT MAYBE -- AND HE LIVED BY
8 HIMSELF, AND I THOUGHT HE WAS SICK AND SO WE GOT IN THE CAR ON
9 SUNDAY MORNING AND WENT OVER THERE AND WHEN WE ARRIVED
10 THERE WERE FIRE TRUCKS, AMBULANCES, POLICE CARS AND
11 EVERYTHING IN FRONT OF THE HOUSE.

12 Q AND WOULD THIS HAVE BEEN SUNDAY THE 15th OF JANUARY?

13 A YES.

14 Q LET ME ASK YOU A FEW QUESTIONS ABOUT CHARLES, MS. GLORIA. DID
15 YOU KNOW ANYTHING AT ALL ABOUT HIS FINANCES? HOW HE
16 RECEIVED MONEY?

17 A HE RECEIVED A CHECK EVERY MONTH. HIS S-S-I CHECK.

18 Q ALL RIGHT.

19 A AND THAT WAS WHAT HE WAS LIVING ON.

20 Q DO YOU KNOW HOW MUCH IT WAS?

21 A \$660.00.

22 Q AND ARE YOU FAMILIAR WITH HOW YOUR BROTHER KEPT HIS MONEY?

23 A HE USUALLY CASHED HIS CHECK AND KEPT IT AT HOME.

24 Q DID HE KEEP A LOT OF MONEY IN THE BANK?

25 A NO, HE DIDN'T.

DIRECT EXAMINATION OF GLORIA PETREVITCH BY MR. THORNTON:

104

1 Q WHY NOT?

2 A HE JUST DID NOT. HE KEPT HIS MONEY, YOU KNOW, AT HOME.

3 Q AND HE KEPT IT WHERE HE COULD FIND IT?

4 A YES.

5 Q AND DO YOU KNOW, DID HE CARRY A WALLET?

6 A YES, HE DID.

7 Q NOW YOU TESTIFIED A FEW MINUTES AGO THAT YOU SHOWED UP ON

8 THE 15th OF JANUARY AND THERE WERE POLICE CARS AND ALL KINDS

9 OF VEHICLES, AND DID YOU LEARN ANYTHING -- AND I WILL REMIND

10 YOU, DON'T TELL ME ANYTHING SOMEBODY ELSE TOLD YOU -- DID YOU

11 LEARN THAT YOUR BROTHER -- DID YOU LEARN ANYTHING ABOUT YOUR

12 BROTHER WHEN YOU GOT THERE?

13 A THAT HE WAS DEAD.

14 Q ALL RIGHT. AND AT SOME POINT THAT DAY, DID LAW ENFORCEMENT

15 TELL YOU THAT THEY DIDN'T THINK IT WAS A CRIME SCENE AND

16 TURNED IT OVER TO YOU, TURNED THE HOUSE OVER TO YOU?

17 A YES. WHEN THEY TOOK HIS BODY OUT OF THE HOUSE, WE ASKED

18 THEM IF THEY WANTED YELLOW TAPE AROUND THE HOUSE AND

19 SHOULD WE GO IN AND THEY TOLD US TO GO ON IN.

20 Q ALL RIGHT. AND WHEN YOU WENT IN, DID YOU LOOK AROUND FOR

21 ANYTHING IN PARTICULAR?

22 A YES. WHEN THE DETECTIVE SHOWED ME WHAT HE HAD TAKEN, YOU

23 KNOW, AS EVIDENCE OUT OF THE HOUSE, HE DIDN'T HAVE A WALLET

24 AND SO WHEN I WENT INTO THE HOUSE, BUBBA'S CLOTHES WERE ON

25 THE COUCH AND I LOOKED IN HIS POCKETS AND I COULDN'T FIND HIS

DIRECT EXAMINATION OF GLORIA PETREVITCH BY MR. THORNTON:

105

1 WALLET. AND I LOOKED EVERYWHERE FOR IT, AND I COULDN'T FIND IT.

2 Q NOW MS. GLORIA, I KNOW THIS MAY SOUND LIKE A SILLY QUESTION,
3 BUT WHEN YOU SAY BUBBA, DO YOU MEAN CHARLES?

4 A YES. I'M SORRY.

5 Q THAT'S OKAY. ALL RIGHT, AND YOU LOOKED THROUGH HIS POCKETS
6 AND YOU DIDN'T FIND HIS WALLET?

7 A NO WALLET.

8 Q DID YOU LOOK THROUGH THE REST OF THE HOUSE?

9 A YES, WE DID. WE COULD NOT FIND IT.

10 Q TO THIS DAY, HAVE YOU EVER FOUND HIS WALLET?

11 A NEVER.

12 Q MS. GLORIA, CAN YOU TELL ME WHAT TYPE OF HOUSE THIS WAS? WAS
13 IT A BIG HOUSE, SMALL HOUSE, COULD YOU DESCRIBE IT FOR ME?

14 A IT WAS A BIG FARM HOUSE.

15 Q OKAY. WHEN YOU SAY A FARM HOUSE WAS IT FARM STYLE OR WAS IT
16 LITERALLY A FARM?

17 A WELL, MY FATHER WAS A BIG TRUCK FARMER AT ONE TIME, BUT SINCE
18 HIS DEATH, IT WAS JUST, YOU KNOW, THEY WERE JUST LIVING THERE,
19 AND IT WAS A BIG HOUSE WITH A LOT OF ROOMS.

20 Q OKAY. AND WHAT TYPE OF FARM DID YOU SAY IT USED TO BE?

21 A HE WAS A TRUCK FARMER. HE RAISED TOMATOES AND THINGS LIKE
22 THAT AND THEN SHIPPED THEM.

23 Q OKAY. AND HOW LONG DID HE DO THAT OUT OF THE HOUSE?

24 A OH, HE DID IT FOR YEARS – YEARS AND YEARS.

25 Q SO, WAS IT WELL KNOWN IN THE COMMUNITY THAT IT WAS A FARM

DIRECT EXAMINATION OF GLORIA PETREVITCH BY MR. THORNTON:

106

1 HOUSE?

2 A OH, YES. YES.

3 Q WHEN YOU TALKED -- DID YOU AT ANY POINT TALK TO ANY OF THE
4 DETECTIVES THAT DAY?

5 A THE YOUNG MAN -- THEY WOULDN'T LET ME GO IN THE HOUSE, AND I
6 TALKED TO, I DON'T KNOW HIS NAME, I BELIEVE HE WAS HISPANIC OR
7 PUERTO RICAN --

8 Q OKAY.

9 A -- AND I TALKED TO HIM.

10 Q ALL RIGHT. DID ANYBODY, AT ANY TIME, ASK YOU WHETHER OR NOT
11 YOUR BROTHER WAS SAD OR DEPRESSED OR UPSET?

12 A NOT NECESSARILY.

13 Q OKAY. DID YOU TELL ANY OF THE OFFICERS THAT YOUR BROTHER HAD
14 BEEN UPSET BECAUSE HIS MOTHER, Y'ALL'S MOTHER, HAD PASSED
15 AWAY, OR HIS MOTHER HAD PASSED AWAY? I'M ASSUMING SHE WAS
16 YOURS TOO BUT --

17 A THE WHOLE FAMILY WAS SAD ABOUT MY MOTHER'S PASSING.

18 Q WHEN WAS THE LAST TIME, BEFORE THAT SUNDAY, WHEN WAS THE
19 LAST TIME YOU TALKED TO CHARLES?

20 A I THINK IT WAS ON THURSDAY. I HAD BEEN OVER THERE HELPING HIM.
21 HE WAS MOVING AND --

22 Q ALL RIGHT. DO YOU KNOW WHY HE WAS MOVING?

23 A YES. HE WAS SELLING THE HOUSE AND HE WAS MOVING TO SUMTER,
24 SOUTH CAROLINA, AND HE WANTED ME TO HELP HIM GET THINGS
25 TOGETHER TO SET UP AN APARTMENT AND SO I WAS DOING THAT.

DIRECT EXAMINATION OF GLORIA PETREVITCH BY MR. THORNTON:

107

1 Q SO, HAD Y'ALL MADE PLANS TO CONTINUE TO DO THAT?

2 A YES. HE ASKED ME WHEN I WAS COMING BACK TO THE HOUSE TO
3 HELP HIM AND I TOLD HIM I WOULD COME BACK ON MONDAY AND I
4 WOULD COME EVERY DAY UNTIL WE HAD DONE EVERYTHING.

5 Q HAD HE GIVEN YOU ANY INDICATION HE MIGHT HARM HIMSELF?

6 A NEVER.

7 Q WHY WAS -- WHAT WAS -- WAS THERE ANYTHING IN PARTICULAR IN
8 SUMTER THAT HE WAS --

9 A HE HAD A FRIEND THERE, AND HE WAS MOVING --

10 Q I SEE YOU SMILING MS. GLORIA. HE HAD A FRIEND. WAS IT A
11 GIRLFRIEND?

12 A A GIRLFRIEND. AND HE WAS MOVING TO BE NEAR HER.

13 Q ALL RIGHT. AND SO YOU HAD MADE PLANS TO COME AND HELP HIM --

14 A YES.

15 Q -- AND Y'ALL HAD DISCUSSED THAT.

16 A YES.

17 Q AND HE'D NEVER GIVEN YOU ANY INDICATION THAT HE MIGHT HARM
18 HIMSELF OR ANYTHING SUCH AS THAT?

19 A NO. NO. HE WAS KIND OF EXCITED ABOUT GETTING THINGS
20 TOGETHER TO LEAVE.

21 Q THANK YOU MS. GLORIA, VERY MUCH. IF YOU WILL ANSWER ANY
22 QUESTIONS THAT --

23 A ALL RIGHT.

24 Q -- MR. HOOD HAS FOR YOU.

25 MR. THORNTON: NO FURTHER QUESTIONS, YOUR HONOR.

CROSS EXAMINATION OF GLORIA PETREVITCH BY MR. HOOD:

108

1 CROSS EXAMINATION OF GLORIA PETREVITCH BY MR. HOOD:

2 Q I AM GOING TO BE VERY BRIEF WITH YOU, OKAY?

3 A ALL RIGHT.

4 Q OKAY. I JUST HAVE A COUPLE OF QUESTIONS. I ASSUME THAT YOUR
5 BROTHER KEPT ALL OF HIS PAPERS SUCH AS HIS VOTER
6 REGISTRATION CARD, HIS CREDIT CARDS, THINGS OF THAT NATURE,
7 ALSO IN HIS WALLET. IS THAT CORRECT?

8 A I THINK THAT IS WHY WE WERE LOOKING FOR IT, BECAUSE, YOU KNOW,
9 HIS VA, SOCIAL SECURITY, HIS DRIVER'S LICENSE AND THINGS LIKE
10 THAT.

11 Q RIGHT. OKAY. SO, A LOT OF THOSE ITEMS WERE ACTUALLY FOUND
12 INSIDE OF THE HOUSE AND THEY WERE SORT OF STACKED UP. IS THAT
13 CORRECT?

14 A NOT, NOT THOSE ITEMS.

15 Q NOT THAT YOU ARE AWARE OF. IS THAT CORRECT?

16 A NO, I KNOW THEY WEREN'T, BECAUSE WE WERE LOOKING FOR
17 EVERYTHING.

18 Q WELL, DID THE OFFICERS, TO YOUR KNOWLEDGE, TAKE ANYTHING OUT
19 OF THE HOUSE OR ANY OF THE EMS PEOPLE OR THE FIRE PEOPLE OR
20 ANYBODY LIKE THAT?

21 A THE ONLY THING WAS THAT, YOU KNOW, THE DETECTIVE, HE WAS
22 TAKING SOME TELEPHONE RECORDS AND THINGS LIKE THAT. HE
23 SHOWED ME WHAT HE WAS TAKING.

24 Q NOW, DID YOU EVER HAVE AN OPPORTUNITY TO GO INSIDE OF THE
25 HOUSE PRIOR TO THEIR RELEASING THE PROPERTY BACK TO YOU,

CROSS EXAMINATION OF GLORIA PETREVITCH BY MR. HOOD:

109

1 THE HOUSE BACK TO YOU?

2 A NO.

3 Q NOW, IT'S MY UNDERSTANDING THAT THIS WAS JOINTLY OWNED BY
4 YOU AND YOUR BROTHER. IS THAT CORRECT?

5 A YES.

6 Q OKAY.

7 A AND MY SISTER.

8 Q AND YOUR SISTER. AND I UNDERSTAND THAT YOU GUYS WERE ALL IN
9 THE PROCESS OF SELLING THE HOME AFTER YOUR MOTHER HAD DIED.
10 IS THAT CORRECT?

11 A YES. HE HAD DECIDED. IT WAS LEFT UP TO HIM TO DO IT, BECAUSE HE
12 WAS LIVING THERE AND WE SAID STAY AS LONG AS YOU WANT TO,
13 BUT HE DECIDED THAT HE WANTED TO SELL IT.

14 Q OKAY. NOW, DO YOU RECALL EVER TALKING TO ANY OF THE OFFICERS
15 OR THEM QUESTIONING YOU ABOUT YOUR BROTHER'S MENTAL STATE?
16 AS FAR AS —

17 A I DON'T RECALL.

18 Q NO CONVERSATIONS —

19 A NO.

20 Q — THAT YOU CAN REMEMBER? YOU DON'T RECALL TELLING ANY OF
21 THEM THAT HE WAS DEPRESSED OVER THE DEATH OF HIS MOTHER
22 AND THINGS OF THAT NATURE?

23 A NO. I DON'T RECALL.

24 Q AND DO YOU — I ASSUME THAT PRIOR TO YOUR MOTHER DYING, THAT
25 CHARLES HAD ALSO LIVED THERE WITH HIS MOTHER. IS THAT

CROSS EXAMINATION OF GLORIA PETREVITCH BY MR. HOOD:

110

1 CORRECT?

2 A YES. AND MY FATHER.

3 Q AND YOUR FATHER. AND YOUR FATHER DIED SOME TIME BEFORE
4 YOUR MOTHER DIED. IS THAT CORRECT?

5 A YES.

6 Q AS A MATTER OF FACT, A CONSIDERABLE PERIOD OF TIME. IS THAT
7 CORRECT?

8 A I GUESS ABOUT TWO OR THREE YEARS —

9 Q AND THEN —

10 A — SOMETHING LIKE THAT.

11 Q — YOUR MOTHER DIES, AND IS THAT CORRECT?

12 A YES.

13 Q AND MR. GODLEY, CHARLES, HAD BEEN THERE THAT ENTIRE PERIOD OF
14 TIME, HAD BEEN RAISED IN THAT HOME. ISN'T THAT CORRECT?

15 A YES.

16 Q ALL RIGHT. NOW, I DON'T THINK I HAVE ANY OTHER QUESTIONS.

17 THANK YOU.

18 A ALL RIGHT.

19 THE COURT: ANY REDIRECT?

20 MR. THORNTON: NOTHING FURTHER FROM THE STATE, JUDGE. I ASK
21 THAT SHE BE ALLOWED TO STEP DOWN, PROBABLY SHOULD REMAIN UNDER
22 SEQUESTRATION, JUST IN CASE WE NEED TO DO A RECALL.

23 THE COURT: ALL RIGHT. YOU CAN STEP DOWN. THANK YOU.

24 WITNESS: YOU'RE WELCOME.

25 MR. THORNTON: MS. GLORIA, IF YOU WILL, JUST GO HAVE A SEAT

DIRECT EXAMINATION OF WANDA COOK BY MR. THORNTON:

111

1 BACK IN THE ROOM AGAIN. THANK YOU. WANDA COOK.

2 (AFTER BEING DULY SWORN BY THE CLERK OF COURT,

3 WANDA COOK TESTIFIES AS FOLLOWS:)

4 CLERK OF COURT: PLEASE BE SEATED AND STATE AND SPELL YOUR
5 NAME FOR THE COURT, PLEASE.

6 MS. COOK: MY NAME IS WANDA COOK.

7 **DIRECT EXAMINATION OF WANDA COOK BY MR. THORNTON:**

8 Q MS. COOK, FOR THE RECORD WOULD YOU SPELL YOUR LAST NAME?

9 A C-O-O-K.

10 Q THANK YOU MA'AM. MS. COOK, WHERE DO YOU LIVE?

11 A I LIVE ON HARBOR ISLAND. ON HARBOR ISLAND.

12 Q OKAY. AND WHAT COUNTY IS THAT LOCATED IN?

13 A THAT IS IN BEAUFORT COUNTY.

14 Q AND WHAT DO YOU DO, MS. COOK?

15 A I'M A REAL ESTATE AGENT.

16 Q OKAY. WERE YOU A REAL ESTATE AGENT IN JANUARY OF 1995?

17 A YES, I WAS.

18 Q OKAY. IN JANUARY OF 1995, MS. COOK, DID YOU HAVE ANY DEALINGS
19 WITH A HOUSE OWNED, OR OWNED AT LEAST IN PART BY A
20 MR. CHARLES GODLEY?

21 A YES, I DID.

22 Q AND WHAT WAS YOUR CONNECTION TO MR. GODLEY AND THE HOUSE,
23 MA'AM?

24 A I WAS THE SELLING AGENT. THE HOUSE WAS ON THE MARKET. THE
25 HOUSE WAS ON THE MARKET AND I SOLD IT TO MY SON AND SO WE

DIRECT EXAMINATION OF WANDA COOK BY MR. THORNTON:

112

1 WERE IN THE PROCESS OF BUYING THE HOUSE.

2 Q ALL RIGHT. AND CAN YOU TELL ME WHAT COUNTY THAT HOUSE IS
3 LOCATED IN?

4 A IN BEAUFORT COUNTY.

5 Q AND IS IT [REDACTED], I GUESS THAT IS [REDACTED]

6 [REDACTED] ON ST. HELENA'S? DOES THAT SOUND ABOUT RIGHT?

7 A I DON'T KNOW THE ROUTE.

8 Q OKAY.

9 A WE GO BY THE ADDRESS.

10 Q WAS IT ON [REDACTED] —

11 A YES.

12 Q — IN BEAUFORT COUNTY?

13 A UH-HUH. YES.

14 Q AND DID YOU HAVE AN OCCASION TO SPEAK TO CHARLES ON FRIDAY
15 JANUARY 13th, SOMETIME THAT AFTERNOON?

16 A I SPOKE TO HIM ON THE PHONE. I WAS WORKING IN THE OFFICE AND I
17 HAD THE CONTRACT READY FOR HIM TO SIGN AND IT WAS JUST A FINAL
18 CONTRACT, INITIALS, AND I CALLED HIM PROBABLY — MY SON HAD
19 COME BACK WITH THE CONTRACT FROM SAVANNAH, FROM MS.
20 PETREVITCH, AND I CALLED HIM AND ASKED IF I COULD COME OVER
21 AND GET HIS FINAL INITIALS.

22 Q ALL RIGHT. HOW MANY TIMES DO YOU THINK YOU HAD SEEN AND
23 TALKED TO CHARLES?

24 A OH, EIGHT OR TEN TIMES.

25 Q AND IN THOSE TIMES, DID HE EVER SEEM OVERLY UPSET OR — I HATE

DIRECT EXAMINATION OF WANDA COOK BY MR. THORNTON:

113

1 TO USE A THREE-DOLLAR LAWYER WORD, BUT DESPONDENT OR
2 ANYTHING LIKE THAT?

3 A NOT TO ME AT ALL. HE WAS A VERY QUIET, GENTLEMANLY PERSON.
4 HE LISTENED TO HIS MUSIC. HE WOULD LIKE TO TALK ABOUT HIS
5 MUSIC AND HE SEEMED TO BE VERY PLEASED THAT THE HOUSE
6 WOULD NO LONGER BE HIS SO HE COULD TRAVEL.

7 Q ALL RIGHT. DID -- AFTER YOU TALKED TO HIM THAT FRIDAY, DID YOU
8 MAKE ANY ARRANGEMENTS THAT -- AND YOU MAY HAVE ALREADY
9 TESTIFIED TO THIS -- DID YOU MAKE AN ARRANGEMENT TO GO SEE HIM
10 AND GET HIM TO SIGN THE PAPERWORK?

11 A I WAS TO MEET HIM THAT AFTERNOON AND HE TOLD ME HE DIDN'T
12 FEEL WELL AND COULD I PLEASE COME OVER THE WEEK-END. AND SO
13 I TOLD HIM I WAS BUSY ON SUNDAY, BUT I WOULD CALL HIM ON
14 SATURDAY.

15 Q OKAY.

16 A SO, I STARTED CALLING HIM ABOUT, A LITTLE AFTER LUNCH ON
17 SATURDAY, AND I CALLED THREE OR FOUR OR FIVE TIMES ALL
18 AFTERNOON.

19 Q DID YOU GET ANY RESPONSE?

20 A NO ANSWER AT ALL, WHICH WASN'T -- I MEAN, I WASN'T --

21 Q WAS THAT UNUSUAL?

22 A VERY UNUSUAL. HE WAS ALWAYS AT HOME. SO, MY HUSBAND AND I
23 WENT TO DINNER THAT NIGHT AND I NOTICED COMING BACK ABOUT
24 ELEVEN O'CLOCK THERE WAS NO LIGHT ON THAT I COULD SEE IN THE
25 HOUSE. HE ALWAYS HAD A FRONT LIGHT ON AND A LAMP.

DIRECT EXAMINATION OF WANDA COOK BY MR. THORNTON:

114

1 Q SO, DID YOU THINK THAT THAT WAS ODD OR UNUSUAL, THAT THERE
2 WAS NO LIGHT ON?

3 A I WAS CONCERNED BECAUSE HE HAD SAID HE DIDN'T FEEL WELL. SO, I
4 CALLED THE FIRST THING ON SUNDAY MORNING AND I CALLED
5 MS. PETREVITCH —

6 Q OKAY.

7 A — AND TOLD HER I WAS CONCERNED AND I TOLD HER WE WERE GOING
8 TO CHURCH AND I WOULD STOP BY THERE, BUT SHE SAID I AM ON THE
9 WAY. AND SO MY HUSBAND AND I STOPPED THERE ON MY WAY TO
10 CHURCH.

11 Q AND WHEN YOU GOT THERE, DID YOU GO INSIDE?

12 A YES, WE DID. WE WENT -- THE FRONT DOOR WAS LOCKED AND I
13 KNOCKED ON THE DOOR AND NO ONE ANSWERED. SO, WE WALKED
14 AROUND TO THE BACK TO SEE IF HIS CAR WAS THERE AND IT WAS.
15 AND WE WENT TO THE KITCHEN BACK DOOR AND THE SCREEN WAS
16 OPEN -- I MEAN, WAS CLOSED, BUT THE BACK DOOR WAS OPEN AND IT
17 WAS JANUARY. HE WOULD NEVER HAVE LEFT THE DOOR OPEN. SO,
18 WE WERE CONCERNED.

19 Q DID YOU GO IN THE HOUSE?

20 A YES. YES, WE DID. AND I WENT THROUGH TO THE LIVING ROOM TO
21 SEE IF HE WAS IN HIS CHAIR AND MY HUSBAND WENT THROUGH THE
22 DINING ROOM TO THE BEDROOM AND HE FOUND THE BODY AND
23 CALLED ME.

24 Q AND WHAT DID YOU DO?

25 A I WENT FIRST TO SEE IF IT WAS SOMEBODY -- IF HE NEEDED HELP. AND

DIRECT EXAMINATION OF WANDA COOK BY MR. THORNTON:

115

1 I WAS -- I MEAN, I DIDN'T REALIZE THAT HE WAS IN THE STATE HE WAS
2 IN. AND THEN I WENT AND USED THE TELEPHONE IN THE LIVING ROOM
3 AND I CALLED 9-1-1.

4 Q AND WHEN YOU SAY THE STATE THAT HE WAS IN -- DID YOU --

5 A I THOUGHT WHEN HE SAID, "HERE HE IS," I GUESS, IN MY MIND HE WAS
6 SICK, BUT HE WAS LYING ON THE FLOOR.

7 Q DID YOU SEE HIM MOVE AT ALL?

8 A OH, NO.

9 Q SPEAK OR ANYTHING?

10 A NO.

11 Q SHOW ANY SIGNS OF LIFE WHATSOEVER?

12 A NONE WHATSOEVER. NO.

13 Q AND YOU INDICATED YOU CALLED THE POLICE?

14 A I DID. I CALLED 9-1-1.

15 Q ALL RIGHT, MS. COOK, SO BASED ON YOUR TESTIMONY, IS IT FAIR TO
16 SAY THAT YOU TALKED TO HIM, YOU TALKED TO CHARLES FRIDAY
17 AFTERNOON --

18 A YES.

19 Q -- YOU HAD MADE PLANS TO MAYBE GET HIM TO SIGN THE PAPERS ON
20 SATURDAY. YOU CALLED SEVERAL TIMES SATURDAY WITH NO
21 RESPONSE, WENT BY HIS HOUSE, HIS LIGHTS WERE OFF, WHICH WAS
22 UNUSUAL --

23 A UH-HUH.

24 Q SO, YOU WENT AHEAD FIRST THING SUNDAY MORNING AND CALLED
25 AGAIN WITH NO RESPONSE.

DIRECT EXAMINATION OF WANDA COOK BY MR. THORNTON:

116

- 1 A THAT'S RIGHT.
- 2 Q AND Y'ALL WENT OVER THERE AND FOUND HIM ABOUT 10:30 OR SO IN
- 3 THE MORNING. DOES THAT SOUND ROUGHLY ABOUT RIGHT?
- 4 A 10:30. BECAUSE CHURCH STARTED AT 11:00 AND SO WE LEFT EARLY
- 5 ENOUGH TO STOP.
- 6 Q SO, WE KNOW HE WAS ALIVE FRIDAY BECAUSE YOU TALKED TO HIM
- 7 AND HE WAS ---
- 8 A UH-HUH.
- 9 Q --- AND HE WAS -- HE SHOWED NO SIGNS OF LIFE SUNDAY MORNING AT
- 10 10:30 WHEN YOU GOT THERE? IS THAT RIGHT?
- 11 A NO. NO, HE WAS...
- 12 Q IN ALL YOUR DISCUSSIONS WITH HIM AND TALKS ABOUT THE HOUSE
- 13 DID HE EVER INDICATE TO YOU HE MIGHT BE THINKING ABOUT
- 14 HARMING HIMSELF OR ANYTHING LIKE THAT?
- 15 A NO, JUST NO WAY. HE WAS ABSOLUTELY TRYING TO GET TO THE
- 16 PLACE HE WAS GOING. HE HAD PLANS. HE WAS TRYING TO GET TO
- 17 SUMTER.
- 18 Q DID HE INDICATE HE WAS GOING TO TAKE SOMEBODY WITH HIM TO
- 19 SUMTER?
- 20 A YES. WELL, YES, OFF AND ON. THERE WAS A YOUNG LADY THAT
- 21 WOULD COME AND VISIT AND THEY WOULD GO OUT TO DINNER
- 22 OCCASIONALLY. SHE WAS FROM CAMDEN.
- 23 Q DID HE LET YOU KNOW HE WAS MAKING PLANS, THAT MAYBE SHE
- 24 WOULD ACCOMPANY HIM ON SOME OF THESE TRIPS?
- 25 A YES. HE SAID, "WE MIGHT," HE DIDN'T SAY DEFINITELY. BUT HE SAID,

CROSS EXAMINATION OF WANDA COOK BY MR. HOOD:

117

1 "YES." THAT WAS HIS HOPE, I THINK.

2 Q DID YOU NOTICE ANYTHING UNUSUAL, MS. COOK, OTHER THAN THAT
3 THE LIGHTS WEREN'T ON WHEN THEY WERE SUPPOSED TO BE AT
4 NIGHT?

5 A THE DOOR WAS WIDE OPEN WHEN IT SHOULDN'T HAVE BEEN.

6 Q OTHER THAN THAT DID YOU NOTICE ANYTHING UNUSUAL ABOUT THE
7 HOUSE ITSELF?

8 A NO. THE DOOR BEING OPEN WAS UNUSUAL, BECAUSE HE KEPT IT
9 ABOUT 100 DEGREES IN THERE AND SO I KNEW IN JANUARY THAT WAS
10 UNUSUAL. THERE WAS FOOD IN THE SKILLET AND, I DON'T KNOW, I
11 THINK I ASSUMED HE WAS GOING TO COOK AND THEN JUST DIDN'T
12 FEEL LIKE IT.

13 Q OKAY.

14 A OTHER THAN THAT I DIDN'T SEE ANYTHING THAT WAS REALLY OUT OF
15 PLACE.

16 Q THANK YOU VERY MUCH, MS. COOK. I HAVE NO FURTHER QUESTIONS.
17 ANSWER ANYTHING MR. HOOD HAS TO ASK YOU.

18 CROSS EXAMINATION OF MS. COOK BY MR. HOOD:

19 Q MS. COOK, SO CHARLES GODLEY DID DRIVE AN AUTOMOBILE. IS THAT
20 CORRECT?

21 A YES. HE DID.

22 Q AND HE DIDN'T STAY AT HOME 24-HOURS-A-DAY, SEVEN-DAYS-A-WEEK.
23 IS THAT CORRECT?

24 A NO. NO. I DON'T KNOW WHAT HIS REGULAR ROUTINE WAS. HE WAS
25 ALWAYS THERE AS A RULE WHEN I CALLED BECAUSE I WOULD HAVE AN

CROSS EXAMINATION OF WANDA COOK BY MR. HOOD:

118

1 APPOINTMENT.

2 Q WHEN YOU WENT INTO THE BEDROOM, DID YOU LOOK AT THE BED
3 WHICH WAS IN THE ROOM?

4 A YES. I DID.

5 Q AND ON THAT BED THERE WAS AN EMPTY BOTTLE OF WHISKEY. ISN'T
6 THAT CORRECT?

7 A NO. I DID NOT SEE THAT. I WAS PROBABLY MUCH MORE LOOKING AT
8 THE BODY.

9 Q HOW WELL DID YOU KNOW MR. GODLEY?

10 A I, WELL, I HAD KNOWN HIM -- OUR CONTRACT WAS -- I HAD KNOWN HIM
11 ABOUT SIX WEEKS.

12 Q DID YOU KNOW THAT HE DRANK QUITE A BIT OF ALCOHOL?

13 A I DIDN'T. HE WAS ALWAYS LUCID WITH ME.

14 Q DID YOU KNOW THAT HE DRANK ALCOHOL?

15 A IT HAS BEEN ABOUT ELEVEN YEARS, BUT I THINK, YES, I PROBABLY
16 HAVE SEEN A BOTTLE IN THE KITCHEN, BUT I CAN'T -- BUT HE NEVER --
17 HE NEVER, TO ME, WAS IN THAT CONDITION.

18 Q OKAY . NOW WHEN YOU AND YOUR HUSBAND ARRIVED, YOU WENT TO
19 THE FRONT DOOR. IS THAT CORRECT? AND THE FRONT DOOR WAS
20 SECURE. IS THAT CORRECT? AND WHEN YOU WENT AROUND THE
21 STRUCTURE DID YOU LOOK TO SEE IF ANY OF THE WINDOWS HAD BEEN
22 BROKEN OR WIDE OPEN OR ANYTHING OF THAT NATURE?

23 A NO, SIR. I AM SORRY. I DID NOT.

24 Q YOU DIDN'T CHECK THE OTHER DOORS THAT WERE ON THE
25 STRUCTURE PRIOR TO ARRIVING AT THE ONE THAT YOU FOUND AJAR?

CROSS EXAMINATION OF WANDA COOK BY MR. HOOD:

119

1 IS THAT RIGHT?

2 A WELL, WE WENT TO THE BACK TO MAKE SURE HIS CAR WAS THERE.

3 THAT WOULDN'T MAKE US LOOK INTO WINDOWS OR ANYTHING, AND SO

4 WE WENT STRAIGHT TO THE BACK DOOR. THOSE FRONT DOORS – WE

5 WENT TO THE KITCHEN BACK DOOR.

6 Q AND SO WAS THE OTHER DOOR SECURE? THE OTHER BACK DOOR?

7 A I DIDN'T TRY IT.

8 Q YOU DIDN'T TRY IT, BUT YOU DIDN'T SEE THAT IT WAS OPEN. IS THAT

9 CORRECT?

10 A NO. IT WASN'T OPEN.

11 Q OKAY. BUT YOU DIDN'T OPEN ANY DOORS OR WINDOWS OR ANYTHING

12 OF THAT NATURE WHILE YOU WERE IN THERE. IS THAT CORRECT?

13 A NOTHING BUT THE SCREEN DOOR, WHICH WAS CLOSED WHERE THE

14 BACK DOOR WAS OPEN. WE DID OPEN THAT TO GO IN.

15 Q WHEN YOU SAY THE BACK DOOR WAS OPEN, WAS IT WIDE OPEN OR

16 WAS IT AJAR?

17 A IT WAS WIDE OPEN.

18 Q IT WAS WIDE OPEN SO YOU COULD SEE ALL THE WAY THROUGH THE

19 PLACE?

20 A WELL, YOU CAN'T SEE. YOU JUST CAN SEE – AT THAT POINT YOU ARE

21 JUST LOOKING INTO A UTILITY ROOM, BUT IT IS PART OF THE KITCHEN.

22 Q NOW DID THIS DOOR THAT YOU WENT THROUGH, TO YOUR

23 KNOWLEDGE, HAVE A LOCKING MECHANISM ON THE OUTSIDE OF THE

24 DOOR?

25 A NO. I DON'T KNOW THAT.

DIRECT EXAMINATION OF TIM NEWMAN BY MR. THORNTON:

120

1 Q I HAVE NO OTHER QUESTIONS. THANK YOU.

2 THE COURT: REDIRECT?

3 MR. THORNTON: NONE YOUR HONOR. I WOULD ASK FOR MS. COOK TO
4 BE EXCUSED.

5 THE COURT: ALL RIGHT. YOU MAY STEP DOWN. THANK YOU.

6 MR. THORNTON, NEXT WITNESS?

7 MR. THORNTON: STATE CALLS TIM NEWMAN TO THE STAND, YOUR
8 HONOR. HE WAS ON THIS MORNING.

9 (AFTER BEING DULY SWORN BY THE CLERK OF COURT, TIM
10 NEWMAN TESTIFIED AS FOLLOWS:)

11 CLERK OF COURT: PLEASE BE SEATED AND STATE YOUR NAME AND
12 SPELL IT FOR THE COURT, PLEASE.

13 WITNESS: MY NAME IS TIMOTHY DALE NEWMAN.

14 **DIRECT EXAMINATION OF TIM NEWMAN BY MR. THORNTON:**

15 Q FOR THE RECORD, SPELL YOUR LAST NAME FOR ME.

16 A N-E-W-M-A-N.

17 Q THANK YOU. I AM GOING TO TRY TO CALL YOU MR. NEWMAN, INSTEAD
18 OF TIM. MR. NEWMAN WHERE DO YOU CURRENTLY WORK?

19 A I CURRENTLY WORK FOR A COMPANY CALLED DYCOR AND AM UNDER
20 CONTRACT WITH THE STATE DEPARTMENT.

21 Q WHAT IS IT YOU DO FOR THEM?

22 A I DO POLICE TRAINING FOR LAW ENFORCEMENT OFFICERS GOING TO
23 IRAQ. I ALSO HANDLE EMPLOYEE ADVOCACY FOR INJURED PEOPLE
24 AND CASUALTIES THAT COME BACK FROM IRAQ.

25 Q AND IN JANUARY OF 1995, DID YOU HOLD THAT SAME JOB OR DID YOU

DIRECT EXAMINATION OF TIM NEWMAN BY MR. THORNTON:

121

1 HAVE A DIFFERENT JOB?

2 A NO, SIR. I WORKED FOR THE SHERIFF'S OFFICE HERE.

3 Q THAT WOULD BE THE BEAUFORT COUNTY SHERIFF'S OFFICE?

4 A YES, SIR.

5 Q WHAT CAUSED YOU TO LEAVE THE SHERIFF'S OFFICE AND GET WITH
6 THIS NEW WORK THAT YOU ARE DOING?

7 A I WOULD SAY IN 2004, AFTER 18 YEARS OF LAW ENFORCEMENT, I
8 DECIDED I WANTED A CHANGE AND WENT FOR THE MONEY AND WENT
9 TO IRAQ. I SPENT TWO YEARS IN IRAQ.

10 Q ALL RIGHT, SIR. AND WHAT DID YOU DO THERE IN IRAQ?

11 A I WAS A POLICE TRAINER. I WAS TEACHING THEIR POLICE OFFICERS
12 HOW TO BE POLICE OFFICERS.

13 Q OKAY. AND WHAT CAUSED THAT PART OF YOUR EMPLOYMENT TO
14 END?

15 A ON SEPTEMBER 2nd OF LAST YEAR, OF 2005, I WAS ON A CONVOY. MY
16 CONVOY GOT HIT BY A ROADSIDE BOMB AND I GOT INJURED PRETTY
17 WELL AND I HAD TO COME BACK TO THE UNITED STATES AND
18 RECUPERATE. IT TOOK A YEAR FOR ME TO RECUPERATE AND START
19 WALKING AGAIN.

20 Q MR. NEWMAN, I NOTICED THE INJURY YOU ARE TALKING ABOUT. IS
21 THAT WHAT CAUSES YOUR LIMP, SIR?

22 A YES. I LOST MY RIGHT LEG AND INJURED EVERYTHING ELSE.

23 Q ALL RIGHT. AND SO NOW YOU DO TRAINING WITH THE POLICE AND
24 VICTIMS SERVICES WHERE PEOPLE ARE COMING BACK FROM IRAQ.

25 A YES, SIR.

DIRECT EXAMINATION OF TIM NEWMAN BY MR. THORNTON:

122

1 Q MR. NEWMAN, WHERE WERE YOU ON A CASE IN JANUARY, 1995?

2 A IT INVOLVED THE HOUSE ON [REDACTED], I'M SORRY, [REDACTED]
3 IN ST. HELENA, THE HOME OF CHARLES GODLEY.

4 Q ARE YOU FAMILIAR AT ALL WITH THAT CASE?

5 A YES, SIR.

6 Q CAN YOU TELL ME WHAT COUNTY THAT HOUSE IS LOCATED IN?

7 A IT WAS LOCATED IN BEAUFORT COUNTY.

8 Q WHAT WAS YOUR ROLE IN THE SHERIFF'S DEPARTMENT AT THAT TIME?

9 A I WAS A PATROL OFFICER PATROLLING THAT AREA, THE OTHER SIDE
10 OF ST. HELENA, LADY'S ISLAND.

11 Q DID YOU GET ANY DISPATCH CALLS ON SUNDAY, JANUARY 15, 1995 TO
12 GO TO THAT HOUSE?

13 A YES, SIR. I THINK IT WAS A LITTLE AFTER 10:00 O'CLOCK. I HAD A
14 DISPATCH CALL FOR A WELFARE CHECK AT THAT HOUSE AND WE
15 STARTED HEADING THERE.

16 Q WHEN YOU SAY A WELFARE CHECK, CAN YOU TELL US WHAT THAT
17 MEANS?

18 A WELL, A WELFARE CHECK MEANS SOMEBODY CALLING IF THEY
19 HAVEN'T HEARD FROM A RELATIVE OR SUCH AND THEY WANT TO CALL
20 THE SHERIFF'S OFFICE TO GO CHECK ON THEM. THAT WAS THE FIRST
21 CALL I GOT.

22 Q DID YOU GET ANOTHER CALL AFTER THAT?

23 A WHILE WE WERE IN ROUTE, YES, SIR. I GOT ANOTHER CALL. THE
24 DISPATCHER SAID ANOTHER PERSON HAD ARRIVED AT THAT HOUSE
25 AND FOUND SOMEBODY DEAD THERE IN THE RESIDENCE AND THAT

DIRECT EXAMINATION OF TIM NEWMAN BY MR. THORNTON:

123

1 WAS PRIOR TO US GETTING THERE.

2 Q AND WHEN YOU GOT THERE, WERE YOU FIRST, SECOND, THIRD AS FAR
3 AS LAW ENFORCEMENT, IN WHAT ORDER DID YOU GET THERE?

4 A I WAS THE FIRST LAW ENFORCEMENT OFFICER TO GET THERE.

5 Q ALL RIGHT. YOU WERE THE FIRST RESPONDER AS FAR AS LAW
6 ENFORCEMENT.

7 A YES, SIR.

8 Q WHAT HAPPENED WHEN YOU GOT THERE?

9 A I GOT THERE -- I ACTUALLY HAD A RESERVE OFFICER WITH ME AT THE
10 TIME AS WELL -- WE ARRIVED THERE ABOUT THE SAME TIME AS EMS
11 AND THE ST. HELENA POLICE DEPARTMENT PERSONNEL ARRIVED. I
12 WENT AHEAD IN THE BUILDING. MET WITH -- BEFORE THAT, I MET WITH
13 -- I BELIEVE I MET WITH MS. COOK. I SPOKE TO HER REAL QUICK, WENT
14 INSIDE THE HOUSE, WENT TO THE BACK REAR BEDROOM OF THE
15 HOUSE AND FOUND A GENTLEMAN DEAD THERE ON THE FLOOR.

16 Q WHAT DID YOU DO UPON FINDING HIM? IN FINDING -- I BELIEVE THAT
17 YOU PROBABLY DIDN'T KNOW AT THE TIME, BUT HAVE YOU SINCE
18 FOUND OUT WHAT THE VICTIM'S NAME IS?

19 A YES, SIR. THAT WAS MR. GODLEY.

20 Q WAS THAT CHARLES GODLEY?

21 A YES, SIR.

22 Q ONCE YOU LOCATED CHARLES' BODY, WHAT DID YOU DO, SIR?

23 A WE BASICALLY SECURED THE SCENE. EMS CHECKED HIM OUT, DID
24 THEIR BASIC CHECK TO MAKE SURE HE WAS, IN FACT, DEAD.

25 Q DID HE SHOW ANY SIGNS OF LIFE?

DIRECT EXAMINATION OF TIM NEWMAN BY MR. THORNTON:

124

1 A NO, SIR. IT WAS PRETTY OBVIOUS HE HAD BEEN DEAD FOR A LITTLE
2 WHILE.

3 Q DID THEY PUT THE LITTLE, I DON'T KNOW WHAT YOU CALL THEM, BUT
4 LITTLE PLATELETS?

5 A YEAH. THEY RAN A QUICK EKG AND THEY HAD NO SIGNS OF LIFE AT
6 ALL.

7 Q DID YOU DO ANYTHING ELSE AFTER THAT, AFTER THEY -- AFTER YOU
8 DETERMINED WITH EMS THAT CHARLES WAS, IN FACT, DECEASED?

9 A YES, SIR. I CONTACTED MY SUPERVISOR AND I REQUESTED AN
10 INVESTIGATIONS UNIT TO COME OUT. MY SUPERVISOR ADVISED THERE
11 WAS AN INVESTIGATOR ON THE WAY. WE BASICALLY SECURED THE
12 SCENE AND MADE SURE NOTHING WAS DISTURBED, KEPT A LOG OF
13 WHO CAME AND WENT. LATER ON, ONCE THE INVESTIGATORS
14 ARRIVED, WE ASSISTED THEM.

15 Q ALL RIGHT, SIR.

16 (SOLICITOR SHOWS THE DEFENSE ATTORNEY SOME PHOTOGRAPHS)

17 Q TIM, I AM GOING TO HAND YOU WHAT HAS BEEN MARKED FOR
18 IDENTIFICATION AS STATE'S EXHIBITS #1 THROUGH #7. WOULD YOU
19 LOOK THROUGH THOSE PHOTOGRAPHS AND LET ME KNOW IF YOU
20 RECOGNIZE THAT SCENE?

21 (WITNESS LOOKS THROUGH PHOTOGRAPHS)

22 A YES, SIR.

23 Q ALL RIGHT, SIR. WHAT SCENE IS THAT? WHAT ARE THOSE PICTURES
24 OF?

25 A THAT IS THE BEDROOM OF MR. GODLEY WHERE WE FOUND HIS BODY.

DIRECT EXAMINATION OF TIM NEWMAN BY MR. THORNTON:

125

1 THE PHOTOGRAPHS OF HIS BODY, AND I BELIEVE THE PELLET PISTOL
2 WE FOUND ON THE FLOOR, AND THE BED SHEETS, ET CETERA, AND
3 THINGS LIKE THAT.

4 Q ALL RIGHT, SIR. AND IS THAT AN ACCURATE DEPICTION OF THE SCENE
5 AS IT APPEARED THAT DAY?

6 A YES, SIR.

7 MR. THORNTON: YOUR HONOR, I WOULD SUBMIT THESE
8 PHOTOGRAPHS, EXHIBITS #1 THROUGH #7, BE MOVED INTO EVIDENCE.

9 MR. HOOD: NO OBJECTION.

10 THE COURT: THEY ARE ADMITTED.

11 (WHEREUPON, SEVEN PHOTOGRAPHS ARE ADMITTED INTO
12 EVIDENCE AS STATE'S EXHIBITS #1 - #7, WITHOUT OBJECTION.)

13 MR. THORNTON: YOUR HONOR, MAY I PUBLISH THEM TO THE JURY?

14 THE COURT: YOU MAY.

15 (SOLICITOR SHOWS PHOTOGRAPHS TO THE JURY)

16 Q IN THOSE PICTURES THAT THE JURY IS NOW LOOKING AT AND PASSING
17 AMONG THEMSELVES, TIM, THERE IS A WHISKEY BOTTLE OR SOME
18 OTHER TYPE BOTTLE LOCATED ON THE BED. IS THAT CORRECT?

19 A YES, SIR.

20 Q WHAT ELSE DID YOU DO AT THE SCENE ON THAT DAY?

21 A ONCE THE INVESTIGATORS ARRIVED, I MADE SURE MY RESERVE
22 OFFICER STOOD GUARD AT THE FRONT DOOR TO MAKE SURE THE
23 SCENE WAS STILL SECURE. I ASSISTED DETECTIVE ARTHUR LOO AND
24 THE CORONER IN WHATEVER THEY NEEDED WHILE THEY WERE THERE
25 AT THE SCENE.

DIRECT EXAMINATION OF TIM NEWMAN BY MR. THORNTON:

126

1 Q THERE IS A PICTURE, OFFICER NEWMAN, OF A PISTOL IN ONE OF THOSE
2 PICTURES. IS THAT CORRECT?

3 A YES, SIR.

4 Q ALL RIGHT, SIR. AND WERE YOU THERE WHEN THE VICTIM, CHARLES
5 GODLEY, WHEN HE WAS MOVED?

6 A I WAS THERE. I DON'T BELIEVE I WAS IN THE ROOM AT THE TIME.

7 Q ALL RIGHT, SIR. DID -- AT SOME POINT WHILE YOU WERE THERE, WAS A
8 DECISION MADE BY ONE OF THE DETECTIVES TO TURN THE HOUSE
9 OVER TO THE VICTIM'S FAMILY?

10 A I BELIEVE THAT WAS MUCH LATER IN THE DAY. YES, SIR.

11 Q AT SOME POINT, HAD THERE BEEN SOME TALK AMONG THE OFFICERS
12 THAT THIS MIGHT HAVE BEEN SOME TYPE OF SUICIDE?

13 A YES, SIR.

14 Q ALL RIGHT, SIR. AND WERE YOU ABLE TO AT ALL -- DID YOU LOOK AT
15 THE GUN AT ALL, THAT WAS IN THE PICTURE?

16 A I BRIEFLY LOOKED, I DIDN'T MOVE IT, BUT I LOOKED AT IT FOR THE
17 POSITION IT WAS IN.

18 Q COULD YOU TELL WHAT TYPE OF WEAPON IT WAS?

19 A YEAH. IT WAS A BB GUN OR A PELLET PISTOL.

20 Q WE ARE NOT TALKING ABOUT A 357, BUT A BB GUN?

21 A YES, SIR.

22 Q ALL RIGHT. ONCE YOU HAD ASSISTED THE DETECTIVES, DID YOU HAVE
23 ANY OTHER CONNECTION TO THIS CASE IN PARTICULAR?

24 A NO, SIR.

25 Q OFFICER NEWMAN, I JUST WANT TO ASK YOU ONE OTHER QUESTION.

CROSS EXAMINATION OF TIM NEWMAN BY MR. HOOD:

127

1 YOU WERE -- IS IT TRUE YOU WERE THERE WHEN THE EMS PERSONNEL
2 WERE TRYING TO FIND SIGNS OF LIFE?

3 A YES, SIR.

4 Q AND WHEN I SAY YOU WERE THERE, YOU WERE RIGHT THERE WITH
5 THEM?

6 A YES, SIR.

7 Q WERE THERE ANY SIGNS OF LIFE ON THE E-K-G, ANY SIGNS OF LIFE AT
8 ALL?

9 A NO. NOT AT ALL.

10 Q CLEARLY, AND WITH YOUR TRAINING AS AN OFFICER, THIS MAN WAS
11 DEAD.

12 A YES, SIR.

13 Q I HAVE NO OTHER QUESTIONS. PLEASE ANSWER ANY QUESTIONS MR.
14 HOOD MIGHT HAVE FOR YOU.

15 **CROSS EXAMINATION OF TIM NEWMAN BY MR. HOOD:**

16 Q TIM, I HAVE KNOWN YOU FOR QUITE SOME PERIOD OF TIME.

17 A YES, SIR.

18 Q TIM, I HAVE A FEW QUESTIONS I AM GOING TO ASK YOU. FIRST, DID
19 YOU HAVE AN OPPORTUNITY TO LOOK AROUND THE HOUSE, TO
20 EXAMINE THE DOORS AND WINDOWS AND THINGS OF THAT NATURE, TO
21 DETERMINE WHETHER THERE WAS ANY BREAKING AND ENTERING INTO
22 THE HOUSE?

23 A I DIDN'T FIND ANY SIGNS OF BREAKING OR ENTERING OR ANYTHING
24 LIKE THAT AND I DON'T BELIEVE -- I BELIEVE THAT THE INVESTIGATOR
25 DID A MUCH MORE THOROUGH AND EXTENSIVE SEARCH THAN WE DID.

CROSS EXAMINATION OF TIM NEWMAN BY MR. HOOD:

128

1 Q AS WAS REFLECTED ON YOUR REPORT, YOU DIDN'T SEE ANY SIGNS OF
2 ANYBODY, YOU KNOW, THROWING THINGS AROUND LIKE A BURGLARY
3 HAD TAKEN PLACE OR ANYTHING OF THAT NATURE. IS THAT
4 CORRECT?

5 A THE ONLY ROOM BASICALLY -- THIS WAS A VERY ECLECTIC TYPE OF
6 HOUSE. THERE WERE THINGS EVERYWHERE. IT WOULD HAVE BEEN
7 KIND OF HARD TO TELL, BUT THE ONLY ROOM WHICH HAD ANYTHING
8 OBVIOUSLY DISTURBED, WAS THAT BEDROOM.

9 Q AND ALSO DEPICTED IN ONE OF THOSE PICTURES YOU HAVE THERE,
10 WAS A NIGHT STAND, A SORT OF NIGHT STAND NEXT TO THE BED. IS
11 THAT CORRECT?

12 A YES, SIR.

13 Q AND IT WAS VERY CLOSE TO THE BED. IS THAT CORRECT?

14 A YES, SIR.

15 Q AT THE TIME THAT YOU SAW MR. GODLEY, HIS UPPER TORSO WAS UP
16 UNDERNEATH THAT PARTICULAR NIGHT STAND. IS THAT CORRECT?

17 A YES, SIR. HIS HEAD WASN'T TOO FAR FROM THE WALL. IT WAS KIND OF
18 UNDERNEATH THERE.

19 Q BUT ALL OF THE ITEMS ON TOP OF THE NIGHT STAND WERE NOT
20 DISTURBED. IS THAT CORRECT? IN OTHER WORDS, IT HADN'T BEEN
21 KNOCKED OVER?

22 A NO, IT WASN'T KNOCKED OVER. I DON'T RECALL WHAT WAS ON TOP OF
23 IT.

24 Q SO EVERYTHING WAS IN ORDER BASICALLY? AND I ASSUME, THAT AT
25 SOME POINT IN TIME, CURT COPELAND ARRIVED, THE CORONER. IS

CROSS EXAMINATION OF TIM NEWMAN BY MR. HOOD:

129

1 THAT RIGHT?

2 A YES, SIR. HE IS THE CORONER.

3 Q AND THEN CURT AND THE DETECTIVES GOT TOGETHER AND THEY
4 BASICALLY TOOK ANOTHER LOOK AT THE BODY AND EXAMINED THE
5 ROOM AND THINGS OF THAT NATURE. IS THAT CORRECT?

6 A YES, SIR.

7 Q AT SOME TIME, YOU TALKED TO MISS GLORIA AND EACH OFFICER. IS
8 THAT CORRECT?

9 A I BELIEVE SO.

10 Q AND THAT WAS THE SISTER OF CHARLES?

11 A THAT WAS HIS SISTER.

12 Q AND I THINK THAT SHE TOLD YOU THAT CHARLES HAD BEEN SUFFERING
13 EMOTIONALLY, HAVING EMOTIONAL PROBLEMS SINCE HIS MOTHER
14 DIED. IS THAT CORRECT?

15 A I DON'T KNOW ABOUT EMOTIONAL PROBLEMS OR HEALTH PROBLEMS,
16 BUT IT WAS SOMETHING ALONG THAT LINE.

17 Q OKAY. WOULD IT HELP TO REFRESH YOUR MEMORY IF I GAVE YOU A
18 COPY OF YOUR REPORT?

19 A SURE.

20 Q WHAT YOU SAID IN YOUR REPORT.

21 A YES.

22 (MR. HOOD HANDS WITNESS DOCUMENT. WITNESS LOOKS AT
23 DOCUMENT)

24 A YES, SIR. YOU ARE RIGHT, SIR.

25 Q AND WHAT DID YOU SAY IN YOUR REPORT? WHAT DID YOU SAY IN

CROSS EXAMINATION OF TIM NEWMAN BY MR. HOOD:

130

1 YOUR REPORT?

2 A IN THIS REPORT? AS IN?

3 Q AS IN WHAT SHE SAID.

4 A SHE SAID HE HAD BEEN SUFFERING FROM EMOTIONAL PROBLEMS
5 AFTER THE DEATH OF HIS MOTHER.

6 Q THAT IS CORRECT?

7 A YES, SIR.

8 Q THEN YOU ALSO -- DID YOU ASK ANYONE ANY QUESTIONS CONCERNING
9 MR. GODLEY'S CONSUMPTION OF ALCOHOL? AND PERHAPS OF DRUGS,
10 ET CETERA, DID YOU?

11 A I PROBABLY DID.

12 Q I NOTICED IN ONE OF THE PICTURES THERE, THERE WERE A NUMBER
13 OF PILL BOTTLES OR AT LEAST ONE PILL BOTTLE, THAT I RECALL.

14 A YES, SIR.

15 Q DID YOU PERHAPS KNOW THE DIFFERENT TYPE OF PILLS THAT MR.
16 GODLEY WAS TAKING?

17 A I DON'T THINK SO. I THINK THAT WAS SOMETHING THAT THE
18 INVESTIGATOR MAY HAVE WORKED ON.

19 Q AND AFTER THE OTHER INDIVIDUALS, CORONER COPELAND ALONG
20 WITH ARBELO AND ANOTHER DETECTIVE, WHO WERE ACTUALLY
21 DETECTIVES THAT WOULD TAKE OVER THE CASE FROM YOU AFTER
22 THEY ARRIVED, AFTER THEY DID ALL OF THEIR EXAMINATIONS AND
23 THINGS OF THAT NATURE, THEY MADE THE DECISION, AND COPELAND
24 TURNED OVER THE CRIME SCENE AS A SUICIDE TO THE FAMILY. IS
25 THAT CORRECT?

DIRECT EXAMINATION OF OFFICER ARBELO BY MR. THORNTON:

131

1 A I KNOW HE TURNED OVER THE HOUSE TO THE FAMILY. THERE WAS
2 TALK OF SUICIDE, BUT I DON'T KNOW IF THERE WAS A PROCEDURE.

3 Q AND WHAT HAPPENS AT THAT POINT IN TIME IS EVERYBODY LEAVES. IS
4 THAT CORRECT? AND THE FAMILY TAKES POSSESSION OF THE
5 PROPERTY?

6 A YES, SIR.

7 Q OKAY. AND DID YOU EVER GO BACK OUT TO THE PROPERTY AGAIN?

8 A I DON'T BELIEVE SO.

9 Q OKAY. THANK YOU.

10 MR. THORNTON: NO FURTHER QUESTIONS, YOUR HONOR, AND I WOULD
11 ASK THAT THE WITNESS BE EXCUSED AND I WOULD ASK MR. NEWMAN TO
12 REMAIN BY HIS PHONE IN CASE I NEED TO CALL HIM LATER IN THE WEEK, BUT
13 I DON'T THINK WE NEED HIM TO DELAY ANY MORE TODAY.

14 THE COURT: ALL RIGHT. THANK YOU.

15 WITNESS: THANK YOU, SIR.

16 THE COURT: THANK YOU.

17 MR. THORNTON: WE CALL OFFICER ARBELO.

18 (AFTER BEING DULY SWORN BY THE CLERK OF COURT, SERGEANT
19 ROBERT ARBELO TESTIFIED AS FOLLOWS:)

20 CLERK OF COURT: PLEASE BE SEATED. STATE YOUR NAME AND SPELL
21 IT FOR THE COURT, PLEASE.

22 WITNESS: MY NAME IS STAFF SARGENT ROBERT ARBELO. A-R-B-E-L-O.

23 **DIRECT EXAMINATION OF SERGEANT ARBELO BY MR. THORNTON:**

24 Q SARGENT ARBELO, I KNOW THIS IS ALWAYS A DUMB QUESTION EVERY
25 TIME YOU COME TO COURT SINCE YOU ARE IN UNIFORM, BUT WHO DO

DIRECT EXAMINATION OF OFFICER ARBELO BY MR. THORNTON:

132

1 YOU WORK FOR?

2 A BEAUFORT COUNTY SHERIFF'S OFFICE.

3 Q I KIND OF FIGURED THAT BASED ON THE UNIFORM, BUT I HAVE TO ASK
4 YOU ANYWAY. DID YOU WORK FOR THE BEAUFORT COUNTY SHERIFF'S
5 OFFICE IN 1995?

6 A YES, SIR. I DID.

7 Q IN WHAT CAPACITY DID YOU WORK FOR THE DEPARTMENT?

8 A I WAS AN INVESTIGATOR AT THAT TIME.

9 Q DID YOU HAVE ANY CALLS TO GO TO A HOUSE ON HIGHWAY 21 IN
10 ST. HELENA?

11 A YES, SIR, I DID.

12 Q AND WAS THAT THE HOME OF CHARLES GODLEY?

13 A YES, SIR, IT WAS.

14 Q ALL RIGHT, SIR. AND CAN YOU TELL ME WHAT YOU DID WHEN YOU GOT
15 THERE?

16 A WHEN I GOT THERE I OBSERVED WHAT OFFICERS WERE THERE. I
17 TOOK PHOTOGRAPHS OF THE SCENE AND EXAMINED THE DECEDENT
18 THAT WAS PRESENT, DID A CRIME SCENE SKETCH, TOOK SOME
19 MEASUREMENTS WHILE I WAS AT THE SCENE, LOOKED FOR ANY
20 EVIDENCE THAT WAS THERE.

21 Q DETECTIVE, I'M SORRY, SARGENT, AT THE TIME YOU WERE AN
22 INVESTIGATOR IN '95, HOW LONG HAD YOU BEEN WITH BEAUFORT
23 COUNTY?

24 A I HAD BEEN WITH BEAUFORT COUNTY SINCE 1989.

25 Q OKAY. HOW LONG HAD YOU BEEN AN INVESTIGATOR?

DIRECT EXAMINATION OF OFFICER ARBELÓ BY MR. THORNTON:

133

1 A I HAD BEEN AN INVESTIGATOR FOR ABOUT A YEAR-AND-A-HALF.

2 Q OKAY, SIR. NOW WHEN YOU GOT TO THE SCENE YOU TALKED ABOUT
3 TAKING PICTURES. WAS OFFICER NEWMAN ALREADY THERE, SIR? TIM
4 NEWMAN?

5 A YES, SIR, HE WAS.

6 Q ALL RIGHT. AND WHEN YOU GOT THERE, ONCE YOU TOOK PICTURES,
7 DID YOU, AT ANY TIME, COLLECT ANY EVIDENCE?

8 A I DID AFTER I TOOK THE PICTURES.

9 Q YES, SIR. I AM GOING TO HAND YOU WHAT'S BEEN MARKED AS EXHIBIT
10 #10, FOR IDENTIFICATION PURPOSES. IF YOU COULD LOOK AT THAT
11 FOR ME AND TELL ME IF YOU RECOGNIZE THAT ITEM?

12 A YES, SIR. THIS IS THE BB PISTOL I RECOVERED BY THE VICTIM.

13 Q ALL RIGHT, SIR. AND DID YOU TAKE A PICTURE OF THAT BB GUN?

14 A I BELIEVE I DID, SIR.

15 Q ALL RIGHT, SIR. BUT IS THAT THE GUN THAT YOU FOUND ON THE
16 SCENE?

17 A YES, SIR. IT IS.

18 Q HOW DO YOU KNOW IT IS, SIR?

19 A I RECOGNIZE IT. I AM LOOKING AT IT AND ALSO THAT IS MY SIGNATURE
20 ON THIS EVIDENCE LABEL HERE.

21 Q ALL RIGHT, SIR. IS IT IN SUBSTANTIALLY THE SAME CONDITION TODAY
22 THAT IT WAS THAT DAY?

23 A YES, SIR, IT IS.

24 MR. THORNTON: YOUR HONOR, I'D ASK THAT THIS BE MOVED INTO
25 EVIDENCE, AND THIS IS MARKED STATES EXHIBIT #10.

DIRECT EXAMINATION OF OFFICER ARBELO BY MR. THORNTON:

1 THE COURT: ANY OBJECTION?

2 MR. HOOD: NONE.

3 THE COURT: ADMITTED.

4 (WHEREUPON, A BB PELLET GUN IS ENTERED INTO EVIDENCE AS
5 STATE'S EXHIBIT #10, WITHOUT OBJECTION.)

6 Q DETECTIVE ARBELO, WHAT TYPE OF GUN IS THAT? AND WHAT I MEAN
7 BY THAT, WHAT CALIBER?

8 A IF I HAD TO - IT'S LIKE A C-O 2 BB PISTOL, A 22 STYLE.

9 Q ALL RIGHT, SIR. WOULD IT BE CORRECT TO CALL THAT A BB GUN OR A
10 PELLET GUN? WOULD THAT BE CORRECT?

11 A A BB GUN OR A PELLET GUN, THAT'S CORRECT.

12 Q ALL RIGHT, SIR. SARGENT ARBELO, I AM GOING TO SHOW YOU WHAT
13 HAS BEEN MARKED FOR IDENTIFICATION AS STATES EXHIBIT #9.

14 COULD YOU TELL ME WHAT THAT ITEM IS AND IF YOU RECOGNIZE IT?

15 A YES, SIR. THIS IS A HAMMER THAT I RECOVERED FROM UNDER THE
16 DECEDENT'S BODY.

17 Q WHEN YOU SAY UNDER THE DECEDENT'S BODY, IN NORMAL PEOPLE
18 TALK THAT MEANS THAT YOU FOUND IT UNDER CHARLES' BODY?

19 A YES, SIR. I FOUND THIS UNDER CHARLES' BODY.

20 Q ALL RIGHT, SIR. AND ARE YOU SURE THAT IS THE SAME HAMMER?

21 A YES, SIR, I'M SURE.

22 Q AND DO YOU RECOGNIZE IT?

23 A I DO.

24 Q AND DOES IT HAVE ANY EVIDENCE TAGS OR ANYTHING WHERE YOU
25 HAD TAGGED IT?

DIRECT EXAMINATION OF OFFICER ARBELO BY MR. THORNTON:

1 A IT DOES HAVE AN EVIDENCE TAG WITH MY SIGNATURE ON IT.

2 Q DOES IT LOOK LIKE IT IS IN SUBSTANTIALLY THE SAME CONDITION THAT
3 IT WAS THEN?

4 A YES, SIR.

5 Q ALL RIGHT, SIR.

6 MR. THORNTON: YOUR HONOR, I'D ASK THIS HAMMER BE MOVED INTO
7 EVIDENCE AS STATES EXHIBIT #9.

8 MR. HOOD: NO OBJECTION.

9 THE COURT: ADMITTED.

10 (WHEREUPON, A HAMMER IS ENTERED INTO EVIDENCE AS
11 STATE'S EXHIBIT #9, WITHOUT OBJECTION.)

12 Q DETECTIVE ARBELO, I'M SORRY, SARGENT ARBELO, AT SOME TIME DID
13 YOU TAKE SOME SCRAPINGS OR SAMPLES OFF OF THESE ITEMS?

14 A YES, SIR, I DID.

15 Q ALL RIGHT, SIR. DID YOU TAKE -- DID YOU TURN THOSE IN TO YOUR
16 EVIDENCE LOCKER?

17 A YES, SIR. I DID.

18 Q NOW, SARGENT ARBELO, I AM GOING TO SHOW YOU WHAT IS MARKED
19 AS STATES EXHIBIT #14, FOR IDENTIFICATION. DO YOU RECOGNIZE
20 EITHER OF THOSE TWO CONTAINERS?

21 A YES, SIR, I DO.

22 Q AND DO THEY HAVE WRITING ON THEM, SIR?

23 A YES, SIR, THEY DO.

24 Q DO THEY INDICATE WHAT THEY CONTAIN?

25 A YES, SIR, THEY DO.

DIRECT EXAMINATION OF OFFICER ARBELO BY MR. THORNTON:

1 Q AND WHAT DOES IT SAY THEY CONTAIN, SIR?

2 A SCRAPINGS FROM THE SURFACE OF THE ROUND EDGE OF THE
3 HAMMER AND BLOOD SCRAPINGS FROM THE WEAPON.

4 Q AND THAT IS THE SCRAPINGS YOU TOOK, SIR?

5 A YES, THEY ARE.

6 Q ALL RIGHT, SIR. SARGENT ARBELO, WHEN YOU WERE AT THE SCENE,
7 YOU DID A FAIRLY LENGTHY REPORT ON THIS, DID YOU NOT?

8 A YES, SIR, I DID.

9 Q ALL RIGHT, SIR. AND YOU PAID PARTICULAR ATTENTION TO LOOKING
10 AROUND TO SEE IF YOU COULD SEE SIGNS THAT YOU THOUGHT MIGHT
11 INDICATE A STRUGGLE, CORRECT?

12 A I DID.

13 Q ALL RIGHT, SIR. WHILE YOU WERE LOOKING AROUND, DID YOU SEE A
14 LOT OF OVERTURNED FURNITURE?

15 A I PRIMARILY FOCUSED ON THE BEDROOM AND I DIDN'T SEE A LOT OF
16 OVERTURNED FURNITURE.

17 Q ALL RIGHT, SIR. DID YOU AT ANY TIME LOOK ON A NIGHT STAND WHERE
18 THERE WERE ANY KIND OF PAPERS OR DOCUMENTS BELONGING TO
19 CHARLES GODLEY?

20 A YES, SIR. I DID NOTICE THERE WERE SOME PAPERS ON THE NIGHT
21 STAND, VOTER REGISTRATION CARD AND STUFF, THINGS LIKE THAT,
22 LETTERS.

23 Q SARGENT, I AM GOING TO SHOW YOU WHAT HAS BEEN MARKED FOR
24 IDENTIFICATION AS STATES EXHIBIT #15. CAN YOU LOOK AT THAT AND
25 THE CONTENTS OF THAT BAG -- AND FEEL FREE TO OPEN THAT BAG IF

DIRECT EXAMINATION OF OFFICER ARBELO BY MR. THORNTON:

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1 YOU NEED TO -- AND TELL ME WHAT THE CONTENTS OF THAT BAG ARE,
2 IF YOU RECOGNIZE THOSE.

3 (WITNESS LOOKS THROUGH BAG AND RE-SEALS IT)

4 A YES, SIR. THESE ARE THE ITEMS THAT WERE ON HIS NIGHT TABLE.

5 Q THOSE ARE THE ITEMS ON THE TABLE?

6 A YES, SIR. IT LOOKED LIKE HE WAS DOING SOME BUDGETING.

7 Q HOW IS IT THAT YOU KNOW THOSE ARE THE SAME ITEMS? DO THEY
8 CONTAIN HIS NAME?

9 A THEY CONTAINED SOME NUMBERS THAT I MADE NOTE OF IN MY
10 REPORT ALSO, AND THEY HAD, SOME OF THEM HAVE HIS NAME ON IT,
11 BILLS, AND THINGS LIKE THAT.

12 Q DO THEY SEEM IN SUBSTANTIALLY THE SAME CONDITION AS THEY
13 WERE IN THAT DAY?

14 A A LITTLE OLDER, BUT YES, SIR.

15 Q UNDERSTOOD. ANYWHERE IN THAT BAG, SIR, IS THERE A WALLET?

16 A NO, SIR.

17 Q DID YOU FIND A WALLET AT THE SCENE?

18 A NO, SIR.

19 Q TO YOUR KNOWLEDGE DID ANYBODY EVER RECOVER A WALLET?

20 A NO, SIR.

21 Q DID YOU FIND ANY -- I THINK THERE MIGHT HAVE BEEN SOME MENTION
22 THAT THERE MIGHT HAVE BEEN A VOTER REGISTRATION CARD OR
23 SOMETHING IN HERE, I AM NOT SURE, BUT WERE THERE WERE ANY
24 BUNCHES OF CREDIT CARDS LAYING AROUND THAT YOU FOUND?

25 A THERE WAS A STACK OF CARDS THAT YOU WOULD HAVE IN YOUR

DIRECT EXAMINATION OF OFFICER ARBELO BY MR. THORNTON:

1 WALLET.

2 Q BUT NO WALLET?

3 A NO WALLET.

4 Q ALL RIGHT, SIR. NOW THE SCENE ITSELF, YOU SAID, YOU KNOW, THAT
5 YOU DID NOT SEE A LOT OF SIGNS OF WHAT YOU MIGHT THINK OF AS A
6 STRUGGLE. IS THAT CORRECT?

7 A YES, SIR.

8 Q ALL RIGHT. BASED ON THAT, BASED ON YOUR LOOKING AROUND, DID
9 YOU REACH ANY OPINION, AT THAT TIME, AS TO WHETHER OR NOT THIS
10 WAS A BREAK-IN OR A HOMICIDE?

11 A INITIALLY, I COULD NOT DETERMINE WHETHER IT WAS A BREAK-IN OR A
12 HOMICIDE. IT DID NOT APPEAR THAT WAY TO ME.

13 Q ALL RIGHT, SIR. AT THE TIME.

14 A AT THE TIME.

15 Q DID SOMEBODY COME AFTER THAT? DID YOU - FOR INSTANCE, DID
16 THE CORONER EVER SHOW UP?

17 A THE CORONER WAS THERE PRIOR TO MY ARRIVAL.

18 Q OKAY, SIR. SO, WHEN YOU GOT THERE THE CORONER WAS ALREADY
19 ON THE SCENE.

20 A YES, SIR, HE WAS.

21 Q DID YOU DISCUSS - IS THE CORONER MR. COPELAND?

22 A YES, SIR.

23 Q ALL RIGHT. DID YOU DISCUSS WITH HIM WHAT YOU HAD SEEN AND
24 WHAT YOUR OBSERVATIONS WERE, ET CETERA?

25 A ACTUALLY, I REALLY DIDN'T GET TO DISCUSS WHAT MY OBSERVATIONS

DIRECT EXAMINATION OF OFFICER ARBELO BY MR. THORNTON:

- 1 AND BELIEFS WERE. WHEN I GOT THERE, HE WAS ALREADY THERE
2 AND I WAS OF THE OPINION THAT HE THOUGHT IT WAS A SUICIDE.
3 Q ALL, RIGHT SIR. AND YOU WERE, AT THAT TIME, INCONCLUSIVE?
4 A AT THAT TIME, I WAS INCONCLUSIVE.
5 Q BUT LIKE I SAID, TAKING A LOOK AT YOUR REPORT -- BUT BASED ON
6 WHAT I'VE READ IN YOUR REPORT, IS IT FAIR TO SAY THAT YOU
7 LOOKED AROUND AND DIDN'T SEE A LOT OF EVIDENCE THAT THERE
8 WAS A BREAK-IN, SO, AT THAT TIME, YOU DID NOT CONSIDER IT A
9 BURGLARY, AT THAT TIME.
10 A AT THAT TIME. THAT'S RIGHT.
11 Q HAVE YOU EVER BEEN WRONG BEFORE?
12 A OH, YEAH.
13 Q DO YOU THINK YOU WERE WRONG WHEN YOU CONSIDERED THAT IN
14 THIS CASE?
15 A ABSOLUTELY.
16 Q AND WERE YOU AT THE AUTOPSY OF CHARLES GODLEY?
17 A YES, I WAS.
18 Q ALL RIGHT, SIR. AND DO YOU REMEMBER, BY ANY CHANCE, THE NAMES
19 OF THE PATHOLOGISTS THAT PREFORMED THE AUTOPSY?
20 A I THINK IT WAS DR. NICHOLS.
21 Q OKAY, SIR. AND AFTER DR. NICHOLS -- DID YOU HAVE ANY
22 DISCUSSIONS WITH DR. NICHOLS? AND DON'T TELL ME WHAT HE TOLD
23 YOU BUT, DID YOU TALK TO HIM AND DID HE TELL YOU HIS FINDINGS?
24 A YES, HE DID.
25 Q BASED ON HIS FINDINGS, DID YOU CHANGE YOUR MIND AS TO WHAT

DIRECT EXAMINATION OF OFFICER ARBELO BY MR. THORNTON:

1 YOU THOUGHT THIS CASE WAS?

2 A YES, I DID.

3 Q ALL RIGHT. AND DID YOU THINK IT WAS -- HOW DID YOU THINK HE DIED
4 AT THAT POINT?

5 A I THOUGHT HE HAD DIED BY BEING HIT IN THE HEAD WITH THE HAMMER.

6 Q ALL RIGHT, SIR. SO, WOULD IT BE FAIR TO SAY THAT IF YOU WERE
7 GOING TO GO BACK TO THAT SAME SCENE AND LOOK AT THE SAME
8 THINGS AGAIN THAT YOU MIGHT HAVE A DIFFERENT REPORT?

9 A ABSOLUTELY.

10 MR. HOOD: YOUR HONOR, I WOULD OBJECT TO THIS. YOU KNOW,
11 HINDSIGHT'S GREAT, BUT WHAT WE ARE TALKING ABOUT ARE WHAT HIS
12 OBSERVATIONS WERE AT THE TIME OF THIS EVENT, WHICH HE RECORDED
13 VERY CLEARLY AT ONE TIME, WHICH WE HAVE A COPY OF THAT.

14 THE COURT: SUSTAINED.

15 Q OFFICER, WHEN YOU WERE AT THE SCENE, WERE YOU THE RANKING
16 LAW ENFORCEMENT OFFICER? IN OTHER WORDS WERE YOU IN
17 CHARGE OF THE SCENE?

18 A I WAS THE INVESTIGATOR, I WAS THE LEAD INVESTIGATOR ON THE
19 SCENE, BUT I WAS NOT THE SENIOR OFFICER ON THE SCENE.

20 Q ALL RIGHT, SIR.

21 A IT IS ALSO RECORDED IN MY REPORT, MY FINDINGS OF THE EXTERIOR
22 OF THE RESIDENCE.

23 Q AND WHAT WERE THEY, SIR?

24 A THAT SOMEBODY HAD FORCIBLY ENTERED THE SCREEN DOOR.

25 Q ALL RIGHT, SIR. NOW WHEN YOU WERE -- AT SOME POINT AFTER

DIRECT EXAMINATION OF OFFICER ARBELO BY MR. THORNTON:

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1 WHATEVER DETERMINATION WAS MADE BY THE CORONER, ET CETERA,
2 WAS THE RESIDENCE TURNED OVER TO THE FAMILY?

3 A AFTER WE WERE DONE?

4 Q YES, SIR.

5 A YES.

6 Q ALL RIGHT. AND AFTER THAT, DID YOU HAVE ANY FURTHER
7 CONNECTION TO THIS CASE?

8 A NO, SIR.

9 Q ALL RIGHT. OTHER THAN YOU'VE INDICATED THAT YOU WENT TO THE
10 AUTOPSY. WHEN WAS THE AUTOPSY PERFORMED? DO YOU
11 REMEMBER?

12 A I WOULD SAY IT WAS PERFORMED MAYBE TWO DAYS LATER.

13 Q IN YOUR INVESTIGATION ON THIS CASE, DID YOU EVER INTERVIEW A
14 MAN NAMED DONALD MITCHELL?

15 A YES, I DID.

16 Q CAN YOU TELL ME WHY YOU INTERVIEWED HIM?

17 A DONALD MITCHELL WAS STOPPED BY OFFICER CALANDRA IN THE
18 VICINITY OF THE VICTIM'S RESIDENCE, I BELIEVE, ON THE NIGHT IN
19 QUESTION, AND MY SUPERVISORS, AT THE TIME, TOLD ME -- BROUGHT
20 IT TO MY ATTENTION THAT HE WOULD BE A PERSON OF POSSIBLE
21 INTEREST.

22 A ALL RIGHT, SIR. DID YOU GO AND -- DID YOU INTERVIEW HIM?

23 A YES, I DID.

24 Q AND DID HE COOPERATE IN ANSWERING YOUR QUESTIONS?

25 A YES, HE DID.

DIRECT EXAMINATION OF OFFICER ARBELO BY MR. THORNTON:

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1 Q DID YOU ASK HIM FOR ANY CLOTHING?

2 A YES, I DID.

3 Q I AM GOING TO SHOW YOU WHAT HAS BEEN MARKED AS STATES
4 EXHIBIT #16, AND BE CAREFUL, IT IS IN A BIO-HAZARD BAG. CAN YOU
5 EXAMINE THE CONTENTS OF THAT AND LET ME KNOW IF YOU
6 RECOGNIZE IT?

7 (WITNESS COMPLIES)

8 A YES, SIR. I RECOGNIZE THIS.

9 Q ALL RIGHT. CAN YOU TELL ME WHAT THE CONTENTS OF THAT BAG
10 ARE?

11 A THERE ARE A PAIR OF BLACK PANTS AND A PAIR OF BLUE PANTS, RED
12 CAP, GREY SHIRT, BLACK SHOES, AND BLACK BOOTS THAT ZIP UP ON
13 THE SIDE —

14 Q YES, SIR.

15 A — ON MR. MITCHELL'S CLOTHING.

16 Q IS THAT THE CLOTHING HE GAVE YOU?

17 A YES, SIR.

18 Q IS IT SUBSTANTIALLY IN THE SAME CONDITION THAT IT WAS WHEN HE
19 GAVE IT TO YOU?

20 A YES, SIR. IT IS.

21 MR. THORNTON: YOUR HONOR, I WOULD ASK THAT STATE'S EXHIBIT
22 #16 BE INTRODUCED INTO EVIDENCE.

23 MR. HOOD: I HAVE NO OBJECTION TO THAT.

24 THE COURT: ALL RIGHT. IT IS ADMITTED.

25 (WHEREUPON, A BAG OF CLOTHING IS ENTERED INTO EVIDENCE

DIRECT EXAMINATION OF OFFICER ARBELO BY MR. THORNTON:

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1 AS STATE'S EXHIBIT #16, WITHOUT OBJECTION.)

2 Q IS THAT THE ONLY CLOTHING YOU TOOK FROM DONALD MITCHELL?

3 A YES, SIR.

4 Q THERE WAS – DID YOU TAKE ANY KIND OF GREEN TRENCH COAT OR
5 ANYTHING FROM HIM? OR WAS IT —

6 A IT WAS A GREY TRENCH COAT, I BELIEVE.

7 Q ALL RIGHT, SIR. DID YOU TAKE THAT?

8 A I THINK I DID. I AM NOT SURE.

9 Q ALL, RIGHT SIR. LET ME ASK YOU ANOTHER WAY. IF IT'S NOT IN THAT
10 BAG, DID YOU TAKE IT?

11 A NO, SIR.

12 Q ALL RIGHT, SIR. NOW, YOU MADE A COMMENT EARLIER ABOUT YOUR
13 NOTICING THE EXTERIOR OF THE HOUSE, ABOUT A SCREEN DOOR.
14 COULD YOU TELL ME ABOUT THE SCREEN DOOR?

15 A IT WAS A SCREEN DOOR AT THE BACK. I WANT TO SAY IT WAS THE
16 SECOND DOOR FROM THE LEFT SIDE OF THE HOUSE, AS YOU LOOK AT
17 IT. IT HAD A SCREEN ON IT. AND THAT DOOR – THE SCREEN ITSELF,
18 HAD A CUT IN IT LIKE A SIX-INCH SLICE WHERE YOU COULD REACH IN
19 AND UNDO THE LATCH. IT HAD ONE OF THOSE HOOKS THAT LATCH
20 OVER AND THAT SCREEN WAS CUT AND THERE WERE SOME MARKS ON
21 THE DOOR INDICATING IT HAD BEEN FORCED OR PRIED AND THAT
22 DOOR LED INTO LIKE A LAUNDRY. IT WAS LIKE A – SOME TOOLS WERE
23 THERE, A LITTLE WORK AREA, AND A LAUNDRY ROOM KIND OF THING.
24 IT WAS IN A HALLWAY LEADING INTO THE KITCHEN.

25 Q ALL RIGHT. YOU SAID IT HAD A SIX-INCH CUT IN THE SCREEN. DID YOU

DIRECT EXAMINATION OF OFFICER ARBELO BY MR. THORNTON:

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1 NOTICE ANYTHING ELSE UNUSUAL ABOUT THE DOOR?

2 A IT LOOKED LIKE IT HAD BEEN PRIED OPEN OR PUSHED OPEN WITH
3 SOME KIND OF TOOL, MAYBE, I COULDN'T TELL WHAT KIND OF TOOL
4 THOUGH, IF AT ALL.

5 Q SARGENT ARBELO, I AM GOING TO HAND YOU WHAT IS ABOUT TO BE
6 MARKED AS STATES EXHIBIT #17, FOR IDENTIFICATION. CAN YOU
7 IDENTIFY THAT DRAWING?

8 A THIS IS A DRAWING I MADE OF THE SCALE OF THE HOUSE, THE VICTIM'S
9 HOUSE, MR. GODLEY'S HOUSE.

10 Q ALL RIGHT, SIR. AND IS THAT THE DRAWING THAT YOU DID THAT DAY?

11 A IT IS.

12 Q I UNDERSTAND IT IS NOT TO SCALE, BUT DOES IT ACCURATELY
13 REPRESENT THE LAY-OUT OF THE HOUSE?

14 A THE BEST I COULD DRAW IT.

15 Q ALL RIGHT, SIR. HAS IT BEEN CHANGED IN ANY WAY THAT YOU CAN
16 TELL?

17 A NO, SIR.

18 Q ALL RIGHT.

19 MR. THORNTON: JUDGE, I WOULD ASK THAT THIS BE ADMITTED INTO
20 EVIDENCE AS STATE'S EXHIBIT #17.

21 MR. HOOD: I HAVE NO OBJECTION.

22 THE COURT: ADMITTED.

23 (WHEREUPON, A DRAWING OF MR. GODLEY'S HOME IS ENTERED
24 INTO EVIDENCE AS STATE'S EXHIBIT #17.)

25 MR. THORNTON: THANK YOU, JUDGE.

DIRECT EXAMINATION OF OFFICER ARBELO BY MR. THORNTON:

145

1 Q CAN YOU INDICATE WHICH SCREEN DOOR YOU ARE TALKING ABOUT?

2 A THE ONE THAT IS LEADING INTO THE UTILITY ROOM, RIGHT THERE.

3 (INDICATING).

4 Q ALL RIGHT. AND SO IT IS THE SCREEN, THE DOOR MARKED ON THE
5 SIDE OF THE UTILITY ROOM. IS THAT CORRECT?

6 A YES.

7 Q AND COULD YOU TELL ME AGAIN, WHAT WAS INSIDE THAT UTILITY
8 ROOM, THAT YOU RECALL.

9 A I RECALL THERE WAS TOOLS IN THERE. IT WAS LIKE A LAUNDRY ROOM.
10 IT WAS LIKE LEADING INTO THE KITCHEN/DINING ROOM AREA.

11 Q IS THIS THE FRONT OR THE BACK OF THE HOUSE?

12 A THE BACK OF THE HOUSE.

13 Q ALL RIGHT, SIR. YOU SAID THAT THE SCREEN DOOR HAD BEEN CUT.
14 WAS THERE ANOTHER WOODEN DOOR BEHIND IT?

15 A YES.

16 Q WAS THAT DOOR OPEN OR NOT?

17 A WELL, IT WAS UNSECURED. IT WAS CLOSED, BUT IT WAS NOT LOCKED.

18 Q ALL RIGHT. WAS THERE ANY OTHER DOOR THAT WAS OPEN AT THE
19 BACK OF THE HOUSE?

20 A NOT AT THE BACK OF THE HOUSE, NO.

21 Q ALL RIGHT, SIR. HOW DID LAW ENFORCEMENT, THE OTHER OFFICERS,
22 IF YOU KNOW, HOW DID THEY GET IN AND OUT?

23 A I AM GOING TO HAVE TO VENTURE A GUESS, BECAUSE THE FRONT
24 DOOR WAS WHERE I WENT IN, THAT DOOR WAS OPEN WHEN I GOT
25 THERE, SO I WOULD SAY IN THE FRONT DOOR.

DIRECT EXAMINATION OF OFFICER ARBELO BY MR. THORNTON:

146

1 Q BUT YOU DON'T KNOW FOR SURE.

2 A NO, I DON'T.

3 Q THAT WAS THE ONLY DOOR AT THE BACK THAT WAS UNSECURED?

4 A RIGHT. YES, SIR.

5 Q ALL RIGHT, SIR. AND WHEN YOU SAY TOOLS, YOU MEAN LIKE HAND
6 TOOLS?

7 A LIKE A SAW, LIKE PLIERS, SCREW DRIVERS, YOU KNOW, TOOLS THAT
8 YOU WOULD HAVE.

9 Q SO, IF SOMEONE WENT IN THROUGH THAT SCREEN DOOR, THE FIRST
10 THING THEY WOULD HAVE COME IN CONTACT WITH WAS A, WHERE
11 TOOLS WERE KEPT?

12 A YES.

13 Q TOOLS LIKE HAMMERS, MAYBE?

14 A YES, SIR.

15 **MR. THORNTON:** YOUR HONOR, MAY WE APPROACH?

16 (BRIEF BENCH CONFERENCE)

17 Q THANK YOU VERY MUCH SARGENT ARBELO. I DON'T HAVE ANY
18 FURTHER QUESTIONS FOR YOU. IF YOU WOULD PLEASE ANSWER ANY
19 QUESTIONS THAT MR. HOOD MIGHT HAVE.

20 **THE COURT:** TELL YOU WHAT, BEFORE MR. HOOD BEGINS HIS CROSS,
21 LET'S GO AHEAD AND TAKE ABOUT A TEN MINUTE BREAK. ALL RIGHT, GO
22 AHEAD AND GO ON BACK TO THE JURY ROOM AND DON'T BEGIN
23 DELIBERATIONS OR DISCUSSIONS ABOUT THE CASE. IF ANYBODY NEEDS TO
24 TAKE A SMOKE BREAK, THE BAILIFF'S CAN ESCORT YOU DOWNSTAIRS. WE
25 WILL SEE YOU BACK IN ABOUT TEN MINUTES.

CROSS EXAMINATION OF OFFICER ARBELO BY MR. HOOD:

147

1 (JURY OUT AT 3:30 PM)

2 THE COURT: LET'S TAKE A BREAK. YOU CAN'T TALK TO ANYBODY, BUT
3 YOU ARE WELCOME TO USE A RESTROOM OR SOMETHING. (ADDRESSING
4 THE WITNESS)

5 THE COURT: BRING THE JURY IN.

6 THE BAILIFF: ALL JURORS PRESENT YOUR HONOR.

7 (JURY IN AT 3:46 PM)

8 THE COURT: ALL RIGHT. MR. HOOD, YOU MAY BEGIN YOUR CROSS.

9 MR. HOOD: THANK YOU.

10 **CROSS EXAMINATION OF ROBERT ARBELO BY MR. HOOD:**

11 Q NOW SARGENT ARBELO, THERE WERE QUITE A FEW OTHER POLICE
12 OFFICERS THERE AT THE SCENE. IS THAT CORRECT?

13 A I DIDN'T HEAR YOUR QUESTION. PLEASE?

14 Q THERE WERE QUITE A FEW OTHER POLICE OFFICERS THERE AT THE
15 SCENE THAT WORK FOR THE SHERIFF'S DEPARTMENT. IS THAT
16 CORRECT?

17 A YES, SIR.

18 Q OKAY. AND THEY ALSO ASSISTED IN THIS INVESTIGATION IN ONE WAY
19 OR ANOTHER. IS THAT CORRECT?

20 A YES. I BELIEVE SO.

21 Q AND THERE WAS ANOTHER INVESTIGATOR THERE WITH YOU ALSO,
22 WASN'T THERE?

23 A MY SUPERVISOR.

24 Q YOUR SUPERVISOR. YES.

25 A YES, SIR.

CROSS EXAMINATION OF OFFICER ARBELO BY MR. HOOD:

148

1 Q AND HE ALSO, ALONG WITH ALL THESE OTHER OFFICERS, INCLUDING
2 THE CORONER, CAME TO THE CONCLUSION THAT THIS WAS A SUICIDE
3 AND NOT A HOMICIDE. ISN'T THAT CORRECT?

4 A I THINK INITIALLY THEY ASSUMED THAT.

5 Q AND YOU DID, TOO. ISN'T THAT CORRECT?

6 A INITIALLY.

7 Q INITIALLY. IT WASN'T UNTIL AFTER THE AUTOPSY THAT YOU ALL
8 CHANGED YOUR MIND. ISN'T THAT CORRECT?

9 A NO.

10 Q WELL, YOU PREPARED A VERY EXTENSIVE REPORT IN THIS CASE,
11 DIDN'T YOU?

12 A I DID.

13 Q AND DO YOU HAVE A COPY OF YOUR REPORT, BY THE WAY?

14 A YES, SIR.

15 Q OKAY. YOU INDICATED THAT -- DURING YOUR TESTIMONY IN THE
16 LATTER PART OF YOUR TESTIMONY -- YOU FOUND A DOOR THAT
17 APPEARED TO YOU TO HAVE BEEN BROKEN INTO. IS THAT CORRECT?

18 A IT LOOKED LIKE IT HAD BEEN BROKEN INTO AT SOME POINT OR
19 FORCED OPEN.

20 Q WHY DON'T YOU CHECK YOUR REPORT THERE AND SEE WHERE IN
21 YOUR REPORT DOES IT EVER MAKE MENTION OF ANY DOOR
22 ANYWHERE ON THAT STRUCTURE THAT WAS BROKEN IN ANY WAY.

23 A I DIDN'T SAY BROKEN. IT JUST LOOKED LIKE IT HAD BEEN FORCED
24 OPEN AT SOME POINT. JUST LIKE THE SCREEN, THE SCREEN THAT
25 WAS CUT.

CROSS EXAMINATION OF OFFICER ARBELO BY MR. HOOD:

149

1 Q WHEN YOU SAY FORCED OPEN, ARE YOU TALKING ABOUT THE SAME
2 DOOR THAT THE REAL ESTATE AGENT, MS. COOK, WENT THROUGH?

3 A I DON'T KNOW WHAT DOOR SHE WENT THROUGH. I DON'T KNOW.

4 Q WELL, DIDN'T THEY SHOW YOU WHAT DOOR WAS AJAR WHEN THEY
5 ARRIVED AT THE SCENE?

6 A I DON'T RECALL.

7 Q IN YOUR REPORT YOU INDICATE, YOU INDICATE -- DIDN'T YOU INDICATE
8 THAT THERE WAS NOT ONE SIGN OF ANY FOUL PLAY OR A STRUGGLE
9 IN THAT HOUSE. ISN'T THAT CORRECT?

10 A I DID IN THE FIRST PORTION OF THIS.

11 Q WELL, WHERE, IN ANOTHER PORTION, DOES IT SAY THERE WERE SIGNS
12 OF FOUL PLAY?

13 A IT DOESN'T SAY THAT THERE WAS SIGNS OF FOUL PLAY, IN THAT
14 LANGUAGE.

15 Q OR A STRUGGLE?

16 A IT DOESN'T SAY THAT EITHER.

17 Q OKAY. NOW, YOU PUT IN YOUR REPORT THAT THERE APPEARS TO BE
18 ALCOHOL, THAT HE HAD BEEN DRINKING DURING THIS PERIOD OF TIME.
19 IS THAT CORRECT?

20 A I CAN FLIP BACK IN MY REPORT. IS THAT ON THE FIRST PAGE?

21 Q YEAH, LET'S TRY THE FIRST PAGE. WE'LL JUST GO THROUGH THE
22 FIRST PAGE. WE'LL JUST TAKE THEM A PAGE AT A TIME. FIRST PAGE,
23 ABOUT THREE QUARTERS OF THE WAY DOWN, ABOUT LINE #6, FROM
24 THE BOTTOM.

25 A I SEE IT.

CROSS EXAMINATION OF OFFICER ARBELO BY MR. HOOD:

150

- 1 Q WHAT DOES IT SAY?
- 2 A VICTIM ALSO APPEARS TO HAVE BEEN DRINKING ALCOHOL AT SOME
- 3 TIME.
- 4 Q BECAUSE THERE WAS AN EMPTY BOTTLE OF WHISKEY ON THE BED.
- 5 ISN'T THAT CORRECT.
- 6 A EMPTY BOTTLE OF AN ALCOHOLIC BEVERAGE.
- 7 A OKAY. GO BACK UP THE REPORT JUST A LITTLE BIT. LET'S TRY THE
- 8 THIRD LINE. "WE INDICATE THERE ARE NO FOUL ODORS OR UNUSUAL
- 9 ODORS." IS THAT CORRECT?
- 10 A THAT I CAN DETECT. YES.
- 11 Q NOW GOING DOWN FURTHER, YOU INDICATE THAT IT APPEARS THE
- 12 VICTIM FELL OFF OF THE BED AND STRUCK HIS HEAD ON SOMETHING.
- 13 IS THAT CORRECT?
- 14 A THAT WAS MY ASSUMPTION, MISTAKEN ASSUMPTION.
- 15 Q DO YOU KNOW WHAT KIND OF MEDICATION HE WAS ON? DID YOU LOOK
- 16 AT THE MEDICATION BOTTLES?
- 17 A I DID LOOK AT IT, BUT I DON'T RECALL THEM.
- 18 Q WELL, I GUESS IT IS PRETTY OBVIOUS, JUST BASED ON THE QUESTIONS
- 19 THE SOLICITOR WAS ASKING, YOU HAVE BEEN TAKING A LOT OF HEAT
- 20 AS A RESULT OF "CALLING THIS A SUICIDE." ISN'T THAT CORRECT?
- 21 A I DIDN'T TAKE ANY HEAT FOR IT.
- 22 Q IN OTHER WORDS, THEY AREN'T TRYING TO SAY YOU DIDN'T DO A VERY
- 23 GOOD JOB WITH THIS. IS THAT CORRECT?
- 24 A I DON'T KNOW. I AM NOT SURE I UNDERSTAND YOUR QUESTION.
- 25 Q OKAY. OKAY. I'LL WITHDRAW THE QUESTION. LET'S GO THROUGH -

CROSS EXAMINATION OF OFFICER ARBELO BY MR. HOOD:

151

- 1 HOW ABOUT GO THROUGH YOUR REPORT AND SEE IF YOU CAN FIND
2 ONE PLACE IN THERE WHERE IT SAYS A DOOR APPEARED TO BE
3 BROKEN, WHERE THE ENTRY OCCURS, OR ANYTHING OF THAT NATURE,
4 OTHER THAN THE SCREEN BEING TORN.
- 5 A I KNOW THAT IS NOT IN THERE.
- 6 Q YOU KNOW IT IS NOT IN THERE. OKAY.
- 7 A BUT THE SCREEN BEING TORN —
- 8 Q SO, WHEN DID YOU COME TO THE CONCLUSION THAT THE DOOR WAS
9 BROKEN? BECAUSE IT IS NOT IN THE REPORT THAT YOU SAID YOU
10 JUST, YOU KNOW, YOU TESTIFIED TO IT. WHEN DID YOU MAKE THAT
11 DECISION?
- 12 A THAT DOOR LOOKED LIKE IT HAD BEEN FORCED OPEN, EITHER
13 RECENTLY OR AT SOME POINT AND THE SCREEN DOOR BEING SLICED
14 TO ALLOW SOMEBODY TO UNLATCH IT. I MEAN, I THOUGHT THAT WAS
15 PRETTY EVIDENT. I WAS REPORTING MY FINDINGS.
- 16 Q OKAY. THAT PARTICULAR DOOR, IS THAT THE DOOR THAT BOLTED
17 FROM THE INSIDE?
- 18 A YOU MEAN THE SLIDE AT THE TOP?
- 19 Q YEAH.
- 20 A I BELIEVE IT IS.
- 21 Q AND ISN'T IT TRUE THAT THERE WAS NO WAY OF UNLOCKING THAT
22 DOOR FROM THE OUTSIDE? IS THAT CORRECT?
- 23 A I DON'T KNOW. DO YOU MEAN LIKE WITH A KEY?
- 24 Q I'M SORRY?
- 25 A DID YOU MEAN LIKE WITH A KEY OR SOMETHING?

CROSS EXAMINATION OF OFFICER ARBELO BY MR. HOOD:

152

1 Q THAT IS CORRECT. YES.

2 A I DON'T KNOW. I DON'T RECALL. I JUST DON'T RECALL.

3 Q DO YOU RECALL EXAMINING A DOOR WHICH YOU SAID HAD NO WAY OF
4 ENTERING FROM THE OUTSIDE UNLESS BY KEY, UNLESS IT WAS
5 UNBOLTED FROM THE INSIDE.

6 A I DO RECALL THAT SOME OF THE DOORS, FROM THE OUTSIDE, YOU
7 COULD GET IN. BUT THERE WERE SEVERAL DOORS ON THE OUTSIDE
8 OF THIS RESIDENCE.

9 Q I AGREE WITH YOU THAT THERE WERE SEVERAL DOORS. BUT IN YOUR
10 REPORT, YOU SAID YOU EXAMINED ALL OF THE POINTS OF ENTRY AND
11 FOUND NO SIGNS OF FORCED ENTRY. ISN'T THAT CORRECT?

12 A YES, IT IS.

13 Q OKAY. ALL RIGHT. THAT'S FINE. NOW, LET'S GO TO – WELL, LET'S
14 JUMP TO THE AUTOPSY REAL QUICK. AT THE AUTOPSY YOU WERE
15 PRESENT. IS THAT CORRECT?

16 A YES, SIR.

17 Q OKAY. AND AT THE AUTOPSY, YOU ALONG WITH THE PERSONS
18 CONDUCTING THE AUTOPSY, DR. NICHOLS AND WHOEVER ELSE,
19 DISCOVERED FINGERPRINTS ON THE LEG OF MR. GODLEY. ISN'T THAT
20 CORRECT?

21 A YES, SIR.

22 Q OKAY. AND YOU, OR ONE OF THE OFFICERS WITH YOU, ACTUALLY PUT
23 THE OLD POWDER ON IT SO YOU COULD LIFT THE PRINTS OFF. ISN'T
24 THAT CORRECT?

25 A THEY SUMMONED A CHARLESTON CITY OFFICER TO ASSIST US.

CROSS EXAMINATION OF OFFICER ARBELO BY MR. HOOD:

153

1 Q AND YOU OBSERVED THEM TAKE THE PRINTS FROM THE LEGS? ISN'T
2 THAT CORRECT? OR THE LEG. ISN'T THAT CORRECT?

3 A I OBSERVED THEM. YES, SIR.

4 Q DID YOU TAKE CUSTODY OF THOSE PRINTS?

5 A PRINTS?

6 Q THE LIFTS THAT THEY TOOK OFF OF THE LEG.

7 A I DON'T BELIEVE – I REALLY DO NOT RECALL THEM DOING LIFTS. I

8 BELIEVE WHAT THE DID WAS TO DEVELOP THE PRINTS AND

9 PHOTOGRAPH THEM, IF I AM NOT MISTAKEN.

10 Q OKAY. DID YOU TAKE CUSTODY OF THE PHOTOGRAPHS?

11 A NOT AT THAT POINT, BECAUSE THEY STILL HAD TO BE DEVELOPED.

12 Q OKAY. DID SOME TIME LATER ON DID YOU COME INTO THE CUSTODY
13 OF THOSE PRINTS?

14 A I BELIEVE I DID.

15 Q OKAY. OKAY. NOW, DID YOU TAKE THOSE AND TAKE THEM TO
16 SOMEONE TO SAY WHOSE PRINTS THOSE WERE?

17 A I SHOWED THEM TO, I BELIEVE IT WAS MY SUPERVISOR, BECAUSE I'M
18 NOT – I DON'T HAVE THE EXPERTISE TO DETERMINE IF THEY ARE OF
19 VALUE OR IN ENOUGH DETAIL AND SO ON.

20 Q OKAY. WERE THOSE PRINTS, THAT WERE PHOTOGRAPHED AND LIFTED
21 AND EXAMINED, MATCHED AGAINST THE PRINTS OF RICHARD
22 SIMMONS?

23 A I DON'T KNOW. MR. SIMMONS WAS NOT A SUSPECT AT THAT TIME. I
24 DIDN'T EVEN KNOW WHO MR. SIMMONS WAS.

25 Q OKAY. LET'S JUST SAY THAT – OKAY, JUST A SECOND. LET'S START

CROSS EXAMINATION OF OFFICER ARBELO BY MR. HOOD:

154

1 OVER. YOU ALSO FOUND, I BELIEVE, YOURSELF, SOME HAIR IN THE
2 HAND, THE RIGHT HAND, OF MR. GODLEY. IS THAT CORRECT?

3 A YES, SIR.

4 Q AND THIS WAS AT THE SCENE. IS THAT CORRECT?

5 A I NOTICED IT AT THE AUTOPSY.

6 Q OKAY. SO IT WAS HAIR IN A CLOSED HAND, IN MR. GODLEY'S RIGHT
7 HAND. IS THAT CORRECT?

8 A YES, SIR. IT WAS -- HIS HAND WAS KIND OF CLOSED UP.

9 Q AND DID YOU TAKE CUSTODY OF THAT HAIR?

10 A I DID AFTER THEY REMOVED IT, AFTER THE CORONER TOOK IT OFF,
11 AFTER THE MEDICAL EXAMINER TOOK IT OUT OF HIS HAND.

12 Q ALL RIGHT. NOW, WE ARE TALKING ABOUT THE CORONER HERE. CURT
13 COPELAND IS THE CORONER AND HE WAS THERE --

14 A NOT THE CORONER, MR. COPELAND. HOWEVER, IT WAS THE MEDICAL
15 EXAMINER DOING THE AUTOPSY.

16 Q OKAY. SO YOU TAKE CUSTODY OF THESE HAIRS. IS THAT CORRECT?

17 A YES.

18 Q WHAT DO YOU DO WITH THOSE HAIRS?

19 A I HOLD ON TO THEM AND PUT THEM INTO EVIDENCE AND I REQUESTED
20 THAT THE CORONER FROM THE COUNTY, MR. COPELAND, REMOVE
21 SOME HAIR FROM THE VICTIM FOR COMPARISON PURPOSES.

22 Q OKAY. AND DO YOU KNOW WHAT THE RESULTS OF THAT COMPARISON
23 WAS?

24 A NO, SIR, I DON'T.

25 Q OKAY. WELL, IT SOUNDS KIND OF STRANGE, BUT I WILL ASK THE

CROSS EXAMINATION OF OFFICER ARBELO BY MR. HOOD:

155

1 QUESTION ANYWAY. WHY DID YOU NOT CONTINUE WITH THE CASE? I
2 MEAN, YOU WERE THE INVESTIGATING OFFICER, THE INVESTIGATOR
3 ALONG WITH YOUR SUPERVISOR WHO WAS SENIOR TO YOU, WHO
4 HELPED INVESTIGATE THE CASE. WHY DIDN'T YOU CONTINUE WITH
5 THE INVESTIGATION?

6 A I WAS LEAVING THE DETECTIVE DIVISION, I WAS LEAVING THE
7 SHERIFF'S OFFICE.

8 Q SO, YOU WENT TO OTHER DUTIES. IS THAT CORRECT?

9 A YES, SIR. I WENT ON.

10 Q OKAY. YOU WENT ON TO OTHER DUTIES. THEN ANOTHER PERSON IS
11 APPOINTED AS THE DETECTIVE IN CHARGE OF THIS INVESTIGATION. IS
12 THAT CORRECT?

13 A YES, SIR.

14 Q SO, IN OTHER WORDS, AFTER THAT POINT IN TIME, YOU DID
15 ABSOLUTELY NO FOLLOW-UP WHATSOEVER. IS THAT CORRECT?

16 A YOU MEAN ONCE IT WAS TRANSFERRED TO THE OTHER
17 INVESTIGATOR?

18 Q CORRECT.

19 A I HAD NOTHING FURTHER TO DO WITH IT.

20 Q OKAY. ALL RIGHT. NOW, LET'S GO BACK TO THE SCENE OF THE CRIME.
21 DO YOU RECALL, DURING YOUR INVESTIGATION, WHAT THE WEATHER
22 WAS LIKE EARLY FRIDAY MORNING OR FRIDAY NIGHT LATE. DO YOU
23 RECALL WHAT THE WEATHER WAS? WAS IT RAINING THAT
24 PARTICULAR NIGHT?

25 A I DON'T REMEMBER.

CROSS EXAMINATION OF OFFICER ARBELO BY MR. HOOD:

156

1 Q WELL, DURING THE COURSE OF YOUR INVESTIGATION, DID YOU
2 DETERMINE THAT THE PERSON THAT CALANDRA HAD STOPPED WAS
3 WEARING A TRENCH COAT BECAUSE IT WAS RAINING?

4 A I MAY HAVE MADE THAT DETERMINATION. I DON'T RECALL. I KNOW
5 THAT HE WAS WEARING A RAINCOAT.

6 Q OKAY. NOW, YOU INDICATED IN YOUR REPORT NO FOUL PLAY, NO
7 SIGNS OF TURNED OVER FURNITURE, EVERYTHING WAS NEATLY
8 STACKED UP IN PILES AND THINGS OF THAT NATURE. ISN'T THAT
9 CORRECT?

10 A YES, I DID.

11 Q DID YOU NOTICE ANYWHERE ON ANY OF THE FLOORS ANY MUDDY
12 FOOTPRINTS?

13 A I COULDN'T NOTICE, BECAUSE IT WAS DARK IN THAT ROOM, IT WAS
14 REALLY DARK IN THAT ROOM, BUT NO, I DID NOT NOTICE.

15 Q OKAY. DID YOU CHECK FOR FOOTPRINTS AROUND THE PERIMETER OF
16 THE HOUSE?

17 A I DID.

18 Q AND YOU FOUND NONE. IS THAT CORRECT?

19 A THAT'S CORRECT.

20 Q OKAY. OKAY. SO, GOING BACK AND SORT OF REVIEWING WHAT YOU
21 SAID, THERE WAS A DOOR THAT APPARENTLY WAS THE ONLY DOOR
22 THAT WAS OPEN, BECAUSE MS. COOK WENT THROUGH THE DOOR
23 ALONG WITH HER HUSBAND, THAT BOLTED FROM THE INSIDE AND
24 COULD NOT BE OPENED FROM THE OUTSIDE. ISN'T THAT CORRECT?

25 A I DON'T KNOW ABOUT THAT. I DON'T KNOW WHAT DOOR MS. COOK

CROSS EXAMINATION OF OFFICER ARBELO BY MR. HOOD:

157

1 WENT IN. I HAVE NO IDEA. I DON'T - I JUST DON'T KNOW, BECAUSE
2 WHEN I GOT THERE EVERYBODY WAS COMING OUT OF THE FRONT
3 DOOR, YOU KNOW.

4 Q DID YOU HAVE ANY SIGNS OF SKIN, HAIR, OR ANY TYPE OF SUBSTANCE
5 ON THE WEAPON OR ON THE HAMMER?

6 A ON THE HAMMER, THERE WAS BLOOD. ON THE WEAPON, THERE WAS
7 BLOOD. I DON'T KNOW IF THERE WAS SKIN ON ANYTHING. I COULDN'T
8 TELL, YOU KNOW, IF THERE WAS ANY SKIN MIXED IN WITH THE BLOOD,
9 BUT THAT IS WHAT I COULD TELL.

10 Q ALL RIGHT. NOW LET'S GO A LITTLE FURTHER, PAGE FIVE OF YOUR
11 REPORT.

12 A ALL RIGHT, SIR.

13 Q THE MIDDLE PARAGRAPH, SIX LINES FROM THE BOTTOM. IT SAYS,
14 "IT APPEARED AS THOUGH THE INCIDENT WAS A SUICIDE DUE TO A
15 SELF-INFLICTED SHOT WITH A C-O 2 PISTOL FOUND NEAR THE VICTIM'S
16 HEAD. HOWEVER, AS THE INVESTIGATION PROCEEDED IT WAS
17 PROBABLE THAT THE INCIDENT WAS NOT A SUICIDE." IS THAT
18 CORRECT?

19 A I MUST BE ON ANOTHER PAGE. HOLD ON JUST A MINUTE, MR. HOOD.
20 WHAT'S THE DATE ON THE ONE YOU ARE LOOKING AT, SIR?

21 Q THE DATE ON THE ONE I AM LOOKING AT, AND HOPEFULLY, YOU DON'T
22 HAVE ONE ON A DIFFERENT DATE, IS 01-20-'95.

23 A OKAY. LET'S SEE. WOULD THAT BE ON PAGE NUMBER ONE, ON THE
24 UPPER RIGHT-HAND CORNER?

25 Q LET'S JUST SKIP IT. LET'S JUST SKIP IT. OKAY. YOU ALSO FOUND

CROSS EXAMINATION OF OFFICER ARBELO BY MR. HOOD:

158

1 SOMETHING ON THE VICTIM'S BODY THAT YOU DESCRIBED AS TEETH
2 MARKS. IS THAT CORRECT?

3 A LOOKED LIKE TEETH MARKS. YES, SIR.

4 Q AND DID YOU OR ANYBODY ELSE TAKE SWABBINGS OF THAT
5 PARTICULAR INJURY?

6 A I DID NOT.

7 Q DID ANYBODY ELSE TO YOUR KNOWLEDGE?

8 A NOT TO MY KNOWLEDGE.

9 Q TEETH MARKS – WHEN A PERSON BITES SOMEONE, THEY LEAVE
10 SOMETHING BEHIND OTHER THAN THE MARKS. ISN'T THAT CORRECT?

11 A I BELIEVE THEY DO.

12 Q AND THAT THING THAT THEY LEAVE BEHIND IS SALIVA. ISN'T THAT
13 CORRECT?

14 A YES.

15 Q AND SALIVA CAN LIVE THERE IN THAT WOUND FOR A LONG PERIOD OF
16 TIME. ISN'T THAT CORRECT?

17 A I GUESS SO.

18 Q AND BY TAKING THE SWABS, WE CAN "BOOM", SEE AND DETERMINE
19 DNA-WISE, WHO INFLECTED THAT PARTICULAR WOUND. ISN'T THAT
20 CORRECT?

21 A I BELIEVE THAT IS CORRECT NOWADAYS, BUT BACK IN THOSE DAYS WE
22 DIDN'T HAVE THAT. WE WEREN'T THAT ADVANCED, AT LEAST I WASN'T.

23 Q WELL, EVEN IF WE WEREN'T THAT ADVANCED, I HOPE WE WERE, BUT
24 EVEN IF WE WEREN'T THAT ADVANCED, WE HAVE HAD DNA FOR A LONG
25 PERIOD OF TIME, HAVEN'T WE?

CROSS EXAMINATION OF OFFICER ARBELO BY MR. HOOD:

159

1 A YES, AS FAR AS I KNOW.

2 Q AND ALSO, TEETH MARKS CAN BE IDENTIFIED ALSO. ISN'T THAT
3 CORRECT?

4 A YES, SIR.

5 Q BY THE WAY THEY MATCH UP WITH THE MOUTH OF A PERSON WHO
6 INFLECTS THE OLD WOUNDS. IS THAT CORRECT?

7 A AS FAR AS I KNOW.

8 Q THAT'S BEEN AROUND FOR A LONG TIME, HASN'T IT?

9 A YES, SIR.

10 Q WAY BACK, EVEN CENTURIES, WHATEVER. DID YOU GET ANY
11 PICTURES, DRAWINGS, OR ANYTHING OF THAT NATURE THAT WOULD
12 ALLOW US THE OPPORTUNITY TO MATCH THAT WOUND INFLECTED
13 WITH A POTENTIAL SUSPECT?

14 A I BELIEVE THAT THE MEDICAL EXAMINER -- I THINK THEY TOOK A
15 PICTURE OF THAT AND WANTED TO DO A CASTING OF IT, BUT
16 SOMEBODY SAID IT WAS NOT -- THAT THEY COULDN'T DO IT AND I THINK
17 IT WAS THE MEDICAL EXAMINER'S OFFICE THAT SAID THEY COULDN'T
18 MAKE THAT HAPPEN.

19 Q NOW TO JUST CLARIFY ONE THING, YOU DO NOT KNOW WHERE THAT
20 HAMMER CAME FROM IN THE HOUSE. ISN'T THAT CORRECT?

21 A IT CAME FROM UNDER MR. GODLEY.

22 Q RIGHT.

23 A I MEAN --

24 Q WHEN YOU SAID IT WAS OUT IN THE SHED WHERE ALL THE OTHER
25 TOOLS WERE AT --

CROSS EXAMINATION OF OFFICER ARBELO BY MR. HOOD:

160

1 **MR. THORNTON:** OBJECTION, YOUR HONOR. I DON'T BELIEVE THE
2 WITNESS EVER TESTIFIED TO THAT.

3 **MR. HOOD:** WELL, MAYBE I JUST MISUNDERSTOOD THAT. MAYBE THE
4 SOLICITOR ASKED YOU, "ISN'T IT CONSISTENT WITH ALL THESE OTHER
5 TOOLS" OR SOMETHING LIKE THAT.

6 Q BUT YOU HAVE NO KNOWLEDGE OF WHERE THAT HAMMER WAS PRIOR
7 TO BEING UNDER MR. GODLEY. ISN'T THAT CORRECT?

8 A THAT'S CORRECT.

9 Q AND YOU DON'T KNOW HOW IT GOT THERE, DO YOU?

10 A NO.

11 Q AND FROM WHAT YOU GUYS ALL SAW FROM THIS PARTICULAR TIME,
12 YOU BELIEVED ONE OF TWO THINGS OCCURRED: EITHER IT WAS A
13 SUICIDE OR BECAUSE OF BLOOD FOUND CLOSE TO THE DOOR JAMB OF
14 THE DOOR WHICH WAS OPEN, THAT MR. GODLEY MIGHT HAVE LET THE
15 INTRUDER OR PERHAPS THE KILLER IN. ISN'T THAT CORRECT?

16 **MR. THORNTON:** OBJECTION YOUR HONOR. THAT CALLS FOR
17 SPECULATION.

18 **THE COURT:** SUSTAINED.

19 Q OKAY. ALL RIGHT. YOU INTERVIEW MITCHELL. MITCHELL IS THE GUY
20 WHO IS WANDERING AROUND THAT CALANDRA STOPS WHO IS
21 WEARING THE CLOTHING THAT MATCHES THE DESCRIPTION AND HE,
22 MATCHING THE SHAPE, THE BIG SIZE OF THE PERSON THAT MR.
23 GODLEY HAS TOLD CALANDRA ABOUT. IS THAT CORRECT?

24 A I DON'T KNOW. I GUESS SO. THAT'S NOT -- I DIDN'T TAKE THAT
25 REPORT, THAT INITIAL REPORT, SO I DON'T KNOW THE DETAILS OF

CROSS EXAMINATION OF OFFICER ARBELO BY MR. HOOD:

161

1 THAT.

2 Q BUT -- BUT YOU HAD TO HAVE KNOWN SOMETHING IN ORDER TO HAVE
3 INTERVIEWED MITCHELL. ISN'T THAT CORRECT?

4 A I KNEW THAT HE WAS A PERSON OF INTEREST AND MY SUPERVISOR
5 TOLD ME TO INTERVIEW HIM.

6 Q OKAY. BECAUSE HE WAS THE GUY THAT WAS STOPPED ON THE ROAD
7 THAT NIGHT IN THE RAIN, "BOOM", WEARING THE CLOTHING DESCRIBED
8 BY THE VICTIM. ISN'T THAT CORRECT?

9 A YES, SIR.

10 Q OKAY. ALL RIGHT. NOW YOU INTERVIEWED THAT PERSON. IS THAT
11 CORRECT?

12 A YES, I DID.

13 Q OKAY. AND DURING THE COURSE OF YOUR INTERVIEW, WHAT WAS
14 YOUR IMPRESSION OF MR. MITCHELL AND WHAT HE WAS SAYING?

15 A I THOUGHT HE WAS NOT BEING COMPLETELY HONEST WITH ME AND HE
16 WAS HAVING AN EXTRAMARITAL AFFAIR AND THAT WAS PROBABLY THE
17 REASON THAT HE WAS LYING.

18 Q WELL, WAS IT A LITTLE BIT MORE THAN THAT?

19 A I DIDN'T -- WELL I JUST DIDN'T BELIEVE WHAT HE SAID.

20 Q OKAY. ISN'T IT TRUE THAT YOU PUT IN YOUR REPORT THAT MR.
21 MITCHELL WENT OUT OF HIS WAY TO SAY HE WAS NEVER CLOSE TO
22 THAT HOUSE?

23 A IT SEEMED THAT WAY TO ME.

24 Q OKAY. AND HE HAD NEVER BEEN AROUND THAT HOUSE? IS THAT
25 CORRECT?

CROSS EXAMINATION OF OFFICER ARBELO BY MR. HOOD:

162

- 1 A HE SAID -- HE SAID HE WALKED PAST IT ON THE OPPOSITE SIDE OF THE
2 STREET.
- 3 Q AND EVERY TIME YOU ASKED HIM A QUESTION HE WOULD REPEAT THE
4 QUESTION BEFORE HE WOULD GIVE AN ANSWER. ISN'T THAT
5 CORRECT?
- 6 A YES, THAT'S CORRECT. YES, SIR.
- 7 Q AND WHAT YOU THOUGHT HE WAS DOING WAS TRYING TO MAKE SURE
8 HOW HE WAS GOING TO ANSWER THE QUESTION. ISN'T THAT
9 CORRECT?
- 10 A THAT WAS MY BELIEF. YES, IT WAS.
- 11 Q OKAY. SO YOU BELIEVE, AT THAT POINT IN TIME, THAT MR. MITCHELL IS
12 THE GUY. ISN'T THAT CORRECT?
- 13 A I BELIEVED THAT HE WAS BEING DECEITFUL AND I AM NOT REALLY
14 SURE. I JUST DON'T HAVE ENOUGH YET.
- 15 Q RIGHT. RIGHT. OKAY. SO YOU GET HIS CLOTHING.
- 16 A RIGHT.
- 17 Q YOU SEND HIS CLOTHING OFF. THEY FIND NO BLOOD ON HIS
18 CLOTHING. ISN'T THAT CORRECT?
- 19 A I WAS ALREADY OFF THE CASE BY THAT TIME, EVERYTHING CAME
20 AFTER THAT.
- 21 Q OH. OKAY, I'M SORRY. I'M SORRY. NOW OTHER THAN DONALD
22 MITCHELL, THE GUY OUT ON THE ROAD, DID YOU INTERVIEW ANY
23 OTHER PERSONS OF INTEREST IN THIS PARTICULAR CASE?
- 24 A I REALLY DON'T RECALL. I DON'T THINK SO. I WAS WORRIED ABOUT
25 THE CRIME SCENE AND THAT STUFF.

CROSS EXAMINATION OF OFFICER ARBELO BY MR. HOOD:

163

1 Q AND DID YOU INTERVIEW ANY OF THE ALIBI WITNESSES THAT MR.
2 MITCHELL GAVE YOU?

3 A I BELIEVE I SPOKE TO HIS WIFE BRIEFLY, JUST TO VERIFY THAT HE
4 CAME HOME THAT NIGHT AND I WAS TRYING TO INTERVIEW THE GIRL
5 THAT HE WAS SUPPOSEDLY WITH, BUT I NEVER COULD GET HER TO
6 COOPERATE. SHE NEVER WOULD COOPERATE.

7 Q OKAY. SO BASICALLY, WHAT YOU ARE TELLING ME IS THAT, YOU
8 COULD NOT SUBSTANTIATE MR. MITCHELL'S ALIBI AS TO WHERE HE
9 WAS AT THE TIME OF THIS KILLING. ISN'T THAT CORRECT?

10 A THAT'S CORRECT.

11 Q OKAY. OKAY. WHY DIDN'T MR. MITCHELL GIVE YOU HIS TRENCH COAT?

12 A I DON'T REMEMBER.

13 Q OKAY. NOW, WELL, MAYBE I SHOULD ASK A COUPLE MORE QUESTIONS.
14 YOU SHOWED THE SISTER OF MR. GODLEY THE EVIDENCE THAT YOU
15 HAD RECOVERED FROM THE BEDROOM. IS THAT CORRECT?

16 A YOU MEAN THE DOCUMENTS AND STUFF LIKE THAT?

17 Q THE DOCUMENTS, THE HAMMER, THE GUN AND ALL THAT STUFF.

18 A I DON'T REMEMBER SHOWING HER ALL THAT.

19 Q DO YOU REMEMBER SHOWING OR TELLING ANYBODY ELSE ABOUT IT?

20 A NO.

21 Q WERE YOU PRESENT AT ANY TIME WHEN ANY OF THE OTHER OFFICERS
22 DISCUSSED OR TOLD OR SHOWED ANY OF THIS EVIDENCE TO ANYBODY
23 OUTSIDE THE LAW ENFORCEMENT CHAIN?

24 A NO. NO, SIR.

25 Q OKAY. SO YOU DON'T KNOW THE RESULTS OF THE SCRAPINGS THAT

CROSS EXAMINATION OF OFFICER ARBELO BY MR. HOOD:

164

1 YOU TOOK FROM THE HAMMER? IS THAT CORRECT?

2 A I JUST -- I REALLY DON'T RECALL THEM. I MEAN -- I DON'T REMEMBER.

3 Q I BELIEVE YOU DETERMINED THAT MR. GODLEY FREQUENTLY, AND
4 ACCORDING TO YOUR STATEMENT, "THE VICTIM BUYS A LOT OF HIS
5 ALCOHOL FROM THE RED DOT STORE WHICH IS ATTACHED TO LADY'S
6 ISLAND PLAZA." ISN'T THAT CORRECT?

7 A YES, THAT'S WHAT I WROTE.

8 Q SO, YOU LOOKED INTO THE FACT THAT HE WAS PURCHASING A LARGE
9 AMOUNT OF ALCOHOL. IS THAT CORRECT?

10 A I THINK HE HAD SOME RECEIPTS THERE OR SOMETHING LIKE THAT.

11 Q OKAY. I DON'T HAVE ANY FURTHER QUESTIONS.

12 THE COURT: RE-DIRECT?

13 MR. THORNTON: YOUR HONOR, MAY WE APPROACH?

14 (BRIEF BENCH CONFERENCE OFF THE RECORD)

15 Q I HAVE ONE MORE QUESTION. THE HAIRS AT THE AUTOPSY THAT WERE
16 TAKEN FROM MR. GODLEY'S HAND, WAS THERE MORE THAN ONE HAIR?

17 A I DON'T THINK SO. I DON'T REALLY REMEMBER HOW MANY HAIRS
18 THERE WERE BECAUSE HIS HAND WAS CLOSED TOGETHER AND IT
19 COULD HAVE BEEN ONE HAIR KIND OF FOLDED OVER OR SOMETHING.
20 IT DIDN'T LOOK LIKE A LOT OF HAIR. IT DIDN'T LOOK LIKE A CLUMP OF
21 HAIR, LET'S PUT IT THAT WAY.

22 Q DID YOU TAKE THE HAIR FROM HIS HAND?

23 A THE MEDICAL EXAMINER DID.

24 Q DID YOU RECEIVE CUSTODY OF THOSE HAIRS?

25 A YES, I DID.

RE-DIRECT EXAMINATION OF OFFICER ARBELO BY MR. THORNTON:

165

1 Q IN YOUR REPORT IT SAYS HAIRS, NOT HAIR. WAS IT HAIRS OR WAS IT
2 ONE HAIR?

3 A I DON'T REALLY REMEMBER, PROBABLY, MAYBE TWO HAIRS.

4 Q IF YOUR REPORT SAYS HAIRS, IT MEANS MORE THAN ONE. ISN'T THAT
5 CORRECT?

6 A YES, SIR.

7 Q SO, YOU ARE SAYING THAT IT WAS MORE THAN ONE HAIR.

8 A LET'S SAY THAT THEN.

9 Q OKAY. THANK YOU.

10 THE COURT: REDIRECT, MR. THORNTON?

11 MR. THORNTON: BRIEFLY, JUDGE.

12 **RE-DIRECT EXAMINATION OF SERGEANT ARBELO BY MR. THORNTON:**

13 Q SARGENT, I KNOW YOU HAD A FAIRLY LENGTHY REPORT, SO I AM
14 GOING TO FIND THE EXACT PLACE HERE, SO WHEN I CALL YOUR
15 ATTENTION TO IT YOU WILL BE ABLE TO FIND IT. WHAT I AM GOING TO
16 ASK YOU ABOUT IS THIS DOOR YOU TALKED ABOUT AND THE SCREEN
17 YOU TESTIFIED THAT WAS CUT, THAT BOTH I AND MR. HOOD TALKED TO
18 YOU ABOUT AT SOME LENGTH.

19 A YES, SIR.

20 Q ALL RIGHT. WHERE I AM, SIR, ON MY COPY OF THIS REPORT IS ON
21 PAGE -- I AM NINE PAGES I THINK, NINE PAGES BACK, IT'S ON THE
22 TENTH PAGE, SIR AND IT SAYS, "OBSERVATIONS OF HOUSE EXTERIOR
23 01-16-95, 1800 HOURS." WILL YOU LOOK FOR A SECOND AND SEE IF YOU
24 CAN FIND THAT?

25 (WITNESS LOOKS THROUGH DOCUMENT)

RE-DIRECT EXAMINATION OF OFFICER ARBELO BY MR. THORNTON:

166

1 Q THAT'S THE PAGE WE'RE ON. TOP OF THE PAGE SAYS, "INTERVIEW OF
2 MS. PETREVITCH CONTINUED."

3 A YES, SIR.

4 Q ALL RIGHT. YOU'VE FOUND THAT PAGE?

5 A YES, SIR.

6 Q I THINK IT WILL BE A LOT EASIER THAN JUST MAKING YOU LOOK
7 THROUGH FIFTY PAGES AT A TIME. IF YOU WOULD LOOK TOWARDS
8 THE BOTTOM OF THAT PAGE SIR, DID YOU INDICATE ABOUT A SCREEN
9 BEING CUT, AT SOME POINT, THAT YOU TESTIFIED TO EARLIER?

10 A YES, I DO.

11 Q ALL RIGHT. DO YOU SEE THE SENTENCE THAT SAYS, "THE SECOND
12 ENTRANCE APPEARS TO HAVE BEEN, 'I'M SORRY,' APPEARED TO HAVE
13 BEEN FORCED OPEN AT SOME TIME."

14 A YES.

15 Q ALL RIGHT. SO, WHEN MR. HOOD WAS ASKING YOU EARLIER WHERE IN
16 YOUR REPORT IT INDICATED THAT THERE WAS ANYTHING ABOUT A
17 FORCED OPEN DOOR, WAS THAT IN YOUR REPORT WHERE THAT WAS
18 INDICATED?

19 A YES, SIR.

20 Q ALL RIGHT, SIR. ON THE NEXT PAGE OVER SIR, IF YOU WILL FLIP BACK.
21 IS THAT WHERE IT SAYS SOMETHING ABOUT CUT – "A CUT ON THE
22 SCREEN DOOR, THE LENGTH IS APPROXIMATELY SIX INCHES AND
23 FACILITATES ACCESS TO THE INNER HOOK WHICH UNFASTENS THE
24 SCREEN DOOR."

25 A YES, SIR.

RE-DIRECT EXAMINATION OF OFFICER ARBELO BY MR. THORNTON:

167

1 Q ALL RIGHT. AND DOESN'T IT SAY THE SCREEN DOOR BEHIND THAT HAS
2 NO KNOB AND NO LOCK MECHANISM OTHER THAN THE ONE, THE LATCH
3 THAT'S ON THE INSIDE OF THE DOOR?

4 A YES, SIR.

5 Q DOES IT REFLECT IN YOUR REPORT THAT YOU EVER TRIED TO SECURE
6 THAT DOOR?

7 A IT JUST SAYS I FOUND THIS DOOR UNSECURED.

8 Q ALL RIGHT SIR. KEEP READING DOWN. DOES IT SAY YOU TRIED TO
9 SECURE THE DOOR AFTER YOU PROCESSED IT?

10 A IT SAYS, "MADE A DETERMINATION FROM THE EVIDENCE " -- DO YOU
11 WANT ME TO READ IT, SIR?

12 Q NO SIR. I WILL TRY TO HELP YOU DOWN TO IT. IF YOU WILL...

13 A I SEE IT.

14 Q ALL RIGHT, SIR. DOES IT SAY THAT AFTER YOU PROCESSED THE LATCH
15 THAT YOU TRIED TO SECURE THE DOOR?

16 A YES.

17 Q WERE YOU ABLE TO SECURE IT?

18 A "BUT WITH A DEGREE OF DIFFICULTY."

19 Q ALL RIGHT, SIR. SO WAS IT HARD TO LATCH?

20 A TO USE THE SLIDING BAR LOCK, IT WAS.

21 Q ALL RIGHT SIR. MIGHT SOMEONE WHO IS A LITTLE BIT OLDER THAN
22 YOU AND MAYBE NOT AS STRONG AS YOU HAVE EVEN MORE TROUBLE?

23 A OH, YES, SIR.

24 Q JUST OUT OF CURIOSITY, HOW LONG HAVE YOU BEEN A POLICE
25 OFFICER NOW, SERGEANT?

RE-DIRECT EXAMINATION OF OFFICER ARBELO BY MR. THORNTON:

168

1 A SIXTEEN, ALMOST SEVENTEEN YEARS.

2 Q DO YOU RESPOND TO DO A LOT OF SCENES?

3 A YES, SIR.

4 Q DO LOCKS DO YOU A LOT OF GOOD IF YOU FORGET TO USE THEM?

5 A NO, SIR.

6 MR. HOOD: OBJECTION, YOUR HONOR. WE ARE GOING BACK TO
7 SPECULATING AGAIN, YOU KNOW.

8 THE COURT: I THINK THAT IS WITHIN COMMON KNOWLEDGE.

9 Q MR. HOOD ASKED YOU SEVERAL QUESTIONS, SARGENT, ABOUT
10 WHETHER YOU -- ABOUT A POSSIBLE WOUND THAT MIGHT HAVE BEEN
11 A TOOTH MARK OR MIGHT NOT HAVE BEEN. ARE YOU AN EXPERT IN
12 DETERMINING WHETHER MARKS ARE MADE BY TEETH OR NOT?

13 A NO, I AM NOT.

14 Q SO, BUT WERE YOU ON THIS CASE FROM ITS INCEPTION ALL THE WAY
15 UNTIL NOW?

16 A NO, SIR.

17 Q SO YOU WOULDN'T KNOW IF WE HAD, SAY, A SLED PERSON WHO WAS
18 GOING TO COME TESTIFY ABOUT THAT OR NOT?

19 A NO. I WOULDN'T KNOW.

20 Q WHO WAS THE OFFICER -- DO YOU KNOW WHO TOOK THIS OVER.
21 WHAT DETECTIVE TOOK THIS OVER FROM YOU?

22 A DETECTIVE STEVE DAVIS.

23 Q ALL RIGHT, SIR. I HAVE NOTHING FURTHER. THANK YOU.

24 MR. HOOD: I HAVE ONE QUESTION --

25 THE COURT: GO AHEAD.

RE-CROSS EXAMINATION OF OFFICER ARBELO BY MR. HOOD:

169

1 MR. HOOD: BASED ON THOSE QUESTIONS.

2 RE-CROSS EXAMINATION OF SERGEANT ARBELO BY MR. HOOD:

3 Q THIS DOOR, THAT YOU SAY WAS OPEN, THERE WAS A SLIDE, A BAR
4 SLIDE, THAT YOU INDICATE WAS DIFFICULT FOR YOU TO MANEUVER OR
5 TO GET LATCHED. IS THAT CORRECT?

6 A YES, SIR.

7 Q ISN'T IT TRUE THAT THERE IS NOTHING ON THE EXTERIOR OF THAT
8 DOOR THAT SHOWED SIGNS OF THAT DOOR BEING BROKEN OPEN WITH
9 THE SLIDE CLOSED?

10 A NO. THERE IS NOTHING LIKE THAT.

11 Q OKAY. SO, WHAT YOU ARE SAYING IS, YOU DON'T KNOW HOW THAT
12 DOOR GOT OPENED. IS THAT CORRECT?

13 A I DON'T.

14 Q AND THE FRONT DOOR WAS OPEN, OTHER DOORS WERE OPEN,
15 OBVIOUSLY, TO THIS SAME HOUSE. IS THAT CORRECT?

16 A I DON'T KNOW.

17 Q THAT COULD HAVE BEEN THE SAME DOOR THAT MS. COOK ENTERED.
18 IS THAT CORRECT?

19 A I GUESS IT COULD BE.

20 Q OKAY. OKAY. I DON'T HAVE ANY OTHER QUESTIONS.

21 THE COURT: OKAY. ALL RIGHT, FOLKS THAT IS WHERE WE ARE GOING
22 TO STOP FOR TODAY. TOMORROW MORNING WE WILL START WITH A NEW
23 WITNESS. NOW, I AM GOING TO SEND YOU HOME. DON'T BEGIN
24 DELIBERATIONS OR DISCUSSIONS ABOUT THE CASE. OBVIOUSLY, YOU DON'T
25 WANT TALK TO ANYBODY ABOUT THIS CASE INCLUDING YOUR FAMILY

RE-DIRECT EXAMINATION OF OFFICER ARBELO BY MR. THORNTON:

170

1 MEMBERS OR LOVED ONES OR ANYBODY WHO MIGHT APPROACH YOU ABOUT
2 IT. IF YOU DO HAVE ANYBODY WHO DOES APPROACH YOU ABOUT TALKING
3 ABOUT THE CASE OR YOU OVERHEAR SOMEBODY TALKING ABOUT IT, PLEASE
4 NOTIFY ME. OBVIOUSLY, AGAIN, IT IS VERY IMPORTANT THAT YOU NOT
5 DISCUSS OR READ ABOUT THE CASE OR WATCH ANYTHING ABOUT THE CASE
6 ON THE NEWS, THERE WERE TV CAMERAS EARLIER TODAY, SO THERE WILL
7 BE SOMETHING ON THE NEWS TONIGHT. I AM INSTRUCTING YOU NOT TO
8 WATCH THE NEWS TONIGHT. THERE WILL PROBABLY BE SOMETHING IN THE
9 NEWSPAPER ABOUT THE CASE TOMORROW. DON'T READ THE NEWSPAPER,
10 JUST DON'T EVEN TOUCH THE NEWSPAPER. AVOID THE -- BECOME NON-
11 NEWSPAPER READERS FOR A COUPLE OF DAYS. I DON'T THINK IT WILL HURT
12 THE CIRCULATION OF THE LOCAL NEWS TOO MUCH, BUT IT IS SOMETHING WE
13 HAVE TO TAKE VERY SERIOUSLY AND I APPRECIATE YOU TAKING IT
14 SERIOUSLY AS WELL, AND IT IS OBVIOUS YOU DID TODAY. SO, WE WILL
15 BEGIN BACK TOMORROW MORNING AT 9:30 AM. IF YOU WOULD, BE IN THE
16 JURY ROOM AT 9:30 AM. WE WILL BEGIN AT THAT TIME. SO ENJOY THE REST
17 OF YOUR EVENING. WE WILL SEE YOU TOMORROW.

18 (JURY OUT AT 4:30 PM)

19 THE COURT: OKAY . WE WILL SEE Y'ALL AT 9:30 AM TOMORROW THEN.

20 **NOVEMBER 15, 2006 MORNING**

21 (JURY IN AT 9:48 AM)

22 THE COURT: GOOD MORNING, LADIES AND GENTLEMEN. LET ME ASK
23 YOU BEFORE WE BEGIN, THERE WAS, OF COURSE, COVERAGE IN THE LOCAL
24 NEWSPAPERS THIS MORNING ABOUT THE CASE. I NEED TO ASK IF THERE IS
25 ANY MEMBER OF THIS JURY PANEL THAT SAW ANY OF THE NEWSPAPER

DIRECT EXAMINATION OF DR. NICHOLS BY MR. THORNTON:

171

1 ARTICLES THIS MORNING. IN PARTICULAR, DID YOU READ ANY OF THE
2 NEWSPAPER ARTICLES THAT WERE IN THE PAPER THIS MORNING. IF SO,
3 WOULD YOU INDICATE BY RAISING YOUR RIGHT HAND. YES, MA'AM?

4 JUROR: I THOUGHT YOU MEANT SAY YES. I DIDN'T SEE ANYTHING IN
5 THE NEWSPAPER.

6 THE COURT: OUT OF AN ABUNDANCE OF CAUTION, OKAY. WE ALSO
7 SAW – YESTERDAY THERE WERE SOME NEWSPAPER AND TELEVISION FOLKS
8 IN HERE. I DIDN'T WATCH THE NEWS LAST NIGHT TO SEE IF THERE WAS ANY
9 COVERAGE ON THERE. I ASSUME THERE WAS. DID ANY MEMBER OF THE
10 JURY PANEL SEE ANY COVERAGE ABOUT THIS CASE LAST NIGHT ON THE
11 TELEVISION? ALL RIGHT. IN BOTH INSTANCES LET THE RECORD REFLECT
12 NO ONE READ THE NEWSPAPER STORIES OR SAW ANY TELEVISION
13 COVERAGE ABOUT THE CASE. ALL RIGHT, MR. SOLICITOR, IF YOU ARE
14 READY, CALL YOUR WITNESS.

15 MR. THORNTON: DR. NICHOLS.

16 (AFTER BEING DULY SWORN BY THE CLERK OF COURT, CLAY
17 ALAN NICHOLS TESTIFIED AS FOLLOWS:)

18 CLERK OF COURT: PLEASE BE SEATED. STATE YOUR NAME AND SPELL
19 IT FOR THE COURT, PLEASE.

20 WITNESS: CLAY ALLEN NICHOLS. N-I-C-H-O-L-S.

DIRECT EXAMINATION OF DR. NICHOLS BY MR. THORNTON:

22 Q DR. NICHOLS, WHAT ARE YOU A DOCTOR OF, SIR?

23 A I AM A MEDICAL DOCTOR. SPECIFICALLY, MY SPECIALTY IS FORENSIC
24 PATHOLOGY.

25 Q ALL RIGHT, SIR. SO, PATHOLOGIST, WOULD THAT BE A PROPER TITLE?

DIRECT EXAMINATION OF DR. NICHOLS BY MR. THORNTON:

172

1 A SURE. YES.

2 Q ALL RIGHT, SIR. WHAT KIND OF EDUCATION OR EXPERIENCE DO YOU
3 HAVE IN THE AREA OF PATHOLOGY?

4 A I RECEIVED MY BACHELOR OF SCIENCE DEGREE FROM THE UNIVERSITY
5 OF OKLAHOMA IN 1981. I RECEIVED MY MEDICAL DEGREE ALSO FROM
6 OKLAHOMA IN '85. AFTER THAT I ENTERED A RESIDENCY PROGRAM IN
7 BOTH ANATOMIC AND FORENSIC PATHOLOGY AT MUSC, COMPLETING
8 THAT IN '89. I WAS ON THE FACULTY AT MUSC TEACHING PATHOLOGY
9 TO RESIDENTS AND STUDENTS UNTIL 2000, WHEN I LEFT MUSC AND
10 WENT TO RICHLAND COUNTY IN PRIVATE PRACTICE. I AM BOARD
11 CERTIFIED BY THE AMERICAN BOARD OF PATHOLOGY IN BOTH
12 ANATOMIC AND FORENSIC PATHOLOGY AND I HAVE AN UNRESTRICTED
13 LICENSE TO PRACTICE MEDICINE AND SURGERY IN THE STATE OF
14 SOUTH CAROLINA.

15 Q DR NICHOLS, HAVE YOU EVER TESTIFIED IN COURT REGARDING YOUR
16 JOB AS A PATHOLOGIST?

17 A SEVERAL HUNDRED TIMES. YES.

18 MR. THORNTON: ALL RIGHT, SIR. YOUR HONOR, I'D ASK THAT DR.
19 NICHOLS BE DECLARED AN EXPERT IN THE FIELD OF FORENSIC PATHOLOGY.

20 MR. HOOD: NO OBJECTION.

21 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, NORMALLY WHEN A
22 WITNESS TESTIFIES IN COURT, THE WITNESS TELLS US ABOUT THEIR
23 OBSERVATIONS: THE THINGS THAT THEY SAW, THEY TOUCHED, THEY FELT,
24 THEY SMELLED, THAT SORT OF THING. THEY ARE NOT ALLOWED TO TESTIFY
25 IN THE FORM OF AN OPINION. HOWEVER, THE LAW SAYS THAT WHEN A

DIRECT EXAMINATION OF DR. NICHOLS BY MR. THORNTON:

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1 PERSON, BECAUSE OF THEIR EDUCATION AND EXPERIENCE IN A FIELD RISES
2 TO THE LEVEL OF EXPERTISE, THEN WE WILL ALLOW THEM TO COME TO
3 COURT TO TESTIFY AND BE QUALIFIED AS AN EXPERT AND THEY WILL NOT
4 ONLY BE ALLOWED TO TESTIFY AS TO THEIR OBSERVATIONS BUT THEY CAN
5 ALSO TESTIFY AS TO THEIR OPINION. THIS WITNESS HAS NOW BEEN
6 QUALIFIED AS AN EXPERT IN THE FIELD OF FORENSIC PATHOLOGY AND HE
7 WILL BE ALLOWED TO TESTIFY AND GIVE YOU HIS OPINION. YOU ARE NOT
8 REQUIRED TO GIVE HIS TESTIMONY ANY GREATER WEIGHT THAN YOU
9 WOULD ANY OTHER WITNESS SIMPLY BECAUSE HE IS QUALIFIED AS AN
10 EXPERT. YOU DETERMINE HOW MUCH WEIGHT YOU GIVE HIS TESTIMONY
11 BASED ON ALL OF THE EVIDENCE THAT YOU WILL HEAR THROUGHOUT THIS
12 TRIAL. ALL RIGHT? THANK YOU.

13 MR. THORNTON: THANK YOU JUDGE.

14 Q DR. NICHOLS, DID YOU HAVE AN OCCASION IN JANUARY OF 1995 TO
15 PERFORM AN AUTOPSY ON ONE CHARLES GODLEY?

16 A YES, I DID. THAT WAS ON JANUARY 16TH.

17 Q ALL RIGHT, SIR. COULD YOU JUST TELL THE MEMBERS OF THE JURY
18 WHAT YOUR FINDINGS WERE -- WHAT YOUR RELEVANT FINDINGS
19 WERE AS REGARDS TO ANY INJURIES THAT YOU MIGHT HAVE FOUND.

20 A YES. ESSENTIALLY, THERE WERE TWO BLUNT FORCE INJURIES
21 IDENTIFIED. A BLUNT FORCE INJURY IS ONE THAT OBVIOUSLY IS NOT
22 CAUSED BY A KNIFE WHICH IS A SHARP FORCE INJURY. WHAT WE ARE
23 TALKING ABOUT IS SOME KIND OF BLUNT OBJECT AND WHEN A BLUNT
24 OBJECT STRIKES A PART OF THE BODY, THERE IS USUALLY A TEARING
25 OF THE SKIN CAUSING LACERATION AND THERE IS ALSO BRUISING

DIRECT EXAMINATION OF DR. NICHOLS BY MR. THORNTON:

174

1 AROUND IT AND MEDICALLY THAT IS CALLED A CONTUSION. AND
2 SPECIFICALLY, THERE IS A MID-LINE LACERATION OF THE
3 MID-FOREHEAD, APPROXIMATELY HERE (INDICATING). THERE WAS AN
4 UNDERLINING SKULL FRACTURE AND THIS LACERATION MEASURED
5 1.7 INCHES BY 0.9 INCH IN WIDTH. THE OTHER INJURY WAS A
6 LACERATION WITH AN UNDERLINING SKULL FRACTURE LOCATED ON
7 THE RIGHT TEMPLE, RIGHT ABOUT HERE (INDICATING) WITH A 0.8 INCH
8 SEMICIRCULAR LACERATION AND AN ASSOCIATED 1.2 INCH DIAMETER
9 CIRCULAR IMPRINT AND ABRASION. SO WHAT THAT MEANS IS, NOT
10 ONLY WITH THIS INJURY DID YOU HAVE THE TEARING, BUT THERE IS
11 ALSO A CIRCULAR BRUISE OR ABRASION AROUND IN THAT AREA.
12 (INDICATING) THERE WAS EXTENSIVE PERIORBITAL ECCHYMOSIS AND
13 THAT IS A BIG TERM WHICH MEANS HE HAD TWO BIG BLACK EYES.
14 LET'S SEE, AND ONCE WE LOOKED UNDERNEATH THE SCALP DURING
15 THE COURSE OF THE AUTOPSY, THE SCALP IS ACTUALLY PEELED BACK
16 OVER THE FOREHEAD SO WE CAN EXAMINE THE ENTIRE TOP OF THEIR
17 HEAD, THERE WERE COMMINUTED AND DEPRESSED SKULL FRACTURES
18 AND THE COMMINUTED SKULL FRACTURE MEANS THE SKULL HAS BEEN
19 FRACTURED TO LOOK LIKE A JIGSAW PUZZLE, IT IS MULTIPLE SMALL
20 PIECES AND WITH THE DEPRESSED SKULL FRACTURE, WHICH MEANS
21 THAT THE PORTIONS OF THE SKULL ARE ACTUALLY DRIVEN BELOW THE
22 LEVEL OF THE SKULL. LET'S SEE. THE CALVARIAM WAS REMOVED AND
23 THE CALVARIAM IS THE TOP PART OF THE HEAD THAT WAS REMOVED
24 AS PART OF THE AUTOPSY. AND THERE WAS AN APPROXIMATELY
25 200CC RIGHT TEMPORAL SUBDURAL HEMATOMA AND WHAT THAT

DIRECT EXAMINATION OF DR. NICHOLS BY MR. THORNTON:

175

1 MEANS IS THERE WAS A COLLECTION OF BLOOD ON THE RIGHT SIDE OF
2 THE HEAD, UNDERNEATH THE PROTECTIVE MEMBRANE KNOWN AS THE
3 DURA. SUBDURAL HEMATOMA IS, 99% OF THE TIME, CAUSED BY BLUNT
4 TRAUMA WHICH WE HAVE HERE. SO, GIVEN THE TWO, WE KNOW THAT
5 SUBDURAL HEMATOMA WAS CAUSED BY THE BLUNT TRAUMA. THERE
6 WAS ALSO BLEEDING OVER THE BRAIN. THE BRAIN CELL WAS BRUISED
7 AND SLIGHTLY TORN AND THE BRAIN WAS FURTHER DAMAGED BY
8 BONE FRAGMENTS BEING DRIVEN INTO THE BRAIN AS A RESULT OF THE
9 DEPRESSED SKULL FRACTURES. FURTHER SKULL FRACTURES WERE
10 IDENTIFIED AFTER THE BRAIN WAS REMOVED AND WE COULD
11 ACTUALLY LOOK ON THE FLOOR OF THE SKULL. AND THE FLOOR OF
12 THE SKULL MAKES UP ACTUALLY THE ROOF OF YOUR EYES AND PART
13 OF YOUR FACIAL BONES SO THAT WHEN THE BRAIN IS REMOVED WE
14 CAN LOOK DOWN AND ACTUALLY SEE A DISTAL SKULL FRACTURE. SO
15 WE HAD SKULL FRACTURES HERE, HERE AND IN THE BASE OF THE
16 BRAIN AS WELL, ASSOCIATED BLEEDING, AS WELL AS THE DAMAGE TO
17 THE BRAIN ITSELF.

18 Q DR. NICHOLS, TO A REASONABLE DEGREE OF MEDICAL CERTAINTY, DO
19 YOU HAVE AN OPINION AS TO WHAT THESE WOUNDS ARE
20 CHARACTERISTIC OF OR CONSISTENT WITH?

21 A MAINLY WITH THE CIRCULAR ABRASIONS OR SEMICIRCULAR
22 ABRASIONS, YOU ARE LOOKING FOR A ROUNDED OBJECT. FOR THIS
23 TYPE OF INJURY YOU ARE LOOKING FOR SOMETHING WITH A
24 SIGNIFICANT MASS THAT WASN'T A LIGHT OBJECT, AND I BELIEVE THAT
25 THESE INJURIES ARE CONSISTENT WITH BLOWS FROM A HAMMER. IN

DIRECT EXAMINATION OF DR. NICHOLS BY MR. THORNTON:

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1 ADDITION, A BLOW WAS ALSO FOUND ON THE BACK OF THE LEFT HAND.

2 Q ALL RIGHT, SIR. WAS THERE ANY PARTICULAR WAY WHICH YOU
3 WOULD CHARACTERIZE THAT WOUND?

4 A OFTENTIMES WHEN PEOPLE ARE ASSAULTED THEY PUT THEIR HANDS
5 UP AS A FORM OF PROTECTION TRYING TO WARD OFF THE ASSAILANT
6 AND THESE ARE KNOWN AS DEFENSIVE INJURIES BECAUSE THE
7 HANDS, THE FOREARMS ARE STRUCK IN THE COURSE OF THE ATTACK.

8 Q DOCTOR, TO A REASONABLE DEGREE OF MEDICAL CERTAINTY CAN
9 YOU GIVE ME AN OPINION OF WHETHER OR NOT THESE INJURIES
10 COULD HAVE BEEN CAUSED OR CHARACTERISTIC OF A BB OR A PELLET
11 FIRED FROM A C-O 2 BB PISTOL?

12 A A WHAT?

13 Q I'M SORRY. A BB GUN. DO THE WOUNDS LOOK LIKE THEY WERE
14 CAUSED BY A BB?

15 A NO.

16 Q IN FACT, YOUR TESTIMONY IS THAT THEY ARE MOST CHARACTERISTIC
17 OF BLOWS FROM A HAMMER?

18 A THAT'S CORRECT.

19 Q AND DR. NICHOLS, WHILE I KNOW YOU CAN'T IDENTIFY ANY
20 PARTICULAR HAMMER, IS THIS THE KIND OF HAMMER THAT YOU ARE
21 TALKING ABOUT?

22 A MAY I SEE IT?

23 (MR. THORNTON HANDS HAMMER TO DR. NICHOLS)

24 A THE HAMMER WOULD HAVE TO HAVE A CIRCULAR FACE SUCH AS THIS.
25 WE HAVE SEEN ATTACKS WHERE HAMMER BLOWS CAN BE CAUSED BY

CROSS EXAMINATION OF DR. NICHOLS BY MR. HOOD:

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1 BLOWS FROM THE SIDE AS WELL AS THE CLAW PART OF THE HAMMER.
2 IN THIS PARTICULAR CASE, THE INJURIES LOOK TO BE CAUSED BY THE
3 ACTUAL FACE OF THE HAMMER, THE FLAT ROUNDED PART.

4 Q DR. NICHOLS, TO A REASONABLE DEGREE OF MEDICAL CERTAINTY, DO
5 YOU HAVE AN OPINION AS TO HOW BEST THIS DEATH CAN BE
6 DESCRIBED?

7 A THE DEATH WAS DETERMINED AS A HOMICIDE, AS FAR AS THE MANNER
8 OF DEATH. THE CAUSE OF DEATH WAS LISTED AS MASSIVE HEAD
9 TRAUMA DUE TO BLUNT FORCE INJURY.

10 Q DR. NICHOLS, YOU HAVE ALREADY TESTIFIED, YOU HAVE TESTIFIED IN
11 HUNDREDS OF CASES, JUST GIVE ME A ROUGH BALL PARK FIGURE,
12 HOW MANY AUTOPSIES DO YOU THINK YOU HAVE DONE?

13 A PUSHING 5,000.

14 Q HOW MANY SUICIDES BY HAMMER HAVE YOU EVER SEEN?

15 A NONE.

16 Q THANK YOU, SIR.

17 MR. THORNTON: YOUR HONOR, I HAVE NO FURTHER QUESTIONS.

18 Q DR. NICHOLS, PLEASE ANSWER ANY QUESTIONS MR. HOOD HAS FOR
19 YOU.

20 A ALL RIGHT.

21 **CROSS EXAMINATION OF DOCTOR NICHOLS BY MR. HOOD:**

22 Q DR. NICHOLS, IN THE COURSE OF YOUR EXAMINATION OF THE BODY, I
23 BELIEVE YOU DISCOVERED SOMETHING THAT LOOKED LIKE
24 FINGERPRINTS ON THE LEG OF THE DECEASED. ISN'T THAT CORRECT?

25 (WITNESS LOOKS AT DOCUMENT)

CROSS EXAMINATION OF DR. NICHOLS BY MR. HOOD:

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- 1 A WHERE ARE YOU, SIR? I DON'T SEE THAT ON MY REPORT.
- 2 Q YOU ARE THE PERSON WHO PERFORMED THE AUTOPSY. ISN'T THAT
- 3 CORRECT?
- 4 A THAT'S CORRECT.
- 5 Q AND YOU HAD OTHER OFFICERS FROM THE BEAUFORT COUNTY
- 6 SHERIFF'S OFFICE AND PEOPLE LIKE THAT, WHO WERE PRESENT
- 7 DURING THE COURSE OF THE AUTOPSY. IS THAT CORRECT?
- 8 A YES, THAT'S ENTIRELY POSSIBLE, THIS CASE IS ELEVEN YEARS OLD.
- 9 Q RIGHT. RIGHT. DO YOU RECALL AN OFFICER USING THE OLD BLACK
- 10 STUFF ON THE LEG TO, YOU KNOW, LOOK AT AND SEE IF THERE WERE
- 11 CERTAIN IMPRESSIONS ON THE LEG CONCERNING FINGERPRINTS IN
- 12 THIS CASE?
- 13 A NO. AND FIRST OFF, I WOULDN'T THAT. THAT WOULD BE BEAUFORT
- 14 SHERIFF'S OFFICE WHO WOULD DOCUMENT THAT. THE OTHER THING
- 15 IS, LIFTING FINGERPRINTS FROM A BODY IS DIFFICULT AT BEST. I
- 16 WOULD BE SURPRISED IF ANYBODY ACTUALLY PURPOSELY TRIED TO
- 17 GET FINGERPRINTS OFF A BODY. BUT, IF YOU SAY THAT HAPPENED, I
- 18 CAN'T ARGUE. I DON'T REMEMBER IT.
- 19 Q OKAY. WELL, LET ME ASK YOU A COUPLE OF OTHER QUESTIONS
- 20 ABOUT THIS THEN. YOU SAY THAT THE WOUNDS WERE CAUSED BY A
- 21 CIRCULAR OBJECT. IS THAT CORRECT?
- 22 A THAT'S CORRECT.
- 23 Q NOW, WASN'T THERE AN ACTUAL HOLE IN ONE OF THE PARTICULAR
- 24 WOUNDS?
- 25 A I BELIEVE THAT WAS A DEPRESSED SKULL FRACTURE, YES.

CROSS EXAMINATION OF DR. NICHOLS BY MR. HOOD:

179

1 Q AND THAT WASN'T A CIRCULAR-TYPE THING, IT WAS A JAGGED-TYPE
2 THING, WASN'T IT?

3 A WELL, USUALLY WITH BLUNT FORCE OBJECTS, YOU GET THAT JAGGED
4 INJURY, WHICH WE COMMONLY CALL SKULL FRACTURE, YES.

5 Q THE TYPE OF DEATHS YOU ARE TALKING ABOUT, THESE, YOU KNOW,
6 ON THIS PARTICULAR CASE, I ASSUME HAD A CASE HISTORY ON THE
7 VICTIM HIMSELF. IS THAT CORRECT?

8 A THAT'S CORRECT.

9 Q AND SO YOU WERE AWARE OF THE FACT THAT THERE WERE NO SIGNS
10 OF FORCED ENTRY INTO THE HOUSE AND THINGS OF THAT NATURE. IS
11 THAT CORRECT?

12 A THAT'S POSSIBLE. I DON'T RECALL THAT OFF THE TOP OF MY HEAD.

13 Q AND DID YOU HAVE THE OPPORTUNITY TO LOOK AT ANY PICTURES OR
14 DESCRIPTIONS OF HOW, WHERE THE BODY WAS FOUND, HOW IT WAS
15 FOUND AND THINGS OF THAT NATURE?

16 A I DON'T RECALL VIEWING ANY PHOTOGRAPHS. THE INFORMATION, AS
17 FAR AS THE HISTORY, WOULD BE IN A DIFFERENT FILE. TODAY, I HAVE
18 A COPY OF MY AUTOPSY REPORT.

19 Q WELL, BASED ON WHAT YOU WERE ABLE TO DETERMINE FROM THE
20 FRACTURES, DID THIS PERSON DIE IMMEDIATELY? DID HE DIE OVER A
21 PERIOD OF TIME? WHAT DID HE ACTUALLY DIE FROM?

22 A HE DIED AS A RESULT OF THE MASSIVE HEAD TRAUMA, WHICH WOULD
23 HAVE TAKEN SEVERAL MINUTES FOR HIM TO ACTUALLY DIE FROM.

24 Q A PERSON SUSTAINING THOSE TYPES OF BLOWS THAT YOU ARE
25 TALKING ABOUT, AND I THINK THERE WERE TWO. IS THAT CORRECT?

CROSS EXAMINATION OF DR. NICHOLS BY MR. HOOD:

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1 A TWO PLUS ONE TO THE BACK OF THE HAND.

2 Q OKAY. A PERSON SUSTAINING THOSE TYPES OF BLOWS, WOULD THEY
3 BE ABLE TO MOVE AROUND?

4 A IT'S POSSIBLE, BUT IT WOULD BE SOMETHING THAT WOULD ONLY BE
5 TECHNICALLY POSSIBLE. LIKE SOMEBODY SHOT IN THE HEAD, SOME
6 PEOPLE DIE IMMEDIATELY, SOME PEOPLE MAY DIE SECONDS OR
7 MINUTES LATER, SOME PEOPLE MAY DIE HOURS LATER. I CANNOT
8 PREDICT BY LOOKING AT THE WOUNDS EXACTLY WHEN A PERSON
9 WOULD DIE. A CLASSIC EXAMPLE WAS SOMEBODY IN OUR TEXTBOOKS,
10 WHO WAS SHOT IN THE MOUTH WITH A 357 MAGNUM HANDGUN,
11 LITERALLY LIFTED THE TOP OF HIS HEAD OFF. HE LIVED UNASSISTED
12 FOR AT LEAST 45 MINUTES AND I WOULD HAVE TO TESTIFY THAT IN
13 THAT REGARD, THAT HE WOULD HAVE DIED AN IMMEDIATE DEATH, BUT
14 IN REALITY, WITH APPROPRIATE MEASUREMENTS AND WITH WITNESS
15 STATEMENTS, HE DID NOT DIE IMMEDIATELY.

16 Q OKAY. NOW, DO YOU RECALL DURING THE COURSE OF YOUR
17 EXAMINATION OF THE BODY IN THIS CASE, FINDING HAIRS IN THE HAND
18 OF THE VICTIM IN THIS CASE?

19 (WITNESS LOOKS AT DOCUMENT)

20 A NO.

21 Q NOW, YOU SAY, THAT BASED ON YOUR PAST EXPERIENCE AND THINGS
22 OF THAT NATURE, THAT YOU HAVE EXAMINED SEVERAL PEOPLE WHO
23 HAVE DIED AS A RESULT OF SELF-INFLICTED WOUNDS. IS THAT
24 CORRECT?

25 A THAT'S CORRECT.

CROSS EXAMINATION OF DR. NICHOLS BY MR. HOOD:

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1 Q AND PEOPLE CAN INFLICT WOUNDS ON THEMSELVES IN STRANGE AND
2 UNUSUAL WAYS. ISN'T THAT CORRECT?

3 A THAT'S CORRECT.

4 Q AND PEOPLE WHO SELF-INFLICT WOUNDS CAN DO IT OVER A PERIOD
5 OF TIME AS OPPOSED TO JUST ONE PARTICULAR ACT. ISN'T THAT
6 CORRECT?

7 A YES, SIR. THERE ARE PEOPLE WHO ARE INTO WHAT IS KNOWN AS
8 SELF-MUTILATION BEHAVIOR.

9 Q NOW, PEOPLE WHO ARE JUST SUFFERING FROM VARIOUS PROBLEMS
10 SUCH AS DEPRESSION AND THINGS OF THIS NATURE, ARE THOSE THE
11 MOST LIKELY PEOPLE AND DO YOU HAVE THAT INFORMATION WHEN
12 YOU MAKE A DETERMINATION AS TO WHETHER OR NOT IT WAS A
13 SUICIDE OR NOT?

14 A THE PEOPLE WHO WOULD DO THIS TYPE OF BEHAVIOR WOULD BE
15 SCHIZOPHRENICS, PEOPLE WHO ARE PSYCHOTIC, TECHNICALLY
16 CRAZY, AND PEOPLE WHO WOULD BE SUFFERING FROM SOMETHING
17 CALLED MUNCHAUSEN'S SYNDROME WHO MUTILATE THEMSELVES TO
18 GET SYMPATHY FROM OTHER PEOPLE AND PEOPLE WHO HAVE
19 CERTAIN METABOLIC DISEASES SUCH AS LESCH-NYHAN WHICH IS A
20 VERY RARE DISORDER AND THEY DEVELOP SELF MUTILATION. I HAVE
21 BEEN DOING THIS WORK FOR TWENTY-FIVE YEARS AND I'VE NEVER
22 RUN ACROSS ANYBODY WHO KILLED THEMSELVES WITH A HAMMER OR
23 OTHER SORT OF BLUNT OBJECT, BUT IS IT TECHNICALLY POSSIBLE?
24 YES. BUT, I COULDN'T TESTIFY HERE TODAY THAT THAT IS WHAT
25 HAPPENED. AND TODAY I AM SAYING THIS A HOMICIDE AS A RESULT OF

CROSS EXAMINATION OF DR. NICHOLS BY MR. HOOD:

182

1 BLUNT TRAUMA.

2 Q BUT, YOU CAN SAY THAT, YOU KNOW, IT IS NOT IMPOSSIBLE FOR A
3 PERSON TO KILL THEMSELVES WITH A HAMMER. ISN'T THAT CORRECT?

4 A THAT'S CORRECT. BUT ONCE AGAIN, I HAVE NO KNOWLEDGE OF THAT,
5 AND THAT'S TWENTY-FIVE YEARS OF EXPERIENCE.

6 Q NOW, THIS PARTICULAR WOUND THAT YOU CLAIM IS ON THE TOP OF
7 THE HAND HERE.

8 A YES.

9 Q DID IT APPEAR TO YOU, OR DID ANYBODY ELSE MAKE REFERENCE TO IT
10 AS BEING A BITE MARK?

11 A IT DID NOT LOOK LIKE A BITE MARK TO ME. IT LOOKS LIKE BLUNT
12 TRAUMA TO ME.

13 Q WELL, DID ANYBODY TAKE ANY IMPRESSIONS OR PICTURES OR THAT
14 THEY TRIED TO GET IMPRESSIONS FROM THAT PARTICULAR WOUND?

15 A NO.

16 Q I DON'T THINK I HAVE ANY FURTHER QUESTIONS. THANK YOU.

17 A THANK YOU, MR. HOOD.

18 THE COURT: REDIRECT?

19 MR. THORNTON: I DON'T HAVE ANY RE-DIRECT. THANK YOU VERY
20 MUCH DR. NICHOLS. YOU MAY STEP DOWN. I ASK THAT HE BE EXCUSED,
21 YOUR HONOR.

22 THE COURT: ANY OBJECTION?

23 MR. HOOD: I DON'T HAVE ANY OBJECTION.

24 THE COURT: THANK YOU.

25 WITNESS: THANK YOU. THANK YOU, YOUR HONOR.

DIRECT EXAMINATION OF DR. KIM COLLINS BY MR. THORNTON:

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1 **MR. THORNTON:** KIM COLLINS. DR. COLLINS.

2 **MR. THORNTON:** THE STATE CALLS DR. COLLINS TO THE STAND.

3 (AFTER BEING DULY SWORN BY THE CLERK OF COURT,

4 DR. KIM COLLINS TESTIFIED AS FOLLOWS:)

5 **CLERK OF COURT:** PLEASE BE SEATED. PLEASE STATE YOUR NAME

6 AND SPELL IT FOR THE COURT PLEASE.

7 **WITNESS:** DR. KIM A. COLLINS. C-O-L-L-I-N-S.

8 **DIRECT EXAMINATION OF DR. KIM COLLINS BY MR. THORNTON:**

9 Q DR. COLLINS, WHAT ARE YOU A DOCTOR OF?

10 A FORENSIC PATHOLOGY.

11 Q DOES THAT MEAN YOU ARE A PATHOLOGIST?

12 A YES, I AM.

13 Q WHAT KIND OF TRAINING, EDUCATION OR EXPERIENCE DO YOU HAVE IN
14 BEING A PATHOLOGIST?

15 A MY TRAINING IN COLLEGE WAS AT THE UNIVERSITY OF GEORGIA,
16 WHERE I RECEIVED MY BACHELORS IN MICROBIOLOGY. I THEN WENT
17 TO MEDICAL SCHOOL AT THE MEDICAL COLLEGE OF GEORGIA TO
18 RECEIVE MY MD. FOLLOWING MEDICAL SCHOOL, I COMPLETED A
19 FIVE-YEAR RESIDENCY IN PATHOLOGY AT WAKE FOREST UNIVERSITY IN
20 NORTH CAROLINA. AND THEN AFTER MY RESIDENCY, I COMPLETED A
21 ONE-YEAR FORENSIC PATHOLOGY FELLOWSHIP AT THE MEDICAL
22 UNIVERSITY OF SOUTH CAROLINA IN CHARLESTON.

23 Q HAVE YOU EVER TESTIFIED IN COURT BEFORE AS A FORENSIC
24 PATHOLOGIST?

25 A YES, SIR. I HAVE.

DIRECT EXAMINATION OF DR. KIM COLLINS BY MR. THORNTON:

184

1 Q HOW MANY TIMES?

2 A APPROXIMATELY TWO HUNDRED, TWO HUNDRED AND FIFTY.

3 MR. THORNTON: YOUR HONOR, I WOULD ASK THAT DR. COLLINS BE
4 DECLARED AN EXPERT IN THE FIELD OF FORENSIC PATHOLOGY.

5 MR. HOOD: I HAVE NO OBJECTIONS.

6 THE COURT: ALL RIGHT. AS I TOLD YOU EARLIER ABOUT EXPERT
7 WITNESSES, THE SAME ADMONITIONS WOULD APPLY TO THIS WITNESS WHO
8 HAS NOW BEEN QUALIFIED AS AN EXPERT WITNESS IN THE FIELD OF
9 FORENSIC PATHOLOGY. YOU DETERMINE HOW MUCH WEIGHT TO GIVE HER
10 TESTIMONY BASED UPON ALL OF THE EVIDENCE THAT YOU WILL HEAR
11 THROUGHOUT THE TRIAL. YOU MAY PROCEED.

12 MR. THORNTON: THANK YOU, JUDGE.

13 Q DR. COLLINS, IN JANUARY – ACTUALLY, JANUARY 16th OF 1995, DID YOU
14 ASSIST IN PREFORMING AN AUTOPSY ON A CHARLES GODLEY?

15 A YES, I DID.

16 Q ALL RIGHT, MA'AM. AND WE'VE ALREADY, OF COURSE, RECEIVED SOME
17 TESTIMONY ABOUT THAT TODAY WITH DR. NICHOLS. CAN YOU TELL ME
18 WHAT THE IMPORTANT FINDINGS ARE WITH REGARD TO ANY INJURIES?

19 A YES. THE MAJOR FINDINGS WERE BLUNT FORCE TRAUMA AND THIS
20 WAS PREDOMINATELY TO THE HEAD. THERE WERE TWO LOCATIONS
21 OF IMPACT OF THE TRAUMA TO THE HEAD. AS WELL, THERE WAS
22 BLUNT FORCE TRAUMA TO THE HAND WHICH WAS CONSISTENT WITH
23 THE DEFENSE WOUND. THE TRAUMA TO THE HEAD RESULTED IN
24 TEARING OF THE SKIN —

25 MR. HOOD: YOUR HONOR, YOU KNOW, THIS IS JUST REPEATING THE

DIRECT EXAMINATION OF DR. KIM COLLINS BY MR. THORNTON:

185

1 SAME REPORT THAT DR. NICHOLS JUST READ. I AM NOT QUITE SURE WHERE
2 WE ARE GOING HERE, BUT, YOU KNOW, IT'S CUMULATIVE. WE ARE JUST
3 GOING OVER AND OVER THE SAME GROUND AGAIN. I MEAN, WHAT UNUSUAL
4 DID SHE DO AT THIS PARTICULAR AUTOPSY THAT DR. NICHOLS HAS NOT
5 ALREADY TESTIFIED TO? YOU KNOW? IT IS MOSTLY CUMULATIVE EVIDENCE
6 THAT IS ABSOLUTELY NO VALUE TO US.

7 MR. THORNTON: YOUR HONOR, THE STATE'S POSITION IS, SHE IS A
8 QUALIFIED EXPERT AS THE OTHER EXPERT IS. SHE WAS AT THE SAME
9 AUTOPSY AND, I THINK, CAN TESTIFY TO THE FINDINGS. IF SHE HAPPENS TO
10 AGREE WITH DR. NICHOLS, I DON'T FEEL THAT THAT IS CUMULATIVE IN AND
11 OF ITSELF, JUDGE. I CAN MOVE ON TO ANOTHER AREA.

12 THE COURT: OBJECTION'S OVERRULED. YOU MAY PROCEED.

13 Q THANK YOU, JUDGE. PLEASE CONTINUE DR. COLLINS.

14 A THE INJURIES THAT WE SAW AT AUTOPSY WERE TWO FATAL INJURIES
15 TO THE HEAD, WHICH WERE BLUNT FORCE TRAUMA TO THE FOREHEAD
16 AND TO THE RIGHT ASPECT OF THE HEAD OR THE TEMPORAL REGION.
17 THERE WAS TEARING OR LACERATION OF THE SKIN AND UNDERNEATH
18 THERE WERE DEPRESSED SKULL FRACTURES IN BOTH LOCATIONS
19 RESULTING IN BLEEDING AROUND THE BRAIN AND BRUISING OR
20 CONTUSION TO THE BRAIN.

21 Q DR. COLLINS, TO A REASONABLE DEGREE OF MEDICAL CERTAINTY, CAN
22 YOU TESTIFY AS TO WHAT THESE WOUNDS WOULD BE
23 CHARACTERISTIC OF, AS FAR AS WHAT INSTRUMENT MIGHT BE USED?

24 A IT WAS CHARACTERISTIC OF A BLUNT TRAUMA AND THERE WAS A
25 PATTERN TO THE INJURY THAT WAS IN A TYPE OF SEMICIRCULAR

DIRECT EXAMINATION OF DR. KIM COLLINS BY MR. THORNTON:

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1 CONFIGURATION AND THAT, WITH THE UNDERLINING DEPRESSED
2 SKULL FRACTURE, WAS CONSISTENT WITH A HAMMER.

3 Q WOULD IT BE CONSISTENT WITH A BB FIRED FROM A BB GUN?

4 A NO.

5 Q WITH A REASONABLE DEGREE OF MEDICAL CERTAINTY, CAN YOU
6 TESTIFY AS TO HOW BEST DESCRIBE THE MANNER OF DEATH?

7 A THERE ARE FIVE MANNERS OF DEATH. THERE IS NATURAL, ACCIDENT,
8 SUICIDE, HOMICIDE AND UNDETERMINED. AND SO, THOSE ARE THE
9 FIVE THAT WE HAVE TO CHOOSE FROM WHEN WE DO CLASSIFY THE
10 MANNER OF DEATH AND IN THIS CASE THE MANNER OF DEATH WAS
11 HOMICIDE.

12 Q AS PART OF AN AUTOPSY, ARE THERE SOMETIMES SOME TYPES OF
13 TOXICOLOGY THAT GOES ALONG WITH IT?

14 A YES. WE DO OR PERFORM TOXICOLOGY ON ALL OF OUR CASES
15 WHETHER IT IS A ONE-YEAR-OLD BABY OR HUNDRED-YEAR-OLD
16 INDIVIDUAL. SO, WE DO TOXICOLOGY LOOKING FOR ALCOHOL IN THE
17 BLOOD AS WELL AS ANY DRUGS, WHETHER IT IS CAFFEINE, ASPIRIN, OR
18 ILLEGAL DRUGS.

19 Q AND DID YOU DO A TOXICOLOGY IN THIS CASE?

20 A YES, WE DID.

21 Q CAN YOU TELL ME WHAT YOUR TOXICOLOGY REPORT OR ANALYSIS
22 SHOWED?

23 A WHAT WAS FOUND IN THE DECEDENT WAS A DECONGESTANT, WHICH
24 IS ONE YOU CAN ACTUALLY BUY OVER THE COUNTER, AS WELL AS
25 THERE WAS AN ANTIBIOTIC.

CROSS EXAMINATION OF DR. KIM COLLINS BY MR. HOOD:

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1 Q WOULD YOU HAVE NOTATED EXCESSIVE AMOUNTS OF ALCOHOL IN THE
2 BLOOD?

3 A IF IT HAD BEEN PRESENT, YES.

4 Q DID YOU NOTATE ANY?

5 A NO.

6 Q DID YOU NOTATE ANY OTHER ILLEGAL NARCOTICS OR ANY OTHER
7 OVER-THE-COUNTER PRESCRIPTION DRUGS?

8 A NO. THE DRUG SCREEN AS WELL AS THE ANALYSIS ON THE BLOOD
9 WAS SPECIFICALLY NEGATIVE FOR ALCOHOL. NO ALCOHOL WAS
10 PRESENT AND NO OTHER TYPES OF SUBSTANCES OR DRUGS WERE
11 PRESENT, ONLY THE TWO I MENTIONED, THE DECONGESTANT AND THE
12 ANTIBIOTIC.

13 Q THANK YOU, DR. COLLINS. I DON'T HAVE ANY OTHER QUESTIONS.
14 PLEASE ANSWER ANY QUESTIONS MR. HOOD HAS.

15 CROSS EXAMINATION OF KIM COLLINS BY MR. HOOD:

16 Q DR. COLLINS, I BELIEVE YOU WERE A FELLOW AT THE TIME. IS THAT
17 CORRECT? IN PATHOLOGY?

18 A YES. THAT WAS THE ONE YEAR FELLOWSHIP I MENTIONED IN
19 FORENSICS.

20 Q AND YOU WERE WORKING UNDER DR. NICHOLS. IS THAT CORRECT?

21 A YES. HE WAS WHAT WE CALL AN ATTENDING PHYSICIAN.

22 Q AND DID YOU REMOVE THE HAIRS FROM THE RIGHT HAND OF THE
23 DECEASED IN THIS CASE?

24 (WITNESS LOOKS AT DOCUMENT)

25 A WE REMOVED WHAT WE CALLED A FIBERS AND HAIRS FROM THE RIGHT

CROSS EXAMINATION OF DR. KIM COLLINS BY MR. HOOD:

188

1 HAND.

2 Q DID YOU DO THAT?

3 A I CAN'T RECALL EXACTLY WHO REMOVED IT. I DO KNOW THAT IT WAS
4 SIGNED OVER BY DR. NICHOLS, SIGNED OVER TO THE BEAUFORT
5 COUNTY SHERIFF'S OFFICE.

6 Q CAN YOU SHED ANY LIGHT ON FINGER IMPRESSIONS, PRINTS FOUND
7 ON THE DECEASED LEG? LOWER LEG?

8 (WITNESS REFERS TO DOCUMENT)

9 A NO. I CAN NOT. I DON'T KNOW IF THOSE WERE FOUND AT THE SCENE,
10 BUT I DON'T HAVE A RECORD OF THAT FIND AT THE AUTOPSY.

11 Q I DON'T HAVE ANY MORE QUESTIONS.

12 THE COURT: ANYTHING FURTHER?

13 MR. THORNTON: I DON'T HAVE ANY RE-DIRECT.

14 MR. HOOD: EXCUSE ME. I DO HAVE ONE, YOUR HONOR. I'M SORRY.

15 THE COURT: ALL RIGHT.

16 **CONTINUING CROSS EXAMINATION OF DR. COLLINS BY MR. HOOD:**

17 Q THESE TYPES OF WOUNDS THAT WE ARE TALKING ABOUT HERE, THE
18 ONE ON THE HAND, OKAY?

19 A YES.

20 Q DID IT APPEAR AS THOUGH OR IS THERE ANY ISSUE CONCERNING
21 WHETHER OR NOT THIS COULD HAVE BEEN A BITE MARK?

22 A NO. IT WASN'T A BITE MARK. IT WAS SEMICIRCULAR, BUT IT WAS ONLY
23 A HALF-OF-AN-INCH, WHICH WOULD BE MUCH SMALLER THAN THE ARC
24 THAT YOU COULD GET FROM A BITE MARK.

25 Q AND DID ANYBODY TAKE ANY IMPRESSIONS OR ANYTHING OF THAT

CROSS EXAMINATION OF DR. KIM COLLINS BY MR. HOOD:

- 1 NATURE FROM THAT PARTICULAR WOUND?
- 2 A FROM THE HAND WOUND?
- 3 Q YES.
- 4 A NO. I HAVE NEVER HEARD OF DOING THAT.
- 5 Q OKAY. AND DID ANYBODY SWAB THAT FOR ANY TYPE OF RESIDUE LEFT
- 6 IF IT HAD BEEN ADMINISTERED BY A TOOTH OR TEETH?
- 7 A IF WE HAD THOUGHT IT WAS CONSISTENT WITH A BITE MARK, WE
- 8 WOULD HAVE SWABBED IT.
- 9 Q OKAY. AND WHY WOULD YOU SWAB IT?
- 10 A IF I THOUGHT IT WAS A BITE MARK?
- 11 Q YES.
- 12 A LOOKING FOR ANY SALIVA THAT COULD BE LEFT BEHIND.
- 13 Q AND SALIVA DOESN'T JUST GO AWAY DOES IT? I MEAN, EVEN THOUGH
- 14 IT MIGHT DRY UP IT IS STILL THERE. ISN'T THAT CORRECT?
- 15 A IT CAN BE, SOME RESIDUE CAN BE PRESENT.
- 16 Q AND WERE THERE BEAUFORT COUNTY POLICE OFFICERS AND OTHER
- 17 OFFICERS PRESENT DURING THE COURSE OF THIS AUTOPSY?
- 18 A YES. WHEN WE TRANSFERRED THE MATERIALS OVER, THERE WAS A
- 19 ROBERT ARBELO WITH THE BEAUFORT COUNTY SHERIF'S OFFICE.
- 20 Q AND NOW, THESE TWO OR THREE WOUNDS THAT WE ARE TALKING
- 21 ABOUT HERE, IF AN OBJECT, WHATEVER IT WAS THAT WAS USED TO
- 22 ADMINISTER AS YOU BELIEVE THESE WOUNDS, STRUCK IN THE AREAS
- 23 THAT WE ARE TALKING ABOUT ON THE BODY OR WHATEVER, WOULD
- 24 ONE NORMALLY FIND ON THE OBJECT WHICH INFLECTED THE WOUND,
- 25 SKIN FROM THE WOUND ITSELF?

CROSS EXAMINATION OF DR. KIM COLLINS BY MR. HOOD:

190

1 A DEPENDING ON IF THE OBJECT HAS A ROUGH SURFACE OR TEXTURE
2 THAT WOULD EXTEND AND BE TRANSFERRED TO THE OBJECT. YOU
3 CAN FIND IT BUT, HOWEVER, YOU CAN'T ALWAYS FIND IT.

4 Q AND THE WOUND WE ARE TALKING ABOUT, RIGHT UP HERE,
5 (INDICATING) LOOKED LIKE A JAGGED WOUND. IS THAT RIGHT?

6 A YES. THAT'S -- THAT'S A LACERATION.

7 Q THAT'S A LACERATION. AND FROM THAT PARTICULAR WOUND WOULD
8 YOU EXPECT THAT WHATEVER OBJECT THAT WAS THAT CAUSED THAT
9 LACERATION WOULD, IN FACT, HAVE RESIDUE OF SKIN ON IT FROM
10 THAT PARTICULAR WOUND?

11 A IT COULD. YES.

12 Q OKAY. NOW, WHEN A PERSON IS STRUCK BY AN OBJECT, LET'S SAY,
13 THE OBJECT NORMALLY WOULD LEAVE SOME TYPE OF DEBRIS. IS
14 THAT CORRECT?

15 A NO. NO.

16 Q WOULD IT NEVER LEAVE ANY DEBRIS?

17 A I WOULDN'T SAY IT NEVER WOULD LEAVE ANY DEBRIS. THE TYPE OF
18 DEBRIS THAT WOULD BE LEFT MAY BE WOOD SPLINTERS FROM A PIECE
19 OF WOOD, A PIECE OF CHINA MIGHT FRAGMENT IF HE WAS HIT BY A
20 PIECE OF CHINA, OR A LAMP.

21 Q RIGHT. BUT YOU WOULD BE ABLE TO, AND YOU DID AT THIS AUTOPSY,
22 TRY TO IDENTIFY WHAT TYPE OF OBJECT CAUSED THE BLUNT FORCE
23 TRAUMA. IS THAT CORRECT?

24 A YES.

25 Q OKAY. SO, YOU WOULD EXAMINE THE WOUND TO SEE IF THERE WERE

RE-DIRECT EXAMINATION OF DR. KIM COLLINS BY MR. THORNTON:

191

1 ANY METAL FRAGMENTS THERE. IS THAT CORRECT?

2 A WELL, WE WOULD KNOW THAT THERE IS A FOREIGN MATERIAL, BUT
3 WHAT WE WERE LOOKING FOR WAS A PATTERNED INJURY. WHAT WE
4 ARE LOOKING FOR IS A SHAPE OR PATTERN LEFT ON THE BODY FROM
5 THE OBJECT AND THAT IS WHAT WE FOUND.

6 Q BUT, YOU DIDN'T LOOK FOR ANY TYPE OF FOREIGN SUBSTANCES OR
7 ANYTHING OF THAT NATURE THAT MIGHT HAVE BEEN LEFT WHEN THE
8 OBJECT CAME OFF THE BODY?

9 A NO. WE DIDN'T. WE INSPECT THE WOUND ON THE OUTSIDE AND LOOK
10 IN THE LACERATION.

11 Q AND DID YOU FIND ANY TISSUE?

12 A NO.

13 Q I DON'T HAVE ANY OTHER QUESTIONS. THANK YOU.

14 THE COURT: ANYTHING FURTHER?

15 **RE-DIRECT EXAMINATION OF DR. KIM COLLINS BY MR. THORNTON:**

16 Q DR. COLLINS, FOLLOWING UP ON WHAT MR. HOOD JUST ASKED YOU, IF
17 YOU WERE HIT IN THE HEAD, SAY, BY A METAL HAMMER, WOULD YOU
18 EXPECT TO FIND ANY DEBRIS FROM THE METAL HAMMER HEAD?

19 A NO. NO.

20 Q OKAY. JUST COMMON SENSE. WOULD THAT BE BECAUSE GENERALLY
21 SPEAKING, A HAMMER HEAD IS HARDER THAN A PERSON'S HEAD?

22 A IT'S MORE THAT THE HAMMER IS NOT MADE OF A MATERIAL THAT
23 WOULD FRAGMENT AND LEAVE LITTLE SPLINTERS OF MATERIAL
24 BEHIND, SO IT'S NOT SOMETHING THAT WE SEE WITH A HAMMER,
25 BLUNT FORCE TRAUMA.

RE-DIRECT EXAMINATION OF DR. KIM COLLINS BY MR. THORNTON:

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1 Q BECAUSE IF A HAMMER WERE TO FRAGMENT AND LEAVE DEBRIS AND
2 STUFF WHEN YOU STRUCK IT, THEN IT WOULDN'T BE MUCH GOOD FOR
3 POUNDING IN NAILS AND SUCH, WOULD IT?

4 A I WOULD NOT THINK IT WOULD BE.

5 Q THANK YOU DR. COLLINS. NO FURTHER QUESTIONS.

6 THE COURT: ANYTHING BASED ON HIS QUESTIONS?

7 MR. HOOD: I DON'T THINK SO.

8 THE COURT: ALL RIGHT. CALL YOUR NEXT WITNESS.

9 MR. THORNTON: YOUR HONOR, MAY WE APPROACH?

10 (BRIEF BENCH CONFERENCE OFF THE RECORD)

11 THE COURT: WE ARE GOING TO TAKE A TEN MINUTE BREAK TO SEE IF
12 THE WITNESS HAS ARRIVED, SO GO BACK TO THE JURY ROOM AND IF YOU
13 WANT TO, YOU CAN GO DOWNSTAIRS TO TAKE A SMOKE BREAK OR GET
14 FRESH AIR, BUT DON'T, OF COURSE, DELIBERATE OR DISCUSS THE CASE. WE
15 WILL SEE YOU BACK IN ABOUT TEN MINUTES.

16 (JURY OUT AT 10:26)

17 THE COURT: OKAY. WE'LL START BACK IN ABOUT TEN MINUTES.

18 MR. THORNTON: THANK YOU JUDGE, VERY MUCH.

19 THE COURT: JUST FOR THE RECORD, I HAD THE COURT REPORTER
20 MARK THE THREE NEWSPAPERS THAT WERE BROUGHT IN YESTERDAY BY
21 THE JURORS AS COURT EXHIBITS #1, #2, AND #3, SO THEY ARE IN THE
22 RECORD. ALL RIGHT. LET'S BRING THE JURY BACK IN.

23 (WHEREUPON, THREE NEWSPAPERS ARE MARKED AS COURT'S
24 EXHIBITS #1, #2, AND #3.)

25 (JURY IN AT 10:49)

DIRECT EXAMINATION OF DAVID BLACK BY MR. THORNTON:

193

1 **THE BAILIFF:** ALL JURORS PRESENT, YOUR HONOR.

2 **THE COURT:** ALL RIGHT MR. THORNTON, CALL YOUR NEXT WITNESS.

3 **MR. THORNTON:** THANK YOU, SIR. THE STATE CALLS AGENT DAVID
4 BLACK TO THE STAND.

5 (AFTER BEING DULY SWORN BY THE CLERK OF COURT, AGENT
6 DAVID BLACK TESTIFIED AS FOLLOWS:)

7 **CLERK OF COURT:** PLEASE BE SEATED AND STATE YOUR NAME AND
8 SPELL IT FOR THE COURT, PLEASE.

9 **WITNESS:** MY NAME IS DAVID WARREN BLACK. THE LAST NAME IS
10 SPELLED B-L-A-C-K.

11 **DIRECT EXAMINATION OF AGENT DAVID BLACK BY MR. THORNTON:**

12 Q AGENT BLACK, WHO DO YOU WORK FOR?

13 A I AM EMPLOYED WITH THE SOUTH CAROLINA STATE LAW
14 ENFORCEMENT DIVISION, BETTER KNOWN AS SLED.

15 Q ALL RIGHT, SIR. WHAT DO YOU DO FOR SLED?

16 A CURRENTLY I AM A FIREARMS AND TOOL MARK EXAMINER, ASSIGNED
17 TO THE FIREARMS DEPARTMENT IN THE FORENSIC SCIENCE LAB.

18 Q AS A TOOLS MARK EXAMINER WHAT TYPES OF TRAINING AND
19 EXPERIENCE DO YOU HAVE AND WHAT EXACTLY DOES A TOOL MARK
20 EXAMINER DO?

21 A I HAVE COMPLETED THE -- AN EXTENSIVE THREE-YEAR TRAINING,
22 IN-HOUSE TRAINING PROGRAM, IN THE SLED FIREARMS DEPARTMENT.
23 THERE IS NO SCHOOL PER SE THAT YOU CAN GO TO TO RECEIVE THIS
24 TRAINING. I WAS ASSIGNED TO A TENURED, COURT QUALIFYING
25 FIREARM AND TOOL MARK EXAMINER, BY THE NAME OF AGENT BELA

DIRECT EXAMINATION OF DAVID BLACK BY MR. THORNTON:

194

1 CABELL. UNDER HIS DIRECT SUPERVISION, I WORKED CASES AND
2 ALSO WHAT I DID, I HAD TRAINING THAT I WENT THROUGH AND AFTER
3 EACH SEGMENT OF TRAINING I WENT THROUGH, I RECEIVED NOT ONLY
4 WRITTEN TESTS AND ORAL TESTS, I ALSO HAD PRACTICAL TESTS THAT
5 I HAD TO COMPLETE. UPON COMPLETION OF ALL THE TRAINING
6 PROGRAMMING FOR, LIKE I SAID, TANTAMOUNT TO THREE YEARS, I
7 WAS THEN DEEMED COMPETENT BY MY AGENCY IN THAT REGARD.
8 ALSO WHILE I WAS GOING THROUGH THE TRAINING, AS THE YEARLY
9 PROFICIENCY TESTS WERE BROUGHT IN, I ALSO WOULD COMPLETE
10 THOSE PROFICIENCY TESTS. I AM ALSO A MEMBER OF THE SOUTH
11 CAROLINA DIVISION OF THE INTERNATIONAL ASSOCIATION FOR
12 IDENTIFICATION AND THE PARENT BODY, THE INTERNATIONAL
13 ASSOCIATION FOR IDENTIFICATION KNOWN AS I-A-I AND THEIR
14 TRAINING SEMINARS THAT I'VE BEEN TO THAT GO INTO SUBJECTS THAT
15 DEAL WITH TOOL MARK IDENTIFICATION AND FIREARMS
16 IDENTIFICATION. THAT'S THE EXTENT, AS FAR AS THE TOOL MARK
17 IDENTIFICATION, AS FAR AS TRAINING AND WHATNOT.

18 Q ALL RIGHT, SIR. AND WHAT IS IT THAT YOU DO IN REGARDS TO YOU
19 BEING A TOOL MARK EXAMINER?

20 A BASICALLY, AS A TOOL MARK EXAMINER, WHICH FIREARMS ALSO FALLS
21 INTO THAT CLASSIFICATION ALSO, BECAUSE A FIREARM BARREL OR
22 RIFLE BARREL ARE CONSIDERED A TOOL. WHAT I AM LOOKING AT IS A
23 TOOL GIVES YOU A MECHANICAL ADVANTAGE OVER AN ITEM. AND
24 WHAT THE TOOL WILL DO IS HELP YOU TO ACCOMPLISH A TASK. AND
25 WHAT I WOULD LOOK AT IN THE EVIDENCE FORM IS THE ACTUAL MARK

DIRECT EXAMINATION OF DAVID BLACK BY MR. THORNTON:

195

1 OR IMPRESSION, EXAMINE THAT, AND THEN COMPARE IT TO A KNOWN
2 TOOL STANDARD THAT I WOULD HAVE. WITH THAT TOOL, I WOULD
3 MAKE TEST IMPRESSIONS AND COMPARING THE TEST IMPRESSIONS TO
4 THE ACTUAL EVIDENCE MARKED THROUGH MICROSCOPIC
5 EXAMINATION, I WOULD DETERMINE IF THERE WERE ANY
6 CHARACTERISTICS THAT ARE PRESENT THAT CAN EITHER IDENTIFY OR
7 NOT IDENTIFY THAT TOOL TO THAT MARK.

8 Q ALL RIGHT, SIR. AND DO YOU HAVE ANY OTHER EXPERTISE – SAY, ON
9 OR ABOUT JANUARY OR THEREABOUTS OF 1995, WERE YOU DOING THE
10 SAME JOB WITH SLED?

11 A NO, SIR, I WAS NOT.

12 Q WHAT JOB WERE YOU DOING AT THAT TIME, SIR?

13 A AT THAT TIME I WAS A LATENT FINGERPRINT EXAMINER. I HAVE
14 FOURTEEN YEARS AS A LATENT FINGERPRINT EXAMINER AND CRIME
15 SCENE INVESTIGATOR. AT THAT PARTICULAR TIME, I WAS IN THE
16 LATENT PRINT CRIME SCENE DEPARTMENT AT SLED. I HAD ELEVEN
17 YEARS IN THAT UNIT, AND THEN I HAD THREE YEARS WITH THE
18 RICHLAND COUNTY SHERIFF'S DEPARTMENT FORENSIC UNIT WITH THE
19 SAME DUTIES AS A LATENT FINGERPRINT EXAMINER AND CRIME SCENE
20 INVESTIGATOR.

21 MR. THORNTON: YOUR HONOR, I WOULD ASK THAT AGENT BLACK BE
22 CERTIFIED AS AN EXPERT, BOTH IN TOOL MARK IDENTIFICATION AND IN
23 FINGERPRINT IDENTIFICATION.

24 THE COURT: ANY OBJECTION OR DO YOU WISH TO VOIR DIRE?

25 MR. HOOD: NO OBJECTION.

DIRECT EXAMINATION OF DAVID BLACK BY MR. THORNTON:

196

1 **THE COURT:** ALL RIGHT. LADIES AND GENTLEMEN, THIS WITNESS IS
2 NOW A QUALIFIED EXPERT IN TOOL MARK IDENTIFICATION AND FINGERPRINT
3 IDENTIFICATION AND I WOULD ASK THAT YOU REMEMBER THE SAME
4 INSTRUCTION THAT I GAVE YOU EARLIER, ABOUT YOU DETERMINE HOW
5 MUCH WEIGHT TO GIVE THIS WITNESS' TESTIMONY BASED ON ALL THE
6 EVIDENCE THAT YOU WILL HEAR. ALL RIGHT, YOU MAY CONTINUE.

7 **MR. THORNTON:** THANK YOU JUDGE.

8 Q AGENT BLACK, I AM GOING TO HAND YOU WHAT HAS BEEN MARKED
9 AND PUT INTO EVIDENCE AS STATE'S EXHIBIT #9. HAVE YOU EVER
10 SEEN THAT PARTICULAR HAMMER BEFORE, SIR?

11 A YES, SIR, I HAVE.

12 Q DID YOU PERFORM ANY TESTS ON THAT HAMMER?

13 A YES, SIR, WITH THIS ITEM AND ANOTHER ITEM THAT WAS SUBMITTED
14 BY THE BEAUFORT COUNTY SHERIFF'S OFFICE. I PROCESSED THIS
15 ITEM FOR LATENT FINGERPRINTS. PRIOR TO MY LATENT PROCESSING
16 OF THOSE ITEMS, HOWEVER, AGENT DAVID McCLURE FROM THE SLED
17 DNA DEPARTMENT AND AGENT JOE POWER FROM THE TRACE
18 DEPARTMENT, IN MY PRESENCE, EXAMINED THOSE TWO ITEMS ALSO
19 FOR ANY EVIDENCE THEY MIGHT NEED, AS FAR AS DNA OR ANIMAL
20 TRACE MATERIAL. ONCE THEY WERE COMPLETED WITH THEIR EXAM, I
21 DID CONDUCT MY LATENT EXAMINATION.

22 Q ALL RIGHT, AGENT BLACK, DID YOU FIND ANY FINGERPRINTS ON THAT
23 HAMMER?

24 A NO, SIR. I USED VARIOUS METHODS OF CHEMICAL AND POWDERS AND
25 NO FINGERPRINTS WERE DEVELOPED ON THE HAMMER.

DIRECT EXAMINATION OF DAVID BLACK BY MR. THORNTON:

197

1 Q ALL RIGHT SIR. YOU MENTIONED ANOTHER ITEM. I AM GOING TO HAND
2 YOU WHAT HAS BEEN MARKED AS STATE'S EXHIBIT #10. IS THAT THE
3 OTHER ITEM YOU WERE TALKING ABOUT?

4 A YES, SIR. STATE'S EXHIBIT #10 IS THE MARKSMAN BB PISTOL THAT I
5 ALSO PROCESSED FOR LATENT PRINTS.

6 Q ALL RIGHT, SIR. AND DID YOU FIND ANY PRINTS ON THE BB PISTOL?

7 A NO, SIR. I DID NOT. AGAIN, I USED VARIOUS CHEMICAL AND POWDERS
8 AND NO FINGERPRINTS WERE DEVELOPED.

9 Q AGENT BLACK, I AM NOW GOING TO HAND YOU WHAT HAS BEEN
10 MARKED FOR IDENTIFICATION PURPOSES AS STATES EXHIBITS #11, #12,
11 AND #13. CAN YOU IDENTIFY THOSE THREE PHOTOGRAPHS, PLEASE
12 SIR?

13 A YES, SIR. I CAN.

14 Q ALL RIGHT. DO YOU KNOW WHO TOOK THOSE PHOTOGRAPHS?

15 A YES, SIR. THESE PHOTOGRAPHS WERE TAKEN BY MYSELF AND
16 LIEUTENANT RITA SCHULER. AT THAT TIME, PRIOR TO HER
17 RETIREMENT, LIEUTENANT SCHULER WAS THE SUPERVISOR IN THE
18 FORENSIC PHOTOGRAPHY SECTION. SHE ACCOMPANIED ME TO THE
19 COPELAND FUNERAL HOME HERE IN BEAUFORT COUNTY TO
20 PHOTOGRAPH SOME INJURIES TO THE HAND OF THE VICTIM.

21 Q AND IS THIS THE VICTIM CHARLES GODLEY?

22 A YES, SIR. IT IS.

23 Q ALL RIGHT, SIR. AND IS THAT HIS HAND THAT YOU HAVE TAKEN
24 PICTURES OF?

25 A YES, SIR. SPECIFICALLY, IT IS HIS LEFT HAND.

DIRECT EXAMINATION OF DAVID BLACK BY MR. THORNTON:

198

1 Q ALL RIGHT, SIR. IS THERE ANYTHING IN PARTICULAR ON THAT
2 PHOTOGRAPH OF HIS LEFT HAND?

3 A YES, SIR. IF YOU WERE TO LOOK AT THE LEFT HAND, IN PARTICULAR
4 THE LEFT MIDDLE FINGER, THE KNUCKLE AND RIGHT BELOW THE
5 KNUCKLE BETWEEN THE KNUCKLE AND THE JOINT, YOU CAN SEE TOOL
6 MARKS, TWO, ALMOST LIKE SMALL CUTS, AND THAT WAS IN
7 PARTICULAR WHAT I PHOTOGRAPHED. THESE WERE PHOTOGRAPHED
8 WITH AND WITHOUT SCALE.

9 Q ALL RIGHT. WHEN YOU SAY WITH AND WITHOUT SCALE, WHAT DOES
10 THAT MEAN? DOES THAT MEAN WITH A RULER NEXT TO IT ?

11 A YES, SIR, IT DOES. IN PARTICULAR, WE PHOTOGRAPH ONCE WITHOUT
12 ANY TYPE OF SCALE OR RULER TO SHOW IT AS IS AND THEN WE PLACE
13 A RULER OR SCALE NEXT TO OR NEAR TO THE INJURY SO, IF SOME
14 POINT IN TIME THE PHOTOGRAPH NEEDS TO BE ENLARGED, WHAT'S
15 KNOWN AS ONE TO ONE, WHERE ONE INCH IS EQUAL TO ONE INCH, WE
16 CAN BRING IT UP TO ACTUAL SIZE.

17 Q AGENT BLACK, DID THOSE PHOTOGRAPHS APPEAR IN SUBSTANTIALLY
18 THE SAME CONDITION TODAY AS THEY DID WHEN YOU TOOK THEM?

19 A YES, SIR.

20 Q DOES THE SCENE DEPICTED IN THOSE PHOTOGRAPHS ACCURATELY
21 DEPICT THE SCENE OF MR. CHARLES GODLEY'S HAND ON THAT DATE?

22 A YES, SIR. IT DOES.

23 MR. THORNTON: JUDGE I WOULD ASK THESE BE MOVED INTO
24 EVIDENCE.

25 MR. HOOD: I HAVE NO OBJECTION.

DIRECT EXAMINATION OF DAVID BLACK BY MR. THORNTON:

199

1 THE COURT: ADMITTED.

2 (WHEREUPON, THREE PHOTOGRAPHS OF THE VICTIM'S HAND ARE
3 ENTERED INTO EVIDENCE AS STATE'S EXHIBITS #11, #12, AND #13 WITHOUT
4 OBJECTION.)

5 Q AGENT BLACK, DID YOU EXAMINE THAT WOUND?

6 A YES, SIR. I EXAMINED BOTH WOUNDS, BOTH MARKS ON THE SCENE
7 VISUALLY, NORMALLY USING A FLASHLIGHT, BUT ALSO WITH AN
8 ALTERNATE LIGHT TO SEE IF IT WOULD HELP IN THE PHOTOGRAPHY,
9 YOU KNOW, WHATEVER INFORMATION WE COULD FIND OR ENHANCE.
10 AND WITH THAT, I DID CONDUCT AN EXAMINATION. I WAS PRINCIPALLY
11 CONTACTED BY A DETECTIVE, I BELIEVE IT WAS ARBELO, IN BEAUFORT
12 COUNTY, AND THERE WERE CONCERNS ABOUT WHETHER OR NOT
13 THERE MIGHT BE BITE MARKS.

14 Q ALL RIGHT, SIR. DID YOU LOOK AT THAT AT ALL TO DETERMINE
15 WHETHER IT WAS A TOOL MARK OR CONSISTENT WITH A TOOL MARK
16 OR CONSISTENT WITH A BITE MARK?

17 A WHAT I WILL SAY IS, IN MY OPINION IN FOURTEEN YEARS I DID CRIME
18 SCENE INVESTIGATIONS LOOKING AT WOUNDS AND THEN ALSO GOING
19 TO THE AUTOPSIES AND AFTERWARDS AND WHATNOT, IT DID NOT
20 APPEAR TO BE THE RESULT OF A BITE MARK. HOWEVER, IT DID
21 APPEAR TO BE THE RESULT OF BEING HIT BY SOME FORM OF OBJECT
22 SUCH AS A BLUNT OBJECT.

23 Q DID YOU TAKE ANY CASTING OR ANYTHING OF THAT AT THE TIME?

24 A YES, SIR. I USED A PROCESS KNOWN AS MIKROSIL. IT'S SPELLED,
25 M-I-K-R-O-S-I-L. AND MIKROSIL IS A SILICONE-TYPE CASTING MATERIAL

CROSS EXAMINATION OF DAVID BLACK BY MR. HOOD:

200

1 THAT'S BROWN IN COLOR AND YOU HAVE THE CASTING MATERIAL AND
2 A HARDENING AGENT AND YOU MIX THOSE KIND OF LIKE SILLY PUTTY
3 AND YOU PLACE IT OVER THE AREA. AND ONCE IT DRIES, YOU CAN LIFT
4 IT. AND WHAT IT DOES IS ACTUALLY RE-CREATES WHATEVER IMAGE
5 OR WHATEVER MARK IS THERE. IT ACTUALLY LIFTS WHERE YOU CAN
6 LOOK AT IT.

7 Q AND DID YOU EXAMINE THAT CASTING AFTER YOU HAD DONE IT?

8 A YES, SIR. I DID. I LOOKED VISUALLY AT IT AND ALSO I LOOKED AT IT
9 UNDER A COMPARISON MICROSCOPE OR COMPARISON MAGNIFIER
10 RATHER, IT'S A 4X POWER MAGNIFIER IN MY OFFICE AND AGAIN, IT DID
11 NOT APPEAR TO BE A BITE MARK. IT APPEARED TO BE AN IMPRESSION
12 OR MARK FROM BEING STRUCK BY AN OBJECT.

13 Q ALL RIGHT, SIR.

14 Q AGENT BLACK, OTHER THAN THE FINGERPRINTING THAT YOU'VE
15 TESTIFIED TO, THE FACT THAT YOU EXAMINED THE MARK, TOOK THOSE
16 PHOTOGRAPHS AND EXAMINED THE CASTING THAT YOU YOURSELF
17 COMPLETED, DID YOU HAVE ANY OTHER DUTIES WITH REGARD TO THIS
18 CASE?

19 A NO, SIR. I DID NOT.

20 Q THANK YOU VERY MUCH, AGENT BLACK. PLEASE ANSWER ANY
21 QUESTIONS MR. HOOD HAS FOR YOU.

22 A YES, SIR.

23 **CROSS EXAMINATION OF AGENT DAVID BLACK BY MR. HOOD:**

24 Q NOW, BASICALLY, TO SUMMARIZE A LOT OF WHAT YOU'VE SAID HERE,
25 IS THAT YOU EXAMINED THE HAMMER AND YOU EXAMINED THE PELLET

CROSS EXAMINATION OF DAVID BLACK BY MR. HOOD:

201

1 GUN. IS THAT CORRECT?

2 A YES, SIR.

3 Q AND YOU FOUND NO FINGERPRINTS ON EITHER ITEM. IS THAT
4 CORRECT?

5 A YES, SIR. THAT'S CORRECT.

6 Q YOU ALSO DETERMINED THAT THE WOUND THAT APPEARED ON THE
7 HAND, THE RIGHT HAND —

8 A THE LEFT HAND.

9 Q THE RIGHT HAND OR THE LEFT HAND?

10 A THE LEFT HAND.

11 Q OKAY. THAT YOU COULD DEVELOP NO RIDGE DETAIL TO SHOW THAT,
12 IN FACT, EITHER ONE OF THESE ITEMS THE GUN OR THE HAMMER
13 INFLECTED THAT WOUND. ISN'T THAT CORRECT?

14 A THAT IS CORRECT.

15 Q OKAY. NOW, YOU DID THESE CASTS OF THE MARK ITSELF. DID YOU
16 SWAB ANY OF THOSE AREAS FOR FOREIGN SUBSTANCES OR ANYTHING
17 OF THAT NATURE TO HAVE ANALYZED?

18 A NO, SIR, I DID NOT, FOR THIS REASON. WHEN I WAS NOTIFIED ABOUT
19 COMING TO BEAUFORT COUNTY TO DO THIS, THE BODY HAD ALREADY
20 BEEN AUTOPSIED. SO ANYTHING THAT I WOULD HAVE DONE IN, WITH
21 THIS, IT SHOULD HAVE BEEN DONE AT AUTOPSY, BUT BY THAT TIME
22 THE BODY WOULD HAVE BEEN CLEANED, PREPARED, AND THE BODY
23 WAS IN A CASKET GETTING READY FOR BURIAL.

24 Q WELL, THAT WAS MY NEXT QUESTION, BUT THANK YOU FOR
25 ANSWERING IT. IN OTHER WORDS, WHAT YOU HAD, WHAT YOU WERE

CROSS EXAMINATION OF DAVID BLACK BY MR. HOOD:

202

1 SHOWN THERE WAS A CLEAN BODY. IS THAT CORRECT?

2 A YES, SIR.

3 Q IN OTHER WORDS, THE WOUND HAD BEEN CLEANED, EVERYTHING
4 ELSE HAD BEEN TAKEN CARE OF AND THE ONLY THING YOU WERE
5 DOING WAS LOOKING AT THE ACTUAL RIDGE DETAIL FOR THAT
6 PARTICULAR WOUND. IS THAT CORRECT?

7 A I WAS LOOKING AT – WHEN I WALKED IN I WAS LOOKING – I SAW THE
8 VICTIM AND THERE WERE INJURIES TO HIS HEAD AND FACE THAT
9 INDICATED A BEATING, BUT I WAS DIRECTED PRINCIPALLY TO LOOK AT
10 THE HAND AND THE MARKS THAT WERE ON THE HAND AND THAT IS
11 WHAT I CONCENTRATED ON. WHAT I SAW THERE WAS MORE
12 CONSISTENT WITH BEING HIT WITH AN OBJECT, NOT A BITE MARK.

13 Q OKAY. BUT YOU CAN'T RULE OUT THE FACT THAT IT COULD HAVE BEEN
14 A BITE MARK. ISN'T THAT CORRECT?

15 A IT'S POSSIBLE. IT IS POSSIBLE.

16 Q OKAY. NOW, ALSO, DID YOU EXAMINE ALL OF THE ITEMS THAT WERE
17 SUBMITTED BY THE OFFICERS WHO INVESTIGATED THIS CASE FOR ANY
18 FINGERPRINT ANALYSIS?

19 A THE ONLY TWO ITEMS THAT I RECEIVED FOR FINGERPRINT ANALYSIS
20 WERE A HAMMER AND THE BB OR PELLET PISTOL THAT YOU REFERRED
21 TO EARLIER.

22 Q SO, YOU NEVER RECEIVED ANY – AND I AM SURE YOU ARE FAMILIAR
23 WITH LIFTS. IS THAT CORRECT?

24 A YES, SIR.

25 Q AND WHEN A PERSON HAS LEFT A FINGER PRINT ON AN OBJECT AND

CROSS EXAMINATION OF DAVID BLACK BY MR. HOOD:

203

1 THAT PARTICULAR OBJECT IS DUSTED WITH A BLACK POWDER. ISN'T
2 THAT CORRECT?

3 A YES, SIR. IT CAN BE.

4 Q YEAH. AND THEN YOU PUT ONE OF THESE QUOTE "LIFTS" ON THERE TO
5 LIFT THAT IMPRESSION OFF. ISN'T THAT CORRECT?

6 A YES, SIR.

7 Q OKAY. AND FROM THAT IMPRESSION YOU GET WHAT YOU CALL RIDGE
8 DETAIL. IS THAT CORRECT?

9 A YES, SIR.

10 Q OKAY. AND FROM THAT RIDGE DETAIL, YOU ARE ABLE TO, IN A LOT OF
11 INSTANCES, IN MOST INSTANCES, TO IDENTIFY WHO THE PERSON WAS
12 THAT LEFT THAT PRINT THERE. IS THAT CORRECT?

13 A IF THE PRINT IS -- AFTER THE PRINT IS EVALUATED, IF IT HAS
14 SUFFICIENT RIDGE DETAIL, SUFFICIENT RIDGE CHARACTERISTICS TO
15 RENDER IDENTIFICATION, NOT ONLY CAN YOU IDENTIFY SOMEBODY
16 BUT YOU CAN ALSO NOT IDENTIFY SOMEONE, MEANING THAT IT IS
17 THEM OR IT IS NOT THEM.

18 Q ABSOLUTELY. SO, IT EXCLUDES PEOPLE ALSO.

19 A THAT IS CORRECT.

20 Q NOW, DID YOU EVER RECEIVE ANY LIFTS FROM ANYBODY IN THE
21 SHERIFF'S DEPARTMENT TO EXAMINE FOR RIDGE DETAIL THAT CAME
22 FROM THE BODY OF THE DECEASED IN THIS CASE?

23 A NO, SIR. I DID NOT.

24 Q TO YOUR KNOWLEDGE, ARE YOU THE ONLY PERSON WHO WAS GIVEN
25 THE RESPONSIBILITY FOR EXAMINING ALL OF THE EVIDENCE THAT WAS

RE-DIRECT EXAMINATION OF DAVID BLACK BY MR. THORNTON:

204

1 TAKEN FOR FINGERPRINTS?

2 A THE ONLY WAY I CAN ANSWER THAT -- TO MY KNOWLEDGE --THE ONLY
3 THING I RECEIVED TO HAVE ANYTHING TO DO WITH LATENTS, AS I SAID
4 BEFORE, WAS THE HAMMER AND THE BB OR PELLET PISTOL. THAT IS
5 MY INVOLVEMENT AS FAR AS THE LATENTS. I AM NOT AWARE OF
6 ANYONE ELSE EXAMINING ANYTHING. I HAVE NO PERSONAL
7 KNOWLEDGE. I DON'T KNOW.

8 Q BUT THAT IS THE ONLY THING THAT YOU DID?

9 A THAT'S CORRECT.

10 Q WELL, AT THE TIME -- AT THE TIME YOU WERE DOING THESE
11 EXAMINATIONS OF THESE ITEMS, WERE YOU THE PERSON IN CHARGE
12 OF EXAMINING ITEMS FOR FINGERPRINTS?

13 A IF THEY WERE SUBMITTED TO SLED, THEN YES. I WAS THE LATENT
14 EXAMINER ASSIGNED TO THIS CASE. THEY WOULD HAVE BEEN SENT
15 TO ME. YES, THAT IS CORRECT.

16 Q SO, IF IT WENT TO SLED, YOU GOT IT?

17 A I SHOULD HAVE RECEIVED IT, YES.

18 Q OKAY. THANK YOU VERY MUCH.

19 A YES, SIR.

20 THE COURT: RE-DIRECT?

21 **RE-DIRECT EXAMINATION OF DAVID BLACK BY MR. THORNTON:**

22 Q THIS CHEMICAL THAT MR. HOOD ASKED YOU ABOUT, A BLACK
23 CHEMICAL, IS THERE A NAME FOR THAT?

24 A WELL, I THINK HE WAS TALKING ABOUT, I AM READING BETWEEN THE
25 LINES, BLACK FINGERPRINT POWDER, BUT I THINK HE'S TALKING ABOUT

RE-DIRECT EXAMINATION OF DAVID BLACK BY MR. THORNTON:

205

1 DEVELOPING A BODY FOR PRINTS. IF YOU HAVE A -- WHERE YOU HAVE
2 BLOOD INVOLVED, THERE IS A CHEMICAL KNOWN AS AMIDO BLACK. IT
3 IS ACTUALLY A CHEMICAL THAT IS USED, IT CAN BE APPLIED OR
4 SPRAYED ONTO A SURFACE AND WHAT HAPPENS IS THE AMIDO BLACK
5 STAINS THE PROTEIN THAT IS PRESENT IN BLOOD AND IF THERE IS ANY
6 RIDGE DETAIL OR RIDGE CHARACTERISTICS PRESENT, IT WOULD
7 ADHERE TO THAT AND MAKE IT VISIBLE TO THE HUMAN EYE, THAT YOU
8 CAN PHOTOGRAPH.

9 Q ALL RIGHT, SIR. WOULD YOU CHARACTERIZE IT AS EASY OR DIFFICULT
10 TO ACTUALLY DO A LIFT WITH AMIDO BLACK OFF OF A BODY?

11 A I HAVE NEVER LIFTED AMIDO BLACK FROM A BODY. I PERSONALLY
12 HAVE NOT LIFTED A PRINT FROM A BODY. I HAVE PROCESSED BODIES
13 FOR PRINTS. THE PRINTS THAT I HAVE DEVELOPED HAVE ALWAYS
14 BEEN PHOTOGRAPHED WITH A SCALE, AGAIN, SO YOU COULD BRING IT
15 UP TO ACTUAL SIZE. I PERSONALLY HAVE NOT BEEN SUCCESSFUL IN
16 LIFTING AMIDO BLACK PRINTS FROM A BODY. I AM NOT AWARE OF
17 ANYONE THAT HAS. IT IS THE NORMAL PROCEDURE TO PHOTOGRAPH
18 ANY DEVELOPED PRINT.

19 Q ALL RIGHT, SIR. AND THEN YOU WOULD MAKE A DETERMINATION --
20 WOULD YOU MAKE A DETERMINATION BASED ON THE PHOTOGRAPHS
21 AS TO WHETHER YOU HAD ANY IDENTIFIABLE PRINTS?

22 A YES. ONCE YOU HAVE YOUR ONE-TO-ONE PHOTOGRAPHS, YOU WOULD
23 THEN EVALUATE AND DETERMINE IF IT IS AN IDENTIFIABLE PRINT OR
24 NOT AND THEN COMPARE IT TO WHATEVER KNOWN STANDARDS YOU
25 WOULD HAVE.

RE-CROSS EXAMINATION OF DAVID BLACK BY MR. HOOD:

206

1 Q ALL RIGHT, SIR. THANK YOU VERY MUCH. NO FURTHER QUESTIONS.

2 MR. HOOD: I HAVE ONE FROM THAT. JUST IN CASE.

3 **RE-CROSS EXAMINATION OF DAVID BLACK BY MR. HOOD:**

4 Q YOU NEVER RECEIVED ANY PHOTOGRAPHS OF ANY PRINTS TO
5 EXAMINE. IS THAT CORRECT?

6 A NO, SIR. I DID NOT.

7 Q THANK YOU.

8 THE COURT: YOU MAY STEP DOWN. THANK YOU.

9 WITNESS: THANK YOU.

10 MR. THORNTON: THE STATE CALLS ROBIN TAYLOR. YOUR HONOR I
11 WOULD ASK THAT THIS WITNESS BE EXCUSED, UNLESS THERE IS AN
12 OBJECTION.

13 MR. HOOD: NO OBJECTION. THANK YOU.

14 THE COURT: ALL RIGHT. THANK YOU.

15 (AFTER BEING DULY SWORN BY THE CLERK OF COURT, ROBIN
16 TAYLOR TESTIFIED AS FOLLOWS:)

17 CLERK OF COURT: PLEASE BE SEATED AND STATE YOUR NAME AND
18 SPELL IT FOR THE COURT PLEASE.

19 A MY NAME IS ROBIN A. TAYLOR. T-A-Y-L-O-R.

20 **DIRECT EXAMINATION OF ROBIN TAYLOR BY MR. THORNTON:**

21 Q AGENT TAYLOR, WHO DO YOU WORK FOR?

22 A I WORK FOR, IN THE ANALYSIS DEPARTMENT AT SLED.

23 Q YOU KIND OF ANSWERED MY SECOND QUESTION FOR ME ALREADY. SO
24 YOU ANALYZE DNA. IS THAT CORRECT?

25 A THAT'S CORRECT.

DIRECT EXAMINATION OF ROBIN TAYLOR BY MR. THORNTON:

207

1 Q CAN YOU TELL ME WHAT KIND OF EDUCATION OR EXPERIENCE YOU
2 HAVE IN ANALYZING DNA?

3 A I HAVE A BACHELOR OF SCIENCE DEGREE IN MEDICAL TECHNOLOGY
4 FROM THE UNIVERSITY OF SOUTH CAROLINA. I GRADUATED FROM
5 BAPTIST MEDICAL CENTER SCHOOL OF MEDICINE IN COLUMBIA. I AM
6 BOARD CERTIFIED BY THE AMERICAN SOCIETY OF CLINICAL
7 PATHOLOGISTS. I WORKED IN HOSPITAL LABORATORIES FOR
8 APPROXIMATELY TWO-AND-ONE-HALF YEARS PRIOR TO JOINING SLED.
9 I HAVE BEEN AT SLED FOR NEARLY SEVENTEEN YEARS, DURING WHICH
10 TIME I HAVE COMPLETED INTENSIVE TRAINING PROGRAMS IN THE
11 AREAS OF FORENSIC SEROLOGY, FORENSIC RFLP DNA ANALYSIS AND
12 FORENSIC PCR DNA ANALYSIS. I AM REQUIRED BY THE DNA ADVISORY
13 BOARD TO ATTEND CONTINUING EDUCATION EACH YEAR IN THE FORM
14 OF EITHER WORKSHOPS OR PROFESSIONAL MEETINGS AND I ABIDE BY
15 THAT.

16 THE COURT: CAN I GET YOU TO SPEAK INTO THE MICROPHONE. YOU
17 CAN MOVE IT OVER A LITTLE BIT.

18 Q AGENT TAYLOR, DO YOU -- IS YOUR TITLE DNA ANALYST OR...

19 A I AM A FORENSIC DNA ANALYST.

20 Q A FORENSIC DNA ANALYST. AND IN ADDITION TO DNA, IS THAT PART OF
21 WHAT YOU DO, IS DETERMINE WHETHER OR NOT BLOOD IS PRESENT
22 AND THEN GO FURTHER TO ANALYZE THE BLOOD?

23 A THAT IS CORRECT. THAT WOULD BE CONSIDERED FORENSIC
24 SEROLOGY.

25 MR. THORNTON: YOUR HONOR, I WOULD ASK THAT AGENT TAYLOR BE

DIRECT EXAMINATION OF ROBIN TAYLOR BY MR. THORNTON:

208

1 QUALIFIED AS AN EXPERT BOTH AS A FORENSIC DNA ANALYST AND IN THE
2 SUB-CATEGORY OF FORENSIC SEROLOGY.

3 THE COURT: ANY OBJECTION OR DO YOU WISH TO VOIR DIRE?

4 MR. HOOD: JUDGE, I ONLY HAVE ONE QUESTION. WHAT WAS YOUR
5 NAME TEN YEARS AGO?

6 WITNESS: ROBIN A. WHITMIRE.

7 MR. HOOD: SO YOU ARE THE LADY THAT SIGNED THIS REPORT?

8 WITNESS: THAT'S CORRECT.

9 MR. HOOD: OKAY. THANK YOU.

10 THE COURT: NO OBJECTION? MR. HOOD, YOU HAVE NO OBJECTION?

11 MR. HOOD: I HAVE NO OBJECTION.

12 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, THIS WITNESS HAS
13 NOW BEEN QUALIFIED AS AN EXPERT IN THE FIELD OF DNA ANALYSIS AND
14 SEROLOGY. YOU MAY AGAIN USE THE SAME INSTRUCTIONS THAT I GAVE YOU
15 EARLIER, ABOUT YOU DETERMINE HOW MUCH WEIGHT YOU GIVE HER
16 TESTIMONY ALONG WITH ALL OF THE WITNESSES AND ALL THE TESTIMONY
17 THAT YOU WILL HEAR IN THIS TRIAL. THANK YOU.

18 Q AGENT TAYLOR, AS A MATTER OF FACT, ALTHOUGH MR. HOOD HAS
19 BEEN KIND ENOUGH TO POINT IT OUT ALREADY, LET ME JUST GO
20 AHEAD AND RE-PHRASE THAT, SINCE WE ARE GOING TO BE TALKING
21 ABOUT A COUPLE OF DIFFERENT ITEMS OF EVIDENCE. IS IT TRUE THAT
22 YOU HAVE DONE MORE THAN ONE REPORT IN THIS CASE?

23 A YES, I HAVE.

24 Q AND WAS ONE OF THOSE SIGNED AS ROBIN WHITMIRE?

25 A YES, IT WAS.

DIRECT EXAMINATION OF ROBIN TAYLOR BY MR. THORNTON:

209

1 Q ALL RIGHT. NOW THAT WAS IN OR AROUND SOMETIME IN '95?

2 A THE REPORT IS DATED AUGUST 31, 1995.

3 Q DID YOU DO A SUBSEQUENT EXAMINATION OF EVIDENCE IN THIS CASE?

4 A I DID, IN NOVEMBER OF 2005.

5 Q ALL RIGHT. AND DID YOU SIGN THAT ONE ROBIN TAYLOR?

6 A I SIGNED IT ROBIN A. TAYLOR. YES.

7 Q FANTASTIC. AND YOU ARE BOTH PERSONS CORRECT?

8 A I AM THE ONE AND THE SAME.

9 Q FANTASTIC. ALL RIGHT, AGENT TAYLOR LET ME ASK YOU A FEW
10 QUESTIONS. I AM GOING TO HAND YOU, AND I REALIZE IT IS
11 CONSIDERED BIO-HAZARD, DO YOU NEED SOME GLOVES?

12 A I WOULD APPRECIATE IT.

13 MR. THORNTON: YOUR HONOR, I APOLOGIZE, I NEED TO GET SOME
14 GLOVES FOR HER TO EXAMINE THIS. WE SHOULD HAVE THEM MOMENTARILY.
15 SORRY ABOUT THE DELAY, JUDGE. QUICKER THAN I THOUGHT. THANK YOU,
16 SARGENT.

17 (WITNESS IS HANDED A PAIR OF GLOVES AND THE SOLICITOR HANDS
18 THE WITNESS A BAG OF CLOTHING.)

19 Q AGENT TAYLOR, I AM HANDING YOU WHAT HAS BEEN INTRODUCED INTO
20 EVIDENCE AS STATE'S EXHIBIT #16. I WOULD ASK YOU TO EXAMINE THE
21 CONTENTS OF THE BAG AND LET ME KNOW IF YOU DID ANY ANALYSIS
22 AT ALL ON THOSE ITEMS.

23 WITNESS: YOUR HONOR I AM REFERRING TO THE NOTES FROM MY
24 CASE FILE.

25 THE COURT: I'M SORRY, WHAT?

DIRECT EXAMINATION OF ROBIN TAYLOR BY MR. THORNTON:

210

1 **WITNESS:** I AM GOING TO REFER TO SOME NOTES FROM MY CASE FILE.

2 **THE COURT:** YOU CAN MOVE IT OVER IF YOU WANT. WHATEVER IS
3 MOST COMFORTABLE FOR YOU.

4 (WITNESS REMOVES CLOTHING FROM BAG)

5 A THIS IS SLED'S ITEM #13.4, A PAIR OF BLACK PANTS. THE INITIALS IN
6 THE WAISTBAND OF THE PANTS ACTUALLY REFLECT THE INITIALS OF A
7 PERSON I WAS TRAINING TO EXAMINE THESE ITEMS. THEY WERE
8 EXAMINED IN MY PRESENCE. THAT PERSON IS DAVID McCLURE. BUT
9 AGAIN IN MY NOTES, IT DOES REFLECT A PAIR OF BLACK PANTS; BRAND
10 NAME "STREET SMART", AND WE DETERMINED THEM, AS I SAID, ITEM
11 #13.4. THIS IS MARKED AS ITEM #13.5 AND AGAIN, DAVID'S INITIALS ARE
12 ON THE PANTS. HE EXAMINED THEM UNDER MY SUPERVISION. THESE
13 ARE A PAIR OF NAVY BLUE PANTS, BRAND NAME IS "KAMENSKI." THIS IS
14 A PAIR OF BLACK BOOTS, ITEM #13.1 AND THEY WERE ALSO EXAMINED
15 IN MY PRESENCE BY DAVID McCLURE. THIS IS A RED HAT WITH THE
16 WORDS MAUI MAUI , HAWAII ON THE FRONT. IT IS ITEM #13.3. AGAIN,
17 DAVID'S INITIALS ARE ON THERE AND WAS EXAMINED WITH MY
18 SUPERVISION. THIS IS OUR ITEM #13.2 . IT IS A WHITE SHIRT, BRAND
19 NAME "MARQUIS," SIZE 18 ½ , 35-36 AND AGAIN, DAVID'S INITIALS ARE
20 REFLECTED WHERE IT WAS EXAMINED.

21 Q AGENT TAYLOR, AT MY REQUEST THIS MORNING, DID YOU REVIEW
22 WITH ME THE CONTENTS OF THAT BAG?

23 A I DID.

24 Q ALL RIGHT. IS THERE ANYTHING IN THAT, ANYTHING LEFT IN THAT TOP
25 ORANGE BAG RIGHT THERE?

DIRECT EXAMINATION OF ROBIN TAYLOR BY MR. THORNTON:

211

- 1 A NO. THIS IS —
- 2 Q UPON PULLING THESE ITEMS OUT AND LOOKING AT THEM THIS
- 3 MORNING, DID YOUR REPORT REFLECT THAT YOU HAD ANALYZED
- 4 ANYTHING, IN ADDITION TO THAT, THAT WAS SUBMITTED?
- 5 A WELL, ACTUALLY MY REPORT SIMPLY STATED THAT IT WAS CLOTHING
- 6 BELONGING TO THE SUSPECT. IT WAS ONLY AFTER LOOKING AT MY
- 7 NOTES FROM 10 YEARS AGO THAT THERE WAS ANOTHER ITEM NOTED
- 8 THAT SHOULD HAVE BEEN PRESENT. IT WAS A GREY TRENCH COAT. I
- 9 THINK IT WAS "TOTE" BRAND, EXTRA LARGE.
- 10 Q ALL RIGHT. AGENT TAYLOR WOULD YOU LOOK UNDERNEATH THE
- 11 ORANGE BAG AND TELL ME IF THERE IS ANYTHING ELSE IN THAT?
- 12 A THERE IS ANOTHER ORANGE BAG INSIDE THIS WHITE BAG.
- 13 Q COULD YOU TELL ME WHAT IS INSIDE THAT ORANGE BAG?
- 14 A IT APPEARS TO BE A GREY COAT, "TOTES BRAND", EXTRA LARGE.
- 15 Q NOW ALL THOSE ITEMS WERE REFERENCED AS SUSPECT'S CLOTHING.
- 16 IS THAT CORRECT?
- 17 A THAT IS CORRECT. THAT IS HOW IT APPEARED ON MY REPORT
- 18 FROM 1995.
- 19 Q AND DID YOU TEST ALL OF THESE ITEMS OR DID AGENT McCLURE IN
- 20 YOUR PRESENCE AND UNDER YOUR SUPERVISION TEST ALL THESE
- 21 ITEMS?
- 22 A WE DID.
- 23 Q ALL RIGHT. AND WHAT WERE YOU TESTING THEM FOR?
- 24 A THE PRESENCE OF BLOOD.
- 25 Q DID YOU FIND ANY?

DIRECT EXAMINATION OF ROBIN TAYLOR BY MR. THORNTON:

212

1 A NO. WE DID NOT.

2 Q THANK YOU VERY MUCH. IF YOU COULD RE-PACK FOR ME THAT AGENT
3 TAYLOR, I WOULD APPRECIATE IT.

4 (WITNESS COMPLIES)

5 Q THANK YOU, AGENT TAYLOR. I AM GOING TO HAND YOU SOME ITEMS.
6 DO YOU WANT TO CHANGE GLOVES OUT OR DO YOU WANT TO KEEP
7 THE SAME ONES ON? I THINK MOST OF THE REST OF THEM ARE
8 SEALED BUT ---

9 A ARE THEY PACKAGED?

10 Q I THINK SO. AGENT TAYLOR, CAN YOU EXPLAIN PLEASE THE
11 DIFFERENCE IN WHEN YOU, OR WHY THERE ARE TWO REPORTS? DID
12 YOU LOOK AT EVIDENCE, OR DIFFERENT PIECES OF EVIDENCE, MORE
13 THAN ONE TIME?

14 A I DID. IN 1995, I EXAMINED -- I APOLOGIZE I AM HAVING TO LOOK BACK
15 AND FORTH.

16 Q THAT'S ALL RIGHT. MAYBE THIS WILL HELP. I AM GOING TO HAND YOU
17 WHAT HAS BEEN IDENTIFIED AS STATE'S EXHIBIT #14. IT IS NOT IN
18 EVIDENCE. DO YOU RECOGNIZE THAT ITEM?

19 A I DO. THIS, THESE CONTAINERS, IN FACT, THIS BLACK ONE HAS R-A-W
20 ON THE TOP OF IT. THOSE WERE MY INITIALS AT THE TIME BACK IN
21 1995. IT'S SCRAPINGS FROM THE SURFACE OF A ROUND-EDGED
22 HAMMER.

23 Q ALL RIGHT. AND IT IS NOT IN THE SAME CONDITION IT WAS IN 1995, IS
24 IT? IN OTHER WORDS, HAS THE SEAL ON THAT TAPE BEEN BROKEN?

25 A I THINK I RE-TAPED IT. BUT YES, I OPENED IT.

DIRECT EXAMINATION OF ROBIN TAYLOR BY MR. THORNTON:

213

1 Q WHEN YOU RECEIVED IT, WAS IT SEALED?

2 A YES.

3 Q CAN YOU TELL ME WHERE YOU RECEIVED IT FROM? WOULD THAT BE
4 REFERENCED ON YOUR REPORT AS TO WHO THE SUBMITTING AGENCY
5 WAS?

6 A THE SUBMITTING AGENCY WAS BEAUFORT COUNTY SHERIFF'S
7 DEPARTMENT.

8 Q ALL RIGHT. AND WHO WAS THE EVIDENCE CUSTODIAN TO WHOM YOU
9 SENT YOUR REPORT?

10 A MY REPORT IN 1995 WAS ADDRESSED TO MIKE REYNOLDS.

11 Q NOW, DID YOU TAKE ANY ITEMS OUT OF THAT BLACK CONTAINER AT
12 THAT TIME?

13 A I DID. I TRANSFERRED THE SCRAPINGS FROM THIS HAMMER INTO A
14 FLAT ENVELOPE FOR EASE OF STORAGE. THIS IS MORE BULKY AND A
15 FLAT ENVELOPE IS ONE COMMONLY USED IN OUR DEPARTMENT. I PUT
16 IT IN TISSUE PAPER AND PUT IT IN THAT ENVELOPE SIMPLY BECAUSE IT
17 TOOK UP LESS ROOM FOR STORAGE.

18 Q ALL RIGHT. DID AT ANY TIME LATER, DID YOU SEE THAT ENVELOPE
19 THAT YOU HAD PUT THE SCRAPINGS IN, AGAIN?

20 A YES. I DID.

21 Q ALL RIGHT. AND WAS THAT IN 2005?

22 A YES.

23 Q DID YOU RECEIVE THAT ENVELOPE IN SUBSTANTIALLY THE SAME
24 CONDITION, OR, EXCUSE ME, IN EXACTLY THE SAME CONDITION AS IT
25 LEFT YOU? IN OTHER WORDS, WAS IT STILL SEALED PROPERLY WHEN

DIRECT EXAMINATION OF ROBIN TAYLOR BY MR. THORNTON:

214

1 YOU RECEIVED IT IN 2005?

2 A YES, IT WAS AND MY HANDWRITING WAS ON THE OUTSIDE.

3 Q DID YOU ANALYZE IT?

4 A I DID.

5 Q ALL RIGHT. AND SO THIS IS AGAIN, YOU ANALYZED THE SCRAPINGS
6 FROM THE HAMMER COLLECTED AT THE SCENE. IS THAT CORRECT?

7 A THAT'S CORRECT.

8 Q I AM GOING TO HAND YOU WHAT IS ABOUT TO BE MARKED FOR STATE'S
9 IDENTIFICATION, FOR IDENTIFICATION PURPOSES, AS STATE'S #18.
10 NOW, THE FIRST THING I AM GOING TO NOTICE IS THAT THE SEAL ON
11 THAT OUTSIDE BAG IS BROKEN. CAN YOU TELL ME WHEN THAT WAS
12 DONE?

13 A THAT WAS DONE THIS MORNING, JUST PRIOR TO COURT.

14 Q AND WAS IT DONE AT MY REQUEST?

15 A YES, IT WAS.

16 Q AND WHO DID IT?

17 A I DID.

18 Q BEFORE THAT SEAL -- BEFORE THAT CUT WAS MADE ON THAT BAG,
19 WAS IT STILL SEALED UP AS YOU HAD SENT IT BACK?

20 A YES, IT WAS.

21 Q ALL RIGHT. AND DID YOU ANALYZE ANY OF THE MATERIAL CONTAINED
22 IN THAT ENVELOPE?

23 A I ANALYZED -- THIS IS WHAT WAS SUBMITTED TO ME IN 2005. IT
24 CONTAINS MY ORIGINAL ENVELOPE IN 1995 FOR ITEM #8, WHICH IS
25 SCRAPINGS FROM A BB GUN AND SCRAPINGS FROM A HAMMER WHICH

DIRECT EXAMINATION OF ROBIN TAYLOR BY MR. THORNTON:

215

1 WAS ITEM #9 AND ALSO, THERE ARE SOME SWABS PRESENT THAT
2 WERE COLLECTED IN 1995 ALSO AND RE-SUBMITTED TO ME IN 1995,
3 ITEM #6.1, WHICH IS A SWAB FROM A HAMMER AND ITEM #7.1, WHICH IS
4 A SWAB FROM A BB GUN.

5 Q CAN YOU TELL ME WHO DID THE SWABS?

6 A DAVID McCLURE ACTUALLY COLLECTED THOSE SWABS.

7 Q AND HE WORKED UNDER YOUR SUPERVISION AND YOU WERE TRAINING
8 HIM? IS THAT CORRECT?

9 A THAT'S CORRECT.

10 Q THANK YOU. PLEASE CONTINUE.

11 A I ALSO RECEIVED UNDER RE-SUBMISSION, ITEM #11.1 AND 11.2. BUT IN
12 1995, I HAD DETERMINED THAT #11.1 DID NOT HAVE ANY BLOOD
13 PRESENT ON IT, AND SO I DIDN'T DO ANYTHING FURTHER WITH IT, BUT
14 ON 11.2, I DID FURTHER ANALYSIS.

15 Q AND WHAT IS #11.1 REFERENCED AS?

16 A I'M SORRY. #11.1 WAS PRESENTED TO ME AS BEING A STAIN FROM A
17 STEP. "A BLOOD SPOT FROM A STEP" IS HOW IT WAS LABELED AND
18 #11.2 IS LABELED AS BEING "A BLOOD SPOT FROM FRENCH DOORS."

19 Q ALL RIGHT. CAN YOU TELL ME IF YOU WERE ABLE TO MAKE ANY
20 DETERMINATIONS AS TO THESE ITEMS?

21 A I WAS. I HAD SOME RESULTS FROM 1995 AND SOME FROM 2005. DO
22 YOU WANT ME TO DISCUSS BOTH?

23 Q FOR THE ONES THAT YOU'VE JUST TALKED ABOUT, EVERYTHING THAT
24 YOU HAVE CONTAINED IN THAT BAG.

25 A OKAY. ITEM #6.1 ,ACTUALLY IN 1995 MY REPORT SAYS IT IS ITEM #6,

DIRECT EXAMINATION OF ROBIN TAYLOR BY MR. THORNTON:

216

1 BECAUSE THE SAMPLE CAME FROM ITEM #6. BUT BY 2005, OUR
2 PROCEDURES HAD CHANGED SOMEWHAT, AND I CALLED IT #6.1. IT WAS
3 A SWAB FROM A HAMMER, OR TESTING FROM A HAMMER. IN 1995, I DID
4 SEROLOGICAL TESTING ON IT AND WHAT THE WORD SEROLOGY
5 SIMPLY MEANS IS THE STUDY OF BODY FLUID. AND IN FORENSICS, YOU
6 KNOW, WE JUST TAKE THAT STUDY OF BODY FLUIDS AND APPLY THEM
7 TO LAW ENFORCEMENT CONCERNS. TECHNOLOGY WAS VERY
8 DIFFERENT IN 1995 THAN IN 2005. SO, THE TESTING THAT I DID THEN
9 WOULD NOW ACTUALLY BE CONSIDERED QUITE PRIMITIVE. HUMAN
10 BLOOD WAS IDENTIFIED AND THAT SAME TESTING STILL GOES ON
11 TODAY, BUT I DID -- I ATTEMPTED A-B-O GROUPING. A-B-O GROUPING IS
12 SIMPLY THE SAME TYPE OF CLASSIFICATION THAT THE RED CROSS
13 USES A, B, AB, OR O. EVERYONE IS ONE OF THOSE FOUR TYPES. AND I
14 ALSO DID ANOTHER ANALYSIS CALLED A P-G-M THAT STANDS FOR
15 PHOSPHOGLUCOMUTASIS. THAT IS JUST AN ENZYME THAT HAS -- I'M
16 SORRY I AM HAVING TO RECALL -- I THINK IT IS ABOUT 12 DIFFERENT
17 SUB-TYPES. THAT IS THE TYPE OF TESTING I DID IN 1995 AND I JUST
18 WANTED TO LAY THAT FOUNDATION FOR YOU SO YOU CAN
19 UNDERSTAND A LITTLE BIT ABOUT MY RESULTS FROM THEN. AND OF
20 COURSE, THE TESTING I DID IN 2005 WAS PCR DNA ANALYSIS WHICH IS
21 MUCH MORE SOPHISTICATED AND MUCH MORE SENSITIVE AND YOU
22 WILL NOTICE THAT SEVERAL OF THE ITEMS IN 1995, I DIDN'T GET GOOD
23 RESULTS ON, SOME OF THE STUFF DIDN'T WORK. THAT WAS A BIG
24 LIMITATION THEN. NOW, THINGS ARE, WE HAVE A LOT BETTER CHANCE
25 OF GETTING RESULTS NOW. ON THE HAMMER, I IDENTIFIED IT WAS

DIRECT EXAMINATION OF ROBIN TAYLOR BY MR. THORNTON:

217

1 HUMAN BLOOD BUT MY TESTING FOR A-B-O WAS INCONCLUSIVE WHICH
2 WAS NOT UNCOMMON TO HAVE, AND I DID NOT HAVE ENOUGH SAMPLE
3 AT THAT TIME TO TEST FOR PGM SUB-TYPE AND THAT IS ONE OF THE
4 BIG DRAWBACKS THEN, WAS THE AMOUNT OF SAMPLE THAT WE
5 NEEDED TO DO THIS TESTING. IN 2005, WHEN I DID PCR DNA ANALYSIS
6 ON THE SWABS FROM THE HAMMER, AGAIN I GOT A VERY SMALL
7 AMOUNT BUT MY TESTING IS MUCH MORE SOPHISTICATED AND MUCH
8 MORE SENSITIVE AND I WAS ABLE TO, I WAS ABLE TO DEVELOP A
9 PERSONAL DNA PROFILE BUT NOT A COMPLETE ONE. AND IT WAS
10 ACTUALLY OFF OF – THE SWAB FROM THE HAMMER WAS TOO WEAK
11 FOR ME TO DO ANY INTERPRETATION ON THAT. I ALSO TESTED THE
12 SWAB FROM THE PISTOL, FROM THE BB PISTOL. IN 1995, MY REPORT
13 REFLECTED THAT THE BLOOD TYPE FROM THAT WAS A-B-O TYPE O
14 AND PGM SUBTYPE WAS 1 PLUS 2 PLUS. IN 2005, I GOT A COMPLETE
15 DNA PROFILE FROM THAT ITEM AND IT MATCHED WITH THE DNA
16 PROFILE OF CHARLES GODLEY AND THE PROBABILITY OF RANDOMLY
17 SELECTING AN UNRELATED INDIVIDUAL HAVING THIS SAME DNA
18 PROFILE WAS APPROXIMATELY ONE IN 260 QUADRILLION, QUITE A
19 RARE PROFILE. AGAIN, MOVING ON, I TESTED SOME SCRAPINGS FROM
20 A BB GUN IN 1995. MY REPORT REFLECTS I DID NOT ANALYZE THAT
21 FEELING THAT IT WAS A DUPLICATION OF EVIDENCE FROM THE SWAB
22 OF THE BB PISTOL, BUT ON RE-SUBMISSION I DID TEST THOSE
23 SCRAPINGS FROM THE BB GUN IN 2005 AND GOT THE SAME RESULT
24 THAT I DID FROM THE SWAB FROM THE BB GUN. IT WAS A DNA MATCH
25 FOR CHARLES GODLEY WITH A PROBABILITY OF RANDOMLY SELECTING

DIRECT EXAMINATION OF ROBIN TAYLOR BY MR. THORNTON:

218

1 ANOTHER INDIVIDUAL HAVING THAT IN A PROFILE AS ONE IN 160
2 QUADRILLION. I ALSO GOT SCRAPINGS FROM THE HAMMER. AND
3 AGAIN, IN 1995 I DID NOT ANALYZE THAT AND IN 2005 I DID AND AGAIN
4 GOT A FULL PROFILE THE SAME AS ITEM #7.1, THE SWAB ON THE BB
5 GUN AND THE SCRAPINGS FROM THE BB GUN WAS A MATCH FOR
6 CHARLES GODLEY AND A STATISTIC OF ONE IN 260 QUADRILLION. THAT
7 COVERS THE ONLY ITEMS THAT I TESTED BOTH TIMES. I AM NOT SURE
8 DID YOU WANT ME TO CONTINUE.

9 Q YES, MA'AM. #11.2.

10 A OH, THAT'S CORRECT. #11.2, IN 1995, I IDENTIFIED THAT IT WAS HUMAN
11 BLOOD AND MY A-B-O GROUPING WAS INCONCLUSIVE. AND THE P-G-M
12 SUBTYPE WAS 1 PLUS 2 PLUS AND, I APOLOGIZE, I'M GOING TO
13 BACKTRACK JUST A LITTLE BIT, MY SEROLOGY TESTING FROM THE BB
14 PISTOL WAS A-B-O GROUP O P-G-M SUBTYPE 1 PLUS 2 PLUS. THAT
15 A-B-O GROUP O AND P-G-M SUBTYPE 1 PLUS 2 PLUS WAS ALSO
16 CONSISTENT WITH THE TESTING I DID ON THE VICTIM'S STANDARD IN
17 1995. HE WAS A-B-O GROUP O AND P-G-M SUBTYPE 1 PLUS 2 PLUS.
18 BUT WHEN I ATTEMPTED DNA ON ITEM #11.2, I WAS UNABLE TO
19 EXTRACT ANY DNA FROM THAT. I HAD CONSUMED THAT DOING THE
20 SEROLOGY TESTING IN 1995.

21 Q AGENT TAYLOR, I AM GOING TO HAND YOU WHAT, IF MY MEMORY
22 SERVES ME CORRECTLY, WHAT IS ABOUT TO BE MARKED AS STATE'S
23 #19 FOR IDENTIFICATION. CAN YOU IDENTIFY THE CONTENTS OF THAT
24 BAG?

25 A THIS IS THE HEAT SEALED POUCH CONTAINING THE KNOWN BLOOD

DIRECT EXAMINATION OF ROBIN TAYLOR BY MR. THORNTON:

219

1 STANDARD FROM MR. GODLEY AS IT WAS RE-SUBMITTED TO ME IN
2 2005. NOW YOU CAN SEE MY -- WELL MY INITIALS AND THE DATE
3 01-31-95, ALONG WITH THE SLED CASE NUMBER L95-829, ARE ON THIS
4 POUCH, I MEAN, THIS INNER ENVELOPE AND I DID LABEL IT. THAT IS
5 WHEN I ACTUALLY TOOK THE LIQUID BLOOD SAMPLE AND PLACED IT ON
6 CLOTH TO ALLOW IT TO DRY. THAT IS THE BEST WAY TO PRESERVE
7 EVIDENCE FOR THE LONG TERM SO THAT IT DOESN'T DEGRADE. AND
8 WHEN IT WAS BROUGHT BACK AND RE-SUBMITTED TO SLED IN 2005,
9 THIS IS THE POUCH THAT IT WAS PUT IN. BOB BROMAGE BROUGHT IT
10 TO SLED AND YOU CAN SEE HIS INITIALS AND THE DATE HERE WHERE
11 HE SEALED THIS POUCH AND ON THIS SIDE YOU CAN SEE WHERE I CUT
12 IT TO ACCESS THIS STANDARD AND OPENED IT AND RE-SEALED IT ON
13 11-14-05.

14 Q IS IT STILL SEALED, ALL SEALS INTACT?

15 A IT IS.

16 Q AS AN OVERALL QUESTION, ALL THE ITEMS YOU HAVE EXAMINED
17 TODAY, AND I REALIZE THIS IS GOING BACK, ALL THE WAY BACK TO
18 1995, WERE ALL THE ENVELOPES THAT WERE SUBMITTED TO YOU
19 BOTH IN 1995 AND THEN RE-SUBMITTED TO YOU IN 2005, AND TODAY,
20 WERE ALL OF THEM INTACT AND SEALS APPROPRIATE, EXCEPT WHEN
21 REQUESTED BY ME THAT YOU BREAK ONE THIS MORNING?

22 A THAT'S CORRECT. WHEN I LOOKED AT THIS EVIDENCE FOR THE
23 SECOND TIME IN 2005, I DID NOT SEE ANY INDICATION OF ANYTHING
24 OUT OF THE ORDINARY. IT APPEARED TO ME THAT IT HAD NOT BEEN
25 EVEN TOUCHED OR LEAKED SINCE I HAD EXAMINED IT BEFORE.

DIRECT EXAMINATION OF ROBIN TAYLOR BY MR. THORNTON:

220

1 Q AND WHO HAD PUT THE SCRAPINGS AND THINGS IN THE ENVELOPES.
2 WAS THAT DONE AT SLED?

3 A THAT WAS DONE AT SLED BY BOB BROMAGE AND HE HAD TO SEAL IT
4 AND SIGN IT THE SAME AS THE OTHER POUCH AND AGAIN YOU CAN SEE
5 WHERE ON NOVEMBER 14th OF '05 I OPENED IT AND RESEALED IT FOR
6 MY ANALYSIS.

7 Q IF I COULD SUMMARIZE AGENT TAYLOR, WOULD THE FOLLOWING BE
8 FAIR TO SAY? YOU EXAMINED ALL OF THESE ITEMS INCLUDING THE
9 GREY TRENCH COAT, THAT THERE WAS NO BLOOD IDENTIFIED. IS THAT
10 CORRECT?

11 A THERE WAS NO BLOOD IDENTIFIED. THAT IS CORRECT.

12 Q AND YOU EXAMINED THE SCRAPINGS FROM THE BB GUN AND THE
13 HAMMER IN QUESTION, YOU EXAMINED SWABS FROM BOTH OF THEM,
14 AND YOU EXAMINED OTHER ITEMS AND OF ALL THE ITEMS YOU
15 EXAMINED THEY EITHER CAME BACK AS NONE PRESENT,
16 INCONCLUSIVE, OR CAME BACK TO THE VICTIM. IS THAT CORRECT?

17 A THAT'S CORRECT.

18 Q AND THE RE-TESTING THAT YOU DID IN 2005, IS THAT CONSIDERED TO
19 BE THE TYPE OF TESTING, IS THAT STILL THE STANDARD THAT YOU
20 WOULD USE TODAY?

21 A IT IS.

22 Q SO IF I UNDERSTOOD WHAT YOU SAID EARLIER, THAT THERE WAS A
23 LARGE DISPARITY BETWEEN WHAT YOU WERE ABLE TO DO IN 1995 AND
24 WHAT YOU WERE ABLE TO RE-DO IN 2005.

25 A YES. THAT'S RIGHT.

CROSS EXAMINATION OF ROBIN TAYLOR BY MR. HOOD:

221

1 Q IN YOUR EXPERT OPINION, WOULD IT DO ANY GOOD TO RE-SUBMIT THE
2 SCRAPINGS OR THE SWABS OFF THE HAMMER OR WOULD THE TESTS
3 BE BASICALLY THE SAME?

4 A THE TESTING WOULD BE EXACTLY THE SAME AS IN 2005. AND AS FAR
5 AS FINDING NO BLOOD ON THE CLOTHES, THAT WOULD BE -- THAT HAS
6 NOT CHANGED. WITH THAT TYPE OF EXAMINATION, THE INITIAL
7 EXAMINATION, IT HAS NOT CHANGED AND THERE WOULD STILL -- I
8 WOULD EXPECT THE SAME RESULTS.

9 Q THANK YOU.

10 MR. THORNTON: YOUR HONOR, I WOULD ASK THAT STATE'S EXHIBITS,
11 #18 AND #19 BE MOVED INTO EVIDENCE.

12 MR. HOOD: I DON'T HAVE A COPY OF THE SECOND REPORT FROM 2005
13 THAT YOU SAY YOU DID.

14 WITNESS: THAT'S CORRECT.

15 (MR. THORNTON SHOWS MR. HOOD THE REPORT FROM 2005)

16 MR. HOOD: THANKS.

17 **CROSS EXAMINATION OF ROBIN TAYLOR BY MR. HOOD:**

18 Q JUST TO GET THIS ABSOLUTELY CORRECT HERE, (ADDRESSING THE
19 WITNESS), I DON'T WANT TO MISLEAD ANYBODY, THE ITEMS THAT YOU
20 HAVE LISTED HERE ON THIS REPORT FROM 2005, #6.1 THROUGH #11.2,
21 THOSE WERE THE ONLY ITEMS THAT YOU RE-EXAMINED. IS THAT
22 CORRECT?

23 A THAT IS CORRECT.

24 Q OKAY. AND DO YOU KNOW HOW OR WHO PUT THOSE ITEMS IN THESE
25 AT THE TIME YOU RECEIVED THEM.

CROSS EXAMINATION OF ROBIN TAYLOR BY MR. HOOD:

222

1 A AT THE TIME I RECEIVED THEM, BOB BROMAGE HAD BROUGHT THOSE
2 INDIVIDUAL ITEMS BACK TO SLED AND HE HAD ENTERED THEM IN OUR
3 LOG-IN DEPARTMENT WHERE EVIDENCE IS TAKEN IN AND PUT IN THE
4 COMPUTER.

5 Q BUT YOU DON'T KNOW WHO GATHERED THEM OR WHAT THEY PUT
6 THEM IN OR WHO THAT PERSON WAS OR WHEN THEY DID THAT? IS
7 THAT CORRECT?

8 A IF THEY WERE NOT AT SLED, I HAVE NO KNOWLEDGE OF THAT.

9 MR. HOOD: OKAY. ALL RIGHT. I DON'T HAVE ANY OBJECTIONS TO THIS
10 STUFF.

11 THE COURT: THEY ARE ADMITTED.

12 (WHEREUPON, SCRAPINGS AND A BLOOD STANDARD ARE
13 ENTERED INTO EVIDENCE AS STATE'S EXHIBITS #18 AND #19, WITHOUT
14 OBJECTION)

15 Q THANK YOU VERY MUCH AGENT TAYLOR. IF YOU WOULD ANSWER ANY
16 QUESTIONS MR. HOOD HAS.

17 **CROSS EXAMINATION OF ROBIN TAYLOR BY MR. HOOD:**

18 Q WELL, I DON'T THINK I NEED THIS. WELL LETS GO OVER THE ITEMS.
19 JUST TO MAKE SURE WE ARE TALKING ABOUT THE SAME THING. WE
20 ARE TALKING ABOUT A SWAB FROM A HAMMER. IS THAT CORRECT?

21 A THAT'S CORRECT.

22 Q WE ARE TALKING ABOUT A SWAB FROM A BB GUN. IS THAT CORRECT?

23 A YES, SIR.

24 Q WE ARE TALKING ABOUT SCRAPINGS FROM A BB GUN. IS THAT
25 CORRECT?

CROSS EXAMINATION OF ROBIN TAYLOR BY MR. HOOD:

223

- 1 A YES, SIR.
- 2 Q WE ARE TALKING ABOUT SCRAPINGS FROM THE HAMMER. IS THAT
- 3 CORRECT?
- 4 A YES.
- 5 Q WE ARE TALKING ABOUT STAINS FROM FRENCH DOORS. IS THAT
- 6 CORRECT?
- 7 A YES.
- 8 Q ALL RIGHT. NO OTHER ITEMS?
- 9 A NO OTHER ITEMS WERE RE-EXAMINED BY ME IN 2005.
- 10 Q WELL, THERE WAS ONE OTHER THING, #10 WAS A BLOOD STANDARD
- 11 FROM CHARLES GODLEY. ISN'T THAT CORRECT?
- 12 A I MISS-SPOKE. I DID RE-EXAMINE THAT PARTICULAR ITEM AND RAN
- 13 PCR DNA ANALYSIS ON IT —
- 14 Q OKAY.
- 15 A — AND THE BLOOD STANDARD FROM THE VICTIM.
- 16 Q ALL RIGHT. YOU NEVER RECEIVED AS — FROM BEAUFORT COUNTY
- 17 SHERIFFS DEPARTMENT OR ANY OTHER AGENCY — SCRAPINGS OF
- 18 BLOOD FROM THE BODY OF CHARLES GODLEY, DID YOU?
- 19 A NO, SIR.
- 20 Q SO, IF THERE HAD BEEN BLOODY FINGERPRINTS ON THE BODY OF THE
- 21 DECEASED, YOU DID NOT RECEIVE THOSE TO DETERMINE WHOSE
- 22 BLOOD IT WAS AND THINGS OF THAT NATURE. IS THAT CORRECT?
- 23 A I DID NOT RECEIVE ANYTHING OF THAT NATURE.
- 24 Q AND ALL OF THESE BAGS HERE, YOU DON'T KNOW, TO YOUR
- 25 KNOWLEDGE, WHO PUT THEM IN THERE OR WHEN THEY WERE PUT IN

CROSS EXAMINATION OF ROBIN TAYLOR BY MR. HOOD:

224

1 THERE. DO YOU?

2 A NO, SIR. I HAVE NO KNOWLEDGE OF ANYTHING EXCEPT WHAT
3 HAPPENED AT MY AGENCY AND IN MY POSSESSION.

4 Q OKAY. THANK YOU. OH, I HAVE ONE OTHER QUESTION. WHEN YOU
5 SAY YOU DO SEROLOGY AND THINGS OF THAT NATURE, IN OTHER
6 WORDS, IF YOU EXAMINE SWABS TO DETERMINE IF DNA EXISTS ON
7 THOSE PARTICULAR ITEMS, IS IT CORRECT THAT YOU CAN DETERMINE
8 WHO THE PERSON IS AND THINGS OF THAT NATURE? IS THAT
9 CORRECT?

10 A WHEN I INITIALLY RECEIVE A SWAB, THE VERY FIRST STEP IS TO
11 DISCOVER WHETHER OR NOT ANY BODY FLUIDS ARE PRESENT.
12 USUALLY I'M TESTING FOR BLOOD, SEMEN, OR SALIVA. I DO THE INITIAL
13 PRESUMPTIVE TESTING TO DETERMINE WHETHER OR NOT IT IS
14 POSITIVE AND IF IT IS POSITIVE THEN USUALLY IT MOVES ON TO DNA
15 ANALYSIS, IF THAT'S INDICATED, FOR FURTHER TESTING.

16 Q RIGHT. SO IF THERE WAS -- LET'S JUST SAY FOR EXAMPLE, IF THERE
17 WAS A WOUND ON A BODY THAT WAS QUESTIONABLE AS TO WHAT
18 CAUSED THAT WOUND WHETHER IT BE SOMETHING THAT MIGHT LEAVE
19 SOMETHING BEHIND SUCH AS SALIVA, IF IT MIGHT BE A BITE MARK AS
20 OPPOSED TO SOME OTHER TYPE OF MARK, CAUSED BY AN
21 INSTRUMENT OTHER THAN TEETH, YOU WOULD BE ABLE TO -- IF YOU
22 GOT A SWAB FROM THAT PARTICULAR WOUND, YOU WOULD BE ABLE,
23 IF IN FACT THERE WAS SALIVA THERE, TO BE ABLE TO IDENTIFY THE
24 PERSON THAT PUT THAT SALIVA THERE. IS THAT CORRECT?

25 A SOMETIMES, YES, THAT IS POSSIBLE, PROVIDED THE WOUND IS NOT

RE-DIRECT EXAMINATION OF ROBIN TAYLOR BY MR. THORNTON:

225

1 BLOODY.

2 Q RIGHT. THANK YOU.

3 **RE-DIRECT EXAMINATION OF ROBIN TAYLOR BY MR. THORNTON:**

4 Q A COUPLE OF QUICK QUESTIONS. JUST SO EVERYBODY IS CLEAR
5 AGENT TAYLOR, MR. HOOD HAD ASKED YOU ABOUT WHO PUT – WHO
6 COLLECTED THE EVIDENCE AND WHO PUT THAT, AND OF COURSE WE
7 HAVE ALREADY HEARD TESTIMONY REGARDING THAT, BUT IT WAS MY
8 UNDERSTANDING WHEN YOU TESTIFIED EARLIER THAT SOMEONE
9 UNDER YOUR SUPERVISION ACTUALLY SWABBED THE ITEMS AND PUT
10 THE SWABS IN THESE SMALLER ENVELOPES. DID I MISUNDERSTAND
11 YOU?

12 A NO, YOU DID NOT. I APOLOGIZE. THAT'S RIGHT. DAVID McCLURE
13 ACTUALLY SWABBED THE ITEMS AND COLLECTED THOSE. THAT'S HIS
14 HANDWRITING ON THE ENVELOPES FOR THE SWAB FROM THE HAMMER
15 AND THE SWAB FROM THE BB GUN.

16 Q I THINK MAYBE WE ARE GETTING CONFUSED BECAUSE THERE ARE
17 DIFFERENT ENVELOPES. THE ENVELOPES I AM TALKING ABOUT ARE
18 THE VERY SMALL ENVELOPES HERE.

19 A THAT'S CORRECT. IN MY TERMINOLOGY, THE ENVELOPES ARE THE
20 SMALL ORANGE ENVELOPES THAT YOU SEE THERE. THE LARGER
21 CONTAINERS I TERM THEM AS HEAT-SEAL POUCHES TO DISTINGUISH
22 THOSE FROM THE ITEMS THAT ARE ACTUALLY INSIDE. THE HEAT-SEAL
23 POUCHES CONTAIN ENVELOPES THAT HAVE THE EVIDENCE INSIDE
24 THEM.

25 Q SO IS IT FAIR TO SAY THAT SOMEONE UNDER YOUR SUPERVISION

RE-DIRECT EXAMINATION OF ROBIN TAYLOR BY MR. THORNTON:

226

1 SWABBED THE ITEMS AND PUT THE SWABS IN ONE OF THOSE SMALL
2 BROWN ENVELOPES?

3 A THAT'S CORRECT.

4 Q AND THAT WOULD HAVE BEEN IN 1995?

5 A THAT'S CORRECT.

6 Q DID YOU ALSO TESTIFY THAT YOU YOURSELF REMOVED SCRAPINGS
7 FROM THIS SEALED TAPED CONTAINER AND PUT THOSE IN A SMALL
8 BROWN ENVELOPE?

9 A I DID.

10 Q IS THAT ONE OF THOSE ENVELOPES IN THERE?

11 A THAT'S CORRECT.

12 Q AND THAT WAS ALSO IN 1995. IS THAT CORRECT?

13 A YES.

14 Q ALL RIGHT. BETWEEN 1995 WHEN YOU SEALED ALL THAT UP, IN 2005
15 WHEN YOU GOT IT BACK, HAD IT BEEN TAMPERED WITH OR ANY OF THE
16 SEALS BROKEN ON WHATEVER POUCH THEY WERE PLACED IN, IN YOUR
17 PRESENCE?

18 A I SAW NO EVIDENCE THAT LED ME TO BELIEVE THAT THEY HAD BEEN
19 TAMPERED WITH. HAD I SEEN THAT I WOULD HAVE STOPPED
20 ANALYSIS IMMEDIATELY AND CALLED THE SUBMITTING AGENCY AND
21 ASKED THEM TO COME ACTUALLY TO SLED TO VERIFY WHAT I WAS
22 LOOKING AT. I WILL NOT PROCEED WITH ANY SORT OF TESTING IF I
23 HAVE REASON TO BELIEVE THERE IS SOME IRREGULARITY IN WHAT I
24 AM ABOUT TO EXAMINE.

25 Q THANK YOU AGENT TAYLOR. I DON'T HAVE ANYTHING ELSE.

RE-CROSS EXAMINATION OF ROBIN TAYLOR BY MR. HOOD:

227

1 THE COURT: ANY FURTHER QUESTIONS, MR. HOOD?

2 **RE-CROSS EXAMINATION OF ROBIN TAYLOR BY MR. HOOD:**

3 Q DID SPECIAL AGENT POWELL WORK FOR SLED AT THAT TIME?

4 A I BELIEVE YOU ARE REFERRING TO AGENT JOSEPH POWELL. YES, HE
5 WORKED AND STILL WORKS IN THE TRACE ANALYSIS LABORATORY AT
6 SLED, WHICH IS A DIFFERENT DEPARTMENT FROM MINE.

7 Q OKAY. IF HE IS EXAMINING AN ITEM IN WHICH HE MIGHT FIND SOME
8 TYPE OF ITEM THAT COULD BE EXAMINED BY YOU FOR DNA, WOULD HE
9 TRANSFER THAT ITEM TO YOU?

10 A WHEN AN ITEM IS SUBMITTED TO SLED, IT IS DETERMINED USUALLY BY
11 OUR LOG-IN DEPARTMENT AND THE SUBMITTING AGENCY WHAT
12 TESTING IS NEEDED ON THOSE ITEMS AND TRACE ANALYSIS WOULD BE
13 DONE FIRST AND THEN USUALLY, AND I'M NOT FAMILIAR WITH WHAT
14 WAS ACTUALLY DONE IN THIS CASE, BUT USUALLY THAT'S FOR HAIRS
15 OR FIBERS OR ITEMS LIKE THAT AND THEN THOSE ITEMS WOULD BE
16 PASSED ALONG TO MY DEPARTMENT FOR EXAMINATION. JOE POWELL
17 WOULD NOT AT ALL BE RESPONSIBLE FOR TRYING TO FIND ANY
18 STAINS, THAT WOULD PERTAIN TO MY DEPARTMENT. IT IS OUR
19 RESPONSIBILITY TO EXAMINE THOSE ITEMS FOR OUR STAINS. HE
20 MIGHT HAVE MADE NOTES IN HIS CASE FILE ON SOMETHING VERY
21 OBVIOUS LIKE AN OBVIOUS BLOOD STAIN OR SOMETHING LIKE THAT,
22 BUT IT WAS NOT HIS RESPONSIBILITY TO FIND THOSE STAINS. THE
23 EVIDENCE WOULD BE EXAMINED BY OTHER DEPARTMENTS.

24 Q SO, IF HE EXAMINES SOMETHING, LETS SAY A HAIR, HE WOULD PASS
25 THAT TO YOU TO DETERMINE THE SOURCE. IS THAT CORRECT?

RE-DIRECT EXAMINATION OF ROBIN TAYLOR BY MR. THORNTON:

228

1 A NOW, HE MIGHT WOULD DO THAT. IN 1995 HE WOULD NOT HAVE DONE
2 THAT. WE DID NOT HAVE THE CAPABILITY TO DO DNA ANALYSIS ON A
3 HAIR IN 1995.

4 Q BUT YOU DO TODAY AND AT THE TIME YOU DID ALL THIS RE-ANALYSIS
5 OF ALL THIS OTHER STUFF.

6 A YES, IF THE HAIR HAS A ROOT, IT CAN CONTAIN NUCLEAR DNA AND I
7 COULD DETERMINE THE SOURCE IF IT HAPPENS —

8 Q AND YOU CAN IDENTIFY A SUBJECT OR A PERSON WHO LEFT THAT
9 PARTICULAR ITEM THERE. ISN'T THAT CORRECT?

10 A I WOULD NEED HIS BLOOD STANDARD, A BLOOD STANDARD OR A
11 CHEEK SWAB COLLECTED FROM HIM, AND PROVIDED I COULD
12 ACTUALLY GET DNA FROM THE HAIR, I COULD MAKE A COMPARISON.

13 Q AND THAT ALSO APPLIES TO FIBERS. IS THAT CORRECT?

14 A NO, IT DOES NOT.

15 Q IT DOES NOT?

16 A NO, SIR, I DON'T. THERE WOULD BE NO DNA. THERE WOULD BE NO
17 HUMAN DNA IN A NON-HUMAN SOURCE. I DON'T DO FIBER
18 COMPARISONS.

19 Q OKAY. THANK YOU.

20 MR. THORNTON: JUDGE I HAVE ONE MORE. I AM SORRY.

21 THE COURT: GO AHEAD.

RE-DIRECT EXAMINATION OF ROBIN TAYLOR BY MR. THORNTON:

23 Q AGENT TAYLOR, IN 1995 IF JOSEPH POWELL HAD FOUND A HAIR THAT
24 WAS CONSISTENT WITH A VICTIM IN A CASE, IN OTHER WORDS, NOT
25 ANYBODY EXCEPT CONSISTENT WITH THE VICTIM, WOULD THERE BE

DIRECT EXAMINATION OF OFFICER CALANDRA BY MR. THORNTON:

229

1 ANY NEED FOR HIM TO SEND IT TO YOU FOR ANYTHING IF YOU
2 COULDN'T ANALYZE IT?

3 A NO, SIR.

4 Q THANK YOU NO FURTHER QUESTIONS.

5 THE COURT: ANYTHING?

6 MR. HOOD: I HAVE NO QUESTIONS.

7 THE COURT: YOU MAY STEP DOWN. THANK YOU.

8 MR. THORNTON: YOUR HONOR, I ASK THAT AGENT TAYLOR BE
9 EXCUSED.

10 MR. HOOD: NO OBJECTIONS.

11 THE COURT: YOU ARE FREE TO GO. THANK YOU. CALL YOUR NEXT
12 WITNESS.

13 MR. THORNTON: I NEED OFFICER JOEL CALANDRA, PLEASE.

14 (AFTER BEING DULY SWORN BY THE CLERK OF COURT, OFFICER
15 CALANDRA TESTIFIED AS FOLLOWS:)

16 CLERK OF COURT: PLEASE BE SEATED. STATE YOUR NAME AND SPELL
17 IT FOR THE COURT, PLEASE.

18 WITNESS: STAFF SARGENT JOEL CALANDRA. BEAUFORT COUNTY
19 SHERIFF'S OFFICE. C-A-L-A-N-D-R-A.

20 **DIRECT EXAMINATION OF OFFICER CALANDRA BY MR. THORNTON:**

21 Q SARGENT, I KNOW THIS IS A RIDICULOUS QUESTION BASED ON YOUR
22 UNIFORM, BUT WHO DO YOU WORK FOR, SIR?

23 A BEAUFORT COUNTY SHERIFF'S OFFICE.

24 Q ALL RIGHT, SIR. DID YOU WORK FOR THE BEAUFORT COUNTY
25 SHERIFF'S OFFICE IN 1995?

DIRECT EXAMINATION OF OFFICER CALANDRA BY MR. THORNTON:

230

1 A YES, I DID.

2 Q IN WHAT CAPACITY DID YOU WORK FOR THEM THEN, SIR. WHAT DID
3 YOU DO FOR THEM?

4 A I WAS A CORPORAL ON THE PATROL DIVISION.

5 Q ALL RIGHT. ON JANUARY, I BELIEVE IT WOULD HAVE BEEN JANUARY
6 14th EARLY MORNING JANUARY THE 14th, OR ACTUALLY I TAKE THAT
7 BACK, THIS MAY HAVE STARTED ON FRIDAY EVENING JANUARY THE 13th
8 OF '95. DID YOU RESPOND OUT TO THE HOME OF CHARLES GODLEY?

9 A YES, I DID.

10 Q AND WHAT DID YOU GO OUT THERE FOR?

11 A I WENT OUT THERE FOR A COMPLAINT OF SUSPICIOUS ACTIVITY. A
12 SUBJECT THAT WAS ON MR. GODLEY'S PROPERTY.

13 Q ALL RIGHT, SIR. DID YOU GO OUT AND TALK TO MR. GODLEY?

14 A YES, I DID.

15 Q AND BASED UPON WHAT HE TOLD YOU, SIR, DID YOU DO ANYTHING?

16 A AH, YES SIR. AFTER I LEFT MR. GODLEY'S HOUSE HE GAVE ME A
17 DESCRIPTION OF THE SUBJECT THAT WAS ON HIS PORCH AND I
18 CHECKED THE AREA TO SEE IF I COULD LOCATE ANYBODY THAT MET
19 THAT DESCRIPTION.

20 Q ALL RIGHT, SIR. AND DID YOU FIND ANYBODY ON HIGHWAY 21 THAT
21 MATCHED THAT DESCRIPTION?

22 A YES, SIR. APPROXIMATELY A MILE FROM THE RESIDENCE I FOUND THE
23 SUBJECT AT THE END OF, I THINK IT WAS, TOM FRIPP ROAD, AND I
24 STOPPED HIM. HE FIT THE DESCRIPTION THAT MR. GODLEY GAVE AND I
25 STOPPED AND SPOKE WITH THE INDIVIDUAL.

DIRECT EXAMINATION OF OFFICER CALANDRA BY MR. THORNTON:

231

1 Q AND WHEN YOU STOPPED HIM AND I AM SORRY IF I MISSED IF YOU

2 HAVE ALREADY TESTIFIED TO THIS, WAS THAT SATURDAY MORNING?

3 A YES, SIR. THAT WAS APPROXIMATELY ONE A.M.

4 Q ALL RIGHT, SIR. AND WERE YOU ABLE TO IDENTIFY THE PERSON THAT

5 YOU STOPPED?

6 A YES, I DID.

7 Q AND WHO WAS IT?

8 A A FELLOW BY THE NAME OF DONALD MITCHELL.

9 Q ALL RIGHT, SIR. DID - AND THIS WAS DARK. WERE THERE ANY

10 OUTSIDE LIGHTS ON?

11 A THERE WAS THE STREET LAMP THAT WAS AT THE END OF THE ROAD

12 THERE AND MY HEADLIGHTS, BUT NO OTHER LIGHTS.

13 Q ALL RIGHT, SIR. AND DID YOU GET OUT OF THE CAR TO SPEAK WITH

14 HIM?

15 A YES, SIR. I DID.

16 Q ALL RIGHT. AND COULD YOU SEE HIM FAIRLY WELL IN THE LIGHTS AND

17 HEAD LIGHTS.

18 A YES, SIR. I DID.

19 Q AND DO OFFICERS CARRY A FLASHLIGHT?

20 A YES, SIR.

21 Q AND DID YOU NEED THAT AT THAT TIME?

22 A I DID CARRY MY FLASHLIGHT WITH ME.

23 Q DID YOU TURN IT ON?

24 A YES, SIR. I HAD IT AND IT WAS TURNED ON.

25 Q ALL RIGHT. AND WHAT IS THE PURPOSE OF LIGHTING UP SOMEBODY

DIRECT EXAMINATION OF OFFICER CALANDRA BY MR. THORNTON:

232

1 THAT YOU ARE TALKING TO?

2 A TO CHECK AND MAKE SURE THEY DON'T HAVE ANY WEAPONS ON THEM
3 OR IN THEIR HAND AND ALSO TO SEE WHO YOU ARE SPEAKING TO FOR
4 IDENTIFICATION.

5 Q ALL RIGHT, SIR. DO YOU PAY ATTENTION TO LOOKING AT THEM WHEN
6 YOU ARE TALKING TO THEM?

7 A YES, SIR.

8 Q ALL RIGHT. WHEN YOU WERE TALKING TO MR. MITCHELL, DID YOU
9 NOTICE IF HE WAS COVERED IN BLOOD OR HE HAD BLOOD SPATTERED
10 ALL OVER HIM OR ANYTHING LIKE THAT?

11 A NO, SIR. HE DIDN'T.

12 Q WOULD YOU HAVE NOTATED THAT IN YOUR REPORT IF THAT HAD BEEN
13 THE CASE?

14 A YES, SIR, I WOULD HAVE.

15 Q ANY DOUBT IN YOUR MIND THAT HE DID NOT HAVE BLOOD SPATTERED
16 ALL OVER HIM, ET CETERA?

17 A NO. NO DOUBT IN MY MIND THAT HE HAD NOTHING ON HIM.

18 Q ALL RIGHT, SIR. AND HAD HE HAD SOMETHING ON HIM, YOU WOULD
19 HAVE TAKEN HIM INTO CUSTODY, OR QUESTIONED HIM, OR DONE
20 SOMETHING?

21 A I WOULD HAVE PROBABLY HAVE NOTIFIED AN INVESTIGATOR AND THE
22 INVESTIGATOR WOULD HAVE INVESTIGATED A LITTLE FURTHER TO SEE
23 WHAT WAS GOING ON.

24 Q ALL RIGHT, SIR. YOU TALKED TO I BELIEVE -- DID YOU WRITE A REPORT,
25 SIR?

CROSS EXAMINATION OF OFFICER CALANDRA BY MR. HOOD:

233

1 A YES, SIR. I DID.

2 Q IN YOUR REPORT YOU IDENTIFIED SOME OF THE ITEMS THAT THE
3 SUSPECT MIGHT HAVE BEEN WEARING AND THAT IS WHY YOU
4 STOPPED MR. MITCHELL. IS THAT CORRECT?

5 A YES, SIR. THE DESCRIPTION THAT MR. GODLEY HAD GIVEN ME WAS A
6 SOMEWHAT LARGE, YOU KNOW, BLACK MALE THAT WAS WEARING
7 WHAT APPEARED TO BE A TRENCH COAT AND I BELIEVE IT WAS AN
8 ORANGE-TYPE BASEBALL-TYPE HAT.

9 Q ALL RIGHT, SIR. AND WHEN YOU, WHEN YOU FOUND MR. MITCHELL,
10 YOU STOPPED AND YOU TALKED TO HIM. IS THAT CORRECT?

11 A YES, SIR.

12 Q NOW, ABOUT HOW MANY HOURS ARE WE TALKING ABOUT BETWEEN
13 THE TIME YOU TALKED TO CHARLES GODLEY ON FRIDAY, EITHER
14 AFTERNOON OR EVENING, AND THE TIME THAT YOU STOPPED DONALD
15 MITCHELL SATURDAY MORNING?

16 A IT WAS APPROXIMATELY TWO HOURS.

17 Q ALL RIGHT, SIR. AND I DON'T THINK I HAVE ANY FURTHER QUESTIONS.
18 THANK YOU VERY MUCH. CORP – I'M SORRY I WAS GOING TO CALL
19 YOU CORPORAL, SARGENT CALANDRA AND PLEASE ANSWER ANY
20 QUESTIONS THAT MR. HOOD MIGHT HAVE FOR YOU.

21 **CROSS EXAMINATION OF SERGEANT CALANDRA BY MR. HOOD:**

22 Q NOW, AFTER YOU STOPPED THIS INDIVIDUAL THAT NIGHT AND TALKED
23 TO HIM ABOUT HIS PRESENCE BEING ON MR. GODLEY'S FRONT PORCH,
24 I BELIEVE HE WAS REFERRED TO AS A PEEPING TOM. IS THAT
25 CORRECT?

CROSS EXAMINATION OF OFFICER CALANDRA BY MR. HOOD:

234

- 1 A YES, SIR.
- 2 Q OKAY. AND HE WAS LOOKING INTO THE WINDOWS OF MR. GODLEY'S
3 RESIDENCE. ISN'T THAT CORRECT?
- 4 A AH, YES SIR. I ASKED HIM THAT.
- 5 Q AND AFTER YOUR MEETING WITH THIS PERSON OUT ON THE ROAD AND
6 EVERYTHING, DID YOU LEAVE AND GO BACK TO MR. GODLEY'S PLACE
7 AND SEE HIM AGAIN AT ANY TIME?
- 8 A I LEFT AND I HAD GONE BACK, BUT I HAD NOT PERSONALLY TALKED TO
9 MR. GODLEY, BUT I DID CHECK HIS PROPERTY AGAIN.
- 10 Q BUT YOU DIDN'T SEE HIM. IS THAT CORRECT?
- 11 A I DIDN'T UNDERSTAND THE QUESTION, SIR.
- 12 Q YOU DIDN'T SEE MR. GODLEY? IS THAT CORRECT?
- 13 A NO, SIR. I DID NOT SEE MR. GODLEY.
- 14 Q SO YOU JUST DROVE BY HIS PROPERTY JUST TO CHECK TO SEE IF
15 THERE WAS ANYBODY HANGING AROUND THERE. IS THAT CORRECT?
- 16 A YES, SIR. I WENT OUT THERE TO THE DRIVEWAY AT THE HOUSE AND
17 PULLED AROUND AND DID NOT SEE ANYTHING.
- 18 Q OKAY. AND NOBODY CAME TO THE DOORS OR CUT ON ANY LIGHTS FOR
19 YOU OR ANYTHING OF THAT NATURE AT THE RESIDENCE. ISN'T THAT
20 CORRECT?
- 21 A YES, SIR.
- 22 Q OKAY. ALL RIGHT. SO, YOU LEAVE AT THAT POINT IN TIME.
- 23 A YES, SIR.
- 24 Q AND YOU HAD NO FURTHER CONTACT WITH THAT PARTICULAR
25 RESIDENCE THE REST OF THAT WEEK. IS THAT CORRECT?

CROSS EXAMINATION OF OFFICER CALANDRA BY MR. HOOD:

235

1 A THAT'S CORRECT.

2 Q OKAY. NOW, THE PERSON THAT YOU STOPPED OUT HERE ON THE
3 ROAD AND YOU'RE TALKING TO, I BELIEVE YOU TOLD THE PERSON
4 SOMETHING TO THE EFFECT THAT IF I CATCH YOU PEEKING IN
5 ANYBODY ELSE'S WINDOWS I AM GOING TO RUN YOU IN. IS THAT
6 CORRECT? SOMETHING LIKE THAT?

7 A I THINK I SAID SOMETHING LIKE DON'T PEEK IN THE WINDOWS OR YOU
8 KNOW ITS AGAINST THE LAW OR SOMETHING TO THAT EFFECT.

9 Q AND THAT WAS APPROXIMATELY TWO HOURS AFTER MR. GODLEY HAD
10 INFORMED YOU THAT SOMEBODY WAS ON HIS STEPS. IS THAT
11 CORRECT?

12 A THAT'S CORRECT.

13 Q OKAY. I DON'T HAVE ANY OTHER QUESTIONS. OH, YOU DIDN'T
14 COLLECT ANY EVIDENCE OR ANYTHING LIKE THAT IN THIS CASE DID
15 YOU?

16 A NO SIR, I DIDN'T.

17 Q OKAY. THANKS.

18 THE COURT: REDIRECT?

19 MR. THORNTON: NONE YOUR HONOR.

20 THE COURT: YOU MAY STEP DOWN. THANK YOU.

21 MR. THORNTON: YOUR HONOR, MAY WE APPROACH?

22 (BRIEF BENCH CONFERENCE OFF THE RECORD)

23 THE COURT: OKAY FOLKS, WE ARE GOING TO GO AHEAD AND BREAK
24 FOR LUNCH NOW. I WOULD ASK YOU TO BE BACK IN THE JURY ROOM AT
25 1:30 PM. DON'T BEGIN DELIBERATIONS OR DISCUSSIONS ABOUT THE CASE

IN CHAMBERS INTERVIEW WITH JUROR DEBRA POWERS:

236

1 AND, OF COURSE, AVOID ANY EXPOSURE TO THE MEDIA THAT YOU MIGHT
2 HAVE IN THE BREAK. SO, COME BACK AND BE IN THE JURY ROOM AT 1:30 PM
3 AND WE WILL SEE YOU THEN. THANK YOU.

4 THE COURT: WE WILL BE BACK AT 1:30 PM, IF Y'ALL WANT TO COME
5 BACK IN CHAMBERS.

6 MR. THORNTON: YES, SIR.

7 IN CHAMBERS INTERVIEW WITH JUROR DEBRA POWERS:

8 (PRESENT: JUDGE YOUNG, LAW CLERK, MR. THORNTON, MR. HOOD, JO
9 RICE

10 THE COURT: AT LUNCH, JUROR 133, DEBRA POWERS, TOLD THE BAILIFF
11 AS SHE WAS LEAVING FOR LUNCH, SHE LOOKED OVER AND SAW DONALD
12 MITCHELL OUTSIDE AND SAID, "OH, THAT DONALD MITCHELL. HE USED TO
13 WORK FOR ME." AND SO, I THOUGHT IT WOULD BE APPROPRIATE IF WE
14 BROUGHT HER IN. I THINK HE EVEN USED TO WORK FOR HER, IF I RECALL
15 WHAT SHE SAID, SO, CERTAINLY, IT MIGHT BE APPROPRIATE TO INQUIRE ON
16 HER RELATIONSHIP WITH HIM, BECAUSE IF YOU ARE GOING TO BE
17 SUGGESTING THAT HE MIGHT HAVE PERHAPS, COMMITTED A MURDER, THEN
18 IT MIGHT BE RELEVANT THAT SHE KNOWS HIS CHARACTER, ESPECIALLY IF
19 SHE WORKED WITH HIM.

20 MR. HOOD: OBVIOUSLY, IT WOULD.

21 THE COURT: SO, WOULD YOU BRING DEBRA POWERS BACK HERE?

22 (SPEAKING TO LAW CLERK)

23 (MS. POWERS ENTERS THE ROOM)

24 THE COURT: HELLO. COME ON IN AND HAVE A SEAT. I NEED TO ASK
25 YOU A LITTLE BIT, BASED ON THE CONVERSATION THAT YOU HAD WITH THE

IN CHAMBERS INTERVIEW WITH JUROR DEBRA POWERS:

237

1 BAILIFF THAT YOU APPARENTLY KNOW MR. DONALD MITCHELL, WHOSE NAME
2 HAS COME UP AS A PERSON WHO MIGHT HAVE BEEN A SUSPECT AT ONE
3 TIME IN THIS CASE. TELL ME HOW YOU KNOW MR. MITCHELL.

4 MS. POWERS: I WOULDN'T HAVE EVEN THOUGHT ANYTHING ABOUT IT.
5 TEN YEARS AGO, I USED TO WORK AS THE OPERATIONS MANAGER FOR A BIG
6 CORPORATION AND I HAD EIGHTY EMPLOYEES. HE WAS ONE OF THEM. BUT,
7 I WOULDN'T HAVE KNOWN UNTIL I WENT DOWNSTAIRS AND HE TURNED
8 SIDEWAYS. HE DIDN'T SEE ME, I DON'T THINK, BUT AS SOON AS I SAW HIS
9 FACE, HE HASN'T CHANGED ANY, BUT HE'S NON-DESCRIPT, I MEAN, I
10 WOULDN'T.

11 THE COURT: WELL, YOU'RE NOT IN IN TROUBLE.

12 MS. POWERS: OH, I KNOW. I JUST WANTED YOU GUYS TO KNOW. I
13 DIDN'T WANT THERE TO BE ANY TROUBLE.

14 THE COURT: IT'S IMPORTANT THAT YOU DID.

15 MS. POWERS: ALL RIGHT.

16 THE COURT: SO, HE USED TO WORK FOR YOU?

17 MS. POWERS: UH-HUH.

18 THE COURT: AND HOW WELL DID YOU KNOW HIM?

19 MS. POWERS: NOT HIM ANY MORE THAN THE SEVENTY-NINE OTHERS, I
20 MEAN, I JUST —

21 THE COURT: WHAT KIND OF INTERACTION ON A DAILY BASIS DID YOU
22 HAVE WITH HIM?

23 MS. POWERS: WELL, I WOULD GIVE THEM ALL THEIR DUTIES AND THEY
24 WOULD GO OUT AND PERFORM THEM AND THEY WOULD REPORT BACK TO
25 ME. THEY'D BRING PAYROLL, SOME OF THEM AND —

IN CHAMBERS INTERVIEW WITH JUROR DEBRA POWERS:

238

1 THE COURT: WHAT WAS IT THAT YOU DID?

2 MS. POWERS: I WAS THE OPERATIONS MANAGER FOR A COMPANY
3 CALLED R-S-R AND IT WAS COMMERCIAL POOLS, COMMERCIAL
4 LANDSCAPING, REAL ESTATE, IT WAS A WHOLE BUNCH OF DIFFERENT
5 THINGS.

6 THE COURT: AND HOW OFTEN WOULD YOU INTERACT WITH HIM?

7 MS. POWERS: HIM PARTICULARLY? MAYBE ONCE OR TWICE A WEEK,
8 BUT NO DIFFERENT THAN THE OTHERS.

9 THE COURT: OKAY. WHEN YOU INTERACTED WITH HIM, WAS IT A
10 THIRTY-SECOND CONVERSATION USUALLY, OR THIRTY MINUTE
11 CONVERSATION, OR WHAT?

12 MS. POWERS: THIRTY SECONDS, IF THAT.

13 THE COURT: OKAY.

14 MS. POWERS: YOU KNOW, BECAUSE THEY WOULD COME IN IN THE
15 MORNINGS -- ACTUALLY I WOULD GET IN AFTER THEM -- AND IF THEY HAD
16 ANYTHING THAT WENT WRONG DURING THE DAY, THEY WOULD COME AND
17 TELL ME, BUT OTHER THAN BRINGING ME THEIR HOURS OR ME SAYING,
18 "OKAY, YOU'LL BE HERE TODAY OR .." OTHER THAN THAT, NO DIFFERENT
19 THAN THE REST.

20 THE COURT: HOW LONG DID HE WORK FOR YOU?

21 MS. POWERS: WELL, I WORKED THERE FOR THREE YEARS SO, HE
22 WORKED FOR ME THE WHOLE TIME, BUT MOST OF THEM DID, MOST OF THEM
23 STAYED.

24 THE COURT: OKAY. DID HE LEAVE FIRST OR DID YOU LEAVE FIRST?

25 MS. POWERS: I DON'T EVEN REMEMBER, TO BE HONEST WITH YOU.

IN CHAMBERS INTERVIEW WITH JUROR DEBRA POWERS:

239

1 **THE COURT:** OKAY. DID YOU -- WHAT KIND OF EMPLOYEE DID YOU
2 CONSIDER HIM TO BE? GOOD, BAD, INDIFFERENT, OR WHAT?

3 **MS. POWERS:** IN HONESTY, I COULDN'T TELL YOU. IF YOU PAID ME, I
4 COULDN'T TELL YOU. I DON'T EVEN REMEMBER, I ONLY REMEMBER HIS FACE.
5 WHEN HE TURNED, IT WAS LIKE, "WHOA", HE HAD NOT CHANGED THAT MUCH,
6 SO, THAT'S THE ONLY REASON I RECOGNIZED HIM, BUT IF HE STOOD IN
7 FRONT OF ME I COULDN'T, IF HE ASKED ME, "DO YOU REMEMBER WHAT KIND
8 OF EMPLOYEE I WAS," I COULDN'T TELL YOU.

9 **THE COURT:** OKAY.

10 **MS. POWERS:** I MEAN, IT WAS TEN YEARS AGO.

11 **THE COURT:** ALL RIGHT. AND YOU HAVEN'T SEEN HIM SINCE THEN?

12 **MS. POWERS:** NOT AT ALL.

13 **THE COURT:** AND SO, YOU DON'T KNOW WHY -- HE MAY STILL BE
14 WORKING THERE, FOR ALL YOU KNOW.

15 **MS. POWERS:** WELL, AFTER I LEFT, MY BROTHER OWNED THE
16 COMPANY BEFORE THESE PEOPLE BOUGHT IT AND THEY TOOK IT DOWN, AND
17 SO I DON'T KNOW WHAT HAPPENED AFTER THAT. I HAVE NO IDEA.

18 **THE COURT:** DO EITHER OF Y'ALL HAVE ANY QUESTIONS YOU WANT TO
19 ASK HER?

20 **MR. THORNTON:** I DON'T, JUDGE.

21 **MR. HOOD:** I HAVE A COUPLE OF QUESTIONS I WOULD LIKE TO ASK.
22 WHAT TYPE OF DUTIES DID HE PERFORM FOR YOU?

23 **MS. POWERS:** WELL, HE WAS INVOLVED IN THE LANDSCAPE END AND
24 SO HE WOULD HAVE GONE OUT, HE WAS IN THE RESIDENTIAL PART, AND SO
25 HE WOULD HAVE GONE OUT AND CUT GRASS OR LAID PINE STRAW OR --

IN CHAMBERS INTERVIEW WITH JUROR DEBRA POWERS:

240

1 THOUSANDS OF DIFFERENT THINGS.

2 MR. HOOD: WELL, I GUESS -- DID YOU EVER HAVE ANY COMPLAINTS OR
3 ANYTHING ABOUT THE NATURE OF HIS WORK OR --

4 MS. POWERS: NO. IF WE DID, THEY WERE GONE. I WAS A HARD TASK
5 MASTER. HE WOULD HAVE BEEN GONE IF THERE HAD BEEN ANY PROBLEMS.

6 MR. HOOD: SO, HE MUST HAVE BEEN A GOOD EMPLOYEE. IS THAT
7 WHAT YOU ARE SAYING?

8 MS. POWERS. YES. IF HE WAS STILL THERE, YES, HE HAD TO BE A
9 DECENT EMPLOYEE, YES.

10 MR. HOOD: AND WOULD HE HAVE BEEN IN CHARGE OF ANY OTHER
11 PEOPLE THAT WORKED THERE?

12 MS. POWERS: NO.

13 MR. HOOD: OKAY. AND SO, WHEN YOU WERE TALKING ABOUT
14 PAYROLLS AND THINGS OF THAT NATURE, DID HE HANDLE THE PAYROLLS --

15 MS. POWERS: NO, HE WOULD JUST TURN IN HIS HOURS.

16 MR. HOOD: HE WOULD TURN IN THE HOURS TO YOU AND --

17 MS. POWERS: RIGHT.

18 MR. HOOD: -- AND YOU WERE SATISFIED THAT HE WAS DOING IT IN AN
19 HONEST MANNER. IS THAT CORRECT?

20 MS. POWERS: YES.

21 MR. HOOD: ALL RIGHT. I DON'T HAVE ANY FURTHER QUESTIONS.

22 THE COURT: OKAY. I'M GOING TO ASK YOU TO JUST STEP OUT TO THE
23 OUTER DESK RIGHT HERE. DON'T GO BACK INTO THE JURY POOL, JUST STAY
24 RIGHT OUT HERE FOR A MINUTE. THANK YOU.

25 (MS. POWERS LEAVES THE ROOM)

IN CHAMBERS INTERVIEW WITH JUROR DEBRA POWERS:

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1 **THE COURT:** WELL, WHAT DO Y'ALL THINK?

2 **MR. HOOD:** SHE'S GOT TO GO. I HATE TO SAY THAT, BUT SHE'S GOT TO
3 GO. WE HAVE TWO ALTERNATES AND THE ALTERNATES HAVE BEEN THERE
4 ALL THE TIME. WE'RE JUST GOING TO HAVE TO LET HER GO. I MEAN, SHE
5 KNOWS THE REPUTATION OF THIS PERSON IN THE COMMUNITY FOR A
6 PERIOD OF TIME BECAUSE HE WORKED FOR HER AND SHE KNOWS THAT HE
7 NEVER GAVE HER ANY PROBLEMS BECAUSE SHE WAS, LIKE SHE SAID, A
8 TASKMASTER OR WHATEVER AND THAT SHE TRUSTED HIM BECAUSE SHE
9 NEVER HAD ANY PROBLEMS WITH HIM, NEVER HAD ANY COMPLAINTS. SHE,
10 YOU NOW, ACCEPTED HIS HOURS AS BEING TRUTHFUL AND HONEST AND HE
11 WAS A VERY RELIABLE EMPLOYEE AND THEREFORE —

12 **THE COURT:** WOULDN'T BE THE KIND OF PERSON THAT LIKELY
13 COMMITTED A MURDER.

14 **MR. HOOD:** THAT'S RIGHT.

15 **THE COURT:** I'VE GOTCHA.

16 **MR. HOOD:** OKAY.

17 **THE COURT:** MR. THORNTON, YOU WANT TO CHIME IN ON IT?

18 **MR. THORNTON:** JUDGE, I UNDERSTAND WE HAVE TWO ALTERNATES
19 AND I WOULD JUST SAY THAT, BASED ON WHAT SHE JUST DESCRIBED TO
20 YOU WHEN SHE ANSWERED YOU, THOSE AREN'T THE KINDS OF THINGS THAT
21 WOULD HAVE KEPT HER OFF THE JURY IN THE FIRST PLACE, KNOWING HIM IN
22 AN ANCILLARY MANNER TEN YEARS AGO, I DON'T THINK YOU WOULD HAVE
23 DISQUALIFIED HER FOR THAT, I THINK SHE IS STILL A QUALIFIED JUROR AND
24 SHE HASN'T INDICATED ANY BIAS OTHER THAN HE WORKED FOR HER TEN
25 YEARS AGO AND AS FAR AS SHE KNEW, HE WAS HONEST IN TURNING IN HIS

IN CHAMBERS INTERVIEW WITH JUROR DEBRA POWERS:

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1 TIME SHEETS, BUT, YOU KNOW, BEYOND THAT, I DON'T THINK THAT WOULD
2 HAVE KEPT HER OFF THE JURY IN THE FIRST PLACE.

3 THE COURT: WELL—

4 MR. THORNTON: BUT I DO RECOGNIZE —

5 THE COURT: -- IT MIGHT HAVE KEPT HER OFF IF WE HAD FOLLOWED
6 UP ON THIS LINE OF INQUIRY, BECAUSE OBVIOUSLY, IF MR. HOOD IS GOING
7 TO POINT THE FINGER OF SUSPICION AT SOMEONE THAT SHE WORKED WITH
8 FOR SOME PERIOD OF TIME, SHE WOULD BE IN A POSITION, ESPECIALLY IN
9 THE TIME FRAME, TEN YEARS AGO THAT WE ARE TALKING ABOUT, SHE
10 WOULD KNOW WHAT HE WAS LIKE THEN. AND THEN, YOU KNOW, ASIDE
11 FROM HIS CHARACTER, PROBABLY HAD SOME INDICATION OF WHAT HIS
12 CONDUCT WAS LIKE, YOU KNOW.

13 MR. THORNTON: I UNDERSTAND, JUDGE.

14 THE COURT: PEOPLE ACCUSED OF MURDER MIGHT BE A LITTLE BIT
15 JITTERIER THAN A NORMAL ACTING PERSON. I THINK WE'RE GOING TO HAVE
16 TO LET HER GO HOME. SO, WE WILL THEN PUT TWO NAMES UP AND JUMBLE
17 THEM UP AND DRAW FOR THE FIRST ALTERNATE TO BE SEATED. WHILE WE
18 HAVE HER IN HERE, AS TO THE ISSUE OF WHETHER OR NOT WE'RE GOING TO
19 LET MR. MITCHELL TESTIFY, OFF THE RECORD OR RIGHT BEFORE WE BROKE
20 FOR LUNCH, THE STATE HAS INDICATED THEIR INTENT TO CALL DONALD
21 MITCHELL AS A WITNESS FOR THE PURPOSES, OSTENSIBLY, OF ASKING HIM,
22 "YOU WERE A SUSPECT IN THIS CASE TEN YEARS AGO, DID YOU COMMIT THE
23 MURDER." AND PRESUMABLY HE WOULD DENY IT. MR. HOOD HAS INDICATED
24 THAT HE OBJECTS THE CALLING OF MR. MITCHELL FOR THAT PURPOSE. I'VE
25 REFLECTED ON IT AND I DO NOT FEEL IT WOULD BE APPROPRIATE TO CALL

IN CHAMBERS INTERVIEW WITH JUROR DEBRA POWERS:

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1 MR. MITCHELL FOR THE SOLE PURPOSE OF PUTTING HIM ON THE STAND TO
2 DENY THAT HE COMMITTED THE MURDER HE WAS A SUSPECT FOR VERY
3 BRIEFLY, AND SO I'M GOING TO DISALLOW FOR HIM TO BE CALLED. ON THE
4 OTHER HAND, I'M NOT GOING TO ALLOW YOU, IN YOUR CLOSING ARGUMENT,
5 ASK, "WHY WASN'T HE CALLED AS A WITNESS", YOU OPEN THAT DOOR AND
6 WE MAY HAVE TO, YOU KNOW, RE-OPEN THE EVIDENCE AND SO YOU HAVE
7 TO BE VERY CAREFUL ABOUT YOUR ARGUMENT AND I KNOW WHAT YOU
8 WANT TO ARGUE, BE CAREFUL YOU DON'T OPEN THE DOOR TO THEM
9 JUMPING UP AND SAYING, "OKAY, WE GET TO CALL HIM NOW." OKAY?

10 MR. HOOD: I'M NOT GOING TO, OBVIOUSLY, I WOULDN'T DO THAT.

11 THE COURT: TREAD LIGHTLY.

12 MR. HOOD: I THINK THAT, TO BE PERFECTLY HONEST WITH YOU, I
13 PERSONALLY THINK THAT IS UNETHICAL, AND SO, MY ETHICS MAY BE A
14 LITTLE SHATTERED IN SOME PLACES, BUT THEY'RE STILL PRETTY GOOD IN
15 OTHERS, SO YOU KNOW, I CERTAINLY, I THINK THAT WOULD BE UNETHICAL.

16 THE COURT: OKAY.

17 MR. THORNTON: JUDGE, THE ONLY THING THAT I WOULD ASK IS TO
18 COMBINE MY OBJECTION TO THAT OF YOUR NOT ALLOWING ME TO CALL
19 DONALD MITCHELL SHOULD BE NOTED FOR THE RECORD, SO I DON'T HAVE
20 TO BRING IT UP AND IT BE CONSIDERED CONTEMPORANEOUSLY. IT'S
21 UNDERSTOOD, JUDGE, I'D JUST LIKE TO MAKE THAT CLEAR FOR LATER
22 PURPOSES.

23 THE COURT: I'M DOING IT IN HERE, I WOULD DO IT IN OPEN COURT
24 NORMALLY, BUT LORD HAVE MERCY, THE LAST THING WE NEED IS ANOTHER
25 NEWSPAPER ARTICLE AND THE REPORTER THEN TOMORROW MORNING, YOU

IN CHAMBERS INTERVIEW WITH JUROR DEBRA POWERS:

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1 KNOW, WRITES ABOUT THIS AND --

2 MR. THORNTON: UNDERSTOOD, JUDGE.

3 (DEBRA POWERS RETURNS TO CHAMBERS)

4 THE COURT: ALL RIGHT. MS. POWERS, WE'RE GOING TO HAVE TO
5 DISMISS YOU ON THIS CASE. IT'S NOTHING YOU HAVE DONE WRONG. IT'S
6 JUST THAT UNDER THE CIRCUMSTANCES, THE DEFENSE IS SUGGESTING
7 THAT MR. MITCHELL MIGHT HAVE BEEN THE PERSON THAT DID THIS AND YOU,
8 OBVIOUSLY, HAVE KNOWLEDGE OF HIS CHARACTER AND EVEN DURING THAT
9 TIME FRAME, WHAT HE WAS DOING AND ACTING LIKE, AND SO THAT COULD
10 BECOME RELEVANT AND SO I NEED TO DISMISS YOU. WE'VE GOT TWO
11 ALTERNATES TO BRING IN AND I AM GOING TO ASK THAT WHEN YOU GO BACK
12 TO GET YOUR STUFF, OF COURSE, DON'T TALK TO ANYBODY IN THE JURY
13 ROOM. BUT I ALSO ASK THAT YOU DON'T TALK TO ANYBODY ELSE ABOUT
14 THIS CASE UNTIL IT'S OVER WITH. I STRONGLY DOUBT ANYBODY FROM THE
15 NEWSPAPER OR TELEVISION WILL CONTACT YOU, BUT IF THEY DO, TELL
16 THEM THE JUDGE SAID YOU COULDN'T TALK TO ANYBODY ABOUT IT. DON'T
17 TALK TO YOUR FAMILY MEMBERS ABOUT IT. WHEN THE CASE IS OVER WITH,
18 YOU CAN READ ABOUT IT TOMORROW, YOU'RE FREE TO DO THAT NOW, BUT
19 DON'T TALK TO ANYBODY ABOUT YOUR PARTICIPATION IN THE CASE AND
20 WHAT YOU KNOW ABOUT MR. MITCHELL OR EVEN WHY YOU ARE NO LONGER
21 ON THE JURY. OKAY?

22 MS. POWERS: UH-HUH.

23 THE COURT: THANK YOU SO MUCH FOR WHAT YOU'VE DONE. THANK
24 YOU, I'M SORRY.

25 MS. POWERS: NO, THAT'S FINE.

IN CHAMBERS INTERVIEW WITH ROBERT BROMAGE:

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1 **THE COURT:** THANK YOU FOR BRINGING IT TO OUR ATTENTION.

2 **MR. POWERS:** ALL RIGHT. THANK YOU.

3 (MS. POWERS LEAVES THE ROOM)

4 (TH THE JUDGE DRAWS THE NAME OF ALTERNATE ROSE ROBINSON,
5 JUROR #138, AS THE REPLACEMENT JUROR FOR MS. POWERS.)

6 **INTERVIEW WITH ROBERT BROMAGE IN CHAMBERS:**

7 (PRESENT: JUDGE YOUNG, SEAN THORNTON, GENE HOOD, JO RICE)

8 (AFTER BEING DULY SWORN BY THE JUDGE IN CHAMBERS, OFFICER
9 BROMAGE TESTIFIED AS FOLLOWS:

10 **THE COURT:** THERE HAS BEEN SOME REPORTS THAT WE'VE HAD THAT
11 YOU WENT BACK AND TALKED TO SOME OF THE WITNESSES THAT WERE
12 SEQUESTERED.

13 **OFFICER BROMAGE:** YES. YESTERDAY, SIR.

14 **THE COURT:** TELL US WHO YOU TALKED TO.

15 **OFFICER BROMAGE:** I TALKED TO STEPHEN DAVIS BECAUSE HE HAD
16 THE PHOTOS OF THE AMIDO BLACK FINGERPRINTS OVER A PERIOD OF
17 SEVERAL YEARS AND I HAD TO SIGN FOR THEM. DAVID BLACK.

18 **THE COURT:** OKAY. AND WHAT DID YOU TALK TO HIM ABOUT?

19 **MR. BROMAGE:** SAME THING. WE LOOKED AT THESE PHOTOS A WHILE
20 BACK, AND YOU KNOW, I COULDN'T FOR THE LIFE OF ME REMEMBER WHAT
21 THE DISPOSITION WAS. I WAS JUST TRYING TO FIGURE OUT FOR ME. NOT
22 TALKING ABOUT WHAT IS GOING ON IN THE COURTROOM WHATSOEVER. I
23 JUST ASKED ABOUT THE PHOTOS.

24 **THE COURT:** TELL ME WHAT YOU WERE TALKING ABOUT.

25 **MR. BROMAGE:** THAT'S WHAT I WAS TALKING ABOUT, ASKING HIM

IN CHAMBERS INTERVIEW WITH ROBERT BROMAGE:

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1 ABOUT THE PHOTOS, THE AMIDO BLACK PHOTOS THAT, I GUESS, THEY NEVER
2 MADE IT TO SLED, BUT THERE WAS SOME EVIDENCE THAT THEY MADE IT TO
3 SLED AND I DIDN'T HAVE ANY OTHER PAPERWORK AND SO I WAS ASKING HIM
4 ABOUT THEM.

5 THE COURT: SPECIFICALLY.

6 MR. BROMAGE: THAT IS WHAT I WAS ASKING – THAT IS WHAT I WAS
7 ASKING, WERE THEY NOT ANALYZED? THERE IS NO PAPERWORK OR
8 ANYTHING LIKE THAT. I COULDN'T FIND THE PAPERWORK REGARDING THE
9 FINGERPRINTS OF THE AMIDO BLACK ON THE LEGS AND I DIDN'T WRITE THEM
10 IN EITHER. I WROTE THEM UP TO SLED A COUPLE OF YEARS AGO, SENT
11 THEM UP THERE, HAD SOMEBODY LOOK AT THEM, BUT THEY SAID THEY
12 WEREN'T ALLOWED IN BECAUSE THERE IS NO SCALE IN THE PHOTOS IS
13 WHAT WAS TOLD TO ME A FEW YEARS AGO. I CAN'T REMEMBER WHO TOLD
14 ME THAT, THOUGH.

15 THE COURT: SO, YOU WENT BACK AND ASKED ABOUT THE PHOTOS?

16 MR. BROMAGE: ASKED STEVE DAVIS, HE HAD THESE PHOTOS IN HIS
17 PERSONAL POSSESSION.

18 THE COURT: HE'S GOT THEM?

19 MR. BROMAGE: HE HAD THEM IN HIS PERSONAL POSSESSION UNTIL I
20 SIGNED FOR THEM BACK IN 2000 FROM HIM.

21 THE COURT: HE DOESN'T HAVE THEM BACK THERE NOW?

22 MR. BROMAGE: NO.

23 THE COURT: OKAY, SO YOU WERE ASKING ABOUT THE PHOTOS.

24 MR. BROMAGE: JUST ASKING ABOUT THE PHOTOS. I WAS WONDERING
25 IF ANYTHING WAS EVER DONE WITH THEM AND THEN I WAS ASKING DAVID

IN CHAMBERS INTERVIEW WITH ROBERT BROMAGE:

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1 BLACK THE SAME THING, YOU KNOW, AND NOTHING WAS TOLD TO ME OF ANY
2 SIGNIFICANCE THAT —

3 THE COURT: WELL, WHAT DID HE TELL YOU?

4 MR. BROMAGE: HE TOLD ME, WELL YOU KNOW, I DIDN'T ANALYZE THEM
5 AND THAT WAS ESSENTIALLY —

6 THE COURT: HOW LONG DID THIS CONVERSATION TAKE PLACE?

7 OFFICER BROMAGE: PROBABLY A MINUTE EACH. TALKING TO STEVE
8 DAVIS, STEVE AND I WERE TALKING ABOUT ALL THE JUNK, NOTHING REALLY
9 TO DO WITH THE TRIAL, BUT NOTHING THAT IS GOING ON IN THE
10 COURTROOM, YOUR HONOR.

11 THE COURT: YOU WERE TALKING TO STEPHEN DAVIS ABOUT THE
12 PHOTOS OR MR. BLACK ABOUT THE PHOTOS?

13 OFFICER BROMAGE: STEPHEN DAVIS, FIRST, ABOUT THE PHOTOS AND
14 THEN BLACK ABOUT THE PHOTOS, THE AMIDO BLACK PHOTOS.

15 THE COURT: WHY WOULD YOU TALK TO OFFICER BLACK ABOUT THE
16 PHOTOS?

17 OFFICER BROMAGE: BECAUSE I KNOW I ASKED HIM A FEW YEARS AGO
18 ABOUT THE PHOTOS THEMSELVES. I BROUGHT THEM UP TO SLED, WENT
19 THROUGH THEIR FORENSIC SCIENCE, A FEW YEARS AGO.

20 THE COURT: WHY DID YOU GO BACK AND TALK TO SOMEBODY WHO
21 WAS SEQUESTERED?

22 OFFICER BROMAGE: THAT WAS BAD JUDGMENT AT THE TIME. I DIDN'T
23 REALIZE IT WAS A PROBLEM. I WASN'T TALKING ABOUT WHAT WAS GOING ON
24 IN THE COURTROOM. I THOUGHT — THAT WAS BAD JUDGMENT.

25 THE COURT: ALL RIGHT. YOU WANT TO ASK HIM ANYTHING?

IN CHAMBERS INTERVIEW WITH STEPHEN DAVIS:

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1 MR. HOOD: (SHAKES HEAD)

2 MR. THORNTON: NO, SIR. I DON'T THINK SO.

3 THE COURT: OKAY. THANK YOU. ALL RIGHT. GO GET STEPHEN DAVIS.

4 (SPEAKING TO LAW CLERK)

5 INTERVIEW OF STEPHEN DAVIS IN CHAMBERS:

6 THE COURT: HELLO. HAVE A SEAT.

7 (AFTER BEING DULY SWORN BY THE JUDGE, OFFICER DAVIS TESTIFIED
8 AS FOLLOWS:)

9 THE COURT: IF YOU WILL, LET ME ASK YOU, DID YOU HAVE ANYBODY
10 COME AND TALK TO YOU ABOUT YOUR TESTIMONY AFTER BEING
11 SEQUESTERED?

12 OFFICER DAVIS: NO, NOT ABOUT MY TESTIMONY. NO. NOTHING.

13 THE COURT: DID ANYBODY COME BACK AND TALK TO YOU ABOUT THIS
14 CASE WHILE YOU WERE BEING SEQUESTERED?

15 OFFICER DAVIS: NO. NOT THAT I —

16 THE COURT: YOU DIDN'T HAVE ANY CONVERSATION WITH ANYONE
17 DURING THE TIME YOU WERE SEQUESTERED?

18 OFFICER DAVIS: JUST THE PEOPLE THAT WERE IN THE ROOM, OTHER
19 WITNESSES BEING SEQUESTERED AS WELL.

20 THE COURT: NO ONE FROM INSIDE THE COURTROOM?

21 OFFICER DAVIS: NO ONE THAT I KNOW OF.

22 THE COURT: WHAT ABOUT MR. BROMAGE?

23 OFFICER DAVIS: YEAH. HE CAME IN. I DON'T THINK THAT I —

24 THE COURT: WHAT DID HE ASK YOU ABOUT?

25 OFFICER DAVIS: HE DIDN'T ASK ME ABOUT THE CASE. I'LL HAVE TO

IN CHAMBERS INTERVIEW WITH STEPHEN DAVIS:

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1 THINK WHAT HE TALKED ABOUT. HE DID TALK TO ME, I'M TRYING TO THINK
2 ABOUT WHAT. HE CAME IN AND ASKED ME, HE ASKED ME SOMETHING. I
3 DON'T RECALL WHAT IT WAS. IT WAS NOTHING MAJOR, NOTHING THAT I CAN
4 THINK OF THAT WAS RELATED TO THIS THAT I KNOW OF. HE DID ASK ME
5 SOMETHING. I DON'T REMEMBER WHAT HE ASKED ME.

6 THE COURT: DID HE ASK YOU ABOUT PHOTOGRAPHS?

7 OFFICER DAVIS: SOMEBODY ASKED ME ABOUT PHOTOGRAPHS, BUT
8 NOT TODAY.

9 THE COURT: WHEN DID YOU TALK TO MR. BROMAGE?

10 OFFICER DAVIS: I TALKED TO HIM YESTERDAY AND I THINK IT WAS,
11 YES, IT WAS YESTERDAY.

12 THE COURT: ALL RIGHT. AND HOW LONG DID THIS CONVERSATION
13 TAKE PLACE?

14 OFFICER DAVIS: ABOUT TWO MINUTES.

15 THE COURT: ALL RIGHT. YOU DON'T REMEMBER WHAT IT WAS ABOUT?

16 OFFICER DAVIS: NO. HE ASKED ME A QUESTION, I KNOW THAT. IT
17 MIGHT HAVE BEEN PHOTOGRAPHS. HE MIGHT HAVE ASKED, BUT IT WASN'T
18 IMPORTANT. THAT'S WHY I DIDN'T THINK ANYTHING OF IT. I KNOW
19 SOMEBODY, RICK CHAPMAN, CAME BY AND INTERRUPTED WHAT HE WAS
20 ASKING ME AND THEN THAT WAS THE END OF IT.

21 THE COURT: OKAY. YOU WANT TO ASK HIM ANY QUESTIONS?

22 MR. THORNTON: I DON'T, JUDGE.

23 MR. HOOD: (SHAKES HEAD)

24 THE COURT: OKAY. THANK YOU. GO BACK AND DON'T TALK TO
25 ANYBODY ABOUT THIS. GO GET DAVID BLACK.

IN CHAMBERS ARGUMENTS AND MOTION:

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1 **MR. THORNTON:** DAVID BLACK IS THE SLED MAN WITH THE LIMP. HE'S
2 ALREADY GONE, JUDGE. I COULD TRY TO GO GET HIM BACK. HE HAD TO GO
3 TO SOME TYPE OF PHYSICAL THERAPY, AN APPOINTMENT, THIS AFTERNOON.
4 THAT'S WHY I TRIED TO GET HIM DONE THIS MORNING.

5 **THE COURT:** I'M NOT HAPPY ABOUT THIS.

6 **MR. THORNTON:** ALL RIGHT, SIR.

7 **THE COURT:** GENE, YOU LOOK LIKE YOUR MENTAL POWERS ARE BEING
8 TAXED OVER THERE.

9 **MR. HOOD:** JUDGE, UNFORTUNATELY, I AM VERY FAMILIAR WITH BOTH
10 INDIVIDUALS. I MEAN, I'VE KNOWN THEM EVER SINCE I'VE BEEN HERE. I'M
11 VERY CONCERNED.

12 **THE COURT:** WELL, I AM, TOO.

13 **MR. HOOD:** WELL, I JUST DON'T LIKE THE SEQUENCE OF EVENTS, AND
14 PARTICULARLY AFTER ARBELO AND THEN THIS TAKES PLACE. AND DAVIS IS
15 THE GUY WHO COMPLETES IT. ARBELO'S SAYING ONE THING AND DAVIS MAY
16 OR MAY NOT – I DON'T KNOW WHAT TO SAY. I JUST KNOW THAT IT'S
17 INAPPROPRIATE TO TALK ABOUT THAT, PERIOD. WE'D ALREADY EXAMINED
18 THOSE PARTICULAR ITEMS WAY BEFORE ARBELO TESTIFIED. YOU
19 REMEMBER WE LOOKED AT THEM, I REMEMBER, AND I THINK THOSE ARE THE
20 PHOTOS THOSE THAT I'D BROUGHT UP. THERE WERE NO ISSUES ABOUT
21 THOSE PHOTOS. NONE. SO, THERE IS NO REASON TO TALK ABOUT THE
22 PHOTOS. IN FACT, THEY CAN'T REMEMBER WHAT THEY WERE TALKING
23 ABOUT, OBVIOUSLY, BECAUSE STEVE COULDN'T REMEMBER FROM LAST
24 NIGHT WHAT THEY WERE TALKING ABOUT...ANYTHING.

25 **THE COURT:** I'M VERY CONCERNED THAT THE CONVERSATION CEASED

IN CHAMBERS ARGUMENTS AND MOTION:

1 BECAUSE YOUR INVESTIGATOR CONFRONTED THEM WITH IT. IT ONLY
2 LASTED A MINUTE OR TWO, BUT IT ENDED BECAUSE THE INVESTIGATING
3 OFFICER WAS BACK THERE TALKING TO A SEQUESTERED WITNESS.

4 MR. HOOD: THAT'S RIGHT.

5 MR. THORNTON: JUDGE, I UNDERSTAND THE COURT'S CONCERN, BUT
6 AS FAR AS THAT GOES, IF SOMEBODY COMES BACK AND SAYS, "Y'ALL
7 SHOULDN'T EVEN BE TALKING," THEN THAT MAY EXPLAIN WHY THEY CEASED
8 AND I AGREE, I WISH THEY HADN'T, IN THAT CONTEXT, BUT, I MEAN, THE
9 PHOTOS AREN'T GOING TO BE INTRODUCED AND THAT WAS THE LARGE
10 STACK OF PHOTOS THAT I HAD AND I HAD ASKED BOB SOMETHING ABOUT IT
11 BECAUSE THERE WAS AN ISSUE IN MY MIND ABOUT, YOU NOW, THERE IS
12 SOME CHAIN PROBLEM OR SOMETHING AND I'M NOT GOING TO INTRODUCE
13 THEM. THEY DIDN'T DO IT TO SCALE AND SO I CAN'T ASK SOMEBODY TO
14 TESTIFY ABOUT TRYING TO DO PRINTS BECAUSE THERE'S NOT A SCALE IN IT
15 OR SOMETHING LIKE IT AND I ASKED BOB ABOUT IT AND I DON'T REMEMBER
16 DIRECTING HIM SPECIFICALLY, TO GO AND TALK TO ANYBODY ABOUT IT, BUT I
17 ASKED HIM WHAT THE PROBLEM WAS. THAT MAY HAVE PRECIPITATED IT, I'M
18 NOT SURE.

19 MR. HOOD: I KNOW THEY WERE IN THE INTERROGATORIES OR
20 SOMETHING THAT I HAVE.

21 MR. THORNTON: THEY ARE MENTIONED IN THE SUMMARIES.

22 MR. HOOD: AND THEY MENTIONED ABOUT HAVING THEM —

23 THE COURT: BUT WHAT THE POINT IS, HE'S GOT NO BUSINESS TALKING
24 TO WITNESSES THAT ARE SEQUESTERED.

25 MR. THORNTON: YES, SIR. I UNDERSTAND.

IN CHAMBERS ARGUMENTS AND MOTION:

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1 **THE COURT:** THAT'S THE WHOLE POINT OF HAVING THEM
2 SEQUESTERED.

3 **MR. THORNTON:** AND THAT MAY PARTIALLY BE MY FAULT, JUDGE,
4 WHEN I TOLD HIM TO GO ASK HIM, BECAUSE I WAS IN COURT, ASK HIM IF HE
5 HAS ANY CREDENTIALS ABOUT EXAMINING FINGERPRINTS. I DIDN'T THINK
6 THAT THAT WOULD BE IMPROPER, SIR, BUT I MAY HAVE MISLED HIM INTO
7 THINKING THAT AS LONG AS IT WASN'T DIRECTLY ABOUT TESTIMONY, THAT,
8 YOU KNOW, THAT KIND OF THING WAS OKAY. AND FOR THAT, I APOLOGIZE,
9 BUT I DIDN'T DIRECT HIM TO GO TALK TO HIM, THAT I RECALL, ABOUT
10 PHOTOGRAPHS OR ANYTHING LIKE THAT. I PROBABLY DID TELL HIM, YOU
11 KNOW, TO FIND OUT FOR ME WHAT THE ISSUE IS WITH THESE WHILE I WAS
12 DOING SOMETHING ELSE.

13 **MR. HOOD:** BUT, SEE, THERE WAS NO ISSUE WITH RESPECT TO THE
14 THINGS, BECAUSE --

15 **MR. THORNTON:** WELL, THERE WAS IN MY MIND, BECAUSE I DIDN'T
16 KNOW WHO HAD LOOKED AT THEM AND WHO HADN'T LOOKED AT THEM.

17 **THE COURT:** WELL, IF THERE WAS NO ISSUE, THEN THERE'S NO HARM.

18 **MR. THORNTON:** YES, SIR. AND I CAN'T INTRODUCE THEM BECAUSE
19 THEY CAN'T BE EXAMINED BY A FINGERPRINT EXAMINER.

20 **MR. HOOD:** WELL, I'M NOT EVEN SURE THAT IS WHAT THEY WERE
21 TALKING ABOUT, BECAUSE, OBVIOUSLY, STEVE DIDN'T REMEMBER.

22 **MR. THORNTON:** AND JUDGE, I WILL BE HAPPY TO GO BACK AND, ONCE
23 AGAIN, TELL EVERYBODY TO MAKE SURE THAT YOU DON'T DISCUSS
24 ANYTHING, YOU KNOW, DEALING WITH THE CASE OF ANY NATURE, AND DON'T
25 EVEN TALK TO EACH OTHER. I'VE DONE IT BEFORE, BUT I WILL GO BACK AND

IN CHAMBERS ARGUMENTS AND MOTION:

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1 DO IT AGAIN, SPECIFICALLY.

2 MR. HOOD: I WILL SAY THIS, SHOULD THEY BE ALLOWED TO TESTIFY,
3 I'M GOING TO HAVE THE OPPORTUNITY TO TALK TO THEM AND QUESTION
4 THEM ABOUT YOUR ORDER AND THEM DISREGARDING THAT ORDER AND
5 THINGS OF THAT NATURE AND THE IMPROPRIETY OF IT ALL, BECAUSE WE'RE
6 GOING TO COME TO A SITUATION WHERE BROMAGE IS GOING TO TESTIFY
7 AND BROMAGE IS GOING TO TESTIFY ABOUT WHAT HE DID WITH CERTAIN
8 WITNESSES, SUCH AS ALL OF THESE GUYS THAT HE DID THINGS WITH IN THE
9 JAIL, THAT HE DIDN'T PROMISE THEM ANYTHING, HE DIDN'T DO ANYTHING, HE
10 DIDN'T, YOU KNOW, DO THIS, THAT AND THE OTHER, AND I THINK THIS GOES
11 TO CREDIBILITY AND SO, THIS IS GOING TO BE A HOT PROBLEM WHEN HE
12 TAKES THE STAND AND HAS TO TESTIFY ABOUT THESE GUYS WHO ARE NOW
13 GOING TO TAKE THE STAND AND SAY, "HUH-UH", YOU KNOW, BOB BROMAGE
14 MAY HAVE PROMISED THEM SOMETHING, MAY HAVE TOLD THEM SOMETHING,
15 MAY EVEN HAVE SET THE WHOLE THING UP FOR ALL WE KNOW. AND ALL
16 THEY -- WHEN THEY SAY, "HUH-UH", YOU KNOW, "NO, I DIDN'T SAY THAT.", OR
17 WHAT I'M TELLING YOU IS WHAT I SAID THERE IS A LIE." YOU KNOW, AND
18 THAT BECOMES A CRUCIAL ISSUE IN THEIR TESTIMONY, BECAUSE HE'S THE
19 ONE THAT TOOK THE STATEMENTS FROM ALL THOSE GUYS. HE IS ALSO THE
20 ONE THAT DIRECTED THE SLED TAPES THAT WE HAVE AND HE IS PROBABLY
21 -- AND THE QUESTIONS THAT I AM GOING TO BE ASKING THE SLED AGENT
22 CONCERNING WHOSE IDEA IT WAS, WHOSE IDEA WAS IT TO PROVIDE
23 ALCOHOL TO THIS PERSON, WHO SUGGESTED YOU BUY IT, WHAT WAS THE
24 PURPOSE OF GIVING HIM THE ALCOHOL OTHER THAN TO KEEP HIM
25 INTOXICATED IN ONE FORM OR THE OTHER, YOU KNOW. ALL THESE

IN CHAMBERS ARGUMENTS AND MOTION:

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1 QUESTIONS GO TO CREDIBILITY, AND I THINK I SHOULD HAVE THE
2 OPPORTUNITY NOW, TO SAY THAT, YOU KNOW, THEY EVEN VIOLATED THE
3 ORDER OF THE JUDGE.

4 THE COURT: NO QUESTION ABOUT THAT.

5 MR. HOOD: WE DON'T KNOW WHAT THEY WERE TALKING ABOUT, BUT
6 THE JUDGE TOLD THEM, "DON'T TALK TO THE WITNESSES" AND I THINK
7 THAT'S REAL DIFFICULT.

8 THE COURT: I'M GOING TO HOLD OFF DECLARING A MISTRIAL BECAUSE
9 IT WASN'T LONG AND IF IT'S WHAT THEY SAID IT WAS ABOUT, THOSE
10 PHOTOGRAPHS, I'M TOLD AREN'T COMING INTO EVIDENCE.

11 THE THORNTON: NO, SIR.

12 THE COURT: I AM NOT HAPPY ABOUT THIS AND I WANT TO SPEAK TO
13 THE SHERIFF ABOUT IT. BOTH OF THESE GUYS WORK FOR HIM?

14 MR. THORNTON: STEPHEN DAVIS WORKS IN WASHINGTON, D.C., SIR.

15 THE COURT: WHO DOES HE WORK FOR IN WASHINGTON?

16 MR. THORNTON: THE METROPOLITAN POLICE DEPARTMENT. SIR, I
17 DON'T KNOW EXACTLY WHO IT IS.

18 THE COURT: WELL, ALL RIGHT. HE USED TO WORK FOR THE SHERIFF, I
19 TAKE IT?

20 MR. THORNTON: YES, SIR. I DON'T KNOW HOW LONG HE'S BEEN
21 SEPARATED FROM THEM.

22 THE COURT: BROMAGE WORKS FOR THE SHERIFF?

23 MR. THORNTON: YES, SIR. AND I'M SORRY, I'M NOT TRYING TO BE
24 EVASIVE ON THAT, I BELIEVE HE DOES IN A CAPACITY. I THINK HE'S, AT SOME
25 POINT, HAD A DUAL CAPACITY WITH THE CORONER, BUT I THINK HIS MAIN

IN CHAMBERS ARGUMENTS AND MOTION:

255

1 EMPLOYMENT IS STILL WITH THE SHERIFF'S DEPARTMENT AS THE COLD CASE
2 INVESTIGATOR.

3 THE COURT: ALL RIGHT. WELL, I'M GOING TO WANT TO TALK TO THE
4 SHERIFF ABOUT THIS BEFORE IT'S ALL SAID AND DONE, BUT HE NEEDS TO DO
5 SOMETHING. I DON'T KNOW WHAT HE NEEDS TO DO. I'LL LET HIM DECIDE
6 WHAT HE WANTS TO DO, BUT HE JUST ABOUT CAUSED Y'ALL TO MISTRIAL ON
7 A CASE AND IF I GRANT ONE, IT'S ON PROSECUTORIAL MISCONDUCT AND YOU
8 WOULDN'T GET TO TRY HIM AGAIN.

9 MR. THORNTON: YES, SIR. I UNDERSTAND. COULD I HAVE A FEW
10 MINUTES TO GO REMIND EVERYBODY OF...

11 THE COURT: REMIND THEM THAT IF THEY DO VIOLATE THE COURT
12 ORDER, THIS TIME THEY'LL SPEND THE REMAINDER OF THE WEEK IN JAIL.

13 MR. THORNTON: YES, SIR.

14 THE COURT: OKAY.

15 MR. THORNTON: JUDGE, I HAD A SMALL ISSUE, WHICH IS NOT A
16 PROBLEM WITH THIS CASE OR ANYTHING. I'VE GOT – THE GUYS THAT I HAVE
17 THAT ARE INMATES, YOU KNOW, IT'S GOING TO TAKE A LITTLE TIME TO GET
18 THEM BACK AND FORTH AND I DON'T KNOW, FRANKLY BECAUSE WE'VE BEEN
19 DELAYED HERE, IF I'LL GET TO THEM THIS AFTERNOON OR NOT. I TOLD THEM
20 TO BRING THE FIRST ONE OVER. MY FEAR IS, AND I TOOK GREAT PAINS IN
21 TIMING OUT THE CD'S. THESE ARE INTERVIEWS CONDUCTED BY BROMAGE
22 THAT WERE TAPED WITH THEM. I ASSUME THEY ARE GOING TO COME OUT
23 AND I'M GOING TO ASK THEM, YOU KNOW, "DID YOU TALK TO DETECTIVE
24 BROMAGE AND DID YOU, YOU KNOW, RELAY TO HIM A STORY TOLD TO YOU
25 BY THE DEFENDANT IN THIS CASE," OR SOMETHING THEREABOUTS AND I'M

IN CHAMBERS ARGUMENTS AND MOTION:

256

1 SURE THEY ARE GOING TO SAY NO. I TOOK GREAT PAINS TO TIME OUT ANY
2 POTENTIAL REFERENCE TO, THAT THE CONVERSATIONS TOOK PLACE IN JAIL
3 BECAUSE THE DEFENDANT, AT THE TIME, WAS IN SOMEWHERE. HOWEVER,
4 YOU KNOW, BECAUSE I'VE ALREADY GOT PEOPLE WHO, APPARENTLY DIDN'T
5 LISTEN VERY CLEARLY THE FIRST TIME, AND I KNOW THESE GUYS MAY NOT.
6 IF THERE IS A WAY TO BRING THEM OUT AND HAVE YOU INSTRUCT THE
7 WITNESS, "OKAY YOU ARE NOT TO MAKE ANY REFERENCE TO," BECAUSE I'VE
8 ALREADY TOLD THEM BEFORE, YOU KNOW, YOU ARE NOT TO MAKE ANY
9 REFERENCE. IF YOU GET UP THERE AND TELL ME I DIDN'T SAY THAT OR
10 WHATEVER, I'VE GOT IT RECORDED, THAT'S FINE, BUT MAKE NO REFERENCE
11 TO THE FACT THAT HE TOLD YOU THIS WHILE Y'ALL WERE IN JAIL TOGETHER.
12 BECAUSE I DON'T WANT TO GET IN TROUBLE WITH THE COURT. IF I COULD
13 HAVE THE COURT ASSIST ME SO THAT, YOU KNOW, THAT THEY HAVE BEEN
14 TOLD THAT AND YOU HAVE TOLD THEM THAT, MAYBE THEY WILL STICK TO IT
15 BECAUSE ALL I'M GOING TO SAY IS, YOU KNOW, HAVE YOU EVER TALKED TO --

16 THE COURT: YOU DON'T WANT TO HAVE THEM BE KNOWN AS JUST
17 JAILHOUSE SNITCHES?

18 MR. HOOD: YOUR HONOR, THAT'S MY WHOLE THEORY, YOU KNOW.

19 MR. THORNTON: I'M JUST TRYING TO --

20 MR. HOOD: THE FACT IS, THAT MY CLIENT HAS HAD A COPY OF THIS
21 POLICE REPORT, ALL THESE REPORTS, FOR ALMOST TWO YEARS IN HIS CELL,
22 ALONG WITH THESE SAME GROUPS OF GUYS THAT ARE GOING TO COME
23 RUNNING THROUGH HERE.

24 MR. THORNTON: WELL, THAT'S FINE, THEN. I --

25 THE COURT: YOU WANT IT KNOWN, THEN --

IN CHAMBERS ARGUMENTS AND MOTION:

257

1 **MR. HOOD:** THEY HAD AN OPPORTUNITY TO KNOW EVERYTHING ABOUT
2 THE CASE, YOU KNOW, JUST BY BEING AROUND THE CELL. I MEAN, PEOPLE
3 LOOK AT EACH OTHERS MATERIAL ALL THE TIME.

4 **THE COURT:** SEAN'S TRYING TO KEEP IT FROM THE JURY THAT THESE
5 CONVERSATIONS TOOK PLACE IN JAIL.

6 **MR. THORNTON:** IF HE DOESN'T CARE ABOUT THAT.

7 **THE COURT:** DO YOU WANT IT KNOWN THAT THEY WERE IN JAIL?

8 **MR. HOOD:** YEAH.

9 **MR. THORNTON:** I WISH YOU HAD TOLD ME THAT BEFORE I SPENT SIX
10 HOURS DUBBING THE CD'S.

11 **MR. HOOD:** THE WHOLE IDEA IS ---

12 **THE COURT:** WELL, I GOT IT, I WAS JUST THINKING AS YOU WERE
13 TELLING ME THIS, I WOULD ASSUME HE WOULD WANT IT KNOWN HE WAS IN
14 JAIL AND NOT DOWN THE STREET AT THE BURGER KING.

15 **MR. HOOD:** HERE'S THE SITUATION. WE HAD THE TAPES THAT YOU'VE
16 ALREADY ADMITTED. ON THOSE TAPES, HE TALKS ABOUT, "WELL, WHAT
17 WERE YOU IN PRISON FOR?" SO, WE KNOW THAT MY GUY IS IN "PRISON" ---

18 **THE COURT:** RIGHT.

19 **MR. HOOD:** --- AND WHAT HE'S IN PRISON FOR.

20 **THE COURT:** WELL, THE REFERENCES ON THE TAPES THAT HE WANTS
21 TO HAVE COME IN THAT SAY, "WE WERE IN JAIL WHEN WE HAD THESE
22 CONVERSATIONS IN WHICH HE CONFESSED TO ME." YOU'RE OKAY WITH
23 THAT STAYING IN?

24 **MR. THORNTON:** WELL, I WILL JUST PLAY THE WHOLE CD THEN.

25 **THE COURT:** OKAY.

IN CHAMBERS ARGUMENTS AND MOTION:

258

1 **MR. HOOD:** I DON'T HAVE A PROBLEM WITH THAT.

2 **MR. THORNTON:** GENE, IT WOULD HAVE BEEN REAL NICE IF YOU HAD
3 TOLD ME THAT THE LAST TIME, BECAUSE I SPENT SIX HOURS DUBBING THE
4 TAPE DOWN.

5 **MR. HOOD:** SEE, AT THAT POINT IN TIME, I DIDN'T KNOW WHETHER OR
6 NOT WE WERE GOING TO ALLOW THE TAPES IN.

7 **MR. THORNTON:** WELL, THAT MAKES IT EASIER, JUDGE. I'LL JUST PUT
8 THEM UP ON THE STAND AND ASK THEM AND I'LL PLAY THE WHOLE THING IN
9 ITS ENTIRETY.

10 **MR. HOOD:** IN REFERENCE, YOU'VE GOT TO STAY CONSISTENT. I
11 MEAN, I CAN'T TELL THEM, YOU KNOW —

12 **MR. THORNTON:** AND GENE MAY HAVE WANTED, GENE MAY HAVE —

13 **THE COURT:** I WOULD THINK HE WOULD WANT IT KNOWN IN JAIL AS
14 OPPOSED TO, YOU KNOW, CHURCH.

15 **MR. THORNTON:** JUDGE, I WAS JUST TRYING TO — YOU KNOW, I'VE HAD
16 TO DO IT BEFORE, MAKING SURE NO REFERENCES WERE MADE, I WAS JUST
17 TRYING TO DO WHAT I WAS SUPPOSED TO DO.

18 **MR. HOOD:** IT WASN'T A CRACK FEST OR ANYTHING LIKE THAT SO,
19 WE'RE PRETTY SECURE.

20 **MR. THORNTON:** I'LL JUST LET THE TAPES ROLL, THEN. AND GENE,
21 YOU, I MEAN, THOSE ARE ALL IN EVIDENCE. YOU'VE HEARD COPIES OF ALL
22 THOSE, HAVE YOU NOT?

23 **MR. HOOD:** YEAH, I LOVE THEM.

24 **MR. THORNTON:** OKAY. I MEAN, I KNOW WHY YOU LOVE THEM AND I
25 FIGURED YOU MIGHT WANT SOME OF THAT IN, AND YOU KNOW, I JUST TRY TO

IN CHAMBERS ARGUMENTS AND MOTION:

259

1 PLAY WITH THE CARDS I'M DEALT WITH.

2 MR. HOOD: I WILL TELL YOU NOW, I ALSO KNOW THAT THERE WERE,
3 WELL, WHEN I QUESTION BROMAGE, YOU'LL HEAR IT, BUT ANYWAY.

4 MR. THORNTON: OKAY, THAT'S FINE. JUDGE, I —

5 THE COURT: YOU GET FREE REIN ON CROSS ON —

6 MR. HOOD: I AGREE.

7 THE COURT: — AS FAR AS THEIR ACTIONS GO.

8 MR. THORNTON: NOW, JUDGE, YOU KNOW —

9 MR. HOOD: BUT I ALSO AM GOING TO MAKE THE MOTION FOR A
10 MISTRIAL, BECAUSE I THINK I ABSOLUTELY HAVE TO.

11 THE COURT: WELL, YOU'RE ON THE RECORD IF YOU WANT TO MAKE IT
12 NOW OFFICIALLY.

13 MR. HOOD: YEAH, I DEFINITELY WANT TO MAKE A MOTION FOR A
14 MISTRIAL BASED ON EXACTLY WHAT WE DISCUSSED ABOUT THE
15 PROSECUTORIAL MISCONDUCT. YOU KNOW, WE DON'T KNOW WHAT
16 EXACTLY THE CONVERSATIONS WERE THAT WERE GOING ON BETWEEN
17 OFFICER BROMAGE AND OFFICER DAVIS. WE KNOW THAT BOTH OF THEM
18 HAVE CREDIBILITY ISSUES, BECAUSE THEY ARE BOTH WITNESSES WHO ARE
19 GOING TO TESTIFY IN THIS CASE AND THEY ALL PROVIDE INFORMATION THAT
20 IS DAMAGING TO MY CLIENT AS TO HOW THEY GOT THAT INFORMATION,
21 WHERE THEY GOT THE INFORMATION, WHAT TYPES OF PROMISES OR
22 WHATEVER THEY'VE MADE TO ALL THESE INDIVIDUALS WHO ARE GOING TO
23 BE IN THERE TESTIFYING ABOUT MY CLIENT. YOU KNOW, CONFESSING TO
24 THEM. SO, IT'S A HUGE CREDIBILITY PROBLEM, AND ALSO THE MATTER
25 CONCERNING THE CONDUCT OF THE OFFICERS AND THE, YOU KNOW,

IN CHAMBERS ARGUMENTS AND MOTION:

260

1 MISCONDUCT, POLICE OFFICER MISCONDUCT IS WHAT I BASICALLY ALLEGED
2 WITH RESPECT TO THE TAPES, AND THE FACT THAT THESE GUYS BROKE THE
3 LAW IN THEIR EFFORTS TO GET THIS FROM MY CLIENT AND NOW, THEY'VE
4 BROKEN THE LAW AGAIN BY NOT FOLLOWING THE ORDER OF THE COURT
5 NOT TO TALK TOGETHER ABOUT THE CASE.

6 **THE COURT:** WELL, I THINK YOU HAVE A --TO PRESERVE THE RECORD --
7 YOU HAVE AN ARGUMENT THAT I WILL ALLOW YOU TO MAKE TO THE JURY. AS
8 FAR AS YOUR MOTION FOR THE MISTRIAL GOES, I'M GOING TO DENY IT,
9 BECAUSE IT THINK THE CONDUCT WAS CERTAINLY SERIOUS, BUT IT WAS NOT
10 GRIEVOUS TO THE POINT OF PREJUDICE. IT SOUNDED LIKE THEY WERE
11 TALKING, THEY GOT INTERRUPTED WITHIN A MINUTE OR TWO AT MAX, AND
12 THEY WERE TALKING ABOUT PHOTOGRAPHS THAT WERE NOT GOING TO
13 COME INTO EVIDENCE AND I'M GOING TO ALLOW YOU TO CROSS-EXAMINE
14 THEM LIBERALLY ON THAT ISSUE AS WELL AS ARGUE IT ON CLOSING. OKAY?
15 **BEAUFORT 11-15 AFTERNOON**

16 **MR. THORNTON:** YOUR HONOR MAY WE APPROACH?

17 **THE COURT:** YES

18 (BRIEF BENCH CONFERENCE)

19 **BAILIFF:** ALL JURORS PRESENT, YOUR HONOR.

20 (JURY IN AT 2:27 PM)

21 **THE COURT:** OKAY. THANK YOU.

22 **THE COURT:** WELCOME BACK, LADIES AND GENTLEMEN. DURING THE
23 LUNCH BREAK, IT TURNS OUT THAT ONE OF YOUR FELLOW JURORS, MS.
24 POWERS, RECOGNIZED SOMEBODY WHO IS GOING TO BE CALLED AS A
25 POTENTIAL WITNESS IN THIS CASE. SHE DID NOT RECOGNIZE THE NAME

DIRECT EXAMINATION OF STEPHEN DAVIS BY MR. THORNTON:

261

1 EARLIER WHEN WE WERE DOING THE VOIR DIRE AT THE BEGINNING OF THE
2 TRIAL, SO I NEEDED TO TALK WITH HER AND IT TURNS OUT SHE DID HAVE A
3 SOMETHING OF A, I DON'T WOULDN'T SAY INTIMATE IN NATURE
4 RELATIONSHIP, BUT SHE DID KNOW THE INDIVIDUAL, AND SO, I FELT LIKE IT
5 WAS APPROPRIATE THAT SHE PROBABLY SHOULDN'T BE A JUROR ANY
6 LONGER ON THIS CASE, SO I DISMISSED HER, NOT FOR ANY MISCONDUCT OR
7 ANYTHING LIKE THAT ON HER PART, SHE JUST DIDN'T REALIZE AT THE TIME
8 THAT SHE KNEW ONE OF THE PEOPLE. THEY WORKED FOR HER PREVIOUSLY.
9 AND SO OBVIOUSLY, SHE WOULD KNOW A GOOD BIT ABOUT THEIR
10 CHARACTER AND BACKGROUND. SO MS. POWERS HAS BEEN DISMISSED AS A
11 JUROR AND STATUTE PROVIDES WE HAVE A LOTTERY ON THE OTHER TWO
12 ALTERNATES AS TO WHO WILL SERVE SO MS. ROBINSON, ROSE ROBINSON,
13 HAS BEEN MOVED UP. SO, MS. ROBINSON YOU ARE NOW A FULL-FLEDGED
14 MEMBER OF THE JURY PANEL, ALL RIGHT? ARE WE READY TO GO NOW?

15 MR. THORNTON: THE STATE'S READY, JUDGE. STEPHEN DAVIS.

16 (AFTER BEING DULY SWORN BY THE CLERK OF COURT, STEPHEN DAVIS
17 TESTIFIED AS FOLLOWS:)

18 CLERK OF COURT: PLEASE BE SEATED AND STATE YOUR NAME AND
19 SPELL IT FOR THE COURT, PLEASE.

20 WITNESS: STEPHEN A. DAVIS, THAT'S S-T-E-P-H-E-N, AND THEN DAVIS
21 D-A-V-I-S.

DIRECT EXAMINATION OF STEPHEN DAVIS BY MR. THORNTON:

23 Q MR. DAVIS, WHERE DO YOU WORK, SIR?

24 A I WORK FOR THE METROPOLITAN POLICE DEPARTMENT IN

DIRECT EXAMINATION OF STEPHEN DAVIS BY MR. THORNTON:

262

1 WASHINGTON, D.C.

2 Q ALL RIGHT, SIR. AND DID YOU WORK FOR THE WASHINGTON, D.C.
3 METROPOLITAN POLICE DEPARTMENT IN JANUARY OF 1995?

4 A NO, SIR, I DIDN'T.

5 Q ALL RIGHT. WHERE DID YOU WORK THEN, SIR?

6 A AT THE BEAUFORT COUNTY SHERIFF'S OFFICE.

7 Q ALL RIGHT, SIR. AND WHAT WAS YOUR JOB IN JANUARY 1995 FOR THE
8 SHERIFF'S OFFICE. WHAT DID YOU DO?

9 A I WAS A DETECTIVE ASSIGNED TO THE BEAUFORT SIDE OF THE RIVER.

10 Q ALL RIGHT. WHEN YOU SAY THE BEAUFORT SIDE OF THE RIVER, IS THE
11 POLICE, THE SHERIFF'S DEPARTMENT SPLIT INTO TWO DIFFERENT
12 SECTIONS?

13 A THEY HAVE A ST. HELENA DIVISION AND A BEAUFORT DIVISION.

14 Q AND YOU WERE ASSIGNED HERE IN BEAUFORT?

15 A YES, SIR.

16 Q ALL RIGHT. DID YOU HAVE AN OCCASION TO WORK ON A CASE
17 INVOLVING THE MURDER OF CHARLES GODLEY?

18 A YES, SIR, I DID.

19 Q NOW, WHEN -- DO YOU REMEMBER ABOUT WHEN YOU WERE ASSIGNED
20 THIS CASE? WAS IT THE SAME DAY AS THE MURDER OR WAS IT
21 SOMETIME THEREAFTER?

22 A NO. IT WAS PROBABLY, I WANT TO SAY, CLOSE TO A WEEK AFTER.

23 Q ALL RIGHT, SIR. DID YOU COLLECT ANY EVIDENCE IN THIS CASE?

24 A YES, SIR.

25 Q DID YOU COLLECT A SAMPLE OF A STAIN FROM A FRENCH DOOR?

DIRECT EXAMINATION OF STEPHEN DAVIS BY MR. THORNTON:

263

- 1 A I COLLECTED SOME BLOOD STAINS. I THOUGHT IT WAS OFF THE STEPS.
- 2 Q ALL RIGHT SIR, WOULD YOU REVIEW YOUR REPORT?
- 3 (WITNESS COMPLIES)
- 4 A YES, I DID. OFF THE FRENCH DOORS AND SOME FIBER, BB PELLETS,
5 AND SOME BLOOD OFF THE STEPS AND FROM THE LIVING ROOM AND
6 DINING ROOM.
- 7 Q ALL RIGHT, SIR. AND DID YOU TURN THOSE IN TO EVIDENCE, SIR?
- 8 A YES, SIR, I DID.
- 9 Q ALL RIGHT. I AM GOING TO HAND YOU WHAT HAS ALREADY BEEN
10 INTRODUCED INTO EVIDENCE AS STATE'S EXHIBIT #18. DO YOU SEE
11 ANYWHERE ON THERE WHERE YOUR INITIALS ARE, SIR?
- 12 A CAN I OPEN THIS UP? YEAH, ON THE BACK OF THE EVIDENCE TAG.
13 THESE ARE MY INITIALS.
- 14 Q ALL RIGHT, SIR. IT HAS ALREADY BEEN TESTIFIED TO, THAT THAT WAS
15 TESTED BY SLED, BUT IS THAT THE, IS THAT ONE OF THE ITEMS THAT
16 YOU WERE TALKING ABOUT?
- 17 A YES, SIR, IT IS. THAT'S MY HANDWRITING.
- 18 Q ALL RIGHT, SIR. THANK YOU VERY MUCH. OFFICER DAVIS, AT THE TIME
19 YOU WERE ASSIGNED THIS CASE AND THROUGHOUT YOUR
20 INVESTIGATION, HOW LONG WERE YOU WORKING THIS CASE, SIR?
- 21 A IT WAS A WHILE AGO. I DON'T RECALL EXACTLY.
- 22 Q ALL RIGHT. DID YOU EVER INTERVIEW ANY PEOPLE THAT YOU
23 THOUGHT MIGHT POTENTIALLY BE SUSPECTS?
- 24 A YES, SIR.
- 25 Q ALL RIGHT. COULD YOU TELL ME WHO YOU INTERVIEWED?

DIRECT EXAMINATION OF STEPHEN DAVIS BY MR. THORNTON:

264

- 1 A I INTERVIEWED THE DEFENDANT, I INTERVIEWED RICHARD SIMMONS
2 AND I SPOKE TO A FEMALE IN THIS CASE. I REMEMBER THAT.
- 3 Q ALL RIGHT, SIR, AND WHEN YOU SAY RICHARD SIMMONS, ARE
4 INDICATING THE DEFENDANT, RICHARD SIMMONS?
- 5 A YES, SIR.
- 6 Q ALL RIGHT, SIR. AND I AM GOING TO ASK YOU DETECTIVE -- NOW DON'T
7 TELL ME WHAT ANYBODY TOLD YOU, BUT DID YOU RECEIVE SOME
8 INFORMATION, A TIP -- MAYBE THAT IS A BETTER WORD THAN SOME
9 INFORMATION -- DID YOU RECEIVE A TIP THAT THE DEFENDANT IN THIS
10 CASE, RICHARD SIMMONS, MIGHT HAVE SOMETHING TO DO WITH THIS?
- 11 A YES, SIR, I DID.
- 12 Q ALL RIGHT. AS A RESULT OF THAT DID YOU INTERVIEW MR. SIMMONS?
- 13 A YES, SIR.
- 14 Q ALL RIGHT, SIR. AND UPON THE CONCLUSION OF YOUR INTERVIEW
15 WITH MR. SIMMONS, DID YOU FEEL LIKE YOU HAD ANY REASON OR
16 ENOUGH EVIDENCE TO CHARGE HIM WITH ANYTHING?
- 17 A NO, SIR.
- 18 Q ALL RIGHT, SIR. AND DID HE COOPERATE DURING THE INTERVIEW?
- 19 A IN THE BEGINNING.
- 20 Q ALL RIGHT, SIR.
- 21 A AT THE END, HE DIDN'T.
- 22 Q ALL RIGHT, SIR. AND DID YOU GIVE HIM ANY DETAILS IN THIS CASE?
- 23 A NO, SIR.
- 24 Q ALL RIGHT. DID YOU TALK TO HIM ABOUT ANY ITEMS THAT MIGHT BE
25 MISSING IN THE CASE?

DIRECT EXAMINATION OF STEPHEN DAVIS BY MR. THORNTON:

265

1 A NO, SIR.

2 MR. HOOD: I MAY HAVE AN OBJECTION IN HERE. IF HE WAS A SUSPECT
3 IN THIS CASE, DID MR. DAVIS, OFFICER DAVIS, ADVISE HIM OF HIS RIGHTS OR
4 ANYTHING? I MEAN HE IS QUESTIONING HIM OBVIOUSLY ABOUT A MURDER.
5 HE OBVIOUSLY TOLD HIM THAT. IT SEEMS TO ME WE SHOULD HAVE SOME
6 RIGHTS FOR HIM OR SOMETHING, YOU KNOW. I DON'T KNOW WHERE WE ARE
7 GOING WITH THIS, AND I DIDN'T UNDERSTAND IT UNTIL HE JUST STARTED
8 TALKING TO HIM, BUT ANYWAY.

9 THE COURT: WELL, I AM NOT SURE -- WHERE YOU ARE GOING.

10 MR. THORNTON: WELL, YOUR HONOR I WILL -- I GUESS ONE WAY TO
11 HANDLE IT IS, DON'T TELL ME ANYTHING THAT THE DEFENDANT TOLD YOU.

12 Q DID YOU PROVIDE HIM ANY INFORMATION WHEN YOU TALKED TO HIM?

13 A NO, I JUST ASKED QUESTIONS.

14 Q DID YOU TELL HIM ANYTHING ABOUT ANY MATERIALS THAT MIGHT BE
15 MISSING FROM THE HOME?

16 A NO, I JUST ASKED HIM SOME QUESTIONS.

17 Q DID YOU TELL HIM WHAT TYPE OF INSTRUMENT WAS USED IN THE
18 CRIME?

19 A NO.

20 Q IN OTHER WORDS, DID YOU TELL HIM THAT IT WAS A HAMMER THAT
21 WAS USED?

22 A NO, I GAVE OUT NO INFORMATION. I ASKED QUESTIONS OF HIM.

23 Q DID YOU TELL HIM THAT THE WALLET WAS MISSING?

24 A NO.

25 Q ALL RIGHT. IN YOUR INVESTIGATION OF THE CASE, WAS MR. GODLEY'S

DIRECT EXAMINATION OF STEPHEN DAVIS BY MR. THORNTON:

266

- 1 WALLET EVER RECOVERED?
- 2 A NO, IT WASN'T.
- 3 Q DID YOU GET ANY INFORMATION FROM ANY OF THE OTHER OFFICERS
- 4 THAT SAID, "HEY, I FOUND THE WALLET?"
- 5 A NO. I SEARCHED FOR IT, BUT NEVER FOUND IT.
- 6 Q WHEN YOU WERE THE DETECTIVE ON THE CASE, HAD IT BEEN FOUND
- 7 DURING THE TIME YOU WERE THE DETECTIVE, WOULD IT HAVE BEEN
- 8 NORMAL PROCEDURE FOR THEM TO GIVE IT TO YOU?
- 9 A YES, SIR.
- 10 Q BUT, IT WAS NEVER FOUND.
- 11 A NO, SIR.
- 12 Q YOU DID NOT TELL THAT TO THE DEFENDANT?
- 13 A NO, SIR.
- 14 Q AND SINCE MR. HOOD HAS BROUGHT UP THIS MIRANDA ISSUE, DID YOU
- 15 ASK MR. SIMMONS TO COME DOWN VOLUNTARILY TO TALK TO YOU?
- 16 A IT WAS NOT CUSTODIAL. I JUST WANTED TO TALK TO HIM AT THAT TIME.
- 17 Q WAS HE UNDER ARREST AT ANY TIME?
- 18 A NO. HE ASKED TO LEAVE AND I TOLD HIM HE COULD LEAVE ANY TIME
- 19 HE WANTED TO.
- 20 Q AND THEN, AT SOME POINT, DID HE LEAVE?
- 21 A YES, SIR.
- 22 Q DID YOU PREVENT HIM FROM LEAVING?
- 23 A NO.
- 24 Q AND IS IT YOUR UNDERSTANDING THAT IF THEY ARE NOT IN CUSTODY
- 25 YOU ARE NOT REQUIRED TO READ MIRANDAS?

DIRECT EXAMINATION OF STEPHEN DAVIS BY MR. THORNTON:

267

- 1 A YES, SIR.
- 2 Q AS A RESULT OF ANY INFORMATION THAT HE MAY HAVE TOLD YOU, DID
- 3 YOU DO ANYTHING?
- 4 A NO. AFTER HE TOLD ME -- I DON'T KNOW.
- 5 Q DID HE PROVIDE YOU WITH ANY INFORMATION ON HIS WHEREABOUTS
- 6 ON THE NIGHT OF THE MURDER?
- 7 A YES, SIR. HE DID.
- 8 Q DID YOU ATTEMPT TO CHECK THAT OUT?
- 9 A YES, I DID.
- 10 Q ALL RIGHT. WHAT DID YOU DO?
- 11 A I WENT TO SOME OF THE PLACES THAT HE SAID HE HAD BEEN AND I
- 12 TRIED TO FIND THE PEOPLE HE HAD SAID HE HAD BEEN WITH. I
- 13 COULDN'T FIND ANY OF THESE PEOPLE.
- 14 Q WERE YOU EVER ABLE TO LOCATE THEM?
- 15 A NO.
- 16 Q DID YOU EVER, WITH ANYBODY OUTSIDE THE LAW ENFORCEMENT
- 17 COMMUNITY, DID YOU EVER DISCUSS ANY DETAILS LIKE THAT THERE
- 18 WAS A HAMMER USED, THAT YOU RECALL, THAT A WALLET WAS
- 19 MISSING, OR ANY OTHER DETAILS ABOUT THE CRIME?
- 20 A NOT THAT I KNOW OF. NO, SIR.
- 21 Q ALL RIGHT, SIR. ARE YOU ABSOLUTELY SURE THAT YOU DID NOT
- 22 PROVIDE MR. SIMMONS WITH ANY DETAILS OF THIS CASE?
- 23 A YES, SIR.
- 24 Q ALL RIGHT. DID YOU TELL HIM THAT YOU -- THAT IT WAS -- THAT YOU
- 25 WANTED TO TALK TO HIM IN REFERENCE TO THE GODLEY MURDER?

CROSS EXAMINATION OF STEPHEN DAVIS BY MR. HOOD:

268

- 1 A NO. I TOLD HIM THAT ONCE HE GOT TO THE POLICE STATION.
- 2 Q ALL RIGHT, SIR. SO, YOU DID TELL HIM THE NAME OF THE VICTIM?
- 3 A WHEN HE GOT TO THE POLICE STATION.
- 4 Q DID YOU TELL HIM ANYTHING OTHER THAN THAT?
- 5 A NO.
- 6 Q DO YOU REMEMBER WHERE YOU LOCATED MR. SIMMONS AT?
- 7 A THE ISLAND PLAZA.
- 8 Q THE ISLAND PLAZA. IS THERE --IS THERE --
- 9 A ST. HELENA ISLAND.
- 10 Q AND WHAT KIND OF STORE IS THAT? IS THIS A MULTIPLE STORE
- 11 COMPLEX? OR WHAT'S THERE?
- 12 A IT'S A GAS STATION AND A CONVENIENCE STORE AND A LIQUOR STORE
- 13 AND A LAUNDRY MAT.
- 14 Q ALL RIGHT, SIR. AND IT IS CALLED THE ISLAND PLAZA?
- 15 A YES, SIR.
- 16 Q AND THAT IS WHERE YOU FOUND MR. SIMMONS?
- 17 A YES, SIR.
- 18 Q AND THAT IS WHERE YOU ASKED HIM TO COME BACK AND TALK TO
- 19 YOU?
- 20 A YES, SIR.
- 21 Q THANK YOU VERY MUCH OFFICER DAVIS. PLEASE ANSWER ANY
- 22 QUESTIONS THAT MR. HOOD MIGHT HAVE FOR YOU.

CROSS EXAMINATION OF STEPHEN DAVIS BY MR. HOOD:

- 24 Q DID YOU EVER FOLLOW UP ON ANY OF THE EVIDENCE IN THIS CASE?
- 25 A I KNOW THE EVIDENCE WAS SENT OFF. I DON'T BELIEVE -- AT THIS TIME

CROSS EXAMINATION OF STEPHEN DAVIS BY MR. HOOD:

269

1 I DON'T REMEMBER WHAT HAPPENED TO IT.

2 Q WELL, YOU WERE ON THE CASE UP UNTIL IT WAS CLOSED BECAUSE
3 YOU HAD NO SUSPECTS OR YOU DIDN'T BELIEVE YOU HAD ANY
4 SUSPECTS. IS THAT CORRECT?

5 A YES, SIR.

6 Q SO, THE CASE WAS COMPLETELY CLOSED BECAUSE YOU HAD
7 EXHAUSTED EVERYTHING YOU COULD POSSIBLY DO TO FIND THE
8 PERSON WHO COMMITTED WHAT YOU GUYS BELIEVE NOW TO HAVE
9 BEEN A HOMICIDE. IS THAT CORRECT?

10 A THE CASE WAS CLOSED WHEN I RAN OUT OF LEADS.

11 Q SO, YOU DIDN'T HAVE ANY OTHER SUSPECTS OR ANY OTHER PEOPLE
12 THAT MIGHT HAVE COMMITTED THIS CRIME?

13 A I DIDN'T HAVE ANY SUSPECTS.

14 Q YEAH, BECAUSE YOU HAD ALREADY CHECKED OUT THIS GUY'S ALIBI
15 ALSO, DIDN'T YOU?

16 A YES, SIR.

17 Q OKAY. SO, IN OTHER WORDS EVERYTHING THAT HE TOLD YOU ABOUT
18 WHERE HE WAS AT, WHO HE WAS WITH, THE CLOTHES HE WAS
19 WEARING, AND EVERYTHING ELSE CHECKED OUT?

20 A I COULDN'T FIND A LOT OF IT. I COULDN'T FIND ANY OF THE PEOPLE HE
21 SAID HE WAS WITH.

22 Q WELL, WAIT A MINUTE. YOU JUST GOT THROUGH SAYING THAT HIS ALIBI
23 CHECKED OUT. SO, I MEAN, BUT IF YOU COULDN'T FIND ANYBODY THAT
24 HE NAMED, NOW HOW COULD YOU SAY THAT HE -- THAT IT WAS OVER?

25 A I DON'T KNOW IF I SAID THAT HIS ALIBI CHECKED OUT. I JUST

CROSS EXAMINATION OF STEPHEN DAVIS BY MR. HOOD:

270

1 FOLLOWED THE LEADS I HAD AND WHEN I DON'T HAVE ANY MORE
2 LEADS TO GO TO, I CAN'T MAKE AN ARREST SO, I HAD TO CLOSE THE
3 CASE.

4 Q ISN'T IT TRUE THAT ONE OF THE PEOPLE THAT HE TOLD YOU ABOUT
5 WAS THE LADY WHO OPERATED THE PLAZA, THE LAUNDRY MAT THERE
6 WHERE HE ACTUALLY SPENT THE NIGHT? THAT YOU GUYS WERE
7 THINKING SO MUCH ABOUT BEING THE NIGHT OF THE SATURDAY
8 MORNING HOURS?

9 A I DON'T KNOW WHAT YOU —

10 Q ON THE 13th, THE 14th, EARLY MORNING HOURS OF THE 14th? YOU
11 KNOW WHERE THE ISLAND PLAZA IS, DON'T YOU?

12 A YES. I KNOW WHERE THE PLAZA IS.

13 Q YOU KNOW THERE IS A LAUNDRY MAT THERE, TOO, DON'T YOU?

14 A YES.

15 Q OKAY, AND IT WAS SOMEONE WHO OPERATED THAT LAUNDRY MAT,
16 WASN'T IT?

17 A I DON'T KNOW. HE NEVER MENTIONED SOMEBODY WAS OPERATING
18 THE LAUNDRY MAT.

19 Q OH, HE NEVER MENTIONED THAT. WELL, YOU MADE A REPORT IN THIS
20 CASE, DIDN'T YOU?

21 A HE SAID A WOMAN CAME UP.

22 Q YEAH, A WOMAN BY THE NAME OF BETTY WHO RAN THE PLACE.

23 A I DON'T REMEMBER THAT.

24 Q YOU DON'T REMEMBER THAT?

25 A IT HAS BEEN A WHILE. I DON'T REMEMBER HIM SAYING THAT.

CROSS EXAMINATION OF STEPHEN DAVIS BY MR. HOOD:

271

- 1 Q WELL, DID YOU GO DOWN TO THE LAUNDRY MAT AND SAY, "BETTY, DID
2 YOU SEE RICHARD SIMMONS ON SATURDAY MORNING IN THE LAUNDRY
3 MAT WEARING THESE CLOTHES, SLEEPING IN THE LAUNDRY ROOM?"
- 4 A NO. I DON'T REMEMBER. I DON'T KNOW IF I DID.
- 5 Q WELL, YOU EITHER DID OR YOU DIDN'T.
- 6 A I DON'T KNOW. IT'S BEEN A WHILE.
- 7 Q YOU DON'T KNOW?
- 8 A YES, SIR.
- 9 Q OKAY. THAT'S FINE. THAT'S FINE. WELL, WHAT DID YOU DO WITH THE
10 CRIME SCENE?
- 11 A WHEN I WENT BACK TO THE CRIME SCENE, IT HAD ALREADY BEEN
12 RELEASED BACK TO HIS SISTER.
- 13 Q SO, IN OTHER WORDS, IT HAD ALL BEEN CLEANED. IS THAT CORRECT?
- 14 A I DON'T KNOW IF IT HAD BEEN CLEANED THE DAY OF THE INCIDENT, I
15 HAD NOTHING TO DO WITH THAT.
- 16 Q THAT'S NOT WHAT I ASKED YOU. I SAID, YOU SAID, "I WENT THERE."
17 YOU SAID IT HAD ALREADY BEEN RELEASED TO THE FAMILY AND MY
18 QUESTION IS, WASN'T IT CLEAN SO THAT YOU COULDN'T GATHER ANY
19 FURTHER INFORMATION AT THAT TIME?
- 20 A IT WASN'T CLEAN. CLEAN, AS IN THE CONDITION OF IT? I MEAN, I DON'T
21 KNOW THE CONDITION OF IT PRIOR TO ME GETTING THERE.
- 22 Q DID YOU TAKE ANY PICTURES OF CLOTHING, BLOOD ON CLOTHING, ON
23 BEDSPREADS, ON SHEETS, ON WALLS, ON MIRRORS OR ANYTHING LIKE
24 THAT?
- 25 A NO. I DIDN'T TAKE ANY PICTURES.

CROSS EXAMINATION OF STEPHEN DAVIS BY MR. HOOD:

272

- 1 Q OKAY, BECAUSE IT WASN'T THERE. ISN'T THAT CORRECT?
- 2 A THERE WAS NO BLOOD THERE, RIGHT. THERE IS NO BLOOD THAT I CAN
- 3 REMEMBER BEING THERE. I DON'T REMEMBER BLOOD BEING THERE.
- 4 Q WELL, YOU FOUND BLOOD ON THE FRENCH DOOR.
- 5 A RIGHT. THERE WAS A STAIN THERE.
- 6 Q YOU FOUND A SPOT OF BLOOD IN THE DINING ROOM. IS THAT RIGHT?
- 7 A A SMALL STAIN.
- 8 Q YEAH. SO, YOU DID FIND -- SO, YOU MUST HAVE BEEN LOOKING FOR
- 9 BLOOD. SO, THERE MUST NOT HAVE BEEN ANY BLOOD IN ANY OTHER
- 10 PARTS OF THE HOUSE. ISN'T THAT CORRECT?
- 11 A YES, SIR.
- 12 Q OKAY. YOU ALSO CAME INTO CUSTODY OF SOME PHOTOGRAPHS THAT
- 13 WERE TAKEN OF THE LEG OF THE DEFENDANT, I MEAN THE DECEASED
- 14 IN THIS CASE. ISN'T THAT CORRECT?
- 15 A YES, SIR.
- 16 Q AND THOSE PHOTOGRAPHS WERE TAKEN FOR THE PURPOSES OF
- 17 TRYING TO IDENTIFY THE FINGERPRINTS WHICH WERE LIFTED UP
- 18 WHENEVER THE ACID WAS APPLIED. IS THAT CORRECT?
- 19 A LIFTED UP? I DON'T KNOW -- WHEN YOU SAY LIFTED UP, I AM NOT SURE
- 20 WHAT YOU ARE TALKING ABOUT.
- 21 Q OKAY. THE PHOTOGRAPHS.
- 22 A THOSE PHOTOGRAPHS, RIGHT.
- 23 Q WERE THOSE PHOTOGRAPHS OF THE DECEASED'S LEG?
- 24 A YES, SIR.
- 25 Q WERE THEY PHOTOGRAPHS OF FINGERPRINTS ON THE DECEASED'S

CROSS EXAMINATION OF STEPHEN DAVIS BY MR. HOOD:

273

- 1 LEG?
- 2 A THEY WEREN'T ACTUALLY PRINTS. THEY WERE LIKE SMEARS OF
- 3 SOMEONE'S HANDS.
- 4 Q SOMEONE'S HANDS. DID YOU EVER SEND THOSE DOCUMENTS TO THE
- 5 LAB FOR ANALYSIS TO DETERMINE WHOSE FINGERPRINTS THOSE
- 6 WERE?
- 7 A I LOOKED AT THEM AND THEY WERE NOT IN SUFFICIENT DETAIL, RIDGE
- 8 DETAIL, TO BE PRINTS.
- 9 Q WELL THEN, YOU -- WHAT YOU ARE SAYING IS YOU ARE AN EXPERT IN
- 10 FINGERPRINTING.
- 11 A I HAVE A FINGERPRINT CLASSIFICATION IN READING.
- 12 Q DID YOU AT THAT TIME?
- 13 A YES, SIR.
- 14 Q TEN YEARS AGO?
- 15 A YES, SIR. I LOOKED AT THEM AND THERE WERE NO PRINTS THERE.
- 16 Q SO, YOU MADE THAT DETERMINATION ON YOUR OWN?
- 17 A YES, SIR.
- 18 Q OKAY. BUT THOSE WERE PRINTS THAT WERE GIVEN TO YOU BY WHOM?
- 19 A I BELIEVE SOMEBODY FROM SLED TOOK THE PICTURES. I AM NOT SURE
- 20 WHO TOOK THEM, BUT I DIDN'T TAKE THE PICTURES.
- 21 Q YOU DIDN'T TAKE THE PICTURES?
- 22 A I MAY HAVE GOTTEN THEM FROM DETECTIVE ARBELO. I AM NOT SURE.
- 23 Q DID YOU GATHER ANY OTHER EVIDENCE IN THIS CASE?
- 24 A ONLY WHAT'S HERE, ON THIS SUPPLEMENT RIGHT HERE. THERE IS
- 25 ITEMS "A" THROUGH "F" (INDICATING).

CROSS EXAMINATION OF STEPHEN DAVIS BY MR. HOOD:

274

1 Q SO, WHAT YOU ARE SAYING IS, YOU ACTUALLY TALKED TO TWO
2 PEOPLE IN THIS CASE ABOUT THIS PARTICULAR CRIME. IS THAT
3 CORRECT?

4 A YOU ARE SAYING I TALKED TO TWO PEOPLE. CAN YOU NAME THEM?
5 I AM NOT SURE WHO YOU ARE TALKING ABOUT.

6 Q WELL, YOU MENTIONED SOMETHING ABOUT YOU TALKED TO A WOMAN
7 SUSPECT. WHO IS THIS WOMAN SUSPECT?

8 A NO. I TALKED TO A LADY ABOUT A PROWLER AROUND HER HOUSE.

9 Q ABOUT A PROWLER AROUND HER HOUSE? OKAY. OKAY. WELL, WHO
10 INTERVIEWED THE NEIGHBORS OF MR. GODLEY?

11 A LIEUTENANT NORMAN STEWART. I SPOKE TO MRS. COOK, I THINK.

12 Q WELL, WAIT A MINUTE. WHO IS STEWART?

13 A HE IS A LIEUTENANT. HE WAS IN CHARGE OF DETECTIVES IN THE
14 BEAUFORT COUNTY SHERIFF'S OFFICE.

15 Q OKAY. AND DID HE FILE A REPORT IN THIS CASE?

16 A NO. HE WAS THE ONE WHO GAVE ME THE INFORMATION ON -- I DON'T
17 KNOW IF I AM ALLOWED TO SAY .

18 Q WELL, DID YOU -- DID YOU GET ANY INFORMATION AT ALL FROM ANY OF
19 THE NEIGHBORS OF MR. GODLEY CONCERNING THE EVENTS OF THE
20 WHOLE WEEK-END? DID YOU DO ANY OF THAT?

21 A MR. GODLEY'S HOUSE SITS BY ITSELF ON A CURB. PEOPLE WE TALKED
22 TO IN THIS NEIGHBORHOOD, AND INFORMATION CAME TO ME FROM THE
23 DETECTIVE, LIEUTENANT DETECTIVE NORMAN STEWART.

24 Q AND HE NEVER FILED A REPORT?

25 A NO. HE JUST GAVE ME WHAT THEY SAID.

CROSS EXAMINATION OF STEPHEN DAVIS BY MR. HOOD:

275

1 Q AND YOU NEVER FILED THAT AS PART OF YOUR REPORT EITHER, DID
2 YOU?

3 A NO, SIR. WELL, I DID REMARK IN THE FRONT PART OF MY REPORT.

4 Q I SEE. DID YOU PERHAPS CHECK AROUND THE HOUSE FOR ANY SIGNS
5 OF FOOTPRINTS, YOU KNOW, ITEMS OF EVIDENCE THAT MIGHT HAVE
6 BEEN DROPPED OR ANYTHING OF THAT NATURE?

7 A YES, SIR.

8 Q DID YOU FIND ANY OF THOSE ITEMS?

9 A NO, SIR. NO, SIR.

10 Q NOW, DID YOU KNOW THE PEOPLE, I'M SURE YOU PROBABLY DO, BUT
11 ANYWAY, DO YOU KNOW THE NAMES OF ALL OF THE PEOPLE WHO
12 WERE IN AND OUT OF MR. GODLEY'S RESIDENCE AFTER THE TIME IT
13 WAS TURNED OVER TO THE FAMILY —

14 A NO, SIR.

15 Q --- FOR CLEANING, BECAUSE APPARENTLY THINGS WERE CLEAN. IS
16 THAT CORRECT?

17 A NO. THEY WEREN'T CLEAN, SIR.

18 Q WELL, WAS THE BLOODY SHEETS AND THE BED AND ALL THAT STUFF IN
19 THE PLACE WHEN YOU GOT THERE?

20 A SIR, I WAS NOT THERE THE NIGHT —

21 Q NO, I AM TALKING ABOUT WHEN YOU GOT THERE. WHEN YOU WENT TO
22 THE SCENE.

23 A NO, SIR.

24 Q I'M SORRY?

25 A NO, IT WASN'T THERE, SIR.

CROSS EXAMINATION OF STEPHEN DAVIS BY MR. HOOD:

276

1 Q IT WASN'T THERE?

2 A NOT THAT I CAN REMEMBER.

3 Q OKAY. BUT WHAT I AM SAYING IS, DO YOU KNOW WHO – DID YOU GET A
4 LIST OF ALL THE NAMES OF ALL THE PEOPLE WHO HAD BEEN IN THE
5 GODLEY'S RESIDENCE FROM THE TIME IT HAD BEEN TURNED OVER TO
6 THE FAMILY TO THE TIME YOU WENT BACK AND TRIED TO GATHER
7 EVIDENCE?

8 A NO, SIR.

9 Q OKAY. SO, WHEN WE TALK ABOUT A MISSING WALLET, WE DON'T EVEN
10 KNOW IF HE HAD A WALLET, DO WE?

11 MR. THORNTON: OBJECTION, YOUR HONOR. I THINK THAT WAS
12 TESTIFIED TO BY ANOTHER WITNESS EARLIER IN THE TRIAL.

13 THE COURT: OVERRULED. THIS IS CROSS EXAMINATION.

14 MR. THORNTON: YES, SIR.

15 A I SUSPECT HE HAD A WALLET.

16 Q OKAY. ALL RIGHT. ALL RIGHT. DID YOU LOOK IN THE WOODS FOR THE
17 WALLET?

18 A SAY AGAIN?

19 Q DID YOU LOOK IN THE WOODS FOR THE WALLET?

20 A YES. I LOOKED ALL AROUND HIS PROPERTY AND ALONG THE ADJACENT
21 TREE LINE.

22 Q AND YOU DIDN'T FIND ANYTHING?

23 A NO, SIR.

24 Q YOU DIDN'T FIND ANY CARDS OR DRIVER'S LICENSE OR ANYTHING?
25 NOTHING?

CROSS EXAMINATION OF STEPHEN DAVIS BY MR. HOOD:

277

- 1 A NO, SIR.
- 2 Q ABSOLUTELY BARE. FIND ANY ITEMS OF CLOTHING?
- 3 A NO, SIR.
- 4 Q YOU GATHERED ALL OF THE INFORMATION FROM RICHARD SIMMONS.
- 5 IS THAT CORRECT?
- 6 A I INTERVIEWED HIM. HE JUST GAVE ME SOME INFORMATION. HE
- 7 ANSWERED SOME QUESTIONS FOR ME.
- 8 Q ISN'T IT TRUE THAT YOU WENT TO THE ISLAND PLAZA, SAW MR.
- 9 SIMMONS, YOU ASKED HIM TO COME WITH YOU, AND YOU SAID, "WHY
- 10 DID YOU HIT THAT OLD MAN WITH THE HAMMER?"
- 11 A NO, SIR.
- 12 Q WHAT DID YOU SAY?
- 13 A I IDENTIFIED MYSELF AS A DETECTIVE WITH THE SHERIFF'S
- 14 DEPARTMENT -- FIRST I IDENTIFIED HIM AS BEING WHO HE WAS, TOLD
- 15 HIM WHO I WAS AND TOLD HIM I WANTED TO TALK TO HIM ABOUT HIS
- 16 WHEREABOUTS ON THE 13th OR THE 14th AND ASKED HIM IF HE'D MIND
- 17 COMING TO THE SHERIFF'S OFFICE AND HE SAID, "YEAH."
- 18 Q AND SO YOU GUYS WENT TO THE SHERIFF'S OFFICE.
- 19 A YES, SIR.
- 20 Q SO, NOW WAIT A MINUTE. SO, YOU HAD ALREADY TOLD HIM ABOUT THE
- 21 MURDER BEFORE YOU GOT TO THE SHERIFF'S OFFICE? OR AFTER YOU
- 22 GOT TO THE SHERIFF'S OFFICE?
- 23 A I NEVER MENTIONED MURDER. I THOUGHT IT WAS ODD THAT HE DIDN'T
- 24 ASK WHY HE WAS GOING. THE ONLY COMMENT HE MADE WAS "I
- 25 THOUGHT YOU WOULD BE COMING TO SEE ME." AND I ASKED HIM

CROSS EXAMINATION OF STEPHEN DAVIS BY MR. HOOD:

278

1 ABOUT THAT.

2 Q WAIT A MINUTE. "I THOUGHT YOU WOULD BE COMING TO SEE ME."

3 WHERE IS THAT IN YOUR REPORT?

4 A IT'S NOT IN THE REPORT.

5 Q OH, IT'S NOT IN YOUR REPORT. OKAY. WELL, THEN GO AHEAD, KEEP ON
6 GOING.

7 A I ASKED HIM AND HE SAID SOMETHING, HE DIDN'T ANSWER ME, BUT HE
8 SAID IT WASN'T IMPORTANT. WE DROVE TO THE SHERIFF'S OFFICE.
9 I DIDN'T WANT TO AGGRAVATE THE SITUATION BECAUSE I WANTED TO
10 INTERVIEW HIM.

11 Q OKAY. NOW YOU AND THIS OFFICER HERE BY THE NAME OF OFFICER
12 BROMAGE ARE BOTH WITNESSES IN THIS CASE, IS THAT CORRECT?

13 A YES, SIR.

14 Q AND YOU BOTH WERE ORDERED BY THE JUDGE TO BE SEQUESTERED.
15 ISN'T THAT CORRECT?

16 A YES, SIR.

17 Q AND THAT ORDER MEANS THAT YOU WOULD HAVE NO CONVERSATION,
18 YOU OR OFFICER BROMAGE. ISN'T THAT CORRECT?

19 A YES, SIR.

20 Q AND AFTER SERGEANT ARBELO TESTIFIED LAST NIGHT, HE GOT OFF
21 THE STAND, HE EXITED AND WENT OUT THAT DOOR THERE. IS THAT
22 CORRECT?

23 A YES, SIR.

24 Q HE CAME IN THE ROOM WITH YOU, RIGHT?

25 A YES, SIR.

CROSS EXAMINATION OF STEPHEN DAVIS BY MR. HOOD:

279

- 1 Q OKAY. A FEW MINUTES LATER, OR SECONDS LATER, OFFICER
2 BROMAGE CAME TO YOU. ISN'T THAT CORRECT?
- 3 A NO, SIR. I SAW HIM IN THE HALLWAY. I BELIEVE RIGHT OUT THE DOOR.
- 4 Q AND YOU GUYS WERE TALKING ABOUT THE EVIDENCE IN THIS CASE.
5 ISN'T THAT CORRECT?
- 6 A YES, SIR. I BELIEVE SO.
- 7 Q AND THE JUDGE HAD ORDERED YOU NOT TO DO THAT. ISN'T THAT
8 CORRECT?
- 9 A HE HAD ASKED ME A QUESTION AND I JUST ANSWERED. YES, SIR.
- 10 Q ANSWER MY QUESTION.
- 11 A YES, SIR.
- 12 Q YOU KNEW YOU WERE NOT SUPPOSED TO HAVE ANY CONVERSATIONS
13 WITH THIS OFFICER WHO HAD BEEN SITTING IN THIS COURTROOM THE
14 ENTIRE TIME THE TESTIMONY OF THE OTHER OFFICERS AND THE
15 OTHER WITNESSES IN THIS CASE WERE GIVEN. ISN'T THAT CORRECT?
- 16 A COULD YOU REPEAT THAT? REPEAT THE QUESTION AGAIN.
- 17 Q YOU KNEW THAT THIS OFFICER HAD BEEN SITTING IN THIS
18 COURTROOM THE WHOLE TIME THAT EVERYONE OF THOSE OTHER
19 WITNESSES WERE TESTIFYING AND THAT YOU WERE NOT SUPPOSED
20 TO TALK WITH HIM ABOUT THIS CASE. ISN'T THAT CORRECT?
- 21 A ABOUT THE TESTIMONY THAT WAS BEING GIVEN. YES, SIR.
- 22 Q ABOUT ANYTHING. ISN'T THAT CORRECT?
- 23 A I SAID ABOUT TESTIMONY. I DON'T KNOW.
- 24 Q WELL, TELL ME WHAT YOU WERE TALKING ABOUT.
- 25 A I THINK HE ASKED ME IF I SAW THE PICTURES AND I TOLD HIM, I'M NOT

CROSS EXAMINATION OF STEPHEN DAVIS BY MR. HOOD:

280

1 SURE, BUT I THINK HE ASKED IF I SAW THE PICTURES OR GAVE HIM THE
2 PICTURES AND I TOLD HIM I WAS FINGERPRINT QUALIFIED. I AM NOT
3 SURE BUT I THINK THAT WAS WHAT THE CONVERSATION WAS ABOUT
4 AND THEN SOMEONE CAME ALONG AND THAT WAS THE END OF IT.

5 Q SOMEONE CAME ALONG AND SAID, " YOU GUYS ARE NOT SUPPOSED TO
6 BE TALKING." AND YOU SPLIT UP IMMEDIATELY. ISN'T THAT CORRECT?

7 A NO, SIR.

8 Q WHY WOULD YOU TALK TO HIM WHEN THE JUDGE TOLD YOU NOT TO
9 DO THAT?

10 A SIR, THE JUDGE SEQUESTERED US. HE DIDN'T SAY I COULDN'T TALK TO
11 ANYBODY ABOUT TESTIMONY. THAT IS HOW I UNDERSTOOD IT. THAT I
12 COULDN'T GO OVER MY TESTIMONY OR ANYBODY ELSE'S TESTIMONY
13 WITH THEM.

14 Q WELL, TALKING ABOUT PICTURES, FINGERPRINT EXPERT BEING
15 WHATEVER, THAT IS NOT EVIDENCE?

16 A I DIDN'T TAKE IT AS BEING EVIDENCE.

17 Q WHAT HAPPENED TO THOSE PHOTOGRAPHS?

18 A THEY SHOULD BE HERE IN THE COURTROOM.

19 Q ARE THOSE THE ONES YOU DIDN'T SEND OFF TO SLED?

20 A I ASSUME SO. YES, SIR.

21 Q AND THAT IS ALL OF THE CONVERSATION THAT YOU GUYS WERE
22 HAVING AT THE TIME. IS THAT CORRECT?

23 A YES, SIR.

24 Q SO, YOU WEREN'T TALKING ABOUT THE CASE.

25 A I BELIEVE THAT WAS WHAT IT WAS, BUT I AM NOT SURE. I DON'T

RE-DIRECT EXAMINATION OF STEPHEN DAVIS BY MR. THORNTON:

281

1 REMEMBER EVERYTHING. IT WAS A SHORT CONVERSATION.

2 Q YOU DIDN'T HAVE ANY CONVERSATION ABOUT WHAT ARBELO HAD JUST
3 TESTIFIED ABOUT, HAVING PROBLEMS TESTIFYING ABOUT?

4 A NONE OF THAT. NO, SIR.

5 Q NONE OF THAT.

6 A NO, SIR. NO, SIR.

7 Q OKAY. I THINK THAT'S ENOUGH. THANK YOU.

8 THE COURT: RE-DIRECT?

9 MR. THORNTON: BRIEFLY, YOUR HONOR.

10 **RE-DIRECT EXAMINATION OF STEPHEN DAVIS BY MR. THORNTON:**

11 Q OFFICER DAVIS, YOU JUST GOT FINISHED TESTIFYING FOR MR. HOOD,
12 WAS THAT THE EXTENT OF THE CONVERSATION YOU HAD WITH
13 CAPTAIN BROMAGE?

14 A YES, SIR. IT WAS ABOUT A ONE OR TWO MINUTE CONVERSATION,
15 BECAUSE HE JUST ASKED ME A QUESTION.

16 Q ALL RIGHT, SIR. DID HE ATTEMPT IN ANY WAY TO COACH YOU ABOUT
17 WHAT YOUR TESTIMONY WOULD BE?

18 A NO, SIR. NOTHING ABOUT THAT.

19 Q OTHER THAN QUESTIONS ASKED BY MR. HOOD ABOUT THESE
20 PHOTOGRAPHS, YOU KNOW, DOES THAT CHANGE YOUR TESTIMONY IN
21 ANY WAY? DID CAPTAIN BROMAGE ATTEMPT TO CHANGE YOUR
22 TESTIMONY IN ANY WAY?

23 A NO, SIR.

24 Q DID HE TALK TO YOU ABOUT WHAT ANY OTHER WITNESS HAD
25 TESTIFIED TO?

RE-CROSS EXAMINATION OF STEPHEN DAVIS BY MR. HOOD:

282

1 A NO, SIR. HE DIDN'T.

2 Q ALL RIGHT. THANK YOU VERY MUCH. NO FURTHER QUESTIONS.

3 MR. HOOD: I ONLY HAVE ONE OTHER QUESTION.

4 **RE-CROSS EXAMINATION OF STEPHEN DAVIS BY MR. HOOD:**

5 Q PREVIOUSLY, YOU WERE QUESTIONED ABOUT THIS CONVERSATION
6 THAT YOU HAD WITH THIS OFFICER HERE.

7 A YES, SIR.

8 Q AND ISN'T IT TRUE THAT THE FIRST QUESTION THAT WAS ASKED WAS,
9 DID YOU HAVE A CONVERSATION WITH HIM AND YOU SAID, I DON'T
10 REMEMBER.

11 A YOU ASKED ME WHAT THE CONVERSATION WAS ABOUT AND I DIDN'T
12 REMEMBER.

13 Q YOU DIDN'T REMEMBER.

14 A I SAID I HAD A CONVERSATION, BUT I DIDN'T REMEMBER WHAT THE
15 CONVERSATION WAS ABOUT.

16 Q AND THAT CONVERSATION TOOK PLACE LAST NIGHT. ISN'T THAT
17 CORRECT?

18 A YES, SIR.

19 Q OKAY. THANK YOU.

20 THE COURT: YOU MAY STEP DOWN.

21 MR THORNTON: JUDGE, I'D ASK THAT OFFICER DAVIS BE EXCUSED, BUT
22 SUBJECT TO RECALL, IF HE COULD JUST WAIT BACK IN THE ROOM.

23 THE COURT: THAT'S FINE.

24 MR. THORNTON: THANK YOU, JUDGE. YOUR HONOR, AT THIS TIME THE
25 STATE CALLS CAPTAIN BOB BROMAGE TO THE STAND.

DIRECT EXAMINATION OF ROBERT BROMAGE BY MR. THORNTON:

283

1 (AFTER BEING DULY SWORN BY THE CLERK OF COURT, ROBERT
2 BROMAGE TESTIFIED AS FOLLOWS:)

3 **CLERK OF COURT:** PLEASE BE SEATED AND STATE YOUR NAME AND
4 SPELL IT FOR THE COURT, PLEASE.

5 **WITNESS:** ROBERT E. BROMAGE. B-R-O-M-A-G-E.

6 **DIRECT EXAMINATION OF ROBERT BROMAGE BY MR. THORNTON:**

7 Q CAPTAIN BROMAGE, BY WHOM ARE YOU EMPLOYED SIR?

8 A BEAUFORT COUNTY SHERIFF'S OFFICE AND I AM ACTUALLY BEING PAID
9 BY THE CORONER'S OFFICE AS A DEATH INVESTIGATOR FOR BEAUFORT
10 COUNTY.

11 Q ALL RIGHT, SIR. AND IS YOUR RANK CAPTAIN? IS THAT CORRECT?

12 A WITH THE SHERIFF'S OFFICE, I AM CAPTAIN. YES, SIR.

13 Q ALL RIGHT, SIR. AND DO YOU HAVE AS A DEATH INVESTIGATOR, DO
14 YOU HAVE ANY OTHER TITLE OR SPECIFIC PLACE THAT YOU WORK? I'M
15 SORRY, THAT IS A POORLY PHRASED QUESTION. IS THERE ANY OTHER
16 TYPE OF CASE OR IS THERE A SPECIFIC TYPE OF CASE YOU WORK?

17 A I WORK ANY SUSPICIOUS DEATH INCLUDING HOMICIDE AND COLD CASE
18 WHICH ARE REFERRED TO AS AN UNRESOLVED DEATH INVESTIGATION.

19 Q WERE YOU AT SOME POINT ASSIGNED TO THIS INVESTIGATION AS A
20 COLD CASE?

21 A YES, I HAVE ALL THE SHERIFF'S OFFICE COLD CASES THAT I WORK.

22 Q WHAT IS IT -- AND I KNOW YOU KIND OF WENT INTO IT A LITTLE BIT, BUT
23 WHAT IS IT THAT MAKES A CASE A COLD CASE?

24 A AFTER A FEW YEARS OR A CERTAIN PERIOD OF TIME, WHEN ALL THE
25 LEADS ARE EXHAUSTED, THAT'S WHEN I'LL PICK UP A CASE AND START

1 WORKING IT AND SEE IF THERE ARE ANY OTHER AVENUES AND
2 RE-EVALUATE EVIDENCE AND RE-INTERVIEW WITNESSES.

3 Q ALL RIGHT, SIR. DID YOU HAVE ANY CONNECTION AT ALL TO THE CASE
4 OF THE MURDER OF CHARLES GODLEY?

5 A YES, I DID. I INHERITED THAT CASE IN 1999.

6 Q ALL RIGHT, SIR. SO, AT THAT POINT IT WAS ALREADY, WHAT,
7 FOUR-YEARS-OLD?

8 A THAT'S CORRECT.

9 Q AND WHEN YOU GOT IT, HAD IT BEEN DETERMINED THAT AT THAT TIME
10 ALL THE LEADS HAD BEEN EXHAUSTED?

11 A WELL, THERE WERE SOME LEADS STILL THERE, BUT IT HADN'T BEEN
12 WORKED ON FOR THREE OR FOUR YEARS. WHAT HAPPENED WAS
13 SHERIFF McLEOD REQUESTED ASSISTANCE FROM SLED, THE SOUTH
14 CAROLINA LAW ENFORCEMENT DIVISION, AND BUTCH POLK, THE
15 RESIDENT AGENT PICKED IT UP FOR A FEW YEARS AND NOT MUCH WAS
16 DONE.

17 Q ALL RIGHT, SIR. ONCE YOU GOT THE CASE, WHAT ARE THE TYPES OF
18 THINGS THAT YOU WOULD DO?

19 A FIRST THING I DID WAS GO THROUGH THE EVIDENCE, THE BOX OF
20 EVIDENCE THAT WAS IN OUR EVIDENCE LOCKUP TO SEE IF ANYTHING,
21 AND OBVIOUSLY – THE FORENSIC REPORTS HAD BEEN PREVIOUSLY
22 SENT BACK HERE BY SLED – AND LOOK AT THE CHANGING
23 TECHNOLOGY BECAUSE THERE WAS NOW PCR DNA TECHNOLOGY
24 WHICH IS A MUCH MORE SENSITIVE TECHNOLOGY AND ALSO SEE IF
25 ANYTHING NEEDED TO BE DONE AS FAR AS LATENT FINGERPRINTS AND

DIRECT EXAMINATION OF ROBERT BROMAGE BY MR. THORNTON :

285

1 THINGS LIKE THAT AND OBVIOUSLY SEEING THAT THE EVIDENCE WAS
2 STILL THERE BECAUSE SOMETIMES EVIDENCE IS SOMETIMES, YOU
3 KNOW, LOST OR MISPLACED AND THINGS LIKE THAT, BUT ESSENTIALLY,
4 EVERYTHING WAS IN THE EVIDENCE BOX.

5 Q ALL RIGHT, SIR. AT SOME POINT WERE YOU ABLE TO IDENTIFY OR
6 COME UP WITH ANY PARTICULAR LEADS ABOUT RICHARD SIMMONS?

7 A IN SPEAKING WITH A FEW OFFICERS, I UNDERSTOOD THAT A FORMER
8 SLED AGENT HAD WENT WITH ONE OF OUR OFFICERS TO ALLENDALE
9 CORRECTIONAL FACILITY BACK IN 1996, I BELIEVE, AND SPOKE WITH AN
10 INMATE AT THAT FACILITY REGARDING A STATEMENT THAT RICHARD
11 SIMMONS HAD MADE TO HIM.

12 Q ALL RIGHT, SIR. AND WITHOUT GOING INTO ANYTHING, WHAT ANYBODY
13 SPECIFICALLY SAID, AS A RESULT OF THAT INFORMATION BEING GIVEN
14 TO YOU DID YOU DO ANYTHING IN PARTICULAR?

15 A WHEN I GET INFORMATION, I TRY TO CORROBORATE THE INFORMATION
16 BY ADDITIONAL WITNESSES THAT WERE PROVIDED BY THIS INDIVIDUAL
17 AND, OBVIOUSLY, AT THE SAME TIME, THERE WERE NINE OR TEN TO
18 TWELVE HOMICIDES GOING ON IN BEAUFORT COUNTY, SO NOT A LOT
19 WAS DONE FOR A FEW YEARS.

20 Q ALL RIGHT, SIR.

21 A THAT WAS IN 1999.

22 Q BACK-UP FOR ME FOR ONE MINUTE. YOU SAID YOU GOT OTHER NAMES
23 FROM THIS INDIVIDUAL. BY THE INDIVIDUAL, DOES THAT INDIVIDUAL
24 HAVE A NAME?

25 A I CAN'T REMEMBER.

DIRECT EXAMINATION OF ROBERT BROMAGE BY MR. THORNTON :

286

1 Q ALL RIGHT, SIR. AND DID YOU -- I THINK WE SKIPPED A STEP BECAUSE
2 WE WERE TALKING ABOUT BUTCH POLK, THE SLED AGENT THAT WENT
3 TO TALK TO HIM. AS A RESULT OF THAT INFORMATION BEING PASSED
4 TO YOU, DID YOU GO TALK TO HIM?

5 A I WENT AND TALKED TO HIM. THAT IS CORRECT.

6 Q ALL RIGHT, SIR. SO YOU DID GO AND SEE KEVIN BENTLEY IN THE
7 ALLENDALE CORRECTION INSTITUTE?

8 A I DID.

9 Q AND WITHOUT GOING INTO WHAT HE SAID, DID HE PROVIDE YOU
10 INFORMATION?

11 A HE PROVIDED ME INFORMATION.

12 Q ALL RIGHT, SIR. AND DID THAT INFORMATION IMPLICATE ANYBODY IN
13 PARTICULAR IN THIS CASE?

14 A YES. RICHARD SIMMONS.

15 Q WERE OTHER NAMES GIVEN TO YOU AT THAT POINT?

16 A NAMES OF PEOPLE WHO MAY HAVE BEEN WITH RICHARD AFTER THE
17 MURDER.

18 Q ALL RIGHT, SIR. AND DID YOU FOLLOW UP -- I UNDERSTAND YOU SAID
19 THERE WAS SOME TIME LAG. AT SOME POINT DID YOU FOLLOW UP ON
20 THOSE LEADS?

21 A I DID. I DID.

22 Q CAN YOU TELL ME THE NAMES OF THE PEOPLE THAT YOU TALKED TO?

23 A WELL, I TALKED TO A ELAINE BRYANT, BUT I ALSO WAS RE-ASSIGNED
24 FOR ABOUT A YEAR-AND-A-HALF TO TWO YEARS. I WENT TO THE FBI
25 NATIONAL ACADEMY AND ENDED UP AS A LIEUTENANT OF

DIRECT EXAMINATION OF ROBERT BROMAGE BY MR. THORNTON:

287

1 INVESTIGATIONS FOR BEAUFORT COUNTY, SO MY DUTIES WERE
2 SHIFTED TO SOMEBODY ELSE. WHEN THEY WERE SHIFTED TO
3 SERGEANT SAM ROCHER, I TOLD HIM ABOUT THE TWO PEOPLE WHO
4 NEEDED TO BE INTERVIEWED AND HE HAD WORKED FOR BEAUFORT
5 COUNTY FOR THE MAJORITY OF HIS CAREER AND HE WAS FAMILIAR, HE
6 ALSO WORKED NARCOTICS AND THESE PEOPLE WERE INVOLVED WITH
7 NARCOTICS, YOU KNOW. HE SAID HE WENT AND TALKED TO THEM AND
8 HE HAD NOTHING TO SAY ABOUT IT, THAT HE HAD NO RECOLLECTION ---

9 MR. HOOD: YOUR HONOR, I AM GOING TO OBJECT TO THAT -- I MEAN,
10 THAT IS HEARSAY AND IT REALLY DOESN'T MAKE ANY DIFFERENCE. THEY
11 HAD NO RECOLLECTION AND NO KNOWLEDGE OF WHAT HE WAS TALKING
12 ABOUT, SO...

13 THE COURT: DO YOU WITHDRAW YOUR OBJECTION?

14 MR. HOOD: I DON'T OBJECT. I'LL WITHDRAW IT. I MEAN, THEY
15 INTERVIEWED THEM AND THEY SAID THEY DIDN'T KNOW NOTHING.

16 THE COURT: PROCEED.

17 MR. THORNTON: ALL RIGHT JUDGE. I AM SORRY. I WAS WAITING ON
18 MR. HOOD TO FINISH. HE WAS GETTING KIND OF LONG THERE ---

19 THE COURT: HE'S WITHDRAWING HIS OBJECTION.

20 MR. THORNTON: YES, SIR.

21 Q CAPTAIN, DID YOU DO ANY -- DID YOU INTERVIEW ANY OTHER PEOPLE?

22 A I INTERVIEWED ONE, TWO PEOPLE THAT WERE MENTIONED. ONE,
23 WHOSE NAME WAS ELAINE BRYANT, WHO TOLD ME TO MY FACE SHE
24 HAD NO KNOWLEDGE OF THIS AT ALL.

25 Q ALL RIGHT, SIR.

DIRECT EXAMINATION OF ROBERT BROMAGE BY MR. THORNTON :

288

1 A TO ME, THAT WAS A DEAD LEAD AS FAR AS CORROBORATING WITH
2 WHAT MR. BENTLEY HAD SAID.

3 Q ALL RIGHT, SIR. DID YOU MOVE ON TO ANYBODY ELSE?

4 A I DID. I ACTUALLY WENT BACK TO KEVIN BENTLEY TO TALK TO HIM
5 FURTHER ABOUT THE SAME INFORMATION THAT HE HAD GIVEN ME.

6 Q ALL RIGHT, SIR. AND AS A RESULT OF THAT INTERVIEW WERE ANY
7 OTHER NAMES PROVIDED TO YOU?

8 A FURTHER DOWN THE ROAD THEY WERE.

9 Q ALL RIGHT, SIR. DID YOU -- CAN YOU NAME THESE INDIVIDUALS?

10 A I CAN.

11 Q ALL RIGHT, SIR.

12 A ARTHUR SINGLETON, THOMAS DAVIS, KEVIN MIDDLETON, AND CLYDE
13 EVANS, BUT THOMAS DAVIS WAS NOT PROVIDED, THAT WAS ACTUALLY
14 A LEAD THAT WE DEVELOPED FROM THE BEAUFORT COUNTY
15 DETENTION CENTER, SO IT WOULD BE KEVIN MIDDLETON, ARTHUR
16 SINGLETON, AND CLYDE EVANS,

17 Q ALL RIGHT, SIR, IN ADDITION TO KEVIN BENTLEY.

18 A RIGHT. KEVIN BENTLEY ACTUALLY PROVIDED ME THOSE NAMES TO
19 SAY THEY HAD TALKED TO MR. SIMMONS' LAWYER.

20 Q ALL RIGHT, SIR. AND AS A RESULT OF THAT INFORMATION, DID YOU GO
21 INTERVIEW EACH OF THESE INDIVIDUALS?

22 A I DID.

23 Q DID YOU HAVE A DISCUSSION WITH THEM?

24 A I DID.

25 Q ALL RIGHT, SIR. AND DID THEY PROVIDE YOU WITH ANY INFORMATION?

DIRECT EXAMINATION OF ROBERT BROMAGE BY MR. THORNTON:

289

1 A THEY PROVIDED ME WITH INFORMATION IMPLICATING RICHARD
2 SIMMONS.

3 Q ALL RIGHT, SIR. AND WITHOUT GOING INTO SPECIFICS, WAS THIS
4 INFORMATION THAT HE HAD MADE STATEMENTS TO THEM?

5 A THAT'S CORRECT.

6 Q ALL RIGHT. WHAT DID YOU DO AFTER GAINING THIS INFORMATION, SIR?
7 WHAT WAS THE NEXT STEP IN THIS INVESTIGATION?

8 A WELL, THE NEXT STEP AFTER TALKING WITH KEVIN BENTLEY AGAIN
9 WAS RESEARCHING WHERE RICHARD SIMMONS PRESENTLY WAS. WE
10 DETERMINED THAT HE WAS ON THE STREETS OF COLUMBIA,
11 HOMELESS APPARENTLY, AND WE WERE ABLE TO LOCATE HIM. I WENT
12 AND MET WITH A BEHAVIORAL SCIENCE CAPTAIN FROM SLED, NAMED
13 DAVID CALDWELL, AND WE PLANNED AN UNDERCOVER OPERATION.

14 Q ALL RIGHT, SIR. AND WAS A PARTICULAR AGENT INVOLVED IN THAT
15 UNDERCOVER OPERATION? I REALIZE THERE MAY HAVE BEEN SEVERAL
16 BUT WAS HERE ONE PERSON WHO WAS MOST INVOLVED?

17 A THE ONE THAT WAS MOST INVOLVED WAS BRUCE OTTERBACHER, WHO
18 HAD DONE EXTENSIVE UNDERCOVER IN HIS CAREER, I GUESS, WITH
19 THE SECRET SERVICE AND WITH SLED OVER A PERIOD OF TWENTY
20 SOME ODD YEARS. HE WAS SELECTED FOR THIS.

21 Q ALL RIGHT, SIR. AND WHAT WAS – YOU SAID YOU PUT A PLAN
22 TOGETHER. WHAT WAS THE PLAN?

23 A THE PLAN WAS TO INITIATE CONTACT WITH RICHARD SIMMONS. HE
24 WAS ACTUALLY LIVING IN THE FIVE POINTS AREA BY HARDEES'
25 RESTAURANT THERE AND INITIATED CONTACT WITH RICHARD

DIRECT EXAMINATION OF ROBERT BROMAGE BY MR. THORNTON :

290

1 SIMMONS, IDENTIFIED HIM AS BEING THE SAME RICHARD SIMMONS
2 THAT WAS ORIGINALLY FROM BEAUFORT COUNTY, THE ST. HELENA
3 AREA, AND TO ENGAGE IN MOCK CRIMINAL ACTIVITY THAT WAS SET UP
4 BY SLED AND, ACTUALLY, THE VICTIM OF THE MOCK CRIMINAL ACTIVITY
5 WOULD BE STATE PROPERTY AND NOT PRIVATE INDIVIDUALS, TO KEEP
6 IT SAFE.

7 Q ALL RIGHT. EXPLAIN WHAT YOU MEAN BY MOCK CRIMINAL ACTIVITY.
8 WAS THERE SOMETHING SPECIFIC THAT Y'ALL WERE EITHER GOING TO
9 DO OR DID?

10 A WELL, THE FIRST THING WAS TO SET UP A STORAGE UNIT AND AGENT
11 OTTERBACHER WAS GOING TO DO A FALSE INSURANCE CLAIM. THAT
12 WAS THE PLAN. AND MR. SIMMONS WOULD BE COMING IN TO SEE IF HE
13 WOULD BE ENGAGED WITH THAT ACTIVITY, AND HE DID. HE CUT THAT
14 LOCK ON THE STORAGE UNIT. THAT WAS HIS JOB AS FAR AS THAT
15 GOES. AGENT OTTERBACHER HAD INDICATED TO MR. SIMMONS THAT
16 HE WAS GOING TO FILE A FALSE INSURANCE CLAIM AND GIVE HIM A
17 HUNDRED DOLLARS OR WHATEVER THE CASE MAY BE, BUT AGENT
18 OTTERBACHER WOULD KNOW THE SPECIFICS OF THAT.

19 Q ALL RIGHT, SIR. AND IN UNDERCOVER OPERATIONS, WHAT IS THE
20 PURPOSE OF THIS MOCK CRIMINAL ACTIVITY? WHAT ARE YOU DOING IT
21 FOR?

22 A TO GAIN HIS TRUST AND GAIN HIS CONFIDENCE AND BASICALLY, TO
23 ELICIT A RESPONSE DOWN THE ROAD, IS WHAT WE WERE HOPING, IS
24 TO FIND OUT IF HE WAS INVOLVED IN IT AND IF HE WOULD ADMIT IT, TO
25 THE HOMICIDE THAT OCCURRED IN BEAUFORT COUNTY.

DIRECT EXAMINATION OF ROBERT BROMAGE BY MR. THORNTON :

291

1 Q ALL RIGHT, SIR. AND DURING THIS TIME, WHERE WERE YOU AT IN
2 RELATION AND -- WELL LET ME ACTUALLY STEP BACK ONE STEP.

3 WHERE DID A LOT OF THESE CONVERSATIONS AND THINGS WITH THE
4 AGENT AND RICHARD SIMMONS, WHERE DID THEY TAKE PLACE?

5 A IT TOOK PLACE IN COLUMBIA, SOUTH CAROLINA. I WAS ACTUALLY IN A
6 FOLLOW CAR WITH A WIRE.

7 Q ALL RIGHT, SIR.

8 A I WAS LISTENING.

9 Q AND WERE THEY IN A SEPARATE VEHICLE?

10 A THEY WERE IN A VAN THAT WAS SUPPLIED TO AGENT OTTERBACHER.
11 IT WAS WIRED WITH VIDEO AND AUDIO.

12 Q ALL RIGHT, SIR. AND WAS THE VAN MARKED IN ANY WAY?

13 A NO, NOT AT ALL. IT WAS AN OLD CONVERSION VAN THAT LOOKED LIKE
14 IT WAS PRETTY BEAT UP, A PRETTY BEAT-UP VAN.

15 Q ALL RIGHT, SIR. DID -- WAS THIS -- YOU SAID, I BELIEVE YOU JUST
16 TESTIFIED THAT IT WAS WIRED. SO WAS THERE AUDIO AVAILABLE?

17 A AUDIO AND VIDEO --

18 Q ALL RIGHT. AND --

19 A -- AUDIO WAS FED RUNNING TO THE FOLLOWING VEHICLE TO MAKE
20 SURE HE WAS SAFE AND THERE WAS AN ACTUAL VIDEO WHERE THE
21 PASSENGER IN MR. OTTERBACHER'S VEHICLE, IT WOULD BE FACING UP
22 TOWARDS HIS FACE, WHICH WAS ALL PRE-SET BEFORE ANY
23 UNDERCOVER STARTED.

24 Q AND WHERE WAS THE CAMERA LOCATED?

25 A THE CAMERA WAS LOCATED ACTUALLY -- IT WOULD BE ON THE FLOOR,

DIRECT EXAMINATION OF ROBERT BROMAGE BY MR. THORNTON :

292

1 I BELIEVE ON THE FLOORBOARD BETWEEN HIS LEGS AND FACING
2 UPWARD WHERE YOU COULD ACTUALLY SEE THE PERSON THAT WAS
3 SITTING IN THE VAN.

4 Q ALL RIGHT. NOW, EARLIER THERE WAS TESTIMONY, AND OF COURSE
5 YOU WERE PRESENT, ABOUT THE SUBMISSION OR RE-SUBMISSION OF
6 EVIDENCE. ARE YOU THE ONE THAT RE-SUBMITTED EVIDENCE TO
7 SLED?

8 A I RE-SUBMITTED EVIDENCE TO SLED.

9 Q ALL RIGHT SIR. I AM GOING TO SHOW YOU WHAT HAS BEEN MARKED
10 AS PLAINTIFF'S, I'M SORRY, AS STATE'S EXHIBIT #19 AND STATE'S
11 EXHIBIT #18. CAN YOU TELL ME WHETHER OR NOT THOSE ARE THE
12 ITEMS THAT YOU HAD RE-SUBMITTED TO SLED?

13 A YES, SIR. MY INITIALS ARE ON THEM WITH THE RETURN DATE OF
14 NOVEMBER 7th, 2005.

15 Q DURING THE COURSE OF THE INVESTIGATION, WERE ALL OF THE
16 TAPES IN QUESTION, WERE THEY ALL PRESERVED?

17 A YES.

18 Q ALL RIGHT, SIR. AND AS A RESULT OF THIS UNDERCOVER OPERATION,
19 FIRST OF ALL , CAN YOU TELL ME A LITTLE ABOUT HOW IT STARTED
20 FIRST? IN OTHER WORDS, DID THE FIRST THING THAT THE AGENT DO
21 WAS GO UP AND START TALKING TO HIM ABOUT DOING A CRIME, OR
22 HOW DOES THAT WORK?

23 A THAT'S ESSENTIALLY WHAT HAPPENED. I BELIEVE THEY GOT
24 TOGETHER, TOOK A RIDE AND AGENT OTTERBACHER GOT THE
25 CONVERSATION —

DIRECT EXAMINATION OF ROBERT BROMAGE BY MR. THORNTON:

293

1 **MR. HOOD:** YOUR HONOR, I'M GOING TO OBJECT TO THIS BECAUSE I
2 DON'T THINK HE IS TESTIFYING TO HIS OWN PERSONAL KNOWLEDGE OF
3 WHAT THESE INDIVIDUALS WERE TALKING ABOUT, BECAUSE I DON'T BELIEVE
4 THAT HE HAS ANY TAPES AND IF HE HAS ANY TAPES, ACTUALLY I DON'T HAVE
5 THEM, OF ANY CONVERSATIONS PRIOR TO THEM BEGINNING THIS LITTLE
6 EPISODE OF INVOLVING MY CLIENT IN THESE MOCK BURGLARIES MORE OR
7 LESS WITH THIS AGENT. SO I DON'T HAVE ANY OF THIS.

8 **THE COURT:** YOU HAVE TO LAY A FOUNDATION FOR THE QUESTION.

9 Q THE QUESTION I ASKED YOU JUST A MOMENT AGO, HOW WOULD YOU
10 KNOW WHAT CONVERSATIONS TOOK PLACE IN THE VAN BETWEEN MR.
11 SIMMONS AND THE AGENT?

12 A THERE WAS A WIRE, AN AUDIO WIRE IN THE VAN, IN THE CONVERSION
13 VAN DRIVEN BY AGENT OTTERBACHER AND OCCUPIED BY THE
14 PASSENGER RICHARD SIMMONS THAT WAS FED DIRECTLY INTO THE
15 VEHICLE I WAS IN, SO I HEARD ALL BUT ONE CONVERSATION WHILE I
16 WAS THERE, ALL BUT ONE CONVERSATION AND THAT WASN'T
17 ANYTHING SIGNIFICANT.

18 Q THEN PLEASE, DON'T TALK ABOUT THAT OTHER CONVERSATION. WITH
19 REGARD TO THE CONVERSATIONS THAT YOU YOURSELF HEARD VIA
20 AUDIO, THAT WAS BEING DIRECTLY FED INTO YOU, THAT WAS ALL SET
21 UP WITH THE MOCK CRIMINAL ACTIVITY – YOU TESTIFIED EARLIER THAT
22 IT WAS TO SET UP TRUST – WAS TRUST IN THIS CASE ESTABLISHED?

23 A I BELIEVE SO.

24 Q AND WITHOUT GOING INTO WHAT HE SAID, BECAUSE WE HAVE VIDEO
25 TAPES OF THAT, DID MR. SIMMONS MAKE ANY ADMISSIONS?

DIRECT EXAMINATION OF ROBERT BROMAGE BY MR. THORNTON:

294

1 A HE MADE SOME SPECIFIC ADMISSIONS TO THIS CASE, I WOULD SAY.

2 Q ALL RIGHT, SIR. AS THE RESULT OF THE INFORMATION THAT YOU
3 RECEIVED VIA THESE AUDIO OR THESE VIDEO TAPES, THE
4 CONVERSATIONS BETWEEN UNDERCOVER AGENT OTTERBACHER AND
5 THE DEFENDANT IN THIS CASE RICHARD SIMMONS, WHAT DID YOU DO,
6 IF ANYTHING?

7 A I CAME BACK AND PRESENTED -- AFTER THE COMPLETION OF ALL THE
8 UNDERCOVER --

9 Q YES, SIR.

10 A I CAME BACK AND MET WITH THEN SOLICITOR, RANDOLPH MURDOCH,
11 IN HAMPTON, AND DISCUSSED THE CASE WITH HIM AND DISCUSSED
12 THE CONCERN OF CONTINUING WITH THE UNDERCOVER BASED ON THE
13 INFORMATION THAT WE HAD REACHED. WE HAD REACHED THE
14 THRESHOLD OF PROBABLE CAUSE FOR AN ARREST IN THIS CASE FOR
15 MURDER IN THE FIRST DEGREE REGARDING CHARLES GODLEY.

16 Q AND DID YOU CEASE THE UNDERCOVER OPERATION AT THAT POINT?

17 A WE CEASED THE UNDERCOVER AT THAT POINT AND WE MADE ONE
18 MORE CONTACT TO ARREST HIM AND BRING HIM IN FOR AN INTERVIEW
19 AT SLED HEADQUARTERS.

20 Q ALL RIGHT.

21 A THAT WAS THE FINAL THING THAT WE DID.

22 Q ALL RIGHT, SIR. NOW, AFTER THIS HAPPENED, DID YOU HAVE AN
23 OCCASION -- YOU HAD MENTIONED BEFORE THAT THERE WERE A
24 COUPLE OF PEOPLE OR ONE PERSON I THINK YOU SAID A MR. -- I THINK
25 YOU SAID IT WAS DAVIS -- WAS THERE ANY OTHER CONTACTS FROM

DIRECT EXAMINATION OF ROBERT BROMAGE BY MR. THORNTON:

295

1 INDIVIDUALS WHO SAID THEY HAD INFORMATION AFTER THE
2 UNDERCOVER OPERATION WAS CEASED?

3 A YES, I DID A FEW INTERVIEWS AFTERWARDS.

4 Q ALL RIGHT, SIR.

5 A ON OCTOBER OF 2004 -- THE ARREST WAS ACTUALLY SEPTEMBER OF
6 2004 -- I INTERVIEWED ARTHUR SINGLETON WHO WAS INCARCERATED
7 AT THE ALLENDALE CORRECTIONAL FACILITY.

8 Q OKAY, SIR. AND DID HE PROVIDE INFORMATION AS WELL?

9 A HE DID.

10 Q ALL OF THESE CONVERSATIONS YOU HAD WITH THE, FOR LACK OF A
11 BETTER WORD, INMATES IN THE DIFFERENT CORRECTIONAL OR THE
12 ALLENDALE CORRECTIONAL FACILITY, DID YOU USE ANY TYPE OF
13 RECORDING DEVICE?

14 A I DID.

15 MR. THORNTON: I APOLOGIZE FOR THE DELAY, YOUR HONOR. I HAVE
16 SIX ITEMS I AM HAVING MARKED.

17 Q CAPTAIN BROMAGE, I AM GOING TO HAND YOU ITEMS TWENTY
18 THROUGH TWENTY-FIVE. IF YOU COULD LOOK THROUGH THOSE AND
19 TELL ME, DO YOU -- CAN YOU IDENTIFY ANY OF THOSE ITEMS? AND YOU
20 CAN TAKE THEM ONE AT A TIME, SIR, IF YOU WOULD LIKE, IF YOU
21 WOULD JUST REFERENCE THE NUMBERS.

22 A THAT'S FINE. THE FIRST ONE IS A CD FROM MY DIGITAL RECORDING OF
23 MY INTERVIEW WITH ARTHUR SINGLETON ON OCTOBER 28th, 2004. THE
24 SECOND ONE IS A CD OF AN INTERVIEW FROM A DIGITAL RECORDING
25 OF KEVIN MIDDLETON AND THAT WAS ACTUALLY MARCH 24th, 2006. THE

DIRECT EXAMINATION OF ROBERT BROMAGE BY MR. THORNTON:

296

1 THIRD ONE IS A COMPUTER CD OF MY INTERVIEW WITH THOMAS DAVIS
2 WHICH WAS OCTOBER 31st, 2005, A DIGITAL RECORDING. GIVE ME A
3 SECOND ON THE LAST ONE HERE. THE FOURTH ONE IS A CD INTERVIEW
4 OF KEVIN BENTLEY AT THE ALLENDALE CORRECTIONAL MAY 4th, 2004.
5 THE FIFTH ONE IS A COMPUTER CD OF TWO INTERVIEWS, ONE ON
6 APRIL 22, 2005 AND ONE IS APRIL 26, 2005 OF CLYDE EVANS AND HE
7 WAS IN THE CUSTODY OF THE BEAUFORT COUNTY DETENTION CENTER
8 AT THAT TIME.

9 Q ALL RIGHT, SIR.

10 A THE LAST ONE IS A COMPUTER CD OF THE SURVEILLANCE FOR
11 UNDERCOVER ON SEPTEMBER 15, 2004.

12 Q ALL RIGHT, SIR. AND WHAT ITEM NUMBER IS THAT?

13 A THAT'S ITEM #27.

14 Q I'M SORRY. WHAT ITEM NUMBER THAT HAS BEEN MARKED BY THE
15 COURT REPORTER AS? JUST THE LAST ONE. SIR. JUST THE LAST ONE.

16 A #25.

17 Q ALL RIGHT, SIR. SO THE OTHER CD'S ARE RECORDINGS OF THE
18 CONVERSATIONS YOU HAD THAT WERE RECORDED ON A DIGITAL
19 RECORDER?

20 A THAT IS CORRECT.

21 Q ALL RIGHT, SIR. SO YOU -- IS IT TRUE THEN THAT YOU RECORDED YOUR
22 CONVERSATIONS WITH THESE INDIVIDUALS?

23 A YES, I FELT LIKE I HAD TO.

24 Q AND AFTER THESE -- WHO MADE THESE CD'S?

25 A I DID.

CROSS EXAMINATION OF ROBERT BROMAGE BY MR. HOOD:

297

1 Q ALL RIGHT, SIR. AND ARE THEY AN ACCURATE REPRESENTATION OF
2 YOUR CONVERSATIONS?

3 A COMPLETELY. YES, SIR.

4 Q HAVE THESE, TO YOUR KNOWLEDGE, BEEN ALTERED IN ANY WAY,
5 SHAPE OR FORM FROM THE ORIGINAL DIGITAL RECORDING?

6 A NO, SIR.

7 Q ALL RIGHT. AFTER YOUR UNDERCOVER INVESTIGATION WAS CLOSED --
8 AFTER YOU HAD TALKED TO THE SOLICITOR AND MADE THE ARREST IN
9 THIS CASE OF THE DEFENDANT AND TALKED TO THESE OTHER PEOPLE,
10 HAVE YOU DONE ANYTHING ELSE ON THIS CASE UP TO COMING TO
11 COURT HERE TODAY?

12 A NO.

13 Q ALL RIGHT, SIR. AND IS THAT PRETTY MUCH EVERYTHING THAT YOU
14 CAN THINK OF IN THIS CASE THAT WAS YOUR RESPONSIBILITY THAT
15 YOU TOOK CARE OF?

16 A YES, SIR.

17 Q ALL RIGHT, SIR. I DON'T HAVE ANY FURTHER QUESTIONS. CAPTAIN
18 BROMAGE IF YOU WOULD PLEASE ANSWER ANY QUESTIONS THAT MR.
19 HOOD HAS FOR YOU.

20 **CROSS EXAMINATION OF ROBERT BROMAGE BY MR. HOOD:**

21 Q NOW, AFTER THIS CASE WAS TURNED OVER BY BEAUFORT COUNTY, IT
22 WENT TO SLED. IS THAT CORRECT?

23 A INITIALLY, THAT IS, TO MY KNOWLEDGE. YES, SIR.

24 Q IT WAS THERE FOR THREE YEARS, YOU SAID.

25 A THEY HAD AN ACTIVE CASE FOR THREE YEARS. WE STILL HAD THE

CROSS EXAMINATION OF ROBERT BROMAGE BY MR. HOOD:

298

1 ORIGINAL CASE FILE RIGHT HERE.

2 Q AND THEY WERE INVESTIGATING THE GODLEY HOMICIDE. IS THAT
3 CORRECT?

4 A YES, SIR.

5 Q WITH ALL THE SAME OLD GOOD OLD INFORMATION THAT THEY HAD
6 BACK TEN, ELEVEN YEARS AGO, PLUS, FROM BEAUFORT COUNTY. IS
7 THAT CORRECT?

8 A YES, SIR.

9 Q AND THEY DID MORE EXTENSIVE INVESTIGATION INTO THAT
10 PARTICULAR CRIME. ISN'T THAT CORRECT?

11 A I DON'T KNOW HOW EXTENSIVE IT GOT MR. HOOD. I CAN'T SPEAK FOR
12 SLED TODAY.

13 Q WELL, I MEAN, YOU HAVE A COPY OF THE SLED REPORT, DON'T YOU?

14 A ACTUALLY, I BELIEVE YOU DO. I FORWARDED IT TO YOU. I DON'T HAVE
15 A COPY WITH ME TODAY.

16 Q WELL, YOU HAD A COPY OF IT, THOUGH. ISN'T THAT CORRECT?

17 A I DID. I PROVIDED YOU WITH IT.

18 Q WELL, I AM NOT SAYING THAT YOU DIDN'T. I AM JUST TELLING YOU
19 THAT YOU HAD A COPY OF THE SLED REPORT, DIDN'T YOU?

20 A I HAD A COPY OF NUMEROUS INCIDENT REPORTS AND ONE PAGE
21 INCIDENT REPORTS THAT BUTCH POLK HAD SUBMITTED. YES.

22 Q AND ISN'T IT TRUE THAT BACK IN 1995, MAYBE '96, I THINK IT WAS '95,
23 THAT MR. -- WHAT WAS HIS NAME? BENTLEY?

24 A KEVIN BENTLEY.

25 Q YEAH. KEVIN BENTLEY WAS INTERVIEWED BY SLED, WASN'T HE?

CROSS EXAMINATION OF ROBERT BROMAGE BY MR. HOOD:

299

1 A THAT'S MY UNDERSTANDING, YES.

2 Q WELL, IT'S YOUR UNDERSTANDING BECAUSE IT IS IN A REPORT, ISN'T
3 IT?

4 A IT WAS IN THE REPORT SUBMITTED BY SLED.

5 Q AND AT THAT TIME, SLED AFTER THEY HAD INTERVIEWED HIM AND
6 CHECKED OUT HIS INFORMATION AND THINGS OF THAT NATURE, THEY
7 DECIDED TWO THINGS, DIDN'T THEY. IS THAT —

8 A ARE YOU TELLING ME —

9 Q WELL, I'LL TELL YOU WHAT THE TWO THINGS ARE. THEY DECIDED
10 NUMBER ONE, HIS INFORMATION IS NOT THAT GOOD. AND NUMBER
11 TWO, HE WANTS TOO MUCH IN RETURN. ISN'T THAT TRUE?

12 A THAT IS THEIR DETERMINATION, MR. HOOD, NOT MINE. I DON'T AGREE
13 WITH THAT ASSESSMENT AT ALL.

14 Q BUT ISN'T THAT WHAT WAS IN THERE?

15 A I DIDN'T SEE THAT IN THE REPORT. IF YOU WOULD LIKE TO PROVIDE ME
16 WITH A COPY I WILL BE GLAD TO LOOK AT IT.

17 Q BUT YOU ARE THE ONE THAT MADE A COPY OF THE REPORT FOR ME
18 THAT YOU HAD IN YOUR CUSTODY. IS THAT CORRECT?

19 A I OBTAINED IT FROM CAPTAIN CALDWELL AT SLED TO REVIEW IT TO
20 SEE IF THEY HAD ANY ADDITIONAL INFORMATION WHICH I SAW THEY
21 HAD NONE.

22 Q OKAY. SO, THREE OR SO YEARS LATER, AFTER A YEAR OR SO LATER
23 AFTER THEY DROPPED IT, YOU PICK IT UP AGAIN. IS THAT CORRECT?

24 A THAT'S CORRECT.

25 Q AND FROM THAT YOU GATHER THE NAMES OF TWO WITNESSES WHO

CROSS EXAMINATION OF ROBERT BROMAGE BY MR. HOOD:

300

1 ARE NOT INCARCERATED. ISN'T THAT CORRECT?

2 A THAT'S CORRECT.

3 Q AND THOSE TWO NAMES OF THOSE WITNESSES WERE GIVEN TO YOU
4 BY KEVIN BENTLEY. IS THAT CORRECT?

5 A THAT'S CORRECT.

6 Q AND THESE PEOPLE HAD NOTHING THAT YOU COULD DO FOR THEM AS
7 FAR AS GETTING THEM OUT OF TROUBLE. THEY WEREN'T BAD PEOPLE
8 THEY WERE JUST PEOPLE THAT YOU WERE INTERVIEWING. ISN'T THAT
9 CORRECT?

10 A THEY DIDN'T SEEM TO HAVE ANYTHING TO DO WITH THIS, MR. HOOD,
11 QUITE FRANKLY —

12 Q BUT THE BOTTOM LINE IS —

13 A — THEY DIDN'T GIVE US ANYTHING.

14 Q — YOU INTERVIEWED THEM AND THEY SAID, "WE DON'T KNOW WHAT
15 YOU ARE TALKING ABOUT."

16 A EXACTLY RIGHT.

17 Q BUT THEY WERE NOT LOCKED UP?

18 A THEY WEREN'T LOCKED UP, MR. HOOD.

19 Q THEY WEREN'T, YOU KNOW, HAVING SOMETHING HELD OVER THEIR
20 HEAD IF THEY DIDN'T TALK THEY WERE IN BIG TIME TROUBLE OR
21 SOMETHING LIKE THAT. IS THAT CORRECT?

22 A THAT'S CORRECT.

23 Q OKAY. OKAY. NOW, WE GO TO ALL THESE OTHER GUYS. EVERY ONE OF
24 THESE GUYS THAT YOU HAVE BEEN TALKING ABOUT WERE
25 INCARCERATED AT THE TIME. IS THAT CORRECT?

CROSS EXAMINATION OF ROBERT BROMAGE BY MR. HOOD:

301

1 A THAT'S CORRECT.

2 Q AND THEY ALL WANTED ONE THING, TO GET OUT OF JAIL. ISN'T THAT
3 CORRECT? AND PRISON.

4 A KEVIN BENTLEY NEVER MADE A REQUEST TO GET OUT OF JAIL TO ME
5 AT ALL, TO BE HONEST WITH YOU, MR. HOOD. I BELIEVE A FEW OF THE
6 OTHER ONES DID, BUT I CAN TELL YOU, THERE WERE NO PROMISES
7 MADE OR ANYTHING LIKE THAT, SO.

8 Q WELL, THAT WAS GOING TO BE MY NEXT QUESTION. OBVIOUSLY, YOU
9 DIDN'T PROMISE THESE GOOD CITIZENS ANYTHING TO GET THEM TO
10 MAKE THESE STATEMENTS.

11 A THAT WOULD BE KIND OF DEFEATING THE PURPOSE IF WE WERE
12 PROMISING THEM TO GET OUT AND, YOU KNOW, THEY WERE IN THERE
13 FOR SIMILAR TYPE OFFENSES.

14 Q WELL, MAYBE WE AREN'T SAYING, "HERE'S WHAT WE WILL DO FOR YOU
15 RIGHT NOW. WE AREN'T PROMISING YOU THAT WE WILL GET YOU OUT
16 OF JAIL, BUT WE WILL TALK WITH THE PEOPLE IN CHARGE TO SEE IF
17 WE CAN'T HELP YOU AFTER THE FACT AFTER YOU TESTIFY." ISN'T
18 THAT CORRECT?

19 A I DON'T THINK THAT IS CORRECT AT ALL.

20 Q WELL, SO THESE PEOPLE OUT OF THE GOODNESS OF THEIR HEART
21 ARE COMING FORWARD AND SAYING "THAT ROTTEN RASCAL RICHARD
22 SIMMONS TOLD ME THIS STUFF".

23 A I THINK A FEW OF THEM ACTUALLY BELIEVED THEY WERE GOING TO BE
24 HELPING BY TELLING US THE TRUTH, MR. HOOD. THAT WAS PART OF
25 THE RULES. EACH OF THESE, YOU KNOW, THEY'RE NOT --

CROSS EXAMINATION OF ROBERT BROMAGE BY MR. HOOD:

302

- 1 Q THESE GUYS ALL BELIEVED THAT THEY WERE GOING TO GET
2 SOMETHING IN RETURN. ISN'T THAT CORRECT?
- 3 A NO, SIR. THAT IS NOT CORRECT. THAT IS NOT CORRECT.
- 4 Q NONE OF THEM?
- 5 A NONE OF THEM WAS GIVEN ANY ASSURANCES THAT ANYTHING WOULD
6 BE DONE FOR THEM.
- 7 Q WELL, WHAT ABOUT CLYDE "THE GLIDE" EVANS? CLYDE EVANS. LET'S
8 JUST TAKE CLYDE, FOR EXAMPLE.
- 9 A LET'S TAKE CLYDE.
- 10 Q NOW, I BELIEVE YOU GOT CLYDE OUT OF JAIL, DIDN'T YOU?
- 11 A EXCUSE ME, MR. HOOD? I DIDN'T GET HIM OUT OF JAIL.
- 12 Q YOU DIDN'T GET HIM OUT OF JAIL?
- 13 A NO, I DIDN'T GET CLYDE EVANS OUT OF JAIL. NO SIR, I DID NOT. I DID
14 NOT.
- 15 Q DID YOU GET HIM OUT OF JAIL?
- 16 A I SIGNED HIM OUT OF JAIL?
- 17 Q YEAH.
- 18 A I GOT HIM OUT AND GOT HIM RELEASED?
- 19 Q I SAW YOU SIGNED HIM, YEAH, YOU SIGNED HIM OUT OF JAIL.
- 20 A I SIGNED HIM OUT TO INTERVIEW HIM. NO I DID NOT SIGN HIM OUT OF
21 JAIL. I SAW HIM. HE WAS ON TWO WORK DETAILS WHEN I TALKED TO
22 HIM. HE WAS STILL IN CUSTODY.
- 23 Q OH, I SEE. SO, HE WAS NOT IN YOUR AUTOMOBILE?
- 24 A HE WAS IN MY AUTOMOBILE.
- 25 Q OH, WAIT A MINUTE. I THOUGHT YOU SAW HIM IN AN INTERVIEW.

CROSS EXAMINATION OF ROBERT BROMAGE BY MR. HOOD:

303

1 WASN'T HE OUT IN FRONT OF PUBLIX ON HIGHWAY 21, RIDING DOWN
2 THE ROAD IN YOUR AUTOMOBILE, IN THE FRONT SEAT, IN HIS
3 DETENTION CENTER UNIFORM, SMOKING CONTRABAND.

4 A WHY WOULD HE BE IN MY CAR? IF HE WAS IN MY CAR I DON'T
5 REMEMBER IT, AND I USUALLY HAVE A PRETTY GOOD MEMORY WHEN IT
6 COMES TO THIS. HE WAS IN CUSTODY. WE INTERVIEWED HIM AT THE
7 PUBLIC WORK STATION THE FIRST TIME. THE SECOND TIME WAS
8 OFF-ROAD WHEN HE USED TO RUN PHYSICAL FITNESS FOR THE
9 SHERIFF'S OFFICE. I DON'T THINK HE WAS EVER IN MY CAR. IF HE WAS I
10 DON'T REMEMBER. SMOKING A CIGARETTE AND RIDING DOWN THE
11 ROAD, HE NEVER HAS.

12 Q WELL, DIDN'T YOU GO OUT WITH CLYDE EVANS TO CHECK THE SCENE
13 OUT, SO THAT HE WOULD IDENTIFY THE RIGHT HOUSE AND HE WAS
14 TALKING ABOUT THE RIGHT PLACE WHERE THE INCIDENT OCCURRED
15 AT?

16 A NO. ABSOLUTELY NOT.

17 Q HE DIDN'T RIDE WITH YOU OUT THERE TO SHOW YOU THAT?

18 A NO. NO SIR, MR. HOOD.

19 Q AND THAT WASN'T CLYDE EVANS IN THE FRONT SEAT OF YOUR CAR
20 SMOKING A CIGARETTE?

21 A CLYDE EVANS SMOKING A CIGARETTE RIDING OUT TO THE CRIME
22 SCENE WITH ME?

23 Q I DIDN'T SAY YOU WERE RIDING OUT TO THE CRIME SCENE.

24 A YOU JUST SAID THE SCENE WHERE IT HAPPENED TO MAKE SURE IT
25 WAS THE RIGHT PLACE.

CROSS EXAMINATION OF ROBERT BROMAGE BY MR. HOOD:

304

1 Q NO, I SAID, "WEREN'T YOU TRAVELING ON HIGHWAY 21 AT THE PUBLIX
2 RED LIGHT THERE HEADED BACK INTO BEAUFORT CITY WITH CLYDE
3 EVANS IN THE FRONT SEAT OF YOUR VEHICLE AND CLYDE SMOKING
4 CONTRABAND."

5 A NO, SIR. I HAD TWO CONTACTS WITH CLYDE EVANS I ALREADY TOLD
6 YOU ABOUT.

7 Q OKAY. THAT'S FINE. OKAY. NOW, ALL OF THESE OTHER GUYS,
8 THOMAS – LET'S SEE WHAT WAS HIS NAME – I LISTENED TO THESE
9 TAPES AND HEARD ALL THESE THINGS – THOMAS WAS OVER HERE IN
10 THE BEAUFORT COUNTY DETENTION CENTER WHEN YOU GOT HIM
11 ALSO. RIGHT?

12 A I SENT A REQUEST OVER TO TALK ABOUT THIS CASE.

13 Q RIGHT. RIGHT. BECAUSE HE WAS IN THERE FOR – WHAT WAS IT?

14 A ARMED ROBBERY.

15 Q ARMED ROBBERY AND SOME OTHER LITTLE MINOR JUNK, SOMETHING
16 ABOUT SHOOTING AT A PERSON WITH A GUN OR SOMETHING LIKE
17 THAT, BUT ANYWAY, AND YOU GUYS ARRESTED MY GUY IN 2004,
18 RICHARD SIMMONS. DIDN'T YOU?

19 A THAT'S CORRECT.

20 Q AND POOR RICHARD HAS BEEN INCARCERATED RIGHT OVER THERE IN
21 THE BEAUFORT COUNTY DETENTION CENTER FOR OVER TWO YEARS,
22 HASN'T HE?

23 A NOW, IT HAS BEEN OVER TWO YEARS. YES, SIR.

24 Q AND DID YOU KNOW – I AM SURE THAT ONE OF YOUR GUYS MUST HAVE
25 TOLD YOU THIS – THAT RICHARD SIMMONS HAD A COMPLETE COPY OF

CROSS EXAMINATION OF ROBERT BROMAGE BY MR. HOOD:

305

1 THIS ENTIRE INVESTIGATION IN THE CELL WITH HIM OVER THERE. DID
2 YOU KNOW THAT?

3 A NO. I WASN'T AWARE OF THAT, SUSPECTED IT.

4 Q YOU SUSPECTED IT?

5 A I SUSPECTED THAT. ALL THE INFORMATION IS FROM YOU, MR. HOOD.
6 THAT'S CORRECT.

7 Q MR. DAVIS AND CLYDE EVANS WERE BOTH WITH RICHARD SIMMONS
8 OVER HERE IN THE DETENTION CENTER AT ONE TIME. IS THAT
9 CORRECT? AT THE TIME THAT YOU TOOK THEIR STATEMENTS.

10 A YES. AT THE TIME THEY WERE INCARCERATED.

11 Q WHERE IS CLYDE EVANS LOCATED AT NOW?

12 A I HAVE NO CLUE, MR. HOOD.

13 Q NO CLUE. IS HE NOT IN PRISON?

14 A HE VERY WELL MAY BE. I DON'T KNOW. I DIDN'T TRY TO FIND THE GUYS
15 FOR THE TRIAL AT THIS POINT.

16 Q OKAY. LET'S FORGET THAT. LET'S GO TO SOMETHING ELSE. LET'S GO
17 TO THIS UNDERCOVER OPERATION YOU HAD HERE. OBVIOUSLY, IN
18 ORDER TO GAIN THE CONFIDENCE OF AN INDIVIDUAL, YOU HAVE TO
19 MAKE SOME -- AND YOU WANT TO GET HIM INVOLVED IN CRIMINAL
20 ACTIVITY -- YOU ARE GOING TO HAVE TO MAKE SOME CONTACTS WITH
21 HIM JUST IN A SHORT-TERM TYPE MANNER. IS THAT CORRECT?

22 A I'M NOT SURE I HEARD YOU.

23 Q WELL, YOU'VE GOT A HOMELESS GUY.

24 A RIGHT.

25 Q OKAY? YOU KNEW HE WAS HOMELESS.

CROSS EXAMINATION OF ROBERT BROMAGE BY MR. HOOD:

306

- 1 A THAT'S CORRECT.
- 2 Q YOU GUYS RAN SURVEILLANCE ON HIM, ISN'T THAT CORRECT?
- 3 A RIGHT.
- 4 Q YOU KNEW HIS COMINGS, HIS GOINGS, HIS HABITS, WHAT HE WAS UP
5 TO AND THINGS OF THAT NATURE, BECAUSE YOU NEEDED TO KNOW
6 ALL OF THAT IN ORDER TO BE ABLE TO RUN THIS OPERATION. ISN'T
7 THAT CORRECT?
- 8 A THAT'S CORRECT.
- 9 Q OKAY. SO YOU KNEW HE WAS HOMELESS ON THE STREET. YOU KNEW
10 HE WAS BEGGING ON THE STREET FOR MONEY. ISN'T THAT CORRECT?
- 11 A I WAS UNAWARE OF THAT. A LOT OF THAT SURVEILLANCE, I GUESS,
12 WAS DONE BY SLED PRIOR TO OUR ACTUALLY MAKING THE CONTACT.
13 HE WAS LOCATED. THERE WAS NOT A CONTINUOUS SURVEILLANCE ON
14 MR. SIMMONS AT ANY TIME.
- 15 Q NOW WAIT A MINUTE. THERE WERE SEVERAL OCCASIONS – WE ONLY
16 HAVE THREE TAPES IN THIS CASE, IS THAT CORRECT?
- 17 A I DON'T THINK THAT IS CORRECT AT ALL. I THINK THERE IS MORE THAN
18 THAT, AS FAR AS CONTACTS AND EVERYTHING ELSE.
- 19 Q NO. NO. NO. VIDEO TAPES. VIDEO TAPES. HOW MANY DO WE HAVE?
- 20 A JUST GIVE ME A SECOND, I WILL LET YOU KNOW.
- 21 Q WELL, I COUNTED THREE SEPARATE TAPES, OKAY? MAYBE I CAN
22 SHORTEN THIS FOR YOU. THE FIRST DAY, YOU GUYS TAKE HIM OUT TO
23 THIS OLD SHED TO CUT A LOCK OFF AND TO CHANGE, MASK OFF THE
24 LICENSE TAGS AND THINGS OF THAT NATURE AND YOU PAY HIM A
25 HUNDRED BUCKS IN CASH. ISN'T THAT CORRECT? THAT'S THE FIRST

CROSS EXAMINATION OF ROBERT BROMAGE BY MR. HOOD:

307

- 1 VIDEO.
- 2 A THAT APPEARS TO BE THE FIRST VIDEO.
- 3 Q HAVE YOU SEEN THESE VIDEOS?
- 4 A IT'S BEEN A WHILE SINCE I'VE SEEN THEM ALL, BUT YES, SIR, I HAVE
- 5 SEEN THEM, THOUGH.
- 6 Q OKAY. OKAY. THE SECOND VIDEO. THIS IS WHERE YOU GUYS BUY HIM
- 7 ALCOHOL AND TAKE HIM OUT ON A STAKE-OUT AND GIVE HIM BITS AND
- 8 BITS AND BITS AND MORE INFORMATION ABOUT THE GODLEY
- 9 PROBLEM. ISN'T THAT CORRECT?
- 10 A NOTHING WAS EVER MENTIONED ABOUT MR. GODLEY THROUGHOUT
- 11 THIS INVESTIGATION, MR. HOOD.
- 12 Q ALL RIGHT.
- 13 Q ESPECIALLY UNDERCOVER, THAT WOULD HAVE BLOWN EVERYTHING
- 14 WE WERE DOING.
- 15 Q OKAY. INCIDENT NUMBER THREE, OR RECORDING NUMBER THREE,
- 16 VIDEO NUMBER THREE IS ACTUALLY WHERE, FOR THE FIRST TIME YOU
- 17 TAKE HIM TO MACDONALD'S FOR A MEAL JUST PRIOR TO DRIVING HIM
- 18 TO SLED HEADQUARTERS WITH THE BELIEF THAT YOU GUYS ARE
- 19 GOING TO PROVIDE HIM WITH A COOKIE OF CRACK COCAINE. ISN'T
- 20 THAT TRUE?
- 21 A THAT WAS THE LAST CONTACT. I BELIEVE THAT'S THE RESTAURANT
- 22 TAPE THAT YOU ARE TALKING ABOUT.
- 23 Q THAT'S WHAT I AM TALKING ABOUT.
- 24 A RIGHT. I WAS ACTUALLY AT THE SLED HEADQUARTERS WHEN THAT
- 25 WAS GOING ON, SO I WASN'T MONITORING THAT.

CROSS EXAMINATION OF ROBERT BROMAGE BY MR. HOOD:

308

1 Q THOSE ARE THE THREE TAPES. RIGHT? THREE VIDEO TAPES. ONE,
2 TWO, THREE. DO YOU HAVE —

3 A I BELIEVE THERE WERE FOUR SETS OF TAPES, MR. HOOD. THAT'S FOUR
4 SETS OF CONTACTS. I'M NOT, I MEAN, I DON'T HAVE IN FRONT OF ME
5 BUT IF YOU WANT TO —

6 Q YOU MEAN THERE WERE FOUR —

7 A THERE WAS WHATEVER HAS BEEN —

8 Q DIFFERENT CONTACTS ON DIFFERENT OCCASIONS?

9 A WHATEVER HAS BEEN TURNED IN, THERE WAS THE COPIES ON THE
10 12th, THE 15th OF SEPTEMBER 2004, THE 22nd OF 2004, AND THE
11 ARREST CONTACT ON THE 27th. THAT MAKES FOUR.

12 Q HOW COME I WAS ONLY PROVIDED WITH THREE?

13 A YOU WERE PROVIDED WITH EVERYTHING THAT WE HAVE, MR. HOOD.

14 Q OKAY. OKAY. PRIOR TO THE VIDEO TAPING, OKAY? ISN'T IT TRUE THAT
15 YOU GUYS WERE PROVIDING RICHARD SIMMONS WITH MONEY?

16 A YOU ARE GOING TO HAVE TO ASK THE SLED AGENTS HOW HIS
17 CONTACTS WENT EVERY TIME, MR. HOOD. THAT WAS HIS CONTACT
18 WITH MR. SIMMONS. HE WAS PROVIDED MONEY ON A COUPLE OF
19 OCCASIONS. THERE WAS AN ORIGINAL MEETING WHERE WE ACTUALLY
20 IDENTIFIED HIM BEFORE STARTING THE OPERATION. SO THERE WERE
21 SEVERAL CONTACTS. AND HE WAS PROVIDED MONEY. HE WAS
22 CONTACTED.

23 Q AND YOU GUYS KNEW PRIOR TO MAKING CONTACT WITH RICHARD
24 SIMMONS, THAT RICHARD SIMMONS WAS A CRACK USER, ADDICTED TO
25 CRACK COCAINE. ISN'T THAT TRUE?

CROSS EXAMINATION OF ROBERT BROMAGE BY MR. HOOD:

309

1 A WE KNEW HE HAD A HISTORY OF CRACK COCAINE USE BASED ON THE
2 INTERVIEW WITH STEVE DAVIS BACK IN 1995. SO, WHETHER HE WAS
3 STILL ON CRACK, I DIDN'T KNOW, MR. HOOD. WE FOUND OUT SHORTLY
4 THEREAFTER THAT HE WAS BACK USING AGAIN, WHEN WE STARTED
5 THE OPERATION.

6 Q WELL, IF YOU WERE RUNNING SURVEILLANCE ON HIM TO WATCH HIM
7 BEFORE YOU ACTUALLY STARTED APPROACHING HIM, YOU KNEW THAT
8 HE WAS PURCHASING CRACK COCAINE. ISN'T THAT TRUE?

9 A AS FAR AS I KNOW, WE DID NOT HAVE ANY CONTACT WITH HIM
10 ACTUALLY BUYING OR ENGAGING IN ILLEGAL NARCOTICS ACTIVITY, IF
11 THAT IS WHAT YOU ARE SAYING.

12 Q BUT YOU GOT —

13 A YOU'RE SAYING, BASICALLY, THAT WE WERE SITTING THERE ALLOWING
14 HIM TO DO THINGS IN FRONT OF US. THAT IS INCORRECT.

15 Q I'M NOT SAYING THAT. I DIDN'T SAY THAT. WHAT I WAS SAYING WAS
16 THAT YOU INDIVIDUALS, YOU GUYS WHO WERE SURVEILLING HIM FOR A
17 PERIOD OF TIME, KNEW HIS HABITS. YOU WANTED TO KNOW WHAT HIS
18 COMINGS AND GOINGS WERE. WHAT TYPE OF ACTIVITY HE WAS
19 INVOLVED IN BEFORE YOU APPROACH HIM. ISN'T THAT CORRECT?

20 A WE KNEW HE WAS HOMELESS AND WE KNEW HE LIVED BEHIND
21 HARDEES. THAT'S WHAT WE KNEW ABOUT HIM —

22 Q YOU KNEW HE WAS ADDICTED TO DRUGS —

23 A HE WAS APPROACHABLE. HE WAS APPROACHABLE IS WHAT WE
24 KNEW. HE WAS APPROACHABLE AND THAT WE COULD PROBABLY
25 COULD COMMUNICATE WITH HIM AND GET HIM TO AT LEAST ENGAGE IN

CROSS EXAMINATION OF ROBERT BROMAGE BY MR. HOOD:

310

1 SOME OF THIS ACTIVITY, WHICH HE DID.

2 Q AND YOU KNEW HE WAS INVOLVED IN CRACK COCAINE.

3 A AFTER WE STARTED THE INVESTIGATION. AFTER WE STARTED THE
4 UNDERCOVER, HE DID MAKE SOME COMMENTS THAT LED US TO
5 BELIEVE HE WAS BACK ON CRACK. YES, SIR.

6 Q WHEN YOU SAY BACK ON CRACK. SO, YOU OBVIOUSLY KNEW THAT HE
7 WAS ON CRACK BEFORE THAT PERIOD OF TIME.

8 A AND AS I TOLD YOU, MR. HOOD, BACK IN 1995, AND IN FACT, FROM
9 OTHER OFFICERS, MR. SIMMONS DID HAVE THAT REPUTATION.

10 Q OKAY. OKAY. MAYBE WE CAN GET THE SLED AGENT TO TALK ABOUT IT.
11 SO, YOU GUYS BASICALLY PLANNED THIS ENTIRE OPERATION FROM
12 BEGINNING TO END OR DID YOU SORT OF ADJUST IT AS YOU WENT
13 ALONG?

14 A WE ADJUSTED AS WE WENT ALONG TO DECIDE HOW WE WERE GOING
15 TO DO THE NEXT STEP, BECAUSE WE DIDN'T KNOW HOW LONG HE
16 WOULD COOPERATE, HOW LONG HE WOULD BE IN THE SAME SPOT.
17 WE JUST DIDN'T KNOW.

18 Q AND WHO WAS THE PERSON IN CHARGE OF THE OPERATION, HOW IT
19 WAS GOING TO BE CONDUCTED?

20 A BRUCE OTTERBACHER WAS GIVEN A LOT OF LATITUDE ON THAT. IT
21 WAS A BEAUFORT COUNTY SHERIFF'S OFFICE HOMICIDE CASE, SO I
22 WAS OF COURSE, IN CHARGE OF THE OVERALL OPERATION. I KNOW
23 EVERY LITTLE DETAIL GOING ON UNDERCOVER, BUT WHAT WE WERE
24 LOOKING FOR AND, YOU KNOW, TO APPROVE WHAT WAS GOING ON.

25 Q SO, IN OTHER WORDS, WHAT YOU DID WAS, YOU AND AGENT

CROSS EXAMINATION OF ROBERT BROMAGE BY MR. HOOD:

311

1 OTTERBACHER DISCUSSED THE CASE AND THEN HE KNEW ALL OF THE
2 FACTS OF THE CASE AS YOU GUYS BELIEVED THEM TO BE. IS THAT
3 CORRECT?

4 A I DON'T KNOW THAT HE KNEW ALL THE FACTS AT ALL. CAPTAIN DAVID
5 CALDWELL, HIS SUPERVISOR, WAS THE PERSON I WAS IN CONTACT
6 MORE OFTEN WITH. HE WAS THE LIAISON AT THAT POINT. HE AND HIS
7 TASK FORCE WAS ALSO INVOLVED IN THIS OPERATION, BUT THEY
8 WEREN'T PROVIDED WITH EVERY LITTLE DETAIL OF THE CASE. I DON'T
9 BELIEVE, I DON'T BELIEVE, AND WE ARE GOING BACK OVER A COUPLE
10 OF YEARS, BUT I DON'T BELIEVE AGENT OTTERBACHER WAS PROVIDED
11 WITH ALL THE DETAILS. HE WAS GIVEN THE NUTS AND BOLTS OF THE
12 CASE. IT WAS A HOME INVASION, A BEATING DEATH, AND THAT WAS
13 WHAT HE WAS GIVEN. HE DIDN'T HAVE A COPY OF THE REPORT TO MY
14 KNOWLEDGE AT ALL.

15 Q OKAY. SO, WHEN AGENT OTTERBACHER SAYS TO RICHARD SIMMONS,
16 "WHAT WOULD YOU DO IF THE PERSON WOKE UP IN THE BED," HE JUST
17 SORT OF FIGURED, I MEAN, HE JUST GUESSED AT THAT?

18 A NO. NO. I MEAN, THAT COULD HAVE BEEN PART OF THE DISCUSSION,
19 MR. HOOD, BUT WE DON'T KNOW, YOU KNOW, MR. GODLEY WAS
20 SLEEPING UNTIL IT WAS STATED BY THESE OTHER WITNESSES. THAT
21 MAY NOT HAVE BEEN FACTUALLY CORRECT ANYWAY, WHAT WE FOUND
22 OUT ABOUT IT.

23 Q THAT'S OKAY. BUT, YOU ARE SAYING THAT YOU NEVER DISCUSSED —

24 A I DIDN'T SAY I NEVER DISCUSSED THE CASE.

25 Q — THIS CASE WITH BRUCE OTTERBACHER.

CROSS EXAMINATION OF ROBERT BROMAGE BY MR. HOOD:

312

1 A THAT IS NOT WHAT I JUST SAID. HE WAS GIVEN PRE-DETAILS ABOUT
2 THE INVESTIGATION AS WE KNEW IT. SO, WHEN I SAID WE SUSPECTED
3 MR. GODLEY WAS ASLEEP, WELL HE MAY HAVE BEEN. HE WAS IN HIS
4 BED. WE KNOW THAT. SO, THAT COULD VERY WELL HAVE BEEN
5 DISCUSSED. I DON'T HAVE A TAPE RECORDING OF MY CONVERSATION
6 WITH BRUCE OTTERBACHER.

7 Q AND YOU DON'T HAVE ANY TAPES OF THE CONVERSATIONS OR THE
8 CONTACTS THAT WERE MADE WITH RICHARD SIMMONS PRIOR TO THE
9 ACTUAL TAPINGS EPISODE AT THE BEGINNING, DO YOU?

10 A EXACTLY. WE WEREN'T GOING ANYWHERE WITH THOSE CONTACTS.
11 WE WERE ESTABLISHING IDENTITY ---

12 Q OKAY.

13 A --- AND FORMULATING A PLAN.

14 Q ALL RIGHT. NOW, YOU WERE IN THE CHASE CAR LISTENING TO AND
15 MONITORING THE ACTIVITIES THAT WERE TAKING PLACE IN THE VAN
16 ON THE NIGHT -- LET ME MAKE SURE WE ARE TALKING ABOUT THE
17 RIGHT TAPE NOW -- THE NIGHT THAT YOU GUYS -- OTTERBACHER IS
18 RIDING AROUND THE BLOCK SAYING, "HE IS NOT HERE. HE IS NOT
19 HERE." AND THEN ALL OF A SUDDEN HE SAYS, "I SEE HIM IN MY
20 REARVIEW MIRROR. HE IS RUNNING TOWARD THE VAN." YOU RECALL
21 THAT?

22 A I RECALL THAT COMMENT. I DON'T REMEMBER EVERY DETAIL OF THAT
23 CONVERSATION.

24 Q OKAY. AND DO YOU RECALL HEARING AND SEEING MY CLIENT JUMP
25 INTO THE VAN?

CROSS EXAMINATION OF ROBERT BROMAGE BY MR. HOOD:

313

- 1 Q I WAS TOO FAR AWAY. I BELIEVE WE WERE PARKED OVER AT THE
2 FITNESS CENTER, THIS WAS CLEAR OVER AT THE HARDEES, A COUPLE
3 HUNDRED YARDS AWAY AND I DIDN'T HAVE AN EYE VIEW OF WHAT WAS
4 GOING ON.
- 5 Q BUT YOU BASICALLY COULD HEAR.
- 6 A I COULD HEAR IT, SURE. TRUE.
- 7 Q AND YOU HEAR MY CLIENT TALKING ABOUT RUNNING FROM THOSE NA
8 AND THOSE AA PEOPLE WHO WERE TRYING TO GET HIM INTO A
9 MEETING. ISN'T THAT CORRECT?
- 10 A THAT'S CORRECT. I RECALL THAT.
- 11 Q AND YOU HEAR NOW THE VOICE OF AN INTOXICATED PERSON, DON'T
12 YOU?
- 13 A I DON'T KNOW IF HE WAS INTOXICATED, MR. HOOD. THAT IS VERY
14 SUBJECTIVE.
- 15 Q WELL, WHO'S IDEA WAS IT FOR THE AGENT TO SAY AFTER MY CLIENT IS
16 IN THE VAN AND WAS RIDING ALONG "I SURE COULD USE A BEER. WHAT
17 ABOUT YOU?"
- 18 A WHO'S IDEA WAS IT? I DON'T KNOW, BUT I WILL ACCEPT
19 RESPONSIBILITY FOR IT.
- 20 Q OKAY. SO WE GO DOWN TO THE LOCAL K-MART, WAL-MART OR
21 WHATEVER IT WAS, I KNOW IT WAS RECORDED, I REMEMBER ALL THIS
22 -- BUY SOME BEER. A CASE OF BEER, HUH?
- 23 A THEY BOUGHT A CASE OF BEER?
- 24 Q BUY A CASE OF BEER, YOU SAID?
- 25 Q I DON'T KNOW.

CROSS EXAMINATION OF ROBERT BROMAGE BY MR. HOOD:

314

1 A I DON'T KNOW, EITHER, AND I THINK THAT IS INCORRECT.

2 Q WELL, IT MUST HAVE BEEN A BUNCH, BECAUSE DO YOU REMEMBER ON
3 THE VIDEO MY CLIENT DRINKING AND ALSO CARRYING HOME A BUNCH
4 OF BEER WITH HIM? HE HAD IT IN HIS HAND. "HOW MANY DO YOU
5 WANT?"

6 A I DON'T RECALL SEEING THAT, BUT IF IT IS ON THE VIDEO IT IS ON IT.

7 Q DON'T TAKE JUST TWO. TAKE TWO, THREE, FOUR. YOU DON'T
8 REMEMBER, DO YOU?

9 A I DON'T REMEMBER THAT AT ALL.

10 Q WELL, DO YOU REMEMBER HOW MUCH MONEY BRUCE PUT ON HIS
11 EXPENSE ACCOUNT FOR THE BEER, THE COOLER, THE ICE THAT HE
12 PURCHASED AND PUT IN THE BACK OF THE VAN AND HE HELPED
13 CONSUME.

14 A THAT WOULD HAVE BEEN ON THE PURCHASE ORDER SENT TO SLED,
15 MR. HOOD. I HAD NOTHING TO DO WITH THE FINANCE OF THIS.

16 Q OKAY. BUT ALL THAT MONEY IS GOVERNMENT MONEY. IS THAT
17 CORRECT?

18 A THAT'S CORRECT, MR. HOOD.

19 Q SO, IN OTHER WORDS, HE IS GOING TO BE REIMBURSED FOR
20 PURCHASING ALCOHOL FOR AN INTOXICATED PERSON. RIGHT?

21 A YOU ARE SAYING ---

22 MR. THORNTON: I OBJECT YOUR HONOR. HE IS CALLING FOR
23 SPECULATION, JUDGE. HE HAS ALREADY ANSWERED THAT HE DIDN'T KNOW
24 IF HE WAS INTOXICATED OR NOT, THAT IT WAS SUBJECTIVE, AND HE IS JUST
25 TRYING TO PLOW THE SAME GROUND.

CROSS EXAMINATION OF ROBERT BROMAGE BY MR. HOOD:

315

- 1 MR. HOOD: I'LL WITHDRAW THAT, YOUR HONOR. I WOULD LIKE TO JUST
2 ASK...
- 3 Q ISN'T IT TRUE THAT AFTER THE BEERS ARE ICED DOWN, YOU HEAR THE
4 SOUNDS OF "POP", "POP."
- 5 A YES, THEY WERE DRINKING BEER, MR. HOOD.
- 6 Q AND THEN YOU SEE OR HEAR DOORS OPEN, DOORS CLOSE, AND THEN
7 YOU VIVIDLY SEE RICHARD SIMMONS DRINKING THE BEER, TURNING IT
8 UP. ISN'T THAT RIGHT?
- 9 A I'M SORRY. HE WAS DRINKING THE BEER, MR. HOOD. THAT IS
10 ABSOLUTELY CORRECT.
- 11 Q ALL RIGHT. THAT IS ALL I ASKED. AND THEN YOU GUYS ARE DRIVING
12 DOWN THE ROAD. IS THAT CORRECT?
- 13 A I AM NOT RIDING IN THE VAN, MR. HOOD.
- 14 Q THEY ARE JUST DRIVING DOWN THE ROAD. ISN'T THAT TRUE?
- 15 A I GUESS SO, MR. HOOD.
- 16 Q WELL, GRACIOUS GOODNESS. THIS IS DIFFICULT, LIKE PULLING TEETH.
17 COME ON MAN, YOU WERE IN A VEHICLE BEHIND THEM.
- 18 A I HAVE NOT SEEN THAT TAPE IN TWO YEARS. I DIDN'T NEED TO REVIEW
19 IT FOR THIS, MR. HOOD.
- 20 Q WAS NOT THE AGENT AND THE ACCUSED RIDING IN A VAN, DRINKING
21 BEERS ON THE HIGHWAYS, IN THE STATE OF SOUTH CAROLINA?
- 22 A YES, SIR.
- 23 Q OKAY. AND ISN'T IT AGAINST THE LAW TO OPERATE A VEHICLE WHILE
24 DRINKING, AN OPEN CONTAINER IN YOUR HAND?
- 25 A THAT'S OUT OF MY JURISDICTION, MR. HOOD, BUT I WOULD ASSUME

CROSS EXAMINATION OF ROBERT BROMAGE BY MR. HOOD:

316

1 A THAT IS A VIOLATION OF THE OPEN CONTAINER LAW. YES, SIR.

2 Q SO, WHAT YOU GUYS WERE DOING WAS VIOLATING THE LAW, WASN'T
3 IT? ISN'T THAT CORRECT?

4 A IT WOULD APPEAR THAT WAY AT THIS POINT.

5 Q OKAY. OKAY. AND THAT FIRST NIGHT ON THE FIRST VIDEO, YOU GIVE
6 HIM A HUNDRED BUCKS CASH, DON'T YOU?

7 A I DIDN'T GIVE HIM ANY MONEY, MR. HOOD. YOU WILL HAVE TO ASK MR.
8 OTTERBACHER. I HAVE NOT RECORDED ANY OF THIS INFORMATION.

9 Q OKAY. YOU WERE JUST IN CHARGE OF IT FOR THE COUNTY.

10 A I WAS OVERSEEING THE INVESTIGATION FOR THE HOMICIDE.

11 Q ALL RIGHT. BUT YOU DON'T KNOW ANYTHING ABOUT THAT. IS THAT
12 CORRECT, SIR?

13 A I DIDN'T SAY I DIDN'T KNOW ANYTHING ABOUT IT. I DIDN'T SAY THAT,
14 NO. I DO KNOW A LOT ABOUT IT, MR. HOOD.

15 Q OKAY. ALL RIGHT. YOU HAVE BEEN SITTING HERE EVER SINCE THIS
16 TRIAL BEGAN.

17 A YES, THAT IS CORRECT, MR. HOOD.

18 Q AND YOU HAVE BEEN IN MANY, MANY CASES BEFORE. ISN'T THAT
19 CORRECT?

20 A I HAVE BEEN IN A FEW, YES, MR. HOOD.

21 Q WHERE YOU'VE SAT RIGHT IN HERE BEFORE. ISN'T THAT CORRECT?

22 A THAT'S CORRECT.

23 Q AND YOU HAVE, YOURSELF, BEEN ORDERED BY THE COURT NOT TO
24 DISCUSS ANY OF YOUR TESTIMONY, ANY STATEMENTS, OR ANY
25 EVIDENCE, OR MAKE ANY CONTACT WITH ANY OF THE OTHER

CROSS EXAMINATION OF ROBERT BROMAGE BY MR. HOOD:

317

1 WITNESSES IN THIS CASE, OR IN A CASE. ISN'T THAT CORRECT?

2 A I BELIEVE THAT I WAS INSTRUCTED NOT TO HAVE ANY CONVERSATION
3 REGARDING THE TESTIMONY ON THE STAND, WHATSOEVER, WHEN
4 EVIDENCE WAS BEING PRESENTED OR ANYTHING LIKE THAT. YES, SIR.
5 THAT IS ABSOLUTELY CORRECT.

6 Q YOU WERE TOLD NOT TO HAVE ANY CONVERSATIONS WITH ANY OF
7 THE OTHER WITNESSES WHO HAD NOT TESTIFIED. ISN'T THAT
8 CORRECT?

9 A I THINK THAT IS PRETTY CLEAR RIGHT NOW, MR. HOOD. YES, IT IS
10 PRETTY CLEAR.

11 Q AND YOU SIMPLY IGNORED WHAT THE JUDGE HAD ORDERED YOU TO
12 DO AND HAD A CONVERSATION WITH STEVE DAVIS RIGHT BACK HERE,
13 OUT HERE SOMEWHERE AROUND THIS AREA. ISN'T THAT RIGHT?

14 A I DID. I DID HAVE A SHORT CONVERSATION IN THE HALLWAY. YES, I
15 DID.

16 Q NOW, YOU WERE SITTING IN HERE WHEN STEVE DAVIS TESTIFIED. IS
17 THAT CORRECT?

18 A THAT IS CORRECT.

19 Q SO, YOU KNOW WHAT HE SAID WHEN I ASKED HIM, "WHAT DID YOU
20 GUYS TALKED ABOUT." IS THAT CORRECT?

21 A HE SAID EXACTLY WHAT HAPPENED, MR. HOOD.

22 Q OKAY. AND YOU GUYS WERE TALKING ABOUT EVIDENCE IN THE CASE.

23 A I WAS TALKING ABOUT THE AMIDO BLACK, THE PHOTOGRAPHS
24 WITHOUT THE SCALE IN THEM, THAT WE COULDN'T DEAL WITH. I WAS
25 WONDERING WHY.

CROSS EXAMINATION OF ROBERT BROMAGE BY MR. HOOD:

318

1 Q THEY NEVER WERE SENT TO SLED AND NEVER ENTERED INTO
2 EVIDENCE.

3 A THERE WAS NOTHING THEY COULD DO WITH THEM. THERE WAS NO
4 SCALE IN THE PHOTOGRAPH, THEY COULDN'T ONE TO ONE. THAT WAS
5 PART OF THE EVIDENCE THAT I REVIEWED WHEN I GOT THE CASE. IT
6 WAS SOME SMUDGES THAT HE SAID LOOKED LIKE FINGERPRINTS. WE
7 DON'T KNOW.

8 Q WHY WOULD YOU WANT TO TALK TO HIM ABOUT SOMETHING THAT
9 WAS NOT EVEN GOING TO BE PROFFERED, INTRODUCED AT ALL?

10 A BAD JUDGEMENT, MR. HOOD.

11 Q OKAY. BAD JUDGEMENT.

12 A BAD JUDGEMENT ON MY PART. YES, SIR.

13 Q YES. AND WEREN'T YOU INTERRUPTED BY THE INVESTIGATOR FROM
14 MY OFFICE WHO SAID, "YOU GUYS, KNOW YOU ARE NOT SUPPOSED TO
15 BE DOING THIS?"

16 A I DON'T BELIEVE THAT WAS THE CONVERSATION AT ALL. I BELIEVE
17 WHAT HE SAID WAS, "WHAT ARE YOU GUYS TALKING ABOUT?" HE
18 USED TO WORK FOR THE SHERIFFS OFFICE, SO...

19 Q WELL, I THINK IT MIGHT HAVE BEEN A LITTLE BIT MORE THAN THAT.

20 A NO, SIR, MR. HOOD. IT WASN'T MORE THAN THAT.

21 Q ALL RIGHT. ALL RIGHT. AND WHAT OTHER CONVERSATIONS DID YOU
22 HAVE WITH MR. DAVIS, BACK THERE AT THE BACK?

23 A THAT'S THE CONVERSATION I HAD WITH HIM. I ASKED HIM HOW HE WAS
24 FEELING, WAS HE FEELING THAT WELL? AND THAT WAS ABOUT IT, MR.
25 HOOD.

1 OF THE JURORS IN CHAMBERS.

2 THE COURT: ALL RIGHT. FOR THE RECORD, ONE OF THE JURORS, MR.
3 TAYLOR, HAD INDICATED TO THE BAILIFF THAT HE HAD SOME ACQUAINTANCE
4 WITH OFFICER OR SERGEANT DAVIS WHO TESTIFIED EARLIER. I BROUGHT
5 HIM IN AND INQUIRED AS TO WHAT HIS RELATIONSHIP WAS AND IT TURNS
6 OUT, HE JUST KNEW HIM BECAUSE HE WAS A FRIEND OF HIS FATHER'S AND
7 HE REALLY DID NOT KNOW HIM OTHER THAN THROUGH HIS FATHER,
8 WOULDN'T CONSIDER HIM TO BE ANYTHING OTHER THAN AN ACQUAINTANCE
9 AND IT WOULD NOT AFFECT HIS ABILITY TO SERVE AS A FAIR AND IMPARTIAL
10 JUROR IN THIS CASE, EITHER FOR OR AGAINST THE STATE OR FOR OR
11 AGAINST THE DEFENSE.

12 MR. THORNTON: BRING IN -- IS IT ALL RIGHT TO GO AHEAD AND GET
13 STARTED WITH THIS JUDGE?

14 THE COURT: YES. GO AHEAD AND BRING HIM IN.

15 (MR. BENTLEY ENTERS THE COURTROOM)

16 THE COURT: ARE YOU MR. BENTLEY? COME IN AND HAVE A SEAT. MR.
17 BENTLEY I WANT TO TALK TO YOU A SECOND BEFORE WE BRING THE JURY
18 IN. THERE IS SOME INDICATION THAT YOU DON'T WANT TO TESTIFY AND I
19 UNDERSTAND THAT, BUT YOU HAVE AN OBLIGATION TO BE HERE BECAUSE
20 YOU HAVE GOT CALLED INTO COURT. NOW, IF YOU WANT TO ACT UP IN
21 COURT THAT'S YOUR BUSINESS, BUT I WARN YOU THAT IF YOU ACT UP IN
22 COURT, I WILL HOLD YOU IN CONTEMPT OF COURT AND IF YOU ARE -- IF I
23 DECIDE I AM GOING TO GIVE YOU ANY JAIL TIME FOR ACTING UP IN COURT,
24 THEN I AM GOING TO ADD IT ON TO THE END OF WHATEVER TIME YOU ARE
25 DOING NOW. WE CAN DO THAT THE HARD WAY OR WE CAN DO IT THE EASY

1 WAY. THE EASY WAY IS, YOU JUST GET IN HERE AND TESTIFY AND THEN YOU
2 WILL BE DONE FOR THE REST OF THE DAY. THEY WERE TALKING ABOUT
3 HOW YOU WEREN'T COMING IN AT ALL AND THEY WERE GOING TO HAVE TO
4 DRAG YOU IN AND WE DON'T NEED TO DO THAT DO WE?

5 MR. BENTLEY: NO, SIR.

6 THE COURT: YOU COME IN HERE AND YOU JUST TESTIFY TRUTHFULLY
7 AND YOUR DAY WILL GO A LOT BETTER. DO YOU UNDERSTAND THAT?

8 MR. BENTLEY: I HEAR YOU, YOUR HONOR.

9 THE COURT: OKAY? DO WE UNDERSTAND EACH OTHER?

10 MR. BENTLEY: IT WAS NEVER A MISUNDERSTANDING.

11 THE COURT: MISUNDERSTANDING. I THOUGHT THAT MIGHT BE THE
12 CASE. I JUST WANTED TO MAKE SURE WE HAD CLEARED THAT UP. OKAY,
13 ARE YOU READY?

14 MR. BENTLEY: EXCUSE ME, SIR.

15 MR. THORNTON: YES, SIR. JUDGE, IF WE CAN BRING THE JURY OUT,
16 I'LL KEEP GOING WITH THIS AND AS SOON AS THEY COME IN, YOUR HONOR, I
17 WILL BE READY TO GO.

18 THE COURT: YOU ARE NOT BRINGING UP YOUR BIG SCREEN OR
19 ANYTHING?

20 MR. THORNTON: NO, SIR.

21 THE COURT: OKAY. ALL RIGHT. BRING THE JURY ON IN.

22 MR. THORNTON: JUST A LITTLE SCREEN, JUDGE. IT'S JUST AUDIO.

23 THE COURT: ALL RIGHT.

24 MR. HOOD: JUDGE, I HOPE WE ARE NOT GETTING THE CART BEFORE
25 THE HORSE HERE.

1 THE COURT: PARDON?

2 MR. HOOD: I HOPE WE ARE NOT GETTING THE CART BEFORE THE
3 HORSE HERE. I ASSUME WE ARE GOING TO ASK MR. BENTLEY IF HE EVER
4 HAD A CONVERSATION WITH MY CLIENT CONCERNING THE GODLEY —

5 THE COURT: WELL, HE IS NOT GOING TO SAY ANYTHING UNTIL HE HAS—

6 MR. THORNTON: JUDGE, ACTUALLY THE QUESTION I WANT TO ASK IS —

7 THE COURT: THAT IS JUST TO KEEP US FROM HAVING TO BOOT UP AND
8 EVERYTHING.

9 MR. THORNTON: YES, SIR. THE QUESTION I AM ACTUALLY GOING TO
10 ASK IS, IF HE HAD EVER HAD A CONVERSATION WITH DETECTIVE BROMAGE
11 BECAUSE I THINK THAT IS THE CONVERSATION IN QUESTION THAT WAS
12 RECORDED.

13 THE COURT: OKAY.

14 MR. THORNTON: AND IF HE DENIES THAT CONVERSATION, THEN YOU
15 ARE RIGHT, YOUR HONOR, THEN I WOULD SEEK TO INTRODUCE THIS
16 EXTRINSIC EVIDENCE. BUT AS I HAVE STATED TO MR. HOOD TWO TIMES NOW,
17 I AM REAL FAMILIAR WITH RULE SIXTEEN, SO I AM JUST TRYING TO SET THIS
18 UP IN ADVANCE SO THAT Y'ALL WON'T HAVE TO WAIT ON ME TO DO IT.

19 THE COURT: OKAY.

20 THE BAILIFF: YOU READY FOR THE JURY, YOUR HONOR?

21 THE COURT: HOLD ON JUST ONE SECOND. YOU GOT ANYTHING ELSE
22 YOU WANT TO SAY?

23 MR. HOOD: NOTHING. BUT THE FLIP SIDE OF THAT IS THAT HE ADMITS
24 IT AND SAYS THAT —

25 MR. THORNTON: WON'T PLAY IT, JUDGE

RE-DIRECT EXAMINATION OF ROBERT BROMAGE BY MR. THORNTON:

319

1 Q AND YOU SAT HERE DURING THE ENTIRE TESTIMONY OF SERGEANT
2 ARBELO, ISN'T THAT CORRECT?

3 A THAT'S CORRECT.

4 Q HE SEEMED TO HAVE SOME PROBLEMS WITH QUITE A FEW THINGS,
5 ISN'T THAT CORRECT?

6 A I AM NOT GOING TO COMMENT ON THAT.

7 Q WELL, I AM JUST SAYING, YOU KNOW, YOU WERE HERE, RIGHT?

8 A THAT'S RIGHT. THAT'S YOUR OPINION. I'M NOT GOING TO COMMENT.

9 Q AND SERGEANT DAVIS WAS THE FOLLOW-UP GUY. HE IS THE GUY THAT
10 WAS GOING TO COME IN AND CLEAR UP ALL OF THE PROBLEMS WITH
11 THE CASE. ISN'T THAT CORRECT?

12 A I DON'T THINK THAT THEY COULD HAVE BEEN CLEARED UP WITH ONE
13 PERSON'S TESTIMONY. I'M SORRY, I DON'T THINK THEY CAN.

14 Q I DON'T THINK SO EITHER. THANK YOU.

15 THE COURT: ANY RE-DIRECT?

16 MR. THORNTON: ONE QUESTION, JUDGE.

17 **RE-DIRECT EXAMINATION OF ROBERT BROMAGE BY MR. THORNTON:**

18 Q CAPTAIN BROMAGE, DID YOU COACH MR. DAVIS IN ANY WAY ON WHAT
19 HE WAS GOING TO TESTIFY TO?

20 A NOT MR. DAVIS NOR ANYBODY ELSE ON THIS WHOLE CASE. NO.

21 Q DID YOU TALK TO MR. DAVIS ABOUT ANY OTHER WITNESS' TESTIMONY
22 OR ANY OF THE TESTIMONY BY THE OTHER WITNESSES?

23 A NO. IT WASN'T IMPORTANT.

24 MR. THORNTON: I'M SORRY JUDGE. THAT WAS TWO QUESTIONS.

25 Q THANK YOU, SIR. NOTHING FURTHER.

RE-DIRECT EXAMINATION OF ROBERT BROMAGE BY MR. THORNTON:

320

1 MR. HOOD: JUDGE, I'M GOING TO HAVE TO FOLLOW-UP, I GUESS.

2 **RE-CROSS EXAMINATION OF ROBERT BROMAGE BY MR. HOOD:**

3 Q YOU MADE A SWORN STATEMENT REGARDING THIS CONTACT THAT
4 YOU HAD WITH MR. DAVIS IN WHICH YOU WERE NOT ALLOWED TO
5 HAVE. ISN'T THAT CORRECT?

6 A THAT'S CORRECT, MR. HOOD.

7 Q AND AT THAT TIME YOU WERE TOLD ABOUT THIS INVESTIGATOR
8 HAVING BASICALLY WARNED YOU TWO ABOUT YOUR CONDUCT. ISN'T
9 THAT CORRECT?

10 A I'M SORRY, MR. HOOD. I'M MISSING SOMETHING. I DON'T RECALL AN
11 INVESTIGATOR EVEN BEING BROUGHT UP AT ALL. I WAS ASKED IF I
12 HAD A CONVERSATION.

13 Q YOU WERE ASKED IF A PERSON CAME IN AND MADE THAT BREAK IN
14 YOUR CONVERSATION.

15 A I DON'T REMEMBER THAT BEING ASKED OF ME WHEN I CAME IN,
16 MR. HOOD.

17 Q WELL, OKAY. ALL RIGHT. ALL RIGHT. MAYBE YOU DON'T REMEMBER.

18 A I DON'T.

19 Q DO YOU REMEMBER, THAT RIGHT AFTER YOU LEFT THAT PARTICULAR
20 ROOM DOWN THERE, RIGHT OVER IN HERE YOU RAN INTO THAT SAME
21 INVESTIGATOR AND YOU SAID, "WE WERE ONLY TALKING ABOUT HOW
22 HE WAS DOING IN HIS BUSINESS DOWN IN" —

23 A THAT IS NOT CORRECT. I DID TALK TO YOUR INVESTIGATOR, MR. HOOD.
24 IN THE HALLWAY. YES, SIR. YES, I DID.

25 Q AND I BELIEVE MY CLIENT WAS STANDING BACK THERE IN THE BACK

RE-DIRECT EXAMINATION OF ROBERT BROMAGE BY MR. THORNTON:

321

1 ALSO, WASN'T HE?

2 A NO. I DIDN'T SEE HIM BACK THERE.

3 Q YOU DIDN'T SEE HIM BACK THERE?

4 A NO, I DIDN'T SEE HIM BACK THERE, THE JAIL FACTOR AND THAT WAS
5 ANOTHER BAD JUDGEMENT CALL, I GUESS.

6 Q ANOTHER BAD JUDGEMENT CALL. THANK YOU.

7 **THE COURT:** ALL RIGHT. YOU MAY STEP DOWN.

8 **MR. THORNTON:** I DON'T HAVE ANYTHING FURTHER. THANK YOU,
9 JUDGE.

10 **THE COURT:** OKAY, FOLKS, LET'S TAKE ABOUT A TEN-MINUTE BREAK AT
11 THIS POINT. IF YOU NEED TO TAKE A SMOKE BREAK OR GO DOWN AND GET
12 SOME FRESH AIR, WHATEVER, THE BAILIFF CAN ESCORT YOU DOWNSTAIRS
13 AND DON'T BEGIN DELIBERATIONS OR DISCUSSIONS ON THE CASE. WE WILL
14 SEE YOU BACK HERE IN TEN OR FIFTEEN MINUTES.

15 (JURY OUT AT 4:00 PM)

16 **THE COURT:** ALL RIGHT. WHAT ELSE HAVE YOU GOT FOR US TODAY?

17 **MR. THORNTON:** JUDGE MAY WE APPROACH?

18 (BRIEF BENCH CONFERENCE)

19 **MR. THORNTON:** YOUR HONOR, WHENEVER YOU ARE READY FOR THE
20 DEFENDANT, I WILL GO AHEAD AND BRING HIM OUT.

21 **THE COURT:** DO YOU WANT TO HOOK YOUR EQUIPMENT UP?

22 **MR. THORNTON:** YES SIR, JUST IN CASE STUFF STARTS GETTING
23 TURNED OVER.

24 **MR. HOOD:** JUDGE, BEFORE WE BRING HIM OUT, I THINK MAYBE WE
25 SHOULD PUT ON THE RECORD THE MATTER THAT WE DISCUSSED WITH ONE

DIRECT EXAMINATION OF KEVIN BENTLEY BY MR. THORNTON:

325

1 **MR. HOOD: — THAT IT IS NOT TRUE THEN —**

2 **THE COURT: YES. STOP THERE. THIS ISN'T WHERE IT TAKES TEN**
3 **MINUTES TO BOOT IT UP ANY MORE AND THIS IS JUST A PRECAUTION TO GET**
4 **IT SO THAT WE DON'T HAVE AN AWKWARD DELAY AND MR. BENTLEY CAN GO**
5 **BACK ABOUT HIS BUSINESS.**

6 **MR. THORNTON: YES, SIR.**

7 **MR. BENTLEY: I APPRECIATE IT YOUR HONOR.**

8 **THE COURT: ALL RIGHT , YOU READY?**

9 **MR. THORNTON: YES, SIR.**

10 **THE COURT: OKAY. BRING THEM ON IN.**

11 **(JURY IN AT 4:32)**

12 **THE BAILIFF: ALL JURORS PRESENT, YOUR HONOR.**

13 **THE COURT: ALL RIGHT. LET'S SWEAR THE WITNESS IN.**

14 **(AFTER BEING DULY SWORN BY THE CLERK OF COURT, KEVIN BENTLEY**
15 **TESTIFIED AS FOLLOWS:)**

16 **CLERK OF COURT: STATE YOUR NAME AND SPELL IT FOR THE COURT,**
17 **PLEASE.**

18 **WITNESS: KEVIN BENTLEY. K-E-V-I-N-B-E-N-T-L-E-Y.**

19 **DIRECT EXAMINATION OF KEVIN BENTLEY BY MR. THORNTON:**

20 **Q MR. BENTLEY, HAVE YOU EVER HAD A CONVERSATION, AND I AM**
21 **SPEAKING OF TWO IN PARTICULAR; ONE OCCURRING IN 1999, ONE**
22 **OCCURRING IN 2004, WITH CAPTAIN BOB BROMAGE?**

23 **A YES, SIR.**

24 **Q ALL RIGHT, SIR. AND IN THAT CONVERSATION, DID YOU TALK ABOUT**
25 **SOME INFORMATION REGARDING STATEMENTS MADE TO YOU BY ONE**

1 RICHARD SIMMONS?

2 A I TALKED TO THE DETECTIVE ABOUT SOME HEARSAY CONVERSATION
3 THAT I HEARD.

4 Q ALL RIGHT, SIR. DID YOU, IN FACT, TELL HIM THAT RICHARD SIMMONS
5 HAD CONFESSED TO YOU THAT HE HAD KILLED CHARLES GODLEY?

6 A I DON'T RECALL THAT.

7 Q WELL, WHAT TYPE OF HEARSAY STATEMENTS DID YOU TELL HIM?

8 A EXCUSE ME?

9 Q YOU JUST SAID YOU TALKED TO HIM ABOUT SOME HEARSAY THINGS.
10 WHAT WERE THOSE?

11 A JUST SOME RUMORS AND SCUTTLEBUTT THAT GUYS TALK ABOUT
12 WHEN THERE IS NOTHING TO DO, EXAGGERATED STORIES.

13 Q ALL RIGHT, SIR. SO, DID YOU OR DID YOU NOT TELL DETECTIVE
14 BROMAGE THAT RICHARD SIMMONS TOLD YOU THAT HE KILLED
15 CHARLES GODLEY?

16 A I DON'T RECALL THAT.

17 Q WOULD IT HELP IF I PLAYED A TAPE FOR YOU?

18 A YOU CAN IF YOU WANT TO.

19 Q ALL RIGHT, SIR.

20 MR. THORNTON: YOUR HONOR, AT THIS TIME I WOULD ASK TO SEEK TO
21 HELP THE WITNESS' MEMORY BY PLAYING A TAPE RECORDING OF THAT
22 CONVERSATION.

23 THE COURT: ALL RIGHT.

24 MR. HOOD: WELL, I GUESS THERE SHOULD BE A FOLLOW-UP QUESTION
25 IN THIS, SHOULDN'T THERE?

DIRECT EXAMINATION OF KEVIN BENTLEY BY MR. THORNTON:

327

1 **THE COURT:** I'M SORRY. CAN YOU TAKE THE JURY BACK OUT WHILE
2 WE DISCUSS THIS? DON'T BEGIN DELIBERATIONS OR DISCUSSIONS ABOUT
3 THE CASE.

4 (JURY OUT AT 4:35)

5 **THE COURT:** OKAY.

6 **MR. HOOD:** JUDGE, IF THE WITNESS MAKES A STATEMENT TO THE
7 EFFECT THAT HE DOESN'T REMEMBER MAKING THAT STATEMENT, I GUESS
8 THE FOLLOW-UP QUESTION WOULD BE, IF THAT STATEMENT WERE MADE,
9 WAS IT TRUE?

10 **MR. THORNTON:** YOUR HONOR, DO YOU MIND —

11 **MR. HOOD:** IF HE SAYS —

12 **THE COURT:** HE ADVISED HIM OF THE SUBSTANCE OF THE STATEMENT,
13 THE TIME AND PLACE IT WAS MADE, AND THE PERSON IT WAS MADE, AND
14 THEN THE OPPORTUNITY TO DENY OR EXPLAIN IT. IF HE DOESN'T ADMIT IT,
15 HE DOESN'T ADMIT IT. IF HE MADE A PRIOR INCONSISTENT STATEMENT,
16 EXTRINSIC EVIDENCE OF SUCH STATEMENT IS ADMISSIBLE. IF HE ADMITS
17 MAKING THE PRIOR STATEMENT THE EXTRINSIC EVIDENCE OF THE PRIOR
18 STATEMENT IS INADMISSABLE. WELL, HE ADMITS HE MADE THE STATEMENT,
19 BUT HE DOESN'T RECALL WHAT THE CONTENTS OF IT ARE, SO I DON'T KNOW
20 IF THAT FITS UNDER YOUR 613 EXCEPTION.

21 **MR. THORNTON:** WELL, JUDGE THE STATES POSITION ON IT WOULD BE
22 THAT HE IN FACT, YOU KNOW, I ASKED HIM SPECIFICS ABOUT THESE
23 STATEMENTS AND HE DOESN'T — THE KEY IS THAT HE DOESN'T DENY IT. HE
24 DOESN'T ADMIT MAKING THE STATEMENTS THAT THE DEFENDANT, IN FACT,
25 CONFESSED TO HIM. HE SAYS HE CAN'T RECALL, SO THE STATES POSITION

DIRECT EXAMINATION OF KEVIN BENTLEY BY MR. THORNTON:

328

1 UNDER 613 WOULD BE THAT HE IS NOT ADMITTING THE DETAILS. HE SAYS HE
2 CAN'T RECALL. THE OTHER MATTER JUDGE, THAT I WOULD PUT UP AND I,
3 PLEASE FORGIVE ME, I DON'T HAVE THE RULE IN FRONT OF ME, BUT UNDER
4 ANOTHER CIRCUMSTANCE, HE'S ASKED, HE SAID IT IS OKAY TO PLAY THE
5 TAPE TO REFRESH HIS MEMORY, BECAUSE HE CAN'T REMEMBER ALL OF IT.

6 THE COURT: WELL, THAT'S 612, THAT'S USING A WRITING TO REFRESH
7 YOUR MEMORY. 612 REFERS TO A WRITING. 803(5) IS A RECORDED
8 RECOLLECTION, A MEMORANDUM OR A RECORD AND THAT WOULD FIT
9 CONCERNING A MATTER ABOUT WHICH THE WITNESS ONCE HAD
10 KNOWLEDGE, BUT NOW HAS INSUFFICIENT RECOLLECTION TO ENABLE THE
11 WITNESS TO TESTIFY FULLY AND ACCURATELY, SHOWN TO HAVE BEEN MADE
12 OR ADOPTED BY THE WITNESS WHEN THE MATTER WAS FRESH IN THE
13 WITNESS' MEMORY AND TO REFLECT THAT KNOWLEDGE CORRECTLY. IF
14 ADMITTED, THE MEMORANDUM RECORD MAY BE READ INTO EVIDENCE AND
15 MAY NOT BE RECEIVED AS AN EXHIBIT, UNLESS OFFERED BY AN ADVERSE
16 PARTY. YOU COULD USE IT TO REFRESH HIS RECOLLECTION.

17 MR. THORNTON: YES, SIR. I DON'T INTEND ON INTRODUCING IT AS AN
18 EXHIBIT, JUDGE, BUT I AM JUST LOOKING TO REFRESH HIS MEMORY.

19 MR. HOOD: WELL, THE QUESTION WAS, DO YOU REMEMBER.

20 THE COURT: CAN YOU READ BACK WHAT THE RECORD SAYS HIS
21 ANSWER WAS?

22 COURT REPORTER: DO YOU WANT IT LIVE OR READ?

23 THE COURT: PARDON?

24 COURT REPORTER: LIVE OR READ? DO YOU WANT ME TO PLAY IT LIVE
25 OR READ IT BACK.

DIRECT EXAMINATION OF KEVIN BENTLEY BY MR. THORNTON:

329

1. THE COURT: YOU CAN READ IT BACK TO ME.

2. (COURT REPORTER READS BACK WITNESS' TESTIMONY)

3. THE COURT: HE'S NOT DENYING IT. HE ADMITS THAT HE MADE A
4. STATEMENT TO HIM, BUT HE DOES NOT ADMIT THE CONTENTS, THAT HE
5. MADE THAT PARTICULAR STATEMENT IN THAT CONVERSATION, SO I THINK
6. THAT CAN COME IN UNDER 613(B)

7. MR. THORNTON: THANK YOU, JUDGE.

8. THE COURT: AND I MAKE MR. HOOD'S OBJECTION OVERRULED. OKAY?
9. ALL RIGHT, BRING THE JURY BACK IN.

10. THE BAILIFF: ALL JURORS PRESENT YOUR HONOR.

11. (JURY IN AT 4:43)

12. THE COURT: ALL RIGHT. YOU MAY PROCEED.

13. MR. THORNTON: THANK YOU, JUDGE.

14. (MR. THORNTON PLAYS A TAPE (STATE'S EXHIBIT #23) OF MR. BENTLEY'S
15. RECORDED CONVERSATION WITH DETECTIVE BROMAGE.)

16. THE COURT: ANYTHING FURTHER OF THIS WITNESS?

17. MR. THORNTON: THE ONLY THING I WOULD ASK, YOUR HONOR, IS...

18. Q AFTER HEARING THAT SIR, DOES THAT JAR YOUR MEMORY ANY?

19. A SIR?

20. Q DOES THAT JAR YOUR MEMORY AFTER HEARING THAT CONVERSATION
21. ON TAPE? DOES THAT HELP YOU RECALL IT?

22. A WHEN WAS THE TAPE? I NEVER SAW A TAPE RECORDER IN FRONT OF
23. ME. THE DETECTIVE TALKED TO ME AT THE INSTITUTION, BUT WHEN
24. WAS THAT TAPE?

25. Q DO YOU RECALL IT?

1 A I AM ASKING WHEN WAS THE TAPE WAS DONE.

2 MR. THORNTON: JUDGE, I WOULD ASK THAT THE WITNESS BE
3 DIRECTED TO ANSWER THE QUESTION.

4 THE COURT: HE ASKS THE QUESTIONS. ALL YOU NEED DO IS ANSWER.
5 YOU CAN'T ASK A QUESTION.

6 Q DOES THAT REFRESH YOUR MEMORY ABOUT THE CONVERSATION YOU
7 HAD WITH CAPTAIN BOB BROMAGE?

8 A SOMEWHAT.

9 Q SOMEWHAT.

10 MR. THORNTON: I DON'T HAVE ANYTHING FURTHER, JUDGE. THANK
11 YOU.

12 CROSS EXAMINATION OF MR. BENTLEY BY MR. HOOD:

13 Q KEVIN, I ONLY HAVE A COUPLE OF QUESTIONS TO ASK. KEVIN, THE
14 INFORMATION THAT YOU PROVIDED MR. BROMAGE WITH, WAS THAT
15 THE TRUTH OR WAS IT A LIE?

16 A SOME OF IT TRUTH, SOME OF IT MAY BE LIES.

17 Q OKAY. WAS IT A LIE WHEN YOU SAID THAT MY CLIENT, RICHARD
18 SIMMONS, TOLD YOU THAT HE KILLED THIS MAN?

19 A IT WAS AN EXAGGERATION. AS I SAID ON THE TAPE, HE NEVER SAID
20 THAT TO ME.

21 Q SO, HE DIDN'T SAY THAT TO YOU. ISN'T THAT CORRECT?

22 A NO, SIR.

23 Q OKAY. NOW, WHAT DID -- KEVIN I KNOW THAT YOU HAVE BEEN IN
24 PRISON FOR QUITE SOME TIME. WELL, ACTUALLY, I GUESS THE FIRST
25 TIME YOU TALKED TO ANYBODY ABOUT THIS WAS A SLED OFFICER.

RE-DIRECT EXAMINATION OF KEVIN BENTLEY BY MR. THORNTON:

331

1 ISN'T THAT CORRECT?

2 A YES, SIR. I SPOKE TO A SLED OFFICER, A DETECTIVE FROM BEAUFORT
3 COUNTY.

4 Q RIGHT. AND AT THAT POINT IN TIME, I THINK YOU WANTED SOMETHING
5 FROM THEM IN RETURN FOR YOUR STATEMENT. ISN'T THAT CORRECT?

6 A YES, SIR.

7 Q AND DID YOU EXPECT OFFICER BROMAGE OR BEAUFORT COUNTY TO
8 FULFILL YOUR REQUEST IF YOU GAVE THEM THE STATEMENT? IS THAT
9 CORRECT?

10 A YES, SIR.

11 MR. HOOD: I DON'T HAVE ANY FURTHER QUESTIONS.

12 MR. THORNTON: I HAVE ONE, YOUR HONOR.

13 RE-DIRECT EXAMINATION OF MR. BENTLEY BY MR. THORNTON:

14 Q DIDN'T YOU SAY ON THE TAPE TO CAPTAIN BROMAGE WHEN HE ASKED
15 YOU IF YOU WANT SOMETHING OUT OF THIS, DIDN'T YOU SAY ON THE
16 TAPE, "THERE IS NOTHING YOU CAN DO FOR ME?"

17 A THAT'S WHY I ASKED YOU WHEN WAS THIS CONVERSATION -- WHEN IT
18 TOOK PLACE, BECAUSE I SPOKE TO HIM ON THREE DIFFERENT
19 OCCASIONS.

20 Q ISN'T THAT WHAT YOU SAID ON THE TAPE?

21 A THAT'S WHY I ASKED WHEN THIS TAPE WAS MADE. I NEVER SAW A
22 TAPE.

23 Q MR. BENTLEY, I AM GOING TO ASK YOU ONE MORE TIME AND I WILL DO
24 IT SLOWLY. DIDN'T YOU SAY ON THE TAPE THAT WE JUST HEARD THAT,
25 "THERE IS NOTHING YOU CAN DO FOR ME, I'M DUE TO GET OUT AT

1 SOME POINT, THERE'S NOTHING Y'ALL CAN DO FOR ME." DID YOU OR
2 DID YOU NOT SAY THAT?

3 A YES, SIR. I DD SAY THAT.

4 Q THANK YOU SIR. NOTHING FURTHER.

5 RE-CROSS EXAMINATION OF MR. BENTLEY BY MR. HOOD:

6 Q I THINK YOU HAD PREVIOUS CONVERSATIONS, OBVIOUSLY, WITH
7 OFFICER BROMAGE WHICH WERE NOT RECORDED. ISN'T THAT
8 CORRECT?

9 A YES, SIR. THAT'S RIGHT. I DIDN'T EVEN KNOW THIS ONE WAS
10 RECORDED BECAUSE I NEVER SAW A TAPE RECORDER. WE WERE IN
11 AN INSTITUTIONAL SETTING WHICH PROHIBITS TAPE RECORDERS.

12 Q OKAY. THANK YOU.

13 MR. THORNTON: NOTHING FURTHER, JUDGE.

14 THE COURT: LADIES AND GENTLEMEN, WE ARE GOING TO BREAK FOR
15 THE EVENING. DON'T BEGIN DELIBERATIONS OR DISCUSSIONS, OBVIOUSLY,
16 ABOUT THE CASE. AS I TOLD YOU LAST NIGHT, THERE WILL PROBABLY BE
17 PRESS COVERAGE ABOUT THIS, SO I AM GOING TO INSTRUCT YOU TO NOT
18 WATCH ANY TELEVISION NEWS. I HAVEN'T SEEN ANY CAMERAS TODAY, BUT
19 THAT DOESN'T MEAN THEY WEREN'T HERE, SO DON'T WATCH THE NEWS
20 TONIGHT. AND ALSO, I WANT TO INSTRUCT YOU THAT IN THE MORNING,
21 AVOID THE NEWSPAPERS. DON'T WATCH OR READ ANYTHING ABOUT THE
22 CASE. DON'T TALK TO ANYONE THAT'S READ ANYTHING ABOUT THE CASE. IF
23 ANYBODY TRIES TO HAVE A CONVERSATION WITH YOU ABOUT THE CASE,
24 PLEASE REPORT IT TO ME TOMORROW MORNING. ALL RIGHT, GO BACK AND
25 ENJOY THE EVENING AND, IF YOU WOULD, REPORT BACK TO THE JURY ROOM

1 TOMORROW MORNING. BE BACK BY 9:30 AM. THANK YOU.

2 (JURY OUT AT 5:22 PM)

3 THE COURT: OKAY. ANYTHING BEFORE WE BREAK?

4 MR. THORNTON: NOTHING FROM THE STATE, JUDGE. I ASK THIS
5 WITNESS BE EXCUSED.

6 THE COURT: YOU DON'T NEED HIM FOR ANYTHING FURTHER, DO YOU?

7 MR. HOOD: I DON'T THINK SO. HOW ABOUT IF WE JUST SAY, FOR THE
8 MOMENT, WE LET HIM REMAIN IN BEAUFORT COUNTY AND GIVE ME AN
9 EVENING TO THINK ABOUT IT AND —

10 THE COURT: ALL RIGHT. MR. THORNTON MAKE SURE HE IS NOT
11 RETURNED TONIGHT AND WE WILL MAKE A DECISION TOMORROW.

12 MR. THORNTON: I WILL TAKE CARE OF IT RIGHT NOW, JUDGE.

13 THE COURT: THANK YOU, SIR.

14 MR. THORNTON: YES, SIR.

15 THE COURT: OKAY, WE WILL SEE Y'ALL IN THE MORNING.

16 MR. HOOD: THANK YOU.

17 NOVEMBER 16 MORNING

18 THE COURT: ALL RIGHT. ANYTHING WE NEED TO TAKE UP BEFORE WE
19 BRING THE JURY IN?

20 MR. THORNTON: NOTHING FROM THE STATE, JUDGE.

21 MR. HOOD: NOTHING, YOUR HONOR.

22 THE COURT: ALL RIGHT. LET THE RECORD REFLECT THAT THE
23 DEFENDANT IS IN THE COURTROOM. BRING THE JURY IN.

24 (JURY IN AT 9:45 AM)

25 THE BAILIFF: ALL PRESENT, YOUR HONOR.

1 **THE COURT:** WELL, LADIES AND GENTLEMEN, WELCOME BACK. WE
2 SENT IN YOUR LUNCH ORDERS EARLIER. I THINK WHAT WE'RE GOING TO TRY
3 TO DO IS WORK THROUGH TODAY, MAKE SURE WE GET IN ALL THE EVIDENCE
4 TODAY. WE MAY OR MAY NOT GET TO CHARGES AND DELIBERATIONS BUT I
5 WANTED TO MAKE SURE WE AT LEAST COMPLETED ALL OF THE EVIDENCE
6 TODAY SO, WE'RE GOING TO BUY YOU LUNCH. YOU'VE ALL PUT IN YOUR
7 ORDERS AND SO WHEN IT COMES LUNCH TIME AND THEY TELL ME THE FOOD
8 IS HERE, WE'LL TAKE A BREAK AND GIVE YOU AN OPPORTUNITY TO STRETCH
9 YOUR LEGS AND THINGS LIKE THAT AND WE'LL MOVE ON BACK WITH THE
10 CASE JUST TO INSURE THAT WE GET ALL OF THE EVIDENCE IN TODAY.

11 NOW, LET ME BEGIN BY ASKING, HAS ANY MEMBER OF THE JURY PANEL
12 HAD THE OPPORTUNITY TO SEE THE NEWSPAPERS THIS MORNING, EITHER
13 OF THE LOCAL PAPERS THAT HAD AN ARTICLE ABOUT THIS CASE? IF YOU DID
14 WOULD YOU RAISE YOUR HAND? ALL RIGHT. NOBODY RAISED THEIR HAND.
15 LET ME ASK YOU THIS, I DIDN'T HAPPEN TO SEE THE NEWS LAST NIGHT TO
16 SEE IF THERE WAS A STORY ON THE CASE, BUT IF THERE WAS, DID ANYBODY
17 HAPPEN TO SEE THE NEWS LAST NIGHT AND IF THERE WAS, WAS THERE A
18 STORY ON IT THAT YOU SAW ABOUT THE CASE? AGAIN, NOBODY HAS
19 INDICTED THAT THEY DID. OKAY. WELL, FOLKS, WE'LL GO AHEAD. MR.
20 THORNTON, YOU MAY CALL YOUR NEXT WITNESS.

21 **MR. THORNTON:** THANK YOU, JUDGE. CLYDE EVANS.

22 (AFTER BEING DULY SWORN BY THE CLERK OF COURT, CLYDE EVANS
23 TESTIFIED AS FOLLOWS:)

24 **CLERK OF COURT:** PLEASE STATE YOUR NAME AND STATE IT FOR THE
25 COURT, PLEASE.

DIRECT EXAMINATION OF CLYDE EVANS BY MR. THORNTON:

335

1 **MR. EVANS: MY NAME IS CLYDE EVANS. C-L-Y-D-E E-V-A-N-S.**

2 **DIRECT EXAMINATION OF CLYDE EVANS BY MR. THORNTON:**

3 Q MR. EVANS, DO YOU RECALL HAVING A CONVERSATION ON TWO
4 DIFFERENT DAYS BEING, APRIL 22nd AND APRIL 26th, 2005 WITH THE
5 GENTLEMAN SEATED HERE AT THE TABLE WITH ME, CAPTAIN BOB
6 BROMAGE?

7 A I REMEMBER.

8 Q ALL RIGHT, SIR. AND DURING THOSE CONVERSATIONS, DID YOU HAVE
9 ANY PARTICULAR DISCUSSION WITH HIM? DID YOU TALK ABOUT
10 ANYTHING IN PARTICULAR?

11 A WE TALKED ABOUT RICHARD SIMMONS.

12 A ALL RIGHT, SIR. AND DID YOU MAKE STATEMENTS TO HIM THAT
13 RICHARD SIMMONS HAD BASICALLY CONFESSED TO YOU ABOUT THE
14 KILLING OF A ST. HELENA MAN NOW KNOWN AS CHARLES GODLEY?

15 A I TOLD HIM THAT STATEMENT, BUT IT WASN'T TRUE.

16 Q ALL RIGHT, SIR. BUT, YOU DO ADMIT THAT THAT'S WHAT YOU TOLD HIM
17 AT THAT TIME.

18 A I TOLD HIM.

19 Q AND DID YOU TELL HIM THAT RICHARD SIMMONS HAD TOLD YOU THAT
20 HE HIT THE MAN WITH AN OBJECT THAT HE BELIEVED TO BE A
21 HAMMER?

22 A THAT'S WHAT I TOLD HIM.

23 Q ALL RIGHT, SIR. BUT, YOUR TESTIMONY TODAY IS THAT'S NOT WHAT HE
24 TOLD YOU?

25 A THAT'S NOT WHAT WHO TOLD ME?

1 Q I'M SORRY. THAT WAS A POORLY PHRASED QUESTION. IS IT YOUR
2 TESTIMONY TODAY THAT WHAT YOU TOLD CAPTAIN BROMAGE IS NOT
3 TRUE?

4 A WHAT I TOLD HIM IS NOT TRUE.

5 Q ALL RIGHT, SIR. DID HE -- AT THE TIME THAT YOU MADE THIS
6 STATEMENT TO CAPTAIN BROMAGE, DID YOU ALSO TELL CAPTAIN
7 BROMAGE THAT RICHARD SIMMONS STARTED TALKING TO YOU ABOUT
8 IT BECAUSE HE WAS VERY UPSET ABOUT IT? HAVING PROBLEMS.

9 A THAT'S WHAT I TOLD HIM.

10 Q ALL RIGHT. AND DID YOU TELL HIM THAT THIS CONVERSATION HAD
11 TAKEN PLACE, I BELIEVE IT WAS 1996 OR '97, SOMEWHERE IN THAT
12 NEIGHBORHOOD?

13 A THAT'S WHAT I TOLD HIM.

14 Q BUT, ALL THAT WAS A LIE.

15 A YES, SIR. IT WAS.

16 Q ALL RIGHT, SIR. SO, YOU'RE TELLING THE TRUTH HERE TODAY AND
17 YOU LIED TO CAPTAIN BROMAGE.

18 A THAT'S THE TRUTH.

19 Q AND YOU LIED TO HIM TWICE, AS A MATTER OF FACT.

20 A THAT'S THE TRUTH.

21 Q BUT, YOU DID TELL HIM THAT RICHARD SIMMONS HAD TOLD YOU THAT
22 HE ADMITTED TO KILLING A ST. HELENA MAN BY BEATING HIM WITH A
23 HAMMER.

24 A THAT'S WHAT I TOLD THE CAPTAIN.

25 Q ALL RIGHT, SIR.

CROSS EXAMINATION OF CLYDE EVANS BY MR. HOOD:

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1 MR. THORNTON: I DON'T HAVE ANY FURTHER QUESTIONS, JUDGE.

2 THE COURT: MR. HOOD?

3 MR. HOOD: I ONLY HAVE A COUPLE, YOUR HONOR.

4 CROSS EXAMINATION OF CLYDE EVANS BY MR. HOOD:

5 Q CLYDE, HOW MANY -- ON HOW MANY OCCASIONS DID YOU HAVE
6 CONTACT WITH OFFICER BROMAGE?

7 A WITH THE CAPTAIN?

8 Q YEAH.

9 A TWICE.

10 Q TWICE. AND WHERE WERE THOSE CONTACTS AT?

11 A IT WAS AT BEAUFORT CITY WORKS COMPOUND.

12 Q WERE BOTH OF THEM THERE?

13 A NO. ONE OF THEM WAS AT THE STREET.

14 Q ONE OF THEM WAS AT THE STREET. WERE YOU EVER IN CAPTAIN
15 BROMAGE'S CAR?

16 A YES.

17 Q WHILE YOU WERE IN THAT AUTOMOBILE, WERE YOU DRIVING?

18 A NO, SIR.

19 Q WAS HE DRIVING?

20 A YES, SIR.

21 Q HE WAS DRIVING, AND CORRECT ME IF I'M WRONG, CLYDE, BUT I THINK
22 YOU WERE AN INMATE AT THAT TIME. IS THAT CORRECT?

23 A YES, I WAS.

24 Q OKAY. AND CLYDE, WHILE YOU WERE IN THE AUTOMOBILE WITH
25 OFFICER BROMAGE, YOU WERE SMOKING A CIGARETTE. IS THAT

1 CORRECT?

2 A I DON'T REMEMBER, BUT I KNOW I HAD POSSESSION OF CIGARETTES.

3 Q OKAY. OKAY. SO, CLYDE, IF YOU LIED TO OFFICER BROMAGE, DID HE

4 OFFER, IF ANYTHING, TO GET YOU TO LIE TO HIM?

5 A HE DIDN'T OFFER ME ANYTHING TO LIE TO HIM. I MEAN, IT WAS JUT

6 SOMETHING THAT I HAD IN MY MIND THAT I MAY BE ABLE TO WORK

7 SOMETHING OUT WITH THE OFFICER BECAUSE, AT THE TIME, I

8 THOUGHT I HAD A WARRANT STANDING OVER MY HEAD.

9 Q SO, BASICALLY, YOU WERE USING HIM TO BASICALLY TRY TO GET

10 SOMETHING OFFERED TO YOU. IS THAT CORRECT?

11 A YEAH, THAT WAS MY MOTIVE.

12 Q AND CLYDE, I DON'T WANT TO GO INTO RECORD, OR ANYTHING OF

13 THAT NATURE, BUT YOU WERE PENDING AN ARMED ROBBERY CHARGE

14 WITH A DEADLY WEAPON. IS THAT CORRECT?

15 A NOT AT THAT TIME, SIR.

16 Q BUT SINCE THEN, YOU HAVE THAT CHARGE AND OTHER CHARGES. IS

17 THAT CORRECT?

18 A I HAVE THOSE CHARGES, YES.

19 Q OKAY. THANK YOU.

20 THE COURT: MR. THORNTON?

21 MR. THORNTON: JUST ONE, JUDGE.

22 RE-DIRECT EXAMINATION OF CLYDE EVANS BY MR. THORNTON:

23 Q YOU DID SAY THAT CAPTAIN BROMAGE DIDN'T OFFER YOU ANYTHING

24 FOR YOU TO LIE.

25 A NO, HE DIDN'T.

DIRECT EXAMINATION OF ARTHUR SINGLETON BY MR. THORNTON:

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1 **MR. THORNTON:** ALL RIGHT. I DON'T HAVE ANYTHING FURTHER,
2 JUDGE.

3 **THE COURT:** ANYTHING FURTHER?

4 **MR. HOOD:** I DON'T HAVE ANYTHING.

5 **THE COURT:** ALL RIGHT. YOU MAY STEP DOWN. CALL YOUR NEXT
6 WITNESS.

7 **MR. THORNTON:** I THINK HE'S COMING OUT NOW, JUDGE. THE STATE
8 CALLS ARTHUR SINGLETON. IT WILL TAKE ME A MOMENT TO PREP JUST IN
9 CASE, YOUR HONOR.

10 (AFTER BEING DULY SWORN BY THE CLERK OF COURT, ARTHUR
11 SINGLETON TESTIFIED AS FOLLOWS:)

12 **CLERK OF COURT:** WILL YOU PLEASE STATE YOUR NAME AND SPELL IT
13 FOR THE COURT.

14 **MR. SINGLETON:** ARTHUR SINGLETON. A-R-T-H-U-R S-I-N-G-L-E-T-O-N.

15 **DIRECT EXAMINATION OF ARTHUR SINGLETON BY MR. THORNTON:**

16 Q GOOD MORNING, MR. SINGLETON.

17 A MORNING.

18 Q MR. SINGLETON, DO YOU RECALL HAVING A CONVERSATION WITH THE
19 MAN SEATED TO MY LEFT, CAPTAIN BOB BROMAGE?

20 A YEAH.

21 Q ALL RIGHT, SIR. DID YOU TALK TO HIM ON SOMETIME IN LATE
22 OCTOBER, ABOUT OCTOBER 28th OF 2004? YOU REMEMBER TALKING
23 TO HIM? SOMETIME AROUND THAT TIME FRAME?

24 A YEAH.

25 Q ALL RIGHT, SIR. DID YOU TALK TO HIM ABOUT RICHARD SIMMONS?

1 A YEAH.

2 Q AND DID YOU TELL CAPTAIN BROMAGE, AT THAT TIME, THAT RICHARD
3 SIMMONS HAD TOLD YOU OR CONFESSED TO YOU THAT HE HAD KILLED
4 AN ELDERLY MAN IN ST. HELENA DURING A BURGLARY?

5 A NO. I AIN'T TOLD HIM THAT.

6 Q YOU DIDN'T TELL HIM THAT?

7 A (SHAKES HEAD)

8 Q SO, YOU DID NOT TELL HIM THAT RICHARD SIMMONS HAD MADE ANY
9 STATEMENTS TO YOU ABOUT CONFESSING A CRIME?

10 A NO. HE TOLD ME, HE SAY, "HE'D DONE SOMETHING BAD." I TOLD HIM, I
11 SAY, "I REALLY CAN'T HELP WITH THAT, THAT'S BETWEEN HIM AND GOD.

12 Q OKAY, SIR. BUT, I DIDN'T UNDERSTAND YOU. IF YOU COULD SPEAK UP.
13 WHO TOLD YOU THAT THEY DID SOMETHING BAD?

14 A RICHARD.

15 Q YOU MEAN THE DEFENDANT, RICHARD SIMMONS?

16 A (NODS HEAD)

17 Q WELL, WHAT EXACTLY DID HE TELL YOU?

18 A I CAN'T REMEMBER WHAT HE TOLD ME.

19 Q YOU DON'T RECALL?

20 A YOU WANT ME TO TELL YOU IF I RECALL IT?

21 Q YES, SIR. YOU DON'T RECALL IT, THOUGH?

22 A I CAN'T REMEMBER.

23 MR. THORNTON: JUDGE, I'D ASK TO BE ABLE TO PLAY THE TAPE. HE'S
24 DENYING SAYING THE STATEMENTS.

25 THE COURT: LET'S SEND THE JURY OUT A MINUTE. DON'T BEGIN

DIRECT EXAMINATION OF ARTHUR SINGLETON BY MR. THORNTON:

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1 DELIBERATIONS OR DISCUSSIONS ABOUT THE CASE.

2 (JURY OUT AT 10:00 AM)

3 THE COURT: MADAM COURT REPORTER, READ ME BACK WHAT HE
4 SAID. I COULDN'T UNDERSTAND HIM, WHAT HE WAS SAYING.

5 (COURT REPORTER READS BACK TESTIMONY OF THE WITNESS,
6 ARTHUR SINGLETON)

7 MR. HOOD: I OBJECT TO THE PLAYING OF THE STATEMENT AND THINGS
8 OF THIS NATURE WITHOUT FIRST INQUIRING AS TO WHETHER OR NOT ANY
9 CONVERSATIONS THAT HE HAD WITH OFFICER BROMAGE, WHETHER OR NOT
10 HE TOLD HIM THE TRUTH OR NOT. I MEAN WE'RE GOING TO GO THROUGH
11 THIS ALL AGAIN. I MEAN, IF HE SAYS, "WHAT I TOLD OFFICER BROMAGE WAS
12 A LIE, THEN IT STOPS RIGHT THERE. I DON'T UNDERSTAND. WE'RE GOING
13 BACK OVER THE SAME ORDER AGAIN.

14 THE COURT: WELL, WHAT ABOUT THIS, ACCORDING TO WHAT SHE
15 JUST PLAYED BACK, MR. THORNTON SAID, "DID YOU TELL OFFICER BROMAGE
16 THAT RICHARD SIMMONS KILLED THIS MAN?" AND HE SAID, "NO, I AIN'T TOLD
17 HIM THAT.

18 MR. HOOD: THAT IS CORRECT.

19 THE COURT: SO, HE HAS DENIED MAKING, HE DOES NOT ADMIT TO
20 MAKING THAT PRIOR STATEMENT.

21 MR. THORNTON: THAT'S THE STATE'S POSITION, YOUR HONOR. IF ALL
22 YOU HAD TO DO IS GET UP AND SAY, "YEAH, I TALKED TO HIM, BUT
23 EVERYTHING I TOLD HIM WAS A LIE, THAT WOULD DEFEAT THE PURPOSE OF
24 THAT RULE. THE PURPOSE OF THE RULE IS FOR YOU TO GET INTO THE
25 ACTUAL SUBSTANCE OF THE STATEMENT AND IF HE WANTS TO ADMIT

DIRECT EXAMINATION OF ARTHUR SINGLETON BY MR. THORNTON:

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1 EVERYTHING THAT I ASKED HIM THAT YEAH THAT'S WHAT I TOLD HIM, BUT
2 THAT'S A LIE, LIKE THE PREVIOUS, LIKE WE'VE HAD IN OTHER CASES, THAT'S
3 FIND, JUDGE, BUT IF HE SAYS, NO I DIDN'T SAY THAT. THEN YOU CAN'T JUST
4 SAY, "WELL, IF YOU DID SAY THAT, WOULD THAT HAVE BEEN A LIE." AND THEN
5 END IT, THAT WOULD BE RIDICULOUS, THAT DEFEATS THE WHOLE RULE.

6 THE COURT: WELL, HE HAS, HE HAS NOTIFIED HIM OF THE TIME, THE
7 DATE, AND THE PERSON TO WHOM IT WAS MADE AND HE'S GIVEN HIM THE
8 OPPORTUNITY TO EXPLAIN OR DENY IT AND HE HAS DENIED THAT HE SAID
9 THAT HE TOLD OFFICER BROMAGE THAT HE KILLED, THAT RICHARD SIMMONS
10 KILLED MR. GODLEY, SO IF YOU'VE GOT A STATEMENT THAT SAYS HE SAID
11 SOMETHING OPPOSITE TO THAT, THEN I THINK YOU CAN IMPEACH HIM ON
12 THAT ON A PRIOR EXISTING STATEMENT. SO, OBJECTION OVERRULED.

13 MR. THORNTON: YOUR HONOR, MAY WE APPROACH?

14 THE COURT: YES.

15 (BENCH CONFERENCE OFF THE RECORD)

16 MR. THORNTON: YOUR HONOR, JUST TO MAKE SURE WE'VE GOT THE
17 RECORD COVERED, WHAT THE STATE WOULD PROPOSE TO DO TO TRY TO
18 ALLEVIATE HAVING TO HAVE THE JURY LISTEN TO 36 MINUTES OF TAPE, IS I
19 HAD PREVIOUSLY, IN THE PREVIOUS TRIAL, REDACTED THE TAPE DOWN TO
20 INFORMATION THAT I THOUGHT WAS PERTINENT WITHOUT VERY MANY, IF
21 ANY, REFERENCES TO BEING IN JAIL AT THE TIME WHEN THE WITNESS AND
22 MR. SIMMONS HAD A DISCUSSION, SO I WILL OFFER TO PLAY THE WITNESS IN
23 THIS CASE, MR. SINGLETON, A, KIND OF A REDACTED, FOR LACK OF A BETTER
24 WORD, VERSION, IT'S ONLY ABOUT FIVE MINUTES AND MAYBE THAT WILL
25 REFRESH HIS MEMORY AND THEN HE IS FREE TO ADMIT OR DENY THAT THAT

DIRECT EXAMINATION OF ARTHUR SINGLETON BY MR. THORNTON:

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1 WAS TRUTHFUL. AS LONG AS HE ADMITS TO MAKING THE STATEMENTS, THE
2 STATE WILL BE SATISFIED AND MAYBE THAT WILL HELP KEEP THE JURY
3 FROM HAVING TO LISTEN TO 36 MINUTES OF INTERVIEW.

4 CONTINUE DIRECT EXAMINATION OF ARTHUR SINGLETON BY MR. THORNTON:

5 Q MR. SINGLETON, I AM GOING TO PLAY A TAPE FOR YOU THAT IS A
6 RECORDING OF THE CONVERSATION THAT YOU HAD. IF YOU WOULD
7 PLEASE LISTEN TO IT AND SEE IF THIS HELPS REFRESH YOUR MEMORY.

8 (MR. THORNTON PLAYS TAPE RECORDING OF CONVERSATION
9 BETWEEN MR. SINGLETON AND CAPTAIN BROMAGE).

10 A I DON'T REMEMBER SAYING THAT.

11 THE COURT: IS THAT ALL YOU'RE GOING TO PLAY?

12 MR. THORNTON: JUDGE, SINCE WE DON'T HAVE THE JURY, I'LL LET IT
13 GO FOR A FEW MORE MOMENTS AND REVIEW IT AT THE NEXT PLACE.

14 THE COURT: OKAY.

15 (MR. THORNTON CONTINUES PLAYING TAPE)

16 Q MR. SINGLETON, AFTER LISTENING TO THAT, DOES THAT HELP
17 REFRESH YOUR MEMORY?

18 A THAT WASN'T ME. NO.

19 THE COURT: WHAT DID HE SAY?

20 MR. THORNTON: HE'S TRYING TO SAY IT DOESN'T SOUND LIKE HIM.

21 A THAT WASN'T ME. I STILL DON'T REMEMBER SAYING IT. I DON'T
22 REMEMBER.

23 THE COURT: ALL RIGHT. YOU GET TO PLAY IT IN FRONT OF THE JURY,
24 THEN, IF HE DOESN'T ADMIT HE MADE IT.

25 MR. THORNTON: YOUR HONOR, WITH REGARD TO SAVING TIME FOR

DIRECT EXAMINATION OF ARTHUR SINGLETON BY MR. THORNTON:

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1 THE JURY, DOES THE COURT HAVE ANY PREFERENCE? I HAVE NONE.

2 WHETHER YOU WANT THE WHOLE THING PLAYED OR —

3 MR. HOOD: LET'S DO THE SHORT VERSION.

4 THE COURT: OKAY. ALL RIGHT, SIR, I'LL START IT AT — I BELIEVE THE
5 WHOLE THING IS 36 MINUTES AND THE FIRST 15 OR 20, WAS MAINLY, AS I
6 RECALL, AND MR. HOOD CAN CORRECT ME IF I'M WRONG, I KNOW YOU HAD A
7 COPY OF IT, WAS GETTING IN THERE, SETTING UP, HAVING PRELIMINARY
8 DISCUSSIONS WHICH ALL STARTED AT THE PLACE WHERE I STARTED IT
9 BEFORE, JUDGE.

10 THE COURT: OKAY.

11 MR. THORNTON: WHICH IS AT 21 MINUTES, AND SO THE REST OF THE
12 TAPE WOULD ONLY BE 15 MINUTES LONG.

13 THE COURT: OKAY. ALL RIGHT. LET'S BRING THE JURY IN.

14 (JURY IN AT 10:17 AM)

15 THE BAILIFF: ALL JURORS PRESENT, YOUR HONOR.

16 THE COURT: ALL RIGHT. MR. THORNTON.

17 MR. THORNTON: THANK YOU, JUDGE. PERMISSION TO PLAY THE TAPE.

18 THE COURT: GO AHEAD.

19 MR. THORNTON: THANK YOU, SIR.

20 Q MR. SINGLETON, I'M GOING TO PLAY A TAPE FOR YOU. I WOULD LIKE
21 FOR YOU TO LISTEN TO IT, PLEASE SIR.

22 (MR. THORNTON PLAYS TAPE RECORDING OF CONVERSATION
23 BETWEEN MR. SINGLETON AND CAPTAIN BROMAGE)

24 Q ALL RIGHT, MR. SINGLETON, DOES THAT REFRESH YOUR MEMORY
25 ABOUT THE CONVERSATION YOU HAD WITH CAPTAIN BROMAGE?

CROSS EXAMINATION OF ARTHUR SINGLETON BY MR. HOOD:

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1 A NOT REALLY.

2 Q IT DOESN'T? ALL RIGHT.

3 MR. THORNTON: I DON'T HAVE ANY FURTHER QUESTIONS, JUDGE.

4 THE COURT: MR. HOOD?

5 MR. HOOD: I ONLY HAVE A COUPLE OF QUESTIONS.

6 CROSS EXAMINATION OF ARTHUR SINGLETON BY MR. HOOD:

7 Q RICHARD, I MEAN, SORRY, ARTHUR, IS THAT YOU ON THAT TAPE?

8 A I DON'T KNOW. IT DOESN'T SOUND LIKE ME.

9 Q IT DOESN'T SOUND LIKE YOU. OKAY. DO YOU RECALL EVER MAKING
10 ANY STATEMENTS TO CAPTAIN BROMAGE HERE?

11 A THAT MAN RIGHT THERE? (INDICATING)

12 Q RIGHT.

13 A HE CAME TO ME TO TELL ME HE SAY HE BEEN TRYING TO HELP
14 SIMMONS AND SOME OF THAT. HE CAME AND SAID HE WAS TRYING TO
15 HELP SIMMONS AND SOME OF THAT. I DON'T REMEMBER RECORDING
16 ANYTHING LIKE THAT.

17 Q LET ME ASK YOU A QUESTION. IF YOU MADE THOSE STATEMENTS,
18 WERE THEY TRUE?

19 A I DON'T REMEMBER.

20 Q SO, ARE YOU SAYING YOU DIDN'T HAVE, THAT RICHARD SIMMONS DID
21 NOT TELL YOU THAT HE KILLED SOMEONE. IS THAT CORRECT?

22 A I DON'T REMEMBER.

23 Q OKAY. ARTHUR, THE QUESTION THAT I HAVE FOR YOU IS, NOW, YOU
24 WERE IN PRISON. IS THAT CORRECT?

25 A (NODS HEAD)

DIRECT EXAMINATION OF THOMAS DAVIS BY MR. THORNTON:

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1 Q AND YOU'RE IN PRISON FOR MURDER, AREN'T YOU?

2 A I DON'T, I DIDN'T --

3 Q I KNOW, BUT THAT'S WHAT IS IS. IS THAT CORRECT?

4 A YES, SIR.

5 Q AND YOU ARE OBVIOUSLY TRYING TO HELP YOURSELF, TO PUT

6 YOURSELF IN A BETTER POSITION. IS THAT CORRECT?

7 A I DON'T UNDERSTAND THE QUESTION, SIR.

8 Q IF YOU HAD MADE THOSE QUESTIONS FOR OFFICER BROMAGE, YOU

9 HOPED TO GET SOMETHING IN RETURN. IS THAT CORRECT?

10 A HE DIDN'T KNOW WHAT HE COULD DO.

11 Q OKAY. THANK YOU ARTHUR.

12 MR. THORNTON: NO FURTHER QUESTIONS, JUDGE.

13 THE COURT: YOU CAN STEP DOWN.

14 MR. THORNTON: THOMAS DAVIS.

15 (AFTER BEING DULY SWORN BY THE CLERK OF COURT, THOMAS DAVIS

16 TESTIFIED AS FOLLOWS:)

17 CLERK OF COURT: HAVE A SEAT AND STATE YOUR NAME AND SPELL IT

18 FOR THE COURT, PLEASE.

19 MR. DAVIS: MY NAME IS THOMAS DAVIS. T-H-O-M-A-S D-A-V-I-S.

20 DIRECT EXAMINATION OF MR. DAVIS BY MR. THORNTON:

21 Q GOOD MORNING, MR. DAVIS. MR. DAVIS, DO YOU KNOW WHO THIS

22 PERSON IS SITTING TO MY LEFT?

23 A NOT PERSONALLY.

24 Q NOT PERSONALLY. HAVE YOU EVER SEEN HIM BEFORE?

25 A I'VE SEEN HIM BEFORE.

DIRECT EXAMINATION OF THOMAS DAVIS BY MR. THORNTON:

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1 Q ALL RIGHT, SIR. AND HAVE YOU EVER HAD ANY CONVERSATIONS WITH
2 CAPTAIN BROMAGE? HAVE YOU EVER TALKED TO HIM?

3 A I TALKED TO HIM.

4 Q DID YOU TALK TO HIM OCTOBER THE 31st OF 2005?

5 A I DON'T REMEMBER.

6 Q ALL RIGHT, SIR. WOULD IT HAVE BEEN ABOUT THAT TIME? ABOUT A
7 YEAR AGO, A LITTLE OVER A YEAR AGO?

8 A I THINK SO.

9 THE COURT: COULD YOU MOVE A LITTLE CLOSER TO THE
10 MICROPHONE?

11 Q MR. DAVIS, DID YOU TALK TO CAPTAIN BROMAGE ABOUT STATEMENTS
12 MADE TO YOU BY RICHARD SIMMONS?

13 A I VAGUELY REMEMBER SOME OF THE THINGS THAT WE SAID.

14 Q ALL RIGHT, SIR. WHAT ARE SOME OF THE THINGS THAT YOU MIGHT
15 HAVE SAID THAT YOU VAGUELY REMEMBER?

16 A WE TALKED ABOUT SOMEBODY KILLING SOMEBODY.

17 Q YOU THINK IT WAS ABOUT SOMEBODY KILLING SOMEBODY?

18 (MR. THORNTON ADJUSTS THE MICROPHONE)

19 Q JUST TO TEST THAT, MR. DAVIS, WOULD YOU REPEAT WHAT YOUR LAST
20 NAME IS, SIR. I BELIEVE WE DISCUSSED SOMEONE KILLING SOMEBODY.
21 WAS THAT ANY PARTICULAR SOMEONE WHO KILLED SOMEBODY?

22 A HE WAS ASKING ME ABOUT MR. SIMMONS.

23 Q WHAT DID YOU TELL HIM?

24 A I DON'T REMEMBER EXACTLY WHAT I SAID BECAUSE I WAS ON
25 MEDICATION AT THE TIME.

1 Q YOU WERE ON MEDICATION AT THE TIME? WHAT KIND?

2 A I DON'T KNOW.

3 Q ARE YOU ON THAT MEDICATION TODAY?

4 A I'M ON IT EVERY DAY.

5 Q ALL RIGHT, SIR. ARE YOU ABLE TO UNDERSTAND WHERE YOU ARE
6 RIGHT NOW?

7 A YEAH.

8 Q ALL RIGHT. TELL ME WHERE YOU ARE.

9 A I'M IN BEAUFORT COUNTY COURTHOUSE.

10 Q ALL RIGHT, SIR. AND WHEN YOU WERE TAKING IT ON THAT DAY, COULD
11 YOU UNDERSTAND WHERE YOU WERE ON THAT DAY?

12 A I KNEW RIGHT WHERE I WAS, I WAS IN JAIL.

13 Q ALL RIGHT. YOU DIDN'T HAVE ANY TROUBLE KNOWING WHERE YOU
14 WERE AND WHAT WAS GOING ON?

15 A NOT AT THAT PARTICULAR TIME.

16 Q NOT AT THAT TIME. DID YOU, IN FACT, TELL DETECTIVE BROMAGE THAT
17 RICHARD SIMMONS TOLD YOU THAT HE KILLED A MAN, LATER TO BE
18 IDENTIFIED AS CHARLES GODLEY ON ST. HELENA DURING A
19 BURGLARY?

20 A I DON'T REMEMBER.

21 Q DID YOU TELL HIM THAT HE TOLD YOU THAT HE HIT THE MAN?

22 A I DON'T REMEMBER.

23 THE COURT: DID YOU GIVE HIM THE TIME AND DATE?

24 MR. THORNTON: I'M SORRY, JUDGE, I BELIEVE I DID. I BELIEVE IT WAS

25 OCTOBER 31st, HALLOWEEN OF 2005. DID YOU MAKE THOSE STATEMENTS AT

CROSS EXAMINATION OF THOMAS DAVIS BY MR. HOOD:

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1 THAT TIME?

2 A I DON'T REMEMBER.

3 Q THIS WOULD HAVE BEEN 2:25 IN THE AFTERNOON.

4 A I DON'T REMEMBER.

5 THE COURT: ALL RIGHT. DO YOU WANT TO INTRODUCE THE PRIOR
6 INCONSISTENT?

7 MR THORNTON: I WOULD ASK UNDER 813.

8 THE COURT: ALL RIGHT. GO AHEAD.

9 ((MR. THORNTON PLAYS TAPE RECORDING OF CONVERSATION
10 BETWEEN MR. DAVIS AND CAPTAIN BROMAGE)

11 Q DOES THAT REFRESH YOUR MEMORY AT ALL, MR. DAVIS?

12 A SOMEWHAT.

13 Q SOMEWHAT.

14 MR. THORNTON: I DON'T HAVE ANY FURTHER QUESTIONS, YOUR
15 HONOR.

16 MR. HOOD: I HAVE A COUPLE.

17 CROSS EXAMINATION OF MR. DAVIS BY MR. HOOD:

18 Q MR. DAVIS, I BELIEVE THAT AT THAT TIME YOU WERE INCARCERATED
19 OVER HERE IN THE BEAUFORT COUNTY JAIL. ISN'T THAT CORRECT?

20 A YES, SIR.

21 Q OKAY. AND I BELIEVE THAT YOU WERE TRYING TO GET OUT OF A BAD
22 SITUATION THAT YOU WERE IN. ISN'T THAT CORRECT?

23 A REAL BAD SITUATION.

24 Q REAL BAD SITUATION. AND, BASICALLY, WHAT YOU - YOU WERE
25 HOPING TO GAIN SOMETHING, OBVIOUSLY, BY MAKING THESE

1 STATEMENTS AGAINST RICHARD SIMMONS. IS THAT CORRECT?

2 A I WAS TOLD THAT THEY WERE GOING TO LET ME GO.

3 Q OKAY. NOW, I'LL SHOW YOU A LITTLE DOCUMENT HERE. DO YOU

4 RECOGNIZE THAT DOCUMENT?

5 A YES, I DO.

6 Q AND IS THAT YOUR SIGNATURE AT THE BOTTOM OF THAT DOCUMENT?

7 A YES, IT IS.

8 Q AND WOULD YOU MIND READING THAT ONE PORTION RIGHT THERE?

9 MR. THORNTON: OBJECTION, YOUR HONOR. THAT'S HEARSAY. IT'S AN
10 STATEMENT.

11 MR. HOOD: THAT'S HIS STATEMENT. HE'S ALREADY IDENTIFIED HIS
12 SIGNATURE AT THE BOTTOM OF IT.

13 MR. THORNTON: IT DOESN'T CHANGE THE FACT THAT IT'S HEARSAY, I
14 DON'T THINK, YOUR HONOR.

15 THE COURT: IT'S NOT HEARSAY IF IT'S HIS STATEMENT. WHAT DOES IT
16 SAY? IS IT TO REFRESH HIS MEMORY?

17 MR. HOOD: I ASKED HIM ABOUT THE DOCUMENT.

18 A MR. SIMMONS IS A PERSON —

19 MR. THORNTON: JUDGE, I'LL WITHDRAW THE OBJECTION.

20 THE COURT: ALL RIGHT. ANSWER THE QUESTION.

21 A RICHARD SIMMONS IS THE PERSON ALLEGEDLY OF INTEREST OF THE
22 BCSO WHOM THE DEFENDANT HAS ALLEGEDLY BEEN PRESSURED TO
23 TESTIFY AGAINST. I AM PRESSURED TO TESTIFY AGAINST HIM.

24 Q SO, YOU ARE THE DEFENDANT IN THAT PHRASE?

25 A YEAH, THEY GAVE ME AN EXTRA SIX MONTHS BECAUSE I WOULDN'T GO

RE-DIRECT EXAMINATION OF THOMAS DAVIS BY MR. THORNTON:

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1 TO COURT.

2 Q THEY GAVE YOU A WHAT?

3 A THEY MADE ME STAY IN JAIL SIX MONTHS BECAUSE I WOULDN'T GO TO
4 COURT. I LOST MY BUSINESS AND EVERYTHING.

5 Q BECAUSE YOU WOULDN'T TESTIFY AGAINST RICHARD?

6 A RIGHT.

7 Q OKAY. THANK YOU.

8 **RE-DIRECT EXAMINATION OF DAVIS BY MR. THORNTON:**

9 Q WHEN CAPTAIN BROMAGE CAME OVER TO TALK TO YOU, YOU KNOW IN
10 THAT STATEMENT THAT YOU DIDN'T RECALL UNTIL JUST A COUPLE OF
11 MINUTES AGO —

12 A RIGHT.

13 Q DID YOU ASK TO SEE HIM?

14 A DID I ASK TO SEE HIM? NO. HE WAS SENT BY THIS OTHER DETECTIVE
15 OVER THERE, ALL RIGHT. HE SAID, "I'M GOING TO SEND SOMEBODY
16 OVER THERE TO HELP YOU OUT OF THE SITUATION THAT YOU ARE IN."

17 Q ALL RIGHT, SIR.

18 A AND SO WHEN THEY GOT ME IN FOR ARMED ROBBERY, WHICH Y'ALL
19 NEVER PROVED —

20 Q WHO CONTACTED THE OTHER OFFICER?

21 A I HAVE NO IDEA. I NEVER — I'M JUST NOW KNOWING HIS NAME.

22 Q OKAY. YOU SAID THAT SOMEBODY ELSE TOLD YOU THAT THEY WERE
23 GOING TO SEND DETECTIVE BROMAGE?

24 A YEAH.

25 Q DID YOU CONTACT THAT PERSON? HOW DID YOU KNOW THEY WERE

1 GOING TO SEND HIM?

2 A HE CAME OVER TO THE JAIL AND TALKED TO ME.

3 Q ALL RIGHT, SIR. AND THIS STATEMENT THAT, THAT'S SUPPOSEDLY
4 YOUR STATEMENT THAT YOU HAD TROUBLE LOOKING AT?

5 A IT'S A MOTION, IT'S NOT JUST A STATEMENT, IT'S A MOTION.

6 Q AND WAS IT -- DID YOU WRITE THAT MOTION?

7 A YEAH, BECAUSE THEY WERE GIVING ME INEFFECTIVE COUNSEL AND
8 THEY WEREN'T REPRESENTING ME AND THEY WERE PURPOSELY
9 HOLDING ME IN JAIL.

10 Q ALL RIGHT, SIR. CAN YOU TELL ME WHAT IT SAYS RIGHT THERE AT THE
11 BOTTOM? IN PRINT? WHERE IT SAYS RESPECTFULLY SUBMITTED?

12 A YEAH. MR. COLEMAN HOOKAYLO?

13 Q OKAY.

14 A YEAH, I HAD HIM SIGN IT. OKAY, I WOULDN'T.

15 Q ALL RIGHT, SIR. YOU WROTE IT BUT YOUR LAWYER WAS GOING TO
16 PRESENT IT AS COMING FROM HIS OFFICE?

17 A HE NEVER TRIED TO PRESENT IT. THAT'S WHY I'M SUING HIM, TOO.

18 Q OH, SO YOU WERE SUING THE PERSON WHO HELPED YOU DO THE
19 STATEMENT?

20 A I ALREADY AM SUING HIM. I ALREADY BROUGHT HIM UP ON CHARGES IN
21 THE UNITED DISTRICT COURT BECAUSE OF INEFFECTIVE COUNSEL. HE
22 WAS DISMISSED AS MY COUNSEL.

23 Q OKAY, SIR.

24 MR. THORNTON: NO FURTHER QUESTIONS, JUDGE.

25 THE COURT: ANYTHING FURTHER?

1 **MR. HOOD:** I HAVE NOTHING FURTHER. THANK YOU.

2 **THE COURT:** YOU CAN STEP DOWN.

3 **MR. DAVIS:** THANK YOU.

4 **THE COURT:** ALL RIGHT. LET'S TAKE ABOUT A TEN MINUTE BREAK
5 HERE. Y'ALL GO ON BACK TO THE JURY ROOM. YOU CAN TAKE A SMOKE
6 BREAK IF YOU WANT TO. DON'T BEGIN DELIBERATIONS OR DISCUSSIONS
7 ABOUT THE CASE.

8 (JURY OUT AT 10:48 AM)

9 **MR. HOOD:** JUDGE, AT THIS POINT, I THINK IT PROBABLY WOULD BE
10 BETTER FOR ME TO GO AHEAD AND OBJECT TO THE PLAYING OF THOSE
11 TAPES AND STATEMENTS THAT MY CLIENT MADE ON THOSE TAPES.

12 **THE COURT:** ALL RIGHT.

13 **MR. HOOD:** AGAIN, WE ORIGINALLY HAD A SUPPRESSION MOTION ON
14 THOSE AND YOU OVERRULED THAT BASED ON THE VOLUNTARINESS OF THE
15 STATEMENTS AND ALL I WANT TO DO IS PRECLUDE HAVING TO STAND UP
16 AND OBJECT TO THE STATEMENTS.

17 **THE COURT:** ALL RIGHT. WELL, WE'LL LET THE RECORD NOTE THAT
18 YOU ARE OBJECTION HAS BEEN RENEWED AND IT'S MADE
19 CONTEMPORANEOUS AND YOU WON'T NEED TO MAKE IT AGAIN WHEN THE
20 WITNESS IS ON THE STAND.

21 **MR. HOOD:** THANK YOU.

22 **THE COURT:** ALL RIGHT?

23 **MR. THORNTON:** ALL RIGHT, YOUR HONOR. I'LL GO AHEAD AND GET
24 THAT READY AND MAKE SURE THAT HE'S READY TO GO.

25 (BRIEF BREAK)

1 THE COURT: ALL RIGHT. ARE YOU READY?

2 MR. THORNTON: WE ARE, YOUR HONOR. MAY WE APPROACH?

3 THE COURT: YOU MAY.

4 (BENCH CONFERENCE OFF THE RECORD)

5 THE COURT: BRING THE JURY IN.

6 (JURY IN AT 11:19 AM)

7 THE BAILIFF: ALL JURORS ARE PRESENT, YOUR HONOR.

8 THE COURT: ALL RIGHT. GO AHEAD.

9 MR. THORNTON: THANK YOU, JUDGE. BRUCE OTTERBACHER.

10 (AFTER BEING DULY SWORN BY THE COURT, BRUCE OTTERBACHER
11 TESTIFIED AS FOLLOWS:)

12 THE COURT: HAVE A SEAT THERE. STATE YOUR NAME FOR THE
13 RECORD, PLEASE.

14 MR. OTTERBACHER: MY NAME IS BRUCE B-R-U-C-E, OTTERBACHER.
15 O-T-T-E-R-B-A-C-H-E-R.

16 DIRECT EXAMINATION OF BRUCE OTTERBACHER BY MR. THORNTON:

17 Q MR. OTTERBACHER, WHO DO YOU WORK FOR?

18 A I AM A SLED AGENT CURRENTLY ASSIGNED TO THE COLUMBIA OFFICE
19 OF THE F.B.I. MY JOB IS TO SUPERVISE SLED AGENTS ASSIGNED TO
20 THE JOINT TERRORISM TASK FORCE.

21 Q ALL RIGHT.

22 A I'VE BEEN INVOLVED IN LAW ENFORCEMENT FOR THIRTY YEARS.

23 Q SORRY ABOUT THAT, SIR. THAT WAS MY NEXT QUESTION. HOW LONG
24 HAVE YOU BEEN IN LAW ENFORCEMENT. AGENT, AND YOUR CORRECT
25 TITLE WOULD BE AGENT?

DIRECT EXAMINATION OF BRUCE OTTERBACHER BY MR. THORNTON:

355

1 A LIEUTENANT.

2 Q LIEUTENANT. ALL RIGHT, I WANT TO GET THAT RIGHT. LIEUTENANT,
3 DID YOU WORK FOR THE SOUTH CAROLINA LAW ENFORCEMENT
4 DIVISION ALSO KNOW AS SLED, DID YOU WORK FOR THEM IN 1995?

5 A YES, SIR.

6 Q ALL RIGHT. AND IN 2004, DID YOU ALSO WORK FOR THEM, SIR?

7 A YES, SIR. I DID.

8 Q HOW LONG HAVE YOU WORKED FOR SLED, SIR?

9 A SINCE 1991.

10 Q ALL RIGHT, SIR. NOW, IN, I BELIEVE IT WAS IN SEPTEMBER OF 2004, DID
11 YOU HAVE AN OCCASION TO WORK AT ALL WITH CAPTAIN BOB
12 BROMAGE?

13 A YES, SIR, I DID.

14 Q AND WHAT KIND OF CASE WAS THAT ON, SIR?

15 A THIS WAS ON A MURDER THAT TOOK PLACE HERE IN BEAUFORT
16 COUNTY.

17 Q ALL RIGHT, SIR. AND, DID -- WHAT WAS YOUR ROLE IN WORKING WITH
18 CAPTAIN BROMAGE?

19 A CAPTAIN BROMAGE WENT UP TO SLED AND MET WITH MY SUPERVISOR,
20 CAPTAIN CALDWELL AND DISCUSSED THE CASE WITH HIM AND THE
21 TWO OF THEM DECIDED THEY WOULD START AN UNDERCOVER
22 OPERATION ON A SUSPECT THAT THEY BELIEVED MAY HAVE BEEN
23 INVOLVED IN A MURDER. THE MURDER WAS NINE YEARS OLD AND
24 OCCURRED IN 1995 AND THE VICTIM WAS A MR. GODLEY. MR. GODLEY
25 WAS BEAT TO DEATH WITH A HAMMER WAS THE INITIAL INFORMATION

1 THAT WE RECEIVED.

2 Q NOW, DID YOU -- WHAT WAS YOUR ROLE IN THIS INVESTIGATION?

3 A AFTER THEY DISCUSSED THE INVESTIGATION UP TO THAT POINT, THEY
4 DECIDED THEY WANTED TO PUT AN UNDERCOVER OPERATION INTO
5 THE -- TO MEET WITH MR. SIMMONS ON THE STREET AND GAIN HIS
6 CONFIDENCE AND SEE IF HE HAD ANY INVOLVEMENT IN THIS MURDER,
7 TO SEE IF WE COULD GET HIM TO TALK ABOUT IT.

8 Q NOW, WERE YOU THE UNDERCOVER OFFICER?

9 A YES, SIR. I WAS THE UNDERCOVER OFFICER.

10 Q NOW, WHEN YOU -- DID YOU, AT SOME POINT, MAKE CONTACT WITH
11 RICHARD SIMMONS?

12 A YES, SIR. ON FOUR DIFFERENT OCCASIONS I MET WITH MR. SIMMONS
13 DURING THE MONTH OF SEPTEMBER.

14 Q AND ON THREE OF THOSE OCCASIONS, SAY THE LAST THREE, WERE
15 THEY ON NOVEMBER THE 15th, the 22nd, and the 27th?

16 A THAT WOULD BE CORRECT.

17 Q OF SEPTEMBER OF 2004?

18 A SEPTEMBER OF 2004.

19 Q WERE THOSE VIDEOTAPED?

20 A THEY WERE.

21 Q AND I'M GOING TO HAND YOU THREE TAPES THAT HAVE BEEN MARKED
22 FOR IDENTIFICATION AS STATE'S EXHIBITS #26, #27, AND #28 AND ASK
23 YOU IF YOU CAN IDENTIFY THOSE FOR ME.

24 A YES, SIR. THESE ARE THE TAPES.

25 Q ALL RIGHT, SIR. AND WHEN YOU SAY THESE ARE THE TAPES, TAPES OF

DIRECT EXAMINATION OF BRUCE OTTERBACHER BY MR. THORNTON:

357

1 WHAT?

2 A THESE ARE THE VIDEO TAPES OF MY MEETINGS WITH MR. SIMMONS.

3 Q DID YOU REVIEW THESE TAPES AT MY REQUEST?

4 A I DID, SIR.

5 Q HAVE THEY BEEN ALTERED IN ANY WAY, SHAPE OR FORM?

6 A NO, SIR.

7 Q DO THEY ACCURATELY REPRESENT THE THREE -- THREE OF THE FOUR
8 MEETINGS THAT YOU HAD WITH THE DEFENDANT IN THIS CASE,
9 SEPTEMBER THE 15th, SEPTEMBER THE 22nd AND SEPTEMBER 27th OF
10 2004?

11 A THAT IS CORRECT.

12 MR. THORNTON: JUDGE, I WOULD ASK THESE BE ADMITTED INTO
13 EVIDENCE.

14 THE COURT: ADMITTED.

15 (THREE TAPES FROM SEPTEMBER 15th, 22nd, and 27th ARE
16 ENTERED INTO EVIDENCE AS STATE'S EXHIBITS #26, #27 AND #28)

17 Q AS PART OF THIS UNDERCOVER OPERATION, HOW WAS IT THAT YOU
18 WERE GOING TO GAIN RICHARD SIMMONS' TRUST?

19 A IT INITIALLY STARTED AS A MEETING ON THE STREET. IT WAS A COLD
20 MEET. BY COLD MEET, HE DIDN'T KNOW ME, I DIDN'T KNOW HIM. THERE
21 WAS NOBODY TO INTRODUCE US. I JUST HAD TO PULL UP IN AN
22 UNDERCOVER VAN, HOLLER AT HIM, GET HIM TO COME OVER TO THE
23 VAN, I ASKED HIM IF HE WANTED TO MAKE A HUNDRED BUCKS BY
24 HELPING ME AND HE SAID, "HELL, YEAH, I'LL DO WHATEVER I NEED TO
25 DO FOR THAT \$100.00. AND WE SET UP A MEETING FOR A COUPLE

1 DAYS LATER WHERE HE WAS GOING TO HELP ME BREAK IN TO A
2 STORAGE AREA THAT WE HAD ALREADY FIXED UP SO THAT ALL HE HAD
3 TO DO WAS CUT A LOCK OFF THE STORAGE AREA AND DURING THIS —

4 Q LIEUTENANT, LET ME STOP YOU FOR A SECOND.

5 A OKAY.

6 Q WHEN YOU SAY, "WE HAD FIXED UP", WHO HAD FIXED UP THE LOCKER?

7 A SLED AND MYSELF.

8 Q AND WAS THIS PROPERTY OWNED BY SLED IN A LOCKER OR —

9 A IT WAS A RENTED PROPERTY, A RENTAL STORAGE AREA. WE RENTED
10 IT FOR \$55.00 FOR ONE MONTH. IT WAS EMPTY. IT STAYED EMPTY. WE
11 TOLD HIM THERE WERE ITEMS IN THERE THAT I WAS GOING TO
12 REMOVE AND THEN WE WERE GOING TO —

13 Q NOW, LIEUTENANT, WHEN YOU SAY YOU TOLD HIM, TOLD WHO?

14 A RICHARD SIMMONS.

15 Q INCIDENTALLY, SIR, DO YOU SEE MR. SIMMONS IN THE COURTROOM?

16 A YES, SIR. HE'S IN THE WHITE SHIRT.

17 Q IS THAT THE SAME MAN THAT IS ON VIDEO TAPE WITH YOU IN THOSE
18 THREE TAPES?

19 A YES, SIR. IT IS.

20 Q DOES HE LOOK EXACTLY THE SAME NOW AS HE DID THEN?

21 A NO, SIR.

22 Q I'M GOING TO HAND YOU WHAT'S BEEN MARKED STATE'S, FOR
23 IDENTIFICATION, A STATE'S EXHIBIT #29.

24 A YES, SIR.

25 Q CAN YOU IDENTIFY THAT, SIR?

DIRECT EXAMINATION OF BRUCE OTTERBACHER BY MR. THORNTON: 359

1 A YES, SIR. THIS IS A NAPKIN THAT MR. RICHARD SIMMONS WROTE HIS
2 DATE OF BIRTH AND SOCIAL SECURITY ON FOR ME TO MAKE HIM A
3 FALSE IDENTIFICATION. HE HANDED THIS TO ME INSIDE THE VAN
4 DURING ONE OF THE UNDERCOVER MEETINGS.

5 Q AND IS THE PERSON THAT WROTE HIS NAME AND SOCIAL SECURITY
6 NUMBER DOWN FOR YOU IN THE COURTROOM?

7 A YES, SIR. IT'S THE SAME MR. SIMMONS THAT IS SITTING AT THE TABLE
8 OVER THERE.

9 Q NOW, HAS THIS BEEN ALTERED IN WAY, SHAPE OR FORM?

10 A NO, SIR.

11 MR. THORNTON: JUDGE, I'D ASK THIS BE MOVED INTO EVIDENCE.

12 MR. HOOD: I DON'T HAVE ANY OBJECTION.

13 THE COURT: ADMITTED.

14 (WHEREUPON, A NAPKIN IS ENTERED INTO EVIDENCE AS STATE'S
15 EXHIBIT #29)

16 Q LIEUTENANT, AFTER THIS INITIAL MEETING, DID YOU GO BACK AND
17 MEET WITH RICHARD SIMMONS AGAIN?

18 A YES, SIR. AFTER I TALKED TO HIM, HE ASKED ME FOR \$20.00 WORTH
19 OF, OR \$20.00 TO GET SOME FOOD. I TOLD HIM I HAD TO GO TO THE
20 BANK TO GET THE MONEY AND THAT I'D BE RIGHT BACK. THE INITIAL
21 MEETING LASTED TEN MINUTES INCLUDING THE TRIP TO THE BANK AND
22 BACK. I GAVE HIM \$20.00 AND THIS WAS, IN MY MIND, A WAY TO GET
23 HIM TO MEET ME AGAIN, MAKE SURE HE WAS THERE THE NEXT TIME I
24 COME, BUILDING HIS CONFIDENCE.

25 Q ALL RIGHT. DID YOU MEET HIM AGAIN, SIR?

1 A YES, SIR. WE SET UP A MEETING FOR WEDNESDAY. WEDNESDAY
2 WOULD BE SEPTEMBER THE 15th AND WHEN MR. SIMMONS RODE WITH
3 ME, I THINK, TO CUT THE LOCK OFF THE DOORS OF THE STORAGE
4 CONTAINER.

5 Q WHAT WERE YOU RIDING IN, SIR?

6 A WE WERE IN A VAN, UNDERCOVER VAN, THAT HAD BEEN WIRED UP BY
7 THE CITY OF COLUMBIA WITH A VIDEO CAMERA INSIDE THE DASH AND
8 EVERYTHING WAS RECORDED DURING THE ENTIRE MEETING.

9 Q AND DOES THIS VIDEO HAVE, IS THERE AUDIO AS WELL ON THESE
10 VIDEO TAPES?

11 A YES, SIR, THERE IS.

12 Q AND WHEN YOU WENT BACK, WHEN YOU WENT TO CUT THIS LOCK OFF,
13 WOULD IT BE FAIR TO CHARACTERIZE THIS AS A, FOR THE LACK OF A
14 BETTER WORD, A FAKE CRIME OR A MOCK CRIME?

15 A THAT IS CORRECT.

16 Q AND AT SOME POINT, DID MR. SIMMONS, IN FACT, CUT THE LOCK OFF
17 THE STORAGE CONTAINER?

18 A YES, SIR. WE ARRIVED ABOUT A BLOCK AWAY FROM THE STORAGE
19 AREA AND HE GOT OUT OF THE CAR, GOT INTO THE DRIVERS SEAT, I
20 HANDED HIM A ROLL OF DUCT TAPE TO PUT TAPE OVER THE TAG SO
21 THAT IT WOULDN'T BE CONSPICUOUS OF CAMERAS AS WE DROVE
22 INSIDE. WE'RE PLAYING A ROLE AND THE ROLE IS, WE ARE GOING TO
23 GO IN THERE AND DO A CRIME AND SO I'M PLAYING A ROLE. HE
24 COVERED UP THE TAG WITH THE TAPE. WE DROVE INSIDE AND I GAVE
25 HIM A PAIR OF BOLT CUTTERS AND HE REMOVED THE LOCK BY

DIRECT EXAMINATION OF BRUCE OTTERBACHER BY MR. THORNTON:

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1 CUTTING IT, REPLACED THE LOCK, SAT IT ON THE GROUND AND CAME
2 BACK INTO THE VAN.

3 Q LIEUTENANT, LET ME ASK YOU THIS, WHEN YOU'RE -- IS IT FAIR TO
4 CHARACTERIZE WHAT YOU DID IN THIS CASE AS BEING UNDERCOVER?

5 A YES, SIR.

6 Q AND I REALIZE THESE MAY BE SILLY QUESTIONS, SIR, BUT THEY ARE
7 THINGS I HAVE TO ASK. WERE YOU DRESSED AS YOU ARE TODAY?

8 A NO, SIR. I WAS DRESSED IN BLUE JEANS AND A SWEATSHIRT.

9 Q AND SO YOU DIDN'T HAVE A BADGE OR INSIGNIA ON YOU OR ANYTHING
10 IDENTIFYING YOURSELF AS A SLED OFFICER?

11 A I HAD IT ON ME, BUT NOT SO YOU COULD SEE IT.

12 A ALL RIGHT, SIR. THAT WOULD KIND OF DEFEAT THE PURPOSE, WOULD
13 IT NOT?

14 A YES, SIR. IT WOULD.

15 Q DID YOU, AT ANY OF THESE MEETINGS, WERE YOU INITIALLY, EITHER
16 THE 15th, 22nd OR THE 27th, DID YOU AT ANY TIME IDENTIFY YOURSELF
17 AS A SLED OFFICER?

18 A NOT UNTIL AFTER HIS ARREST ON THE 27th.

19 Q AND DID YOU AT ANY TIME DISPLAY A GUN TO HIM?

20 A NO, SIR.

21 Q THREATEN HIM IN ANY WAY?

22 A NO, SIR.

23 Q NOW, ON THE TAPES THAT ARE NOW IN EVIDENCE --

24 A YES, SIR.

25 Q DID YOU -- WAS THERE ANY -- ALL THIS WAS RECORDED?

1 A YES, SIR.

2 Q AND AFTER HE CUT THE LOCK OFF THE STORAGE UNIT, WHAT
3 HAPPENED AFTER THAT?

4 A WE DEPARTED THE AREA, WELL, WE STAYED THERE A FEW MINUTES, I
5 TOLD HIM I WANTED IT TO MAKE IT LOOK LIKE WE HAD SPENT TIME
6 THERE TO ACTUALLY LOAD THE VAN UP, BUT I EXPLAINED TO HIM THAT
7 THE WEEKEND BEFORE I HAD GONE OVER THERE AND EMPTIED OUT THE
8 CONTAINER AND SO THERE WAS NOTHING IN THERE AND HE KNEW
9 THAT. AND SO, WE SPENT THE TIME THERE AND SO WHEN THE
10 CAMERA CAUGHT US GOING BACK OUT, THAT THAT ALLOWS US TO
11 TALK A LITTLE BIT THERE AND SO WE TALKED A LITTLE BIT THERE AND
12 THEN WE MOVED TO ANOTHER LOCATION AND TALKED. WE WENT
13 AROUND AND LOOKED AT A COUPLE OF LOCATIONS THAT WERE
14 POTENTIALS FOR BREAKING IN. I ASKED HIM IF HE WOULD MIND
15 BREAKING INTO A GARAGE AREA WITH ME. HE SAID HE DIDN'T WANT
16 TO DO IT THAT NIGHT BUT IF I LINED IT UP, HE WOULD DO IT IN THE
17 FUTURE AND I EXPLAINED TO HIM THAT I HAD BEEN INVOLVED IN A
18 SHOOTING INCIDENT IN FORT BENNING, GEORGIA, WHERE I HAD KILLED
19 SOMEBODY DURING A DEER HUNTING ACCIDENT AND THIS WAS TO
20 BUILD HIS CONFIDENCE, LET HIM KNOW THAT I'M WILLING TO TELL HIM
21 STORIES ABOUT MY LIFE. WE ALSO DISCUSSED THE FACT THAT HIS
22 WIFE HAD A DRUG PROBLEM AND MY WIFE, I TALKED ABOUT HER, AND
23 THIS WAS JUST BUILDING CONFIDENCE BETWEEN HIM AND ME.
24 BETWEEN THE TWO OF US VERY GOOD CONVERSATIONS, NOTHING
25 THREATENING AT ALL.

DIRECT EXAMINATION OF BRUCE OTTERBACHER BY MR. THORNTON:

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1 Q ALL RIGHT, SIR. AFTER THAT MEETING, DID YOU HAVE ANOTHER
2 MEETING ON THE 22nd OF SEPTEMBER?

3 A YES, SIR.

4 Q AND WAS THAT ONE RECORDED AS WELL?

5 A YES, SIR, IT WAS.

6 Q AND WHAT HAPPENED ON THAT MEETING, SIR?

7 A THIS MEETING, MR. SIMMONS CONFESSED TO KILLING A MAN DURING A
8 BURGLARY IN BEAUFORT, SOUTH CAROLINA.

9 Q AND DURING THAT MEETING WITH YOU, DID YOU AT ANY TIME, EITHER
10 ON THAT MEETING OR PREVIOUS, IN THE PREVIOUS TWO TIMES THAT
11 YOU HAD SPOKEN WITH MR. SIMMONS, DID YOU AT ANY TIME PROVIDE
12 HIM WITH ANY INFORMATION ABOUT THE CRIME, THAT YOU WERE
13 TRYING TO SEE IF HE HAD ANYTHING TO DO WITH?

14 A NO, SIR. I DID NOT.

15 Q YOU DID TALK TO HIM ABOUT THAT YOU HAD KILLED SOMEBODY.
16 CORRECT?

17 A YES, SIR. A FICTITIOUS CRIME OF MY KILLING SOMEBODY.

18 Q BUT, WAS YOURS THE SAME? IN OTHER WORDS, DID YOU TALK TO HIM
19 AND SAY, "HEY, ONE TIME I BEAT SOMEBODY TO DEATH WITH A
20 HAMMER, HAVE YOU EVER DONE THAT?"

21 A NO, SIR.

22 Q IN FACT, WHAT YOU TOLD HIM ABOUT WAS A SHOOTING RELATING TO A
23 HUNTING ACCIDENT. IS THAT RIGHT?

24 A THAT IS CORRECT.

25 Q LIEUTENANT, I'M GOING TO ASK YOU A FEW QUESTIONS. I DON'T KNOW

1 IF THEY ARE GOING TO BE UNCOMFORTABLE FOR YOU OR NOT. I JUST
2 NEED YOU TO ANSWER THEM LIKE YOU'RE ANSWERING EVERYTHING
3 ELSE.

4 A YES, SIR.

5 Q YOU GAVE HIM SOME BEER, DIDN'T YOU?

6 A YES, SIR. I DID.

7 Q AND YOU USED GOVERNMENT MONEY. CORRECT?

8 A YES, SIR.

9 Q WHICH MEANS TAXPAYER MONEY.

10 A NOT REALLY.

11 Q OKAY. TELL ME HOW IT'S DIFFERENT.

12 A WELL, WITH SLED, WHAT WE DO, WE SEIZE A LOT OF MONEY. WE SEIZE
13 CARS, WE SEIZE HOUSES, WE SELL THOSE AND GET PROCEEDS FROM
14 THAT. ALL THAT MONEY GOES INTO A FUND AND ALL THAT MONEY
15 GOES FOR UNDERCOVER SUCH AS THIS.

16 Q ALL RIGHT. NOW, AGAIN, THIS MAY BE A SILLY QUESTION.

17 A YES, SIR.

18 Q WHEN YOU SELL DOPE, YOU DON'T LET IT GO OUT ON THE STREET, DO
19 YOU?

20 A NO, SIR.

21 Q OKAY. NOW, WERE YOU DRIVING AROUND AT SOME POINT IN THIS
22 WITH AN OPEN CONTAINER OF BEER?

23 A YES, SIR. I WAS.

24 Q AND YOU REALIZE THAT IS A TRAFFIC VIOLATION AND THAT'S
25 SOMETHING THAT NORMALLY YOU WOULD NOT DO. IS THAT CORRECT?

DIRECT EXAMINATION OF BRUCE OTTERBACHER BY MR. THORNTON:

365

- 1 A THAT'S CORRECT.
- 2 Q IF AN AGENT IS GOING UNDERCOVER, SAY TO DO A DRUG DEAL, DO
- 3 THEY CARRY DRUGS WITH THEM IF THEY ARE SELLING?
- 4 A IF THEY ARE SELLING, THEY DO, YES.
- 5 Q ALL RIGHT. NORMALLY, YOU WOULDN'T DO THAT WOULD YOU?
- 6 A NO, SIR.
- 7 Q THEN, WHY WOULD YOU DO IT?
- 8 A THE DRUG DEAL SITUATION?
- 9 Q YES, SIR.
- 10 A TO CATCH PEOPLE OUT BUYING DRUGS, WANTING TO COME IN AND
- 11 BUY DRUGS.
- 12 Q MIGHT IT BE NECESSARY SOMETIMES TO HAVE AN OPEN CONTAINER IF
- 13 YOU'RE TRYING TO CATCH A MURDER SUSPECT?
- 14 A OH, YES. OH, YES.
- 15 Q SO, THERE'S NO DOUBT. THAT'S ON TAPE, RIGHT?
- 16 A OH, YES. THERE'S NO HIDING IT. WE DID IT ON PURPOSE.
- 17 Q YOU MIGHT HEAR A "POP, POP" OR SOMETHING LIKE THAT WHEN THE
- 18 BEERS ARE OPENED?
- 19 A SURE. I PURPOSELY DID IT. I VOUCH FOR THE BEER.
- 20 Q YOU PROVIDED RICHARD SIMMONS WITH MONEY, AS WELL, DID YOU
- 21 NOT?
- 22 A I DID ON SEVERAL OCCASIONS.
- 23 Q NOW, DID HE EVER CONSUME CRACK IN YOUR PRESENCE?
- 24 A NO, SIR.
- 25 Q BUT, YOU KNEW HE HAD A PROBLEM WITH IT. IS THAT RIGHT?

- 1 A HE DID TELL ME ON THE SECOND TRIP.
- 2 Q SO, AS FAR AS YOU KNEW, HE MIGHT HAVE VERY WELL GONE AND
3 BOUGHT CRACK WITH THAT MONEY.
- 4 Q I KNOW THAT HE DID, BUT HE TOLD ME HE SPENT \$20.00 OF THE \$100.00
5 I GAVE HIM TO BUY DRUGS.
- 6 Q DID YOU TELL HIM AT ANY TIME HE SHOULD GO BUY DRUGS?
- 7 A NO, SIR.
- 8 Q DID YOU SELL ANY DRUGS TO HIM?
- 9 A NO, SIR.
- 10 Q YOU'RE POSITIVE.
- 11 A I'M POSITIVE.
- 12 Q NOW, THE DETAILS TO THIS BASED ON WHAT YOU HAVE TESTIFIED TO,
13 THE DETAILS OF HIS CONFESSION AND ALL THESE THINGS WE'VE
14 TALKED ABOUT ARE ALL REFERENCED IN THE VIDEO TAPES, ARE THEY
15 NOT?
- 16 A YES, SIR. THEY ARE.
- 17 Q AND WHAT OCCURRED AFTER HE MADE THIS CONFESSION TO YOU?
18 NOW, DID HE COME RIGHT OUT AND SAY IT OR DOES THIS TAKE PLACE
19 OVER THE COURSE OF SEVERAL MINUTES?
- 20 A IT TAKES PLACE IN OVER, APPROXIMATELY, AN HOUR AND TWENTY
21 MINUTES AND HE TALKS ABOUT IT SEVERAL DIFFERENT TIMES.
- 22 Q NOW, AGAIN, HAVE YOU EVER TALKED TO HIM ABOUT ANY DETAILS OF
23 THIS CASE THAT YOU KNEW?
- 24 A NO, SIR.
- 25 Q AND DID YOU HAVE ALL OF THE DETAILS OF THE CASE?

DIRECT EXAMINATION OF BRUCE OTTERBACHER BY MR. THORNTON:

367

1 A NO, SIR.

2 Q BUT, EVEN IF YOU HAD, DID YOU TELL HIM ANYTHING ABOUT THIS

3 CASE?

4 A NO, SIR.

5 Q YOU DIDN'T SAY, I HEARD ABOUT AN INCIDENT ON ST. HELENA WHERE A

6 MAN NAMED CHARLES GODLEY WAS BEATEN TO DEATH WITH A

7 HAMMER. DID YOU DO THAT? YOU DIDN'T TELL HIM THAT?

8 A NO, SIR.

9 Q SO, YOU DIDN'T SUGGEST THE TYPES OF THINGS HE SHOULD BE

10 TELLING YOU.

11 A NO, SIR.

12 Q DID YOU AT ANY TIME SAY, YOU KNOW I KILLED SOMEBODY AND IF YOU

13 HAVEN'T KILLED SOMEBODY TOO, THEN I'M NOT GOING TO GIVE YOU

14 ANY MORE MONEY FOR CRACK? DID YOU DO THAT?

15 A NO, SIR.

16 Q DID YOU DO THAT?

17 A NO, SIR.

18 Q YOU'RE POSITIVE?

19 A I'M POSITIVE.

20 Q BECAUSE WE'VE GOT THE TAPES NOW, LIEUTENANT, ARE YOU SURE?

21 A LOOK AT THEM ALL YOU WANT.

22 Q LIEUTENANT, AFTER HE TALKED TO YOU ABOUT THE MURDER HE

23 COMMITTED WHERE HE BEAT A MAN TO DEATH WITH A HAMMER.

24 A YES, SIR.

25 Q WHAT HAPPENED AFTER THAT MEETING? DID YOU GO AHEAD AND

1 ARREST HIM THEN?

2 A NO, SIR. WE DISCUSSED WHAT WE WERE GOING TO DO AT THE NEXT
3 MEETING. SET UP A MEETING FOR THE NEXT MONDAY, I BELIEVE IT
4 WAS ON THE 27th AND I GAVE HIM TWENTY MORE DOLLARS AFTER
5 THAT MEETING TO DO WHATEVER HE WANTED TO DO WITH IT.

6 Q NOW, DID YOU -- HOW CLOSE WERE YOU SITTING TO HIM?

7 A RIGHT NEXT TO HIM IN THE DRIVER'S SIDE OF THE VAN.

8 Q AND HOW LONG, ROUGH GUESSTIMATE, ROUGH ESTIMATE ARE THESE
9 TAPES, TOTAL?

10 A SOMEWHERE AROUND FOUR HOURS.

11 Q DURING THOSE FOUR HOURS, IS A LOT OF THAT TAKEN UP WITH
12 CONVERSATION BETWEEN YOU AND RICHARD SIMMONS?

13 A YES, SIR.

14 Q AND SO, IS IT FAIR TO SAY THAT YOU TALKED A GOOD BIT?

15 A YES, SIR.

16 Q WHEN YOU WERE TALKING TO HIM, YOU'VE ALREADY TESTIFIED THAT
17 YOU SUPPLIED HIM WITH BEER AND SO IT'S OBVIOUS HE WAS
18 DRINKING.

19 A YES, SIR.

20 Q DID HE APPEAR TO YOU TO BE SO INTOXICATED HE DIDN'T KNOW WHAT
21 HE WAS SAYING?

22 A NO, SIR. THAT ONLY HAPPENED ON ONE OCCASION ON THE 22nd, I
23 BELIEVE. LET ME CHECK MY DATES, YES THE 22nd AND HE CAME
24 RUNNING DOWN TO THE VAN, JUMPED INTO THE VAN --

25 Q NOW, LET ME ASK YOU A QUESTION.

DIRECT EXAMINATION OF BRUCE OTTERBACHER BY MR. THORNTON:

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1 A YES, SIR.

2 Q YOU SAY, "THAT ONLY HAPPENED ON THE 22nd. WHAT ONLY
3 HAPPENED?

4 A I GAVE HIM A BEER.

5 Q AT ANY TIME, DID HE APPEAR TO BE SO INTOXICATED THAT HE DIDN'T
6 KNOW WHAT HE WAS SAYING?

7 A NO, SIR.

8 Q NOW, DID HE, AND AGAIN, IT'S ON THE TAPE AND SO I DON'T WANT YOU
9 TO GO INTO TOO MUCH OF THE DETAILS OF WHAT HE TOLD YOU
10 BECAUSE, YOU KNOW, THE JURY IS GOING TO BE ABLE TO SEE THAT,
11 THEY'RE GOING TO WATCH THAT, THAT'S IN EVIDENCE. WHAT I WANT
12 TO ASK YOU, THOUGH, IN ALL THESE CONVERSATIONS, DID HE PROVIDE
13 DETAILS?

14 A YES, HE DID.

15 Q DID HE TALK TO YOU IN A COHERENT MANNER?

16 A YES, SIR.

17 Q DID YOU HAVE ANY CONCERNS THAT HE WAS SO DRUNK OR SO HIGH
18 HE DIDN'T KNOW WHAT HE WAS DOING?

19 A NO, SIR.

20 Q COULD HE FORM COMPLETE SENTENCES?

21 A OH, YES.

22 Q NOW, AFTER THIS MEETING WHEN YOU GAVE HIM \$20.00, AFTER HE
23 CONFESSED TO YOU THAT HE BEAT A MAN TO DEATH WITH A HAMMER.

24 A YES, SIR.

25 Q WHAT HAPPENED AFTER THAT? DID YOU MEET WITH HIM AGAIN?

1 A YES, SIR.

2 Q TELL ME ABOUT THAT MEETING.

3 A THAT MEETING TOOK PLACE ON THE 27th WHICH WAS A MONDAY. I

4 LOCATED HIM IN ROUGHLY THE SAME AREA OF FIVE POINTS IN

5 COLUMBIA, SOUTH CAROLINA. I TOOK HIM TO GET SOME LUNCH. I

6 TOLD HIM I HAD A PERSON THAT WORKED FOR SLED THAT COULD

7 SUPPLY ME WITH CRACK COCAINE AND THAT WE WERE GOING TO GO

8 OUT THERE AND GET SOME CRACK COCAINE FOR HIM.

9 Q AND DID YOU AT THAT POINT FIND HIM?

10 A YES, I DID.

11 Q YOU TOLD HIM JUST WHAT YOU RELATED TO US?

12 A YES, SIR.

13 Q THEN WHAT HAPPENED?

14 Q WE WENT OUT TO SLED. WE ARRIVED AT SLED. HE WAS PLACED

15 UNDER ARREST BY THE ARRESTING TEAM.

16 Q LIEUTENANT, DID YOU AT ANY TIME, MAKE ANY PROMISES TO RICHARD

17 SIMMONS ABOUT HELPING HIM OUT WITH HIS CASE OR ANYTHING ELSE

18 WHILE TALKING WITH HIM ON THESE TAPES?

19 A NO, SIR.

20 Q WHAT ABOUT OFF THE TAPES?

21 A NO, SIR.

22 Q DID YOU IDENTIFY YOURSELF AT ANY TIME DURING -- UP UNTIL THE

23 ARREST -- DID YOU IDENTIFY YOURSELF AS AN AGENT OR ANYBODY

24 THAT COULD DO ANYTHING FOR HIM OTHER THAN GIVE HIM SOME

25 MONEY AND GIVE HIM SOME BEER?

DIRECT EXAMINATION OF BRUCE OTTERBACHER BY MR. THORNTON:

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1 A NO, SIR.

2 Q AT SOME POINT ON THE TAPE, DOES HE ASK YOU ABOUT PROVIDING
3 SHELTER?

4 A HE DOES.

5 Q AND DID YOU TELL HIM THAT IF YOU DON'T CONFESS TO THIS CRIME
6 THEN I'M NOT GOING TO GIVE YOU MONEY AND I'M GOING TO LEAVE
7 YOU HOMELESS ON THE STREETS OF COLUMBIA?

8 A NO, SIR.

9 Q ARE YOU POSITIVE?

10 A I AM POSITIVE. I TOLD HIM THAT IF WE CONTINUED WORKING, HE
11 WOULD MAKE ENOUGH MONEY TO -- HE COULD GET INTO A SITUATION
12 WHERE HE COULD MAKE ENOUGH MONEY TO DO THAT.

13 Q WHEN YOU WERE GIVING HIM BEER, SIR AND RIDING AROUND WITH A
14 BEER, THAT WOULD NORMALLY BE AN OPEN CONTAINER VIOLATION,
15 WITH GOVERNMENT MONEY --

16 A YES, SIR.

17 Q -- WHAT WERE YOU DOING? WHY DO THAT? WHAT DOES THAT DO
18 FOR YOU AS AN UNDERCOVER OFFICER?

19 A IT DOES TWO THINGS. THE LAST TIME THAT I HAD BEEN WITH HIM, I
20 GAVE HIM \$100.00. IF YOU GIVE A PERSON ON THE STREET \$100.00,
21 THEY KNOW THAT YOU'VE GOT MONEY. I WANT TO KEEP HIM CALM, I
22 WANT TO KEEP HIM AS MUCH TO NOT THINKING ABOUT DOING A
23 ROBBERY, NOT THINKING ABOUT HURTING ME. I WANT TO GET OUT OF
24 THERE AT THE END OF THE DAY AND GO HOME AND I FELT LIKE IN THIS
25 CASE SINCE I'D ALREADY GIVEN HIM THE MONEY IN THE PAST AND HE

DIRECT EXAMINATION OF BRUCE OTTERBACHER BY MR. THORNTON:

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1 KNEW I WOULD HAVE MORE MONEY ON ME THAT NIGHT AND I WANTED
2 HIM TO BE CALM AND COLLECTED, TALK TO ME IN A CALM VOICE. WE
3 HAD GOOD CONVERSATION THAT NIGHT, NO THREATENING
4 CONVERSATIONS EVERYTHING WENT NICE AND SMOOTH AND IT WENT
5 REAL SMOOTH AND I GOT TO GO HOME.

6 Q NOW, IS THERE ANY OTHER REASON THAT YOU DO THESE FAKE
7 BURGLARIES, FAKE BREAKING INTO THE CONTAINER AND ALL THAT
8 STUFF. WHAT DOES THAT DO FOR YOU?

9 A THAT BUILDS HIS CONFIDENCE IN ME AND MY CONFIDENCE IN HIM.

10 Q IS IT MORE LIKELY THAT HE MIGHT TELL YOU THINGS LIKE THAT'S ON
11 THAT TAPE WHEN HE TRUSTS YOU?

12 A THERE IS NO DOUBT.

13 MR. HOOD: YOUR HONOR, I'VE LET HIM LEAD, YOU KNOW, IT'S TIME TO
14 OBJECT TO ALL THIS.

15 THE COURT: WHAT IS YOUR OBJECTION.

16 MR. HOOD: HE'S TESTIFYING AS OPPOSED TO MR. OTTERBACHER.

17 THE COURT: RE-PHRASE YOUR QUESTION.

18 MR. THORNTON: YES, SIR.

19 Q AGENT, —

20 A YES, SIR.

21 Q — I'LL REPEAT THE LAST QUESTION, I'LL RE-PHRASE IT A LITTLE
22 DIFFERENTLY. IS THERE ANY OTHER PURPOSE FOR YOU TO SET UP
23 MOCK BREAK-INS AND PROVIDE MONEY FOR SOMEBODY THAT YOU ARE
24 DEALING WITH?

25 A MY WHOLE GOAL DURING THIS UNDERCOVER WAS TO BUILD

DIRECT EXAMINATION OF BRUCE OTTERBACHER BY MR. THORNTON:

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1 CONFIDENCE IN HIM AND AFFORD HIM THE OPPORTUNITY TO EITHER
2 GIVE ME INFORMATION ON THE MURDER OR NOT AND BUILDING
3 CONFIDENCE IN HIM.

4 Q IN YOUR OVER THIRTY YEARS OF EXPERIENCE AS A POLICE OFFICER —

5 A YES, SIR.

6 Q — WOULD YOU SAY THAT IT WOULD BE MORE LIKELY OR LESS LIKELY
7 THAT A PERSON TO WHOM YOU GAIN CONFIDENCE WOULD TELL YOU
8 ABOUT THEMSELVES?

9 A THERE IS NO DOUBT THAT IF HE HAS CONFIDENCE IN ME, HE'S GOING
10 TO BE FREER IN TALKING.

11 Q DID YOU CHARGE RICHARD SIMMONS WITH BREAKING INTO THIS
12 CONTAINER OR ANYTHING LIKE THAT?

13 A NO, SIR.

14 Q WHY NOT?

15 A IT WAS A FAKE CRIME. THERE WAS NO CRIME COMMITTED. HE JUST
16 BELIEVED IT TO BE A CRIME.

17 Q COULD YOU DEFINE THAT THEN, FOR THE LACK OF A BETTER WORK, A
18 RUSE?

19 A YES, SIR.

20 Q DID YOU AT ANY TIME ARREST HIM FOR THE OPEN CONTAINER
21 VIOLATION?

22 A NO, SIR.

23 Q WOULD THAT HAVE BEEN DIFFICULT SINCE YOU WERE DOING THE
24 SAME THING?

25 A THAT'S RIGHT.

DIRECT EXAMINATION OF BRUCE OTTERBACHER BY MR. THORNTON:

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

2 THE COURT: YES.

3 (BENCH CONFERENCE OFF THE RECORD)

4 THE COURT: BEFORE I LET MR. HOOD BEGIN HIS CROSS EXAMINATION,
5 WHICH MAY TAKE SOME TIME, THEY'VE NOTIFIED ME THAT YOUR LUNCH IS
6 HERE AND SO WHAT I'M GOING TO DO IS GO AHEAD AND LET YOU EAT YOUR
7 SANDWICH AND THAT WAY WE WON'T HAVE TO INTERRUPT THE FLOW AND
8 THINGS SHOULD MOVE ALONG A LITTLE BIT QUICKER. I KNOW IT'S A LITTLE
9 BIT EARLY FOR LUNCH, BUT IT WILL HELP US GET EVERYTHING COMPLETED
10 TODAY, I THINK, IF WE DO THIS, SO GO ON AHEAD BACK TO THE JURY ROOM
11 AND DON'T DELIBERATE OR DISCUSS THE CASE. LET'S TAKE ABOUT, LET'S
12 SEE IF WE CAN DO THIS IN ABOUT THIRTY TO FORTY-FIVE MINUTES AND THEN
13 WE'LL JUST COME ON RIGHT BACK IN HERE. SO, LET'S PLAN ON COMING
14 BACK ABOUT 12:30 RIGHT NOW AND THEN WE'LL RESUME AND SO GO ON
15 BACK AND ENJOY YOUR LUNCH AND WE'LL SEE YOU BACK IN ABOUT FORTY
16 MINUTES.

17 (JURY OUT AT 11:48 AM)

18 MR. THORNTON: MAY HE STEP DOWN AND GO TO LUNCH, JUDGE?

19 THE COURT: YOU CAN GO, YOU CAN'T TALK TO ANYBODY ABOUT
20 ANYTHING, REALLY, SO IT'S SOLO TIME FOR ABOUT THE NEXT FORTY
21 MINUTES.

22 MR. OTTERBACHER: I CAN HANDLE THAT.

23 THE COURT: ALL RIGHT. THANK YOU.

24 NOVEMBER 16 AFTERNOON

25 THE COURT: ALL RIGHT. BRING THE JURY IN.

CROSS EXAMINATION OF BRUCE OTTERBACHER BY MR. HOOD:

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1 (JURY IN 12:37 PM)

2 THE BAILIFF: ALL JURORS PRESENT, YOUR HONOR.

3 THE COURT: ALL RIGHT. YES, SIR, DID YOU HAVE SOMETHING?

4 MR. THORNTON: JUDGE, JUST FOR THE RECORD, I DON'T THINK I

5 ACTUALLY SAID IT, BUT NO FURTHER QUESTIONS AT THIS TIME.

6 Q LIEUTENANT, PLEASE GO AHEAD AND ANSWER ANY QUESTIONS MR.

7 HOOD MIGHT HAVE.

8 A YES, SIR.

9 THE COURT: GO AHEAD, MR. HOOD.

10 MR. HOOD: THANK YOU.

11 CROSS EXAMINATION OF MR. OTTERBACHER BY MR. HOOD:

12 Q NOW, WE'VE HEARD THAT YOU'VE BEEN AN AGENT FOR THIRTY YEARS.

13 IS THAT CORRECT?

14 A APPROXIMATELY. YES, SIR.

15 Q AND SO YOU, OBVIOUSLY, HAVE BEEN TO A LOT OF SCHOOLS, CLASSES

16 AND THINGS OF THAT NATURE, IS THAT CORRECT, DURING YOUR

17 THIRTY YEARS?

18 A I HAVE.

19 Q AND YOU'VE HAD EXTENSIVE TRAINING IN DRUGS. ISN'T THAT

20 CORRECT?

21 A I HAVE.

22 Q OKAY. AND YOU KNOW THE EFFECTS OF DRUGS ON PEOPLE. IS THAT

23 CORRECT?

24 A SOMEWHAT, YES.

25 Q WELL, YOU SEE THEM ON ALMOST A DAILY BASIS.

1 A WE ALL DO.

2 Q YEAH. SO, YOU CAN PRETTY MUCH RECOGNIZE WHEN A PERSON HAS A
3 PROBLEM BASED ON YOUR OWN OBSERVATIONS. ISN'T THAT
4 CORRECT?

5 A THAT'S RIGHT.

6 Q OKAY. NOW, YOU INDICATED THAT YOU HAD GIVEN RICHARD SIMMONS
7 MONEY BEFORE ON OTHER OCCASIONS. IS THAT CORRECT?

8 A OTHER, YOU'LL HAVE TO BE MORE SPECIFIC, I DON'T UNDERSTAND
9 WHAT TIME YOU ARE TALKING ABOUT.

10 Q OTHER THAN THE —

11 A OTHER THAN THE FIRST INITIAL MEETING, I GAVE HIM \$20.00, YES.

12 Q OKAY. AND PRIOR TO THAT, YOU GUYS HAD BEEN RUNNING
13 SURVEILLANCE, BASICALLY, ON RICHARD SIMMONS. ISN'T THAT
14 CORRECT?

15 A THAT'S NOT CORRECT. THAT'S WHAT I TOLD HIM, BUT THAT IS NOT
16 CORRECT. I DID NOT DO SURVEILLANCE ON HIM. I DID GO DOWN ONE
17 DAY AND LOOKED FOR HIM AND GOT HIM SPOTTED TO FIND OUT WHAT
18 HE LOOKED LIKE SO I WOULD KNOW WHO TO APPROACH. THAT'S THE
19 ONLY SURVEILLANCE THAT I DID.

20 Q WHO WAS DETERMINING WHERE HE WAS LOCATED AT? YOU DIDN'T DO
21 ANY OF THE SURVEILLANCE WORK, THE TRACKING DOWN?

22 A THE DAY THAT I MET HIM WAS THE DAY I STARTED SURVEILLANCE.

23 Q BUT SOMEONE IN YOUR OFFICE HAD TO, OBVIOUSLY, POINT YOU IN THE
24 RIGHT DIRECTION. WAS IT OFFICER BROMAGE?

25 A OFFICER BROMAGE BROUGHT ME A PHOTOGRAPH OF HIM. I HAD

CROSS EXAMINATION OF BRUCE OTTERBACHER BY MR. HOOD:

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1 PREVIOUSLY SEEN HIM DOWN AT THE FIVE POINTS AREA IN THE PAST
2 AND I WAS AWARE THAT HE WAS DOWN THERE.

3 Q AND YOU WERE AWARE OF THE FACT THAT HE WAS PURCHASING
4 CRACK COCAINE.

5 A YES, SIR. I WAS AWARE HE WAS LIVING ON THE STREETS DOWN IN
6 FIVE POINTS. WHEN I BECAME AWARE THAT HE WAS PURCHASING
7 CRACK COCAINE IN FIVE POINTS WAS WHEN HE TOLD ME AFTER I GAVE
8 HIM THE \$100.00 AND HE TOLD ME THAT HE HAD SPENT \$20.00 WORTH
9 OF THAT ON DRUGS. THAT'S WHEN I KNEW THAT HE HAD PURCHASED
10 DRUGS WITH THE MONEY.

11 Q SO, YOU DIDN'T HAVE ANY CONVERSATIONS WITH OFFICER BROMAGE
12 ABOUT THIS PARTICULAR RICHARD SIMMONS, WHERE HE WAS
13 LOCATED AT AND ABOUT THE FACT THAT HE MIGHT BE BAD ON CRACK
14 COCAINE ON THE STREETS OF COLUMBIA?

15 A I DON'T REMEMBER ANY CONVERSATION ABOUT CRACK COCAINE.

16 Q YOU DON'T REMEMBER IT?

17 A NO, SIR.

18 Q WELL, DIDN'T YOU GO OVER THE FILE WITH OFFICER BROMAGE
19 CONCERNING THIS INCIDENT THAT OCCURRED TEN OR ELEVEN YEARS
20 AGO?

21 A NO, SIR. I WAS BRIEFED BY OFFICER BROMAGE AND WHAT HE TOLD ME
22 WAS THAT A MURDER HAD OCCURRED AND THAT THE SUBJECT HAD
23 BEEN KILLED WITH A HAMMER. THAT WAS WHAT, THE SUBSTANCE OF
24 WHAT I GOT FROM HIM.

25 Q WELL, YOU WERE TALKING ABOUT THE CRACK COCAINE EARLIER WITH

1 THE SOLICITOR HERE AND YOU INDICATED SOMETHING ABOUT HIM
2 PURCHASING CRACK COCAINE.

3 A YES, SIR. I JUST EXPLAINED, THAT WAS WHEN I GAVE HIM THE \$100.00
4 AND HE WENT, HE CAME BACK THE NEXT WEEK AND TOLD ME HE HAD
5 SPENT \$20.00 OF THE \$100.00 I HAD GIVEN HIM TO PURCHASE CRACK,
6 WELL, HE DIDN'T SAY CRACK, HE SAID TO PURCHASE DRUGS.

7 Q SO, WHAT YOU'RE SAYING IS, THAT PRIOR TO YOUR CONTACT, THE
8 FIRST CONTACT WITH RICHARD SIMMONS ON THE STREETS IN
9 COLUMBIA, THAT YOU WERE NOT AWARE THAT HE WAS ADDICTED TO
10 CRACK COCAINE.

11 A I DON'T BELIEVE I WAS.

12 Q WAIT A MINUTE. I DON'T BELIEVE I WAS?

13 A I DON'T REMEMBER BEING TOLD THAT HE WAS ADDICTED TO CRACK
14 COCAINE.

15 Q OKAY. LET'S DO A LITTLE BIT OF CONFIDENCE BUILDING HERE.

16 A OKAY.

17 Q YOU KNOW CRACK COCAINE IS ILLEGAL. RIGHT?

18 A IT IS.

19 Q OKAY. AND AS A GOOD AGENT YOU WOULD NEVER EVER PROVIDE
20 ANYBODY WITH AN ILLEGAL SUBSTANCE. ISN'T THAT CORRECT?

21 A THAT'S CORRECT.

22 Q BUT, WHEN YOU KNOW A PERSON IS ADDICTED TO A DRUG, LET'S SAY
23 CRACK COCAINE, YOU KNOW THAT THAT PERSON WILL DO ANYTHING
24 HE CAN TO GET MORE CRACK COCAINE. ISN'T THAT CORRECT?

25 A I TREAT HIM LIKE A MAN.

CROSS EXAMINATION OF BRUCE OTTERBACHER BY MR. HOOD:

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1 Q THAT'S NOT THE QUESTION. ANSWER THE QUESTION.

2 A GIVE ME THE QUESTION AGAIN. WHAT'S THE QUESTION? I DIDN'T
3 UNDERSTAND.

4 Q IF YOU KNOW THAT A PERSON -- BASED ON YOUR EXPERIENCE, YOU
5 OBVIOUSLY KNOW WHEN A PERSON IS ADDICTED TO A CERTAIN TYPE
6 OF SUBSTANCE. IS THAT CORRECT?

7 A THAT'S CORRECT.

8 Q OKAY. AND WHEN YOU KNOW THAT THAT PERSON IS ADDICTED TO
9 THAT PARTICULAR SUBSTANCE, YOU ALSO NOTE OTHER THINGS SUCH
10 AS, WHAT'S THE FIRST THING THEY DO WHEN THEY GET MONEY.

11 A HE ASKED ME FOR MONEY FOR FOOD. I GAVE HIM MONEY. WHAT HE
12 DOES WITH THAT MONEY AFTERWARDS IS NOT MY CONCERN. I DON'T
13 CARE.

14 Q YOU DON'T CARE.

15 A I DON'T CARE.

16 Q OKAY. YOU DON'T CARE, BUT YOU KNOW THAT PEOPLE WHO ARE
17 ADDICTED TO CRACK COCAINE, THE FIRST THING THEY ARE GOING TO
18 DO WHEN THEY GET MONEY IN THEIR HANDS IS GET CRACK COCAINE.
19 ISN'T THAT CORRECT?

20 A IF HE'S TELLING ME HE WANTS FOOD, I'VE GOT TO TAKE HIM AT HIS
21 WORD AND THINK HE'S GOING TO GET FOOD. I KNOW THAT CRACK
22 COCAINE PEOPLE BUY CRACK AND THEY SPEND A LOT OF MONEY ON
23 CRACK, SO I DON'T KNOW HOW TO ANSWER YOUR QUESTION OTHER
24 THAN THAT.

25 Q WELL, HOW IS IT THAT YOU GAINED HIS CONFIDENCE THE LAST DAY BY

1 SAYING, "I'M GOING TO TAKE YOU DOWN AND GET YOU A WHOLE
2 BUNCH OF CRACK COCAINE. A COOKIE OF CRACK."

3 A I JUST ANSWERED THAT ON THE THIRD MEETING. HE TOLD ME THAT HE
4 HAD SPENT \$20.00 OF THE \$100.00 ON CRACK COCAINE AND THAT'S
5 WHEN I KNEW HE WAS ACTUALLY USING CRACK COCAINE.

6 Q AND OFFICER BROMAGE WAS IN THE VEHICLE BEHIND YOU, WASN'T
7 HE?

8 A THERE WERE SEVERAL VEHICLES FOLLOWING ME.

9 Q SOMEWHERE IN THAT NEIGHBORHOOD. AND LET'S JUST JUMP TO THE
10 SECOND TIME, THE SECOND TIME THAT YOU PICK HIM UP. THIS IS THE
11 TIME THAT YOU ARE RIDING AROUND LOOKING FOR HIM BECAUSE HE'S
12 NOT WHERE HE'S SUPPOSED TO BE, ISN'T THAT CORRECT?

13 A I DON'T RECALL THAT. IT'S BEEN A FEW YEARS, I DON'T RECALL THAT.

14 Q YOU MEAN TO SAY YOU HAVEN'T REVIEWED YOUR NOTES?

15 A MY NOTES ARE RIGHT HERE. I DON'T HAVE ANY NOTES ON DRIVING
16 AROUND.

17 Q I'M SORRY?

18 A I SAID I HAD MY NOTES. I HAVE NO INDICATION OF DRIVING AROUND.
19 IT'S VERY POSSIBLE THAT'S WHAT I WAS DOING.

20 Q SO, YOU DON'T KNOW WHAT YOU SAID OR DID BACK DURING THE
21 COURSE OF THIS?

22 A THAT'S NOT WHAT I'M SAYING.

23 Q I'M SORRY?

24 A THAT'S NOT WHAT I'M SAYING. I'M SAYING THAT I DON'T KNOW IF, ON
25 THAT DAY, I DROVE AROUND AND LOOKED FOR HIM.

CROSS EXAMINATION OF BRUCE OTTERBACHER BY MR. HOOD:

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- 1 Q YOU CAN REMEMBER SPECIFIC THINGS, NOW. YOU WERE ON DUTY.
2 IS THAT CORRECT?
3 A YES, SIR.
4 Q YOU HAD A GUN AND A BADGE. ISN'T THAT CORRECT?
5 A YES, SIR.
6 Q YOU HAD A BACK-UP CAR OR A SURVEILLANCE VAN OR SOMETHING?
7 A SEVERAL.
8 Q IS THAT CORRECT?
9 A YES, SIR.
10 Q SO, YOU WERE ON DUTY THE WHOLE TIME THESE EVENTS TOOK
11 PLACE. IS THAT RIGHT?
12 A RIGHT. THERE WERE FOUR SEPARATE MEETINGS.
13 Q AND DO YOU RECALL HAVING RICHARD SIMMONS ON THE, LET'S JUST
14 SAY THE SECOND OCCASION, AFTER YOU GIVE HIM THE \$100.00, OKAY?
15 A OKAY. THAT'S THE THIRD OCCASION.
16 Q THIRD OCCASION?
17 A LET ME THINK, THE FIRST OCCASION WAS THE MEETING WHERE I
18 INTRODUCED MYSELF. THE SECOND OCCASION WAS WHEN I PICKED
19 HIM UP, I PAID HIM \$100.00 AND SO IT WAS THE SECOND OCCASION.
20 YOU'RE RIGHT.
21 Q SECOND OCCASION.
22 A YES, SIR.
23 Q WHERE HE WAS VIDEO TAPED.
24 A YES, SIR.
25 Q WE DON'T HAVE ANY VIDEO TAPE ON THE OTHER OCCASIONS.

- 1 A WE HAVE VIDEO TAPE ON EVERY OCCASION, AUDIO TAPE ON THE FIRST
2 OCCASION.
- 3 Q NOW, WAIT A MINUTE. YOU SAID YOU HAVE VIDEO TAPE ON ALL THE
4 OCCASIONS?
- 5 A YES, SIR.
- 6 Q BUT YET, YOU JUST SAID THAT, YOU MEAN THERE IS A FOURTH VIDEO?
- 7 A NO, SIR. I'M SAYING THERE ARE THREE VIDEO TAPES AND ONE AUDIO
8 TAPE WHERE HE DIDN'T GET INTO THE VEHICLE.
- 9 Q SO, WE DON'T HAVE ANOTHER VIDEO TAPE. ISN'T THAT CORRECT?
- 10 A THAT'S CORRECT.
- 11 Q OKAY. SO, YOU HAD -- OKAY, WELL, LET'S GO BACK, THEN, TO MY
12 ORIGINAL STATEMENT --
- 13 A OKAY.
- 14 Q THIS WE'RE TALKING ABOUT, LET'S JUST SAY, THE SECOND TAPE
15 AFTER YOU GIVE HIM THE HUNDRED BUCKS --
- 16 A OKAY.
- 17 Q -- SOMETIME BEFORE. ON THIS PARTICULAR OCCASION, YOU'RE
18 RIDING AROUND IN THE VAN LOOKING FOR RICHARD SIMMONS. IS THAT
19 CORRECT?
- 20 A I DON'T RECALL THAT, BUT I DID THAT EVERY TIME, SO I WOULD SAY I
21 DID LOOK FOR HIM AT SOME POINT.
- 22 Q OKAY. WELL, DO YOU RECALL MAKING A STATEMENT TO THE EFFECT
23 OF, HE'S NOT WHERE HE'S SUPPOSED TO BE, HE'S NOT HERE, I'LL CUT
24 AROUND THE BLOCK AGAIN. YOU REMEMBER ANY OF THAT?
- 25 A I BELIEVE THAT WAS SAID, YES.

CROSS EXAMINATION OF BRUCE OTTERBACHER BY MR. HOOD:

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- 1 Q OH, OKAY.
- 2 A I JUST DON'T RECALL THAT THAT WAS MY STATEMENT.
- 3 Q OH, OKAY. DO YOU REMEMBER SAYING, LOOKING THROUGH YOUR
- 4 REAR-VIEW MIRROR, "I SEE HIM, HE'S RUNNING DOWN THE STREET
- 5 CHASING THE VAN."
- 6 A YES, SIR.
- 7 Q OKAY. HE JUMPS IN THE VAN.
- 8 A YES, SIR.
- 9 Q AND HE'S TALKING ABOUT THOSE PEOPLE TRYING TO GET HIM IN THE
- 10 NA AND AA MEETINGS?
- 11 A AA MEETINGS.
- 12 Q AND ALL THAT STUFF. ISN'T THAT CORRECT?
- 13 A YES, SIR.
- 14 Q AND HE'S LAUGHING, HE'S HIGHLY INTOXICATED. ISN'T HE?
- 15 A NO, SIR.
- 16 Q HE'S NOT?
- 17 A NO, SIR. TO ME, INTOXICATED IS SOMEBODY WHO'S FALLING DOWN
- 18 DRUNK, NOT IN CONTROL OF THEIR FACULTIES, CAN'T CARRY A
- 19 CONVERSATION THAT IS CLEAR AND CONCISE AND HE DID ALL THOSE
- 20 THINGS. HE EVEN RAN UP TO THE VAN AS YOU JUST STATED.
- 21 Q PEOPLE ON CRACK COCAINE DON'T FALL DOWN. DO THEY?
- 22 A OH, YES.
- 23 Q OH, THEY DO?
- 24 A YES, SIR.
- 25 Q DO YOU -- ALL RIGHT, NEVER MIND. WHAT ABOUT -- NO, LET'S NOT GET

- 1 INTO THAT. OKAY, HE GET'S INTO THE VAN AND HE'S LAUGHING AND
2 TALKING ABOUT THE NA MEETINGS AND THINGS OF THIS NATURE AND
3 HE'S OBVIOUSLY NOT INTOXICATED TO YOU. IS THAT CORRECT?
- 4 A THAT'S CORRECT.
- 5 Q OKAY. SO, HE GETS IN THE VAN AND YOU'RE RIDING DOWN THE ROAD
6 AND ALMOST WITHIN, I'D SAY A MINUTE AFTER HE GETS INTO THE VAN,
7 THE FIRST THING YOU SAY IS, "I SURE COULD USE A BEER. WHAT
8 ABOUT YOU?"
- 9 A OKAY.
- 10 Q DID YOU MAKE THAT STATEMENT?
- 11 A YES, SIR.
- 12 Q OKAY. SO, RICHARD SIMMONS DIDN'T SAY, "HEY, MAN I NEED SOME
13 ALCOHOL, I NEED SOME CRACK," OR ANYTHING OF THAT NATURE.
14 YOU'RE THE ONE WHO BROUGHT THAT UP. ISN'T THAT CORRECT?
- 15 A I DID.
- 16 Q SO, YOU GO AND YOU BUY, LET'S JUST SAY AN EIGHTEEN-PACK OF
17 BEER.
- 18 A YES, SIR.
- 19 Q AND ALL THAT IS -- YOU CAN HEAR THAT ON THE AUDIO, BUT YOU CAN'T
20 SEE IT ON THE VIDEO BECAUSE YOU ARE OUT OF THE VAN AT FOOD
21 LION, I THINK IT IS. IS THAT CORRECT?
- 22 A YES, SIR.
- 23 Q AND YOU GO UP THERE AND YOU GET A COOLER, ICE, AND YOU GET
24 THE BEER AND BRING IT BACK TO THE VAN. RIGHT?
- 25 A YES, SIR.

CROSS EXAMINATION OF BRUCE OTTERBACHER BY MR. HOOD:

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- 1 Q AND THEN WE HEAR, "POP, POP." BOTH DOOR OPEN, RICHARD JUMPS
2 IN, HE'S DRINKING HIS, LAUGHING, SHOOTING THE BULL. YOU DRIVE
3 OFF. RIGHT?
- 4 A RIGHT.
- 5 Q OKAY. NOW, DURING THE COURSE OF THIS, YOU ALSO MAKE ANOTHER
6 STOP WHERE YOU'RE BUYING A SWEATSHIRT, A DARK SWEATSHIRT OR
7 SOMETHING OF THAT NATURE BECAUSE HIS CLOTHES ARE TOO LIGHT
8 AND YOU GUYS ARE GOING TO BE OUT, STICKING OUT OF PLACE AT
9 NIGHT. RIGHT?
- 10 A THE SWEATSHIRT AND SOME PANTS.
- 11 Q YEAH.
- 12 A RIGHT.
- 13 Q DARK CLOTHING.
- 14 A (NODS HEAD)
- 15 Q SO, DO ALL THAT, BACK IN THE VAN, DRIVE ALONG, AND YOU START
16 STOPPING AT A PLACE THAT, WHERE YOU'RE GOING TO LOOK OVER AT
17 SOME KIND OF A BUILDING. IS THAT CORRECT?
- 18 A IT'S A HOUSE.
- 19 Q IT'S NOT A HOME, THOUGH. IS IT?
- 20 A IT IS A HOME.
- 21 Q OH, IT IS A HOME.
- 22 A YES, SIR. IT IS.
- 23 Q WELL, I THOUGHT YOU WERE TALKING ABOUT BURGLARIZING A
24 GARAGE OR SOMETHING.
- 25 A IT WAS A GARAGE ON THE BOTTOM FLOOR OF THE HOME.

1 Q OH, OKAY. OKAY. AND AT, THAT POINT IN TIME, YOU START DOING A
2 LOT OF TALKING TO HIM. IS THAT CORRECT?

3 A I DID. WE BOTH TALKED.

4 Q YEAH. BUT, THE CONVERSATION THAT YOU ARE HAVING WITH HIM IS
5 ONE OF YOU PUTTING HIM IN CERTAIN TYPES OF POSITIONS AS FAR AS
6 WHERE HE IS, AS FAR AS BREAKING INTO A HOUSE, BREAKING INTO A
7 BUILDING. HOW WOULD YOU BREAK INTO THAT HOUSE. DO YOU
8 REMEMBER?

9 A WE WERE LOOKING AT A HOUSE TO BREAK INTO, AND YES, WE HAD
10 THAT CONVERSATION.

11 Q AND SO, BASICALLY, YOU'RE TAKING HIM ALONG STEP-BY-STEP AS TO,
12 HOW WOULD YOU BREAK INTO THIS HOUSE?

13 A NO, SIR. IT WAS WHAT WOULD YOU DO IF SOMEBODY CAUGHT YOU
14 INSIDE THE HOUSE.

15 Q NOW, WAIT A MINUTE. WE HAVEN'T GOTTEN THAT FAR YET.

16 A OKAY.

17 Q WE'LL GET TO THAT IN A MINUTE. YOU REMEMBER THAT, THOUGH,
18 RIGHT?

19 A I DO.

20 Q YOU REMEMBER THE FACT THAT ON EACH OCCASION, FIRST WE
21 STARTED OUT WITH BURGLARY OF A BUSINESS OR SOMETHING LIKE
22 THAT, HOW DID YOU GET CAUGHT OR SOMETHING LIKE THAT. DO YOU
23 REMEMBER THOSE WORDS?

24 A YES.

25 Q AND YOU DON'T REMEMBER ABOUT TAKING HIM FROM A BUSINESS TO A

1 RESIDENCE, BURGLARIZING A RESIDENCE?

2 A OH, YES, SIR. YES, THAT WAS WHERE WE JUST SAT TALKING.

3 Q OKAY. AND YOU'RE TALKING TO HIM ABOUT, "WELL WHAT IF THERE
4 WERE PEOPLE INSIDE?"

5 A YOU'RE TAKING THIS OUT OF CONTEXT. THE, "WHAT IF THERE ARE
6 PEOPLE INSIDE" CAME LATER THAN THE OTHER CONVERSATION.

7 Q BUT, YOU WERE HAVING SEVERAL DIFFERENT CONVERSATIONS WITH
8 HIM.

9 A YES, SIR.

10 Q BUT, YOU WERE FEEDING HIM LITTLE BITS OF INFORMATION, PUTTING
11 HIM IN A POSITION SO THAT EVENTUALLY, HE WOULD END UP IN A
12 HOME WITH A PERSON SLEEPING, WHO SUDDENLY WAKES UP AND
13 "BOOM", WHAT WOULD YOU DO. ISN'T THAT CORRECT?

14 A IF WE GOT CAUGHT IN A HOME BY SOMEBODY, WHAT WOULD WE DO.

15 Q OKAY. ALSO, YOU SAY, "YOU KNOW, I'VE GOT TO KNOW SOMETHING
16 ABOUT YOU, RICHARD, I'VE GOT TO KNOW THAT YOU'RE GOING TO BE
17 THERE TO BACK ME UP IF SOMETHING GOES WRONG." DID YOU MAKE
18 THAT STATEMENT?

19 A THAT IS CORRECT.

20 Q YEAH. "SO, NOW, I TOLD YOU ABOUT THIS GUY THAT I KILLED, NOW
21 HOW ABOUT TELL ME ABOUT THE GUY THAT YOU KILLED."

22 A THAT WASN'T THE WAY IT WAS PUT. YOU CAN REVIEW THE TAPE AND
23 LISTEN TO IT. IT'S ALL ON THERE.

24 Q I THOUGHT YOU DIDN'T KNOW WHAT WAS ON THE TAPE.

25 A THAT'S NOT WHAT I SAID. I SAID I DIDN'T RECALL THE PART ABOUT

1 DRIVING AROUND.

2 Q RIGHT. RIGHT. OKAY. ALL RIGHT. WELL, HOPEFULLY, WE WILL GET ALL
3 THAT TAKEN CARE OF. BUT, ANYWAY, SO YOU DO REMEMBER MAKING
4 A STATEMENT LIKE THAT TO HIM.

5 A I SAID I DIDN'T MAKE THAT KIND OF STATEMENT TO HIM.

6 Q YOU DIDN'T.

7 A NO, SIR.

8 Q DID YOU SAY SOMETHING TO THE EFFECT OF, "I DON'T WANT YOU
9 CUTTING BAIT AND RUNNING ON ME" OR SOMETHING LIKE THAT?

10 A "I WANT TO MAKE SURE YOU AREN'T GOING TO RUN IF SOMETHING
11 HAPPENS." THAT'S CORRECT.

12 Q SO, WHAT YOU'RE SAYING THEN IS, "NOW, WHAT HAPPENS IF THE
13 PEOPLE ARE IN THE HOUSE, WHAT DO YOU DO." DO YOU REMEMBER
14 THAT?

15 A NOT, PEOPLE IN THE HOUSE WHAT DO YOU DO. IF PEOPLE APPROACH
16 US OR CATCH US INSIDE THE HOUSE, WHAT ARE YOU GOING TO DO?

17 A YEAH. AND YOU SAY, "HE'S GOING TO TIE THEM UP."

18 A THAT'S WHAT HE SAYS. HE SAYS, "I'M GOING TO TIE THEM UP AND NOT
19 HARM THEM.

20 Q "WHAT DO YOU DO IF THERE ARE PEOPLE IN THE HOUSE?" "WELL, I'D
21 TIE THEM UP." "THEN WHAT WOULD YOU DO IF THE PEOPLE GOT
22 VIOLENT WITH YOU."

23 A THAT'S RIGHT.

24 Q "YOU'D HAVE TO HIT THEM."

25 A NO. I SAID I THINK HE SAID, "I'D HAVE TO ROUGH THEM UP." I THINK

CROSS EXAMINATION OF BRUCE OTTERBACHER BY MR. HOOD:

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1 THAT'S WHAT HE SAID.

2 Q OKAY. ALL RIGHT. SO, THEN —

3 A GIVE ME JUST ONE SECOND AND I'LL FIND IT IN MY NOTES. "WE'VE GOT
4 TO BUST THEIR ASS" IS WHAT HE SAID. I'M SORRY.

5 Q ALL RIGHT. AND THEN YOU TALK ABOUT PEOPLE WAKING UP AND
6 STARTLING YOU OR SOMETHING LIKE THAT. IS THAT CORRECT?

7 A NO, SIR.

8 Q YOU DON'T REMEMBER THAT?

9 A NO, SIR. IT'S NOT IN THERE.

10 Q OKAY. DURING ALL YOUR CONVERSATIONS WITH RICHARD SIMMONS —

11 A YES, SIR.

12 Q — YOU WERE TRYING TO BRING HIM TO THIS PARTICULAR INCIDENT
13 THAT OCCURRED TEN YEARS PRIOR TO THAT.

14 A AS I MENTIONED IN THE BEGINNING OF THIS, MY GOAL WAS TO SEE IF
15 HE HAD ANY PART IN THE MURDER. YES.

16 Q AND SO, THEREFORE, YOU KNEW THAT RICHARD SIMMONS HAD BEEN
17 QUESTIONED TEN YEARS AGO BY OFFICERS ABOUT THIS MURDER OF
18 GODLEY.

19 A NO, SIR. I DIDN'T KNOW THAT.

20 Q YOU DIDN'T KNOW THAT?

21 A NO, SIR.

22 Q OKAY. YOU DIDN'T KNOW HE WAS A CRACK HEAD AND YOU DIDN'T
23 KNOW THAT HE HAD BEEN QUESTIONED ABOUT THE MURDER OF TEN
24 YEARS PRIOR.

25 A THAT'S CORRECT.

1 Q SO, YOU DIDN'T KNOW WHAT INFORMATION THAT HE HAD THAT YOU
2 NEEDED TO GET?

3 A THAT'S EXACTLY RIGHT. I KNEW THAT THERE WAS A HAMMER
4 INVOLVED AND A GENTLEMAN WAS MURDERED AND I KNEW THE NAME
5 OF THE MAN THAT WAS MURDERED.

6 Q SO, YOU DIDN'T KNOW THAT THE GUY JUST WOKE UP AND STARTLED
7 YOU OR SOMETHING LIKE THAT. DID YOU?

8 A NO, SIR.

9 Q YOU DIDN'T KNOW ANYTHING ABOUT ALL THAT?

10 A NO, SIR.

11 Q SO, WHEN YOU MADE THOSE STATEMENTS, YOU DIDN'T KNOW YOU
12 WERE GIVING HIM THAT INFORMATION OR SOMETHING?

13 A I BELIEVE I DID TESTIFIED THAT I DIDN'T MAKE THAT STATEMENT, THAT
14 SOMEBODY WOKE UP AND GOT STARTLED.

15 Q OKAY. ALL RIGHT. DO YOU KNOW WHAT AIDING AND ABETTING IS?

16 A YES, SIR.

17 Q IF I GO DOWN TO YOU, WHO I KNOW IS ADDICTED TO CRACK COCAINE
18 AND I AM A LAW ENFORCEMENT OFFICER ON DUTY AND KNOW ALL OF
19 THIS STUFF AND KNOW ALL ABOUT THIS STUFF ABOUT DRUGS AND
20 THIS, THAT, AND THE OTHER, AND I KNOW, OR SHOULD KNOW, THAT
21 THE FIRST THING THIS PERSON WHO IS BEGGING ON THE STREETS IS
22 GOING TO DO WITH THAT MONEY IS TO PURCHASE CRACK COCAINE,
23 AND I GIVE THEM MONEY RATHER THAN FOOD OR CLOTHING AND THEY
24 GO OUT AND PURCHASE CRACK COCAINE, AM I NOT AIDING AND
25 ABETTING IN THE POSSESSION AND DISTRIBUTION OF CRACK

CROSS EXAMINATION OF BRUCE OTTERBACHER BY MR. HOOD:

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1 COCAINE?

2 MR. THORNTON: OBJECTION, YOUR HONOR. RELEVANCE AND HE'S
3 CALLING FOR A LEGAL CONCLUSION.

4 THE COURT: WHAT'S THE RELEVANCE?

5 MR. HOOD: WELL, HE KNOWS WHAT AIDING AND ABETTING IS.

6 THE COURT: THAT'S TRUE. BUT, WHAT'S THE RELEVANCE OF IT?

7 MR. HOOD: THE RELEVANCE IS THAT HE HAS SAID THAT HE DOES NOT
8 KNOW WHAT THIS PERSON WAS GOING TO DO WITH THE MONEY, THAT HE
9 THOUGHT IT WAS FOOD THAT HE WANTED AND SO HE GAVE HIM THE MONEY
10 FOR FOOD. I AM JUST TRYING TO —

11 THE COURT: YOU CAN PROCEED THE LINE OF QUESTIONING, JUST
12 AVOID THE CONCLUSIONS, THE CONCLUSIONS OR LEGAL STATEMENTS.

13 Q SO, DO YOU THINK THAT I WOULD BE AN AGENT, PERHAPS, NOT DOING
14 THINGS THAT ARE PERFECTLY LEGAL.

15 MR. THORNTON: OBJECTION, YOUR HONOR, THAT STILL CALLS FOR A
16 LEGAL CONCLUSION.

17 THE COURT: IT'S CROSS EXAMINATION. GO AHEAD.

18 MR. THORNTON: YES, SIR.

19 A ASK IT AGAIN, PLEASE SIR.

20 Q NO, IT'S TOO DIFFICULT TO ASK A QUESTION OVER AGAIN. NOW, HOW
21 LONG HAVE YOU BEEN AN AGENT?

22 A ALMOST THIRTY YEARS.

23 Q ALMOST THIRTY YEARS. AND YOU'VE BEEN TO NUMEROUS DRUG
24 CLASSES, COURSES, YOU'VE BEEN TO ALL KINDS OF TRAINING IN THE
25 EFFECTS OF DRUGS —

1 A I HAVE.

2 Q — THE PERSONALITIES THAT PEOPLE HAVE, THE WAY THEY ACT, WHAT
3 THEY DO AND THINGS OF THAT NATURE. YOU UNDERSTAND ALL THAT?

4 A YES, SIR.

5 Q RIGHT. OKAY. OKAY. AND SO, TO GAIN THE TRUST AND CONFIDENCE
6 OF A PERSON ADDICTED TO A DRUG, HOW DO YOU DO THAT?

7 A YOU BUILD UP A RAPPORT WITH THEM, A TRUST, BY CONVERSATION BY
8 ANY MEANS YOU CAN FOR THIS UNDERCOVER.

9 Q BY ANY MEANS YOU CAN.

10 A YES, SIR.

11 Q SO, THAT MEANS THAT YOU PROVIDE THEM WITH THE OBJECT TO
12 SATISFY THEIR ADDICTIVE NEED. IS THAT CORRECT?

13 A NO, SIR. YOU'RE JUST TURNING WHAT I'M SAYING AROUND.

14 Q I HOPE NOT. DO YOU REMEMBER WHAT A CRACK HEAD IS?

15 A I REMEMBER YOU STATING THAT HE WAS A CRACK HEAD.

16 Q DID YOU EVER FIGURE OUT WHAT A CRACK HEAD IS?

17 A A PERSON THAT USES CRACK.

18 Q SO, YOU DON'T KNOW THAT.

19 A I DO KNOW THAT.

20 Q I THOUGHT YOU DIDN'T.

21 A NO. I JUST DON'T USE THE TERM.

22 Q OKAY. NOW, RICHARD SIMMONS WAS SLEEPING WHERE, ON THE
23 STREETS IN COLUMBIA?

24 A A WALL, SOME LITTLE BUSHES BY IT, RIGHT BY THE FOOD LION.

25 Q AND THAT WAS IN FIVE POINTS.

CROSS EXAMINATION OF BRUCE OTTERBACHER BY MR. HOOD:

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1 A YES, SIR.

2 Q WHAT ABOUT THIS HARDEES OR MACDONALDS?

3 A RIGHT NEXT DOOR TO THE FOOD LION.

4 Q AND WAS HE SLEEPING WITH OTHER PEOPLE THERE?

5 A I NEVER SAW HIM WITH ANYBODY, OTHER THAN BY HIMSELF.

6 Q WHAT WAS HE SLEEPING UNDER?

7 A I NEVER WATCHED HIM SLEEP. I JUST SAW WHERE HE STAYED. HE

8 WAS THERE IN THE DAYTIME. HE WAS OUT THERE BY THE BUSH. HE

9 WOULD LEAVE THERE, WALK AROUND AND SLEEP.

10 Q HE WASN'T UNDER SOME CARDBOARD OR SOMETHING LIKE THAT?

11 A NOT THAT I EVER SAW. ALL I SAW OUT THERE WERE SHOES AND

12 BOOKS, A COUPLE OF OTHER THINGS BY THE BUSHES. BUT, I NEVER

13 SAW CARDBOARD. IT MAY HAVE BEEN BACK BEHIND WHEN HE WAS

14 THERE.

15 Q DO YOU REMEMBER TALKING TO HIM ABOUT, YOU WERE GOING TO

16 TAKE CARE OF HIM SO THAT HE COULD GET HIM A PLACE OVER HIS

17 HEAD TO LIVE, AND THINGS OF THAT NATURE?

18 A YES, SIR. DURING THE UNDERCOVER ROLE, I DID.

19 Q AND YOU ONLY HAD ONE CONTACT WITH HIM PRIOR TO THE NEXT

20 CONTACT WHERE YOU PAY HIM THE \$100.00. IS THAT CORRECT?

21 A THAT'S CORRECT.

22 Q AND YOU NEVER HAD ANY PART IN GOING OUT AND LOOKING FOR HIM

23 AND WATCHING HIS COMINGS AND GOINGS AND HIS HABITS. IS THAT

24 CORRECT?

25 A YES, SIR. WE WENT OUT ONE TIME PRIOR TO THAT. BOB BROMAGE

1 AND I, WHEN HE CAME DOWN, WE LOCATED HIM THAT DAY, WE SET UP
2 A MEETING FOR THAT SUNDAY, WE WENT OVER AND MET WITH HIM. I
3 TOLD YOU THAT I WORKED DOWN IN THE FIVE POINTS AREA AND I HAD
4 SEEN HIM IN THE PAST, SO I KNEW WHO HE WAS TALKING ABOUT.

5 Q SO, YOU HAD SEEN HIM IN THE PAST.

6 A YES, SIR.

7 Q YOU WORKED IN THE FIVE POINTS AREA BEFORE?

8 A YES, SIR.

9 Q IN DRUGS?

10 A NO. IT WASN'T DRUGS. IT WAS A MISSING PERSONS.

11 Q SO, WAS OFFICER BROMAGE WITH YOU ON THE FIRST CONTACT THAT
12 YOU HAD WITH —

13 A NO.

14 Q HE WASN'T IN THE VAN?

15 A NO.

16 Q SO, THEN WE'RE TALKING ABOUT AN ENTIRELY DIFFERENT TIME.

17 A YES, SIR.

18 Q OKAY. NOW, I ONLY ASKED THIS ONCE. WHEN YOU OFFERED RICHARD
19 SIMMONS MORE INTOXICANTS, YOU DIDN'T DO THAT WITH THE
20 INTENTION OF KEEPING HIM LUBRICATED, HIGH. IS THAT CORRECT?

21 A THAT'S CORRECT.

22 Q OKAY. THANK YOU. AND THERE ARE THREE TAPES AND THERE ARE
23 APPROXIMATELY FOUR HOURS WORTH OF TAPES?

24 A YES, SIR.

25 Q THANK YOU.

RE-DIRECT EXAMINATION OF BRUCE OTTERBACHER BY MR. THORNTON: 395

1 MR. THORNTON: BRIEF RE-DIRECT, YOUR HONOR.

2 THE COURT: ALL RIGHT.

3 RE-DIRECT EXAMINATION OF BRUCE OTTERBACHER BY MR. THORNTON:

4 Q LIEUTENANT, EARLIER MR. HOOD ASKED YOU ABOUT, THAT THERE
5 WERE -- JUST TO GET THESE TAPES RIGHT, ESPECIALLY SINCE HE JUST
6 WRAPPED THIS UP -- THERE ARE HOW MANY VIDEO TAPES?

7 A THREE VIDEOTAPES.

8 Q ARE THESE THE THREE VIDEO TAPES YOU ARE TALKING ABOUT? THAT
9 ARE ALREADY IN EVIDENCE?

10 A YES, SIR.

11 Q AND YOU ALSO TALKED ABOUT SOME AUDIO TAPES OF THE FIRST
12 MEETING.

13 A ON THE FIRST MEETING, THERE WAS AN AUDIO TAPE.

14 Q I'M GOING TO HAND YOU WHAT HAS BEEN MARKED FOR IDENTIFICATION
15 AS STATE'S EXHIBIT #30. CAN YOU IDENTIFY THAT FOR ME?

16 A YES, SIR. THAT IS THE TAPE.

17 Q ALL RIGHT. WHEN YOU SAY, THAT IS THE TAPE, IS THAT AN AUDIO TAPE
18 OR VIDEO TAPE?

19 A IT IS AN AUDIO TAPE COPY OF A CD OFF THE DIGITAL RECORDER. IT
20 CAME OUT OF A CD.

21 Q THAT'S OUT OF WHAT MEETING?

22 A THE INITIAL MEETING ON THE, SUNDAY THE 12th.

23 Q DID RICHARD SIMMONS GET IN THE CAR WITH YOU ON THAT MEETING?

24 A I DON'T BELIEVE SO, I BELIEVE WE SPOKE THROUGH THE WINDOW.

25 Q WAS THAT'S THE INITIAL MEETING YOU TALKED ABOUT?

1 A YES, SIR.

2 Q AND HAVE YOU REVIEWED THAT AT MY REQUEST?

3 A YES, SIR. I HAVE.

4 Q IS IT AN ACCURATE COPY OR AN ACCURATE REPRESENTATION OF
5 YOUR CONVERSATION WITH RICHARD SIMMONS?

6 A IT IS.

7 MR. THORNTON: JUDGE, I WOULD HAVE THIS MOVED INTO EVIDENCE,
8 PLEASE.

9 MR. HOOD: NO OBJECTION.

10 THE COURT: IT IS SO MOVED.

11 (WHEREUPON, AN AUDIO TAPE OF A MEETING BETWEEN OFFICER
12 OTTERBACHER AND RICHARD SIMMONS IS MOVED INTO EVIDENCE AS
13 STATE'S EXHIBIT #30.)

14 Q LIEUTENANT, THERE WERE SEVERAL TIMES THAT MR. HOOD ASKED
15 YOU QUESTIONS AND THERE WAS SOME CONFUSION AS TO, MAYBE
16 WHAT EXACTLY WAS SAID AND EXACTLY WHAT WAS NOT SAID.

17 A YES, SIR.

18 Q IS THAT WHY YOU TAPED THE MEETINGS?

19 A YES, SIR.

20 Q IF YOU SAID ANYTHING, WILL IT BE ON THOSE TAPES?

21 A IT WILL BE.

22 Q AND IF IT ISN'T ON THOSE TAPES, THEN YOU DIDN'T SAY IT.

23 A THAT'S CORRECT.

24 Q SIR, I DON'T HAVE ANYTHING FURTHER. THANK YOU VERY MUCH,
25 LIEUTENANT.

RE-CROSS EXAMINATION OF BRUCE OTTERBACHER BY MR. HOOD:

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1 **MR. HOOD: ONE QUESTION.**

2 **RE-CROSS EXAMINATION OF BRUCE OTTERBACHER BY MR. HOOD:**

3 Q SO, DO YOU HAVE TAPES OF ALL YOUR DISCUSSIONS OF THIS CASE
4 WITH OFFICER BROMAGE?

5 A NO, SIR. WE DON'T RECORD THOSE.

6 Q YOU DON'T RECORD THOSE?

7 A NEVER.

8 Q OKAY. AND YOU DON'T HAVE ANY TAPE RECORDINGS OF ANY OTHER
9 CITINGS OF RICHARD SIMMONS OR THINGS OF THAT NATURE. IS THAT
10 CORRECT?

11 A NO, SIR.

12 Q OKAY.

13 **THE COURT: ALL RIGHT. YOU CAN PLAY YOUR TAPE.**

14 **MR. THORNTON: YES, YOUR HONOR AND IT MAY TAKE JUST A MINUTE**
15 **TO BRING IT AROUND AND PLUG IT IN, JUDGE.**

16 **THE COURT: OKAY.**

17 **MR. THORNTON: I'M GOING TO PUBLISH, WITH THE COURT'S**
18 **PERMISSION, THE TAPE OF 9-22-04, WHICH IS A SECOND MEETING. OF**
19 **COURSE, ALL THE TAPES ARE IN EVIDENCE AND MR. HOOD IS FREE, IF HE**
20 **WISHES, TO PLAY THE REST OF THEM, BUT I'D LIKE TO START WITH THE**
21 **SECOND MEETING, SIR.**

22 **THE COURT: THAT'S FINE.**

23 **(VIDEOTAPE OF CONVERSATION BETWEEN LIEUTENANT BRUCE**
24 **OTTERBACHER AND RICHARD SIMMONS IS PLAYED FOR THE JURY ON A**
25 **LARGE SCREEN TELEVISION)**

1 **THE COURT:** SO LET'S TAKE ABOUT A 15 MINUTE BREAK AND IF YOU
2 NEED TO TAKE A SMOKE BREAK DOWNSTAIRS AND WANT TO STRETCH YOUR
3 LEGS YOU CAN DO THAT. DON'T FORGET, NO DELIBERATIONS OR
4 DISCUSSIONS ABOUT THE CASE. OKAY. SEE YOU BACK IN 15 MINUTES.

5 **THE COURT:** ALL RIGHT. ARE YOU GOING TO ASK ANYTHING FURTHER
6 OF THIS WITNESS?

7 **MR. THORNTON:** NO SIR. AS A MATTER OF FACT, WHEN THE JURY
8 COMES BACK IN, JUDGE, I AM GOING TO ASK THAT HE BE EXCUSED AND I AM
9 NOT PLANNING ON INTRODUCING ANY OF THE TAPES OR ANY EVIDENCE. IF
10 THE JURY WANTS TO SEE THEM, I WILL MAKE SURE THE EQUIPMENT IS
11 AVAILABLE TO THE BAILIFF, SIR. AFTER THAT, AFTER HE STEPS DOWN, YOUR
12 HONOR, THE STATE WOULD REST.

13 **THE COURT:** ALL RIGHT. MR. HOOD? ARE YOU GOING TO PUT UP ANY
14 DEFENSE?

15 **MR. HOOD:** NO, YOUR HONOR.

16 **THE COURT:** OKAY. WELL, I'M GOING TO GO AHEAD AND TALK TO MR.
17 SIMMONS FOR A MINUTE WHILE THE JURY IS OUT. MR. SIMMONS WE HAVE
18 COME TO THAT POINT IN THE TRIAL WHEN THE STATE HAS PRESENTED ALL
19 OF THE EVIDENCE THAT THEY ARE GOING TO PRESENT. AND SO, AS I
20 EXPLAINED TO THE JURY AT THE FIRST OF THE TRIAL, THE BURDEN OF
21 PROOF IS ON THE STATE TO PROVE THAT YOU ARE GUILTY OF THESE TWO
22 CRIMES BEYOND A REASONABLE DOUBT. YOU DON'T HAVE TO PROVE
23 ANYTHING. THAT IS, YOU DON'T HAVE TO PUT UP A DEFENSE. YOU DON'T
24 HAVE TO TESTIFY. BUT, SINCE THEY ARE RESTING AND NOT PUTTING UP ANY
25 FURTHER EVIDENCE YOU HAVE TO MAKE A DECISION AS TO WHETHER OR

1 NOT YOU ARE GOING TO PUT UP ANY DEFENSE. YOU MAY CALL ANY
2 WITNESSES AND PRODUCE ANY EXHIBITS OR ANYTHING LIKE THAT OR IF YOU
3 WANT TO TESTIFY AND TELL YOUR SIDE OF THE STORY TO THE JURY. YOU
4 ARE UNDER ABSOLUTELY NO COMPULSION TO TESTIFY. IT IS A DECISION
5 THAT YOU HAVE TO MAKE AND YOU ALONE HAVE TO MAKE. YOU CAN
6 CONSULT WITH YOUR LAWYER, YOU CAN CONSULT WITH FAMILY MEMBERS,
7 BUT, ULTIMATELY, IT IS YOUR DECISION AS TO WHETHER OR NOT YOU WISH
8 TO TESTIFY ON YOUR BEHALF. IT IS A CONSTITUTIONAL RIGHT THAT YOU
9 HAVE AND NO ONE CAN MAKE IT FOR YOU. IT IS ONLY YOU AND YOU ALONE
10 THAT CAN MAKE IT. IF YOU WANT TO TESTIFY, YOU CAN TESTIFY. IF YOU
11 DON'T WANT TO TESTIFY, THEN WE WILL GO AND HAVE THE DELIBERATIONS.
12 I WILL INSTRUCT THE JURY THAT THEY ARE NOT TO CONSIDER THE FACT
13 THAT YOU DID NOT PUT UP A DEFENSE OR THAT YOU DID NOT TESTIFY. THEY
14 ARE NOT TO HOLD THAT AGAINST YOU IN ANY WAY OR CONSIDER IT IN ANY
15 WAY OR EVEN MENTION IT AT ALL DURING THEIR DELIBERATIONS. DO YOU
16 UNDERSTAND THAT?

17 **MR. SIMMONS:** YES, SIR.

18 **THE COURT:** ALL RIGHT. UNDERSTANDING THAT, HAVE YOU MADE A
19 DECISION AS TO WHETHER OR NOT YOU WISH TO TESTIFY?

20 **MR. SIMMONS:** YES, SIR.

21 **THE COURT:** AND WHAT IS YOUR DECISION?

22 **MR. SIMMONS:** I CHOOSE NOT TO TESTIFY.

23 **THE COURT:** OKAY. ALL RIGHT. WELL, I ACCEPT THAT AND SO, MR.
24 HOOD, I UNDERSTAND THAT YOU ARE NOT GOING TO PUT UP ANY
25 WITNESSES. IS THAT CORRECT?

1 **MR. HOOD:** THAT IS CORRECT, YOUR HONOR.

2 **THE COURT:** OKAY. WELL WHAT THE PLAN IS THEN, MY PLAN IS THAT
3 WE WILL CALL THE JURY BACK IN AND LET THEM KNOW WE HAVE HEARD ALL
4 THE EVIDENCE IN THIS CASE. WE WILL THEN DISMISS THEM FOR THE
5 AFTERNOON AND THEY WILL HAVE TO COME BACK TOMORROW MORNING AT
6 9:30 AM FOR CLOSING ARGUMENTS AND FOR THE CHARGE ON THE LAW. AND
7 WE WILL JUST HAVE A LITTLE BRIEF CHARGE CONVERSATION HERE THIS
8 AFTERNOON BEFORE WE LEAVE. YES SIR, MR. HOOD?

9 **MR. HOOD:** DOES THAT MEAN WE ARE NOT GOING TO BE ABLE TO
10 QUESTION HIM ANY FURTHER AS TO THE TAPES?

11 **THE COURT:** UNLESS YOU WANTED TO.

12 **MR. HOOD:** WELL, I JUST HAVE ONE QUESTION.

13 **THE COURT:** WELL, I WILL ALLOW YOU TO DO THAT.

14 **MR. HOOD:** OKAY.

15 **THE COURT:** BUT JUST SINCE WE WILL BE A LITTLE BIT OUT OF ORDER
16 THEN, SINCE THAT WILL STILL BE PART OF THEIR PRESENTATION OF THE
17 CASE, IF YOU WANT TO CROSS-EXAMINE, THEN ONCE YOU FINISH YOUR
18 CROSS-EXAMINATION IF YOU WOULD JUST STAND UP AND SAY YOU HAVE
19 RESTED AND THEN YOU REST AND I WILL TELL THE JURY WHAT OUR PLAN IS.
20 OKAY? SO YOU WISH TO ASK SOME MORE QUESTIONS?

21 **MR. HOOD:** JUST ONE.

22 **THE COURT:** OKAY. BRING THE JURY BACK IN.

23 (JURY IN AT 3:16 PM)

24 **THE BAILIFF:** ALL JURORS PRESENT, YOUR HONOR.

25 **THE COURT:** ALL RIGHT. DO YOU HAVE ANY OTHER QUESTIONS, MR.

CROSS EXAMINATION OF BRUCE OTTERBACHER BY MR. HOOD:

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1 THORNTON?

2 MR. THORNTON: I HAVE NO FURTHER QUESTIONS, YOUR HONOR.

3 MR. HOOD: I HAVE ONE, YOUR HONOR.

4 CROSS EXAMINATION OF BRUCE OTTERBACHER BY MR. HOOD:

5 Q AGENT, IF YOU DIDN'T DISCUSS THE CASE OR THE FACTS OF THE CASE
6 THAT YOU WERE INVESTIGATING HERE FOR BEAUFORT COUNTY, WHY
7 DID YOU MAKE THE STATEMENT TO RICHARD SIMMONS ABOUT GIVING A
8 COLORED PISTOL TO SHOOT OUT THE LIGHTS AT THE HOUSE?

9 A I JUST KNOW THAT IS WHAT WE DO ON SWAT CALLS AND SINCE IT IS
10 COMMON KNOWLEDGE FOR US TO USE THAT.

11 Q OKAY. NO FURTHER QUESTIONS.

12 THE COURT: ANYTHING FURTHER?

13 MR. THORNTON: YOUR HONOR, I DON'T HAVE ANY FURTHER
14 QUESTIONS. I WOULD ASK THAT LIEUTENANT OTTERBACHER BE EXCUSED,
15 SIR.

16 THE COURT: ALL RIGHT. THANK YOU VERY MUCH. YOU ARE EXCUSED.

17 THE COURT: ALL RIGHT. ANYTHING FURTHER FROM THE STATE?

18 MR. THORNTON: YOUR HONOR, AT THIS TIME, THE STATE WOULD REST.

19 THE COURT: ALL RIGHT. ANYTHING FROM THE DEFENSE?

20 MR. HOOD: YOUR HONOR, WE HAD SOME MOTIONS WE HAVE TO MAKE.

21 THE COURT: OKAY. WE WILL TAKE THOSE UP IN A MINUTE. IF IT IS ALL
22 RIGHT, WE WILL RESERVE THOSE.

23 MR. HOOD: IT IS ALL RIGHT, WE WILL RESERVE THOSE AND THE
24 DEFENSE RESTS.

25 THE COURT: OKAY. ALL RIGHT, LADIES AND GENTLEMEN OF THE JURY,

1 YOU HAVE HEARD ALL OF THE EVIDENCE THAT YOU ARE GOING TO HEAR IN
2 THIS CASE AND WHAT WE ARE GOING TO DO, RATHER THAN GIVE THIS CASE
3 TO YOU LATE THIS AFTERNOON TO BEGIN DELIBERATIONS, WE WILL START
4 FRESH IN THE MORNING. I AM GOING TO EXCUSE YOU FOR THE REST OF
5 TODAY AND YOU WILL BEGIN DELIBERATIONS TOMORROW. WE WILL HAVE
6 THE CHARGES AND THE ARGUMENTS TOMORROW MORNING. SO, I AM GOING
7 TO EXCUSE YOU FOR THE REMAINDER OF TODAY AND THEN YOU REPORT
8 BACK TOMORROW MORNING AT 9:30 AM. NOW LET ME GO OVER SOMETHING
9 VERY CAREFULLY. YOU HAVE HEARD ALL THE EVIDENCE IN THIS CASE. THAT
10 DOES NOT MEAN THIS IS THE TIME FOR YOU TO BEGIN YOUR DELIBERATIONS
11 WITH EACH OTHER OR WITH ANYONE ELSE. SO WHEN YOU GO HOME THIS
12 EVENING DO NOT TALK TO ANYBODY ABOUT THE CASE. DO NOT TALK TO
13 EACH OTHER ABOUT THE CASE. I DON'T EVEN WANT YOU TO THINK ABOUT
14 THE CASE. I KNOW YOU CAN'T CONTROL YOUR THOUGHTS, BUT IT IS
15 ABSOLUTELY TOO PREMATURE FOR YOU TO EVEN BEGIN TO CONTEMPLATE
16 WHAT YOU WANT TO DO IN THE TERMS OF A VERDICT IN THIS CASE BECAUSE
17 YOU HAVEN'T HEARD THE ARGUMENTS OR, MORE IMPORTANTLY, YOU
18 HAVEN'T HEARD ME TELL YOU WHAT LAW YOU HAVE TO APPLY TO THE FACTS
19 THAT YOU HEARD. AND SO IT REALLY IS PREMATURE FOR YOU TO BEGIN
20 THINKING ABOUT THE CASE IN TERMS OF WHAT YOU WANT TO HEAR FOR A
21 VERDICT, SO THAT IS VERY, VERY IMPORTANT. AND SO WHEN YOU GO HOME
22 THIS EVENING, GO ABOUT WHATEVER YOUR NORMAL ACTIVITIES ARE. DON'T
23 WATCH ANY OF THE NEWS REPORTS THAT MIGHT BE ON THE TELEVISION OR
24 GO OUT ON THE INTERNET TO TRY TO FIND OUT ANYTHING ABOUT THE CASE.
25 SOMETIMES WE EVEN HAVE FOLKS WHO LIKE TO GO OUT, ONCE THEY HAVE

1 HEARD THESE DIFFERENT THINGS, AND PLAY INVESTIGATOR, GO VISIT THE
2 CRIME SCENE, THAT SORT OF THING. IF WE NEEDED YOU TO DO THAT, WE
3 WOULD TAKE YOU THERE. THERE IS ABSOLUTELY NOTHING MORE THAT WE
4 WANT YOU TO DO ON THIS CASE EXCEPT SHOW UP TOMORROW MORNING
5 AND BE READY TO LISTEN TO THE LAWYERS WHILE YOU ARE FRESH AND ME
6 TELL YOU WHAT THE LAW IS. WE WILL GET THE CASE TO YOU AND YOU CAN
7 BEGIN YOUR DELIBERATIONS AT THAT TIME TOMORROW MORNING. AGAIN,
8 DO NOT READ ANY NEWSPAPER ARTICLES, AVOID THE NEWSPAPER PERIOD,
9 SO THAT YOU DON'T HAVE ANY TEMPTATION TO EVEN READ THE HEADLINES
10 OR ANYTHING LIKE THAT. SO, I AM GOING TO SEND YOU BACK WITH THE
11 BAILIFF NOW. REPORT BACK TO THE JURY ROOM AT 9:30 AM TOMORROW
12 MORNING AND WE WILL SEE YOU THEN. ALL RIGHT. THANK YOU.

13 (JURY OUT AT 3:21 PM)

14 THE COURT: ALL RIGHT. MR. HOOD, GO AHEAD.

15 MR. HOOD: YOUR HONOR, FIRST OFF I WOULD LIKE TO RENEW MY
16 MOTIONS FOR A MISTRIAL THAT HAVE BEEN MADE DURING THE COURSE OF
17 THIS TRIAL. IF I RECALL CORRECTLY, THERE WERE AT LEAST THREE. BUT
18 ANYWAY, WE WANT TO SAY TWO AT LEAST. I JUST RENEW THOSE MOTIONS
19 DIRECTED YOUR HONOR TO THE SAME ARGUMENTS I HAD PREVIOUSLY. AND
20 AT THE TIME, THEY WERE DENIED.

21 THE COURT: ALL RIGHT. AND FOR THE SAME REASONS THEY ARE
22 STILL DENIED.

23 MR. HOOD: I WOULD ALSO LIKE TO RENEW MY MOTION WITH RESPECT
24 TO MY OBJECTIONS TO THE CASE THAT WE PLAYED HERE, THE THREE TAPES
25 THAT ARE IN EVIDENCE, THAT WERE PRESENTED HERE WITH THE LAST

1 WITNESS ALSO.

2 THE COURT: ALL RIGHT. I AM NOT SURE IT IS NECESSARY FOR YOU TO
3 RENEW THOSE MOTIONS, BUT THEY ARE AGAIN DENIED.

4 MR. HOOD: OUT OF AN ABUNDANCE OF CAUTION.

5 THE COURT: I HEAR YOU.

6 MR. HOOD: YOUR HONOR, I WOULD ALSO AT THIS TIME MAKE A MOTION
7 AND ASK FOR A DIRECTIVE VERDICT AS TO THE CHARGE OF MURDER AND
8 THE CHARGE OF BURGLARY IN THE FIRST. WE BELIEVE THAT, TAKING THE
9 EVIDENCE IN THE LIGHT MOST FAVORABLE TO THE STATE, THE STATE HAS
10 NOT MET IT'S BURDEN AND THE DIRECTIVE VERDICT SHOULD BE GRANTED.
11 WE DON'T EVEN KNOW WHAT TIME OF DAY, NIGHT, OR WHATEVER THE CASE
12 MAY BE, BUT ANYWAY, THAT IS THE MOTION FOR DIRECTED VERDICT.

13 THE COURT: ALL RIGHT. DOES THE STATE WANT TO ARGUE ON THE
14 LAST ONE?

15 MR. THORNTON: BRIEFLY, JUDGE. THE STATE FEELS WE HAVE
16 PRESENTED ENOUGH EVIDENCE THAT THIS CASE CAN GO TO THE JURY TO
17 BOTH COUNTS. I UNDERSTAND MR. HOOD'S POINT, BUT I THINK WHAT HE
18 WAS ABOUT TO TALK ABOUT WAS ABOUT THE BURGLARY, THAT WE DON'T
19 KNOW WHETHER IT OCCURRED DAY OR NIGHT. I DON'T THINK THAT IS
20 REQUIRED WHEN YOU ARE ARMED WITH A DEADLY WEAPON. THERE IS
21 TESTIMONY BOTH FROM THE -- WELL TESTIMONY IN THE FORM OF
22 STATEMENTS MADE BY THE DEFENDANT THAT HE USED A HAMMER WHILE HE
23 WAS IN THE HOME OF THE VICTIM. THERE ARE OTHER STATEMENTS HE
24 MADE TO OTHER PEOPLE, STATEMENTS, THAT WE FEEL, THERE IS ENOUGH
25 ON EACH ELEMENT THAT IT SHOULD AT LEAST GO TO THE JURY AND LET

1 THEM MAKE THAT DECISION. IF I NEED TO ARGUE FURTHER I CAN, YOUR
2 HONOR.

3 THE COURT: YOUR MOTIONS ARE DENIED. THERE IS SUFFICIENT
4 DIRECT EVIDENCE.

5 MR. HOOD: YOUR HONOR, WHEN I SAY I MAKE THOSE MOTIONS, I MEAN
6 TO MAKE THE MOTIONS ACTUALLY TWICE. I HAVE TO MAKE THEM AT THE
7 END OF THE STATE'S CASE AND NOW ALSO AFTER MY DIRECTIVE, SO I
8 RENEW THE SAME MOTIONS AGAIN FOR THE SECOND TIME IN MY CASE WITH
9 THE SAME ARGUMENTS AND I ASSUME WITH THE SAME RESULTS.

10 THE COURT: ALL RIGHT. DENIED.

11 MR. HOOD: THANK YOU.

12 THE COURT: ALL RIGHT. HAVE YOU HAVE HAD A CHANCE TO LOOK AT
13 THE CHARGES?

14 MR. THORNTON: I HAVE YOUR HONOR. THE STATE HAS NO
15 OBJECTIONS, NO ADDITIONS.

16 THE COURT: HAVE YOU HAD A CHANCE TO LOOK AT IT MR. HOOD?

17 MR. HOOD: I HAVE NOT.

18 THE COURT: ALL RIGHT. TAKE A LOOK AT THEM THIS AFTERNOON AND
19 YOU CAN GET BACK WITH ME THIS AFTERNOON OR I WILL BE BACK HERE BY
20 9:00 AM TOMORROW MORNING AND I WILL ARRANGE FOR A CHARGE
21 CONFERENCE IF YOU HAVE ANY OBJECTION TO THEM. ALL RIGHT? WE WILL
22 SEE Y'ALL IN THE MORNING.

23 (COURT ADJOURNED AT 3:26 PM)

24 NOVEMBER 17 MORNING

25 THE COURT: ALL RIGHT. ANYTHING FROM THE STATE BEFORE WE

1 BRING THE JURY IN?

2 MR. THORNTON: NOTHING FROM THE STATE, JUDGE.

3 THE COURT: FROM THE DEFENSE?

4 MR. HOOD: NOTHING, YOUR HONOR.

5 THE COURT: OKAY. LET'S BRING THE JURY IN THEN. LET THE RECORD
6 REFLECT THE DEFENDANT IS IN THE COURTROOM.

7 (JURY IN AT 9:37 AM)

8 THE BAILIFF: ALL JURORS ARE PRESENT, YOUR HONOR.

9 THE COURT: ALL RIGHT. WELCOME BACK, LADIES AND GENTLEMEN.
10 JUST FOR THE LAST TIME, I'M SURE, I NEED TO ASK IF ANY MEMBER OF THE
11 JURY PANEL SAW OR READ THE ARTICLE THAT WAS IN EITHER OF THE
12 NEWSPAPERS THIS MORNING. IF SO, PLEASE RAISE YOUR HAND. LET THE
13 RECORD REFLECT NONE HAVE. I DON'T KNOW, AGAIN, IF THERE WERE ANY
14 TELEVISION SEGMENTS ON THE NEWS LAST NIGHT, BUT IF THERE WERE, DID
15 ANY MEMBER OF THE JURY PANEL VIEW ANY OF THE STORIES ON THIS CASE
16 LAST NIGHT? AGAIN, LET THE RECORD REFLECT THAT NONE OF THE JURORS
17 INDICATED THAT THEY DID. ALL RIGHT, WE'LL PROCEED ON THEN. NOW, AS I
18 EXPLAINED TO YOU YESTERDAY, YOU HAVE HEARD NOW ALL OF THE
19 EVIDENCE THAT IS GOING TO BE PRESENTED IN THIS CASE. SO, WE'LL MOVE
20 ON TO THE FINAL PHASE, WHICH IS, THE LAWYERS WILL GET UP AND EXPLAIN
21 TO YOU THE CASES IN TERMS OF CLOSING ARGUMENTS. AGAIN, LET ME
22 REMIND YOU THAT WHEN THE LAWYERS ARE UP HERE TALKING, THEY ARE
23 NOT TESTIFYING. WHAT THEY SAY IS NOT EVIDENCE. THEY ARE GOING TO
24 TALK ABOUT THE EVIDENCE THAT YOU HEARD FROM THE WITNESS STAND,
25 OR VIDEO TAPES, OR PICTURES, DOCUMENTS THAT YOU SAW. THOSE

1 THINGS ARE EVIDENCE. THE LAWYERS TALKING IS NOT EVIDENCE. THEY
2 ARE GOING TO GET UP AND REVIEW THE EVIDENCE AND THEY ARE GOING TO
3 TALK TO YOU ABOUT IT AND GIVE YOU, PROBABLY, SOME OVERVIEW OF
4 WHAT THEY ANTICIPATE OF WHAT I AM GOING TO CHARGE YOU ON THE LAW
5 AND SPEAK TO YOU IN TERMS SO THAT YOU WILL CONSIDER RENDERING A
6 VERDICT IN THEIR CLIENTS FAVOR.

7 THE STATE HAVING THE BURDEN OF PROOF, GOES FIRST. THE
8 DEFENSE, IN A CASE LIKE THIS, WILL GO SECOND. AND SO, AFTER THEY
9 FINISH WITH THEIR CLOSING ARGUMENTS, I WILL THEN CHARGE YOU ON THE
10 LAW, GO OVER THE VERDICTS WITH YOU AND THEN YOU WILL RETIRE TO THE
11 JURY ROOM TO BEGIN YOUR DELIBERATIONS. AGAIN, DON'T BEGIN TO MAKE
12 UP YOUR MIND UNTIL AFTER I TALK TO YOU ABOUT THE JURY INSTRUCTIONS
13 AND TELL YOU YOU CAN BEGIN YOUR DELIBERATIONS. ALL RIGHT. MR.
14 SOLICITOR, IF YOU ARE READY, YOU MAY BEGIN.

15 MR. THORNTON: THANK YOU, JUDGE.

16 **CLOSING ARGUMENT BY MR. THORNTON:**

17 GOOD MORNING, Y'ALL. IF YOU THINK THIS IS A SUICIDE, GO BACK
18 THERE AND TURN HIM LOOSE. YOU KNOW, COLLECTIVELY, AS A JURY, IF YOU
19 GO BACK THERE AND YOU DECIDE THAT RICHARD SIMMONS HAD NOTHING TO
20 DO WITH THIS BECAUSE CHARLES GODLEY COMMITTED SUICIDE, THEN IT IS
21 YOUR ABSOLUTE DUTY TO TURN HIM LOOSE.

22 BUT, WHAT DOES THE EVIDENCE SHOW? AGAIN, THE JUDGE HAS TOLD
23 YOU NOTHING THAT I TELL YOU AND NOTHING THAT MR. HOOD TELLS YOU IS
24 EVIDENCE. THE QUESTIONS THAT WE ASK ARE NOT EVIDENCE. THE
25 ANSWERS THAT WE GET ARE EVIDENCE. THE TAPES THAT YOU HEARD

1 PLAYED, THE TAPES RIGHT HERE THAT ARE IN EVIDENCE THAT YOU CAN GO
2 BACK AND LISTEN TO AS MANY TIMES AS YOU WANT, WHICH EVER ONES YOU
3 WANT, OR NOT AT ALL. IT'S UP TO YOU. THAT'S EVIDENCE. THE
4 PHOTOGRAPHS IS EVIDENCE. CLOTHING IS EVIDENCE. THE HAMMER, THAT'S
5 EVIDENCE.

6 LET'S TALK ABOUT SOME OF THE THINGS IN THIS CASE. YOU KNOW,
7 WE HEARD A LOT OF CONJECTURE AND THINGS IN THIS CASE. FOR
8 INSTANCE, YOU HEARD A LOT OF QUESTIONS AND A LOT OF THINGS BEING
9 ASKED, "WHAT ABOUT THE WHISKEY BOTTLE THAT WAS IN THE BED?" "HE
10 WAS A HEAVY DRINKER, WASN'T HE," TALKING ABOUT THE VICTIM IN THIS
11 CASE. WHAT HAS THAT GOT TO DO WITH WHETHER OR NOT THE MAN WAS
12 BEATEN TO DEATH WITH A HAMMER? OKAY? BUT, WE HAD QUESTIONS
13 ABOUT THAT. WASN'T HE A DRINKER? DIDN'T HE DRINK? WASN'T THERE A
14 WHISKEY BOTTLE? WHAT DID THE PATHOLOGIST TELL YOU? WE TEST
15 TOXICOLOGY, WE TEST FOR ALCOHOL, SO REGARDLESS IF IT HAS ANYTHING
16 TO DO WITH IT OR NOT, IF IT HELPS PUT YOUR MINDS AT EASE, THEY TESTED
17 IT, HE HAD NO MEASURABLE ALCOHOL IN HIS SYSTEM. WE HEARD A LOT OF
18 QUESTIONS ABUT THE PILL BOTTLES. WELL, THERE WERE A LOT OF PILLS IN
19 THE HOUSE. THERE WERE PILL BOTTLES. TOXICOLOGIST, WHAT DID SHE
20 TESTIFY TO, DR. COLLINS, WHAT DID SHE TELL YOU? AN OVER-THE-
21 COUNTER, I THINK SHE SAID COLD MEDICINE OR ANTIHISTAMINE. I THINK
22 YOUR MEMORY IS PROBABLY A LOT BETTER THAN MINE ON THAT, AND AN
23 ANTIBIOTIC. I BELIEVE I ASKED HER IF THERE WAS EVIDENCE OF ANY
24 ILLEGAL DRUG AND I BELIEVE SHE SAID ABSOLUTELY NOT. THAT WAS ALL
25 THAT WAS FOUND. BUT, WHAT WOULD IT MATTER EVEN IF THERE WAS? IF

1 YOU TAKE A DRINK, DOES THAT MEAN YOU HAVE TO BE BEAT TO DEATH WITH
2 A HAMMER? WHAT DOES THAT HAVE TO DO WITH THE EVIDENCE IN THIS
3 CASE? OKAY. SO WE START OF WITH WHAT ABOUT THE WHISKEY BOTTLE,
4 THERE WAS A WHISKEY BOTTLE. WELL, THAT DOESN'T REALLY WORK
5 BECAUSE THERE IS NOT ALCOHOL IN THE SYSTEM. SO, WE RUN OVER TO
6 THE OTHER SIDE. NOW, WAIT A MINUTE, THERE ARE PILL BOTTLES IN THE
7 HOUSE. THERE WERE PILLS. TOXICOLOGY REPORT SAYS THAT DOESN'T
8 MATTER ONE WAY OR THE OTHER -- I'M SORRY, THE TESTIMONY OF DR.
9 COLLINS' SAYS IT DOESN'T MATTER. SO, THAT DOESN'T WORK SO WHERE
10 ARE WE GOING TO LOOK NEXT? DONALD MITCHELL. DONALD MITCHELL
11 MUST HAVE DONE IT. DONALD MITCHELL WAS STOPPED, HE WAS
12 QUESTIONED. YOU REMEMBER WHEN WE TALKED ABOUT THAT? AND THERE
13 WAS, I BELIEVE THAT ONE OF MR. HOOD'S QUESTIONS ASKED ABOUT, HE
14 KEPT ASKING ONE OF THE DETECTIVES ON THE STAND, ARBELO, YOU
15 REMEMBER SERGEANT ARBELO WHEN HE WAS TESTIFYING? WELL, YOU
16 DIDN'T GET THE TRENCH COAT, DID YOU? YOU DIDN'T GET THE TRENCH
17 COAT, BECAUSE IF HE HAD DONE IT, HE HAD IT -- I BELIEVE MR. HOOD DID
18 SOMETHING LIKE THIS, HE WOULD HAVE COVERED UP BECAUSE BLOOD
19 WOULD HAVE SPLATTERED ON THE TRENCH COAT IF HE HAD DONE IT. THE
20 TRENCH COAT IS RIGHT HERE. IT WAS COLLECTED. ROBIN TAYLOR
21 TESTIFIED THAT SHE TESTED IT. IT HAD NO BLOOD ON IT. WHAT ELSE DO WE
22 KNOW ABOUT? OFFICER CALANDRA STOPPED DONALD MITCHELL AT THE
23 START OF THIS WHOLE THING WITH DONALD MITCHELL. WHAT DID I ASK HIM?
24 AGAIN, WHAT I ASKED HIM IS NOT EVIDENCE, BUT HIS ANSWER IS. DID YOU
25 SEE ANY BLOOD? NO. DID YOU NOTICE NAY BLOOD? NO. HAD YOU NOTICED

1 HIM COVERED IN BLOOD AS MR. HOOD TALKED ABOUT IF HE'S HAVE
2 WRAPPED HIMSELF UP IN THE TRENCH COAT, WOULD YOU HAVE NOTATED
3 THAT IN A REPORT AND CALLED SOMEBODY? YES. OKAY, SO WE STARTED
4 WITH THE WHISKEY BOTTLE. THAT DOESN'T WORK. NOW, WE GO TO THE
5 PILL BOTTLES. WELL, THAT DOESN'T REALLY MATTER EITHER. NOW,
6 THERE'S THIS, YOU KNOW, INFAMOUS DONALD MITCHELL. WELL, THAT
7 DOESN'T REALLY HOLD WATER EITHER BECAUSE HIS CLOTHES ARE RIGHT
8 HERE, INCLUDING THE GREY TRENCH COAT. THEY HAD NO BLOOD ON THEM.
9 THEY WERE TESTED. AND WHAT'S MORE, OFFICER CALANDRA SAW HIM
10 FRIDAY NIGHT A FEW HOURS AFTER, YOU KNOW, BY MR. GODLEY THAT
11 THERE WAS SOMEBODY THERE THAT MATCHED HIS DESCRIPTION. THAT'S
12 WHY THEY STOPPED HIM. DIDN'T HAVE ANY BLOOD ON HIM THEN, EITHER.

13 OKAY, SO WE'VE GONE THROUGH ALL THAT. NOW, WHAT ARE WE
14 WORRIED ABOUT? NOW, WE ARE WORRIED ABOUT THE MARK ON HIS HAND.
15 OKAY? NOW, SUDDENLY THE MARK ON HIS HAND IS ANOTHER BIG MYSTERY
16 AND IF YOU'LL REMEMBER THE QUESTIONING KEPT, "WELL, WHAT ABOUT THE
17 BITE MARK ON HIS HAND." THAT WAS THE QUESTION. I DON'T KNOW HOW
18 MANY TIMES WE HEARD THAT QUESTION. AND WHAT WAS THE ANSWER
19 VIRTUALLY EVERY TIME? THAT IT WASN'T A BITE MARK. WHAT DID THE TWO
20 PATHOLOGISTS, OR THE PATHOLOGIST TELL YOU? YOU REMEMBER DR.
21 COLLINS WHEN SHE WAS ON THE STAND. "WELL, SHOULDN'T YOU HAVE
22 SWABBED IT?" WHAT WAS THE ANSWER. "IF IT HAD BEEN A BITE MARK, WE
23 WOULD HAVE SWABBED IT." "BUT, YOU DIDN'T SWAB IT, DID YOU?" "NO,
24 BECAUSE IT WASN'T A BITE MARK." "BUT, IF IT HAD BEEN A BITE MARK, YOU
25 SHOULD HAVE SWABBED IT." "YES, BUT IT WASN'T A BITE MARK." DAVID

1 BLACK, TOOL MARK EXPERT. WHAT DID HE SAY? "NOT CONSISTENT WITH A
2 BITE MARK." OKAY? SO, NOW WE'VE TRAVELED FROM, WHUP, WATCH THE
3 WHISKEY BOTTLE. THAT DOESN'T WORK. PILL BOTTLES DON'T WORK,
4 DONALD MITCHELL DOESN'T WORK. WELL, WHAT ELSE HAVE WE GOT? AH,
5 THE BITE MARK, YOU DIDN'T SWAB THE BITE MARK. IT ISN'T A BITE MARK.
6 THERE WAS TESTIMONY FROM THE PATHOLOGIST THAT IT WASN'T A BITE
7 MARK, THERE WAS TESTIMONY FROM THE OTHER PATHOLOGIST THAT SAID
8 IT WAS CONSISTENT WITH A WHAT? TRAUMA FROM A BLUNT OBJECT.
9 CHARACTERIZED IT AS A DEFENSIVE WOUND, LIKE ONE YOU MIGHT RECEIVE
10 IF YOU WERE BEING BEATEN IN THE HEAD WITH A HAMMER.

11 THEN THERE WAS A DISCUSSION ABOUT THESE, WHY WEREN'T THERE
12 LIFTS DONE WITH THE MARKS ON THE LEGS. AND AGAIN, WHAT WAS THE
13 QUESTION REPEATEDLY? WHAT ABOUT THE FINGERPRINTS ON THE LEGS?
14 ANYBODY THAT EVER LOOKED AT THOSE EVER SAY THEY WERE
15 FINGERPRINTS? THEY TALKED ABOUT THEM BEING MARKS AND SMUDGES
16 AND HE ASKED OFFICER DAVIS ABOUT THAT AND HE GOT HIS ANSWER. AND
17 IF YOU NEED TO HEAR THAT PLAYED BACK, YOU CAN HAVE IT PLAYED BACK.

18 NOW, WHAT DO WE HAVE? WE'VE TALKED ABOUT ALL THESE THINGS
19 THAT -- I DON'T KNOW WHAT MR. HOOD IS GOING TO SAY. YOU KNOW, THIS IS
20 MY LAST OPPORTUNITY TO TALK TO YOU. ONCE I SIT DOWN, I'VE DONE
21 EVERYTHING I CAN DO IN THIS CASE AND THAT'S ALL I'VE GOT AND THEN MR.
22 HOOD'S GOING TO GET TO TALK TO YOU. SO, I DON'T KNOW WHAT HE'S
23 GOING TO TALK ABOUT. I'VE GOT AN IDEA WHICH IS WHY I'M TALKING TO YOU
24 NOW ABOUT THIS. BUT, WHAT DO WE HAVE FROM THE SCENE? WE'VE GOT
25 THESE PHOTOGRAPH, WHICH I'LL TALK ABOUT IN A MINUTE, A COUPLE OF

1 THEM IN PARTICULAR. AND THERE ARE SOME THAT ARE GRAPHIC, BUT YOU
2 KNOW WHAT, Y'ALL, THIS IS A MURDER. THERE ARE LIKELY TO BE GRAPHIC
3 PHOTOS. WE'VE GOT THESE TAPES WHERE RICHARD SIMMONS IS KIND
4 ENOUGH TO TELL YOU THAT HE COMMITTED THIS CRIME. WE'VE GOT THE
5 HAMMER. WE'VE GOT THE BB GUN. WHAT ELSE DO WE HAVE? YOU KNOW,
6 THOSE THINGS CAME FROM THE SCENE WITH THE EXCEPTION OF THE
7 TAPES. NOW, WHEN YOU'RE LOOKING AT THIS, WHAT YOU REALLY SHOULD
8 DO IS, YOU WANT TO LOOK AT THE ENTIRE PICTURE. YOU KNOW, ONE THING
9 THAT STRUCK ME THROUGHOUT THIS WHOLE TRIAL, SOMETHING THAT MR.
10 HOOD SAID IN HIS OPENING STATEMENT WAS SOMETHING TO THE EFFECT
11 OF, THE STATE MAY BRING OUT ONLY THE THINGS IT LIKES, THE GOOD
12 STUFF. AFTER WATCHING THE FIRST FEW PEOPLE TESTIFY, IT SHOULD BE
13 VERY OBVIOUS THAT THAT DID NOT HAPPEN. WOULD I HAVE RATHER THEY
14 NOT MAKE A MISTAKE AND LEAVE THE SCENE AND NOT COLLECT, YOU KNOW,
15 MAYBE SOME OF THE STUFF THAT WAS THERE? ABSOLUTELY. BUT, YOU
16 KNOW WHAT? WE PUT IT ALL UP ANYWAY.

17 NOW, IS THERE ANYTHING SIGNIFICANT ABOUT THE HAMMER? YOU
18 KNOW, IT WAS TESTED, NO FINGERPRINTS. YOU REMEMBER, DAVID BLACK
19 GOT UP AND SAID HE TESTED IT FOR PRINTS. IT DIDN'T HAVE ANY. OKAY?
20 NOW, I WANT YOU TO REMEMBER THAT BECAUSE I'M GOING TO COME BACK
21 TO THAT IN A MINUTE. ONLY THE VICTIM'S BLOOD WAS FOUND IN ALL THE
22 STUFF THEY TESTED. IT WAS EITHER INCONCLUSIVE OR IT JUST CAME BACK
23 TO THE VICTIM. THAT'S ALSO IMPORTANT AND I'LL TELL YOU WHY IN A FEW
24 MINUTES. OKAY? BUT, I WANT YOU TO KEEP THOSE THINGS IN MIND. SO,
25 WHAT ELSE DO WE HAVE? ALL RIGHT. WE HAVE THE FACT THAT CHARLES'

1 SISTER, MISS GLORIA, GOT UP ON THAT STAND AND TOLD YOU HER BROTHER
2 KEPT A WALLET, THEY NEVER FOUND IT. LAW ENFORCEMENT SAID THEY
3 NEVER FOUND IT. THAT'S THE ONE THING THEY KNOW WAS TAKEN AND
4 NEVER RECOVERED. THE WALLET. NOT STUFF OUT OF THE WALLET, THE
5 ENTIRE WALLET. AND ALTHOUGH I'M GOING TO GO OVER IT AGAIN,
6 REMEMBER WHEN RICHARD SIMMONS WAS ON TAPE? WHAT DID HE SAY HE
7 TOOK? HE TALKED ABOUT SOME CHANGE IN A BOX, HE TALKED ABOUT IT
8 BEING ON A FARM -- WE'LL GET TO ALL THAT IN A MINUTE -- HE SAID, "I TOOK
9 THE WALLET. IT HAD TWENTIES IN IT." AND BRUCK OTTERBACHER SAID,
10 "YOU TOOK THE WHOLE THING?" "YEP I TOOK THE WHOLE WALLET." WHAT
11 ELSE DO WE HAVE? WE HAD FOUR PEOPLE GOT UP AND IT IS RELATIVELY
12 OBVIOUS THAT THEY WERE INCARCERATED. SEVERAL OF THEM. THE FIRST
13 HINT WAS WHEN THEY WENT TO BE SWORN IN AND THEY HAD TO DO THIS
14 BECAUSE THAT'S AS HIGH AS THEY COULD GET THEIR ARM UP, OKAY? SOME
15 OF THEM GOT UP ON THE STAND AND SAID TO YOU, "I SAID THAT, BUT IT WAS
16 A LIE." SOME OF THEM SAID, "I DON'T RECALL SAYING THAT." SOME OF THEM
17 SAID THAT CAPTAIN BROMAGE PROMISED THEM SOMETHING. AND A COUPLE
18 OF THEM SAID, "YOU KNOW WHAT? I'M SERVING FOR MURDER. YOU CAN'T
19 DO ANYTHING FOR ME." BUT, WHAT DID EVERY ONE OF THEM, EITHER ON
20 TAPE OR HERE ON THE STAND ADMIT THAT AT ONE TIME OR ANOTHER, WHAT
21 DID ALL OF THEM AGREE ON? THAT RICHARD SIMMONS TOLD THEM THAT HE
22 DID IT. THAT'S THE ONE THING THAT ALL OF THEM HAD TO AGREE TO AT ONE
23 POINT OR ANOTHER EITHER VIA A TAPE YOU HAD PLAYED IN FRONT OF YOU
24 OR THEY SAID, "YEAH, I DID SAY THAT, BUT IT WAS A LIE."

25 LET'S GET TO THE TAPES. WHAT ARE THE THINGS ON THE TAPE THAT

1 ARE IMPORTANT? AND AGAIN, PLEASE DON'T LET ME JUST TELL YOU WHAT I
2 THINK IS IMPORTANT. I'M GOING TO POINT SOME STUFF OUT YOU'VE GOT
3 THE TAPES, YOU'LL BE ABLE TO LISTEN TO THEM AS LITTLE OR AS MUCH AS
4 YOU WANT. I WILL LET YOU KNOW THAT PART OF THE TAPE THE MIDDLE
5 TAPE, 9-22-04, AT 700 HOURS, I'M SORRY THAT'S MILITARY TIME, 1951 AND 41
6 SECONDS IS ABOUT WHERE RICHARD SIMMONS STARTS TALKING ABOUT THE
7 FARM. WHAT DID YOU HEAR TESTIMONY ABOUT? RICHARD SIMMONS LIVED
8 WHERE? ON A FARM, IT WAS AN OLD FARM. OKAY? YOU HEAR HIM SAY
9 THINGS LIKE, EARLIER IN THE TAPE, AND AGAIN, FORGIVE, I KNOW Y'ALL HAVE
10 ONLY LOOKED AT THIS FOR A FEW DAYS, I'VE BEEN LOOKING AT IT FOR
11 LONGER THAN THAT AND SOMETIMES THINGS RUN TOGETHER -- YOU
12 REMEMBER SOMEWHERE IN THAT SECOND TAPE WHEN RICHARD SIMMONS
13 SAYS, "OH I LIKE TO GO TO THE MASTER BEDROOM." WHERE WAS CHARLES
14 GODLEY KILLED? IN HIS BEDROOM. WHAT ELSE DOES RICHARD SIMMONS
15 TELL US? WELL, HE SAYS, "I FOUND A WALLET WITH TWENTIES IN IT AND I
16 TOOK THE WALLET." AND I ALREADY TOLD YOU THAT'S THE ONE THING WE
17 KNOW WASN'T FOUND. YOU KNOW, INTERESTINGLY ENOUGH, AND HE TALKS
18 ABOUT IT SEVERAL TIMES, AND IF YOU'LL REMEMBER, HE TALKED ABOUT A
19 PRIOR BURGLARY AND HE'S TELLING BRUCE OTTERBACHER, "YOU KNOW, I
20 GOT CAUGHT BECAUSE I WENT BACK ONE TOO MANY TIMES." AND THEN A
21 FEW MINUTES LATER HE SAYS, "NO, THAT'S NOT REALLY WHY I GOT CAUGHT.
22 LET ME TELL YOU THE REAL REASON." AND YOU'LL NOTICE THAT AS A
23 PATTERN AS THIS CONVERSATION DEVELOPS. HE GIVES A LITTLE BIT AT A
24 TIME. WHAT'S ONE OF THE THINGS HE TALKED ABOUT EARLY ON? HE SAYS,
25 HE TALKS ABOUT HITTING HIM. HE SAYS WITH HIS HAND AND LATER HE

1 TALKS ABOUT THE HAMMER, USING THE HAMMER THAT HE FOUND. HE ALSO
2 TALKS ABOUT SMOTHERING HIM AT SOME POINT WITH A PILLOW. I WANT
3 YOU TO TAKE A REAL GOOD LOOK AT THAT PILLOW. LOOK LIKE SOMEBODY
4 THAT MAY HAVE BEEN BREATHING REAL HEAVY MIGHT HAVE BEEN
5 SMOTHERED AT SOME POINT WITH THAT PILLOW? YOU KNOW, IT'S KIND OF
6 INTERESTING THAT THAT HAS THE VAST MAJORITY OF THE BLOOD ON IT, IS
7 ON THE BEDCLOTHES. CERTAINLY NOT ALL OF IT, BUT A LOT OF IT. IT'S
8 AWFULLY CONVENIENT TO BE JUST A COINCIDENCE, DON'T YOU THINK?
9 WHAT ELSE DID HE SAY? HE TALKS ABOUT -- AND I WILL LEAVE THE
10 EXPLETIVES OUT -- HE TALKS ABOUT GOING INTO ANOTHER PART OF THE
11 HOUSE AND HEARING MR. SO ON AND SO ON SAY, "UHHHH," LIKE HE WAS
12 WAKING UP. NOW, HAD THIS BEEN FED TO HIM BY BRUCE OTTERBACHER?
13 HAD HE BEEN GIVING HIM DETAILS OF THE CRIME? LISTEN TO THE TAPE.
14 AND OTTERBACHER DID SAY, WELL THAT WOULD HAVE SCARED ME TO
15 DEATH. AND WHAT DID HE SAY? "YEAH, IT SCARED ME TOO AND MY FIRST
16 REACTION WAS, I'VE GOT TO BUST HIS ASS UP." WELL, LADIES AND
17 GENTLEMEN, HE DID A HELL OF A JOB, WITH A HAMMER. USED A HAMMER ON
18 HIM. "I HAD A HAMMER, I HIT HIM WITH IT. I DIDN'T HIT HIM SQUARE, I HIT HIM
19 TWO OR THREE MORE TIMES." AND THERE IS SOMETHING IN THIS TAPE AND
20 LET ME TELL YOU RIGHT NOW BECAUSE I DON'T WANT TO FORGET IT. I HAVE
21 LISTENED TO IT SEVERAL TIMES MYSELF, BUT I WANT YOU TO REMEMBER
22 THIS, 754, 1954, 38 ON THAT SECOND TAPE, SOMETHING THAT YOU MAY HAVE
23 MISSED. YOU KNOW WHAT HE SAYS? HE'S TALKING ABOUT HITTING HIM
24 WITH A HAMMER, TALKING ABOUT HITTING HIM WITH HIS FISTS. YOU KNOW
25 WHAT HE SAYS? I HAD GLOVES ON. NOW, WERE THERE ANY PRINTS FOUND

1 ON THIS HAMMER? NO, THERE WEREN'T. YOU THINK THAT MIGHT BE
2 BECAUSE HE HAD GLOVES ON? BRUCE OTTERBACHER ASKED HIM, HE SAID,
3 "WELL, DID HE KNOW YOU WERE THERE? DID HE COME AFTER YOU? WHAT
4 DID HE SAY?" "HE NEVER KNEW WHAT HIT HIM." WELL, IF HE NEVER KNEW
5 WHAT HIT HIM AND HE WASN'T FIGHTING BACK, HOW MUCH OF A CHANCE DO
6 YOU THINK THAT RICHARD SIMMONS LEFT BLOOD OR DNA THERE IF HE DIDN'T
7 GET INJURED? "HE NEVER KNEW WHAT HIT HIM." SOME OF THIS STARTING
8 TO COME TOGETHER? DOES IT SOUND LIKE THAT MIGHT EXPLAIN WHY
9 THERE WASN'T ANYBODY ELSE'S DNA THAT WE FOUND? DOES IT EXPLAIN
10 WHY THERE WAS NO FINGERPRINTS ON THE HAMMER? I HAD GLOVES ON.
11 DO YOU REMEMBER AT ONE POINT ON THE TAPE HE SAID, "YEAH, I GOT
12 CAUGHT THAT TIME, BUT I GOT SMARTER." MAYBE HE GOT SMARTER
13 BECAUSE HE WAS WEARING GLOVES, BECAUSE HE TOLD YOU HE WAS
14 WEARING GLOVES. WHAT ELSE DOES HE TALK ABOUT? HE SAYS, BRUCE
15 OTTERBACHER SAYS, "HOW DO YOU KNOW HE WAS DEAD?" HE SAYS, "WELL
16 I WATCHED AND EMS FOUND HIM TWO DAYS LATER." WHEN'S THE LAST TIME
17 WE ARE ALL ABSOLUTELY SURE THAT CHARLES GODLEY WAS ALIVE? FRIDAY
18 NIGHT. WHEN ARE WE ABSOLUTELY SURE HE WAS FOUND DEAD? SUNDAY.
19 HOW MANY DAYS ARE BETWEEN FRIDAY AND SUNDAY? TWO. YES ANOTHER
20 STARTLING COINCIDENCE. TWO DAYS. WHAT ELSE DOES HE SAY? "YOU
21 KNOW, I WAS QUESTIONED ABOUT THIS CASE." BRUCE OTTERBACHER SAYS,
22 "WELL, WHAT DO YOU MEAN?" I WAS QUESTIONED ABOUT THIS CASE
23 BECAUSE I WAS HANGING AROUND THE GUY WHO HAD DONE SOME, HAD
24 BEEN SUSPECTED OR SOMETHING, ABOUT STEALING COINS IN A LAUNDRY
25 MAT. YOU REMEMBER WHERE STEPHEN DAVIS SAID HE PICKED UP RICHARD

1 SIMMONS TO TALK TO HIM ABOUT THIS CASE? HE WAS AT THE ISLAND PLAZA.
2 NOW, I'M NOT FROM THIS AREA, OKAY? Y'ALL PROBABLY KNOW THIS AREA
3 BETTER THAN ME, BUT THAT'S WHY I ASKED STEPHEN DAVIS, WHAT'S
4 LOCATED AT THE ISLAND PLAZA? "WELL, THERE'S A LAUNDRY MAT THERE."
5 NOW, ONE OF -- SOMETHING THAT IS PROBABLY JUST AS IMPORTANT AS ALL
6 THESE OTHER STATEMENTS. "I HIT HIM WITH A HAMMER. I HIT HIM THREE
7 TIMES. HOW MANY WOUNDS DID THE PATHOLOGIST TESTIFY TO? THAT THEY
8 WERE SURE WERE GIVEN? TWO TO THE HEAD, ONE TO THE HAND. HE ALSO
9 TALKS ABOUT THE FACT, YOU KNOW, "I HIT HIM WITH A HAMMER AND I DIDN'T
10 HIT HIM SQUARE, SO I HIT HIM AGAIN." "I'VE GOT TO BUST HIS ASS UP." HE
11 TALKS ABOUT IT BEING AN OLDER WHITE MAN ON A FARM WHERE HE TOOK A
12 WALLET, HE WORE GLOVES, HE USED A HAMMER HE FOUND AT THE SCENE,
13 HE HIT THE MAN TWO OR THREE TIMES, HE ALSO SMOTHERED HIM WITH A
14 PILLOW. ANY OF THIS SOUND FAMILIAR? IT SOUNDS AN AWFUL LOT LIKE THE
15 EVIDENCE THAT WAS COLLECTED AND ABLE TO BE COLLECTED AT THE
16 CRIME SCENE IN THE MURDER OF CHARLES GODLEY. IT'S RARE, LADIES AND
17 GENTLEMEN, TO HAVE STATEMENTS LIKE THIS MADE FROM A DEFENDANT.
18 THE POLICE WENT UNDERCOVER, THEY SHOWED A LOT OF DETERMINATION
19 TO TRY TO OVERCOME SOME EARLIER PROBLEMS IN THE CASE TO GET A
20 GOOD SUSPECT. THEY DEVELOPED HIM AS A SUSPECT, THEY PUT AN
21 UNDERCOVER OFFICER ON HIM AND IT WORKED. HE'S CONFESSED. YOU
22 KNOW, I DON'T KNOW IF YOU APPROVE OR DON'T APPROVE OF AN OFFICER
23 GIVING HIM BEER TO GET HIM TO CONFESS. WE'RE NOT LOOKING FOR
24 SOMEBODY WHO'S PLAYING TIDDLY WINKS. WE'RE TRYING TO CATCH
25 SOMEBODY WHO HAS KILLED SOMEONE, BEATEN HIM TO DEATH WITH A

1 HAMMER FOR MONEY IN A BURGLARY. BRUCE OTTERBACHER GAVE HIM
2 BEER. COULD HAVE BEEN ONE, COULD HAVE BEEN FIFTY, OKAY? HE GAVE
3 HIM BEER. BRUCE OTTERBACHER RODE AROUND IN A VEHICLE WITH AN
4 OPEN CONTAINER, TWO OPEN CONTAINERS. IF YOU DON'T LIKE THE WAY
5 THAT THEY DID THAT AND YOU HAVE A PROBLEM WITH IT AND YOU WANT TO
6 WRITE CHIEF STEWART WITH SLED, THAT'S THE WAY YOU HANDLE IT. YOU
7 DON'T TURN A MURDERER LOOSE, OKAY? YOU KNOW, THE POLICE
8 MISCONDUCT, THAT'S PROBABLY THE LAST - YOU KNOW, THEY SHOULD
9 HAVE DONE THIS. YOU KNEW HE WAS ON DRUGS. DID THE POLICE PROVIDE
10 HIM WITH DRUGS? DID THEY MAKE HIM A DRUG ADDICT? I THINK MR. HOOD
11 CALLED HIS CLIENT A CRACK HEAD. DID WE MAKE HIM LIKE THAT? IS THAT
12 THE POLICE'S FAULT? ARE THEY OUT THERE TRYING TO PROVIDE HIM WITH
13 FOOD AND SHELTER? NO, THEY ARE TRYING TO FIND OUT IF HE BEAT A MAN
14 TO DEATH. THAT'S WHAT THIS CASE IS ABOUT. I TOLD YOU THAT IN THE
15 BEGINNING, OKAY? ALL THESE RED HERRINGS GET THROWN OUT IN CASES,
16 OKAY? THIS ISN'T ABOUT A WHISKEY BOTTLE. IT ISN'T ABOUT A PILL BOTTLE.
17 IT'S NOT ABOUT A MAN COMMITTING SUICIDE. IT'S NOT ABOUT A MAN WHO'S
18 DEPRESSED, OKAY? HIS SISTER SAID, YES HE WAS SAD BECAUSE OUR
19 MOTHER DIED. THAT'S PROBABLY NOT THAT UNUSUAL, OKAY? THAT'S NOT
20 WHAT THIS IS ABOUT. IT'S ABOUT RICHARD SIMMONS BEATING CHARLES
21 GODLEY TO DEATH WITH THIS HAMMER. THAT'S WHAT THIS CASE IS ABOUT
22 AND THAT'S ALL THAT IT IS ABOUT. AND THE REST OF IT IS JUST CONFUSION.
23 PLEASE, FOCUS ON WHAT'S IMPORTANT IN THIS CASE. WATCH THOSE
24 TAPES. HE TELLS YOU HE DID IT.

25 I'M GOING TO LEAVE YOU WITH THIS, LADIES AND GENTLEMEN,

1 CHARLES GODLEY NEVER KNEW WHAT HIT HIM. WE DO. THIS HAMMER HIT
2 HIM AND IT WAS WIELDED BY RICHARD SIMMONS AND IT WAS DONE FOR THE
3 MOST DESPICABLE OF REASONS, MONEY. WE KNOW WHAT HIT CHARLES
4 GODLEY. TODAY IS NOT JUST ABOUT RICHARD SIMMONS DAY IN COURT, IT'S
5 ABOUT CHARLES GODLEY'S DAY IN COURT AND HIS FAMILY'S DAY IN COURT.
6 JUSTICE IN THIS CASE HAS BEEN DELAYED. IT SHOULD NOT BE DENIED. FIND
7 RICHARD SIMMONS GUILTY OF MURDER AND FIND HIM GUILTY OF BURGLARY
8 AND DELIVER A JUST VERDICT. THANK YOU.

9 THE COURT: MR. HOOD.

10 MR. HOOD: MAY IT PLEASE THE COURT.

11 CLOSING ARGUMENT OF MR. HOOD:

12 FOR TWO YEARS, RICHARD SIMMONS HAS SAT OVER THERE IN THAT
13 DETENTION CENTER AND ALL THE TIME THAT HE HAD BEEN SITTING THERE,
14 THEY HAD THESE TAPES. THEY HAD ALL OF THIS OTHER STUFF. THEY HAD
15 THEIR INVESTIGATION AND RICHARD SIMMONS IS SAYING, "I'M NOT GUILTY. I
16 WANT A TRIAL." FOR TWO YEARS THAT GOES ON. SAME STUFF THAT THEY
17 HAD HERE. WHAT DOES THAT TELL YOU? WHAT HAPPENS DURING THAT
18 TWO-YEAR PERIOD? THEY AREN'T SATISFIED WITH THE EVIDENCE. GOT
19 SOME BAD STUFF THERE. YOU'VE GOT GUYS WHO GO OUT OF THERE WAY
20 TO KEEP A PERSON UNDER THE INFLUENCE OF DRUGS AND/OR ALCOHOL.
21 AND FOR TWO YEARS, THEY TRY TO GATHER EVIDENCE. WHAT DO THEY
22 COME UP WITH FOR THOSE TWO YEARS WHILE HE'S SAYING, "I WANT A TRIAL,
23 I'M NOT GUILTY." FOR TWO YEARS, THEY GO AROUND AND THEY GO TO
24 CLYDE EVANS, THEY GO TO ALL OF THESE GUYS WHO THEY BRING IN FOR
25 YOU, BECAUSE THIS WASN'T GOOD ENOUGH, BECAUSE THEY TOOK

1 ADVANTAGE OF A HOMELESS PERSON WHO WAS ADDICTED TO DRUGS OUT
2 ON THE STREETS. THEY CONVINCED HIM THAT HE COMMITTED A CRIME AND
3 NOW AS MR. OTTERBACHER SAID, "WE'RE GOING TO GAIN HIS CONFIDENCE."
4 WE'RE GOING TO GAIN HIS CONFIDENCE BY GIVING HIM WHAT HE NEEDS. HE
5 NEEDS MONEY FOR CRACK COCAINE. WE'LL GIVE HIM BOOZE, WHEN THEY
6 KNOW HE'S UNDER THE INFLUENCE, HE TELLS THEM, YOU SAY THE VIDEO. I
7 MEAN, WE HAVE A GUY WHO'S INTOXICATED, WHO'S BEING QUESTIONED BY A
8 POLICE OFFICER, WHO HAS A BADGE, WHO'S ON DUTY. WHO'S IDEA WAS IT?
9 RICHARD SIMMONS DID NOT GO AND SAY, "GIVE ME ALCOHOL, GIVE ME
10 CRACK." NO, HE DIDN'T HAVE TO DO THAT BECAUSE MR. OTTERBACHER JUST
11 KEPT SAYING OVER AND OVER AGAIN, YOU KNOW, I COULD SURE USE A
12 BEER, HOW ABOUT YOU? I NEED TO KEEP YOU IN THIS STATE THAT YOU'RE
13 IN SO I CAN TAKE ADVANTAGE OF YOU. WHAT DOES HE TAKE ADVANTAGE
14 OF? RICHARD SIMMONS. ALL OF THIS, TO BEGIN WITH, FOR OVER TEN YEARS
15 THIS CASE HAD BEEN GOING ON, BEEN INVESTIGATED, FOR THREE YEARS
16 SLED INVESTIGATED. WHO DID THEY TALK TO? WHAT DID THEIR
17 INVESTIGATION COME UP WITH? ALL OF THESE THINGS EVERYBODY KNEW.
18 THEY LEFT THE CRIME SCENE, SHOWED PEOPLE THE EVIDENCE AND ALL
19 THAT KIND OF STUFF. I'M TAKING THIS OUT OF THE HOUSE. WE'RE STILL
20 LOOKING FOR THE WALLET. THEY DON'T FIND IT. THEY DON'T EVEN KNOW
21 WHO CLEANED THE HOUSE. THEY CAME BACK SEVERAL DAYS LATER,
22 EVERYTHING HAS NOW CHANGED BECAUSE THEY THOUGHT IT WAS A
23 SUICIDE. NOW, I CAN STAND HERE AND ARGUE WITH ANYBODY AS TO
24 WHETHER OR NOT A PERSON CAN OR CANNOT KILL THEMSELVES WITH
25 ANYTHING. IF YOU HAVE THAT DETERMINATION. WHAT THE STATE MAKES

1 YOU BELIEVE IS THAT RICHARD SIMMONS DID IT BECAUSE HE MADE THESE
2 STATEMENTS, THESE SELF-SERVING STATEMENTS, THESE STATEMENTS
3 THAT WERE THE PRODUCT OF BRUCE OTTERBACHER. "I HAVE TO KNOW
4 YOU'RE GOING TO BE THERE TO SUPPORT ME. YOU KNOW, I TOLD YOU
5 ABOUT THE MAN I KILLED. YOU KILLED SOMEBODY, DIDN'T YOU?" THE STORY
6 GOES, KEEPS ON GOING, RICHARD SIMMONS KNEW ABOUT THE CASE. YEAH,
7 EVERYBODY IN FROGMORE, EVERYBODY IN ST HELENA KNEW ABOUT THE
8 KILLING. EVERYBODY KNEW THAT CHARLES GODLEY HAD EITHER
9 COMMITTED SUICIDE BY HITTING HIMSELF WITH A HAMMER OR CHARLES
10 GODLEY WAS ATTACKED BY SOMEBODY. NOW, LET'S GO TO THE, ATTACKED
11 BY SOMEBODY. AS I TOLD YOU WHEN WE BEGAN THIS, THERE WAS THIS
12 PERSON WHO WAS PEEKING IN THE WINDOWS ON THE PORCH OF CHARLES
13 GODLEY. THAT PERSON MOVED AWAY FROM THE PORCH. CHARLES GODLEY
14 CALLS THE POLICE. THE POLICE ARRIVE. HE GIVES THEM A COMPLETE
15 DESCRIPTION OF THE GUY HE HAD SAW PEEKING IN HIS WINDOWS. "BOOM."
16 NOW, IT'S BECOME SIGNIFICANT BECAUSE IT'S TWO HOURS LATER,
17 APPROXIMATELY WHEN CALANDRA COMES IN CONTACT WITH THE GUY
18 MATCHING THE DESCRIPTION OF THE GUY IN THE AREA. STOPS HIM, GETS
19 HIS NAME, MITCHELL. "BOOM." IF I CATCH YOU PEEKING IN ANYBODY'S
20 WINDOWS AGAIN, I'M GOING TO RUN YOU IN." WHAT'S HE GOING TO DO AT
21 THAT POINT? TWO HOURS HAVE EXPIRED SINCE THE TIME HE TALKED TO
22 MR. GODLEY AND THE TIME HE RUNS INTO MR. MITCHELL. CALANDRA TELLS
23 YOU, "I SPOKE TO MR. GODLEY. IN FACT, I DROVE UP INTO THE YARD. I
24 CHECKED THE PLACE TO MAKE SURE THERE WAS NOBODY AROUND. NO
25 LIGHTS WERE ON, NOBODY CAME TO THE DOOR." HE DIDN'T SAY ANYTHING,

1 HE DIDN'T TALK TO ANYBODY, HE DIDN'T SEE ANY SIGNS OF ANY TYPE OF
2 BREAK INS OR ANYTHING. HE LEAVES. THEN WE HAVE THE DISCOVERY. I'M
3 NOT SURE HOW MANY DOORS, WHO OPENED THEM? THEY DON'T KNOW.
4 THEY WALKED IN THERE AND THEY CHECKED IT OUT. THEY CHECKED IT OUT
5 THOROUGHLY AND THEY DETERMINED THERE WERE NO SIGNS OF BREAKING
6 IN. THERE WERE NO SIGNS OF A STRUGGLE IN THIS CASE. THERE WAS
7 ABSOLUTELY NOTHING THAT THEY SAW THAT WAS OF VALUE. THERE WERE
8 VALUABLE THINGS THERE THAT ACCORDING TO THE OFFICER COULD HAVE
9 BEEN TAKEN. THEY WEREN'T TAKEN. SO, WHAT DO THEY HAVE? THEY HAVE
10 EXACTLY WHAT THEY SAW. NO SIGNS OF A STRUGGLE, NO SIGNS OF
11 BREAKING AND ENTERING, THEREFORE, SUICIDE. THEY TURNED THE PLACE
12 OVER THE FAMILY AND SAID IT'S YOURS. WE'RE DONE. WE'RE TAKING OUT
13 THIS PELLET GUN, THIS HAMMER, THIS YOU KNOW, DOCUMENTS AND ALL,
14 THIS OTHER STUFF. YOU CAN HAVE IT. WHO ARE ALL THE PEOPLE THAT
15 WERE THERE THAT HEAR ALL THIS? EVERYBODY'S MAKING A DECISION. THE
16 CORONER, SUICIDE. HE WAS THERE. HE EXAMINED THE BODY. HE CAME TO
17 THE SAME CONCLUSION. THEY TURN IT OVER TO THE FAMILY. WHAT
18 HAPPENS AT THAT POINT IN TIME? ONCE IT'S TURNED OVER, BASICALLY
19 THEY DON'T KNOW WHAT HAPPENED. WE KNOW ONE THING FOR SURE, THAT
20 THE TESTIMONY IF YOU'LL RECALL OF OFFICER ARBELO, THE INVESTIGATOR
21 IN THE CASE, HE AND ANOTHER, HIS SUPERVISOR, WERE THERE AS A PART
22 OF THIS INVESTIGATION AND THEY ALL CAME TO THE SAME CONCLUSION.
23 AFTER AN AUTOPSY, SOMEBODY TELLS THEM YOU'VE GOT TO CHANGE YOUR
24 MIND BECAUSE WE THINK, NUMBER ONE, THAT THIS PELLET GUN CAN KILL.
25 WE DON'T THINK, NUMBER TWO, THAT IT WAS A SUICIDE BECAUSE, YOU

1 KNOW, IT'S POSSIBLE FOR A PERSON TO KILL HIMSELF WITH A HAMMER, BUT
2 WE DON'T KNOW, YOU KNOW, BUT WE THINK MAYBE IT WASN'T A SUICIDE.
3 SO, WHAT DO THEY DO? THEY GO BACK. WELL, BY THIS TIME, DAVIS IS
4 GOING TO TAKE OVER THE CASE FOR SERGEANT ARBELO. BUT ARBELO DOES
5 ONE THING THAT'S IMPORTANT. HE BRINGS IN MITCHELL. AND WHAT DOES
6 HE GET FROM MITCHELL? HE GOES TO MITCHELL AND HE SAYS, "GIVE ME ALL
7 OF THE CLOTHING THAT YOU WERE WEARING THAT PARTICULAR NIGHT."
8 AND THEN, "BOOM." HE DOES AN INVENTORY LIST, HE TESTIFIED TO IT RIGHT
9 THERE ON THE STAND. HE SAID THESE ARE THE ITEMS THAT I GOT FROM MR.
10 MITCHELL AND HE LISTS THEM, PANTS, SHIRTS, YOU KNOW, THINGS OF THAT
11 NATURE, EVERYTHING WAS LISTED ON THAT LIST EXCEPT FOR THE TRENCH
12 COAT. WHERE DID IT COME FROM? WE KNOW THAT ARBELO DIDN'T
13 BECAUSE ARBELO DIDN'T LIST IT. HE SAID, THAT'S WHAT I'VE GOT ON THE
14 LIST. SO, WHERE DID IT COME FROM? WHERE HAS IT BEEN? WHOSE IS IT?
15 YOU KNOW, THIS WAS A HORRIBLE, HORRIBLE, HORRIBLE CASE. THERE'S NO
16 DOUBT ABOUT THAT. BUT YOU'VE GOT TO BE SATISFIED THAT THIS PERSON,
17 RICHARD SIMMONS, COMMITTED THIS CRIME BEYOND A REASONABLE DOUBT.
18 YOU HAVE NOT ONE SHRED OF PHYSICAL EVIDENCE THAT CONNECTS
19 RICHARD SIMMONS TO THIS PARTICULAR CRIME. HE TALKS ABOUT GLOVES
20 AND ALL THESE OTHER KINDS OF STUFF, TO GIVE YOU WHAT YOU YOU
21 KNOW, THERE ARE A LOT OF THINGS THAT PEOPLE SAY AND THEY SAY IT
22 FOR A REASON. THEY SAY IT BECAUSE THEY GET SOMETHING IN RETURN.
23 SOMETHING THEY NEED. GET ME OFF THE STREET, PLEASE. GET ME OFF
24 THE STREET, I WANT SOMETHING OVER MY HEAD. I NEED MY MEDICINE. MY
25 MEDICINE IS MY ADDICTION, CRACK COCAINE. BRUCE OTTERBACHER DOES

1 NOT COME TO RICHARD SIMMONS ON THE STREET AND SAY, I'VE GOT A JOB
2 FOR YOU, AN HONEST JOB FOR YOU. COME ON OVER HERE AND WE'LL GET
3 YOU SOME WORK AND WE'LL GET YOU OFF THE STREET. TO GAIN HIS TRUST
4 AND HIS CONFIDENCE, HE DOESN'T TAKE THIS HOMELESS PERSON WHO IS
5 ADDICTED, OBVIOUSLY, TO DRUGS, ALTHOUGH TO HEAR HIM TELL THE
6 STORY HE DIDN'T KNOW THAT, HE DIDN'T KNOW THAT AFTER HIS THIRTY
7 YEARS OF EXPERIENCE AND AFTER ALL HIS TIME ON THE STREETS DEALING
8 WITH NARCOTICS, FOR THIRTY YEARS, AND HE COMES RIGHT IN HERE AND
9 TAKES THAT STAND AND TELLS YOU, I DIDN'T KNOW, I DIDN'T KNOW
10 ANYTHING ABOUT THE CASE. I NEVER DISCUSS THE CASE WITH THESE GUYS.

11 **MR. THORNTON:** OBJECTION, YOUR HONOR. THAT WAS NOT TESTIFIED
12 TO AS EVIDENCE, FACTS NOT IN EVIDENCE.

13 **THE COURT:** STICK TO EVIDENCE THAT'S IN THE RECORD AND NOT
14 ANY REASONABLE INFERENCE FROM IT.

15 **MR. HOOD:** I THINK IT'S IN THE RECORD, BUT ANYWAY HE DIDN'T HAVE
16 ANY CONVERSATIONS. HE DIDN'T KNOW ABOUT THE CASE, BECAUSE HE
17 SAID, YOU KNOW, WE DIDN'T DISCUSS IT. AND ALL OF THESE THINGS WE'RE
18 TALKING ABOUT A YEAR BECAUSE YOU GUYS HAVE TO JUDGE THE
19 CREDIBILITY OF THOSE PEOPLE WHO WERE TAKING THE STAND AND UNDER
20 OATH SWEARING TO THINGS. THEY SWEAR TO THINGS. THEY SWEAR THEY
21 ARE THE TRUTH AND YES, COME RIGHT AROUND AND CONTRADICT OTHER
22 EVIDENCE IN THE CASE. OH, WE DIDN'T KNOW HE WAS ADDICTED TO CRACK
23 COCAINE AND WAS, YOU KNOW, THIS THAT AND THE OTHER, WE DIDN'T
24 KNOW THAT. BUT THEN YOU CLEARLY HEAR ON ONE OF THESE WONDERFUL
25 TAPES, ONE OF THESE WONDERFUL INTERVIEWS THAT WAS CONDUCTED BY

1 THIS OFFICER RIGHT HERE WHERE HE MAKES THE STATEMENT PRIOR TO
2 THIS GRAND LITTLE SCHEME THAT WAS GOING TO WORK OUT IN COLUMBIA
3 WITH A HOMELESS RICHARD SIMMONS, "HE IS CRACKED OUT ON THE
4 STREETS OF COLUMBIA." BUT, I THOUGHT YOU SAID WE DIDN'T KNOW HE
5 WAS. AGAIN, JUDGE, DON'T DISCUSS THIS CASE AMONGST THE WITNESSES.
6 ARBELO TESTIFIES. HOW DID THEY HANDLE THIS TWO YEARS AGO? SOON
7 AS ARBELO FINISHES, OFFICER BROMAGE IS TALKING TO OFFICER DAVIS NOT
8 SUPPOSED TO. NOW, THEY SAY THEY WERE TALKING ABOUT, LET'S SEE,
9 ABOUT THOSE PHOTOGRAPHS THAT THEY TOOK OF THE FINGERPRINTS ON
10 THE LEG. YOU REMEMBER THE BLACK STUFF WE TALKED ABOUT ALL DAY,
11 YOU KNOW. AND REMEMBER THE GUY SLED SAYING, YEAH IF YOU GET GOOD
12 PICTURES, WE WOULD BE ABLE TO DETERMINE AND GET GOOD PRINTS.
13 THEY HAD THE PICTURES. WHAT HAPPENED TO THEM? THEY WERE TURNED
14 OVER TO SLED. THEY WERE TURNED OVER TO SLED. ANOTHER LITTLE
15 MISTAKE. WELL, I EXAMINED THEM AND I DECIDED THEY WEREN'T ANY GOOD.
16 THAT'S NOT AN EXPERT. THAT'S THE REASON WE HAVE A LAB. THAT'S THE
17 REASON HE HAD EXPERTS. THAT' WHY WE HAVE PEOPLE COME IN SAY
18 CERTAIN THINGS ABOUT CERTAIN THINGS, YOU KNOW. WAS THAT
19 EVIDENCE? NO. NO. ANOTHER LITTLE THING. WHEN YOU TALK ABOUT
20 CERTAIN PEOPLE TELLING CERTAIN THINGS AFTER THE CRIME SCENE HAS
21 ALREADY BEEN DESTROYED, AFTER, PROBABLY EVERYONE IN ST. HELENA
22 KNEW ABOUT THIS PARTICULAR CASE, IN FACT, THEY EVEN BELIEVE IT'S A
23 MURDER. "BOOM." WHAT DO THEY DO? THEY START CHECKING PEOPLE
24 AROUND THE AREA AND TALKING TO PEOPLE. WHERE WERE YOU? DO YOU
25 KNOW SO-AND-SO? DID YOU SEE ANYTHING AROUND THIS AREA? HE GOES

1 ON AND ON UNTIL THEY RUN INTO RICHARD SIMMONS. AND WHAT HAPPENS
2 WHEN THEY INTERVIEW RICHARD SIMMONS? WELL, ONCE AGAIN, OFFICER
3 DAVIS SAYS, "WELL, NO I DIDN'T TELL HIM ANYTHING ABOUT THE MURDER. I
4 DIDN'T TELL HIM ANYTHING." WHY DID YOU GET BECAUSE I COULD KILL HIM
5 WITH A HAMMER. I DIDN'T ASK HIM ABOUT MONEY THAT HE HAD, THINGS OF
6 THIS NATURE. WHAT HE DOES IS, HE INTERVIEWS RICHARD SIMMONS, GETS
7 DETAILS OF WHERE RICHARD SIMMONS WAS, WHO HE WAS WITH, WHERE HE
8 STAYED ON SATURDAY NIGHT, FRIDAY NIGHT AND THROUGH SATURDAY
9 MORNING. WHERE WAS HE AT? SLEPT IN THE LAUNDRY MAT. THE WOMAN
10 WHO RUNS THE PLACE BY THE NAME OF BETTY CAME IN AND WOKE ME UP. I
11 WAS WEARING THIS CLOTHING. WHAT DID OFFICER DAVIS DO? HE NEVER
12 EVEN WENT TO THE LAUNDRY MAT. HE NEVER EVEN TALKED TO THIS
13 WOMAN WHO WAS IN THE LAUNDRY MAT. RICHARD SIMMONS SAID, "SHE CAN
14 TELL YOU EXACTLY WHERE I WAS. SHE WOKE ME UP." THE WHOLE NINE
15 YARDS. THEY WERE TALKING ABOUT SOMEBODY BREAKING INTO THE
16 LAUNDRY MAT, ONE OF THE MACHINES AND GETTING QUARTERS OUT OF
17 THEM. SO, WHAT DO WE HAVE? WE HAVE, ONCE AGAIN, SOMEBODY WHO
18 SAID SOMETHING. DO WE CHECK IT OUT? ABSOLUTELY NOT. NOT THE FIRST
19 THING. NOT THE FIRST THING. BUT, YET, THEY WANT YOU, BASED ON THIS
20 WONDERFUL INVESTIGATION THAT THEY'VE DONE, TO CONVICT THAT MAN OF
21 MURDER BECAUSE HE MAKES A STATEMENT UNDER THE INFLUENCE OF, WE
22 DON'T KNOW WHAT, WE KNOW SOMETHING BECAUSE THE AGENT GIVES HIM
23 THIS STUFF. THE AGENT, AS I SAID BEFORE, HE DIDN'T COME TO HIM AND
24 SAY, RICHARD, DO YOU KNOW, I'M GOING TO GAIN YOUR TRUST AND
25 CONFIDENCE BY TAKING YOU AND HELPING YOU, I'M GOING TO BASICALLY

1 GAIN YOUR CONFIDENCE AND YOUR TRUST BY GIVING YOU CRACK COCAINE
2 AND ALCOHOL. I'M GOING TO PUT YOU IN A POSITION THAT YOU ARE GOING
3 TO COMMIT A CRIME AND NOW I HAVE SOMETHING THAT I CAN TELL YOU
4 ABOUT THAT YOU'VE DONE. I HAVE GAINED YOUR TRUST AND CONFIDENCE
5 AND THAT'S EXACTLY WHAT HE DID. NOW, WE DON'T KNOW HOW MANY
6 OTHER OF THESE CONVERSATIONS ARE NOT TAPED OR WHATEVER. WE
7 DON'T KNOW HOW MANY TAPES HE HAD WITH RICHARD. AGAIN, IT GOES
8 BACK TO, TELL YOU AS MUCH AS YOU NEED TO KNOW AND THAT'S WHAT YOU
9 HEAR. WE'VE PARADED ALL OF THESE GUYS IN HERE FROM THE JAIL. THESE
10 WERE THE GUYS WHO RICHARD SIMMONS IS OVER AT THE JAIL. THEY ARE
11 OUT TAKING STATEMENTS FROM THEM. SOME OF THEM WERE IN THE JAIL
12 WITH RICHARD SIMMONS AND WHAT DID THEY GET OUT OF THAT? NOTHING.
13 NOT A THING. IT JUST SHOWS YOU WHAT ENDS THEY WILL GO TO TO TRY TO
14 CONVICT RICHARD SIMMONS BECAUSE THEY KNEW THAT THE EVIDENCE
15 THAT THEY HAD ON THOSE LITTLE TAPES THERE AREN'T ENOUGH. THEY
16 KNEW THAT WHEN A PERSON IS UNDER THE INFLUENCE, WHEN YOU TAKE
17 ADVANTAGE OF A PERSON AND ALSO THE FACT THAT THEY KNEW RICHARD
18 SIMMONS HAD BEEN AROUND FOR TWELVE YEARS, TEN YEARS, THAT
19 PEOPLE TALK. THEIR DISCUSSIONS ABOUT, SO THEY KNOW IT IS EXTREMELY
20 DIFFICULT TO GET BECAUSE THEY KNOW ALL THEY HAVE IS A STATEMENT
21 MADE BY RICHARD SIMMONS UNDER THE INFLUENCE OF THIS SUBSTANCE,
22 THIS OFFICER, IT'S VERY EASY. AND YOU RECALL SOMETHING THEY GUYS
23 TESTIFIED TO, SAID I DIDN'T KNOW YOU WERE TAPING THAT. YOU WEREN'T
24 SUPPOSED TO BE TAPING THAT. SO, THEY ARE HIDING FROM THEM TOO.
25 WHY? BECAUSE THEY DIDN'T TRUST THEM. DIDN'T TRUST THEM. BUT, THEY

1 BROUGHT THEM IN FOR YOU TO TRUST AND IT BOILS DOWN IN THIS CASE TO
2 THE FACT THAT ALL THEY HAVE ARE THOSE TAPES. AND THOSE TAPES ARE
3 THE PRODUCT OF WHATEVER YOU WANT TO DO. YOU SEE IT AS WELL AS I
4 SEE IT. THEY GET A HOMELESS PERSON, A PERSON ADDICTED, PUT HIM IN A
5 POSITION, GIVE HIM ENOUGH INFORMATION TO KEEP HIM GOING, KEEP IT
6 GOING, BUT WHAT HAPPENS IF SOMEBODY WAKES UP AND GETS VIOLENT.
7 WHAT DO YOU DO THEN? YOU KNOW. WELL, I'D DO THIS. KEEPS ON GOING.
8 FEELING HIM A LITTLE BIT MORE, A LITTLE BIT OF WHAT HE ALREADY HAD. HE
9 HAD IT. HE HAD YEARS AND YEARS. FOR THREE YEARS HE SAID WHAT
10 HAPPENED TO THE SLED INVESTIGATION STUFF? NEVER ONCE DID ANYBODY
11 ARREST RICHARD SIMMONS FOR THIS CRIME. THESE PAPERS, I THINK
12 SOMEBODY SAID WE READ ABOUT IT IN THE NEWSPAPER. WE DON'T KNOW
13 WHAT'S IN THE NEWSPAPER. THEY DON'T KNOW WHO WAS IN THE HOUSE.
14 THEY DON'T KNOW IF THE WALLET WAS FOUND LATER ON BY SOMEBODY
15 WHO WAS CLEANING THE HOUSE OR ANYTHING OF THAT NATURE. TELL
16 THEM WHAT THEY WASN'T TO HEAR, WHAT YOU WANT THEM TO HEAR,
17 BECAUSE THEY ARE THE PEOPLE WHO TAKE CARE OF YOU. THEY ARE THE
18 ONES THAT ARE GOING TO TAKE CARE OF YOUR LIFE. THEY ARE THE ONES
19 THAT SUPPLIED WHAT YOU NEED. SELF-SERVING BECAUSE I GET
20 SOMETHING IN RETURN. I'M SURVIVING IS WHAT THEY'RE TALKING ABOUT.
21 I'M TRYING TO SURVIVE. I'LL TELL YOU ANYTHING YOU WANT IF YOU CAN
22 JUST TAKE CARE OF ME. AND THAT'S EXACTLY WHAT THEY DO. I COULD GO
23 BACK OVER THE DISCREPANCIES AND TESTIMONY OF THE CASE, BUT I THINK
24 YOU HAVE TO LOOK AT AGAIN, THE INTEGRITY AND THE CREDIBILITY OF THE
25 PEOPLE WHO HAVE TAKEN THE STAND AND THE TESTIMONY AND I THINK

1 THAT IF YOU LOOK LONG AND HARD, THAT YOU WILL FIND THAT THERE IS AN
2 AWFUL LOT OF INCREDIBLE TESTIMONY AND IF YOU WANT TO RELY UPON
3 THAT AND THE LACK OF EVIDENCE, OR NO PHYSICAL EVIDENCE
4 WHATSOEVER IN THIS CASE TO CONVICT RICHARD SIMMONS, THAT'S WHAT
5 YOU'RE GOING TO HAVE TO DO BECAUSE THAT'S WHERE YOU GET YOUR
6 EVIDENCE FROM. THOSE ARE THE PEOPLE THAT YOU HAVE TO RELY ON. YOU
7 HAVE TO TRUST WHAT THEY SAY, WHAT THEY TELL YOU. "OH, NO, WE NEVER
8 SAID ANYTHING LIKE THAT. OH, NO, NO, NO, WE WOULDN'T DO THAT. WE
9 WOULDN'T DO THAT." OH, BY THE WAY, WE HAVE A SLUSH FUND WITH SLED
10 THAT'S NOT YOUR MONEY THAT WE WERE USING TO BUY RICHARD DRUGS,
11 TO BUY CRACK COCAINE WITH. NO, WE DON'T USE THAT FOR RICHARD
12 SIMMONS. WE DIDN'T KNOW THIS MONEY DIDN'T BELONG TO YOU GUYS.
13 WOULDN'T USE TAXPAYERS MONEY. WELL, WHO DOES SLED WORK FOR?
14 TAXPAYERS. WHO FUNDS IT? YOU KNOW, ALL OF THIS KIND OF STUFF. YOU
15 DO. THEY HAD THEM TELL YOU, NO IT'S NOT YOUR MONEY THAT WE WERE
16 SPENDING ON DOPE AND THINGS OF THAT NATURE. REMEMBER THE LAST
17 STATEMENT THAT MAKES. I'VE DONE SPENT THIRTY SOMETHING DOLLARS
18 ON YOU TONIGHT AND HERE'S ANOTHER TWENTY. WHY DID HE MAKE THOSE
19 KINDS OF STATEMENTS AND WHY DID HE HAVE ACCOUNTABILITY SO THAT IF
20 WE HAVE TO ACCOUNT FOR THE MONEY THAT BELONGS TO SOMEBODY,
21 SLED. INTEGRITY. THAT'S THE MOST IMPORTANT THING. THAT'S WHAT WE
22 STARTED THIS CASE, I TOLD YOU AT THE START OF THIS CASE. THAT'S
23 WHERE IT COMES FROM, RIGHT THERE (INDICATING WITNESS STAND).
24 YOU'RE GOING TO HAVE TO BELIEVE THE PEOPLE WHO TESTIFIED BECAUSE
25 THAT'S THE ONLY EVIDENCE YOU HAVE THAT THEY DIDN'T DO ANYTHING AT

1 ALL. THANK YOU.

2 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, YOU HAVE NOW
3 HEARD THE ARGUMENTS OF COUNSEL AND SO I AM NOW GOING TO EXPLAIN
4 THE LAW TO YOU THAT APPLIES TO THE FACTS AS YOU FIND THEM.

5 NOW, UNDER OUR CONSTITUTION AND OUR LAWS, ONLY THE JURY CAN
6 MAKE FINDINGS OF FACT IN A CASE. AS I TOLD YOU AT THE BEGINNING OF
7 THE TRIAL, I AM NOT PERMITTED TO INDICATE TO YOU HOW I FEEL ABOUT
8 THE FACTS OF THE CASE AND I WANT TO TELL YOU, EXPRESSLY, RIGHT NOW
9 THAT IF I HAVE SAID OR DONE ANYTHING IN THIS CASE THAT INDICATES TO
10 YOU THAT I HAVE AN OPINION CONCERNING THIS CASE, THEN YOU SHOULD
11 DISREGARD THAT. YOU, THE JURY, MUST INDEPENDENTLY WEIGH THE
12 EVIDENCE PRESENTED IN THE TRIAL AND RENDER A VERDICT BASED SOLELY
13 ON THE EVIDENCE.

14 NOW, THE SAME CONSTITUTION AND LAWS THAT MAKE YOU THE
15 FINDERS OF THE FACT, ALSO MAKE ME INSTRUCTOR OF THE LAW. AND IF
16 YOU HAVE SOME IDEA OF WHAT THE LAW IS OR WHAT THE LAW OUGHT TO
17 BE, AND IT DOES NOT AGREE WITH WHAT I NOW TELL YOU THE LAW IS, THEN
18 YOU ARE OBLIGATED UNDER THE OATH THAT YOU TOOK AT THE BEGINNING
19 OF THE TRIAL TO ABANDON ANY PRECONCEPTION THAT YOU MIGHT HAVE ON
20 YOUR PART AND YOU MUST ACCEPT AND APPLY ONLY THE LAW AS I
21 PRECISELY NOW INSTRUCT YOU ON IT.

22 NOW, AS I TOLD YOU AT THE BEGINNING OF THE TRIAL, THERE ARE
23 TWO INDICTMENTS IN THIS CHARGE. INDICTMENT 2004-GS-07-1654 CHARGES
24 MR. SIMMONS WITH MURDER. INDICTMENT 2004-GS-07-1667 CHARGES MR.
25 SIMMONS WITH BURGLARY IN THE FIRST DEGREE. EACH OF THESE

1 INDICTMENTS IS A SEPARATE AND DISTINCT OFFENSE AND YOU MUST DECIDE
2 EACH INDICTMENT SEPARATE ON THE EVIDENCE AND THE LAW APPLICABLE
3 TO IT UNINFLUENCED BY YOUR DECISION AS TO THE OTHER INDICTMENT.
4 THE DEFENDANT MAY BE CONVICTED SEPARATELY OR HIS MAY BE
5 ACQUITTED ON ANY OR ALL OF THE OFFENSES CHARGED. YOU ARE GOING
6 TO BE ASKED TO WRITE A SEPARATE VERDICT OF GUILTY OR NOT GUILTY ON
7 EACH OF THE INDICTMENTS. NOW, I WANT TO REMIND YOU THE FACT THAT
8 THE DEFENDANT WAS ARRESTED, CHARGED AND INDICTED IN THIS CASE, IS
9 NOT EVIDENCE IN THIS CASE AND IS NOT TO BE CONSIDERED BY YOU AS
10 EVIDENCE IN THIS CASE. NOR, DOES IT CREATE ANY PRESUMPTION OF GUILT
11 OR AN INFERENCE OF GUILT. THE DOCUMENTS WHICH I JUST TOLD YOU
12 ABOUT ARE SIMPLY FORMAL, WRITTEN INSTRUMENTS THAT CONTAIN THE
13 CHARGES BROUGHT AGAINST THE DEFENDANT AND IT IS THE FORMAL
14 DOCUMENT BY WHICH THIS CASE IS BROUGHT INTO THIS COURT.

15 NOW, I TOLD YOU AT THE BEGINNING OF THE TRIAL, THE DEFENDANT
16 HAS PLED NOT GUILTY TO EACH OF THESE INDICTMENTS AND THAT CASTS A
17 BURDEN ON THE STATE TO PROVE THE DEFENDANT IS GUILTY BEYOND A
18 REASONABLE DOUBT. A PERSON CHARGED WITH COMMITTING A CRIMINAL
19 OFFENSE IN SOUTH CAROLINA IS NEVER REQUIRED TO PROVE HIMSELF
20 INNOCENT. IT IS AN IMPORTANT RULE OF LAW IN THIS COUNTRY THAT THE
21 DEFENDANT IN A CRIMINAL CHARGE WILL ALWAYS BE PRESUMED INNOCENT
22 OF A CRIME FOR WHICH HE IS INDICTMENT, UNLESS AND UNTIL HIS GUILT HAS
23 BEEN PROVEN BY EVIDENCE SATISFYING YOU OF THAT GUILT BEYOND A
24 REASONABLE DOUBT. THE PRESUMPTION OF INNOCENCE IS NOT MERELY A
25 LEGAL THEORY. IT'S NOT A LEGAL PHRASE. IT'S A SUBSTANTIAL

1 CONSTITUTIONAL RIGHT TO WHICH EVERY DEFENDANT IS ENTITLED. AND
2 THIS PRESUMPTION OF INNOCENCE ACCOMPANIES THE DEFENDANT FROM
3 THE TIME HE IS CHARGED, THROUGHOUT THE TRIAL, UNTIL YOU REACH A
4 VERDICT OF GUILTY BASED UPON EVIDENCE WHICH SATISFIES YOU OF THAT
5 GUILT AND ON A REASONABLE DOUBT.

6 LADIES AND GENTLEMEN, I WANT TO INSTRUCT YOU NOW AND I WANT
7 TO EMPHASIZE TO YOU, THE FACT THAT THE DEFENDANT DID NOT TESTIFY IN
8 THIS TRIAL MUST NOT CONSIDERED BY YOU IN ANY WAY DURING YOUR
9 DELIBERATIONS. A DEFENDANT HAS A CONSTITUTIONAL RIGHT TO REMAIN
10 SILENT AND THE EXERCISE OF THAT CONSTITUTIONAL RIGHT CAN NOT AND
11 MUST NOT BE HELD AGAINST THE DEFENDANT. UNDER YOUR OATH AS
12 JURORS, YOU ARE TO DRAW NO INFERENCE AND DRAW NO CONCLUSION
13 WHATSOEVER FROM THE FACT THAT THE DEFENDANT IN THIS CASE DID NOT
14 TESTIFY. DO NOT EVEN DISCUSS THIS FACT IN THE JURY ROOM. THE
15 DEFENDANT IS NOT REQUIRED TO PROVE ANYTHING. THE BURDEN OF
16 PROOF REMAINS ON THE STATE TO PROVE THE DEFENDANT'S GUILT BEYOND
17 A REASONABLE DOUBT.

18 NOW, AS I JUST SAID, THE STATE HAS THE BURDEN OF PROVING
19 GUILTY BEYOND A REASONABLE DOUBT. NOW, SOME OF YOU MAY HAVE
20 SERVED AS JURORS IN A CIVIL CASE, AND I EXPLAINED THIS BRIEFLY TO YOU
21 AT THE BEGINNING OF THE TRIAL. IN A CIVIL CASE, YOU WERE TOLD THAT IT
22 WAS ONLY NECESSARY TO PROVE THAT A FACT IS MORE LIKELY TO BE TRUE
23 THAN NOT TRUE, SUCH AS, BY THE GREATER WEIGHT OR THE
24 PREPONDERANCE OF THE EVIDENCE. IN A CRIMINAL CASE, SUCH AS THIS,
25 THE STATE'S PROOF MUST BE MORE POWERFUL THAN THAT. IT MUST BE

1 BEYOND A REASONABLE DOUBT. PROOF BEYOND A REASONABLE DOUBT IS
2 PROOF THAT LEAVES YOU FIRMLY CONVINCED OF THE DEFENDANT'S GUILT.
3 THERE ARE VERY FEW THINGS IN THIS WORLD THAT WE KNOW WITH
4 ABSOLUTE CERTAINTY. IN CRIMINAL CASES, THE LAW DOES NOT REQUIRE
5 PROOF THAT OVERCOMES EVERY POSSIBLE DOUBT. IF, BASED ON YOUR
6 CONSIDERATION OF THE EVIDENCE, YOU ARE FIRMLY CONVINCED THAT THE
7 DEFENDANT IS GUILTY OF THE CRIME CHARGED, YOU MUST FIND THE
8 DEFENDANT GUILTY. IF, ON THE OTHER HAND, YOU THINK THERE IS A REAL
9 POSSIBILITY THAT THE DEFENDANT IS NOT GUILTY, THEN YOU MUST GIVE
10 THE DEFENDANT THE BENEFIT OF THE DOUBT AND FIND THE DEFENDANT
11 NOT GUILTY.

12 NOW, I EXPLAINED TO YOU DURING THE TRIAL THAT ORDINARILY WE
13 DON'T ALLOW PEOPLE TO TESTIFY ABOUT THEIR OPINIONS IN COURT. WE DO
14 MAKE AN EXCEPTION FOR EXPERT WITNESSES AND AS I TOLD YOU BACK IN
15 THE TRIAL, EXPERTS ARE PEOPLE, WHO BECAUSE OF THEIR EDUCATION OR
16 EXPERIENCE OR SPECIALIZED TRAINING IN THEIR FIELD, RISE TO THE LEVEL
17 OF EXPERTISE IN THAT AREA AND THEY ARE ALLOWED TO TESTIFY AND GIVE
18 THEIR OPINION AND STATE THE REASONS FOR THEIR OPINION. NOW, YOU
19 CAN GIVE AN EXPERT'S OPINION AS MUCH OR AS LITTLE WEIGHT AS YOU
20 THINK IT DESERVES. AND IF YOU DON'T THINK IT IS BASED ON SUFFICIENT
21 EDUCATION OR EXPERIENCE, OR YOU CONCLUDE THAT AN EXPERT'S
22 OPINIONS ARE NOT SOUND, OR THEY ARE OUTWEIGHED BY OTHER
23 EVIDENCE, YOU CAN DISREGARD THAT OPINION ENTIRELY. YOU ARE NOT
24 COMPELLED TO BLINDLY ACCEPT AN EXPERT'S OPINION AND EVEN IF IT'S
25 UNCONTRADICTED, AN EXPERT'S TESTIMONY MAY BE REJECTED IF YOU FIND

1 IT INCONSISTENT WITH THE FACTS OR IS OTHERWISE UNREASONABLE. YOU
2 HAVE THE RIGHT TO CONSIDER TESTIMONY IN LIGHT OF ALL OF THE
3 CIRCUMSTANCES AND GIVE IT SUCH WEIGHT, IF ANY, THAT YOU THINK IT IS
4 ENTITLED TO.

5 NOW, AS JURORS, YOU MUST NECESSARILY DETERMINE CREDIBILITY
6 OF WITNESSES WHO TESTIFIED IN THIS CASE. CREDIBILITY SIMPLY MEANS
7 BELIEVABILITY AND IT IS YOUR DUTY AS JURORS TO ANALYZE AND TO
8 EVALUATE THE EVIDENCE AND DETERMINE WHICH EVIDENCE CONVINCES
9 YOU OF ITS TRUTH. IN DETERMINING THE BELIEVABILITY OF WITNESSES WHO
10 TESTIFIED IN THIS CASE, YOU MAY BELIEVE ONE WITNESS OVER SEVERAL
11 WITNESSES OR SEVERAL WITNESSES OVER ONE WITNESS. YOU MAY
12 BELIEVE PART OF THE TESTIMONY OF A WITNESS AND REJECT THE
13 REMAINING PART OF THE TESTIMONY OF THAT SAME WITNESS. YOU MAY
14 BELIEVE THE TESTIMONY OF A WITNESS IN ITS ENTIRETY OR YOU CAN
15 REJECT THE TESTIMONY OF A WITNESS IN ITS ENTIRETY. YOU MAY
16 CONSIDER WHETHER ANY WITNESS EXHIBITED TO YOU ANY INTEREST, BIAS,
17 PREJUDICE OR OTHER MOTIVE IN THIS CASE. YOU MAY ALSO CONSIDER THE
18 APPEARANCE AND THE MANNER OF A WITNESS WHILE ON THE WITNESS
19 STAND. I WILL ALSO TELL YOU THAT THERE MAY HAVE BEEN EVIDENCE
20 PRESENTED THAT WITNESSES HAVE MADE PRIOR STATEMENTS THAT ARE
21 NOT CONSISTENT WITH A WITNESS' PRESENT TESTIMONY. YOU MAY USE
22 THIS EVIDENCE TO DECIDE WHETHER TO BELIEVE A WITNESS. YOU MAY
23 ALSO USE AS EVIDENCE OF THE EARLIER CONTRADICTORY STATEMENT TO
24 DETERMINE THE TRUTH OF THOSE STATEMENTS. IT IS UP TO YOU TO
25 DECIDE WHETHER TO BELIEVE THE EARLIER STATEMENTS OR THE

1 TESTIMONY GIVEN AT TRIAL. IF A WITNESS IS SHOWN TO KNOWINGLY
2 TESTIFY UNTRUTHFULLY CONCERNING ANY MATERIAL MATTER, YOU MAY
3 CONSIDER THIS IN DETERMINING IN WHETHER TO TRUST THE WITNESS'
4 TESTIMONY AS TO OTHER MATTERS. YOU MAY REJECT ALL TESTIMONY OF
5 THAT WITNESS OR GIVE ALL OR PART OF THE TESTIMONY THE WEIGHT THAT
6 YOU THINK IT DESERVES.

7 NOW, I WILL ALSO TELL YOU THAT THERE HAS BEEN A STATEMENT
8 THAT WAS ALLEGED TO HAVE BEEN MADE BY THE DEFENDANT THAT HAD TO
9 BE ADMITTED INTO EVIDENCE IN THIS TRIAL. WHILE THE COURT HAS MADE
10 AN INITIAL DETERMINATION THAT THIS STATEMENT IS ADMISSIBLE, I
11 INSTRUCT YOU THAT YOU MAKE THE ULTIMATE DECISION AS TO WHETHER
12 OR NOT THE DEFENDANT MADE THE STATEMENT. IF THE DEFENDANT DID
13 MAKE THE STATEMENT, THEN YOU MUST DETERMINE WHETHER OR NOT THE
14 STATEMENT WAS MADE BY THE DEFENDANT VOLUNTARILY AND OF ITS OWN
15 FREE WILL. NOW, THIS MEANS THAT THE STATEMENT WAS NOT CAUSED BY
16 PRESSURE, FORCE, FEAR, THREATS, COERCION, OR INTIMIDATION, OR BY
17 HOPE OR PROMISE OF LENIENCY OR REWARD OF ANY KIND. IN DETERMINING
18 WHETHER A STATEMENT WAS VOLUNTARY, YOU SHOULD CONSIDER BOTH
19 THE CHARACTERISTICS OF THE DEFENDANT AND THE DETAILS OF THE
20 QUESTIONS. SOME OF THE FACTORS THAT YOU MAY CONSIDER OF ARE: THE
21 AGE OF THE DEFENDANT, THE DEFENDANT'S EDUCATION OR LACK OF
22 EDUCATION, THE DEFENDANT'S MENTAL ABILITY OR CAPACITY, THE
23 DEFENDANT'S IQ OR INTELLIGENCE, THE DEFENDANT'S BACKGROUND AND
24 ENVIRONMENT, PLACE AND LENGTH OF DETENTION, THE NATURE OF THE
25 QUESTIONING, THE ADVICE OR LACK THEREOF TO THE DEFENDANT OF HIS

1 CONSTITUTIONAL RIGHTS, INCLUDING BUT NOT LIMITED TO, THE RIGHT TO
2 REMAIN SILENT, THAT ANY STATEMENT MADE COULD BE USED AGAINST HIM
3 IN A COURT OF LAW, THE RIGHT TO HAVE A LAWYER PRESENT AND THAT IF
4 HE COULD NOT AFFORD A LAWYER, A LAWYER WOULD BE APPOINTED TO
5 REPRESENT HIM WITHOUT ANY COSTS AND THAT HE COULD STOP MAKING A
6 STATEMENT AT ANY TIME. YOU MUST ALSO CONSIDER ALL OF THE
7 SURROUNDING CIRCUMSTANCES BEFORE YOU GIVE ANY WEIGHT TO AN
8 ALLEGED STATEMENT. THE STATE HAS THE BURDEN OF PROVING BEYOND A
9 REASONABLE DOUBT THAT THE ALLEGED STATEMENT WAS VOLUNTARY. IF
10 YOU DETERMINE IT WAS, THEN YOU MAY GIVE THE STATEMENT ANY
11 FURTHER CONSIDERATION THAT YOU DEEM PROPER. YOU MUST DECIDE
12 WHAT WEIGHT, IF ANY, SHOULD BE GIVEN THE ALLEGED STATEMENT. IF YOU
13 DETERMINE THAT THE STATEMENT WAS NOT A FREE AND VOLUNTARY
14 STATEMENT OF THE DEFENDANT, YOU SHOULD NOT CONSIDER THE
15 STATEMENT AT ALL.

16 NOW, I AM GOING TO GO OVER WITH YOU THE ELEMENTS OF THE TWO
17 CRIMES THE DEFENDANT HAS BEEN CHARGED WITH. FIRST OF ALL, THE
18 DEFENDANT IS CHARGED WITH MURDER. THAT IS A VIOLATION OF
19 CODE §16-3-10 IN THE SOUTH CAROLINA CODE OF LAWS. THE STATE MUST
20 PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT KILLED
21 ANOTHER PERSON WITH MALICE AFORETHOUGHT. MALICE IS HATRED,
22 ILL-WILL, OR HOSTILITY TOWARDS ANOTHER PERSON. IT IS THE INTENTIONAL
23 DOING OF A WRONGFUL ACT WITHOUT JUST CAUSE OR EXCUSE AND WITH
24 THE INTENT TO INFLICT AN INJURY OR OTHER CIRCUMSTANCES THAT THE
25 LAW WOULD INFER AN ILLEGAL INTENT. MALICE AFORETHOUGHT DOES NOT

1 REQUIRE THAT MALICE EXISTS FOR ANY PARTICULAR TIME BEFORE THE ACT
2 IS COMMITTED. BUT, MALICE MUST EXIST IN THE MIND OF THE DEFENDANT
3 JUST BEFORE AND AT THE TIME THE ACT WAS COMMITTED. THEREFORE,
4 THERE MUST BE THE COMBINATION OF THE PREVIOUS EVIL INTENT AND THE
5 ACT. MALICE AFORETHOUGHT MAY BE EXPRESSED OR INFERRED. THE
6 TERMS EXPRESSED OR INFERRED DO NOT MEAN DIFFERENT KINDS OF
7 MALICE BUT MERELY THE MANNER IN WHICH MALICE MAY BE SHOWN TO
8 EXIST. THIS IS EITHER BY DIRECT EVIDENCE OR AN INFERENCE FROM THE
9 FACTS AND CIRCUMSTANCES WHICH ARE PROVED. MALICE -- OR EXPRESS
10 MALICE IS SHOWN WHEN A PERSON SPEAKS WORDS WHICH EXPRESS
11 HATRED OR ILL-WILL FOR ANOTHER OR WHEN A PERSON PREPARES
12 BEFOREHAND TO DO THE ACT WHICH WAS LATER ACCOMPLISHED. FOR
13 EXAMPLE, LYING IN WAIT FOR A PERSON OR ANY OTHER ACTS OF
14 PREPARATION GOING TO SHOW THAT THE DEED WAS WITHIN THE
15 DEFENDANT'S MIND WOULD BE EXPRESSED MALICE. MALICE MAY BE
16 INFERRED FROM CONDUCT SHOWING A TOTAL DISREGARD FOR HUMAN LIFE.
17 INFERRED MALICE MAY ALSO ARISE WHEN A DEED IS DONE WITH A DEADLY
18 WEAPON. A DEADLY WEAPON IS AN ARTICLE, INSTRUMENT OR SUBSTANCE
19 WHICH IS LIKELY TO CAUSE DEATH OR GREAT BODILY HARM. WHETHER AN
20 INSTRUMENT HAS BEEN USED AS A DEADLY WEAPON DEPENDS ON THE
21 FACTS AND CIRCUMSTANCES IN EACH CASE. THE FOLLOWING ARE
22 EXAMPLES OF INSTRUMENTS THAT MAY BE DEADLY WEAPONS: A PISTOL, A
23 SHOTGUN, A RIFLE, A DIRK, A DAGGER, A KNIFE, A SLING-SHOT, METAL
24 KNUCKLES, RAZOR, GASOLINE, A FIRE BOMB, A MOLOTOV COCKTAIL, LIGHTER
25 FLUID. A GUN MAY BE A DEADLY WEAPON EVEN IF IT IS NOT OPERATED.

1 NOW, THE SECOND CRIME THE DEFENDANT IS CHARGED WITH IS
2 BURGLARY IN THE FIRST DEGREE. IN ORDER TO CONVICT THE DEFENDANT
3 WITH BURGLARY IN THE FIRST DEGREE, THE STATE MUST PROVE EACH OF
4 THE FOLLOWING INSTRUMENTS BY -- BEYOND A REASONABLE DOUBT. FIRST,
5 IT MUST PROVE THAT THE DEFENDANT ENTERED THE DWELLING, THAT THE
6 DEFENDANT NEEDED CONSENT TO ENTER THAT DWELLING, THE DEFENDANT
7 DID NOT HAVE CONSENT TO ENTER THE DWELLING AND AT THE TIME THAT
8 THE DEFENDANT ENTERED THE DWELLING, HE HAD THE INTENT TO COMMIT A
9 CRIME WHILE IN THE DWELLING. AND FINALLY, AT THE TIME THAT THE
10 DEFENDANT ENTERED, WHILE IN THE DWELLING OR WHEN FLEEING, THE
11 DEFENDANT CAUSED PHYSICAL INJURY TO SOMEONE WHO WAS NOT
12 PARTICIPATING IN THE CRIME. SO, LET ME GO OVER THESE WITH YOU. FIRST
13 OF ALL, THE STATE MUST PROVE BEYOND A REASONABLE DOUBT THAT THE
14 DEFENDANT ENTERED A DWELLING WITHOUT CONSENT. A DWELLING IS ANY
15 BUILDING OR PORTION OF A BUILDING THAT A PERSON ORDINARILY SLEEPS.
16 A BUILDING CONSTRUCTED AS A DWELLING THAT HAS NEVER BEEN
17 OCCUPIED CANNOT BE CONSIDERED A DWELLING FOR PURPOSES OF A
18 BURGLARY BUT A BUILDING IS A DWELLING EVEN IF ITS RESIDENT IS
19 TEMPORARY ABSENT FROM THE BUILDING. IN ORDER TO PROVE THAT THE
20 DEFENDANT ENTERED THE DWELLING, THE STATE DOES NOT HAVE TO SHOW
21 THE DEFENDANT'S ENTIRE BODY ENTERED THE DWELLING, THE SMALLEST
22 ENTRY IS SUFFICIENT. IT MAY BE ANY PART OF THE BODY SUCH AS THE
23 HAND OR THE FOOT OR EVEN AN INSTRUMENT SUCH AS A HOOK OR
24 ANOTHER INSTRUMENT. IN ADDITION, THE STATE DOES NOT HAVE TO PROVE
25 THAT FORCE WAS USED TO GAIN ENTRY. IF A PERSON ENTERS A PERSON

1 ENTERS A BUILDING BY USING DECEPTION, ARTIFICE, TRICKERY OR
2 MISREPRESENTATION TO GET CONSENT TO ENTER, THIS IS AN ENTRY
3 WITHOUT CONSENT. NEXT, THE STATE MUST PROVE BEYOND A REASONABLE
4 DOUBT THAT THE DEFENDANT INTENDED TO COMMIT A CRIME, EITHER A
5 FELONY OR A MISDEMEANOR AT THE TIME OF THE ENTRY. THE MERE ENTRY
6 INTO A DWELLING WITHOUT CONSENT IS NOT BURGLARY. IF THE INTENT TO
7 COMMIT A CRIME IS FORMED AFTER THE ENTRY, IT IS NOT BURGLARY. ON
8 THE OTHER HAND, IF THE DEFENDANT INTENDED TO COMMIT A CRIME AT THE
9 TIME OF THE ENTRY IT IS A BURGLARY EVEN IF THE INTENT WAS ABANDONED
10 AFTER THE ENTRY. IT DOES NOT MATTER IF THE INTENT OF THE CRIME WAS
11 NOT COMPLETED. INTENT MUST ALSO BE SHOWN BY – INTENT MAY ALSO BE
12 SHOWN BY ACTS AND CONDUCT BY THE DEFENDANT AND OTHER
13 CIRCUMSTANCES FROM WHICH YOU MAY NATURALLY AND REASONABLY
14 INFER INTENT. AND FINALLY, THE STATE MUST PROVE BEYOND A
15 REASONABLE DOUBT THAT WHILE ENTERING, WHILE IN THE DWELLING OR
16 WHEN FLEEING, THE DEFENDANT CAUSED PHYSICAL INJURY TO SOMEONE
17 NOT PARTICIPATING IN THE CRIME.

18 NOW, IN DETERMINING GUILT OR INNOCENCE OF THE DEFENDANT, YOU
19 CANNOT CONSIDER THE POSSIBLE PENALTY FOR ANY PARTICULAR CRIME.
20 THE PUNISHMENT FOR THE CRIME IS A MATTER FOR ME TO DETERMINE AND
21 SHOULD NEVER BE CONSIDERED BY YOU IN ANY WAY, WHATSOEVER, IN
22 ARRIVING AT A FAIR AND IMPARTIAL VERDICT AS TO THE GUILT OR
23 INNOCENCE OF THE DEFENDANT.

24 NOW, THERE ARE FOUR POSSIBLE VERDICTS THAT YOU MAY FIND IN
25 THIS CASE. GUILTY OF MURDER AND NOT GUILTY OF MURDER. GUILTY OF

1 BURGLARY IN THE FIRST DEGREE AND NOT GUILTY OF BURGLARY IN THE
2 FIRST DEGREE AND THERE IS NO PARTICULAR SIGNIFICANCE TO THE FACT
3 THAT I JUST WENT OVER THAT WITH YOU IN THAT ORDER. I JUST HAD TO GO
4 OVER SOMETHING FIRST. NOW, FOLKS, YOUR VERDICT MUST BE
5 UNANIMOUS. EVERY PERSON MUST AGREE ON THE VERDICT.

6 NOW, MR. FOREMAN, I AM GOING TO SEND THESE VERDICT FORMS OR
7 THESE INDICTMENTS BACK TO THE JURY ROOM WITH YOU. ON THE BACK OF
8 EACH OF THE INDICTMENTS, YOU WILL SEE THERE IS A PLACE DOWN AT THE
9 BOTTOM. ON EACH OF THEM YOU WILL WRITE GUILTY OR NOT GUILTY. ON
10 THE INDICTMENT FORM FOR MURDER, YOU WILL WRITE ALONG THE BACK
11 EITHER GUILTY OR NOT GUILTY AS THE VERDICT. ON THE BACK OF THE
12 INDICTMENT FORM FOR BURGLARY IN THE FIRST DEGREE, YOU WILL SIMPLY
13 WRITE GUILTY OR NOT GUILTY, AND AFTER YOU HAVE REACHED A VERDICT,
14 KNOCK ON THE DOOR, LET THE BAILIFF KNOW YOU HAVE REACHED A
15 VERDICT AND WE WILL HAVE YOU RETURN TO THE COURTROOM TO TELL US
16 WHAT YOUR VERDICT IS.

17 NOW, I DON'T WANT YOU TO BEGIN YOUR DELIBERATIONS UNTIL I
18 INSTRUCT YOU TO. WHAT WE ARE GOING TO DO RIGHT NOW, IS SEND YOU
19 BACK TO THE JURY ROOM, WE'LL GET THE EVIDENCE TOGETHER, I WILL GIVE
20 THE LAWYERS THE OPPORTUNITY TO SAY, "JUDGE, YOU MIS-SPOKE AND
21 SOMETHING YOU SAID YOU WERE GOING TO SAY OR YOU FORGOT TO SAY
22 SOMETHING." THAT SORT OF THING. JUST TO MAKE AN OBJECTION. THESE
23 SHOULDN'T TAKE LONG AT ALL, BUT DON'T BEGIN YOUR DELIBERATIONS
24 UNTIL I SEND THE EVIDENCE AND THE INDICTMENTS BACK WITH THE BAILIFF
25 WITH MY INSTRUCTION THAT YOU CAN BEGIN YOUR DELIBERATIONS. NOW,

1 WE DO HAVE THOSE VIDEO TAPES AVAILABLE FOR YOU TO WATCH. IF YOU
2 WANT TO WATCH THEM YOU LET US KNOW AND WE'LL BRING THE CAMERA
3 INTO THE JURY ROOM FOR YOU AND SET IT UP AND THEN Y'ALL CAN PLAY
4 WHATEVER PORTIONS YOU WANT IF YOU SO DESIRE. ALL RIGHT? SO, GO ON
5 BACK TO THE JURY ROOM, DON'T BEGIN DELIBERATIONS UNTIL I SEND WORD
6 BACK TO YOU THAT YOU CAN BEGIN YOUR DELIBERATIONS.

7 (JURY OUT AT 10:51 AM)

8 THE COURT: ALL RIGHT. ANYTHING FROM THE STATE?

9 MR. THORNTON: NO EXCEPTIONS OR ADDITIONS TO THE CHARGE,
10 JUDGE.

11 THE COURT: DEFENSE?

12 MR. HOOD: NOTHING, YOUR HONOR.

13 THE COURT: OKAY. Y'ALL WANT TO MAKE SURE THE EVIDENCE IS ALL
14 TOGETHER THEN?

15 MR. THORNTON: YES, SIR.

16 (EVIDENCE AND INDICTMENTS BACK TO THE JURY ROOM AT 10:56 AM)

17 THE COURT: LET THE RECORD REFLECT THAT THE ALTERNATE WAS
18 REMOVED FROM THE JURY DURING DELIBERATIONS. HE WAS SEQUESTERED
19 INTO ANOTHER ROOM AND WAS NOT PRESENT DURING THE DELIBERATIONS.

20 THE COURT: WE HAVE BEEN INFORMED THE JURY HAS REACHED A
21 VERDICT. LET THE RECORD REFLECT THAT THE DEFENDANT IS IN THE
22 COURTROOM. BRING THE JURY IN.

23 (JURY IN AT 12:11 PM)

24 THE BAILIFF: ALL JURORS PRESENT, YOUR HONOR.

25 THE COURT: ALL RIGHT. MR. FOREMAN, I HAVE BEEN INFORMED THAT

1 THE JURY HAS REACHED A VERDICT. IS THAT CORRECT?

2 **FOREPERSON:** THAT'S CORRECT, YOUR HONOR. ARE THEY
3 UNANIMOUS VERDICTS?

4 **FOREPERSON:** YES, SIR.

5 **THE COURT:** AND ARE THEY UNANIMOUS AS TO BOTH INDICTMENTS?

6 **FOREPERSON:** YES, SIR.

7 **THE COURT:** WOULD YOU HAND THEM TO THE BAILIFF, PLEASE.

8 (BAILIFF COLLECTS VERDICT FORMS AND HANDS THEM TO
9 THE JUDGE)

10 **THE COURT:** ALL RIGHT. MADAM CLERK, WOULD YOU PUBLISH.

11 **CLERK OF COURT:** 2004-GS-07-1654, THE STATE OF SOUTH CAROLINA
12 VERSUS RICHARD SIMMONS, INDICTMENT FOR MURDER. WE, THE JURY, FIND
13 THE DEFENDANT GUILTY. SIGNED BY FOREPERSON, RICHARD REICHEL.

14 2004-GS-07-1667, THE STATE OF SOUTH CAROLINA VERSUS RICHARD
15 SIMMONS FOR INDICTMENT OF BURGLARY FIRST DEGREE, WE, THE JURY,
16 FIND THE DEFENDANT GUILTY. SIGNED BY FOREPERSON RICHARD REICHEL.

17 **CLERK OF COURT:** MR. REICHEL, IS THIS YOUR VERDICT?

18 **FOREPERSON:** YES, MA'AM.

19 **CLERK OF COURT:** IF ALL AGREE, WOULD YOU PLEASE RAISE YOUR
20 RIGHT HAND.

21 **THE COURT:** LET THE RECORD REFLECT THAT EACH OF THE JURORS
22 HAVE RAISED THEIR RIGHT HAND. DO YOU WISH TO HAVE THE JURY POLLED?

23 **MR. HOOD:** I DO, YOUR HONOR.

24 **THE COURT:** ALL RIGHT. MADAM CLERK, WOULD YOU POLL THE JURY,
25 PLEASE.

1 CLERK OF COURT: WHEN I CALL YOUR NAME, WOULD YOU PLEASE

2 STAND. RALPH MORRISON. (MR. MORRISON STANDS)

3 CLERK OF COURT: WAS THIS YOUR VERDICT?

4 MR. MORRISON: YES.

5 CLERK OF COURT: IS IT STILL YOUR VERDICT?

6 MR. MORRISON: YES, IT IS.

7 CLERK OF COURT: THANK YOU, SIR. CATHRYN DEWITT. (MS. DEWITT
8 STANDS)

9 CLERK OF COURT: WAS THIS YOUR VERDICT?

10 MS. DEWITT: YES.

11 CLERK OF COURT: IS IT STILL YOUR VERDICT?

12 MS. DEWITT: YES, IT IS.

13 CLERK OF COURT: THANK YOU, MA'AM. RICHARD REICHEL. (MR.
14 REICHEL STANDS)

15 CLERK OF COURT: WAS THIS YOUR VERDICT?

16 MR. REICHEL: YES.

17 CLERK OF COURT: IS IT STILL YOUR VERDICT?

18 MR. REICHEL: YES, MA'AM.

19 CLERK OF COURT: THANK YOU, SIR. KIRK RUGE. (MR. RUGE STANDS)

20 CLERK OF COURT: WAS THIS YOUR VERDICT?

21 MR. RUGE: YES, MA'AM.

22 CLERK OF COURT: IS IT STILL YOUR VERDICT?

23 MR. RUGE: YES, MA'AM.

24 CLERK OF COURT: THANK YOU, SIR. TRACEY SANDERS. (MS. SANDERS
25 STANDS)

1 CLERK OF COURT: WAS THIS YOUR VERDICT?

2 MS. SANDERS: YES.

3 CLERK OF COURT: IS IT STILL YOUR VERDICT?

4 MS. SANDERS: YES.

5 CLERK OF COURT: THANK YOU. DAVID TAYLOR. (MR. TAYLOR STANDS)

6 CLERK OF COURT: WAS THIS YOUR VERDICT?

7 MR. TAYLOR: YES.

8 CLERK OF COURT: IS IT STILL YOUR VERDICT?

9 MR. TAYLOR: YES.

10 CLERK OF COURT: THANK YOU. KELLY ROSCHE. (MS. ROSCHE
11 STANDS)

12 CLERK OF COURT: WAS THIS YOUR VERDICT?

13 MS. ROSCHE: YES.

14 CLERK OF COURT: IS IT STILL YOUR VERDICT?

15 MS. ROSCHE: YES.

16 CLERK OF COURT: THANK YOU. BARBARA PALMIERI. (MS. PALMIERI
17 STANDS)

18 CLERK OF COURT: WAS THIS YOUR VERDICT?

19 MS. PALMIERI: YES, MA'AM.

20 CLERK OF COURT: IS IT STILL YOUR VERDICT?

21 MS. PALMIERI: YES.

22 CLERK OF COURT: THANK YOU. THOMAS MCMURRAY. (MR. MCMURRAY
23 STANDS)

24 CLERK OF COURT: WAS THIS YOUR VERDICT?

25 MR. MCMURRAY: YES.

1 CLERK OF COURT: IS IT STILL YOUR VERDICT?

2 MR. MCMURRAY: YES.

3 CLERK OF COURT: THANK YOU. EDWARD SCHUMACHER. (MR.
4 SCHUMACHER STANDS)

5 CLERK OF COURT: WAS THIS YOUR VERDICT?

6 MR. SCHUMACHER: YES, MA'AM.

7 CLERK OF COURT: IS IT STILL YOUR VERDICT?

8 MR. SCHUMACHER: YES, MA'AM.

9 CLERK OF COURT: THANK YOU. SUSAN BRAINARD. (MS. BRAINARD
10 STANDS)

11 CLERK OF COURT: WAS THIS YOUR VERDICT?

12 MS. BRAINARD: YES.

13 CLERK OF COURT: IS IT STILL YOUR VERDICT?

14 MS. BRAINARD: YES.

15 CLERK OF COURT: THANK YOU. ROSE ROBINSON. (MS. ROBINSON
16 STANDS)

17 CLERK OF COURT: WAS THIS YOUR VERDICT?

18 MS. ROBINSON: YES, MA'AM.

19 CLERK OF COURT: IS IT STILL YOUR VERDICT?

20 MS. ROBINSON: YES, MA'AM.

21 CLERK OF COURT: THANK YOU.

22 THE COURT: ALL RIGHT. WELL, LADIES AND GENTLEMEN, I WANT TO
23 COMMEND YOU FOR YOUR SERVICE THIS WEEK. THE LAW DOES NOT PERMIT
24 ME TO COMMENT ON YOUR VERDICT. I WILL TELL YOU THAT I CAN COMMENT
25 ON YOUR SERVICE AND IT WAS CLEAR TO ME THAT YOU TOOK YOUR DUTIES

1 VERY CAREFULLY, VERY SERIOUSLY AND YOU HAD A DIFFICULT JOB THIS
2 WEEK. WE ANTICIPATED THIS CASE WOULDN'T PROBABLY RUN THIS LONG,
3 BUT WE RAN INTO A COUPLE OF ROADBLOCKS HERE AND THERE AND IT
4 TOOK A LITTLE MORE THAN WE THOUGHT IT MIGHT AND SO, I TOLD YOU YOU
5 MIGHT BE DONE WITH THE CASE BY WEDNESDAY AND HERE IT IS FRIDAY
6 MORNING AND SO YOU HAD A LONG WEEK AS WELL. WE TOOK YOU AWAY
7 FROM YOUR NORMAL DUTIES, BUT YOU FOLKS DID WHAT YOU NEEDED TO DO
8 AS FAR AS PERFORMING YOUR COMMUNITY SERVICE AND YOU DID YOUR
9 SERVICE WELL. I WATCHED YOU THROUGHOUT THE TRIAL, YOU FOLKS WERE
10 PAYING ATTENTION. I DIDN'T CATCH ANYBODY NAPPING OR MIND
11 WANDERING. THIS WAS A VERY DIFFICULT CASE AND THESE CASES ARE,
12 SOME ARE MORE CHALLENGING THAN OTHERS AND THIS WAS A VERY
13 CHALLENGING CASE FOR A JURY TO DECIDE ON, BUT IT'S CLEAR THAT YOU
14 TOOK YOUR DUTIES SERIOUSLY AND YOU PERFORMED YOUR COMMUNITY
15 SERVICE ADMIRABLY AND I WANT TO THANK YOU FOR YOUR SERVICE ON
16 BEHALF OF BEAUFORT COUNTY AND THE STATE OF SOUTH CAROLINA. NOW,
17 IN A MINUTE I AM GOING TO PRONOUNCE SENTENCE. YOU ARE WELCOME TO
18 STAY IF YOU WANT TO OR YOU ARE FREE TO GO. THE CHOICE IS ENTIRELY
19 UP TO YOU. I WILL TELL YOU THAT YOU ARE DISCHARGED FOR, OF COURSE,
20 THIS TRIAL AND FOR THE REMAINDER OF THE WEEK. I WILL TELL YOU THAT
21 YOU ARE NO, OF COURSE, FREE TO READ ANYTHING YOU WANT ABOUT THE
22 CASE AND WATCH ANY TELEVISION THAT YOU WANT TO WATCH AND I
23 COMMEND YOU SO MUCH FOR PAYING ATTENTION TO WHAT I TOLD YOU
24 EARLIER THIS WEEK ABOUT THAT BECAUSE IT WOULD MAKE IT VERY
25 DIFFICULT TO HAVE TO GO BACK AND RETRY THIS CASE BASED ON THOSE

1 GROUND. I WILL TELL YOU THAT YOU ARE FREE TO SPEAK TO THE PRESS IF
2 YOU WANT TO AND THEY APPROACH YOU. I DON'T KNOW IF THEY WILL OR
3 NOT. AND YOU CAN SPEAK TO ANYONE YOU WANT TO ABOUT THE CASE
4 NOW. SOMETIMES, FROM TIME TO TIME AFTER A CASE LIKE THIS, YOU MAY
5 BE CONTACTED BY SOMEBODY FROM EITHER THE SOLICITOR'S OFFICE OR
6 THE LAWYER'S OFFICE THAT ARE INVOLVED. THEY ARE NOT CALLING TO
7 HARASS YOU IN ANY WAY BUT THEY MIGHT WANT TO ASK YOU SOME
8 QUESTIONS ABOUT YOUR PERFORMANCE OR YOUR EVALUATION OF HOW
9 THEY PERFORMED. NOT SO MUCH TO SECOND GUESS YOU IN THE CASE, BUT
10 TO HELP THEM PRESENT THEIR CASES IN THE FUTURE AND YOU ARE
11 PERFECTLY FREE TO CALL OR TO TALK TO SOMEBODY IF THEY CONTACT
12 YOU. YOU ARE NOT REQUIRED TO TALK TO ANYBODY IF THEY CONTACT YOU
13 AND YOU SIMPLY TELL THEM YOU DO NOT WISH TO TALK TO THEM AND IF
14 YOU CONTINUE TO HAVE A PROBLEM WITH THAT WHICH YOU MOST
15 ASSUREDLY WILL NOT, BUT IF YOU DO, YOU ARE TO CALL THE CLERKS
16 OFFICE AND THEY WILL LET ME KNOW AND WE'LL TAKE CARE OF THAT. BUT,
17 THOSE ARE THINGS YOU ARE FREE TO DO NOW. YOU NO LONGER HAVE
18 RESTRICTIONS ON YOUR ABILITIES TO WATCH ANYTHING OR READ ANYTHING
19 OR TALK TO ANYONE IN ANY MANNER WHATSOEVER. SO, YOU ARE FREE TO
20 GO. IF YOU WANT TO STAY, YOU ARE WELCOME TO GO, BUT I WANT TO
21 THANK YOU AGAIN FOR YOUR SERVICE THIS WEEK. IT'S BEEN A LONG WEEK.

22 THE COURT: ALL RIGHT.

23 MR. THORNTON: THE STATE WOULD REQUEST A - NOT MORE THAN
24 TWO MINUTES TO FINISH UP THE SHEET.

25 THE COURT: ALL RIGHT.

1 **MR. HOOD:** YOUR HONOR, WHEN WOULD YOU LIKE FOR ME TO MAKE
2 MY MOTIONS?

3 **THE COURT:** YOU CAN MAKE THEM NOW. GO AHEAD.

4 **MR. HOOD:** THE FIRST THING I'D DO IS RENEW ALL MY MOTIONS FOR A
5 MISTRIAL ON THIS CASE BASED ON THE NEWSPAPER ARTICLES, I THINK WAS
6 ONE OF THEM, AND SOME OF THE JURORS EVEN THOUGH WE HAD, I THINK
7 THREE PAPERS AND ONE PERSON SAYING, YES, OR SOMETHING OF THAT
8 NATURE THAT BROUGHT IN THE PAPER. THE OTHER WAS A MISTRIAL MOTION
9 CONCERNING THE TWO WITNESSES WHO TALKED AFTER YOU HAD DIRECTED
10 THEM NOT TO DISCUSS THE CASE. AND MY CLIENT HAS ALSO WISHED THAT I
11 MAKE A MOTION FOR A MISTRIAL ALSO ON THE FACT THAT, I THINK
12 YESTERDAY AFTERNOON WE DISCOVERED THAT ONE OF THE JURORS WAS
13 PENDING INDICTMENT BY THE GRAND JURY AND THE QUESTION WAS
14 WHETHER OR NOT WE SHOULD TAKE HIM OFF AND PUT THE ALTERNATE ON
15 OR PROCEED WITH HIM ON. IF I RECALL, THE STATE WANTED TO TAKE HIM
16 OFF AND I THOUGHT THE OPPOSITE. AT THAT POINT IN TIME, WE CHOSE NOT
17 TO TAKE ANY ACTION OTHER THAN TO TELL HIM HE DID NOT HAVE TO
18 APPEAR FOR HIS ROLL CALL. MY CLIENT IS VERY CONCERNED WITH THAT
19 BECAUSE HE FEELS AS THOUGH A PERSON WHO IS PENDING INDICTMENT
20 AND ACTUALLY WAS INDICTED APPARENTLY YESTERDAY, THAT THEY MIGHT
21 HAVE SOMETHING TO GAIN BY THIS VERDICT AS A RESULT OF IT BEING
22 FAVORABLE TO THE STATE. AND WE WOULD AT THIS TIME MAKE A MOTION
23 FOR A MISTRIAL BASED ON THAT, THAT PARTICULAR ISSUE.

24 **THE COURT:** THAT MOTION, AS WELL AS ALL YOUR RENEWED
25 MOTIONS, IS DENIED.

1 **MR. HOOD:** WE PREFER TO MAKE A MOTION FOR A NEW TRIAL BASED
2 ON THE FACT THAT WE BELIEVE THE EVIDENCE SUBMITTED HERE WAS NOT
3 SUFFICIENT FOR THE VERDICTS WHICH WERE HANDED DOWN.

4 **THE COURT:** ALL RIGHT. THAT MOTION IS ALSO DENIED.

5 **MR. HOOD:** THANK YOU.

6 **THE COURT:** ALL RIGHT.

7 **MR. THORNTON:** THE ONLY THING I HAVE LEFT, SIR, IS TO DOUBLE-
8 CHECK THE CDR CODE.

9 **THE COURT:** WE CAN DO THAT LATER.

10 **MR. THORNTON:** I BELIEVE EVERYTHING ELSE IS TAKEN CARE OF,
11 JUDGE.

12 (MR. THORNTON HANDS DOCUMENTS TO THE CLERK OF COURT,
13 WHO HANDS THEM TO THE JUDGE)

14 **THE COURT:** ANYTHING THE STATE WANTS TO SAY AT THIS TIME?

15 **MR. THORNTON:** YOUR HONOR, MS. GLORIA PETREVITCH, THE SISTER
16 IN THIS CASE, WOULD LIKE TO SPEAK.

17 **THE COURT:** CERTAINLY, MA'AM. IF YOU WANT TO COME AROUND, YOU
18 CAN.

19 **MR. THORNTON:** COME AROUND AND STATE YOUR NAME FOR THE
20 RECORD.

21 **MS. PETREVITCH:** GLORIA, GLORIA PETREVITCH, P-E-T-R-E-V-I-T-C-H.

22 **THE COURT:** ALL RIGHT. GO AHEAD.

23 **MS. PETREVITCH:** YOUR HONOR, I AM SO HAPPY I CAN'T -- THIS TRIAL IS
24 OVER AND IT'S BEEN A LONG TIME AND I WOULD APPRECIATE IT IF, I WANT TO
25 THANK THE SOLICITOR AND CAPTAIN BROMAGE AND HIS STAFF FOR DOING

1 SUCH A GOOD JOB AND I APPRECIATE THE JURY AND I WOULD APPRECIATE IT
2 IF RICHARD COULD HAVE THE MAXIMUM SENTENCE BECAUSE HE'S BEEN OUT
3 A LONG TIME AND MY BROTHER HAS BEEN DEAD DURING THAT TIME AND HE
4 WON'T BE ABLE TO HAVE A LIFE OF HIS OWN EVER AND I'D APPRECIATE IT.

5 THE COURT: THANK YOU, VERY MUCH.

6 MR. THORNTON: THE OTHER THING, YOU'VE HEARD ALL THE FACTS.
7 THE ONLY THING I WOULD SAY, JUDGE, IN THIS CASE, YOU'RE TALKING
8 ABOUT -- I DON'T KNOW THAT ANY MURDER ISN'T A VICIOUS CRIME, YOUR
9 HONOR, BUT IN THIS CASE YOU'RE TALKING ABOUT THE BEATING DEATH OF
10 SOMEONE THAT WAS BLUDGEONED TO DEATH WITH A HAMMER DURING A
11 BURGLARY. THE DEFENDANT IN THIS CASE, RICHARD SIMMONS, REMAINED
12 AT LARGE, ESCAPING JUSTICE FOR A NUMBER OF YEARS, COMBINING THAT
13 WITH THE JUST ABSOLUTE, INCREDULOUS BEHAVIOR ON TAPE AND JUDGE,
14 WHEN HE'S DISCUSSING, BASICALLY, BEING WILLING TO DO IT ALL AGAIN,
15 OBVIOUSLY, HE NEVER LEARNED HIS LESSON AND CANNOT BE TRUSTED IN
16 SOCIETY. HE'S A DANGER TO SOCIETY. HE'S ALREADY KILLED ONE PERSON
17 THAT WE KNOW OF. HE'S TALKING OF THINGS LIKE BUSTING UP OTHER
18 PEOPLE IF THEY GET IN THE WAY OF HIS BURGLARY. I WOULD ASK FOR THE
19 MAXIMUM SENTENCE AS TO BOTH CHARGES, JUDGE, AND I THINK A LIFE
20 SENTENCE ON BOTH CHARGES WOULD BE CALLED FOR ON BOTH CASES,
21 YOUR HONOR. THE STATE HAS NOTHING FURTHER, YOUR HONOR.

22 THE COURT: MR. HOOD?

23 MR. HOOD: YOUR HONOR, YOU SAT HERE FOR THE LAST FIVE DAYS
24 LIKE I HAVE AND YOU'VE HEARD ALL THE EVIDENCE IN THIS CASE AND WE
25 KNOW THERE ARE PROBLEMS, OBVIOUSLY, WITH RESPECT TO THIS

1 PARTICULAR CASE. I WOULD POINT OUT THAT RICHARD IS 43 YEARS OLD,
2 HE'S FROM ST. HELENA ISLAND AND HAS BEEN THERE ALL OF HIS LIFE,
3 PRACTICALLY EXCEPT FOR A BRIEF PERIOD IN TIME WHERE HE WAS IN
4 COLUMBIA. HE HAS ONE CHILD, A SON. AT THIS TIME, I GUESS, ABOUT 21 AT
5 THIS POINT IN TIME. YOU KNOW RICHARD HAS BEEN SITTING OVER IN THE
6 DETENTION CENTER FOR WELL OVER TWO YEARS NOW WAITING THIS
7 PARTICULAR TRIAL. RICHARD HAS, OBVIOUSLY, BASED UPON MY PREVIOUS
8 STATEMENTS, ALWAYS MAINTAINED HIS INNOCENCE IN THIS CASE AND WE
9 WOULD ASK THAT, YOU KNOW, A SENTENCE BE STRUCTURED SO THAT
10 RICHARD PERHAPS WOULD HAVE AN OPPORTUNITY AT SOME TIME TO BE
11 RELEASED AGAIN TO SOCIETY.

12 THE COURT: ALL RIGHT. MR. SIMMONS, WOULD YOU LIKE TO SAY
13 ANYTHING BEFORE I PROPOSE SENTENCE? PLEASE STAND. (AFTER WAITING
14 A FEW MOMENTS WITH NO COMMENT) YOU DON'T WANT TO SAY ANYTHING?

15 MR. SIMMONS: YOU KIND OF TOOK ME OFF GUARD. I DIDN'T KNOW YOU
16 WERE GOING TO ASK ME TO SAY ANYTHING. I JUST WANT TO ASK YOU, YOUR
17 HONOR, IF YOU'D PLEASE BE LENIENT ON THE SENTENCING. LIKE I SAID, I
18 CAN TELL YOU RIGHT NOW, I'M GOING TO MAINTAIN MY INNOCENCE, BUT
19 WOULD YOU PLEASE BE LENIENT ON THE SENTENCING.

20 THE COURT: ALL RIGHT, SIR. VERY WELL. WELL, MR. SIMMONS, YOU
21 ARE -- YOUR OWN WORDS ARE WHAT CONVICTED YOU. IT IS CLEAR THAT
22 THERE WAS NO REAL PHYSICAL EVIDENCE TO LINK YOU TO THIS CRIME. IT
23 WAS A CRIME THAT WAS UNSOLVED FOR TEN YEARS AND THE THING THAT
24 BROUGHT YOU HERE TODAY WAS YOURSELF, YOUR CONDUCT AND YOUR
25 WORDS. I KNOW THAT YOU'RE DEFENSE IN THIS CASE WAS THAT YOU

1 SPOKE THESE WORDS AND ADMITTED TO THESE CRIMES BECAUSE OF YOUR
2 DRUGS AND ALCOHOL ADDICTION, BUT THE FACT OF THE MATTER IS, THAT
3 YOU SPOKE ABOUT THINGS THAT ONLY ONE PERSON COULD HAVE KNOWN
4 AND THAT IS THE PERSON THAT COMMITTED THIS CRIME AND THE JURY SAW
5 FIT TO CONVICT YOU BASED UPON YOUR OWN WORDS AND YOU WERE A
6 FREE MAN FOR TEN YEARS. DURING THAT TIME, THERE'S NO SHOWING OF
7 ANY SORT OF REMORSE AND EVEN AT THE TIME THAT YOU WERE TALKING
8 TO THE POLICE OFFICER ON TAPE, THERE WAS NO SENSE THAT THERE WAS
9 ANY SENSE OF REMORSE WHATSOEVER, OUT OF YOUR MOUTH AND I SEE NO
10 REASON THAT YOU WILL GAIN ANY SENSE OF REMORSE IN THE COMING
11 YEARS. SOCIETY NEEDS TO BE PROTECTED FROM A PERSON LIKE YOU. THIS
12 CRIME WAS BRUTAL AND IT IS DESERVING OF THE HARSHTEST PUNISHMENT
13 THAT THE LAW WILL ALLOW AND I AM GOING TO SENTENCE YOU TO LIFE ON
14 BOTH OF THE CHARGES. GOOD LUCK TO YOU, SIR.

15 MR. THORNTON: THANK YOU, YOUR HONOR.

16 THE COURT: ALL RIGHT, LADIES AND GENTLEMEN, AGAIN, THANK YOU
17 FOR YOUR SERVICE. YOU ARE FREE TO GO.

C-E-R-T-I-F-I-C-A-T-E

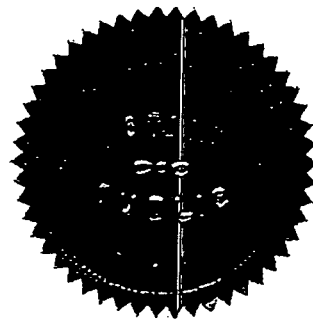
I, THE UNDERSIGNED JO RICE, OFFICIAL COURT REPORTER FOR THE EIGHTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF THE TRIAL OF THE CAPTIONED CASE IN THE CIRCUIT COURT FOR BEAUFORT COUNTY, SOUTH CAROLINA, NOVEMBER 13-17, 2006, TO THE BEST OF MY SKILL AND ABILITIES.

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

APRIL 21, 2007

Jo Rice

JO RICE



FORM 5

2011-CP-07-3808

STATE OF SOUTH CAROLINA

COUNTY OF BeaufortRichard Simmons #232156

Full name and prison number (if any) of Applicant.

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

APPLICATION FOR
POST-CONVICTION RELIEFSEP - 1 AM 8:14
CLERK OF COURT
BEAUFORT COUNTY, S.C.INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay fees and costs of the proceedings. When the application is completed the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Wicher Corr. Inst. P.O. Box 205, Ridgville, SC
2. Name and location of Court which imposed sentence Beaufort General Sessions
3. Name(s) of co-defendant(s) (if any) NUMEROUS, APPROX (4)
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 04-GS-07-1654 (murder)
 - (b) 04-GS-07-1667 (burglary first)
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) November 17, 2006 life without parole
 - (b) November 17, 2006 life

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty trial by jury
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Reversed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. June 8, 2011
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. 2011-UP-279
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) N/A
- (c) N/A
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective Assistance of Counsel
 (b) Denial of 8-6- And 14th Amendment US Const.
 (c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) numerous deficiencies (will amend at later date)
 (b) failure to file Mass. application
 (c) failure to object to jury instructions on malice

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? NO
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
 (d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. NA
 ii. _____
 iii. _____
 iv. _____

(b) the name and location of the Court in which each was filed:

- i. NA
 ii. _____
 iii. _____
 iv. _____

(c) the disposition thereof:

- i. NA
 ii. _____
 iii. _____

- iv. _____
- (d) the date of each such disposition:
- i. NA _____
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. NA _____
- ii. _____
- iii. _____
- iv. _____
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
- NA NO _____
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. NA _____
- ii. _____
- iii. _____
- (b) the proceedings in which each ground was raised:
- i. NA _____
- ii. _____
- iii. _____
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented.
- (a) First filing Post conviction Relief _____
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? _____
- (b) your trial, if any? yes _____
- (c) your sentencing? yes _____
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? no _____

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
 - i. Gene Hood Esq. Public Defender
 - ii. Joseph Schwartz III, SC Appellate defender
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Trial, Sentencing
 - ii. Direct Appeal
 - iii. _____

19. State clearly the relief you seek in filing this application:

VACATE & Remand for new trial

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA)

County of)

Dorchester)

VERIFICATION

I, Richard Simmons, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Richard Simmons

SWORN to and subscribed before me this 2ND
day of September, 2011

Sylvia Jones (L.S.)
Notary Public

My Commission Expires: 1/24/2018

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

Richard Simmons

I, Richard Simmons, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Richard Simmons
Applicant

SWORN or affirmed to and subscribed before me this

2nd day of September, 2011

Sylvia Jones
Notary Public

My Commission Expires: 1/24/2018

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	
	)	2011-CP-07-3808
Richard Simmons, #232156,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

The Respondent, making its Return to the application for post-conviction relief filed September 7, 2011, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Beaufort County. The Applicant was indicted at the October 2004 term of the Beaufort County Grand Jury for murder (2004-GS-07-1654) and burglary – 1st degree (2004-GS-07-1667). Gene Hood, Esquire, represented the Applicant. The Applicant proceeded to trial on November 13-17, 2006, after which a jury found him guilty as indicted. The Honorable Roger M. Young, Sr. sentenced the Applicant to confinement for life for each offense. The sentences were to run concurrently.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. Joseph L. Savitz, III, Esquire, of the South Carolina Commission on Indigent Defense, represented Applicant on appeal. Following an Anders brief, the South Carolina Court of Appeals dismissed the appeal. State v. Simmons, Op. No. 2011-UP-279 (S.C. Ct. App. filed June 8, 2011). The Remittitur was issued on June 28, 2011.

Attached herewith and incorporated herein by reference are the records of the Beaufort County Clerk of Court regarding the subject convictions, the Applicant's records from the Department of Corrections, the Record on Appeal, the Final Anders Brief of Appellant, the Court of Appeals' opinion dismissing the appeal, and the Remittitur dated June 28, 2011.

II.

In his current application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel in that counsel
 - a. Made numerous deficiencies.
 - b. Failed to file a Massiah motion.
 - c. Failed to object to jury instruction on malice.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in the application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The Respondent denies each allegation that is not expressly admitted, qualified, or explained.

V.

WHEREFORE, having made its Return, the Respondent requests that an evidentiary hearing be held.

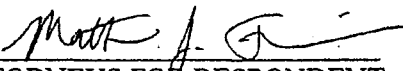
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

MATTHEW J. FRIEDMAN
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
(803) 734-3737

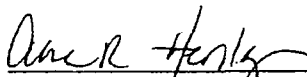
Feb 10, 2012.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	
	)	
	)	2011-CP-07-3808
	)	
RICHARD SIMMONS, #232156	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Lauren L Martel, Esquire
Martel Law Office
PO Box 23101
Hilton Head Island, SC 29925

DATED this 10th day of February 2012


 Anne R. Henley, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA
14TH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT
COURT OF COMMON PLEAS
CASE NO. 2011-CP-07-03968

RICHARD SIMMONS

APPLICANT

VERSUS

APRIL 1, 2013

TRANSCRIPT OF POST-CONVICTION

RELIEF HEARING

BEAUFORT, SOUTH CAROLINA

STATE OF SOUTH CAROLINA

RESPONDENT

B E F O R E:

HON. PERRY M. BUCKNER, JUDGE.

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

ON BEHALF OF THE STATE:

HON. ASHLEIGH R. WILSON

ON BEHALF OF APPLICANT:

HON. CHARLIE J. JOHNSON

ORIGINAL

WANDA H. ROWE, CVR-M
OFFICIAL COURT REPORTER

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EXHIBITS

No exhibits were admitted as evidence.

1 BEGINNING 1:57 P.M.

2 BY THE COURT:

3 THE COURT: Thank you. Good afternoon. Please be
4 seated.

5 All right. Have I got a packet?

6 MS. WILSON: Yes, your Honor.

7 THE COURT: Mr. Johnson have a copy of everything
8 you've just handed to the Court, Ms. Wilson?

9 MS. WILSON: Yes, your Honor.

10 THE COURT: Very well. Give me a moment.

11 THE COURT REVIEWING DOCUMENTS.

12 THE COURT: Wanda, you ready?

13 COURT REPORTER: I'm ready, sir.

14 THE COURT: Let the record reflect this is 2011 at
15 3968, in Beaufort County. This is Richard Simmons
16 versus the State of South Carolina. Present before me
17 is Charlie J. Johnson, along with Mr. Simmons. Also
18 present in the courtroom is Ashleigh Wilson, attorney
19 for the State of South Carolina.

20 I have reviewed the application for post-
21 conviction relief, Mr. Johnson. I have also reviewed
22 the return of the State. I, obviously, have not had
23 time to review the trial transcript. You may call your
24 first witness.

25 MR. JOHNSON: Thank you, your Honor. Please the

1 Court.

2 Your Honor, just a small amendment to the actual
3 application. I informed the State it was all ready.
4 We basically broke it down to basically one issue, your
5 Honor, in this whole case. It's our contention that
6 it's a alibi defense that should have been given to the
7 jury at the time, and his defense attorney did not give
8 that alibi instruction; that there's evidence that
9 there should have been an alibi defense; and as a
10 result of that, it was ineffective assistance of
11 counsel. And that's what we intend to show today, your
12 Honor.

13 THE COURT: Any objection to that amendment at
14 this time, Ms. Wilson?

15 MS. WILSON: No, your Honor.

16 THE COURT: Very well. So ordered, without
17 objection. You may proceed solely on those grounds,
18 Mr. Johnson, as you requested.

19 MR. JOHNSON: Thank you, your Honor. Your Honor,
20 at this --

21 THE COURT: Call your first witness.

22 MR. JOHNSON: I'd like to call Richard Simmons to
23 the stand.

24 THE COURT: Mr. Simmons, if you'd come around.
25 Put your left hand on the Bible. Raise your right

1 hand.

2 WITNESS SWORN.

3 THE COURT: Watch your step. Have a seat up
4 there. Wanda's going to pull the microphone over to
5 you. It's going to amplify your voice. Pull up a
6 little bit, and she's going to put the mic right beside
7 you.

8 I want you to state your full name and spell your
9 last name. Let her get seated. State your full name
10 and spell your last name for the record.

11 MR. SIMMONS: Richard Simmons, S/i/m/m/o/n/s.

12 THE COURT: All right. Speak up. Give us a
13 verbal answer. Don't shake your head or nod your head.
14 No uh-huhs and uh-uh. Yes or no. You understand?

15 MR. SIMMONS: Yes.

16 THE COURT: Very well. Your witness, Mr. Johnson.
17 Direct examination.

18 MR. JOHNSON: Thank you, your Honor.

19 RICHARD SIMMONS

20 DIRECT EXAMINATION, MR. JOHNSON:

21 Q. Mr. Simmons, are you presently incarcerated?

22 A. Yes, sir.

23 Q. Where are you being held?

24 A. Lieber Correctional.

25 Q. And what type of sentence are you being held on?

- 1 A. Two life times.
- 2 Q. Two life sentences?
- 3 A. Yes, sir.
- 4 Q. That's for murder?
- 5 A. And burglary.
- 6 Q. And burglary. Now, you had a trial back on
- 7 January -- November the 13th through the 17th of 2006?
- 8 A. Yes, sir.
- 9 Q. That's what you're being held on at the present
- 10 time, the results of that trial?
- 11 A. Yes.
- 12 Q. You was found guilty. Is that correct?
- 13 A. Yes, sir.
- 14 Q. Now, in that trial, you were charged with murder.
- 15 Is that correct?
- 16 A. Yes, sir.
- 17 Q. And who was you charged with murder?
- 18 A. Yeah.
- 19 Q. Who was the victim in this case?
- 20 A. Let's see.
- 21 Q. Mr. Who?
- 22 A. Godley.
- 23 Q. Mr. Godley?
- 24 A. Yes.
- 25 Q. And was you represented by counsel at that trial?

- 1 A. Yes, sir.
- 2 Q. And who was the attorney that represented you?
- 3 A. Mr. Hood.
- 4 Q. Is Mr. Hood present today?
- 5 A. Yes, sir.
- 6 Q. And do you see him in court?
- 7 A. Yes, sir.
- 8 Q. Now, Mr. Hood was appointed to be your attorney?
- 9 A. I guess he was.
- 10 Q. Did he meet with you?
- 11 A. Several times.
- 12 Q. Several times? And you went over the facts of the
- 13 case, correct?
- 14 A. Yes.
- 15 Q. Now, the victim in this case was actually murdered
- 16 ten years earlier. Is that correct?
- 17 A. Yes sir.
- 18 Q. Do you remember the date?
- 19 A. January. January 15th, I think it was.
- 20 Q. Of '95?
- 21 A. Of 1995.
- 22 Q. And you was initially interviewed by different
- 23 people from the police department?
- 24 A. Yes, sir.
- 25 Q. And they questioned you concerning that case back

1 in '95. Is that correct?

2 A. Yes.

3 Q. What kind of questions did they ask you?

4 A. I -- I don't remember the officer name right now,
5 but he asked me -- the first question he asked me was
6 -- he said, *Why did I do that to him.*

7 Q. And what was your response?

8 A. I didn't know where -- what he was talking about.

9 Q. Okay. At some point, did he tell you that you
10 were being investigated about a murder?

11 A. Not until he got me all the way to the police
12 department.

13 Q. Okay. Now, during that time, did you give them
14 any explanation as to -- did you admit that you did it
15 at that time?

16 A. No, sir.

17 Q. What did you tell the police officer?

18 A. That I -- at that time, I was waiting for a guy
19 that was giving me a job.

20 Q. And where were you waiting at?

21 A. Island Plaza.

22 Q. Did you give them some type of alibi as to where
23 you were located during the time that the crime was
24 committed?

25 A. Yes, sir.

1 Q. What did you tell the police?

2 A. That I was at the Island Plaza. I stayed there
3 overnight.

4 Q. Okay. And what else did you tell them? Did you
5 give them all the specifics about that night?

6 A. That I was with three -- I believe it was three
7 other people I was with that night.

8 Q. Did you give them names of the people?

9 A. Yes.

10 Q. Do you remember their names?

11 A. Just one of them.

12 Q. What was that?

13 A. Reggie Daise.

14 Q. Reggie Daise?

15 A. Yeah. The other two people were his friends.

16 Q. Okay. Now, you also mentioned something about a
17 laundromat or something? Do you remember that?

18 A. Yes, sir.

19 Q. What was that about?

20 A. The laundromat -- the laundromat is part of the
21 Island Plaza. I don't know if it still is today, but
22 1995, it was part of the Island Plaza.

23 Q. Did you tell them that somebody was there that
24 could also identify you?

25 A. Yeah, it was a woman there working name Ms. Betty.

1 Q. And you told them, also, about that, as well.

2 A. Yes.

3 Q. And as a result of that, were you ever arrested
4 back in 1995 or charged with this murder?

5 A. No. No.

6 Q. Did anybody ever report you out that you talked to
7 an officer?

8 A. No.

9 Q. And you never heard anything else.

10 A. No, sir.

11 Q. Did you have an attorney when you were being
12 interviewed back in '95?

13 A. No.

14 Q. You didn't have an attorney.

15 A. No, sir.

16 Q. But you never heard anything else about this. Is
17 that correct?

18 A. That's correct.

19 Q. Now, when did you next hear something about this
20 murder?

21 A. Almost ten -- almost eleven years later.

22 Q. And what happened that caused you to hear
23 something about it?

24 A. I was living in Columbia, and they had a SLED
25 agent that came about, and I was already on drugs and

1 stuff like that. So, he came and he had me under
2 surveillance.

3 Q. Before we even get to that part, the SLED agent,
4 did you know the person to be a SLED agent at the time?

5 A. No, I didn't know it at the time.

6 Q. Okay. So, you met someone.

7 A. I met a white guy.

8 Q. About what year was this? Do you remember?

9 A. Two thousand --

10 Q. Was it 2005 or 2006?

11 A. Meeting SLED?

12 Q. Right.

13 A. No. 2002, I think.

14 Q. 2002?

15 A. Yes.

16 Q. Okay. But you did not know he was a SLED agent.
17 Is that correct?

18 A. I didn't. I didn't.

19 Q. Did he befriend you or become a friend?

20 A. Yes, that's what he did.

21 Q. And what type of interaction did you have?

22 A. He was giving me money to go buy drugs. We would
23 just talk. Buy a beer. And give me money here and
24 there to go buy drugs.

25 Q. And at the time, you was on drugs?

1 A. Yeah.

2 Q. What type of drugs?

3 A. Crack, alcohol.

4 Q. Were you living somewhere or were you homeless?

5 A. I was homeless. In and out of shelters. Most of
6 the time I was basically living off the streets.

7 Q. Okay. Now, what happened next that caused you to
8 be arrested?

9 NO ANSWER BY WITNESS.

10 Q. So, you said back in 2002 is when you first became
11 acquainted with this -- that you later -- the person
12 you later found out to be a SLED agent. Is that
13 correct?

14 A. Yes.

15 Q. How long did you know this man? Probably two or
16 three years?

17 A. I don't think I understand.

18 Q. I mean, from 2002 until the time you were arrested
19 was how long?

20 A. From the time that I met this guy?

21 Q. Right. Until you --

22 A. Until I got arrested.

23 Q. Right.

24 A. Probably three months. Two months, I think.

25 Q. So, you actually were arrested in 2002.

1 A. Yes, sir.

2 Q. Okay. When you was arrested, what happened?

3 A. When I got arrested?

4 Q. Right.

5 A. You got to help me to explain.

6 Q. Okay. Do you remember the day that you was

7 arrested?

8 A. Yes, sir.

9 Q. Who arrested you?

10 A. The guy that befriended me, him and it was --

11 Q. Do you remember the guy's name?

12 A. Bruce is the first name.

13 Q. Bruce.

14 A. Bruce.

15 Q. Okay. You said, so, Bruce, along with somebody

16 else, arrested you?

17 A. It was about three other officers.

18 Q. Okay. Was you questioned that day?

19 A. He asked me something, but it was more like he

20 showed me a folder that had *Saint Helena Island Murder*

21 on it. So, when I saw that, I was like -- I couldn't

22 exactly figure out where he was coming from, where he

23 -- but that's -- that's the only thing then. So, he

24 really never said anything. He just held a folder

25 where I could see it.

1 Q. So, did you give any statements to them?

2 A. No.

3 Q. Okay. So, you didn't talk to anyone until you got
4 an attorney. Is that correct?

5 A. Right.

6 Q. Was Mr. Hood your first attorney?

7 A. Yes, sir.

8 Q. Okay. When you met with Mr. Hood, what did you
9 tell him about this case?

10 A. I -- I did maintain my innocence.

11 Q. Did you tell him you had an alibi?

12 A. I told him I had a alibi; that where I was at; who
13 I was with.

14 Q. Okay. And did he investigate any further? Or
15 what did he do?

16 A. I don't recall him telling me that -- that they
17 investigated, because he never came back and told me if
18 they had met with the people, the names that I gave
19 them.

20 Q. Okay. Now, it went to trial. Is that correct?

21 A. Yes, it did.

22 Q. And you didn't testify. Is that correct?

23 A. That's correct.

24 Q. All right. Basically, can you explain why you
25 didn't testify?

1 A. Mr. Hood instructed me that it wouldn't be a good
2 idea to do it, because I had a previous burglary. I
3 had one or two other records on -- in my folder. And
4 he didn't think it was a good idea to bring it -- bring
5 it up. In fact, he said that, you know, it might
6 expose me too much.

7 Q. Okay. And after thinking about it, you agreed
8 with him. Is that correct?

9 A. I agreed with him.

10 Q. So, it was your choice not to testify, correct?

11 A. That's correct.

12 Q. Okay. And now, the result of that, at the end of
13 trial, you was found guilty. Is that correct?

14 A. Yes, sir.

15 Q. Now, was there ever anything brought up during
16 trial about your alibi?

17 A. Never.

18 Q. You don't remember a officer bringing it up during
19 a trial?

20 A. No.

21 Q. Or your attorney asking the officer about the
22 alibi that was given to him by you?

23 A. Oh, yeah, yeah. He -- he said something along the
24 way that he -- he couldn't find a lead or something.

25 Q. Now, would that be Officer Solandra.

1 A. Solandra.

2 Q. Solandra. And I think we talked about it earlier,
3 Your Honor. ^ That would be on Page 230, direct
4 examination of Officer Solandra.

5 THE COURT: Proceed.

6 Q. Remember we went over that direct examination of
7 the officer?

8 A. Yes.

9 Q. Okay. Now, in that statement, the officer said
10 that you told him about your alibi witnesses, correct?

11 A. Correct.

12 Q. And that he closed this case because he could not
13 disprove your alibi. Is that correct?

14 A. Correct.

15 Q. So, there was some testimony during your trial of
16 the alibi defense. Is that correct?

17 A. Correct.

18 Q. Now, also, I guess on cross-examination by your
19 attorney, Mr. Hood, he also brought that up concerning
20 an alibi defense. Is that correct?

21 A. Correct.

22 Q. So, there was testimony about your alibi defense.
23 Is that correct?

24 A. Yes, sir.

25 Q. Now, is your contention that, after conferring

1 with me and understanding the law better, that you feel
2 that a alibi defense should have been one of the
3 charges given to the jury?

4 A. Yes.

5 Q. And then, as a result of that, that that was
6 ineffective assistance by your counsel by not having
7 it?

8 A. Yes, sir.

9 Q. Now, we went over everything else in the trial,
10 correct?

11 A. Yes.

12 Q. And we really didn't find anything else. Or it
13 was my opinion to you that I didn't find anything else.
14 Is that correct?

15 A. That's correct.

16 Q. And you're in agreement with that. Is that
17 correct?

18 A. Yes.

19 Q. Now, as a result of that, you'd like the Court to
20 consider this one issue as far as the non-use of a
21 alibi defense or alibi charge by the jury that that
22 being ineffective assistance of counsel. Is that
23 correct?

24 A. Yes.

25 MR. JOHNSON: I have no other questions, your

1 Honor.

2 THE COURT: Very well. Cross-examination.

3 APPLICANT RICHARD SIMMONS

4 CROSS-EXAMINATION, MS. WILSON:

5 Q. Mr. Simmons, you said that you met with Mr. Hood
6 before you went to trial. Do you know about how many
7 times you met with him?

8 A. Might have been three or four times. If it was
9 anymore, I just can't remember if it was.

10 Q. Okay. Did you communicate with him via letter
11 when you couldn't meet with him in person, or by phone
12 or any other way?

13 A. No.

14 Q. And did he review any discovery that he received
15 with you?

16 A. No.

17 Q. Did he receive the evidence that he received from
18 the State? That's what I mean by discovery.

19 A. Oh, yeah, he received that.

20 Q. And did he discuss having possible defenses with
21 you that he could present to the court during trial?

22 A. Yes.

23 Q. And did you give him any leads or potential
24 witnesses that could come testify for you?

25 A. I have.

1 Q. And you said today that you told Mr. Hood about
2 your alibi.

3 A. Yes, ma'am.

4 Q. And what was your alibi?

5 A. To where I was. I told them where I was at the
6 Island Plaza. I was -- I was staying over there
7 overnight, so I can get a fresh start in the morning
8 with a guy that was supposed to meet me there that
9 morning to give me some work.

10 Q. And did you tell them the names of people who
11 would have seen you or who may have been with you at
12 the Island Plaza?

13 A. Yes.

14 Q. And can you recall again what names you told him
15 to check out.

16 A. First was Reggie Daise. He had some girlfriends
17 that was with us that night, but I don't -- I never
18 knew any names. And there's Ms. Betty at the -- at the
19 laundromat there.

20 Q. Did you give him any phone numbers or addresses to
21 find these people?

22 A. No.

23 Q. And after you gave Mr. Hood this information, did
24 he ever discuss, you know, that he found the people;
25 that he didn't find the people that you had given him?

1 Did you all discuss that?

2 A. It was never mentioned to me.

3 MS. WILSON: Thank you, Mr. Simmons.

4 THE COURT: Re-direct.

5 MR. JOHNSON: Just one briefly, your Honor.

6 THE COURT: Yes.

7 APPLICANT RICHARD SIMMONS

8 RE-DIRECT EXAMINATION:

9 Q. During the time that you was arrested and went to
10 trial, you really had been -- you was recovering your
11 addiction. Is that correct?

12 A. Yes.

13 Q. So, how much of that time period do you actually
14 remember?

15 A. Not very much.

16 MR. JOHNSON: No other questions, your Honor.

17 THE COURT: Re-cross limited to re-direct.

18 MS. WILSON: Nothing from the State, your Honor.

19 THE COURT: You may step down, Mr. Simmons. Call
20 your next witness, Mr. Johnson.

21 MR. JOHNSON: Your Honor, at this time, we call
22 Mr. Hood to the stand.

23 THE COURT: Mr. Hood, would you come and be sworn
24 by the clerk, please.

25 State your full name and spell your last for the

1 record, please.

2 MR. HOOD: Gene T. Hood, H/o/o/d.

3 THE COURT: Mr. Johnson, your witness. Direct
4 Examination.

5 MR. JOHNSON: Thank you, your Honor.

6 HON. GENE T. HOOD

7 DIRECT EXAMINATION, MR. JOHNSON:

8 Q. Good afternoon, Mr. Hood. Mr. Hood, you sat
9 during my direct of the petitioner here. Our issue
10 here is about the alibi defense. Did he make you aware
11 of a alibi that he had in this case?

12 A. Well, I didn't know whether he did specifically or
13 not. I know we discussed it, because it was in the
14 reports that he had given some information to the
15 officer the night -- well, actually, the day that they
16 brought him in for questioning.

17 The investigation actually was of anybody on the
18 Island, basically, because they had no -- no clues, no
19 evidence or anything of that nature. So, they just
20 started interviewing everybody around. And anybody who
21 was homeless or whatever was basically picked up and
22 questioned. And that's what happened originally. And
23 Richard gave them some information concerning some
24 people, and I took that information and -- but now
25 we're talking about 12, 13 years later.

1 Q. I understand.

2 A. And trying to find those people, we were unable to
3 do anything with that information. Just like, I think,
4 the officers, you know, basically, I think that they
5 had already decided that this was a suicide,
6 originally. And then, after, you know, a few days,
7 they got to wondering, well, maybe it wasn't a suicide,
8 because there was no signs of breaking and entering.
9 Nothing to indicate that there was an intrusion and
10 that there was any type of confrontation between the
11 victim and another individual.

12 There were items of value that were neatly
13 stacked, you know, on the table right next to the bed.
14 Things of that nature that were not -- not in any way
15 disrupted or removed. And some of it could have,
16 obviously, been used for -- as money.

17 So, that's the reason they felt that, you know, it
18 was possible that this was a suicide. So, it was
19 several days before Richard was brought in and before
20 they actually started looking. The officers who were
21 originally were involved in the case, when they went to
22 the scene the first time, they -- they made this
23 decision, I guess, that it was a suicide. And so, they
24 just simply turned the crime scene over to the family.
25 The family went in and cleaned it up. So, there was

1 really very little, if any, evidence left that would,
2 you know, give you any idea of what may or may not have
3 taken place that particular night.

4 So, they interviewed Richard. Richard gave them
5 some information. And once again, I don't even think
6 that they interviewed anybody. I don't think that they
7 went out and tried to find these people. Some of them,
8 the names, we couldn't find. I mean, it's just that
9 whenever I went 13 years later, and trying to find it,
10 I couldn't find the people. My people could not.

11 So, it was basically uncorroborated. And so, but
12 I felt as though it should have been done the first
13 time, 12 or 13 years ago, and perhaps they would have
14 been able to uncover something. However, if you look
15 at the evidence in the case, and you know that the
16 death of the individual had to have occurred after a
17 certain hour of the night, because there was an
18 intruder on the door steps of Mr. Godley, about 12:30
19 or 11:30, I forgot the exact time, but it was pretty
20 late. And he hears this noise on his front porch. He
21 goes and looks out and sees the person peeping down or
22 looking through, standing low and trying to look
23 through his window. The person then turns, and he's --
24 he describes it to the officer later on, and walks away
25 towards -- back towards 21. And at that time, Mr.

1 Godley calls law enforcement. And a officer shows up.
2 He gives him that information. So now, we're probably
3 talking about -- and again, I don't remember the exact
4 date.

5 Q. If I were to tell you if was two hours later.

6 A. Yeah.

7 Q. Because I was getting ready to ask you that same
8 question.

9 A. It was about 1:30, 2:00 o'clock in the morning, if
10 I recall correctly. And at that point in time, this
11 officer takes off, and he actually finds the guy,
12 somebody does. I forgot whether it was him or another
13 officer.

14 Q. And would that guy name be Donald Mitchell?

15 A. Correct. Correct. That was -- he had a trench
16 coat and an orange baseball cap on. Or some -- some
17 color that was very distinctive. And they -- they
18 brought him in for questioning, also, and they -- but
19 the time line, it would have been -- if the intruder
20 came in and committed this crime, it probably was some
21 time after 2:00 o'clock in the morning. That -- that's
22 probably the time. So, that's about all I can tell
23 you.

24 Q. Okay. There were -- so, in your investigation,
25 you found that your client did tell the police about an

1 alibi.

2 A. Correct.

3 Q. That they were aware of an alibi, and whether they
4 investigated any further or not, that they were told
5 about an alibi.

6 A. Correct. Correct.

7 Q. All right. Now, you say that, initially, they
8 thought it was suicide.

9 A. Correct.

10 Q. Can you explain -- I've been confused about this
11 ever since I looked at this case. This person was hit
12 over the head twice with a hammer or something?

13 A. It was blunt force trauma, yes. But initially,
14 when they looked at it, it looked like it was a B.B.,
15 this gun. There was a gun there, but it was a pellet
16 gun or I forgot what -- B.B. gun, pellet gun, or
17 something of that nature, that, you know, they thought
18 that he had shot himself. And the -- and the trauma to
19 his head was as a result of this, you know, weapon or
20 whatever.

21 Now, the hammer was actually found underneath his
22 body, and it had blood on it.

23 Q. So, they thought it was a suicide; that he had
24 shot himself; and they did not investigate this or find
25 this out till four days later?

1 A. Well, I don't know whether -- it wasn't four days
2 later, but it was -- see, this occurred, we believe, on
3 that Friday night where the intruder was outside. And
4 then, because his sister -- or they contacted -- tried
5 to reach Mr. Godley, the next day, on Saturday, Godley
6 told her that he was sick or something of that nature.
7 And she said, Well, I'll -- he said, I'll talk with you
8 tomorrow, which was Saturday. She calls on Saturday
9 and gets no answer. That's right. They were selling
10 the house, and this was the sales person that was --
11 she wanted to come by and he said, I'm sick. And that
12 was on Friday. And he said we'll do it on -- or give
13 me a call on or I'll call you on Saturday.

14 She calls on Saturday, gets no answer. She calls,
15 I guess, a couple of times, and still gets no answer.
16 She becomes concerned and calls the sister of Godley,
17 who had lived in Savannah or some other place outside
18 of Beaufort County. And she had had no contact with
19 him and had not heard from him.

20 So, then, the following day, the agent decides
21 they would go out there. They had rode -- they rode
22 past his house, and I think that was Saturday night,
23 and saw no lights on. And then, on Sunday, I believe
24 it was, they went by the house, and discovered the back
25 door was open, and found him on the floor in the house.

1 Q. Okay. But there was no physical evidence at the
2 scene found to connect Richard to this case.

3 A. Absolutely none. They did little or no
4 investigation. There was blood found on several items.
5 There were fingerprints, bloody fingerprints, found on
6 the body. There was hair found in the hand of Mr.
7 Godley. And I'm trying to recall what else it was. If
8 I recall correctly, it was blond hair, though, if I
9 remember correctly. But at least it was hair like
10 somebody would have pulled something out of the head of
11 another person or something of that nature. At least
12 that's -- that was my impression given to me by the --
13 by the officers and by the reports. But nobody ever
14 analyzed any of it.

15 Q. Okay, but you say it was some type of blond hair,
16 but it was inconsistent with your client.

17 A. Absolutely. Absolutely. But that was the whole
18 purpose. I mean, yeah, it certainly wasn't his.

19 Q. So, at trial that you went to, except for the
20 statements where -- allegedly there were statements
21 made by Richard and different people that he did it,
22 that was the only evidence at trial.

23 A. That was the only evidence. That was the only
24 evidence that they had that Richard Simmons committed
25 this crime. Now, I will say that there was a guy by

1 the name of Bentley, if I recall correctly his name,
2 who was on the Island at the time, who also gave a
3 statement to the police back in the year of the crime,
4 '95, that he, if I recall correctly, had seen Richard
5 with a lot of coins or something of that nature.

6 Q. But that wasn't given at trial.

7 A. I forgot whether Bentley testified or not. There
8 were so many of them. They brought in people from
9 every institution in South Carolina just about, to
10 testify against Richard.

11 Q. All right.

12 A. And then, they all recanted, and it was, you know,
13 it was a big mess is what it was.

14 Q. So, all the statements from the inmates, they are
15 recanted. Is that correct?

16 A. If I recall correctly, all of them, yes.

17 Q. So, basically, the statement that -- the only
18 un-recanted statement was one by a SLED officer.

19 A. One by the SLED agent, that's correct.

20 Q. Which he said he recorded.

21 A. Well, they video and audio taped every
22 conversation and meeting with -- with Richard.

23 Q. And at that time, was there evidence that Richard
24 was sober, or was he high at the time?

25 A. Well, you know, I think you have to look at the

1 tapes and listen to the conversations in order to be
2 able to even come close to knowing whether or not a
3 person's under the influence or, you know, is in their
4 right mind or -- or whatever. I mean, I -- I -- I
5 looked at them and watched them. I reviewed them
6 dozens of times looking for things.

7 Q. I'm not trying to cut you off, but did you
8 question the officer as to whether he had had any
9 intake of drugs prior to his statement?

10 A. Oh, yes. Oh, yes.

11 Q. And also --

12 A. I mean, he -- he admitted that -- that Richard had
13 been using crack cocaine, because, I mean, that's --
14 that's how they picked him up on the street. And the
15 Officer Bromage, who was the -- instrumental in
16 bringing in all of these other inmates and getting SLED
17 to -- to set up the sting on Richard, actually knew,
18 and his statement was recorded that Richard was cracked
19 out on the streets of Columbia, you know. That -- that
20 was his words.

21 Q. And he admitted that he give Richard money; that
22 he knowed Richard would use it to buy drugs. Is that
23 correct?

24 A. Absolutely. And I told him. I mean, asked him,
25 you know, basically said, you know, I mean, so you knew

1 what he was going to do with the money.

2 Q. Okay.

3 A. So. And he was giving him money, and he bought
4 him alcohol. I mean, they went to one of the grocery
5 stores, and it's kind of interesting, because Richard
6 apparently knew the woman that was behind the counter,
7 because, as they were exiting, the cashier, she made
8 some comments to Richard, and you know. But anyway, I
9 -- I -- yes.

10 Q. Okay. So, you questioned Office Solandra about
11 the alibi defense on your cross-examination.

12 A. Right.

13 Q. And then, also, on Page 426, Lines 6 through 19 in
14 your closing, you mention it to the jury that he had
15 given an alibi defense. Is that correct?

16 A. Correct. Correct.

17 Q. But at the end of trial, you do not request a jury
18 charge on the alibi defense.

19 A. You know, in -- in thinking back on that
20 particular issue, I think that what I had concluded was
21 that I could not confirm that there -- you know, that
22 -- because I was unable to locate any of these people,
23 you know, and I didn't believe that the officers had
24 done it, but maybe they did, and were unable to, you
25 know, get statements, because there were no statements

1 anywhere attached to the file. And you know, to be
2 perfectly honest with you, maybe I even missed it.
3 Maybe I should have forced the issue and -- and asked
4 for an instruction on an alibi, and you know, the judge
5 would have said, well, show me where it's at. You
6 know. I mean, I've got to have some live witnesses or
7 somebody come in and say I interviewed so and so, and
8 so and so says that he was with me all night. We
9 didn't have anything, other than these allegations,
10 more or less.

11 And you know, as I said, thinking back on it,
12 maybe I should have forced them, at least the Court,
13 given the Court the opportunity to make the decision
14 that there was insufficient evidence to give an alibi
15 defense.

16 Q. But you did have a little more than just that.
17 Wouldn't you agree that you had the police reports, in
18 which the police reports indicated that he gave an
19 alibi defense?

20 A. Oh, absolutely. I brought that up myself.

21 Q. And then you did have -- and then you did have the
22 officer saying that he was aware of it.

23 A. Oh, absolutely.

24 Q. And then you had the other officer admitted that
25 he probably didn't even go check on it.

1 A. That's probably correct.

2 Q. So then, there is more than enough sufficient
3 evidence for an alibi defense, because you're not
4 required -- you agree that, as defense counsel, you're
5 not required to prove his alibi. Police are required
6 to disprove his alibi.

7 A. That's correct. And -- and you know, again, the
8 problem was the time line of the killing. It was --
9 even if all of the things that Richard had told them
10 were true, there was still that time open where it was
11 possible that he could have committed the crime. That
12 was the problem.

13 Q. I understand. But under the remaining evidence,
14 that could have been anybody in the world.

15 A. Absolutely.

16 Q. Because there was no evidence connecting Richard
17 to that crime at all.

18 A. Absolutely.

19 Q. So, I mean, so, first concern, is it didn't --
20 that evidence didn't -- that evidence didn't convict
21 Richard. The time line, because there was no evidence
22 that he was there, correct?

23 A. That is correct.

24 Q. But the alibi defense was evidence that could have
25 assisted Richard.

1 A. When I say it was evidence that he wasn't there,
2 you know, I mean, they did have the statement from the
3 officer, you know, who rode with him on several
4 different occasions, and they taped of all these
5 various and sundry statements, you know, about
6 burglaries and about killing him. And Richard made
7 statements like he gave this funny sound when he hit
8 him with the hammer, or you know, or blunt instrument
9 or whatever, you know.

10 And so, I mean, they did have evidence which
11 directly -- and nobody allegedly knew that there was a
12 hammer that was used in the killing; that the officers
13 -- and -- and nowhere could I find in any of the -- I
14 went back and pulled the newspaper clippings and
15 articles and things of that nature. And throughout all
16 of the interviews, through all of the people, no one
17 ever gave up the fact that there was a hammer that was
18 used. And that first came out, if I recall correctly,
19 when the officer was questioning Richard.

20 Q. Right. But there was no evidence that that hammer
21 committed the crime; is there?

22 A. At the time, no.

23 Q. Even after the time, was there any evidence that
24 the hammer committed --

25 A. Well, that's what the pathologist testified, blunt

1 force trauma by an instrument that could have been a
2 hammer.

3 Q. Could have been.

4 A. Yes. Yes.

5 Q. But in examining the hammer, there was no evidence
6 connecting the hammer, correct?

7 A. Other than the blood on the hammer, which could
8 have gotten there as a result of the falling of the
9 individual on the hammer.

10 Q. Right.

11 A. Because it was underneath his body, and the blood
12 could have been transferred from the wound to the
13 hammer.

14 Q. So there was no conclusive evidence stating that
15 the hammer was the instrument that caused of the death.

16 A. Not that I'm aware of. Other than the fact,
17 again, it had blood on it and this and that and the
18 other. I would just like to say that I think this was
19 a very poorly investigated case. And I think it was
20 not because of the officers not wanting to do a good
21 job, it was because everybody initially thought this
22 was a suicide because of that gun that was there, and
23 there being absolutely nothing disturbed. There were
24 no -- and it was a whiskey bottle, an empty whiskey
25 bottle, on the bed. And from all of the investigation,