

VOLUME ONE OF TWO

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Richland County

James R. Barber, III, Circuit Court Judge

RECEIVED

JAN 13 2014

S.C. Supreme Court

DEMARCO JOHNSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-000935

APPENDIX

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South Carolina Commission on Indigent
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1 STATE OF SOUTH CAROLINA)
2) IN THE COURT OF GENERAL SESSIONS
COUNTY OF RICHLAND) 2000-GS-40-47714, 47716,
) 2000-GS-40-47717, 47718
3)
4)
THE STATE,)
5)
PLAINTIFF,)
6)
-VS-) TRANSCRIPT OF RECORD
7)
DEMARCO JOHNSON,)
8) FEBRUARY 5 - 7, 2001
DEFENDANT.) COLUMBIA, SOUTH CAROLINA
9)
10
B E F O R E:
11
THE HONORABLE MARC H. WESTBROOK, JUDGE; AND A JURY.
12
A P P E A R A N C E S:
13
DAVID M. PASCOE, JR., ESQUIRE,
14
DANA A. PELLIZZARI, ESQUIRE,
15 ASSISTANT SOLICITORS FOR THE FIFTH JUDICIAL CIRCUIT,
ATTORNEYS FOR THE STATE,
16
SHEILA DUKE-MIMS, ESQUIRE,
17
APRIL WOODARD SAMPSON, ESQUIRE,
18 ASSISTANT PUBLIC DEFENDERS FOR RICHLAND COUNTY,
19 ATTORNEYS FOR THE DEFENDANT.
20
21
22
23 ROBBIE KOON DEFREESE
CIRCUIT COURT REPORTER
24
25

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NOTE: ALL EXHIBITS FILED WITH THE CLERK OF COURT FOR
RICHLAND COUNTY.

Date: 2-5-01County: Richland

Case No: 2000-MS-40-47714 VOIR DIRE Judge: Wootch
 Pl./State: The State 47716, 47717, 47718 State/Pl's. Atty: S. Dellizai
 Defendant: Demarco Johnson Defense Atty: Shelia Dulce-Mims
 Court Reporter: Robbie Koon Do Freese

Juror No.	Name	Sex	Race	*Court	Strikes		
					Plaintiff	Defense	Accept
325	D. Stoudemire	M	W				(1)
121	K. M. Folks	F	W				(2)
91	C. Darrell	F	B			D-1	
315	G. Smith	M	B				(3)
117	D. H. Felschow	M	W				(4)
336	D. Thompson	M	W				(5)
347	M. Viohl	F	W			D-2	
200	D. Kahr	F	W				(6)
356	K. Watkins	F	W			D-3	
154	J. Hammond	F	W				(7)
317	D. Xenakis	M	W				(8)
310	C. Grayson Shiny	M	W			D-4	
348	D. Walker	F	B				(9)
176	C. Hudson	F	B		S-1		
69	M. Clem	M	W				(10)
126	B. K. Dossauwe	F	B				(11)
132	N. Dairs	F	B				(12)

For the court column, please indicate who made the motion to strike the jurors "for cause".
 with a "C" for Court, "P" for Plaintiff or "D" for Defense.

County: Gichland

Case No: 2000 MS-40-47714, 477 ^{VOIR DIRE} Judge: Westbrook
Pl./State: The State State/Pl.'s. Atty: D. Pellizzari
D. Pascoe
Defendant: Demarco Johnson Defense Atty: Shelia Dukes-Morris
April Sampson
Court Reporter: Gabrie Koon Betters

[illegible]

For the court column, please indicate who made the motion to strike the jurors "for cause" with a "C" for Court, "P" for Plaintiff or "D" for Defense.

1-B

1 MONDAY, FEBRUARY 5, 2001.

2 MR. PASCOE: MAY IT PLEASE THE COURT.

3 THE COURT: YES, SIR.

4 MR. PASCOE: YOUR HONOR, AT THIS TIME, THE STATE
5 CALLS THE CASE OF THE STATE VERSUS DEMARCO JOHNSON FOR
6 ONE COUNT OF BURGLARY IN THE FIRST DEGREE, TWO COUNTS OF
7 KIDNAPPING, AND ONE COUNT OF ARMED ROBBERY. AND I DO HAVE
8 ONE QUICK MOTION MAYBE BEFORE WE BRING THE JURY IN OR WE
9 CAN TAKE IT UP AT THE SIDE -- I TOLD MS. MIMS ABOUT IT
10 OUTSIDE.

11 ON THE BURGLARY IN THE FIRST DEGREE WARRANT, YOUR
12 HONOR, WHICH IS 2000-GS-40-47718, I'M GOING TO ASK FOR AN
13 AMENDMENT ON THE BACK OF IT. IT SAYS WITH THE INTENT TO
14 COMMIT A CRIME THEREIN AND THE DEFENDANT WHILE THEREIN WAS
15 ARMED WITH A SHOTGUN. WE WOULD ASK THAT SHOTGUN BE CHANGED
16 JUST TO DEADLY WEAPON.

17 THE COURT: ALL RIGHT.

18 WHAT'S THE DEFENSE'S POSITION ON THAT?

19 MS. SAMPSON: YOUR HONOR, ON THAT, WE WOULD
20 ACTUALLY OPPOSE THAT, YOUR HONOR. APPARENTLY THERE WAS
21 SOME EVIDENCE PRESENTED TO THE GRAND JURY THAT THERE WAS A
22 SHOTGUN PRESENTED AND THEY INDICTED IT AS A SHOTGUN. IF
23 THEY ARE NOW ALLEGING THAT IT'S SOME OTHER WEAPON, THEN,
24 WE THINK THAT THEY NEED TO REPRESENT THIS TO THE GRAND JURY
25 OR GO AHEAD ON SOMETHING ELSE BECAUSE THE INDICTMENT

1 CLEARLY SAYS SHOTGUN, NOT PISTOL.

2 THE COURT: I UNDERSTAND.

3 COUNSEL, I'M GOING TO GRANT THE MOTION TO ALLOW
4 THE AMENDMENT. I DON'T FIND THAT THE DEFENDANT WOULD BE
5 PREJUDICED BY THAT PARTICULAR CHANGE.

6 MS. SAMPSON: THANK YOU, YOUR HONOR.

7 THE COURT: ALL RIGHT.

8 MR. PASCOE: THANK YOU.

9 THE COURT: ANY OTHER MOTIONS FROM THE STATE?

10 MR. PASCOE: NONE FROM THE STATE, YOUR HONOR.

11 THE COURT: ARE THERE ANY MOTIONS FROM THE
12 DEFENSE?

13 MS. DUKE-MIMS: YES, YOUR HONOR.

14 YES, SIR, WE DO HAVE SOME MOTIONS. I DON'T KNOW
15 IF YOU WANT TO HEAR THEM NOW. A COUPLE OF MOTIONS IN
16 LIMINE AND---

17 THE COURT: WHAT I THOUGHT WE WOULD DO IS THIS.
18 JUST GO AHEAD AND HEAR ANY MOTIONS RELATED TO THE JURY OR
19 VOIR DIRE AND THEN, AFTER THAT, WE COULD DO THE MOTIONS
20 AFTERWARDS---

21 MS. DUKE-MIMS: THAT'S FINE.

22 THE COURT: ---THE OTHER MOTIONS AFTERWARD IT.

23 MS. DUKE-MIMS: THAT'S FINE.

24 THE COURT: ANY PROBLEM FROM THE STATE ON THAT
25 PROCEDURE?

1 MR. PASCOE: NO, SIR.

2 THE COURT: OKAY.

3 ARE THERE ANY MOTIONS FURTHER -- DO YOU HAVE ANY
4 VOIR DIRE BY THE WAY? PROPOSED VOIR DIRE OTHER THAN -- AS
5 YOU KNOW, I ASK A NUMBER OF STANDARD QUESTIONS---

6 (WHEREUPON, MS. DUKE-MIMS NODS IN
7 THE NEGATIVE AT THIS TIME.)

8 THE COURT: I GUESS I WAS THINKING IN TERMS OF
9 ANYTHING BEYOND THOSE STANDARD QUESTIONS THAT I NORMALLY
10 ASK.

11 ANYTHING FROM THE DEFENSE?

12 MS. DUKE-MIMS: NO, SIR, YOUR HONOR.

13 THE COURT: FROM THE STATE?

14 MR. PASCOE: NO, SIR.

15 THE COURT: ALL RIGHT.

16 LET'S BRING THE JURY IN.

17 (WHEREUPON, THE JURY VENIRE ENTERS
18 THE COURTROOM AT THIS TIME.)

19 THE BAILIFF: THE JURY IS ALL PRESENT, YOUR
20 HONOR.

21 THE COURT: THANK YOU, SIR.

22 SOLICITOR, ARE YOU PREPARED TO CALL THE NEXT
23 CASE?

24 MS. PELLIZZARI: YES, SIR, YOUR HONOR.

25 AT THIS TIME, THE STATE CALLS THE STATE OF

1 SOUTH CAROLINA VERSUS DEMARCO JOHNSON.

2 THE COURT: ALL RIGHT.

3 LADIES AND GENTLEMEN, AS YOU HAVE HEARD, THE
4 STATE NOW CALLS THE CASE OF THE STATE VERSUS DEMARCO
5 JOHNSON.

6 MR. JOHNSON IS CHARGED WITH FOUR OFFENSES BY
7 VIRTUE OF THESE INDICTMENTS THAT I HOLD IN MY HAND. I WANT
8 TO BE SURE YOU UNDERSTAND THAT THESE INDICTMENTS ARE NOT
9 EVIDENCE AND THEY CERTAINLY DON'T MEAN THAT THE DEFENDANT
10 HAS DONE ANYTHING WRONG. THEY SIMPLY ARE STATEMENTS OF THE
11 CHARGES AGAINST HIM AND ARE DESIGNED TO GIVE HIM NOTICE OF
12 THE OFFENSES WITH WHICH HE IS CHARGED.

13 I WILL VERY BRIEFLY READ TO YOU THE ALLEGATIONS
14 FROM EACH OF THE INDICTMENTS -- AND, AGAIN, REMEMBER THESE
15 ARE JUST ALLEGATIONS IN THE INDICTMENTS THEMSELVES.

16 I WOULD NOTE THAT THE STATE CHARGES MR. JOHNSON
17 WITH ONE COUNT OF ARMED ROBBERY, TWO COUNTS OF KIDNAPPING,
18 AND ONE COUNT OF BURGLARY IN THE FIRST DEGREE.

19 ON INDICTMENT 2000-GS-40-47714 FOR ARMED ROBBERY,
20 THE INDICTMENT ALLEGES THAT DEMARCO JOHNSON DID IN RICHLAND
21 COUNTY ON OR ABOUT THE 14TH DAY OF DECEMBER, 1999, COMMIT
22 ROBBERY BY FELONIOUSLY TAKING FROM THE PERSON OR PRESENCE
23 OF NORMAN DORN BY MEANS OF FORCE OR INTIMIDATION, GOODS OR
24 MONIES OF NORMAN DORN SUCH GOODS OR MONIES BEING DESCRIBED
25 AS U.S. CURRENCY WITH THE INTENT TO DEPRIVE THE OWNER

1 PERMANENTLY OF SUCH PROPERTY, WHILE ARMED WITH A PISTOL,
2 DIRK, SLINGSHOT, METAL KNUCKLES, RAZOR, OR OTHER DEADLY
3 WEAPON, OR WHILE ALLEGING, EITHER BY WORDS OR ACTIONS, THAT
4 HE WAS ARMED WHILE USING A REPRESENTATION OF A DEADLY
5 WEAPON OR ANY OBJECT WHICH A PERSON PRESENT DURING THE
6 COMMISSION OF THE ROBBERY REASONABLY BELIEVED TO BE A
7 DEADLY WEAPON.

8 BY INDICTMENT 2000-GS-40-47716, THE STATE CHARGES
9 MR. JOHNSON WITH KIDNAPPING. IT ALLEGES THAT DEMARCO
10 JOHNSON DID IN RICHLAND COUNTY ON OR ABOUT DECEMBER 14,
11 1999, UNLAWFULLY SEIZE, CONFINED, INVEIGLE, DECOY, KIDNAP,
12 ABDUCT, OR CARRY AWAY ANY PERSON, TO WIT: KETRA HEARON, BY
13 ANY MEANS WHATSOEVER WITHOUT AUTHORITY OF LAW.

14 INDICTMENT 2000-GS-40-47717 ALSO CHARGES THE
15 DEFENDANT WITH KIDNAPPING, ALLEGING THAT DEMARCO JOHNSON
16 DID IN RICHLAND COUNTY ON OR ABOUT DECEMBER 14, 1999,
17 UNLAWFULLY SEIZE, CONFINED, INVEIGLE, DECOY, KIDNAP, ABDUCT,
18 OR CARRY AWAY ANY PERSON, AGAIN, TO WIT: NORMAN DORN, BY
19 ANY MEANS WHATSOEVER WITHOUT AUTHORITY OF LAW.

20 AND BY INDICTMENT 2000-GS-40-47718, THE STATE
21 CHARGES THE DEFENDANT WITH BURGLARY IN THE FIRST DEGREE.
22 IT ALLEGES THAT DEMARCO JOHNSON DID IN RICHLAND COUNTY ON
23 OR ABOUT DECEMBER 14, 1999, UNLAWFULLY AND WILLFULLY ENTER
24 THE DWELLING OF NORMAN DORN WITHOUT CONSENT AND WITH THE
25 INTENT TO COMMIT A CRIME THEREIN AND THE DEFENDANT WHILE

1 THEREIN WAS ARMED WITH A DEADLY WEAPON AND DID COMMIT AN
2 ARMED ROBBERY UPON NORMAN DORN.

3 AGAIN, THESE ARE THE ALLEGATIONS IN THE
4 INDICTMENTS AGAINST THE DEFENDANT.

5 THERE ARE SOME QUESTIONS THAT I MUST ASK YOU AND
6 IF ANY OF THESE QUESTIONS -- I ASK YOU, AGAIN, WE WOULD DO
7 AS WE DID THIS MORNING, JUST STAND AND GIVE US YOUR NAME,
8 IF YOU WOULD, PLEASE.

9 FIRST OF ALL, THE STATE IN THIS MATTER BRINGS THE
10 CASE THROUGH THE FIFTH CIRCUIT SOLICITOR'S OFFICE.

11 HAS ANY MEMBER OF THE JURY VENIRE, EITHER YOU OR
12 AN IMMEDIATE FAMILY MEMBER OR A CLOSE FRIEND, EVER HAD ANY
13 RELATIONSHIP OR ANY DEALINGS WITH THE FIFTH CIRCUIT
14 SOLICITOR'S OFFICE AND THAT WOULD BE WHETHER AS A VICTIM OR
15 AS A WITNESS OR AS AN EMPLOYEE OF THE OFFICE, DOING
16 BUSINESS WITH THEM? ANY DEALINGS IN ANY FASHION WITH THE
17 FIFTH CIRCUIT SOLICITOR'S OFFICE?

18 (WHEREUPON, A JUROR STANDS AT THIS
19 TIME.)

20 THE COURT: YES, SIR. WOULD YOU STAND AND GIVE
21 US YOUR NAME, PLEASE, SIR?

22 THE JUROR: FRANCIS T. BURACZYNSKI. I WORK FOR
23 THE CRIMINAL JUSTICE ACADEMY. IN THE COURSE OF OUR
24 VIDEOTAPING, I DO SOME TELEVISION FOR THEM, WE HAVE
25 INTERVIEWED---

1 THE COURT: BASICALLY, YOU'VE DONE SOME WORK WITH
2 THEM THROUGH THAT BUSINESS?

3 THE JUROR: YES, SIR.

4 THE COURT: WOULD THAT AFFECT YOUR ABILITY TO
5 GIVE BOTH SIDES A FAIR TRIAL IN THIS CASE?

6 THE JUROR: I DON'T BELIEVE SO, SIR.

7 THE COURT: OKAY.

8 THANK YOU, SIR.

9 ANYTHING ELSE?

10 (NO RESPONSE.)

11 THE COURT: ALL RIGHT.

12 PARTICULARLY FOR THE SOLICITOR'S OFFICE, HANDLING
13 THE CASE WILL BE MR. DAVID PASCOE AND MS. DANA PELLIZZARI.
14 THESE ARE ASSISTANT SOLICITORS IN THE OFFICE.

15 DOES ANY MEMBER OF THE JURY VENIRE KNOW OR KNOW
16 OF MR. PASCOE OR MS. PELLIZZARI?

17 (NO RESPONSE.)

18 THE COURT: ALL RIGHT.

19 THANK YOU.

20 THE DEFENDANT IN THIS CASE IS MR. DEMARCO
21 JOHNSON. WOULD YOU LET MR. JOHNSON STAND SO THEY CAN SEE
22 WHO HE IS? THIS IS MR. JOHNSON.

23 DOES ANY MEMBER OF THE JURY VENIRE KNOW MR.
24 JOHNSON OR KNOW OF MR. JOHNSON?

25 (NO RESPONSE.)

1 THE COURT: ALL RIGHT.

2 THANK YOU.

3 MR. JOHNSON IS REPRESENTED BY THE PUBLIC
4 DEFENDER'S OFFICE IN RICHLAND COUNTY. HAS ANY MEMBER OF
5 THE JURY VENIRE EVER HAD ANY DEALINGS -- AGAIN, YOU OR A
6 CLOSE FAMILY -- CLOSE FRIEND OR AN IMMEDIATE FAMILY MEMBER
7 EVER HAD DEALINGS---

8 (WHEREUPON, A JUROR STANDS AT THIS
9 TIME.)

10 THE COURT: ---I'LL GET TO YOU IN JUST A MINUTE.
11 JUST A MINUTE. I SAID I'LL GET TO YOU IN JUST A MINUTE.

12 THE JUROR: I'M SORRY.

13 THE COURT: ---EVER HAD ANY DEALINGS, ANY
14 RELATIONSHIP WITH THE RICHLAND COUNTY PUBLIC DEFENDER'S
15 OFFICE? AGAIN, WHETHER WORKING WITH THEM OR BEING
16 REPRESENTED BY THEM, WORKING FOR THEM, ANY FASHION
17 WHATSOEVER?

18 THE COURT: YES, SIR, MR. BURACZYNSKI, I THINK
19 WAS THE NAME.

20 THE JUROR: FRANCIS BURACZYNSKI.

21 THE COURT: AND, I ASSUME, IT'S THROUGH -- AGAIN,
22 THROUGH YOUR WORK IN THE CRIMINAL JUSTICE---

23 THE JUROR: YES, SIR.

24 ALSO, ME AND MY WIFE ARE FRIENDS WITH THEIR
25 OFFICE MANAGER, SAJA BARRINEAU.

1 THE COURT: OKAY.

2 AND WOULD THAT AFFECT YOUR ABILITY TO GIVE BOTH
3 SIDES A FAIR TRIAL IN THIS CASE?

4 THE JUROR: NO, I DON'T BELIEVE SO.

5 THE COURT: OKAY.

6 ANYONE ELSE?

7 (NO RESPONSE.)

8 THE COURT: OR PARTICULARLY FROM THE PUBLIC
9 DEFENDER'S OFFICE, MS. SHEILA MIMS AND MS. APRIL SAMPSON,
10 WILL BE HANDLING THE CASE. DOES ANY MEMBER OF THE JURY
11 VENIRE KNOW OR KNOW OF MS. MIMS OR MS. SAMPSON?

12 (NO RESPONSE.)

13 THE COURT: ALL RIGHT.

14 THANK YOU.

15 NOW, THERE ARE CERTAIN PEOPLE WHO MAY BE
16 WITNESSES IN THIS CASE. I WILL CALL EACH OF THE NAMES ONE
17 AT A TIME AND AS I CALL THE NAME, IF YOU RECOGNIZE THE NAME
18 OF THE PERSON, IF YOU KNOW THEM OR KNOW OF THEM IN ANY
19 FASHION OR YOU THINK THAT YOU MIGHT RECOGNIZE THEM, WE'LL
20 ASK YOU TO STAND AND LET US KNOW THAT.

21 LET ME NOTE, MR. SOLICITOR, IF ANY OF THESE ARE
22 IN THE COURTROOM, LET THEM STAND WHEN THEIR NAME IS CALLED.
23 AND, LADIES AND GENTLEMEN, IF THEY ARE NOT HERE IN THE
24 COURTROOM DON'T BE CONCERNED BECAUSE THEY DON'T ALL HAVE TO
25 BE HERE AT THIS PARTICULAR POINT.

1 FIRST OF ALL, MR. NORMAN VAN DORN. ALL RIGHT.
2 THIS IS MR. VAN DORN.

3 AGAIN, ANYONE KNOW MR. VAN DORN, KNOW OF MR. VAN
4 DORN IN ANY WAY, FEEL LIKE YOU MAY RECOGNIZE HIM IN ANY
5 FASHION?

6 (NO RESPONSE.)

7 THE COURT: THANK YOU, SIR.

8 KETRA HEARON?

9 (NO RESPONSE.)

10 THE COURT: ALL RIGHT.

11 THANK YOU, MA'AM.

12 SERGEANT STAN SMITH OF THE RICHLAND COUNTY
13 SHERIFF'S DEPARTMENT?

14 (NO RESPONSE.)

15 THE COURT: ALL RIGHT.

16 KEVIN SASS, SPELLED S-A-S-S? ANYONE?

17 (NO RESPONSE.)

18 THE COURT: ALL RIGHT.

19 DEPUTY DENNIS DODGE OF THE RICHLAND COUNTY
20 SHERIFF'S DEPARTMENT?

21 (NO RESPONSE.)

22 THE COURT: SERGEANT ERIC BARNES OF THE RICHLAND
23 COUNTY SHERIFF'S DEPARTMENT?

24 (NO RESPONSE.)

25 THE COURT: DEPUTY SHAWN SWICEGOOD OF THE

1 RICHLAND COUNTY SHERIFF'S DEPARTMENT?

2 (NO RESPONSE.)

3 THE COURT: ALL RIGHT.

4 DEPUTY KEVIN PATE? AND, AGAIN, UNTIL I TELL YOU
5 OTHERWISE, THE NEXT SEVERAL ARE FROM THE RICHLAND COUNTY
6 SHERIFF'S DEPARTMENT.

7 DEPUTY KEVIN PATE?

8 (NO RESPONSE.)

9 THE COURT: INVESTIGATOR WILLIAM SLICER?

10 (NO RESPONSE.)

11 THE COURT: CAPTAIN MICHAEL PRICHARD?

12 (NO RESPONSE.)

13 THE COURT: LIEUTENANT COLE PORTER?

14 I ASSUME THAT'S NOT THE SONGWRITER.

15 (NO RESPONSE.)

16 THE COURT: DEPUTY LEROY GLISSON?

17 (NO RESPONSE.)

18 THE COURT: DEPUTY GARY BARNHARD OR BARNHARD?

19 HOW DO YOU PRONOUNCE IT?

20 MS. PELLIZZARI: BARNHARD, YOUR HONOR.

21 THE COURT: BARNHARD. OKAY. I HAD IT RIGHT THE
22 FIRST TIME. IT'S SPELLED B-A-R-N-H-A-R-D, BY THE WAY.

23 (NO RESPONSE.)

24 THE COURT: DEPUTY JOHN ALEXANDER?

25 (NO RESPONSE.)

1 THE COURT: DEPUTY MICHAEL PEARSON?
2 (NO RESPONSE.)
3 THE COURT: INVESTIGATOR KEVIN BAKER?
4 (NO RESPONSE.)
5 THE COURT: INVESTIGATOR TODD BRADLEY?
6 (NO RESPONSE.)
7 THE COURT: INVESTIGATOR DAVID LINFERT, SPELLED
8 L-I-N-F-E-R-T?
9 (NO RESPONSE.)
10 THE COURT: INVESTIGATOR WENDALL HARRIS?
11 (NO RESPONSE.)
12 THE COURT: DEPUTY HOWARD FOY, SPELLED F-O-Y?
13 (WHEREUPON, A JUROR STANDS AT THIS
14 TIME.)
15 THE COURT: YES, SIR. WHAT'S YOUR NAME, PLEASE,
16 SIR?
17 THE JUROR: EDWARD SHARPE.
18 THE COURT: ALL RIGHT.
19 YOU KNOW---
20 THE JUROR: I'VE DONE SOME WORK FOR MR. FOY.
21 THE COURT: ALL RIGHT.
22 AND WHAT SORT OF WORK WAS IT?
23 THE JUROR: I DONE SOME LAND CLEARING FOR HIM AND
24 HE'S A FRIEND OF THE FAMILY.
25 THE COURT: OKAY.

1 WOULD THAT AFFECT YOUR ABILITY TO GIVE BOTH SIDES
2 A FAIR TRIAL?

3 THE JUROR: YES, SIR.

4 THE COURT: OKAY. ALL RIGHT.

5 WE'LL EXCUSE THIS JUROR FROM THIS CASE THEN. I
6 BELIEVE THEY WILL HAVE YOU SIT TOWARD THE BACK.

7 (JUROR EXCUSED.)

8 THE COURT: ANYONE ELSE?

9 (NO RESPONSE.)

10 THE COURT: DEPUTY HOWARD FOY?

11 (NO RESPONSE.)

12 THE COURT: INVESTIGATOR LONNIE GROSS?

13 (NO RESPONSE.)

14 THE COURT: ALSO INVESTIGATOR KEVIN REESE OF THE
15 COLUMBIA POLICE DEPARTMENT?

16 (NO RESPONSE.)

17 THE COURT: KENJI MCQUEEN? KENJI MCQUEEN?

18 (NO RESPONSE.)

19 THE COURT: TARREL LIDE? TARREL LIDE?

20 (NO RESPONSE.)

21 THE COURT: AND CYCRUS TUCKER? CYCRUS TUCKER?

22 (NO RESPONSE.)

23 THE COURT: AGAIN, DOES ANY MEMBER OF THE JURY
24 VENIRE RECOGNIZE ANY OF THOSE NAMES, FEEL LIKE YOU MAY KNOW
25 OR KNOW OF ANY OF THOSE INDIVIDUALS?

1 (NO RESPONSE.)

2 THE COURT: ALL RIGHT.

3 NOW, YOU'VE HEARD THE ALLEGATIONS OF THE
4 INDICTMENTS READ OUT HERE.

5 DOES ANY MEMBER OF THE JURY VENIRE KNOW ANYTHING
6 ABOUT THIS CASE OR HAVE YOU HEARD ANYTHING ABOUT THIS CASE
7 IN ANY FASHION WHATSOEVER? ANY ONE KNOW ANYTHING ABOUT IT
8 OR HEARD ABOUT THE CASE IN ANY WAY?

9 (NO RESPONSE.)

10 THE COURT: ALL RIGHT.

11 NOW HAS ANY MEMBER OF THE JURY VENIRE AND, AGAIN,
12 EITHER YOU OR A FAMILY MEMBER -- AN IMMEDIATE FAMILY MEMBER
13 OR A CLOSE FRIEND EVER BEEN THE VICTIM OF A CRIME INVOLVING
14 A BURGLARY OR AN ARMED ROBBERY OR A KIDNAPPING?

15 OKAY. WOULD YOU STAND, PLEASE, SIR?

16 (WHEREUPON, A JUROR STANDS AT THIS
17 TIME.)

18 THE COURT: WHAT IS YOUR NAME, PLEASE, SIR?

19 THE JUROR: ROBERT DOVE. AND I'VE BEEN
20 BURGLARIZED A COUPLE OF TIMES.

21 THE COURT: ALL RIGHT.

22 WOULD THAT AFFECT YOUR ABILITY TO GIVE BOTH SIDES
23 A FAIR TRIAL IN THIS CASE?

24 THE JUROR: I DON'T THINK SO, NO, SIR.

25 THE COURT: ALL RIGHT.

1 THANK YOU, SIR.

2 ANYONE ELSE?

3 (WHEREUPON, A JUROR STANDS AT THIS

4 TIME.)

5 THE COURT: YES, MA'AM. WHAT IS YOUR NAME,

6 PLEASE?

7 THE JUROR: MARY VIOHL. MY MOTHER'S HOUSE WAS

8 BURGLARIZED AND MY SISTER WAS ROBBED.

9 THE COURT: OKAY.

10 WOULD THAT AFFECT YOUR ABILITY TO GIVE BOTH SIDES

11 A FAIR TRIAL IN THIS CASE?

12 THE JUROR: NO, IT WOULD NOT.

13 THE COURT: WOULD NOT.

14 ALL RIGHT. THANK YOU, MS. VIOHL.

15 YES, SIR.

16 THE JUROR: GRAYSON SHIREY. MY HOUSE WAS BROKEN

17 INTO ABOUT FOUR YEARS AGO, BUT THAT WON'T AFFECT ME.

18 THE COURT: WOULD NOT AFFECT YOUR ABILITY TO GIVE

19 A FAIR TRIAL?

20 THE JUROR: NO, SIR.

21 THE COURT: ALL RIGHT.

22 THANK YOU, SIR.

23 ANYONE ELSE?

24 THE JUROR: MY HOUSE WAS BURGLARIZED---

25 THE COURT: WHAT'S YOUR NAME, PLEASE, MA'AM?

1 THE JUROR: CATHERINE DAVOLL.

2 THE COURT: DAVOLL -- MS. DAVOLL---

3 THE JUROR: FIFTEEN OR TWENTY YEARS AGO.

4 THE COURT: OKAY.

5 IT WAS BURGLARIZED FIFTEEN OR TWENTY YEARS AGO---

6 THE JUROR: I BELIEVE IT WAS FIFTEEN---

7 THE COURT: WOULD THAT AFFECT YOUR ABILITY TO
8 GIVE BOTH SIDES A FAIR TRIAL?

9 THE JUROR: NO, IT WOULD NOT.

10 THE COURT: ALL RIGHT. THANK YOU, MA'AM.

11 YES, MA'AM.

12 THE JUROR: I AM DOROTHY WALKER. MY CAR WAS
13 STOLEN OUT OF MY DRIVEWAY---

14 THE COURT: ALL RIGHT---

15 THE JUROR: ---A COUPLE OF YEARS AGO.

16 THE COURT: HOW LONG AGO?

17 THE JUROR: ABOUT THREE YEARS AGO.

18 THE COURT: OKAY.

19 AND, MS. WALKER, WOULD THAT AFFECT YOUR ABILITY
20 TO BE GIVE BOTH SIDES A FAIR TRIAL IN THIS CASE?

21 THE JUROR: NO, SIR.

22 THE COURT: ALL RIGHT.

23 THANK YOU, MA'AM.

24 ANYONE ELSE?

25 (NO RESPONSE.)

1 THE COURT: ALL RIGHT.

2 NOW, IS ANY MEMBER OF THE JURY VENIRE RELATED BY
3 BLOOD OR MARRIAGE TO ANYONE WHO IS EMPLOYED BY A LAW
4 ENFORCEMENT AGENCY, WHETHER A STATE LAW ENFORCEMENT AGENCY,
5 CITY, COUNTY, FEDERAL LAW ENFORCEMENT AGENCY OF ANY KIND?
6 ANYONE RELATED BY BLOOD OR MARRIAGE TO SOMEONE WHO IS
7 EMPLOYED BY A LAW ENFORCEMENT AGENCY?

8 (WHEREUPON, A JUROR STANDS AT THIS
9 TIME.)

10 THE COURT: YES, SIR, AGAIN, YOUR NAME?

11 THE JUROR: ROBERT DOVE. MY SON IS A CITY
12 POLICEMAN WITH WEST COLUMBIA.

13 THE COURT: ALL RIGHT.

14 WOULD THAT AFFECT YOUR ABILITY TO GIVE BOTH SIDES
15 A FAIR TRIAL IN THIS CASE?

16 THE JUROR: NO, SIR.

17 THE COURT: AND WHAT THAT MEANS IS THIS, MR.
18 DOVE, THAT BY VIRTUE OF BEING RELATED TO A LAW ENFORCEMENT
19 OFFICER, WOULD YOU TEND TO BELIEVE A LAW ENFORCEMENT
20 OFFICER MORE THAN ANYONE ELSE BECAUSE YOU ARE RELATED TO
21 ONE?

22 THE JUROR: PROBABLY NOT.

23 THE COURT: OKAY.

24 ALL RIGHT. ANYONE ELSE?

25 (WHEREUPON, A JUROR STANDS AT THIS

1 TIME.)

2 THE COURT: YES, MA'AM?

3 THE JUROR: DONNA CROOM. MY NEPHEW IS WITH THE

4 CITY OF COLUMBIA POLICE DEPARTMENT.

5 THE COURT: ALL RIGHT.

6 AND---

7 THE JUROR: AND THAT WOULD NOT AFFECT.

8 THE COURT: ---WOULD NOT AFFECT YOUR ABILITY---

9 THE JUROR: NO, SIR.

10 THE COURT: ---YOU WOULD NOT GIVE A LAW

11 ENFORCEMENT OFFICER MORE CREDIBILITY BECAUSE OF THAT?

12 THE JUROR: NO, SIR.

13 THE COURT: ALL RIGHT. THANK YOU, MA'AM.

14 YES, SIR. GO AHEAD AND STAND UP, WHOEVER HAD

15 YOUR HAND -- JUST GO -- ANY OF YOU STAND UP.

16 WELL, OKAY. YOUR NAME, PLEASE, SIR.

17 THE JUROR: MY NAME IS STEVE STROUPE. MY

18 FATHER-IN-LAW IS CHIEF OF POLICE FOR A SMALL TOWN IN

19 PENNSYLVANIA---

20 THE COURT: OKAY.

21 THE JUROR: ---AND MY BOTHER-IN-LAW IS ALSO A

22 POLICE OFFICER IN VIRGINIA.

23 THE COURT: YES, SIR.

24 AND WOULD THAT AFFECT YOUR ABILITY TO GIVE BOTH

25 SIDES A FAIR TRIAL IN THIS CASE?

1 THE JUROR: I DON'T BELIEVE SO.

2 THE COURT: WOULD IT CAUSE YOU TO BELIEVE A LAW
3 ENFORCEMENT OFFICER ABOVE ANYONE ELSE?

4 THE JUROR: NO.

5 THE COURT: ALL RIGHT. THANK YOU, SIR.

6 YES, SIR.

7 THE JUROR: MY FATHER-IN-LAW IS A RETIRED COUNTY
8 DEPUTY IN VIRGINIA.

9 THE COURT: ALL RIGHT.

10 WOULD THAT AFFECT YOUR ABILITY TO GIVE BOTH SIDES
11 A FAIR TRIAL?

12 THE JUROR: NO, SIR.

13 THE COURT: AND WOULD IT CAUSE YOU TO BELIEVE A
14 LAW ENFORCEMENT OFFICER ABOVE ANYONE ELSE BECAUSE YOU ARE
15 RELATED TO ONE?

16 THE JUROR: NO, SIR.

17 THE COURT: ALL RIGHT.

18 THANK YOU, SIR.

19 MS. DUKE-MIMS: YOUR HONOR, COULD I HAVE THAT
20 JUROR'S NAME ONE MORE TIME? I'M SORRY.

21 THE COURT: WHAT WAS YOUR NAME, AGAIN, PLEASE,
22 SIR?

23 THE JUROR: GRAYSON SHIREY.

24 THE COURT: ALL RIGHT.

25 YES, MA'AM.

1 THE JUROR: MY NAME IS GLORIA BURLEY SHELL AND MY
2 SON-IN-LAW IS A POLICEMAN IN ATLANTA, GEORGIA.

3 THE COURT: OKAY.

4 WOULD THAT AFFECT YOUR ABILITY TO GIVE BOTH SIDES
5 A FAIR TRIAL?

6 THE JUROR: NO, SIR.

7 THE COURT: AND, AGAIN, BY VIRTUE OF THE FACT
8 THAT YOU ARE RELATED TO A LAW ENFORCEMENT OFFICER, WOULD
9 YOU TEND TO BELIEVE ONE ABOVE OTHERS?

10 THE JUROR: NO, SIR.

11 THE COURT: ALL RIGHT.

12 THANK YOU.

13 ANYONE ELSE?

14 (NO RESPONSE.)

15 THE COURT: ALL RIGHT.

16 IS ANYONE RELATED BY BLOOD OR MARRIAGE TO ANYONE
17 WHO WORKS IN THE ATTORNEY GENERAL'S OFFICE OR ANY
18 SOLICITOR'S OFFICE?

19 (NO RESPONSE.)

20 THE COURT: NOW, IS ANY MEMBER OF THE JURY VENIRE
21 A MEMBER OF OR HAVE YOU EVER BEEN A CONTRIBUTOR TO ANY OF
22 THE FOLLOWING ORGANIZATIONS WHO HAVE AS A PRIME CONCERN THE
23 PROMOTION OF LAW ENFORCEMENT OR VICTIM'S RIGHTS? AND THAT
24 WOULD INCLUDE EITHER YOU OR AN IMMEDIATE FAMILY MEMBER OR A
25 CLOSE FRIEND AND THESE WOULD BE GROUPS SUCH AS M.A.D.D.,

1 WHICH IS MOTHERS AGAINST DRUNK DRIVERS; S.A.D.D., WHICH IS
2 STUDENTS AGAINST DRUNK DRIVERS; C.A.D.R.E., WHICH IS
3 CITIZENS ADVOCATING A REVIVAL OF DENSITY AND ETHICS;
4 C.A.V.E., CITIZENS ADVOCATING AGAINST VIOLENT CRIME; AND
5 GROUPS SUCH AS THAT? THOSE ARE ONLY EXAMPLES, BUT ANY
6 GROUP SUCH AS THAT, THAT WHOSE PURPOSE IS TO PROMOTE LAW
7 ENFORCEMENT OR VICTIM RIGHTS? AGAIN, ANYONE, EITHER YOU OR
8 AN IMMEDIATE FAMILY MEMBER OR A CLOSE FRIEND EVER BEEN A
9 MEMBER OF OR A CONTRIBUTOR TO?

10 (WHEREUPON, A JUROR STANDS AT THIS
11 TIME.)

12 THE COURT: YES, SIR, MR. BURACZYNSKI, I BELIEVE?

13 THE JUROR: YES, SIR.

14 I'M A MEMBER OF THE FRATERNAL ORDER OF POLICE---

15 THE COURT: ALL RIGHT.

16 THE JUROR: ---I'M ALSO A FORMER POLICE OFFICER.

17 I'M NO LONGER COMMISSIONED, BUT I WAS AT ONE TIME.

18 THE COURT: ALL RIGHT.

19 AND WOULD THOSE AFFECT YOUR ABILITY TO GIVE BOTH
20 SIDES A FAIR TRIAL IN THIS CASE?

21 THE JUROR: I DON'T BELIEVE SO.

22 THE COURT: ALL RIGHT. THANK YOU, SIR.

23 ANYONE ELSE?

24 (NO RESPONSE.)

25 THE COURT: ALL RIGHT.

1 DOES ANY MEMBER OF THE JURY VENIRE THEN KNOW OF
2 ANY OTHER REASON WHY YOU COULD NOT GIVE BOTH SIDES A FAIR
3 TRIAL IN THIS CASE?

4 (NO RESPONSE.)

5 THE COURT: ANY OTHER REQUEST FOR VOIR DIRE FROM
6 THE STATE?

7 MR. PASCOE: NO, YOUR HONOR.

8 MS. PELLIZZARI: NO, SIR.

9 THE COURT: FROM THE DEFENSE?

10 MS. DUKE-MIMS: NOTHING.

11 THE COURT: ALL RIGHT. THANK YOU.

12 AT THIS TIME, WE WILL PROCEED WITH THE DRAWING OF
13 THE JURY.

14 COUNSEL, I BELIEVE, IT WILL BE FIVE AND TEN ON
15 THE STRIKES.

16 LADIES AND GENTLEMEN, WE WILL PROCEED WITH THE
17 DRAWING OF THE JURY.

18 THE CLERK WILL TAKE YOU THROUGH THIS. HE'S DONE
19 IT MANY TIMES. HE WILL TREAT YOU KINDLY AND GENTLY SO
20 DON'T BE CONCERNED ABOUT ANY SORT OF EMBARRASSMENT. WE
21 HAVE A PROCEDURE AND HE WILL TAKE YOU RIGHT THROUGH IT VERY
22 EASILY.

23 MR. CLERK, I'M GOING TO TURN THEM OVER TO YOU.

24 THE CLERK: YES, YOUR HONOR. THANK YOU.

25 ALL RIGHT. LADIES AND GENTLEMEN OF THE JURY, IF

1 I CALL OUT YOUR NAME, PLEASE COME FORWARD TO THIS
2 MICROPHONE STANDING HERE TO MY RIGHT, STATE YOUR NAME AND
3 OCCUPATION AND REMAIN STANDING THERE UNTIL I GIVE YOU
4 FURTHER INSTRUCTIONS. IF YOU HAVE ANY BOOKS, COATS,
5 UMBRELLAS, ET CETERA, BRING THOSE WITH YOU IF I CALL OUT
6 YOUR NAME.

7 (WHEREUPON, A JURY CONSISTING OF
8 TWELVE JURORS AND ONE ALTERNATE, WAS SELECTED TO SIT IN THE
9 TRIAL OF THIS CASE.)

10 THE COURT: ALL RIGHT. OKAY.

11 LADIES AND GENTLEMEN OF THE JURY, LET ME ASK YOU
12 IF YOU WILL STEP TO THE JURY ROOM JUST FOR A MOMENT. THERE
13 ARE SOME MATTERS I NEED TO TAKE UP WITH THE ATTORNEYS. THE
14 BAILIFFS WILL TAKE YOU.

15 NOW, WHILE YOU ARE THERE, IT'S VERY IMPORTANT
16 THAT YOU NOT TALK ABOUT THIS CASE OR NOT TALK ABOUT ANY
17 SORT OF SIMILAR CASES OR ISSUES SUCH AS THIS TODAY. IT'S
18 VERY IMPORTANT THAT YOU DO THAT. WE'LL BRING YOU BACK OUT
19 IN JUST A MOMENT.

20 (JURY OUT.)

21 THE COURT: COUNSEL, LET ME ASK YOU TO APPROACH
22 THE BENCH JUST A MINUTE.

23 (WHEREUPON, A BENCH CONFERENCE WAS
24 HELD AT THIS TIME OFF THE RECORD.)

25 THE COURT: ALL RIGHT.

1 LADIES AND GENTLEMEN OF THE JURY, AS YOU SEE, WE
2 HAVE NOW DRAWN A JURY FOR THIS CASE. WE ARE GOING TO LET
3 YOU RETURN TO THE JURY POOL ROOM -- WELL, THAT DOESN'T
4 SOUND, POOL ROOM -- BACK TO THE JURY ROOM AT THIS TIME AND
5 THEY WILL HAVE FURTHER INSTRUCTIONS FOR YOU THERE LATER.
6 THANK YOU. I ENJOYED WORKING WITH YOU.

7 (WHEREUPON. THE REMAINDER OF THE
8 JURY VENIRE WAS EXCUSED AT THIS TIME.)

9 THE COURT: ALL RIGHT.

10 ALL THE JURORS ARE NOW SECURED. COUNSEL, I
11 UNDERSTAND YOU HAVE SOME MOTIONS. WHAT'S YOUR STATUS? ARE
12 WE PREPARED TO BEGIN TODAY OR WILL THE MOTIONS TAKE US A
13 LITTLE BIT LATER?

14 MR. PASCOE: WE CAN -- IT DEPENDS ON WHAT THE
15 MOTIONS ARE. WE NEED TO HEAR THEM FIRST.

16 THE COURT: OH, OKAY.

17 MR. PASCOE: I THINK I KNOW WHAT THEY ARE.

18 SHEILA -- MS. MIMS AND I HAVE TALKED ABOUT THEM AND I DON'T
19 THINK WE ARE GOING TO HAVE TO DO ANY TESTIMONY OR ANYTHING
20 LIKE THAT TODAY.

21 THE COURT: OKAY.

22 HOW MUCH WOULD WE GET -- WELL, IT'S ABOUT 4
23 O'CLOCK NOW.

24 MR. PASCOE: I THINK THE MOTIONS ARE GOING TO BE
25 DONE PROBABLY IN THE NEXT FIVE OR TEN MINUTES. I DON'T---

1 THE COURT: OKAY.

2 MS. DUKE-MIMS: YES, YOUR HONOR. I DON'T THINK
3 THEY WILL TAKE VERY LONG, PROBABLY ABOUT 10 TO 15 MINUTES.

4 THE COURT: ALL RIGHT.

5 WE COULD PROBABLY GET OPENING STATEMENTS, I
6 ASSUME, IN. ANY PROBLEM WITH DOING THAT AND THEN COMING
7 BACK?

8 MR. PASCOE: THAT'S MY -- I HAD TOLD, AFTER
9 TALKING TO YOU EARLIER TODAY---

10 THE COURT: YES, SIR.

11 MR. PASCOE: ---I HAD TOLD MS. MIMS THAT WE
12 PROBABLY WOULD NOT DO OPENING UNTIL IN THE MORNING. BUT
13 THAT'S MY FAULT. I'M SORRY---

14 THE COURT: THAT'S OKAY, NO PROBLEM.

15 MR. PASCOE: I DON'T CARE. IT'S UP TO THEM.

16 THE COURT: DO YOU WANT TO JUST START OPENING
17 STATEMENTS IN THE MORNING THEN?

18 MS. DUKE-MIMS: EITHER WAY, YOUR HONOR. I, OF
19 COURSE, PREFER, BUT EITHER WAY IS FINE. I MEAN, I CAN---

20 THE COURT: WE CAN DO THEM IN THE MORNING.

21 MS. DUKE-MIMS: OKAY. THANK YOU, YOUR HONOR.

22 THE COURT: THAT'S NOT A PROBLEM. I'M EASY THESE
23 DAYS.

24 MS. DUKE-MIMS: THANK YOU.

25 THE COURT: I'M NOT NEARLY AS BAD AS I -- THE

1 COURT REPORTER WILL TELL YOU, I'M NOT NEARLY AS BAD AS I
2 USED TO BE. AND SHE WAS ONE OF THE ONES WHO DIDN'T WHINE.

3 OKAY. LET'S DO THIS. LET'S BRING THE JURY BACK
4 IN AND WE'LL GO AHEAD AND EXCUSE THEM FOR THE DAY AND BRING
5 THEM BACK IN THE MORNING AT 9:30. ANY PROBLEM WITH THAT?

6 MS. DUKE-MIMS: NO, SIR.

7 THE COURT: OKAY.

8 (WHEREUPON, A NOTE IS HANDED TO
9 THE COURT AT THIS TIME.)

10 THE COURT: MS. FOLKS SENDS A NOTE INDICATING
11 THAT SHE, AFTER BEING SEATED, SHE RECALLED THAT SHE HAD A
12 CELL PHONE STOLEN FROM HER CAR. GOT ANOTHER ONE AFTERWARD,
13 BETTER THAN THE ONE BEFORE. SO SHE SAYS SHE SELDOM THINKS
14 BACK ON IT, BUT THOUGHT SHE SHOULD MENTION IT. DOES NOT
15 THINK IT WOULD AFFECT HER ABILITY TO GIVE BOTH SIDES A FAIR
16 TRIAL.

17 DOES, COUNSEL, OR EITHER OF YOU WANT TO HAVE ANY
18 FURTHER PURSUIT OF THAT ISSUE WITH THAT JUROR?

19 MS. PELLIZZARI: NOT FROM THE STATE, YOUR HONOR.

20 MS. DUKE-MIMS: I DON'T THINK WE HAVE A PROBLEM
21 WITH THAT, YOUR HONOR.

22 THE COURT: OKAY. ALL RIGHT.

23 MR. CLERK, WOULD YOU GIVE THAT TO THE COURT
24 REPORTER AND SHE CAN GO AHEAD AND MARK THAT AS A COURT'S
25 EXHIBIT?

1 THE CLERK: YES, SIR.

2 (WHEREUPON, COURT'S EXHIBIT NUMBER
3 ONE, JUROR NOTE, MARKED FOR THE RECORD AT THIS TIME.)

4 THE COURT: OKAY.

5 LET'S BRING THE JURY BACK IN.

6 (JURY IN.)

7 THE BAILIFF: THE JURY IS ALL PRESENT, YOUR
8 HONOR.

9 THE COURT: THANK YOU, SIR.

10 ALL PARTIES AND ATTORNEYS ARE IN THE COURTROOM
11 AND ALL JURORS HAVE RETURNED.

12 LADIES AND GENTLEMEN, WE ARE PREPARED TO START
13 THE CASE, BUT IT'S LATE IN THE DAY, SO WHAT WE WILL DO IS
14 BEGIN IN THE MORNING. IF WE WERE TO BEGIN AT THIS POINT,
15 IT WOULD PROBABLY TAKE UNTIL ABOUT 6:00 OR 6:30 OR 7:00 TO
16 GET ALL OF THE ARGUMENTS IN AND THE FIRST WITNESS AND DO
17 THAT. I KNOW THAT ALL OF YOU ARE CERTAINLY ANXIOUS TO GO
18 THAT LATE, BUT WE'LL PASS UP ON THE OPPORTUNITY AT THIS
19 POINT. I'LL ASK YOU TO COME BACK IN THE MORNING AT 9:30.
20 JUST COME BACK TO THE JURY ROOM FROM WHERE YOU JUST CAME
21 AND THE BAILIFFS WILL TAKE CARE OF YOU THERE.

22 AGAIN, VERY IMPORTANT, AND I WILL BE TELLING YOU
23 THIS THROUGHOUT THE TRIAL. IT'S IMPORTANT THAT YOU NOT
24 TALK ABOUT THE CASE WITH ANYONE. CERTAINLY DON'T LET
25 ANYONE TALK WITH YOU ABOUT THE CASE. NOW, IT CERTAINLY IS

1 UNDERSTANDABLE THAT YOU WILL WANT TO TELL YOUR FAMILY AND
2 FRIENDS AND CO-WORKERS WHERE YOU ARE, WHAT YOU ARE DOING,
3 BUT, AGAIN, TELL THEM THAT IT'S IMPORTANT THAT YOU NOT TALK
4 ABOUT THE DETAILS OF THE CASE ITSELF.

5 WITH THAT IN MIND, WE'LL SEE YOU IN THE MORNING
6 AT 9:30. I HOPE YOU HAVE A GOOD EVENING.

7 (JURY OUT.)

8 THE COURT: ALL RIGHT.

9 COUNSEL, I UNDERSTOOD YOU HAD SOME MOTIONS FROM
10 THE DEFENSE?

11 MS. DUKE-MIMS: YES, SIR, YOUR HONOR.

12 I GUESS THE FIRST MOTIONS ARE JUST KIND OF THE
13 GENERAL ONES. WE WOULD ASK THAT THE WITNESSES IN THIS CASE
14 BE SEQUESTERED FOR, I THINK, OBVIOUS REASONS, JUST SO THAT
15 THEY ARE NOT TAMPERED BY EACH OTHER'S TESTIMONY IN THIS
16 CASE.

17 THE COURT: ANY OBJECTION?

18 MS. PELLIZZARI: NO, SIR, YOUR HONOR. WE WOULD
19 JUST ASK THAT IT BE RECIPROCAL AND, OF COURSE, WE WOULD ASK
20 THAT SERGEANT SMITH AND BOTH KETRA HEARON AND VAN DORM BE
21 ABLE TO STAY IN THE COURTROOM SINCE MR. DORM AND MS. HEARON
22 ARE BOTH VICTIMS AND, OF COURSE, SERGEANT SMITH IS THE CASE
23 OFFICER.

24 THE COURT: OKAY.

25 MS. DUKE-MIMS: YOUR HONOR, I WOULD ASK THAT MR.

1 DORN AND MS. HEARON ALSO STEP OUTSIDE SIMPLY BECAUSE THEIR
2 CASE INVOLVES THE SAME SET OF FACTS. THEY ARE BOTH VICTIMS
3 IN THIS CASE AND I UNDERSTAND THAT, BUT I THINK THERE COULD
4 BE SOME PROBLEMS WITH THAT.

5 THE COURT: I UNDERSTAND.

6 THEY HAVE A CONSTITUTIONAL RIGHT TO BE IN THE
7 COURTROOM. I WOULD NOT -- IT WOULDN'T BE APPROPRIATE TO
8 HAVE THEM STAY OUT OF THE COURTROOM. MY POLICY IS, OF
9 COURSE, VICTIMS ARE ALWAYS ALLOWED TO STAY; THE LEAD
10 INVESTIGATOR IS ALLOWED TO STAY ALSO. AND THAT APPLIES TO
11 BOTH SIDES. IF YOU HAVE A LEAD INVESTIGATOR, THAT
12 INVESTIGATOR COULD ALSO STAY IN THE COURTROOM.

13 MS. DUKE-MIMS: YES, SIR.

14 THE COURT: WITH THAT IN MIND, AS INDICATED, IT
15 IS -- IT DOES GO BOTH WAYS. THE STATE AND DEFENSE ARE
16 PROHIBITED FROM HAVING PROSPECTIVE WITNESSES IN THE
17 COURTROOM. THE STATE DOES NOT HAVE TO SEQUESTER ANY
18 REBUTTAL WITNESSES. OBVIOUSLY, AS YOU KNOW, THAT'S NOT
19 REQUIRED. AND LET ME BE SURE AND CAUTION BOTH SIDES. NOW,
20 IF I SEE SOMEBODY IN THE COURTROOM WHO IS IN HERE FOR ANY
21 SUBSTANTIAL TIME, I WILL NOT HESITATE TO PREVENT THAT
22 PERSON FROM TESTIFYING. SO IT'S VERY IMPORTANT THAT ALL OF
23 YOU SORT OF KEEP AN EYE OUT FOR WHO COMES IN OR OUT. BUT
24 WE WILL, UNDER THOSE PARAMETERS, WE WILL GRANT THE MOTION
25 FOR SEQUESTRATION.

1 ALL RIGHT.

2 MS. DUKE-MIMS: THANK YOU, YOUR HONOR.

3 I WOULD JUST AT THIS TIME ALSO RENEW MY MOTION,
4 MY RULE FIVE MOTION IN CASE THERE IS ANY EVIDENCE THAT HAS
5 NOT BEEN HANDED OVER TODAY. I THINK I RECEIVED SOMETHING
6 FRIDAY -- LAST -- JUST TO MAKE SURE THERE'S NO NEW EVIDENCE
7 I NEED TO RECEIVE.

8 THE COURT: ALL RIGHT.

9 AS I THINK ALL OF YOU KNOW, MY STANDARD PROCEDURE
10 ON THAT MOTION IS TO ASK -- INQUIRE OF THE STATE IF THEY
11 HAVE ANYTHING ELSE.

12 LET ME ASK THE SOLICITORS AND THE LEAD
13 INVESTIGATOR OFFICER ALSO, DO EITHER OF YOU KNOW OF
14 ANYTHING THAT WOULD APPROPRIATELY FALL UNDER A DISCOVERY
15 MOTION THAT HAS NOT BEEN PRODUCED AT THIS TIME?

16 MS. PELLIZZARI: YOUR HONOR, MS. MIMS AND I WENT
17 THROUGH MY FILE LAST THURSDAY. I GAVE HER WHATEVER SHE
18 DIDN'T HAVE AND ADDITIONALLY GAVE HER SOMETHING ON FRIDAY.

19 YOUR HONOR, I HAVEN'T RECEIVED ANYTHING SINCE
20 FRIDAY, SO THERE'S NOTHING ADDITIONAL THAT SHE NEEDS.

21 THE COURT: ALL RIGHT.

22 MR. INVESTIGATOR:

23 SERGEANT STAN SMITH: THE SOLICITOR HAS
24 EVERYTHING.

25 THE COURT: ALL RIGHT. THANK YOU.

1 AND, OF COURSE, I ASK THAT QUESTION, AS YOU KNOW,
2 UNDER KYLES VERSUS WHITLEY.

3 ALL RIGHT. THEY'VE ASSURED ME THEY KNOW OF
4 NOTHING THEN, COUNSEL?

5 MS. DUKE-MIMS: THANK YOU, SIR.

6 YOUR HONOR, IT IS MY UNDERSTANDING FROM SPEAKING
7 WITH MR. PASCOE THAT THERE WILL NOT BE A NEED FOR A NEIL
8 VERSUS BIGGERS' HEARING. I UNDERSTAND THAT FROM THE
9 DISCOVERY THERE WAS A PHOTO LINEUP OR THERE WAS A SHOW-UP
10 WITH MR. KEVIN SASS AND IT IS MY UNDERSTANDING THAT THEY
11 WILL NOT BE ASKING MR. SASS TO IDENTIFY MY CLIENT IN THE
12 COURTROOM OR BE DISCUSSING SHOW-UP OR THAT TYPE OF THING.
13 I JUST WANT TO MAKE SURE THAT IS, IN FACT, THE CASE.

14 THE COURT: IS THAT CORRECT?

15 MR. PASCOE: I DON'T -- YES, YOUR HONOR, I DON'T
16 -- I TOLD MS. MIMS I DON'T ANTICIPATE MR. SASS DOING AN
17 IN-COURT IDENTIFICATION IS WHAT I SAID AND IF, FOR SOME
18 REASON, WE THOUGHT HE WAS GOING TO DO ONE, WE WILL TELL HER
19 AHEAD OF TIME SO WE COULD DO THE HEARING.

20 THE COURT: OKAY.

21 WELL, IF SOMETHING -- CERTAINLY, WE'LL TAKE THAT
22 AS IT IS, BUT IF ANYTHING ARISES THAT WOULD REQUIRE,
23 CERTAINLY, LET THEM KNOW AS SOON AS POSSIBLE AND WE'LL GET
24 THE JURY OUT AND DO AN IN-CAMERA HEARING IF WE HAVE TO.

25 MR. PASCOE: YES, YOUR HONOR.

1 MS. DUKE-MIMS: THANK YOU, SIR.

2 I ALSO UNDERSTAND THAT THAT IS THE SAME ISSUE
3 WITH THE JACKSON VERSUS DENNO. I THINK MY CLIENT HAS
4 MADE SOME STATEMENTS TO INVESTIGATOR BARNES AND
5 INVESTIGATOR FOY IN THIS CASE AND I JUST WANT TO MAKE SURE
6 THAT THOSE STATEMENTS WILL NOT BE COMING OUT. IF THEY DO
7 COME OUT OR AHEAD OF TIME, WE WOULD PLEASE LIKE NOTICE SO
8 THAT WE COULD DO A JACKSON VERSUS DENNO HEARING.

9 MR. PASCOE: EXACTLY, THE SAME THING. WE DON'T
10 ANTICIPATE PUTTING IN HIS STATEMENT, BUT IF WE DO, I'LL
11 TELL MS. MIMS.

12 THE COURT: ALL RIGHT. THANK YOU, SIR.

13 MS. DUKE-MIMS: YOUR HONOR, JUST A COUPLE OF
14 MOTIONS IN LIMINE, IF I MAY?

15 THE COURT: SURE.

16 MS. DUKE-MIMS: FIRST OF ALL, I THINK IN OFFICER
17 BARNES' INVESTIGATIVE REPORT, THERE IS MENTION OF MY CLIENT
18 HAVING A PRIOR MURDER CHARGE, THERE IS MENTION OF SOME
19 OTHER CHARGES THAT HE HAD AND I JUST WANT TO MAKE SURE THAT
20 THERE CAN BE NO MENTION OF THOSE -- OF THAT COMING INTO
21 THIS CASE. I'M SURE THAT.

22 THE COURT: THE STATE?

23 MS. PELLIZZARI: YOUR HONOR, OF COURSE, IF MR.
24 JOHNSON ELECTS TO TAKE THE STAND, WE INTEND TO USE THOSE
25 FOR IMPEACHMENT PURPOSES, BUT IN TERMS OF OUR CASE IN

1 CHIEF, WE DON'T INTEND TO BRING THAT OUT.

2 THE COURT: ALL RIGHT.

3 COUNSEL, IS THAT UNDERSTOOD?

4 MS. DUKE-MIMS: THANK YOU, YOUR HONOR.

5 YES, SIR. BEG THE COURT'S INDULGENCE A MOMENT.

6 (WHEREUPON, MS. DUKE-MIMS CONFERS
7 WITH THE DEFENDANT AT THIS TIME OFF THE RECORD.)

8 MS. DUKE-MIMS: YOUR HONOR, WE WOULD ALSO ASK
9 THAT INVESTIGATOR BARNES, AGAIN, AS HE NOT BE ALLOWED TO
10 TESTIFY AS TO THE CO-DEFENDANT'S STATEMENTS THAT WERE GIVEN
11 TO HIM EVEN IF THE CO-DEFENDANT TESTIFIES. CONSIDERING
12 THAT'S HEARSAY, WE'D ASK AHEAD OF TIME THAT THAT NOT BE
13 ALLOWED TO COME IN AS WELL.

14 THE COURT: COUNSEL.

15 MR. PASCOE: YOUR HONOR, I JUST ASK THAT WE WAIT
16 UNTIL THAT -- TO SEE IF THAT COMES UP.

17 AGAIN, WE'LL TIP -- WE'LL TIP YOU OFF -- WE'RE
18 TIP MS. MIMS OFF IF WE INTEND TO DO THAT.

19 THE COURT: OKAY.

20 ALL RIGHT. MS. MIMS, MY PROCEDURE IS THAT ANY
21 TIME EITHER OF THE PARTIES HAS ANY HESITATION, I ALWAYS
22 JUST DELAY IT UNLESS NECESSARY.

23 MS. DUKE-MIMS: YES, SIR, I UNDERSTAND. THANK
24 YOU.

25 AND THIS MAY BE AHEAD OF TIME AS WELL, YOUR

1 HONOR. I JUST WANT TO ADDRESS IT EARLY ON---

2 THE COURT: SURE.

3 MS. DUKE-MIMS: THIS ONE IS A LITTLE MORE
4 COMPLICATED. FROM WHAT I UNDERSTAND, THERE IS -- AND I DO
5 SEE FROM THEIR WITNESS LIST, THERE IS A YOUNG MAN NAME
6 KENJI MCQUEEN. FROM WHAT I UNDERSTAND OF THIS CASE AND I
7 MAY BE COMPLETELY OFF, BUT FROM WHAT I UNDERSTAND OF THIS
8 CASE, MR. MCQUEEN'S TESTIMONY MAY BE USED TO TRACE A GUN
9 THAT WAS FOUND IN THE VICTIM'S APARTMENT TO MY CLIENT. AND
10 I'M NOT TRYING TO RUN ON HERE, YOUR HONOR, BUT FROM WHAT I
11 UNDERSTAND, MR. MCQUEEN HAS TOLD INVESTIGATORS OR SERGEANT
12 SMITH, THROUGH AN INTERVIEW, THAT HE HAD STOLEN A GUN IN A
13 BURGLARY. LATER ON, DURING SOME TYPE OF MEETING WITH A LOT
14 OF PEOPLE AROUND, HE SOLD THAT GUN TO MY CLIENT'S BROTHER
15 IN A TRANSACTION FOR DRUGS. AT THAT TIME, DURING THIS
16 TRANSACTION, SOME TYPE OF RUCKUS HAPPENED, EVERYBODY ENDS
17 UP PULLING GUNS ON EACH OTHER. MY CLIENT IS THERE.
18 THERE'S NO MENTION THAT HE PULLED A GUN, BUT HE IS THERE IN
19 THE ROOM. BUT LATER ON, THE TRANSACTION IS COMPLETE. THE
20 GUN GOES TO MY CLIENT'S BROTHER AND THE DRUGS, I GUESS, TO
21 MR. MCQUEEN.

22 MY PROBLEMS ARE TWOFOLD WITH THIS, YOUR HONOR,
23 AND MR. MCQUEEN'S TESTIMONY.

24 FIRST OF ALL, ARGUING, JUST BASED ON -- FIRST OF
25 ALL, I WOULD LIKE TO SAY THAT -- I WOULD LIKE TO ASK THAT

1 MR. MCQUEEN OR MAKE A MOTION THAT MR. MCQUEEN NOT BE
2 ALLOWED TO TESTIFY AS TO THE GUN BEING SOLD TO MY CLIENT'S
3 BROTHER. I FIND THAT -- I THINK THAT THAT'S IRRELEVANT,
4 YOUR HONOR, AND IT'S HIGHLY PREJUDICIAL UNDER RULE 403. I
5 BELIEVE IT WOULD ONLY BE RELEVANT IF THE GUN COULD BE
6 PLACED DIRECTLY IN MY CLIENT'S HAND OR THEY COULD PROVE HOW
7 IT GOT INTO MY CLIENT'S HAND. OTHERWISE, WE WOULD ARGUE
8 THAT MR. MCQUEEN'S TESTIMONY ABOUT SELLING THAT GUN TO MY
9 CLIENT'S BROTHER IS IRRELEVANT.

10 FURTHER, YOUR HONOR, EVEN IF YOU FEEL THAT THAT
11 IS OKAY AND WILL ALLOW HIM TO TESTIFY AS TO THAT, WE WOULD
12 ASK THAT THEY NOT BE ALLOWED TO GO INTO THIS RUCKUS THAT
13 HAPPENED WHERE THESE GUNS WERE DRAWN AND WHERE MY CLIENT
14 WAS PRESENT. I FEEL THAT THERE IS ABSOLUTELY NO RELEVANCE
15 FOR THAT. IT'S EXTREMELY PREJUDICIAL JUST SAYING THAT HE
16 IS IN THE ROOM WHEN THIS IS HAPPENING. SO WE WOULD AT
17 LEAST ASK FOR THAT, YOUR HONOR. BUT, I THINK, JUST IN SUM,
18 WE WOULD JUST ASK THAT MR. MCQUEEN NOT BE ALLOWED TO
19 TESTIFY ABOUT THE GUN AND HOW IT GOT INTO MY CLIENT'S HAND
20 OR MY CLIENT'S BROTHER'S HANDS.

21 THE COURT: MR. SOLICITOR?

22 MR. PASCOE: YOUR HONOR, AGAIN, I'D ASK THAT WE
23 JUST WAIT UNTIL IT COMES UP AT TRIAL. THE REASON MR.
24 MCQUEEN IS ON THERE IS TO SEE WHERE THE DEFENSE IS GOING
25 WITH IT, WHERE THE GUN CAME FROM. I MEAN, IF I HAVE TO

1 EXPLAIN THAT THE GUN DID BELONG TO THE DEFENDANT, THEN I
2 WOULD HAVE TO PUT THOSE WITNESSES UP TO PROVE THAT. THAT'S
3 WHY THEY ARE ON THERE. WE MAY NOT HAVE TO EVEN DO THAT.

4 THE COURT: OKAY. ALL RIGHT.

5 AGAIN, COUNSEL, WE'LL HOLD THAT ISSUE UNDER
6 ADVISEMENT ALSO UNTIL THERE IS -- THE APPROPRIATE TIME.

7 MS. DUKE-MIMS: YES, SIR, YOUR HONOR.

8 AND I THINK THE ONLY OTHER THING WOULD JUST TO BE
9 TO SETTLE MY CLIENT'S RECORD AND, I THINK, THAT WOULD BE
10 IT.

11 THE COURT: OKAY.

12 COUNSEL, SOLICITOR, IF THE DEFENDANT WERE TO
13 TESTIFY, DO YOU HAVE ANY PRIOR CONVICTIONS YOU WOULD SEEK
14 TO USED AGAINST HIM UNDER RULE 609?

15 MS. PELLIZZARI: YES, SIR, YOUR HONOR.

16 YOUR HONOR, MR. JOHNSON HAS A 1997 CONVICTION FOR
17 ASSAULT AND BATTERY WITH INTENT TO KILL AND ATTEMPTED ARMED
18 ROBBERY. AND, YOUR HONOR, THOSE ARE THE CHARGES THAT WE
19 WOULD BRING OUT.

20 THE COURT: OKAY.

21 ASSAULT AND BATTERY WITH INTENT TO KILL.

22 MS. PELLIZZARI: AND ATTEMPTED ARMED ROBBERY.

23 THE COURT: AND ATTEMPTED ARMED ROBBERY.

24 WHAT WERE THE DATES OF THOSE?

25 MS. PELLIZZARI: YOUR HONOR, HIS COURT DATE WAS

1 MARCH 21ST OF 1997, HE PLED GUILTY TO BOTH OF THOSE CHARGES
2 AT THE SAME TIME.

3 THE COURT: OKAY.

4 MS. DUKE-MIMS: THANK YOU, SIR.

5 THAT'S ALL WE HAVE.

6 THE COURT: ALL RIGHT.

7 WELL, LET ME ASK THIS. WOULD THERE BE ANY
8 OBJECTION TO THEIR BEING ALLOWED TO USED THOSE FOR
9 CROSS-EXAMINATION IF THE DEFENDANT TESTIFIED?

10 MS. DUKE-MIMS: NO, SIR. I UNDERSTAND THEY HAVE
11 THE RIGHT TO DO THAT.

12 THANK YOU.

13 THE COURT: ALL RIGHT.

14 THAT IS APPROPRIATE WITHIN RULE 609.

15 ANY OTHER MOTIONS FROM THE DEFENSE?

16 MS. DUKE-MIMS: NO, SIR.

17 THE COURT: MS. SAMPSON, DO YOU HAVE ANYTHING TO
18 ADD?

19 MS. SAMPSON: NO, SIR, YOUR HONOR.

20 THE COURT: OKAY.

21 SOLICITOR, IS THERE ANYTHING? MR. PASCOE?

22 MS. PELLIZZARI: NOT AT THIS TIME, YOUR HONOR.

23 THE COURT: ALL RIGHT. OKAY.

24 WE'LL STAND IN RECESS UNTIL 9:30 IN THE MORNING.

25 I'LL SEE YOU THEN.

1 MR. PASCOE: THANK YOU, YOUR HONOR.

2 (WHEREUPON, COURT RECESSED FOR THE
3 DAY AT 4:10 P.M.)

4 TUESDAY, FEBRUARY 6, 2001.

5 (WHEREUPON, COURT RECONVENED ON
6 TUESDAY, FEBRUARY 6, 2001, AT 9:40 A.M.)

7 THE BAILIFF: COURT COME TO ORDER. ALL RISE,
8 PLEASE.

9 THE COURT: THANK YOU.

10 PLEASE HAVE A SEAT.

11 (WHEREUPON, STATE'S EXHIBIT NUMBER
12 ONE, PISTOL; STATE'S EXHIBIT NUMBER 1-A, CLIP; STATE'S
13 EXHIBIT NUMBER TWO; STATE'S EXHIBIT NUMBER 2-A; STATE'S
14 EXHIBIT NUMBERS THREE, FOUR, FIVE, SIX, SEVEN, EIGHT, NINE,
15 TEN, 11, 12, 13, 14, 15, PHOTOGRAPHS; STATE'S EXHIBIT
16 NUMBER 16, SWEATSHIRT/BURGUNDY; STATE'S EXHIBIT NUMBER 17,
17 SWEATSHIRT/GRAY; STATE'S EXHIBIT NUMBER 18,
18 SWEATSHIRT/NAVY; AND STATE'S EXHIBIT NUMBER 19,
19 ENVELOPE/BULLETS, ENTERED INTO EVIDENCE AT THIS TIME
20 WITHOUT OBJECTION.)

21 THE COURT: ALL RIGHT.

22 COUNSEL, READY?

23 MS. PELLIZZARI: YES, SIR.

24 THE COURT: DEFENSE, ARE YOU READY?

25 MS. DUKE-MIMS: YES, SIR.

1 THE COURT: ALL RIGHT.

2 IN THE MATTER OF THE STATE VERSUS DEMARCO

3 JOHNSON, ALL PARTIES ARE PRESENT AND ALL ATTORNEYS AND

4 THE DEFENDANT, OF COURSE, IS ALSO PRESENT. LET'S GO AHEAD

5 AND BRING THE JURY OUT IF WE COULD, PLEASE.

6 COUNSEL, LET ME KNOW -- I BELIEVE I WOULD APPOINT

7 MR. STOUDEMIRE AS THE FOREMAN OF THE JURY.

8 ANY OBJECTION TO THAT?

9 MS. PELLIZZARI: NOT FROM THE STATE, YOUR HONOR.

10 MS. DUKE-MIMS: NO, YOUR HONOR.

11 THE COURT: ALL RIGHT.

12 (JURY IN.)

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

14 THE COURT: THANK YOU, SIR.

15 ALL PARTIES AND ATTORNEYS ARE IN THE COURTROOM

16 AND ALL JURORS HAVE NOW RETURNED.

17 MR. CLERK, WILL YOU PUT THE JURY UNDER OATH FOR

18 ME, PLEASE, SIR?

19 THE CLERK: YES, YOUR HONOR.

20 LADIES AND GENTLEMEN, PLEASE STAND AND RAISE YOUR

21 RIGHT HAND TO BE SWORN.

22 PLEASE ANSWER I DO OR I WILL AT THE END OF MY

23 STATEMENT.

24 (WHEREUPON, THE JURY WAS FIRST

25 DULY SWORN AT THIS TIME.)

1 THE COURT: THANK YOU, SIR.

2 MR. STOUDEMIRE, LET ME ASK IF YOU WOULD SERVE AS
3 THE FOREMAN OF THE JURY. THANK YOU.

4 NOW, LADIES AND GENTLEMEN OF THE JURY, BY VIRTUE
5 OF THESE INDICTMENTS THAT I HOLD IN MY HAND, THE STATE OF
6 SOUTH CAROLINA CHARGES THE DEFENDANT, MR. DEMARCO JOHNSON,
7 WITH ONE COUNT OF FIRST DEGREE BURGLARY, ONE COUNT OF ARMED
8 ROBBERY, AND TWO COUNTS OF KIDNAPPING.

9 NOW, I REMIND YOU, AGAIN, AS I DID YESTERDAY,
10 THAT THESE INDICTMENTS ARE NOT EVIDENCE. THEY DO NOT MEAN
11 THAT THE DEFENDANT DID ANYTHING WRONG. THAT IS OBVIOUSLY
12 UP TO THE STATE TO PROVE AND IT'S UP TO YOU TO DETERMINE
13 WHETHER THAT HAS BEEN PROVEN. THESE INDICTMENTS ARE
14 DESIGNED ONLY TO GIVE NOTICE OF THE CHARGES TO THE
15 DEFENDANT.

16 NOW, TO THESE INDICTMENTS, THE DEFENDANT PLEAS
17 NOT GUILTY AND THAT THEREBY PLACES UPON THE STATE THE
18 BURDEN OF PROVING HIM GUILTY BEYOND A REASONABLE DOUBT.

19 NOW, IN THIS CASE, YOU WILL SIT AS THE FINDERS OF
20 FACT. IT IS YOUR DUTY TO DETERMINE THE TRUE FACTS OF THE
21 CASE. NOBODY CAN TELL YOU THE FACTS OF A CASE. NOT EVEN
22 I. THAT IS A ROLE THAT IS RESERVED ENTIRELY TO YOU AND IT
23 IS AN AREA IN WHICH YOU HAVE VERY WIDE DISCRETION. AS
24 FINDERS OF THE FACT, YOU MUST NECESSARILY BE THE JUDGES OF
25 THE BELIEVABILITY OR THE CREDIBILITY OF ALL THE EVIDENCE

1 THAT COMES IN.

2 NOW, AS JUDGES OF THE CREDIBILITY, THAT MEANS
3 THAT YOU MAY BELIEVE EVERYTHING THAT A WITNESS SAYS; YOU
4 MAY BELIEVE NOTHING; OR YOU MAY BELIEVE ANY PART OF IT. IT
5 IS ENTIRELY WITHIN THAT DISCRETION ALLOTTED TO YOU TO
6 DETERMINE WHO YOU WILL OR WILL NOT BELIEVE AMONG THE
7 WITNESSES.

8 NOW, YOU MUST CONSIDER AS A JURY IN DETERMINING
9 THE FACTS, YOU MUST CONSIDER ONLY THE EVIDENCE WHICH COMES
10 INTO THE CASE. SO LET'S TALK FOR A MOMENT WHAT WE MEAN BY
11 WHAT IS EVIDENCE AND WHAT IS NOT EVIDENCE.

12 WELL, VERY SIMPLY, EVIDENCE IS THE TESTIMONY OF
13 THE WITNESSES WHO TAKE THIS WITNESS STAND, PLUS ANY
14 EXHIBITS OR OTHER DOCUMENTS THAT COME IN THROUGH THOSE
15 WITNESSES. THAT'S WHAT EVIDENCE IS. VERY SIMPLY, THE
16 TESTIMONY AND THE EXHIBITS.

17 SO THEN WHAT IS NOT EVIDENCE. WELL, EVIDENCE IS
18 NOT ANYTHING THAT YOU MAY HAVE HEARD OUTSIDE OF THIS
19 COURTROOM. IT IS NOT ANY CONCEPT OR ANY IDEAS THAT YOU MAY
20 HAVE DEVELOPED ABOUT HOW THE COURT SYSTEM WORKS OR ABOUT
21 HOW A PARTICULAR CASE IS WORKED OR ABOUT HOW PARTICULAR
22 CHARGES SHOULD BE HANDLED. THAT IS NOT EVIDENCE. YOU MUST
23 PUT ASIDE ANYTHING YOU MAY HAVE HEARD ABOUT THIS CASE OR
24 ANY CASE LIKE IT OR ANY IDEAS YOU MAY HAVE HEARD ABOUT HOW
25 WE HANDLE A CASE SUCH AS THIS. EVIDENCE IS NOT ANYTHING

1 THAT THE LAWYERS SAY. THE LAWYERS, OBVIOUSLY, WILL BE
2 DEEPLY INVOLVED IN THE CASE. THEY WILL HAVE QUESTIONS OF
3 THE WITNESSES, BUT THOSE QUESTIONS ARE DESIGNED ONLY TO
4 BRING THE EVIDENCE FROM THE MOUTH OF THE WITNESS. THE
5 LAWYERS ALSO WILL HAVE OPENING AND CLOSING STATEMENTS AND
6 THOSE STATEMENTS ARE DESIGNED ONLY TO GIVE YOU THEIR
7 INTERPRETATION OF THE EVIDENCE IN THE CASE. SO REMEMBER
8 THAT ANYTHING THAT THE LAWYERS SAY IS NOT EVIDENCE.
9 ANYTHING THAT I SAY IS NOT EVIDENCE. MY DUTY IS TO SIT AS
10 THE INSTRUCTOR OF THE LAW AND YOU MUST ACCEPT THE LAW AS I
11 GIVE IT TO YOU. NOW, IF I'M WRONG, THERE IS A TIME AND
12 PLACE FOR ANY ERROR THAT I MAY MAKE TO BE CORRECTED, BUT
13 FOR TODAY'S PURPOSES, YOU MUST ACCEPT IT AS CORRECT. AND
14 LET ME CAUTION YOU, THAT IT IS NOT WHAT YOU THINK THE LAW
15 SHOULD BE, BUT YOU MUST GO BY PRECISELY WHAT I TELL YOU THE
16 LAW IS.

17 NOW, FROM TIME-TO-TIME, THERE WILL BE -- AND LET
18 ME, ONE OTHER THING AS FAR AS THE INSTRUCTION OF THE LAW.
19 REMEMBER THAT I TOLD YOU, THAT YOU HAVE VERY WIDE
20 DISCRETION WHEN IT COMES TO THE FACTS OF A CASE IN YOUR
21 ROLE AS FACT FINDERS. YOU DO NOT HAVE THAT DISCRETION WHEN
22 IT COMES TO THE LAW. YOU MUST ACCEPT IT STRICTLY AS I GIVE
23 IT TO YOU.

24 NOW, FROM TIME-TO-TIME, THE ATTORNEYS WILL HAVE
25 OBJECTIONS. DO NOT BE CONCERNED IF AN ATTORNEY OBJECTS

1 MORE THAN YOU THINK THAT HE OR SHE SHOULD. THEY HAVE A
2 ROLE TO FULFILL AND THERE ARE CERTAIN TIMES, UNDER OUR
3 RULES OF EVIDENCE, THAT THEY HAVE TO OPERATE AND THERE ARE
4 CERTAIN TIMES THEY HAVE TO OBJECT.

5 NOW, THE RULES OF EVIDENCE ARE BASICALLY THE WAY
6 WE TALK IN A COURTROOM. IT'S DIFFERENT THAN THE WAY YOU
7 MAY TALK OUTSIDE OF THE COURTROOM. THERE ARE CERTAIN
8 THINGS THAT CAN BE DONE AND CANNOT BE DONE BECAUSE OF THE
9 RULES OF EVIDENCE. SO THEN, THERE ARE TIMES THAT THE
10 ATTORNEYS WILL OBJECT THAT THEY HAVE TO UNDER THE RULES,
11 BUT YOU MAY NOT UNDERSTAND THAT. SO, AGAIN, DON'T BE
12 CONCERNED IF THEY OBJECT MORE THAN YOU THINK THEY SHOULD.
13 THEY, SIMPLY, ARE DOING THEIR JOB. FROM TIME-TO-TIME,
14 WE'LL HAVE TO ASK YOU TO STEP OUTSIDE OF THE COURTROOM SO
15 THAT WE CAN TAKE UP CERTAIN MATTERS. AGAIN, DON'T BE
16 OFFENDED BY THAT; AND I'M SURE ACTUALLY YOU MAY EVEN
17 WELCOME THOSE OPPORTUNITIES TO GET UP AND MOVE AROUND A
18 LITTLE BIT.

19 I WILL ASK YOU IT'S VERY IMPORTANT THAT YOU NOT
20 DISCUSS THE CASE WITH ANYBODY. DO NOT LET THEM DISCUSS THE
21 CASE WITH YOU. NOW, OBVIOUSLY, IT'S IMPORTANT THAT YOU NOT
22 FORM ANY OPINIONS ABOUT THE INNOCENCE OR GUILT OF THE
23 DEFENDANT UNTIL YOU HAVE HEARD EVERYTHING AND YOU NEVER
24 KNOW BUT THAT THE LAST WITNESS MAY BE THE MOST IMPORTANT
25 ONE, BUT YOU DON'T KNOW THAT UNTIL YOU'VE HEARD IT. SO

1 THAT'S WHY IT'S IMPORTANT THAT YOU NOT FORM ANY OPINION
2 WHATSOEVER. AND, OF COURSE, IF YOU BEGIN TO TALK WITH
3 SOMEONE ABOUT THE CASE OR LET THEM TALK WITH YOU ABOUT THE
4 CASE, THEN THAT IS AT LEAST THE BEGINNING OF FORMATION OF
5 OPINION. SO VERY IMPORTANT, DON'T TALK WITH ANYONE, DON'T
6 LET THEM TALK WITH YOU ABOUT THE CASE. EVEN AMONG EACH
7 OTHER, YOU MUST NOT TALK ABOUT THE CASE IN ANY WAY.

8 AND, MR. FOREMAN, I RESERVE -- I LEAVE TO YOU THE
9 DUTY OF ENFORCING THAT AND AS A SWORN FOREMAN, IT IS YOUR
10 DUTY -- IF YOU PICK UP ANYONE TALKING ABOUT THE CASE, IT IS
11 YOUR DUTY TO REPORT THAT TO ME. SO I'M CERTAIN THEY WON'T
12 TALK ABOUT IT IN YOUR PRESENCE AND I KNOW THEY WON'T DO IT
13 AT ALL.

14 THE PROCEDURE THAT WE FOLLOW WILL BE THIS. AFTER
15 MY OPENING CHARGE HERE, THE ATTORNEYS WILL HAVE OPENING
16 STATEMENTS. THEN WE WILL GET INTO THE EVIDENCE OF THE
17 CASE. ONCE ALL OF THE EVIDENCE OF THE CASE IS DONE, THEN
18 THE ATTORNEYS WILL HAVE CLOSING STATEMENTS.

19 NOW, THE CLOSING STATEMENTS ARE DIFFERENT FROM
20 THE OPENINGS. THE OPENING STATEMENTS ARE DESIGNED ONLY TO
21 GIVE YOU AN IDEA OF WHAT THE CASE IS ABOUT. SORT OF A ROAD
22 MAP AS TO WHERE YOU ARE GOING AND WHAT TO LOOK FOR. THE
23 CLOSING -- THEY ARE NOT DESIGNED TO BE ARGUMENTATIVE OR
24 PERSUASIVE -- THE CLOSING STATEMENTS ARE DESIGNED TO BE
25 ARGUMENTATIVE. THEY ARE DESIGNED TO BE PERSUASIVE. THEY

1 ARE DESIGNED TO PERSUADE YOU TO SEE THE CASE FROM THEIR
2 PARTICULAR POINT OF VIEW.

3 AFTER THE CLOSING STATEMENTS BY THE ATTORNEYS, I
4 WILL GIVE YOU A FINAL INSTRUCTION OF THE LAW AND AT THAT
5 POINT, IT WILL BE YOUR CASE. SO THE BEST THING THAT I CAN
6 ASK YOU TO DO IS TO LISTEN CAREFULLY, OBSERVE THE WITNESSES
7 CAREFULLY, OBSERVE THEIR DEMEANOR ON THE STAND, THE WAY
8 THEY CONDUCT THEMSELVES, AND, CERTAINLY, OF COURSE, LISTEN
9 CLOSELY TO WHAT THEY SAY AND WHEN IT COMES TIME, WE'LL ASK
10 YOU TO USE YOUR GOOD COMMON SENSE AND JUDGMENT, APPLYING TO
11 IT THE RULES AND THE LAW AS I GIVE IT TO YOU AND THE FACTS
12 AS YOU FIND THEM IN ORDER TO ARRIVE AT A VERDICT.

13 COUNSEL, ANY EXCEPTION TO THE CHARGE FROM THE
14 STATE?

15 MS. PELLIZZARI: NOT FROM THE STATE, YOUR HONOR.

16 THE COURT: FROM THE DEFENSE?

17 MS. DUKE-MIMS: NOTHING FROM THE DEFENSE, YOUR
18 HONOR.

19 THE COURT: ALL RIGHT.

20 STATE, ARE YOU READY FOR YOUR OPENING?

21 MS. PELLIZZARI: YES, SIR, YOUR HONOR.

22 THE COURT: MS. PELLIZZARI?

23 MS. PELLIZZARI: MAY IT PLEASE THE COURT.

24 THE COURT: YES, MA'AM.

25 MS. PELLIZZARI: THIS IS A SIMPLE CASE. IT'S A

1 CASE ABOUT GETTING CAUGHT WITH YOUR HAND IN THE COOKIE JAR.
2 IT'S ABOUT GETTING CAUGHT IN THE ACT OF COMMITTING A CRIME.
3 NOT ONLY COMMITTING ONE CRIME, BUT COMMITTING FOUR CRIMES,
4 FOUR VERY SERIOUS CRIMES. AND IT'S ALSO ABOUT
5 UNDERESTIMATING THE INTEGRITY AND THE COURAGE OF THE
6 VICTIMS AND THE WITNESSES IN THIS CASE.

7 LADIES AND GENTLEMEN OF THE JURY, MY NAME IS DANA
8 PELLIZZARI AND I'M AN ASSISTANT SOLICITOR HERE IN RICHLAND
9 COUNTY. SEATED AT THE TABLE WITH ME IS MY CO-COUNSEL IN
10 THIS CASE, DAVID PASCOE, AND SERGEANT STAN SMITH FROM THE
11 RICHLAND COUNTY SHERIFF'S DEPARTMENT. SEATED BEHIND US ARE
12 VAN DORN AND KETRA HEARON AND THEY WERE THE VICTIMS IN THIS
13 CASE. SEATED AT THE TABLE FURTHER FROM YOU ARE MS. SHEILA
14 MIMS AND MS. APRIL SAMPSON AND THEY REPRESENT THE DEFENDANT
15 IN THIS CASE, DEMARCO JOHNSON, WHO IS SEATED AT THAT TABLE
16 AS WELL.

17 EVERYONE IN THIS COURTROOM TODAY HAS A ROLE. MS.
18 MIMS AND MS. SAMPSON, THEY ARE HERE TO MAKE SURE THAT
19 DEMARCO JOHNSON, THE DEFENDANT, GETS A FAIR TRIAL.

20 HIS HONOR, JUDGE WESTBROOK, HE'S THE JUDGE OF THE
21 LAW. HE HAS THE FINAL SAY ON THE LAW IN THIS CASE. AND AS
22 HE'S TOLD YOU, YOU'LL HEAR FROM TIME-TO-TIME, THE ATTORNEYS
23 IN THE CASE MAKING OBJECTIONS AND HE'S THE ONE WHO RULES ON
24 THOSE OBJECTIONS AND AT THE END OF THIS CASE, HE WILL
25 INSTRUCT YOU AS THE LAW YOU ARE TO APPLY IT TO THE FACTS IN

1 THIS CASE.

2 AND THAT BRING ME TO YOU, THE JURY. THE TWELVE
3 OF YOU WHO DECIDE THIS CASE. YOU ARE THE FINDERS OF THE
4 FACT. AND JUST AS A JUDGE WESTBROOK WEARS A BLACK ROBE, IN
5 THE SAME SENSE, THE TWELVE OF YOU WHO DECIDE THIS CASE,
6 WEAR A BLACK ROBE AS WELL BECAUSE NO ONE COMES BEHIND YOU
7 AND DOUBLE GUESSES OR SECOND GUESSES YOUR DECISION, YOUR
8 FINDINGS, AS TO WHAT TRULY HAPPENED ON DECEMBER 14TH OF
9 1999.

10 SO HOW DO YOU DECIDE WHAT HAPPENED THAT DAY? YOU
11 CONSIDER THE EVIDENCE THAT'S PRESENTED TO YOU. AND
12 EVIDENCE, AS JUDGE WESTBROOK TOLD YOU, COMES IN MANY
13 DIFFERENT FORMS. IT COULD BE A PHOTOGRAPH. IT CAN BE A
14 DOCUMENT. IT COULD BE THE WEAPONS USED IN THIS CASE, BUT
15 MOST IMPORTANTLY, IT'S GOING TO COME FROM HERE, FROM THIS
16 WITNESS STAND, FROM THE WITNESSES WHO COME BEFORE YOU,
17 PLACE THEIR HAND ON A BIBLE AND SWEAR OR AFFIRM TO TELL YOU
18 THE TRUTH ABOUT WHAT THEY KNOW OF DECEMBER 14TH OF 1999.
19 AND AS YOU LISTEN TO THE WITNESSES AND AS YOU HAVE A CHANCE
20 TO SEE THE WITNESSES, HOW THEY TESTIFY, YOU ARE GOING TO BE
21 ASKED TO JUDGE THEIR CREDIBILITY. AND ALL CREDIBILITY
22 MEANS IS BELIEVABILITY. DO YOU BELIEVE WHAT THE WITNESSES
23 HAVE TO TELL YOU. DO THEY HAVE A REASON TO LIE TO YOU? DO
24 THEY HAVE A REASON TO BE BIASED? THOSE ARE THINGS THAT ARE
25 IN YOUR PROVINCE AS THE JURY.

1 NOW, THE STATE IN THIS CASE IS REPRESENTED BY MR.
2 PASCOE AND MYSELF. WE REPRESENT THE STATE OF SOUTH
3 CAROLINA. WE REPRESENT THE CITIZENS OF OUR COMMUNITY AND
4 WE ARE HERE TO PRESENT EVIDENCE ON BEHALF OF THE CITIZENS
5 OF RICHLAND COUNTY TO SHOW YOU WHY DEMARCO JOHNSON, THE
6 DEFENDANT, IS GUILTY OF THE CRIMES THAT HE'S CHARGED WITH.
7 AND THE STATE IN THIS CASE HAS THE BURDEN OF PROOF AND
8 THAT'S THE WAY IT IS IN EVERY CRIMINAL COURT AROUND THE
9 UNITED STATES AND THAT BURDEN IS BEYOND A REASONABLE DOUBT.
10 AND IT'S A HIGH BURDEN, BUT IT'S NOT AN IMPOSSIBLE BURDEN.
11 IT DOESN'T MEAN WE HAVE TO PROVE TO YOU BEYOND EVERY SHADOW
12 OF A DOUBT, BEYOND ANY DOUBT THAT THE DEFENDANT IS GUILTY.
13 WHAT IT MEANS IS, AND THE JUDGE WILL INSTRUCT YOU AT THE
14 END OF THIS CASE, IS THAT IF YOU ARE USING YOUR COMMON
15 SENSE, YOUR REASONABLE COMMON SENSE, IF YOU ARE FIRMLY
16 CONVINCED OF THE DEFENDANT'S GUILT, THEN YOU HAVE AN
17 OBLIGATION TO FIND HIM GUILTY.

18 I WOULD LIKE TO TELL YOU A LITTLE BIT MORE ABOUT
19 WHAT HAPPENED ON DECEMBER 14TH OF 1999. IT STARTED OUT AS
20 A NORMAL DAY FOR KETRA AND VAN, WHO WERE LIVING TOGETHER,
21 IN AN APARTMENT OFF OF BROAD RIVER ROAD. KETRA WAS A
22 NURSING STUDENT AT THE TIME. SHE HAD GONE TO TAKE A FINAL
23 EXAM THAT MORNING. VAN WAS GOING OUT TO PLAY BASKETBALL
24 THAT MORNING, HE WAS GOING TO THE GYM. AS HE LEFT HIS
25 APARTMENT THAT MORNING, HE WALKED OUT TO HIS TRUCK, AS HE

1 WAS GETTING IN, TWO PEOPLE CAME UP FROM BEHIND HIM, PUT
2 GUNS IN HIS BACK, TOLD HIM THAT THEY WERE ROBBING HIM.
3 THIS IS BROAD DAYLIGHT, 9 O'CLOCK IN THE MORNING. THE
4 PARKING LOT OF HIS APARTMENT COMPLEX. THEY SEARCH HIS
5 POCKETS, GUNS TO HIM, AND THEY TAKE TEN DOLLARS OUT OF HIS
6 POCKET AND THEN THEY MARCH VAN BACK TO HIS OWN APARTMENT,
7 FORCE HIM TO GO INTO HIS APARTMENT AT GUNPOINT WHERE THEY
8 START RUMMAGING THROUGH THE THINGS IN HIS APARTMENT. START
9 GATHERING UP MORE THINGS TO TAKE. OVERTURNING MATTRESSES.
10 GETTING WHATEVER THEY WANT OUT OF THE APARTMENT. WHAT THEY
11 DON'T KNOW -- WHAT DEMARCO JOHNSON DOESN'T KNOW IS THAT
12 THERE'S A WITNESS WHO SAW WHAT HAPPENED IN THE PARKING LOT.
13 A WITNESS WHO CALLED 911 AND REPORTED WHAT HE HAD SEEN AND
14 HE DOESN'T KNOW THAT THE POLICE ARE QUICK TO RESPOND. YOU
15 ARE GOING TO HEAR HOW VAN WAS IN HIS APARTMENT WHERE THESE
16 TWO MEN ARE HOLDING HIM AT GUNPOINT, FORCING HIM TO STAY IN
17 HIS OWN APARTMENT, TELLING HIM WHAT TO DO, WHEN THE POLICE
18 START RESPONDING TO THE SCENE. NOW, THE POLICE ARE ALL
19 OVER THE PARKING LOT LOOKING FOR THEM. AND YOU ARE GOING
20 TO HEAR HOW VAN'S WORST NIGHTMARE COMES TRUE. BECAUSE
21 BEFORE THE POLICE GOT TO HIS APARTMENT, HE HEARS THE KEY IN
22 THE DOOR AND IT'S KETRA COMING HOME FROM HER FINAL EXAM AND
23 AS SHE WALKS INTO THE APARTMENT, SHE SEES HER BOYFRIEND,
24 VAN, AND TWO STRANGERS ARE IN HER APARTMENT WHO SHE DOESN'T
25 KNOW. SHE GETS NERVOUS RIGHT AWAY. SHE SENSES SOMETHING

1 IS WRONG AND SHE ASKS VAN, WHO ARE THESE GUYS. AND HE
2 TELLS HER, JUST SIT DOWN NEXT TO ME, THEY ARE ROBBING US.
3 AND SHE IS FORCED TO STAY IN HER APARTMENT, AGAIN, AT
4 GUNPOINT BY THESE TWO MEN. THE POLICE AGAIN ARE COMING
5 CLOSER AND CLOSER TO THEIR APARTMENT. THE POLICE END UP
6 KNOCKING ON THE DOOR. KETRA TELLS THEM THAT SHE HAS TO GO
7 ANSWER THE DOOR BECAUSE THE POLICE HAVE SEEN HER COME INTO
8 HER APARTMENT. AND SHE GOES AND ANSWERS THE DOOR AND SHE
9 GETS OUT SAFELY BY THE POLICE AND THEY TAKE HER TO THE
10 OFFICE AROUND THE CORNER AND SHE TELLS THEM, THEY'VE GOT MY
11 BOYFRIEND. THEY HAVE GUNS AND THEY'VE GOT MY BOYFRIEND IN
12 THERE. AND THE POLICE GO BACK AROUND AND ARE ABLE TO GET
13 VAN OUT SAFELY AND THE TWO DEFENDANTS, WHO WERE IN THE
14 APARTMENT, ALSO COME OUT. ONE OF WHOM IS DEMARCO JOHNSON
15 WHO SITS IN THIS COURTROOM TODAY. AND THEY ARREST DEMARCO
16 JOHNSON. THEY ARREST CYCRUS TUCKER, WHO IS THE SECOND
17 PERSON IN THE APARTMENT. THEY ALSO ARREST A THIRD
18 INDIVIDUAL IN THE PARKING LOT WHO WAS THE DRIVER THAT LED
19 DEMARCO JOHNSON AND CYCRUS TUCKER TO THAT APARTMENT. YOU
20 ARE GOING TO HEAR HOW VAN AND KETRA BOTH IDENTIFIED THE
21 DEFENDANT AS BEING IN THEIR APARTMENT THAT MORNING, THE
22 CLOTHING HE WAS WEARING, THE DESCRIPTION, AND THE GUNS.
23 THE GUNS THAT HE HAD. YOU ARE GOING TO HEAR HOW THE POLICE
24 FOUND ONE OF THE GUNS IN THE DRESSER OF VAN'S BEDROOM AND
25 YOU ARE GOING TO HEAR HOW VAN LATER ON FOUND THE SECOND GUN

1 THAT WAS HELD BY THAT DEFENDANT HIDDEN IN HIS CLOSET AND HE
2 TURNED THAT OVER TO THE POLICE.

3 THE DEFENDANT WAS CHARGED WITH FOUR CRIMES. HE
4 WAS CHARGED WITH BURGLARY IN THE FIRST DEGREE, ARMED
5 ROBBERY, AND TWO COUNTS OF KIDNAPPING. AND THE JUDGE WILL
6 INSTRUCT YOU AT THE END OF THE CASE WHAT ELEMENTS WE NEED
7 TO PROVE TO YOU TO SHOW THAT HE'S GUILTY OF THOSE CRIMES,
8 BUT I JUST WANT TO GO OVER THEM VERY BRIEFLY.

9 BURGLARY IN THE FIRST DEGREE BASICALLY BOILS DOWN
10 TO ENTERING SOMEONE ELSE'S HOME WITH THE INTENT TO COMMIT A
11 CRIME WITHOUT CONSENT, AND, IN THIS CASE, BURGLARY IN THE
12 FIRST DEGREE THAT THE DEFENDANT WAS ARMED WITH A DEADLY
13 WEAPON WHEN HE ENTERED.

14 KIDNAPPING, BASICALLY, BOILS DOWN TO BEING HELD
15 AGAINST YOUR WILL WITHOUT ANY LAWFUL -- BY ANY UNLAWFUL
16 MEANS. AND THERE ARE TWO COUNTS OF KIDNAPPING IN THIS
17 CASE: ONE FOR VAN AND ONE FOR KETRA, WHO WERE BOTH HELD
18 AGAINST THEIR WILL IN THEIR OWN APARTMENT.

19 AN ARMED ROBBERY, BASICALLY, IS TAKING AND
20 CARRYING AWAY THE PERSONAL PROPERTY OF ANOTHER WITH THE
21 INTENT TO KEEP THAT PROPERTY BY THE USE OF FORCE, THREATS,
22 OR INTIMIDATION WHILE YOU'RE ARMED WITH A DEADLY WEAPON.
23 AND THAT'S FOR VAN. FOR TAKING MONEY OUT OF VAN'S POCKETS
24 AT GUNPOINT IN THE PARKING LOT.

25 AS YOU LISTEN TO THE EVIDENCE IN THIS CASE, I

1 : WOULD ASK YOU JUST TO APPLY THE LAW AS THE JUDGE INSTRUCTS
2 YOU AT THE END OF THE CASE TO THE FACTS AS YOU WILL KNOW
3 THEM TO BE AT THE CONCLUSION OF THE CASE.

4 I'M GOING TO ASK THAT AT THE END OF THIS CASE --
5 Y'ALL HAVE THE FINAL WORDS WHEN YOU ARE ASKED TO RENDER A
6 VERDICT. VERDICT COMES FROM THE LATIN WORD VEREDICTO WHICH
7 MEANS TO SPEAK THE TRUTH. WE ARE ASKING WHEN YOU SPEAK THE
8 TRUTH IN THIS CASE, THAT YOU WILL FIND THE DEFENDANT GUILTY
9 OF ALL FOUR OF THOSE CHARGES.

10 THANK YOU.

11 THE COURT: DEFENSE.

12 MS. DUKE-MIMS: THANK YOU, YOUR HONOR.

13 MAY IT PLEASE THE COURT.

14 THE COURT: YES, MA'AM.

15 MS. DUKE-MIMS: LADIES AND GENTLEMEN, THE CASE IS
16 SIMPLY NOT THAT SIMPLE AND IF IT WERE, YOU WOULDN'T BE HERE
17 TODAY.

18 REASONABLE DOUBT. THAT'S A WORD THAT I WANT YOU
19 TO KEEP WITH YOU THROUGHOUT THIS TRIAL. THE STATE HAS A
20 HIGH BURDEN OF PROVING TO YOU BEYOND A REASONABLE DOUBT
21 THAT DEMARCO JOHNSON COMMITTED THE CRIMES OF ARMED ROBBERY,
22 KIDNAPPING, AND BURGLARY. AND I SUBMIT TO YOU THEY CANNOT
23 DO IT.

24 THE STATE WANTS YOU TO BELIEVE THAT ON DECEMBER
25 14, 1999, NORMAN VAN DORN WAS A RANDOM VICTIM. THEY WANT

1 YOU TO BELIEVE THAT ON THAT DAY DEMARCO JOHNSON AND TWO
2 OTHERS DROVE INTO TRENTON COURT APARTMENTS RANDOMLY AND
3 JUST HAPPENED TO PICK HIM OUT OF THE BLUE. AND THAT'S NOT
4 WHAT OCCURRED.

5 ON THAT DAY, DEMARCO JOHNSON AND TWO OTHERS
6 INTENTIONALLY DROVE INTO TRENTON COURT APARTMENTS TO SEE
7 NORMAN VAN DORN. YOU ARE GOING TO HEAR ABOUT THAT. AND
8 WHEN THEY MET UP WITH MR. VAN DORN, WHAT OCCURRED THAT DAY
9 IS A FAR CRY FROM A KIDNAPPING AND ARMED ROBBERY AND A
10 BURGLARY. FAR FROM IT. AND YOU ARE GOING TO HEAR THAT IN
11 THE EVIDENCE.

12 AND, AS THE SOLICITOR TOLD YOU, YES, MOST OF THE
13 EVIDENCE IN THIS CASE IS GOING TO COME THROUGH THE FORM OF
14 TESTIMONY. TESTIMONY FROM WITNESSES WHO ARE GOING TO TELL
15 YOU WHAT THEY HEARD AND WHAT THEY SAW ON THAT DAY. IT'S
16 GOING TO BE THEIR STORIES. CREDIBILITY, ABSOLUTELY.
17 THAT'S WHAT YOU JUDGE AND I'M SO GLAD THAT YOU ARE HERE TO
18 DO THAT BECAUSE I WANT YOU TO LISTEN VERY CAREFULLY TO WHAT
19 THEY SAY. THAT'S THE MOST IMPORTANT THING.

20 PLEASE LISTEN CAREFULLY WHEN THE STATE EXAMINES
21 THESE WITNESSES AND PLEASE LISTEN CAREFULLY WHEN THE
22 DEFENSE EXAMINES THESE WITNESSES BECAUSE WHEN YOU DO THAT,
23 I THINK YOU'LL SEE THAT IT DOESN'T ADD UP. THE STORIES
24 DON'T MAKE SENSE WHEN YOU LISTEN CAREFULLY. AND THE MOST
25 IMPORTANT THING YOU, AS JURORS, CAN DO IN A CRIMINAL CASE

1 SUCH AS THIS PARTICULARLY IS TO APPLY COMMON SENSE, APPLY
2 WHAT YOU KNOW ABOUT LIFE, APPLY WHAT YOU KNOW ABOUT THE
3 REAL WORLD, AND APPLY IT TO WHATEVER -- WHAT THESE PEOPLE
4 ARE TELLING YOU ON THE STAND AND I THINK YOU WILL FIND IT
5 DOES NOT ADD UP. BECAUSE, LADIES AND GENTLEMEN, I TRULY
6 BELIEVE YOU WILL FIND THAT DEMARCO JOHNSON IS NOT GUILTY OF
7 BURGLARY, ARMED ROBBERY, AND KIDNAPPING.

8 THANK YOU VERY MUCH.

9 THE COURT: ALL RIGHT.

10 THE STATE, ARE YOU READY TO CALL YOUR FIRST
11 WITNESS?

12 MS. PELLIZZARI: YES, SIR, YOUR HONOR.

13 THE STATE CALLS NORMAN DORN.

14 NORMAN VAN DORN,

15 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:

16 THE CLERK: PLEASE HAVE A SEAT HERE, SIR. STATE
17 YOUR FULL NAME FOR THE RECORD.

18 THE WITNESS: NORMAN VAN DORN.

19 DIRECT EXAMINATION

20 BY MS. PELLIZZARI:

21 Q GOOD MORNING.

22 A GOOD MORNING.

23 Q YOU MIGHT HAVE TO SPEAK UP A LITTLE BIT, VAN.

24 IS YOUR REAL NAME VAN OR IS THAT YOUR---

25 A YES, MA'AM, NORMAN VAN DORN.

1 Q VAN IS YOUR MIDDLE NAME?

2 A YES, MA'AM.

3 Q DO YOU GO BY VAN, THOUGH?

4 A YES, MA'AM.

5 Q MOST PEOPLE KNOW YOU AS VAN?

6 A YES, MA'AM.

7 Q DO YOU MIND IF I CALL YOU VAN TODAY?

8 A THAT'S FINE.

9 Q VAN, WHERE WERE YOU LIVING ON DECEMBER 14TH OF 1999?

10 A TRENTON -- TRENTON COURT APARTMENTS.

11 Q AND CAN YOU JUST TELL THE JURY A LITTLE BIT ABOUT

12 WHERE TRENTON COURT APARTMENTS ARE?

13 A IT'S RIGHT OFF OF BROAD RIVER ROAD.

14 Q IS IT NEAR -- HOW FAR IS IT FROM THE CORNER OF ST.

15 ANDREWS AND BROAD RIVER?

16 A MAYBE A BLOCK.

17 Q CLOSE TO -- IS IT WIDEWATER SQUARE---

18 A YES, MA'AM.

19 Q ---IS THAT THE NAME OF IT? THAT'S WHERE THE BI-LO

20 IS?

21 A THE BI-LO.

22 Q AND IS THAT IN RICHLAND COUNTY?

23 A YES, MA'AM.

24 Q BACK IN DECEMBER OF 1999, WHO WERE YOU LIVING WITH AT

25 THAT TIME?

1 A MY GIRLFRIEND, KETRA.

2 Q ARE YOU ORIGINALLY FROM COLUMBIA?

3 A NO, MA'AM. I'M FROM EDGEFIELD, SOUTH CAROLINA.

4 Q HOW LONG HAVE YOU BEEN IN COLUMBIA?

5 A SINCE 1990.

6 Q HOW OLD ARE YOU, VAN?

7 A TWENTY-EIGHT.

8 Q DID YOU GRADUATE HIGH SCHOOL?

9 A YES, MA'AM.

10 Q IN EDGEFIELD?

11 A YES, MA'AM.

12 Q DO YOU HAVE ANY FAMILY ASIDE FROM KETRA, DO YOU HAVE

13 ANY FAMILY IN THE AREA?

14 A I HAVE AN AUNT WHO ALSO LIVES IN COLUMBIA.

15 Q AND THE REST OF YOUR FAMILY LIVES IN EDGEFIELD?

16 A YES, MA'AM.

17 Q IN FACT, IS YOUR MOM HERE IN THE COURTROOM TODAY WITH

18 YOU?

19 A YES, MA'AM.

20 Q DOES YOUR MOM STILL WORK IN EDGEFIELD?

21 A NO. SHE'S A RETIRED SCHOOL TEACHER.

22 Q NOW, VAN, I WANT TO -- DO YOU NORMALLY WORK OUT OR

23 PLAY BASKETBALL?

24 A YES, MA'AM. WE WORK OUT AT HARBISON REC ON TUESDAY

25 MORNINGS.

- 1 Q HOW OFTEN -- DO YOU WORK OUT DAILY, WOULD YOU SAY, OR
2 PLAY BASKETBALL DAILY?
- 3 A WELL, ABOUT ONCE A WEEK, EVERY TUESDAY.
- 4 Q AND WHEN DO YOU NORMALLY PLAY BASKETBALL?
- 5 A ABOUT EVERY TUESDAY.
- 6 Q WHAT TIME OF DAY?
- 7 A OH, WE USUALLY MEET AT THE GYM AROUND 9:00 OR 9:30.
- 8 Q AND THAT'S AT HARBISON REC YOU SAID?
- 9 A YES, MA'AM.
- 10 Q AND WHAT DOES KETRA DO?
- 11 A SHE WORKS AT PALMETTO BAPTIST HOSPITAL.
- 12 Q WHAT DOES SHE DO THERE?
- 13 A A NURSE TECH, I THINK.
- 14 Q DOES SHE ALSO GO TO SCHOOL?
- 15 A YES, MA'AM, MIDLANDS TECH.
- 16 Q WHAT IS SHE STUDYING FOR?
- 17 A NURSING.
- 18 Q AND IS SHE DUE TO GRADUATE SOON?
- 19 A I THINK NEXT MAY.
- 20 Q DO YOU KNOW WHAT HER DEGREE IS GOING TO BE IN?
- 21 A UH---
- 22 Q SOME SORT OF NURSING DEGREE?
- 23 A NURSING.
- 24 Q VAN, DO YOU REMEMBER DECEMBER 14TH OF 1999?
- 25 A YES, MA'AM.

- 1 Q HOW DO YOU REMEMBER THAT DAY?
- 2 A THAT'S THE DAY ALL THIS OCCURRED.
- 3 Q ALL WHAT OCCURRED?
- 4 A THE ROBBERY AND.
- 5 Q DO YOU REMEMBER WHAT DAY OF THE -- WHAT DAY OF THE
- 6 WEEK IT WAS?
- 7 A WELL, IT HAD TO BE A TUESDAY MORNING BECAUSE I WAS --
- 8 THAT'S THE MORNING I WAS GOING TO WORKOUT AT THE GYM.
- 9 Q YOU REMEMBER THAT MORNING?
- 10 A YES, MA'AM.
- 11 Q DO YOU REMEMBER WHAT YOU WERE DOING BEFORE YOU WENT
- 12 TO GO PLAY BASKETBALL?
- 13 A JUST PRETTY MUCH GETTING DRESSED AND READY TO GO OUT.
- 14 Q DID KETRA LEAVE THE HOUSE BEFORE YOU THAT MORNING?
- 15 A YES, MA'AM.
- 16 Q WHY DID SHE LEAVE THE HOUSE THAT MORNING?
- 17 A BECAUSE SHE WAS GOING TO SCHOOL TO MIDLANDS TECH.
- 18 Q DID YOU EXPECT HER HOME -- WHAT TIME WERE YOU GOING
- 19 TO PLAY BASKETBALL?
- 20 A WE USUALLY MEET AROUND 9 O'CLOCK, 9:30.
- 21 Q DID YOU EXPECT TO SEE KETRA BEFORE YOU LEFT -- AFTER
- 22 SHE LEFT, DID YOU EXPECT HER TO COME HOME BEFORE YOU WERE
- 23 GOING OUT TO PLAY BASKETBALL?
- 24 A I REALLY CAN'T SAY BECAUSE I CAN'T REALLY REMEMBER
- 25 WHAT ALL SHE HAD TO DO THAT DAY.

1 Q NOW, VAN, AT ANY TIME THAT MORNING DID YOU LEAVE YOUR
2 APARTMENT?

3 A YES, I LEFT ABOUT -- MAYBE QUARTER TILL NINE,
4 SOMEWHERE IN THERE.

5 Q AND WHAT WERE YOU GOING TO DO THAT MORNING?

6 A I WAS ON MY WAY TO THE GYM.

7 Q WERE YOU BY YOURSELF?

8 A YES, MA'AM.

9 Q WHAT DID YOU HAVE IN YOUR HANDS WITH YOU?

10 A I HAD MY BAG WHICH HAD MY SHOES AND MY SHORTS.

11 Q YOUR GYM CLOTHES?

12 A YES, MA'AM.

13 Q ANYTHING ELSE WITH YOU?

14 A NO.

15 Q DO YOU REMEMBER WHAT YOU WERE WEARING THAT DAY?

16 A I THINK I HAD ON AN ORANGE NAUTICAL SWEAT SUIT.

17 Q A SWEAT SUIT?

18 A AN ORANGE NAUTICAL SWEAT SUIT.

19 Q TOP AND BOTTOM WERE BOTH ORANGE?

20 A YES, MA'AM.

21 Q DID YOU HAVE ANYTHING IN YOUR POCKETS?

22 A WE HAVE TO PAY TWO DOLLARS TO ENTER THE GYM AND I HAD
23 A TEN-DOLLAR BILL IN MY POCKET.

24 Q AND THAT WAS TO PAY TO GET INTO THE GYM THAT MORNING?

25 A YES, MA'AM.

1 Q AND WERE YOU -- AFTER YOU LEFT YOUR APARTMENT, WHERE
2 DID YOU GO?

3 A I WALKED DOWN THE SIDEWALK AND I WAS GOING TO GET IN
4 -- I HAD BORROWED MY FRIEND'S TRUCK AND THAT'S WHAT I WAS
5 GOING TO DRIVE TO THE GYM.

6 Q AND WHERE WAS THE TRUCK PARKED?

7 A LIKE THE FIRST PARKING SPACE RIGHT IN FRONT OF THE
8 OFFICE.

9 Q IT WAS PARKED IN THE APARTMENT PARKING LOT?

10 A YES, MA'AM.

11 Q COMPLEX PARKING LOT?

12 A YES, MA'AM.

13 Q OKAY.

14 WERE OTHER CARS AROUND?

15 A I DON'T THINK SO. MAYBE -- IT MIGHT HAVE BEEN ONE OR
16 TWO.

17 Q DID YOU MAKE IT TO YOUR CAR?

18 A YES, MA'AM.

19 Q TO THE TRUCK?

20 A YES, MA'AM.

21 Q OKAY.

22 AND WHAT HAPPENED WHEN YOU GOT TO THE TRUCK?

23 A I PUT MY -- I PUT THE KEY IN THE DOOR AND I OPENED
24 THE DOOR AND I WAS THROWING THE BAG ACROSS, YOU KNOW, TO
25 THE PASSENGER'S SEAT AND AS I TURNED TO GET IN THE TRUCK,

1 THAT'S WHEN TWO GUYS WALKED UP BEHIND ME.

2 Q DID YOU SEE ANYONE AS YOU WERE WALKING TO YOUR TRUCK?

3 DID YOU SEE ANYONE ELSE IN THE PARKING LOT?

4 A NO, MA'AM.

5 Q TELL THE JURY WHAT HAPPENED WHEN YOU STARTED PUTTING

6 YOUR STUFF IN THE TRUCK?

7 A WELL, AS I TURNED TO GET IN THE TRUCK, THAT'S WHEN

8 TWO GUYS WALKED UP BEHIND ME AND THEY SAID, WELL, WHERE WAS

9 THE MONEY, WE KNOW YOU GOT THE MONEY AND THEY STARTED GOING

10 THROUGH MY POCKETS AND THROUGH THE TRUCK.

11 Q WERE YOU ABLE TO SEE THESE TWO MEN AT FIRST?

12 A YES. BUT THEY HAD HOODS ON, SO, I REALLY COULDN'T

13 GET A GOOD LOOK AT THE FACES.

14 Q WERE YOU ABLE TO SEE THEM BEFORE THEY CAME UP FROM---

15 A OH, NO. THEY WALKED UP BEHIND.

16 Q THEY CAME UP FROM BEHIND YOU?

17 A YES, MA'AM.

18 Q HOW DID YOU KNOW THERE WERE TWO OF THEM?

19 A I MEAN, AS THEY WALKED UP BEHIND ME, I KIND OF

20 TURNED, YOU KNOW, OVER MY SHOULDER AND I SAW TWO PEOPLE.

21 Q DID YOU SEE ANY -- AND YOU WERE ABLE TO TELL IF THEY

22 WERE MALES?

23 A YES, MA'AM.

24 Q WERE YOU ABLE TO TELL WHAT RACE THEY WERE?

25 A YES, MA'AM.

1 Q WHAT RACE WERE THEY?

2 A THEY WERE BOTH BLACK.

3 Q OKAY.

4 WERE YOU ABLE TO TELL ANYTHING AT THAT POINT

5 ABOUT WHAT THEY LOOKED LIKE?

6 A NO BECAUSE THEY HAD THE HOODS TIED OVER THEIR FACES.

7 Q DID THEY HAVE ANYTHING -- ANY WEAPONS WITH THEM?

8 A YES, MA'AM.

9 Q WHAT TYPE OF WEAPONS?

10 A BOTH HAD PISTOLS.

11 Q BOTH OF THEM DID?

12 A YES, MA'AM.

13 Q AND WHERE WERE THEY HOLDING THE PISTOLS?

14 A LIKE TO MY BACK.

15 Q BOTH OF THEM HAD THEM TO YOUR BACK?

16 A YES, MA'AM.

17 Q AND WHEN THEY SAID -- WHEN THEY MADE COMMENTS TO YOU

18 ABOUT WHERE IS THE MONEY, WHAT DID YOU DO AT THAT POINT?

19 A I MEAN, I WAS JUST PRETTY MUCH LIKE, WHAT MONEY. YOU

20 KNOW, I HAD NO IDEA WHAT THEY WERE TALKING ABOUT.

21 Q AND DID THEY GET ANY MONEY OFF OF YOU IN THE PARKING

22 LOT?

23 A YES, THE TEN DOLLARS THAT I HAD IN MY FRONT POCKET.

24 Q DO YOU KNOW WHICH GUY WENT THROUGH YOUR POCKETS?

25 A NO, I'M NOT SURE BECAUSE THEY WERE BEHIND ME.

- 1 Q I'M SORRY?
- 2 A I SAID I'M NOT SURE BECAUSE THEY WERE BEHIND ME. I
- 3 DON'T KNOW WHOSE HANDS.
- 4 Q DID THEY SEARCH THROUGH YOUR OTHER POCKETS AS WELL --
- 5 HOW MANY POCKETS DID YOU HAVE IN YOUR SWEAT PANTS?
- 6 A I HAD TWO FRONT POCKETS AND ONE POCKET ON MY RIGHT
- 7 HIP.
- 8 Q AND DID THEY GO THROUGH ALL OF YOUR POCKETS?
- 9 A YES, MA'AM.
- 10 Q OKAY.
- 11 AND THEY GOT TEN DOLLARS OUT OF ONE POCKET?
- 12 A OUT OF WHICH POCKET?
- 13 Q OUT OF ONE POCKET?
- 14 A YES, MA'AM.
- 15 Q DID YOU HAVE YOUR MONEY FOLDED IN ANY PARTICULAR WAY?
- 16 A I THINK I FOLDED IT IN HALF AND THEN I FOLDED IT
- 17 AGAIN.
- 18 Q WHAT DID YOU DO WHEN THE MEN CAME UP TO YOU AND
- 19 STARTED SEARCHING THROUGH YOUR POCKETS? WHERE WERE YOUR
- 20 HANDS?
- 21 A I STOOD LIKE THIS WITH MY HANDS UP (INDICATES).
- 22 Q YOUR HANDS UP IN THE AIR?
- 23 A YES.
- 24 Q AND THIS IS 9 O'CLOCK IN THE MORNING ON A WEEKDAY
- 25 MORNING?

- 1 A YES, MA'AM.
- 2 Q OKAY.
- 3 DID YOU SEE ANYONE ELSE IN THE PARKING LOT ASIDE
- 4 FROM THESE TWO MEN?
- 5 A NO, MA'AM.
- 6 Q DESCRIBE FOR THE JURY, IF YOU COULD, WHAT YOU
- 7 REMEMBER ABOUT EACH OF THESE TWO MEN?
- 8 A DEMARCO HAD ON A BURGUNDY JUMPER AND BLUE JEANS, I
- 9 THINK. AND THE OTHER GUY, TUCKER, HAD A GRAY SWEATSHIRT ON
- 10 AND I THINK HE HAD ON BLUE JEANS, TOO.
- 11 Q AND HOW DO YOU KNOW THEIR NAMES? DO YOU KNOW THEM?
- 12 A NO.
- 13 Q HOW DO YOU KNOW THEIR NAMES?
- 14 A I MEAN, FROM GOING OVER ALL OF THE EVIDENCE AND
- 15 STUFF.
- 16 Q FROM THEM BEING ARRESTED?
- 17 A YES, MA'AM.
- 18 Q YOU DIDN'T KNOW THE DEFENDANT'S NAME BEFORE DECEMBER
- 19 14TH OF 1999?
- 20 A NO, MA'AM.
- 21 Q DID YOU KNOW CYCRUS TUCKER'S NAME BEFORE THAT DAY?
- 22 A NO, MA'AM.
- 23 Q WOULD YOU DESCRIBE THE DEFENDANT WHO IS HERE TODAY AS
- 24 BEING THE SHORTER OR THE TALLER OF THOSE TWO MEN?
- 25 A HE SEEMED TO BE A LITTLE SHORTER.

1 Q WHAT HAPPENED AFTER THEY WENT THROUGH YOUR POCKETS IN
2 THE PARKING LOT?

3 A THEY JUST PRETTY MUCH WENT THROUGH THE TRUCK AND
4 DEMANDED MONEY FROM ME AND I WAS, I DON'T HAVE ANY MONEY.
5 I DON'T KNOW WHAT YOU ARE TALKING ABOUT. AND ONE OF THEM
6 MADE A COMMENT ABOUT, WELL, WE WANT TO CHECK THE HOUSE.

7 Q MEANING YOUR APARTMENT?

8 A MY APARTMENT, YES, MA'AM.

9 Q WHAT TYPE OF GUNS DID THEY HAVE? YOU CALLED THEM
10 PISTOLS?

11 A YES, MA'AM. HANDGUNS.

12 Q SO AS OPPOSED TO A SHOTGUN?

13 A YES, MA'AM.

14 Q DO YOU KNOW IF THEY WERE AUTOMATIC GUNS?

15 A I'M NOT SURE.

16 Q DID YOU SEE HOW THESE TWO MEN -- DID YOU RECOGNIZE
17 THEM FROM YOUR APARTMENT COMPLEX?

18 A NO, MA'AM.

19 Q HAVING LIVED IN YOUR APARTMENT COMPLEX?

20 A NO, MA'AM.

21 Q DO YOU HAVE ANY IDEA OF HOW THEY GOT -- THAT MORNING,
22 DO YOU KNOW HOW THEY GOT TO YOUR APARTMENT COMPLEX?

23 A NO, MA'AM.

24 Q VAN, LET ME ASK YOU, WHAT APARTMENT NUMBER DID YOU
25 LIVE IN AT THAT TIME?

1 A

2 Q OKAY.

3 AND , WHERE IS IN RELATION TO WHERE YOUR
4 TRUCK WAS?

5 A IT'S LIKE ON THE FRONT SIDE OF THE BUILDING, LIKE THE
6 SECOND APARTMENT FROM THE CORNER.

7 Q ARE YOU FAMILIAR WITH AN APARTMENT NUMBER 119 IN THAT
8 COMPLEX?

9 A NO -- WELL, LATER---

10 Q DO YOU KNOW IF THERE IS AN APARTMENT 119 IN THAT
11 COMPLEX?

12 A YES.

13 Q AND DO YOU KNOW WHERE THAT APARTMENT IS IN RELATION
14 TO WHERE YOUR TRUCK WAS PARKED?

15 A IT WAS LIKE ADJACENT FROM WHERE THE TRUCK WAS PARKED.

16 Q VAN, I'M GOING TO SHOW YOU WHAT HAS BEEN MARKED AS
17 STATE'S EXHIBIT NUMBER THREE FOR IDENTIFICATION AND ASK IF
18 YOU IF YOU RECOGNIZE THAT PHOTOGRAPH?

19 A YES, MA'AM.

20 Q WHAT IS THAT -- WHAT IS THAT A PHOTOGRAPH OF?

21 A OF MY APARTMENT COMPLEX PARKING LOT.

22 Q THAT'S THE PARKING LOT?

23 A YES, MA'AM.

24 Q AND IS THAT A FAIR AND ACCURATE REPRESENTATION OF
25 WHAT THE PARKING LOT LOOKED LIKE ON DECEMBER 14TH---

1 A YES, MA'AM.

2 Q ---OF 1999?

3 A YES, MA'AM.

4 MS. PELLIZZARI: YOUR HONOR, AT THIS TIME, WE
5 WOULD OFFER STATE'S EXHIBIT NUMBER THREE INTO EVIDENCE.

6 THE COURT: ANY OBJECTION?

7 MS. DUKE-MIMS: NO OBJECTION.

8 THE COURT: ALL RIGHT.

9 WITHOUT OBJECTION.

10 MS. PELLIZZARI: THANK YOU, YOUR HONOR.

11 (WHEREUPON, STATE'S EXHIBIT NUMBER
12 THREE, PHOTOGRAPH, ENTERED INTO EVIDENCE AT THIS TIME
13 WITHOUT OBJECTION.)

14 MS. PELLIZZARI: AND, VAN, I'M GOING TO ASK YOU
15 TO TAKE A LOOK AT -- ACTUALLY, YOUR HONOR, MAY HE STEP
16 DOWN?

17 THE COURT: CERTAINLY.

18 THE WITNESS: (WITNESS COMPLIES.)

19 MS. PELLIZZARI: VAN -- AND, YOUR HONOR, MAY WE
20 PUBLISH THIS TO THE JURY?

21 THE COURT: YES, MA'AM.

22 MS. PELLIZZARI: VAN, I'M GOING TO ASK YOU IN
23 THIS APARTMENT -- IN THIS PICTURE, IF YOU COULD POINT OUT
24 FOR THE JURY WHERE THE TRUCK IS THAT YOU WERE DRIVING THAT
25 DAY?

1 A (WITNESS COMPLIES.)

2 Q OKAY.

3 AND THIS IS THE PARKING AREA OF THE APARTMENT

4 COMPLEX?

5 A YES, MA'AM.

6 Q AND THERE ARE AT LEAST TWO BUILDINGS THAT COMPRISE

7 THE PARKING COMPLEX -- THE APARTMENT COMPLEX?

8 A YES, MA'AM.

9 Q OKAY.

10 AND WHICH ONE IS YOUR BUILDING THAT YOUR

11 APARTMENT IS IN?

12 A THE FRONT SIDE.

13 THE COURT REPORTER: I'M SORRY?

14 THE WITNESS: THE FRONT SIDE.

15 MS. PELLIZZARI: AND THAT'S THE ONE THAT FACES

16 BROAD RIVER ROAD?

17 A YES, MA'AM.

18 Q AND, ACTUALLY, THAT SIGN RIGHT THERE (INDICATES) IS

19 THAT A SIGN FOR SOME BUSINESS ON BROAD RIVER ROAD?

20 A YES, MA'AM.

21 Q AND WHEN THESE TWO MEN APPROACHED YOU, WHERE WERE YOU

22 IN THE PARKING LOT?

23 A STANDING BY THE DRIVER'S DOOR.

24 Q SO AWAY FROM YOUR APARTMENT?

25 A YES, MA'AM.

1 Q OKAY.

2 WHERE IS THE OFFICE MANAGER'S OFFICE?

3 A RIGHT HERE (INDICATES), BEHIND THE TRUCK.

4 Q AND THAT'S ON -- THAT'S ON THE OPPOSITE SIDE FROM
5 WHERE YOUR APARTMENT IS?

6 A YES, MA'AM.

7 Q THE SAME BUILDING?

8 A YES, MA'AM.

9 Q WHERE WOULD APARTMENT NUMBER 119 BE?

10 A RIGHT HERE (INDICATES).

11 Q AND, VAN, I'M GOING TO ASK YOU TO TAKE A LOOK AT
12 WHAT'S BEEN MARKED AS STATE'S EXHIBIT NUMBER FOUR FOR
13 IDENTIFICATION AND ASK IF YOU RECOGNIZE THAT PHOTOGRAPH?

14 A YES, MA'AM.

15 Q WHAT IS THAT A PHOTOGRAPH OF?

16 A ANOTHER PHOTOGRAPH OF THE PARKING LOT.

17 Q AND DOES THAT PHOTOGRAPH FAIRLY AND ACCURATELY
18 REPRESENT WHAT THE PARKING LOT LOOKED LIKE ON DECEMBER 14,
19 1999?

20 A YES, MA'AM.

21 MS. PELLIZZARI: YOUR HONOR, AT THIS TIME, WE
22 WOULD OFFER STATE'S EXHIBIT NUMBER FOUR INTO EVIDENCE.

23 THE COURT: ANY OBJECTION?

24 MS. DUKE-MIMS: NO OBJECTION, YOUR HONOR.

25 THE COURT: WITHOUT OBJECTION.

1 (WHEREUPON, STATE'S EXHIBIT NUMBER
2 FOUR, PHOTOGRAPH, ENTERED INTO EVIDENCE AT THIS TIME
3 WITHOUT OBJECTION.)

4 MS. PELLIZZARI: AND, VAN, I'M GOING TO ASK YOU,
5 THIS IS, AGAIN, JUST ANOTHER VIEW OF THE PARKING LOT CLOSER
6 UP?

7 THE WITNESS: YES, MA'AM.

8 Q OKAY.

9 AND IS THAT STILL THE SAME WHITE TRUCK THAT YOU
10 WERE DRIVING THAT DAY?

11 A YES, MA'AM.

12 Q AND, AGAIN, CAN YOU POINT OUT FOR THE JURY WHERE
13 APARTMENT NUMBER 119 WOULD BE IN RELATION TO WHERE THE
14 TRUCK IS?

15 A (INDICATES.)

16 Q RIGHT THERE (INDICATES)?

17 A YES, MA'AM.

18 Q IS THERE ANYTHING OBSTRUCTING THE VIEW FROM THAT
19 APARTMENT?

20 A I DON'T THINK SO.

21 Q THANK YOU. YOU CAN TAKE YOUR SEAT.

22 A (WITNESS COMPLIES.)

23 Q VAN, WHAT HAPPENED AFTER THEY SEARCHED THROUGH YOUR
24 POCKETS, THESE TWO MEN?

25 A AFTER HE TOOK THE MONEY OUT OF MY POCKET OR AFTER

1 THEY TOOK THE MONEY FROM MY POCKET, THEY PRETTY MUCH WENT
2 JUST THROUGH THE TRUCK AND THROUGH MY BAG.

3 Q AND THAT, AGAIN, WAS NOT -- WAS NOT YOUR TRUCK?

4 A NO, MA'AM.

5 Q OKAY.

6 BUT THE BAG IN IT WAS?

7 A YES, MA'AM.

8 Q DID THEY TAKE ANYTHING OUT OF YOUR BAG?

9 A I DON'T THINK SO.

10 Q AND AFTER THEY WENT THROUGH YOUR TRUCK, WHAT DID THEY
11 MAKE YOU DO NEXT?

12 A THEY WALKED ME AROUND THE FRONT OF THE BUILDING INTO
13 MY APARTMENT.

14 Q AND THAT WAS APARTMENT NUMBER ?

15 A YES, MA'AM.

16 Q AND WHERE DOES THAT APARTMENT FACE?

17 A IT FACES BROAD RIVER ROAD.

18 Q AND WHERE WERE THEIR GUNS WHEN THEY WERE TAKING YOU
19 TO YOUR APARTMENT?

20 A WELL, AS THEY WALKED ME DOWN THE SIDEWALK, I THINK
21 THEY PUT THEM UP, BUT ONE GUY WAS STANDING ON ONE OF MY
22 ARMS -- ONE OF MY SHOULDERS AND THE OTHER GUY WAS STANDING
23 ON THE OTHER SIDE.

24 Q WERE THEY SORT OF ESCORTING YOU PHYSICALLY TO YOUR
25 APARTMENT?

1 A YES, MA'AM.

2 Q DID YOU FEEL LIKE YOU WERE FREE TO LEAVE AT THAT

3 POINT?

4 A NO, MA'AM.

5 Q WHY NOT?

6 A BECAUSE THEY WERE PRETTY MUCH HOLDING ON TO ME.

7 Q AND THEY HAD THEIR GUNS?

8 A YES, MA'AM.

9 Q DID YOU EVENTUALLY MAKE IT BACK TO YOUR APARTMENT?

10 A YES, MA'AM.

11 Q AS YOU WERE APPROACHING YOUR APARTMENT, DID THEY SAY

12 ANYTHING TO YOU?

13 A WHEN I WALKED UP TO MY DOOR, WHICH IS , ONE OF THE

14 TWO GUYS MADE A COMMENT, THIS WAS -- THAT WAS THE WRONG

15 APARTMENT, THAT WASN'T WHERE I STAYED. IT WAS SUPPOSED TO

16 BE 106.

17 Q AND DID YOU TELL THEM ANYTHING IN RESPONSE?

18 A WELL, I WAS LIKE, IT IS 106 BECAUSE THIS IS THE KEY.

19 I WEAR MY KEYS AROUND MY NECK ON A CHAIN.

20 Q YOU MEAN , THAT'S WHERE YOU STAYED?

21 A YES. AND I SAID IT IS AND HERE'S -- THIS IS MY

22 KEY RIGHT HERE BECAUSE I WEAR MY KEYS AROUND MY NECK ON A

23 CHAIN AND I PUT THE KEY IN THE DOOR AND WALKED IN.

24 Q YOU SAID YOU PUT THE KEY IN THE DOOR?

25 A YES, MA'AM.

- 1 Q TO SHOW THEM THAT THAT'S WHERE YOU LIVED?
- 2 A YES, MA'AM.
- 3 Q DO YOU KNOW WHO LIVES IN APARTMENT 106?
- 4 A NO, MA'AM.
- 5 Q IS APARTMENT NUMBER 106 RIGHT NEXT DOOR TO YOURS?
- 6 A YES, MA'AM.
- 7 Q DID YOU GO BACK INTO YOUR APARTMENT AFTER YOU OPENED
- 8 THE DOOR?
- 9 A YES, MA'AM.
- 10 Q DID YOU GO BACK IN BY YOURSELF?
- 11 A WE -- WE ALL WENT.
- 12 Q DID YOU INVITE THEM INTO YOUR APARTMENT?
- 13 A NO.
- 14 Q WHAT HAPPENED ONCE YOU GOT INTO YOUR APARTMENT?
- 15 A HE -- THEY SAT ME DOWN ON A COUCH AND TUCKER, I
- 16 THINK, PRETTY MUCH WATCHED OVER ME WHILE DEMARCO WENT
- 17 THROUGHOUT MY APARTMENT.
- 18 Q NOW, TUCKER -- HOW WERE YOU ABLE TO DISTINGUISH THE
- 19 TWO OF THEM?
- 20 A WELL, TUCKER -- LIKE I SAID, TUCKER WAS THE GUY WHO
- 21 HAD ON A GRAY SWEAT SUIT---
- 22 Q OKAY.
- 23 A ---AND DEMARCO HAD ON A BURGUNDY.
- 24 Q DEMARCO HAD ON WHAT?
- 25 A THE BURGUNDY SWEATSHIRT..

1 Q OKAY.

2 SO THE GUY IN THE GRAY SWEATSHIRT WAS SITTING
3 WITH YOU ON THE COUCH?

4 A YES, MA'AM.

5 Q AND THE GUY IN THE BURGUNDY SWEATSHIRT WAS DOING
6 WHAT?

7 A PRETTY MUCH JUST GOING THROUGH THE APARTMENT.

8 Q WHAT WAS HE DOING?

9 A I GUESS -- HE WAS SAYING HE WAS -- THE WHOLE TIME
10 THEY WERE ASKING ME FOR SOME MONEY BECAUSE THEY THOUGHT I
11 HAD MONEY IN MY APARTMENT. SO HE WAS JUST PRETTY MUCH
12 RANSACKING MY BEDROOM. GOING THROUGH MY CLOSETS AND STUFF.

13 Q DID YOU HAVE MONEY IN YOUR APARTMENT?

14 A NO, MA'AM.

15 Q AND AS THE GUY IN THE GRAY SWEATSHIRT WAS SITTING
16 NEXT TO YOU, WHAT WAS HE DOING? WAS HE TALKING FRIENDLY TO
17 YOU?

18 A NO. I MEAN, HE WAS JUST -- HE WASN'T REALLY SAYING
19 MUCH TO ME. HE WAS JUST PRETTY MUCH HOLDING ME DOWN ON THE
20 COUCH.

21 Q HOLDING YOU DOWN PHYSICALLY?

22 A NOT PHYSICALLY, NO. JUST -- YOU KNOW PRETTY MUCH HAD
23 ME AT GUNPOINT ON THE CHAIR. I WAS SITTING ON THE CHAIR.

24 Q DID YOU FEEL LIKE YOU WERE FREE TO LEAVE YOUR
25 APARTMENT AT THAT POINT?

1 A NO, MA'AM.

2 Q DID YOU FEEL LIKE EVEN YOU WERE FREE TO MAKE ANY
3 MOVEMENTS ON YOUR OWN AT THAT POINT?

4 A NO, MA'AM.

5 Q WHY NOT?

6 A BECAUSE HE HAD ME AT GUNPOINT.

7 Q WERE EITHER ONE -- WERE EITHER -- EITHER THE GUY IN
8 THE GRAY OR THE GUY IN THE BURGUNDY, WERE EITHER ONE OF
9 THEM SAYING A WHOLE LOT IN THE APARTMENT? TALKING TO EACH
10 OTHER OR TALKING TO YOU?

11 A WELL, NOT -- NOT REALLY. IT WASN'T REALLY TOO MUCH
12 BEING SAID, OTHER THAN WHERE WAS THE MONEY OR WE KNOW YOU
13 HAVE IT AND ALL THAT.

14 Q AND WHAT HAPPENED AFTER THE GUY IN THE BURGUNDY WAS
15 GOING THROUGH YOUR APARTMENT?

16 A EXCUSE ME?

17 Q WHAT HAPPENED AFTER THE GUY IN THE BURGUNDY WAS GOING
18 THROUGH YOUR APARTMENT? WAS HE ABLE TO GET SOME THINGS
19 TOGETHER?

20 A WELL, LATER HE HAD -- HE PICKED UP MY CLOTHES BASKET
21 AND HE HAD A RADIO -- MY RADIO IN THE CLOTHES BASKET, A
22 PAIR OF MY TIMBERLAND BOOTS AND SOME DISKS AND JUST LITTLE
23 THINGS LIKE THAT.

24 Q HE PACKED UP SOME ITEMS IN A BASKET---

25 A YES, MA'AM.

1 Q ---IN A LAUNDRY BASKET?

2 A YES, MA'AM.

3 Q AND HOW LONG -- HOW LONG WOULD YOU ESTIMATE THEY WERE
4 IN YOUR APARTMENT, DO YOU HAVE ANY IDEA?

5 A MAYBE 15, 20 MINUTES AT THE MOST.

6 Q AND WHERE WERE YOU THE WHOLE TIME THAT THEY WERE IN
7 YOUR APARTMENT?

8 A FROM THE CHAIR TO THE -- THEY EVEN HAD ME ON THE
9 FLOOR AT ONE POINT. JUST BASICALLY FROM MY CHAIR TO THE
10 FLOOR, FROM MY COUCH TO THE FLOOR.

11 Q AND -- OKAY.

12 WHAT HAPPENED AFTER THEY SEARCHED THROUGH YOUR
13 APARTMENT?

14 A WELL, AFTER THEY DIDN'T FIND ANYTHING, I WAS PRETTY
15 MUCH TELLING THEM THAT I WAS, YOU KNOW, I WAS THE WRONG
16 GUY. I DON'T KNOW WHO THEY WERE TRYING TO ROB, BUT THEY
17 JUST INSISTED THAT IT WAS ME.

18 Q AND AT ANY TIME DID YOU HEAR ANYTHING GOING ON
19 OUTSIDE?

20 A MAYBE TEN MINUTES INTO IT, WE STARTED HEARING CARS
21 PULL UP AND---

22 Q WHAT KIND OF CARS? COULD YOU TELL WHAT KIND OF CARS?

23 A NO. WE JUST CONSTANTLY HEARD CARS PULLING INTO THE
24 PARKING LOT AND THE GUY WITH THE GRAY SWEATSHIRT WENT AND
25 CHECKED THE BLINDS AND THAT'S WHEN HE SAID IT WAS THE

1 POLICE.

2 MS. DUKE-MIMS: YOUR HONOR, I OBJECT TO THE
3 HEARSAY.

4 THE COURT: OVERRULE. I'M GOING TO GIVE HIM A
5 LITTLE BIT OF DISCRETION, BUT DON'T GO TOO FAR WITH IT.

6 MS. PELLIZZARI: THANK YOU, YOUR HONOR.

7 HE SAID THAT THERE WERE POLICE IN THE PARKING
8 LOT?

9 THE WITNESS: YES, MA'AM.

10 Q NOW, WERE YOU ABLE TO SEE OUT OF YOUR APARTMENT?

11 A NO, MA'AM.

12 Q WHY NOT?

13 A BECAUSE I WAS -- LIKE I SAID, I WAS BASICALLY -- THEY
14 WERE BASICALLY MOVING ME FROM THE CHAIR TO THE FLOOR.

15 Q DO YOU HAVE ANY WINDOWS IN YOUR APARTMENT THAT LOOK
16 OUT?

17 A YES, MA'AM.

18 Q AND WERE YOU SITTING IN THE LIVING ROOM?

19 A YES, MA'AM.

20 Q AND THERE ARE WINDOWS IN THE LIVING ROOM?

21 A YES, MA'AM.

22 Q COULD YOU SEE OUT OF THOSE WINDOWS?

23 A NO, BECAUSE THEY -- WHEN WE FIRST WALKED IN, THEY
24 CLOSED THE BLINDS. THE BLINDS WERE SHUT.

25 Q HOW DO Y'ALL NORMALLY KEEP YOUR BLINDS DURING THE

1 DAY?

2 A PRETTY MUCH OPEN DURING THE DAYTIME.

3 Q DO YOU REMEMBER WHICH ONE OF THEM SHUT YOUR BLINDS
4 THAT MORNING?

5 A NO, MA'AM.

6 Q SO AFTER THEY LEARNED THAT THE POLICE WERE IN THE
7 APARTMENT COMPLEX, WHAT DID THEY DO OR WHAT DID YOU DO?

8 A WELL, AT THAT POINT, I PRETTY MUCH JUST TRIED TO TALK
9 THEM DOWN, YOU KNOW, SO -- I THINK I EVEN TOLD THEM AT ONE
10 POINT IF Y'ALL WILL JUST LEAVE, I WON'T CALL THE POLICE. I
11 WAS JUST TRYING TO TALK THEM DOWN.

12 Q AND WHAT HAPPENED AFTER -- DID THAT WORK? DID THEY
13 LEAVE YOUR APARTMENT VOLUNTARILY?

14 A NO, MA'AM.

15 Q WHAT HAPPENED AFTER THE POLICE CAME INTO THE
16 APARTMENT COMPLEX?

17 A I THINK RIGHT AFTER THAT, THAT'S WHEN I HEARD KETRA
18 PUT HER KEY IN THE DOOR WHEN SHE CAME IN.

19 Q AND HOW DID KETRA GET INTO THE APARTMENT?

20 A SHE USED HER KEY.

21 Q WHAT HAPPENED WHEN SHE TRIED TO GET INTO THE
22 APARTMENT?

23 A WELL, SHE PUT THE KEY IN AND SHE OPENED THE DOOR AND
24 SHE CAME ON IN AND I THINK THE GUY WITH THE BURGUNDY SHIRT
25 WAS BEHIND THE DOOR AND THE OTHER GUY WAS SITTING BESIDE ME

1 ON THE CHAIR.

2 Q THE GUY IN THE BURGUNDY WAS BEHIND THE DOOR, YOU SAY?

3 A BEHIND THE DOOR WHEN SHE WALKED IN AND THE GUY WITH

4 THE GRAY SHIRT ON WAS SITTING BESIDE ME.

5 Q YOU'RE SAYING HE'S BEHIND THE DOOR, BEHIND THE FRONT

6 DOOR THAT KETRA WAS WALKING IN?

7 A YES, MA'AM.

8 Q DID HE SAY ANYTHING TO KETRA?

9 A I DON'T -- I DON'T RECALL.

10 Q WHAT WAS KETRA'S REACTION WHEN SHE CAME INTO THE

11 APARTMENT?

12 A SHE WAS JUST -- SHE WAS ASKING ME, WHO WERE THESE

13 PEOPLE AND I WAS JUST LIKE, KETRA, SIT DOWN, THEY CAME TO

14 ROB US.

15 Q YOU TOLD HER THEY CAME TO ROB YOU?

16 A YES, MA'AM.

17 Q WHAT WAS HER REACTION WHEN SHE HEARD THAT?

18 A I MEAN, SHE WAS -- SHE WAS KIND OF HYSTERICAL. I

19 MEAN, SHE SIT DOWN, STOOD UP, SIT DOWN. AND I FINALLY GOT

20 HER TO SIT DOWN.

21 Q DID SHE KNOW EITHER OF THOSE TWO -- EITHER OF THOSE

22 TWO GUYS?

23 A NO, MA'AM.

24 Q NO?

25 A NO, MA'AM.

1 Q AND YOU -- WERE YOU ABLE TO GET KETRA NEXT TO YOU
2 SITTING ON THE COUCH?

3 A YES, YES, MA'AM.

4 Q WHAT HAPPENED AFTER KETRA CAME IN AND YOU WERE ABLE
5 TO GET HER ON THE COUCH NEXT TO YOU?

6 A RIGHT AFTER THAT, THAT'S WHEN THE SHERIFF'S
7 DEPARTMENT KNOCKED ON THE DOOR.

8 Q AND HOW DID YOU KNOW IT WAS THE SHERIFF'S DEPARTMENT
9 OR DID YOU KNOW IT WAS THE SHERIFF'S DEPARTMENT?

10 A I THINK WHEN HE KNOCKED, HE SAID POLICE. I'M NOT
11 SURE. I THINK HE DID.

12 Q AND WHAT HAPPENED WHEN THE POLICE KNOCKED ON THE
13 DOOR?

14 A KETRA SAID -- SHE MADE A COMMENT ABOUT SHE HAD TO GO
15 OUT BECAUSE THEY SAW HER WHEN SHE WALKED INTO THE APARTMENT
16 AND THEY KNOW THAT SOMEBODY WAS IN THE APARTMENT.

17 Q AND DID SHE, IN FACT, GO AND ANSWER THE DOOR?

18 A YES.

19 Q DID THE GUY IN THE BURGUNDY -- WHAT WERE THEY DOING
20 WHEN KETRA ANSWERED THE DOOR?

21 A AT THIS POINT, I THINK THEY WERE PRETTY MUCH JUST
22 TRYING TO GET OUT OF THE APARTMENT BECAUSE SOMEONE MADE A
23 COMMENT ABOUT WE DIDN'T HAVE ANYTHING---

24 MS. DUKE-MIMS: OBJECTION, YOUR HONOR, TO THE
25 HEARSAY.

1 MS. PELLIZZARI: YOUR HONOR, IT'S HER CLIENT'S
2 STATEMENTS.

3 THE COURT: ALL RIGHT.

4 IF HE'S REFERRING TO A STATEMENT BY THE
5 DEFENDANT, I'LL ALLOW IT IN.

6 GO AHEAD.

7 THE WITNESS: ONE OF THE GUYS MADE A COMMENT
8 ABOUT WE DIDN'T HAVE ANYTHING TO WORRY ABOUT BECAUSE THEY
9 WERE GOING TO LET US GO.

10 MS. PELLIZZARI: WHAT WERE THEY DOING NOW? WERE
11 THEY SITTING ON THE COUCH WITH YOU WHEN KETRA ANSWERED THE
12 DOOR?

13 A THE GUY WITH THE GRAY SHIRT WAS ON THE COUCH WITH ME.

14 Q HOW ABOUT THE GUY IN THE BURGUNDY?

15 A HE WAS STANDING BEHIND THE DOOR.

16 Q STANDING BEHIND THE DOOR?

17 A YES, MA'AM.

18 Q AND WHAT HAPPENED WHEN KETRA ANSWERED THE DOOR? WAS
19 IT -- WHO WAS AT THE DOOR?

20 A WHEN KETRA ANSWERED THE DOOR?

21 Q YES, SIR.

22 A IT WAS THE POLICE.

23 Q AND WHAT HAPPENED WHEN KETRA ANSWERED THE DOOR?

24 A SHE JUST WALKED ON -- SHE WALKED ON OUT THE DOOR AND
25 AS SHE WALKED OUT THE DOOR, THE GUY WITH THE GRAY SHIRT

1 TOOK ME INTO MY BEDROOM AND I FOUND OUT LATER THAT DEMARCO
2 WENT TO MY OTHER COUCH -- TO MY OTHER CLOSET, EXCUSE ME.
3 Q THAT WAS THE GUY IN THE BURGUNDY?
4 A YES, MA'AM.
5 Q WHERE IS THIS CLOSET THAT HE WENT INTO? IS IT IN
6 YOUR BEDROOM?
7 A THE CLOSET I WENT INTO?
8 Q NO. THE CLOSET THAT HE WENT INTO?
9 A NO, IT'S LIKE A LAUNDRY CLOSET.
10 Q VAN, I'M GOING TO ASK YOU TO TAKE A LOOK AT WHAT'S
11 BEEN MARKED STATE'S NUMBER SIX AND ASK IF YOU RECOGNIZE
12 THAT PHOTOGRAPH?
13 A YES, MA'AM.
14 Q WHAT IS THAT A PHOTOGRAPH OF?
15 A OF MY LIVING ROOM.
16 Q AND IS THAT WHAT YOUR LIVING ROOM LOOKED LIKE ON
17 DECEMBER 14TH OF 1999?
18 A YES, MA'AM.
19 MS. PELLIZZARI: YOUR HONOR, AT THIS TIME, WE
20 WOULD OFFER STATE'S EXHIBIT NUMBER SIX INTO EVIDENCE.
21 THE COURT: ANY OBJECTION?
22 MS. MIMS: NO, NO OBJECTION, YOUR HONOR.
23 THE COURT: ALL RIGHT.
24 (WHEREUPON, STATE'S EXHIBIT NUMBER
25 SIX, PHOTOGRAPH, ENTERED INTO EVIDENCE AT THIS TIME WITHOUT

1 OBJECTION.)

2 MS. PELLIZZARI: AND, VAN, IF YOU COULD -- MAYBE
3 YOU CAN JUST DO IT FROM YOUR SEAT -- COULD YOU SORT OF
4 POINT FOR THE JURY WHERE YOUR FRONT -- YOU CAN'T -- CAN YOU
5 SEE YOUR FRONT DOOR IN THAT PICTURE?

6 THE WITNESS: NO, MA'AM.

7 Q WHERE IS YOUR FRONT DOOR IN RELATION TO WHERE YOUR
8 COUCH IS?

9 A LIKE BACK THIS WAY (INDICATES).

10 Q SO WHEN YOU FIRST WALK IN, KIND OF FACING THE COUCH
11 RIGHT THERE?

12 A WELL, YEAH, RIGHT BESIDE THE COUCH.

13 Q THAT'S YOUR CROUCH RIGHT THERE, RIGHT (INDICATES)?

14 A YES.

15 Q OKAY.

16 AND WHAT'S BEHIND YOUR LIVING AREA?

17 A A KITCHEN.

18 Q THIS IS -- HOW MANY BEDROOMS ARE IN YOUR APARTMENT?

19 A ONE.

20 Q AND WHERE IS YOUR BEDROOM? CAN YOU SEE YOUR BEDROOM
21 DOOR?

22 A FROM THIS DOOR RIGHT HERE (INDICATES).

23 Q SO THE FIRST DOOR THAT YOU COME TO IS THE BEDROOM?

24 A YES, MA'AM.

25 Q AND WHAT IS THAT DOOR BEHIND YOUR BEDROOM?

- 1 A THAT'S THE LAUNDRY CLOSET.
- 2 Q THE LAUNDRY CLOSET?
- 3 A YES, MA'AM.
- 4 Q DID Y'ALL HAVE A BATHROOM IN THIS APARTMENT?
- 5 A YES. THE BATHROOM -- THAT RIGHT THERE,
- 6 TOO(INDICATES). THE DOOR RIGHT THERE(INDICATES).
- 7 Q OKAY.
- 8 IN -- IN THE -- INSIDE THE BEDROOM?
- 9 A YEAH -- NO. THE BEDROOM WAS TO THE RIGHT, THE
- 10 BATHROOM WAS STRAIGHT AHEAD.
- 11 Q I GOT YOU. I GOT YOU. BUT THAT CLOSET THAT THE GUY
- 12 IN THE BURGUNDY WENT INTO IS SEPARATE FROM YOUR BEDROOM?
- 13 A YES.
- 14 Q OKAY.
- 15 AND, VAN, I'M GOING TO SHOW YOU WHAT HAS BEEN
- 16 MARKED AS STATE'S EXHIBIT NUMBER SEVEN AND ASK YOU TO TAKE
- 17 A LOOK AT THAT PHOTOGRAPH?
- 18 A (WITNESS COMPLIES.)
- 19 Q DO YOU RECOGNIZE THAT PHOTOGRAPH?
- 20 A YES, MA'AM.
- 21 Q WHAT IS THAT A PHOTOGRAPH OF?
- 22 A OF MY BEDROOM AND MY BEDROOM CLOSET.
- 23 Q AND IS THAT WHAT YOUR BEDROOM LOOKED LIKE ON DECEMBER
- 24 14TH OF 1999?
- 25 A YES, MA'AM.

1 MS. PELLIZZARI: YOUR HONOR, AT THIS TIME, WE
2 WOULD OFFER STATE'S EXHIBIT NUMBER SEVEN INTO EVIDENCE.

3 THE COURT: ANY OBJECTION?

4 MS. DUKE-MIMS: NO OBJECTION, YOUR HONOR.

5 THE COURT: WITHOUT OBJECTION.

6 (WHEREUPON, STATE'S EXHIBIT NUMBER
7 SEVEN, PHOTOGRAPH, ENTERED INTO EVIDENCE AT THIS TIME
8 WITHOUT OBJECTION.)

9 MS. PELLIZZARI: AND, AGAIN, VAN, IF YOU CAN
10 POINT OUT FOR THE JURY WHERE YOUR BEDROOM DOOR IS OFF OF
11 THE LIVING ROOM?

12 THE WITNESS: RIGHT HERE (INDICATES).

13 Q AND WAS YOUR CLOSET OPEN LIKE THAT THAT MORNING?

14 A YES, MA'AM.

15 Q DID YOU OPEN YOUR -- YOUR CLOSET WAS OPEN LIKE
16 THAT---

17 A WE PRETTY MUCH LEAVE IT OPEN.

18 Q OKAY.

19 AND, VAN, I'M GOING TO ASK YOU TO TAKE A LOOK AT
20 STATE'S EXHIBIT NUMBER FIVE FOR IDENTIFICATION AND ASK IF
21 YOU RECOGNIZE THAT PHOTOGRAPH?

22 A YES, MA'AM.

23 Q WHAT IS THAT A PHOTOGRAPH OF?

24 A ALSO OF MY BEDROOM.

25 Q AND IS THAT WHAT YOUR BEDROOM LOOKED LIKE ON DECEMBER

1 14TH OF 1999?

2 A YES, MA'AM.

3 MS. PELLIZZARI: YOUR HONOR, AT THIS TIME, WE
4 WOULD OFFER STATE'S EXHIBIT NUMBER FIVE INTO EVIDENCE.

5 THE COURT: ANY OBJECTION?

6 MS. DUKE-MIMS: NO OBJECTION.

7 THE COURT: ALL RIGHT.

8 WITHOUT OBJECTION.

9 (WHEREUPON, STATE'S EXHIBIT NUMBER
10 FIVE, PHOTOGRAPH, ENTERED INTO EVIDENCE AT THIS TIME
11 WITHOUT OBJECTION.)

12 MS. PELLIZZARI: VAN, IN THIS PHOTOGRAPH, CAN YOU
13 SEE YOUR BED?

14 THE WITNESS: YES, MA'AM.

15 Q DID YOU HAVE YOUR BED UNMADE THAT MORNING?

16 A NO, MA'AM.

17 Q YOUR BED WAS MADE UP?

18 A YES, MA'AM.

19 Q THERE'S -- WHAT ELSE CAN YOU SEE ON THE FLOOR IN THAT
20 PICTURE?

21 A MY PILLOWS AND SOME OF MY CLOTHES.

22 Q DID YOU LEAVE THEM LIKE THAT THAT MORNING?

23 A NO, MA'AM.

24 Q HOW DID YOUR STUFF GET ON THE FLOOR LIKE THAT?

25 A AFTER THE TWO GUYS WENT THROUGH MY STUFF.

1 Q THEY LEFT YOUR---

2 A YES, MA'AM.

3 Q ---YOUR BEDROOM LIKE THAT?

4 A YES, MA'AM.

5 Q NOW, VAN, WHEN YOU WENT INTO THE BEDROOM WITH THE GUY
6 IN THE GRAY SWEATSHIRT, HE DIRECTED YOU INTO YOUR BEDROOM?

7 A YES, MA'AM.

8 Q WHAT HAPPENED AT THAT POINT WHEN YOU WERE IN YOUR
9 BEDROOM WITH THE GUY IN THE GRAY SWEATSHIRT?

10 A PRETTY MUCH, AS WE WERE GOING INTO -- AS WE WERE
11 GOING INTO THE BEDROOM, THE POLICE WAS STILL KNOCKING
12 AND---

13 Q AND BY THAT TIME, KETRA WAS OUT OF THE APARTMENT?

14 A YES, MA'AM. I GUESS THEY WERE GOING TO HIDE BECAUSE
15 WHEN WE GOT INTO THE BEDROOM, THE GUY IN THE GRAY
16 SWEATSHIRT HANDED ME HIS GUN. HE WAS LIKE, HIDE THIS FOR
17 ME.

18 Q WHAT GUN DID HE HAVE? DO YOU REMEMBER THE COLOR OF
19 HIS GUN?

20 A IT WAS BLACK.

21 Q VAN, I'M GOING SHOW YOU WHAT HAS BEEN MARKED AS
22 STATE'S NUMBER ONE FOR IDENTIFICATION AND ASK YOU IF YOU
23 RECOGNIZE THAT?

24 A YES, MA'AM.

25 Q WHAT IS THAT?

1 A IT'S A PISTOL.

2 Q OKAY.

3 DO YOU RECOGNIZE THAT PISTOL FROM DECEMBER 14TH
4 OF 1999?

5 A YES, MA'AM.

6 Q WHICH -- WHICH GUY HAD THAT PISTOL?

7 A THE GUY IN THE GRAY SHIRT.

8 Q AND I'M GOING TO SHOW YOU WHAT HAS BEEN MARKED AS
9 STATE'S EXHIBIT NUMBER 1-A AND ASK YOU, IF YOU RECOGNIZE
10 THAT?

11 A YES.

12 Q WHAT IS THAT?

13 A A CLIP.

14 Q DOES IT GO INTO STATE'S EXHIBIT NUMBER ONE, THAT
15 PISTOL?

16 A YES.

17 Q OKAY.

18 AND -- YOUR HONOR, AT THIS TIME, WE MOVE STATE'S
19 EXHIBIT NUMBER ONE AND 1-A INTO EVIDENCE.

20 THE COURT: ANY OBJECTION?

21 MS. DUKE-MIMS: NO OBJECTION.

22 THE COURT: ALL RIGHT.

23 WITHOUT OBJECTION.

24 (WHEREUPON, STATE'S EXHIBIT NUMBER
25 ONE, PISTOL; AND STATE'S EXHIBIT NUMBER 1-A, CLIP, ENTERED

1 INTO EVIDENCE AT THIS TIME WITHOUT OBJECTION.)

2 MS. PELLIZZARI: AND IS THIS THE PISTOL, VAN,
3 THAT WAS HANDED TO YOU BY THE GUY IN THE GRAY SHIRT THAT
4 DAY?

5 THE WITNESS: YES, MA'AM.

6 Q DID IT HAVE THE CLIP IN OR OUT?

7 A IT WAS IN.

8 Q IN?

9 A YES, MA'AM.

10 Q SO IT WAS TOGETHER AS ONE PIECE?

11 A YES, MA'AM.

12 Q ALL RIGHT.

13 WHAT DID YOU DO -- WHY DID HE HAND YOU THAT
14 PISTOL, DO YOU KNOW?

15 A NO.

16 Q YOU DON'T KNOW?

17 A I GUESS HE WAS NERVOUS, SCARED, WHATEVER.

18 Q WHAT DID YOU DO WITH THAT PISTOL ONCE HE HANDED IT TO
19 YOU?

20 A I IMMEDIATELY LAID IT ON THE DRESSER.

21 Q AND IS YOUR DRESSER PORTRAYED IN STATE'S EXHIBIT
22 NUMBER FIVE?

23 A YES, MA'AM.

24 Q IS THAT THE DRESSER PORTRAYED IN STATE'S EXHIBIT
25 NUMBER FIVE?

- 1 A YES, MA'AM.
- 2 Q OKAY.
- 3 AND IS THAT THE DRESSER THAT YOU LAID IT ON?
- 4 A YES, MA'AM.
- 5 Q AND AFTER YOU LAID THE PISTOL ON THE DRESSER, WHAT
- 6 DID YOU DO NEXT?
- 7 A I IMMEDIATELY HEADED FOR THE FRONT DOOR.
- 8 Q BECAUSE THE POLICE WERE KNOCKING?
- 9 A YES, MA'AM.
- 10 Q ALL RIGHT.
- 11 WERE YOU ABLE TO GET OUT OF THE APARTMENT?
- 12 A YES, MA'AM.
- 13 Q WHAT HAPPENED AFTER YOU GOT OUT OF THE APARTMENT?
- 14 A THE POLICE CAME UP TO ME AND THEY SEARCHED ME AND
- 15 HANDCUFFED ME AND TOOK ME AROUND THE BUILDING.
- 16 Q WHAT WERE YOU WEARING WHEN YOU CAME OUT OF THE
- 17 APARTMENT?
- 18 A THE SAME ORANGE JUMPER.
- 19 Q YOU HADN'T CHANGED YOUR CLOTHES?
- 20 A NO, MA'AM.
- 21 Q WHAT HAPPEN AFTER YOU CAME OUT OF THE APARTMENT?
- 22 A THEY TOOK ME AROUND THE BUILDING.
- 23 Q THE POLICE DID?
- 24 A YES, MA'AM.
- 25 Q OKAY.

1 DO YOU KNOW IF -- AND WHERE WERE THE GUYS IN THE
2 GRAY SWEATSHIRT AND THE GUY IN THE BURGUNDY SWEATSHIRT WHEN
3 YOU WERE COMING OUT OF YOUR APARTMENT?

4 A STILL IN THE APARTMENT.

5 Q STILL IN YOUR APARTMENT?

6 A YES, MA'AM.

7 Q DO YOU KNOW IF THEY CAME OUT AT ANY POINT?

8 A WELL, I ASSUME, THEY CAME OUT LATER BECAUSE I DON'T
9 KNOW. THEY WALKED ME IMMEDIATELY AROUND THE BUILDING.

10 Q THE POLICE---

11 A THE POLICE---

12 Q ---WALKED YOU AROUND THE BUILDING?

13 A YES, MA'AM.

14 Q AND ONCE YOU WERE OUTSIDE YOUR APARTMENT, DID YOU SEE
15 THE GUY IN THE GRAY AND THE GUY IN THE BURGUNDY AGAIN?

16 A I THINK BRIEFLY RIGHT BEFORE WE ALL LEFT TO GO TO
17 RICHLAND COUNTY HEADQUARTERS.

18 Q NOW, WERE YOU EVENTUALLY -- YOU SAID THAT THE POLICE
19 HANDCUFFED YOU WHEN YOU GOT OUT OF THE APARTMENT?

20 A YES, MA'AM.

21 Q WERE YOU EVENTUALLY UN-HANDCUFFED?

22 A YES, MA'AM.

23 Q OKAY.

24 AND HOW -- HOW DID THAT HAPPEN? HOW DID YOU GET
25 UN-HANDCUFFED?

1 A I GUESS BECAUSE THEY WEREN'T SURE WHO WAS WHO, BUT
2 AFTER MY GIRLFRIEND TOLD THEM WHAT I HAD ON.

3 Q WHO WERE THE VICTIM AND WHO WERE THE SUSPECTS?

4 A YES, MA'AM.

5 Q KETRA CAME UP AND TOLD THE POLICE WHO YOU WERE?

6 A YES, MA'AM.

7 Q NOW, WHEN YOU SAW THE TWO MEN THAT CAME OUT OF YOUR
8 -- WHO WERE TAKEN OUT OF YOUR APARTMENT, WERE THEY WEARING
9 THE SAME CLOTHES?

10 A I CAN'T RECALL.

11 Q ALL RIGHT.

12 DO YOU KNOW IF ANY CLOTHING WAS RECOVERED IN YOUR
13 APARTMENT AFTER YOU LEFT?

14 A I THINK IT WAS A GRAY -- A GRAY SWEATSHIRT LEFT IN MY
15 APARTMENT.

16 Q I'M GOING TO SHOW YOU WHAT HAS BEEN MARKED AS STATE'S
17 EXHIBIT NUMBER 17 AND ASK YOU IF YOU RECOGNIZE THAT?

18 A YES, MA'AM.

19 Q WHAT IS THAT?

20 A IT'S A SWEATSHIRT.

21 Q DOES IT HAVE A HOOD ON IT?

22 A YES, MA'AM.

23 Q AND DO YOU RECOGNIZE THE SWEATSHIRT FROM DECEMBER
24 14TH OF 1999?

25 A YES, MA'AM.

1 Q IS THIS YOUR SWEATSHIRT?

2 A NO, MA'AM.

3 Q WAS ONE OF THOSE TWO MEN WEARING THIS SWEATSHIRT?

4 A YES, MA'AM.

5 Q AND DO YOU KNOW WHERE THIS SWEATSHIRT WAS RECOVERED
6 FROM?

7 A I HEARD IT CAME FROM THE APARTMENT, I'M NOT SURE.

8 MS. PELLIZZARI: YOUR HONOR, AT THIS TIME, WE
9 WOULD OFFER STATE'S EXHIBIT NUMBER 17 INTO EVIDENCE.

10 THE COURT: ANY OBJECTION?

11 MS. DUKE-MIMS: NO OBJECTION.

12 THE COURT: WITHOUT OBJECTION.

13 (WHEREUPON, STATE'S EXHIBIT NUMBER
14 17, SWEATSHIRT/GRAY, ENTERED INTO EVIDENCE AT THIS TIME
15 WITHOUT OBJECTION.)

16 MS. PELLIZZARI: CAN YOU DESCRIBE THE OTHER
17 PERSON IN THE BURGUNDY SWEATSHIRT? I'M GOING TO SHOW YOU
18 WHAT'S BEEN MARKED AS STATE'S EXHIBIT NUMBER 16 AND ASK YOU
19 IF YOU RECOGNIZE THAT?

20 THE WITNESS: YES, MA'AM.

21 Q WHAT IS THAT?

22 A IT'S A BURGUNDY SWEATSHIRT.

23 Q AND DO YOU KNOW -- IS THIS YOUR SWEATSHIRT?

24 A NO, MA'AM.

25 Q DO YOU KNOW WHO WAS WEARING THIS SWEATSHIRT ON

1 DECEMBER 14TH OF 1999?

2 A YES, MA'AM.

3 Q WHO WAS WEARING IT?

4 A DEMARCO.

5 Q THE GUY -- THE GUY WHO BROKE INTO YOUR APARTMENT?

6 A YES, MA'AM.

7 MS. PELLIZZARI: YOUR HONOR, AT THIS TIME, WE
8 WOULD OFFER STATE'S EXHIBIT NUMBER 16 INTO EVIDENCE.

9 THE COURT: ANY OBJECTION?

10 MS. DUKE-MIMS: NO OBJECTION.

11 THE COURT: WITHOUT OBJECTION.

12 (WHEREUPON, STATE'S EXHIBIT NUMBER
13 16, SWEATSHIRT/BURGUNDY, ENTERED INTO EVIDENCE AT THIS TIME
14 WITHOUT OBJECTION.)

15 MS. PELLIZZARI: DID YOU HAVE A CHANCE TO SEE
16 EITHER ONE OF THOSE TWO MEN LATER ON, WHETHER IT WAS IN
17 YOUR APARTMENT COMPLEX OR AT THE SHERIFF'S DEPARTMENT?

18 THE WITNESS: I THINK I SAW THEM BRIEFLY AT
19 HEADQUARTERS.

20 Q WERE YOU ASKED TO IDENTIFY THEM AT ANY TIME?

21 A I DON'T THINK SO.

22 Q DO YOU KNOW -- WERE YOU ALLOWED BACK INTO YOUR
23 APARTMENT BEFORE YOU WENT OFF TO HEADQUARTERS THAT DAY?
24 WERE YOU ALLOWED BACK INTO YOUR APARTMENT?

25 A NO, MA'AM.

1 Q NO?

2 A NO, MA'AM.

3 Q WHEN YOU CAME OUT OF YOUR APARTMENT, WHO WAS THERE?
4 WERE THERE POLICE OFFICERS THERE?

5 A YES, MA'AM.

6 Q WERE THERE ANY INVESTIGATORS THERE, DO YOU KNOW, FROM
7 THE SHERIFF'S DEPARTMENT?

8 A YES, MA'AM.

9 Q DO YOU REMEMBER SEEING SERGEANT SMITH THERE?

10 A YES, MA'AM.

11 Q AND AFTER YOU GOT OUT OF YOUR APARTMENT, DID YOU TELL
12 THE POLICE WHAT HAD HAPPENED?

13 A YES, MA'AM.

14 Q WHAT -- WHAT WERE YOU FEELING WHEN YOU WERE BEING
15 APPROACHED IN THE PARKING LOT AND THEN BEING HELD AT
16 GUNPOINT IN YOUR APARTMENT?

17 MS. DUKE-MIMS: OBJECTION, YOUR HONOR.

18 THE COURT: OVERRULED. I THINK IT'S APPROPRIATE
19 TO DESCRIBE HIS FEELINGS IN TERMS OF WHAT HE DID AND WHY HE
20 DID WHAT HE DID.

21 GO AHEAD.

22 THE WITNESS: I WAS VERY NERVOUS AT FIRST. I WAS
23 REALLY NERVOUS WHEN MY GIRLFRIEND WALKED IN BECAUSE I
24 DIDN'T -- I DIDN'T KNOW WHAT SHE WAS GOING TO DO OR WHAT
25 SHE WAS GOING TO MAKE THEM DO TO HER BY HER BEING SO

1 NERVOUS.

2 MS. PELLIZZARI: WAS SHE SCARED?

3 A YES, MA'AM.

4 Q DID YOU HAVE AN OPPORTUNITY TO TELL THE POLICE ABOUT

5 THE CLOTHING THAT THE TWO MEN WERE WEARING?

6 A YES, MA'AM.

7 Q AND DID YOU DESCRIBE THE GUNS TO THEM AS WELL?

8 A YES, MA'AM.

9 Q HOW DID YOU DESCRIBE THE GUNS TO THE POLICE, DO YOU

10 REMEMBER?

11 A I THINK I CALLED THE SMALLER -- I SAID THE SMALLER

12 ONE WAS BLACK AND THE BIGGER ONE WAS SILVER.

13 Q DO YOU KNOW IF THE POLICE RECOVERED ANY GUNS FROM

14 YOUR APARTMENT THAT DAY?

15 A IF THE POLICE DID?

16 Q YES, SIR.

17 A I THINK THEY RECOVERED THE BLACK ONE.

18 Q THE ONE THAT'S MARKED AS STATE'S EXHIBIT NUMBER ONE?

19 A YES, MA'AM.

20 Q HOW ABOUT THE OTHER GUN?

21 A WE LATER FOUND THAT IN OUR -- IN THE LAUNDRY CLOSET.

22 Q I'M GOING TO SHOW YOU WHAT HAS BEEN MARKED STATE'S

23 EXHIBIT NUMBER TWO AND ASK YOU IF YOU RECOGNIZE THAT?

24 A YES, MA'AM.

25 Q WHAT IS THAT?

1 A IT'S A PISTOL.

2 Q OKAY.

3 HOW DO YOU -- DO YOU RECOGNIZE THAT GUN FROM

4 DECEMBER 14TH OF 1999?

5 A YES, MA'AM.

6 Q OKAY.

7 AND I'M GOING TO SHOW YOU WHAT'S BEEN MARKED AS

8 STATE'S EXHIBIT NUMBER 2-A, AND ASK IF YOU RECOGNIZE THAT?

9 A YES, MA'AM.

10 Q WHAT IS THAT?

11 A A CLIP.

12 Q IT'S A CLIP?

13 A A CLIP, YES, MA'AM.

14 Q DID STATE'S EXHIBIT NUMBER 2-A GO IN STATE'S EXHIBIT

15 NUMBER TWO?

16 A YES, MA'AM.

17 Q IT'S A CLIP TO THAT GUN?

18 A YES, MA'AM.

19 Q AND WHEN YOU RECOVERED THAT GUN, WAS STATE'S EXHIBIT

20 NUMBER 2-A IN STATE'S EXHIBIT NUMBER TWO?

21 A YES, MA'AM.

22 Q WAS IT LOADED?

23 A YES, MA'AM.

24 Q AND THIS IS THE GUN THAT YOU FOUND IN YOUR LAUNDRY

25 CLOSET?

1 A YES, MA'AM.

2 MS. PELLIZZARI: YOUR HONOR, AT THIS TIME, WE
3 WOULD OFFER STATE'S EXHIBIT NUMBER TWO AND 2-A INTO
4 EVIDENCE.

5 THE COURT: ANY OBJECTION?

6 MS. DUKE-MIMS: NO OBJECTION, YOUR HONOR.

7 THE COURT: WITHOUT OBJECTION.

8 MS. PELLIZZARI: THANK YOU.

9 (WHEREUPON, STATE'S EXHIBIT NUMBER
10 TWO, GUN; AND STATE'S EXHIBIT NUMBER 2-A, CLIP, ENTERED
11 INTO EVIDENCE AT THIS TIME WITHOUT OBJECTION.)

12 MS. PELLIZZARI: NOW, WHAT DID YOU DO WHEN YOU
13 FOUND THAT GUN LATER ON THAT DAY?

14 THE WITNESS: WE CALLED BACK TO THE RICHLAND
15 COUNTY SHERIFF'S DEPARTMENT.

16 Q YOU CALLED BACK TO THE SHERIFF'S DEPARTMENT?

17 A YES, MA'AM.

18 Q LET ME BACK UP FOR A MINUTE. WHEN YOU WENT TO THE
19 SHERIFF'S DEPARTMENT THAT DAY, HOW DID YOU GET THERE?

20 A WITH INVESTIGATOR SMITH.

21 Q SERGEANT SMITH DROVE YOU THERE?

22 A YES, MA'AM.

23 Q DID HE DRIVE KETRA THERE, TOO?

24 A YES, MA'AM.

25 Q WHAT WAS YOUR PURPOSE IN GOING TO THE SHERIFF'S

1 DEPARTMENT THAT DAY?

2 A I GUESS, JUST TO GIVE A STATEMENT.

3 Q AND DID YOU GIVE A STATEMENT THAT DAY?

4 A YES, MA'AM.

5 Q TO SERGEANT SMITH?

6 A YES, MA'AM.

7 Q OKAY.

8 AND THAT WAS A WRITTEN STATEMENT?

9 A WAS IT WRITTEN?

10 Q YES, SIR.

11 A NO, IT WAS ORAL.

12 Q IT WAS ORAL?

13 A YES, MA'AM.

14 Q AT ANY TIME WAS IT REDUCED TO WRITING?

15 A I THINK HE WAS TYPING IT AS I WAS TELLING HIM.

16 Q YOU WERE TELLING HIM AND HE WAS TYPING IT?

17 A YES, MA'AM.

18 Q OKAY.

19 AT ANY TIME, WERE YOU ABLE TO READ OVER YOUR

20 STATEMENT AND THEN SIGN IT AS BEING YOUR STATEMENT?

21 A I DON'T REMEMBER IF I SIGNED IT OR NOT, BUT HE DID

22 GIVE ME AN OPPORTUNITY TO READ OVER IT.

23 Q WELL, LET ME SHOW YOU THIS STATEMENT AND ASK YOU IF

24 YOU RECOGNIZE IT?

25 A (WITNESS COMPLIES.) YES, MA'AM. I DO.

- 1 Q AND IS THAT THE STATEMENT YOU GAVE TO SERGEANT SMITH
2 THAT DAY?
- 3 A YES, MA'AM.
- 4 Q AND IS THAT YOUR SIGNATURE ON THE BOTTOM OF IT?
- 5 A YES, MA'AM.
- 6 Q AND DO YOU KNOW ALSO IF KETRA GAVE A STATEMENT THAT
7 DAY?
- 8 A I'M -- I'M NOT SURE.
- 9 Q WAS SHE IN -- WHEN YOU WERE GIVING YOUR STATEMENT TO
10 SERGEANT SMITH, WAS SHE SITTING IN THE ROOM WITH YOU?
- 11 A NO, MA'AM.
- 12 Q OKAY.
- 13 SO Y'ALL WERE SEPARATED?
- 14 A YES, MA'AM.
- 15 Q IN FACT, WERE YOU ABLE TO TALK AT ALL BY YOURSELVES
16 BETWEEN THE TIME YOU GOT OUT OF YOUR APARTMENT AND THE TIME
17 YOU BASICALLY CAME HOME FROM THE SHERIFF'S DEPARTMENT?
- 18 A NO, MA'AM.
- 19 Q VAN, I'M GOING TO ASK YOU TO TAKE A LOOK AT SOME
20 PHOTOGRAPHS AND ASK YOU IF YOU RECOGNIZE THESE. ASK YOU TO
21 TAKE A LOOK AT STATE'S EXHIBIT NUMBER NINE AND ASK YOU IF
22 YOU RECOGNIZE THAT PHOTOGRAPH?
- 23 A (WITNESS COMPLIES.) YES, MA'AM.
- 24 Q WHO IS IN THAT PHOTOGRAPH?
- 25 A DEMARCO AND MR. TUCKER.

1 Q AND, AGAIN, DID YOU KNOW THEIR NAMES BEFORE DECEMBER
2 14TH OF 1999?

3 A NO, MA'AM.

4 Q OKAY.

5 DID YOU TAKE THAT PHOTOGRAPH?

6 A NO, MA'AM.

7 Q ARE THEY WEARING THE SAME CLOTHING THAT THEY WERE
8 WEARING AT YOUR HOUSE THAT DAY?

9 A NO, MA'AM.

10 MS. PELLIZZARI: YOUR HONOR, AT THIS TIME, WE'D
11 OFFER STATE'S EXHIBIT NUMBER NINE INTO EVIDENCE.

12 THE COURT: ANY OBJECTION?

13 MS. DUKE-MIMS: NO OBJECTION, YOUR HONOR.

14 THE COURT: ALL RIGHT.

15 WITHOUT OBJECTION.

16 (WHEREUPON, STATE'S EXHIBIT NUMBER
17 NINE, PHOTOGRAPH, ENTERED INTO EVIDENCE AT THIS TIME
18 WITHOUT OBJECTION.)

19 MS. PELLIZZARI: AND YOU DESCRIBED THE GUY IN THE
20 BURGUNDY AS BEING THE SHORTER OF THE TWO---

21 THE WITNESS: YES, MA'AM---

22 Q ---IN YOUR OPINION?

23 A YES, MA'AM.

24 Q OKAY.

25 YOU REMEMBER HIM BEING HEAVIER OR LIGHTER OR SAME

1 WEIGHT AS THE GUY IN THE GRAY?

2 A HE APPEARED TO BE A LITTLE MORE STOCKY THAN THE OTHER
3 ONE.

4 Q VAN, I'M GOING TO ASK YOU TO TAKE A LOOK AT STATE'S
5 EXHIBIT NUMBER 13 AND ASK YOU IF YOU RECOGNIZE THAT
6 PHOTOGRAPH?

7 A (WITNESS COMPLIES.) YES, MA'AM.

8 Q WHAT IS THAT A PHOTOGRAPH OF?

9 A THE TEN-DOLLAR BILL I HAD IN MY POCKET.

10 MS. PELLIZZARI: YOUR HONOR, AT THIS TIME, WE
11 WOULD OFFER STATE'S EXHIBIT NUMBER 13 INTO EVIDENCE.

12 THE COURT: ANY OBJECTION?

13 MS. DUKE-MIMS: NO OBJECTION, YOUR HONOR.

14 THE COURT: WITHOUT OBJECTION.

15 (WHEREUPON, STATE'S EXHIBIT NUMBER
16 13, PHOTOGRAPH, ENTERED INTO EVIDENCE AT THIS TIME WITHOUT
17 OBJECTION.)

18 MS. PELLIZZARI: NOW, VAN, I'M GOING TO ASK YOU
19 TO LOOK AT STATE'S EXHIBIT NUMBER EIGHT AND ASK YOU IF YOU
20 RECOGNIZE THAT?

21 THE WITNESS: (WITNESS COMPLIES.) YES, MA'AM.

22 Q WHAT IS THAT?

23 A THE TEN-DOLLAR BILL.

24 Q IS THAT THE SAME TEN-DOLLAR BILL THAT'S PHOTOGRAPHED
25 IN STATE'S EXHIBIT NUMBER 13, I THINK?

1 A YES, MA'AM.

2 MS. PELLIZZARI: YOUR HONOR, AT THIS TIME, WE
3 OFFER STATE'S EXHIBIT NUMBER EIGHT INTO EVIDENCE.

4 MS. DUKE-MIMS: YOUR HONOR, I'M GOING TO OBJECT
5 TO THAT JUST TO SAY THAT THEY DIDN'T SHOW THAT MY CLIENT
6 TOOK THE TEN DOLLARS FROM MR. DORN.

7 THE COURT: OKAY.

8 WHAT IS IT? IT'S A PHOTOGRAPH OF---

9 MS. PELLIZZARI: YOUR HONOR, THE LAST ONE WAS A
10 PHOTOGRAPH. THIS IS THE ACTUAL MONEY THAT WAS RECOVERED---

11 THE COURT: OH, THAT IS -- OKAY. OVERRULED.
12 IT'S APPROPRIATE.

13 GO AHEAD.

14 MS. PELLIZZARI: THANK YOU, YOUR HONOR.

15 (WHEREUPON, STATE'S EXHIBIT NUMBER
16 EIGHT, ENVELOPE/TEN-DOLLAR BILL, ENTERED INTO EVIDENCE AT
17 THIS TIME OVER OBJECTION OF COUNSEL.)

18 MS. PELLIZZARI: AND, VAN, I'M GOING TO ASK YOU
19 TO TAKE A LOOK AT STATE'S EXHIBIT NUMBER 11 FOR
20 IDENTIFICATION AND ASK YOU IF YOU RECOGNIZE THAT
21 PHOTOGRAPH?

22 THE WITNESS: (WITNESS COMPLIES.) YES, MA'AM.

23 Q WHAT IS THAT A PHOTOGRAPH OF?

24 A OF A HANDGUN.

25 Q WAS THAT -- WAS THAT THE GUN THAT WAS FOUND IN YOUR

1 APARTMENT THAT DAY?

2 A YES, MA'AM.

3 Q WHO FOUND THAT GUN?

4 A I LATER FOUND IT IN THE CLOSET.

5 Q AND WHO WAS CARRYING THAT GUN THAT DAY?

6 A DEMARCO, THE GUY IN THE BURGUNDY SHIRT.

7 MS. PELLIZZARI: YOUR HONOR, AT THE TIME, WE
8 WOULD OFFER STATE'S EXHIBIT NUMBER 11 INTO EVIDENCE.

9 THE COURT: ANY OBJECTION?

10 MS. DUKE-MIMS: CAN I SEE THAT?

11 (WHEREUPON, THE EXHIBIT IS HANDED
12 TO MS. DUKE-MIMS AT THIS TIME.)

13 MS. DUKE-MIMS: NO OBJECTION, YOUR HONOR.

14 THE COURT: WITHOUT OBJECTION.

15 (WHEREUPON, STATE'S EXHIBIT NUMBER
16 11, PHOTOGRAPH, ENTERED INTO EVIDENCE AT THIS TIME WITHOUT
17 OBJECTION.)

18 MS. PELLIZZARI: DID YOU PUT THE GUN ON THE CHAIR
19 -- THAT GUN IS PHOTOGRAPHED ON A CHAIR, IS THAT RIGHT?

20 THE WITNESS: NO, MA'AM. THE OFFICER WHO CAME
21 OUT AND GOT IT, PLACED IT THERE.

22 Q IS THAT YOUR KITCHEN CHAIR?

23 A YES, MA'AM.

24 Q AND, LASTLY, VAN, I'M GOING TO ASK YOU TO TAKE A LOOK
25 AT STATE'S EXHIBIT NUMBER 12 AND ASK YOU IF YOU RECOGNIZE

1 THAT PHOTOGRAPH?

2 A YES, MA'AM.

3 Q WHAT IS THAT A PHOTOGRAPH OF?

4 A ANOTHER PICTURE OF THE SAME GUN.

5 Q IS THERE ANY DIFFERENCE BETWEEN THAT PHOTOGRAPH AND
6 THE LAST ONE YOU JUST SAW?

7 A THE CLIP, THE MAGAZINE IS OUT.

8 Q DID YOU TAKE THE MAGAZINE OUT OF THE GUN?

9 A NO, MA'AM, THE OFFICER DID.

10 Q AND IS THAT WHAT THE GUN LOOKED LIKE ON DECEMBER 14TH
11 OF 1999?

12 A YES, MA'AM.

13 MS. PELLIZZARI: YOUR HONOR, AT THIS TIME, WE
14 WOULD OFFER STATE'S EXHIBIT NUMBER 12 INTO EVIDENCE.

15 THE COURT: ANY OBJECTION?

16 MS. DUKE-MIMS: NO, SIR, NO OBJECTION.

17 THE COURT: ALL RIGHT.

18 WITHOUT OBJECTION.

19 (WHEREUPON, STATE'S EXHIBIT NUMBER
20 12, PHOTOGRAPH, ENTERED INTO EVIDENCE AT THIS TIME WITHOUT
21 OBJECTION.)

22 MS. PELLIZZARI: AND, AGAIN, THIS IS THE GUN THAT
23 THE GUY IN THE BURGUNDY WAS CARRYING?

24 THE WITNESS: YES, MA'AM.

25 Q AFTER YOU GOT HOME FROM THE SHERIFF'S DEPARTMENT THAT

1 DAY, YOU SAID YOU SEARCHED FOR THE SECOND GUN?

2 A YES, MA'AM.

3 Q AND WHY DID YOU DO THAT?

4 A I BELIEVE MR. SMITH SAID THAT THEY ONLY RECOVERED ONE
5 GUN, BUT I KNEW THAT MR. JOHNSON WAS IN THE CLOSET SO
6 THAT'S WHERE IT HAD TO BE.

7 Q AND SO, YOU TOOK IT UPON YOURSELF TO GO LOOK FOR THE
8 GUN YOURSELF?

9 A YES, MA'AM.

10 Q OKAY.

11 AND WHAT DID YOU DO ONCE YOU FOUND THAT GUN?

12 A EITHER MYSELF OR MY AUNT CALLED BACK TO RICHLAND
13 COUNTY.

14 Q TO THE SHERIFF'S DEPARTMENT?

15 A YES, MA'AM.

16 Q WHY DID YOU CALL THE SHERIFF'S DEPARTMENT?

17 A SO THEY COULD COME GET THE GUN.

18 Q TO LET THEM KNOW YOU FOUND IT?

19 A YES, MA'AM.

20 Q AND DID AN OFFICER COME OUT?

21 A YES, MA'AM.

22 Q DO YOU KNOW THE OFFICER'S NAME?

23 A NO, MA'AM, I CAN'T -- I CAN'T RECALL.

24 Q DID HE COME OUT TO YOUR APARTMENT THAT SAME DAY?

25 A YES, MA'AM.

1 A NO, MA'AM.

2 Q WOULD YOU HAVE STAYED IN YOUR APARTMENT HAD THEY NOT
3 HAD YOU AT GUNPOINT?

4 A NO, MA'AM.

5 Q VAN, DO YOU SEE THE PERSON YOU HAVE BEEN TALKING
6 ABOUT AS DEMARCO JOHNSON, THE PERSON YOU DESCRIBED WEARING
7 A BURGUNDY SWEATSHIRT THAT DAY, DO YOU SEE HIM HERE IN THE
8 COURTROOM TODAY?

9 A YES, MA'AM.

10 Q CAN YOU POINT HIM OUT FOR THE JURY, PLEASE?

11 A HE'S SITTING BETWEEN THE TWO YOUNG LADIES AT THE
12 TABLE.

13 Q CAN YOU TELL -- DESCRIBE WHAT HE'S WEARING?

14 A A BLUE OR BLACK SWEATER AND A WHITE SHIRT UNDERNEATH.

15 MS. PELLIZZARI: YOUR HONOR, IF WE COULD JUST LET
16 THE RECORD REFLECT THAT THE WITNESS HAS IDENTIFIED THE
17 DEFENDANT.

18 THE COURT: SO NOTED.

19 MS PELLIZZARI: VAN, I HAVE NO OTHER QUESTIONS
20 FOR YOU AT THIS POINT. PLEASE ANSWER ANY QUESTIONS FROM
21 THE DEFENSE.

22 THE COURT: ALL RIGHT.

23 LET'S TAKE A SHORT BREAK AT THIS POINT.

24 LADIES AND GENTLEMEN, WE'LL TAKE A SHORT BREAK.

25 I'LL LET YOU USE THE REST ROOM AND GET REFRESHMENTS OR

1 WHATEVER YOU NEED TO DO. REMEMBER IT'S VERY IMPORTANT THAT
2 YOU STILL NOT TALK ABOUT THE CASE. ALL RIGHT. IF YOU
3 WOULD JUST GO WITH THE BAILIFF.

4 (JURY OUT.)

5 THE COURT: THE JURORS ARE SECURED.

6 COUNSEL, THE BAILIFF AND THE CLERK HAD INDICATED
7 THAT ONE OF THE JURORS NEEDED TO USE THE REST ROOM. WE
8 TOOK A BREAK FOR THAT. WE'LL TAKE A SHORT BREAK. STAND AT
9 RECESS.

10 MR. DORN, DURING THE BREAK, BE SURE NOT TO TALK
11 WITH ANYBODY ABOUT YOUR TESTIMONY.

12 ALL RIGHT. WE'LL STAND IN RECESS.

13 (WHEREUPON, THE WITNESS LEAVES THE
14 WITNESS STAND AT THIS TIME.)

15 (RECESS.)

16 THE BAILIFF: COURT COME TO ORDER. ALL RISE.

17 THE COURT: THANK YOU.

18 PLEASE HAVE A SEAT.

19 ALL RIGHT. LET'S BRING THE JURY IN.

20 NORMAN VAN DORN,

21 BEING ALREADY DULY SWORN, RETURNED
22 TO THE WITNESS STAND, AND TESTIFIED AS FOLLOWS:

23 (JURY IN.)

24 THE BAILIFF: THE JURY IS PRESENT.

25 THE COURT: ALL RIGHT.

1 ALL PARTIES AND ATTORNEYS ARE IN THE COURTROOM.

2 ALL JURORS HAVE RETURNED.

3 CROSS-EXAMINATION.

4 MS. DUKE-MIMS: THANK YOU, YOUR HONOR.

5 CROSS-EXAMINATION

6 BY MS. DUKE-MIMS.

7 Q MR. DORN, WHAT DO YOU DO FOR A LIVING?

8 A I PRESENTLY WORK PART-TIME FOR UNIQUE CARS, ST.
9 MATTHEWS.

10 Q OKAY.

11 WHAT WERE YOU DOING FOR A LIVING ON DECEMBER 14TH
12 OF '99?

13 A EXCUSE ME?

14 Q WHAT WERE YOU DOING FOR A LIVING DECEMBER 14TH OF
15 '99?

16 A I THINK I WAS WORKING AT CAROLINA HONDA, AT THE
17 MOTORCYCLE SHOP ON RIVERS DRIVE.

18 Q WERE YOU WORKING FULL-TIME?

19 A YES, MA'AM.

20 Q OKAY.

21 I'M JUST GOING TO START AT THE BEGINNING AND GO
22 THROUGH EVERYTHING WITH YOU AGAIN, OKAY.

23 YOU ARE OUT IN FRONT OF YOUR APARTMENT AROUND
24 NINE IN THE MORNING?

25 A YES, MA'AM.

1 Q AND YOU ARE APPROACHED BY TWO MEN, IS THAT RIGHT?

2 A YES, MA'AM.

3 Q ACTUALLY, AT NINE IN THE MORNING, THAT'S A BUSY TIME
4 OF THE DAY USUALLY, ISN'T IT?

5 A THAT'S RIGHT.

6 Q AND PEOPLE ARE USUALLY GETTING READY TO GO TO WORK
7 DURING THAT TIME OF DAY?

8 A THAT'S RIGHT.

9 Q SO ISN'T IT TRUE THAT THERE WERE ACTUALLY SOME PEOPLE
10 IN THE PARKING LOT THAT DAY?

11 A NO, MA'AM.

12 Q YOU WOULD SAY THERE IS ABSOLUTELY NO ONE IN THE
13 PARKING LOT THAT DAY?

14 A NO, MA'AM.

15 Q OKAY.

16 YOU ARE APPROACHED BY THESE TWO MEN AND THEY
17 START ASKING YOU ACTUALLY ABOUT DRUGS, DON'T THEY, MR.
18 DORN?

19 A NO, MA'AM.

20 Q THEY JUST HAPPEN TO RANDOMLY COME UP AND WANT TO ROB
21 YOU, IS THAT RIGHT? IN FACT, MR. DORN, DIDN'T THEY COME UP
22 TO YOU AND SHOW YOU A TEN-DOLLAR BILL THAT THEY WANTED TO
23 USE TO BUY DRUGS?

24 A NO, MA'AM.

25 Q YOU SAY ONE GUY HAD ON A GRAY SHIRT?

1 A YES.

2 Q OKAY.

3 YOU SEE WHERE I'VE GOT A LITTLE DASH RIGHT THERE?

4 A UH-HUH.

5 Q CAN YOU READ THAT SENTENCE FOR ME?

6 A THE GUY IN THE GRAY -- THE GUY IN THE GRAY SEARCHED
7 THROUGH MY TRUCK.

8 Q SO THE GUY IN THE GRAY SEARCHED THROUGH YOUR TRUCK.

9 OKAY. LET ME TAKE THAT BACK.

10 A (WITNESS COMPLIES.)

11 Q SO IT WASN'T ACTUALLY LIKE YOU TOLD THE SOLICITOR
12 THAT THEY SEARCHED YOUR TRUCK, ISN'T THAT RIGHT?

13 A WELL, THEY WERE TOGETHER. SO MAYBE THAT'S WHAT I
14 MEANT BY THAT.

15 Q I'M SORRY?

16 A I SAID THERE WERE TWO PEOPLE TOGETHER. THAT'S WHAT I
17 MEANT BY THEY.

18 Q THINGS STARTED TO GET A LITTLE LOUD OUTSIDE, ISN'T
19 THAT RIGHT?

20 A (NO RESPONSE.)

21 Q WERE THINGS LOUD OUTSIDE?

22 A I MEAN, I WOULD GUESS SOMEBODY -- SOMEONE IN THE
23 APARTMENT HEARD WHAT WAS GOING ON.

24 Q AND YOU TOLD THE STATE OR YOU JUST TESTIFIED THAT YOU
25 SAID THEY WANTED TO SEARCH YOUR HOUSE, IS THAT RIGHT?

1 A YES.

2 Q WHY DIDN'T YOU TELL THE POLICE THAT THEY SAID THEY
3 WANTED TO SEARCH YOUR HOUSE? YOU DIDN'T MENTION THAT TO
4 THE POLICE, DID YOU?

5 A I DON'T REALLY RECALL THAT EITHER.

6 Q MR. DORN, THINGS WERE GETTING A LITTLE LOUD OUTSIDE
7 AND IN ACTUALITY, WASN'T IT YOU WHO RECOMMENDED GOING INTO
8 YOUR APARTMENT?

9 A NO, MA'AM. WHY WOULD I DO THAT?

10 Q SO THAT THE NEIGHBORS WOULDN'T HEAR THE RUCKUS THAT
11 WAS GOING ON?

12 A NO, THAT'S NOT TRUE.

13 Q WEREN'T YOU THE ONE INTERESTED IN NOBODY KNOWING THEY
14 WERE TRYING TO BUY MARIJUANA FROM YOU?

15 A NO, MA'AM.

16 Q HOW DID THEY GET INTO YOUR APARTMENT AGAIN---

17 A I DON'T SELL MARIJUANA. HOW COULD THEY BUY MARIJUANA
18 FROM ME.

19 Q OH. OKAY.

20 LET'S GO ON. DIDN'T YOU WANT -- HOW DID THEY GET
21 INTO YOUR APARTMENT, MR. DORN, AGAIN?

22 A THEY FORCED ME. I USED A KEY THAT WAS AROUND MY
23 NECK.

24 Q THAT WAS AROUND YOUR NECK?

25 A YES.

1 Q WAS THE KEY HANGING ON THE OUTSIDE OF YOUR SHIRT?

2 A IT WAS INSIDE MY SHIRT.

3 Q IT WAS INSIDE YOUR SHIRT. SO THEY HAD NO WAY OF
4 KNOWING THE KEY WAS ON YOU PERIOD WITHOUT YOU GIVING THEM
5 THE KEY, ISN'T THAT RIGHT?

6 A YES.

7 Q OKAY.

8 SO YOU HAVE TWO GUYS WHO ARE POINTING GUNS AT YOU
9 IN THE PARKING LOT AND YOU VOLUNTARILY LET THEM KNOW THAT
10 YOU HAVE KEYS UNDERNEATH YOUR SHIRT?

11 A NO, IT DIDN'T HAPPEN LIKE THAT. WHEN THEY---

12 Q WELL---

13 A ---WHEN THEY STUCK ME UP IN THE PARKING LOT AND
14 NOTHING WAS IN THE TRUCK, THEY SAID, WELL, LET'S GO INSIDE.
15 SO WHEN I GOT TO THE DOOR, THEY SAID THIS IS THE WRONG
16 APARTMENT. TO PROVE TO THEM THAT I DID STAY IN , THAT'S
17 WHEN I USED MY KEY.

18 Q WHY DID YOU HAVE TO PROVE TO THEM THAT YOU STAYED IN
19 ?

20 A BECAUSE WHEN WE GOT TO THE DOOR, THEY SAID THIS IS
21 NOT THE RIGHT APARTMENT, THIS IS NOT WHERE YOU LIVE.

22 Q WHY DIDN'T YOU JUST TELL THEM THAT I DON'T LIVE HERE?

23 A I DID. AND THEY SAID THIS IS THE APARTMENT.

24 Q IF YOU ARE BEING ROBBED, MR. DORN, WOULDN'T YOU FEEL
25 SAFER ON THE OUTSIDE?

1 A I WAS SAFE.

2 Q BUT YOU VOLUNTEERED TO GIVE THEM YOUR KEYS TO GET
3 INTO YOUR APARTMENT?

4 A I WAS AT GUNPOINT.

5 Q BUT THEY WOULD HAVE NEVER FOUND YOUR KEYS PRETTY MUCH
6 OTHERWISE, ISN'T THAT RIGHT?

7 A I CAN'T SAY THAT.

8 Q BUT YOU LET THEM INTO YOUR APARTMENT AND ONCE INSIDE
9 YOUR APARTMENT, THEY STARTED SEARCHING FOR SOMETHING AND
10 THEY SAT YOU DOWN YOU SAY ON THE COUCH, IS THAT RIGHT?

11 A YES, MA'AM.

12 Q OKAY.

13 AND YOU WERE JUST SITTING THERE. YOU WERE NOT AT
14 GUNPOINT, IS THAT RIGHT?

15 A YES, I WAS.

16 Q DIDN'T YOU JUST SAY YOU WERE NOT AT GUNPOINT?

17 A NO, I DIDN'T.

18 Q DID YOU TELL THE POLICE YOU WERE AT GUNPOINT?

19 A I DON'T RECALL.

20 Q YOU DIDN'T TELL THE POLICE YOU WERE AT GUNPOINT. DO
21 YOU WANT TO SEE YOUR STATEMENT AGAIN OR DO YOU THINK THAT'S
22 PROBABLY TRUE THAT YOU DIDN'T TELL THE POLICE YOU WERE AT
23 GUNPOINT?

24 A YOU CAN SHOW IT TO ME.

25 Q ALL RIGHT.

1 LET'S PUT A LITTLE DOT WHERE IT SAYS AFTER --
2 RIGHT THERE (INDICATES).

3 MS. PELLIZZARI: YOUR HONOR, WE HAVE NO OBJECTION
4 IF SHE WANTS TO PUT HIS STATEMENT INTO EVIDENCE.

5 MS. DUKE-MIMS: NO, I DON'T WANT TO DO THAT, YOUR
6 HONOR---

7 THE COURT: ALL RIGHT.

8 MS. DUKE-MIMS: ---I'M JUST TALKING ABOUT HIS
9 STATEMENT---

10 THE COURT: ARE YOU MOVING UNDER RULE 107 TO
11 ADMIT THE STATEMENT?

12 MS. PELLIZZARI: YOUR HONOR, IF SHE IS REFERRING
13 TO PARTS OF THE STATEMENT, I THINK THE JURY HAS THE --
14 SHOULD HAVE THE RIGHT TO SEE THE WHOLE STATEMENT.

15 MS. DUKE-MIMS: YOUR HONOR, I'M JUST -- I'M
16 IMPEACHING THE WITNESS.

17 THE COURT: I UNDERSTAND.

18 SHE HAS A RIGHT UNDER RULE 106 TO, DEPENDING ON
19 THE CIRCUMSTANCES, TO ASK TO HAVE THE FULL STATEMENT
20 ADMITTED.

21 LET'S -- DO YOU WANT TO TAKE -- LET'S TAKE IT UP
22 AT THIS POINT.

23 MS. DUKE-MIMS: YES, SIR.

24 THE COURT: LADIES AND GENTLEMEN OF THE JURY, LET
25 ME ASK YOU IF YOU'LL STEP TO THE JURY ROOM AND WHILE YOU

1 ARE THERE BE SURE NOT TO TALK ABOUT THE CASE.

2 (JURY OUT.)

3 THE COURT: ALL RIGHT.

4 THE JURY IS SECURED.

5 COUNSEL, AS YOU KNOW, RULE 106 SAYS AS FOLLOWS:

6 WHEN A WRITING OR RECORDED STATEMENT OR PART THEREOF IS
7 INTRODUCED BY A PARTY, AN ADVERSE PARTY MAY REQUIRE THE
8 INTRODUCTION AT THAT TIME OF ANY OTHER PART OR ANY OTHER
9 WRITING OR RECORDED STATEMENT WHICH OUGHT IN FAIRNESS TO BE
10 CONSIDERED CONTEMPORANEOUSLY WITH IT.

11 SO IN ESSENCE, THE STATE HAS A RIGHT TO ASK THAT
12 EITHER ANOTHER PART OR THE WHOLE STATEMENT BE INTRODUCED.
13 I GUESS, IN ESSENCE, DEPENDING ON WHAT THE FAIRNESS OF IT
14 IS AND, OF COURSE, THE RULE SAYS CONTEMPORANEOUSLY MEANS
15 THEY HAVE A RIGHT TO HAVE IT INTRODUCED NOW.

16 WHAT PART ARE YOU GOING TO ASK THE WITNESS ABOUT?

17 MS. DUKE-MIMS: JUST WHERE IT SAYS AFTER WE GOT
18 INSIDE, THEY HAD ME SIT ON THE FLOOR IN FRONT OF THE COUCH.
19 HE NEVER MENTIONS ANYBODY POINTING A GUN AT HIM. THAT'S
20 ALL. I'M NOT INTERESTED IN ANYTHING---

21 THE COURT: OKAY.

22 MR. PASCOE: IT'S THE VERY NEXT SENTENCE---

23 MS. DUKE-MIMS: YOUR HONOR, YES, SIR. YOUR HONOR
24 WOULD LIKE TO SEE A COPY OF THE STATEMENT?

25 THE COURT: YEAH. I HAVEN'T SEEN THE STATEMENT.

1 I NEED TO TAKE A LOOK AT IT.

2 MS. DUKE-MIMS: IT DOES SAY HE HELD A GUN ON ME
3 AFTER WE GOT INTO THE APARTMENT, YOUR HONOR.

4 MR. PASCOE: THE VERY NEXT SENTENCE.

5 MS. PELLIZZARI: THE EXACT WORDING IS THE DUDE
6 WITH THE GRAY HOODIE HELD HIS GUN ON ME WHILE THE OTHER ONE
7 SEARCHED THE APARTMENT. I APOLOGIZE. I DON'T HAVE AN
8 EXTRA COPY.

9 THE COURT: OH, THAT'S ALL RIGHT. THAT'S ALL
10 RIGHT.

11 WHERE ARE YOU NOW? I SEE. IT'S UNDERLINED, "THE
12 DUDE WITH THE GRAY HOODIE HELD HIS GUN ON ME WHILE THE
13 OTHER ONE SEARCHED THE APARTMENT", IS THAT RIGHT?

14 MS. DUKE-MIMS: RIGHT. YOUR HONOR, MY POINT IS
15 THAT MY CLIENT DOESN'T HOLD THE GUN ON HIM. THE GUY IN THE
16 GRAY HOOD, HE'S NOT MY CLIENT.

17 THE COURT: OKAY.

18 MS. DUKE-MIMS: AND I WILL CLARIFY THAT. I DON'T
19 NEED THE STATEMENT TO COME IN TO CLARIFY THAT. I WILL
20 ACTUALLY CLARIFY THAT.

21 THE COURT: OKAY.

22 WELL, THAT STATEMENT IS WHAT YOU ARE WANTING IN,
23 IS THAT RIGHT?

24 MS. DUKE-MIMS: YES, SIR. JUST TO SAY THAT THE
25 GUY IN THE BURGUNDY HOODIE WAS NOT HOLDING THE GUN.

1 THE COURT: ALL RIGHT.

2 IS THERE ANOTHER PART THAT YOU'RE WANTING IN?

3 MS. PELLIZZARI: YOUR HONOR, I GUESS I'LL ADDRESS
4 THAT ON REDIRECT.

5 THE COURT: OKAY. LET'S BRING THE JURY BACK IN.

6 (JURY IN.)

7 THE BAILIFF: THE JURY IS PRESENT, YOUR HONOR.

8 THE COURT: ALL RIGHT.

9 ALL PARTIES AND ATTORNEYS ARE IN THE COURTROOM
10 AND ALL JURORS HAVE RETURNED.

11 COUNSEL.

12 MS. DUKE-MIMS: THANK YOU, YOUR HONOR.

13 CONTINUED CROSS-EXAMINATION

14 BY MS. DUKE-MIMS:

15 Q MR. DORN, LET ME CLARIFY. YOU MENTIONED THE TWO
16 HOODIES. YOU SAID THAT DEMARCO JOHNSON WAS WEARING THE
17 BURGUNDY, IS THAT RIGHT? THAT'S DEMARCO JOHNSON?

18 A YES, MA'AM.

19 Q CYCRUS TUCKER WAS WEARING A GRAY HOOD, IS THAT RIGHT?

20 A YES.

21 Q OKAY.

22 MR. DEMARCO JOHNSON, THE PERSON IN THE BURGUNDY
23 HOODIE, HOLDING A GUN ON YOU WHILE YOU'RE SITTING IN THE
24 APARTMENT?

25 A NO, MA'AM.

1 Q ALL RIGHT.

2 YOU MENTIONED WHEN THEY GOT INTO THE APARTMENT,

3 THEY STARTED SEARCHING FOR SOMETHING. DO YOU KNOW WHAT

4 THEY WERE SEARCHING FOR?

5 A NO, MA'AM.

6 Q DO YOU HAVE A T.V. IN YOUR APARTMENT?

7 A YES, MA'AM.

8 Q OKAY.

9 DID THEY ATTEMPT TO UNPLUG THE T.V.?

10 A NO, MA'AM.

11 Q DO YOU HAVE A V.C.R.?

12 A YES, MA'AM.

13 Q DID THEY ATTEMPT TO UNPLUG THE V.C.R.?

14 A NO.

15 Q DO YOU HAVE JEWELRY?

16 A NO.

17 Q NO NECKLACES, NO EARRINGS, NOTHING LIKE THAT?

18 A NO.

19 Q KETRA HAS NO JEWELRY?

20 A I'M PRETTY SURE SHE DOES, BUT---

21 Q AND THERE'S -- NOBODY TRIED TO LOAD UP ON ANY JEWELRY

22 IN YOUR APARTMENT?

23 A NO.

24 Q YOU MENTIONED THAT THEY WERE GOING THROUGH CLOSETS,

25 THAT THEY WERE LOOKING IN THE CLOSETS, THEY WERE LOOKING IN

- 1 THE BEDROOM FOR SOMETHING, IS THAT RIGHT?
- 2 A (WHEREUPON, THE WITNESS NODS IN THE AFFIRMATIVE AT
- 3 THIS TIME.)
- 4 Q SO WHAT WE ARE SUPPOSED TO UNDERSTAND IS THAT THESE
- 5 PEOPLE WHO DO NOT KNOW YOU ARE GOING THROUGH YOUR APARTMENT
- 6 LOOKING FOR SOMETHING IN PARTICULAR, IS THAT RIGHT?
- 7 A YES, MA'AM.
- 8 Q PEOPLE WHO DON'T KNOW WHO YOU ARE. PEOPLE WERE JUST
- 9 THERE TO ROB YOU, RIGHT?
- 10 A (WHEREUPON, THE WITNESS NODS IN THE AFFIRMATIVE AT
- 11 THIS TIME.)
- 12 Q YET, THEY'RE NOT TAKING YOUR T.V., THEY'RE NOT TAKING
- 13 YOUR V.C.R., IS THAT RIGHT?
- 14 A RIGHT.
- 15 Q YOU MENTIONED THAT THERE WAS A LAUNDRY BASKET THAT
- 16 SOME STUFF WAS IN. DID YOU TELL THE POLICE THAT?
- 17 A I DON'T RECALL.
- 18 Q DO YOU KNOW WHY THE POLICE WOULDN'T MENTION FINDING
- 19 ANYTHING LIKE THAT?
- 20 A NO.
- 21 Q DID YOU SEE IT IN ANY OF THE PICTURES?
- 22 A YES, MA'AM.
- 23 Q CAN YOU SHOW ME IN THE PICTURES WHERE IT IS?
- 24 A ON ONE OF THE PICTURES---
- 25 Q IS IT A SMALL PICTURE OR A BIG PICTURE?

1 A IT'S A PICTURE LIKE THAT(INDICATES) .

2 Q IT'S A PICTURE LIKE THIS?

3 A ON ONE OF THE PICTURES, THE RADIO IS BESIDE THE

4 COUCH.

5 Q SO THEY MOVED THE RADIO BESIDE THE COUCH?

6 A YES.

7 Q YOU'VE GOT A NICE LITTLE STEREO SYSTEM HERE, TOO,

8 DON'T YOU?

9 A THE ONE ON THE FLOOR.

10 Q THIS ONE RIGHT HERE(INDICATES)?

11 A NO, THE ONE ON THE FLOOR WAS MOVED FROM THE BEDROOM.

12 Q SO THEY HAD MOVED THAT OVER HERE IN BETWEEN THE TWO

13 CHAIRS LIKE THAT, IS THAT RIGHT?

14 A YES.

15 Q SO THEY WOULD TAKE A RADIO THAT THEY WANT TO TAKE OUT

16 OF YOUR HOUSE IN BETWEEN TWO CHAIRS---

17 A THEY---

18 Q ---AND PUT IT IN BETWEEN TWO CHAIRS?

19 A ---THEY MOVED IT FROM THE BEDROOM.

20 Q AND PUT IT IN BETWEEN TWO CHAIRS?

21 A YES.

22 Q OKAY.

23 YOU'VE GOT A NICE LITTLE STEREO SYSTEM THERE AS

24 WELL, RIGHT?

25 A (NO RESPONSE.)

1 Q NOBODY TOOK THAT AND UNPLUGGED IT, RIGHT, AND SET IT
2 BY THE DOOR?

3 A YES.

4 Q DIDN'T YOU ALSO TELL THE POLICE THAT THEY ACTUALLY
5 ASKED YOU TO HELP THEM SEARCH YOUR HOUSE?

6 A I DON'T RECALL.

7 Q DO YOU HAVE THE STATEMENT? DO YOU RECALL TELLING THE
8 POLICE THEY HAD YOU LIFTING UP THE BED, THE MATTRESS IN
9 YOUR BEDROOM?

10 A NOT THE MATTRESS, I DIDN'T LIFT THE MATTRESS.

11 Q CAN YOU READ RIGHT HERE. CAN'T YOU LOOK RIGHT HERE
12 OR CAN YOU -- CAN YOU LOOK RIGHT HERE WHERE IT SAYS AFTER
13 AND READ THAT SENTENCE AND THE NEXT SENTENCE FOR ME?

14 A START -- START FROM WHERE?

15 Q IT SAYS AFTER THEY COULDN'T FIND ANYTHING, DO YOU SEE
16 THAT?

17 A AFTER THEY COULDN'T FIND ANYTHING, THEY MADE ME START
18 LOOKING OVER TO SEARCH.

19 Q OKAY.

20 AND AFTER THAT, DOESN'T IT SAY THEY HAD YOU FLIP
21 UP THE MATTRESS AND A RUG?

22 A YES.

23 Q OKAY.

24 SO YOU WERE LOOKING AROUND IN YOUR OWN APARTMENT,
25 IS THAT RIGHT?

1 A YES, I GUESS.

2 Q OKAY.

3 SO YOU WERE HELPING THEM LOOK AROUND YOUR
4 APARTMENT FOR STUFF TO LOOK FOR. THESE PEOPLE WHO DON'T
5 KNOW YOU, HAVE NO IDEA WHO YOU ARE, WERE ACTUALLY LOOKING
6 FOR SOMETHING VERY PARTICULAR, IS THAT RIGHT?

7 A YES.

8 MS. PELLIZZARI: YOUR HONOR, SPECULATION.

9 THE COURT: SUSTAINED, UNLESS THE WITNESS CAN
10 GIVE SOME FACTUAL BASIS FOR THE ANSWER.

11 MS. DUKE-MIMS: THANK YOU, YOUR HONOR.

12 YOU MENTIONED THEY FLIPPED UP YOUR MATTRESS, TOO,
13 ISN'T THAT RIGHT, MR. DORN?

14 THE WITNESS: YES.

15 Q THE MATTRESS STILL HAS A COVER ON IT, DOESN'T IT?

16 A (NO RESPONSE.)

17 Q IT'S STILL GOT A COMFORTER ON IT, ISN'T THAT RIGHT?

18 A YEAH, BUT THE SPREAD IS OFF.

19 Q THIS IS THE COMFORTER?

20 A YEAH.

21 Q IT'S STILL ON THE BED, RIGHT?

22 A WELL, THE BED WAS MADE UP.

23 Q YOU HAD ACTUALLY -- YOU HAD MADE YOUR BED THAT
24 MORNING?

25 A I MAKE MY BED EVERY MORNING.

1 Q YOU MAKE YOUR BED EVERY MORNING?

2 A I TRY TO.

3 Q YOU STILL HAD SOME STUFF ON YOUR BED FOR A MATTRESS
4 THAT WAS FLIPPED UP, DIDN'T YOU?

5 A EXCUSE ME?

6 Q YOU DID STILL HAVE SOME STUFF ON YOUR BED, SOME LOOSE
7 ARTICLES ON YOUR BED FOR -- ISN'T THAT RIGHT?

8 A I DON'T UNDERSTAND YOUR QUESTION.

9 Q ACTUALITY, MR. DORN, NOBODY ENDED UP TAKING OR
10 ATTEMPTING TO TAKE ANYTHING FROM YOUR HOUSE, DID THEY?

11 A THEY ATTEMPTED TO TAKE MY RADIO. I THINK IT WAS A
12 PAIR OF TIMBERLAND BOOTS THAT I HAD AND A COUPLE OF C.D.'S.

13 Q THE RADIO THAT WAS PUSHED UP BETWEEN THE TWO CHAIRS?

14 A YES.

15 Q OKAY.

16 THEN THE POLICE ARRIVED AND SOMEONE SAYS THE CAT
17 TEAM IS OUTSIDE, IS THAT RIGHT?

18 A I DON'T RECALL.

19 Q YOU DON'T RECALL. YOU MENTIONED IN YOUR STATEMENT,
20 MR. DORN, THAT YOU KNEW WHO THE CAT TEAM WAS? DO YOU KNOW
21 WHO THE CAT TEAM IS?

22 A YEAH, I DID. RICHLAND COUNTY HAD CAT ON THEIR BACK,
23 I GUESS.

24 Q DO YOU KNOW ANYTHING ABOUT THE CAT TEAM?

25 A NO, NOT REALLY.

1 Q OKAY.

2 BUT YOU MENTIONED IN YOUR STATEMENT YOU WERE
3 FAMILIAR WITH THE CAT TEAM?

4 A YES.

5 Q AND YOU HEAR THE POLICE HAVE ARRIVED AND AT THAT
6 POINT, YOU VOLUNTEERED TO STASH THE GUN FOR THESE GUYS,
7 ISN'T THAT RIGHT?

8 A NO, MA'AM.

9 Q YOU DIDN'T TELL THEM THAT I'LL TAKE THE GUNS AND GET
10 RID OF THEM?

11 A NO, MA'AM.

12 Q AT THAT POINT, YOUR GIRLFRIEND COMES IN. SHE USED
13 HER OWN KEY, ISN'T THAT RIGHT?

14 A YES, SHE USED HER OWN KEY.

15 Q OKAY.

16 AND YOU TOLD YOUR GIRLFRIEND TO COME ON IN AND
17 SIT DOWN?

18 A WELL, AFTER SHE WALKED IN THE DOOR, I JUST TOLD HER
19 TO SIT DOWN BECAUSE---

20 Q SIT DOWN---

21 A ---SHE WAS ACTING NERVOUS.

22 Q SIT DOWN. DIDN'T YOU TELL HER EVERYTHING IS COOL,
23 JUST SIT DOWN?

24 A I DIDN'T SAY EVERYTHING WAS COOL. I JUST SAID HAVE A
25 SIT, THEY WERE ROBBING US.

1 Q OKAY.

2 SO YOU SAY YOU TOLD YOUR GIRLFRIEND YOU WERE
3 BEING ROBBED? DO YOU KNOW WHY SHE DIDN'T MENTION TO THE
4 POLICE THAT YOU TOLD HER YOU WERE BEING ROBBED?

5 A NO.

6 Q DO YOU KNOW WHY SHE DIDN'T MENTION ANYTHING TO THE
7 POLICE ANYTHING ABOUT A ROBBERY?

8 A NO, MA'AM.

9 Q NO ONE ACTUALLY DURING THIS TIME THREATENED YOUR
10 GIRLFRIEND, DID THEY, MR. DORN?

11 A NOT THAT I REMEMBER.

12 Q NOBODY POINTS A GUN AT HER, DO THEY, MR. DORN?

13 A NOT THAT I REMEMBER.

14 Q IN FACT, THE COPS COME AND KNOCK ON THE DOOR, ISN'T
15 THAT RIGHT, WHILE SHE'S IN THERE?

16 A YES.

17 Q AND SHE ACTUALLY GETS UP AND WALKS TO THE DOOR, ISN'T
18 THAT RIGHT?

19 A YES, MA'AM.

20 Q NOBODY STOPS HER, DO THEY?

21 A NO.

22 Q SHE JUST WALKS RIGHT OUT THE DOOR, ISN'T THAT RIGHT?

23 A YES, MA'AM.

24 Q OKAY.

25 AND YOU END UP IN THE BACK BEDROOM WITH THE GUY

- 1 IN THE GRAY SWEATSHIRT, IS THAT RIGHT?
- 2 A YES.
- 3 Q YOU DON'T KNOW WHERE THE GUY IN THE BURGUNDY IS?
- 4 A WELL, I CAN -- I CAN HEAR HIM WHEN HE OPENED THE
- 5 OTHER -- I COULD HEAR HIM WALKING AROUND IN THE OTHER
- 6 CLOSET.
- 7 Q SO YOU ASSUME HE WAS IN THE CLOSET?
- 8 A YES.
- 9 Q BUT YOU DIDN'T SEE HIM GO IN THE CLOSET?
- 10 A NO.
- 11 Q HOW DID YOU FIND OUT LATER THAT HE WAS IN THE CLOSET?
- 12 A BECAUSE WHEN I WALKED OUT, I DIDN'T SEE HIM.
- 13 Q SO YOU ASSUMED HE HAD TO BE IN THERE?
- 14 A YES, MA'AM.
- 15 Q SO YOU WERE IN THE BACK BEDROOM WITH THE GUY IN THE
- 16 GRAY HOOD?
- 17 A YES, MA'AM.
- 18 Q HE HAS A GUN?
- 19 A YES.
- 20 Q AND AT THAT POINT, DON'T YOU TELL HIM I'LL HIDE THE
- 21 GUN FOR HIM AGAIN?
- 22 A NO.
- 23 Q HE HANDS YOU HIS GUN?
- 24 A YES, SIR.
- 25 Q IT'S A -- IT'S THIS BLACK GUN, ISN'T THAT RIGHT?

1 A YES, MA'AM.

2 Q THIS BLACK GUN RIGHT HERE (INDICATES). AND I ASSUME
3 THAT YOU KNEW IT WAS LOADED, AM I RIGHT?

4 A I ASSUMED IT WAS LOADED.

5 Q BECAUSE YOU IDENTIFIED A CLIP JUST A FEW MINUTES AGO,
6 RIGHT?

7 A YES.

8 Q SO HE HANDS YOU A LOADED NINE MILLIMETER, ISN'T THAT
9 RIGHT?

10 A YES.

11 Q IN THE BACK ROOM?

12 A YES.

13 Q AND YOU PROCEEDED TO PUT THE GUN ON A DRESSER?

14 A YES, MA'AM.

15 Q YOU LAID IT DOWN RIGHT IN FRONT OF HIM?

16 A WELL, HE TURNED -- HE, THE GUY IN THE CLOSET, OR, I
17 THINK, HE ATTEMPTED TO HIDE UNDER THE BED. I DON'T KNOW.

18 Q BUT HE'S IN THE ROOM WITH YOU?

19 A YES.

20 Q OKAY.

21 SO YOU GOT THE GUN AND YOU SIMPLY LAY IT ON THE
22 DRESSER?

23 A YES, MA'AM.

24 Q YOU PUT IT DOWN. SO I GUESS, MR. DORN, WHAT YOU'RE
25 ASKING US TO BELIEVE IS THAT YOU'RE BEING ROBBED AND HELD

1 AGAINST YOUR WILL, ALL RIGHT. AND SOMEBODY HANDS YOU A
2 LOADED NINE MILLIMETER OR HANDGUN, IS THAT RIGHT?

3 A UH-HUH.

4 Q AND YOU PUT IT DOWN ON THE DRESSER WHERE THIS SCARY
5 HUMAN BEING IS, ISN'T THAT RIGHT, AND PROCEEDED JUST TO
6 WALK OUT OF THE ROOM, AM I RIGHT?

7 A YES.

8 Q SO YOU ARE SCARED TO DEATH BECAUSE YOU ARE BEING
9 ROBBED, RIGHT, BY PEOPLE YOU DON'T KNOW, RIGHT?

10 A (WHEREUPON, THE WITNESS NODS IN THE AFFIRMATIVE AT
11 THIS TIME.)

12 Q YET, SOMEBODY HANDS YOU A LOADED GUN AND YOU JUST PUT
13 IT RIGHT BACK DOWN ON THE DRESSER WHERE THAT PERSON IS IN
14 THE ROOM, IS THAT RIGHT?

15 A YES.

16 Q YOU DIDN'T THINK TO CARRY THAT GUN WITH YOU AS YOU
17 WALKED TO THE DOOR?

18 A NO.

19 Q JUST FOR YOUR SAFETY REASONS?

20 A NO.

21 Q YOU DIDN'T FEAR FOR YOUR SAFETY, DID YOU, MR. DORN?

22 A MY ONLY CONCERN WAS TO GET OUT OF THE APARTMENT.

23 Q BUT YOU WEREN'T SCARED ENOUGH TO CARRY THAT GUN WITH
24 YOU, WERE YOU?

25 A I WASN'T GOING TO CARRY A GUN OUTSIDE THE APARTMENT

1 WHEN THERE ARE POLICE OUTSIDE ANYWAY.

2 Q THEY ARE THERE TO HELP YOU, AREN'T THEY, MR. DORN?

3 A BUT THEY DIDN'T KNOW WHO WAS WHO.

4 Q YOU COULD HAVE EXPLAINED THAT, COULDN'T YOU?

5 A I COULDN'T, I WAS HANDCUFFED. I DIDN'T EVEN GET A
6 CHANCE TO EXPLAIN THAT UNTIL LATER. SO I WASN'T GOING TO
7 TAKE THAT RISK.

8 Q BUT YOUR GIRLFRIEND HAD JUST WALKED OUT THE DOOR, MR.
9 DORN?

10 A WELL, I DIDN'T KNOW -- I DIDN'T HAVE ANY IDEA WHAT
11 THEY WERE DOING OUTSIDE.

12 Q YOU WERE AS SCARED OF THE POLICE AS MUCH AS YOU WERE
13 THE PEOPLE INSIDE, WEREN'T YOU?

14 A PROBABLY AT THAT POINT, YEAH.

15 Q THAT'S RIGHT, YOU PROBABLY WERE.

16 AND YOU DID THIS -- WHEN YOU WALKED OUT, YOU WERE
17 SUPPOSED TO TELL THE POLICE EVERYTHING WAS OKAY, WEREN'T
18 YOU?

19 A ACCORDING TO WHAT?

20 Q THAT WAS WHAT YOU SAID YOU WERE GOING TO DO TO THE
21 PEOPLE WHO WERE INSIDE THE HOUSE?

22 A WELL, YEAH. I PRETTY MUCH TOLD THEM THAT JUST TO TRY
23 TO KEEP THE WHOLE SITUATION CALM.

24 Q WELL, ACTUALLY, EVERYTHING WAS OKAY, WASN'T IT, MR.
25 DORN?

- 1 A NO.
- 2 Q YOU WEREN'T VERY SCARED, WERE YOU?
- 3 A YES.
- 4 Q IN FACT, WHEN YOU GOT OUTSIDE, DIDN'T YOU ASK THE
- 5 POLICE WHAT'S GOING ON?
- 6 A NO, MA'AM.
- 7 Q DIDN'T YOU SAY -- DIDN'T YOU TELL THE POLICE THAT YOU
- 8 WERE NOT BEING ROBBED---
- 9 A NO, I DIDN'T---
- 10 Q ---AT FIRST?
- 11 A NO, I DIDN'T.
- 12 Q MR. DORN, SINCE THIS INCIDENT, HAVEN'T YOU TOLD OTHER
- 13 PEOPLE THAT THE COPS BLEW THIS OUT OF PROPORTION?
- 14 A EXCUSE ME?
- 15 Q SINCE THIS INCIDENT HAPPENED, HAVEN'T YOU TOLD OTHER
- 16 PEOPLE THAT THE COPS HAVE BLOWN THIS OUT OF PROPORTION?
- 17 A NO, MA'AM.
- 18 Q DIDN'T YOU TELL SOME PEOPLE THAT THE COPS GOT IT
- 19 WRONG?
- 20 A WHO ARE SOME PEOPLE?
- 21 Q I'M ASKING YOU. DIDN'T YOU TELL -- HAVE YOU TOLD
- 22 ANYBODY THAT THE COPS GOT THIS WRONG?
- 23 A NO, MA'AM.
- 24 Q LATER THAT EVENING, YOU FIND ANOTHER GUN IN YOUR
- 25 CLOSET, IS THAT RIGHT?

- 1 A YES, MA'AM.
- 2 Q THIS INCIDENT INITIALLY OCCURRED AT LIKE NINE IN THE
- 3 MORNING?
- 4 A YES, MA'AM.
- 5 Q OKAY.
- 6 FIVE O'CLOCK THAT AFTERNOON, YOU DISCOVER A GUN
- 7 IN YOUR CLOSET?
- 8 A I DON'T -- I CAN'T RECALL WHAT TIME.
- 9 Q WHY WERE YOU SEARCHING FOR THAT GUN?
- 10 A EXCUSE ME?
- 11 Q WHY WERE YOU SEARCHING THE CLOSET?
- 12 A WHEN I WAS AT HEADQUARTERS, I CAN'T REMEMBER IF I
- 13 HEARD IT FROM MR. SMITH OR WHOEVER, THAT THEY ONLY
- 14 RECOVERED ONE GUN.
- 15 Q AND YOU HAD TOLD THE POLICE THERE WERE TWO?
- 16 A WELL, I KNEW IT WAS TWO.
- 17 Q YOU WERE THE ONLY ONE WHO TOLD THE POLICE THERE WERE
- 18 TWO GUNS?
- 19 A MAYBE.
- 20 Q THEY HAD SEARCHED THE CLOSET, RIGHT?
- 21 A I'M NOT SURE.
- 22 Q THEY NEVER FOUND ANOTHER GUN?
- 23 A NO.
- 24 Q AND THEY TOLD YOU THAT?
- 25 A YES.

1 Q SO YOU TOOK IT UPON YOURSELF TO GO BACK HOME AND TO
2 SEARCH YOURSELF FOR THE OTHER GUN?

3 A YES.

4 Q OKAY.

5 BEG THE COURT'S INDULGENCE.

6 (WHEREUPON, MS. DUKE-MIMS CONFERS
7 WITH THE DEFENDANT AT THIS TIME.)

8 MS. DUKE-MIMS: THANK YOU, MR. DORN. I HAVE NO
9 FURTHER QUESTIONS.

10 THE COURT: REDIRECT.

11 MS. PELLIZZARI: THANK YOU, YOUR HONOR.

12 REDIRECT EXAMINATION

13 BY MS. PELLIZZARI:

14 Q VAN, MS. MIMS ASKED YOU SEVERAL QUESTIONS ABOUT YOUR
15 STATEMENT. I'LL GIVE YOU AN OPPORTUNITY TO LOOK OVER YOUR
16 STATEMENT AND I THINK I'VE HIGHLIGHTED AND UNDERLINED SOME
17 OF THE PARTS THAT I WOULD LIKE YOU TO REFER TO. I WOULD
18 LIKE YOU TO READ THAT STATEMENT BEGINNING WITH THE GUY FOR
19 THE JURY, PLEASE?

20 A THE GUY WITH THE BURGUNDY HOODIE HAD LIGHT SKIN AND A
21 GRAY PISTOL. KEEP ON?

22 Q YES, SIR, THE NEXT SENTENCE?

23 A THE OTHER GUY IN THE GRAY HOODIE WAS DARKER SKIN AND
24 HE HAD A BLACK GUN. BOTH PISTOLS LOOKED LIKE AUTOMATIC.

25 Q SO RIGHT FROM THE VERY START, FROM DECEMBER 14TH OF

1 1999, IT'S ALWAYS BEEN YOUR STATEMENT THAT THERE WERE TWO
2 GUNS INVOLVED?

3 A YES, MA'AM.

4 Q WHAT YOU REFER TO AS A GRAY PISTOL AND A BLACK GUN?

5 A YES, MA'AM.

6 Q AND BOTH LOOKED LIKE AUTOMATICS TO YOU?

7 A YES, MA'AM.

8 Q BOTH THE GUY IN THE BURGUNDY HAD A GUN?

9 A YES, MA'AM.

10 Q AND THE GUY IN THE GRAY HAD A GUN?

11 A YES, MA'AM.

12 Q AT ANY TIME, DID THE GUY IN THE BURGUNDY HAVE HIS GUN
13 TO YOU?

14 A I THINK ONLY WHEN WE WERE IN THE PARKING LOT OUTSIDE.

15 Q WHAT WAS THE GUY IN THE GRAY -- IN THE BURGUNDY
16 SWEATSHIRT DOING WHILE YOU WERE IN YOUR APARTMENT?

17 A HE WAS PRETTY MUCH RANSACKING, YOU KNOW, JUST GOING
18 THROUGH ALL MY THINGS.

19 Q BUT EARLIER ON IN THE PARKING LOT, HE HAD HIS GUN TO
20 YOU?

21 A YES, MA'AM.

22 Q AND, IN FACT, IN YOUR STATEMENT, DO YOU NOT INDICATE
23 THAT THEY HAD THEIR GUNS ON YOU IN THE PARKING LOT?

24 A YES, MA'AM.

25 Q AND LET ME ASK YOU TO READ THIS SENTENCE RIGHT HERE

1 THAT'S STARRED AND UNDERLINED?

2 A THEY TOLD ME TO GO TO MY APARTMENT WHILE THEY HAD
3 THEIR PISTOLS ON ME THE WHOLE TIME.

4 Q SO DID YOU VOLUNTEER TO GO TO YOUR APARTMENT, TO
5 BRING THEM BACK TO HAVE A DRINK OR TO HAVE A SNACK?

6 A NO, MA'AM.

7 Q OKAY.

8 WHAT WAS THE PURPOSE OF YOUR GOING BACK TO YOUR
9 APARTMENT?

10 A THEY FORCED ME.

11 Q THEY FORCED YOU BACK INTO YOUR APARTMENT?

12 A YES, MA'AM.

13 Q OKAY.

14 AT GUNPOINT?

15 A YES,, MA'AM.

16 Q AND WERE THEY PHYSICALLY TOUCHING YOU AS YOU WERE
17 WALKING BACK INTO YOUR APARTMENT?

18 A AS WE WALKED DOWN THE SIDEWALK, YES, MA'AM.

19 Q WHAT WERE THEY DOING TO YOU?

20 A LIKE HOLDING, RIGHT ON MY SLEEVES, LIKE RIGHT BY MY
21 ELBOWS.

22 Q WAS THERE ONE ON EACH SIDE OF YOU?

23 A YES, MA'AM.

24 Q OKAY.

25 AND BOTH OF THEM HAD YOU BY THE ARM?

- 1 A YES, MA'AM.
- 2 Q ESCORTING YOU BACK TO YOUR APARTMENT?
- 3 A YES, MA'AM.
- 4 Q WAS IT YOUR IDEA TO GO BACK INTO YOUR APARTMENT?
- 5 A NO, MA'AM.
- 6 Q AND LET ME ASK YOU TO READ ALSO THIS STATEMENT RIGHT
- 7 HERE (INDICATES)?
- 8 A WHICH ONE?
- 9 Q ABOUT THE CAT TEAM. IT'S RIGHT HERE (INDICATES).
- 10 A AFTER THE DUDE IN THE GRAY WENT TO THE WINDOW, HE
- 11 TOLD THE OTHER DUDE THAT THE CAT TEAM WAS IN THE PARKING
- 12 LOT.
- 13 Q SO IT'S THE TWO OF THEM DISCUSSING THE CAT TEAM IN
- 14 THE PARKING LOT?
- 15 A YES, MA'AM.
- 16 Q AND THE CAT TEAM IS PART OF THE SHERIFF'S DEPARTMENT?
- 17 A I WOULD GUESS.
- 18 Q VAN, YOU HAVE HAD AN OPPORTUNITY ON DECEMBER 14TH TO
- 19 OBSERVE BOTH THE GUY IN THE GRAY AND THE GUY IN THE
- 20 BURGUNDY SWEATSHIRT, RIGHT?
- 21 A YES, MA'AM.
- 22 Q HAD AN OPPORTUNITY TO OBSERVE THEIR ACTIONS?
- 23 A YES, MA'AM.
- 24 Q WHO WAS THE LEADER OF THOSE TWO IN YOUR OPINION?
- 25 A THE GUY IN THE BURGUNDY.

- 1 Q WAS HE THE GUY DIRECTING THE OTHER GUY?
- 2 A PRETTY MUCH.
- 3 Q AND THEY HAD A LAUNDRY BASKET FULL OF ITEMS THAT THEY
- 4 WERE GOING TO TAKE FROM YOU, IS THAT RIGHT?
- 5 A YES, MA'AM.
- 6 Q SMALLER ITEMS, A SMALLER PORTABLE RADIO?
- 7 A YES, MA'AM.
- 8 Q AND SOME BOOTS AND OTHER ITEMS?
- 9 A YES, MA'AM.
- 10 Q THEY WEREN'T CARRYING OUT BIG HUGE T.V.S OUT OF YOUR
- 11 APARTMENT?
- 12 A NO, MA'AM.
- 13 Q AT ANY POINT, ON DECEMBER 14TH OF 1999, DID YOU THINK
- 14 IT WAS OKAY TO HAVE A GUN PUT IN YOUR BACK?
- 15 A NO, MA'AM.
- 16 Q DID YOU THINK IT WAS OKAY FOR SOMEONE TO SEARCH
- 17 THROUGH YOUR POCKETS AND TAKE YOUR MONEY?
- 18 A NO, MA'AM.
- 19 Q DID YOU THINK IT WAS OKAY FOR SOMEONE TO FORCE YOU
- 20 INTO YOUR APARTMENT?
- 21 A NO, MA'AM.
- 22 Q DID YOU THINK IT WAS OKAY FOR SOMEONE TO HOLD YOU AT
- 23 GUNPOINT IN YOUR APARTMENT?
- 24 A NO, MA'AM.
- 25 Q BEG THE COURT'S INDULGENCE. I DON'T HAVE ANY FURTHER

1 QUESTIONS.

2 THANK YOU, VAN.

3 THE COURT: ANY NEW MATTERS YOU WANT TO GO OVER,
4 COUNSEL?

5 MS. DUKE-MIMS: JUST A COUPLE OF QUESTIONS, YOUR
6 HONOR.

7 RECROSS-EXAMINATION

8 BY MS. DUKE-MIMS:

9 Q MR. DORN, DO YOU OWN ANY CLOTHES?

10 A YES, MA'AM.

11 Q DO YOU OWN SHOES?

12 A YES, MA'AM.

13 Q DO YOU OWN THE LITTLE RADIO WE SHOWED YOU? THE
14 LITTLE STEREO THAT SITS UP IN YOUR HOUSE?

15 A YES, MA'AM.

16 Q AND NONE OF THAT WAS TAKEN OUT OF YOUR APARTMENT OR
17 CHARGED OR PUT NEAR THE DOOR AT YOUR APARTMENT THAT NIGHT?

18 A EXCUSE ME?

19 Q NONE OF THAT WAS SHACKED NEAR THE DOOR OF YOUR
20 APARTMENT, IS THAT RIGHT?

21 A NO, MA'AM.

22 Q AND YOU KNEW WHO THE CAT TEAM WAS FROM BEFORE, DIDN'T
23 YOU, MR. DORN?

24 A MA'AM?

25 Q YOU SAY YOU KNEW WHO THE CAT TEAM WAS, RIGHT? YOU

1 HAD SEEM THEM BEFORE?

2 A I HAVE SEEN THEM, YES.

3 Q I HAVE NO FURTHER QUESTIONS, YOUR HONOR.

4 MS. PELLIZZARI: NO, SIR, YOUR HONOR.

5 THE COURT: ALL RIGHT.

6 YOU CAN STEP DOWN.

7 (WHEREUPON, THE WITNESS WAS
8 EXCUSED AT THIS TIME).

9 MR PASCOE: THE STATES KETRA HEARON.

10 KETRA HEARON,

11 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:

12 THE CLERK: PLEASE HAVE A SEAT HERE AND STATE
13 YOUR FULL NAME FOR THE RECORD.

14 THE WITNESS: MY FIRST NAME IS KETRA; LAST NAME
15 HEARON.

16 DIRECT EXAMINATION

17 BY MR. PASCOE:

18 Q GOOD MORNING, KETRA.

19 A GOOD MORNING.

20 Q AND DO YOU HAVE -- AND KETRA, DO YOU LIVE HERE IN THE
21 COLUMBIA AREA?

22 A YES, SIR.

23 Q HOW LONG HAVE YOU LIVED IN SOUTH CAROLINA.

24 A ALL MY LIFE.

25 Q HOW OLD ARE YOU?

1 A TWENTY-SIX.

2 Q OKAY.

3 AND DO YOU WORK?

4 A YES, SIR.

5 Q AND WHAT KIND OF WORK DO YOU DO, KETRA.

6 A I'M A STUDENT NURSE TECH AT BAPTIST MEDICAL CENTER.

7 Q HOW LONG HAVE YOU BEEN A STUDENT NURSE TECHNICIAN?

8 A ABOUT FOUR YEARS.

9 Q OKAY.

10 DO YOU ALSO GO TO SCHOOL?

11 A YES, SIR.

12 Q AND WHERE DO YOU GO TO SCHOOL?

13 A AT MIDLANDS TECH, AIRPORT CAMPUS.

14 Q AND WHAT KIND OF CLASSES DO YOU TAKE AT MIDLANDS
15 TECH?

16 A NURSING CLASSES. I JUST STARTED MICROBIOLOGY AND
17 ANATOMY.

18 Q AND IN WHAT FIELD OF NURSING?

19 A GET MY ASSOCIATE'S DEGREE.

20 Q OKAY.

21 AND WHAT -- IS THERE A SPECIFIC FIELD OF NURSING
22 YOU'RE WORKING IN NOW?

23 A WELL, I WORK ON THE HEART FLOOR.

24 Q AND ARE YOU GOING TO GRADUATE THIS YEAR AND GET YOUR
25 NURSING DEGREE?

1 A HOPEFULLY.

2 Q HOPEFULLY?

3 A UH-HUH.

4 Q AND, KETRA, DO YOU LIVE WITH VAN DORN WHO JUST
5 TESTIFIED?

6 A YES, SIR.

7 Q HOW LONG HAVE YOU GUYS BEEN LIVING TOGETHER?

8 A ABOUT FOUR AND A HALF YEARS.

9 Q OKAY.

10 ABOUT FOUR AND A HALF YEARS. AND WERE -- AND,
11 OBVIOUSLY, YOU GUYS WERE LIVING TOGETHER BACK ON DECEMBER
12 14, 1999?

13 A YES, SIR.

14 Q AND, APPROXIMATELY, HOW LONG -- WHERE WERE YOU LIVING
15 AT THAT TIME?

16 A TRENTON COURT APARTMENTS.

17 Q OKAY.

18 APARTMENT ?

19 A YES, SIR.

20 Q AND, APPROXIMATELY, HOW LONG HAD YOU AND VAN BEEN
21 LIVING THERE AT THAT TIME?

22 A UH -- ABOUT THREE YEARS.

23 Q OKAY.

24 AND BACK IN DECEMBER OF 1999, BEFORE THIS
25 INCIDENT, DID YOU KNOW THE DEFENDANT, DEMARCO JOHNSON?

1 A NO, SIR.

2 Q DID YOU KNOW CYCRUS TUCKER?

3 A NO, SIR.

4 Q DID YOU KNOW ANYBODY BY THE NAME OF TARREL LIDE?

5 A NO, SIR.

6 Q HAD YOU EVER INVITED ANYBODY NAME DEMARCO JOHNSON OR

7 CYCRUS TUCKER OR TARREL LIDE INTO YOUR APARTMENT BEFORE?

8 A NO, SIR.

9 Q HAD YOU EVER SEEN THEM IN YOUR APARTMENT BEFORE?

10 A NO, SIR.

11 Q AND LET ME ASK YOU, SPECIFICALLY, ABOUT THE MORNING

12 OF DECEMBER 14, 1999. WHAT DID YOU DO THAT EARLY MORNING?

13 WHERE DID YOU HAVE TO GO?

14 A I HAD AN 8 O'CLOCK EXAM. I WENT TO TAKE THAT EXAM.

15 Q OKAY.

16 AND SPEAK UP AS LOUD AS YOU CAN BECAUSE THE

17 ACOUSTICS ARE BAD, OKAY?

18 A OKAY.

19 Q NOW, WHERE DID YOU HAVE TO GO TO TAKE THE EXAM AT, AT

20 8 O'CLOCK?

21 A AT AIRPORT CAMPUS, MIDLANDS TECH.

22 Q OKAY.

23 AND DID YOU GO AND TAKE YOUR EXAM?

24 A YES, SIR.

25 Q AND, APPROXIMATELY, HOW LONG DID IT TAKE YOU TO TAKE

1 THAT EXAM?

2 A ABOUT 45 MINUTES.

3 Q OKAY.

4 AND THIS IS AROUND CHRISTMASTIME, ISN'T IT? SO
5 WE ARE TALKING ABOUT---

6 A YES.

7 Q ---THE SEMESTER FINALS?

8 A UH-HUH.

9 Q OKAY. AND AFTER THAT 45 MINUTES AFTER -- SO IT'S
10 ABOUT 8:45, WHAT DID YOU DO AFTER YOU TOOK THAT EXAM?

11 A I LEFT THE CAMPUS TO GO BACK HOME TO STUDY FOR
12 ANOTHER TEST---

13 Q OKAY.

14 A ---THAT WAS AT ELEVEN.

15 Q AND YOU HAD ANOTHER EXAM AT ELEVEN?

16 A YES.

17 Q AND, APPROXIMATELY, HOW LONG DID IT TAKE TO GET BACK
18 TO YOUR APARTMENT?

19 A ABOUT 15 -- 20 MINUTES.

20 Q SO ABOUT WHAT TIME WAS IT DO YOU THINK YOU GOT TO
21 YOUR APARTMENT -- BACK TO YOUR APARTMENT THAT MORNING,
22 APPROXIMATELY?

23 A ABOUT NINE OR A LITTLE AFTER NINE.

24 Q OKAY.

25 AND WERE YOU LOOKING AT YOUR WATCH? ARE YOU

1 ABSOLUTELY SURE IT WAS ABOUT NINE, A LITTLE AFTER NINE, OR
2 YOU JUST DON'T KNOW?

3 A WELL, AFTER I GOT OUT OF THAT CLASS, I LOOKED AT MY
4 WATCH. IT WAS ABOUT TEN MINUTES---

5 Q 8:45 AT THAT TIME?

6 A YES.

7 Q OKAY.

8 NOW -- AND YOU'VE TESTIFIED YOU HAD ANOTHER EXAM
9 AT 11 O'CLOCK. WERE YOU ABLE TO TAKE THAT EXAM?

10 A NO, SIR.

11 Q OKAY.

12 DID YOU NOTICE ANYTHING UNUSUAL WHEN YOU GOT TO
13 THE PARKING LOT SOMETIME AFTER 9 O'CLOCK THAT MORNING?

14 A WELL, WHEN I PULLED INTO THE PARKING LOT, I SAW A LOT
15 OF COPS OUTSIDE AND I NOTICED THE TRUCK WAS STILL PARKED
16 AND I KNOW VAN USUALLY GOES TO THE GYM ABOUT THAT TIME.

17 Q OKAY. YOU NOTICED A LOT OF POLICE OFFICERS OUTSIDE?

18 A YES, SIR.

19 Q AND WAS THAT UNUSUAL? DO YOU ALWAYS COME HOME IN THE
20 MORNING TO A BUNCH OF POLICE OFFICERS OUT IN THE PARKING
21 LOT?

22 A NO, SIR.

23 Q AND YOU TESTIFIED THAT YOU KNEW VAN WAS GOING TO GO
24 TO THE GYM IN THE MORNING AND THE TRUCK WAS THERE. DO YOU
25 RECOGNIZE STATE'S EXHIBIT NUMBER FOUR?

1 A YES, SIR.

2 Q AND WHAT IS THAT?

3 A THAT IS THE TRUCK.

4 Q OKAY.

5 SO WHAT DID YOU DO -- YOU SEE THE POLICE OUTSIDE
6 AND YOU SEE THE TRUCK. WHAT DID YOU DO THEN?

7 A I LOOKED AROUND FOR A MINUTE AND THEN I JUST WALKED
8 UP TO THE APARTMENT AND AS I WAS WALKING TO THE APARTMENT,
9 I SAW THE BLINDS WERE CLOSED AND WE USUALLY HAVE THE BLINDS
10 OPEN IN THE MORNING. SO I FELT KIND OF FUNNY.

11 Q OKAY.

12 AND THEN AFTER SEEING THAT THE BLINDS WERE
13 CLOSED, DO YOU KNOW WHETHER THEY WERE OPEN OR NOT WHEN YOU
14 HAD LEFT THAT MORNING?

15 A YEAH, I OPENED THEM BEFORE I LEFT.

16 Q OKAY.

17 SO WHAT DID YOU DO THEN?

18 A I GOT MY KEY OUT OF MY BAG AND I WAS PUTTING IT IN
19 THE DOOR AND AS I WAS OPENING THE DOOR, SOMEBODY WAS
20 STANDING BEHIND THE DOOR AND THEY OPENED THE DOOR AND TOLD
21 ME TO COME ON IN.

22 Q OKAY.

23 WHAT WAS THE PERSON WEARING THAT WAS STANDING
24 BEHIND THE DOOR?

25 A A BURGUNDY SWEATSHIRT.

1 Q ALL RIGHT.

2 I SHOW YOU STATE'S EXHIBIT NUMBER 16 ALREADY IN
3 EVIDENCE. DO YOU RECOGNIZE THAT?

4 A YES, SIR.

5 Q WHAT DO YOU RECOGNIZE THAT TO BE?

6 A THE SWEATSHIRT THE DEFENDANT WAS WEARING.

7 Q OKAY.

8 AND IS THAT THE PERSON THAT WAS STANDING BEHIND
9 THE DOOR?

10 A YES, SIR.

11 Q AND WHAT DID HE TELL YOU WHEN THE DOOR WAS OPENED?

12 A HE TOLD ME TO COME ON IN.

13 Q DID YOU SEE ANYTHING ELSE ON THAT PERSON?

14 A YEAH, HE HAD A GUN IN HIS HAND.

15 Q LET ME SHOW YOU WHAT HAS BEEN MARKED AS STATE'S
16 EXHIBIT NUMBER TWO. DO YOU RECOGNIZE THAT?

17 A YES, SIR.

18 Q WHAT DO YOU RECOGNIZE THAT TO BE?

19 A THE GUN THE DEFENDANT HAD.

20 Q OKAY.

21 AND THAT'S THE PERSON IN THE BURGUNDY SWEATSHIRT?

22 A YES, SIR.

23 Q NOW, WHAT WAS HE DOING WITH THE GUN?

24 A HE HAD -- I WAS STANDING IN THE DOOR WITH MY BOOK BAG
25 IN MY HAND AND HE WAS LIKE, COME ON IN, COME ON IN. SO I

1 WAS STANDING THERE SHOCKED, JUST STANDING THERE LOOKING.
2 AND SO I LOOKED AT VAN AND I ASKED VAN -- AND I ASKED VAN
3 WHO WERE THE GUYS IN THERE---

4 Q UH-HUH.

5 A ---AND HE WAS LIKE JUST COME ON IN AND SIT DOWN, WE
6 ARE BEING ROBBED.

7 Q OKAY.

8 VAN TOLD YOU THAT?

9 A YEAH.

10 Q AND DID YOU SIT DOWN?

11 A NO.

12 Q OKAY---

13 A I JUST KEPT ON STANDING UP LOOKING, I WAS SCARED.

14 Q WAS THERE EVER A POINT IN TIME WHEN YOU DID SIT DOWN
15 OR---

16 A YEAH. FINALLY, BECAUSE HE -- TARREL, THE GUY IN THE
17 GRAY---

18 Q OKAY---

19 A ---CYCRUS TUCKER---

20 Q OKAY.

21 WHAT HAPPENED? WHAT MADE YOU SIT DOWN?

22 A HE HAD HIS GUN. HE WAS LIKE, SIT DOWN, SIT---

23 MS. SAMPSON: OBJECTION, YOUR HONOR. HEARSAY.

24 THE COURT: ALL RIGHT.

25 MR. PASCOE: YOUR HONOR, NUMBER ONE, IT'S PRESENT

1 SENSE IMPRESSION BECAUSE IT'S DURING THE ROBBERY. IT'S RES
2 GESTAE BECAUSE IT'S DURING A ROBBERY AND IT'S STATEMENTS BY
3 THE CO-DEFENDANT, CONSPIRATOR, DURING THE ROBBERY. SO, I
4 THINK, THERE ARE REALLY THREE EXCEPTIONS TO WHY.

5 THE COURT: OKAY.

6 LET'S LET THE JURY STEP OUT JUST A MINUTE.

7 LADIES AND GENTLEMEN, LET ME ASK YOU TO STEP TO
8 THE JURY ROOM. BE SURE NOT TO TALK ABOUT THE CASE.

9 (JURY OUT.)

10 THE COURT: COUNSEL, CERTAINLY, I DON'T LIKE TO
11 SEND THE JURY OUT TOO MUCH, BUT I CERTAINLY DIDN'T WANT
12 THEM TO HEAR US HASH THIS OUT.

13 MR. PASCOE: YES, SIR.

14 THE COURT: GO AHEAD, MR. PASCOE.

15 MR. PASCOE: WELL, FIRST OFF, YOUR HONOR, I'D SAY
16 IT FALLS UNDER THE OLD RES GESTAE. REMEMBER, IF THERE ARE
17 STATEMENTS MADE BY SOMEBODY DURING THE CRIME AND THIS IS
18 DURING THE CRIME, DURING THE ROBBERY AND THE BURGLARY, IT
19 WOULD COME IN.

20 FURTHERMORE, IT'S PRESENT SENSE IMPRESSION
21 BECAUSE THEY ARE STATEMENTS MADE BY THE CO-DEFENDANT DURING
22 THE CRIME.

23 AND, FINALLY, REALLY, THEY ARE STATEMENTS MADE BY
24 A CO-CONSPIRATOR DURING THE ARMED ROBBERY TO COMMIT -- IN
25 FURTHERANCE OF THE CRIME COMMITTING IT AND IN GETTING AWAY,

1 HE MADE CERTAIN STATEMENTS.

2 AND THESE ARE THE ONLY STATEMENTS I'M GOING TO
3 TRY TO GET IN. THERE ARE NO STATEMENTS WHERE I'M GOING TO
4 GET IN CYCRUS TUCKER SAYS THAT DEMARCO JOHNSON IS THE ONLY
5 PERSON COMMITTING THIS ARMED ROBBERY OR EVEN MENTIONS
6 JOHNSON'S NAME.

7 THE COURT: I UNDERSTAND.

8 COUNSEL.

9 MS. SAMPSON: YOUR HONOR, FIRST OF ALL, I
10 UNDERSTAND THAT THEY ARE CO-CONSPIRATORS, BUT THEY ARE NOT
11 BEING TRIED AT THE SAME TIME. IF THEY WERE BOTH BEING
12 TRIED AT THE SOMETIME, WE MIGHT HAVE A DIFFERENT ISSUE,
13 BUT THEY ARE NOT. THEY CAN CALL CYCRUS TUCKER IF THEY WANT
14 TO, TO FIND OUT WHAT HE DID OR DID NOT SAY TO THIS
15 PARTICULAR WITNESS.

16 FURTHERMORE, YOUR HONOR, AS FAR AS RES GESTAE OR
17 PRESENT IMPRESSION, SHE CAN GIVE HER IMPRESSION WHAT WAS
18 GOING ON WITHOUT SPECIFICALLY STATING WHAT THE CO-DEFENDANT
19 SAID.

20 THE COURT: OKAY..

21 THE STATEMENT IS ADMISSIBLE PARTICULARLY UNDER
22 RES GESTAE---

23 MR. PASCOE: THANK YOU---

24 THE COURT: ---MORE SO THAN THE OTHERS.

25 LET'S BRING THE JURY BACK IN.

1 (JURY IN.)

2 THE BAILIFF: THE JURY IS PRESENT, YOUR HONOR.

3 THE COURT: ALL RIGHT.

4 ALL PARTIES AND ATTORNEYS ARE IN THE COURTROOM
5 AND ALL JURORS HAVE RETURNED.

6 CONTINUE, MR. PASCOE.

7 MR. PASCOE: THANK YOU, YOUR HONOR.

8 CONTINUED DIRECT EXAMINATION

9 BY MR. PASCOE:

10 Q KETRA, YOU JUST TESTIFIED HOW THE PERSON IN THE
11 BURGUNDY SHIRT HAD YOU COME IN HOLDING STATE'S EXHIBIT TWO,
12 THE GUN---

13 A YES, SIR.

14 Q ---AND WHAT MADE YOU SIT DOWN? WHAT WERE YOU
15 TESTIFYING ABOUT?

16 A I WAS JUST -- I KEPT ON PASSING BACK AND FORTH. I
17 WAS SCARED TO SIT DOWN AND THE GUY IN THE GRAY SWEATSHIRT
18 WAS LIKE, JUST SIT DOWN, JUST SIT DOWN. WE ARE NOT GOING
19 TO DO ANYTHING TO YOU. I'M GOING TO LET YOU GO AS SOON AS
20 THE COPS LEAVE.

21 Q OKAY.

22 AND LET ME SHOW YOU WHAT HAS BEEN MARKED AS
23 STATE'S EXHIBIT NUMBER 17. DO YOU RECOGNIZE THAT?

24 A YES, SIR.

25 Q WHAT DO YOU RECOGNIZE THAT TO BE?

1 A THE OTHER SWEATSHIRT THE OTHER GUY HAD ON.

2 Q OKAY.

3 AND DID HE HAVE ANYTHING IN HIS HANDS ALSO?

4 A YES, SIR.

5 Q AND WHAT DID HE HAVE?

6 A HE HAD A BLACK GUN.

7 Q LET ME SHOW YOU WHAT HAS BEEN MARKED AS STATE'S
8 EXHIBIT NUMBER ONE, DO YOU RECOGNIZE THAT?

9 A YES, SIR.

10 Q WHAT DO YOU RECOGNIZE THAT TO BE?

11 A THE OTHER GUN, GUY IN THE GRAY SWEATSHIRT HAD.

12 Q OKAY.

13 AND WHAT WAS HE DOING WITH HIS GUN?

14 A UH -- WELL, HE WAS GOING BACK AND FORTH FROM THE
15 WINDOW BACK TO THE COUCH AND HE HAD THE GUN OUT IN HIS
16 HAND.

17 Q AND DID YOU GO AND SIT DOWN NEXT TO VAN?

18 A FINALLY.

19 Q OKAY.

20 AND WERE YOU FREE TO LEAVE YOUR APARTMENT?

21 A NO, SIR.

22 Q WHY NOT?

23 A DEMARCO TOLD ME -- WELL, AFTER I WENT -- WHEN I GOT
24 INTO THE APARTMENT, TO COME ON IN AND SIT DOWN.

25 Q OKAY.

1 AND WHAT WAS HE HOLDING WHEN HE TOLD YOU TO DO
2 THAT?

3 A HE HAD THE SILVER PISTOL.

4 Q OKAY.

5 NOW, WAS THERE -- NOW, HOW MANY PEOPLE -- OTHER
6 THAN YOU AND VAN, HOW MANY PEOPLE ARE IN THE APARTMENT?

7 A FOUR.

8 Q OKAY.

9 A ALTOGETHER.

10 Q THAT'S COUNTING YOU AND VAN?

11 A YES, SIR.

12 Q THE OTHER TWO BEING THE BURGUNDY SWEATSHIRT DEFENDANT
13 AND THE GRAY?

14 A YES, SIR.

15 Q WAS THERE ANY ONE OF THEM THAT BARKED OUT THE MOST
16 ORDERS?

17 A THE GUY IN THE GRAY SWEATSHIRT -- I MEAN, THE
18 BURGUNDY SWEATSHIRT.

19 Q OKAY.

20 AND WAS HE TALLER OR SHORTER THAN THE GUY IN THE
21 GRAY---

22 A THE SHORTER.

23 Q AND WAS THERE ANY ONE -- BETWEEN THOSE TWO THAT
24 APPEARED TO BE THE LEADER?

25 A YES, SIR.

1 Q AND WHO WAS THAT?

2 A THE GUY IN THE BURGUNDY SWEATSHIRT.

3 Q AND WAS HE A LITTLE TALLER OR A LITTLE SHORTER?

4 A SHORTER.

5 Q OKAY.

6 LET ME SHOW YOU WHAT HAS BEEN MARKED AS STATE'S
7 EXHIBIT NUMBER NINE. DO YOU RECOGNIZE THESE TWO
8 INDIVIDUALS?

9 A YES, SIR.

10 Q AND THESE ARE THE TWO INDIVIDUALS THAT WERE IN YOUR
11 APARTMENT HOLDING YOU AT GUNPOINT?

12 A YES, SIR.

13 Q OKAY.

14 AND IS ONE SHORTER THAN THE OTHER, APPEAR TO BE
15 AT LEAST?

16 A YES, SIR.

17 Q POINT, IF YOU COULD, TO THE ONE THAT YOU SAID WAS THE
18 LEADER OF THE BUNCH?

19 A THE GUY IN THE WHITE T-SHIRT.

20 Q WEARING THE WHITE T-SHIRT RIGHT THERE (INDICATES)?

21 A (WHEREUPON, THE WITNESS NODS IN THE AFFIRMATIVE AT
22 THIS TIME.)

23 Q AND WHAT COLOR SWEATSHIRT DID THE GUY IN THE WHITE
24 T-SHIRT HAVE?

25 A A BURGUNDY.

1 Q DO YOU EVEN KNOW HOW LONG YOU HAD TO SIT DOWN ON THAT
2 SOFA? WERE YOU TIMING IT?

3 A NO. I WAS SO NERVOUS.

4 Q OKAY.

5 AND WHAT HAPPENED AS YOU WERE SITTING DOWN ON THE
6 SOFA WITH VAN?

7 A AS I SAT DOWN, I HEARD A KNOCK ON THE DOOR.

8 Q OKAY.

9 WERE THE DEFENDANTS DOING ANYTHING PRIOR --
10 BEFORE THAT KNOCK ON THE DOOR, THE TWO MEN IN THERE, WERE
11 THEY DOING ANYTHING?

12 A NO. WE WERE ALL JUST -- THEY WERE JUST LIKE PASSING
13 BACK AND FORTH FROM THE WINDOW TO THE COUCH AND THEN AS WE
14 HEARD A KNOCK ON THE DOOR, THE GUY IN THE BURGUNDY
15 SWEATSHIRT WAS LIKE, DON'T ANSWER THE DOOR.

16 Q OKAY.

17 THAT'S THE GUY IN THE BURGUNDY?

18 A YES, SIR.

19 Q AND WHAT, IF ANYTHING, DID HE HAVE IN HIS HAND WHEN
20 HE TOLD YOU THAT?

21 A HE STILL HAD A GUN IN HIS HAND.

22 Q OKAY.

23 AND AFTER HE TOLD YOU NOT TO ANSWER THE DOOR, DID
24 YOU JUST GO AHEAD AND STAND UP, WALK ON OVER TO THE DOOR,
25 AND OPEN IT?

1 A NO. WE SAT THERE FOR A MINUTE AND THEN I TOLD HIM, I
2 WAS LIKE, I GOT TO ANSWER THE DOOR BECAUSE THEY SAW WHEN I
3 CAME IN FROM THE PARKING LOT. SO IF WE DON'T ANSWER IT,
4 THEY ARE GOING TO KICK THE DOOR IN.

5 Q OKAY.

6 AND WAS THAT TRUE? DID YOU KNOW WHETHER THE
7 POLICE HAD SEEN YOU COME IN OR NOT?

8 A YES, SIR. BECAUSE WHEN -- WELL, WHEN I GOT OUT OF
9 THE CAR, I PARKED LIKE IN THE SECOND PARKING SPACE AND
10 THERE WAS SOME COP CARS LIKE RIGHT BY MY CAR. SO, THEY SAW
11 WHEN I CAME IN.

12 Q ARE YOU ACTUALLY -- DID YOU SEE THEM WATCHING YOU,
13 THOUGH, AS YOU---

14 A NO, I DIDN'T REALLY PAY ATTENTION, BUT I JUST LOOKED
15 FOR A MINUTE TO SEE WHAT WAS GOING ON IN THE PARKING LOT.

16 Q OKAY.

17 AND MY POINT IS, WERE YOU 100 PERCENT SURE THAT
18 SOMEONE HAD SEEN YOU GO IN THERE?

19 A NO, I WASN'T A 100 PERCENT SURE.

20 Q SO WHY DID YOU TELL THE DEFENDANT IN THE BURGUNDY
21 SWEATSHIRT THAT THEN?

22 A I GUESS I WOULD SAY ANYTHING TO GET OUT.

23 Q OKAY.

24 YOU WERE WILLING TO SAY ANYTHING TO GET OUT?

25 A YES, SIR.

1 Q AND AT THAT POINT, DID YOU FINALLY GET PERMISSION TO
2 GET UP AND ANSWER YOUR DOOR IN YOUR APARTMENT?

3 A NO. WELL, THE GUY IN THE GRAY SWEATSHIRT TOOK VAN
4 BACK IN---

5 MS. SAMPSON: AGAIN, YOUR HONOR, OBJECTION TO
6 HEARSAY.

7 MR. PASCOE: IT'S---

8 THE COURT: OKAY. SO NOTED.

9 OVERRULED. GO AHEAD.

10 MR. PASCOE: OKAY.

11 GO AHEAD.

12 THE WITNESS: THE GUY IN THE GRAY SWEATSHIRT TOOK
13 VAN IN THE BACK ROOM AND THE GUY IN THE BURGUNDY SWEATSHIRT
14 TOLD ME TO TELL THE COPS THAT THEY WERE JUST VISITING.

15 Q OKAY.

16 AND WHAT DID YOU DO?

17 A I WAS GOING TO OPEN THE DOOR AND HE WAS WALKING
18 TOWARDS THE REFRIGERATOR TO GET SOMETHING OUT TO DRINK AND
19 I OPENED THE DOOR AND THE COPS ASKED ME, ASKED ME, WAS
20 EVERYTHING ALL RIGHT AND I DIDN'T SAY ANYTHING. I JUST
21 STOOD THERE AND LOOKED.

22 Q OKAY.

23 AND WHAT HAPPENED AS YOU JUST -- WITHOUT -- SINCE
24 YOU DIDN'T ANSWER, DID ANYTHING HAPPEN?

25 A YES, HE ASKED ME TO STEP OUTSIDE.

1 Q OKAY. NOW, LET ME -- LET'S GET ONE THING STRAIGHT.
2 WHEN THE OFFICERS WERE ASKING YOU WHETHER ANYBODY WAS IN
3 THERE, WHAT WAS GOING ON, WAS THE DOOR OPEN AT THAT TIME?

4 A IT WASN'T ALL THE WAY OPEN. IT WAS LIKE CRACKED
5 ENOUGH FOR THEM TO SEE IN.

6 Q COULD HE SEE YOU?

7 A YES, SIR.

8 Q OKAY.

9 COULD HE SEE YOUR DEMEANOR?

10 A YES, SIR.

11 Q DID YOU RESPOND AT ALL?

12 A NO, SIR.

13 Q OKAY.

14 NOW, WHEN HE TOLD YOU -- WHAT DID HE TELL YOU TO
15 DO?

16 A HE ASKED ME TO STEP OUTSIDE.

17 Q AND DID YOU DO THAT?

18 A YES, SIR.

19 Q GLADLY?

20 A YEAH.

21 Q OKAY.

22 AND AS YOU STEPPED OUTSIDE, WHERE DID YOU GO?
23 WHAT DID THEY DO TO YOU?

24 A THEY ASKED ME WERE THE GUYS IN THE APARTMENT AND I
25 SAID, YES. SO THEY TOOK ME AROUND TO THE OFFICE.

1 Q OKAY.

2 A AND THEY ASKED ME WHAT DID VAN HAVE ON AND I TOLD
3 THEM.

4 Q OKAY.

5 AND WHAT DID VAN HAVE ON?

6 A AN ORANGE SWEATSUIT.

7 Q OKAY.

8 DID YOU TELL THEM HOW MANY PEOPLE WERE IN
9 THERE---

10 A YES, SIR.

11 Q ---OTHER THAN VAN? HOW MANY PEOPLE DID YOU TELL THEM
12 WERE IN THERE?

13 A I TOLD THEM IT WAS VAN AND TWO OTHER GUYS AND THEY
14 HAD GUNS.

15 Q AND HOW MANY GUNS DID YOU TELL THEM WERE IN THE
16 APARTMENT?

17 A I TOLD THEM IT WAS TWO.

18 Q AND YOU SAID YOU WENT AROUND TO THE SIDE. WHERE
19 EXACTLY DID THEY TAKE YOU?

20 A THEY TOOK ME AROUND TO THE APARTMENT OFFICE.

21 Q OKAY.

22 AND WHAT HAPPENED WHILE YOU WERE AT THE APARTMENT
23 OFFICE? WHAT DID THEY HAVE YOU DO NEXT?

24 A THEY ASKED ME FOR THE PHONE NUMBER IN THE APARTMENT
25 AND THEY JUST ASKED ME WHAT COLOR WAS VAN WEARING.

1 Q OKAY.

2 YOU TESTIFIED YOU TOLD THEM IT WAS ORANGE?

3 A YES, SIR.

4 Q DID YOU TELL THEM ANY DESCRIPTION OF THE TWO GUNMEN
5 THAT WERE IN YOUR APARTMENT?

6 A I TOLD THEM THAT ONE HAD ON A BURGUNDY SWEATSHIRT AND
7 A GRAY SWEATSHIRT.

8 Q OKAY.

9 AND, OBVIOUSLY, WHEN YOU'RE IN THE OFFICE
10 WAITING, YOU DON'T KNOW WHAT'S GOING ON IN THE APARTMENT AT
11 THAT TIME?

12 A NO, SIR.

13 Q OKAY.

14 NOW, WAS THERE EVER A POINT IN TIME WHEN YOU SAW
15 ANYBODY COMING OUT OF THE APARTMENT OR GOT TO?

16 A NO, NOT UNTIL EVERYTHING WAS OVER.

17 Q OKAY.

18 NOW, WHEN EVERYTHING WAS OVER, DID YOU SEE
19 ANYBODY? DID THE POLICE BRING ANYBODY TO YOU?

20 A WELL, THEY HAD THEM ALL IN DIFFERENT CARS AND THEY
21 ASKED ME WHICH ONE WAS VAN.

22 Q OKAY.

23 AND DID YOU TELL THEM WHICH ONE VAN WAS?

24 A YES, SIR.

25 Q AND EXPLAIN TO THEM, THAT THAT'S MY BOYFRIEND?

1 A YES, SIR.

2 Q NOW, WHERE WERE YOU FORCED TO SIT AT GUNPOINT?

3 A ON THE COUCH.

4 Q AND LET ME SHOW YOU WHAT HAS BEEN MARKED AS STATE'S
5 EXHIBIT NUMBER SIX. IS THAT THE COUCH?

6 A YES, SIR.

7 Q THAT'S ALREADY IN EVIDENCE?

8 A YES, SIR.

9 Q OKAY.

10 AND AT ANY POINT IN TIME, WERE YOU FREE TO JUST
11 WALK AROUND AND DO WHATEVER YOU WANTED?

12 A NO, SIR.

13 Q COULD YOU USE THE TELEPHONE?

14 A NO, SIR.

15 Q JUST WALK AROUND IN THE APARTMENT?

16 A NO, SIR.

17 Q YOU TESTIFIED THE DEFENDANTS WERE GOING TO YOUR
18 REFRIGERATOR. WERE YOU ABLE TO JUST WALK TO YOUR
19 REFRIGERATOR AND GET SOMETHING TO DRINK?

20 A NO, SIR.

21 Q AND WHY IS THAT?

22 A I JUST I WAS SCARED AT GUNPOINT. SCARE TO DO
23 ANYTHING.

24 Q AND WHEN YOU WERE IN YOUR APARTMENT THAT MORNING,
25 KETRA, DID YOU SEE ANY ITEMS THAT APPEARED TO BE OUT OF

1 PLACE ANYWHERE?

2 A YES. I SAW THAT THE LAUNDRY BASKET WITH THIS
3 PORTABLE RADIO IN IT AND A PAIR OF VAN'S BOOTS.

4 Q OKAY.

5 AND YOU TESTIFIED THOSE WERE OUT OF PLACE?

6 A YES, SIR.

7 Q WERE THEY THERE THAT MORNING WHEN YOU LEFT AT SEVEN
8 SOMETHING TO GO TAKE YOUR EXAM?

9 A YES, SIR.

10 Q BUT WERE THEY THERE IN THAT PLACE---

11 A NO, THEY WERE AROUND IN THE BEDROOM.

12 Q OKAY.

13 AND DID YOU EVER HAVE AN OPPORTUNITY LATER ON
14 THAT DAY TO SEE YOUR BEDROOM?

15 A YES, SIR.

16 Q AND WHEN WAS THAT?

17 A UH -- ABOUT 4 O'CLOCK WE GOT BACK FROM THE POLICE
18 STATION.

19 Q OKAY.

20 AND WAS THERE ANYTHING OUT OF PLACE IN THE
21 BEDROOM?

22 A YES, SIR. THEY -- I GUESS THEY WERE SEARCHING THE
23 APARTMENT AND THE STUFF WAS EVERYWHERE.

24 Q JUST A FEW MORE QUESTIONS, OKAY, KETRA.

25 NOW, YOU TESTIFIED THAT YOU WENT TO THE POLICE

1 STATION?

2 A YES, SIR.

3 Q AND DID YOU PROVIDE THEM WITH A STATEMENT?

4 A YES, SIR.

5 Q AND YOU COOPERATED WITH THE POLICE?

6 A YES, SIR.

7 Q WILLINGLY?

8 A YES, SIR.

9 Q AND AFTER YOU GAVE THE POLICE A STATEMENT, DID YOU GO

10 BACK TO YOUR APARTMENT AND DISCOVER ANYTHING?

11 A YEAH. WELL, BEFORE WE LEFT, I CAN'T REMEMBER HIS

12 NAME, BUT HE GAVE US A CARD AND HE WAS TELLING US THAT ONE

13 GUN WAS FOUND AND IF WE FIND ANYTHING TO GIVE HIM A CALL

14 AND I CALLED AND I LEFT A MESSAGE ON THE LITTLE---

15 Q UH-HUH---

16 A ---AND SOMEBODY CALLED US BACK.

17 Q OKAY.

18 NOW, THE PERSON WHO LEFT YOU THE CARD, WAS THAT

19 AN INVESTIGATOR WITH THE POLICE DEPARTMENT?

20 A YES, SIR.

21 Q OKAY.

22 DID YOU GO BACK WITH VAN AND DID Y'ALL LOOK AND

23 LOCATE ANOTHER GUN?

24 A YES, SIR.

25 Q AND WHICH WEAPON DID YOU LOCATE?

1 A THE SILVER GUN.

2 Q OKAY.

3 AND WHERE DID YOU LOCATE THAT SILVER GUN?

4 A BACK IN THE LINEN CLOSET IN THE BACK.

5 Q OKAY.

6 AND AS SOON AS YOU LOCATED THE SILVER GUN, WHAT
7 DID YOU?

8 A VAN LOCATED THE GUN IN THE BACK CLOSET---

9 Q OKAY.

10 A ---AND WE CALLED.

11 Q WHO DID YOU CALL?

12 A WE CALLED THE INVESTIGATOR.

13 Q OKAY.

14 AND DID THEY SEND SOMEONE OUT THAT EVENING TO
15 COME AND GET THE GUN---

16 A YES, SIR.

17 Q ---OUT OF YOUR HOUSE?

18 A YES, SIR.

19 Q ---AND, AGAIN, THAT GUN IS STATE'S EXHIBIT NUMBER
20 TWO?

21 A YES, SIR.

22 Q AND WHO WAS HOLDING STATE'S EXHIBIT NUMBER TWO?

23 A THE DEFENDANT.

24 Q WHAT WAS HE WEARING?

25 A A BURGUNDY SWEATSHIRT.

1 Q OKAY.

2 BEG THE COURT'S INDULGENCE.

3 THE COURT: YES, SIR.

4 MR. PASCOE: NOW, YOU TESTIFIED THAT YOU GAVE A
5 STATEMENT TO THE POLICE -- JUST A COUPLE MORE QUESTIONS,
6 OKAY -- ON THAT DAY. WOULD IT REFRESH YOUR MEMORY IF YOU
7 SAW YOUR STATEMENT?

8 THE WITNESS: YES, SIR.

9 Q OKAY.

10 I SHOW YOU THAT -- DO YOU RECOGNIZE THAT?

11 A YES, SIR.

12 Q WHAT DO YOU RECOGNIZE THAT TO BE?

13 A WELL, I GAVE AN ORAL STATEMENT AND AN INVESTIGATOR
14 WROTE EVERYTHING DOWN I SAID.

15 Q OKAY.

16 AND THEN YOU SIGNED IT?

17 A YES, SIR.

18 Q OKAY.

19 AND IS THERE ANYTHING THAT YOU TOLD THE POLICE
20 THAT DAY ABOUT WHAT THE MEN IN THE APARTMENT HAD SAID TO
21 YOU WHEN YOU CAME IN?

22 A UH---

23 Q DOWN HERE(INDICATES). DOES THAT REFRESH YOUR MEMORY?

24 A YEAH, HE WAS -- YEAH, HE TOLD US THAT---

25 MS. SAMPSON: OBJECTION, YOUR HONOR. HEARSAY. I

1 DON'T KNOW WHO SHE'S TALKING ABOUT SAID WHAT.

2 THE COURT: WELL, WE'LL BRING IT OUT RIGHT NOW.

3 OKAY. SHE NEEDS TO IDENTIFY WHO SAID WHAT.

4 MR. PASCOE: OKAY.

5 AND AS YOU CAME INTO THE APARTMENT, DID ANYONE
6 ELSE ADDRESS YOU AS TO WHY THEY WERE THERE AMONG THE
7 DEFENDANTS? JUST YES OR NO?

8 THE WITNESS: YES, SIR.

9 Q AND WHICH DEFENDANT WAS IT?

10 A THE DEFENDANT.

11 Q OKAY.

12 WHAT -- WHAT WAS HE WEARING?

13 A A BURGUNDY SWEATSHIRT.

14 Q WHAT, IF ANYTHING, DID THEY SAY -- DID HE SAY WHEN HE
15 CAME IN?

16 A THEY WERE TELLING ME JUST TO SIT DOWN.

17 Q OKAY.

18 AND DO YOU RECALL HIM SAYING ANYTHING ELSE OR
19 WHAT YOU TOLD THE POLICE?

20 A WELL THE POLICE WAS WALKING AROUND IN THE PARKING
21 LOT. THEY WERE LOOKING OUT THE BLINDS. THEY WERE LIKE,
22 JUST SIT DOWN, WE ARE NOT GOING TO HURT YOU. WE'RE GOING
23 TO LET YOU LEAVE---

24 MS. SAMPSON: OBJECTION, YOUR HONOR. HEARSAY. I
25 DON'T KNOW WHO SHE IS TALKING ABOUT.

1 MR. PASCOE: AGAIN, IT'S DURING THE CRIME,
2 THOUGH, BUT -- SO IT---

3 THE COURT: BUT SHE NEEDS TO IDENTIFY WHO SHE IS
4 TALKING ABOUT.

5 THE WITNESS: THE GUY IN THE BURGUNDY SWEATSHIRT.

6 MR. PASCOE: OKAY.

7 AND DID YOU TELL THE POLICE -- CAN YOU READ THAT
8 RIGHT THERE (INDICATES)? DOES THAT REFRESH YOUR MEMORY OF
9 ANYTHING ELSE HE SAID TO YOU---

10 A WE'RE NOT GOING TO HURT YOU ALL. WE GOT -- WE GOT
11 THE WRONG PERSON.

12 Q YOU TOLD THE POLICE THAT THAT DAY?

13 A YES, SIR.

14 Q NOW, WERE THESE EVENTS EVEN FRESHER IN YOUR MIND,
15 OBVIOUSLY, THE DAY OF THE CRIME THAN THEY ARE EVEN TODAY?

16 A YES, SIR.

17 Q AND THE PERSON THAT WORE THE BURGUNDY SWEATSHIRT AND
18 HELD STATE'S EXHIBIT NUMBER TWO TO YOU, FORCING YOU ON THE
19 SOFA, IS HE IN THE COURTROOM TODAY?

20 A YES, SIR.

21 Q IF YOU COULD, POINT HIM OUT FOR THE JURY?

22 A HE'S WEARING A BLACK VEST WITH A WHITE SHIRT.

23 Q SITTING IN BETWEEN HIS ATTORNEYS---

24 A YES, SIR.

25 Q ---MR. DEMARCO JOHNSON---

1 A YES, SIR.

2 Q PLEASE ANSWER ANY QUESTIONS MS. SAMPSON HAS FOR YOU.

3 A YES, SIR.

4 THE COURT: CROSS.

5 CROSS-EXAMINATION

6 BY MS. SAMPSON:

7 Q GOOD AFTERNOON, MS. HEARON. MY NAME IS APRIL
8 SAMPSON. I'M GOING TO ASK YOU A COUPLE OF QUESTIONS.

9 A OKAY.

10 Q NOW, YOU DIDN'T ARRIVE UNTIL AFTER YOUR BOYFRIEND WAS
11 IN THE APARTMENT, RIGHT?

12 A YES, MA'AM.

13 Q SO YOU DIDN'T SEE ANYTHING THAT HAPPENED IN THE
14 PARKING LOT?

15 A NO, MA'AM.

16 Q SO YOU DON'T KNOW HOW THEY CAME TO BE IN THE
17 APARTMENT, DO YOU? NOT FROM PERSONAL KNOWLEDGE, YOU DIDN'T
18 SEE THEM GO IN OR ANYTHING LIKE THAT?

19 A NO, MA'AM.

20 Q OKAY.

21 SO YOU DON'T KNOW -- THE ONLY WAY YOU WOULD KNOW
22 WHOSE IDEA IT WAS TO GO TO THE APARTMENT IS FROM WHAT YOUR
23 BOYFRIEND TOLD YOU? YOU WERE NOT THERE?

24 A NO, I WASN'T THERE.

25 Q NOW, WHEN YOU ARRIVED, YOU SAID YOU HAD TO UNLOCK THE

1 DOOR?

2 A YES, MA'AM.

3 Q SO THE DOOR -- IT WAS LOCKED?

4 A YES, MA'AM, AND THE BLINDS WERE CLOSED.

5 Q AND THE BLINDS WERE CLOSED. THERE WAS NO DAMAGE TO
6 THE DOOR?

7 A NO, MA'AM.

8 Q OKAY---

9 A YEAH, THERE WAS SOME DAMAGE, BUT FROM THE PAST.

10 Q FROM THE PAST. I MEAN, SO THERE'S NO FRESH DAMAGE---

11 A NO, MA'AM.

12 Q ---THERE WAS NO PROBLEM OPENING THE DOOR?

13 A NO, MA'AM.

14 Q OKAY.

15 NOW, YOU STATE YOU ENTERED THE DOOR AND AT THAT
16 POINT YOU COULD SEE PEOPLE?

17 A I WAS -- AS I WAS PUTTING -- JIGGLING TO PUT THE KEY
18 IN THE DOOR, HE OPENED THE DOOR AND HE TOLD ME TO COME ON
19 IN.

20 Q OKAY.

21 AT THAT POINT, WAS THERE A GUN POINTED TO YOU?

22 A HE HAD A GUN IN HIS HAND. HE WAS LIKE, COME ON IN,
23 COME ON IN.

24 Q WAS IT POINTED AT YOU?

25 A HE WAS WAVING IT.

1 Q HE WAS WAVING IT?

2 A YES, MA'AM.

3 Q OKAY.

4 AND WHAT COLOR WAS THAT GUN?

5 A IT WAS THE SILVER GUN.

6 Q THE SILVER GUN?

7 A YES, MA'AM.

8 Q OKAY.

9 AND YOU'RE SURE ABOUT THAT?

10 A YES, MA'AM.

11 Q NOW, MS. HEARON, WHEN MR. PASCOE -- EXCUSE ME, WHEN

12 MR. PASCOE ASKED YOU, FIRST, YOU STATED THAT THE DEFENDANT

13 HAD A BLACK GUN?

14 A NO, MA'AM. HE HAD A SILVER GUN.

15 Q SO THAT'S NOT WHAT YOU STATED TO MR. PASCOE WHEN HE

16 FIRST SHOWED IT TO YOU?

17 A THE DEFENDANT HAD A SILVER GUN.

18 Q HE HAD A SILVER GUN?

19 A YES, MA'AM.

20 Q EARLIER YOU TALKED TO MR. PASCOE ABOUT YOUR STATEMENT

21 THAT YOU MADE TO THE POLICE, CORRECT?

22 A YES, MA'AM.

23 Q AND YOU SWORE TO TELL THE TRUTH, THE WHOLE TRUTH AND

24 NOTHING BUT THE TRUTH IN THAT STATEMENT, CORRECT?

25 A YES, MA'AM.

1 Q NOW, I'M GOING TO GIVE YOU YOUR -- I'M GOING TO SHOW
2 YOU -- MAY I APPROACH THE WITNESS, YOUR HONOR.

3 I WANT YOU TO LOOK OVER YOUR STATEMENT FOR ME,
4 OKAY. TAKE AS LONG AS YOU NEED. AND I WANT YOU TO SHOW ME
5 IN THERE WHERE YOU STATE THE DEFENDANT HAD A GRAY GUN.

6 A (WITNESS COMPLIES.) I SAID SOMETHING ABOUT A GUN ON
7 THE LAST PAGE.

8 Q AND ISN'T IT TRUE THAT YOU STATE THE GUN IS BLACK?

9 A I DIDN'T SAY WHICH GUY HAD THE BLACK GUN---

10 Q BUT DID YOU---

11 THE COURT REPORTER: BEG YOUR PARDON---

12 MS. SAMPSON: ---ISN'T IT TRUE THAT YOU STATE THE
13 GUN IS BLACK AND IF YOU -- THE QUESTION IS, CAN YOU
14 DESCRIBE THE GUN? IT WAS BLACK AND IT HAD -- LOOKED LIKE A
15 45. IS THAT NOT YOUR STATEMENT?

16 THE WITNESS: YES, MA'AM.

17 Q OKAY.

18 I WANT YOU TO KEEP LOOKING AT YOUR STATEMENT.
19 CAN YOU TELL ME WHERE YOU STATE THERE ARE TWO GUNS IN YOUR
20 STATEMENT?

21 A I DIDN'T SAY.

22 Q AND, AGAIN, I WANT YOU TO LOOK AT YOUR STATEMENT.
23 CAN YOU SHOW ME WHERE YOU STATE THE DEFENDANT WAVES THE GUN
24 AROUND AT YOU?

25 A IT'S NOT IN HERE.

1 Q OKAY. THANK YOU.

2 NOW, YOU STATE THAT THEY TOLD YOU THAT YOU
3 WEREN'T GOING TO BE HURT---

4 A YES.

5 Q ---TO JUST SIT DOWN? ISN'T IT TRUE THAT YOUR
6 BOYFRIEND ALSO TOLD YOU JUST COME SIT DOWN, THAT EVERYTHING
7 WAS OKAY?

8 A NO, HE DIDN'T SAY THAT.

9 Q HE DIDN'T SAY THAT?

10 A NO, MA'AM.

11 Q AND YOU STATED -- YOU STATED WHEN MR. PASCOE ASKED
12 YOU, THAT YOU TOLD -- THAT YOUR BOYFRIEND TOLD YOU THAT YOU
13 WERE BEING ROBBED?

14 A YES, MA'AM.

15 Q AGAIN, I'M GOING TO HAND YOU YOUR STATEMENT.

16 A (WITNESS COMPLIES.)

17 Q CAN YOU SHOW ME IN YOUR STATEMENT WHERE YOU TELL THE
18 POLICE THAT YOUR BOYFRIEND TOLD YOU, YOU WERE BEING ROBBED?

19 A I DIDN'T SAY.

20 Q COULD YOU REPEAT THAT, PLEASE?

21 A I DIDN'T SAY.

22 Q OKAY. THANK YOU.

23 SO YOU COME IN AND YOU SIT DOWN AFTER SOME
24 DISCUSSION ABOUT WHAT YOU SHOULD DO. YOU STATE THAT THEY
25 WERE WALKING BACK AND FORTH?

- 1 A YES, MA'AM.
- 2 Q OKAY.
- 3 A FROM THE WINDOW TO THE COUCH.
- 4 Q FROM THE WINDOW TO THE COUCH. AND MR. PASCOE ASKED
- 5 YOU ABOUT GETTING UP. DID YOU EVER ASK TO GET UP?
- 6 A NO, I NEVER ASKED TO GET UP.
- 7 Q OKAY.
- 8 DID YOU ASK TO GO TO THE REFRIGERATOR?
- 9 A NO, MA'AM. I WAS SO NERVOUS AND, YOU KNOW, THE GUN
- 10 WAS THERE AND I COULDN'T SIT DOWN.
- 11 Q AND YOU STATED ON -- DURING DIRECT THAT THE DEFENDANT
- 12 WENT TO THE REFRIGERATOR?
- 13 A AFTER THE COPS KNOCKED ON THE DOOR.
- 14 Q AND I'VE GIVEN YOU YOUR STATEMENT. I COULD GIVE IT
- 15 TO YOU AGAIN---
- 16 A YES, MA'AM.
- 17 Q ---DO YOU REMEMBER EVER TELLING THE POLICE THAT?
- 18 A YEAH. I MENTIONED IT TO HIM. HE MIGHT DIDN'T WRITE
- 19 IT DOWN.
- 20 Q IT WASN'T -- IT'S NOT IN YOUR STATEMENT?
- 21 A YES, MA'AM.
- 22 Q IT IS IN YOUR STATEMENT OR IT'S NOT---
- 23 A I MENTIONED IT TO HIM, BUT I GUESS HE DIDN'T WRITE IT
- 24 DOWN.
- 25 Q OKAY.

1 NOW, YOU, ACCORDING TO YOUR STATEMENT, WHEN THE
2 POLICE ARRIVED, MR. JOHNSON GIVES HIS GUN TO MR. TUCKER, IS
3 THAT RIGHT? AND I CAN GIVE YOU YOUR STATEMENT AGAIN. IN
4 FACT, WHY DON'T I GIVE IT TO YOU.

5 MR. PASCOE: YOUR HONOR, I'M NOT OBJECTING, BUT
6 IF MS. SAMPSON WANTS THE JURY TO SEE THE STATEMENT, I'VE
7 GOT NO OBJECTION IF SHE WANTS TO PUT IT IN EVIDENCE INSTEAD
8 OF PICKING IT APART.

9 MS. SAMPSON: I'M NOT EVEN GOING TO ASK HER TO
10 REPEAT ANYTHING THAT'S IN HER STATEMENT. I WANT HER TO
11 TELL ME IF SHE CAN FIND SOMETHING IN HER STATEMENT. I'M
12 NOT ASKING TO PUBLISH IT, YOUR HONOR.

13 THE COURT: I UNDERSTAND.

14 GO AHEAD.

15 MS. SAMPSON: NOW, AND CORRECT ME IF I'M WRONG,
16 ISN'T IT TRUE THAT YOU TOLD THE POLICE THAT THE DEFENDANT
17 GAVE HIS GUN TO MR. TUCKER?

18 THE WITNESS: WELL, I SAW TWO GUNS. I GUESS THEY
19 WERE -- I GUESS THEY WERE NERVOUS WALKING BACK AND FORTH,
20 WHICH ONE WAS GOING TO TAKE VAN IN THE BACK---

21 Q OKAY.

22 WELL, CAN YOU SHOW ME IN YOUR STATEMENT WHERE YOU
23 STATE THERE ARE TWO GUNS IN THAT. MR. TUCKER HAS ONE AND
24 MR. JOHNSON HAS ANOTHER.

25 A I SAID IT WHEN WE WERE DOWN AT THE STATION. I GUESS

1 HE DIDN'T WRITE IT DOWN WHAT I TOLD HIM---

2 Q BUT HE JUST DIDN'T WRITE IT DOWN---

3 A YES, I TOLD HIM.

4 Q OKAY.

5 AND YOU STATED THIS HAPPENS BEFORE YOU GO TO THE

6 DOOR?

7 A YES, MA'AM.

8 Q SO, THEN, MR. TUCKER TAKES YOUR BOYFRIEND TO THE

9 BACK?

10 A YES, MA'AM.

11 Q AND PRESUMABLY TAKES BOTH GUNS WITH HIM?

12 A I REALLY DON'T REMEMBER---

13 Q BUT YOU---

14 A I KNOW THAT MR. JOHNSON WENT -- GOES TOWARDS THE

15 REFRIGERATOR TO GET SOMETHING TO DRINK AND I GOES TOWARDS

16 THE DOOR.

17 Q BUT DIDN'T YOU -- LET ME MAKE SURE I UNDERSTAND. YOU

18 JUST STATED THAT MR. JOHNSON GAVE MR. TUCKER HIS GUN.

19 THAT'S WHAT YOU TOLD THE POLICE THAT THEY DIDN'T WRITE DOWN

20 IN YOUR STATEMENT?

21 A NO. I SAID THEY WERE SCUFFLING BACK AND FORTH ABOUT

22 WHO'S GOING TO TAKE VAN IN THE BACK WITH THE GUN.

23 Q WITH THE GUN---

24 A YES, MA'AM.

25 Q SO NOW THERE'S JUST ONE GUN?

1 A I GUESS THE GUN HE HAD IN HIS HAND AT THE TIME.

2 Q SO HE -- SO THEN YOUR STATEMENT TODAY IS HE NEVER
3 GAVE THE GUN TO MR. JOHNSON -- MR. JOHNSON NEVER GAVE IT TO
4 MR. TUCKER. MR. DEMARCO JOHNSON ALWAYS HAD A GUN?

5 A YES, MA'AM, HE DID.

6 Q SO THEN YOUR STATEMENT THAT YOU GAVE THE POLICE IS
7 INACCURATE?

8 A INACCURATE ON WHAT?

9 Q BECAUSE DIDN'T YOU TELL THEM THAT MR. DEMARCO -- MR.
10 JOHNSON GAVE HIS GUN TO MR. TUCKER AND IT WAS A BLACK GUN?

11 A WHAT WAS THE QUESTION AGAIN?

12 Q MY QUESTION IS DON'T YOU TELL THE POLICE THAT MR.
13 DEMARCO JOHNSON GIVES HIS BLACK GUN TO MR. TUCKER AND THAT
14 MR. TUCKER THEN TAKES YOUR BOYFRIEND TO THE BEDROOM?

15 A YES, MA'AM.

16 Q SO THEN MR. JOHNSON DOES NOT HAVE A GUN---

17 A YES, MA'AM, HE HAS A GUN---

18 Q ---WHEN YOU ANSWER THE DOOR---

19 A ---ON HIM, YES, MA'AM.

20 Q ---HE DOES HAVE A GUN?

21 A YES, MA'AM.

22 Q SO HE DIDN'T GIVE IT TO MR. TUCKER?

23 A HE MIGHT HAVE HAD BOTH, BUT I KNOW THAT HE GAVE HIM
24 THE GUN AND HE TOOK VAN IN THE BACK---

25 Q SO NOW, HE MIGHT HAVE HAD BOTH GUNS?

1 A I CAN'T REMEMBER EVERYTHING THAT HAPPENED. I WAS
2 NERVOUS.

3 Q THAT'S FINE.

4 NOW, YOU STATE THAT YOU WENT TO THE DOOR AND HE'S
5 IN THE KITCHEN?

6 A YES, MA'AM.

7 Q SO HE'S IN THE KITCHEN, PRESUMABLY, WITH EITHER ONE,
8 TWO, OR NO GUNS---

9 A YES, MA'AM.

10 Q ---AND MR. JOHNSON -- MR. TUCKER IS IN THE BEDROOM
11 WITH YOUR BOYFRIEND---

12 A YES, MA'AM.

13 Q ---PRESUMABLY WITH A GUN?

14 A YES, MA'AM.

15 Q AND THERE'S NO ONE WITH YOU AT THE DOOR WITH
16 ANYTHING?

17 A YES, MA'AM.

18 Q OKAY.

19 SO WHEN YOU OPEN THE DOOR, WHY DON'T YOU JUST RUN
20 OUT? THERE'S NOBODY HOLDING A GUN TO YOU?

21 A BECAUSE I WAS NERVOUS AND HE HAD VAN IN THE BACK WITH
22 A GUN. I DIDN'T KNOW WHAT HE WAS GOING TO DO---

23 Q BUT YOU DO LEAVE YOUR BOYFRIEND WITH THEM AT SOME
24 POINT AND GO OUTSIDE?

25 A YES, MA'AM.

1 Q OKAY.

2 AND YOU DON'T IMMEDIATELY TELL THE POLICE THAT
3 YOU ARE BEING ROBBED, DO YOU?

4 A HE ASKED ME WAS EVERYTHING ALL RIGHT AND I JUST STOOD
5 THERE. I COULDN'T SAY ANYTHING.

6 Q AND WHEN YOU GET OUT, YOU DON'T SAY, WE'RE BEING
7 ROBBED, THEY'RE IN THERE ROBBING---

8 A I SAY, THEY HAVE MY BOYFRIEND IN THERE.

9 Q OKAY.

10 AND AT THAT POINT, YOU DIDN'T KNOW IF THEY HAD
11 TAKEN ANYTHING FROM YOUR BOYFRIEND, DID YOU?

12 A WELL, I ASSUMED, AFTER HE TOLD ME WE WERE BEING
13 ROBBED.

14 Q BUT, I MEAN, AT THAT POINT, YOUR BOYFRIEND HADN'T
15 TOLD YOU THEY HAD TAKEN ANYTHING FROM YOU?

16 A NO, MA'AM.

17 Q YOU HADN'T SEEN THEM TAKE NOT ONE SINGLE ITEM?

18 A NO, MA'AM.

19 Q BEG THE COURT'S INDULGENCE.

20 I HAVE NO QUESTIONS -- NO FURTHER QUESTIONS, YOUR
21 HONOR.

22 THE COURT: OKAY.

23 REDIRECT.

24 MR. PASCOE: JUST VERY BRIEFLY, YOUR HONOR.

25 REDIRECT EXAMINATION

1 BY MR. PASCOE:

2 Q KETRA, WAS VAN FREE TO WALK AROUND THE APARTMENT WHEN
3 YOU WERE THERE?

4 A NO, SIR.

5 Q OKAY.

6 WAS THERE ANY POINT IN TIME WHEN YOU HEARD THAT
7 OR FELT THAT MR. JOHNSON, THE DEFENDANT, OR CYCRUS TUCKER
8 HAVE PERMISSION TO BE IN YOUR APARTMENT?

9 A NO, SIR.

10 Q DID THEY HAVE PERMISSION TO BE IN YOUR APARTMENT?

11 A NO, SIR.

12 Q AND -- I MEAN, LET'S JUST COME RIGHT OUT. STOP THE
13 IMPLYING. ARE YOU A DRUG DEALER?

14 A NO, SIR.

15 Q BUT YOU OWN A NICE STEREO SYSTEM, KETRA, OR A NICE
16 STEREO, YOU'RE A DRUG DEALER, AREN'T YOU?

17 A NO, SIR.

18 Q IS THIS YOUR GUN?

19 A NO, SIR.

20 Q IS IT VAN'S GUN?

21 A NO, SIR.

22 Q DO YOU KNOW O'DELL JOHNSON, THE DEFENDANT'S BROTHER?

23 A NO, SIR.

24 MS. SAMPSON: OBJECTION, YOUR HONOR. IT GOES
25 BEYOND THE SCOPE----

1 MR. PASCOE: NO, JUDGE---

2 MS. SAMPSON: ---AND IT'S IRRELEVANT---

3 MR. PASCOE: THEY'RE TRYING TO IMPLY ABOUT WHERE
4 THAT GUN CAME FROM AND I'M JUST GOING TO -- I'M NOT GOING
5 TO GO IN---

6 THE COURT: I UNDERSTAND.

7 HE SIMPLY ASKED HER IF SHE KNEW THE DEFENDANT'S
8 BROTHER. SHE SAYS NO.

9 GO AHEAD.

10 MR. PASCOE: AND DO YOU KNOW -- WITH REGARDS TO
11 THE GUN, DO YOU KNOW A KENJI QUEEN(SIC)?

12 THE WITNESS: NO, SIR.

13 Q MCQUEEN, I'M SORRY. KENJI MCQUEEN?

14 A NO, SIR.

15 Q OKAY.

16 I'M SORRY, KETRA. THAT'S ALL I HAVE, YOUR HONOR.

17 THE COURT: ANYTHING ELSE ON RECROSS?

18 MS. SAMPSON: NO, SIR, YOUR HONOR.

19 THE COURT: ALL RIGHT.

20 YOU CAN STEP DOWN. THANK YOU.

21 (WHEREUPON, THE WITNESS WAS
22 EXCUSED AT THIS TIME.)

23 THE COURT: CALL YOUR NEXT WITNESS.

24 MS. PELLIZZARI: YOUR HONOR, THE STATE CALLS
25 MICHAEL PEARSON.

1 THE COURT: LADIES AND GENTLEMEN OF THE JURY, IT
2 MAY TAKE A MINUTE OR TWO TO GET THE WITNESSES. WE HAVE THE
3 WITNESSES SEQUESTERED, WHICH MEANS THEY ARE IN ANOTHER
4 ROOM. THEY ARE NOT IN HERE SO THEY HAVE TO -- WHEN THEY
5 CALL THEM, SOMEONE HAS TO GO GET THEM. SO THAT'S WHY THE
6 DELAY.

7 MICHAEL PEARSON,
8 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:

9 THE CLERK: PLEASE HAVE A SEAT HERE, SIR, AND
10 STATE YOUR FULL NAME FOR THE RECORD AND SPELL YOUR LAST.

11 THE WITNESS: MICHAEL DURHAM PEARSON,
12 P-E-A-R-S-O-N.

13 DIRECT EXAMINATION
14 BY MS. PELLIZZARI:

15 Q GOOD MORNING, DEPUTY PEARSON. I APOLOGIZE. I KNOW
16 YOU WORKED THE NIGHT SHIFT LAST NIGHT, DIDN'T YOU?

17 A YES.

18 Q WHAT TIME DID YOU GET OFF OF WORK?

19 A SEVEN THIS MORNING.

20 Q I'M SORRY. I'LL TRY TO BE BRIEF.

21 CAN YOU TELL THE JURY, SIR, PLEASE, WHERE YOU ARE
22 CURRENTLY WORKING?

23 A I WORK FOR THE RICHLAND COUNTY SHERIFF'S DEPARTMENT.
24 I'M A LINE DEPUTY. BASICALLY, I'M THE PERSON THAT ANSWERS
25 THE 911 CALLS AND TAKES REPORTS.

1 Q AND HOW LONG HAVE YOU WORKED FOR THE RICHLAND COUNTY
2 SHERIFF'S DEPARTMENT?

3 A SIX YEARS AND EIGHT MONTHS.

4 Q WHAT REGION DO YOU WORK OUT OF?

5 A REGION FOUR, WHICH IS THE BROAD RIVER-ST. ANDREWS
6 AREA.

7 Q AND, ACTUALLY, WHERE IS YOUR REGION FOUR OFFICES NOW?

8 A OUR HEADQUARTERS FOR REGION FOUR IS AT WIDEWATER
9 SQUARE.

10 Q AND IS THAT RIGHT OFF OF BROAD RIVER ROAD?

11 A YES, IT IS.

12 Q IS THAT THE SAME REGION THAT YOU WERE WORKING IN ON
13 DECEMBER 14TH OF 1999?

14 A YES, IT IS.

15 Q AND THAT -- YOU SAID THAT'S THE BROAD RIVER ROAD-ST.
16 ANDREWS AREA?

17 A YES.

18 Q DOES THAT INCLUDE THE TRENTON COURT APARTMENTS?

19 A YES, IT DOES.

20 Q OKAY.

21 AND, CERTAINLY, THAT'S WITHIN RICHLAND COUNTY?

22 A YES, IT IS.

23 Q WERE YOU WORKING ON DECEMBER 14TH OF 1999?

24 A YES, I WAS.

25 Q DO YOU KNOW WHAT SHIFT YOU WERE WORKING THAT DAY?

1 A I WAS ON DAY SHIFT.

2 Q WHICH WOULD BE WHAT HOURS?

3 A WHICH WOULD BE SEVEN IN THE MORNING TO SEVEN IN THE

4 EVENING.

5 Q DID YOU HAVE AN OPPORTUNITY THAT DAY, SIR, TO RESPOND

6 TO TRENTON COURT APARTMENTS?

7 A YES, I DID.

8 Q DO YOU KNOW WHAT TYPE OF CALL YOU RESPONDED TO?

9 A WE RESPONDED TO A CALL WHERE TWO SUBJECTS APPEARED TO

10 BE KIDNAPPING OR TAKING AN INDIVIDUAL IN THE PARKING LOT.

11 Q WHAT TIME WAS THAT CALL?

12 A I WOULD SAY IT WAS ROUGHLY MID -- MID-MORNING.

13 Q SOMEWHERE AROUND 9 O'CLOCK---

14 A YES.

15 Q ---YOU AGREE WITH THAT? AND HOW WAS THAT CALL PUT

16 OUT TO YOU?

17 A OVER THE RADIO. IT WAS DISPATCHED -- A CALL OF THAT

18 NATURE PRETTY MUCH GOES OUT TO ANY CAR IN THE AREA TO

19 RESPOND.

20 Q DO YOU KNOW HOW DISPATCH GOT THE INFORMATION?

21 A I BELIEVE IT WAS THROUGH A 911 CALL.

22 Q A 911 CALL?

23 A YES.

24 Q AND WERE YOU RIDING BY YOURSELF THAT DAY?

25 A YES, I WAS.

1 Q WHO ELSE -- WERE YOU ONE OF THE FIRST UNITS TO
2 ARRIVE?

3 A MYSELF AND DEPUTY ALEXANDER RESPONDED AT THE SAME
4 TIME.

5 Q WERE YOU RESPONDING RIGHT FROM THE REGION FOUR
6 HEADQUARTERS, RIGHT THERE AT WIDE WATER SQUARE?

7 A YES, IN THAT IMMEDIATE AREA.

8 Q HOW FAR IS IT FROM TRENTON COURT TO WIDE WATER
9 SQUARE?

10 A IT'S LESS THAN HALF A MILE. IT'S WITHIN WALKING
11 DISTANCE.

12 Q SO YOU GOT THERE PRETTY QUICKLY---

13 A YES, I DID.

14 Q ---AFTER THE DISPATCH?

15 A YES.

16 Q AND YOU SAID YOU AND DEPUTY ALEXANDER WERE THE FIRST
17 TO ARRIVE?

18 A YES, WE WERE.

19 Q WHAT INFORMATION DID YOU HAVE FROM DISPATCH ABOUT THE
20 CRIME?

21 A THERE WERE TWO BLACK MALES AND ANOTHER MALE IN THE
22 PARKING LOT AND APPEARED TO BE FORCING HIM TO GO SOMEWHERE
23 WITH -- BY GUNPOINT.

24 Q AT GUNPOINT YOU SAID?

25 A YES.

1 Q AND DID YOU HAVE THAT INFORMATION BEFORE YOU ARRIVED
2 AT TRENTON COURT?

3 A YES, WE DID. IT WAS PUT OVER THE RADIO BEFORE I
4 ARRIVED ON THE SCENE.

5 Q AND WHEN YOU ARRIVED AT TRENTON COURT, CAN YOU TELL
6 THE COURT WHAT YOU OBSERVED OR WHO YOU OBSERVED IN THE
7 PARKING LOT?

8 A ONCE WE ARRIVED AT THE AREA THAT THE INCIDENT WE WERE
9 ORIGINALLY DISPATCHED TO, WE DIDN'T FIND ANYTHING. AT
10 WHICH TIME, WE WERE TRYING TO GET DISPATCH TO SEE IF WE
11 COULD VERIFY ANYTHING AND THEN WE BEGIN TO GO TOWARDS THE
12 AREA WHERE WE BELIEVED THEY HAD GONE TO AND KNOCK ON DOORS
13 AND SEE WHAT WE COULD GET FROM THERE.

14 Q SO WHEN YOU SAY YOU DIDN'T FIND ANYTHING UPON YOUR
15 ARRIVAL, DOES THAT MEAN THAT NOBODY WAS IN THE PARKING LOT?

16 A NO, NO, IT DOESN'T. IT MEANS THERE WASN'T TWO
17 PERSONS WITH A GUN HOLDING ANOTHER PERSON AGAINST THEIR
18 WILL.

19 Q AND SO YOU SAID THAT YOU INITIALLY -- AND SO THEN YOU
20 BEGAN SORT OF KNOCKING ON DOORS TO SEE WHAT YOU COULD FIND
21 OUT?

22 A YES.

23 Q AT ANY TIME, DID YOU CALL FOR ANY OTHER BACKUP UNITS
24 TO ASSIST YOU AND DEPUTY ALEXANDER?

25 A THERE WERE OTHER UNITS ARRIVING, BUT I -- AFTER

1 MAKING CONTACT, I DID REQUEST CERTAIN UNITS.

2 Q WHAT TYPE OF UNITS DID YOU REQUEST?

3 A ONCE WE REALIZED THAT THERE WERE PERSONS INSIDE OF
4 THE APARTMENT, THAT WE HAD GOTTEN THE APARTMENT DUE TO
5 THE VICTIM'S GIRLFRIEND STATING THAT, THEN WE TREATED IT AS
6 A HOSTAGE SITUATION. SO I CALLED FOR MY SUPERVISOR AND
7 ALSO A SPECIALIZED UNIT TO SET UP A PERIMETER FOR THAT IN
8 DEALING WITH THOSE TYPE OF SITUATIONS WITH HOSTAGES.

9 Q WHO, SPECIFICALLY, DID YOU CALL TO DEAL WITH WHAT YOU
10 CONSIDERED TO BE A HOSTAGE SITUATION?

11 A CAPTAIN PRICHARD. HE'S THE OVERALL SUPERVISOR FOR
12 REGION FOUR AND S.R.T. SUPERVISOR.

13 Q CAN YOU TELL THE JURY, PLEASE, SIR, WHAT HAPPENED
14 WHEN YOU GOT TO APARTMENT NUMBER ?

15 A MYSELF AND DEPUTY ALEXANDER, ALONG WITH SOME OTHER
16 DEPUTIES APPROACHED THE -- THAT APARTMENT. WE KNOCKED ON
17 THE DOOR. THE FEMALE ANSWERED THE DOOR.

18 Q LET ME JUST STOP YOU FOR A SECOND. WHEN YOU KNOCKED
19 ON THE DOOR, COULD YOU SEE -- ARE THERE WINDOWS FACING THE
20 FRONT OF THEIR APARTMENT?

21 A YES, BUT THE CURTAINS WERE DRAWN. YOU CANNOT SEE
22 INTO THE APARTMENT.

23 Q YOU COULDN'T SEE INTO THE APARTMENT?

24 A NO.

25 Q OKAY.

1 I'M SORRY. CONTINUE, PLEASE.

2 A ONCE I KNOCKED ON THE DOOR, THE FEMALE WOMAN ANSWERED
3 THE DOOR AND SHE WAS -- VISIBLY, YOU COULD TELL SOMETHING
4 WAS WRONG. SHE HAD A VERY -- JUST A -- HER FACE YOU COULD
5 TELL THAT SOMETHING WASN'T RIGHT.. SHE LOOKED SCARED AND
6 VERY TENSE IN HER EXPRESSION. THAT'S WHEN I TRIED TO TALK
7 A LITTLE BIT MORE AS FAR AS TALKING WITH HER AND THAT'S
8 WHEN SHE INDICATED THAT, YES, THAT THERE WERE PEOPLE IN HER
9 APARTMENT THAT HAD HER BOYFRIEND. I IMMEDIATELY TOOK HER
10 OUT OF THE AREA AND PUT HER IN A SAFE PLACE.

11 Q HAD YOU SEEN -- AND THAT FEMALE YOU LATER FOUND OUT
12 WAS KETRA HEARON?

13 A YES.

14 Q OKAY.

15 AND YOU HAD AN OPPORTUNITY -- DID YOU HAVE AN
16 OPPORTUNITY TO TALK WITH HER THAT DAY?

17 A JUST -- JUST BRIEFLY DURING THAT INCIDENT.

18 Q DID YOU REMEMBER -- WHEN YOU WERE IN THE PARKING LOT,
19 DO YOU REMEMBER SEEING MS. HEARON COME HOME AT ALL OR
20 ARRIVE AT THE APARTMENT COMPLEX?

21 A YES, I -- I DO REMEMBER A FEMALE PULLING IN AND
22 HEADING DOWN THE CORRIDOR THAT GOES TO THOSE APARTMENTS
23 WHEN WE WERE STANDING OUT THERE LOOKING AROUND.

24 Q AND LET ME ASK YOU, DEPUTY PEARSON, ON STATE'S
25 EXHIBIT NUMBER THREE, DO YOU RECOGNIZE THAT PHOTOGRAPH?

1 A YES.

2 Q AND WHAT IS THAT A PHOTOGRAPH OF?

3 A THAT'S TRENTON COURT APARTMENTS AND THAT'S THE OFFICE
4 COMPLEX RIGHT THERE (INDICATES) AND BEHIND IT WOULD BE THE
5 APARTMENT SHE WOULD HAVE BEEN HEADING TO.

6 Q SO BROAD RIVER ROAD IS THAT WAY (INDICATES)?

7 A YES, IT'S RIGHT ACROSS HERE, RUNS PARALLEL.

8 Q AND WHEN YOU SAW -- WHEN YOU FIRST SAW KETRA, IN
9 WHICH DIRECTION WAS SHE WALKING?

10 A SHE HAD PARKED HER CAR HERE AND SHE WAS WALKING THIS
11 WAY (INDICATES) IN FRONT OF THE BUILDING.

12 Q SO SHE WOULD BE WALKING TO AN APARTMENT THAT WAS
13 FACING BROAD RIVER ROAD?

14 A YES.

15 Q WERE YOU ABLE TO SEE EXACTLY WHICH APARTMENT SHE HAD
16 GONE INTO?

17 A NO.

18 Q AFTER KETRA ANSWERED THE DOOR, WHAT HAPPENED THEN?
19 YOU SAID SHE OBVIOUSLY LOOKED LIKE SOMETHING WAS WRONG?

20 A YES. SHE LOOKED LIKE SOMETHING WAS WRONG AND, AS I
21 TALKED TO HER, TO GET HER TO STEP OUT OF THE APARTMENT,
22 THAT'S WHEN SHE PRETTY MUCH SAID UNDER HER BREATH THAT
23 THEY'RE -- THEY'RE IN THERE WHICH LEAD ME TO BELIEVE THAT I
24 WAS AT THE RIGHT APARTMENT. AND WE IMMEDIATELY PUT HER IN
25 A SAFE PLACE BEING THAT SHE'S RIGHT THERE AT THE DOOR.

1 Q WHERE -- WHAT WAS CONSIDERED A SAFE PLACE AT THAT
2 POINT?

3 A SHE WAS TAKEN -- I TOOK HER AND THEN SHE WAS HANDED
4 OFF TO ANOTHER DEPUTY AND MAYBE ANOTHER ONE UNTIL SHE WAS A
5 GOOD DISTANCE AWAY FROM THAT IMMEDIATE APARTMENT WHERE THEY
6 BEGIN TO QUESTION HER ABOUT WHAT WAS GOING ON.

7 Q AND WHAT -- DO YOU REMEMBER WHAT SHE TOLD YOU?

8 A ALL SHE INDICATED TO ME IS THAT THERE WERE PEOPLE IN
9 THERE HOLDING HER BOYFRIEND AND THAT'S WHEN I IMMEDIATELY
10 PUSHED -- DIDN'T PUSH HER, BUT TOOK HER FROM AWAY FROM THE
11 PATH OF THE DOOR AND SHE WENT DOWN THE SIDEWALK.

12 Q DID SHE INDICATE TO YOU SPECIFICALLY WHETHER THEY HAD
13 WEAPONS OR NOT?

14 A YES.

15 Q SHE TOLD YOU THEY DID HAVE WEAPONS?

16 A YES.

17 Q WHAT HAPPENED -- WHAT HAPPENED AFTER Y'ALL GOT KETRA
18 TO A SAFE PLACE? WHAT HAPPENED NEXT? DID YOU GO BACK TO
19 THE FRONT DOOR OF THE APARTMENT?

20 A YES. WE APPROACHED THE DOOR AND NO ONE ELSE WAS
21 COMING OUT. I BELIEVE WE IDENTIFIED OURSELVES -- IF THE
22 COURT COULD EXCUSE ME, I'M A LITTLE TIRED -- AND THEN,
23 THAT'S WHEN I HAD CALLED FOR CAPTAIN PRICHARD. KNOWING
24 THAT SHE WAS OUT, THEN I KNEW WE ONLY HAD ONE PERSON THAT
25 WAS OBVIOUSLY BEING HELD AGAINST THEIR WILL, TO SET UP

1 BASICALLY, SECURE THE SCENE, AND SET UP A PERIMETER, AND GO
2 FROM THERE. DURING THESE OFFICERS' ARRIVAL AND THAT
3 COMMUNICATION IS WHEN THE INDIVIDUALS STARTED TO WALK OUT
4 OF THE APARTMENT.

5 Q WHO WAS THE FIRST INDIVIDUAL AFTER KETRA -- WHO WAS
6 THE FIRST INDIVIDUAL TO WALK OUT OF THE APARTMENT?

7 A I'M NOT SURE OF HIS NAME.

8 Q DO YOU REMEMBER -- DO YOU REMEMBER WHAT HE WAS
9 WEARING?

10 A NO.

11 Q DO YOU KNOW -- WAS HE IDENTIFIED LATER ON AS BEING
12 EITHER A VICTIM OR A SUSPECT?

13 A YES.

14 Q WHAT WAS HE IDENTIFIED AS?

15 A I BELIEVE THE FIRST PERSON WHO CAME OUT WAS
16 IDENTIFIED AS THE VICTIM.

17 Q AND THAT WOULD HAVE BEEN KETRA'S BOYFRIEND, THE ONE
18 THAT SHE HAD INDICATED WAS BEING HELD AGAINST HIS WILL?

19 A YES.

20 Q WHAT DID Y'ALL DO WHEN THE FIRST -- WHEN THE FIRST
21 MALE WALKED OUT OF THE APARTMENT, WHAT DID Y'ALL DO TO HIM?

22 A OH, WE SECURED HIM AND PLACED HIM IN HANDCUFFS TO
23 MAKE SEARCH HE DIDN'T HAVE A WEAPON BECAUSE WE DIDN'T KNOW
24 WHO WE WERE DEALING WITH AT THE TIME.

25 Q BECAUSE YOU DIDN'T KNOW AT THAT POINT WHETHER HE WAS

1 A VICTIM OR A SUSPECT?

2 A NO. WE HAD NO IDEA WHO WAS WHO.

3 Q WAS KETRA STANDING IN THE IMMEDIATE AREA WHEN HE
4 FIRST WALKED OUT? WAS SHE ABLE TO SEE WHO THE FIRST PERSON
5 OUT OF THE DOOR WAS?

6 A NO, NOT AT ALL.

7 Q AND YOU WERE LATER -- THROUGH THE COURSE OF THE
8 INVESTIGATION, YOU WERE ABLE TO LEARN HIS IDENTITY?

9 A YES.

10 Q THAT HE WAS A VICTIM?

11 A YES.

12 Q AND, OF COURSE, THERE IS THE POSSIBILITY THAT THEY
13 COULD HAVE CHANGED CLOTHES OR---

14 A YEAH. I MEAN, YOU NEVER KNOW WHAT YOU'RE DEALING
15 WITH. IT'S ALWAYS BETTER TO BE SAFE AND MAKE SURE
16 EVERYBODY IS SECURE FIRST.

17 Q AFTER VAN CAME OUT OF THE APARTMENT, WHO CAME OUT
18 NEXT OR WHAT HAPPENED NEXT?

19 A THE OTHER TWO INDIVIDUALS. THE ONE INDIVIDUAL -- ONE
20 OF THE SUBJECTS WALKED OUT WHERE HE WAS ALSO PLACED TO THE
21 GROUND AND HANDCUFFED. BUT, I BELIEVE, SERGEANT DODGE
22 APPROACHED THE SECOND -- THE LAST SUBJECT TO COME OUT OF
23 THE HOUSE AND KIND OF MET HIM AND PUT HIM DOWN AND
24 HANDCUFFED HIM.

25 Q YOU REMEMBER AT ALL WHAT EITHER OF THE TWO SUBJECTS

1 WERE WEARING?

2 A NO, I DON'T.

3 Q SO THE SECOND PERSON -- THE SECOND SUBJECT WHO CAME
4 OUT, CAME OUT, I GUESS, WITH SOME PRODDING?

5 A YES.

6 Q AND ALL -- AND VAN, ALONG WITH THE TWO SUSPECTS, WERE
7 ALL DETAINED?

8 A YES, AT THAT TIME UNTIL WE KNEW WHO WE HAD.

9 Q AND VAN WAS LATER IDENTIFIED BY HIS GIRLFRIEND AS
10 BEING VAN, THE VICTIM?

11 A YES.

12 Q WHAT HAPPENED AFTER Y'ALL SECURED BOTH SUSPECTS? WHO
13 CAME -- AND, AGAIN, YOU WITNESSED THEM COME DIRECTLY OUT OF
14 THE APARTMENT?

15 A YES.

16 Q WHAT HAPPENED AFTER THEY WERE DETAINED AND YOU
17 LEARNED VAN'S IDENTITY?

18 A THEY WERE SECURED AND SEPARATED. IMMEDIATELY, WE
19 CLEARED THE APARTMENT WHICH IS JUST TO DETERMINE -- WE WENT
20 IN THERE TO MAKE SURE THERE WAS NO ONE ELSE IN THERE THAT
21 WE DIDN'T KNOW ABOUT. ONCE THAT WAS SECURED AND THE
22 SUBJECTS WERE SECURED AND SEPARATED, AN INVESTIGATOR WAS
23 CALLED AND ALSO WE HAD INFORMATION THERE WERE POSSIBLY
24 WEAPONS STILL IN THE APARTMENT.

25 Q WHO GAVE YOU INFORMATION ABOUT THE WEAPONS?

1 A I BELIEVE IT WAS THE GIRLFRIEND. IT WASN'T -- SHE
2 DID NOT DIRECTLY TELL ME, BUT I KNOW -- I BELIEVE THE
3 CAPTAIN CAME TO ME AND SAID THAT WE STILL HAVE SOME WEAPONS
4 IN THE APARTMENT.

5 Q AND WERE -- KETRA AND VAN WERE THEY TAKEN TO
6 HEADQUARTERS AFTER SERGEANT SMITH ARRIVED?

7 A YES, I BELIEVE SO.

8 Q AND THE DEFENDANTS AS WELL?

9 A YES.

10 Q WERE KETRA AND VAN EVER ALLOWED BACK INTO THEIR
11 APARTMENT FROM THE TIME THAT YOU WERE THERE OR DID THEY
12 JUST GO DIRECTLY TO HEADQUARTERS WITH SERGEANT SMITH?

13 A I BELIEVE SERGEANT SMITH BRIEFLY INTERVIEWED THEM AND
14 TOOK THEM TO HEADQUARTERS. I DO NOT RECALL THEM GOING BACK
15 TO THE APARTMENT.

16 Q SO THEY WOULD NOT HAVE BEEN IN THE APARTMENT WHEN
17 Y'ALL WERE SEARCHING THE APARTMENT FOR THE WEAPONS?

18 A NO.

19 Q OKAY.

20 IS THAT STANDARD PROCEDURE?

21 A YES.

22 Q DID YOU HAVE ANY INFORMATION ABOUT WHETHER THE
23 WEAPONS WERE LOADED OR NOT?

24 A NO, WE DIDN'T.

25 Q AND WHO WENT BACK IN THE APARTMENT TO SEARCH?

1 A IT WAS MYSELF, CAPTAIN PRICHARD, AND, I BELIEVE,
2 DEPUTY ALEXANDER.

3 Q AND DID Y'ALL FIND ANY WEAPONS?

4 A YES. I BELIEVE CAPTAIN PRICHARD FOUND A HANDGUN.

5 Q DO YOU KNOW WHERE HE FOUND THAT HANDGUN?

6 A I BELIEVE IT WAS IN A DRESSER, DRESSER DRAWER.

7 Q DO YOU KNOW WHAT TYPE OF WEAPON IT WAS?

8 A I JUST REMEMBER IT WAS A -- I BELIEVE IT WAS A
9 SEMIAUTOMATIC HANDGUN. I'M NOT SURE EXACTLY WHAT TYPE.

10 Q I'M GOING TO SHOW YOU WHAT'S BEEN MARKED AS STATE'S
11 EXHIBIT NUMBER FIVE AND WERE YOU SEARCH -- WHAT PART OF THE
12 APARTMENT WERE YOU SEARCHING?

13 A MYSELF AND THE CAPTAIN BOTH WENT TO THE BEDROOM.
14 WHEN YOU WALK IN, THE DOOR TO YOUR IMMEDIATE RIGHT IS THE
15 BEDROOM.

16 Q AND I'M GOING TO SHOW YOU WHAT HAS BEEN MARKED AS
17 STATE'S NUMBER FIVE AND ASK YOU IF YOU RECOGNIZE THAT
18 PHOTOGRAPH?

19 A YES, THAT WAS THE ROOM.

20 Q THAT WAS THE BEDROOM?

21 A YES, IT WAS.

22 Q AND IS THE DRESSER WHERE THE GUN WAS FOUND BY CAPTAIN
23 PRICHARD SHOWN IN THAT PHOTOGRAPH?

24 A YES.

25 Q THAT'S THE DRESSER?

1 A YES, IT IS.

2 Q WERE YOU THERE WHEN HE FOUND THAT GUN?

3 A YES, I WAS. I WAS IN THE ROOM RIGHT BESIDE HIM, THEN
4 HE SAID HE HAD A GUN.

5 Q DID Y'ALL SEARCH -- DID YOU HAVE ANY INFORMATION
6 ABOUT HOW MANY WEAPONS WERE IN THE APARTMENT?

7 A I BELIEVE THAT IT WAS TWO WEAPONS. THAT'S WHAT I HAD
8 BEEN BRIEFED ON WHEN WE WENT TO THE ROOM.

9 Q WERE YOU -- WELL, DID YOU START SEARCHING FOR A
10 SECOND WEAPON?

11 A YES, WE DID.

12 Q WHERE WERE YOU SEARCHING FOR THE SECOND WEAPON?

13 A I HAD SEARCHED THE KITCHEN AND THEN MYSELF AND
14 CAPTAIN PRICHARD WENT TO A BACK AREA THAT HAD LOT OF BOXES
15 AND A REAL CLUTTERED AREA.

16 Q WERE Y'ALL ABLE TO FIND A SECOND WEAPON?

17 A NO, WE WEREN'T.

18 Q DID YOU SEARCH THE CLOSET IN THE BEDROOM AS WELL?

19 A YES, THE BEDROOM CLOSET.

20 Q BEG THE COURT'S INDULGENCE.

21 SIR, I DON'T HAVE ANY FURTHER QUESTIONS. PLEASE
22 ANSWER ANY QUESTIONS FROM THE DEFENSE.

23 THE COURT: CROSS.

24 MS. SAMPSON: THANK YOU, YOUR HONOR.

25 MAY IT PLEASE THE COURT.

1 CROSS-EXAMINATION

2 BY MS. SAMPSON:

3 Q DEPUTY PEARSON, IS THAT RIGHT?

4 A YES.

5 Q GOOD AFTERNOON. MY NAME IS APRIL SAMPSON. I'M GOING
6 TO BE ASKING YOU A COUPLE OF QUESTIONS, OKAY.

7 NOW, YOU WERE CALLED TO THE SCENE BY DISPATCH,
8 IS THAT HOW IT WORKS?

9 A YES, THROUGH A 911 CALL.

10 Q OKAY.

11 AND YOU DON'T KNOW WHO MADE THAT 911 CALL, DO
12 YOU?

13 A NO. WE NORMALLY DON'T HAVE THAT INFORMATION.

14 Q AND THIS IS A NORMAL AREA THAT YOU PATROL. IT WOULD
15 INCLUDE TRENTON COURT APARTMENTS?

16 A YES.

17 Q HAVE YOU EVER BEEN CALLED THERE BEFORE?

18 A TO TRENTON COURT APARTMENTS?

19 Q UH-HUH.

20 A YES. THERE'S A LOT OF APARTMENTS THERE.

21 Q OKAY.

22 COULD YOU TELL ME WHAT A 1080 IS?

23 A IN REFERENCE TO TEN CODES?

24 Q YES.

25 A WE USE THAT AS A SUSPICIOUS PERSON.

1 Q OKAY.

2 AND ISN'T IT TRUE THAT THERE'S BEEN A LOT OF
3 THOSE TYPE OF CALLS IN THAT PARTICULAR COMPLEX RECENTLY?

4 MS. PELLIZZARI: YOUR HONOR, MAY WE APPROACH,
5 PLEASE?

6 THE COURT: YES, MA'AM.

7 (WHEREUPON, A BENCH CONFERENCE WAS
8 HELD AT THIS TIME OFF THE RECORD.)

9 THE COURT: LADIES AND GENTLEMEN, LET ME ASK YOU
10 TO STEP TO THE JURY ROOM JUST FOR A MOMENT. AND WHILE
11 YOU'RE THERE, BE SURE NOT TO TALK ABOUT THE CASE, PLEASE.

12 (JURY OUT.)

13 THE COURT: ALL RIGHT.

14 COUNSEL, AS I UNDERSTAND, YOU ARE INDICATING YOU
15 WANTED TO ASK A QUESTION REGARDING CALLS TO THAT APARTMENT
16 COMPLEX, IS THAT CORRECT?

17 MS. SAMPSON: YES, SIR, YOUR HONOR.

18 THE COURT: ALL RIGHT.

19 WHAT'S THE RELEVANCE OF THAT?

20 MS. SAMPSON: WELL, THE RELEVANCE COULD BE
21 TWOFOLD, YOUR HONOR.

22 FIRST OF ALL, IF THERE'S BEEN A LOT OF CRIME
23 ACTIVITY IN THAT PARTICULAR PARKING LOT OR IN THAT
24 PARTICULAR AREA, I THINK THAT WOULD GIVE REASONS AS TO WHY,
25 IF THIS DEFENDANT PULLED A GUN, WHY HE MAY HAVE PULLED A

1 GUN OTHER THAN TO COMMIT A ROBBERY AND I DON'T FEEL LIKE AT
2 THIS TIME, I NEED TO GO ANY FURTHER AS FAR AS WHAT OUR
3 DEFENSE ACTIONS ARE, BUT THAT, I THINK, IS RELEVANT AS TO
4 WHETHER OR NOT HE DID PULL A GUN AND WHY HE WOULD HAVE
5 MAYBE PULLED A GUN.

6 SECONDLY, YOUR HONOR---

7 THE COURT: LET'S TAKE THEM ONE AT A TIME, OKAY.
8 WHAT'S YOUR POSITION ON THAT?

9 MS. PELLIZZARI: YOUR HONOR, WE DON'T HAVE ANY
10 OBJECTION IF THEY WANT TO ASK THE OFFICER, YOU KNOW, IS
11 THIS CONSIDERED -- IS THIS A HIGH CRIME AREA AND JUST LEAVE
12 IT AT THAT.

13 MS. SAMPSON: THEN I WOULD HAVE TO -- I MEAN, I
14 DON'T KNOW WHAT HE WOULD CONSIDER A HIGH CRIME AREA. I'M
15 JUST ASKING HIM ABOUT SPECIFICALLY SUSPICIOUS -- I DON'T
16 EVEN, YOU KNOW---

17 THE COURT: ALL RIGHT.

18 WHY DON'T YOU DO THIS. GO AHEAD AND LET'S
19 PROFFER---

20 MS. SAMPSON: I COULD PROFFER -- I MEAN, I WASN'T
21 GOING VERY FAR INTO IT---

22 THE COURT: ---THE TESTIMONY YOU WANT TO ASK HIM.
23 SURE.

24 MS. SAMPSON: UH---

25 THE COURT: I UNDERSTAND, BUT THE PROBLEM IS IT'S

1 NOT APPROPRIATE, CERTAINLY, TO GET INTO A LOT OF TESTIMONY
2 TRYING TO GET INTO ALL OF THE CRIME AND, IN ESSENCE, I
3 GUESS TRY TO SUGGEST THAT THE VICTIM IS INVOLVED IN SOME
4 SORT OF CRIME ACTIVITY UNLESS YOU HAVE SOMETHING TO TIE IT
5 TO THE VICTIM.

6 MS. SAMPSON: THAT WAS NOT MY INTENT, YOUR HONOR.

7 THE COURT: OKAY.

8 ALL RIGHT. GO AHEAD THEN.

9 MS. SAMPSON: DEPUTY PEARSON, AGAIN, I ASK YOU
10 WHAT'S A 1080?

11 THE WITNESS: A SUSPICIOUS PERSON.

12 Q AND ISN'T IT TRUE THAT YOU HAD -- AROUND THE TIME OF
13 DECEMBER OF '99, YOU ALL HAD HAD A LOT OF -- FAIR AMOUNT OF
14 CALLS TO THAT AREA ON THOSE TYPE OF CALLS? SUSPICIOUS
15 CALLS?

16 A IT'S A MAJOR WALKING CODE BETWEEN ABOUT THREE
17 DIFFERENT APARTMENTS AND WE DO GET A FAIR NUMBER OF CALLS.

18 Q BUT TO TRENTON COURT, WOULD YOU SAY THERE WERE A FAIR
19 AMOUNT OF CALLS FOR 1080'S?

20 A MA'AM, I HONESTLY CAN'T RECALL. THAT'S TWO YEARS
21 AGO. I MEAN, I ANSWER THOSE EVERYDAY.

22 Q THAT'S -- THAT'S AS FAR AS IT'S GOING TO GO, YOUR
23 HONOR.

24 THE COURT: OKAY.

25 HE SAID -- I DIDN'T CATCH -- I KNOW YOU ARE KIND

1 OF TIRED, BUT YOU WERE SAYING THERE WERE MAJOR CALLS TO
2 THREE DIFFERENT APARTMENTS?

3 THE WITNESS: SIR, IT'S A -- IT'S A MAJOR WALK
4 THROUGH THAT FOOT TRAILS GO TO ABOUT THREE DIFFERENT
5 APARTMENTS TO THAT AREA---

6 THE COURT: RIGHT. YOU MEAN, APARTMENT
7 COMPLEXES?

8 THE WITNESS: YES, YOUR HONOR.

9 THE COURT: OKAY.

10 THE WITNESS: AND DUE TO AUTO BREAKINGS, WE GET A
11 LOT OF CALLS FOR PEOPLE WALKING THROUGH THE PARKING LOTS
12 AND THAT'S A NORMAL CALL WE GET EVERYDAY.

13 THE COURT: OKAY.

14 WHERE DOES -- STATE, WHAT'S YOUR POSITION ON
15 THAT? I'M TRYING TO FIGURE OUT WHERE THE RELEVANCY
16 ATTACHES, BUT GO AHEAD.

17 MS. PELLIZZARI: YEAH, YOUR HONOR, I MEAN, I
18 GUESS THAT'S OUR OBJECTION. IT'S JUST PURELY RELEVANCE. I
19 DON'T KNOW WHY IT'S RELEVANT. I DON'T KNOW HOW THAT TIES
20 IN WITH WHETHER THIS DEFENDANT COMMITTED AN ARMED ROBBERY
21 ON THAT DAY.

22 MS. SAMPSON: WITHOUT GOING FURTHER, YOUR HONOR,
23 I WOULD JUST STATE THAT THERE COULD BE GREAT REASON IF WE
24 WANT TO PRESENT THAT TYPE OF EVIDENCE, THAT THERE IS A
25 REASON OTHER THAN A ROBBERY WHY HE MAY PULL A GUN IN SUCH

1 AN AREA. THEY HAVE CALLS FOR AUTO BREAKING OR ET CETERA.
2 I'M NOT GOING TO GO INTO SPECIFICS. THAT'S AS FAR AS I'M
3 GOING TO GO INTO IT.

4 THE COURT: OKAY.

5 THE PROBLEM AT THIS POINT IS THAT THERE'S NOTHING
6 IN THE RECORD TO SUGGEST ANY OTHER REASON WHY HE WOULD HAVE
7 PULLED A GUN.

8 MS. SAMPSON: AND I CAN'T GO ANY FURTHER IF I
9 DON'T LAY FOUNDATION THAT THERE'S BEEN CALLS. WE CAN'T DO
10 IT IN THE FUTURE IF I DON'T LAY SOME SORT OF FOUNDATION
11 THAT THERE'S BEEN CRIME IN THIS AREA AND I CAN'T DO THAT
12 WITHOUT ASKING OFFICERS THAT ARE INVOLVED WHETHER THERE WAS
13 CRIME IN THIS AREA OR NOT

14 THE COURT: NO. I THINK WE MAY BE JUST LOOKING
15 AT IT DIFFERENTLY. I THINK IT'S KIND OF A CART BEFORE THE
16 HORSE THING. I THINK THERE HAS TO BE SOMETHING IN THE
17 RECORD TO INDICATE THAT THERE WAS ANOTHER REASON FOR THE
18 DEFENDANT PULLING A GUN IF THAT, IN FACT, TURNS OUT TO BE
19 TESTIMONY OR IF THERE'S ANY SORT OF EVIDENCE ALONG THOSE
20 LINES. BUT THAT HAS TO BE ON THE RECORD FIRST. THEN YOU
21 CAN ESTABLISH THAT THERE WAS A HIGH CRIME -- THAT IT WAS A
22 HIGH CRIME AREA, IN ESSENCE, TO BACK UP THAT POINT. BUT I
23 DON'T THINK YOU CAN FIRST SAY, YOU KNOW, THAT IT WAS A HIGH
24 CRIME AREA AND THEN START GOING INTO OTHER THINGS FROM
25 THERE. IT'S GOT TO BE THE OTHER WAY AROUND.

1 MS. SAMPSON: OKAY, YOUR HONOR.

2 THE COURT: ALL RIGHT.

3 LET'S BRING THE JURY BACK IN.

4 (JURY IN.)

5 THE BAILIFF: THE JURY IS PRESENT, YOUR HONOR.

6 THE COURT: ALL RIGHT.

7 ALL PARTIES AND ATTORNEYS ARE IN THE COURTROOM

8 AND ALL JURORS HAVE RETURNED.

9 COUNSEL.

10 CONTINUED CROSS-EXAMINATION

11 BY MS. SAMPSON:

12 Q NOW, LET ME MAKE SURE I GO BACK TO WHERE -- A LITTLE
13 -- A LITTLE BIT FURTHER.

14 THIS IS THE NORMAL AREA YOU PATROL?

15 A YES, IT IS.

16 Q SO -- AND HAVE YOU EVER BEEN TO TRENTON COURT
17 APARTMENTS BEFORE OR WAS THIS YOUR FIRST TIME EVER THERE?

18 A I HAVE BEEN TO TRENTON COURT APARTMENTS BEFORE.

19 Q OKAY.

20 NOW, DID YOU, WHEN YOU WERE CALLED, DID YOU KNOW
21 WHAT APARTMENT YOU NEEDED TO GO TO? YOU DIDN'T, RIGHT?

22 A NO.

23 Q OKAY.

24 BUT YOU STATED ON DIRECT THAT YOU WENT --
25 EVENTUALLY, YOU DID GO TO 107?

1 A YES.

2 Q OKAY.

3 NOW, IS IT ROUTINE FOR YOU TO AFTER EVERYTHING
4 HAS HAPPENED TO MAKE A REPORT?

5 A YES.

6 Q OKAY.

7 AND IN THAT REPORT YOU PUT DOWN THE IMPORTANT
8 THINGS SUCH AS WHAT YOU DID OR THINGS TO HELP YOU REFRESH
9 YOUR MEMORY LATER, WOULD THAT BE AN ACCURATE STATEMENT?

10 A YES.

11 Q OKAY.

12 NOW, IN YOUR REPORT, DON'T YOU STATE THAT YOU
13 WENT TO 119?

14 A IN THE STATEMENT I GAVE OR THE -- I'M NOT THE
15 REPORTING OFFICER.

16 Q IN YOUR -- IN YOUR SUPPLEMENT REPORT THAT YOU MADE?

17 A THE SUPPLEMENTARY REPORT?

18 Q YES.

19 A IT MAY HAVE BEEN. I -- THERE WAS -- I DIDN'T KNOW
20 THE APARTMENT NUMBER. I DON'T RECALL WHY THAT COULD HAVE
21 BEEN THERE. THAT MIGHT HAVE BEEN SOME INFORMATION I GOT
22 FROM COMMUNICATIONS AS FAR AS WHERE THEY MIGHT HAVE HAD
23 OTHER INFORMATION. I CAN'T RECALL EXACTLY HOW I GOT THAT
24 NUMBER---

25 Q BUT TODAY, YOU ARE SURE THAT YOU WENT TO 107, WHICH

1 IS WHERE---

2 A YES, BECAUSE I KNOW IT'S THE APARTMENT THAT FACES
3 BROAD RIVER ROAD WHICH FACES CYPRESS RUNS APARTMENTS.

4 Q OKAY.

5 NOW, YOU -- WERE YOU THE ONE THAT KNOCKED ON THE
6 DOOR AT OR WAS IT ANOTHER OFFICER?

7 A IT WAS DEPUTY ALEXANDER AND I WAS STANDING RIGHT
8 BESIDE HIM.

9 Q STANDING BESIDE HIM. OKAY.

10 AND, AT FIRST MS. HEARON COMES OUT AND THEN LATER
11 ON THREE OTHER BLACK MALES COME OUT?

12 A YES.

13 Q OKAY.

14 WHEN MS. HEARON COMES OUT, YOU COULD HEAR WHAT
15 SHE TOLD -- YOU COULD OVERHEAR WHAT SHE WAS SAYING?

16 A SHE SAID IT TO ME.

17 Q SHE SAID IT TO YOU?

18 A YES.

19 Q AND SHE TOLD YOU THAT HER BOYFRIEND WAS INSIDE WITH
20 TWO OTHER SUBJECTS?

21 A SHE SAID THAT THEY HAVE MY BOYFRIEND.

22 Q HAVE HER BOYFRIEND. SHE DIDN'T SAY THEY WERE ROBBING
23 MY BOYFRIEND?

24 A NOT THAT I RECALL.

25 Q OKAY.

1 AND SHE WAS TAKEN SOMEWHERE ELSE -- NOT BY YOU,
2 BUT BY OTHER DEPUTIES?

3 A YES.

4 Q OKAY.

5 THEN, AT SOME POINT, THREE BLACK MALES COME OUT
6 AND YOU DON'T REMEMBER SPECIFICALLY WHICH ORDER, BUT THREE
7 CAME OUT, IS THAT RIGHT?

8 A I KNOW WHO HAS BEEN LATER IDENTIFIED. THE VICTIM WAS
9 THE FIRST TO COME OUT AND THEN TWO OTHER MALES, BLACK
10 MALES, CAME OUT AFTER HIM.

11 Q YOU DON'T KNOW WHICH ONE, IF IT WAS MR. JOHNSON OR
12 MR. TUCKER WHO CAME OUT AS THE FIRST SUSPECT---

13 A NO. I JUST REMEMBER ONE CAME OUT. THE OTHER ONE HAD
14 TO BE MORE HELPED, TAKEN OUT.

15 Q AND YOU CAN'T TELL ME RIGHT NOW WHICH ONE THAT WAS,
16 CAN YOU?

17 A NO.

18 Q OKAY.

19 WHEN THEY CAME OUT, DID MR. DORN SAY ANYTHING?
20 THE VICTIM?

21 A HE WAS PASSED ON JUST -- I JUST CHECKED HIM AND
22 PASSED HIM ON. THAT'S WHAT WE DO.

23 Q SO HE DIDN'T SAY ANYTHING TO YOU, LIKE I'VE JUST BEEN
24 ROBBED, I'VE JUST BEEN KIDNAPPED, HE DIDN'T SAY A WORD?

25 A I KNOW LATER, ONCE WE CAME BACK, THAT HE WAS UPSET

1 THAT HE HAD BEEN -- HE SAID HE HAD BEEN ROBBED---

2 Q OKAY.

3 BUT RIGHT THEN---

4 A ---AND HE WAS THE VICTIM.

5 Q ----BUT RIGHT THEN, WHEN HE'S COMING OUT OF THE DOOR
6 BY HIMSELF HE DOESN'T SAY TO YOU, I'VE JUST BEEN ROBBED,
7 I'VE JUST BEEN KIDNAPPED, THERE ARE TWO GUYS IN THERE WITH
8 GUNS? HE DOESN'T SAY ANYTHING?

9 A NO, MA'AM, PROBABLY BECAUSE WE HAD HIS HANDS UP
10 AND---

11 Q I'M NOT ASKING YOU---

12 A ---WEAPONS DRAWN---

13 Q ---TO SPECULATE WHY HE DIDN'T. I JUST WANT TO KNOW,
14 DID HE OR DID HE NOT SAY ANYTHING TO YOU?

15 A I DON'T RECALL.

16 Q NOW, YOU STATED THAT -- DID HE SAY HIS NAME, I'M
17 NORMAN VAN DORN OR ANYTHING?

18 A NO, MA'AM, NOT AT THAT IMMEDIATE MOMENT.

19 Q NOT AT THAT TIME.

20 NOW, YOU STATED ON DIRECT THAT AFTER EVERYBODY
21 HAD BEEN TAKEN AWAY, YOU WENT BACK IN TO HELP -- JUST TO
22 HELP SEARCH?

23 A YES.

24 Q AND IT WAS YOU AND TWO OTHER OFFICERS, I BELIEVE?

25 A THAT I RECALL. I KNOW IT WAS CAPTAIN PRICHARD AND

1 DEPUTY ALEXANDER.

2 Q AND ALEXANDER. AND YOU AND OFFICER PRICHARD SEARCHED
3 THE BEDROOM SPECIFICALLY?

4 A YES.

5 Q AND OFFICER PRICHARD FINDS THE GRAY GUN, IS THAT
6 RIGHT?

7 A EXCUSE ME?

8 Q WHICH -- THERE ARE TWO GUNS SUPPOSEDLY INVOLVED.
9 THIS GRAY ONE (INDICATES) AND I DON'T KNOW THE DIFFERENCE
10 BETWEEN A PISTOL AND -- AND THE BLACK GUN (INDICATES).
11 WHICH ONE DID HE FIND?

12 A THE PISTOL THAT WAS FOUND IN THE DRESSER DRAWER IS
13 THE ONE HE FOUND.

14 Q AND WHICH ONE WOULD THAT BE?

15 A HE FOUND IT. I DID NOT FIND IT.

16 Q SO YOU DON'T KNOW IF IT WAS THE GRAY ONE OR THE BLACK
17 GUN?

18 A NO. HE JUST SAID HE HAD A GUN.

19 Q HE JUST TOLD YOU HE HAD A GUN. YOU DON'T -- DO YOU
20 KNOW IF IT WAS FOUND IN THE DRAWER OR ON TOP OF THE -- ON
21 TOP OF THE DRESSER?

22 A I'M PRETTY SURE IT WAS FOUND IN THE DRAWER BECAUSE HE
23 OPENED---

24 Q IN THE DRAWER---

25 A ---THE DRAWER WHEN HE SAID -- HE MADE A STATEMENT.

1 Q AND THE DRAWER WAS CLOSED. HE HAD TO PHYSICALLY OPEN
2 IT AND GO INTO IT TO GET THE GUN?

3 A AS FAR AS I RECALL. HE WAS SEARCHING, I WASN'T.

4 Q DO YOU KNOW IF IT WAS COVERED UP BY ANYTHING?

5 A NO.

6 Q BUT IT WAS DEFINITELY IN THE DRAWER?

7 A YES.

8 Q OKAY.

9 SO AFTER HE FINDS THAT GUN, YOU PROCEED TO SEARCH
10 THE REST OF THE HOUSE FOR A WEAPON?

11 A NOT THE ENTIRE HOUSE. WE EACH HAD AREAS---

12 Q WHERE DID YOU SEARCH?

13 A I WENT TO THE KITCHEN AND I ASSISTED HIM IN ANOTHER
14 PART OF THE HOUSE THAT HAD A LOT OF BOXES AND CLUTTER.

15 Q SO YOU SEARCHED THE KITCHEN?

16 A YES.

17 Q DO YOU KNOW IF ANYONE SEARCHED THE LINEN CLOSET?

18 A NO.

19 Q YOU DON'T KNOW OR NO ONE DID?

20 A I DON'T KNOW.

21 Q YOU DON'T KNOW. BUT YOU DIDN'T SEARCH IT?

22 A I DID NOT.

23 Q OKAY.

24 DID YOU SEARCH THE BATHROOM?

25 A NO, I DID NOT.

1 Q DID YOU SEARCH THE LIVING ROOM?

2 A NO, I DID NOT.

3 Q DO YOU KNOW IF ANY OF THOSE OTHER AREAS WERE
4 SEARCHED?

5 A I KNOW THAT DEPUTY ALEXANDER WAS IN THE LIVING ROOM
6 SEARCHING.

7 Q AND YOU DON'T KNOW ABOUT THE LINEN CLOSET OR
8 BATHROOM?

9 A NO.

10 Q HAD YOU ALL AT THAT POINT BEEN TOLD WHERE ANY OF THE
11 SUSPECTS HAD BEEN?

12 A THE CAPTAIN SAID THAT WE HAD GOT INFORMATION THAT THE
13 SUBJECT WAS IN THE BEDROOM OR IN THE DOORWAY OF THE
14 BEDROOM.

15 Q SO YOU HADN'T BEEN TOLD THAT THE SUSPECT HAD BEEN IN
16 THE LINEN CLOSET?

17 A NO.

18 Q OKAY.

19 AND YOU SEARCHED -- SEARCHING AN AREA WOULD BE
20 ROUTINE IN WHAT YOU DO, RIGHT?

21 A (NO RESPONSE.)

22 Q I MEAN, IT'S NOT NECESSARILY AN EVERYDAY THING, BUT
23 YOU WOULD DO IT PROBABLY, WHAT, ONCE A WEEK? ONCE A MONTH
24 THAT YOU SEARCH AN AREA?

25 A NOT A HOUSE.

1 Q NOT A HOUSE. SO THIS WAS THE FIRST TIME YOU HAD EVER
2 SEARCHED AN APARTMENT?

3 A NO, IT'S NOT THE FIRST TIME, BUT THAT'S NOT SOMETHING
4 I WOULD DO ROUTINELY IS SEARCH A HOUSE.

5 Q SO HOW OFTEN -- GIVE ME AN ESTIMATE -- HAD YOU
6 SEARCHED AN APARTMENT BEFORE THIS INCIDENT?

7 A YES.

8 Q I'M SORRY, HOW OFTEN HAD YOU SEARCHED, COULD YOU SAY?

9 A MAYBE TWICE A YEAR.

10 Q MAYBE TWICE A YEAR. AND HOW LONG HAD YOU BEEN A
11 DEPUTY IN DECEMBER OF '99 -- AN OFFICER, I'M SORRY?

12 A THAT WOULD HAVE BEEN TWO YEARS AGO. SO THAT WOULD
13 HAVE BEEN AROUND FIVE AND A HALF, I BELIEVE.

14 Q SO MAYBE TEN -- TEN -- TWELVE TIMES YOU SEARCHED
15 APARTMENTS IN YOUR CAREER AT THAT POINT?

16 A MAYBE. IT'S PICKED UP MORE SINCE I'VE GOTTEN MORE
17 TIME.

18 Q OKAY.

19 AND IT TOOK YOU ALL HALF AN HOUR TO SEARCH THIS
20 APARTMENT?

21 A I DON'T -- I DON'T HAVE ANY IDEA OF THE TIMING.

22 Q YOU DON'T KNOW. AND IT'S JUST A ONE-BEDROOM
23 APARTMENT?

24 A YES.

25 Q OKAY.

1 AND THE BEST THAT YOU CAN REMEMBER, YOU ONLY
2 SEARCHED THE BEDROOM AND THE KITCHEN?

3 A YES.

4 Q BUT YOU DIDN'T FIND THE GUN, PRICHARD DID?

5 A YES.

6 Q BEG THE COURT'S INDULGENCE.

7 I HAVE NO FURTHER QUESTIONS, YOUR HONOR.

8 THE COURT: ANY REDIRECT?

9 MS. PELLIZZARI: JUST ONE QUESTION, YOUR HONOR.

10 REDIRECT EXAMINATION

11 BY MS. PELLIZZARI:

12 Q DEPUTY PEARSON, YOU WOULD DESCRIBE VAN'S DEMEANOR AS
13 SHOCKED WHEN HE FIRST CAME OUT OF THE APARTMENT?

14 A YES.

15 Q THANK YOU. I HAVE NOTHING FURTHER AND WE WOULD ASK
16 THIS WITNESS TO BE EXCUSED, YOUR HONOR.

17 THE COURT: ANYTHING ELSE?

18 MS. SAMPSON: NO, YOUR HONOR.

19 THE COURT: ALL RIGHT.

20 YOU CAN STEP DOWN. THANK YOU, SIR.

21 THE WITNESS: THANK YOU, YOUR HONOR.

22 (WHEREUPON, THE WITNESS WAS
23 EXCUSED AT THIS TIME.)

24 THE COURT: ALL RIGHT.

25 LADIES AND GENTLEMEN, WE'LL GO AHEAD AND TAKE A

1 LUNCH BREAK AT THIS POINT. I'LL ASK YOU TO BE BACK IN THE
2 JURY ROOM -- IT'S 1 O'CLOCK NOW -- I'LL JUST ASK YOU TO BE
3 BACK IN THE JURY ROOM AT 2:30 AND WE'LL GET STARTED BACK.

4 DURING THE LUNCH BREAK, OF COURSE, IT'S STILL
5 VERY IMPORTANT THAT YOU NOT TALK ABOUT THE CASE. DON'T LET
6 ANYONE TALK ABOUT IT WITH YOU. WE'LL SEE YOU BACK AT
7 TWO-THIRTY. HAVE A GOOD LUNCH.

8 (JURY OUT.)

9 THE COURT: ALL RIGHT.

10 COUNSEL, ANYTHING BEFORE WE BREAK FOR LUNCH FROM
11 THE STATE?

12 MS. PELLIZZARI: NOT FROM THE STATE, YOUR HONOR.

13 THE COURT: FROM THE DEFENSE?

14 MS. DUKE-MIMS: NO, SIR.

15 THE COURT: OKAY.

16 SEE YOU BACK AT TWO-THIRTY.

17 (WHEREUPON, COURT RECESSED FOR
18 LUNCH AT 1:00 P.M.)

19 (WHEREUPON, COURT RECONVENED AFTER
20 LUNCH AT 2:30 P.M.)

21 THE BAILIFF: ALL RISE. COURT IS IN ORDER.

22 THE COURT: THANK YOU. PLEASE HAVE A SEAT.

23 ALL RIGHT.

24 ARE WE READY TO BRING THE JURY IN? IS THE STATE
25 READY?

1 MS. PELLIZZARI: YES, SIR.

2 THE COURT: THE DEFENSE?

3 MS. DUKE-MIMS: YES, SIR.

4 THE COURT: BRING THE JURY IN.

5 (JURY IN.)

6 THE BAILIFF: THE JURY IS PRESENT, YOUR HONOR.

7 THE COURT: THANK YOU, SIR.

8 ALL PARTIES AND ATTORNEYS ARE IN THE COURTROOM
9 AND ALL JURORS HAVE RETURNED.

10 THE STATE, CALL YOUR NEXT WITNESS, PLEASE.

11 MR. PASCOE: YOUR HONOR, THE STATE CALLS SERGEANT
12 DODGE.

13 SERGEANT DENNIS DODGE,

14 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:

15 THE CLERK: PLEASE HAVE A SEAT HERE, SIR. STATE
16 YOUR FULL NAME FOR THE RECORD AND SPELL YOUR LAST.

17 THE WITNESS: DENNIS DODGE, D-O-D-G-E.

18 DIRECT EXAMINATION

19 BY MR. PASCOE:

20 Q GOOD AFTERNOON, SERGEANT.

21 A GOOD AFTERNOON, SIR.

22 Q WHERE DO YOU WORK, SIR?

23 A I'M EMPLOYED WITH THE RICHLAND COUNTY SHERIFF'S
24 DEPARTMENT.

25 Q HOW LONG HAVE YOU BEEN IN LAW ENFORCEMENT?

1 A ALMOST SIX YEARS.

2 Q AND WHAT ARE YOUR CURRENT DUTIES WITH THE RICHLAND
3 COUNTY SHERIFF'S DEPARTMENT?

4 A I'M A SUPERVISOR FOR BROAD RIVER ROAD AREA.

5 Q OKAY.

6 AND WHAT ALL DOES THIS ENTAIL? WHAT DO YOU DO AS
7 SUPERVISOR?

8 A I MANAGE TWO SQUADS WHICH PERFORMS 24 HOUR ROAD
9 SERVICES ON 911 CRIMES IN PROGRESS, ALARMS.

10 Q OKAY.

11 SO, IN ESSENCE, IF I CALL 911, EITHER YOU OR ONE
12 OF YOUR DEPUTIES UNDER YOU WILL BE THE FIRST ONE AT THE
13 SCENE?

14 A YES, SIR.

15 Q OKAY.

16 AND WERE YOU PATROLLING AN AREA BACK IN DECEMBER
17 OF 1999?

18 A YES, SIR.

19 Q WHAT AREA WERE YOU PATROLLING?

20 A I WAS THEN ASSIGNED TO THE COMMUNITY ACTION TEAM AND
21 I WORKED THE BROAD RIVER ROAD AREA.

22 Q AND COMMUNITY ACTION TEAM IS THAT ALSO REFERRED TO AS
23 CAT?

24 A YES, SIR.

25 Q OKAY.

1 NOW, WERE YOU ON DUTY, SIR, BACK ON DECEMBER THE
2 14TH, 1999?

3 A YES, SIR.

4 Q WHAT SHIFT WERE YOU WORKING?

5 A I WAS WORKING PRETTY MUCH THE DAY AND NIGHT SHIFT.
6 WE SPLIT OUR HOURS TO COVER THE MOST TIMES IN WHICH WE WERE
7 NEEDED.

8 Q OKAY.

9 AND WHAT HOURS WERE YOU WORKING THAT DAY?

10 A I BELIEVE IT WAS NINE TO NINE AT THAT TIME.

11 Q SO ABOUT TWELVE-HOUR SHIFTS, NINE IN THE EVENING TO
12 NINE IN THE MORNING?

13 A USUALLY, AROUND TWELVE HOURS.

14 Q OKAY.

15 AND WHAT, IF ANYTHING, WERE YOU CALLED UPON TO DO
16 WHEN YOU WERE ON PATROL AT 9 O'CLOCK THAT MORNING ON
17 DECEMBER 14, 1999?

18 A PRETTY MUCH WHAT I WAS DOING WAS MAKING CONTACTS
19 WITHIN THE COMMUNITY, DISCUSSING THEIR CONCERNS OR PROBLEMS
20 AND I WAS GOING FROM ONE SIDE TO THE OTHER AND DOING
21 FOLLOW-UPS. ALSO MAKING CONTACT WITH THE PATROL DIVISION
22 WHEN I HEARD THE CALL GO OUT.

23 Q I WAS GOING TO ASK YOU, DID YOU HAVE TO GO ANYWHERE
24 THAT MORNING SOMETIME AFTER 9 O'CLOCK?

25 A NO, SIR.

1 Q WERE YOU CALLED TO GO ANYWHERE SOMETHING THAT MORNING
2 AROUND 9 O'CLOCK?

3 A I HEARD THE GENERAL BROADCAST GO OUT OVER THE RADIO.

4 Q AND WHERE DID YOU END UP GOING?

5 A TO TRENTON COURT APARTMENTS ON CONNIE DRIVE.

6 Q OKAY.

7 AND WHY -- WHY DID YOU GO TO TRENTON COURT
8 APARTMENTS?

9 A IT WAS AN ARMED ROBBERY-KIDNAPPING IN PROGRESS, WHICH
10 MEANS IT'S HAPPENING RIGHT THEN AND THERE. AT THAT TIME,
11 ANY AVAILABLE UNIT IS MOVING IN THAT DIRECTION.

12 Q ALL RIGHT, SIR.

13 SO YOU DIDN'T RECEIVE THE ORIGINAL DISPATCH, BUT
14 YOU HEARD THE BROADCAST OVER THE RADIO?

15 A YES, SIR.

16 Q AND THAT'S WHY YOU WENT BECAUSE ANY ADDITIONAL FORCE
17 WAS ASKED TO GO?

18 A YES, SIR, AND I WAS CLOSE TO THE AREA.

19 Q AND ABOUT HOW LONG DID IT TAKE YOU TO GET TO THE
20 PARKING LOT?

21 A NO MORE THAN FOUR OR FIVE MINUTES.

22 Q OKAY.

23 AND WHEN YOU GOT THERE, WHAT, IF ANYTHING, WERE
24 YOU LOOKING FOR?

25 A THE INITIAL BROADCAST DESCRIBED THREE BLACK MALES,

1 CLOTHING DESCRIPTION. ONE I RECALL WAS A MAROON SWEATSHIRT
2 AND THE OTHER ONE WAS A NAVY BLUE SWEATSHIRT.

3 Q OKAY.

4 SO YOU RECALL A NAVY BLUE AND A MAROON. AND WHEN
5 YOU GOT TO THE SCENE IS THAT WHAT YOU WERE LOOKING FOR?

6 A YES, SIR. I WAS LOOKING FOR ANYTHING THAT WAS OUT OF
7 THE ORDINARY OR PEOPLE WALKING AROUND THAT MAY BE FITTING
8 THAT DESCRIPTION---

9 Q OKAY.

10 A ---OR WEARING THOSE CLOTHES.

11 Q AND WAS THERE -- WERE YOU LOOKING FOR ANYONE TO BE
12 ARMED WHEN YOU GOT THERE?

13 A YES, SIR, THEY SAID THEY WERE ARMED.

14 Q AND THAT'S ON THE DISPATCH?

15 A YES, SIR.

16 Q AND WHEN YOU -- WHEN YOU GOT TO THE PARKING LOT,
17 WHERE IS THIS AGAIN?

18 A RIGHT AS YOU TURN OFF OF BROAD RIVER ROAD, IT'S THE
19 SECOND BUILDING WHERE I SAW THE FIRST SUSPECT.

20 Q OKAY.

21 NOW -- AND WHAT HAPPENED AS YOU GOT THERE? TELL
22 THE JURY WHAT, IF ANYTHING, YOU SAW AND DID WHEN YOU FIRST
23 GOT TO THE PARKING LOT?

24 A OKAY.

25 THERE WAS A LEAD VEHICLE IN FRONT OF ME PULL IN

1 COMING FROM THE OTHER DIRECTION OF BROAD RIVER ROAD THAT I
2 WAS COMING FROM---

3 Q THAT'S ANOTHER DEPUTY?

4 A YES, SIR.

5 Q OKAY.

6 A AND AS I WAS GOING IN, HE WENT STRAIGHT AHEAD. I SAW
7 AN INDIVIDUAL WHO FIT OR MATCHED ONE OF THE CLOTHING
8 DESCRIPTIONS OF THE THREE SUSPECTS.

9 Q OKAY.

10 AND WHAT WAS HE WEARING THAT INDIVIDUAL THAT YOU
11 SAW?

12 A A DARK BLUE SWEATSHIRT.

13 Q OKAY.

14 DID YOU SEE ANY OTHER INDIVIDUALS OUT IN THE
15 PARKING LOT OTHER THAN THE DARK BLUE SWEATSHIRT PERSON
16 YOU'VE TESTIFIED?

17 A NO, SIR.

18 Q OKAY.

19 WHAT DID YOU DO WHEN YOU SAW THE PERSON IN THE
20 BLUE SWEATSHIRT?

21 A I GOT OUT OF MY CAR, WENT -- AS HE SAW ME, HE MADE A
22 SHARP TURN TO MOVE AWAY FROM---

23 MS. DUKE-MIMS: YOUR HONOR, I OBJECT TO THE
24 RELEVANCE.

25 MR. PASCOE: IT'S ONE OF THE CO-DEFENDANTS.

1 THE COURT: I'LL GIVE HIM A LITTLE BIT OF LEEWAY.
2 GO AHEAD.
3 MR. PASCOE: OKAY.
4 WHAT HAPPENED AS YOU GOT OUT OF THE CAR?
5 THE WITNESS: WHEN I GOT OUT OF THE CAR, I WENT
6 UP TO THE SUSPECT AND DETAINED HIM FOR QUESTIONING.
7 Q OKAY.
8 WHEN YOU SAY DETAINED, WAS HE UNDER ARREST?
9 A NO, SIR. HE WAS JUST CUFFED FOR THE SECURITY OF
10 HIMSELF AND MYSELF.
11 Q OKAY.
12 AND, OBVIOUSLY, YOU WEREN'T GOING TO LET HIM
13 LEAVE?
14 A NO, SIR.
15 Q OKAY.
16 AFTER DETAINING HIM, THAT PERSON IN THE BLUE
17 SWEATSHIRT, WHAT DID YOU THEN DO?
18 A I TURNED HIM OVER TO ANOTHER OFFICER BECAUSE OTHER
19 OFFICERS WERE INDICATING A POSSIBLE APARTMENT IN WHICH THE
20 SUSPECTS WERE FLEEING INTO.
21 Q OKAY.
22 AND DID YOU GO INTO THAT APARTMENT?
23 A YES, SIR, I DID.
24 Q AND WHAT, IF ANYTHING, HAPPENED WHEN YOU WENT TO THAT
25 APARTMENT?

1 A UH---

2 Q AND LET ME ASK YOU WHILE YOU'RE DOING IT, ARE YOU
3 USING YOUR NOTES FROM THAT DAY IN FOLLOW-UP TO ASSIST YOU
4 IN YOUR TESTIMONY?

5 A ONLY TO REFRESH CERTAIN POINTS.

6 Q OKAY.

7 SO WHAT HAPPENED WHEN YOU GOT TO THE APARTMENT?

8 A WHEN I WENT TO THE APARTMENT, DEPUTY ALEXANDER HAD
9 KNOCKED ON THE DOOR. A WOMAN CAME TO THE DOOR AND
10 ALEXANDER HAD ASKED HER IF THERE WAS ANYBODY IN THERE. SHE
11 SAID, YES, THERE WERE TWO GUYS HOLDING HER BOYFRIEND IN THE
12 APARTMENT. HE PULLED HER OUT, MOVED OUT OF THE WAY, GIVE
13 US CLEAR SHOT AND PUTTING HIM OUT OF THE LINE OF FIRE
14 SHOULD SHOOTING START.

15 Q WHAT WAS HER DEMEANOR LIKE, THE YOUNG LADY, WHEN
16 Y'ALL GOT HER OUT OF THE APARTMENT?

17 A KIND OF NERVOUS AND SHAKING. I DIDN'T HAVE TOO MUCH
18 CONTACT WITH HER. I WAS MORE CONCENTRATING ON THE PEOPLE
19 THAT WERE INSIDE THE APARTMENT STILL.

20 Q OKAY.

21 AND WHAT DID YOU AND THE OTHER DEPUTIES DO AS FAR
22 AS THE OTHER PEOPLE IN THE APARTMENT?

23 A WE SHOUTED OUT TO THE APARTMENT FOR THE PEOPLE TO
24 COME OUT AND THEN THE NEXT PERSON CAME OUT WHICH---

25 Q AND WHO WAS THE NEXT PERSON THAT CAME -- THAT CAME

1 OUT?

2 A WAS THE SECOND VICTIM, MR. DORN, I BELIEVE HIS NAME
3 IS, WEARING AN ORANGE SHIRT.

4 Q NOW, AT THAT TIME, AS A TRAINED DEPUTY, DO YOU JUST
5 ASSUME THAT IT'S THE VICTIM THAT'S COMING OUT?

6 A NO, SIR, IT COULD BE ANYBODY.

7 Q WHAT DID YOU---

8 A WE IMMEDIATELY PUT HIM OFF TO THE SIDE. WE HAD TO
9 DETAIN HIM, PUT HIM IN CUFFS FOR EVERYONE'S SAFETY AND THEN
10 MOVE HIM OUTSIDE. WE STILL HAVE TWO PEOPLE INSIDE THE
11 APARTMENT THAT WE ARE AWARE OF.

12 Q OKAY.

13 AND WERE YOU AWARE -- DID YOU GET ANY INFORMATION
14 WITH REGARDS TO YOUR INVESTIGATION OF TRYING TO GET THESE
15 PEOPLE OUT WHETHER THEY WERE GOING TO BE ARMED OR NOT?

16 A THE FULL KNOWLEDGE THAT WE HAD AT THE TIME WAS TWO
17 PEOPLE INSIDE THE APARTMENT WERE ARMED AND CARRYING GUNS.

18 Q OKAY.

19 HOW MANY GUNS?

20 A TWO GUNS.

21 Q OKAY.

22 AND IS THAT YOUR INFORMATION YOU'RE GOING ON
23 RIGHT THEN WHEN YOU'RE TRYING TO GET THE PEOPLE OUT?

24 A YES, SIR.

25 Q OKAY.

1 AND YOU'VE GOT THE VICTIM OUT AND YOU'VE GOT
2 KETRA, THE FIRST VICTIM OUT. TELL THE JURY ABOUT WHAT
3 HAPPENED WITH THE OTHER TWO DEFENDANTS IN THERE.

4 A OKAY.

5 WE THEN, MYSELF AND DEPUTY PEARSON, HOLLERED INTO
6 THE APARTMENT ASKING THEM TO COME OUT WITH THEIR HANDS IN
7 PLAIN VIEW SO WE CAN SEE THAT THEY ARE NOT HOLDING
8 ANYTHING. THE FIRST SUSPECT CAME OUT, CYCRUS TUCKER,
9 WEARING A BLACK SHIRT AND SOME LETTER ON THE FRONT OF IT.
10 HE COMES OUT WITH HIS HANDS SHOWING. WE IMMEDIATELY -- THE
11 SIDE OFFICER TAKES HIM OFF TO THE SIDE, PUTS HIM TO THE
12 GROUND. WE CUFF HIM, SEARCH HIM FOR ANY WEAPONS. WE
13 DIDN'T FIND ANY WEAPONS.

14 Q OKAY.

15 DID THE -- DID ANYONE ELSE VOLUNTARILY COME OUT
16 AS YOU WERE YELLING TO COME OUT---

17 A NO. WE THEN YELLED MORE BECAUSE WE ARE BEHIND COVER
18 FOR THE NEXT ONE TO COME OUT. IT'S SILENCE. SOMEHOW I
19 COME TO THE BELIEF THAT I HAD HEARD THAT THERE WAS NO ONE
20 ELSE IN THE APARTMENT, BUT YET WE HAD BEEN TOLD THERE WERE
21 TWO PEOPLE. SO WE ARE ACTING THAT THERE IS STILL SOMEBODY
22 IN THE APARTMENT.

23 Q WHO TOLD YOU THAT THERE WERE TWO PEOPLE IN THE
24 APARTMENT?

25 A IT WAS THE OTHER DEPUTIES THAT WERE OUT ON THE OTHER

1 SIDE OF THE CLEAR FIRE ZONE.

2 Q AND IS THAT INFORMATION THAT WAS RECEIVED FROM THE
3 VICTIMS?

4 A I CAN PRESUME THAT.

5 Q OKAY.

6 BUT YOU DIDN'T HAVE FIRST-HAND KNOWLEDGE?

7 A NO, SIR.

8 Q OKAY.

9 AND WHAT DID YOU DO ABOUT IT THINKING THAT THERE
10 MIGHT BE A SECOND PERSON IN THERE THAT WAS NOT COMING OUT?

11 A AFTER A DELAY OF HOLLERING AND NO RESPONSE
12 WHATSOEVER, THE DOORS OPENED WIDE. I MOVE UP TO THE FRONT
13 OF THE DOOR IN A LOW POSITION AND THEN I DO A SUDDEN PEEK
14 IN AND AROUND THE CORNER IN WHICH I SEE THE OTHER SUSPECT
15 LEANING UP AGAINST THE WALL AS TIGHT AS HE COULD CLOSE TO
16 THE DOOR ON THE RIGHT-HAND SIDE.

17 Q DID YOU HAVE YOUR FIREARM DRAWN WHEN YOU WENT IN
18 THERE?

19 A YES, SIR.

20 Q AND IS THAT BECAUSE YOUR INFORMATION YOU TESTIFIED
21 THAT THERE WERE ARMED INDIVIDUALS IN THERE?

22 A YES, SIR.

23 Q AND YOU SAID THAT THIS OTHER PERSON WAS -- THIS
24 SECOND PERSON THAT DIDN'T VOLUNTARILY COME OUT WAS LEANING
25 AGAINST THE WALL. HOW WAS HE LEANING?

1 A TRYING TO GET AS CLOSE INTO THE WALL AS POSSIBLE SO
2 IF SOMEBODY IS LOOKING INSIDE THE ROOM, IT WOULD LOOK LIKE
3 THERE WAS NOBODY THERE.

4 Q OKAY.

5 SO IN YOUR OPINION THEN, WATCHING HIM, HE WAS
6 TRYING TO HIDE?

7 A YES, SIR.

8 Q OKAY.

9 WHAT WAS THAT PERSON WEARING?

10 A HE WAS WEARING A MAROON SWEATSHIRT.

11 Q AND WHAT DID YOU DO WITH THAT INDIVIDUAL THAT WAS
12 HIDING OR TRYING TO HIDE?

13 A I IMMEDIATELY BACKED BACK AWAY OUT OF THERE. WE
14 CALLED AGAIN AND HE CAME OUT. HE KNEW I HAD SAW HIM. HE
15 SAW ME AT THE SAME TIME WHEN WE CAME---

16 Q WELL, WHY -- I'M SORRY, GO AHEAD.

17 A HE CAME OUT THEN WITH HIS HANDS IN PLAIN VIEW.

18 Q WHY WOULD YOU IMMEDIATELY BACK AWAY WHEN YOU SAW THE
19 PERSON WITH THE MAROON SWEATSHIRT AS A TRAINED OFFICER?

20 A BECAUSE IF HE DID HAVE A GUN IN HIS HAND, I WAS IN
21 DANGER.

22 Q OKAY.

23 AND WAS IT AT THAT TIME, FINALLY, THAT THE MAN
24 WITH THE MAROON SWEATSHIRT CAME OUT?

25 A YES, SIR.

1 Q OKAY.

2 AND LET ME SHOW YOU WHAT HAS BEEN MARKED AS
3 STATE'S EXHIBIT NUMBER 16 ALREADY IN EVIDENCE. DO YOU
4 RECOGNIZE THAT?

5 A YES, SIR. THAT WAS THE SWEATSHIRT IN WHICH THE THIRD
6 SUSPECT OR THE SUSPECT THAT WAS DELAYED IN COMING OUT. MR.
7 WILSON'S.

8 Q AND WHAT DID YOU DO WITH THAT INDIVIDUAL WHEN HE
9 FINALLY CAME OUT, THE PERSON IN THE MAROON SWEATSHIRT?

10 A TWO OFFICERS, MYSELF AND MICHAEL PEARSON, HAD GOT HIM
11 ON THE GROUND, IMMEDIATELY CUFFED HIM, SEARCHED HIM FOR ANY
12 WEAPONS. HE DID NOT HAVE A WEAPON ON HIM AT THAT TIME.

13 Q OKAY.

14 AND WHERE DID YOU TAKE HIM FROM THERE?

15 A WE TOOK HIM TO A SECURED AREA AND PASSED HIM OFF OVER
16 TO OTHER DEPUTIES FOR SECURITY UNTIL FURTHER INVESTIGATIONS
17 AND THE INVESTIGATORS ARRIVED ON THE SCENE.

18 Q AND THERE WERE A NUMBER OF OTHER DEPUTIES AND
19 INVESTIGATORS THAT WERE AT THE SCENE AND COMING TO THE
20 SCENE, SERGEANT, IS THAT---

21 A YES, SIR, THERE WAS.

22 Q DID YOU HAVE ANYMORE INVOLVEMENT WITH THE ARREST OF
23 THE DEFENDANT, DEMARCO JOHNSON, THE PERSON IN THE MAROON
24 SHIRT? ANY OTHER INVOLVEMENT?

25 A NO, SIR.

1 Q OKAY.

2 NOW, IF I COULD JUST BACKTRACK JUST A MINUTE BACK
3 TO YOUR TESTIMONY OF THE PERSON IN THE -- THE FIRST PERSON
4 YOU DETAINED, WHAT WAS HE WEARING?

5 A A BLUE SWEATSHIRT, NAVY BLUE SWEATSHIRT.

6 Q YOU TESTIFIED EARLIER THAT YOU WERE LOOKING FOR
7 SOMEONE IN A NAVY BLUE SWEATSHIRT AND ALSO A MAROON
8 SWEATSHIRT -- LET ME SHOW YOU WHAT'S BEEN MARKED -- WHEN
9 YOU GOT THERE. LET ME SHOW YOU WHAT'S BEEN MARKED AS
10 STATE'S EXHIBIT NUMBER 18. TAKE A LOOK AT THAT.

11 A (WITNESS COMPLIES.) YES, SIR. THIS IS THE
12 SWEATSHIRT WHICH THE SUBJECT THAT I SAW OUTSIDE STANDING
13 AROUND WHEN I ARRIVED WAS WEARING.

14 Q AND THAT'S THE PERSON THAT YOU DETAINED FIRST OFF?

15 A YES, SIR.

16 Q IS IT IN THE SAME CONDITION AS IT WAS IN ON DECEMBER
17 14, 1999?

18 A YES, SIR.

19 Q OKAY.

20 YOUR HONOR, I'D ASK THAT STATE'S EXHIBIT NUMBER
21 18 BE ADMITTED INTO EVIDENCE.

22 THE COURT: ANY OBJECTION?

23 MS. DUKE-MIMS: YOUR HONOR, WE WOULD OBJECT TO
24 THE RELEVANCE.

25 THE COURT: WHAT IS IT, AGAIN, COUNSEL?

1 MR. PASCOE: IT'S THE CO-DEFENDANT'S SWEATSHIRT
2 THAT THERE WAS A DISPATCH OUT ABOUT WHAT WAS BEING WORN AND
3 THAT WAS THE DISPATCH ON THE CO-DEFENDANT.

4 THE COURT: OKAY.

5 COUNSEL, I THINK IT'S APPROPRIATE TO -- IN TERMS
6 OF THE CREDITABILITY OF THE WITNESS AS TO HIS TESTIMONY.
7 I'LL ALLOW IT.

8 (WHEREUPON, STATE'S EXHIBIT NUMBER
9 18, SWEATSHIRT/NAVY, ENTERED INTO EVIDENCE AT THIS TIME
10 OVER OBJECTION OF COUNSEL.)

11 MR. PASCOE: AND WERE YOU ABLE TO ASCERTAIN THE
12 VEHICLE THAT THE DEFENDANTS WERE IN WHEN THEY CAME TO THE
13 PARKING LOT?

14 THE WITNESS: YES, SIR. THIS WAS LATER ON DURING
15 THE INVESTIGATIONS, SUSPECT LIDE, WHICH WAS---

16 Q ALL YOU HAVE TO SAY IS YES OR NO---

17 A YES---

18 Q ---YOU CAN'T GO INTO WHAT HE SAID, OKAY. IT'S
19 HEARSAY. DID YOU FIND OUT WHAT THEY WERE DRIVING?

20 A HE HAD KEYS IN HIS POCKET WHICH MATCHED THE
21 DESCRIPTION OF THE VEHICLE THAT CAME OVER THE RADIO
22 BROADCAST.

23 Q GOT YOU. AND WHAT WAS THE DESCRIPTION OF THE VEHICLE
24 THAT YOU WERE LOOKING FOR OVER THE RADIO BROADCAST?

25 A A BLUE FORD EXPLORER.

1 Q OKAY.

2 LET ME SHOW YOU WHAT'S -- WAS THAT VEHICLE TOWED
3 FROM THE PARKING LOT AFTER THESE THREE INDIVIDUALS WERE
4 ARRESTED?

5 A YES, SIR, I BELIEVE IT WAS.

6 Q LET ME SHOW YOU WHAT HAS BEEN MARKED AS STATE'S
7 EXHIBIT NUMBER 14. DO YOU RECOGNIZE THAT?

8 A YES, SIR, THAT'S THE VEHICLE.

9 Q AND YOU SAY THAT'S THE VEHICLE, WHAT VEHICLE IS THAT?

10 A THE FORD EXPLORER THAT THE SUSPECTS WERE -- ARRIVED
11 ON THE SCENE.

12 Q AND THAT'S WHAT YOU WERE LOOKING FOR IN YOUR
13 DISPATCH?

14 A YES, SIR.

15 Q YOUR HONOR, I'D ASK THAT STATE'S EXHIBIT NUMBER 14 BE
16 ADMITTED INTO EVIDENCE.

17 THE COURT: ANY OBJECTION?

18 MS. DUKE-MIMS: YOUR HONOR, I WOULD -- I THINK I
19 WOULD OBJECT AGAIN TO THE RELEVANCE. I'D ALSO OBJECT TO
20 THE FOUNDATION. THEY HAVEN'T TOLD ABOUT HOW THEY LINKED
21 THIS CAR TO THIS PERSON OR ANYTHING ELSE.

22 THE COURT: I THINK THAT MAY BE CORRECT. I HAVE
23 NOT DETERMINED. HE'S JUST INDICATED HE WAS LOOKING FOR AND
24 THAT WAS IT.

25 MR. PASCOE: OKAY.

1 WE CAN DO THAT THROUGH ANOTHER OFFICER LATER.

2 THE COURT: OKAY.

3 MR. PASCOE: OKAY.

4 AND LET ME SHOW YOU WHAT'S BEEN MARKED AS STATE'S
5 EXHIBIT NUMBER 15. DO YOU RECOGNIZE THAT?

6 THE WITNESS: THAT WAS THE KEYS IN THE POCKET OF
7 THE FIRST PERSON I DETAINED.

8 Q AND WHO WAS THAT PERSON YOU DETAINED?

9 A HIS NAME WAS LIDES.

10 Q OKAY.

11 TARREL LIDE?

12 A TARREL LIDE.

13 Q OKAY.

14 AND DID YOU DETERMINE WHAT VEHICLE THOSE KEYS
15 BELONGED TO?

16 A I WAS NO MORE THAN THE OTHER SIDE OF THE PARKING LOT
17 WHEN WE FOUND THE KEYS IN HIS POCKET AND YOU COULD SEE THE
18 VEHICLE IN A STRAIGHT LINE PATH FROM WHERE WE WERE AND JUST
19 WENT AND PUT THE KEY INTO THE DOOR LOCK AND IT TURNED.

20 Q IT TURNED?

21 A AND THE VEHICLE WAS PARKED IN FRONT OF BUILDING
22 NUMBER TWO IN WHICH WE GOT THE ORIGINAL CALL FROM.

23 Q OKAY.

24 AND THAT'S STATE'S EXHIBIT NUMBER 14, THE
25 VEHICLE, YOU'RE TALKING ABOUT?

1 A YES, SIR.

2 Q OKAY.

3 AND LET ME SHOW YOU STATE'S EXHIBIT NUMBER TEN.

4 DO YOU RECOGNIZE THAT? THAT PERSON?

5 A YES, SIR. THAT'S THE PERSON THAT WAS WEARING THE
6 BLUE SWEATSHIRT.

7 Q OKAY.

8 IS THAT MR. TARREL LIDE?

9 A YES, SIR.

10 Q AND WAS HE ARRESTED IN THIS CASE FOR THESE CHARGES AS
11 WELL?

12 A YES, SIR, HE WAS.

13 Q OKAY.

14 AND DOES THAT ADEQUATELY DEPICT MR. LIDE?

15 A I NEVER SAW HIM WITHOUT THE SWEATSHIRT ON, SO---

16 Q BUT I MEAN, THAT'S HIM---

17 A YES, SIR.

18 Q I'D ASK THAT STATE'S EXHIBIT NUMBER 10 BE ADMITTED
19 INTO EVIDENCE.

20 THE COURT: ANY OBJECTION?

21 MS. DUKE-MIMS: NO, SIR.

22 THE COURT: ALL RIGHT.

23 WITHOUT OBJECTION.

24 (WHEREUPON, STATE'S EXHIBIT NUMBER
25 TEN, PHOTOGRAPH, ENTERED INTO EVIDENCE AT THIS TIME WITHOUT

1 OBJECTION.)

2 MR. PASCOE: AND, SERGEANT, WERE YOU INVOLVED
3 WHEN ANY OF THE GUNS WERE LOCATED THAT AFTERNOON?

4 THE WITNESS: NO, SIR. I WAS NOT INSIDE THE
5 APARTMENT.

6 Q OKAY.

7 WHEN THE GUNS WERE LOCATED?

8 A THAT'S -- I WAS NOT THERE. I WAS OUTSIDE WHEN THE
9 GUNS -- WHEN ONE OF THE GUNS WAS LOCATED.

10 Q BEG THE COURT'S INDULGENCE.

11 SIR, THE PERSON THAT YOU TESTIFIED THAT DIDN'T --
12 WOULDN'T VOLUNTARILY COME OUT, THAT WAS WEARING THE MAROON
13 SWEATSHIRT, DO YOU SEE HIM IN THE COURTROOM TODAY?

14 A YES, SIR. HE'S THE DEFENDANT SITTING DOWN.

15 Q IN BETWEEN HIS TWO ATTORNEYS?

16 A YES, SIR.

17 Q THANK YOU, SERGEANT. ANSWER ANY QUESTIONS THAT
18 DEFENSE COUNSEL MS. MIMS HAS FOR YOU.

19 THE COURT: ALL RIGHT.

20 COUNSEL.

21 MS. DUKE-MIMS: MAY IT PLEASE THE COURT, YOUR
22 HONOR.

23 THE COURT: YES, MA'AM.

24 CROSS-EXAMINATION

25 BY MS. DUKE-MIMS:

1 Q SERGEANT DODGE, HOW ARE YOU?

2 A GOOD.

3 Q GOOD. JUST A COUPLE OF QUESTIONS.

4 SO YOU WERE THE ONE OF THE FIRST DEPUTIES ON THE
5 SCENE THAT DAY, DECEMBER 14TH, AT TRENTON COURT APARTMENTS?

6 A I WAS ONE OF FIRST ARRIVED AND THERE WERE SEVERAL
7 DEPUTIES ALREADY ON THE SCENE.

8 Q OKAY.

9 YOU EVENTUALLY WENT TO APARTMENT 107?

10 A YES, MA'AM.

11 Q OKAY.

12 AND WHEN YOU GOT THERE, DEPUTY ALEXANDER WAS
13 KNOCKING ON THE DOOR?

14 A YES, MA'AM.

15 Q AND THAT'S WHEN THE FEMALE CAME TO THE DOOR?

16 A YES, MA'AM.

17 Q AND WAS EVENTUALLY -- EVENTUALLY, JUST CAME OUT ON
18 HER OWN I THINK?

19 A YES.

20 Q OKAY.

21 AFTER THAT, YOU ALL ORDERED EVERYONE TO COME OUT?

22 A YES, MA'AM.

23 Q OKAY.

24 AND THE FIRST PERSON TO COME OUT WAS NORMAN VAN
25 DORN?

1 A YES, MA'AM.

2 Q AND HE WAS THE ONE IN THE ORANGE SWEATSHIRT?

3 A YES, MA'AM.

4 Q OKAY.

5 HOW DID YOU -- WELL, ACTUALLY, WHEN NORMAN VAN

6 DORN CAME OUT, HE WAS CUFFED, ISN'T THAT RIGHT?

7 A ONCE HE CAME OUT, WE DIDN'T KNOW WHO---

8 Q SURE.

9 A ---ALL THE SUSPECTS WERE OR IF THEY HAD SWITCHED

10 CLOTHES OR WHAT.

11 Q OKAY.

12 WAS HE PUTTING ON A BIG FIGHT WITH YOU OR

13 ANYTHING?

14 A NOT THAT I RECALL.

15 Q STRUGGLING WITH YOU?

16 A HE COULDN'T UNDERSTAND WHY HE WAS BEING CUFFED---

17 Q DID HE SAY, WHAT'S GOING ON?

18 A WE -- I EXPLAINED TO HIM, I WAS TELLING HIM, I SAID

19 WE ARE DOING THIS FOR YOUR SAFETY AND OURS---

20 Q OKAY.

21 A ---BECAUSE WE JUST NEED TO GET TO THE FACTS.

22 Q HOW DID -- HOW DID YOU FIND OUT -- HOW DID YOU FIGURE

23 THAT THERE WERE TWO GUNS IN THE APARTMENT, DO YOU REMEMBER?

24 A I KNOW ONE OF THE DEPUTIES HAD TALKED TO THE WOMAN

25 WHEN SHE CAME OUT AND SHE HAD SAID THERE WERE TWO GUNS.

- 1 Q SO SHE TOLD YOU THERE WERE TWO GUNS?
- 2 A YES, MA'AM.
- 3 Q THAT'S THE ONLY WAY YOU KNEW THERE WERE GUNS -- TWO
- 4 GUNS IN THE APARTMENT?
- 5 A NO, MA'AM. WHILE WE KNEW THERE WERE GUNS---
- 6 Q RIGHT.
- 7 A ---WE JUST DON'T KNOW HOW MANY.
- 8 Q OKAY.
- 9 SO THE NEXT PERSON TO COME OUT WAS CYCRUS TUCKER?
- 10 A YES, MA'AM -- NO, MA'AM. MR. DORN COME OUT, THEN
- 11 CYCRUS TUCKER.
- 12 Q RIGHT. AND THEN CYCRUS TUCKER CAME OUT?
- 13 A YES, MA'AM.
- 14 Q AND YOU LOOKED IN THE APARTMENT AND YOU SAY YOU SAW
- 15 DEMARCO JOHNSON STANDING AGAINST THE WALL?
- 16 A YES, MA'AM. AS YOU GO IN THE FRONT DOOR---
- 17 Q UH-HUH.
- 18 A ---IMMEDIATELY ALONG SIDE OF THE DOOR OUTER WALL, HE
- 19 WAS LEANING UP AS TIGHT AGAINST THAT WALL AS YOU CAN TO TRY
- 20 TO SEE LIMITED.
- 21 Q SO HE WAS RIGHT THERE BY THE DOOR ESSENTIALLY?
- 22 A YES, MA'AM.
- 23 Q OKAY.
- 24 HE WASN'T HIDING ANYWHERE IN THE APARTMENT?
- 25 A NO, HE WAS STANDING UP.

1 Q HE WAS STANDING UP. AND YOU ACTUALLY -- IN FACT,
2 SERGEANT DODGE, YOU ACTUALLY GRABBED HIM AND PULLED HIM OUT
3 OF THE APARTMENT, DIDN'T YOU?

4 A I MAY HAVE. I BACKED OUT OF THERE AND HE WAS COMING
5 OUT PRETTY MUCH---

6 Q OKAY.

7 A ---AT THE SAME TIME.

8 Q YOU MENTIONED THAT YOU DO HAVE YOUR NOTES TO REFRESH
9 YOUR MEMORY AND I UNDERSTAND THIS IS OVER A YEAR AGO. ON
10 PAGE TWO, KIND OF AT THE BOTTOM, YOU DO MENTION THAT YOU
11 GRABBED HIM AND TOOK HIM OUTSIDE. DO YOU THINK THAT WOULD
12 BE AN ACCURATE BETRAYAL OF WHAT HAPPENED AT THAT TIME?

13 A YES, MA'AM. IT'S PRETTY MUCH BACKING AWAY AND HE'S
14 COMING OUT AND GRABBING HIM AT THE SAME TIME.

15 Q OKAY.

16 A WE NEED TO GET HIM AND SECURED FOR EVERYONE'S SAFETY.

17 Q OKAY.

18 HE WASN'T RESISTING YOU?

19 A NOT REALLY.

20 Q OKAY.

21 A NOT AFTER HE CAME OUT.

22 Q OKAY.

23 DID YOU SEARCH HIM?

24 A YES, MA'AM.

25 Q ALL RIGHT.

1 DID YOU FIND A WEAPON ON HIM?

2 A NO, MA'AM.

3 Q DID YOU FIND ANY MONEY ON HIM?

4 A NONE THAT I RECALL. I DIDN'T MAKE ANY NOTE OF ANY
5 MONEY.

6 Q ANY JEWELRY ON HIM ANYWAY?

7 A NOT THAT I CAN RECALL.

8 Q OKAY.

9 DO YOU---

10 A I WASN'T LOOKING FOR THE JEWELRY OR ANYTHING LIKE
11 THAT.

12 Q NOTHING WEIRD ON HIM. NOTHING LIKE HE HAD JUST TAKEN
13 SOMETHING AND STASHED IT ON HIMSELF?

14 A MY MAIN CONCERN WAS HAVING A WEAPON ON HIM AND THAT'S
15 WHAT I WAS -- SOMEONE ELSE GOT---

16 Q SURE---

17 A ---WOULD GO TO THAT---

18 Q ---AND YOU DIDN'T FIND A WEAPON ON HIM?

19 A NO, MA'AM.

20 Q OKAY.

21 BEG THE COURT'S INDULGENCE, YOUR HONOR.

22 ONCE MY CLIENT CAME OUT OF THE APARTMENT, HE
23 WASN'T BEING AGGRESSIVE OR ANYTHING, WAS HE? HE WASN'T
24 RESISTING YOU, WAS HE?

25 A NOT THAT I RECALL, NO, MA'AM.

1 Q OKAY. OKAY.

2 YOU MENTIONED THAT TWO PEOPLE WERE CUFFING HIM.

3 IT'S NOT BECAUSE HE WAS---

4 A NO. IT'S FOR EVERYONE'S SAFETY TO GET HIM CUFFED AS
5 QUICKLY AS POSSIBLE FROM HIM---

6 Q AND YOU'RE PROTECTING YOURSELF AS WELL AS ANYBODY
7 ELSE?

8 A IT'S EVERYONE'S SAFETY, YES, MA'AM.

9 Q ABSOLUTELY.

10 THANK YOU VERY MUCH.

11 THE COURT: REDIRECT?

12 MR. PASCOE: JUST ONE QUESTION.

13 REDIRECT EXAMINATION

14 BY MR. PASCOE:

15 Q HOW MUCH OF AN OPPORTUNITY DID THE DEFENDANT HAVE --
16 WERE YOUR WEAPONS DRAWN WHEN THE DEFENDANT WAS COMING OUT
17 FINALLY?

18 A WHEN HE WAS COMING OUT, MY WEAPON WAS DRAWN, BUT AT
19 THE TIME, I'M PUTTING IT BACK AWAY BECAUSE I CANNOT WORK
20 HANDCUFFS AND THE WEAPON AT THE SAME TIME.

21 Q THAT WAS AFTER YOU SAW THAT HE WAS NOT ARMED THAT YOU
22 PUT YOURS AWAY?

23 A WHEN WE SEE HIS HAND, ONE PERSON GOES UNARMED OR
24 HOLSTERED WHILE HE GOES TO CUFF HIM WHILE HE'S BEING
25 COVERED BY OTHER OFFICERS WHO ARE ARMED.

1 Q I GUESS WHAT I'M ASKING IS HOW MUCH OF AN OPPORTUNITY
2 DID MR. JOHNSON, THE DEFENDANT, HAVE TO RESIST ARREST WITH
3 ALL THOSE OFFICERS AROUND ARMED?

4 A WELL, WITH -- HE COULD HAVE INITIALLY ATTACKED ME---
5 MS. DUKE-MIMS: YOUR HONOR, THAT CALLS FOR
6 SPECULATION.

7 THE COURT: I'M SORRY?

8 MS. DUKE-MIMS: I WOULD OBJECT. IT CALLS FOR
9 SPECULATION.

10 MR. PASCOE: I'LL WITHDRAW THAT QUESTION---

11 THE COURT: I THINK THAT WOULD BE.

12 MR. PASCOE: THANK YOU.

13 THE WITNESS: YES, SIR.

14 THE COURT: ALL RIGHT.

15 ANYTHING ELSE?

16 MS. DUKE-MIMS: NO, SIR.

17 THE COURT: ALL RIGHT.

18 YOU CAN STEP DOWN. THANK YOU, SIR.

19 (WHEREUPON, THE WITNESS WAS
20 EXCUSED AT THIS TIME.)

21 MR. PASCOE: YOUR HONOR, THE STATE CALLS CAPTAIN
22 PRICHARD.

23 CAN THE SERGEANT BE EXCUSED, YOUR HONOR?

24 THE COURT: YES, SIR. YOU'RE FREE TO GO.

25 MR. PASCOE: THANK YOU.

1 CAPTAIN ROBERT LEE PRICHARD,

2 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:

3 THE CLERK: PLEASE HAVE A SEAT. STATE YOUR FULL
4 NAME FOR THE RECORD AND SPELL YOUR LAST, PLEASE.

5 THE WITNESS: MY NAME IS ROBERT LEE PRICHARD.
6 I'M A CAPTAIN WITH THE RICHLAND COUNTY SHERIFF'S
7 DEPARTMENT.

8 THE COURT REPORTER: WOULD YOU SPELL YOUR LAST
9 NAME?

10 THE WITNESS: P-R-I-C-H-A-R-D.

11 DIRECT EXAMINATION

12 BY MR. PASCOE:

13 Q GOOD AFTERNOON, CAPTAIN.

14 HOW LONG HAVE YOU BEEN IN LAW ENFORCEMENT, SIR?

15 A LAW ENFORCEMENT, TOTAL TWENTY -- 32 YEARS; 28 YEARS
16 IN RICHLAND COUNTY.

17 Q HOW LONG HAVE YOU BEEN A CAPTAIN?

18 A FOUR AND A HALF YEARS.

19 Q AND WHAT ARE YOUR CURRENT DUTIES AS A CAPTAIN? WHAT
20 REGION DO YOU PRESIDE OVER?

21 A I'M A REGION COMMANDER OF REGION FOUR, WHICH IS RIVER
22 DRIVE, UP BROAD RIVER ROAD TO NEWBERRY COUNTY, LEXINGTON
23 COUNTY LINE, LAKE MURRAY BOAT PATROL.

24 Q APPROXIMATELY, HOW MANY DEPUTIES DO YOU HAVE UNDER
25 YOUR SUPERVISION?

1 A THIRTY DEPUTIES NOW.

2 Q OKAY.

3 AND THE AREA THAT YOU SAID YOUR SUPERVISION
4 ENCOMPASSES AS CAPTAIN OF REGION FOUR---

5 A YES, SIR.

6 Q ---DOES THAT INCLUDE THE APARTMENTS OFF OF CONNIE
7 DRIVE?

8 A YES, IT DOES.

9 Q OKAY.

10 AND WERE YOU CALLED TO AN ARMED
11 ROBBERY-KIDNAPPING OF APARTMENT AT TRENTON COURT ON
12 CONNIE DRIVE?

13 A YES, SIR.

14 Q AND THAT'S IN RICHLAND COUNTY, SIR?

15 A YES, SIR, IT IS.

16 Q AND WHY WERE YOU CALLED TO GO THERE ON DECEMBER THE
17 14TH OF 1999? WHY DID YOU GO AS CAPTAIN?

18 A HAD AN ARMED ROBBERY GIVEN OUT IN PROGRESS AT TRENTON
19 COURT APARTMENTS. I HAD -- I JUST HAD LEFT MY REGION WHICH
20 IS UP WIDE WATER SQUARE, WHICH IS HALF A BLOCK AWAY. BY
21 THE TIME I GOT THERE, AS I SAY, WE MAY POSSIBLY HAVE A
22 HOSTAGE SITUATION---

23 Q AND APPROXIMATELY---

24 A ---THAT'S ALSO ONE OF MY JOBS.

25 Q OKAY.

1 I WAS GOING TO ASK, DO YOU GO TO EVERY ARMED
2 ROBBERY CALL?

3 A IF I'M CLOSE TO IT, YES, SIR.

4 Q OKAY.

5 AND, APPROXIMATELY, WHAT TIME DO YOU THINK YOU
6 GOT THERE THAT MORNING?

7 A SOMEWHERE AROUND 9 O'CLOCK.

8 Q AND IF THERE IS A HOSTAGE TAKING, IS IT MANDATORY IN
9 YOUR DISTRICT THAT YOU GO?

10 A USUALLY, I TRY TO BE THE FIRST ONE ON THE SCENE IF
11 IT'S IN MY REGION.

12 Q AND WHY IS THAT?

13 A BECAUSE I CO-COMMAND THE S.R.T.S, SPECIAL RESPONSE
14 TEAM, FOR THE SHERIFF'S OFFICE AND THAT IS ONE OF THE
15 THINGS THAT WE DO HANDLE IS HOSTAGE SITUATIONS.

16 Q OKAY.

17 AND TELL THE JURY WHAT HAPPENED WHEN YOU GOT TO
18 TRENTON COURT THAT MORNING AT APPROXIMATELY 9:00 -- 9:15.

19 A OKAY.

20 WHEN I ARRIVED ON THE SCENE AT TRENTON COURT, WE
21 HAD BEEN ADVISED BE ON THE LOOKOUT FOR THREE BLACK MALES.
22 ONE DESCRIBED WITH A BLUE SWEATSHIRT ON, ONE WITH A MAROON
23 SWEATSHIRT ON, AND THE OTHER WAS IN DARK CLOTHING AND IN
24 THAT AREA -- WERE THE PERSONS TAKING PLACE IN AN ARMED
25 ROBBERY.

1 WHEN I ARRIVED AND PULLED IN THE DRIVEWAY, I SAW
2 MY DEPUTIES WERE AT AN APARTMENT, , WHICH IS -- FACES
3 BROAD RIVER ROAD FROM THE ENTRANCE OF TRENTON COURT. I
4 PULLED MY CAR UP THERE AND I SAW -- AS I APPROACHED, THE
5 DEPUTIES WERE TALKING TO PEOPLE IN THE APARTMENT.

6 Q OKAY.

7 A AND I CAME UP TO THE SIDEWALK. AT THAT TIME, A BLACK
8 FEMALE OPENED THE DOOR AND CAME OUT. THE DOOR WAS SHORT --
9 SLAMMED THERE SHORTLY AFTER SHE EXITED THE APARTMENT. AND
10 MY OFFICERS PULLED HER OFF TO THE SIDE, GOT HER TO THE TOP
11 OF THE SIDEWALK. SHE SAID THIS GUY IS IN THERE HOLDING MY
12 BOYFRIEND HOSTAGE, THERE ARE TWO OTHER BLACK MALES IN THERE
13 WITH HIM. WE GO AHEAD AND WE GOT HER OUT OF THE SCENE ONTO
14 A SAFE AREA.

15 WE PROCEED TO NEGOTIATE WITH THE PEOPLE IN THE
16 APARTMENT. OFFICER DODGE AND OTHER OFFICERS, ALONG WITH
17 MYSELF, SET UP A PERIMETER AROUND IT, TRIED TO GET THE
18 PERSONS OUT OF THE APARTMENT. THE PEOPLE FINALLY
19 COOPERATED ABOUT COMING OUT OF THE APARTMENT. THE FIRST
20 ONE OUT WAS A BLACK MALE IN AN ORANGE SWEATSHIRT. OF
21 COURSE, WE PUT HIM DOWN ON THE GROUND. VERY SHORTLY
22 THERE---

23 Q LET ME JUST STOP YOU RIGHT THERE JUST FOR A---

24 A CERTAINLY.

25 Q ---YOU'VE TESTIFIED THAT YOU WERE LOOKING FOR SOMEONE

1 IN NAVY BLUE, ALSO IN MAROON OR BURGUNDY---

2 A YES, SIR.

3 Q --AND POSSIBLY OTHER DARK CLOTHING?

4 A YES, SIR.

5 Q NOW, SOMEONE HAS JUST COME OUT WITH ORANGE?

6 A I -- WE -- I DIDN'T KNOW AT THE TIME, YOU KNOW, WHO
7 WAS THE VICTIM OR THEY WERE THE SUBJECTS. AS FAR AS I
8 KNEW, THEY WERE ALL SUSPECTS.

9 Q OKAY.

10 AND SO WHAT DID YOU DO EVEN THOUGH IT WAS THE
11 VICTIM AND YOU DIDN'T KNOW---

12 A EVEN THOUGH IT WAS THE VICTIM, WE PUT HIM DOWN ON THE
13 GROUND AND HANDCUFFED HIM, EXITED HIM OUT OF THE AREA, AND
14 TALKED THE OTHER PARTIES OUT OF THE APARTMENT.

15 Q OKAY.

16 AND -- NOW, YOU TESTIFIED IT WAS YOUR INFORMATION
17 THAT THE INDIVIDUALS WERE ARMED?

18 A YES, SIR.

19 Q HOW MANY GUNS WERE YOU---

20 A WE WERE TOLD BY THE BLACK FEMALE THAT TWO SUBJECTS
21 WERE ARMED.

22 Q OKAY.

23 A ONE WITH A SILVER OR GRAY-LOOKING WEAPON AND THE
24 OTHER ONE WITH A BLUE WEAPON.

25 Q NOW, AFTER THE PERSON IN THE ORANGE, WHO AT THAT

1 TIME, YOU DON'T KNOW NECESSARILY IS A VICTIM, WHEN HE COMES
2 OUT, WHAT DO YOU DO WITH HIM?

3 A WE TOOK HIM DOWN ON THE GROUND. WE FRISKED HIM,
4 SEARCHED HIM, TOOK HIM TO A SAFE AREA. AT THAT POINT, HE'S
5 NOT GIVEN US ANY INFORMATION, SO WE PUT HIM IN A VEHICLE TO
6 KEEP HIM OUT OF THE WAY AND WE ARE STILL NEGOTIATING WITH
7 THE OTHER PERSONS IN THE APARTMENT.

8 Q OKAY.

9 AND ARE YOU ABLE TO FIND OUT HOWEVER THAT THE
10 PERSON IN THE ORANGE IS THE VICTIM?

11 A WE FOUND OUT THE OFFICER -- ANOTHER OFFICER HAD
12 INTERVIEWED THE BLACK FEMALE CAME OUT AND SAID, WELL, HE'S
13 THE VICTIM, HE'S THE BOYFRIEND.

14 Q NOW, WHAT HAPPENED WITH THE OTHER TWO INDIVIDUALS IN
15 THE APARTMENT?

16 A THE FIRST -- THE NEXT SUBJECT TO COME OUT HAS A BLACK
17 SHIRT ON WITH SOME KIND OF WRITING OR A NUMBER ON THE
18 FRONT. HE COMES OUT WITH HANDS MEDIOCRE, NOT ALL THE WAY
19 UP, JUST DOWN ABOUT SHOULDER WIDTH. WE GET HIM OUT,
20 HANDCUFF HIM, FRISK HIM DOWN, THERE'S NO WEAPON.

21 Q OKAY.

22 DID ANYONE ELSE IMMEDIATELY COME OUT AFTER THAT
23 SECOND INDIVIDUAL IN DARK---

24 A NO, SIR.

25 Q OKAY.

1 A WE KEPT HOLLERING, COME ON OUT, COME ON OUT. NOBODY
2 CAME OUT.

3 Q NOW, NOBODY CAME OUT. WAS ANYBODY EVEN RESPONDING
4 FROM THE INSIDE OF THE APARTMENT---

5 A NO, SIR---

6 Q ---IF THEY WERE IN THERE?

7 A ---NOBODY WAS RESPONDING.

8 Q OKAY.

9 WHAT FINALLY GOT THE THIRD INDIVIDUAL OUT OF THAT
10 APARTMENT?

11 A I WAS CLOSE ENOUGH TO THE ENTRANCE TO THE APARTMENT
12 AND THE DOOR THAT OFFICER DODGE HAD LOOKED INSIDE AND SAW
13 THE LINEAR SIDE OF THE SUBJECT STANDING NEXT TO THE
14 DOORWAY. AT THAT TIME, HE BACKED OFF AND WE ANNOUNCED OR
15 DEMANDED THAT HE COME OUT, THAT WE KNEW HE WAS THERE.

16 Q AND DID HE FINALLY COME OUT?

17 A YES, SIR. HE CAME OUT. HE HAD A MAROON SWEATSHIRT
18 ON AND HE WAS TAKEN DOWN, HANDCUFFED.

19 Q YOU SAID HE HAD A MAROON SWEATSHIRT ON. DO YOU
20 RECOGNIZE STATE'S EXHIBIT NUMBER 16?

21 A YES, SIR.

22 Q WHAT DO YOU RECOGNIZE THAT TO BE?

23 A THAT'S A MAROON SWEATSHIRT THAT CAME OFF THE LAST
24 SUBJECT WE GOT OUT OF THE APARTMENT.

25 Q OKAY.

1 AND WHAT DID YOU DO WITH THAT LAST SUBJECT?

2 A HANDCUFFED HIM, PUT HIM IN THE CAR.

3 Q AND HE WAS PLACED UNDER ARREST?

4 A YES, SIR. NO WEAPONS WERE ON HIM AT THAT TIME. ON
5 ANY OF THE PARTIES THAT WE TOOK OUT OF THE APARTMENT.

6 Q OKAY.

7 AND BECAUSE OF THAT, BECAUSE NO WEAPONS WERE
8 LOCATED ON THEM, DID YOU DO ANYTHING SINCE YOU HAD HEARD
9 THAT TWO WEAPONS WERE INVOLVED?

10 A YES, SIR. ONCE -- ONCE WE KNEW THAT TWO WEAPONS WERE
11 INVOLVED, WE SECURED THOSE PEOPLE IN THE CAR, SEPARATE CARS
12 SO THEY COULDN'T COMMUNICATE WITH EACH OTHER AND WENT
13 THROUGH AND DID A PHYSICAL SEARCH OF THE APARTMENT.

14 Q OKAY.

15 AND DID YOU LOCATE ANYTHING WHEN YOU WERE IN THAT
16 APARTMENT?

17 A YES, SIR, I DID. I WENT TO THE BEDROOM AREA OF THE
18 APARTMENT AND LOCATED IN THE TOP DRAWER OF A LARGE CHEST OF
19 DRAWERS WITH A MIRROR A NINE MILLIMETER INTERARMS M-70
20 SEMI-AUTO PISTOL, GRAY IN COLOR.

21 Q AND WHAT ROOM WAS THAT IN AGAIN?

22 A THAT WAS IN THE BEDROOM.

23 Q OKAY.

24 LET ME SHOW YOU WHAT HAS BEEN MARKED AS STATE'S
25 EXHIBIT NUMBER ONE AND 1-A. DO YOU RECOGNIZE THAT?

1 A YES, SIR. THAT'S THE INTERARMS 870.

2 Q AND 1-A?

3 A YES, SIR.

4 Q THE CLIP THAT GOES WITH IT?

5 A YES, SIR.

6 Q AND YOU KNOW 100 PERCENT SURE THAT THAT'S THE GUN

7 THAT YOU SEIZED?

8 A YES, SIR, IT IS. I TOOK THE SERIAL NUMBER DOWN.

9 Q AND DOES THE SERIAL NUMBER THAT YOU TOOK DOWN MATCH

10 THE ONE YOU JUST LOOKED AT THE GUN?

11 A YES, SIR, IT DOES.

12 Q IS THAT WHAT YOU WERE DOING, SIR?

13 A YES, SIR.

14 Q NO DOUBT THAT'S THE GUN YOU TOOK OUT OF THE BEDROOM?

15 A NO DOUBT.

16 Q OKAY.

17 AND YOU TESTIFIED THAT YOU GOT IT OUT OF THE

18 BEDROOM ON A DRESSER?

19 A YES, SIR, TOP CHEST OF DRAWERS.

20 Q DO YOU RECOGNIZE STATE'S EXHIBIT NUMBER FIVE?

21 A YES, SIR. THAT'S THE CHEST OF DRAWERS I GOT IT OUT

22 OF.

23 Q OKAY.

24 NOW, WERE THE VICTIMS AROUND WHEN YOU WERE

25 SEARCHING THE APARTMENT?

1 A NO, SIR.

2 Q AND SO YOU -- THE REST -- WHEN YOU WERE SEARCHING,
3 DID YOU KNOW EXACTLY WHERE TO LOOK FOR THE OTHER WEAPON?

4 A NO, SIR.

5 Q AND DID YOU LOOK FOR A SECOND WEAPON?

6 A YES, SIR. WE DID A PHYSICAL SEARCH OF THE WHOLE
7 APARTMENT TRYING TO LOCATE THE SECOND WEAPON.

8 Q OKAY.

9 DID YOU LOCATE THE SECOND WEAPON ON YOUR OWN THEN
10 AT THAT TIME?

11 A WE DID NOT, NOT ON THE INITIAL SEARCH, NO, SIR.

12 Q ARE YOU SHOCKED -- YOU'VE BEEN PART OF SEARCHES
13 BEFORE -- ARE YOU SHOCKED THAT YOU CAN'T FIND A -- THE
14 OTHER WEAPON?

15 A NOT REALLY. THEY DO HAVE A LOT OF HIDING PLACES
16 WHERE YOU CAN'T GET INTO.

17 Q OKAY.

18 SO YOU NEVER SAW STATE'S EXHIBIT NUMBER TWO
19 YOURSELF THAT AFTERNOON?

20 A NO, SIR, I DID NOT.

21 Q ARE YOU AWARE OF WHETHER THE VICTIMS WERE TOLD
22 WHETHER THE SECOND GUN WAS NOT FOUND OR NOT?

23 A NO, I'M NOT AWARE OF THAT.

24 Q OKAY.

25 CAPTAIN, DID YOU HAVE ANY OTHER INVOLVEMENT AFTER

1 THE ARREST AND AFTER LOCATING THE GUN?

2 A NOTHING OTHER THAN STANDING BY THE PRISONERS OUT IN
3 THE PARKING LOT.

4 Q OKAY.

5 FROM THAT POINT ON, AS A SUPERVISOR, AS A
6 CAPTAIN, DO YOU MAKE SURE INVESTIGATORS COME AND TAKE OVER
7 THE INVESTIGATION?

8 A YES, SIR. ONCE THE INVESTIGATORS ARRIVE, WE TURN IT
9 OVER TO THEM.

10 Q IS THE PERSON THAT YOU ARRESTED WEARING THAT MAROON
11 SWEATSHIRT, IS HE IN THE COURTROOM TODAY?

12 A YES, SIR, HE IS.

13 Q COULD YOU POINT HIM OUT FOR THE JURY?

14 A HE IS SITTING IN THE MIDDLE BETWEEN THE TWO LADIES.

15 Q OKAY.

16 THANK YOU, SIR. ANSWER ANY QUESTIONS DEFENSE
17 COUNSEL HAS FOR YOU, CAPTAIN.

18 THE COURT: CROSS.

19 MS. SAMPSON: MAY IT PLEASE THE COURT?

20 CROSS-EXAMINATION

21 BY MS. SAMPSON:

22 Q GOOD AFTERNOON, CAPTAIN PRICHARD.

23 A GOOD AFTERNOON.

24 Q MY NAME IS APRIL SAMPSON. I'M GOING TO BE ASKING YOU

25 A FEW QUESTIONS.

1 A YES, MA'AM.

2 Q NOW, YOU'VE BEEN A POLICE OFFICER FOR SOME 32 YEARS,
3 RIGHT?

4 A THIRTY-TWO YEARS, YES, MA'AM.

5 Q OKAY.

6 AND YOU STATED THAT WHEN YOU ARRIVED AT THE
7 INCIDENT LOCATION, YOU KNEW YOU WERE LOOKING FOR SOMEONE
8 WEARING A BLUE SWEATSHIRT, A BURGUNDY SWEATSHIRT, AND---

9 A AND A MAROON SWEATSHIRT---

10 Q EXCUSE ME. A MAROON, BLUE, AND DARK---

11 A DARK CLOTHING.

12 Q ---CLOTHING? YOU DIDN'T KNOW WHETHER IT WAS GRAY OR
13 BLUE OR---

14 A NO, MA'AM.

15 Q AND TO THE BEST OF YOUR KNOWLEDGE, WAS ANYBODY
16 WEARING THIS SWEATSHIRT WHEN YOU -- WHEN YOU ARRESTED THE
17 THREE SUSPECTS?

18 A NOT WHEN I ARRIVED, NO, MA'AM.

19 Q AND YOU DIDN'T RECEIVE ANY INFORMATION THAT ANYBODY
20 WAS WEARING A GRAY SWEATSHIRT?

21 A NO.

22 Q OKAY.

23 NOW, WHEN YOU ARRIVED, THEY WERE ALL RIGHT IN THE
24 PROCESS OF TRYING TO GET PEOPLE OUT OF THE APARTMENT?
25 THEY---

1 A THEY WERE STANDING IN FRONT OF THE APARTMENT, YES,
2 MA'AM.

3 Q SO YOU DIDN'T SEE ANYTHING THAT HAD OCCURRED PRIOR TO
4 ANYBODY GOING INTO THE APARTMENT?

5 A NO.

6 Q AND AFTER EVERYONE WAS TAKEN OUT, YOU, ALONG WITH --
7 LET ME MAKE SURE I GOT THE OFFICERS RIGHT, OFFICER
8 ALEXANDER AND OFFICER PEARSON?

9 A YES, MA'AM.

10 Q YOU ALL -- YOU THREE SEARCHED THE APARTMENT?

11 A WE DID THE SEARCH ON THE APARTMENT, YES, MA'AM.

12 Q DID ANYBODY ELSE SEARCH WITH YOU?

13 A NOT THAT I RECALL. THERE MAY HAVE BEEN.

14 Q AND YOU WERE LOOKING FOR THE GUNS THAT WERE INVOLVED?

15 A THERE WAS TWO WEAPONS ALLEGEDLY INVOLVED AND, YES,
16 MA'AM, THAT'S WHAT WE WERE LOOKING FOR.

17 Q AND YOUR DESCRIPTION THAT YOU HAD GOTTEN WAS THAT ONE
18 WAS BLACK AND ONE GRAY---

19 A YES, MA'AM.

20 Q ---IS THAT RIGHT?

21 A YES, MA'AM.

22 Q OKAY.

23 AND YOU STATE THAT YOU FOUND A GRAY PISTOL?

24 A DULL GRAY, YES, MA'AM.

25 Q DULL GRAY.

1 NOW, YOU JUST DESCRIBED TO THE SOLICITOR THAT
2 THIS WAS THE GUN THAT YOU FOUND?

3 A YES, MA'AM.

4 Q WHAT COLOR IS THIS?

5 A THAT'S DULL GRAY OR BLUE---

6 Q THIS IS WHAT YOU WOULD CALL DULL GRAY?

7 A I WOULD CLASSIFY THAT AS DULL GRAY. IT'S NOT
8 BRIGHT---

9 Q OKAY.

10 WHAT COLOR WOULD THIS ONE BE?

11 A THAT ONE IS SILVER, STAINLESS STEEL.

12 Q AND YOU'D MAKE THAT DISTINCTION WHEN YOU WRITE IT
13 DOWN?

14 A YES, MA'AM.

15 Q OKAY.

16 SO IF I CALL THIS BLACK, I'D BE WRONG?

17 A NO. YOU COULD MISTAKEN THAT AS BLACK OR BLUE.

18 Q OKAY.

19 BUT YOU WOULDN'T CALL IT BLACK?

20 A NO, MA'AM.

21 Q ALL RIGHT.

22 AND YOU STATE THAT YOU FIND THAT IN THE DRESSER
23 DRAWER?

24 A YES, MA'AM. THE TOP DRESSER DRAWER OF THE DRESSER.

25 Q NOW, THERE ARE -- LET ME SHOW YOU WHAT'S BEEN

1 PREVIOUSLY MARKED AS STATE'S EXHIBIT NUMBER FIVE AND
2 STATE'S EXHIBIT NUMBER SEVEN.
3 A YES, MA'AM.
4 Q YOU FOUND IT IN THIS ONE (INDICATES) ---
5 A YES, MA'AM---
6 Q ---OR THIS ONE (INDICATES)?
7 A ---THE ONE WITH THE MIRROR.
8 Q THIS ONE RIGHT HERE (INDICATES)?
9 A YES, MA'AM.
10 Q OKAY.
11 AND IN WHICH DRAWER, JUST FOR MY CLARIFICATION?
12 A THE RIGHT-HAND DRAWER---
13 Q THIS ONE (INDICATES) ---
14 A ---THE CLOSEST TO THE DOOR OR THE BED -- BEDROOM
15 GOING INTO THE HALLWAY.
16 Q SO THERE'S A DOOR RIGHT HERE (INDICATES), WE JUST
17 CAN'T SEE IT?
18 A THERE'S A DOORWAY, YES, MA'AM.
19 Q OKAY.
20 SO YOU FOUND IT IN THAT TOP---
21 A YES, MA'AM.
22 Q WAS THE DRAWER OPEN OR SHUT?
23 A IT WAS SHUT.
24 Q IT WAS SHUT. SO YOU HAD TO OPEN IT?
25 A OPENED THE DRAWER, YES, MA'AM.

1 Q WAS THE GUN SITTING RIGHT ON TOP OR---

2 A LAYING RIGHT ON TOP OF THE CLOTHING, YES, MA'AM.

3 Q RIGHT ON TOP OF THE CLOTHING. BUT IT WAS SHUT?

4 A YES, MA'AM.

5 Q OKAY.

6 AND WHEN YOU FOUND THAT GUN, DID YOU GIVE IT TO
7 SOMEBODY OR WHAT DID YOU DO?

8 A I CLEARED THE WEAPON AND HANDLED IT TO---

9 Q EXPLAIN TO ME WHAT CLEAR MEANS? THAT'S TAKING---

10 A UNLOADED IT, MAKE SURE THERE WASN'T NO ROUND IN THE
11 CHAMBER.

12 Q DID YOU TAKE THE BULLETS OUT?

13 A TAKE THE MAGAZINE OUT.

14 Q OKAY.

15 A YES, MA'AM.

16 Q SO YOU DID ALL THAT. DID YOU PLACE IT SOMEWHERE ELSE
17 IN THE LIVING ROOM OR WHERE DID YOU PUT IT?

18 A NO. WE GAVE THAT TO THE INVESTIGATORS.

19 Q AND THEN YOU CONTINUED SEARCHING?

20 A YES, MA'AM.

21 Q DID YOU SEARCH -- DID YOU YOURSELF SEARCH THE WHOLE
22 APARTMENT OR JUST THE BEDROOM?

23 A JUST THE BEDROOM.

24 Q OKAY.

25 DID YOU -- SO YOU DIDN'T SEARCH THE BATHROOM?

1 A NO, MA'AM.

2 Q DID YOU SEARCH THE LINEN CLOSET?

3 A NO, MA'AM.

4 Q YOU DIDN'T SEARCH ANYWHERE IN THE HOUSE BUT IN THE
5 BEDROOM?

6 A JUST THE BEDROOM.

7 Q OKAY.

8 BUT TO THE BEST OF YOUR KNOWLEDGE, WERE THE
9 DEFENDANTS ANYWHERE ELSE IN THAT APARTMENT OTHER THAN THE
10 BEDROOM?

11 A I DON'T KNOW EVEN IF THEY WERE IN THE BEDROOM, NO,
12 MA'AM.

13 Q OKAY.

14 BUT Y'ALL JUST SEARCHED THE BEDROOM NOT KNOWING
15 WHERE THEY HAD BEEN?

16 A IT'S A SMALL APARTMENT.

17 Q OKAY.

18 SO YOU WERE LOOKING FOR A WEAPON THAT YOU THINK
19 IS INVOLVED IN A ROBBERY, A KIDNAPPING, BUT YOU DON'T
20 SEARCH THE ENTIRE APARTMENT, YOU ONLY SEARCH THE BEDROOM?

21 A I ONLY SEARCHED THAT SECTION OF THE BEDROOM, YES,
22 MA'AM.

23 Q DID YOU SEE ANYBODY ELSE SEARCHING?

24 A I SAW THE OTHER OFFICERS TAKE DIFFERENT SECTIONS OF
25 THE APARTMENT.

- 1 Q SO CAN YOU TELL ME WHO SEARCHED THE LINEN CLOSET?
- 2 A NO, I CAN'T.
- 3 Q CAN YOU TELL ME IF ANYBODY SEARCHED THE LINEN CLOSET?
- 4 A I'M SURE THEY DID.
- 5 Q SO YOU ARE DOING A THOROUGH SEARCH TO TRY TO FIND
- 6 THIS GUN---
- 7 A YES, MA'AM---
- 8 Q ---THAT YOU DON'T WANT TO FALL IN THE WRONG HANDS---
- 9 A YES, MA'AM---
- 10 Q ---BUT YOU CAN'T TELL ME IF ANYBODY SEARCHED THE
- 11 LINEN CLOSET?
- 12 A I'M SURE -- I'M SURE THEY DID BY SEARCHING THAT AREA.
- 13 Q SO THAT'S SOMETHING THAT Y'ALL WOULD DO?
- 14 A YEAH.
- 15 Q AND YOU'RE LOOKING SPECIFICALLY FOR GUNS?
- 16 A WE'RE LOOKING FOR WEAPONS, YES, MA'AM.
- 17 Q SO I WOULD BE SAFE TO ASSUME THAT YOU'D LOOK ANYWHERE
- 18 A GUN MIGHT BE?
- 19 A YES, MA'AM.
- 20 Q THAT MIGHT BE -- THAT WOULD BE UNDER CLOTHING AND
- 21 BOXES, ET CETERA?
- 22 A IF WE HAD---
- 23 Q AND YOU SEARCHED FOR ABOUT, WHAT, THIRTY MINUTES?
- 24 A PROBABLY TWENTY MINUTES.
- 25 Q TWENTY MINUTES. AND THERE WERE THREE OF YOU

1 SEARCHING?

2 A THREE.

3 Q AND NOBODY FOUND THE OTHER GUN?

4 A NO, MA'AM.

5 Q BEG THE COURT'S INDULGENCE.

6 NO FURTHER QUESTIONS, YOUR HONOR.

7 THE COURT: ANY REDIRECT?

8 MR. PASCOE: JUST VERY BRIEFLY, YOUR HONOR.

9 REDIRECT EXAMINATION

10 BY MR. PASCOE:

11 Q SOMETHING I FORGOT THAT MS. SAMPSON DID BRING UP.

12 YOU TESTIFIED THAT YOU CLEARED THE GUN?

13 A YES, SIR.

14 Q WAS THE GUN THAT YOU SEIZED, STATE'S EXHIBIT NUMBER
15 ONE, WAS IT LOADED?

16 A IT WAS LOADED, YES, SIR.

17 Q OKAY.

18 AND WHEN YOU SAY IT WAS LOADED, IT HAD BULLETS IN
19 IT?

20 A YES, SIR---

21 Q LET ME SHOW---

22 A ---SIX ROUNDS.

23 Q LET ME SHOW YOU STATE'S EXHIBIT NUMBER 19. DO YOU
24 RECOGNIZE THOSE?

25 A YES, SIR.

1 Q DO THEY APPEAR TO BE THE ROUNDS---

2 A NINE MILLIMETER THAT COME OUT OF IT, YES, SIR.

3 Q AND WHO DID YOU GIVE THOSE ROUNDS TO AND THE GUN TO?

4 A IT ALL WENT TO INVESTIGATIONS.

5 Q OKAY.

6 YOUR HONOR, I'M NOT GOING TO PUT STATE'S EXHIBIT
7 NUMBER 19 INTO EVIDENCE, THE BULLETS. I JUST DON'T LIKE TO
8 DO THAT. IF THE DEFENSE WANTS TO---

9 THE COURT: YES, SIR.

10 MR. PASCOE: THAT'S ALL I HAVE.

11 (WHEREUPON, STATE'S EXHIBIT NUMBER
12 19, ENVELOPE/SHELLS, MARKED FOR IDENTIFICATION ONLY AT THIS
13 TIME.)

14 THE COURT: ALL RIGHT.

15 ANYTHING ELSE?

16 MS. SAMPSON: NO, SIR, YOUR HONOR.

17 THE COURT: ALL RIGHT.

18 YOU CAN STEP DOWN, OFFICER, AND YOU'RE FREE TO
19 GO. THANK YOU, SIR.

20 MR. PASCOE: THANK YOU, CAPTAIN.

21 (WHEREUPON, THE WITNESS WAS
22 EXCUSED AT THIS TIME.)

23 MS. PELLIZZARI: THE STATE CALLS OFFICER SHAWN
24 SWICEGOOD.

25 OFFICER SHAWN SWICEGOOD,

1 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:

2 THE CLERK: PLEASE HAVE A SEAT, SIR. STATE YOUR
3 FULL NAME FOR THE RECORD AND SPELL YOUR LAST.

4 THE WITNESS: MY NAME IS SHAWN SWICEGOOD. MY
5 LAST NAME IS SPELLED S-W-I-C-E-G-O-O-D.

6 DIRECT EXAMINATION

7 BY MS. PELLIZZARI:

8 Q GOOD AFTERNOON, OFFICER SWICEGOOD.

9 I UNDERSTAND YOU WORKED THE NIGHT SHIFT LAST
10 NIGHT, TOO, IS THAT RIGHT, WITH DEPUTY PEARSON?

11 A YES, MA'AM.

12 Q AND I APOLOGIZE. I'LL TRY TO KEEP THIS BRIEF SO YOU
13 CAN GO HOME AND GO TO BED.

14 CAN YOU PLEASE TELL THE COURT WHERE YOU'RE
15 CURRENTLY EMPLOYED?

16 A RICHLAND COUNTY SHERIFF'S DEPARTMENT.

17 Q HOW LONG HAVE YOU WORKED WITH THE SHERIFF'S
18 DEPARTMENT?

19 A OVER TWO YEARS.

20 Q AND WHAT'S YOUR POSITION WITH THE SHERIFF'S
21 DEPARTMENT?

22 A A DEPUTY IN REGION FOUR.

23 Q AND CAN YOU TELL THE JURY A LITTLE BIT ABOUT YOUR
24 DUTIES AND RESPONSIBILITIES AS A DEPUTY?

25 A I ANSWER 911 CALLS AND MOSTLY PATROL BROAD RIVER

1. ROAD.
- 2 Q SO REGION FOUR INCLUDES BROAD RIVER ROAD?
- 3 A YES, MA'AM.
- 4 Q AND DOES THAT ALSO INCLUDE THE TRENTON COURT
- 5 APARTMENTS?
- 6 A YES, MA'AM.
- 7 Q AND WERE YOU WORKING IN THAT SAME REGION ON DECEMBER
- 8 14TH OF 1999?
- 9 A YES, MA'AM.
- 10 Q DO YOU KNOW WHAT SHIFT YOU WERE WORKING THAT DAY?
- 11 A THE MORNING SHIFT.
- 12 Q DID YOU HAVE AN OPPORTUNITY THAT MORNING TO RESPOND
- 13 TO A CALL AT TRENTON COURT APARTMENTS?
- 14 A YES, MA'AM.
- 15 Q DO YOU KNOW WHAT TIME YOU RESPONDED?
- 16 A AT 9 O'CLOCK IN THE MORNING.
- 17 Q AND WHAT TYPE OF CALL WERE YOU RESPONDING TO?
- 18 A IT WAS A -- IF I RECALL RIGHT, IT WAS A POSSIBLE
- 19 KIDNAPPING OR AN ARMED ROBBERY IN THE PARKING LOT THERE AT
- 20 TRENTON COURT.
- 21 Q AND HOW DID YOU RECEIVE THAT CALL?
- 22 A OVER DISPATCH, 911 SYSTEM. SOMEBODY HAD CALLED IT
- 23 IN.
- 24 Q SOMEBODY CALLED 911?
- 25 A YES, MA'AM.

1 Q AND THEN 911 DISPATCHES THE CALL TO THE SHERIFF'S
2 DEPARTMENT?

3 A YES, MA'AM.

4 Q WERE YOU RIDING BY YOURSELF THAT MORNING?

5 A YES, MA'AM.

6 Q WERE YOU THE FIRST OFFICER TO ARRIVE ON THE SCENE?

7 A NO, MA'AM.

8 Q DO YOU KNOW WHAT OTHER OFFICERS WERE THERE WHEN YOU
9 GOT THERE?

10 A YEAH. CAPTAIN PRICHARD WAS THERE, DEPUTY MIKE
11 PEARSON, JOHN ALEXANDER, GARY BARNHARD, MYSELF, THE
12 LIEUTENANT WAS THERE. UH -- DENNIS---

13 Q SEVERAL OTHER---

14 A ---DODGE. THERE WERE A GOOD MANY PEOPLE THERE BEFORE
15 I GOT THERE. I WAS COMING OUT AT THE END OF BROAD RIVER.

16 Q SO THERE WERE SEVERAL OTHER OFFICERS THERE FROM YOUR
17 PARTICULAR REGION?

18 A YES, MA'AM.

19 Q WHAT INFORMATION DID YOU HAVE ABOUT THE CRIME WHEN
20 YOU GOT THERE?

21 A JUST WHAT DISPATCH PUT OUT ABOUT BEING A DISTURBANCE,
22 YOU KNOW, SOMETHING WAS GOING ON AT THAT PARKING LOT.

23 Q DO YOU REMEMBER SPECIFICALLY WHAT YOU KNEW?

24 A WELL, COMING OUT, WE THOUGHT IT WAS AN ARMED ROBBERY.
25 THAT'S WHAT WE THOUGHT IT WAS BECAUSE THERE WERE GUNS

1 INVOLVED.

2 Q AND, AGAIN, THAT WAS INFORMATION THAT HAD COME FROM
3 911?

4 A YES, MA'AM.

5 Q SOMETHING THAT OCCURRED IN THE PARKING LOT?

6 A RIGHT.

7 Q WHEN YOU GOT TO THE TRENTON COURT APARTMENTS, WERE
8 THERE ANY CIVILIANS IN THE PARKING LOT?

9 A AT THE TIME I GOT THERE, NO, MA'AM, I THINK EVERYBODY
10 WAS LAW ENFORCEMENT I REMEMBER.

11 Q SO WAS THERE AN ARMED ROBBERY OCCURRING IN THE
12 PARKING LOT WHEN YOU ARRIVED?

13 A NO, MA'AM, NOT WHEN I GOT THERE.

14 Q CAN YOU TELL THE JURY WHAT HAPPENED WHEN YOU GOT TO
15 THE SCENE?

16 A BEST OF MY KNOWLEDGE WHEN I GOT THERE, WE HAD HAD A
17 -- LISTING TO OTHER DEPUTIES ON THE RADIO -- BY THE TIME I
18 GOT THERE, YOU HAD A HOLDUP SITUATION WHERE THEY WERE
19 LOOKING FOR SOMEBODY IN AN APARTMENT BUILDING. WHEN WE
20 FIRST GOT THERE, WE COULDN'T FIND EXACTLY WHICH APARTMENT
21 BUILDING IT WAS THERE IN TRENTON COURT AND JOHN ALEXANDER
22 AND MIKE PEARSON FINALLY FOUND THE ROOM WHERE MS. KETRA
23 HEARON -- KETRA HEARON CAME TO THE DOOR WHEN THEY KNOCKED
24 ON THE DOOR FROM PAST EXPERIENCES WE HAD THERE.

25 Q WHAT -- WHAT APARTMENT NUMBER DOES KETRA LIVE IN?

1 A THAT IS CONNIE DRIVE, APARTMENT .

2 Q SO IT'S APARTMENT ?

3 A YES, MA'AM.

4 Q OKAY.

5 AND THAT'S WHERE THE OFFICER RESPONDED, WHERE
6 KETRA CAME OUT?

7 A THAT'S WHERE WE FINALLY FOUND HER, YES.

8 Q OKAY.

9 AND YOU SAID THAT -- WERE YOU THERE WHEN KETRA
10 CAME OUT OF THE APARTMENT?

11 A YES, MA'AM. I WAS THERE LIKE PROBABLY ABOUT A FIFTH
12 OR SIXTH OFFICER IN LINE. WHEN SHE CAME OUT OF THE
13 APARTMENT, THEY FUNNELLED HER DOWN TO ME AND I WAS THE LAST
14 ONE AT THE END OF THE LINE TO TAKE HER AND GET HER OUT OF A
15 -- MORE OR LESS MOVE HER TO A SAFER AREA AND THEN START
16 QUESTIONING HER ABOUT WHAT WAS GOING ON, WHAT DID WE HAVE
17 HERE, YOU KNOW, WHAT WAS HAPPENING.

18 Q SO WERE YOU THE OFFICER WHO WAS RESPONSIBLE FOR
19 GETTING HER TO A SAFE PLACE AND THEN TRYING TO GET SOME
20 INFORMATION FROM HER?

21 A YES, MA'AM.

22 Q AND DID YOU, IN FACT, GET HER TO A SAFE PLACE?

23 A YES, MA'AM. I TOOK HER TO THE OFFICE AND STARTED
24 QUESTIONING HER.

25 Q DID SHE -- WAS SHE ABLE TO GIVE YOU ANY INFORMATION

1 ABOUT WHAT HAD HAPPENED?

2 A SHE JUST STATED THAT THEY HAD HER BOYFRIEND IN THE
3 APARTMENT AND THEY HAD GUNS.

4 Q DID SHE SAY HOW MANY PEOPLE HAD HER BOYFRIEND?

5 A TWO.

6 Q AND DID SHE SAY HOW MANY GUNS WERE INVOLVED?

7 A IF I RECALL, I THOUGHT SHE SAID THERE WERE TWO.

8 Q SO SHE INDICATED BOTH PEOPLE HAD GUNS?

9 A YES, MA'AM.

10 Q WHAT WAS HER DEMEANOR LIKE AT THE TIME, DO YOU
11 REMEMBER?

12 A SHE WAS VERY UPSET, KIND OF, YOU KNOW, HYSTERICAL.
13 SHE WAS SCARED, YOU KNOW, AT THE TIME AND I WAS JUST TRYING
14 TO CALM HER DOWN AND TO TALK TO HER TO FIND OUT WHAT WAS
15 HAPPENING.

16 Q NOW, WERE YOU IN A POSITION TO SEE KETRA WHEN SHE
17 CAME OUT OF THE APARTMENT?

18 A NO, MA'AM, I WAS NOT.

19 Q WERE YOU IN A POSITION TO SEE WHEN VAN, HER
20 BOYFRIEND, FINALLY CAME OUT OF THE APARTMENT?

21 A NO, MA'AM, I WAS NOT.

22 Q HOW ABOUT ANY OF THE TWO SUSPECTS WHO WERE ARRESTED?

23 A WHEN I CAME BACK AROUND TO THE SIDE THAT THEY WERE ON
24 IN THE APARTMENT COMPLEX, THEY WERE ALREADY ON THE GROUND
25 BEING DETAINED.

1 Q SO VAN, THE VICTIM, AND THEN THE TWO SUSPECTS WERE
2 ALREADY BEING DETAINED---

3 A RIGHT.

4 Q ---BY THE TIME YOU GOT BACK AROUND?

5 A YES, MA'AM.

6 Q AND WHY WERE YOU NOT IN A POSITION TO SEE WHEN THOSE
7 THREE PEOPLE CAME OUT OF THE APARTMENT?

8 A BECAUSE BY THE TIME I GOT THERE, WE HAD ENOUGH COVER
9 OFFICERS THERE AND IT WAS BETTER FOR ME TO STAY ON THE
10 OUTSIDE PERIMETER AND PLUS AT THE TIME, I HAD THE
11 COMPLAINANT WITH ME ASKING HER QUESTIONS WHILE THE REST OF
12 THE OFFICERS DID WHAT THEY HAD TO DO.

13 Q AND THE COMPLAINANT WOULD HAVE BEEN KETRA, THE
14 VICTIM?

15 A YES, MA'AM.

16 Q SO YOU WERE TRYING TO GET INFORMATION FROM HER AND
17 START YOUR -- WERE YOU THE ONE WHO WAS RESPONSIBLE FOR
18 COMPLETING THE INCIDENT REPORT IN THIS CASE?

19 A I WAS TOLD TO DO THE INCIDENT REPORT BASED ON
20 EVERYBODY ELSE AT THE TIME, I GUESS, BEING BUSY, WITH
21 EVERYTHING ELSE THAT WAS GOING ON, IT KIND OF GOT PUT ON ME
22 TO JUST START THE INITIAL INCIDENT REPORT AND THEN THE
23 INVESTIGATORS COME IN AND TAKE OVER FROM THERE.

24 Q OKAY.

25 AND DID YOU, IN FACT, START THE INCIDENT REPORT?

1 A YES, MA'AM, I DID.

2 Q WERE YOU AROUND THE APARTMENT AT ANY TIME WHEN KETRA
3 WAS ABLE TO TELL THE OTHER OFFICERS WHICH ONE OF THE THREE
4 WAS HER BOYFRIEND?

5 A I REMEMBER HER TELLING HIS NAME AND, I THINK, MAYBE
6 SAYING HE HAD AN ORANGE SHIRT ON OR SOMETHING. I'M NOT
7 SURE.

8 Q AND WHAT HAPPENED AFTER VAN AND THE TWO OTHER
9 SUSPECTS CAME OUT OF THE APARTMENT?

10 A WHAT HAPPENED WHEN THEY CAME OUT OF THE APARTMENT?

11 Q YES, SIR.

12 A AFTER THEY WERE DETAINED AND TAKEN BACK FROM THE
13 ACTUAL APARTMENT, THE OTHER DEPUTIES, MIKE PEARSON,
14 ALEXANDER, AND, I THINK, PATE, WENT AHEAD AND WENT IN AND
15 STARTED TO CLEAR THE APARTMENT.

16 Q ALL RIGHT.

17 WHAT -- WHAT DO YOU MEAN BY CLEAR THE APARTMENT?

18 A CLEARING IT, MEANS TO MAKE SURE THERE'S NOBODY ELSE
19 IN THE APARTMENT BESIDES WHAT CAME OUT ALREADY.

20 Q AND WAS CAPTAIN PRICHARD IN THE APARTMENT AS WELL?

21 A YES, MA'AM, HE WAS.

22 Q AND DO YOU KNOW WHAT CAPTAIN PRICHARD WAS DOING IN
23 THE APARTMENT?

24 A YES. HE WAS RUNNING A SEARCH FOR THE WEAPONS THAT
25 WERE SUPPOSED TO BE THERE BECAUSE WE DID NOT FIND ANY

1 WEAPONS ON THE SUBJECTS AT THE TIME.

2 Q I'M SORRY. YOU DIDN'T FIND WEAPONS ON THE TWO
3 SUBJECTS---

4 A NO, MA'AM.

5 Q ---IS THAT WHAT YOU SAID? AND ARE YOU AWARE IF
6 CAPTAIN PRICHARD RECOVERED A WEAPON OR NOT?

7 A YES, MA'AM, HE DID.

8 Q DO YOU KNOW WHAT TYPE OF WEAPON IT WAS?

9 A YES, MA'AM. IT WAS A NINE MILLIMETER, BLACK IN
10 COLOR, PISTOL, IF I REMEMBER RIGHT. HE WENT AHEAD AND
11 CLEARED THE WEAPON AND HANDED IT TO ME TO TAKE AND SECURE
12 IT SO I COULD TAKE IT TO THE LAB WHICH I DID LATER.

13 Q SO HE GAVE OVER A NINE MILLIMETER PISTOL TO YOU---

14 A YES, MA'AM.

15 Q ---AND YOU, IN TURN, DELIVERED THAT TO THE SHERIFF'S
16 DEPARTMENT?

17 A YES, MA'AM.

18 Q AND WAS THERE ANYTHING ELSE WITH THAT NINE MILLIMETER
19 GUN?

20 A THE MAGAZINE WAS WITH IT WITH AMMO IN IT.

21 Q WITH AMMUNITION IN IT?

22 A YES, MA'AM.

23 Q AND YOU TRANSPORTED THAT BACK TO THE SHERIFF'S
24 DEPARTMENT?

25 A YES, MA'AM. LONNIE GROSS PICKED IT UP FROM ME AT THE

1 FORENSICS LAB UNIT.

2 Q NOW, DEPUTY SWICEGOOD, YOU WENT AHEAD -- THE
3 INFORMATION THAT YOU GOT ON YOUR INCIDENT REPORT, WHERE DID
4 YOU GET THAT INFORMATION FROM?

5 A I GOT IT FROM MS. HEARON.

6 Q FROM KETRA HEARON?

7 A YES, MA'AM.

8 Q AND SHE'S THE VICTIM IN THE CASE?

9 A YES, MA'AM, ONE OF THE TWO.

10 Q AND YOU GOT HER PERSONAL INFORMATION ALONG WITH HER
11 BOYFRIEND'S INFORMATION AS WELL?

12 A YES, MA'AM.

13 Q DO YOU HAPPEN TO INDICATE IN YOUR INCIDENT REPORT AT
14 ANY POINT A RELATIONSHIP BETWEEN THE VICTIMS AND THE
15 SUBJECTS?

16 A YES, MA'AM, IF YOU KNOW THEY KNOW. IN THIS CASE, IT
17 WAS UNIDENTIFIED.

18 Q SO THAT MEANS THEY DIDN'T KNOW EACH OTHER?

19 A RIGHT.

20 Q AND THAT INFORMATION CAME FROM KETRA?

21 A YES, MA'AM.

22 Q HOW ABOUT INFORMATION IN TERMS OF SUSPECTS? WHERE
23 DID YOU GET THAT INFORMATION FROM? DID YOU FILL THAT OUT?

24 A I FILLED IT OUT ON THE INCIDENT REPORT AND
25 SUPPLEMENTAL REPORT, BUT THAT WOULD HAVE BEEN INFORMATION

1 PROBABLY, IF I WENT FROM CAR TO CAR, BECAUSE ONCE YOU HAVE
2 THE SUBJECTS IN INVESTIGATIVE DETENTION, THEY ARE PLACED IN
3 THREE DIFFERENT CARS. SO I DON'T -- I MAY HAVE WENT TO
4 EACH CAR AND GOT THE INFORMATION SEPARATELY OR IT COULD
5 HAVE COME FROM FIELD NOTES FROM ONE OF THE DEPUTIES THAT
6 HAD THEM DETAINED THERE BECAUSE THEY ARE GOING TO WRITE
7 DOWN THE INFORMATION IN THEIR NOTEPAD, DATE OF BIRTH, AND
8 SO ON.

9 Q BUT IN TERMS OF THE SUSPECT INFORMATION, THAT'S
10 INFORMATION THAT YOU'RE GETTING FROM THE SUSPECTS
11 THEMSELVES?

12 A YES, MA'AM.

13 Q OKAY.

14 WHO DO YOU HAVE LISTED AS SUSPECT NUMBER ONE ON
15 YOUR INCIDENT REPORT?

16 A AT THE TIME, I HAVE DOWN HERE JAMES JOHNSON.

17 Q AND DO YOU HAVE HIS RACE AND THE SEX AND AGE
18 INDICATED?

19 A BLACK MALE, 21---

20 Q DO YOU HAVE HIS DATE OF BIRTH INDICATED AS WELL?

21 A 09/25/78.

22 Q AND HIS HEIGHT AND WEIGHT?

23 A FIVE NINE, 170 POUNDS.

24 Q HOW ABOUT AN ADDRESS?

25 A I WAS GIVEN 4550 CONGAREE ROAD.

1 Q AND DID YOU LATER LEARN THAT THAT INFORMATION WAS
2 FALSE?

3 A YES, MA'AM, AFTER THE FACT.

4 Q THAT THAT WAS NOT, IN FACT, JAMES JOHNSON?

5 A RIGHT.

6 Q WHO IS LISTED AS SUSPECT NUMBER TWO?

7 A CYCRUS TUCKER.

8 Q AND HOW ABOUT SUSPECT NUMBER THREE?

9 A TARREL LIDE.

10 Q SO WHEN WE ARE REFERRING TO SUSPECT AS JAMES JOHNSON,
11 WE NOW KNOW THAT INFORMATION IS FALSE?

12 A CORRECT.

13 Q DO YOU KNOW HIS TRUE IDENTITY AT THIS POINT?

14 A DEMARCO JOHNSON.

15 Q I BEG THE COURT'S INDULGENCE.

16 SIR, PLEASE ANSWER ANY QUESTIONS FROM THE
17 DEFENSE. THANK YOU.

18 THE COURT: CROSS.

19 MS. SAMPSON: THANK YOU, YOUR HONOR.

20 MAY IT PLEASE THE COURT.

21 CROSS-EXAMINATION

22 BY MS. SAMPSON:

23 Q GOOD AFTERNOON, OFFICER SWICEGOOD. MY NAME IS APRIL
24 SAMPSON. I'M GOING TO BE ASKING YOU A COUPLE OF QUESTIONS.

25 NOW, YOU MADE -- INITIALLY MADE THE INCIDENT

1 REPORT, RIGHT?

2 A YES, MA'AM.

3 Q AND YOU DO THAT -- THE INFORMATION YOU GOT RELATED TO
4 WHAT HAPPENED, YOU GOT THAT INFORMATION FROM KETRA HEARON,
5 RIGHT?

6 A YES, MA'AM.

7 Q YOU NEVER SPOKE TO THE OTHER VICTIM, NORMAN VAN DORN?

8 A NO.

9 Q NOT WHEN YOU MADE THE INCIDENT REPORT?

10 A NOT INITIALLY, MA'AM.

11 Q OKAY.

12 NOW, YOU STATED THAT -- AND CORRECT ME IF I'M
13 WRONG -- THE INFORMATION THAT YOU GOT ABOUT THE SUSPECTS,
14 THEIR NAMES AND THAT INFORMATION, DID YOU TALK TO EACH
15 SUSPECT SPECIFICALLY OR DID YOU TALK TO THE OFFICER WHO WAS
16 HOLDING THAT SUSPECT?

17 A I REMEMBER TAKING THE -- WELL, I HAD ONE OF THE
18 SUBJECTS MYSELF IN MY CAR.

19 Q AND WHO WOULD THAT BE?

20 A I'M THINKING IT WAS JAMES JOHNSON AT THE TIME. AND
21 THEN WE ALSO HAD CYCRUS TUCKER AND TARREL LIDE IN, YOU
22 KNOW, SEPARATE CARS. AND RIGHT OFF, I DON'T REMEMBER IF I
23 GOT SPECIFIC FROM THEM OR WAS IT THE CASE OFFICER THAT HAD
24 THEM AND WROTE THE INFORMATION DOWN IN HIS NOTEPAD.

25 Q SO YOU CAN'T SAY FOR SURE THAT DEMARCO JOHNSON TOLD

1 YOU HIS NAME WAS JAMES JOHNSON OR IF THE OFFICER TOLD YOU
2 THAT HIS NAME WAS JAMES JOHNSON?

3 A I HAD HIM IN MY CAR. SO---

4 Q YOU HAD HIM---

5 A YEAH, I HAD HIM SPECIFICALLY. YEAH, I GOT JAMES
6 JOHNSON FROM HIM.

7 NOW, THE OTHER TWO, SUBJECT NUMBER TWO AND THREE,
8 I'M NOT SURE OF.

9 Q DO YOU KNOW IF JAMES IS HIS MIDDLE NAME?

10 A NO, MA'AM, I DO NOT KNOW.

11 Q NOW, YOU STATED THAT THE INFORMATION YOU GOT FROM MS.
12 HEARON YOU PUT IN THE INCIDENT REPORT, BASIC INFORMATION?

13 A BASIC, YES, MA'AM.

14 Q OKAY.

15 NOW, YOU STATE IN THE INCIDENT REPORT THAT -- YOU
16 SPECIFICALLY STATED THAT MR. VAN DORN WAS FORCED TO GO IN
17 HIS APARTMENT AND THAT SOME MONEY WAS TAKEN FROM HIM.
18 WOULD THAT BE CORRECT?

19 A CORRECT.

20 Q NOW, YOU DON'T STATE IN THIS THAT KETRA HEARON WAS
21 FORCED IN THE APARTMENT, DO YOU?

22 A NO, MA'AM, SHE WAS NOT FORCED IN THE APARTMENT.

23 Q OKAY.

24 AND YOU DON'T STATE THAT THEY PULLED GUNS ON HER,
25 DO YOU---

1 A THAT I---

2 Q ---IN YOUR INCIDENT REPORT?

3 A THAT I DO NOT KNOW. I KNOW SHE CAME TO THE DOOR,
4 ANSWERED THE DOOR, AND TALKED TO OUR OFFICER THERE.

5 Q OKAY.

6 BUT IN YOUR -- IT'S NOT IN YOUR REPORT, THOUGH?

7 A NO, MA'AM.

8 Q OKAY.

9 AND IT'S ALSO NOT IN YOUR REPORT THAT THEY WERE
10 ROBBED -- THAT SHE WAS ARMED?

11 A NO, MA'AM.

12 Q BEG THE COURT'S INDULGENCE.

13 NO FURTHER QUESTIONS, YOUR HONOR.

14 THE COURT: ANY REDIRECT?

15 MS. PELLIZZARI: YES, SIR, JUST VERY BRIEFLY.

16 REDIRECT EXAMINATION

17 BY MS. PELLIZZARI:

18 Q DEPUTY SWICEGOOD, CAN YOU PLEASE READ THE FIRST TWO
19 SENTENCES OF YOUR NARRATIVE THAT YOU HAVE---

20 A YES, MA'AM---

21 Q ---ON YOUR INCIDENT REPORT?

22 A VICTIM STATES THAT SUBJECT ONE AND TWO DID ROB HIM OF
23 TEN DOLLARS IN CASH AT GUNPOINT. CONTINUE?

24 Q YES, SIR.

25 A VICTIM STATES BOTH SUBJECTS HAD PISTOLS AND DID FORCE

1 HIM BACK INTO HIS AUNT'S APARTMENT.

2 Q AND THE NEXT -- THE NEXT LINE, PLEASE?

3 A VICTIM'S GIRLFRIEND, WHICH IS COMPLAINANT, KETRA,

4 WALKED INTO THE APARTMENT, ROOM .

5 Q THANK YOU, SIR.

6 THE COURT: ANYTHING ELSE?

7 MS. SAMPSON: BRIEFLY, YOUR HONOR.

8 RE CROSS EXAMINATION

9 BY MS. SAMPSON:

10 Q YOU JUST READ THAT VICTIM STATES THAT SUBJECT ONE AND
11 TWO DID ROB HIM. I THOUGHT YOU DIDN'T TALK TO THE VICTIM?

12 A I TALKED TO THE VICTIM, BUT NOT INITIALLY. I GOT THE
13 INITIAL INFORMATION FROM HER. AND---

14 Q YOU---

15 A ---I TALKED TO HIM AFTER THE FACT, AFTER HE WAS
16 ALREADY -- ORIGINALLY, WE HAD HIM HANDCUFFED BECAUSE WE
17 DIDN'T KNOW WHO WE WERE DEALING WITH. WAS HE A SUBJECT OR
18 WAS HE A COMPLAINANT OR WAS HE A VICTIM? WE DIDN'T KNOW.

19 Q AND YOU JUST STATED THAT IT WAS HIS AUNT'S APARTMENT,
20 NOT HIS APARTMENT? ISN'T THAT WHAT'S IN YOUR REPORT?

21 A YES, MA'AM, THAT'S IN MY REPORT.

22 Q NO FURTHER QUESTIONS, YOUR HONOR.

23 MS. PELLIZZARI: NOTHING FURTHER, YOUR HONOR, AND
24 WE ASK THAT HE BE EXCUSED.

25 THE COURT: YOU CAN STEP DOWN. THANK YOU, SIR.

1 (WHEREUPON, THE WITNESS WAS
2 EXCUSED AT THIS TIME.)

3 MS. PELLIZZARI: THE STATE CALLS INVESTIGATOR
4 WENDELL HARRIS---

5 MS. DUKE-MIMS: YOUR HONOR, MAY WE APPROACH THE
6 BENCH?

7 (WHEREUPON, A BENCH CONFERENCE WAS
8 HELD AT THIS TIME OFF THE RECORD.)

9 THE COURT: ALL RIGHT.

10 LADIES AND GENTLEMEN, LET'S TAKE A SHORT BREAK AT
11 THIS POINT. WE'LL ASK YOU TO STEP TO THE JURY ROOM. WHILE
12 YOU'RE THERE, BE SURE NOT TO TALK ABOUT THE CASE.

13 (JURY OUT.)

14 THE COURT: ALL RIGHT.

15 THE JURY IS SECURED. THE STATE, FOR SCHEDULING
16 PURPOSES, HOW MANY MORE WITNESSES DO YOU ANTICIPATE
17 CALLING?

18 MR. PASCOE: PROBABLY JUST THREE, YOUR HONOR. AS
19 OF RIGHT NOW, JUST THREE.

20 THE COURT: DO YOU THINK WE'LL BE ABLE TO GET
21 YOUR CASE FINISHED---

22 MR. PASCOE: WE'LL GET TO AT LEAST -- AT LEAST
23 TWO OF THEM TODAY.

24 THE COURT: OKAY.

25 DEFENSE, HAVE YOU MADE ANY DETERMINATION AS TO

1 WHETHER YOU'LL PUT UP A CASE?

2 MS. DUKE-MIMS: NOT UNTIL WE HEAR ALL OF THEIRS,
3 YOUR HONOR.

4 THE COURT: OKAY.

5 ALL RIGHT. WE'LL STAND IN RECESS.

6 (RECESS.)

7 THE BAILIFF: ALL RISE.

8 THE COURT: THANK YOU.

9 PLEASE BE SEATED.

10 BRING THE JURY IN.

11 (JURY IN.)

12 THE BAILIFF: THE JURY IS PRESENT, YOUR HONOR.

13 THE COURT: THANK YOU, SIR.

14 ALL PARTIES AND ATTORNEYS ARE PRESENT AND THE
15 JURY IS NOW IN THE COURTROOM.

16 COUNSEL, CALL YOUR NEXT WITNESS, PLEASE, FOR THE
17 STATE.

18 MS. PELLIZZARI: THANK YOU, YOUR HONOR.

19 THE STATE CALL INVESTIGATOR WENDELL HARRIS.

20 INVESTIGATOR WENDALL T. HARRIS,

21 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:

22 THE CLERK: PLEASE HAVE A SEAT AND STATE YOUR
23 FULL NAME FOR THE RECORD.

24 THE WITNESS: MY NAME IS WENDALL TERRANCE HARRIS.

25 DIRECT EXAMINATION

1 BY MS. PELLIZZARI:

2 Q GOOD AFTERNOON, INVESTIGATOR HARRIS.

3 A GOOD AFTERNOON.

4 Q COULD YOU PLEASE TELL THE COURT, SIR, WHERE YOU ARE

5 PRESENTLY EMPLOYED?

6 A AT THE RICHLAND COUNTY SHERIFF'S DEPARTMENT.

7 Q AND HOW LONG HAVE YOU WORKED WITH THE SHERIFF'S

8 DEPARTMENT?

9 A APPROXIMATELY FIVE AND A HALF YEARS.

10 Q AND WHAT'S YOUR CURRENT POSITION AT THE SHERIFF'S

11 DEPARTMENT?

12 A INVESTIGATION IN THE BURGLARY DIVISION.

13 Q IN THE BURGLARY DIVISION?

14 A YES, MA'AM.

15 Q AND CAN YOU TELL THE JURY A LITTLE BIT ABOUT YOUR

16 DUTIES AND RESPONSIBILITIES AS AN INVESTIGATOR?

17 A WELL, AS AN INVESTIGATOR, WE ARE TO PROCESS SCENES

18 AND TAKE EVIDENCE THAT ARE GATHERED BY THE LINE UNITS WHO

19 INITIATES THE FIRST CONTACT WITH ANY CRIME SCENE OR ANY

20 REPORT THAT'S APPLIED. AT THAT POINT, IT'S FILTERED UP TO

21 INVESTIGATIONS WHERE THE DIFFERENT DIVISION UNITS ARE

22 DESIGNATED BASED ON THE BURGLARIES, MAJOR CRIMES --

23 DEPENDING ON WHAT KIND OF CRIME IT IS TO DIFFERENT

24 INVESTIGATORS WHERE WE'LL TAKE IT FROM THERE AND TRY TO

25 BRING IT TO AN END.

1 Q ARE YOU ASSIGNED YOUR OWN CASELOAD AS THE CHIEF
2 INVESTIGATING OFFICER?

3 A EXCUSE ME?

4 Q ARE YOU ASSIGNED CASES THAT YOU ARE THE CHIEF
5 INVESTIGATING OFFICER ON?

6 A YES.

7 Q AND ARE THERE OTHER INVESTIGATORS IN THE SHERIFF'S
8 DEPARTMENT WHO ARE ASSIGNED CASES IN THE SAME WAY, THE CHIEF
9 INVESTIGATING OFFICER?

10 A YES, MA'AM.

11 Q DO YOU EVER HAVE AN OCCASION TO HELP OTHER
12 INVESTIGATORS OUT EVEN IF YOU ARE NOT THE CHIEF
13 INVESTIGATING OFFICER ON THE CASE?

14 A QUITE FREQUENTLY.

15 Q AND, SIR, WERE YOU WORKING ON DECEMBER 14TH OF 1999?

16 A YES, I WAS.

17 Q DO YOU REMEMBER WHAT SHIFT YOU WERE WORKING THAT DAY?

18 A YES. I WAS ON EVENING SHIFT, ON-CALL INVESTIGATIONS.

19 Q DO YOU REMEMBER AT ALL RESPONDING OVER TO APARTMENT
20 NUMBER 107 IN THE TRENTON COURT APARTMENTS?

21 A YES, I DO.

22 Q WHY DID YOU RESPOND -- AND WOULD YOU HAVE RESPONDED
23 IN THE EVENING HOURS?

24 A YES, IT WAS.

25 Q DO YOU REMEMBER ABOUT WHAT TIME IN THE EVENING?

1 A I BELIEVE IT WAS AROUND 9:30, 9:15, THAT WAS ABOUT
2 THE TIME, YES, MA'AM.

3 Q ALL RIGHT.

4 AND DO YOU REMEMBER WHY YOU WERE RESPONDING OUT
5 TO THAT APARTMENT NUMBER?

6 A YES, MA'AM.

7 Q CAN YOU TELL THE JURY WHY YOU WENT OUT TO THAT
8 APARTMENT?

9 A YES, MA'AM. I RECEIVED INFORMATION FROM INVESTIGATOR
10 MAC ROBERTS, WHO WAS ALSO ON CALL AT THE TIME, THAT
11 SERGEANT STAN SMITH RECEIVED INFORMATION THAT THERE WAS A
12 SECOND WEAPON THAT WAS INVOLVED IN THE INCIDENT EARLIER
13 THAT DAY THAT WAS FOUND BY THE VICTIMS.

14 Q AND WHAT WAS YOUR PURPOSE OF GOING OVER TO THEIR
15 APARTMENT?

16 A YES, MA'AM. TO RECOVER -- TO RECOVER THE WEAPON.

17 Q AND WHO WAS AT THE APARTMENT WHEN YOU ARRIVED THAT
18 EVENING?

19 A WHEN I ARRIVED, THERE WAS -- THERE WAS A GENTLEMAN
20 AND TWO FEMALES THAT OCCUPIED THE APARTMENT. I RECALL
21 MEETING WITH THEM.

22 Q AND DID THEY, IN FACT, SHOW YOU THE GUN THAT THEY HAD
23 FOUND?

24 A YES, THEY DID.

25 Q OKAY.

1 WHAT KIND OF GUN WAS IT, DO YOU KNOW?

2 A IT WAS SOME TYPE SEMI-AUTOMATIC I RECALL.

3 Q DID THEY GIVE YOU THE GUN?

4 A WELL, I DON'T THINK THEY TOUCHED IT. I THINK IT WAS
5 LEFT WHERE IT WAS BELIEVED TO BE DROPPED BY POSSIBLE
6 SUSPECTS.

7 Q OKAY.

8 BUT DID THEY HAND -- I MEAN, DID THEY -- DID YOU
9 TAKE POSSESSION OF THE WEAPON?

10 A YES, I DID.

11 Q I'M GOING TO SHOW YOU WHAT HAS BEEN MARKED AS STATE'S
12 EXHIBIT NUMBER 11 FOR IDENTIFICATION AND ASK YOU -- EXCUSE
13 ME, THAT'S IN EVIDENCE -- AND ASK YOU IF YOU RECOGNIZE THAT
14 PHOTOGRAPH?

15 A YES, I DO.

16 Q OKAY.

17 WHAT IS THAT A PHOTOGRAPH OF?

18 A IT'S A PHOTOGRAPH OF A NINE MILLIMETER SILVER IN
19 COLOR, SEMIAUTOMATIC WEAPON.

20 Q IS THAT YOUR HANDWRITING AT THE BOTTOM OF THE
21 PHOTOGRAPH?

22 A I'M NOT QUITE SURE IF IT'S MY HANDWRITING, BUT I
23 RECALL TAKING THE PICTURE.

24 Q OKAY.

25 AND, AGAIN, AFTER YOU SAW THE WEAPON IN THE HOME,

1 YOU PHOTOGRAPHED IT?

2 A YES, I DID.

3 Q OKAY.

4 AND WHAT WAS THE PURPOSE OF PHOTOGRAPHING IT?

5 A FOR EVIDENCE PURPOSES AND FOR HISTORIC COURT VALUE
6 FOR A LATER DATE.

7 Q DO YOU HAVE ANY -- IS THERE ANY WRITING ON THE BACK
8 OF THAT PHOTOGRAPH?

9 A YES, IT IS.

10 Q WHAT WRITING IS ON THE BACK OF THAT?

11 A THE INCIDENT DATE AND ALSO MY NAME AND THE TIME THAT
12 I ARRIVED AND TOOK THE PHOTO.

13 Q WHAT TIME IS INDICATED ON THERE?

14 A NINE-THIRTY, NINE-THIRTY IN THE EVENING, DECEMBER THE
15 14TH.

16 Q AND, SIR, IS THAT THE SAME WEAPON AS STATE'S EXHIBIT
17 NUMBER TWO?

18 A YES, IT IS.

19 Q AND, INVESTIGATOR HARRIS---

20 A DO YOU WANT ME TO HOLD IT?

21 Q NO.

22 INVESTIGATOR HARRIS, LET ME SHOW YOU WHAT'S BEEN
23 MARKED AS STATE'S EXHIBIT NUMBER 12 IN EVIDENCE---

24 A IT'S OKAY.

25 Q ---I'LL GET YOU A TOWEL.

1 A THANK YOU.

2 Q AND ASK IF YOU RECOGNIZE THAT PHOTOGRAPH?

3 A YES, I DO.

4 Q WHAT IS THAT A PHOTOGRAPH OF?

5 A THIS IS THE SECOND PHOTOGRAPH THAT I TOOK AT THE TIME

6 OF THE INCIDENT. I USED A PENCIL TO PICK THE WEAPON UP AND

7 PUT IT ON TOP OF THE TABLE, REMOVED THE MAGAZINE SO THAT I

8 CAN SHOW THAT THE GUN WAS LOADED AT THE TIME OF RECOVERY.

9 IT HAS A PICTURE OF A MAGAZINE, ALSO A ROUND LAYING BESIDE

10 IT TO SHOW THAT THE WEAPON WAS LOADED.

11 Q DO YOU HAVE THAT OTHER PHOTOGRAPH UP THERE?

12 A YES, I DO.

13 Q SO WHAT IS THE MAIN DIFFERENCE BETWEEN THOSE

14 PHOTOGRAPHS, STATE'S EXHIBIT NUMBER 11 AND STATE'S EXHIBIT

15 NUMBER 12?

16 A ONE IS JUST SHOWING THE ACTUAL PICTURE OF THE NINE

17 MILLIMETER. THE SECOND SHOWS MORE CLARITY IN THAT THERE

18 WAS A MAGAZINE IN THE WEAPON AND THAT IT WAS ALSO -- ROUNDS

19 ALSO IN THAT WEAPON.

20 Q SO IT WAS LOADED?

21 A YES, IT WAS.

22 Q AND, SIR, AFTER YOU PHOTOGRAPHED -- AFTER YOU

23 PHOTOGRAPHED THAT WEAPON, WHAT DID YOU DO WITH IT?

24 A I TRANSPORTED THAT WEAPON BACK TO THE RICHLAND COUNTY

25 SHERIFF'S DEPARTMENT AND PLACED IT IN THE DROP BOX OF

1 EVIDENCE.

2 Q AS STANDARD PROCEDURE?

3 A STANDARD PROCEDURE.

4 Q AND, SIR, YOU WERE NOT PRESENT WHEN THE VICTIMS FOUND
5 THAT GUN?

6 A NO, MA'AM.

7 Q DO YOU KNOW WHERE THEY FOUND IT?

8 A NO, MA'AM.

9 Q AND, IN FACT, YOUR ONLY DUTIES THAT DAY IN REGARDS TO
10 THIS CASE WERE JUST YOU WERE TOLD TO GO OVER TO THE
11 APARTMENT, GET THE GUN, AND BRING IT BACK TO THE SHERIFF'S
12 DEPARTMENT?

13 A RIGHT. JUST ASSISTING OTHER INVESTIGATORS WHO WERE
14 TIED UP ON SOME OTHER CASES AT THE TIME.

15 Q BEG THE COURT'S INDULGENCE. BEG THE COURT'S
16 INDULGENCE. THANK YOU, SIR. THAT'S ALL THE QUESTIONS I
17 HAVE. PLEASE ANSWER ANY QUESTIONS FROM THE DEFENSE.

18 A SURE.

19 THE COURT: CROSS.

20 MS. SAMPSON: THANK YOU, YOUR HONOR.

21 MAY IT PLEASE THE COURT.

22 CROSS-EXAMINATION

23 BY MS. SAMPSON:

24 Q YOU STATED THAT YOU ARRIVED TO TAKE PICTURES AROUND 9
25 O'CLOCK---

1 A UH---

2 Q ---OR YOU WERE CALLED AT 9 O'CLOCK?

3 A IT WAS PROBABLY ABOUT 9 O'CLOCK WHEN I RECEIVED THE
4 CALL. IT WAS ABOUT 9:30 -- 9:20 PROBABLY, WHEN I ARRIVED.
5 I WAS LEAVING HEADQUARTERS. I WAS ONLY APPROXIMATELY 15 OR
6 20 MINUTES AWAY, APPROXIMATELY.

7 Q AND TO THE BEST OF YOUR KNOWLEDGE, THIS INCIDENT
8 OCCURRED AT NINE IN THE MORNING?

9 A I'M NOT SURE WHAT TIME---

10 Q YOU'RE NOT SURE WHAT---

11 A ---I WASN'T INVOLVED IN THAT.

12 Q NOW, YOU JUST STATED ON DIRECT THAT YOU WEREN'T
13 HANDED THE GUN BY ANYBODY?

14 A NO, I WAS NOT HANDED.

15 Q WHERE WAS IT WHEN YOU GOT THERE?

16 A IT WAS IN A CHAIR IN THE DINING ROOM -- IN THE LITTLE
17 DINING ROOM AREA TO THE LEFT AS YOU ENTERED THE APARTMENT
18 AND THE WEAPON WAS LAYING IN THE CHAIR.

19 Q SO -- AND YOU STATED SOMETHING ABOUT IT BEING DROPPED
20 THERE?

21 A YES. I BELIEVE -- INFORMATION I WAS GIVEN AT THE
22 TIME THAT THE WEAPON MIGHT HAVE BEEN POSSIBLY DROPPED
23 THERE.

24 Q AND YOU WERE GIVEN THAT BY THE VICTIM THAT THE WEAPON
25 HAD BEEN DROPPED?

1 A NO, MA'AM. I DON'T HAVE ANYTHING ON RECORD SO I'M
2 JUST GOING OFF MY REMEMBRANCE.

3 Q SO YOU DON'T REMEMBER -- YOU DON'T KNOW WHERE IT WAS
4 FOUND OR HOW IT GOT WHERE IT GOT?

5 A THAT'S CORRECT.

6 Q AND YOU DON'T KNOW -- YOU SAID IT WAS LOADED, BUT YOU
7 DON'T KNOW WHO LOADED IT OR ANYTHING ABOUT THE GUN OTHER
8 THAN YOU WERE CALLED TO COME PICK IT UP?

9 A YES, MA'AM.

10 Q I HAVE NO FURTHER QUESTIONS, YOUR HONOR.

11 THE COURT: THANK YOU.

12 REDIRECT?

13 MS. PELLIZZARI: NO, YOUR HONOR, AND WE WOULD ASK
14 THAT HE BE EXCUSED.

15 THE COURT: YES, SIR. YOU ARE FREE TO GO.

16 THANK YOU, SIR.

17 THE WITNESS: THANK YOU, YOUR HONOR.

18 (WHEREUPON, THE WITNESS WAS
19 EXCUSED AT THIS TIME.)

20 MR. PASCOE: THE STATE CALLS INVESTIGATOR LONNIE
21 GROSS.

22 INVESTIGATOR LONNIE GROSS,

23 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:

24 THE CLERK: PLEASE HAVE A SEAT. STATE YOUR FULL
25 NAME FOR THE RECORD.

1 THE WITNESS: MY NAME IS LONNIE BERT GROSS, II.

2 DIRECT EXAMINATION

3 BY MR. PASCOE:

4 Q GOOD AFTERNOON, INVESTIGATOR GROSS.

5 A GOOD AFTERNOON, SIR.

6 Q WHERE DO YOU WORK, SIR?

7 A I'M EMPLOYED BY THE RICHLAND COUNTY SHERIFF'S
8 DEPARTMENT HERE IN RICHLAND COUNTY.

9 Q AND HOW LONG HAVE YOU WORKED IN LAW ENFORCEMENT ALL
10 TOGETHER?

11 A I'VE BEEN A CERTIFIED LAW ENFORCEMENT OFFICER SINCE
12 1972.

13 Q AND WHAT ARE YOUR CURRENT DUTIES WITH THE RICHLAND
14 COUNTY SHERIFF'S DEPARTMENT?

15 A I AM A CRIME SCENE INVESTIGATOR ASSIGNED TO THE
16 FORENSIC LAB WITH THE RICHLAND COUNTY SHERIFF'S DEPARTMENT.

17 Q AND HOW LONG HAVE YOU BEEN A CRIME SCENE
18 INVESTIGATOR?

19 A I'D HAVE TO SAY APPROXIMATELY 18 TO 27, GOING ON 28
20 YEARS.

21 Q SO MOST OF YOUR LAW ENFORCEMENT EXPERIENCE HAS BEEN
22 AS A CRIME SCENE INVESTIGATOR?

23 A YES, SIR, IT HAS.

24 Q AND IF YOU COULD, VERY BRIEFLY, JUST TELL THE JURY
25 WHAT ALL THAT ENTAILS.

1 A THE FORENSIC LAB, WE ARE A SUPPORT UNIT FOR THE
2 CRIMINAL INVESTIGATION DIVISION AS WELL AS THE PATROL
3 DIVISION AND OTHER DIVISIONS WITHIN THE RICHLAND COUNTY
4 SHERIFF'S DEPARTMENT. WE'RE A SUPPORT UNIT FOR THE
5 IDENTIFICATION. BASICALLY, WE'RE RESPONSIBLE FOR THE
6 IDENTIFICATION, COLLECTION, AND PRESERVATION OF ALL
7 PHYSICAL -- I MEAN, ALL CRIME SCENES AND OR ACCIDENT
8 SCENES.

9 Q SO, IN ESSENCE, YOU'RE THE GUY THAT WOULD DUST FOR
10 FINGERPRINTS AND OTHER TRACE EVIDENCE?

11 A YES, SIR, WE DO.

12 Q OKAY.

13 AND YOU'RE ALSO THE PERSON WHO WOULD COMPARE OR
14 ANALYZE THINGS SUCH AS FINGERPRINTS FOUND AT THE SCENE TO
15 KNOWN SAMPLES.

16 A YES, SIR, WE DO.

17 Q OKAY.

18 AND TELL THE JURY A LITTLE BIT ABOUT YOUR
19 EDUCATIONAL BACKGROUND. WHAT, IF ANY, SPECIAL TRAINING DO
20 YOU HAVE BOTH REGARDS TO COLLECTING EVIDENCE AND ANALYZING
21 FINGERPRINTS

22 A FORMAL EDUCATION, I HAVE A TWO-YEAR ASSOCIATES DEGREE
23 IN CRIMINAL JUSTICE, WHICH I RECEIVED IN 1978 FROM MIDLANDS
24 TECHNICAL COLLEGE. I HAVE HAD A -- I'VE BEEN A CERTIFIED
25 LAW ENFORCEMENT OFFICER SINCE OCTOBER OF 1972. DURING THAT

1 TIME, I WORKED AS AN INVESTIGATOR FOR APPROXIMATELY SEVEN
2 YEARS WITH THE PUBLIC SAFETY DIVISION IN THE DEPARTMENT OF
3 YOUTH SERVICES. THE FIRST THREE YEARS, I WAS A PATROL
4 OFFICER. THEN I WAS LATER PROMOTED TO THE SERGEANT AND
5 WENT INTO THE INVESTIGATIVE DIVISION FOR THE SOUTH CAROLINA
6 DEPARTMENT OF YOUTH SERVICES PUBLIC SAFETY DIVISION AND I
7 WORKED THE LAST FOUR YEARS THERE DOING INVESTIGATIONS OF
8 CRIMES. I ALSO -- WE ALSO PROCESSED ANY CRIME SCENES THAT
9 WERE REQUIRED TO BE PROCESSED IN ADDITION TO DOING THE
10 INTERVIEWING OF THE SUSPECTS AND VICTIMS AND WITNESSES. I
11 LEFT THERE IN '79. I WENT TO THE CITY OF COLUMBIA AND I
12 WORKED AS A PATROL OFFICER THERE FOR A FEW YEARS. LATER
13 TRANSFERRING INTO THE CRIME LAB THERE. I WORKED THERE FROM
14 '79 TO APRIL OF '90, AND I'VE BEEN WITH THE SHERIFF'S
15 DEPARTMENT EVER SINCE.

16 DURING THE COURSE OF WITHIN THOSE THREE
17 DEPARTMENTS THAT I HAVE BEEN INVOLVED WITH DOING CRIME
18 SCENE PROCESSING, I HAVE ATTENDED NUMEROUS SCHOOLS FROM THE
19 SOUTH CAROLINA CRIMINAL JUSTICE ACADEMY DEALING WITH BASIC
20 LATENT FINGERPRINT IDENTIFICATION, ADVANCED LATENT
21 FINGERPRINT IDENTIFICATION, AND SCHOOLS DEALING WITH
22 CHEMICAL ANALYSIS, CRIME SCENE RECONSTRUCTIONS, BLOODSTAIN
23 PATTERN ANALYSIS, COURSES -- A MULTITUDE OF COURSES THAT I
24 RECEIVED TRAINING OVER THE LAST 18 YEARS.

25 Q AND LET ME JUST ASK YOU THIS. IN THE LAST 18 YEARS,

1 CAN YOU EVEN PUT A NUMBER ON HOW MANY CRIME SCENES YOU'VE
2 GONE TO LOOK FOR FINGERPRINTS AND ITEMS THAT YOU'VE BEEN
3 ASKED TO ANALYZE FOR FINGERPRINTS? IT WOULD BE IN THE
4 WHAT?

5 A AS FAR AS DOING INDIVIDUAL FINGERPRINT
6 IDENTIFICATIONS OR EXAMINATIONS, I WOULD HAVE TO SAY
7 CONSERVATIVELY, I -- PROBABLY ABOUT THREE TO FOUR-HUNDRED
8 THOUSAND AT LEAST.

9 Q THREE OR FOUR-HUNDRED THOUSAND?

10 A YES, SIR.

11 Q OKAY.

12 A AND THAT'S INDIVIDUALIZED FINGERPRINT IMPRESSIONS.

13 Q AND HAVE YOU HAD AN OCCASION -- ANY OCCASION TO
14 TESTIFY AS AN EXPERT IN BOTH THE COLLECTION OF EVIDENCE
15 SUCH AS FINGERPRINTS AT CRIME SCENES HERE IN SOUTH CAROLINA
16 IN COURTS?

17 A YES, SIR, I HAVE.

18 Q HOW MANY TIMES HAVE YOU TESTIFIED AS AN EXPERT?

19 A I'D HAVE TO SAY AT LEAST BETWEEN FIVE AND TEN TIMES.

20 Q OKAY.

21 AND, AGAIN, THAT'S IN THE FIELD OF---

22 A LATENT -- LATENT FINGERPRINTS IDENTIFICATION AS FAR
23 AS EXPERTISE IN THAT.

24 Q YOUR HONOR, I'D ASK THAT HE BE ADMITTED AS AN EXPERT
25 IN THE FIELD OF EVIDENCE COLLECTION AND ANALYZING

1 FINGERPRINTS.

2 THE COURT: ANY OBJECTION?

3 MS. DUKE-MIMS: NO OBJECTION.

4 THE COURT: LADIES AND GENTLEMEN, I WILL QUALIFY
5 THIS WITNESS AS AN EXPERT IN THE AREAS INDICATED IN
6 EVIDENCE COLLECTION AND IN FINGERPRINT ANALYSIS.

7 NOW, LET ME EXPLAIN WHAT THAT MEANS. I TOLD YOU
8 EARLIER THAT YOU ARE THE JUDGE OF THE CREDIBILITY OR THE
9 BELIEVABILITY OF ALL WITNESSES. NOW, MOST WITNESSES ARE
10 WHAT ARE CALLED LAY WITNESSES. IN OTHER WORDS, THEY
11 TESTIFY TO WHAT THEY MAY KNOW ABOUT THE CASE OR NOT KNOW
12 ABOUT THE CASE PARTICULARLY. AN EXPERT WITNESS IS
13 DIFFERENT. THIS IS A WITNESS WHO COMES IN WITH -- AND
14 PRESENTS QUALIFICATIONS, EXPERIENCED BACKGROUND, EDUCATION
15 IN A PARTICULAR AREA AND IS ALLOWED TO GIVE AN OPINION IN
16 THAT AREA. NOW, YOU ARE NOT BOUND BY THE OPINION OF ANY
17 EXPERT WITNESS. YOU REGARD AN EXPERT WITNESS LIKE YOU
18 WOULD ANOTHER WITNESS. IN OTHER WORDS, YOU DETERMINE HOW
19 MUCH CREDIBILITY AND HOW MUCH WEIGHT TO GIVE TO THEIR
20 TESTIMONY. AGAIN, THE OPINION OF AN EXPERT IS TO SIMPLY
21 TO GUIDE YOU IN YOUR EFFORTS. YOU ARE NOT BOUND BY THE
22 OPINION.

23 ANY EXCEPTION TO THAT CHARGE FROM THE STATE?

24 MR. PASCOE: NO, YOUR HONOR.

25 THE COURT: THE DEFENSE?

1 MS. DUKE-MIMS: NO, SIR.

2 THE COURT: ALL RIGHT.

3 CONTINUE.

4 MR. PASCOE: THANK YOU.

5 INVESTIGATOR, LET'S START WITH THE BASICS. TELL
6 THE JURY WHAT IS A LATENT FINGERPRINT OR A PRINT THAT CAN
7 BE IDENTIFIABLE?

8 THE WITNESS: A LATENT FINGERPRINT IS AN
9 IMPRESSION THAT THEORETICALLY WHEN A PERSON TOUCHES A
10 SURFACE, THERE'S TRANSFERENCE OF THE GREASE, MOISTURE
11 CONTENT FROM THE RAISED RIDGES, FRICTION SKIN -- WHAT WE
12 REFER TO AS FRICTION SKIN WHICH IS NORMALLY FOUND ON THE
13 FINGERTIPS, THE PALMS, AND THE PLANTAR OR SOLES OF THE
14 FEET.

15 WHEN A PERSON TOUCHES A SURFACE, THERE IS A
16 TRANSFERENCE, NORMALLY A TRANSFERENCE OF THE PATTERN OF THE
17 RIDGE FORMATIONS. THESE PATTERNS SOMETIMES CAN BE SEEN BY
18 THE NAKED EYE AND OTHER TIMES CANNOT BE; AND, THEREFORE,
19 THEY HAVE TO BE DEVELOPED OUT BY SOME MEDIUMS, SUCH AS THE
20 USE OF CHEMICALS OR POWDERS SO THAT THEY CAN BE
21 PHOTOGRAPHED AND PRESERVED LATER FOR COMPARISON PURPOSES.

22 Q IS A SMUDGE GOING TO NECESSARILY BE AN IDENTIFIABLE
23 LATENT FINGERPRINT?

24 A NO, SIR, IT IS NOT.

25 Q THE MERE FACT THAT I'M TOUCHING THIS WALL OR TOP UP

1 HERE, AM I GOING TO LEAVE -- RIGHT NOW, AM I GOING TO LEAVE
2 AN IDENTIFIABLE FINGERPRINT?

3 A NOT NECESSARILY. THAT'S WHY I SAID IN THEORY THAT'S
4 -- THAT'S HOW A FINGERPRINT IS NORMALLY LEFT WHICH
5 BASICALLY IS AN ACCIDENT IF YOU WANT TO CALL IT THAT.

6 Q SO LEAVING A FINGERPRINT IN YOUR EXPERTISE IS REALLY
7 AN ACCIDENT?

8 A I THINK SO. THERE ARE A LOT OF FACTORS INVOLVED.

9 Q WHAT ARE SOME OF THOSE FACTORS AS TO WHETHER YOU
10 MIGHT LEAVE A PRINT?

11 A TWO FACTORS THAT WOULD -- NORMALLY THAT COME INTO
12 PLAY WHICH WOULD MAKE A DETERMINATION AS TO WHETHER YOU
13 WOULD GET AN IDENTIFIABLE PRINT WOULD BE PROBABLY THE HUMAN
14 FACTOR AS WELL AS AN ENVIRONMENTAL FACTOR.

15 THE HUMAN FACTOR COULD BE A PERSON'S FINGERS IF
16 THEY ARE LACK OF MOISTURE LIKE -- SUCH AS COLD WEATHER, WE
17 GET WHAT WE CALL DRY HANDS. WE LOSE THE ADDED MOISTURE
18 THAT YOU WOULD NEED IN ORDER TO LEAVE AN IMPRESSION. IT
19 COULD BE, WELL, SOME PEOPLE ALSO SWEAT MORE PROFUSELY THAN
20 OTHERS. THAT IN ITSELF COULD BE A PROBLEM.

21 ENVIRONMENTALLY SPEAKING, THERE COULD BE -- THE
22 WEAPON HAS A BEARING ON IT. THE ENVIRONMENT, THE TYPE OF
23 SURFACE THAT ONE TOUCHES, WHETHER IT'S A DUST -- A DUSTY
24 SURFACE, A WET SURFACE. THESE WOULD ALL PRECLUDE AS TO
25 WHETHER AN IMPRESSION WOULD BE OBTAINABLE FROM A PARTICULAR

1 SURFACE. ALSO, THE SURFACE IN ITSELF. A TEXTURED SURFACE
2 VERSUS A SMOOTH NON-COARSE SURFACE.

3 Q AND LET ME ASK YOU THIS. IN THE THOUSANDS OF THINGS
4 YOU'VE BEEN ASKED TO ANALYZE IN YOUR EXPERTISE INVOLVING
5 CRIME, WHETHER IT'S A CRIME SCENE OR NOT, DID YOU ALWAYS
6 FIND A SUSPECT'S FINGERPRINT?

7 A NO, SIR.

8 Q DO YOU EVEN USUALLY FIND A SUSPECT'S FINGERPRINT?

9 A IT'S BEEN MY EXPERIENCE OVER THE YEARS OF THE -- A
10 MULTITUDE OF ITEMS THAT WE HAVE PROCESSED, IT IS MORE IN
11 THE NORM TO NOT FIND AN IDENTIFIABLE FINGERPRINT. THIS IS
12 ONE THAT WOULD CONTAIN, NOT ONLY CLASS CHARACTERISTICS, BUT
13 THE INDIVIDUAL IDENTIFYING CHARACTERISTICS WHICH ARE FOUND
14 IN AN IMPRESSION TO BE ABLE TO MAKE A POSITIVE
15 IDENTIFICATION. THIS WOULD BE MORE OF A NORMAL OCCURRENCE.

16 Q AND IS THAT DUE IN LARGE PART TO THE FACTORS YOU'VE
17 ALREADY TESTIFIED ABOUT?

18 A THAT'S TRUE; THAT'S CORRECT.

19 Q NOW, LET ME ASK YOU THIS. DO YOU KNOW HOW MANY
20 HANDGUNS YOU'VE BEEN ASKED TO ANALYZE WITH REGARDS TO CRIME
21 SCENES IN THE PAST 18 YEARS AS A FORENSIC---

22 A I -- I WOULD HAVE TO SAY CONSERVATIVELY HUNDREDS,
23 ANYTHING FROM ALL TYPES OF WEAPONS.

24 Q IS THERE ANYTHING INHERENTLY DIFFICULT ABOUT GETTING
25 PRINTS WITH SUFFICIENT RIDGE DETAIL OFF OF A HANDGUN?

1 A I THINK THE FIRST PROBLEM THAT YOU HAVE WILL BE --
2 ENVIRONMENTALLY SPEAKING, WOULD BE THE FACT THAT MOST
3 HANDGUNS, IF THEY ARE IN ANY KIND OF CONDITION AT ALL,
4 USUALLY WILL HAVE SOME TYPES OF COATS OF OIL. PEOPLE WILL
5 OIL GUNS. THIS OIL SOMETIMES WILL STAY ON A WEAPON FOR A
6 VERY LONG TIME EVEN THOUGH IT MAY NOT BE READILY SEEN BY
7 THE NAKED EYE, IT WOULD RENDER A PRINT SOMEWHAT DIFFICULT
8 TO LEAVE IT ONTO THIS TYPE OF SURFACE.

9 A LOT OF VARIOUS TYPE WEAPONS OR ESPECIALLY THE
10 NEWER WEAPONS TODAY ARE MADE OUT OF DIFFERENT TYPES OF
11 MATERIALS OR PLASTIC MATERIALS. THEY HAVE PLASTIC PARTS OR
12 THEY HAVE TEXTURED SURFACES ON THEM LIKE SUCH AS THE
13 HANDGUNS ON THE HANDLES. THEY HAVE TEXTURED SURFACES WHICH
14 THESE ARE BASICALLY MANUFACTURED THAT WAY. THAT'S TO
15 IMPROVE THE GRIP SO THAT WHEN YOU HOLD A WEAPON THAT YOU
16 WOULD HAVE THESE -- THIS TEXTURED SURFACE. UNFORTUNATELY,
17 THAT HAS A BEARING ON WHETHER YOU WOULD LEAVE A
18 FINGERPRINT.

19 IT HAS BEEN -- ONCE AGAIN, I'D HAVE TO SAY FROM
20 MY EXPERIENCE OUT OF HUNDREDS OF WEAPONS THAT I'VE
21 PROCESSED, I WOULD HAVE TO SAY THAT PROBABLY ABOUT TEN
22 PERCENT OF ALL THOSE WEAPONS THAT WE ACTUALLY WERE ABLE TO
23 GET SOME TYPE OF RIDGE FORMATION, NOT NECESSARILY AN
24 IDENTIFIABLE FINGERPRINT. IN MY PERSONAL EXPERIENCE,
25 PROBABLY OUT OF THE TEN PERCENT OF THE WEAPONS THAT I'VE

1 ACTUALLY COME UP WITH FINGERPRINTS, PROBABLY ONLY ONE OR
2 TWO PERCENT OF THOSE THAT I'VE ACTUALLY MADE A POSITIVE
3 IDENTIFICATION ON A SUSPECT OR AN INDIVIDUAL OFF OF A
4 HANDGUN.

5 Q SO AN EXTREMELY LOW PERCENTAGE WHERE YOU CAN GET
6 RIDGE DETAIL OFF OF A GUN IN YOUR EXPERIENCE?

7 A YES, SIR. CONTRARY TO POPULAR BELIEFS BROUGHT ON BY
8 TELEVISION AND ALL THE THINGS THAT WE SEE IN MOVIES, IT'S
9 NOT AS EASY AS ONE WOULD THINK SO.

10 Q WELL, THAT'S -- THAT'S WHAT I'M GETTING AT. IS --
11 YOU, IN YOUR EXPERIENCE, YOU'VE TESTIFIED THERE'S A
12 CONCEPTION OUT THERE THAT WHEN WE TOUCH SOMETHING, WE LEAVE
13 A FINGERPRINT. IS THAT TRUE?

14 A THAT'S NOT NECESSARILY TRUE, NO, SIR.

15 Q AND YOU'VE TESTIFIED ACTUALLY THAT THAT'S MORE OF AN
16 ACCIDENT THAN ANYTHING ELSE, CORRECT---

17 A IN---

18 Q ---IN YOUR OPINION?

19 A IN MOST CASES, YES, SIR.

20 Q OKAY.

21 NOW, LET ME JUST ASK YOU SOME QUESTIONS DIRECTLY
22 WITH REGARDS TO DECEMBER THE 14TH, 1999. WERE YOU CALLED
23 TO 107 CONNIE DRIVE, TRENTON COURT APARTMENTS?

24 A YES, SIR, I WAS.

25 Q AND WAS THAT FOR THE ARMED ROBBERY, KIDNAPPING,

1 BURGLARY THAT HAD TAKEN PLACE THERE?

2 A YES, SIR.

3 Q DID YOU EVEN GO AHEAD AND BOTHER TO FINGERPRINT THE
4 INSIDE OF THE APARTMENT THAT AFTERNOON OR THAT MORNING WHEN
5 YOU GOT THERE?

6 A NO, SIR. BUT IF I COULD BACK UP---

7 Q GO AHEAD.

8 A THE FIRST THING I WAS ASKED BY ONE OF THE
9 INVESTIGATORS WAS BRIEFED ON THE SITUATION WHERE THREE
10 SUSPECTS OR THREE ALLEGED SUSPECTS HAD APPARENTLY
11 APPROACHED THE VICTIM IN APPARENTLY SOME TYPE OF ARMED
12 ROBBERY SITUATION OUT IN THE PARKING LOT OF THIS PARKING
13 LOT. AND I WAS REQUESTED BY THE INVESTIGATOR AT THAT TIME
14 IF I COULD PROCESS THE OUTSIDE OR THE EXTERIOR OF THIS
15 VICTIM'S VEHICLE JUST IN CASE WE COULD FIND ANY KIND OF
16 PRINTS OR ANYTHING OF THAT NATURE. AND I DID SO AND MY
17 FINDINGS WERE NEGATIVE AT THAT TIME.

18 Q YOU DID PROCESS THE VEHICLE. DO YOU RECOGNIZE
19 STATE'S EXHIBIT NUMBER FOUR?

20 A YES, SIR. THIS IS THE -- THIS IS THE VICTIM'S
21 VEHICLE. IT WAS A NISSAN -- I BELIEVE IT WAS A NISSAN
22 TRUCK---

23 Q AND IS THAT THE VEHICLE---

24 A ---WHITE TRUCK---

25 Q ---THAT YOU PROCESSED?

1 A YES, SIR, IT IS.

2 Q AND YOU ONLY -- YOU'VE TESTIFIED YOU ONLY PROCESSED
3 THE OUTSIDE OF THE VEHICLE JUST TO SEE IF THERE WERE ANY
4 PRINTS ON IT?

5 A YES, SIR, EVEN THOUGH HE SAID THEY -- SUSPECTS MAY
6 HAVE BEEN IN THE VEHICLE LOOKING AROUND. THE ONLY THING
7 THEY WERE CONCERNED AT THAT TIME WAS IF ANYTHING COULD BE
8 TAKEN OFF OF THE EXTERIOR OF THE VEHICLE JUST TO PUT THE
9 TWO -- HOPEFULLY, BACK UP THE VICTIM'S STATEMENTS AT THAT
10 TIME.

11 Q DID YOU FIND ANY PRINTS ON THE EXTERIOR OF THE
12 VEHICLE THAT WERE LATENT, THAT HAD SUFFICIENT RIDGE DETAIL?

13 A NO, I DID NOT.

14 Q EVEN THOUGH YOU KNEW IT WAS THE VICTIM'S TRUCK, DID
15 YOU FIND ANY PRINTS THAT WOULD HAVE BELONGED TO HIM ON THE
16 OUTSIDE OF THAT TRUCK?

17 A NOT ON THE EXTERIOR, NO, SIR.

18 Q OKAY.

19 THAT BELONGED TO NOBODY?

20 A NO, SIR.

21 Q THERE WERE NONE?

22 A NO, SIR.

23 Q AND DID THAT SHOCK YOU AS AN EXPERT AND A FORENSIC
24 CRIME SCENE INVESTIGATOR FOR 18 YEARS?

25 A NO, SIR, IT DID NOT.

1 Q OKAY.

2 AGAIN, THE REASONS YOU'VE ALREADY TESTIFY ABOUT,
3 THE FACTORS AND---

4 A (WHEREUPON, THE WITNESS NODS IN THE AFFIRMATIVE AT
5 THIS TIME.)

6 Q DID YOU TAKE ANY -- DID YOU BOTHER TO FINGERPRINT THE
7 INSIDE OF THE APARTMENT?

8 A NO, SIR. THE INFORMATION I RECEIVED AFTER THAT WAS
9 THE VICTIM WAS -- ALLEGEDLY WAS TAKEN OVER TO HIS
10 APARTMENT, WHICH, AS I UNDERSTAND, FACED -- I DON'T RECALL
11 THE APARTMENT NUMBER -- IT FACED BROAD RIVER ROAD. THE
12 INFORMATION THAT I HAD RECEIVED WAS THAT THE ONLY THING
13 THEY WERE CONSIDERING AT THAT TIME WAS JUST GETTING SOME
14 GENERAL PHOTOGRAPHS OF THE INSIDE OF THE INTERIOR OF THE
15 APARTMENT BUILDING BECAUSE OF THE FACT THAT WE HAD TWO
16 SUSPECTS ALREADY APPREHENDED INSIDE OF THE APARTMENT AND A
17 THIRD OUTSIDE.

18 Q AND SINCE THEY ARE ALREADY FOUND INSIDE THE
19 APARTMENT, EVEN IF YOU HAD FOUND THEIR FINGERPRINTS INSIDE
20 OF THE APARTMENT, IN YOUR EXPERT OPINION, WHAT'S THE ONLY
21 THING THAT TELLS YOU IF YOU FOUND PRINTS ON THE INSIDE OF
22 THE APARTMENT?

23 A THAT THEY, IN FACT, WERE THERE.

24 Q OKAY.

25 AND YOU WERE TOLD THAT THEY WERE ALREADY CAUGHT

1 IN THERE, CORRECT?

2 A YES, SIR, I WAS.

3 Q YOU DID SAY -- DID YOU TAKE PHOTOGRAPHS, SIR, AT THE
4 SCENE?

5 A YES, SIR. I TOOK SEVERAL GENERAL PHOTOGRAPHS OF THE
6 -- FROM THE OUTSIDE OF THE PARKING LOT AND ALSO SOME
7 GENERAL PHOTOGRAPHS FROM THE INSIDE OF THE APARTMENT.

8 Q IN FACT, YOU ARE THE ONE THAT TOOK STATE'S EXHIBITS
9 THREE THROUGH SEVEN FOR US -- OR THAT DAY?

10 A YES, SIR, I TOOK THESE PHOTOGRAPHS.

11 Q AND DID YOU HAVE THE PHOTOGRAPHS BLOWN UP?

12 A YES, SIR. I MADE SOME PHOTOGRAPHIC ENLARGEMENTS OF
13 THOSE.

14 Q WERE THERE ANY OTHER ITEMS IN THIS CASE THAT YOU WERE
15 ASKED TO PROCESS FOR FINGERPRINTS BY THE INVESTIGATOR IN
16 CHARGE, MR. SMITH?

17 A YES, SIR. MY UNDERSTANDING WAS THERE WERE TWO
18 WEAPONS, TWO HANDGUNS WHICH WERE -- ONE OF THEM WAS BROUGHT
19 TO ME DIRECTLY. ACTUALLY WAS BROUGHT TO ME PRIOR TO ME
20 GETTING THE NOTIFICATION THAT MY SERVICES WAS NEEDED ON THE
21 SCENE. A WEAPON WAS BROUGHT TO ME BY ONE OF THE DEPUTIES.
22 I DID A CHAIN OF CUSTODY VOUCHER WITH HIM AND SECURED THAT
23 PARTICULAR WEAPON IN THE LAB AND THEN ABOUT THE SAME TIME I
24 RECEIVED NOTIFICATION ALSO FROM DISPATCH THAT I WAS NEEDED
25 ON THIS PARTICULAR SCENE AND I LEFT THE LAB AND PROCEEDED

1 TO THE SCENE.

2 ALSO, ON -- THAT WAS ON THE 14TH OF DECEMBER,
3 '99. AND ON THE NEXT DAY, I WAS INFORMED THAT A SECOND
4 WEAPON HAD BEEN RECOVERED. I BELIEVE IT WAS FROM THE SCENE
5 AND I CHECKED THIS WEAPON OUT OF THE PROPERTY ROOM. THIS
6 WEAPON HAD BEEN PUT IN FOR HOLDING IN THE PROPERTY ROOM AND
7 I CHECKED THIS WEAPON OUT ALSO AND BROUGHT IT BACK UP TO
8 THE LAB AND SOMEWHERE BETWEEN THAT AND THE NEXT FEW DAYS, I
9 PROCESSED BOTH OF THESE WEAPONS FOR FINGERPRINTS, LATENT
10 FINGERPRINTS.

11 Q AND LET ME SHOW YOU THE FIRST GUN, STATE'S EXHIBIT
12 NUMBER ONE. DO YOU RECOGNIZE THAT AND STATE'S EXHIBIT 1-A,
13 THE CLIP?

14 A YES, SIR. THIS IS THE NINE MILLIMETER THAT WAS
15 BROUGHT TO ME BY, I BELIEVE, IT WAS DEPUTY SWICEGOOD ON THE
16 14TH, THE DAY OF THE INCIDENT.

17 Q AND WHEN DID YOU---

18 A THIS WAS A---

19 Q GO AHEAD, I'M SORRY.

20 A THIS WAS A NINE MILLIMETER. I THINK IT WAS INTERARMS
21 AST -- THE STYLE WAS ASTRA. THAT'S ONE OF THEM.

22 Q AND WHEN DID YOU PROCESS THAT GUN? WHEN DID YOU
23 TESTIFY?

24 A I'M NOT EXACTLY SURE EXACTLY WHAT DATE IT WAS. I
25 RECEIVED -- I DIDN'T PROCESS IT THAT DAY. THE SECOND DAY,

1 ON THE 15TH, I RECEIVED ANOTHER WEAPON. ALSO, ON THIS IS
2 THE CLIP THAT GOES WITH THIS ALSO.

3 I RECEIVED A SECOND WEAPON ON THE NEXT DAY WHICH
4 WOULD HAVE BEEN THE 15TH AND SOMEWHERE BETWEEN THAT TIME
5 AND THE TIME I TURNED -- I WOULD HAVE TO LOOK AT THE
6 REPORT.

7 Q OKAY.

8 DO YOU HAVE IT---

9 A WITHIN THE NEXT FEW DAYS.

10 Q OKAY.

11 WITHIN THE NEXT FEW DAYS. AND YOU PROCESSED BOTH
12 GUNS ON THE SAME DAY?

13 A YES, SIR, I DID. AT THE SAME TIME PROBABLY.

14 Q WHILE YOU ARE LOOKING, I WANT TO ALSO SHOW YOU
15 STATE'S EXHIBIT NUMBER TWO. IS THAT THE SECOND GUN THAT
16 YOU ALSO WERE ASKED TO ANALYZE?

17 A I BELIEVE, ACCORDING TO MY STATEMENT HERE, ON
18 DECEMBER 29TH OF 1999, SEVERAL DAYS LATER WAS ACTUALLY WHEN
19 I WAS ABLE TO GET TO THESE PARTICULAR WEAPONS. THAT'S WHEN
20 THEY WERE PROCESSED AND THEN RETURNED TO THE PROPERTY ROOM
21 BY MYSELF---

22 Q AND YOU---

23 A ---WERE SIGNED BACK IN.

24 Q I'M SORRY. YOU PROCESSED BOTH WEAPONS---

25 A YES, SIR, I DID.

1 Q ---THAT DAY---

2 A YES, SIR.

3 Q AND WHEN THEY WERE SECURED, WHAT ARE THEY DONE? ARE
4 THEY PLACED IN SOME BAGS?

5 A THESE -- THESE WERE PLACED IN -- I DON'T RECALL WHAT
6 THESE WERE ACTUALLY PLACED IN. SOME TYPE OF CONTAINER,
7 PROBABLY A BOX OR SOMETHING.

8 Q HOW -- CONTAINER. HOW DID YOU GO ABOUT PROCESSING
9 THE GUNS, JUST VERY BRIEFLY. HOW DO YOU DO THE PROCESSING
10 AND LOOK FOR THE PRINTS?

11 A OUR STANDARD PROCEDURE ON MOST WEAPONS IS THAT WE
12 WOULD EXPOSE THESE WEAPONS -- WE PUT THEM IN A FUMING
13 CHAMBER AND WE WOULD EXPOSE THEM TO CYANO -- CYANO
14 ACRYLATES, WHICH ARE A MAIN BONDING INGREDIENT WHICH IS
15 FOUND IN SUPERGLUE. THAT'S WHAT WE CALL A SUPERGLUE
16 METHOD. AND WHAT HAPPENS IS THE SUPERGLUE ADHERES TO THE
17 DEAD SKIN CELLS AND -- OR LIPIDS AND SUCH FROM -- LEFT FROM
18 AN IMPRESSION AND IT FORMS A WHITE PLASTIC MOLD ONTO THE
19 ITEM THAT YOU'RE PROCESSING. THIS ALSO IS A VERY STABLE
20 IMPRESSION AND IT ALLOWS YOU TO BE ABLE TO DO FURTHER
21 PROCESSING ON IT EITHER THROUGH USE OF OTHER CHEMICALS OR
22 POWDERS. YOU CAN APPLY POWDERS AND -- WHICH THIS SECURES
23 IT TO THE POINT WHERE YOU CAN ACTUALLY GET MULTIPLE LIFTS
24 IF, IN FACT, THERE ARE ANY FINGERPRINTS OR ANYTHING TO BE
25 ABLE TO BE DEVELOPED AND TO BE LIFTED. AND THAT'S WHAT I

1 DID.

2 Q AND IS THAT WHY THERE'S THIS BLACK SUBSTANCE ON IT
3 NOW EVERY TIME SOMEBODY TOUCHES ONE OF THESE GUNS?

4 A YES, SIR. IT'S FINGERPRINT POWDER.

5 Q ALL RIGHT.

6 AND ON STATE'S EXHIBIT ONE AND 1-A, WHAT WERE
7 YOUR FINDINGS?

8 A MY FINDING WAS NEGATIVE FOR LATENT FINGERPRINTS.

9 Q OKAY.

10 SO, WAS THERE ANYTHING ON IT? ANY FINGERPRINTS
11 THAT COULD HAVE BEEN COMPARED TO A KNOWN SAMPLE ON ONE OR
12 1-A?

13 A NO, SIR, THERE WAS NOT.

14 Q NOT EVEN -- NOT CYCRUS TUCKER?

15 A NO, SIR.

16 Q NOBODY. DEMARCO JOHNSON?

17 A NO, SIR.

18 Q OKAY.

19 NOT EVEN CAPTAIN PRICHARD'S? I MEAN, THERE WAS
20 JUST NOTHING YOU CAN EVEN LIFT OFF OF, IS THAT WHAT YOU'RE
21 SAYING?

22 A NO, SIR.

23 Q NOW, ON EXHIBIT TWO AND 2-A, DID YOU ALSO ANALYZE
24 THAT THE SAME WAY AS EXHIBIT ONE?

25 A YES, SIR, I DID.

- 1 Q AND YOU TESTIFIED IT WAS THE SAME DAY, THE SAME TIME?
- 2 A YES, SIR, I DID.
- 3 Q DID YOU FIND ANY PRINTS THAT COULD BE LIFTED OFF OF
- 4 STATE'S EXHIBIT TWO OR 2-A?
- 5 A NO, SIR, I DID NOT.
- 6 Q NONE WHATSOEVER?
- 7 A NO, SIR.
- 8 Q AND, AGAIN, BASED ON YOUR EXPERIENCE AND EXPERTISE AS
- 9 A FORENSIC INVESTIGATOR, DID THAT SHOCK OR SURPRISE YOU
- 10 THAT DAY WHEN YOU DID THAT?
- 11 A NO, SIR.
- 12 Q AND, AGAIN, BASED ON YOUR EXPERIENCE, YOU TESTIFIED,
- 13 WHAT, LESS THAN MAYBE ONE OR TWO PERCENT IS WHERE YOU'LL
- 14 EVEN FIND A PRINT?
- 15 A YES, SIR, BASED ON MY EXPERIENCE THAT WAS.
- 16 Q BEG THE COURT'S INDULGENCE.
- 17 LET ME ASK YOU THIS. CAN YOU PUT A DATE ON A
- 18 FINGERPRINT GENERALLY?
- 19 A NOT GENERALLY, NO, SIR. THERE WOULD HAVE TO BE
- 20 SEVERAL FACTORS THAT WOULD HAVE TO BE CONSIDERED. IF ONE
- 21 WERE TO FIND AN IDENTIFIABLE FINGERPRINT, IT WOULD DEPEND
- 22 ON THE TYPE OF SURFACE THAT A FINGERPRINT IS FOUND ON,
- 23 WHETHER THAT SURFACE IS HANDLED A LOT OR NOT, IF IT'S NOT
- 24 DISTURBED OR WHETHER IT'S IN A PROTECTIVE ENVIRONMENT WHERE
- 25 IT'S NOT DISTURBED, WHERE IT'S NOT SUBJECTED TO HAVING DUST

1 AND HUMILITY AND MOISTURE AND THIS TYPE. THERE HAVE BEEN
2 CASES WHERE FINGERPRINTS HAVE BEEN LEFT ON OR FOUND ON
3 DOCUMENTS WHICH HAVE BEEN PRESERVED IN CERTAIN SITUATIONS
4 THAT WERE ENVIRONMENTALLY CONDUCIVE FOR PRINTS THAT CAN GO
5 FOR TWENTY OR THIRTY YEARS SOMETIMES.

6 Q IS A TWO-WEEK DELAY IN ANALYZING THE GUNS, IS THAT
7 GOING TO MAKE A PRINT DISAPPEAR?

8 A NO, SIR, IT WOULD NOT.

9 Q OKAY.

10 ANSWER ANY QUESTIONS DEFENSE COUNSEL HAS FOR YOU.

11 A ALL RIGHT.

12 THE COURT: CROSS.

13 MS. DUKE-MIMS: THANK YOU, YOUR HONOR.

14 JUST BRIEFLY.

15 CROSS-EXAMINATION

16 BY MS. DUKE-MIMS:

17 Q MR. GROSS, INVESTIGATOR SLICER, I THINK, IS THE ONE
18 WHO ACTUALLY CAME TO YOU AND ASKED YOU TO FINGERPRINT THE
19 NISSAN TRUCK?

20 A YES, MA'AM. HE'S THE ONE THAT WHEN I ARRIVED ON THE
21 SCENE, INVESTIGATOR SWICEGOOD WAS -- I MET WITH HIM IN THE
22 PARKING LOT.

23 Q OKAY.

24 AND ACCORDING TO INVESTIGATOR -- WELL, FROM WHAT
25 I UNDERSTAND, ISN'T IT TRUE THAT THERE WAS A POSSIBLE PRINT

1 OBTAINED FROM THE NISSAN TRUCK?

2 A I'M NOT AWARE OF THAT.

3 Q OKAY.

4 BUT YOU DIDN'T FIND ANY FINGERPRINTS FROM DEMARCO
5 JOHNSON ON THE NISSAN TRUCK?

6 A NO, MA'AM, I DID NOT.

7 Q OKAY.

8 AND YOU MENTIONED THAT, I GUESS, SWEAT MAKES A
9 BETTER PRINT. LIKE IF I WERE SWEATY AND I TOUCHED
10 SOMETHING, IT WOULD PROBABLY LEAVE A BETTER PRINT THAN IF I
11 WERE COMPLETELY DRY? MY HANDS WERE DRY---

12 A ACTUALLY, ON THE CONTRARY, IF---

13 Q SWEAT WOULD BE WORSE?

14 A RIGHT. SOMETIMES PEOPLE -- SOME -- CERTAIN
15 INDIVIDUALS PERSPIRE MORE PROFUSELY THAN OTHERS---

16 Q UH-HUH.

17 A ---AND THAT, LIKE IN THE SUMMERTIME, WHEN THE HEAT,
18 WHEN IT GETS HOT, PEOPLE PERSPIRE MORE. THAT SOMETIMES IN
19 ITSELF CAN BE OR HAVE AN ADVERSE EFFECT ON FINGERPRINTS.
20 IT'S A LITTLE BIT TOO MUCH MOISTURE.

21 Q I SEE. THIS HAPPENED IN DECEMBER, RIGHT?

22 A YES.

23 Q OKAY.

24 HAVE YOU EVER OBTAINED A PRINT OFF OF A HANDGUN?

25 A YES, I HAVE.

1 Q OKAY.

2 AND DID YOU FIND DEMARCO JOHNSON'S PRINTS ON
3 EITHER OF THESE GUNS?

4 A NO. NO, MA'AM, NOT ON THESE WEAPONS.

5 Q THANK YOU, SIR.

6 THE COURT: ANY REDIRECT?

7 MR. PASCOE: NO, YOUR HONOR.

8 CAN HE BE EXCUSED?

9 THE COURT: YOU CAN STEP DOWN. THANK YOU, SIR.
10 YOU ARE FREE TO GO.

11 (WHEREUPON, THE WITNESS WAS
12 EXCUSED AT THIS TIME.)

13 MS. PELLIZZARI: YOUR HONOR, THE STATE CALLS
14 SERGEANT SMITH.

15 SERGEANT J. STANDIN SMITH,
16 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:

17 THE CLERK: PLEASE HAVE A SEAT. STATE YOUR FULL
18 NAME FOR THE RECORD.

19 THE WITNESS: IT'S JAMES STANDIN SMITH,
20 S-T-A-N-D-I-N.

21 DIRECT EXAMINATION

22 BY MS. PELLIZZARI:

23 Q GOOD AFTERNOON, SERGEANT SMITH.

24 A GOOD AFTERNOON.

25 Q SIR, CAN YOU PLEASE TELL THE JURY WHERE YOU ARE

1 CURRENTLY EMPLOYED?

2 A I'M WITH THE RICHLAND COUNTY SHERIFF'S DEPARTMENT.

3 Q HOW LONG HAVE YOU BEEN EMPLOYED WITH THE SHERIFF'S
4 DEPARTMENT?

5 A OFF AND ON FOR ABOUT 17 YEARS..

6 Q WHAT'S YOUR CURRENT POSITION THERE?

7 A I AM A DETECTIVE SERGEANT AND I'M OVER THE ARMED
8 ROBBERY UNIT AT THE SHERIFF'S DEPARTMENT, THE MAJOR CRIMES
9 SECTION.

10 Q CAN YOU TELL -- WAS THAT THE SAME POSITION THAT YOU
11 HELD BACK IN DECEMBER OF 1999?

12 A NO. IN DECEMBER OF 1999, I WAS IN A DIFFERENT
13 POSITION.

14 Q YOU WERE WHAT?

15 A I WAS IN A DIFFERENT POSITION IN INVESTIGATIONS.

16 Q WERE YOU AN INVESTIGATOR AT THAT TIME?

17 A I WAS A CRIMINAL INVESTIGATOR. I JUST WASN'T A
18 SERGEANT AT THE TIME.

19 Q WELL, CONGRATULATIONS ON YOUR PROMOTION.

20 A THANK YOU.

21 Q WHAT -- IN DECEMBER OF 1999, WHICH DIVISION WITHIN
22 THE SHERIFF'S DEPARTMENT WERE YOU AN INVESTIGATOR WITH?

23 A I WAS ACTUALLY IN THE SEX CRIMES UNIT AT THE TIME.
24 AND ON THIS PARTICULAR DAY, AS ALL INVESTIGATORS ARE
25 REQUIRED TO BE ON CALL CERTAIN TIMES ON THEIR SCHEDULE, AND

1 THERE ARE TWO INVESTIGATORS, WE ARE ON CALL DURING THE WEEK
2 ON DAYSHIFT HOURS FOR INCIDENTS SUCH AS THIS THAT COME UP
3 AND I WAS ONE OF THOSE TWO INVESTIGATORS ON THAT DAY.

4 Q SO YOU WERE ON CALL ON DECEMBER 14TH OF 1999?

5 A THAT'S CORRECT.

6 Q AND IS THAT HOW YOU GOT TO BE ASSIGNED? IS THAT HOW
7 YOU WERE ASSIGNED THIS CASE?

8 A THAT'S CORRECT. ALTHOUGH WE ARE ALL ASSIGNED TO
9 SPECIALIZED UNITS, WE ARE REQUIRED TO WORK ANYTHING AND WE
10 ARE SUBJECT TO BE ON CALL FOR ANYTHING AND THAT'S HOW I GOT
11 INVOLVED IN THIS CASE.

12 Q SIR, EVEN THOUGH YOU WERE WORKING AT THAT TIME IN THE
13 -- WORKING SEXUAL ASSAULT CASES, HAD YOU HAD ANY EXPERIENCE
14 WORKING ANY TYPE OF ARMED ROBBERY, KIDNAPPING, BURGLARY
15 TYPE CASES BEFORE?

16 A YES, MA'AM.

17 Q CAN YOU TELL -- GIVE THE JURY JUST AN APPROXIMATE
18 NUMBER OF HOW MANY OF THOSE CASES YOU'VE BEEN ASSIGNED TO
19 OVER YOUR---

20 A I STARTED WITH THE RICHLAND COUNTY SHERIFF'S
21 DEPARTMENT IN 1984. I WAS ON UNIFORM PATROL LIKE SOME OF
22 THESE OFFICERS THAT HAVE TESTIFIED ALREADY. IN '87, I MADE
23 INVESTIGATOR. AT THAT TIME, I WORKED BURGLARIES PRIMARILY,
24 BUT I WAS INVOLVED IN A NUMBER OF ARMED ROBBERY CASES. I
25 HAD -- WAS PROMOTED TO SERGEANT OVER THE BURGLARY SECTION.

1 IN 1986, I LEFT THE SHERIFF'S DEPARTMENT, WENT TO PRIVATE
2 INDUSTRY. CAME BACK SEVERAL MONTHS PRIOR TO THIS INCIDENT
3 AS AN INVESTIGATOR. AND SINCE THEN, HAVE BEEN INVOLVED,
4 AGAIN, IN A NUMBER OF ARMED ROBBERIES.

5 Q OKAY.

6 AND, SIR, YOU SAID YOU WERE WORKING AS AN ON-CALL
7 INVESTIGATOR ON DECEMBER 14, OF 1999?

8 A YES, MA'AM.

9 Q ON DAY SHIFT?

10 A I WAS, YES, MA'AM.

11 Q OKAY.

12 AT ANY TIME DURING THE MORNING HOURS, WERE YOU
13 ASKED TO RESPOND TO THE TRENTON COURT APARTMENTS?

14 A I WAS.

15 Q WHAT TYPE OF CALL WENT OUT?

16 A I WAS NOTIFIED BY DISPATCH, I BELIEVE, BY PAGER THAT
17 THERE WAS A KIDNAPPING-ARMED ROBBERY SITUATION AT TRENTON
18 COURT APARTMENTS WHERE THERE WERE THREE SUBJECTS IN
19 CUSTODY.

20 AT THAT TIME, I HAD INVESTIGATOR SLICER WITH ME.
21 HE WAS A RELATIVELY NEW INVESTIGATOR AND HE WAS IN A
22 TRAINING POSITION WITH ME. ALTHOUGH, HE HAD SIGNIFICANT
23 EXPERIENCE, THEY ALL HAVE TO GO THROUGH THAT AND SLICER WAS
24 WITH ME. WE BOTH RESPONDED TO THE SCENE.

25 Q WERE Y'ALL RIDING TOGETHER?

1 A YES.

2 Q AND WHAT APARTMENT NUMBER DID YOU RESPOND TO?

3 A WE ACTUALLY RESPONDED TO THE APARTMENT COMPLEX
4 ITSELF. I PERSONALLY DIDN'T GO TO THE ACTUAL APARTMENT.
5 SLICER WOULD LATER HANDLE SOME CIRCUMSTANCES INVOLVING THE
6 APARTMENT ITSELF. BUT IT WAS APARTMENT 107 WAS THE
7 APARTMENT IN QUESTION.

8 Q AND DO YOU KNOW WHAT TIME -- ABOUT WHAT TIME IN THE
9 MORNING YOU GOT THE CALL?

10 A I GOT THE CALL AROUND NINE-THIRTY.

11 Q AND YOU IMMEDIATELY RESPONDED OUT TO THE SCENE?

12 A YES, MA'AM.

13 Q CAN YOU TELL THE JURY A LITTLE BIT ABOUT WHAT YOU
14 OBSERVED WHEN YOU GOT ON THE SCENE?

15 A WHEN I GOT ON THE SCENE, THE DEPUTIES HAD GAINED A
16 CERTAIN AMOUNT OF KNOWLEDGE ABOUT WHAT HAD TAKEN PLACE.
17 THEY HAD THREE SUSPECTS IN CUSTODY. THEY WERE IN SEPARATE
18 AUTOMOBILES. WE HAD TWO DIFFERENT VICTIMS WHO WERE BEING
19 SEPARATED AT THE TIME AND THERE WAS A WITNESS INVOLVED IN
20 THE CASE.

21 Q WHO WAS THAT WITNESS?

22 A THE WITNESS WAS -- IDENTIFY IT BY NAME?

23 Q YES, SIR.

24 A KEVIN SASS.

25 Q AND HOW WAS HE A WITNESS?

1 A MR. SASS LIVED IN AN APARTMENT WHICH WAS IN CLOSE
2 PROXIMITY TO THE VICTIM'S APARTMENT AND HE HAD ACTUALLY
3 OBSERVED THIS ARMED ROBBERY AS IT WAS INITIATED AND
4 ACTUALLY OBSERVED TWO INDIVIDUALS WALKING THE VICTIM, MR.
5 DORN, BACK TO HIS APARTMENT ARMED AND HE IS THE INDIVIDUAL
6 WHO HAD CALLED 911.

7 Q OKAY.

8 SO AS FAR AS YOU KNOW, HE'S THE PERSON WHO HAD
9 CALLED 911?

10 A YES.

11 Q OKAY.

12 DO YOU KNOW WHAT APARTMENT MR. SASS LIVED IN AT
13 THAT TIME?

14 A I DON'T REMEMBER THE EXACT APARTMENT NUMBER, BUT I
15 CAN PROBABLY LOCATE IT PRETTY QUICKLY. HE LIVED IN 119.

16 Q HAVE YOU HAD ANY CONTACT PERSONALLY, YOURSELF, WITH
17 MR. SASS SINCE THE DATE OF THIS INCIDENT?

18 A MAYBE A DAY OR SO AFTER, BUT AFTER THAT, NO, MA'AM.

19 Q OKAY.

20 DO YOU HAVE ANY IDEA WHERE MR. SASS IS? DO YOU
21 KNOW IF HE STILL LIVES IN THOSE APARTMENTS NOW?

22 A HE DOESN'T LIVE THERE ANY LONGER. NO, MA'AM.

23 Q DO YOU KNOW WHY HE DOESN'T LIVE THERE ANYMORE?

24 A YES, MA'AM, I DO.

25 MS. DUKE-MIMS: OBJECTION, YOUR HONOR. THAT

1 CALLS FOR SPECULATION.

2 THE COURT: UNLESS HE KNOWS OF HIS OWN KNOWLEDGE,
3 IT WOULD EITHER BE SPECULATION OR HEARSAY.

4 MS. PELLIZZARI: LET ME JUST ASK YOU THIS WITHOUT
5 -- JUST ANSWER YES OR NO -- DID MR. SASS TELL YOU
6 PERSONALLY WHY HE MOVED?

7 THE WITNESS: YES.

8 MS. DUKE-MIMS: HEARSAY, YOUR HONOR.

9 THE COURT: IT APPEARS IT WOULD BE HEARSAY.

10 MS. PELLIZZARI: OKAY.

11 SERGEANT SMITH, AFTER -- DID YOU INTERVIEW MR.
12 SASS THAT DAY?

13 THE WITNESS: I INTERVIEWED MR. SASS BRIEFLY.
14 INVESTIGATOR SLICER ACTUALLY TOOK A MORE DETAILED STATEMENT
15 FROM HIM AT THE LOCATION.

16 Q ALL RIGHT.

17 CAN YOU TELL THE JURY A LITTLE BIT ABOUT THE
18 INFORMATION THAT YOU HAD ONCE YOU ARRIVED ON THE SCENE
19 ASIDE FROM THE THREE SUSPECTS AND WITNESSES AND VICTIMS?

20 A WELL, I GOT A BRIEFING FROM SEVERAL OFFICERS TO
21 INCLUDE CAPTAIN PRICHARD, I THINK LIEUTENANT PORTER WAS
22 THERE, OFFICERS GLISSON, DODGE, BARNHARD, ALEXANDER,
23 PEARSON. SORT OF GOT AN ACCOUNT OF WHAT HAD TAKEN PLACE
24 AND IT WAS MY UNDERSTANDING THAT MR. SASS HAD OBSERVED TWO
25 INDIVIDUALS, ONE IN A GRAY SWEATSHIRT, AND ONE IN A MAROON

1 SWEATSHIRT, APPROACHING OR ACTUALLY BEHIND MR. DORN WALKING
2 HIM TO HIS APARTMENT AND THEY HAD WEAPONS.

3 MS. DUKE-MIMS: YOUR HONOR, MAY WE APPROACH?

4 THE COURT: YES, MA'AM.

5 (WHEREUPON, A BENCH CONFERENCE WAS
6 HELD AT THIS TIME OFF THE RECORD.)

7 THE COURT: LADIES AND GENTLEMEN, LET ME ASK IF
8 YOU'LL STEP TO THE JURY ROOM JUST FOR A MOMENT. WHILE
9 YOU'RE THERE, BE SURE NOT TO TALK ABOUT THE CASE, PLEASE.

10 (JURY OUT.)

11 THE COURT: ALL RIGHT.

12 THE JURY IS SECURED.

13 COUNSEL, I UNDERSTAND YOU ARE WANTING TO GET THIS
14 IN, I ASSUME, UNDER RULE 804 AS AN UNAVAILABLE WITNESS?

15 MS. PELLIZZARI: YES, SIR, YOUR HONOR, AND,
16 ACTUALLY, I WAS NOT EVEN PLANNING ON GOING INTO ALL OF THIS
17 DEPTH ABOUT MR. SASS. I WAS ACTUALLY TRYING TO GET INTO
18 ANOTHER AREA, BUT.

19 THE COURT: OKAY. ALL RIGHT.

20 GO AHEAD AND YOU CAN QUESTION THE WITNESS AND
21 WE'LL PROFFER IT AND DETERMINE WHETHER OR NOT IT'S
22 ADMISSIBLE OR NOT.

23 MS. PELLIZZARI: SIR, I APOLOGIZE. THE LAST
24 RESPONSE, I THINK YOU GAVE, WAS ABOUT INFORMATION THAT MR.
25 SASS HAD PROVIDED?

1 THE WITNESS: MR. SASS HAD PROVIDED INFORMATION
2 CONCERNING -- THIS CASE KIND OF SORT OF BOILED DOWN TO THE
3 ORIGINAL IDENTIFICATION WHO DID WHAT. IT WAS LINKED TO
4 SWEATSHIRTS THAT THEY WERE WEARING. AND IMMEDIATELY, I WAS
5 GETTING INFORMATION ABOUT THREE COLORS OF SWEATSHIRTS, A
6 NAVY ONE, A BURGUNDY ONE, AND A GRAY ONE. THE INFORMATION
7 I HAD LEARNED IS THAT THE TWO PRIMARY SUSPECTS, WHO WERE
8 CAUGHT IN THE APARTMENT AND I HAD LEARNED BY THIS TIME
9 IMMEDIATELY THAT TWO SUSPECTS WERE APPREHENDED IN THE
10 APARTMENT, ONE WAS WEARING GRAY, ONE WAS WEARING BURGUNDY.
11 A THIRD INDIVIDUAL HAD BEEN DETAINED OR HAD BEEN SEEN BY
12 DEPUTY DODGE AS HE WAS PULLING IN AND ACCORDING TO
13 STATEMENTS THAT I GOT FROM DODGE OR I LEARNED, HE ATTEMPTED
14 TO ALLUDE DODGE AND APPARENTLY WAS INVOLVED. HE WAS
15 WEARING A NAVY SWEATSHIRT.

16 I ALSO LEARNED FROM MR. SASS THAT HE HAD SEEN THE
17 NAVY SWEATSHIRT INDIVIDUAL ATTEMPTING TO ALLUDE DODGE AND
18 IT WAS HIS BELIEF THAT THAT THIRD INDIVIDUAL WAS INVOLVED
19 IN THIS.

20 Q OKAY.

21 BUT THE POINT IS THIS IS ALL INFORMATION THAT HAD
22 GONE TO THE 911? ALL INFORMATION THAT HAD BEEN DISPATCHED?
23 A THAT'S CORRECT. AND I RECEIVED MOST OF THIS
24 INFORMATION INITIALLY FROM SOME OF THESE UNIFORM OFFICERS
25 TO INCLUDE LIEUTENANT PORTER, CAPTAIN PRICHARD, WHEN I

1 FIRST ARRIVED AT THE SCENE.

2 Q OFFICERS WHO HAVE ALREADY TESTIFIED HERE?

3 A LIEUTENANT PORTER HASN'T. CAPTAIN PRICHARD HAS.

4 THE COURT: OKAY.

5 HE STILL HAS NOT TESTIFIED AS TO WHY THE WITNESS
6 IS UNAVAILABLE.

7 MS. PELLIZZARI: WELL, BECAUSE YOU PROHIBITED HIS
8 ANSWERING EARLIER BASED ON THEIR OBJECTION---

9 THE COURT: OH, I UNDERSTAND. BUT WHAT I'M
10 SAYING, HE CAN DO IT NOW THAT THE JURY IS OUT.

11 MS. PELLIZZARI: OKAY.

12 SIR, DO YOU HAVE ANY PERSONAL KNOWLEDGE---

13 THE WITNESS: YES.

14 Q AS TO WHY MR. SASS DOESN'T LIVE IN THAT APARTMENT
15 COMPLEX ANYMORE?

16 A HE'S SCARED TO DEATH. HE -- HE LEFT. HE WAS
17 IMMEDIATELY -- HE WAS FRIGHTENED TO THE DEGREE THAT HE HAD
18 TO GO INTO A MOTEL RIGHT AFTER THIS INCIDENT. HE STAYED
19 FOR SEVERAL DAYS AND I UNDERSTAND HE LEFT TOWN AND CHANGED
20 JOBS AS A DIRECT RESULT OF HIS INVOLVEMENT IN THIS
21 INCIDENT.

22 THE COURT: OKAY.

23 MS. DUKE-MIMS: YOUR HONOR, I WOULD ARGUE THEY
24 ARE THE RICHLAND COUNTY SHERIFF'S DEPARTMENT. THEY HAVE
25 FOUND WITNESSES WHO ARE HARDER TO FIND THAN THIS. AND IT'S

1 MY UNDERSTANDING THAT MR. SASS HAS BEEN CONTACTED AND IS
2 SAYING THAT HE'S SCARED AND WILL NOT TESTIFY. THAT IS NOT
3 AN EXCEPTION TO A WITNESS BEING UNAVAILABLE.

4 THE COURT: I BELIEVE THAT'S CORRECT. I DON'T
5 KNOW IF THERE'S AN EXCEPTION THAT APPLIES TO THAT.

6 MR. PASCOE: I DON'T KNOW WHERE WE ARE GOING. WE
7 ARE NOT TRYING TO GET IN HIS STATEMENTS.

8 THE COURT: RIGHT.

9 MR. PASCOE: SO I -- UNAVAILABLE WITNESS THING TO
10 ME DOESN'T BOTHER ME, BUT I DON'T SEE HOW HE CAN'T TESTIFY
11 THAT A WITNESS IS BEING UNCOOPERATIVE AND WON'T COME IN AND
12 JUST LEAVE IT AT THAT. WE WON'T EVEN HAVE TO GET INTO TO
13 HE'S SCARED TO DEATH UNLESS THEY PUSH THAT ISSUE.

14 MS. DUKE-MIMS: I DON'T WANT -- NO, SIR, YOUR
15 HONOR, I -- HE'S GIVING STATEMENTS THAT THE WITNESS TOLD
16 HIM. HE'S TALKING ABOUT SWEATSHIRTS. HE'S TALKING ABOUT
17 MR. LIDE RUNNING, EVERYTHING -- THOSE ARE STATEMENTS THAT
18 HE WAS TOLD---

19 MR. PASCOE: AND WE---

20 MS. DUKE-MIMS: EVEN IF IT'S COMING FROM
21 ANOTHER---

22 MS. PELLIZZARI: THAT'S ALL INFORMATION THAT CAME
23 FROM DISPATCH.

24 MS. DUKE-MIMS: EVEN IF IT'S COMING IN FROM
25 SOMEBODY ELSE, THAT'S HEARSAY.

1 THE COURT: ALL RIGHT.

2 IT'S STILL HEARSAY TESTIMONY, EVEN IF IT'S COMING
3 THROUGH THE DISPATCHER

4 MS. PELLIZZARI: WELL, YOUR HONOR, IT'S ALREADY
5 BEEN TESTIFIED TO BY SEVERAL -- I MEAN, THREE OR FOUR
6 OFFICERS ALREADY.

7 MS. DUKE-MIMS: NOT ABOUT -- NOT ABOUT KEVIN
8 SASS, YOUR HONOR. IT HAS NOT.

9 THE COURT: I UNDERSTAND.

10 ALL RIGHT.

11 COUNSEL, I'LL SUSTAIN THE OBJECTION AT THIS POINT
12 AND LET'S JUST DON'T GO ANY FURTHER IN THIS AREA -- THE
13 TESTIMONY THEN, OKAY.

14 MR. PASCOE: CAN I -- JUST A MATTER FOR
15 CLARIFICATION, ONE THING?

16 THE COURT: YES, SIR.

17 MR. PASCOE: I MEAN, OBVIOUSLY, JUST DON'T GET
18 INTO KEVIN SASS SAID.

19 THE COURT: YES, SIR.

20 MR. PASCOE: BUT -- BECAUSE -- WE CAN STILL GO
21 INTO THE DISPATCH WAS GRAY SWEATSHIRT, BLUE SWEATSHIRT, BUT
22 NOT THAT KEVIN SASS SAID, IS THAT RIGHT?

23 MS. DUKE-MIMS: I HAVE NO PROBLEM WITH THAT, YOUR
24 HONOR.

25 THE COURT: OKAY.

1 MR. PASCOE: THAT'S WHAT I THOUGHT. OKAY.

2 NOW, ONLY ONE MORE THING, I'M SORRY. NOW, AGAIN,
3 WHY CAN'T WE GET INTO THAT WE HAVE AN UNCOOPERATIVE WITNESS
4 THAT WILL NOT COME UP HERE? I DON'T SEE HOW THAT'S
5 OBJECTIONABLE AS LONG AS WE DON'T GET INTO HE'S SCARED TO
6 DEATH OR WHY.

7 MS. DUKE-MIMS: NO, YOUR HONOR. I THINK THAT'S,
8 ONE, IT'S PREJUDICIAL, AND IT'S IRRELEVANT.

9 THE COURT: OKAY.

10 MR. PASCOE: WELL, IT'S RELEVANT IF THEY ARE
11 GOING TO STAND UP AND START TALKING ABOUT KEVIN SASS ALL
12 THE TIME. WE CAN'T MAKE SOMEBODY COME UP HERE.

13 MS. DUKE-MIMS: I HAVEN'T SAID A WORD ABOUT KEVIN
14 SASS, YOUR HONOR.

15 THE COURT: I UNDERSTAND.

16 BUT THE ONLY -- THE CLOSEST EXCEPTION TO THAT IS
17 THAT THE WITNESS PERSISTS IN REFUSING TO TESTIFY DESPITE AN
18 ORDER OF THE COURT TO DO. I THINK THAT HAS OFTEN BEEN
19 INTERPRETED AS USE OF A SUBPOENA.

20 HAS HE BEEN SUBPOENAED OR HAS HE DODGED A
21 SUBPOENA?

22 MR. PASCOE: A SUBPOENA HAS BEEN SENT TO HIS
23 HOUSE AND I KNOW HIS WIFE SAID THAT THEY HAD RECEIVED THE
24 SUBPOENA. THEY TOLD INVESTIGATOR WESLEY THAT. WE SENT TWO
25 SUBPOENAS OUT THERE AND HE WOULDN'T COME UP HERE, NOT ONLY

1 TO MEET WITH US OVER THE WEEKEND, HE WOULDN'T COME UP HERE
2 MONDAY OR TUESDAY.

3 AND, AGAIN, IT'S NOT TO GET IN HIS STATEMENTS. I
4 JUST WANTED -- NOW, IF MS. MIMS SAYS SHE'S NOT MAKING A BIG
5 DEAL OUT OF IT AND SHE HASN'T AND SHE CONTINUES NOT TO,
6 THEN IT ISN'T A BIG DEAL. SO WE CAN MOVE ON.

7 THE COURT: I UNDERSTAND.

8 AND AS I LOOK AT RULE 804, EVEN WITH ANY EXPANDED
9 EXCEPTIONS ON THOSE, I THINK NONE OF THOSE STILL APPLY TO
10 THIS PARTICULAR TESTIMONY.

11 MR. PASCOE: AND I AGREE A HUNDRED PERCENT.
12 YES, SIR. YOUR HONOR IS ABSOLUTELY RIGHT AS FAR AS THE
13 STATEMENTS, YES, SIR.

14 THE COURT: OKAY.

15 I DON'T -- I DON'T THINK WE CAN GO ANY FURTHER
16 WITH THE TESTIMONY OF MR. SASS AT THIS POINT THEN.

17 MS. DUKE-MIMS: SO NOTHING ELSE THAT MR. SASS
18 SAYS CAN COME IN AT THIS POINT THEN, YOUR HONOR.

19 THE COURT: RIGHT. RIGHT.

20 NOW, THERE IS -- I UNDERSTAND THEY ARE SEEKING TO
21 GET IN THE TESTIMONY FROM THE DISPATCHER. THE ONLY REASON
22 I CAN SEE FOR THAT WOULD BE IF HE'S NOT TESTIFYING AS TO
23 THE TRUTH OF IT EXCEPT -- UNLESS IT'S TO EXPLAIN WHY HE DID
24 WHAT HE DID OR HOW THEY OPERATED. AS YOU KNOW, IT'S
25 ADMISSIBLE FOR SOMETHING LIKE THAT.

1 IS THAT WHAT YOU ARE TRYING TO GET IN THROUGH IT?
2 I'M NOT SURE -- I'M STILL TRYING TO UNDERSTAND THAT.

3 MS. PELLIZZARI: YOUR HONOR, I THINK IT DOES
4 EXACTLY GO TO SHOW WHY THE OFFICERS WENT WHERE THEY WENT
5 AND WHY THEY ARRESTED WHO THEY ARRESTED.

6 I MEAN, CERTAINLY, FOR TARREL LIDE, I MEAN, THAT
7 CERTAINLY GOES TO WHY THEY ARRESTED HIM AND WHY THEY
8 THOUGHT HE WAS INVOLVED AS THE THIRD PERSON.

9 THE COURT: OKAY.

10 WHAT ABOUT THAT, COUNSEL?

11 MS. DUKE-MIMS: YOUR HONOR, I MEAN, MY BIG
12 CONCERN WITH THE WHOLE THING IS JUST THAT I UNDERSTAND THEY
13 CAN SAY THAT THEY PUT OUT THE CALL AS THE OTHER OFFICERS
14 HAVE TESTIFIED TO AND MENTION THAT THERE ARE THREE PEOPLE
15 WITH SWEATSHIRTS ON, BUT MY BIG PROBLEM IS SAYING THAT AN
16 INDEPENDENT PERSON OR ANOTHER PERSON IDENTIFIED MY CLIENT
17 WITH A GUN OUTSIDE. I MEAN, AS LONG -- AS LONG AS, YOU
18 KNOW, THE OFFICER IS NOT GOING TO TESTIFY THAT DISPATCH
19 SAYS THIS INDEPENDENT WITNESS SAYS HE HAD A GUN OUTSIDE, I
20 DON'T REALLY HAVE A PROBLEM AS LONG AS IT'S JUST THE BASIC
21 FACTS THAT WE'VE HEARD SO FAR ABOUT THE THREE SWEATSHIRTS
22 AND THAT TYPE OF THING. I DON'T HAVE ANY PROBLEM.

23 THE COURT: RIGHT. I HAVEN'T HEARD ANYTHING
24 THAT'S DIRECTLY---

25 MS. DUKE-MIMS: NO, SIR.

1 THE COURT: ---BEEN ABOUT THE DEFENDANT.

2 DO YOU ANTICIPATE THAT SOME OF THE TESTIMONY WILL
3 BE ABOUT THE DEFENDANT DIRECTLY?

4 MS. PELLIZZARI: YOUR HONOR, I THINK I CAN GET
5 INTO THE FACT THAT MR. SASS IS THE ONE WHO CALLED 911 AND I
6 THINK I CAN GET INTO THE FACT THAT DISPATCH SAYS THERE'S AN
7 ARMED ROBBERY IN THE PARKING LOT.

8 IN FACT, ONE OF THE OTHER OFFICERS HAS ALREADY
9 TESTIFIED THAT DISPATCH POINTED OUT THAT THERE WERE GUNS
10 AND AN ARMED ROBBERY IN PROGRESS IN THE PARKING LOT?

11 MS. DUKE-MIMS: BUT NOBODY SAYS HE HAS A GUN,
12 YOUR HONOR, AND I THINK THAT THAT STILL GOES TO HEARSAY.

13 THE COURT: I UNDERSTAND.

14 MS. PELLIZZARI: WELL, YOUR HONOR, WE'RE NOT
15 ASKING -- YOU KNOW, OF COURSE, WE ARE NOT ASKING MR. SASS
16 TO, YOU KNOW, IDENTIFY HIM, NOR SERGEANT SMITH. I MEAN, HE
17 CERTAINLY WASN'T THERE, BUT I THINK THE INFORMATION COULD
18 GET OUT THAT THERE ARE TWO BLACK MALES WITH A THIRD ONE, AN
19 ARMED ROBBERY IN PROGRESS, GUNS.

20 MS. DUKE-MIMS: THAT INFERS THAT THIS MAN SAW TWO
21 MEN IN THE PARKING LOT WITH GUNS. I MEAN, WHICH IS EXACTLY
22 WHAT WE ARE TRYING TO KEEP OUT.

23 THE COURT: I UNDERSTAND---

24 MS. PELLIZZARI: IT'S ALREADY BEEN TESTIFIED TO.

25 THE COURT: RIGHT. HE'S BASICALLY -- THAT'S

1 ALREADY IN. HE'S TESTIFIED TO THAT. I BELIEVE IT'S
2 APPROPRIATE THOUGH, COUNSEL, TO LET HIM TESTIFY TO IT AND
3 WHAT I'M GOING TO DO IS GIVE THE JURY AN INSTRUCTION AND
4 TELL THEM THAT THEY CAN'T CONSIDER IT FOR THE TRUTH OF THE
5 MATTER THAT'S ASSERTED BY THE WITNESS, BUT THAT ONLY FOR
6 THE UNDERSTANDING OF WHY HE DID WHAT HE DID AND WHY THEY
7 PROCEEDED IN THE FASHION THAT THEY DID BECAUSE, IN ESSENCE,
8 WHAT HAPPENED, AS I UNDERSTAND THE GIST OF IT IS, THAT WHEN
9 THEY COME UP ON THE SCENE, THEY HAVE ONE SUSPECT -- AND
10 THAT'S THEIR TERM, NOT MINE -- ONE SUSPECT WHO IS IN THE
11 PARKING LOT, TWO WHO ARE ALLEGED TO HAVE GONE INTO AN
12 APARTMENT.

13 MS. DUKE-MIMS: YES, SIR.

14 THE COURT: THAT OBVIOUSLY AFFECTS THE WAY THEY
15 DID WHAT THEY DID AND WHY THEY DID IT. I THINK IT'S
16 APPROPRIATE TO LET HIM TESTIFY FOR THAT REASON.

17 MS. DUKE-MIMS: I UNDERSTAND, YOUR HONOR.

18 I MEAN, MY ONLY -- AS I MENTIONED, MY ONLY
19 CONCERN IS THAT THEY ARE GOING TO SAY THAT AN ARMED ROBBERY
20 IS OCCURRING IN THE PARKING LOT AND I THINK THAT THAT WOULD
21 AUTOMATICALLY LINK THIS TO MY CLIENT SIMPLY BECAUSE WERE
22 MR. SASS HERE TO TAKE THE STAND, I COULD CONFRONT HIM AND
23 GET OUT THE FACT THAT HE SAYS THE GUY IN THE GRAY
24 SWEATSHIRT HAD THE GUN, NOT MY CLIENT. I DON'T HAVE THAT
25 BENEFIT SINCE MR. SASS ISN'T HERE.

1 THE COURT: I UNDERSTAND.

2 MS. DUKE-MIMS: SO BY THEM ASKING ABOUT THE ARMED
3 ROBBERY AND SAYING MR. SASS SEES AN ARMED ROBBERY, THAT
4 CREATES A BIG PROBLEM FOR ME.

5 THE COURT: I THINK THAT HAS ALREADY BEEN
6 TESTIFIED TO, HAS IT NOT? THAT PORTION HAS BEEN---

7 MS. DUKE-MIMS: NO, NOT THAT MR. SASS SAID THAT.
8 THAT HAS NOT BEEN TESTIFIED---

9 MS. PELLIZZARI: NO, NO, THAT THE DISPATCH.

10 MS. DUKE-MIMS: THAT DISPATCH HAS PUT THAT OUT---

11 MS. PELLIZZARI: YES.

12 MS. DUKE-MIMS: IF THEY SAY DISPATCH, I DON'T---

13 THE COURT: OKAY.

14 MS. DUKE-MIMS: I'M SORRY, YOUR HONOR.

15 THE COURT: ALL RIGHT.

16 MS. PELLIZZARI: AND IT'S ALREADY BEEN TESTIFIED
17 TO THAT MR. SASS IS THE PERSON WHO CALLED 911.

18 THE COURT: OKAY.

19 I UNDERSTAND THAT. BUT STILL, HE'S -- AS I
20 UNDERSTAND WHAT HE'S TESTIFYING TO IS THE INFORMATION HE
21 RECEIVED FROM THE DISPATCHER---

22 MS. PELLIZZARI: YES, SIR.

23 THE COURT: ---AND WHY HE DID WHAT HE DID---

24 MS. PELLIZZARI: YES, SIR.

25 THE COURT: ---AND I NEED TO BE SURE THE JURY

1 UNDERSTANDS THAT.

2 OKAY.

3 LET'S BRING THE JURY BACK IN, PLEASE. HOW LONG
4 DO YOU ANTICIPATE THIS WITNESS WILL BE?

5 MS. PELLIZZARI: MY DIRECT IS PROBABLY GOING TO
6 BE 20 OR 25 MINUTES I WOULD IMAGINE.

7 THE COURT: OKAY.

8 DO YOU ANTICIPATE MUCH CROSS ON THAT?

9 MS. DUKE-MIMS: PROBABLY ABOUT FIFTEEN, YOUR
10 HONOR---

11 THE COURT: OKAY.

12 MS. DUKE-MIMS: ---TEN TO FIFTEEN.

13 THE COURT: WELL, WE MAY NEED TO GO AHEAD AND
14 STOP AT SOME POINT AND JUST -- DO YOU WANT TO GO AHEAD AND
15 TRY TO FINISH YOUR DIRECT AND THEN COME BACK FOR CROSS OR
16 JUST -- I THINK HE'S YOUR CHIEF INVESTIGATOR ANYWAY, SO I
17 ASSUME HE'S GOING TO BE HERE.

18 MS. PELLIZZARI: YES, SIR.

19 THE COURT: EITHER WAY YOU WANT TO HANDLE IT.

20 MS. PELLIZZARI: I'LL LEAVE IT TO YOUR
21 DISCRETION.

22 THE COURT: ALL RIGHT.

23 IT MIGHT BE A GOOD IDEA TO GO AHEAD AND JUST TAKE
24 A BREAK AT THIS POINT, THEN, AND JUST LET THEM COME BACK
25 AND SEE WHERE WE CAN GO. I WAS HOPING WE WOULD BE ABLE TO

1 -- ACTUALLY, OF COURSE, I HAD HOPED WE WOULD BE ABLE TO GET
2 TO THE JURY TODAY, BUT THAT DOESN'T LOOK LIKE IT'S GOING TO
3 HAPPEN OBVIOUSLY.

4 OKAY. LET'S BRING THE JURY BACK IN AND WE'LL
5 STOP FOR THE DAY.

6 (JURY IN.)

7 THE BAILIFF: THE JURY IS PRESENT, YOUR HONOR.

8 THE COURT: THANK YOU, SIR.

9 ALL PARTIES AND ATTORNEYS ARE IN THE COURTROOM
10 AND ALL JURORS HAVE RETURNED.

11 MR. FOREMAN AND LADIES AND GENTLEMEN, WE ARE
12 GOING TO GO AHEAD AND JUST RECESS FOR THE DAY. IT'S A
13 LITTLE BIT AFTER FIVE NOW AND I HAD HOPED -- AS I TOLD THE
14 LAWYERS, I HAD HOPED WE COULD GO AHEAD AND TRY TO GET THE
15 CASE TO YOU TODAY, BUT I THINK THAT WOULD PUT US WELL INTO
16 THE NIGHT HOURS BEFORE WE DID THAT AND I KNOW YOU FOLKS
17 HAVE GOT OTHER THINGS. YOU HAVE GOT TO GET HOME TO YOUR
18 FAMILIES AND THAT SORT OF THING.

19 WE'LL GO AHEAD AND TAKE A RECESS FOR THE DAY
20 THEN. I'LL ASK YOU TO BE BACK IN THE MORNING AT TEN. THE
21 REASON WE WILL START AT TEN, THERE ARE SOME OTHER THINGS
22 THAT WE HAVE TO DO BEFORE THAT. I DON'T HAVE A CHOICE
23 ABOUT THAT. SO WE'LL START AT 10 O'CLOCK. I'LL ASK YOU TO
24 BE IN THE JURY ROOM AT TEN AND WE'LL BE STARTING RIGHT
25 THEN.

1 NOW, AGAIN, IT'S VERY IMPORTANT. BE SURE YOU
2 REMEMBER, DON'T TALK ABOUT THE CASE. DON'T LET ANYONE TALK
3 ABOUT THE CASE WITH YOU.

4 I'LL SEE YOU IN THE MORNING.

5 THANK YOU.

6 (JURY OUT.)

7 THE COURT: THE JURY HAS NOW LEFT THE COURTROOM.
8 ANYTHING BEFORE WE RECESS FOR THE DAY FROM THE
9 STATE?

10 MS. PELLIZZARI: NO, SIR.

11 THE COURT: THE DEFENSE?

12 MS. DUKE-MIMS: YOUR HONOR, JUST FOR
13 CLARIFICATION PURPOSES, IT'S MY UNDERSTANDING THAT THE
14 OFFICER CANNOT TESTIFY AS TO WHAT KEVIN SASS SAID, ONLY
15 WHAT CAME FROM DISPATCH.

16 THE COURT: THAT'S CORRECT.

17 MS. DUKE-MIMS: GREAT.

18 THANK YOU, YOUR HONOR.

19 THE COURT: OKAY.

20 OFFICER SMITH, BE SURE ALSO TO NOT TALK WITH
21 ANYONE ABOUT YOUR TESTIMONY BETWEEN NOW AND TOMORROW.

22 MR. PASCOE: THANK YOU, YOUR HONOR.

23 THE COURT: OKAY.

24 SEE YOU IN THE MORNING AT 10 O'CLOCK. THANK YOU.

25 (WHEREUPON, THE WITNESS WAS

1 EXCUSED AT THIS TIME.)

2 THE COURT: OH, BY THE WAY, LET ME SEE ALL OF YOU
3 JUST ONE SECOND, COUNSEL.

4 (WHEREUPON, A BENCH CONFERENCE WAS
5 HELD AT THIS TIME OFF THE RECORD.)

6 (WHEREUPON, COURT RECESSED FOR THE
7 DAY AT 5:10 P.M.)

8 WEDNESDAY, FEBRUARY 7, 2001.

9 (WHEREUPON, COURT RECONVENED ON
10 WEDNESDAY, FEBRUARY 7, 2001, AT 10:00 A.M.)

11 THE BAILIFF: ALL RISE.

12 THE COURT: THANK YOU. PLEASE BE SEATED.

13 (WHEREUPON, OTHER MATTERS WERE
14 TAKEN UP WITH THE COURT AT THIS TIME NOT RELATING TO THIS
15 PARTICULAR CASE.)

16 THE COURT: ALL RIGHT.

17 BACK ON THE RECORD IN THE MATTER OF THE STATE
18 VERSUS JOHNSON.

19 STATE, ARE YOU READY TO GO FORWARD?

20 MS. PELLIZZARI: YES, SIR, YOUR HONOR.

21 THE COURT: DEFENSE, READY?

22 MS. DUKE-MIMS: YOUR HONOR, I WOULD JUST ASK --
23 ONCE AGAIN, I UNDERSTAND THAT WE HAVE MR. SMITH OR
24 INVESTIGATOR SMITH OR SERGEANT SMITH ON THE RECORD. I WAS
25 LOOKING OVER HIS TESTIMONY AGAIN OR HIS STATEMENT AGAIN,

1 THE REPORT THAT HE GIVES, HE SAID A LOT OF HEARSAY IN THERE
2 ABOUT KENJI MCQUEEN. HE'S GOT SOME HEARSAY IN THERE ABOUT
3 CYCRUS TUCKER AND BEFORE WE EVEN GET TO IT, I JUST WANTED
4 TO SEE IF COULD GET THAT SMOOTHED OUT NOW AND UNDERSTAND
5 EXACTLY WHAT HE CAN GO INTO AND WHAT CAN'T GO INTO.

6 MS. PELLIZZARI: YOUR HONOR, WE ARE NOT PLANNING
7 ON GETTING INTO ANY STATEMENTS MADE BY THOSE WITNESSES.

8 THE COURT: I'M SORRY?

9 MS. PELLIZZARI: WE ARE NOT PLANNING ON GETTING
10 INTO ANY STATEMENTS, ORAL STATEMENTS, MADE BY KEVIN SASS,
11 CYCRUS TUCKER, OR KENJI MCQUEEN.

12 MS. DUKE-MIMS: THANK YOU, YOUR HONOR.

13 THE COURT: ALL RIGHT.

14 COUNSEL, HAVE BOTH OF YOU HAD A CHANCE TO LOOK
15 OVER THE PROPOSED CHARGE YET? AND BY THE WAY, I WAS GOING
16 TO ASK IF EITHER OF YOU -- IF YOU HAVE ANY REQUESTS THAT
17 ARE AMENDMENTS TO IT, YOU CAN HAND THEM UP IF YOU WANT TO
18 OR WE CAN -- WE CAN ALWAYS WAIT UNTIL LATER TO TAKE THEM
19 UP. ANY -- ANYTHING ANY OF YOU NEED TO GO OVER AT THIS
20 POINT?

21 MR. PASCOE: JUDGE, JUST -- WE WERE LOOKING
22 THROUGH IT LAST NIGHT AND I SAW UNDER BURGLARY FIRST ON
23 PAGE SEVEN THROUGH EIGHT---

24 THE COURT: OKAY.

25 MR. PASCOE: ---STARTING WITH NUMBER ONE DOWN, I

1 THINK THERE'S SOME TYPE OF ERROR IN THAT. THIS MAY HAVE
2 COME FROM ANOTHER CASE---

3 THE COURT: COULD BE.

4 MR. PASCOE: IT PROBABLY CAME FROM ANOTHER CASE
5 BECAUSE IT TALKS ABOUT ALIBI, IDENTIFICATION---

6 THE COURT: OH, YES, SIR. I UNDERSTAND THAT --
7 YEAH, THIS WAS FROM A CASE THAT MS. PELLIZZARI IS GOING TO
8 RECOGNIZE. WHAT YOU DO -- WHAT I DO IS, AS YOU KNOW, I
9 TAKE -- I KEEP ALL MY CHARGES AND CASE NOTES IN THE
10 COMPUTER AND I USE THE CLIP AND PASTE MODE AND THE INSERT
11 MODE TO ADJUST THE CHARGES AS I DO AND THIS CAME FROM THE
12 DENNIS JACKSON CHARGE THAT I GAVE. AS I SAY -- MS.

13 PELLIZZARI IS NODDING HER HEAD, SHE RECOGNIZES THAT ONE---

14 (WHEREUPON, MS. PELLIZZARI NODS IN
15 THE AFFIRMATIVE AT THIS TIME.)

16 THE COURT: ---A CASE IN WHICH SHE TRIED -- WHICH
17 SHE TRIED VERY MASTERLY, ALONG WITH MR. SORENSON, I
18 BELIEVE, WASN'T IT?

19 MS. PELLIZZARI: YES, SIR.

20 THE COURT: BUT, YEAH, THAT WAS THAT AND A LOT OF
21 THAT IS GOING TO HAVE TO BE ADJUSTED. THERE WAS SOMETHING
22 ABOUT IDENTIFICATION IN THERE, TOO. THERE WAS AN
23 IDENTIFICATION ISSUE. THAT, OBVIOUSLY, WILL HAVE TO COME
24 OUT.

25 ALSO I TOLD YOU, THAT THIS IS JUST A FIRST DRAFT.

1 THERE WILL BE SOME THINGS THAT WILL HAVE TO BE -- WHAT I DO
2 IS I TEND TO PUT IN MORE THAN IS NECESSARY BECAUSE IT --
3 MECHANICALLY, IT'S JUST EASIER TO CUT STUFF THAN IT IS TO
4 HAVE TO ADD IT BACK IN.

5 MR. PASCOE: THAT'S TRUE.

6 MS. DUKE-MIMS: I'M SURE.

7 THE COURT: I GUESS THAT'S THE LAZY SIDE OF ME.
8 BUT, ANYWAY, WE CAN ADJUST ALL THAT. YOU THREW ME OFF ON
9 THE EXPERT THING YESTERDAY. I DIDN'T KNOW THAT WAS GOING
10 TO HAPPEN, BUT OTHER THAN THAT, WE CAN GET THOSE ADJUSTED.

11 ANY OTHER---

12 MR. PASCOE: NO, SIR.

13 THE COURT: ANYTHING THE DEFENSE WANTS TO NOTE ON
14 IT?

15 MS. DUKE-MIMS: NO, SIR, YOUR HONOR.

16 JUST LIKE AT THE TOP, THIS DEFENDANT CLAIMS HE
17 WAS NOT AT THE SCENE. WE ARE NOT CLAIMING THAT---

18 THE COURT: OH, YEAH.

19 MS. DUKE-MIMS: ---BUT, ABSOLUTELY, IT JUST GOES
20 RIGHT ALONG WITH THAT. THANK YOU.

21 THE COURT: OKAY.

22 ALL RIGHT. LET'S BRING THE JURY IN.

23 (JURY IN.)

24 SERGEANT J. STANDIN SMITH,

25 BEING ALREADY DULY SWORN, RETURNED

1 TO THE WITNESS STAND, AND TESTIFIED AS FOLLOWS:

2 THE BAILIFF: THE JURY IS PRESENT, YOUR HONOR.

3 THE COURT: ALL RIGHT.

4 ALL PARTIES AND ATTORNEYS ARE IN THE COURTROOM
5 AND ALL JURORS HAVE RETURNED.

6 MR. SMITH IS BACK ON THE STAND. OFFICER SMITH.

7 MS. PELLIZZARI, CONTINUE, PLEASE MA'AM.

8 MS. PELLIZZARI: THANK YOU, YOUR HONOR.

9 MAY IT PLEASE THE COURT.

10 DIRECT EXAMINATION

11 BY MS. PELLIZZARI:

12 Q SERGEANT SMITH, I BELIEVE WHEN WE LEFT OFF YESTERDAY,
13 WE WERE TALKING ABOUT SOME INFORMATION THAT YOU HAD WHEN
14 YOU ARRIVED ON THE SCENE?

15 A YES, MA'AM.

16 Q DID YOU KNOW HOW MANY SUSPECTS THAT YOU HAD AT THAT
17 TIME?

18 A THREE.

19 Q OKAY.

20 HOW MANY VICTIMS DID YOU HAVE?

21 A TWO.

22 Q AND WERE THERE ANY ADDITIONAL WITNESSES ASIDE FROM
23 THE TWO VICTIMS?

24 A ONE.

25 Q AND DO YOU HAVE ANY INFORMATION OR THROUGH THE COURSE

1 OF YOUR INVESTIGATION, DID YOU LEARN WHERE THOSE THREE
2 SUSPECTS WERE LOCATED?

3 A YES, MA'AM, I DID.

4 MS. DUKE-MIMS: YOUR HONOR, MAY WE APPROACH?

5 (WHEREUPON, A BENCH CONFERENCE WAS
6 HELD AT THIS TIME OFF THE RECORD.)

7 THE COURT: ALL RIGHT.

8 LADIES AND GENTLEMEN, LET ME ASK IF YOU'LL STEP
9 TO THE JURY ROOM JUST A MOMENT, PLEASE.

10 NOW, WHILE YOU ARE THERE, BE SURE NOT TO TALK
11 ABOUT THE CASE.

12 (JURY OUT.)

13 THE COURT: ALL RIGHT.

14 THE JURY IS SECURED. MS. MIMS, I THINK YOU HAVE
15 A MOTION YOU WANT TO MAKE.

16 MS. DUKE-MIMS: YOUR HONOR, MAYBE JUST FOR
17 CLARIFICATION PURPOSES. PERHAPS, I MISUNDERSTOOD AND I
18 JUST WANTED TO MAKE SURE. THAT I -- I DIDN'T THINK THERE
19 WAS GOING TO BE ANY MENTION OR THERE COULDN'T BE ANY
20 MENTION OF INDEPENDENT WITNESSES OR ANY INCLINATION TOWARDS
21 MR. SASS' NAME PERIOD AND I JUST WANTED TO MAKE SURE.
22 MAYBE I'M MISUNDERSTANDING. BUT SHE DID MENTION ANOTHER
23 WITNESS AND I JUST WANTED TO SEE IF THAT WAS YOUR RULING
24 YESTERDAY.

25 THE COURT: RIGHT.

1 I -- I BELIEVE ALL HE SAID WAS THAT THERE WERE
2 OTHER WITNESSES, IS THAT CORRECT?

3 MS. PELLIZZARI: YES, SIR.

4 YOUR HONOR, AND I'M NOT TRYING TO GET INTO ANY
5 STATEMENTS BY MR. SASS. IN FACT, THE INFORMATION THAT HE
6 GOT ABOUT WHERE THE SUSPECT -- SUSPECTS WERE LOCATED WHEN
7 THEY WERE ARRESTED IS FROM OTHER DEPUTIES WHO HAVE ALREADY
8 TESTIFIED. SO THAT'S NOT INFORMATION THAT'S ANYTHING NEW
9 COMING FROM MR. SASS. I'M NOT PLANNING ON GETTING INTO ANY
10 STATEMENTS THAT MR. SASS MADE.

11 MS. DUKE-MIMS: OKAY.

12 AND JUST FOR CLARIFICATION, YOUR HONOR, THERE
13 AREN'T GOING TO BE ANY STATEMENTS ABOUT INDEPENDENT
14 WITNESSES AGAIN IDENTIFYING AN ARMED ROBBERY TAKING PLACE
15 IN THE PARKING LOT OR ANYTHING OF THAT SORT. IT'S JUST
16 GOING TO BE -- THAT'S -- THAT'S AS FAR AS WE'RE GOING IN
17 SAYING THERE'S ANOTHER EYEWITNESS, IS THAT RIGHT?

18 MS. PELLIZZARI: I'M GOING TO GET INTO THE FACT
19 THAT HE GAVE A STATEMENT THAT DAY. I'M NOT GOING TO GET
20 INTO THE SUBSTANCE OF HIS STATEMENT. I'M NOT GOING TO GET
21 INTO THE FACT THAT HE IDENTIFIED THAT THERE WAS ANY SHOW-UP
22 PROCEDURE, NOTHING LIKE THAT.

23 THE COURT: OF THAT WHO GAVE A STATEMENT NOW?

24 MS. PELLIZZARI: MR. SASS.

25 THE COURT: MR. SASS.

1 WELL, AS I RECALL, WE WERE GOING TO STAY AWAY
2 FROM MR. SASS I THINK.

3 MS. PELLIZZARI: I'M NOT SAYING ANYTHING ABOUT --
4 CAN I -- I CAN'T EVEN GET OUT THE FACT THAT HE GAVE A
5 STATEMENT THAT DAY? NOT ANYTHING RELATED TO WHAT HE SAID.

6 THE COURT: WELL, IT'S -- THE PROBLEM IS IF YOU
7 DO THAT AND YOU DON'T GO INTO WHAT HE SAID, THEN THAT'S
8 GOING TO LEAVE SOMETHING HANGING IN THE JURY'S MIND. IT'S
9 BETTER TO JUST STAY AWAY FROM IT.

10 MS. PELLIZZARI: OKAY.

11 MS. DUKE-MIMS: THANK YOU VERY MUCH, YOUR HONOR.

12 THE COURT: OKAY.

13 ALL RIGHT. LET'S BRING THE JURY BACK IN.

14 MS. PELLIZZARI: YOUR HONOR, JUST FOR
15 CLARIFICATION, THEN, I MEAN THEN THE DEFENSE CAN'T---

16 THE COURT: ALL RIGHT.

17 ONCE SECOND. BAILIFF, HOW ABOUT HOLD UP ONE
18 SECOND.

19 GO AHEAD.

20 MS. PELLIZZARI: THEN THE DEFENSE IN THEIR
21 CLOSING ARGUMENT CAN'T ARGUE ABOUT WHY WE HAVEN'T BROUGHT
22 MR. SASS FORWARD TO TESTIFY ABOUT WHAT HE SAID.

23 THE COURT: SURE.

24 MS. DUKE-MIMS: NO, SIR. I MEAN, I'M JUST GOING
25 TO MENTION THAT THERE ARE ONLY TWO WITNESSES TO THIS CRIME

1 THAT THEY HAVE SEEN, BUT I WON'T MENTION THAT THEY HAVE NOT
2 BROUGHT IN THIS OTHER WITNESS THAT THEY'VE -- THEY'VE
3 MENTIONED JUST NOW, I THINK, THAT THERE IS ANOTHER WITNESS.
4 I'M NOT GOING TO MENTION THEY DIDN'T BRING THAT WITNESS IN.

5 THE COURT: OKAY.

6 MS. DUKES-MIMS: NO, SIR, THAT'S FINE.

7 THE COURT: ALL RIGHT.

8 (JURY IN.)

9 THE BAILIFF: THE JURY IS PRESENT, YOUR HONOR.

10 THE COURT: THANK YOU, SIR.

11 ALL RIGHT.

12 CONTINUE, MS. PELLIZZARI.

13 MS. PELLIZZARI: THANK YOU, YOUR HONOR.

14 CONTINUED DIRECT EXAMINATION

15 BY MS. PELLIZZARI:

16 Q SERGEANT SMITH, DID YOU HAVE ANY INFORMATION THAT YOU
17 GATHERED FROM YOUR DEPUTIES ABOUT WHERE THE THREE SUSPECTS
18 WERE ARRESTED?

19 A YES, MA'AM, I DID.

20 Q AND CAN YOU TELL THE JURY WHAT INFORMATION YOU GOT
21 FROM YOUR DEPUTIES ABOUT WHERE THE SUSPECTS WERE ARRESTED?

22 A IMMEDIATELY UPON ARRIVING AT THE SCENE, AS I
23 TESTIFIED, THERE WERE A NUMBER OF OFFICERS WHO BRIEFED ME
24 CONCERNING WHAT HAD TRANSPIRED, TWO OF THE SUSPECTS HAD
25 ACTUALLY BEEN LOCATED IN THE RESIDENCE WHERE THE INCIDENT

1 TOOK PLACE AND A THIRD SUSPECT WAS APPREHENDED ATTEMPTING
2 TO ALLUDE ONE OF THE OFFICERS AS HE WAS PULLING IN BY A
3 SUSPECT VEHICLE.

4 Q WHO WERE THE TWO SUSPECTS WHO WERE ARRESTED IN THE
5 RESIDENCE?

6 A DEMARCO JOHNSON AND CYCRUS TUCKER, I BELIEVE IS HOW
7 YOU PRONOUNCE HIS FIRST NAME.

8 Q HOW ABOUT THE THIRD INDIVIDUAL, TARREL LIDE?

9 A HE WAS THE INDIVIDUAL WHO WAS IN THE PARKING LOT THAT
10 WAS APPREHENDED BY -- ACTUALLY, DETAINED INITIALLY BY
11 DEPUTY DODGE AS HE WAS COMING INTO THE APARTMENT COMPLEX.

12 Q DID YOU HAVE ANY INFORMATION FROM DISPATCH ABOUT HOW
13 THESE THREE INDIVIDUALS HAD ARRIVED ON THE SCENE---

14 A YES, MA'AM---

15 Q ---HAD ARRIVED AT THE APARTMENT COMPLEX?

16 A YES, MA'AM.

17 IN ADDITION TO THE DESCRIPTION OF THE CLOTHING,
18 THERE WAS A DESCRIPTION OF A FORD -- A BLUE FORD EXPLORER
19 THAT WAS ASSOCIATED WITH THE SUSPECTS IN PARTICULAR WHERE
20 LIDE WAS IN AND AROUND.

21 Q SIR, I'M GOING TO SHOW YOU WHAT HAS BEEN MARKED AS
22 STATE'S EXHIBIT NUMBER 14 AND ASK YOU IF YOU RECOGNIZE THAT
23 PHOTOGRAPH?

24 A YES, MA'AM, I TOOK THAT PHOTOGRAPH.

25 Q WHAT IS THAT A PHOTOGRAPH OF?

1 A IT'S A 1979 FORD EXPLORER AND I TOOK THIS PHOTOGRAPH
2 ON DECEMBER THE 15TH.

3 Q 1979 OR 1997?

4 A IT'S A '97. I GUESS, I MIS-WROTE THAT.

5 Q AND, SIR, WHERE WAS THIS FORD EXPLORER LOCATED?

6 A WHEN I TOOK THE PHOTOGRAPH OR---

7 Q NO, SIR. WHY WERE YOU TAKING A PHOTOGRAPH OF THAT
8 FORD EXPLORER?

9 A ALL RIGHT.

10 IT WAS THE SUSPECT VEHICLE. INVESTIGATION
11 REVEALED THAT IT WAS THE VEHICLE THAT THEY ARRIVED IN AND
12 IT WAS IN VERY CLOSE PROXIMITY TO VICTIM DORN'S TRUCK WHEN
13 THE ARMED ROBBERY INITIATED.

14 Q DID Y'ALL ACTUALLY TOW THAT VEHICLE?

15 A YES, MA'AM.

16 Q YOUR HONOR, AT THIS TIME, WE WOULD MOVE STATE'S
17 EXHIBIT NUMBER 14 INTO EVIDENCE.

18 THE COURT: ANY OBJECTION?

19 MS. DUKE-MIMS: NO OBJECTION, YOUR HONOR.

20 THE COURT: ALL RIGHT.

21 WITHOUT OBJECTION.

22 MS. PELLIZZARI: THANK YOU, YOUR HONOR.

23 (WHEREUPON, STATE'S EXHIBIT NUMBER
24 14, PHOTOGRAPH, ENTERED INTO EVIDENCE AT THIS TIME WITHOUT
25 OBJECTION.)

1 MS. PELLIZZARI: AND, SIR, DID YOU HAVE -- WERE
2 YOU ABLE TO LOCATE ANY KEYS TO THAT VEHICLE?

3 THE WITNESS: YES, MA'AM.

4 DEPUTY DODGE HAD LOCATED THE KEYS TO THE VEHICLE
5 AND IT'S MY UNDERSTANDING UPON ARRIVAL AT THE SCENE, THAT
6 THE KEYS THAT HE LOCATED IN LIDE'S POSSESSION DID, INDEED,
7 FIT THAT FORD EXPLORER.

8 Q AND, SIR, I'M GOING TO SHOW YOU WHAT HAS BEEN MARKED
9 AS STATE'S EXHIBIT NUMBER 15 AND ASK YOU IF YOU RECOGNIZE
10 THAT PHOTOGRAPH?

11 A YES, MA'AM, I TOOK THAT PHOTOGRAPH AS WELL.

12 Q WHAT IS THAT A PHOTOGRAPH OF?

13 A IT'S A PHOTOGRAPH OF THE KEYS THAT WERE LOCATED BY
14 DODGE. THEY WENT WITH THE VEHICLE WHEN IT WAS TOWED TO THE
15 COMPOUND AND I TOOK THAT PHOTOGRAPH THE FOLLOWING DAY.

16 Q SIR, IS THAT WHAT THE KEYS LOOKED LIKE ON DECEMBER
17 THE 14TH---

18 A YES.

19 Q ---1999?

20 YOUR HONOR, AT THIS TIME, WE WOULD MOVE STATE'S
21 EXHIBIT NUMBER 15 INTO EVIDENCE.

22 MS. DUKE-MIMS: NO OBJECTION, YOUR HONOR.

23 THE COURT: ALL RIGHT.

24 WITHOUT OBJECTION.

25 (WHEREUPON, STATE'S EXHIBIT NUMBER

1 15, PHOTOGRAPH, ENTERED INTO EVIDENCE AT THIS TIME WITHOUT
2 OBJECTION.)

3 MS. PELLIZZARI: AND, SERGEANT SMITH, WHEN YOU
4 ARRIVED ON THE SCENE, WAS THAT FORD EXPLORER STILL IN THE
5 PARKING LOT?

6 THE WITNESS: I BELIEVE IT WAS STILL THERE WHEN I
7 WAS THERE. WE WERE -- THE TOW TRUCK WAS EN ROUTE. I
8 BELIEVE I WAS STILL ABLE TO OBSERVE IT THERE BEFORE THEY
9 ACTUALLY TOWED IT.

10 Q DO YOU HAVE ANY NOTES OR DO YOU REMEMBER HOW CLOSE
11 THAT VEHICLE WAS PARKED TO MR. DORN'S TRUCK?

12 A IT WAS -- I BELIEVE IT WAS DIRECTLY ADJACENT TO MR.
13 DORN'S TRUCK.

14 Q NOW, DID YOU HAVE AN OPPORTUNITY WHEN YOU ARRIVED ON
15 THE SCENE TO TALK TO KETRA HEARON OR VAN DORN?

16 A I SPOKE TO THEM BRIEFLY.

17 Q AND WERE THEY ABLE TO PROVIDE YOU ANY INFORMATION
18 ABOUT WHAT HAD HAPPENED---

19 A YES, MA'AM, I HAD GOTTEN---

20 Q ---AT THE SCENE---

21 A ---I HAD GOTTEN A BRIEF EXPLANATION FROM THE OFFICERS
22 AS IT HAD BEEN RELAYED BY THEM. I DIDN'T SPEAK TO THEM AT
23 LENGTH AT THE SCENE.

24 Q DID YOU HAVE ANY INFORMATION ABOUT WEAPONS AT THE
25 SCENE?

1 A YES, MA'AM. IT WAS MY UNDERSTANDING THAT THERE WERE
2 WEAPONS INVOLVED. ONE WEAPON HAD ALREADY BEEN LOCATED
3 PRIOR TO MY DEPARTING THE SCENE.

4 Q AND JUST TO SHOW YOU, THAT'S STATE'S EXHIBIT NUMBER
5 ONE THAT HAD BEEN LOCATED AT THE SCENE?

6 A YES, MA'AM.

7 Q AND DO YOU KNOW WHICH OFFICER LOCATED THAT?

8 A I BELIEVE CAPTAIN PRICHARD LOCATED THAT WEAPON IN A
9 BEDROOM. IT'S MY UNDERSTANDING IT HAD BEEN LOCATED IN A
10 DRESSER DRAWER.

11 Q AND STATE'S EXHIBIT NUMBER 1-A WAS THAT IN -- WITHIN
12 STATE'S EXHIBIT NUMBER ONE?

13 A YES. IT WAS MY UNDERSTANDING THAT IT WAS IN IT AND
14 CAPTAIN PRICHARD CLEARED THAT WEAPON. IN OTHER WORDS, HE
15 UNLOADED IT FOR SAFETY.

16 Q IS THAT THE ONLY WEAPON THAT WAS USED THAT DAY?

17 A NO, MA'AM.

18 Q DID YOU HAVE ANY INFORMATION ABOUT CLOTHING
19 DESCRIPTIONS?

20 A YES, MA'AM. INFORMATION HAD BEEN RELAYED BY DISPATCH
21 AND CONFIRMED BY THE OFFICERS THAT THE THREE INDIVIDUALS
22 WERE IDENTIFIED INITIALLY BY THE TYPE OF SWEATSHIRT THAT
23 THEY HAD ON, HOODED TYPE SWEATSHIRTS AND THE TWO PRIMARY
24 SUSPECTS WHO HAD ACTUALLY APPROACHED THE VICTIM WERE NOTED
25 AS HAVE BEEN WEARING A BURGUNDY AND A GRAY SWEATSHIRT AND

1 THE INDIVIDUAL WHO TURNED OUT TO BE LIDE WAS WEARING A NAVY
2 BLUE ONE.

3 Q SIR, I'M GOING TO SHOW YOU WHAT'S BEEN MARKED AS
4 STATE'S EXHIBIT NUMBER 16 AND ASK YOU IF YOU RECOGNIZE THAT
5 SWEATSHIRT?

6 A I DO.

7 Q AND WHO WAS WEARING THIS SWEATSHIRT?

8 A THE DEFENDANT, DEMARCO JOHNSON.

9 Q WAS HE WEARING THIS WHEN HE WAS ARRESTED?

10 A YES.

11 Q AND DID YOU ACTUALLY TAKE THIS SWEATSHIRT FROM HIM
12 AND PUT IT INTO EVIDENCE?

13 A YES, MA'AM.

14 Q AND THAT WAS ONE OF THE SWEATSHIRTS THAT WAS
15 DESCRIBED?

16 A THAT'S CORRECT. IT WAS DESCRIBED AS A MAROON HOODED
17 SWEATSHIRT.

18 Q AND HOW ABOUT STATE'S EXHIBIT NUMBER 17, DO YOU
19 RECOGNIZE THIS?

20 A I DO.

21 Q AND WAS THIS SWEATSHIRT BEING WORN BY ANY OF THE
22 DEFENDANTS WHEN THEY WERE ARRESTED?

23 A NO, IT WAS NOT.

24 Q HOW DID YOU COME INTO POSSESSION OF THAT SWEATSHIRT?

25 A WELL, WE IMMEDIATELY NOTED THAT OF THE THREE

1 DEFENDANTS, WE HAD ACCOUNTED FOR THE NAVY SWEATSHIRT AND
2 THE MAROON SWEATSHIRT, BUT THE GRAY SWEATSHIRT WE KEPT
3 HEARING ABOUT WAS UNACCOUNTED FOR INITIALLY. I RELAYED
4 THAT INFORMATION TO INVESTIGATOR SLICER WHO WAS HANDLING
5 THE SCENE ITSELF AND WHO IN TURN CALLED INVESTIGATOR GROSS
6 AND SLICER SUBSEQUENTLY LOCATED THAT GRAY SWEATSHIRT AT THE
7 SCENE IN THE BEDROOM IS MY UNDERSTANDING.

8 Q WITHIN THE -- WITHIN VAN'S APARTMENT?

9 A THAT'S CORRECT.

10 Q OKAY.

11 AND DID YOU SHOW THAT SWEATSHIRT TO THE VICTIM,
12 VAN?

13 A YES.

14 Q OKAY.

15 AND DID HE IDENTIFY THAT SWEATSHIRT AS BELONGING
16 TO HIM?

17 A NO, MA'AM.

18 Q OKAY.

19 WHO DID HE IDENTIFY THAT SWEATSHIRT BELONGING TO?

20 A HE IDENTIFIED THAT SWEATSHIRT AS -- THE GRAY
21 SWEATSHIRT WORN BY THE CO-DEFENDANT.

22 Q AND, IN FACT, SIR, I'M GOING TO SHOW YOU WHAT HAS
23 BEEN MARKED AS STATE'S EXHIBIT NUMBER NINE AND ASK YOU IF
24 YOU RECOGNIZE THAT PHOTOGRAPH?

25 A YES, MA'AM. THAT'S A PHOTOGRAPH THAT I TOOK THAT

1 AFTERNOON AND IT'S A PHOTOGRAPH OF THE CO-DEFENDANT, CYCRUS
2 TUCKER, AND DEFENDANT, DEMARCO JOHNSON.

3 Q AND THIS IS AFTER THERE -- WELL, DEMARCO JOHNSON, IS
4 HE WEARING A BURGUNDY SWEATSHIRT IN THAT PHOTOGRAPH?

5 A NO, MA'AM.

6 Q WHERE IS THE BURGUNDY SWEATSHIRT?

7 A I HAD REMOVED THE SWEATSHIRT BY THE TIME I HAD TAKEN
8 THIS PHOTOGRAPH.

9 Q AND CYCRUS TUCKER IS ALSO NOT WEARING THE GRAY
10 SWEATSHIRT?

11 A HE DIDN'T -- HE DID NOT HAVE ON -- HAVE IT ON AT ANY
12 TIME THAT HE WAS -- BECAUSE HE HAD LEFT IT AT THE SCENE.

13 Q WAS THAT THE SHIRT THAT CYCRUS TUCKER WAS ARRESTED
14 IN?

15 A THAT'S CORRECT.

16 Q AFTER -- WHILE YOU WERE STILL ON THE SCENE, AFTER YOU
17 CONFIRMED THAT ALL THREE SUSPECTS WERE INVOLVED IN THE
18 ARMED ROBBERY, WHAT DID YOU DO AT THAT POINT?

19 A BASICALLY, I HAD THE SUSPECTS TRANSPORTED -- KEPT
20 SEPARATE. SO, I HAD THREE DIFFERENT DEPUTIES TRANSPORTING
21 THESE INDIVIDUALS AND I ACTUALLY TRANSPORTED THE TWO
22 VICTIMS IN MY VEHICLE TO HEADQUARTERS.

23 Q WHAT WAS YOUR PURPOSE OF TRANSPORTING VAN AND KETRA
24 TO HEADQUARTERS?

25 A WELL, WE NEEDED TO SECURE STATEMENTS FROM THEM, A

1 DETAILED ACCOUNT OF WHAT HAD TRANSPIRED. ALSO, I WANTED TO
2 -- I DIDN'T MIND TRANSPORTING THEM TOGETHER BECAUSE I
3 WARNED THEM NOT TO DISCUSS THE CASE. I WANTED THEIR
4 ACCOUNTS TO BE, YOU KNOW, A HONEST REFLECTION OF WHAT HAD
5 HAPPENED WITHOUT INFLUENCE FROM EACH OTHER.

6 Q DID THEY, IN FACT, DISCUSS THE CASE---

7 A NO---

8 Q ---WHILE THEY WERE IN YOUR PRESENCE?

9 A NO, MA'AM.

10 Q AND WERE THERE ANY OFFICERS WHO STAY AT THE SCENE
11 AFTER YOU WERE TRANSPORTING VAN AND KETRA---

12 A YES, MA'AM---

13 Q ---TO HEADQUARTERS---

14 A ---SEVERAL UNIFORM OFFICERS, I BELIEVE, STAYED AT THE
15 SCENE AND INVESTIGATOR SLICER REMAINED BEHIND TO COORDINATE
16 WITH THE FORENSIC OFFICER, INVESTIGATOR GROSS, WHO WAS EN
17 ROUTE.

18 Q THE INFORMATION THAT YOU HAD, ACCORDING TO VAN, WAS
19 THAT THERE WERE TWO WEAPONS USED?

20 A THAT'S CORRECT.

21 Q AND YOU SAID AT THE SCENE THAT ALREADY ONE OF THOSE
22 WEAPONS HAD BEEN RECOVERED?

23 A THAT IS CORRECT.

24 Q HOW ABOUT THAT SECOND GUN?

25 A I ADVISED THE VICTIM, OF COURSE, THAT THERE'S A

1 POSSIBILITY THAT A GUN COULD OBVIOUSLY STILL BE AT THE
2 SCENE. AND I ADVISED HIM TO -- OF COURSE, IF HE WERE ABLE
3 TO LOCATE IT, TO LET US KNOW AS SOON AS POSSIBLE. INDEED,
4 THAT'S WHAT TOOK PLACE.

5 Q DO YOU HAVE ANY IDEA HOW LONG VAN ACTUALLY STAYED AT
6 HEADQUARTERS THAT DAY? I MEAN, HE AND KETRA WERE BOTH
7 THERE TOGETHER?

8 A THEY WERE BOTH THERE TOGETHER. I BELIEVE THEY
9 ACTUALLY HAD TO GET A RIDE HOME. THEY WERE THERE SEVERAL
10 HOURS.

11 Q AND DID YOU, IN FACT, GET A CALL BACK FROM VAN OR
12 KETRA THAT DAY?

13 A I BELIEVE IT WAS -- I CAN'T RECALL ACTUALLY WHO
14 CALLED ME, WHETHER IT WAS VAN OR KETRA, BUT I DID GET A
15 CALL BACK FROM THE SCENE THAT DAY BY ONE OF THEM -- FROM
16 ONE OF THEM INDICATING THAT THEY HAD LOCATED A WEAPON. IT
17 WAS LATER IN THE AFTERNOON.

18 Q AND, SIR, I'M HANDING YOU WHAT HAS BEEN MARKED AS
19 STATE'S EXHIBIT NUMBER TWO AND ASK YOU IF YOU RECOGNIZE
20 THAT HANDGUN?

21 A I DO.

22 Q AND IS -- WHAT IS -- WHAT IS THAT?

23 A THAT'S A NINE MILLIMETER BERETTA THAT WAS LOCATED BY
24 THE VICTIMS UPON THEIR RETURN TO THEIR APARTMENT THAT
25 AFTERNOON. IT WAS MY UNDERSTANDING THAT IT WAS LOCATED IN

1 A CLOSET, A HIGHLY CONGESTED AREA, AND IT WAS PRETTY WELL
2 HIDDEN.

3 Q AND STATE'S EXHIBIT NUMBER 2-A?

4 A YES, MA'AM, THAT WOULD BE THE CLIP FOR THAT WEAPON.

5 Q WAS THAT LOCATED WITHIN STATE'S EXHIBIT NUMBER TWO?

6 A YES, MA'AM.

7 Q DID YOU, IN FACT, TAKE VAN'S STATEMENT THAT DAY?

8 A YES, MA'AM, I TOOK MR. DORN'S STATEMENT MYSELF.

9 Q WAS HE COOPERATIVE IN THE INVESTIGATION?

10 A YES, MA'AM, VERY COOPERATIVE.

11 Q HOW ABOUT KETRA? DID SHE GIVE A STATEMENT AS WELL?

12 A INVESTIGATOR BAKER TOOK MS. HEARON'S STATEMENT.

13 Q AND WERE THEY SEPARATED WHEN THEY WERE GIVING THEIR
14 STATEMENT?

15 A YES, MA'AM.

16 Q AND DID VAN -- WHAT DID VAN TELL YOU HAD HAPPENED
17 THAT DAY?

18 A VAN BASICALLY SAID THAT HE HAD BEEN GOING TO THE GYM
19 TO PLAY BASKETBALL. HE WAS APPROACHED FROM BEHIND IN THE
20 PARKING LOT BY TWO INDIVIDUALS PROCLAIMING THEY WERE
21 ROBBING HIM. ONE OF THE TWO HAD PUT THE BARREL OF A PISTOL
22 IN HIS BACK AND WENT THROUGH HIS POCKETS, TOOK OUT A
23 TEN-DOLLAR BILL. THE SUSPECT WITH THE GRAY HOODED SHIRT,
24 WHO BY THAT TIME, WE KNEW WAS APPARENTLY TUCKER, SEARCHED
25 THE VEHICLE AND THEN THE TWO OF THEM ESCORTED HIM AT

1 GUNPOINT TO HIS APARTMENT.

2 ONCE AT THE APARTMENT, THEY SEARCHED IT FOR
3 VALUABLES. ACTUALLY -- THEY ACTUALLY FORCED MR. DORN TO
4 PARTICIPATE IN THE SEARCH. THIS -- SOMETIME AFTER THIS,
5 RICHLAND COUNTY SHERIFF'S DEPARTMENT OFFICERS BEGIN TO
6 ARRIVE. THE SUSPECTS LEARNED OF THIS. THEY MADE
7 STATEMENTS ABOUT, I THINK, THE CAT TEAM'S ARRIVING,
8 RICHLAND COUNTY'S ARRIVING; AND AS THEY WERE LOOKING OUT
9 THE WINDOW, ABOUT THIS TIME, HIS GIRLFRIEND KETRA CAME
10 HOME. NOT REALIZING WHAT WAS GOING ON, SHE WAS THEN
11 DETAINED BY THE TWO SUSPECTS WHO WERE NOW, ACCORDING TO
12 DORN, BEGINNING TO SORT OF PANIC.

13 AT SOME POINT, THE DEPUTIES GOT TO THAT
14 PARTICULAR APARTMENT DOOR AND THEY KNOCKED. THE SUSPECTS
15 TOLD, ACCORDING TO DORN, KETRA TO GO TO THE DOOR AND TELL
16 THE DEPUTIES THAT EVERYTHING WAS OKAY. SHE APPARENTLY TOLD
17 THE OFFICERS WHAT WAS GOING ON OR INDICATED THAT SOMETHING
18 WAS WRONG BY HER ACTIONS. THEY WERE ABLE TO SECURE HER.
19 THE DEPUTIES KNOCKED THE SECOND TIME ACCORDING TO DORN AT
20 WHICH POINT, APPARENTLY, DEFENDANT TUCKER HANDS DORN THE
21 PISTOL IN AN EFFORT TO GET IT OUT OF HIS POSSESSION, I
22 GUESS, AND TOLD DORN THE SAME THING. TELL THEM EVERYTHING
23 IS OKAY WHEN THEY COME IN BECAUSE THEY WERE EXPECTING
24 ARRIVAL OF THE SHERIFF'S DEPARTMENT ANY MOMENT INSIDE THE
25 APARTMENT.

1 AT SOME POINT, DORN HAD PUT THE GUN DOWN. THE
2 GUN -- THAT WOULD LATER BE THE GUN THAT WAS SECURED BY THE
3 OFFICERS. THE SUSPECTS WERE THEN TAKEN INTO CUSTODY; AND,
4 OF COURSE, IN THE MEANTIME, DORN EXITED THE APARTMENT
5 SAFELY AND WAS ABLE TO GET OUT.

6 Q YOU MENTIONED THAT VAN TOLD YOU THAT THERE WAS MONEY
7 TAKEN FROM HIS PERSON?

8 A YES, MA'AM.

9 Q DID YOU EVER RECOVER ANY MONEY IN THIS CASE?

10 A YES, MA'AM, I DID.

11 Q HOW MUCH MONEY DID YOU RECOVER?

12 A I RECOVERED A TEN-DOLLAR BILL.

13 Q I'M GOING TO SHOW YOU WHAT HAS BEEN MARKED AS -- AND
14 WHERE WAS THAT MONEY RECOVERED?

15 A RECOVERED OUT OF TUCKER'S PANTS POCKET.

16 Q SIR, I'M GOING TO SHOW YOU WHAT HAS BEEN MARKED AS
17 STATE'S EXHIBIT NUMBER EIGHT. IT'S ALREADY IN EVIDENCE,
18 BUT DO YOU RECOGNIZE---

19 A YES, MA'AM.

20 Q ---THE TEN-DOLLAR BILL?

21 A YES, MA'AM, I DO.

22 Q IS THAT A TEN-DOLLAR BILL?

23 A IT IS.

24 Q AND WHERE DID THAT MONEY COME FROM?

25 A IT CAME FROM TUCKER'S POCKET.

1 Q AND YOU PUT THAT MONEY DIRECTLY INTO EVIDENCE?

2 A I PHOTOGRAPHED IT AND I TOOK IT -- I PUT IT INTO
3 EVIDENCE.

4 Q AND STATE'S EXHIBIT NUMBER 13, IS THAT A PHOTOGRAPH
5 OF THAT SAME TEN-DOLLAR BILL?

6 A I TOOK THAT PHOTOGRAPH, YES, MA'AM.

7 Q DID YOU SHOW VAN THE MONEY?

8 A I DID AND HE INDICATED THAT HE DISTINCTLY FOLDED HIS
9 BILLS IN THAT FASHION. SORT OF DIFFERENTIATED IT FROM
10 ANOTHER TEN-DOLLAR BILL THAT TUCKER MIGHT HAVE HAD.

11 Q SAID HE FOLDS IT OVER -- I GUESS THAT WOULD BE FOLDED
12 OVER TWICE?

13 A RIGHT.

14 Q NOW, SERGEANT SMITH, YOU'VE WORKED SEVERAL ARMED
15 ROBBERY CASES, I GUESS, THROUGHOUT YOUR CAREER?

16 A QUITE A FEW.

17 Q WOULD YOU SAY, MORE OFTEN THAN NOT, YOU RECOVER
18 WEAPONS THAT ARE USED IN THOSE ARMED ROBBERIES?

19 A MORE OFTEN WE DO NOT.

20 Q DO NOT. OKAY.

21 THROUGH THE COURSE OF YOUR INVESTIGATION, DID YOU
22 LEARN WHERE THE NINE MILLIMETER, THE BERETTA THAT WAS FOUND
23 LATER ON BY VAN, DID YOU LEARN WHERE THAT GUN CAME FROM?

24 A YES, MA'AM, I DID.

25 Q AND CAN YOU EXCLUDE VAN AS BEING THE OWNER OF THAT

1 GUN?

2 A YES, MA'AM.

3 Q CAN YOU EXCLUDE DEMARCO JOHNSON FROM POSSESSING THAT

4 GUN?

5 A NO, I CANNOT.

6 Q NOW, DID YOU RUN A CHECK, WHAT'S CALLED A N.C.I.C.

7 CHECK ON STATE'S EXHIBIT NUMBER ONE, THE OTHER GUN, THE ONE

8 THAT WAS FOUND EARLIER BY CAPTAIN PRICHARD?

9 A ONE WAS ONE. I'M NOT QUIET SURE IF I DID IT, BUT ONE

10 WAS RUN, YES, MA'AM.

11 Q WHAT IS A N.C.I.C. CHECK---

12 A ALL---

13 Q ---WHEN YOU RETURN IT ON A GUN---

14 A ---ALL WEAPONS ARE THE SAME AS AUTOMOBILES. THEY ARE

15 IDENTIFIED BY A SERIAL NUMBER. ON A CAR, YOU CALL IT A

16 V.I.N. AND WHEN A CAR IS STOLEN, IT'S THE SAME WITH A GUN.

17 THAT NUMBER CAN BE ENTERED INTO THE NATIONAL CRIME

18 INFORMATION COMPUTER AND THAT'S WHAT N.C.I.C. STANDS FOR.

19 SO TEN YEARS LATER, THEORETICALLY, IF THAT GUN WERE USED IN

20 ANOTHER CRIME ON THE EAST COAST OR THE WEST COAST AND IT

21 WERE FOUND, IT COULD BE TRACED BACK TO ITS ORIGIN OF THEFT

22 IF THE SERIAL NUMBER WAS AVAILABLE AT THE TIME IT WAS

23 STOLEN.

24 Q DID YOU DETERMINE THAT THAT FIRST GUN, THE ONE THAT

25 WAS FOUND BY CAPTAIN PRICHARD, DID YOU DETERMINE THAT TO

1 HAVE BEEN A STOLEN GUN?

2 A WE WERE UNABLE TO DETERMINE THAT IT WAS A STOLEN GUN.

3 Q AND, SERGEANT SMITH, YOU HAVE HAD A CHANCE, OF
4 COURSE, TO REVIEW THE INCIDENT REPORT IN THIS CASE?

5 A YES, MA'AM.

6 Q AND WHO IS LISTED AS SUSPECT NUMBER ONE ON THE
7 INCIDENT REPORT?

8 A SUSPECT NUMBER ONE IS LISTED AS JAMES AND THE MIDDLE
9 NAME IS M-E-I-N-E, WHICH I PRESUME, WAS MEINE OR MEINE
10 JOHNSON.

11 Q DID YOU LATER DETERMINE WHETHER THAT WAS AN ACCURATE
12 IDENTIFIER FOR THIS DEFENDANT?

13 A IT WAS AN INACCURATE IDENTIFIER. IT WAS NOT CORRECT.

14 Q AND WHAT IS HIS TRUE NAME?

15 A DEMARCO GERMANE JOHNSON.

16 Q SO JAMES IS NOT HIS MIDDLE NAME?

17 A THAT'S CORRECT.

18 Q AND HOW ABOUT THE DATE OF BIRTH THAT'S LISTED ON THE
19 INCIDENT REPORT?

20 A THE DATE OF BIRTH ORIGINALLY PROVIDED WAS
21 THE OF . THE ACCURATE DATE OF BIRTH WAS LEARNED
22 TO BE THE OF .

23 Q SO THAT INFORMATION WAS FALSE?

24 A THAT'S CORRECT.

25 Q ON THE INCIDENT REPORT?

1 A THAT'S CORRECT. AND I LATER -- I LATER CORRECTED THE
2 INCIDENT REPORT BY WAY OF A SUPPLEMENTAL REPORT MAKING THE
3 RECORDS ACCURATE.

4 Q BEG THE COURT'S INDULGENCE.

5 SIR, JUST ONE MORE QUESTION. STATE'S EXHIBIT
6 NUMBER TWO, THIS IS THE SECOND GUN THAT WAS FOUND AT THE
7 SCENE?

8 A YES, MA'AM.

9 Q AND, AGAIN, WITHOUT -- JUST YES OR NO ANSWER. DO YOU
10 KNOW WHERE THIS GUN CAME FROM?

11 A I DO.

12 Q OKAY.

13 AND, SIR, DO YOU SEE IN THE COURTROOM TODAY THE
14 PERSON WHO WAS ARRESTED ON DECEMBER 14TH OF 1999?

15 A I DO.

16 Q WHO WAS ARRESTED IN VAN'S APARTMENT?

17 A I DO.

18 Q CAN YOU IDENTIFY HIM, PLEASE, FOR THE JURY?

19 A THE DEFENDANT, DEMARCO JOHNSON, WEARING A BLACK VEST
20 AND A WHITE SHIRT AT THE DEFENSE TABLE.

21 MS. PELLIZZARI: THANK YOU, SIR.

22 I HAVE NOTHING FURTHER. PLEASE ANSWER ANY
23 QUESTIONS FROM THE DEFENSE.

24 THE COURT: CROSS.

25 MS. DUKES-MIMS: THANK YOU.

1 CROSS-EXAMINATION

2 BY MS. DUKE-MIMS:

3 Q GOOD MORNING, SERGEANT SMITH.

4 A GOOD MORNING.

5 Q HOW ARE YOU?

6 A FINE.

7 Q JUST A COUPLE OF QUICK QUESTIONS FOR YOU.

8 A ALL RIGHT.

9 Q IF I CAN MOVE THIS. ALL RIGHT.

10 YOU ARE THE LEAD INVESTIGATOR ON THIS CASE?

11 A YES, MA'AM.

12 Q AND AS LEAD INVESTIGATOR, JUST TO GIVE THE JURY

13 BACKGROUND, THAT MEANS YOU ARE THE PERSON IN CHARGE?

14 A THAT'S CORRECT.

15 Q OKAY.

16 YOU ARE THE PERSON THAT GETS MOST OF THE REPORTS

17 THAT ARE MADE FROM OTHER DEPUTIES WHO ARE ALSO

18 INVESTIGATING THIS SCENE?

19 A SORT OF COORDINATE THE REPORTS, MAKE SURE THEY ARE IN

20 THE CASE FILE.

21 Q OKAY.

22 IT DOESN'T NECESSARILY MEAN THAT YOU ARE THE

23 FIRST PERSON ON THE SCENE WHO TAKES DOWN EVERYBODY, WHO

24 MAKES THE ARREST, AND TAKES THE FIRST EVIDENCE, CORRECT?

25 A THAT'S CORRECT.

1 Q IN FACT, SOMETIMES YOU ARRIVE A LOT LATER THAN
2 EVERYBODY ELSE?

3 A THAT'S CORRECT.

4 Q BUT YOU ARE THE GUY WHO HAS BEEN THERE THE LONGEST,
5 YOU ARE THE INVESTIGATOR, YOU'RE THE CHIEF PERSON, AND,
6 THEREFORE, THAT MAKES YOU THE PERSON IN CHARGE?

7 A THAT'S CORRECT.

8 Q OKAY.

9 SO BY THE TIME YOU ARRIVED ON THE SCENE HERE,
10 EVERYBODY WAS ALREADY ARRESTED?

11 A YES, MA'AM.

12 Q PEOPLE THAT THEY THOUGHT HAD COMMITTED THE CRIME WERE
13 IN CUFFS AT THAT POINT, IS THAT RIGHT?

14 A THAT'S CORRECT.

15 Q OKAY.

16 THE POLICE AT THAT POINT, I THINK, ALSO -- AND
17 CORRECT ME IF I'M WRONG, WERE ALREADY SEARCHING THE
18 APARTMENT, MR. VAN DORN'S APARTMENT?

19 A I DIDN'T ACTUALLY GO TO THE APARTMENT. I PRESUME
20 THAT THE SEARCH HAD BEEN INITIATED ALONG THAT SAME TIME. I
21 CAN'T SAY FOR SURE.

22 Q OKAY.

23 YOU DIDN'T ACTUALLY -- YOU WEREN'T ACTUALLY AT
24 THE APARTMENT?

25 A I DIDN'T ACTUALLY GO TO THE APARTMENT MYSELF. NO,

1 MA'AM. I DEPENDED ON OTHER INVESTIGATORS TO INCLUDE SLICER
2 AND OUR FORENSIC INVESTIGATOR AND SOME OTHER DEPUTIES THAT
3 WERE SEARCHING FOR THE GUNS TO HANDLE THAT PART OF IT.

4 Q I UNDERSTAND.

5 SO MOST OF YOUR INVESTIGATION, THEN, REALLY
6 DEPENDS ON THE PEOPLE AROUND YOU WHO TELL YOU WHAT'S
7 HAPPENED?

8 A (NO RESPONSE.)

9 Q YOU FIND OUT THE FACTS FROM THE OTHER DEPUTIES WHO
10 ARRIVE ON THE SCENE FIRST?

11 A I COLLECT STATEMENTS, FACTS, WITNESS INFORMATION---

12 Q RIGHT.

13 A THAT'S CORRECT.

14 Q OKAY.

15 SO ALL OF THE STATEMENTS WOULD COME TO YOU? ANY
16 REPORTS FILED BY DEPUTIES?

17 A YES, MA'AM, I -- YOU KNOW, WHEN YOU WORK THESE CASES,
18 YOU WISH YOU COULD BE---

19 Q SURE.

20 A ---AT EACH SPOT AND HANDLE EVERYTHING YOURSELF, BUT
21 IT'S IMPOSSIBLE.

22 Q I UNDERSTAND. I UNDERSTAND COMPLETELY.

23 YOU DID, HOWEVER, SPECIFICALLY SPEAK WITH NORMAN
24 VAN DORN?

25 A YES.

1 Q WHO WAS THE VICTIM IN THIS CASE?

2 A I DID.

3 Q AND HE TOLD YOU -- HE KIND OF GAVE YOU HIS SCENARIO
4 OF THE FACTS?

5 A YES, MA'AM, HE DID.

6 Q OKAY.

7 HE TOLD YOU THAT HE WAS CONFRONTED BY TWO MEN IN
8 THE PARKING LOT?

9 A BEAR WITH ME JUST ONE MOMENT.

10 Q SURE.

11 A ARE WE ARE GOING TO REFER TO HIS STATEMENT NOW?

12 Q YES, SIR.

13 A OKAY.

14 YES, MA'AM.

15 Q OKAY.

16 AND THAT THEY -- THAT THESE TWO MEN EVENTUALLY
17 TAKE HIM INSIDE HIS APARTMENT?

18 A YES, MA'AM.

19 Q OKAY.

20 DID HE TELL YOU HOW THEY GOT INTO HIS APARTMENT?

21 A HE INDICATED THAT -- BEAR WITH ME JUST ONE MINUTE AND
22 LET ME FIND THAT PORTION.

23 Q SURE.

24 A HE DIDN'T INDICATE IN HIS STATEMENT, IN HIS ACTUAL
25 WRITTEN STATEMENT, WHICH IS NOT UNCOMMON TO LEAVE SOME

1 DETAILS OUT WHEN WE GO BACK OVER IT. I DO KNOW THAT THERE
2 WAS SOME INDICATION THAT HE HAD A KEY ON HIM AND THERE WAS
3 A COMMENT MADE BY ONE OF THE DEFENDANTS THAT THEY HAD THE
4 WRONG APARTMENT, IT WAS SUPPOSED TO BE 106. AND---

5 Q SO THERE WAS A COMMENT THAT THIS POSSIBLY COULD BE A
6 WRONG APARTMENT?

7 A YES, MA'AM.

8 Q THAT THEY THOUGHT THEY WERE GOING TO A DIFFERENT
9 APARTMENT?

10 A YES, MA'AM.

11 Q SO MAYBE THERE WAS AN INTENTION TO GO TO A CERTAIN
12 PLACE THAT DAY?

13 A I -- YOU KNOW, THE ONLY COMMENT I WOULD HAVE ON THEIR
14 INTENT WAS TO COMMIT AN ARMED ROBBERY AND A BURGLARY.

15 Q SURE. SURE.

16 A YOU KNOW, THAT'S---

17 Q DID YOU SPEAK TO THE DEPUTIES -- I THINK IT WAS
18 DEPUTY FOY, DEPUTY DODGE WHO ACTUALLY ARRESTED THE PEOPLE
19 INSIDE THE HOUSE THAT DAY?

20 A IF I DIDN'T SPEAK TO THEM DIRECTLY, I REVIEWED THEIR
21 FOLLOW-UPS.

22 Q OKAY.

23 DO YOU RECALL IF THEY SAID THAT THEY RECOVERED
24 ANY ITEMS OR IF THEY SAW ANY ITEMS STASHED UP AGAINST THE
25 DOOR LIKE THEY WERE GETTING READY TO TAKE OUT OF THE HOUSE?

1 DO YOU RECALL THEM SAYING THAT?

2 A I WOULD HAVE TO REVIEW THEIR STATEMENTS. I'LL BE
3 GLAD TO. I DON'T RECALL OFF THE TOP OF MY HEAD.

4 Q OKAY.

5 BUT YOU DON'T RECALL ANYTHING LIKE THAT?

6 A WELL, I WOULD HAVE TO REVIEW THEIR FOLLOW-UPS. THERE
7 ARE PROBABLY EIGHT TO TEN FOLLOW-UPS IN THIS CASE.

8 Q I UNDERSTAND.

9 WELL, LET ME ASK YOU THIS. DID YOU ACTUALLY EVEN
10 GO TO THE APARTMENT?

11 A I DON'T BELIEVE I ACTUALLY WENT TO THE APARTMENT.

12 Q YOU NEVER WENT TO THE APARTMENT?

13 A NO, MA'AM.

14 Q SO YOU DIDN'T TAKE ANY PICTURES OF THE APARTMENT?

15 A INVESTIGATOR GROSS HANDLED THE PHOTOGRAPHS.

16 Q OKAY.

17 A THAT'S WHY HE WAS CALLED TO THE SCENE.

18 Q SURE.

19 A I'M CAPABLE OF TAKING A POLAROID---

20 Q YOU AND ME BOTH---

21 A ---BUT A 35 MILLIMETER OF A CRIME SCENE LIKE THAT
22 NEEDS TO BE HANDLED BY FORENSIC PEOPLE.

23 Q I UNDERSTAND.

24 MR. DORN, THROUGH HIS STATEMENT TO YOU,
25 INVESTIGATOR SMITH, HAD TOLD YOU THAT AT SOME POINT HE'S IN

1 THE BACK BEDROOM WITH THE MAN IN THE GRAY SWEATSHIRT?

2 A HE SAID THE DUDE IN THE GRAY TOOK ME BACK TO MY
3 BEDROOM.

4 Q RIGHT.

5 AND HE ALSO SAID THAT THE MAN IN THE GRAY HANDED
6 HIM HIS NINE MILLIMETER AT THAT POINT?

7 A YES, MA'AM, HE DID. HE SAID HE PUT THE GUN -- HE
8 SAID HE PUT THE GUN IN MY HAND.

9 Q OKAY.

10 AND MR. DORN TELLS YOU HE PLACES THE GUN DOWN ON
11 THE DRESSER?

12 A SET IT ON THE DRESSER AND WALKED OUT AND LET THE
13 DEPUTIES INSIDE.

14 Q OKAY.

15 AND HE NOT ONLY PUT IT ON THE DRESSER, HE PUT IT
16 INSIDE THE DRESSER DRAWER, ISN'T THAT RIGHT?

17 A I DON'T BELIEVE SO.

18 Q YOU DON'T THINK SO?

19 A NO, MA'AM.

20 Q ISN'T---

21 A ARE YOU ASKING FOR MY OPINION?

22 Q NO, NO, I'M NOT. I'M ASKING YOU WHERE -- WHERE THE
23 GUN WAS FOUND ACTUALLY? I MEAN, HE WAS---

24 A WELL, IT'S MY UNDERSTANDING THE GUN WAS FOUND IN THE
25 DRESSER. IT'S ALSO MY UNDERSTANDING HE HAD LEFT MR. TUCKER

1 IN THE BEDROOM.

2 Q OKAY.

3 SO FROM WHAT YOU UNDERSTAND, IT WAS JUST LEFT ON
4 THE DRESSER?

5 A THAT'S WHAT HE INDICATED TO ME.

6 Q OKAY.

7 YOU DON'T KNOW WHERE THE GUN WAS ACTUALLY FOUND?

8 A BASED ON THE REPORT FROM CAPTAIN PRICHARD, I
9 UNDERSTAND IT WAS FOUND IN THE DRESSER DRAWER.

10 Q RIGHT. OKAY.

11 A I MADE THE ASSUMPTION THAT MR. TUCKER HID IT THERE---

12 Q OH, OKAY---

13 A ---AS THE OTHER GUN WAS HIDDEN BY MR. JOHNSON.

14 Q AFTER -- THE OFFICERS THEN GO IN AFTER EVERYBODY IS
15 PULLED OUT OF THE HOUSE AND THEY'VE MADE THEIR ARRESTS,
16 ACTUALLY GO IN AND SEARCH THE APARTMENT?

17 A YES, MA'AM.

18 Q OKAY.

19 AND AT THIS POINT, THEY ARE LOOKING -- I THINK
20 IT'S A ONE-BEDROOM APARTMENT, IS THAT YOUR UNDERSTANDING?

21 A THAT'S WHAT I HEARD, YES, MA'AM.

22 Q OKAY.

23 I THINK THREE DIFFERENT DEPUTIES WERE SEARCHING
24 THE APARTMENT AT THAT POINT?

25 A THAT'S MY UNDERSTANDING.

1 Q SO THEY ARE LOOKING THROUGH A SMALL APARTMENT FOR TWO
2 GUNS?

3 A THAT'S CORRECT.

4 Q AND THEY UNDERSTOOD THERE WERE TWO GUNS?

5 A THAT'S CORRECT.

6 Q AND THEY, AFTER I THINK, TWENTY -- 25-MINUTE SEARCH,
7 THEY FIND ONE GUN?

8 A THAT'S MY UNDERSTANDING. I DON'T KNOW THE LENGTH OF
9 THE SEARCH. I'VE HEARD TESTIMONY TO THAT.

10 Q SURE.

11 YOU HAVE BEEN AN OFFICER AND I FORGET HOW LONG?
12 HOW LONG HAVE YOU BEEN AN OFFICER?

13 A A LONG TIME, ABOUT 17 YEARS OFF AND ON.

14 Q SEVENTEEN YEARS, SOMETHING LIKE THAT.

15 DO POLICE OFFICERS SEARCH SCENES A LOT?

16 A INVESTIGATORS DO---

17 Q INVESTIGATORS DO---

18 A ---MORE SO THAN -- WE'RE USED TO HANDLING SEARCH
19 WARRANTS---

20 Q YES, SIR.

21 A ---SEARCHING AREAS WHERE THINGS ARE HIDDEN. YOU
22 LEARN CERTAIN TRICKS THAT SUSPECTS USED TO HIDE CERTAIN
23 THINGS. THESE LINE OFFICERS AREN'T AS EXPERIENCED IN
24 CONDUCTING THOSE TYPE OF SEARCHES.

25 Q SURE.

1 BUT THEY UNDERSTAND THE IMPORTANCE OF FINDING
2 EVIDENCE?

3 A THEY DO.

4 Q ISN'T THAT RIGHT?

5 A THAT'S CORRECT.

6 Q ESPECIALLY WHEN THEY KNEW THERE WERE TWO GUNS IN THE
7 APARTMENT, THAT'S KIND OF A BIG DEAL?

8 A THEY WOULD UNDERSTAND THAT IMPORTANCE, YES, MA'AM.

9 Q AND YOU WOULD WANT TO SECURE WEAPONS---

10 A THAT'S CORRECT.

11 Q ---PROBABLY MORE THAN ANYTHING ELSE? YOU ALSO SPOKE
12 TO MR. DORN AND HE TOLD YOU THAT -- ACTUALLY, I THINK THEY
13 HAD FOUND A TEN-DOLLAR BILL IN CYCRUS TUCKER'S BACK POCKET?

14 A I FOUND THAT, YES, MA'AM.

15 Q OKAY.

16 AND YOU HAVE SEEN THE ACTUAL TEN-DOLLAR BILL?

17 A I REMOVED IT FROM HIS POCKET AND I PHOTOGRAPHED IT.

18 Q AND YOU SHOWED THIS TO MR. DORN?

19 A YES.

20 Q AND HE TOLD YOU, OH, THAT'S MY TEN-DOLLAR BILL?

21 A HE SAID HE FOLDED HIS TEN-DOLLAR BILL IN THAT
22 FASHION.

23 Q IS THIS A PECULIAR WAY TO FOLD A TEN-DOLLAR BILL?

24 A WELL, IT WAS THE ONLY TEN-DOLLAR BILL THAT WAS
25 LOCATED ON THE DEFENDANTS AND THERE WAS AN INDICATION THAT

1 A TEN-DOLLAR BILL HAD BEEN REMOVED FROM MR. DORN'S POCKET
2 AND THEN WHEN HE INDICATED THAT HE FOLDED IT IN THAT
3 FASHION, I DREW THE CONCLUSION THAT IN ALL PROBABILITY THAT
4 WAS HIS TEN-DOLLAR BILL.

5 Q SO DID YOU FIND THE TEN-DOLLAR BILL OFF OF MR. TUCKER
6 FIRST AND THEN ASK MR. DORN IF THAT WAS HIS TEN DOLLARS?

7 A WELL, I HAD TO FIND IT FIRST TO SHOW IT TO HIM AND
8 ASK HIM IF THAT WAS HIS TEN DOLLARS.

9 Q OKAY.

10 SO YOU FOUND THE TEN DOLLARS, THEN YOU ASKED MR.
11 DORN, IS THIS YOUR TEN DOLLARS?

12 A I'M NOT SURE EXACTLY IF THAT'S THE WAY IT WENT OR
13 NOT. HE INDICATED THAT HE HAD A TEN-DOLLAR BILL. IT WAS
14 THE ONLY TEN-DOLLAR BILL FOUND.

15 Q OKAY.

16 DID YOU HAVE THAT TEN-DOLLAR BILL PRINTED BY ANY
17 CHANCE?

18 A NO, MA'AM.

19 Q YOU CAN HAVE MONEY PRINTED? TESTED FOR FINGERPRINTS?

20 A YOU COULD, BUT IT'S BEEN MY EXPERIENCE THAT CURRENCY
21 IS HANDLED SO MUCH THAT THE LIKELIHOOD OF GETTING
22 FINGERPRINTS IS NIL.

23 Q BUT IT CAN HAPPEN. I MEAN, PEOPLE HAVE MONEY TESTED
24 FOR FINGERPRINTS ALL THE TIME?

25 A YES, MA'AM, BUT AT THAT STAGE OF THE INVESTIGATION,

1 WAS THE CASE WITH THE DEFENDANTS BEING REMOVED FROM THE
2 APARTMENT, IT WAS SORT OF A MOOT POINT THAT -- WE PULLED IT
3 OUT OF MR. TUCKER'S POCKET. MR. TUCKER WAS PULLED OUT OF
4 THE INCIDENT LOCATION.

5 Q OH, SURE. BUT DID YOU TEST IT TO SEE IF MAYBE MR.
6 VAN DORN HAD TOUCHED THAT MONEY?

7 A NO, MA'AM.

8 Q YOU EVENTUALLY HAD THE---

9 A I DIDN'T HAVE ANY REASON TO DOUBT MR. VAN DORN'S
10 STORY---

11 Q SURE---

12 A ---AT THAT TIME.

13 Q YOU ACTUALLY HAD THE SUSPECT'S VEHICLE, I THINK --
14 AND JUST MOVING ON TO THE FORD EXPLORER, YOU ACTUALLY HAD
15 THAT VEHICLE TOWED?

16 A YES, MA'AM.

17 Q AND WHAT'S THE PURPOSE OF TOWING THAT VEHICLE?

18 A IT WAS THE SUSPECT VEHICLE.

19 Q OKAY.

20 A IT HAD TO BE SECURED.

21 Q OKAY.

22 AND---

23 A AND, OF COURSE, WE WANTED TO CONDUCT A SEARCH ON IT.

24 Q SURE.

25 DID YOU TEST THAT VEHICLE FOR FINGERPRINTS?

1 A I BELIEVE THAT VEHICLE WAS PROCESSED---

2 Q OKAY---

3 A ---BY ONE OF THE FORENSIC -- NOT BY MYSELF. ONE OF

4 THE FORENSIC OFFICERS.

5 Q AND DO YOU KNOW IF ANY PRINTS WERE FOUND ON THAT

6 VEHICLE?

7 A NONE THAT I'M AWARE OF.

8 Q OKAY.

9 YOU ALSO---

10 A WE DID LOCATE THREE PLATES FROM THE WAFFLE HOUSE

11 WHERE SOME OF THE INDICATION THEY HAD GONE PRIOR TO THIS.

12 INDICATED THERE WERE THREE INDIVIDUALS POSSIBLY IN THE

13 VEHICLE.

14 Q SO YOU FOUND FOOD IN THE CAR?

15 A THREE TAKEOUT PLATES IS ACTUALLY WHAT IT WAS IN THE

16 EXPLORER.

17 Q OKAY.

18 MR. DORN TOLD YOU THAT THE MAN IN GRAY ALSO HAD

19 SEARCHED HIS NISSAN TRUCK?

20 A YES, MA'AM. IT SAYS THE GUY IN THE GRAY SEARCHED

21 THROUGH MY TRUCK.

22 Q OKAY.

23 DO YOU KNOW WHY HE GOT UP HERE EARLIER AND SAID

24 HE COULDN'T TELL EXACTLY WHO SEARCHED HIS TRUCK?

25 A ARE YOU ASKING FOR MY OPINION?

1 Q YES, SIR.

2 A WELL, IT'S BEEN A YEAR. ALSO, HE WAS BEING
3 VICTIMIZED BY TWO INDIVIDUALS WHO WERE ARMED IN AN ARMED
4 ROBBERY MATTER.

5 Q AND HE WASN'T FACING THESE INDIVIDUALS, ISN'T THAT
6 RIGHT?

7 A I BELIEVE MY RECOLLECTION WOULD BE A LITTLE BIT, YOU
8 KNOW, AMBIGUOUS AT THAT POINT IN TIME.

9 Q UH-HUH, SURE.

10 DO YOU KNOW THAT -- DO YOU KNOW IF HE ALSO TOLD
11 ANOTHER OFFICER THAT ACTUALLY BOTH SUSPECTS WERE SEARCHING
12 HIS CAR?

13 A I'M NOT AWARE OF THAT. I KNOW WHAT HE TOLD ME.

14 Q OKAY. OKAY.

15 BUT IT HAS BEEN A YEAR. THE TRUCK WAS EVENTUALLY
16 TESTED FOR FINGERPRINTS, CORRECT?

17 A I BELIEVE INVESTIGATOR GROSS DID PROCESS THE TRUCK.

18 Q OKAY.

19 AND NO FINGERPRINTS WERE FOUND ON THE TRUCK?

20 A NONE THAT I'M AWARE OF AND I HEARD HIS TESTIMONY.

21 Q THIS INCIDENT ACTUALLY OCCURRED ABOUT NINE IN THE
22 MORNING, DECEMBER 14TH, NINE IN THE MORNING?

23 A YES, MA'AM.

24 Q OKAY.

25 AND AT THAT POINT, POLICE LIKE WE SAID

1 INVESTIGATED THE SCENE AND SEARCHED THE SCENE, EVERYONE WAS
2 ARRESTED, EVERYBODY IS TAKEN AWAY. EVERYTHING IS OKAY.
3 EVERYTHING -- I THINK THE WITNESSES ACTUALLY WERE TAKEN
4 DOWN TO THE DEPARTMENT, TO THE RICHLAND COUNTY SHERIFF'S
5 DEPARTMENT?

6 A YES, MA'AM.

7 Q GAVE THEIR STATEMENTS?

8 A YES, MA'AM.

9 Q AND THEN WENT BACK HOME.

10 AND ABOUT 5 O'CLOCK, YOU GET A PHONE CALL FROM
11 MR. DORN, IS THAT CORRECT?

12 A I'VE GOT IN ANY NOTES 17:00 HOURS, WHICH IS 5
13 O'CLOCK, I RECEIVED A PHONE CALL FROM THE VICTIM DORN.

14 Q OKAY.

15 YOU MENTIONED EARLIER THAT YOU HAD TOLD MR. DORN
16 TO BE ON THE LOOK OUT FOR ANOTHER GUN?

17 A YES, MA'AM.

18 Q IS THAT BECAUSE YOU DIDN'T THINK YOUR OFFICERS DID A
19 VERY GOOD JOB?

20 A I MISS THINGS IN SEARCHES MYSELF. I KNOW IT CAN
21 HAPPEN. NOT BEING CRITICAL OF MY OFFICERS, I'VE HAD
22 OFFICERS COME RIGHT BEHIND ME AND MISS THINGS.

23 Q IT'S PRETTY BIG, ISN'T IT---

24 A I'VE MISSED AN INDIVIDUAL HIDING IN A CLOSET MYSELF
25 BEFORE. SO, I MEAN, I KNOW -- I KNOW IT CAN HAPPEN.

1 Q MISSED AN INDIVIDUAL HIDING IN A CLOSET. AFTER 20 OR
2 25 MINUTES OF---

3 A IT'S RATHER EMBARRASSING, BUT IT DID HAPPEN.

4 Q OKAY. OKAY.

5 BUT AFTER 20 TO 30 MINUTES OF SEARCHING FOR A GUN
6 IN A TINY APARTMENT WITH ONE CLOSET ESSENTIALLY, WITH ONE
7 LINEN CLOSET, THEY DIDN'T FIND ANYTHING, ISN'T THAT RIGHT?

8 A THAT'S MY UNDERSTANDING. IT WAS ALSO MY
9 UNDERSTANDING IT'S A HIGHLY CONGESTED AREA AND IT WAS
10 PRETTY WELL HIDDEN. OF COURSE, THIS IS MR. DORN'S
11 APARTMENT. HE HAD SOME TIME TO GO BACK AND LOOK THE LATER
12 PART OF THE AFTERNOON AND HE DID FIND THE GUN.

13 Q OKAY.

14 A I WISH THAT THEY HAD FOUND IT, BUT THAT'S THE WAY IT
15 WORKED OUT.

16 Q DID YOU EVENTUALLY -- YOU MENTIONED THAT YOU RAN A
17 N.C.I.C. AND WE UNDERSTAND NOW THAT THAT'S THE -- THAT
18 THAT'S LIKE A DISPATCH OR SOMETHING, THAT YOUR COMPUTER
19 SYSTEM, THAT YOU WOULD RUN A SERIAL NUMBER THROUGH TO FIND
20 OUT WHO THIS -- WHO THIS GUN BELONGS TO, IS THAT RIGHT?

21 A THAT'S CORRECT.

22 Q OR WEAPON?

23 A WHICH WEAPON -- ARE WE REFERRING TO THE SECOND
24 WEAPON?

25 Q THANK YOU.

1 A YES, MA'AM.

2 Q YES, I'M NOT SPITTING IT OUT VERY WELL. AND YOU DID
3 THAT FOR THIS PARTICULAR WEAPON AS WELL?

4 A WHICH WEAPON?

5 Q THE SECOND ONE THAT MR. DORN---

6 A YES, MA'AM, I DID---

7 Q ---FOUND, IS THAT RIGHT---

8 A UH-HUH---

9 Q ---I'M SORRY, I'M NOT BEING CLEAR.

10 AND ON THAT -- YOU HAD TRACED THAT TO A GUN THAT
11 HAD BEEN STOLEN FROM---

12 A THAT'S CORRECT.

13 Q ---FROM A BURGLARY?

14 A YES, MA'AM.

15 Q OKAY.

16 DID -- WAS THE PERSON ARRESTED FOR THAT?

17 A IT'S MY UNDERSTANDING THAT A PERSON HAD BEEN ARRESTED
18 IN THE BURGLARY.

19 Q OKAY.

20 WAS DEMARCO JOHNSON THE PERSON ARRESTED FOR THE
21 BURGLARY?

22 A MR. JOHNSON WASN'T ARRESTED AS THE PERSON IN THE
23 BURGLARY, BUT THE INDIVIDUAL THAT WAS ARRESTED IN THE
24 BURGLARY DID LINK MR. JOHNSON TO THE WEAPON.

25 Q HE WASN'T THE PERSON ARRESTED FOR THIS BURGLARY, WAS

1 HE?

2 A NO, MA'AM.

3 Q THANK YOU VERY MUCH.

4 THE COURT: REDIRECT?

5 MS. PELLIZZARI: YES, SIR, YOUR HONOR.

6 REDIRECT EXAMINATION

7 BY MS. PELLIZZARI:

8 Q INVESTIGATOR SMITH, WHO HAD POSSESSION OF THAT GUN
9 BEFORE DEMARCO JOHNSON, THAT SECOND GUN?

10 A WE WERE ABLE TO LINK THE WEAPON TO ODELL JOHNSON, WHO
11 IS DEMARCO'S BROTHER.

12 Q SOLD TO HIM BY KENJI MCQUEEN?

13 A THAT'S CORRECT.

14 MS. DUKE-MIMS: YOUR HONOR, MAY WE APPROACH?

15 THE COURT: YES, MA'AM.

16 (WHEREUPON, A BENCH CONFERENCE WAS
17 HELD AT THIS TIME OFF THE RECORD.)

18 THE COURT: ALL RIGHT.

19 LADIES AND GENTLEMEN, LET ME ASK YOU IF YOU'LL
20 STEP TO THE JURY ROOM JUST FOR A MOMENT AND WHILE YOU ARE
21 THERE, PLEASE BE SURE TO REMEMBER, DON'T TALK ABOUT THE
22 CASE.

23 (JURY OUT.)

24 THE COURT: OKAY.

25 MS. MIMS, YOU WANT TO PUT THAT ON THE RECORD?

1 MS. DUKE-MIMS: YES, SIR, YOUR HONOR.

2 I WOULD JUST SAY THAT HE SHOULDN'T BE ALLOWED TO
3 GO INTO THIS SIMPLY BECAUSE THE SOLICITOR IS THE ONE WHO
4 OPENED THE DOOR ON THIS, ASKING ABOUT THE GUN, ABOUT THE
5 N.C.I.C. I DIDN'T HAVE TIME TO OBJECT TO IT WHEN SHE FIRST
6 GOT THAT OUT. I FEEL THAT SHE'S THE ONE WHO OPENED THE
7 DOOR. ALL I DID IS FOLLOW-UP. SHE LEFT IT DANGLING OUT
8 THERE THAT THIS GUN GOT CAUGHT IN A BURGLARY. COMPLETELY
9 LEFT IT DANGLING OUT THERE. ALL I DID WAS ASK WHO WAS
10 ARRESTED FOR THAT BURGLARY. THE OFFICER TOOK IT UPON
11 HIMSELF TO PIT -- TO SAY, THAT NO, BUT MY CLIENT WAS LINKED
12 TO THE BURGLARY WHICH IS FAR-REACHING. I DIDN'T ASK THAT
13 QUESTION. I DIDN'T OPEN THAT DOOR, YOUR HONOR. I WAS
14 TRYING MY VERY BEST TO STAY RIGHT THERE ON THAT LINE. I
15 DID MY VERY BEST TO DO THAT AND I DO NOT -- I THINK THE
16 OFFICER OPENED -- I MEAN, THE OFFICER SAID SOMETHING THAT I
17 DID NOT INVITE THAT QUESTION. I DID NOT INVITE THAT
18 QUESTION, YOUR HONOR. IT IS SO HIGHLY PREJUDICIAL TO MY
19 CLIENT TO GET INTO THIS.

20 ALSO, THEY HAVEN'T PRODUCED ODELL JOHNSON. THEY
21 HAVEN'T PRODUCED KENJI MCQUEEN. IF THEY WANT TO DO THAT,
22 THEY CAN AND AT THAT POINT, WE CAN GET INTO WHO HAD THESE
23 GUNS, WHO SOLD GUNS TO WHO. IN THE MEANTIME, IT'S
24 IRRELEVANT, IT'S HEARSAY, AND I DID NOT OPEN THE DOOR TO
25 YOUR PRIOR RULING.

1 THE COURT: I UNDERSTAND.

2 I THINK YOU ARE CORRECT THAT THE OFFICER DID OPEN
3 THE DOOR TO IT. HOWEVER, IN RESPONSE TO THE QUESTION, I
4 AGREE THAT HE PROBABLY PUSHED THE ENVELOPE A LITTLE BIT ON
5 THE ANSWER THAT HE GAVE, BUT HE STILL WAS WITHIN, AT LEAST,
6 THE PARAMETERS OF REASONABLENESS IN TERMS OF THE ANSWER---

7 MS. DUKE-MIMS: YOUR HONOR, HE KNEW EXACTLY WHAT
8 HE WAS DOING. HE HAS BEEN SITTING HERE THE WHOLE TIME---

9 THE COURT: BUT LET ME FINISH AND THEN YOU'LL GET
10 TO TALK---

11 MS. DUKE-MIMS: YES, SIR.

12 THE COURT: I JUST LIKE TO HEAR MYSELF TALK
13 SOMETIMES.

14 MS. DUKE-MIMS: I UNDERSTAND.

15 THE COURT: OKAY.

16 HE WAS WITHIN THE PARAMETERS OF REASONABLENESS ON
17 HIS ANSWER. AND -- SO I THOUGHT IT WAS APPROPRIATE UNDER
18 THAT CIRCUMSTANCE.

19 GO AHEAD. YOU WANT TO PUT SOMETHING ON THE
20 RECORD?

21 MS. DUKE-MIMS: I GUESS, I -- I WOULD JUST SAY HE
22 KNEW EXACTLY WHAT HE WAS DOING. HE DID THIS DELIBERATELY.
23 I MEAN, THERE'S NO DOUBT ABOUT IT. I WAS SIMPLY CLOSING A
24 DOOR THAT THE SOLICITOR HAD OPENED AND DANGLED OUT THERE
25 WITH ONE SPECIFIC QUESTION. HE KNEW EXACTLY WHAT HE WAS

1 DOING.

2 THE COURT: I UNDERSTAND. OFFICERS---

3 MS. DUKE-MIMS: AND, NOW, YOU KNOW, HERE I AM. I
4 DIDN'T OPEN THE DOOR TO ANYTHING. IN FACT, THE SOLICITOR
5 OPENED THE DOOR; AND, IF ANYTHING, SHE'S THE ONE WHO IS
6 WRONG FOR GETTING INTO SOMETHING YOU TOLD HER NOT TO GET
7 INTO.

8 MS. PELLIZZARI: YOUR HONOR---

9 THE COURT: WELL, AGAIN, I HAVE TO GIVE HER
10 CREDIT THAT SHE VERY CLEVERLY SKIRTED AROUND DOING IT. AND
11 I RECALLED WHEN SHE ASKED THE QUESTIONS A FEW MOMENTS AGO
12 AND THEN I'VE GOT MY NOTES ON WHAT SHE ASKED HIM. SHE DID
13 MANAGE TO, AT LEAST, GO AROUND THE RULING APPROPRIATELY.
14 THE QUESTIONS THAT SHE ASKED -- I KNOW YOU DIDN'T OBJECT AT
15 THAT TIME -- BUT THE QUESTIONS SHE ASKED---

16 MS. DUKE-MIMS: THE QUESTION WAS ALREADY OUT
17 THERE, YOUR HONOR.

18 THE COURT: WELL---

19 MS. PELLIZZARI: YOU COULD HAVE OBJECTED.

20 THE COURT: ---WELL, IT WASN'T REALLY
21 INAPPROPRIATE EITHER. IT REALLY WAS NOT INAPPROPRIATE THE
22 WAY SHE ASKED IT EITHER.

23 OBVIOUSLY, THERE -- SOMETIMES THERE ARE JUST
24 CERTAIN WAYS YOU CAN ASK THINGS WITHOUT GETTING AT THE
25 ISSUE DIRECTLY AND IT WAS APPROPRIATE UNDER THE

1 CIRCUMSTANCES.

2 MS. DUKE-MIMS: YOUR HONOR, I GUESS MY NEXT
3 QUESTION, SINCE WE ARE ALL OUT, I MEAN, IS HOW FAR THEY CAN
4 GO WITH THIS. HOW MUCH HE CAN SAY.

5 THE COURT: WELL, I THINK HE'S ANSWERED THE
6 QUESTION AND I DON'T THINK THERE'S ANY NEED TO GO ANY
7 FURTHER WITH IT AT THIS POINT.

8 MS. PELLIZZARI, I DIDN'T MEAN TO KEEP YOU FROM
9 SAYING -- ANYTHING YOU WANT TO PUT ON THE RECORD ABOUT
10 THAT?

11 MS. PELLIZZARI: YOUR HONOR, LET ME JUST CLARIFY.
12 IN MY DIRECT, THE REFERENCES THAT I MADE TO THE N.C.I.C.
13 WERE TO THE OTHER PISTOL. NOT THE STOLEN PISTOL THAT WAS
14 LINKED TO DEMARCO JOHNSON. IT WAS TO THE OTHER PISTOL.

15 AND I THINK THEY'VE MADE INSINUATIONS THAT OUR
16 VICTIM HAD SOMETHING TO DO WITH THAT WEAPON. I MEAN, I
17 THINK CERTAINLY -- AND I DIDN'T GO INTO ANYTHING ABOUT IT
18 WAS FROM A BURGLARY. ABSOLUTELY, I DID NOT GO INTO THE
19 FACT THAT THAT SECOND PISTOL CAME FROM A BURGLARY, THAT,
20 YOU KNOW, KENJI MCQUEEN SAYS HE SOLD THAT PARTICULAR GUN TO
21 DEMARCO'S BROTHER. I DID NOT GET INTO THAT. THE ONLY
22 THING I ASKED THAT OFFICER IS, DO YOU KNOW WHERE THAT GUN
23 COME FROM, WAS IT LINKED TO THE VICTIM. NO, IT'S NOT. AND
24 THAT WAS THE END OF IT. I DIDN'T OPEN ANY DOORS, ANY
25 BURGLARIES, AND THAT WAS TOTALLY DEFENSE ATTORNEY'S

1 QUESTIONS.

2 MS. DUKE-MIMS: WELL, YOUR HONOR, THEN IT WAS
3 AWFULLY MISLEADING BECAUSE I'VE NEVER RECEIVED ANYTHING
4 FROM N.C.I.C. SAYING THAT THE OTHER WEAPON WAS STOLEN FROM
5 A BURGLARY. THE ONLY BURGLARY I'VE RECEIVED ANY
6 INFORMATION ON HAS TO DO WITH THE ONE THAT WAS IN THE
7 CLOSET WITH DEMARCO JOHNSON---

8 MS. PELLIZZARI: SHEILA---

9 MS. DUKE-MIMS: ---THE ONE THAT WAS INITIALLY---

10 MS. PELLIZZARI: ---THE BLACK GUN IS NOT A STOLEN
11 GUN. IT CAME BACK NEGATIVE AND THAT IS IN OFFICER
12 PRICHARD'S REPORT. THAT'S THE QUESTION I ASKED
13 INVESTIGATOR SMITH. THE BLACK GUN.

14 MS. DUKE-MIMS: THEN I DON'T UNDERSTAND HOW ANY
15 OF THIS -- HOW KENJI MCQUEEN WAS EVER EVEN A WITNESS.

16 MS. PELLIZZARI: WHEN I ASKED HIM ABOUT THE
17 SECOND GUN. THAT'S THE ONE THAT COMES BACK STOLEN. HE
18 NEVER TESTIFIED IT CAME BACK FROM A BURGLARY ON DIRECT.

19 MS. DUKE-MIMS: WELL, YOUR HONOR, I FIND THAT
20 VERY MISLEADING.

21 THE COURT: I UNDERSTAND.

22 I DON'T THINK IT'S MISLEADING. IT WAS
23 APPROPRIATE.

24 MS. DUKE-MIMS: SO AT THIS POINT, NOBODY CAN GO
25 INTO KENJI MCQUEEN, NOBODY CAN GO INTO ODELL JOHNSON.

1 THE COURT: SHE CAN'T GO ANY FURTHER. IF YOU
2 WANT TO GO INTO IT ON RECROSS, OBVIOUSLY---

3 MS. DUKE-MIMS: NO, SIR.

4 THE COURT: ---BUT THAT -- I THINK HE'S ANSWERED
5 THE QUESTION. SHE BASICALLY RESPONDED TO SOMETHING THAT
6 CAME UP IN CROSS. HE'S ANSWERED IT, IT'S DONE.

7 MS. DUKE-MIMS: THANK YOU, YOUR HONOR.

8 THE COURT: ALL RIGHT.

9 LET'S BRING THE JURY BACK IN.

10 (WHEREUPON, STATE'S EXHIBIT NUMBER
11 20, PHOTOGRAPH, MARKED FOR IDENTIFICATION ONLY AT THIS
12 TIME.)

13 (JURY IN.)

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

15 THE COURT: ALL RIGHT.

16 CONTINUE.

17 MS. PELLIZZARI: THANK YOU, YOUR HONOR.

18 CONTINUED REDIRECT EXAMINATION

19 BY MS. PELLIZZARI:

20 Q JUST TWO MORE QUICK QUESTIONS, SERGEANT SMITH.

21 FROM YOUR INFORMATION THAT YOU GOT FROM VAN, THE
22 VICTIM IN THIS CASE, DID YOU HAVE INFORMATION ABOUT THE
23 MONEY THAT WAS STOLEN FROM HIM?

24 A YES, MA'AM.

25 Q DID YOU RECEIVE THAT INFORMATION BEFORE YOU FOUND

1 THAT MONEY IN CYCRUS TUCKER'S POCKET?

2 A YES, MA'AM.

3 Q AND, SERGEANT SMITH, LASTLY, I'M GOING TO SHOW YOU
4 WHAT HAS BEEN MARKED AS STATE'S EXHIBIT NUMBER TWENTY FOR
5 IDENTIFICATION AND ASK YOU IF YOU RECOGNIZE THAT
6 PHOTOGRAPH?

7 A I DO. I TOOK THAT PHOTOGRAPH.

8 Q WHAT IS THAT A PHOTOGRAPH OF?

9 A IT'S THE REAR SEAT OF THE FORD EXPLORER WITH THE
10 THREE WAFFLE HOUSE PLATES TO GO SITTING ON IT.

11 Q AND, SIR, IS THAT WHAT THE WAFFLE HOUSE PLATES LOOKED
12 LIKE ON DECEMBER 14TH OF 1999?

13 A YES, MA'AM.

14 Q YOUR HONOR, AT THIS TIME, WE WOULD MOVE STATE'S
15 EXHIBIT NUMBER 20 INTO EVIDENCE.

16 THE COURT: ANY OBJECTION?

17 MS. DUKE-MIMS: NO OBJECTION.

18 THE COURT: ALL RIGHT.

19 WITHOUT OBJECTION.

20 (WHEREUPON, STATE'S EXHIBIT NUMBER
21 20, PHOTOGRAPH, ENTERED INTO EVIDENCE AT THIS TIME WITHOUT
22 OBJECTION.)

23 MS. PELLIZZARI: SERGEANT, I DON'T HAVE ANY OTHER
24 QUESTIONS FOR YOU.

25 THANK YOU.

1 THE COURT: ANYTHING ELSE?

2 MS. DUKE-MIMS: NO, SIR.

3 THE COURT: ALL RIGHT.

4 YOU CAN STEP DOWN.

5 THANK YOU, SIR.

6 (WHEREUPON, THE WITNESS WAS
7 EXCUSED AT THIS TIME.)

8 MS. PELLIZZARI: YOUR HONOR, AT THIS TIME, THE
9 STATE RESTS.

10 THE COURT: ALL RIGHT.

11 LADIES AND GENTLEMEN, AS YOU HAVE HEARD, THE
12 STATE HAS NOW RESTED THEIR CASE. THERE ARE SOME MATTERS
13 THAT I'M REQUIRED TO TAKE UP WITH THE LAWYERS AT THIS
14 POINT. SO I'LL ASK YOU IF YOU'LL STEP TO THE JURY ROOM
15 WHILE I DO THAT. WE'LL PROBABLY TAKE A FEW MINUTES DOING
16 IT. SO IF YOU WANT TO GET A BREAK AND WALK AROUND AND GET
17 SOME AIR OR GET SOME REFRESHMENTS, YOU CAN. IF YOU WANT TO
18 TAKE A SMOKE BREAK -- I DON'T ENCOURAGE SMOKING, BUT
19 OBVIOUSLY, SOME OF YOU. THAT'S UP TO YOU IF YOU WANT TO,
20 OKAY. THANK YOU. JUST DON'T TALK ABOUT THE CASE. THAT'S
21 THE ONLY THING WE DON'T DO.

22 (JURY OUT.)

23 THE COURT: ALL RIGHT.

24 ANY MOTIONS?

25 MS. DUKE-MIMS: YES, YOUR HONOR.

1 AT THIS TIME, THE DEFENSE WOULD MAKE A MOTION FOR
2 A DIRECTED VERDICT ASKING THAT THE CASE BE DISMISSED
3 AGAINST MY CLIENT. EVEN WITH THE LIGHT -- EVEN GIVEN THE
4 LIGHT MOST FAVORABLE TO THE STATE AT THIS POINT, WE BELIEVE
5 THAT THE STATE DOES NOT HAVE SUFFICIENT EVIDENCE TO SUSTAIN
6 THE CHARGES OF BURGLARY IN THE FIRST DEGREE, ARMED ROBBERY,
7 AND TWO COUNTS OF KIDNAPPING.

8 PARTICULARLY IN REGARDS TO KETRA HEARON AND THE
9 KIDNAPPING CHARGE, YOUR HONOR, WE FEEL THAT -- IN HER
10 STATEMENT TO THE POLICE, SHE SAYS THAT SHE'S TOLD TO COME
11 INTO THE APARTMENT. SHE NEVER MENTIONS ANYONE TELLING HER
12 THAT SHE COULD NOT LEAVE THE APARTMENT. SHE DOESN'T
13 MENTION BEING HELD AT GUNPOINT AT ANY TIME. THE POLICE
14 COME TO THE DOOR. SHE GOES TO IT AND SHE WALKS OUT.

15 WE WOULD SPECIFICALLY ASK, IN REGARDS TO KETRA
16 HEARON, BUT WE ALSO FEEL THAT THE STATE HAS NOT MET ITS
17 BURDEN ON THE OTHER CHARGES AS WELL AND WE WOULD ASK FOR A
18 DIRECTED VERDICT.

19 THANK YOU, YOUR HONOR.

20 THE COURT: OKAY.

21 AS TO -- FIRST ON THE BURGLARY FIRST CHARGE, THE
22 TESTIMONY GIVEN FROM MR. DORN WAS THAT THE DEFENDANT
23 ENTERED HIS DWELLING WITHOUT CONSENT. HE TESTIFIED THAT
24 FROM HIS TESTIMONY AND FROM THE CIRCUMSTANCES AND THE
25 CONDUCT OF MR. JOHNSON, AS TESTIFIED TO BY MR. DORN, IN THE

1 DWELLING AND BEFORE ENTERING, THE JURY COULD REASONABLY
2 INFER THAT THERE WAS INTENT TO COMMIT A CRIME IN THE
3 DWELLING. THERE WAS TESTIMONY FROM MR. DORN AND MS. HEARON
4 AS TO BEING ARMED WITH A DEADLY WEAPON OR THREATENING THE
5 USE OF A DEADLY WEAPON OR DISPLAYING THE USE. THE
6 TESTIMONY WAS THAT MR. JOHNSON WAS A PARTICIPANT. AGAIN,
7 THEY ENTERED THE DWELLING, DID SO WITHOUT CONSENT.

8 ALSO, AGAIN, THERE'S TESTIMONY REGARDING THE
9 WEAPONS.

10 AS TO BURGLARY FIRST, AS TO BOTH VICTIMS, THE
11 STATE AGAIN HAS EVIDENCE IN THE RECORD AND, AS YOU KNOW,
12 COUNSEL, OBVIOUSLY, MY RULING HAS NO IMPLICATIONS AS TO THE
13 WEIGHT OF THE EVIDENCE, SIMPLY TO WHAT IS ACTUALLY IN THE
14 RECORD. AND I NOTE THAT THERE WAS -- THERE'S A RECENT CASE
15 I NOTICED WHERE ONE OF THE JUDGES WAS REVERSED ON QUESTION
16 OF CIRCUMSTANTIAL EVIDENCE AND I NOTICED THAT THIS EVIDENCE
17 IS ALL DIRECT EVIDENCE, SO I NEED TO -- I THINK I NEED TO
18 START PUTTING SOMETHING ON THE RECORD WHEN IT COMES TO THE
19 STRENGTH OF CIRCUMSTANTIAL EVIDENCE, BUT THIS WAS DIRECT
20 AND, OF COURSE, THERE WAS FAIRLY STRONG CIRCUMSTANTIAL
21 EVIDENCE ALSO REGARDING THE ISSUE OF INTENT.

22 AS TO ARMED ROBBERY, THE WITNESS ALSO HAS PUT OUT
23 -- TESTIFIED TO AS TO THE ISSUES OF THE ELEMENTS OF LARCENY
24 AND ROBBERY AND ALSO HAS TESTIFIED TO A DEADLY WEAPON BEING
25 INVOLVED IN THE USE IN THE ROBBERY ITSELF.

1 AS TO KIDNAPPING, THERE HAS BEEN TESTIMONY THAT
2 AS TO BOTH VICTIMS, THAT THEY WERE CONFINED, WHICH IS, AS
3 YOU KNOW, IS ONE OF THE MANY THINGS THAT ARE LISTED IN THE
4 KIDNAPPING STATUTE, AND THAT IT WAS NOT DONE WITH AUTHORITY
5 OF LAW.

6 BASED ON THAT, THERE IS SUFFICIENT EVIDENCE IN
7 THE RECORD ON ALL THREE TO DENY THE MOTION. THE MOTIONS
8 ARE DENIED.

9 SOLICITOR, DID YOU WANT TO PUT ANYTHING ON THE
10 RECORD AS TO THAT?

11 MS. PELLIZZARI: NO, SIR, YOUR HONOR.

12 THE COURT: ALL RIGHT.

13 ANY OTHER MOTIONS FROM THE DEFENSE?

14 MS. DUKE-MIMS: NO, SIR.

15 THE COURT: ALL RIGHT.

16 ANY MOTIONS FROM THE STATE AT ALL?

17 MS. PELLIZZARI: NO, SIR.

18 THE COURT: ALL RIGHT.

19 I HAVE A COUPLE OF MATTERS, AS YOU KNOW, TO TAKE
20 UP WITH MR. JOHNSON.

21 MR. JOHNSON,, WOULD YOU STAND UP, PLEASE, SIR.

22 MR. CLERK, WOULD YOU PUT HIM UNDER OATH FOR ME -- OH, NO
23 CLERK.

24 ALL RIGHT. JUST RAISE YOUR RIGHT HAND,

25 DEMARCO JOHNSON,

1 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:

2 THE COURT: OKAY.

3 COUNSEL, I HAVE -- WILL HAVE SOME QUESTIONS TO
4 ASK. THERE IS, OBVIOUSLY, NO CROSS-EXAMINATION. THESE ARE
5 ONLY FOR PURPOSES OF GOING FORWARD.

6 MR. JOHNSON, YOU UNDERSTAND FIRST IN THIS CASE
7 THAT THE STATE HAS CHARGED YOU WITH A CRIMINAL OFFENSE. SO
8 THAT MEANS THAT THEY HAVE THE BURDEN OF PROOF AND THAT
9 MEANS THAT THEY MUST PROVE EACH ELEMENT OF THEIR CHARGE TO
10 THIS JURY, MUST DO SO BEYOND A REASONABLE DOUBT.

11 DO YOU UNDERSTAND THAT?

12 THE DEFENDANT: YES, SIR.

13 THE COURT: WHAT THAT ALSO MEANS IS THAT YOU
14 DON'T HAVE TO PROVE ANYTHING. THERE'S ABSOLUTELY NOTHING.
15 EVEN IF YOU WERE NOT EVEN SITTING THERE, THEY STILL WOULD
16 HAVE TO PROVE EACH ELEMENT OF EACH CHARGE BEYOND A
17 REASONABLE DOUBT.

18 DO YOU UNDERSTAND THAT?

19 THE DEFENDANT: YES, SIR.

20 THE COURT: ALL RIGHT.

21 SO WHAT THAT MEANS AT THIS POINT IS THIS: THAT
22 IF YOU WISH TO CALL A CASE AT THIS TIME, IN OTHER WORDS, TO
23 CALL ANY WITNESSES ON YOUR BEHALF, YOU CAN, BUT YOU DON'T
24 HAVE TO.

25 DO YOU UNDERSTAND THAT?

1 THE DEFENDANT: YES, SIR.

2 THE COURT: HAVE YOU HAD A CHANCE TO GO OVER THAT
3 WITH YOUR LAWYERS?

4 THE DEFENDANT: YES, SIR.

5 THE COURT: AND HAVE THEY EXPLAINED IT TO YOU?

6 THE DEFENDANT: YES, SIR.

7 THE COURT: HAVE YOU BEEN SATISFIED WITH YOUR
8 LAWYERS?

9 THE DEFENDANT: YES, SIR.

10 THE COURT: DO YOU FEEL LIKE THEY HAVE DONE
11 EVERYTHING YOU WANTED THEM TO?

12 THE DEFENDANT: YES, SIR.

13 THE COURT: AND HAVE YOU HAD THEIR ADVICE IN THIS
14 MATTER?

15 THE DEFENDANT: YES, SIR.

16 THE COURT: ALL RIGHT.

17 AND AT THIS TIME, DO YOU FEEL THAT YOU ARE
18 CAPABLE, MENTALLY AND EMOTIONALLY, OF MAKING A DECISION AS
19 TO WHETHER TO CALL WITNESSES OR NOT?

20 THE DEFENDANT: YES, SIR.

21 THE COURT: ALL RIGHT.

22 NOW, THIS SOUNDS LIKE A STUPID QUESTION, BUT I
23 HAVE TO ASK THIS. ARE YOU UNDER THE INFLUENCE OF ANY DRUGS
24 OR ALCOHOL OR MEDICATION OF ANY KIND?

25 THE DEFENDANT: NO, SIR.

1 THE COURT: HAD ANY KIND OF SUBSTANCES OR
2 ANYTHING AT ALL THAT WOULD AFFECT YOUR ABILITY TO MAKE THIS
3 DECISION?

4 THE DEFENDANT: NO, SIR.

5 THE COURT: ALL RIGHT.

6 SO YOU FEEL THAT YOU ARE CAPABLE OF DECIDING IT?

7 THE DEFENDANT: YES, SIR.

8 THE COURT: OKAY.

9 HAVE YOU DECIDED WHETHER YOU WISH TO CALL ANY
10 OTHER WITNESSES IN YOUR CASE; AND, OF COURSE, I WILL ASK
11 YOU, BEFORE YOU TELL ME, YOU CAN TAKE A FEW MINUTES TO TALK
12 WITH YOUR LAWYERS ALSO IF YOU NEED TO.

13 FIRST, BEFORE YOU TELL ME, DO YOU WANT TO TALK
14 WITH YOUR LAWYERS FOR A FEW MINUTES?

15 THE DEFENDANT: YES, SIR.

16 THE COURT: OKAY.

17 LET ME TELL YOU WHAT ELSE YOU CAN TALK TO THEM
18 ABOUT, OKAY, AND WE'LL TAKE A SHORT BREAK TO LET YOU DO
19 THAT.

20 I WILL ALSO ASK YOU IF YOU WISH TO TESTIFY.

21 NOW, BY THE SAME THING THAT I'VE TOLD YOU A
22 MOMENT AGO, YOU CAN TESTIFY IF YOU WANT TO, BUT YOU DON'T
23 HAVE TO TESTIFY. YOU ARE NOT REQUIRED TO. AND IF YOU
24 DON'T, I WILL EITHER SAY NOTHING TO THE JURY OR I WILL GIVE
25 THEM AN INSTRUCTION WHICH, IN ESSENCE, SAYS THAT THEY CAN'T

1 CONSIDER THE FACT THAT YOU DIDN'T TESTIFY, CAN'T EVEN TALK
2 ABOUT IT IN THE JURY ROOM. AND I, FRANKLY, WILL DO
3 WHATEVER YOU CHOOSE ON THAT. I WILL EITHER GIVE THEM THE
4 INSTRUCTION OR NOT, DEPENDING ON WHAT YOU WANT. YOU CAN
5 ALSO TALK WITH YOUR LAWYERS ABOUT THAT, OKAY.

6 IF YOU TESTIFY, AS WE WENT OVER EARLIER, THERE
7 ARE SOME PRIOR CONVICTIONS ON YOUR RECORD THAT COULD BE
8 ASKED OF YOU. NOW, THEY WOULD BE USED -- THEY WOULD BE
9 ASKED ONLY TO AFFECT YOUR CREDIBILITY AND I, OF COURSE,
10 WOULD TELL THE JURY THAT THEY CAN BE ASKED ONLY FOR THAT
11 REASON.

12 AS I UNDERSTAND, THE TWO CONVICTIONS ARE A 1997
13 CONVICTION FOR ASSAULT AND BATTERY WITH INTENT TO KILL AND
14 A 1997 CONVICTION FOR ATTEMPTED ARMED ROBBERY, IS THAT
15 RIGHT?

16 MR. PASCOE: I'M SORRY, YOUR HONOR.

17 I TOLD MS. MIMS YESTERDAY THAT I HAD DISCOVERED
18 -- HE ALSO HAS A 1993 BURGLARY IN THE THIRD DEGREE
19 CONVICTION IN JUVENILE COURT FOR ADJUDICATION AND, OF
20 COURSE, UNDER THE RULES, IT SAYS THAT AN ADJUDICATION---

21 THE COURT: THAT'S RIGHT.

22 RULE 609 PROVIDES -- ALLOWS FOR JUVENILE
23 ADJUDICATION. ANY EXCEPTION TO THAT MS. MIMS?

24 MS. DUKE-MIMS: NO, SIR, YOUR HONOR.

25 THE COURT: MS. SAMPSON?

1 MS. SAMPSON: NO, SIR.

2 THE COURT: OKAY.

3 YOU UNDERSTAND THAT THERE'S A THIRD ONE THEN THAT
4 COULD ALSO BE USED. SO, IN ESSENCE, THEY COULD ASK YOU
5 ABOUT THE FACT THAT YOU HAVE A CONVICTION FOR ASSAULT AND
6 BATTERY WITH INTENT TO KILL, CONVICTION FOR ATTEMPTED ARMED
7 ROBBERY, AND A CONVICTION FOR BURGLARY IN THE THIRD DEGREE.

8 DO YOU UNDERSTAND THAT?

9 THE DEFENDANT: YES, SIR.

10 THE COURT: NOW, IF YOU DON'T -- AND, AGAIN, I'VE
11 TOLD YOU WHAT I COULD CHARGE THE JURY IF YOU DID NOT
12 TESTIFY.

13 ALL RIGHT. AGAIN, DO YOU FEEL LIKE YOU ARE
14 CAPABLE OF MAKING THAT DECISION ALSO?

15 THE DEFENDANT: YES, SIR.

16 THE COURT: OKAY. ALL RIGHT.

17 AGAIN, LET'S DO THIS. I'LL GIVE YOU A FEW
18 MINUTES TO TALK WITH YOUR LAWYERS ABOUT IT AND, COUNSEL,
19 ONE THING THAT WE COULD DO IS -- WELL, I DON'T KNOW WHAT TO
20 DO. I'M NOT SURE WHETHER TO SEND -- LET THE JURY GO ON TO
21 LUNCH WHILE WE DO THAT AND THEN JUST DETERMINE WHEN WE COME
22 BACK OR JUST WAIT A FEW MINUTES.

23 MS. DUKE-MIMS: IT WILL BE VERY QUICK, YOUR
24 HONOR.

25 THE COURT: OKAY.

1 MS. DUKES-MIMS: WE'LL PROBABLY GET IT ALL DONE
2 BEFORE LUNCH.

3 THE COURT: OKAY. OKAY.

4 WHY DON'T LET'S DO THIS THEN. TAKE A FEW MINUTES
5 AND TALK WITH HIM---

6 MS. DUKES-MIMS: YES, SIR.

7 THE COURT: ---AND THEN WE'LL COME BACK AND JUST
8 LET ME KNOW WHEN YOU HAVE HAD A CHANCE TO TALK WITH HIM,
9 OKAY?

10 MS. DUKE-MIMS: YES, SIR. I CERTAINLY WILL.

11 THE COURT: ALL RIGHT.

12 ANYTHING FROM THE STATE BEFORE WE RECESS THEN?

13 MS. PELLIZZARI: NO, SIR.

14 THE COURT: ALL RIGHT.

15 LET'S TAKE JUST A FEW MINUTES AND LET YOU TALK
16 WITH HIM, ALL RIGHT.

17 WE'LL STAND IN RECESS.

18 (RECESS.)

19 THE BAILIFF: ALL RISE.

20 THE COURT: THANK YOU. PLEASE BE SEATED.

21 ALL RIGHT.

22 BACK ON THE RECORD.

23 MR. JOHNSON, HAVE YOU HAD A CHANCE TO TALK
24 FURTHER WITH YOUR LAWYERS?

25 THE DEFENDANT: YES, SIR.

1 THE COURT: OKAY.

2 HAVE YOU DETERMINED, FIRST OF ALL, WHETHER YOU

3 WILL CALL A CASE?

4 THE DEFENDANT: WILL YOU REPEAT THAT?

5 THE COURT: YES.

6 HAVE YOU DECIDED IF YOU WILL CALL -- IF YOU WILL

7 PUT UP A CASE? IN OTHER WORDS, IF YOU WILL CALL WITNESSES?

8 THE DEFENDANT: NO, SIR.

9 THE COURT: YOU WILL NOT?

10 THE DEFENDANT: NO, SIR.

11 THE COURT: DOES THAT ALSO MEAN THAT YOU WILL NOT

12 TESTIFY YOURSELF?

13 THE DEFENDANT: YES, SIR.

14 THE COURT: OKAY.

15 AGAIN, YOU HAVE HAD A CHANCE TO TALK WITH YOUR

16 LAWYERS ABOUT IT?

17 THE DEFENDANT: YES, SIR.

18 THE COURT: AND, AGAIN, YOU HAVE BEEN SATISFIED

19 WITH THEIR ADVICE ON IT?

20 THE DEFENDANT: YES, SIR.

21 THE COURT: AND IS THIS YOUR DECISION MADE BY YOU

22 ALONE?

23 THE DEFENDANT: YES, SIR.

24 THE COURT: OKAY.

25 COUNSEL, LET ME ASK BOTH OF YOU. HAVE BOTH OF

1 YOU HAD A CHANCE TO GIVE HIM THE BEST ADVICE YOU FEEL YOU
2 COULD GIVE HIM AND FEEL LIKE HE'S UNDERSTOOD YOUR ADVICE
3 REGARDING THIS?

4 MS. MIMS?

5 MS. DUKE-MIMS: YES, YOUR HONOR.

6 THE COURT: MS. SAMPSON?

7 MS. SAMPSON: YES, YOUR HONOR.

8 THE COURT: AND DO BOTH OF YOU WISH TO COMMENT ON
9 WHETHER YOU CONCUR OR DON'T CONCUR IN HIS DECISION? I
10 ALWAYS GIVE THE LAWYERS A CHANCE -- MOST LAWYERS DON'T MAKE
11 ANY COMMENT EITHER WAY, BUT EVERY NOW AND THEN, YOU GET ONE
12 WHO HAS A BURNING DESIRE TO SAY SOMETHING ONE WAY OR
13 ANOTHER. IF YOU DO HAVE THAT BURNING DESIRE, YOU CAN SAY
14 SOMETHING, BUT IF YOU JUST WANT NOT TO MAKE A COMMENT,
15 THAT'S FINE.

16 MS. DUKE-MIMS: I HAVE NO COMMENT.

17 THE COURT: OKAY.

18 ALL RIGHT.

19 I FIND THAT MR. JOHNSON HAS WILLFULLY AND
20 VOLUNTARILY, FREELY AND INTELLIGENTLY DECIDED THAT HE WILL
21 NOT CALL A CASE, WHICH WILL NOT EVEN TESTIFY HIMSELF. HE
22 DOES SO WITH THE UNDERSTANDING OF THE REPERCUSSIONS ON BOTH
23 SIDES OF THESE ISSUES, DOES SO ON THE ADVICE OF VERY
24 COMPETENT COUNSEL. I HAVE DEALT WITH BOTH OF THESE
25 ATTORNEYS. THEY HAVE GOOD RECORDS; AND I HAVE ALSO FOUND

1 THEM, IN PERSONALLY DEALING WITH THEM, TO BE EXCELLENT
2 LAWYERS. SO -- AND, OF COURSE, UNDER THE INFLUENCE OF NO
3 DEBILITATING SUBSTANCES OR FACTORS, I FIND IT'S THE
4 APPROPRIATE DECISION BY THE DEFENDANT UNDER THOSE
5 CIRCUMSTANCES.

6 ALL RIGHT.

7 COUNSEL, WILL WE BE PREPARED TO GO AHEAD AND GO
8 TO THE JURY RIGHT AWAY OR DO YOU WANT TO TAKE A LUNCH BREAK
9 AND THEN COME BACK? EITHER WAY IS---

10 MR. PASCOE: WE'RE READY.

11 MS. DUKE-MIMS: WE ARE PREPARED, YOUR HONOR.

12 THE COURT: YOU'RE READY.

13 ALL RIGHT.

14 HAVE YOU HAD A CHANCE TO LOOK AT THE REVISED JURY
15 INSTRUCTIONS? THIS WOULD BE THE TIME -- I LIKE TO, BEFORE
16 WE GO INTO THE CHARGE, I LIKE THE LAWYERS TO GO AHEAD AND
17 MAKE THEIR OBJECTIONS IF THEY WANT TO. AND, OBVIOUSLY,
18 THIS WON'T DEPRIVE YOU OF THE CHANCE TO DO IT AFTER THE
19 CHARGE. SOMETIMES WHAT'S IN THE CHARGE COMES OUT,
20 HOPEFULLY, THE RIGHT WAY, BUT ONE NEVER KNOWS.

21 ANY FURTHER REQUESTS TO AMEND -- AND YOU NOTICE
22 WHAT I HAVE DONE IS I HAVE INCLUDED THE EXPERT TESTIMONY
23 LANGUAGE THAT WAS NOT THERE YESTERDAY. I HAVE REVISED THE
24 BURGLARY SECTION, AS REQUESTED BY THE STATE AND AGREED UPON
25 BY THE DEFENSE. AND I THINK EVERYTHING ELSE IS THE SAME.

1 ANY OTHER REQUESTS TO CHANGE, AMEND OR DELETE OR
2 OTHERWISE ALTER IT?

3 MS. PELLIZZARI: NO, SIR, NOT FROM THE STATE,
4 YOUR HONOR.

5 THE COURT: THE DEFENSE?

6 MS. DUKE-MIMS: JUST QUICKLY GOING OVER IT, YOUR
7 HONOR, NO, I DON'T SEE ANYTHING THAT WE NEED TO REVISE.

8 IS IT MY UNDERSTANDING THAT THIS WILL GO BACK TO
9 THE JURY?

10 THE COURT: YES. I'LL GIVE THE JURY A COPY.

11 ANYBODY WANT TO TAKE EXCEPTION TO THAT, FROM THE
12 STATE?

13 MS. PELLIZZARI: NO, SIR.

14 THE COURT: THE DEFENSE?

15 MS. DUKE-MIMS: NO, SIR, YOUR HONOR.

16 THE COURT: OKAY.

17 ALL RIGHT.

18 AND, BY THE WAY, WE ARE READY, IS THAT RIGHT?
19 EVERYBODY?

20 THE STATE, WHO WILL DO YOUR CLOSING?

21 MR. PASCOE: I AM.

22 THE COURT: WHO IS GOING TO OPEN ON THE LAW?

23 MR. PASCOE: WELL, I -- SINCE THEY DIDN'T PUT
24 ANYTHING UP, I GUESS I'VE GOT TO DO EVERYTHING. I'M GOING
25 TO DO THE LAW AND THE FACTS---

1 THE COURT: OKAY.

2 MR. PASCOE: ---SINCE THEY DIDN'T PUT ANYTHING
3 UP, I'LL DO EVERYTHING FIRST.

4 THE COURT: OKAY. GOOD.

5 ALL RIGHT.

6 LET'S BRING THEM IN.

7 OH, DID MR. JOHNSON WISH TO HAVE ME GIVE THE JURY
8 AN INSTRUCTION OR NOT ABOUT HIS NOT TESTIFYING?

9 MS. DUKE-MIMS: YES, YOUR HONOR. WE'D ASK THAT
10 YOU PLEASE GIVE THE JURY AN INSTRUCTION.

11 THE COURT: IS THAT RIGHT, MR. JOHNSON?

12 THE DEFENDANT: YES, SIR.

13 THE COURT: OKAY.

14 (JURY IN.)

15 THE BAILIFF: THE JURY IS PRESENT, YOUR HONOR.

16 THE COURT: ALL RIGHT.

17 ALL PARTIES AND ATTORNEYS ARE IN THE COURTROOM.

18 ALL JURORS HAVE RETURNED TO THEIR ASSIGNED SEATING AND WE
19 ARE READY TO PROCEED.

20 DEFENSE.

21 MS. DUKE-MIMS: YES, SIR.

22 THE COURT: DO YOU WISH TO REST ON THE RECORD?

23 MS. DUKE-MIMS: YES, SIR, YOUR HONOR. WE REST.

24 THE COURT: OKAY.

25 ALL RIGHT.

1 LADIES AND GENTLEMEN, AT THIS TIME, WE HAVE
2 COMPLETED WITH ALL OF THE EVIDENCE PRESENTED IN THE CASE
3 AND WE'LL NOW GO TO THE FINAL STAGE OF THE TRIAL WHICH IS
4 THE FINAL CLOSINGS FROM THE ATTORNEYS AND THEN I WILL GIVE
5 YOU A CHARGE IN A FEW MOMENTS AND IT WILL BE YOUR CASE IN
6 JUST A LITTLE WHILE.

7 NOW, THE ORDER OF THE CLOSINGS IS THIS. THE
8 STATE IS REQUIRED TO OPEN ON THE LAW AND THEY WILL DO SO,
9 FOLLOWED BY THEN THE DEFENSE WILL HAVE THEIR CLOSING
10 STATEMENT, AND THEN THE STATE WILL HAVE THE FINAL CLOSING
11 STATEMENT. AFTER THAT'S DONE, I WILL THEN GIVE YOU AN
12 INSTRUCTION.

13 THE STATE, ARE YOU READY?

14 MR. PASCOE: MAY IT PLEASE THE COURT.

15 THE COURT: YES, SIR.

16 MR. PASCOE: AND, ACTUALLY, WITH THE COURT'S
17 PERMISSION, I WILL -- I HAVE TO GIVE THE LAW AND THE FACTS
18 AT FIRST SINCE THE DEFENSE RESTED. IS THAT OKAY?

19 THE COURT: YOU ARE CORRECT.

20 MR. PASCOE: I DON'T GET LAST ARGUMENT.

21 THE COURT: THAT IS CORRECT. I APOLOGIZE. IT
22 DIDN'T OCCUR TO ME AND YOU ARE RIGHT.

23 AND I -- DEFENSE, YOU DO WISH TO TAKE THE
24 FINAL---

25 MS. DUKE-MIMS: OH, YES, SIR, WE'LL TAKE FINAL.

1 THANK YOU.

2 THE COURT: OKAY.

3 ALL RIGHT.

4 WELL, THEN MR. PASCOE GOES FIRST AND THE DEFENSE
5 GOES LAST.

6 MR. PASCOE: THANK YOU.

7 THE COURT: ALL RIGHT.

8 MR. PASCOE: MR. FOREMAN AND LADIES AND GENTLEMEN
9 OF THE JURY, GOOD MORNING. WE STILL HAVE FOUR OR FIVE
10 MINUTES LEFT TO THE MORNING HOUR.

11 I WANT TO START OFF BY THANKING EACH AND EVERY
12 ONE OF YOU FOR YOUR SERVICES THIS WEEK. IT'S OFTEN SAID
13 THAT JURY DUTY IS THE MOST IMPORTANT DUTY YOU CAN PERFORM
14 FOR YOUR COUNTRY IN TIMES OF PEACE AND I'D CERTAINLY CONCUR
15 WITH THAT, BUT MOST IMPORTANTLY, I WANT TO THANK YOU FOR
16 THE TREMENDOUS AMOUNT OF ATTENTION YOU'VE GIVEN THIS CASE.
17 IT HASN'T BEEN A LONG CASE.

18 AS MS. PELLIZZARI TOLD YOU, IT'S A SIMPLE CASE,
19 BUT WE'VE PUT IN SOME LONG HOURS AND YOU'VE HAD TO TAKE A
20 LOT OF BREAKS IN THAT BACK ROOM. SO THANK YOU FOR ENDURING
21 THAT.

22 LADIES AND GENTLEMEN, YOU KNOW FROM YOUR OWN
23 EXPERIENCES, WHETHER WATCHING THE NEWS OR WHATEVER, EACH
24 AND EVERYDAY CRIMES ARE BEING COMMITTED AND WHAT WE CAN DO
25 ABOUT IT IS WE CAN BRING PEOPLE RESPONSIBLE FOR COMMITTING

1 CRIMES TO A COURTROOM LIKE THIS AND HOLD THEM ACCOUNTABLE
2 FOR THEIR ACTIONS AND THAT'S EXACTLY WHAT THE STATE OF
3 SOUTH CAROLINA IS DOING FOR THE DEFENDANT DEMARCO JOHNSON.
4 AND YOU CAN UPHOLD YOUR END OF THE BARGAIN BY JUST DOING
5 WHAT YOU'VE ALREADY SWORN TO DO.

6 IF YOU WILL RECALL, THE MOST IMPORTANT THING
7 YOU'VE DONE UP UNTIL NOW IS YOU TOOK AN OATH. YOU TOOK AN
8 OATH THAT YOU WOULD PUT ASIDE ANY BIAS OR PREJUDICE THAT
9 YOU MAY HAVE EITHER AGAINST THE STATE OF SOUTH CAROLINA OR
10 THE DEFENSE AND BASE YOUR VERDICT, YOUR TRUTHFUL VERDICT,
11 ON JUST TWO THINGS: THE EVIDENCE AND THE LAW.

12 NOT ON SPECULATION, NOT ON ASSERTIONS, BUT ON THE
13 EVIDENCE AND THE LAW.

14 WHAT I'M GOING TO DO RIGHT NOW IS I'M GOING TO
15 TAKE ABOUT TEN MINUTES AND TALK ABOUT THE LAW IN THE CASE
16 AND THEN I'M GOING TO TALK ABOUT THE FACTS IN THIS CASE.
17 AND AS I TALK ABOUT THE LAW RIGHT NOW, LET ME GIVE YOU ONE
18 CAVEAT WHICH IS IF I EVER SAY ANYTHING THAT CONTRADICTS THE
19 LAW THAT JUDGE WESTBROOK GIVES YOU, YOU TAKE THE LAW
20 ACCORDING TO THE JUDGE, NOT THE LAW ACCORDING TO PASCOE.
21 BECAUSE JUST LIKE YOU'RE THE SOLE TRIER OF THE FACTS IN
22 THIS CASE, HE'S THE SOLE TRIER OF THE LAW.

23 THE FIRST THING I WANT TO TALK TO YOU ABOUT IS
24 ARMED ROBBERY.

25 ARMED ROBBERY IS THE TAKING OF PROPERTY FROM THE

1 PRESENCE OF ANOTHER BY MEANS OF FORCE OR INTIMIDATION WHILE
2 ARMED OR ACTING AS THOUGH YOU ARE ARMED WITH A DEADLY
3 WEAPON. THAT'S IT. THE TAKING OF PROPERTY FROM THE
4 PRESENCE OF ANOTHER BY MEANS OF FORCE OR INTIMIDATION WHILE
5 ARMED OR PURPORTING TO BE ARMED WITH A DEADLY WEAPON.

6 WALKING UP TO SOMEONE AT GUNPOINT AND TAKING TEN
7 DOLLARS OUT OF THEIR POCKET IS ARMED ROBBERY. GOING INTO
8 ANOTHER PERSON'S HOME, WAVING A GUN AROUND, AND TAKING
9 ITEMS, PUTTING IN THE MIDDLE OF THE FLOOR TO TAKE IS ARMED
10 ROBBERY.

11 NEXT, THE DEFENDANT IS CHARGED WITH BURGLARY IN
12 THE FIRST DEGREE. AND BURGLARY IN THE FIRST DEGREE IS
13 WHERE YOU ENTER ANOTHER PERSON'S DWELLING, APARTMENT, OR
14 HOME WITHOUT CONSENT WITH JUST THE INTENT TO COMMIT A
15 CRIME. JUST THE INTENT. YOU DON'T EVEN HAVE TO COMMIT IT.
16 WITH THE INTENT TO COMMIT A CRIME AND YOU DO SO WHILE ARMED
17 WITH A DEADLY WEAPON SUCH AS A PISTOL OR YOU BECOME ARMED
18 WHEN INSIDE OF THE HOUSE OR APARTMENT. ENTER A DWELLING,
19 WITHOUT CONSENT, WITH INTENT TO COMMIT A CRIME, ARMED WITH
20 A DEADLY WEAPON. THAT'S IT. ESCORTING SOMEONE TO THEIR
21 APARTMENT AT GUNPOINT AND MAKING THEM -- AND HAVING THEM
22 LET YOU IN THE APARTMENT, BURGLARY IN THE FIRST DEGREE.

23 EVEN IF YOU WENT INTO THE APARTMENT BY TRICKERY
24 -- WE WANT TO TALK ABOUT ASSERTIONS -- BY TRICKERY, BUT YOU
25 BECOME ARMED ONCE INSIDE THAT APARTMENT AND ATTEMPT A

1 CRIME, BURGLARY IN THE FIRST DEGREE.

2 THE LAST CRIME THE DEFENDANT IS CHARGED WITH IS
3 TWO COUNTS OF KIDNAPPING AND A LOT OF TIMES WHEN WE HEAR
4 THE TERM KIDNAPPING, WE THINK OF A DOG-DAY AFTERNOON OR A
5 HOSTAGE TAKING. BUT THAT'S NOT NECESSARILY A KIDNAPPING
6 IN SOUTH CAROLINA. ALL YOU NEED FOR A KIDNAPPING IN SOUTH
7 CAROLINA IS THE UNLAWFUL SEIZURE OF A PERSON, THE UNLAWFUL
8 CONFINEMENT OF A PERSON, RESTRAINING A PERSON'S MOVEMENT,
9 EVEN IF IT'S JUST FOR ONE SECOND. HOLDING SOMEONE AT
10 GUNPOINT AGAINST THEIR WILL IS KIDNAPPING. MAKING THEM SIT
11 ON THE SOFA AGAINST THEIR WILL WHERE THEY CAN'T EVEN WALK
12 AROUND IN THEIR OWN APARTMENT IS A KIDNAPPING. WHEN YOU
13 HAVE TO GET PERMISSION TO GO TO THE DOOR, THAT'S EVIDENCE
14 OF A KIDNAPPING.

15 NOW, IN SOUTH CAROLINA, MERELY BEING AROUND THE
16 CRIME DOES NOT AUTOMATICALLY LEAD TO ONE'S GUILT. IN OTHER
17 WORDS, MERE PRESENCE DOES NOT AUTOMATICALLY MEAN THAT A
18 DEFENDANT IS GUILTY. NOW, IT DOES NOT MEAN THAT IT IS NOT
19 EVIDENCE OF THE DEFENDANT'S GUILT. IT'S CERTAINLY EVIDENCE
20 OF GUILT. IT JUST MEANS YOU ARE NOT AUTOMATICALLY GUILTY.
21 AND THE JUDGE IS GOING TO CHARGE YOU THAT IN SOUTH
22 CAROLINA, IF TWO OR MORE PEOPLE SET OUT TO COMMIT A CRIME
23 TOGETHER, EACH IS GUILTY OF THAT CRIME NO MATTER WHAT THEIR
24 ROLES ARE. THE HAND OF ONE IS THE HAND OF ALL. AND I
25 THINK THE BEST EXAMPLE I CAN THINK OF FOR THE HAND OF ONE

1 IS THE HAND OF ALL IS THIS CASE. TARREL LIDE. YOU'VE
2 HEARD TESTIMONY ABOUT HIM OUT IN THE PARKING LOT, THE
3 LOOKOUT. EVEN THOUGH HE NEVER PUT A GUN TO VAN OR KETRA,
4 EVEN THOUGH HE NEVER WENT INTO THE APARTMENT, HE'S CHARGED
5 WITH THESE CRIMES AND HE'S JUST AS GUILTY AS DEMARCO
6 JOHNSON BECAUSE IN SOUTH CAROLINA, THE HAND OF ONE IS THE
7 HAND OF ALL.

8 NOW, IN THIS CASE, AS IN EVERY CASE, THE STATE
9 HAS THE BURDEN OF PROVING CRIMINAL INTENT. AND YOU CAN
10 INFER FROM THE CIRCUMSTANCES IN DETERMINING INTENT SUCH AS
11 THE FACT THAT THE DEFENDANT IS CAUGHT AT THE SCENE AND WHAT
12 I MEAN BY PROVING CRIMINAL INTENT, OF COURSE, IS THAT WE
13 CAN'T OPEN UP THE HEAD AND DISSECT THE BRAIN AND SAY THAT'S
14 WHAT A DEFENDANT MEANT TO DO. RATHER, THE WAY YOU PROVE IT
15 IS THOROUGH THE TESTIMONY OF THE WITNESSES, THE ACTIONS OF
16 THE DEFENDANT SUCH AS HIDING. YOU PROVE IT THROUGH THE
17 EVIDENCE. AND THERE ARE TWO TYPES OF EVIDENCE, BOTH OF
18 WHICH ARE EQUAL UNDER THE LAW AND BOTH EXISTS IN THIS CASE.

19 DIRECT EVIDENCE AND CIRCUMSTANTIAL EVIDENCE.

20 DIRECT EVIDENCE IS EVIDENCE THAT A WITNESS
21 ACTUALLY SEES, HEARS, TOUCHES, SMELLS. EXAMPLES OF THIS
22 WOULD BE SERGEANT DODGE, I SAW THE PERSON WITH THE BLUE
23 SWEATSHIRT OUT IN THE PARKING LOT. THAT WAS A DESCRIPTION
24 ON THE DISPATCH -- THAT AND A MAROON SWEATSHIRT -- OR
25 KETRA'S TESTIMONY, I SAW THE DEFENDANT WAVING THE GUN. HE

1 TOLD ME TO FINALLY GET THE DOOR WHEN I TOLD HIM THAT THE
2 POLICE HAD SEEN ME COME IN. THOSE ARE EXAMPLES OF DIRECT
3 EVIDENCE.

4 NOW, CIRCUMSTANTIAL EVIDENCE IS EVIDENCE IN WHICH
5 YOU CAN INFER SOMETHING FROM THE CIRCUMSTANCES AND ONE OF
6 THE BEST ANALOGIES I CAN THINK OF FOR CIRCUMSTANTIAL
7 EVIDENCE IS IF, BEFORE YOU GO TO BED ONE NIGHT, THERE'S
8 ABSOLUTELY NO SNOW ON THE GROUND AND IT'S NOT SNOWING, BUT
9 YOU WATCH EITHER THE WEATHER CHANNEL OR JOE PINNER, AND HE
10 TELLS YOU THERE'S A CHANCE OF SNOW TONIGHT. YOU WAKE UP
11 THE NEXT MORNING AND YOU LOOK OUT THE WINDOW, IT'S NOT
12 SNOWING, BUT THERE'S SNOW ALL OVER THE NEIGHBORHOOD. NOW,
13 THAT'S CIRCUMSTANTIAL EVIDENCE. NOW, WHILE YOU WERE
14 SLEEPING THAT NIGHT, IT SNOWED. IT'S NOT DIRECT EVIDENCE
15 BECAUSE YOU DIDN'T SEE IT SNOW, BUT IT'S CIRCUMSTANTIAL
16 EVIDENCE. AND SOME EXAMPLES OF CIRCUMSTANTIAL EVIDENCE IN
17 THIS CASE WOULD BE THE FACT THAT THE CO-DEFENDANT HAS TEN
18 DOLLARS IN HIS POCKET -- THE TEN DOLLARS THAT VAN HAD
19 STOLEN FROM HIM -- THE FACT THAT THE POLICE FIND A GUN IN
20 VAN'S BEDROOM THAT CYCRUS TUCKER HAD; AND THE FACT THAT
21 THEY FIND A GUN IN THE CLOSET, THE PLACE WHERE THE
22 DEFENDANT, DEMARCO JOHNSON WAS HIDING. AND I SUBMIT
23 ANOTHER EXAMPLE OF CIRCUMSTANTIAL EVIDENCE IS THE FACT THAT
24 THE DEFENDANT LIED WHEN HE WAS CAUGHT ABOUT HIS NAME, ABOUT
25 HIS DATE OF BIRTH, AND HIS ADDRESS. THESE ARE JUST SOME

1 EXAMPLES OF CIRCUMSTANTIAL EVIDENCE IN THIS CASE.

2 NOW, THE STATE -- THE JUDGE IS GOING TO TELL YOU
3 THAT YOU AND YOU ALONE ASSESS THE CREDIBILITY OF THE
4 WITNESSES IN THIS CASE. YOU CAN BELIEVE NONE, SOME, OR ALL
5 OF THE TESTIMONY YOU'VE HEARD. IT'S UP TO YOU AND THERE
6 ARE A NUMBER OF FACTORS YOU CAN CONSIDER IN DETERMINING THE
7 CREDIBILITY OF A WITNESS. AND THESE ARE JUST SOME OF THOSE
8 FACTORS:

9 WHAT WAS THE Demeanor OF THE WITNESS ON THE
10 WITNESS STAND? WERE THEY HOSTILE? WAS THE WITNESS
11 FORTHRIGHT OR HESITANT? WAS THE WITNESS' TESTIMONY
12 CONSISTENT? WAS THE WITNESS' TESTIMONY CORROBORATED BY
13 OTHER EVIDENCE? DID THE WITNESS HAVE A REASON TO LIE?
14 WHAT REASON DID THE POLICE OFFICERS AND KETRA AND VAN HAVE
15 TO LIE? AND IF THEY HAD ANY PRIOR CONVICTIONS, YOU COULD
16 HAVE CONSIDERED THAT. I SUBMIT THAT DOESN'T APPLY IN THIS
17 CASE.

18 NOW, AS YOU KNOW, THE STANDARD OF PROOF FOR WHICH
19 THE STATE MUST PROVE THE DEFENDANT'S GUILT IS PROOF BEYOND
20 A REASONABLE DOUBT. AND THE STATE OF SOUTH CAROLINA
21 ABSOLUTELY RELISHES THE OPPORTUNITY TO COME INTO THIS
22 COURTROOM AND PROVE THE DEFENDANT'S GUILT. THIS STANDARD
23 OF PROOF, ALONG WITH OUR JURY SYSTEM, IS WHAT MAKES OUR
24 SYSTEM OF JUSTICE THE BEST IN THE WORLD. AND IT'S
25 CERTAINLY NOT SOME IMPOSSIBLE STANDARD BECAUSE PEOPLE ARE

1 BOTH CONVICTED AND ACQUITTED IN THIS COUNTRY EACH AND
2 EVERYDAY. RATHER, THIS PHRASE MEANS EXACTLY AS IT SOUNDS.
3 IT'S NOT PROOF BEYOND ANY DOUBT. IT'S NOT PROOF BEYOND ANY
4 POSSIBLE DOUBT. IT'S PROOF BEYOND A REASONABLE DOUBT. AND
5 IN ESSENCE, WHAT THAT MEANS IS, AFTER YOU'VE LOOKED AT ALL
6 OF THE EVIDENCE, AFTER YOU'VE LOOKED AT WHAT'S IN FRONT OF
7 YOU, IF YOU ARE FIRMLY CONVINCED, JUST FIRMLY CONVINCED OF
8 THE DEFENDANT'S GUILT, YOU MUST FIND HIM GUILTY. AND I
9 SUBMIT THE EVIDENCE IN THIS CASE LEAVES YOU MUCH, MUCH MORE
10 THAN FIRMLY CONVINCED. HOW IS THERE ANY DOUBT, MUCH LESS A
11 REASONABLE DOUBT? HOW IS THERE ANY DOUBT THAT THE
12 DEFENDANT IS GUILTY OF ARMED ROBBERY, BURGLARY, AND
13 KIDNAPPING? HOW IS THERE ANY DOUBT, MUCH LESS A REASONABLE
14 DOUBT, THAT THE DEFENDANT PROFITS BY STICKING THIS IN
15 PEOPLE'S FACES, STATE'S EXHIBIT NUMBER TWO.

16 THE DEFENDANT'S TRADE IS HE'S A ROBBER AND THIS
17 IS THE TOOL OF HIS TRADE, STATE'S EXHIBIT NUMBER TWO, AND
18 THE ENFORCEMENT, THE TEETH THAT MAKE HIS DOG BITE IS HE
19 WALKS AROUND WITH A LOADED MAGAZINE LIKE STATE'S EXHIBIT
20 NUMBER 2-A. AND IF I'M WRONG, FIND HIM NOT GUILTY, LET HIM
21 GO. FIND HIM NOT GUILTY IF I'M WRONG.

22 BUT FACTS ARE STUBBORN THINGS. AND THE JUDGE IS
23 GOING TO TELL YOU THAT WE KNOW VERY FEW THINGS IN THIS
24 WORLD BEYOND ANY AND ALL CERTAINTY AND WE DON'T HAVE TO
25 PROVE THE DEFENDANT'S GUILT BEYOND ANY AND ALL CERTAINTY,

1 BUT IF THERE'S EVER A CASE, LADIES AND GENTLEMEN, IF
2 THERE'S EVER A CASE WHERE A DEFENDANT'S GUILT WAS PROVEN
3 BEYOND ANY AND ALL CERTAINTY, IT'S THE CASE OF DEMARCO
4 JOHNSON, THE DEFENDANT, SITTING RIGHT THERE.

5 FACTS ARE STUBBORN THINGS AND I'M GOING TO TALK
6 TO YOU ABOUT THOSE STUBBORN FACTS BECAUSE THE ONLY EVIDENCE
7 IN THIS CASE, THE ONLY EVIDENCE IS THAT THE DEFENDANT IS AN
8 ARMED ROBBER. BUT I'M GOING TO NIP ONE THING IN THE BUD
9 RIGHT NOW.

10 FIRST AND FOREMOST IS THAT WHILE THE STATE OF
11 SOUTH CAROLINA HAS THE SOLE BURDEN OF PROOF IN THIS CASE,
12 THE DEFENSE DIDN'T HAVE TO SAY A WORD. THEY DON'T EVEN
13 HAVE TO ASK ANY QUESTIONS. BUT ONCE THEY DO START THROWING
14 UP ASSERTIONS AND SPECULATION, IT'S SUBJECT TO SCRUTINY
15 JUST LIKE ANYTHING ELSE. JUST LIKE ANYTHING ELSE.

16 THE QUESTIONS WE ASK AS ATTORNEYS SUCH AS, ISN'T
17 IT TRUE THAT THE TEN DOLLARS IN YOUR POCKET OR IN THE
18 CO-DEFENDANT'S POCKET WAS TO BUY DRUGS FROM YOU. WHERE IS
19 THE EVIDENCE OF THAT? THAT'S FICTION. THAT'S
20 MAKE-BELIEVE. THAT'S NOT EVIDENCE. THERE'S NONE.
21 ABSOLUTELY NONE. BUT I SUBMIT THE DEFENSE DOESN'T WANT YOU
22 TO BASE YOUR VERDICT ON THE EVIDENCE AND THE LAW. THEY
23 WANT YOU TO BASE IT ON ASSERTIONS AND SPECULATIONS AND
24 WORSE YET, THEY WANT YOU TO BASE IT ON FICTION. ASSERTIONS
25 SUCH AS, WELL, AS YOU WILL RECALL IN MS. MIMS' OPENING

1 ARGUMENT, THIS IS NOT A RANDOM ROBBERY. WHERE IS THE
2 EVIDENCE OF THAT? IF YOU ARE GOING TO MAKE THAT ASSERTION,
3 BACK IT UP. THERE'S NO EVIDENCE OF IT. AND YOU KNOW WHAT,
4 WHO CARES. I DON'T CARE IF IT'S RANDOM. I DON'T CARE IF
5 IT'S INTENTIONAL. I DON'T CARE IF THEY THOUGHT VAN WAS A
6 DRUG DEALER, BUT HE'S NOT AND THEY ROBBED THE WRONG GUY,
7 IT'S STILL A CRIME AND HE'S STILL GUILTY. IT DOESN'T
8 MATTER.

9 ASSERTIONS LIKE, WELL, THE OFFICERS DIDN'T FIND
10 THE GUN, THE SECOND GUN UNTIL LATER. WHO CARES? WHO
11 CARES? ALL YOU NEED IS ONE GUN FOR A DEADLY WEAPON FOR
12 ARMED ROBBERY, BURGLARY FIRST, AND KIDNAPPING. WHO CARES?
13 THAT'S WHY IT DOESN'T MAKE SENSE TO LIE ABOUT A SECOND GUN
14 UNLESS IT'S TRUE. THE HAND OF ONE IS THE HAND OF ALL. SO
15 WHO CARES. BUT I SUBMIT WE KNOW WHOSE GUN THIS IS, DON'T
16 WE. WE KNOW IT'S THE DEFENDANT'S GUN, STATE'S EXHIBIT
17 NUMBER TWO. WE KNOW IT'S NOT VAN'S GUN OR KETRA'S WHO THE
18 IMPLICATION AND ASSERTIONS THROUGHOUT THE TRIAL UNTIL THE
19 LAST WITNESS WAS THEY MUST HAVE PLANTED IT OR SOMETHING,
20 BUT WE FIND OUT THAT THIS IS THE DEFENDANT'S GUN OR AT
21 LEAST HIS BROTHER'S GUN. AT LEAST WE KNOW WHERE THE
22 DEFENDANT GOT STATE'S EXHIBIT NUMBER TWO---

23 MS. DUKE-MIMS: OBJECTION, YOUR HONOR. I DON'T
24 THINK THAT CAME OUT AT ALL.

25 MR. PASCOE: IT CAME OUT ON -- ALL RIGHT. I'LL

1 MOVE ON IF I HAVE TO. I DON'T WANT TO BREAK---

2 THE COURT: ALL RIGHT.

3 LADIES AND GENTLEMEN, OBVIOUSLY, WE CAN'T GO BACK
4 AND CLEAR UP WHAT THE FACTS OF THE CASE WERE. YOU HEARD
5 THE TESTIMONY. REMEMBER, AGAIN, AS I TOLD YOU AT THE VERY
6 START OF THE TRIAL, THE LAWYERS' COMMENTS ARE NOT EVIDENCE.
7 THEY ONLY HAVE THE RIGHT TO COMMENT ON THE EVIDENCE AS THEY
8 PERCEIVE IT. IT'S UP TO YOU TO DETERMINE WHETHER YOU
9 RECALL THE TESTIMONY BEING THAT AND IF YOU DO, HOW MUCH
10 WEIGHT AND CREDIBILITY TO GIVE TO IT.

11 IF YOU RECALL -- IF YOU DO NOT RECALL THAT BEING
12 GIVEN, THEN GIVE NO WEIGHT AND CREDIBILITY TO IT. WE LEAVE
13 THAT TO YOU.

14 GO AHEAD, COUNSEL.

15 MR. PASCOE: THANK YOU, YOUR HONOR.

16 YOU KNOW WHERE STATE'S EXHIBIT NUMBER TWO CAME
17 FROM. IT WASN'T LONG AGO WHEN THAT TESTIMONY WAS TESTIFIED
18 ABOUT. IT WASN'T YESTERDAY. IT WAS JUST LATE THIS
19 MORNING. THIS IS THE DEFENDANT'S GUN. THIS HIS TOOL FOR
20 HIS TRADE.

21 AND SOME OF YOU MIGHT HAVE BEEN WONDERING,
22 PASCOE, WHY DID YOU PUT UP LONNIE GROSS TO TELL US THAT
23 THEY NEVER FIND FINGERPRINTS ON GUNS AND I DID THAT BECAUSE
24 I DIDN'T KNOW WHAT THEIR NEXT ASSERTION WAS GOING TO BE.
25 AND I WANTED TO MAKE SURE YOU KNEW THAT YOU NEVER FIND OR

1 ALMOST NEVER FIND FINGERPRINTS ON GUNS BECAUSE I DIDN'T
2 KNOW WHAT WAS NEXT BECAUSE I'D SUBMIT, THAT THE ASSERTIONS
3 WERE NOT ONLY BASELESS, BUT AT TIMES DOWN RIGHT OFFENSIVE.

4 I GUESS WHEN THE LAW IS NOT ON YOUR SIDE AND THE
5 FACTS AREN'T ON YOUR SIDE, THE ONLY THING LEFT TO DO FOR
6 THE DEFENSE IS DEFAME THE VICTIM. VAN IS A DRUG DEALER.
7 YEAH. NO EVIDENCE OF IT. NONE.

8 KETRA, DRUG DEALER. DEFAME THE VICTIM.

9 DO YOU KNOW WHY THEY'RE DRUG DEALERS? BECAUSE
10 SOMEWHERE IN HERE, THEY OWN A LITTLE STEREO. REPEATEDLY,
11 ASKED THAT. THAT'S NOT A DEFENSE. THAT'S OFFENSIVE.
12 THAT'S WHAT IT IS. LOOK AT MY DRUG DEALER'S CAR, HIS
13 TRUCK. STATE'S EXHIBIT NUMBER FOUR. THAT'S MY DRUG DEALER
14 VICTIM. THAT'S WHAT HE DRIVES. THANK GOODNESS HE WASN'T
15 DRIVING WHAT THE GUN-TOTING DEFENDANTS DRIVE AROUND IN,
16 STATE'S EXHIBIT NUMBER 14, OR THEY WOULD HAVE BEEN CALLING
17 HIM A DRUG LORD.

18 IF YOU'RE GOING TO MAKE AN ASSERTION ABOUT A
19 VICTIM LIKE THAT, THEY'VE ALREADY BEEN VICTIMIZED ONCE,
20 THEY'VE ALREADY HAD THIS SHOVED IN THEIR FACE, BUT IF YOU
21 ARE GOING TO DO SOMETHING LIKE THAT, BACK IT UP. THEY HAVE
22 BEEN VICTIMIZED ONCE AND NOW THEY HAVE TO COME IN HERE AND
23 BE VICTIMIZED AGAIN. AND YOU DON'T THINK IT TOOK GUTS TO
24 GET ON THAT WITNESS STAND. YOU SAW HOW IT TAKE GUTS. IT
25 TOOK GUTS FOR THEM TO GET UP THERE AND FACE THEIR ATTACKER,

1 THEIR ASSAILANT, AND THEY DID IT AND THEY TOLD THE TRUTH.
2 THEY TOLD THE TRUTH.

3 AND AS I SAID, THE DEFENDANT'S GUILT IN THIS CASE
4 ISN'T PROVEN JUST BEYOND A REASONABLE DOUBT, IT'S PROVEN
5 BEYOND ANY DOUBT.

6 NOW, I'M JUST GOING TO TAKE THE LAST MOMENTS OF
7 MY TIME AND TALK ABOUT WHY IT'S BEYOND ANY DOUBT.

8 FIRST, YOU HAVE THE TESTIMONY OF VAN. HIS
9 TESTIMONY BY ITSELF CONVICTS THE DEFENDANT. BY ITSELF.
10 WHAT DOES HE TELL YOU? KETRA'S GONE TO CLASS. I'M GOING
11 TO THE GYM AROUND 9 O'CLOCK IN THE MORNING TO GET INTO MY
12 TRUCK. TWO MEN COME UP TO ME -- THE DEFENDANT, AND A MAN
13 CYCRUS TUCKER, WEARING THE GRAY SWEATSHIRT THAT'S IN
14 EVIDENCE, THE DEFENDANT WEARING THE BURGUNDY ONE -- PUT A
15 GUN TO ME, TAKE TEN DOLLARS OUT OF MY POCKET. RUMMAGE
16 THROUGH MY CAR WHEN I'M AT GUNPOINT. ORDERED ME TO TAKE
17 THEM TO MY APARTMENT. I GET THERE AND DEMARCO JOHNSON, THE
18 DEFENDANT, IS TELLING ME THAT THAT'S NOT MY APARTMENT AND I
19 SAY, YES, IT IS, AND I PULL OUT THE KEY AND OPEN THE DOOR
20 AND THE DEFENDANT(SIC) GETS BLAMED ON CROSS-EXAMINATION FOR
21 ALLOWING THEM INTO HIS APARTMENT WHEN HE'S BEING HELD AT
22 GUNPOINT. THAT MAKES A LOT OF SENSE. WHAT DOES HE TELL
23 YOU? THEY ARE SEARCHING THROUGH HIS APARTMENT FOR
24 SOMETHING. THEY ARE GATHERING UP ITEMS. HIS WORST
25 NIGHTMARE HAPPENS. KETRA COMES HOME. SHE'S ORDERED ON THE

1 SOFA AT GUNPOINT, NOT ALLOWED TO MOVE. WHAT ELSE DOES HE
2 TELL US? FINALLY, THE POLICE ARRIVE. KNOCK ON THE DOOR
3 AND YOU KNOW THE REST. KETRA GOES TO THE DOOR. THE POLICE
4 HAVE HER OUT. CYCRUS TUCKER HANDS THE DEFENDANT IN THE
5 BEDROOM STATE'S EXHIBIT NUMBER ONE BECAUSE CYCRUS TUCKER IS
6 NOT THE LEADER. YOU HEARD THAT. DEMARCO JOHNSON IS.
7 CYCRUS TUCKER IS SPASMING. THE POLICE WERE THERE. THAT'S
8 WHY HE GIVES HIM THE GUN. WHY, WHY IS VAN GOING TO LIE
9 ABOUT THAT? IF HE'S GOING TO LIE AND SAY THAT THEY ARE
10 ARMED ROBBERS, HE'S NOT GOING TO SAY HE HANDED ME THE GUN.
11 AND WHAT DOES VAN DO? HE DOES WHAT YOU'RE SUPPOSED -- WHAT
12 YOU SHOULD HAVE DONE. HE PUTS THE GUN DOWN AND GOES OUT,
13 BUT HE GETS BLAMED FOR THAT, TOO, ON CROSS-EXAMINATION.
14 THEY EXPECTED VAN TO WALK OUT WITH A PARKING LOT FULL OF
15 POLICE OFFICERS WITH THEIR GUNS DRAWN WITH STATE'S EXHIBIT
16 NUMBER ONE.

17 NOW, WHAT SENSE DOES THAT MAKE UNLESS YOU WANT TO
18 GET SHOT? NONE.

19 HIS TESTIMONY BY ITSELF IS PROOF BEYOND A
20 REASONABLE DOUBT. BUT HE'S CORROBORATED BY KETRA. KETRA
21 GOES AND TAKES AN EXAM, COMES HOME, SEES POLICE, SEES
22 SHADES DOWN, KNOWS SOMETHING IS WRONG, STARTS TO OPEN THE
23 DOOR. THE DOOR IS OPENED. SHE TESTIFIES THE DEFENDANT
24 SAYS COME ON IN AT GUNPOINT, SIT DOWN. WHAT DOES VAN TELL
25 HER IMMEDIATELY? WHAT'S HER TESTIMONY AND WHAT DOES SHE

1 TELL THE POLICE THAT DAY? SIT DOWN, THEY ARE ROBBING US.
2 AND SHE DOES SO. THE DEFENDANTS RUMMAGING, PARTICULARLY,
3 THE DEFENDANT THROUGH THE APARTMENT. FINALLY, THE POLICE
4 KNOCK AT THE DOOR. SHE HAS TO GET PERMISSION TO ANSWER THE
5 DOOR BY LYING TO THEM. SHE'LL DO ANYTHING TO GET OUT OF
6 THAT APARTMENT. AND SHE SAYS, THEY SAW ME COME IN HERE SO
7 I HAVE TO ANSWER THE DOOR. SHE OPENS THE DOOR; SHE CAN'T
8 EVEN TALK. THE POLICE MOVE HER TO THE SIDE AND, AGAIN, YOU
9 KNOW THE REST. I'M NOT GOING TO HASH IT OUT. I'LL TALK
10 ABOUT IT JUST A SECOND. YOU KNOW THE REST. THEIR
11 TESTIMONY BY ITSELF WAS PROOF BEYOND A REASONABLE DOUBT,
12 EVEN IF THE DEFENDANTS WEREN'T CAUGHT UNTIL SIX MONTHS
13 LATER WITH NO WEAPONS. IT'S LIKE INVESTIGATOR SMITH SAID,
14 USUALLY YOU DON'T EVEN HAVE THE WEAPONS IN ARMED ROBBERY
15 CHARGES, BUT WHAT MAKES THEIR CASE BEYOND ANY DOUBT IS THAT
16 THE DEFENDANTS ARE CAUGHT AT THE SCENE AND THE
17 CORROBORATION OF THE POLICE OFFICERS AT THE SCENE.

18 VERY QUICKLY, JUST GOING -- GLOSSING THROUGH IT
19 VERY QUICKLY.

20 AT APPROXIMATELY 9 O'CLOCK IN THE MORNING, THE
21 POLICE ARE DISPATCHED TO THE TRENTON COURT APARTMENTS.
22 THEY ARE LOOKING FOR AN ARM ROBBERY, MAN IN BURGUNDY, MAN
23 IN BLUE. SERGEANT DODGE GETS THERE SOMETIME RIGHT AFTER
24 NINE AND HE SEES A MAN IN BLUE. AGAIN, YOU'LL HAVE THIS
25 SWEATSHIRT TO TAKE BACK. THAT'S TARREL LIDE. HE ALSO SEES

1 THE FORD EXPLORER. HE KNOWS SOMETHING IS UP AND HE DETAINS
2 TARREL LIDE. AND, I SUBMIT, TARREL LIDE IS THE LOOKOUT.
3 THAT'S THE ONLY REASON HE'S THERE. THAT'S IT. BUT THE
4 REASON HE COULDN'T GET AWAY IS BECAUSE THAT PLACE GOT
5 SWAMPED WITH POLICE BEFORE HE KNEW WHAT TO DO. PEARSON,
6 DODGE, CAPTAIN PRICHARD, AND A NUMBER OF DEPUTIES ARE ON
7 THE SCENE. THEY FINALLY END UP AT ROOM . THE DOOR IS
8 OPENED BY KETRA. AND WHAT DID THE OFFICERS TESTIFY ABOUT?
9 PARTICULARLY, THE MAIN OFFICER THERE. KETRA OPENS THE
10 DOOR. IS EVERYTHING OKAY, MA'AM? IS THERE ANYBODY IN
11 THERE. KETRA CAN'T EVEN SPEAK SHE'S SO NERVOUS. THE
12 OFFICER KNOWS SOMETHING IS GOING ON. HE SAYS GET OUT AND
13 HE MOVES HER TO THE SIDE AND THE FIRST WORD OUT OF HER
14 MOUTH IS THEY'VE GOT MY BOYFRIEND. THEY HAVE ALREADY
15 SOMEHOW, ACCORDING TO THE DEFENSE, BASED ON THEIR
16 SPECULATION AND FICTION, ELABORATED SOME ARMED ROBBERY
17 CHARGE AGAINST DEMARCO JOHNSON. THEY'VE GOT MY BOYFRIEND.
18 THEY TAKE KETRA ASIDE. WHAT DID THE POLICE WANT TO KNOW
19 FROM KETRA, THE VICTIM? ALL RIGHT. HOW MANY ARE IN THERE?
20 SHE TELLS HIM HOW MANY, THREE. JUST LIKE DISPATCH. WHAT
21 ARE THEY WEARING? CONSISTENT WITH DISPATCH. HOW MANY
22 WEAPONS? TWO. THAT'S WHAT THE POLICE KNEW. THEY KNEW
23 THERE WERE TWO WEAPONS IN THERE. THEY START YELLING, THEY
24 SURROUND THE AREA. THEY ARE YELLING, COME OUT, COME OUT,
25 AND WHAT HAPPENS? VAN COMES OUT. WHY? BECAUSE THE

1 DEFENDANTS ARE HIDING. CYCRUS IS SPASMING AND JOHNSON IS
2 HIDING IN A CLOSET. VAN COMES OUT AND THE POLICE DO WHAT
3 THEY ARE SUPPOSED TO UNFORTUNATELY. THEY TAKE HIM DOWN.
4 THEY'RE NOT GOING TO TAKE ANY CHANCES, EVEN THOUGH HE'S
5 WEARING ORANGE, AND THEY CUFF HIM. AND DO YOU REMEMBER ON
6 CROSS-EXAMINATION OF SERGEANT DODGE -- ONCE AGAIN, THE
7 QUESTIONS ARE NOT EVIDENCE, THE ANSWER IS -- AND MR. DORN
8 HE WASN'T UPSET THAT YOU'RE EVEN CUFFING HIM? YEAH, HE WAS
9 IRRITATED. THAT WAS THE ANSWER. HE WAS IRRITATED AND HE
10 WANTED TO KNOW WHY WE WERE CUFFING HIM. AND I TOLD HIM WE
11 WERE DOING IT FOR HIS SAFETY BECAUSE, AGAIN, THE OFFICERS
12 DON'T -- THEY ARE NOT A HUNDRED PERCENT SURE. THEY ARE NOT
13 GOING TO TAKE ANY CHANCES. THEY TAKE VAN AROUND; KETRA
14 IDENTIFIES HIM AND THEN THEY UN-CUFF HIM.

15 WHAT HAPPENS NEXT? THE OFFICERS SEE -- FINALLY
16 CYCRUS TUCKER COMES OUT WITH HIS HANDS UP. HE'S BEEN
17 CAUGHT. AND DOES THE DEFENDANT COME OUT VOLUNTARILY? DOES
18 HE COME OUT WHEN THE POLICE OFFICERS ARE YELLING? IN FACT,
19 SERGEANT DODGE TESTIFIED HE WASN'T SURE WHETHER THE THIRD
20 PERSON WAS IN THERE. SO HE WENT IN WITH HIS GUN DRAWN TO
21 HIS SIDE AND HE SEES THE DEFENDANT. HE TESTIFIED UP
22 AGAINST THE WALL LIKE HE'S TRYING TO HIDE. SERGEANT DODGE
23 IMMEDIATELY EXITS THE ROOM AND TELLS THE DEFENDANT TO COME
24 OUT. HE EXITS JUST IN CASE HE'S ARMED -- HE'S STILL ARMED.
25 AND FINALLY, THE DEFENDANT JOHNSON COMES OUT AND IS PLACED

1 UNDER ARREST.

2 KETRA AND VAN GIVE STATEMENTS TO THE POLICE AT
3 THE SCENE. THEY TELL THEM AT THE SCENE, AS OFFICER
4 SWICEGOOD TOLD YOU, THAT THE TEN DOLLARS WAS STOLEN AND
5 ABOUT THE OTHER EVENTS AND THEY GET TO SPEND THE REST OF
6 THEIR DAY AT THE RICHLAND COUNTY SHERIFF'S DEPARTMENT.

7 HOW MUCH FUN IS THAT FOR THESE TWO VICTIMS?

8 AND WHAT DOES DEMARCO JOHNSON DO? HE LIES. HE
9 LIES ABOUT HIS NAME. HE LIES ABOUT HIS DATE OF BIRTH. HE
10 LIES ABOUT HIS ADDRESS.

11 AND TO SUM IT ALL UP, LADIES AND GENTLEMEN, THE
12 REASON HE LIES AND I'M NOT GOING TO GET INTO -- YOU HEARD
13 THE EVIDENCE ABOUT HOW THE GUNS ARE FOUND AND IT DOESN'T
14 MATTER, BUT WHY DOES HE LIE? IT'S JUST LIKE MS. PELLIZZARI
15 TOLD YOU, THE DEFENDANT GOT CAUGHT WITH HIS HANDS IN THE
16 COOKIE JAR AND IT WAS NOTHING ELSE FOR HIM TO DO.

17 IN CLOSING, I WANT TO AGAIN THANK YOU FOR
18 ALLOWING ME TO GET UP HERE AND ARGUE AND FOR YOUR
19 TREMENDOUS ATTENTION DURING THE CLOSING ARGUMENT. AND IF I
20 COULD, I WANT TO THROW ONE LAST THING OUT AT YOU WHICH IS
21 THAT WHILE THERE ARE NO CLASSES ON HOW YOU CAN BE A GOOD
22 JUROR, I SUBMIT EACH AND EVERY ONE OF YOU HAVE BEEN
23 TRAINING FOR THIS JOB YOUR WHOLE LIFE. SOME OF YOU HAVE
24 BEEN TRAINING IN TEACHING AND CONSTRUCTION, AS PARENTS, AND
25 THIS IS A DIVERSITY OF EXPERIENCE YOU'RE ASKED TO BRING

1 TOGETHER, USE YOUR COMMON SENSE, AND RENDER A VERDICT.

2 VERDICT COMES FROM THE LATIN WORD VERDICTO. IT
3 MEANS TO SPEAK THE TRUTH. SO, IN ESSENCE, ALL I'M ASKING
4 YOU TO DO IS TO TELL US WHAT THE TRUTH IS ABOUT DECEMBER
5 THE 14TH AND IT'S IMPORTANT THAT YOU TELL US THE TRUTH
6 BECAUSE I DON'T HAVE THE LAST WORD. DEFENSE COUNSEL
7 DOESN'T HAVE THE LAST WORD. JUDGE WESTBROOK DOESN'T HAVE
8 THE LAST WORD. ONLY YOU DO. YOU HAVE THE LAST WORD AS TO
9 WHETHER WE ARE GOING TO HOLD THE DEFENDANT ACCOUNTABLE FOR
10 STICKING THIS IN PEOPLE'S FACES OR ARE WE GOING TO LET HIM
11 GO BY SLANDERIZING THE VICTIMS.

12 AND I RESPECTFULLY ASK THAT YOUR LAST WORD, HOLD
13 THE DEFENDANT ACCOUNTABLE TO HIS ACTIONS AND THAT YOUR LAST
14 WORD BE THAT THE DEFENDANT IS GUILTY OF BURGLARY IN THE
15 FIRST DEGREE, ARMED ROBBERY, AND TWO COUNTS OF KIDNAPPING.

16 THANK YOU AGAIN.

17 MS. DUKE-MIMS: THANK YOU, YOUR HONOR.

18 MAY IT PLEASE THE COURT.

19 FIRST OF ALL, LADIES AND GENTLEMEN, I WOULD LIKE
20 TO LET YOU KNOW THAT I'M NOT HERE TO INSULT YOUR
21 INTELLIGENCE. AS I TOLD YOU WHEN I FIRST STOOD UP HERE TO
22 TALK TO YOU, IF THIS CASE WERE THAT SIMPLE, WE WOULDN'T BE
23 HERE. WE WOULDN'T NEED YOU. BUT IT'S NOT.

24 WHEN I ALSO SPOKE TO YOU, I THINK I MENTIONED
25 THAT -- I ASKED YOU, AS YOU LISTEN TO THE EVIDENCE, TO

1 SIMPLY APPLY YOUR COMMON SENSE. APPLY WHAT YOU KNOW ABOUT
2 LIFE AS YOU LISTEN TO THE EVIDENCE.

3 YOU'VE BEEN AN EXTREMELY ATTENTIVE JURY AND WE
4 ARE VERY GRATEFUL FOR THAT. WE THANK YOU VERY MUCH FOR
5 THAT. I KNOW THIS ISN'T ALWAYS EASY AND WE APPRECIATE
6 THAT. I JUST HOPE AT THE SAME TIME YOU WERE ABLE TO SEE
7 THAT A LOT OF THESE THINGS DIDN'T ADD UP AND A LOT OF WHAT
8 WE SAID DOESN'T MAKE SENSE.

9 PRETTY MUCH THE ONLY EVIDENCE THAT THE STATE HAS
10 SHOWN YOU THAT AN ARMED ROBBERY, A BURGLARY, AND A
11 KIDNAPPING OCCURRED THAT DAY IS TESTIMONY FROM TWO
12 EYEWITNESSES, NORMAN VAN DORN AND KETRA HEARON.

13 AND, LADIES AND GENTLEMEN, I SUBMIT TO YOU THAT
14 EVEN THOSE TWO WITNESSES DON'T HAVE THEIR STORIES
15 COMPLETELY STRAIGHT. I JUST WANT TO GO OVER A LITTLE BIT
16 OF THAT WITH YOU.

17 YOU FIRST OF ALL HAVE MR. VAN DORN WHO TELLS YOU
18 THAT HE SEES TWO GUNS. THERE ARE TWO GUNS IN THE
19 APARTMENT. BUT WHEN YOU LOOK AT KETRA HEARON, IN HER
20 STATEMENT ON DECEMBER 14TH OF '99, SHE MENTIONS ONE GUN.
21 DECEMBER 14TH IS THE DATE SHE GAVE THAT STATEMENT -- OVER A
22 YEAR AGO. AND SHE MENTIONS SEEING ONE GUN. THAT'S
23 INCONSISTENT, LADIES AND GENTLEMEN.

24 YOU ALSO HAVE MR. DORN TELLING YOU THAT WHEN
25 KETRA CAME INTO THE APARTMENT WHILE THE OTHER GUYS WERE

1 THERE, HE SAID SIT DOWN, WE ARE BEING ROBBED.

2 WELL, AS YOU SAW WITH MS. SAMPSON'S
3 CROSS-EXAMINATION OF MS. KETRA HEARON, SHE DOES NOT MENTION
4 IN HER STATEMENT ANYWHERE, WE'RE BEING ROBBED. NOWHERE IN
5 HER STATEMENT DOES SHE SAY, DORN TOLD ME TO SIT DOWN, WE'RE
6 BEING ROBBED. SHE SAYS HE SAYS COME IN AND SIT DOWN. IT'S
7 NOT IN THERE, LADIES AND GENTLEMEN.

8 THEY BOTH TELL YOU AND THIS WAS PRETTY -- I
9 THOUGHT THIS WAS KIND OF INTERESTING. IT WAS IMPORTANT
10 THAT YOU KNEW THAT THE BLINDS WERE DOWN THAT DAY, BUT THEY
11 BOTH REALLY WANTED YOU TO KNOW THAT THEY OPENED THE BLINDS.
12 SO WHAT DO THEY DO? EACH ONE TELLS YOU THEY OPENED THE
13 BLINDS THAT DAY.

14 YEAH, MR. DORN THAT GETS UP HERE FIRST AND SAYS,
15 I OPENED THE BLINDS BEFORE I WENT OUT. THEN, MS. HEARON
16 COMES UP AND SAYS, NO, I OPENED THE BLINDS BEFORE I WENT TO
17 SCHOOL THAT DAY. PLEASE REMEMBER THAT THESE GUYS LIVE
18 TOGETHER. THEY'VE HAD A YEAR TO THINK ABOUT THIS. AND
19 WHILE THEIR STORIES ARE VERY INCONSISTENT INITIALLY, I WANT
20 YOU TO REMEMBER THAT. DECEMBER 14TH, '99, IS WHEN THEY
21 GAVE THEIR INITIAL STATEMENTS. I SUBMIT TO YOU THAT'S THE
22 TIME WHEN OUR MEMORY IS FRESH. THAT'S THE TIME WHEN WE'RE
23 GIVING THE ACCURATE STATEMENTS. THEY'VE HAD OVER A YEAR
24 NOW TO THINK ABOUT THIS AND TO GO OVER THIS AND IT'S STILL
25 NOT CONSISTENT.

1 THERE'S MUCH MORE TO THIS CASE THAT DOESN'T MAKE
2 SENSE AND I WANT US TO STEP BACK AND JUST THINK ABOUT WHAT
3 MR. DORN SAYS AND HIS STATEMENT ON THEIR FACE.

4 FIRST OF ALL, WE ASK, HOW DID -- HOW DID THE
5 PEOPLE WHO WERE ROBBING YOU GET INTO YOUR HOUSE. HOW DID
6 THEY GET THERE? WELL, HE SAYS, I TOOK THEM TO THE DOOR.
7 AND I WANT YOU TO STOP AND THINK ABOUT THAT FOR ONE MINUTE.
8 YOU'RE OUTSIDE AT 9 O'CLOCK IN THE MORNING. IT'S BROAD
9 DAYLIGHT. YOU'RE IN AN APARTMENT COMPLEX. THE OFFICERS --
10 ONE OF THE OFFICERS HAS ALREADY MENTIONED HEAVY TRAFFIC
11 THROUGH THAT AREA, YET, A ROBBER WANTS YOU TO TAKE THEM TO
12 YOUR HOUSE. I DON'T THINK I WOULD WALK THEM TO MY
13 APARTMENT. I THINK I WOULD START SCREAMING OR I WOULD SAY
14 I LEFT MY KEYS OUT OR I WOULD MAKE UP ANY MYRIAD OF REASONS
15 NOT TO GET TO THE APARTMENT, LADIES AND GENTLEMEN, BUT, NOT
16 ONLY, DOES HE TAKE THEM TO AN APARTMENT, HE WANTS YOU THINK
17 THAT HE LET'S THEM IN THE APARTMENT. AND I ASKED, WELL,
18 WHERE WERE YOUR KEYS? THEY WERE INSIDE MY SWEATSHIRT.
19 COULD ANYBODY SEE YOUR KEYS? NO, THEY COULDN'T.

20 SO HE'S GOT KEYS TUCKED AROUND HIS NECK INSIDE
21 THIS SWEATSHIRT. NOBODY CAN SEE THESE KEYS. YET, HE'S
22 MORE THAN WILLING TO OPEN THE APARTMENT DOOR AND TO GO IN
23 AND LET THEM INSIDE. DOES THAT MAKES SENSE TO YOU? I
24 SUBMIT IT MAKES NO SENSE.

25 AND WHAT DOES MR. DORN TELL DEPUTY -- TELL DEPUTY

1 SMITH? I MEAN, THIS IS SUPPOSED TO BE A MAN WHO IS A
2 RANDOM VICTIM, WHO DOES NOT KNOW THESE PEOPLE; YET THEY GET
3 TO THE DOOR AND SOMEONE MENTIONS, OH, IT'S SUPPOSED TO BE
4 APARTMENT NUMBER 106. WELL, IF THEY DON'T KNOW HIM, HOW DO
5 THEY KNOW ANYTHING ABOUT HIS APARTMENT? THAT DOESN'T MAKE
6 SENSE. THAT DOESN'T ADD UP.

7 HE TELLS YOU THAT ONCE HE'S INSIDE THE APARTMENT
8 WITH THESE PEOPLE, THAT HE'S TOLD TO SIT ON THE FLOOR. BUT
9 HE FAILS TO MENTION TO YOU, AS HE DID IN HIS STATEMENT TO
10 INVESTIGATORS, THAT THEY ASKED HIM TO HELP SEARCH THE
11 APARTMENT.

12 IN HIS STATEMENT -- WE GOT IT OUT OF HIM -- HE
13 DIDN'T WANT TO TELL YOU ABOUT IT, BUT IT'S IN THERE. THEY
14 MADE ME HELP THEM SEARCH THE APARTMENT. WHAT ROBBER MAKES
15 A VICTIM HELP THEM SEARCH AN APARTMENT? THAT DOESN'T ADD
16 UP. THAT DOESN'T MAKE SENSE. OF COURSE, HE DIDN'T
17 REMEMBER THAT WHEN HE WAS SITTING HERE ON THE STAND. THAT
18 WASN'T CONVENIENT. AND WHY WOULD THEY BE SEARCHING FOR
19 SOMETHING IN PARTICULAR IF THEY DIDN'T KNOW THIS PERSON AND
20 IF THEY ARE SEARCHING AT ALL. WHY SEARCHING FOR SOMETHING
21 IN PARTICULAR. THEY DON'T KNOW HIM, RIGHT.

22 AND THEN HE TALKS TO YOU ABOUT STASHING. THAT
23 WAS THE INTERESTING PART, TOO. SO THEY ARE THERE TO ROB
24 HIM AND THEY START STASHING GOODS. AND WE ASKED HIM ABOUT
25 THAT AND HE SAID, WELL, THEY STARTED PUTTING GOODS INTO A

1 BASKET, SOME BOOTS, AND A RADIO. WELL, I'VE LOOKED AND
2 LOOKED AND LOOKED AT THESE PICTURES AND I AM FAILING TO SEE
3 A HAMPER OR A BASKET WITH A PAIR OF BOOTS WITH A RADIO
4 INSIDE. AND, NO, WE DIDN'T MENTION THAT HIM HAVING A
5 STEREO IS AN INDICATION OF BEING A DRUG DEALER. I THINK
6 WHAT WE SAID IS HERE'S A STEREO SITTING RIGHT HERE THAT
7 NOBODY TRIED TO TAKE AND ROB YOU OF TO PUT BY THE DOOR FOR
8 EASY ACCESS. I THINK THAT WAS OUR POINT. I THINK OUR
9 POINT WAS THERE'S NO VCR SITTING BY THE DOOR, IS THERE?
10 THERE'S NO JEWELRY LAYING OUT ANYWHERE. THERE ARE TONS OF
11 CLOTHES HERE. WE'VE GOT A T.V. HERE. NONE OF THIS WAS
12 STACKED UP BY THE DOOR. WHY IS THAT? I SEE NO STASH. DID
13 YOU HEAR ANY OFFICER TESTIFY AS TO A STASH THAT THEY FOUND?
14 DID ANYBODY TESTIFY ABOUT A BASKET, A BASKET WITH BOOTS
15 INSIDE? NO, BECAUSE IT WASN'T THERE, LADIES AND GENTLEMEN?
16 WHERE IS THE ROBBERY?

17 AND MOST CONFUSING OF ALL -- AND I'M SORRY, I
18 DON'T CARE WHAT THE SOLICITOR SAYS, THIS IS VERY CONFUSING.
19 THIS MAN WHO WAS THE VICTIM OF AN ARMED ROBBERY, OF A
20 KIDNAPPING, OF SOMETHING THAT'S OCCURRED SINCE OUTSIDE AND
21 HE HAS BEEN WALKED INSIDE, IS TAKEN TO A BACK ROOM, NOT
22 ONLY HAS HE DONE THAT, HE'S HANDED A GUN, A LOADED GUN. HE
23 TOLD YOU UP HERE HE KNEW THE GUN WAS LOADED. HE'S HANDED A
24 LOADED GUN. AND WHAT DOES HE DO? HE LAYS IT DOWN.

25 NOW, PLEASE JUST STOP AND THINK ABOUT THAT FOR

1 ONE SECOND. HOW MUCH SENSE DID THAT MAKE? HE DOESN'T KNOW
2 WHERE THE OTHER PERSON IS IN THE APARTMENT. HE'S NOT SURE
3 WHERE THAT OTHER PERSON IS; YET, HE TAKES A GUN, A LOADED
4 GUN, FROM A PERSON WHO IS HOLDING HIM HOSTAGE AND LAYS IT
5 DOWN. STRANGE THING IS, THE GUN IS FOUND IN A DRESSER
6 DRAWER. SO I SUBMIT TO YOU, NOT ONLY DOES HE LAY THE GUN
7 DOWN ON THE DRESSER, HE OPENS THE DOOR, PUTS IT INSIDE AND
8 CLOSES IT. THIS IS A PERSON WHO IS THE VICTIM OF A
9 ROBBERY. THIS IS A PERSON WHO DOESN'T KNOW WHAT'S GOING
10 ON, WHO IS SCARED TO DEATH. NO. THIS IS A PERSON, LADIES
11 AND GENTLEMEN, WHO IS NOT AFRAID. I SUBMIT TO YOU MR. DORN
12 WAS NOT AFRAID OF THE PEOPLE IN THIS APARTMENT. AND WHEN
13 ORDERED OUT OF THE APARTMENT, DOES HE TELL THE POLICE HEY,
14 WHOA, WHOA, WHAT ARE YOU DOING? WHY ARE YOU ARRESTING ME,
15 I'M THE ONE BEING ROBBED HERE? NO. NO. HE'S SILENT OR HE
16 SAYS NOTHING. ONE PERSON SAYS HE ASKED, WHAT'S GOING ON
17 AND THAT'S IT. HE SAYS NOTHING. I SUBMIT TO YOU THAT IF
18 YOU WERE THE ONE BEING ROBBED AND ALL OF A SUDDEN THE
19 POLICE COME OUT AND THEY'RE CUFFING YOU, YOU'RE SAYING, OH,
20 THANK GOD, YOU'RE HERE OR YOU'RE SAYING, THANK YOU FOR
21 GETTING ME OUT OF THERE OR HEY, I'M BEING ROBBED, WHAT ARE
22 YOU DOING. YOU'RE SAYING SOMETHING. I THINK MOST
23 COMPELLING IS WHAT CAPTAIN PRICHARD -- I DON'T KNOW IF YOU
24 REMEMBER CAPTAIN PRICHARD, 32 YEARS ON THE FORCE -- GOT UP
25 HERE AND TOLD YOU WHEN HE ARRIVED AT THE SCENE. HE SAID

1 THAT MR. DORN WAS INITIALLY PLACED IN A POLICE VEHICLE.
2 WHY? BECAUSE HE WOULD NOT GIVE ANY INFORMATION INITIALLY.
3 NOW, WHY IS THAT? WHY WOULDN'T HE GIVE ANY INFORMATION
4 INITIALLY? YOU'RE THE VICTIM OF A CRIME. YOU WANT THE
5 POLICE TO KNOW EVERYTHING. YOU'RE GUSHING INFORMATION.
6 YOU WANT THEM TO CATCH THESE PEOPLE AND PUT THEM AWAY
7 BECAUSE YOU'RE SCARED TO DEATH. WHY NOT TALK TO THE POLICE
8 RIGHT HERE. THERE'S SOMETHING GOING ON.

9 AND EIGHT HOURS AFTER THIS INCIDENT -- AND I
10 DON'T CARE HOW YOU LOOK AROUND IT -- EIGHT HOURS AFTER THIS
11 INCIDENT, A SECOND GUN IS FOUND. A SECOND GUN IS FOUND.
12 THIS IS AFTER THREE OFFICERS HAVE SEARCHED A TINY
13 ONE-BEDROOM APARTMENT. KNOWING THAT ONE OF THE SUSPECTS
14 WAS HIDING IN THE LINEN CLOSET. THREE OFFICERS HAVE
15 SEARCHED THAT APARTMENT AND CANNOT FIND THAT GUN.

16 NOW, I HEARD WHAT DEPUTY SMITH SAID THAT SOME
17 OFFICERS ARE BETTER AT SEARCHING THAN OTHER OFFICERS, BUT I
18 SUBMIT TO YOU, THESE OFFICERS SEARCH ON A DAILY BASIS.
19 PARTICULARLY, THE DEPUTIES. THEY ARE CONSTANTLY SEARCHING
20 CARS. THEY ARE CONSTANTLY SEARCHING HOTELS. THEY ARE
21 ALWAYS LOOKING FOR EVIDENCE IS WHAT THEY DO. THEY ARE
22 PROFESSIONALS. BUT NORMAN VAN DORN WANTS YOU TO BELIEVE
23 THAT HE IS BETTER THAN THE COPS. HE COULD FIND THINGS
24 BETTER THAN THE COPS CAN. AND WHAT'S MOST INTERESTING
25 ABOUT THAT IS ONCE HE DOES FIND THE GUN, HE LAYS IT OUT ON

1 THE CHAIR IN THE LIVING ROOM. THAT'S WHERE INVESTIGATOR
2 HARRIS FINDS THE GUN WHEN HE COMES HOME OR WHEN HE COMES TO
3 MR. DORN'S HOUSE TO PICK UP THE GUN. IF YOU FIND A GUN IN
4 THE CLOSET AND YOU'VE JUST BEEN A VICTIM OF A CRIME, IT
5 SEEMS TO ME YOUR FIRST INCLINATION IS TO SAY, WHOA, THERE'S
6 THE GUN, LET'S NOT TOUCH ANYTHING, WE'VE GOT EVIDENCE HERE.
7 I THINK MOST OF US KNOW THAT. I'D BE SCARED TO TOUCH THE
8 GUN PERIOD. BUT, NO. HE FEELS FREE TO TAKE THE GUN OUT OF
9 THE CLOSET AND PLACE IT IN A CHAIR IN THE MIDDLE OF THE
10 LIVING ROOM.

11 LADIES AND GENTLEMEN, IS THERE REASONABLE DOUBT
12 HERE? YES, THERE IS. YES, THERE IS.

13 AND AS MR. PASCOE TOLD YOU, THE JUDGE IS GOING TO
14 INSTRUCT YOU ON REASONABLE DOUBT AND YOU SHOULD FOLLOW
15 EXACTLY -- YOU MUST FOLLOW EXACTLY WHAT THE JUDGE SAYS
16 REASONABLE DOUBT IS. BUT REASONABLE DOUBT IS ALSO WHEN YOU
17 HESITATE TO ACT IN FINDING A DEFENDANT GUILTY OR WHEN YOU
18 HESITATE TO ACT IN FINDING THAT SOMETHING OCCURRED. AND
19 WHEN THAT HAPPENS, YOU MUST RETURN A VERDICT OF NOT GUILTY.
20 DO WE HAVE REASONABLE DOUBT HERE? YES, WE DO. WE HAVE NO
21 PRINTS. WE HAVE A VICTIM WHO IS STASHING GUNS THAT HE'S
22 JUST BEEN HANDED BY A WOULD-BE ROBBER INTO A DRAWER. WE
23 HAVE THE ONLY PERSON WHO TELLS THE POLICE INITIALLY THAT
24 THERE ARE TWO GUNS, FINDING THE SECOND GUN. WE HAVE NO
25 CORROBORATION OF ANY ITEMS BEING STASHED. NO INDICATION OF

1 ANY ROBBERY IN THAT APARTMENT.

2 FRANKLY, LADIES AND GENTLEMEN, THIS JUST LOOKS
3 LIKE A MESSY BEDROOM TO ME. THE LIVING ROOM IS NEAT AS IT
4 CAN BE. I DON'T SEE ANY INDICATION OF THAT.

5 WE HAVE NO EVIDENCE OF A CRIME OTHER THAN WHAT
6 KETRA HEARON AND NORMAN VAN DORN TELL YOU. THAT'S IT.
7 THAT IS REASONABLE DOUBT. AND IF YOU FIND REASONABLE DOUBT
8 IN THIS CASE, THEN YOU MUST FIND THAT DEMARCO JOHNSON IS
9 NOT GUILTY OF THIS OFFENSE.

10 THIS CASE, LADIES AND GENTLEMEN, IS FRAUGHT WITH
11 ERROR. IT'S FRAUGHT WITH LITTLE THINGS THAT JUST DON'T ADD
12 UP. I ASK, AS YOU LISTEN TO THIS EVIDENCE, I ASK, AS YOU
13 REVIEW THIS EVIDENCE, AS YOU LOOK AT ALL THE EVIDENCE
14 THAT'S HERE, AND YOU GO OVER THE TESTIMONY WITH EACH OTHER,
15 THAT YOU PLEASE DO SO VERY CAREFULLY. THIS IS A VERY, VERY
16 SERIOUS CASE. THESE CHARGES ARE EXTREMELY SERIOUS AND THEY
17 CARRY HUGE PENALTIES. I ASK THAT YOU, PLEASE, CAREFULLY,
18 CAREFULLY CONSIDER EVERYTHING YOU'VE HEARD. GO BACK OVER
19 THE WITNESSES, TALK TO EACH OTHER ABOUT IT. THINK ABOUT
20 WHAT DOESN'T ADD UP, WHAT DOESN'T MAKE SENSE. AND, I
21 THINK, AT THE END, YOU'LL FIND THAT DEMARCO JOHNSON IS NOT
22 GUILTY OF THESE OFFENSES.

23 THANK YOU VERY MUCH FOR YOUR TIME.

24 THE COURT: COUNSEL, LET ME ASK ALL OF YOU TO
25 APPROACH A MINUTE.

1 MR. CLERK, WILL YOU COME DOWN?

2 (WHEREUPON, A BENCH CONFERENCE WAS
3 HELD AT THIS TIME OFF THE RECORD.)

4 THE COURT: ALL RIGHT.

5 LADIES AND GENTLEMEN, ONE THING THAT STRUCK ME IS
6 THAT WE ARE GOING TO HAVE TO ORDER LUNCH FOR YOU BECAUSE IT
7 WILL BE CLOSE TO ONE WHEN YOU GET THROUGH. IT TAKES A FEW
8 MINUTES TO GET LUNCH -- YOU KNOW, FOR THE FOLKS TO GET IT
9 TO US. SO WHAT I WOULD LIKE TO DO NOW IS LET YOU TAKE A
10 SHORT BREAK JUST TO GO IN AND LET THE CLERK GO WITH YOU AND
11 GET LUNCH ORDERS. AND THEN, ONCE THAT'S DONE, THEY CAN
12 SEND ON AND DO IT WHILE WE ARE FINISHING UP, OKAY.

13 SO IF YOU'LL STEP TO THE JURY ROOM. NOW, AGAIN,
14 VERY, VERY IMPORTANT THAT YOU NOT TALK ABOUT THE CASE RIGHT
15 NOW, OKAY. WAIT UNTIL WE GET -- AND WE'RE GOING TO BRING
16 YOU RIGHT BACK OUT AND DO THE INSTRUCTIONS AS SOON AS WE
17 CAN.

18 (JURY OUT.)

19 THE COURT: ALL RIGHT.

20 COUNSEL, WE'LL BE IN RECESS JUST FOR A FEW
21 MINUTES, OKAY. HOW ABOUT JUST STAY CLOSE BY.

22 (RECESS.)

23 THE BAILIFF: ALL RISE.

24 COURT COME TO ORDER.

25 THE COURT: THANK YOU.

1 THIS MAY NOT ALSO ENTER INTO YOUR DISCUSSIONS OR
2 DELIBERATIONS IN THE JURY ROOM IN ANY WAY.

3 NOW, WHAT IS PROOF BEYOND A REASONABLE DOUBT?
4 WELL, PROOF BEYOND A REASONABLE DOUBT IS PROOF THAT WOULD
5 CAUSE A REASONABLE PERSON TO HESITATE TO ACT. IT IS PROOF
6 THAT LEAVES YOU FIRMLY CONVINCED OF THE DEFENDANT'S GUILT.
7 YOU KNOW THERE ARE VERY FEW THINGS IN THE WORLD THAT WE
8 KNOW WITH ABSOLUTE CERTAINTY AND IN CRIMINAL CASES, THE LAW
9 DOES NOT REQUIRE PROOF THAT OVERCOMES EVERY POSSIBLE DOUBT.
10 SO, IF BASED ON YOUR CONSIDERATION OF THE EVIDENCE, YOU ARE
11 FIRMLY CONVINCED THAT THE DEFENDANT IS GUILTY OF THE CRIME
12 CHARGED, THEN YOU MUST FIND HIM GUILTY.

13 ON THE OTHER HAND, IF YOU THINK THERE IS A REAL
14 POSSIBILITY THAT HE IS NOT GUILTY, THEN YOU MUST GIVE HIM
15 THE BENEFIT OF THE DOUBT AND FIND HIM NOT GUILTY.

16 NOW, YOU SIT AS THE FINDERS OF FACTS IN THIS
17 CASE. I DO NOT HAVE THE RIGHT TO PASS UPON THE FACTS OR
18 EVEN TO EXPRESS ANY OPINION I MIGHT HAVE ABOUT THEM. NOR
19 MAY I INTIMATE IN ANY WAY WHAT I THINK ABOUT THE INNOCENCE
20 OR THE GUILT OF THE DEFENDANT.

21 NOW, AS JUDGES OF THE FACTS, YOU ARE ALSO THE
22 JUDGES OF THE CREDIBILITY OR IN OTHER WORDS, THE
23 BELIEVABILITY OF THE WITNESSES WHO'VE TESTIFIED IN THIS
24 CASE. AND IN PASSING UPON THEIR CREDIBILITY, YOU MAY TAKE
25 INTO CONSIDERATION A NUMBER OF FACTORS INCLUDING, BUT NOT

1 LIMITED TO THE FOLLOWING:

2 THE APPEARANCE AND MANNER OF A WITNESS ON THE
3 STAND, WHICH IS SOMETIMES CALLED THE Demeanor OF THE
4 WITNESS;

5 YOU MAY CONSIDER WHETHER THE WITNESS WAS
6 FORTHRIGHT OR HESITANT IN HIS OR HER TESTIMONY;

7 WHETHER THE WITNESS' TESTIMONY WAS CONSISTENT OR
8 WHETHER IT CONTAINED DISCREPANCIES;

9 WHAT WAS THE ABILITY OF THE WITNESS TO KNOW THE
10 FACTS ABOUT WHICH HE OR SHE TESTIFIED;

11 DID THE WITNESS HAVE A CAUSE OR A REASON TO BE
12 BIASED OR PREJUDICED IN FAVOR OF THE TESTIMONY THAT HE OR
13 SHE GAVE;

14 AND WAS THE TESTIMONY OF THE WITNESS CORROBORATED
15 OR MADE STRONGER BY THE OTHER TESTIMONY AND EVIDENCE OR WAS
16 IT MADE WEAKER. IN OTHER WORDS, BY THE OTHER TESTIMONY AND
17 EVIDENCE.

18 NOW, AS JURORS, YOU HAVE A RIGHT TO BELIEVE A
19 SMALL PORTION OF A WITNESS' TESTIMONY AND DISCARD THE
20 LARGER OR VICE VERSA. YOU MAY BELIEVE THE TESTIMONY OF A
21 SINGLE WITNESS AGAINST THAT OF MANY WITNESSES OR THE OTHER
22 WAY AROUND.

23 THROUGHOUT THE PROCESS YOU HAVE ONE SINGLE
24 OBJECTIVE AND THAT IS TO SEEK THE TRUTH REGARDLESS OF THE
25 SOURCE FROM WHICH THE TESTIMONY MAY HAVE COME.

1 ALL THESE THINGS YOU CONSIDER, BEARING IN MIND,
2 THAT YOU MUST GIVE THE DEFENDANT THE BENEFIT OF EVERY
3 REASONABLE DOUBT.

4 NOW, YOU ALSO HEARD THE TESTIMONY OF A WITNESS
5 WHO HAS SPECIAL KNOWLEDGE, SKILL, EXPERIENCE, TRAINING, OR
6 EDUCATION IN A PARTICULAR FIELD AND WHO GAVE HIS OPINION AS
7 AN EXPERT IN THE MATTERS IN WHICH HE IS SKILLED.

8 NOW, IN DETERMINING THE WEIGHT TO BE GIVEN TO
9 SUCH AN OPINION, YOU SHOULD CONSIDER THE QUALIFICATIONS AND
10 THE CREDIBILITY OF THE EXPERT AND THE REASONS GIVEN FOR HIS
11 OPINION. YOU ARE NOT BOUND BY THE OPINION. GIVE TO IT THE
12 WEIGHT, IF ANY, TO WHICH YOU DEEM IT ENTITLED.

13 NOW, IN A TRIAL SUCH AS THIS, THERE ARE GENERALLY
14 TWO TYPES OF EVIDENCE WHICH ARE PRESENTED.

15 ONE IS CALLED DIRECT EVIDENCE AND THE OTHER IS
16 CALLED CIRCUMSTANTIAL EVIDENCE.

17 NOW, DIRECT EVIDENCE IS THE TESTIMONY OF A PERSON
18 WHO CLAIMS TO HAVE ACTUAL KNOWLEDGE OF A FACT SUCH AS AN
19 EYEWITNESS.

20 CIRCUMSTANTIAL EVIDENCE IS PROOF OF A CHAIN OF
21 FACTS AND CIRCUMSTANCES WHICH INDICATE THE EXISTENCE OF A
22 FACT IN ISSUE.

23 NOW, THE LAW MAKES ABSOLUTELY NO DISTINCTION
24 BETWEEN THE WEIGHT OR VALUE TO BE GIVEN TO EITHER DIRECT
25 EVIDENCE OR CIRCUMSTANTIAL EVIDENCE. NOR IS A GREATER

1 DEGREE OF CERTAINTY REQUIRED FOR CIRCUMSTANTIAL EVIDENCE
2 THAN FOR DIRECT EVIDENCE. YOU SHOULD WEIGH ALL OF THE
3 EVIDENCE IN THE CASE. AND AFTER WEIGHING ALL OF THE
4 EVIDENCE, IF YOU ARE NOT CONVINCED OF THE GUILT OF THE
5 DEFENDANT BEYOND A REASONABLE DOUBT, THEN YOU MUST FIND HIM
6 NOT GUILTY.

7 NOW, THE SAME CONSTITUTION AND LAW WHICH MAKE YOU
8 THE FINDERS OF THE FACTS AND OF THE EVIDENCE, AS WE'VE
9 DISCUSSED WITH YOU, MAKES ME THE JUDGE -- AS THE JUDGE, THE
10 SOLE AND ONLY INSTRUCTOR IN THE LAW. YOU MUST ACCEPT AS
11 CORRECT THE LAW AS I GIVE IT TO YOU AND YOU SHOULD APPLY IT
12 TO THE EVIDENCE AS YOU FIND IT IN REACHING YOUR VERDICT.

13 NOW, IF I MAKE ANY MISTAKES OR ANY ERRORS, THERE
14 IS ANOTHER TIME AND PLACE IN WHICH IT CAN BE CORRECTED, BUT
15 FOR TODAY'S PURPOSES, YOU MUST ACCEPT THE LAW AS I GIVE IT
16 TO YOU. AND LET ME CAUTION YOU THAT IT'S NOT WHAT YOU
17 THINK THE LAW SHOULD BE, BUT IT IS, IN FACT, WHAT I TELL
18 YOU THE LAW IS.

19 YOU REMEMBER EARLIER I TOLD YOU THAT WHEN IT
20 COMES TO THE FACTS -- AND, I BELIEVE, I TOLD YOU BEFORE WE
21 STARTED THE TRIAL, WHEN IT COMES TO THE FACTS AND THE
22 EVIDENCE, YOU HAVE VERY WIDE DISCRETION. YOU DO NOT HAVE
23 THAT DISCRETION WHEN IT COMES TO THE LAW. YOU MUST ACCEPT
24 IT STRICTLY AS I GIVE IT TO YOU.

25 NOW, LET'S DISCUSS, IF WE MIGHT, THE ELEMENTS OF

1 EACH OF THE CHARGES AGAINST MR. JOHNSON.

2 THE FIRST OFFENSE WITH WHICH THE STATE HAS
3 CHARGED MR. JOHNSON IS THE OFFENSE OF BURGLARY IN THE FIRST
4 DEGREE. NOW, THIS IS WHAT IS CALLED A STATUTORY OFFENSE.

5 IN OTHER WORDS, IT MEANS THAT OUR LEGISLATURE HAS
6 PASSED A LAW WHICH SETS FORTH THE ELEMENTS OF THE CRIME AND
7 GIVES US CERTAIN DEFINITIONS OF THE CRIME. THAT STATUTE IS
8 16-11-311 AND THE PERTINENT PARTS READ AS FOLLOWS:

9 A PERSON IS GUILTY OF BURGLARY IN THE FIRST
10 DEGREE IF THE PERSON ENTERS A DWELLING WITHOUT CONSENT AND
11 WITH INTENT TO COMMIT A CRIME THEREIN:

12 AND EITHER, ONE, WHILE IN EFFECTING ENTRY OR
13 WHILE IN THE DWELLING OR IN IMMEDIATE FLIGHT THEREFROM, HE
14 OR ANOTHER PARTICIPANT IN THE CRIME; EITHER

15 (A) IS ARMED WITH A DEADLY WEAPON OR EXPLOSIVE;

16 (B) USES OR THREATENS THE USE OF A DANGEROUS
17 INSTRUMENT; OR

18 (C) DISPLAYS WHAT IS OR APPEARS TO BE A KNIFE,
19 PISTOL, REVOLVER, RIFLE, SHOTGUN, MACHINE GUN OR OTHER
20 FIREARM.

21 SO THEN, IN ORDER FOR THE STATE -- WHAT THAT
22 MEANS IS THIS -- IN ORDER FOR THE STATE TO PROVE THE
23 DEFENDANT GUILTY, THEY MUST PROVE EACH OF THE FOLLOWING
24 ELEMENTS WITH PROOF BEYOND A REASONABLE DOUBT:

25 IN OTHER WORDS, HERE'S WHAT THE STATUTE BREAKS

1 DOWN TO. THEY MUST PROVE, FIRST OF ALL, FOUR ELEMENTS:

2 (1) THEY MUST PROVE BEYOND A REASONABLE DOUBT
3 THAT THE DEFENDANT WAS A PARTICIPANT. THE STATE MUST PROVE
4 PRESENCE AND PARTICIPATION AS ALL OTHER ALLEGATIONS ARE
5 REQUIRED TO BE PROVEN BY EVIDENCE BEYOND A REASONABLE
6 DOUBT. IF YOU HAVE A REASONABLE DOUBT AS TO WHETHER THE
7 DEFENDANT WAS PRESENT AND PARTICIPATING, YOU MUST RESOLVE
8 THIS DOUBT IN FAVOR OF THE DEFENDANT AND FIND HIM NOT
9 GUILTY.

10 (2) THAT HE ENTERED A DWELLING. NOW, A DWELLING
11 MEANS THE LIVING QUARTERS OF A BUILDING WHICH IS USED OR
12 NORMALLY USED FOR SLEEPING, LIVING, OR LODGING BY A PERSON.

13 (3) THAT HE DID SO WITHOUT CONSENT, WHICH MEANS
14 TO ENTER A BUILDING WITHOUT THE CONSENT OF THE PERSON WHO
15 IS IN LAWFUL POSSESSION, OWNERSHIP, OR CONTROL OF THE
16 BUILDING; AND

17 (4) THAT HE DID SO WITH INTENT TO COMMIT A CRIME
18 THEREIN.

19 NOW, IT IS NECESSARY THAT CRIMINAL INTENT EXISTED
20 AT THE TIME OF THE ENTERING AND IT IS NOT SUFFICIENT THAT
21 THE CRIMINAL INTENT IS FORMED AFTER THE ENTRY.

22 ON THE OTHER HAND, WHERE THE INTENT EXISTS AT THE
23 TIME OF THE ENTRY, IT IS NOT AN OFFENSE THAT THE INTENT WAS
24 ABANDONED AFTER THE ENTRY. THE REASON IS THAT THE ENTRY
25 WITH THE CRIMINAL INTENT COMPLETES THE CRIME OF BURGLARY.

1 NOW, PROOF OF INTENT NECESSARILY RESTS ON
2 INFERENCE FROM CONDUCT.

3 IN OTHER WORDS, CRIMINAL INTENT IS ALWAYS A
4 MATTER THAT MUST BE DETERMINED BY THE JURY FROM THE
5 CIRCUMSTANCES SURROUNDING THE SITUATION.

6 NOW, THERE'S NO WAY INTENT CAN BE PROVEN TO A
7 MATHEMATICAL CERTAINTY. OBVIOUSLY, THERE IS NO WAY THAT
8 MEDICAL SCIENCE CAN DISSECT A PERSON'S BRAIN AND DETERMINE
9 WHAT HE HAD IN MIND. SO THE LAW THEN SAYS THAT CRIMINAL
10 INTENT MAY BE INFERRED FROM THE CIRCUMSTANCES SHOWN TO HAVE
11 EXISTED, INCLUDING THE DEFENDANT'S CONDUCT. SO IT IS UP TO
12 YOU, AS THE JURY, TO DETERMINE WHAT THE DEFENDANT INTENDED
13 TO DO BASED ON THE CIRCUMSTANCES SHOWN TO HAVE EXISTED.

14 SO THEN, THERE ARE FOUR ELEMENTS THAT THE STATE
15 MUST PROVE. THEY MUST PROVE:

- 16 (1) IDENTITY OF THE OFFENDER;
17 (2) ENTERING A DWELLING;
18 (3) ENTERING WITHOUT CONSENT; AND
19 (4) INTENT TO COMMIT A CRIME.

20 IN ADDITION, THEY MUST PROVE ONE OF THE FOLLOWING
21 THREE ELEMENTS. -- THEY DON'T HAVE TO PROVE ALL OF THESE
22 FOLLOWING THREE, BUT ONE:

- 23 (1) THAT WHILE ENTERING OR IN THE HOUSE, THE
24 DEFENDANT WAS ARMED WITH A DEADLY WEAPON OR EXPLOSIVE; OR
25 (2) THAT THE DEFENDANT USED OR THREATENED TO USE

1 A DANGEROUS OBJECT; OR

2 (3) THAT THE DEFENDANT DISPLAYED WHAT WAS OR WHAT
3 APPEARED TO BE A PISTOL OR OTHER FIREARM.

4 NOW, THE SECOND OFFENSE WITH WHICH THE DEFENDANT
5 IS CHARGED IS THE OFFENSE OF ARMED ROBBERY. I WILL READ TO
6 YOU A PART OF SECTION 16-11-330 OF THE CODE OF LAWS AND IT
7 SAYS THIS:

8 ANY PERSON CONVICTED FOR THE CRIME OF ROBBERY
9 WHILE ARMED WITH A PISTOL, DIRK, SLINGSHOT, MEDAL KNUCKLES,
10 RAZOR, OR OTHER DEADLY WEAPON SHALL SUFFER PUNISHMENT FOR
11 ARMED ROBBERY.

12 IN ORDER TO HELP YOU BETTER UNDERSTAND THE
13 ELEMENTS OF ARMED ROBBERY, I MUST FIRST TELL YOU ABOUT WHAT
14 IS CALLED LARCENY AND THEN ROBBERY BECAUSE THE ELEMENTS OF
15 LARCENY AND ROBBERY ARE PART OF THE CHARGE OF ARMED
16 ROBBERY.

17 LET'S TALK ABOUT LARCENY FIRST. THERE ARE FOUR
18 ELEMENTS WHICH MUST BE PRESENT AND ESTABLISHED BEYOND A
19 REASONABLE DOUBT TO MAKE OUT THE CRIME OF LARCENY AND THEY
20 ARE AS FOLLOWS:

21 (1) THAT THERE WAS A TAKING;

22 (2) THAT THE TAKING WAS OF THE PERSONAL PROPERTY
23 OF ANOTHER;

24 (3) THAT AFTER BEING TAKEN, THE PROPERTY WAS
25 CARRIED AWAY; AND

1 (4) THAT THE TAKING AND CARRYING AWAY OF THE
2 PROPERTY WAS DONE WITH THE INTENT TO STEAL.

3 NOW, THOSE ARE THE ELEMENTS OF ROBBERY.

4 NOW, THE OFFENSE OF ROBBERY -- I APOLOGIZE.
5 THOSE ARE THE ELEMENTS OF LARCENY.

6 NOW, THE CRIME OF ROBBERY THEN INCLUDES THOSE
7 FOUR ELEMENTS OF LARCENY, AS I HAVE JUST EXPLAINED THEM,
8 WITH AN ADDITIONAL ELEMENT WHICH IS NECESSARY TO MAKE OUT
9 THE CRIME OF ROBBERY. AND THIS ADDITIONAL ELEMENT IS THAT
10 THE TAKING AND CARRYING AWAY OF THE PROPERTY MUST HAVE BEEN
11 ACCOMPLISHED BY PLACING THE PERSON IN FEAR BY VIOLENCE OR
12 THREATS OF VIOLENCE SO AS TO MAKE THAT PERSON SURRENDER THE
13 PROPERTY WITHOUT HIS CONSENT AND AGAINST HIS WILL.

14 SO THEN, THE CRIME OF ARMED ROBBERY INCLUDES ALL
15 OF THESE ELEMENTS. IT INCLUDES THOSE FOUR ELEMENTS OF
16 LARCENY. IT INCLUDES THAT ELEMENT OF ROBBERY AND THEN
17 AGAIN, AN ADDITIONAL ELEMENT WHICH IS THIS: THAT THE
18 ROBBERY MUST HAVE BEEN COMMITTED WITH A DEADLY WEAPON.

19 IN OTHER WORDS, THE PERSON COMMITTING THE ROBBERY
20 HAD AND USED A DEADLY WEAPON WITH WHICH HE PLACED THE
21 PERSON POSSESSING THE PROPERTY IN FEAR IN ORDER TO OBTAIN
22 THE PROPERTY. AND I WOULD FURTHER INSTRUCT YOU THAT A
23 PISTOL OR GUN OR RIFLE IS A DEADLY WEAPON, WHETHER OR NOT
24 IT WAS ACTUALLY LOADED WITH AMMUNITION AT THE TIME OF THE
25 ROBBERY.

1 NOW, THE THIRD OFFENSE IS THE OFFENSE OF
2 KIDNAPPING. NOW, THE OFFENSE OF KIDNAPPING IS PROSCRIBED
3 IN THIS STATE AGAIN BY THE CODE OF LAWS. RECALL THAT ON
4 THE OTHER TWO CHARGES THAT I READ TO YOU PORTIONS OF THE
5 STATUTE, I WILL ALSO READ YOU A PORTION OF THE STATUTE ON
6 KIDNAPPING. IT ALLEGES -- IT SAYS THIS:

7 THAT WHOEVER SHALL UNLAWFULLY SEIZE, CONFINED,
8 INVEIGLE, DECOY, KIDNAP, ABDUCT, OR CARRY AWAY ANY OTHER
9 PERSON BY ANY MEANS WHATSOEVER WITHOUT AUTHORITY OF LAW
10 SHALL BE GUILTY OF KIDNAPPING.

11 NOW, THE OFFENSE OF KIDNAPPING, LIKE ANY OTHER
12 CRIMINAL OFFENSE, HAS ELEMENTS WHICH CONSTITUTE OR, IN
13 OTHER WORDS, MAKE UP THAT OFFENSE. EACH OF THESE ELEMENTS
14 MUST BE PROVEN BY THE STATE BEYOND A REASONABLE DOUBT
15 BEFORE A VERDICT OF GUILTY CAN BE RETURNED. AND THE
16 ELEMENTS OF KIDNAPPING WHICH MUST BE PROVEN ARE AS FOLLOWS
17 AND THERE ARE THREE:

18 THEY MUST PROVE FIRST, THAT THE PERSON WAS
19 SEIZED, CONFINED, INVEIGLED, DECOYED, KIDNAPPED, ABDUCTED,
20 OR CARRIED AWAY;

21 THEY MUST PROVE, SECOND, THAT THAT SEIZURE,
22 CONFINEMENT, INVEIGLEMENT, DECOYING, KIDNAPPING, ABDUCTION,
23 OR CARRYING AWAY WAS DONE BY SOME MEANS; AND

24 THIRD, THAT IT WAS DONE WITHOUT AUTHORITY OF LAW.

25 NOW, I ALSO CHARGE YOU THAT THE LAW OF SOUTH

1 CAROLINA SAYS THAT IF A CRIME IS COMMITTED BY TWO OR MORE
2 PERSONS, WHO ARE ACTING TOGETHER, IN THE COMMISSION OF A
3 CRIME, THEN THE ACT OF ONE IS THE ACT OF BOTH. TWO PEOPLE
4 CAN BE GUILTY OF THE SAME OFFENSE AT THE SAME TIME. SO IF
5 BOTH PEOPLE ARE TOGETHER, ACTING TOGETHER, ASSISTING EACH
6 OTHER IN THE COMMISSION OF THE CRIME, THEN THE LAW SAYS
7 UNDER THOSE CIRCUMSTANCES, THE ACT OF ONE IS THE ACT OF
8 ALL; OR OTHERWISE STATED, THE HAND OF ONE IS THE HAND OF
9 ALL.

10 NOW, IN THIS CASE, YOU HAVE BEEN SELECTED AS FAIR
11 AND IMPARTIAL JURORS. YOU HAVE BEEN SWORN TO GIVE AN
12 IMPARTIAL TRIAL TO THIS CASE AND TO IMPARTIALLY TRY AND
13 DETERMINE THE FACTS OF THE CASE, AND WHEN YOU HAVE COMPLIED
14 WITH YOUR OATH TO DO SO, THEN NO ONE WILL HAVE A RIGHT TO
15 CRITICIZE YOUR VERDICT. YOU WILL HAVE FULLY DISCHARGED
16 YOUR DUTY. YOU MUST NOT BE INFLUENCED BY OPINIONS OR
17 EXPRESSIONS OR IDEAS WHICH YOU MAY HAVE HEARD ON THE
18 OUTSIDE, BUT YOU MUST DECIDE THIS CASE ACCORDING TO THE
19 TESTIMONY THAT YOU HAVE HEARD FROM THE LIPS OF THE SWORN
20 WITNESSES, ALONG WITH THE OTHER EVIDENCE INTRODUCED.

21 NOW, THERE ARE TWO POSSIBLE VERDICTS WHICH YOU
22 MAY FIND ON EACH OF THESE CHARGES. AGAIN, THERE ARE THREE
23 CHARGES AND ON EACH CHARGE, YOU MAY FIND TWO POSSIBLE
24 VERDICTS: ONE OF GUILTY AND THE OTHER OF NOT GUILTY.

25 NOW, THERE'S NO SIGNIFICANCE IN THE ORDER IN

1 WHICH I STATE THEM. IT SIMPLY IS THAT ONE MUST BE STATED
2 FIRST.

3 YOU MUST NOT TAKE INTO ACCOUNT THE FACT THAT THE
4 DEFENDANT HAS BEEN CHARGED WITH MORE THAN ONE CHARGE. HE
5 IS ENTITLED TO A FAIR TRIAL ON EACH CHARGE AND MUST NOT BE
6 PREJUDICED BY THE FACT THAT THERE IS MORE THAN ONE CHARGE
7 AGAINST HIM. AS TO EACH OF THESE CHARGES, YOU MUST
8 CONSIDER WHETHER THE STATE HAS PROVEN THE ELEMENTS OF THAT
9 PARTICULAR CHARGE.

10 NOW, YOUR VERDICT MUST BE A UNANIMOUS VERDICT.
11 IN OTHER WORDS, IT MUST BE AGREED UPON BY ALL TWELVE OF
12 YOU.

13 MR. FOREMAN, IT IS YOUR DUTY TO PRESIDE OVER THE
14 DELIBERATIONS OF THE JURY AND WHEN THE JURY AGREES ON THE
15 VERDICT, YOU WOULD WRITE IT ON THE BACK OF THE INDICTMENT
16 AND SIGN YOUR NAME AS FOREMAN AND DATE IT AND THEN KNOCK ON
17 THE DOOR. LET US -- OF COURSE, WHEN YOU HAVE YOUR VERDICT,
18 KNOCK ON THE DOOR AND LET US KNOW THAT.

19 I WOULD NOTE THAT IF, BEFORE THAT TIME, YOU HAVE
20 ANY QUESTIONS OR INQUIRIES OTHERWISE, YOU CAN ALSO KNOCK ON
21 THE DOOR AND WE'LL TAKE YOUR INQUIRIES. NOW, YOU CAN DO
22 THAT ONE OF TWO WAYS. IF YOU HAVE QUESTIONS, YOU CAN
23 EITHER DO IT VERBALLY IN WHICH CASE, WE'LL LET YOU AND THE
24 FULL JURY COME OUT OR YOU MAY SIMPLY SEND A NOTE OUT. I'LL
25 LET YOU DO THAT HOW YOU WISH TO, MR. FOREMAN.

1 NOW, I'M GOING TO ASK YOU IN JUST A MOMENT TO
2 STEP TO THE JURY ROOM, BUT I'LL ASK YOU AGAIN DO NOT BEGIN
3 DELIBERATING UNTIL YOU ARE SPECIFICALLY ADVISED TO DO SO BY
4 THE CLERK. THERE ARE SOME MATTERS THAT I HAVE TO TAKE UP
5 WITH THE LAWYERS AT THIS TIME AND WHAT WE WILL DO IN JUST A
6 MOMENT IS WE'LL SEND ALL OF THIS EVIDENCE IN TO YOU, ALONG
7 WITH THE INDICTMENTS, AND A COPY OF THE CHARGE, AND YOU
8 WILL HAVE SPECIFIC INSTRUCTIONS AS TO WHEN TO BEGIN
9 DELIBERATING. BUT UNTIL -- FOR RIGHT NOW, DON'T BEGIN
10 DELIBERATING UNTIL WE SEND WORD.

11 ALL RIGHT. LET ME ASK YOU IF YOU'LL STEP TO THE
12 JURY ROOM AND LUNCH SHOULD BE ALONG SHORTLY.

13 (JURY OUT.)

14 THE COURT: ALL RIGHT.

15 THE JURY HAS RETIRED.

16 COUNSEL, ANY EXCEPTION TO THE CHARGE FROM THE
17 STATE?

18 MS. PELLIZZARI: NO, SIR, YOUR HONOR.

19 THE COURT: FROM THE DEFENSE?

20 MS. DUKE-MIMS: NO, YOUR HONOR.

21 THE COURT: ALL RIGHT.

22 LET ME ASK YOU IF YOU'LL COME UP AND GO OVER WITH
23 THE COURT REPORTER THE EVIDENCE AND MAKE SURE EVERYTHING IS
24 IN ORDER.

25

1 (WHEREUPON, ALL EXHIBITS WERE
2 REVIEWED BY MS. PELLIZZARI ON BEHALF OF THE STATE AND BY
3 MS. DUKE-MIMS ON BEHALF OF THE DEFENDANT AT THIS TIME.)

4 (WHEREUPON, COURT'S EXHIBIT NUMBER
5 TWO, JURY INSTRUCTIONS, MARKED FOR THE RECORD AT THIS
6 TIME.)

7 THE COURT: ALL RIGHT. BACK ON THE RECORD.
8 ATTENTION, PLEASE.

9 COUNSEL, HAVE BOTH OF YOU HAD A CHANCE TO LOOK
10 OVER THE EVIDENCE AND AGREE THAT EVERYTHING GOING INTO THE
11 JURY IS APPROPRIATE?

12 THE STATE?

13 MS. PELLIZZARI: YES, SIR.

14 THE COURT: DEFENSE?

15 MS. SAMPSON: YES, SIR.

16 THE COURT: ALL RIGHT.

17 SEND IT ON IN AND TELL THEM TO START TO
18 DELIBERATE. THE JURY HAS THE CASE AT 1:10 P.M.

19 (WHEREUPON, THE JURY BEGAN THEIR
20 DELIBERATIONS AT 1:10 P.M.)

21 THE CLERK: AND GO AHEAD AND BRING THE ALTERNATE
22 BACK IN?

23 THE COURT: YES, BRING THE ALTERNATE BACK IN.

24 (WHEREUPON, THE ALTERNATE JUROR
25 RETURNED TO THE COURTROOM AT THIS TIME.)

1 THE COURT: MADAM ALTERNATE, WE WANT TO THANK YOU
2 FOR PARTICIPATING. AS YOU CAN GATHER, ALL TWELVE JURORS
3 MADE IT INTO THE JURY ROOM. THEY DID MAKE IT, MR. CLERK,
4 RIGHT?

5 THE CLERK: YES, SIR.

6 THE COURT: OKAY. SO YOU WON'T HAVE TO
7 PARTICIPATE WITH THEM OBVIOUSLY, BUT I APPRECIATE THE FACT
8 THAT YOU WERE VERY ATTENTIVE AND TOOK AN ACTIVE PART IN THE
9 TRIAL.

10 SO WE'LL EXCUSE YOU ON THIS CASE. YOU DON'T HAVE
11 TO COME BACK UNTIL 9:30 IN THE MORNING.

12 NOW IF YOU WANT TO STAY AROUND -- I KNOW YOU'D
13 PROBABLY LOVE TO STAY AROUND AND WATCH WHAT GOES ON, BUT
14 YOU CAN IF YOU WANT TO, BUT YOU DON'T HAVE TO.

15 THE JUROR: THANK YOU, YOUR HONOR.

16 THE COURT: THANK YOU, MA'AM.

17 (WHEREUPON, THE ALTERNATE JUROR
18 WAS EXCUSED FROM FURTHER SERVICE AT THIS TIME.)

19 THE COURT: WE'LL BE IN RECESS.

20 (RECESS.)

21 THE BAILIFF: ALL RISE.

22 THE COURT: THANK YOU. HAVE A SEAT.

23 (WHEREUPON, OTHER MATTERS WERE
24 TAKEN UP WITH THE COURT AT THIS TIME NOT RELATING TO THIS
25 PARTICULAR CASE.)

1 THE COURT: THE CLERK HAS INFORMED ME THE JURY
2 HAS A VERDICT.

3 ALL RIGHT.

4 COUNSEL, ARE WE READY TO TAKE THE VERDICT? IS
5 THE STATE READY?

6 MR. PASCOE: YES, SIR.

7 THE COURT: DEFENSE READY?

8 MS. DUKE-MIMS: YES, SIR, YOUR HONOR.

9 THE COURT: ALL RIGHT.

10 LET'S BRING THE JURY IN.

11 (WHEREUPON, THE JURY RETURNED TO
12 THE COURTROOM WITH A VERDICT AT 3:15 P.M.)

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

14 THE COURT: ALL RIGHT.

15 ALL PARTIES AND ATTORNEYS ARE IN THE COURTROOM
16 AND ALL JURORS HAVE RETURNED.

17 MR. CLERK.

18 THE CLERK: YES, YOUR HONOR.

19 MR. FOREMAN, IF THE JURY HAS REACHED YOUR
20 VERDICTS, WOULD YOU HAND THEM TO ME, PLEASE.

21 (WHEREUPON, THE VERDICTS ARE
22 HANDED TO THE CLERK AT THIS TIME.)

23 THE CLERK: THANK YOU.

24 (WHEREUPON, THE VERDICTS ARE
25 HANDED TO THE COURT AT THIS TIME.)

1 THE COURT: THANK YOU, SIR.

2 ALL RIGHT.

3 EACH ONE IS IN PROPER FORM. WOULD YOU PUBLISH
4 THE VERDICTS, PLEASE, SIR?

5 THE CLERK: YES, YOUR HONOR.

6 THE STATE OF SOUTH CAROLINA, COUNTY OF RICHLAND
7 COURT OF GENERAL SESSIONS. INDICTMENT NUMBER
8 00-GS-40-47714, THE STATE OF SOUTH CAROLINA VERSUS
9 DEMARCO JOHNSON, INDICTMENT FOR ARMED ROBBERY, THE
10 VERDICT IS GUILTY.

11 INDICTMENT NUMBER 00-GS-40-47716, THE STATE OF
12 SOUTH CAROLINA VERSUS DEMARCO JOHNSON, INDICTMENT FOR
13 KIDNAPPING, THE VERDICT IS GUILTY.

14 INDICTMENT NUMBER 00-GS-40-47717, THE STATE OF
15 SOUTH CAROLINA VERSUS DEMARCO JOHNSON, INDICTMENT FOR
16 KIDNAPPING, THE VERDICT IS GUILTY.

17 INDICTMENT NUMBER 00-GS-40-47718, THE STATE OF
18 SOUTH CAROLINA VERSUS DEMARCO JOHNSON, INDICTMENT FOR
19 BURGLARY IN THE FIRST DEGREE, THE VERDICT IS GUILTY.

20 SIGNED GEORGE STOUDEMIRE ON THIS 7TH DAY OF
21 FEBRUARY, 2001.

22 MR. FOREMAN, IS THIS YOUR VERDICT AND THE VERDICT
23 OF THE ENTIRE JURY?

24 THE FOREMAN: YES, SIR.

25 THE CLERK: THANK YOU, SIR.

1 THE COURT: ALL RIGHT.

2 COUNSEL, DOES ANYONE WISH TO HAVE THE JURY
3 POLLED?

4 MS. DUKE-MIMS: YES, YOUR HONOR, AS TO EACH
5 COUNT, PLEASE.

6 THE COURT: ALL RIGHT.

7 MR. CLERK, WOULD YOU POLL THE JURY, PLEASE, SIR?

8 THE CLERK: YES, YOUR HONOR.

9 LADIES AND GENTLEMEN OF THE JURY, I NOW HAVE TWO
10 QUESTIONS TO ASK YOU. THOSE QUESTIONS WILL BE, WERE THESE
11 YOUR VERDICTS AND ARE THEY STILL YOUR VERDICTS.

12 WHEN I CALL OUT YOUR NAME, PLEASE, ANSWER YES OR
13 NO.

14 GEORGE STOUDEMIRE, WERE THESE YOUR VERDICTS?

15 THE FOREMAN: YES, SIR.

16 THE CLERK: ARE THEY STILL YOUR VERDICTS?

17 THE FOREMAN: YES, SIR.

18 THE CLERK: KATHELEEN FOLKS, WERE THESE YOUR
19 VERDICTS?

20 THE JUROR: YES, SIR.

21 THE CLERK: ARE THEY STILL YOUR VERDICTS?

22 THE JUROR: YES, SIR.

23 THE CLERK: LEVAN SMITH, WERE THESE YOUR
24 VERDICTS?

25 THE JUROR: YES, SIR.

1 THE CLERK: ARE THEY STILL YOUR VERDICTS?
2 THE JUROR: YES, SIR.
3 THE CLERK: DEAN FELSHOW, WERE THESE YOUR
4 VERDICTS?
5 THE JUROR: YES, SIR.
6 THE CLERK: ARE THEY STILL YOUR VERDICTS?
7 THE JUROR: YES, SIR.
8 THE CLERK: DOROTHY THOMPSON, WERE THESE YOUR
9 VERDICTS?
10 THE JUROR: YES, SIR.
11 THE CLERK: ARE THEY STILL YOUR VERDICTS?
12 THE JUROR: YES, SIR.
13 THE CLERK: GERDA KAHN, WERE THESE YOUR VERDICTS?
14 THE JUROR: YES, SIR.
15 THE CLERK: ARE THEY STILL YOUR VERDICTS?
16 THE JUROR: YES, SIR.
17 THE CLERK: JUDY HAMMOND, WERE THESE YOUR
18 VERDICTS?
19 THE JUROR: YES, MA'AM.
20 THE CLERK: ARE THEY STILL YOUR VERDICTS?
21 THE JUROR: YES, SIR.
22 THE CLERK: GEORGE XENAKIS, WERE THESE YOUR
23 VERDICTS?
24 THE JUROR: YES, SIR.
25 THE CLERK: ARE THEY STILL YOUR VERDICTS?

1 THE JUROR: YES, SIR.

2 THE CLERK: DOROTHY WALKER, WERE THESE YOUR

3 VERDICTS?

4 THE JUROR: YES.

5 THE CLERK: ARE THEY STILL YOUR VERDICTS?

6 THE JUROR: YES.

7 THE CLERK: MICHAEL CLEM, WERE THESE YOUR

8 VERDICTS?

9 THE JUROR: YES, SIR.

10 THE CLERK: ARE THEY STILL YOUR VERDICTS?

11 THE JUROR: YES, SIR.

12 THE CLERK: BARBARA DESSAUSURE, WERE THESE YOUR

13 VERDICTS?

14 THE JUROR: YES, SIR.

15 THE CLERK: ARE THEY STILL YOUR VERDICTS?

16 THE JUROR: YES, SIR.

17 THE CLERK: DELORIS GOINS, WERE THESE YOUR

18 VERDICTS?

19 THE JUROR: YES, SIR.

20 THE CLERK: ARE THEY STILL YOUR VERDICTS?

21 THE JUROR: YES, SIR.

22 THE CLERK: THANK YOU.

23 THE JURY HAS BEEN POLLED, YOUR HONOR.

24 THE COURT: ALL RIGHT.

25 COUNSEL, ANYTHING ELSE OR ANY OTHER MOTION BEFORE

1 THE JURY IS EXCUSED?

2 FROM THE STATE?

3 MS. PELLIZZARI: NOT FROM THE STATE, YOUR HONOR.

4 THE COURT: FROM THE DEFENSE?

5 MS. DUKE-MIMS: NOT BEFORE THE JURY IS EXCUSED.

6 THE COURT: ALL RIGHT.

7 LADIES AND GENTLEMEN, THANK YOU FOR PARTICIPATING
8 WITH US. AT THIS TIME, WE WILL EXCUSE YOU. IF YOU'D LIKE
9 TO BE EXCUSED -- NOW, I ALWAYS ALLOW JURIES, IF THEY WISH
10 TO STAY AND WATCH SENTENCING, THEY CERTAINLY CAN DO SO. WE
11 WILL DO SO IMMEDIATELY AFTERWARD. BUT YOU CAN ALSO BE
12 EXCUSED IF YOU'D LIKE TO.

13 WE WOULD ASK YOU TO COME BACK AT 9:30 IN THE
14 MORNING AND WITH THAT IN MIND, AGAIN, YOU CAN EITHER STAY
15 AND WATCH SENTENCING, THEN BE EXCUSED; OR YOU CAN BE
16 EXCUSED NOW, WHICHEVER YOU WISH. BUT EITHER WAY, BE BACK
17 AT 9:30 IN MORNING.

18 AND, AGAIN, THANK YOU VERY MUCH FOR WORKING WITH
19 US AND MAINTAINING YOUR PATIENCE WITH US DURING THIS
20 PROCESS. WE APPRECIATE IT.

21 ALL RIGHT. IS THE STATE READY FOR SENTENCING?

22 MS. PELLIZZARI: YES, SIR, YOUR HONOR.

23 THE COURT: IS THE DEFENSE READY?

24 MS. DUKE-MIMS: I WOULD JUST LIKE TO MAKE A
25 MOTION FOR A NEW TRIAL, YOUR HONOR---

1 THE COURT: OKAY---

2 MS. DUKE-MIMS: ---IF WE COULD DO THAT REAL
3 QUICK---

4 THE COURT: ---GO AHEAD.

5 MS. DUKE-MIMS: I WOULD MAKE A MOTION FOR A NEW
6 TRIAL BASED ON THE FACT THE EVIDENCE DOES NOT SUPPORT THE
7 VERDICT THAT WAS RETURNED BY THE JURY, YOUR HONOR.

8 I WOULD ALSO LIKE TO RENEW ALL PREVIOUSLY MADE
9 OBJECTIONS THAT WERE OVERRULED. ALSO, MOTIONS THAT WERE
10 OVERRULED. PARTICULARLY, DEPUTY SMITH'S TESTIMONY
11 REGARDING LINKING MY CLIENT TO THE GUN; AND ALSO THE
12 SOLICITOR MENTIONING IN HIS CLOSING ARGUMENT THAT MY CLIENT
13 WAS LINKED TO THE GUN AS WELL.

14 I WOULD JUST LIKE TO RENEW THOSE OBJECTIONS.

15 THE COURT: ALL RIGHT.

16 THANK YOU, MA'AM.

17 MS. DUKE-MIMS: THANK YOU, YOUR HONOR.

18 THE COURT: NOTED AND DENIED.

19 ALL RIGHT. ARE WE READY FOR SENTENCING? COME
20 AROUND, PLEASE.

21 ALL RIGHT.

22 MADAM SOLICITOR, BEFORE SENTENCING, DO YOU HAVE
23 ANYTHING YOU WISH TO PRESENT BY WAY OF RECORD OR ANYTHING
24 FROM THE VICTIMS?

25 MS. PELLIZZARI: YES, SIR, YOUR HONOR.

1 YOUR HONOR, YOU ARE HIGHLY FAMILIAR WITH THE
2 FACTS IN THIS CASE. THE VICTIMS HAVE INDICATED TO ME THAT
3 THEY DO NOT WISH TO ADDRESS YOUR HONOR.

4 IN TERMS OF SENTENCING FOR MR. JOHNSON, YOUR
5 HONOR, THIS IS A LIFE WITHOUT PAROLE CASE UNDER SOUTH
6 CAROLINA CODE 17-25-45. MR. JOHNSON FALLS UNDER OUR TWO
7 STRIKE LAW. HE WAS SERVED WITH NOTICE OF INTENTION TO SEEK
8 A SENTENCE OF LIFE WITHOUT PAROLE. THAT NOTICE WAS SERVED
9 ON HIM ON JANUARY 19TH OF THIS YEAR. AND THAT FALLS WITHIN
10 THE TEN-DAY NOTICE PERIOD THAT WE ARE REQUIRED TO GIVE HIM.

11 YOUR HONOR, IN TERMS OF HIS PRIOR RECORD, HE HAS,
12 ASIDE FROM THE 1993 ADJUDICATION FOR BURGLARY IN THE THIRD
13 DEGREE, HE HAS FROM 1997, A CONVICTION FOR TWO COUNTS OF
14 ATTEMPTED ARMED ROBBERY AND ONE COUNT OF ASSAULT AND
15 BATTERY WITH INTENT TO KILL.

16 YOUR HONOR, THE ASSAULT AND BATTERY WITH INTENT
17 TO KILL IS WHAT WE WOULD SEEK AS A PRIOR CONVICTION TO MAKE
18 THIS A LIFE WITHOUT PAROLE SENTENCE.

19 THE COURT: OKAY.

20 THANK YOU, MA'AM.

21 ALL RIGHT, COUNSEL---

22 MS.DUKE-MIMS: YOUR HONOR---

23 THE COURT: ---FIRST, LET ME ASK, DO YOU WISH TO
24 ADDRESS THE LIFE WITHOUT PAROLE ISSUE?

25 MS. DUKE-MIMS: YES, SIR, I DO, ABSOLUTELY.

1 WE'D ALSO LIKE TO ASK THAT THEY -- THAT THE
2 SOLICITOR BE MADE TO PROVE HIS IDENTITY BEYOND A REASONABLE
3 DOUBT AS TO THESE PRIOR CONVICTIONS; ALSO BE MADE TO PROVE
4 THE PRIORS ARE HIS PRIORS; AND ANY LINKS BETWEEN THE PRIOR
5 CONVICTION AND HIS IDENTITY, WHETHER THAT BE THROUGH
6 FINGERPRINTS OR WHATEVER. I THINK HE HAS THAT RIGHT.

7 THE COURT: ALL RIGHT.

8 MADAM SOLICITOR, DO YOU HAVE---

9 MS. PELLIZZARI: YOUR HONOR, WE HAVE THE
10 CERTIFIED---

11 THE COURT: ---EVIDENCE REGARDING THAT---

12 MS. PELLIZZARI: I'M SORRY.

13 THE COURT: GO AHEAD.

14 MS. PELLIZZARI: WE HAVE THE CERTIFIED
15 CONVICTIONS FROM THE ATTEMPTED -- TWO ATTEMPTED ARMED
16 ROBBERIES AND THE ONE ASSAULT AND BATTERY WITH INTENT TO
17 KILL AND THOSE HAVE BEEN PROVIDED TO MS. MIMS.

18 THE COURT: OKAY.

19 YOU DISPUTE THOSE, MS. MIMS?

20 MS. DUKE-MIMS: I WOULD -- YOUR HONOR, I WOULD
21 CERTAINLY LIKE LINK AS TO HIS IDENTITY AT THE TIME. HE
22 ACTUALLY WAS DEMARCO JOHNSON AND WAS CONVICTED OF THESE
23 CRIMES BACK IN 1997. WE WOULD ASK THE COURT FOR THAT AS
24 WELL, THAT THE STATE BE MADE TO PROVE THAT AS WELL.

25 THE COURT: OKAY.

1 CAN YOU HAND SOME DOCUMENTATION -- DO YOU HAVE
2 THE DOCUMENTATION TO HAND UP?

3 MS. PELLIZZARI: YES, SIR.

4 (WHEREUPON, THE DOCUMENTS ARE
5 HANDED TO THE COURT AT THIS TIME.)

6 THE COURT: ALL RIGHT.

7 I NOTE THE STATE HAS HANDED UP CERTIFIED TRUE
8 COPIES OF ORIGINALS FILED WITH THE CLERK'S OFFICE IN
9 RICHLAND COUNTY.

10 ONE IS AN INDICTMENT 96-GS-40-12220 FOR ARMED
11 ROBBERY. ACCORDING TO THE RECORD, MR. JOHNSON WAS PUT
12 BEFORE THE BAR AND PLED GUILTY AS CHARGED AND THE DOCUMENT
13 INDICATES IT WAS SIGNED BY THE CLERK AND BY MR. JOHNSON.

14 AND THAT WAS ON MARCH 21ST OF 1997.

15 ALSO, IN INDICTMENT NUMBER 99 -- AND LET ME NOTE,
16 I SAID ARMED ROBBERY. I APOLOGIZE, THAT WAS ATTEMPTED
17 ARMED ROBBERY.

18 INDICTMENT 96-GS-40-12224 WAS AN INDICTMENT ALSO
19 FOR ATTEMPTED ARMED ROBBERY ON MARCH 21 OF 1997. AGAIN, BY
20 CERTIFIED TRUE COPY, MR. DEMARCO JOHNSON WAS PUT BEFORE THE
21 BAR AND ARRAIGNED AND PLED GUILTY AS CHARGED ON THAT
22 INDICTMENT ALSO.

23 AND IN THAT, LET ME NOTE ON EACH OF THOSE, JUDGE
24 -- THE HONORABLE THOMAS W. COOPER, JR., WAS THE PRESIDING
25 JUDGE AND SENTENCED MR. JOHNSON TO TWELVE YEARS, PROVIDED

1 ON THE SERVICE OF EIGHT YEARS. IT WAS SUSPENDED AND HE WAS
2 THEN PLACED ON PROBATION FOR THREE YEARS.

3 AGAIN, THAT WAS THE SENTENCE ON BOTH AND THOSE
4 WERE RUN CONCURRENTLY.

5 ALSO, BY INDICTMENT NUMBER 96-GS-40-12219, WHICH
6 WAS AN INDICTMENT FOR ASSAULT AND BATTERY WITH INTENT TO
7 KILL, ON MARCH 21, 1997, THE RECORD SHOWS THAT MR. DEMARCO
8 JOHNSON WAS PUT BEFORE THE BAR AND ARRAIGNED AND PLED
9 GUILTY AS CHARGED ON THAT. AND ON THAT WAS SENTENCED AGAIN
10 BY THE HONORABLE JUDGE COOPER TO TWELVE YEARS, SUSPENDED ON
11 THE SERVICE OF EIGHT YEARS WITH THREE YEARS PROBATION.

12 ALL RIGHT. COUNSEL, ACCORDING TO THE RECORDS
13 PRESENTED BY THE SOLICITOR, BY CERTIFIED TRUE COPIES FROM
14 THE CLERK'S OFFICE, THEY INDICATE GUILTY PLEAS BY MR.
15 JOHNSON FOR TWO COUNTS OF ATTEMPT ARMED ROBBERY, ONE COUNT
16 OF ASSAULT AND BATTERY WITH INTENT TO KILL.

17 ANYTHING FURTHER?

18 MS. DUKE-MIMS: I UNDERSTAND, YOUR HONOR.

19 I WOULD JUST LIKE TO GO ON THE RECORD SAYING THAT
20 WE HAVE REQUESTED ACTUAL IDENTIFICATION, WHETHER THAT BE
21 FINGERPRINTS OR MUG SHOT, WHATEVER, FROM 1997 SHOWING THAT
22 THIS IS THE SAME INDIVIDUAL WHO IS HERE BEFORE YOU TODAY,
23 YOUR HONOR. AND I UNDERSTAND THE STATE IS NOT ABLE TO
24 PROVIDE THAT AT THIS POINT. I WOULD JUST LIKE TO GO ON
25 RECORD HAVING REQUESTED THAT AT LEAST.

1 THE COURT: ALL RIGHT.

2 ANYTHING ELSE YOU WANT TO PUT ON THE RECORD,
3 MADAM SOLICITOR?

4 MS. PELLIZZARI: NO, SIR, YOUR HONOR.

5 THE COURT: OKAY.

6 MS. DUKE-MIMS: OKAY.

7 YOUR HONOR, JUST BRIEFLY, WE ARE ASKING THAT THE
8 LIFE WITHOUT PAROLE STATUTE BE HELD UNCONSTITUTIONAL FOR
9 STATE AND FEDERAL REASONS, YOUR HONOR.

10 SPECIFICALLY, UNDER THE SEPARATION OF POWERS
11 PROVISION, WE SUBMIT IT VIOLATES THE STATE AND FEDERAL
12 CONSTITUTION SEPARATION OF POWERS.

13 YOUR HONOR, WE ALSO FEEL THAT THIS STATUTE, THE
14 LIFE WITHOUT PAROLE STATUTE, REQUIRES MANDATORY SENTENCING
15 AND IS PROHIBITED AS CRUEL AND UNUSUAL PUNISHMENT UNDER THE
16 EIGHTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND
17 ARTICLE ONE, SECTION FIVE OF THE STATE CONSTITUTION.

18 WE FEEL THAT THIS IS ALSO AN EQUAL PROTECTION
19 VIOLATION, YOUR HONOR, UNDER SOUTH CAROLINA CODE. IT'S A
20 VIOLATION OF EQUAL PROTECTION CLAUSE OF THE UNITED STATES
21 CONSTITUTION AS CONTAINED IN THE FOURTEENTH AMENDMENT AND
22 THE SOUTH CAROLINA CONSTITUTION, ARTICLE ONE, SECTION
23 THREE.

24 WE ALSO BELIEVE THIS IS BURDEN SHIFTING, YOUR
25 HONOR. THE THREE STRIKES -- THE TWO STRIKES LAW IS INVALID

1 AS APPLIED TO THE DEFENDANT BECAUSE IT SHIFTS THE BURDEN OF
2 PROOF ONTO THE DEFENDANT VIOLATING ONE OF THE GREATEST
3 TENANTS OF CRIMINAL LAW.

4 ALSO, YOUR HONOR, THE STRIKES LAW VIOLATES AND
5 PROHIBITS -- VIOLATES THE PROHIBITION ON EX-POST FACTO
6 LAWS. IT IS RETROSPECTIVE AND IT DISADVANTAGES THE
7 OFFENDER WHO IS AFFECTED BY IT.

8 YOUR HONOR, IF I COULD, I WOULD ALSO LIKE TO MAKE
9 THIS A COURT'S EXHIBIT FOR THE RECORD.

10 THE COURT: ALL RIGHT.

11 IF YOU'LL JUST GIVE IT TO THE COURT REPORTER AND
12 LET HER MARK IT.

13 (WHEREUPON, COURT'S EXHIBIT NUMBER
14 THREE, MOTION AND MEMORANDUM OF LAW IN OPPOSITION TO A
15 SENTENCE LIFE WITHOUT PAROLE, MARKED FOR THE RECORD AT THIS
16 TIME.)

17 MS. DUKES-MIMS: YOUR HONOR, I KNOW AT THIS
18 POINT, YOUR HANDS ARE TIED AND I UNDERSTAND THAT AND MY
19 CLIENT UNDERSTANDS THAT. FOR WHAT IT'S WORTH, I WOULD JUST
20 LIKE TO LET YOU KNOW THAT HE IS 21-YEARS-OLD. HE'S
21 RECEIVED HIS G.E.D. ALREADY. ALTHOUGH HE DIDN'T GRADUATE
22 FROM HIGH SCHOOL, HE DID GO AND EARN HIS G.E.D. HE HAS A
23 LOT OF FAMILY WHO IS HERE TO SUPPORT HIM TODAY. I'VE
24 REPRESENTED MR. JOHNSON SINCE THIS INCIDENT OCCURRED AND HE
25 IS ONE OF THE MOST RESPECTFUL CLIENTS I HAVE ONE. ONE OF

1 THE MOST RESPECTFUL ONES, ONE OF THE MOST PATIENT CLIENTS.
2 HE'S NEVER GIVEN ME ANY PROBLEMS. I'M VERY SORRY THAT THIS
3 HAS TO HAPPEN TO A 21-YEAR-OLD MAN AND I WOULD JUST LIKE TO
4 GIVE THAT TO YOU FOR WHAT THAT'S WORTH.

5 THE COURT: CERTAINLY.

6 MS. SAMPSON, DID YOU WANT TO SAY ANYTHING?

7 MS. SAMPSON: I'M JUST IN AGREEMENT WITH MS. MIMS.
8 I'M JUST BASICALLY STANDING HERE FOR SUPPORT, YOUR HONOR.

9 THE COURT: OKAY.

10 MR. JOHNSON, IS THERE ANYTHING YOU WANTED TO
11 SAY?

12 THE DEFENDANT: NO, SIR.

13 THE COURT: OKAY.

14 COUNSEL, I CERTAINLY AGREE. I THINK IT'S
15 OBVIOUSLY VERY TRAGIC WHEN A 21-YEAR-OLD IS SENTENCED TO A
16 LIFE WITHOUT PAROLE SENTENCE AND AS YOU KNOW -- BUT AS YOU
17 KNOW, THE LEGISLATURE HAS DETERMINED THAT UNDER CERTAIN
18 CIRCUMSTANCES, IT MUST OCCUR. I CERTAINLY WOULD -- I AGREE
19 WITH YOU THAT THROUGHOUT THE PROCESS -- OF COURSE, I WATCH
20 EVERYONE IN THE COURTROOM AND I'VE WATCHED MR. JOHNSON. HE
21 ACTED VERY POLITELY AND VERY COURTEOUSLY TO EVERYONE DURING
22 THE TRIAL. CONDUCTED HIMSELF, I THOUGHT, WITH VERY GOOD
23 DEMEANOR.

24 NOW, I CERTAINLY -- I DON'T KNOW THAT THAT
25 CHANGES ANYTHING AND I CERTAINLY NOTE THAT FOR THE RECORD

1 THOUGH.

2 AND, MR. JOHNSON, I CERTAINLY WANT YOU TO KNOW
3 THAT, TOO, THAT I CERTAINLY OBSERVED THAT DURING THE TRIAL.
4 BUT AS YOU KNOW, THE LEGISLATURE HAS MADE IT VERY CLEAR
5 AND, AS YOU KNOW, I'M SURE YOU'VE DISCUSSED WITH HIM, THIS
6 IS WHAT'S REFERRED TO AS A PINE BOX LIFE SENTENCE. THAT IN
7 ESSENCE, HE'LL LEAVE -- WHENEVER HE DIES AT WHATEVER AGE IS
8 WHEN HE WILL LEAVE THE DEPARTMENT OF CORRECTIONS. AGAIN,
9 VERY TRAGIC, BUT WE DON'T HAVE A CHOICE ON THAT.

10 ON EACH OF THE SENTENCES, I'LL ORDER THAT THE
11 DEFENDANT BE COMMITTED TO THE DEPARTMENT OF CORRECTIONS FOR
12 THE TERM OF HIS NATURAL LIFE TO SERVE WITHOUT POSSIBILITY
13 OF PAROLE.

14 THANK YOU, MA'AM.

15 GOOD LUCK, MR. JOHNSON.

16 MS. DUKE-MIMS: THANK YOU, SIR.

17 THE COURT: ALL RIGHT.

18 LADIES AND GENTLEMEN OF THE JURY, AGAIN, THANK
19 YOU.

20 CERTAINLY, IF YOU WISH TO GO AHEAD AND BE EXCUSED
21 AT THIS TIME, YOU CAN AND BE BACK AT 9:30 IN THE MORNING.

22 (WHEREUPON, THE JURY WAS EXCUSED
23 FROM FURTHER SERVICE AT THIS TIME.)

24 (WHEREUPON, COURT'S EXHIBIT NUMBER
25 FOUR, CERTIFIED COPIES OF INDICTMENTS, ET CETERA, MARKED

1 FOR THE RECORD AT THIS TIME.)

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1 STATE OF SOUTH CAROLINA)

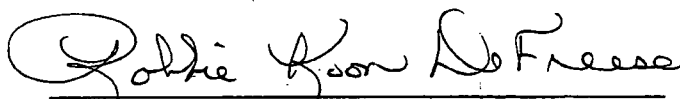
2 C E R T I F I C A T E

3 COUNTY OF RICHLAND)

4
5
6 I, THE UNDERSIGNED ROBBIE KOON DEFREESE, OFFICIAL
7 COURT REPORTER FOR THE FIFTH JUDICIAL CIRCUIT OF THE STATE
8 OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS
9 A TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF ALL
10 THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL OF
11 THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE GENERAL
12 SESSIONS COURT FOR RICHLAND COUNTY, SOUTH CAROLINA, ON THE
13 5TH, 6TH, AND 7TH DAYS OF FEBRUARY, 2001.

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

16
17 MAY 6, 2001

18 

19 ROBBIE KOON DEFREESE
20 CIRCUIT COURT REPORTER
21
22
23
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25

Westlaw.

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(Cite as: 350 S.C. 543, 567 S.E.2d 486)

H

State v. Johnson
S.C.App., 2002.

Court of Appeals of South Carolina.
The STATE, Respondent,
v.
Demarco JOHNSON, Appellant.
No. 3501.

Submitted March 25, 2002.
Decided May 28, 2002.
Rehearing Denied Aug. 23, 2002.

Defendant was convicted in the Orangeburg County Circuit Court, Marc H. Westbrook, J., of first-degree burglary, armed robbery, and kidnapping, and he appealed. The Court of Appeals, Goolsby, J., held that application to defendant of "Two-Strikes" law, resulting in sentence of life imprisonment without possibility of parole, did not amount to cruel and unusual punishment.

Affirmed.

West Headnotes

[1] Constitutional Law 92 ⇨ 52

92 Constitutional Law

92III Distribution of Governmental Powers and Functions

92III(A) Legislative Powers and Delegation Thereof

92k51 Encroachment on Judiciary

92k52 k. In General. Most Cited Cases

Sentencing and Punishment 350H ⇨ 1210

350H Sentencing and Punishment

350HVI Habitual and Career Offenders

350HVI(A) In General

350Hk1210 k. Validity of Statute or
Regulatory Provision. Most Cited Cases
Defendant's sentence of life imprisonment without
the possibility of parole under "Two-Strikes" law

did not violate the separation of powers doctrine on basis that law deprives the judiciary of "all judicial discretion" in the exercise of its sentencing function; judicial discretion in sentencing was subject to statutory restriction without any violation of the separation of powers doctrine. Code 1976, § 17-25-45(A).

[2] Sentencing and Punishment 350H ⇨ 1513

350H Sentencing and Punishment

350HVII Cruel and Unusual Punishment in General

350HVII(E) Excessiveness and Proportionality of Sentence

350Hk1513 k. Habitual Offenders and Career Criminals. Most Cited Cases

Application to defendant of "Two-Strikes" law, resulting in sentence of life imprisonment without possibility of parole for his convictions for first-degree burglary, armed robbery, and kidnapping, did not amount to cruel and unusual punishment; burglary, armed robbery, and kidnapping were grave offenses of the most serious nature, and when considered along with defendant's prior offenses, two of which were for attempted armed robbery and one of which was for assault and battery with intent to kill, penalty of life without parole for each of offenses for which defendant was convicted was not extreme. U.S.C.A. Const. Amend. 8; Code 1976, § 17-25-45(A).

[3] Sentencing and Punishment 350H ⇨ 1381(6)

350H Sentencing and Punishment

350HVI Habitual and Career Offenders

350HVI(K) Proceedings

350Hk1375 Evidence

350Hk1381 Sufficiency

350Hk1381(6) k. Identity. Most

Cited Cases

Evidence was sufficient to show that defendant and the individual previously convicted were one and the same, and thus, State satisfied its burden of

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proof that defendant had been convicted of the prior offenses that triggered the "Two-Strikes" law; State proffered certified copies of court records showing that defendant had previously pled guilty to two counts of attempted armed robbery and one count of assault and battery with intent to kill, and defendant offered no evidence to suggest that he was not that individual. Code 1976, § 17-25-45(A).

*544 Assistant Appellate Defender Katherine Carruth Link, of S.C. Office of Appellate Defense, of Columbia, for appellant.

Attorney General Charles M. Condon, Chief Deputy Attorney General John W. McIntosh, Assistant Deputy Attorney General Charles H. Richardson, Assistant Attorney General *545 W. Rutledge Martin; and Solicitor Warren B. Giese, all of Columbia, for respondent.
GOOLSBY, J.

A jury convicted Demarco Johnson of first-degree burglary, armed robbery, and two counts of kidnapping. The trial judge sentenced Johnson on each offense pursuant to section 17-25-45(A) of the South Carolina Code, FN1 known as the "Two-Strikes" law, FN2 to life imprisonment without the possibility of parole. Johnson had a prior conviction for assault and battery with intent to kill and two prior convictions for attempted armed robbery. On appeal, Johnson challenges the validity of section 17-25-45(A), claiming the statute violates the doctrine of separation of powers and the prohibition against cruel and unusual punishment. He also contends the State failed to satisfy its burden of proving that he had been convicted of the prior offenses. We affirm. FN3

FN1. S.C.Code Ann. § 17-25-45(A) (Supp.2001). This section currently provides in pertinent part:

(A) ... [U]pon a conviction for a most serious offense as defined by this section, a person must be sentenced to a term of imprisonment for life without the possibility of parole if that person has one or more prior convictions for: (1) a most serious offense....

Id. Section 17-25-45 further provides:

(C) As used in this section:

(1) "Most serious offense" means:

...
16-3-620 Assault and battery with intent to kill

...
16-3-910 Kidnapping

...
16-11-311 Burglary, First degree
16-11-330 (A) Armed robbery
16-11-330(B) Attempted armed robbery....
Id. § 17-25-45(C)(1).

FN2. *State v. Jones*, 344 S.C. 48, 55, 543 S.E.2d 541, 544 (2001).

FN3. Because oral argument would not aid the court in resolving the issues on appeal, we decide this case without oral argument pursuant to Rule 215, SCACR.

[1] 1. We find no merit to Johnson's contention that his sentence under section 17-25-45(A) violates the separation of powers doctrine because it deprives the judiciary of "all judicial discretion" in the exercise of its sentencing function. The *546 supreme court basically settled this issue in *State v. De La Cruz*, FN4 a case that dealt with a challenge on the same ground to another mandatory sentencing statute, S.C.Code Ann. § 44-53-370(e)(2)(c) (Supp.1989). FN5 In that case, the supreme court recognized judicial discretion in sentencing is subject to statutory restriction without any violation of the separation of powers doctrine. FN6

FN4. 302 S.C. 13, 393 S.E.2d 184 (1990).

FN5. In his attack on the mandatory sentencing statute contained in S.C.Code Ann. § 44-53-370(e)(2)(c) (Supp.1989), *De La Cruz* argued "that the mandatory sentence set forth by the legislature impermissibly intrudes into inherent judicial powers in that *all* judicial discretion in sentencing is removed." *Id.* at 15, 393 S.E.2d at 185-86 (emphasis added).

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FN6. *See id.* at 15, 393 S.E.2d at 186; *see also Jones*, 344 S.C. at 56, 543 S.E.2d at 545 (holding the mandatory nature of section 17-25-45 does not violate the separation of powers doctrine in light of a prosecutor's discretion to pursue triggering offenses or plea down the charges) (citing *State v. Burdette*, 335 S.C. 34, 515 S.E.2d 525 (1999)).

[2] 2. We likewise find no merit to Johnson's contention that the application to him of the mandatory sentencing statute at issue here amounts to cruel and unusual punishment^{FN7} because the facts and circumstances in this case "simply [are] not the kind **488 that warrant[] imposition of a life sentence without eligibility for parole."

FN7. Johnson recognizes this Court upheld the constitutionality of the statute against an attack mounted on cruel and unusual punishment grounds in *State v. Brannon*, 341 S.C. 271, 533 S.E.2d 345 (Ct.App.2000).

In *State v. Jones*,^{FN8} our supreme court determined the life without parole sentence under the Two Strikes law of a defendant who was convicted of three counts of armed robbery and possession of a firearm was not grossly out of proportion to the severity of the crime for which he was convicted.^{FN9} The *Jones* court considered the following three factors mentioned in *Solem v. Helm*^{FN10} in reaching its conclusion: (1) the gravity *547 of the offense compared to the harshness of the penalty, (2) the sentences imposed on other criminals in the same jurisdiction, and (3) the sentences for the same crime in other jurisdictions.^{FN11}

FN8. 344 S.C. 48, 543 S.E.2d 541 (2001).

FN9. *Id.* at 57, 543 S.E.2d at 545.

FN10. 463 U.S. 277, 103 S.Ct. 3001, 77 L.Ed.2d 637 (1983).

FN11. *Jones*, 344 S.C. at 56, 543 S.E.2d at

545.

Here, few would argue that first-degree burglary, armed robbery, and kidnapping are anything other than grave offenses of the "most serious" nature. Indeed, the Two Strikes law declares them to be such.^{FN12} When considered along with Johnson's prior offenses, two of which were for attempted armed robbery and one of which was for assault and battery with intent to kill, the penalty of life without parole for each of the offenses for which Johnson was convicted is not extreme.^{FN13}

FN12. *See supra* note 1.

FN13. *See Jones*, 344 S.C. at 57, 543 S.E.2d at 545 ("[G]iven the 'most serious' nature of armed robbery, when coupled with a prior most serious offense, the gravity of the offense is not disproportionate to a sentence of life without parole.")

Moreover, the sentence that Johnson received is no different from a sentence that would be levied on any other defendant convicted in South Carolina under similar circumstances. The sentence of life without the possibility of parole that the trial court imposed on Johnson upon his conviction for four "most serious" offenses is the same sentence as would be imposed on any other defendant with a record of convictions for one or more "most serious" offenses^{FN14} and similarly convicted.

FN14. *See id.* at 57, 543 S.E.2d at 545; S.C.Code Ann. § 17-25-45(A).

Regarding the third factor, a life sentence under recidivist laws for armed robbery, one of four "most serious" offenses for which the jury convicted Johnson, is not, as the court recognized in *Jones*, "unique to South Carolina."^{FN15}

FN15. *Jones*, 344 S.C. at 57, 543 S.E.2d at 545.

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[3] 3. Finally, we disagree with Johnson's contention that the State failed to satisfy its burden of proof that Johnson had *548 been convicted of the prior offenses that triggered the Two-Strikes law. The State proffered certified copies of court records showing that a Demarco Johnson pled guilty in 1997 to two counts of attempted armed robbery and one count of assault and battery with intent to kill. Johnson offered no evidence ^{FN16} to suggest he was not that Demarco Johnson. Under these circumstances, the evidence was sufficient to show that Johnson and the individual previously convicted were one and the same. ^{FN17}

FN16. Rather than offer evidence that he was not the Demarco Johnson in question, Johnson, through counsel, complained about the State's failure to honor his request to furnish him with fingerprints or a mug shot from 1997 showing that he was in fact the same individual who had pled guilty to the two offenses that the State relied upon to trigger the Two-Strikes law. Complaints of counsel do not constitute evidence. See *Gilmore v. Ivey*, 290 S.C. 53, 58, 348 S.E.2d 180, 183 (Ct.App.1986) ("[I]n determining whether a genuine issue of material fact exists, factual statements of counsel, whether made during oral argument or in written briefs or memoranda, ordinarily may not be [] considered.").

FN17. See *Lewis v. State*, 234 Ga.App. 873, 508 S.E.2d 218, 222 (1998) (stating where the defendant presented no evidence contradicting that he was the person named in the certified court documents, "[c]oncurrence of name alone is some evidence of identity" and was sufficient to show the defendant and the individual previously convicted were the same person) (citation omitted); *Murphy v. State*, 399 So.2d 340, 346 (Ala.Crim.App.1981) (holding certified copy of prior conviction of individual with the same name as the defendant was

sufficient as it "raised a prima facie presumption of the sameness of the person" and "[t]here was no attempt to rebut that presumption"); see also *Parke v. Raley*, 506 U.S. 20, 113 S.Ct. 517, 121 L.Ed.2d 391 (1992) (holding where a defendant challenges a prior conviction and the Commonwealth initially proves the existence of the judgment on which it intends to rely, a presumption of regularity attaches and the burden shifts to the defendant to produce evidence showing his rights were infringed or an irregularity occurred).

AFFIRMED.

CONNOR and ANDERSON, JJ., concur.
S.C.App., 2002.
State v. Johnson
350 S.C. 543, 567 S.E.2d 486

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STATE OF SOUTH CAROLINA

In the Court of Common Pleas

County of RICHLANDDemarco Johnson #241438

Full name and prison number (if any) of Applicant,

vs.

State of South Carolina

Name of Respondent.

A3CP 105842

APPLICATION FOR

POST-CONVICTION RELIEF

03 DEC -5 PM 4:35
BARBARA A. SCOTT
& S.

FILED

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 it clear to which question any such continued answer refers.

Since every application must be sworn to 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 the 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 applicant was convicted.

1. Place of detention Lee Correctional Institution 990 Wisacky Highway
Bishopville South Carolina 29010
2. Name and location of Court which imposed sentence Richland County General Sessions
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) 2000-GS-40-47718 FIRST DEGREE BURGLARY, 200 GS-40-47714, Armed Robber
 - (b) 200-GS-40-47716, Kidnapping
 - (c) 200-GS-40-47717, Kidnapping
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) February 7th, 2001, Sentences were imposed upon all Counts.
 - (b) Under S.C. Code §17-25-45.
 - (c) _____

5. Check whether a finding of guilty was made

- (a) after a plea of guilty _____
(b) after a plea of not guilty **NOT GUILTY** _____
(c) after a plea of nolo contendere _____

6. Did you appeal from the judgment of conviction or the imposition of sentence?

Yes

7. If you answered "yes" to (6), list

(a) the name of each Court to which you appealed:

- i. **South Carolina Supreme Court** _____
ii. _____
iii. _____

(b) the result in each such Court to which you appealed:

- i. **Sentence Affirmed** _____
ii. _____
iii. _____

(c) the date of each such result:

- i. ~~Submitted March 25, 2002--Filed May 28, 2002~~ _____
ii. **Rehearing denied June 13, 2002.** _____
iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

- i. **Opinion No: 3501** _____
ii. _____
iii. _____

8. If you answered "no" to (6), state your reasons for not so appealing:

- (a) **NA** _____
(b) _____
(c) _____

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) **SEE ATTACHMENT** _____
(b) _____
(c) _____

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

- (a) **SEE ATTACHMENT** _____
(b) _____
(c) _____

ATTACHMENT 9 (a)

- a) The Conviction and Sentence was in violation of the Constitution of the United States and the Constitution and laws of South Carolina.
- b) That the Court was without jurisdiction to impose the sentence that the defendant recieved.
- c) There exists evidence of material facts not previously presented and heard that requires vacation of the sentence in the interests of justice.
- d) That the defendant received ineffective assistance of counsel.

ATTACHMENT 10 (a)

a) The conviction and sentence was in violation of the Constitution of the United States and the Constitution of the laws of South Carolina for each of the following reasons:

1. The sentence and the conviction of the Defendant was obtained through prosecutorial misconduct in that each and every witness of the State presented false testimony against the defendant.
2. Defendant was deprived of his Constitutional right's when the State failed to obtain the victim's desires for Defendants punishment.
3. The defendant was denied his Constitutional right to due process when the State secured defendants detention upon faulty warrants.
4. The defendant was denied his Constitutional right to present mitigating evidence prior to sentencing under the "Future Dangerousness " doctrine.
5. The Defendant's rights to a fair trial, due process and fundamental fairness were violated when the trial court failed to charge the jury with the lesser included offenses, to include Burglary 2nd.
6. The defendant's right to a fair trial, funamental fairness and due process was violated when he was tried for both Kidnapping charges, and Burglary 1st, in the same trial;

- b) The Court was without jurisdiction, and Defendant was denied his right to due process and fundamental fairness, because the warrants furnished the Defendant were not secured in or under oath sworn to before issuance and trial. The Defendant was not brought before a magistrate after his arrest was secured in order to procure the warrant of his arrest upon the notice of a sworn affidavit before trial. The warrants omit whether they were sworn to under oath, and a issuing judges signature showing proof of oath.
- c) The exist evidence of material facts, not previously presented and heard that requires vacation of the conviction and sentence in the interest of judgment in that there are facts that will show that the witnesses against the Defendant presented false testimonay. This false testimony goes to discovery of the Defendant on the premises, the actions of the Defendant while on the premises, and the physical motive of the Defendant.
- d) The Defendant received ineffective assistance of counsel in each of the following paticulars;
1. Counsel was ineffective for failing to request the Court to charge the lesser offense of Burglary 2nd;
 2. Counsel was ineffective for failing to explore the possibility of a plea negotiation with the victims in opposition to the "Two Strikes Law".
 3. Counsel was ineffective for failing to request that the charges of Buglary 1st, and Kidnapping be seperated and tried seperately;
 4. Counsel was ineffective for failing to obtain jail documents that showed Defendant to have \$203.00 dollars upon his arrest and booking, which would have shown that witnesses James Standin Smith, and Dennis Dodge gave false testimonay.
 5. Counsel was ineffective for not moving to request

evidence of affidavit of arrest showing the warrants to be procured under sworn oath.

6. Counsel was ineffective for failing to object and ask for a mistrial when the state tried to introduce evidence concerning statements, made by uncalled witnesses prejudicing the Defendant's right to a fair trial in solicitor's closing arguments.

7. Counsel Failed to object or move for mistrial when the Prosecutor argued that in opening statements that the Defendant was guilty of Burglary 1st degree because he escorted someone to their apartment at gunpoint and having them let you in was burglary first, These arguments were improper and prejudicial in that the Defendant was indicted for committing Burglary 1st, based upon the possession of a handgun, Furthermore, he was not indicted for Burglary 1st, while in the commission of Kidnapping which is exactly what the prosecutor described as Burglary 1st.

11. 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 petitions in State or Federal Courts for habeas corpus or post-convictions relief? NO

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? NO

(d) any other petitions, motions or applications in this or any other Court?

Applicant has only had a direct appeal to the Supreme Court

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. Direct Appeal

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. Supreme Court

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. Affirmed

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

14. If you answered "yes" to (), identify:

(a) which grounds have been presented:

- i. N/A
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. N/A
- ii. _____
- iii. _____

15. If any ground set forth in (9) 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) This Applicants first PCR since denial of Direct appeal

(b) _____

(c) _____

16. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? Yes

(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? Yes.

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

i. Sheilla Mims/ Trial Sentencing

April Woodard Sampson /Trial Sentencing

ii. Catherine Link / Direct Appeal/ Office of Appellate Defense

iii. _____

(b) the proceedings at which each such attorney represented you:

i. S. Mims /Trial Sentencing

ii. A. W. Sampson /Trial Sentencing

iii. C. Link ? Direct Appeal

18. State clearly the relief you seek in filing this application.

New Trial And Vacation of Sentence

19. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA

County of LEE

VERIFICATION

I, Demarco Johnson #241438, 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.

Demarco Johnson
Demarco Johnson

SWORN to and subscribed before me this 3

day of Dec, 19 2003

Barbara Reckton (L.S.)
 Notary Public

My Commission Expires: Oct 28, 2012

APPLICATION TO PROCEED WITHOUT PREPAYMENT
 OF COSTS AND AFFIDAVIT
 IN SUPPORT THEREOF

I, Demarco Johnson #241438, 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 therefor.

Demarco Johnson
 Applicant

SWORN or affirmed to and subscribed before me this

3 day of Dec, 19 2003

Barbara Reckton
 Notary Public

My Commission Expires Oct 28, 2012

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

03-CP-40-5842

Demarco Johnson, #214138,

Applicant,

v.

**RETURN AND
MOTION TO DISMISS IN PART**

State of South Carolina,

Respondent.

The Respondent, making its Return to the application for post conviction relief (PCR) filed December 5, 2003, 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 Richland County Clerk of Court. The Applicant was indicted at the July 2000 term of the Richland County Grand Jury for two counts of kidnapping (00-GS-40-47716,47717) and first degree burglary (00-GS-40-47718). He was represented by Sheila Mims and April Sampson, Esq. On February 7, 2001, the Applicant proceeded to trial and was found guilty. He was sentenced by the Honorable Marc Westbrook to confinement for Life without parole. The Applicant did not appeal his conviction or sentence.

Attached herewith and incorporated herein by reference are the records of the Richland County Clerk of Court regarding the subject convictions, the Applicant's records from the South

Carolina Department of Corrections, the guilty plea transcript, and the application for PCR. Any of the above not so attached will be forwarded upon receipt.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Conviction and sentence violate of the U.S. and S.C. Constitutions.
2. Trial court lacked subject matter jurisdiction.
3. Newly discovered evidence.
4. Ineffective assistance of counsel.

III.

First, the State submits that the current application for PCR should be summarily dismissed for failure to comply with the filing procedures of the Act. S.C. Code Ann. § 17-27-10 to -160 (1976 & Supp. 1997). The Act reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

S.C. Code Ann. § 17-27-45(a) (Supp. 1998).

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was convicted of the offense(s) he challenges in this Application on February 7, 2001. This Application was filed on December 5, 2003, well after the one year statutory filing period had expired.

A motion for summary judgement may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (1985) authorizes the PCR Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . that there is no genuine issue of material fact and the moving party is entitled to judgement as a matter of law." Therefore, the State requests that this Court summarily dismiss the Application for PCR for failure to file within the time mandated by statute.

V.

Thus, the State requests that the Court summarily dismiss this Application for PCR as barred by the statute of limitations as it relates to the Applicant's claim of ineffective assistance of counsel and unlawful conviction and sentence. The State recognizes that the Applicant can bring a PCR claim on subject matter jurisdiction and newly discovered evidence grounds after the time for filing has expired. Accordingly, the State requests an evidentiary hearing solely on the issue of subject matter jurisdiction and newly discovered evidence.

VI.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

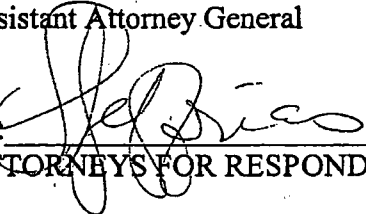
Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

LAKESHA JEFFRIES
Assistant Attorney General

By: 

ATTORNEYS FOR RESPONDENT

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Columbia, SC 29211
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July 13, 2004



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

STATE OF SOUTH CAROLINA
IN THE CIRCUIT COURT

Case No.2003-CP-40-5842

DEMARCO JOHNSON, NO. 214138

Applicant,

v.

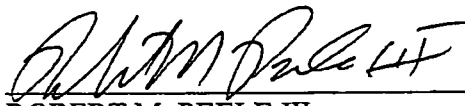
STATE OF SOUTH CAROLINA,

Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the Return of the Respondent been served upon opposing counsel, Tara Dawn Shurling by mailing one (1) copy in an envelope properly addressed with postage prepaid this 13th day of July, 2004, to the below address:

Ms. Tara Dawn Shurling, Esquire
Law Offices of Tara Dawn Shurling
3614 Landmark Drive, Suite D
Columbia, South Carolina 29204


ROBERT M. PEELE III
LEGAL ASSISTANT

STATE OF SOUTH CAROLINA)

County of Richland)

COURT OF COMMON PLEAS
03-CP-40-5842

Demarco Johnson,)

APPLICANT,)

vs.)

The State,)

Respondent,)

TRANSCRIPT OF RECORD

February 26th, 2007
Columbia, South CarolinaBEFORE:

THE HONORABLE JAMES R. BARBER, JUDGE.

APPEARANCES:TARA D. SHURLING, ATTORNEY AT LAW
Attorney for the ApplicantROBERT L. BROWN, ASSISTANT ATTORNEY GENERAL
Attorney for the RespondentKAREN TRACY
Official Court Reporter

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PLAINTIFF'S EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
1	Evidence log	53	53

1 MR. BROWN: May it please the Court.

2 THE COURT: Yes, sir.

3 MR. BROWN: This is Demarco Johnson vs. The State of
4 South Carolina. This case is docketed at 2003-CP-40-5842.
5 It comes by way of an application filed December 5th,
6 2003.

7 Your Honor, by way of background, Mr. Johnson was
8 indicted at the July 2000 term of the Richland County
9 Grand Jury for two counts of kidnapping, and first degree
10 burglary.

11 He was represented by Sheila Mims and April Sampson.
12 On February 7th, 2001, he proceeded to trial at the
13 conclusion of which he was found guilty. He was sentenced
14 by the Honorable Marc Westbrook to confinement for life
15 without parole.

16 He did appeal his conviction and sentence. It was
17 affirmed on May 28th, 2002, and the remitter, he did
18 petition for cert. to the South Carolina Supreme Court,
19 and that petition for cert. was denied. The remitter was
20 issued February 27th, 2003.

21 Your Honor, the return does not reflect that bit of
22 procedural history. I would at this time just move to
23 orally amend that and reflect it in any future files --

24 THE COURT: All right.

25 MR. BROWN: -- files.

1 At this time, the State would yield to the Applicant.

2 THE COURT: All right. Ms. Shurling?

3 MS. SHURLING: Thank you.

4 Your Honor, initially there was some confusion
5 because the return indicated that this was a case in which
6 the State was seeking a summary judgment based on failure
7 to comply with 17-27-45(a).

8 This past Friday I talked to Mr. Brown about this
9 case, and we got the procedural history straight. I am
10 prepared to go forward today with one exception. The
11 client had asked that I obtain a copy of the personal
12 possessions log from the Richland County detention center
13 from when he was arrested.

14 I had not done that because I thought the State was
15 proceeding on their motion for summary judgment and that
16 we would probably be doing the merits on a different day.

17 I did send a subpoena out to Richland County.
18 They're pulling the information for me, and I can have
19 that personal property log back in a week to ten days, so
20 I would ask that to the extent my client's testimony
21 reveals a purpose for that documentation, that we be
22 allowed to leave the record open just for that one
23 document. That would be my only --

24 MR. BROWN: That's without objection.

25 Just for the record, Your Honor, this case has been

1 scheduled every term since October as a standard hearing.
2 It's never been scheduled as a motions hearing. That's
3 it.

4 THE COURT: All right.

5 MS. SHURLING: There's also never been an amended
6 return, Your Honor, so to my knowledge, the position of
7 the State had not changed, but it doesn't matter. We're
8 ready to go forward.

9 I would call Mr. Demarco Johnson to the stand.

10 DEMARCO JOHNSON, after being duly
11 sworn, testified as follows:

12 MS. SHURLING: Your Honor, could I ask that he have
13 one wrist undone? He has a good bit of paperwork that he
14 wants to refer to.

15 THE COURT: Do you all have any problem with that?

16 CORRECTIONS OFFICER: No, sir.

17 THE COURT: All right.

18 MS. SHURLING: Thank you very much.

19 THE COURT: Let me let you stay up there, if you
20 would. You can sit right there.

21 (The Applicant's handcuff was unlocked.)

22 DIRECT EXAMINATION:

23 BY MS. SHURLING

24 Q State your full name for the record, Mr. Johnson.

25 A Demarco Johnson.

1 Q Mr. Johnson, you are currently serving a sentence of
2 life without parole; is that correct?

3 THE COURT: Ms. Shurling, before you -- I mean, I
4 don't -- I want you to tell me, in reading his
5 application, I'm really -- I want to know it's -- what
6 he's really saying.

7 MS. SHURLING: Thank you, Your Honor.

8 THE COURT: It seems like a lot of arguments in his
9 application, and what I've read in the file is he's
10 contesting the ability of the State to go forward with a
11 life without parole, which is where he went on his appeal,
12 as well.

13 MS. SHURLING: Yes, sir, Your Honor. I would
14 apologize to the Court. I would ordinarily have done a
15 written amended application for post conviction relief in
16 this case if I had perceived that we were going forward
17 with a merits hearing.

18 It's true that it's been scheduled before, but
19 because it was -- there was a return and motion to dismiss
20 and because based on the language of the return, there had
21 been no appeal, I believe it was not timely. I had not
22 done an amended application, but I can tell the Court
23 specifically that there was some very damaging evidence
24 introduced at trial, came out contrary to an earlier
25 ruling from the court that they would not get into a

1 discussion about the source of a pistol in this case.

2 There were two pistols involved in this case
3 allegedly, Your Honor, one of which was taken at the time
4 the police arrived. The codefendant handed, allegedly
5 according to the victim, handed him his pistol, and he
6 laid it down on a dresser.

7 The record, however, also reveals that the officer
8 who found the pistol found it not laying on the dresser
9 but in a drawer, actually, secreted or concealed by being
10 in a closed drawer.

11 There had been discussion pretrial, as I understand
12 it, that the State was not going to venture into the
13 source of a second weapon which was found in a closet.

14 Now, when the police searched this residence, no
15 weapon was found in the closet. Ironically, it was the
16 victim who some time later called the police and had
17 miraculously managed to find a pistol in the closet that
18 law enforcement had supposedly missed in searching the
19 place.

20 That pistol, when an N.C.I.C. check was run on the
21 serial number, they apparently were able to discover that
22 that pistol was the product of a burglary and that they
23 had information that that pistol had been sold to my
24 client's brother by yet a third individual who was not
25 testifying at trial, nor was my client's brother

1 testifying at trial.

2 There were some questions asked, Your Honor,
3 beginning on about page 360 of the transcript by
4 Ms. Pellizari that opened the door, arguably, to the
5 introduction of testimony that was agreed pretrial would
6 not be delved into.

7 Subsequently, that -- I believe defense counsel was
8 very much shocked by that turn of events. They were blind
9 sided by it, Your Honor.

10 In an effort to mitigate it, I think they unwittingly
11 made it worse. Ultimately, they wound up asking questions
12 themselves which placed before the jury the fact that the
13 weapon was the product of a burglary, and once they
14 elicited that testimony, Ms. Pellizari ran with it and
15 introduced the testimony found on page 381 on redirect
16 where the State introduced without any objection by
17 defense counsel the fact that the weapon --

18 THE COURT: All right. So I'm -- it...

19 MS. SHURLING: So --

20 THE COURT: So we're not going forward on all those
21 other grounds?

22 MS. SHURLING: No, sir, Your Honor.

23 THE COURT: All right. Well --

24 MS. SHURLING: We're pursuing the fact that the
25 Applicant has life without parole, and it's not a homicide

1 case, Your Honor. So any error that may have prejudiced
2 him as glaringly as this may have, we believe is very
3 important for the Court to examine very carefully.

4 Clearly, he was represented by two able attorneys
5 with a lot of trial experience, but in this particular
6 situation, we believe the way they handled this particular
7 issue ultimately compounded error instead of mitigating
8 it, and that it was error that rises to a degree that it
9 irreparably prejudiced his ability to receive a fair
10 trial.

11 THE COURT: All right. Well --

12 MS. SHURLING: Particularly under the scrutiny that
13 the Court must give a case where a young man like this is
14 serving a life without parole.

15 THE COURT: All right. If you would.

16 MS. SHURLING: And also, Your Honor, I would just
17 point out that there were some prior inconsistent
18 statements.

19 I hate to make it sound like I raise that in every
20 case, but there were questions in this case involving
21 prior inconsistencies between the female victim's earlier
22 statement and the way she testified at trial, as well as
23 the way Van testified at trial versus his original
24 statement.

25 Although there were discussions about the jury's role

1 in determining credibility based on inconsistencies, there
2 wasn't a request for a Copeland charge on whether or not
3 that evidence might also be considered for substantive
4 value, and that would be another issue that we would
5 raise.

6 Now, may I proceed, Your Honor?

7 THE COURT: Yes, ma'am.

8 BY MS. SHURLING

9 Q Mr. Johnson, I may have thoroughly confused you by
10 now, but were you listening to everything I said?

11 A Yes, ma'am.

12 Q Okay. Now, I sort of have taken the direction you
13 pointed me in and refined it a good bit, but do you
14 basically agree with the arguments that I'm putting
15 forward on your behalf?

16 A Yes, ma'am, they are accurate.

17 Q Okay. Now, in addition to the allegation that --
18 first off, you believe defense counsel should have
19 objected the minute the Solicitor started getting into
20 questions designed to elicit evidence that the parties had
21 agreed would not be admitted, correct?

22 A Yes, ma'am; yes, ma'am.

23 Q And that if the testimony came out the way it did
24 faster than she could object, she should have made an
25 appropriate motion for a mistrial at that juncture rather

1 than try to clean it up by asking her own questions.

2 A Yes, ma'am.

3 Q Okay. And you also believe that counsel unwittingly
4 exacerbated the prejudice to you by asking questions that
5 actually further opened the door for the State to even
6 further delve into material that the parties had agreed
7 would otherwise not have been admissible, correct?

8 A Yes, ma'am; yes, ma'am.

9 Q And once all of it came out, and there was an in
10 camera discussion concerning it -- do you recall that?

11 A Yes, ma'am.

12 Q Do you recall after the testimony had come out that
13 at some point defense counsel finally asked for the jury
14 to be taken out, and there was a big discussion on the
15 record about it?

16 Your Honor, I'm referring to page 382 going over to
17 approximately 387. Defense counsel made very clear her
18 displeasure with the way the State had handled that issue,
19 didn't she?

20 A Yes, ma'am.

21 Q But she didn't make a motion to strike that
22 testimony, did she?

23 A No, ma'am, she didn't.

24 Q And she didn't make a motion for a mistrial, did she?

25 A No, she didn't.

1 Q And you believe that she should have done one or both
2 of those things?

3 A Yes, ma'am.

4 Q And if she had made a motion to strike and it had
5 been granted, you would have also wanted her to request a
6 curative charge; is that correct?

7 A Yes, ma'am.

8 Q And you believe that her failure to do those things
9 resulted in that testimony coming in unfettered by any
10 real challenge on her part?

11 A Yes, ma'am.

12 Q Okay. The witnesses in this case also testified a
13 little differently from what their original stories were,
14 isn't that true?

15 A Yes, ma'am.

16 Q Did she discuss with you the fact that the jury would
17 have a right to consider those inconsistencies when
18 deciding whether or not they believe those people?

19 A Could you explain it again?

20 Q Okay. Did you discuss with your lawyer the fact that
21 the jury would have a right to consider prior inconsistent
22 statements when they were deciding what version to believe
23 or whether to believe witnesses?

24 A I can't recall.

25 Q Okay. Do you recall any discussion of whether it

1 might be advantageous to you to ask that the jury be
2 further instructed that they had a right to consider as
3 substantive evidence any prior inconsistent statement that
4 was materially different from the one -- from the trial
5 testimony?

6 A Yes, ma'am, it's clear.

7 Q Okay. You would have wanted that?

8 A Yes, ma'am.

9 Q Okay. This is a very, very difficult case because
10 you have life without parole.

11 A Yes, ma'am.

12 Q I have told you that in my judgment it comes down to
13 this one very serious error in your trial that I believe
14 would justify your getting a new trial. We had that
15 discussion, didn't we?

16 A Yes, ma'am.

17 Q I am not raising a bunch of other little issues,
18 because in my judgment, it's the best thing to do, to
19 present the judge with what I believe the real glaring
20 problem with your trial is. Do you understand that?

21 A Yes, ma'am.

22 Q Having said that, this is your only P.C.R. hearing,
23 and you're the one without a lock. Are there any other
24 things that you feel the trial counsel you were provided
25 failed to do that might have made a difference in the