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[PP. 1001-1500]

STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. Supreme Court

APPEAL FROM DORCHESTER COUNTY

Court of Common Pleas

(Capital PCR: 2005-CP-18-1368)

The Honorable Doyet A. Early, III, Circuit Court Judge

Appellate Case No. 2014-000387

Kenneth Simmons, #5066,

Respondent/Petitioner,

v.

State of South Carolina,

Petitioner/Respondent.

APPENDIX

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Deputy Attorney General

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General

MELODY J. BROWN
Senior Assistant Attorney General

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-6305

ATTORNEYS FOR
PETITIONER/RESPONDENT

JAMES MORTON, ESQUIRE
Morton & Gettys, LLP
Post Office Box 707
Rock Hill, SC 29731

EMILY C. PAAVOLA, ESQUIRE
Death Penalty Resource & Defense Center
900 Elmwood Avenue, Suite 101
Columbia, SC 29201

ATTORNEYS FOR
RESPONDENT/PETITIONER

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STATE’S EXHIBIT #18b (CD 2 OF 2) [VIDEO DEPOSITION]**

MOTIONS

1 MR. HANDLER: HERE.

2 THE CLERK: NUMBER SIX, REBADELL B.

3 AHL?

4 MRS. AHL: HERE.

5 THE CLERK: NUMBER SEVEN, DEBORAH K.

6 SHUFORD?

7 MRS. SHUFORD: HERE.

8 THE CLERK: NUMBER EIGHT, MARK S.

9 WILLIAMSON?

10 MR. WILLIAMSON: HERE.

11 THE CLERK: NUMBER NINE, BRYANT L.

12 SULLIVAN?

13 MR. SULLIVAN: HERE.

14 THE CLERK: NUMBER TEN, DONALD F.

15 SHORT, JR.?

16 MR. SHORT: HERE.

17 THE CLERK: NUMBER ELEVEN,

18 CHRISTOPHER CAMPEAU?

19 MR. CAMPEAU: HERE.

20 THE CLERK: NUMBER TWELVE, JANET H.

21 WHITMORE?

22 MRS. WHITMORE: HERE.

23 THE CLERK: ON THE ALTERNATES;

24 ALTERNATE NUMBER ONE, RONALD BOLES?

25 MR. BOLES: HERE.

MOTIONS

1 THE CLERK: NUMBER TWO IS ROBERT S.
2 HUGHES?
3 MR. HUGHES: HERE.
4 THE CLERK: NUMBER THREE IS MILFORD
5 E. CARTER?
6 MR. CARTER: HERE.
7 THE COURT: MR. BOLES, I'M GOING TO
8 ASK YOU TO SIT ON THE FAR RIGHT CHAIR BECAUSE THAT
9 WILL MAKE IT EASIER FOR YOU WITH THE SITUATION WITH
10 YOUR LEG; AND OTHER TWO GENTLEMAN -- MR. HUGHES,
11 YOU SIT IN THE NEXT TO THE OUTSIDE CHAIR. AND MR.
12 CARTER, YOU SIT IN THE THIRD CHAIR THERE IF YOU
13 WOULD. AND MR. BOLES, IF YOU NEED A COCA COLA
14 CRATE OR A MILK CRATE OR SOMETHING TO PROP YOUR
15 FEET ON; WE WANT TO MAKE YOU AS COMFORTABLE AS WE
16 CAN. PLEASE, IF YOU WANT TO TURN YOUR CHAIR A
17 DIFFERENT WAY, WOULD YOU PLEASE LET US KNOW WHAT WE
18 CAN DO TO AID AND ABET AND ASSIST YOU TO BE AS
19 COMFORTABLE AS YOU CAN?
20 MR. BOLES: YES, SIR. A CRATE OR
21 SOMETHING WOULD BE GREAT TO PROP MY FOOT UP ON.
22 THE COURT: ALL RIGHT. MINE IS
23 NAILED IN HERE. I CAN'T GIVE YOU MINE. BUT WE'LL
24 TRY AND FIND YOU A CRATE OR SOMETHING OR SOME KIND
25 OF BOX OR A FOOT STOOL OR A FOOT REST. NOW, LADIES

MOTIONS

1 AND GENTLEMEN, WHILE I HAVE YOU ALL HERE PRESENT,
2 LET ME PLEASE THANK YOU VERY, VERY KINDLY FOR YOUR
3 WILLFULNESS TO BE HERE AND TO BE EXPOSED TO THE
4 FACT YOU MAY BE AWAY FROM YOUR HOME OR YOUR FAMILY
5 OR FRIENDS FOR FIVE, SIX, SEVEN, EIGHT, OR NINE
6 DAYS. AND EACH OF YOU HAVE BEEN CANDID. YOU'VE
7 DISPLAYED GOOD HUMOR. YOU HAVE BEEN JUST SO
8 COOPERATIVE. AND I AM JUST SO PLEASED THAT HERE IN
9 DORCHESTER COUNTY THAT WE HAVE SUCH A QUALIFIED
10 RATE OF CITIZENS CAPABLE OF BEING JUDGES OF THE
11 FACTS IN THE TRIAL OF CASES. AND I JUST THANK YOU
12 SO MUCH FOR BEING PRESENT. AND I THINK AT THIS
13 TIME THAT WE WILL GO AHEAD -- AND REMAINING MEMBERS
14 OF THE JURY PANEL, IF YOU NEED WORK EXCUSES, GO
15 DOWNSTAIRS TO THE CLERK'S OFFICE AND THEY WILL GIVE
16 THEM TO YOU BECAUSE THEY DON'T NORMALLY MAIL THEM
17 I'M TOLD. YOUR CHECKS WILL BE MAILED IN TWO OR
18 THREE DAYS. AND YOU WON'T HAVE TO SERVE AGAIN
19 DURING THE CALENDAR YEAR '99 IF YOU'RE CALLED AS A
20 JUROR IN STATE COURT. BUT BY BEING HERE YOU'RE
21 CONSIDERED TO HAVE SERVED ALBEIT YOU DID NOT
22 OFFICIALLY SIT ON THE JUROR PANEL. THERE IS AN
23 EXEMPTION WHICH YOU CAN CLAIM THAT SAYS THAT IN
24 EVERY THREE YEARS THAT IF YOU WANT TO CLAIM THAT
25 EXEMPTION FOR THREE YEARS THAT YOU CAN. BUT YOU

MOTIONS

1 STILL HAVE TO COME IN TO CLAIM IT LIKE THE SCHOOL
2 TEACHERS THAT HAD TO COME IN ON MONDAY SO WE COULD
3 TRANSFER THEM TO ANOTHER TERM OF COURT. AND LADIES
4 AND GENTLEMEN, YOU MAY BE CALLED TO SERVE AS A
5 JUROR IN THE FEDERAL COURT, U.S. DISTRICT COURT.
6 YOU MAY BE CALLED TO SERVE IN MUNICIPAL COURT AND
7 MAGISTRATE'S COURT. IF YOU ARE CALLED AS A JUROR
8 LET ME ENCOURAGE YOU TO GO WITH AN OPEN MIND AND A
9 A WILLING HEART BECAUSE WE NEED TO DO EVERYTHING WE
10 CAN TO PRESERVE THE RIGHT TO A JURY TRIAL AS WELL
11 AS THE INTEGRITY OF A JURY TRIAL. THESE TWELVE
12 LADIES AND GENTLEMEN SEATED IN THE BOX, TOGETHER
13 WITH THE ALTERNATES OF THREE, THEY'RE FAR SUPERIOR
14 TO ANY ONE OF US WHO MIGHT WEAR THIS BLACK ROBE AND
15 SIT AS A JUDGE. THEY ARE TRAINED IN LIFE AND EVERY
16 DAY EXPERIENCES AS CITIZENS OF DORCHESTER COUNTY.
17 I'M TRAINED IN THE LAW. BUT THEY CERTAINLY ARE FAR
18 SUPERIOR TO SIT AS JUDGES OF THE FACTS REGARDING
19 THE CREDIBILITY OR THE BELIEVABILITY OF THE
20 WITNESSES WHO WILL TESTIFY DURING THE TRIAL OF THIS
21 CASE.

22 I DON'T HAVE A MAGIC CHAIR THAT
23 WHEN A PERSON SITS IN IT AND STATES AN UNTRUTH --
24 HOPEFULLY NO ONE WILL STATE AN UNTRUTH -- BUT IF
25 BELLS WOULD RING AND LIGHTS WOULD GO ON, WE

MOTIONS

1 WOULDN'T NEED A JURY BECAUSE THEN THE COURT COULD
2 DETERMINE -- COULD PASS ON THE CREDIBILITY OR THE
3 BELIEVABILITY. BUT THAT IS NOT THE SYSTEM WE
4 HAVE. AND THAT'S WHY WE NEED YOU LADIES AND
5 GENTLEMEN. SO, AGAIN, MAY I PLEASE THANK YOU VERY
6 KINDLY FOR BEING HERE. AND YOU REMAINING JURORS
7 ARE EXCUSED. I TELL YOU; THE LAST FIVE THAT WE
8 QUALIFIED UNTIL EIGHT OR SO LAST EVENING; THEY
9 DIDN'T EVEN COME INTO PLAY. WE DIDN'T GET THAT FAR
10 BECAUSE THE LAWYERS WERE -- BOTH SIDES RECOGNIZED
11 THE QUALITY AND ABILITY OF THE OTHER JURORS THERE.
12 AND WE JUST THANK YOU SO MUCH. AND WE'RE GOING TO
13 GIVE YOU THE REST OF THE DAY OFF WITH PAY AND THE
14 REST OF THE WEEK OFF WITHOUT PAY. AND Y'ALL DRIVE
15 CAREFULLY; AND YOU ARE EXCUSED. THANK YOU, LADIES
16 AND GENTLEMEN.

17 (AT THIS TIME REMAINING JURORS ARE EXCUSED FROM
18 SERVICE.)

19 THE COURT: NOW, LADIES AND
20 GENTLEMEN OF THE JURY, YOU HAVE BEEN SELECTED TO
21 THE PROCESS; AND YOU NEED NOT CONCERN YOURSELF
22 WHETHER OR NOT YOU'RE QUALIFIED WITHIN YOURSELVES
23 TO SIT AS JURORS BECAUSE WE'RE SATISFIED THAT YOU
24 ARE SO QUALIFIED. YOU DON'T KNOW ANYTHING ABOUT
25 THE CASE SPECIFICALLY OR ANYTHING ABOUT THE

REMARKS TO THE JURY BY THE COURT

1 INDIVIDUALS WHO ARE INVOLVED. AND THAT'S THE WAY
2 THE PROCESS IS DESIGNED TO WORK. SO, LADIES AND
3 GENTLEMEN, YOU'RE QUALIFIED BY VIRTUE OF YOUR
4 COMMON SENSE, EXPERIENCE IN LIFE, BY VIRTUE OF THE
5 FACT THAT YOU ARE ADULTS AND HAVE EXERCISED CIVIC
6 RESPONSIBILITY. WE ACKNOWLEDGE THAT YOU HAVE JOBS,
7 YOU HAVE FAMILIES, YOU HAVE HOMES, YOU HAVE OTHER
8 RESPONSIBILITIES THAT YOU NEED TO BE TENDING TO.
9 NOW, YOU'VE NEVER BEEN CALLED UPON PERHAPS TO SIT
10 IN JUDGMENT OF A FELLOW HUMAN BEING AT ANY TIME IN
11 THE PAST. BUT YOU HAVE BEEN CALLED UPON TO MAKE A
12 BASIC JUDGMENT WHICH WILL LEAD YOU ULTIMATELY TO
13 THAT DECISION ALMOST EVERY DAY. SO PLEASE DO NOT
14 SIT THERE CONCERNED OVER WHETHER OR NOT YOU ARE
15 ADEQUATE TO THE TASK. I CAN ASSURE YOU THAT WE'RE
16 SATISFIED THAT YOU ARE. WE WILL GIVE YOU FURTHER
17 INSTRUCTIONS BEFORE THIS TRIAL BEGINS TO TELL YOU
18 MORE SPECIFICALLY ABOUT WHAT YOU WILL BE DOING.
19 THE LAWYERS WILL PRESENT TO YOU PREVIEWS ABOUT WHAT
20 THEIR CASE IS GOING TO BE ABOUT. AND THEN WE'LL
21 BEGIN THE TRIAL OF THE CASE WITH THE TAKING OF
22 TESTIMONY AND INTRODUCTION OF OTHERS. BUT THAT
23 WILL BE LATER ON BECAUSE WE'RE GOING TO GO AHEAD
24 NOW.

25 IN A FEW MINUTES AFTER YOU'RE

REMARKS TO THE JURY BY THE COURT

1 SWORN, WE'RE GOING TO GO AHEAD AND SEND YOU TO THE
2 MOTEL AND LET YOU GET CHECKED INTO YOUR ROOMS AT
3 THAT TIME. OR, GENTLEMEN, WOULD Y'ALL PREFER TO
4 GO AHEAD AND HAVE OPENING STATEMENTS AND THEN LET
5 THEM GO TO THEIR ROOMS AND BE CHECKED IN AND GO TO
6 LUNCH AT THE SAME TIME? I DON'T KNOW HOW MANY
7 PEOPLE HAVE SOMEONE WAITING TO TAKE THEIR CARS
8 HOME. IF YOU WOULD, RAISE YOUR HAND IF ANYBODY IS
9 HERE. (SEVERAL JURORS RAISE HANDS.) WE'LL ARRANGE
10 FOR SOMEBODY TO TAKE IT HOME FOR YOU AND BE
11 RESPONSIBLE FOR SAFE DELIVERY, I MIGHT ADD. AND,
12 MA'AM, YOU HAVE SOMEONE THAT NEEDS TO TAKE YOUR CAR
13 HOME?

14 THE JUROR: YES, SIR.

15 THE COURT: AND YOUR CLOTHES AND
16 THINGS ARE IN IT NOW?

17 THE JUROR: YES, SIR.

18 THE COURT: SHALL I GET A BAILIFF TO
19 COME FORWARD OR A DEPUTY TO GO GET YOUR THINGS OUT
20 OF THE CAR AND PUT IT IN THE VAN AND THEN THAT
21 PERSON CAN GO AHEAD? OR DO THEY MIND WAITING A
22 LITTLE BIT?

23 THE JUROR: MY PURSE IS IN THERE.

24 THE COURT: OKAY. WELL, WE'LL WAIT
25 THEN IF YOU WOULD LIKE TO. BUT THE THOUGHT

REMARKS TO THE JURY BY THE COURT

1 OCCURRED TO ME THAT WE MIGHT GO AHEAD AND HAVE
2 OPENING STATEMENTS AND THEN EXCUSE THEM TO GO CHECK
3 INTO THEIR ROOMS AND TO GO TO LUNCH BECAUSE THAT
4 WOULD SAVE THEM COMING AND GOING. DOES THAT SOUND
5 REASONABLE?

6 MR. THEOS: THAT SOUNDS FINE, YOUR
7 HONOR.

8 MR. BAILEY: THAT'S FINE, YOUR
9 HONOR.

10 THE COURT: LADIES AND GENTLEMEN, I
11 THINK WHAT WE'RE GOING TO DO IS TO GO AHEAD AND
12 HAVE YOU SWORN AND HAVE OPENING STATEMENTS AND THEN
13 BREAK FOR YOU TO GO TO THE MOTEL AND CHECK IN AND
14 HAVE LUNCH WHILE YOU'RE GOING BECAUSE I THINK WE
15 MIGHT SAVE THIRTY OR FORTY MINUTES IN THAT MANNER.
16 SO, LADIES AND GENTLEMEN, I TELL YOU NOW AND I'LL
17 REPEAT THIS; OFTEN TIMES YOU'RE NOT AT LIBERTY TO
18 DISCUSS THIS CASE WITH ANYONE, NOT EVEN AMONG
19 YOURSELVES UNTIL I GIVE YOU THE SPECIFIC
20 INSTRUCTIONS THAT YOU CAN START YOUR DISCUSSIONS
21 AMONG YOURSELVES. SO WHILE YOU'RE AWAY FROM US FOR
22 LUNCH OR CHECKING IN THE MOTEL, PLEASE REMEMBER
23 DON'T EXPOSE YOURSELF TO ANY INFORMATION ABOUT THIS
24 CASE. DON'T DISCUSS IT AMONG YOURSELVES OR WITH
25 ANYONE ELSE, AND DON'T ALLOW ANYONE TO DISCUSS IT

REMARKS TO THE JURY BY THE COURT

1 WITH YOU.

2 NOW AS YOU KNOW, LADIES AND
3 GENTLEMEN, YOU WILL BE SEQUESTERED DURING THE
4 COURSE OF THIS TRIAL AS I MENTIONED TO YOU DURING
5 THE LAST TWO DAYS. AND BRIEFLY IN A MOMENT WE'RE
6 GOING TO INTRODUCE YOU TO JUROR CUSTODIANS AND
7 BAILIFFS WHO WILL HAVE YOU IN CHARGE WHILE THIS
8 TRIAL IS UNDER WAY. THEY'LL BE HERE WITH YOU IN
9 THE DAYTIME IN THE COURTROOM. THEY'LL BE WITH YOU
10 AT THE MOTEL AT NIGHT. AND THESE INDIVIDUALS ARE
11 SECURITY DETAIL, AND THE BAILIFFS WILL BE LIKE DEN
12 MOTHERS OR DEN FATHERS TO YOU FOR THE NEXT WEEK OR
13 SO WHILE YOU'RE SERVING AS JURORS. AND YOU'LL GET
14 TO KNOW THEM WELL NO DOUBT. THEY'LL BE YOUR
15 FRIENDS. THEY'LL HELP YOU IN ANY WAY THEY CAN
16 GIVEN CERTAIN LIMITATIONS THAT ARE PLACED UPON YOU
17 AND YOUR ABILITY TO CONTACT AND BE CONTACTED BY
18 ANYONE NOT INVOLVED DIRECTLY WITH THE CASE. SO YOU
19 UNDERSTAND, AND I INSTRUCT YOU NOW LADIES AND
20 GENTLEMEN, YOU'RE NOT ALLOWED TO MAKE TELEPHONE
21 CALLS OUT.

22 YOU'RE NOT ALLOWED TO RECEIVE
23 TELEPHONE CALLS. EVERYTHING HAS TO GO THROUGH THE
24 CAPTAIN OR LIEUTENANT IN CHARGE OF SECURITY TO
25 DETERMINE IF IT IS A MATTER OF AN EMERGENCY

REMARKS TO THE JURY BY THE COURT

1 NATURE. AND OF COURSE THERE'S AN EXCEPTION TO THAT
2 BECAUSE IN REGARD TO MY FIRST ALTERNATE, MR. RONALD
3 D. BOLES, HE HAS A DOCTOR'S APPOINTMENT, I BELIEVE,
4 ON NEXT MONDAY. AND WHEN YOU GO BACK TO THE MOTEL,
5 YOU CAN TRY AND REACH HIM AT THAT TIME TO SEE IF
6 YOU CAN CHANGE IT -- IT WOULD BE BETTER TO PUT IT
7 AS LATE AS YOU CAN. BUT IF NEED BE, WE'LL TRY AND
8 MAKE ARRANGEMENTS TO GET THAT DOCTOR OVER HERE TO
9 SEE YOU ALTHOUGH YOU WANT TO MINIMIZE THE COST.
10 BUT CERTAINLY, PLEASE KEEP US POSTED AS TO YOUR
11 COMFORT OR DISCOMFORT OR ANY NEEDS THAT YOU MAY
12 HAVE. SO AT THIS TIME IF YOU'D ASK THE SECURITY
13 DETAIL TO STEP IN, PLEASE. YOU HAVE YOUR FOLKS.
14 IF YOU'D BRING THEM FORWARD AND INTRODUCE THEM TO
15 THE JURY PANEL, PLEASE.

16 MR. RUDOLPH: AGENT CHARLIE RUDOLPH;
17 AND I'M MR. POPE'S LIEUTENANT FROM SLED.

18 THE COURT: ALL RIGHT. THANK YOU,
19 MADAM CLERK. YOU MAY GIVE THESE GENTLEMEN THEIR
20 OATH. AND Y'ALL WILL BE STAYING AT THE HOTEL. I'M
21 GOING TO MAKE YOU A CAPTAIN THIS WEEK, LT. POPE, IF
22 YOU DON'T MIND; AND I'LL MAKE AGENT RUDOLPH A
23 LIEUTENANT. OR ARE YOU ALREADY A LIEUTENANT?

24 MR. RUDOLPH: I'M A SENIOR AGENT,
25 YOUR HONOR.

REMARKS TO THE JURY BY THE COURT

1 THE COURT: WELL, YOU'RE A
2 LIEUTENANT NOW. SO GO AHEAD.

3 (AT THIS TIME AGENTS FROM SLED ARE SWORN.)

4 THE COURT: ALL RIGHT, NOW. HAVE
5 THE BAILIFFS COME FORWARD AND SWEAR THE BAILIFFS,
6 PLEASE, IN THE PRESENCE OF THE JURY; AND I WANT
7 THEM TO INTRODUCE THEMSELVES. AND MRS. JAN H.
8 WHITMORE; I PUT THREE CHECKMARKS BY YOUR NAME ON
9 YESTERDAY. WHEN YOU WERE QUALIFIED, I SAID "THAT'S
10 MY FORELADY." AND HERE YOU'RE SITTING IN THE
11 FORELADY'S CHAIR. I'M GOING TO ASK YOU TO SERVE AS
12 A FOREPERSON OR FORELADY OF THIS JURY. UPON
13 RETURNING TO THE COURTROOM IN THE TRIAL OF THIS
14 PARTICULAR CASE, ALWAYS RETURN TO THE CHAIR WHERE
15 YOU ARE NOW SITUATE THE OTHER ELEVEN REGULAR
16 JURORS. IT DOESN'T MATTER. YOU CAN SIT IN ANY OF
17 THE SEATS YOU WISH OTHER THAN THE FORELADY OR
18 ALTERNATE SEATS. AND AS YOU COME IN, MOVE ALL THE
19 WAY DOWN THE ROW SO PEOPLE WON'T HAVE TO STEP OVER
20 YOU. AS TO THE ALTERNATES, MR. BOLES, YOU'LL BE
21 MORE COMFORTABLE, I BELIEVE -- NORMALLY THE
22 ALTERNATE ONE WOULD BE WHERE MR. CARTER IS SEATED.
23 BUT WE'VE REVERSED THE ORDER TO ACCOMMODATE YOU.
24 YOU ALTERNATES PLEASE SIT IN THE
25 CHAIRS WHERE YOU ARE NOW SITUATE UPON YOUR RETURN

REMARKS TO THE JURY BY THE COURT

1 TO THE COURTROOM. AND YOU ALTERNATES, GENTLEMEN,
2 YOU'RE CONSIDERED A FULL-FLEDGED MEMBERSHIP AND
3 PART AND PARCEL OF THIS JURY, PLEASE. I EXPECT THE
4 ALTERNATES TO GIVE VERY CAREFUL ATTENTION TO THE
5 TESTIMONY AND EVIDENCE JUST AS I EXPECT YOU
6 REMAINING TWELVE JURORS SO TO DO BECAUSE IN THE
7 EVENT THAT IT'S NECESSARY TO EXCUSE FOR ANY
8 EMERGENCY REASON, BUSINESS, PERSONAL, OR OTHERWISE,
9 ANY ONE OF MY TWELVE REGULAR JURORS, THEN THE
10 ALTERNATES WOULD BECOME MEMBERS OF THE COMPLIMENT
11 OF TWELVE IN THE ORDER IN WHICH THEY WERE SELECTED
12 THAT BEING MR. BOLES AND MR. HUGHES AND THEN MR.
13 CARTER. BUT AFTER ALL THE TESTIMONY IS IN, AND
14 AFTER ARGUMENTS BY COUNSEL AND CHARGE BY THE COURT
15 AS TO THE LAW, ONLY AT THAT TIME WILL THE JURY
16 COMMENCE THEIR DELIBERATIONS. BUT THEY'LL GO TO
17 THE JURY ROOM TO DELIBERATE. IF ALL TWELVE ARE
18 HEALTHY, WEALTHY AND WISE, YOU WOULD NOT -- NONE OF
19 YOU THREE WOULD NORMALLY ENTER INTO THE FINAL
20 DELIBERATIONS. BUT YOU NEVER KNOW. YOU MAY BE
21 CALLED UPON TO SERVE AS AN ALTERNATE. AND YOU
22 WOULD REMAIN SEQUESTERED DURING THEIR DELIBERATIONS
23 BUT NOT PARTICIPATE IN THE DELIBERATIONS BECAUSE
24 YOU ALSO WOULD BE THE ALTERNATE IF WE GET TO THE
25 SECOND PHASE OF THE CASE, THE PENALTY PHASE, AS

REMARKS TO THE JURY BY THE COURT

1 I'VE EXPLAINED TO EACH OF YOU ON VOIR DIRE. THEN
2 YOU WOULD SIT AS ALTERNATES IN THAT TRIAL AND BE
3 AVAILABLE TO BE A REGULAR TEAM MEMBER RATHER THAN
4 AN ALTERNATE. AND WHEN YOU GO OUT AFTER THE
5 PENALTY PHASE, WHEN THE JURY IS INSTRUCTED TO
6 DELIBERATE, WE STILL HAVE TO SEQUESTER AND KEEP YOU
7 SEPARATE AND APART FROM THE DELIBERATIONS, BUT
8 YOU'RE ON CALL STANDBY, SO TO SPEAK. SO I HOPE YOU
9 UNDERSTAND THAT FUNCTION. NOW, MAJOR?

10 MR. MOULTRIE: YES, SIR.

11 THE COURT: MAY I PLEASE HAVE YOU
12 INTRODUCE YOURSELF AND YOUR FINE STAFF TO THIS
13 JURY?

14 MR. MOULTRIE: I'M MAJOR MOULTRIE.
15 I'M WITH THE SHERIFF'S OFFICE. THIS IS MRS.
16 SALISBURY. SHE'S ONE OF OUR BAILIFFS. NEXT TO HER
17 IS MRS. EVELYN BOYD. SHE'S ONE OF OUR BAILIFFS.
18 WE HAVE SMITTY, ONE OF OUR DEPUTY SHERIFFS. AND WE
19 HAVE MRS. TAYLOR WHO'S ALSO A BAILIFF.

20 THE COURT: IF YOU WOULD, GIVE THEM
21 THEIR OATH, MA'AM.

22 THE CLERK: YES, SIR.

23 (AT THIS TIME BAILIFFS ARE SWORN.)

24 THE COURT: THANK YOU. Y'ALL MAY
25 RETURN TO YOUR DUTIES. AND I LIKE THOSE GAMECOCK

REMARKS TO THE JURY BY THE COURT

1 COATS. THOSE ARE NICE. ALL RIGHT. NOW, LADIES
2 AND GENTLEMEN, AT THIS TIME I WILL HAVE THE CLERK
3 OF COURT GIVE THE OATH TO THE JURY. AND PLEASE
4 CAREFULLY LISTEN TO THIS OATH BECAUSE IN SIMPLISTIC
5 TERMS IT DESCRIBES YOUR JOB AS JURORS.

6 (AT THIS TIME JURY IS SWORN.)

7 THE COURT: MADAM COURT REPORTER,
8 LET THE RECORD REFLECT THAT THE JURY PANEL HAS BEEN
9 STRUCK; THE JURY IS SEATED; THE FORELADY APPOINTED;
10 THE ALTERNATES HAVE BEEN SELECTED; AND THE JURY HAS
11 BEEN SWORN. NOW, LADIES AND GENTLEMEN OF THE JURY;
12 YOU HAVE NOW BEEN SWORN IN AS THE OFFICIAL JUROR IN
13 THE TRIAL OF THIS CASE. AND IN A FEW MINUTES YOU
14 WILL HAVE OPENING STATEMENTS BY THE ATTORNEYS, BUT
15 I THINK IT WOULD HELP IF I EXPLAINED SOME THINGS TO
16 YOU. IN THE OPENING STATEMENTS BY THE ATTORNEYS
17 THE STATE'S COUNSEL WILL OUTLINE FOR YOU, IN
18 SOMETHING OF A PREVIEW FASHION, WHAT THIS CASE IS
19 ABOUT FROM THE STATE'S PERSPECTIVE AND WILL
20 INDICATE TO YOU WHAT THE STATE INTENDS TO OFFER BY
21 WAY OF SUPPORT OF THE CHARGES BROUGHT IN THESE
22 INDICTMENTS. AND THEN WHEN THE SOLICITOR COMPLETES
23 THE STATE'S OPENING, THE DEFENDANT THROUGH EITHER
24 OR BOTH OF HIS LAWYERS, HAS THE RIGHT TO MAKE AN
25 OPENING STATEMENT AND EXPLAIN TO YOU THAT WHICH

REMARKS TO THE JURY BY THE COURT

1 THEY DEEM PROPER IN THE TRIAL OF THE CASE. AND
2 THEN OF COURSE WE'LL BREAK AFTER THE OPENING
3 STATEMENTS AND LET YOU GO CHECK INTO THE MOTEL AND
4 HAVE LUNCH. LT. POLK, WHERE WOULD YOU LIKE TO FEED
5 THIS JURY TODAY? WE'RE NOT GOING TO BRING THE FOOD
6 IN. WE'RE GOING TO LET THEM GO---

7 MR. POLK: THERE'S A PLACE BY THE
8 ANTIQUE STORE, THE COUNTRY KITCHEN.

9 THE COURT: ALL RIGHT. AND THERE
10 WILL BE 15 JURORS PLUS ABOUT FOUR OR FIVE --
11 THEY'LL BE ABOUT TWENTY PERSONS, AND IT WILL
12 PROBABLY BE BETWEEN ABOUT ONE BEFORE THEY CAN GET
13 THERE?

14 MR. POLK: YES, SIR.

15 THE COURT: BECAUSE WE NEED TO HAVE
16 THE OPENING STATEMENTS.

17 * * * * *

18 PRELIMINARY REMARKS TO THE JURY

19
20 SO THEN, LADIES AND GENTLEMEN, WHEN
21 YOU GET BACK FROM LUNCH THE STATE HAS THE BURDEN OF
22 PROOF, SO THE STATE PROCEEDS WITH ITS CASE FIRST. AND
23 IT WILL PRESENT ITS EVIDENCE AND TESTIMONY IN SUPPORT OF
24 THE CHARGES WHICH IT HAS BROUGHT. EVIDENCE MAY TAKE THE
25 FORM OF TESTIMONY OF WITNESSES WHO WILL TAKE THE STAND

REMARKS TO THE JURY BY THE COURT

1 IN FRONT OF YOU AND BE SWORN AND TESTIFY ABOUT WHAT THEY
2 PURPORT TO KNOW ABOUT THE CASE SUBJECT TO QUESTIONS BY
3 LAWYERS FOR BOTH SIDES OR PERHAPS DOCUMENTS OR ITEMS OR
4 PHOTOGRAPHS OR THINGS LIKE THAT THAT ARE ALLOWED INTO
5 EVIDENCE UNDER THE RULES THAT WE OPERATE UNDER IN THE
6 TRIAL OF CASES OF THIS SORT. AND AFTER THE STATE HAS
7 FINISHED PUTTING UP ITS EVIDENCE, THEN THE DEFENDANT, AS
8 YOU KNOW, HAS THE RIGHT TO PUT IN EVIDENCE BUT DOES NOT
9 HAVE THE OBLIGATION TO PUT UP EVIDENCE. AFTER ALL THE
10 EVIDENCE IS IN, FROM WHATEVER SOURCE IT MAY COME, THEN
11 THE LAWYERS WILL BE GIVEN AN OPPORTUNITY TO HAVE THEIR
12 FINAL ARGUMENTS, CLOSING STATEMENTS.

13 NOW, IN THESE CLOSING STATEMENTS THE
14 LAWYERS ARE ALLOWED TO ARGUE THE INFERENCES FROM THE
15 EVIDENCE WHICH WILL HAVE BEEN INTRODUCED, THOSE
16 INFERENCES WHICH THEY CLAIM SUPPORT THEIR RESPECTIVE
17 POSITION IN THE CASE. AND AFTER THAT IS DONE, THEN I
18 WILL GIVE YOU THE COMPLETE LEGAL INSTRUCTIONS THAT
19 GOVERN IN THIS CASE. PLEASE DON'T CONFUSE THESE OPENING
20 REMARKS AS INSTRUCTIONS ON THE LAW BECAUSE CERTAINLY
21 THEY'RE NOT THAT. I WILL GIVE COMPLETE LEGAL
22 INSTRUCTIONS THAT WILL GOVERN IN A PARTICULAR CASE AT
23 THE CLOSE OF THE TRIAL. AND THEN AND ONLY THEN WILL YOU
24 BE ALLOWED TO GO TO YOUR JURY ROOM TO DELIBERATE AND
25 REACH A VERDICT IN THE CASE.

REMARKS TO THE JURY BY THE COURT

1 SO, LADIES AND GENTLEMEN, I ADMONISH
2 YOU AGAIN, YOU'RE NOT ALLOWED TO TALK ABOUT THIS CASE
3 AMONG YOURSELVES. YOU ALREADY KNOW YOU'RE NOT TO TALK
4 WITH ANYBODY ELSE ABOUT IT. YOU'RE NOT TO TRY TO FIND
5 OUT ANYTHING ON YOUR OWN ABOUT THE CASE. YOU'RE NOT TO
6 EXPOSE YOURSELF TO ANY INFORMATION ABOUT THE CASE FROM
7 ANY SOURCE AT ALL. AND THAT'S THE PURPOSE OF THE
8 SEQUESTRATION PROCESS THAT YOU ARE NOW A PART OF. AND
9 AGAIN, I REMIND YOU YOU'RE NOT ALLOWED TO TALK ABOUT THE
10 CASE AMONG YOURSELVES. YOU MAY HEAR SOMEBODY TESTIFY
11 ABOUT SOMETHING IN THE COURTROOM THAT MAY BE INTERESTING
12 TO YOU, AND YOU MIGHT HAVE SOME QUESTIONS IN YOUR MIND
13 ABOUT IT. YOU MAY WANT TO TALK ABOUT IT THEN WHILE IT'S
14 FRESH IN YOUR MIND. BUT I TELL YOU, LADIES AND
15 GENTLEMEN, YOU CANNOT DO THAT BECAUSE ONCE YOU START
16 TALKING ABOUT THE CASE YOU'RE GOING TO START MAKING UP
17 YOUR MIND AND DRAWING CONCLUSIONS ABOUT WHAT YOU'VE SEEN
18 AND HEARD AND DISCUSSED AMONG YOURSELVES. AND LATER IN
19 THE TRIAL OF THE CASE YOU MAY POSSIBLY HEAR EVIDENCE
20 THAT'S DIFFERENT FROM THAT WHICH YOU HEARD EARLIER. BUT
21 IF YOU'VE ALREADY STARTED TO TALK ABOUT THE CASE AND
22 DRAW CONCLUSIONS BASED ON YOUR CONVERSATIONS WITH YOUR
23 FELLOW JURORS, YOU MIGHT CLOSE YOUR MIND TO OTHER
24 EVIDENCE, AND YOU'RE OBVIOUSLY NOT GOING TO RECEIVE THAT
25 LATER EVIDENCE WITH AN OPEN MIND. SO FOR THAT REASON

REMARKS TO THE JURY BY THE COURT

1 YOU MUST NOT DISCUSS THIS CASE AMONG YOURSELVES AT ANY
2 TIME DURING THE COURSE OF THE TRIAL. WHEN THE TRIAL IS
3 OVER, YOU WILL HAVE ALL THE TIME YOU NEED TO TALK ABOUT
4 THE CASE.

5 AND FURTHER, LADIES AND GENTLEMEN,
6 DURING THE TRIAL THE LAWYERS MAY ASK THE COURT TO
7 PUBLISH A PIECE OF EVIDENCE TO THE JURY. THAT SIMPLY
8 MEANS THEY CAN SHOW IT TO YOU. IT MAY BE A PHOTOGRAPH.
9 IT MAY BE A PIECE OF PAPER. AND IF I ALLOW THEM TO
10 PUBLISH IT, THEY WILL SIMPLY HAND IT OVER TO THE
11 FORELADY AND YOU PASS IT AROUND AMONG YOURSELVES. BUT
12 PLEASE DON'T FEEL THAT'S THE LAST TIME YOU'RE GOING TO
13 SEE THAT PIECE OF EVIDENCE. YOU'LL HAVE AN OPPORTUNITY
14 TO STUDY IT IN GREATER DETAIL BECAUSE WHEN YOU GO TO
15 YOUR JURY ROOM FOR YOUR FINAL DELIBERATIONS, ALL THE
16 EXHIBITS THAT ARE IN EVIDENCE WILL BE SENT TO THE JURY
17 ROOM FOR YOU TO GIVE SUCH CONSIDERATION AS YOU DEEM
18 PROPER. THE LAW DOES NOT PERMIT THE DOCUMENTS TO BE
19 TAKEN INTO THE JURY ROOM UNTIL THE END OF THE TRIAL. SO
20 PLEASE TRY TO AVOID INADVERTENTLY WHEN YOU DO TAKE A
21 RECESS TO POWDER YOUR NOSE OR STRETCH YOUR LEGS TO BE
22 GUARDED AND CAREFUL NOT TO TAKE ANY OF THE EXHIBITS AT
23 THAT TIME BACK INTO THE JURY ROOM.

24 SO LADIES AND GENTLEMEN, IF YOU
25 WOULD TRY NOT TO BE TOO CONSUMED ABOUT THESE EXHIBITS.

REMARKS TO THE JURY BY THE COURT

1 YOU KNOW, FAMILIARIZE YOURSELVES WITH IT AND SEE WHAT'S
2 BEING TALKED ABOUT AND THEN PASS IT ON TO THE NEXT
3 PERSON. NOW BY AGREEMENT, LADIES AND GENTLEMEN, THE
4 LAWYERS HAVE STIPULATED AS TO CERTAIN EXHIBITS THAT WILL
5 BE ALLOWED INTO EVIDENCE IN THE CASE. NORMALLY EITHER
6 THE STATE OR THE DEFENSE MAY OFFER AN EXHIBIT, AND YOU
7 WOULD LAY A FOUNDATION WITH CERTAIN QUESTIONS OF THE
8 WITNESS. BUT THE LAWYERS, IN AN EFFORT TO SAVE YOUR
9 TIME, HAVE STIPULATED THAT CERTAIN ITEMS OF EVIDENCE ARE
10 ADMITTED INTO EVIDENCE. NORMALLY THE ISSUE OF THE
11 ADMISSIBILITY, THAT'S FOR THE COURT. THE CREDIBILITY OR
12 THE BELIEVABILITY OR HOW MUCH ATTENTION YOU PAY TO A
13 CERTAIN EXHIBIT ALLOWED INTO EVIDENCE, THAT IS ENTIRELY
14 UP TO YOU, LADIES AND GENTLEMEN OF THE JURY. SO YOU
15 SHOULD NOT CONCLUDE THE FACT THAT SOMETHING IS ALLOWED
16 INTO EVIDENCE IF YOU HAVE TO GIVE IT GREATER WEIGHT OR
17 LESS WEIGHT. THAT'S REALLY UP TO YOU AS TO HOW MUCH
18 ATTENTION OR CREDENCE YOU PUT IN ANY PARTICULAR
19 STATEMENTS.

20 NOW, LADIES AND GENTLEMEN, THE
21 OPENING STATEMENTS THAT THE LAWYERS MAKE TO YOU ARE NOT
22 EVIDENCE. NOW THEY MAY BE HELPFUL TO YOU BECAUSE THEY
23 WILL ATTEMPT TO OUTLINE THEIR CASE IN PREVIEW FASHION,
24 AND THEY MAY HELP YOU TO BETTER UNDERSTAND THE EVIDENCE
25 BECAUSE ONCE YOU HAVE HEARD THE OPENING STATEMENTS YOU

REMARKS TO THE JURY BY THE COURT

1 WILL UNDERSTAND THE CONTEXT IN WHICH IT IS PRESENTED.
2 BUT I REPEAT; THE OPENING STATEMENTS OF THE LAWYERS ARE
3 NOT EVIDENCE. AND FOR THAT FACT, NEITHER ARE THE
4 CLOSING STATEMENTS. THEY'RE NOT EVIDENCE EITHER. THE
5 QUESTIONS THE LAWYERS ASK ARE NOT EVIDENCE. SO WHAT IS
6 EVIDENCE? I REMIND YOU AGAIN IT'S NOT THE QUESTIONS
7 THEMSELVES. IT IS THE ANSWERS TO THOSE QUESTIONS THAT
8 YOU HEAR FROM THE WITNESS STAND. AND FURTHER, IT IS
9 THOSE DOCUMENTS, THOSE TANGIBLE THINGS, PHOTOGRAPHS AND
10 THE LIKE THAT MIGHT BE INTRODUCED INTO EVIDENCE DURING
11 THE TRIAL OF THE CASE.

12 NOW IT'S IMPORTANT, MADAM FORELADY
13 AND LADIES AND GENTLEMEN, THAT YOU UNDERSTAND WHAT IS
14 EVIDENCE IN THE CASE BECAUSE YOU, LADIES AND GENTLEMEN
15 OF THE JURY, ARE THE SOUL AND ONLY JUDGES OF THE FACTS
16 IN THIS CASE. I'M THE JUDGE OF THE LAW, AND I HAVE TO
17 DECIDE FROM TIME TO TIME AS A MATTER OF LAW WHETHER
18 SOMETHING IS ALLOWED INTO EVIDENCE OR NOT WHEN SOMEONE
19 IS ON THE WITNESS STAND OR AN EXHIBIT. BUT ONCE I
20 DECIDE THAT YOU CAN HEAR A WITNESS TALK ABOUT SOMETHING
21 OR LOOK AT AN EXHIBIT, WHAT YOU DO WITH IT IS ENTIRELY
22 UP TO YOU. WHETHER YOU BELIEVE IT AT ALL OR NOT IS
23 ENTIRELY UP TO YOU. THE WEIGHT YOU GIVE IT, THE MEASURE
24 OF TRUTH THAT YOU ASSIGN TO IT, ITEMS OF EVIDENCE OR
25 TESTIMONY IS YOUR DECISION AND YOURS ALONE. I CANNOT

REMARKS TO THE JURY BY THE COURT

1 MAKE THAT DECISION FOR YOU AND NEITHER CAN ANYBODY
2 ELSE.

3 SO OBVIOUSLY, LADIES AND
4 GENTLEMEN, IT'S VERY IMPORTANT THAT YOU PAY CAREFUL
5 ATTENTION BECAUSE YOU'RE CERTAINLY NOT GOING TO BE IN A
6 POSITION WHEN THE TRIAL IS OVER TO GO INTO THE JURY ROOM
7 AND START DISCUSSING AMONG YOURSELVES WHERE THE TRUTH OF
8 THE CASE LIES UNLESS YOU PAY ATTENTION. AND I'M SURE
9 THAT YOU WILL INDEED PAY ATTENTION AND KEEP NOT ONLY AN
10 OPEN MIND BUT AN OPEN EAR AS WELL. AND IF YOU DO THAT,
11 YOU'LL BE IN A POSITION WHEN THE TRIAL IS OVER TO
12 EVALUATE THE EVIDENCE AND DECIDE WHERE THE TRUTH OF THE
13 CASE LIES AND WRITE A VERDICT THAT REFLECTS AND SPEAKS
14 THE TRUTH.

15 SO AGAIN, LADIES AND GENTLEMEN, THE
16 DEFENDANT IN THIS CASE DOES NOT HAVE TO OFFER AN OPENING
17 STATEMENT. HE DOESN'T HAVE TO PRESENT EVIDENCE OR
18 TESTIMONY. HE DOESN'T HAVE TO PRESENT A CLOSING
19 STATEMENT IF HE CHOOSES NOT TO. AND AS I WENT THROUGH
20 THE INDIVIDUAL VOIR DIRE WITH YOU, PLEASE REMEMBER THAT
21 THE DEFENDANT HAS ENTERED A PLEA OF NOT GUILTY TO THE
22 CHARGES, AND THE AFFECT OF THAT PLEA OF NOT GUILTY IS TO
23 CLOAK HIM WITH AND ABOUT HIM THE PRESUMPTION OF
24 INNOCENCE. AND ALL THAT WE MEAN WHEN WE SAY SOMEONE IS
25 PRESUMED INNOCENT IS THEY DO NOT HAVE TO PROVE THEIR

REMARKS TO THE JURY BY THE COURT

1 INNOCENCE. THE DEFENDANT, KENNETH SIMMONS, HAS NO
2 BURDEN OF PROOF. HE DOESN'T HAVE TO TAKE THE STAND AND
3 TESTIFY IN HIS OWN DEFENSE OR OFFER OTHERS TO TESTIFY.
4 HE DOESN'T HAVE TO OFFER AN OPENING OR A CLOSING
5 STATEMENT. AS I'VE ALREADY TOLD YOU, THE BURDEN OF
6 PROOF RESTS UPON THE STATE TO PROVE THE GUILT OF THE
7 DEFENDANT TO YOUR SATISFACTION, OF EACH OF YOU
8 INDIVIDUALLY AND ALL OF YOU COLLECTIVELY, BEYOND A
9 REASONABLE DOUBT.

10 SO WHAT WE'RE GOING TO BE DOING OVER
11 THE NEXT FEW DAYS IS LISTENING TO EVIDENCE AND
12 TESTIMONY. AND WHEN ALL IS SAID AND DONE, GO BACK TO
13 YOUR JURY ROOM; AND FINALLY, AT LONG LAST, I WILL TELL
14 YOU WHEN YOU CAN BEGIN TO DISCUSS THE CASE AMONG
15 YOURSELVES, TO WEIGH AND EVALUATE THE EVIDENCE, AND TO
16 DECIDE WHETHER THE STATE HAS MET THEIR BURDEN OF PROOF,
17 WHETHER IT HAS CONVINCED YOU BEYOND A REASONABLE DOUBT
18 AS TO KENNETH SIMMONS', THE DEFENDANT'S GUILT, ON THESE
19 CHARGES. IF THE STATE MEETS THAT BURDEN, IT'S ENTITLED
20 TO A VERDICT OF GUILTY. IF THE STATE FAILS TO MEET THAT
21 BURDEN, THE DEFENDANT, KENNETH SIMMONS, WOULD BE
22 ENTITLED TO A VERDICT OF NOT GUILTY.

23 AND THAT, LADIES AND GENTLEMEN, IS
24 THE IMPORTANCE OF THE TASK BEFORE YOU, AND I HOPE YOU
25 APPRECIATE AND UNDERSTAND THAT. AND EACH OF YOU HAVE

REMARKS TO THE JURY BY THE COURT

1 IMPRESSED THIS COURT THROUGHOUT THE PROCESS. YOUR
2 QUALIFICATION AS JURORS SHOW THAT YOU ARE FULLY
3 COGNIZANT OF THE IMPORTANCE OF THE ISSUES BEFORE YOU,
4 AND CERTAINLY YOU WILL TAKE THOSE THINGS INTO ACCOUNT.
5 AND I REMIND YOU, IF YOU DO THOSE THINGS YOU WILL HAVE
6 FULFILLED YOUR OBLIGATION AND THE OATH THAT YOU TOOK TO
7 WELL AND TRULY TRY THIS CASE AND A TRUE VERDICT RENDER
8 ACCORDING TO THE LAW AND THE EVIDENCE SO HELP YOU GOD.
9 AND THAT'S WHAT WE ASK OF YOU. AND WE THANK YOU, LADIES
10 AND GENTLEMEN, SO MUCH FOR YOUR ATTENTION TO THE REMARKS
11 THAT I HAVE GIVEN TO YOU.

12 NOW LADIES AND GENTLEMEN, DURING THE
13 TRIAL OF THE CASE THERE HAVE BEEN TWO REQUESTS BY TWO
14 TELEVISION STATIONS TO BE ALLOWED TO RECORD CERTAIN OF
15 THESE PROCEEDINGS, AND YOU MAY FROM TIME TO TIME SEE OR
16 NOTICE THAT THERE WILL BE SOME CAMERAS IN THE
17 COURTROOM. LET ME PUT YOUR MINDS AT EASE IN THAT
18 REGARD. UNDER THE RULES THAT WE OPERATE WHEN CAMERAS
19 ARE IN THE COURTROOM; THOSE LADIES AND GENTLEMEN ARE
20 FULLY AND COMPLETELY AWARE THAT THEY'RE NOT TO TAKE ANY
21 PICTURES OF THE JURORS OR IDENTIFY YOU IN ANY WAY
22 WHATSOEVER. THAT MAY BE A CONCERN OF YOURS ONE WAY OR
23 THE OTHER, AND YOU MIGHT BE A LITTLE DISAPPOINTED THAT
24 YOUR FAMILY IS NOT GOING TO BE ABLE TO SEE YOU AT HOME
25 ON TELEVISION. BUT, IN ANY EVENT, THEY'RE NOT BECAUSE

REMARKS TO THE JURY BY THE COURT

1 THEY'RE AWARE OF THE FACT THAT YOUR LIKENESS, YOUR
2 NAMES, WILL IN NO WAY BE SHOWN ON TELEVISION. SO YOU
3 NEED NOT CONCERN YOURSELVES WITH THAT. THERE ARE
4 SPECIFIC RULES THAT GOVERN THAT. AND I ASSUME THEY WILL
5 HAVE EXPERIENCED CAMERA FOLKS IN HERE THAT HAVE BEEN IN
6 NUMEROUS TRIALS. SO LET ME PUT YOUR MIND AT EASE IN
7 THAT RECORD. AND I TRUST THAT THE NEWSPAPERS---

8 THE COURT: YOU AGREE THAT YOU WILL
9 NOT PRINT THE NAMES OF ANY OF THE JURORS, PLEASE?

10 THE MEDIA: YES, SIR.

11 THE COURT: ALL RIGHT. THANK YOU.
12 I KNEW YOU WOULDN'T. I JUST WANTED TO HAVE THAT ON
13 THE RECORD TO HELP PUT AT EASE THE JURORS' CONCERNS
14 THAT THEY MAY HAVE. NOW, MR. SOLICITOR, AT THIS
15 TIME WE WOULD PROCEED WITH OPENING STATEMENTS. BUT
16 IT'S 11:28. AGAIN, I DON'T WANT TO FLIP-FLOP ON
17 THESE TIMES, BUT I DON'T WANT TO BREAK THE -- I
18 THINK WE CAN GET THE OPENING STATEMENTS IN AN HOUR,
19 DO YOU NOT; THE STATE AND THE DEFENSE?

20 MR. BAILEY: I BELIEVE SO.

21 MR. THEOS: YES, SIR.

22 THE COURT: AND ONE OTHER THING,
23 GENTLEMEN, I WOULD INQUIRE; IS THERE ANY OBJECTION
24 FOR THE CLERK TO GET FIFTEEN LITTLE SMALL, THE
25 LITTLE LEGAL PADS AND PENCILS IN THE EVENT THAT ANY

REMARKS TO THE JURY BY THE COURT

1 OF THE JURORS WISH TO TAKE NOTES?

2 MR. BAILEY: NONE FROM THE STATE,

3 YOUR HONOR.

4 MR. THEOS: NO OBJECTION, JUDGE.

5 THE COURT: SO, LADIES AND

6 GENTLEMEN, WHEN YOU COME BACK INTO THE COURTROOM

7 WE'LL HAVE IN EACH OF THE CHAIRS A PENCIL AND A

8 PAD. YOU'RE NOT REQUIRED TO TAKE NOTES. BUT IN

9 THE EVENT THAT YOU WOULD LIKE TO, YOU ARE GIVEN

10 LEAD TO TAKE NOTES DURING THE TESTIMONY. YOU'RE

11 NOT ALLOWED TO TAKE NOTES DURING THE CHARGE BY THE

12 COURT AS TO THE LAW. THE REASON FOR THAT IS YOU

13 MAY TAKE SOMETHING OUT OF CONTEXT AND YOU MAY NOT

14 TAKE SHORTHAND TO WHERE YOU COULD GET THE COMPLETE

15 CHARGE. AND I WILL MAKE EVERY EFFORT TO SPEAK SLOW

16 AND ARTICULATE AND AS CLEAR AS I CAN HAVING BEEN

17 RAISED IN THE LOW, LOW COUNTRY OF HAMPTON COUNTY TO

18 SPEAK PLAINLY AND CLEARLY SO THAT HOPEFULLY YOU CAN

19 UNDERSTAND MY CHARGE WITHOUT A CONCERN FOR TAKING

20 NOTES. I THINK WE SHOULD DO THIS: YOU'VE BEEN

21 HERE SINCE TEN O'CLOCK. IT'S 11:30. LET ME EXCUSE

22 YOU TO GO TO YOUR ROOM AND POWER YOUR NOSE. AND

23 WE'D LIKE FOR YOU TO COME BACK IN AS SOON AS YOU

24 CAN. SO KNOCK ON THE DOOR, MADAM FORELADY, WHEN

25 EVERYONE IS COMFORTABLE AND READY TO COME BACK INTO

REMARKS TO THE JURY BY THE COURT

1 THE COURTROOM. THANK YOU. YOU'RE EXCUSED TO GO TO
2 YOUR ROOM.

3 (AT THIS TIME JURY RETIRES TO JURY ROOM.)

4 THE COURT: ALL RIGHT. IS ANGIE
5 SIMMONS AND DERRICK DUGGANS PRESENT IN THE
6 COURTROOM? PLEASE COME FORWARD. FOR THE RECORD
7 PLEASE, MADAM COURT REPORTER, ALWAYS PUT IN THE
8 RECORD WITHOUT MY TELLING YOU THAT THE STATE'S
9 ATTORNEYS ARE PRESENT AND THE DEFENDANT IS PRESENT,
10 IF HE IS IN FACT PRESENT WHICH HE IS, AND HIS
11 COUNSEL. MR. DERRICK DUGGANS, HOW OLD ARE YOU,
12 SIR?

13 MR. DUGGANS: I'M 35.

14 THE COURT: THIRTY-FIVE. AND MRS.
15 ANGIE SIMMONS?

16 MS. SIMMONS: THIRTY-TWO.

17 THE COURT: WHERE DO YOU LIVE, MR.
18 DUGGANS?

19 MR. DUGGANS: [REDACTED].

20 THE COURT: AND MS. SIMMONS?

21 MS. SIMMONS: [REDACTED].

22 THE COURT: ALL RIGHT. LADY AND
23 GENTLEMAN, MR. THEOS HERE IS ONE OF THE ATTORNEYS
24 FOR THE DEFENDANT IN THIS CASE, KENNETH SIMMONS.
25 HE ADVISES THE COURT THAT HE HAD ISSUED A SUBPOENA

REMARKS TO THE JURY BY THE COURT

1 FOR THE TWO OF Y'ALL TO BE PRESENT ON MONDAY,
2 FEBRUARY THE 22ND AND TO REMAIN THROUGHOUT THE
3 TRIAL UNTIL AND AS YOU WERE NEEDED. IS THAT
4 CORRECT, MR. THEOS?

5 MR. THEOS: YES, SIR. AND WHAT I
6 INDICATED TO THEM IS THAT WE WOULD NEED THEM LATER
7 IN THE WEEK BUT WE WOULD SPEAK WITH THEM MONDAY
8 AFTERNOON, AND THAT WE WANTED TO ADMONISH THEM AS
9 WE DID ONE OF THE OTHER WITNESSES, MR. ROSS, THAT
10 THEY ARE TO HONOR THAT SUBPOENA. AND MR. DUGGANS
11 AND MS. SIMMONS LEFT BEFORE YOU HAD THAT
12 OPPORTUNITY, JUDGE.

13 THE COURT: ALL RIGHT. NOW. MR.
14 DUGGANS AND MS. SIMMONS; THE COURT DOESN'T WANT TO
15 HAVE ANY DIFFICULTY, AND I ASSUME YOU DON'T WANT TO
16 HAVE ANY DIFFICULTY. EACH OF YOU MUST UNDERSTAND
17 THAT A SUBPOENA OF THE COURT MUST BE OBEYED. WE
18 HAVE FIFTEEN JURORS THAT ARE AWAY FROM THEIR
19 FAMILIES AND THEIR HOMES FOR AS MUCH AS A WEEK OR
20 MORE; AND WE MUST BE CONSIDERATE OF THEIR NEEDS.
21 SO IF MR. THEOS NEEDED YOU HERE SATURDAY MORNING OR
22 MONDAY AFTERNOON OR SUNDAY, WHENEVER THE TIME MAY
23 BE, AND YOU'RE NOT HERE; YOU'RE KEEPING NUMEROUS
24 PEOPLE WAITING. WE SHALL NOT TOLERATE THAT.

25 NOW, YOU HAVE THREE CHOICES.

REMARKS TO THE JURY BY THE COURT

1 NUMBER ONE, YOU CAN TALK WITH MR. THEOS NOW OR MR.
2 JAMES BELL, CO-COUNSEL, REPRESENTING MR. SIMMONS.
3 TALK TO THEM ABOUT WHERE YOU WORK, WHERE YOU LIVE,
4 YOUR PHONE NUMBER AND WHERE YOU CAN BE REACHED IN A
5 TIMELY MANNER AS TO WHEN TO BE IN COURT. IF MR.
6 THEOS TELLS YOU YOU MUST REMAIN IN COURT EVERY
7 MINUTE THE COURT'S IN SESSION, YOU MUST DO THAT.
8 IF YOU FAIL TO COOPERATE AND RECOGNIZE THE
9 AUTHORITY OF THE COURT, THE NECESSITY OF BEING
10 HERE, THEN IT'S EASY ENOUGH FOR ME TO TELL SHERIFF
11 RAY NASH, "SHERIFF, TAKE THESE TWO PEOPLE, PUT THEM
12 IN A DETENTION CENTER; WHEN I TELL YOU TO BRING
13 THEM HERE, I'LL GIVE YOU THIRTY MINUTES NOTICE." I
14 CAN DO THAT EASY ENOUGH RIGHT NOW. AND WE'LL FEED
15 AND CLOTHE YOU, BUT WE'RE NOT GOING TO HAVE TO WAIT
16 FOR YOU BECAUSE WE'LL KNOW WHERE YOU ARE. THE
17 THIRD ALTERNATIVE IS THAT IF YOU FAIL TO SHOW UP
18 WHEN YOU'RE SUPPOSED TO BE HERE OR FAIL TO
19 COOPERATE WITH MR. THEOS, THE DEFENSE COUNSEL, THEN
20 YOU'LL BE CITED FOR CONTEMPT OF COURT WHICH CARRIES
21 UP TO SIX MONTHS IN THE DISCRETION OF THE COURT.
22 YOU GET NO GOOD TIME OFF FOR PICKING UP TRASH OR
23 WEEKENDS OR GOOD BEHAVIOR; FULL SIX MONTHS ON EACH
24 CITATION OF CONTEMPT. AND I'M SURE THAT EVERY LAW
25 ENFORCEMENT PERSON, MAN OR WOMAN IN SOUTH CAROLINA,

REMARKS TO THE JURY BY THE COURT

1 WILL AID THIS COURT AND THE FEDERAL AUTHORITIES IN
2 FINDING YOU. DO YOU UNDERSTAND WHAT I'VE SAID, MR.
3 DUGGANS?

4 MR. BAILEY: YES, SIR, I DO.

5 THE COURT: DO YOU HAVE ANY
6 QUESTIONS OF THIS COURT?

7 MR. DUGGANS: NO, SIR. BUT CAN I
8 SAY SOMETHING?

9 THE COURT: YES, SIR.

10 MR. DUGGANS: I DID TALK TO HIM. HE
11 DID SAY THAT YOU WANTED TO TALK TO US. AND WHEN I
12 TALKED TO SAMUEL RICHARDSON, HE TOLD US THAT---

13 THE COURT: I DON'T KNOW WHO SAMMY
14 RICHARDSON IS. ALL I KNOW IS MR. THEOS TOLD THIS
15 COURT. AND MR. THEOS IS AN OFFICER OF THIS COURT
16 AND WILL NOT MISLEAD OR BE UNTRUTHFUL TO THIS
17 COURT. I KNOW HE WOULD NOT. I ACCEPT WHAT HE TOLD
18 ME. AND I'M NOT GOING ARGUE WITH YOU ABOUT IT.
19 YOU'VE HEARD WHAT I SAID. I MEAN WHAT I SAY; I SAY
20 WHAT I MEAN. NOW, ARE YOU GOING -- WHAT IS YOUR
21 PLEASURE?

22 MR. DUGGANS: WELL, SIR---

23 THE COURT: DO YOU WANT OF STAY IN
24 THE DORCHESTER MOTEL, OR ARE YOU GOING TO COOPERATE
25 WITH MR. THEOS?

REMARKS TO THE JURY BY THE COURT

1 MR. DUGGANS: I'M GOING TO
2 COOPERATE.

3 THE COURT: ALL RIGHT. MS. ANGIE
4 SIMMONS, HAVE YOU HEARD WHAT THE COURT JUST
5 EXPLAINED TO YOU?

6 MS. SIMMONS: YES, SIR.

7 THE COURT: AND WHAT IS YOUR
8 PLEASURE? OPTION ONE, TWO, OR THREE?

9 MS. SIMMONS: TO DEAL AND COOPERATE
10 WITH Y'ALL.

11 THE COURT: WITH MR. THEOS?

12 MS. SIMMONS: YES.

13 THE COURT: I HAVE NO CONTACT WITH
14 HIM. SO, MR. THEOS, CONFER WITH THESE PERSONS AND
15 TELL THEM WHEN TO BE WHERE.

16 MR. THEOS: YES, SIR. WE'VE GOT ONE
17 OF OUR---

18 THE COURT: GO AHEAD AND DEAL WITH
19 THEM. YOU DON'T NEED TO TELL ME ABOUT IT. YOU
20 TELL THEM. ALL RIGHT, GENTLEMEN AND LADIES, CHECK
21 WITH THE JURY AND SEE IF THEY'RE READY TO PROCEED.
22 IS THERE ANYTHING FURTHER THAT WE CAN TAKE UP NOW
23 BEFORE THE OPENING STATEMENTS?

24 MR. BAILEY: NOT FROM THE STATE,
25 YOUR HONOR.

REMARKS TO THE JURY BY THE COURT

1 THE COURT: MR. THEOS; I'M TALKING
2 TO YOU. IS THERE ANYTHING BEFORE WE BRING THE JURY
3 IN?

4 MR. THEOS: NO, SIR.

5 THE COURT: BRING THE JURY IN. ALL
6 RIGHT; COURT'S IN SESSION. BE SEATED, LADIES AND
7 GENTLEMEN.

8 (AT THIS TIME JURY RETURNS TO OPEN COURT.)

9 THE COURT: GOOD AFTERNOON --
10 ALMOST. STILL MORNING. MADAM FORELADY AND LADIES
11 AND GENTLEMEN OF THE JURY; AT THIS TIME WE WILL
12 HAVE THE OPENING STATEMENTS BY THE STATE AND THE
13 DEFENDANT IF THEY SO CHOOSE. MR. BAILIFF, PLEASE
14 CLOSE THE COURTROOM DOORS. DO NOT LET ANYONE IN OR
15 OUT DURING THESE OPENING STATEMENTS. OTHERWISE LET
16 PEOPLE IN AND OUT AS THEY DEEM NECESSARY. IF ANY
17 OF YOU LADIES AND GENTLEMEN NEED TO LEAVE AT THIS
18 TIME, PLEASE DO SO. I JUST DON'T WANT ANY
19 DISTRACTIONS DURING THESE OPENING STATEMENTS. SO,
20 THANK YOU. YOU MAY PROCEED.

21 MR. BAILEY: THANK YOU, YOUR HONOR.

22 THE COURT: YES, SIR.

23 - - - - -

24 OPENING STATEMENT

25 BY MR. BAILEY

OPENING STATEMENT BY MR. BAILEY

1 LADIES AND GENTLEMEN, I'M WALTER
2 BAILEY. I THINK I INTRODUCED MYSELF TO ALL OF Y'ALL
3 EITHER MONDAY OR TUESDAY DURING THE JURY SELECTION
4 PROCESS. I'M THE SOLICITOR FOR THIS JUDICIAL CIRCUIT
5 WHICH COVERS DORCHESTER COUNTY AND A COUPLE OF OTHER
6 COUNTIES. BUT THE SOLICITOR IS LIKE -- THE DISTRICT
7 ATTORNEY IS ANOTHER NAME FOR IT -- Y'ALL ARE PROBABLY
8 MORE FAMILIAR WITH. BUT I'LL BE PROSECUTING THIS CASE
9 ON BEHALF OF THE STATE OF SOUTH CAROLINA. THE OTHER
10 PEOPLE AT COUNSEL TABLE SITTING RIGHT HERE BY THIS
11 PROJECTOR IS HARRISON BELL. HE'S AN ASSISTANT SOLICITOR
12 IN MY OFFICE. BESIDE HIM IS ROBBIE ROBBINS, DEPUTY
13 SOLICITOR. BESIDE MR. ROBBINS IS MRS. MURPHY WHO IS
14 ALSO AN ASSISTANT SOLICITOR. DARLENE SIMMONS, THE YOUNG
15 LADY UP THERE TO YOUR LEFT, IS WITH OUR OFFICE ALSO.
16 THERE'S NO ROOM AT THE TABLE, SO SHE'S OVER THERE NOW.

17 AS Y'ALL KNOW BY NOW THE DEFENDANT
18 IN THIS CASE, KENNETH SIMMONS, IS CHARGED WITH
19 KIDNAPPING, RAPE, AND MURDER OF LILLY BELL BOYD. MRS.
20 BOYD WAS AN 89 YEAR OLD WOMAN WHO LIVED ALONE IN THE
21 TOWN LIMITS OF SUMMERVILLE IN THE BROWNSVILLE
22 COMMUNITY. HE'S ALSO CHARGED WITH FIRST DEGREE BURGLARY
23 OF HER HOME AND ARMED ROBBERY. NOW I KNOW SOME OF YOU
24 HAVE SAT AS JURORS BEFORE MAYBE IN THIS COURTROOM,
25 MUNICIPAL COURT, MAGISTRATE'S COURT. BUT OBVIOUSLY THIS

OPENING STATEMENT BY MR. BAILEY

1 IS THE MOST SERIOUS CASE THAT CAN BE TRIED ANYWHERE.
2 AND AS THE JUDGE SAID, IT WOULD DEMAND YOUR STRICT
3 ATTENTION THROUGHOUT THIS TRIAL THROUGHOUT ALL THE
4 WITNESSES TESTIFYING WHEN THE JUDGE TELLS YOU WHAT THE
5 LAW IS.

6 AND THE STATE HAS BROUGHT FIVE
7 SEPARATE CHARGES AGAINST MR. SIMMONS IN THIS CASE; FIVE
8 SEPARATE INDICTMENTS. THE JUDGE READ THOSE TO YOU
9 MONDAY. I WON'T READ THAT AGAIN. BUT ALL FIVE OF THESE
10 SEPARATE CASES ARE BEING TRIED TOGETHER BECAUSE THE
11 STATE ALLEGES THEY ALL HAPPENED AT THE SAME LOCATION AND
12 AT THE SAME POINT AND TIME. SO YOU ARE GOING TO BE
13 CONSIDERING FIVE SEPARATE INDICTMENTS IN THIS CASE.

14 NOW JUDGE PEEPLES AT THE END OF THIS
15 TRIAL WILL INSTRUCT YOU ON THE LAW. HE WILL GIVE YOU
16 THE LEGAL DEFINITIONS OF THE ELEMENTS OF EACH ONE OF THE
17 CRIMES THE STATE ALLEGES THAT KENNETH SIMMONS COMMITTED,
18 AND HE WILL GIVE YOU THE OTHER LAW. AND THAT WILL
19 INCLUDE THE DEFINITIONS OF THESE DIFFERENT OFFENSES.
20 BUT I'M GOING TO BRIEFLY RUN THROUGH THESE SO YOU'LL
21 KNOW WHERE I'M HEADING HERE AS FAR AS THE STATE'S CASE
22 IS CONCERNED. MURDER IS THE UNLAWFUL KILLING OF A HUMAN
23 BEING WITH MALICE AFORETHOUGHT, AND MALICE REFERS TO AN
24 EVIL STATE OF MIND, A DEPRAVED HEART. AND YOU CAN INFER
25 MALICE FROM THE INTENTIONAL DOING OF A WRONGFUL ACT

OPENING STATEMENT BY MR. BAILEY

1 WITHOUT ANY LEGAL JUSTIFICATION. AND THE AFORETHOUGHT
2 -- WHEN WE SAY MALICE AFORETHOUGHT -- MEANS THAT STATE
3 OF MIND, THAT MALICIOUS STATE OF MIND, HAS TO OCCUR AT
4 SOME POINT IN TIME BEFORE THE ACT OF KILLING. IT COULD
5 BE A SPLIT SECOND. IT DOESN'T HAVE TO BE A LONG PERIOD
6 OF PRE-MEDITATION. BUT THAT'S WHAT WE MEAN BY MALICE
7 AFORETHOUGHT. AND THAT'S WHAT MAKES A KILLING A MURDER,
8 MAKES A HOMICIDE A MURDER.

9 ROBBERY IS STEALING GOODS OR
10 PROPERTY OR MONEY FROM ANOTHER PERSON FROM THE UNLAWFUL
11 POSSESSION BY THE USE OF FORCE. AND IT BECOMES ARMED
12 ROBBERY WHEN THE PERSON COMMITTING THE ROBBERY USES A
13 DEADLY WEAPON SUCH AS A KNIFE, STICK, CLUB, OR WHATEVER
14 TO ACCOMPLISH THAT ROBBERY. AND THE JUDGE WILL INSTRUCT
15 YOU AT THE END OF THE CASE THAT UNDER CERTAIN
16 CIRCUMSTANCES A FIST CAN CONSTITUTE A DEADLY WEAPON.
17 KIDNAPPING INCLUDES FORCING SOMEBODY TO GO WHERE THEY
18 DON'T WANT TO GO; MAKING THEM STAY WHEN THEY WANT TO
19 LEAVE. IT'S A FORCIBLE RESTRICTION ON THEIR FREEDOM OF
20 MOVEMENT. IT'S A CONTINUING OFFENSE TO START WHEN
21 SOMEBODY IS DEPRIVED OF THEIR FREEDOM TO GO ABOUT THEIR
22 BUSINESS TO DO WHAT THEY WANT TO DO. AND AT THE END
23 WHEN THAT PERSON IS RELEASED, OR IN THIS CASE WHEN A
24 PERSON IS KILLED.

25 CRIMINAL SEXUAL CONDUCT IN THE FIRST

OPENING STATEMENT BY MR. BAILEY

1 DEGREE IS BASICALLY A FORCIBLE AGGRAVATED RAPE. FIRST
2 DEGREE BURGLARY IS ENTERING SOMEONE'S HOME WITH THE
3 INTENT TO COMMIT A CRIME INSIDE THAT HOME WHEN THE
4 ENTERING IS AT NIGHT OR WHEN A PERSON INSIDE THAT HOME
5 IS INJURED OR WHEN A WEAPON IS USED. SO VERY BASICALLY
6 THOSE ARE THE CRIMES THAT THE STATE ALLEGES KENNETH
7 SIMMONS COMMITTED.

8 WE ALL HAVE OUR JOBS TO DO IN THIS
9 COURTROOM. EVERYBODY WITH THE EXCEPTION OF SOME OF THE
10 SPECTATORS OUT HERE HAS A UNIQUE INDIVIDUAL JOB TO
11 PERFORM; A REASON TO BE HERE. AS Y'ALL KNOW, THE
12 BAILIFFS ARE HERE TO MAINTAIN ORDER. THE COURT REPORTER
13 WILL TAKE DOWN EVERY SINGLE WORD SAID IN THIS ENTIRE
14 TRIAL. SHE'LL MAKE A PERMANENT RECORD OF IT. THE SLED
15 AGENTS ARE HERE TO GET Y'ALL TO AND FROM THE MOTEL, TO
16 AND FROM THE RESTAURANT AND TAKE CARE OF YOUR NEEDS. MY
17 JOB ON BEHALF OF THE STATE OF SOUTH CAROLINA IS TO
18 PRESENT EVIDENCE CONCERNING THESE FIVE SEPARATE
19 INDICTMENTS TO PROVE BEYOND A REASONABLE DOUBT; NUMBER
20 ONE, THAT THESE CRIMES WERE COMMITTED; AND NUMBER TWO,
21 THAT KENNETH SIMMONS IS THE PERSON THAT COMMITTED THOSE
22 CRIMES. AND I ACCEPT THAT BURDEN OF PROOF AS I DO IN
23 ANY CRIMINAL CASE THAT I'VE TRIED. EVERY PROSECUTOR IN
24 THIS COUNTRY HAS THAT BURDEN OF PROOF AND THEY ACCEPT
25 THAT BURDEN OF PROOF, AND THEY PROCEED TO GO TO TRIAL.

OPENING STATEMENT BY MR. BAILEY

1 MR. THEOS AND MR. BELL, OF COURSE,
2 REPRESENT THE DEFENDANT. JUDGE PEEPLES HAS TWO ROLES AS
3 JUDGE HERE. FIRST OF ALL HE PRESIDES OVER THE TRIAL.
4 HE ACTS AS A REFEREE IF NECESSARY DURING THE TRIAL.
5 HE'LL MAKE RULINGS ON EVIDENTIARY MATTERS. HE MIGHT
6 BREAK FROM TIME TO TIME. YOU MIGHT HEAR EITHER ME OR
7 ONE OF THE OTHER LAWYERS GET UP AND SAY "JUDGE, I HAVE A
8 MATTER OF LAW" OR "I OBJECT" OR SOMETHING OF THAT
9 NATURE. AND HE MAY SEND YOU OUT TO THE JURY ROOM WHILE
10 HE TAKES UP THOSE LEGAL MATTERS.

11 HIS SECOND ROLE AT THE END OF THE TRIAL
12 WHEN ALL OF THE TESTIMONY IS IN, HE WILL CHARGE YOU OR
13 INSTRUCT YOU AS TO WHAT THE LAW IS. HE'LL TELL YOU WHAT
14 THE LAW IS. IT WILL BE YOUR DUTY TO ACCEPT THAT LAW AS
15 HE GIVES IT TO YOU. YOUR JOB AS JURORS, LADIES AND
16 GENTLEMEN -- AND THE JUDGE MENTIONED THIS BEFORE -- IS
17 THE MOST IMPORTANT JOB OF ANYBODY IN THIS COURTROOM;
18 MORE IMPORTANT THAN MY JOB OR THE JUDGE'S JOB BECAUSE
19 Y'ALL ARE JUDGES, TOO. YOU ARE THE JUDGES OF THE
20 FACTS. YOU AND ONLY YOU CAN DETERMINE WHAT THE TRUE
21 FACTS ARE. AND YOU DO THAT BY LISTENING TO THESE
22 WITNESSES THAT ARE CALLED. THEY'LL BE IN THIS SAME
23 CHAIR THAT Y'ALL SAT IN EITHER MONDAY OR TUESDAY.
24 THEY'LL BE PUT UNDER OATH, SWORN TO TELL THE TRUTH. AND
25 YOU USE YOUR GOOD EVERY DAY COMMON SENSE. THERE'S NO

OPENING STATEMENT BY MR. BAILEY

1 MAGIC TO IT. THERE'S NO SECRET FORMULA THAT YOU USE.
2 YOU USE YOUR GOOD COMMON SENSE. YOU DON'T LEAVE THAT AT
3 HOME. AND YOU SIZE THESE PEOPLE UP LIKE YOU SIZE PEOPLE
4 UP IN EVERY DAY LIFE WITHOUT EVEN THINKING ABOUT IT.

5 WHEN THESE WITNESSES GET UP HERE AND
6 TESTIFY, ASK YOURSELVES WHETHER OR NOT WHAT THAT PERSON
7 IS SAYING; IS IT CREDIBLE, IS IT BELIEVABLE; IS WHAT
8 HE'S SAYING, DOES IT HAVE A RING OF TRUTH ABOUT IT? IS
9 IT CONSISTENT WITH OTHER TESTIMONY I BELIEVE? DOES THAT
10 WITNESS HAVE A REASON TO GET UP HERE AND SAY SOMETHING
11 THAT ISN'T TRUE? ASK YOURSELVES THESE QUESTIONS. SIZE
12 THESE PEOPLE UP. JUDGE THEIR CREDIBILITY OR
13 BELIEVABILITY. AND DOING THAT YOU WILL DETERMINE THE
14 TRUE FACTS OF THIS CASE. THAT'S WHAT A TRIAL IS. IT'S
15 A SEARCH FOR THE TRUTH. THAT'S BASICALLY WHAT IT IS.
16 AND YOU ARE THE FINDERS OF THE TRUTH. AGAIN, THERE'S NO
17 MAGIC; NO SECRET TO IT. YOU USE YOUR COMMON SENSE; AND
18 THAT'S THE BEAUTY OF THE JURY SYSTEM; THAT'S WHY IT
19 WORKS BECAUSE WE HAVE JURORS THAT ARE WILLING TO COME IN
20 HERE AND USE THEIR GOOD EVERY DAY COMMON SENSE AND
21 DETERMINE THE TRUTHFULNESS OF THE TESTIMONY THAT YOU'RE
22 GOING TO HEAR.

23 NOW WHAT I SAY IS NOT EVIDENCE. IF
24 THE DEFENSE MAKES AN OPENING STATEMENT TO YOU, THAT'S
25 NOT EVIDENCE EITHER. WHAT I'M GOING TO DO IS PREVIEW TO

OPENING STATEMENT BY MR. BAILEY

1 YOU BRIEFLY, KIND OF GIVE YOU A ROAD MAP OF WHERE I
2 EXPECT OUR CASE TO GO, WHAT I ANTICIPATE THE TESTIMONY
3 TO BE FROM THE STATE'S WITNESSES THAT WILL BE CALLED IN
4 HERE STARTING THIS AFTERNOON. WHAT I'M GOING TO TALK TO
5 Y'ALL ABOUT, THE TESTIMONY THAT YOU'RE GOING TO HEAR, IS
6 NOT GOING TO BE PLEASANT FOR ME TO TALK ABOUT; NOT GOING
7 TO BE PLEASANT FOR Y'ALL TO LISTEN TO. IT'S AN UGLY
8 STORY, BUT IT' MY JOB TO RELATE FROM THESE WITNESSES
9 WHAT UNFOLDED ON SEPTEMBER THE FIRST, 1996 HERE IN
10 DORCHESTER COUNTY.

11 THE PRESENTATION OF MY CASE, THE
12 EVIDENCE WILL SHOW THAT EARLY SUNDAY MORNING ON
13 SEPTEMBER FIRST, 1996, LILLY BELL BOYD, AS I SAID, WAS
14 AN 89 YEAR OLD WOMAN THAT LIVED ALONE IN A SMALL HOUSE
15 AT THE END OF LUKE STREET. LUKE STREET IS A STREET IN
16 THE TOWN OF SUMMERVILLE THAT RUNS PARALLEL TO THE
17 RAILROAD TRACK IN THE BROWNSVILLE COMMUNITY. SHE LEFT
18 HER HOUSE, THE INSIDE OF HER HOUSE, EARLY THAT SUNDAY
19 MORNING BEFORE DAYBREAK TO FEED HER CHICKENS. AND AS
20 SHE WENT OUT OF HER BACK DOOR INTO THE YARD SHE
21 ENCOUNTERED A MAN BACK THERE THAT PUSHED HER BACK INSIDE
22 OF HER HOUSE AND DEMANDED MONEY FROM HER WHICH SHE GOT.

23 IN THE KITCHEN OF THAT HOUSE MRS.
24 BOYD WAS ROBBED. SHE WAS SAVAGELY BEATEN. SHE WAS
25 RAPED. SHE WAS BOUND. SHE WAS GAGGED. SHE WAS

OPENING STATEMENT BY MR. BAILEY

1 STRANGLED TO DEATH. THIS WAS A SUNDAY MORNING. WHEN
2 SHE DIDN'T SHOW UP FOR CHURCH THAT SHE REGULARLY WENT
3 TO, HER SISTER, VIRGINIA WILSON, WHO YOU'LL HEAR TESTIFY
4 AND HER COUSIN, BLONDELL SMITH, WHO ATTENDED THAT SAME
5 CHURCH THOUGHT SOMETHING WAS WRONG BECAUSE MRS. BOYD
6 WASN'T AT CHURCH WHERE SHE ALWAYS ATTENDED. SO THEY
7 WENT BY HER HOUSE TO CHECK ON HER. THE FRONT DOOR WAS
8 LOCKED. THESE TWO LADIES WENT AROUND THE BACK AND FOUND
9 THE BACK DOOR PARTIALLY OPEN. THEY WENT INSIDE, AND
10 MRS. WILSON FOUND HER SISTER LAYING ON THE KITCHEN
11 FLOOR, HANDS TIED BEHIND HER BACK, HER FEET TIED
12 TOGETHER, AND THERE WAS SOMETHING OVER HER MOUTH AND
13 NOSE. SHE FOUND HER DRESS PULLED UP, HER UNDERPANTS
14 PULLED DOWN AROUND HER KNEES. SHE CALLED 911. THERE
15 WAS BLOOD BENEATH MRS. BOYD'S BODY. AND MRS. WILSON GOT
16 A TOWEL AND TRIED TO CLEAN UP. OBVIOUSLY E.M.S. AND THE
17 POLICE ARRIVED.

18 THE NEXT DAY AN AUTOPSY WAS
19 CONDUCTED ON MRS. BOYD'S BODY BY DR. CLAY NICHOLS WHO'S
20 A FORENSIC PATHOLOGIST AT THE MEDICAL UNIVERSITY. DR.
21 NICHOLS DETERMINED THAT -- AND HE'LL BE TESTIFYING HERE
22 ALSO -- THAT MRS. BOYD DIED OF BLUNT HEAD TRAUMA AND
23 STRANGULATION. DURING THE COURSE OF THAT AUTOPSY WHICH
24 IS WHAT THEY DO IN EVERY AUTOPSY OF A FEMALE; DR.
25 NICHOLS DREW BLOOD. HE OBTAINED VAGINAL AND ORAL SWABS

OPENING STATEMENT BY MR. BAILEY

1 FROM MRS. BOYD'S BODY. DR. NICHOLS WILL TESTIFY ABOUT
2 EXTENSIVE VAGINAL HEMORRHAGING THAT HE OBSERVED
3 INDICATIVE OF FORCIBLE SEXUAL INTERCOURSE. HE OBSERVED
4 SEMEN ON A MICROSCOPIC SLIDE PREPARED FROM ONE OF THOSE
5 SWABS THAT HE OBTAINED.

6 YOU'LL HEAR THAT NO ARRESTS WERE
7 MADE IN THIS CASE FOR OVER A YEAR ALTHOUGH NUMEROUS
8 PEOPLE WERE QUESTIONED, NUMEROUS EARLY SUSPECTS WERE
9 CHECKED OUT AND CLEARED. THE INVESTIGATION CONTINUED
10 FOR A LONG TIME. YOU'LL ALSO HEAR TESTIMONY THAT THE
11 DEFENDANT ADVISED SOME CORRECTIONAL OFFICERS AT THE
12 RICHLAND COUNTY DETENTION CENTER THAT HE HAD KNOWLEDGE
13 OF THE MURDER OF AN ELDERLY WOMAN IN SUMMERVILLE. ON
14 DECEMBER THE FIFTH, 1997, SLED AGENT KENNY MEARS AND TWO
15 OTHER LAW ENFORCEMENT OFFICERS WENT TO RICHLAND COUNTY,
16 INTERVIEWED THE DEFENDANT, MR. SIMMONS HERE; AND AFTER
17 GIVING HIM HIS MIRANDA RIGHTS, THEY CONDUCTED A TAPED
18 INTERVIEW IN WHICH KENNETH SIMMONS GAVE A BIZARRE STORY
19 BRIEFLY THAT A GUY NAMED SHORTY KILLED MRS. BOYD AND
20 THAT KENNETH SIMMONS'S SEMEN HAD BEEN PLANTED IN MRS.
21 BOYD BY SHORTY AND SOME WOMAN. LATER ON ON DECEMBER THE
22 FIFTH AND AGAIN ON DECEMBER THE NINTH, 1997, ADDITIONAL
23 TAPED INTERVIEWS WERE TAKEN BY AGENT MEARS AGAIN AFTER
24 MR. SIMMONS WAS ADVISED OF HIS MIRANDA RIGHTS. AND IN
25 THOSE TYPED CONFESSIONS KENNETH SIMMONS TOLD AGENT MEARS

OPENING STATEMENT BY MR. BAILEY

1 THAT HE, ACTING ALONE, ROBBED, RAPED, AND BEAT LILLY
2 BELL BOYD THAT WEEKEND. AND YOU'RE GOING TO HEAR THESE
3 TAPES AS PART OF THE STATE'S CASE IN THEIR ENTIRETY.

4 YOU'RE ALSO GOING TO HEAR TESTIMONY
5 THAT BLOOD WAS DRAWN FROM KENNETH SIMMONS AFTER HIS
6 ARREST; AND THIS BLOOD, THE BLOOD FROM MRS. BOYD FROM
7 THE AUTOPSY, THE VAGINAL AND ORAL SWABS THAT WERE TAKEN
8 FROM THE AUTOPSY WERE INITIALLY SENT TO SLED, THE STATE
9 CRIME LAB. AND THE TECHNOLOGY THAT WAS AT THE STATE
10 CRIME LAB, THEY COULD NOT DEVELOP ANY DNA PROFILE FROM
11 THAT. SO THIS MATERIAL WAS SENT TO A DIFFERENT LAB IN
12 CONNECTICUT, A LAB THAT DOES A DIFFERENT KIND OF DNA
13 PROCESS CALLED P.C.R. AND YOU'RE GOING TO HEAR FROM A
14 COUPLE OF PEOPLE THAT WORK IN THAT LAB IN CONNECTICUT.
15 THE DIRECTOR OF THE LAB AND THEN THE ANALYST THAT
16 ANALYZED THE VAGINAL SWABS AND THE BLOOD FROM MRS. BOYD,
17 THE BLOOD FROM KENNETH SIMMONS. AND THEY'RE GOING TO
18 TESTIFY ABOUT DNA EVIDENCE. THEY'RE GOING TO TESTIFY
19 THAT NINE OUT OF NINE OF THE LOCATIONS ON DNA MOLECULES
20 THAT THEY COMPARED WITH THE SEMEN IN THAT VAGINAL SWAB
21 MATCHED THE DNA FROM KENNETH SIMMONS' BLOOD. AND THERE
22 WILL BE TESTIMONY ABOUT THE STATISTICAL SIGNIFICANCE OF
23 THAT DNA MATCH THAT YOU'LL HEAR LATER ON IN THIS CASE.

24 THE STATE'S CASE CONSISTS BASICALLY
25 OF KENNETH SIMMONS' CONFESSION, STATEMENTS THAT ARE ON

OPENING STATEMENT BY MR. BAILEY

1 TAPE THAT HE GAVE KENNY MEARS. AND IT ALSO CONSISTS OF
2 THE DNA EVIDENCE. YOU'LL ALSO HEAR THAT AN EFFORT WAS
3 MADE AT THE CRIME SCENE TO TAKE FINGERPRINTS, TO
4 IDENTIFY FOOTPRINTS AND THAT KIND OF THING. AND THERE
5 WILL BE NO FINGERPRINT EVIDENCE THAT MATCHES UP WITH
6 KENNETH SIMMONS. THERE WILL BE NO FOOTWEAR THAT MATCHES
7 UP WITH HIM. WE'RE LOOKING AT CONFESSIONS AND DNA.
8 YOU'RE GOING TO HEAR THAT THEY DID FIND SOME
9 FINGERPRINTS. THEY CHECKED HIS FINGERPRINTS OUT WITH
10 EVERYBODY THAT WAS A SUSPECT OR THEY KNEW HAD BEEN IN
11 THERE. THERE WAS ONE FINGERPRINT OFF THE TELEPHONE THAT
12 WAS NEVER MATCHED TO ANYBODY. BUT YOU'LL ALSO HEAR
13 EVIDENCE THERE'S NO WAY TO AGE A FINGERPRINT; NO WAY TO
14 TELL IF THAT PRINT HAD ANY CONNECTION AT ALL WITH THE
15 EVENTS OF SEPTEMBER THE FIRST.

16 LADIES AND GENTLEMEN, THAT'S THE
17 STATE'S CASE IN A NUTSHELL. THOSE ARE THE HIGHLIGHTS OF
18 IT. AGAIN THIS IS JUST A PREVIEW OR SUMMARY OF WHAT I
19 EXPECT THE STATE'S TESTIMONY TO BE IN THIS CASE. AND
20 I'M CONFIDENT THAT AT THE END OF THIS CASE, THE FACTS
21 THAT I PRESENT THROUGH THESE WITNESSES THAT YOU'RE GOING
22 TO HEAR WILL ESTABLISH KENNETH SIMMONS' GUILT BEYOND ANY
23 REASONABLE DOUBT. THE GUILT OR INNOCENCE ARE ALL WE'RE
24 CONCERNED WITH; DID HE DO IT. THAT'S THE ULTIMATE
25 QUESTION WE HAVE TO DETERMINE HERE BASED ON THE

OPENING STATEMENT BY MR. BAILEY

1 TESTIMONY. THIS TRIAL IS NOT GOING TO BE LIKE ON
2 TELEVISION WHERE EVERYTHING IS OVER IN A HALF AN HOUR OR
3 AN HOUR. I EXPECT THAT WE SHOULD BE ABLE TO FINISH THE
4 STATE'S CASE BY TOMORROW. AND I'VE BEEN WRONG BEFORE ON
5 MY TIME ESTIMATES; BUT THAT'S MY BEST GUESS AT THIS
6 POINT THAT I SHOULD BE ABLE TO FINISH THE STATE'S CASE
7 BY MAYBE LATE TOMORROW AFTERNOON OR TOMORROW NIGHT.

8 EACH WITNESS HAS SOMETHING TO SAY.
9 IT MAY NOT SOUND THAT IMPORTANT, BUT AT THE END OF THE
10 CASE WHEN Y'ALL GO BACK AND DELIBERATE, WHAT YOU'VE GOT
11 TO DO IS TAKE ALL THE LITTLE PIECES AND PUT THEM
12 TOGETHER. SO PLEASE PAY CLOSE ATTENTION TO ALL THESE
13 WITNESSES. AGAIN, USE YOUR COMMON SENSE. AND I CAN'T
14 STRESS THAT ENOUGH. WE DON'T WANT JURORS TO LEAVE THEIR
15 COMMON SENSE AT HOME. WE WANT THEM TO BRING THEM TO
16 COURT. AND YOU CAN USE THAT COMMON SENSE THAT YOU USE
17 IN YOUR EVERY DAY LIVES AND DETERMINE, BASED ON THE
18 EVIDENCE AND THE LAW THE JUDGE WILL GIVE YOU, WHETHER OR
19 NOT KENNETH SIMMONS HAS BEEN PROVEN GUILTY OF THESE
20 DIFFERENT CRIMES THAT THE STATE ALLEGES BEYOND A
21 REASONABLE DOUBT.

22 MY SOUL PURPOSE HERE AS YOUR
23 SOLICITOR IS TO PRESENT THE TRUTH TO YOU. AND I CAN
24 ONLY ASK THAT YOU PAY CLOSE ATTENTION AND LET YOUR
25 VERDICT SPEAK THE TRUTH WHEN THIS CASE GOES TO YOU.

OPENING STATEMENT BY MR. THEOS

THANK YOU.

THE COURT: MR. THEOS?

- - - - -

OPENING STATEMENT

BY MR. THEOS

LADIES AND GENTLEMEN, I'M JERRY THEOS. WE'VE MET BEFORE. WE HAD A CHANCE TO TALK WITH YOU EARLIER. THIS IS KENNETH SIMMONS; JIM BELL. JIM AND I REPRESENT KENNETH. AND JUST AS MR. BAILEY IS A REPRESENTATIVE OF THE COUNTY OF DORCHESTER COUNTY, JIM AND I ARE REPRESENTATIVE -- AND AS CITIZENS; MR. BAILEY IS -- JIM AND I ARE LAWYERS. JIM'S OFFICE IS HERE IN ST. GEORGE. MINE IS IN CHARLESTON. WE PRACTICE PRIMARILY IN THE TRI-COUNTY AREA. AND WE HAVE THE HONOR AND THE PRIVILEGE OF REPRESENTING A MEMBER OF THE COMMUNITY, ONE OF ITS CITIZENS.

NOW, I THOUGHT I HEARD SOME SIGHS WHEN SOME OF YOU WERE SELECTED AS JURORS. AND I'M NOT SURE WHETHER THOSE WERE SIGHS OF RELIEF, SIGHS OF EXCITEMENT, THAT YOU WERE EXCITED ABOUT SERVING ON THIS JURY, OR SIGHS OF -- I THINK I MIGHT HAVE EVEN HEARD AN "OH, NO." I MAY HAVE HEARD AN OH, NO! YOU'VE BEEN CALLED UPON, AS MR. BAILEY SAID, TO DECIDE SOMETHING EXTREMELY SERIOUS. AND THAT'S SOMETHING THAT YOU'RE ALL EQUIPPED TO DO BASED UPON YOUR LIFE'S EXPERIENCES AS

OPENING STATEMENT BY MR. THEOS

1 WE'VE READ ABOUT AND WE'VE HEARD ABOUT. IT IS A GRAVE
2 DECISION TO BE CALLED UPON TO MAKE. NOBODY LIKES TO
3 PASS JUDGMENT ON ANY INDIVIDUAL. YOU'RE CALLED UPON TO
4 DO IT. AND WE APOLOGIZE FOR THAT ON ONE HAND; BUT WE
5 APPLAUD IT ON THE OTHER BECAUSE IT'S THE ONLY WAY THAT
6 WE KNOW TO RESOLVE DISPUTES.

7 NOW BEFORE I TALK ABOUT WHAT THOSE
8 DISPUTES ARE, MR. BAILEY AND I SEE THINGS A LITTLE
9 DIFFERENTLY. I WANT TO APOLOGIZE TO THE FAMILY OF MRS.
10 BOYD. I'VE HAD A CHANCE TO MEET THEM OVER THE LAST
11 COUPLE OF WEEKS, AT LEAST A COUPLE OF THEM. WHAT
12 HAPPENED TO MRS. BOYD WAS TRULY TRAGIC, UNNECESSARY; AND
13 WE OFFER OUR CONDOLENCES AND APOLOGIES TO THEM. I ALSO
14 WANT TO STATE THAT MR. BELL AND I ARE NOT INTENDING ON
15 SUBJECTING THEM TO ANYTHING FURTHER, ANYTHING THAT MAY
16 OFFEND THEM. IT'S OUR JOB AS IT IS MR. BAILEY'S TO ASK
17 QUESTIONS, TO PRESENT WITNESSES, TO PRESENT WHATEVER
18 EVIDENCE WE THINK APPROPRIATE. AND SOMETIMES IN ASKING
19 QUESTIONS WE'RE CALLED UPON TO ASK SOME THINGS THAT
20 MIGHT BE DISTASTEFUL, MIGHT BE DISTASTEFUL TO A FAMILY
21 OF SOMEBODY WHO HAS BEEN THROUGH SOMETHING LIKE THIS.
22 YOU MIGHT THINK AS JURORS IT'S SOMETHING THAT -- IT MAY
23 BE SOMETHING THAT OFFENDS YOU. I DON'T APOLOGIZE FOR
24 HAVING TO ASK THOSE QUESTIONS BECAUSE IT'S A PART OF
25 WHAT WE'RE REQUIRED TO DO, WHAT WE NEED TO DO, TO GET TO

OPENING STATEMENT BY MR. THEOS

1 THE TRUTH OF THINGS. BUT I APOLOGIZE IN ADVANCE IF WE
2 OFFEND YOU. YOU CAN CERTAINLY HOLD THAT AGAINST ME,
3 HOLD IT AGAINST MR. BELL, BUT PLEASE DO NOT HOLD IT
4 AGAINST KENNETH SIMMONS. KENNETH IS OUR CLIENT, BUT HE
5 HAS NO CONTROL OVER WHAT WE DO OR WHAT WE SAY OR HOW WE
6 SAY IT.

7 NOW, AS I SAID, THIS IS -- MR.
8 BAILEY AND I SEE THINGS DIFFERENTLY. THIS IS AN
9 ADVERSARIAL PROCESS; ADVERSARIAL IN A SENSE THAT MR.
10 BAILEY IS GOING TO PRESENT EVIDENCE; EVIDENCE THAT HE'S
11 ALREADY CITED FOR YOU; EVIDENCE THAT HE WILL TRY TO
12 CONVINCING YOU TO SEE THIS A CERTAIN WAY, TO SEE THINGS
13 HIS WAY, MR. BAILEY'S WAY. MR. BELL AND I WILL PRESENT
14 EVIDENCE BOTH THROUGH THE CROSS-EXAMINATION OF THE
15 STATE'S WITNESSES, THROUGH THE PRESENTATION OF CERTAIN
16 OTHER WITNESSES, IN AN EFFORT TO TRY TO PERSUADE YOU TO
17 SEE IT OUR WAY. NOW IN THAT SENSE IT'S ADVISARIAL. BUT
18 AS THE JUDGE TOLD YOU BEFORE, THIS IS AN EFFORT TO TRY
19 TO DETERMINE WHAT THE TRUTH -- TO TRY TO FIND THE TRUTH;
20 TO TRY TO DETERMINE WHAT THE TRUTH IS. AND THAT'S WHAT
21 WE'RE HERE FOR. WE'RE NOT HERE TO SATISFY MR. BAILEY.
22 WE'RE NOT HERE TO SATISFY JERRY THEOS OR JIM BELL.
23 WE'RE NOT HERE TO SATISFY JUDGE PEEPLES OR THE
24 COMMUNITY. WHAT WE'RE HERE TO DO IS EXAMINE THE
25 EVIDENCE AND DETERMINE WHAT THAT EVIDENCE SHOWS; WHAT

OPENING STATEMENT BY MR. THEOS

1 DOES THE EVIDENCE REFLECT.

2 NOW, I'VE GOT A COUPLE OF FEARS THAT
3 I WANT TO SHARE WITH YOU; AND THOSE FEARS YOU MIGHT
4 UNDERSTAND. BUT THE FIRST FEAR IS WE'VE SPENT SO MUCH
5 TIME OVER THE LAST COUPLE OF DAYS, AND WE APOLOGIZE FOR
6 THAT TIME. AS THE JUDGE SAID, IT IS ABSOLUTELY
7 REQUIRED. WE SPENT SO MUCH TIME IN DISCUSSING POTENTIAL
8 PENALTIES THAT WE SOMETIMES -- AS I TOLD MANY OF YOU WE
9 KIND OF PUT THE CART BEFORE THE HORSE. WE'RE MOVING
10 AHEAD OF OURSELVES. AND THE FEAR THAT I'VE GOT, AND THE
11 FEAR THAT JIM BELL HAS, IS THAT IN DISCUSSING THOSE
12 THINGS WITH YOU THAT YOU MIGHT THINK AS JURORS THAT
13 "WELL, THERE REALLY ISN'T ANY ISSUE OF GUILT; ALL WE'RE
14 REALLY DOING IS SORT OF GOING THROUGH THE MOTIONS HERE
15 TO GET TO THAT POINT. THAT REALLY IS THE HEART OF THE
16 MATTER." WELL, THAT'S NOT THE HEART OF THE MATTER. THE
17 HEART OF THE MATTER AT THIS POINT IS WHETHER OR NOT
18 KENNETH SIMMONS IS GUILTY OF WHAT HE'S BEEN CHARGED
19 WITH, WHAT HE'S BEEN ARRESTED FOR, AND WHAT HE'S BEEN
20 INDICTED FOR.

21 MR. BAILEY CONTENDS THAT KENNETH
22 SIMMONS WAS THERE; THAT HE DID THESE THINGS. WE CONTEND
23 KENNETH SIMMONS WAS NOT THERE, DID NOT DO THESE THINGS.
24 NOW, THAT'S A BIG DISCREPANCY AND OPINION. AND A BIG
25 DISCREPANCY IN WHAT WE'RE ATTEMPTING TO SHOW YOU. BUT

OPENING STATEMENT BY MR. THEOS

1 THAT'S WHAT THE DISAGREEMENT IS. AND THE ONLY WAY TO
2 RESOLVE THAT DISAGREEMENT -- MR. BAILEY AND I WOULD
3 NEVER AGREE ON THAT; WE COULD NEVER AGREE ON -- HE WOULD
4 NEVER PERSUADE ME OF KENNETH SIMMONS' GUILT, AND I WOULD
5 NEVER PERSUADE HIM OF KENNETH SIMMONS' INNOCENCE.
6 THAT'S NOT THE WAY IT IS. HE'S TO PRESENT HIS EVIDENCE
7 TO YOU. I'M TO PRESENT OUR EVIDENCE TO YOU AS WELL.
8 AND THEN YOU'RE TO MAKE A DECISION BASED UPON THAT
9 EVIDENCE.

10 NOW ONE THING THAT WE TALKED ABOUT
11 IN WHAT WAS CALLED THE VOIR DIRE -- WHEN WE WERE
12 QUESTIONING YOU -- ONE THING WE TALKED ABOUT IS
13 PRESUMPTION OF INNOCENCE. AND WE KIND OF THROW THAT
14 AROUND, AND YOU READ ABOUT IT AND HEAR ABOUT IT ON T.V.
15 WE THROW IT AROUND AND SAY "OH, YEAH, I KNOW WHAT THAT
16 IS; I CAN APPLY THAT; I UNDERSTAND WHAT BURDEN OF PROOF
17 IS." MR. BAILEY SAYS "YES, WE ACCEPT THAT." YOU TELL
18 US YOU UNDERSTAND WHAT PROOF BEYOND A REASONABLE DOUBT
19 IS. THOSE ARE KIND OF NIFTY LITTLE LEGAL TERMS, BUT
20 THEY HAVE A WHOLE LOT OF SIGNIFICANCE. AND THE
21 SIGNIFICANCE IS, THINK ABOUT IT. THINK ABOUT WHAT YOU
22 DO WHEN YOU READ THE NEWSPAPER, WATCH T.V. IT'S
23 NORMAL. IT'S NATURAL AT THAT POINT WHEN YOU SEE THAT
24 SOMEONE HAS BEEN ARRESTED.

25 YOU HEAR THAT SOMEONE HAS BEEN

OPENING STATEMENT BY MR. THEOS

1 ARRESTED. YOU FIND OUT THAT SOMEBODY MAY BE ON TRIAL.
2 YOU FIND OUT THAT SOMEBODY IN PARTICULAR MIGHT BE ON
3 TRIAL IN A CASE LIKE THIS WHERE THE CONSEQUENCES ARE SO
4 GREAT. THE FIRST NATURAL REACTION IS TO THINK, "THANK
5 GOODNESS THEY GOT THAT PERSON; THANK GOODNESS THEY
6 BROUGHT THAT PERSON TO JUSTICE; THAT PERSON DESERVES
7 WHATEVER THAT JUSTICE MAY BE." THERE'S AN ASSUMPTION OF
8 GUILT, AND IT'S A HUMAN SORT OF REACTION. BUT THINK
9 ABOUT -- AND I THINK EVERYBODY'S GUILTY OF THAT FROM
10 TIME TO TIME. BUT THINK ABOUT WHAT HAPPENS IF THE
11 PERSON YOU HEAR ABOUT OR THE PERSON YOU READ ABOUT IS
12 SOMEONE THAT YOU MAY HAVE SOME CONTACT WITH, A CHURCH
13 MEMBER OR WHOEVER; BUT YOU KNOW THEM. WHAT IS IT THAT
14 YOU THINK AT THAT POINT? "I CAN'T BELIEVE; I CAN'T
15 BELIEVE JOHN SMITH OR JOE JONES DID SOMETHING LIKE THAT;
16 I JUST CAN'T BELIEVE IT; THEY'RE GOING TO HAVE TO PROVE
17 IT TO ME BEFORE I BELIEVE ANYTHING LIKE THAT; I AM NOT
18 GOING TO BELIEVE IT UNLESS OR UNTIL SOMEBODY PROVES IT
19 TO ME BEYOND A REASONABLE DOUBT; I JUST CANNOT BELIEVE
20 IT." WELL, THAT IS THE SORT OF MENTALITY OR MINDSET
21 THAT YOU HAVE TO HAVE TO BE JURORS. AND YOU ALL SAID,
22 YOU ALL SWORE UNDER OATH THAT YOU COULD DO THAT. AND
23 YOU ALL ARE REAL INTELLIGENT, CAPABLE JURORS. AND AS
24 THE JUDGE TOLD YOU, WE DIDN'T EVEN EXHAUST ALL OF OUR
25 STRIKES AS HE TOLD Y'ALL. WE PICKED Y'ALL QUICKLY AND

OPENING STATEMENT BY MR. THEOS

1 AGREED ON Y'ALL BASED ON YOUR EXPERIENCES. BUT THAT IS
2 THE STANDARD THAT HAS TO APPLY IN EVERY CRIMINAL CASE,
3 AND ESPECIALLY IN THIS ONE; THAT YOU CANNOT BELIEVE
4 SOMETHING; YOU CANNOT BELIEVE GUILT UNLESS THE STATE
5 PROVES IT TO YOU.

6 NOW, WHAT IS THE STATE PROPOSING TO
7 PRESENT TO YOU TO TRY TO PERSUADE YOU BEYOND A
8 REASONABLE DOUBT THAT KENNETH SIMMONS IS GUILTY? WELL,
9 TWO THINGS. AND YOU HEARD IT I THINK THREE TIMES FROM
10 MR. BAILEY. THE STATEMENT OR STATEMENTS THAT KENNETH
11 SIMMONS GAVE AND THE DNA; THOSE TWO THINGS. NOW, WHAT
12 MR. BAILEY TOLD YOU IS TRUE TO A LIMITED EXTENT. THERE
13 WAS A LONG DRAWN OUT EXHAUSTIVE INVESTIGATION FROM
14 SEPTEMBER THE FIRST OF 1996 THROUGH DECEMBER THE FIFTH
15 OF 1997. DURING THAT TIME, AS MR. BAILEY SAID, A NUMBER
16 OF PEOPLE WERE INTERVIEWED. A NUMBER OF PEOPLE WERE
17 SUSPECTS. A NUMBER OF PEOPLE WERE LOOKED AT AS
18 POTENTIAL PEOPLE THAT POTENTIALLY COULD HAVE COMMITTED
19 THE CRIME.

20 NOW, I ASSUME MR. BAILEY WILL CALL
21 SOME OF THOSE OFFICERS IN TO TESTIFY RELATED TO THEIR
22 INVESTIGATION AND THOSE PEOPLE THAT WERE SUSPECTS AND
23 WHAT THE THOUGHT PROCESS WAS, WHY CERTAIN OF THESE
24 PEOPLE WERE ELIMINATED AS SUSPECTS; PERHAPS WHY SOME
25 WEREN'T ELIMINATED AS SUSPECTS.

OPENING STATEMENT BY MR. THEOS

1 NOW, ON DECEMBER THE FIFTH MR.
2 BAILEY TOLD YOU -- AND I DON'T KNOW THAT HE SAID TODAY
3 -- BUT IT WAS DECEMBER THE FIFTH. THERE WAS A PHONE
4 CALL THAT MR. SIMMONS HAD GIVEN A STATEMENT. WHAT MR.
5 BAILEY DIDN'T TELL YOU -- HE CALLED IT A BIZARRE STORY
6 -- BUT WHAT MR. BAILEY DIDN'T TELL YOU IS THAT MR.
7 SIMMONS ACTUALLY ADMITTED TO KILLING SOMEBODY ELSE, NOT
8 MRS. BOYD. AND THEN THERE WERE A SERIES OF INTERVIEWS
9 AFTER THAT. SO I THINK WHAT I WANT TO TELL YOU AT THIS
10 POINT IS THOSE STATEMENTS AT SOME POINT MAY BE
11 CHARACTERIZED AS CONFESSIONS. LET'S CALL THEM
12 STATEMENTS. THESE STATEMENTS, THE STATE WILL CONTEND,
13 ARE CONFESSIONS ON THE PART OF KENNETH SIMMONS. AND
14 BECAUSE OF THOSE CONFESSIONS AND HIS ACKNOWLEDGMENT THAT
15 HE DID SOMETHING, YOU THE JURY SHOULD FIND HIM GUILTY.
16 AND BY THAT IN AND OF ITSELF, THEN THEY WILL ALSO
17 PRESENT THIS DNA EVIDENCE.

18 NOW THE JUDGE AT SOME POINT -- AND I
19 BELIEVE THE JUDGE DURING THE CASE -- WILL ADVISE YOU AS
20 TO WHAT THE LAW IS RELATED TO STATEMENTS BY SOMEBODY IN
21 A TRIAL; STATEMENTS BY KENNETH SIMMONS IN THIS CASE.
22 NOW STATEMENTS GIVEN BY SOMEBODY -- AND THEY CALL THEM
23 CONFESSIONS -- BUT THESE STATEMENTS GIVEN BY PEOPLE THAT
24 ARE ARRESTED OR CHARGED WITH CRIMES ARE FUNNY THINGS.
25 THE HISTORICAL SIGNIFICANCE OF A CONFESSION IS -- AND

OPENING STATEMENT BY MR. THEOS

1 THE REASON THE JUDGE WILL GIVE YOU THIS INSTRUCTION --
2 IS THAT HISTORICALLY PEOPLE CANNOT BE CONVICTED BASED
3 UPON THEIR STATEMENTS ALONE. THERE HAD TO BE SOME
4 EVIDENCE TO CORROBORATE THOSE STATEMENTS. AND THE JUDGE
5 WILL GO INTO FAIRLY GOOD DETAIL WITH YOU AS TO WHAT YOU
6 ARE TO CONSIDER AS A JUROR WHEN DETERMINING WHETHER THAT
7 STATEMENT SHOULD BE CONSIDERED AGAINST KENNETH SIMMONS.
8 AND THERE'S A GOOD REASON FOR IT. PEOPLE SAY THINGS
9 THAT AREN'T TRUE. PEOPLE SAY THINGS THAT THEY FEEL
10 COMPELLED TO SAY, THAT THEY FEEL FORCED TO SAY. PEOPLE
11 SAY THINGS BECAUSE THEY DON'T UNDERSTAND THE
12 CONSEQUENCES OF WHAT THEY'RE SAYING. PEOPLE SAY THINGS
13 BECAUSE THEY THINK IT'S WHAT OTHER PEOPLE WANT TO HEAR.
14 THIS ISN'T JUST SOME DEFENSE LAWYER TELLING YOU ALL
15 THIS. YOU KNOW FROM YOUR EVERY DAY EXPERIENCES THAT
16 THOSE THINGS HAPPEN WHETHER YOU ANALOGIZE IT TO CHILDREN
17 TAKING RESPONSIBILITY FOR THINGS THEY DIDN'T DO OR OTHER
18 PEOPLE. IT HAPPENS!

19 WHAT YOU WILL HEAR ABOUT KENNETH
20 SIMMONS IS THAT KENNETH -- I THINK KENNETH'S A NICE
21 LOOKING FELLOW. HE'S GOT A COAT ON, A NICE PAIR OF
22 PANTS, A TIE; AND HE'S -- I THINK KENNETH JUST TURNED
23 THIRTY-EIGHT. WHAT YOU'LL HEAR ABOUT KENNETH, THOUGH,
24 IS HE HAS THE MENTALITY AND THE FUNCTIONAL EQUIVALENCY
25 OF A SEVEN YEAR OLD. YOU'LL HEAR SOME TESTIMONY ABOUT

OPENING STATEMENT BY MR. THEOS

1 WHETHER OR NOT HE'S MENTALLY RETARDED. AND THERE WILL
2 BE SOME CONFLICT IN THAT TESTIMONY. AND THAT REALLY
3 ISN'T THE ISSUE WHETHER OR NOT HE'S MENTALLY RETARDED.
4 I THINK YOU'LL PROBABLY HEAR SOME EXPERTS, SOME DOCTORS,
5 SAY HE IS. AND YOU MIGHT HEAR SOME THAT SAY THEY'RE NOT
6 QUITE SURE WHETHER HE IS. AND YOU MIGHT HEAR SOME
7 DOCTORS THAT SAY "WE DON'T THINK HE IS." THE ISSUE WILL
8 NOT BE WHETHER OR NOT HE'S MENTALLY RETARDED. THE ISSUE
9 WILL BE HIS CAPACITY, HIS MENTAL CAPACITY; WHAT IS IT?
10 WHAT ARE HIS LIMITATIONS?

11 KENNETH FUNCTIONS ON THE LEVEL OF A
12 SECOND GRADER. HE THINKS LIKE A SEVEN YEAR OLD. HE
13 PROCESSING THOUGHTS LIKE A SEVEN YEAR OLD. AND THAT
14 WILL BE CLEAR. WE'LL PRESENT TO YOU WITNESSES, EXPERTS
15 IN THEIR FIELD, BECAUSE I'M CERTAIN I'M NO EXPERT WHEN
16 IT COMES TO TESTING AND PSYCHOLOGICAL MATTERS. BUT
17 WE'LL PRESENT TO YOU PEOPLE FAR MORE EXPERIENCED AND
18 WITH FAR MORE EXPERTISE THAN OURSELVES THAT WILL TELL
19 YOU ABOUT THAT; THOSE PEOPLE MEANING PEOPLE WITH THIS
20 LIMITED MENTAL AND FUNCTIONING CAPACITY. THOSE PEOPLE
21 DON'T THINK NORMALLY. THEY DON'T THINK THE SAME WAY.
22 THOSE PEOPLE ARE ESPECIALLY PRONE AND SUBJECT TO SAYING
23 THINGS THAT AREN'T NECESSARILY TRUE. AND YOU MIGHT
24 THINK, "WELL, I DON'T KNOW; WHY WOULD SOMEBODY SAY
25 SOMETHING IF IT ISN'T SO?" WELL, I'LL LEAVE YOU WITH

OPENING STATEMENT BY MR. THEOS

1 THIS THOUGHT BEFORE I MOVE ON TO SOMETHING ELSE BECAUSE
2 IT IS BETTER FOR YOU TO HEAR THAT FROM OTHER PEOPLE THAN
3 FROM ME. MR. SIMMONS SAID HE KILLED ONE OR TWO OTHER
4 PEOPLE BEFORE HE SAID THAT HE WAS INVOLVED IN MRS.
5 BOYD'S DEATH. SO WE KNOW THAT HE WILL SAY SOMETHING
6 THAT IS NOT TRUE. THAT'S THE BEST EVIDENCE OF HIM. AND
7 YOU'LL HEAR IT; YOU'LL HEAR THOSE THINGS.

8 NOW, THE OTHER THING THAT YOU WILL
9 HEAR IS THIS MATTER ABOUT THE DNA. IT'S NOT AS BLACK
10 AND WHITE AND AS CLEAR-CUT AS MR. BAILEY SAYS. YOU WILL
11 HEAR ULTIMATELY -- ULTIMATELY -- THAT THE DNA TEST AND
12 THE BLOOD THAT WAS TAKEN FROM KENNETH SIMMONS AND THE
13 SEMEN THAT WAS REMOVED FROM MRS. BOYD; YOU WILL HEAR
14 THAT IT MAY BE KENNETH SIMMONS'. NOT THAT IT IS. AND
15 YOU CAN FORGET ALL THESE PROBABILITIES. AND AT SOME
16 POINT YOU WILL HEAR ABOUT ALL THIS. YOU WILL HEAR
17 ULTIMATELY THAT IT MAY BE. YOU WILL ALSO HEAR THAT IT
18 MAY NOT BE. OKAY? THERE'S A BIG DIFFERENCE IN "IT IS"
19 AND "WE'LL SHOW YOU ALL THE NUMBERS" AND "IT MAY BE."

20 SO ULTIMATELY WHAT MR. BAILEY
21 WILL CALL UPON YOU TO DO IS TO DECIDE -- AND WHAT HE'S
22 ASKED YOU TO DO -- IS TO DECIDE THE GUILT OF MR. SIMMONS
23 BASED UPON TWO OPINIONS. ONE IS THE OPINION OF PERHAPS
24 LAW ENFORCEMENT, PERHAPS AN EXPERT OR TWO THAT MIGHT
25 COME IN TO SAY THAT IN THEIR OPINION MR. SIMMONS

OPENING STATEMENT BY MR. THEOS

1 KNOWINGLY AND INTELLIGENTLY MADE THIS STATEMENT, AND HE
2 WAIVED HIS RIGHTS, AND HE KNEW WHAT HE WAS DOING, ETC.,
3 AND THAT THE STATEMENT MUST THEREFORE BE TRUE. HE WILL
4 ALSO PRESENT THIS SECOND OPINION, THE OPINION OF THE DNA
5 EXPERT, THAT IT MAY BE HIM. SO HE WILL ULTIMATELY ASK
6 YOU TO CONVICT MR. SIMMONS OF ALL OF THESE HORRIBLE
7 CRIMES BASED UPON TWO OPINIONS. AND THOSE OPINIONS, YOU
8 WILL HEAR, WILL BE BASED UPON ASSUMPTIONS. WHAT WE'RE
9 GOING TO ASK YOU TO DO IS LOOK BEYOND THE STATEMENT;
10 LOOK BEYOND THESE TWO OPINIONS; BECAUSE THAT'S WHAT
11 WE'VE GOT TO DO. WHAT I THOUGHT WAS INTERESTING
12 YESTERDAY WHEN THIS JURY WAS NOT SEATED HERE -- BUT WHEN
13 MR. BAILEY AND I WERE ASKING THIS PARTICULAR JUROR
14 CERTAIN QUESTIONS, HE KIND OF LOOKED AT US AND HE SAID,
15 "I'M NOT GOING TO CONSIDER WHAT YOU PRESENT AS FACTS;
16 AND I'M NOT GOING TO CONSIDER CERTAIN CIRCUMSTANCES.
17 I'M GOING TO CONSIDER THE EVIDENCE. THE EVIDENCE IS
18 WHAT I WILL LOOK AT. I'M NOT GOING TO LOOK AT ANYTHING
19 ELSE." AND, YOU KNOW, WE GET CAUGHT UP AS LAWYERS SORT
20 OF TALKING AND PRESENTING YOU WITH LEGAL THEORIES AND
21 ALL OF THIS STUFF. AND I THOUGHT THAT WAS SO
22 INSIGHTFUL.

23 WE HAVE TO LOOK AT THE EVIDENCE.
24 AND THAT'S WHAT WE'RE GOING TO ASK YOU TO LOOK AT. LOOK
25 BEYOND THE APPEARANCES. LOOK BEYOND THESE THINGS FOR

OPENING STATEMENT BY MR. THEOS

1 THEIR FACE VALUE. LET'S LOOK AT THE EVIDENCE. THE
2 EVIDENCE WILL SHOW CERTAIN THINGS. THE EVIDENCE
3 UNFORTUNATELY WILL SHOW THAT MRS. BOYD WAS ASSAULTED;
4 MRS. BOYD -- SHE WAS ASSAULTED IN A NUMBER OF WAYS AND
5 THAT MRS. BOYD ULTIMATELY DIED FROM THAT ASSAULT. BUT
6 WHAT I WANT YOU TO FOCUS ON IS FOCUS ON THE DETAILS.
7 FOCUS ON THE SPECIFICS RELATED TO TIMES, DAYS, THE
8 NATURE OF THE ASSAULT OR ASSAULTS AND THE EVIDENCE THAT
9 WAS GATHERED RELATED TO THAT ASSAULT.

10 NOW, MR. BAILEY TELLS YOU "WELL,
11 WE'VE GOT SOME FINGERPRINTS BUT THEY DON'T MATCH; WE MAY
12 HAVE SOME FOOTPRINTS BUT THEY DON'T REALLY MATCH." LOOK
13 AT THOSE THINGS. THERE IS A FINGERPRINT. ACTUALLY
14 THERE ARE TWO. ONE, THEY MAY SAY THEY COULDN'T GET A
15 COMPARISON ON OR THAT THERE'S SOMETHING A LITTLE
16 CONFUSING ABOUT ON THAT. AND THEN ONE THAT CLEARLY IS
17 READABLE AND CAN BE COMPARED. IT'S NOT A FINGERPRINT OF
18 KENNETH SIMMONS. SO WE KNOW WHOEVER WAS THERE LEFT A
19 FINGERPRINT. WE KNOW THAT WHOEVER WAS THERE LEFT A
20 FOOTPRINT. AND THEY MAY OFFER -- THEY WILL NOT OFFER
21 ANYBODY TO SAY THAT THAT IS THE FOOTPRINT OR THE
22 FINGERPRINT OF KENNETH SIMMONS.

23 THERE WILL BE OTHER THINGS THAT YOU
24 WILL HEAR PERHAPS FROM THE MEDICAL EXAMINER, PERHAPS
25 FROM THE PEOPLE AT THE CRIME SCENE THAT RELATED TO THE

OPENING STATEMENT BY MR. THEOS

1 DETAILS, RELATED TO THAT PHYSICAL EVIDENCE THAT YOU NEED
2 TO LOOK AT AND SCRUTINIZE AND FOCUS ON. AND WHEN YOU
3 LOOK AT THOSE THINGS AND YOU SCRUTINIZE THOSE THINGS, I
4 ASK YOU TO LOOK AT THOSE THINGS, LOOK AT THOSE THINGS,
5 AND THEN LOOK AT THESE OTHER THINGS THAT MR. BAILEY SAYS
6 THAT THEY WILL OFFER. DON'T LOOK AT THOSE THINGS THAT
7 HE SAYS HE WILL OFFER AND THEN AT THESE OTHER THINGS.

8 LOOK AT THE EVIDENCE FIRST. SEE THE
9 EVIDENCE FOR WHAT IT IS, OKAY? IF YOU DO THAT; IF YOU
10 LOOK AT THE EVIDENCE OR THE LACK OF EVIDENCE OR THE
11 INCONSISTENCIES IN THE EVIDENCE, YOU WILL SEE THAT --
12 AND THE INCONSISTENCIES AND THE EVIDENCE OF MR. SIMMONS'
13 STATEMENT, THAT'S THE OTHER THING YOU NEED TO FOCUS ON.
14 THEY'RE ALL INCONSISTENCIES. YOU NEED TO LOOK AT THAT.
15 THEY'LL TRY TO EXPLAIN THOSE THINGS AWAY, BUT THEY'RE
16 CRUCIAL TO LOOK AT AND SCRUTINIZE. WHEN YOU LOOK AT ALL
17 OF THOSE THINGS; WHEN YOU SCRUTINIZE THAT EVIDENCE THAT
18 THAT ONE JUROR SO INSIGHTFULLY SAID "I'M GOING TO LOOK
19 AT." WHEN YOU LOOK AT ALL THOSE THINGS, YOU'LL SEE THAT
20 THE FINGER POINTS, NOT AT KENNETH SIMMONS. IT POINTS
21 SOMEWHERE ELSE. WE CAN'T TELL YOU WHERE IT IS IT
22 POINTS, BUT WE KNOW IT DOES NOT POINT TO KENNETH
23 SIMMONS. AT THAT POINT IN THE CASE WE WILL ASK YOU,
24 BASED UPON THOSE INCONSISTENCIES, THAT LACK OF EVIDENCE,
25 THE EVIDENCE THAT WAS COLLECTED; WE WILL ASK YOU TO

REMARKS TO THE JURY BY THE COURT

1 RETURN A VERDICT OF NOT GUILTY BECAUSE IT IS
2 INCONSISTENT WITH KENNETH SIMMONS' GUILT AND THE STATE
3 WILL NOT HAVE MET ITS BURDEN OF PROVING BEYOND A
4 REASONABLE DOUBT THAT KENNETH SIMMONS COMMITTED THIS
5 CRIME. THANK YOU.

6 - - - - -

7 THE COURT: MADAM FORELADY AND
8 LADIES AND GENTLEMEN OF THE JURY, PLEASE LEAVE YOUR
9 LITTLE NOTE PADS IN YOUR CHAIRS AS YOU LEAVE AT THIS
10 TIME. AND YOU MIGHT WANT TO WRITE YOUR NAME ON THE TOP
11 OF IT. AND IF FOR ANY REASON YOU GO BACK TO A DIFFERENT
12 CHAIR YOU CAN GET TO KNOW YOUR FELLOW AND SISTER JURORS
13 DURING THIS SOJOURN. BUT LEAVE THOSE IN YOUR CHAIRS.
14 YOU'RE NOT ALLOWED TO TAKE THOSE TO THE JURY ROOM UNTIL
15 YOU START YOUR FINAL DELIBERATIONS. NOW, AT THIS TIME
16 LADIES AND GENTLEMEN, WE'RE GOING TO SEND YOU WITH YOUR
17 SECURITY PEOPLE AND BAILIFFS. AND LT. POKE; IS HE
18 PRESENT? WE HAVE TWO ADDITIONAL BAILIFFS POLICE HERE
19 PLUS THE HIGHWAY PATROLMAN. IF Y'ALL WILL COME FORWARD
20 AND BE SWORN, PLEASE. LADIES, IF YOU WOULD, PLEASE
21 STATE YOUR NAME TO THE JURY; INTRODUCE YOURSELF.

22 MRS. WILLIAMS: LOUNELLA WILLIAMS.

23 MRS. ROGERS: I'M DEBORAH ROGERS.

24 THE COURT: THESE LADIES ARE SLED
25 AGENTS, AND THEY'LL BE ASSIGNED TO THE SECURITY

REMARKS TO THE JURY BY THE COURT

1 FORCE. AND IF YOU GENTLEMEN OF THE HIGHWAY PATROL
2 WOULD STATE YOUR NAMES, PLEASE?

3 MR. VELKEY: THOMAS VELKEY.

4 MR. CRAYTON: TIM CRAYTON.

5 THE COURT: THANK YOU. AND IF YOU
6 WOULD, GIVE THEM THE OATH, PLEASE.
7 (AT THIS TIME SLED AGENTS AND HIGHWAY PARTOLMEN ARE
8 SWORN.)

9 THE COURT: DO ANY OF YOU LADIES AND
10 GENTLEMEN HAVE YOUR CARS WITH YOU? (SOME JURORS
11 ANSWER IN THE AFFIRMATIVE.) ALL RIGHT. DO YOU
12 INTEND TO KEEP THOSE CARS AT THE MOTEL? IS THAT
13 YOUR INTENT? AND, OF COURSE, YOU UNDERSTAND THAT
14 ONCE YOU GET TO THE MOTEL AND CHECK IN, YOU WILL
15 GIVE THE KEYS TO THE SLED AGENT. AND I'M SURE THAT
16 THEY WILL NOT BE DRIVING YOUR CARS. (JUROR
17 STANDS.) YES, SIR?

18 THE JUROR: MY BUSINESS IS ON THE
19 WAY TO THE MOTEL. I'D LIKE TO LEAVE MY CAR THERE
20 WITH MY SON.

21 THE COURT: CERTAINLY. WE'LL HAVE
22 ONE OF THE PEOPLE DO IT ON THE WAY BACK FROM THE
23 MOTEL. (JUROR STANDS.) YES, MA'AM?

24 THE JUROR: I HAVE SOMEONE TO PICK
25 UP MY CAR.

REMARKS TO THE JURY BY THE COURT

1 THE COURT: DO YOU HAVE YOUR CLOTHES
2 IN IT?

3 THE JUROR: YES, SIR.

4 THE BAILIFF: I GOT YOUR STUFF.

5 THE JUROR: OH, YOU'VE ALREADY
6 GOTTEN IT OUT?

7 THE BAILIFF: YES, MA'AM.

8 THE JUROR: HAVE YOU GOT MY PURSE?

9 THE BAILIFF: YES, SIR.

10 THE JUROR: ALL RIGHT. (JUROR
11 STANDS.)

12 THE COURT: YES, MA'AM?

13 THE JUROR: I NEED SOMEBODY TO TAKE
14 MY CAR HOME.

15 THE COURT: OKAY. WE'LL MAKE THOSE
16 ARRANGEMENTS. NOW, DO YOU WANT THEM TO GO DOWN TO
17 THE CARS?

18 THE BAILIFF: YES, SIR.

19 THE COURT: EVERYONE KNOWS WHERE THE
20 HOLIDAY INN IS. THAT WOULD BE GOING WEST, I
21 SUPPOSE, AND THAT IS GOING OUT TOWARD I-95. IT'S
22 ON THE RIGHT RIGHT THERE -- JUST AS YOU SEE THAT
23 ST. GEORGE POLICE CAR WITH THE DUMMY THAT SITS IN
24 IT. I LAUGH EVERY TIME I PASS BY THERE. AND IF
25 Y'ALL WOULD PROCEED TO YOUR CARS AND GO TO THE

REMARKS TO THE JURY BY THE COURT

1 HOLIDAY INN, AND YOU'LL MEET THEM IN THE LOBBY AT
2 THAT TIME?

3 THE BAILIFF: WE'LL HAVE THEM PULL
4 RIGHT OUT HERE, AND WE'LL HAVE A PATROL CAR. JUST
5 PULL UP RIGHT BEHIND THAT PATROL CAR. WE'LL TAKE
6 THEM STRAIGHT TO THE HOLIDAY INN.

7 THE COURT: AND YOU'VE MADE
8 ARRANGEMENTS FOR THEM TO EAT TODAY AT?

9 THE BAILIFF: THE COUNTRY BUFFET.

10 THE COURT: COUNTRY BUFFET? AND
11 LADIES AND GENTLEMEN, Y'ALL CAN HAVE AS MUCH TO EAT
12 AS YOU WANT, DESSERT OR WHATEVER. THE COUNTY IS
13 GOING TO PAY FOR IT. BUT PLEASE, NOW, NO ALCOHOLIC
14 BEVERAGES DURING LUNCH. AT NIGHT-TIME, IF YOU WANT
15 BEER OR WINE OR WHATEVER ALCOHOLIC, THAT'S YOUR
16 BUSINESS. OBVIOUSLY THE COUNTY CANNOT PAY FOR ANY
17 ALCOHOLIC BEVERAGES WHILE YOU'RE SERVING ON THE
18 JURY. I'M SORRY. I'LL TELL YOU LATER ABOUT A
19 MISTAKE I MADE IN '77 IN A DEATH PENALTY CASE WITH
20 THE JURORS. IT WAS A MISTAKE ON MY PART. I'LL
21 TELL YOU ABOUT IT. BUT IF YOU DO WISH TO HAVE A
22 BEER OR A GLASS OF WINE, THEN YOU CAN ORDER, NOT TO
23 EXCEED -- IF YOU FEEL, CAPTAIN POPE, THAT THAT IS
24 REASONABLE. AND DON'T ONE PERSON BE ORDERING TWO
25 AND GIVING IT TO THE NEXT. AND YOU HAVE TO PAY FOR

REMARKS TO THE JURY BY THE COURT

1 THAT AT YOUR OWN EXPENSE. I DON'T ENCOURAGE YOU
2 TO; BUT IF THAT RELAXES YOU AND IT'S SOMETHING THAT
3 YOU'RE USED TO DRINKING WINE WITH YOUR MEAL AND IT
4 HELPS DIGEST YOUR FOOD, WELL CERTAINLY I WOULD NOT
5 WANT TO CHANGE THAT. SO LADIES AND GENTLEMEN,
6 WE'RE GOING TO ANTICIPATE THAT YOU'RE GOING TO BE
7 BACK BY 2:30. BUT PLEASE UNDERSTAND, WE CAN'T RUN
8 THE RAILROAD WITHOUT YOU; AND WE DON'T WANT YOU TO
9 HURRY THROUGH YOUR FOOD. TAKE YOUR TIME EATING.
10 AND WE WON'T START BACK UNTIL YOU GET BACK. WE
11 HAVE OTHER MATTERS THAT WE CAN TAKE UP OUTSIDE OF
12 YOUR PRESENCE THAT NECESSARILY HAVE TO BE DONE. SO
13 DO ANY OF YOU HAVE ANY QUESTIONS, PLEASE? (JUROR
14 STANDS.)

15 THE JUROR: ARE WE ALLOWED TO CALL
16 OUR SPOUSES AT THE TIME THE TRIAL IS GOING ON?

17 THE COURT: YES. I THINK THAT THAT
18 WOULD BE PROPER ALTHOUGH YOU'VE HEARD OPENING
19 STATEMENTS. BUT I DO THINK THAT THEY SHOULD --
20 NORMALLY THE TELEPHONE CALLS HAVE TO ALL BE
21 SCREENED THROUGH SLED. AND THEY WILL HAVE A LOG OF
22 ALL CALLS IN AND OUT. AND THEY HAVE A NUMBER ON
23 THAT SHEET THAT THEY WERE GIVEN YESTERDAY WHICH IS
24 THE NUMBER THEY SHOULD CALL IF YOU WANT TO SPEAK TO
25 ANY MEMBER OF JURY. BUT GENTLEMEN OF THE BAR; DO

REMARKS TO THE JURY BY THE COURT

1 YOU HAVE ANY OBJECTIONS FOR THE LIMITED SOUL
2 PURPOSE OF CALLING THE SPOUSE?

3 MR. THEOS: NO OBJECTION.

4 THE COURT: WITHOUT OBJECTION. BUT
5 OTHER THAN THAT -- AND I'LL EXPLAIN IT IN MORE
6 DETAIL THIS AFTERNOON BEFORE YOU LEAVE FOR THE
7 EVENING ABOUT THE SECURITY AND V.C.R.S AND T.V.S
8 AND NEWSPAPERS WHICH HAVE BEEN REDACTED. (JUROR
9 STANDS.) YES, SIR?

10 THE JUROR: COULD YOU STILL GET ME A
11 FOOTSTOOL, PLEASE?

12 THE COURT: YES, SIR. WE'LL HAVE
13 THREE DIFFERENT SIZES BECAUSE YOU MAY WANT TO
14 ADJUST IT A LITTLE BIT OR WHATEVER. BUT, YOU KNOW,
15 A COCA-COLA CRATE OR SOMETHING COMFORTABLE FOR THE
16 GENTLEMAN. AND YOU GO AHEAD AND MAKE YOUR CALL TO
17 YOUR DOCTOR ABOUT CHANGING THAT APPOINTMENT.

18 MR. BOLES: YES, SIR. I WAS GOING
19 TO MAKE A CALL AND LET THEM KNOW I WASN'T GOING TO
20 CHANGE THE APPOINTMENT. I WAS JUST GOING TO TELL
21 THEM AT THIS POINT THAT I MIGHT NOT BE THERE
22 MONDAY.

23 THE COURT: I THINK YOU'D BETTER GO
24 AHEAD AND CHANGE IT BECAUSE I DO NOT ANTICIPATE
25 THAT WE'LL BE THROUGH WITH THIS CASE BY MONDAY.

REMARKS TO THE JURY BY THE COURT

1 GENTLEMEN, DO YOU AGREE?

2 MR. BAILEY: YES, SIR.

3 MR. THEOS: YES, SIR.

4 THE COURT: SO YOU MIGHT OUGHT TO GO
5 AHEAD AND MAKE THAT CALL, THEN. WE HAVE SEVERAL
6 MATTERS TO CONSIDER. WE WON'T TAKE THEM ALL UP
7 NOW. BUT ONE OF WHICH IS WHETHER OR NOT WE'RE
8 GOING TO WORK ON SUNDAY AND IF NOT WHAT TO DO. BUT
9 WE'LL TALK ABOUT THAT AT A LATER TIME. PLEASE,
10 THOUGH, YOU'RE UNDER YOUR OATH NOW NOT TO DISCUSS
11 THE CASE OR LET ANYBODY INFLUENCE YOU. Y'ALL GO
12 AND CHECK INTO YOUR ROOMS. HAVE A NICE LUNCH.
13 WE'LL LOOK TO SEE YOU BACK AT OR ABOUT 2:30. BUT
14 AGAIN, IF YOU'RE NOT BACK UNTIL THREE, I'M GOING TO
15 SMILE AT YOU AND SAY "THANK YOU; I'M GLAD YOU MADE
16 IT." YOU'RE EXCUSED AT THIS TIME.

17 (AT THIS TIME JURY PANEL IS EXCUSED FOR LUNCH.)

18 THE COURT: MADAM CLERK, I NEED
19 Y'ALL TO GET THREE PACKAGES OF HALL COUGH DROPS
20 INDIVIDUALLY WRAPPED; TWO OF JUST THE REGULAR
21 MENTHOL; ONE MAYBE WITH A CHERRY. AND ALSO,
22 SMITTY, IF YOU WILL HAVE ONE BAILIFF SEATED RIGHT
23 THERE. AND I WANT Y'ALL TO BE ALERT. IF SOMEONE
24 IS COUGHING IN THE COURTOOM -- AND I UNDERSTAND THE
25 POLLEN WILL START FALLING SOON; AND WE'VE HAD COLD

REMARKS TO THE JURY BY THE COURT

1 WEATHER. PEOPLE GET COLDS AND THINGS. AND I'M
2 GOING TO HAVE MRS. EVELYN BE ALERT TO THE FACT THAT
3 ANY TIME A JUROR IS COUGHING YOU CAN USE MY WATER
4 PITCHER THERE. COULD Y'ALL PUT ICE AND WATER IN
5 IT? AND JUST POUR A CUP OF WATER AND WALK OVER
6 HERE AND -- YOU KNOW, TRY NOT TO BE INTRUSIVE.
7 JUST HAND IT TO THEM. AND ALSO, SMITTY, IF
8 SOMEBODY IN THE COURTROOM IS COUGHING, THE NICE
9 THING TO DO IS THERE'S A WATER PITCHER ON THE
10 SOLICITOR'S TABLE AND THE DEFENSE ATTORNEY. AND
11 NONE OF THOSE ARE SPIKED. JUST GO POUR A CUP OF
12 WATER, AND GO HAND IT TO THE LADY OR GENTLEMAN IN
13 THE COURTROOM WHO MIGHT BE COUGHING. AND I
14 UNDERSTAND PEOPLE WILL COUGH. SO Y'ALL GO AHEAD
15 AND COUGH BECAUSE THAT'S THE NATURAL, NORMAL THING
16 TO DO. BUT WHAT WE'RE TRYING TO DO IS THE COURT
17 REPORTER MUST BE ABLE TO TAKE DOWN VERBATIM
18 EVERYTHING THAT IS SAID AND SPOKEN. SO WE WANT TO
19 MINIMIZE THE COUGHING. BUT IF YOU NEED TO COUGH,
20 GEE, I UNDERSTAND THAT. AND ALSO IF YOU NEED A
21 HALL'S COUGH DROP, THE CLERK IS GOING TO HAVE THEM
22 HERE. AND WE NEED TO HAVE A BIG BOTTLE OF TYLENOL
23 AND A BIG BOTTLE OF BAYER'S ASPIRIN. WOULD THAT
24 COVER IT? CAN YOU THINK OF ANYTHING ELSE THAT --
25 OF COURSE THE JURY, NOW; Y'ALL CHECK WITH THEM AND

REMARKS TO THE JURY BY THE COURT

1 FIND OUT -- YOU KNOW, LIKE I DRINK DIET-RITE COLAS.
2 SOME OF THEM JUST LOVE JUST LOVE GINGERALE AND
3 SPRITE. WELL, YOU CAN ORDER A SIX PACK OR A TWELVE
4 PACK OF GINGERALE OR SPRITE AND HAVE THEM FOR
5 THEM.

6 YOU BAILIFFS ARE EXCELLENT IN
7 ACCOMMODATING THE JUDGES AND THE JURORS. YOU KNOW,
8 HAVE THEIR COFFEE READY FOR THEM. AND WHEN THEY GO
9 OUT FOR A RECESS AFTER TWO HOURS AND THEY'RE THERE
10 AND THEY COME BACK IN -- AND Y'ALL ARE NOT
11 JANITORS; I KNOW THAT. I DON'T MIND HELPING YOU.
12 BUT, YOU KNOW, JUST TRY AND TIDY UP THE JURY ROOM
13 SO IT WILL BE NEAT, NICE, AND CLEAN. AND MAKE SURE
14 THAT WE CAN JUST AFFORD THEN EVERY AMENITY THAT'S
15 REASONABLE UNDER THE CIRCUMSTANCES. IF Y'ALL WOULD
16 DO THAT FOR US, PLEASE. NOW, ALSO, PLEASE BE VERY
17 GUARDED AND CAREFUL ABOUT THE COMING AND GOING OF
18 MR. SIMMONS. DO NOT AT ANY TIME HAVE HIM IN CUFFS
19 OR PRISON GARB OR HOLDING HIS ARM OR WHATEVER. LET
20 HIM JUST ACT LIKE A NORMAL PERSON THAT HE IS. AND
21 PLEASE DON'T LET HIM BE SUBJECTED TO THAT JURY.
22 MINIMIZE THAT IN ANY INSTANCE THAT YOU CAN. SO,
23 GENTLEMEN AND LADIES; ANYTHING ELSE BEFORE WE
24 RECESS?

25 MR. BAILEY: YES, SIR, YOUR HONOR.

MOTIONS

1 I CAN TAKE THIS UP LATER.

2 THE COURT: I WANT YOU TO TAKE IT UP
3 LATER BECAUSE I NEED TO BE SOMEWHERE AT 12:30.

4 MR. BAILEY: YES, SIR; THAT'S FINE.

5 THE COURT: BUT IS THERE ANYTHING AT
6 THIS IMMEDIATE MOMENT?

7 MR. BAILEY: NO, SIR.

8 THE COURT: MR. THEOS? I REALIZE I
9 NEED TO CONFER WITH YOU AND YOUR EXPERT. BUT I'M
10 GOING TO HAVE TO COME BACK -- IT WILL PROBABLY BE
11 45 MINUTES. I SENT FOR A MCDONALD'S FISH SANDWICH
12 OF ALL THINGS FOR ME. BUT AT THIS TIME WE'RE GOING
13 TO RECESS UNTIL 2:30. LET'S SAY UNTIL 2:15.
14 THAT'S AN HOUR-AND-A-HALF. BUT MR. THEOS AND MR.
15 BELL, I HOPE TO BE BACK HERE IN THIRTY MINUTES SO
16 WE CAN CONFER SO Y'ALL CAN GET ON YOUR HORSE AND
17 RIDE OR WHATEVER YOUR NEEDS MAY BE.

18 MR. THEOS: THANK YOU, SIR.

19 THE COURT: SO WITH THAT, AT THIS
20 TIME WE'LL BE IN RECESS. THANK YOU, LADY AND
21 GENTLEMEN.

22 (LUNCH RECESS.)

23 - - - - -

24

25

MOTIONS

1 THE COURT: ALL RIGHT. THE
2 ATTORNEYS ARE PRESENT; THE DEFENDANT IS READY.
3 AND, GENTLEMEN, I'VE BEEN CALLING ON THE CLERK OF
4 COURT'S OFFICE FOR SO MANY THINGS. AND MORE OFTEN
5 THAN NOT THERE WILL BE CLERK HERE. BUT IF NOT, IS
6 THERE ANY OBJECTION IF I GIVE AN OATH TO A WITNESS?

7 MR. BAILEY: NO, SIR.

8 THE COURT: NO OBJECTION, MR. BELL?

9 MR. BELL: NO, YOUR HONOR.

10 THE COURT: AND, JIM, HOW ABOUT
11 IN THE MORNING BRING YOUR ADVANCE SHEET FROM
12 MONDAY. I JUST WANT TO READ IT. MINE WENT TO
13 BARNWELL.

14 MR. BELL: SURE.

15 THE COURT: GENTLEMEN, I'M SURE THE
16 RECORD WILL REFLECT THAT THE DEFENDANT HAS BEEN
17 ARRAIGNED; THAT HE'S BEEN PRESENTED WITH THE CITE
18 OF THE INDICTMENTS. ALL THAT HAS BEEN TAKEN UP
19 SOME TIME AGO. IS THERE ANYTHING FOR THE RECORD?
20 I BELIEVE MY LAW CLERK GAVE EACH OF YOU THAT
21 QUESTIONNAIRE THE COURT IS REQUIRED TO COMPLETE
22 LAST WEEK?

23 MR. BAILEY: YES, SIR, I BELIEVE SO.

24 THE COURT: AT YOUR CONVENIENCE AS YOU
25 COMPLETE WHAT YOU KNOW ABOUT IT, YOU CAN GIVE IT

MOTIONS

1 BACK TO ME. AND JERRY AND JIM, Y'ALL HAVE THAT,
2 TOO?

3 MR. THEOS: I'M NOT SURE I KNOW WHAT
4 YOU'RE TALKING ABOUT.

5 THE COURT: I'VE GOT AN EXTRA COPY.
6 BUT WE ALSO NEED AT A CONVENIENT TIME TO PUT IN
7 THE RECORD THE QUALIFICATIONS OF LEAD COUNSEL AND
8 SECOND COUNSEL. BUT WE WON'T TAKE TIME TO DO THAT
9 NOW. WE'LL DO THAT AFTER HOURS AT YOUR
10 CONVENIENCE, PLEASE. ALSO GENTLEMEN, I'VE REVIEWED
11 YOUR REQUESTS TO CHARGE. AND NOT RECEIVING ANY,
12 I'VE GOT TO TELL YOU MY USC GAMECOCKS PLAY AT
13 SEVEN. THE PRE-GAME IS AT 6:30. I'D LIKE TO BE
14 GONE FROM HERE BY 6:30 IF YOU'RE AT A STOPPING
15 POINT. IF WE'RE NOT, WE CAN RUN UNTIL SIX, SEVEN,
16 EIGHT OR NINE TONIGHT. BUT I'M HOPING TO STAY ON A
17 NINE TO SIX SCHEDULE. IS THAT REASONABLE TO YOU,
18 SOLICITOR?

19 MR. BAILEY: YES, SIR.

20 THE COURT: MR. THEOS AND BELL?

21 MR. THEOS: YES, SIR.

22 MR. BELL: YES, SIR.

23 THE COURT: WE NEED TO DECIDE NOT
24 LATER THAN FRIDAY WHETHER WE'RE GOING TO BE WORKING
25 ON SUNDAY. I'VE ALREADY INDICATED TO YOU THAT IN

MOTIONS

1 TWENTY-FIVE YEARS I'VE NOT HELD COURT ON SUNDAY. I
2 HAVE ON SATURDAY IN CIVIL MALPRACTICE CASES AND IN
3 A DEATH PENALTY. BUT IF WE CAN AVOID IT, I'D LIKE
4 TO. BUT WE'LL JUST SEE WHERE WE STAND ON FRIDAY.
5 AND ALSO I WILL GIVE AN ADVISORY OPINION TO THE
6 JURY. AND SOME OF THEM MAY WANT TO GO TO CHURCH,
7 BUT THEY PROBABLY GO TO DIFFERENT CHURCHES; AND YOU
8 RETURN THE RISK OF CONTACT WITH THE JURORS OR
9 POTENTIAL PROBLEMS IF THEY'RE SPREAD OUT IN
10 DIFFERENT LOCATIONS. AND WE'LL JUST HAVE TO WAIT
11 AND SEE. BUT DO YOU HAVE A RECOMMENDATION ABOUT
12 SUNDAY, MR. SOLICITOR?

13 MR. BAILEY: NO, SIR.

14 THE COURT: DO YOU STRONGLY ONE WAY
15 OR THE OTHER?

16 MR. BAILEY: NO, SIR.

17 THE COURT: FOR THE DEFENSE?

18 MR. THEOS: NO, SIR.

19 THE COURT: MR. BELL?

20 MR. BELL: THAT'S FINE, YOUR HONOR.

21 THE COURT: NO, SIR. BUT WHAT I'M
22 FIXING TO ASK YOU; WOULD YOU BE OFFENDED IF WHEN I
23 ADDRESS THE DEFENSE IF I JUST SAY MR. THEOS RATHER
24 THAN MISTERS THEOS AND BELL WITH THE UNDERSTANDING
25 WE'RE WAITING PATIENTLY AND WITH GREAT ANXIETY TO

MOTIONS

1 HEAR YOU ARTICULATE ON VARIOUS SUBJECTS AND
2 MATTERS?

3 MR. BELL: THAT WOULD BE FINE, YOUR
4 HONOR. WHEN MY TURN COMES, I'LL BE READY.

5 THE COURT: YOU'LL BE READY AND DO
6 WELL I'M SURE. ALL RIGHT. BRING THE JURY IN,
7 PLEASE.

8 (AT THIS TIME JURY RETURNS TO OPEN COURT.)

9 THE COURT: MR. ALTERNATE JUROR
10 NUMBER ONE, WE HAVE FOUR DIFFERENT SIZE STOOLS OVER
11 THERE. AND PLEASE FEEL FREE TO USE ANY OR ALL OF
12 THEM. AND IF THEY ARE NOT COMFORTABLE FOR YOU, LET
13 US KNOW AND WE'LL TRY AND FIND SOMETHING
14 DIFFERENT. WE DO WANT TO ACCOMMODATE YOU IN ANY
15 WAY WE CAN BECAUSE I APPRECIATE YOUR SPUNK FOR
16 BEING WILLING TO SERVE ON THIS JURY WITH CRUTCHES
17 AND YOUR KNEE SURGERY LAST WEEK. WE THANK YOU FOR
18 BEING HERE.

19 MADAM FORELADY, LADIES AND GENTLEMEN
20 OF THE JURY, I HOPE THAT YOU ENJOYED YOUR LUNCH. I
21 HOPE ALL OF YOU GOT SETTLED IN WELL AT THE HOLIDAY
22 INN. BUT WE HAVE A SHORT LITTLE FORM WHEN YOU DO
23 TAKE YOUR NEXT LITTLE RECESS WE'LL GIVE TO YOU FOR
24 EACH OF YOU TO FILL OUT YOUR PHONE AT WORK OR AT
25 HOME IN THE EVENT THAT YOU WANT US TO CONTACT A

MOTIONS

1 FAMILY MEMBER FOR YOU AND OTHER INFORMATION. BUT
2 WE'LL GET THAT DONE AT THE RECESS. AND WE'RE
3 FORTUNATE TO HAVE CAPTAIN POLK HEADING UP THE
4 DETAIL TO CARE FOR YOUR NEEDS BECAUSE JUST IN
5 NOVEMBER HERE THEY HAD A DEATH PENALTY CASE WHERE
6 HE WENT THROUGH THIS SAME EXERCISE IN DORCHESTER
7 COUNTY, AND HE SHOULD BE FAMILIAR WITH THE GOOD
8 EATING PLACES. YOU CAN LOOK AT HIM AND TELL HE'S
9 NOT UNDERFED. AND YOU, LADIES AND GENTLEMEN, ARE
10 NATIVES OF THIS AREA, AND IF YOU KNOW OF A
11 BAR-B-QUE PLACE THAT'S OPEN ON SATURDAY OR A
12 SPECIAL PLACE THAT YOU'D LIKE TO GO TO FOR A MEAL,
13 CONFER WITH HIM. AND WE'RE NOT GOING TO SEND YOU
14 TO COLUMBIA TO THE SUMMIT CLUB OR TO CHARLESTON TO
15 HENRY'S. WE'RE NOT GOING TO SEND YOU OUT OF THE
16 COUNTY NOW. I MEAN, THERE'S A GREAT MENNONITE
17 RESTAURANT IN BLACKVILLE BUT THAT'S FIFTY MILES
18 FROM HERE, AND WE JUST CAN'T GO TO THAT TIME AND
19 EXPENSE, BUT WE REALLY DO WANT TO MAKE YOU AS
20 COMFORTABLE AS HUMANLY POSSIBLE WITHIN REASON. AND
21 I DON'T KNOW -- SUMMERVILLE IS WHAT, THIRTY MINUTES
22 FROM HERE; AND MOST OF YOU ARE FROM OVER THAT WAY.
23 THAT IS THE POPULOUS AREA OF THE COUNTY. AND IT
24 MAY BE AT NIGHT IF Y'ALL KNOW OF A RESTAURANT UP
25 THERE, ON DIFFERENT NIGHTS YOU MAY WANT TO GO TO A

MOTIONS

1 RESTAURANT UP THERE. TALK TO BUTCH ABOUT IT AND
2 LET HIM CHECK IT OUT. SOME PLACES WON'T AFFORD
3 CREDIT TO THE COUNTY; NOT JUST DORCHESTER. IN
4 AIKEN THE RED LOBSTER -- AND I ENJOY THE RED
5 LOBSTER IN AIKEN -- THEY JUST WON'T DO CREDIT WITH
6 THE COUNTY EVEN THOUGH WE PUT A CHECK BACK IN THE
7 MAIL TO THEM THE SAME DAY; AND IT MAY BE THAT SOME
8 OF YOUR LOCAL RESTAURANTS OR WHATEVER MAY NOT DO
9 THAT. SO THAT'S WHY WE CAN'T ALWAYS SEND YOU
10 EXACTLY WHERE YOU WANT TO GO BECAUSE IF WE DON'T
11 HAVE CREDIT -- UNLESS Y'ALL WANT TO PAY FOR YOUR
12 OWN. IF YOU WANT TO DO THAT, THEN I'M SURE WE CAN
13 ARRANGE IT. IN ANY EVENT, PLEASE, IF YOU HAVE ANY
14 NEEDS COMMUNICATE WITH BUTCH AND THE OTHER
15 OFFICERS. BUT IF YOU NEED TO ADDRESS ANYTHING TO
16 ME, THEN I'LL BE GLAD TO DISCUSS IT WITH YOU
17 LIKEWISE. BUT THEY'RE THE FRONT LINE, AND I'M THE
18 BACK LINE. SO TALK TO THEM. THEY HAVE CERTAIN
19 DISCRETION. THEY CAN EXERCISE THEIR GOOD JUDGMENT.
20 IF THERE'S A PROBLEM ABOUT IT, THEN THEY'LL GET IN
21 TOUCH WITH ME. BUT IF ANY OF YOU HAVE A MATTER OF
22 A PERSONAL NATURE THAT YOU NEED TO DISCUSS WITH THE
23 COURT, OBVIOUSLY I WILL BE ON 24 HOUR CALL AND
24 AVAILABLE IN ANY WAY THAT I CAN. SO, LADIES AND
25 GENTLEMEN, AT THIS TIME, WE'LL PROCEED WITH

MOTIONS

1 TESTIMONY. AND, GENTLEMEN AND LADIES, MAY WE AGREE
2 THAT IT'S UNNECESSARY TO POLL THE JURY UPON THEIR
3 RETURN FROM LUNCH AND FROM OVER-NIGHT STAYS ON EACH
4 OCCASION THAT YOU COME BACK?

5 MR. BAILEY: THE STATE AGREES, YOUR
6 HONOR.

7 MR. THEOS: THAT'S FINE, YOUR HONOR.

8 THE COURT: ALL RIGHT. SO WITH
9 THAT, LADIES AND GENTLEMEN, PLEASE GIVE YOUR
10 CAREFUL ATTENTION, AND IF AT ANY TIME YOU CANNOT
11 HEAR THAT WHICH IS BEING SAID OR SPOKEN BY A
12 WITNESS, BY AN ATTORNEY, OR BY THE COURT, PLEASE
13 RAISE YOUR HANDS AND SIGNAL TO ME. WE HAVE AN
14 EXCELLENT SOUND SYSTEM, AND WE CAN INCREASE THE
15 VOLUME OR AMPLIFICATION THEREOF. AND IT'S
16 IMPORTANT THAT YOU, LADIES AND GENTLEMEN OF THE
17 JURY, AS JUDGES OF THE FACTS, BE ABLE TO HEAR AND
18 DISCERN THAT WHICH IS ALLOWED INTO EVIDENCE DURING
19 THE TRIAL OF THE CASE. SO PLEASE ALERT ME IF
20 YOU'RE UNABLE TO HEAR WHAT'S BEING SAID DURING THE
21 TRIAL. THANK YOU. YOU MAY PROCEED.

22 MR. BAILEY: THANK YOU, YOUR HONOR.
23 THE STATE CALLS DEBBIE BROWN.

24 - - - - -

25 WHEREUPON,

DEBBIE S. BROWN - DIRECT/MR. BAILEY

DEBBIE S. BROWN, WHO BEING PREVIOUSLY
DULY SWORN TO TELL THE TRUTH, TESTIFIED
AS FOLLOWS:

DIRECT EXAMINATION

BY MR. BAILEY:

Q. MRS. BROWN, WILL YOU TELL THE JURY, PLEASE, WHERE
YOU LIVE?

A. AT [REDACTED] [REDACTED] [REDACTED] [REDACTED].

Q. IS THAT IN THE TOWN OF SUMMERVILLE?

A. YES.

Q. IN THE BROWNSVILLE COMMUNITY?

A. YES.

Q. HOW LONG HAVE YOU LIVED AT THAT
ADDRESS?

A. THIRTY-ONE YEARS.

Q. AND DID YOU KNOW MRS. LILLY BELL
BOYD?

A. YES, SIR.

Q. WOULD YOU TELL THE JURY ABOUT HOW LONG YOU KNEW
MRS. BOYD?

A. ABOUT FIFTEEN YEARS.

Q. BACK IN AUGUST AND SEPTEMBER OF 1996, WHERE WAS
YOUR HOUSE LOCATED IN RELATION TO MRS. BOYD'S
HOUSE?

A. ACROSS THE STREET.

DEBBIE S. BROWN - DIRECT/MR. BAILEY

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- 1 Q. IS THERE A RAILROAD TRACK BETWEEN THOSE TWO HOUSES?
- 2 A. YES.
- 3 Q. OKAY. I'VE GOT STATE'S ONE ALREADY PRE-MARKED.
- 4 I'M GOING TO PUT THAT UP ON THE TELEVISION SCREEN.
- 5 AND IF YOU WOULD, MRS. BROWN, JUST COME AROUND HERE
- 6 FOR A SECOND. AND IF YOU CAN STAND TO THE SIDE
- 7 OVER HERE AND SHOW THE JURY, PLEASE, WHERE THE
- 8 RAILROAD TRACK IS.
- 9 A. IT'S RIGHT UP IN THE MIDDLE HERE. (INDICATING.).
- 10 Q. OKAY. I'LL GIVE YOU A SECOND TO LOOK AT THAT. IS
- 11 THAT THE RAILROAD TRACK?
- 12 A. YES.
- 13 Q. WHERE IS YOUR HOUSE? COULD YOU POINT TO IT?
- 14 A. THIS IS MY HOUSE RIGHT UP HERE. (INDICATING.)
- 15 Q. OKAY. RIGHT DOWN THERE ON THE BOTTOM?
- 16 A. YES.
- 17 Q. WHERE IS MRS. BOYD'S HOUSE?
- 18 A. RIGHT THERE. (INDICATING.)
- 19 Q. YOU'RE POINTING TO THAT HOUSE DIRECTLY ACROSS FROM
- 20 YOU?
- 21 A. YES.
- 22 Q. YOU CAN HAVE A SEAT. (WITNESS RETURNS TO WITNESS
- 23 STAND.) NOW DO YOU HAVE A FRONT PORCH ON YOUR
- 24 HOUSE?
- 25 A. YES.

DEBBIE S. BROWN - DIRECT/MR. BAILEY

1 Q. FROM YOUR FRONT PORCH CAN YOU SEE MRS. BOYD'S
2 HOUSE?

3 A. YES.

4 Q. NOW, I WANT TO CALL YOUR ATTENTION TO SATURDAY,
5 AUGUST THE 31ST OF 1996 AND ASK WHETHER OR NOT YOU
6 WERE HOME THAT AFTERNOON ABOUT 3:30 P.M.?

7 A. YES.

8 Q. OKAY. AND HOW DO YOU RECALL THE TIME BEING ABOUT
9 3:30 P.M.?

10 A. BECAUSE DURING THAT TIME MY AUNT COMES HOME FROM
11 WORK AROUND THAT TIME. AND AFTER SHE GOT HOME FROM
12 WORK, WE SAT ON THE FRONT PORCH.

13 Q. WHAT TIME WOULD SHE GET OFF WORK?

14 A. SHE GETS OFF ABOUT 3:15; AND SHE GETS HOME AROUND
15 3:20 TO 3:30.

16 Q. OKAY. SO ABOUT 3:30 ON THE AFTERNOON OF AUGUST THE
17 31ST THAT SATURDAY, YOU AND YOUR AUNT WERE SITTING
18 ON THE FRONT PORCH?

19 A. YES.

20 Q. AND FROM WHERE Y'ALL WERE SITTING, COULD YOU SEE
21 MRS. BOYD'S HOUSE AND FRONT YARD?

22 A. YES.

23 Q. AND CAN YOU STATE WHETHER OR NOT YOU SAW MRS. BOYD
24 IN THE YARD THAT AFTERNOON?

25 A. I DID.

DEBBIE S. BROWN - DIRECT/MR. BAILEY

1 Q. WHAT WAS SHE DOING?

2 A. SHE WAS WEEDING OUT HER FLOWER BEDS. SHE WAS JUST
3 IN THE FRONT YARD DOING SOME YARD WORK.

4 Q. NOW THE NEXT DAY WHICH WOULD HAVE BEEN SUNDAY,
5 SEPTEMBER THE FIRST, DID YOU BECOME AWARE OF
6 SOMETHING HAPPENING OVER AT MRS. BOYD'S HOUSE?

7 A. YES.

8 Q. WHAT WAS GOING ON?

9 A. WE WAS DOWN THE STREET, AND WHEN WE TURNED BACK
10 AROUND WE SAW A LOT OF AMBULANCES AND FIRE TRUCKS
11 AND RESCUE WORKERS. AND WE RAN OVER THERE.

12 Q. WHEN YOU SAY "WE," MRS. BROWN, WHO ARE YOU TALKING
13 ABOUT?

14 A. ME, MY SISTERS, MY BROTHERS AND MY COUSIN WAS JUST
15 WALKING DOWN THE STREET.

16 Q. WAS ANYBODY ELSE WITH YOU?

17 A. NO.

18 Q. DO YOU KNOW THE DEFENDANT IN THIS CASE, KENNETH
19 SIMMONS?

20 A. YES.

21 Q. DID YOU SEE HIM THAT SUNDAY?

22 A. WHEN WE WERE STANDING ON THE RAILROAD TRACK; YES.

23 Q. YOU SAW HIM OUT THERE?

24 A. YES.

25 Q. ALL RIGHT. AND AS FAR AS THESE DATES AND TIMES,

DEBBIE S. BROWN - CROSS/MR. THEOS

1 YOU'RE PRETTY CERTAIN THEY'RE CORRECT?

2 A. YES.

3 Q. OKAY. MRS. BROWN, PLEASE ANSWER ANY QUESTIONS MR.
4 THEOS MAY HAVE FOR YOU.

5 CROSS-EXAMINATION

6 BY MR. THEOS:

7 Q. MRS. BROWN, HOW ARE YOU?

8 A. FINE.

9 Q. IF YOU COULD JUST STEP BACK DOWN HERE, PLEASE.

10 (WITNESS COMPLIES.) I JUST DIDN'T GET A CHANCE TO
11 SEE EVERYTHING THAT YOU POINTED OUT. COULD YOU
12 POINT OUT TO THE JURY AND TO ME, PLEASE, WHERE YOU
13 LIVE ONE MORE TIME?

14 A. HERE. (INDICATING.)

15 Q. OKAY. AND THEN COULD YOU POINT OUT WHERE MRS. BOYD
16 LIVES?

17 A. HERE. (INDICATING.)

18 Q. CAN YOU POINT OUT THE OTHER HOMES THAT ARE IN THE
19 PICTURE THAT WOULD BE IN THIS IMMEDIATE AREA?

20 A. THIS IS MRS. BOYD'S. THIS IS MRS. ERTHA ROLLINS.
21 THE NEXT ONE WOULD BE BETTY BROWN'S.

22 Q. OKAY. HOW ABOUT THIS? WHAT IS THAT?

23 A. THAT MIGHT BE HER SHED IN THE BACK YARD; I'M NOT
24 SURE.

25 Q. ARE THERE OTHER HOMES BACK HERE?

DEBBIE S. BROWN - CROSS/MR. THEOS

- 1 A. YES.
- 2 Q. CAN YOU TELL US WHO LIVES BACK THERE? WE DON'T SEE
- 3 THE HOMES BECAUSE OF ALL THE GROWTH. BUT CAN YOU
- 4 TELL US WHO RESIDES IN THOSE HOMES?
- 5 A. THERE'S A WHOLE NEIGHBORHOOD BACK THERE.
- 6 Q. CAN YOU GIVE US THESE AT LEAST THREE OR FOUR?
- 7 (INDICATING.)
- 8 A. THAT WOULD BE MRS. THOMAS' HOUSE. AND THAT WOULD
- 9 BE MRS. ZEEK'S HOUSE. THAT'S ABOUT ALL I KNOW
- 10 RIGHT NOW.
- 11 Q. AND CAN YOU TELL US WHO LIVES IN THIS HOUSE?
- 12 A. THIS IS MY HOUSE.
- 13 Q. I'M SORRY; I THOUGHT YOU POINTED AT THIS ONE A
- 14 WHILE AGO.
- 15 A. NO; I WAS AT MY AUNT'S HOUSE.
- 16 Q. THESE HOUSES BACK HERE; THAT'S JUST A SHORT WALK
- 17 THROUGH THE WOODED AREA? YOU CAN GET FROM THESE
- 18 HOUSES TO -- YOU SAID THIS WAS A RAILROAD?
- 19 (INDICATING.)
- 20 A. YES.
- 21 Q. YOU CAN GET FROM THESE HOUSES TO THE RAILROAD?
- 22 A. YES.
- 23 Q. YOU CAN WALK FROM HERE TO HERE? (INDICATING.)
- 24 A. I GUESS. IT'S BUSHES; BUT I GUESS YOU CAN.
- 25 Q. ALL RIGHT. IF YOU DON'T MIND STAYING DOWN HERE---

DEBBIE S. BROWN - CROSS/MR. THEOS

1 THE COURT: EXCUSE ME, MR. THEOS.
2 IF YOU CAN GET THE WITNESS TO STAND TO THE SIDE SO
3 THAT THE JURORS CAN SEE. THEY CAN'T SEE WHAT
4 YOU'RE TALKING ABOUT.

5 MR. THEOS: OKAY.

6 Q. MRS. BROWN, LET ME ASK YOU. YOU SAID YOU SAW MRS.
7 BOYD THAT AFTERNOON; YOU THINK IT WAS SOME TIME
8 AFTER 3:20?

9 A. YES.

10 Q. CAN YOU BE A LITTLE MORE PRECISE WHETHER IT WAS
11 3:25, 3:30, 4:00?

12 A. I KNOW IT WASN'T AT FOUR. IT WAS BETWEEN 3:20 AND
13 3:30.

14 Q. IN THE AFTERNOON?

15 A. YES.

16 Q. IT WAS DAYLIGHT; SO YOU SAW HER?

17 A. YES.

18 Q. IS THAT RIGHT?

19 A. YES.

20 Q. DID SEE HER AGAIN ANY TIME FROM THAT POINT UNTIL
21 THE NEXT DAY WHEN YOU SAW ALL THIS COMMOTION; THE
22 AMBULANCE AND SO FORTH?

23 A. NO.

24 Q. NOW, YOU SAID THAT THE NEXT DAY YOU SAW AND HEARD A
25 LOT OF COMMOTION?

DEBBIE S. BROWN - CROSS/MR. THEOS

1 A. YES.

2 Q. CAN YOU TELL US WHERE YOU WERE? CAN YOU SHOW US
3 WHERE YOU WERE?

4 A. THIS IS IN FRONT OF HER HOUSE. WE WAS DOWN THAT
5 STREET GOING DOWN THAT STREET. WE CAME UP BACK
6 THIS WAY. WE CROSSED OVER THE RAILROAD TRACKS, AND
7 I WAS GOING OVER ON THE OTHER STREET TOWARDS MRS.
8 BOYD'S HOUSE. AND THAT'S WHEN THEY TOLD ME I
9 COULDN'T GO ANY FURTHER.

10 Q. ALL RIGHT. THIS AREA; IS THIS A FAIRLY SMALL
11 COMMUNITY?

12 A. YES.

13 Q. IS IT A PREDOMINANTLY BLACK COMMUNITY?

14 A. YES.

15 Q. IN THIS AREA DO A LOT OF PEOPLE WALK AROUND ON THE
16 STREET?

17 A. YES.

18 Q. AND SO ON ANY DAY YOU'RE LIABLE TO SEE A LOT OF
19 PEOPLE OUT AND ABOUT IN THEIR YARDS WALKING AROUND;
20 THAT SORT OF THING?

21 A. WELL, NOT A WHOLE BUNCH OF PEOPLE.

22 Q. WELL, ON A SUNDAY?

23 A. A LITTLE BIT; NOT TOO MUCH.

24 Q. AND SINCE IT IS A SMALL COMMUNITY AND THERE WAS A
25 LOT OF COMMOTION WITH THE SIRENS AND OBVIOUSLY

VIRGINIA WILSON - DIRECT/MR. BAILEY

1 SOMETHING HAD HAPPENED; A LOT OF PEOPLE WERE COMING
2 UP BECAUSE THEY WERE CURIOUS, WEREN'T THEY?

3 A. YES.

4 Q. ONE OF THOSE PEOPLE YOU SAID WAS KENNETH
5 SIMMONS?

6 A. YES.

7 Q. NO OTHER QUESTIONS.

8 THE COURT: ANYTHING ON RE-DIRECT,
9 PLEASE?

10 MR. BAILEY: NOTHING ON RE-DIRECT,
11 YOUR HONOR.

12 THE COURT: YOU MAY STEP DOWN,
13 PLEASE, MA'AM. THANK YOU.

14 MR. BAILEY: YOUR HONOR, MAY SHE BE
15 EXCUSED, PLEASE?

16 THE COURT: YES, SIR.

17 MR. BAILEY: THE STATE CALLS
18 VIRGINIA WILSON.

19 - - - - -

20 WHEREUPON,

21 VIRGINIA WILSON, WHO BEING PREVIOUSLY
22 SWORN TO TELL THE TRUTH, TESTIFIED AS
23 FOLLOWS:

24 DIRECT EXAMINATION

25 BY MR. BAILEY:

VIRGINIA WILSON - DIRECT/MR. BAILEY

- 1 Q. YOU'RE MRS. VIRGINIA WILSON?
- 2 A. YES, SIR.
- 3 Q. WOULD YOU PLEASE TELL THE JURY WHERE YOU LIVE?
- 4 A. I LIVE AT [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]. THAT'S
- 5 [REDACTED] [REDACTED] IN SUMMERVILLE.
- 6 Q. ALL RIGHT. AND IS THAT AREA CONSIDERED PART OF THE
- 7 BROWNSVILLE COMMUNITY?
- 8 A. YES, SIR, IT DOES.
- 9 Q. AND WOULD YOU TELL THE JURY, PLEASE, WHAT YOUR
- 10 RELATIONSHIP WAS WITH LILLY BELL BOYD?
- 11 A. SHE WAS MY OLDER SISTER.
- 12 Q. HOW MANY BROTHERS AND SISTERS WERE IN YOUR FAMILY?
- 13 A. I UNDERSTAND PROBABLY BEFORE I WAS BORN THERE WAS A
- 14 TOTAL OF ELEVEN; BUT I ONLY KNEW EIGHT.
- 15 Q. SOME DIED WHEN THEY WERE VERY YOUNG?
- 16 A. YES; OR BEFORE I WAS BORN.
- 17 Q. AND MRS. WILSON, WHO WAS OLDEST OUT OF THE TEN
- 18 CHILDREN?
- 19 A. MY SISTER, LILLY BELL BOYD.
- 20 Q. DO YOU KNOW WHAT YEAR SHE WAS BORN IN?
- 21 A. 1908 SHE TOLD ME.
- 22 Q. OKAY. AND WERE YOU THE YOUNGEST OUT OF THE TEN
- 23 CHILDREN?
- 24 A. YES.
- 25 Q. AND WHAT YEAR WERE YOU BORN IN?

VIRGINIA WILSON - DIRECT/MR. BAILEY

1 A. 1925.

2 Q. SO LILLY BELL BOYD WOULD HAVE BEEN ROUGHLY
3 SEVENTEEN YEARS OLD AT THE TIME OF YOUR BIRTH?

4 A. YES, SIR.

5 Q. AND IN 1996 WHERE DID YOUR SISTER, LILLY BELL BOYD,
6 LIVE?

7 A. SHE LIVED ON LUKE STREET, 911; THEY CALL IT WEST
8 LUKE STREET IN SUMMERVILLE.

9 Q. ALL RIGHT. AND ABOUT HOW FAR WAS HER HOUSE FROM
10 YOUR HOUSE?

11 A. I'M NOT VERY GOOD ON DISTANCES; BUT I THINK IT WAS
12 ABOUT A QUARTER OF A MILE.

13 Q. ABOUT HOW LONG DID MRS. BOYD LIVE ON LUKE STREET?

14 A. SHE MUST HAVE LIVED THERE AT LEAST ABOUT
15 APPROXIMATELY FIFTEEN YEARS. I COULDN'T SAY
16 EXACTLY.

17 Q. DID SHE LIVE THERE BY HERSELF?

18 A. YES, SIR.

19 Q. MRS. WILSON, WOULD YOU PLEASE THINK BACK AND TELL
20 THE JURY WHEN THE LAST TIME YOU SAW YOUR SISTER,
21 LILLY BELL BOYD, ALIVE?

22 A. THE LAST TIME I SEEN HER ALIVE IS WHEN WE WENT TO
23 PINE RIDGE SENIOR CITIZENS CENTER THAT FRIDAY
24 PRECEDING THE WEEKEND OF HER DEATH.

25 Q. THAT WOULD HAVE BEEN AUGUST THE 30TH?

VIRGINIA WILSON - DIRECT/MR. BAILEY

- 1 A. YES, SIR.
- 2 Q. OF 1996?
- 3 A. YES, SIR.
- 4 Q. OKAY. AND DID YOU HAVE ANY CONTACT WITH HER EITHER
- 5 IN PERSON OR BY TELEPHONE THE NEXT DAY; THIS WOULD
- 6 HAVE BEEN SATURDAY, AUGUST THE 31ST?
- 7 A. YES, SIR. THAT SATURDAY MORNING SHE CALLED ME AND
- 8 TOLD ME---
- 9 Q. WE DON'T NEED TO KNOW WHAT SHE SAID. BUT DO YOU
- 10 RECALL HER CALLING YOU ON SATURDAY?
- 11 A. YES; SHE CALLED ME SATURDAY MORNING.
- 12 Q. OKAY. NOW, DID YOU AND YOUR SISTER, LILLY BELL
- 13 BOYD ATTEND THE SAME CHURCH?
- 14 A. YES, SIR.
- 15 Q. WHAT CHURCH WAS THAT?
- 16 A. BROWNSVILLE COMMUNITY CHURCH OF GOD. I THINK IT'S
- 17 920 WEST FIRST NORTH STREET IN SUMMERVILLE.
- 18 Q. AND WAS YOUR SISTER A REGULAR CHURCH GOER AT THAT
- 19 CHURCH?
- 20 A. YES, SIR.
- 21 Q. DID SHE GO PRETTY MUCH EVERY SUNDAY?
- 22 A. YES, SIR.
- 23 Q. MRS. WILSON, THAT SUNDAY, SEPTEMBER THE FIRST, DID
- 24 YOU GO TO CHURCH THAT MORNING?
- 25 A. YES, SIR.

VIRGINIA WILSON - DIRECT/MR. BAILEY

1 Q. ALL RIGHT. AND WHAT TIME WAS THE SERVICE THAT DAY?

2 A. IT WAS APPROXIMATELY ELEVEN. IT STARTS AROUND
3 ELEVEN.

4 Q. WAS LILLY BELL BOYD AT THE SERVICE?

5 A. NO, SIR.

6 Q. NOW, WERE YOU WITH ANYBODY ELSE AT THE CHURCH?

7 A. NO, SIR.

8 Q. ALL RIGHT. AND YOU HAVE A COUSIN, BLONDELLE SMITH?

9 A. YES, SIR.

10 Q. WAS SHE AT THE CHURCH ALSO?

11 A. AFTER SERVICE I WAS SUPPOSED TO BE TAKING HER HOME.

12 Q. ALL RIGHT.

13 A. BUT I TOLD HER THAT I -- IF SHE HAD TIME BECAUSE
14 SHE HAD AN ILL MOTHER AT THE TIME -- BUT I TOLD HER
15 IF SHE HAD TIME, WE WOULD GO BY AND CHECK ON LILLY
16 BELL, THEN I WOULD TAKE HER FROM THERE ON HOME.

17 Q. ALL RIGHT. WHY DID YOU WANT TO CHECK ON LILLY BELL
18 BOYD?

19 A. BECAUSE SHE WASN'T IN CHURCH, AND I WAS CONCERNED.
20 AND SHE DIDN'T SAY ANYTHING ON SATURDAY ABOUT NOT
21 COMING.

22 Q. ALL RIGHT. NOW DID YOU AND BLONDELLE SMITH GO OVER
23 TO MRS. BOYD'S HOUSE?

24 A. YES, SIR; WE DID GO.

25 Q. WHAT HAPPENED AFTER Y'ALL ARRIVED AT HER HOUSE?

VIRGINIA WILSON - DIRECT/MR. BAILEY

1 A. WHEN WE ARRIVED THERE, I WAS ASSUMING SHE WOULD BE
2 UP AND ABOUT BECAUSE IT WAS IN THE AFTERNOON. SO I
3 WENT TO THE FRONT DOOR AND KNOCKED. AND WHEN I
4 DIDN'T GET A RESPONSE I TOLD BLONDELLE LET'S GO
5 AROUND TO THE BACK BECAUSE A LOT OF TIMES WHEN I'M
6 ALONE I GO AROUND TO THE BACK NORMALLY. BUT WHEN I
7 DIDN'T GET HER, I TOLD HER LET'S GO AROUND TO THE
8 BACK.

9 Q. DID YOU GO AROUND TO THE BACK?

10 A. YES, SIR.

11 Q. ALL RIGHT. NOW, MRS. WILSON, I'M GOING TO PUT A
12 PICTURE UP THERE ON THAT T.V. SCREEN WHICH IS
13 STATE'S TWO. AND I'M GOING TO GET YOU TO COME UP.
14 AND WATCH YOUR STEP AS YOU WALK AROUND HERE. IF
15 YOU CAN JUST STAND RIGHT THERE BECAUSE THIS LADY
16 HAS GOT TO SEE FROM ON THE END. NOW, MRS. WILSON,
17 IS THAT THE BACK -- YOUR SISTER, LILLY BELL BOYD'S
18 BACK YARD?

19 A. YES, SIR.

20 Q. AND IS THAT THE BACK DOOR THERE AS YOU CAN SEE?

21 A. YES, SIR.

22 Q. YOU GO UP THE STEPS, AND THERE'S A LITTLE PORCH AT
23 THE BACK DOOR?

24 A. YES, SIR.

25 Q. THAT'S WHERE YOU WENT?

VIRGINIA WILSON - DIRECT/MR. BAILEY

1 A. YES, SIR.

2 Q. YOU CAN HAVE A SEAT, MRS. WILSON.

3 A. THANK YOU. (AT THIS TIME WITNESS RETURNS TO WITNESS
4 STAND.)

5 Q. MRS. WILSON, WHEN YOU GOT AROUND AND WENT UP ON THE
6 BACK PORCH, DID YOU NOTICE THE BACK DOOR?

7 A. I DIDN'T NOTICE IT. AT FIRST WE WERE LOOKING
8 AROUND. AND I CALLED TO HER. YOU KNOW, I WAS
9 CALLING TO HER AS I WAS APPROACHING SO AS NOT TO
10 SLIP UP ON HER, YOU KNOW, AND MAKE HER FRIGHTENED
11 BECAUSE SHE WASN'T EXPECTING US. SO AFTER WE
12 DIDN'T SEE HER OUTSIDE, I STARTED INSIDE. AND I
13 NOTICED THE DOOR WAS SLIGHTLY OPEN. AND I CALLED
14 AS I APPROACHED THE DOOR. AND I KEPT ON CALLING.
15 THEN I WENT ON IN WHEN I DIDN'T SEE HER. I WENT ON
16 INSIDE.

17 Q. WHEN YOU GO INSIDE THAT DOOR, WHAT ROOM DOES THAT
18 ENTER INTO?

19 A. IT ENTERS INTO A HALLWAY LIKE.

20 Q. OKAY.

21 A. AND I WENT INTO THE HALL AND WENT DOWN TO HER
22 BEDROOM WHICH IS WHERE SHE USUALLY SITS A LOT OF
23 TIMES. SHE NEVER USED THE LIVING ROOM. SHE
24 BASICALLY -- WHEN SHE WAS SITTING, SHE SAT THERE.
25 SO I WENT IN THERE TO LOOK FOR HER.

VIRGINIA WILSON - DIRECT/MR. BAILEY

1 Q. WAS SHE THERE?

2 A. NO, SIR.

3 Q. WHERE DID YOU GO NEXT?

4 A. I CAME BACK. I RE-TRACKED MY STEPS. AND I CAME
5 BACK PAST THE KITCHEN DOOR. AND THERE SHE WAS
6 LYING ON THE FLOOR DEAD. I---

7 Q. ALL RIGHT. JUST TAKE YOUR TIME, MRS. WILSON. AND
8 I'M GOING TO ASK YOU A COUPLE OF QUESTIONS OF WHAT
9 YOU SAW. YOU SAW YOUR SISTER LYING ON THE KITCHEN
10 FLOOR?

11 A. YES, SIR.

12 Q. WHAT POSITION WAS SHE LYING IN?

13 A. SHE WAS LYING LIKE ON HER SIDE BECAUSE I REMEMBER I
14 ATTEMPTED TO TRY TO PULL HER OVER ON HER BACK.

15 Q. ALL RIGHT.

16 A. I CALLED TO HER. SHE WAS LAYING -- I DIDN'T
17 REALIZE SHE WAS DEAD AT THE TIME. I KNEW SHE WAS
18 TIED UP. SO I KEPT ASKING HER "WHO DID THIS TO
19 YOU?" THEN I STARTED TAKING THE BANDAGE OFF SO SHE
20 COULD TALK TO ME.

21 Q. SLOW DOWN JUST A LITTLE BIT, PLEASE, MRS. WILSON.

22 A. I'M SORRY.

23 Q. YOU SAID YOU STARTED TAKING A BANDAGE OFF. WHERE
24 WAS THE BANDAGE?

25 A. SHE HAD A BANDAGE ON HER HAND AND ON HER FEET AND

VIRGINIA WILSON - DIRECT/MR. BAILEY

ON HER MOUTH. BUT I THOUGHT IT WAS HER MOUTH. SO
I WANTED---

Q. LET'S TALK ABOUT HER MOUTH AND FACE FIRST. PLEASE
TELL THE JURY WHAT YOU NOTICED, YOUR BEST
RECOLLECTION NOW, AS FAR AS HER FACE. WHAT DID YOU
SEE?

A. MY BEST RECOLLECTION IS THAT SHE HAD THIS -- LIKE
SCRAP MATERIAL FROM AROUND THERE; SOME KIND OF
RUBBER BAND, YOU KNOW, BANDAGE. AND HER MOUTH WAS
LIKE TIED UP.

Q. OKAY; WITH A BANDAGE OR WHAT?

A. YES. AND THE FIRST THING I DID WAS OPEN IT BECAUSE
I THOUGHT SHE WOULD SPEAK TO ME.

Q. YOU SAY YOU OPENED IT. DID YOU TAKE THE BANDAGE
OFF HER FACE?

A. YES, SIR.

Q. DID YOU LOOK AT HER HANDS?

A. BEG YOUR PARDON?

Q. DID YOU LOOK AT YOUR SISTER'S HANDS?

A. YES, SIR. HER HANDS WERE ALSO TIED UP.

Q. AND DO YOU RECALL WHAT HER HANDS WERE TIED WITH?

A. IT WAS LIKE A PIECE OF STRING OR SCRAP MATERIAL
THAT WAS SEEMINGLY WAS AROUND THE HOUSE.

Q. ALL RIGHT. NOW MRS. WILSON, WHAT WAS YOUR MENTAL
CONDITION AS YOU WERE MAKING THESE OBSERVATIONS?

VIRGINIA WILSON - DIRECT/MR. BAILEY

- 1 A. MY MENTAL CONDITION WAS TRYING TO GET HER SO THAT
2 SHE COULD TALK TO ME OR SO WE WOULD GET HELP FOR
3 HER BEFORE SHE---
- 4 Q. DID YOU KNOW SHE WAS DEAD AT FIRST?
- 5 A. NO, SIR.
- 6 Q. WHAT DID YOU DO WITH HER HANDS?
- 7 A. I UNTIED HER HANDS. I UNTIED HER FEET.
- 8 Q. WERE HER HANDS TIED IN FRONT LIKE MY HANDS ARE NOW,
9 OR WERE THEY TIED IN THE BACK?
- 10 A. THEY WERE TIED IN THE BACK.
- 11 Q. OKAY. WOULD YOU STATE WHETHER OR NOT YOU RECALL
12 SEEING A STOCKING TYPE MATERIAL AROUND?
- 13 A. IT SEEMED LIKE THAT WAS EITHER ON HER HAND OR --
14 BUT IT KNOW THERE WAS A MATERIAL THERE BECAUSE IT
15 WAS BASICALLY A SCRAP MATERIAL. WELL, THEY WERE
16 STOCKINGS, BUT I DON'T REMEMBER IF IT WAS ON HER
17 HANDS OR FEET.
- 18 Q. ALL RIGHT. NOW, WHAT ABOUT HER FEET? WHAT DID YOU
19 OBSERVE ABOUT HER FEET?
- 20 A. HER FEET WERE ALSO TOGETHER AND TIED UP.
- 21 Q. DID YOU TRY TO UNTIE HER FEET ALSO?
- 22 A. YES, SIR.
- 23 Q. NOW AS FAR AS HER CLOTHING, MRS. WILSON, COULD YOU
24 TELL THE JURY, PLEASE, WHAT YOU RECALL ABOUT THE
25 CONDITION OF HER CLOTHING?

VIRGINIA WILSON - DIRECT/MR. BAILEY

1 A. HER CLOTHING WAS RAISED UP TO HER -- YOU KNOW, UP
2 ABOVE HER WAIST, AND THEN HER PANTIES WERE PULLED
3 DOWN TO HER KNEES.

4 Q. ALL RIGHT. WHEN YOU OBSERVED YOUR SISTER IN THIS
5 CONDITION, MRS. WILSON, ON THE KITCHEN FLOOR AND
6 AFTER YOU UNTIED HER HANDS AND A TOOK THIS THING
7 OFF OF HER MOUTH, WHAT DID YOU DO NEXT?

8 A. I DON'T REMEMBER. I DON'T REMEMBER IF IT WAS AT
9 THAT POINT I CALLED E.M.S. OR WHETHER I STARTED
10 TURNING HER OVER. BUT IT MIGHT HAVE BEEN AFTER
11 THAT. SO I STARTED TURNING HER OVER BECAUSE I
12 THOUGHT MAYBE I COULD GIVE HER ARTIFICIAL
13 RESPIRATION.

14 Q. WERE YOU ABLE TO TURN HER OVER? YOU SAID SHE WAS
15 ON HER SIDE.

16 A. I COULDN'T.

17 Q. YOU COULD NOT TURN HER?

18 A. I COULDN'T BECAUSE IT SEEMED LIKE HER ARM WAS
19 DISLODGED FOR A MOMENT. I THOUGHT I WAS HURTING
20 HER, YOU KNOW, BECAUSE IT SEEMED LIKE WHEN I
21 STARTED TO PULL HER, THE ARM WOULDN'T -- I DON'T
22 KNOW WHETHER IT WAS DISLODGED OR WHAT. BUT I SAID,
23 "OH, I'M SORRY."

24 Q. YOU COULD NOT TURN HER OVER?

25 A. NO, SIR.

VIRGINIA WILSON - DIRECT/MR. BAILEY

1 Q. OKAY. NOW, AT SOME POINT YOU MADE A TELEPHONE
2 CALL. WHO DID YOU CALL?

3 A. I CALLED 911.

4 Q. AND WHAT TELEPHONE DID YOU USE?

5 A. I USED HER TELEPHONE WHICH WAS IN THE BEDROOM ON A
6 LITTLE STAND.

7 Q. ALL RIGHT. DID YOU CALL FROM THE BEDROOM, OR DID
8 YOU TAKE THE TELEPHONE SOMEWHERE ELSE?

9 A. I TOOK THE TELEPHONE IN THE HALL. IT WAS LIKE A
10 TABLE SHE HAD IN THE HALL. AND I TOOK IT IN THE
11 HALL BECAUSE SHE WAS A PERSON THAT, YOU KNOW,
12 DIDN'T HAVE -- I FIGURED THAT SHE WOULDN'T HAVE
13 PEOPLE RUNNING IN AND OUT OF THE HOME. AND I
14 FIGURED IF THE PEOPLE COME, IF THEY NEED TO USE THE
15 TELEPHONE I WOULD PUT IT THERE SO THEY WOULDN'T
16 HAVE TO GO INTO HER ROOM.

17 Q. OKAY.

18 A. I BROUGHT IT OUTSIDE AND MADE THE CALL, AND I LEFT
19 IT THERE.

20 Q. ALL RIGHT. NOW, AFTER YOU PLACED THAT CALL TO 911,
21 WHAT DO YOU RECALL DOING NEXT?

22 A. I DON'T REMEMBER WHAT I DID IN-BETWEEN THAT TIME OR
23 IN-BETWEEN THEN. I DON'T KNOW IF I WAS TRYING TO
24 RESCUE HER OR NOT; YOU KNOW, TRYING TO REVIVE HER
25 OR NOT. BUT THAT'S ALMOST A TOTAL BLANK OUT THERE,

VIRGINIA WILSON - DIRECT/MR. BAILEY

1 YOU KNOW.

2 Q. LET ME ASK YOU THIS, MRS. WILSON. DO YOU RECALL
3 ANY BLOOD BEING PRESENT EITHER ON YOUR SISTER OR ON
4 THE FLOOR UNDER HER?

5 A. SIR?

6 Q. DO YOU RECALL SEEING ANY BLOOD?

7 A. NO. BUT I BELIEVE WHEN I STARTED -- I THINK SO.
8 WHEN I STARTED TO TURN HER OVER, THAT WAS WHEN
9 SOMETHING GOT DISLODGED, AND I SAW HER BEING BLUE,
10 YOU KNOW, BLOODY AROUND THE AREA. THAT IS WHEN I
11 NOTICED IT. BUT OTHER THAN THAT---

12 Q. OKAY. WELL, LET ME ASK YOU THIS, THEN, MRS.
13 WILSON: DO YOU RECALL GETTING SOME TOWELS?

14 A. SIR?

15 Q. DO YOU RECALL GETTING SOME TOWELS?

16 A. OH, YES, SIR. I TRIED TO CLEAN HER UP A BIT
17 BECAUSE I WENT TO THE TABLE IN THE HALL WHICH SHE
18 NORMALLY KEEPS PAPER TOWELS. BUT I DIDN'T SEE
19 ANY. AND THEN I SAID TO MYSELF "SHE'LL GET ME
20 ABOUT THIS" BECAUSE I TOOK A NICE NEW GUEST TOWEL
21 FROM OFF THE RACK AND TRIED TO CLEAN HER UP WITH
22 IT.

23 Q. OKAY.

24 A. IT'S THE TOWEL WHICH I LEFT THERE AND EVERYTHING.

25 Q. ALL RIGHT. AND I KNOW THIS ISN'T EASY, MRS.

VIRGINIA WILSON - DIRECT/MR. BAILEY

1 WILSON; BUT WHAT PART OF HER BODY DID YOU TRY TO
2 CLEAN UP WITH THE TOWEL?

3 A. WELL, I TRIED TO CLEAN UP HER FACE, AND
4 PARTICULARLY HER VAGINAL AREA WHERE THEY -- SHE WAS
5 MESSED UP.

6 Q. AGAIN, I'M SORRY. BUT WHEN YOU SAY SHE WAS MESSED
7 UP; WHAT DID YOU SEE AROUND HER VAGINAL AREA THAT
8 CAUSED YOU TO TRY TO CLEAN IT UP WITH A TOWEL?

9 A. A LOT OF STUFF. I DON'T KNOW HOW TO DESCRIBE IT.

10 Q. NOW MRS. WILSON, DID THE POLICE AND E.M.S. COME
11 LATER ON?

12 A. YES, SIR, THEY DID COME.

13 Q. HOW LONG DO YOU THINK IT WAS AFTER YOU CALLED
14 BEFORE SOMEBODY SHOWED UP?

15 A. I DON'T THINK IT WAS VERY LONG. BUT I HAVE NO
16 JUDGMENT. I HAVE NO RECOLLECTION OF THAT PERIOD OF
17 TIME. BUT I DON'T THINK IT WAS TOO LONG.

18 Q. BUT YOU WERE STILL THERE WHEN E.M.S. ARRIVED?

19 A. YES, SIR.

20 Q. NOW, OTHER THAN TRYING TO TURN YOUR SISTER OVER AND
21 PULLING THE BANDAGE OR WHATEVER THAT WAS ACROSS HER
22 MOUTH AND UNTYING HER HANDS AND TRYING TO CLEAN UP
23 THE VAGINAL AREA WITH THE TOWEL, DID YOU DO
24 ANYTHING ELSE, MOVE ANYTHING ELSE AROUND OR DISTURB
25 THAT AREA IN ANY WAY?

VIRGINIA WILSON - CROSS/MR. THEOS

1 A. NO, SIR. I DON'T THINK I DID. THERE WAS NO REASON
2 TO.

3 Q. MRS. WILSON, DID YOU LATER ON GIVE THE POLICE YOUR
4 FINGERPRINTS?

5 A. YES, SIR.

6 Q. ALL RIGHT. MRS. WILSON, THAT'S ALL I HAVE RIGHT
7 NOW. THANK YOU FOR YOUR TESTIMONY. PLEASE ANSWER
8 ANY QUESTIONS MR. THEOS MAY HAVE.

9 THE COURT: YOU MAY CROSS.

10 MR. THEOS: THANK YOU.

11 CROSS-EXAMINATION

12 BY MR. THEOS:

13 Q. MRS. WILSON, I'M SORRY WE HAVE TO ASK YOU THESE
14 QUESTIONS, BUT PLEASE BEAR WITH ME. I'LL TRY TO
15 MAKE IT AS PAINLESS AS POSSIBLE. I UNDERSTAND THAT
16 YOU WENT TO THE HOUSE THE NEXT DAY, TO MRS. BOYD'S
17 HOUSE?

18 A. YES, SIR.

19 Q. AND I KNOW THAT IT WAS AFTER CHURCH SOME TIME?

20 A. YES, SIR. IT WAS IN THE AFTERNOON.

21 Q. AND I MAY JUST NOT HAVE HEARD IT. I WAS TRYING TO
22 TAKE SOME NOTES ON WHAT YOU WERE SAYING. BUT ABOUT
23 WHAT TIME WAS IT THAT YOU WENT THERE?

24 A. IT WAS IN THE AFTERNOON AFTER CHURCH. I WOULD SAY
25 BETWEEN 1:30 AND 2:00. BUT THAT'S NOT AN ACCURATE

VIRGINIA WILSON - CROSS/MR. THEOS

1 TIME BECAUSE, YOU KNOW, I DON'T HAVE A RECORD OF
2 THE TIME.

3 Q. I UNDERSTAND. AND I'M CERTAINLY NOT GOING TO HOLD
4 YOU TO THAT TIME. BUT IT WAS SOME TIME IN THE
5 AFTERNOON TIME?

6 A. YES, SIR.

7 Q. OKAY. NOW, I SAW FROM THE PHOTOGRAPH OF THE
8 DOORWAY THAT YOU CAME DOWN AND TALKED ABOUT. IS
9 THAT THE BACK DOOR OF MRS. BOYD'S HOME?

10 A. YES, SIR.

11 Q. OKAY. AND THAT BACK DOOR, AS I UNDERSTAND IT,
12 LEADS INTO A HALLWAY?

13 A. YES, SIR.

14 Q. AND AS YOU GO DOWN THAT HALLWAY, CAN YOU TELL ME
15 WHAT ROOM -- IS THERE A ROOM ON THE RIGHT OR A ROOM
16 ON THE LEFT?

17 A. THE ROOM WAS PRETTY MUCH STRAIGHT AHEAD. THE
18 KITCHEN WAS LIKE STRAIGHT AHEAD.

19 Q. OKAY.

20 A. TO THE RIGHT; STRAIGHT AHEAD BUT SLIGHTLY TO THE
21 RIGHT.

22 Q. AT THE END OF THE HALLWAY THERE'S A KITCHEN TO THE
23 RIGHT?

24 A. THE KITCHEN IS TO THE LEFT.

25 Q. TO THE LEFT?

VIRGINIA WILSON - CROSS/MR. THEOS

1 A. YEAH; WHEN YOU COMING FROM THAT DIRECTION; WHEN
2 YOU'RE COMING FROM THE BACK ENTRANCE.

3 Q. AS WE'RE GOING DOWN HALLWAY; AS YOU WALK DOWN THE
4 HALL, THE KITCHEN IS ON THE LEFT?

5 A. YES, SIR.

6 Q. OKAY. ARE THERE ANY ROOMS TO THE RIGHT BEFORE YOU
7 GET TO THE KITCHEN?

8 A. NO, SIR. THAT'S THE FIRST ROOM.

9 Q. ALL RIGHT.

10 A. THAT'S THE FIRST ROOM ON THE LEFT EXCEPT, YOU KNOW,
11 THE BACK PORCH.

12 Q. ALL RIGHT. AND IT'S THE FIRST ROOM ON THE LEFT?

13 A. ON THE LEFT.

14 Q. ALL RIGHT. ARE THERE ANY ROOMS ON THE RIGHT AS
15 WE'RE HEADED TOWARDS THE KITCHEN?

16 A. THERE'S A ROOM ON THE RIGHT, BUT I DON'T THINK
17 THERE IS ANY ENTRANCE THERE. YOU KNOW, THERE'S
18 ANOTHER ROOM, BUT I BELIEVE -- I DON'T EVEN
19 REMEMBER THE HOUSE NOW; BUT I BELIEVE YOU WOULD
20 HAVE TO COME THROUGH HER ROOM TO GET TO THE OTHER
21 ROOM.

22 Q. OKAY. SO WHAT YOU'RE SAYING, THEN, IS THERE ARE NO
23 DOORWAYS ON THE RIGHT?

24 A. NO, SIR; I DON'T THINK SO.

25 Q. OKAY. AND THE FIRST DOORWAY WE COME TO AS WE WOULD

VIRGINIA WILSON - CROSS/MR. THEOS

1 TRAVEL DOWN THE HALL IS ON THE LEFT NEXT TO THE
2 KITCHEN?

3 A. YES, SIR.

4 Q. ALL RIGHT. NOW, FROM THE KITCHEN IS THAT HOW YOU
5 -- IF WE'RE COMING AGAIN FROM THE BACK, IS THAT
6 HOW YOU WOULD GET TO THE BEDROOM?

7 A. I WOULD GO TO THE BEDROOM THROUGH THAT HALL THAT
8 EXTENDS. IT EXTENDS A DISTANCE. IT'S A WIDE HALL
9 THAT EXTENDS A DISTANCE. AND THEN THERE'S HER
10 BEDROOM TO THE RIGHT. AND THEN IF YOU WANT TO GO
11 TO THE LEFT, YOU KNOW, IS THE LIVING ROOM AREA.

12 Q. SO AS I UNDERSTAND IT WHEN YOU WENT IN, YOU WALKED
13 DOWN THE HALLWAY; YOU PASSED THE KITCHEN FIRST?

14 A. YES; AND I DIDN'T SEE HER.

15 Q. BUT DIDN'T GO IN AT THAT POINT?

16 A. NO, SIR.

17 Q. DIDN'T SEE ANYTHING?

18 A. NO; BECAUSE I KNEW THAT'S WHERE SHE WOULD NORMALLY
19 BE, YOU KNOW, WOULD ROUTINELY BE WOULD BE IN THE
20 ROOM. SHE WOULD NOT BE LYING DOWN; SHE WOULD BE
21 LIKE SITTING THERE OR WHAT HAVE YOU.

22 Q. OKAY. SO YOU PASSED THE KITCHEN AND WENT TO THE
23 RIGHT FURTHER DOWN THE HALL TO THE RIGHT INTO HER
24 BEDROOM?

25 A. YES, SIR.

VIRGINIA WILSON - CROSS/MR. THEOS

1 Q. IS HER BEDROOM CONNECTED TO A SITTING ROOM OF SOME
2 SORT, OR IS IT JUST HER BEDROOM?

3 A. IT'S JUST HER BEDROOM BUT SHE -- NO. THE ROOM
4 WHERE SHE SITS IS -- I MEAN THE SITTING ROOM AS
5 YOU CALL IT WOULD BE ON THE LEFT. YOU WOULD GO
6 LEFT TO GET INTO THAT. BUT HER BEDROOM, I
7 SAID, SHE SITS IN IT, BUT IT'S NOT
8 NECESSARILY A SITTING ROOM. BUT THAT WAS
9 WHERE SHE SAT.

10 Q. NOT A FORMAL ROOM, BUT JUST A SITTING AREA IN THE
11 BEDROOM?

12 A. YES. SHE WOULD JUST SIT THERE, YOU KNOW; JUST SIT
13 IN THE BEDROOM.

14 Q. AT THAT POINT YOU CAME OUT OF HER BEDROOM, WALKED
15 BACK DOWN THE HALLWAY, AND WENT TO THE RIGHT INTO
16 THE KITCHEN?

17 A. YES, SIR.

18 Q. OKAY. NOW, I'M SORRY TO HAVE TO ASK YOU THESE
19 QUESTIONS, BUT I JUST WANT TO GO OVER A COUPLE OF
20 THE DETAILS, PLEASE. I UNDERSTAND SHE WAS ON THE
21 KITCHEN FLOOR?

22 A. YES, SIR.

23 Q. CAN YOU ESTIMATE FOR US ABOUT HOW FAR AWAY FROM THE
24 DOORWAY SHE WAS?

25 MR. THEOS: JUDGE, IF I CAN APPROACH

VIRGINIA WILSON - CROSS/MR. THEOS

THE WITNESS, PLEASE?

THE COURT: YES, SIR.

Q. I'LL BACK UP. AND YOU TELL ME WHEN TO STOP. LET'S JUST PRETEND THAT YOU'RE AT THE DOORWAY. AND YOU TELL ME WHEN TO STOP. I WANT YOU TO KNOW ABOUT HOW FAR THE BODY WAS TO---

A. WELL, YOU CAN STOP RIGHT THERE; BUT I'M NOT CERTAIN ABOUT THAT. I REALLY CAN'T REFLECT BACK ON THE DISTANCE THAT SHE WAS, BUT IT WAS ABOUT LIKE WHERE YOU'RE STANDING.

Q. SO IT WAS ABOUT---

A. ABOUT LIKE THAT; YES, SIR.

Q. OKAY.

A. I KNOW THE POLICE TOOK ALL THIS RECORD, BUT I DIDN'T STOP TO MEASURE DISTANCE OR ANYTHING LIKE THAT.

Q. I UNDERSTAND. I UNDERSTAND. WE MAY GET SOME OTHER INFORMATION LATER ON EXACTLY WHERE---

A. YES, SIR.

Q. NOW, AS I UNDERSTAND IT ALSO -- AND AGAIN I APOLOGIZE; BUT MRS. BOYD HAD SOMETHING COVERING HER MOUTH?

A. YES, SIR.

Q. WHICH YOU REMOVED?

A. YES, SIR.

VIRGINIA WILSON - CROSS/MR. THEOS

1 Q. AND THEN SHE HAD SOMETHING ON HER HANDS WHICH YOU
2 REMOVED?

3 A. YES, SIR.

4 Q. AND THEN SHE HAD SOMETHING ON HER FEET WHICH YOU
5 TRIED TO REMOVE?

6 A. YES, SIR. I DON'T KNOW WHETHER I REMOVED IT OR NOT
7 OR ATTEMPTED, BUT I KNOW I DID ATTEMPT TO REMOVE
8 ALL OF IT.

9 Q. NOW, DID YOU WAIT THERE FOR THE REST OF -- FOR
10 EVERYBODY ELSE TO GET THERE, FOR THE POLICE AND ALL
11 THE MEDICAL PEOPLE; OR DID YOU AND THE FAMILY
12 MEMBERS SORT OF WAIT OUTSIDE OF THE HOME?

13 A. THE MEDICAL PEOPLE CAME FIRST. AND AFTER THEY CAME
14 AND WAS CHECKING -- THEY STOPPED AT A POINT. I
15 DIDN'T REALIZE THAT SHE WAS DEAD. SO I KEPT URGING
16 THEM TO, YOU KNOW, TO CONTINUE, YOU KNOW. HE SAID
17 HE COULDN'T DO ANY MORE. SO I SAID -- YOU KNOW, I
18 TOLD HIM "CAN'T YOU JUST TRY?" AND THE POINT THAT
19 HE TOLD ME -- THEN HE GOT TO THE PLACE WHERE HE
20 SAID SOMETHING TO HIS SUPERIOR, I GUESS. THEN HE
21 TOLD ME THAT SHE WASN'T TAKING ANY AIR. THAT WAS
22 DEVASTATING. HE SAID, "WELL, I CAN'T DO IT BECAUSE
23 SHE ISN'T -- CAN YOU IMAGINE? HE SAID, "SHE ISN'T
24 TAKING AIR." SHE WASN'T TAKING IT. HE COULDN'T GET
25 THE AIR IN HER BECAUSE SHE WASN'T TAKING IT.

VIRGINIA WILSON - CROSS/MR. THEOS

1 Q. NOW I UNDERSTAND WHEN MR. BAILEY ASKED YOU, YOU
2 SAID YOU GAVE FINGERPRINTS?

3 A. YES, SIR.

4 Q. AND AS I UNDERSTAND IT, THE REASON YOU AND SOME OF
5 THE OTHER FAMILY MEMBERS GAVE FINGERPRINTS WAS TO
6 COMPARE IT TO THE FINGERPRINTS THEY FOUND; CORRECT?

7 A. I'M ASSUMING. I THINK THAT'S THE
8 PROCEDURE.

9 MR. BAILEY: OBJECTION.

10 THE COURT: SUSTAINED. SHE WOULDN'T
11 HAVE ANY KNOWLEDGE OF THAT.

12 MR. THEOS: YOUR HONOR, I DIDN'T
13 KNOW---

14 THE COURT: SUSTAINED.

15 Q. NOW, MRS. WILSON, DID Y'ALL LOOK AROUND THE HOUSE
16 TO TRY TO FIND OUT, EITHER WITH THE POLICE OFFICERS
17 OR MAYBE ON YOUR OWN IF THE FAMILY MEMBERS, WHETHER
18 THERE WAS ANY PERSONAL ITEMS MISSING?

19 A. NO, SIR. AT THE POINT THAT WASN'T MY INTEREST.

20 Q. I UNDERSTAND YOUR CONCERN WAS FOCUSED ON YOUR
21 SISTER. BUT AT SOME POINT, EITHER THAT DAY OR IN
22 THE FUTURE, DID Y'ALL GO BACK TO THE HOME EITHER
23 WITH THE POLICE OR WITH FAMILY TO TRY TO DETERMINE
24 WHETHER THERE WAS ANY JEWELRY MISSING OR MONEY
25 MISSING OR ANYTHING ALONG THOSE LINES?

VIRGINIA WILSON - CROSS/MR. THEOS

1 A. I'M SURE THAT WAS CHECKED YOU AT A POINT.

2 Q. LET ME ASK YOU THIS JUST TO MAKE IT EASIER: DO YOU
3 KNOW WHETHER THERE WAS ANY JEWELRY MISSING?

4 A. NO, SIR. I DON'T KNOW BECAUSE I DIDN'T KNOW HER
5 JEWELRY OR HOW MUCH SHE HAD OR WHERE IT WAS.

6 Q. AND DID MRS. BOYD TYPICALLY HAVE A PURSE THAT SHE
7 USED; A FAVORITE POCKETBOOK?

8 A. THAT I DON'T KNOW EITHER. BUT I THINK -- OTHER
9 PEOPLE THAT WAS AROUND IN THE AREA SAID THAT SHE
10 HAD. BUT THAT I'M NOT SURE OF THAT
11 EITHER.

12 Q. DO YOU KNOW WHETHER OR NOT HER POCKETBOOK WAS
13 MISSING?

14 A. I'M NOT CERTAIN ABOUT THAT EITHER. I'M SURE ALL OF
15 THIS IS RECORDED. BUT, I MEAN, LIKE I SAY THAT
16 WASN'T MY INTEREST AT THAT POINT. SO I WOULDN'T
17 KNOW.

18 Q. I UNDERSTAND. AND AGAIN I'M JUST TRYING TO FIND
19 OUT IF YOU HAVE ANY KNOWLEDGE OF WHETHER OR NOT
20 THOSE THINGS WERE MISSING. I APPRECIATE YOUR
21 ANSWERS.

22 A. OKAY.

23 MR. BAILEY: NO RE-DIRECT, YOUR
24 HONOR.

25 THE COURT: THANK YOU, MA'AM. YOU

WILLIAM A. PENN, JR. - DIRECT/MR. BAILEY
MAY STEP DOWN, PLEASE.

MR. BAILEY: WE CALL WILLIAM PENN.

- - - - -

WHEREUPON,

WILLIAM A. PENN, JR., WHO BEING DULY
SWORN TO TELL THE TRUTH, TESTIFIED AS
FOLLOWS:

DIRECT EXAMINATION

BY MR. BAILEY:

Q. MR. PENN, WHERE ARE YOU EMPLOYED, PLEASE?

A. THE SUMMERVILLE FIRE DEPARTMENT.

Q. HOW LONG HAVE YOU BEEN WORKING THERE?

A. FOUR-AND-A-HALF YEARS.

Q. WHAT'S YOUR POSITION AT THE FIRE DEPARTMENT?

A. ENGINEER.

Q. OKAY. DO YOU HAVE ANY OTHER COLLATERAL TRAINING,
ANY OTHER EXPERTISE?

A. YES, SIR; FIRST RESPONDER TRAINING.

Q. ALL RIGHT, SIR. WHAT IS A FIRST
RESPONDER?

A. BASICALLY I GO OUT BEFORE E.M.S. AND ASSESS THE
SITUATION. WE CAN DO FIRST AID. WE CAN'T
ADMINISTER ANY DRUGS.

Q. HAVE YOU HAD SOME KIND OF TRAINING IN EMERGENCY
MEDICINE TO BE A FIRST RESPONDER?

WILLIAM A. PENN, JR. - DIRECT/MR. BAILEY

1 A. YES, SIR.

2 Q. JUST VERY BRIEFLY WHAT TRAINING HAVE YOU HAD?

3 A. YOU HAVE TO GO THROUGH A FIRST RESPONDER COURSE TO
4 BE CERTIFIED AS A FIRST RESPONDER, C.P.R., AND SO
5 FORTH.

6 Q. YOU WERE CERTIFIED AS A FIRST RESPONDER BACK IN
7 SEPTEMBER OF '96?

8 A. YES, SIR.

9 Q. CALLING YOUR ATTENTION TO SEPTEMBER THE FIRST WHICH
10 WAS A SUNDAY IN 1996, YOU WERE EMPLOYED BY
11 SUMMERVILLE FIRE AND RESCUE AT THAT TIME?

12 A. YES, SIR.

13 Q. WERE YOU ON DUTY THAT DAY?

14 A. YES, SIR.

15 Q. CALLING YOUR ATTENTION TO ABOUT 1:40 P.M., WOULD
16 YOU STATE WHETHER OR NOT YOU RECEIVED A CALL TO
17 RESPOND TO 911 WEST LUKE STREET?

18 A. YES, SIR, WE DID.

19 Q. AND YOU SAY "WE"; WERE YOU WITH SOMEBODY ELSE?

20 A. YES, SIR. I WAS WITH ANOTHER FIREFIGHTER.

21 Q. OKAY. AND IS THAT ADDRESS, 911 WEST LUKE, IN THE
22 TOWN LIMITS OF SUMMERVILLE IN DORCHESTER COUNTY?

23 A. YES, SIR.

24 Q. AND APPROXIMATELY WHAT TIME DID YOU AND THE OTHER
25 FIRST RESPONDER ARRIVE?

WILLIAM A. PENN, JR. - DIRECT/MR. BAILEY

1 A. ALL I CAN TELL YOU IS THE CALL COMES IN, WE
2 RESPONDED. I CAN'T TELL YOU EXACTLY WHAT TIME WE
3 GOT THERE.

4 Q. DID IT TAKE YOU ABOUT A MINUTE TO GET THERE?

5 A. YES, SIR; TWO OR THREE MINUTES AT THE MOST.

6 Q. ALL RIGHT. DID YOU ENTER THE HOUSE OR GO INSIDE AT
7 911 WEST LUKE?

8 A. YES, SIR.

9 Q. OKAY. AND DO YOU RECALL WHAT DOOR YOU WENT IN?

10 A. YES, SIR; WE WENT IN THE BACK.

11 Q. OKAY. AND WAS ANYBODY ELSE AT THE HOUSE WHEN YOU
12 ARRIVED?

13 A. YES, SIR. MRS. WILSON WAS THERE.

14 Q. WERE THERE ANY OTHER MEDICAL PEOPLE OR LAW
15 ENFORCEMENT PEOPLE AT THE HOUSE, OR WERE YOU AND
16 YOUR PARTNER THE FIRST ONES THERE?

17 A. WE WERE THE FIRST THERE. AND SHORTLY AFTER OFFICER
18 NEALY ARRIVED.

19 Q. PLEASE TELL THE JURY WHAT YOU OBSERVED WHEN YOU
20 WENT INTO THE HOUSE.

21 A. WE WENT IN. MRS. WILSON TOOK US IN. AND HER
22 SISTER WAS LAYING ON THE FLOOR IN THE KITCHEN
23 CORRIDOR. SHE WAS LAYING LIKE ON HER SIDE, ALMOST
24 ON HER BACK. SHE WAS -- HER FACE WAS REAL SWOLLEN
25 AND BLOODY. SO WE STARTED TO GET SOME VITALS AND

WILLIAM A. PENN, JR. - DIRECT/MR. BAILEY

1 WE COULDN'T GET ANYTHING. SO---

2 Q. WHEN YOU SAY VITALS; YOU MEAN---

3 A. A PULSE; BREATHING. AND WE WEREN'T GETTING
4 ANYTHING AT ALL.

5 Q. YOU TESTIFIED ABOUT OBSERVING HER FACE AND IT WAS
6 BLOODY AND SWOLLEN. DID YOU OBSERVE HER HANDS?

7 A. YES, SIR. HER HANDS WERE LIKE BEHIND HER BACK, BUT
8 THEY WEREN'T TIED AT THE TIME. HER SISTER TOLD US
9 THAT HER HANDS WERE TIED AND THAT SHE UNTIED THEM.

10 Q. DID YOU OBSERVE HER FEET?

11 A. YES, SIR. IF I REMEMBER CORRECTLY, THEY WERE STILL
12 TIED WHEN WE WERE THERE. THEY WERE TOGETHER AND
13 TIED.

14 Q. ALL RIGHT. DO YOU RECALL SPECIFICALLY WHAT THEY
15 WERE TIED WITH?

16 A. I CAN'T REALLY RECALL. IT WAS LIKE A YARN LAYING
17 BESIDE HER HANDS. IT MIGHT HAVE BEEN A STOCKING BY
18 HER FEET. THERE WAS SOME KIND OF MATERIAL.

19 Q. AND AS FAR AS HER CLOTHING, DO YOU REMEMBER WHAT
20 POSITION HER CLOTHING WAS IN WHEN YOU SAW HER?

21 A. YES, SIR. HER CLOTHING BASICALLY WAS COVERED
22 EXCEPT FOR HER UNDERWEAR WAS AT HER KNEES.

23 Q. NOW AFTER CHECKING FOR PULSE, CHECKING FOR VITAL
24 SIGNS, DID YOU OR DAVID MARGARET (PHONETICALLY
25 SPELLED) WHO WAS THE FELLOW WITH YOU DO ANYTHING

WILLIAM A. PENN, JR. - DIRECT/MR. BAILEY

1 ELSE TO TRY TO REVIVE MRS. BOYD?

2 A. YES, SIR. WE TOOK WHAT WE CALL AMBLER BAGS
3 (PHONETICALLY SPELLED). IT'S USED FOR C.P.R. AND
4 WE TRIED TO GIVE HER A COUPLE BREATHS OF AIR; BUT
5 IT WAS JUST GOING IN HER FACE. IT WASN'T GOING IN
6 HER LUNGS.

7 Q. DID YOU REACH AN OPINION OR CONCLUSION ABOUT
8 WHETHER OR NOT SHE WAS DEAD AT THAT TIME?

9 A. WELL, WE CONTINUED TO -- I LOOKED AT HER SISTER,
10 AND I TOLD HER THAT SHE WASN'T -- THAT THE AIR
11 WASN'T GOING TO HER LUNGS. AND SHE SAID COULD YOU
12 PLEASE TRY. SO WE TRIED AGAIN, AND NOTHING
13 HAPPENED. AND ABOUT THAT TIME E.M.S. WAS PULLING
14 UP OUTSIDE.

15 Q. ALL RIGHT. WERE YOU PRESENT WHEN E.M.S. ARRIVED?
16 DID Y'ALL STAY UNTIL THEY CAME IN?

17 A. YES, SIR.

18 Q. WHAT ABOUT THE POLICE OFFICERS? WERE YOU THERE
19 WHEN OFFICER NEALY ARRIVED?

20 A. YES, SIR. WHEN WE WERE THERE, WE WERE WORKING, AND
21 HE SAW HOW SHE WAS LAYING THERE AND EVERYTHING.
22 AND HE TOLD US NOT TO TOUCH ANYTHING.

23 Q. OKAY. AND OTHER THAN TRYING TO GET AIR INTO HER
24 AND TAKING VITAL SIGNS, DID EITHER YOU OR MR.
25 MARGARET DO ANYTHING TO MOVE THE BODY OR DO

WILLIAM A. PENN, JR. - CROSS/MR. THEOS

1 ANYTHING TO DISTURB THE CRIME SCENE?

2 A. NO, SIR. WE TURNED OFF THE STOVE. THE STOVE WAS
3 ON WHEN WE GOT THERE.

4 Q. ALL RIGHT. AND AFTER THE POLICE AND THE E.M.S.
5 ARRIVED, DID YOU AND YOUR PARTNER THEN LEAVE?

6 A. YES, SIR.

7 Q. THANK YOU. PLEASE ANSWER ANY QUESTIONS MR. THEOS
8 MAY HAVE FOR YOU.

9 CROSS-EXAMINATION

10 BY MR. THEOS:

11 Q. JUST A COUPLE OF QUESTIONS. MR. PENN, AS I
12 UNDERSTAND IT, YOU'RE THE FIRST -- YOU WERE THE
13 FIRST OFFICER, THE FIRST PROFESSIONAL PERSON ON THE
14 SCENE AFTER MRS. WILSON MADE THE CALL?

15 A. YES, SIR.

16 Q. AND WHEN YOU ARRIVED AT THE SCENE WITH MRS. WILSON
17 -- YOU AND WHO ELSE?

18 A. FIREFIGHTER DAVID MARGARET.

19 Q. YOU WERE THE FIRST PERSON IN THE KITCHEN AREA TO
20 SEE?

21 A. I CAN'T REALLY REMEMBER THAT.

22 Q. NOW, THE CLOTHES THAT WE'RE TALKING ABOUT; MRS.
23 BOYD HAD ON A GREEN UNDER-DRESS OF SORTS?

24 A. IT MIGHT HAVE BEEN. I REALLY DON'T REMEMBER WHAT
25 COLOR.

JOHNNY BROOKE NEALY - DIRECT/MR. BAILEY

1 Q. OKAY. DID SHE HAVE ON A DRESS AND SOME SORT OF
2 HOUSECOAT?

3 A. YES, SIR.

4 Q. OKAY. ALSO WHEN YOU ARRIVED AT THE SCENE, SHE DID
5 NOT HAVE ANY SHOES ON; IS THAT CORRECT?

6 A. I DIDN'T PAY ATTENTION TO WHAT KIND OF SHOES IF SHE
7 HAD ANY ON OR NOT.

8 Q. THANK YOU, SIR.

9 MR. BAILEY: NO RE-DIRECT, YOUR
10 HONOR. WE WOULD EXCUSE HIM.

11 THE COURT: WITHOUT OBJECTION, THE
12 GENTLEMAN MAY BE EXCUSED.

13 MR. BAILEY: THE STATE CALLS J.B.
14 NEALY.

15 - - - - -

16 WHEREUPON,

17 JOHNNY BROOKE NEALY, WHO AFTER BEING
18 FIRST DULY SWORN TO TELL THE TRUTH,
19 TESTIFIED AS FOLLOWS:

20 DIRECT EXAMINATION

21 BY MR. BAILEY:

22 Q. MR. NEALY, YOU'RE A POLICE OFFICER WITH THE TOWN OF
23 SUMMERVILLE?

24 A. YES, SIR.

25 Q. AND YOU'RE A CORPORAL?

JOHNNY BROOKE NEALY - DIRECT/MR. BAILEY

1 A. YES, SIR.

2 Q. HOW LONG HAVE YOU BEEN IN LAW ENFORCEMENT?

3 A. SIX YEARS.

4 Q. ALL RIGHT, SIR. I CALL YOUR ATTENTION TO SEPTEMBER
5 THE FIRST, 1996. WERE YOU EMPLOYED BY THE
6 SUMMERVILLE POLICE DEPARTMENT AS A COMMISSIONED LAW
7 ENFORCEMENT OFFICER THEN?

8 A. YES, SIR.

9 Q. WERE YOU A UNIFORMED OFFICER THEN?

10 A. YES, SIR.

11 Q. CALLING YOUR TO ABOUT 1:43 P.M. ON SEPTEMBER THE
12 FIRST, 1996; DID YOU GO TO 911 WEST LUKE STREET IN
13 SUMMERVILLE?

14 A. YES, I DID.

15 Q. HOW DID YOU HAPPEN TO GO OUT TO THAT ADDRESS?

16 A. I WAS SCANNING A MEDICAL CHANNEL WHEN A MEDICAL
17 CALL CAME OUT FOR AN UNRESPONSIVE SUBJECT. AND WE
18 NORMALLY RESPOND ANYWAY. SO THAT'S WHEN I WENT
19 OVER BEHIND FIRST RESPONDERS.

20 Q. ALL RIGHT, SIR. AND THAT LOCATION, 911 WEST LUKE
21 STREET; IS THAT IN THE TOWN OF SUMMERVILLE WITHIN
22 YOUR DEPARTMENT'S JURISDICTION IN DORCHESTER
23 COUNTY?

24 A. YES, SIR.

25 Q. OKAY. WHEN YOU ARRIVED, WHO ELSE WAS AT 911 WEST

JOHNNY BROOKE NEALY - DIRECT/MR. BAILEY

LUKE?

A. WHEN I ARRIVED THERE WAS -- MRS. WILSON WAS THERE. THERE WAS ANOTHER LADY. I'VE GOT HER NAME RIGHT HERE.

Q. WAS IT BLONDELLE SMITH?

A. YES, SIR. MRS. SMITH WAS THERE. MR. PENN AND ANOTHER FIRE RESPONDER WAS THERE.

Q. ALL RIGHT. YOU WERE THE FIRST LAW ENFORCEMENT OFFICER TO ARRIVE?

A. YES, SIR.

Q. DID YOU GO INSIDE THE HOUSE?

A. YES, I DID.

Q. WHAT DOOR DID YOU USE?

A. THE BACK DOOR.

Q. OKAY. NOW, WE HAD A PHOTOGRAPH -- THIS IS STATE'S TWO. CAN YOU SEE THAT?

A. I CAN SEE IT FINE.

Q. IS THAT THE BACK DOOR YOU WENT INTO?

A. YES, IT IS.

Q. OKAY. NOW, WHEN YOU ENTER THAT HOUSE THROUGH THE BACK DOOR, WHAT DO YOU ENTER INTO -- IT APPEARS TO BE A SHORT HALLWAY?

A. IT WAS WIDE, BUT IT WAS -- IT APPEARED TO BE A SHORT HALLWAY.

Q. OKAY. AND TO THE LEFT OF THE HALLWAY, WHAT ROOM IS

JOHNNY BROOKE NEALY - DIRECT/MR. BAILEY

1 THERE?

2 A. TO THE LEFT IS A KITCHEN; TO THE IMMEDIATE LEFT IS
3 A KITCHEN.

4 Q. DID YOU GO IN THE KITCHEN?

5 A. YES, I DID.

6 Q. WILL YOU TELL THE JURY WHAT YOU OBSERVED, PLEASE?

7 A. WHEN I FIRST WALKED INTO THE KITCHEN, OF COURSE,
8 THE TWO FIREFIGHTERS ARE KNEELING ON THE FLOOR. I
9 COULDN'T SEE MRS. BOYD'S BODY COMPLETELY. MRS.
10 WILSON AND MRS. SMITH WERE ALSO STANDING BEHIND THE
11 FIREFIGHTERS, SO I DIDN'T GET A REAL GOOD VIEW OF
12 MRS. BOYD AT THE TIME. BUT THE FIREFIGHTERS WERE
13 ADMINISTERING, OR ATTEMPTING TO ADMINISTER, FIRST
14 AID AT THAT TIME.

15 Q. OKAY. DID YOU OBSERVE THE CONDITION OF HER HANDS
16 AND FEET AND ANY MATERIALS THAT MIGHT HAVE BEEN
17 AROUND HER HANDS AND FEET?

18 A. JUST A COUPLE MINUTES LATER AFTER THE FIREFIGHTERS
19 STOOD UP AND CLEARED THE AREA WHERE I COULD SEE
20 HER.

21 Q. WHAT DID YOU OBSERVE?

22 A. SHE WAS LAYING ON HER LET SIDE. HER HANDS WERE
23 BEHIND HER BACK, AND THERE WAS SOME NYLON STOCKING
24 TYPE MATERIAL THAT WAS LYING ON THE FLOOR NEAR HER
25 HANDS. HER FEET WERE CLOSE TOGETHER. THEY WERE

JOHNNY BROOKE NEALY - DIRECT/MR. BAILEY

1 STILL TIED WITH SOMETHING APPEARING SIMILAR TO A
2 NYLON STOCKING OR PANTYHOSE OR SOMETHING.

3 Q. OKAY. DID YOU GET A CHANCE TO UNTIE ANYTHING OFF
4 OF HER FEET?

5 A. NO, I DIDN'T.

6 Q. DID YOU ATTEMPT TO MOVE THE STOCKING MATERIAL THAT
7 YOU OBSERVED NEAR HER HANDS?

8 A. NO, I DIDN'T.

9 Q. OKAY. NOW, WERE HER HANDS BEHIND HER BACK OR IN
10 FRONT OF HER?

11 A. YES, SIR; BEHIND HER.

12 Q. AND DID YOU OBSERVE ANYTHING ELSE THAT YOU CAN
13 RECALL AT THIS TIME EITHER ON MRS. BOYD OR AROUND
14 MRS. BOYD?

15 A. I DID OBSERVE HER CLOTHING AT THIS TIME AND IN
16 ASSESSING THE SITUATION AND THE AREA, I OBSERVED
17 THAT SHE APPEARED TO HAVE A DARK COLORED DRESS OR
18 GOWN ON. AND IT WAS DOWN JUST TO SLIGHTLY ABOVE
19 HER KNEES. I THOUGHT I SAW A LIGHT COLORED PANTIES
20 THAT WAS JUST DOWN TO THE TOP OF HER KNEES.

21 Q. DID YOU OBSERVE ANY BLOOD ON HER?

22 A. YES, SIR, I DID. AFTER THE FIREFIGHTERS WERE
23 CLEARED, I DID OBSERVE THE SWELLING ABOUT THE FACE
24 AND A PURPLE-BLUIISH SWELLING AND BLOOD WAS ON HER
25 FACE. AND THEN I FURTHER NOTICED BLOOD ON THE

JOHNNY BROOKE NEALY - DIRECT/MR. BAILEY

FLOOR.

Q. OKAY. DID YOU DO ANYTHING WHILE YOU WERE THERE, OR DID YOU SEE THE FIRST RESPONDERS DO ANYTHING TO DISTURB THAT BLOOD THAT YOU OBSERVED ON THE FLOOR?

A. NO, SIR.

Q. ALL RIGHT. NOW FAR AS MRS. BLONDELLE SMITH AND VIRGINIA WILSON, WHAT IF ANYTHING DID YOU DO WITH THEM ONCE YOU ARRIVED AS THE FIRST LAW ENFORCEMENT OFFICER THERE?

A. WELL, AFTER THE FIREFIGHTERS CLEARED THE AREA TO WHERE I COULD TAKE A LOOK AT THE AREA AND SEE WHAT WAS GOING ON, IT WAS APPARENT THAT A CRIME HAD POSSIBLY BEEN COMMITTED. IN LAW ENFORCEMENT WE HAVE TO CLEAR THE AREA AND SECURE THE CRIME SCENE. SO I ASKED EVERYBODY TO LEAVE INCLUDING THE E.M.S. FIREFIGHTERS AND MRS. WILSON AND MRS. SMITH.

Q. OKAY. WHEN YOU SAY SECURE THE CRIME SCENE; TELL THE JURY WHAT THAT MEANS.

A. IN SIMPLE TERMS SECURING A CRIME SCENE IS MERELY STANDING GUARD OVER A SCENE OR AN AREA IN ORDER TO PRESERVE AND PROTECT POSSIBLE EVIDENCE. WE DON'T LET NOBODY COME IN THE AREA.

Q. OKAY. DID ANYBODY COME IN THE AREA WHILE YOU WERE THERE OTHER THAN PEOPLE YOU'VE DESCRIBED, THE MEDICAL PEOPLE?

JOHNNY BROOKE NEALY - DIRECT/MR. BAILEY

1 A. NOT IMMEDIATELY. I SUBSEQUENTLY HAD A BACK-UP
2 POLICE OFFICER COME.

3 Q. WHO WAS THAT?

4 A. THAT WAS OFFICER HAMMER.

5 Q. AFTER YOU SECURED THE CRIME SCENE, WHAT DID YOU DO
6 THEN? DID YOU CONTACT ANYBODY ELSE?

7 A. YES, SIR. AFTER THE CRIME SCENE WAS TOTALLY
8 SECURED WE CONTACTED DETECTIVE MIKE TURNER WHICH
9 WAS THE LIEUTENANT DETECTIVE AT THAT TIME.

10 Q. HOW DID YOU CONTACT HIM?

11 A. ACTUALLY THE DISPATCHER CONTACTED HIM. I CALLED
12 THE DISPATCHER AND REPORTED THAT WE WAS OUT AT A
13 POSSIBLE CRIME SCENE; AND DISPATCH HELPED US TO
14 CONTACT EVERYBODY IN THE CHAIN OF COMMAND.

15 Q. OKAY. HOW DID YOU CALL DISPATCH?

16 A. I ATTEMPTED TO USE MY RADIO. BUT IN THE AFTERNOON
17 MY BATTERY WAS WEAK AND IT WAS CHIRPING, SO I
18 COULDN'T GET OUT. I MADE TWO OR THREE ATTEMPTS TO
19 CALL DISPATCH ON MY WALKIE AND IT WASN'T GOING
20 THROUGH. SO I LOOKED AROUND AND IN THE HALLWAY WAS
21 A SMALL TABLE AND A BLACK TELEPHONE -- IT APPEARED
22 TO BE BLACK -- SO I JUST INSTANTLY GRABBED THE
23 PHONE AND DIALED 911 AND CALLED THE DISPATCHER AND
24 TOLD HER TO GET SOME PEOPLE OUT THERE.

25 Q. ALL RIGHT. NOW, YOU SAID CORPORAL HAMNER ARRIVED

JOHNNY BROOKE NEALY - DIRECT/MR. BAILEY

1 WHO WAS YOUR IMMEDIATE SUPERIOR?

2 A. NO, SIR. HE WAS JUST A REGULAR PATROL OFFICER.

3 Q. ALL RIGHT.

4 A. HE SERVED AS A BACK-UP OFFICER.

5 Q. ALL RIGHT. AND WHO ELSE ARRIVED AS FAR AS LAW
6 ENFORCEMENT PEOPLE?

7 A. THERE WAS OTHER OFFICERS THAT ARRIVED, BUT AT THAT
8 TIME WE HAD SECURED THE CRIME SCENE. AND WHAT WE
9 DID THEN; WE CORNERED OFF THE ENTIRE AREA INCLUDING
10 THE ENTIRE BACKYARD, THE ENTIRE HOUSE, THE ENTIRE
11 YARD AREA, THE FRONT YARD; SO NOBODY ELSE WAS
12 ALLOWED TO COME PAST THE FRONT GATE OF THE YARD.

13 Q. OKAY. AND THEN YOU TOOK CHARGE OF THAT AREA; IS
14 THAT RIGHT?

15 A. YES, SIR.

16 Q. NOW, WERE YOU THERE WHEN SGT. MIKE TURNER SHOWED
17 UP?

18 A. YES, SIR.

19 Q. WHEN HE ARRIVED, WHO BECAME IN CHARGE OF THE CRIME
20 SCENE AT THAT TIME?

21 A. DETECTIVE MIKE TURNER AUTOMATICALLY ASSUMED
22 COMMAND.

23 Q. ALL RIGHT. BETWEEN THE TIME YOU ARRIVED AND THE
24 TIME MIKE TURNER ARRIVED, YOU TESTIFIED THAT YOU
25 SET UP THE PERIMETER OF THE CRIME SCENE?

JOHNNY BROOKE NEALY - CROSS/MR. THEOS

1 A. YES, SIR.

2 Q. DID ANY AUTHORIZED PEOPLE COME ON THERE IN THE
3 IMMEDIATE AREA, THE BACK YARD, OR INSIDE THE HOUSE?

4 A. NO, SIR.

5 Q. AND YOU TESTIFIED THAT YOU REMOVED THE E.M.S.
6 PEOPLE AND THE RELATIVES THAT WERE INSIDE?

7 A. YES, SIR; IMMEDIATELY.

8 Q. WERE YOU PRESENT WHEN RON MANCHESTER WHO'S THE TOWN
9 CRIME SCENE MAN ARRIVED?

10 A. YES, SIR.

11 Q. AND BY THE TIME HE ARRIVED, HAD ANYBODY OTHER THAN
12 THE FIRST RESPONDENT AND MRS. WILSON TOUCHED OR HAD
13 ANY CONTACT WITH MRS. BOYD'S BODY?

14 A. NO, SIR.

15 Q. AND WOULD YOU STATE WHETHER OR NOT YOU GAVE
16 FINGERPRINTS TO THE POLICE DEPARTMENT?

17 A. YES, SIR, I DID.

18 Q. MR. NEALY, PLEASE ANSWER ANY QUESTIONS MR. THEOS
19 MAY HAVE FOR YOU.

20 CROSS-EXAMINATION

21 BY MR. THEOS:

22 Q. OFFICER NEALY, YOU'RE WITH THE SUMMERVILLE POLICE
23 DEPARTMENT?

24 A. YES, SIR.

25 Q. NOW, JUST TO MAKE SURE I UNDERSTAND IT; YOU MADE

JOHNNY BROOKE NEALY - CROSS/MR. THEOS

1 SURE THAT THE CRIME SCENE WAS SECURED UPON YOUR
2 ARRIVAL. ONCE YOU ARRIVED AND CLEARED MR. PENN AND
3 MR. MARGARET; ONCE YOU CLEARED THEM YOU OF THE
4 AREA, THEN YOU SECURED THE CRIME SCENE?

5 A. YES, SIR.

6 Q. AND YOU DID THAT IN ORDER SO THAT NOTHING WOULD BE
7 DISTURBED OR CONTAMINATED IN ANY WAY?

8 A. THAT'S CORRECT.

9 Q. IN AN EFFORT TO TRY TO PRESERVE WHAT EVIDENCE THERE
10 MIGHT BE?

11 A. YES, SIR.

12 Q. IS THAT RIGHT?

13 A. YES, SIR.

14 Q. OKAY. AND THAT WAS DONE?

15 A. YES, SIR.

16 Q. AND AS FAR AS YOU KNOW, NOTHING FROM THE TIME YOU
17 TOOK OVER UNTIL -- AT LEAST UNTIL THE TIME OFFICER
18 TURNER CAME IN -- NOTHING WAS DONE TO DISTURB OR
19 CONTAMINATE THAT CRIME SCENE?

20 A. CORRECT. NOTHING WAS DISTURBED.

21 Q. NO OTHER QUESTIONS.

22 MR. BAILEY: NO RE-DIRECT, YOUR
23 HONOR.

24 THE COURT: ANY OBJECTION TO THIS
25 GENTLEMAN BEING EXCUSED?

GEORGE MURRAY - DIRECT/MR. BAILEY

1 MR. THEOS: NO, SIR.

2 THE COURT: THANK YOU, SIR.

3 MR. BAILEY: THE STATE CALLS GEORGE
4 MURRAY.

5 - - - - -

6 WHEREUPON,

7 GEORGE MURRAY, WHO AFTER BEING FIRST DULY
8 SWORN TO TELL THE TRUTH, TESTIFIED AS
9 FOLLOWS:

10 DIRECT EXAMINATION

11 BY MR. BAILEY:

12 Q. MR. MURRAY, WHERE ARE YOU EMPLOYED?

13 A. WITH DORCHESTER COUNTY E.M.S.

14 Q. OKAY, SIR. WERE YOU EMPLOYED WITH E.M.S. ON
15 SEPTEMBER THE FIRST, 1996?

16 A. YES, SIR.

17 Q. WERE YOU WORKING THAT SUNDAY?

18 A. YES, SIR.

19 Q. ALL RIGHT, SIR. WERE YOU WORKING WITH SOMEBODY
20 ELSE?

21 A. YES, SIR. MY PARTNER THAT DAY WAS MS. TORI CLARK
22 (PHONETICALLY SPELLED).

23 Q. ALL RIGHT. SO WERE YOU THE SENIOR PERSON WITH YOUR
24 UNIT?

25 A. YES, SIR; I WAS CREW CHIEF.

GEORGE MURRAY - DIRECT/MR. BAILEY

1 Q. AND I CALL YOUR ATTENTION TO ABOUT 1:47 P.M. DID
2 YOU RECEIVE A CALL TO GO TO 911 WEST LUKE STREET?

3 A. YES, SIR, WE DID.

4 Q. APPROXIMATELY WHAT TIME DID YOU GET THERE?

5 A. (NO RESPONSE.)

6 Q. DO YOU NEED YOUR REPORT?

7 A. THAT WOULD BE HELPFUL.

8 MR. BAILEY: YOUR HONOR, IF I CAN
9 APPROACH HIM TO REFRESH HIS MEMORY.

10 THE COURT: YES, SIR. SHARE IT WITH
11 HIM.

12 A. THANK YOU, SIR. (WITNESS EXAMINES REPORT.)

13 Q. YOU ARRIVED AT ABOUT 1:45 P.M.?

14 A. YES, SIR; AROUND 1345.

15 Q. AROUND 1:45 P.M.?

16 A. YES, SIR.

17 Q. NOW WERE THE FIRST RESPONDERS ALREADY THERE, THE
18 FIRE DEPARTMENT?

19 A. YES, SIR.

20 Q. ALL RIGHT, SIR. DID YOU GO INSIDE THE HOUSE?

21 A. WE WALKED AS FAR AS UP TO THE BACK PORCH AND UP
22 THROUGH THE THRESHOLD LEADING INTO THE HALL AND
23 STOPPED RIGHT AT THE THRESHOLD TO THE KITCHEN.

24 Q. WERE YOU ABLE TO SEE INTO THE KITCHEN FROM
25 THERE?

GEORGE MURRAY - DIRECT/MR. BAILEY

1 A. YES, SIR.

2 Q. ALL RIGHT, SIR. AND WHAT DID YOU OBSERVE VERY
3 BRIEFLY?

4 A. AN ELDERLY BLACK LADY WHO WAS LAYING ON HER SIDE
5 SEMI-FACE DOWN. HER FEET WERE BOUND. HER HANDS
6 WERE BEHIND HER BACK. HER FACE WAS GROSSLY SWOLLEN
7 AND BATTERED AND BLOODY. THE FIRST RESPONDER WHO
8 HAD CAME YOU AND MET US AT THE UNIT -- THE CALL
9 CAME IN AS A SIGNAL WHICH IS A HEART PROBLEM;
10 UNCONSCIOUS, UNRESPONSIVE. AND WE NORMALLY COME IN
11 WITH A FULL LOAD OF ACCESSORY EQUIPMENT. THEY HAD
12 ALREADY DETERMINED PRIOR TO OUR ARRIVAL THAT SHE
13 WAS DEAD ON ARRIVAL OR D-O-A. SO HE CAME OUT TO
14 LET US KNOW THAT. THEN WE CAME IN WITH A CHEST
15 CARDIAC MONITOR TO MORE OR LESS DOCUMENT THIS.

16 Q. SO YOU CONFIRMED THAT SHE WAS DECEASED; IS THAT
17 CORRECT?

18 A. WE DID NOT RUN AN EKG ON HER.

19 Q. ALL RIGHT. WAS SHE OBVIOUSLY DEAD WHEN YOU GOT
20 THERE?

21 A. YES, SIR. HE TOLD US THAT HE HAD ATTEMPTED TO
22 VENTILATE HER AND WASN'T ABLE TO MOVE ANY AIR, AND
23 HE SUSPECTED RIGOR-MORTIS HAD SET IN. THIS IS A
24 PERSON WE WORK WITH FREQUENTLY SO WE PUT A LOT OF
25 FAITH IN HIS OPINION.

GEORGE MURRAY - CROSS/MR. THEOS

1 Q. YOU'RE REFERRING TO THE FIRST RESPONDER; IS THAT
2 CORRECT?

3 A. YES, SIR.

4 Q. SO DID YOU THEN DEPART? DID YOU LEAVE?

5 A. WE LEFT THE SCENE, AND WE WERE OUT IN THE FRONT OF
6 THE HOUSE.

7 Q. SO NEITHER YOU NOR YOUR PARTNER DID ANYTHING AS FAR
8 AS MOVING THE BODY OR CHANGING POSITION OR ANYTHING
9 OF THAT NATURE?

10 A. NO, SIR.

11 Q. PLEASE ANSWER ANY QUESTIONS THE DEFENSE MIGHT HAVE.

12 THE COURT: CROSS?

13 MR. THEOS: YES, SIR; JUST A FEW
14 QUESTIONS.

15 CROSS-EXAMINATION

16 BY MR. THEOS:

17 Q. MR. MURRAY, JUST TO MAKE SURE WE'RE ALL CLEAR ON
18 THE TIME. AS I READ YOUR REPORT -- AND I THINK
19 IT'S THE SAME ONE THAT YOU HAVE IN FRONT OF YOU --
20 YOU ARRIVED ON THE SCENE AT 1355; THAT WOULD BE
21 1:55 P.M.; IS THAT CORRECT?

22 A. YES, SIR.

23 Q. AND AS I ALSO UNDERSTAND IT, YOU OBSERVED MRS.
24 BOYD'S FEET TO BE BOUND. DO YOU RECALL WHETHER
25 THERE WERE ANY SHOES ON THOSE FEET?

GEORGE MURRAY - CROSS/MR. THEOS

1 A. NO, SIR.

2 Q. DOES YOUR REPORT REFLECT THAT? PLEASE TAKE A LOOK
3 AT IT. (WITNESS EXAMINES REPORT.)

4 A. I DON'T BELIEVE I MADE MENTION OF WHETHER HER SHOES
5 WERE PRESENT OR ABSENT.

6 Q. DO YOU HAVE ANY RECOLLECTION OF IT?

7 A. NO, I DON'T.

8 Q. OKAY. AND LASTLY; YOU TALKED ABOUT THE APPEARANCE
9 OF THE FACE AND BLOOD. DO YOU RECALL WHERE THERE
10 WAS BLOOD?

11 A. IT WAS BLOOD ABOUT THE SIDE OF HER FACE WHERE IT
12 WAS SWOLLEN.

13 Q. OKAY. DO YOU RECALL WHERE THERE WAS BLOOD IN THE
14 AREA ASIDE FROM ON THE BODY?

15 A. NO, SIR.

16 Q. BECAUSE OF YOUR LINE OF WORK, YOU WERE MORE FOCUSED
17 ON THE BODY RATHER THAN ON THE SURROUNDING AREA?

18 A. I'VE HAD BEST FRIENDS ON SCENES BEFORE AND NEVER
19 REALIZED THEY WERE THERE.

20 Q. OKAY.

21 A. I JUST TEND TO FOCUS MORE ON THE JOB TASK.

22 Q. OKAY. THANK YOU VERY MUCH.

23 MR. BAILEY: NO RE-DIRECT, YOUR
24 HONOR.

25 THE COURT: ANY OBJECTION TO HIM

MICHAEL TURNER - DIRECT/MR. BAILEY

BEING EXCUSED?

MR. THEOS: NO, SIR.

THE COURT: THANK YOU, SIR. NEXT
WITNESS.

- - - - -

WHEREUPON,

MICHAEL ALLEN TURNER, WHO AFTER BEING
FIRST DULY SWORN TO TELL THE TRUTH,
TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. BAILEY:

Q. MR. TURNER, YOU'RE EMPLOYED WITH THE SHERIFF'S
OFFICE?

A. YES, SIR.

Q. WHAT'S YOUR POSITION WITH THE SHERIFF'S OFFICE AT
THIS TIME?

A. I'M THE OPERATIONS CAPTAIN.

Q. AND HOW LONG HAVE YOU BEEN IN LAW ENFORCEMENT?

A. SINCE 1990.

Q. BACK IN 1996, SEPTEMBER OF '96, WHERE WERE YOU
EMPLOYED?

A. AT THE SUMMERVILLE POLICE DEPARTMENT.

Q. IN WHAT POSITION?

A. I WAS A DETECTIVE SUPERVISOR.

Q. WERE YOU A SERGEANT AT THAT TIME?

MICHAEL TURNER - DIRECT/MR. BAILEY

1 A. FIRST SERGEANT.

2 Q. FIRST SERGEANT?

3 A. YES, SIR.

4 Q. ALL RIGHT. AND CALLING YOUR ATTENTION TO SEPTEMBER
5 THE FIRST, 1996, WOULD YOU STATE WHETHER OR NOT YOU
6 WENT TO THE HOME OF LILLY BELL BOYD AT 911 WEST
7 LUKE STREET IN SUMMERVILLE?

8 A. YES, SIR, I DID.

9 Q. ALL RIGHT. AND IS THAT IN THE TOWN OF SUMMERVILLE
10 IN DORCHESTER COUNTY?

11 A. YES, SIR, IT IS.

12 Q. WHO WAS THERE WHEN YOU ARRIVED AS FAR AS OTHER LAW
13 ENFORCEMENT OFFICERS THE BEST YOU CAN REMEMBER?

14 A. OFFICER NEALY AND CORPORAL O'BRIEN.

15 Q. OKAY. AND WOULD YOU STATE WHETHER OR NOT THE CRIME
16 SCENE WAS SECURED AT THE TIME YOU ARRIVED?

17 A. YES, SIR. THEY HAD TAKEN CONTROL OF THE SCENE, AND
18 I RESPONDED AS A DETECTIVE SUPERVISOR; BUT THEY HAD
19 ALREADY -- THE E.M.S. PERSONNEL, I BELIEVE THE
20 FIRST RESPONDERS, HAD ALREADY BEEN IN; AND IT WAS
21 SEALED.

22 Q. WHEN YOU ARRIVED WERE YOU THE SENIOR MAN IN CHARGE
23 OF EVERYTHING AT THE TIME YOU GOT THERE?

24 A. YES, SIR.

25 Q. SO YOU TOOK OVER FOR MR. NEALY?

MICHAEL TURNER - DIRECT/MR. BAILEY

1 A. YES, SIR.

2 Q. AS FAR AS ASSUMING THE OVERALL RESPONSIBILITY AT
3 THE SCENE?

4 A. YES, SIR.

5 Q. ALL RIGHT, SIR. WOULD YOU STATE WHETHER OR NOT YOU
6 WERE PRESENT WHEN RON MANCHESTER WHO'S THE TOWN
7 CRIME SCENE DETECTIVE ARRIVED?

8 A. YES, SIR.

9 Q. NOW BETWEEN THE TIME THAT YOU ARRIVED THERE OR TOOK
10 OVER FOR MR. NEALY UNTIL THE TIME RON ARRIVED, DID
11 ANYONE COME OVER THERE AND DISTURB THE CRIME SCENE,
12 MOVE MRS. BOYD'S BODY, OR DO ANYTHING TO YOUR
13 KNOWLEDGE THAT WOULD HAVE INTERFERED WITH ANY
14 EVIDENCE?

15 A. NO, SIR; THE SCENE WAS SEALED.

16 Q. ALL RIGHT. NOW BACK ON SEPTEMBER THE FIRST, 1996,
17 WAS IT DAYLIGHT SAVINGS?

18 A. YES, SIR, IT WAS.

19 Q. ALL RIGHT. DO YOU RECALL WHETHER OR NOT AT 6:00
20 A.M. BACK ON SEPTEMBER THE FIRST, 1996, WAS IT
21 LIGHT OR DARK?

22 A. IT SHOULD HAVE BEEN DARK, SIR.

23 Q. THANK YOU. THAT'S ALL I HAVE. PLEASE ANSWER ANY
24 QUESTIONS MR. THEOS MAY HAVE FOR YOU.

25 THE COURT: YOU MAY CROSS.

MICHAEL TURNER - CROSS/MR. THEOS

CROSS-EXAMINATION

BY MR. THEOS:

Q. OFFICER TURNER, WHAT WERE YOUR DUTIES AT THE TIME THAT YOU WERE WITH THE SUMMERVILLE POLICE DEPARTMENT?

A. AT THAT TIME I WAS THE DETECTIVE SUPERVISOR.

Q. OKAY. WHAT DID THAT ENTAIL? WHAT DOES THAT MEAN?

A. I WAS THE SENIOR INVESTIGATOR. I HAD SEVERAL INVESTIGATORS THAT WORKED FOR ME OF WHICH ONE IS THE CRIME SCENE TECHNICIAN. I INSTRUCTED THEM ON WHAT TO DO AND THE WAY THEY ESSENTIALLY BEGAN THE INVESTIGATION.

Q. OKAY. AND AS I UNDERSTAND IT, YOU WERE THE DETECTIVE IN CHARGE OF THIS INVESTIGATION AT THE OUTSET?

A. AT THE OUTSET; YES, SIR.

Q. HOW LONG DID YOU PROCEED AS THE HEAD OF THAT INVESTIGATION BEFORE IT WAS SWITCHED TO SOMEBODY ELSE?

A. I ASSUMED -- I WAS PROMOTED AND ASSUMED OTHER DUTIES ROUGHLY A MONTH LATER.

Q. OKAY. I UNDERSTAND YOU PLAYED OTHER ROLES BECAUSE OF THE FACT THAT YOU WERE THE LEAD DETECTIVE IN THIS CASE FOR SOME PERIOD OF TIME. YOU PLAYED ANOTHER ROLE OTHER THAN JUST MAKING SURE THAT THE

MICHAEL TURNER - CROSS/MR. THEOS

1 CRIME SCENE WAS SECURE AND INSTRUCTING OFFICER
2 MANCHESTER TO TAKE CONTROL?

3 A. YES, SIR. I WAS AN INVESTIGATOR IF THAT'S WHAT
4 YOU'RE ASKING; YES, SIR.

5 MR. THEOS: YOUR HONOR, WE WOULD
6 HAVE NO FURTHER QUESTIONS OF OFFICER TURNER AT THIS
7 TIME JUST SUBJECT TO -- WE'VE SUBPOENAED HIM AS
8 WELL.

9 THE COURT: WOULD YOU LIKE HIM TO
10 REMAIN IN COURT, OR COULD YOU GIVE HIM A TWO HOUR
11 NOTICE OF WHEN WE MIGHT NEED HIM?

12 MR. THEOS: WE'LL GIVE HIM MORE THAN
13 THAT, JUDGE. WE HOPEFULLY WILL GIVE HIM A CALL
14 SOME TIME TOMORROW MORNING AND LET HIM KNOW WHAT
15 DATE AND WHAT TIME.

16 THE COURT: IS THAT AGREEABLE, SIR?

17 MR. MANCHESTER: YES, SIR.

18 THE COURT: THANK YOU, SIR. I
19 ASSUME THERE WAS NO RE-DIRECT?

20 MR. BAILEY: NO, SIR.

21 MR. BAILEY: THE STATE WOULD NEXT
22 CALL RON MANCHESTER.

23 - - - - -

24 WHEREUPON,

25 RONALD BRUCE MANCHESTER, WHO AFTER BEING

RONALD BRUCE MANCHESTER - DIRECT/MR. BAILEY

FIRST DULY SWORN TO TELL THE TRUTH,
TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. BAILEY:

Q. MR. MANCHESTER, WHERE ARE YOU EMPLOYED?

A. I'M EMPLOYED WITH THE SUMMERVILLE POLICE
DEPARTMENT.

Q. WHAT IS YOUR RANK?

A. I'M CURRENTLY A SERGEANT WITH THE SUMMERVILLE
POLICE DEPARTMENT.

Q. WHAT ARE YOUR DUTIES AT THIS TIME?

A. THREEFOLD. I AM THE CRIME SCENE TECHNICIAN. I AM
ALSO THE EVIDENCE CUSTODIAN. AND I'M ALSO A LATENT
EXAMINER WITH THE SUMMERVILLE POLICE DEPARTMENT.

Q. YOU SAID LATENT EXAMINER. ARE YOU TALKING ABOUT
FINGERPRINTS?

A. YES, SIR.

Q. ALL RIGHT, SIR. AND DID YOU HOLD ALL THREE OF
THOSE RESPONSIBILITIES BACK IN SEPTEMBER OF 1996?

A. YES, SIR, I DID.

Q. WOULD YOU BRIEFLY DESCRIBE TO THE JURY WHAT YOUR
DUTIES ARE AS A CRIME SCENE TECHNICIAN?

A. AS A CRIME SCENE TECHNICIAN I AM SUMMONSED TO GO TO
DIFFERENT CRIME SCENES. ONE OF THE FIRST THINGS I
DO IS I AM BRIEFED BY EITHER THE FIRST RESPONDING

RONALD BRUCE MANCHESTER - DIRECT/MR. BAILEY

1 OFFICER OR MY SUPERVISOR IF THEY CAN GIVE ME ENOUGH
2 DETAIL ON WHAT OCCURRED. THEN IS TO PROCEED INTO
3 THE CRIME SCENE AND COLLECT PHYSICAL EVIDENCE OR
4 MAKE A DETERMINATION OF WHAT HAS TAKEN PLACE.

5 Q. WHAT TYPE PHYSICAL EVIDENCE DO YOU LOOK FOR AT A
6 CRIME SCENE JUST IN GENERAL; NOT IN THIS CASE, BUT
7 JUST IN GENERAL?

8 A. FINGERPRINTS, ANY TRACE EVIDENCE, ANY FOOTWEAR
9 EVIDENCE. AND I CAN GO ON.

10 Q. OKAY. BUT AS FAR AS EVIDENCE CUSTODIAN, WHAT DO
11 YOU DO FOR THE POLICE DEPARTMENT THERE?

12 A. I HAVE AN EVIDENCE ROOM AT THE SUMMERVILLE POLICE
13 DEPARTMENT WHERE EVIDENCE IS TURNED IN. IT'S MY
14 JOB TO TAKE THAT EVIDENCE FROM THE EVIDENCE LOCKER,
15 TO LOG IT IN THE COMPUTER, TO MAINTAIN AND CONTROL
16 THIS EVIDENCE. AND THEN IF THE EVIDENCE NEEDS TO
17 BE TRANSPORTED TO ANY SPECIAL LABS; IT'S MY JOB
18 ALSO TO CARRY THE EVIDENCE TO THE LABS.

19 Q. OKAY. WOULD THAT INCLUDE THE SLED LAB, THE STATE
20 LAW ENFORCEMENT DIVISION'S LAB, IN COLUMBIA?

21 A. YES, SIR.

22 Q. ALL RIGHT, SIR. WHAT TRAINING HAVE YOU HAD AS A
23 CRIME SCENE TECHNICIAN AND LATENT FINGERPRINT
24 IDENTIFICATION?

25 A. IN AUGUST THE 23RD OF 1991, I ATTENDED BASIC LAW

RONALD BRUCE MANCHESTER - DIRECT/MR. BAILEY

1 ENFORCEMENT TRAINING AT THE SOUTH CAROLINA CRIMINAL
2 JUSTICE ACADEMY; ALSO LAW ENFORCEMENT PHOTOGRAPHY
3 MAY THE 14TH, 1993.

4 Q. SLOW DOWN JUST A LITTLE BIT.

5 A. I'M SORRY. THE LAW ENFORCEMENT TRAINING WITH THE
6 SOUTH CAROLINA JUSTICE ACADEMY. I ALSO ATTENDED A
7 SEMINAR ON DEATH INVESTIGATION ON MARCH THE 20TH,
8 1994, AT M.U.S.C.; DETECTIVE LEVEL ONE MAY THE
9 SIXTH, 1994, AT THE SOUTH CAROLINA CRIMINAL JUSTICE
10 ACADEMY; BASIC FINGERPRINTS ON MAY THE 20TH, 1994,
11 AT THE SOUTH CAROLINA CRIMINAL JUSTICE ACADEMY;
12 LATENT PRINT DEVELOPMENT TECHNIQUES OCTOBER THE
13 27TH, 1994, AGENT DWAYNE JOHNSON WITH THE F.B.I.
14 LATENT PRINT IDENTIFICATION NOVEMBER THE FOURTH,
15 1994, ALSO WITH DWAYNE JOHNSON WITH THE F.B.I.;
16 BASIC ARSON INVESTIGATION DECEMBER THE 16TH, 1994.
17 HOMICIDE INVESTIGATION MAY THE 19TH, 1995, SOUTH
18 CAROLINA CRIMINAL JUSTICE ACADEMY; ADVANCED PALM
19 PRINT IDENTIFICATION AUGUST THE 28TH, 1996;
20 INSTRUCTOR WAS RON SMITH FROM THE MISSISSIPPI STATE
21 CRIME LAB; ALSO BLOOD PATTERN ANALYSIS SCHOOL
22 SEPTEMBER THE 19TH, 1996. INSTRUCTOR WAS JERRY
23 FINLEY WITH THE GEORGIA PUBLIC SAFETY TRAINING
24 CENTER. AND I.D. TECHNICIAN SCHOOL MAY THE 23RD,
25 1997, AT THE SOUTH CAROLINA CRIMINAL JUSTICE

RONALD BRUCE MANCHESTER - DIRECT/MR. BAILEY

ACADEMY.

Q. HAVE YOU BEEN QUALIFIED AS AN EXPERT WITNESS IN THE
FIELD OF FINGERPRINT IDENTIFICATION IN THE PAST IN
THE COURTS OF THIS STATE?

A. YES, SIR, I HAVE.

Q. ABOUT HOW MANY TIMES?

A. APPROXIMATELY SIX.

Q. YOU'VE TESTIFIED IN ALL SIX OF THOSE OCCASIONS?

A. YES, SIR.

MR. BAILEY: YOUR HONOR, I WOULD
TENDER MR. MANCHESTER AS AN EXPERT IN FINGERPRINT
IDENTIFICATION.

THE COURT: YOU MAY CROSS IF YOU
WISH, MR. THEOS.

MR. THEOS: NO, SIR; THAT'S WITHOUT
OBJECTION, YOUR HONOR.

THE COURT: ALL RIGHT. WITHOUT
OBJECTION; PROCEED.

MR. BAILEY: THANK YOU, YOUR HONOR.

BY MR. BAILEY:

Q. MR. MANCHESTER, I CALL YOUR ATTENTION TO SEPTEMBER
THE FIRST, 1996, ABOUT 2:00 P.M. THAT SUNDAY. WERE
YOU SENT OR TOLD TO GO TO 911 WEST LUKE STREET IN
SUMMERVILLE?

A. YES, SIR, I WAS.

RONALD BRUCE MANCHESTER - DIRECT/MR. BAILEY

1 Q. ALL RIGHT, SIR. AND WHEN YOU GOT TO THAT ADDRESS
2 ON LUKE STREET, WHO WAS IN CHARGE OF THE CRIME
3 SCENE?

4 A. FIRST SERGEANT MIKE TURNER.

5 Q. ALL RIGHT, SIR. AND WHEN YOU ARRIVED DID YOU HAVE
6 ANY DISCUSSIONS WITH SERGEANT TURNER?

7 A. YES, SIR, I DID.

8 Q. WOULD YOU STATE WHETHER OR NOT YOU EXAMINED THE
9 INTERIOR OF THE HOUSE AT 911 WEST LUKE STREET?

10 A. YES, SIR, I DID.

11 Q. LET ME SHOW YOU A PHOTOGRAPH OF STATE'S THREE,
12 PRE-MARKED. CAN YOU SEE THAT, SGT. MANCHESTER?

13 A. YES, SIR.

14 Q. IS THAT THE FRONT OF MRS. LILLY BELL BOYD'S HOUSE
15 AT 911 WEST LUKE?

16 A. YES, SIR. I TOOK THAT PHOTOGRAPH.

17 Q. NOW WHEN YOU ARRIVED AT 911 WEST LUKE, DID YOU MAKE
18 ANY OBSERVATIONS ABOUT THE CONDITION OF THE FRONT
19 DOOR AND THE WINDOWS?

20 A. THE FRONT DOOR WAS LOCKED AND SECURED AND ALSO THE
21 WINDOWS WERE.

22 Q. NOW, AFTER OBSERVING THE FRONT OF THE HOUSE DID YOU
23 GO AROUND TO THE BACK?

24 A. YES, SIR, I DID.

25 Q. THIS IS STATE'S TWO ALREADY IN EVIDENCE WHICH HAS

RONALD BRUCE MANCHESTER - DIRECT/MR. BAILEY

1 BEEN IDENTIFIED AS BEING A PHOTOGRAPH OF THE BACK
2 DOOR, THE BACK PORCH. ARE YOU FAMILIAR WITH THAT?

3 A. YES, SIR.

4 Q. ALL RIGHT, SIR. IN THE BACK YARD OF THAT HOUSE DID
5 YOU OBSERVE ANYTHING ON THE GROUND?

6 A. YES, SIR. AT THE BOTTOM OF THE STEPS THERE WAS
7 SOME FOOTWEAR IMPRESSIONS IN THE SOFT SAND OR DIRT.

8 Q. SO YOU SAW A FOOTPRINT?

9 A. YES, SIR.

10 Q. DOES THAT PHOTOGRAPH THERE SHOW THE AREA WHERE YOU
11 OBSERVED THE FOOTPRINT?

12 A. YES, SIR.

13 Q. OKAY. CAN YOU POINT THAT OUT TO THE JURY?

14 (WITNESS COMPLIES.)

15 A. IT WOULD BE THIS AREA RIGHT IN HERE. (INDICATING.)

16 Q. OKAY. YOU CAN HAVE A SEAT. MR. MANCHESTER, AS A
17 CRIME SCENE TECHNICIAN, WHEN YOU OBSERVE A
18 FOOTPRINT AT A CRIME SCENE, WHAT ARE YOU TRAINED TO
19 DO?

20 A. DOCUMENT AND PRESERVE IT FOR LATER IDENTIFICATION.

21 Q. HOW DO YOU DO THAT; PHOTOGRAPH IT?

22 A. YES, SIR, BY PHOTOGRAPHING IT.

23 Q. DID YOU PHOTOGRAPH THAT FOOTPRINT?

24 A. YES, SIR, I DID.

25 Q. DID YOU OBSERVE THE CONDITION OF THE BACK DOOR?

RONALD BRUCE MANCHESTER - DIRECT/MR. BAILEY

1 A. YES, SIR, I DID.

2 Q. WHAT WAS THAT?

3 A. IT WAS PARTIALLY OPEN.

4 Q. OKAY. AND DID YOU ENTER THE HOUSE?

5 A. YES, SIR, I DID.

6 Q. AND WOULD YOU STATE WHETHER OR NOT YOU PREPARED A
7 SKETCH, NOT TO SCALE SKETCH, OF THE INSIDE OF THE
8 HOUSE AT 911 WEST LUKE?

9 A. YES, SIR, I DID.

10 Q. IN FACT YOU PREPARED A COUPLE OF SKETCHES, DIDN'T
11 YOU?

12 A. YES, SIR.

13 Q. ALL RIGHT. LET ME SHOW YOU WHAT'S BEEN MARKED
14 STATE'S FOUR. AND I BELIEVE THE DEFENSE HAS A
15 COPY. IS THAT THE SKETCH YOU PREPARED?

16 A. YES, SIR.

17 Q. ALL RIGHT, SIR. I'M GOING TO PUT THIS ON THE
18 PODIUM HERE AND ASK IF YOU CAN COME AROUND AND
19 DEMONSTRATE TO THE JURY WHAT'S SHOWN. AND IF YOU
20 WOULD, TRY TO STAND TO THE SIDE WHERE EVERYONE CAN
21 SEE.

22 THE COURT: IS THAT TO SCALE OR
23 NOT?

24 MR. MANCHESTER: NO, SIR, IT'S NOT
25 TO SCALE.

RONALD BRUCE MANCHESTER - DIRECT/MR. BAILEY

1 THE COURT: NO PROBLEM. I JUST
2 WONDERED.

3 A. MYSELF AND FIRST SGT. MIKE TURNER ASSISTED ME IN
4 HOLDING THE TAPE MEASURER AND GETTING THE
5 MEASUREMENTS. ALL THIS IS IS AN OVERVIEW OF THE
6 KITCHEN AREA WHERE THE BODY WAS FOUND. AND BECAUSE
7 I CAN ONLY TAKE PICTURES FROM ONE SIDE OR ONE ANGLE
8 AT THE TIME, WE LIKE TO DO A SKETCH OF THE AREA SO
9 WE CAN PUT IT AND JUST GIVE YOU AN OVERHEAD
10 ORIENTATION OF THE KITCHEN AREA.

11 Q. FIRST OF ALL, SHOW THE JURY WHERE THE BACK DOOR IS,
12 WHERE THE ENTRY IS.

13 A. THE DOOR; YOU'D ENTER RIGHT IN THIS AREA RIGHT HERE
14 INTO THE BACK HALLWAY.

15 Q. ALL RIGHT. AND THAT ROOM THERE WITH THE STUFF IN
16 THE CORNERS AND THE DETAIL ON IT, WHAT ROOM IS
17 THAT?

18 A. WHEN YOU ENTER INTO THE BACK DOOR, IMMEDIATELY TO
19 YOUR LEFT THERE'S A DOORWAY RIGHT HERE THAT YOU GO
20 INTO THE KITCHEN AREA.

21 Q. ALL RIGHT. AND WHEN YOU WENT INTO THAT KITCHEN
22 AREA, WHAT DID YOU OBSERVE?

23 A. AN ELDERLY BLACK FEMALE LYING ON HER LEFT SIDE.

24 Q. ALL RIGHT, SIR. AND DID YOU MAKE ANOTHER SKETCH, A
25 ROUGH SKETCH, SHOWING THE LOCATION AND THE POSITION

1 OF THE BODY?

2 A. YES, SIR.

3 Q. ALL RIGHT. I'M GOING TO HAND WHAT'S BEEN MARKED
4 STATE'S FIVE AND ASK IF THAT'S THE DRAWING YOU
5 MADE?

6 A. YES, SIR, IT IS.

7 MR. BAILEY: YOUR HONOR, THE DEFENSE
8 HAS A COPY OF THIS, AND I BELIEVE NO OBJECTION TO
9 IT.

10 THE COURT: YES, SIR.

11 MR. BAILEY: NO OBJECTION TO STATE'S
12 FIVE.

13 STATE'S EXHIBIT NO. 5

14 ADMITTED AS EVIDENCE

15 Q. MR. MANCHESTER, IF YOU WOULD, PLEASE, GO
16 AHEAD AND DESCRIBE WHAT THAT PICTURE
17 DEPICTS.

18 A. FIRST OF ALL I'D LIKE TO SAY THIS IS NOT TO SCALE.
19 THE MEASUREMENTS HERE ARE JUST FOR ORIENTATION.
20 THIS IS AGAIN THE KITCHEN AREA WHEN YOU WOULD WALK
21 INTO THE BACK DOOR RIGHT HERE. THIS WOULD BE THE
22 ENTRANCE ON YOUR LEFT-HAND SIDE AS SOON AS YOU WALK
23 INTO THE BACK DOOR.

24 Q. AND YOU'VE GOT A SKETCH OF A FIGURE LAYING ON THE
25 FLOOR; IS THAT CORRECT?

1 A. YES, SIR.

2 Q. WOULD YOU DEMONSTRATE THAT TO THE JURY? WHAT DOES
3 THAT SHOW?

4 A. THIS DEMONSTRATES MRS. LILLY BELL BOYD LAYING ON
5 HER LEFT SIDE WITH HER HANDS TO HER BACK AND HER
6 FEET BEING TOGETHER AND TIED.

7 Q. DID YOU FIND ANYTHING NEAR HER HANDS?

8 A. NEAR HER HANDS? YES, SIR; SOME HOSE OR STOCKINGS.

9 Q. OKAY. WOULD YOU STATE WHETHER OR NOT YOU COLLECTED
10 THAT AS EVIDENCE?

11 A. YES, SIR, I DID.

12 Q. POTENTIAL EVIDENCE?

13 A. YES, SIR.

14 Q. MR. MANCHESTER, I'M GOING TO AND YOU WHAT'S BEEN
15 MARKED STATE'S NUMBER SIX AND ASK IF YOU CAN
16 IDENTIFY THAT, PLEASE. GO AHEAD AND TAKE IT OUT OF
17 THE BAG IF YOU NEED TO. (WITNESS EXAMINES CONTENTS
18 OF BAG.)

19 A. YES, SIR, I CAN IDENTIFY IT.

20 Q. WHAT IS THAT?

21 A. THEY WERE THE STOCKINGS THAT WERE LOCATED RIGHT
22 NEAR HER HANDS TO THE BACK OF HER BODY. AND THIS
23 IS THE BAG THAT I PLACED THEM IN.

24 Q. CAN YOU JUST HOLD THOSE UP AND DEMONSTRATE THEM FOR
25 THE JURY, PLEASE? (WITNESS COMPLIES.)

RONALD BRUCE MANCHESTER - DIRECT/MR. BAILEY

1 MR. BAILEY: YOUR HONOR, I BELIEVE
2 THAT'S IN EVIDENCE BY AGREEMENT.

3 THE COURT: YES, SIR; THAT'S
4 CORRECT.

5 STATE'S EXHIBIT NO. 6

6 ADMITTED AS EVIDENCE

7 Q. YOU CAN HAVE A SEAT. I WANT TO CALL YOUR ATTENTION
8 TO THE AREA AROUND MRS. BOYD'S FEET. DID YOU MAKE
9 ANY OBSERVATIONS THERE?

10 A. YES, SIR. SHE DIDN'T HAVE ANY SHOES ON, AND THERE
11 WAS A BLACK ROPE LIKE YARN TYPE MATERIAL AROUND HER
12 ANKLES AND FEET.

13 STATE'S EXHIBIT NO. 7

14 ADMITTED AS EVIDENCE

15 Q. I'M GOING TO SHOW YOU WHAT'S BEEN MARKED AS STATE'S
16 SEVEN AND ASK YOU TO LOOK IN THAT BAG AND SEE IF
17 YOU CAN IDENTIFY THAT. (WITNESS REVIEWS DOCUMENT.)

18 MR. THEOS: WITHOUT OBJECTION, YOUR
19 HONOR.

20 A. YES, SIR; I CAN IDENTIFY IT.

21 Q. ALL RIGHT, SIR. AND AGAIN, WHERE DID YOU FIND THAT
22 BLACK MATERIAL?

23 A. THIS BLACK MATERIAL WAS AROUND HER FEET.

24 Q. OKAY. AND YOU SAY AROUND HER FEET, WAS IT LAYING
25 ON THE SIDE AROUND IT OR HOW WAS IT THERE?

RONALD BRUCE MANCHESTER - DIRECT/MR. BAILEY

1 A. TIED AROUND HER FEET.

2 Q. OKAY. WOULD YOU JUST COME UP TO THE JURY AND
3 DEMONSTRATE THAT TO THEM, PLEASE?

4 THE COURT: WITHOUT OBJECTION;
5 STATE'S SEVEN.

6 A. IT WAS JUST -- BOTH OF HER FEET WERE THROUGH THIS
7 BLACK ROPE-LIKE TYPE MATERIAL.

8 Q. THANK YOU, MR. MANCHESTER. YOU CAN HAVE A SEAT
9 NOW. PUT THAT BACK IN THE BAG, PLEASE. (WITNESS
10 COMPLIES.) MR. MANCHESTER, WHAT WAS THE CONDITION
11 OF MRS. BOYD'S CLOTHING WHEN YOU ARRIVED?

12 A. HER CLOTHING WAS BLOODY. HER PANTIES HAD BEEN
13 PULLED DOWN. AND HER DRESS HAD BEEN PUSHED UP
14 SOME.

15 Q. DID YOU NOTICE ANYTHING ELSE IN THE AREA AROUND
16 MRS. BOYD'S BODY OTHER THAN THE BLACK ROPE-LIKE
17 MATERIAL AND STOCKINGS THAT YOU'VE IDENTIFIED?

18 A. YES, SIR.

19 Q. WHAT ELSE WAS THERE?

20 A. THERE WAS TOWELS AND LIKE A DARK BLUE JACKET TYPE
21 MATERIAL AROUND HER FACE THAT APPEARED TO HAVE BEEN
22 USED TO CLEAN UP BLOOD OR SOMETHING LIKE THAT.

23 Q. OKAY. DID YOU OBSERVE ANY BANDAGE?

24 A. THERE WAS ALSO BANDAGE AND PAPER TOWELS.

25 Q. ALL RIGHT. NOW IN REGARD TO MRS. BOYD'S FACE, WHAT

RONALD BRUCE MANCHESTER - DIRECT/MR. BAILEY

1 OBSERVATIONS DID YOU MAKE, IF ANY?

2 A. VERY SWOLLEN; VERY DISCOLORED. AND IT APPEARED
3 THAT SHE HAD BEEN BEAT IN THE FACE WITH A BLUNT
4 OBJECT.

5 Q. DID YOU TAKE PHOTOGRAPHS OF THE CRIME SCENE
6 INCLUDING THE BODY?

7 A. YES, SIR, I DID.

8 Q. NOW IN REGARD TO THE BLACK ROPE-LIKE MATERIAL THAT
9 YOU OBSERVED AROUND MRS. BOYD'S FEET, DID YOU
10 OBSERVE ANY OTHER SIMILAR BLACK ROPE-LIKE MATERIAL
11 IN MRS. BOYD'S HOUSE?

12 A. YES, SIR, I DID.

13 Q. OKAY. AND WHERE DID YOU OBSERVE THAT?

14 A. IN THE -- WHEN YOU ENTERED INTO THE BACK OF THE
15 HOUSE, THERE'S A LARGE HALLWAY, THE BACK HALLWAY.
16 THERE WAS A KITCHEN TABLE SET UP THERE; AND ONE OF
17 THE CHAIRS HAD A CUSHION ON IT. AND THIS MATERIAL
18 WAS USED -- IT WAS ON A CUSHION TO HOLD THE CUSHION
19 ON THE CHAIR.

20 STATE'S EXHIBIT NO. 8

21 ADMITTED AS EVIDENCE

22 Q. I'M GOING TO HAND YOU WHAT'S BEEN MARKED AS STATE'S
23 EIGHT AND ASK IF YOU CAN IDENTIFY THAT AS BEING THE
24 ROPE LIKE MATERIAL THAT YOU TOOK OFF THE KITCHEN.

25 A. YES, SIR.

RONALD BRUCE MANCHESTER - DIRECT/MR. BAILEY

1 Q. ALL RIGHT, SIR. DID YOU COMPARE STATE'S EIGHT, THE
2 ROPE MATERIAL OFF OF THE CUSHION WITH STATE'S SEVEN
3 WHICH WAS THE ROPE-LIKE MATERIAL THAT WAS TIED
4 AROUND HER FEET?

5 A. YES, SIR.

6 Q. DID IT APPEAR TO BE THE SAME TYPE MATERIAL?

7 A. VISUALLY; YES, SIR.

8 Q. NOW, IN REGARD TO THE SHOE PRINT THAT YOU TOOK, THE
9 PHOTOGRAPH OF THE SHOE PRINT; DID YOU GO BACK INTO
10 THE BOYD HOUSE AT A LATER DATE TO LOOK FOR THE
11 SHOES TO SEE IF YOU COULD GET A VISUAL MATCH TO THE
12 CLEAN SHOES IN THE HOUSE AND THAT PRINT OUT THERE?

13 A. YES, SIR.

14 Q. ALL RIGHT, SIR. AND APPROXIMATELY WHEN WAS IT THAT
15 YOU WENT BACK OUT TO THE HOUSE TO LOOK FOR THOSE
16 SHOES?

17 A. LAST WEEK.

18 Q. AND DID YOU LOCATE ANY SHOES THAT APPEARED TO YOU
19 TO LOOK SIMILAR TO THAT SHOE IMPRESSION?

20 A. YES, SIR.

21 Q. OKAY. WOULD YOU PLEASE STATE WHY YOU WENT OUT
22 THERE LAST WEEK INSTEAD OF SOME POINT IN TIME
23 BEFORE THAT?

24 A. I HAD BEEN BUSY TRANSPORTING EVIDENCE AND DOING
25 OTHER THINGS, SO I REQUESTED OTHER DETECTIVES TO GO

RONALD BRUCE MANCHESTER - DIRECT/MR. BAILEY

1 OUT THERE AND LOOK FOR THIS SHOE PRINT. AND I HAD
2 SHOWED THEM PHOTOGRAPHS OF IT. BUT I PERSONALLY
3 HADN'T GONE OUT THERE AND LOOKED MYSELF. AND IN
4 REVIEWING FOR THE CASE I WAS LOOKING AT THE VIDEO
5 TAPE OF THE CRIME SCENE, A VIDEO THAT I HAD MADE OF
6 THE CRIME SCENE. AND I OBSERVED A PAIR OF SHOES IN
7 THE VIDEO TAPE. AND I FELT IT WAS THE RIGHT THING
8 FOR ME TO DO TO PERSONALLY GO BACK OUT THERE AND
9 PERSONALLY LOOK FOR THESE SHOES AT WHICH TIME I
10 DID.

11 Q. LET ME HAND YOU A BOX AND SEE IF YOU CAN IDENTIFY
12 THE CONTENTS OF THIS BOX. (WITNESS REVIEWS
13 CONTENTS OF BOX.)

14 A. YES, SIR, I CAN.

15 Q. ALL RIGHT, SIR. WHAT IS THAT?

16 A. THESE ARE THE SHOES THAT I FOUND IN MRS. LILLY BELL
17 BOYD'S BEDROOM.

18 Q. OKAY. AND WHAT PART OF THE BEDROOM DID YOU FIND
19 THEM IN?

20 A. IN A CORNER BEHIND THE DOOR.

21 MR. BAILEY: YOUR HONOR, I WOULD
22 MOVE JUST TO HAVE THOSE MARKED FOR IDENTIFICATION
23 AT THIS POINT.

24 THE COURT: ALL RIGHT. STATE'S
25 NUMBER EIGHT FOR I.D. ARE THEY BEDROOM SHOES OR

RONALD BRUCE MANCHESTER - DIRECT/MR. BAILEY

1 WALKING SHOES?

2 MR. BAILEY: THEY APPEAR TO BE SOME
3 TYPE OF SANDALS. I THINK WE'VE ALREADY GOT A
4 NUMBER EIGHT. SO, YOUR HONOR, THIS WOULD BE
5 FOURTEEN.

6 THE COURT: STATE'S NUMBER FOURTEEN
7 FOR I.D. THANK YOU.

8 STATE'S EXHIBIT NO. 14

9 MARKED FOR IDENTIFICATION

10 Q. I'M GOING TO HAND YOU THIS. I CALL YOUR ATTENTION
11 TO THE PHOTOGRAPH ON THE LEFT. CAN YOU IDENTIFY
12 THAT AS BEING THE PHOTOGRAPH THAT YOU TOOK THAT YOU
13 IDENTIFIED THE LOCATION OUTSIDE OF THE BACK DOOR?

14 A. YES, SIR.

15 MR. BAILEY: YOUR HONOR, I WOULD
16 LIKE TO HAVE THIS MARKED FOR IDENTIFICATION AT THIS
17 POINT.

18 THE COURT: STATE'S NUMBER FIFTEEN,
19 MA'AM?

20 THE COURT REPORTER: YES, SIR.

21 THE COURT: FOR I.D., OF COURSE.

22 STATE'S EXHIBIT NO. 15

23 MARKED FOR IDENTIFICATION

24 Q. MR. MANCHESTER, WILL YOU STATE WHETHER OR NOT YOU
25 TOOK THE PHOTOGRAPH THAT YOU JUST IDENTIFIED THAT

RONALD BRUCE MANCHESTER - DIRECT/MR. BAILEY

1 WAS MARKED FOR IDENTIFICATION AS WELL AS THE WHITE
2 SHOES THAT WERE MARKED FOR IDENTIFICATION JUST NOW
3 TO STEVE DERRICK FROM SLED?

4 A. YES, SIR, I DID.

5 Q. FOR WHAT PURPOSE?

6 A. TO EXAMINE THE TWO OF THEM FOR COMPARISON.

7 Q. ALL RIGHT, SIR. YOU'VE BEEN QUALIFIED AS AN EXPERT
8 IN FINGERPRINT IDENTIFICATION. WOULD YOU PLEASE
9 TELL THE JURY WHAT A LATENT FINGERPRINT IS?

10 A. YES, SIR. ON THE BOTTOMS OF YOUR FINGERS ARE
11 RAISED AREAS OF SKIN. THESE RAISED AREAS OF SKIN
12 ARE KNOWN AS FRICTION RIDGES. ON THE TOPS OF THESE
13 FRICTION RIDGES ARE PORES THAT SECRETE
14 PERSPIRATION. THIS PERSPIRATION WILL ADHERE TO THE
15 FINGERPRINT CHARACTERISTICS WHICH ARE YOUR ENDING
16 RIDGES AND DIVIDING RIDGES WHICH MAKE EACH
17 FINGERPRINT UNIQUE AND INDIVIDUAL. WHEN A
18 FINGERPRINT COMES IN CONTACT WITH A SURFACE, A
19 RECORDING OF THESE CHARACTERISTICS ARE THEN LEFT ON
20 THE SURFACE THAT IS TOUCHED. WITH THE USE OF
21 CHEMICALS OR FINGERPRINT POWDER WE CAN VISUALLY SEE
22 THESE FINGERPRINTS; AND THAT IS WHAT IS KNOWN AS
23 LATENT FINGERPRINTS.

24 Q. DOES A PERSON ALWAYS LEAVE A FINGERPRINT?

25 A. NO, SIR.

RONALD BRUCE MANCHESTER - DIRECT/MR. BAILEY

1 Q. WHY NOT?

2 A. WELL, FIRST THEY COULD HAVE GLOVES ON NATURALLY.
3 SECONDLY IF IT'S A DIRTY SURFACE OR SOMETHING LIKE
4 THAT, INSTEAD OF LEAVING THE PERSPIRATION OR THE
5 RIDGE CHARACTERISTICS ON THAT SURFACE; WHAT WILL
6 HAPPEN IS THE DIRT WILL ADHERE TO THE PERSPIRATION
7 OF THE WET FINGERS, AND THEN YOU WON'T HAVE THE
8 FINGERPRINT OR LATENT PRINT LEFT THERE AT THE
9 SCENE.

10 Q. OKAY. WHAT DOES IT MEAN TO LIFT A FINGERPRINT; TO
11 LIFT A LATENT PRINT?

12 A. WE LIFT A FINGERPRINT WHEN WE USE THE BLACK
13 POWDER. WE APPLY THE BLACK POWDER TO THE AREA
14 WHERE WE CAN SEE A FINGERPRINT APPEAR. WE TAKE
15 CLEAR LIFTING TAPE OR FINGERPRINT TAPE. WE APPLY
16 IT TO THAT AREA AND THEN RE-LIFT THE TAPE OFF OF
17 THAT SURFACE, AND THE FINGERPRINT POWDER THAT
18 ADHERES TO THE RIDGE CHARACTERISTIC IS THEN ON THAT
19 PIECE OF TAPE. THEN WE REAPPLY THE TAPE ONTO A
20 WHITE CARD WHERE WE CAN VISUALIZE THE LATENT
21 FINGERPRINT.

22 Q. DID YOU ATTEMPT TO LIFT ANY FINGERPRINTS FROM MRS.
23 BOYD'S HOUSE?

24 A. YES, SIR, I DID.

25 Q. WHAT THINGS IN THE HOUSE DID YOU TRY TO LIFT PRINTS

RONALD BRUCE MANCHESTER - DIRECT/MR. BAILEY

1 FROM? WHAT PART OF THE HOUSE?

2 A. THE BACK DOOR, THE BEDROOM AREA, THE TELEPHONE AREA
3 IN A HALLWAY, THE STOVE IN THE KITCHEN AREA. AND I
4 USED SOME OTHER CHEMICAL TYPE STUFF TO TRY TO
5 RECOVER FINGERPRINTS FROM OFF OF THE FLOOR IN THE
6 KITCHEN AREA.

7 Q. DID YOU ACTUALLY LIFT ANY FINGERPRINTS?

8 A. YES, SIR, I DID.

9 Q. FROM WHAT LOCATION WERE YOU SUCCESSFUL IN LIFTING
10 PRINTS FROM?

11 A. I RECOVERED IDENTIFIABLE OR PRINTS THAT COULD BE
12 I.D.'D FROM THE TELEPHONE AREA.

13 Q. AND DO YOU RECALL THE CONDITION OF THE TELEPHONE
14 WHEN YOU LIFTED THE PRINTS FROM IT?

15 A. IT WAS SLIGHTLY DIRTY.

16 Q. DIRTY?

17 A. YES, SIR.

18 Q. WHAT DATE WAS IT THAT YOU LIFTED PRINTS OFF THE
19 PHONE?

20 A. THE DAY OF THE INCIDENT.

21 Q. SEPTEMBER THE FIRST, 1996?

22 A. YES, SIR.

23 Q. OKAY. DID YOU ATTEMPT TO LIFT -- IS THERE A WAY TO
24 GET FINGERPRINTS OFF THE BODY?

25 A. YES, SIR.

RONALD BRUCE MANCHESTER - DIRECT/MR. BAILEY

1 Q. THERE IS? HOW DO YOU GO ABOUT DOING THAT?

2 A. THERE ARE NUMEROUS WAYS. BUT ONE OF THE WAYS I HAD
3 LEARNED WAS TO FUME THE BODY. WOULD YOU LIKE FOR
4 ME TO EXPLAIN?

5 Q. JUST BRIEFLY. PLEASE.

6 A. YOU HEAT UP SUPER-GLUE, AND IT TURNS INTO A GAS.
7 AND THIS GAS WILL ADHERE TO FINGERPRINTS.

8 Q. WERE YOU SUCCESSFUL IN GETTING ANY FINGERPRINTS OFF
9 OF MRS. BOYD'S BODY?

10 A. NO, SIR.

11 Q. AND IS THAT FUMING SYSTEM; DOES THAT ALWAYS WORK?

12 A. NO, SIR. AND USUALLY IT WORKS ONLY A FEW HOURS
13 AFTER BEING TOUCHED. AND NO, SIR, IT VERY OFTEN
14 DOES NOT WORK.

15 Q. OKAY. AND YOU WERE UNABLE TO GET ANY PRINTS OFF
16 MRS. BOYD'S BODY; IS THAT CORRECT?

17 A. YES, SIR.

18 Q. ALL RIGHT, SIR. AND THE FINGERPRINTS -- YOU MAY
19 HAVE ANSWERED THIS PREVIOUSLY -- BUT THE
20 FINGERPRINTS YOU ATTEMPTED TO LIFT, SPECIFICALLY
21 OFF THE TELEPHONE, WERE ANY OF THOSE READABLE
22 PRINT?

23 A. YES, SIR.

24 Q. FROM WHAT LOCATION?

25 A. ON THE SIDE, AND I BELIEVE ON THE RECEIVER.

RONALD BRUCE MANCHESTER - DIRECT/MR. BAILEY

1 Q. WERE THE PRINTS -- TO YOUR KNOWLEDGE WERE THE
2 PRINTS THAT YOU LIFTED OFF THAT TELEPHONE COMPARED
3 TO ANYBODY ELSE'S FINGERPRINTS, ANY SPECIFIC
4 INDIVIDUAL?

5 A. YES, SIR.

6 Q. WHO WERE THEY COMPARED TO?

7 A. INDIVIDUAL PERSONS THAT THIS WAS COMPARED TO, THERE
8 WERE ALL THE OFFICERS THAT WERE AT THE SCENE, MRS.
9 VIRGINIA WILSON, MRS. BLONDELLE SMITH, TWO
10 RESPONDING OFFICERS, IN WHICH THEY LEFT -- PALM
11 PRINTS OF JOHNNY NEALY WAS RECOVERED FROM THE
12 TELEPHONE. THERE WAS A TOTAL SEARCH OF EVERY
13 FINGERPRINT CARD WE HAD AT THE SUMMERVILLE POLICE
14 DEPARTMENT.

15 Q. BEFORE WE GET ON TO THE TOTAL SEARCH, LET ME ASK
16 YOU ABOUT THAT; THE SEARCH TO SPECIFIC PRINTS
17 THERE. WERE THEY AT SOME POINT LATER ON IN TIME
18 COMPARED TO KENNETH SIMMONS' PRINTS?

19 A. YES, SIR.

20 Q. WERE THEY COMPARED WITH LILLY BELL BOYD'S PRINTS
21 TAKEN AT THE AUTOPSY?

22 A. YES, SIR.

23 Q. WERE THEY COMPARED WITH BLONDELLE SMITH'S AND
24 VIRGINIA WILSON'S PRINTS?

25 A. YES, SIR.

RONALD BRUCE MANCHESTER - DIRECT/MR. BAILEY

1 Q. AND OFFICER NEALY'S?

2 A. YES, SIR.

3 Q. AND YOU TESTIFIED THAT A PALM PRINT WAS IDENTIFIED
4 AS OFFICER NEALY'S; IS THAT CORRECT?

5 A. YES, SIR.

6 Q. OKAY. AND WERE THERE SOME PRINTS ON THE TELEPHONE
7 THAT WERE NOT IDENTIFIED WITH ANY OF THESE PEOPLE?

8 A. THAT IS CORRECT.

9 Q. OKAY. AND YOU WERE GETTING READY TO SAY SOMETHING
10 ABOUT A COLD SEARCH. WHAT'S A COLD SEARCH?

11 A. WHEN YOU DON'T KNOW WHO THE FINGERPRINT BELONGS TO,
12 YOU CAN ACTUALLY MANUALLY PULL EVERYTHING ON THE
13 PRINT CARD THAT YOU HAVE ON FILE AND DO A SEARCH TO
14 YOUR UNKNOWN PRINT.

15 Q. WAS THAT DONE?

16 A. IT WAS DONE BY SLED; YES, SIR.

17 Q. OKAY. AND WERE YOU PRESENT WHEN SLED DID THAT?

18 A. YES, SIR; WITH THE SUMMERVILLE POLICE DEPARTMENT.

19 Q. TO YOUR KNOWLEDGE DID THEY GET A MATCH FROM THAT
20 COLD SEARCH?

21 A. NO, SIR.

22 Q. WHAT IS AFIS?

23 A. AFIS STAND FOR AUTOMATED FINGERPRINT IDENTIFICATION
24 SYSTEM.

25 Q. WHAT IS THAT?

RONALD BRUCE MANCHESTER - DIRECT/MR. BAILEY

1 A. IT IS A DATA BASE OF ALL FINGERPRINTS OF ANYONE
2 THAT'S BEEN ARRESTED IN THE STATE OF SOUTH
3 CAROLINA.

4 Q. OKAY. WERE THOSE PRINTS THAT WERE UNABLE TO BE
5 MATCHED FROM THE TELEPHONE RUN ON AFIS?

6 A. YES, SIR.

7 Q. HOW MANY TIMES WERE THEY RUN?

8 A. THREE TIMES.

9 Q. OKAY. WERE YOU ABLE TO GET AN AFIS HIT?

10 A. NO, SIR.

11 Q. DID THE F.B.I. -- WAS THE F.B.I. ASKED TO LOOK FOR
12 THOSE PRINTS?

13 A. YES, SIR.

14 Q. WERE THEY ABLE TO GET A MATCH?

15 A. NO, SIR.

16 Q. TO YOUR KNOWLEDGE DID THE PRINTS THAT SLED LOOKED
17 AT AT THE REQUEST OF THE SUMMERVILLE POLICE
18 DEPARTMENT INCLUDE ALL THE PEOPLE THAT WERE
19 DEVELOPED AS SUSPECTS AT ONE POINT OR ANOTHER IN
20 THE MURDER OF MRS. BOYD?

21 A. IT WOULD HAVE MADE UP 75 PERCENT OF THE SUSPECTS.
22 THEY WERE SUSPECTS WHO HAD PREVIOUSLY BEEN ARRESTED
23 BY THE SUMMERVILLE POLICE DEPARTMENT IN
24 SUMMERVILLE.

25 Q. SO AS OF RIGHT NOW THERE IS STILL ONE UN-MATCHED

RONALD BRUCE MANCHESTER - DIRECT/MR. BAILEY

1 PRINT; IS THAT CORRECT?

2 A. ONE READABLE IDENTIFICATION---

3 Q. ONE READABLE UN-MATCHED PRINT. IS THERE ANY WAY TO
4 DATE A FINGERPRINT? IF YOU FIND A LATENT; LET'S
5 SAY IF IT'S A GOOD READABLE PRINT ON SOMEBODY; IS
6 THERE ANY WAY TO TELL HOW OLD IT IS?

7 A. NO, SIR; NO WAY.

8 Q. OKAY. YOU TESTIFIED EARLIER THAT WHEN YOU FUMED
9 THE BODY, THE PRINT DIDN'T LAST THAT LONG. IS THAT
10 UNIQUE TO THE FUMING PROCESS?

11 A. IT'S UNIQUE TO THE BODY BECAUSE THE BODY SECRETES
12 THE SAME PERSPIRATION THAT THE FINGER WOULD LEAVE
13 ON IT. SO IT KIND OF ABSORBS INTO ITSELF. AND
14 STUDIES HAVE SHOWN A FEW HOURS WITH THAT SORT OF---

15 Q. NOW, GETTING BACK TO MY ORIGINAL QUESTION. IF YOU
16 TOUCH AN INANIMATE OBJECT, A BOARD, A PIECE OF
17 PAPER, A GLASS, OR SOMETHING AND LEAVE A PRINT AND
18 LATER ON THAT PRINT IS LIFTED, IS THERE ANY WAY TO
19 AGE A PRINT OFF OF THAT TYPE OBJECT?

20 A. NO, SIR.

21 Q. IS THERE ANY WAY TO TELL HOW OLD THAT PRINT ON THE
22 TELEPHONE WAS WHEN YOU LIFTED IT?

23 A. NO, SIR.

24 Q. IS THERE ANY WAY TO KNOW WHETHER THAT PRINT WAS
25 CONNECTED IN ANY WAY WITH THE MURDER OF MRS. BOYD?

RONALD BRUCE MANCHESTER - CROSS/MR. THEOS

1 MR. THEOS: YOUR HONOR, I'M GOING TO
2 OBJECT. THAT CALLS FOR SPECULATION ON THE PART OF
3 THIS WITNESS.

4 THE COURT: I'M GOING TO ALLOW IT.
5 OVERRULED.

6 A. THERE'S NO WAY TO TELL IF IT HAS ANYTHING TO DO
7 WITH IT.

8 Q. THANK YOU, SIR. PLEASE ANSWER ANY QUESTIONS---

9 MR. BAILEY: YOUR HONOR, WE WOULD
10 RESERVE THE RIGHT TO RECALL MR. MANCHESTER. I HAVE
11 NOTHING FURTHER AT THIS POINT.

12 THE COURT: YOU MAY CROSS.

13 CROSS-EXAMINATION

14 BY MR. THEOS:

15 Q. OFFICER MANCHESTER, DID YOU BRING -- I SEE YOU HAVE
16 A BAG WITH YOU, SOME SORT OF SACK. DID YOU BRING
17 WITH YOU THE PHOTOS THAT YOU TOOK AT THE SCENE?

18 A. YES, SIR, I DID.

19 Q. DO YOU HAVE THE ACTUAL LATENT PRINTS THAT YOU
20 LIFTED?

21 A. THEY ARE -- I DON'T HAVE THEM UP HERE.

22 Q. CAN YOU PUT YOUR HANDS ON THEM FOR US, PLEASE?

23 A. CAN I STEP DOWN?

24 Q. CERTAINLY. MAY I LOOK OVER YOUR SHOULDER?

25 MR. THEOS: JUDGE, IF THAT'S OKAY?

RONALD BRUCE MANCHESTER - CROSS/MR. THEOS

THE COURT: YES, SIR.

Q. OFFICER MANCHESTER, ARE THERE ANY MORE IN THIS ENVELOPE?

A. NO, SIR; THEY'RE IN THIS ENVELOPE HERE.
(INDICATING.)

Q. OFFICER MANCHESTER, HOW MANY LATENTS WERE LIFTED OFF THE TELEPHONE?

A. I'M HOLDING FIVE HERE IN MY HAND.

Q. NOW WOULD THAT MEAN THAT THERE WERE FIVE SEPARATE FINGERPRINTS LIFTED FROM THE PHONE?

A. NO, SIR.

Q. WHAT WOULD THAT MEAN?

A. WHEN I DUST AN AREA FOR FINGERPRINTS AND I SEE AN IMAGE OR SEE ONE OF THESE LATENT FINGERPRINTS BEING DISCOVERED, I WILL LIFT THAT AREA. VERY COMMON I WILL REAPPLY FINGERPRINT PATTERNS TO THE EXACT SAME AREA AND RE-LIFT IT. SOMETIMES IT WILL WORK, AND THE LATENT FINGERPRINT WILL BE CLEARER AND EASIER FOR ME TO IDENTIFY LATER.

Q. WE'LL COME BACK TO THOSE PRINTS IN A SECOND, OFFICER MANCHESTER. LET'S BACK UP AT THIS POINT. AS I UNDERSTAND IT THE FRONT DOOR OF MRS. BOYD'S HOUSE WAS LOCKED?

A. YES, SIR; THAT'S CORRECT.

Q. WHEN YOU GOT THERE. DID IT REMAIN LOCKED, OR DID

RONALD BRUCE MANCHESTER - CROSS/MR. THEOS

1 YOU OR ANYBODY WITHIN YOUR UNIT OPEN IT?

2 A. I BELIEVE IT REMAINED LOCKED.

3 Q. NOW ALSO AS I UNDERSTAND IT MRS. BOYD WAS LYING --
4 YOU HAD A POSTER THAT WE ALL LOOKED AT, AND IT
5 STATES EXHIBIT FIVE. AND IS THIS ESSENTIALLY --
6 AND WE UNDERSTAND IT'S NOT TO SCALE. BUT IS THIS
7 ESSENTIALLY THE POSITION THAT THE BODY WAS IN WHEN
8 YOU ARRIVED?

9 A. YES, SIR.

10 Q. AND THIS WHERE I'VE GOT MY HAND POINTED WOULD BE
11 THE DOORWAY?

12 A. YES, SIR.

13 Q. SO MRS. BOYD'S BACK WOULD HAVE BEEN TO THE DOORWAY?

14 A. THAT WOULD BE CORRECT.

15 Q. WITH HER FACE FACING IN THE OPPOSITE DIRECTION
16 TOWARDS THE REFRIGERATOR AND FREEZER THAT YOU HAVE
17 MARKED; IS THAT CORRECT?

18 A. THAT IS CORRECT.

19 Q. AND IT WAS YOUR UNDERSTANDING WHEN YOU ARRIVED
20 THERE THAT NOBODY HAD MOVED MRS. BOYD'S BODY OTHER
21 THAN WHAT WE'VE HEARD FROM MRS. WILSON? BUT NOBODY
22 HAD PHYSICALLY TURNED IT OR MOVED IT. IT WAS JUST
23 ESSENTIALLY LYING IN THAT SAME POSITION?

24 A. YES, SIR.

25 Q. OKAY. NOW, ALSO I THINK -- LET ME ASK YOU THIS: I

RONALD BRUCE MANCHESTER - CROSS/MR. THEOS

1 UNDERSTAND THERE WAS SOME BLOOD IN THIS AREA?

2 (INDICATING.)

3 A. YES, SIR.

4 Q. CAN YOU POINT OUT TO US -- AND I'LL BE HAPPY TO GO
5 DOWN HERE IN FRONT OF THE JURY, OR YOU CAN DO IT AT
6 THIS POINT WHERE ALL THE JURY CAN SEE.

7 (INDICATING.) CAN YOU SHOW US THE DIFFERENT
8 AREAS? AND IF YOU COULD USE THIS YARDSTICK. IF
9 YOU COULD POINT OUT THE DIFFERENT AREAS THAT THE
10 BLOOD WAS LOCATED FOR US, PLEASE? IF IT WOULD BE
11 BETTER, I'LL MOVE OVER.

12 A. THERE WAS BLOOD ALL IN THIS HEAVY AREA ON THE
13 KITCHEN FLOOR. ALSO THERE WAS BLOOD IN THIS AREA
14 RIGHT HERE ON THE KITCHEN FLOOR AND ALSO IN THIS
15 AREA AND THEN DOWN HERE BY HER FEET. (INDICATING.)

16 Q. WAS THERE BLOOD ON ANY OF THE KITCHEN CABINETS THAT
17 YOU RECALL?

18 A. WHEN I GET THERE I SWAB DIFFERENT AREAS TO CHECK
19 FOR BLOOD TO MAKE SURE IT IS BLOOD. AND ONE OF THE
20 AREAS I DID SWAB WAS RIGHT HERE IN FRONT OF THE
21 KITCHEN AREA. BUT IF I RECALL CORRECTLY, IT WAS
22 NOT BLOOD.

23 Q. WAS THERE BLOOD ON ANY OF THE WALLS OR THE COUNTER
24 AREAS?

25 A. NO, SIR.

RONALD BRUCE MANCHESTER - CROSS/MR. THEOS

1 Q. WAS THERE BLOOD ON ANY DOORWAYS?

2 A. (NO RESPONSE.)

3 Q. MY RECOLLECTION OF THE PHOTOGRAPHS AND ANY EVIDENCE
4 THAT Y'ALL WERE NICE ENOUGH TO SHARE WITH US WAS
5 THAT THERE WAS SOME BLOOD ON ONE OF THE DOORWAYS.
6 DO YOU RECALL WHICH DOORWAY THAT WOULD HAVE BEEN?

7 A. NO, SIR. LET ME HAVE A LOOK AT THE PHOTOGRAPHS.
8 FOR SOME REASON I DO REMEMBER A LITTLE BIT OF BLOOD
9 BEING ON THE DOOR KNOB EXITING OUT THROUGH THIS
10 BACK DOOR. (INDICATING.)

11 Q. OKAY. WOULD YOU SAY THAT THERE WAS A SMALL AMOUNT
12 OF BLOOD OVERALL, A MODERATE AMOUNT OF BLOOD, OR A
13 LARGE AMOUNT OF BLOOD?

14 A. (NO RESPONSE.)

15 Q. BASED UPON YOUR EXPERIENCE AND INVESTIGATING CRIME
16 SCENES AND GATHERING EVIDENCE?

17 A. AND SPEAKING ABOUT A HOMICIDE AND THE WAY THIS TOOK
18 PLACE?

19 Q. YES, SIR.

20 A. I WOULD SAID A LARGE AMOUNT OF BLOOD.

21 Q. ALL RIGHT. A COUPLE MORE QUESTIONS.

22 A. CERTAINLY.

23 Q. AS I UNDERSTAND IT, ALSO THERE WAS AN AREA OF THE
24 FLOOR THAT WAS CUT OUT?

25 A. YES, SIR; THAT'S CORRECT.

RONALD BRUCE MANCHESTER - CROSS/MR. THEOS

1 Q. AND THAT AREA OF THE FLOOR THAT WAS CUT OUT WAS
2 SENT OFF FOR TESTING; IS THAT CORRECT?

3 A. I HAD SOMEONE FROM SLED COME DOWN AND LOOK AT THE
4 FLOOR; YES, SIR.

5 Q. AND ULTIMATELY IT WAS CUT OUT FOR SOME PURPOSE THAT
6 YOU DIDN'T TAKE PLACE IN?

7 A. (NO RESPONSE.)

8 Q. YOU DIDN'T PARTICIPATE IN WHATEVER TESTS MAY HAVE
9 BEEN CONDUCTED BY SLED RELATED TO THAT SECTION OF
10 THE FLOOR, DID YOU?

11 A. I WAS THERE WHEN IT WAS TAKING PLACE. I ATTENDED
12 BLOOD SPATTER SCHOOL. AND I JUST WANTED SOMEONE
13 WITH MORE EXPERIENCE THAN I HAD TO RE-EXAMINE THE
14 FLOOR.

15 Q. TELL US WHAT YOU FOUND SINCE YOU'VE GOT THAT
16 EXPERIENCE IN BLOOD SPATTERING. TELL US WHAT YOU
17 FOUND RELATED TO THE BLOOD SPATTERING IN THIS
18 KITCHEN.

19 A. THERE WAS BLOOD IN THIS AREA DOWN HERE BY HER
20 FEET. AND THERE WAS A SMALL AMOUNT OF SPATTER
21 COMING OUT FROM THIS AREA DOWN HERE. (INDICATING.)
22 ALSO THERE WAS A POOL OF BLOOD UP HERE AND A
23 SPATTER GOING OFF IN THIS DIRECTION. (INDICATING.)

24 Q. GO AHEAD.

25 A. I HAD FORMED AN OPINION OF WHAT HAD TAKEN PLACE.

RONALD BRUCE MANCHESTER - CROSS/MR. THEOS

1 AND TO BE ON THE SAFE SIDE, I WENT AHEAD AND CUT
2 OUT THE FLOOR SO IT COULD BE LATER EXAMINED BY
3 SOMEONE ELSE WHO HAD MORE EXPERIENCE THAN WHAT I
4 DID.

5 Q. WELL, I DIDN'T OBJECT TO YOU BEING QUALIFIED AS A
6 WITNESS. WOULD YOU GO AHEAD AND TELL US WHAT
7 OPINION YOU FORMED BASED UPON THE EVIDENCE YOU SAW
8 AT THE SCENE RELATED TO THE BLOOD SPATTERING?

9 A. MY OPINION IS THAT AT ONE POINT AND TIME THIS BODY
10 WAS PROBABLY IN THIS AREA. (INDICATING.) HER FACE
11 WAS IN THIS AREA RIGHT HERE. (INDICATING.) BEING
12 THE BLOOD THAT WAS DOWN HERE AND THERE WERE NO CUTS
13 ON HER FEET OR HER LEGS, I FELT THAT AT ONE POINT
14 AND TIME HER FACE AREA HAD TO BE IN THIS AREA, AND
15 SOMEHOW SHE GOT TURNED AROUND. SO SHE WAS PROBABLY
16 BEATEN IN THIS AREA AND ALSO IN THIS AREA.
17 (INDICATING.)

18 Q. WOULD THAT HAVE INDICATED TO YOU THAT SHE WAS ONE
19 OR TWO THINGS; THAT SHE WAS EITHER TURNED BY
20 WHOEVER IT WAS THAT DID THIS OR THAT SHE MAY HAVE
21 TURNED HERSELF?

22 A. YES, SIR, THAT WOULD BE CORRECT.

23 Q. IS THERE ANY OTHER POSSIBILITY THAT MIGHT EXIST
24 THAT WOULD EXPLAIN THIS BLOOD SPLATTERING IN YOUR
25 OPINION RELATED TO IT?

RONALD BRUCE MANCHESTER - CROSS/MR. THEOS

1 A. NOT IN MY OPINION.

2 Q. NOW, AS I UNDERSTAND IT -- AND MAYBE I MISREAD ONE
3 OF THESE REPORTS. BUT I THOUGHT THAT I READ---

4 THE COURT: I'M SORRY NOW, COUNSEL.
5 THAT'S NOT PROPER PHRASEOLOGY. YOU'RE NOT UNDER
6 OATH. AND YOU'RE GOING TO HAVE TO APPROACH IT A
7 DIFFERENT WAY.

8 Q. WAS A LATENT PRINT REMOVED FROM THE FLOORING?

9 A. SOMETHING THAT RESEMBLED -- IT COULD POSSIBLY HAVE
10 BEEN A FINGERPRINT OR SOMETHING SIMILAR -- WAS
11 REMOVED FROM THE FLOOR; YES, SIR.

12 Q. NOW THIS FINGERPRINT OR THIS SOMETHING WITH
13 POSSIBLE RIDGES THAT MIGHT HAVE BEEN A FINGERPRINT,
14 WAS NOT COMPATIBLE FOR THIS AFIS SEARCH THAT YOU
15 TALKED ABOUT WITH MR. BAILEY; IS THAT CORRECT?

16 A. THAT WOULD BE CORRECT.

17 Q. BECAUSE THERE WASN'T A SUFFICIENT RIDGE DETAIL?

18 A. THAT WOULD BE CORRECT.

19 Q. BUT IT WOULD BE -- WOULD IT NOT BE POSSIBLE TO
20 STILL COMPARE THAT LATENT WITH OTHER PRINTS? NOT
21 ON THE AFIS SYSTEM, BUT TO DO ACTUAL COMPARISONS
22 WITH OTHER PRINTS?

23 A. WHAT WAS REMOVED FROM THE KITCHEN FLOOR WAS NOT
24 SUITABLE TO EVEN MAKE A COLD SEARCH OR JUST MAKE
25 ANY KIND OF SEARCH. THERE WAS NOT ENOUGH RIDGE

RONALD BRUCE MANCHESTER - CROSS/MR. THEOS

1 DETAIL TO MAKE ANY SORT OF SEARCH AT THAT TIME.

2 Q. SO IT'S YOUR TESTIMONY THEN THAT THAT COULD NOT
3 HAVE BEEN COMPARED IN ANY WAY TO ANY OTHER PRINTS?

4 A. THAT WOULD BE CORRECT.

5 Q. ALL RIGHT. NOW, WITH RESPECT TO THE PHONE; CAN YOU
6 SHOW US WHERE THE PHONE, IF IT WAS IN THIS ROOM,
7 THAT WE'VE GOT HERE; CAN YOU SHOW US WHERE THIS
8 PHONE WOULD HAVE BEEN, PLEASE?

9 A. THE PHONE WAS NOT IN THIS ROOM.

10 Q. OKAY. WE BOTH LOOKED AT YOUR OTHER POSTER. DOES
11 THAT REFLECT WHERE IT MIGHT HAVE BEEN?

12 A. I CAN GIVE YOU A GENERAL AREA.

13 Q. OKAY; WOULD YOU, PLEASE?

14 A. AGAIN, THIS RIGHT HERE WOULD BE THE BACK DOOR
15 LEADING INTO THE AREA. THIS WOULD BE A BACK
16 HALLWAY; AND RIGHT HERE WAS A KITCHEN TABLE. AND
17 THE PHONE WOULD BE SITTING ON THIS KITCHEN TABLE ON
18 THE CORNER OF IT.

19 Q. OKAY.

20 A. IT'S NOT IN THIS PICTURE.

21 Q. NOW, YOU SAID THAT TWO PRINTS, I BELIEVE, WERE
22 REMOVED OFF OF THAT PHONE?

23 A. THERE WERE TWO DIFFERENT LIFTS FROM THE PHONE; YES,
24 SIR. (AT THIS TIME WITNESS RETURNS TO WITNESS
25 STAND.)

RONALD BRUCE MANCHESTER - CROSS/MR. THEOS

Q. LET ME, IF YOU DON'T MIND, SHOW YOU A PHOTOGRAPH;
AND YOU TELL ME WHETHER THIS APPEARS TO BE THE
PHONE THAT THOSE PRINTS WERE LIFTED FROM, PLEASE?

A. YES, SIR, IT DOES.

MR. THEOS: YOUR HONOR, IF WE COULD
MARK THIS AND ADMIT THIS INTO EVIDENCE AS
DEFENDANT'S ONE.

MR. BAILEY: NO OBJECTION.

THE COURT: WITHOUT OBJECTION;
DEFENDANT'S NUMBER ONE. AND AGAIN, THAT IS?

MR. THEOS: THIS IS A PHOTOGRAPH,
YOUR HONOR, OF THE TELEPHONE THAT OFFICER
MANCHESTER---

DEFENDANT'S EXHIBIT NO. 1

ADMITTED AS EVIDENCE

MR. THEOS: YOUR HONOR, IF I COULD
PUBLISH THIS TO THE JURY?

THE COURT: YES, SIR.

Q. OFFICER MANCHESTER, THIS DOCUMENT -- JUST SO WE CAN
BE CLEAR. THERE WERE TWO PRINTS LIFTED OFF THIS
PHONE. YOU SAID ONE WAS FROM THE SIDE AND ONE WAS
FROM THE TOP; IS THAT CORRECT?

A. I HAVE THREE LIFTS HERE FROM THE TELEPHONE, AND I'M
NOT SURE EXACTLY IF THEY'RE FROM THE RECEIVER, FROM
THE SIDE OF THE PHONE, OR WHICH ONES WERE TAKEN

RONALD BRUCE MANCHESTER - CROSS/MR. THEOS

1 FROM WHICH AREA.

2 Q. DO YOU HAVE THOSE THREE OUT?

3 A. YES, SIR, I DO.

4 Q. ALL RIGHT. CAN YOU SHOW THEM TO ME, PLEASE?

5 A. THIS WOULD BE ONE LIFT. AND THERE'S TWO LIFTS FROM
6 THAT SAME AREA.

7 MR. THEOS: YOUR HONOR, AT THIS TIME
8 IF WE COULD MARK THESE AS DEFENDANT'S TWO AND
9 THREE.

10 MR. BAILEY: NO OBJECTION, YOUR
11 HONOR.

12 THE COURT: ALL RIGHT. DEFENDANT'S
13 TWO AND THREE, PHOTOS, WITHOUT OBJECTION.

14 DEFENDANT'S EXHIBIT NOS. 2 & 3
15 ADMITTED AS EVIDENCE

16 Q. LET'S HOLD ONTO THOSE, OFFICER MANCHESTER. NOW,
17 YOU'VE BEEN HANDED TWO MORE. CAN YOU PLEASE
18 IDENTIFY THESE THAT WE WILL THEN MARK AND ADMIT
19 INTO EVIDENCE AS DEFENDANT'S FOUR AND FIVE?
20 (WITNESS EXAMINES PHOTOGRAPHS.)

21 A. THESE AGAIN ARE TWO LIFTS FROM THE EXACT SAME
22 AREA. THESE WERE THE ONES THAT WERE IDENTIFIED AS
23 JOHNNY NEALY'S.

24 Q. OKAY.

25 MR. THEOS: YOUR HONOR, WE'D MOVE TO

RONALD BRUCE MANCHESTER - CROSS/MR. THEOS
INTRODUCE THESE INTO EVIDENCE.

THE COURT: ARE THESE ADDITIONAL
ONES BESIDES TWO AND THREE?

MR. THEOS: YES, SIR.

THE COURT: ARE YOU TALKING ABOUT
FOUR AND FIVE?

MR. THEOS: FOUR AND FIVE.

DEFENDANT'S EXHIBIT NOS. 4 & 5

ADMITTED AS EVIDENCE

Q. NOW OFFICER MANCHESTER, THERE'S ONE REMAINING. CAN
YOU TELL ME WHAT THAT ONE IS? ACTUALLY I SEE TWO;
A SMALL ONE AND A LARGER ONE. CAN YOU TELL ME WHAT
THOSE ARE? (WITNESS EXAMINES PHOTOGRAPHS.)

A. THIS ONE WAS LIFTED FROM THE TELEPHONE. AND THERE
IS A LATENT THERE, BUT IT'S NOT ENOUGH TO
IDENTIFY.

Q. THIS THAT WE HAVE NOT MARKED YOU WERE UNABLE TO
IDENTIFY?

A. YES, SIR.

Q. CAN YOU EXPLAIN WHAT UNABLE TO IDENTIFY IS?

A. WELL, NOT ONLY IS IT UNABLE TO BE IDENTIFIED; BUT
THERE'S NOT ENOUGH RIDGE CHARACTERISTICS IN THAT
PRINT TO MAKE AN IDENTIFICATION.

Q. SO THERE WASN'T ANYTHING YOU COULD DO WITH THIS?

A. NO, SIR.

RONALD BRUCE MANCHESTER - CROSS/MR. THEOS

1 Q. ALL RIGHT, THEN. WE WON'T MARK THAT ONE. WHAT IS
2 THAT LAST ONE?

3 A. IT'S THE SAME SITUATION; LACK OF SUFFICIENT
4 DETAIL. THIS WAS LIFTED FROM THE BOTTOM OF THE TIN
5 LOCATED IN MRS. LILLY BELL BOYD'S BEDROOM.

6 Q. OKAY. AGAIN, THE SAME AS THE ONE THAT WE DID NOT
7 MARK IS SUFFICIENT TO DO ANYTHING WITH?

8 A. THAT'S CORRECT.

9 Q. NOW, IF YOU WOULD LOOK AT EXHIBIT TWO AND THREE.
10 CAN YOU TELL US EXACTLY WHERE THOSE -- ARE THOSE
11 TWO DIFFERENT PRINTS?

12 A. I ASSUME YOU'RE REFERRING TO THE TWO DIFFERENT
13 PATTERNS, THE TWO DIFFERENT AREAS. ARE YOU TALKING
14 TO THE TWO DIFFERENT CARDS?

15 Q. LET'S TALK ABOUT BOTH.

16 A. OKAY.

17 Q. LET'S TALK ABOUT EXHIBIT TWO FIRST. ARE THERE TWO
18 DIFFERENT PRINTS WITHIN THAT CARD?

19 A. YES, SIR.

20 Q. OKAY.

21 A. AND POSSIBLY A THIRD.

22 Q. OKAY. EXPLAIN TO US WHAT THE DIFFERENCE IS AND HOW
23 YOU CONCLUDE THERE ARE TWO AND POSSIBLY THREE
24 KINDS OF PRINTS?

25 A. WHEN EXAMINING THIS CARD UNDER MAGNIFICATION, YOU

RONALD BRUCE MANCHESTER - CROSS/MR. THEOS

1 CAN VISUALLY SEE THREE AREAS -- WHAT APPEARS TO BE
2 THREE INDIVIDUAL DIFFERENT AREAS ON THIS SAME
3 LIFT. HE ASKED ME IF THEY WERE THE SAME
4 FINGERPRINT OR NOT. THE SECOND OR THIRD AREA
5 THERE'S NOT ENOUGH THERE REALLY TO COMPARE OR TO
6 LOOK AT THE CHARACTERISTICS TO SEE IF THEY ARE THE
7 SAME OR NOT. BUT THE ONE IN PARTICULAR PRINT IS
8 ENOUGH AND HAS BEEN RUN THROUGH AFIS. SO THERE IS
9 ENOUGH CHARACTERISTICS TO MAKE AN IDENTIFICATION.

10 Q. AGAIN THAT'S OFF DEFENDANT'S EXHIBIT TWO?

11 A. YES, SIR.

12 Q. ALL RIGHT. NOW, IF YOU'LL PICK UP EXHIBIT THREE.
13 IS THERE MORE THAN ONE PRINT THAT'S REFLECTED IN
14 EXHIBIT THREE?

15 A. EXHIBIT THREE IS EXACTLY THE SAME AS EXHIBIT TWO.
16 LIKE I SAID, I REAPPLIED FINGERPRINT POWDER AND
17 THEN MADE A LIFT.

18 Q. I WAS A LITTLE CONFUSED. AND I WANT TO MAKE SURE
19 WE ARE CLEAR. SO TWO AND THREE ARE ACTUALLY THE
20 SAME PRINT?

21 A. THE SAME PRINT, THE SAME PRINT AREA; YES, SIR.

22 Q. DIFFERENT LIFTS BUT THE SAME PRINT?

23 A. YES, SIR.

24 Q. OKAY.

25 MR. THEOS: YOUR HONOR, IF I MAY

RONALD BRUCE MANCHESTER - CROSS/MR. THEOS

PUBLISH THESE TO THE JURY?

THE COURT: CERTAINLY.

Q. OFFICER MANCHESTER, AS I UNDERSTAND IT BECAUSE OF THE SUFFICIENCY OF THE RIDGE DETAIL OF THE FINGERPRINT THAT'S REFLECTED IN EXHIBIT TWO AND THREE, YOU WERE ABLE TO RUN THAT PRINT THROUGH THE AFIS SYSTEM AND COMPARE IT TO OTHER PRINTS; CORRECT?

A. YES, SIR.

Q. AND THE FIRST THING THAT YOU DID TO BE CERTAIN IT WASN'T A FINGERPRINT OF ANY OF THE CRIME SCENE TECHNICIANS OR OFFICERS RESPONDING OR FAMILY MEMBER THAT MAY HAVE RESPONDED, THE FIRST THING YOU DID WAS COMPARE IT TO THOSE PEOPLES PRINTS; CORRECT?

A. THE FIRST THING I DID WAS MADE A PHONE CALL TO THE CHARLESTON POLICE DEPARTMENT, AND WE PLACED IT IN THEIR ASSISTANCE AND CALLED THEM THAT WEEKEND AND REQUESTED THAT THEY RESPOND TO THE AFIS TERMINAL AT THE CHARLESTON POLICE DEPARTMENT AND ACTUALLY RAN IT THERE FIRST THING.

Q. ONE OF THE THINGS THAT YOU DID -- IF NOT THE FIRST -- ONE OF THE THINGS THAT YOU DID TO BE CERTAIN IT WASN'T SOMEBODY, A FRIENDLY PERSON, SO TO SPEAK, WAS YOU GOT THE FINGERPRINTS FROM THE CRIME SCENE, OTHER PEOPLE THAT WERE PRESENT, FAMILY, SO THAT YOU

RONALD BRUCE MANCHESTER - CROSS/MR. THEOS

1 COULD COMPARE IT TO THAT PRINT; CORRECT?

2 A. YES, SIR.

3 Q. AND THERE WAS NO MATCH WITH THAT PRINT IN ANY OF
4 THOSE PEOPLE; CORRECT?

5 A. NO, SIR.

6 Q. AND IN FACT DID YOU DO THAT COMPARISON YOURSELF OR
7 DID YOU SEND IT OFF SOMEWHERE, OR DID YOU DO BOTH?

8 A. I DID BOTH. I MADE A COMPARISON MYSELF AND THEN
9 SENT IT OFF.

10 Q. I THOUGHT YOU SAID YOU SENT IT TO THE F.B.I.; IS
11 THAT CORRECT?

12 A. YES, SIR.

13 Q. WAS THEIR CONCLUSION THE SAME AS YOURS?

14 A. YES, SIR.

15 Q. IT DID NOT MATCH ANY OF THE FRIENDLY SORT OF PEOPLE
16 -- FRIENDLY PEOPLE WE'LL CALL THEM; IS THAT
17 CORRECT?

18 A. YES, SIR.

19 Q. OKAY.

20 A. WELL, EXCEPT FOR THE ONE THAT BELONGED TO OFFICER
21 NEALY.

22 Q. WELL, THAT WAS MY NEXT QUESTION. NOW WE DO HAVE A
23 PRINT THAT HAS BEEN MARKED AS EXHIBITS FOUR AND
24 FIVE; AND THAT IS OF THE SAME PALM PRINT; IS THAT
25 CORRECT?

RONALD BRUCE MANCHESTER - CROSS/MR. THEOS

1 A. THE EXACT SAME LIFT; YES, SIR.

2 Q. OKAY. ARE THOSE TWO PHOTOS OF THE SAME LIFT, OR
3 ARE THEY TWO DIFFERENT LIFTS; FOUR AND FIVE?

4 A. THEY ARE TWO LIFTS FROM THE EXACT SAME AREA.

5 Q. OKAY. AND THOSE DID MATCH WITH OFFICER NEALY?

6 A. YES, SIR.

7 Q. IS THAT CORRECT?

8 A. YES, SIR.

9 THE COURT: MR. THEOS, I DON'T WANT
10 TO SLOW YOU DOWN OR HURRY YOU UP; BUT I USUALLY TRY
11 TO TAKE A RECESS EVERY TWO HOURS. ARE YOU NEAR A

12 BREAKING POINT, OR IS IT BETTER TO GO AHEAD AND
13 BREAK NOW? ARE YOU NEAR CONCLUSION, OR WOULD YOU
14 LIKE FOR ME TO GO AHEAD AND---

15 MR. THEOS: JUDGE, IF I CAN JUST ASK
16 ABOUT THIS; AND THEN THAT WILL BE A GOOD BREAKING
17 POINT; AND THEN I'LL JUST HAVE A FEW FOLLOW-UP
18 QUESTIONS.

19 THE COURT: IF YOU'VE GOT ANY OTHER
20 FOLLOW-UPS, WE'LL TAKE A RECESS NOW. STEP DOWN.
21 NOW, LADIES AND GENTLEMEN, PLEASE LEAVE THE
22 EXHIBITS AND YOUR NOTE PADS IN THE COURTROOM.
23 (AT THIS TIME JURY RETIRES TO JURY ROOM.)

24 THE COURT: NOW, MR. BAILIFF, ON THE
25 BACK DOOR -- LISTEN TO ME WELL -- MR. BAILIFF;

RONALD MANCHESTER - CONT'D CROSS-MR. THEOS

1 PEOPLE CAN COME IN AND GO OUT DURING THE TRIAL
2 EXCEPT WHEN I TELL YOU TO THE CONTRARY. FOR
3 EXAMPLE WHEN THEY'RE HAVING THE OPENING STATEMENTS
4 OR CHARGE OF THE LAW BY THE COURT OR CLOSING
5 STATEMENTS. BUT WHEN WE TAKE A RECESS AND EXCUSE
6 THE JURY, I DON'T WANT ANYBODY, NOBODY, NOT THE
7 LAWYERS, LAW ENFORCEMENT, WITNESSES TO GET UP AND
8 START TALKING AND MOVING ABOUT. PLEASE BE
9 RESPECTFUL, AND WAIT UNTIL THE JURY GETS OUT BEFORE
10 YOU GET UP AND MOVE ABOUT THE COURTROOM. MAY I ASK
11 YOU, PLEASE. THANK YOU; WE'LL TAKE ABOUT A TEN
12 MINUTE RECESS.

13 MR. BAILEY: YOUR HONOR, CAN I GET
14 MR. MANCHESTER -- I KNOW HE'S UNDER OATH NOW -- TO
15 GO OUT TO HIS TRUCK AND GET A PIECE OF EVIDENCE OUT
16 OF THERE THAT MAY COME UP DURING THE TRIAL?

17 THE COURT: SURE; THAT'S NO
18 PROBLEM.

19 (BRIEF RECESS.)

20 THE COURT: MR. WITNESS, YOU'RE
21 STILL UNDER OATH. YOU MAY CONTINUE WITH YOUR
22 EXAMINATION, MR. THEOS.

23 MR. THEOS: YES, SIR.

24 CONTINUED CROSS-EXAMINATION

25 BY MR. THEOS:

RONALD MANCHESTER - CONT'D CROSS-MR. THEOS

1 Q. OFFICER MANCHESTER, WE JUST MOVED INTO EVIDENCE
2 EXHIBIT NUMBER SIX. CAN YOU TELL US WHAT THIS
3 EXHIBIT IS, PLEASE?

4 A. THIS IS A REPORT RECEIVED FROM THE F.B.I.

5 Q. ALL RIGHT. CAN YOU -- IT'S A TWO PAGE DOCUMENT?

6 A. YES, SIR.

7 Q. CAN YOU READ THE RESULT -- CAN YOU TELL US WHAT IT
8 IS AND WHAT IS THE REPORT RELATED TO, PLEASE?

9 THE COURT: I'M SORRY; HAS THAT BEEN
10 OFFERED INTO EVIDENCE?

11 MR. THEOS: YES, SIR; WITHOUT
12 OBJECTION.

13 MR. BAILEY: WITHOUT OBJECTION, YOUR
14 HONOR.

15 THE COURT: SO IT IS NOW MARKED?

16 MR. THEOS: YES, SIR.

17 STATE'S EXHIBIT NO. 6

18 ADMITTED AS EVIDENCE

19 THE COURT: YOU MAY PUBLISH ANY
20 PORTION THEREOF.

21 Q. READING FROM PAGE TWO. BEFORE YOU DO THAT, WOULD
22 YOU PLEASE TELL US WHAT THIS IS A REPORT FROM THE
23 F.B.I. RELATED TO?

24 A. I SENT EVERYTHING -- ALL THE FINGERPRINTS AND INKED
25 FINGERPRINTS AND KNOWN FINGERPRINTS AND LATENT

RONALD MANCHESTER - CONT'D CROSS-MR. THEOS

1 FINGERPRINTS -- TO THE F.B.I. SO THEY COULD RE-LOOK
2 OVER EVERYTHING THAT'S BEEN DONE AT THIS POINT.
3 THERE WAS NO I.D.S IN THE CASE WITH THE EXCEPTION
4 OF JOHN NEALY. THEY MADE A COPY OF THE UNKNOWN
5 FINGERPRINT THAT HAD BEEN PASSED AROUND, AND THEY
6 KEPT IT IN THEIR LAB. SO WHEN MR. KENNETH SIMMONS
7 WAS DEVELOPED AS A SUSPECT, I REQUESTED THAT THE
8 F.B.I. EXAMINE THAT EXHIBIT THAT WENT AROUND TO THE
9 KNOWN KENNETH SIMMONS' FINGERPRINTS.

10 Q. WHEN DID YOU SEND THAT OFF? WHAT IS THE DATE?
11 DOES THAT REPORT REFLECT THE DATE THAT YOU SENT IT
12 OR JUST THE DATE THAT THEY---

13 A. THE DATE THEY SENT IT BACK.

14 Q. WHAT IS THE DATE THAT THEY FORWARDED THIS BACK,
15 PLEASE?

16 A. FEBRUARY THE 25TH, 1998.

17 Q. CAN YOU READ TO US THE RESULTS OF THE EXAMINATIONS
18 PLEASE ON PAGE TWO?

19 A. THE PREVIOUSLY REPORTED UNIDENTIFIED LATENT
20 FINGERPRINTS FROM THIS CASE ARE NOT THE
21 FINGERPRINTS OF KENNETH SIMMONS; F.B.I. NUMBER
22 75994X1.

23 MR. THEOS: YOUR HONOR, I'D LIKE TO
24 PUBLISH THIS TO THE JURY AT THIS TIME, PLEASE.

25 THE COURT: YES, SIR.

RONALD MANCHESTER - CONT'D CROSS-MR. THEOS

1 Q. OFFICER MANCHESTER, DO YOU HAVE WITH YOU ANY
2 PHOTOGRAPHS THAT YOU MAY HAVE TAKEN OF THE
3 FOOTPRINT THAT YOU FOUND OUTSIDE OTHER THAN ONE
4 THAT WAS PREVIOUSLY REFERRED TO ON THAT PIECE OF
5 CARDBOARD?

6 A. YES, SIR.

7 Q. DO YOU HAVE THOSE WITH YOU?

8 A. YES, SIR.

9 Q. CAN YOU PULL THOSE OUT, PLEASE?

10 A. YES, SIR. WOULD YOU LIKE FOR ME TO PULL THEM ALL
11 OUT? THEY'RE REPETITIOUS.

12 Q. IF YOU WOULD JUST -- HOW MANY FOOTPRINTS WERE
13 THERE?

14 A. TWO OR THREE.

15 Q. I WOULD LIKE FOR YOU TO PULL OUT THOSE PHOTOGRAPHS
16 THAT YOU NEED TO DEPICT THOSE DIFFERENT TWO OR
17 THREE FOOTPRINTS, PLEASE. (WITNESS COMPLIES.)

18 A. I BELIEVE THAT'S IT. (INDICATING.)

19 Q. NOW YOU'VE PULLED OUT THREE DIFFERENT PHOTOGRAPHS
20 FOR US?

21 A. YES, SIR.

22 MR. THEOS: WITHOUT OBJECTION, YOUR
23 HONOR.

24 THE COURT: NO OBJECTION. MA'AM, IF
25 YOU WOULD, PLEASE, WHEN YOU GIVE THEM A NUMBER

RONALD MANCHESTER - CONT'D CROSS-MR. THEOS

WOULD YOU SHARE THAT WITH THE COURT?

THE COURT REPORTER: OKAY. THAT'S
SEVEN, EIGHT, AND NINE.

STATE'S EXHIBIT NOS. 7-9

ADMITTED AS EVIDENCE

Q. OFFICER NEALY, I'M GOING TO SHOW YOU WHAT IS NOW
MARKED AND HAS BEEN INTRODUCED AS DEFENDANT'S
EXHIBITS SEVEN, EIGHT, AND NINE AND ASK YOU TO LOOK
FIRST AT EXHIBIT NUMBER SEVEN. HOW MANY FOOTPRINTS
ARE IN THAT PHOTOGRAPH?

A. ONE PARTIAL.

Q. I'M GOING TO ASK YOU TO LOOK AT DEFENDANT'S EXHIBIT
EIGHT. HOW MANY FOOTPRINTS ARE DEPICTED IN IT?

A. TO THE BEST OF MY KNOWLEDGE TWO.

Q. ALL RIGHT. AND THEN LASTLY I'M GOING ASK YOU TO
LOOK AT DEFENDANT'S EXHIBIT NUMBER NINE. HOW MANY
FOOTPRINTS?

A. ONE.

Q. ALL RIGHT.

MR. THEOS: YOUR HONOR, IF I MAY
PUBLISH THESE AS WELL TO THE JURY?

THE COURT: CERTAINLY.

Q. OFFICER MANCHESTER, WHEN WERE THOSE PHOTOGRAPHS
TAKEN?

A. I BELIEVE IT WAS THE FIRST; THE SAME DAY OF THE

RONALD MANCHESTER - CONT'D CROSS-MR. THEOS
INCIDENT.

1

2

Q. SEPTEMBER THE FIRST OF 1996?

3

A. YES, SIR.

4

Q. AND ON SEPTEMBER THE FIRST OF 1996 AND THE FIRST
SEVERAL -- AT LEAST THE FIRST SEVERAL DAYS
IMMEDIATELY AFTER THAT -- DID YOU NOT CONDUCT A
THOROUGH INSPECTION OF THE HOME TO ATTEMPT TO
LOCATE ANY SHOES THAT MIGHT HAVE MATCHED WITH THE
FOOTPRINTS THAT YOU LOCATED OUTSIDE OF THE HOME?

5

6

7

8

9

10

A. DID I?

11

Q. YES, SIR?

12

A. NO, SIR.

13

Q. DID YOUR DEPARTMENT TO YOUR KNOWLEDGE?

14

A. NO, SIR. YOU SAY THOROUGH. THERE WAS OTHER
DETECTIVES THAT HAD GONE UP THERE LOOKING FOR
DIFFERENT THINGS, AND I TOLD THEM WHILE THEY WERE
LOOKING FOR THESE OTHER ITEMS THAT THEY COULD LOOK
AROUND FOR THE SHOES.

15

16

17

18

19

Q. IN FACT THERE WERE A NUMBER OF SHOES RETRIEVED FROM
THE RESIDENCE; CORRECT?

20

21

A. THERE WAS ONE OTHER PAIR OF BEDROOM SLIPPERS THAT
WERE RETRIEVED FROM THAT LOCATION.

22

23

Q. AND THOSE SHOES WERE COMPARED TO THESE FOOTPRINTS?

24

A. YES, SIR.

25

Q. AND THERE WAS NO MATCH; CORRECT?

RONALD MANCHESTER - CONT'D CROSS-MR. THEOS

1 A. THAT'S CORRECT.

2 Q. AND THOSE FOOTPRINTS WERE ALSO COMPARED TO OTHER
3 SHOES; SHOES NOT FROM THE RESIDENCE BUT OTHER
4 SHOES?

5 A. YES, SIR.

6 Q. AND THERE WAS ALSO NO MATCH WITH THOSE SHOES?

7 A. THAT'S CORRECT.

8 Q. OKAY. FOOTPRINTS COMPARED WITH MR. SIMMONS. ANY
9 SHOES FROM MR. SIMMONS?

10 A. NO; NOT THAT I'M AWARE OF; NO, SIR.

11 Q. WHERE WERE THOSE FOOTPRINTS? WHERE WERE THOSE
12 FOOTPRINTS -- HOW DID YOU PRESERVE THE FOOTPRINTS,
13 I GUESS IS A BETTER QUESTION?

14 A. PRESERVED THEM WITH A PHOTOGRAPH.

15 Q. IS THAT STANDARD PROCEDURE TO TAKE A PHOTOGRAPH AND
16 PRESERVE THEM, OR IS THERE SOME OTHER METHOD THAT
17 CAN BE USED TO PRESERVE THEM?

18 A. THERE IS ANOTHER METHOD WHICH IS CALLED CASTING A
19 FOOTPRINT.

20 Q. ALL RIGHT. WHY WAS THERE NOT A CAST DONE OF THIS
21 FOOTPRINT OR THESE FOOTPRINTS?

22 A. IN MY EXPERIENCE THAT WAS VERY, VERY SOFT AND
23 SANDY. AND I FELT THAT IF I EVEN ATTEMPTED TO CAST
24 IT, IT WOULD PROBABLY DESTROY IT, SO I DID NOT
25 PURSUE THAT.

RONALD MANCHESTER - CONT'D CROSS-MR. THEOS

- 1 Q. OKAY. NOW, YOU SAID THAT THOSE PICTURES DEPICT
2 TWO, POSSIBLY THREE FOOTPRINTS; IS THAT CORRECT?
- 3 A. YES, SIR.
- 4 Q. THOSE TWO TO THREE FOOTPRINTS BE FROM THE SAME SHOE
5 OR FOOT OR FROM DIFFERENT SHOES?
- 6 A. ALL EXCEPT FOR ONE WERE WHAT APPEARED TO BE FROM
7 THE SAME SHOE.
- 8 Q. SO OUT OF THE THREE, TWO ARE RELATED TO THE SAME
9 SHOE IN YOUR OPINION, OR MOST PROBABLY RELATED TO
10 THE SAME SHOE IN YOUR OPINION. AND ONE IS RELATED
11 TO A DIFFERENT SHOE MOST PROBABLY IN YOUR OPINION?
- 12 A. ALL THREE OF THOSE PHOTOGRAPHS HAVE AN IDENTICAL
13 SHOE PATTERN. ONE OF THOSE PARTICULAR PHOTOGRAPHS
14 HAS GOT A HIGH-TECH, WHAT APPEARS TO BE A HIGH-TECH
15 OR POLICE BOOT ALSO IN THE PICTURE ALONG WITH IT.
- 16 Q. WHAT YOU'VE TOLD US IS YOU HAD THIS PHOTOGRAPH.
17 YOU COMPARED IT OR SAW TO IT THAT IT WAS COMPARED
18 TO A NUMBER OF DIFFERENT SHOES; ONE FROM MRS.
19 BOYD'S HOME AND OTHER SHOES. I ASSUME, AM I
20 CORRECT, THAT THOSE OTHER SHOES THAT THEY WERE
21 COMPARED TO WERE OTHER SUSPECTS, OR WOULD THEY HAVE
22 BEEN OF OTHER FAMILY MEMBERS?
- 23 A. THERE WERE SOME COMPARISONS TO OTHER SUSPECTS.
- 24 Q. WERE THEY COMPARISONS TO OTHER FAMILY MEMBERS?
- 25 A. NO, SIR; NOT BY MYSELF.

RONALD MANCHESTER - CONT'D CROSS-MR. THEOS

1 Q. WERE THERE COMPARISONS TO OTHER POLICE OFFICERS?

2 A. YES, SIR.

3 Q. NO MATCHES WERE FOUND BETWEEN THE COMPARISONS WITH
4 OTHER POLICE OFFICERS AND THESE FOOTPRINTS; IS THAT
5 RIGHT?

6 A. THAT'S CORRECT.

7 Q. AS I UNDERSTAND IT YOU HAD THESE PHOTOGRAPHS. YOU
8 COMPARED IT TO A NUMBER OF DIFFERENT SHOES IN ORDER
9 TO EITHER HAVE A MATCH OR RULE OUT CERTAIN PEOPLE;
10 IS THAT CORRECT?

11 A. THAT WOULD BE CORRECT.

12 Q. AND YOU DID THAT WITHIN A SHORT PERIOD OF TIME
13 FOLLOWING SEPTEMBER THE FIRST, THE DISCOVERY OF
14 MRS. BOYD'S BODY; IS THAT CORRECT?

15 A. I WOULDN'T SAY AFTER A SHORT PERIOD. THERE WAS A
16 HANDFUL OF COMPARISONS I MADE IMMEDIATELY
17 AFTERWARDS AND THEN PERIODICALLY THERE WOULD BE
18 ANOTHER SET OF SHOES OR SOMETHING WE'D LOOK AT.

19 Q. SO WOULD IT BE FAIR TO SAY, THEN, THAT THIS WAS
20 SOMETHING THAT YOU WERE FOCUSED ON IN A CONTINUOUS
21 ONGOING FASHION?

22 A. YES, SIR; THAT WOULD BE CORRECT.

23 Q. AND THAT WOULD HAVE STARTED ON SEPTEMBER THE FIRST
24 OF '96; RIGHT?

25 A. YES, SIR.

RONALD MANCHESTER - CONT'D CROSS-MR. THEOS

- 1 Q. NOW WHAT YOU'VE TOLD US TODAY ON DIRECT EXAMINATION
2 BY MR. BAILEY IS LAST WEEK YOU WENT INSIDE MRS.
3 BOYD'S HOME AND FOUND ANOTHER SHOE?
- 4 A. YES, SIR.
- 5 Q. THAT YOU THOUGHT MIGHT MATCH?
- 6 A. YES, SIR.
- 7 Q. IS THAT YOUR OPINION THAT IT MIGHT MATCH, OR IT'S
8 AT LEAST -- I'M SORRY; I WON'T PUT WORDS IN YOUR
9 MOUTH -- THAT IT MIGHT BE CONSISTENT WITH?
- 10 A. YES, SIR.
- 11 Q. YOU CAN'T SAY THAT IT IS THE SAME SHOE, OR IT IS
12 THAT SHOE, THOUGH; CORRECT?
- 13 A. I WOULDN'T BE QUALIFIED TO SAY IF IT WAS OR WAS
14 NOT.
- 15 Q. NOW, THERE WERE OTHER ARTICLES OF PHYSICAL EVIDENCE
16 COLLECTED AT THE SCENE; IS THAT CORRECT?
- 17 A. YES, SIR.
- 18 Q. AND WERE YOU THE OFFICER IN CHARGE OF THE
19 COLLECTION OF THAT EVIDENCE AND THE PRESERVATION OF
20 THOSE ARTICLES OF PHYSICAL EVIDENCE COLLECTED AT
21 THE SCENE?
- 22 A. YES, SIR.
- 23 Q. AND WERE YOU THE OFFICER RESPONSIBLE FOR SENDING
24 OFF THOSE ITEMS OF PHYSICAL EVIDENCE TO EITHER SLED
25 OR THE F.B.I. OR WHOEVER THEY MAY HAVE BEEN SENT TO

RONALD MANCHESTER - CONT'D CROSS-MR. THEOS

FOR TESTING PURPOSES?

A. YES, SIR.

Q. AND WERE YOU THE OFFICER THAT WAS RESPONSIBLE FOR THE RECEIPT BACK OF THOSE ITEMS OF EVIDENCE AND THE REPORTS RELATED TO THOSE ITEMS?

A. YES, SIR.

Q. I'M GOING TO SHOW YOU A COUPLE OF DIFFERENT -- TWO DIFFERENT REPORTS, OFFICER. AND I'M GOING TO FIRST LET MR. BAILEY TAKE A LOOK AT THEM. (COUNSEL REVIEWS DOCUMENT.)

MR. BAILEY: NO OBJECTION, YOUR HONOR.

THE COURT: WITHOUT OBJECTION. AFTER YOU MARK THEM, MA'AM, GIVE ME THE NUMBERS, PLEASE.

STATE'S EXHIBIT NOS. 10-14

ADMITTED AS EVIDENCE

THE COURT REPORTER: NUMBER TEN; NUMBER ELEVEN; NUMBER TWELVE; NUMBER THIRTEEN; NUMBER FOURTEEN.

THE COURT: THANK YOU, MA'AM. AND LET ME ENCOURAGE THE LAWYERS IN THE FUTURE IF WE HAVE A RECESS TO TRY AND CONFER EACH WITH THE OTHER AND AGREE ON WHAT'S NOT OBJECTIONABLE AND GO AHEAD AND GET THEM MARKED SO WE CAN MOVE ON ALONG. THANK

RONALD MANCHESTER - CONT'D CROSS-MR. THEOS

1 YOU.

2 Q. OFFICER MANCHESTER, I'M GOING TO SHOW YOU WHAT HAS
3 BEEN MARKED FIRST AS DEFENDANT'S EXHIBIT TEN. CAN
4 YOU IDENTIFY THAT, PLEASE? (WITNESS EXAMINES
5 EVIDENCE.)

6 A. YES, SIR.

7 Q. WHAT IS THAT?

8 A. IT'S A SLEB LAB REQUEST SHEET. WE TAKE EVIDENCE TO
9 SLED, DROP IT OFF.

10 Q. WHAT ITEMS OF EVIDENCE DOES IT REFLECT WERE
11 FORWARDED TO SLED FOR TESTING?

12 A. A CIGARETTE FILTER HALF SMOKED; A MARLBORO
13 CIGARETTE AND A KITCHEN KNIFE.

14 Q. WERE THESE THREE ITEMS FOUND AT THE SCENE? THE
15 FIRST, THE CIGARETTE FILTER. WAS IT FOUND AT THE
16 SCENE?

17 A. YES, SIR.

18 Q. CAN YOU TELL US WHERE IT WAS FOUND?

19 A. THERE WERE TWO CIGARETTE PIECES FOUND AT THE
20 SCENE. ONE OF THEM WAS FOUND NEAR THE FRONT GATE
21 AS SOON AS YOU GOT TO THE SCENE, AND THE OTHER ONE
22 WAS AROUND THE BACK NEAR THE BACK DOOR.

23 Q. DO YOU KNOW WHICH WAS FOUND WHERE? THE FIRST IS A
24 CIGARETTE FILTER, AND THE SECOND IS A HALF SMOKED
25 MARLBORO CIGARETTE. DO YOU KNOW WHICH WAS FOUND

RONALD MANCHESTER - CONT'D CROSS-MR. THEOS

WHERE?

A. NO, SIR.

Q. DO YOU KNOW WHETHER THE CIGARETTE FILTER, WHETHER IT WAS POSSIBLE TO IDENTIFY THE MAKE OR THE BRAND OF THAT CIGARETTE?

A. NO, SIR. I'M NOT EVEN FOR SURE WHAT THAT'S REFERENCE TO.

Q. BUT THERE'S NO QUESTION ABOUT THE FACT THAT A CIGARETTE FILTER AND A HALF SMOKED CIGARETTE WERE FOUND ON THE PROPERTY OF MRS. BOYD?

A. YES, SIR; THAT WOULD BE CORRECT.

Q. SO Y'ALL COLLECTED THAT FOR TESTING PURPOSES AND FORWARDED IT TO SLED?

A. YES, SIR.

MR. THEOS: YOUR HONOR, MAY I PUBLISH THIS TO THE JURY; PUBLISH THESE AS I QUESTION MR. MANCHESTER ABOUT THEM?

THE COURT: YES, SIR.

Q. I'M SHOWING YOU WHAT HAS BEEN INTRODUCED AS DEFENSE EXHIBIT ELEVEN. WHAT IS IT, PLEASE?

A. THIS IS A SUBMITTED FORM FOR LIFE COATS (PHONETICALLY SPELLED) IN CONNECTICUT.

Q. LIFE COATS?

A. A DNA LAB.

Q. DEFENSE EXHIBIT TWELVE, PLEASE. CAN YOU IDENTIFY

RONALD MANCHESTER - CONT'D CROSS-MR. THEOS

- 1 IT? (WITNESS EXAMINES EVIDENCE.)
- 2 A. THE CHAIN OF CUSTODY FORM FROM THE SUMMERVILLE
- 3 POLICE DEPARTMENT.
- 4 Q. CAN YOU TELL US WHAT TWO ITEMS IT REFERENCES IN THE
- 5 OPEN SECTION, PLEASE?
- 6 A. A MILLER LIGHT BEER CAN AND FOUR SETS OF SUSPECTED
- 7 LATENT FINGERPRINTS.
- 8 Q. DO THE FOUR SETS OF SUSPECTED LATENT PRINTS REFER
- 9 TO THE EXHIBITS WE'VE PREVIOUSLY PASSED AROUND TO
- 10 THE JURY?
- 11 A. NO, SIR.
- 12 Q. WHAT DO THESE FOUR SETS OF SUSPECTED LATENT PRINTS
- 13 REFER TO?
- 14 A. I DO NOT KNOW.
- 15 Q. THE MILLER LIGHT BEER -- LET ME BACK UP A SECOND.
- 16 THE FOUR SETS OF SUSPECTED LATENT PRINTS REFER TO
- 17 LATENT PRINTS FROM THE SCENE OF MRS. BOYD'S HOME,
- 18 THOUGH; CORRECT?
- 19 A. THEY WERE TAKEN BY OFFICER THOMASON. ASK HIM WHERE
- 20 THEY CAME FROM. I DON'T KNOW.
- 21 Q. THE MILLER LIGHT BEER CAN.
- 22 A. YES, SIR.
- 23 Q. THIS WAS TAKEN AT THE SCENE AS WELL. THIS WAS FOUND
- 24 OUT AT THE SCENE?
- 25 A. I WOULD ASSUME SO.

RONALD MANCHESTER - CONT'D CROSS-MR. THEOS

1 Q. NOW, I'M GOING TO SHOW YOU WHAT'S MARKED AS DEFENSE
2 EXHIBIT 13. CAN YOU IDENTIFY IT? AND IS THIS A
3 DOCUMENT THAT YOU PREPARED?

4 A. YES, SIR, IT IS. THIS IS ANOTHER SLED SUBMITTAL
5 FORM.

6 Q. IS THIS A DOCUMENT YOU PREPARED?

7 A. YES, SIR, IT IS.

8 Q. ALL RIGHT. IF I COULD DIRECT YOUR ATTENTION TO --
9 LET ME BACK UP A SECOND. THIS WAS A FORM THAT WAS
10 SENT TO SLED?

11 A. I HAND CARRIED THIS FORM TO SLED; YES, SIR.

12 Q. IT'S A SLED FORM?

13 A. YES, SIR.

14 Q. AN INVENTORY SHEET FROM SLED?

15 A. YES, SIR.

16 Q. EVIDENCE INVENTORY SHEET. AND YOU HAND CARRIED ALL
17 OF THE ITEMS REFLECTED IN THIS INVENTORY SHOW TO
18 SLED?

19 A. YES, SIR; THAT'S CORRECT.

20 Q. ITEMS THAT WERE COLLECTED FROM THE SCENE; IS THAT
21 RIGHT?

22 A. YES, SIR.

23 Q. AND LASTLY I'LL SHOW YOU EXHIBIT FOURTEEN. WHAT IS
24 IT, PLEASE? (WITNESS EXAMINES EVIDENCE.)

25 A. RESULTS OF AN EXAMINATION BY SPECIAL AGENT WILLIE

RONALD MANCHESTER - CONT'D CROSS-MR. THEOS
GALLMAN.

1

2

Q. ARE THESE THE RESULTS OF THE EXAMINATIONS THAT WERE
CONDUCTED ON ALL THE PIECES OF PHYSICAL EVIDENCE
THAT WERE FORWARDED TO SLED BY YOU OR YOUR
DEPARTMENT?

3

4

5

6

A. I BELIEVE SO.

7

8

9

10

11

12

13

A. YES, SIR.

14

15

Q. THEY WOULD INCLUDE SWABS TO ATTEMPT TO IDENTIFY
SEMEN; IS THAT CORRECT?

16

17

A. YES, SIR.

18

19

20

Q. THEY WOULD INCLUDE OTHER SWABS TAKEN FROM THE
KITCHEN AREA; IS THAT CORRECT?

21

22

A. YES, SIR.

23

24

Q. SO EVERYTHING THAT WAS TAKEN FROM THE SCENE WAS
FORWARDED TO SLED, AND AS A RESULT THEY PERFORMED
CERTAIN TESTS, OR DIDN'T PERFORM TESTS WHERE IT
SAYS "NO ANALYSIS PERFORMED;" IS THAT CORRECT?

25

26

A. MAY I?

27

Q. YES; PLEASE. (WITNESS EXAMINES EVIDENCE.)

RONALD MANCHESTER - RE-DIRECT/MR. BAILEY

1 A. YES, SIR; THIS APPEARS TO HAVE EVERYTHING LISTED.

2 Q. ON THE LEFT-HAND SIDE ARE ALL THE ITEMS OF
3 EVIDENCE, AND ON THE RIGHT-HAND SIDE WERE THE
4 RESULTS OF THOSE EXAMINATIONS; CORRECT?

5 A. YES, SIR.

6 Q. OFFICER MANCHESTER, DO YOU KNOW IF MRS. BOYD'S
7 PURSE WAS EVER FOUND?

8 A. NO, SIR. I HAVE NO PERSONAL KNOWLEDGE OF THAT.

9 MR. THEOS: NO OTHER QUESTIONS, YOUR
10 HONOR.

11 THE COURT: ANYTHING ON RE-DIRECT?

12 MR. BAILEY: VERY BRIEFLY, IF IT
13 PLEASE THE COURT?

14 RE-DIRECT EXAMINATION

15 BY MR. BAILEY:

16 Q. MR. MANCHESTER, JUST TO KIND OF FOLLOW UP A LITTLE
17 BIT ON SOME OF THE QUESTIONS THAT MR. THEOS ASKED
18 YOU. AND I'LL TRY TO BE VERY BRIEF. THE
19 PHOTOGRAPHS YOU TOOK OR THE PICTURES OF THE DIRT
20 AREA OUTSIDE OF THE BACK PORCH, YOU TESTIFIED THAT
21 YOU TOOK SEVERAL PHOTOGRAPHS OF WHAT APPEARED TO BE
22 TWO DIFFERENT FOOT IMPRESSIONS; IS THAT CORRECT?

23 A. I TOOK SEVERAL PHOTOGRAPHS OF ONE PARTICULAR
24 FOOTWEAR. AND LIKE I SAID, THE SECOND FOOTWEAR
25 THAT I'M TALKING ABOUT WAS A POLICE OFFICER'S.

RONALD MANCHESTER - RE-DIRECT/MR. BAILEY

1 Q. ALL RIGHT. AND THE OTHER ONE WOULD HAVE BEEN
2 WHAT'S BEEN MARKED AS STATE'S -- THE PHOTOGRAPH ON
3 THE LEFT IS STATE'S FIFTEEN FOR IDENTIFICATION; IS
4 THAT CORRECT?

5 A. YES, SIR.

6 Q. OKAY. AND I KNOW YOU'RE NOT A FOOTWEAR EXPERT AND
7 HAVEN'T BEEN QUALIFIED AS SUCH; BUT WHAT IS THE
8 REASON THAT YOU SENT THOSE WHITE SHOES IN THAT BOX
9 THAT WE REFERRED TO EARLIER THAT YOU FOUND IN THE
10 HOUSE ALONG WITH THAT PICTURE?

11 A. BECAUSE THEY APPEARED TO BE THE SAME.

12 Q. ALL RIGHT, SIR. AND DID YOU ASK MR. LAMBERT -- WHO
13 DID YOU SEND THOSE TO AT SLED?

14 A. IF YOU HADN'T SAID LAMBERT.

15 Q. STEVE DERRICK?

16 A. STEVE DERRICK; YES, SIR.

17 Q. ALL RIGHT, SIR. NOW MR. THEOS ASKED YOU ABOUT THE
18 FLOOR IN THE KITCHEN. DID YOU CUT AN AREA OF THAT
19 KITCHEN FLOOR OUT?

20 A. YES, SIR, I DID.

21 Q. AND DURING THE BREAK DID YOU GET THAT OUT OF THE
22 CAR AND PUT IT ON THE FLOOR?

23 A. YES, SIR, I DID.

24 MR. BAILEY: YOUR HONOR, I WOULD
25 HONOR THIS FLOORING INTO EVIDENCE AT THIS POINT, I

RONALD MANCHESTER - RE-DIRECT/MR. BAILEY

BELIEVE WITHOUT OBJECTION.

MR. THEOS: WITHOUT OBJECTION, YOUR HONOR.

THE COURT: ALL RIGHT. THAT WILL BE STATE'S NUMBER?

THE COURT REPORTER: SIXTEEN.

STATE'S EXHIBIT NO. 16

ADMITTED AS EVIDENCE

Q. OFFICER MANCHESTER, IF YOU WOULD PLEASE, STEP OUT HERE. (WITNESS COMPLIES.) CAN YOU ORIENT THE JURY -- AND Y'ALL IN THE BACK MAY HAVE TO STAND UP TO SEE WHAT HE'S DOING. WOULD YOU ORIENT THE JURY TO THE RELATION OF WHERE MRS. BOYD'S BODY WAS, YOU KNOW, WHERE THE HEAD WOULD HAVE BEEN; WHERE THE FEET WOULD HAVE BEEN?

A. MAY I GET ONE OF THESE PICTURES?

Q. YES, SIR.

A. IF YOU LOOK AT THE WAY THIS IS TO THE LEFT.

Q. WHY DON'T YOU READ OFF OF THIS WHAT YOU'RE REFERRING TO? (INDICATING.)

A. THIS IS STATE'S EXHIBIT NUMBER FIVE.

Q. THANK YOU.

A. THIS RIGHT HERE IS THE WAY THE BODY WAS FOUND. THE HEAD WOULD HAVE BEEN RIGHT UP IN THAT SECTION. THE FEET WOULD HAVE BEEN DOWN HERE IN THIS AREA.

RONALD MANCHESTER - RE-DIRECT/MR. BAILEY

1 (INDICATING.) THIS AREA RIGHT HERE WITH THIS
2 INDENTATION IS ONE OF THE LEGS OF THE REFRIGERATOR.

3 Q. ALL RIGHT. THANK YOU. YOU CAN PUT THAT DRAWING
4 BACK IF YOU WANT TO. NOW THE BLACK MATERIAL ON THE
5 FLOOR; WHAT IS THAT?

6 A. THAT IS A STAIN OR CHEMICAL USED CALLED AMINO
7 BLACK.

8 Q. WHAT'S THE PURPOSE OF PUTTING AMINO BLACK ON THERE?

9 A. HOPEFULLY TO RECOVER FINGERPRINTS.

10 Q. ALL RIGHT.

11 A. IT WILL STAIN THE PROTEINS IN THE BLOOD.

12 Q. AND THE PINK AND YELLOW STRINGS DOWN ON THE BOTTOM
13 END OF IT. WHAT ARE THOSE?

14 A. UM---

15 Q. IF YOU KNOW.

16 A. IT'S REFERENCE TO THE BLOOD SPATTER.

17 Q. ALL RIGHT, SIR. DID YOU PLACE THOSE ON THERE, OR
18 DID SOMEBODY ELSE DO THAT?

19 A. AGENT STEVE DERRICK PLACED THOSE ON THERE AT MY
20 REQUEST.

21 Q. ALL RIGHT, SIR. HAVE A SEAT. (WITNESS COMPLIES.)

22 MR. BAILEY: YOUR HONOR, THAT'S ALL
23 I HAVE OF MR. MANCHESTER.

24 THE COURT: ANYTHING FURTHER ON
25 RE-CROSS, MR. THEOS?

CLAY ALLEN NICHOLS - DIRECT/MR. BAILEY

1 MR. THEOS: NO, SIR.

2 THE COURT: ALL RIGHT. YOU MAY STEP
3 DOWN. AND ANY OBJECTION TO THIS GENTLEMAN BEING
4 EXCUSED, OR IS HE NEEDED LATER?

5 MR. BAILEY: I MAY NEED TO RECALL
6 HIM, YOUR HONOR.

7 THE COURT: WELL, HE'S UNDER YOUR
8 SUBPOENA. YOU ADVISE HIM, PLEASE, SIR.

9 MR. BAILEY: CLAY NICHOLS.

10 THE COURT: COME AROUND PLEASE, MR.
11 CLAY NICHOLS. PUT YOUR LEFT HAND ON THE BIBLE AND
12 RAISE YOUR RIGHT.

13 - - - - -

14 WHEREUPON,

15 CLAY ALLEN NICHOLS, WHO AFTER BEING FIRST
16 DULY SWORN TO TELL THE TRUTH, TESTIFIED
17 AS FOLLOWS:

18 MR. BAILEY: YOUR HONOR, I BEG THE
19 COURT'S INDULGENCE.

20 MR. THEOS: YOUR HONOR, MAY MR.
21 BAILEY AND I APPROACH THE BENCH, PLEASE?

22 THE COURT: SURE. (AT THIS TIME
23 BENCH CONFERENCE IS HELD.)

24 DIRECT EXAMINATION

25 BY MR. BAILEY:

CLAY ALLEN NICHOLS - DIRECT/MR. BAILEY

1 Q. WOULD YOU STATE YOUR FULL NAME, PLEASE?

2 A. CLAY ALLEN NICHOLS.

3 Q. ALL RIGHT, SIR. AND WHAT IS YOUR PROFESSION?

4 A. I'M A FORENSIC PATHOLOGIST.

5 Q. WOULD YOU BRIEFLY TELL THE JURY AS A DOCTOR WHAT
6 YOUR EDUCATIONAL BACKGROUND IS?

7 A. I RECEIVED MY BACHELOR OF SCIENCE DEGREE FROM THE
8 UNIVERSITY OF OKLAHOMA IN 1981. FOLLOWING THAT I
9 GRADUATED FROM THE UNIVERSITY OF OKLAHOMA COLLEGE
10 OF MEDICINE IN 1985. AFTER THAT I ENTERED A
11 RESIDENCY PROGRAM IN ANATOMIC AND FORENSIC
12 PATHOLOGY AT THE MEDICAL UNIVERSITY OF SOUTH
13 CAROLINA, COMPLETING THAT IN 1989. FOLLOWING THAT
14 I RECEIVED A FACULTY APPOINTMENT AT THE MEDICAL
15 UNIVERSITY WHERE I'M CURRENTLY AN ASSOCIATE
16 PROFESSOR IN THE DEPARTMENT OF PATHOLOGY AND
17 LABORATORY MEDICINE. I HAVE A FULL AND
18 UNRESTRICTED LICENSE TO PRACTICE MEDICINE AND
19 SURGERY IN THE STATE OF SOUTH CAROLINA, AND I'M
20 BOARD CERTIFIED BY THE AMERICAN BOARD OF FORENSIC
21 PATHOLOGY IN BOTH ANATOMIC AND FORENSIC PATHOLOGY
22 PARTS.

23 Q. ALL RIGHT, SIR. AND YOUR PRESENT POSITION IS AT
24 THE MEDICAL UNIVERSITY?

25 A. YES, IT IS.

CLAY ALLEN NICHOLS - DIRECT/MR. BAILEY

1 Q. ALL RIGHT, SIR. APPROXIMATELY HOW MANY AUTOPSIES
2 HAVE YOU PERFORMED, DOCTOR?

3 A. APPROXIMATELY 2,000.

4 Q. AND HAVE YOU TESTIFIED IN COURT BEFORE AS AN EXPERT
5 IN THE FIELD OF FORENSIC PATHOLOGY?

6 A. YES, I HAVE.

7 Q. ON APPROXIMATELY HOW MANY OCCASIONS?

8 A. SEVERAL HUNDRED.

9 MR. BAILEY: YOUR HONOR, I WOULD
10 TENDER DR. NICHOLS AS AN EXPERT IN FORENSIC
11 PATHOLOGY.

12 THE COURT: YOU MAY CROSS AS TO HIS
13 EXPERTISE, IF YOU PLEASE.

14 MR. THEOS: NO QUESTIONS, YOUR
15 HONOR.

16 Q. DOCTOR, IF YOU WOULD PLEASE, TELL THE JURY WHAT A
17 PATHOLOGIST IS?

18 A. TO BEGIN WITH A PATHOLOGIST IS A PHYSICIAN. WE GO
19 TO MED SCHOOL FOR FOUR YEARS LIKE ANY OTHER
20 PHYSICIAN, BUT RATHER THAN SPECIALIZING IN PATIENT
21 CARE, WE SPECIALIZE IN THE USE OF LABORATORY
22 METHODS FOR THE DIAGNOSIS OF PATIENT PROBLEMS.
23 ESSENTIALLY WHAT A PATHOLOGIST SEES INSTEAD OF
24 PATIENTS ARE PARTS OF PATIENTS. AND WE RECEIVE ANY
25 SORT OF BLOOD THAT'S TAKEN AT THE TIME OF THE

CLAY ALLEN NICHOLS - DIRECT/MR. BAILEY

1 EXAMINATION. THAT'S SENT TO THE LABORATORY FOR A
2 PATHOLOGIST TO INTERPRET, PLUS ANY TISSUES THAT ARE
3 REMOVED AT SURGERY OR PERHAPS IN A DOCTOR'S OFFICE
4 ARE ALSO SENT TO A PATHOLOGIST FOR THE
5 INTERPRETATION OF DISEASE. ONE OF THE THINGS THAT
6 A PATHOLOGIST DOES ALSO IS THE PERFORMANCE OF AN
7 AUTOPSY WHICH IS THE DISSECTION OF A PERSON IN
8 ORDER TO DETERMINE THE CAUSE OR MANNER OF DEATH. A
9 FORENSIC PATHOLOGIST SPECIALIZES IN DEATHS THAT ARE
10 CAUSED BY UNNATURAL OR VIOLENT DISEASE PROCESSES.

11 Q. AS PART OF YOUR DUTIES, ARE YOU SOMETIMES CALLED TO
12 CRIME SCENES AS A FORENSIC PATHOLOGIST?

13 A. YES, I AM.

14 Q. ALL RIGHT, SIR. AND WHY IS THAT? WHY WOULD YOU GO
15 TO A CRIME SCENE?

16 A. IT AIDS IN DETERMINING THE CAUSE OR MANNER OF
17 DEATH. THE PATHOLOGIST GETS TO SEE FIRSTHAND WHAT
18 THE SCENE APPEARS TO BE.

19 Q. ALL RIGHT, SIR. CALLING YOUR ATTENTION TO SUNDAY
20 AFTERNOON, SEPTEMBER THE FIRST, 1996. WERE YOU
21 REQUESTED BY THE DORCHESTER COUNTY CORONER TO COME
22 TO SUMMERVILLE TO WEST LUKE STREET, 911 WEST LUKE
23 STREET?

24 A. YES, I WAS.

25 Q. AND DID YOU GO INSIDE THE HOUSE AT THAT ADDRESS?

CLAY ALLEN NICHOLS - DIRECT/MR. BAILEY

1 A. YES, SIR, I DID.

2 Q. DID YOU ENTER THE KITCHEN AREA?

3 A. YES, I DID.

4 Q. WHAT OBSERVATION DID YOU MAKE IN THE KITCHEN AREA?

5 A. ESSENTIALLY THE BODY OF LILLY BELL BOYD WAS FOUND
6 ON THE KITCHEN FLOOR. IT WAS APPARENT FROM INITIAL
7 EXAMINATION THAT SHE WAS THE VICTIM OF A VIOLENT
8 BEATING; IN ADDITION THAT SHE ALSO APPEARED TO BE
9 SEXUALLY ASSAULTED AT THAT TIME. IT WAS REPORTED
10 TO ME THAT THERE WAS SOME ATTEMPT AT RESUSCITATION
11 AND CLEANING UP OF THE BODY BY FAMILY MEMBERS AND
12 E.M.S. PERSONNEL AND THAT HER HANDS WERE TIED
13 BEHIND HER BACK ALTHOUGH AT THAT TIME THEY WERE
14 NOT. HER FEET WERE CURRENTLY BOUND WHEN I WAS AT
15 THE SCENE.

16 Q. ALL RIGHT, SIR. AND YOU SAID SHE APPEARED TO BE A
17 VICTIM OF A SEXUAL ASSAULT. WHAT LED YOU TO REACH
18 THAT PRELIMINARY CONCLUSION?

19 A. WELL, THERE WAS BLOODY FLUID EMANATING FROM BETWEEN
20 HER LEGS.

21 Q. DID YOU HAVE AN INITIAL IMPRESSION OF WHAT THE
22 BLOODY FLUID WAS?

23 A. IT WAS A COMBINATION OF BLOOD COMING FROM HER
24 VAGINAL, ANAL AREA; AND THERE APPEARED TO BE SEMEN
25 MIXED IN WITH THAT.

CLAY ALLEN NICHOLS - DIRECT/MR. BAILEY

1 Q. AND WHAT DO YOU RECALL THE POSITIONING OF HER
2 CLOTHING WAS WHEN YOU WERE AT THE SCENE?

3 A. THE MAIN THING THAT WAS REMARKABLE WAS THAT HER
4 PANTIES WERE PULLED DOWN TO APPROXIMATELY THE
5 MID-THIGH LEVEL.

6 Q. ALL RIGHT, SIR. AND WAS MRS. BOYD'S BODY
7 SUBSEQUENTLY TAKEN TO THE MEDICAL UNIVERSITY
8 AUTOPSY ROOM?

9 A. YES, SIR, IT WAS.

10 Q. AND THE NEXT DAY WOULD YOU STATE WHETHER OR NOT YOU
11 PERFORMED AN AUTOPSY ON THE BODY OF LILLY BELL
12 BOYD?

13 A. YES, I DID; ON 9/2/96 AT 9:00 A.M.

14 Q. ALL RIGHT, SIR. AND THIS WAS THE SAME WOMAN YOU
15 HAD OBSERVED THE PREVIOUS DAY IN THE HOUSE ON LUKE
16 STREET?

17 A. YES, SIR.

18 Q. AND WOULD YOU STATE WHETHER OR NOT RON THOMASON
19 WITH THE SUMMERVILLE POLICE DEPARTMENT WAS PRESENT
20 DURING THAT AUTOPSY?

21 A. YES, SIR, HE WAS.

22 Q. DID YOU CONDUCT THE AUTOPSY PURSUANT TO THE
23 AUTHORIZATION FROM THE CORONER OF DORCHESTER
24 COUNTY?

25 A. YES, SIR, I DID.

CLAY ALLEN NICHOLS - DIRECT/MR. BAILEY

1 Q. ALL RIGHT, SIR. COULD YOU BRIEFLY, DOCTOR,
2 DESCRIBE TO THE JURY WHAT THE AUTOPSY PROCEDURE IS;
3 WHAT YOU DO WHEN YOU CONDUCT AN AUTOPSY?

4 A. WELL, THE FIRST THING THAT IS PERFORMED IS WHAT'S
5 CALLED AN EXTERNAL EXAMINATION WHERE THE BODY IS
6 EXAMINED, OF COURSE, EXTERNALLY LOOKING FOR ANY
7 SORT OF EVIDENCE OF INJURY THAT COULD LEAD US ONE
8 WAY OR THE OTHER AS FAR AS THE DIAGNOSIS.
9 FOLLOWING THAT A COMPLETE DISSECTION OF ALL MAJOR
10 INTERNAL ORGANS IS PERFORMED LOOKING FOR THE
11 PRESENCE OR ABSENCE OF DISEASE AS NECESSARY
12 ANCILLARY STUDIES ARE PERFORMED SUCH AS
13 TOXICOLOGY. AND FOLLOWING THAT A COMPLETE REPORT
14 IS ISSUED INCLUDING MICROSCOPIC EXAMINATION OF ANY
15 PERTINENT TISSUES.

16 Q. ALL RIGHT, SIR. DO YOU ROUTINELY WEIGH AND MEASURE
17 THE BODY PRIOR TO THE AUTOPSY?

18 A. YES, I DO.

19 Q. DID YOU DO THAT IN THIS CASE?

20 A. YES, I DID.

21 Q. WOULD YOU TELL THE JURY, PLEASE, HOW TALL MRS. BOYD
22 WAS?

23 A. SIXTY-THREE AND A HALF INCHES.

24 Q. WHICH IS SLIGHTLY OVER FIVE FEET TALL?

25 A. YES, SIR.

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1 Q. ALL RIGHT, SIR. AND HOW MUCH DID SHE WEIGH?

2 A. ONE HUNDRED AND TEN POUNDS.

3 Q. NOW, YOU TESTIFIED PRIOR TO THE AUTOPSY YOU WOULD
4 OBSERVE THE EXTERIOR OF THE BODY; IS THAT CORRECT?

5 A. YES, SIR.

6 Q. DO YOU PREPARE A SKETCH SHOWING THE BODY?

7 A. YES, I DO.

8 Q. IN ORDER TO SHOW LOCATION OF ANY TRAUMA ON THAT?

9 A. YES, SIR.

10 Q. ALL RIGHT, SIR. WOULD YOUR PLEASE DESCRIBE
11 STARTING WITH THE FACE AND HEAD WHAT YOU OBSERVED
12 EXTERNALLY ON MRS. BOYD PRIOR TO THE AUTOPSY?

13 A. THERE WAS EXTENSIVE RED-BROWN CONTUSION TO THE
14 RIGHT SIDE OF THE FACE EXTENDING FROM THE RIGHT EYE
15 POSTERIOR TO BEHIND THE EAR AND DOWN TO THE LEVEL
16 OF THE RIGHT CHIN. THE MAXIMUM DIMENSIONS OF THIS
17 CONTUSION IS 6.5 INCHES. THE RIGHT EYELID IS
18 SWOLLEN, AND THE UNDERLYING EYE CONTAINS BOTH
19 PETECHIAL HEMORRHAGES AS WELL AS LARGER, BLOTCHY
20 HEMORRHAGES. THE LEFT EYELID IS ALSO SWOLLEN, AS
21 IS THE ENTIRE LEFT SIDE OF THE FACE DISTORTING THE
22 FACIAL ARCHITECTURE. THE DISTINCT CONTUSION IS NOT
23 IDENTIFIED IN THIS AREA. THE UNDERLYING LEFT EYE
24 CONTAINS PETECHIAL HEMORRHAGES. A BLOODY DISCHARGE
25 IS PRESENT IN BOTH NOSTRILS. THE LEFT UPPER LIP IS

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1 CONTUSED WITH A BLOODY DISCHARGE EMANATING FROM THE
2 MOUTH. AND THEN WE GO ON TO THE NEXT. DO YOU WANT
3 ME TO STOP AT THE FACE?

4 Q. YES, SIR. I'M GOING TO ASK YOU ABOUT THE NEXT ONE
5 IN A SECOND. BUT AS FAR AS YOUR CHARACTERIZATION
6 OF THE DISTORTED FACIAL ARCHITECTURE, WHAT DO YOU
7 MEAN BY THAT?

8 A. WHAT I MEAN IS THAT THE LEFT SIDE OF THE FACE IS SO
9 SWOLLEN FROM BRUISING THAT IT'S NO LONGER A NATURAL
10 CONTOUR. THERE'S A BIG LUMP SITTING RIGHT ON THE
11 LEFT SIDE OF THE FACE.

12 Q. ALL RIGHT, SIR. WHAT IS A PETECHIAL HEMORRHAGE?

13 A. A PETECHIAL HEMORRHAGE IS A PIN-POINT HEMORRHAGE
14 THAT IS ALSO FOUND ON THE FACE OR THE WHITES OF THE
15 EYES FROM A PERSON WHO DIES OF ASPHYXIATION.

16 Q. ALL RIGHT, SIR. AND DID YOU FIND THAT TO BE
17 PRESENT IN MRS. BOYD'S EYES?

18 A. YES, I DID.

19 Q. BOTH EYES?

20 A. YES, SIR.

21 Q. ALL RIGHT, SIR. AND GOING ON DOWN TO -- YOU WERE
22 GETTING READY TO TESTIFY I THINK ABOUT THE NECK
23 AREA. WHAT DID YOU OBSERVE?

24 A. PRESENT ON THE RIGHT LATERAL ANTERIOR NECK IS A
25 SQUARED OFF ABRASION CONTUSION MEASURING 0.6 INCHES

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1 ON EACH SIDE. THIS MAY REPRESENT TWO OVERLAPPING
2 INJURIES. ON THE POSTERIOR UPPER ARM -- WELL, I
3 WON'T GO ON TO THE ARM.

4 Q. ALL RIGHT, SIR. AND YOU MAY HAVE ANSWERED THIS
5 EARLIER, DOCTOR, BUT JUST TO MAKE SURE I UNDERSTAND
6 WHAT YOU'RE SAYING ABOUT PETECHIAL HEMMORHAGING; DO
7 YOU HAVE AN OPINION TO A REASONABLE DEGREE OF
8 MEDICAL CERTAINTY AS TO WHAT THE CAUSE OF PETECHIAL
9 HEMORRHAGING IN BOTH EYES WOULD BE?

10 A. YES, SIR, I DO.

11 Q. WHAT IS THAT?

12 A. ASPHYXIATION.

13 Q. ALL RIGHT, SIR. AND WITH RESPECT TO THE INJURIES
14 THAT YOU'VE TESTIFIED WERE ON HER FACE AND HEAD, DO
15 YOU HAVE AN OPINION TO A REASONABLE DEGREE OF
16 MEDICAL CERTAINTY AS TO HOW THOSE INJURIES WOULD
17 HAVE BEEN INFLICTED?

18 A. BLUNT TRAUMA. SOME SORT OF FORCE SUCH AS MIGHT
19 OCCUR IN A BEATING TOOK PLACE TO HER HEAD AND FACE
20 AREA.

21 Q. ALL RIGHT, SIR. AND COULD YOU DETERMINE OR
22 ESTIMATE TO A REASONABLE DEGREE OF MEDICAL
23 CERTAINTY APPROXIMATELY HOW MANY TIMES MRS. BOYD
24 WAS BEAT OR STRUCK IN THE HEAD OR FACE AREA?

25 A. SEVERAL TIMES. MANY OF THE BRUISES WERE

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1 OVERLAPPING AS FAR AS I COULD TELL.

2 Q. DO YOU HAVE AN OPINION AGAIN, DOCTOR, TO A
3 REASONABLE DEGREE OF MEDICAL CERTAINTY AS TO
4 WHETHER OR NOT THE INJURIES TO MRS. BOYD'S FACE AND
5 HEAD COULD HAVE BEEN CAUSED BY FALLING?

6 A. NOT BY A PLAIN FALL.

7 Q. DID YOU NOTE ANYTHING WITH REGARD TO THE LOCATION
8 OF THE AREAS ON OR ABOUT THE FACE OR THE HEAD WHERE
9 MRS. BOYD WAS STRUCK?

10 A. THESE AREAS TEND TO BE THE AREAS TARGETED BY PEOPLE
11 THROWING BLOWS OR PUNCHES TO A PERSON'S FACE SUCH
12 AS THE EYES AND CHEEKS AND CHIN AREA.

13 Q. ALL RIGHT, SIR. YOU'VE SEEN THOSE TYPES OF
14 INJURIES PREVIOUSLY?

15 A. YES, I HAVE.

16 Q. WOULD YOU PLEASE DESCRIBE WHAT YOU OBSERVED AS FAR
17 AS HER NECK AREA?

18 A. ONCE AGAIN ON THE RIGHT LATERAL ANTERIOR NECK WHICH
19 IS APPROXIMATELY IN THIS AREA WAS A SQUARED OFF
20 ABRASION-CONTUSION MEASURING 0.6 INCHES ON EACH
21 SIDE. THIS MAY BE A SINGLE ABRASION OR COULD BE
22 OVERLAPPING INJURIES.

23 Q. ALL RIGHT, SIR. AND WITH RESPECT TO HER ARMS; DID
24 YOU OBSERVE ANY TRAUMA ON HER ARMS?

25 A. YES, I DID. ON THE BACK OR THE POSTERIOR ASPECT OF

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1 THE LEFT UPPER ARM ARE FOUR 0.2 TO 0.3 IN SHELL OR
2 RED ABRASIONS. ON THE LATERAL ASPECT OF THE RIGHT
3 WRIST IS A TWO BY TWO INCH RED-BROWN CONTUSION WITH
4 MULTIPLE FAINT ABRASIONS MEASURING UP TO 0.5 INCH
5 EACH.

6 Q. ALL RIGHT, SIR. NOW, WITH RESPECT TO THE VAGINA,
7 DID YOU EXAMINE THAT PRIOR TO THE AUTOPSY?

8 A. AS PART OF THE AUTOPSY, I DID EXAMINE IT; YES, SIR.

9 Q. WHAT OBSERVATIONS DID YOU MAKE?

10 A. EXAMINATION OF THE VAGINA SHOWS NO EXTERIOR TRAUMA,
11 BUT A BLOODY DISCHARGE IS PRESENT. WOULD YOU LIKE
12 FOR ME TO READ THE INTERNAL DESCRIPTION OF THE
13 VAGINA?

14 Q. YES, SIR. LET ME GET TO THAT IN A MINUTE. WOULD
15 YOU STATE WHETHER OR NOT DURING THE AUTOPSY DO YOU
16 ROUTINELY TAKE VAGINAL OR RECTAL SWABS?

17 A. YES, I DO.

18 Q. ALL RIGHT, SIR. AND HOW DO YOU GO ABOUT DOING
19 THAT? WHAT DO WE MEAN BY A VAGINAL SWAB?

20 A. ESSENTIALLY WHAT IS PERFORMED IS THAT SIX VERY
21 SIMILAR TO Q-TIP SWABS ARE PLACED IN EACH ORIFICE
22 OF THE BODY BEING THE MOUTH, THE ANUS, AND THE
23 VAGINA. THE SWABS ARE MOVED AROUND TO SCRAPE OFF
24 THE SURFACE AREA TO MAKE SURE EACH SWAB IS COATED.
25 FOLLOWING THAT TWO SWABS FROM EACH ORIFICE ARE USED

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1 TO MAKE GLASS SLIDES FOR DIRECT MICROSCOPIC
2 EXAMINATION. TWO SWABS FROM EACH ORIFICE ARE SENT
3 OFF FOR BIOCHEMICAL MARKERS LOOKING FOR, IN THIS
4 PARTICULAR CASE, EVIDENCE OF SEMEN. AND THEN THE
5 TWO SWABS ARE USUALLY SAVED OR SENT OFF TO A LAB
6 FOR DNA ANALYSIS.

7 Q. DID YOU DO THAT IN THIS CASE?

8 A. YES, I DID.

9 Q. TAKE SWABS FROM ALL THREE LOCATIONS?

10 A. YES, SIR.

11 Q. ALL RIGHT, SIR. AND AGAIN, THE REASON YOU DO THOSE
12 SWABS IS FOR WHAT?

13 A. LOOKING FOR THE PRESENCE OR ABSENCE OF SEMEN OR
14 SPERM.

15 Q. ALL RIGHT, SIR. DO YOU RECALL WHEN YOU DID THE
16 ORAL SWABS WHETHER OR NOT THERE WAS ANY BLOOD IN
17 THE AREA OF THE MOUTH?

18 A. YES, THERE WAS.

19 Q. DOCTOR, WHEN YOU ACTUALLY BEGAN THE AUTOPSY, WOULD
20 YOU TELL THE JURY WHAT OBSERVATIONS YOU MADE WHEN
21 YOU AUTOPSIED THE HEAD AREA? AND FIRST OF ALL IF
22 YOU WOULD, PLEASE, TELL THE JURY BASICALLY HOW YOU
23 GO ABOUT AUTOPSYING THAT PART OF THE BODY?

24 A. EXAMINATION OF THE HEAD INVOLVED PLACING AN
25 INCISION BEHIND THE HEAD FROM EAR TO EAR. THEN THE

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1 SCALP IS LITERALLY PEALED FORWARD EXPOSING THE TOP
2 OF THE SKULL, AND THE TEMPORALIS MUSCLES WHICH ARE
3 THE MUSCLES ON THE SIDE OF THE HEAD WHICH YOU CAN
4 FEEL WHEN YOU CLINCH YOUR JAWS DOWN. IT MOVES BACK
5 AND FORTH. FOLLOWING THAT THE TOP OF THE SKULL IS
6 REMOVED USING A SAW. THE COVERINGS OF THE BRAIN
7 ARE EXAMINED FOR THE PRESENCE OR ABSENCE OF INJURY,
8 BLEEDING, INFECTION, OR TUMORS. THE BRAIN IS
9 ACTUALLY REMOVED, WEIGHED, DESCRIBED, AND DISSECTED
10 LOOKING ONCE AGAIN FOR THE PRESENCE OF HEMORRHAGE
11 OR OTHER DISEASE PROCESSES.

12 Q. AND DID YOU NOTE ANY EVIDENCE OF HEMORRHAGING WHEN
13 YOU REMOVED THE SKULL CAP?

14 A. YES, SIR. BUT BEFORE WE EVEN REMOVED THE SKULL
15 CAP, THERE WAS EVIDENCE OF WHAT'S CALLED SUBAERIAL
16 HEMORRHAGE WHICH MEANS DIRECTLY BENEATH THE SCALP
17 THERE WERE AREAS WHERE IT WAS BRUISED BENEATH THE
18 SCALP, AND EACH TEMPORALIS MUSCLE WAS ALSO
19 HEMORRHAGIC INDICATING BLUNT TRAUMA OR CONTUSION TO
20 THAT AREA AS WELL.

21 Q. ALL RIGHT, SIR. WHEN YOU LIFTED THE SKULL CAP, DID
22 YOU OBSERVE ANY FURTHER HEMORRHAGES?

23 A. YES, I DID. THERE WAS A 100 CC RED LIQUID AMOUNT
24 OF BLOOD FOUND IN THE SUBDURAL SPACES KNOWN AS THE
25 SUBDURAL SPACES KNOWN AS A SUBDURAL HEMATOMA. AND

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1 WHAT THAT MEANS IS THAT THE BRAIN IS COVERED BY A
2 VERY THICK MEMBRANE KNOWN AS THE DURA; AND THIS
3 PARTICULAR BLEEDING WAS UNDERNEATH THAT DURA. AND
4 THAT'S USUALLY INDICATIVE OF BLUNT HEAD TRAUMA.

5 Q. ALL RIGHT, SIR. AND WHAT DEPTH WOULD THE
6 SUBARACHNOID HEMORRHAGING BE BELOW THE LEVEL OF THE
7 SKULL?

8 A. THE SUBDURAL HEMORRHAGE WAS FOUND DIRECTLY BENEATH
9 THE DURA.

10 Q. ALL RIGHT. AND WAS THERE ANY SUBARACHNOID
11 HEMORRHAGING?

12 A. YES, SIR. THERE IS AN ADDITIONAL MEMBRANE THAT
13 COVERS THE BRAIN VERY TIGHTLY THAT'S KNOWN AS THE
14 ARACHNOID MEMBRANE. AND A SMALL AMOUNT OF BLEEDING
15 WAS ALSO FOUND UNDERNEATH THAT MEMBRANE AS WELL.

16 Q. ALL RIGHT. SO HOW DEEP WITHIN THE SKULL IN TERMS
17 OF INCHES OR WHATEVER WAS THAT BLEEDING TAKING
18 PLACE?

19 A. LESS THAN A HALF INCH.

20 Q. DID YOU HAVE AN OPINION TO A REASONABLE DEGREE OF
21 MEDICAL CERTAINTY OF THE DEGREE OF FORCE THAT WOULD
22 BE REQUIRED TO PRODUCE THE SUBDURAL AND
23 SUBARACHNOID HEMORRHAGING AS YOU'VE DESCRIBED?

24 A. IT CAN OCCUR AS A RESULT OF A FALL. BUT IN THIS
25 PARTICULAR CASE, CONSIDERING ALL THE BRUISING TO

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1 THE OUTSIDE OF THE FACE AND THE HEAD AS WELL AS ALL
2 THE BRUISING TO THE INSIDE OF THE HEAD ON MULTIPLE
3 DIRECTIONS THAT THIS WAS CAUSED BY INTENTIONAL
4 BEATING OR BLUNT TRAUMA.

5 Q. SO YOU CAN RULE OUT AN ACCIDENTAL FALL OR A FALL?

6 A. IT WOULD BE VERY DIFFICULT FOR A PERSON TO JUST
7 FALL DOWN AND HAVE MULTIPLE BRUISES AND CONTUSIONS
8 ALL OVER THEIR FACE INCLUDING THE TOP OF THEIR HEAD
9 AND SIDES OF THEIR TEMPORALIS MUSCLES. YES, THAT
10 IS EXCLUDED.

11 Q. DOCTOR, DO YOU HAVE AN OPINION TO A REASONABLE
12 DEGREE OF MEDICAL CERTAINTY AS TO WHETHER OR NOT
13 THE BLOWS THAT YOU OBSERVED TO MRS. BOYD'S HEAD
14 WERE FATAL INJURIES?

15 A. YES, SIR. THERE WERE TWO PARTS TO MRS. BOYD'S
16 DEATH. ONE WAS THE ASPHYXIATION AND THE OTHER WAS
17 DUE TO BLUNT HEAD TRAUMA CAUSING THE SUBDURAL AND
18 SUBARACHNOID HEMORRHAGE.

19 Q. ALL RIGHT, SIR. AND AGAIN, DO YOU HAVE AN OPINION
20 TO A REASONABLE DEGREE OF MEDICAL CERTAINTY AS TO
21 MOST LIKELY CAUSE OF THOSE INJURIES?

22 A. BLUNT FORCE TRAUMA.

23 Q. NOW IN REGARD TO MRS. BOYD'S NECK AREA, DID YOU
24 AUTOPSY THAT?

25 A. YES, WE DID.

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1 Q. SO WHAT OBSERVATIONS DID YOU MAKE WHEN YOU
2 AUTOPSIED THE NECK? (WITNESS REVIEWS DOCUMENT.)

3 A. FIRST OFF THE NECK ALSO INCLUDES THE TONGUE AREA.
4 THE TONGUE WAS FOUND TO BE CONTUSED OR BRUISED
5 ALONG THE LEFT LATERAL ASPECTS INSIDE THE TONGUE ON
6 THE LEFT SIDE. THAT WAS ALSO BRUISED. THE RIGHT
7 WING OF THE HYOID BONE WAS FOUND TO BE FRACTURED.

8 Q. IN REGARD TO THE INJURY TO THE TONGUE, DO YOU HAVE
9 AN OPINION TO A REASONABLE DEGREE OF MEDICAL
10 CERTAINTY AS TO THE CAUSATION OF THAT TYPE OF
11 INJURY?

12 A. YES, SIR.

13 Q. WHAT IS THAT?

14 A. A BLOW TO THAT SIDE OF THE FACE CAUSED HER TO BITE
15 HER TONGUE.

16 Q. ALL RIGHT, SIR. CAN YOU INDICATE ON YOUR FACE
17 APPROXIMATELY WHERE THAT BLOW WOULD HAVE BEEN?

18 A. RIGHT IN THIS AREA. (INDICATING.) PROBABLY UNDER
19 THE JAW; CAUSED THE JAW TO GO UP AGAINST THE TONGUE
20 BRUISING THAT PARTICULAR AREA.

21 Q. YOU'RE INDICATING A BLOW TO THE LEFT LOWER PART OF
22 THE JAW?

23 A. YES, SIR.

24 Q. ALL RIGHT, SIR.

25 A. IN ADDITION, THE RIGHT WING OF THE HYOID BONE WAS

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1 FOUND TO BE FRACTURED NEAR THE MIDLINE. HEMORRHAGE
2 WAS FOUND AROUND THAT PARTICULAR FRACTURE AS WELL
3 AS THE UNDERLYING STRAP MUSCLES.

4 Q. FIRST OF ALL COULD YOU TELL THE JURY WHERE THE
5 HYOID BONE IS LOCATED?

6 A. THE HYOID BONE IS A VERY SMALL SLENDER HORSESHOE
7 SHAPED BONE RIGHT ABOVE YOUR ADAMS APPLE. IF YOU
8 LOCATE YOUR ADAMS APPLE AND GO UP A LITTLE BIT,
9 YOU'LL FEEL A HORSESHOE SHAPED STRUCTURE RIGHT
10 ABOVE THAT. AND IT WRAPS RIGHT AROUND THE THROAT
11 AREA. IN THIS PARTICULAR CASE THE RIGHT SIDE OF
12 THAT BONE WAS FRACTURED, AND THERE WAS HEMORRHAGE
13 INDICATING THAT THAT BONE WAS FRACTURED WHILE MRS.
14 BOYD HAD A BLOOD PRESSURE AND SHE WAS ALIVE.

15 Q. ALL RIGHT, SIR. AND AGAIN TO MAKE IT CLEAR IN THE
16 RECORD, WHAT IS THE SIGNIFICANCE OF A FRACTURED
17 HYOID BONE?

18 A. THIS USUALLY OCCURS IN CASES OF MANUAL
19 STRANGULATION WHERE A PERSON HAS FORCE APPLIED TO
20 THE THROAT AREA AND THE HYOID BONE GETS FRACTURED.
21 IN THIS PARTICULAR CASE, BESIDES HAVING THE
22 FRACTURED HYOID BONE ADDITIONAL EVIDENCE OF MANUAL
23 STRANGULATION COMES FROM THE MARK OR ABRASION ON
24 THE OUTSIDE OF THE NECK IN APPROXIMATELY THE SAME
25 AREA. THE STRAP MUSCLES WERE ALSO FOUND TO BE

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1 BRUISED OR HEMORRHAGIC IN THAT AREA. THE STRAP
2 MUSCLES ARE THE MUSCLES OF THE NECK THAT RUN FROM
3 THE COLLAR BONE UP TO THE JAW, AND IF YOU CLINCH
4 YOUR JAW AGAIN YOU CAN FEEL THESE MUSCLES
5 PROTRUDE. FOLLOWING THAT WE ALSO HAVE ADDITIONAL
6 EVIDENCE OF INJURY OF ASPHYXIATION FROM THE
7 PETECHIAE OR SMALL PINPOINT HEMORRHAGES THAT WERE
8 FOUND IN EACH EYE.

9 Q. ALL RIGHT, SIR. SO DO YOU HAVE AN OPINION TO A
10 REASONABLE DEGREE OF MEDICAL CERTAINLY WHETHER OR
11 NOT MRS. BOYD WAS MANUALLY STRANGLED?

12 A. SHE WAS; YES, SIR.

13 Q. AND AGAIN YOUR TESTIMONY WOULD BE THAT DUE TO THE
14 CONDITION OF WHAT YOU OBSERVED DURING THE AUTOPSY
15 AND THE HEMORRHAGING, SHE WOULD HAVE BEEN ALIVE AT
16 THE TIME OF THE STRANGLING?

17 A. THAT IS CORRECT.

18 Q. ALL RIGHT, SIR. DR. NICHOLS, DID YOU AUTOPSY THE
19 CHEST CAVITY; THE RIB CAGE AREA?

20 A. YES, I DID.

21 Q. ALL RIGHT, SIR. WHAT OBSERVATIONS DID YOU MAKE?

22 A. MULTIPLE RIB FRACTURES WERE IDENTIFIED, AND
23 HEMORRHAGE WAS IDENTIFIED AROUND THESE RIB
24 FRACTURES, SPECIFICALLY RIGHT RIBS NUMBERS TWO
25 THROUGH SEVEN ON THE ANTERIOR ASPECT, LEFT RIBS TWO

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- 1 THROUGH SIX, WERE FOUND FRACTURED ON THE ANTERIOR
2 ASPECT. IN ADDITION LEFT RIBS FIVE THROUGH EIGHT
3 ARE FRACTURED ON THE LATERAL ASPECTS.
- 4 Q. ALL RIGHT, SIR. SO HOW MANY RIB FRACTURES DID YOU
5 OBSERVE TOTAL?
- 6 A. FOURTEEN.
- 7 Q. THAT'S ON BOTH SIDES OF THE RIB CAGE?
- 8 A. IT WASN'T ONLY ON BOTH SIDES BUT IN DIFFERENT
9 AREAS. THE ANTERIOR RIB FRACTURES WOULD HAVE BEEN
10 ALONG HERE. THE LATERAL LEFT RIB FRACTURES WOULD
11 HAVE BEEN ALONG THE SIDE AREAS.
- 12 Q. ALL RIGHT, SIR. DO YOU HAVE AN OPINION AGAIN TO A
13 REASONABLE DEGREE OF MEDICAL CERTAINTY AS TO THE
14 MOST LIKELY WAY THAT THE RIBS COULD BE FRACTURED IN
15 THAT MANNER?
- 16 A. THIS APPEARS DUE TO EITHER A STOMP OR A BODY SLAM,
17 SOME SORT OF FORCIBLE FORCE OF CONSIDERABLE WEIGHT
18 PUT ON MRS. BOYD'S BODY USUALLY WHILE SHE WAS IN A
19 RECLINING POSITION OR LAYING DOWN.
- 20 Q. DID YOU OPEN HER STOMACH DURING THE AUTOPSY?
- 21 A. YES, I DID.
- 22 Q. WHAT WAS THE CONDITION OF THE STOMACH CONTENTS?
- 23 A. THERE WAS LESS THAN ONE-HALF OUNCE OF BROWN LIQUID
24 IDENTIFIED.
- 25 Q. ALL RIGHT, SIR. ANY SOLID FOOD?

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1 A. NO, SIR; ESSENTIALLY THE STOMACH WAS EMPTY.

2 Q. HOW LONG DOES IT TAKE FOR THE STOMACH TO EMPTY OUT
3 AFTER A MEAL ROUGHLY?

4 A. DEPENDING ON THE PERSON AND THE SIZE
5 OF THE MEAL AND THE TYPE OF MEAL, ANY PLACE FROM
6 ABOUT TWO HOURS TO FORTY-SIX HOURS.

7 Q. DID YOU OPEN THE VAGINAL CAVITY AS FAR AS THE
8 AUTOPSY?

9 A. YES, I DID.

10 Q. WHAT OBSERVATIONS DID YOU MAKE?

11 A. EXAMINATION OF THE VAGINA IS REMARKABLE FOR THE
12 PRESENCE OF RATHER SEVERE HEMORRHAGIC SHELL
13 LACERATIONS EXTENDING FROM THE ROOF OF THE VAGINA
14 TOWARDS THE BACK OF THE VAGINA. HEMORRHAGES
15 READILY ARE VISIBLE THROUGH THE SEROSAL SURFACE
16 APPROXIMATELY ONE-FOURTH TO ONE-THIRD OF THE TOTAL
17 VAGINAL OTOSSES FOUND TO BE TRAUMATIZED.

18 Q. ALL RIGHT. WHAT IS A SIGNIFICANCE OF HEMORRHAGING
19 IN THE VAGINAL CAVITY THAT YOU'VE DESCRIBED?

20 A. THIS INDICATES THAT DIRECT FORCE WAS APPLIED TO THE
21 VAGINA TO THE POINT WHERE IT CAUSED DIRECT TISSUE
22 DAMAGE. AND ONCE AGAIN THE HEMORRHAGE BEING THERE
23 INDICATES THAT MRS. BOYD WAS ALIVE DURING THE
24 COURSE OF THIS PART OF THE ASSAULT.

25 Q. ALL RIGHT, SIR. HEMORRHAGING IS BLEEDING; IS THAT

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1 CORRECT?

2 A. THAT'S CORRECT. AND IN ORDER TO HEMORRHAGE A
3 PERSON NEEDS A BEATING HEART TO GENERATE BLOOD
4 PRESSURE.

5 Q. DOCTOR, YOU TESTIFIED EARLIER THAT YOU HAD PREPARED
6 A CHART; IS THAT CORRECT?

7 A. YES, SIR.

8 Q. A SKETCH?

9 A. YES, SIR.

10 Q. I'M GOING TO HAND YOU WHAT'S BEEN MARKED AS STATE'S
11 NINE AND ASK IF THAT'S THE CHART THAT YOU REFERRED
12 TO?

13 A. YES, IT IS.

14 Q. THAT'S AN ENLARGEMENT OF IT?

15 A. YES, SIR.

16 Q. ALL RIGHT, SIR. I'M GOING TO PUT THIS ON THE
17 PODIUM HERE. IF YOU WOULD, DOCTOR, STEP AROUND
18 HERE PLEASE AND INDICATE TO THE JURY WHAT'S SHOWN
19 ON THAT CHART?

20 A. THIS IS A STANDARD BODY DIAGRAM USED TO DOCUMENT
21 EXTERNAL INJURIES OR OTHER SIMILAR FINDINGS ON A
22 PERSON AT THE AUTOPSY. THIS PARTICULAR DIAGRAM
23 SHOWS THE EXTERNAL INJURIES ON LILLY BELL BOYD.

24 Q. ALL RIGHT, SIR. IF YOU JUST CAN GO THROUGH WHAT'S
25 SHOWN THERE, DOCTOR.

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1 A. SEVERAL NOTES ARE JUST INCIDENTAL TO THE FINDINGS
2 TO THE AUTOPSY; THINGS SUCH AS GRAY SHORT HAIRS IS
3 IDENTIFIED; DENTURES ARE IDENTIFIED. BUT
4 SPECIFICALLY IT IS IDENTIFYING THE CONTUSION TO THE
5 RIGHT SIDE OF THE FACE ONCE AGAIN WHICH IS
6 APPROXIMATELY 2.5 INCHES IN LENGTH WHICH EXTENDS
7 FROM THE EAR TO THE CHEEK THAT SHOWS A BLOODY
8 DISCHARGE COMING FROM THE NOSTRILS AND MOUTH,
9 CONTUSION TO THE LIP THAT WAS IDENTIFIED. THE
10 SMALL EDEMATOUS AREA AROUND THE LEFT SIDE OF THE
11 FACE. IT ALSO DEMONSTRATES THE SQUARED OFF
12 ABRASION TO THE RIGHT LATERAL ASPECT OF THE NECK.
13 ALSO SHOWN ARE THE ABRASIONS MEASURING FROM 0.2 TO
14 0.3 INCH ON THE BACK OF THE LEFT ARM AND THE
15 ABRASIONS OR CONTUSIONS TO THE LOWER PART OF THE
16 ARM AND THE RIGHT WRIST AS WELL. ALSO IDENTIFIED,
17 INCIDENTALLY, IS AN AREA OF INSECT ACTIVITY WHERE
18 INSECTS HAD GATHERED AND SOME MINOR SCARS TO HER
19 ABDOMINAL AREA.

20 Q. SO NOW YOU MENTIONED INSECT ACTIVITY. HOW LONG
21 DOES IT TAKE FOR INSECTS TO COME TO A BODY AFTER
22 DEATH?

23 A. MINUTES.

24 Q. THANK YOU. YOU CAN HAVE A SEAT, DOCTOR. (AT THIS
25 TIME WITNESS RETURNS TO WITNESS STAND.) DOCTOR,

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1 WITH RESPECT TO YOUR OPINION AS TO THE CAUSE OF
2 DEATH, WOULD YOU SUM THAT UP, PLEASE?

3 A. LILLY BELL BOYD DIED AS A RESULT OF BLUNT HEAD
4 TRAUMA AND STRANGULATION.

5 Q. ALL RIGHT, SIR. AND AS PART OF THE AUTOPSY
6 PROCEDURE DO YOU ROUTINELY DRAW BLOOD FROM THE
7 PERSON THAT YOU'RE DOING THE AUTOPSY ON?

8 A. YES, WE DO.

9 Q. DID YOU DO THAT IN THIS CASE?

10 A. YES, I DID.

11 Q. WOULD YOU STATE WHETHER OR NOT YOU TURNED OVER TO
12 MR. THOMASON, THE POLICE OFFICER YOU TESTIFIED WAS
13 AT THE AUTOPSY, A TUBE OF BLOOD FROM THE AUTOPSY
14 AND ORAL VAGINAL SWABS?

15 A. YES, I DID.

16 Q. ALL RIGHT, SIR. WOULD YOU STATE WHETHER OR NOT YOU
17 -- I BELIEVE YOU TESTIFIED EARLIER THAT YOU WOULD
18 SEPARATE THOSE SWABS AND WOULD TAKE SOME OF THEM
19 BACK TO THE MEDICAL UNIVERSITY WITH YOU?

20 A. WHILE I WAS AT THE MEDICAL UNIVERSITY; YES, SIR.

21 Q. YES; THAT'S CORRECT. NOW WITH RESPECT TO THE SWABS
22 THAT YOU DID NOT TURN OVER TO RON THOMASON; WHAT
23 DID YOU DO WITH THOSE?

24 A. TWO SWABS WERE USED TO MAKE GLASS SLIDES ONCE AGAIN
25 FOR DIRECT MICROSCOPIC EXAMINATION OF THE BODY

CLAY ALLEN NICHOLS - DIRECT/MR. BAILEY

1 ORIFICES. AND TWO WERE TURNED OVER FROM EACH
2 ORIFICE TO OUR TOXICOLOGY DEPARTMENT TO LOOK FOR
3 THE PRESENCE OR ABSENCE OF MARKERS FOR SEMEN.

4 Q. ALL RIGHT, SIR. NOW, IS THAT A ROUTINE PART OF THE
5 AUTOPSY PROCEDURE TO GET A TOXICOLOGY REPORT?

6 A. YES, SIR, IT IS.

7 Q. IS THAT THE TYPE OF INFORMATION THAT YOU GET FROM
8 THE LAB IN ORDER TO HELP YOU FORM YOUR PROFESSIONAL
9 OPINION?

10 A. YES, IT IS.

11 Q. ALL RIGHT, SIR. AND DID YOU GET A TOXICOLOGY
12 REPORT FROM THE LAB IN THIS CASE?

13 A. YES, I DID.

14 Q. ALL RIGHT, SIR. AND YOU SAID MARKERS FOR SEMEN.
15 WHAT IS ACID PHOSPHATASE?

16 A. ACID PHOSITACE IS A CHEMICAL IN THIS PARTICULAR
17 CASE THAT IS OFTEN PRODUCED BY THE PROSTATE GLAND
18 WHICH IS INVOLVED IN MALE EJACULATION AND THE
19 PRODUCTION OF SEMEN. AND IF IT'S A LEVEL ABOVE 100
20 NANOGRAMS PER SWAB IT'S CONSIDERED A POSITIVE
21 RESULT. ANYTHING LESS THAN THAT IS CONSIDERED A
22 NEGATIVE.

23 Q. ALL RIGHT. AND THE TOXICOLOGY REPORT THAT YOU
24 RECEIVED AS PART OF YOUR AUTOPSY PROCEDURE, WHAT
25 WAS THE ACID PHOSPHATASE LEVEL OF THE VAGINAL SWAB?

CLAY ALLEN NICHOLS - DIRECT/MR. BAILEY

1 A. THE VAGINAL SWAB WAS 1034 NANOGRAMS.

2 Q. WHICH INDICATED WHAT, IF ANYTHING, TO YOU?

3 A. A POSITIVE ACID PHOSPHATASE RESULT MEANING THAT
4 SEMEN WAS PRESENT IN THE VAGINAL CANAL.

5 Q. SAME QUESTION, DOCTOR, WITH REGARD TO THE ORAL
6 SWABS.

7 A. THE ORAL SWAB WAS 1034 NANOGRAMS PER SWAB.

8 Q. WHICH INDICATED WHAT?

9 A. A POSITIVE SEMEN RESULT IN THE ORAL CAVITY.

10 Q. DOCTOR, YOU TESTIFIED YOU PREPARED A SLIDE OF THE
11 VAGINAL SWAB?

12 A. YES, I DID.

13 Q. DID YOU OBSERVE THAT YOURSELF?

14 A. YES, I DID.

15 Q. WHAT, IF ANYTHING, DID YOU OBSERVE ON THE VAGINAL
16 SWAB?

17 A. SPERM ARE IDENTIFIED IN SMEARS FROM THE VAGINA.

18 Q. ALL RIGHT, SIR. WAS THAT PARTICULAR SLIDE
19 ULTIMATELY TURNED OVER TO RON MANCHESTER
20 WHO'S WITH THE SUMMERVILLE POLICE DEPARTMENT?

21 A. YES, IT WAS.

22 MR. BAILEY: YOUR HONOR, NOTHING
23 FURTHER OF DR. NICHOLS AT THIS POINT.

24 Q. PLEASE ANSWER ANY QUESTIONS MR. THEOS MAY HAVE.

25 THE COURT: YOU MAY CROSS-EXAMINE.

CLAY ALLEN NICHOLS - CROSS-MR. THEOS

1 LADIES AND GENTLEMEN OF THE JURY, WE ARE TRYING TO
2 START AT NINE AND CONCLUDE AT SIX, BUT TO AVOID
3 THIS WITNESS HAVING TO COME BACK TOMORROW, WE'RE
4 GOING TO WORK A LITTLE LATER BECAUSE Y'ALL DON'T
5 HAVE ANYWHERE TO GO TONIGHT EXCEPT TO THE HOLIDAY
6 INN. SO I TRUST THAT MEETS WITH YOUR APPROVAL.
7 THANK YOU.

8 CROSS-EXAMINATION

9 BY MR. THEOS:

10 Q. DR. NICHOLS, DO YOU RECALL WHAT TIME YOU ARRIVED AT
11 MRS. BOYD'S HOME?

12 A. IT WAS SOME TIME IN THE AFTERNOON ABOUT THREE OR
13 FOUR O'CLOCK.

14 Q. AND YOU'VE DESCRIBED TO US WHAT YOU FOUND AND THE
15 POSITIONING OF MRS. BOYD'S BODY. CAN YOU TELL US
16 WHAT THE CONDITION OF THAT BODY WAS?

17 A. IN WHAT REGARD, SIR?

18 Q. FROM A RIGOR?

19 A. OBVIOUSLY RIGOR WAS PRESENT AS SEVERAL PEOPLE HAVE
20 TESTIFIED ALREADY; THAT EVEN AFTER THE HANDS WERE
21 UNTIED, THEY REMAINED BEHIND HER BACK WHICH
22 INDICATES THE BODY STIFFENED IN THE POSITION IN
23 WHICH SHE DIED AND FULL RIGOR-MORTIS WAS OBVIOUSLY
24 PRESENT AT THE SCENE.

25 Q. JUST TO MAKE SURE WE ALL UNDERSTAND. CAN YOU

CLAY ALLEN NICHOLS - CROSS-MR. THEOS

1 EXPLAIN WHAT RIGOR IS?

2 A. YES, SIR. RIGOR-MORTIS IS THE STIFFENING OF A BODY
3 AFTER A PERSON PASSES AWAY. IT CLASSICALLY BEGINS
4 IN THE SMALL MUSCLES OF THE JAWS AND HANDS AND FEET
5 AND PROGRESSES TO THE LARGER MUSCLE AREAS IN
6 SEVERAL HOURS. AFTER ABOUT SIXTEEN TO EIGHTEEN
7 HOURS AS THE MUSCLES START TO BREAK DOWN AND
8 DECOMPOSE, THE STIFFENING DISAPPEARS OR PASSES,
9 ONCE IN ROUGHLY THE SAME WORDS STARTING WITH THE
10 SMALL MUSCLES OF THE HANDS AND JAWS GOING TO THE
11 LARGER MUSCLE GROUPS.

12 Q. AND WHEN YOU ARRIVED AT THE SCENE HAD THE RIGOR
13 PASSED?

14 A. NO, SIR.

15 Q. YOU'RE WELCOME TO REFER TO YOUR REPORT.

16 A. I THINK THAT THE REPORT INDICATES THAT RIGOR HAD
17 PASSED AT THE TIME OF AUTOPSY THE NEXT DAY BECAUSE
18 -- AM I MISTAKEN ON THAT?

19 Q. WELL---

20 A. I THINK IN THE INTERNAL DESCRIPTION WHICH WAS
21 PERFORMED ON THE NEXT DAY WHICH WAS AT 9:00 A.M.,
22 BY THAT TIME THE RIGOR-MORTIS HAD PASSED.

23 Q. IF YOU WOULD REFER TO PAGE TWO, PARAGRAPH ONE?

24 A. YES, SIR.

25 Q. BACK AT LINE -- THE SECOND FULL SENTENCE AFTER THE

CLAY ALLEN NICHOLS - CROSS-MR. THEOS

1 WAIVER---

2 A. YES, SIR; THE RIGOR HAD PASSED.

3 Q. DOES IT REFRESH YOUR MEMORY?

4 A. IT DOES. BUT THAT WAS NOT AT THE SCENE. THIS WAS
5 AT MY AUTOPSY TABLE.

6 Q. THIS IS THE EXTERNAL DESCRIPTION AT THE AUTOPSY
7 TABLE?

8 A. YES, SIR.

9 Q. NOW---

10 A. I'M SORRY; BUT ONE AGAIN WAS DONE THE FOLLOWING
11 MORNING.

12 Q. OKAY. NOW BASED UPON THAT FACT, THE PASSAGE OF THE
13 RIGOR; DOES THAT ASSIST YOU IN DETERMINING THE
14 APPROXIMATE TIME OF DEATH?

15 A. IT'S HELPFUL, BUT RIGOR-MORTIS IS VERY IMPRECISE AS
16 FAR AS DETERMINING THE TIME OF DEATH. I REALIZE IT
17 WORKS WELL ON TELEVISION AND MOVIES, BUT IT'S ONLY
18 AN ESTIMATE. AND WE ESTIMATED THE TIME OF DEATH AS
19 ROUGHLY THE P.M. OF 8/31/96.

20 Q. EIGHT THIRTY-ONE OF '96? WHICH WOULD HAVE BEEN
21 SATURDAY---

22 A. SATURDAY NIGHT.

23 Q. SATURDAY EVENING?

24 A. YES, SIR.

25 Q. IS IT POSSIBLE TO A REASONABLE DEGREE OF MEDICAL

CLAY ALLEN NICHOLS - CROSS-MR. THEOS

CERTAINTY---

THE COURT: I'M SORRY, NOW. YOU
CAN'T ASK POSSIBLE. IT'S EITHER GOT TO BE MOST
PROBABLE OR NOT. IT CAN NOT BE POSSIBLE.

MR. THEOS: I'M SORRY.

Q. CAN YOU TO A REASONABLE DEGREE OF MEDICAL CERTAINTY
BE MORE SPECIFIC WITH THE TIME?

A. I CANNOT IN THIS PARTICULAR CASE.

Q. THE P.M. IS ALL THAT YOU CAN TELL US?

A. YES, SIR. AND ONCE AGAIN, IT'S VERY DIFFICULT.
AND IF I MAY ELABORATE A LITTLE BIT MORE?

Q. SURE.

A. IS THAT RIGOR-MORTIS IS BASED ON MANY FACTORS. IT
HAS TO DO WITH A PERSON'S BODY TEMPERATURE; HOW
MUCH MUSCLE THEY HAVE; THE TONE OF THAT MUSCLE; THE
ACTIVITY BEFORE THEY DIED. AND THERE ARE INSTANCES
WHERE PEOPLE WHO ARE VERY YOUNG AND MUSCULAR SUCH
AS YOUNG MEN IN BATTLE WHEN ENGAGED IN HEATED
ACTIVITY WOULD GO INTO INSTANTANEOUS RIGOR-MORTIS,
A CONDITION KNOWN AS CADAVERIC SPASM. THERE ARE
CASES WHERE THE ELDERLY WHO HAVE VIRTUALLY NO
MUSCLE MASS BY THE TIME THEY PASS AWAY, PERHAPS IN
A NURSING HOME, WOULD NEVER GO INTO RIGOR-MORTIS.
SO WITHIN THIS CONDITION, IN THESE PARAMETERS, I
HAVE NO IDEA REALLY WHAT LILLY BELL BOYD'S MUSCLE

CLAY ALLEN NICHOLS - CROSS-MR. THEOS

1 MASS WAS, HER TONE WAS, OR EXACT PHYSICAL ACTIVITY
2 OR TEMPERATURE BEFORE SHE PASSED AWAY. THAT'S WHY
3 IT'S AN ESTIMATE AND IT'S MEANT TO BE IMPRECISE.

4 Q. NOW, WITH RESPECT TO THE TRAUMA TO THE HEAD?

5 A. YES, SIR.

6 Q. YOU INDICATED THAT THERE WAS SEVERE TRAUMA TO THE
7 HEAD AREA ON DIRECT EXAMINATION?

8 A. YES, SIR.

9 Q. CAN YOU -- POINTING OUT ON YOUR FACE, CAN YOU TELL
10 US WHERE THE BLOWS WERE STRUCK? AND I UNDERSTAND
11 WHEN YOU ANSWERED MR. BAILEY'S QUESTION I SAW YOUR
12 HEAD AND LEFT CHEEK. WHAT BLOWS WERE THERE TO THE
13 RIGHT SIDE OF MRS. BOYD'S FACE? WHAT INJURIES WERE
14 THERE TO THE RIGHT SIDE OF THE FACE, I SHOULD ASK?

15 A. EXTENSIVE RED-BROWN CONTUSION OR BRUISING TO THE
16 RIGHT SIDE OF THE FACE EXTENDING FROM THE RIGHT EYE
17 POSTERIORLY FROM HERE TO BEHIND THE RIGHT EAR ALL
18 THE WAY DOWN TO THE RIGHT CHEEK AREA TO THE LEVEL
19 OF THE RIGHT CHIN. SO IT EXTENDS FROM HERE BACK TO
20 HERE AND DOWN TO HERE WITH A MAXIMUM DIMENSION OF
21 6.5 INCHES. (INDICATING.)

22 Q. DO YOU HAVE AN OPINION TO A REASONABLE DEGREE OF
23 MEDICAL CERTAINTY AS TO WHAT THE CAUSE OF INJURIES
24 WAS?

25 A. BLUNT TRAUMA.

CLAY ALLEN NICHOLS - CROSS-MR. THEOS

1 Q. WHEN YOU SAY "BLUNT TRAUMA," CAN YOU PLEASE DEFINE
2 THAT OR DESCRIBE THAT FOR US?

3 A. BLUNT TRAUMA MEANS IT WAS SOME OBJECT USED THAT DID
4 NOT HAVE A PARTICULAR SHARP EDGE TO IT. AND WHAT I
5 MEAN BY THAT, IT COULD BE A FIST. IT COULD BE A
6 FLOOR SUCH AS -- IT'S NOT UNREASONABLE IN THIS CASE
7 WHERE A VICTIM IS FOUND ON THE FLOOR UPON A SEVERE
8 ASSAULT THAT THE FLOOR IS ACTUALLY USED AS AN
9 OBJECT TO CAUSE FURTHER DAMAGE IF THEIR HEAD OR
10 FACE IS DRIVEN INTO THE FLOOR. IT COULD BE SOME
11 SORT OF OTHER OBJECT WITH A NON-DEFINED PATTERN
12 THAT I COULDN'T DISCERN.

13 Q. WHAT CAUSES YOU TO CONCLUDE THAT IT IS MOST
14 PROBABLY BLUNT TRAUMA RATHER THAN SOME SORT OF
15 SHARP OBJECT?

16 A. THERE WERE NO CUTS TO THAT PARTICULAR AREA, NO
17 SHARP EDGE DEEP INJURIES THAT YOU MIGHT SEE WITH A
18 KNIFE.

19 Q. DO YOU HAVE AN OPINION TO A REASONABLE DEGREE OF
20 MEDICAL CERTAINTY WHETHER IT WAS MOST PROBABLY
21 CAUSED BY A FIST OR A BLUNT OBJECT?

22 A. I WOULD CONSIDER A FIST A BLUNT OBJECT. AND THAT
23 IS ONE OF THE POSSIBILITIES. AND GIVEN THE FACT
24 THAT THE EXTENSIVENESS OF THE INJURIES, INCLUDING
25 THAT TO THE RIGHT FACE, THERE'S A POSSIBILITY OF

CLAY ALLEN NICHOLS - CROSS-MR. THEOS

1 MORE THAN ONE OBJECT BEING USED, ONCE AGAIN, LIKE A
2 FIST OR PERHAPS A KNEE, AN ELBOW, OR MAYBE EVEN THE
3 FLOOR.

4 Q. NOW WITH RESPECT TO THE RIB INJURIES THAT YOU'VE
5 DESCRIBED ON DIRECT EXAMINATION; DO YOU HAVE AN
6 OPINION TO A REASONABLE DEGREE OF MEDICAL CERTAINTY
7 AS TO WHAT SORT OF BLOWS MAY HAVE CAUSED THOSE
8 INJURIES?

9 A. IT IS MY OPINION THAT THESE WERE CAUSED BY SOME
10 SORT OF EITHER STOMPING OR SOME SORT OF SLAMMING
11 ACTION.

12 Q. AGAIN, CAN YOU TELL US WHY YOU CONCLUDE THAT RATHER
13 THAN BEING CAUSED BY SOME SORT OF SHARP OBJECT?

14 A. ONE AGAIN THERE WAS NO PARTICULAR PATTERN OR
15 BRUISING FOUND TO THE OUTSIDE THAT I COULD
16 DISCERN. IN ADDITION THE PATTERN OF THE RIB
17 FRACTURES THEMSELVES INDICATE TO ME AN EXTREME
18 PRESSURE BEING PLACED DOWN ON THE CHEST OR BACK
19 AREA EXTENDING THE RIBS, FLEXING THEM TO THE POINT
20 THAT THEY ARE FRACTURING ALONG THE ANTERIOR AND
21 ESPECIALLY THE LATERAL ASPECTS. AND ONE OTHER
22 POINT, SIR, THAT I WOULD LIKE TO CLARIFY IS THAT
23 THERE WAS ONCE AGAIN HEMORRHAGING AROUND THESE
24 AREAS INDICATING THAT SHE WAS ALIVE WHEN THE RIB
25 FRACTURES OCCURRED; AND THIS IS NOT SORT OF AN

CLAY ALLEN NICHOLS - CROSS-MR. THEOS

ARTIFACT THAT MIGHT HAVE OCCURRED DURING
RESUSCITATION BY EITHER THE FAMILY MEMBERS OR
E.M.S. PERSONNEL.

Q. NOW WITH RESPECT TO THE -- LET ME BACK UP FOR A
SECOND. WERE THERE ANY FRACTURES TO THE HEAD AREA?

A. NO, SIR.

Q. NO FRACTURES OF THE DENTAL PLATES OR TO THE SKULL?

A. NO, SIR.

Q. AND WHAT WOULD THAT INDICATE TO YOU THE FACT THAT
THERE WAS AN ABSENCE OF FRACTURES?

A. THAT THE FORCE USED ON LILLY BELL BOYD WAS NOT
SUFFICIENT TO FRACTURE HER SKULL.

Q. NOW WITH RESPECT TO THE STRANGULATION YOU SPOKE OF?

A. YES, SIR.

Q. DO YOU HAVE AN OPINION TO A REASONABLE DEGREE OF
MEDICAL CERTAINTY AS TO WHAT MAY HAVE CAUSED THE
MARKS THAT YOU REFERRED TO ON MRS. BOYD'S NECK?

A. YES, SIR. IT WAS SOME SORT OF FIRM OBJECT ROUGHLY
WITH SQUARED OFF EDGES AS INDICATED IN THE DIAGRAM
AS DEMONSTRATED PREVIOUSLY. THIS COULD BE USED
EITHER IN THE ASSAULT BY THE ASSAILANT. IT COULD
HAVE BEEN PART OF THE ASSAILANT'S BODY THAT WAS
INCIDENTALLY PRESSED AGAINST THAT AREA. OR IT
COULD HAVE BEEN ACTUALLY ON THE FLOOR OR THE
IMMEDIATE AREA AND SHE WAS PRESSED INTO THAT

CLAY ALLEN NICHOLS - CROSS-MR. THEOS

1 OBJECT.

2 Q. WHAT WAS THE SHAPE -- WE HAVEN'T SEEN A PHOTOGRAPH
3 AT THIS POINT -- BUT WHAT WAS THE SHAPE OF THE
4 MARKING ON THE NECK?

5 A. IT WAS A C-SHAPED WITH ROUGHLY ROUNDED CORNERS. IT
6 WOULD BE VERY SIMILAR TO PERHAPS A HALF A BUCKLE
7 TYPE SHAPE.

8 Q. WHAT ARE THE DIFFERENT WAYS THAT STRANGULATION CAN
9 OCCUR?

10 A. THERE IS MANUAL STRANGULATION SUCH AS WHERE SOMEONE
11 PUTS THEIR HANDS AROUND SOMEBODY'S NECK AND CAUSES
12 THE CONSTRICTION FORCE. OFTEN TIMES THERE'S ALSO
13 ANOTHER FORM OF STRANGULATION AT THE SCENE WHERE A
14 LIGATURE IS USED SUCH AS A ROPE OR A BELT,
15 SOMETHING OF THAT NATURE, USED TO CAUSE THE
16 CONSTRICTING FORCE.

17 Q. CAN FROM TIME TO TIME BLOWS TO THE NECK CAUSE IT AS
18 WELL?

19 A. IT'S POSSIBLE; YES, SIR.

20 Q. DO YOU HAVE AN OPINION TO A REASONABLE DEGREE OF
21 MEDICAL CERTAINTY AS TO WHAT CAUSED THE
22 STRANGULATION IN THIS PARTICULAR CASE?

23 A. I FEEL IN THIS CASE THERE WAS SOME SORT OF MANUAL
24 PRESSURE APPLIED TO HER NECK.

25 Q. DO YOU HAVE AN OPINION THAT YOU CAN STATE TO A

CLAY ALLEN NICHOLS - CROSS-MR. THEOS

1 REASONABLE DEGREE OF MEDICAL CERTAINTY WHETHER AN
2 OBJECT OF SOME SORT LIKE A BELT WITH A BUCKLE MAY
3 HAVE BEEN USED?

4 A. THAT'S A DISTINCT POSSIBILITY WITH THE MARK AROUND
5 THE NECK. BUT A MANUAL STRANGULATION CANNOT BE
6 RULED OUT AS WELL.

7 Q. NOW, WITH RESPECT TO THE PHYSICAL EVIDENCE RELATED
8 TO THE VAGINAL AREA?

9 A. YES, SIR.

10 Q. YOU TESTIFIED THAT THERE WAS TRAUMA TO THE VAGINAL
11 AREA?

12 A. YES, SIR.

13 Q. WOULD THAT TRAUMA HAVE BEEN EXTERIOR TRAUMA OR
14 INTERIOR TRAUMA?

15 A. INTERIOR TRAUMA.

16 Q. DO YOU HAVE AN OPINION THAT YOU CAN STATE TO A
17 REASONABLE DEGREE OF MEDICAL CERTAINTY AS TO WHAT
18 CAUSED THAT TRAUMA?

19 A. IT WAS DUE TO AN INSERTION OF SOME OBJECT. OF
20 COURSE A PENIS IS CERTAINLY ONE OF THE OBJECTS THAT
21 WAS INSERTED. SEMEN AND SPERM WERE RECOVERED.
22 IT'S ALSO POSSIBLE ANOTHER OBJECT WAS ALSO PUT IN
23 CAUSING THE DAMAGE SUCH AS A STICK.

24 Q. CAN YOU STATE TO A REASONABLE DEGREE OF MEDICAL
25 CERTAINTY WHAT OBJECT MAY HAVE BEEN INSERTED TO A

CLAY ALLEN NICHOLS - RE-DIRECT/MR. BAILEY

REASONABLE DEGREE OF MEDICAL CERTAINTY?

A. IT WOULD BE SOMETHING AKIN TO A STICK OF SOME SORT OR ROUNDED OBJECT LIKE THAT. IT WAS LIKE A STICK, ALTHOUGH A FINGER COULD HAVE CAUSED THIS TYPE OF DAMAGE. AND IT CERTAINLY WASN'T ANYTHING LIKE A KNIFE OR ANYTHING WITH A SHARP OBJECT, A SHARP BLADE; OTHERWISE WE WOULD HAVE SEEN MORE EVIDENCE OF CUTTING OR DEEPER LACERATIONS.

Q. SO IT COULD HAVE BEEN CONSISTENT WITH AN OBJECT, OR IT COULD BE CONSISTENT WITH A PENIS OR A FINGER OR A HUMAN LIMB?

A. YES, SIR.

MR. THEOS: I BELIEVE THAT'S ALL, YOUR HONOR.

THE COURT: ANYTHING ON RE-DIRECT, PLEASE?

MR. BAILEY: YES, SIR; VERY BRIEFLY, YOUR HONOR.

RE-DIRECT EXAMINATION

BY MR. BAILEY:

Q. DOCTOR, LET ME BACK UP JUST A LITTLE BIT.

A. YES, SIR.

Q. WITH REGARD TO RIGOR-MORTIS AND WHETHER OR NOT YOU CAN ESTIMATE THE CAUSE OF DEATH. COULD YOU RULE OUT FIVE TO SIX A.M. THAT SUNDAY MORNING?

CLAY ALLEN NICHOLS - RE-DIRECT/MR. BAILEY

1 A. OH, ABSOLUTELY NOT. IN ESTIMATING TIMES OF DEATH,
2 THE GENERAL RULE IS THAT A DEATH CAN OCCUR
3 VIRTUALLY AT ANY TIME BETWEEN WHEN THE PERSON WAS
4 LAST SEEN ALIVE BY A CREDIBLE WITNESS AND WHEN THEY
5 WERE FOUND DEAD. ALL THE APPROXIMATIONS THAT WE
6 USED IN FORENSIC PATHOLOGY ARE ONLY APPROXIMATIONS,
7 AND THERE ARE WIDE VARIABLES BETWEEN THERE. AND
8 THERE'S NO EXACT TEST OTHER THAN A RELIABLE WITNESS
9 WITH A GOOD WATCH TO COME UP WITH AN EXACT TIME OF
10 DEATH.

11 Q. ALL RIGHT, SIR. AND IN REGARD TO ONE OF THE
12 QUESTIONS MR. THEOS ASKED YOU ABOUT PATTERNS; DID
13 YOU SEE ANY EVIDENCE OF A PATTERN LIKE A STICK OR
14 SOMETHING CAUSING THE BLOW TO THE FACE?

15 A. NO, SIR, I DID NOT.

16 Q. I WANT TO FOLLOW UP A LITTLE BIT, DOCTOR, AGAIN
17 VERY BRIEFLY ON SOME OF THE QUESTIONS MR. THEOS
18 ASKED YOU ABOUT THE VAGINAL TRAUMA THAT YOU
19 OBSERVED.

20 A. YES, SIR.

21 Q. AND IN THE AUTOPSIES YOU'VE CONDUCTED,
22 APPROXIMATELY HOW MANY OF THEM HAVE YOU HAD
23 OCCASION TO FIND VAGINAL TRAUMA?

24 A. A COUPLE OF DOZEN.

25 Q. ALL RIGHT, SIR. AND YOU TESTIFIED PREVIOUSLY THAT

CLAY ALLEN NICHOLS - RE-DIRECT/MR. BAILEY

1 WOULD BE INDICATIVE OF FORCIBLE INTERCOURSE?

2 A. YES, SIR, IT WOULD.

3 Q. OR ASSAULT IN THE VAGINAL AREA?

4 A. YES, SIR.

5 Q. ALL RIGHT, SIR. AND IN TERMS OF DEGREE OF TRAUMA,
6 THE EXTENT OF TRAUMA THAT YOU OBSERVED ON MRS.

7 BOYD, HOW DOES THAT COMPARE WITH THE OTHER TWELVE
8 OR SO CASES LIKE THAT WHERE YOU'VE OBSERVED VAGINAL
9 TRAUMA?

10 A. THIS IS THE SECOND WORSE CASE OF VAGINAL TRAUMA DUE
11 TO THIS CONDITION THAT I'VE SEEN.

12 Q. ALL RIGHT, SIR. AND IN RESPONSE TO ONE OF THE
13 QUESTIONS, YOU SAID THERE WOULD BE SOMETHING AKIN
14 TO A STICK; IS THAT CORRECT?

15 A. SOMETHING OF THAT NATURE; YES, SIR.

16 Q. ALL RIGHT, SIR. AND THAT'S DUE TO THE DEGREE OF
17 TRAUMA?

18 A. THE DEGREE OF TRAUMA AND A LACK OF MORE SIGNIFICANT
19 INJURIES SUCH AS PERFORATION OR CUTS TO THE VAGINA.

20 Q. ALL RIGHT, SIR. IS THE DEGREE OF TRAUMA YOU
21 OBSERVED CONSISTENT WITH PENAL INTERCOURSE?

22 A. IT'S POSSIBLE. BUT I THINK THERE'S POSSIBLY OTHER
23 THINGS INSERTED BESIDES THE PENIS.

24 Q. IS THAT TO A REASONABLE DEGREE OF MEDICAL
25 CERTAINTY?

MOTIONS

1 A. YES, SIR.

2 Q. THANK YOU. THAT'S ALL I HAVE.

3 THE COURT: ANYTHING FURTHER,
4 PLEASE, MR. THEOS?

5 MR. THEOS: NO, SIR.

6 THE COURT: ALL RIGHT. MAY THIS
7 GENTLEMAN BE EXCUSED?

8 MR. BAILEY: YES, SIR.

9 THE COURT: THE COURT IS VERY
10 DESIROUS AS ARE THE LAWYERS, I'M SURE, TO TRY TO
11 ACCOMMODATE PROFESSIONALS THAT NEED TO BE ABOUT
12 THEIR DUTIES TREATING THE ILL OR EXAMINING FORENSIC
13 PATHOLOGISTS, OR WHATEVER. BUT DO YOU HAVE ANYBODY
14 ELSE THAT'S NOT TOO LONG THAT YOU'D LIKE TO CALL
15 THIS EVENING?

16 MR. BAILEY: YOUR HONOR, I DON'T
17 HAVE ANOTHER SHORT WITNESS AT THIS POINT. MY NEXT
18 WITNESS WILL BE FAIRLY LENGTHY.

19 THE COURT: MORE LIKE AN HOUR?

20 MR. BAILEY: NOT QUITE AN HOUR.

21 THE COURT: OKAY. GENTLEMEN, I JUST
22 NEED TO GO OVER SOME THINGS WITH THE JURORS. BUT
23 FOR ANY OF YOU WHO WOULD LIKE TO LEAVE, YOU'RE
24 WELCOME TO DO SO. DOES IT SUIT Y'ALL TO START AT
25 NINE IN THE MORNING?

MOTIONS

1 MR. BAILEY: YES, SIR.

2 MR. THEOS: THAT WILL BE FINE.

3 THE COURT: LADIES AND GENTLEMEN OF
4 THE JURY, DOES IT SUIT Y'ALL? WE'LL DO WHAT YOU
5 WANT, BUT IF IT'S CONVENIENCE TO YOU WE'LL START AT
6 NINE IN THE MORNING. LADIES AND GENTLEMEN, WHAT I
7 WANTED TO EXPLAIN TO YOU WAS PLEASE DO NOT ALLOW
8 ANYONE TO DISCUSS THIS CASE WITH YOU OR IN YOUR
9 PRESENCE OR TO COMMUNICATE WITH YOU IN ANY WAY.
10 AND PLEASE DO NOT PERMIT YOURSELF TO BE EXPOSED BY
11 PRINT, MEDIA OR ELECTRONIC, RADIO OR T.V. OR
12 OTHERWISE. AND OBVIOUSLY GENTLEMEN OF THE BAR;
13 Y'ALL PLEASE INSTRUCT YOUR EXPERT WITNESSES AND ANY
14 OF YOUR STAFF NOT TO BE ON OR ABOUT THE PREMISES OF
15 THE HOLIDAY INN. THERE ARE OTHER MOTELS IN ST.
16 GEORGE. AND WE ALSO ASK YOU WHERE YOU'RE GOING TO
17 EAT BECAUSE WE JUST DON'T WANT ANY INNOCENT
18 INCIDENTAL CONTACT TO TAKE PLACE WHERE SOMEBODY
19 MIGHT RAISE A QUESTION. OR IF ME AND MR. THEOS ARE
20 EATING DINNER, THEY'D WANT TO KNOW WHY I DIDN'T
21 INVITE THE SOLICITOR. IF THEY SEE ME AND THE
22 SOLICITOR, THEY'RE GOING TO WANT TO KNOW WHY I
23 DIDN'T INVITE MR. BELL. AND WE JUST DON'T WANT TO
24 GET INTO THAT SITUATION. SO WITH THAT, LADIES AND
25 GENTLEMEN, Y'ALL PLEASE HAVE A PLEASANT EVENING.

MOTIONS

1 AND WE'LL SEE YOU IN THE MORNING. BE READY TO GO
2 AT NINE O'CLOCK.

3 MR. THEOS: YOUR HONOR?

4 THE COURT: I'M SORRY.

5 THE CLERK: WE HAVE ONE MORE SLED
6 AGENT THAT NEEDS TO BE SWORN IN.

7 THE COURT: OKAY. WOULD YOU PLEASE
8 INTRODUCE YOURSELF, SIR?

9 MR. HOFFMAN: I'M TERRY HOFFMAN.

10 THE COURT: THANK YOU, AGENT
11 HOFFMAN. IF YOU DO A GOOD JOB, WE'LL PROMOTE YOU.
12 GO AHEAD AND SWEAR HIM.

13 (AT THIS TIME MR. HOFFMAN IS SWORN BY THE CLERK.)

14 THE COURT: Y'ALL HAVE BEEN PRESENT,
15 AND I HAD AN INFORMAL DISCUSSION WITH THE JURY IN
16 THE BOX RATHER THAN SLED MANAGING THE SITUATION AND
17 RENTING V.C.R.S AND TRYING TO AGREE TO WHAT
18 RESTAURANT THEY WANTED TO GO TO AND SO FORTH. WERE
19 THERE ANY OBJECTIONS TO THAT?

20 MR. BAILEY: NOT FROM THE STATE,
21 YOUR HONOR.

22 MR. THEOS: NO, SIR.

23 THE COURT: DO YOU AGREE THAT IT WAS
24 NECESSARY TO DO THAT?

25 MR. BAILEY: YES, SIR.

MOTIONS

1 THE COURT: MR. THEOS?

2 MR. THEOS: YES, SIR.

3 THE COURT: ALL RIGHT. NOW, WHAT
4 DID YOU WANT?

5 MR. BAILEY: JUDGE, EARLY TOMORROW
6 ONE OF MY FIRST OR SECOND WITNESSES WHO WILL BE
7 GETTING INTO THOSE GUYS FROM RICHLAND COUNTY WITH
8 THE NOTE THAT MR. SIMMONS PASSED THROUGH THE CHAIN
9 AND IT GOT UP TO MR. HOWARD?

10 THE COURT: YES, SIR.

11 MR. BAILEY: THAT NOTE IS WRITTEN ON
12 THE BACK OF AN ARREST WARRANT FOR SHOPLIFTING WHICH
13 HAS NEVER BEEN DISPOSED OF. AND I DIDN'T KNOW
14 WHETHER MR. THEOS WANTED TO MAKE A COPY OF IT OR
15 CLEAN IT UP SOMEHOW.

16 THE COURT: I BROUGHT THAT TO YOUR
17 ATTENTION. YOU PROBABLY KNEW IT ALREADY. BUT WE
18 DISCUSSED THAT AT A SIDE BAR AT THE HEARING THREE
19 OR FOUR WEEKS AGO AND I INDICATED TO YOU THAT I HAD
20 A CONCERN ABOUT THE FACT THAT THE REVERSE SIDE OF
21 THAT NOTE HAD SOME CHARGES OF OTHER CRIMES OR
22 DIFFERENT THINGS K.C. LYLES (PHONETICALLY SPELLED)
23 IS BRINGING INTO EVIDENCE OF PRIOR BAD ACT ALBEIT I
24 UNDERSTAND THE POSITION THAT HE CHOSE TO WRITE ON
25 THAT, AND SHOPLIFTING IS A MINUSCULE CHARGE

MOTIONS

1 COMPARED TO WHAT'S BEFORE THE COURT. BUT WHAT IS
2 YOUR POSITION ON IT, MR. THEOS?

3 MR. THEOS: YOU KNOW, JUDGE, IF IT'S
4 GOING TO COME OUT THAT HE WAS IN THE COUNTY JAIL
5 WHEN HE WROTE THE NOTE BECAUSE OBVIOUSLY WE'RE NOT
6 GOING TO GET AROUND THAT. THEY'RE GOING TO KNOW
7 THAT. I DON'T -- IF THERE'S SOME WAY -- I DON'T
8 WANT THEM TO TURN IT OVER, THOUGH, AND SEE WHAT THE
9 CHARGE IS. THAT'S WHAT MY CONCERN IS.

10 THE COURT: SHOPLIFTING? AGAIN, I'M
11 NOT GOING TO PRACTICE LAW; BUT YOU KNOW SOMETIMES
12 YOU MAY BE BETTER OFF, MR. THEOS, TO MINIMIZE THE
13 FACT THAT HE WAS IN JAIL FOR A SIMPLE SHOPLIFTING.
14 I DON'T KNOW IF IT'S A FIRST, SECOND, OR THIRD
15 OPPOSED AS TO WHETHER HE WAS THERE FOR DISTRIBUTION
16 OF CRACK COCAINE OR FOR MURDER FOR HIRE WHEN HE
17 STARTS TELLING HIS SHORTY TALE AND HOW HE'S FROM
18 GEORGIA. BUT THAT'S UP TO YOU, THOUGH, TO DECIDE
19 BECAUSE I'VE TOLD YOU THAT IT CAUSED ME CONCERN.

20 MR. BAILEY: I JUST WANT TO GO ON
21 THE RECORD AS AGREEING TO GO AHEAD AND PHOTOSTAT
22 THE COPY WITH A NOTE ON IT AND LEAVE THAT PART OFF
23 IF THAT'S WHAT---

24 MR. THEOS: I THINK THAT'S---

25 THE COURT: WHERE IS IT? LET ME

MOTIONS

SEE IT.

MR. THEOS: JUDGE, IF WE COULD GO
AHEAD AND MAKE A DUPLICATE ORIGINAL AND THEN
I'LL---

THE COURT: I'LL LET Y'ALL WORK ON
THAT. BUT YOU WON'T NEED THAT BEFORE 11:30, WILL
YOU?

MR. BAILEY: YES, SIR.

THE COURT: YOU WILL?

MR. BAILEY: YES, SIR.

THE COURT: WELL, Y'ALL BE HERE AT
8:30 IN THE MORNING AND HAVE YOUR PROPOSED
RESOLUTION. AND YOU HAVE YOUR OBJECTIONS AND/OR
PROPOSED RESOLUTION, MR. THEOS. IT'S TWENTY UNTIL
SEVEN. ANYTHING ELSE FOR THE RECORD, MR. BAILEY?

MR. BAILEY: JUDGE, NOTHING THAT
CAN'T WAIT.

THE COURT: WELL, TELL ME WHAT IT
IS.

MR. BAILEY: OKAY. IN MR. THEOS'
OPENING STATEMENT, I DON'T THINK I MISUNDERSTOOD IT
CORRECTLY; IT SAYS "WE CONTEND KENNETH SIMMONS WAS
NOT THERE AND DID NOT DO THESE THINGS."

THE COURT: HE SAID THAT. I WROTE
IT DOWN MYSELF.

MOTIONS

1 MR. BAILEY: BUT I'M ASSUMING HE
2 WOULDN'T SAY SOMETHING TO THE JURY UNLESS HE HAD
3 SOME EVIDENCE HE INTENDED TO INTRODUCE IN SUPPORT
4 OF THAT. AND I'VE SERVED NOTICE AND ASKED IF
5 THERE'S AN ALIBI DEFENSE; AND I DON'T HAVE IT YET.
6 SO I NEED TO KNOW IF THERE'S GOING TO BE AN ALIBI
7 BECAUSE IF HE WASN'T THERE AND WAS SOMEWHERE ELSE
8 -- IF HE WAS SOMEWHERE ELSE, THEN THAT'S AN ALIBI.
9 SO---

10 MR. THEOS: YOUR HONOR, I'LL TAKE
11 THEM IN THE EASIEST ORDER. FIRST OF ALL, THERE
12 WILL BE EXPERT TESTIMONY THAT WE WILL OFFER RELATED
13 TO HIS FUNCTIONING LEVEL. AND I THINK I PREFACED
14 IT BY SAYING THERE WILL BE EXPERTS THAT WILL COME
15 IN AND TESTIFY. WITH RESPECT TO THE ISSUE OF
16 ALIBI, MR. BAILEY DID SERVE US WITH NOTICE WITH HIS
17 DISCOVERY REQUEST. WE HAVE NOT POSED AN ALIBI
18 DEFENSE AND DO NOT INTEND TO. BUT THE STATE HAS TO
19 PROVE THAT MR. SIMMONS WAS THERE. WE DON'T CONCEDE
20 THAT HE WAS THERE.

21 THE COURT: ISN'T ANY QUESTION ABOUT
22 THAT. BUT IT'S CERTAINLY INAPPROPRIATE FOR YOU TO
23 ARGUE IN AN OPENING STATEMENT THAT MR. SIMMONS
24 WASN'T THERE. YOU DID SAY THAT IF WE HAVE A RECORD
25 OF IT, DIDN'T YOU?

MOTIONS

1 MR. THEOS: YES, SIR.

2 THE COURT: BUT YOU CAN'T BE SAYING
3 THINGS YOU DON'T INTEND TO OFFER EVIDENCE ON.

4 MR. THEOS: YOUR HONOR, THE STATE
5 HAS TO PROVE THAT HE WAS THERE. WE DON'T HAVE TO
6 PROVE WHERE HE WAS OTHERWISE. BUT I STILL THINK WE
7 CAN ASSERT THAT HE WASN'T THERE.

8 THE COURT: WELL---

9 MR. THEOS: I DON'T THINK WE CAN
10 BE---

11 THE COURT: YOU MIGHT IN ASKING
12 QUESTIONS OF THE WITNESS. BUT I DON'T THINK YOU
13 CAN GET UP IN OPENING STATEMENTS AND GIVE YOUR
14 PREVIEW OF THE CASE AND MAKE A STATEMENT THAT HE
15 WASN'T THERE. I DON'T THINK THAT'S PROPER, BUT
16 YOU'VE ALREADY DONE IT NOW. SO YOU MADE THE
17 STATEMENT. WHAT YOU'RE ASKING IS DID HE RELY ON AN
18 ALIBI DEFENSE?

19 MR. BAILEY: IF THERE'S GOING TO BE
20 ANY TESTIMONY COMING OUT THAT HE WAS NOT THERE,
21 THEN HE HAD TO BE SOMEWHERE ELSE. IF HE'S
22 SOMEWHERE ELSE, THEN THAT'S AN ALIBI, AND I NEED TO
23 BE NOTICED ON IT. AND IF HE'S NOT GOING TO
24 INTRODUCE ANY EVIDENCE THAT HE WASN'T THERE, THEN
25 I'D ASK THE JURY TO BE INSTRUCTED ON THE---

MOTIONS

1 THE COURT: IT SHOULD HAVE BEEN
2 NOTICED A LONG, LONG AGO IF THAT'S THE CASE.
3 WHAT'S THE SITUATION, MR. THEOS?

4 MR. THEOS: YOUR HONOR, IT'S NOT
5 INCUMBENT UPON THE DEFENSE TO PROVE THAT MR.
6 SIMMONS WAS SOMEPLACE ELSE, AND THAT'S NOT OUR
7 ARGUMENT.

8 THE COURT: SIMPLE QUESTION, MR.
9 THEOS. ARE YOU RELYING ON ALIBI AS A DEFENSE?

10 MR. THEOS: NO, SIR; AND IF WE WERE,
11 WE WOULD HAVE SERVED HIM WITH THE PROPER NOTICE.

12 THE COURT: ALL RIGHT. YOU PREPARE
13 ANY PROPOSED CHARGE YOU WANT ME TO GIVE ON THAT AND
14 GIVE A COPY TO HIM, AND WE'LL TALK ABOUT IT, AND
15 WE'LL ARGUE ABOUT IT TOMORROW. WHAT ELSE TONIGHT?

16 MR. BAILEY: THAT'S IT, JUDGE.

17 THE COURT: ANYTHING ELSE, MR.
18 THEOS?

19 MR. THEOS: NO, SIR.

20
21 (WHEREUPON AT 6:45 P.M. COURT WAS ADJOURNED FOR THE
22 DAY.)
23
24
25

- - - - -

MOTIONS

THURSDAY, FEBRUARY 25, 1999

THE COURT: GOOD MORNING. I BELIEVE YOU GENTLEMEN HAVE ARRIVED AT AN AGREEMENT RELATIVE TO AN EXHIBIT. WOULD YOU PLEASE STATE FOR THE RECORD?

MR. BAILEY: YOUR HONOR, THE EXHIBIT IS STATE'S TEN WHICH IS A NOTE THAT WE ANTICIPATE THERE WILL BE SOME TESTIMONY THAT THIS WAS PASSED BY MR. SIMMONS TO SOME CORRECTIONAL OFFICERS AT THE RICHLAND COUNTY JAIL. AND THE NOTE IS WRITTEN ON THE BACK OF AN ARREST WARRANT FOR SHOPLIFTING. THAT CASE, TO THE BEST OF MY KNOWLEDGE, HAS NOT BEEN ADJUDICATED. YOUR HONOR, I HAVE XEROXED THE NOTE.

THE COURT: THAT CASE HAS NOT BEEN DISPOSED OF?

MR. BAILEY: TO THE BEST OF MY KNOWLEDGE IT HAS NOT. IT'S A RICHLAND COUNTY CHARGE, YOUR HONOR. AND I HAVE XEROXED THE NOTE, THE BACK OF THE WARRANT, AND CUT OUT JUST A PART WHICH HAS THE NOTE ON IT AND HAVE SHOWN THAT TO MR. THEOS. HE ADVISES ME AS A MATTER OF TRIAL STRATEGY HE PREFERS THE ENTIRE ARREST WARRANT TO GO IN BECAUSE AS I UNDERSTAND THE SHOPLIFTING IS A FAIRLY

MOTIONS

1 MINOR OFFENSE. AND HE DIDN'T WANT THE JURY TO
2 SPECULATE THAT MR. SIMMONS MIGHT HAVE BEEN IN THERE
3 FOR SOME GREATER OFFENSE.

4 THE COURT: ALL RIGHT. WELL, LET ME
5 SUGGEST ONE THING IF YOU WOULD. PLEASE HAVE
6 SOMEONE CALL COLUMBIA TO VERIFY IF THE CHARGE IS
7 STILL PENDING; AND PERHAPS DON'T WANT TO GET AN
8 OBSTRUCTION OF JUSTICE CHARGE; BUT IN VIEW OF THE
9 CHARGES HERE, PERHAPS IT WOULD BE DISMISSED. AGAIN
10 THAT'S ENTIRELY IN THE DISCRETION OF THE
11 RESPONSIBLE AUTHORITIES THERE. WE HAD TALKED ABOUT
12 THIS GENTLEMEN SEVERAL WEEKS AGO WHEN WE HAD A
13 HEARING, DINNO VS. JACKSON HEARING. I ASSUME Y'ALL
14 HAVE HAD TEN DAYS OR TWO WEEKS TO THINK ABOUT IT.
15 AND MR. THEOS, CERTAINLY IF YOU DID NOT WANT THE
16 ORIGINAL IN WHICH SHOWS ON THE REVERSE SIDE THE
17 CHARGE OF SHOPLIFTING, THEN CERTAINLY THE COURT
18 WILL RULE IT INADMISSIBLE AND USE THE DUPLICATE
19 ORIGINAL JUST OF THE LITTLE SMALL PORTION OF IT
20 WHICH DOES NOT SET FORTH ANY CHARGE. AND YOU'RE
21 AWARE OF THAT?

22 MR. THEOS: YES, SIR.

23 THE COURT: WHAT'S YOUR PLEASURE?

24 MR. THEOS: YOUR HONOR, MR. BAILEY
25 STATED IT CORRECTLY. I'VE DISCUSSED IT WITH MR.

MOTIONS

1 BELL, AND WE ARE IN FACT MAKING A DECISION BASED
2 UPON THE FEAR, I GUESS IS THE RIGHT WORD, THAT THE
3 JURY MIGHT ASSIGN SOME OTHER SIGNIFICANCE TO IT TO
4 HIM BEING IN JAIL IN RICHLAND COUNTY FOR SOMETHING
5 GREATER THAN THE SHOPLIFTING. SO AGAIN, WE ARE
6 ASKING THAT THAT BE ADMITTED -- THE ORIGINAL BE
7 ADMITTED -- SO THAT THEY WOULD NOT BE COMPELLED
8 TO---

9 THE COURT: WELL---

10 MR. THEOS: --NOT BE SPECULATING AS
11 TO---

12 THE COURT: WELL, IT MAY BE THAT THE
13 JURY WILL NOT EVEN LOOK AT THE OTHER SIDE OR GIVE
14 IT ANY CONSIDERATION WHATSOEVER. BUT IF YOU WOULD
15 LIKE FOR THE COURT TO, AND THE COURT DOESN'T WANT
16 TO UNDULY EMPHASIZE THE MATTER, OF COURSE. BUT IF
17 YOU WOULD LIKE FOR THE COURT TO IN ANY WAY INSTRUCT
18 THE JURY TO DISREGARD ANY INFORMATION CONTAINED ON
19 THE REVERSE SIDE OF STATE'S EXHIBIT TEN, THEN I
20 WILL INSTRUCT THE JURY. WHAT'S YOUR PLEASURE?

21 MR. THEOS: AS YOU SAY, THE JURY
22 MIGHT NOT LOOK AT THE OTHER SIDE. BUT CERTAINLY IF
23 YOU GIVE THEM THAT INSTRUCTION THEY WILL.

24 THE COURT: WELL---

25 MR. THEOS: YOUR HONOR, JUST A

MOTIONS

1 CURATIVE INSTRUCTION THAT THEY ARE NOT TO CONSIDER
2 -- THEY ARE ONLY TO CONSIDER -- THEY'RE NOT TO
3 CONSIDER ANYTHING THAT MAY BE -- ANYTHING ELSE THAT
4 MAY BE CONTAINED ON THIS DOCUMENT AS EVIDENCE
5 AGAINST MR. SIMMONS IN THIS PARTICULAR CASE.

6 THE COURT: IF THAT BE YOUR
7 PLEASURE? YOU HAVE NO OBJECTION TO THAT,
8 SOLICITOR?

9 MR. BAILEY: NO, SIR. YOUR HONOR,
10 WHAT I'D LIKE TO DO IF THE COURT PLEASES WOULD BE
11 TO XEROX THE FRONT OF THAT, THE NOTE ON IT, AND TO
12 CUT OUT JUST THE NOTE PORTION AND IT OFFSETS MR.
13 THEOS TO USE THAT IN LIEU OF THE ORIGINAL. AND IF
14 WE COULD MAKE THIS A COURT'S EXHIBIT JUST SO IT
15 WILL BE A PART OF THE RECORD?

16 THE COURT: AND, MA'AM, THAT WILL BE
17 COURT'S EXHIBIT NUMBER?

18 THE COURT REPORTER: NUMBER TWO.

19 COURT'S EXHIBIT NO. 2

20 MARKED FOR IDENTIFICATION

21 THE COURT: FOR THE PURPOSE OF THIS
22 HEARING. COURT'S TWO IS A COPY FROM THE STATE IN
23 LIEU OF THE ORIGINAL.

24 MR. THEOS: SO I COULD STATE FOR THE
25 RECORD, YOUR HONOR, TO PROTECT THE RECORD; THE COPY

MOTIONS

1 THAT'S BEEN -- I DON'T KNOW THAT ANY COPY COULD BE
2 MADE ANY BETTER THAN THAT. BUT THE COPY THAT'S
3 BEEN OFFERED DOES HAVE SOME LANGUAGE THAT WOULD
4 REFLECT THAT IT IS A WARRANT. AND I JUST THINK
5 THAT UNDER THE CIRCUMSTANCES THAT I'VE EXPLAINED
6 BEFORE, WE'VE DECIDED, MR. BELL AND I, THAT THE
7 APPROPRIATE THING TO DO IS TO ALLOW THE ORIGINAL TO
8 GO IN.

9 THE COURT: ALL RIGHT, SIR. WELL
10 THE WORD WARRANT IS NOT SHOWN ON THAT COURT'S
11 NUMBER TWO, BUT IT DOES HAVE A LITTLE BLANK LINE
12 FOR JUDGE AND BAIL SET BY AND NAME OF SURETY AND
13 PRELIMINARY HEARING HELD BY, TELEPHONE, NAME AND
14 ADDRESS. BUT IT DOESN'T MENTION A WARRANT. AND OF
15 COURSE THE CONTENTS OF PROPOSED STATE'S NUMBER TEN
16 DOES REFLECTS A SHOPLIFTING CHARGE FOR TAKING TWO
17 FAMILY PACKS OF STEAK AND PUTTING IT INTO HIS PANTS
18 AT FOOD LION. SO IF THE JURY DID LOOK AT THAT, I
19 THINK THAT THEY WOULD SEE THAT THAT'S A RELATIVELY
20 MINOR CHARGE ALBEIT HE WAS CHARGED ON NOVEMBER THE
21 22ND AND OF '97; AND THEN THE TIME THAT HE GAVE
22 THIS TO THE PERSONNEL AT THE RICHLAND COUNTY
23 JUDICIAL CENTER OR THE DETENTION CENTER WAS
24 ABOUT---

25 MR. BAILEY: DECEMBER THE THIRD,

MOTIONS

1 YOUR HONOR.

2 THE COURT: DECEMBER THE THIRD. SO
3 THAT WOULD BE THE THIRTY-ONE DAYS. AND THAT WOULD
4 BE TWELVE DAYS LATER. BUT I CONCUR WITH YOU IN
5 YOUR ANALYSIS, MR. THEOS, THAT BECAUSE THIS IS A
6 MINOR THING AND IT SAYS SHOPLIFTING UNDER A
7 THOUSAND. I MEAN, IT SAYS TWENTY DOLLARS WORTH OF
8 STEAKS. AND I THINK YOUR STRATEGY IS WELL TAKEN
9 THAT THEY MIGHT THINK THAT HE'S IN THERE FOR A MORE
10 SERIOUS CRIME. I UNDERSTAND THAT. PARTICULARLY IN
11 LIGHT OF THE ALLEGED CONFESSION. AND GENTLEMEN, IN
12 REGARD TO THE ALLEGED CONFESSION, Y'ALL BEAR IN
13 MIND NOW THAT YOU'VE MADE CERTAIN PROFFERS TO THE
14 COURT -- WELL NOR PROFFERS, OFFERS -- DURING THE IN
15 CAMERA HEARING. BUT BE SURE AND PUT YOUR FULL
16 DETAIL IN AGAIN AT THIS TIME. AND I WILL GIVE AN
17 INTERMITTENT CHARGE. I DON'T THINK IT'S NECESSARY
18 TO GO INTO THE FACTS. THE STATE HAS PROVED THE
19 CORPUS DELICTI AS YOU MENTIONED IN YOUR OPENING
20 STATEMENT ON YESTERDAY BECAUSE THE STATE HAS DONE
21 THIS AT THIS TIME. AND I WILL, OF COURSE, INSTRUCT
22 THEM TO KNOWING, VOLUNTARY, AND WHATEVER AND
23 WHATEVER. I'M NOT GOING TO GO INTO THREE PAGE
24 DISSERTATION ON THAT. BUT I WILL GIVE AN
25 APPROPRIATE INTERMITTENT INSTRUCTION.

MOTIONS

1 MR. BAILEY: YES, SIR. YOUR HONOR,
2 WHILE WE'RE TALKING ABOUT STATEMENT; WE HAVE GOTTEN
3 TOGETHER AND REDACTED THE REFERENCE TO MR. SIMMONS
4 NAME "SKINRAT;" AND ALSO HAVE REDACTED A REFERENCE
5 TO SOME PRIOR OFFENSES THAT HE HAD. THAT'S BEEN
6 DELETED. IT'S BEEN EDITED OFF THE TAPE AND THE
7 TRANSCRIPT.

8 THE COURT: GOOD.

9 MR. BAILEY: AND ALSO I HAVE SPOKEN
10 WITH MR. THEOS' SECRETARY, AND THERE ARE A LOT OF
11 TYPOGRAPHICAL ERRORS AND SPELLING ERRORS. AND
12 THAT'S BEEN CLEANED UP. SO THE COPIES WE'VE GOT ON
13 THE TRANSCRIPT ON TWO OF THEM HAVE BEEN ALTERED
14 PURSUANT TO THE AGREEMENT. THAT'S THE FIRST TWO, I
15 BELIEVE.

16 THE COURT: AGREED?

17 MR. THEOS: I HAVEN'T SEEN THEM; BUT
18 I WILL ACCEPT MR. BAILEY'S WORD THAT THAT'S BEEN
19 DONE..

20 THE COURT: WELL, WOULD YOU LIKE FOR
21 HIM TO GET A COPY MADE---

22 MR. THEOS: I'VE GOT THAT, YOUR
23 HONOR.

24 THE COURT: AND MR. THEOS, MR.
25 BAILEY MENTIONED TO ME THAT THE DNA EXPERT IS DUE

MOTIONS

1 AT THE AIRPORT AT 2:30 AND MIGHT BE AS LATE AS
2 4:00. IF THE PERSON COULD GET HERE, DO YOU
3 ANTICIPATE CONCLUDING THE STATE'S CASE TODAY?

4 MR. BAILEY: YES, SIR.

5 THE COURT: AND THAT YOU THINK YOU
6 HAVE ENOUGH TO KEEP US BUSY UNTIL 6:00 OR 6:30?

7 MR. BAILEY: YOUR HONOR, I THINK I
8 HAVE ENOUGH BECAUSE THESE ARE MY LAST TWO WITNESSES
9 COMING IN THIS AFTERNOON. AND DEPENDING ON HOW
10 FAST THEY CAN GO, I THINK WE CAN PRETTY MUCH FILL
11 UP THE DAY UNTIL THEY GET HERE. THERE MAY BE A
12 BRIEF WAITING PERIOD IF THE PLANE IS LATE OR
13 SOMETHING.

14 THE COURT: RIGHT. THEN WE COULD
15 HEAR ANY MOTIONS THAT MIGHT BE IN ORDER THIS
16 EVENING; AND THEN YOU CAN BE PREPARED TO COMMENCE
17 IN THE MORNING?

18 MR. THEOS: YOUR HONOR, I DO HAVE A
19 COUPLE OF WITNESSES THAT ARE ON STANDBY. WOULD IT
20 BE OKAY TO LET THEM KNOW THAT THEY NEED TO BE HERE
21 AT NINE O'CLOCK TOMORROW MORNING RATHER THAN THIS
22 AFTERNOON LATE?

23 THE COURT: HOW FAR AWAY ARE THEY?

24 MR. THEOS: EAST CHARLESTON.

25 THE COURT: WELL, LET'S WAIT UNTIL

MOTIONS

1 ABOUT -- TELL THEM IT APPEARS THAT WE WON'T NEED
2 THEM UNTIL NINE, BUT WE'LL LET THEM KNOW BY THREE
3 O'CLOCK BECAUSE THEN THAT WOULD GIVE THEM TWO HOURS
4 TO GET HERE BY FIVE, IF NEED BE. I JUST DON'T KNOW
5 HOW QUICKLY OR SLOWLY THINGS ARE GOING TO
6 PROGRESS. BUT I KNOW WE'VE GOT TO BE CONCERNED
7 ABOUT THIS JURY BEING SEQUESTERED, AND WE WANT TO
8 TRY AND USE FROM NINE UNTIL SIX; AND IT'S ALREADY
9 TEN AFTER NINE AND THE JURY IS WAITING. SO---

10 MR. BAILEY: YOUR HONOR, ONE OTHER
11 THING WHILE THE JURY IS OUT. THE SECOND WITNESS I
12 PLAN TO CALL TODAY IS EARL WORSHEM; AND I HAD
13 MENTIONED MR. WORSHEM DURING THE JACKSON VS. DINNO
14 HEARING. I DID NOT HAVE HIM HERE. HE KNOWS MR.
15 SIMMONS. AND HE WOULD TESTIFY THAT HE HAD A BRIEF
16 CONVERSATION WITH MR. SIMMONS ON THE STREET AND HAD
17 ASKED HIM TO COME IN TO BE INTERVIEWED THE
18 FOLLOWING MONDAY. AND MR. SIMMONS DID NOT SHOW UP
19 FOR THE INTERVIEW. AND MR. WORSHEM THEN STARTED TO
20 LOOK FOR HIM AND COULDN'T FIND HIM. APPARENTLY HE
21 HAD LEFT TOWN AND ENDED UP GETTING ARRESTED LATER
22 ON IN COLUMBIA. AS I SAID, THERE WAS A
23 CONVERSATION WITH HIM. HE MADE STATEMENTS. AND I
24 GUESS THE DEFENSE COULD CONTEND THAT THERE'S SOME
25 VOLUNTARINESS ISSUE. I DON'T KNOW; BUT THAT'S---

MOTIONS

1 THE COURT: WELL, WE ALL WE KNOW
2 UNDER DAHL VS. OHIO THAT EVIDENCE OF SILENCE IS NOT
3 ADMISSIBLE. BUT, YOU KNOW, HE HAD NOT BEEN
4 FORMERLY ARRESTED. IT WAS DURING AN INVESTIGATION,
5 AND HE ASKED HIM TO COME IN SO HE COULD TALK TO
6 HIM. AND THEN HE DIDN'T COME IN. WHAT DO YOU SAY,
7 MR. THEOS?

8 MR. THEOS: YOUR HONOR, I THOUGHT WE
9 ADDRESSED THAT EARLIER. MR. BAILEY MADE A PROFFER
10 AS TO WHAT MR. WORSHEM, OR OFFICER WORSHEM, WOULD
11 SAY. AND I THOUGHT THAT THE RULING WAS THAT -- AND
12 I MIGHT BE WRONG -- BUT I THOUGHT THAT THE RULING
13 WAS THAT -- I THINK THE INFERENCE IS THAT HE IN
14 FACT INTENDED TO COMMENT ON HIS SILENCE IN NOT
15 COMING IN. AND I THOUGHT THAT THE RULING OF THE
16 COURT IS THAT THAT WOULD NOT BE ADMISSIBLE.

17 THE COURT: YOU WELL COULD BE
18 CORRECT. BUT I DON'T RECALL THAT.

19 MR. BAILEY: I DON'T RECALL THAT YOU
20 RULED EITHER WAY. I THINK WE JUST PRESENTED THAT
21 TO YOU AND LET IT STAND AT THAT POINT. YOUR HONOR,
22 I DON'T THINK DAHL APPLIES TO A PRE-ARREST OR
23 PRE-DETAINMENT SITUATION.

24 THE COURT: IT DOES NOT.

25 MR. BAILEY: AND WE'RE NOT TRYING TO

MOTIONS

1 ELICIT HIS SILENCE. BUT THE FACT THAT HE DID
2 AGREE---

3 THE COURT: ARE YOU TRYING TO ELICIT
4 EVIDENCE FLIGHT?

5 MR. BAILEY: YES, SIR.

6 THE COURT: ALL RIGHT. DO YOU WANT
7 TO BE HEARD FURTHER ON THAT, MR. THEOS?

8 MR. THEOS: YES, SIR. WE WOULD
9 OBJECT TO THAT TESTIMONY, YOUR HONOR. IT DOES NOT
10 APPEAR TO BE ADMISSIBLE BASED ON A COUPLE OF
11 REASONS. ONE IS THE RELEVANCE. TWO IS THAT IT
12 WOULD BE -- IT'S BEING OFFERED AS MR. BAILEY SAID
13 TO SHOW FLIGHT; AND THAT'S CERTAINLY PREJUDICIAL,
14 AND IT SERVES NO PROBATIVE VALUE. THEY WILL HAVE
15 FOUR OR FIVE, I DON'T KNOW HOW MANY OFFICERS TO
16 COME IN, AT LEAST THE SAME NUMBER THAT CAME IN AT
17 THE JACKSON VS. DINNO HEARING TO TESTIFY TO WHAT
18 MR. SIMMONS' STATEMENTS WERE AND WHAT ADMISSIONS HE
19 MAY HAVE MADE. THE ONLY PURPOSE THAT I CAN GATHER
20 THAT MR. WORSHEM WOULD BE CALLED TO TESTIFY IS JUST
21 WHAT MR. BAILEY SAID, TO SHOW THAT THERE WAS
22 FLIGHT. AND THAT IS NOT EVIDENCE OF FLIGHT, YOUR
23 HONOR. HE CERTAINLY HAS A RIGHT TO EXERCISE ANY
24 CONSTITUTIONAL RIGHT NOT TO SPEAK TO SOMEBODY.

25 THE COURT: WELL, IT WASN'T A MATTER

MOTIONS

1 OF NOT SPEAKING. HE DIDN'T APPEAR. AND ONE OF THE
2 INVESTIGATIVE AGENCY AWARE AS DEBBIE BROWN, YOUR
3 WITNESS ON YESTERDAY SAID, THAT SHE SAW THE
4 DEFENDANT ON THE RAILROAD TRACKS. WERE THEY AWARE
5 OF THAT?

6 MR. BAILEY: THEY WERE NOT AT THAT
7 TIME, YOUR HONOR.

8 THE COURT: HE WAS NOT A SUSPECT?
9 WHY DID YOU ASK HIM TO COME IN?

10 MR. BAILEY: IT DIDN'T TAKE A WHOLE
11 LOT TO GET TO BE A SUSPECT IN THIS CASE, YOUR
12 HONOR. I MEAN, ANYBODY THAT THE POLICE KNEW THAT
13 HAD A REPUTATION AND WERE CAPABLE OF IT, THEY WOULD
14 ASK THEM TO COME IN FOR FINGERPRINTS OR BLOOD OR AN
15 INTERVIEW. AND HE WAS ONE OF THE PEOPLE THAT THEY
16 HAD SPOKEN TO. AND WHEN I TALKED TO OFFICER
17 WORSHEM ABOUT THAT, AND I CAUTIONED HIM THAT IF HE
18 DOES TESTIFY, HE CAN'T GET INTO THE REPUTATION OR
19 WHY HE SOUGHT MR. SIMMONS OUT; JUST THAT HE RAN
20 INTO HIM IN THE STREET AND ASKED HIM TO COME IN.
21 YOUR HONOR, MR. THEOS' OPENING STATEMENT, HE SAYS
22 THAT MR. SIMMONS HAS THE FUNCTIONING AT A SEVEN
23 YEAR OLD LEVEL, SECOND GRADE AND THAT KIND OF
24 THING. AND I THINK IF HE HAD THE WHEREWITHAL TO
25 REALIZE IT AND THEY ASKED HIM TO COME IN FOR AN

MOTIONS

1 INTERVIEW THAT IT WOULD BE A GOOD IDEA NOT TO SHOW
2 UP AND TO GET OUT OF TOWN THAT THAT WOULD HAVE SOME
3 RELEVANCE TO HIS ABILITY TO KNOW WHAT HE WAS DOING.

4 THE COURT: DO EITHER OF YOU
5 GENTLEMEN HAVE ANY CASE LAW FOR THE COURT TO
6 CONSIDER IN REGARD TO THIS MATTER?

7 MR. BAILEY: I'VE GOT NUMEROUS CASES
8 ON FLIGHT, YOUR HONOR, I COULD HAND UP TO THE COURT
9 THAT'S PROBABLY NOT DIRECTLY ON POINT BECAUSE MOST
10 OF IT DEALS WITH SOMEBODY DOING SOMETHING AND
11 THEY'RE IMMEDIATELY TAKEN OFF. YOU KNOW, THE
12 POLICEMAN SHOWS UP AND THEY HAVE DRUGS AND RUN
13 OFF. I HAVE THOSE KINDS OF CASES IF THAT WOULD
14 HELP THE COURT.

15 THE COURT: NO, SIR. I'M GENERALLY
16 FAMILIAR WITH THE LAW FOR FLIGHT. BUT I JUST
17 WONDERED IF ANYBODY HAD ANYTHING PRECISELY ON THIS
18 POINT, WHETHER DEATH PENALTY OR OTHERWISE.

19 MR. THEOS: I DON'T, YOUR HONOR.

20 THE COURT: MR. BELL, DO YOU WANT TO
21 BE HEARD FURTHER ON THIS?

22 MR. BELL: NO, SIR.

23 THE COURT: GO AHEAD, MR. THEOS.
24 LET ME HEAR FROM YOU.

25 MR. THEOS: THE ONLY THING I WOULD

MOTIONS

1 SAY; MR. BAILEY IS CORRECT. THERE WERE PROBABLY --
2 IN THIS SMALL COMMUNITY -- THERE WERE PROBABLY
3 TWENTY TO TWENTY-FIVE PEOPLE THAT WERE SPOKEN
4 WITH. ANYBODY AND EVERYBODY WAS A SUSPECT. AND I
5 THINK THERE'S A GREAT POTENTIAL FOR PREJUDICE
6 AGAINST MR. SIMMONS IF OFFICER WORSHEM IS ALLOWED
7 TO TESTIFY. AND IT MAY SHIFT THE BURDEN TO US TO
8 SHOW WHY HE MAY NOT HAVE APPEARED. AND I DON'T
9 THINK THE DEFENDANT HAS ANY BURDEN TO SHOW
10 ANYTHING. AND IT SERVES NO PROBATIVE VALUE, YOUR
11 HONOR.

12 MR. BAILEY: YOUR HONOR, I'LL
13 WITHDRAW IT AT THIS TIME. I THINK I'M CORRECT.
14 BUT I DON'T THINK THE VALUE I'D GET OUT OF HIS
15 TESTIMONY WOULD OFFSET THE RISK AND MAYBE SOME
16 APPELLATE COURT TAKING A DIFFERENT VIEW ON IT.

17 THE COURT: THAT'S ENTIRELY UP TO
18 YOU BECAUSE ON CROSS-EXAMINATION HE COULD ASK
19 OFFICER WORSHEM OR WHOMEVER "HOW MANY PERSONS DID
20 YOUR INTERVIEW; HOW MANY PERSONS DID YOU BRING IN?"

21 TWENTY OR TWENTY-FIVE HE SAYS. I DON'T KNOW.
22 BUT IF YOU WITHDRAW IT, THAT SUITS THE COURT FINE.

23 MR. BAILEY: YOUR HONOR, I THINK I
24 WILL AT THIS TIME. IF SOMETHING DEVELOPS LATER ON
25 WHERE THE DOOR GETS OPENED; BUT I'M NOT

MOTIONS

1 IRREVERSIBLY SAYING THAT I'M NOT GOING TO TENDER
2 THE WITNESS. BUT AT THIS TIME I WILL KIND OF PUT
3 THAT ON THE BACK BURNER.

4 THE COURT: ALL RIGHT. SO THE COURT
5 HAS NOT RULED THAT IT IS NOT ADMISSIBLE BECAUSE I'M
6 OF THE VIEW THAT THE RELEVANCE WOULD OUTWEIGH ANY
7 POTENTIAL PREJUDICE. AND I DON'T SEE THAT IT WILL
8 BE BURDEN SHIFTING. AND I DON'T SEE THAT IT'S
9 EVIDENCE OF SILENCE BECAUSE IT WAS A PRE-ARREST
10 INVESTIGATION, AND HE WAS UNDER -- MIRANDA WOULDN'T
11 APPLY; OR SILENCE THERE WOULDN'T APPLY. BUT WE'LL
12 MOVE FROM THERE. ANYTHING ELSE Y'ALL CAN THINK OF,
13 GENTLEMEN, BEFORE WE BRING THE JURY IN?

14 MR. THEOS: YOUR HONOR, MR. BAILEY
15 DID SAY HE HAD TWO OF THE TRANSCRIPTS. I JUST
16 WONDERED IF THAT THIRD TRANSCRIPT HAD BEEN---

17 MR. BAILEY: ONE OF THE THREE
18 TRANSCRIPTS WAS---

19 THE COURT: NOW, GENTLEMEN, AGAIN
20 LET ME REMIND Y'ALL. I ASKED Y'ALL TO BE HERE AT A
21 QUARTER UNTIL NINE SO WE COULD PUT ANYTHING ON THE
22 RECORD THAT WE NEEDED TO. SO BE SURE IN THE
23 MORNING THAT Y'ALL GET HERE FIFTEEN MINUTES BEFORE
24 THE JURY BECAUSE, YOU KNOW, IT'S TWENTY AFTER NINE.
25 AND WE CAN'T BRING THEM IN AND MAKE THEM WAIT.

MOTIONS

1 MR. BAILEY: YOUR HONOR, THE THIRD
2 TRANSCRIPT HAS NO SUBSTANTIVE CHANGES. THERE WAS
3 NO REFERENCE TO SKINRAT OR PRIOR CRIMES. SO ALL WE
4 DID WAS JUST CLEAN UP THE LANGUAGE. AND I DID TALK
5 TO MR. THEOS' SECRETARY ON THAT. SHE HAD MADE A
6 LOT OF CORRECTIONS.

7 THE COURT: ALL RIGHT, GENTLEMEN.
8 LET ME JUST WALK TO MY OFFICE. I HAVE SOME NOTES
9 ON WHAT WE'RE ABOUT TO HEAR. I DON'T WANT TO TAKE
10 NOTES TWICE. IS THERE ANYTHING ELSE FOR THE
11 RECORD?

12 MR. THEOS: YES, SIR. JUST SO WE
13 DON'T HAVE TO TAKE ANOTHER BREAK, YOUR HONOR, YOU
14 ASKED IF WE WANTED TO PUT OUR -- JUST TO PRESERVE
15 OUR OBJECTIONS RELATED TO THE ADMISSIBILITY OF
16 THOSE STATEMENTS RATHER THAN -- I DON'T KNOW WHAT
17 ORDER MR. BAILEY WILL PUT THOSE PEOPLE IN.

18 THE COURT: I'LL BE GLAD TO HEAR
19 FROM YOU. JUST A MINUTE, PLEASE.

20 (AT THIS TIME THE JUDGE LEAVES COURTROOM TO RETRIEVE
21 NOTES.)

22 THE COURT: YES, SIR. I'LL BE GLAD
23 TO HEAR FROM YOU, GENTLEMEN.

24 MR. THEOS: THANK YOU. YOUR HONOR,
25 YOU HAD MENTIONED EARLIER IF WE WANTED TO; AND I

MOTIONS

1 THOUGHT I UNDERSTOOD YOU TO ASK IF WE WANTED TO, AT
2 THIS TIME BEFORE THE JURY CAME BACK IN, PLACE ANY
3 POSITIONS ON THE RECORD RELATED TO THE STATEMENTS
4 THAT MR. SIMMONS GAVE. AND I'M PREPARED TO DO THAT
5 AT THIS TIME, YOUR HONOR, OR WE CAN WAIT UNTIL THAT
6 POINT IN TIME WHEN MR. BAILEY OFFERS THOSE VARIOUS
7 WITNESSES.

8 THE COURT: I WANT TO AVOID HAVING
9 TO SEND THE JURY IN AND OUT. AND, YOU KNOW, I WANT
10 YOU TO PUT IT ON THE RECORD AT THE TIME YOU DEEM
11 APPROPRIATE BEING CONSIDERATE OF THE JURY, PLEASE.
12 SO WHAT'S YOUR PLEASURE? IT DOESN'T MATTER TO ME.
13 YOU CAN DO IT NOW, OR YOU CAN DO IT LATER.

14 MR. THEOS: I THINK I'LL WAIT. AS I
15 UNDERSTAND IT, MR. BAILEY HAS GOT A COUPLE OF
16 WITNESSES BEFORE WE GET TO THAT POINT.

17 THE COURT: ALL RIGHT. BUT, NOW, I
18 DON'T WANT TO HAVE TO SEND THIS JURY OUT UNLESS WE
19 JUST HAVE TO FOR THE NEXT TWO HOURS. DO YOU
20 UNDERSTAND?

21 MR. BAILEY: YOUR HONOR, WHAT I'VE
22 GOT. I'VE GOT MR. DERRICK FROM SLED, STEVE
23 DERRICK. THEN AFTER THAT I'VE GOT THE CORRECTIONAL
24 OFFICER FROM RICHLAND COUNTY AND THEN THE SLED
25 AGENT WHO TOOK THE STATEMENT. AND THAT'S COMING UP

MOTIONS

1 IN FAIRLY SHORT ORDER.

2 MR. THEOS: I'LL PUT IT ON THE
3 RECORD NOW.

4 THE COURT: THANK YOU.

5 MR. THEOS: YOUR HONOR, WE
6 PREVIOUSLY HAD A JACKSON VS. DINNO HEARING IN WHICH
7 MR. BAILEY -- WE HAD FILED A MOTION TO SUPPRESS THE
8 STATEMENTS MADE BY MR. SIMMONS ON THE GROUNDS THAT
9 THEY WERE UNLAWFULLY TAKEN SUCH THAT MR. SIMMONS
10 WAS UNABLE TO KNOWINGLY AND INTELLIGENTLY WAIVE HIS
11 MIRANDA WARNINGS, AND AS SUCH THAT THOSE STATEMENTS
12 SHOULD BE DEEMED INADMISSIBLE. WE HAD I BELIEVE A
13 TWO DAY HEARING THAT ENCOMPASSED BOTH THE BLAIR
14 HEARING AND THE JACKSON VS. DINNO HEARING. AND
15 SOME OF THE WITNESSES WERE OVERLAPPING WITNESSES.
16 YOU RULED, YOUR HONOR, OVER OUR -- YOU DENIED OUR
17 MOTION TO SUPPRESS THOSE STATEMENTS. WE SUBMITTED
18 A MEMORANDUM OF LAW IN SUPPORT OF OUR MOTION. AND,
19 YOUR HONOR, WE WOULD AT THIS TIME SIMPLY NOTE FOR
20 THE RECORD OR CONTINUE TO OBJECT ON THAT TO THE
21 ADMISSIBILITY OF THOSE STATEMENTS BASED UPON OUR
22 CONTENTION THAT MR. SIMMONS DID UNKNOWINGLY AND --
23 DID NOT MAKE A KNOWING AND INTELLIGENT AND
24 VOLUNTARY WAIVER OF HIS MIRANDA WARNINGS BEFORE THE
25 STATEMENT WAS GIVEN AND AS SUCH THE STATEMENT

MOTIONS

1 SHOULD BE DEEMED INADMISSIBLE, YOUR HONOR. AND I
2 WOULD ALSO ASK THAT THE -- AND BASED ON THE
3 ADDITIONAL GROUNDS, YOUR HONOR, THAT WE'VE STATED
4 IN OUR MEMORANDUM OF LAW. AND THE ARGUMENTS THAT
5 WE MADE THAT THEY WERE ESSENTIALLY -- THAT WAS
6 ESSENTIALLY THE BASIS FOR THE MOTION.

7 THE COURT: ALL RIGHT, SIR. AND, OF
8 COURSE, THE RECORD WILL SPEAK FOR ITSELF. WE HAD A
9 TWO DAY HEARING ON THAT AND VARIOUS OTHER MATTERS,
10 AND THAT THE COURT HAS REVIEWED THE VARIOUS
11 MEMORANDUMS AND THAT I'VE CONSIDERED THE VARIOUS
12 EXPERT TESTIMONY THAT WAS OFFERED RELATIVE TO HIS
13 MENTAL CAPACITY. AND THE COURT CONCLUDED THAT HE
14 CERTAINLY WAS CAPABLE OF UNDERSTANDING AND DID
15 INDEED WAIVE THEM. AND, YOU KNOW, YOU'VE PASSED --
16 WHILE REASONABLE MEN AND WOMEN DIFFER, THE FACT
17 THAT SOMEONE PASSES THEIR DRIVER'S LICENSE TEST
18 AND, YOU KNOW, SECOND GRADER OR FUNCTIONING AT A
19 SEVEN YEAR OLD LEVEL, WOULD NOT BE CAPABLE OF
20 PASSING THAT TEST. AND ANYBODY THAT GRADUATED FROM
21 SUMMERVILLE HIGH SCHOOL, WHILE SUMMERVILLE HAS THE
22 FINEST ATHLETIC FOOTBALL REPUTATION OF ANYBODY IN
23 THE STATE AND THROUGHOUT, THEY ALSO HAVE AN
24 EXCELLENT ACADEMIC REPUTATION. AND I UNDERSTAND
25 THAT IN THE ELEVENTH GRADE THAT HE WAS PLACED IN

MOTIONS

1 REMEDIAL ENGLISH; HOWEVER, HE DID RECEIVE HIS
2 DIPLOMA FROM SUMMERVILLE HIGH SCHOOL, LETTERED TWO
3 YEARS IN FOOTBALL. AND I JUST DON'T BELIEVE ANYONE
4 FUNCTIONING AT A SEVEN YEAR OLD LEVEL OR SECOND
5 GRADE LEVEL WOULD BE CAPABLE OF THAT. AND THERE
6 ARE VARIOUS REASONS IN THE RECORD. I'VE RULED.
7 LET HIS MOTION BE PROTECTED IN THE RECORD THAT HE'S
8 RENEWING HIS OBJECTION TO THE RULING OF THE COURT,
9 AND LET THE OBJECTION RUN THROUGHOUT, PLEASE, MADAM
10 COURT REPORTER. ALL RIGHT. SHALL WE PROCEED?

11 MR. THEOS: YES, SIR.

12 THE COURT: BRING THE JURY IN,
13 PLEASE. GENTLEMEN, I CONTINUE TO, IN THE EVENINGS
14 AND DURING THE BREAKS, TO REVIEW THESE REQUESTS TO
15 CHARGE, AND I CONTINUE TO INVITE YOU TO SHARE WITH
16 ME ANY REQUESTS THAT YOU HAVE. YOU CAN RIGHT UP TO
17 THE TIME OF THE CHARGE. BUT IF YOU HAVE ANY,
18 PLEASE FEEL FREE TO SHARE THEM WITH ME.

19 (AT THIS TIME JURY RETURNS TO OPEN COURT.)

20 THE COURT: MADAM FORELADY AND
21 LADIES AND GENTLEMEN OF THE JURY; I HOPE YOU HAD A
22 PLEASANT EVENING. UNFORTUNATELY CLEMSON AND
23 CAROLINA LOST LAST EVENING, BUT THE SUN IS SHINING
24 TODAY, SO THINGS SHALL GO ON. THANK YOU SO MUCH
25 FOR BEING PRESENT AND HERE PROMPTLY EVEN BEFORE

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1 NINE. WE'VE BEEN INVOLVED IN SOME MOTIONS AND
2 LEGAL MATTERS SINCE ABOUT QUARTER OF NINE. AND
3 WE'RE NOT TELLING CLEMSON OR CAROLINA JOKES, SO
4 WE'VE BEEN WORKING. PLEASE BE UNDERSTANDING OF
5 THAT. AT THIS TIME, LADIES AND GENTLEMEN, WE'LL
6 CONTINUE WITH OTHER AND FURTHER TESTIMONY. YOU MAY
7 CALL YOUR WITNESS, PLEASE.

8 MR. BAILEY: THANK YOU, YOUR HONOR.
9 WE WOULD CALL STEVEN DERRICK.

10 - - - - -
11 WHEREUPON,

12 STEVEN M. DERRICK, WHO AFTER BEING FIRST
13 DULY SWORN TO TELL THE TRUTH, TESTIFIED
14 AS FOLLOWS:

15 DIRECT EXAMINATION

16 BY MR. BAILEY:

17 Q. PLEASE TELL THE JURY WHERE YOU'RE EMPLOYED.

18 A. I'M EMPLOYED WITH THE SOUTH CAROLINA LAW
19 ENFORCEMENT DIVISION WHICH IS MORE COMMONLY
20 REFERRED TO AS SLED.

21 Q. ALL RIGHT, SIR. WHAT'S YOUR EDUCATIONAL
22 BACKGROUND?

23 A. I HAVE A BACHELOR OF SCIENCE DEGREE FROM FRANCIS
24 MARION COLLEGE WHICH A COUPLE OF YEARS AGO WAS
25 RE-NAMED AS FRANCIS MARION UNIVERSITY.

STEVEN DERRICK - DIRECT/MR. BAILEY

1 Q. ALL RIGHT, SIR. AND YOUR LAW ENFORCEMENT
2 BACKGROUND?

3 A. YES, SIR. I'VE BEEN A CERTIFIED POLICE OFFICER FOR
4 APPROXIMATELY TWENTY-TWO YEARS. OUT OF THAT
5 TWENTY-TWO YEARS OF LAW ENFORCEMENT I'VE SPENT OVER
6 NINETEEN YEARS ON THE POLICE FORCE IN THE FORENSIC
7 SCIENCE FIELD. I'M CURRENTLY EMPLOYED WITH THE
8 DEPARTMENT OF LATENT PRINTS AND CRIME SCENE AT THE
9 SOUTH CAROLINA LAW ENFORCEMENT DIVISION. PRIOR TO
10 THAT I WAS EMPLOYED WITH THE AIKEN COUNTY SHERIFF'S
11 DEPARTMENT WHERE I WAS THE AGENT IN CHARGE OF THE
12 FORENSICS LAB FOR FOUR YEARS AND PRIOR TO THAT
13 SPENT APPROXIMATELY SIX YEARS AT THE LEXINGTON
14 COUNTY SHERIFF'S DEPARTMENT IN THE IDENTIFICATION
15 SECTION.

16 Q. AT THE PRESENT TIME, WHAT ARE YOUR DUTIES AT SLED?

17 A. IN THE DEPARTMENT OF LATENT PRINTS IN A CRIME
18 SCENE, THE DUTIES AND RESPONSIBILITIES OF THE
19 EXAMINER ARE THE PROCESSING AND/OR RECONSTRUCTION
20 OF CRIME SCENES WHEN REQUESTED BY OTHER LAW
21 ENFORCEMENT AGENCIES IN THE STATE. THE SCIENCE OF
22 FINGERPRINTS, THE SCIENCE OF TIRE AND FOOTWEAR, AND
23 THE SCIENCE OF BLOOD STAIN SPATTER ANALYSIS.

24 Q. I WANT TO TAKE THESE DIFFERENT FUNCTIONS ONE AT A
25 TIME, OR SOME OF THEM ANYWAY. FIRST OF ALL THE

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1 FOOTWEAR IMPRESSIONS THAT YOU TALKED ABOUT.

2 A. YES, SIR.

3 Q. THAT TYPE TESTIMONY. WHAT TRAINING HAVE YOU HAD IN
4 COMPARING A FOOTPRINT OR A PHOTOGRAPH OR CAST WITH
5 A SHOE?

6 A. OKAY. I'VE HAD APPROXIMATELY TEN YEARS OF
7 EXPERIENCE IN DOING EXAMINATIONS AND COMPARISONS OF
8 FOOTWEAR EVIDENCE. PRIOR TO THAT I'VE BEEN
9 COLLECTING FOOTWEAR EVIDENCE DURING MY ENTIRE
10 NINETEEN YEARS. DURING THE COURSE OF THIS TIME I
11 HAVE HAD TRAINING. THE MOST RECENT ONE WAS LAST
12 MONTH. I WENT TO A FOOTWEAR EXAMINATION SCHOOL BY
13 MR. WILLIAM BOESIAK (PHONETICALLY SPELLED) WHO IS A
14 RETIRED SUPERVISOR OF THE F.B.I. FOOTWEAR SECTION.
15 I HAVE ALSO ATTENDED AN INTERNATIONAL SYMPOSIUM AT
16 THE F.B.I. ACADEMY ON FIRE AND FOOTWEAR. AND I'VE
17 ATTENDED TWO INTERNATIONAL CONFERENCES SPONSORED BY
18 THE INTERNATIONAL ASSOCIATION FOR IDENTIFICATION.
19 THIS ORGANIZATION IS AN INTERNATIONAL ORGANIZATION
20 OF WHICH MEMBERS OF THE VARIOUS DISCIPLINES THAT I
21 SPOKE OF EARLIER ARE MEMBERS. THEY SPONSOR A
22 YEARLY INTERNATIONAL CONFERENCE ON THESE SPECIFIC
23 SUBJECT AREAS AS WELL AS GIVING BI-MONTHLY
24 PUBLICATIONS WITH UPDATED INFORMATION IN THE
25 VARIOUS SCIENCES.

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1 Q. HAVE YOU TESTIFIED IN THE PAST OR BEEN QUALIFIED AS
2 AN EXPERT IN TESTIFYING ON FOOTWEAR IMPRESSIONS?

3 A. YES, SIR, I HAVE.

4 Q. ON APPROXIMATELY HOW MANY OCCASIONS?

5 A. APPROXIMATELY 39 OCCASIONS.

6 MR. BAILEY: YOUR HONOR, I WOULD
7 TENDER MR. DERRICK AS AN EXPERT IN FOOTWEAR
8 IDENTIFICATION.

9 THE COURT: THANK YOU, SIR. WOULD
10 YOU LIKE TO CROSS-EXAMINE HIM AS TO HIS EXPERTISE,
11 COUNSEL?

12 MR. THEOS: NO, SIR YOUR HONOR.

13 THE COURT: THANK YOU.

14 Q. MR. DERRICK, IN REGARD TO FINGERPRINTS; WHAT
15 TRAINING HAVE YOU HAD IN FINGERPRINT
16 IDENTIFICATION?

17 A. I HAVE A APPROXIMATELY NINETEEN YEARS OF EXPERIENCE
18 IN THE SCIENCE OF FINGERPRINTS. DURING THE COURSE
19 OF THAT TIME I'VE ATTENDED BASIC COURSES AT THE
20 SOUTH CAROLINA CRIMINAL JUSTICE ACADEMY IN BASIC
21 FINGERPRINTING. I'VE ALSO ATTENDED THE F.B.I.
22 ADVANCED LATENT PRINT COURSE AND HAVE ALSO ATTENDED
23 THE F.B.I. NATIONAL ACADEMY AND COMPLETED THE
24 ADMINISTRATIVE ADVANCED COURSE. IN ADDITION TO
25 THAT, I'VE ATTENDED PALM PRINT SCHOOL AT THE NORTH

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1 CAROLINA JUSTICE ACADEMY; RECENTLY COMPLETED AN
2 ADVANCED RIDGEOLOGY COURSE IN LEXINGTON, KENTUCKY.
3 AND I'VE ALSO BEEN TO TEXAS TECH UNIVERSITY WHERE
4 I'VE STUDIED THE USE OF LASER ALTERNATE LIGHT
5 SYSTEM FOR THE ENHANCEMENT OF LATENT PRINTS.

6 Q. ALL RIGHT, SIR. HAVE YOU TESTIFIED IN THE PAST IN
7 THE COURTS OF THIS STATE AS AN EXPERT IN
8 FINGERPRINT IDENTIFICATION?

9 A. YES, SIR. I'VE TESTIFIED APPROXIMATELY 76 TIMES IN
10 THE COURTS IN THE STATE OF SOUTH CAROLINA, AND I
11 HAVE ALSO TESTIFIED IN THE STATE OF GEORGIA AND IN
12 U.S. FEDERAL DISTRICT COURT AND IN THE MILITARY
13 COURTS.

14 MR. BAILEY: YOUR HONOR, I WOULD
15 TENDER MR. DERRICK IN THE FIELD OF FINGERPRINT
16 IDENTIFICATION.

17 MR. THEOS: WITHOUT OBJECTION.

18 THE COURT: WITHOUT OBJECTION.

19 Q. MR. DERRICK, WHAT IS BLOOD SPATTER TESTIMONY?

20 A. BLOOD SPATTER -- LET ME REPHRASE THAT. THE SCIENCE
21 OF BLOOD SPATTER OR BLOOD STAIN PATTERN ANALYSIS IS
22 THE SCIENCE OF EXAMINING BLOOD STAINS ASSOCIATED
23 WITH VIOLENT CRIMES. BLOOD HAS LIGHT
24 CHARACTERISTICS THAT CAN BE STUDIED AND EXAMINED
25 AND REVEALS CERTAIN INFORMATION SUCH AS THE

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1 POSITION OF THE VICTIM WHEN BLOODLETTING OCCURRED,
2 POSSIBLE POSITION OF A SUSPECT WHEN FORCE WAS
3 APPLIED TO THE VICTIM. BLOOD STAIN PATTERNS CAN
4 REVEAL OTHER THINGS SUCH AS MOVEMENT OF THE VICTIM
5 WHO HAS BLOODLETTING OCCURRING. ANYTHING SUCH AS
6 TRANSFER OF BLOOD; EVIDENCE THAT CAN BE TRANSFERRED
7 IN BLOOD SUCH AS FINGERPRINTS, PALM PRINTS, OR SHOE
8 IMPRESSION EVIDENCE. SO IT'S A STUDY OF THE
9 CHARACTERISTICS OF BLOOD TO HELP RECONSTRUCT
10 CERTAIN EVENTS THAT TOOK PLACE DURING THE
11 COMMISSION OF A VIOLENT CRIME.

12 Q. HAVE YOU HAD TRAINING IN THAT AREA ALSO?

13 A. YES, SIR, I HAVE.

14 Q. WHAT TRAINING HAVE YOU HAD?

15 A. I'VE ATTENDED TWO SCHOOLS ON BLOOD STAIN PATTERN
16 ANALYSIS. ONE WAS FROM MR. JERRY FINLEY WHO IS
17 WITH THE GEORGIA POLICE ACADEMY; ONE PRIOR TO THAT
18 FROM JUDITH BUNKER AND ASSOCIATES OUT OF ORLANDO,
19 FLORIDA. I'VE ALSO HAD ADDITIONAL TRAINING WHICH
20 WAS SEGMENTED TRAINING IN OTHER SCHOOLS SUCH AS THE
21 SOUTHERN POLICE INSTITUTE HOMICIDE SCHOOL. IN
22 ADDITION TO THAT, I'M ALSO A MEMBER OF THE
23 INTERNATIONAL ASSOCIATION OF BLOOD STAIN PATTERN
24 ANALYSIS WHICH GIVE ME QUARTERLY UPDATED
25 INFORMATION IN THAT SCIENCE AS WELL AS BEING A

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1 MEMBER OF THE INTERNATIONAL ASSOCIATION FOR
2 IDENTIFICATION THAT GIVES ME AN ADDITIONAL
3 BI-MONTHLY INFORMATION IN THAT PARTICULAR SCIENCE.

4 Q. HAVE YOU TESTIFIED AS AN EXPERT WITNESS IN THE
5 FIELD OF BLOOD SPATTER EVIDENCE?

6 A. YES, SIR, I HAVE.

7 Q. ON APPROXIMATELY HOW MANY OCCASIONS?

8 A. APPROXIMATELY THIRTY-SEVEN TIMES.

9 MR. BAILEY: YOUR HONOR, I WOULD
10 TENDER MR. DERRICK AS AN EXPERT IN BLOOD SPATTER
11 ANALYSIS.

12 THE COURT: THANK YOU.

13 Q. MR. DERRICK, IN REGARD TO FINGERPRINTS, FIRST OF
14 ALL -- AND MR. MANCHESTER TESTIFIED TO THIS BRIEFLY
15 -- BUT WHAT IS A LATENT FINGERPRINT?

16 A. OKAY. A LATENT FINGERPRINT IS THAT PRINT THAT'S
17 LEFT ON THE SURFACE BY CHANCE THAT HAS COMMONLY
18 BECOME KNOWN AS THE PRINTS THAT ARE RAISED AT A
19 CRIME SCENE. BUT TO UNDERSTAND HOW A LATENT PRINT
20 GETS THERE, YOU NEED TO FIRST UNDERSTAND HOW THE
21 PRINT IS FORMED. ON THE FINGERS AND ON THE PALM OF
22 THE HANDS THERE IS A SYSTEM OF RIDGES AND FURROWS.
23 ON THE TOPS OF THESE RIDGES THERE ARE TINY PORE
24 OPENINGS. THROUGH THESE TINY PORE OPENINGS THERE
25 IS A CONSTANT SECRETION OF MOISTURE AND OTHER BODY

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1 CHEMICALS SUCH AS SALTS AND AMINO ACID. AS THESE
2 PORES SECRETE THIS MOISTURE AND OTHER CHEMICALS IT
3 BEGINS TO BUILD UP ON THE TOP OF THE RIDGES
4 THEMSELVES. AS WE TOUCH OTHER PARTS OF OUR BODY
5 SUCH AS OUR FACE AND OUR HAIR, TWO PRIMARY AREAS,
6 THIS RIDGE DETAIL BEGINS TO PICK UP GREASES AND
7 OILS. THEREFORE WHEREVER WE MAKE CONTACT WITH
8 ANOTHER SURFACE THERE IS A CHANCE THAT THIS RESIDUE
9 WILL TRANSFER FROM THE RIDGES OF OUR FINGERS OR
10 PALMS OF OUR HANDS TO THAT PARTICULAR SURFACE.
11 USING APPROPRIATE POWDERS AND CHEMICALS, THESE
12 PRINTS HAVE A TENDENCY TO BE DEVELOPED AND SEEN BY
13 THE HUMAN EYE.

14 Q. ALL RIGHT. SO YOU SAID THERE'S A CHANCE THAT YOU
15 MAY LEAVE A PRINT. IF I PICK THIS CUP UP, DOES IT
16 NECESSARILY MEAN I'M GOING TO LEAVE A PRINT ON IT?

17 A. NO, SIR; NOT NECESSARILY. IN ADDITION YOU CAN
18 TRANSFER THIS RESIDUE, BUT HOW THE RESIDUE IS
19 TRANSFERRED TO THE SURFACE CAN ALSO AFFECT WHETHER
20 OR NOT A PARTICULAR LATENT PRINT IS OF QUALITY FOR
21 EXAMINATION. WHAT I MEAN BY THAT; IF I HAVE THE
22 RESIDUE ON MY FINGERS AND I WAS TO PLACE THEM
23 STRAIGHT DOWN ON THIS WOOD SURFACE AND LIFT THEM
24 STRAIGHT UP, THERE IS A GOOD PROBABILITY THAT I
25 WOULD LEAVE A LEGIBLE PRINT THAT COULD BE EXAMINED

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1 BY A QUALIFIED EXAMINER IN THE FIELD AND THIS
2 EXAMINER, AS WELL AS MYSELF, REACH SOME CONCLUSION
3 ABOUT IT. HOWEVER IF I WAS TO TAKE MY FINGERS AND
4 SLIDE THEM ACROSS THIS BOARD, THERE WOULD BE A
5 TRANSFER OF RESIDUE IN THESE GREASES AND OILS; BUT,
6 HOWEVER, BECAUSE OF THE MOTION OF THE FINGERS THIS
7 RIDGE DETAIL WOULD NOT BE CLEAR AND DISTINCT FOR AN
8 EXAMINER TO DRAW A CONCLUSION. THERE ARE OTHER
9 VARIABLES SUCH AS THE WEATHER WHICH CAN AFFECT
10 WHETHER OR NOT RESIDUE IS EVEN ON THE HAND. SUCH
11 AS YESTERDAY MORNING BEFORE COMING IN THE COURT
12 HOUSE WITH THE COLD AIR OUT THERE, MY FINGERS WERE
13 EXTREMELY DRY, SO THERE WAS A MINIMAL CHANCE THAT
14 THIS RESIDUE WOULD TRANSFER. BEING HERE IN THIS
15 BUILDING THIS MORNING WHERE IT'S WARM, THE FEELING
16 OF MY FINGERS, THERE'S A LARGE AMOUNT OF RESIDUE
17 THAT'S CURRENTLY THERE. AND THERE'S A GOOD CHANCE
18 THAT I CAN LEAVE A LATENT PRINT.

19 Q. ALL RIGHT. WHAT ABOUT THE TYPE OF SURFACE OR
20 TEXTURE; WOULD THAT HAVE ANYTHING TO DO WITH IT?

21 A. SOME SURFACES ARE A LOT BETTER TO WORK FROM THAN
22 OTHER SURFACES WITH THE EXCEPTION OF PROBABLY
23 FABRICS. THERE ARE POTENTIAL CHEMICAL TECHNIQUES
24 WHICH CAN BE USED TO MAKE THIS VISIBLE IMPRESSION
25 LAYING ON THE SURFACE.

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- 1 Q. ALL RIGHT. WOULD THE CLEANLINESS OF THE OBJECT THE
2 PERSON IS TOUCHING WITH THEIR FINGERS HAVE A
3 BEARING ON WHETHER OR NOT IT WOULD LEAVE A PRINT?
- 4 A. YES, SIR, IT WOULD. THE MOST SIMPLIFIED EXAMPLE
5 THAT I CAN THINK OF IS A DOOR HANDLE. IF WE HAD A
6 BRAND NEW CLEAN DOOR HANDLE AND THE FIRST TIME YOU
7 OPEN THE DOOR THERE IS A GOOD CHANCE YOU WOULD
8 TRANSFER RIDGE DETAIL FROM THE RESIDUE ON YOUR
9 FINGERS. HOWEVER IF YOU CONTINUE TO USE THAT
10 DOORKNOB FOR THREE OR FOUR DAYS, FOUR OR FIVE TIMES
11 A DAY, WHAT HAPPENS IS EACH TIME YOU TOUCH IT, YOU
12 TRANSFER THE RESIDUE. AS THE RESIDUE IS
13 TRANSFERRED AND NOT TOUCHING THE DOORKNOB EXACTLY
14 IN THE SAME SPOT EACH TIME, THEN THE RESIDUE BUILDS
15 UP. AND AS THE RESIDUE BUILDS UP, YOU LOSE THE
16 RIDGE DETAIL; HOWEVER, THE CHEMICALS IN THE POWDER
17 WOULD REACT TO THE GREASES AND OILS THAT ARE
18 PRESENT.
- 19 Q. ALL RIGHT, SIR. NOW AS FAR AS BEING ABLE TO
20 DETERMINE THE AGE OF A PRINT OR WHEN IT WAS LEFT,
21 IF YOU WERE TO SAY GRAB THAT WATER PITCHER ON THE
22 JUDGE'S DESK AND IT WOULD LEAVE A PRINT AND SOME
23 EXPERT CAME ALONG TOMORROW OR NEXT WEEK OR NEXT
24 MONTH OR NEXT YEAR AND FOUND YOUR LATENT PRINT
25 THERE, IS THERE ANY WAY THEY CAN TELL WHEN THAT

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1 PRINT WAS LEFT THERE?

2 A. THERE IS NO SCIENTIFIC WAY TO ANALYZE RESIDUE THAT
3 IS TRANSFERRED AND SPECIFICALLY SAY WHEN A
4 PARTICULAR PRINT WAS LEFT ON A SURFACE. KNOWING
5 MAYBE THE HISTORY OF A PARTICULAR PITCHER, THE LAST
6 TIME IT WAS CLEANED BEFORE THE LATENT PRINT WAS
7 DEVELOPED, MAY PUT IT WITHIN A TIME SPAN OF A DAY
8 OR TWO DAYS; HOWEVER, IF THAT ITEM HASN'T BEEN
9 COMPLETELY CLEANED OR NOTHING HAS BEEN DONE TO IT,
10 IT WOULD BE DIFFICULT AND IN NO WAY WOULD YOU BE
11 ABLE TO SCIENTIFICALLY TELL EXACTLY WHEN A LATENT
12 WAS LEFT ON A SURFACE.

13 Q. NOW, ARE ALL LATENT PRINTS READABLE? ARE YOU ABLE
14 TO COMPARE THOSE TO KNOWN PRINTS?

15 A. NO, SIR.

16 Q. WHY IS THAT?

17 A. GOING BACK AGAIN TALKING ABOUT THE RIDGE FLOW ON
18 THE FINGERS AND ON THE PALMS OF THE HANDS, THE
19 RIDGES THAT FLOW IN A PATTERN. SOME OF THESE
20 RIDGES WILL START OUT ON ONE SIDE OF THE PATTERN
21 AND CONTINUE TO FLOW ALL THE WAY THROUGH TO THE
22 OTHER SIDE OF THE PATTERN, BUT NOT ALL RIDGES DO
23 THAT. SOME RIDGES AS THEY START OFF IN THE PATTERN
24 SOMEWHERE DURING THE COURSE OF THE PATTERN WILL
25 STOP OR COME TO AN ABRUPT END BEING REFERRED TO AS

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1 AN ENDING RIDGE. OTHER RIDGES AS THEY START OFF IN
2 THE PATTERN AND BEGIN THEIR FLOW WILL DIVIDE OFF
3 INTO FORMING TWO RIDGES WHICH WOULD CONTINUE
4 THROUGH THE PATTERN; OR A RIDGE MAY START OFF AS A
5 SINGLE RIDGE IN THE PATTERN, DIVIDE OFF INTO TWO
6 RIDGES, GO THROUGH THE PATTERN FOR A WHILE AND THEN
7 CLOSE BACK UP INTO ONE RIDGE WHICH CONTINUES THE
8 PATTERN. YOU CAN HAVE OTHER RIDGES THAT ARE LITTLE
9 DOTS OR SHORT RIDGES THAT WOULD BE PRESENT IN THE
10 LATENT PRINT ITSELF. THESE ARE THE PRIMARY DETAILS
11 THAT AN EXAMINER LOOKS FOR WHEN COMPARING A LATENT
12 PRINT TO A KNOWN INKED PRINT. IF EXAMINING THE
13 LATENT PRINT, THERE'S INSUFFICIENT QUALITY OR
14 INSUFFICIENT NUMBER OF THESE PARTICULAR DETAILS TO
15 WHICH THAT EXAMINER IS REASSURED THERE'S AN
16 IDENTIFICATION OR A NEGATION THAT'S AFFECTED TO A
17 PARTICULAR INK CARD, THEN THE PRINT IS OF NO VALUE
18 OR INSUFFICIENT RIDGE DETAIL FROM WHICH TO DRAW A
19 CONCLUSION.

20 Q. ALL RIGHT, SIR. NOW YESTERDAY OFFICER MANCHESTER
21 THROUGH HIS TESTIMONY THERE WAS A PORTION OF THE
22 FLOORING CUT OFF OF LILLY MAE BOYD'S KITCHEN. HAVE
23 YOU EXAMINED THAT FLOOR IN THE PAST?

24 A. YES, SIR, I HAVE.

25 Q. IF YOU WOULD GET DOWN HERE TO GET THIS IN THE RIGHT

STEVEN DERRICK - DIRECT/MR. BAILEY

1 ORDER. IT'S IN THE RECORD AS STATE'S 16. BEAR
2 WITH ME ONE MOMENT.

3 MR. BAILEY: YOUR HONOR, COULD WE
4 GET MR. MANCHESTER TO GIVE US A HAND IN PUTTING
5 THIS UP SINCE HE'S THE ONE WHO CUT THE FLOOR UP?

6 THE COURT: CERTAINLY.

7 Q. MR. DERRICK, WERE YOU PRESENT IN COURT WHEN THERE
8 WAS SOME TESTIMONY WITH REGARD TO WHAT APPEARS TO
9 BE SOME RIDGE DETAIL ON THAT FLOOR?

10 A. YES, SIR. WHEN I EXAMINED THE FLOOR, I EXAMINED AN
11 AREA OF PARTIAL RIDGE DETAIL THAT WAS PRESENT.

12 Q. ALL RIGHT, SIR. AND APPROXIMATELY WHERE WAS IT ON
13 THE FLOOR?

14 A. I BELIEVE I HAVE THE AREA CIRCLED WITH BLACK
15 CIRCLES.

16 Q. ALL RIGHT, SIR. CAN YOU COME UP HERE AND POINT
17 THAT OUT FOR THE JURY, PLEASE?

18 A. IN THIS PARTICULAR AREA RIGHT IN HERE.
19 (INDICATING.)

20 Q. ALL RIGHT, SIR. YOU CAN RETURN TO YOUR SEAT.

21 (AT THIS TIME WITNESS RETURNS TO WITNESS STAND.)

22 WOULD YOU STATE WHETHER OR NOT YOU WERE ABLE TO GET
23 ENOUGH RIDGE DETAIL OFF OF THAT LOCATION THERE TO
24 COMPARE THAT TO ANY KNOWN PRINT?

25 A. NO, SIR. THAT PARTICULAR IMPRESSION LACKED ENOUGH

1 OF THE CHARACTERISTICS AND RIDGE DETAIL PRESENT
2 FROM WHICH I COULD DRAW A CONCLUSION TO EITHER
3 IDENTIFY OR NEGATE TO ANYONE.

4 Q. DID YOU SEE ANYTHING ON THAT FLOOR BY WAY OF WHAT
5 MIGHT HAVE BEEN FINGERPRINTS THAT YOU FELT LIKE
6 WOULD BE SUITABLE FOR COMPARISON?

7 A. NO, SIR, I DID NOT.

8 Q. NOW I WANT TO TALK TO YOU A LITTLE BIT ABOUT
9 FOOTWEAR. YOU'VE BEEN QUALIFIED AS AN EXPERT IN
10 THAT AREA. AND I WANT TO HAND YOU WHAT'S BEEN
11 MARKED FOR IDENTIFICATION AS STATE'S FIFTEEN AND
12 ASK IF YOU'RE FAMILIAR WITH THAT?

13 A. YES, SIR, I AM.

14 Q. ALL RIGHT, SIR. DID YOU PREPARE THAT EXHIBIT?

15 A. YES, SIR. I HAD IT PREPARED AT MY DIRECTION.

16 Q. ALL RIGHT. I SHOW YOU NOW WHAT'S BEEN MARKED
17 STATE'S FOURTEEN, I BELIEVE, AND ASK IF YOU'LL TAKE
18 A LOOK AT THAT AND LET THE JURY KNOW WHETHER OR NOT
19 YOU'VE SEEN THOSE SHOES BEFORE? (WITNESS EXAMINES
20 EVIDENCE.)

21 A. YES, SIR, I HAVE. I CAN IDENTIFY THESE SHOES.
22 THEY BEAR MY CASE NUMBER AND MY INITIALS.

23 MR. BAILEY: YOUR HONOR, THESE ARE
24 MARKED FOR IDENTIFICATION. I WOULD MOVE THEM INTO
25 EVIDENCE AT THIS TIME.

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1 THE COURT: ANY OBJECTION?

2 MR. THEOS: NO, SIR.

3 MR. BAILEY: THANK YOU, JUDGE.

4 STATE'S EXHIBIT NOS. 14 & 15

5 ADMITTED AS EVIDENCE

6 Q. ALL RIGHT, SIR. I HAND YOU STATE'S FOURTEEN WHICH
7 HAS BEEN TESTIFIED AS BEING A PAIR OF SHOES THAT
8 RON MANCHESTER RECOVERED FROM LILLY BELL BOYD'S
9 HOME. (WITNESS EXAMINES EVIDENCE.) TELL THE JURY,
10 PLEASE, WHAT IF ANYTHING YOU DID WHEN YOU RECEIVED
11 THOSE SHOES FROM OFFICER MANCHESTER. WHAT DID YOU
12 DO WITH THEM?

13 A. I RECEIVED THIS PAIR OF SHOES ALONG WITH AN
14 ENLARGED TO SCALE PHOTOGRAPH OF A PARTIAL FOOTWEAR
15 IMPRESSION THAT WAS IN THE SOIL. THE REQUEST WAS
16 TO CONDUCT AN EXAMINATION OF THIS UNKNOWN
17 IMPRESSION TO THE OUT-SOLES OF THESE KNOWN SHOES.

18 Q. ALL RIGHT, SIR. DID YOU DO THAT?

19 A. YES, SIR, I DID.

20 Q. ALL RIGHT, SIR. AND REFERRING TO STATE'S FIFTEEN,
21 WOULD YOU PLEASE STEP UP IN FRONT OF THE JURY AND
22 EXPLAIN WHAT THAT DEPICTS. (WITNESS COMPLIES.)

23 A. STATE'S EXHIBIT NUMBER FIFTEEN IS A PHOTOGRAPHIC
24 CHART WHICH ON MY RIGHT SIDE IS THE PHOTOGRAPH THAT
25 I RECEIVED FROM SGT. MANCHESTER OF THE UNKNOWN

STEVEN DERRICK - DIRECT/MR. BAILEY

1 FOOTWEAR IMPRESSION THAT WAS IN THE SOIL. THE
2 CENTER PHOTOGRAPH IS A PHOTOGRAPH OF THE RIGHT SHOE
3 THAT WAS SUBMITTED. THE PHOTOGRAPH ON MY LEFT IS A
4 TEST IMPRESSION OF THIS PARTICULAR SHOE OUT-SOLE.
5 THIS WAS A THREE DIMENSIONAL IMPRESSION THAT WAS
6 TAKEN FROM THE SHOE OUT-SOLE SINCE I WAS DEALING
7 WITH A THREE DIMENSIONAL IMPRESSION IN THE SOIL
8 EVEN THOUGH ALL I HAD TO DEAL WITH WAS A PHOTOGRAPH
9 OF THE IMPRESSION.

10 Q. SO THE QUESTIONED IMPRESSION IS THE PHOTOGRAPH THAT
11 MR. MANCHESTER SENT UP TO YOU?

12 A. THAT'S CORRECT.

13 Q. AND THE ONE IN THE MIDDLE IS THE ACTUAL PHOTOGRAPH
14 OF THE SHOE ITSELF?

15 A. THAT'S CORRECT.

16 Q. ALL RIGHT, SIR. DID YOU COMPARE THE IMPRESSION
17 THAT MR. MANCHESTER FOUND IN THE DIRT BEHIND MRS.
18 BOYD'S HOUSE WITH THE SHOES HE FOUND IN THE HOUSE?

19 A. YES, SIR, I DID.

20 Q. WOULD YOU TELL THE JURY WHAT YOUR CONCLUSIONS WERE?

21 A. IN EXAMINING THE QUESTIONED IMPRESSION ALONG WITH
22 THE KNOWN SHOE AND THE TEST IMPRESSION ITSELF, I
23 THEN CONCLUDED THAT THE QUESTIONED IMPRESSIONS
24 COULD HAVE BEEN MADE BY THE PAIR OF SHOES. FURTHER
25 EXAMINATION FOLLOWING THE PARTICULAR OUTLINE AND

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1 CURVATURE OF THIS PARTIAL IMPRESSION, IT IS MOST
2 PROBABLY MADE BY A RIGHT SHOE WITH THIS OUT-SOLE
3 DESIGN. THUS IT COULD HAVE BEEN MADE BY THE RIGHT
4 SHOE OF THE TWO SHOES THAT I RECEIVED.

5 Q. ALL RIGHT, SIR. WOULD YOU STATE WHETHER OR NOT THE
6 QUESTIONED IMPRESSION IS CONSISTENT IN EVERY
7 RESPECT WITH THE RIGHT SHOE THAT YOU OBSERVED?

8 A. YES, SIR, IT IS. SO THAT YOU HAVE A BETTER
9 UNDERSTANDING OF FOOTWEAR EXAMINATIONS; AS AN
10 EXAMINER THE FIRST CHARACTERISTICS I LOOK FOR IS
11 NUMBER ONE, TO SEE IF THE QUESTIONED IMPRESSION IS
12 CONSISTENT IN SIZE AND SHAPE AND WITH THE OUT-SOLE
13 DESIGN ITSELF BETWEEN THE SHOE AND THE QUESTIONED
14 IMPRESSION. IF IT APPEARS TO BE CONSISTENT TO
15 OUT-SOLE DESIGN, WE DO A SERIES OF MEASUREMENTS TO
16 MAKE SURE THAT THESE LITTLE IMPRESSIONS THAT ARE
17 REPRESENTATIVE OF THE QUESTIONED IMPRESSION ARE THE
18 SAME SIZE AND IN THE SAME UNIT RELATIONSHIP WITH
19 THE KNOWN SHOE. ONCE, AS AN EXAMINER, I'M
20 SATISFIED THAT THE SHOE IS A POTENTIAL SHOE THAT
21 COULD HAVE MADE THIS IMPRESSION, THEN THE
22 EXAMINATION GOES FURTHER WHICH LEADS TO THE TEST
23 IMPRESSION. AND THAT IS TO SORT FOR WEAR
24 CHARACTERISTICS. AS EACH OF US WALKS, OUR SHOES
25 MAKE CONTACT WITH THE SURFACE. AND AS WE MAKE

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1 CONTACT, THERE'S FRICTION AND VARIOUS PARTS OF THE
2 SHOE BEGIN TO WEAR DOWN BASED ON THE WAY WE WALK.
3 THEN IN ADDITION TO THAT I LOOK FOR RANDOM
4 IDENTIFYING CHARACTERISTICS. THESE ARE THE LITTLE
5 NICKS OR CUTS AS WE WALK OVER VARIOUS THINGS WITH
6 OUR SHOES. IN CONDUCTING THE EXAMINATION OF THE
7 KNOWN SHOE, TEST IMPRESSIONS AND QUESTIONED
8 IMPRESSIONS, THE ONLY AREAS THAT I COULD FIND WAS
9 THAT IT WAS CONSISTENT WITH THE SIZE, SHAPE, AND
10 OUT-SOLE DESIGN WITH THE RIGHT SHOE. IN EXAMINING
11 THE SHOE, THE SHOE APPEARS TO BE A FAIRLY NEW SHOE
12 WITH LIMITED WEAR. THUS THE WEAR CHARACTERISTICS
13 WERE NOT VERY PROMINENT, AND THERE WAS NONE OF
14 THESE RANDOM IDENTIFYING CHARACTERISTICS THAT WOULD
15 HAVE TRANSFERRED IN A SOLE OF THREE DIMENSION
16 IMPRESSIONS. THEREFORE MY CONCLUSION WAS THAT IT
17 WOULD HAVE BEEN MADE BY THIS RIGHT SHOE OR ANOTHER
18 RIGHT SHOE THAT WAS CONSIDERED TO BE THE SAME SIZE
19 AND OUT-SOLE DESIGN.

20 Q. ALL RIGHT, SIR. NOW IS IT POSSIBLE TO AGE A
21 FOOTPRINT LIKE ON THE LEFT THERE?

22 A. NO; NOT THAT I'M AWARE OF.

23 Q. ALL RIGHT. HAVE YOU EVER SEEN THAT PARTICULAR
24 TREAD DESIGN OR SOLE DESIGN ON ANOTHER SHOE?

25 A. NO, SIR. IN APPROXIMATELY THE TEN YEARS I'VE BEEN

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1 EXAMINING SHOES, THIS IS THE FIRST TIME THIS
2 PARTICULAR OUT-SOLE DESIGN HAS COME ACROSS MY DESK.

3 Q. ALL RIGHT. YOU CAN HAVE A SEAT, MR. DERRICK. (AT
4 THIS TIME WITNESS RETURNS TO WITNESS STAND.) LET
5 ME ASK YOU NEXT, MR. DERRICK, ABOUT BLOOD
6 SPATTERS. NOW YOU TESTIFIED THAT YOU HAD EXAMINED
7 THIS PIECE OF FLOOR THAT MR. MANCHESTER CUT FROM
8 LILLY BELL BOYD'S KITCHEN FLOOR WHICH IS STATE'S
9 16?

10 A. THAT'S CORRECT.

11 Q. WHAT WAS THE PURPOSE OF THE EXAMINATION OF THAT
12 FLOOR?

13 A. I WAS ASKED TO CONDUCT AN EXAMINATION OF THE FLOOR
14 TO DETERMINE THE VARIOUS BLOOD STAIN PATTERN TYPES
15 THAT WERE PRESENT AND TO EXAMINE THE SPATTER THAT
16 WAS ON THE FLOOR TO DETERMINE A MEDIUM OF FORCE
17 THAT WAS APPLIED AND TO TRY, BASED ON THE AMOUNT OF
18 EVIDENCE PRESENT, IF I COULD REACH SOME CONCLUSION
19 ABOUT THE HEIGHT OR THE SOURCE FROM THIS BLOOD
20 SPATTER ONCE FORCE WAS APPLIED TO IT.

21 Q. ALL RIGHT, SIR. COULD YOU STEP UP HERE, PLEASE,
22 AND SHOW THE JURY WHAT OBSERVATIONS YOU MADE AND
23 WHAT CONCLUSIONS, IF ANY, YOU REACHED IN THOSE
24 OBSERVATIONS. (WITNESS COMPLIES.)

25 A. IN THE FIRST OBSERVATIONS OF THE FLOOR ITSELF,

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1 THERE WERE TWO DISTINCT AREAS WHERE THERE HAD BEEN
2 SOME VOLUME BLOOD OR BLEEDING OUT. IN THIS BLOOD
3 THERE WAS SOME STREAKING, SOME TRANSFERRING IN THE
4 BLOOD ITSELF, ESPECIALLY OVER HERE. (INDICATING.)

5 Q. WHAT DO YOU MEAN BY TRANSFERRING THE BLOOD?

6 A. WHAT IT IS IS WHEN BLOOD GETS ON A SURFACE AND IT'S
7 POOLED UP IT JUST KIND OF LIKE WE HAVE WATER
8 SITTING ON THE COUNTER, AS SOMETHING MAKES CONTACT
9 WITH IT SUCH AS OVER HERE IN THIS AREA AND OVER
10 HERE IN THIS AREA BECAUSE THE BLOOD COAGULATES AND
11 WANTS TO STICK TOGETHER; AS MOVEMENT OCCURS IN THIS
12 POOL OF BLOOD THEN IT WILL LEAVE THIS STREAKING
13 FORMATION AS REPRESENTED HERE. IN OTHER WORDS,
14 SOMETHING THAT DOESN'T HAVE BLOOD ON IT OR MAYBE A
15 MINIMAL AMOUNT OF BLOOD MOVES THROUGH THE POOL OF
16 BLOOD AND CAUSES IT TO SPREAD OUT AND LEAVES MARKS
17 IN IT. IN ADDITION TO THAT, ALONG WITH THAT
18 ASPECT, SOMETHING THAT HAS BLOOD ON IT THAT MAKES
19 CONTACT WITH A NON-BLOODY SURFACE CAN ALSO CREATE
20 THESE SAME STREAKING MARKS. IN OTHER WORDS, IF I
21 HAVE THIS AS A CLEAN FLOOR AND THE SLEEVES ON MY
22 ARM ARE VERY BLOODY AND I SLID IT ACROSS THE FLOOR,
23 THE WET BLOOD FROM MY SHIRT SLEEVE IS GOING TO
24 TRANSFER DOWN ONTO THIS FLOOR.

25 Q. WOULD THAT BE CONSISTENT WITH SOMEBODY DRAGGING A

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1 TOWEL ACROSS THE BLOOD AND TRYING TO CLEAN UP?

2 A. THIS PARTICULAR AREA OVER HERE BECAUSE OF THE
3 EXTREME LENGTH OF IT AND THE SWIPING MOTION THAT
4 GOES ALL THE WAY IN THERE, THAT WOULD BE A VERY
5 CONSISTENT POSSIBILITY. I DIDN'T MEAN TO INTERRUPT
6 YOU.

7 Q. THAT'S ALL RIGHT.

8 A. WE SPOKE OF EARLIER ABOUT PARTIAL RIDGE DETAIL THAT
9 WAS PRESENT THAT HAD BEEN TRANSFERRED APPARENTLY IN
10 BLOOD BECAUSE OF THE AMINO REACTION. IN ADDITION
11 TO THAT, THERE WERE A NUMBER OF TYPE SPATTERS WHICH
12 IS REPRESENTED BY THE TWO VARIOUS COLORS OF STRING.

13 Q. THAT'S SPATTER, S-P-A-T-T-E-R?

14 A. THAT'S CORRECT, SIR. AND THAT SPATTER IS A RESULT
15 OF FORCE BEING APPLIED TO THE BLOOD. NOW AS AN
16 EXAMINER THROUGH SCIENTIFIC TESTS WE KNOW BY THE
17 SIZE OF THESE LITTLE BLOOD DROPS OR RANGE OF FORCE
18 THAT IS APPLIED TO THE BLOOD, WE'RE ABLE TO BREAK
19 IT DOWN INTO THREE CATEGORY AREAS; THE FIRST OFF
20 BEING A LOW VELOCITY SPATTER. THIS IS SOMETHING
21 THAT STARTS FROM JUST A GRAVITATIONAL PULL LIKE IF
22 YOU CUT YOUR HAND AND LET IT BLEED, EVENTUALLY
23 YOU'RE GOING TO HAVE A DROP OF BLOOD TO FALL TO THE
24 SURFACE, THE FLOOR, OR WHATEVER IT'S ON UP TO ABOUT
25 TWENTY-FIVE FEET PER SECOND. THESE ARE VERY LARGE

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1 DROPS FROM MEDIUM SIZE DROPS OF BLOOD. SO IF I CUT
2 MY HAND AND I LIGHTLY TAPPED IT, I COULD GET A
3 LARGE VOLUME OF BLOOD SPATTER OFF, BUT THE DROPS
4 WOULD BE SOMEWHAT LARGE IN SIZE. THE SECOND ONE
5 THAT WE DEAL WITH IS THE MEDIUM VELOCITY FORCE.
6 AND THIS IS SOMEWHERE WHERE THE IMPACT FORCE HAS
7 BEEN SOMEWHERE BETWEEN TWENTY-FIVE FEET PER SECOND
8 UP TO ABOUT 100 FOOT PER SECOND. THIS TYPE OF
9 SPATTER IS MOST COMMONLY ASSOCIATED WITH A BLUNT
10 TRAUMA INJURY SUCH AS BEING HIT, A WEAPON USED,
11 LEAVING A BLOODY SURFACE. THE THIRD TYPE, OF
12 COURSE, IS THE HIGH VELOCITY WHICH IS THE TYPE
13 SPATTERS THAT WOULD BE ASSOCIATED WITH SOMETHING
14 LIKE A GUNSHOT WOUND. IN THIS PARTICULAR CASE
15 EXAMINING THE SPATTERS, MEASURING OFF THE LENGTH
16 AND THE WIDTH OF THEM, THEY WERE ALL CONSISTENT
17 SIZE, SOMEWHERE BETWEEN ONE MILLIMETER AND FOUR
18 MILLIMETERS IN SIZE. BECAUSE OF THE SIZE OF THESE
19 DROPLETS OF BLOOD, THIS WAS A MEDIUM VELOCITY
20 IMPACT FORCE. I WAS ABLE TO ESTABLISH THAT TO
21 BEGIN WITH. NOW, AS A SURFACE IS STRUCK, OR THE
22 BLOOD ON A SURFACE IS STRUCK, THE BLOOD GOES OUT
23 BECAUSE THE FORCE HAS BEEN APPLIED TO IT. SOME
24 DROPS -- IF I WAS TO HIT MY HAND HERE AND THERE WAS
25 BLOOD ON IT, IT COULD COME ACROSS TO THE JURY BOX,

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1 AND ONES THAT HAVE SLIGHT CHARACTERISTICS STRAIGHT
2 ACROSS WOULD HIT ALMOST IN A PERFECT CIRCLE BECAUSE
3 THEY WERE COMING STRAIGHT ACROSS, THE DROP OF BLOOD
4 BEING PERPENDICULAR, AND AT A 90 DEGREE ANGLE. NOT
5 ALL THESE DROPS OF BLOOD WOULD HIT THAT FAST AT 90
6 DEGREES. AS THEY FLY OUT AND COME IN CONTACT WITH
7 OTHER SURFACES, THEY CREATE A TEAR DROP. IN
8 STUDYING THE TEAR DROP FORMATIONS AS I PREVIOUSLY
9 SPOKE OF, THEY'RE ALMOST LIKE AN ARROW. IT FLOWS
10 BACK IN THE DIRECTION THEY CAME FROM. WHEN THERE
11 ARE A SERIES OF THESE TEARDROPS THAT ARE PRESENT,
12 THEN YOU CAN TAKE THE SERIES OF THE TEARDROPS AND
13 TRACK BACK TO WHERE THEY CAME FROM, WHEN YOU HAVE A
14 NUMBER OF THESE IN VARIOUS LOCATIONS SUCH AS
15 REPRESENTED IN THIS PARTICULAR AREA HERE, WHEN
16 THESE TEARDROPS MEET IN A GIVEN AREA SUCH AS IF YOU
17 WILL NOTICE THE PINK STRING THAT I HAVE RUNNING
18 HERE, THESE PINK STRINGS CONVERGE HERE AND HERE TO
19 FORM THIS ONE GENERAL AREA. THIS IS THE GENERAL
20 AREA OF THE SOURCE OF WHERE THIS BLOOD CAME FROM.
21 THE SAME THING IS TRUE AGAIN WITH THE YELLOW
22 STRINGS THAT I HAVE PUT DOWN. TRACKING ALL THESE
23 TEARDROPS BACK, THEY ALL MEET IN THIS SAME GENERAL
24 AREA. WHERE THESE STRINGS CROSS ARE REFERRED TO A
25 POINT OF CONVERSION. AND WHEN THERE ARE TWO

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1 SEPARATE AREAS, THEN AS AN EXAMINER I KNOW THAT I
2 NOW HAVE A MINIMUM OF TWO IMPACTS WHERE SOMETHING
3 HAS MADE CONTACT WITH A BLOODY SURFACE;
4 SPECIFICALLY WITH WHAT I LOOKED AT ON THE FLOOR, I
5 CAN ACCOUNT FOR A MINIMUM OF THREE BLOWS. AND I
6 SAY A MINIMUM. THEY WOULD HAVE HAD TO BE ONE BLOW
7 TO CREATE BLOOD LETTING, OR OTHERWISE WE WOULD HAVE
8 HAD NO SPATTER. THEN AFTER BLOOD LETTING HAD
9 OCCURRED AND BLOOD WAS ON THE SURFACE, THEN THERE
10 WAS A MINIMUM OF TWO MORE IMPACTS TO THAT BLOOD
11 COVERED AREA IN THIS GENERAL AREA OF THE FLOOR.

12 Q. ALL RIGHT, SIR. AND YOU MIGHT HAVE MENTIONED
13 BEFORE; WHAT IS A CAST-OFF PATTERN?

14 A. A CAST-OFF PATTERN IS ANOTHER PATTERN WHICH IS
15 LOOKED FOR IN A BLUNT TRAUMA CASE. AND WHAT THIS
16 IS IS IF A WEAPON SUCH AS A KNIFE OR A BOARD OR A
17 BASEBALL BAT IS USED -- IF THIS WAS A BASEBALL BAT
18 -- AND I STRUCK A BLOODY SURFACE, BLOOD WOULD
19 TRANSFER FROM MY HAND ON THAT SURFACE TO THE
20 BASEBALL BAT. AS I BRING THIS BAT IN MOTION, THIS
21 LIQUEFIED BLOOD IS GOING TO CAST OFF OR FLY OUT
22 BECAUSE THE STABILIZED BLOOD IS NOW IN MOTION. AS
23 I GO TO RAISE MY BAT, BECAUSE FORCE IS APPLIED,
24 THEN THERE WILL BE ELONGATED DROPS THAT WOULD START
25 OFF HERE THAT COULD BE UP HERE AS THE BAT IS IN

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1 MOTION. AND OF COURSE THE MOST COMMON ONES ARE
2 FOUND BACK BEHIND WHERE THE BLOODY PART OF THE BAT
3 IS. IF THE BAT STOPS, THE BLOOD IS STILL IN
4 MOTION, THE BLOOD CONTINUES TO FLY OFF UNTIL IT
5 MAKES CONTACT WITH THE SURFACE. THIS IS WHAT IS
6 REFERRED TO AS A CAST-OFF PATTERN. THEY'RE VERY
7 DISTINCT PATTERNS BECAUSE THE BLOOD IS SOMEWHAT
8 ELONGATED, BUT IT STAYS IN A STRAIGHT LINE. IN
9 EXAMINING THIS FLOOR, I WAS NOT ABLE TO FIND ANY OF
10 THOSE PATTERNS PRESENT.

11 Q. ALL RIGHT, SIR. WHAT CONCLUSIONS IF ANY DID YOU
12 REACH IN REGARD TO THE BLACK OR CAST-OFF PATTERN?

13 A. IF IT WAS AN OBJECT USED, THEN IT WOULD BE STRAIGHT
14 UP AND DOWN IF THERE WAS NO SWINGING MOTION. OR IF
15 IT WAS A HAND OR A FIST, HERE AGAIN BEING A
16 STRAIGHT UP AND DOWN MOTION ONTO A BLOOD SOAKED
17 SURFACE, THUS NOT GIVING ANY OF THIS CAST-OFF
18 PATTERN.

19 Q. ALL RIGHT, SIR. BASED ON YOUR OBSERVATIONS, WERE
20 YOU ABLE TO REACH AN OPINION TO A REASONABLE DEGREE
21 OF SCIENTIFIC CERTAINTY WITH RESPECT TO THE HEIGHT
22 ABOVE THE FLOOR THAT MRS. BOYD'S BODY WOULD HAVE
23 BEEN FOR THAT BLOOD PATTERN TO HAVE BEEN LEFT THAT
24 NIGHT?

25 A. YES, SIR, I DID. REFERRING BACK TO THESE DROPS

STEVEN DERRICK - DIRECT/MR. BAILEY

1 THAT I SPOKE OF EARLIER THAT I POINTED TO EARLIER;
2 BY DOING A MEASUREMENT AND MATHEMATICAL
3 CALCULATION, I'M ABLE TO DETERMINE THE DEGREE OR
4 THE ANGLE IMPACT DEGREE OF THAT BLOW. ONCE I HAVE
5 ESTABLISHED THAT, I'M ABLE TO USE A VERY SIMPLE
6 PROTRACTOR THAT GIVES ME THE VARIOUS DEGREES AND
7 TRACK BACK THE TYPE OF THESE BLOOD STAIN PATTERNS
8 THAT HAVE HIT THE FLOOR. IN EXAMINING THE STAINS
9 ASSOCIATED WITH THE PINK STRINGS HERE, THESE
10 SPATTERS CAME FROM APPROXIMATELY THREE TO FOUR
11 INCHES ABOVE THE FLOOR. EXAMINING THE YELLOW
12 STRING, THESE IMPACT SPATTERS CAME BETWEEN FIVE AND
13 NINE INCHES ABOVE THE FLOOR. I HAD NONE OF THESE
14 ELONGATED BLOOD SPATTERS THAT WAS ABOVE NINE INCHES
15 FROM THE FLOOR. SO THE SOURCE OF THE BLOOD LETTING
16 WAS SOMEWHERE BETWEEN THREE AND NINE INCHES FROM
17 THE MINIMAL TWO ASSOCIATED IMPACT SPATTERS.

18 Q. SO IS IT YOUR TESTIMONY THAT MRS. BOYD WAS LAYING
19 ON THE FLOOR WHEN SHE WAS BEATEN?

20 A. THAT WOULD BE THE MOST PROBABLE CONCLUSION BASED ON
21 ALL THE INFORMATION THAT I HAVE.

22 Q. YOU CAN HAVE A SEAT.

23 A. THANK YOU.

24 (AT THIS TIME WITNESS RETURNS TO WITNESS STAND.)

25 Q. MR. DERRICK, ONE OTHER THING. I APOLOGIZE. IS

EVERETT HOWARD - DIRECT/MR. BAILEY

1 THERE ANY INDICATION THAT BASED ON WHAT YOU
2 OBSERVED THAT THE BODY HAD BEEN MOVED IN ANY MANNER
3 DURING THE COURSE OF THE ASSAULT?

4 A. I HAVE TWO SEPARATE AREAS OF FREE FLOWING BLOOD. I
5 DON'T REALLY FIND ANY DROPS OR STREAKS OR ANYTHING
6 TO CONNECT IT TO. EITHER THE OPENING WOUND OF THE
7 BODY HAS BEEN MOVED FROM ONE SIDE TO THE OTHER OR
8 THERE WERE TWO SEPARATE SOURCES OF BLOOD LETTING.

9 Q. MR. DERRICK, PLEASE ANSWER ANY QUESTIONS MR. THEOS
10 MAY HAVE FOR YOU.

11 MR. THEOS: YOUR HONOR, WE DON'T
12 HAVE ANY QUESTIONS.

13 THE COURT: ALL RIGHT. ANY
14 OBJECTION TO THIS WITNESS BEING EXCUSED, PLEASE?

15 MR. BAILEY: NO, SIR.

16 MR. THEOS: NO, SIR, YOUR HONOR.

17 THE COURT: ALL RIGHT. THANK YOU SO
18 MUCH. YOU MAY BE EXCUSED.

19 MR. DERRICK: THANK YOU, YOUR HONOR.

20 MR. BAILEY: THE STATE CALLS EVERETT
21 HOWARD.

22 - - - - -

23 WHEREUPON,

24 EVERETT D. HOWARD, WHO AFTER BEING FIRST
25 DULY SWORN TO TELL THE TRUTH, TESTIFIED

EVERETT HOWARD - DIRECT/MR. BAILEY

AS FOLLOWS:

DIRECT EXAMINATION

BY MR. BAILEY:

Q. MR. HOWARD, WOULD YOU PLEASE TELL THE JURY WHERE
YOU'RE EMPLOYED?

A. I WORK FOR THE RICHLAND COUNTY DETENTION CENTER IN
COLUMBIA, SOUTH CAROLINA.

Q. WHAT IS YOUR BACKGROUND IN LAW ENFORCEMENT?

A. I'VE BEEN IN LAW ENFORCEMENT FOR A LITTLE OVER
TWENTY-FIVE YEARS, AND GRADUATED FROM THE SOUTH
CAROLINA CRIMINAL JUSTICE ACADEMY AND NUMEROUS
OTHER TRAINING SCHOOLS OVER THAT TIME.

Q. ALL RIGHT, SIR. AND WERE YOU EMPLOYED AS AN
INVESTIGATOR FOR THE RICHLAND COUNTY DETENTION
CENTER BACK IN DECEMBER OF 1997?

A. YES, SIR, I WAS.

Q. ALL RIGHT, SIR. AND DO YOU KNOW THE DEFENDANT,
KENNETH SIMMONS?

A. YES, SIR, I DO.

Q. COULD YOU POINT HIM OUT?

A. YES, SIR. HE'S SITTING AT THE DEFENSE TABLE WITH
THE DARK SUIT ON AND THE RED TIE.

Q. WOULD YOU STATE WHETHER OR NOT YOU MET MR. SIMMONS
AT THE RICHLAND COUNTY DETENTION CENTER?

A. YES, SIR; THAT'S WHERE I MET HIM.

EVERETT HOWARD - DIRECT/MR. BAILEY

1 Q. ALL RIGHT. DO YOU KNOW WHEN HE ENTERED THE
2 DETENTION CENTER?

3 A. YES, SIR. ACCORDING TO HIS BOOKING REPORT, HE WAS
4 BOOKED IN ON NOVEMBER THE 22ND OF 1997.

5 Q. ALL RIGHT, SIR. IN YOUR CAPACITY AS INVESTIGATOR
6 AT THE DETENTION CENTER, DID YOU HAVE AN OCCASION
7 TO SPEAK TO MR. SIMMONS ON SEVERAL OCCASIONS?

8 A. YES, SIR, I DID.

9 Q. ALL RIGHT, SIR. I WOULD CALL YOUR ATTENTION TO THE
10 EVENING OF DECEMBER THE SECOND, 1997, AND ASK
11 WHETHER OR NOT YOU SAW MR. SIMMONS ON THAT
12 OCCASION?

13 A. YES, SIR. I DID MEET WITH HIM THAT DAY.

14 Q. ALL RIGHT, SIR. AND WHERE DID YOU SEE HIM? WHAT
15 PART OF THE DETENTION CENTER DID YOU MEET WITH HIM?

16 A. I BELIEVE IT WAS AT MY OFFICE, SIR.

17 Q. COULD YOU JUST BRIEFLY DESCRIBE YOUR OFFICE TO THE
18 JURY?

19 A. IT'S -- WELL, IT'S TWO OFFICES THAT'S SHARED. IT'S
20 PROBABLY ABOUT AS LONG AS THE JURY BOX IS THERE AND
21 PROBABLY AS WIDE AS IT IS HERE. IT'S SEPARATE FROM
22 THE OTHER OFFICES IN THE DETENTION CENTER.

23 Q. ALL RIGHT, SIR. WHO INITIATED THE MEETING BETWEEN
24 YOU AND MR. SIMMONS? WHOSE IDEA WAS IT TO MEET?

25 A. MR. SIMMONS'.

EVERETT HOWARD - DIRECT/MR. BAILEY

1 Q. ALL RIGHT, SIR. AND PRIOR TO TALKING TO MR.
2 SIMMONS, WOULD YOU STATE WHETHER OR NOT ADVISED HIM
3 OF HIS MIRANDA RIGHTS?

4 A. YES, SIR. I DID.

5 Q. HOW DID YOU GO ABOUT DOING THAT?

6 A. I READ THEM FROM A CARD.

7 Q. DO YOU HAVE THAT CARD WITH YOU?

8 A. YES, SIR, I DO.

9 Q. ALL RIGHT. IF YOU WOULD, PLEASE, GO AHEAD AND READ
10 TO THE JURY THE RIGHTS THAT YOU READ TO MR. SIMMONS
11 ON DECEMBER THE SECOND THE SAME WAY YOU READ THEM
12 TO HIM?

13 A. YES, SIR. "YOU HAVE THE RIGHT TO REMAIN SILENT;
14 ANYTHING YOU SAY CAN AND WILL BE USED AGAINST YOU
15 IN A COURT OF LAW; YOU HAVE THE RIGHT TO TALK TO A
16 LAWYER AND HAVE HIM PRESENT WITH YOU WHILE YOU'RE
17 BEING QUESTIONED; IF YOU CANNOT AFFORD TO HIRE A
18 LAWYER, ONE WILL BE APPOINTED TO REPRESENT YOU
19 BEFORE ANY QUESTIONING IF YOU WISH ONE." AND
20 FOLLOWING THAT THERE ARE TWO QUESTIONS THAT I ASK
21 THAT ARE ALSO FROM THE CARD. "DO YOU UNDERSTAND
22 EACH OF THESE RIGHTS I'VE EXPLAINED TO YOU." AND I
23 WAIT UNTIL I GET AN ANSWER. IN HIS CASE IS WAS
24 THAT HE DID. AND SECONDLY "HAVING THESE RIGHTS IN
25 MIND, DO YOU WISH TO TALK TO ME NOW." AND HIS

EVERETT HOWARD - DIRECT/MR. BAILEY

1 ANSWER TO THAT WAS YES.

2 Q. ALL RIGHT, SIR. AND WHEN YOU READ THESE RIGHTS TO
3 MR. SIMMONS IN YOUR OFFICE AT THE DETENTION CENTER,
4 DO YOU RECALL WHAT HE Demeanor WAS AT THAT TIME?

5 A. HE WAS VERY CALM; VERY ALERT; WILLING TO TALK.

6 Q. ALL RIGHT, SIR. AFTER READING THOSE RIGHTS TO HIM,
7 DID HE INDICATE THAT HE UNDERSTOOD THE RIGHTS?

8 A. YES, SIR, HE DID.

9 Q. ALL RIGHT, SIR. AND PLEASE TELL THE JURY WHAT
10 HAPPENED AFTER THAT. WAS THERE A VERBAL STATEMENT
11 HE GAVE YOU?

12 A. YES, SIR. MR. SIMMONS TALKED TO ME---

13 Q. PRIOR TO HIM GIVING YOU A VERBAL STATEMENT, DID YOU
14 OFFER HIM ANYTHING OF VALUE TO GET HIS STATEMENT?

15 A. NO, SIR.

16 Q. DID YOU THREATEN HIM IN ANY WAY IF HE WOULDN'T GIVE
17 THE STATEMENT?

18 A. NO, SIR, I DID NOT.

19 Q. THE STATEMENT HE GAVE YOU, WAS THAT GIVEN FREELY
20 AND VOLUNTARILY TO THE BEST OF YOUR KNOWLEDGE?

21 A. YES, SIR, IT WAS.

22 Q. WAS THERE ANYBODY ELSE IN THE ROOM BESIDES YOU AND
23 MR. SIMMONS?

24 A. NO, SIR.

25 Q. ALL RIGHT, SIR. AND IF YOU WOULD, SIR; REFERRING

EVERETT HOWARD - DIRECT/MR. BAILEY

1 TO YOUR NOTES IF NECESSARY TO REFRESH YOUR MEMORY,
2 TELL THE JURY THE BEST YOU CAN REMEMBER WHAT MR.
3 SIMMONS TOLD YOU ON DECEMBER THE SECOND, 1997,
4 AFTER BEING ADVISED OF HIS LEGAL RIGHTS?

5 A. YES, SIR. MR. SIMMONS TOLD ME THAT HE KNEW ABOUT A
6 MURDER THAT HAD HAPPENED ABOUT A YEAR AGO. AND HE
7 TOLD ME IT HAPPENED SOMEWHERE BETWEEN GREENVILLE
8 AND GEORGIA. HE TOLD ME THAT HIS GIRLFRIEND WHICH
9 IS SOMEBODY BY THE NAME OF BRENDA STEVENSON -- AND
10 I REMEMBER ASKING HIM HOW HE SPELLED THAT, AND HE
11 DIDN'T REMEMBER WHICH WAY IT WAS SPELLED -- BUT HAD
12 BEEN DEALING DRUGS FOR SOME GUY NAMED SHORTY. AND
13 HE SAID HE DIDN'T KNOW SHORTY'S REAL NAME. HE SAID
14 THAT TOGETHER MS. STEVENSON AND MR. SIMMONS HAVE A
15 SON AND THAT SIMMONS WAS TOLD BY HIS GIRLFRIEND,
16 BRENDA, THAT SHE HAD BORROWED ABOUT TWENTY THOUSAND
17 DOLLARS FROM THIS GUY, SHORTY, AND COULDN'T PAY IT
18 BACK TO HIM. MR. SIMMONS SAID THAT BRENDA CAME TO
19 HIM AND TOLD HIM THAT SHORTY HAD COME TO HER AND
20 TOLD HER THAT HE WAS GOING TO COLLECT THE MONEY.
21 SHE TOLD SHORTY THAT SHE DIDN'T HAVE IT, AND SHORTY
22 TOLD HER THAT HE WAS GOING TO KILL HER AND THEIR
23 SON. MR. SIMMONS TOLD ME THAT BRENDA HAD TOLD HIM
24 THAT SHE HAD TWO GUYS TO KILL SHORTY AND SHE WANTED
25 MR. SIMMONS TO HELP PAY FOR IT. SIMMONS TOLD ME

EVERETT HOWARD - DIRECT/MR. BAILEY

1 THAT HE GAVE BRENDA SIX HUNDRED DOLLARS FOR THIS
2 PURPOSE. MR. SIMMONS WENT ON TO TELL ME THAT ON
3 THE DAY OF THIS KILLING OF SHORTY THAT HE AND
4 BRENDA, HIS GIRLFRIEND, WAITED DOWN THE ROAD WHILE
5 THESE TWO GUYS MET WITH SHORTY. HE SAID HE WASN'T
6 SURE WHERE THIS MEETING WAS, BUT THAT IT WAS OUT IN
7 THE COUNTRY AROUND TRAVELERS REST OR ON THE OTHER
8 SIDE OF CLEMSON. MR. SIMMONS DID MENTION TO ME
9 THAT HE HAD SEEN SOME TRAILERS ON THAT ROAD. MR.
10 SIMMONS SAID THAT TWO GUYS CAME BACK TO WHERE HE
11 AND BRENDA WERE WAITING AND TOLD THEM THAT THEY HAD
12 KILLED SHORTY. THE TWO GUYS THEN LEFT WHERE HE AND
13 BRENDA WERE, AND THEN HE AND BRENDA LEFT THE
14 SCENE. MR. SIMMONS TOLD ME SHORTLY AFTER THAT THAT
15 BRENDA HAD LEFT AND WENT TO MIAMI, FLORIDA. I
16 ASKED HIM IF HE KNEW WHERE SHE WAS AT AND DID HE
17 KNOW HOW TO CONTACT HER, AND HE TOLD ME NO THAT HE
18 DIDN'T. I ASKED MR. SIMMONS IF HE WAS PRESENT AT
19 THE TIME WHEN SHORTY WAS KILLED, AND HE SAID NO. I
20 ASKED HIM TO TELL ME A LITTLE BIT ABOUT WHO SHORTY
21 WAS, AND HE SAID HE DIDN'T KNOW HIS REAL NAME
22 AGAIN. I ASKED HIM TO DESCRIBE SHORTY TO ME. HE
23 TOLD ME HE WAS A BLACK MAN ABOUT THIRTY-ONE OR
24 THIRTY-TWO YEARS OLD; THAT HE WAS SHORTER THAN MR.
25 SIMMONS IS. HE WAS CLEAN CUT; HAD A LITTLE

EVERETT HOWARD - DIRECT/MR. BAILEY

1 MUSTACHE; HAD SOME GOLD TEETH IN THE TOP FRONT. HE
2 TOLD ME THAT SHORTY WORE A LOT OF GOLD JEWELRY AND
3 SAID HE WAS FROM GEORGIA BUT HE DIDN'T KNOW EXACTLY
4 WHERE IN GEORGIA. I ASKED HIM HOW SHORTY WAS
5 KILLED, AND MR. SIMMONS SAID HE WAS KILLED WITH A
6 GUN. I ASKED HIM HOW HE KNEW THIS, AND HE SAID
7 THAT TWO MEN HAD TOLD HIM THAT. I ASKED HIM TO
8 TELL ME ABOUT THE TWO MEN, AND HE SAID HE DIDN'T
9 KNOW THEM BUT BRENDA DID. HE SAID HE HAD SEEN THEM
10 BEFORE. HE DESCRIBED ONE OF THEM TO ME AS A BLACK
11 MAN THAT THEY CALLED BLACKIE. HE WAS HEAVY SET,
12 ABOUT 6'1" TALL, 250 TO 260 POUNDS; THAT HE WAS
13 FROM SOMEWHERE IN GEORGIA AND DROVE A RED BMW. HE
14 SAID THE OTHER GUY WAS A BLACK MAN BUT GAVE NO
15 OTHER DESCRIPTION OF HIM. AND HE SAID THAT THIS
16 MAN WAS ALSO FROM GEORGIA. MR. SIMMONS TOLD ME
17 THAT HE HIMSELF, MR. SIMMONS, USED TO LIVE ON
18 [REDACTED] [REDACTED] [REDACTED] IN TRAVELERS REST, SOUTH
19 CAROLINA, AND THAT MR. SIMMONS WORKED FOR A
20 CONTRACTOR BY THE NAME OF BEN SHIVERS OR SHIVERS; I
21 CAN'T REMEMBER HOW HE PRONOUNCED IT BACK THEN. MR.
22 SIMMONS WENT ON TO TELL ME THAT BRENDA LIVED IN
23 [REDACTED] [REDACTED] [REDACTED] AND THAT WAS BETWEEN TRAVELERS
24 REST AND GREENVILLE. I WENT ON TO ASK MR. SIMMONS
25 TOWARDS THE END OF OUR CONVERSATION IF HE

EVERETT HOWARD - DIRECT/MR. BAILEY

1 REMEMBERED ANYTHING ELSE. HE TOLD ME NO. HE DID
2 TELL ME THAT ALL THIS WAS BOTHERING HIM AND HE HAD
3 TO TELL SOMEBODY. AND SHORTLY AFTER THAT I ENDED
4 OUR FIRST MEETING WITH HIM.

5 Q. ALL RIGHT, SIR. NOW DURING THAT CONVERSATION YOU
6 HAD WITH MR. SIMMONS, DID YOU HAVE ANY DIFFICULTY
7 UNDERSTANDING HIM WHEN HE WOULD SPEAK TO YOU?

8 A. NO, SIR; I UNDERSTOOD WHAT HE TOLD ME.

9 Q. DID HE HAVE AN APPARENT INABILITY TO UNDERSTAND YOU
10 WHEN YOU GAVE THE RIGHTS TO HIM OR WHEN YOU
11 RESPONDED TO HIS STATEMENTS?

12 A. NO, SIR. WE HAD A VERY NORMAL, INTELLIGENT
13 CONVERSATION.

14 Q. ALL RIGHT, SIR. AND JUST FOR THE RECORD, WOULD YOU
15 POINT MR. SIMMONS OUT?

16 A. YES, SIR. HE'S SEATED AT THE DEFENSE TABLE IN THE
17 BLACK SUIT WITH THE RED TIE.

18 Q. NOW, WITHOUT TELLING ME WHAT ANYBODY ELSE TOLD YOU,
19 DID YOU MAKE ANY TELEPHONE CALLS TO FOLLOW UP ON
20 THE STORY THAT HE HAD GIVEN YOU?

21 A. YES, SIR, I DID MY BEST TO CHECK INTO IT.

22 Q. WHO DID YOU GET IN TOUCH WITH?

23 A. I CONTACTED THE SLED AGENT THAT I KNEW IN THE UPPER
24 PART OF THE STATE THAT WORKED THAT REGION.

25 Q. ALL RIGHT, SIR. THAT'S AROUND THE TRAVELERS REST

EVERETT HOWARD - DIRECT/MR. BAILEY

1 AREA?

2 A. TRAVELERS REST, GREENVILLE, CLEMSON AREA.

3 Q. ALL RIGHT, SIR. WAS THERE ANY FURTHER CONVERSATION
4 WITH MR. SIMMONS ON THAT DAY?

5 A. NO, SIR, IT WASN'T.

6 MR. BAILEY: YOUR HONOR, I HAVE
7 NOTHING FURTHER OF MR. HOWARD AT THIS TIME, BUT MAY
8 LIKE TO RECALL HIM AFTER SEVERAL MORE WITNESSES.

9 THE COURT: ALL RIGHT. EXCUSE ME A
10 MINUTE, PLEASE, GENTLEMEN. AND LADIES AND
11 GENTLEMEN OF THE JURY, WHILE THE COURT GENERALLY
12 DETERMINES THE ADMISSIBILITY OF EVIDENCE, I
13 INSTRUCT YOU AS REGARDS ANY ALLEGED ORAL STATEMENT
14 OR WRITTEN CONFESSION BY THE DEFENDANT THAT YOU,
15 LADIES AND GENTLEMEN OF THE JURY, MAKE THE ULTIMATE
16 DETERMINATION OF WHETHER OR NOT THE DEFENDANT MADE
17 SUCH STATEMENT, AND IF HE DID MAKE IT WHETHER IT
18 WAS MADE BY THE DEFENDANT VOLUNTARILY AND OF HIS
19 OWN FREE WILL; AND FINALLY JUST WHAT WEIGHT, IF
20 ANY, SHOULD BE GIVEN THERETO. I CHARGE YOU THAT
21 YOU MUST DETERMINE IF THE ALLEGED CONFESSION WAS
22 THE PRODUCT OF AN ESSENTIALLY FREE AND
23 UNCONSTRAINED CHOICE BY ITS MAKER. AND IF YOU
24 DETERMINE IT WAS AND IS UPON THE STATE TO PROVE
25 THAT FACT AS ALL OTHER FACTS BEYOND A REASONABLE

EVERETT HOWARD - DIRECT/MR. BAILEY

DOUBT, YOU MAY GIVE IT SUCH FURTHER CONSIDERATION
AS YOU DEEM PROPER. IF YOU DETERMINE THE ALLEGED
STATEMENT OR CONFESSION WAS NOT THE FREE AND
VOLUNTARY WILL, EXPRESSION OF THE DEFENDANT, THEN
YOU SHOULD NOT CONSIDER IT AT ALL. NOW IN
DETERMINING WHETHER A DEFENDANT'S WILL WAS OVERCOME
IN OBTAINING A CONFESSION, YOU SHOULD CONSIDER BOTH
THE CHARACTERISTICS OF THE ACCUSED AND THE DETAILS
OF THE INTERROGATION WHICH IS OFTEN REFERRED TO AS
THE TOTALITY OF THE CIRCUMSTANCES. SOME OF THE
FACTORS YOU MAY CONSIDER WOULD BE THE AGE OF THE
ACCUSED, HIS EDUCATION OR LACK THEREOF, HIS
BACKGROUND AND ENVIRONMENT, THE ADVICE OR LACK
THEREOF TO THE ACCUSED OF HIS CONSTITUTIONAL RIGHTS
INCLUDING BUT NOT LIMITED TO THE PROCEDURAL
SAFEGUARDS KNOWN AS THE MIRANDA WARNINGS CONCERNING
HIS RIGHT TO REMAIN SILENT; THAT THE STATEMENT
COULD BE USED AGAINST HIM; THE RIGHT TO HAVE A
LAWYER PRESENT; IF AN INDIGENT, A LAWYER WOULD BE
APPOINTED TO REPRESENT HIM, AND HE COULD STOP THE
STATEMENT AT ANY TIME. OTHER FACTORS TO CONSIDER
ARE THE PLACE AND LENGTH OF THE DETENTION AND THE
NATURE OF THE QUESTIONS. AND YOU, LADIES AND
GENTLEMEN OF THE JURY, MUST CAREFULLY SCRUTINIZE
ALL THE SURROUNDING CIRCUMSTANCES, AND BEFORE YOU

EVERETT HOWARD - CROSS/MR. THEOS

1 GIVE ANY WEIGHT TO ANY ALLEGED CONFESSION, YOU MUST
2 BE SATISFIED BEYOND A REASONABLE DOUBT IT WAS MADE
3 BY THE ACCUSED UN-INFLUENCED BY PROMISE OF REWARD,
4 THREAT OF INJURY, OR DIMINUTION OF HIS RIGHTS. YOU
5 MUST DETERMINE IF THE DEFENDANT HAD THE ABILITY OR
6 CAPACITY TO COMPREHEND THE MEANING AND EFFECT OF
7 WAIVING HIS CONSTITUTIONAL RIGHTS; AND IF HE DID SO
8 AS WELL AS THE MEANING AND EFFECT OF THE ALLEGED
9 STATEMENT. THANK YOU. YOU MAY PROCEED.

10 CROSS-EXAMINATION

11 BY MR. THEOS:

12 Q. OFFICER HOWARD, THAT WAS THE FIRST TIME YOU HAD
13 EVER SPOKEN TO MR. SIMMONS?

14 A. YES, SIR, IT WAS.

15 Q. JUST AS YOU READ THAT MIRANDA CARD YOU PULLED OUT
16 OF YOUR POCKET, WAS THAT EXACTLY HOW YOU READ IT TO
17 MR. SIMMONS?

18 A. YES, SIR, IT WAS.

19 Q. SO THE SAME PERIOD OF TIME THAT IT TOOK YOU TO READ
20 IT TO US, THAT'S HOW LONG IT TOOK YOU TO READ IT TO
21 MR. SIMMONS?

22 A. I WOULD SAY SO; YES.

23 Q. JUST TO MAKE SURE WE'RE CLEAR ON THE DATE; ON
24 DECEMBER THE SECOND, IS THE DATE THAT YOU FIRST
25 SPOKE WITH MR. SIMMONS THAT YOU JUST TESTIFIED TO?

EVERETT HOWARD - CROSS/MR. THEOS

1 A. YES, SIR. DECEMBER THE SECOND, 1997.

2 Q. ON THAT FIRST CONVERSATION THAT YOU HAD WITH MR.
3 SIMMONS, HE TOLD YOU ABOUT A KILLING?

4 A. YES, SIR, HE DID.

5 Q. TAKING PLACE IN THE UPPER PART OF THE STATE?

6 A. YES, SIR.

7 Q. AS A RESULT OF THAT CONVERSATION, AS YOU STATED,
8 YOU SPOKE WITH LT. RANDALL STEWART OF SLED IN THE
9 UPPER PART OF THE STATE?

10 A. YES, SIR, I DID.

11 Q. AND YOU SPOKE WITH HIM TWICE ON THAT FIRST DAY?

12 A. AT LEAST TWICE; YES, SIR.

13 Q. AND YOU CONFIRMED THAT AT LEAST THROUGH THE END OF
14 THAT AFTERNOON THAT NOTHING COULD BE FOUND RELATED
15 TO WHAT MR. SIMMONS HAD TOLD YOU; CORRECT?

16 A. YES, SIR; THAT'S WHAT LT. STEWART TOLD ME.

17 MR. THEOS: NO OTHER QUESTIONS, YOUR
18 HONOR.

19 THE COURT: ANYTHING ON RE-DIRECT?

20 MR. BAILEY: NO RE-DIRECT, YOUR
21 HONOR. THE STATE CALLS MARGARET BUSH.

22 THE COURT: ANY OBJECTION TO THIS
23 GENTLEMAN BEING EXCUSED?

24 MR. BAILEY: YOUR HONOR, I'M GOING
25 TO RECALL HIM.

MARGARET ANN BUSH - DIRECT/MR. BAILEY

THE COURT: ALL RIGHT.

- - - - -

WHEREUPON,

MARGARET ANN BUSH, WHO AFTER BEING FIRST
DULY SWORN TO TELL THE TRUTH, TESTIFIED
AS FOLLOWS:

DIRECT EXAMINATION

BY MR. BAILEY:

Q. MS. BUSH, YOU'RE A CORRECTIONAL OFFICER; IS THAT
CORRECT?

A. YES, SIR.

Q. AND WHERE DO YOU WORK?

A. RICHLAND COUNTY DETENTION IN COLUMBIA, SOUTH
CAROLINA.

Q. HOW LONG HAVE YOU BEEN EMPLOYED AS A CORRECTIONAL
OFFICER?

A. I THINK ABOUT A YEAR-AND-A-HALF.

Q. WERE YOU WORKING AS A CORRECTIONAL OFFICER IN
DECEMBER OF 1997 AT THE RICHLAND COUNTY DETENTION
CENTER?

A. YES, I WAS.

Q. LET ME CALL YOUR ATTENTION TO DECEMBER THE THIRD,
1997, AND ASK WHETHER OR NOT YOU WORKED THAT DAY?

A. I DID.

Q. OKAY. CALLING YOUR ATTENTION TO ABOUT 2:55 P.M. ON

MARGARET ANN BUSH - DIRECT/MR. BAILEY

1 DECEMBER THE THIRD, 1997, DID YOU HAVE OCCASION TO
2 SEE KENNETH SIMMONS AT THE DETENTION CENTER?

3 A. YES, SIR.

4 Q. WHERE DID YOU SEE MR. SIMMONS?

5 A. IN DORM B AT THE RICHLAND COUNTY DETENTION CENTER,
6 THE DORM THAT I WAS WORKING THAT DAY.

7 Q. WERE YOU WORKING AT A PARTICULAR LOCATION? IS
8 THERE AN OFFICER'S DESK THERE?

9 A. YES, SIR.

10 Q. WHAT IS AN OFFICER'S DESK?

11 A. SIR?

12 Q. WHAT IS THE OFFICER'S DESK?

13 A. WHAT IS IT?

14 Q. YES, MA'AM.

15 A. IT'S LIKE A TILE PODIUM LIKE.

16 Q. IS THAT WHERE YOU WERE?

17 A. YES, SIR.

18 Q. OKAY. LET ME HAND YOU A PIECE OF PAPER THAT'S BEEN
19 MARKED STATE'S TEN AND ASK WHETHER OR NOT YOU
20 RECEIVED THAT FROM MR. SIMMONS?

21 A. YES, SIR.

22 Q. NOW MRS. BUSH, AFTER YOU GOT THAT PAPER FROM MR.
23 SIMMONS, DID YOU HAVE ANY CONVERSATION WITH HIM AT
24 THAT TIME?

25 A. WHEN HE HANDED IT TO ME, HE STATED THAT HE WANTED

MARGARET ANN BUSH - DIRECT/MR. BAILEY

1 TO CONFESS TO A MURDER, AND I TOOK THE NOTE.

2 Q. ALL RIGHT. WHAT DID YOU DO THEN?

3 A. I GLANCED OVER THE NOTE TO SEE WHAT IT SAID. AND I
4 LOOKED BACK AT HIM AND ASKED HIM WHAT HE WANTED ME
5 TO DO. HE SAID HE NEEDED TO TALK TO SOMEONE.

6 Q. ALL RIGHT. AND WHAT DID YOU DO AT THAT TIME?

7 A. AT THAT TIME I ASKED HIM TO GO BACK TO HIS BUNK AND
8 I WOULD CONTACT MY SUPERVISOR.

9 Q. OKAY. AND DID YOU DO THAT?

10 A. YES, SIR.

11 Q. OKAY. AND IS THERE AN OFFICER SAMUEL JACKSON AT
12 THE DETENTION CENTER?

13 A. YES, SIR.

14 Q. DID YOU GIVE MR. JACKSON THAT NOTE?

15 A. I DID LATER ON. ONCE THE SUPERVISOR SENT HIM DOWN
16 TO THE DORM WHERE I WAS WORKING, I HANDED HIM THE
17 NOTE.

18 Q. ALL RIGHT.

19 MR. BAILEY: YOUR HONOR, MAY I
20 PUBLISH THAT NOTE TO THE JURY AT THIS TIME?

21 THE COURT: YES. WITHOUT OBJECTION?

22 MR. THEOS: YES, SIR.

23 MR. BAILEY: "DEAR SIR, MY NAME IS
24 KENNETH SIMMONS; I AM CONFESSING TO A MURDER IN
25 GREENVILLE. I KILLED TWO MEN IN 9/97; FOR KILLING

MARGARET ANN BUSH - CROSS/MR. THEOS

1 A LADY IN SUMMERVILLE, S.C. AND THEY SAID THEY WILL
2 KILL MY SON; THAT IS I KILLED TWO MEN. I NEED TO
3 TALK TO SOMEONE TODAY OR TONIGHT; KENNETH SIMMONS;
4 21161, 247-17-6374."

5 MR. BAILEY: YOUR HONOR, THAT'S ALL
6 I HAVE OF MS. BUSH.

7 THE COURT: CROSS?

8 MR. THEOS: YES, SIR.

9 CROSS-EXAMINATION

10 BY MR. THEOS:

11 Q. MS. BUSH, YOU HAD NEVER SPOKEN WITH MR. SIMMONS
12 BEFORE THAT?

13 A. NO, SIR, I HADN'T.

14 Q. AND YOU DIDN'T SEE MR. SIMMONS WRITE THIS NOTE?

15 A. I DIDN'T SEE HIM WRITE IT.

16 Q. MR. SIMMONS TOLD YOU HE WANTED TO CONFESS TO A
17 MURDER?

18 A. YES.

19 Q. AND THE NOTE STATED THAT HE KILLED TWO MEN?

20 A. YES, SIR.

21 MR. THEOS: NO OTHER QUESTIONS,
22 YOUR.

23 THE COURT: ANY RE-DIRECT?

24 THE COURT: NO RE-DIRECT, YOUR
25 HONOR.

SAMUEL JACKSON - DIRECT/MR. BAILEY

1 THE COURT: ANY OBJECTION TO THIS
2 LADY BEING EXCUSED?

3 MR. BAILEY: NO, SIR.

4 MR. THEOS: NO, SIR.

5 THE COURT: THANK YOU, MA'AM.

6 MR. BAILEY: THE STATE CALLS SAMUEL
7 JACKSON.

8 THE COURT: COME AROUND, MR.
9 JACKSON.

10 - - - - -

11 WHEREUPON,
12 SAMUEL JACKSON, WHO AFTER BEING FIRST
13 DULY SWORN TO TELL THE TRUTH, TESTIFIED
14 AS FOLLOWS:

15 DIRECT EXAMINATION

16 BY MR. BAILEY:

17 Q. MR. JACKSON, YOU'RE A CORRECTIONAL OFFICER AT THE
18 RICHLAND COUNTY DETENTION CENTER?

19 A. YES, SIR.

20 Q. OKAY. TELL THE JURY, PLEASE, WHAT A HALLWAY
21 OFFICER IS.

22 A. A HALLWAY OFFICER WATCHES THE HALLWAY AND GETS THE
23 OFFICERS WHAT THEY NEED WHILE THEY'RE IN THE UNIT
24 OR TAKE 95 WHICH ARE INMATES TO THEIR DESTINATION
25 WHICH IS GOING TO COURT OR OTHER LOCATIONS.

SAMUEL JACKSON - DIRECT/MR. BAILEY

- 1 Q. ALL RIGHT. AND BACK IN DECEMBER OF 1997 WERE YOU
2 WORKING AT THE RICHLAND COUNTY DETENTION CENTER AS
3 A HALLWAY OFFICER?
4 A. YES, SIR.
5 Q. ALL RIGHT, SIR. I CALL YOUR ATTENTION TO DECEMBER
6 THE THIRD, 1997. WERE YOU WORKING THAT DAY?
7 A. YES, SIR.
8 Q. AND DID YOU HAVE OCCASION TO SEE OFFICER MARGARET
9 BUSH THAT JUST TESTIFIED?
10 A. YES, SIR.
11 Q. MS. BUSH TESTIFIED THAT SHE HANDED YOU A NOTE WHICH
12 IS STATE'S TEN. DID SHE HAND YOU THAT NOTE?
13 A. YES, SIR.
14 Q. ALL RIGHT, SIR. AND DID YOU SEE KENNETH SIMMONS
15 THAT DAY?
16 A. YES, SIR.
17 Q. NOW WHAT, IF ANYTHING, DID YOU DO WITH THAT NOTE
18 AND KENNETH SIMMONS?
19 A. I TOOK THE NOTE AND KENNETH SIMMONS TO THE
20 SUPERVISOR'S OFFICE.
21 Q. WHO WAS THE SUPERVISOR THAT YOU TOOK THE NOTE AND
22 MR. SIMMONS TO?
23 A. SGT. PERRYMAN.
24 Q. THAT'S ALL I HAVE. PLEASE ANSWER ANY QUESTIONS THE
25 DEFENSE MAY HAVE FOR YOU.

NATHAN PERRYMAN - DIRECT/MR. BAILEY

MR. THEOS: NO QUESTIONS, SIR.

THE COURT: STEP DOWN. NEXT
WITNESS? NO OBJECTION TO HIM BEING EXCUSED. THANK
YOU.

MR. BAILEY: NATHAN PERRYMAN.

WHEREUPON,

NATHAN PERRYMAN, WHO AFTER BEING FIRST
DULY SWORN TO TELL THE TRUTH, TESTIFIED
AS FOLLOWS:

DIRECT EXAMINATION

BY MR. BAILEY:

Q. MR. PERRYMAN, WHERE ARE YOU EMPLOYED?

A. RICHLAND COUNTY DETENTION CENTER.

Q. WHAT'S YOUR RANK OR POSITION AT THE DETENTION
CENTER?

A. I'M A SERGEANT SUPERVISOR.

Q. HOW LONG HAVE YOU WORKED OUT THERE?

A. APPROXIMATELY SEVEN-AND-A-HALF YEARS.

Q. WERE YOU A SERGEANT SUPERVISOR IN DECEMBER OF 1997?

A. I WAS.

Q. AND ON DECEMBER THIRD, 1997, WERE YOU WORKING THAT
DAY?

A. I WAS.

Q. AND CALLING YOUR ATTENTION TO ABOUT THREE O'CLOCK

NATHAN PERRYMAN - DIRECT/MR. BAILEY

1 IN THE AFTERNOON; DID YOU RECEIVE A CALL FROM
2 MARGARET BUSH?

3 A. YES, I DID.

4 Q. AND BASED ON THAT TELEPHONE CALL SHE MADE TO YOU,
5 DID YOU GIVE HER ANY INSTRUCTIONS?

6 A. YES. I TOLD HER TO SEND THE INMATE, MR. SIMMONS,
7 TO MY OFFICE.

8 Q. WAS HE BROUGHT TO YOUR OFFICE?

9 A. YES, HE WAS.

10 Q. BY OFFICER JACKSON?

11 A. YES; OFFICER JACKSON.

12 Q. OKAY. DID OFFICER JACKSON BRING A NOTE TO YOU AT
13 THAT TIME? I'LL SHOW YOU STATE'S TEN. (WITNESS
14 EXAMINES DOCUMENT.)

15 A. YES, HE DID.

16 Q. OKAY.

17 A. THIS HERE IS THE NOTE THAT HE BROUGHT TO ME.

18 Q. WHERE WAS YOUR OFFICE LOCATED?

19 A. MY OFFICE IS APPROXIMATELY, I GUESS, ABOUT TWENTY
20 FEET FROM THE LOCATION WHERE MS. BUSH WAS WORKING
21 AT THAT PARTICULAR TIME.

22 Q. DID YOU HAVE A CONVERSATION WITH MR. SIMMONS WHEN
23 HE WAS BROUGHT TO YOUR OFFICE ALONG WITH THAT NOTE
24 BY OFFICER JACKSON?

25 A. WHEN WE CAME TO MY OFFICE I ASKED HIM CAN I HELP

1 HIM.

2 Q. OKAY.

3 A. AND HE SAID HE WANTED TO CONFESS TO KILLING TWO
4 PEOPLE.

5 Q. JUST FOR THE RECORD, CAN YOU IDENTIFY MR. SIMMONS
6 FOR ME?

7 A. YES, I CAN. HE'S SITTING AT THE TABLE WITH THE RED
8 COLOR TIE.

9 Q. ALL RIGHT, SIR. DID YOU CONTINUE TO TALK TO HIM
10 AFTER HE TOLD YOU HE WANTED TO CONFESS TO KILLING
11 TWO PEOPLE?

12 A. ONCE HE TOLD ME, I TOLD HIM HE NEEDED TO TALK TO
13 THE INVESTIGATOR.

14 Q. OKAY. WHAT DID YOU DO THEN?

15 A. AT THAT TIME I TOOK HIM TO THE INVESTIGATOR'S
16 OFFICE.

17 Q. AND THE INVESTIGATOR WAS WHO?

18 A. LT. HOWARD.

19 Q. AND YOU CARRIED MR. SIMMONS OR TOOK MR. SIMMONS
20 DIRECTLY TO MR. HOWARD'S OFFICE?

21 A. I DID.

22 Q. ON DECEMBER THE THIRD, THAT AFTERNOON?

23 A. I DID.

24 Q. NOW AS FAR AS THE NOTE THAT HE HAD GIVEN YOU, DID
25 YOU AT SOME POINT IN TIME ALSO GIVE THAT NOTE TO

NATHAN PERRYMAN - CROSS/MR. THEOS

1 INVESTIGATOR HOWARD?

2 A. I DID.

3 Q. WHEN DID YOU GIVE HIM THE NOTE?

4 A. I GAVE IT TO HIM THE NEXT DAY.

5 Q. WHICH WAS DECEMBER THE FOURTH?

6 A. YES, SIR.

7 Q. SO YOU ESCORTED MR. SIMMONS TO MR. HOWARD ON THE
8 THIRD, AND YOU GAVE MR. HOWARD THE NOTE ON THE
9 FOURTH; IS THAT RIGHT?

10 A. YES, SIR.

11 Q. AND WHY WAS THAT?

12 A. I GUESS SOME KIND OF WAY IT GOT MISPLACED ON MY
13 DESK THERE FOR A MINUTE OR TWO.

14 Q. ALL RIGHT. MR. PERRYMAN, PLEASE ANSWER ANY
15 QUESTIONS MR. THEOS MAY HAVE FOR YOU.

16 CROSS-EXAMINATION

17 BY MR. THEOS:

18 Q. MR. PERRYMAN, PRIOR TO DECEMBER THE THIRD OF 1997,
19 YOU HAD NOT SPOKEN TO MR. SIMMONS; IS THAT CORRECT?

20 A. RIGHT.

21 Q. AND WHEN YOU SPOKE WITH MR. SIMMONS, YOU DID NOT
22 ADVISE HIM OF HIS MIRANDA WARNINGS; CORRECT?

23 A. NO, I DIDN'T.

24 Q. WHEN MR. SIMMONS DID SPEAK WITH YOU, HE TOLD YOU
25 THAT HE WANTED TO ADMIT TO KILLING TWO MEN;

EVERETT HOWARD - DIRECT/MR. BAILEY

1 CORRECT?

2 A. YES, SIR.

3 Q. THANK YOU, SIR.

4 MR. THEOS: NO FURTHER QUESTIONS,
5 YOUR HONOR.

6 MR. BAILEY: MAY HE BE EXCUSED, YOUR
7 HONOR?

8 THE COURT: CERTAINLY.

9 MR. BAILEY: YOUR HONOR, WE RECALL
10 EVERETT HOWARD.

11 THE COURT: ALL RIGHT, MR. HOWARD,
12 YOU'RE STILL UNDER OATH. COME AROUND, PLEASE.

13 - - - - -

14 WHEREUPON,

15 EVERETT HOWARD, WHO BEING PREVIOUSLY
16 SWORN TO TELL THE TRUTH, TESTIFIED AS
17 FOLLOWS:

18 DIRECT EXAMINATION

19 BY MR. BAILEY:

20 Q. MR. HOWARD, CALLING YOUR ATTENTION NOW TO DECEMBER
21 THE THIRD, 1997, COULD YOU STATE WHETHER OR NOT
22 NATHAN PERRYMAN WHO JUST TESTIFIED ESCORTED KENNETH
23 SIMMONS TO YOUR OFFICE?

24 A. YES, SIR, HE DID.

25 Q. WAS THAT MEETING AT YOUR OFFICE ON DECEMBER AT YOUR

EVERETT HOWARD - DIRECT/MR. BAILEY

1 REQUEST OR AT MR. SIMMONS' REQUEST?

2 A. OBVIOUSLY AT MR. SIMMONS' BECAUSE THE SERGEANT
3 BROUGHT HIM TO MY OFFICE.

4 Q. AND WOULD YOU STATE WHETHER OR NOT YOU GAVE MR.
5 SIMMONS HIS MIRANDA RIGHTS ON THAT OCCASION?

6 A. YES, SIR, I DID.

7 Q. ALL RIGHT, SIR. AND DID YOU USE THE SAME CARD YOU
8 USED BEFORE?

9 A. YES, SIR; THE SAME ONE I READ EARLIER.

10 Q. JUST FOR THE RECORD, WOULD YOU GO AHEAD AND READ
11 THOSE RIGHTS OFF THE CARD THE WAY YOU READ THEM TO
12 MR. SIMMONS ON DECEMBER THE THIRD?

13 A. YES, SIR, I WILL. "YOU HAVE A RIGHT TO REMAIN
14 SILENT; ANYTHING YOU SAY CAN AND WILL BE USED
15 AGAINST YOU IN A COURT OF LAW. YOU HAVE THE RIGHT
16 TO TALK TO A LAWYER AND HAVE HIM PRESENT WITH YOU
17 WHILE YOU'RE BEING QUESTIONED; IF YOU CANNOT AFFORD
18 TO HIRE A LAWYER, ONE WILL BE APPOINTED TO
19 REPRESENT YOU BEFORE ANY QUESTIONING IF YOU WISH
20 ONE." THEN I FOLLOWED THAT UP WITH TWO QUESTIONS
21 THAT ARE ALSO WRITTEN ON THE CARD. "DO YOU
22 UNDERSTAND EACH OF THESE RIGHTS I'VE EXPLAINED TO
23 YOU?" MR. SIMMONS REPLIED THAT HE DID. "AND
24 HAVING THESE RIGHTS IN MIND, DO YOU WISH TO TALK TO
25 ME NOW?" AND HE SAID THAT HE DID.

EVERETT HOWARD - DIRECT/MR. BAILEY

1 Q. WAS THERE ANYTHING ABOUT THE WAY MR. SIMMONS WAS
2 ACTING, HIS DEMEANOR OR ANYTHING ELSE, THAT CAUSED
3 YOU TO THINK THAT MAYBE HE DIDN'T UNDERSTAND YOU OR
4 DIDN'T KNOW WHAT WAS HAPPENING OR ANYTHING OF THAT
5 NATURE?

6 A. NO, SIR. IT WAS PRETTY OBVIOUS TO ME THAT HE
7 UNDERSTOOD AND WAS WILLING TO TALK.

8 Q. ALL RIGHT, SIR. AND DID YOU OFFER HIM ANYTHING TO
9 TALK TO YOU?

10 A. NO, SIR, I DID NOT.

11 Q. DID YOU MAKE ANY PROMISES OR THREATS TO GET HIM TO
12 TALK TO YOU?

13 A. NO, SIR; NONE WHATSOEVER.

14 Q. DID HE THEREAFTER GIVE YOU A STATEMENT?

15 A. YES, SIR. HE BEGAN TO TALK TO ME AGAIN.

16 Q. WHEN YOU SAY AGAIN; THIS WAS A VIABLE ORAL
17 STATEMENT?

18 A. YES, SIR.

19 Q. ALL RIGHT, SIR. AND IF YOU WOULD, PLEASE,
20 REFERRING TO YOUR NOTES TO REFRESH YOUR MEMORY IF
21 YOU NEED TO; TELL THE JURY YOUR BEST RECOLLECTION
22 OF WHAT MR. SIMMONS TOLD YOU ON DECEMBER THE THIRD,
23 1997.

24 A. AFTER I FINISHED READING HIM HIS RIGHTS, I ASKED
25 HIM WHAT IT WAS HE WANTED TO TELL ME. AND THE

EVERETT HOWARD - DIRECT/MR. BAILEY

1 FIRST WORDS OUT OF HIS MOUTH WERE "I KILLED
2 SHORTY." AND I ASKED HIM "WHEN DID THIS HAPPEN?"
3 AND HE TOLD ME ABOUT SEPTEMBER OF THIS YEAR WHICH
4 WAS 1997. I ASKED HIM WHERE. HE SAID IT HAPPENED
5 ON [REDACTED] [REDACTED] [REDACTED] IN TRAVELERS REST. HE MADE
6 THE STATEMENT TO ME THAT I HAD TO DO IT TO PROTECT
7 MY SON. I ASKED HIM HOW HE DID IT. AND HE TOLD ME
8 HE SHOT HIM WITH A .38; EXACT WORDS "I SHOT HIM IN
9 THE CHEST TWO TIMES." I ASKED MR. SIMMONS WHERE
10 THE BODY WAS. HE TOLD ME THAT THE TWO GUYS HAD PUT
11 IT IN THE TRUNK OF SHORTY'S CAR AND THAT MR.
12 SIMMONS PUT THE PISTOL IN THE TRUNK OF THE CAR WITH
13 THE BODY. SIMMONS TOLD ME THAT HE PAID THESE TWO
14 MEN SIX HUNDRED DOLLARS TO TAKE THE BODY OFF. AND
15 WHEN I ASKED HIM WHERE, HE SAID HE DIDN'T KNOW
16 WHERE THEY HAD TAKEN THE BODY. I ALSO ASKED HIM IF
17 HE KNEW THEIR NAMES, AND HE TOLD ME HE DIDN'T KNOW
18 THEM. HE SAID THAT ONE OF THE MEN DROVE OFF IN
19 SHORTY'S CAR AND THE OTHER ONE DROVE AWAY IN A RED
20 BMW, BUT HE DIDN'T REMEMBER WHICH OF THE TWO MEN
21 DROVE WHAT CARS. HE TOLD ME THAT SHORTY'S NAME WAS
22 EITHER JAMES NELSON OR JAMES NEALSON; HE WASN'T
23 SURE WHICH. AND HE TOLD ME THAT SHORTY WAS A MAN
24 WHO WEIGHED ABOUT 150 TO 175 POUNDS. AND IN
25 TALKING WITH MR. SIMMONS AND ASKING ABOUT WHERE HE

EVERETT HOWARD - DIRECT/MR. BAILEY

1 WAS AND WHERE BRENDA WAS WHEN IT ALL HAPPENED, HE
2 TOLD ME THAT ONE TIME BRENDA WAS WAITING DOWN THE
3 ROAD WHILE SIMMONS KILLED SHORTY. AND THEN ANOTHER
4 TIME WHEN HE TOLD ME, HE TOLD ME THAT BRENDA WAS
5 PRESENT AT THE TIME THAT HE SHOT SHORTY. I ASKED
6 MR. SIMMONS WHERE HE GOT THE GUN FROM. HE TOLD ME
7 THAT BRENDA HAD GIVEN IT TO HIM AND THAT WHEN SHE
8 GAVE IT TO HIM, SHE TOLD HIM IT WAS HOT. HE TOLD
9 ME THAT AFTER ALL THIS WAS OVER THAT BRENDA LEFT
10 AND THAT SOON AFTER THAT IS WHEN SHE WENT TO MIAMI,
11 FLORIDA. HE TOLD ME ONCE AGAIN THAT BRENDA KNOWS
12 THESE TWO GUYS AND THAT WAS ALL THEY KNEW ABOUT
13 IT. I ASKED HIM AGAIN IF HE KNEW ABOUT WHERE THE
14 BODY WAS TAKEN. HE SAID NO. AND AFTER A LITTLE
15 BIT, AFTER THAT WE ENDED OUR CONVERSATION, AND THEY
16 ESCORTED MR. SIMMONS BACK TO HIS DORM AREA.

17 Q. DID YOU MAKE ANY TELEPHONE CALLS AFTER THAT
18 CONVERSATION?

19 A. YES, SIR, I DID.

20 Q. WITHOUT SAYING WHAT ANYBODY ELSE TOLD YOU, WHO DID
21 YOU CALL?

22 A. I CALLED LT. RANDALL STEWART FROM THE STATE LAW
23 ENFORCEMENT DIVISION; SLED.

24 Q. I CALL YOUR ATTENTION TO THE NEXT DAY, DECEMBER THE
25 FOURTH, 1997, AND ASK IF YOU AGAIN MET WITH MR.

EVERETT HOWARD - DIRECT/MR. BAILEY

1 SIMMONS?

2 A. YES, SIR, I DID.

3 Q. HOW DID THAT MEETING COME ABOUT?

4 A. WHEN I CAME INTO WORK THAT MORNING, THE
5 CORRECTIONAL OFFICER TOLD ME THAT MR. SIMMONS HAD
6 SENT UP A NOTE FROM HIM TO ME. AND AT THAT TIME I
7 JUST WENT RIGHT ON DOWN TO MR. SIMMONS' DORM TO
8 MEET WITH HIM.

9 Q. OKAY. AND WHEN YOU MET WITH HIM AT THE DORM, DID
10 YOU HAVE A CONVERSATION?

11 A. YES, SIR, WE DID.

12 Q. AND AT SOME POINT THAT AFTERNOON DID YOU GET THE
13 NOTE FROM MR. PERRYMAN?

14 A. YES, I DID; LATER THAT AFTERNOON.

15 Q. I'LL HAND YOU STATE'S TEN AND ASK IF THAT'S THE
16 NOTE YOU GOT FROM MR. PERRYMAN? (WITNESS EXAMINES
17 DOCUMENT.)

18 A. YES, SIR, IT IS.

19 Q. ALL RIGHT, SIR. THAT MEETING ON DECEMBER THE
20 FOURTH, WAS THAT AT YOUR REQUEST OR MR. SIMMONS'
21 REQUEST?

22 A. AT MR. SIMMONS' REQUEST, SIR.

23 Q. WOULD YOU STATE WHETHER OR NOT YOU AGAIN GAVE MR.
24 SIMMONS HIS MIRANDA RIGHTS?

25 A. YES, SIR, I DID ONCE AGAIN.

EVERETT HOWARD - DIRECT/MR. BAILEY

- 1 Q. AND AGAIN PLEASE FOR THE BENEFIT OF THE JURY GO
2 AHEAD AND USE THAT CARD AND READ THOSE RIGHTS THE
3 SAME WAY YOU READ THEM TO MR. SIMMONS ON THAT DAY.
- 4 A. YES, SIR. "YOU HAVE A RIGHT TO REMAIN SILENT;
5 ANYTHING YOU SAY CAN AND WILL BE USED AGAINST YOU
6 IN A COURT OF LAW; YOU HAVE THE RIGHT TO TALK TO A
7 LAWYER AND HAVE HIM PRESENT WITH YOU WHILE YOU'RE
8 BEING QUESTIONED. IF YOU CAN'T AFFORD TO HIRE A
9 LAWYER, ONE WILL BE APPOINTED TO REPRESENT YOU
10 BEFORE ANY QUESTIONING IF YOU WISH ONE." AND THEN
11 ONCE AGAIN AFTER I READ THOSE, THERE ARE TWO
12 QUESTIONS ALSO WRITTEN ON THE CARD THAT I ASKED.
13 "DO YOU UNDERSTAND THESE RIGHTS I'VE EXPLAINED TO
14 YOU?" AND MR. SIMMONS SAID THAT HE DID. "AND
15 HAVING THESE RIGHTS IN MIND, DO YOU WISH TO TALK TO
16 ME NOW?" AND HE SAID THAT HE DID.
- 17 Q. ALL RIGHT, SIR. AND AGAIN, WAS THERE ANYTHING
18 ABOUT THE WAY MR. SIMMONS WAS ACTING OR HOW HE
19 CARRIED HIMSELF, CONDUCTED HIMSELF, THAT LED YOU TO
20 HAVE ANY BELIEF OR SUSPICION THAT HE DIDN'T KNOW
21 WHAT HE WAS SAYING OR DIDN'T UNDERSTAND WHAT WAS
22 HAPPENING?
- 23 A. NO, SIR. IT WAS OBVIOUS TO ME THAT HE UNDERSTOOD
24 WHAT I HAD SAID AND WHAT HIS ANSWERS WERE AND WHAT
25 HE WAS SAYING TO ME.

EVERETT HOWARD - DIRECT/MR. BAILEY

1 Q. ALL RIGHT, SIR. DID YOU OFFER HIM ANYTHING TO GIVE
2 YOU A STATEMENT OR THREATEN OR COERCE HIM INTO
3 TELLING YOU ANYTHING?

4 A. NO, SIR, I DID NOT.

5 Q. DID HE FREELY AND VOLUNTARILY MAKE ANOTHER VERBAL
6 STATEMENT TO YOU?

7 A. YES, SIR, HE DID.

8 Q. ALL RIGHT, SIR. AND USING YOUR NOTES TO REFRESH
9 YOUR MEMORY, WHAT DID HE TELL YOU?

10 A. AFTER I GOT THROUGH GIVING HIM THE WARNINGS, I
11 ASKED MR. SIMMONS WHAT HE WANTED. HE SAID THAT HE
12 HAD GIVEN A NOTE TO A SERGEANT LAST NIGHT. AND I
13 ASKED HIM IF HE KNEW WHO THE SERGEANT WAS. HE SAID
14 IT WAS THE SAME ONE WHO HAD BROUGHT HIM BY MY
15 OFFICE WHO WAS SGT. PERRYMAN. AND I TOLD HIM THAT,
16 YOU KNOW, I WOULD GET THE NOTE FROM THE SERGEANT
17 LATER. AND I ASKED HIM WHAT THE NOTE WAS ABOUT.
18 AND MR. SIMMONS TOLD ME IT WAS ABOUT AN OLD WOMAN
19 WHO WAS KILLED IN SUMMERVILLE LAST YEAR. HE SAID
20 THAT THE TWO GUYS KILLED HER, BLACKIE AND THE OTHER
21 GUY. AND I ASKED HER IF SHE WAS KILLED IN THE CITY
22 OF SUMMERVILLE. HE SAID THAT SHE WAS. I ASKED HIM
23 HOW SHE WAS KILLED. HE SAID THAT SHE WAS STRANGLED
24 AND BEAT IN THE HEAD. I ASKED HIM IF ANYBODY HAD
25 BEEN ARRESTED FOR THIS CRIME, AND HE TOLD ME NO. I

1 ASKED HIM IF HE KNEW THE NAMES OF THESE TWO GUYS.
2 AGAIN HE TOLD ME THAT HE DIDN'T KNOW THE TWO
3 NAMES. WE TALKED JUST A LITTLE BIT LONGER. AND
4 SHORTLY AFTER THAT OUR MEETING ENDED.

5 Q. ALL RIGHT, SIR. AND AFTER YOUR MEETING ENDED ON
6 DECEMBER THE FOURTH, DID YOU PLACE ANY TELEPHONE
7 CALLS?

8 A. YES, SIR, I DID.

9 Q. WHO DID YOU CALL ON THE FOURTH?

10 A. INVESTIGATOR THOMAS WITH THE SUMMERVILLE POLICE
11 DEPARTMENT.

12 Q. WHY DID YOU CALL SOMEBODY FROM THE SUMMERVILLE
13 POLICE DEPARTMENT?

14 A. BECAUSE MR. SIMMONS HAD JUST TOLD ME ABOUT A MURDER
15 THAT HAD OCCURRED IN SUMMERVILLE.

16 Q. ALL RIGHT, SIR. AND DID YOU RELATE TO DETECTIVE
17 RON THOMAS WHAT MR. SIMMONS HAD TOLD YOU?

18 A. YES, SIR.

19 Q. ALL RIGHT. MR. HOWARD, PLEASE ANSWER ANY QUESTIONS
20 THAT MR. THEOS MAY HAVE FOR YOU AT THIS TIME.

21 CROSS-EXAMINATION

22 BY MR. THEOS:

23 Q. MR. HOWARD, ON DECEMBER THE THIRD, AGAIN YOU READ
24 THE RIGHTS JUST AS MR. BAILEY HAD YOU READ IT OUT.
25 I ASSUME YOU READ THOSE RIGHTS TO MR. SIMMONS IN

EVERETT HOWARD - CROSS/MR. THEOS

1 THE SAME FASHION?

2 A. YES, SIR, I DID.

3 Q. YOU HAD NO FURTHER DISCUSSIONS WITH HIM ABOUT HIS
4 MIRANDA RIGHTS, IS THAT CORRECT, OTHER THAN THE
5 READING OF THOSE RIGHTS?

6 A. AND THEN ASKED HIM IF HE UNDERSTOOD AND WAS HE
7 WILLING TO TALK TO ME.

8 Q. I UNDERSTAND. BUT YOU READ THAT OUT TO US WHAT'S
9 INCLUDED IN YOUR CARD?

10 A. YES, SIR.

11 Q. NO FURTHER DISCUSSIONS BEYOND THE READING OF THE
12 CARD AND THE VERBAL RESPONSES?

13 A. NO, SIR. I DIDN'T HAVE ANY REASON TO DO THAT.

14 Q. NOW IN THAT INTERVIEW OF DECEMBER THE THIRD, HE
15 TOLD YOU THAT HE KILLED A MAN NAMED SHORTY IN
16 SEPTEMBER OF 1997; CORRECT?

17 A. YES, SIR.

18 Q. HE TOLD YOU THAT HE SHOT THIS MAN WITH A .38 PISTOL
19 TWO TIMES IN THE CHEST; CORRECT?

20 A. YES, SIR; THAT'S WHAT HE TOLD ME.

21 Q. HE TOLD YOU THAT THAT BODY WAS PLACED IN A TRUNK
22 FOR DISPOSAL; CORRECT?

23 A. IN THE TRUNK OF A CAR; YES, SIR.

24 Q. AND HE TOLD YOU THAT THE PISTOL WAS IN THE TRUNK OF
25 THE CAR AS WELL?

EVERETT HOWARD - CROSS/MR. THEOS

1 A. YES, SIR, HE DID.

2 Q. ON DECEMBER THE FOURTH, THE NEXT TIME YOU SPOKE
3 WITH HIM, AGAIN YOU READ THOSE MIRANDA WARNINGS TO
4 HIM JUST AS YOU READ THEM TO US FOR THE THIRD TIME;
5 CORRECT?

6 A. YES, SIR, I DID.

7 Q. IN THE SAME FASHION AND ESSENTIALLY THE SAME SPEED?

8 A. PRETTY MUCH; YES.

9 Q. AND AGAIN, BEYOND THE READING OF THE CARD AND MR.
10 SIMMONS' VERBAL RESPONSES TO THOSE ITEMS IN THE
11 CAR, THERE WERE NO FURTHER DISCUSSIONS RELATED TO
12 MR. SIMMONS' RIGHTS AND MIRANDA WARNINGS; IS THAT
13 CORRECT?

14 A. NO, SIR; I SAW NO REASON TO DISCUSS THEM FURTHER.

15 Q. AND IN THAT CONVERSATION THAT YOU HAD WITH MR.
16 SIMMONS ON THE FOURTH, HE TOLD YOU ABOUT TWO MEN
17 HAVING KILLED MRS. BOYD; IS THAT CORRECT?

18 A. YES, SIR; THAT'S WHAT HE SAID.

19 Q. NOW AS I UNDERSTAND IT, YOU FOLLOWED UP ON DECEMBER
20 THE THIRD WITH THE INFORMATION THAT MR. SIMMONS
21 GAVE YOU?

22 A. YES, SIR, I DID.

23 Q. AND CAN YOU TELL ME WHAT YOU LEARNED? NOT WHAT
24 SOMEBODY TOLD YOU, BUT WHAT THE RESULT OF THAT
25 FOLLOW-UP WAS?

ANN REESE - DIRECT/MR. BAILEY

1 A. THAT NO ONE IN LAW ENFORCEMENT IN THE UPPER PART OF
2 THE STATE OR THE UPPER PART OF GEORGIA HAD ANY
3 INFORMATION ABOUT A CRIME THAT SOUNDED LIKE
4 ANYTHING MR. SIMMONS DESCRIBED TO ME.

5 MR. THEOS: NO FURTHER QUESTIONS,
6 YOUR HONOR.

7 THE COURT: ANYTHING ON RE-DIRECT?

8 MR. BAILEY: NO, SIR, YOUR HONOR.
9 MAY HE BE EXCUSED?

10 THE COURT: YES, SIR.

11 MR. BAILEY: THE STATE WOULD CALL
12 ANN REESE.

13 - - - - -
14 WHEREUPON,

15 ANN REESE, WHO AFTER BEING FIRST DULY
16 SWORN TO TELL THE TRUTH, TESTIFIED AS
17 FOLLOWS:

18 DIRECT EXAMINATION

19 BY MR. BAILEY:

20 Q. YOU'RE ANN REESE?

21 A. YES, SIR.

22 Q. OKAY. PLEASE TELL THE JURY WHERE YOU'RE EMPLOYED.

23 A. I'M EMPLOYED AT THE SOUTH CAROLINA LAW ENFORCEMENT
24 DIVISION BETTER KNOWN AS SLED.

25 Q. HOW LONG HAVE YOU WORKED FOR SLED?

ANN REESE - DIRECT/MR. BAILEY

1 A. I'VE WORKED FOR SLED FOR APPROXIMATELY
2 FIVE-AND-A-HALF YEARS.

3 Q. WHAT'S YOUR JOB WITH SLED AT THIS TIME?

4 A. I'M ASSIGNED TO THE LOW COUNTRY REGION WHICH IS
5 THIS AREA AS A CRIMINAL INVESTIGATOR.

6 Q. ALL RIGHT. AND WHAT'S THE DIFFERENCE BETWEEN WHAT
7 YOU DO FOR SLED AND WHAT PEOPLE LIKE MR. DERRICK
8 THAT WORKS IN THE LAB DO?

9 A. WELL, THEY DO A LOT WITH FORENSIC SCIENCES. WE ARE
10 AGENTS ASSIGNED OUT IN THE FIELD, AND WE DO
11 INVESTIGATIONS. THAT'S BASICALLY WHAT WE DO. OVER
12 70 PERCENT OF OUR JOB IS INVESTIGATION.

13 Q. WHAT OFFICE DO YOU WORK OUT OF? WHAT SLED OFFICE?

14 A. THE CHARLESTON OFFICE.

15 Q. WHAT GEOGRAPHICAL AREAS DO YOU COVER?

16 A. ALL OF THE LOW COUNTRY REGION.

17 Q. NOW, MRS. REESE, WAS THE TASK FORCE ORGANIZED AFTER
18 THE MURDER OF LILLY BELL BOYD?

19 A. YES, SIR.

20 Q. OKAY. AND WOULD YOU STATE WHETHER OR NOT YOU WERE
21 ASSIGNED BY SLED TO WORK WITH THAT TASK FORCE?

22 A. I WAS.

23 Q. I WANT TO CALL YOUR ATTENTION TO DECEMBER THE
24 FOURTH, 1997, AND ASK WHETHER OR NOT YOU HAD
25 OCCASION TO SPEAK WITH RON THOMASON OF THE

ANN REESE - DIRECT/MR. BAILEY

1 SUMMERVILLE POLICE DEPARTMENT?

2 A. I DID.

3 Q. OKAY. AND BASED ON THE INFORMATION THAT MR.
4 THOMASON GAVE YOU, DID YOU GO TO COLUMBIA THE
5 FOLLOWING DAY TO THE RICHLAND COUNTY DETENTION
6 CENTER?

7 A. I DID.

8 Q. OKAY. AND WHO ELSE WENT WITH YOU TO THE DETENTION
9 CENTER?

10 A. AGENT KENNY MEARS OF SLED, DETECTIVE MAYBELLE
11 HENDRICKS OF THE ST. GEORGE POLICE DEPARTMENT.

12 Q. AND WOULD YOU STATE WHETHER OR NOT WHEN -- WELL,
13 ROUGHLY WHAT TIME DID Y'ALL GET TO THE DETENTION
14 CENTER ON DECEMBER THE FIFTH?

15 A. I BELIEVE IT WAS SOME TIME AROUND 11:30 OR A
16 QUARTER TO TWELVE.

17 Q. OKAY. SOME TIME BEFORE LUNCH TIME IN THE MORNING?

18 A. YES, SIR.

19 Q. OKAY. AND DID YOU SEE MR. SIMMONS?

20 A. YES, SIR, WE DID.

21 Q. COULD YOU POINT HIM OUT FOR THE RECORD, PLEASE?

22 A. MR. SIMMONS IS THE GENTLEMAN SITTING AT THE DEFENSE
23 TABLE WITH THE RED TIE.

24 Q. AND WHERE DID YOU SEE HIM?

25 A. ON THE FIFTH.

ANN REESE - DIRECT/MR. BAILEY

1 Q. WHAT PART OF THE DETENTION CENTER DID YOU SEE HIM?

2 A. IN DETECTIVE HOWARD'S OFFICE.

3 Q. ALL RIGHT. AND DID YOU ENCOUNTER DETECTIVE HOWARD
4 THERE ALSO?

5 A. I DID.

6 Q. DID HE INTRODUCE Y'ALL TO MR. SIMMONS?

7 A. HE DID.

8 Q. AND THE THREE OF Y'ALL TOGETHER, YOU AND MRS.
9 HENDRICKS AND KENNY MEARS?

10 A. YES, SIR.

11 Q. WHAT DO YOU RECALL OF MR. SIMMONS' APPEARANCE AND
12 Demeanor, THE WAY HE WAS ACTING WHEN YOU SAW HIM
13 FOR THE FIRST TIME ON DECEMBER THE FIFTH?

14 A. HE WAS INTRODUCED TO US BY DETECTIVE HOWARD. HE
15 SEEMED TO BE CALM AND READY TO TALK WITH US.

16 Q. ALL RIGHT. AND WERE YOU PRESENT WHEN AGENT MEARS
17 OF SLED READ MIRANDA RIGHTS TO KENNETH SIMMONS?

18 A. YES, SIR.

19 Q. AND WOULD YOU STATE WHETHER OR NOT THE READING OF
20 THOSE RIGHTS WAS TAPED?

21 A. YES, SIR.

22 Q. AND WERE YOU PRESENT WHEN THAT OCCURRED THE WHOLE
23 TIME WHEN THE RIGHTS WERE GIVEN TO HIM?

24 A. YES, SIR.

25 Q. WOULD YOU STATE WHETHER OR NOT THERE WAS A WRITTEN

ANN REESE - DIRECT/MR. BAILEY

1 MIRANDA FORM THAT WAS ALSO PREPARED AT THE SAME
2 TIME?

3 A. YES, SIR.

4 Q. IS THAT A STANDARD FORM THAT SLED USES IN ALL
5 CASES?

6 A. YES, SIR, AS FAR AS I KNOW.

7 Q. ALL RIGHT. NOW I'M GOING TO SHOW YOU WHAT'S MARKED
8 AS STATE'S ELEVEN AND ASK IF YOU CAN IDENTIFY THAT?

9 A. YES, SIR. THIS IS THE FORM.

10 Q. THAT'S THE MIRANDA FORM?

11 A. YES, SIR.

12 Q. OKAY. IS YOUR SIGNATURE ON THAT PAPER?

13 A. YES, SIR.

14 Q. LET ME PUT THIS ON THE SCREEN HERE. THIS IS
15 STATE'S ELEVEN. IF YOU CAN COME DOWN AND COME STAND
16 TO THE SIDE, PLEASE. (WITNESS COMPLIES.)

17 THE COURT: LADIES AND GENTLEMEN,
18 SOME OF US OLDER FOLKS WEAR BIFOCALS AND CAN'T SEE
19 DISTANCES WELL. ARE EACH OF YOU ABLE TO READ WHAT
20 YOU'RE LOOKING AT ON THE SCREEN? IF ANYONE WANTS
21 IT BROUGHT CLOSER, RAISE YOUR HAND. (NO RESPONSE.)
22 ALL RIGHT. IT APPEARS THAT ALL CAN READ.

23 Q. ON THE UPPER LEFT-HAND CORNER WHERE YOU HAVE THE
24 DATE; IS THAT CORRECT, DECEMBER THE FIFTH, 1997?

25 A. YES, SIR.

LASER STOCK FORM FMU

THE CORBY GROUP 1-800-255-5040

- 1 Q. DOWN AT THE BOTTOM OF THAT FORM ON THE LEFT WHERE
- 2 IT'S GOT WITNESS ANN REESE. IS THAT YOUR
- 3 SIGNATURE?
- 4 A. YES, SIR.
- 5 Q. ALL RIGHT. AND WHEN THAT FORM WAS READ, THE
- 6 MIRANDA FORM WAS READ TO MR. SIMMONS, DID HE APPEAR
- 7 TO UNDERSTAND TO THE BEST OF YOUR KNOWLEDGE WHAT
- 8 MR. MEARS WAS TELLING HIM?
- 9 A. YES, SIR.
- 10 Q. AND TO THE LEFT OF EACH ONE OF THOSE RIGHTS THERE'S
- 11 SOME INITIALS. IT'S GOT K.S. ON THERE?
- 12 A. YES, SIR.
- 13 Q. DID YOU OBSERVE MR. SIMMONS SIGN OR INITIAL EACH
- 14 ONE OF THOSE RIGHTS AFTER MR. MEARS READ THAT TO
- 15 HIM?
- 16 A. I DID.
- 17 Q. AND DOWN AT THE BOTTOM THERE'S A WAIVER OF RIGHTS
- 18 FORM AND A SIGNATURE UNDER THAT?
- 19 A. YES, SIR.
- 20 Q. AND THAT'S KENNETH SIMMONS' SIGNATURE?
- 21 A. YES, SIR.
- 22 Q. DID YOU SEE HIM SIGN THAT?
- 23 A. I DID.
- 24 Q. NOW AFTER THE MIRANDA RIGHTS WERE READ ON THE TAPE
- 25 BY AGENT MEARS TO KENNETH SIMMONS, WAS THERE A

ANN REESE - DIRECT/MR. BAILEY

1 TAPED INTERVIEW THAT WAS CONDUCTED PRIMARILY
2 BETWEEN AGENT KENNY MEARS AND MR. SIMMONS?

3 A. YES, SIR.

4 Q. WERE YOU PRESENT THROUGHOUT THE ENTIRE TAPED
5 INTERVIEW?

6 A. YES, SIR.

7 Q. AND DID YOU PARTICIPATE IN ANY EXTENT TO ANY OF THE
8 QUESTIONS AND ANSWERS?

9 A. I ASKED HIM ONE QUESTION.

10 Q. AT ANY POINT IN TIME ON DECEMBER THE FIFTH, 1997
11 DURING THAT INTERVIEW, DID YOU OR MAYBELLE
12 HENDRICKS OR AGENT KENNY MEARS OR ANYBODY ELSE
13 OFFER ANY INDUCEMENT OR PROMISES OR ENCOURAGEMENT
14 TO MR. SIMMONS TO GIVE Y'ALL A STATEMENT?

15 A. NO, SIR, WE DID NOT.

16 Q. DID ANYBODY THREATEN MR. SIMMONS IN ANY WAY?

17 A. NO, SIR.

18 Q. DID HE ASK FOR ANYTHING THAT HE WASN'T GIVEN LIKE
19 FOOD OR WATER OR TO USE THE BATHROOM OR ANYTHING OF
20 THAT NATURE?

21 A. NO, SIR.

22 Q. AND WHEN THE QUESTIONS WERE ASKED OF MR. SIMMONS,
23 WHEN THE EXCHANGE TOOK PLACE BETWEEN MR. MEARS AND
24 MR. SIMMONS THAT YOU WERE PRESENT AT, DID MR.
25 SIMMONS APPEAR TO UNDERSTAND THE QUESTIONS?

ANN REESE - CROSS/MR. THEOS

1 A. YES, SIR, HE DID.

2 Q. TO THE BEST OF YOUR KNOWLEDGE?

3 A. YES, SIR.

4 Q. WHEN HE RESPONDED, DID YOU HAVE ANY DIFFICULTY
5 UNDERSTANDING HIM?

6 A. NO, SIR.

7 Q. AND TO THE BEST OF YOUR KNOWLEDGE WAS THE TAPED
8 STATEMENT THAT FOLLOWED THOSE MIRANDA WARNINGS
9 GIVEN BY MR. SIMMONS FREELY AND VOLUNTARILY GIVEN?

10 A. YES, SIR.

11 Q. ALL RIGHT. HAVE YOU READ A TYPED TRANSCRIPT OF THE
12 TAPED STATEMENT?

13 A. YES, SIR.

14 Q. AND TO THE BEST OF YOUR KNOWLEDGE IS THAT
15 TRANSCRIPT A REASONABLY ACCURATE REPRESENTATION OF
16 WHAT'S ON THE TAPE?

17 A. YES, SIR, IT IS.

18 MR. BAILEY: YOUR HONOR, I HAVE
19 NOTHING FURTHER OF MRS. REESE AT THIS TIME, BUT I'D
20 LIKE TO RECALL HER IF NEEDED.

21 THE COURT: THANK YOU. YOU MAY
22 CROSS.

23 CROSS-EXAMINATION

24 BY MR. THEOS:

25 Q. MRS. REESE, WHAT TASK FORCE WAS FORMED? CAN YOU

ANN REESE - CROSS/MR. THEOS

1 DESCRIBE THE TASK FORCE, PLEASE? TELL US WHAT IT
2 IS, WHAT IT WAS.

3 A. AFTER MRS. BOYD'S MURDER IN SEPTEMBER OF '96, I WAS
4 ASKED BY MY SUPERVISOR TO ASSIST THE SUMMERVILLE
5 POLICE DEPARTMENT IN THIS INVESTIGATION. WE WORKED
6 ON THE CASE FROM SEPTEMBER OF '96 UNTIL AUGUST, I
7 BELIEVE, OF '97; AND THAT'S WHEN THE TASK FORCE WAS
8 FORMED. I BELIEVE IT WAS A SUGGESTION BY MY
9 SUPERVISOR THAT THE TASK FORCE BE FORMED. IT WAS
10 CONSISTING OF MYSELF, RETIRED MAJOR ERNEST
11 MOULTRIE, DETECTIVE MAYBELLE HENDRICKS OF THE ST.
12 GEORGE POLICE DEPARTMENT, AND CORPORAL RON THOMASON
13 OF THE SUMMERVILLE POLICE DEPARTMENT. WE WERE
14 ASSIGNED TO THE TASK FORCE TO SPECIFICALLY JUST
15 WORK THIS HOMICIDE TO TRY AND FIND OUT WHO
16 COMMITTED THE CRIME.

17 Q. OKAY. WHAT WAS YOUR ROLE WITH THE TASK FORCE?

18 A. I WAS LIKE THE LEAD INVESTIGATOR.

19 Q. DURING THE COURSE OF YOUR INVESTIGATION OF THE TASK
20 FORCE FROM SEPTEMBER OF '96 THROUGH AUGUST OF '97,
21 YOU SAID THOSE WERE THE DATES -- DID THE TASK FORCE
22 END ITS WORK IN AUGUST OF '97 AS A FORMAL TASK
23 FORCE?

24 A. THE TASK FORCE WAS NOT FORMED UNTIL AUGUST OF '97.

25 Q. I'M SORRY. I MISUNDERSTOOD. I THOUGHT YOU---

ANN REESE - CROSS/MR. THEOS

1 A. I WAS ASSIGNED TO WORK WITH THE SUMMERVILLE POLICE
2 DEPARTMENT IN SEPTEMBER OF 1996.

3 Q. BUT THE TASK FORCE WAS NOT FORMED UNTIL AUGUST OF
4 '97?

5 A. THAT'S CORRECT.

6 Q. NOW DURING YOUR INVESTIGATION FROM SEPTEMBER OF '96
7 AND ON THROUGH YOUR INVOLVEMENT WITH THE TASK
8 FORCE, DID YOU ALL INTERVIEW A NUMBER OF SUSPECTS?

9 A. YES, SIR.

10 Q. HOW MANY WOULD YOU SAY YOU INTERVIEWED?

11 A. I REALLY DON'T HAVE ANY IDEA. I WOULD IMAGINE
12 MAYBE SOMEWHERE THAT I, YOU KNOW, AND THE TASK
13 FORCE INTERVIEWED WAS PROBABLY SOMEWHERE AROUND
14 TWENTY-FIVE PEOPLE.

15 Q. THOSE TWENTY TO TWENTY-FIVE PEOPLE; CAN YOU TELL US
16 WHAT YOUR CRITERIA WAS FOR DETERMINING WHETHER
17 SOMEBODY QUALIFIED AS A SUSPECT, PLEASE?

18 A. LET ME BACK UP HERE. SOME OF THE PEOPLE THAT WERE
19 INTERVIEWED WERE NOT SUSPECTS. SOME WERE SUSPECTS
20 AND SOME WERE JUST PEOPLE THAT WE THOUGHT MIGHT
21 HAVE SOME INFORMATION THAT COULD HELP THE TASK
22 FORCE DECIDE THIS HOMICIDE.

23 Q. WHAT WAS THE CRITERIA IN YOUR MIND AND IN THE TASK
24 FORCE'S MIND LATER FOR THOSE PEOPLE DEEMED TO BE
25 SUSPECTS?

ANN REESE - CROSS/MR. THEOS

1 A. WE BASICALLY JUST TRIED TO GO BACK THROUGH SOME OF
2 THE ARRESTS THAT THE SUMMERVILLE POLICE DEPARTMENT
3 HAD MADE TO TRY AND SEE IF THERE WERE SOME PEOPLE
4 THAT COULD POSSIBLY BE SUSPECTS IN THIS HOMICIDE;
5 THAT, AND BASED ON OTHER INFORMATION THAT WAS
6 ALREADY IN THE FILE THAT SUMMERVILLE HAD COLLECTED;
7 IN PARTICULAR THE PROFILE THAT WAS DONE.

8 Q. EXPLAIN THAT FOR US, PLEASE. WHAT DO YOU MEAN BY
9 PROFILE?

10 A. I BELIEVE THE SUMMERVILLE POLICE DEPARTMENT HAD
11 SOMEONE. AND I'M NOT SURE WHO THAT PERSON WAS
12 RIGHT NOW. I'D HAVE TO REFER BACK TO THE CASE
13 FILE. BUT THE SUMMERVILLE POLICE DEPARTMENT HAD
14 SOMEONE TO DO A PROFILE BASED ON I GUESS THE SCENE
15 OF THE HOMICIDE. AND THEY BASICALLY TOLD THEM WHAT
16 THEY THOUGHT THE TYPE OF PERSON WOULD BE THAT COULD
17 HAVE COMMITTED THIS CRIME.

18 Q. SO IS THAT ONE OF THE TOOLS THAT WAS USED IN THE
19 INVESTIGATION AND IN DETERMINING WHO OR WHO WAS NOT
20 A SUSPECT IN THE CASE?

21 A. THAT WAS ONE OF THE TOOLS.

22 Q. CAN YOU TELL US WITH SOME SPECIFICITY WHAT THE
23 OTHER TOOLS WERE?

24 A. JUST AS I SAID EARLIER, WE JUST BASICALLY STARTED
25 GOING BACK THROUGH SOME OF THE ARRESTS THAT

ANN REESE - CROSS/MR. THEOS

1 SUMMERVILLE HAD MADE ON SUBJECTS THAT HAD VIOLENT
2 HISTORIES IN COMMITTING CRIMES, ROBBERIES, JUST
3 ANYTHING THAT WOULD GIVE US SOME IDEA AS TO WHO THE
4 SUSPECT COULD POSSIBLY BE.

5 Q. WERE SUSPECTS DEVELOPED ALSO THAT RESIDED IN CLOSE
6 PROXIMITY TO MRS. BOYD'S HOME?

7 A. YES, SIR.

8 Q. WERE SOME OF THOSE SUSPECTS DEVELOPED THE SAME AS
9 THOSE SUSPECTS DEVELOPED BASED UPON THOSE FACTORS
10 OF PRIOR ARRESTS AND CRIMES OF VIOLENCE?

11 A. YES, SIR.

12 Q. WAS MR. LESTER---

13 MR. BAILEY: JUDGE, I HAVE A MATTER
14 OF LAW TO TAKE UP.

15 THE COURT: APPROACH THE BENCH,
16 PLEASE.

17 (AT THIS TIME, BENCH CONFERENCE IS HELD.)

18 MR. BAILEY: CAN I GET SOMETHING OUT
19 OF MY NOTEBOOK HERE?

20 THE COURT: MR. BAILEY, WE'RE
21 SUPPOSED TO TAKE A RECESS. WOULD YOU LIKE FOR ME
22 TO GO AHEAD AND RECESS?

23 MR. BAILEY: YES, SIR.

24 THE COURT: ALL RIGHT. YOU MAY STEP
25 DOWN, MA'AM. MADAM FORELADY AND LADIES AND

MOTIONS

1 GENTLEMEN; OBVIOUSLY YOU'RE UNDER THE CONTINUING
2 ADMONITION. PLEASE, PLEASE, DO NOT DELIBERATE THIS
3 CASE. I'LL LET YOU KNOW WHEN TO DO SO. AND DON'T
4 TALK ABOUT IT AMONG YOURSELVES. THERE SHOULD BE
5 COFFEE AND SOFT DRINKS, CRACKERS, OR WHATEVER. IF
6 YOU NEED ANY SARDINES AND SODA CRACKERS OR TYLENOL,
7 LET US KNOW. PLEASE GO TO YOUR ROOM, PLEASE.
8 (AT THIS TIME JURY RETIRES TO JURY ROOM FOR A BRIEF
9 RECESS.)

10 THE COURT: ALL RIGHT, GENTLEMEN.
11 WE'LL STAND AT EASE FOR A FEW MINUTES TO GIVE MR.
12 BAILEY AN OPPORTUNITY TO---

13 MR. BAILEY: YOUR HONOR, I WAS JUST
14 TRYING TO PULL SOME CASES.

15 THE COURT: THAT'S FINE.

16 MR. BAILEY: BUT I THINK I CAN ARGUE
17 THE POINT WITHOUT---

18 THE COURT: I'D RATHER YOU PULL
19 THEM.

20 MR. BAILEY: ALL RIGHT, SIR.

21 (BRIEF RECESS.)

22 (THE FOLLOWING TAKES PLACE OUT OF THE PRESENCE OF
23 THE JURY.)

24 THE COURT: ALL RIGHT, GENTLEMEN.
25 WE HAD BRIEFLY DISCUSSED THE MATTERS IN CHAMBERS;

1 AND I'LL BE HAPPY TO PROFFER EITHER IN NARRATIVE
2 FORM OR BY SWORN TESTIMONY FORM TO BE GIVEN TO THE
3 COURT. BE GLAD TO HEAR FROM YOU.

4 MR. BAILEY: YOUR HONOR, COULD I PUT
5 THE STATE'S POSITION ON THE RECORD JUST SINCE I
6 DON'T THINK I DID THAT BEFORE THE BREAK?

7 THE COURT: CERTAINLY. THE JURY WAS
8 PRESENT BEFORE THE BREAK. GO AHEAD.

9 MR. BAILEY: YOUR HONOR, IT APPEARED
10 TO ME THAT THE DEFENSE WAS TRYING TO ELICIT SOME
11 TESTIMONY ABOUT OTHER POSSIBLE SUSPECTS IN THIS
12 CASE. MY POSITION WAS -- AND THERE'S A LINE OF
13 CASES; AND I CAN CITE THOSE FOR THE RECORD. BUT AS
14 I READ THEM, THEY STAND FOR THE PROPOSITION THAT
15 EVIDENCE OFFERED BY A DEFENDANT; IF ANOTHER
16 PERSON'S CONVICTED OF THE CRIME CHARGED, HE HAS TO
17 BE LIMITED TO THE FACTS INCONSISTENT WITH THE
18 DEFENDANT'S GUILT TO RAISE A REASONABLE INFERENCE
19 OR PRESUMPTION OF HIS INNOCENCE AND THAT EVIDENCE
20 WHICH ONLY CASTS A BARE SUSPICION ON ANOTHER PERSON
21 OR RAISES CONJECTURE IF THE COMMISSION OF THE CRIME
22 IS INADMISSIBLE. AND I WOULD CITE STATE VERSUS
23 WILLIAMS, 416 S.E.2D 626; STATE VS. SOUTHERLAND,
24 447 S.E.2D, 862; STATE VS. PARKER, 366 S.E.2D 10;
25 STATE VS. GREGORY, 16 S.E.2D 532; AND FINALLY STATE

MOTIONS

1 VS. JASON SCOTT BYRUM. I DON'T HAVE THE CITE.
2 IT'S DATED APRIL THE 28TH, 1997; A DEATH PENALTY
3 CASE.

4 THE COURT: ALL RIGHT. DO YOU WANT
5 TO PASS THOSE UP FOR THE COURT TO LOOK AT? I'LL BE
6 GLAD TO -- ANY LAW YOU WANT ME TO LOOK AT, MR.
7 THEOS, THAT YOU HAVE SUSTAINING YOUR POSITION?

8 MR. THEOS: YES, SIR.

9 THE COURT: YOU WENT TO GET SOME,
10 BUT YOU NEVER DID HAND IT TO ME.

11 MR. THEOS: YES, SIR. THIS IS THE
12 CASE, THE STATE VS. STAN YOUNG.

13 THE COURT: I HAVE THAT; FEBRUARY
14 THE 16TH, 1999. IT'S IN ADVANCE SHEET NUMBER SEVEN
15 OF FEBRUARY THE 20TH, '99; AND IT WAS -- IT HAD TO
16 DO WITH AFTER DISCOVERED EVIDENCE. YES, SIR; I'VE
17 READ THAT.

18 MR. BAILEY: YOUR HONOR, MR. BELL
19 JUST HANDED ME THE BECKHAM CASE WHICH STANDS FOR
20 THAT SAME PROPOSITION. IT JUST CAME OUT. IF I
21 COULD HAND THAT?

22 THE COURT: ON AFTER DISCOVERED
23 EVIDENCE?

24 MR. BAILEY: ON WHETHER OR NOT YOU
25 CAN RAISE A THIRD PARTY INFERENCE.

1 THE COURT: OKAY. PASS IT UP.

2 THAT'S NOT IN THE ADVANCE SHEET YET. BUT PASS IT
3 UP. I'LL BE GLAD TO LOOK AT IT. HAVE YOU
4 HIGHLIGHTED WHAT YOU WANT ME TO LOOK AT?

5 MR. BAILEY: NO, SIR; I'LL DO THAT
6 RIGHT NOW.

7 THE COURT: GO AHEAD. LET ME HEAR
8 FROM YOU, MR. THEOS.

9 MR. THEOS: YES, SIR. YOUR HONOR,
10 THERE ARE A NUMBER OF -- FIRST OF ALL, WE'RE NOT
11 ATTEMPTING TO POINT THE FINGER AT ALL OF THESE
12 SUSPECTS. AND ONE OF THE ARGUMENTS THAT MR. BAILEY
13 HAS MADE IS THAT IF WE WERE TO POINT AT ALL 20 OR
14 25 SUSPECTS AS HAVING POSSIBLY COMMITTED THIS CRIME
15 OR THAT SOME INFERENCE COULD BE DRAWN THAT THEY MAY
16 HAVE COMMITTED THIS CRIME, THEN MR. BAILEY HAS SAID
17 THAT HE WOULD BE PLACED IN THE -- ESSENTIALLY IN
18 THE POSSIBLE TASK OF DEFENDING ALL 20 TO 25 OF
19 THOSE DEFENDANTS. THAT IS NOT OUR INTENT, JUDGE.
20 WE ARE FOCUSING ON ONE OF THOSE SUSPECTS; MR.
21 SINCLAIR MYZEKE. YOUR HONOR, WE ARE NOT ATTEMPTING
22 TO FOCUS ON MR. MYZEKE AND ELICIT TESTIMONY TO
23 RAISE AN INFERENCE. WE ARE POINTING AT MR. MYZEKE
24 BECAUSE THERE ARE A NUMBER OF INVESTIGATING
25 OFFICERS THAT HAVE, THROUGH THE COURSE OF THEIR

MOTIONS

1 INVESTIGATION, DEVELOPED EVIDENCE CONSISTENT WITH
2 MR. MYZEKE HAVING COMMITTED THIS CRIME AND
3 INCONSISTENT WITH MR. SIMMONS HAVING COMMITTED THIS
4 CRIME. IT'S NOT AN INFERENCE AS A LOT OF CASES
5 THAT MR. BAILEY CITED; STATE VS. SOUTHERLAND,
6 WILLIAMS, JASON SCOTT, BYRUM AND STATE VS. FORNEY.
7 WE ARE ALLOWED TO INTRODUCE THOSE IN EVIDENCE AND
8 POINT THE FINGER SO TO SPEAK AT A THIRD PARTY IF
9 OUR INTENT AND IF THE EVIDENCE WOULD BEAR OUT
10 CERTAIN FACTS THAT ARE INCONSISTENT AND CERTAIN
11 EVIDENCE IS INCONSISTENT WITH MR. SIMMONS HAVING
12 COMMITTED THE CRIME. AND THAT IS EXACTLY WHY IT IS
13 BEING OFFERED AND WHY WE WOULD ATTEMPT TO ELICIT
14 THAT TESTIMONY. THERE WAS A PROFILE THAT AGENT
15 REESE TESTIFIED TO, A PROFILE THAT WAS DONE BY THE
16 ACADEMY GROUP AT THE REQUEST OF THE SUMMERVILLE
17 POLICE DEPARTMENT. AS A RESULT OF THAT PROFILE,
18 AND AS A RESULT OF THE PHYSICAL EVIDENCE THAT WAS
19 COLLECTED AT THE SCENE WHICH HAS BEEN -- SOME OF
20 WHICH HAS BEEN INTRODUCED -- I BELIEVE ALL OF THIS
21 HAS BEEN INTRODUCED INTO EVIDENCE THROUGH DEFENSE
22 EXHIBITS. AS YOU RECALL YESTERDAY WE INTRODUCED A
23 NUMBER OF INVENTORY SHEETS THAT CONTAINED ALL OF
24 THE EVIDENCE BASED UPON THE PROFILE, BASED UPON
25 THOSE PHYSICAL -- THOSE ITEMS OF PHYSICAL EVIDENCE

MOTIONS

1 -- AND BASED UPON THE HISTORY OF MR. MYZEKE AND
2 OTHER SPECIFIC CHARACTERISTICS, NAMELY HIS
3 PROPENSITY FOR VIOLENCE, HIS AFFECTION AND
4 INCLINATION TO HAVE RELATIONSHIPS WITH OLDER WOMEN
5 SIGNIFICANTLY OLDER THAN HIMSELF; BASED UPON A
6 NUMBER OF THOSE SPECIFIC ITEMS. THERE WAS AN
7 AFFIDAVIT THAT WAS SIGNED BY OFFICER, SGT. CHERYL
8 BASS OF THE SUMMERVILLE POLICE DEPARTMENT. AND IT
9 WAS ALSO SIGNED BY DETECTIVE MIKE TURNER. AND THAT
10 AFFIDAVIT RELATED TO THAT SEARCH WARRANT, YOUR
11 HONOR. THERE WAS A SEARCH WARRANT DATED NOVEMBER
12 THE 18TH OF 1986 WHICH I'LL HAND UP TO THE COURT.

13 THE COURT: WELL, GO AHEAD AND HAVE
14 IT MARKED, WHY DON'T WE, AS DEFENSE FOR I.D. WOULD
15 THAT BE AGREEABLE?

16 THE COURT REPORTER: YES, SIR;
17 THAT'S NUMBER FIFTEEN.

18 THE COURT: DEFENDANT'S NUMBER
19 FIFTEEN FOR I.D. GO AHEAD AND MARK IT.

20 DEFENDANT'S EXHIBIT NO. 15

21 MARKED FOR IDENTIFICATION

22 THE COURT: MRS. JULIE SMITH. IS
23 SHE PRESENT IN THE COURTROOM? I DON'T KNOW HER;
24 BUT, MADAM COURT REPORTER, I'M PLACING WITH THE
25 CLERK OF COURT THE FILE COPY OF AUTHORIZATION OF

MOTIONS

1 JULIE SMITH OF THE SUMMERVILLE JOURNAL SCENE TO BE
2 PERMITTED ALONG WITH JOE DITMUTH, THE PHOTOGRAPHER,
3 TO PARTICIPATE UNDER THE GUIDELINES OF MEDIA
4 COVERAGE OF COURT SCENES INCLUDING THE USE OF A
5 CAMERA. YES, SIR?

6 MR. THEOS: THANK YOU, YOUR HONOR.

7 THE COURT: I NEED TO SEE IT. MAY I
8 HAVE THE STATEMENT, PLEASE?

9 MR. THEOS: YES, SIR. I'VE GOT A
10 COPY OF IT.

11 THE COURT: DO YOU HAVE A COPY OF
12 THIS SEARCH WARRANT OF NOVEMBER THE 18TH OF '96,
13 MR. SOLICITOR?

14 MR. BAILEY: I DON'T HAVE ONE IN
15 FRONT OF ME. I'VE GOT THE FILE. I'M GENERALLY
16 FAMILIAR WITH WHAT IT SAYS, YOUR HONOR.

17 MR. THEOS: MR. BAILEY, WOULD YOU
18 LIKE FOR ME TO WAIT UNTIL YOU READ THROUGH IT?

19 THE COURT: YOU MAY SHARE YOUR COPY
20 WITH THE SOLICITOR AND LET HIM BE READING YOURS.
21 MR. SOLICITOR, DID I UNDERSTAND THAT THE
22 INVESTIGATING DEPARTMENT AND/OR THE TASK FORCE
23 OBTAINED -- HAD 25 TO 30 SUSPECTS IN WHICH THEY HAD
24 QUESTIONED? IS THAT WHAT YOU WERE TOLD, MR.
25 BAILEY?

MOTIONS

1 MR. BAILEY: YES, SIR. YOUR HONOR,
2 THE NUMBER IS ROUGHLY THIRTY PEOPLE THEY
3 QUESTIONED. THEY OBTAINED BLOOD FOR DNA ANALYSIS
4 ALL OF WHICH WAS SENT UP TO THE LAB.

5 THE COURT: AND HOW MANY PERSONS?

6 MR. BAILEY: ROUGHLY 50 PEOPLE.
7 I'VE GOT A LIST I CAN GIVE TO YOUR HONOR IF YOU
8 NEED THE LIST ON EXACT NUMBERS.

9 THE COURT: THERE WERE 50 PEOPLE
10 THAT THEY HAD REQUESTED DNA---

11 MR. BAILEY: NO, SIR. CLOSER TO
12 THIRTY. BUT IF YOU CAN INDULGE ME FOR A SECOND, I
13 THINK I CAN FIND THAT LIST.

14 THE COURT: ALL RIGHT. AND YOU'VE
15 HAD AN OPPORTUNITY TO READ THIS WARRANT?

16 MR. BAILEY: YES, SIR, I HAVE YOUR
17 HONOR. AND I HAVE THE LIST OF FINGERPRINTS AT THE
18 TOP. THEY WERE ALSO SENT FOR DNA IF I CAN HAND
19 THAT UP TO THE COURT; THAT WOULD BE THE PEOPLE THAT
20 WERE CONSIDERED SUSPECTS.

21 THE COURT: TELL ME HOW MANY IS ON
22 IT. YOU CAN JUST COUNT THEM.

23 MR. BAILEY: TWENTY-SEVEN.

24 THE COURT: AND WHY DON'T WE MAKE
25 THAT STATE'S I.D. NUMBER, WHAT KATHI?

MOTIONS

1 THE COURT REPORTER: TWENTY-SEVEN.

2 THE COURT: ALL RIGHT. THERE WILL
3 BE TWENTY-SEVEN PERSONS; AND IT'S ITEM NUMBER 27.

4 COURT'S EXHIBIT NO. 27

5 MARKED FOR IDENTIFICATION

6 THE COURT: ALL RIGHT. ANYTHING
7 FURTHER FROM THE STATE?

8 MR. BAILEY: NO, SIR. ONLY TO POINT
9 OUT, YOUR HONOR, I'M NOT SURE HOW FAR MR. THEOS
10 INTENDS TO GO WITH THIS. IF HE GETS INTO THE
11 PROFILING AND ALL THIS OTHER HOCUS-POCUS THAT'S GOT
12 NOTHING TO DO WITH THE TRIAL OF THE CASE THAT I'M
13 FAMILIAR WITH, AND GETS INTO MR. MYZEKE'S
14 REPUTATION AND PRIOR CRIMES, THAT'S STUFF I
15 CERTAINLY CAN'T GET INTO IN REGARD TO THE
16 DEFENDANT. SO I THINK HE OUGHT TO BE HELD TO THE
17 SAME RULES. I'M JUST NOT SURE HOW FAR HE PLANS TO
18 GO WITH THIS. I WOULD STRONGLY OBJECT TO THAT
19 AFFIDAVIT COMING IN FOR ANY REASON. I'M JUST NOT
20 SURE HOW FAR HE PLANS ON GOING. BUT I THINK WHAT
21 HE'S TRYING TO DO IS TAKE THE JURY'S MIND OFF OF
22 THIS CASE AND LET'S TRY MR. MYZEKE. I'M JUST NOT
23 PREPARED TO DO THAT.

24 THE COURT: YES, SIR, MR. THEOS?

25 MR. THEOS: IF I MIGHT CONTINUE.

1 FIRST OF ALL, YOUR HONOR, OUR INTENT IS TO NOT TO
2 POINT THE FINGER AT MR. MYZEKE OR ANY OTHER PERSON
3 AS BEING THE PERPETRATOR OF THE CRIME. OUR INTENT
4 IS TO POINT OUT THE INCONSISTENCIES THAT EXIST
5 BETWEEN MR. SIMMONS HAVING DONE THIS AND ANOTHER
6 PERSON IN THIS CASE OR PERSONS HAVING DONE IT.

7 THE COURT: WHAT ARE THOSE
8 INCONSISTENCIES?

9 MR. THEOS: EXCUSE ME?

10 THE COURT: WHAT ARE THOSE
11 INCONSISTENCIES?

12 MR. THEOS: YOUR HONOR, ONE OF THEM
13 -- AND IF I COULD POINT OUT ON THE AFFIDAVIT.

14 THE COURT: I'VE READ THE AFFIDAVIT
15 IT'S NICELY TYPED. I COMMENT WHOEVER WENT TO THE
16 TROUBLE TO TYPE IT.

17 MR. THEOS: YOUR HONOR, IF I COULD
18 GO THROUGH AND TELL YOU WHAT THOSE INCONSISTENCIES
19 ARE AS A REFERENCE TO ANY AFFIDAVIT, PLEASE?

20 THE COURT: YES. BUT IT HAS TO BE
21 UNDER THE LAW INCONSISTENT WITH THE ACCUSED GUILT
22 OR RAISE A REASONABLE INFERENCE OR PRESUMPTION OF
23 HIS INNOCENCE.

24 MR. THEOS: YES, SIR.

25 THE COURT: ALL RIGHT.

MOTIONS

1 MR. THEOS: THE FIRST WOULD BE, YOUR
2 HONOR, THAT THE AFFIANT -- AND I TAKE IT THAT THAT
3 WAS SGT. BASS ALTHOUGH THERE ARE TWO SIGNATURES.
4 THE FIRST IS THAT THE OBVIOUS AMOUNT OF BLOOD
5 SPATTER THAT WE HEARD TESTIFIED TO BEFORE AND THE
6 CONCLUSION THAT WOULD BE DRAWN FROM THAT THAT
7 WHOEVER COMMITTED THIS CRIME WOULD HAVE HAD A
8 LARGE AMOUNT OF BLOOD -- WOULD HAVE HAD BLOOD ON
9 THEM OR A QUANTITY OF BLOOD COVERING THEM APPEARING
10 ON THEIR BODY. THAT'S THE FIRST ISSUE, YOUR
11 HONOR. AND THE SECOND, YOUR HONOR.

12 THE COURT: BUT WAIT A MINUTE. HOW
13 DOES THAT ISSUE IN ANY WAY -- BECAUSE WE'RE LIMITED
14 TO FACTS INCONSISTENT WITH THE ACCUSED'S GUILT. I
15 DON'T UNDERSTAND YOUR LOGIC.

16 MR. THEOS: WELL, YOUR HONOR, WE
17 INTEND ON INTRODUCING EVIDENCE IN OUR CASE THAT IS
18 INCONSISTENT WITH THAT CONCLUSION.

19 THE COURT: WELL, YOU KNOW, BEFORE I
20 CAN LET YOU GET INTO IT WITH THIS LADY -- AND I
21 DON'T WANT TO ASK YOU WHAT YOUR EVIDENCE IS -- BUT
22 THAT DOESN'T CONNECT UP ANYTHING FOR ME; DOESN'T
23 JUMP START MY BATTERY TODAY ON YOUR POSITION.

24 MR. THEOS: THE SECOND -- I
25 UNDERSTAND, YOUR HONOR; BUT WE WILL INTRODUCE

MOTIONS

1 EVIDENCE IN OUR CASE FROM SOME INDIVIDUALS THAT SAW
2 MR. SIMMONS DURING THIS TIME FRAME THAT IS
3 INCONSISTENT WITH HIM HAVING -- AND AGAIN THE TIME
4 FRAME IS KIND OF A FUNNY QUESTION BECAUSE IT WAS
5 THE FIRST, ALTHOUGH WE'VE HEARD IT MAY BE THE
6 THIRTY-FIRST.

7 THE COURT: NOT A FUNNY THING THAT
8 THE STATE SERVED ON YOU THE REQUIREMENT TO GIVE HIM
9 NOTICE OF ALIBI. THE SOLICITOR WAS STANDING.. BUT
10 GO AHEAD AND STATE YOUR OWN POSITION.

11 MR. BAILEY: YOU JUST DID, YOUR
12 HONOR.

13 THE COURT: WELL, I'M JUST TRYING TO
14 SAVE THE JURY'S TIME.

15 MR. THEOS: YOUR HONOR, NOT FOR
16 PURPOSES OF OFFERING AN ALIBI BUT FOR PURPOSES OF
17 ATTESTING THAT MR. SIMMONS DID NOT HAVE ANY BLOOD
18 ON HIS CLOTHING OR ON HIS PERSON AT ANY TIME DURING
19 THIS WEEKEND, ON THE 30TH, ON THE 31ST, ON THE
20 FIRST. I THINK THAT THAT'S NOT AN ALIBI. IT'S NOT
21 BEING OFFERED FOR THE PURPOSE OF ESTABLISHING HIS
22 WHEREABOUTS OTHER THAN BEING AT THE SCENE. BUT IT
23 IS BEING OFFERED FOR THE PURPOSE OF SHOWING THAT
24 THERE ARE INCONSISTENCIES WITH THE FACTUAL EVIDENCE
25 AND WITH THE CONCLUSIONS THAT CAN BE DRAWN FROM THE

MOTIONS

1 FACTUAL EVIDENCE. HE DIDN'T HAVE ANY BLOOD ON HIS
2 PERSON. THAT CERTAINLY ISN'T RESTRICTED BY ALIBI.

3 MR. BAILEY: YOUR HONOR, IF HE COULD
4 PROVE THAT MR. MYZEKE HAD SOME BLOOD ON HIM THAT
5 DAY, THEN THAT MAY BE SOMETHING. BUT I DON'T THINK
6 THAT'S COMING. AND IF IT IS, THEN IT'S IMMATERIAL
7 AND THERE IS NOTHING THERE.

8 THE COURT: ALL RIGHT; NEXT POINT?

9 MR. THEOS: THE SECOND POINT, YOUR
10 HONOR, IS THAT MR. MYZEKE RESIDES RIGHT BEHIND MRS.
11 BOYD. AND BASED UPON THE CONCLUSION THAT THE
12 OFFICERS DRAW AT THE SCENE THAT HIS FOOTPRINT WAS
13 COMPATIBLE WITH AND CONSISTENT WITH THE FOOTPRINT
14 THAT WAS LEFT. THIRD, YOUR HONOR, THAT MR. MYZEKE
15 IS A CHRONIC DRUG AND ALCOHOL ABUSER WITH A HISTORY
16 OF VIOLENCE TOWARDS OLDER WOMEN INCLUDING AUTHORITY
17 FIGURES OR FORMER GIRLFRIENDS ALL MUCH OLDER THAN
18 HIMSELF. THE NEXT POINT, YOUR HONOR, WOULD BE THAT
19 MRS. BOYD BORE A STRIKING RESEMBLANCE TO HIS FORMER
20 GIRLFRIEND. THE NEXT POINT, YOUR HONOR, WOULD BE
21 THAT MR. MYZEKE WAS EVALUATED BY, I BELIEVE, IT WAS
22 THE WEBBER INSTITUTE AND DISPLAYED HOMICIDAL
23 TENDENCIES AND ANTISOCIAL BEHAVIOR WHICH IS
24 CONSISTENT WITH HIS MILITARY RECORD HAVING BEEN
25 DISCHARGED FOR LESS THAN HONORABLE REASONS BASED ON

MOTIONS

1 HIS ANTISOCIAL BEHAVIOR AND HIS DRUG
2 ADDICTION.

3 THE COURT: BACK UP TO THE
4 AFFIDAVIT. I JUST HAVEN'T BEEN ABLE TO -- PERHAPS
5 I JUST OVERLOOKED IT BECAUSE THIS IS A FOUR PAGE
6 AFFIDAVIT TYPED SINGLE LINE. WHERE IN THERE DOES
7 IT SAY THAT THE FOOTPRINTS OF MYZEKE ARE CONSISTENT
8 WITH THOSE THAT WERE FOUND AT THE SCENE?

9 MR. THEOS: (NO RESPONSE.)

10 THE COURT: I SEE THE STATEMENT IN
11 HIS INITIAL ASSESSMENT. CORPORAL MANCHESTER
12 DISCOVERED SOME SHOE PRINTS IN THE SAND ON A PATH
13 LEADING---

14 MR. THEOS: ONE SECOND, PLEASE.

15 THE COURT: ON THE LAST PAGE, THE
16 LAST PARAGRAPH; A SEARCH WARRANT TO SEARCH FOR
17 SHOES WITH A SIMILAR PATTERN. BUT YOU SAID
18 SOMETHING FAR STRONGER THAN THAT. YOU SAID THAT
19 THERE WAS A STATEMENT THAT HIS SHOE PRINTS WERE
20 SIMILAR TO THOSE THAT WERE FOUND AT THE SCENE. I
21 DON'T SEE THAT.

22 MR. THEOS: YOUR HONOR, I STAND TO
23 BE CORRECTED. THE STATEMENT IS THAT AT THE REQUEST
24 A SEARCH WARRANT TO SEARCH LESTER MYZEKE'S
25 RESIDENCE FOR SHOES WITH SIMILAR PATTERNS OR PRINTS

MOTIONS

1 OUTLINED; BLOODY CLOTHING WAS---

2 THE COURT: YES, SIR; I READ THAT.

3 MR. THEOS: I STAND TO BE

4 CORRECTED.

5 THE COURT: THANK YOU.

6 MR. THEOS: YOUR HONOR, THE NEXT

7 POINT WOULD BE THAT THERE WERE A NUMBER OF

8 NEIGHBORS ACCORDING TO THIS AFFIDAVIT THAT

9 ASSERTED, BASED UPON THEIR OBSERVATION, THAT MR.

10 MYZEKE'S BEHAVIOR CHANGED; THAT HE BECAME MARKEDLY

11 DIFFERENT IN HIS ROUTINE. HE APPEARED TO BE

12 NERVOUS; COMPLAINED OF PHYSICAL SYMPTOMS SUCH AS A

13 STOMACH PROBLEM. THEY ALSO ASSERT THAT THE

14 NEIGHBORS FEARED HIM BECAUSE OF HIS CHARACTER AND

15 REPUTATION FOR VIOLENCE. AND THEY POINT OUT THE

16 VIOLENCE WAS AGAINST HIS MOTHER AND SISTER. YOUR

17 HONOR, ON THE LAST PAGE THE AFFIANT IN THIS

18 STATEMENT STATES THAT ALL OF THOSE FACTORS LED HER

19 TO BELIEVE, ALONG WITH THE PARAGRAPH, THE FULL

20 FIRST PARAGRAPH AFTER THAT, THAT THE PROFILE

21 DEVELOPED BY HAZELWOOD WITH THE EXCEPTION OF A FEW

22 MINOR DETAILS WHICH CAN BE RECONCILED BY MYZEKE'S

23 ACTUAL PERSONALITY AND BEHAVIOR; BEHAVIORAL

24 CHARACTERISTICS. BUT ALL OF THOSE FACTORS LED THE

25 AFFIANT TO CONCLUDE AND BELIEVE THAT LESTER MYZEKE

MOTIONS

1 COMMITTED THE CRIME. NOW, YOUR HONOR---

2 THE COURT: WELL, AGAIN, WHERE DOES
3 IT SAY THAT?

4 MR. THEOS: THAT'S ON THE LAST
5 PAGE.

6 THE COURT: I'M LOOKING AT THE LAST
7 PAGE.

8 MR. THEOS: THE TOP -- IF YOU LOOK
9 AT THE TOP PARAGRAPH; IT'S NOT---

10 THE COURT: WE RECEIVED CONFIRMATION
11 AT THE LAB THAT NONE OF THE SUSPECT KITS SUBMITTED
12 MATCHED SUSPECT DNA IDENTIFIED LEADING AFFIANT TO
13 BELIEVE THAT LESTER MYZEKE COMMITTED THIS CRIME.

14 MR. THEOS: IF YOU GO ON FURTHER,
15 THE FIRST FULL SENTENCE OF THE LAST PARAGRAPH.
16 BASED UPON THE FOREGOING FACTS, THE AFFIANT HAS
17 PROBABLE CAUSE TO BELIEVE THAT LESTER MYZEKE HAD
18 THE ABILITY, OPPORTUNITY, AND MOTIVATION TO MURDER
19 LILLY BELL BOYD. AND, YOUR HONOR, THESE VARIOUS
20 AGENTS, ESPECIALLY THE ONES THAT PREPARED THIS
21 AFFIDAVIT, CERTAINLY DEFENSE COUNSEL SHOULD BE
22 ALLOWED AN OPPORTUNITY TO CROSS-EXAMINE THOSE
23 AGENTS RELATED TO THEIR INVESTIGATION AS A WHOLE
24 AND RELATED TO ANY REPORTS THAT THEY PREPARED; AND
25 SPECIFICALLY RELATED TO ANY STATEMENTS THAT THEY'VE

MOTIONS

1 GIVEN UNDER OATH RELATED TO THAT INVESTIGATION.
2 AND THIS WAS A STATEMENT UNDER OATH. AND TO NOT
3 ALLOW US TO DO THAT, YOUR HONOR, WOULD TIE OUR
4 HANDS AND IN A SENSE THAT WE ARE ATTEMPTING TO
5 ESTABLISH MR. SIMMONS -- ATTEMPTING TO ESTABLISH
6 INCONSISTENCIES WITH THE EVIDENCE AND THE EVIDENCE
7 REVEALED AND PRODUCED DURING THE INVESTIGATION AND
8 MR. SIMMONS HAVING COMMITTED THIS CRIME.

9 THE COURT: ALL RIGHT. ANY OTHER
10 PROFFER OFFER OR TESTIMONY OR EVIDENCE OR DOCUMENT
11 THAT YOU WISH TO PRESENT ON THAT POINT?

12 MR. THEOS: YOUR HONOR, I'VE GOT A
13 NUMBER OF REPORTS FROM VARIOUS OFFICERS THAT RELATE
14 TO MR. MYZEKE AND THEIR PARENT CONTENTION THAT HE
15 WAS THE PRIME SUSPECT. I CAN SHARE THOSE WITH MR.
16 BAILEY, AND I CAN MARK THEM AS AN EXHIBIT.

17 THE COURT: THAT'S UP TO YOU. I
18 ASSUME YOU'VE SEEN THOSE, MR. BAILEY.

19 MR. BAILEY: YES, SIR. HE GOT THEM
20 FROM---

21 THE COURT: BAYLON?

22 MR. BAILEY: YES, SIR.

23 MR. THEOS: YOUR HONOR, OFFICER MIKE
24 TURNER; THERE'S A REPORT THAT WAS PREPARED ON
25 ELEVEN SEPTEMBER, 1996. AND I WOULD LIKE TO

1 CROSS-EXAMINE OFFICER TURNER ON THIS REPORT THAT HE
2 PREPARED AND WOULD HOPEFULLY BE ALLOWED TO DO IT.
3 DO YOU WANT ME TO GO INTO THOSE THINGS THAT DON'T
4 RELATE TO THIS AGENT AT THIS POINT AND RELATE TO
5 THESE OTHER OFFICERS? WE'VE GOT THEM UNDER
6 SUBPOENA, BUT WE COULD DO IT BY WAY OF---

7 THE COURT: DO YOU PLAN ON CALLING
8 OFFICER TURNER?

9 MR. BAILEY: YOUR HONOR, HE'S
10 ALREADY TESTIFIED. I'LL MAKE HIM AVAILABLE IF MR.
11 THEOS WANTS TO CALL HIM IN HIS CASE; BUT HE'S
12 ALREADY TESTIFIED.

13 MR. THEOS: WE'VE SUBPOENAED HIM,
14 JUDGE. SO WE CAN---

15 THE COURT: WELL, WHY DON'T WE JUST
16 TAKE UP THE ISSUE OF WHAT THIS LADY CAN TESTIFY TO
17 NOW THAT JURY HAS BEEN OUT NOW FOR AN HOUR. AND,
18 YOU KNOW, WE NEED TO NOT DETAIN THEM FURTHER IF WE
19 CAN.

20 MR. THEOS: YOUR HONOR, I DID NOT
21 INTEND ON TRYING TO ELICIT ANY SPECIFIC INFORMATION
22 RELATED TO MR. MYZEKE FROM AGENT REESE. I WILL DO
23 THAT THROUGH OTHER OFFICERS. THAT WOULD HAVE BEEN
24 THE EXTENT OF MY QUESTIONING RELATED TO MR. MYZEKE;
25 WAS HE A SUSPECT.

MOTIONS

1 THE COURT: WELL, ANYTHING ELSE?

2 MR. THEOS: NO, SIR.

3 THE COURT: ALL RIGHT. ANYTHING
4 ELSE, MR. SOLICITOR?

5 MR. BAILEY: OTHER THAN JUST TO
6 POINT OUT, YOUR HONOR, THAT IF THAT'S ALL HE'S
7 TRYING TO GET OUT OF HER WAS HE A SUSPECT, THEN
8 THAT CLEARLY FALLS WITHIN THE PERIMETER OF THOSE
9 CASES. BECAUSE NOTHING ABOUT HIM BEING A SUSPECT
10 WOULD TEND TO EXCLUDE THE DEFENDANT. BUT IF HE
11 LEAVES IT HANGING LIKE THAT, THAT'S WHY THOSE CASES
12 SAY WHAT THEY SAY.

13 MR. THEOS: WELL, YOUR HONOR, I
14 INTEND ON OFFERING OTHER WITNESSES TO FOLLOW-UP ON
15 THAT TO ESTABLISH A NEXUS BETWEEN HER TESTIMONY AND
16 THEIRS TO SHOW THAT THERE ARE -- EXCUSE ME. THERE
17 IS EVIDENCE THAT IS INCONSISTENT WITH MR. SIMMONS
18 HAVING DONE THIS.

19 THE COURT: ALL RIGHT. THANK YOU.
20 MR. SOLICITOR, I SUSTAIN YOUR OBJECTION IN REGARD
21 TO THE LINE OF QUESTIONING AND INQUIRY THAT MR.
22 THEOS WISHES TO MAKE. OBVIOUSLY IN ANY SERIOUS
23 CASE OR MURDER CASE THERE MAY BE TWENTY-FIVE OR
24 MORE PERSONS THAT WOULD BE INTERVIEWED. YOU HAVE
25 IN THE RECORD THERE WAS SOME TWENTY-SEVEN PERSONS

MOTIONS

1 ON THE STATE'S FOR IDENTIFICATION; TWENTY-SEVEN
2 PERSONS BLOOD THAT WAS SENT TO DNA. AND THE FACT
3 THAT THIS SEARCH WARRANT AND AFFIDAVIT TO SEARCH
4 MR. MYZEKE'S HOME BECAUSE THEY WANTED -- AND TO GET
5 A BLOOD SAMPLE AND A FOOT PRINT SAMPLE AND TO CHECK
6 FOR CLOTHING WITH BLOOD OR OTHER FOR ANY SOUVENIRS
7 THAT MAY HAVE BEEN BROUGHT FROM THE CRIME. THE
8 COURT DOES NOT DISCERN THAT IN ANY WAY TO BE
9 EVIDENCE OF FACTS INCONSISTENT WITH THE ACCUSED'S
10 GUILT AND RAISE A REASONABLE INFERENCE OR
11 PRESUMPTION OR HIS INNOCENCE AS THE COURT POINTED
12 OUT IN STATE VS. BYNUM AND AGAIN UNDER STATE VS.
13 BECKHAM WHERE MR. BECKHAM'S COUNSEL, SWERLING AND
14 HARPOOTLIAN WANTED TO ADMIT EVIDENCE TO THE THIRD
15 PARTY GUILT THAT THERE WERE TWO OTHER PERSONS, TWO
16 MEN ON LITTLE MOUNTAIN ROAD ON THE NIGHT OF THE
17 MURDER AND SOMEONE ELSE HAD BEEN WITH ANDERSON --
18 THIS IS FEBRUARY THE 22ND. THAT'S AN OPINION OF
19 OUR SUPREME COURT JUST FOUR DAYS AGO. AND I DO NOT
20 THINK, BARRING A FURTHER OR OTHER SHOWING OR OTHER
21 FURTHER TESTIMONY THAT THAT WOULD BE PROPER, MR.
22 THEOS. THANK YOU. SO ANYTHING ELSE BEFORE WE
23 BRING THE JURY IN?

24 MR. BAILEY: NOT FROM THE STATE,
25 YOUR HONOR.

ANN REESE - CONT'D CROSS/MR. THEOS

1 MR. THEOS: NOTHING, YOUR HONOR.

2 THE COURT: ALL RIGHT. BRING THE
3 JURY IN, PLEASE.

4 (AT THIS TIME JURY RETURNS TO OPEN COURT.)

5 THE COURT: EXCUSE US FOR THE DELAY,
6 LADIES AND GENTLEMEN OF THE JURY. AT THIS TIME
7 WE'LL CONTINUE WITH THE TESTIMONY. MA'AM, YOU'RE
8 STILL UNDER OATH.

9 MRS. REESE: YES, SIR.

10 CONTINUED CROSS-EXAMINATION

11
12 BY MR. THEOS:

13 Q. NOW, ON DECEMBER THE FIFTH YOU WENT TO THE
14 DETENTION CENTER, IS THAT CORRECT; RICHLAND COUNTY?

15 A. YES, SIR.

16 Q. AND YOU WERE THERE WITH AGENT MEARS FROM SLED?

17 A. YES.

18 Q. AND YOU WERE THERE WITH DETECTIVE HENDRICKS,
19 MAYBELLE HENDRICKS, FROM THE DORCHESTER COUNTY
20 POLICE DEPARTMENT?

21 A. ST. GEORGE POLICE DEPARTMENT.

22 Q. I'M SORRY; THE ST. GEORGE POLICE DEPARTMENT. NOW,
23 YOU ALL WENT INTO THE DETENTION CENTER TO INTERVIEW
24 MR. SIMMONS?

25 A. YES, SIR.

ANN REESE - CONT'D CROSS/MR. THEOS

- 1 Q. WHO ELSE WAS IN THE ROOM? WAS IT JUST THE THREE OF
2 YOU, OR WAS MR. HOWARD THERE ALSO?
- 3 A. MYSELF, AGENT MEARS, DETECTIVE HENDRICKS, AND
4 KENNETH SIMMONS.
- 5 Q. AND AS YOU TESTIFIED EARLIER, THE EXTENT OF THE
6 ADVISING MR. SIMMONS OF HIS MIRANDA WARNINGS IS
7 CONTAINED IN THE TRANSCRIPT AND THE TRANSCRIPT OF
8 THE TAPE RECORDING AND ON THE TAPE RECORDING
9 ITSELF; CORRECT?
- 10 A. YES, SIR.
- 11 Q. AND THIS WHICH IS MARKED STATE'S EXHIBIT ELEVEN IS
12 THE ORIGINAL ADVISEMENT OF RIGHTS FORM?
- 13 A. YES, SIR.
- 14 Q. IT'S DATED DECEMBER THE FIFTH?
- 15 A. IT WAS DATED DECEMBER THE FIFTH, BUT I CAN'T SEE
16 THAT.
- 17 Q. I'M SORRY. IF YOU'D STEP DOWN, PLEASE. (WITNESS
18 COMPLIES.) IT'S DATED DECEMBER THE 5TH, 1997;
19 CORRECT?
- 20 A. YES, SIR.
- 21 Q. AND THEN IF WE COULD SLIDE IT OVER JUST A LITTLE
22 BIT. THE TIME REFLECTED ON THAT IS 12:50 P.M.;
23 CORRECT?
- 24 A. YES, SIR.
- 25 Q. AND THEN ALL OF THESE RIGHTS WERE READ TO MR.

ANN REESE - CONT'D CROSS/MR. THEOS

1 SIMMONS; CORRECT?

2 A. YES, SIR.

3 Q. AND THEN THE SIGNATURE AT THE BOTTOM IS THAT OF MR.
4 SIMMONS; CORRECT?

5 A. YES, SIR.

6 Q. AND I BELIEVE ON THE BOTTOM LEFT-HAND CORNER IS
7 YOUR SIGNATURE AND THE TIME AS BEING 12:53 P.M.?

8 A. YES, SIR.

9 Q. SO MR. SIMMONS WAS ADVISED OF THOSE MIRANDA
10 WARNINGS FROM 12:50 TO 12:53 P.M.; IS THAT CORRECT?

11 A. CAN WE GO BACK TO THE TIME IN THE BEGINNING?

12 Q. YES.

13 A. OKAY. THIS WAS DONE BY AGENT MEARS. THAT'S HIS
14 HANDWRITING. CAN WE NOW GO BACK DOWN TO THE BOTTOM
15 LEFT?

16 Q. YES.

17 A. THIS IS MY SIGNATURE AND DURING THE TIME. AND I
18 LOOKED AT MY WATCH, AND THAT WAS THE TIME THAT I
19 PUT ON THERE.

20 Q. SO ASSUMING AGENT MEARS NOTED THE CORRECT TIME OF
21 12:50, AND YOU NOTED THE CORRECT TIME OF 12:53;
22 THEN CAN WE NOT STATE THAT IT TOOK THREE MINUTES
23 FOR MR. SIMMONS TO BE ADVISED OF HIS RIGHTS?

24 A. YES, SIR.

25 (AT THIS TIME WITNESS RETURNS TO WITNESS STAND.)

ANN REESE - CONT'D CROSS/MR. THEOS

1 Q. AND AS YOU SAID THERE IS A RECORD OF, NOT ONLY THE
2 STATEMENT THAT WAS GIVEN, BUT OF THOSE RIGHTS AS
3 THEY WERE GIVEN; CORRECT?

4 A. RIGHT. THAT WERE ON THE TAPE; CORRECT IT ON THE
5 TAPE.

6 Q. AND THERE IS AND WAS NO OTHER DISCUSSION RELATED TO
7 THOSE RIGHTS OTHER THAN WHAT IS ON THE TAPE;
8 CORRECT?

9 A. THAT'S CORRECT.

10 Q. NOW IF WE COULD MOVE FORWARD TO THE---

11 MR. THEOS: I'M SORRY, YOUR HONOR.
12 IF I MIGHT ASK MR. BAILEY ONE QUESTION BEFORE I ASK
13 ANY MORE, PLEASE?

14 THE COURT: SURE

15 (OFF-THE-RECORD DISCUSSION IS HELD.)

16 MR. THEOS: NO FURTHER QUESTIONS,
17 YOUR HONOR, WITH REGARDS TO THIS STATEMENT.

18 THE COURT: ANYTHING ON RE-DIRECT?

19 MR. BAILEY: NO, SIR, YOUR HONOR.

20 THE COURT: STEP DOWN. NEXT
21 WITNESS, PLEASE.

22 MR. BAILEY: MAYBELLE HENDRICKS.

23 THE COURT: COME AROUND, PLEASE.

24 - - - - -

25 WHEREUPON,

MAYBELLE HENDRICKS - DIRECT/MR. BAILEY

MAYBELLE HENDRICKS, WHO AFTER BEING FIRST
DULY SWORN TO TELL THE TRUTH, TESTIFIED
AS FOLLOWS:

DIRECT EXAMINATION

BY MR. BAILEY:

Q. MRS. HENDRICKS, TELL THE JURY, PLEASE, WHERE YOU'RE
EMPLOYED.

A. AT THE ST. GEORGE POLICE DEPARTMENT.

Q. WHAT'S YOUR POSITION WITH THE POLICE DEPARTMENT?

A. DETECTIVE.

Q. OKAY. HOW MANY YEARS OF LAW ENFORCEMENT EXPERIENCE
DO YOU HAVE?

A. EIGHTEEN.

Q. OKAY. NOW, THERE'S BEEN SOME TESTIMONY THAT A TASK
FORCE WAS FORMED AFTER LILLY BELL BOYD'S MURDER.
WERE YOU ASSIGNED TO THAT TASK FORCE?

A. YES, SIR.

Q. I WANT TO CALL YOUR ATTENTION TO DECEMBER THE
FIFTH, 1997, AND ASK WHETHER OR NOT YOU WENT TO THE
RICHLAND COUNTY DETENTION CENTER ALONG WITH ANN
REESE WHO JUST TESTIFIED AND SLED AGENT KENNY
MEARS?

A. YES, I DID.

Q. WOULD YOU STATE WHETHER OR NOT YOU SAW THE
DEFENDANT, KENNETH SIMMONS, AT THE DETENTION

MAYBELLE HENDRICKS - DIRECT/MR. BAILEY

1 CENTER?

2 A. YES, I DID.

3 Q. WOULD YOU POINT MR. SIMMONS OUT FOR THE RECORD,
4 PLEASE?

5 A. SITTING OVER THERE AT THE END OF THE TABLE.

6 Q. OKAY. WHAT ROOM DID Y'ALL SEE HIM AT AT THE
7 DETENTION CENTER?

8 A. THE INVESTIGATOR'S OFFICE.

9 Q. OKAY. WOULD YOU TELL THE JURY, PLEASE MRS.
10 HENDRICKS, WHAT YOU RECALL ABOUT MR. SIMMONS'
11 APPEARANCE AND DEMEANOR WHEN YOU MET WITH HIM THAT
12 DAY.

13 A. THE MANNER WAS GOOD. HE WAS A LITTLE NERVOUS.

14 Q. WHEN HE SPOKE TO YOU, DID YOU HAVE ANY DIFFICULTY
15 UNDERSTANDING HIM?

16 A. NO, SIR.

17 Q. AND DID HE APPEAR TO HAVE ANY DIFFICULTY
18 UNDERSTANDING YOU?

19 A. NO, SIR.

20 Q. DID HE APPEAR TO BE AWARE OF WHAT WAS GOING ON
21 AROUND HIM?

22 A. YES, SIR.

23 Q. DID YOU NOTE ANY INDICATION OF ANY INABILITY TO
24 COMPREHEND WHAT WAS HAPPENING OR WHERE HE WAS OR
25 WHAT WAS GOING ON OR ANYTHING OF THAT NATURE?

MAYBELLE HENDRICKS - DIRECT/MR. BAILEY

1 A. NO, SIR.

2 Q. OKAY. AND WERE YOU PRESENT WHEN SLED AGENT, KENNY
3 MEARS, WENT OVER HIS MIRANDA RIGHTS FORM THAT'S IN
4 EVIDENCE?

5 A. YES, SIR.

6 Q. WERE YOU PRESENT THE ENTIRE TIME THOSE RIGHTS WERE
7 READ TO HIM?

8 A. YES, SIR.

9 Q. AND THEY WERE TAPED?

10 A. YES, SIR.

11 Q. THERE'S BEEN TESTIMONY THAT THERE WAS A TAPED
12 INTERVIEW THAT WAS CONDUCTED DURING THE COURSE IN
13 WHICH MIRANDA RIGHTS WERE READ. WERE WAS PRESENT
14 FOR THE ENTIRE TAPED INTERVIEW; THE INITIAL TAPE?

15 A. FOR THE MIRANDA I WAS PRESENT; YES, SIR.

16 Q. ALL RIGHT. AND ON THAT MIRANDA FORM -- I HAND YOU
17 THIS AS STATE'S ELEVEN. I CALL YOUR ATTENTION TO
18 THE WITNESS SIGNATURE DOWN HERE AT THE BOTTOM
19 LEFT-HAND PORTION OF THAT. IS THAT YOUR SIGNATURE?

20 A. YES, SIR.

21 Q. OKAY. AND DID YOU OBSERVE KENNETH SIMMONS SIGN
22 ACKNOWLEDGMENT OF THE MIRANDA RIGHTS?

23 A. YES, I DID.

24 Q. THAT'S YOUR SIGNATURE THERE?

25 A. YES, SIR.

MAYBELLE HENDRICKS - DIRECT/MR. BAILEY

1 Q. AND UNDERNEATH THAT THERE'S A WAIVER OF RIGHTS
2 FORM. DID YOU OBSERVE MR. SIMMONS SIGN THAT?

3 A. YES, I DID.

4 Q. OUT TO THE LEFT OF EACH ONE OF THOSE RIGHTS THERE'S
5 AN INITIAL K.S. BESIDE EACH RIGHT. WHO PUT THAT
6 "K.S." THERE?

7 A. MR. KENNETH SIMMONS DID.

8 Q. YOU SAW HIM DO THAT?

9 A. YES, SIR.

10 Q. MRS. HENDRICKS, DURING THE TIME THAT YOU WERE
11 PRESENT DID MR. SIMMONS EXPRESS ANY INABILITY TO
12 UNDERSTAND THAT MIRANDA FORM OR UNDERSTAND HIS
13 RIGHTS?

14 A. NO, SIR, HE DIDN'T.

15 Q. OKAY. AT ANY POINT IN TIME THAT YOU WERE PRESENT
16 WITH MR. SIMMONS, DID EITHER YOU OR MRS. REESE OR
17 KENNY MEARS OR ANYBODY ELSE OFFER ANY INCENTIVE TO
18 MR. SIMMONS IF HE WOULD GIVE Y'ALL A STATEMENT?

19 A. NO, SIR, WE DIDN'T.

20 Q. WERE ANY THREATS MADE TO HIM?

21 A. NO, SIR.

22 Q. ANY COERCION; ANYTHING OF THAT NATURE?

23 A. NO, SIR.

24 Q. DID HE ASK FOR ANYTHING THAT HE WASN'T GIVEN LIKE A
25 DRINK OF WATER OR FOOD OR ANYTHING OF THAT NATURE?

MAYBELLE HENDRICKS - DIRECT/MR. BAILEY

1 A. NO, SIR.

2 Q. DID HE APPEAR TO BE WELL RESTED?

3 A. HE APPEARED TO BE; YES, SIR.

4 Q. DID HE APPEAR TO BE SICK OR UNDER ANY DISABILITY
5 THAT YOU WERE AWARE OF?

6 A. NO, SIR.

7 Q. TO THE BEST OF YOUR KNOWLEDGE WAS THAT TAPED
8 INTERVIEW GIVEN FREELY AND VOLUNTARILY?

9 A. YES, SIR.

10 Q. HAVE YOU READ A TRANSCRIPT OF THAT TAPE THAT WAS
11 MADE FROM THE TAPE?

12 A. YES.

13 Q. A TYPED TRANSCRIPT?

14 A. YES.

15 Q. HAVE YOU LISTENED TO THE TAPE AND FOLLOWED THE
16 TRANSCRIPT AT THE SAME TIME?

17 A. YES, SIR.

18 Q. AND WAS THAT TRANSCRIPT A REASONABLY
19 ACCURATE REPRESENTATION OF WHAT WAS ON
20 THE TAPE?

21 A. YES, SIR.

22 MR. BAILEY: YOUR HONOR, NOTHING
23 FURTHER FROM MRS. HENDRICKS, BUT WOULD RESERVE THE
24 RIGHT TO RECALL.

25 THE COURT: OKAY.

KENNETH M. MEARS - DIRECT/MR. BAILEY

1 MR. THEOS: NO QUESTIONS, YOUR
2 HONOR.

3 THE COURT: STEP DOWN. NEXT
4 WITNESS.

5 MR. BAILEY: KENNY MEARS.

6 THE COURT: COME AROUND, MR. MEARS.

7 - - - - -

8 WHEREUPON,

9 KENNETH M. MEARS, WHO AFTER BEING FIRST
10 DULY SWORN TO TELL THE TRUTH, TESTIFIED
11 AS FOLLOWS:

12 DIRECT EXAMINATION

13 BY MR. BAILEY:

14 Q. MR. MEARS, YOU'RE A SLED AGENT?

15 A. YES, SIR.

16 Q. ALL RIGHT. PLEASE TELL THE JURY WHAT YOUR
17 EDUCATIONAL BACKGROUND IS.

18 A. AFTER HIGH SCHOOL, I ATTENDED AND GRADUATED FROM
19 SOUTH CAROLINA STATE COLLEGE WITH A BACHELOR OF
20 SCIENCE DEGREE. I ATTENDED THE CITADEL AND GOT A
21 MASTER OF ART DEGREE FROM WEBSTER UNIVERSITY. ALSO
22 I GRADUATED FROM THE N.C.I. ACADEMY IN QUANTICO,
23 VIRGINIA.

24 Q. HOW LONG HAVE YOU BEEN WITH SLED?

25 A. I'VE BEEN WITH SLED FOR OVER FIVE YEARS.

KENNY MEARS - DIRECT/MR. BAILEY

1 Q. AND WHAT'S YOUR PRIOR LAW ENFORCEMENT EXPERIENCE
2 BEFORE GOING TO SLED?

3 A. I HAVE NINETEEN YEARS TOTAL WITH TWELVE OF IT BEING
4 WITH THE WALTERBORO POLICE DEPARTMENT; AND STARTED
5 IN INVESTIGATIONS IN 1988.

6 Q. AND YOUR PRESENT JOB WITH SLED IS WHAT?

7 A. PRESENTLY I'M EMPLOYED WITH SLED AS A CRIMINAL
8 INVESTIGATOR.

9 Q. OKAY. AND YOU WORK OUT OF THE LOW COUNTRY OFFICE?

10 A. YES, SIR; THAT'S CORRECT.

11 Q. WERE YOU ASSIGNED TO WORK WITH THE TASK FORCE THAT
12 WAS FORMED AFTER LILLY BELL BOYD'S MURDER?

13 A. I WAS ASSIGNED TO THE TASK FORCE APPROXIMATELY THE
14 END OF NOVEMBER OF '97.

15 Q. OF 1997?

16 A. YES, SIR.

17 Q. ALL RIGHT, SIR. AND I WANT TO CALL YOUR ATTENTION
18 TO DECEMBER THE FIFTH, 1997 AND ASK WHETHER OR NOT
19 YOU ACCOMPANIED THE TWO LADIES THAT JUST TESTIFIED,
20 MRS. HENDRICKS AND MRS. REESE, TO COLUMBIA?

21 A. YES, SIR, I DID.

22 Q. DID YOU GO TO THE RICHLAND COUNTY DETENTION CENTER
23 WITH HIM?

24 A. YES, SIR.

25 Q. AND AT THE DETENTION CENTER DID YOU ENCOUNTER THE

KENNY MEARS - DIRECT/MR. BAILEY

1 DEFENDANT, KENNETH SIMMONS?

2 A. YES, SIR, I DID.

3 Q. FOR THE RECORD, PLEASE POINT MR. SIMMONS OUT.

4 A. MR. SIMMONS IS THE GENTLEMAN ON THE LEFT SITTING AT
5 THE DEFENSE TABLE IN THE BLACK COAT AND RED TIE.

6 Q. WHERE IN THE DETENTION CENTER DID YOU SEE HIM?

7 A. I SAW HIM IN INVESTIGATOR HOWARD'S OFFICE.

8 Q. ALL RIGHT. WOULD YOU STATE WHETHER OR NOT
9 ACCORDING TO YOUR RECOLLECTION; WAS HE HANDCUFFED
10 OR SHACKLED OR ANYTHING OF THAT NATURE?

11 A. NO, SIR, HE WAS NOT HANDCUFFED OR SHACKLED.

12 Q. CAN YOU DESCRIBE THE ROOM THAT YOU WERE IN?

13 A. THE ROOM WAS AN OFFICE APPROXIMATELY 16 X 24 IN
14 SIZE WITH A COUPLE OF DESKS.

15 Q. JUST A TYPICAL OFFICE; GOVERNMENT OFFICE?

16 A. YES, SIR; THAT'S CORRECT.

17 Q. WOULD YOU TELL THE JURY WHAT YOU RECALL ABOUT MR.
18 SIMMONS' APPEARANCE AND Demeanor?

19 A. UPON MR. SIMMONS COMING INTO THE ROOM, HE APPEARED
20 TO BE NORMAL AND CALM, WILLING TO TALK.

21 Q. OKAY. DID HE APPEAR TO BE SICK OR SLEEPY OR UNDER
22 ANY KIND OF DISABILITY THAT WOULD INTERFERE WITH
23 HIS ABILITY TO COMMUNICATE INTELLIGENTLY WITH YOU,
24 AND DID YOU DO THE SAME WITH HIM?

25 A. NO, SIR.

KENNY MEARS - DIRECT/MR. BAILEY

1 Q. DID HE APPEAR NORMAL IN ALL RESPECTS TO YOU?

2 A. YES, SIR, HE DID.

3 Q. ALL RIGHT, SIR. AND WE HAVE IN EVIDENCE THROUGH
4 THE TESTIMONY OF MRS. REESE AND MRS. HENDRICKS
5 STATE'S ELEVEN WHICH THEY TESTIFIED WAS A MIRANDA
6 RIGHTS FORM. I'D ASK YOU TO TAKE A LOOK AT THAT.
7 (WITNESS REVIEWS DOCUMENT.)

8 A. ALL RIGHT.

9 Q. ALL RIGHT, SIR. WOULD YOU STATE WHETHER OR NOT YOU
10 READ THOSE RIGHTS TO MR. SIMMONS?

11 A. YES, SIR, I DID.

12 Q. AND AT THE TIME YOU DID THAT, WERE MRS. REESE AND
13 MRS. HENDRICKS PRESENT?

14 A. YES, SIR.

15 Q. AND AT THE TIME YOU READ THE RIGHTS, WAS THERE A
16 TAPE PLAYER ON?

17 A. I THINK I GAVE MR. SIMMONS A COPY OF THE RIGHTS,
18 AND I RETAINED A COPY. AND I ASKED HIM TO READ
19 ALONG WITH ME.

20 Q. OKAY.

21 A. AND I DON'T RECALL IF I READ THE RIGHTS FIRST AND
22 THEN TURNED THE TAPE ON AND READ THEM AGAIN.

23 Q. OKAY.

24 A. BUT AT SOME POINT THE TAPE WAS TURNED ON AND HIS
25 RIGHTS WERE READ ON TAPE ALSO.'

KENNY MEARS - DIRECT/MR. BAILEY

- 1 Q. ALL RIGHT, SIR. AND WHEN YOU READ THE MIRANDA
2 RIGHTS TO MR. SIMMONS, DID HE APPEAR TO UNDERSTAND
3 YOU WHEN YOU READ EACH RIGHT?
- 4 A. YES, SIR, HE DID.
- 5 Q. AND DID YOU WITNESS HIS SIGNATURE ON THAT MIRANDA
6 ACKNOWLEDGMENT OF RIGHTS FORM?
- 7 A. NO, SIR, NOT ON THE MIRANDA. IT WAS WITNESSED BY
8 DETECTIVE HENDRICKS AND ANN REESE.
- 9 Q. WHEN I SAY WITNESSED IT, WERE YOU PRESENT WHEN HE
10 SIGNED IT?
- 11 A. YES, SIR.
- 12 Q. OKAY. AND YOU DIDN'T SIGN AS A WITNESS, BUT DID
13 YOU OBSERVE HIM SIGN IT?
- 14 A. YES, SIR, I DID.
- 15 Q. DID YOU OBSERVE HIM SIGN THE WAIVER OF RIGHTS FORM?
- 16 A. YES, SIR.
- 17 Q. ON THE BOTTOM OF THAT?
- 18 A. YES, SIR.
- 19 Q. AT ANY POINT IN TIME EITHER BEFORE OR AFTER THAT
20 TAPE WAS TURNED ON, DID YOU THREATEN MR. SIMMONS IN
21 ANY WAY?
- 22 A. NO, SIR; HE NEVER WAS THREATENED AT ANY TIME.
- 23 Q. DID YOU MAKE HIM ANY PROMISES?
- 24 A. NO, SIR; NO PROMISES.
- 25 Q. AND ANY DIFFICULTY COMMUNICATING -- I THINK I'VE

KENNY MEARS - DIRECT/MR. BAILEY

1 ASKED THIS BEFORE; BUT JUST TO MAKE SURE WE'RE
2 CLEAR -- BETWEEN YOU AND HIM?

3 A. NONE WHATSOEVER.

4 Q. ALL RIGHT, SIR. I'M GOING TO HAND YOU A TAPE AND
5 ASK IF THIS APPEARS TO BE A COPY OF THE TAPE THAT
6 YOU TOOK? I'M REFERRING TO DECEMBER THE FIFTH.

7 A. YES, SIR. THIS APPEARS TO BE THE COPY.

8 Q. ALL RIGHT, SIR.

9 THE COURT: THAT'S STATE'S NUMBER
10 WHAT?

11 MR. BAILEY: STATE'S TWENTY, YOUR
12 HONOR.

13 STATE'S EXHIBIT NO. 20

14 ADMITTED AS EVIDENCE

15 Q. I HAND YOU WHAT'S BEEN MARKED STATE'S SEVENTEEN AND
16 ASK IF THIS APPEARS TO BE A TRANSCRIPT OF THAT
17 TAPE?

18 STATE'S EXHIBIT NO. 17

19 ADMITTED AS EVIDENCE

20 A. YES, SIR. THIS IS THE FIRST TAPE THAT WAS OF OUR
21 CONVERSATION WITH KENNETH SIMMONS ON DECEMBER THE
22 FIFTH.

23 Q. ALL RIGHT, SIR. AND DID YOU LISTEN TO THE TAPE
24 AFTER IT WAS TAPED AND AFTER THE TRANSCRIPT WAS
25 TYPED AND FOLLOW ALONG AS THAT TAPE WAS PLAYED AND

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1 READ THE TRANSCRIPT AT THE SAME TIME?

2 A. YES, SIR, I DID LISTEN TO THE TAPE AND READ ALONG
3 ON THE TRANSCRIPT.

4 Q. IS THAT TRANSCRIPT A REASONABLY ACCURATE
5 REPRESENTATION OF WHAT'S ON THE TAPE?

6 A. YES, SIR, IT IS.

7 Q. ALL RIGHT, SIR. ON PAGE TWENTY-THREE OF THAT
8 TRANSCRIPT, THE TAPE IS CUT OFF AND RE-STARTED; IS
9 THAT CORRECT?

10 A. AT SOME POINT. I DON'T HAVE A COPY.

11 Q. ALL RIGHT, SIR. I'LL HAND THAT BACK TO YOU. I
12 APOLOGIZE.

13 A. I DON'T SEE PAGE 23.

14 Q. IT MAY BE A PAGE OR TWO OFF. LET ME CHECK ONE
15 THING. (COUNSEL REVIEWS DOCUMENT.) ALL RIGHT,
16 SIR. I'M SORRY. PAGE 24 DOWN AT THE BOTTOM.
17 (WITNESS REVIEWS DOCUMENT.)

18 A. YES, SIR; IT WAS CUT OFF.

19 Q. ALL RIGHT, SIR. AND WILL YOU TELL THE JURY,
20 PLEASE, WHY Y'ALL CUT THE TAPE OFF; WHAT WAS
21 HAPPENING THEN?

22 A. AT ONE POINT DURING THE INTERVIEW WITH KENNETH
23 SIMMONS, OFFICER HOWARD CAME BACK INTO HIS OFFICE
24 TO GET SOMETHING FROM HIS DESK DRAWER.

25 Q. ALL RIGHT. AND ABOUT HOW LONG WAS THE TAPE CUT

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1 OFF?

2 A. MAYBE THIRTY OR FORTY-FIVE SECONDS.

3 Q. ALL RIGHT. DID ANYTHING OF SUBSTANCE OCCUR BETWEEN
4 YOU AND MR. SIMMONS WHILE THAT TAPE WAS OFF?

5 A. NO, SIR, NOTHING.

6 Q. OKAY.

7 MR. BAILEY: YOUR HONOR, AT THIS
8 POINT I'VE GOT COPIES OF THE TRANSCRIPT FOR EACH
9 ONE OF THE JURORS. I'D LIKE TO PLAY THE TAPE. AND
10 SINCE PARTS OF IT ARE SOMEWHAT DIFFICULT TO
11 UNDERSTAND, I'D LIKE TO GIVE THEM A TRANSCRIPT SO
12 THEY CAN FOLLOW ALONG WITH US.

13 THE COURT: ANY OBJECTION?

14 MR. THEOS: NO, SIR.

15 THE COURT: ALL RIGHT. PROCEED.

16 MAY I HAVE A COPY?

17 MR. BAILEY: YES, SIR.

18 THE COURT: THIS IS STATE'S NUMBER
19 17 THAT WAS JUST MARKED?

20 MR. BAILEY: YES, SIR.

21 * * * * *

22 (AT THIS TIME STATE'S EXHIBIT NO. 20, A TAPED
23 CONVERSATION BETWEEN AGENT MEARS AND DEFENDANT,
24 KENNETH SIMMONS FROM 12/5/97 IS PLAYED FOR THE
25 JURY.)

KENNY MEARS - DIRECT/MR. BAILEY

* * * * *

THE COURT: ARE WE AT A BREAKING
POINT, SOLICITOR?

MR. BAILEY: YES, SIR.

THE COURT: IT'S NOW LUNCH TIME.
YOU MAY STEP DOWN, MR. MEARS. MADAM FORELADY AND
LADIES AND GENTLEMEN OF THE JURY; IT'S TIME TO
RECESS FOR LUNCH AT THIS TIME. YOU'RE UNDER YOUR
CONTINUING OATH AND OBLIGATION NOT TO DISCUSS THE
CASE OR ALLOW ANYONE TO DISCUSS IT WITH YOU OR IN
YOUR PRESENCE. Y'ALL PLEASE HAVE A PLEASANT
LUNCH.

(WHEREUPON AT 1:20 P.M. JURY CONVENES FOR LUNCH
RECESS.)

THE COURT: ALL RIGHT. IS THERE
ANYTHING GENTLEMEN AT THIS TIME BEFORE WE RECESS?

MR. BAILEY: YOUR HONOR, BEFORE I
FORGET ABOUT IT. MR. THEOS AND I HAD AGREED TO --
THIS IS A COPY OF THE MIRANDA CARD THAT AGENT
HOWARD HAD, AND I NEGLECTED TO GET HIM TO MAKE A
COPY OF IT. WE DID AT THE PREVIOUS HEARING; BUT I
WANTED TO GO AHEAD AND MARK THIS.

THE COURT: MAKE IT PART AND PARCEL
OF THE RECORD?

MR. BAILEY: YES, SIR.

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1 THE COURT: BY AGREEMENT?

2 MR. THEOS: YES, SIR.

3 THE COURT: THAT WOULD BE?

4 THE COURT REPORTER: THAT'S STATE'S
5 NUMBER 28.

6 STATE'S EXHIBIT NO. 28

7 MARKED FOR I.D.

8 THE COURT: ARE WE STILL ON
9 SCHEDULE, MR. SOLICITOR, FOR COMPLETING THE STATE'S
10 CASE AT OR ABOUT SIX?

11 MR. BAILEY: YES, SIR.

12 THE COURT: BEARING ANY UNFORESEEN
13 COMPLICATIONS?

14 MR. BAILEY: YES, SIR.

15 THE COURT: ALL RIGHT. WE'LL BE IN
16 RECESS UNTIL 2:30, PLEASE, LADIES AND GENTLEMEN.
17 ENJOY YOUR LUNCH.

18 (LUNCH RECESS.)

19 - - - - -

20 THE COURT: ALL RIGHT, GENTLEMEN.
21 ANYTHING BEFORE WE BEGIN?

22 MR. BAILEY: NOTHING FROM THE STATE,
23 YOUR HONOR.

24 MR. THEOS: NO, SIR.

25 THE COURT: BRING THE JURY IN,

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PLEASE.

(AT THIS TIME JURY RETURNS TO OPEN COURT.)

THE COURT: LADIES AND GENTLEMEN, I
HOPE YOU HAD A PLEASANT LUNCH. AT THIS TIME WE
WILL PROCEED WITH FURTHER TESTIMONY. YOU MAY CALL
YOUR NEXT WITNESS.

MR. BAILEY: YOUR HONOR, MR. MEARS
NEEDS TO RETURN ON THE STAND.

THE COURT: YOU MAY RETURN TO THE
STAND, MR. MEARS. YOU'RE STILL UNDER OATH, PLEASE.

- - - - -

WHEREUPON,

KENNETH MEARS, WHO BEING PREVIOUSLY
SWORN TO TELL THE TRUTH, TESTIFIED AS
FOLLOWS:

CONTINUED EXAMINATION

BY MR. BAILEY:

Q. MR. MEARS, AFTER YOU MADE THAT TAPE THE JURY JUST
HEARD WHICH I THINK ENDED SOME TIME APPROXIMATELY
2:00 P.M.; WILL YOU STATE WHETHER OR NOT YOU
REQUESTED THAT KENNETH SIMMONS GIVE YOU A WRITTEN
STATEMENT?

A. YES, SIR. I ASKED HIM TO WRITE ME A WRITTEN
STATEMENT.

Q. WHY DID YOU DO THAT?

KENNY MEARS - DIRECT/MR. BAILEY

1 A. AT TIMES A TAPE MISSES PARTS OF INTERVIEWS; AND I
2 ASKED HIM TO GIVE ME A SUMMATION OF HOW THE
3 INTERVIEW TOOK PLACE ON TAPE.

4 Q. ALL RIGHT, SIR. I'M GOING TO HAND YOU WHAT'S BEEN
5 MARKED PREVIOUSLY IN THIS CASE AS STATE'S 29 AND
6 ASK IF YOU CAN IDENTIFY THAT, MR. MEARS?

7 A. YES, SIR, I CAN.

8 Q. WHAT IS THAT?

9 A. THIS IS THE HANDWRITTEN STATEMENT WRITTEN BY
10 KENNETH SIMMONS IN HIS OWN HANDWRITING.

11 THE COURT: WITHOUT OBJECTION, SIR?

12 MR. THEOS: YES, SIR.

13 STATE'S EXHIBIT NO. 28

14 ADMITTED AS EVIDENCE

15 THE COURT: ALL RIGHT, SIR.

16 Q. MR. MEARS, DOES THAT STATEMENT INDICATE WHEN YOU
17 STARTED TO GO OVER THAT WITH MR. SIMMONS?

18 A. NO, SIR. IT DOES NOT STATE WHEN IT STARTED; BUT IT
19 STATE'S WHEN IT WAS ENDED.

20 Q. WHAT TIME DID IT END?

21 A. IT ENDED AT 3:05 P.M. ON THE FIFTH OF DECEMBER OF
22 '97.

23 Q. IS THAT A STANDARD SLED VOLUNTARY STATEMENT FORM?

24 A. YES, SIR, IT IS.

25 Q. TWO PAGES IN LENGTH?

KENNY MEARS - DIRECT/MR. BAILEY

1 A. YES, SIR.

2 Q. ALL RIGHT, SIR. WHAT I'M GOING TO DO IS PUT THIS
3 ON THE SCREEN FOR THE BENEFIT OF THE JURY. MR.
4 MEARS, DO YOU HAVE A COPY OF THAT HANDY? IF NOT,
5 I'LL HAND YOU A COPY.

6 A. NO, SIR, I DON'T HAVE A COPY.

7 MR. BAILEY: ONE SECOND, PLEASE,
8 YOUR HONOR.

9 THE COURT: ALL RIGHT, SIR.

10 Q. ALL RIGHT, SIR. BETWEEN THE TIME THAT THE TAPE
11 ENDED WHICH I THINK ACCORDING TO THE TAPE IS
12 APPROXIMATELY 2:00 P.M.; AT 3:05 P.M. WHICH IS THE
13 TIME WRITTEN DOWN AT THE BOTTOM OF THIS STATEMENT
14 FORM; WHAT WAS GOING ON BETWEEN YOU AND MR.
15 SIMMONS?

16 A. AFTER THE TAPED CONVERSATION HAD ENDED, I ASKED HIM
17 TO GIVE ME A WRITTEN STATEMENT. AND I EXPLAINED
18 WHY I WANTED ONE. AND AT FIRST HE ASKED ME TO
19 WRITE IT FOR HIM, BUT I SUGGESTED THAT HE WRITE IT
20 IN HIS OWN HANDWRITING. AFTER ABOUT TEN MINUTES,
21 HE DECIDED TO WRITE THE WRITTEN STATEMENT.

22 Q. ALL RIGHT, SIR. AND THERE'S SOME HANDWRITTEN STUFF
23 AT THE TOP OF THAT STATEMENT; IS THAT CORRECT?

24 A. YES, SIR, IT IS.

25 Q. ALL RIGHT, SIR. WHO FILLED OUT THE HANDWRITTEN

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1 MATERIAL AT THE TOP OF THE STATEMENT?

2 A. AGENT ANN REESE FILLED OUT THE TOP OF THE
3 STATEMENT.

4 Q. ALL RIGHT, SIR. DID SHE DO THAT IN YOUR PRESENCE?

5 A. YES, SIR.

6 Q. THEN THERE'S SOME PRINTED MATERIAL UNDERNEATH THAT;
7 AND THEN THERE'S A BODY IN THE STATEMENT BELOW
8 THAT. WHO'S HANDWRITING IS THAT STATEMENT IN?

9 A. THE HANDWRITING ITSELF IS IN KENNETH SIMMONS'
10 HANDWRITING.

11 Q. ALL RIGHT, SIR. SINCE THE JURY CAN'T READ THIS
12 FROM THAT ANGLE, IF YOU WOULD SIR, JUST PUBLISH
13 THAT OR READ THAT TO THE JURY STARTING AT THE TOP.

14 A. STARTING WITH THE COUNTY OF RICHLAND?

15 Q. YES, SIR; THE ENTIRE THING.

16 A. IT SAYS "THIS IS A VOLUNTARY STATEMENT CONSISTING
17 OF TWO PAGES. COUNTY OF RICHLAND COUNTY;

18 PERSONALLY APPEARED BEFORE ME KENNETH SIMMONS,

19 A/K/A SKINRAT, WHO STATES 'MY NAME IS KENNETH

20 SIMMONS; MY ADDRESS IS [REDACTED], [REDACTED]

21 [REDACTED]; DATE OF BIRTH [REDACTED]; SOCIAL SECURITY

22 NUMBER [REDACTED]; PHONE NUMBER [REDACTED]" IT

23 SAYS "I COMPLETED THE TWELFTH GRADE IN SCHOOL --

24 AND HE HAS CIRCLED "I CAN READ AND WRITE."

25 Q. ALL RIGHT, SIR. NOW, AS FAR AS THE EDUCATIONAL

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1 LEVEL, THE TWELFTH GRADE; WHERE DID THAT
2 INFORMATION COME FROM?

3 A. IT CAME FROM KENNETH SIMMONS.

4 Q. AS FAR AS I CAN READ AND WRITE, WHERE DID THAT COME
5 FROM?

6 A. THAT ALSO CAME FROM KENNETH SIMMONS.

7 Q. AND THE BIRTH DATE, SOCIAL SECURITY, ADDRESS, AND
8 TELEPHONE NUMBER; WHERE DID THOSE COME FROM?

9 A. THAT'S NUMBERS AND ADDRESSES THAT KENNETH SIMMONS
10 PROVIDED FOR ANN REESE.

11 Q. ALL RIGHT, SIR. GO AHEAD AND CONTINUE, PLEASE.

12 A. THEN IT GOES INTO -- THE NEXT SENTENCE SAYS "BEFORE
13 ASKING ANY QUESTIONS OR MAKING ANY STATEMENTS, ANN
14 REESE AND KENNETH MEARS, SLED, AND MAYBELLE
15 HENDRICKS, A PERSON WHO IDENTIFIED HIMSELF AS --
16 IT'S GOT KENNETH SIMMONS WHERE HE PUT HIS NAME IN
17 THE WRONG PLACE -- AS POLICE OFFICERS; DULY WARNED
18 AND ADVISED ME, AND I KNOW AND UNDERSTAND THAT I
19 HAVE THE FOLLOWING RIGHTS: THAT I HAVE THE RIGHT TO
20 REMAIN SILENT; AND I DO NOT HAVE TO ANSWER ANY
21 QUESTIONS OR MAKE ANY STATEMENTS AT ALL; THAT ANY
22 STATEMENTS I MAKE CAN AND WILL BE USED AGAINST ME
23 IN A COURT OF LAW FOR THE OFFENSE OR OFFENSES
24 CONCERNING WHICH THE FOLLOWING STATEMENT IS
25 HEREINAFTER MADE. THAT I HAVE THE RIGHT TO CONSULT

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1 WITH A LAWYER OF MY OWN CHOICE BEFORE OR AT ANY
2 TIME DURING ANY QUESTIONS OR STATEMENTS I MAKE;
3 THAT IF I CANNOT AFFORD TO HIRE A LAWYER, I MAY
4 REQUEST TO HAVE A LAWYER APPOINTED FOR ME BY THE
5 PROPER AUTHORITY BEFORE OR AT ANY TIME DURING ANY
6 QUESTION OR STATEMENT THAT I MAKE WITHOUT COST OR
7 EXPENSES TO ME; THAT I CAN STOP ANSWERING QUESTIONS
8 OR MAKING ANY STATEMENT AT ANY TIME THAT I CHOOSE
9 AND CALL FOR THE PRESENCE OF A LAWYER TO ADVISE ME
10 BEFORE CONTINUING ANY QUESTIONS OR MAKING ANY
11 STATEMENTS WHETHER OR NOT I HAVE ALREADY ANSWERED
12 SOME QUESTIONS OR MADE SOME STATEMENT. I DO NOT
13 WANT A LAWYER, AND I HEREBY KNOWINGLY AND PURPOSELY
14 WAIVE MY RIGHTS TO REMAIN SILENT AND MY RIGHT TO
15 HAVE A LAWYER PRESENT WHILE I MAKE THE FOLLOWING
16 STATEMENT TO THE AFORESAID PERSON. KNOWING THAT I
17 HAVE THE RIGHT AND PRIVILEGE TO TERMINATE ANY
18 INTERVIEW AT ANY TIME HEREFTER AND HAVE A LAWYER
19 PRESENT WITH ME BEFORE ANSWERING ANY QUESTIONS,
20 MAKING ANY FOR STATEMENTS IF I CHOOSE TO DO SO. I
21 DECLARE THAT THE FOLLOWING VOLUNTARY STATEMENT IS
22 MADE OF MY OWN FREE WILL WITHOUT PROMISE OR HOPE OF
23 REWARD, WITHOUT FEAR OR THREAT OF PHYSICAL HARM,
24 WITHOUT COERCION, FAVOR, WITHOUT LENIENCY OR OFFER
25 OF LENIENCY BY ANY PERSON OR PERSONS WHOMSOEVER.

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1 Q. ALL RIGHT, SIR. HOW WERE THOSE RIGHTS PRESENTED TO
2 MR. SIMMONS THAT AFTERNOON?

3 A. AGAIN, HE WAS HANDED A COPY OF THIS WHILE I READ
4 THAT PART TO HIM.

5 Q. ALL RIGHT, SIR. AND WHEN YOU READ IT TO HIM, DID
6 HE EXPRESS ANY INDICATION TO YOU THAT HE DID NOT
7 UNDERSTAND WHAT YOU HAD READ TO HIM?

8 A. AT NO TIME DID HE EXPRESS THAT HE DID NOT
9 UNDERSTAND. HE WAS ASKED; AND HE CLEARLY STATED
10 THAT HE DID UNDERSTAND HIS RIGHTS.

11 Q. ALL RIGHT, SIR. AND WAS ANYTHING ABOUT HIS
12 DEMEANOR OR THE WAY HE WAS ACTING THAT INDICATED TO
13 YOU IN ANY WAY THAT HE DIDN'T UNDERSTAND WHAT HIS
14 RIGHTS WERE THAT YOU READ TO HIM AS YOU'VE READ
15 THEM TO THE JURY?

16 A. NO, SIR; NONE WHATSOEVER. THE ONLY THING IS HE
17 STATED THAT HE COULD NOT SPELL SOME WORDS. AND HE
18 WAS THEN TOLD THAT THE WORDS THAT HE NEEDED TO
19 SPELL THAT HE WOULD BE ASSISTED.

20 Q. ALL RIGHT, SIR. DID YOU IN FACT ASSIST HIM IN SOME
21 OF THOSE WORDS THAT HE HAD TROUBLE SPELLING?

22 A. YES, SIR, I DID.

23 Q. ALL RIGHT. NOW, DIFFERENT PLACES IN HERE THERE ARE
24 LINES WRITTEN THROUGH SOME WORDS AND INITIALS K.S.
25 ON SEVERAL OCCASIONS THERE. HOW DID THAT COME

KENNY MEARS - DIRECT/MR. BAILEY

1 ABOUT?

2 A. HE WAS ASKED IF HE MADE A MISTAKE OR MISSPELLED A
3 WORD OR WANTED TO STATE SOMETHING DIFFERENT TO
4 SCRATCH THROUGH THAT PARTICULAR WORD OR SENTENCE
5 AND PUT HIS INITIAL ABOVE THAT ERROR.

6 Q. ALL RIGHT, SIR. AND WHOSE HANDWRITING IS THAT
7 STATEMENT IN?

8 A. THE STATEMENT IS IN KENNETH SIMMONS' HANDWRITING.

9 Q. DID YOU SEE HIM WRITE THAT STATEMENT OUT?

10 A. YES, SIR, I DID.

11 Q. AS FAR AS THE CONTENT OF THAT STATEMENT, DID HE GET
12 ANY ASSISTANCE FROM YOU?

13 A. NO, SIR; THIS IS IN HIS OWN WORDS.

14 Q. THE ONLY HELP YOU GAVE HIM WAS YOU SPELLED WORDS
15 WHEN IT CAME UP TO IT?

16 A. THAT'S CORRECT.

17 Q. ALL RIGHT, SIR. NOW, DID YOU SIT THERE AND WATCH
18 MR. SIMMONS WRITE THAT STATEMENT OUT?

19 A. YES, SIR; THE COMPLETE STATEMENT.

20 Q. ALL RIGHT, SIR. THAT'S THE TWO PAGE STATEMENT.
21 LET ME HAND YOU A COPY OF THE ENTIRE THING.

22 (WITNESS REVIEWS DOCUMENT.) NOW, MR. MEARS, I'LL
23 ASK YOU AGAIN AS I DID WITH THE TAPED STATEMENT YOU
24 HAD GIVEN EARLIER. DID YOU OFFER ANY INDUCEMENT TO
25 MR. SIMMONS TO GIVE YOU THAT HANDWRITTEN STATEMENT?

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1 A. NO, SIR. I MERELY ASKED HIM TO PUT IT IN HIS
2 HANDWRITING, AND HE DID DO SO.

3 Q. OKAY. ANY PROMISES OR THREATS OR ANYTHING OF THAT
4 NATURE?

5 A. NO, SIR; NO PROMISES WERE MADE.

6 Q. WAS THAT STATEMENT FREELY AND VOLUNTARILY GIVEN AS
7 FAR AS YOU COULD DETERMINE?

8 A. YES, SIR.

9 Q. OKAY. AND IN REGARD TO THE INFORMATION THAT YOU
10 WENT OVER BEFORE ABOUT I CAN READ AND THE
11 EDUCATIONAL LEVEL, AT LEAST TWELVE YEARS OF SCHOOL,
12 WAS THERE ANYTHING IN MR. SIMMONS' DEMEANOR THAT
13 INDICATED TO YOU IN ANY WAY THAT THAT WASN'T TRUE;
14 THAT HE COULDN'T READ; OR THAT HE DIDN'T HAVE A
15 TWELFTH GRADE EDUCATION?

16 A. NO, SIR. AS A MATTER OF FACT, WHEN I HANDED HIM
17 THE RIGHTS STATEMENT AND ASKED HIM TO READ ALONG
18 WITH IT, HE APPEARED TO BE READING RIGHT ALONG AS I
19 READ TO HIM.

20 Q. ALL RIGHT, SIR. NOW, IF YOU WOULD MR. MEARS,
21 PUBLISH THAT TO THE JURY. JUST GO AHEAD AND READ
22 THAT STATEMENT AS MR. SIMMONS WROTE IT OUT ON
23 DECEMBER THE FIFTH.

24 A. ALL RIGHT. THIS IS IN HIS HANDWRITING, SO I MAY
25 HAVE A FEW PROBLEMS READING SOME OF THE WORDS.

KENNY MEARS - DIRECT/MR. BAILEY

1 1996 WHEN MRS. BOYD WAS KILLED. SHE WAS KILLED BY
2 SHORTY AND JAMES ANDERSON BECAUSE I OWE SHORTY---

3 Q. SLOW DOWN JUST A LITTLE BIT. MR. BELL IS TRYING TO
4 FOLLOW YOU ON THIS MONITOR OVER HERE.

5 A. OKAY. "BECAUSE I OWE SHORTY SOME MONEY THAT I OWE
6 HIM TWENTY THOUSAND DOLLARS. I GET DRUGS AND CASH,
7 TEN THOUSAND. ME AND SHORTY AT THE TRAILER PARK
8 NEAR MRS. BOYD'S HOUSE. WHEN I GOT THERE SHORTY
9 AND BRENDA ANDERSON WAS ALREADY THERE. BRENDA WAS
10 SITTING IN THE CAR, AND SHORTY WAS AT MRS. BOYD'S
11 HOUSE. I WENT TO MRS. BOYD HOUSE. MRS. BOYD WAS
12 LYING ON THE KITCHEN FLOOR BEAT UP AND BLOODY.
13 SHORTY HAS A STICK IN HIS HAND WITH BLOOD ALL OVER
14 IT. MRS. BOYD HAND TIED BEHIND HER BACK. SHE WAS
15 STILL ALIVE. AND I TRIED TO UNTIE HER BUT SHORTY
16 PULL GUN OUT ON ME, AND I WENT TO THE PHONE. BUT
17 SHORTY SAID HE WILL KILL ME. BRENDA AND I HAD SEX
18 ON THURSDAY NIGHT. SHE ASKED ME TO USE A RUBBER.
19 IT STATES "CONTINUES OF STATEMENT AND KENNETH
20 SIMMONS' NAME UP TOP; KENNETH SIMMONS." SHE HAD
21 NEVER BEFORE SOME TIME, AUGUST '97. BRENDA TELL ME
22 WHY SHORTY WANT TO GET BACK AT ME BECAUSE OF THE
23 MONEY. BRENDA GAVE SHORTY THE RUBBER TO LOOK LIKE
24 I DID IT. AND SHORTY PUT THE SPERM ON MRS. BOYD
25 AND LOOKED LIKE I DID IT. AND I WENT TO

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1 GREENVILLE. I PLANNED TO KILL SHORTY, ME AND
2 BRENDA. HE THREATENED TO KILL MY SON, TIM, AND
3 ME. BRENDA AND ME DRIVER TO GREENVILLE. SHORTY
4 AND BLACKIE DRIVE A RED BMW AND TWO BRENDA FRIENDS
5 DRIVE A GRAY MONTE CARLO; WENT ME AND BRENDA; MET
6 SHORTY AND BLACKIE. SHORTY GET OUT WITH ME AS
7 BLACKIE DRIVE OFF. I SHOT SHORTY TWO TIMES IN THE
8 CHEST WITH A .38 GUN. BRENDA TWO FRIENDS DRIVER UP
9 AND I GIVE THEM SIX HUNDRED DOLLARS AND THE GUN;
10 PUT SHORTY BODY IN THE TRUNK OF THE MONTE CARLO AND
11 TOLD BRENDA TWO FRIENDS TO TAKE SHORTY BODY AND THE
12 GUN AND GET RID THEM. THIS HAPPENED IN SEPTEMBER
13 OR OCTOBER, 1997. I HAVE NOT SEEN OR TALKED TO ANY
14 OF THEM SINCE THEN. I AM GIVE THIS STATEMENT
15 BECAUSE IT IS TRUE. I VOLUNTEERED TO GIVE THIS
16 STATEMENT. SLASH; AND HE PUT HIS INITIALS AT THE
17 END OF THE LAST WORD K.S.; AND HE SIGNED IT ON THE
18 BOTTOM. ON THE BOTTOM WHERE IT SAYS SIGNATURE OF
19 PERSON GIVING THE VOLUNTARY STATEMENT; KENNETH
20 SIMMONS SIGNED HIS NAME TO IT.

21 Q. OKAY. DID YOU WITNESS HIM SIGNING THAT?

22 A. YES, SIR.

23 Q. DID ANN REESE ALSO WITNESS THAT?

24 A. YES, SIR.

25 Q. AND MAYBELLE HENDRICKS ALSO SIGNED THAT AS A

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WITNESS?

A. THAT'S CORRECT.

Q. ALL RIGHT, SIR. AND DID YOU GIVE MR. SIMMONS A COPY OF THAT STATEMENT AFTER IT WAS READ BACK?

A. YES, SIR; HE RECEIVED A COPY.

Q. ALL RIGHT, SIR. NOW, MR. MEARS, BETWEEN 3:05 P.M. WHEN HE COMPLETED WRITING THAT STATEMENT OUT AND 8:00, 8:30 OR SO THAT EVENING; WHAT DID YOU AND MRS. HENDRICKS OR MRS. REESE DO?

A. AFTER RECEIVING THE FIRST STATEMENT FROM KENNETH SIMMONS, WE LEFT THE DETENTION CENTER AFTER THREE O'CLOCK. I DON'T KNOW EXACTLY WHEN; PROBABLY AROUND 3:30. WE WENT AND FOUND ROSE JONES THAT HE STATED HE TOLD WHAT HAD HAPPENED.

Q. ALL RIGHT, SIR. LET ME ASK YOU THIS: I'LL HAND YOU BACK STATE'S 29. AND YOU READ THE ADDRESS WHERE KENNETH SIMMONS SAID HE LIVED?

A. THAT'S CORRECT.

Q. IS THAT THE ADDRESS YOU WENT TO?

A. YES, SIR, IT IS.

Q. WAS THAT THE CORRECT ADDRESS?

A. THAT WAS THE CORRECT ADDRESS.

Q. ALL RIGHT, SIR. WITHOUT GOING INTO ANY CONVERSATION, DID YOU MEET UP WITH SOMEBODY AT THAT ADDRESS?

KENNY MEARS - DIRECT/MR. BAILEY

- 1 A. YES, SIR.
- 2 Q. WHO WAS THAT?
- 3 A. ROSE JONES.
- 4 Q. DID YOU AND THE TWO LADIES THAT WERE WITH YOU
- 5 INTERVIEW ROSE JONES?
- 6 A. YES, SIR.
- 7 Q. AND WAS SHE QUESTIONED IN REGARD TO THE INFORMATION
- 8 THAT MR. SIMMONS HAD GIVEN YOU PREVIOUSLY IN THE
- 9 TAPED STATEMENT?
- 10 A. YES, SIR; THAT'S CORRECT.
- 11 Q. AFTER YOU COMPLETED THAT INTERVIEW WITH MS. JONES
- 12 OR WELLS, OR WHATEVER HER NAME IS HERE; WHAT DID
- 13 Y'ALL DO THEN?
- 14 A. AFTER COMPLETING THE INTERVIEW WITH ROSE, WE THEN
- 15 RETURNED BACK TO THE RICHLAND COUNTY DETENTION
- 16 CENTER.
- 17 Q. ALL THREE OF YOU?
- 18 A. ALL THREE OF US; YES, SIR.
- 19 Q. WILL YOU STATE WHETHER OR NOT Y'ALL AGAIN SAW
- 20 KENNETH SIMMONS AT THE DETENTION CENTER?
- 21 A. YES, SIR. WE MET WITH KENNETH SIMMONS AGAIN.
- 22 Q. IN THE SAME ROOM?
- 23 A. YES, SIR.
- 24 Q. DID YOU HAVE A CONVERSATION WITH MR. SIMMONS WHEN
- 25 YOU GOT BACK TO THE DETENTION CENTER THAT NIGHT?

KENNY MEARS - DIRECT/MR. BAILEY

1 A. YES, I DID.

2 Q. WHAT DID YOU TELL HIM?

3 A. MYSELF AND MAYBELLE AND ANN REESE WERE IN THE ROOM,
4 AND WE ASKED HIM IF HE WOULD TALK WITH US AGAIN.

5 Q. WHEN YOU SAY HIM, FOR THE RECORD ARE YOU TALKING
6 ABOUT THE MAN OVER THERE, KENNETH SIMMONS?

7 A. KENNETH SIMMONS; CORRECT. IF HE WOULD TALK TO US
8 AGAIN IN REFERENCE TO WHAT WE TALKED ABOUT EARLIER
9 WHICH WAS MRS. BOYD'S DEATH.

10 Q. ALL RIGHT, SIR. AND ON THAT OCCASION, AGAIN I ASK
11 YOU DID YOU PROMISE HIM ANYTHING, MAKE ANY THREATS,
12 ANY COERCION OF ANY TYPE?

13 A. NO, SIR; NONE WAS MADE.

14 Q. ALL RIGHT, SIR. YOU TOLD MR. SIMMONS BASICALLY YOU
15 DIDN'T BELIEVE WHAT HE TOLD YOU EARLIER?

16 A. YES, SIR. HE WAS TOLD THAT THE STATEMENT HE GAVE
17 EARLIER DID NOT PAN OUT OR DID NOT COINCIDE WITH
18 THE WITNESS THAT HE GAVE US.

19 Q. DID YOU HAVE ANY FURTHER CONVERSATION WITH HIM AT
20 THAT POINT?

21 A. AT THAT POINT HE WAS ASKED IF HE WOULD GIVE US
22 ANOTHER INTERVIEW, AND HE SAID THAT HE WOULD. HE
23 ALSO REQUESTED AT THAT SECOND INTERVIEW THAT
24 DETECTIVE MAYBELLE AND AGENT ANN REESE NOT BE
25 PRESENT IN THE ROOM; THAT HE WOULD TALK DIRECTLY

KENNY MEARS - DIRECT/MR. BAILEY

1 WITH ME.

2 Q. SO DID THEY LEAVE THE ROOM?

3 A. YES, SIR; THEY LEFT THE ROOM.

4 Q. AFTER THEY LEFT THE ROOM, WAS IT JUST YOU AND MR.
5 SIMMONS IN THERE?

6 A. THAT'S CORRECT.

7 Q. NOW AFTER THAT -- I'M GOING TO HAND YOU STATE'S
8 TWELVE AND SEE IF YOU CAN IDENTIFY THAT AS BEING
9 WHAT WOULD AMOUNT TO A THIRD MIRANDA STATEMENT?

10 A. YES, SIR; THAT'S CORRECT.

11 Q. AND THAT'S DATED THE SAME DATE, DECEMBER THE FIFTH,
12 1997 AT 8:26 P.M.

13 A. THAT'S CORRECT.

14 Q. ALL RIGHT, SIR. AND DID YOU GO OVER THAT WITH MR.
15 SIMMONS?

16 A. YES, SIR, I DID.

17 MR. BAILEY: YOUR HONOR, FOR THE
18 RECORD, I THINK THIS HAS BEEN AGREED TO AND IT'S
19 BEEN PRE-MARKED.

20 THE COURT: THAT WAS STATE'S TWELVE?

21 MR. BAILEY: YES, SIR.

22 THE COURT: OKAY.

23 STATE'S EXHIBIT NO. 12

24 ADMITTED AS EVIDENCE

25 Q. MR. MEARS, IS THE FORM OF THAT STATEMENT IDENTICAL

KENNY MEARS - DIRECT/MR. BAILEY

1 TO THE FIRST ONE THAT YOU'VE ALREADY GONE OVER?

2 A. IT IS. IT'S IDENTICAL; THE SAME STATEMENT.

3 Q. AND WHERE YOU HAVE THE DATE AND TIME ON THE TOP; IS
4 THAT IN YOUR HANDWRITING?

5 A. YES, SIR; THAT'S MY HANDWRITING.

6 Q. WAS THAT TAPED TRANSACTION BETWEEN YOU AND MR.
7 SIMMONS IN REGARD TO THAT MIRANDA FORM?

8 A. YES, SIR; IT WAS TAPED.

9 Q. ALL RIGHT. AND THAT SIGNATURE ON THE BOTTOM THERE
10 AFTER THE ADVISEMENT OF RIGHTS; IS THAT KENNETH
11 SIMMONS' SIGNATURE?

12 A. YES, SIR; THAT'S KENNETH SIMMONS' SIGNATURE; THAT'S
13 CORRECT.

14 Q. DID YOU SEE HIM SIGN THAT?

15 A. YES, SIR.

16 Q. AND UNDER THE WAIVER OF RIGHTS; DID YOU SEE HIM
17 SIGN THAT?

18 A. YES, SIR, I DID.

19 Q. ALL RIGHT, SIR. AND DID YOU SIGN THAT AS A WITNESS
20 ON THE BOTTOM LEFT-HAND COLUMN?

21 A. THAT'S CORRECT. I WAS THE ONLY WITNESS. I WAS THE
22 ONLY OTHER ONE IN THE ROOM WITH HIM.

23 Q. OKAY. AND THE TIME DOWN AT THE BOTTOM. IS THAT
24 8:29 P.M.?

25 A. YES, SIR; 8:29 P.M.

KENNY MEARS - DIRECT/MR. BAILEY

1 Q. IS THAT FILLED OUT IN YOUR HANDWRITING?

2 A. YES, SIR, IT IS.

3 Q. THE ENTIRE THING?

4 A. YES, SIR.

5 Q. THE INITIALS AT THE LEFT-HAND SIDE BESIDE EACH ONE
6 OF THE RIGHTS.

7 A. THE INITIALS ON THE LEFT ARE AS EACH OF THE MIRANDA
8 RIGHTS WERE READ TO KENNETH, I ASKED HIM IF HE
9 UNDERSTOOD IT, HE STATED THAT HE DID. AND I ASKED
10 HIM TO INITIAL TO THE LEFT IF HE UNDERSTOOD. AND
11 HE INITIALED EACH SENTENCE.

12 Q. ALL RIGHT, SIR. DID HE ASK YOU ANY QUESTIONS OR
13 APPEAR PUZZLED OR CONFUSED ABOUT THE RIGHTS THAT
14 YOU HAD GIVEN HIM AGAIN?

15 A. NO, SIR; HE DID NOT.

16 Q. ALL RIGHT, SIR. NOW AFTER GOING THROUGH THE
17 MIRANDA RIGHTS WITH HIM THAT NIGHT AND TAPING THAT,
18 DID YOU CONTINUE TO LEAVE THE TAPE ON WHILE A
19 SECOND TAPED INTERVIEW WAS TAKEN FROM MR. SIMMONS?

20 A. YES, SIR.

21 Q. WAS THAT TAPE TRANSCRIBED BY A SECRETARY?

22 A. YES, SIR, IT WAS.

23 THE COURT: STATE'S NUMBER?

24 MR. BAILEY: TWENTY-ONE, YOUR
25 HONOR.

1 THE COURT: WITHOUT OBJECTION?

2 MR. THEOS: YES, SIR.

3 STATE'S EXHIBIT NO. 21

4 MARKED FOR IDENTIFICATION

5 Q. IT'S BEEN AGREED AS BEING THE SECOND TAPE DECEMBER
6 THE FIFTH?

7 A. YES, SIR.

8 Q. AND STATE'S EIGHTEEN WHICH HAS BEEN PRE-MARKED. IS
9 THAT A TRANSCRIPT OF THAT TAPE?

10 A. YES. THIS IS THE TAPED INTERVIEW. AND THIS IS A
11 TRANSCRIPT OF THIS TAPED INTERVIEW.

12 Q. ALL RIGHT, SIR. DID YOU LISTEN TO THE TAPE AND
13 FOLLOW ALONG WITH THE TRANSCRIPT?

14 A. YES, SIR. I HAVE LISTENED TO IT AND FOLLOWED
15 ALONG.

16 Q. IS THAT A REASONABLY ACCURATE REPRESENTATION OF THE
17 TAPE?

18 A. IT IS.

19 MR. BAILEY: YOUR HONOR, AGAIN, I
20 WOULD LIKE TO PUBLISH THE TAPE IN THE SAME MANNER
21 WE DID PREVIOUSLY.

22 THE COURT: ALL RIGHT. THANK YOU.

23 STATE'S EXHIBIT NO. 21

24 ADMITTED AS EVIDENCE

25 THE COURT: MR. SOLICITOR, WHILE

KENNY MEARS - DIRECT/MR. BAILEY

1 HE'S PASSING THESE OUT TO THE JURY, I'LL TELL YOU
2 THAT I HAVE ENCOURAGED THE SUMMERVILLE JOURNAL AND
3 NEWS AND COURIER TO MAKE SOME NEWSPAPERS AVAILABLE
4 TO YOU; I THINK THE SUMMERVILLE PAPER IS TUESDAY
5 AND FRIDAY. OF COURSE THE NEWS AND COURIER IS
6 EVERY DAY. AND IF THEY WON'T PROVIDE THOSE FREE
7 FOR YOU, WE'LL BUY THEM FOR YOU. BUT I NEED TO
8 KNOW WHICH PAPER YOU'D LIKE TO HAVE. AND IF
9 NEITHER OF THOSE ARE AVAILABLE, WE'LL GET YOU A
10 U.S.A. TODAY; AND WE WOULD HAVE TO REDACT OR CUT
11 OUT ANY INFORMATION OR NEWS ABOUT THE TRIAL. BUT
12 YOU CAN STILL READ THE SPORTS PAGE AND THE COMMENTS
13 OF THE OBITUARY. SO WHEN Y'ALL GO BACK TONIGHT,
14 LET CAPTAIN POLK KNOW WHICH PAPER YOU WANT. THANK
15 YOU. PROCEED, PLEASE.

16 * * * * *

17 (AT THIS TIME SECOND TAPED INTERVIEW BETWEEN
18 DETECTIVE MEARS AND THE DEFENDANT, KENNETH SIMMONS,
19 IS PLAYED FOR THE JURY.)

20 * * * * *

21 Q. MR. MEARS, AGAIN FOR THE RECORD; THE MAN WHO GAVE
22 YOU THAT STATEMENT; WOULD YOU POINT HIM OUT,
23 PLEASE?

24 A. YES, SIR. HE'S THE ONE SITTING ON THE LEFT AT THE
25 DEFENSE TABLE WITH THE BLACK COAT AND RED TIE,

KENNY MEARS - DIRECT/MR. BAILEY

1 KENNETH SIMMONS.

2 Q. MR. MEARS, I WANT TO NEXT CALL YOUR ATTENTION TO
3 DECEMBER THE 9TH, 1997, AND ASK WHETHER OR NOT YOU
4 AGAIN HAD OCCASION TO SEE KENNETH SIMMONS?

5 A. YES, SIR, I DID.

6 Q. ALL RIGHT. AND DURING THAT PERIOD OF TIME BETWEEN
7 DECEMBER THE FIFTH AND THE NINTH, DID YOU HAVE THE
8 TAPES TRANSCRIBED?

9 A. YES, SIR; I HAD THE TAPES TRANSCRIBED.

10 Q. ALL RIGHT, SIR. AND WHAT WAS YOUR REASON FOR GOING
11 BACK TO COLUMBIA TO SEE MR. SIMMONS AGAIN?

12 A. THE REASON FOR GOING BACK ON THE NINTH OF DECEMBER
13 WAS TO GO OVER THE TRANSCRIBED STATEMENT WITH HIM
14 AND GET HIM TO SIGN, TO READ THE COPY, TO BE SURE
15 IT WAS ACCURATE AND WHAT HE HAD TESTIFIED TO ON THE
16 TAPE.

17 Q. DID YOU SEE HIM ON THAT OCCASION; DECEMBER THE
18 NINTH?

19 A. YES, SIR.

20 Q. WHERE?

21 A. I SAW HIM AT THE DETENTION CENTER IN RICHLAND
22 COUNTY.

23 Q. ALL RIGHT, SIR. AND ON OCCASION -- I HAND YOU
24 STATE'S 13 WHICH APPEARS TO BE ANOTHER MIRANDA
25 FORM. (WITNESS EXAMINES DOCUMENT.)

KENNY MEARS - DIRECT/MR. BAILEY

1 A. THAT'S CORRECT.

2 Q. AND JUST TO KIND OF SHORTEN THINGS HERE, THAT'S
3 DATED DECEMBER THE NINTH, 1997; AND THE TIME IS
4 WHAT?

5 A. ELEVEN THIRTY-SIX (11:36) A.M.

6 Q. ALL RIGHT, SIR. AND THE TIME DOWN AT THE BOTTOM IS
7 WHAT?

8 A. ELEVEN THIRTY-EIGHT (11:38) A.M.; 12/9/97.

9 Q. ALL RIGHT, SIR. AND DID YOU GIVE THOSE MIRANDA
10 RIGHTS AS REFLECTED ON THAT STATEMENT TO MR.
11 SIMMONS ON THAT DATE AND TIME?

12 A. YES, SIR, I DID.

13 Q. AND DID YOU GO THROUGH IT THE SAME WAY YOU HAD GONE
14 THROUGH IT PREVIOUSLY?

15 A. YES, SIR. I GAVE HIM A COPY AND LET HIM READ ALONG
16 AS I READ IT TO HIM.

17 Q. OKAY. AND WAS THAT TAPED?

18 A. YES, SIR, IT WAS.

19 Q. ALL RIGHT, SIR. DID YOU OBSERVE HIM SIGN THAT
20 MIRANDA FORM?

21 A. YES, SIR, I DID.

22 Q. AND INITIAL EACH RIGHT INDIVIDUALLY?

23 A. THAT'S CORRECT.

24 Q. AND SIGN THE WAIVER OF RIGHTS DOWN AT THE BOTTOM?

25 A. YES, SIR.

KENNY MEARS - DIRECT/MR. BAILEY

1 Q. AND AGAIN, AS I PREVIOUSLY ASKED YOU, IN REGARD TO
2 THAT MIRANDA RIGHTS FORM, DID YOU MAKE ANY PROMISES
3 TO MR. SIMMONS? DID YOU THREATEN HIM; ANY
4 INDUCEMENT; ANY PROMISES; ANYTHING OF THAT NATURE?

5 A. NO, SIR; NONE AT ALL.

6 Q. DID HE AGREE TO GIVE YOU A THIRD OR WHAT WOULD HAVE
7 AMOUNTED TO A FOURTH STATEMENT BUT A THIRD TAPED
8 STATEMENT?

9 A. THAT'S CORRECT.

10 Q. ALL RIGHT, SIR. AND ON THAT OCCASION, DECEMBER THE
11 NINTH, WAS THERE ANYTHING ABOUT MR. SIMMONS'
12 DEMEANOR, APPEARANCE, OR ANYTHING OF THAT NATURE
13 WHICH WOULD LEAD YOU TO BELIEVE THAT HE WAS
14 CONFUSED, THAT HE DIDN'T UNDERSTAND WHAT WAS
15 HAPPENING, THAT THERE WAS ANY COMMUNICATION PROBLEM
16 THAT HE HAD?

17 A. NO, SIR. HE DID NOT APPEAR CONFUSED. HE APPEARED
18 TO BE COHERENT AND UNDERSTOOD EVERYTHING THAT WAS
19 GOING ON.

20 Q. ALL RIGHT, SIR. AND I REALIZE YOU'RE NOT A
21 PSYCHOLOGIST; BUT WAS THERE ANYTHING THAT LED YOU
22 TO CONCLUDE THAT HE HAD ANY INTELLIGENCE
23 PROBLEMS?

24 A. NO, SIR. HE DIDN'T INDICATE THAT HE HAD ANY
25 PROBLEMS AT ALL.

KENNY MEARS - DIRECT/MR. BAILEY

1 Q. ALL RIGHT, SIR.

2 THE COURT: STATE'S 13 IS IN
3 EVIDENCE WITHOUT OBJECTION?

4 MR. THEOS: YES, SIR.

5 THE COURT: THANK YOU.

6 STATE'S EXHIBIT NO. 13

7 ADMITTED AS EVIDENCE

8 Q. I HAND YOU STATE'S 22 WHICH HAS BEEN PRE-MARKED AND
9 I BELIEVE WITHOUT OBJECTION.

10 STATE'S EXHIBIT NO. 22

11 ADMITTED AS EVIDENCE.

12 Q. WOULD YOU STATE WHETHER OR NOT THAT APPEARS TO BE A
13 COPY OF THE TAPE OF DECEMBER THE NINTH?

14 A. YES, SIR, IT IS.

15 Q. AND, AGAIN, DID YOU LISTEN TO THAT TAPE
16 IN ITS ENTIRETY AND FOLLOW ALONG WITH THE
17 TRANSCRIPT?

18 A. YES, SIR, I DID.

19 Q. THIS IS STATE'S NINETEEN.

20 STATE'S EXHIBIT NO. 19

21 ADMITTED AS EVIDENCE

22 Q. DOES THAT APPEAR TO BE A TRANSCRIPT OF THE TAPE
23 THAT YOU TOOK ON DECEMBER THE NINTH?

24 A. YES, SIR, IT IS.

25 Q. AND YOU READ ALONG?

KENNY MEARS - DIRECT/MR. BAILEY

1 A. YES, SIR.

2 Q. TO YOURSELF WHILE YOU LISTENED TO THAT TAPE?

3 A. THAT'S CORRECT.

4 Q. AND THAT'S A REASONABLY ACCURATE REPRESENTATION OF
5 WHAT'S ON THE TAPE?

6 A. YES, SIR, IT'S VERY ACCURATE.

7 MR. BAILEY: YOUR HONOR, I WOULD
8 OFFER THE TRANSCRIPT, I BELIEVE WITHOUT OBJECTION.
9 WE HAVE COPIES OF THAT ALSO.

10 THE COURT: WITHOUT OBJECTION. PASS
11 THEM OUT, PLEASE.

12 STATE'S NO. 19

13 ADMITTED AS EVIDENCE

14 (AT THIS TIME COPIES OF TRANSCRIPT ARE HANDED OUT
15 TO JURY PANEL.)

16 MR. BAILEY: YOUR HONOR, CAN WE GO
17 AHEAD AND PLAY THE TAPE NOW?

18 THE COURT: EACH JUROR HAS A COPY OF
19 STATE'S NINETEEN. YES, PLEASE.

20 MR. BAILEY: THANK YOU, YOUR HONOR.

21 (AT THIS TIME THIRD TAPED STATEMENT, STATE'S
22 EXHIBIT NO. 19, IS PLAYED FOR JURY.)

23 Q. MR. MEARS, AGAIN FOR THE RECORD, COULD YOU POINT
24 OUT THE MAN THAT WAS ON THE TAPED INTERVIEW ON
25 DECEMBER THE NINTH?

KENNY MEARS - DIRECT/MR. BAILEY

1 A. THE GENTLEMAN, THE THIRD ONE TO MY LEFT, SITTING AT
2 THE DEFENSE TABLE WITH THE BLUE SHIRT, RED TIE, AND
3 BLACK COAT.

4 Q. MR. MEARS, ON THE FIRST PAGE OF THAT TRANSCRIPT,
5 THERE'S A REFERENCE TO YOU ASKING MR. SIMMONS TO
6 READ THE PRIOR TAPE; IS THAT CORRECT?

7 A. TO READ THE TRANSCRIPT OF THE PRIOR TAPE.

8 Q. AND WHEN YOU ASKED HIM TO READ THAT TAPE, DID YOU
9 OBSERVE HIM READ THE TRANSCRIPT?

10 A. YES, SIR.

11 Q. AND WHAT WAS HE DOING WHEN YOU ASKED HIM TO READ
12 THE TAPE?

13 A. HE APPEARED TO BE READING IT.

14 Q. OKAY. HOW DID HE APPEAR TO BE READING IT?

15 A. I GAVE IT TO HIM, AND HE APPEARED TO BE READING
16 IT. HE WAS FLIPPING PAGE BY PAGE. AND IN
17 A NORMAL AMOUNT OF TIME HE GAVE IT BACK TO ME AND
18 TOLD ME HE WAS FINISHED READING IT, AND IT WAS
19 ACCURATE.

20 Q. ALL RIGHT.

21 MR. BAILEY: YOUR HONOR, I HAVE
22 NOTHING FURTHER OF MR. MEARS AT THIS POINT.

23 THE COURT: YOU MAY CROSS-EXAMINE

24 CROSS-EXAMINATION

25 BY MR. THEOS:

KENNY MEARS - CROSS/MR. THEOS

1 Q. AGENT MEARS, PRIOR TO DECEMBER THE FIFTH, OR BEFORE
2 THE DECEMBER THE FIFTH OF '97, WHEN YOU TOOK YOUR
3 FIRST STATEMENT FROM KENNETH SIMMONS, YOU HAD NEVER
4 TALKED TO HIM BEFORE; IS THAT CORRECT?

5 A. NO, SIR; I NEVER HAD.

6 Q. YOU DIDN'T KNOW HIM?

7 A. NO, SIR, I DIDN'T KNOW HIM.

8 Q. HAD NEVER SEEN HIM?

9 A. NO, SIR.

10 Q. HAD NEVER MET HIM?

11 A. DIDN'T KNOW HIM.

12 Q. DIDN'T KNOW ANYTHING ABOUT HIM?

13 A. NO, SIR.

14 Q. DIDN'T KNOW ANYTHING ABOUT HIS EDUCATION?

15 A. DIDN'T KNOW ANYTHING ABOUT HIM, SIR.

16 Q. DIDN'T KNOW ANYTHING ABOUT HIS BACKGROUND OR LIFE
17 AT ALL; IS THAT CORRECT?

18 A. ONLY WHAT I WAS BRIEFED ON BEFORE THE
19 INTERVIEW.

20 Q. JUST FOR PURPOSES OF CONDUCTING THE HEARING?

21 THE COURT: I'M SORRY. PLEASE, MR.
22 MEARS, STEP UP A LITTLE BIT. TAP THAT MICROPHONE.
23 PULL YOUR CHAIR UP SOME AND SPEAK INTO IT, PLEASE.
24 THANK YOU.

25 Q. AGAIN, JUST TO MAKE SURE THAT THE JURORS HEARD YOU;

KENNY MEARS - CROSS/MR. THEOS

- 1 YOU KNEW NOTHING ABOUT MR. SIMMONS' BACKGROUND;
2 EDUCATIONAL BACKGROUND, FAMILY BACKGROUND, NOTHING
3 AT ALL ABOUT MR. SIMMONS?
- 4 A. NO, SIR, I DID NOT.
- 5 Q. AND OTHER THAN TO GATHER ENOUGH INFORMATION
6 TO CONDUCT THE INTERVIEW, YOU DIDN'T SPEAK
7 WITH ANYBODY ABOUT HIM EITHER; IS THAT
8 CORRECT?
- 9 A. NO, SIR, I DID NOT.
- 10 Q. NOW ON THE FIFTH YOU AND THESE TWO OTHER OFFICERS
11 WENT TO THE RICHLAND COUNTY JAIL. ALL THREE OF
12 YOU, AGENT REESE AND DETECTIVE MAYBELLE HENDRICKS
13 FROM ST. GEORGE; CORRECT?
- 14 A. THAT'S CORRECT; THE THREE OF US.
- 15 Q. AND THE THREE OF YOU CONDUCTED THE
16 INTERVIEW?
- 17 A. THE FIRST INTERVIEW---
- 18 Q. THE FIRST INTERVIEW OF THE FIFTH; YES?
- 19 A. THE THREE OF US WERE IN THE ROOM ALONE WITH KENNETH
20 SIMMONS; THAT'S CORRECT.
- 21 Q. AND Y'ALL WERE IN INVESTIGATOR HOWARD'S ROOM AT THE
22 RICHLAND COUNTY DETENTION CENTER?
- 23 A. IN HIS OFFICE; YES, SIR.
- 24 Q. NOW THE JURY HAS HEARD THE TAPE OF THE DECEMBER THE
25 FIFTH INTERVIEW, AND THEY'VE HAD THE TRANSCRIPT

KENNY MEARS - CROSS/MR. THEOS

1 WITH THEM TO READ ALONG AS THE TAPE WAS BEING
2 PLAYED. OTHER THAN WHAT IS IN THE TAPE, WHAT
3 IS ON THE TAPE AND WHAT IS IN THE TRANSCRIPT
4 RELATED TO THE DECEMBER THE FIFTH INTERVIEW,
5 THERE WAS NO FURTHER EXPLANATION OFFERED
6 TO MR. SIMMONS ABOUT HIS MIRANDA WARNINGS; IS
7 THAT CORRECT?

8 A. I DON'T THINK I QUITE UNDERSTAND WHAT YOU'RE
9 ASKING.

10 Q. YOUR ENTIRE INTERVIEW WITH MR. SIMMONS WAS TAPED;
11 CORRECT?

12 A. YES, SIR.

13 Q. SO ANYTHING THAT WAS DISCUSSED RELATED TO MIRANDA
14 WARNINGS AND MR. SIMMONS' RIGHTS WOULD BE CONTAINED
15 ON THAT TAPE RECORDING AND REFLECTED IN THAT
16 TRANSCRIPT; CORRECT?

17 A. THAT'S CORRECT.

18 Q. SO THERE WOULD BE NO FURTHER DISCUSSIONS OR
19 EXPLANATIONS RELATED TO MIRANDA EXCEPT WHAT'S
20 CONTAINED IN THOSE TAPES; RIGHT?

21 A. EVERYTHING IS CONTAINED IN THE TAPE AND TRANSCRIPT;
22 THAT'S CORRECT.

23 Q. NOW THAT INTERVIEW ENDED AT APPROXIMATELY TWO
24 O'CLOCK; CORRECT?

25 A. THAT'S CORRECT.

KENNY MEARS - CROSS/MR. THEOS

- 1 Q. AND ALMOST IMMEDIATELY AFTER THAT YOU -- LET ME
2 BACK UP FOR ONE SECOND. THE MIRANDA FORM RELATED
3 TO THE DECEMBER THE FIFTH INTERVIEW -- AGENT MEARS,
4 I'VE GOT WHAT HAS BEEN MARKED STATE'S EXHIBIT
5 ELEVEN. IS THIS THE MIRANDA FORM FROM THE FIRST
6 INTERVIEW ON DECEMBER THE FIFTH?
- 7 A. YES, SIR, IT IS AT 12:50 P.M.
- 8 Q. AND IT REFLECTS THAT THE ADVISEMENT OF MIRANDA
9 BEGAN AT 12:50?
- 10 A. THAT'S CORRECT.
- 11 Q. AND THAT IT ENDED AT 12:53; CORRECT?
- 12 A. CORRECT.
- 13 Q. NOW, THE SECOND -- SO IT TOOK THREE MINUTES?
- 14 A. APPARENTLY.
- 15 Q. THE SECOND INTERVIEW OF MR. SIMMONS WHICH PRODUCED
16 THIS WRITTEN STATEMENT THAT HAS BEEN INTRODUCED AS
17 A STATE'S EXHIBIT; THAT BEGAN REAL SHORTLY AFTER
18 TWO O'CLOCK; IS THAT CORRECT? I DIDN'T SEE A TIME
19 ON THE TOP FOR THE COMMENCEMENT OR THE BEGINNING OF
20 THE STATEMENT.
- 21 A. WHICH STATEMENT ARE YOU REFERRING TO?
- 22 Q. THE WRITTEN STATEMENT.
- 23 A. IT WAS STARTED AFTER TWO O'CLOCK. I DON'T KNOW THE
24 EXACT TIME.
- 25 Q. ALL RIGHT. IT WAS STARTED AFTER TWO AND COMPLETED

KENNY MEARS - CROSS/MR. THEOS

1 AT, I BELIEVE, 3:05 P.M.

2 A. AT 3:05 P.M.; YES, SIR.

3 Q. NOW, IS IT FAIR TO SAY THAT YOU STARTED THAT WITHIN
4 FIVE TO TEN MINUTES AFTER THE TAPED INTERVIEW WAS
5 COMPLETED?

6 A. I CAN'T RECALL EXACTLY WHEN. I KNOW IT WAS AFTER
7 2:00 P.M. BECAUSE THE TAPE ENDED AT TWO.

8 Q. THE TOP PORTION OF THAT STATEMENT THAT HAS ALREADY
9 BEEN MARKED AS AN EXHIBIT THAT THE JURY HAS SEEN
10 WAS COMPLETED BY MRS. ANN REESE; CORRECT? IT WAS
11 FILLED OUT BY MRS. REESE?

12 A. WHICH ONE ARE YOU REFERRING TO?

13 Q. THE WRITTEN STATEMENT.

14 A. THAT'S CORRECT.

15 Q. AND THE PORTIONS THAT WERE WRITTEN BY MR. SIMMONS
16 WOULD BE THE BODY OF THE STATEMENT AND HIS
17 SIGNATURE AT THE END; CORRECT?

18 A. THAT'S CORRECT.

19 Q. EVERYTHING ELSE WAS COMPLETED BY MRS. REESE;
20 CORRECT?

21 A. WITH THE EXCEPTION OF THE TIME, THE DATE, THE YEAR,
22 AND THE MONTH.

23 Q. WHICH IS AT THE BOTTOM?

24 A. WHICH IS AT THE BOTTOM. IT WAS COMPLETED BY ME.

25 Q. WAS COMPLETED BY YOU?

KENNY MEARS - CROSS/MR. THEOS

1 A. YES, SIR.

2 Q. OKAY. THIS HANDWRITTEN STATEMENT TOOK
3 APPROXIMATELY 45 MINUTES TO COMPLETE; ISN'T THAT
4 CORRECT?

5 A. IT STARTED AFTER TWO, AND IT WAS COMPLETED 3:05.
6 SO I DON'T KNOW EXACTLY WHEN IT STARTED.

7 Q. IS THAT A FAIR ESTIMATE OF THE APPROXIMATE TIME IT
8 TOOK TO COMPLETE THE WRITTEN STATEMENT?

9 A. IT WAS AN HOUR AND FIVE MINUTES IN BETWEEN THE
10 TAPED STATEMENT AND THE COMPLETION OF THIS ONE. SO
11 I REALLY DON'T KNOW; THIRTY OF FORTY-FIVE MINUTES
12 PROBABLY.

13 Q. NOW, WHEN THIS STATEMENT WAS COMPLETED, YOU DID NOT
14 ASK MR. SIMMONS TO READ THE STATEMENT ALOUD;
15 CORRECT?

16 A. NO, SIR, I DID NOT.

17 Q. AND AT NO TIME DID YOU ASK MR. SIMMONS TO READ
18 EITHER THE FIRST MIRANDA WARNINGS THAT
19 YOU ADVISED HIM OF ON DECEMBER THE FIFTH
20 WITH RESPECT TO THE TAPE RECORDED STATEMENT? AT
21 NO TIME DID YOU ASK HIM TO READ THOSE ALOUD
22 EITHER, DID YOU?

23 A. I GAVE HIM A COPY OF THE MIRANDA RIGHTS TO READ
24 ALONG WITH ME EVERY TIME I ADVISED HIM OF HIS
25 RIGHTS.

KENNY MEARS - CROSS/MR. THEOS

1 Q. I UNDERSTAND. YOU DID NOT ASK HIM TO READ THOSE
2 OUT LOUD TO YOU, THOUGH?

3 A. NO, SIR.

4 Q. AND YOU DID NOT ASK HIM TO EXPLAIN WHAT HIS
5 UNDERSTANDINGS OF THOSE RIGHTS WERE EITHER, DID
6 YOU?

7 A. I ASKED HIM IF HE UNDERSTOOD. HE INDICATED THAT HE
8 DID.

9 Q. I UNDERSTAND THAT. BUT YOU DID ASK HIM TO EXPLAIN
10 WHAT HIS UNDERSTANDING WAS, DID YOU?

11 A. I ASKED HIM IF HE HAD ANY QUESTIONS.

12 Q. AND YOU DIDN'T ASK HIM TO EXPLAIN WHAT HIS
13 UNDERSTANDING WAS, THOUGH, DID YOU?

14 A. NO, SIR. I DIDN'T ASK HIM TO EXPLAIN ANYTHING
15 ABOUT THE MIRANDA.

16 Q. NOW, WITH RESPECT TO THE SECOND RECORDED STATEMENT
17 ON THE FIFTH, DO YOU HAVE THE MIRANDA FORM IN FRONT
18 OF YOU? (WITNESS SEARCHES FOR DOCUMENT.) THIS HAS
19 BEEN MARKED AS STATE'S EXHIBIT TWELVE. THIS IS THE
20 MIRANDA FORM THAT YOU REFERRED TO EARLIER ON DIRECT
21 EXAMINATION; IS THAT CORRECT?

22 A. CORRECT; THE SECOND INTERVIEW ON THE FIFTH.

23 Q. ALL RIGHT. AND THE TIME REFLECTED ON THIS FORM FOR
24 THE BEGINNING OF THE ADVISEMENT OF THE MIRANDA IS
25 WHAT?

KENNY MEARS - CROSS/MR. THEOS

1 A. IT'S 8:26 P.M.

2 Q. AND THE TIME REFLECTED FOR THE CONCLUSION OF THE
3 ADVISEMENT OF MIRANDA IS WHAT?

4 A. IS 8:29 P.M.

5 Q. SO AGAIN THIS ADVISEMENT TOOK THREE MINUTES LIKE
6 THE FIRST; IS THAT CORRECT?

7 A. APPROXIMATELY; YES, SIR.

8 Q. AND AGAIN WITH RESPECT TO THE ADVISEMENT OF THE
9 MIRANDA AT THE TIME THE SECOND RECORDED STATEMENT
10 WAS MADE; OTHER THAN WHAT'S CONTAINED IN THE TAPE
11 WHICH IS REFLECTED IN THE TRANSCRIPT, THERE WAS NO
12 FURTHER DISCUSSION RELATED TO THE MIRANDA
13 WARNINGS?

14 A. NO, SIR.

15 Q. IS THAT CORRECT?

16 A. THAT'S CORRECT.

17 Q. NOW, RELATED TO THE DECEMBER THE NINTH MEETING, DO
18 YOU HAVE THAT MIRANDA FORM AS WELL?

19 A. YES, SIR, I DO.

20 Q. ALL RIGHT. LOOKING AT THAT FORM, WHAT TIME IS
21 REFLECTED AT THE TOP OF THAT FORM FOR THE BEGINNING
22 OF THE ADVISEMENT OF MIRANDA RIGHTS?

23 A. IT HAS 11:36 A.M.

24 Q. AND THEN DOWN AT THE LEFT-HAND CORNER, WHAT TIME IS
25 REFLECTED AS BEING THE CONCLUSION OF THE MIRANDA

KENNY MEARS - CROSS/MR. THEOS

1 RIGHTS BEING ADVISED?

2 A. IT'S 11:38 A.M.

3 Q. SO THIS TIME IT TOOK APPROXIMATELY TWO MINUTES; IS
4 THAT CORRECT?

5 A. THAT'S CORRECT.

6 Q. AGAIN, THERE WAS NOTHING SAID RELATED TO THE
7 MIRANDA RIGHTS BY WAY OF EXPLANATION OR OTHERWISE
8 EXCEPT WHAT IS CONTAINED ON THE TAPE AND THUS IN
9 THE TRANSCRIPT; CORRECT?

10 A. NOT AS I CAN RECALL; THAT'S TRUE.

11 Q. AND THERE WAS NO DISCUSSION PRIOR TO THE TAPE BEING
12 TURNED ON ON THE NINTH OTHER THAN WHAT IS ON THE
13 TAPE RELATED TO ANY OTHER SUBJECT MATTER EITHER; IS
14 THAT CORRECT?

15 A. IT MAY HAVE BEEN A BRIEF DISCUSSION AS TO WHY I WAS
16 THERE BEFORE I TURNED THE TAPE ON.

17 Q. WHICH WOULD HAVE BEEN -- WHAT WOULD YOU HAVE
18 ADVISED HIM AT THAT POINT THAT'S NOT ON THE
19 TAPE?

20 A. MAYBE JUST TELLING HIM THE REASON I WAS THERE. AND
21 ALSO IT'S ON THE TAPE ALSO.

22 Q. THAT'S ALSO ON THE TAPE?

23 A. YES, SIR.

24 Q. HOW LONG WOULD YOU SAY IT WOULD HAVE TAKEN TO TELL
25 HIM WHY YOU WERE THERE?

ANN REESE - DIRECT/MR. BAILEY

1 A. ABOUT FOUR OR FIVE MINUTES.

2 Q. NOTHING OF SUBSTANCE ANYWAY WAS DISCUSSED PRIOR TO
3 THE TAPE BEING TURNED ON?

4 A. NO, SIR.

5 Q. MRS. BOYD'S PURSE WAS NEVER RECOVERED?

6 A. I DON'T KNOW. I CAN'T ANSWER THAT.

7 MR. THEOS: NO OTHER QUESTIONS, YOUR
8 HONOR.

9 THE COURT: ANYTHING ON RE-DIRECT?

10 MR. BAILEY: NO RE-DIRECT, YOUR
11 HONOR.

12 THE COURT: ALL RIGHT. YOU MAY STEP
13 DOWN. NEXT WITNESS, PLEASE.

14 MR. BAILEY: YOUR HONOR, WE RECALL
15 ANN REESE.

16 THE COURT: COME AROUND,
17 PLEASE, MA'AM. YOU'RE STILL UNDER OATH, MRS. ANN
18 REESE.

19 - - - - -

20 WHEREUPON,

21 ANN REESE, WHO BEING PREVIOUSLY
22 SWORN TO TELL THE TRUTH, TESTIFIED AS
23 FOLLOWS:

24 DIRECT EXAMINATION

25 BY MR. BAILEY:

ANN REESE - DIRECT/MR. BAILEY

1 Q. MRS. REESE, I CALL YOUR ATTENTION TO DECEMBER THE
2 TENTH, 1997, AND ASK WHETHER OR NOT YOU ATTENDED A
3 BOND HEARING FOR MR. SIMMONS IN DORCHESTER
4 COUNTY?

5 A. YES, SIR.

6 Q. DO YOU RECALL WHO ELSE WAS AT THE BOND HEARING?

7 A. YOU MEAN THE OFFICERS OR---

8 Q. JUST WHO ELSE WAS THERE THAT YOU CAN RECALL JUST IN
9 GENERAL?

10 A. I THINK IT WAS MAJOR TURNER, DETECTIVE HENDRICKS,
11 MYSELF, SOME FAMILY MEMBERS OF KENNETH
12 SIMMONS.

13 Q. ALL RIGHT. AND ABOUT HOW BIG WAS THE ROOM THAT
14 Y'ALL WERE IN AT THE BOND HEARING?

15 A. IT WAS A VERY SMALL ROOM. I GUESS IT WAS PROBABLY
16 TEN BY -- OR MAYBE 12X12; SOMETHING LIKE THAT.

17 Q. AND WOULD YOU STATE WHETHER OR NOT BEFORE THE
18 MAGISTRATE CAME IN, WAS THERE ANY CONVERSATION
19 BETWEEN KENNETH SIMMONS AND HIS FAMILY
20 MEMBERS?

21 A. YES, SIR.

22 Q. ALL RIGHT. COULD YOU RELATE THAT, WHAT YOU HEARD?

23 A. YES, SIR. WE WERE WAITING FOR THE BOND HEARING FOR
24 THE JUDGE TO COME IN. AND AT THAT TIME I DIDN'T
25 KNOW WHO THE PEOPLE WERE. BUT IT WAS A MAN AND A

ANN REESE - CROSS/MR. THEOS

1 WOMAN THAT CAME IN THAT WERE FAMILY MEMBERS OF MR.
2 SIMMONS. AND THE FEMALE SUBJECT ASKED KENNETH
3 SIMMONS HAD HE DID THIS; HAD HE KILLED THAT LADY.
4 AND HE SAID, "YES, I KILLED THAT OLD LADY."

5 Q. THANK YOU, MRS. REESE. PLEASE ANSWER ANY QUESTIONS
6 MR. THEOS MAY HAVE FOR YOU.

7 THE COURT: CROSS?

8 CROSS-EXAMINATION

9 BY MR. THEOS:

10 Q. AGENT REESE, YOU'VE BEEN WITH SLED SINCE JULY OF
11 1993; IS THAT CORRECT?

12 A. YES, SIR.

13 Q. AND BEFORE THAT YOU WERE INVOLVED IN THE LAW
14 ENFORCEMENT FIELD AS WELL?

15 A. YES, SIR.

16 Q. WHERE WERE YOU INVOLVED IN LAW ENFORCEMENT?

17 A. THE ALCOHOLIC BEVERAGE CONTROL COMMISSION AS AN
18 AGENT.

19 Q. HOW LONG WERE YOU WITH THEM?

20 A. ALMOST FIFTEEN YEARS.

21 Q. AND WERE YOU IN LAW ENFORCEMENT BEFORE THAT?

22 A. VERY BRIEFLY AT THE UNIVERSITY OF SOUTH CAROLINA.

23 Q. HOW MANY YEARS IN TOTAL HAVE YOU BEEN IN LAW
24 ENFORCEMENT?

25 A. I HAVE BEEN IN LAW ENFORCEMENT FOR A TOTAL OF 21

ANN REESE - CROSS/MR. THEOS

YEARS.

Q. NOW, WITH RESPECT TO YOUR SERVICE WITH SLED, IN WHAT CAPACITY HAVE YOU SERVED WITH SLED SINCE 1993?

A. WELL, OUR AGENCY WAS DISSOLVED IN '93, JULY OF '93. WE TRANSFERRED TO SLED. I WORKED IN THE ALCOHOL UNIT FOR ONE YEAR. IN 1994 I WAS ASSIGNED TO CRIMINAL INVESTIGATIONS, AND I'VE BEEN WORKING IN THAT UNIT EVER SINCE THEN.

Q. SO FROM 1994 THROUGH -- I ASSUME TODAY'S DATE?

A. THAT'S CORRECT.

Q. YOU'VE BEEN WITH THE CRIMINAL INVESTIGATIVE DIVISION OF SLED?

A. THAT'S CORRECT.

Q. AND IN THE COURSE OF YOUR WORK WITH SLED IN THE CRIMINAL INVESTIGATIVE DIVISION, HOW MANY CASES WOULD YOU SAY YOU'VE BEEN INVOLVED IN INVESTIGATING?

A. IN THE LAST FOUR YEARS MAYBE TWENTY-FIVE, MAYBE THIRTY. I'M NOT REALLY SURE.

Q. ALL RIGHT. AND FROM 1993 THROUGH 1994 WHEN YOU WERE INVOLVED IN THE ALCOHOL DIVISION OF SLED, ROUGHLY HOW MANY CASES?

A. I WAS INVOLVED IN INVESTIGATIONS. BUT IT WAS DIFFERENT FROM CRIMINAL. IT WAS JUST WITH ALCOHOL,

ANN REESE - CROSS/MR. THEOS

1 DEALING WITH ALCOHOL.

2 Q. HOW MANY INVESTIGATIONS WOULD YOU ESTIMATE?

3 A. HUNDREDS.

4 Q. DURING THAT ONE YEAR WITH SLED?

5 A. OH! YOU MEAN WITH SLED?

6 Q. YES, MA'AM.

7 A. HUNDREDS, I WOULD SAY MAYBE BECAUSE SOMETIMES IT
8 WOULD BE SOMEWHERE IN THE NEIGHBORHOOD OF -- IN A
9 SIX MONTHS PERIOD OF TIME I COULD POSSIBLY HAVE
10 DONE AS MANY AS 100, 150; MAYBE MORE.

11 Q. AND THEN PRIOR TO SLED WHEN YOU WERE WITH
12 THE ALCOHOL AND FIREARMS AGENCY, HUNDREDS
13 AGAIN?

14 A. OVER THE FIFTEEN YEAR PERIOD OF TIME, IT WAS MORE
15 THAN JUST A COUPLE OF HUNDRED.

16 Q. SEVERAL HUNDRED AT LEAST?

17 A. SEVERAL; YES, SIR.

18 Q. OKAY. DURING THE COURSE OF YOUR WORK WITH THE
19 ALCOHOL AND---

20 A. ALCOHOL BEVERAGE CONTROL COMMISSION.

21 Q. ALCOHOL, BEVERAGE, AND CONTROL COMMISSION, AND ALSO
22 WITH SLED IN BOTH CAPACITIES, BECAUSE OF THE --
23 DURING YOUR INVESTIGATIONS AND BECAUSE OF THE
24 NATURE OF THOSE INVESTIGATIONS, YOU WERE IN THE
25 NORMAL PRACTICE OF PREPARING REPORTS RELATED TO

ANN REESE - CROSS/MR. THEOS

1 THOSE INVESTIGATIONS; CORRECT?

2 A. CORRECT.

3 Q. AND THE REASON THAT YOU ARE SO -- THE REASON -- IN
4 FACT AS PART OF YOUR TRAINING YOU ARE TRAINED AND
5 REQUIRED TO PREPARE REPORTS RELATED TO YOUR
6 INVESTIGATIONS; CORRECT?

7 A. THAT'S CORRECT.

8 Q. AND THE REASON YOU'RE REQUIRED TO DO THAT IS -- THE
9 REASON THAT YOU'RE REQUIRED TO DO THAT IS ONE, TO
10 DOCUMENT WHAT YOU'VE LEARNED DURING THE COURSE OF
11 YOUR INVESTIGATION; CORRECT?

12 A. THAT'S CORRECT.

13 Q. THAT'S ONE REASON. ANOTHER REASON IS BECAUSE OF
14 THE NUMBER OF CASES YOU MAY BE INVOLVED IN AND
15 ASSIGNED TO TO MAKE SURE THAT THERE'S AN ACCURATE
16 RECORD OF WHAT YOU DISCOVER DURING THE COURSE OF
17 YOUR INVESTIGATION; CORRECT?

18 A. THAT'S CORRECT.

19 Q. CAN YOU THINK OF ANY OTHER REASONS WHY YOU ARE
20 REQUIRED DURING THE COURSE OF YOUR INVESTIGATIONS
21 TO MAINTAIN REPORTS OF WHAT YOU INVESTIGATE, WHAT
22 YOU DISCOVER DURING THE COURSE OF YOUR
23 INVESTIGATIONS?

24 A. TO KEEP -- TO RECORD; TO MAKE A RECORD OF THINGS
25 THAT YOU'VE DONE SO IF YOU HAD TO WRITE A REPORT,

ANN REESE - CROSS/MR. THEOS

1 IT WOULD BE THERE.

2 Q. WOULD ONE OTHER REASON BE TO MAKE SURE THAT YOU CAN
3 REFER TO YOUR REPORT PERHAPS AT A LATER TIME SUCH
4 AS DURING A TRIAL OR DURING A HEARING SO THAT THERE
5 WOULD BE NO QUESTION ABOUT THE REPORT THAT YOU
6 WOULD BE MAKING TO THAT COURT AT THAT FUTURE
7 DATE?

8 A. REPEAT THAT AGAIN.

9 Q. ONE OTHER REASON WOULD BE TO REFRESH YOUR
10 RECOLLECTION AND ALSO FOR VERIFICATION PURPOSES;
11 CORRECT?

12 A. INFORMATION THAT WAS COLLECTED DURING THIS TRIAL IS
13 PLACED IN A CASE FILE.

14 Q. NOW, IN THIS PARTICULAR CASE, YOU WERE INVOLVED IN
15 THE INVESTIGATION OF IT FROM WHAT DATE THROUGH WHAT
16 DATE?

17 A. I WAS INITIALLY INVOLVED IN THIS CASE IN SEPTEMBER
18 OF 1996.

19 Q. AND THROUGH SEPTEMBER OF 1996 -- FROM SEPTEMBER OF
20 1996 THROUGH DECEMBER THE -- I BELIEVE MR. BAILEY
21 SAID THE TENTH; IS THAT CORRECT?

22 A. THE BOND HEARING WAS THE TENTH.

23 Q. THE TENTH OF DECEMBER OF 1997; IS THAT CORRECT?

24 A. CORRECT.

25 Q. YOU WERE NOT ONLY INVOLVED IN THE INVESTIGATION BUT

ANN REESE - CROSS/MR. THEOS

1 PREPARED REPORTS RELATED TO YOUR INVESTIGATION;
2 CORRECT?

3 A. I PREPARED A CASE FILE AT THE END.

4 Q. AND YOU ALSO MADE NOTES AND KEPT REPORTS
5 CONTEMPORANEOUS WITH SOME OF YOUR INVESTIGATIVE
6 EFFORTS DURING WITH THE COURSE OF YOUR INVOLVEMENT
7 WITH THE CASE; CORRECT?

8 A. YES, SIR.

9 Q. WITH RESPECT TO THIS STATEMENT THAT YOU SAY YOU
10 HEARD AT THE BOND HEARING, THERE IS NO RECORDING OF
11 THAT STATEMENT AT ALL; CORRECT?

12 A. NO, SIR. AS YOU STATED -- AS I STATED EARLIER,
13 DURING THAT PERIOD OF TIME THERE WAS A LOT OF
14 THINGS GOING ON, WORKING ON OTHER CASES. I DID NOT
15 REMEMBER THIS UNTIL WE STARTED GOING BACK THROUGH
16 THE TAPED INTERVIEWS OF MR. SIMMONS IN MR. BAILEY'S
17 OFFICE.

18 Q. IN FACT THE FIRST TIME THAT YOU RECALLED THIS
19 STATEMENT BEING MADE WAS APPROXIMATELY TWO TO THREE
20 WEEKS AGO?

21 A. IT WAS BACK IN JANUARY.

22 Q. WITHIN THE LAST THIRTY DAYS? WOULD THAT BE MORE
23 ACCURATE?

24 A. YES.

25 Q. SO FROM DECEMBER THE TENTH OF 1997 THROUGH AT LEAST

ANN REESE - CROSS/MR. THEOS

1 MID-JANUARY, THE END OF JANUARY OF 1999, YOU HAD NO
2 RECOLLECTION OF THIS STATEMENT BEING MADE BY MR.
3 SIMMONS?

4 A. I REMEMBER THE STATEMENT BEING MADE AT THE BOND
5 HEARING. I DID NOT MAKE A NOTE OF IT. BUT I
6 REMEMBERED IT WHEN WE WERE GOING BACK THROUGH
7 PREPARING FOR THE TRIAL. I REMEMBER THAT. I HAD
8 DISCUSSED WITH DETECTIVE HENDRICKS I THINK SOME
9 TIME DURING THAT PERIOD OF TIME OR SHORTLY AFTER
10 THE BOND HEARING ABOUT WHAT WAS -- ASKED HER IF SHE
11 HAD HEARD THE SAME THING. AND SHE SAID THAT SHE
12 DID.

13 Q. ISN'T IT TRUE, AGENT REESE, THAT YOU DIDN'T DISCUSS
14 THAT STATEMENT AT ANY TIME WITH ANY OF THE OTHER
15 CASE AGENTS AFTER THE BOND HEARING?

16 A. DETECTIVE HENDRICKS.

17 Q. YOU DIDN'T DISCUSS IT WITH AGENT MEARS?

18 A. HE WAS NOT THERE.

19 Q. YOU DIDN'T DISCUSS IT WITH ANYBODY FROM THE
20 SUMMERVILLE POLICE DEPARTMENT?

21 A. I DID NOT.

22 Q. YOU DID NOT DISCUSS IT WITH SOLICITOR BAILEY?

23 A. I DID NOT.

24 Q. YOU DID NOT MENTION IT -- WAS SOLICITOR BAILEY AT
25 THE BOND HEARING?

ANN REESE - CROSS/MR. THEOS

1 A. NO, SIR.

2 Q. WAS THERE ANY REPRESENTATIVE FROM THE SOLICITOR'S
3 OFFICE AT THE BOND HEARING?

4 A. I DON'T REMEMBER.

5 Q. HOW MANY TIMES WOULD YOU SAY YOU MET WITH MR.
6 BAILEY OR ONE OF THE OTHER LAWYERS FROM THE
7 SOLICITOR'S OFFICE FROM THE DATE OF MR. SIMMONS'
8 ARREST THROUGH JANUARY OF 1999?

9 A. I THINK I MAY HAVE MET WITH MR. BAILEY MAYBE ONCE
10 OR TWICE PRIOR TO LETTING HIM KNOW THAT I HAD
11 REMEMBERED THAT STATEMENT.

12 Q. SO AGAIN, YOU MADE NO WRITTEN NOTE OF THE
13 STATEMENT?

14 A. THERE IS NO WRITTEN NOTE.

15 Q. MADE NO REPORT OF THIS STATEMENT?

16 A. NONE WHATSOEVER.

17 MR. BAILEY: THAT'S ASKED AND
18 ANSWERED.

19 THE COURT: SUSTAINED.

20 Q. DID YOU MAKE A WRITTEN REPORT AFTER JANUARY OF
21 1998? DID YOU MAKE---

22 THE COURT: HOW ABOUT 1999?

23 MR. THEOS: I'M SORRY.

24 Q. OF 1999. DID YOU MAKE A WRITTEN REPORT OF IT AT
25 THAT TIME?

ANN REESE - CROSS/MR. THEOS

1 A. NO, SIR.

2 MR. THEOS: NO OTHER QUESTIONS, YOUR
3 HONOR.

4 THE COURT: ANYTHING ON RE-DIRECT?

5 MR. BAILEY: NO, SIR.

6 THE COURT: ANY OBJECTION TO THIS
7 WITNESS BEING EXCUSED?

8 MR. BAILEY: NOT FROM THE STATE,
9 YOUR HONOR.

10 MR. THEOS: NO, SIR.

11 THE COURT: YOU MAY BE EXCUSED.

12 THANK YOU, MA'AM. NEXT WITNESS, PLEASE.

13 MR. BAILEY: MAY WE APPROACH
14 BRIEFLY, YOUR HONOR?

15 THE COURT: YES, SIR.

16 (AT THIS TIME BENCH CONFERENCE IS HELD.)

17 THE COURT: YOU MAY CALL YOUR NEXT
18 WITNESS, PLEASE.

19 - - - - -

20 WHEREUPON,

21 MARY JOHNSON, WHO AFTER BEING FIRST DULY
22 SWORN TO TELL THE TRUTH, TESTIFIED AS
23 FOLLOWS:

24 DIRECT EXAMINATION

25 BY MR. BAILEY:

MARY JOHNSON - DIRECT/MR. BAILEY

- 1 Q. MRS. JOHNSON, I APPRECIATE YOUR PATIENCE.
- 2 YOU'VE BEEN WAITING HERE ALL DAY; AND I THANK
- 3 YOU FOR COMING. PLEASE TELL THE JURY WHERE YOU WORK.
- 4 A. WACHOVIA BANK.
- 5 Q. OKAY. AND WHAT'S YOUR POSITION AT THE BANK?
- 6 A. VICE PRESIDENT AND MANAGER.
- 7 Q. AND HOW LONG HAVE YOU HELD THAT POSITION?
- 8 A. SINCE 1979; TWENTY YEARS.
- 9 Q. ALL RIGHT. AND THE BRANCH THAT YOU MANAGE; IS IT
- 10 THE SUMMERVILLE BRANCH OF WACHOVIA?
- 11 A. ON MAIN STREET, 406 NORTH MAIN STREET.
- 12 Q. ALL RIGHT. WERE YOU FAMILIAR WITH LILLY BELL BOYD?
- 13 A. YES, SIR.
- 14 Q. DID YOU KNOW HER BY SITE?
- 15 A. YES, SIR.
- 16 Q. OKAY. WAS SHE A BANK CUSTOMER OF WACHOVIA BANK
- 17 BACK IN AUGUST AND SEPTEMBER, 1996?
- 18 A. YES, SIR.
- 19 Q. OKAY. HAVE YOU GONE OVER HER DEPOSIT AND
- 20 WITHDRAWAL RECORDS?
- 21 A. YES, SIR.
- 22 Q. PRIOR TO TESTIFYING?
- 23 A. YES, SIR.
- 24 Q. DID SHE HAVE BASICALLY A PATTERN OF DEPOSITS AND
- 25 WITHDRAWALS; A GENERAL PATTERN?

MARY JOHNSON - DIRECT/MR. BAILEY

1 A. YES; EVERYTHING SHE DEPOSITED WAS DIRECT DEPOSIT.

2 Q. OKAY. AND APPROXIMATELY HOW MUCH MONEY DID SHE
3 DEPOSIT, AND HOW OFTEN DID SHE DEPOSIT IT?

4 A. ONCE A MONTH SHE HAD A SMALL RETIREMENT CHECK, A
5 HUNDRED AND SOME DOLLARS; AND THEN HER SOCIAL
6 SECURITY CHECK.

7 Q. OKAY. WOULD SHE WITHDRAW THAT MONEY PERIODICALLY?

8 A. YES; SHE'D COME IN AT LEAST ONCE A MONTH.

9 Q. OKAY. AND WHEN SOMEBODY WITHDRAWS CASH FROM THE
10 BANK, IS IT PUT IN AN ENVELOPE?

11 A. FOR ALL THE PEOPLE OVER FIFTY; YES, BECAUSE THAT'S
12 WHAT THEY WANT.

13 Q. AND MRS. BOYD WAS CERTAINLY OVER FIFTY; IS THAT
14 CORRECT?

15 A. YES, SIR.

16 Q. I'M GOING TO HAND YOU THIS ENVELOPE AND ASK IF THIS
17 IS THE TYPE ENVELOPE THAT WAS USED AT WACHOVIA IN 199

18 A. YES, SIR, IT IS.

19 MR. BAILEY: YOUR HONOR, I WOULD
20 OFFER THIS; STATE'S 23.

21 THE COURT: WITH NO OBJECTION.
22 STATE'S NUMBER?

23 THE COURT REPORTER: NUMBER 23.

24 STATE'S EXHIBIT NO. 23

25 ADMITTED AS EVIDENCE

IRA JEFFCOAT - DIRECT/MR. BAILEY

Q. MRS. JOHNSON, THAT'S ALL I HAVE. PLEASE ANSWER ANY
QUESTIONS DEFENSE MAY HAVE FOR YOU.

MR. THEOS: NO QUESTIONS, YOUR
HONOR.

THE COURT: THANK YOU. STEP DOWN.
MAY THIS LADY BE EXCUSED?

MR. BAILEY: YES, SIR.

MR. THEOS: WITHOUT OBJECTION.

MR. BAILEY: WE WOULD CALL IRA
JEFFCOAT.

THE COURT: COME AROUND, PLEASE, MR.
JEFFCOAT.

WHEREUPON,

IRA JEFFCOAT, WHO AFTER BEING FIRST DULY
SWORN TO TELL THE TRUTH, TESTIFIED AS
FOLLOWS:

THE COURT: IS THIS A LONG OR SHORT
WITNESS?

MR. BAILEY: ABOUT MEDIUM.

THE COURT: WE STARTED BACK AT 2:40.
IF IT WILL BE MORE THAN TWENTY MINUTES.

MR. BAILEY: IT WILL BE, YOUR HONOR.

THE COURT: ALL RIGHT. THIS IS
PROBABLY A GOOD TIME TO TAKE A RECESS. LET THE

IRA JEFFCOAT - DIRECT/MR. BAILEY

1 JURORS GET COMFORTABLE.

2 (AT THIS TIME JURY RETIRES TO JURY ROOM FOR A BRIEF
3 RECESS.)

4 THE COURT: ALL RIGHT. COURT WILL
5 STAND AT EASE, PLEASE.

6 (BRIEF RECESS.)

7 - - - - -

8 THE COURT: BRING THE JURY IN,
9 PLEASE. (AT THIS TIME JURY RETURNS TO OPEN COURT.)

10 THE COURT: LADIES AND GENTLEMEN,
11 THIS IS SLED AGENT BUSTER EDWARDS. HE'LL BE
12 ASSISTING THE SECURITY DETAIL. WOULD YOU PLEASE
13 SWEAR HIM ON THE RECORD?

14 (AT THIS TIME SLED AGENT EDWARDS IS SWORN BY THE DEPUTY
15 CLERK OF COURT.)

16 MR. BAILEY: JUDGE, MY WITNESSES
17 PLANE HAS LANDED. THEY'RE IN MY INVESTIGATORS'
18 CARS. THEY'RE ON THE WAY IN HEAVY TRAFFIC, BUT
19 HE'S GOT THE BLUE LIGHT ON. SO---

20 THE COURT: THANK YOU. YOU'VE BEEN
21 SWORN. YOU CAN RETURN TO THE WITNESS STAND,
22 PLEASE.

23 - - - - -

24 WHEREUPON,

25 IRA JEFFCOAT, WHO BEING PREVIOUSLY

IRA JEFFCOAT - DIRECT/MR. BAILEY

SWORN TO TELL THE TRUTH, TESTIFIED AS
FOLLOWS:

DIRECT EXAMINATION

BY MR. BAILEY:

Q. PLEASE STATE YOUR NAME.

A. IRA JEFFCOAT.

Q. MR. JEFFCOAT, PLEASE TELL THE JURY WHERE YOU'RE
EMPLOYED.

A. I WORK FOR THE STATE LAW ENFORCEMENT DIVISION
OTHERWISE KNOWN AS SLED.

Q. ALL RIGHT, SIR. WHAT IS YOUR EDUCATIONAL
BACKGROUND?

A. I HAVE A B.S. DEGREE FROM THE MEDICAL UNIVERSITY OF
CHARLESTON IN MEDICAL TECHNOLOGY.

Q. ALL RIGHT, SIR. AND YOUR EMPLOYMENT HISTORY?

A. YES, SIR. FOR TEN YEARS I WORKED IN A MEDICAL
LABORATORY IN COLUMBIA. AND IN '84 I BECAME
EMPLOYED WITH SLED; TRAINED AS A FORENSIC
SEROLOGIST AT SLED AND IN '84 WORKED IN THE
SEROLOGY LAB FROM '84 TO '88. IN 1988 I WAS GIVEN
THE RESPONSIBILITY OF SETTING UP A DNA LABORATORY
AT SLED. WE DID THAT FROM '88 TO LATE 1990. WENT
ON LINE WITH THE DNA LAB IN 1990; AND I WAS A DNA
EXAMINER FROM 1990 TO 1993. AND IN 1993 I BECAME
THE SUPERVISOR OF THE DEPARTMENT AND HAVE BEEN THE

IRA JEFFCOAT - DIRECT/MR. BAILEY

1 SUPERVISOR OF THE DNA AND SEROLOGY LAB SINCE 1993
2 AT SLED.

3 Q. ALL RIGHT. HOW MANY ANALYSTS DO YOU SUPERVISE AT
4 THE DNA DEPARTMENT AT SLED?

5 A. WHEN WE'RE FULLY STAFFED, IT'S SIXTEEN.

6 Q. AND YOU DO DNA ANALYSES YOURSELF AS WELL AS
7 SUPERVISE OTHER EMPLOYEES AT SLED?

8 A. YES. I DO SOME CASES; NOT A FULL CASE LOAD, BUT
9 SOME CASES; YES.

10 Q. ALL RIGHT, SIR. AND WOULD YOU STATE WHETHER OR NOT
11 LILLIE GALLMAN IS ONE OF THE DNA ANALYSTS THAT
12 Y'ALL EMPLOY AT SLED?

13 A. THAT'S CORRECT. SHE'S A DNA ANALYST UNDER MY
14 SUPERVISION.

15 Q. HOW LONG HAS SHE WORKED AT SLED AS A DNA ANALYST
16 APPROXIMATELY?

17 A. PROBABLY EIGHT -- SINCE 1990 APPROXIMATELY.

18 Q. ALL RIGHT. NOW AT SLED IS THERE A PROCEDURE WHERE
19 WHEN SOMEBODY DOES AN ANALYSIS ON FORENSIC SAMPLES;
20 DOES SOMEBODY ELSE LOOK OVER THEIR WORK?

21 A. EVERY CASE THAT'S ANALYZED BY A SLED ANALYST, IN MY
22 DEPARTMENT ANYWAY, HAS THEIR WORK REVIEWED BY
23 ANOTHER ANALYST BEFORE IT GOES OUT. IN ADDITION
24 IT'S REVIEWED BY THEM AND MYSELF, OF COURSE; BUT
25 THERE ARE TWO REVIEWS ON EVERY CASE IN THE DNA

IRA JEFFCOAT - DIRECT/MR. BAILEY

1 LABORATORY.

2 Q. ALL RIGHT. AND, MR. JEFFCOAT, HAVE YOU TESTIFIED
3 IN THE PAST AS AN EXPERT IN THE FIELD OF DNA
4 EVIDENCE?

5 A. YES, I HAVE.

6 Q. APPROXIMATELY HOW MANY TIMES?

7 A. MORE THAN THIRTY.

8 MR. BAILEY: YOUR HONOR, I WOULD
9 TENDER MR. JEFFCOAT AS AN EXPERT IN DNA ANALYSIS.

10 THE COURT: THANK YOU. WOULD YOU
11 LIKE TO EXAMINE AS TO HIS EXPERTISE, MR. THEOS?

12 MR. THEOS: NO, SIR; WITHOUT
13 OBJECTION, YOUR HONOR.

14 THE COURT: WITHOUT OBJECTION.
15 THANK YOU. YOU MAY PROCEED.

16 MR. BAILEY: THANK YOU, YOUR HONOR.

17 Q. MR. JEFFCOAT, WOULD YOU PLEASE TELL THE JURY
18 BRIEFLY AND IN LAYMAN'S TERMS IF YOU CAN, PLEASE,
19 WHAT DNA IS?

20 A. WELL YES, SIR. IT'S THE GENETIC MATERIAL THAT'S
21 CONTAINED IN THE CELLS OF THE BODY. DNA IS THE
22 MATERIAL THAT REALLY DETERMINES WHY AN INDIVIDUAL
23 LOOKS LIKE WHAT AN INDIVIDUAL IS, MALE VERSUS
24 FEMALE. IT'S MATERIAL CONTAINED WITHIN THE CELLS
25 IN THE BODY MUCH LIKE -- AN EXAMPLE I CAN USE FOR A

IRA JEFFCOAT - DIRECT/MR. BAILEY

1 CELL IS LIKE AN EGG. AN EGG HAS A HARD EXTERIOR,
2 THE CELL MEMBRANE, AND THEN HAS THE CENTER OF THE
3 YOLK. THE YOLK IS THE NUCLEUS OR THE MIDDLE OF THE
4 EGG THAT CONTAINS THE DNA. THE CELLS IN A HUMAN
5 BODY ALSO HAVE THAT SET OF NUCLEUS WHICH CONTAINS
6 DNA. AND THE DNA IS THE MATERIAL THAT PRESCRIBES
7 FOR AN INDIVIDUAL'S APPEARANCE, HAIR COLOR, SEX,
8 EYE COLOR, GENETIC EFFECTS, ALL THOSE THINGS
9 ACCOUNTED FOR IN THE DNA.

10 Q. ALL RIGHT, SIR. AND FORENSICALLY HOW IS DNA USED
11 IN A FORENSIC LAB LIKE SLED?

12 A. WE UTILIZE DNA TO HELP US IDENTIFY AN INDIVIDUAL
13 THROUGH BODY FLUIDS THAT ARE LEFT BEHIND AT A CRIME
14 SCENE; FOR EXAMPLE, BEING A BLOOD STAIN LEFT BEHIND
15 AT A CRIME SCENE, WE CAN EXAMINE THE DNA FROM THE
16 BLOOD STAIN AND COMPARE THE DNA THAT WE EXAMINE
17 FROM THE BLOOD STAIN TO THE DNA WE EXAMINE FROM AN
18 INDIVIDUAL, FROM A KNOWN INDIVIDUAL AND COMPARE THE
19 TWO. AND IF THE TWO MATCH, THEN THAT INDIVIDUAL IS
20 THE DONOR OF THAT PARTICULAR BLOOD STAIN.

21 Q. IS DNA USED IN OTHER FIELDS OTHER THAN FORENSICS;
22 THE LEGAL FIELD?

23 A. I YES; IT'S A VERY USEFUL TOOL FOR PATERNITY
24 TESTING; ESTABLISHING THE PATERNITY OF A CHILD.

25 Q. ALL RIGHT, SIR. WHAT ABOUT IN MEDICAL AREAS? IS

IRA JEFFCOAT - DIRECT/MR. BAILEY

1 IT USED THERE?

2 A. A LOT OF RESEARCHING USING DNA IN THE MEDICAL FIELD
3 AS FAR AS TRANSPLANTS AND GENETIC ENGINEERING.
4 IT'S A VERY POPULAR FIELD RIGHT NOW.

5 Q. HOW LONG HAVE DNA BEEN IN USE GENERALLY?

6 A. GOSH! FOREVER. BUT REALLY AS A FORENSIC TOOL
7 SINCE THE MID EIGHTIES. BUT IN RESEARCH IT IS
8 FOREVER, BUT ESPECIALLY IN THE SIXTIES.

9 Q. DOES EACH CELL IN THE HUMAN BODY HAVE DNA?

10 A. BASICALLY. AS AN EXCEPTION TO THAT PARTICULAR
11 RULE, I MEAN, DNA IS CONTAINED IN THE BLOOD. BUT
12 THE EXCEPTION IS THAT THE RED BLOOD CELLS IN THE
13 BODY DO NOT CONTAIN DNA BECAUSE THEY DON'T HAVE THE
14 NUCLEUS OR THE YOLK I WAS DESCRIBING. BUT THE
15 WHITE BLOOD CELLS IN THE BLOOD DO CONTAIN DNA. BUT
16 EVERY CELL IN THE BODY THAT HAS A NUCLEUS OR A
17 CENTER DOES CONTAIN DNA. AND THAT'S MOST OF THE
18 CELLS IN THE BODY.

19 Q. ALL RIGHT, SIR. IS THE DNA IN EACH CELL IN A
20 PERSON'S BODY THAT HAS DNA, HAS A NUCLEUS, IS THAT
21 IDENTICAL WITH DNA AND OTHER TISSUES OF THE BODY?
22 FOR EXAMPLE WOULD THE DNA IN A MAN'S SEMEN BE THE
23 SAME AS THE DNA IN HIS BLOOD CELLS, THE SAME AS THE
24 DNA IN HIS BRAIN TISSUE?

25 A. THAT'S CORRECT. THE SEMEN IS AN EXAMPLE. IN THE

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1 SEMEN IS ACTUAL SPERM CELLS. THEY CONTAIN THE
2 DNA. BUT THE DNA FOUND IN THE SPERM CELL WOULD BE
3 THE SAME DNA PRINT AS THE DNA FOUND IN THE SAME
4 PERSON'S BLOOD CELLS OR IN THEIR HAIR ROOTS OR IN
5 THEIR BRAIN TISSUE. IT WOULD ALL PRESENT THE SAME
6 DNA PATTERN.

7 Q. WITH THE EXCEPTION OF IDENTICAL TWINS, IS
8 EVERYBODY'S DNA DIFFERENT?

9 A. THAT'S CORRECT. AS YOU SAID, THE EXCEPTION IS
10 IDENTICAL TWINS. TWO IDENTICAL TWINS WOULD HAVE
11 THE IDENTICAL DNA PATTERN. ANYONE ELSE -- ANY TWO
12 OTHER INDIVIDUALS WOULD HAVE DIFFERENT DNA
13 PATTERNS. TWO BROTHERS, FOR EXAMPLE, WOULD HAVE
14 SIMILAR BUT NOT THE SAME DNA THAT -- TWO BROTHERS
15 WOULD HAVE DNA THAT'S MORE CLOSELY RELATED THAN TWO
16 UNRELATED PEOPLE. BUT YET TWO BROTHERS WOULD HAVE
17 DIFFERENT DNA'S UNLESS THEY'RE IDENTICAL TWINS.

18 Q. SO WITHIN A SINGLE INDIVIDUAL, ALL THE DNA IN EVERY
19 CELL WOULD BE IDENTICAL?

20 A. THAT'S CORRECT.

21 Q. AND WITH RESPECT TO DIFFERENT INDIVIDUALS, EACH
22 WOULD HAVE A DIFFERENT DNA PROFILE; IS THAT
23 CORRECT?

24 A. BETWEEN TWO INDIVIDUALS YOU EXPECT TO HAVE A
25 DIFFERENT DNA PATTERN.

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1 Q. ALL RIGHT, SIR. NOW HOW MANY DIFFERENT MAJOR TYPES
2 OF DNA ANALYSIS ARE THERE; WAYS TO ANALYZE DNA?

3 A. FORENSICALLY THERE'S PRIMARILY THREE DIFFERENT
4 METHODS OF TESTING FOR DNA. ONE OF THE TESTS THAT
5 WE'VE USED IN OUR LABORATORY, WE'VE USED SINCE 1990
6 IS WHAT WE CALL R.F.L.P., AND THAT'S RESTRICTION
7 FRAGMENT LENGTH POLYMORPHISM. AND THAT'S JUST TO
8 DESCRIBE THE TYPE OF TESTS THAT WE DO IN OUR
9 LABORATORY. AND WE'VE DONE THAT PROCEDURE SINCE
10 1990 AND HAS BEEN A VERY WIDELY USED PROCEDURE OVER
11 THE LAST FIFTEEN YEARS. THE SECOND TYPE WHICH IS A
12 VERY WIDELY USED PROCEDURE NOW IS CALLED P.C.R. OR
13 POLYMERASE, P-O-L-Y-M-E-R-A-S-E, CHAIN REACTION.
14 THAT'S THE NAME FOR ANOTHER TYPE OF DNA TESTING.
15 IT HAS GAINED IN POPULARITY OVER THE LAST FIVE
16 YEARS. TEN YEARS AGO IT WAS NOT THE METHOD OF
17 CHOICE. IT HAD SOME LIMITATIONS. BUT TODAY THAT'S
18 PROBABLY THE MOST COMMONLY USED TYPE PROCEDURE.
19 OUR LABORATORY IS IN THE PROCESS OF SETTING UP A
20 P.C.R. LABORATORY. WE'RE NOT YET ON LINE, BUT WE
21 HOPE TO BE ON LINE WITHIN THE NEXT SIX MONTHS OR
22 EIGHT MONTHS. THE THIRD TYPE IS WHAT WE CALL
23 MITOCHONDRIAL, M-I-T-O-C-H-O-N-D-R-I-A-L, DNA
24 TESTING. THAT'S PROBABLY THE CUTTING EDGE DNA
25 TECHNOLOGY THAT'S IN USE BY A LIMITED NUMBER OF

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1 LABS TODAY. IT'S ONLY MAYBE FOUR OR FIVE LABS IN
2 THE NATION THAT ACTUALLY OFFER THAT PARTICULAR
3 TEST; AND IT HAS CERTAIN BENEFITS OVER THE OTHER
4 TWO.

5 Q. ALL RIGHT, SIR. AND AT THE PRESENT TIME, AS I
6 UNDERSTAND YOUR TESTIMONY, SLED USES THE R.F.L.P.
7 PROCESS?

8 A. THAT'S CORRECT. WE'VE BEEN DOING THAT SINCE THE
9 EARLY NINETIES.

10 Q. ALL RIGHT, SIR. ARE THERE ANY DISADVANTAGES TO THE
11 R.F.L.P. PROCESS?

12 A. THE DISADVANTAGE WOULD BE THAT IT REQUIRED A FAIRLY
13 LARGE SAMPLE. AN EXAMPLE MIGHT BE IT REQUIRES THE
14 BLOOD STAIN ABOUT THE SIZE OF A NICKEL. IT
15 REQUIRES A PRETTY DARK RED INTENSE BLOOD STAIN TO
16 GET ENOUGH DNA TO GET AN R.F.L.P. PRINT. IT
17 REQUIRES A FAIRLY LARGE SEMEN STAIN. IT REQUIRES A
18 LOT OF SPERM CELLS TO GET A DNA PRINT. THAT'S THE
19 PRIMARY DISADVANTAGE. THE OTHER DISADVANTAGE IS
20 IT'S A FAIRLY LENGTHY PROCEDURE. IT CAN TAKE
21 ANYWHERE FROM A MONTH TO THREE MONTHS TO GET BACK A
22 RESULT USING R.F.L.P. TESTING.

23 Q. ALL RIGHT, SIR. WITH RESPECT TO THE GRADED OR
24 SAMPLE, IS THERE ANY DISADVANTAGE TO R.F.L.P. IN
25 THAT RESPECT?

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1 A. YES, SIR. A GOOD FOR EXAMPLE BEING I MENTIONED
2 QUANTITY. IT REQUIRES A FAIRLY LARGE QUANTITY OF
3 DNA FOR R.F.L.P. TESTING. IT ALSO REQUIRES A
4 SAMPLE OF HIGH QUALITY. IT REQUIRES A SAMPLE THAT
5 PRETTY MUCH HASN'T BEEN AFFECTED BY THE ENVIRONMENT
6 OR ANY SIDE OF OUTSIDE ELEMENTS. AN EXAMPLE BEING
7 IF A PARTICULAR -- THE WORSE EXAMPLE FOR US IS IF
8 AN INDIVIDUAL DIES AND THE BODY IS NOT FOUND FOR
9 SEVERAL DAYS, THE BODY BEGINS TO DEGRADE. WHEN THE
10 BODY BEGINS TO BREAK DOWN, THE TISSUE BREAKS DOWN.
11 AND THEN THE DNA BEGINS TO BREAK DOWN. AND THE DNA
12 IS CONVERTED FROM A LONG MOLECULE WHICH IS THE
13 ORIGINAL FORM OF DNA TO A VERY SHORT SEGMENTED
14 MOLECULE. WHEN THE MOLECULE GETS TOO SHORT FOR
15 R.F.L.P. ANALYSIS, THEN WE CAN'T USE IT IN OUR
16 LABORATORY.

17 Q. ALL RIGHT, SIR. WITH RESPECT TO THE P.C.R., THE
18 OTHER METHOD YOU TALKED ABOUT; WHAT ARE THE
19 ADVANTAGES OF THE P.C.R. COMPARING IT TO THE
20 R.F.L.P. METHOD?

21 A. THE ADVANTAGES ARE JUST THE ONES I OUTLINED; THE
22 DISADVANTAGES FOR THE R.F.L.P. THOSE SAME
23 DISADVANTAGES ARE ADVANTAGES FOR THE P.C.R. THE
24 P.C.R. WILL GIVE YOU A PRINT ON A FAR LESS SAMPLE.
25 I MEAN, YOU CAN TAKE ONE SINGLE HAIR ROOT AND SEND

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1 IT TO GET A DNA PRINT. YOU DON'T NEED NEAR AS MUCH
2 SAMPLE TO GET A P.C.R. PRINT. ALSO YOU CAN TAKE A
3 DEGRADED OR AN INFERIOR SAMPLE QUALITY-WISE, A
4 SAMPLE THAT'S NOT NEARLY AS IN TACT AS YOU WOULD
5 WANT AND HAVE A RELATIVELY GOOD CHANCE OF GETTING A
6 DNA PRINT. THE DISADVANTAGES TO P.C.R. IS IT IS
7 VERY COSTLY. IT'S A PRETTY EXPENSIVE PROCEDURE.
8 AND IT HAS NOT ALWAYS BEEN AS DISCRIMINATING AS
9 R.F.L.P. WHAT I MEAN BY DISCRIMINATING; IF YOU CAN
10 GET AN R.F.L.P. PRINT, YOU'VE PRETTY MUCH GOT
11 IDENTITY WITH THAT PARTICULAR SAMPLE. P.C.R. HAS
12 NOT ALWAYS BEEN THAT DISCRIMINATING. NOW WITH
13 RECENT RESEARCH OVER THE LAST COUPLE OF YEARS, IT'S
14 BECOMING MORE AND MORE DISCRIMINATING AND A BETTER
15 SET OF MARKERS.

16 Q. ALL RIGHT, SIR. AND DUE TO THE DISADVANTAGES OF
17 R.F.L.P. AND THE ADVANTAGES OF P.C.R., ARE Y'ALL IN
18 THE PROCESS OF CHANGING FROM THE R.F.L.P. TO P.C.R.
19 AT THE SLED LAB?

20 A. WELL, WE'RE IN THE PROCESS OF CHANGING. IT'S NOT
21 ALL BECAUSE OF THE DISADVANTAGES; IT'S JUST THAT
22 NEW TECHNOLOGY IS A QUICKER TECHNOLOGY. FOR ONE
23 THING, IT'S A QUICKER TECHNOLOGY. WE CAN TURN
24 AROUND THE EVIDENCE A LOT QUICKER USING P.C.R.
25 TESTING THAN WE CAN R.F.L.P. TESTING. THE OTHER

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1 ADVANTAGES ARE KIND OF BI-PRODUCT. IT REQUIRES
2 LESS SAMPLE, AND IT DOES REQUIRE -- NOT AN INFERIOR
3 QUALITY SAMPLE. BUT THE PRIMARY REASON WE'RE
4 CONVERTING IS TIME. IT'S A LOT QUICKER TO GET A
5 RESULT WITH P.C.R.

6 Q. ALL RIGHT, SIR. AT THE PRESENT TIME YOU DO HAVE
7 NOT YET CONVERTED?

8 A. WE'RE IN THE PROCESS. WE HOPE TO BE ON LINE WITH
9 P.C.R. WITHIN THE NEXT SIX TO NINE MONTHS.

10 Q. ALL RIGHT, SIR. SO YOU'RE WORKING IN THAT
11 DIRECTION, BUT YOU'RE NOT THERE YET; IS THAT
12 CORRECT?

13 A. THAT'S CORRECT, SIR.

14 Q. SO SOME SAMPLES SENT TO SLED NOW, ALL YOU COULD DO
15 WOULD BE R.F.L.P.?

16 A. THAT'S CORRECT. WE EVALUATE THE EVIDENCE; AND IF
17 WE CAN ANALYZE IT, WE DO IN-HOUSE. BUT THERE'S A
18 FEW THAT COME IN THAT DON'T FIT THE CRITERIA, AND
19 WE HAVE TO EITHER FARM THEM TO A PRIVATE LABORATORY
20 OR HAVE THE AGENCY FARM THEM TO A PRIVATE LAB.

21 Q. ALL RIGHT, SIR. AND I THINK YOU ANSWERED THIS JUST
22 NOW; BUT IF SAMPLES ARE SENT TO YOU WHICH ARE
23 EITHER NOT SUFFICIENT OR DEGRADED IN THE SENSE THAT
24 YOU CAN'T DO AN R.F.L.P. ANALYSIS, ARE THEY SENT TO
25 A PRIVATE LAB?

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1 A. YES; THAT'S CORRECT. WE OFFER THAT TO THE LOCAL
2 AGENCY; AND IF THEY AGREE TO SEND IT OUT AND PAY
3 FOR IT, WE SEND IT TO A PRIVATE LABORATORY; THAT'S
4 CORRECT.

5 Q. ALL RIGHT, SIR. AND WOULD YOU STATE WHETHER OR NOT
6 LIFECODES LAB IN CONNECTICUT IS ONE OF THE PRIVATE
7 P.C.R. LABS THAT Y'ALL HAVE SENT WORK TO IN THE
8 PAST?

9 A. WE HAVE USED LIFECODES LABORATORY IN CONNECTICUT
10 BEFORE; THAT'S CORRECT.

11 Q. DID THAT OCCUR IN THIS CASE?

12 A. IN THIS CASE WE USED LIFECODES LABORATORY; THAT'S
13 CORRECT.

14 Q. AND THE REASON FOR THAT, SPECIFICALLY WITH REGARD
15 TO THIS CASE, WAS WHAT?

16 A. THE AMOUNT OF SAMPLE AND THE QUALITY OF THE
17 SAMPLE. THE STANDARD FROM THE VICTIM IN THIS
18 PARTICULAR CASE -- THE BLOOD SAMPLE TAKEN AT
19 AUTOPSY FROM THE VICTIM IN THIS CASE WAS A VERY
20 DEGRADED SAMPLE UNSUITABLE FOR R.F.L.P. TESTING.
21 WE EVEN ATTEMPTED THAT PARTICULAR TEST IN THE LAB
22 AND DIDN'T GET A RESULT. ADDITIONALLY, SOME OF THE
23 OTHER SAMPLES THAT WE HAD SUBMITTED, THE VAGINAL
24 SWABS; THERE WAS SO LITTLE SAMPLE THERE THAT WE
25 FELT WE WOULDN'T BE ABLE TO GET A RESULT ON THOSE

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1 PARTICULAR SAMPLES AS WELL.

2 Q. DID YOU RECEIVE IN ADDITION TO BLOOD FROM THE
3 AUTOPSY OF LILLY BELL BOYD VAGINAL AND ORAL SWABS?

4 A. THAT WAS PART OF THE EVIDENCE SUBMITTED; THAT'S
5 CORRECT.

6 Q. ALL RIGHT, SIR. AND THAT WAS ALL SENT ULTIMATELY
7 TO LIFECODES LABS IN CONNECTICUT?

8 A. IT CAME THROUGH OUR LABORATORY FROM THERE AND WENT
9 TO CONNECTICUT; THAT'S CORRECT.

10 Q. ALL RIGHT, SIR. PLEASE ANSWER ANY QUESTIONS THE
11 DEFENSE MIGHT HAVE FOR YOU.

12 THE COURT: CROSS?

13 MR. THEOS: NO QUESTIONS, YOUR
14 HONOR.

15 THE COURT: THANK YOU. STEP DOWN.

16 MR. BAILEY: YOUR HONOR, WE HAVE A
17 TRAIN COMING BY.

18 THE COURT: IT'S HARD TO TELL ME
19 WHAT YOU WANT TO TELL ME. YOUR WITNESS IS ON THE
20 WAY?

21 MR. BAILEY: YES, SIR.

22 THE COURT: LADIES AND GENTLEMEN,
23 THE WITNESS FROM BUFFALO OR NEW YORK; THEY HAD A
24 BLIZZARD AND A STORM, AND HE DIDN'T MAKE THE FLIGHT
25 THAT ARRIVED AT 2:30. HE WAS TO ARRIVE AT FOUR.

MOTIONS

1 HE'S IN THE CAR WITH A BLUE LIGHT ON TRYING TO GET
2 THROUGH THE TRAFFIC TO BE HERE. BUT DO YOU HAVE
3 ANY OTHER WITNESSES?

4 MR. BAILEY: NO, SIR. WE'VE GOT A
5 STIPULATION WITH REGARD TO CHAIN OF CUSTODY TO PUT
6 ON THE RECORD NOW, YOUR HONOR.

7 THE COURT: SURE. I ASKED THE JURY
8 WHERE THEY WANTED TO EAT SUPPER; THEY SAID HOME.
9 LADIES AND GENTLEMEN, TONIGHT WHILE YOU'RE EATING
10 DINNER TELL THE SLED AGENT OR WHOEVER'S IN CHARGE
11 WHICH PAPER Y'ALL WANT IN THE MORNING, WHETHER THE
12 POST AND COURIER, THE SUMMERVILLE SCENE OR JOURNAL;
13 WHICH IS IT?

14 THE CLERK: THE JOURNAL SCENE.

15 THE COURT: OR USA TODAY. THEY
16 SHOULD HAVE COMPLIMENTARY COPIES. I KNOW WHEN I
17 STAYED AT THE HOLIDAY INN IN WALTERBORO THEY DID,
18 AND IT'S OWNED BY THE SAME PEOPLE. IF THEY DON'T
19 HAVE COMPLIMENTARY COPIES, MA'AM, Y'ALL HAVE GOT
20 SOME MISCELLANEOUS ACCOUNT. JUST GO AHEAD AND FIND
21 OUT WHOEVER WANTS ONE. IF SOMEBODY WANTS ALL
22 THREE; GET THEM ALL THREE. BUT YOU'VE THOSE TWO
23 PAIR OF SCISSORS AND REDACT OR CUT OUT ANY MENTION
24 OF THIS TRIAL. AND IT CERTAINLY SHOULDN'T BE
25 ANYTHING IN USA TODAY. BUT LOOK UNDER THE LITTLE

MOTIONS

1 SOUTH CAROLINA SECTION ON ABOUT SIX OR SEVEN, AND
2 IF SO CLIP IT OUT. AND IF Y'ALL DON'T GET YOUR
3 GOOD NEWSPAPER DELIVERY IN THE MORNING, LET ME
4 KNOW, PLEASE. YES, SIR; STIPULATION FOR THE
5 RECORD, SIR?

6 MR. BAILEY: YOUR HONOR, THE
7 STIPULATION ON DNA IS THAT AT THE AUTOPSY OF MRS.
8 BOYD WHICH OCCURRED THE DAY AFTER HER DEATH, DR.
9 NICHOLS TOOK BLOOD FROM THE AUTOPSY. HE DID
10 VAGINAL SWABS AND ORAL SWABS. PART OF THE ORAL
11 SWABS AND VAGINAL SWABS WERE RETAINED BY DR.
12 NICHOLS AND TAKEN TO THE MEDICAL UNIVERSITY. THE
13 OTHER VAGINAL SWABS AND MRS. BOYD'S BLOOD WERE
14 GIVEN TO RON THOMASON OF THE POLICE DEPARTMENT WHO
15 IN TURN TURNED THOSE OVER TO RON MANCHESTER. THEY
16 WENT TO SLED WHERE AN ANALYSIS WAS ATTEMPTED AS MR.
17 JEFFCOAT HAS TESTIFIED TO. THE VAGINAL AND ORAL
18 SWABS WENT TO THE MEDICAL UNIVERSITY AND WERE
19 EXAMINED DR. NICHOLS WHICH HE TESTIFIED TO
20 YESTERDAY, AND AFTER THAT THEY WERE PICKED UP BY
21 RON MANCHESTER. HE ALSO WENT TO SLED AND PICKED UP
22 THE VAGINAL SWABS, ORAL SWABS, AND BLOOD FROM SLED
23 AND HAND-CARRIED ALL THAT TO LIFECODES LAB IN
24 CONNECTICUT. AND THE NEXT WITNESS WILL BE
25 TESTIFYING ABOUT RECEIVING THE VAGINAL ORAL SWABS

MOTIONS

1 AND BLOOD FROM THE AUTOPSY. IN ADDITION MR.
2 SIMMONS' BLOOD WAS DRAWN IN DECEMBER AFTER HIS
3 ARREST, IN DECEMBER OF 1997, AND MR. MANCHESTER
4 HAND-CARRIED THAT UP TO LIFECODES LAB ALSO.

5 THE COURT: DO YOU AGREE?

6 MR. THEOS: THAT'S RIGHT, YOUR
7 HONOR.

8 THE COURT: MR. THEOS, AND LADIES
9 AND GENTLEMEN; PLEASE UNDERSTAND THAT THERE COULD
10 HAVE BEEN SIX OR EIGHT ADDITIONAL WITNESSES CALLED
11 THAT SAID "I PICKED UP THIS CUP AND I HANDED IT TO
12 THIS LADY AND GOT IN THE CAR AND HANDED IT TO THE
13 NEXT ONE." BUT TO AVOID ALL THAT, THERE'S NO
14 DISPUTE ABOUT THE CHAIN OF CUSTODY OR RELATIVE TO
15 THE INTEGRITY OF THAT WHICH WAS BEING EXAMINED AS I
16 UNDERSTAND IT.

17 MR. BAILEY: YES, SIR.

18 MR. THEOS: THAT'S CORRECT, YOUR
19 HONOR.

20 THE COURT: IS YOUR BLUE BUBBLE ON
21 THE RADIO? DO YOU WANT TO CALL -- I DON'T KNOW
22 WHAT THE WEATHER'S LIKE OUTSIDE; BUT WOULD THE JURY
23 LIKE TO WALK DOWN THE STREET AND BACK UP THE
24 STREET? I DON'T WANT TO KEEP YOU SITTING IN THAT
25 ROOM IN THERE. I CAN TELL YOU A FEW JOKES IF YOU

MOTIONS

1 WANT ME TO. IS THERE ANYTHING Y'ALL WANT TO DO?

2 MR. BAILEY: NO, SIR. I CAN'T THINK
3 OF ANYTHING WE CAN DO UNTIL THEY GET HERE; AND THEY
4 ARE THE LAST TWO WITNESSES, YOUR HONOR.

5 THE COURT: SURE. BUT WE ANTICIPATE
6 FINISHING THAT THIS EVENING?

7 MR. BAILEY: YES, SIR.

8 THE COURT: AND THEN I CAN STATE --
9 THE JURY CAN GO BUT WE'LL HEAR ANY MOTIONS THIS
10 EVENING; AND THEN YOUR PEOPLE ARE READY FOR NINE IN
11 THE MORNING?

12 MR. THEOS: YES, SIR.

13 (AT THIS TIME JURY RETIRES TO JURY ROOM.)

14 THE COURT: WE WANT THE LAWYERS HERE
15 AT A QUARTER TO NINE IN THE EVENT THAT THERE'S
16 ANYTHING TO PUT ON THE RECORD WE CAN DO IT BEFORE
17 NINE SO WE CAN BE READY AT NINE?

18 MR. THEOS: YES, SIR.

19 THE COURT: HAVE Y'ALL GIVEN ANY
20 THOUGHT TO THE SUNDAY SITUATION?

21 (AT THIS TIME OFF-THE-RECORD DISCUSSION IS HELD.)

22 MR. BAILEY: YOUR HONOR, WE WOULD
23 PREFER NOT TO, BUT WE'LL DO WHAT WE HAVE TO DO.

24 THE COURT: IF I COULD WAIT AND
25 START AT 12:30 OR 1:00, IF ANYBODY FELT STRONGLY

MOTIONS

1 THAT THEY SHOULD GO TO CHURCH THAT MORNING. BUT
2 THEN A HALF A DAY IS GONE IF WE WAIT AND START AT
3 1:00 OR 2:00. THEY SHOULD HAVE THEIR TIME FOR
4 LUNCH. THE MORE WE DO TODAY, THE LESS WE'VE GOT TO
5 DO TOMORROW THE WAY I LOOK AT IT.

6 (BRIEF RECESS.)

7 THE COURT: AS ARE THE ATTORNEYS AND
8 MR. THEOS IN THE ABSENCE OF THE JURY WOULD LIKE TO
9 PUT ON THE RECORD AN OBJECTION THAT HE HAD. DO
10 Y'ALL KNOW WHERE JERRY WENT?

11 MR. BAILEY: NO, SIR.

12 THE COURT: ALL RIGHT, MR. BELL, YOU
13 CAN PUT IT ON FOR HIM. (AT THIS TIME MR. THEOS
14 COMES INTO COURTROOM.) ALL RIGHT, MR. THEOS. I'D
15 LIKE TO HEAR FROM YOU AS TO YOUR OBJECTION, PLEASE,
16 RELATIVE TO THE TESTIMONY OF THE LADY FROM WACHOVIA
17 BANK, MRS. MARY JOHNSON, STATE'S NUMBER 23, THE
18 BROWN BAG ENVELOPE, PLEASE.

19 MR. THEOS: YOUR HONOR, OUR
20 OBJECTION WAS BASED ON RELEVANCE, AND THERE WAS NO
21 INDICATION THAT THIS ENVELOPE WAS IN FACT THE
22 ENVELOPE THAT WAS USED OR THAT IT WAS EXACTLY THE
23 SAME AS THE ONE THAT WAS REFERRED TO IN THE
24 STATEMENT. AND CERTAINLY INFERENCES CAN BE DRAWN
25 FROM IT. AGAIN, THE RELEVANCY AND THE PREJUDICIAL

MOTIONS

1 EFFECTS WOULD OUTWEIGH ANY PROBATIVE VALUE.

2 THE COURT: AS I UNDERSTOOD IT, THAT
3 WAS THE ONLY TYPE BROWN ENVELOPE THEY WERE USING
4 BACK THEN AT THAT TIME. AND NO QUESTION THAT THERE
5 WAS NOT TESTIMONY THAT THAT WAS PRECISELY THE
6 ENVELOPE THAT WAS USED. BUT IT WAS THE ONLY ONE
7 THEY USED. AND I FEEL THAT THE RELEVANCY OUTWEIGHS
8 ANY POTENTIAL PREJUDICE, AND I RULE THAT IT WAS
9 ADMISSIBLE. BUT NOTE HIS OBJECTION AS HAVING BEEN
10 MADE NUNC PRO TUNC, LATIN FOR NOW FOR THEN. AT THE
11 TIME IT WAS A CONTEMPORANEOUS OBJECTION AT THE SIDE
12 BAR. BUT WE DIDN'T WANT TO HERD THE JURY OUT.

13 MR. THEOS: YES, SIR. ALSO, YOUR
14 HONOR, WITH RESPECT TO THE VARIOUS STATEMENTS THAT
15 WERE ADMITTED; I KNOW THAT YOU NOTED PRIOR TO THE
16 INTRODUCTION OF THOSE STATEMENTS THAT MY OBJECTION
17 WAS CONTINUING. BUT DURING THE COURSE OF THE TRIAL
18 THERE WERE QUESTIONS ASKED TO ME AS TO EACH ONE
19 WITHOUT OBJECTION. I JUST WANTED TO MAKE SURE SO
20 THERE'S NO QUESTION THAT THOSE OBJECTIONS WERE
21 CONTINUING AND THAT THEY WERE ALL -- THE
22 INTRODUCTION OF ALL THE SUBJECTS IN MY PRIOR
23 OBJECTION WAS WHAT MAY HAVE BEEN SAID AT THE TIME
24 THAT THEY WERE INTRODUCED.

25 THE COURT: WITHOUT QUESTION. AND

MOTIONS

1 WE HAD HEARINGS RELATIVE TO THOSE MATTERS SEVERAL
2 WEEKS AGO AT WHICH TIME YOU OBJECTED TO THE RULING
3 OF THE COURT, AND THOSE OBJECTIONS ARE CONTINUING
4 OBJECTIONS BECAUSE I REALIZE YOU WANT TO -- WELL I
5 ASSUME THAT YOU WANT TO MINIMIZE YOUR OBJECTION IN
6 THE PRESENCE OF THE JURY.

7 MR. THEOS: ABSOLUTELY.

8 THE COURT: ALL RIGHT. SEE IF THE
9 JURY IS READY.

10 MR. BAILEY: YOUR HONOR, BEFORE THE
11 JURY COMES IN; I'VE GOT THREE EXHIBITS HERE THAT I
12 THINK MR. BELL HAS SEEN. WHEN I MARKED THEM, MR.
13 THEOS WAS---

14 THE COURT: ANY OBJECTION, MR. BELL?

15 MR. BELL: NOT AFTER MR. THEOS SEES
16 THEM.

17 THE COURT: YOUR PREACHER WANTS TO
18 HEAR FROM YOU.

19 MR. BELL: I KNOW. THEY'LL HEAR
20 FROM ME, YOUR HONOR.

21 THE COURT: JUST MAKE AN EXTRA
22 CONTRIBUTION WHEN THEY PASS THE PLATE.

23 MR. BELL: YES, SIR, I WILL.

24 THE BAILEY: YOUR HONOR, I'VE SEEN
25 HIS EXHIBITS. AND THERE'S ONE OF THEM I MAY HAVE

MOTIONS

1 AN OBJECTION TO. AND IT DEPENDS ON WHAT HAPPENS.
2 I MEAN, HE MAY LAY A BASIS FOR IT AND MAY NOT.

3 THE COURT: OKAY. HOW ABOUT YOURS?
4 DOES HE HAVE ANY OBJECTION TO YOURS?

5 MR. BAILEY: I DON'T THINK SO.

6 THE COURT: WHAT DO YOU SAY, MR.
7 THEOS? ANY OBJECTION TO---

8 MR. THEOS: NO OBJECTION TO HIS,
9 YOUR HONOR. WOULD YOU LIKE FOR ME TO MARK THESE AS
10 WELL?

11 THE COURT: DO YOU PLAN ON USING
12 THOSE DURING THE -- TO OFFER THEM DURING THE CROSS?

13 MR. THEOS: YES, SIR.

14 THE COURT: GO AHEAD AND GET THEM
15 MARKED. IS THERE ANYTHING ELSE BEFORE I BRING THE
16 JURY IN, BECAUSE THE JURY CAN BE COMING IN WHILE
17 YOU'RE MARKING THEM?

18 MR. BAILEY: NO, SIR.

19 THE COURT: AND I DON'T MIND STAYING
20 HERE UNTIL MIDNIGHT, BUT I HATE TO KEEP THE JURORS.

21 MR. BAILEY: JUDGE, WHILE HE'S DOING
22 THAT, YOU HAD ASKED ME AT ONE POINT TO GET MR.
23 SIMMONS' RECORD ON THAT SHOPLIFTING. HE DID HAVE A
24 CONVICTION ON THAT. WE'LL GO AHEAD AND HAVE HER
25 MARK THAT AS A COURT'S EXHIBIT.

MOTIONS

1 THE COURT: THAT WILL BE FINE. AND
2 THAT'S HIS ONLY PRIOR RECORD? OH, YOU MEAN ON THE
3 FOOD LION, THE TWENTY DOLLAR STEAKS HE PUT IN HIS
4 PANTS?

5 MR. BAILEY: YES, SIR.

6 MR. THEOS: I THINK HE WAS
7 CONVICTED---

8 THE COURT: IT WAS NOT PENDING?
9 IT'S BEEN---

10 MR. THEOS: IT'S NOT PENDING.

11 THE COURT: BUT IT WAS A CONVICTION?

12 MR. THEOS: APPARENTLY IT WAS, YOUR
13 HONOR, ALTHOUGH---

14 THE COURT: ALL RIGHT. BUT HOW
15 ABOUT THE SENTENCES AND THE COURTS AND THE PRECISE
16 DATES ON HIS OTHER PRIOR RECORDS? Y'ALL BE GETTING
17 THAT INFORMATION.

18 MR. BAILEY: WE'VE GOT AN AGREEMENT
19 ON THAT, YOUR HONOR.

20 THE COURT: ALL RIGHT. WE'LL TALK
21 ABOUT IT TONIGHT AFTER THE JURY AND THE COURT
22 REPORTER GO HOME IN MY CHAMBERS WHILE WE TALK ABOUT
23 THE REQUESTS TO CHARGE.

24 MR. BAILEY: YOUR HONOR, THE ONLY
25 THING IS THAT MRS. CRANE, THE DNA ANALYST, IS

MICHAEL LEONARD BAIRD - DIRECT/MR. BAILEY

1 CHANGING FROM AIRPLANE CLOTHES TO SOMETHING ELSE
2 BEFORE SHE TESTIFIES. I'D LIKE HER TO BE HERE WHEN
3 DR. BAIRD TESTIFIES SO I DON'T HAVE TO REPEAT IT.
4 IT MAY TAKE SOME TIME. IF WE COULD GIVE HER A
5 MINUTE TO CHANGE.

6 THE COURT: WHERE IS SHE CHANGING?

7 MR. BAILEY: IN THE RESTROOM, I
8 GUESS.

9 THE COURT: WE'LL WAIT. ALL RIGHT.
10 BRING THE JURY IN.
11 (AT THIS TIME JURY RETURNS TO OPEN COURT.)

12 THE COURT: ALL THE JURORS ARE
13 PRESENT. YOU MAY CALL YOUR NEXT WITNESS, MR.
14 SOLICITOR.

15 MR. BAILEY: THANK YOU, YOUR HONOR.
16 DR. MICHAEL BAIRD.

17 THE COURT: COME AROUND, PLEASE,
18 SIR. PUT YOUR LEFT HAND ON THE BIBLE AND RAISE
19 YOUR RIGHT.

20 - - - - -
21 WHEREUPON,

22 MICHAEL LEONARD BAIRD, M.D., WHO AFTER
23 BEING FIRST DULY SWORN TO TELL THE TRUTH,
24 TESTIFIED AS FOLLOWS:

25 DIRECT EXAMINATION

MICHAEL LEONARD BAIRD - DIRECT/MR. BAILEY

BY MR. BAILEY:

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Q. MR. BAIRD, PLEASE TELL THE JURY WHERE YOU'RE
EMPLOYED.

A. I'M EMPLOYED BY LIFECODES CORPORATION.

Q. WHAT IS LIFECODES CORPORATION?

A. LIFECODES CORPORATION IS A BIOTECHNOLOGY COMPANY
LOCATED IN STANFORD, CONNECTICUT.

Q. ALL RIGHT, SIR. AND WHAT'S YOUR POSITION WITH
LIFECODES CORPORATION?

A. I'M THE VICE-PRESIDENT OF LABORATORY OPERATIONS.

Q. IS THAT LABORATORY LICENSED?

A. YES, IT IS.

Q. WHO IS IT LICENSED BY?

A. IT'S A LABORATORY THAT'S LICENSED BY THE STATE OF
CONNECTICUT AND ALSO HOLDS A PERMIT IN THE STATE OF
NEW YORK.

Q. ALL RIGHT, SIR. AND WHEN WAS LIFECODES LAB
CREATED?

A. LIFECODES WAS FOUNDED IN 1982.

Q. AND HOW LONG HAVE YOU BEEN AFFILIATED WITH
LIFECODES?

A. I'VE BEEN WITH LIFECODES SINCE IT WAS FOUNDED IN
1982.

Q. WHAT ARE YOUR DUTIES AND RESPONSIBILITIES AT
LIFECODES AT THIS TIME?

MICHAEL LEONARD BAIRD - DIRECT/MR. BAILEY

1 A. I'M IN CHARGE OF THE SUPERVISION OF THE PERSONNEL
2 THAT CONDUCTED THE TESTING IN FORENSICS AND
3 PATERNITY, THE PREPARATION OF REPORTS FROM THAT
4 TESTING, AND EXPERT TESTIMONY.

5 Q. ALL RIGHT, SIR. AND YOUR EDUCATIONAL BACKGROUND?

6 A. I RECEIVED A BACHELORS DEGREE FROM DREW UNIVERSITY
7 IN NEW JERSEY IN 1971 IN BIOLOGY; A MASTER'S DEGREE
8 IN 1973 FROM THE STATE UNIVERSITY OF NEW YORK IN
9 GENETICS; AND A PH.D. DEGREE IN GENETICS IN 1978
10 FROM THE UNIVERSITY OF CHICAGO.

11 Q. PRIOR TO GOING TO WORK FOR LIFECODES WHEN IT WAS
12 CREATED, WHERE WERE YOU EMPLOYED?

13 A. AFTER I RECEIVED MY PH.D. DEGREE IN 1978, I WAS A
14 POST-DOCTORAL FELLOW FOR ONE YEAR FROM 1978 TO
15 1979; AT THE UNIVERSITY OF MICHIGAN IN THE
16 DEPARTMENT OF HUMAN GENETICS; AND FROM THERE I WENT
17 TO COLUMBIA UNIVERSITY IN 1979 AND WAS THERE FOR
18 THREE YEARS UNTIL 1982 IN THE DEPARTMENT OF HUMAN
19 GENETICS AND MEDICINE. AND THEN I JOINED LIFECODES
20 IN 1982.

21 Q. HAVE YOU PUBLISHED IN THE FIELD OF DNA ANALYSIS?

22 A. YES, I HAVE.

23 Q. WHAT HAVE YOU PUBLISHED, JUST BRIEFLY?

24 A. I'VE PUBLISHED A NUMBER OF ARTICLES AND PEER REVIEW
25 JOURNALS ON GENETIC TESTING PRIMARILY FOR

MICHAEL LEONARD BAIRD - DIRECT/MR. BAILEY

1 IDENTIFICATION PURPOSES AND FORENSICS AND
2 MATERNITY. I'VE ALSO WRITTEN CHAPTERS IN BOOKS
3 THAT HAVE BEEN PUBLISHED. IN TOTAL, THERE'S
4 PROBABLY ABOUT FIFTY PUBLICATIONS.

5 Q. ALL RIGHT, SIR. DO YOU BELONG TO ANY PROFESSIONAL
6 ORGANIZATIONS IN THE DNA AREA?

7 A. YES, SIR, I DO.

8 Q. WHAT ORGANIZATIONS DO YOU BELONG TO?

9 A. I'M A MEMBER OF THE AMERICAN ACADEMY OF FORENSIC
10 SCIENCES; THE AMERICAN SOCIETY OF HUMAN GENETICS;
11 THE AMERICAN ASSOCIATION OF BLOOD BANKS; THE
12 AMERICAN SOCIETY OF AMERICAN HEMATOLOGY; AND THE
13 INTERNATIONAL SOCIETY FOR FORENSIC HEMOGENICS.

14 Q. WILL YOU STATE WHETHER OR NOT YOU'VE TESTIFIED IN
15 THE PAST AS AN EXPERT IN THE FIELD OF DNA ANALYSIS
16 AND STATISTICAL PROBABILITY RESULTING FROM THOSE
17 ANALYSES?

18 A. YES, I HAVE.

19 Q. ON APPROXIMATELY HOW MANY OCCASIONS?

20 A. I'VE TESTIFIED IN OVER 300 CASES.

21 MR. BAILEY: YOUR HONOR, I WOULD
22 TENDER DR. BAIRD AS AN EXPERT IN THAT FIELD OF DNA
23 ANALYSIS AND STATISTICAL ANALYSIS.

24 THE COURT: YOU MAY CROSS, MR.
25 THEOS, IF YOU PLEASE.

MR. THEOS: NO OBJECTION.

THE COURT: ALL RIGHT. THANK YOU.

Q. DOCTOR, PLEASE BRIEFLY EXPLAIN TO THE JURY WHAT DNA IS IN LAYMAN'S TERMS.

A. WELL, DNA IS THE ACRONYM THAT STANDS FOR DEOXYRIBONUCLEIC ACID. IT'S SIMPLY PUT IN GENETIC MATERIAL. IT'S WHAT MAKES EACH ONE OF US UNIQUE.

Q. ALL RIGHT, SIR. DOES EACH CELL OF A HUMAN BODY OTHER THAN SOME OF THE BLOOD CELLS HAVE DNA?

A. YES. EVERY CELL IN THE HUMAN BODY THAT CONTAINS A NUCLEUS CONTAINS DNA. AND AS YOU STATED, THIS IS REALLY VIRTUALLY EVERY CELL EXCEPT A RED BLOOD CELL THAT DOES NOT CONTAIN ANY OF THIS.

Q. IS THE DNA IN EACH CELL OF A PERSON'S BODY IDENTICAL WITH THE OTHER DNA THROUGHOUT THE BODY?

A. YES. WITHIN ONE PERSON'S BODY ALL THE CELLS IN THEIR BODY THAT HAVE A NUCLEUS CONTAIN THE SAME DNA.

Q. WITH RESPECT TO A MAN, A MALE; WOULD YOU STATE WHETHER OR NOT THE DNA IN HIS WHITE BLOOD CELLS IS IDENTICAL TO DNA IN SEMEN?

A. IF YOU ISOLATED DNA FROM A NUMBER OF SEMEN CELLS AND COMPARE THAT TO DNA AND WHITE BLOOD CELLS, IT WILL BE IDENTICAL FROM THE SAME PERSON.

Q. WITH THE EXCEPTION OF IDENTICAL TWINS, DOES EACH

MICHAEL LEONARD BAIRD - DIRECT/MR. BAILEY

1 PERSON HAVE A UNIQUE DNA?

2 A. YES, SIR.

3 Q. ALL RIGHT, SIR. AND WHAT TYPE OF DNA ANALYSIS DOES
4 LIFECODES DO?

5 A. LIFECODES PERFORMS TWO TYPES OF DNA ANALYSIS. THE
6 FIRST TYPE IS KNOWN AS R.F.L.P. TESTING, SOMETIMES
7 CALLED RIFLIP ANALYSIS. THOSE LETTERS STAND FOR
8 RESTRICTION FRAGMENT LIGHT POLYMORPHISM ANALYSIS.
9 IT BASICALLY IS A WAY TO TAKE DNA FROM A SAMPLE AND
10 BREAK IT DOWN INTO COMPONENTS AND COMPARE THAT WITH
11 DNA FROM A KNOWN SOURCE TO SEE IF THEY MATCH OR DO
12 NOT MATCH. THE SECOND TYPE OF TEST IS KNOWN AS
13 P.C.R. TESTING. THOSE LETTERS STAND FOR POLYMERASE
14 CHAIN REACTION. IT'S A NEWER TYPE ANALYSIS. IT
15 ALLOWS YOU TO AMPLIFY OR MAKE MORE COPIES OF THE
16 DNA THAT'S PRESENT IN A SAMPLE AND THEN COMPARE
17 THAT TO ANOTHER KNOWN SOURCE.

18 Q. ALL RIGHT, SIR. NOW, IN THIS PARTICULAR CASE, DID
19 LIFECODES DO A P.C.R. ANALYSIS?

20 A. YES.

21 Q. WILL YOU EXPLAIN TO THE JURY WHAT THE STEPS ARE IN
22 THE P.C.R. PROCESS?

23 A. THE PROCESS OF P.C.R. FIRST STARTS WITH DNA. SO
24 YOU ISOLATE THE DNA FROM THE SAMPLE THAT YOU ARE
25 ASKED TO TEST. AND THIS CAN BE DONE BY CHEMICAL

MICHAEL LEONARD BAIRD - DIRECT/MR. BAILEY

1 METHODS TO BREAK OPEN THE CELL, REMOVE THE DNA FROM
2 THE CELL AND PURIFY IT, AND THEN TEST IT. THE REST
3 OF THE CELLULAR COMPONENTS YOU'RE NOT CONCERNED
4 WITH. YOU THEN TAKE A SMALL POSITION OF THE DNA
5 THAT YOU'VE ISOLATED AND YOU AMPLIFY THAT DNA IN A
6 PROCESS WHERE YOU TAKE A SMALL PORTION OF THE DNA,
7 PUT IT INTO A SMALL TUBE, AND IN THAT TUBE YOU ADD
8 THE COMPONENTS THAT WILL MAKE MORE DNA. DNA IS
9 MADE OF VERY SIMPLE MOLECULES, MADE OF ONLY FOUR
10 CHEMICAL COMPONENTS; AND YOU ADD THOSE FOUR
11 COMPONENTS INDIVIDUALLY TO THE TUBE ALONG WITH
12 SPECIAL PIECES OF DNA KNOWN AS PRIMERS. AND THE
13 PRIMERS REALLY ALLOW YOU TO DEFINE THE REGION THAT
14 YOU WANT TO AMPLIFY OR COPY. AND BY USING THE SAME
15 MECHANISMS THAT THE CELL USES WHEN IT REPLICATES
16 AND MAKES MORE DNA ITSELF, YOU CAN USE IN THE TEST
17 TUBE, IN THE TUBE THAT YOU HAVE THE DNA IN. AND
18 BASICALLY YOU ADD THE COMPONENTS TO MAKE THE DNA
19 AND AN ENZYME KNOWN AS PRELIMORACE (PHONETICALLY
20 SPELLED) WHICH IS THE ENZYME THAT CAN COPY A DNA
21 MOLECULE THAT'S PRESENT TO MAKE AN EXACT
22 DUPLICATE. AND BY GOING THROUGH A SERIES OF
23 HEATING AND COOLING CYCLES, YOU CAN MAKE MULTIPLE
24 COPIES OF THE DNA THAT'S PRESENT. AND IT'S DONE IN
25 FASHION WHERE IF YOU START WITH ONE MOLECULE OF

MICHAEL LEONARD BAIRD - DIRECT/MR. BAILEY

1 DNA, AFTER THE FIRST ROUND OF AMPLIFICATION, YOU'LL
2 HAVE TWO COPIES. IF YOU THEN COPY THOSE TWO
3 COPIES, YOU'LL HAVE FOUR THE NEXT ROUND, AND THEN
4 EIGHT, SIXTEEN, THIRTY-TWO, AND SO ON; SO AT THE
5 END OF TWENTY TO TWENTY-FIVE OR THIRTY CYCLES OF
6 AMPLIFICATION, YOU CAN HAVE MILLIONS OF COPIES OF
7 DNA PRESENT WHEN YOU ONLY HAD A SINGLE ONE TO START
8 WITH.

9 Q. IS THAT WHY P.C.R. CAN BE USED WITH A VERY SMALL
10 SAMPLE?

11 A. YES.

12 Q. AS OPPOSED TO R.F.L.P.?

13 A. YES. ONE OF THE MAJOR ADVANTAGES OF P.C.R. IS THAT
14 YOU CAN TEST LESS MATERIAL AND GET AN ANSWER
15 WHEREAS R.F.L.P. YOU'RE STARTING WITH THE DNA
16 THAT'S PRESENT AND YOU'RE NOT MAKING ANY MORE OF
17 IT. SO YOU'RE LIMITED BY WHAT YOU HAVE AVAILABLE.
18 SO TO GIVE YOU AN EXAMPLE, YOU CAN TEST AT LEAST A
19 HUNDRED FOLD LESS DNA BY P.C.R. THAN YOU CAN BY
20 R.F.L.P. AND ALSO THE DNA FRAGMENTS THAT YOU
21 GENERATE BY THIS PROCESS ARE GENERALLY SMALLER IN
22 P.C.R., SO THE DNA DOESN'T HAVE TO BE IN AS GOOD A
23 CONDITION AS IT NEEDS TO BE FOR R.F.L.P.

24 Q. WHAT PRIMERS ARE USED AT LIFECODES?

25 A. THE PRIMERS THAT WE USE ARE ONES THAT ARE DESIGNED

MICHAEL LEONARD BAIRD - DIRECT/MR. BAILEY

1 TO LOOK AT REGIONS IN THE DNA THAT ARE VARIABLE
2 AMONG INDIVIDUALS. MOST OF OUR DNA, IF YOU LOOK
3 AROUND THE COURTROOM, 99 PERCENT OF OUR DNA IS THE
4 SAME. THERE'S ONLY A VERY SMALL AMOUNT THAT'S
5 DIFFERENT AMONG US. THOSE DIFFERENCES ARE THEN
6 WHAT WE LOOK AT IN THESE TESTS FOR IDENTIFICATION.
7 SO THE PRIMERS ARE DESIGNED TO LOOK AT THOSE
8 REGIONS THAT ARE VARIABLE AMONG INDIVIDUALS THAT
9 ALLOW YOU TO DIFFERENTIATE DNA AT THE TIME OF ITS
10 ORIGIN.

11 Q. WHAT TYPE OF FORENSIC SAMPLES DO Y'ALL TEST AT
12 LIFECODES LAB?

13 A. WE REALLY TEST ANY SAMPLE THAT COMES IN. IT COULD
14 BE A DRY BLOOD STAIN, A LIQUID BLOOD, A SEMEN
15 STAIN, A VAGINAL SWAB, A BONE, A TOOTH, A HAIR, A
16 STAMP THAT'S BEEN LICKED, A CIGARETTES BUTT. ANY
17 FORENSIC EVIDENCE THAT MAY HAVE BIOLOGICAL MATERIAL
18 ON IT CAN BE POTENTIALLY UNTIL FOR DNA TESTING.

19 Q. WHEN DOES THE DNA MATCH OCCUR?

20 A. THE MATCH OR NON-MATCH NON MATCH REALLY IS WHAT IS
21 DECLARED AT THE END OF THE TESTING. AND IF THE DNA
22 PROFILE THAT YOU GENERATE FROM AN EVIDENTIARY
23 SAMPLE IS INDISTINGUISHABLE FROM THE DNA PROFILE OF
24 A KNOWN SAMPLE, IT MEANS THAT THAT DNA COULD HAVE
25 ORIGINATED FROM THE PERSON WHOM THE KNOWN SAMPLE

MICHAEL LEONARD BAIRD - DIRECT/MR. BAILEY

1 CAME FROM. IF THE PROFILES ARE DIFFERENT, THEN
2 THEY OBVIOUSLY CAME FROM DIFFERENT INDIVIDUALS AND
3 THEY DO NOT MATCH.

4 Q. IS THAT IN ANY WAY SIMILAR TO LIKE ABO BLOOD
5 TYPING?

6 A. IT'S SIMILAR. YOU KNOW, ANY GENETIC TEST, LIKE ABO
7 IS A GENETIC TEST, CAN BE USED TO DISCRIMINATE THE
8 LIMITATION WITH ABO TYPING IS THAT THERE'S ONLY
9 FOUR POSSIBLE TYPES, AND TWO OF THOSE TYPES
10 PREDOMINATE IN THE POPULATION. SO THE
11 DISCRIMINATION POTENTIAL THAT YOU HAVE WITH A
12 SYSTEM LIKE ABO IS RATHER LIMITED ALTHOUGH IT CAN
13 CERTAINLY EXCLUDE SOMEONE OR NOT. BUT THE POWER
14 THAT YOU HAVE IN TERMS OF A MATCH IN THAT CASE IS
15 RELATIVELY LIMITED.

16 Q. ALL RIGHT, SIR. AND HOW IS LIFECODES ORGANIZED?
17 WHAT TYPE OF CONSTRUCTION AS FAR AS PERSONNEL?

18 A. LIFECODES IS A PRIVATE COMPANY. IT'S A FULL PROFIT
19 COMPANY. AND IT'S ORGANIZED AS A BIOTECHNOLOGY
20 COMPANY THAT SPECIALIZES IN BOTH DNA TESTING AS
21 WELL AS THE MANUFACTURE OF PRODUCTS USED IN DNA
22 TESTING. SO THE MANUFACTURING DIVISION MAKES THE
23 COMPONENTS THAT WE USE IN OUR LABORATORY AND ALSO
24 SELLS THOSE COMPONENTS TO OTHER LABORATORIES THAT
25 DO DNA TESTING LIKE THE LAB IN SOUTH CAROLINA, THE

MICHAEL LEONARD BAIRD - DIRECT/MR. BAILEY

1 F.B.I. LAB. REALLY LABS ALL AROUND THE WORLD BUY
2 PRODUCTS FROM LABCODES TO USE IN THEIR OWN DNA
3 TESTING IN BOTH PATERNITY AND FORENSICS. AND THE
4 TESTING DIVISION AT LIFECODES TESTS SAMPLES THAT
5 COME IN FOR ANALYSIS PURPOSES.

6 Q. THE TECHNICIANS THAT DO THE ACTUAL ANALYSIS; WHO
7 SUPERVISES THOSE?

8 A. THE TECHNICIANS ARE SUPERVISED BY MYSELF IN THE
9 LABORATORY IN TERMS OF WHAT THEY DO WITH THE
10 SAMPLES, WHAT THE RESULTS ARE THAT THEY GET. THE
11 INTERPRETATION IS THEN DONE BY THE PEOPLE THAT DO
12 THE ANALYSIS AS WELL AS MYSELF. AND THEN REPORTS
13 ARE GENERATED AND SIGNED BY BOTH THE ANALYST AND
14 MYSELF.

15 Q. ARE THE ANALYSTS TESTED FROM TIME TO TIME?

16 A. YES, SIR.

17 Q. HOW ARE THEY TESTED?

18 A. THEY ARE PROFICIENCY TESTS THAT ARE ADMINISTERED TO
19 THE TESTING PERSONNEL. WE SUBSCRIBE TO A NUMBER OF
20 DIFFERENT PROFICIENCY PROGRAMS. ONE IS
21 ADMINISTERED BY THE COLLEGE OF AMERICAN
22 PATHOLOGISTS KNOWN AS C.A.P., AND THEY HAVE A
23 FORENSIC PROFICIENCY TEST THAT THEY ADMINISTER. IT
24 COMES OUT TWICE A YEAR. AND THE LABORATORY
25 PERSONNEL WHO DO TESTING PARTICIPATE IN THAT

MICHAEL LEONARD BAIRD - DIRECT/MR. BAILEY

1 PROFICIENCY. THERE'S ALSO A PROFICIENCY PROGRAM
2 THAT WE SUBSCRIBE TO FROM COLLABORATIVE TESTING
3 SERVICES IN HERNDON, WEST VIRGINIA. AND THEY ALSO
4 PROVIDE PROFICIENCY SAMPLES THAT WE TEST IN A
5 LABORATORY. AND THERE'S ALSO INTERNAL PROFICIENCY
6 SAMPLES THAT THE LABORATORY PERSONNEL TEST.

7 Q. OKAY. HOW DO YOUR DNA ANALYSTS PERFORM THOSE
8 PROFICIENCY TESTS?

9 A. THEY'VE GOTTEN CONSISTENT RESULTS WITH WHAT OTHER
10 ANALYSTS HAVE GOTTEN. SO THEY'VE GOTTEN THE SAME
11 ANSWERS BASICALLY. NOTHING HAS BEEN INCONSISTENT.

12 Q. DO OTHER LABORATORIES BESIDES LIFECODES DO P.C.R.
13 TESTING USING THE SAME BASIC METHODS THAT YOU'VE
14 DESCRIBED?

15 A. YES.

16 Q. CAN YOU GIVE US A FEW EXAMPLES OF OTHER LABS THAT
17 DO THAT PARTICULAR P.C.R. TESTING?

18 A. I'D SAY VIRTUALLY EVERY CRIME LABORATORY IN THE
19 UNITED STATES NOW THAT HAS A DNA PROGRAM IS EITHER
20 USING P.C.R. TESTING OR IS IN THE PROCESS OF
21 VALIDATING THE P.C.R. TEST. P.C.R. TESTING IS USED
22 IN RESEARCH LABORATORIES ROUTINELY, FOR MEDICAL
23 DIAGNOSTICS. IT REALLY IS A TECHNIQUE IN
24 TECHNOLOGY THAT WE USE WIDELY IN THE MEDICAL
25 COMMUNITY AND THE RESEARCH COMMUNITY AND THE

MICHAEL LEONARD BAIRD - DIRECT/MR. BAILEY

1 FORENSIC COMMUNITY.

2 Q. ALL RIGHT, SIR. AND HAS P.C.R. ANALYSIS BEEN, AS
3 YOU'VE DESCRIBED, AN ACCEPTED IN THE SCIENTIFIC AS
4 WELL AS THE LEGAL COMMUNITY?

5 A. YES.

6 Q. NOW IS THERE A QUALITY CONTROL PROGRAM IN PLACE AT
7 LIFECODES TO ENSURE THAT RELIABILITY OF THE
8 PROVISIONS THAT YOU'VE DESCRIBED?

9 A. YES, THERE IS.

10 Q. AND CAN YOU BRIEFLY DESCRIBE THAT QUALITY CONTROL
11 PROGRAM?

12 A. THE QUALITY CONTROL PROGRAM COMES IN AT SEVERAL
13 LEVELS. FOR THE P.C.R. TESTING THAT WE PERFORM, WE
14 BUY FROM OTHER COMPANIES KITS TO DO THE P.C.R.
15 TESTING. THEY'RE NOT MANUFACTURED AT LIFECODES.
16 WE PURCHASED ONE KIT FROM A COMPANY CALLED
17 PERCONOMA, AND THE SECOND KILLED FROM ANOTHER
18 COMPANY CALLED PROMEGA; AND BOTH OF THOSE COMPANIES
19 HAVE THEIR OWN INTERNAL CONTROLS ON THE COMPONENTS
20 IN THEIR KITS. AND THEY MUST MEET THOSE
21 SPECIFICATIONS BEFORE THEY'RE RELEASED. WE ALSO
22 HAVE QUALITY CONTROLS BUILT INTO THE TESTING THAT
23 WE DO OURSELVES AT LIFECODES WHICH INCLUDE A HUMAN
24 CONTROL DNA THAT WE TEST AT THE SAME TIME OF THE
25 SAMPLES. WE ALSO HAVE A NEGATIVE CONTROL BUILT

MICHAEL LEONARD BAIRD - DIRECT/MR. BAILEY

1 INTO OUR ANALYSIS. IN OTHER WORDS, TO MAKE SURE
2 THAT WE ARE NOT INADVERTENTLY INTRODUCING DNA FROM
3 AN OUTSIDE SOURCE INTO THE TESTING PROCEDURE. AND
4 THE RESULTS OF THOSE BOTH POSITIVE AND NEGATIVE
5 CONTROLS ARE INTERPRETED ALONG WITH THE RESULTS OF
6 THE SAMPLES THAT WE TESTED.

7 Q. ALL RIGHT, SIR. AND WHAT PROCEDURES ARE IN PLACE
8 TO INSURE THAT THE CHAIN OF CUSTODY SAMPLES THAT
9 COME INTO LIFECODES ARE PRESERVED AND IN TACT?

10 A. WHEN SAMPLES ARRIVE AT LIFECODES, A DOCUMENT IS
11 FILLED OUT WHICH IS OUR CHAIN OF CUSTODY DOCUMENT.
12 WE ENTER THE INFORMATION INTO OUR COMPUTER SYSTEM,
13 AND THE COMPUTER ASSIGNS A CASE NUMBER TO EACH SET
14 OF SAMPLES THAT COME IN. AND THEN EACH SYSTEM IS
15 INDIVIDUALLY IDENTIFIED BY THE ACCESSION NUMBER.
16 AND THE INFORMATION THAT ACCOMPANIES THAT SAMPLE IS
17 THEN ENTERED ONTO THE CHAIN OF CUSTODY DOCUMENT
18 WHICH IS KEPT ON THE COMPUTER. THE CHAIN OF
19 CUSTODY DOCUMENT IS ALSO SIGNED BY THE ANALYST WHO
20 IS PERFORMING THE TEST AND BASICALLY REPRESENTS THE
21 RECORD OF THE SAMPLES WHILE THEY WERE AT LIFECODES.

22 Q. WAS LIFECODES REQUESTED TO DO A P.C.R. ANALYSIS ON
23 SOME EVIDENTIARY SAMPLES IN THIS CARE?

24 A. YES.

25 Q. WHO DID YOU ASSIGN, OR WHO WAS ASSIGNED AT

LAUREN CRANE - DIRECT/MR. BAILEY

1 LIFECODES, TO PERFORM THE DNA ANALYSIS?

2 A. THE PERSON WHO DID THE ANALYSIS IS LAUREN CRANE.

3 Q. ALL RIGHT. AND IS MRS. CRANE SUPERVISED GENERALLY
4 BY YOU?

5 A. YES.

6 Q. DOCTOR, THAT'S ALL I HAVE AT THIS TIME.

7 MR. BAILEY: YOUR HONOR, WE RESERVE
8 THE RIGHT TO RECALL HIM AFTER MRS. CRANE
9 TESTIFIES.

10 THE COURT: YES, SIR. CROSS?

11 MR. THEOS: NO QUESTIONS.

12 THE COURT: THANK YOU. YOU MAY STEP
13 DOWN, PLEASE.

14 MR. BAILEY: YOUR HONOR, WE CALL
15 LAUREN CRANE.

16 -----
17 WHEREUPON,

18 LAUREN CRANE, WHO AFTER BEING FIRST DULY
19 SWORN TO TELL THE TRUTH, TESTIFIED AS
20 FOLLOWS:

21 DIRECT EXAMINATION

22 BY MR. BAILEY:

23 Q. MRS. CRANE, WOULD YOU PLEASE TELL THE JURY WHAT
24 YOUR EDUCATIONAL BACKGROUND IS?

25 A. I HAVE A BACHELOR'S DEGREE FROM AHRON COLLEGE IN

LAUREN CRANE - DIRECT/MR. BAILEY

1 SCIENCE AND A MASTER'S IN FORENSIC SCIENCE FROM
2 JOHN J. CRIMINAL JUSTICE IN MANHATTEN.

3 Q. ALL RIGHT. AND WHERE ARE YOU EMPLOYED AT THIS
4 TIME?

5 A. AT LIFECODES CORPORATION.

6 Q. HOW LONG HAVE YOU WORKED THERE?

7 A. TWELVE YEARS.

8 Q. WHAT'S YOUR JOB AT LIFECODES?

9 A. I'M A SENIOR FORENSIC SCIENTIST.

10 Q. HOW LONG HAVE YOU BEEN A FORENSIC SCIENTIST?

11 A. FOR TEN YEARS.

12 Q. WHAT ARE YOUR DUTIES AND RESPONSIBILITIES AT THIS
13 TIME AT LIFECODES?

14 A. AT THIS CURRENT TIME MY DUTIES ARE TO RUN A
15 PROFICIENCY PROGRAM WORLDWIDE TO TEST OTHER
16 LABORATORIES TO MAKE SURE THEY MAINTAIN THE QUALIFY
17 OF THEIR DNA TESTING.

18 Q. ALL RIGHT. AND IN THIS PARTICULAR CASE, WHEN YOU
19 WORKED ON THIS CASE, DID YOU HAVE DIFFERENT DUTIES
20 AT THAT TIME?

21 A. YES, I DID.

22 Q. WHAT WAS YOUR JOB AT LIFECODES AT THAT TIME?

23 A. AT THAT TIME I WAS ANALYZING BIOLOGICAL EVIDENCE
24 FOR THE DNA PRINT TEST.

25 Q. WHAT OTHER TYPES OF WORK HAVE YOU PARTICIPATED IN

LAUREN CRANE - DIRECT/MR. BAILEY

1 IN THE DNA FIELD OTHER THAN WHAT YOU'VE DESCRIBED?

2 A. PRIOR TO WORKING IN THE FORENSIC DEPARTMENT, I
3 WORKED IN THE PATERNITY DEPARTMENT DOING DNA
4 TESTING; AND PRIOR TO THAT I WORKED IN THE CANCER
5 DEPARTMENT DOING DNA TESTING THERE.

6 Q. AND IN THIS PARTICULAR CASE THAT WE'RE TALKING
7 ABOUT HERE TODAY, WHO SUPERVISED YOUR WORK?

8 A. DOCTOR MICHAEL BAIRD.

9 Q. AND WHEN EVIDENCE IS ACCEPTED AT LIFECODES FOR DNA
10 ANALYSIS, IS EACH CASE ASSIGNED A PARTICULAR
11 NUMBER?

12 A. YES, IT IS.

13 Q. AND IS EACH ITEM OF EVIDENCE ALSO ASSIGNED A
14 SEPARATE NUMBER?

15 A. YES, IT IS.

16 Q. WHAT DO YOU CALL THAT NUMBER?

17 A. WE REFER TO THAT NUMBER AS ACCESSION NUMBER.

18 Q. SO WHENEVER, SAY, A BLOOD SAMPLE OR A VAGINAL SWAB
19 OR SOMETHING COMES IN, THAT'S GIVEN A SEPARATE
20 NUMBER SO YOU CAN TRACK THAT; IS THAT CORRECT?

21 A. THAT'S CORRECT.

22 Q. I WANT TO CALL YOUR ATTENTION TO OCTOBER THE
23 ELEVENTH OF 1996 AND ASK WHETHER OR NOT YOU
24 ACCEPTED CERTAIN ITEMS OF EVIDENCE FROM RON
25 MANCHESTER WITH THE SUMMERVILLE POLICE DEPARTMENT?

LAUREN CRANE - DIRECT/MR. BAILEY

- 1 A. YES, I DID.
- 2 Q. OKAY. AND DID YOU ACCEPT THOSE ITEMS IN PERSON AT
- 3 THE LAB IN STANFORD, CONNECTICUT?
- 4 A. YES, I DID.
- 5 Q. WOULD YOU STATE WHETHER OR NOT THE EVIDENCE THAT
- 6 YOU ACCEPTED INCLUDED SOME EVIDENCE THAT WAS
- 7 ASSIGNED LIFECODES NUMBER F156384-62?
- 8 A. YES.
- 9 Q. BEING A VAGINAL SWAB FROM LILLY BELL BOYD THAT'S
- 10 FROZEN IN SALINE?
- 11 A. THAT'S CORRECT.
- 12 Q. DID IT ALSO INCLUDE LIFECODES NUMBER F156383,
- 13 THAT'S 62 ORAL SWABS FROZEN IN SALINE?
- 14 A. YES, I DID.
- 15 Q. AND WOULD YOU STATE WHETHER OR NOT THAT ALSO
- 16 INCLUDED LIFECODES NUMBER F156386-64, TWO OTHER
- 17 VAGINAL SWABS?
- 18 A. YES.
- 19 Q. AND F156388, ADDITIONAL ORAL SWABS?
- 20 A. YES, SIR.
- 21 Q. ALL INDICATING HAVING BEEN LABELED FROM LILLY BELL
- 22 BOYD'S BODY; IS THAT CORRECT?
- 23 A. THAT'S CORRECT.
- 24 Q. AND DID YOU ALSO GET WHAT WAS ASSIGNED LIFECODES
- 25 NUMBER F156389-67, BLOOD ON A CLOTH LABELED LILLY

LAUREN CRANE - DIRECT/MR. BAILEY

1 BELL BOYD?

2 A. YES; THAT'S CORRECT.

3 Q. IS THAT COMMON PRIOR TO ANALYZING A LIQUID SAMPLE
4 LIKE THAT TO PUT IT ON A CLOTH?

5 A. YES, IT IS.

6 Q. NOW, DID YOU MAINTAIN THE CARE, CUSTODY, AND
7 CONTROL OF THE SAMPLES FROM MRS. BOYD, THE ORAL
8 VAGINAL SWABS AND THE BLOOD? DID YOU ANALYZE THOSE
9 YOURSELF?

10 A. YES, I DID.

11 Q. AND WOULD YOU STATE WHETHER OR NOT YOU TESTED THE
12 VAGINAL SWABS FOR THE PRESENCE OF SPERM OR SEMEN?

13 A. YES, I DID.

14 Q. WHAT TESTS DID YOU RUN ON THE VAGINAL SWABS?

15 A. WHAT WE FIRST DO IS AN ISOLATION STEP WHERE WE
16 REMOVE ANY STAIN THAT IS PRESENT ON THE VAGINAL
17 SWAB. WE THEN LICE OR BREAK OPEN ANY FEMALE CELLS
18 THAT ARE PRESENT, SPIN DOWN AND SEPARATE ANY MALE
19 CELLS THAT ARE PRESENT IN PARTICULAR SEMEN OR SPERM
20 CELLS, AND LOOK UNDER A MICROSCOPE TO DETERMINE
21 WHETHER THEY ARE IN FACT THERE.

22 Q. ALL RIGHT, SIR. DID YOU DETECT THE PRESENCE OF ANY
23 SPERM OR SEMEN IN THE VAGINAL SWABS THAT YOU LOOKED
24 AT?

25 A. YES, I DID.

LAUREN CRANE - DIRECT/MR. BAILEY

- 1 Q. NOW WITH RESPECT TO THE ORAL SWABS; DID YOU TEST
2 THOSE FOR THE PRESENCE OF SPERM OR SEMEN?
3 A. YES, I DID.
4 Q. WHAT TESTS DID YOU PERFORM ON THOSE?
5 A. AGAIN, THE SAME ISOLATION PROCEDURE AND A
6 MICROSCOPIC VISUALIZATION FOR SPERM.
7 Q. AND WHAT RESULTS DID YOU OBTAIN FROM THAT?
8 A. THERE WAS SPERM SEEN IN THAT AS WELL.
9 Q. OKAY. THERE WAS SPERM ON THE ORAL SWABS?
10 A. YES.
11 Q. CALLING YOUR ATTENTION TO DECEMBER THE 17TH, 1997;
12 DID YOU AGAIN SEE RON MANCHESTER AT LIFECODES?
13 A. YES, I DID.
14 Q. DID HE GIVE YOU A VIAL OF BLOOD LABELED KENNETH
15 SIMMONS?
16 A. YES, HE DID.
17 Q. AND WAS THAT ASSIGNED LIFECODES NUMBER FD66555-60?
18 A. I BELIEVE IT'S 68555.
19 Q. OKAY. THANK YOU. AND WAS MR. SIMMONS' BLOOD --
20 WHEN YOU ACCEPTED THAT, DID YOU MAINTAIN THAT IN
21 YOUR CARE, CUSTODY, AND CONTROL UNTIL IT WAS
22 ANALYZED?
23 A. YES, I DID.
24 Q. ALL RIGHT. MRS. CRANE, WERE YOU PRESENT IN COURT
25 WHEN DR. BAIRD DESCRIBED TO THE JURY BRIEFLY WHAT

LAUREN CRANE - DIRECT/MR. BAILEY

1 THE P.C.R. ANALYSIS PROCESS WAS?

2 A. YES.

3 Q. WOULD YOU STATE WHETHER OR NOT YOU DID A P.C.R.
4 ANALYSIS USING THE STEPS THAT DR. BAIRD DESCRIBED
5 TO THE JURY?

6 A. I DID; YES.

7 Q. NOW, WITH RESPECT TO THE ORAL SWABS THAT YOU
8 TESTIFIED THAT YOU OBSERVED SEMEN ON, DID YOU DO A
9 P.C.R. ANALYSIS ON THEM?

10 A. NO, I DID NOT.

11 Q. WILL YOU TELL THE JURY WHY YOU WERE UNABLE TO DO
12 THAT?

13 A. BECAUSE THE AMOUNT OF SPERM THAT I VISUALIZED
14 MICROSCOPICALLY WASN'T OF THE SAME QUANTITY TO
15 OBTAIN DNA RESULTS ON THERE WERE ONLY A FEW SPERM
16 SEEN.

17 Q. ALL RIGHT. WAS THERE BLOOD PRESENT ON THE ORAL
18 SWABS?

19 A. I DON'T KNOW. I DIDN'T TEST FOR THE PRESENCE OF
20 BLOOD.

21 Q. NOW, WITH RESPECT TO THE VAGINAL SWABS THAT YOU
22 TESTIFIED THAT YOU GOT FROM MR. MANCHESTER AND
23 ASSIGNED THE BLOOD TEST NUMBER AND THE BLOOD; DID
24 YOU DO THE P.C.R. ANALYSIS ON THEM?

25 A. YES, I DID.

LAUREN CRANE - DIRECT/MR. BAILEY

1 Q. ALL RIGHT. NOW, HAVE YOU PREVIOUSLY REVIEWED A
2 CHART WHICH WAS A COMBINATION OF CHARTS YOU
3 PREPARED TO SHOW THE RESULTS OF YOUR DNA ANALYSIS?

4 A. NOT RECENTLY; NO.

5 Q. LET ME HAND YOU WHAT'S BEEN MARKED AS STATE'S
6 EXHIBIT NUMBER 24. I'LL GIVE YOU A MINUTE TO LOOK
7 AT THAT. (WITNESS REVIEWS DOCUMENT.)

8 A. OKAY.

9 Q. OKAY. WOULD THAT CHART BE OF ASSISTANCE TO YOU IN
10 EXPLAINING TO THE JUROR THE RESULTS OF YOUR P.C.R.
11 ANALYSIS?

12 A. YES.

13 THE COURT: WITHOUT OBJECTION;
14 STATE'S NUMBER 24, GENTLEMEN?

15 MR. THEOS: YES, SIR.

16 THE COURT: THANK YOU.

17 STATE'S EXHIBIT NO. 24

18 ADMITTED AS EVIDENCE

19 Q. MRS. CRANE, WHAT I WANT TO DO IS PUT THIS UP HERE
20 AND ASK IF YOU WOULD TO STEP AROUND HERE AND STAND
21 TO THE SIDE OF THE CHART WHERE YOU DON'T BLOCK OFF
22 ANY OF THE JURORS ON THIS SIDE. I WANT TO ASK YOU
23 A COUPLE OF QUESTIONS ABOUT THAT, PLEASE.

24 THE COURT: MAKE SURE THE JURORS ON
25 THE END CAN SEE.

LAUREN CRANE - DIRECT/MR. BAILEY

MR. BAILEY: I'VE GOT A YARDSTICK AS

A POINTER. THAT MIGHT HELP SOME.

Q. NOW, IF YOU'LL REFER TO THE TOP LINE THERE. WHAT DOES THAT DESCRIBE IN THE LEFT-HAND COLUMN?

A. IT'S THE BLOOD SAMPLE THAT WAS TAKEN FROM LILLY BOYD, THE VICTIM.

Q. ALL RIGHT. AND COULD YOU EXPLAIN AS YOU GO ACROSS THE CHART FROM THE LEFT TO THE RIGHT WHAT THAT INDICATES?

A. THIS INDICATES THE RESULTS THAT WERE OBTAINED FROM THE KNOWN -- WHAT IT IS IS A STRIP THAT REVEALS A DOT REACTION; AND IF THE PERSON EXHIBITED CERTAIN DNA TYPES, THE DOTS WILL REACT. AND YOU GET SPECIFIC TYPES. AND THIS A, B, AND C INDICATES THE TYPE THAT WAS FOUND FOR THAT PARTICULAR SAMPLE OF LILLY BOYD.

Q. OKAY. AND IF YOU COULD JUST EXPLAIN WHAT THE NUMBERS ARE AT THE TOP OF EACH ONE OF THOSE.

A. THIS REPRESENTS THE DNA OR THE GENETIC MARKER THAT WE'RE TESTING FOR IN THAT STRIP. SO WE HAVE L.D.L.R.G.Y.G.A.H.B.G.D.E.7.F.E.G.C.H. L.E.A.A.1. THESE ARE DIFFERENT REGIONS OF DNA THAT WE'RE TESTING FOR.

Q. THOSE ARE THE DIFFERENT LOCATIONS ON THE DNA MOLECULE?

LAUREN CRANE - DIRECT/MR. BAILEY

1 A. THAT'S CORRECT.

2 Q. ALL RIGHT. AND THE NUMBERS BENEATH THAT WOULD
3 INDICATE AGAIN WHAT?

4 A. AGAIN THIS IS ANOTHER WAY THAT THEY DISCERN OR TELL
5 YOU WHAT TYPE THAT IS GOING TO OCCUR FROM TESTING
6 WITH THIS PARTICULAR PROBE SYSTEM.

7 Q. AND THAT'S LILLY BELL BOYD'S BLOOD; IS THAT
8 CORRECT?

9 A. THAT'S CORRECT.

10 Q. OKAY. NOW IS THERE A LINE THERE THAT'S GOT KENNETH
11 SIMMONS' BLOOD?

12 A. YES; THE SECOND ONE.

13 Q. THE SECOND LINE?

14 A. YES.

15 Q. OKAY. COULD YOU RUN OVER THAT FOR THE JURY AND
16 EXPLAIN WHAT YOUR FINDINGS WERE THERE?

17 A. AGAIN WE TESTED FOR THE SAME POLYMARKER D2 ALPHA,
18 AND AN ADDITIONAL SOMETHING WE CALL T.P.C. WHICH IS
19 A DIFFERENT TYPE OF TESTING. IT GIVES US A BANDING
20 PATTERN, AND THOSE BANDS ARE DISCERNED BY THESE
21 NUMBERS, 10, 11, 11, AND 38. SO THERE ARE THREE
22 DIFFERENT GENETIC LOCATIONS THAT WE'RE LOOKING AT;
23 JUST A DIFFERENT METHOD OF DETECTION.

24 Q. OKAY. NOW IS THE DNA PROFILE ON LILLY BELL BOYD'S
25 BLOOD DIFFERENT FROM THE DNA PROFILE ON KENNETH

LAUREN CRANE - DIRECT/MR. BAILEY

1 SIMMONS' BLOOD?

2 A. YES, IT IS.

3 Q. THAT WOULD BE SHOWN BY THE DIFFERENT NUMBERS; IS
4 THAT CORRECT?

5 A. THAT'S CORRECT.

6 Q. ALL RIGHT. NOW DO VAGINAL SWABS GENERALLY CONTAIN
7 A COMBINATION OF VAGINAL SECRETIONS AND SEMEN WHEN
8 YOU RECEIVE THOSE?

9 A. YES.

10 Q. DID THAT OCCUR IN THIS CASE?

11 A. YES, IT DID.

12 Q. AND IS THERE A WAY TO SEPARATE THE FEMALE
13 SECRETIONS FROM VAGINAL SWABS FROM SEMEN IN THOSE
14 SWABS?

15 A. YES. WE DO WHAT WE CALL DIFFERENTIAL LIGHTIS
16 (PHONETICALLY SPELLED) WHERE WE DO A LESS STRINGENT
17 LIGHTIS PROCEDURE WHICH IS JUST BREAKING OPEN THE
18 CELLS TO RELEASE THE DNA. AND THEN WE DO TO A MORE
19 STRINGENT LIGHTIS OR BREAKING OPEN OF THE SPERM
20 CELLS BECAUSE THEY'RE A LITTLE BIT MORE RESILIENT.
21 WHAT HAPPENS, THOUGH, IN A CASE WHERE THERE IS AN
22 ABUNDANT AMOUNT OF FEMALE CELLULAR MATERIAL; IT
23 GETS DIFFICULT TO SEPARATE OUT ALL THE FEMALE
24 CELLULAR MATERIAL FROM THE MALE CELLULAR MATERIAL.
25 SO SOMETIMES THERE IS A MIXTURE OR

LAUREN CRANE - DIRECT/MR. BAILEY

1 CROSS-CONTAMINATION OF ANY FEMALE CELLS THAT MAY BE
2 PRESENT THERE.

3 Q. OKAY. NOW THE FOURTH AND THE SIXTH COLUMNS FROM
4 LET TO RIGHT; WHAT DID THOSE SHOW?

5 A. THIS ONE INDICATES THE MALE FRACTION THAT WE
6 ATTEMPTED TO SEPARATE.

7 Q. I'M SORRY; THE FOURTH AND SIXTH. I THINK WE
8 SKIPPED OVER ONE.

9 A. I'VE SORRY. THIS IS THE FEMALE SECTION. AND
10 AGAIN, THIS IS ALSO THE OTHER FEMALE FRACTION THAT
11 WE ISOLATED.

12 Q. THAT'S FROM TWO SEPARATE VAGINAL SWABS; ONE THAT
13 WENT THROUGH SLED AND ONE THAT CAME FROM THE
14 MEDICAL UNIVERSITY?

15 A. CORRECT.

16 Q. OKAY. AND ARE THOSE IDENTICAL?

17 A. YES, THEY ARE.

18 Q. THE NUMBERS ARE THE SAME THERE?

19 A. CORRECT.

20 Q. AND DID YOU COMPARE THE FEMALE FRACTIONS OF THE
21 VAGINAL SWAB FROM LILLY BELL BOYD'S AUTOPSY WITH
22 THE DNA PROFILE FROM LILLY BELL BOYD'S BLOOD?

23 A. YES, SIR.

24 Q. WHAT DID YOU SEE THERE?

25 A. WE FIND THAT THEY ARE AN EXACT MATCH.

LAUREN CRANE - DIRECT/MR. BAILEY

1 Q. OKAY. NOW THE OTHER TWO LINES THERE WHICH WOULD BE
2 THE THIRD AND FIFTH LINE; IS THAT THE MALE FRACTION
3 FROM THE VAGINAL SWABS?

4 A. YES, IT IS.

5 Q. OKAY. AND COULD YOU EXPLAIN THOSE TO THE JURY,
6 PLEASE?

7 A. OKAY. BASICALLY THIS IS THE TAKING THAT WE
8 RECEIVED FROM THE NARROW PORTION THAT WE ISOLATED
9 OF THE DNA. AND WHAT WE HAVE IS A MIXTURE OF TWO
10 DNAS WHERE YOU SEE -- IN THIS CASE WE SHOULD ONLY
11 GET ONE OR TWO ALLELES. YOU SEE THREE ALLELES TO
12 INDICATE THAT THERE'S A MIXTURE OF DNA. THE SAME
13 THING WITH THIS SYSTEM. YOU SEE FOUR ALLELES
14 ACTUALLY HERE. SO THAT INDICATES THERE'S A MIXTURE
15 OF MORE THAN ONE DNA PRESENT IN HALF OF THAT
16 FRACTION.

17 Q. OKAY. AND WOULD THAT BE PART MALE AND PART FEMALE?

18 A. THAT'S CORRECT.

19 Q. SO THERE WOULDN'T HAVE BEEN A COMPLETE SEPARATION
20 THERE?

21 A. CORRECT.

22 Q. ALL RIGHT. AND WITH RESPECT TO THE MALE FRACTION
23 OF BOTH SWABS, THE ONES THAT WENT THREW THE MEDICAL
24 UNIVERSITY AND THE ONES THAT WENT FROM SLED BEFORE
25 IT CAME TO Y'ALL; ARE THEY THE SAME?

LAUREN CRANE - DIRECT/MR. BAILEY

1 A. YES, THEY ARE.

2 Q. NOW, THERE'S AN ASTERISK DOWN THERE WHERE THE
3 NUMBER TWO ON D.Q. ALPHA MAY INDICATE A 1.2
4 ALLELE. DO YOU SEE THAT?

5 A. CORRECT.

6 Q. COULD YOU EXPLAIN THAT TO THE JURY?

7 A. YES. BASICALLY THE WAY THIS STRIP IS DESIGNED IS
8 IF THERE IS A SERIES OF DOTS THAT LIGHT UP. IN
9 CASES OF A MIXTURE, THE WAY THE STRIP IS DESIGNED;
10 THEY HAVE KIND OF TWO ALLELES THAT ARE PULLED
11 TOGETHER AND OVERLAP EACH OTHER. SO DUE TO THE
12 MIXTURE, IT BECOMES TO DETERMINE WHETHER OR NOT THE
13 1.2 ALLELE IS PRESENT OR NOT. WE DO THAT BY
14 PROCESS OF ELIMINATION. WE HAVE ONE CERTAIN DOT
15 LINING UP. THEN WE KNOW THAT IT'S NOT A 1.2. WHEN
16 THERE'S A MIXTURE, WE HAVE TO BE SURE WHETHER OR
17 NOT 1.2 IS PRESENT.

18 Q. DID YOU FIND A 1.2 ALLELE IN KENNETH SIMMONS'
19 BLOOD?

20 A. YES, WE DID.

21 Q. ALL RIGHT. WOULD YOU STATE WHETHER OR NOT, MRS.
22 CRANE, BASED ON THE TESTS YOU'VE DONE THAT ARE
23 REFLECTED ON THAT CHART, WHETHER THE DNA PROFILE
24 FOR THE MALE FRACTION OF THE VAGINAL SWABS THAT WAS
25 TAKEN FROM LILLY BELL BOYD'S AUTOPSY BY DR. NICHOLS

LAUREN CRANE - CROSS/MR. THEOS

1 WAS IDENTICAL TO THE DNA PROFILE ON KENNETH
2 SIMMONS' BLOOD IN ALL NINE LOCI OR LOCATIONS THERE?

3 A. BASICALLY WHAT WE FOUND WAS A MIXTURE OF DNA WHICH
4 WE COULD NOT ELIMINATE KENNETH SIMMONS' BLOOD AS
5 BEING A CONTRIBUTOR TO.

6 Q. MRS. CRANE, PLEASE ANSWER ANY QUESTIONS THE DEFENSE
7 MAY HAVE FOR YOU.

8 CROSS-EXAMINATION

9 BY MR. THEOS:

10 Q. AS I UNDERSTAND IT, ALL GENES ARE MADE UP OF
11 ALLELES; IS THAT CORRECT?

12 A. CORRECT.

13 Q. AND THE ALLELES ARE -- THE SPECIFIC ALLELES WITHIN
14 EACH GENE ARE WHAT ENABLE YOU TO IDENTIFY AND
15 DISTINGUISH GENES?

16 A. CORRECT.

17 Q. NOW, YOU'VE BEEN REFERRING TO THIS CHART. AND I
18 BELIEVE IN RESPONSE TO MR. BAILEY'S QUESTIONS YOU
19 INDICATED THAT A 1.2 ALLELE MAY BE PRESENT?

20 A. CORRECT.

21 Q. NOW, THE SIGNIFICANCE OF THE ALLELE IS THAT IS WHAT
22 HAS ENABLED YOU TO IDENTIFY KENNETH SIMMONS' BLOOD?

23 A. WITH THAT PARTICULAR SYSTEM; CORRECT.

24 Q. HE HAS A 1.2 ALLELE?

25 A. CORRECT.

LAUREN CRANE - CROSS/MR. THEOS

- 1 Q. SO YOUR REPORT STATES THAT A 1.2 ALLELE WHICH IS
2 IDENTIFIABLE WITH MR. KENNETH SIMMONS MAY BE
3 PRESENT IN THE SPERM?
4 A. CORRECT.
5 Q. WHICH IS FOUND IN THAT SAMPLE?
6 A. CORRECT.
7 Q. ISN'T IT TRUE THAT WITH THIS TYPE OF TEST, AS YOU
8 SAY THERE IS NO DIRECT DOT?
9 A. CORRECT.
10 Q. FOR THE 1.2 ALLELE?
11 A. CORRECT.
12 Q. AND THAT'S WHY YOUR REPORT SAYS IT MAY BE PRESENT?
13 A. CORRECT.
14 Q. THAT'S WHY YOU CANNOT STATE WITH CERTAINTY THAT THE
15 1.2 IS PRESENT?
16 A. THAT'S CORRECT.
17 Q. SO JUST AS THE 1.2 ALLELE MAY BE PRESENT, IT MAY
18 ALSO NOT BE PRESENT?
19 A. CORRECT.
20 Q. NOW, IF THE 1.2 ALLELE IS PRESENT AS YOU'VE
21 TESTIFIED -- AND YOU SAID IT MAY BE -- THEN KENNETH
22 SIMMONS CANNOT BE EXCLUDED?
23 A. CORRECT.
24 Q. IF THE 1.2 ALLELE IS NOT PRESENT -- AS YOU SAID IT
25 MAY NOT BE?

LAUREN CRANE - CROSS/MR. THEOS

1 A. CORRECT.

2 Q. THEN KENNETH SIMMONS WOULD HAVE TO EXCLUDED?

3 A. CORRECT.

4 Q. HE COULD NOT BE THE DONOR?

5 A. CORRECT.

6 Q. IF THE 1.2 ALLELE WERE THEREFORE NOT PRESENT AND HE
7 COULD NOT BE THE DONOR, THEN HE WOULD HAVE TO BE
8 RULED OUT COMPLETELY?

9 A. CORRECT.

10 Q. REGARDLESS OF WHAT OTHER MATCHES THERE MIGHT BE?

11 A. CORRECT.

12 MR. THEOS: NO OTHER QUESTIONS, YOUR
13 HONOR.

14 MR. BAILEY: NO RE-DIRECT, YOUR
15 HONOR.

16 THE COURT: ALL RIGHT. YOU MAY STEP
17 DOWN.

18 MR. BAILEY: WE CALL DR. BAIRD.

19 THE COURT: COME AROUND, DR. BAIRD.
20 YOU'RE STILL UNDER OATH, PLEASE.

21 - - - - -

22 WHEREUPON,

23 MICHAEL LEONARD BAIRD, WHO BEING
24 PREVIOUSLY SWORN TO TELL THE TRUTH,
25 TESTIFIED AS FOLLOWS:

MICHAEL LEONARD BAIRD - DIRECT/MR. BAILEY

DIRECT EXAMINATION

BY MR. BAILEY:

Q. DR. BAIRD, FOR THE RECORD YOU WERE PRESENT IN COURT WHEN MRS. CRANE TESTIFIED TO HER DNA ANALYSIS; IS THAT CORRECT?

A. YES, SIR.

Q. AND YOU SUPERVISED HER WORK IN THIS CASE?

A. YES, I DID.

Q. IN YOUR OPINION DID SHE FOLLOW THE RIGHT STEPS FOR THE P.C.R. DNA ANALYSIS?

A. YES, SHE DID.

Q. ALL RIGHT, SIR. AND YOU TESTIFIED EARLIER ABOUT WHEN A DNA MATCH OCCURS?

A. YES, SIR.

Q. IN THE FIRST TESTIMONY. WOULD YOU STATE WHETHER OR NOT -- AND I'LL REFER TO THIS CHART AGAIN -- STATE'S 24 -- WHETHER OR NOT IN YOUR OPINION YOU WOULD CHARACTERIZE THE DNA MATCH BETWEEN THE MALE FRACTION AND THE VAGINAL SWABS WITH KENNETH SIMMONS' BLOOD?

A. WE CHARACTERIZED THIS AS KENNETH SIMMONS AS NOT EXCLUDED AS CONTRIBUTING TO THE MALE FRACTION BECAUSE THIS IS A MIXTURE, AND IT IS CONSISTENT WITH IT BEING A MIXTURE FROM THE VICTIM AS WELL AS MR. SIMMONS.

MICHAEL LEONARD BAIRD - DIRECT/MR. BAILEY

1 Q. ALL RIGHT. IS ANYTHING INCONSISTENT AT ANY TIME
2 WITH MR. SIMMONS THERE?

3 A. NO.

4 Q. AFTER DOING THE ANALYSIS THAT MRS. CRANE HAS
5 TESTIFIED TO AND THE DIFFERENT LOCI HERE, WHAT'S
6 THE NEXT STEP THAT'S NORMALLY DONE AT THE LAB?

7 A. WELL, THE NEXT STEP THAT IS DONE IS TO REVIEW ALL
8 THE WORK THAT'S DONE IN THE CASE; IN OTHER WORDS,
9 LOOK AT ALL THE DOMES AND PICTURES OF THE RESULTS,
10 DETERMINE WHETHER OR NOT THE MATCH OR MIXTURE IS
11 THERE IN THE WAY THAT IT APPEARS TO BE OR THAT EACH
12 ONE OF US HAS SEEN INDIVIDUALLY. AND IF THAT IS
13 CONFIRMED, I THEN GO THROUGH AND DO A STATISTICAL
14 ANALYSIS TO DETERMINE THE FREQUENCY OF OCCURRENCE
15 THAT A PARTICULAR PROFILE WOULD BE PRESENT IN
16 POPULATION.

17 Q. OKAY. AND WHEN YOU'RE SPEAKING OF PROFILE, YOU'RE
18 TALKING ABOUT HOWEVER MANY LOCI THAT YOU'VE GOT; IS
19 THAT CORRECT?

20 A. RIGHT. IN OTHER WORDS, IF YOU SEE A PARTICULAR DNA
21 PROFILE IN A EVIDENTIARY SAMPLE AND ARE THEN
22 COMPARING THAT BACK TO A KNOWN SOURCE AND LET'S SAY
23 THAT THE KNOWN SOURCE IS CONSISTENT WITH EITHER A
24 DIRECT MATCH OR BEING A COMPONENT IN THAT MIXTURE;
25 ONE CAN THEN DETERMINE THE FREQUENCY THAT THAT

MICHAEL LEONARD BAIRD - DIRECT/MR. BAILEY

1 PARTICULAR PROFILE WOULD OCCUR IN THE POPULATION
2 BASED ON POPULATION GENETIC PRINCIPLES.

3 Q. ALL RIGHT.

4 A. AND THAT TAKES INTO ACCOUNT HOW FREQUENTLY THESE
5 GENES OR ALLELE -- ACTUALLY AN ALLELE IS A FORM OF
6 A GENE -- SO THESE ALLELES OCCUR IN THE POPULATION
7 AND THEN USING FORMULAS, ONE COULD THEN PLUG IN THE
8 FREQUENCIES AND COME OUT WITH A FREQUENCY
9 RECURRENCE.

10 Q. ALL RIGHT, SIR. AND WHAT IS A DATA BASE?

11 A. A DATA BASE IS WHAT IS UTILIZED BY THE POPULATION
12 GENETICISTS TO ARRIVE AT A FREQUENCY OF OCCURRENCE
13 NUMBER. AND WHAT A DATA BASE REALLY IS IS JUST A
14 COMBINATION OR COMPILATION OF TESTING THAT'S BEEN
15 DONE ON RANDOM, UNRELATED INDIVIDUALS TO DETERMINE
16 HOW OFTEN GENES APPEAR IN THE POPULATION.

17 Q. OKAY. AND HOW DO YOU DETERMINE A RELEVANT
18 POPULATION FOR THE DATA BASE -- FOR A DATA BASE?

19 A. WE UTILIZE SAMPLES THAT HAVE BEEN SUBMITTED FOR
20 PATERNITY TESTING AT LIFECODES FOR THE DATA BASES
21 THAT WE UTILIZE. IN THIS PARTICULAR CASE, WE
22 UTILIZED DATA BASES THAT WERE MANUFACTURED BY -- OR
23 ACTUALLY GENERATED BY THE MANUFACTURERS OF THE KITS
24 THAT WE UTILIZE; BOTH PERKONEL MARK (PHONETICALLY
25 SPELLED) AND ALSO PROPOHAGA (PHONETICALLY

MICHAEL LEONARD BAIRD - DIRECT/MR. BAILEY

1 SPELLED). AND THEY AGAIN UTILIZE RANDOM UNRELATED
2 INDIVIDUALS IN THEIR DATA BASE COMPILATIONS.

3 Q. ALL RIGHT, SIR. HOW DOES A POTENTIAL DONOR'S RACE
4 ENTER INTO A DATA BASE? IS THERE A SEPARATE BLACK
5 AND WHITE DATA BASE?

6 A. YES. GENERALLY WHEN DATA BASES ARE MADE OR
7 GENERATED, ONE TAKES INTO ACCOUNT THE ETHNIC ORIGIN
8 OF THE SAMPLES AND TYPICALLY DIVIDES THEM INTO
9 AFRICAN-AMERICAN, CAUCASIAN, HISPANIC, ORIENTAL.
10 AND IT'S THE FOUR BASIC DATA BASES. AND SOMETIMES
11 THERE WILL BE SOME ADDITIONAL DATA BASES TO REFLECT
12 A PARTICULAR GEOGRAPHIC POPULATION.

13 Q. ALL RIGHT, SIR. WHAT IS THE PRODUCT RULE WHEN
14 WE'RE TALKING ABOUT DOING THESE SPECIFIC ANALYSES?

15 A. THE PRODUCT RULE IS THE MATHEMATICAL FORMULA THAT
16 SAYS YOU CAN COMBINE THE RESULTS OF INDEPENDENT
17 EVENTS BY MULTIPLICATION. TO GIVE YOU A VERY BASIC
18 EXAMPLE; IF I WAS TO FLIP A COIN, A TYPICAL COIN,
19 AND I HAD A HEAD OR A TAIL, I'D EITHER GET A HEAD
20 OR A TAIL. THERE'S A 50 PERCENT CHANCE OF A HEAD;
21 50 PERCENT CHANCE OF A TAIL. IF I FLIP TWO COINS,
22 THE CHANCE OF GETTING TWO HEADS WILL BE A HALF
23 TIMES A HALF OR ONE IN FOUR. IF I FLIP THREE
24 COINS, THE CHANCE OF GETTING THREE HEADS IN ONE
25 FLIP WOULD BE A HALF TIMES A HALF TIMES A HALF OR

MICHAEL LEONARD BAIRD - DIRECT/MR. BAILEY

1 ONE TIME AT AN EIGHT. SO THE MULTIPLICATION RULE
2 ALLOWS YOU TO COMBINE THE RESULTS OF INDEPENDENT
3 EVENTS BY MULTIPLICATION. NOW, THAT'S IMPORTANT
4 HERE WHEN THE FREQUENCY OF OCCURRENCES IS GENERATED
5 FOR TWO REASONS; ONE, WHEN I CALCULATE THE
6 FREQUENCY OF OCCURRENCE OF EACH ONE OF THE
7 INDIVIDUAL GENETIC TESTS THAT WERE DONE, I USE A
8 MULTIPLICATION RULE; AND WHEN I THEN COMBINE THAT
9 INFORMATION TOGETHER FOR ALL NINE LOCI, I AGAIN
10 MULTIPLY THE INDIVIDUAL FREQUENCIES OF OCCURRENCE
11 AT EACH LOCIS TOGETHER TO GET A COMBINED FREQUENCY
12 OF OCCURRENCE. SO THE MULTIPLICATION RULE ALLOWS
13 YOU TO COMBINE THAT INFORMATION TOGETHER.

14 Q. ALL RIGHT, SIR. AND REFERRING AGAIN TO THAT CHART
15 YOU'VE GOT IN FRONT OF YOU; IS KENNETH SIMMONS
16 EXCLUDED AS BEING A DONOR OF THE DNA AND THE MALE
17 FRACTION OF THAT?

18 A. NO, HE'S NOT.

19 Q. AND YOU TESTIFIED YOU DID USE AS A PROBABILITY RULE
20 THE DATA BASE TO DETERMINE THE STATISTICAL
21 PROBABILITIES; IS THAT CORRECT?

22 A. YES.

23 Q. ALL RIGHT, SIR. AND DID YOU COMPARE THE TWO CHARTS
24 TO DEMONSTRATE YOUR FINDINGS WITH RESPECT TO THE
25 BLACK AND WHITE DATA BASE?

MICHAEL LEONARD BAIRD - DIRECT/MR. BAILEY

1 A. YES.

2 Q. I'M GOING TO SHOW YOU WHAT'S BEEN MARKED STATE'S 25
3 AND 26.

4 THE COURT: WITHOUT OBJECTION?

5 MR. THEOS: YES, SIR.

6 THE COURT: THANK YOU.

7 STATE'S EXHIBIT NO. 25 & 26

8 ADMITTED AS EVIDENCE

9 Q. I SHOW YOU STATE'S EXHIBITS NUMBER 25 AND 26 AND
10 ASK IF YOU CAN IDENTIFY THOSE OR RECOGNIZE THOSE?
11 (WITNESS REVIEWS DOCUMENT.)

12 A. YES, SIR; I RECOGNIZE BOTH OF THOSE.

13 Q. ALL RIGHT, SIR. ARE THOSE THE LARGE CHARTS THAT
14 YOU PREPARED?

15 A. YES, SIR; THESE ARE ENLARGEMENTS FROM REPORTS THAT
16 WE GENERATED IN THIS CASE.

17 Q. ALL RIGHT. I WANT TO TAKE, FIRST OF ALL, STATE'S
18 25; AND I'LL PUT IT UP ON THE PODIUM AND ASK IF
19 YOU'LL STEP AROUND HERE, PLEASE? (WITNESS
20 COMPLIES.) ALL RIGHT, SIR. IS THAT A CHART USING
21 THE CAUCASIAN OR BLACK DATA BASE?

22 A. THIS IS A CHART THAT USES THE CAUCASIAN DATA BASE
23 FOR THE CALCULATION OF FREQUENCY OF OCCURRENCE OF
24 EACH ONE OF THE NINE LOCI THAT WAS EXAMINED IN THIS
25 CASE. AND ALSO COMBINED WITH THIS INFORMATION IN

MICHAEL LEONARD BAIRD - DIRECT/MR. BAILEY

1 TERMS OF COMBINED FREQUENCY OCCURRENCE.

2 Q. ALL RIGHT, SIR. AND WOULD YOU STATE -- YOU'VE
3 TESTIFIED THAT KENNETH SIMMONS IS NOT EXCLUDED; IS
4 THAT CORRECT?

5 A. THAT'S CORRECT.

6 Q. ALL RIGHT, SIR. AND THAT IS THE CAUCASIAN DATA
7 BASE?

8 A. YES.

9 Q. WHAT PERCENTAGE OF THE CAUCASIAN POPULATION WOULD
10 BE EXCLUDED AS THE DONOR OF THAT SEMEN IN THE MALE
11 FRAGMENT OF THE VAGINA SWABS TAKEN AT LILLY BELL
12 BOYD'S AUTOPSY?

13 A. WELL, VIRTUALLY ALL OF THE CAUCASIAN POPULATION
14 WOULD BE EXCLUDED AS CONTRIBUTING. WE GENERALLY
15 REPRESENT THIS FREQUENCY AS A NUMBER, NOT AS A
16 PERCENTAGE. SO THE FREQUENCY OF OCCURRENCE REALLY
17 REPRESENTS HOW OFTEN YOU WOULD SEE THAT PARTICULAR
18 COMBINED PROFILE IN THE CAUCASIAN POPULATION WHICH
19 IS ONE IN OVER ONE BILLION TWO HUNDRED EIGHTY
20 MILLION, TWO HUNDRED FORTY-NINE THOUSAND NINE
21 HUNDRED AND SIXTEEN.

22 Q. SO TO ASK THAT QUESTION IN A DIFFERENT WAY PERHAPS,
23 DOCTOR, USING THAT CHART; WHAT IS THE PROBABILITY
24 OF A RANDOMLY CHOSEN PERSON UNRELATED TO KENNETH
25 SIMMONS HAVING THE SAME GENETIC PROFILE AS TO THE

MICHAEL LEONARD BAIRD - DIRECT/MR. BAILEY

1 GENETIC PROFILE FOUND IN THE SEMEN FROM THE VAGINAL
2 SWAB TAKEN FROM THE AUTOPSY?

3 A. WELL, AGAIN, IT IS EXTREMELY RARE. IT'S VERY RARE
4 IN THE CAUCASIAN POPULATION. WHEN WE LOOK AT THE
5 NEXT CHART OF BLACK, THE AFRICAN-AMERICAN
6 POPULATION IS NOT QUITE -- BUT AGAIN IT'S STILL IS
7 A VERY RARE EVENT.

8 Q. ALL RIGHT, SIR. AND THE ONE IN ONE BILLION, TWO
9 HUNDRED AND EIGHTY MILLION TWO HUNDRED FORTY-NINE
10 THOUSAND, NINE HUNDRED AND SIXTEEN; IS THAT
11 CORRECT?

12 A. YES, SIR.

13 Q. ALL RIGHT, SIR. IF YOU'D GET THE CHART FOR THE
14 BLACK DATA BASE, PLEASE. (WITNESS COMPLIES.) DR.
15 BAIRD, USING THAT CHART, PLEASE EXPLAIN THE
16 PROBABILITY OF A RANDOMLY CHOSEN PERSON UNRELATED
17 TO KENNETH SIMMONS HAVING THAT SAME GENETIC
18 PROFILE, THE GENETIC PROFILE FOUND IN THE SEMEN ON
19 THIS CHART, THE VAGINAL SWABS TAKEN FROM THE
20 AUTOPSY.

21 A. THE COMBINED FREQUENCY OF OCCURRENCE OF THE EIGHT
22 DIFFERENT GENETIC TESTS DONE IN THIS CASE.

23 Q. EIGHT OR NINE?

24 A. THERE ARE NINE DIFFERENT GENERIC TESTS DONE IN THIS
25 CASE. IN THE BLACK POPULATION IT'S ABOUT ONE IN

MICHAEL LEONARD BAIRD - CROSS/MR. THEOS

1 EIGHT MILLION PEOPLE. IN OTHER WORDS, ONE PERSON
2 IN EIGHT MILLION WOULD HAVE THAT PROFILE THAT WE
3 SEE IN MR. SIMMONS.

4 Q. ALL RIGHT. AND YOU ALSO SEE THAT SAME PROFILE IN
5 THE MALE FRAGMENT OF THE VAGINAL SWAB?

6 A. RIGHT; IN THE VAGINAL SWAB IS A DNA PROFILE
7 CONSISTENT WITH MR. SIMMONS BEING A CONTRIBUTOR AS
8 WELL AS THE VICTIM.

9 Q. THANK YOU.

10 MR. BAILEY: YOUR HONOR, THAT'S ALL
11 I HAVE OF DR. BAIRD. PLEASE ANSWER ANY QUESTIONS
12 MR. THEOS MIGHT HAVE FOR YOU.

13 THE COURT: CROSS?

14 CROSS-EXAMINATION

15 BY MR. THEOS:

16 Q. DR. BAIRD, YOUR OPINION RELATED TO THESE
17 PROBABILITIES AND PERCENTAGES IS BASED UPON THE
18 ASSUMPTION THAT THE 1.2 ALLELE IS PRESENT; CORRECT?

19 A. IT'S BASED ON THE ASSUMPTION FOR THE H.I.C.Q. ALPHA
20 SYSTEM AND AS OBVIOUSLY COMBINED IN WITH THE FINAL
21 NUMBER THAT---

22 Q. RIGHT; BUT IT'S BASED ON THE ASSUMPTION THAT A 1.2
23 ALLELE IS PRINT AS MRS. CRANE PREVIOUSLY TESTIFIED?

24 A. YES, IT IS.

25 Q. ALL RIGHT. IF HOWEVER THE 1.2 ALLELE IS NOT

MICHAEL LEONARD BAIRD - RE-DIRECT/MR. BAILEY

1 PRESENT AS MRS. CRANE TESTIFIED IT MAY NOT BE; THEN
2 MR. SIMMONS WOULD HAVE TO BE EXCLUDED AS A POSSIBLE
3 CONTRIBUTOR OR DONOR; CORRECT?

4 A. YES, HE WOULD.

5 Q. AND IF MR. SIMMONS IS EXCLUDED, THEN THESE NUMBERS
6 MEAN NOTHING, CORRECT; AS IT RELATES TO MR.
7 SIMMONS?

8 A. SURE. THESE NUMBERS REPRESENT MR. SIMMONS' DNA
9 PROFILE. IF THE 1.2 ALLELE IS NOT PRESENT IN THE
10 MIXTURE, THEN HE'S EXCLUDED, AND THERE WOULD BE NO
11 CALCULATION.

12 MR. THEOS: THAT'S ALL, YOUR HONOR.

13 THE COURT: ANYTHING ON RE-DIRECT?

14 MR. BAILEY: YES, SIR.

15 RE-DIRECT EXAMINATION

16 BY MR. BAILEY:

17 Q. CAN YOU EXCLUDE MR. SIMMONS?

18 A. IN MY OPINION, BASED ON THE MIXTURE THAT WE SEE
19 HERE AND THE GENETIC TESTS THAT WE'VE DONE, YOU
20 CANNOT EXCLUDE HIM AS BEING A CONTRIBUTOR TO THAT
21 SAMPLE.

22 Q. THANK YOU.

23 MR. BAILEY: YOUR HONOR, THAT'S ALL
24 I HAVE.

25 THE COURT: ANYTHING ELSE?

MICHAEL LEONARD BAIRD - RE-CROSS/MR. THEOS

1 MR. THEOS: IT PRETTY WELL MAY NOT
2 BE.

3 RE-CROSS EXAMINATION

4 BY MR. THEOS:

5 Q. AGAIN, BASED UPON---

6 A. BASED ON THAT ONE GENETIC TEST -- AND I AGREE; ANY
7 EXCLUSION IS EXCLUDED THAT ONE TEST WHICH IS NOT
8 ABLE TO RESOLVE WHETHER THE 1.2 ALLELE IS PRESENT
9 BECAUSE THERE'S A MIXTURE THERE IS UNCERTAIN. IN
10 MY OPINION IT DOES NOT EXCLUDE HIM. BUT YOU DON'T
11 KNOW FOR SURE THAT 1.2 ALLELE IS THERE.

12 Q. AND AGAIN, IF IT'S NOT, THEN HE MUST BE EXCLUDED?

13 A. YES, SIR.

14 Q. THANK YOU.

15 RE-DIRECT EXAMINATION

16 BY MR. BAILEY:

17 Q. BUT AGAIN, THERE'S NO INDICATION THAT IT'S NOT
18 EXCLUDED; IS THAT CORRECT?

19 A. NO, SIR.

20 MR. THEOS: YOUR HONOR, I WASN'T
21 FINISHED.

22 MR. BAILEY: I'M SORRY. I THOUGHT
23 YOU WERE FINISHED.

24 THE COURT: YOU APOLOGIZED TO HIM;
25 THANK YOU.

MICHAEL LEONARD BAIRD - RE-CROSS/MR. THEOS

1 MR. THEOS: YOUR HONOR, WE HAD
2 PREVIOUSLY AGREED TO MOVE THESE INTO EVIDENCE. AND
3 I WOULD JUST ASK YOU TO IDENTIFY THESE FOR THE
4 RECORD AND MARK THEM AS DEFENDANT'S EXHIBITS 16-A
5 AND B.

6 RE-CROSS EXAMINATION

7 BY MR. THEOS:

8 Q. COULD YOU JUST IDENTIFY THIS, PLEASE?

9 A. SURE.

10 THE COURT: NOW, THIS IS ON
11 RE-CROSS, RIGHT?

12 MR. THEOS: WE HAD AGREED TO GET
13 THEM IN, YOUR HONOR; AND I JUST WANT TO MAKE SURE.
14 A. THE ONE THAT'S MARKED 16-A IS A PAGE FROM ONE OF
15 THE REPORTS THAT WAS GENERATED FOR CASE NUMBER
16 56381 WHICH CONTAINS THE TABLE THAT SHOWS THE
17 RESULT OR SIX OF THE GENETIC SAMPLES THAT WERE
18 TESTED WHICH CONTAIN THE RESULTS OF THE VAGINAL
19 SWABS AND THE BLOOD OF THE VICTIM. AND THE ONE
20 MARKED 16-B IS, I BELIEVE, PROBABLY THE NEXT PAGE
21 IN THAT REPORT THAT HAS THE SUMMARY OF THE RESULTS
22 AND CONCLUSIONS; AND IT IS SIGNED BY LAURA
23 GALBREATH WHO IS NOW LAURA CRANE.

24 Q. NO OTHER QUESTIONS. THANK YOU.

25 THE COURT: ALL RIGHT.

MICHAEL LEONARD BAIRD - RE-DIRECT/MR. BAILEY

1 MR. THEOS: NO OTHER QUESTIONS.

2 THE COURT: THANK YOU. YOU MAY STEP
3 DOWN. ANYTHING ELSE, SOLICITOR?

4 MR. BAILEY: ONE SECOND, PLEASE,
5 YOUR HONOR.

6 THE COURT: YES, SIR.

7 MR. BAILEY: NOTHING FURTHER, YOUR
8 HONOR.

9 THE COURT: ANY OBJECTION TO THIS
10 GENTLEMAN AND MRS. CRANE BEING EXCUSED?

11 MR. BAILEY: NO, SIR.

12 THE COURT: ARE DO Y'ALL PLAN ON
13 KEEPING THEM? IT DOESN'T MATTER TO ME.

14 MR. BAILEY: I'LL NEED TO TALK TO
15 THEM AFTER COURT.

16 THE COURT: OKAY. THANK YOU, SIR.
17 NEXT WITNESS, PLEASE?

18 MR. BAILEY: THE STATE RESTS, YOUR
19 HONOR.

20 THE COURT: ALL RIGHT. THEN, MADAM
21 FORELADY AND LADIES AND GENTLEMEN OF THE JURY; THAT
22 CONCLUDES YOUR WORK FOR TODAY. WE'RE GOING TO
23 EXCUSE YOU AT THIS TIME. PLEASE HAVE A NICE
24 EVENING AND A PLEASANT MEAL. AND I HOPE YOUR
25 PAPERS GET THERE ON TIME IN THE MORNING. AND DOES

MOTIONS

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1 IT STILL SUIT Y'ALL TO START AT NINE, MA'AM?

2 THE FORELADY: YES, SIR.

3 THE COURT: AND AGAIN, YOU'RE UNDER
4 THE CONTINUING ADMONITION NOT TO DISCUSS THE CASE
5 AMONG YOURSELVES AND NOT TO EXPOSE YOURSELVES TO
6 ANY RADIO, NEWSPAPER, OR MEDIA COVERAGE. PLEASE
7 HAVE A PLEASANT EVENING. THANK YOU.

8 (WHEREUPON AT 6:55 P.M. JURY IS EXCUSED FOR THE DAY.)

9 THE COURT: ALL RIGHT, GENTLEMEN. I
10 WOULD ASSUME THAT IT MEETS YOUR APPROVAL THAT WE
11 CAN HEAR MOTIONS AT THIS TIME, OR WOULD YOU PREFER
12 TO TAKE A FIVE MINUTE RECESS AND THEN HEAR THE
13 MOTIONS? IT MATTERS NOT TO ME.

14 MR. BAILEY: YOUR HONOR, IT'S UP TO
15 THE COURT. I DON'T CARE.

16 THE COURT: ARE YOU READY?

17 MR. THEOS: WHATEVER YOU PREFER,
18 JUDGE.

19 THE COURT: ARE YOU SURE? LET'S GO.

20 MR. THEOS: MAY IT PLEASE THE COURT?

21 THE COURT: PLEASE.

22 MR. THEOS: YES, SIR. YOUR HONOR,
23 AT THIS TIME WE WOULD MOVE ON BEHALF OF MR. SIMMONS
24 FOR A DIRECTED VERDICT. WE WOULD INCORPORATE IN
25 OUR DIRECTED VERDICT A MOTION TO AMEND PRE-TRIALS

MOTIONS

1 RELATED TO MR. SIMMONS' FAILURE TO KNOWINGLY AND
2 INTELLIGENTLY WAIVE THE MIRANDA WARNINGS. AND BUT
3 FOR THE STATEMENT THAT'S BEEN ADMITTED INTO
4 EVIDENCE, THE STATE WOULD HAVE NO DEFINITIVE --
5 ARGUABLY DEFINITIVE EVIDENCE OF HIS PRESENCE AT THE
6 SCENE OR HIS INVOLVEMENT IN THIS TYPE CRIME. THE
7 DNA TESTIMONY; THE DNA EXPERTS WERE VERY CANDID AND
8 PROFESSIONAL AND TESTIFIED THAT ON ONE HAND IT MAY
9 BE MR. SIMMONS; ON THE OTHER HAND IT MAY NOT BE.
10 AND, YOUR HONOR, BASED UPON THAT FACT AND THE
11 TOTALITY OF THE CIRCUMSTANCES SURROUNDING THE
12 TAKING OF THE CONFESSION OR THE STATEMENTS, WE
13 WOULD ARGUE THAT MR. SIMMONS -- THAT A VERDICT
14 SHOULD BE DIRECTED ON BEHALF OF MR. SIMMONS. AND
15 WE WOULD ALSO ARGUE, YOUR HONOR, GENERALLY THAT THE
16 STATE HAS FAILED TO MEET THE BURDEN OF PROOF AT
17 THIS POINT, AND TO ALLOW IT TO GO TO A JURY WOULD
18 BE INAPPROPRIATE AND UNNECESSARY.

19 THE COURT: ANYTHING ELSE?

20 MR. THEOS: THAT'S IT.

21 THE COURT: VERY WELL. MR. BELL, DO
22 YOU WANT TO ADD ANYTHING?

23 MR. BELL: NO, SIR.

24 THE COURT: ALL RIGHT. BE GLAD TO
25 HEAR FROM YOU, SOLICITOR.

MOTIONS

1 MR. BAILEY: YOUR HONOR, IF YOU NEED
2 ME TO GIVE AN ARGUMENT, I WILL; BUT I THINK THE
3 EVIDENCE IS ABUNDANT THAT THE MURDER OCCURRED.

4 THE COURT: WELL, THEY'RE GOING TO
5 CONTEST THAT.

6 MR. BAILEY: YES, SIR. AS FAR AS
7 THE CONFESSION IS CONCERNED, YOUR HONOR, IT'S
8 CORROBORATED. MR. SIMMONS' STATEMENT GAVE DETAILS
9 THAT ONLY SOMEBODY WHO COULD HAVE BEEN IN THE HOUSE
10 COULD HAVE KNOWN ABOUT. THE LAYOUT OF THE HALLWAY;
11 THE KITCHEN; THE FACT THAT THE BODY WAS FOUND IN
12 THE KITCHEN. HE MENTIONED -- THE HOSE WERE
13 MENTIONED; HER TIED UP WITH HER HANDS BEHIND HER
14 BACK; JUST DETAILS THAT NOBODY COULD HAVE KNOWN IF
15 THEY WEREN'T THERE. AND, YOUR HONOR, THE DNA
16 EVIDENCE WAS ANALYZED; EVERY SINGLE DNA MOLECULE
17 THAT THERE IS. YOU COULD NEVER TOTALLY -- IT ISN'T
18 LIKE FINGERPRINTS WHERE YOU SAY THIS PERSON THE
19 STATISTICAL PROBABILITIES ARE OVERWHELMING.
20 THEY'RE IN THE MILLIONS AND MILLIONS.

21 THE COURT: MILLIONS FOR AN
22 AFRICAN-AMERICAN AND BILLIONS FOR A WHITE.

23 MR. BAILEY: YES, SIR.

24 THE COURT: IN THE EXCLUSION AREA.

25 MR. BAILEY: YES, SIR.

MOTIONS

1 THE COURT: ONE IN SO MANY. ALL
2 RIGHT. THANK YOU. MR. THEOS, I RESPECTFULLY DENY
3 YOUR MOTIONS. AGAIN, THE ADMISSIBILITY OF THE
4 TESTIMONY IS FOR THE COURT. THE WEIGHT TO BE
5 AFFORDED OR THE CREDIBILITY OF THE EVIDENCE IS FOR
6 THE JURY. AND I'M SATISFIED THAT THERE IS, IF THE
7 JURY SHOULD BELIEVE IT OR GIVE IT THE WEIGHT THAT
8 THE STATE FEELS THEY'RE ENTITLED TO, THAT THE STATE
9 WOULD HAVE PROVEN BEYOND A REASONABLE DOUBT THE
10 GUILT OF THE DEFENDANT; AND I DENY YOUR MOTION.

11 MR. THEOS: YES, SIR.

12 THE COURT: NOW, DO Y'ALL HAVE ANY
13 EXHIBITS THAT Y'ALL COULD MARK TONIGHT RATHER THAN
14 -- SO WE CAN BE READY AT NINE IN THE MORNING? WE
15 DIDN'T GET STARTED UNTIL 9:25 THIS MORNING EVEN
16 THOUGH WE WERE HERE AT 8:45. AND I'D REALLY LIKE
17 TO JUST MAXIMIZE THE USE OF THAT JURY BECAUSE THERE
18 ARE FIFTEEN OF THEM IN THAT JURY ROOM, AND IT'S A
19 SMALL ROOM AND ONLY ONE BATHROOM.

20 MR. BAILEY: I'LL BE HAPPY TO MEET
21 MR. THEOS AFTERWARDS AND GO OVER ALL THE EXHIBITS.

22 MR. THEOS: WE'LL DO THAT, JUDGE.

23 THE COURT: ALL RIGHT. IF YOU CAN,
24 Y'ALL DO THAT WITHOUT THE COURT REPORTER. BE HERE
25 AT A QUARTER TO NINE, AND YOU CAN MARK THEM IN THE

1 MORNING. BUT I WOULD ASK YOU TO AGAIN, AS WE DID
2 THREE WEEKS, TWO WEEKS AGO, LAST WEEK, AND THIS
3 WEEK, TO GO AHEAD; AND ANYTHING THAT YOU CAN AGREE
4 ON, GENTLEMEN. AND I DON'T WANT YOU TO COMPROMISE
5 YOUR ADVOCACY POSITION FOR EITHER THE DEFENSE OR
6 THE PROSECUTION. BUT I DO WANT THOSE THINGS THAT
7 ARE CAPABLE OF GENTLEMENS' AGREEMENT ASCERTAINMENT
8 THAT YOU DON'T KNOW OF ANY LEGAL BASIS UPON WHICH
9 TO OBJECT LIKE THE CHAIN OF CUSTODY. I MEAN, YOU
10 KNOW, JANE GAVE IT TO JOE SIX PACK, AND HE HANDED
11 IT TO TARZAN. IT WENT FROM THERE. AND Y'ALL SAVED
12 A COUPLE OF HOURS BY AGREEING ON THOSE THINGS. SO
13 I THANK YOU FOR THAT. BUT BEFORE -- IS THERE
14 ANYTHING ELSE Y'ALL CAN THINK OF THIS AFTERNOON?

15 MR. BAILEY: NO, SIR.

16 MR. THEOS: NO, SIR.

17 THE COURT: ALL RIGHT. WELL, LET ME
18 SEE YOU IN CHAMBERS, AND WE'LL GO OVER THE REQUESTS
19 TO CHARGE. AND THEN Y'ALL CAN GO OVER YOUR
20 EXHIBITS. COURT WILL BE IN RECESS UNTIL 8:45 IN
21 THE MORNING; THE JURY EXPECTED AT NINE. Y'ALL HAVE
22 A PLEASANT EVENING.
23 (WHEREUPON AT 7:15 COURT WAS ADJOURNED FOR THE DAY.)
24
25

* * * * *

MOTIONS

FRIDAY, FEBRUARY 26, 1999

(AT THIS TIME JURY RETURNS TO OPEN COURT.)

THE COURT: IS EVERYBODY READY?

MR. BAILEY: THE STATE'S READY, YOUR HONOR.

MR. THEOS: YOUR HONOR, WE'VE GOT ONE OF OUR EXPERTS HERE.

THE COURT: GOOD.

MR. THEOS: THE OTHER IS THE ONE FROM THE STATE HOSPITAL THAT'S SUPPOSED TO BE HERE AT NINE. AND WE'VE TRIED TO TRACK HIM DOWN, BOTH SIDES; AND WE CAN'T. BUT OUR SECOND ONE SHOULD BE HERE ANY MINUTE.

THE COURT: BUT YOU'VE GOT SOMEBODY READY TO GO?

MR. THEOS: SOMEBODY IS HERE.

THE COURT: THANK YOU. BRING THE JURY IN, PLEASE.

(AT THIS TIME JURY RETURNS TO OPEN COURT.)

THE COURT: GOOD MORNING, MADAM FORELADY AND LADIES AND GENTLEMEN OF THE JURY. THANK YOU SO MUCH FOR BEING HERE PRESENT AND TIMELY SO. THE SUN IS SHINING; IT'S A NICE DAY. THE STATE HAS RESTED ITS CASE AT THIS TIME. THE

JOHN MICHAEL FOXWORTH - DIRECT/MR. THEOS

1 DEFENDANT WILL PROCEED. MAY I ASK YOU TO PLEASE
2 GIVE YOUR CAREFUL ATTENTION? THANK YOU. YOU MAY
3 PROCEED, GENTLEMEN.

4 MR. THEOS: YOUR HONOR, WE WOULD
5 CALL DR. MICHAEL FOXWORTH.

6 THE COURT: COME AROUND, PLEASE,
7 SIR.

8 - - - - -
9 WHEREUPON,

10 JOHN MICHAEL FOXWORTH, M.D., WHO AFTER
11 BEING FIRST DULY SWORN TO TELL THE TRUTH,
12 TESTIFIED AS FOLLOWS:

13 DIRECT EXAMINATION

14 BY MR. THEOS:

15 Q. WOULD YOU STATE YOUR FULL NAME?

16 A. MY NAME IS JOHN MICHAEL FOXWORTH.

17 Q. WHAT IS YOUR PROFESSION, PLEASE?

18 A. I'M A GENERAL PSYCHIATRIST; A PHYSICIAN
19 SPECIALIZING IN THE FIELD OF PSYCHIATRY.

20 Q. WOULD YOU TELL US WHAT YOUR EDUCATIONAL BACKGROUND
21 IS, PLEASE?

22 A. I COMPLETED THE CITADEL IN 1964, AND THEN I
23 COMPLETED THE MEDICAL COLLEGE OF SOUTH CAROLINA NOW
24 KNOWN AS THE MEDICAL UNIVERSITY OF SOUTH CAROLINA
25 IN 1968.

JOHN MICHAEL FOXWORTH - DIRECT/MR. THEOS

1 Q. ALL RIGHT. HAVE YOU HAD ANY FURTHER EDUCATION
2 BEYOND THE MEDICAL UNIVERSITY OF SOUTH CAROLINA?

3 A. AFTER COMPLETING MY MEDICAL SCHOOL, I WENT TO
4 SPARTANBURG GENERAL HOSPITAL IN SPARTANBURG, SOUTH
5 CAROLINA, TO COMPLETE A ROTATING INTERNSHIP. AND
6 FOLLOWING THAT I WENT TO THE WILLIAM S. HALL
7 PSYCHIATRIC INSTITUTE IN COLUMBIA, SOUTH CAROLINA,
8 FOR THREE YEARS OF TRAINING IN GENERAL PSYCHIATRY.
9 FOLLOWING THAT I ENTERED THE UNITED STATES ARMY AS
10 A MAJOR IN THE MEDICAL CORP AND SERVED THERE UNTIL
11 1974 WHEN I HAD AN HONORABLE DISCHARGE.

12 Q. LET ME ASK YOU, PLEASE; WHAT DID YOU DO, AND WHAT
13 WERE YOUR DUTIES WHEN YOU WERE AT HALL INSTITUTE?

14 A. WELL, ACTUALLY I WAS AT THE HALL INSTITUTE ON TWO
15 DIFFERENT OCCASIONS. I TRAINED THERE INITIALLY IN
16 THE BEGINNING OF 1969 UNTIL 1972. THE SUMMER OF
17 1972 I ENTERED THE ARMY. THAT WAS WHAT YOU CALL
18 RESIDENCY TRAINING. IT'S AFTER A PHYSICIAN
19 COMPLETES MEDICAL SCHOOL AND INTERNSHIP, HE ENTERS
20 A FIELD OF SPECIALTY IF HE SO CHOOSES; AND A
21 RESIDENCY FOR PSYCHIATRY AT THAT TIME WAS A TOTAL
22 OF THREE YEARS. AND I COMPLETED THAT TRAINING.
23 THEN I ENTERED THE UNITED STATES ARMY AND SERVED
24 UNTIL 1974. THE SUMMER OF 1974 I RETURNED TO THE
25 HALL INSTITUTE ON THE FACULTY AND SUBSEQUENTLY

1 BECAME DIRECTOR OF THE RESIDENCY TRAINING, THE
2 PROGRAM I HAD TRAINED IN, IN THE LATE SEVENTIES AND
3 CONTINUED THERE UNTIL '79.

4 Q. LET ME STOP YOU FOR A MINUTE. WHEN YOU WERE IN
5 TRAINING AT THE HALL INSTITUTE, CAN YOU TELL US
6 WHAT YOUR TRAINING CONSISTED OF, PLEASE?

7 A. THE TRAINING OF A GENERAL PSYCHIATRIST IS A VERY
8 BROAD TRAINING. IT USUALLY BEGINS FOCUSING
9 PRIMARILY ON ADULT PATHOLOGY MEANING THAT YOU BEGIN
10 BY LEARNING THE TYPES OF DISEASES AND ABNORMALITIES
11 WHICH OCCUR USUALLY IN ADULT POPULATION. BUT
12 DURING THE COURSE OF THREE YEARS YOU ALSO HAVE
13 PERIODS WHICH YOU ROTATE ON CHILD PSYCHIATRY AND
14 ADOLESCENT PSYCHIATRY SO THAT YOU THEN COVER THE
15 WHOLE SPAN OF THE LIFE SPAN AND THE DISORDERS THAT
16 OCCUR IN THOSE VARIOUS TYPES OF LIFE SPAN.
17 ADDITIONALLY YOU HAVE TRAINING IN SPECIALIZED AREAS
18 SUCH AS, YOU KNOW, LEGAL ASPECTS OF PSYCHIATRY,
19 COMPETENCE TESTIMONY. WE DID SOME WORK WHERE WE
20 WENT TO THE OLD C.C.I., CENTRAL CORRECTIONAL
21 INSTITUTE, IN COLUMBIA AND SAW SOME INTERESTING
22 PEOPLE THERE TO TRY TO STUDY THEM AND UNDERSTAND
23 THE NATURE OF HOW THE FIELD OF MEDICINE OF
24 PSYCHIATRY INTERFACES WITH THE CRIMINAL JUSTICE
25 SYSTEM.

JOHN MICHAEL FOXWORTH - DIRECT/MR. THEOS

1 Q. DID YOU ALSO HAVE TRAINING IN THE FIELD OF FORENSIC
2 PSYCHIATRY?

3 A. YES.

4 Q. NOW, YOU THEN ENTERED THE MILITARY?

5 A. FOLLOWING MY TRAINING WHICH I COMPLETED IN 1972, I
6 ENTERED THE UNITED STATES ARMY.

7 Q. CAN YOU DESCRIBE WHAT THAT ENTAILED IN RELATION TO
8 THE FIELD OF PSYCHIATRY, PLEASE?

9 A. OKAY. I WAS ASSIGNED TO THE UNITED STATES ARMY
10 INSTALLATION AT REDSTONE ARSENAL IN HUNTSVILLE,
11 ALABAMA WHERE I HAD TWO POSITIONS. ONE; I WAS THE
12 CHIEF OF THE DEPARTMENT OF PSYCHIATRY AT THE
13 HOSPITAL; AND THE OTHER WAS I WAS THE CHIEF OF THE
14 DRUG AND ALCOHOL PROGRAM WHICH HAD BEEN BEGUN TO
15 HANDLE THE VIETNAM RETURNEES AND SO FORTH THAT HAD
16 DRUG AND ALCOHOL PROBLEMS. I DID WORK SUCH AS
17 MEDICAL CLEARANCES FOR NUCLEAR SURETY FOR PEOPLE
18 WHO HAD HIGH LEVELS OF SECURITY CLEARANCE AND
19 THINGS OF THAT NATURE. I DID A FAIR AMOUNT OF
20 LEGAL, MEDICAL LEGAL WORK, WHICH YOU HAVE TO DO IN
21 THE MILITARY TO SEE PEOPLE WHO ARE GOING TO BE
22 COURT MARSHALLED OR UNDER SOME SORT OF CHARGES AND
23 SO FORTH AND EVALUATIONS AND SOMETIMES TESTIMONIES
24 FOR THOSE FOLKS.

25 Q. DID YOU CONDUCT WORK IN THE FIELD OF FORENSIC

JOHN MICHAEL FOXWORTH - DIRECT/MR. THEOS

1 PSYCHIATRY AS WELL WHEN YOU WERE IN THE MILITARY?

2 A. WELL, I'M A GENERAL PSYCHIATRIST WHICH MEANS IT'S
3 LIKE BEING A GENERAL PRACTITIONER IN THE FIELD OF
4 GENERAL MEDICINE. YOU KNOW, YOU COVER A WIDE SPAN,
5 NOT ONLY OF AGES OF PEOPLE BUT ALSO VARIOUS TYPES
6 OF WORK. SO THAT IN MY CAREER TOTALLY, THROUGHOUT
7 MY CAREER, THERE HAS ALWAYS BEEN AN ELEMENT OF
8 FORENSIC PSYCHIATRY GOING ON. PART OF THAT IS
9 BECAUSE YOU ALWAYS HAVE PATIENTS OR SEE PATIENTS
10 ALONG THE WAY WHO MAY HAVE SOME LEGAL ASPECT. SO
11 IN THE COURSE OF MY CAREER I'VE DONE TESTIMONY IN
12 FAMILY COURTS; I'VE DONE TESTIMONY IN PROBATE
13 COURTS; I'VE DONE TESTIMONY IN CRIMINAL
14 PROCEEDINGS; I'VE DONE TESTIMONY IN FEDERAL
15 COURTS. I'VE DONE TESTIMONY IN---

16 Q. HOW ABOUT MILITARY COURTS?

17 A. MILITARY COURTS; YES. OF COURSE MILITARY COURTS.
18 AND EVEN PREVIOUSLY IN THIS COURT.

19 Q. AND THAT TESTIMONY WOULD HAVE ENCOMPASSED BOTH THE
20 FIELDS OF GENERAL PSYCHIATRY AND FORENSIC
21 PSYCHIATRY?

22 A. RIGHT.

23 Q. NOW, FOLLOWING YOUR SERVICE IN THE MILITARY, CAN
24 YOU TELL US WHAT YOU DID?

25 A. IN 1974 I RETURNED TO THE HALL INSTITUTE AND BEGAN

JOHN MICHAEL FOXWORTH - DIRECT/MR. THEOS

1 WORKING THERE INITIALLY WRITING SOME GRANTS AND
2 GETTING SOME ADDITIONAL TRAINING FUNDING, AND THEN
3 COMPLETELY REVISING THE TRAINING PROGRAM HERE IN
4 GENERAL PSYCHIATRY BRINGING IT UP TO SOME CURRENT
5 DEVELOPMENTS IN PSYCHIATRY THAT OCCURRED IN THOSE
6 YEARS, IN THE EARLY SEVENTIES. AND THEN I BECAME
7 DIRECTOR OF THAT PROGRAM WHILE I WAS AT THE HALL
8 INSTITUTE FROM 1974 UNTIL 1979. I STOOD FOR
9 EXAMINATION AND BECAME CERTIFIED IN GENERAL
10 PSYCHIATRY BY THE AMERICAN BOARD OF PSYCHIATRY AND
11 NEUROLOGY. AND I ALSO STOOD FOR EXAMINATION AND
12 BECAME CERTIFIED BY THE AMERICAN BOARD OF FAMILY
13 PRACTICE.

14 Q. CAN YOU TELL THE JURY, PLEASE, WHAT THE HALL
15 INSTITUTE IS?

16 A. WELL, THE HALL INSTITUTE IS A TRAINING FACILITY OF
17 THE DEPARTMENT OF MENTAL HEALTH. BACK IN THE
18 SIXTIES, GOING WAY BACK, THIS STATE HAD PROGRAMS
19 WHERE DOCTORS WERE THE NEEDED PSYCHIATRISTS IN THE
20 STATE OF SOUTH CAROLINA; AND THEY HAD PROGRAMS AT
21 ONE TIME WHERE DOCTORS ACTUALLY I THINK RECEIVED
22 SIPANS (PHONETICALLY SPELLED) TO TRAIN ELSEWHERE IF
23 THEY WOULD COME BACK AND PRACTICE IN SOUTH
24 CAROLINA. AND SOMEWHERE AROUND THE LATE SIXTIES
25 THERE WAS A RESIDENCY TRAINING PROGRAM, I THINK, AT

JOHN MICHAEL FOXWORTH - DIRECT/MR. THEOS

1 THE TIME AT THE MEDICAL COLLEGE OF SOUTH CAROLINA.
2 AND THERE WAS A RESIDENCY TRAINING PROGRAM AT THE
3 OLD STATE HOSPITAL. BUT THE REQUIREMENT FOR
4 RESIDENCY TRAINING ACCREDITATION BECAME MUCH MORE
5 STRINGENT OVER THOSE YEARS; AND IT WAS SEEN THAT
6 THE STATE HOSPITAL PROGRAM HAD TO BE REVISED. SO
7 AT THAT TIME THE DEPARTMENT OF MENTAL HEALTH IN
8 ORDER TO REALLY MEET ITS OWN NEEDS AND BE ABLE TO
9 DEVELOP COMMUNITY MENTAL HEALTH CENTERS AND PLACE
10 THEM THROUGHOUT THE STATE TO HELP IN ALL THE
11 VARIOUS COMMUNITIES, DECIDED TO DEVELOP A TRAINING
12 INSTITUTE SEPARATE AND APART FROM THE STATE
13 HOSPITAL. AND THAT'S HOW WILLIAM S. HALL
14 PSYCHIATRIC INSTITUTE CAME INTO BEING. IT WAS
15 UNDER THE PERIOD OF TIME WHEN DR. HALL WAS THE
16 COMMISSIONER OF MENTAL HEALTH, AND THE FACILITY WAS
17 NAMED AFTER HIM.

18 Q. IS THE HALL INSTITUTE A PART OF THE STATE HOSPITAL,
19 OR IS IT A SEPARATE ENTITY?

20 A. WELL, THAT DISTINCTION TO ME HAS BECOME BLURRED
21 OVER THE YEARS. WHEN I WAS THERE, IT WAS VERY
22 CLEARLY A SEPARATE AND DISTINCT HOSPITAL. IT WAS
23 INDIVIDUALLY ACCREDITED BY THE AMERICAN JOINT
24 COMMISSION OF HOSPITAL ACCREDITATION. SO IT WAS
25 INDIVIDUALLY ACCREDITED AS A SEPARATE HOSPITAL OR

JOHN MICHAEL FOXWORTH - DIRECT/MR. THEOS

1 AS A SEPARATE FACILITY OF THE DEPARTMENT OF MENTAL
2 HEALTH. NOW, I KNOW OVER THE YEARS I HAD HEARD
3 THAT THEY HAVE TAKEN ON MORE AND MORE OF SOME OF
4 THE FUNCTIONS SUCH AS THE FORENSIC FUNCTION OF THE
5 STATE HOSPITAL. SO WHERE THAT STANDS NOW, I AM NOT
6 REAL CLEAR ON TODAY'S STATUS.

7 Q. NOW, DURING THE COURSE OF YOUR EMPLOYMENT WITH THE
8 HALL INSTITUTE, DID YOU CONDUCT BOTH GENERAL
9 PSYCHIATRIC EVALUATIONS AS WELL AS FORENSIC
10 PSYCHIATRIC EVALUATIONS?

11 A. IN BOTH OCCASIONS, REALLY, WHEN I WAS THERE AS A
12 RESIDENT MYSELF IN TRAINING AND FROM '69 TO '72,
13 THERE WERE PERIODS OF TIME WHERE WE FOCUSED
14 ENTIRELY ON THE ISSUE OF FORENSIC PSYCHIATRY SO
15 THAT WE WENT TO SEE CASES OVER AT THE OLD COOPER
16 BUILDING. I SAW A CASE OR TWO I THINK ALSO AT THE
17 -- I CAN'T THINK OF THE NAME OF THE OTHER BUILDING
18 AT THE MOMENT -- AND THEN, OF COURSE, AS I SAID
19 EARLIER WE WENT THROUGH THE C.C.I. TO SEE SOME
20 CASES THERE AND DO SOME EVALUATIONS. WHEN I WENT
21 BACK TO THE HALL INSTITUTE AFTER MY MILITARY
22 EXPERIENCE, THERE WERE TIMES WHEN I WOULD BE
23 SUPERVISING A RESIDENT, SOMEONE WHO WAS IN
24 TRAINING; AND THEY WOULD HAVE A CASE WHICH INVOLVES
25 SOME FORENSIC ELEMENTS THAT I WOULD HAVE TO KIND OF