

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Lancaster County
Clifton Newman, Circuit Court Judge

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S.C. Supreme Court

RANDOLPH FRAZIER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-002758

APPENDIX

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INDEX

INDEX	i
TRIAL TRANSCRIPT (SEPTEMBER 16 – 17, 2008)	1
APPLICATION FOR POST-CONVICTION RELIEF	360
SUPPLEMENT TO APPLICATION FOR POST-CONVICTION RELIEF	367
RETURN	370
POST-CONVICTION RELIEF HEARING TRANSCRIPT (OCTOBER 2, 2013)	375
ORDER OF DISMISSAL	393
INDICTMENT	400

STATE OF SOUTH CAROLINA)
COUNTY OF LANCASTER)

IN THE COURT OF GENERAL SESSIONS
OF THE SIXTH JUDICIAL CIRCUIT
08-GS-29-469

STATE OF SOUTH CAROLINA)
VS.)
RANDOLPH FRAZIER)

TRANSCRIPT OF RECORD

SEPTEMBER 16, 17, 2008
LANCASTER, SOUTH CAROLINA

B E F O R E:

THE HONORABLE PAUL BURCH

A P P E A R A N C E S:

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LANCASTER, SOUTH CAROLINA

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I N D E X

WITNESS	DIRECT	CROSS	RE-DIRECT	RE-CROSS
SHERIKA SANDERS				
BY MR. LIFSEY	12			
BY MR. FRICK		18		
PATRICIA CAUTHEN				
BY MR. LIFSEY	33			
BY MR. FRICK		39		
KRISTEN GRANT				
BY MR. LIFSEY	46			
BY MR. FRICK		47		
FRANK STRAIN				
BY MR. LIFSEY	50			
BY MR. FRICK		53		
SUSAN HUNTER				
BY MR. LIFSEY	91			
BY MR. FRICK		100		
SHERIKA SANDERS				
BY MR. LIFSEY	125			
BY MR. FRICK		133		
BY MR. LIFSEY			145	
BY MR. FRICK				146
PATRICIA CAUTHEN				
BY MR. LIFSEY	147			
BY MR. FRICK		150		
FRANK STRAIN				
BY MR. LIFSEY	159			
BY MR. FRICK		163		
DIEDRE STURDIVANT				
BY MR. LIFSEY	168			
BY MR. FRICK		171		
KARL ALLEN				
BY MR. LIFSEY	179			
BY MR. FRICK		183		
BY MR. LIFSEY			184	
BY MR. FRICK				197
JOHN POOVEY				
BY MR. LIFSEY	214			
BY MR. FRICK		221		
BY MR. LIFSEY			229	
BY MR. FRICK				230

SUSAN HUNTER				
BY MR. LIFSEY	231			
BY MR. FRICK		240		
BY MR. LIFSEY			245	
BY MR. FRICK				246
 BRENNER HARTLEY				
BY MR. LIFSEY	247			
BY MR. FRICK		253		
 PAT PARSONS				
BY MR. LIFSEY	255			
BY MR. FRICK		268		
BY MR. LIFSEY			272	
BY MR. FRICK				274
BY MR. LIFSEY	279			
BY MR. FRICK		280		
 SUSAN HUNTER				
BY MR. LIFSEY	283			
BY MR. FRICK		284		
 J. P. PARROTT				
BY MR. LIFSEY	285			
BY MR. FRICK		291		

E X H I B I T S

EXHIBIT NO.	DESCRIPTION	ID	EV
S-1	MAP OF AREA	98	197
S-2	NECKLACE	131	259
S-3	TYPED STATEMENT		145
S-4	JACKET	162	262
S-5	BLACK SHOES	163	261
S-6	BLACK CLOTH BAG		236, 259
S-7	CIGARETTE PACK	247	267
S-8	ADDRESS BOOK	247	267
S-9	EVIDENCE FORM	264	265
S-10	SCREWDRIVER & METAL PIECE		274
S-11	BOOKING REPORT		284
S-12	SLED REPORT		291
 D-1	 STATEMENT	 141	
 C-1	 NOTE FROM JURY	 214	
 C-2	 DOG TRACKING EVIDENCE CHARGE	 302	
 C-3	 NOTE FROM JURY	 344	

5

1 MR. LIFSEY - MAY IT PLEASE THE COURT, YOUR
2 HONOR.

3 THE COURT - YES, SIR.

4 MR. LIFSEY - THE STATE CALLS THE CASE OF STATE
5 VS. RANDOLPH FRAZIER CHARGED IN TWO TRUE BILLS OF
6 INDICTMENT 2008-GS-29-469 AND 2008-GS-29-470, BOTH FOR
7 BURGLARY IN THE FIRST DEGREE. WE'RE READY TO PROCEED. MY
8 UNDERSTANDING IS THE DEFENSE HAS SEVERAL PRE-TRIAL MATTERS
9 THEY WANT TO TAKE UP BEFORE WE START.

10 MR. FRICK - YOUR HONOR, I DO HAVE SOME ISSUES.
11 ONE, WE HAVE A ISSUE REGARDING THE IDENTIFICATION. THERE
12 WERE SEVERAL WITNESSES. I THINK THAT THE ALLEGATIONS IS
13 THE VICTIM OF ONE OF THE BURGLARIES COMES IN THE RESIDENCE
14 AND SEES SOMEONE THERE. SHE GIVES A DESCRIPTION. LAW
15 ENFORCEMENT FINDS SOMEBODY MATCHING THAT DESCRIPTION WHO
16 LATER TURNS OUT TO BE MY CLIENT IS WHO THEY DETAINED.
17 THERE ARE OTHER WITNESSES WHO SAY THEY SEE SOMEONE OF A
18 CERTAIN DESCRIPTION FLEEING THE SCENE. THEY BRING THOSE
19 WITNESSES BY AND THEY SHOW UP AFTER MY CLIENT'S BEEN
20 DETAINED AND DO A IDENTIFICATION THAT WAY. I WOULD MAKE
21 A MOTION TO SUPPRESS THAT. BASICALLY, I JUST WANT TO PUT
22 MY MOTION --- WHAT I'M ASKING FOR ON THE RECORD WE
23 DETERMINE WHICH WAY TO HANDLE THEM BEST. SO I HAVE A
24 SUPPRESSION --- OR ACTUALLY --- YES, I GUESS IT WOULD BE
25 A SUPPRESSION OF THE IDENTIFICATION OF MY CLIENT BY THE

1 VICTIM AND THE SUBSEQUENT WITNESSES.

2 MR. LIFSEY - JUST FOR THE RECORD THERE ARE ---
3 THE VICTIM --- THE VICTIM SHERIKA SANDERS AND TWO
4 ADDITIONAL WITNESSES I.D. HIM AS A RESULT OF A SHOW-UP
5 AFTER THEIR INITIAL VIEWING OF HIM, AND SO WE'RE READY
6 WHEN THE COURT'S READY TO HAVE A HEARING PURSUANT TO NEIL
7 VS. BIGGERS ON THOSE --- ON THOSE IDENTIFICATIONS.

8 THE COURT - OKAY.

9 MR. FRICK - YOUR HONOR, ALSO, THE --- I BELIEVE
10 THAT THE DETENTION OF MY CLIENT IS VIOLATIVE OF HIS FOURTH
11 AMENDMENT RIGHT, THE FACTORS I'LL GET INTO, BUT HE IS SEEN
12 ON THE STREET; HE IS DETAINED AND THEN IN MY ESTIMATION,
13 THAT'S WHEN THE INVESTIGATION BEGINS. HE'S HELD FOR AN
14 UNREASONABLY LENGTH OF TIME SO I HAVE A QUESTION OF A ---
15 I SUPPOSE IT'S TECHNICALLY A TERRY STOP AND THEN A FRISK
16 AND THEN THEY'RE LOOKING FOR EVIDENCE. I THINK THE
17 EVIDENCE SUBSEQUENTLY FOUND AFTER HE'S DETAINED, INCLUDING
18 A BAG THAT WAS NOT ON MY CLIENT'S PERSON BUT NEAR MY
19 CLIENT'S PERSON, THAT THEY CLAIM HE THROWS DOWN, ITEMS
20 FOUND ALONG A TRACK THAT THEY SAY MY CLIENT WENT DOWN AND
21 THE IDENTIFICATIONS BY THE WITNESSES SHOULD BE SUPPRESSED
22 AS A RESULT OF BEING FRUIT OF THE POISONOUS TREE. MY
23 THIRD MOTION I WOULD HAVE, YOUR HONOR, IS REGARDING THE
24 INDICTMENTS. OBVIOUSLY, YOU HAVE TWO INDICTMENTS TODAY.
25 THEY ARE SEPARATE INCIDENTS. I DON'T THINK THAT HE SHOULD

1 BE TRIED ON BOTH OF THOSE AT THE SAME TIME IS THE SUM OF
2 THAT. SO I WOULD MOVE TO SEVER THE CHARGES AND ASK THE
3 STATE TO ELECT WHICH ONE THEY WANT TO GO ON TODAY. AND
4 THEN MY FINAL MOTION, UNLESS I CAN COME UP WITH SOMETHING
5 WHILE I'M UP HERE ARGUING, WOULD BE REGARDING DOG-TRACKING
6 EVIDENCE. THERE WAS A TRACKING BY LUCY THAT THEY --- THE
7 TRACKING CANINE FOR THE CITY. THEY START AT THE --- AT
8 THE APARTMENT, ONE OF THE APARTMENTS AND TRACK A TRAIL
9 THEY SAY MR. FRAZIER WENT DOWN AND ULTIMATELY COME TO HIM
10 AND SAY THAT LUCY IDENTIFIED HIM AS THE SUSPECT. JUDGE,
11 MY MOTION IS THAT THAT SHOULD BE SUPPRESSED, THAT THE
12 JONES FACTORS SHOULD APPLY UNDER SCIENTIFIC EVIDENCE. I
13 WILL ADMIT AND WILL HAVE THE CASE --- I THINK IT'S THE
14 WHITE CASE. I'VE GOT A COPY OF IT, I THINK ---

15 MR. LIFSEY - STATE VS. WHITE, 2007 CASE, YOUR
16 HONOR, FOR THE COURT'S ---

17 MR. FRICK - IT'S REALLY, IN MY ESTIMATION, THE
18 ONLY CASE ON POINT IN THE STATE OF SOUTH CAROLINA
19 REGARDING DOG-TRACKING EVIDENCE. FRANKLY, IN THAT CASE,
20 THE DEFENSE ATTORNEY MADE THE SAME MOTION I'M MAKING
21 ASKING THAT THE JONES FACTORS BE APPLIED. THE JUDGE IN
22 THAT COURT AND I BELIEVE --- I DON'T KNOW IF IT WENT TO
23 THE SUPREME COURT OR NOT --- BUT THE SUBSEQUENT APPELLATE
24 COURT HEARD IT AND SAID THAT JONES FACTOR DIDN'T NEED TO
25 BE APPLIED. I HAVE AN ARGUMENT OF WHY THAT'S INCORRECT

1 AND SHOULD BE APPLIED.

2 THE COURT - WE READY?

3 MR. LIFSEY - WE ARE, YOUR HONOR. YOU WANT ME TO
4 JUST BEGIN WITH THE IDENTIFICATION? OR --- I --- LET ME
5 GO AHEAD --- MAYBE THE SIMPLEST ONE MIGHT BE TO ARGUE HIS
6 MOTION REGARDING THE DOG-TRACKING RIGHT NOW.

7 THE COURT - WHATEVER --- HOWEVER YOU'RE
8 COMFORTABLE.

9 MR. LIFSEY - I DIRECT THE COURT'S ATTENTION TO
10 STATE VS. WHITE, A 2007 COURT OF APPEALS CASE WHERE THIS
11 VERY SAME ISSUE WAS RAISED AND THE COURT OF APPEALS RULED
12 DIRECTLY OPPOSITE TO WHAT MR. FRICK ARGUES AND SO THE
13 COURT OF APPEALS OUT-RANKS ASSISTANT SOLICITOR AND
14 ASSISTANT PUBLIC DEFENDER, AND I THINK THEIR RULINGS ARE
15 THE LAW OF THE STATE OF SOUTH CAROLINA AND THEY CLEARLY
16 SAY THE JONES FACTORS DON'T APPLY, SO I --- I MEAN I DON'T
17 ---

18 THE COURT - MR. FRICK WANTS TO PUT SOMETHING ON
19 THE RECORD THAT THEY MAY HAVE OVERLOOKED.

20 MR. LIFSEY - SURE.

21 MR. FRICK - YES, SIR. YOUR HONOR, AND I TEND TO
22 MAKE THIS MOTION FULLY APPRECIATING (PHONETIC) HOW THE COURT
23 IS LIKELY TO RULE ON IT, BUT I --- I DO HAVE SOME CONCERNS
24 AS FAR AS THE DOG-TRACKING EVIDENCE IS DONE. IN DOING
25 SOME RESEARCH, I DETERMINED THERE IS BASICALLY ONE CASE

1 AND ADMITTEDLY IT'S NOT A SOUTH CAROLINA CASE, IT'S A
2 MARYLAND CASE, TERRELL, T-E-R-R-E-L-L VS. MARYLAND. THE
3 CITE ON THAT IS 239 ATLANTIC 2D. 128. NOW, WHOEVER THE
4 JUDGE IN THAT CASE IS PROBABLY AKIN TO OUR JUDGE ANDERSON
5 BECAUSE HE WROTE A NICE SIXTEEN PAGE SUMMARY OF THE DOG-
6 TRACKING EVIDENCE THAT HE WAS ABLE TO DETERMINE THROUGHOUT
7 THE UNITED STATES. BASICALLY, WHAT THE COURT WAS ABLE TO
8 DETERMINE AT THAT POINT WAS THAT WHILE WE'VE ALWAYS JUST
9 KIND OF ASSUMED THAT DOGS HAVE THIS INHERENT ABILITY OF
10 ACUTE SENSE OF SMELL, THERE'S NEVER REALLY BEEN ANY
11 QUESTIONING TO HOW THAT OCCURS. THE LINE OF CASES THAT IS
12 SAID THAT DOG-TRACKING EVIDENCE AND EXPERT TESTIMONY AND
13 THAT DOESN'T REQUIRE ANY SCIENTIFIC EVIDENCE, BASICALLY
14 GOES BACK TO AN 1893 CASE, HODGE VS. STATE WHICH IS AN
15 ALABAMA CASE AT '98 ALABAMA 10. BASICALLY IN THAT CASE
16 THERE WAS THE FIRST CASE TO EVER CHALLENGE DOG-TRACKING
17 EVIDENCE. IN THAT CASE THE COURT NEVER MADE ANY RULING AS
18 TO WHY DOG-TRACKING EVIDENCE SHOULD BE ADMITTED BUT SAID
19 IT IS QUOTE, COMMON KNOWLEDGE THAT SUCH DOGS IF PROPERLY
20 TRAINED COULD TRACK DOWN A PERSON. THERE'S NEVER BEEN ANY
21 EXPLORATION INTO HOW THIS SENSE OF --- HOW THIS SENSE
22 OCCURS. IT'S MY UNDERSTANDING THROUGH PREVIOUS TRIALS
23 WITH DOG-TRACKING EVIDENCE THAT A PERSON LEAVES AN
24 IDENTIFYING FEATURE, A SCENT POOL OF SOME SORT WITH
25 IDENTIFYING FEATURE, A UNIQUE FEATURE PARTICULAR TO THEM.

1 NOW, AS I READ THROUGH THE CASE LAW IN SOUTH CAROLINA
2 TALKING ABOUT, I THINK JONES IN PARTICULAR, TALKING ABOUT
3 THE ADMISSION OF SCIENTIFIC EVIDENCE, YOU KNOW, SUCH
4 THINGS AS DNA REQUIRE THE JONES FACTOR TO BE APPLIED,
5 TALKING ABOUT THE SAME THING IN MY ESTIMATION. DNA HAS
6 UNIQUE IDENTIFYING FEATURES. THE SCENT THAT THE DOG PICKS
7 UP HAS UNIQUE IDENTIFYING FEATURES. I THINK THE JONES
8 FACTOR SHOULD BE APPLIED. THE COURTS SINCE THE ALABAMA
9 CASE IN 1890 SOMETHING HAVE JUST ALL GONE ALONG WITHOUT
10 ANY EXPLANATION OF TO HOW THIS OCCURS. I THINK DESPITE
11 WHAT IS IN THE WHITE CASE WHICH SIMPLY ECHOS THAT LINEAGE
12 OF CASES OVER THE LAST HUNDRED YEARS IS INCORRECT IN NOT
13 PURSUING HOW THAT SMELL OCCURS. I THINK FAILING TO DO
14 THAT DOESN'T ALLOW MY CLIENT A FAIR TRIAL UNDER SIXTH
15 AMENDMENT RIGHT. HE'S UNABLE TO CONFRONT THE EVIDENCE
16 AGAINST HIM. WE JUST --- IT'S A MYSTICAL THING HOW THOSE
17 DOGS ARE ABLE TO DETERMINE THIS, AND I THINK SOME
18 SCIENTIFIC EVIDENCE SHOULD BE APPLIED, AND THAT'S WHY I
19 ASK YOU TO ALLOW US TO APPLY THE JONES FACTOR.

20 MR. LIFSEY - PLEASE THE COURT. YOUR HONOR, IF
21 I COULD HAND UP TO THE COURT STATE VS. WHITE. THIS IS AN
22 EXHAUSTIVE OPINION BY JUDGE ANDERSON INCLUDING AN
23 EXTENSIVE DISCUSSION OF OTHER JURISDICTIONS AND THEIR
24 ADMISSIBILITY AND THESE VERY ARGUMENTS THAT MR. FRICK ABLY
25 MAKES WERE CONSIDERED BY THE COURT OF APPEALS AND

11

1 REJECTED, SO I WOULD ASK YOUR HONOR TO FOLLOW THE
2 DIRECTION OF OUR COURT OF APPEALS AND NOT REQUIRE ME TO
3 MEET ANY JONES STANDARDS.

4 THE COURT - OKAY, I'M PRETTY FAMILIAR WITH THIS
5 CASE. SPENT SOME TIME COVERING IT IN A RECENT CLASS.
6 WELL, YOU KNOW, SOME OF THESE OTHER JURISDICTIONS OUTSIDE
7 THE SOUTH, THEY DON'T HAVE THE APPRECIATION THAT OUR
8 LIFESTYLE HAS HERE. ANYBODY THAT'S EVER HUNTED, IF YOUR
9 FAMILY IS AVID HUNTERS, YOU DON'T QUESTION THE ABILITIES
10 OF YOUR DOGS IN THEIR TRACKING ABILITIES. I MEAN WE'VE
11 GOTTEN TO THE POINT NOW THAT WE'VE REFINED THE BEAGLES
12 THAT WE USE TO HUNT DEER AND RABBITS WITH --- WE HAVE
13 GOTTEN TO THE ABILITY NOW THAT A LITTLE BIT OF EXTRA
14 TRAINING, IF YOUR RABBIT DOG JUMPS A DEER, HE WON'T TAKE
15 OFF AND LEAVE YOU FOR THREE OR FOUR DAYS LIKE THEY DID
16 TWENTY YEARS AGO, VISA VERSA, SO WE'RE MAKING SOME STRIDES
17 IN FIGURING OUT HOW ANIMALS WORK IN THEIR SCENT, BUT JUDGE
18 ANDERSON WENT IN DEPTH IN EXPLAINING ALL THAT, AND I'M NOT
19 GOING TO SIT HERE AND QUESTION WHAT HE'S ALREADY
20 EXTENSIVELY STUDIED AND WRITTEN ABOUT, SO I'M GOING TO
21 HAVE TO DENY ANY MOTIONS YOU HAVE THERE ABOUT SUPPRESSING
22 THE EVIDENCE CONCERNING THAT DOG-TRACKING.

23 MR. FRICK - AND, YOUR HONOR, JUST --- NOT TO
24 ARGUE THE POINT --- I UNDERSTAND YOUR RULING --- BUT JUST
25 TO CLARIFY FOR THE RECORD WHAT MY MOTION IS, NOT ARGUING

1 THAT DOGS HAVE THAT ABILITY --- THAT'S CERTAINLY CLEAR;
2 THAT'S WITHOUT A DOUBT. AND IF THEY'RE TRAINED AND GO
3 THROUGH THAT, THEN THAT'S CERTAINLY ADMISSIBLE. OUR
4 ARGUMENT IS THAT THE STATE OF SOUTH CAROLINA HAS NEVER
5 DEALT WITH THE SCIENCE OF HOW THAT OCCURS. NO CASE HAS
6 AND THEN THAT'S WHY WE REQUEST THAT FOR JONES FACTOR.
7 THANK YOU, YOUR HONOR.

8 THE COURT - AND I THINK IT'S ALREADY BEEN
9 MENTIONED BEFORE SOMEWHERE, AND IF WE CAN EVER GET THE
10 ABILITY THAT DOGS CAN TALK AND YOU CROSS-EXAMINE THEM,
11 MAYBE YOU CAN MAKE SOME HEAD-WAY THERE.

12 MR. LIFSEY - YOUR HONOR, I'D NEXT MOVE THEN TO
13 THE IDENTIFICATION. I THINK IT'S PROBABLY APPROPRIATE
14 THAT I CALL WITNESSES AS TO HIS MOTION TO SUPPRESS ---

15 THE COURT - OKAY.

16 MR. LIFSEY - --- THE IN-COURT IDENTIFICATIONS.
17 SO I WOULD DO THAT AS THIS TIME. I WOULD CALL BEGINNING
18 WITH SHERIKA SANDERS. MS. SANDERS, IF YOU'D COME ON
19 FORWARD. MR. HAMMOND HERE WILL SHOW YOU WHAT WE'RE USING
20 AS A WITNESS STAND THESE DAYS. COME RIGHT ON AROUND HERE
21 AND FOLLOW MR. HAMMOND.

22 SHERIKA SANDERS, AFTER BEING FIRST DULY SWORN,
23 TESTIFIES AS FOLLOWS:
24 DIRECT EXAMINATION
25 BY MR. LIFSEY -

SHERIKA SANDERS - DIRECT BY MR. LIFSEY

13

1 Q WOULD YOU STATE YOUR FULL NAME, PLEASE?

2 A SHERIKA LAWARREN (PHONETIC) SANDERS.

3 Q MS. SANDERS, WHERE DO YOU LIVE?

4 A [REDACTED] RIGHT NOW.

5 Q OKAY. WELL, RIGHT NOW. I GUESS I ASKED THAT
6 QUESTION WRONG. WHERE DID YOU LIVE BACK ON FEBRUARY 5TH,
7 2008?

8 A [REDACTED] APARTMENTS.

9 Q [REDACTED] APARTMENTS?

10 A (INDICATING YES)

11 Q SPEAK UP JUST A LITTLE BIT AND MAKE SURE EVERYBODY
12 CAN HEAR YOU. OKAY? WHAT'D YOU DO THE MORNING OF
13 FEBRUARY 5TH? DID YOU GET UP AND LEAVE YOUR APARTMENT AT
14 SOME POINT IN TIME?

15 A YES, I GOT UP. I HAD TO GO GET MY TRUCK FIXED, BUT
16 THE MAN TOLD ME TO COME BACK, SO I WENT BACK, RETURNING
17 BACK TO MY HOME, AND WHEN I PULLED UP, I OPENED THE DOOR -
18 --

19 Q LET ME STOP YOU JUST A MINUTE. I WANT TO MAKE SURE
20 WE ALL UNDERSTAND THE PICTURE HERE. THIS IS AN APARTMENT?

21 A YES.

22 Q ALL RIGHT. AND YOU CAME BACK AND YOU WENT --- IT WAS
23 DAYTIME. RIGHT?

24 A YES, IT WAS IN THE MORNING, AROUND ---

25 Q YOU WENT TO THE FRONT DOOR?

SHERIKA SANDERS - DIRECT BY MR. LIFSEY

14

1 A YES.

2 Q ALL RIGHT. AND YOU OPENED YOUR FRONT DOOR. WHAT'D
3 YOU SEE?

4 A WHEN I OPENED MY FRONT DOOR --- MY KITCHEN IS RIGHT
5 STRAIGHT --- RIGHT IN FRONT OF ME AND I SAW THE BLINDS
6 TORE DOWN AND THE DOOR WAS CRACKED OPEN, AND I KNEW I
7 DIDN'T GO OUT THAT DOOR THAT MORNING, THE BACK DOOR THAT
8 MORNING.

9 Q LET ME STOP YOU JUST A MINUTE. YOU TALKING ABOUT YOU
10 COULD SEE FROM YOUR FRONT DOOR, YOU COULD SEE ALL THE WAY
11 ---

12 A YES, TO THE KITCHEN.

13 Q --- TO THE BACK DOOR INTO THE KITCHEN AND THE BACK
14 DOOR?

15 A YES, YES.

16 Q ALL RIGHT, AND WHAT DID YOU NOTICE?

17 A NOTICED THAT THE BLINDS AND THE CURTAINS WAS MESSED
18 UP, AND THAT THE DOOR WAS OPEN, HALF-WAY OPEN, SO ---

19 Q OKAY. WHAT DID YOU --- WHAT DID YOU THINK ABOUT WHEN
20 YOU SAW THAT?

21 A THE FIRST THING I THOUGHT ABOUT WAS TO TURN AROUND
22 AND GO BACK, BUT I DON'T KNOW, I JUST WENT ON AHEAD AND
23 WENT IN AND ---

24 Q OKAY.

25 A --- I WENT --- I GOT A BATHROOM DOWNSTAIRS, SO I

SHERIKA SANDERS - DIRECT BY MR. LIFSEY

15

1 OPENED THE BATHROOM DOOR AND I LOOKED IN. I DIDN'T SEE
2 NOBODY, AND BY THE TIME I GOT --- I LOOKED --- PEEKED IN
3 THE KITCHEN, I HEARD FOOTSTEPS RUNNING DOWN THE STEPS AND
4 I LOOKED BACK, IT WAS HIM RUNNING DOWN THE STEPS WITH A
5 GRAY JACKET ON COVERING STUFF HE HAD IN --- AND HE RAN OUT
6 THE FRONT DOOR, SO I RAN OUT THE BACK DOOR AND CALLED FOR
7 HELP.

8 Q OKAY, LET ME STOP YOU JUST A MINUTE. WHEN YOU SAY
9 HIM, SINCE YOU ALREADY SAID THAT, ARE YOU TALKING ABOUT
10 THIS MAN IN THE --- I GUESS THAT'S SORT OF ---

11 A YES, SIR.

12 Q --- WHITISH-COLORED SHIRT RIGHT HERE ---

13 A YES, SIR.

14 Q --- AT THE TABLE NEXT TO MR. FRICK?

15 A YES, SIR.

16 Q DID YOU GET A LOOK --- WHAT KIND OF LOOK DID YOU GET
17 AT HIM? DID YOU GET A LOOK AT HIS FACE?

18 A YES, SIR, BECAUSE WHEN I LOOKED --- WHEN I TURNED
19 AROUND --- I HEARD FOOTSTEPS, SO I TURNED AROUND AND I
20 LOOKED AND HE LOOKED AT ME, BUT HE RAN OUT THE FRONT DOOR,
21 BUT I RAN OUT THE BACK DOOR AND CALLED FOR HELP.

22 Q WELL, I DON'T BLAME YOU THERE, BUT --- UM --- HOW FAR
23 WERE YOU FROM HIM WHEN YOU LOOKED AT HIM?

24 A I WASN'T EVEN --- I'M GOING TO SAY PROBABLY TEN ---
25 IT WASN'T EVEN TEN FEET.

SHERIKA SANDERS - DIRECT BY MR. LIFSEY

16

1 Q WELL, LET ME JUST STOP YOU. IF YOU'RE YOU AND I'M
2 HIM, IS IT ABOUT THIS FAR? DO I NEED TO BACK-UP SOME, GET
3 A LITTLE CLOSER?

4 A ABOUT RIGHT THERE, MY STEPS, AND I WAS LIKE RIGHT
5 HERE, BECAUSE THE STEPS LIKE CLOSE TO THE LIVING ROOM.

6 Q SO YOU WERE THE DISTANCE FROM YOU ON THE WITNESS ---

7 A YES.

8 Q --- STAND TO ME FROM HIM ---

9 A YES.

10 Q --- WHEN YOU LOOKED AT HIS FACE?

11 A (INDICATING YES)

12 Q ALL RIGHT, HE RAN OUT THE FRONT DOOR? IS THAT RIGHT?

13 A YES.

14 Q ALL RIGHT, WHAT DID YOU DO?

15 A I RAN OUT THE BACK DOOR.

16 Q AND WHAT'D YOU DO?

17 A CALLED FOR HELP, WAS SCREAMING WHATEVER.

18 Q OKAY. ALL RIGHT, YOU WERE SCREAMING.

19 A WELL, I WAS PREGNANT, SO I COULDN'T DO TOO MUCH.

20 Q OKAY, AND DID YOU --- SOME OF YOUR NEIGHBORS COME TO
21 YOUR AID OR COME TO YOU?

22 A YES.

23 Q AND WE'LL GET TO SOME OF THE NEIGHBORS AND WHAT THEY
24 SAW IN A LITTLE BIT, BUT DID YOU ULTIMATELY CALL THE
25 POLICE OR DID SOMEBODY ELSE CALL --- ONE OF YOUR NEIGHBORS

SHERIKA SANDERS - DIRECT BY MR. LIFSEY

17

1 CALL THE POLICE?

2 A UM, I MEAN I COULDN'T TALK --- I MEAN I WAS OUT OF
3 BREATH, SO I GUESS ONE OF THEM.

4 Q WELL, AND LET ME ---

5 A I TRIED TO, BUT SHE COULDN'T UNDERSTAND WHAT I WAS
6 SAYING.

7 Q YOU WERE EXPECTING AT THE TIME. RIGHT?

8 A YES.

9 Q I BEEN THE BABY'S BEEN BORN NOW AND ALL.

10 A YES.

11 Q HOW FAR ALONG WERE YOU AT THE TIME ALL THIS HAPPENED?

12 A I WAS ABOUT SEVEN MONTHS.

13 Q OKAY. ALL RIGHT. SO YOU COME OUT --- AT SOME POINT
14 DID THE POLICE GET THERE IN JUST A LITTLE BIT?

15 A THEY GOT THERE LIKE SOON IT HAPPENED, WELL, AS SOON
16 AS CALLED.

17 Q OKAY. WHAT --- DID YOU TELL THE POLICE WHAT
18 HAPPENED?

19 A YES.

20 Q ALL RIGHT. DID THE POLICE TAKE YOU SOMEWHERE?

21 A THEY TOOK ME TO IDENTIFY HIM.

22 Q ALL RIGHT. LET ME ASK YOU THIS. YOU RODE IN A
23 POLICE CAR. IS THAT RIGHT?

24 A YES, SIR.

25 Q ALL RIGHT, HOW FAR AWAY WERE --- DID YOU RIDE? YOU

SHERIKA SANDERS - DIRECT BY MR. LIFSEY

18

1 RIDE TO WHERE THEY HAD HIM?

2 A YES.

3 Q THEY HAD MR. FRAZIER?

4 A YES, SIR.

5 Q OKAY. NOW, WHAT DID YOU DO WHEN YOU GOT TO WHERE
6 THEY HAD MR. FRAZIER?

7 A WELL, HE WAS STANDING ON THE SIDEWALK. THE POLICE
8 HAD HIM SURROUNDED AND HE TOLD ME TO LOOK AND ASKED ME WAS
9 IT HIM, AND I LOOKED, I SAID THAT'S --- THAT WAS HIM.
10 ONLY THING WAS DIFFERENT, HE HAD THREW HIS COAT DOWN OR
11 WHATEVER HE HAD, BUT I KNEW HIS FACE WHEN I SAW IT.

12 Q OKAY. WAS THERE ANY DOUBT IN YOUR MIND ABOUT THAT?

13 A NO, SIR.

14 Q HOW LONG A PERIOD OF TIME WAS IT FROM WHEN HE RAN ---
15 RAN --- YOU SAW HIM IN YOUR APARTMENT, HOW LONG WAS IT
16 FROM THEN UNTIL WHEN YOU SAW HIM ON THE SIDE OF THE ROAD
17 WITH POLICE?

18 A IT PROBABLY WASN'T ABOUT FIFTEEN MINUTES, TWENTY
19 MINUTES.

20 Q OKAY. ANY DOUBT IN YOUR MIND ABOUT WHAT --- ABOUT
21 WHO IT WAS?

22 A NO, SIR, IT WAS HIM, BECAUSE HE HAD MY LITTLE GIRL
23 NECKLACE TO WHERE I HAD A PICTURE OF HER IN HIS POCKET,
24 AND IT WAS HER PICTURE ON THAT NECKLACE.

25 Q LET ME ASK YOU THIS. IS THE MAN THAT YOU SAW IN YOUR

SHERIKA SANDERS - CROSS BY MR. FRICK

19

1 APARTMENT AND THE MAN THAT YOU SAW ON THE ROADSIDE WITH
2 THE POLICE --- ON THE SIDEWALK WITH THE POLICE THE SAME
3 PERSON?

4 A YES, SIR.

5 Q AND IS THAT PERSON IN THIS COURTROOM?

6 A YES, SIR, RIGHT THERE.

7 Q WHO IS HE?

8 A RANDALL ---

9 Q THIS MAN RIGHT HERE SITTING ---

10 A YES, SIR.

11 Q --- NEXT TO MR. FRICK?

12 A THAT'S HIM.

13 Q OKAY.

14 MR. LIFSEY - I DON'T THINK I HAVE ANY FURTHER
15 QUESTIONS.

16 CROSS EXAMINATION

17 BY MR. FRICK -

18 Q MS. SANDERS, WHAT TIME OF DAY WAS IT WHEN YOU GOT
19 BACK TO YOUR APARTMENT?

20 A IT WAS LIKE --- WELL, I WASN'T EVEN GONE TWENTY
21 MINUTES. I WENT TO THE SHOP AND HE TOLD ME TO COME BACK
22 SO I WENT --- I CAME STRAIGHT BACK HOME. IT WAS EARLY IN
23 THE MORNING. IT WAS AROUND TEN.

24 Q OKAY. ALL RIGHT. WAS THE SUN UP AND SHINING?

25 A YES.

SHERIKA SANDERS - CROSS BY MR. FRICK

20

- 1 Q OKAY. YOU SAID THE BACK DOOR WAS OPEN. DO YOU HAVE
2 A FRONT WINDOW?
3 A YES, SIR.
4 Q AND YOU HAVE A BACK WINDOW, AS WELL?
5 A YES, SIR.
6 Q WERE YOUR BLINDS OPEN?
7 A NO, MY BLINDS WAS SHUT.
8 Q OKAY. DID YOU HAVE A LIGHT ON IN YOUR APARTMENT WHEN
9 YOU WALKED IN?
10 A UM, I CAN'T REMEMBER.
11 Q OKAY.
12 A THE T.V. WAS ON.
13 Q THE T.V. WAS ON?
14 A (INDICATING YES)
15 Q OKAY. ALL RIGHT. BUT IT'S BRIGHT ENOUGH THAT YOU
16 CAN ---
17 A YES, I COULD SEE.
18 Q YOU CAN SEE?
19 A (INDICATING YES)
20 Q OKAY. HAD YOU EVER MET RANDOLPH FRAZIER BEFORE?
21 A NO, SIR.
22 Q OKAY. EVER SEEN HIM IN COMMUNITY, HEARD ABOUT HIM,
23 ANYTHING?
24 A NO.
25 Q OKAY. ALL RIGHT. WHEN HE COMES DOWN THE STEPS, YOU

SHERIKA SANDERS - CROSS BY MR. FRICK

21

1 LOOK IN WHOEVER'S FACE THAT IS?

2 A YES, WHEN HE --- I HEAR FOOTSTEPS COMING DOWN THE
3 STEPS SO I TURNED AROUND AND LOOKED. HE LOOKED RIGHT AT
4 ME, BUT HE RAN OUT THE FRONT DOOR. THAT WAS HIM. I SAW
5 HIM.

6 Q ANY --- I KNOW YOU DON'T EXACT, BECAUSE YOU DIDN'T
7 HAVE A STOP WATCH ON HIM (SIC), BUT I MEAN WAS IT A SPLIT
8 SECOND, A SECOND, A COUPLE SECONDS?

9 A I MEAN HE WASN'T RUNNING THAT FAST. I MEAN HE WAS
10 RUNNING, BUT HE WASN'T RUNNING, YOU KNOW ---

11 Q I MEAN WHEN Y'ALL --- WHEN Y'ALL SAW FACE-TO-FACE?

12 A YES, IT WAS LIKE --- I LOOKED RIGHT AT HIM, AND HE
13 RAN OUT THE FRONT DOOR.

14 Q HOW LONG WAS THAT?

15 A IT WASN'T THAT LONG, BUT I --- I KNOW --- I KNOW HIM
16 WHEN I SAW HIM. IT WAS HIM.

17 Q WAS THERE ANYTHING DISTINGUISHING ABOUT HIM? I MEAN
18 WHAT --- WHAT MAKES YOU SO CERTAIN THAT YOU KNOW WHEN YOU
19 SEE HIM?

20 A BECAUSE I SAW HIS FACE.

21 Q OKAY. I MEAN WAS THERE ANYTHING ABOUT HIS FACE?

22 A I MEAN ONLY THING NOW HE DON'T HAVE IS GRAY HAIR, BUT
23 HE HAD GRAY HAIR AT THE TIME.

24 Q OKAY. HAD GRAY HAIR AT THE TIME. OKAY. YOU SAID
25 SOMETHING ABOUT A JACKET. HE HAD A JACKET ---

SHERIKA SANDERS - CROSS BY MR. FRICK

22

1 A HE HAD A GRAY LEATHER JACKET ON.

2 Q GRAY JACKET?

3 A (INDICATING YES)

4 Q OKAY. HOW ABOUT ANY OTHER CLOTHING? YOU REMEMBER --

5 -

6 A I DIDN'T REALLY PAY ATTENTION TO THAT, BUT I KNOW HE
7 HAD --- AND HE HAD STUFF HIDDEN UP UNDER HIS JACKET
8 RUNNING DOWN THE STEPS. HE RAN OUT THE FRONT DOOR AND I
9 RAN OUT THE BACK.

10 Q OKAY. SO I GUESS JUST TO MAKE SURE I GOT THIS CLEAR.

11 I APOLOGIZE. I DON'T MEAN TO HARP ON IT. YOU HEAR THE
12 FOOTSTEPS; YOU TURN AROUND, FACE-TO-FACE ---

13 A HE LOOKED AT ME AND I LOOKED AT HIM, BUT HE KEPT
14 RUNNING OUT THE DOOR.

15 Q OKAY. BUT YOU WERE OVER BACK BEHIND THIS WAY? WHERE
16 WERE YOU? WHERE ARE THE STEPS?

17 A THE STEPS LIKE --- I MEAN WAS RIGHT THERE BESIDE MY
18 LIVING ROOM. IT'S RIGHT THERE. SOON AS YOU WALK IN THE
19 DOOR, THE STEPS RIGHT HERE AND THE LIVING ROOM RIGHT HERE.

20 Q OKAY. BUT IF HE'S TURNED FACING YOU, CAN HE HEAD
21 STRAIGHT OUT THE DOOR OR HAS ---

22 A YES, HE ---

23 Q --- HE GOT TO TURN?

24 A HE COULD HEAD STRAIGHT OUT THE DOOR.

25 Q OKAY. SO YOU WERE FACING THE BACK ---

SHERIKA SANDERS - CROSS BY MR. FRICK

23

1 A BECAUSE I LEFT THE DOOR OPEN WHEN I CAME IN. I
2 WASN'T GOING TO SHUT THE DOOR KNOWING MY WINDOW WAS, YOU
3 KNOW ---

4 Q I GUESS --- MY QUESTION IS, WHEN YOU COME DOWN THE
5 STEPS --- IF I COME DOWN YOUR STEPS --- THERE'S STEPS IN
6 THAT APARTMENT.

7 A (INDICATING YES)

8 Q AM I FACING THE FRONT DOOR?

9 A YES.

10 Q OKAY. SO YOU WERE STANDING WITH YOUR BACK TO THE
11 FRONT DOOR FACING THE BACK DOOR?

12 A I'M --- YES, I WAS TURNED LIKE THIS, BUT WHEN I HEARD
13 THE FOOTSTEPS I TURNED AROUND AND I LOOKED RIGHT AT HIM.
14 HE LOOKED AT ME BUT HE RAN OUT THE DOOR.

15 Q OKAY. OKAY. ABOUT HOW LONG AFTER YOU SAW HIM THAT
16 YOU TOOK OFF?

17 A SOON AS I LOOK AT HIM --- RUN OUT --- AND HE RUN OUT
18 THE FRONT DOOR, I TOOK OFF.

19 Q OKAY. HOW LONG WAS IT BEFORE THE POLICE ARRIVED?

20 A AS SOON AS I CALL --- WELL, I TRIED TO CALL, BUT SHE
21 DIDN'T UNDERSTAND WHAT I WAS SAYING, SO SOMEBODY ELSE
22 MUST'VE CALLED. THEY GOT THE NUMBER AND ---

23 Q [REDACTED] JUST RIGHT --- RIGHT AROUND THE CORNER OR
24 SOMETHING. RIGHT?

25 A YES.

SHERIKA SANDERS - CROSS BY MR. FRICK

24

1 Q OKAY. THEY GET THERE, HOW LONG IS IT BEFORE THEY
2 PUTTING YOU IN THE CAR TO GO I.D. SOMEBODY?

3 A IT WASN'T EVEN PROBABLY TEN MINUTES.

4 Q TEN MINUTES?

5 A TEN OR FIFTEEN MINUTES.

6 Q OKAY. WHICH OFFICER WERE YOU WITH OR DO YOU KNOW?

7 A THE ONE THAT TOOK ME OUT?

8 Q YES.

9 A I DON'T UNDERSTAND.

10 Q OKAY.

11 (DISCUSSION IS HELD BETWEEN COUNSEL WHICH WAS
12 NOT REPORTED.)

13 Q OKAY, AND THEY DRIVE YOU --- WHAT --- BASICALLY
14 AROUND THE CORNER, DON'T THEY?

15 A YES.

16 Q OKAY. WHEN YOU GET THERE, WHO DO YOU SEE?

17 A I SEE HIM STANDING THERE WITH THE POLICE.

18 Q OKAY. WAS THERE ANY OTHER BLACK GUY STANDING AROUND?

19 A NO.

20 Q WAS HE IN HAND-CUFFS?

21 A NO.

22 Q OKAY. WAS HE STANDING, SITTING?

23 A HE WAS STANDING UP.

24 Q HE WAS STANDING UP?

25 A (NO RESPONSE)

SHERIKA SANDERS - CROSS BY MR. FRICK

25

1 Q I THOUGHT YOU SAID HE WAS SITTING ON THE SIDEWALK?

2 A I DIDN'T SAY HE WAS SITTING. I SAY HE WAS STANDING
3 ON THE SIDEWALK.

4 Q OKAY. HE'S STANDING ON THE SIDEWALK. ALL RIGHT.
5 POLICE AROUND HIM.

6 A (INDICATING YES)

7 Q ANYBODY NOT IN A UNIFORM BESIDES HIM?

8 A NO, I DIDN'T SEE NOBODY BUT HIM.

9 Q OKAY. AND YOU SAID WHEN YOU SAW HIM HE DIDN'T HAVE
10 A JACKET ON?

11 A NO.

12 Q OKAY. AND YOU DIDN'T NOTICE ANYTHING ABOUT ANY OTHER
13 CLOTHING?

14 A NO, BUT I KNOW HIS FACE WHEN I SAW IT.

15 Q YOU KNOW HIS FACE WHEN YOU SAW IT. OKAY. BUT YOU
16 WEREN'T ABLE TO GIVE ANY OTHER FEATURES THAT DEFINE HIS
17 FACE? FACIAL HAIR? ANYTHING PARTICULAR ABOUT HIS NOSE?
18 LIGHT SKIN, DARK SKIN, ANYTHING?

19 A NO, BUT I KNOW HIS FACE. IT WAS HIM.

20 Q OKAY. I GOT ONE MORE QUESTION. YOU HAD TESTIFIED
21 WHEN THE SOLICITOR WAS ASKING YOU THAT HE HAD THE NECKLACE
22 WITH THE PICTURE OF YOUR DAUGHTER IN HIS POCKET.

23 A (INDICATING YES)

24 Q THAT --- DID YOU SAY THAT?

25 A I MEAN I DON'T KNOW IF HE HAD IN HIS POCKET. WHEN

SHERIKA SANDERS - CROSS BY MR. FRICK

26

1 THEY BROUGHT IT BACK, HE HAD THE ITEMS, SO HE HAD TO GET
2 IT OUT OF MY APARTMENT, BECAUSE THAT --- THAT WAS MY
3 PICTURE I HAD OF MY DAUGHTER.

4 Q OKAY, BUT WHEN THE SOLICITOR ASKED YOU --- I CAN'T
5 REMEMBER WHAT THE QUESTION WAS --- YOU SAID THAT HE HAD
6 THAT NECKLACE IN YOUR (SIC) POCKET. DO YOU REMEMBER THAT?

7 A WELL, I GUESS HE HAD IT IN HIS POCKET. I DON'T KNOW,
8 BUT HE --- HE HAD TO HAVE IT FOR HE (SIC) TO BRING IT
9 BACK.

10 Q BUT I MEAN DO YOU DISAGREE THAT YOU TESTIFIED TO
11 THAT?

12 A YES.

13 Q ARE YOU DISAGREEING WITH ME OR ---

14 A HE HAD TO HAVE THE ITEM, BECAUSE THAT WAS MINE.

15 Q OKAY. HOW DO YOU KNOW THAT?

16 A BECAUSE HE HAD TO GET IT OUT OF THE APARTMENT.

17 Q OKAY. NO ONE TOLD YOU THAT HE HAD IT.

18 A NO.

19 MR. FRICK - OKAY. THAT'S ALL THE QUESTIONS I
20 HAVE. THANK YOU, YOUR HONOR.

21 MR. LIFSEY - YOU CAN STEP DOWN. I DON'T HAVE
22 ANYTHING FURTHER. WE CAN ARGUE HER AT THIS TIME IF YOU
23 WANT.

24 MR. FRICK - I THINK IT'D PROBABLY BE BETTER TO
25 TAKE IT ONE BY ONE IF WE'RE GOING TO DO ALL THE WITNESSES

1 AND VICTIMS. I ---

2 MR. LIFSEY - YOU'RE GOING TO MAKE YOUR ARGUMENT
3 AS TO HER NOW?

4 MR. FRICK - YES.

5 MR. LIFSEY - OKAY, THAT'S FINE. YOU CAN HAVE A
6 SEAT. YOU CAN GO BACK OUT THERE. THANK YOU SO MUCH.

7 MR. FRICK - JUDGE, I THINK CLEARLY WE'VE GOT A
8 SITUATION WHERE WE HAVE A SHOW-UP. I DON'T THINK THERE'S
9 ANY QUESTION ABOUT THAT. I THINK THAT THE CASES STARTING
10 WITH BIGGERS HAVE SAID THAT SHOW-UPS ARE INHERENTLY
11 SUGGESTIVE. AND I DO HAVE --- I DO HAVE ONE CASE THAT I
12 WANT TO HAND UP. IT'S STATE V. BROWN. IN THAT CASE IT
13 TALKS ABOUT STATE V. MOORE WHICH IS BASICALLY THE CASE AS
14 FAR AS --- AFTER BIGGERS AS FAR AS SHOW-UPS IN THE STATE
15 OF SOUTH CAROLINA. AND WHAT I'M BASICALLY LOOKING AT IS
16 ON PAGE FOUR AFTER THE LITTLE PART AT --- NEAR THE TOP OF
17 THE PAGE THAT SAYS PAGE 503, BASICALLY WE DO HAVE A TWO-
18 PRONG TEST I KNOW WE'RE ALL AWARE OF. NUMBER ONE IS ---
19 IS THE IDENTIFICA --- IS THE PROCEDURE OF THE
20 IDENTIFICATION SUGGESTIVE. I SUBMIT TO YOU IT IS, BECAUSE
21 IT IS A SHOW-UP. YOU GOT ONE BLACK MAN STANDING THERE
22 SURROUNDED BY UNIFORMED POLICE OFFICERS. I DON'T --- I
23 CAN'T THINK OF ANYTHING THAT WOULD BE MORE SUGGESTIVE, SO
24 THAT LEADS US TO THE NEXT FACTOR IS --- IS IT RELIABLE SO
25 THERE'S NO SUBSTANTIAL LIKELIHOOD OF MISIDENTIFICATION,

1 AND OF COURSE, WE ALL KNOW THAT THERE IS SEVERAL FACTORS
2 THAT GO WITH THAT. AND THOSE FACTORS INCLUDE OPPORTUNITY
3 OF THE WITNESS TO VIEW THE PERSON AT THE TIME OF THE
4 CRIME, WITNESS' DEGREE OF ATTENTION, AND THIS IS THE FACTS
5 I'M LOOKING AT ON PAGE FIVE NEAR THE TOP OF THE PAGE
6 THERE, THAT FIRST FULL PARAGRAPH, WITNESS' DEGREE OF
7 ATTENTION, THE ACCURACY OF THE WITNESS' PRIOR DESCRIPTION,
8 LEVEL OF CERTAINTY DEMONSTRATED BY THE WITNESS AT THE
9 CONFRONTATION, THE AMOUNT OF TIME BETWEEN THE CRIME AND
10 CONFRONTATION. YOUR HONOR, HARD TO ARGUE THAT THERE WAS
11 TOO MUCH TIME TO ELAPSE. WE'RE TALKING ABOUT BY THE
12 WITNESS' TESTIMONY FIFTEEN MINUTES AND I WOULD SAY THAT
13 WAS PROBABLY A FAIRLY ACCURATE ASSESSMENT. I THINK IN MY
14 ESTIMATION THE INCIDENT REPORT, AND I KNOW WE HADN'T HAD
15 ANY TESTIMONY ABOUT THAT, BUT I THINK WE'RE LOOKING AT THE
16 MOST ABOUT A HALF HOUR BEFORE THE VICTIM IS TAKEN AND
17 SHOWN, SO SOMEWHERE BETWEEN FIFTEEN MINUTES AND A HALF
18 HOUR. I THINK WE'RE CLEAR OF THAT. I DON'T THINK THERE'S
19 A PROBLEM THERE. LEVEL OF CERTAINTY DEMONSTRATED BY THE
20 WITNESS AT THE CONFRONTATION. SHE SAID SHE'S CERTAIN.
21 YOU KNOW, NOT MUCH I CAN DO THERE. WHERE --- WHERE I'M
22 SEEING TROUBLE IS ONE AND THREE QUITE FRANKLY, YOUR HONOR.
23 THE OPPORTUNITY OF THE WITNESS TO VIEW THE CRIMINAL AT THE
24 TIME OF THE CRIME AND THREE, THE ACCURACY OF THE WITNESS'
25 PRIOR DESCRIPTION. SHE SAYS IT WAS --- SHE'S STANDING

29

1 DOWNSTAIRS, TURNS, LOOKS, SEES SOMEBODY, AS SOON AS SHE
2 SEES SOMEBODY SHE TURNS AND RUNS OUT THE DOOR. NOW, WHILE
3 SHE'S VERY CERTAIN OF WHAT SHE SAW, SHE'S UNABLE TO GIVE
4 ANY FACIAL FEATURES. THE ONLY THING SHE'S ABLE TO SAY IS
5 SHE SEES A BLACK MAN WITH GRAY HAIR WEARING A GRAY JACKET.
6 NOW, I SUBMIT TO YOU I KNOW AGAIN WE DIDN'T TALK ABOUT THE
7 INCIDENT REPORT, BUT HE'S FOUND WITH A BLACK JACKET, GRAY
8 HAIR AND I BELIEVE GREEN PANTS. I BELIEVE IN HER
9 STATEMENT SHE SAID SHE THOUGHT IT WAS BLUE JEANS. THE
10 ACCURACY OF THE DESCRIPTION IS OFF. AS FAR AS THE
11 OPPORTUNITY TO OBSERVE, BY HER TESTIMONY, DESPITE HER
12 CERTAINTY HERE TODAY, THERE IS NO WAY POSSIBLE THAT SHE
13 COULD HAVE A GOOD ENOUGH VIEW. BY HER ADMISSION, WE DON'T
14 KNOW WHAT THE LIGHTING IS. WE DON'T KNOW WHETHER THERE'S
15 A LIGHT ON IN THE HOUSE. WE KNOW THERE'S A T.V. ON. SHE
16 SAYS THAT THE SUN'S OUT AND SHINING; SHE'S GOT THE BLINDS
17 CLOSED. IT'S THE MIDDLE OF THE DAY. PRESUMABLY, IT'S NOT
18 TERRIBLE WELL LIT. SHE HAS A SPLIT SECOND VIEW IN WHICH
19 THE ONLY THING SHE'S ABLE TO ASCERTAIN IS SHE SEES A BLACK
20 MAN WITH GRAY HAIR AND A GRAY JACKET. THAT'S IT. AS SOON
21 AS SHE SEES, SHE TURNS AND RUNS OUT THE DOOR, AND THE
22 PERSON SHE SEES RUNS, SO IT'S NOT ONE OF THESE WHERE
23 EVERYBODY'S STANDING FACE-TO-FACE STANDING THERE FOR A
24 GREAT WHILE. I DON'T THINK THE OPPORTUNITY TO VIEW IS
25 GOOD ENOUGH, AND I DON'T THINK THE DESCRIPTION IS GOOD

1 ENOUGH, AND I WOULD ASK YOU TO SUPPRESS THAT
2 IDENTIFICATION AS BEING OVERLY SUGGESTIVE AND UNRELIABLE.

3 THE COURT - SOLICITOR?

4 MR. LIFSEY - YOUR HONOR, IN ADDITION TO THE CASE
5 MR. FRICK CITED, WHICH I WOULD ARGUE FROM AS WELL AND ALSO
6 HAND UP TO THE COURT STATE VS. GOVAN, ANOTHER CASE ON
7 SHOW-UP, HERE'S THE ISSUE AS I SEE IT. NEIL VS. BIGGERS
8 REQUIRE --- IS A TWO-PRONG TEST, AND STEP ONE OF THE PRONG
9 IN ORDER FOR MR. FRICK TO PREVAIL IS TO SHOW THAT --- NOT
10 THAT THE IDENTIFICATION PROCEDURE WAS SUGGESTIVE, BUT THAT
11 IT WAS UNDULY SUGGESTIVE. IN THE CASES BOTH BROWN THAT HE
12 HANDED UP --- I THINK IT'S BROWN --- AND GOVAN, THEY BOTH
13 SAY THAT WHILE SHOW-UPS THEMSELVES ARE SUGGESTIVE, THEY'RE
14 NOT ALWAYS UNDULY SUGGESTIVE. AND SO THE FIRST STEP YOU
15 HAVE TO COME TO AND YOU HAVE TO CONSIDER IS WHETHER THIS
16 PROCEDURE WAS UNDULY SUGGESTIVE, AND I ARGUE TO YOU IT
17 WASN'T UNDULY SUGGESTIVE. I'M READING FROM THE BROWN CASE
18 THAT HE HANDED UP. A SHOW-UP MAY BE PROPER WHERE IT
19 OCCURS SHORTLY AFTER THE ALLEGED CRIME, NEAR THE SCENE OF
20 CRIME AS THE WITNESS' MEMORY IS STILL FRESH AND THE
21 SUSPECT HAS NOT HAD TIME TO ALTER HIS LOOKS OR DISPOSE OF
22 EVIDENCE, AND THE SHOW-UP MAY EXPEDITE THE RELEASE OF
23 INNOCENT SUSPECTS THAT ENABLE THE POLICE TO CONTINUE
24 SEARCHING. AND THAT'S EXACTLY WHAT HAPPENED HERE. THE
25 SHOW-UP HAPPENED IN FAIRLY CLOSE --- WELL, FIRST OF ALL IT

31

1 WAS CLOSE IN DISTANCE TO WHERE THIS HAPPENED. YOU'RE
2 TALKING ABOUT --- I THINK I ASKED HER JUST AROUND THE
3 BLOCK FROM WHERE IT HAPPENED. IT HAPPENED CLOSE IN TIME
4 TO IT, AND THE WHOLE PURPOSE OF THE SHOW-UP WAS TO SAY IF
5 THIS IS THE GUY, BECAUSE IF IT WASN'T, WE WOULD'VE LET
6 RANDOLPH FRAZIER GO, SO I GUESS MY FIRST ARGUMENT IS THE
7 IDENTIFICATION SHOULD NOT BE SUPPRESSED BECAUSE UNDER THE
8 PRONG ONE OF BIGGERS IT WAS NOT AN UNDULY SUGGESTIVE
9 PROCEDURE, THAT THE SHOW-UP WAS ENTIRELY PROPER. I'D
10 POINT OUT TO YOU IN GOVAN, I BELIEVE WAS A FORTY-FIVE
11 MINUTE TIME PERIOD FROM THE CRIME TO THE SHOW-UP. IN THIS
12 CASE YOU'RE TALKING --- I THINK SHE SAID BETWEEN FIFTEEN
13 AND TWENTY MINUTES, SO I GUESS MY ARGUMENT IS TO POINT
14 ONE, IT DOESN'T MEET THE FIRST PRONG OF BIGGERS, BUT EVEN
15 IF YOU FOUND THAT SOMEHOW THE FIRST PRONG OF BIGGERS WAS
16 MET, I WOULD ARGUE TO YOU THAT THE SECOND PRONG, WE'RE
17 OKAY ON THERE, TOO, BECAUSE SHE SAYS SHE HAD AN
18 OPPORTUNITY TO VIEW HIM; SHE WAS CERTAIN AT THE SCENE OF
19 THE CRIME; SHE WAS CERTAIN HERE IN THE COURTROOM. THERE
20 WAS NO QUESTION IN HER MIND WHO THAT WAS. SHE SAYS THE
21 LIGHTING WAS SUFFICIENT FOR HER TO SEE. MR. FRICK SAYS
22 PRESUMABLY THE LIGHTING --- WELL, HOW CAN --- PRESUMABLY
23 THE LIGHTING WAS NOT SUFFICIENT. HOW CAN WE PRESUME THAT?
24 HADN'T BEEN ANY TESTIMONY AS TO THAT. THAT SHE WAS
25 CERTAIN AS TO HER IDENTIFICATION; IT HAPPENED IN CLOSE

1 PROXIMITY IN TIME. AND SO I GUESS MY ARGUMENT TO YOU IS
2 IT DOESN'T MEET PRONG ONE OF BIGGERS, AND EVEN IF IT MEETS
3 PRONG ONE OF BIGGERS, YOU GO TO PRONG TWO, HER
4 IDENTIFICATION OUGHT TO BE ADMISSIBLE AS TO PRONG TWO.

5 THE COURT - OKAY. I HAD A CASE SIMILAR TO THIS
6 OUT OF GEORGETOWN COUNTY EXCEPT IT WAS A ROBBERY. IT WAS
7 MORE TIME INVOLVED IN --- OR LAPSE OF TIME, AND ALSO IT
8 WAS IN THE NIGHTTIME IF I REMEMBER CORRECTLY. I WAS
9 AFFIRMED ON THAT CASE. THIS IS EVEN STRONGER, LOT
10 STRONGER THAN THAT PARTICULAR CASE, SO I'M GOING TO HAVE
11 TO DENY YOUR MOTION ON THAT, MR. FRICK. ALL RIGHT, BEFORE
12 WE MOVE ON TO SOMETHING ELSE, I WANT TO MAKE SURE WE DON'T
13 HAVE ANY CONFUSION ABOUT THAT DOG-TRACKING THING, BECAUSE
14 IT'S A LITTLE UNUSUAL HOW WE HANDLE THAT, BUT YOU STILL
15 GOT TO MEET THE REQUIREMENTS OF PUTTING YOUR DOG HANDLER
16 UP AND QUALIFYING HIM JUST LIKE JUDGE ANDERSON MENTIONED
17 AT THE CONCLUSION OF HIS CASE.

18 MR. LIFSEY - YES, SIR.

19 THE COURT - YOU CAN'T SHORT-CIRCUIT ---

20 MR. LIFSEY - I INTEND TO OFFER HIM AS AN EXPERT
21 WITNESS BASED ON HIS TRAINING AS A DOG-HANDLER, SO I
22 PRESUME --- I WILL HOPEFULLY MEET THAT STANDARD.

23 THE COURT - WELL, I DIDN'T WANT YOU TO THINK YOU
24 COULD --- BECAUSE WE --- THE WAY WE HANDLED THAT RIGHT OFF
25 THE BAT THAT YOU COULD TAKE A SHORT ---

1 MR. FRICK - WE'VE RUN THAT DOG AND PONY SHOW.

2 WE'VE ---

3 MR. LIFSEY - MR. FRICK AND I HAVE ARGUED THIS --

4 - THIS WHOLE ISSUE ONE TIME BEFORE.

5 THE COURT - OKAY.

6 MR. LIFSEY - ON THIS CASE. ALL RIGHT, NOW, YOUR

7 HONOR, THERE ARE TWO OTHER WITNESSES THAT IDENTIFIED HIM

8 AS WELL.

9 MR. FRICK - JUDGE, COULD I GO BACK JUST ON THAT

10 FOR RECORD CLARIFICATION PURPOSES. ARE YOU DECLARING THAT

11 IT WAS NOT A SUGGESTIVE LINE-UP, NOT MEETING PRONG ONE?

12 I CERTAINLY UNDERSTAND YOUR RULING IS THAT THE LINE-UP

13 OVERALL WOULD BE RELIABLE ENOUGH, BUT I GUESS MY QUESTION

14 IS, ARE YOU ---

15 THE COURT - I'M NOT MAKING THAT SPECIFIC --- I'M

16 JUST SAYING UNDER ALL FACTORS, THE REQUIREMENTS OF BIGGERS

17 THAT I FIND THAT ALL OF THIS WAS REASONABLE AND THAT I'M

18 GOING TO ALLOW THAT IN. NOW, YOU KNOW, THAT DOESN'T LIMIT

19 YOUR CROSS EXAMINATION, BUT AS FAR AS THE COURT'S REVIEW

20 OF IT, IT'S ADMISSIBLE.

21 MR. FRICK - THANK YOU.

22 THE COURT - WHAT WEIGHT THE JURY GIVES IT BASED

23 ON WHAT COMES OUT IS A DIFFERENT STORY.

24 MR. FRICK - THANK YOU, YOUR HONOR.

25 MR. LIFSEY - YOUR HONOR, I'D CALL PATRICIA

PATRICIA CAUTHEN - DIRECT BY MR. LIFSEY

34

1 CAUTHEN TO THE STAND.

2 PATRICIA CAUTHEN, AFTER BEING FIRST DULY SWORN,

3 TESTIFIES AS FOLLOWS:

4 DIRECT EXAMINATION

5 BY MR. LIFSEY -

6 Q STATE YOUR FULL NAME, PLEASE.

7 A PATRICIA CAUTHEN.

8 Q MS. CAUTHEN, WHERE DO YOU LIVE?

9 A I LIVE ON [REDACTED] --- I LIVE ON [REDACTED], [REDACTED]

10 [REDACTED]

11 Q ALL RIGHT. WERE YOU LIVING THERE BACK ON FEBRUARY

12 THE 5TH, 2008?

13 A YES, SIR.

14 Q ALL RIGHT, WHAT DID YOU --- DID YOU HAVE ANY --- DO
15 YOU KNOW ANYTHING ABOUT THE BREAK-IN THERE?

16 A YES, I WAS SITTING ON THE --- YOU MEAN ---

17 Q MS. SANDERS' APARTMENT, DO YOU KNOW ANYTHING ABOUT
18 THE BREAK-IN?

19 A YES, SIR.

20 Q TELL THE JUDGE WHAT YOU KNOW ABOUT THAT AND WHAT YOU
21 SAW.

22 A WELL, I WAS SITTING ON THE COUCH. I WAS EATING SOME

23 ---

24 Q WHERE IS YOUR APARTMENT IN RELATION TO HERS?

25 A HERS WAS LIKE UP RIGHT FROM MINE. MINE FROM DOWN

PATRICIA CAUTHEN - DIRECT BY MR. LIFSEY

35

1 HERS LIKE THAT RIGHT THERE.

2 Q ALL RIGHT, GO AHEAD. YOU'RE NEIGHBORS THEN.

3 A (INDICATING YES)

4 Q ALL RIGHT, GO AHEAD.

5 A OKAY, I WAS SITTING ON THE COUCH. I WAS EATING ---

6 I HAD MADE SOME HOMEMADE CHICKEN AND NOODLES. I WAS

7 SITTING THERE EATING. SO I SAW A GUY RAN THROUGH AND HE

8 JUST DID LIKE THAT AND HE TURNED THE CORNER AND RUN.

9 THAT'S ALL I SEEN.

10 Q ALL RIGHT. LET ME STOP YOU JUST A MINUTE. YOU'RE

11 SITTING ON YOUR COUCH?

12 A (INDICATING YES)

13 Q WAS YOUR DOOR OPEN OR CLOSED?

14 A OPEN. THE STORM DOOR --- I GOT THE BIG LONG STORM

15 DOOR, THE LONG GLASS ---

16 Q OKAY.

17 A --- AND THE DOOR WAS OPEN AND THE SUN WAS SHINING

18 BRIGHT.

19 Q DOOR'S OPEN, YOU HAD A GLASS, LIKE A GLASS SCREEN

20 DOOR, I GUESS, OR WAS IT A GLASS DOOR?

21 A GLASS DOOR.

22 Q ALL RIGHT. CLEAR GLASS. YOU COULD SEE THROUGH IT?

23 A CLEAR GLASS, BECAUSE I KEEP IT CLEAN.

24 Q AND YOU SAW SOMEBODY RUN BY?

25 A (INDICATING YES)

PATRICIA CAUTHEN - DIRECT BY MR. LIFSEY

36

1 Q WHAT'D THE PERSON DO WHEN THEY RAN BY?

2 A RUN AND DID LIKE THAT AND ---

3 Q LIKE WHEN YOU SAY THAT, I MEAN, JUST SO I CAN GET
4 THIS DOWN FOR THE RECORD, ARE YOU SAYING HE LOOKED IN YOUR
5 DOOR?

6 A (INDICATING YES)

7 Q OKAY. DO YOU KNOW --- DO YOU SEE THE PERSON THAT
8 LOOKED IN YOUR DOOR HERE IN THIS COURTROOM?

9 A THE MAN RIGHT THERE.

10 Q ALL RIGHT, AND YOU'RE POINTING TO MR. FRAZIER WHO'S
11 IN THIS WHITISH SHIRT NEXT TO MR. FRICK?

12 A YES, SIR.

13 Q OKAY. WHAT'D YOU HEAR NEXT? WHAT HAPPENED AFTER
14 THAT, AFTER YOU SAW HIM RUN BY AND --- AND HE KEPT ON
15 RUNNING I GUESS AFTER HE LOOKED IN?

16 A YES, I SAW HER RUNNING AND SHE WAS PREGNANT.

17 Q ALL RIGHT, LET ME STOP YOU. YOU SAY HER. YOU
18 TALKING ABOUT MS. SANDERS WHO TESTIFIED A MINUTE AGO?

19 A YES, SIR.

20 Q AND SHE WAS PREGNANT YOU SAID?

21 A YES, SIR.

22 Q ALL RIGHT, WHAT --- WHAT WAS SHE DOING?

23 A SHE WAS HOLLERING AND SCREAMING.

24 Q OKAY. UM ---

25 A AND THEN SHE ASKED ME FOR MY PHONE.

PATRICIA CAUTHEN - DIRECT BY MR. LIFSEY

37

1 Q ALL RIGHT. AND YOU WAS INVOLVED IN CALLING THE
2 POLICE?

3 A I DIDN'T --- I WAS NERVOUS. I COULDN'T HARDLY DIAL
4 THE NUMBER.

5 Q OKAY. DID THE POLICE EVENTUALLY COME ON OUT THERE?

6 A YES, SIR.

7 Q HOW MUCH LONGER --- HOW LONG WAS IT BEFORE THE POLICE
8 GOT OUT THERE?

9 A I DON'T KNOW.

10 Q A SHORT TIME? LONG TIME?

11 A IT WASN'T THAT LONG.

12 Q DID THE POLICE END UP TAKING YOU SOMEWHERE?

13 A YES, SIR.

14 Q WHERE'D THEY TAKE YOU?

15 A UP THE STREET.

16 Q HOW FAR AWAY WAS THAT?

17 A IT WASN'T FAR. RIGHT THERE. WHAT THE NAME OF
18 STREET? CHESTER --- CHESTERFIELD AVENUE?

19 Q CHESTERFIELD AVENUE?

20 A YES, SIR.

21 Q ALL RIGHT, WHAT'D YOU SEE WHEN YOU GOT TO
22 CHESTERFIELD AVENUE?

23 A THAT MAN WAS STANDING ON THE SIDEWALK.

24 Q ALL RIGHT. WHEN YOU SAY THAT MAN, WHO ARE YOU
25 TALKING ABOUT?

PATRICIA CAUTHEN - DIRECT BY MR. LIFSEY

38

- 1 A THAT MAN RIGHT THERE.
- 2 Q THIS FELLOW SITTING RIGHT HERE, RANDOLPH FRAZIER?
- 3 A YES, SIR.
- 4 Q SAME MAN YOU SAW IN THE APARTMENT --- I MEAN RUNNING
- 5 BY YOUR DOOR?
- 6 A YES, SIR.
- 7 Q ANY DOUBT IN YOUR MIND ABOUT THAT?
- 8 A (INDICATING NO)
- 9 Q YOU GOT TO ANSWER OUT LOUD, BECAUSE THEY GOT TO HEAR
- 10 --- THEY GOT TO TAKE ALL THIS DOWN.
- 11 A NO, SIR.
- 12 Q OKAY. THE POLICE ASK YOU ANYTHING --- WELL, FIRST OF
- 13 ALL --- WELL, DID THE POLICE ASK YOU ANYTHING WHEN YOU GOT
- 14 OUT THERE?
- 15 A ASKED ME WAS THAT THE GUY; I SAY YES.
- 16 Q AND --- DID YOU HESITATE OR ANYTHING?
- 17 A (INDICATING NO)
- 18 Q ARE YOU HESITATING TODAY?
- 19 A NO, SIR.
- 20 Q NO DOUBT IN YOUR MIND THAT'S WHO IT WAS?
- 21 A YES, SIR.
- 22 Q YOU REMEMBER ANYTHING ABOUT WHAT HE WAS WEARING, WHAT
- 23 HE HAD ON OR ANYTHING WHEN HE CAME --- EITHER WHEN HE CAME
- 24 BY OR WHEN YOU SAW HIM OUT THERE?
- 25 A HAD ON A JACKET, BUT I DON'T SAY WHAT COLOR THE

PATRICIA CAUTHEN - DIRECT BY MR. LIFSEY

39

1 JACKET WAS. HE WAS RUNNING SO FAST.

2 Q AND DID HE HAVE ---

3 A I JUST SEED HIS FACE. THAT'S ALL I SEED.

4 Q OKAY. YOU SAW HIS FACE WHEN HE LOOKED IN YOUR DOOR?

5 A (INDICATING YES)

6 Q HOW LONG YOU THINK IT WAS BETWEEN --- I'M NOT ASKING
7 YOU FOR EXACT MINUTES AND SECONDS, BUT AS BEST YOU CAN
8 REMEMBER, HOW LONG WAS IT BETWEEN WHEN HE LOOKED IN YOUR
9 DOOR AND WHEN YOU SAW HIM OUT THERE ON CHESTERFIELD AVENUE
10 WITH THE POLICE?

11 A SAY IT AGAIN, NOW.

12 Q HOW LONG BETWEEN WHEN HE LOOKED IN YOUR DOOR AND WHEN
13 YOU SAW HIM WITH THE POLICE ON CHESTERFIELD AVENUE?

14 A I CAN'T RECALL. I DON'T KNOW.

15 Q YOU'RE NOT SURE?

16 A (INDICATING NO)

17 Q ALL RIGHT. THAT'S GOOD ENOUGH. DO YOU REMEMBER THE
18 POLICE OFFICER THAT TOOK YOU OUT THERE?

19 A WHERE'S --- YES, SIR, BUT SHE AIN'T IN --- I DON'T --

20 -

21 Q FEMALE POLICE OFFICER'S NOT IN HERE?

22 A NO, SIR.

23 MR. LIFSEY - THANK YOU VERY MUCH. I DON'T HAVE
24 ANY FURTHER QUESTIONS.

25 CROSS EXAMINATION

PATRICIA CAUTHEN - CROSS BY MR. FRICK

40

1 BY MR. FRICK -

2 Q MS. CAUTHEN ---

3 A YES, SIR.

4 Q --- DO YOU REMEMBER ABOUT WHAT TIME OF DAY IT WAS
5 WHEN YOU SAT DOWN TO EAT YOUR CHICKEN NOODLES?

6 A NO, SIR, I WASN'T LOOKING AT NO CLOCK. I WAS JUST
7 EATING.

8 Q OKAY. BUT WAS IT ABOUT LUNCHTIME OR SO? I MEAN ---

9 A I REALLY DON'T KNOW. I BE EATING FIVE COURSE MEAL UP
10 IN THE --- UP IN THE MORNING.

11 Q OKAY. THAT'S FINE. OKAY. YOU WATCHING T.V.? WHAT
12 WERE YOU DOING?

13 A SITTING ON THE COUCH EATING MY CHICKEN AND NOODLES
14 AND I HEAR SOMEBODY SCREAMING.

15 Q OKAY. YOU HEAR SOMEBODY SCREAMING?

16 A YES, SIR.

17 Q OTHER THAN THE SCREAMING, DID YOU HEAR ANY KIND OF
18 NOISE, ANYTHING BREAKING, ANYTHING LIKE THAT?

19 A NO, SIR.

20 Q OKAY. AND YOUR APARTMENT IS --- IF I'M SITTING ON
21 YOUR COUCH, WHERE'S MS. SANDER'S APARTMENT?

22 A UP FROM MINE. MINE DOWN.

23 Q OKAY, YOU GOT THE BOT --- IT'S ONE OF THESE THAT'S
24 GOT THE TOP AND THE BOTTOM?

25 A (INDICATING YES)

PATRICIA CAUTHEN - CROSS BY MR. FRICK

41

- 1 Q YOU GOT THE BOTTOM ONE?
- 2 A YES, MINE DOWN BELOW HERS. HERS WAS UP; MINE WAS
- 3 DOWN.
- 4 Q OKAY. AND DID YOU HAVE A RADIO, T.V. OR ANYTHING ON
- 5 IN YOUR HOUSE?
- 6 A THE T.V. WAS ON, BUT I WAS EATING AND --- MY DOOR
- 7 OPEN, BUT I WOULD BE WATCHING THE DOOR WHEN PEOPLE BE
- 8 GOING THROUGH.
- 9 Q OKAY. I MEAN WAS IT UP LOUD OR ---
- 10 A (INDICATING NO)
- 11 Q OKAY. YOU DIDN'T HEAR --- CAN YOU HEAR FOOTSTEPS
- 12 WHEN SOMEBODY'S IN HER APARTMENT? CAN YOU HEAR FEET?
- 13 A (INDICATING NO) BECAUSE HERS A LITTLE PIECE FROM
- 14 MINE.
- 15 Q OKAY. ALL RIGHT. IF I'M AT HER PLACE, HOW WOULD I
- 16 COME TO GO BY YOUR DOOR?
- 17 A WALK DOWN THE LITTLE HILL. IT'S A LITTLE --- LITTLE
- 18 SLANT, LITTLE HILL AND THIS MY APARTMENT RIGHT THERE.
- 19 JUST COME RIGHT DOWN LIKE THAT RIGHT THERE.
- 20 Q OKAY. SHE'S NOT DIRECTLY ON TOP OF YOU THEN. SHE'S
- 21 ACROSS FROM YOU.
- 22 A YES.
- 23 Q OKAY. ALL RIGHT.
- 24 A THAT'S WHAT I'M TRYING TO SAY.
- 25 Q I HAD THAT WRONG. I'M SORRY. I WAS THINKING ---

PATRICIA CAUTHEN - CROSS BY MR. FRICK

42

1 THAT WAS MY FAULT. OKAY. DID YOU SEE WHAT DIRECTION THIS
2 PERSON CAME FROM?

3 A FROM HER APARTMENT RUNNING DOWN THIS A WAY, ---

4 Q OKAY.

5 A --- BECAUSE MY DOOR WAS OPEN. I GOT ONE OF THEM LONG
6 GLASS DOORS.

7 Q RIGHT. AND YOU SAID THAT THEY STOPPED AND DID ONE OF
8 THESE?

9 A (INDICATING YES)

10 Q ABOUT HOW LONG DID IT TAKE THEM TO --- AND WHEN YOU
11 SAY DID ONE OF THESE, YOU TALKING ABOUT TURNED AND LOOKED
12 IN YOUR DOOR AND YOU SAW THEIR FACE?

13 A (INDICATING YES)

14 Q OKAY. MAKE SURE AND SAY YES OR NO.

15 A YES, SIR.

16 Q SHE'S GOT TO RIGHT IT DOWN. SHE'S GOING TO YELL AT
17 ME, NOT YOU, I PROMISE YOU.

18 A OH. THIS MY FIRST TIME.

19 Q I UNDERSTAND. IT'S ALL RIGHT. YOU DOING FINE. HOW
20 LONG --- HOW LONG WAS IT --- AND I KNOW YOU DIDN'T HAVE A
21 WATCH ON IT, BUT I MEAN HOW --- HOW LONG OF A VIEW WAS IT?

22 A IT WASN'T LONG.

23 Q WASN'T LONG.

24 A (INDICATING NO) JUST DID THAT AND ---

25 Q JUST A --- A GLANCE?

PATRICIA CAUTHEN - CROSS BY MR. FRICK

43

- 1 A (INDICATING 'YES)
- 2 Q OKAY.
- 3 A BUT I SEE THE FACE.
- 4 Q WAS THERE ANYTHING IDENTIFIABLE ABOUT THE FACE THAT
- 5 JUST STUCK IN YOUR HEAD?
- 6 A OH, TRUST ME, I CAN SEE.
- 7 Q OKAY. WELL, I KNOW. I AIN'T SAYING YOU CAN'T SEE
- 8 NOW. MY QUESTION IS FROM THIS ONE QUICK --- IS THIS
- 9 SOMEONE YOU'D SEE BEFORE?
- 10 A SAY WHAT?
- 11 Q DO YOU KNOW WHO THIS --- DID YOU RECOGNIZE THE PERSON
- 12 THAT YOU SAW?
- 13 A YES.
- 14 Q OKAY.
- 15 A YES, SIR.
- 16 Q YOU KNOW RANDOLPH?
- 17 A I KNOW --- YES, I KNOW HIM.
- 18 Q HOW DO YOU KNOW RANDOLPH?
- 19 A I KNOW HIM.
- 20 Q I'M TRYING TO FIND OUT --- I MEAN HAVE YOU KNOWN HIM
- 21 FOR A LONG TIME? I'M NOT TRYING TO GET IN ALL YOUR
- 22 PERSONAL BUSINESS. I'M JUST TRYING TO --- HAVE YOU KNOWN
- 23 HIM FOR A WHILE?
- 24 A YES, I --- YES, SIR, I KNOW HIM.
- 25 Q OKAY. ALL RIGHT. AND ON THAT DAY WHEN YOU SAW HIM,

PATRICIA CAUTHEN - CROSS BY MR. FRICK

44

1 DID YOU RECOGNIZE WHAT CLOTHING, ANYTHING LIKE THAT?

2 A I AIN'T --- WASN'T ALL INTO THE CLOTHES. I JUST SEEN
3 HIS FACE.

4 Q OKAY. YOU SAID SOMETHING ABOUT A JACKET. RIGHT?

5 A YOU DIDN'T HEAR ME SAY NOTHING ABOUT NO JACKET.

6 Q YES, YOU DID. SOLICITOR SAID DID YOU RECOGNIZE ---
7 SAME THING ON THE CLOTHING. DIDN'T YOU SAY YOU SAY THAT
8 YOU SAW HE HAD SOME KIND OF JACKET ON?

9 A HE --- NO, YOU DIDN'T HEAR I --- HEAR NO --- NO
10 JACKET.

11 Q THERE WAS NO JACKET ON AT ALL?

12 A WELL, I JUST SEE HIS FACE AND HE DID THAT RIGHT
13 THERE, AND HE TURNED THE CORNER.

14 Q OKAY. YOU DIDN'T TELL THE POLICE THAT YOU SAW HIM
15 WEARING A BROWN JACKET?

16 A I AIN'T SAID NOTHING ABOUT NO JACKET.

17 Q OKAY. ALL RIGHT, NOW, HOLD ON NOW. DID YOU ---

18 A I DON'T KNOW NOTHING ABOUT NO --- I DON'T KNOW
19 NOTHING ABOUT NO JACKET.

20 Q MY QUESTION IS, THAT DAY, DID LAW ENFORCEMENT TAKE
21 ANY KIND OF STATEMENT FROM YOU?

22 A YES, WHEN I SAY I SEED HIM RUNNING.

23 Q OKAY. DID YOU TELL THEM THAT HE WAS A BLACK MALE
24 WITH GRAY HAIR AND A DARK BROWN JACKET?

25 A I DON'T REMEMBER NO JA --- I DON'T REMEMBER NOTHING

PATRICIA CAUTHEN - CROSS BY MR. FRICK

45

1 ABOUT NO JACKET. I CAN'T RECALL. I CAN'T REMEMBER
2 NOTHING ABOUT NO JACKET.

3 Q OKAY. OKAY. AND I KNOW IT WASN'T A LONG TIME BEFORE
4 ALL THAT BEFORE THEY --- DID THEY PUT YOU IN A POLICE CAR?

5 A YES, SIR.

6 Q DID THEY DRIVE YOU DOWN THERE?

7 A YES, SIR.

8 Q HOW'D YOU FEEL ABOUT GETTING IN THE BACK OF A POLICE
9 CAR?

10 A I WASN'T --- I WAS IN A --- LIKE A EXPLORER.

11 Q OKAY. I MEAN BUT IT --- DID IT MAKE YOU NERVOUS?

12 A WELL, I'M ON MEDICATION AND I'M UNDER DOCTOR, SO ---
13 AND YOU BOUND TO BE NERVOUS, BECAUSE THIS IS MY FIRST TIME
14 GOING THROUGH SOMETHING LIKE THIS.

15 Q ESPECIALLY IF YOU GET IN THE BACK OF A POLICE CAR.

16 A WELL, I WASN'T GOING TO NO JAIL, THOUGH.

17 Q I UNDERSTAND. ALL RIGHT, WHEN YOU GOT THERE, DID YOU
18 SEE ANYBODY ELSE BESIDES WHO YOU SAY IS RANDOLPH FRAZIER
19 STANDING AROUND?

20 A SOME COPS.

21 Q OKAY. THEY ALL WEARING UNIFORMS?

22 A WHO? THE COPS?

23 Q YES.

24 A HAD ON SOMETHING. I CAN'T REMEMBER ALL THAT RIGHT
25 THERE.

PATRICIA CAUTHEN - CROSS BY MR. FRICK

46

1 Q OKAY. WAS ANY OF THEM BLACK GUY?

2 A (INDICATING NO)

3 Q OKAY. WAS HE HAND-CUFFED?

4 A I DON'T KNOW. I WASN'T PAYING --- I WAS LOOKING IN
5 THE FACE. I WASN'T --- NOTHING ABOUT NO --- NOTHING ABOUT
6 NO HAND-CUFF.

7 Q OKAY. DID YOU TELL THEM ANY DESCRIPTION ABOUT HIS
8 FACE?

9 A I KNEW HIM, AND I KNOWED THE FACE.

10 Q OKAY. ALL RIGHT. BUT YOU'RE UNABLE TO QUANTIFY ANY
11 DISTINGUISHABLE FEATURES ABOUT HIS FACE, JUST THAT YOU
12 RECOGNIZE HIS FACE?

13 A TRUST ME. I SEED THE FACE.

14 MR. FRICK - OKAY. ALL RIGHT. THAT'S ALL THE
15 QUESTIONS I HAVE. THANK YOU.

16 MR. LIFSEY - I DON'T HAVE ANY OTHER QUESTIONS
17 FOR HER. I DO HAVE ONE BRIEF ADDITIONAL WITNESS ON HER
18 IDENTIFICATION IF I COULD. YOU CAN STEP DOWN, MS.
19 CAUTHEN. DON'T LEAVE NOW. YOU'VE GOT TO STAY HERE UNTIL
20 WE LEAVE. GO BACK THERE, BUT DON'T LEAVE THE COURTROOM.
21 OKAY?

22 MS. CAUTHEN - OKAY.

23 MR. LIFSEY - I CALL KRISTEN GRANT.

24 KRISTEN GRANT, AFTER BEING FIRST DULY SWORN,
25 TESTIFIES AS FOLLOWS:

KRISTEN GRANT - DIRECT BY MR. LIFSEY

47

1 DIRECT EXAMINATION

2 BY MR. LIFSEY -

3 Q WOULD YOU STATE YOUR FULL NAME?

4 A KRISTEN GRANT.

5 Q WHAT DO YOU DO FOR A LIVING NOW?

6 A I'M A DETECTIVE WITH LANCASTER POLICE DEPARTMENT.

7 Q WERE YOU ON DUTY BACK ON FEBRUARY 5TH OF THIS YEAR?

8 A YES.

9 Q OKAY. WERE YOU INVOLVED IN THE INVESTIGATION OF THE
10 [REDACTED] BURGLARY?

11 A YES.

12 Q OR [REDACTED] I GUESS IT WAS. DID YOU TAKE PATRICIA
13 CAUTHEN --- WERE YOU THE ONE WHO TOOK PATRICIA CAUTHEN TO
14 IDENTIFY RANDOLPH FRAZIER?

15 A I WAS.

16 Q ALL RIGHT. HOW --- DO YOU KNOW HOW CLOSE IN TIME IT
17 WAS FROM WHEN YA'LL GOT THE CALL --- NOW, I'M NOT ---
18 MINUTES AND SECONDS, BUT AS BEST YOU CAN RECALL HOW CLOSE
19 IN TIME IT WAS FROM WHEN YOU GOT THE CALL TO WHEN MS.
20 CAUTHEN --- YOU AND MS. CAUTHEN GOT OUT THERE NEAR MR.
21 FRAZIER?

22 A I'D SAY ROUGHLY FIFTEEN MINUTES.

23 Q WHEN MS. CAUTHEN --- WHEN YOU GOT OUT --- YOU GOT
24 THERE WITH MS. CAUTHEN, DID SHE SHOW --- DID SHE IDENTIFY
25 RANDOLPH FRAZIER ---

KRISTEN GRANT - CROSS BY MR. FRICK

48

1 A YES.

2 Q --- AS THE ONE SHE'D SEEN?

3 A YES.

4 Q WAS THERE ANY HESITATION IN HER IDENTIFICATION?

5 A NO.

6 Q ANY DOUBT? SHE EXPRESS ANY RESERVATIONS OR DOUBTS AT
7 ALL?

8 A NO.

9 MR. LIFSEY - I DON'T HAVE ANY FURTHER QUESTIONS
10 FOR THIS WITNESS.

11 CROSS EXAMINATION

12 BY MR. FRICK -

13 Q DO YOU RECALL HOW YOU ASKED HER?

14 A THE WAY I DID WITH BOTH OF THEM WAS, WHAT I BELIEVE
15 WAS, WE DROVE UP --- I THINK THAT WAS FAIRFIELD --- I
16 DON'T KNOW WHICH STREET IT WAS, BUT WHEN WE DROVE UP, HE
17 WAS A LITTLE TO OUR RIGHT. WE CAME UP TO A STOP SIGN; HE
18 WAS STANDING OVER IN THAT AREA. WHEN I PULLED UP TO THE
19 STOP SIGN, SHE TOLD ME THEN THAT THAT WAS HIM. I TOOK A
20 LEFT AND WENT BACK TO THE APARTMENTS.

21 Q ABOUT HOW FAR AWAY WAS HE THEN?

22 A WE WERE --- THAT'S A TWO-LANE ROAD. I WAS ON THIS
23 SIDE OF THE ROAD; HE WAS ON THE OPPOSITE SIDE OF THE ROAD.

24 Q OPPOSITE SIDE OF THE ROAD ---

25 A (INDICATING YES)

KRISTEN GRANT - CROSS BY MR. FRICK

49

1 Q --- ON A TWO-LANE ROAD? ROUGHLY --- I KNOW YOU
2 DIDN'T PUT A TAPE MEASURE ON IT --- I MEAN TWENTY
3 SOMETHING FEET? WHAT WE TALKING ABOUT?

4 A I DON'T --- DON'T KNOW HOW WIDE THE ROAD --- I MEAN
5 I'D SAY IT'S JUST A TWO-LANE, JUST A REGULAR CITY STREET.

6 Q BUT HE WAS ON THE OTHER SIDE OF CHESTERFIELD? RIGHT?

7 A (INDICATING YES)

8 Q ALL RIGHT. WAS SHE IN THE CAR BY HERSELF, OTHER THAN
9 YOU DRIVING, OBVIOUSLY?

10 A YES, JUST SHE AND IT.

11 Q ALL RIGHT. ONCE --- ONCE YOU PICKED HER UP, WHERE --
12 - YOU JUST TOOK HER STRAIGHT BACK HOME OR BACK TO THE
13 APARTMENT COMPLEX?

14 A YES.

15 MR. FRICK - OKAY. THAT'S ALL THE QUESTIONS I
16 HAVE. THANK YOU.

17 MR. LIFSEY - I DON'T HAVE ANY FURTHER QUESTIONS.
18 YOU CAN STEP DOWN. I DON'T HAVE ANY FURTHER WITNESSES ON
19 THIS ISSUE.

20 THE COURT - ALL RIGHT. ANY --- I JUST ASSUME
21 THAT YOU WANT TO MAKE THE SAME --- TAKE THE SAME POSITION
22 YOU DID IN YOUR PREVIOUS ARGUMENTS? ARE THERE ANY
23 ADDITIONAL FACTORS ON THIS PARTICULAR ONE?

24 MR. LIFSEY - NO, SIR.

25 MR. FRICK - JUDGE, FROM MY POINT OF VIEW, YES,

1 SIR, THERE IS. WE'VE GOT SOMEONE WHO ADMITTED THAT --- I
2 BELIEVE IT'S EVEN A SHORTER PERIOD OF TIME THAT SHE GOT TO
3 VIEW. SHE --- WE'VE GOT A STATEMENT THAT SAYS IT WAS A
4 BROWN COAT. SHE'S HERE TODAY SAYING I DON'T NOTHING ABOUT
5 A JACKET. I --- THE ACCURACY OF HER STATEMENT, I THINK,
6 IS IN QUESTION. HER OPPORTUNITY TO VIEW I THINK IS IN
7 QUESTION. BASED ON THOSE FACTORS, I THINK THE TOTALITY OF
8 THE CIRCUMSTANCES MAKES IT UNRELIABLE. SHE'S TRYING ---
9 SHE GETS IN THE BACK OF A POLICE CAR, ADMITS THAT SHE WAS
10 PROBABLY NERVOUS; THEY TAKE HER, POINT TO SOMEBODY WHO'S
11 ACROSS THE ROAD FROM HER AND ASK HER IS THAT THE GUY.
12 HE'S THE ONLY BLACK MAN, ONLY CIVILIAN STANDING THERE. I
13 THINK IT'S UNRELIABLE.

14 THE COURT - OKAY. ALL RIGHT, I'M GOING TO
15 RESERVE RULING ON HER UNTIL WE GET THROUGH THIS THIRD ONE,
16 BECAUSE YOUR INQUIRY A FEW MINUTES AGO, I THINK DEMANDS
17 THAT I GOT TO GO BACK ON THE RECORD. YOU POINTED OUT
18 SOMETHING TO ME THAT WE NEED TO COVER TO MAKE SURE WE MEET
19 WHAT THE SUPREME COURT REQUIRED.

20 MR. LIESEY - YOUR HONOR, AS TO THE NEXT WITNESS,
21 I'D CALL FRANK STRAIN TO THE STAND, PLEASE.

22 FRANK STRAIN, AFTER BEING FIRST DULY SWORN,
23 TESTIFIES AS FOLLOWS:

24 DIRECT EXAMINATION

25 BY MR. LIESEY -

FRANK STRAIN - DIRECT BY MR. LIFSEY

51

- 1 Q STATE YOUR FULL NAME, PLEASE?
- 2 A JERRY FRANKLIN STRAIN.
- 3 Q YOU GO BY FRANK?
- 4 A YES.
- 5 Q MR. STRAIN, WHERE DO YOU LIVE?
- 6 A [REDACTED] [REDACTED].
- 7 Q ALL RIGHT. WERE YOU LIVING ON [REDACTED] --- IN THE [REDACTED]
- 8 [REDACTED] BACK IN FEBRUARY, ON FEBRUARY 5TH OF THIS
- 9 YEAR?
- 10 A YES.
- 11 Q OKAY. WHAT DO YOU KNOW ABOUT THE BREAK-IN THAT
- 12 HAPPENED THERE, TO MS. SANDER'S APARTMENT?
- 13 A ONLY THING I OBSERVED WAS A GUY RUNNING DOWN PAST THE
- 14 APARTMENTS, DOWN TOWARDS THE FENCE WAY, AND I SEEN A
- 15 LEATHER JACKET, A LEATHER JACKET ON AND BLACK LEATHER
- 16 SHOES ON AND THAT'S --- THAT'S ALL. I DIDN'T SEE THE FACE
- 17 OR NOTHING. I JUST SEEN WHAT HE HAD ON.
- 18 Q HANG ON ONE MINUTE. LET ME ASK YOU ANOTHER QUESTION
- 19 OR MAYBE --- MAYBE I CAN CUT IT SHORT IF I CAN. ALL
- 20 RIGHT, WHERE WERE YOU WHEN YOU SAW HIM RUNNING BY WITH ---
- 21 WHERE WERE YOU WHEN YOU SAW THIS?
- 22 A I WAS IN --- I WAS SITTING IN THE HOUSE AT THE TIME.
- 23 Q IN YOUR APARTMENT?
- 24 A YES, SIR.
- 25 Q HOW'D YOU SEE HIM? THROUGH A DOOR, A WINDOW, WHAT?

FRANK STRAIN - DIRECT BY MR. LIFSEY

52

1 A THROUGH A DOOR, THE FRONT --- THE FRONT DOOR.

2 Q SO YOU HAVE THE DOOR OPEN? DO YOU HAVE A GLASS DOOR,
3 TOO?

4 A GLASS DOOR.

5 Q ALL RIGHT. HOW FAR AWAY WAS HE? DO YOU KNOW ABOUT
6 HOW FAR AWAY WHEN HE RAN BY?

7 A WELL, MY CAR PARKED OUT THERE. I SAY CAR LENGTHS
8 DOWN. JUST LIKE I SAY, YOU CAN JUST SEE A PERSON HEAD RUN
9 DOWN THROUGH THERE, BUT I GOT UP AND WENT AND LOOKED AT
10 HIM WHEN YOU HIT THE GATE, I JUST SEE, YOU KNOW, A LEATHER
11 JACKET AND BLACK SHOES, BECAUSE I WAS TRYING TO TELL THE
12 OFFICER --- I WAS TRYING TO REMEMBER DID HE HAVE TENNIS
13 SHOES ON, BUT HE HAD BLACK LEATHER SHOES ON.

14 Q OKAY. DID YOU KNOW WHO HE WAS AT THAT TIME?

15 A NO. I NEVER DID.

16 Q DID THE POLICEMAN TAKE YOU OUT TO THE SCENE?

17 A YES.

18 Q AND DID YOU SEE --- DID YOU SEE SOMEBODY WITH THE
19 POLICE ON CHESTERFIELD AVENUE?

20 A YES, I SEEN UM MR. FRAZIER HERE.

21 Q OKAY. DID YOU RECOGNIZE ANYTHING ABOUT HIM OUT
22 THERE?

23 A THE LEATHER BLACK SHOES HE HAD ON AND THE JACKET.

24 Q SO YOU RECOGNIZED THAT THE PERSON YOU SAW OUT ON
25 CHESTERFIELD AVENUE YOU SAY HAD ON THE SAME SHOES AND

FRANK STRAIN - DIRECT BY MR. LIFSEY

53

1 JACKET?

2 A YES.

3 Q WHAT ABOUT THE FACE? DID YOU GET A LOOK AT THE FACE
4 OR NOT?

5 A NO, I --- I JUST LOOKED AT THE --- BEHIND THE HEAD,
6 YOU KNOW, BLACK GUY, GRAY HAIR.

7 Q ALL RIGHT, SO YOU CAN'T --- YOU DIDN'T IDENTIFY HIM
8 AS BEING THE ONE THAT WAS OUT THERE. YOU JUST RECOGNIZED
9 THE SHOES ---

10 A YES.

11 Q --- AND JACKET?

12 A (INDICATING YES)

13 MR. LIFSEY - I DON'T THINK I HAVE ANY FURTHER
14 QUESTIONS. I DON'T THINK THIS IS IDENTIFICATION WITNESS
15 SUBJECT TO ---

16 THE COURT - I DON'T THINK SO EITHER. THAT GOES
17 STRICTLY TO THE EVIDENTIARY PART ABOUT THE CLOTHING.

18 MR. FRICK - IF I COULD CROSS EXAMINE HIM
19 BRIEFLY, YOUR HONOR.

20 MR. LIFSEY - WELL, I OBJECT TO HIS CROSS
21 EXAMINATION OF HIM, BECAUSE I DON'T THINK IT'S AN
22 IDENTIFICATION --- THIS IS NOT --- IF --- A BIGGERS --- A
23 PRE-TRIAL BIGGERS HEARING IS NOT REQUIRED FOR WHAT THIS
24 IS, HE OUGHT NOT TO BE ENTITLED TO CROSS EXAMINE HIM A
25 SECOND TIME.

FRANK STRAIN - CROSS BY MR. FRICK

54

1 THE COURT - WELL, YOU MAY BE CORRECT TO A
2 CERTAIN DEGREE, BUT I --- AND WE'RE NOT CONCERNED WITH
3 BIGGERS HERE, BUT I'M GOING TO LET HIM GO AHEAD BECAUSE HE
4 MAY WANT TO USE IT A LITTLE BIT AND WE'LL GIVE Y'ALL AN
5 OPPORTUNITY TO DISCUSS HOW I RULE ON THESE THINGS TO SEE
6 IF IT MAY CHANGE YOUR APPROACH ABOUT HOW YOU WANT TO
7 RESOLVE THIS CASE, SO I'LL GIVE YOU SOME LATITUDE.

8 MR. FRICK - THANK YOU. I APPRECIATE THAT.

9 CROSS EXAMINATION

10 BY MR. FRICK -

11 Q DID YOU NOTICE A COLOR OF THE COAT?

12 A WELL, IT WAS A DARK COAT, LIKE A SAID, WHEN THE LIGHT
13 HIT IT --- WHEN HIT --- WHEN HE WENT DOWN TO THE WOODS IT
14 WAS A DARK --- IT GOT SHADE IN IT AND IT MAKE THE COAT
15 LOOK A LOT DARKER THAN WHAT IT WAS.

16 Q OKAY. ALL RIGHT. AND YOU SAY THE SHOES STUCK OUT IN
17 YOUR HEAD?

18 A YES.

19 Q ANY REASON WHY THE SHOES STUCK OUT IN YOUR HEAD?

20 A JUST CAUGHT --- JUST CAUGHT HIM RUNNING I GUESS.

21 Q DID YOU NOTICE ANYTHING ELSE, ANY OTHER CLOTHING?

22 A NO, JUST THE LEATHER JACKET AND SHOES.

23 Q HAIR, FACE, ANYTHING?

24 A I TOLD THEM GRAY HAIR. HE HAD GRAY HAIR ON HIS HEAD,
25 BLACK MALE.

FRANK STRAIN - CROSS BY MR. FRICK

55

1 Q AND WHEN YOU GOT --- WHEN THEY --- DID THEY PUT YOU
2 IN THE POLICE CAR?

3 A YES, SIR.

4 Q DRIVE YOU OVER TO WHERE THE POLICE WAS STANDING?

5 A (INDICATING YES) .

6 Q OKAY. ANYBODY ELSE --- ANY OTHER BLACK MAN BESIDES
7 MR. FRAZIER STANDING THERE?

8 A NO, SIR.

9 Q OKAY. DID YOU SAY HE HAD A JACKET ON OR NOT WHEN YOU
10 ---

11 A WELL, WHEN I SEEN HIM RUNNING, HE HAD A JACKET ON.

12 Q BUT WHEN THE POLICE TAKE YOU OVER TO GO SEE HIM ---

13 A YES, I DIDN'T --- HE DIDN'T HAVE NO JACKET ON THEN.

14 Q NO JACKET?

15 A NO.

16 Q OKAY. WHERE --- WHEN YOU FIRST NOTICE SOMEBODY
17 RUNNING BY, WERE YOU INSIDE OR OUTSIDE?

18 A I WAS INSIDE.

19 Q YOU WERE INSIDE?

20 A (INDICATING YES) .

21 MR. FRICK - OKAY. THAT'S ALL THE QUESTIONS I
22 HAVE. THANK YOU.

23 MR. LIFSEY - I DON'T HAVE ANY FURTHER QUESTIONS
24 FOR HIM. YOU CAN STEP DOWN.

25 THE COURT - OKAY. I DON'T HAVE TO GET INVOLVED

1 FURTHER. I'M GOING TO BACK UP, AND THIS GOES TO BOTH
2 INITIAL FIRST TWO WITNESSES. I THINK MR. FRICK'S CORRECT,
3 MAKE SURE WE COVER ALL THE ANGLES OF SUPREME COURT
4 REQUIREMENTS IN THEIR TWO-PRONG INQUIRY. ON THOSE FIRST
5 TWO, I DON'T --- I DON'T SEE OR I DON'T FIND THAT WHAT
6 HAPPENED WAS UNDULY SUGGESTIVE ON EITHER ONE OF THEM, AND
7 MR. FRICK I LISTENED CAREFULLY TO WHAT YOU SAID ABOUT THE
8 SECOND WITNESS, BUT I POINT BACK OUT TO YOU, NOW THE
9 SECOND WITNESS SAID SHE KNEW THE DEFENDANT. I MAKE THAT
10 FINDING THAT I DON'T SEE THAT IT WAS UNDULY SUGGESTIVE,
11 BUT EVEN IF IT WERE, I FIND THAT AFTER YOU TAKE THE NEXT
12 STEP CONCERNING THOSE FOUR FACTORS AS SET FORTH ON PAGE
13 THREE OF THE OPINION THAT WAS HANDED UP TO ME --- THAT'S
14 THE GOVAN CASE --- THE OPPORTUNITY OF THE WITNESS TO VIEW
15 THE CRIMINAL, THE DEGREE OF ATTENTION, THE ACCURACY OF THE
16 DESCRIPTION, THE LEVEL OF CERTAINTY DEMONSTRATED BY THE
17 WITNESS AND THE AMOUNT OF TIME, I FIND AFTER CAREFULLY
18 LISTENING TO THAT TESTIMONY THAT THERE IS A CONCERN ABOUT
19 THE SUGGESTIVENESS THAT IT'S OVERRIDDEN BY THE TESTIMONY
20 THERE, SO I'M --- I'M NOT GOING TO SUPPRESS THE EYE-
21 WITNESS TESTIMONY, BOTTOM LINE. OKAY.

22 MR. LIFSEY - THANK YOU. THOSE ARE THE ONLY TWO
23 WITNESSES THAT WILL IDENTIFY HIM AS BEING THE ONE THEY
24 SAW. THERE ARE --- THERE IS AT LEAST ONE OR MAYBE TWO
25 OTHER WITNESSES WHO WILL DESCRIBE AN INDIVIDUAL MATCHING

57

1 THE GENERAL DESCRIPTION IN THE AREA, THAT THEY SAW HIM
2 RUNNING, BUT CAN'T SAY --- SIMILAR TO WHAT MR. STRAIN.
3 THERE WILL BE AT LEAST ONE, IF NOT TWO WITNESSES THAT'LL
4 BE SIMILAR TO MR. STRAIN WHO DON'T IDENTIFY HIM BUT
5 IDENTIFY SOMEONE MATCHING THE GENERAL DESCRIPTION RUNNING
6 FROM THE AREA.

7 THE COURT - OKAY.

8 MR. LIFSEY - SO I DON'T THINK I NEED TO OFFER
9 ANY TESTIMONY ON THOSE BECAUSE I DON'T THINK THEY'RE
10 IDENTIFICATIONS, SO THAT'S ALL I HAVE AS TO IDENTIFICATION
11 ISSUE. WHICH ISSUE DO WE WANT TO --- WE WANT TO DEAL WITH
12 --- WE DEALT WITH --- YOU WANT TO DEAL WITH ---

13 MR. FRICK - SEVERANCE PROBABLY.

14 MR. LIFSEY - SEVERANCE?

15 MR. FRICK - YES.

16 MR. LIFSEY - I'LL LET HIM MAKE HIS MOTION AND
17 THEN ARGUE --- HAVE YOU ALREADY MADE YOUR MOTION?

18 MR. FRICK - I JUST GENERALLY --- PONTIFICATED
19 UPON IT I THINK. YOUR HONOR, WE'VE GOT TWO CHARGES HERE
20 OF BURGLARY FIRST. SOLICITOR'S GOING TO STAND UP IN A
21 SECOND AND TELL YOU THAT THEY ARE, ONE, THAT THEY'RE SO
22 CLOSELY LINKED TOGETHER THAT ONE MAY BE THE RES GESTAE,
23 THE OTHER ONE YOU NEED TO INTRODUCE IT ANYWAY, I'D ASK YOU
24 NOT TO ALLOW THAT TO HAPPEN. I DON'T THINK THAT THEY ARE
25 SO INEXTRICABLY INTERTWINED THAT ONE COULD BE PRESENTED

1 WITHOUT THE OTHER ONE. I THINK THAT CLEARLY IS MORE
2 PREJUDICIAL THAN PROBATIVE. THE FIRST ARGUMENT --- MY
3 ARGUMENT ON THE SEVERANCE, HOWEVER, IS THAT WE'VE GOT ONE
4 INCIDENT AT MS. SANDERS' RESIDENCE. IT'S THE ONE WHERE
5 SHE WALKS IN, SEES SOMEBODY. AS THEY'RE CONDUCTING AN
6 INVESTIGATION, THE NEXT DAY, MY UNDERSTANDING, THEY
7 RECEIVE A PHONE CALL FROM SOMEONE AT AN APARTMENT NEAR ---
8 STILL THE [REDACTED] [REDACTED] APARTMENTS, BUT AN APARTMENT NEAR
9 THAT SAYS THAT SOMEONE HAD COME INTO HER RESIDENCE AND
10 STOLE SOME ITEMS. NOW, THERE WAS A BAG THAT WAS FOUND
11 NEAR MR. FRAZIER WHEN HE WAS SEIZED ON CHESTERFIELD
12 AVENUE. THE BAG DID CONTAIN ITEMS THAT BOTH VICTIMS
13 IDENTIFIED AS BEING FROM THEIR RESIDENCE. HOWEVER,
14 BECAUSE --- IT'S A BURGLARY FIRST, QUITE FRANKLY ---
15 BECAUSE THERE'S GOING TO BE A STIPULATION THAT MY CLIENT
16 HAS ALREADY BEEN CONVICTED OF TWO PRIOR BURGLARIES IS WHY
17 THESE WOULD BE BURGLARY FIRST, I FEEL THAT THAT'S GOING TO
18 BE FAR TOO PREJUDICIAL FOR THE JURY TO CONSIDER. I WOULD
19 ASK YOU TO MAKE THE STATE ELECT WHICH ONE THEY WANT TO
20 PROCEED ON TODAY. I JUST --- I DON'T KNOW THAT THERE IS
21 ENOUGH QUITE FRANKLY TO SAY --- OTHER THAN THE BAG,
22 ADMITTEDLY --- TO SAY THAT MR. FRAZIER WAS TRULY INVOLVED
23 IN THE ONE WITH MS. CARMEN GEORGE, THE ONE THAT WAS
24 REPORTED THE NEXT DAY. I JUST --- THE REPORTING OF IT THE
25 NEXT DAY TROUBLES ME, YOUR HONOR. IF IT HAD BEEN

59

1 DISCOVERED AT THE SAME TIME, I THINK MY ARGUMENT'S MUCH,
2 MUCH WEAKER, BUT SINCE IT WASN'T DISCOVERED UNTIL THE NEXT
3 DAY, WE TRULY DON'T KNOW WHAT --- WHAT HAPPENED AND HOW WE
4 GOT TO THAT POINT. JUDGE, THERE IS A LIST OF FACTORS THAT
5 CAN BE CONSIDERED. I DON'T THINK I MADE A COPY OF ANY OF
6 THE CASES I'M LOOKING AT, BUT BASICALLY I THINK WHEN I'M -
7 -- WHAT I'M DEALING WITH COMES OUT OF CITY OF GREENVILLE
8 VS. CHAPMAN. THE CITE ON THAT IS 210 SC, 157. IT'S ONE
9 THAT'S BEEN --- THAT'S ---

10 (DISCUSSION IS HELD BETWEEN COUNSEL WHICH WAS
11 NOT REPORTED.)

12 MR. FRICK - BUT BASICALLY THERE ARE FOUR FACTORS
13 IN REGARD TO JOINDER OF CHARGES. NUMBER ONE, ARISING OUT
14 OF SINGLE CHAIN OF CIRCUMSTANCES PROVED BY SAME EVIDENCE
15 AND SAME GENERAL NATURE. YOUR HONOR, MY CONCERN TRULY IS
16 WITH NUMBER FOUR. NOW, IN --- IN CITY OF GREENVILLE, THEY
17 --- AND THERE WAS A SUBSEQUENT DUI CASE, I BELIEVE --- IT
18 BASICALLY SAID IF YOU'VE GOT MISDEMEANOR, IT'S NOT OVERLY
19 PREJUDICIAL TO PUT THEM TOGETHER, BUT IT SEEMS TO INDICATE
20 THAT IF IT WAS SOMEWHERE MORE SEVERE, IT COULD BE --- THAT
21 COULD BE A FACTOR. AS I STATED PREVIOUSLY, WE'RE HERE ON
22 THE BURGLARY FIRST CHARGE, BECAUSE MY CLIENT HAS TWO PRIOR
23 CONVICTIONS OF BURGLARY. THESE IT'S ALLEGED THAT TOOK
24 PLACE DURING THE DAY-TIME, SO NORMALLY THEY WOULD BE
25 BURGLARY SECONDS AT THE MOST, BUT BECAUSE OF HIS RECORD,

1 THEY'RE GOING TO BE TREATED AS FIRST. HAVING THAT
2 PRESENTED BEFORE THE JURY, ALONG WITH TWO BURGLARIES ---
3 AND I --- I --- YOU KNOW, I JUST --- I KNOW WE'RE NOT
4 GETTING INTO THE EVIDENCE ON THAT SECOND, THE CARMEN
5 GEORGE BURGLARY, BUT THERE IS TRULY NO PHYSICAL EVIDENCE
6 TYING MR. FRAZIER TO THAT. THE ONLY EVIDENCE WE'RE
7 TALKING ABOUT IS SOME STUFF THAT'S FOUND IN A BAG THAT'S
8 ALLEGED THAT MR. FRAZIER DROPPED AS HE WAS FLEEING THE
9 SCENE, CIRCUMSTANTIALLY AT BEST I WOULD SAY. I DON'T
10 THINK THAT THERE'S ENOUGH EVIDENCE TO TIE IT --- THAT
11 WOULD OVERCOME THE PREJUDICIAL AFFECT THAT MR. FRAZIER'S
12 GOING TO SUFFER BY HAVING TWO BURGLARY FIRST TRIED GIVEN
13 HIS RECORD.

14 MR. LIFSEY - YOUR HONOR, THIS IS HOW I
15 UNDERSTAND THE CHAIN OF EVENTS, BECAUSE YOU'VE ---
16 BASICALLY AS YOU HEARD, MS. SANDERS SEES HIM RUNNING OUT
17 OF THE APARTMENT; THEY CATCH HIM A BLOCK OR TWO AWAY; THEY
18 SEEN HIM THROW DOWN THIS BAG THAT CONTAINS ITEMS THAT WERE
19 STOLEN FROM MS. SANDERS' APARTMENT. IN ADDITION TO THE
20 ITEMS FROM MS. SANDERS' APARTMENT, THERE ARE SOME OTHER
21 ITEMS THAT THEY DON'T KNOW WHERE THEY CAME FROM AT THAT
22 POINT. AT SOME POINT YOU'LL HEAR AT SOME POINT IN THIS
23 TRIAL ABOUT THE DOG. THEY GET THE BLOODHOUND OUT AND THE
24 BLOODHOUND TRAILS FROM MS. SANDERS' APARTMENT BACK TO
25 WHERE MR. FRAZIER IS AND IDENTIFIES THE DOG REACTS TO MR.

61

1 FRAZIER. ALONG THAT PATH THEY FIND A NUMBER OF ITEMS
2 DROPPED, SORT OF LIKE, I GUESS --- I MESSED UP THE
3 FAIRYTALE LAST TIME WE TRIED THIS CASE, BUT SORT OF LIKE
4 THE HANSEL AND GRETTEL DROPPING OF BREAD CRUMBS. THEY
5 FIND A NUMBER OF ITEMS ALONG THE PATH. SOME OF THOSE
6 BELONG TO MS. SANDERS. SOME OF THEM, AGAIN, AT THAT TIME,
7 THEY DON'T KNOW WHERE THEY CAME FROM. MY UNDERSTANDING
8 IS THE NEXT DAY, MS. CARMEN GEORGE COMES HOME AND ARRIVES
9 BACK AT HER APARTMENT TO FIND HER APARTMENT'S BEEN
10 BURGLARIZED. SHE CALLS THE POLICE AND THOSE VERY ITEMS
11 THAT WERE UNIDENTIFIED THE DAY BEFORE ARE IDENTIFIED AS
12 HAVING COME FROM HIS --- FROM HER APARTMENT. SO --- AND
13 THEY ARREST BASED ON THAT. AND IT IS A CIRCUMSTANTIAL
14 EVIDENCE CASE. I'LL BE THE FIRST ONE TO TELL IT'S A
15 CIRCUMSTANTIAL EVIDENCE CASE, BUT IT IS --- THERE ARE
16 CERTAINLY PLENTY OF CIRCUMSTANTIAL EVIDENCE CASES WE TRY
17 IN THIS COURT ALL THE TIME. THE CASES ARE INTERTWINED IN
18 THAT IF I WERE TO TRY THE CARMEN GEORGE BURGLARY
19 SEPARATELY, I'D HAVE TO CALL BASICALLY ALL THESE WITNESSES
20 AGAIN. AND --- I MEAN I DON'T KNOW HOW I CAN TRY ONE CASE
21 WITHOUT TRYING THE OTHER. IN OTHER WORDS, I WOULD BE
22 TRYING THE SAME FACTUAL EVIDENCE TWICE. THE ONLY
23 DIFFERENCE WOULD BE, I WOULD HAVE CARMEN GEORGE COME IN --
24 - ON ONE TRIAL --- MY INTENTION IS TO HAVE CARMEN GEORGE
25 BASICALLY COME IN AND SAY THAT'S MY STUFF THEY FOUND AND

1 I DON'T KNOW WHO RANDOLPH FRAZIER IS, BUT HE DIDN'T HAVE
2 PERMISSION TO BE IN MY APARTMENT, SO THAT WOULD BE THE
3 ONLY DISTINCTION BETWEEN THE TWO TRIALS. IT'D OTHERWISE
4 BE THE SAME. AS TO THE PREJUDICE ARGUMENT --- I MEAN IT'S
5 NOT MY FAULT THAT HE'S GOT TWO PRIOR BURGLARIES AND THAT
6 I'M ALLOWED UNDER THE COURT RULES TO INTRODUCE THAT, SO I
7 THINK THEY'RE INTERTWINED SUCH THAT I NEED TO TRY THEM
8 TOGETHER.

9 THE COURT - I DON'T AGREE. THE DOG HAD TRAILED
10 FROM THE FIRST BURGLARY INSTEAD OF THE SANDERS' BURGLARY,
11 I WOULD AGREE WITH YOU, BUT I DON'T HAVE ANY TIMING FACTOR
12 HERE ABOUT WHEN THE FIRST BURGLARY OCCURRED COMPARED TO
13 THE SANDERS' BURGLARY. I'M GOING TO HAVE TO SIDE WITH MR.
14 FRICK ON THIS ONE. I THINK WE COULD REALLY POSSIBLY FOUL
15 THIS CASE UP FOR APPELLATE PURPOSES IF WE WOULD TRY THEM
16 BOTH.

17 MR. LIFSEY - WELL, THEN FOR THAT --- IF THAT'S
18 THE CASE THEN, JUDGE, I WOULD ELECT AND WOULD TRY
19 INDICTMENT 2008-GS-29-469 WHICH IS THE SHERIKA SANDERS'
20 BURGLARY AS THE ONE THAT I'M GOING TO TRY TODAY, IF YOU'RE
21 NOT ALLOWING ME TO TRY THEM BOTH TOGETHER.

22 THE COURT - NOW, SOMETIMES YOU GET MORE THAN
23 WHAT YOU ASK FOR, MR. FRICK. YOU UNDERSTAND THAT ANY
24 DOUBLE JEOPARDY LATER ON, YOU'RE BLOWING THAT OUT THE
25 WINDOW.

63

1 MR. FRICK - YOUR HONOR, I'VE CONSIDERED QUITE
2 FRANKLY SEVERAL FACTORS, INCLUDING DIRECTED VERDICT IN THE
3 OTHER ONE, QUITE FRANKLY. IN THIS ARGUMENT I DO FEEL,
4 HOWEVER, IT'S IN THE BEST INTEREST OF MY CLIENT TO PURSUE
5 A SEVERANCE CHARGE. I WOULD ---

6 THE COURT - AND YOU ARE --- YOU'VE --- WELL,
7 OKAY.

8 MR. FRICK - YES, SIR.

9 MR. LIFSEY - LET ME --- OH, I'M SORRY. GO
10 AHEAD. I HAVE SOME CONCERNS THOUGH. I DON'T WANT TO ---
11 OBVIOUSLY, MR. FRICK CAN CROSS EXAMINE THE WITNESSES
12 HOWEVER HE WANTS TO, BUT IF QUESTIONS ARE RAISED IN HIS
13 CROSS EXAMINATION AS TO WHERE ---

14 THE COURT - IF HE OPENS THE DOOR ---

15 MR. LIFSEY - --- THOSE OTHER --- THOSE OTHER
16 ITEMS CAME FROM, THEN I THINK I'VE GOT A RIGHT TO PROVE
17 THEY CAME FROM ANOTHER BURGLARY THAT HAPPENED, WAS
18 REPORTED THE NEXT DAY, SO I MEAN --- I JUST ---

19 THE COURT - I AGREE WITH YOU.

20 MR. LIFSEY - I THINK WE ALL OUGHT TO BE CAREFUL
21 ABOUT HOW WE --- BECAUSE I'M ASSUMING YOU DON'T WANT ME TO
22 MENTION ---

23 THE COURT - OPEN THE DOOR THEN ---

24 MR. LIFSEY - --- CARMEN GEORGE'S BURGLARY AS
25 PART OF MY CASE.

1 THE COURT - AND THE OTHER REASON --- REASON THAT
2 I'M DECIDING --- THERE'S NOTHING HERE THAT SHOWS ME THAT
3 THEY'RE SO INTERTWINED THAT YOU HAVE TO TRY THEM TOGETHER.
4 IN OTHER WORDS, YOU CERTAINLY, FROM WHAT YOU --- BOTH OF
5 YOU HAVE OUTLINED TO ME THAT YOU CAN TRY THESE SEPARATELY.

6 MR. FRICK - AND YOUR HONOR, I WAS GOING TO
7 PIGGYBACK ON THAT MOTION IN REGARDS TO WHAT I MENTIONED.
8 AT THE VERY OUTSET OF MY SEVERANCE MOTION WAS IN REGARDS
9 TO RES GESTAE AND ANY POSSIBLE 404(B) STUFF. I JUST ASK
10 THAT THE CASE --- I THINK MR. LIFSEY COVERED THAT IN HIS
11 QUESTIONS, BUT HE ---

12 MR. LIFSEY - WELL, I MEAN I GUESS ---

13 MR. FRICK - BARRING ME ASK A QUESTION THAT WOULD
14 OPEN UP THE DOOR, THE STUFF IN THE CARMEN GEORGE INCIDENT
15 CANNOT BE MENTIONED. AM I CORRECT?

16 MR. LIFSEY - WELL, I DON'T ---

17 THE COURT - IT COULD BE MENTIONED, BUT YOU CAN'T

18 ---

19 MR. LIFSEY - I THINK I'M GOING TO HAVE TO ---

20 THE COURT - --- TIE IT BACK TO THE BURGLARY.

21 MR. LIFSEY - I THINK WHAT I'M GOING TO HAVE TO
22 DO --- THIS IS WHAT I'M GOING TO SAY AND THIS IS MY
23 THOUGHTS. I'M GOING TO HAVE TO ASK THEM ABOUT WHAT THEY
24 FOUND, ---

25 THE COURT - RIGHT.

65

1 MR. LIFSEY - --- AND THEY'RE GOING TO HAVE TO
2 DESCRIBE WHAT THEY FOUND, AND I THINK I'M GOING TO HAVE TO
3 ASK THEM AND ASK MS. SANDERS, OUT OF THOSE ITEMS DID THIS
4 ITEM BELONG TO YOU, DID THIS ITEM BELONG TO YOU, DID THIS
5 ITEM BELONG TO YOU, SO THERE --- BUT I DO NOT INTEND TO
6 PURSUE THE LINE ANY FURTHER UNLESS ---

7 MR. FRICK - OKAY.

8 MR. LIFSEY - --- IT'S ARGUED THAT WHERE THESE
9 THINGS COME FROM AND THEN ---

10 THE COURT - UNLESS HE OPENS THE DOOR.

11 MR. LIFSEY - YES, SIR.

12 THE COURT - OKAY.

13 MR. LIFSEY - BUT I THINK I'VE GOT TO MENTION
14 THERE WERE OTHER THINGS OUT THERE FOUND, BECAUSE THEY WERE
15 ALL INTERMIXED TOGETHER.

16 THE COURT - RIGHT.

17 MR. FRICK - CAN I PROPOUND A QUESTION AND JUST
18 TRYING TO EXPEDITE ONCE WE GET TO THE POINT? ONCE WE GET
19 TO THAT POINT AND IF I ASK THE QUESTION, WERE THOSE OTHER
20 ITEMS IDENTIFIED BY MS. SANDERS, ARE YOU GOING TO CONSIDER
21 ME OPENING THE DOOR?

22 THE COURT - WHY WOULD YOU WANT TO ASK THAT IF
23 SHE'S ALREADY MADE IT CRYSTAL CLEAR IN HER DIRECT?

24 MR. FRICK - WELL, SOMETIMES I ASK STUPID
25 QUESTIONS IN THE MIDDLE OF A TRIAL.

1 THE COURT - WELL, DON'T DO IT THEN. THAT'S THE
2 RISK YOU TAKE.

3 MR. FRICK - THANK YOU, YOUR HONOR.

4 MR. LIFSEY - I'M THINKING --- WAS THAT ALL THE
5 PRE-TRIAL?

6 MR. FRICK - I GUESS I JUST WANT TO BE CLEAR, ARE
7 YOU GOING TO CONSIDER ANYTHING ABOUT CARMEN GEORGE RES
8 GESTAE OF THE CASE?

9 MR. LIFSEY - I'M NOT GOING TO MENTION THE NAME
10 CARMEN GEORGE OR THERE WAS ANOTHER BURGLARY UNLESS THERE
11 ARE QUESTIONS RAISED AS TO THOSE OTHER ITEMS?

12 MR. FRICK - OKAY. THAT'S FINE.

13 THE COURT - OKAY.

14 MR. FRICK - THANK YOU.

15 THE COURT - OKAY.

16 MR. LIFSEY - IS THAT EVERYTHING OR ---

17 MR. FRICK - FOURTH AMENDMENT.

18 MR. LIFSEY - OH, YES, YOU'RE ARGUING --- YOU
19 WANT TO ARGUE THE STOP?

20 MR. FRICK - YES.

21 MR. LIFSEY - WE GOT A --- PROBABLY GOT A JURY.
22 I MEAN I DON'T KNOW IF YOU WANT TO PICK THEM AND LET'S
23 ARGUE THAT IN A MINUTE OR YOU WANT TO ARGUE IT NOW.

24 THE COURT - THEY BEEN SITTING OUT --- LET'S GO
25 AHEAD AND CALL THE ROLE OF THE JURY AND WE'LL JUST WORK

1 THAT IN. TAKE A BREAK.

2 (RECESS TAKEN)

3 THE COURT - READY?

4 MR. LIFSEY - YES, SIR.

5 THE COURT - DEFENSE READY?

6 MR. FRICK - READY, YOUR HONOR.

7 THE COURT - YOU MAY CALL THE FIRST CASE FOR
8 TRIAL, SOLICITOR?

9 MR. LIFSEY - YOUR HONOR, THE STATE CALLS 2008-
10 GS-29-469, THE STATE VS. RANDOLPH FRAZIER CHARGED WITH
11 BURGLARY IN THE FIRST DEGREE.

12 THE COURT - CAN I SEE THE INDICTMENT?

13 (INDICTMENT HANDED UP TO THE COURT)

14 THE COURT - LADIES AND GENTLEMEN OF THE PETIT
15 JURY PANEL, THE STATE HAS CALLED THE CASE OF THE TRIAL
16 THAT'S ENTITLED THE STATE VS. RANDOLPH FRAZIER CHARGED IN
17 THE BILL OF INDICTMENT WITH BURGLARY FIRST DEGREE BY THE
18 GRAND JURY OF LANCASTER COUNTY. MR. FRAZIER IS PRESENT,
19 REPRESENTED BY MR. FRICK OF THE LOCAL BAR AND AT THIS TIME
20 SO I CAN ASK THE PROPER QUESTIONS ABOUT KIN-SHIP I NEED
21 MR. FRAZIER TO STAND AND FACE THE JURY.

22 (MR. FRAZIER STANDS)

23 THE COURT - THANK YOU, SIR. YOU MAY BE SEATED.
24 AND AS A REMINDER IN A FEW MINUTES, AS I GO THROUGH OTHER
25 POTENTIAL WITNESSES, AS YOUR NAME IS CALLED, WE NEED YOU

1 TO STAND SO THE JURY CAN SEE YOU, TOO. ANYBODY ON THE
2 JURY PANEL RELATED BY BLOOD OR BY MARRIAGE OR HAVE ANY
3 BUSINESS, SOCIAL, RELIGIOUS OR FRATERNAL RELATIONSHIP WITH
4 RANDOLPH FRAZIER? IF SO, WE NEED YOU TO STAND AT THIS
5 TIME.

6 (NO RESPONSE)

7 THE COURT - SAME QUESTION, EXCEPT TO THE
8 FOLLOWING INDIVIDUALS: JOHN POOVEY, IN THE REAR OF THE
9 COURTROOM, SUSAN HUNTER, BACK OF THE COURTROOM, PAT
10 PARSONS, KARL ALLEN, KRISTEN GRANT, SCOTT GRANT, BRENNER
11 HARTLEY, JEFF PARROT, SHERIKA SANDERS, BACK RIGHT,
12 PATRICIA CAUTHEN, BACK RIGHT OF THE COURTROOM, WILLENE
13 STRAIN, FRANK STRAIN, DIEDRE STURDIVANT. THANK YOU. MR.
14 FRICK, ANY ADDITIONAL ONES?

15 MR. FRICK - NO, YOUR HONOR.

16 THE COURT - ALL RIGHT, IF SO, --- YES, SIR?

17 JUROR - I'M ACQUAINTED WITH JOHN POOVEY THROUGH
18 CHURCH.

19 THE COURT - ALL RIGHT, AND YOUR NAME?

20 JUROR - DENNIS HALL.

21 THE COURT - THROUGH THE CHURCH? AND WHO WAS
22 THAT?

23 JUROR - JOHN POOVEY.

24 COURT REPORTER - I DIDN'T GET HIS NAME.

25 THE COURT - JOHN POOVEY.

1 COURT REPORTER - I DIDN'T GET HIS ---

2 THE COURT - AND YOUR NAME?

3 JUROR - DENNIS HALL.

4 THE COURT - HALL. WOULD THAT AFFECT YOUR
5 ABILITY TO BE A FAIR AND IMPARTIAL JUROR IN THIS CASE?

6 JUROR - NO.

7 THE COURT - ALL RIGHT, ANYONE ELSE?

8 (NO RESPONSE)

9 THE COURT - DOES ANYBODY ON THE JURY PANEL HAVE
10 ANY KNOWLEDGE OR DEVELOPED ANY OPINION ABOUT ANY MATTER OR
11 ISSUE IN THIS CASE? IF SO, WE NEED YOU TO STAND AT THIS
12 TIME.

13 (NO RESPONSE)

14 THE COURT - ANYBODY HAVE ANY BIAS, PREJUDICE OR
15 BELIEF WHEREBY YOU COULD NOT GIVE BOTH THE STATE AND THE
16 DEFENDANT A FAIR AND IMPARTIAL TRIAL IN THIS CASE?

17 (JURORS STAND)

18 THE COURT - YOUR NAME AND DON'T SAY ANYTHING.

19 JUROR - PATRICIA SNIPES.

20 THE COURT - IF YOU'LL APPROACH PLEASE, WE'LL
21 TALK WITH YOU UP HERE.

22 (JUROR APPROACHES)

23 (DISCUSSION IS HELD WITH JUROR WHICH WAS NOT
24 REPORTED.)

25 THE COURT - COME ON UP. COUNSEL.

1 (JUROR APPROACHES)

2 (DISCUSSION IS HELD WITH JUROR WHICH WAS NOT
3 REPORTED.)

4 THE COURT - ANYBODY ON THE JURY PANEL PRESENTLY
5 REPRESENTED OR REPRESENTED IN THE PAST BY THE SOLICITOR'S
6 OFFICE OR BY THE PUBLIC DEFENDER'S OFFICE? IF SO, WE NEED
7 YOU TO STAND AT THIS TIME.

8 (NO RESPONSE)

9 THE COURT - ANY MEMBERS OF THE JURY PANEL,
10 YOURSELF OR EITHER AN IMMEDIATE FAMILY MEMBER OR CLOSE
11 FRIEND EVER BEEN THE VICTIM OF A BURGLARY OR A CRIME OF
12 VIOLENCE? NOW, WE'VE ALREADY HAD ONE TO RESPOND. IT
13 WON'T BE NECESSARY FOR YOU TO RESPOND AGAIN.

14 (JURORS STAND)

15 THE COURT - YES, MA'AM?

16 JUROR - SAY ANYBODY BEEN THE VICTIM OF A
17 BURGLARY?

18 THE COURT - ANYBODY --- IF IT'S YOU, AN
19 IMMEDIATE FAMILY MEMBER OR VERY CLOSE PERSONAL FRIEND, IF
20 YOU'VE EVER BEEN THE VICTIM OF A BURGLARY OR A CRIME OF
21 VIOLENCE, WE NEED YOU TO STAND AND GIVE YOUR NAME AND TELL
22 US WHAT THE CRIME OR THE ACT WAS.

23 (JURORS STAND)

24 THE COURT - WE'LL START WITH YOU, PLEASE, MA'AM.

25 JUROR - JEANETTE OESTERLIN, BURGLARY OF MY HOME.

1 THE COURT - MS. OESTERLIN?

2 JUROR - YES.

3 THE COURT - THANK YOU. YES, SIR?

4 JUROR - BILL ALLEN, BURGLARY OF HOME.

5 THE COURT - BILL ALLEN. YES, SIR?

6 JUROR - JUSTIN BOWERS, HOME BURGLARY AND CAR

7 BREAK-IN.

8 THE COURT - THANK YOU, MR. BOWERS. MR. HALL?

9 MR. HALL - DENNIS HALL. HOME BURGLARY.

10 THE COURT - THANK YOU, MR. HALL.

11 JUROR - WILLIAM MCGONAGLE, HOME BURGLARY.

12 THE COURT - THE LAST NAME?

13 JUROR - MCGONAGLE.

14 THE COURT - OKAY. THANK YOU.

15 JUROR - IRA STOGNER, HOME BURGLARY.

16 THE COURT - THANK YOU, MR. STOGNER.

17 JUROR - SIR, IS THAT CONSIDERED --- TALKING

18 ABOUT YOUR FAMILY? MY MOM WAS WALKED IN ON A FEW MONTHS

19 AGO BY SOMEBODY, LIKE PUSHED IN, BUT THEY DIDN'T TAKE

20 ANYTHING AND MY NEIGHBOR, TOO, SO, YOU KNOW, HER NEIGHBOR

21 ---

22 THE COURT - YOUR NAME, PLEASE?

23 JUROR - PERRY.

24 THE COURT - OKAY, THAT WAS YOUR MOTHER AND A

25 NEIGHBOR?

1 JUROR - (INDICATING YES)

2 THE COURT - ANYBODY ON THE PANEL OR HAVE AN
3 IMMEDIATE FAMILY MEMBER OR A VERY CLOSE PERSONAL FRIEND
4 THAT'S IN LAW ENFORCEMENT OR YOU'VE BEEN IN LAW
5 ENFORCEMENT?

6 (NO RESPONSE)

7 THE COURT - ANYBODY ON THE PANEL PRESENTLY
8 SERVING OR EVER SERVED AS A GUARDIAN AD LITEM IN ANY LEGAL
9 MATTER?

10 (JUROR STANDS)

11 JUROR - I SERVED --- IT'S BEEN A --- IT WAS IN
12 THE SEVENTIES. I SERVED FOR A YEAR.

13 THE COURT - AND YOUR NAME?

14 JUROR - AT THE TIME IT WAS MARLENE FLETCHER.

15 THE COURT - WHAT --- WAS THAT A FAMILY COURT
16 MATTER?

17 JUROR - YES, IT WAS --- ONE CASE IT WAS CHILDREN
18 --- CHILDREN THAT I SERVED.

19 THE COURT - OVER CHILDREN. OKAY? OKAY, THANK
20 YOU. ANYONE ELSE?

21 (JUROR STANDS)

22 THE COURT - YES.

23 JUROR - YOUR HONOR, DID YOU SAY HAVE A CLOSE
24 PERSONAL FRIEND THAT'S IN LAW ENFORCEMENT?

25 THE COURT - YES.

1 JUROR - I HAVE A FRIEND THAT'S IN LAW
2 ENFORCEMENT.

3 THE COURT - ALL RIGHT, AND YOUR NAME?

4 JUROR - I'M CASSANDRA CAMPBELL.

5 THE COURT - AND WHO --- IS IT A LOCAL LAW
6 ENFORCEMENT OFFICER?

7 JUROR - YES, SIR, BUT --- I MEAN WE --- WHAT IT
8 WAS, YOUR HONOR, WE WERE CHILDHOOD FRIENDS, AND THEN I
9 MOVED AWAY TO PHILADELPHIA AND WENT TO SCHOOL AND ALL AND
10 SO SINCE I, YOU KNOW, LIKE BEEN BACK IN LANCASTER, WHEN WE
11 SEE EACH OTHER, WE ACKNOWLEDGE ONE ANOTHER, BUT, YOU KNOW,
12 IT'S --- I MEAN, YOU KNOW, WE SELDOM SEE ONE ANOTHER, JUST
13 OCCASIONALLY AT THE CHRISTIAN SCHOOL.

14 THE COURT - WHAT'S THE OFFICER'S NAME?

15 JUROR - I THINK IT'S LIEUTENANT KIRK?

16 THE COURT - KIRK?

17 JUROR - YES, SIR.

18 MR. LIFSEY - HE'S NOT INVOLVED IN THIS CASE,
19 JUDGE.

20 THE COURT - YES, SIR?

21 JUROR - I'M FRIENDS WITH A LAW OFFICER, DONOVAN
22 SMALL.

23 THE COURT - AND YOU ARE ---

24 JUROR - JUSTIN BOWERS.

25 THE COURT - --- BOWERS. ALL RIGHT, I'VE HEARD

1 THE CONNECTIONS WITH LAW ENFORCEMENT THERE AND ALL THE
2 OTHER RESPONSES YOU'VE GIVEN NOW I'M GOING TO ASK THE
3 QUESTION. IF YOU KNOW OF ANY REASON WHATSOEVER WHY YOU
4 COULD NOT GIVE BOTH THE STATE AND THE DEFENDANT A FAIR AND
5 IMPARTIAL TRIAL, PLEASE COME FORWARD AT THIS TIME.

6 (NO RESPONSE)

7 THE COURT - ALL RIGHT, ANY FURTHER INQUIRY FROM
8 THE STATE?

9 MR. LIFSEY - NO, SIR.

10 THE COURT - FROM THE DEFENSE?

11 MR. FRICK - NO, YOUR HONOR.

12 THE COURT - FIVE AND TEN.

13 MR. LIFSEY - WELL, DID YOU ASK ABOUT PRIVATE
14 PRACTICE, IF ANY OF THEM HAVE BEEN REPRESENTED BY EITHER
15 MR. FRICK OR MYSELF IN PRIVATE PRACTICE? I DON'T THINK
16 SO. WOULD YOU MIND ASKING THAT QUESTION?

17 THE COURT - ALL RIGHT. I'M GOING TO LET YOU
18 INTRODUCE YOURSELVES AND TELL THE FIRMS YOU MIGHT'VE BEEN
19 WITH SO WE CAN COVER THE WHOLE GAMUT. MR. LIFSEY?

20 MR. LIFSEY - MY NAME'S MIKE LIFSEY. I'M WITH
21 THE SOLICITOR'S OFFICE. I'VE WORKED HERE AND IN YORK
22 COUNTY WITH THE SOLICITOR'S OFFICE AND THE PUBLIC
23 DEFENDER'S OFFICE AND PRIVATE PRACTICE IN CHESTER A LONG
24 TIME AGO.

25 THE COURT - MR. FRICK?

75

1 MR. FRICK - MY NAME IS WILLIAM FRICK. I'M
2 PUBLIC DEFENDER HERE IN LANCASTER COUNTY AND ALSO HAVE A
3 PRIVATE PRACTICE IN WINNSBORO WITH THE FIRM OF KOON AND
4 COOK.

5 THE COURT - AND THE QUESTION IS, EVER BEEN
6 REPRESENTED BY THESE GENTLEMEN OR BY THEIR FIRMS?

7 (NO RESPONSE)

8 THE COURT - ALL RIGHT, SEEING NONE ---

9 MR. LIFSEY - THANK YOU, JUDGE.

10 CLERK - LADIES AND GENTLEMEN, WHEN I CALL YOUR
11 NAME, IF YOU WILL PLEASE COME FORWARD, FACE THE REAR DOOR
12 AND BRING ANY PERSONAL BELONGINGS THAT YOU HAVE WITH YOU.
13 NUMBER 17, CASSANDRA CAMPBELL. WHAT SAY THE STATE?

14 MR. LIFSEY - PLEASE PRESENT THE JUROR.

15 THE COURT - DEFENDANT?

16 MR. FRICK - PLEASE EXCUSE THE JUROR.

17 CLERK - YOU'RE EXCUSED. YOU CAN HAVE A SEAT.

18 NUMBER 16, DEBORAH CAIN. WHAT SAY THE STATE?

19 MR. LIFSEY - PLEASE PRESENT THE JUROR.

20 CLERK - DEFENDANT?

21 MR. FRICK - PLEASE EXCUSE THE JUROR.

22 CLERK - YOU'RE EXCUSED. NUMBER 51, WANDA HALL.

23 WHAT SAY THE STATE?

24 MR. LIFSEY - PLEASE EXCUSE THIS JUROR.

25 CLERK - YOU'RE EXCUSED. JUROR 111, GEORGE

1 PLAYER. WHAT SAY THE STATE?
2 MR. LIFSEY - PLEASE PRESENT THE JUROR.
3 CLERK - DEFENDANT?
4 MR. FRICK - PLEASE SEAT THE JUROR.
5 CLERK - PLEASE HAVE A SEAT IN THE JURY BOX.
6 (JUROR SEATED)
7 CLERK - JUROR 44, SUSAN FORD. WHAT SAY THE
8 STATE?
9 MR. LIFSEY - PLEASE PRESENT THE JUROR.
10 CLERK - DEFENDANT?
11 MR. FRICK - PLEASE EXCUSE THE JUROR.
12 CLERK - YOU'RE EXCUSED. JUROR 83, CHARLENE
13 LOWERY. WHAT SAY THE STATE?
14 MR. LIFSEY - PLEASE PRESENT THE JUROR.
15 CLERK - DEFENDANT?
16 MR. FRICK - PLEASE SEAT THE JUROR.
17 CLERK - PLEASE HAVE A SEAT IN THE JURY BOX.
18 (JUROR SEATED)
19 CLERK - JUROR 45, CRYSTAL FOSTER. WHAT SAY THE
20 STATE?
21 MR. LIFSEY - PLEASE EXCUSE THIS JUROR.
22 CLERK - YOU'RE EXCUSED. JUROR 22, JOSHUA CLARK.
23 WHAT SAY THE STATE?
24 MR. LIFSEY - PLEASE EXCUSE THIS JUROR.
25 CLERK - YOU'RE EXCUSED. JUROR 74, SELMA KADRI.

1 WHAT SAY THE STATE?

2 MR. LIFSEY - PLEASE PRESENT THE JUROR.

3 CLERK - DEFENDANT?

4 MR. FRICK - PLEASE EXCUSE THE JUROR.

5 CLERK - YOU'RE EXCUSED. JUROR 126, MARLENE

6 SIMPSON. WHAT SAY THE STATE?

7 MR. LIFSEY - PLEASE PRESENT THE JUROR.

8 CLERK - DEFENDANT?

9 MR. FRICK - PLEASE SEAT THE JUROR.

10 CLERK - PLEASE HAVE A SEAT IN THE JURY BOX.

11 (JUROR SEATED)

12 CLERK - JUROR 98, JOHNNY MYERS. WHAT SAY THE

13 STATE?

14 MR. LIFSEY - PLEASE EXCUSE THIS JUROR.

15 CLERK - YOU'RE EXCUSED. JUROR 43, CHRISS FLYNN.

16 WHAT SAY THE STATE?

17 MR. FRICK - JUDGE, I APOLOGIZE. WHAT DID WE SAY

18 THE STRIKES WERE?

19 THE COURT - FIVE AND TEN.

20 MR. FRICK - FIVE AND TEN. THANK YOU.

21 CLERK - WHAT SAY THE STATE?

22 MR. LIFSEY - I MISSED THE NUMBER, MR. CLERK.

23 I'M SORRY.

24 CLERK - 43.

25 MR. LIFSEY - THANK YOU.

1 MR. FRICK - YOU SHOULD APOLOGIZE FOR THE
2 INTERRUPTION.

3 MR. LIFSEY - PLEASE PRESENT THE JUROR.

4 CLERK - DEFENDANT?

5 MR. FRICK - PLEASE SEAT THE JUROR.

6 CLERK - PLEASE HAVE A SEAT IN THE JURY BOX.

7 (JUROR SEATED)

8 CLERK - JUROR 100; RHONDA OLIVER. WHAT SAY THE
9 STATE?

10 MR. LIFSEY - PLEASE PRESENT THE JUROR.

11 CLERK - DEFENDANT?

12 MR. FRICK - PLEASE EXCUSE THE JUROR.

13 CLERK - YOU'RE EXCUSED. JUROR 73, MICA JONES.
14 WHAT SAY THE STATE?

15 MR. LIFSEY - PLEASE PRESENT THE JUROR.

16 CLERK - DEFENDANT?

17 MR. FRICK - PLEASE EXCUSE THE JUROR.

18 CLERK - YOU'RE EXCUSED. JUROR 14, MARY ANN
19 BROWN. WHAT SAY THE STATE?

20 MR. LIFSEY - PLEASE PRESENT THE JUROR.

21 CLERK - DEFENDANT?

22 MR. FRICK - PLEASE SEAT THE JUROR.

23 CLERK - HAVE A SEAT IN THE JURY BOX.

24 (JUROR SEATED)

25 CLERK - JUROR 92, PAMELA MONKS. WHAT SAY THE

1 STATE?

2 MR. LIFSEY - PLEASE PRESENT THE JUROR.

3 CLERK - DEFENDANT?

4 MR. FRICK - PLEASE EXCUSE THE JUROR.

5 CLERK - YOU'RE EXCUSED. JUROR 99, JEANETTE

6 OESTERLIN. WHAT SAY THE STATE?

7 MR. LIFSEY - PLEASE PRESENT THE JUROR.

8 CLERK - DEFENDANT?

9 MR. FRICK - PLEASE EXCUSE THE JUROR.

10 CLERK - YOU'RE EXCUSED. JUROR 95, MICHELLE

11 MOORE. WHAT SAY THE STATE?

12 MR. LIFSEY - PLEASE PRESENT THE JUROR.

13 CLERK - DEFENDANT?

14 MR. FRICK - PLEASE SEAT THE JUROR.

15 CLERK - PLEASE HAVE A SEAT IN THE JURY BOX.

16 (JUROR SEATED)

17 CLERK - JUROR NUMBER 1, EUGENIE ADAMS. WHAT SAY

18 THE STATE?

19 MR. LIFSEY - PLEASE PRESENT THE JUROR.

20 CLERK - DEFENDANT?

21 MR. FRICK - PLEASE SEAT THE JUROR.

22 CLERK - PLEASE HAVE A SEAT IN THE JURY BOX.

23 (JUROR SEATED)

24 CLERK - JUROR 120, SHAMEKA RUFUS. WHAT SAY THE

25 STATE?

1 MR. LIFSEY - PLEASE PRESENT THE JUROR.

2 CLERK - DEFENDANT?

3 MR. FRICK - PLEASE SEAT THE JUROR.

4 CLERK - PLEASE HAVE A SEAT IN THE JURY BOX.

5 (JUROR SEATED)

6 CLERK - JUROR 52, DENNIS HALL. WHAT SAY THE
7 STATE?

8 MR. LIFSEY - PLEASE PRESENT THE JUROR.

9 CLERK - DEFENDANT?

10 MR. FRICK - PLEASE EXCUSE THE JUROR.

11 CLERK - YOU'RE EXCUSED. JUROR 63, LORI HINSON.
12 WHAT SAY THE STATE?

13 MR. LIFSEY - PLEASE PRESENT THE JUROR.

14 CLERK - DEFENDANT?

15 MR. FRICK - PLEASE SEAT THE JUROR.

16 CLERK - PLEASE HAVE A SEAT IN THE JURY BOX.

17 (JUROR SEATED)

18 CLERK - JUROR 96, KIM MOSS. WHAT SAY THE STATE?

19 MR. LIFSEY - PLEASE PRESENT THE JUROR.

20 CLERK - DEFENDANT?

21 MR. FRICK - PLEASE SEAT THE JUROR.

22 CLERK - PLEASE HAVE A SEAT IN THE JURY BOX.

23 (JUROR SEATED)

24 CLERK - JUROR 116, LISA RHYNER. WHAT SAY THE
25 STATE?

1 MR. LIFSEY - PLEASE PRESENT THE JUROR.

2 CLERK - DEFENDANT?

3 MR. FRICK - PLEASE SEAT THE JUROR.

4 CLERK - PLEASE HAVE A SEAT IN THE JURY BOX.

5 JUROR 115, ROBERT REYNOLDS. WHAT SAY THE STATE?

6 MR. LIFSEY - PLEASE PRESENT THE JUROR.

7 CLERK - DEFENDANT?

8 MR. FRICK - PLEASE EXCUSE THE JUROR.

9 CLERK - YOU'RE EXCUSED. THAT'S TEN, MR. FRICK,
10 ACCORDING TO MY RECORDS.

11 MR. FRICK - YES, SIR. THANK YOU.

12 CLERK - JUROR 53, ZELMA HAMMOND. WHAT SAY THE
13 STATE?

14 MR. LIFSEY - PLEASE PRESENT THE JUROR?

15 CLERK - ANY CHALLENGE FOR CAUSE?

16 MR. FRICK - NO CHALLENGE.

17 CLERK - PLEASE HAVE A SEAT IN THE JURY BOX.

18 (JUROR SEATED)

19 THE COURT - TWO ALTERNATES, ONE AND TWO STRIKES
20 PER ALTERNATE.

21 CLERK - JUROR 128, PATRICIA SNIPES. WHAT SAY
22 THE STATE?

23 MR. LIFSEY - PLEASE PRESENT THE JUROR.

24 CLERK - DEFENDANT?

25 MR. FRICK - PLEASE EXCUSE THE JUROR.

1 CLERK - YOU'RE EXCUSED. JUROR 85, PAUL MAZUREK.

2 WHAT SAY THE STATE?

3 MR. LIFSEY - PLEASE PRESENT THE JUROR.

4 CLERK - DEFENDANT?

5 MR. FRICK - PLEASE EXCUSE THE JUROR.

6 CLERK - YOU'RE EXCUSED. JUROR 3, BILLY ALLEN.

7 WHAT SAY THE STATE?

8 MR. LIFSEY - PLEASE PRESENT THE JUROR.

9 CLERK - ANY CHALLENGE FOR CAUSE?

10 MR. FRICK - I WOULD IF WE MAY APPROACH, YOUR
11 HONOR.

12 (BENCH CONFERENCE IS HELD IN THE PRESENCE OF THE
13 JURY BUT OUT OF THE HEARING OF THE JURY WHICH WAS NOT
14 REPORTED.)

15 CLERK - ANY CHALLENGE?

16 MR. FRICK - YOUR HONOR, IF WE COULD JUST NOTE
17 FOR THE RECORD. THANK YOU.

18 THE COURT - (INDICATING YES)

19 CLERK - HAVE A SEAT IN THE JURY BOX.

20 THE COURT - WAIT JUST A MINUTE. BOTH OF YOU
21 COME BACK UP HERE.

22 (BENCH CONFERENCE WAS HELD IN THE PRESENCE OF
23 THE JURY BUT OUT OF THE HEARING OF THE JURY WHICH WAS NOT
24 REPORTED.)

25 (JUROR SEATED)

1 THE COURT - JUROR 60, ALISHA HAYDEN. WHAT SAY
2 THE STATE?

3 MR. LIFSEY - PLEASE PRESENT THE JUROR.

4 CLERK - DEFENDANT?

5 MR. FRICK - PLEASE SEAT THE JUROR.

6 CLERK - PLEASE HAVE A SEAT IN THE JURY BOX.

7 (JUROR SEATED)

8 THE COURT - ALL RIGHT, ANYTHING CONCERNING THE
9 JURY SELECTION?

10 MR. LIFSEY - MAY I HAVE JUST ONE MOMENT?

11 THE COURT - (INDICATING YES)

12 MR. LIFSEY - NO CHALLENGES, YOUR HONOR.

13 MR. FRICK - NONE FROM DEFENSE.

14 THE COURT - THANK YOU, GENTLEMEN. GOT A CALL-IN
15 NUMBER?

16 CLERK - YES, SIR, WE DO.

17 THE COURT - ALL RIGHT, FOR THE JURORS THAT
18 WEREN'T SELECTED, THANK YOU VERY MUCH FOR COMING AND BEING
19 WILLING TO TAKE PART AND SERVE. WE'RE GOING TO RELEASE
20 YOU AT THIS TIME AND ASK YOU TO CALL IN ON A NUMBER THAT
21 YOU SHOULD HAVE BEEN PROVIDED ON A CARD. MAKE SURE YOU
22 HAVE THAT NUMBER. WE NEED YOU TO CALL IN AFTER SIX
23 TONIGHT. TRY TO CALL IN BETWEEN SIX AND SEVEN THIRTY? IS
24 THAT ALL RIGHT?

25 CLERK - YES, SIR.

1 THE COURT - GET AN UPDATE. IT'LL PROBABLY TELL
2 YOU TO CALL IN AGAIN TOMORROW, BUT IT MAY GIVE YOU A TIME
3 THAT WE ESTABLISH SOME TIME BETWEEN NOW AND THEN. DO NEED
4 YOU TO CHECK IN BY PHONE. YOU'RE MORE THAN WELCOME TO
5 STAY THIS AFTERNOON AND WATCH THESE PROCEEDINGS, BUT
6 OTHERWISE YOU'RE EXCUSED PROVIDED YOU CALL IN AND GET AN
7 UPDATE FROM US. OKAY?

8 (REMAINING JURY PANEL EXITS THE COURTROOM)

9 THE COURT - ALL RIGHT, COURT STAFF WILL BE BACK
10 AT 2:30. THE JURY WE NEED YOU BACK AT 2:45. BEFORE I LET
11 YOU GO, DON'T DISCUSS THIS CASE WITH ANYONE. DON'T EVEN
12 DISCUSS IT AMONGST YOURSELVES UNTIL YOU ARE INSTRUCTED TO
13 DELIBERATE. SHOULD ANYBODY TRY TO APPROACH ANY OF YOU AND
14 DISCUSS THIS CASE, DO NOT HAVE ANY CONTACT WITH THEM AND
15 LET THE COURT KNOW IMMEDIATELY OF ANY SUCH APPROACH.
16 OKAY? SEVERAL PLACES AROUND FOR LUNCH. WE'RE OVER HERE
17 CLOSE TO THE BY-PASS SO GOT AN HOUR AND FIFTEEN MINUTES.
18 WE NEED YOU BACK IN THE ROOM --- MR. BAILIFF WILL SHOW YOU
19 ON THE WAY OUT. YOU GOING TO TAKE THEM THIS WAY? HE'LL
20 SHOW YOU THE ROOM TO REPORT BACK TO. OKAY? ALL RIGHT,
21 WE'LL SEE YOU AT 2:45.

22 (JURY EXITS THE COURTROOM)

23 THE COURT - ALL RIGHT, ANYTHING BEFORE WE SHUT
24 DOWN?

25 MR. LIESEY - NOTHING FROM THE STATE, JUDGE. I

85

1 THINK HE'S GOT ONE MORE MATTER --- PRETRIAL MATTER HE
2 NEEDS SOME TESTIMONY ON BUT ---

3 MR. FRICK - A MOTION.

4 MR. LIFSEY - --- WE CAN DO THAT AT 2:40 ---
5 2:30?

6 THE COURT - 2:30?

7 MR. FRICK - YES, SIR.

8 THE COURT - THAT SUIT?

9 MR. FRICK - YES, SIR.

10 THE COURT - OKAY.

11 (DISCUSSION IS HELD BETWEEN THE COURT AND
12 PROBATION DEFENDANTS WHICH WAS NOT REPORTED)

13 (LUNCH RECESS)

14 THE COURT - ALL RIGHT.

15 MR. LIFSEY - I'M SORRY, JUDGE. WE'RE TRYING TO
16 FIGURE OUT --- WHAT WE'RE TRYING TO DO IS FIGURE HOW TO
17 DISENGAGE THE BURGLARY WE'RE TRYING FROM THE OTHER
18 BURGLARY. AND WHAT THE POLICE HAVE DONE IN EVIDENCE IS
19 BASICALLY --- THERE'S THIS BLACK BAG FOUND WITH JEWELRY
20 BELONGING TO BOTH PLACES, BOTH INCIDENTS, AND THEY HAVE
21 SEPARATED OUT OR HAD ALREADY SEPARATED OUT JEWELRY
22 BELONGING TO MS. SANDERS, THE BURGLARY WE'RE TRYING, SO
23 THAT'S IN A SEPARATE EVIDENCE BAG. IN A BAG WITH THE
24 BLACK BAG --- AND THE BLACK BAG AND THERE'S ACTUALLY A
25 GRAY BAG THAT WAS INSIDE THE BLACK BAG --- ARE --- IS. ---

1 ARE OTHER ITEMS OF JEWELRY NOT CONNECTED WITH MS. SANDERS'
2 BURGLARY BUT CONNECTED WITH THE OTHER BURGLARY, SO WHAT
3 WE'RE PROPOSING TO DO, AND I DON'T THINK MR. FRICK HAS ANY
4 OBJECTION TO IT, WE'RE GOING TO GO AHEAD AND OPEN THE
5 EVIDENCE BAG AND HAVE HIM TAKE OUT THE BLACK BAG AND THE
6 GRAY BAG AND WE'RE GOING TO INTRODUCE IT THAT WAY. I
7 THINK HE STIPULATES THAT --- I MEAN I DON'T --- IT'S NOT
8 FUNGIBLE SO --- AND SO IT REALLY WOULDN'T APPLY TO CHAIN
9 OF CUSTODY ANYWAY, SO I --- THAT'S WHY THE EVIDENCE BAG IS
10 GOING TO BE OPEN AND I INTEND TO INTRODUCE IT WITHOUT THE
11 EVIDENCE BAG.

12 MR. FRICK - JUST SO I'M CLEAR, BECAUSE I'M STILL
13 CONFUSED ON WHAT CAME OUT OF WHAT.

14 MR. PARSONS - THE GRAY BACK WAS INSIDE THE BLACK
15 BAG ALONG WITH THE REST OF THE JEWELRY, SO WE REALLY JUST
16 NEED THE BLACK BAG OUT OF THIS IS WHAT WE NEED, NOT THE
17 GRAY BAG, (INAUDIBLE) ---

18 COURT REPORTER - I'M NOT GETTING A CLEAR RECORD
19 AND I'M NOT UNDERSTANDING A WORD YOU'RE SAYING.

20 MR. LIFSEY - WELL, LET --- JUST --- WHAT'S YOUR
21 QUESTION?

22 MR. FRICK - WE'RE TALKING ABOUT THE BLACK BAG
23 AND DID MS. SANDERS SAY THAT THAT WAS HER BLACK BAG?

24 MR. LIFSEY - I DON'T KNOW, BUT --- I DON'T KNOW
25 AND I DON'T THINK THAT MATTERS, BECAUSE I'M GOING TO SAY

1 THAT WAS THE ONE --- HER JEWELRY WAS INSIDE THAT BLACK
2 BAG.

3 MR. FRICK - OKAY.

4 MR. LIFSEY - SO I INTEND, I GUESS, TO INTRODUCE
5 THE BLACK BAG ITSELF OUTSIDE OF THE NORMAL EVIDENCE
6 ENVELOPE BAG THAT IT'S IN, AND THEN I'M GOING TO INTRODUCE
7 THE JEWELRY AND THE BAG THAT IT'S IN. I KNOW THAT'S
8 CONFUSING, BUT THAT'S WHAT WE HAVE.

9 MR. FRICK - TO PROTECT MYSELF ON THE RECORD, I
10 WOULD SAY THAT --- WELL, I WOULD STIPULATE TO PUTTING IN
11 THE BLACK BAG. I AGREE. I THINK IT'S A FUNGIBLE ITEM.
12 I DON'T MEAN --- THEY DON'T NEED A CHAIN OF CUSTODY ON
13 THAT. I DON'T THINK THEY GOT ANY FURTHER EVIDENCE OFF OF
14 IT, AS FAR AS FINGERPRINTS OR FORENSICS OR STUFF LIKE
15 THAT. I BELIEVE AND THERE MAY BE A COURT IN THE FUTURE
16 THAT WOULD TELL ME THAT I WAS WRONG ON THIS, BUT MY BELIEF
17 WOULD BE THAT THEY'RE GOING TO TESTIFY THAT THAT BAG WAS
18 THE ONE THAT CAPTAIN HUNTER SAID SHE SAW AT THE SCENE, SO
19 WHATEVER OBJECTION I MAY HAVE --- I BELIEVE YOU'RE GOING
20 TO OVERRULE ME ANYWAY, SO TO PREVENT ALL THAT RIGMAROLE I
21 WILL STIPULATE TO THAT BLACK BAG COMING IN.

22 MR. LIFSEY - SORRY TO MAKE IT CONFUSING, BUT
23 THANK YOU, JUDGE.

24 THE COURT - ALL RIGHT, THERE --- WASN'T THERE
25 SOMETHING ELSE YOU --- WHAT WAS IT THAT ---

1 MR. FRICK - YES, SIR. I HAVE A QUESTION ABOUT
2 THE STOP. THERE WAS AN INITIAL STOP OF MY CLIENT AND I
3 OBJECT TO THAT STOP AS AN UNREASONABLE STOP. THEY DIDN'T
4 HAVE A REASONABLE --- A REASONABLE AND ARTICULABLE
5 SUSPICION TO BELIEVE THAT HE WAS INVOLVED IN ANY CRIMINAL
6 ACTIVITY AT THE TIME HE WAS STOPPED. ONCE HE GOT STOPPED,
7 THEY BEGAN THE INVESTIGATION. I WOULD CALL IT MORE OF A
8 FISHING EXPEDITION. HE'S STANDING THERE WHILE THEY BEGIN
9 COLLECTING EVIDENCE, START THE DOG-TRACK AND BRING IN
10 WITNESSES WHO BEGIN TO IDENTIFY HIM, IDENTIFY HIM
11 INCORRECTLY I WOULD SAY, BUT THAT'S WHERE THE
12 IDENTIFICATION COMES FROM. MY --- AND THERE'S ALSO A
13 FRISK OF HIM IN THERE BY A POLICE OFFICERS, A PAT DOWN TO
14 SEE IF THIS BLACK BAG WAS ACTUALLY ON HIS PERSON. THERE
15 WAS NO INDICATION HE HAD ANY DANGEROUS WEAPONS. LAW
16 ENFORCEMENT'S FAIRLY FAMILIAR WITH HIM. I DON'T KNOW THAT
17 THEY FOUND WEAPONS ON HIM BEFORE, SO I --- I WOULD SAY
18 THAT THE FRISK WAS UNNECESSARY, ALTHOUGH THEY DIDN'T FIND
19 ANYTHING ON HIM, BUT I SAY THAT THE WHOLE ENTIRE THING IS
20 --- WAS VIOLATIVE OF HIS FOURTH AMENDMENT RIGHT, HAD NO
21 REASONABLE ARTICULABLE SUSPICION TO STOP HIM UNDER TERRY
22 V. OHIO. AND I HAVE A CASE --- I DON'T KNOW IF YOU WANT
23 ME TO CONTINUE ARGUING AT THIS POINT AND PRESENT MY SOUTH
24 CAROLINA CASE THAT I HAVE OR WE COULD TAKE TESTIMONY.

25 MR. LIFSEY - I DON'T --- I GUESS WHAT I NEED

89

1 CLARIFICATION ON IS, WHAT IS HE MOVING TO SUPPRESS. I
2 MEAN I --- I THINK IT'S A FINE STOP, BUT IF IT WEREN'T THE
3 EXCLUSIONARY RULE IS YOU GET TO EXCLUDE CERTAIN EVIDENCE
4 TAKEN, SO I GUESS WHAT I'M TRYING TO ASK IS WHAT IS IT
5 THAT HE WANTS EXCLUDED.

6 MR. FRICK - I GUESS I'M CONTRADICTING MYSELF.
7 THE EVIDENCE WOULD INCLUDE THE BLACK BAG THAT I SAID I
8 WOULD HAVE NO OBJECTION TO. I WOULD PROBABLY HAVE NO
9 OBJECTION IF I'M OVERRULED ON THIS MOTION NOW. THE
10 CERTAIN --- THE EVIDENCE THAT'S FOUND ALONG THE DOG TRAIL
11 BECAUSE THE DOG TRACK I BELIEVE IS PART OF THIS AND THEN
12 THE IDENTIFICATION OF THE WITNESSES, ALL OF THAT IS PART
13 AND PARCEL. NONE OF THAT WOULD'VE OCCURRED IF THE STOP
14 HADN'T HAPPENED.

15 THE COURT - YOU'RE GOING TO --- UNLESS WE GO
16 FORWARD WITH THE RISK THAT IF I WERE TO RULE IN HIS FAVOR
17 THAT THE WHOLE TRIAL GOES DOWN THE TUBES, WE NEED TO GO
18 AHEAD AND TAKE TESTIMONY ABOUT THE STOP, AND THEN I THINK
19 PROBABLY THE RECORD SOUNDS LIKE IT'S BEEN DEVELOPED AS FAR
20 AS THE DOG-TRACKING AND ALL THAT.

21 MR. LIFSEY - YES, SIR. THAT'S FINE. I'LL BE
22 GLAD --- MY --- AND I'LL JUST TELL YOU, SO YOU CAN BE
23 THINKING ABOUT WHAT MY ARGUMENT IS. MY ARGUMENT IS GOING
24 TO BE, THERE'S NO SEIZURE OF ANYTHING OFF OF MR. FRAZIER,
25 BECAUSE THE TESTIMONY WILL BE THAT THE BAG THAT HE'S

1 WANTING EXCLUDED WAS BY THE TELEPHONE POLE FIVE FEET AWAY
2 FROM HIM, SO I DON'T KNOW HOW HE CAN CLAIM THAT THEY
3 SEIZED THAT BAG FROM HIM WHEN HE SAYS I PRESUME THAT I
4 DIDN'T THROW IT DOWN, AND THE JEWELRY THAT'S ON THE TRAIL
5 IN THE TWO OR THREE BLOCKS BETWEEN WHERE THEY ARREST HIM
6 AND WHERE THE BURGLARY HAPPENED, I DON'T UNDERSTAND HOW HE
7 HAS AN EXPECTATION OF ANY --- I MEAN --- I DON'T KNOW HOW
8 HE CAN SAY THAT STUFF WAS SEIZED FROM HIM WHILE AT THE
9 SAME TIME MAINTAINING HE DOESN'T KNOW ANYTHING ABOUT IT,
10 I MEAN UNLESS HE WANTS TO CONCEDE THAT HE THREW THE BAG
11 DOWN FOR THE PURPOSES OF --- I MEAN OTHER WORDS, I GUESS
12 WHAT I'M SAYING IS IF THEY STOP ME HERE AND FIND AND TAKE
13 --- AFTER --- AFTER THEY STOP ME THEY FIND A BAG FIVE FEET
14 AWAY, I DON'T KNOW HOW I CAN ARGUE THAT THEY SEIZED IT
15 FROM ME, SO I MEAN THAT'S WHAT MY ARGUMENT IS.

16 THE COURT - GOT A POINT, MR. FRICK.

17 MR. FRICK - I CERTAINLY UNDERSTAND. WHAT I WAS
18 LOOKING THROUGH IS --- I HAD A CASE ON POINT THAT TALKED
19 ABOUT THAT THAT A SEARCH TO INCLUDE THE AREA OF THE PERSON
20 AROUND HIM. AND WHAT THEY'RE SAYING IS AT LEAST FROM THE
21 LAW ENFORCEMENT WHO MADE THE REPORT, WAS THAT THE BAG THAT
22 QUITE FRANKLY INITIATED THIS WHOLE INVESTIGATION WAS FOUND
23 FIVE FEET AWAY. I --- THEY ALSO SAY THAT THEY BELIEVE
24 HE'S THE ONE WHO THREW IT DOWN, SO I THINK AT THAT POINT
25 THEY'RE SAYING IT COMES OFF OF HIS PERSON. IN FACT, IN

91

1 THE INCIDENT REPORTS IT SAYS IT WAS ON --- EVIDENCE WAS ON
2 HIS PERSON. I THINK THE WARRANT EVEN SAYS THAT, BUT IT
3 WAS A THROW-DOWN CASE, BASICALLY.

4 THE COURT - OKAY. ALL RIGHT, WE CAN DO THIS
5 THING TWO WAYS. WE CAN GO AHEAD AND HAVE THE HEARING NOW
6 OUTSIDE THE PRESENCE OF THE JURY OR WE CAN GO FORWARD,
7 DEVELOP THE RECORD AND YOU CAN --- AT THAT TIME AFTER WE
8 GET THAT DEVELOPED, YOU CAN ASK ME TO RULE ON IT AND IT
9 SOUNDS LIKE THE CASE WOULD BE OVER ANYWAY IF I WERE TO ---
10 WELL, I DON'T KNOW ABOUT THAT. DON'T KNOW ABOUT THAT.
11 BUT WE CAN GO AT IT TWO DIFFERENT WAYS.

12 MR. LIFSEY - IT DOESN'T MAKE ANY DIFFERENCE TO
13 ME. I MEAN I'LL BE GLAD TO PUT DETECTIVE HUNTER ON THE
14 STAND ABOUT THE STOP I MEAN, BUT --- I GUESS MY POINT IS -
15 -- I MEAN I THINK IT WAS A PERFECTLY VALID STOP, BUT ---
16 I THINK ALSO MY POSITION WOULD BE EVEN IF IT WASN'T IT
17 DOESN'T MATTER BECAUSE THEY DIDN'T TAKE ANYTHING FROM HIM.

18 THE COURT - BASICALLY, WHAT YOU'RE SAYING IS THE
19 BAG WAS SOME WAYS AWAY FROM HIM AND YOUR CASE IS BASED ON
20 SOMETHING THAT WAS VERY CLOSE PROXIMITY TO THE DEFENDANT.

21 MR. FRICK - YES, SIR.

22 MR. LIFSEY - BUT I MEAN THE WHOLE PURPOSE OF THE
23 EXCLUSIONARY RULE IS TO --- I MEAN YOU'RE EXCLUDING
24 EVIDENCE SEIZED ILLEGALLY AND THE BAG WAS NOT SEIZED
25 ILLEGALLY, BECAUSE IF THEY HAD LET RANDOLPH FRAZIER WALK

SUSAN HUNTER - DIRECT BY MR. LIFSEY

92

1 ON OFF, THEY COULD'VE WALKED OVER TO THE TELEPHONE POLE
2 AND PICKED UP THE BAG EVEN IF THEY HAD NOT STOPPED HIM, I
3 GUESS IS MY POINT AND THEN EVEN MORE-SO THE SAME WITH ALL
4 THE REST OF THE STUFF, SO I DON'T --- LIKE I SAY, ASSUME
5 FOR A MOMENT THAT THE STOP WAS INVALID OR ILLEGAL WHICH I
6 DON'T ASSUME, BUT ASSUME IT IS, I DON'T UNDERSTAND HOW
7 THAT IMPACTS A BAG THAT HE HAS TO MAINTAIN I PRESUME WAS
8 NOT ON HIM. I MEAN AND ---

9 THE COURT - WELL, FOR SAFETY'S SAKE, LET'S GO
10 AHEAD AND TAKE TESTIMONY AND GET OVER THAT THRESHOLD TO
11 SEE WHY HE WAS STOPPED.

12 MR. LIFSEY - THANK YOU. ALL RIGHT, THEN I'D GO
13 AHEAD AND CALL --- I'D CALL CAPTAIN HUNTER TO THE STAND.

14 SUSAN HUNTER. AFTER BEING FIRST DULY SWORN.
15 TESTIFIES AS FOLLOWS:

16 DIRECT EXAMINATION

17 BY MR. LIFSEY -

18 Q WOULD YOU STATE YOUR FULL NAME, PLEASE?

19 A SUSAN HUNTER.

20 Q WHAT DO YOU DO FOR A LIVING, MS. HUNTER?

21 A I AM A CAPTAIN HERE WITH THE LANCASTER POLICE
22 DEPARTMENT.

23 Q WERE YOU ON DUTY ON FEBRUARY THE 5TH OF THIS YEAR?

24 A YES, SIR, I WAS.

25 Q OKAY. DID YOU HAVE OCCASION TO COME INTO SOME

SUSAN HUNTER - DIRECT BY MR. LIFSEY

93

1 CONTACT WITH RANDOLPH FRAZIER THAT DAY?

2 A YES, SIR, I DID.

3 Q ALL RIGHT. WOULD YOU RELATE TO THE COURT WHAT YOU
4 WERE DOING AND WHERE YOU WERE AND WHEN YOU FIRST SAW MR.
5 FRAZIER AND WHAT HAPPENED NEXT?

6 A ON FEBRUARY THE 5TH I WAS TRAVELLING INTO TOWN FROM
7 903. I WAS TRAVELLING WEST AND WAS TRAVELLING ON
8 CHESTERFIELD AVENUE ONTO CHESTERFIELD COMING ---

9 Q OKAY.

10 A --- LIKE I SAID INTO TOWN. AS I WAS COMING INTO TOWN
11 ABOUT A HUNDRED AND FIFTY YARDS OR SO IN FRONT OF ME I
12 OBSERVED A BLACK MALE CROSS FROM CHESTERFIELD AVENUE SIDE
13 WHERE CHESTERFIELD VILLA APARTMENTS ARE LOCATED AT TOWARDS
14 THE END OF THE APARTMENT AND CROSS THE ROAD IN FRONT OF
15 ME. I PROCEEDED ON AND AS I PROCEEDED ON THE SUBJECT
16 LOOKED FAMILIAR. WE HAD HAD SOME PAST DEALINGS WITH MR.
17 FRAZIER AND I OPTED TO TURN AROUND TO GET A GOOD LOOK TO
18 MAKE SURE THAT THAT'S WHO IT WAS.

19 Q LET ME STOP YOU JUST A MINUTE. WHEN YOU TURN AROUND,
20 DID YOU ACTIVATE ANY BLUE-LIGHTS?

21 A NO, SIR.

22 Q DID YOU ROLL DOWN YOUR WINDOW AND YELL AT HIM TO STOP
23 OR ANYTHING LIKE THAT?

24 A NO, SIR, I DID NOT.

25 Q SO THE PURPOSE OF YOUR TURNING YOUR VEHICLE AROUND

SUSAN HUNTER - DIRECT BY MR. LIFSEY

94

1 WAS TO DETERMINE IF THAT PERSON WALKING AROUND WAS INDEED
2 RANDOLPH FRAZIER. IS THAT RIGHT?

3 A INITIALLY, YES, SIR, IT WAS.

4 Q GO AHEAD. SO YOU TURNED --- START TURNING AROUND THE
5 VEHICLE. WHAT HAPPENS THEN?

6 A I TURN AROUND AND START TRAVELLING EAST ON
7 CHESTERFIELD AVENUE AGAIN AND AS I PASS HIM --- I'M IN AN
8 UNMARKED CHEVROLET IMPALA --- SO I PASSED HIM, I STILL
9 DIDN'T GET TO ME A SATISFACTORY LOOK AT HIS FACE, SO ---

10 Q OKAY.

11 A --- I OPTED TO TURN AROUND AND COME BACK OUT. I
12 TURNED ONTO BELK STREET, THEN ONTO THREAT STREET AND ---
13 EXCUSE ME --- ONTO FAIRFIELD --- NO, THAT'S NOT THE RIGHT
14 STREETS. BEAR WITH ME JUST ONE SECOND. I DID. I TURNED
15 ONTO FAILE STREET. I TURNED RIGHT ONTO FAILE, RIGHT ONTO
16 THREAT AND I --- AND IT'S JUST A LITTLE SHORT BLOCK IS
17 WHAT THEY ARE, AND THEN I TURNED BACK RIGHT ONTO BELK
18 STREET. AS I TURNED ONTO BELK STREET, THERE WAS SOME
19 RADIO TRAFFIC FROM COMMUNICATIONS ADVISING THAT A BURGLARY
20 HAD JUST OCCURRED AT [REDACTED], AND AT
21 THAT POINT THERE IS A DESCRIPTION GIVEN OUT OF A BLACK
22 MALE WEARING A --- AT THAT TIME A BROWN JACKET WITH GRAY
23 HAIR.

24 Q OKAY.

25 A UM, ---

SUSAN HUNTER - DIRECT BY MR. LIFSEY

95

1 Q LET ME ASK YOU THIS. DID MR. FRAZIER WHO APPARENTLY
2 HAS SHAVED HIS HEAD NOW, DID MR. FRAZIER HAVE GRAY HAIR
3 BACK WHEN YOU SAW HIM ON FEBRUARY 5TH?

4 A YES, SIR, HE DID.

5 Q OKAY, GO AHEAD.

6 A SO AT THAT POINT AS I'M TURNING LEFT BACK ON TO
7 CHESTERFIELD AVENUE, I NOTIFY OVER THE RADIO THAT I HAVE
8 A SUBJECT MATCHING THAT DESCRIPTION WALKING WEST ON
9 CHESTERFIELD AVENUE HEADED TO TOWN.

10 Q NOW, LET ME ASK YOU THIS. SO FRAZIER --- YOU HAD NOT
11 STOPPED HIM AT THIS POINT?

12 A NO, SIR, I HAVE NOT.

13 Q OKAY. FRAZIER MATCHES THE DESCRIPTION OF THE
14 BURGLARY SUSPECT YOU HEAR OVER THE RADIO. IS THAT RIGHT?

15 A SIMILAR TO, YES, SIR.

16 Q AND DO YOU SEE ANYTHING ELSE? DO YOU SEE HIM WITH
17 ANYTHING, CARRYING ANYTHING?

18 A AS I GET CLOSER TO MR. FRAZIER AT THAT POINT I SEE
19 HIM WITH AN OBJECT IN HIS RIGHT HAND.

20 Q COULD YOU TELL WHAT THAT WAS?

21 A NO, SIR, I COULD NOT. I JUST KNOW THAT IT WAS A DARK
22 IN COLOR OBJECT THAT WAS IN THE PALM OF HIS RIGHT HAND.

23 Q OKAY.

24 A AS I PASSED THE TELEPHONE POLE, BECAUSE I HAD ANOTHER
25 UNIT COMING THIS WAY, A MARKED UNIT COMING THIS WAY, ---

SUSAN HUNTER - DIRECT BY MR. LIESEY

96

- 1 Q AND THAT MARKED UNIT ULTIMATELY WAS OFFICER POOVEY?
- 2 A YES, SIR, IT WAS.
- 3 Q GO AHEAD.
- 4 A THEN AT THAT POINT I STOPPED.
- 5 Q OKAY.
- 6 A OFFICER POOVEY ALSO STOPPED. OFFICER POOVEY
- 7 APPROACHED WHO WAS LATER IDENTIFIED AS MR. FRAZIER,
- 8 APPROACHED HIM, AND WHILE HE WAS TALKING WITH MR. FRAZIER
- 9 AT THAT POINT I WENT TO THE TELEPHONE POLE BECAUSE AT THE
- 10 TIME THAT HE WAS STOPPED THERE WAS NOTHING IN EITHER OF
- 11 HIS HANDS.
- 12 Q SO BY THE TIME YOU --- OR YOU AND POOVEY GET OUT TO
- 13 STOP HIM, THIS OBJECT NO LONGER --- THAT YOU HAD LAST SEEN
- 14 NEAR THE TELEPHONE POLE ---
- 15 A YES, SIR.
- 16 Q --- WAS NO LONGER WITH HIM. IS THAT RIGHT?
- 17 A THAT'S EXACTLY RIGHT.
- 18 Q ALL RIGHT, WHAT DID YOU FIND NEAR THE TELEPHONE POLE?
- 19 A I FOUND A BLACK BAG THAT CONTAINED AN ASSORTMENT OF
- 20 JEWELRY.
- 21 Q OKAY. GIVE ME JUST --- WELL, I'LL SHOW IT TO YOU
- 22 LATER, BUT YOU'VE LOOKED AT THIS EVIDENCE BAG, ---
- 23 A YES, SIR.
- 24 Q --- IS IT --- IS THIS THE BAG AND ULTIMATELY DID YOU
- 25 GIVE THAT TO DETECTIVE PARSONS LATER ON?

SUSAN HUNTER - DIRECT BY MR. LIFSEY

97

1 A YES, SIR, I DID.

2 Q OKAY. HOW FAR WAS IT FROM WHERE FRAZIER WAS STOPPED
3 TO WHERE YOU FOUND --- THE TELEPHONE POLE WHERE THIS BAG
4 WAS?

5 A APPROXIMATELY FIVE --- FIVE FEET.

6 Q AND YOU YOURSELF DID NOT SEE HIM THROW IT DOWN, BUT
7 SAW HIM WITH SOMETHING AND THEN NOT WITH SOMETHING AND
8 THEN FOUND THE BAG. IS THAT RIGHT?

9 A YES, SIR, BECAUSE THE TELEPHONE POLE OBSTRUCTED MY
10 VIEW.

11 Q OKAY. WHAT DID YOU DO AT THAT POINT? WHAT DID YOU -
12 -- DID YOU GO LOOK IN THE BAG?

13 A I --- THERE WAS ACTUALLY A PIECE THAT I PICKED UP OFF
14 THE GROUND AND I HAD THE BAG AT THAT TIME AND IT WAS LIKE
15 WITHIN APPROXIMATELY A MINUTE OR SO SERGEANT PARSONS
16 ARRIVED ON THE SCENE AT WHICH AT THAT POINT I HANDED THE
17 BAG WITH THE CONTENTS INTO IT SO IT HE COULD TAKE OVER TO
18 [REDACTED] TO DETERMINE WHETHER OR NOT THAT
19 WAS THE ---

20 Q OKAY. SO FRAZIER'S DETAINED ABOUT A MINUTE BEFORE
21 PARSONS GETS THERE. IS THAT RIGHT?

22 A APPROXIMATELY, YES, SIR.

23 Q AND THEN PARSONS IS DISPATCHED. HOW LONG IS GONE
24 BEFORE YOU HEAR --- DO YOU HEAR SOME CONFIRMATION OF THE
25 ITEMS AT SOME POINT --- IT BEING FROM THE STOLEN --- PART

SUSAN HUNTER - DIRECT BY MR. LIFSEY

98

1 OF THE STOLEN PROPERTY?

2 A WITHIN FIVE OR SIX MINUTES.

3 Q AND THEN FIVE OR SIX SO (SIC) FRAZIER IS DETAINED I
4 GUESS AT THAT POINT SIX OR SEVEN MINUTES BEFORE YOU GET
5 CONFIRMATION THAT THE ITEMS YOU FOUND NEAR HIM THAT WE
6 BELIEVE HE ABANDONED WERE, IN FACT, TAKEN FROM THE
7 RESIDENCE?

8 A YES, SIR.

9 Q WERE YOU --- DID YOU REMAIN NEAR FRAZIER OR DID YOU
10 GO TO THE APARTMENTS?

11 A I STAYED ON THE SCENE WHERE FRAZIER WAS AT.

12 Q HOW --- WERE YOU THERE WITH FRAZIER UNTIL THE VICTIM
13 MS. SANDERS AND THE OTHER LADY CAME, MS. CAUTHEN CAME AND
14 IDENTIFIED HIM?

15 A I REMAINED ON THE SCENE UNTIL HE WAS ACTUALLY
16 TRANSPORTED TO MJC.

17 Q DO YOU REMEMBER HOW LONG APPROXIMATELY IT WAS BETWEEN
18 WHEN YOU FIRST STOPPED FRAZIER TO WHEN --- AS BEST YOU CAN
19 GUESS --- AS BEST YOU CAN ESTIMATE --- BETWEEN THAT AND
20 WHEN FRAZIER WAS IDENTIFIED BY ONE OR MORE OF THE VICTIMS?

21 A APPROXIMATELY FIFTEEN OR TWENTY MINUTES.

22 Q SO YOU'RE TALKING A TOTAL DETENTION OF ABOUT FIFTEEN
23 OR TWENTY MINUTES BEFORE THE I.D.?

24 A THE FIRST I.D., YES, SIR.

25 Q FIRST I.D. OKAY. ALL RIGHT.

SUSAN HUNTER - DIRECT BY MR. LIFSEY

99

1 A THEY CAME THROUGH AT DIFFERENT TIMES.

2 Q ALL RIGHT. NOW, WERE YOU INVOLVED IN ANY OF THE
3 OTHER ITEMS THAT WERE ULTIMATELY RECOVERED FURTHER AWAY
4 THAN FIVE FEET TO THE TELEPHONE POLE?

5 A YES, SIR.

6 Q OKAY. WHAT --- HOW WERE YOU INVOLVED IN THAT?

7 A AFTER WE CLEARED AND MR. FRAZIER WAS TRANSPORTED, WE
8 WALKED BACK THE ROUTE IN WHICH THE DOG HAD TRAVELLED.

9 MR. LIFSEY - CAN I SEE THE --- BEAR WITH ME JUST
10 ONE SECOND. (PAUSE) GO AHEAD --- AND IF I CAN MARK THIS
11 AS A STATE'S EXHIBIT 1.

12 (DOCUMENT MARKED FOR IDENTIFICATION AS STATE'S
13 EXHIBIT NUMBER 1.)

14 Q DO YOU RECOGNIZE THAT, GENERALLY, AS A MAP OF THE ---
15 MAP OF THE AREA?

16 A YES, SIR, I DO.

17 Q AND I THINK MR. FRICK ALREADY HAS A COPY OF THIS, BUT
18 DOES IT SHOW WHERE THE SUBJECT WAS DETAINED AND DOES IT
19 MARKED SOME DISTANCE AWAY THE [REDACTED] [REDACTED]?

20 A YES, SIR, IT DOES.

21 Q OKAY, AND IT SHOWS WHERE VARIOUS ITEMS WERE FOUND.
22 IS THAT RIGHT?

23 A YES, SIR.

24 Q OKAY. AND IS THIS AN ACCURATE --- IS THIS AN
25 ACCURATE MAP? DOES THIS ACCURATELY REFLECT AS BEST YOU

SUSAN HUNTER - DIRECT BY MR. LIFSEY

100

1 KNOW WHERE THESE ITEMS WERE FOUND?

2 A YES, SIR, IT DOES.

3 MR. LIFSEY - I'M GOING TO MOVE IT --- I'M GOING
4 TO MOVE THIS INTO EVIDENCE AS STATE'S EXHIBIT 1.

5 MR. FRICK - MY CONCERN ON THAT IS OBVIOUSLY ---
6 I THINK THAT INCLUDES THE DOG TRACK. AM I INCORRECT?

7 MR. LIFSEY - YES.

8 MR. FRICK - WE HAVEN'T HAD ANY FOUNDATION LAID
9 ABOUT THE DOG TRACK. I WOULD SAY IT'S NOT APPROPRIATE AT
10 THIS TIME.

11 THE COURT - ALL RIGHT, HOLD IT.

12 MR. LIFSEY - I'LL HOLD OFF THEN ON THAT.

13 Q WERE YOU INVOLVED IN PICKING UP SOME OF THESE OTHER
14 ITEMS WITH THE DOG TRACK AND YOU SAID YOU WERE?

15 A YES, SIR.

16 Q OKAY. AND THEY WERE AT A DISTANCE FURTHER AWAY THAN
17 THE TELEPHONE POLE. IS THAT CORRECT?

18 A YES, SIR, THEY WERE.

19 Q OKAY. DID FRAZIER AT ANY POINT CLAIM ANY OF THIS
20 STUFF?

21 A NO, SIR.

22 Q DID HE SAY THAT'S NOT MY BAG; THAT'S MY BAG, DON'T
23 PICK IT UP?

24 A NO, SIR.

25 MR. LIFSEY - BEG THE COURT'S INDULGENCE JUST ONE

SUSAN HUNTER - CROSS BY MR. FRICK

101

1 --- ONE MOMENT. I DON'T THINK I HAVE ANY FURTHER
2 QUESTIONS.

3 CROSS EXAMINATION

4 BY MR. FRICK -

5 Q WHY'D YOU INITIALLY TURN AROUND ON FRAZIER?

6 A I INITIALLY TURNED AROUND ON FRAZIER DUE TO SOME
7 PRIOR DEALINGS THAT WE HAD HAD WITH MR. FRAZIER IN THE
8 PAST AND ---

9 Q PRIOR ARRESTS?

10 A YES. WELL, NOT --- WE WERE --- NOT PRIOR ARRESTS,
11 BUT WE WERE LOOKING AT HIM FOR SOMETHING ELSE PARTICULARLY
12 AT THAT MOMENT.

13 Q OKAY. WAS THERE A WARRANT IN THAT MATTER?

14 A NO, SIR, THERE WAS NOT.

15 Q OKAY. DID YOU SEE HIM DOING ANYTHING BESIDES
16 CROSSING THE STREET?

17 A FROM THE APARTMENTS? NO, SIR, I DID NOT.

18 Q OKAY. AND YOU DIDN'T STOP HIM FOR JAY-WALKING?

19 A NO, SIR.

20 Q OKAY. ABOUT HOW LONG WOULD SAY THAT YOU --- I DON'T
21 WANT TO MIS-CHARACTERIZE --- WERE YOU --- WERE YOU KIND OF
22 DRIVING ALONG BESIDE TRYING TO GET A CLOSER LOOK?

23 A I RODE PAST HIM, BASICALLY TO BE INCONSPICUOUS SO HE
24 WOULDN'T KNOW THAT I WAS LOOKING AT HIM.

25 Q OKAY. AND YOU GOT AN UNMARKED CROWN VIC?

SUSAN HUNTER - CROSS BY MR. FRICK

102

- 1 A THAT'S RIGHT.
- 2 Q OKAY.
- 3 A NO, AN IMPALA. EXCUSE ME.
- 4 Q IMPALA. OKAY. THAT MIGHT BE A LITTLE MORE
- 5 INCONSPICUOUS. ALL RIGHT. DID HE LOOK AT YOU AT ANY
- 6 POINT?
- 7 A TO MY RECOLLECTION, NO, SIR.
- 8 Q OKAY. WHEN YOU SAW HIM COMING ACROSS THE STREET, WAS
- 9 HE RUNNING?
- 10 A NO, SIR, HE WAS NOT.
- 11 Q WAS HE CARRYING ANYTHING?
- 12 A NO, SIR, AT THAT POINT HE WAS WEARING HIS JACKET.
- 13 Q OKAY. WHAT KIND OF JACKET WAS IT?
- 14 A AS WELL AS I CAN RECOLLECT, BECAUSE I'VE NOT WENT
- 15 BACK IN AND REFRESHED MY MEMORY FROM THE EVIDENCE, IT WAS
- 16 A LEATHER --- A BLACK LEATHER-TYPE, AN OLDER TYPE JACKET.
- 17 Q BLACK JACKET. AND I THINK ---
- 18 A (INDICATING YES)
- 19 Q --- Y'ALL HAVE GOT IT OVER HERE. CORRECT? IS THAT -
- 20 --
- 21 MR. FRICK - I GUESS I GOT TO MARK IT FOR I.D.
- 22 NOW.
- 23 Q DO YOU RECOGNIZE THIS ITEM?
- 24 A YES, SIR.
- 25 Q WHAT IS THIS ITEM?

SUSAN HUNTER - CROSS BY MR. FRICK

103

1 A IT'S A BLACK LEATHER JACKET.

2 Q OKAY. DO YOU KNOW WHERE IT CAME FROM?

3 A FROM THE SUSPECT. HE HAD IT WITH HIM WHEN HE WAS
4 STOPPED.

5 Q OKAY. THIS IS WHAT'S BEEN IN Y'ALL'S CUSTODY.
6 RIGHT?

7 A YES, SIR.

8 Q OKAY. THIS IS THE JACKET THAT MR. FRAZIER HAD ON
9 THAT DAY. IS THAT CORRECT?

10 A YES, SIR.

11 Q OKAY. ALL RIGHT. AS YOU --- AS YOU DRIVE PAST HIM
12 AND I --- I SAY YOU COME AROUND THE CORNER TO GET ANOTHER
13 LOOK AT HIM ---

14 A (INDICATING YES)

15 Q --- WHEN DO YOU HEAR THIS RADIO TRAFFIC?

16 A I HAD ACTUALLY PASSED HIM AT THAT TIME AND WAS ---
17 LIKE I SAID WAS --- HAD GONE UP TO TURN AROUND. I WOULD
18 SAY IT WAS APPROXIMATELY ABOUT FORTY-FIVE SECONDS TO A
19 MINUTE LATER, SOMEWHERE IN THAT TIME-FRAME.

20 Q OKAY. DID YOU NOTICE ANY OTHER CLOTHING THAT HE HAD
21 ON?

22 A HIS BLACK SHOES.

23 Q BLACK SHOES?

24 A YES, SIR.

25 Q OKAY. HOW ABOUT THE PANTS?

SUSAN HUNTER - CROSS BY MR. FRICK

104

1 A AT THAT TIME I DIDN'T RECALL. I WAS CONCENTRATING ON
2 THE JACKET.

3 Q OKAY. A DESCRIPTION WAS GIVEN OVER THIS RADIO
4 TRAFFIC. CORRECT?

5 A YES, SIR.

6 Q WHAT WAS THAT DESCRIPTION?

7 A A BLACK MALE WEARING A BROWN JACKET WITH GRAY HAIR.

8 Q A BROWN JACKET?

9 A INITIALLY, YES, SIR.

10 Q OKAY. BUT THAT'S WHAT YOU HEARD?

11 A YES, SIR.

12 Q OKAY. YOU BEGAN TO EXECUTE A STOP AT THAT POINT OR
13 WHEN?

14 A AFTER THE RADIO TRAFFIC.

15 Q AFTER THE RADIO TRAFFIC.

16 A YES, SIR.

17 Q OKAY. NOW, HAVE YOU GOT YOUR INCIDENT REPORT IN
18 FRONT OF YOU?

19 A YES, SIR, I DO.

20 Q NOW, I THINK AT SOME POINT IN HERE YOU SAY THAT YOU
21 SAW HIM PUT HIS HAND IN HIS POCKET.

22 A YES, SIR.

23 Q OKAY, AND ABOUT WHEN DID THAT HAPPEN?

24 A THAT WAS JUST SHORTLY BEFORE HE CAME --- I'M GOING TO
25 SAY FIFTEEN, TWENTY YARDS BEFORE HE GOT TO THE TELEPHONE

SUSAN HUNTER - CROSS BY MR. FRICK

105

1 POLE.

2 Q OKAY. ALL RIGHT. AND YOU SEE HIM PULL SOMETHING OUT
3 OF HIS POCKET.

4 A I SEE SOMETHING IN HIS HAND, YES, SIR.

5 Q OKAY. ANY IDEA WHAT IT IS?

6 A AT THAT TIME, NO, SIR.

7 Q OKAY. DID YOU FEEL IT WAS A WEAPON?

8 A I DIDN'T KNOW.

9 Q OKAY. I'M SORRY, YOU --- YOU SAID IT WAS IN HIS
10 RIGHT HAND?

11 A YES, SIR.

12 Q OKAY. SORRY I --- ALL RIGHT, AND THEN YOU DON'T KNOW
13 WHAT HAPPENED TO THAT BAG AT THAT POINT IN TIME?

14 A NO, SIR, IT WAS IN HIS HAND PRIOR TO ME PASSING THE
15 TELEPHONE POLE. AT THAT POINT I PASSED THE TELEPHONE POLE
16 AND I ACTUALLY LOST SIGHT OF WHAT HE HAD IN HIS HAND ---

17 Q --- OKAY.

18 A --- MOMENTARILY.

19 Q OKAY. I MEAN IT WAS A --- IT WAS A DARK ITEM IN HIS
20 HAND IS WHAT YOU SAY?

21 A YES, SIR.

22 Q OKAY.

23 A KIND OF PALMED IN HIS HAND? COULDN'T CLEARLY SEE
24 WHAT IT WAS?

25 A NO, SIR, I COULDN'T CLEARLY SEE WHAT IT WAS.

SUSAN HUNTER - CROSS BY MR. FRICK

106

1 Q OKAY. DID YOU DETAIN MR. FRAZIER?

2 A SERGEANT POO --- LANCE CORPORAL POOVEY AT THAT TIME
3 DETAINED MR. FRAZIER.

4 Q OKAY.

5 A HE DEALT WITH MR. FRAZIER AND I, LIKE I SAID EARLIER,
6 I WENT TO THE TELEPHONE POLE TO SEE WHAT HAD BEEN
7 DISCARDED.

8 Q OKAY. WAS HE PLACED UNDER ARREST AT THAT TIME?

9 A HE WAS BEING DETAINED AT THAT TIME.

10 Q WHY WAS HE BEING DETAINED?

11 A WE'D JUST HAD A BURGLARY THAT HAD OCCURRED. THE
12 PROPERTY THAT WAS DROPPED BESIDE THE POLE THAT HE HAD, IN
13 OUR EYES HAD DISCARDED WHEN --- BECAUSE SERGEANT ---
14 EXCUSE ME --- LANCE CORPORAL POOVEY HAD SEEN SOMETHING AND
15 WHAT I WAS WAITING ON WAS THE IDENTIFICATION OF THE
16 JEWELRY WHICH SERGEANT PARSONS WAS THERE IN LESS THAN A
17 MINUTE TO TAKE TO THE SCENE.

18 Q BUT YOU DIDN'T KNOW ABOUT THE BAG AT THE TIME.

19 A WE WENT TO THE BAG ONCE HE WAS ---

20 Q AFTER HE WAS ---

21 A --- STOPPED.

22 Q --- DETAINED.

23 A WHILE HE WAS CONFRONTING MR. FRAZIER I WAS GOING TO
24 THE POLE.

25 Q WAS MR. FRAZIER IN HAND-CUFFS AT THIS CONFRONTATION?

SUSAN HUNTER - CROSS BY MR. FRICK

107

- 1 A INITIALLY, NO.
- 2 Q OKAY. WAS HE PATTED DOWN?
- 3 A YES, SIR.
- 4 Q OKAY. Y'ALL HAVE DEALT WITH HIM A GOOD BIT. HAVE
- 5 YOU HAD ISSUES WITH HIM HAVING WEAPONS ON HIM?
- 6 A YES, SIR.
- 7 Q OKAY. DID YOU FIND ANY WEAPON?
- 8 A NO, SIR.
- 9 Q OKAY. DID YOU QUESTION MR. FRAZIER?
- 10 A NO, SIR, I DID NOT.
- 11 Q OKAY. IN FACT, IN YOUR REPORT YOU BASICALLY SAID
- 12 THERE'S REALLY NO POINT IN QUESTIONING HIM. AM I MIS-
- 13 STATING THAT? I THINK IT SAYS IN HERE AT SOME POINT YOU
- 14 HAD PRIOR DEALINGS WITH HIM?
- 15 A I DID. WE'VE HAD PRIOR DEALINGS WITH HIM BUT AT THAT
- 16 POINT THAT INVESTIGATION ONCE I RELINQUISHED THE JEWELRY
- 17 AND THE BAG TO SERGEANT PARSONS AND IDENTIFICATION WAS
- 18 MADE THAT WAS SERGEANT PARSONS' INVESTIGATION AND IT WAS
- 19 SERGEANT PARSONS' RESPONSIBILITY TO INTERVIEW MR. FRAZIER.
- 20 Q OKAY. LET'S GO BACK TO THE TOP PART OF YOUR REPORT
- 21 THERE.
- 22 A YES, SIR.
- 23 Q MAKE SURE WE'RE LOOKING AT THE SAME ONE. IN THAT
- 24 FIRST PARAGRAPH, ONE, TWO, THREE, FOUR SENTENCES UP. I'LL
- 25 POINT TO IT IF YOU DON'T FINE.

SUSAN HUNTER - CROSS BY MR. FRICK

108

1 A THAT'S FINE.

2 Q THAT ONE RIGHT THERE. IT SAYS I MADE THE DECISION TO
3 THEN TURN AROUND AND STOP AND IDENTIFY THE SUBJECT.

4 A YES, SIR.

5 Q THAT'S BEFORE THE RADIO TRAFFIC, ISN'T IT?

6 A YES, SIR, BUT THAT WAS DUE TO SERGEANT PARSONS --- I
7 DON'T KNOW HOW MUCH OF THIS I --- I GUESS BECAUSE THIS IS
8 HIS HEARING. WHAT IT WAS IS HE WAS A PERSON OF INTEREST.
9 SERGEANT PARSONS WAS LOOKING AT HIM IN ANOTHER INCIDENT,
10 ANOTHER BURGLARY THAT HAD OCCURRED, AND AT THAT POINT
11 WOULD'VE BEEN THE PURPOSE FOR ME CALLING SERGEANT PARSONS
12 AND ME AND SERGEANT PARSONS --- LETTING SERGEANT PARSONS
13 KNOW THAT HE WAS THERE AND THEN AT THAT POINT WOULD'VE
14 DISCUSSED THE OTHER INCIDENT WITH HIM. IT JUST SO
15 HAPPENED THE RADIO TRAFFIC COMES IN THAT THE BURGLARY HAS
16 OCCURRED AND HE FITS THE DESCRIPTION OF THE SUBJECT IN THE
17 BURGLARY.

18 Q SO YOU'RE GOING TO STOP HIM WITHOUT THE RADIO
19 TRAFFIC?

20 A YES, SIR.

21 Q OKAY.

22 A IF I COULD IDENTIFY THE FACT THAT HE WAS RANDOLPH
23 FRAZIER. YES, SIR, I WAS.

24 Q YOU'D ALREADY MADE THAT DETERMINATION, HADN'T YOU?
25 THAT'S WHY YOU TURNED.

SUSAN HUNTER - CROSS BY MR. FRICK

109

1 A I TURNED AROUND TO MAKE SURE. I WASN'T A HUNDRED
2 PERCENT SURE.

3 Q OKAY.

4 A SO AT THAT POINT TO FIND --- MAKE SURE I WAS --- I'M
5 NOT GOING TO STOP SOMEBODY IF I AM NOT SURE WHO THEY ARE.

6 Q OKAY. WELL, DID YOU ASK HIM TO PRODUCE AN I.D.?

7 A THAT DAY?

8 Q YES.

9 A NO, SIR.

10 Q OKAY. BUT ON THIS PENDING INVESTIGATION, NO WARRANTS
11 HAD BEEN ISSUED. IT WAS STILL UNDER INVESTIGATION.

12 A YES, SIR.

13 Q OKAY. Y'ALL HAD OTHER SUSPECTS?

14 A NO, SIR.

15 Q OKAY. DID ANYBODY TELL HIM WHY HE WAS STOPPED?

16 A YES, SIR.

17 Q WHO? WAS IT YOU OR POOVEY?

18 A IF I RECALL CORRECTLY, I THINK IT WAS LANCE CORPORAL
19 POOVEY.

20 Q OKAY. DID POOVEY GET TO HIM BEFORE YOU DID?

21 A YES, SIR.

22 Q OKAY. ALL RIGHT, SO THAT WOULD --- THAT'S WHY IT
23 SAYS IN YOUR REPORT HE ACTED AS IF HE DIDN'T KNOW WHY HE
24 WAS STOPPED.

25 A YES, SIR.

SUSAN HUNTER - CROSS BY MR. FRICK

110

1 Q OKAY. THEN LATER DOWN IN YOUR REPORT YOU SAY HE
2 STILL ACTED AS IF HE'D DONE NOTHING WRONG.

3 A YES, SIR. HE WAS UPSET BECAUSE HE WAS BEING
4 DETAINED. HE ACTED LIKE HE DIDN'T KNOW WHY HE WAS BEING
5 DETAINED.

6 Q DID YOU TELL HIM?

7 A I DIDN'T TELL HIM. NO, SIR. NOT TO MY RECOLLECTION.

8 Q AT WHAT POINT, IF YOU KNOW --- AT WHAT POINT WAS AN
9 ARREST WARRANT OBTAINED FOR HIM?

10 A AFTER HE WAS TRANSPORTED TO THE MUNICIPAL JUSTICE
11 CENTER.

12 Q HOW LONG FROM THE POINT OF THAT TRANSPORT TO WHEN HE
13 WAS STOPPED, APPROXIMATELY? I KNOW NOBODY HAS A ---

14 A I CAN'T ANSWER THAT, BECAUSE SERGEANT PARSONS SIGNED
15 THE WARRANTS.

16 Q OKAY. WERE YOU THERE WHEN HE WAS TRANSPORTED?

17 A I WAS ON THE SCENE WHEN HE LEFT THE SCENE, YES, SIR.

18 Q OKAY. ANY IDEA ABOUT HOW LONG THAT TOOK? I MEAN THE
19 TIME-FRAME.

20 A TIME WHAT?

21 Q FROM WHEN HE --- WHEN FRAZIER GETS INITIALLY STOPPED
22 TO WHEN ALL THIS TRANSPIRES TO WHEN HE IS TAKEN TO THE
23 DETENTION CENTER.

24 A I'M GOING TO SAY APPROXIMATELY THIRTY TO FORTY
25 MINUTES.

SUSAN HUNTER - CROSS BY MR. FRICK

111

1 Q THIRTY, FORTY MINUTES.

2 A APPROXIMATELY.

3 Q OKAY. PERIOD OF TIME FROM HANDING THE BAG TO PARSONS
4 TO WHEN THE VICTIM GIVES AN IDENT --- IDENTIFIES THE
5 JEWELRY?

6 A APPROXIMATELY FIVE --- FIVE TO SIX MINUTES
7 APPROXIMATELY.

8 Q FIVE TO SIX MINUTES.

9 A YES, SIR.

10 Q ALL RIGHT. I THINK YOU SAID AS FAR AS THE OTHER
11 WITNESSES, THAT WAS ABOUT FIFTEEN, TWENTY MINUTES?

12 A YES, SIR.

13 Q OKAY. WAS FRAZIER A SUSPECT BECAUSE YOU HAD PRIOR
14 DEALINGS WITH HIM?

15 A NO, SIR. HE MATCHED THE DESCRIPTION. THE GRAY HAIR
16 ---

17 Q I MEAN THE REASON WHY YOU TURNED.

18 A THE REASON WHY I TURNED? FOR THIS PARTICULAR
19 BURGLARY OR FOR SOMETHING ---

20 Q YOU SAID THAT THERE WAS A PENDING INVESTIGATION.
21 CORRECT?

22 A WE --- WE WERE HAVING --- WE WERE HAVING A PROBLEM
23 AREA WHERE WE WERE HAVING SOME BURGLARIES OCCUR AND HE WAS
24 A PERSON THAT WE WERE INTERESTED --- SERGEANT PARSONS WAS
25 INTERESTED IN TALKING TO.

SUSAN HUNTER - CROSS BY MR. FRICK

112

1 Q OKAY. BUT TO YOUR KNOWLEDGE THERE WERE NO OTHER
2 SUSPECTS?

3 A TO WHICH ---

4 Q YOUR KNOWLEDGE. I MEAN YOU CAN ONLY TESTIFY TO WHAT
5 YOU KNEW.

6 A NOT TO MY KNOWLEDGE, NO, SIR.

7 MR. FRICK - OKAY. ALL RIGHT. THAT'S ALL THE
8 QUESTIONS I'VE GOT. THANK YOU.

9 MR. LIFSEY - I DON'T HAVE ANYTHING FURTHER FOR
10 THIS WITNESS.

11 THE COURT - I THINK WE'VE GONE FAR ENOUGH. ALL
12 THIS IS REASONABLE.

13 MR. LIFSEY - THANK YOU. YOU CAN STEP DOWN.

14 THE COURT - READY FOR THE JURY.

15 MR. LIFSEY - YES, SIR. HAVE YOU DECIDED ON ---

16 MR. FRICK - I THINK MY DECISION WAS ---

17 MR. LIFSEY - --- CLERK OF COURT --- CLERK OF
18 COURT THING. WOULD I HAVE TO CALL JEFF ---

19 MR. FRICK - WE WILL STIPULATE TO THE PRIOR
20 BURGLARIES. I THINK YOU'VE TOLD ME PREVIOUSLY WHAT ---

21 MR. LIFSEY - AND BY STIPULATING, LET ME JUST SAY
22 FOR THE RECORD WHAT I MEAN.

23 THE COURT - OKAY.

24 MR. LIFSEY - I'M GOING TO SAY ON THE RECORD HE'S
25 GOT TWO OR MORE PRIOR --- TWO --- EXCUSE ME --- I'M GOING

113

1 TO SAY HE'S GOT TWO PRIOR BURGLARY CONVICTIONS. I'M JUST
2 NOT GOING --- AND I'M GOING TO INTRODUCE INTO EVIDENCE BY
3 STIPULATION AT THE END OF THE CASE THE PROOF OF THE TWO
4 PRIOR CONVICTIONS AND BY STIPULATING HE'S NOT REQUIRING ME
5 TO CALL CLERK OF COURT HAMMOND TO TESTIFY TO THAT. I
6 THINK THE CASE LAW SAYS THAT I'M ALLOWED TO INTRODUCE THE
7 FACT THAT HE'S GOT TWO PRIORS.

8 MR. FRICK - I WOULD HATE TO HAVE TO IMPEACH THE
9 CLERK OF COURT. THAT WOULD BE BAD.

10 THE COURT - HE WOULD HATE IT WORSE.

11 MR. FRICK - WHICH TWO SPECIFICALLY ARE YOU
12 TALKING ABOUT? DO YOU HAVE THE DATES IN FRONT OF YOU?

13 MR. LIFSEY - THE SAME TWO FROM LAST TIME WE DID
14 IT. WHERE'D I PUT THEM. GIVE ME JUST ONE SECOND, JUDGE.
15 2000 --- 85-GS-29-160 (SIC), HOUSEBREAKING AND LARCENY,
16 2001-GS-29-219 BURGLARY. YOU'RE WELCOME TO HAVE THOSE.
17 THOSE ARE COPIES FROM LAST TIME. I HAVE CERTIFIED COPIES
18 THAT ARE --- DON'T HAVE THE EVIDENCE STICKER ON THEM.

19 MR. FRICK - AND I THINK JUST TO CLARIFY --- THE
20 ISSUE WE LEFT OPEN ABOUT THE BAG, IT WAS KIND OF PENDING
21 YOUR RULING ON MY --- MY FOURTH AMENDMENT QUESTION.

22 THE COURT - AFTER YOU HEARD ALL WHAT I HEARD,
23 YOU STILL WANT TO MAINTAIN SOME TYPE OF MOTION?

24 MR. FRICK - NO. HERE'S WHAT I WANT TO SAY. I
25 OBJECT TO YOUR RULING IN THAT. I MEAN I'LL DO THAT AT THE

1 APPROPRIATE TIME, BUT AS FAR AS THE BAG I WOULD JUST TO
2 PREVENT A WHOLE BUNCH OF STUFF LATER DOWN THE ROAD, I
3 WOULD GO AHEAD AND STIPULATE THAT THAT'S THE BAG THAT THEY
4 FOUND, SO WE CAN GO AHEAD AND PUT THAT INTO EVIDENCE
5 WITHOUT HAVING TO GO THROUGH ALL THAT MESS.

6 MR. LIFSEY - WELL, I'LL ASK --- I'LL ASK HUNTER
7 ABOUT IT ON THE --- IT WON'T TAKE BUT JUST A MINUTE. I
8 WAS JUST CONCERNED ABOUT PULLING IT OUT OF THE PLASTIC SO
9 THE OTHER JEWELRY WASN'T IN THERE TO CONFUSE ---

10 MR. FRICK - YES, THAT'S FINE. OKAY.

11 MR. LIFSEY - I'M READY.

12 THE COURT - BRING THEM IN.

13 (JURY ENTERS THE COURTROOM)

14 THE COURT - LADIES AND GENTLEMEN OF THE JURY,
15 THANK YOU FOR YOUR PATIENCE. WE TOOK A LITTLE TIME AND
16 WENT AHEAD AND MARKED SOME EXHIBITS AND ALL TO SAVE TIME
17 LATER ON, SO EVEN THOUGH WE WERE TAKING UP YOUR TIME, WE
18 WERE SAVING YOU SOME TIME LATER ON. WE APPRECIATE YOUR
19 WORKING WITH US. (PAUSE) MR. CLERK, IF YOU WILL
20 ADMINISTER THE OATH. I AM APPOINTING MS. KIM MOSS FORE-
21 PERSON OF THE JURY. WHEN WE TAKE A BREAK AND COME BACK
22 THE BAILIFF WILL SHOW YOU WHICH SEAT TO TAKE. YOU'LL BE -
23 -- YOU AND THE ALTERNATES WILL BE THE ONLY ONES THAT NEED
24 TO KEEP THE SAME SEATS. THE REST OF YOU CAN TAKE THE SEAT
25 THAT COMES TO YOU WHEN YOU COME BACK IN. OKAY.

115

1 (WHEREUPON, JURY IS DULY SWORN BY THE CLERK)

2 CLERK - THANK YOU. PLEASE BE SEATED.

3 THE COURT - LADIES AND GENTLEMEN, I JUST HAVE A
4 FEW OPENING REMARKS TO MAKE TO YOU THEN I'M GOING TO TURN
5 IT OVER TO COUNSEL FOR TRIAL OF THE CASE. I'M GOING TO
6 TELL YOU HOW WE'RE GOING TO PROCEED. WE'VE GOT SEVERAL
7 PHASES WE WILL GO THROUGH. FIRST, AFTER I FINISH, BOTH
8 SIDES WILL BE ALLOWED TO MAKE BRIEF OPENING STATEMENTS TO
9 YOU, OPENING STATEMENTS BASICALLY TO OUTLINE THEIR CASE TO
10 YOU. NOW, IT'S NOT MANDATORY THAT THEY DO THAT. A LOT OF
11 ATTORNEYS WAIVE OPENING STATEMENTS, GO STRAIGHT ON IN TO
12 THE EVIDENTIARY PHASE, BUT THEY DO HAVE A RIGHT TO MAKE AN
13 OPENING TO YOU. AFTER THE OPENING STATEMENTS ARE
14 COMPLETED, WE WILL MOVE INTO THE EVIDENTIARY PORTION OF
15 THE TRIAL WHERE YOU WILL RECEIVE THE EVIDENCE. EVIDENCE
16 MAY TAKE DIFFERENT FORMS. IT MAY BE TESTIMONY FROM THE
17 WITNESS STAND. IT WOULD BE DOCUMENTS, PHOTOGRAPHS,
18 PHYSICAL TYPE ITEMS, DEMONSTRATIVE EXHIBITS. WHATEVER THE
19 EVIDENCE MAY BE, IT'S CRUCIAL THAT YOU LISTEN AND OBSERVE
20 THE EVIDENCE BECAUSE YOU ARE THE FINDERS OF THE FACTS IN
21 THIS CASE. IN SOUTH CAROLINA A TRIAL JUDGE DOESN'T GET
22 INVOLVED IN THE FACT-FINDING. THAT'S STRICTLY UP TO THE
23 JURY. I'M THE JUDGE OF THE LAW. NOW, THE END RESULT OF
24 ANY TRIAL IS TO REACH A VERDICT. VERDICT IS A LATIN
25 DERIVATIVE WORD WHICH IN EFFECT MEANS A TRUE SAYING. SO

1 IT CAN BE SAID THAT A TRIAL IS A SEARCH FOR THE TRUTH.
2 AND HOW DO YOU REACH A VERDICT? YOU TAKE THE FACTS AS YOU
3 FIND THEM FROM THE EVIDENCE PRESENTED, APPLY THEM TO THE
4 LAW THAT I WILL GIVE TO YOU AT THE CONCLUSION OF THE CASE
5 AND THUS REACH A VERDICT. WHEN YOU ARE ASKED TO
6 DELIBERATE AND REACH A VERDICT, YOUR VERDICT WILL HAVE TO
7 BE A UNANIMOUS VERDICT. ALL TWELVE JURORS WILL HAVE TO
8 AGREE WHAT IT'S ON. NOW, NOBODY ELSE IN THE COURTROOM
9 WILL GET INVOLVED IN THE FACT-FINDING BUT YOU THE JURY.
10 THAT IS YOUR SOLE DUTY AND YOURS ALONE. NOW, FROM TIME TO
11 TIME I MAY RULE UPON AN OBJECTION OR SOME PIECE OF
12 EVIDENCE AND DON'T --- DON'T THINK THAT I'M GETTING
13 INVOLVED IN THE FACTS WITH THAT. I JUST MERELY HAVE TO
14 MAKE SURE WE FOLLOWING OUR PROPER PROCEDURE. AND DON'T
15 HOLD ANYTHING AGAINST EITHER SIDE ANYTHING THAT I MAY RULE
16 ON THAT I'M INVOLVED IN THE FACT-FINDING. WE'VE GOT
17 EXCELLENT ATTORNEYS BEFORE THE COURT AND FEEL SURE THAT
18 THEY WILL PROTECT THEIR RESPECTIVE INTEREST TO THE EXTENT
19 THEY NEED TO AND THEY WILL WORK WITH THE COURT JUST AS
20 THEY HAVE IN THE PAST TO GET THIS CASE PRESENTED TO YOU.
21 AFTER THE EVIDENTIARY PORTION OF THE CASE YOU WILL HAVE AN
22 OCCASION TO HEARING CLOSING ARGUMENTS. THAT'S WHERE BOTH
23 SIDES THROUGH THE ATTORNEYS ARGUE THEIR CASE TO YOU AND
24 TRY TO PERSUADE YOU TO SEE THE EVIDENCE AS THEY SEE IT.
25 NOW, I POINT OUT TO YOU WHAT THEY ARGUE AND WHAT THEY SAY

117

1 IS NOT NECESSARILY EVIDENCE. THEY MAY QUOTE THE EVIDENCE
2 OR THEY MAY REPEAT THE EVIDENCE OR OUTLINE THE EVIDENCE TO
3 YOU, BUT WHAT THEY HAVE TO SAY IS NOT EVIDENCE, SO KEEP
4 THAT IN MIND AS YOU WORK THROUGH THESE PHASES. AFTER THAT
5 WE COME THE TIME TO DELIBERATE AFTER YOU RECEIVE THE LAW.
6 IN OTHER WORDS, THE JUDGE'S CHARGE OF THE LAW IS THE FINAL
7 THING IN THE PHASES OF THE TRIAL BEFORE YOU DELIBERATE AND
8 I ONCE AGAIN INSTRUCT YOU, DON'T DELIBERATE THIS CASE.
9 DON'T DISCUSS IT EVEN AMONGST YOURSELVES UNTIL THAT TIME
10 COMES. AS FAR AS NOTE-TAKING, I'LL LEAVE THAT UP TO YOU.
11 SOME JUDGES DON'T ALLOW IT. I PERSONALLY IF I WERE A
12 JUROR, I WOULDN'T DO IT, BECAUSE IF YOU'RE LIKE ME --- IF
13 YOU TAKING AND WRITING A NOTE DOWN, YOU MAY MISS SOMETHING
14 THAT'S BEING SAID WHILE YOU'RE WRITING A NOTE DOWN. BUT
15 IF YOU DO KEEP NOTES, YOU HAVE TO KEEP THEM TO YOURSELF.
16 YOU CAN'T SHARE THEM WITH OTHER JURORS. ONCE AGAIN, WHEN
17 YOU ARE ASKED TO DELIBERATE, IT'LL HAVE TO BE A UNANIMOUS
18 VERDICT, ALL TWELVE DELIBERATING. JURORS WILL HAVE TO BE
19 IN AGREEMENT. I WILL GIVE YOU A FULL CHARGE OF THE LAW AT
20 THE PROPER TIME. THE BURDEN OF PROOF IS ON THE STATE.
21 ANY DEFENDANT, INCLUDING THIS DEFENDANT, ARE INNOCENT
22 UNTIL PROVEN GUILTY, AND THE BURDEN OF PROOF IS WHAT WE
23 CALL BEYOND A REASONABLE DOUBT, AND I'LL DISCUSS ALL THAT
24 WITH YOU AT THE APPROPRIATE TIME. IF YOU NEED A BREAK,
25 RAISE YOUR HAND, LET US KNOW, WE'LL TAKE A BREAK. PLEASE

1 DON'T FALL ASLEEP ON ME. I KNOW IT'S AFTER LUNCH. SOME
2 OF YOU MAY BE USED TO HAVING A SIESTA AFTER LUNCH. PLEASE
3 DON'T LET THAT HAPPEN. WE'LL TAKE A COFFEE BREAK, FIND
4 SOME CAFFEINE SOMEWHERE TO TRY TO GET YOU BACK AWAKE, BUT
5 PLEASE DO NOT FALL ASLEEP. OKAY? LET US KNOW. I THINK
6 I'VE COVERED BASICALLY WHAT I WANTED TO COVER WITH YOU.
7 IF WE --- THE REST OF THIS TRIAL ANY PROBLEMS YOU HAVE,
8 LET THE BAILIFF STAFF KNOW AND WE'LL TRY TO ADDRESS THEM.
9 ALL RIGHT, THE STATE OPENS IF SO DESIRE.

10 MR. LIPSEY - MAY IT PLEASE THE COURT, YOUR
11 HONOR. FEBRUARY 5TH, 2008, THIS YEAR, BETWEEN ELEVEN AND
12 ELEVEN THIRTY IN THE MORNING A LADY NAMED SHERIKA SANDERS
13 --- AND MS. SANDERS IS BACK THERE IN THE BACK IN THE
14 YELLOW SHIRT BACK THERE AND YOU'RE GOING TO HEAR FROM HER
15 IN A MINUTE --- BUT SHERIKA SANDERS CAME ON BACK TO HER
16 HOUSE, HER APARTMENT. SHE LIVES ON [REDACTED] IN THE [REDACTED]
17 [REDACTED] [REDACTED] WHICH IS NOT REALLY TOO FAR FROM HERE.
18 SHE GOES TO THE FRONT DOOR OF HER APARTMENT. SHE LEFT THE
19 APARTMENT LOCKED. SHE GOES TO UNLOCK THE FRONT DOOR, AND
20 SHE UNLOCKS THE FRONT DOOR. IT'S A SMALL APARTMENT. YOU
21 CAN BASICALLY SEE FROM THE FRONT DOOR BACK THROUGH THE
22 KITCHEN INTO THE BACK DOOR, AND AS SHE OPENS IT SHE SEES
23 HER BACK-DOOR IS PARTIALLY OPEN. SHE SEES THAT HER BLINDS
24 ARE MESSED UP, THAT THERE'S EVIDENCE. SO, OF COURSE, IT
25 MIGHT FOR ANYBODY, THAT RAISES SOME CONCERNS. BUT SHE

119

1 GOES ON IN THE HOUSE TO SEE WHAT'S GOING ON. SHE'LL
2 TESTIFY AND SHE'LL TELL YOU THAT AS SHE'S WALKING TO THE
3 KITCHEN SHE HEARS FOOTSTEPS. SHE'LL TELL YOU THAT SHE
4 TURNS AROUND AND SHE SEES RANDOLPH FRAZIER, THAT MAN
5 SITTING RIGHT OVER THERE, RUN DOWN HER STAIRS AND RUN OUT
6 HER FRONT DOOR. THIS FRIGHTENS HER, AS IT MIGHT ANYBODY
7 IN A SIMILAR SITUATION. IN FACT, I THINK SHE WAS SEVEN
8 MONTHS PREGNANT AT THE TIME THIS HAPPENED. SHE RUNS OUT
9 THE BACK DOOR SCREAMING, WHICH IS CERTAINLY PERFECTLY
10 UNDERSTANDABLE. SHE GOES TO A NEIGHBORS HOUSE. YOU'LL
11 HEAR TESTIMONY FROM ONE OF HER NEIGHBORS THAT SHORTLY ---
12 IN FACT, ONLY MOMENTS, AS SHE HEARS THE SCREAMING SHE SEES
13 RANDOLPH FRAZIER RUN BY HER FRONT DOOR AND PEEK INTO HER
14 FRONT DOOR. SO YOU'LL HEAR TWO PEOPLE THAT SAY THEY SAW
15 RANDOLPH FRAZIER. THE POLICE ARE CALLED, AS YOU MIGHT
16 EXPECT. THE POLICE ARE GIVEN THE GENERAL DESCRIPTION OF
17 WHO THE PERSON, WHAT HE LOOKED LIKE IN GENERAL TERMS. HE
18 WAS DESCRIBED AS WEARING A LEATHER JACKET, WAS DESCRIBED
19 AS A BLACK MALE WITH GRAY HAIR. NOW, YOU'LL NOTICE HE
20 SHAVED HIS HEAD NOW. OKAY. HE DOESN'T HAVE ANY HAIR, BUT
21 YOU'LL HEAR TESTIMONY FROM EVERYBODY INVOLVED AT THE TIME
22 HE HAD GRAY HAIR. YOU'RE GOING TO HEAR FROM A COUPLE OF
23 OTHER PEOPLE PROBABLY WHO ARE PEOPLE ALSO AT THE APARTMENT
24 COMPLEX WHO DIDN'T GET A GOOD LOOK AT HIS FACE, BUT THEY
25 WILL BE ABLE TO DESCRIBE TO YOU IN GENERAL TERMS A BLACK

1 MAN WITH GRAY HAIR AND THE DIRECTION HE WAS RUNNING. AS
2 I SAID, POLICE ARE CALLED. YOU'RE GOING TO HEAR FROM A
3 COUPLE OF POLICE OFFICERS FIRST, CAPTAIN SUSAN HUNTER WITH
4 THE LANCASTER POLICE DEPARTMENT, JOHN POOVEY WHO WAS AT
5 THAT TIME I THINK A LANCE CORPORAL WITH THE POLICE
6 DEPARTMENT. THEY'RE GOING TO TELL YOU THAT THEY WERE OUT
7 ON CHESTERFIELD AVENUE, AND I'M GOING TO SHOW YOU LATER ON
8 AND YOU'LL SEE A MAP OF THIS AREA. THIS IS REALLY ONLY A
9 BLOCK OR TWO WHEN YOU CUT THROUGH SOME WOODS FROM WHERE
10 THIS HAPPENED AND CONSISTENT WITH THE DIRECTION THAT
11 PEOPLE ARE GOING TO TELL YOU FRAZIER WAS RUNNING. THEY'LL
12 SAY THAT THEY SAW A MAN WALKING DOWN IN THAT GENERAL
13 DIRECTION MATCHING THE GENERAL DESCRIPTION OF THE PERSON
14 INVOLVED, IN OTHER WORDS, WEARING A JACKET, BLACK MALE,
15 OLDER BLACK MALE WITH GRAY HAIR. BOTH OF THEM WILL TELL
16 YOU THAT THEY SAW SOMETHING IN HIS HAND, AN OBJECT, A ---
17 IT TURNS OUT --- WE'LL SAY A BAG LATER ON, BUT THEY SAY HE
18 HAD SOMETHING IN HIS HAND. BOTH OF THEM --- THEY'RE SORT
19 OF COMING FROM OPPOSITE DIRECTIONS AND THEN THEY BASICALLY
20 TURN AROUND TO GO TOWARD HIM. CAPTAIN HUNTER SAYS SHE
21 LOSES SIGHT BRIEFLY OF HIM BEHIND A TELEPHONE POLE AS HE
22 WALKS BY A TELEPHONE, BUT WHEN HE COMES OUT FROM THERE HE
23 DOESN'T HAVE ANYTHING IN HIS HAND. JOHN POOVEY WILL TELL
24 YOU THAT HE SAW HIM THROW DOWN THE BAG. OKAY? THE
25 OFFICERS STOPPED AND THEY STOPPED MR. FRAZIER AND THE

121

1 PERSON THEY STOP IS RANDOLPH FRAZIER. HE DOESN'T HAVE
2 ANYTHING ON HIM, BUT THEY WILL TELL YOU THEY WALKED TO THE
3 TELEPHONE POLE ABOUT FIVE FEET AWAY AND THEY FIND A BLACK
4 BAG AND THAT IN THAT BAG ARE ITEMS OF JEWELRY. OKAY?
5 YOU'LL HEAR FROM OTHER POLICE OFFICERS THAT JEWELRY IS
6 GONE AND SHOWN TO MS. SANDERS WHO SAYS THAT'S MY STUFF
7 TAKEN FROM MY HOUSE FOUND WITHIN FIVE FEET OF RANDOLPH
8 FRAZIER. YOU'RE GOING TO HEAR THAT THE POLICE GET A
9 BLOODHOUND OUT. I DON'T KNOW HOW MANY OF Y'ALL ARE
10 FAMILIAR WITH LAW ENFORCEMENT, BUT THEY HAVE BLOODHOUNDS
11 THAT CAN TRACK PEOPLE AND RUN TRAILS. YOU'RE GOING TO
12 HEAR TESTIMONY FROM A TRAINED EXPERT BLOODHOUND HANDLER.
13 AND HE'S GOING TO TELL YOU THAT HE WENT TO MS. SANDERS'
14 APARTMENT AND LET THE DOG SNIFF AROUND AND THE DOG STARTED
15 A TRAIL, AND HE'LL EXPLAIN TO YOU HOW THESE WORKS, HOW THE
16 DOG TRAILS AND WHAT THE DOG DOES, AND HE WILL TELL YOU AND
17 SHOW YOU ON A MAP THE TRAIL THAT THE DOG FOLLOWED AND IT'S
18 BACK THROUGH THE WOODS AND BACK TO CHESTERFIELD AVENUE AND
19 RIGHT UP TO RANDOLPH FRAZIER. OKAY? AND HE'LL TELL YOU
20 WHAT THE DOG DID WHEN HE GETS TO RANDOLPH FRAZIER, OR WHAT
21 SHE DID, EXCUSE ME, WHAT THE DOG DOES WHEN SHE GETS TO
22 RANDOLPH FRAZIER. ALONG THIS TRACK WHERE THE DOG TRAILED,
23 THE PATH, THERE ARE OTHER ITEMS THAT ARE FOUND, AND YOU'LL
24 HEAR SOME TESTIMONY ABOUT THAT. YOU'RE GOING TO HEAR
25 TESTIMONY FROM AN ITEM ALONG THAT PATH THAT HAS A

1 FINGERPRINT ON IT OF MR. FRAZIER. SO WITH ALL THAT IN
2 MIND, THE STATE BELIEVES THERE'S NOT ANY DOUBT IN THE
3 WORLD THAT RANDOLPH FRAZIER WENT IN THAT HOUSE AND
4 RANDOLPH FRAZIER STOLE THINGS BELONGING TO SHERIKA
5 SANDERS. NOW, LEGALLY WHAT DOES THAT AMOUNT TO?
6 EVERYBODY KNOWS IT'S WRONG TO DO THAT. OKAY? WHAT CRIME
7 DOES IT AMOUNT TO? IT AMOUNTS TO BURGLARY IN THE FIRST
8 DEGREE. OKAY? WHAT IS BURGLARY? BURGLARY UNDER SOUTH
9 CAROLINA LAW MEANS GOING INTO SOMEBODY'S RESIDENCE ---
10 THAT'S WHERE SOMEBODY LIVES --- AND SHE'LL TELL YOU THIS
11 IS HER APARTMENT WHERE SHE LIVED --- GOING INTO SOMEBODY'S
12 RESIDENCE WITHOUT THE PERMISSION OF THE OWNER. IN OTHER
13 WORDS, SHE DIDN'T INVITE HIM IN. YOU CAN'T CHARGE
14 SOMEBODY WITH BURGLARY IF YOU ASK THEM TO COME IN YOUR
15 HOUSE. OKAY? SO GOING INTO YOUR RESIDENCE WITHOUT
16 PERMISSION OF THE OWNER WITH THE INTENT TO COMMIT A CRIME
17 WHILE YOU'RE IN THERE. IN OTHER WORDS, IF YOU GO IN
18 INTENDING TO DO SOMETHING ILLEGAL. IN THIS CASE WE
19 BELIEVE HE WENT IN INTENDING TO STEAL. STEALING IS
20 ILLEGAL, SO IT'S BURGLARY. WHAT MAKES IT BURGLARY IN THE
21 FIRST DEGREE? TWO THINGS. IT HAS TO BE A RESIDENCE, LIKE
22 I TOLD YOU, SOMEBODY, WHERE SOMEBODY LIVES. AND SECONDLY,
23 IT IS COMMITTED BY SOMEONE WITH TWO PRIOR CONVICTIONS FOR
24 BURGLARY OR HOUSEBREAKING. YOU'RE GOING TO HEAR EVIDENCE
25 THAT RANDOLPH FRAZIER HAS TWO PRIOR CONVICTIONS FOR BUR --

123

1 - ONE FOR BURGLARY AND ONE FOR HOUSEBREAKING. SO THAT'S
2 THE CASE IN SHORTHAND FORM. YOU'RE GOING TO HEAR MORE
3 FROM THE WITNESS STAND AND WE'LL BE BACK UP TO YOU AT THE
4 END OF CASE AND ASK YOU TO RETURN A VERDICT OF GUILTY. DO
5 LIKE THE JUDGE SAYS, FIND THE VERDICT THAT SPEAKS THE
6 TRUTH, AND THE TRUTH IS THAT RANDOLPH FRAZIER IS GUILTY OF
7 BURGLARY IN THE FIRST DEGREE. THANK YOU.

8 MR. FRICK - THANK YOU, YOUR HONOR.

9 THE COURT - MR. FRICK?

10 MR. FRICK - SOLICITOR AND LADIES AND GENTLEMEN
11 OF THE JURY. I FIRST AND FOREMOST WANT TO THANK YOU FOR
12 BEING HERE TODAY. I KNOW YOU FEEL LIKE YOU DIDN'T HAVE A
13 CHOICE IN THAT MATTER AND YOU'RE PROBABLY MORE CORRECT
14 THAN YOU DO BELIEVE, BUT WE DO ALL WHO OPERATE IN THIS
15 SYSTEM WANT TO THANK YOU FOR YOUR SERVICE THIS WEEK. AND
16 IT'S NOT GOING TO BE A LONG TRIAL. I KNOW PEOPLE WATCH
17 T.V. AND THEY SAY, OH, NO, BURGLARY TRIALS, OOH, THEY LAST
18 WEEKS AND WEEKS AND WEEKS. WELL, WE DON'T DO THAT IN
19 SOUTH CAROLINA. WE'RE A LITTLE MORE EXPEDIENT ABOUT
20 MATTERS AND THIS WILL MOVE ALONG RATHER QUICKLY. THAT
21 BEING SAID, I DO WANT TO ECHO A LITTLE BIT THAT THE JUDGE
22 IS GOING TO TELL YOU AT THE END OF THE TRIAL, BUT I WANT
23 YOU TO HAVE IN YOUR MIND NOW. Y'ALL ARE THE JUDGE OF THE
24 FACTS OF THE CASE. Y'ALL DETERMINE WHAT DID OR DID NOT
25 HAPPEN THAT DAY, FEBRUARY 5TH, 2008. Y'ALL GET TO

1 DETERMINE WHAT THE TRUTH IS. NOW, THE WAY Y'ALL GOING TO
2 DO THAT IS THROUGH EVIDENCE THAT'S PRESENTED THAT COMES TO
3 YOU THROUGH THIS WITNESS STAND, THROUGH THE WITNESSES THAT
4 TESTIFY. WHAT MR. LIFSEY AND I HAVE TO SAY JUST
5 PERSUASIVE ARGUMENT. WHAT Y'ALL ARE TO CONSIDER IS WHAT
6 YOU SEE AND HEAR FROM THESE PEOPLE. WHAT YOU GET TO DO,
7 IS YOU GET TO SEE THE PEOPLE; YOU GET TO WATCH THEIR
8 DEMEANOR. YOU GET TO SEE HOW THEY TESTIFY. YOU GET TO
9 BELIEVE ALL, PART OR NONE OF WHAT THEY SAY. THAT'S
10 ENTIRELY YOUR PREROGATIVE. THE JUDGE AT THE END OF THE
11 CASE IS GOING TO TELL YOU WHAT THE LAW IS. AND THROUGHOUT
12 IT --- OR AT THE VERY END IN A SECOND, I'M GOING TO GIVE
13 YOU MY IDEA OF WHAT THE LAW IS. BUT THE JUDGE IS GOING TO
14 TELL YOU WHAT THE LAW IS AND YOU GOT TO APPLY IT TO WHAT
15 HE SAYS. MR. FRAZIER IS CHARGED WITH BURGLARY IN THE
16 FIRST DEGREE. VERY SERIOUS OFFENSE. ONE OF THOSE THINGS
17 WHERE TYPICALLY YOU HAVE THE NIGHTTIME BREAKING IN WITH A
18 PERSON IN BED. NOT WHAT HAPPENED HERE. CLEARLY, MS.
19 SANDERS GETS HOME AND SOMEONE'S IN HER HOUSE, MIDDLE OF
20 THE DAY. SHE SEES SOMEBODY IN HER HOUSE. SOLICITOR
21 CORRECTLY STATED GAVE A VERY GENERAL DESCRIPTION, VERY
22 GENERAL DESCRIPTION, SO GENERAL, IN FACT, I WOULD SUBMIT
23 THAT ANY PERSON FITTING THAT DESCRIPTION WALKING ALONG THE
24 STREET THAT DAY MAY FIND THEMSELVES IN THESE SHOES. WELL,
25 LAW ENFORCEMENT HAS HAD PRIOR DEALINGS WITH MR. FRAZIER.

125

1 AS THE SOLICITOR STATED MY CLIENT HAS NOT BEEN A SAINT.
2 IN YOUNGER DAYS HE HAS GOTTEN HIMSELF IN TROUBLE. HE HAS
3 BEEN CONVICTED OF A SIMILAR OFFENSE TWO TIMES. THAT'S WHY
4 WE'RE HERE TALKING ABOUT A BURGLARY FIRST. AND HE'S NOT
5 GONE IN THREATENING PEOPLE, NOT BREAKING IN THE MIDDLE OF
6 THE NIGHT BECAUSE OF HIS RECORD. AND LADIES AND
7 GENTLEMEN, I SUBMIT TO YOU THAT THEY DID FIND MR. FRAZIER
8 ON CHESTERFIELD AVENUE THAT MORNING. AND YOU'RE GOING TO
9 HEAR THE TESTIMONY ABOUT WHAT HE LOOKED LIKE, WHAT HE WAS
10 WEARING THAT MORNING WHEN THEY STOPPED HIM AND WHAT THE
11 WITNESSES SAY HE LOOKED LIKE, WHAT HE WAS WEARING WHEN
12 THEY SAY THEY SAW HIM. I SUBMIT TO YOU IT'S NOT GOING TO
13 MATCH UP. IT'S GOT TO MATCH UP, LADIES AND GENTLEMEN.
14 THE STATE HAS GOT TO PROVE THE CASE BEYOND REASONABLE
15 DOUBT AS ALREADY BEEN SAID. AND I SUBMIT TO YOU WHAT THAT
16 MEANS IS THERE CAN'T BE ANY OTHER EXPLANATION IN YOUR MIND
17 THAT MR. FRAZIER DID WHAT THE STATE SAYS HE DID. NO OTHER
18 REASONABLE EXPLANATION. LADIES AND GENTLEMEN, I SUBMIT TO
19 YOU ONCE YOU'VE HEARD ALL THE FACTS, ONCE YOU SEE WHAT'S
20 PRESENTED TO YOU, ONCE YOU SEE THE EVIDENCE, IT'S NOT
21 GOING TO ADD UP. IT'S NOT GOING TO ADD UP. AND I BELIEVE
22 THAT YOU'RE GOING TO FIND MR. FRAZIER IS NOT GUILTY OF THE
23 CHARGE OF BURGLARY IN THE FIRST DEGREE. THANK YOU FOR
24 YOUR TIME. THANK YOU FOR ATTENTION. THANK YOU FOR YOUR
25 SERVICE.

SHERIKA SANDERS - DIRECT BY MR. LIFSEY

126

1 THE COURT - SOLICITOR?

2 MR. LIFSEY - YOUR HONOR, I'D CALL SHERIKA
3 SANDERS TO THE STAND, PLEASE.

4 SHERIKA SANDERS, AFTER BEING FIRST DULY SWORN,
5 TESTIFIES AS FOLLOWS:

6 CLERK - THANK YOU. PLEASE BE SEATED.

7 MR. LIFSEY - MAY IT PLEASE THE COURT, YOUR
8 HONOR.

9 THE COURT - YES, SIR.

10 DIRECT EXAMINATION

11 BY MR. LIFSEY -

12 Q WOULD YOU STATE YOUR --- AND SPEAK UP. I'M STANDING
13 HERE SO YOU CAN SPEAK UP LOUD ENOUGH FOR EVERYBODY HERE TO
14 HEAR YOU. OKAY? STATE YOUR FULL NAME.

15 A SHERIKA SANDERS.

16 Q MS. SANDERS, WHERE DO YOU LIVE?

17 A [REDACTED]

18 Q EXCUSE ME?

19 A [REDACTED] AT THE TIME.

20 Q AND THAT'S WHERE YOU LIVED IN --- BACK IN FEBRUARY?

21 A YES, SIR.

22 Q YOU'VE MOVED OUT OF THERE SINCE THEN. RIGHT?

23 A YES, I WAS IN THE PROGRESS IN MOVING.

24 Q OKAY. ON FEBRUARY 5TH, WERE YOU LIVING ON [REDACTED]

25 [REDACTED] IN AN APARTMENT?

SHERIKA SANDERS - DIRECT BY MR. LIFSEY

127

1 A YES, SIR.

2 Q COULD YOU DESCRIBE A LITTLE BIT WHAT YOUR APARTMENT
3 WAS LIKE, WHAT --- I MEAN HOW BIG IT WAS, WHAT IT LOOKED
4 LIKE, THAT SORT OF THING?

5 A WELL, I GOT A DOWNSTAIRS BATHROOM AND UPSTAIRS. WHEN
6 YOU COME IN, YOU CAN SEE RIGHT THROUGH THE BACK DOOR AND
7 THE WINDOW, SO AS SOON AS YOU OPEN THE FRONT DOOR, YOU CAN
8 LOOK RIGHT THERE AND YOU SEE THE WINDOW AND THE BACK DOOR.

9 Q ALL RIGHT. BACK ON FEBRUARY 5TH WERE YOU EXPECTING?

10 A YES, SIR.

11 Q HOW FAR ALONG WERE YOU BACK THEN?

12 A I WAS ABOUT SEVEN MONTHS.

13 Q BABY DOING OKAY NOW, I GUESS.

14 A YES, SIR.

15 Q WHERE HAD YOU BEEN THAT MORNING?

16 A WELL, I --- I WAS GOING TO GET MY TRUCK FIXED, BUT
17 THE MAN TOLD ME TO COME SO I --- I WENT BACK HOME.

18 Q ALL RIGHT, WHEN YOU WENT BACK HOME, WHAT TIME WAS IT?
19 DO YOU REMEMBER? BETWEEN ELEVEN AND ELEVEN THIRTY OR DO
20 YOU REMEMBER EXACTLY WHAT TIME IT WAS OR ABOUT WHAT TIME?

21 A WELL, IT WAS IN BETWEEN --- IT WAS ABOUT ELEVEN.

22 Q YOU GOT BACK HOME. TELL THE JURY WHAT YOU FOUND WHEN
23 YOU GOT --- WHAT YOU DID WHEN YOU GOT OUT OF YOUR VEHICLE
24 AND WHAT HAPPENED AFTER THAT?

25 A OKAY, WELL, I GOT OUT OF MY TRUCK. I PUT THE KEY IN,

SHERIKA SANDERS - DIRECT BY MR. LIFSEY

128

1 I OPENED THE DOOR, AND I LOOKED --- I ALWAYS LOOK AT MY
2 BACK DOOR WHEN I COME IN, SO WHEN I LOOKED IN MY BACK DOOR
3 AND MY WINDOW, I SAW THAT MY WINDOW AND THE BLINDS WAS
4 KNOCKED DOWN AND THE DOOR WAS OPEN, BUT SOMETHING TOLD ME
5 TO TURN AROUND AND GO OUT, BUT I WENT AHEAD AND WENT IN,
6 I LOOKED BEHIND THE DOOR ---

7 Q LET ME STOP YOU JUST A MINUTE. AND I GOT TO ASK YOU
8 A DUMB QUESTION, BUT ONE OF THOSE LAWYER THINGS WE HAVE TO
9 ASK YOU. DO YOU LIVE HERE IN LANCASTER?

10 A YES, SIR.

11 Q AND [REDACTED] THAT YOU'RE DESCRIBING IF ANYBODY'S
12 NOT FAMILIAR WITH IT IS WITHIN THE CITY LIMITS OF
13 LANCASTER. IS THAT RIGHT?

14 A YES, SIR.

15 Q ALL RIGHT, I'M SORRY. AND YOUR APARTMENT'S SMALL
16 ENOUGH YOU CAN SEE YOUR BACK DOOR FROM YOUR FRONT DOOR?

17 A YES, AS SOON AS YOU OPEN THE DOOR YOU CAN SEE IT.

18 Q ALL RIGHT. YOU OPEN THE DOOR --- AND I'M SORRY I
19 INTERRUPTED YOU.

20 A MY LIVING ROOM ---

21 Q GO AHEAD.

22 A --- IS RIGHT HERE AND THE BACK DOOR IS STRAIGHT IN
23 FRONT OF ME.

24 Q OKAY. SO YOU OPENED IT AND WHAT'D YOU SEE WHEN YOU
25 LOOKED IN?

SHERIKA SANDERS - DIRECT BY MR. LIFSEY

129

1 A WHEN I LOOKED IN I SAW THAT THE WINDOW WAS --- THE
2 BLINDS AND THE CURTAIN WAS KNOCKED DOWN HALF-WAY, I MEAN -
3 -- AND THE DOOR WAS HALF-WAY OPEN. I KNEW THAT MORNING I
4 HADN'T WENT OUT THE BACK DOOR, BECAUSE IT WAS TOO EARLY.

5 Q OKAY. WHAT DID YOU DO AT THAT POINT? DID YOU GO ON
6 IN OR DID YOU LEAVE?

7 A YES, I WENT ON IN, SO I WENT AND I LOOKED AROUND. I
8 OPENED THE DOOR DOWNSTAIRS TO MY BATHROOM DOOR AND I
9 OPENED IT AND I LOOKED IN AND I DIDN'T SEE NOBODY, SO BY
10 THE TIME I GOT READY TO WALK TOWARDS THE KITCHEN, WALK
11 HALF-WAY, I HEARD FOOTSTEPS COMING DOWN THE STEPS, SO I
12 TURNED AROUND AND RANDALL (SIC) WAS COMING DOWN THE
13 STAIRS. HE LOOKED RIGHT AT ME AND RAN OUT OF THE FRONT
14 DOOR, BUT I DIDN'T GO BEHIND HIM. I RAN OUT THE BACK DOOR
15 AND CALLED FOR HELP.

16 Q ALL RIGHT. LET ME STOP YOU JUST A MINUTE. THERE'S
17 SOME STAIRS IN YOUR APARTMENT?

18 A YES, SIR.

19 Q OKAY. YOU SAID YOU HEARD FOOTSTEPS ON ---

20 A COMING THE STEPS.

21 Q --- COMING DOWN THE STAIRS. DID YOU LOOK TO SEE WHO
22 WAS COMING DOWN YOUR STAIRS?

23 A YES, I LOOKED RIGHT AT HIM.

24 Q ALL RIGHT. AND YOU SAY HIM ---

25 A RANDALL (SIC) ---

SHERIKA SANDERS - DIRECT BY MR. LIFSEY

130

1 Q --- WHO ARE YOU TALKING ABOUT?

2 A RANDOLPH FRAZIER.

3 Q THIS MAN SITTING RIGHT HERE IN THE SORT OF LIGHT
4 SHIRT NEXT TO MR. FRICK. IS THAT RIGHT?

5 A YES, SIR.

6 Q ALL RIGHT. DID HE --- HAS HE DONE ANYTHING TO HIS
7 APPEARANCE TO ---

8 A HE SHAVED HIS HEAD. HE HAD GRAY HAIR AT THE TIME.

9 Q HE HAD GRAY HAIR AT THE TIME. OKAY. HOW FAR ---
10 LET'S DO THIS. HOW FAR WERE YOU FROM HIM WHEN YOU LOOKED
11 AT HIM? I MEAN COMPARE --- SAY IF YOU'RE YOU AND I'M
12 FRAZIER, HOW FAR AWAY? TELL ME TO STOP WHEN I GET ABOUT
13 FAR ENOUGH ---

14 A COME UP.

15 Q CLOSER?

16 A ABOUT RIGHT THERE. I MEAN BECAUSE MY STEPS WAS RIGHT
17 THERE TO MY LIVING ROOM.

18 Q OKAY, SO YOU WERE AS CLOSE AS YOU AND I ARE RIGHT
19 NOW?

20 A YES, SIR.

21 Q ALL RIGHT. DID YOU LOOK AT --- TELL THE JURY ONCE
22 AGAIN ---

23 A I LOOKED RIGHT --- I LOOKED RIGHT AT HIM AND I SAW
24 HIS FACE BUT HE HAD ON A LEATHER COAT AND HE HAD GRAY HAIR
25 IN HIS HEAD.

SHERIKA SANDERS - DIRECT BY MR. LIFSEY

131

1 Q OKAY. IS THERE ANY DOUBT IN YOUR MIND THAT THAT'S
2 THE MAN SITTING RIGHT OVER THERE THAT YOU SAW THAT DAY
3 COMING DOWN YOUR STAIRS?

4 A YES, SIR, THAT WAS HIM. I WOULD NEVER PUT IT ON HIM
5 IF IT WASN'T HIM. THAT WAS HIM.

6 Q OKAY. WHAT DID YOU DO --- HE TOOK OFF RUNNING OUT
7 YOUR FRONT DOOR?

8 A YES, BECAUSE I --- WHEN I CAME IN THE DOOR I LEFT THE
9 DOOR WIDE OPEN, YOU KNOW, SO HE LEFT OUT THE FRONT DOOR.
10 I WENT OUT THE BACK DOOR CALLING FOR HELP I MEAN BECAUSE
11 WASN'T NOTHING REALLY I --- I WAS PREGNANT SO.

12 Q I IMAGINE YOU WERE SCARED?

13 A YES, SIR.

14 Q ALL RIGHT. YOU WENT OUT CALLING AND HOLLERING. WHAT
15 HAPPENED THEN? DID ANYBODY ---

16 A BY THAT TIME MY NEIGHBOR SHE RAN OUT THE DOOR AND SHE
17 SAID THAT HE PASSED HER --- HE --- I GUESS HE WAS GOING TO
18 RUN IN THERE BUT HE LOOKED IN HERE AND KEPT GOING SO, BY
19 THAT TIME I ASKED HER TO CALL 9-1-1 BUT SHE COULDN'T
20 HARDLY TALK AND I COULDN'T HARDLY TALK SO THEY DIDN'T
21 UNDERSTAND WHAT WE WERE SAYING, SO I GUESS THEY CAME ON
22 RIGHT BACK OVER OR RIGHT OVER.

23 Q SO Y'ALL WAS BOTH PRETTY SCARED, YOU AND THE
24 NEIGHBOR?

25 A YES.

SHERIKA SANDERS - DIRECT BY MR. LIFSEY

132

1 Q HOW LONG DID IT TAKE THE POLICE TO GET THERE? DID IT
2 TAKE A LONG TIME?

3 A IT DIDN'T TAKE NO TIME.

4 Q AFTER THE POLICE GOT THERE --- I'M GOING TO SHOW YOU
5 ---

6 MR. LIFSEY - CAN I HAVE THIS MARKED AS --- FOR
7 IDENTIFICATION PURPOSES --- MARKED FOR IDENTIFICATION AS
8 STATE'S EXHIBIT, I GUESS WOULD BE 2.

9 (DOCUMENT MARKED FOR IDENTIFICATION AS STATE'S
10 EXHIBIT NUMBER 2.)

11 Q I'M GOING TO SHOW YOU THESE THINGS, THIS THAT I'VE
12 MARKED AS STATE'S EXHIBIT 2 FOR IDENTIFICATION PURPOSES.
13 DO YOU KNOW WHAT THAT IS?

14 A YES, SIR.

15 Q WHAT IS THAT?

16 A A NECKLACE WITH MY DAUGHTER'S PICTURE ON IT.

17 Q OKAY. THIS STUFF BELONGS TO YOU THAT'S IN HERE?

18 A YES, SIR.

19 Q OKAY. WHO SHOWED YOU THIS?

20 A THE OFFICER.

21 Q WAS IT THIS OFFICER RIGHT HERE?

22 A YES, SIR.

23 Q OKAY. SO THIS MAN AT SOME POINT CAME AND SHOWED YOU
24 THESE ITEMS AND SAID ---

25 A WAS THIS MY ITEM?

SHERIKA SANDERS - DIRECT BY MR. LIFSEY

133

1 Q HUH?

2 A HE ASKED THIS WAS THIS MY ITEM; I SAID YES.

3 Q AND YOU TOLD HIM IT WAS YOURS?

4 A YES, SIR.

5 Q OKAY. DID A POLICE OFFICER ULTIMATELY TAKE YOU TO A
6 BLOCK OR TWO AWAY TO CHESTERFIELD AVENUE TO LOOK AT
7 SOMEBODY?

8 A YES, SIR.

9 Q OKAY. WHO WAS --- DO YOU --- I'M GOING TO --- EXCUSE
10 ME. THE POLICE CARRIED YOU IN A --- PUT YOU IN ONE OF
11 THEIR VEHICLES AND CARRIED YOU OVER TO CHESTERFIELD
12 AVENUE?

13 A YES, SIR.

14 Q WHO DID YOU --- WHAT DID YOU SEE --- DESCRIBE THE
15 SCENE, WHAT YOU SAW ON CHESTERFIELD AVENUE.

16 A WHEN I. PULLED UP I SAW RANDOLPH FRAZIER STANDING
17 BESIDE, I THINK IT WAS TWO OFFICERS, MAYBE IN HAND-CUFFS,
18 BUT HE DID NOT HAVE THE LEATHER COAT ON. HE JUST HAD ON
19 THE SHIRT HE HAD ON.

20 Q HOW LONG IN TIME WAS IT FROM WHEN YOU SAW HIM IN YOUR
21 APARTMENT COMING DOWN YOUR STAIRS TO WHEN YOU SAW HIM WITH
22 THE POLICE OFFICERS ON CHESTERFIELD AVENUE?

23 A IT WAS ABOUT FIFTEEN MINUTES.

24 Q OKAY. WHAT DID YOU --- DID THE POLICE ASK YOU WHO
25 THAT WAS OR DID THEY ASK YOU IF YOU RECOGNIZE ANYBODY WHEN

SHERIKA SANDERS - CROSS BY MR. FRICK

134

1 YOU GOT OVER?

2 A YES, THEY ASKED ME DID I RECOGNIZE HIM. I SAID, YES,
3 THAT WAS THE MAN THAT WAS IN MY APARTMENT.

4 Q OKAY. AND ONCE AGAIN, THAT MAN YOU'RE REFERRING TO
5 IS THIS MAN SITTING OVER HERE, RANDOLPH FRAZIER?

6 A YES, SIR.

7 Q ALL RIGHT. DID YOU HESITATE OR WAS THERE ANY DOUBT
8 IN YOUR MIND WHEN YOU SAW HIM ON THE SIDE OF THE ROAD?

9 A NO, SIR, IT WAS NO DOUBT. AS SOON AS I SAW HIM, I
10 SAID THAT WAS HIM.

11 Q SO YOU DIDN'T HAVE ANY DOUBTS IN YOUR APARTMENT ---

12 A NO, SIR.

13 Q --- WHEN YOU SAW HIM? DID YOU HAVE ANY --- YOU
14 DIDN'T HAVE ANY DOUBTS ON THE SIDE OF THE ROAD?

15 A NO, SIR.

16 Q YOU GOT ANY DOUBTS TODAY THAT THAT'S THE MAN THAT YOU
17 SAW?

18 A NO, SIR.

19 MR. LIFSEY - BEG THE COURT'S INDULGENCE JUST A
20 MOMENT. I DON'T THINK I HAVE ANY FURTHER QUESTIONS,
21 JUDGE.

22 CROSS EXAMINATION

23 BY MR. FRICK -

24 Q MS. SANDERS, YOU SAID YOU WERE IN THE PROCESS OF
25 MOVING?

SHERIKA SANDERS - CROSS BY MR. FRICK

135

- 1 A I WAS IN THE PROCESS. AT THE TIME I WAS.
- 2 Q OKAY. WERE YOU STAYING AT YOUR NEW PLACE OR ---
- 3 A NO, I WAS STAYING IN THAT APARTMENT.
- 4 Q OKAY. ALL RIGHT. AND ABOUT WHAT TIME DID YOU LEAVE
- 5 THAT MORNING? DO YOU RECALL? I KNOW YOU DON'T ---
- 6 A I CAN'T REMEMBER THAT.
- 7 Q OKAY. ABOUT HOW LONG WERE YOU GONE?
- 8 A IT WASN'T EVEN --- PROBABLY ABOUT TWENTY MINUTES,
- 9 TWENTY-FIVE MINUTES.
- 10 Q OKAY. THE BACK DOOR YOU SAY WAS OPEN. WAS IT GAPING
- 11 OPEN? WHAT'D IT LOOK LIKE?
- 12 A THE BLINDS WERE TORN DOWN AND THE CURTAINS WAS MESSED
- 13 UP, AND THE DOOR WAS OPEN. I KNOW --- EARLY IN THE
- 14 MORNING I DON'T GO OUT MY DOOR LIKE THAT, MY BACK DOOR.
- 15 Q OKAY. ALL RIGHT. ABOUT HOW LONG WERE YOU IN THE
- 16 HOUSE BEFORE YOU HEAR FOOTSTEPS?
- 17 A IT WASN'T EVEN --- PROBABLY ABOUT SEVEN MINUTES.
- 18 Q OKAY. WERE YOU HEADING UPSTAIRS AT THE TIME OR WERE
- 19 YOU STILL LOOKING AROUND?
- 20 A NO, I WAS STILL DOWNSTAIRS.
- 21 Q OKAY. DID YOU INTEND ON GOING UPSTAIRS?
- 22 A NO.
- 23 Q OKAY. IF I'M AT THE BOTTOM OF YOUR STAIRS --- I MEAN
- 24 IF I'M STANDING ON THE BOTTOM STEP, WHAT'S GOING TO BE IN
- 25 FRONT OF ME IN THAT APARTMENT?

SHERIKA SANDERS - CROSS BY MR. FRICK

136

- 1 A STAIRS? WHAT YOU MEAN?
- 2 Q I MEAN IF I'M ON THE BOTTOM STEP, LET'S SAY I'VE COME
- 3 DOWNSTAIRS AND I'M STANDING ON THE BOTTOM STEP OF THOSE
- 4 STAIRS ---
- 5 A (INDICATING YES)
- 6 Q --- AND I LOOK STRAIGHT AHEAD ---
- 7 A THE BATHROOM.
- 8 Q --- WHAT AM I LOOKING AT?
- 9 A THE BATHROOM.
- 10 Q THE BATHROOM? WHERE'S THE FRONT DOOR?
- 11 A THE FRONT DOOR RIGHT BEHIND YOU.
- 12 Q THE FRONT DOOR IS BEHIND ME.
- 13 A YES.
- 14 Q WELL, WAIT A MINUTE. NOW HOLD ON. LET'S MAKE SURE
- 15 I'M CLEAR. I'M STANDING ON THE STEPS.
- 16 A (INDICATING YES)
- 17 Q THE FRONT DOOR IS UNDER THE STEPS?
- 18 A WHAT YOU MEAN? I MEAN --- YOU STANDING ON THE STEPS
- 19 --- ON THE BOTTOM OF THE STEPS, THE DOOR IS RIGHT BEHIND,
- 20 SO AS SOON AS YOU OPEN MY DOOR MY STEPS IS RIGHT THERE ---
- 21 Q OKAY.
- 22 A --- ON THE RIGHT AND MY LIVING ROOM RIGHT THERE.
- 23 Q OKAY. I'M --- I'M NOT STARING UP THE STEPS.
- 24 A OH, SO WHAT YOU TALKING ABOUT?
- 25 Q I'M TALKING ABOUT, I'M STANDING ON THE VERY BOTTOM

SHERIKA SANDERS - CROSS BY MR. FRICK

137

1 STEP LOOKING STRAIGHT AHEAD BUT NOT LOOKING UP THE STAIRS

2 ---

3 A OH, BUT LOOKING --- OH, MY LIVING ROOM.

4 Q OKAY. THE LIVING ROOM'S IN FRONT OF ME.

5 A YES.

6 Q ALL RIGHT. WHERE'S THE FRONT DOOR?

7 A THE FRONT DOOR RIGHT THERE BEHIND YOU.

8 Q RIGHT THERE? IS IT ON THE SIDE?

9 A IT'S LIKE ON THE SIDE, LIKE TO THE LEFT.

10 Q OKAY. ALL RIGHT. IT'S ON THE LEFT SIDE.

11 A (INDICATING YES)

12 Q WHERE'S THE BACK DOOR? THIS WAY?

13 A THE BACK DOOR IS STRAIGHT --- MY LIVING ROOM IS RIGHT

14 HERE AND THAT BACK DOOR RIGHT THERE. THE --- MY FRONT

15 DOOR IS RIGHT THERE STRAIGHT IN FRONT OF MY BACK DOOR, SO

16 WHEN YOU IN FRONT OF MY BACK --- MY FRONT DOOR, YOU CAN

17 LOOK RIGHT AT MY BACK DOOR.

18 Q OKAY. ALL RIGHT. WHERE WERE YOU STANDING?

19 A I WAS STANDING LIKE IN BETWEEN THE BATHROOM DOOR AND

20 THE KIT --- I MEAN AND THE LIVING ROOM.

21 Q SO IF I'M ON YOUR BOTTOM STEP, AM I ON YOUR RIGHT OR

22 YOUR LEFT? RIGHT OR LEFT?

23 A IF YOU ON WHAT NOW?

24 Q IF I'M ON THAT SAME BOTTOM STEP, I HADN'T MOVED; I'M

25 STILL STARING ---

SHERIKA SANDERS - CROSS BY MR. FRICK

138

- 1 A IN MY LIVING ROOM?
- 2 Q (INDICATING YES)
- 3 A WHAT YOU MEAN? OKAY, MY DOOR IS RIGHT BEHIND YOU, SO
- 4 WHICH WAY YOU LOOKING? RIGHT AT MY LIVING ROOM?
- 5 Q ALL RIGHT. FRONT DOOR IS ON SIDE OF THE APARTMENT,
- 6 BACK DOOR IS ON THE OTHER SIDE OF THE OTHER SIDE OF THE
- 7 APARTMENT. CORRECT?
- 8 A YES, RIGHT --- AND THEY RIGHT THERE STRAIGHT AHEAD.
- 9 Q OKAY. LET'S SAY THIS IS THE FRONT DOOR. LET'S SAY
- 10 MY LEFT HAND IS THE FRONT DOOR.
- 11 A (INDICATING YES)
- 12 Q THE STAIRS ARE OVER IN THIS AREA.
- 13 A ON THE RIGHT.
- 14 Q ON THE RIGHT SIDE.
- 15 A (INDICATING YES)
- 16 Q OKAY. HERE ARE THE --- HERE'S --- MY RIGHT HAND IS
- 17 DOWNSTAIRS.
- 18 A OKAY, MY DOOR IS FACING ME. WHEN YOU COME IN MY
- 19 APARTMENT, MY STEPS IS RIGHT HERE. I'M GOING IN LIKE ---
- 20 I'M GOING IN RIGHT NOW, MY STEPS IS ON THE RIGHT AND MY
- 21 LIVING ROOM WAS RIGHT HERE ON THE LEFT.
- 22 Q OKAY. YOU'RE STANDING BESIDE THE STEPS? IS THAT
- 23 ABOUT WHERE THE KITCHEN IS OR --- I'M SORRY --- YOU SAID
- 24 YOUR BATHROOM.
- 25 A YES, MY BATHROOM IS RIGHT THERE. MY LIVING ROOM

SHERIKA SANDERS - CROSS BY MR. FRICK

139

1 RIGHT HERE, AND MY BATHROOM IS RIGHT HERE.

2 Q ALL RIGHT. YOU HEAR STEPS, YOU COME OUT OF THAT
3 BATHROOM AREA. RIGHT?

4 A HUH?

5 Q YOU HEAR STEPS ---

6 A YES, COMING DOWN --- COMING DOWN THE STAIRS, AND SO
7 WHEN I TURN AROUND AND I SEE HIM AND HE LOOK AT ME BUT HE
8 RUN OUT THE FRONT DOOR.

9 Q OKAY. Y'ALL FACE TO FACE AND THEN HE TURNS AND RUNS
10 OUT THE DOOR?

11 A YES, HE RUN OUT THE DOOR. HE HOLDING SOMETHING IN
12 HIS JACKET.

13 Q OKAY. AND YOU TURNED AND RAN THEN OUT THE OTHER
14 DOOR.

15 A NO, I RAN --- YES, I RAN OUT THE BACK DOOR.

16 Q OKAY. BUT YOU HAD TO TURN TO RUN. RIGHT?

17 A NO, I JUST RUN STRAIGHT.

18 Q OKAY. ABOUT HOW LONG DID Y'ALL MAKE EYE CONTACT?

19 A ABOUT TWO MINUTES, BUT I KNOW WHAT I SAW. I --- I
20 LOOKED RIGHT AT HIM.

21 Q TWO MINUTES?

22 A IT WASN'T EVEN --- I MEAN ABOUT THREE OR TWO MINUTES.
23 YES, I LOOKED RIGHT AT HIS FACE. I KNOW WHAT I SAW.

24 Q YOU STARED AT HIM FOR TWO MINUTES?

25 A I LOOKED AT HIM LONG ENOUGH TO KNOW WHO HE WAS AND TO

SHERIKA SANDERS - CROSS BY MR. FRICK

140

- 1 SEE HIS FACE AGAIN.
- 2 Q YOU'RE SAYING THAT YOU STARED AT HIM FOR TWO MINUTES?
- 3 A I DIDN'T KEEP UP WITH THE TIME BUT I KNOW WHAT I SAW.
- 4 Q OKAY. AND THEN YOU TOOK OFF OUT THE BACK DOOR. I
- 5 MEAN ---
- 6 A HE RUN OUT THE FRONT DOOR. I RAN --- I WASN'T GOING
- 7 TO RUN BEHIND HIM.
- 8 Q I UNDERSTAND. I --- WHAT --- WHAT I'M SAYING IS, YOU
- 9 --- WHEN YOU CONFRONT THIS PERSON IT IS A FRIGHTENING
- 10 EXPERIENCE. AM I CORRECT?
- 11 A YES, AND I RUN OUT THE BACK DOOR.
- 12 Q OKAY. ALL RIGHT. DID YOU NOTICE WHAT HE HAD ON?
- 13 A I NOTICED THE JACKET AND I NOTICED HE HAD GRAY HAIR
- 14 ON HIS HEAD.
- 15 Q DID YOU NOTICE A COLOR OF THE JACKET?
- 16 A AT THE TIME IT WAS GRAY WHEN I LOOKED AT IT.
- 17 Q GRAY JACKET?
- 18 A YES.
- 19 Q OKAY. HOW ABOUT ANY OTHER CLOTHING? SHIRT, PANTS --
- 20 -
- 21 A I DIDN'T PAY NO ATTENTION.
- 22 Q OKAY. ALL RIGHT. ANY FACIAL FEATURES?
- 23 A NO, AT THE TIME I REMEMBER HIS GRAY HAIR, BUT I
- 24 REMEMBER HIS FACE.
- 25 Q YOU REMEMBER HIS FACE, BUT NOTHING DISTINGUISHING

SHERIKA SANDERS - CROSS BY MR. FRICK

141

1 ABOUT HIS FACE?

2 A NO.

3 Q OKAY. LET'S SKIP A BIT AHEAD. AT SOME POINT YOU
4 TALKED TO SERGEANT GRANT. AM I RIGHT?

5 A YES, SIR.

6 Q YOU GAVE HER A STATEMENT ABOUT WHAT HAPPENED WHEN YOU
7 GOT HOME. RIGHT?

8 A YES, SIR.

9 Q OKAY. DO YOU HAVE A COPY OF THAT STATEMENT? I'M
10 GOING TO SHOW YOU. IT'S THIS PART RIGHT HERE. OKAY?

11 A (INDICATING YES)

12 Q DO YOU RECOGNIZE THAT? I MEAN YOU CAN LOOK AT THAT
13 OTHER PART. IT'S JUST NOT WHAT I'M ASKING YOU TO LOOK AT.

14 A YES.

15 Q OKAY. IS THAT YOUR STATEMENT?

16 A YES, SIR.

17 Q OKAY. HERE WE GO. I THOUGHT I HAD IT SOMEWHERE. IS
18 THAT THE SAME THING I WAS JUST SHOWING YOU?

19 MR. FRICK - I HADN'T SHOWED YOU. I APOLOGIZE.

20 THIS IS THE --- I APOLOGIZE.

21 A YES, SIR.

22 Q OKAY. THAT'S YOUR STATEMENT THAT YOU GAVE TO MS.
23 GRANT. CORRECT?

24 A YES, SIR.

25 Q OKAY.

SHERIKA SANDERS - CROSS BY MR. FRICK

142

1 MR. FRICK - I GUESS I NEED TO MARK THAT
2 OFFICIALLY AS DEFENSE 1 FOR I.D.

3 (DOCUMENT MARKED FOR IDENTIFICATION AS
4 DEFENDANT'S EXHIBIT NUMBER 1.)

5 Q OKAY. WHAT I'M LOOKING AT IS YOUR SECOND --- THE
6 SECOND QUESTION THERE. WHAT DESCRIPTION DID YOU GIVE THEM
7 THAT DAY?

8 A HE WAS A BLACK MALE WITH GRAY HAIR, A LEATHER JACKET.
9 I THINK HE HAD ON BLUE JEAN PANTS.

10 Q OKAY. ALL RIGHT. SO AT THE TIME YOU THOUGHT HE HAD
11 ON BLUE JEANS?

12 A YES, AT THE TIME.

13 Q OKAY. AFTER YOU --- LET'S GO BACK. OKAY. YOU'VE
14 GONE OUT OF THE HOUSE; LAW ENFORCEMENT ARRIVES. OKAY?
15 YOU'VE SPOKEN TO THEM A LITTLE BIT.

16 A (INDICATING YES)

17 Q THEY THEN WANT YOU TO MAKE AN IDENTIFICATION.

18 A YES, SIR.

19 Q OKAY. HOW DID YOU GET TO THE SCENE?

20 A THE OFFICER IN THE YELLOW SHIRT.

21 Q OKAY. HE PUT YOU IN HIS CAR?

22 A YES, SIR.

23 Q OKAY. YOU IN THE BACK-SEAT? FRONT-SEAT?

24 A THE FRONT.

25 Q FRONT SEAT OF THE POLICE CRUISER?

SHERIKA SANDERS - CROSS BY MR. FRICK

143

- 1 A NO, WE WAS IN A ---
- 2 Q UNMARKED?
- 3 A --- UNMARKED CAR.
- 4 Q OKAY. HE DRIVES YOU TO WHERE THEY HAVE SOMEONE IN
- 5 CUSTODY?
- 6 A YES, SIR.
- 7 Q OKAY. HOW FAR AWAY WERE YOU FROM HIM?
- 8 A I WAS RIGHT ON --- WELL, HE WAS STANDING --- THEY HAD
- 9 HIM ON THE SIDEWALK, AND I WAS RIGHT THERE IN A CAR.
- 10 Q RIGHT THERE WHERE IN A CAR? IN THE STREET?
- 11 A YES.
- 12 Q OKAY. WINDOW UP OR DOWN?
- 13 A I CAN'T REMEMBER.
- 14 Q OKAY. AND YOU SEE THIS PERSON --- WHO ELSE WAS
- 15 STANDING AROUND HIM?
- 16 A OFFICERS.
- 17 Q ANYBODY BUT POLICE OFFICERS?
- 18 A WELL, HIM AND THE OFFICERS.
- 19 Q OKAY. GOOD POINT. WAS THERE ANY OTHER BLACK MALE?
- 20 A NO, SIR.
- 21 Q OKAY. AND YOU SAY THE PERSON THAT YOU SEE IS NOT
- 22 WEARING A JACKET?
- 23 A AT THE TIME HE WASN'T WEARING A JACKET.
- 24 Q RIGHT. WHEN YOU ---
- 25 A WHEN I SAW HIM --- WHEN THEY HAD HIM --- POLICE HAD

SHERIKA SANDERS - CROSS BY MR. FRICK

144

1 HIM IN CUSTODY, YES.

2 Q RIGHT. OKAY. NO JACKET.

3 A (NO RESPONSE)

4 Q DID YOU NOTICE ANYTHING ABOUT THE SHIRT OR THE PANTS
5 OR ---

6 A NO, I JUST LOOKED RIGHT AT HIS FACE AND I SAID THAT
7 WAS HIM.

8 Q OKAY. BECAUSE YOU STARED AT HIM FOR TWO MINUTES.

9 A I MEAN --- YES.

10 Q OKAY. AND YOU'RE ABSOLUTELY CERTAIN TODAY THE MAN
11 SITTING HERE, MR. FRAZIER ---

12 A YES, SIR.

13 Q --- HE IS THE ONE THAT WAS IN YOUR HOUSE?

14 A YES, SIR, THAT WAS HIM.

15 Q NOBODY'S TOLD YOU TO SAY THAT?

16 A WHY THEY GOING TO TELL ME? I SAW HIM MYSELF.

17 Q OKAY. I THINK THEY SHOWED YOU SOME ITEMS THAT THE
18 STATE ---

19 MR. LIFSEY - I HAVEN'T INTRODUCED IT YET. I'VE
20 JUST MARKED IT FOR IDENTIFICATION.

21 MR. FRICK - RIGHT.

22 Q STATE'S --- STATE'S EXHIBIT 1 FOR I.D.

23 A YES.

24 Q OKAY. THOSE ARE YOUR ITEMS?

25 A YES, SIR.

SHERIKA SANDERS - CROSS BY MR. FRICK

145

1 Q OKAY. DO YOU KNOW WHERE THEY FOUND THEM?

2 A IT HAD TO BE UPSTAIRS.

3 Q I MEAN WHERE DID LAW ENFORCEMENT FIND THEM?

4 A IN THE HOUSE. I MEAN YOU --- WHEN THEY FOUND IT
5 OUTSIDE SOMEWHERE? I MEAN WHEN THEY FOUND IT? I DON'T
6 KNOW. THEY DIDN'T SAY. THEY ASKED ME WAS IT MY ITEMS.

7 Q OKAY. ALL RIGHT. I'M SORRY. I MEANT TO ASK YOU ON
8 THE --- ON THE IDENTIFICATION WHEN THEY DROVE YOU UP
9 THERE. DID YOU SAY MR. FRAZIER WAS WEARING HAND-CUFFS?

10 A YES, SIR.

11 Q HE WAS WEARING HAND-CUFFS?

12 A (INDICATING YES)

13 MR. FRICK - OKAY. THANK YOU, MS. SANDERS.
14 THAT'S ALL THE QUESTIONS I HAVE.

15 MR. LIFSEY - MAY I BRIEFLY --- FIRST OF ALL, WAS
16 HER ENTIRE STATEMENT INTRODUCED OR JUST MARKED FOR
17 IDENTIFICATION?

18 MR. FRICK - NO, I JUST MARKED IT FOR I.D.

19 MR. LIFSEY - YOUR HONOR, I'D MOVE THAT --- WHAT
20 IS IT? CAN I SEE THIS? THAT'S NOT IT. I'M SORRY. YOUR
21 HONOR, I'D MOVE IT INTO EVIDENCE. I THINK THEY GOT A
22 RIGHT TO SEE THE ENTIRE STATEMENT IF HE'S GOING TO
23 QUESTION HER ABOUT ONE PORTION OF IT. I DON'T THINK
24 THERE'S ANYTHING IN HERE ---

25 MR. FRICK - AND MY ONLY QUESTION WOULD BE IS

SHERIKA SANDERS - RE-DIRECT BY MR. LIFSEY

146

1 THAT THE STATE MOVE IT INTO EVIDENCE.

2 MR. LIFSEY - OH, YES, I'LL MOVE IT INTO
3 EVIDENCE.

4 MR. FRICK - OKAY. NO OBJECTION, JUDGE.

5 MR. LIFSEY - I GUESS THAT WOULD BE --- THEN
6 BECOME STATE'S EXHIBIT 3.

7 THE COURT - WITHOUT OBJECTION.

8 (DOCUMENT MARKED INTO EVIDENCE AS STATE'S
9 EXHIBIT NUMBER 3.)

10 RE-DIRECT EXAMINATION

11 BY MR. LIFSEY -

12 Q LET ME ASK YOU THIS. MR. FRICK ASKED YOU ABOUT HOW
13 LONG YOU STARED AT HIM. DID YOU HAVE YOUR STOP-WATCH OUT
14 TRYING TO FIGURE OUT HOW LONG YOU LOOKED AT HIM?

15 A NO, SIR.

16 Q A LOT OF US ARE BAD --- I'M BAD AT ESTIMATING
17 DISTANCES. SOME OF US MIGHT BE BAD AT ESTIMATING TIMES.
18 I MEAN WAS IT --- DID YOU GET A QUICK LOOK AT HIM?

19 A A QUICK LOOK, BUT I NOTICED HIM AND I LOOKED AT HIM
20 AND I KNOW WHO HE IS AND I SAW HIM.

21 MR. LIFSEY - ALL RIGHT. THAT'S ALL I HAVE TO
22 ASK YOU.

23 THE COURT - ANYTHING ELSE?

24 RE-CROSS EXAMINATION

25 BY MR. FRICK -

SHERIKA SANDERS - RE-CROSS BY MR. FRICK

147

1 Q BUT YOU ESTIMATE THAT TO BE IN MINUTES?

2 A I KNOW WHAT I SAW. I'M NOT GOING TO --- I DON'T KNOW
3 THAT MAN. I'M NOT GOING TO PUT NOTHING ON THAT MAN. I
4 SAW THAT MAN IN MY HOUSE AND IT WAS HIM.

5 Q WAIT A MINUTE, MS. SANDERS. MY QUESTION IS, YOUR
6 TESTIMONY IS THAT YOU STARED AT HIM FOR A COUPLE OF
7 MINUTES. AM I CORRECT OR NOT?

8 A YES, SIR.

9 MR. FRICK - OKAY.

10 MR. LIFSEY - OKAY. I DON'T HAVE ANY FURTHER
11 QUESTIONS.

12 THE COURT - YOU MAY STEP DOWN. THANK YOU.

13 MR. LIFSEY - MAY I APPROACH ABOUT ONE THING.

14 (BENCH CONFERENCE WAS HELD IN THE PRESENCE OF
15 THE JURY BUT OUT OF THE HEARING OF THE JURY WHICH WAS NOT
16 REPORTED.)

17 MR. LIFSEY - YOUR HONOR, I'D CALL PATRICIA
18 CAUTHEN TO THE STAND, PLEASE.

19 PATRICIA CAUTHEN, AFTER BEING FIRST DULY SWORN,
20 TESTIFIES AS FOLLOWS:

21 MR. LIFSEY - MAY IT PLEASE THE COURT, YOUR
22 HONOR.

23 THE COURT - (INDICATING YES)

24 DIRECT EXAMINATION

25 BY MR. LIFSEY -

PATRICIA CAUTHEN - DIRECT BY MR. LIFSEY

148

- 1 Q STATE YOUR FULL NAME.
- 2 A OH, I'M SORRY.
- 3 Q THAT'S ALL RIGHT.
- 4 A PATRICIA CAUTHEN.
- 5 Q MS. CAUTHEN, WHERE DO YOU LIVE?
- 6 A ON [REDACTED].
- 7 Q WERE YOU LIVING BACK ON [REDACTED] ON FEBRUARY 5TH?
- 8 A YES, SIR.
- 9 Q WHAT --- COULD YOU TELL THIS JURY WHAT YOU KNOW ABOUT
- 10 THE BREAK-IN AT SHERIKA SANDERS' APARTMENT, WHAT YOU KNOW
- 11 ABOUT THAT?
- 12 A OKAY. I WAS SITTING ON THE COUCH.
- 13 Q I'M SORRY. YOU GOT TO SPEAK UP NOW BECAUSE I'M A
- 14 LITTLE HARD OF HEARING.
- 15 A I WAS SITTING ON THE COUCH. I HAD MADE ME SOME HOME-
- 16 MADE CHICKEN AND NOODLES.
- 17 Q OKAY.
- 18 A I WAS SITTING THERE EATING MY CHICKEN AND NOODLE
- 19 SOUP.
- 20 Q ALL RIGHT, LET ME STOP YOU JUST A MINUTE BECAUSE I
- 21 GOT TO ASK YOU --- I'M SORRY TO INTERRUPT YOU BUT I GOT TO
- 22 ASK YOU SOMETHING. NOW, YOU LIVE IN --- IT'S NOT THE SAME
- 23 APARTMENT AS HERS. A DIFFERENT APARTMENT. RIGHT?
- 24 A (INDICATING YES)
- 25 Q WAS YOUR DOOR OPEN?

PATRICIA CAUTHEN - DIRECT BY MR. LIFSEY

149

1 A YES.

2 Q ALL RIGHT. YOUR DOOR'S OPEN. DO YOU HAVE LIKE A
3 SOLID GLASS DOOR?

4 A YES, LONG SOLID --- LONG GLASS DOOR.

5 Q ALL RIGHT. WHERE WERE YOU SITTING IN YOUR APARTMENT?

6 A THIS MY COUCH; THAT'S THE DOOR RIGHT THERE.

7 Q SO YOU'RE SITTING WHERE YOU COULD LOOK --- SITTING
8 THERE EATING, BUT YOU WAS LOOKING OUT WHERE YOU COULD LOOK
9 OUT THE DOOR?

10 A (INDICATING YES)

11 Q ALL RIGHT, GO AHEAD. I'M SORRY TO INTERRUPT YOU. GO
12 AHEAD.

13 A OKAY. I WAS SITTING THERE; MY FRONT DOOR WAS OPEN.
14 I GOT A LONG GLASS DOOR AND YOU CAN SEE OUT THE DOOR REAL
15 GOOD BECAUSE I KEEP IT CLEAN, YOU KNOW, ANYWAY. AND I WAS
16 EATING MY SOUP AND HE WAS RUNNING. I HEAR SOMEBODY
17 SCREAMING. SHE WAS RUNNING. HE WAS RUNNING AND HE DID
18 LIKE THAT AND I SEED HIS FACE.

19 Q ALL RIGHT, LET ME STOP YOU A MINUTE. YOU SAID HE.

20 A RANDY --- HIS NAME RANDY?

21 Q WHO YOU TALKING ABOUT?

22 A (INDICATING)

23 Q YOU'RE POINTING AT THIS MAN RIGHT HERE THAT'S
24 STANDING NEXT --- THAT'S SITTING NEXT TO MR. FRICK IN THE
25 WHITE SHIRT?

PATRICIA CAUTHEN - DIRECT BY MR. LIESEY

150

- 1 A (INDICATING YES) YES, SIR.
- 2 Q TELL THE JURY AGAIN EXACTLY WHAT YOU SAW HIM DO?
- 3 A ALL OVER AGAIN?
- 4 Q JUST TELL THEM.
- 5 A OKAY.
- 6 Q ONE MORE TIME IN CASE I WAS TALKING AND THEY MISSED
- 7 IT. I'M SORRY.
- 8 A OH, OKAY. I WAS SITTING THERE, HAD MADE SOME HOME-
- 9 MADE CHICKEN NOODLE SOUP, SO I WAS --- AND MY --- I GOT MY
- 10 --- MY FRONT DOOR STAYS OPEN ALL THE TIME, YOU KNOW, AND
- 11 THE DOOR --- LONG GLASS DOOR. I WAS SITTING ON THE COUCH
- 12 EATING MY SOUP, THEN I HEAR SOMEBODY SCREAMING, THEN I SEE
- 13 HIM RUNNING THROUGH, THEN HE PEEKED IN MY DOOR LIKE THAT
- 14 THERE AND TROTTED ON, AND THAT'S WHAT I SEE.
- 15 Q WHAT DIRECTION WAS HEADING? DO YOU KNOW?
- 16 A OKAY, THIS MY APARTMENT RIGHT HERE. MY DOOR RIGHT
- 17 HERE. TURNED THE CORNER DOWN THERE BELOW THE OTHER
- 18 APARTMENTS, TURNED THE CORNER AND THAT WAS IT.
- 19 Q YOU GOT ANY DOUBT IN YOUR MIND THE FELLOW YOU SAW
- 20 PEEPING IN YOUR DOOR WAS RANDOLPH FRAZIER, THAT FELLOW'S
- 21 WHO SITTING OVER THERE?
- 22 A NOT --- THAT WHO I SEED.
- 23 Q ALL RIGHT. NOW DID A POLICE OFFICER A FEW MINUTES,
- 24 A LITTLE WHILE LATER TAKE YOU DOWN TO CHESTERFIELD AVENUE
- 25 TO LOOK AT A FELLOW?

PATRICIA CAUTHEN - CROSS BY MR. FRICK

151

1 A YES, SIR.

2 Q ALL RIGHT. WHO DID THEY HAVE OVER ON CHESTERFIELD
3 AVENUE?

4 A RANDY.

5 Q THAT'S RANDOLPH FRAZIER, THE SAME PERSON --- IS IT
6 THE SAME PERSON YOU SAW PEEPING IN YOUR DOOR?

7 A YES, SIR.

8 Q SAME PERSON YOU SAW ON CHESTERFIELD AVENUE?

9 A (INDICATING YES)

10 Q SAME FELLOW SITTING RIGHT OVER THERE NOW?

11 A YES, SIR.

12 Q ANY DOUBT IN YOUR MIND ABOUT THAT?

13 A NO.

14 MR. LIFSEY - I DON'T THINK I HAVE ANYTHING
15 FURTHER TO ASK YOU. IF YOU'D ANSWER ANYTHING MR. FRICK
16 HAS FOR YOU.

17 MS. CAUTHEN - ALL RIGHT.

18 CROSS EXAMINATION

19 BY MR. FRICK -

20 Q MS. CAUTHEN, ABOUT WHAT TIME DID YOU SIT DOWN TO EAT
21 YOUR SOUP?

22 A LIKE I TOLD YOU, RECALL THAT --- I DON'T KNOW WHAT
23 TIME IT WAS BECAUSE I BE EATING A FIVE COURSE MEAL UP IN
24 THE --- UP IN DURING MORNING-TIME. I DON'T KNOW.

25 Q I UNDERSTAND.

PATRICIA CAUTHEN - CROSS BY MR. FRICK

152

1 A I JUST BE EATING, HONEY.

2 Q I UNDERSTAND. BUT I MEAN WAS IT A LITTLE BEFORE
3 NOON, AFTER NOON, ANY IDEA?

4 A I DON'T HAVE THE SLIGHTEST IDEA. I WASN'T WATCHING
5 NO CLOCK.

6 Q OKAY. WERE YOU WATCHING T.V.?

7 A EATING. BECAUSE I --- HONEY, I'M KNOWS I BE LOOKING
8 AT THE DOOR ALL THE TIME, CHILD. MY DOOR STAY OPEN.

9 Q SO IS THAT A YES TO HAVING THE T.V. ON OR NOT?

10 A YES, MY T.V. WAS ON. T.V. CAN BE ON AND YOU CAN BE
11 EATING AND LOOKING AT THE SAME TIME.

12 Q OKAY. YOU WATCHING T.V., EATING AND YOU SEE SOMEBODY
13 COME BY AND DO ONE OF THESE?

14 A YES. DID LIKE THAT. NOW, YOU CAN EASILY CATCH THAT.

15 Q HE STOPPED ---

16 A YES.

17 Q --- TURNED ---

18 A LIKE THIS.

19 Q I MEAN DID HE LIKE STRIKE A HEIZMAN OR SOMETHING?
20 WHAT'D HE DO?

21 A WHAT I JUST TOLD YOU.

22 Q OKAY. BUT HE STOPPED, TURNED AND LOOKED IN YOUR
23 DOOR?

24 A YES.

25 Q ABOUT HOW LONG DID HE DO THAT?

PATRICIA CAUTHEN - CROSS BY MR. FRICK

153

1 A JUST LIKE I SAID, HE DID LIKE THAT AND I GOT TO LOOK
2 AND HE JUST TROTTED ON AND TURNED THE CORNER.

3 Q A QUICK GLANCED?

4 A I SEED, ---

5 Q OKAY.

6 A --- BECAUSE I GOT UP --- MY DOOR REAL CLEAN AND YOU
7 CAN SEE OUT OF THAT DOOR REAL GOOD.

8 Q DID YOU GET UP AND GO TO THE DOOR?

9 A I DIDN'T HAVE TO GO TO THE DOOR. THE DOOR RIGHT
10 THERE. I CAN LOOK OUT MY DOOR.

11 Q WAIT. HERE'S MY QUESTION. DON'T WANT YOU TO GET
12 AHEAD OF ME NOW. YOU SAID YOU SAW HIM GO STRAIGHT AND
13 THEN TURN THE CORNER.

14 A YES, I DID.

15 Q DID YOU GET UP AND GO LOOK AT HIM?

16 A YES, I --- WHEN HE TURNED THE CORNER --- WHEN I HEAR
17 HER SCREAMING, THAT'S WHEN I GOT UP AND I SAW HE PEEKED IN
18 MY DOOR. YES, HE DID. HE DID THAT. NOW DON'T TELL I
19 DON'T KNOW WHAT I SEED.

20 Q OKAY. ALL RIGHT. DON'T YOU THINK THAT'D BE A LITTLE
21 ODD IF YOU RUNNING FROM SOMEBODY SCREAMING, STOP AND LOOK
22 IN YOUR DOOR?

23 A SAY WHAT? WELL, WHAT NOW?

24 Q NO, NO, NO.

25 A WHAT'D YOU SAY NOW?

PATRICIA CAUTHEN - CROSS BY MR. FRICK

154

- 1 Q WHEN --- DO YOU THINK THAT THAT WAS A LITTLE STRANGE
2 THAT SOMEBODY WOULD BE RUNNING FROM SOMEBODY AND STOP AND
3 LOOK IN YOUR DOOR?
4 A NO, THAT AIN'T STRANGE.
5 Q THAT'S NOT STRANGE?
6 A NO, IT'S NOT.
7 Q OKAY.
8 A IF YOU RUNNING, YOU GOING TO PEEK --- YES, YOU GOING
9 TO SEE WHO LOOKING.
10 Q OKAY.
11 A MY DOOR THE ONLY DOOR WAS OPEN.
12 Q SO AND JUST A QUICK HEAD TURN, GONE?
13 A I SEED HIS FACE. I KNOW WHAT I SEED.
14 Q AND IN THAT QUICK GLANCE, ABSOLUTELY NO DOUBT IN YOUR
15 MIND WHO YOU SAW?
16 A THAT'S WHO I SEED.
17 Q ALL RIGHT. DID YOU SEE ANY CLOTHES?
18 A I AIN'T --- WASN'T LOOKING AT NO --- I SEED THE FACE.
19 Q OKAY, THAT'S FINE. ANYTHING PARTICULAR ABOUT HIS
20 FACE THAT YOU RECOGNIZED OR THOUGHT YOU RECOGNIZED?
21 A AIN'T NO THOUGHT. I SEED HIS FACE. AIN'T NO --- NO
22 ---
23 Q I MEAN BUT WE'RE NOT TALKING ABOUT --- AIN'T GOT A
24 MUSTACHE OR GOATEE OR SCARS OR SOMETHING LIKE THAT YOU
25 WENT --- THAT STUCK IN YOUR HEAD?

PATRICIA CAUTHEN - CROSS BY MR. FRICK

155

1 A YOU MUST'VE THOUGHT I WAS LIKE THIS HERE. NO, I SEED
2 HIS FACE. HE PEEPED IN THE DOOR. I AIN'T NO CLOSE UP IN
3 HIS FACE.

4 Q SO YOU WEREN'T EVEN CLOSE TO HIM.

5 A I --- HE --- I SEED HIS FACE IN THE DOOR.

6 Q OKAY.

7 A I KNOW WHAT I SEED.

8 Q OKAY. ALL RIGHT.

9 A I MAY HAVE A LEARNING DISABILITY, BUT I AIN'T STUPID.

10 Q I'M NOT ABOUT TO SAY YOU'RE STUPID, MS. CAUTHEN.
11 BELIEVE ME. OKAY, NOW, DID YOU --- DID YOU TALK TO THE
12 POLICE ABOUT WHAT YOU SAW? DID ANYBODY COME AND INTERVIEW
13 YOU?

14 A JUST --- OH, I DON'T KNOW THE LADY'S NAME. WHERE SHE
15 AT?

16 Q THAT'S --- I'M NOT REALLY CONCERNED WHO. DID YOU ---
17 DID YOU TALK TO ANYBODY?

18 A YES, SHE ASKED ME WHAT --- WHAT DID I SEE AND I TOLD
19 HER THE SAME THING WHAT I'M TELLING YOU.

20 Q WAS IT MS. GRANT?

21 A I DON'T KNOW THE --- I DON'T KNOW NO OFFICER'S NAME.
22 I DON'T KNOW NONE OF THEM'S NAMES.

23 Q OKAY. ALL RIGHT. DID YOU NOT TELL THEM THAT HE WAS
24 WEARING A BROWN COAT?

25 A DID NOT --- I TOLD YOU THAT --- I NOT RECALL THAT I

PATRICIA CAUTHEN - CROSS BY MR. FRICK

156

1 AIN'T --- I AIN'T SAID I RECALL --- I DID NOT SAY THAT,
2 BUT I KNOW I SEED HIS FACE.

3 (DISCUSSION IS HELD BETWEEN COUNSEL WHICH WAS
4 NOT REPORTED)

5 Q MS. CAUTHEN, LET'S GO TO WHEN THEY TAKE YOU TO GO SEE
6 WHO'S STANDING ON THE SIDE OF THE ROAD.

7 A SAY WHAT NOW?

8 Q DID YOU GET IN THE POLICE CAR?

9 A YES, SIR.

10 Q OKAY. WAS IT A MARKED CAR, AN UNMARKED CAR?

11 A AN UNMARKED CAR.

12 Q UNMARKED CAR?

13 A LIKE A EXPEDITION, EXPLORER WHATEVER IT IS.

14 Q DO YOU REMEMBER WHO ---

15 A I DON'T KNOW THE NAME OF NO CARS. I TOLD YOU I CAN'T
16 READ.

17 Q OKAY. THAT'S FINE. DO YOU REMEMBER WHO TOOK YOU?

18 A YOU TOLD ME NEVER MIND ABOUT THE LADY, WHEN I TOLD
19 YOU THE LADY ---

20 Q I AIN'T WORRIED ABOUT THAT ONE. I'M WORRIED ABOUT
21 THIS ONE.

22 A WELL, I DON'T --- THIS THE SAME LADY THAT HAD ---
23 THAT CARRIED ME UP THERE. I DON'T KNOW HER NAME.

24 Q OKAY. SAME LADY. INVESTIGATOR LADY?

25 A I DON'T KNOW WHAT SHE WAS, BUT I KNOW SHE WAS A COP.

PATRICIA CAUTHEN - CROSS BY MR. FRICK

157

- 1 I KNOW SHE CARRIED ME UP THERE.
- 2 Q DID SHE HAVE A UNIFORM ON?
- 3 A SHE HAD ON SOMETHING. SOME KIND OF --- I DON'T KNOW
- 4 WHAT SHE HAD ON. I KNOW SHE WAS A COP.
- 5 Q OKAY. IF YOU SEE HER IN HERE, WOULD YOU RECOGNIZE
- 6 HER?
- 7 A (INDICATING YES) IF SHE WAS IN HERE. (INDICATING
- 8 YES)
- 9 Q OKAY.
- 10 A SHE GOT BLONDE HAIR, HAIR COME ABOUT RIGHT HERE.
- 11 Q OKAY. ALL RIGHT. WERE YOU SITTING IN THE FRONT
- 12 SEAT, BACK SEAT?
- 13 A SHE HAD ME IN THE FRONT.
- 14 Q FRONT SEAT? OKAY. DRIVE UP TO CHESTERFIELD AVENUE.
- 15 RIGHT?
- 16 A (INDICATING YES)
- 17 Q SEE WHO YOU SAY IS MR. FRAZIER?
- 18 A (INDICATING YES)
- 19 Q OKAY. HE GOT HAND-CUFFS?
- 20 A I WASN'T PAYING NO ATTENTION TO NO HAND-CUFFS.
- 21 Q OKAY.
- 22 A I TOLD YOU THAT EARLIER.
- 23 Q OKAY. I KNOW, THAT WAS ANOTHER TIME. I GOT TO DO
- 24 THIS NOW.
- 25 A OKAY THEN.

PATRICIA CAUTHEN - CROSS BY MR. FRICK

158

- 1 Q HAND-CUFFS OR NO? DON'T REMEMBER?
- 2 A (INDICATING NO)
- 3 Q OKAY. JACKET ON OR NOT?
- 4 A I JUST SEE THE FACE. SHE ASKED ME WAS THAT HIM, AND
- 5 I YES, THAT'S THE ONE THAT I SEED --- I SEED, FACE.
- 6 Q CONCENTRATING ON THE FACE, ---
- 7 A (INDICATING YES)
- 8 Q --- NOT SEEING ANYTHING ELSE IN THE WORLD?
- 9 A I WAS LOOKING --- I WAS LOOKING AT THE FACE. I AIN'T
- 10 LOOKING AT NO CLOTHES.
- 11 Q COULDN'T TELL ME WHETHER IT WAS DAY OR NIGHT?
- 12 A IT WAS DAYLIGHT. I KNEW --- I KNEW SUN WAS SHINING.
- 13 Q SO YOU WERE LOOKING AT OTHER THINGS. ALL RIGHT.
- 14 ABOUT HOW FAR AWAY FROM HIM WERE YOU IN THE CAR?
- 15 A I DON'T KNOW.
- 16 Q OKAY. I MEAN WHERE WAS HE?
- 17 A ON THE SIDEWALK.
- 18 Q OKAY. AND YOU IN THE CAR ON THE ROAD OR DID YOU PULL
- 19 UP TO THIS SIDEWALK?
- 20 A LIKE THIS THE SIDEWALK. WE WAS AT THE ROAD PART LIKE
- 21 THAT RIGHT THERE. HE LIKE ACROSS FROM US LIKE THAT. LIKE
- 22 WHERE YOU AT.
- 23 Q OKAY. THIS CLOSE?
- 24 A NOT THAT CLOSE, JUST A LITTLE BIT --- LITTLE BIT.
- 25 Q OKAY. ALL RIGHT.

PATRICIA CAUTHEN - CROSS BY MR. FRICK

159

1 A NOT TOO FAR.

2 Q I'M NOT BACKING UP TO THAT.

3 A OKAY.

4 Q SO YOU DIDN'T NOTICE ANYTHING ELSE ABOUT HIM?

5 A LIKE I SAY THAT --- I KNOW HIS FACE. I KNOW WHO
6 PEEKED IN MY DOOR. I KNOW WHO I SEED.

7 MR. FRICK - OKAY. THAT'S FINE. THAT'S ALL THE
8 QUESTIONS I HAVE. THANK YOU, MA'AM.

9 MR. LIFSEY - I DON'T HAVE ANYTHING FURTHER.

10 THE COURT - LET ME TALK TO Y'ALL A MINUTE.

11 (BENCH CONFERENCE WAS HELD IN THE PRESENCE OF
12 THE JURY BUT OUT OF THE HEARING OF THE JURY WHICH WAS NOT
13 REPORTED.)

14 THE COURT - WE'VE GOT TO TAKE A RESTROOM BREAK
15 RIGHT QUICK. IF THE JURY WILL STEP BACK TO THEIR ROOM.
16 HE'LL SHOW YOU A RESTROOM Y'ALL CAN USE.

17 MR. LIFSEY - CAN SHE BE EXCUSED?

18 THE COURT - SURE? NO, YOU DON'T CARE, DO YOU?

19 MR. FRICK - I THINK I MAY AND I'LL TELL YOU,
20 BECAUSE I THINK I MAY HAVE ISSUED A SUBPOENA BASED ON THIS
21 MORNING. I WILL PROBABLY NOT NEED HER.

22 MR. LIFSEY - SO SHE CAN GO?

23 MR. FRICK - YES. ALL RIGHT. I DID --- I JUST
24 WANTED TO LET YOU KNOW THAT ---

25 THE COURT - ALL RIGHT. WE'LL BE IN RECESS FOR

FRANK STRAIN - DIRECT BY MR. LIFSEY

160

1 A FEW MINUTES.

2 (JURY EXITS THE COURTROOM)

3 (RECESS TAKEN)

4 MR. LIFSEY - I'M READY.

5 THE COURT - OKAY.

6 (JURY RETURNS TO THE COURTROOM)

7 THE COURT - OKAY.

8 MR. LIFSEY - YOUR HONOR, I CALL FRANK STRAIN TO
9 THE STAND.

10 FRANK STRAIN, AFTER BEING FIRST DULY SWORN,

11 TESTIFIES AS FOLLOWS:

12 DIRECT EXAMINATION

13 BY MR. LIFSEY -

14 Q STATE YOUR FULL NAME, PLEASE?

15 A JERRY FRANKLIN STRAIN.

16 Q MR. STRAIN, WHERE DO YOU LIVE?

17 A [REDACTED]

18 Q ALL RIGHT, AND YOU LIVING ON THE [REDACTED]

19 [REDACTED] BACK IN FEBRUARY ON FEBRUARY 5TH?

20 A YES, SIR.

21 Q ALL RIGHT, WOULD YOU TELL THE JURY WHAT YOU SAW
22 REGARDING THIS BREAK-IN AT MS. SANDERS' HOUSE?

23 A WELL, I WAS SITTING IN THE HOUSE AND I SEEN SOMEBODY
24 RUN PAST THE DOOR DOWN THERE.

25 Q ALL RIGHT, LET ME ASK YOU --- LET ME STOP YOU A

FRANK STRAIN - DIRECT BY MR. LIFSEY

161

1 MINUTE. YOU SAY RUN --- WAS YOUR DOOR OPEN?

2 A YES, DOOR OPEN. YES.

3 Q DID YOU HAVE A GLASS DOOR LIKE THE OTHER LADY WAS
4 DESCRIBING?

5 A GLASS DOOR. RIGHT.

6 Q ALL RIGHT. GO AHEAD. I'M SORRY. WHAT'D YOU SEE OUT
7 YOUR DOOR?

8 A ALL RIGHT, I JUST SEEN BLACK GUY RUNNING BY, WHITE
9 HAIR AND I JUST GOT UP THEN AND LOOKED OUT THERE. I JUST
10 CAUGHT AT THE GLANCE OF THE FENCE DOWN THERE, BECAUSE THE
11 FENCE THAT CROSS OVER TO THE OTHER SIDE THERE, AND HE HAD
12 --- IT WAS A BLACK COAT ON, BUT I CAUGHT HIS BLACK SHOES
13 HE WAS WEARING, TOO, WHAT HE HAD ON, BLACK SHOES.

14 Q NOW, YOU DIDN'T GET A GOOD LOOK AT THIS FACE THEN,
15 DID YOU?

16 A NO. NEVER DID ---

17 Q YOU CAN'T REALLY SAY WHO IT WAS BUT YOU COULD
18 DESCRIBE WHAT HE WAS WEARING. IS THAT RIGHT?

19 A YES, SIR.

20 Q AND TELL --- ONCE AGAIN, TELL THE JURY ONE MORE TIME
21 WHAT YOU SAID HE HAD ON?

22 A HE HAD --- IT WAS BLACK COLORED JACKET AND BLACK
23 SHOES ON.

24 Q ALL RIGHT. DID THE BLACK SHOES STRIKE YOU KIND OF
25 UNUSUAL, I GUESS?

FRANK STRAIN - DIRECT BY MR. LIFSEY

162

1 A YES, THEY DID.

2 Q DON'T OFTEN SEE PEOPLE RUNNING IN BLACK SHOES I
3 GUESS?

4 A RIGHT.

5 Q LATER ON DID YOU FIND OUT SOMETHING HAD HAPPENED ---

6 A YES, AFTER ---

7 Q --- THAT THERE'D BEEN A BREAK-IN?

8 A --- WE LEFT THE DOOR. EVERYBODY WAS OUT THERE
9 TALKING ABOUT YOU KNOW SOMEBODY --- SOMEBODY WENT IN
10 SOMEBODY HOUSE UP THERE.

11 Q SO IT WAS PRETTY CLOSE FROM WHEN YOU SAW HIM RUNNING
12 BY TIL EVERYBODY WAS CARRYING ON ABOUT A BREAK-IN AND ALL?

13 A YES, JUST RIGHT AROUND THE CORNER THERE.

14 Q ALL RIGHT. BUT I MEAN CLOSE IN TIME. IT WAS PRETTY
15 ---

16 A YES.

17 Q --- BAD, BUT IT WASN'T LIKE TWENTY MINUTES BETWEEN
18 ONE AND THE OTHER THEN, WAS IT?

19 A NO. NO. (INDICATING NO) JUST A LITTLE MORE THAN
20 ABOUT SEVEN MINUTES AFTER THAT, YOU KNOW.

21 Q ALL RIGHT. DID POLICE OFFICERS ULTIMATELY COME AND
22 TALK TO YOU ABOUT THAT YOU SAW?

23 A YES.

24 Q DID THEY TAKE YOU TO SEE SOMEBODY ON CHESTERFIELD
25 AVENUE?

FRANK STRAIN - DIRECT BY MR. LIFSEY

163

1 A YES, WE WENT UP TO --- WENT UP THE ROAD ABOUT A BLOCK
2 AND HE WAS STANDING OUT THERE WITH TWO OFFICERS, MR.
3 FRAZIER RIGHT HERE.

4 Q ALL RIGHT. AND YOU KNOW RANDOLPH FRAZIER. RIGHT?

5 A YES, SIR.

6 Q AND RANDOLPH FRAZIER WAS THE MAN THAT THE OFFICERS
7 HAD ON CHESTERFIELD AVENUE. IS THAT RIGHT?

8 A YES, SIR.

9 Q OKAY. WHAT DID HE HAVE --- DID HE --- YOU MENTIONED
10 --- YOU NOTICED THE FIRST TIME A BLACK JACKET AND BLACK
11 SHOES?

12 A (INDICATING YES)

13 Q HE HAD BLACK SHOES. ALL I SEE WAS BLACK SHOES, THEN
14 I SEEN THE BLACK JACKET. HE WASN'T --- I DON'T THINK HE
15 HAD THE BLACK JACKET ON. ONLY HE HAD IT IN HIS HAND.

16 Q OKAY. I'M GOING TO SHOW YOU SOMETHING. I'M NOT
17 ASKING A HUNDRED PERCENT --- LET ME START WITH THE JACKET.

18 MR. LIFSEY - CAN I HAVE THIS MARKED FOR
19 IDENTIFICATION THE NEXT STATE'S EXHIBIT? MAYBE --- MAYBE
20 I'LL MARK THE BAG. I'D JUST MARK THE BAG MIGHT BE EASIER.

21 (BAG MARKED AS FOR IDENTIFICATION AS STATE'S
22 EXHIBIT NUMBER 4.)

23 Q DOES THIS LOOK LIKE THE JACKET?

24 A THAT LOOK LIKE THE DARK JACKET. RIGHT.

25 Q DOES THIS LOOK THE JACKET THE FELLOW HAND ON THAT RAN

FRANK STRAIN - CROSS BY MR. FRICK

164

1 PASSED-YOUR DOOR?

2 A YES, SIR.

3 Q AND WAS THIS THE JACKET --- LOOKS LIKE THE JACKET
4 THAT RANDOLPH FRAZIER HAD ON WHEN YOU SAW HIM ON
5 CHESTERFIELD AVENUE?

6 A YES. YES, SIR.

7 Q I SHOW YOU THESE, THIS PAIR OF SHOES. DOES THIS LOOK
8 SIMILAR TO THE PAIR OF SHOES THE FELLOW HAD ON THAT RAN
9 PAST YOUR DOOR?

10 A YES, SIR. (INDICATING YES)

11 Q DO THESE LOOK LIKE THE SHOES THAT RANDOLPH FRAZIER
12 HAD ON ON CHESTERFIELD AVENUE?

13 A RIGHT.

14 MR. LIESEY - I'D HAVE THESE MARKED FOR
15 IDENTIFICATION AS THE NEXT STATE'S EXHIBIT.

16 (SHOES MARKED FOR IDENTIFICATION AS STATE'S
17 EXHIBIT NUMBER 5.)

18 MR. LIESEY - ALL RIGHT. I DON'T THINK I HAVE
19 ANY FURTHER QUESTIONS, JUDGE.

20 THE COURT - ANY QUESTIONS?

21 CROSS EXAMINATION

22 BY MR. FRICK -

23 Q MR. STRAIN, WHERE WERE YOU WHEN YOU SAW THIS PERSON
24 RUNNING BY?

25 A I WAS SITTING IN THE --- IN THE KITCHEN RIGHT THERE.

FRANK STRAIN - CROSS BY MR. FRICK

165

- 1 Q SITTING IN THE KITCHEN?
- 2 A RIGHT. LOOKING OUT THE DOOR.
- 3 Q OKAY. AND YOU GOT ONE OF THESE BIG STORM --- GLASS
- 4 STORM DOORS, TOO?
- 5 A YES, SIR.
- 6 Q IS YOURS AS CLEAN AS MS. CAUTHEN?
- 7 A UH, YOU CAN SEE OUT THE DOOR.
- 8 Q ALL RIGHT. AND YOU SAY --- YOU'RE SAYING TODAY THAT
- 9 YOU SAW SOMEBODY RUNNING BY WITH A BLACK JACKET ON?
- 10 A YES.
- 11 Q CERTAIN IT WAS A BLACK JACKET?
- 12 A YES, SIR.
- 13 Q OKAY. AND YOU SAW BLACK DRESS SHOES?
- 14 A WELL, AFTER I GOT UP AND WALKED TO THE DOOR, HE
- 15 WASN'T ALL THE WAY TO THE CORNER. I CAUGHT HIM WHEN HE
- 16 GOT TO THE CORNER. I SEEN THE BLACK --- BLACK COAT AND
- 17 THE BLACK SHOES ON.
- 18 Q OKAY. OKAY. AND --- OKAY. AND THE SOLICITOR SHOWED
- 19 YOU WHAT'S BEEN MARKED STATE'S ---
- 20 MR. FRICK - FOR I.D. RIGHT?
- 21 MR. LIFSEY - I CAN'T REMEMBER THE NUMBER, BUT
- 22 IT'S FOR IDENTIFICATION PURPOSES, YES.
- 23 Q NUMBER 5 FOR I.D. AND BEFORE HE HANDED IT TO YOU,
- 24 YOU SAID THESE ARE THE SHOES.
- 25 A RIGHT.

FRANK STRAIN - CROSS BY MR. FRICK

166

- 1 Q OKAY. YOU'RE ABSOLUTELY CERTAIN WITHOUT A DOUBT ---
- 2 A I'M SURE.
- 3 Q --- THAT THE SHOES IN NUMBER 5 ARE THE SHOES THAT
- 4 WERE ON THE FEET OF THAT PERSON?
- 5 A YES, SIR.
- 6 Q WELL, WHAT MAKES YOU SO CERTAIN?
- 7 A SAY WHAT NOW?
- 8 Q WHAT MAKES YOU SO CERTAIN?
- 9 A I THOUGHT --- YOU KNOW, BECAUSE I WAS TRYING TO LOOK
- 10 AT HIM TO SEE WAS THEY TENNIS SHOES. THEY WASN'T. THEY
- 11 WAS SLICK --- SLICK BLACK SHOES; SO THOSE GOT TO BE THE
- 12 SHOES.
- 13 Q SHOES THAT YOU HADN'T SEEN IN --- NOW IN SIX MONTHS
- 14 AND YOU'RE ABSOLUTELY CERTAIN TODAY THAT THOSE ARE THE
- 15 EXACT SHOES?
- 16 A I AM SURE THOSE ARE THE SHOES TODAY.
- 17 Q OKAY. YOU WORK IN A SHOE STORE?
- 18 A NO, SIR.
- 19 Q NOW, ON THAT DAY --- ON THE 5TH DID YOU SPEAK TO ANY
- 20 INVESTIGATORS?
- 21 A AFTERWARDS.
- 22 Q AFTER --- RIGHT. RIGHT.
- 23 A YES.
- 24 Q THEY CAME BY AND ---
- 25 A (INDICATING YES)

FRANK STRAIN - CROSS BY MR. FRICK

167

- 1 Q --- THEY TALKED TO YOU ABOUT WHAT YOU SAW AND ALL
2 THAT. RIGHT?
- 3 A (INDICATING YES) YES, SIR.
- 4 Q DO YOU REMEMBER WHICH INVESTIGATOR YOU SPOKE TO?
- 5 A THE LADY --- SHE'S NOT HERE.
- 6 Q OKAY. THE SAME BLONDE-HAIRED LADY ---
- 7 A YES.
- 8 Q --- WE BEEN TALKING ABOUT?
- 9 A (INDICATING YES)
- 10 Q OKAY. WE'LL NAME HER LATER ON IN THE TRIAL BUT ---
11 OKAY. DID YOU GIVE HER A STATEMENT AS TO WHAT YOU SAW?
- 12 A YES.
- 13 Q BUT YOU WEREN'T ABLE TO TELL HER THE COLOR OF THE
14 JACKET AT THE TIME, WERE YOU?
- 15 A BECAUSE I SAID IT WAS A DARK JACKET.
- 16 Q DARK JACKET.
- 17 A RIGHT.
- 18 Q TODAY YOU'RE CERTAIN IT'S A BLACK JACKET THOUGH,
19 AREN'T YOU?
- 20 A WELL, A DARK JACKET USUALLY IS BLACK.
- 21 Q OKAY. OKAY. ALL RIGHT. BUT AT THE TIME YOU
22 COULDN'T TELL WHETHER IT WAS BROWN ---
- 23 A NO, BECAUSE SEE WHEN YOU --- THE LIGHT REFLECTS AND
24 HIT SOMETHING IT CAN ALWAYS BE CHANGED TO DIFFERENT COLORS
25 IN --- BY --- IN THE LIGHT.

FRANK STRAIN - CROSS BY MR. FRICK

168

1 Q A CHANGING COLOR JACKET.

2 A THAT'S RIGHT.

3 Q OKAY. CAN I SEE THAT JACKET? I THINK IT'S STATE'S
4 EXHIBIT 4. DOES THAT APPEAR TO BE CHANGING ANY COLOR IN
5 THE LIGHT TO YOU?

6 A WELL, IN THE SUNLIGHT IT'S A DIFFERENT THING THAN IN
7 HERE.

8 Q THE SUNLIGHT. OKAY. ALL RIGHT. I'M NOT GOING TO
9 ASK US TO GO OUTSIDE. OKAY. DIDN'T YOU ALSO TELL
10 INVESTIGATOR GRANT THAT YOU WERE OUTSIDE WORKING ON YOUR
11 CAR?

12 A NO. I WAS OUTSIDE WORKING ON MY CAR BEFORE ALL THIS
13 HAD HAPPENED.

14 Q YOU DIDN'T TELL HER ---

15 A NO.

16 Q --- THAT YOU WERE OUTSIDE WORKING ON YOUR CAR WHEN
17 THE PERSON CAME RUNNING BY?

18 A NO, BECAUSE I WASN'T OUTSIDE.

19 Q DIDN'T SAY THAT?

20 A NO, SIR.

21 Q ALL RIGHT. DIDN'T SEE ANY FACIAL FEATURES.

22 A NO.

23 Q YOU WERE ABLE TO DETERMINE THOUGH IT WAS A BLACK MAN

24 ---

25 A YES, GRAY HAIR.

DIEDRE STURDIVANT - DIRECT BY MR. LIFSEY

169

1 Q WITH GRAY HAIR.

2 A RIGHT.

3 Q AND ASIDE FROM JACKET AND SHOES ---

4 A THAT'S IT.

5 Q --- NOTHING ELSE?

6 A NOTHING ELSE. NO.

7 Q AND YOU'RE SURE YOU'RE INSIDE SITTING ON THE COUCH?

8 A YES, SIR.

9 MR. FRICK - OKAY. THAT'S ALL THE QUESTIONS I
10 GOT. THANK YOU, SIR.

11 MR. LIFSEY - I DON'T HAVE ANY FURTHER QUESTIONS.
12 CAN HE BE EXCUSED?

13 MR. STRAIN - THANK YOU.

14 MR. FRICK - YOUR HONOR, I THINK THE SAME WITNESS
15 --- SAME THING. I'VE GOT A SUBPOENA SERVED ON HIM. I
16 THINK HE'D JUST GOTTEN IT BACK THERE, BUT IF I NEED HIM
17 I'LL CALL HIM.

18 THE COURT - FREE TO GO.

19 MR. LIFSEY - YOUR HONOR, I'D CALL DIEDRE
20 STURDIVANT TO THE STAND, PLEASE.

21 DIEDRE STURDIVANT, AFTER BEING FIRST DULY SWORN,
22 TESTIFIES AS FOLLOWS:

23 DIRECT EXAMINATION

24 BY MR. LIFSEY -

25 Q WOULD YOU STATE YOUR FULL NAME, PLEASE?

DIEDRE STURDIVANT - DIRECT BY MR. LIFSEY

170

1 A DIEDRE JANINE STURGIVANT.

2 Q MS. STURDIVANT, WHERE DO YOU LIVE?

3 A I LIVE IN CHARLOTTE, NORTH CAROLINA.

4 Q HOW ABOUT BACK IN FEBRUARY?

5 A I LIVED IN [REDACTED] LANCASTER, SOUTH
6 CAROLINA.

7 Q OKAY. WERE YOU OVER THERE NEAR THE [REDACTED]

8 [REDACTED]?

9 A YES, SIR, I WAS GOING TO PICK UP MY GRANDMOTHER.

10 Q OKAY. WHAT DO YOU KNOW? WOULD YOU TELL THE JURY
11 WHAT YOU KNOW AND WHAT YOU MIGHT'VE SEEN THAT DAY ABOUT
12 THIS CASE?

13 A I WAS TURNING RIGHT ONTO [REDACTED] OFF OF [REDACTED]
14 [REDACTED] AND I SAW A MAN RUNNING WITH A LEATHER COAT ON AND
15 GRAY HAIR. HE WAS RUNNING COMING FROM THE APARTMENTS ON
16 [REDACTED] AND HE STOPPED AND --- WHEN I SAW HIM, I
17 STOPPED MY CAR, BECAUSE HE STOPPED RUNNING AND LOOKED AT
18 ME, AND I ROLLED MY WINDOW UP, BECAUSE I HAD THE WINDOW
19 DOWN BECAUSE I WAS SMOKING, AND I ROLLED THE WINDOW UP AND
20 THEN HE TOOK OFF RUNNING UP THROUGH THE PATH OF --- BACK
21 TOWARDS IN FRONT OF ME. HE CROSSED --- CROSSED OVER IN
22 FRONT OF ME, AND THEN I SAW MS. SANDERS --- I DIDN'T KNOW
23 HER AT THE TIME. I SAW HER RUNNING OUT OF HER APARTMENT
24 SCREAMING THAT HE HAD JUST BROKE INTO HER APARTMENT.

25 Q DO YOU REMEMBER ANYTHING ABOUT WHAT HE WAS WEARING?

DIEDRE STURDIVANT - DIRECT BY MR. LIPSEY

171

- 1 A I REMEMBER THE --- A DARK LEATHER COAT.
- 2 Q IS THIS JACKET --- DO YOU BELIEVE IT TO BE SIMILAR TO
- 3 WHAT YOU SAW?
- 4 A IT'S --- IT'S SIMILAR TO THAT ONE, YES, SIR. BECAUSE
- 5 WHEN I SAW HIM RUNNING, I THOUGHT HE WAS JOGGING, BUT I
- 6 SAID, WELL, NOBODY JOGS IN A LEATHER COAT, SO THAT STRUCK
- 7 ME AS ODD.
- 8 Q ALL RIGHT. NOW, DID YOU GET A GOOD ENOUGH LOOK AT
- 9 HIS FACE TO IDENTIFY HIM?
- 10 A NO.
- 11 Q AND, IN FACT, DID THEY TRY TO GET YOU TO IDENTIFY HIM
- 12 ---
- 13 A YES, AND I SAID I --- I WASN'T SURE.
- 14 Q OKAY. SO YOU HAVEN'T BEEN ABLE TO SAY THAT THAT'S
- 15 HIM SITTING OVER THERE. YOU CAN SAY THOUGH THAT A BLACK
- 16 MALE --- DID YOU NOTICE ANYTHING ABOUT HIS HAIR?
- 17 A HE HAD GRAY HAIR, THE MAN THAT I SAW RUNNING.
- 18 Q YOU CAN SAY THAT ---
- 19 A AND NO GLASSES.
- 20 Q YOU CAN SAY THAT A BLACK MALE WITH GRAY HAIR WEARING
- 21 A DARK LEATHER JACKET WAS RUNNING AND THEN JUST A LITTLE
- 22 BIT LATER YOU SAW SHERIKA SANDERS SCREAMING?
- 23 A YES, IT WAS ALMOST SIMULTANEOUS WHENEVER I SAW IT.
- 24 MR. LIPSEY - OKAY. I DON'T HAVE ANY FURTHER
- 25 QUESTIONS FOR THIS WITNESS.

DIEDRE STURDIVANT - CROSS BY MR. FRICK

172

1 THE COURT - YOUR WITNESS.

2 MR. FRICK - THANK YOU, YOUR HONOR.

3 CROSS EXAMINATION

4 BY MR. FRICK -

5 Q AND, MS. STURDIVANT, YOU SPOKE TO INVESTIGATORS.
6 RIGHT?

7 A I SPOKE TO ONE INVESTIGATOR. SHE CAME TO MY HOUSE
8 LATER ON.

9 Q WAS IT THE SAME ONE WHO INVESTIGATOR WHAT THEY'RE
10 TALKING ABOUT?

11 A YES, IT WAS.

12 Q OKAY. YOU DON'T HAPPEN TO KNOW HER NAME, DO YOU?

13 A NO, I DON'T.

14 Q OKAY, THAT'S FINE. AND YOU TOLD HER THAT YOU MADE
15 EYE CONTACT OR SAW HIS FACE OF SOMETHING TO THAT EFFECT.
16 AM I CORRECT?

17 A YES, BUT I'M NOT GOOD WITH FACES.

18 Q OKAY. OKAY. IN FACT, I BELIEVE YOU SAID THAT YOU
19 WERE ABOUT TWENTY FEET AWAY?

20 A YES.

21 Q OKAY. BUT THEY SHOWED YOU A PHOTO LINE-UP, DID THEY
22 NOT?

23 A YES, THEY DID.

24 Q OKAY. WHEN DID THEY DO THAT?

25 A IT MAYBE --- IT MAYBE WAS A COUPLE HOURS LATER.

DIEDRE STURDIVANT - CROSS BY MR. FRICK

173

1 Q COUPLE HOURS ---

2 A THEY CAME TO MY HOUSE, BECAUSE I HAD TO GO TO GET THE
3 CAR BACK, BECAUSE MY AUNT HAD TO GO TO WORK, SO I COULDN'T
4 HANG --- THEY ASKED ME TO HANG THEN BUT I COULDN'T. I HAD
5 TO TAKE THE CAR BACK.

6 Q OKAY. AND YOU COULDN'T PICK ANYBODY OUT?

7 A NO, I DIDN'T WANT TO JUST SAY SOMETHING DEFINITE WHEN
8 I WASN'T A HUNDRED PERCENT SURE.

9 MR. FRICK - ALL RIGHT. THAT'S ALL THE QUESTIONS
10 I HAVE. THANK YOU, MA'AM.

11 MR. LIFSEY - MAY SHE BE EXCUSED?

12 MR. FRICK - IF I NEED HER I'D LIKE TO BE ABLE TO
13 GET HER BACK, BUT AS FAR AS HER SITTING AROUND THE
14 COURTROOM, I DON'T NEED THAT.

15 MR. LIFSEY - ALL RIGHT.

16 MS. STURDIVANT - WELL, I LIVE IN CHARLOTTE AND
17 I'M GOING BACK THERE NOW, SO IF YOU --- ANYTHING YOU NEED
18 FROM ME; IT'S BEST TO GET IT NOW.

19 MR. FRICK - I HAVE A MATTER I'D LIKE TO PUT ON
20 THE RECORD AT THAT POINT THEN. I WOULD LIKE TO DO IT
21 OUTSIDE THE PRESENCE OF THE JURY. I APOLOGIZE, BUT I
22 THINK IT'S SOMETHING I NEED TO DO AT THIS TIME.

23 THE COURT - OKAY. LADIES AND GENTLEMEN, IF
24 YOU'LL JUST STEP BACK JUST A MINUTE AND RELAX.

25 (JURY EXITS THE COURTROOM)

1 THE COURT - MAYBE I CAN HELP YOU A LITTLE BIT.
2 CAN YOU BE REACHED AND BE BACK DOWN HERE SAY TOMORROW OR
3 WHATEVER IF HE NEEDED YOU?

4 MS. STURDIVANT - I --- NOT ---

5 MR. FRICK - HAVE YOU BEEN SERVED WITH MY
6 SUBPOENA?

7 MS. STURDIVANT - YES, I HAVE.

8 MR. FRICK - OKAY. SO I THINK I HAVE HER UNDER
9 SUBPOENA BUT FOR THE FACT SHE'S IN CHARLOTTE ---

10 MS. STURDIVANT - AND GAS IS 4.29 A GALLON.

11 MR. FRICK - AND YOU DON'T GET REIMBURSED FOR
12 TESTIFYING IN A CRIMINAL TRIAL. YOUR HONOR, HERE'S MY
13 CONCERN. IN THE INCIDENT REPORT IT SAYS THAT SHE IS TO BE
14 SHOWN A PHOTO LINE-UP. I SEE NOTHING MORE OF A PHOTO
15 LINE-UP. I FIND OUT AS SHE'S TAKING THE STAND THAT SHE
16 WAS SHOWN A PHOTO LINE-UP AND WAS UNABLE TO IDENTIFY
17 SOMEBODY. THAT IS INFORMATION I WOULD LIKE TO HAVE HAD.
18 I THINK IT'S EXCULPATORY INFORMATION. NOW, I'M NOT SAYING
19 THAT THE SOLICITOR'S OFFICE DID ANYTHING INTENTIONAL, BUT
20 YOUR HONOR, I'VE GOT NO OPPORTUNITY TO REALLY DEAL WITH
21 THAT, AND I WOULD WANT TO PUT THAT ON THE RECORD.

22 THE COURT - ALL I CAN SAY IS, IF YOU'RE GOING TO
23 DO IT, YOU BETTER DO WHATEVER YOU'RE GOING TO DO NOW
24 UNLESS YOU ---

25 MR. FRICK - WELL, I MEAN ---

175

1 THE COURT - --- GET HER TELEPHONE NUMBER AND
2 CALL HER BACK.

3 MR. LIFSEY - MAY I PUT A COUPLE OF MATTERS ON
4 THE RECORD? FIRST OF ALL, I DIDN'T FIND OUT ANYTHING
5 ABOUT THE PHOTO LINE-UP UNTIL AT SOME POINT TODAY WHEN
6 SOMEBODY SAID THEY'D SHOWN HER A PHOTO LINE-UP AND SHE
7 COULDN'T I.D. HIM. CLEARLY, IF I'D HAVE KNOWN THAT, I'D
8 HAVE TOLD THEM, BUT HERE'S THE THING. SHE DIDN'T I.D. HIM
9 TODAY. SHE SAID --- I MEAN SHE DIDN'T GET UP --- IN OTHER
10 WORDS, I GUESS WHAT I'M SAYING IS I WOULD'VE --- I DON'T
11 KNOW WHAT HARM HE HAS SUFFERED BY NOT KNOWING THAT SHE
12 DIDN'T IDENTIFY HIM OUT OF A PHOTO LINE-UP WHEN SHE'S
13 NEVER IDENTIFIED HIM TODAY. I DON'T UNDERSTAND WHAT
14 RELIEF HE'S SEEKING FROM THE COURT IN REGARDS TO US NOT
15 DISCOVERING THAT.

16 THE COURT - WELL --- AND YOU GOT THE TESTIMONY
17 FROM HER THAT SHE SAID SHE WASN'T THAT GOOD WITH FACES AND
18 SHE JUST COULDN'T IDENTIFY HIM SO THAT --- ANYWAY ---

19 MR. FRICK - ALL RIGHT. YOUR HONOR, MY CONCERN
20 WOULD BE THAT HE --- THE SOLICITOR'S SAYING THAT HE FOUND
21 OUT THIS MORNING THAT SHE WASN'T ABLE TO IDENTIFY ANYBODY
22 AND I CERTAINLY UNDERSTAND FROM WORKING WITH THE
23 PROSECUTOR'S OFFICE YOU DON'T FIND OUT THAT INFORMATION
24 UNTIL THE DAY OF TRIAL MANY TIMES.

25 MS. STURDIVANT - I DIDN'T SPEAK WITH ---

1 MR. FRICK - BUT MY CONCERN WAS THIS WOULD'VE
2 BEEN A WITNESS I'D LIKE TO HAVE HAD PROFFERED TESTIMONY ON
3 THIS MORNING. I WAS UNABLE TO GATHER ANY OF THIS
4 INFORMATION AND WAS UNABLE TO PREPARE FOR THIS WITNESS,
5 AND I'M SURPRISED AT THIS POINT TO FIND OUT THAT SHE WAS
6 UNABLE TO I.D. SOMEBODY WHEN CLEARLY SHE GAVE A STATEMENT
7 THAT SAYS SHE WAS TWENTY FEET AWAY AND THOUGHT SHE COULD
8 I.D. SOMEBODY.

9 MR. LIFSEY - WELL, I DON'T UNDERSTAND. ARE YOU
10 COMPLAINING THAT SHE'S NOT IDENTIFYING YOUR CLIENT TODAY?
11 BECAUSE SHE DIDN'T. I MEAN I'M NOT TRYING TO BE SMART.
12 I'M JUST --- I DON'T UNDERSTAND WHAT RELIEF YOU SEEK AND
13 WHY YOU WOULD ---

14 MR. FRICK - AND ---

15 MR. LIFSEY - I DON'T KNOW WHAT RELIEF YOU SEEK.

16 MR. FRICK - QUITE FRANKLY, I CAN'T TELL YOU
17 EXACTLY WHAT RELIEF I'M SEEKING AT THIS TIME. WHAT I'M
18 SAYING, HOWEVER, THOUGH IS I'VE NOW GOT POTENTIALLY
19 EXCULPATORY EVIDENCE THAT WAS NOT PRESENTED TO ME.

20 THE COURT - WELL, I CAN RECESS AND YOU TALK WITH
21 HER AND WHATEVER YOU NEED TO DO.

22 MR. LIFSEY - I MEAN WHAT MORE CAN SHE SAY OTHER
23 THAN I CAN'T I.D. HIM WHICH IS WHAT SHE SAID.

24 MR. FRICK - WELL, I MEAN ---

25 THE COURT - THE SOLICITOR --- HE SAYS HE DIDN'T

1 KNOW IT EITHER AND ---

2 MR. FRICK - CAN I ASK THE COURT TO HAVE THE
3 SOLICITOR'S OFFICE AND LAW ENFORCEMENT TO AT LEAST PROVIDE
4 ME WITH THE PHOTO LINE-UP SO I CAN CROSS EXAMINE THE
5 INVESTIGATOR ABOUT IT?

6 MR. LIFSEY - WELL, I'M SURE --- WE'RE LOOKING
7 FOR THAT RIGHT NOW AND --- I MEAN I DON'T --- I MEAN I'VE
8 GOT IT ON MY WITNESS LIST, BUT I'M GOING TO --- I'M NOT
9 GOING TO --- IF I DON'T CALL HER --- I'M NOT GOING TO SAY
10 KRISTEN GRANT GO HIDE SOMEWHERE. I MEAN SHE'S IN THE
11 POLICE DEPARTMENT. HE CAN CALL HER IF HE WANTS TO --- I
12 MEAN SHE'S AVAILABLE IS WHAT I'M SAYING --- TO BE CROSS
13 EXAMINED ABOUT THIS ANYTHING ELSE THAT MR. FRICK WANTS TO
14 CROSS EXAMINE ABOUT.

15 THE COURT - JUST STRAIGHTEN SOMETHING OUT ---
16 WAS SHE TAKEN DOWN TO WHERE HE WAS ---

17 MR. LIFSEY - NO, SIR, SHE HAD A --- SHE HAD SOME
18 --- ISSUE WITH HER CAR, SO SHE HAD TO TAKE IT BACK, SO SHE
19 COULDN'T HANG AROUND, SO THEY APPARENTLY SHOWED HER A
20 PHOTO LINE-UP LATER ON. IT SAYS THEY'RE GOING TO DO THAT
21 IN THE POLICE REPORT, WHICH HAS BEEN PROVIDED BY THE WAY
22 TO ME AND MR. FRICK AGES AGO, AND SO PROBABLY BOTH OF US
23 ARE PROBABLY NOT DILIGENT ENOUGH AND FOLLOWING UP WITH
24 WHAT HAPPENED ON THAT PHOTO LINE-UP.

25 THE COURT - BUT THAT WAS IN THERE?

1 MR. LIFSEY - YES, SIR. IT SAYS IN HERE THEY
2 WERE GOING TO SHOW HER A PHOTO LINE-UP.

3 MR. FRICK - WELL, BUT IT SAYS THEY WERE GOING TO
4 AND A SUPPLEMENT WILL FOLLOW. NEITHER ONE OF US HAD THE
5 SUPPLEMENT.

6 THE COURT - WELL, HE DIDN'T KNOW. CAN'T BLAME
7 HIM.

8 MR. FRICK - I --- I'M NOT REALLY TRYING TO
9 ASSIGN BLAME.

10 THE COURT - BUT YOU DID HAVE SOME KNOWLEDGE
11 THOUGH.

12 MR. FRICK - I HAD KNOWLEDGE THAT A PHOTO LINE-UP
13 ---

14 THE COURT - POSSIBLY ---

15 MR. FRICK - --- WAS TO BE SHOWN.

16 THE COURT - POSSIBLY.

17 MR. FRICK - I ALSO DIDN'T HAVE NOTICE WE WERE
18 GOING TO BE TRYING THIS CASE UNTIL LAST MONDAY BUT ---

19 THE COURT - WHAT DO YOU WANT ME TO DO?

20 MR. FRICK - YOUR HONOR, I SUPPOSE THE ONLY
21 MOTION I CAN MAKE IS THE FACT THAT I DON'T HAVE
22 EXCULPATORY EVIDENCE THAT I THINK COULD POTENTIALLY
23 COULD'VE BEEN INVESTIGATED AND COULD'VE FOUND OUT MORE
24 ABOUT IT IF I'D BEEN AWARE. I WOULD MAKE A MOTION FOR A
25 MIS-TRIAL UNDERSTANDING HOW THE COURT'S GOING TO RULE.

179

1 THE COURT - BUT IN ALL FAIRNESS I MEAN THE
2 SOLICITOR DIDN'T KNOW ABOUT IT AND HE GETS THE SAME
3 KNOWLEDGE THAT YOU GET AT THIS POINT IN TIME AND IT WAS IN
4 THE INCIDENT REPORT THAT THEY WERE GOING TO SHOW HER ONE
5 BUT LEFT OPEN.

6 MR. FRICK - YOUR HONOR, IN ALL FAIRNESS I'VE HAD
7 THIS ARGUMENT PUT ON ME MANY TIMES WHEN I WAS AT THE
8 SOLICITOR'S OFFICE. IF LAW ENFORCEMENT KNOWS ABOUT IT,
9 IT'S IMPUTED ON THE SOLICITOR'S OFFICE.

10 THE COURT - I UNDERSTAND THAT.

11 MR. FRICK - SO I MEAN THAT'S MY COMPLAINT. I --

12 -

13 THE COURT - BUT I'M GOING TO HAVE TO DENY YOUR
14 MOTION BASED THAT THERE WAS SOMETHING THERE THAT SHOULD'VE
15 RAISED AN EYEBROW THAT MAYBE THERE WAS SOMETHING DONE
16 LATER ON. I MEAN IT'S NOT LIKE YOU JUST GOT SIDE-CARED.

17 MR. FRICK - I WOULD SAY THAT I DID BUT I HAVE
18 PUT MY OBJECTION ON THE RECORD. THANK YOU, JUDGE.

19 MR. LIFSEY - THANK YOU. WHILE WE'VE GOT THE
20 JURY OUT, LET ME PUT ON THE RECORD, I ALSO HAD SUBPOENAED
21 WILLENE STRAIN AND I THINK I DECIDED I'M NOT GOING TO CALL
22 HER AS A WITNESS. I KNOW SHE'LL BE TERRIBLY DISAPPOINTED,
23 BUT I'M NOT GOING TO CALL HER, SO MR. FRICK HAS HER UNDER
24 SUBPOENA, HE CAN DO WHAT HE WANTS TO WITH HER, WHETHER
25 HE'S WANTING HER TO STAY OR GO, BUT I'M THROUGH --- I'M

KARL ALLEN - DIRECT BY MR. LIFSEY

180

1 THROUGH WITH MS. STRAIN AS FAR AS MY --- I'LL LET MR. ---
2 CAN MS. STURDIVANT STEP DOWN?

3 THE COURT - YOU SAID --- ANYTHING YOU WANTED TO
4 FOLLOW-UP WOULD BE WITH THE DETECTIVE?

5 MR. FRICK - I BELIEVE IT WOULD BE WITH THE
6 DETECTIVE, SHOULD I NEED THE WITNESS, I WILL MAKE AN
7 ATTEMPT ---

8 MR. LIFSEY - I'M SURE MS. STRAIN'S GOING TO ASK
9 COULD SHE GO, YOUR HONOR. DON'T LEAVE YET UNTIL TELLS YOU
10 CAN LEAVE. HE'S THE JUDGE. BUT I'M THROUGH WITH YOU, MS.
11 STRAIN.

12 THE COURT - GOT ALL THAT STRAIGHTENED OUT?

13 MR. FRICK - YES, SIR. THANK YOU.

14 (JURY RETURNS TO THE COURTROOM)

15 THE COURT - ALL RIGHT, WE'VE GOT EVERYBODY.

16 MR. LIFSEY - YOUR HONOR, I'M GOING TO CALL MY
17 NEXT WITNESS A LITTLE BIT OUT OF ORDER BECAUSE I HAD SOME
18 SCHEDULING ISSUES THAT HE CAN'T BE HERE TOMORROW, SO I'D
19 CALL KARL ALLEN TO THE STAND.

20 KARL ALLEN, AFTER BEING FIRST DULY SWORN,
21 TESTIFIES AS FOLLOWS:

22 DIRECT EXAMINATION

23 BY MR. LIFSEY -

24 Q STATE YOUR FULL NAME?

25 A KARL E. ALLEN.

KARL ALLEN - DIRECT BY MR. LIFSEY

181

1 Q MR. ALLEN, WHAT DO YOU DO FOR A LIVING?

2 A RIGHT NOW I AM A BLOODHOUND HANDLER FOR THE LANCASTER
3 SHERIFF'S OFFICE.

4 Q BACK ON FEBRUARY 5TH OF THIS YEAR YOU WORKED FOR THE
5 LANCASTER POLICE DEPARTMENT?

6 A YES, SIR, I DID.

7 Q WHAT WAS YOUR JOB WITH THE CITY POLICE DEPARTMENT AT
8 THAT TIME?

9 A I WAS A TRAINING OFFICER AND A BLOODHOUND HANDLER AT
10 THAT TIME.

11 Q LET'S TALK A LITTLE BIT ABOUT BLOODHOUNDS. TELL ME
12 A LITTLE BIT ABOUT YOUR DEALINGS AND YOUR TRAINING, WHAT
13 IT TAKES TO BE --- I MEAN I COULDN'T JUST BRING A DOG IN
14 AND ALL OF A SUDDEN DECLARE MYSELF A CANINE OFFICER COULD
15 I?

16 A NO, SIR.

17 Q EXPLAIN TO THE JURY A LITTLE BIT ABOUT WHAT'S
18 INVOLVED IN THAT TRAINING AND WHAT YOU DO, WHAT YOUR
19 TRAINING AND BACKGROUND IS.

20 A WELL, SPECIFICALLY, I'VE WORKED ON AND OFF WITH DOGS
21 IN THE MILITARY AND IN LAW ENFORCEMENT FOR ABOUT
22 SEVENTEEN, EIGHTEEN YEARS, CERTIFIED OBEDIENCE TRAINER,
23 ALSO CERTIFIED AS A BLOODHOUND TRACKER THROUGH THE
24 NATIONAL POLICE BLOODHOUND ASSOCIATION, BEEN TO NUMEROUS
25 SCHOOLS TO INCLUDE --- WELL, SPECIFICALLY WITH THE

KARL ALLEN - DIRECT BY MR. LIFSEY

182

1 BLOODHOUNDS EVERYTHING SPONSORED BY THE NATIONAL POLICE
2 BLOODHOUND ASSOCIATION WHICH IS AN INTERNATIONAL
3 INSTRUCTIONAL ORGANIZATION THAT PRETTY MUCH ESTABLISHES
4 THE STANDARDS, CERTAINLY IN THE UNITED STATES BUT ALSO IN
5 AUSTRALIA, ENGLAND, FRANCE AND GERMANY FOR TRACKING DOGS.
6 THE TRAINING IS VERY TIME-CONSUMING, VERY STRENUOUS,
7 PHYSICALLY AND MENTALLY FOR THE HANDLER AND FOR THE DOG.
8 WE TRAIN OUR DOGS TO SCENT DISCRIMINATE WHICH IS DIFFERENT
9 THAN WHAT A LOT OF DOGS THAT YOU SEE IN POLICE WORK DO.
10 WE DO TRAILING INSTEAD OF TRACKING. THE TERM IS USED
11 INTERCHANGEABLY TRACKING AND TRAILING, BUT TRAILING IS
12 ACTUALLY TEACHING THE DOG TO FOLLOW A SPECIFIC PERSON'S
13 SCENT, BE IT OVER AN EXTENDED PERIOD OF TIME, DISTANCE OR
14 THROUGH A LOT OF CONTAMINATION. FOR EXAMPLE, IF I WERE TO
15 GET A TRAIL ON AN INDIVIDUAL HERE AND THE PERSON WOVE
16 THROUGH ALL OF YOU AND THEN OUT THE BACK DOOR ACROSS THE
17 PARKING LOT TO A VEHICLE, MY DOG WOULD BE ABLE TO PICK UP
18 ON THAT TRAIL AND FOLLOW THAT INDIVIDUAL DISCRIMINATING
19 THAT PERSON'S SCENT FROM EVERYBODY ELSE'S THAT THEY GO
20 THROUGH.

21 Q DID YOU TAKE SPECIALIZED TRAINING TO LEARN ABOUT HOW
22 TO DO THIS WITH DOGS?

23 A OH, YES, SIR. YES, SIR. AGAIN, LIKE I SAID, I'VE
24 BEEN TO A NUMBER OF TRAINING SEMINARS SPONSORED BY THE
25 NATIONAL POLICE BLOODHOUND ASSOCIATION. I'VE TRAINED IN

KARL ALLEN - DIRECT BY MR. LIFSEY

183

1 THE STATE OF NEW YORK, UP IN YORK COUNTY. I TRAINED WITH
2 THE YORK COUNTY SHERIFF'S OFFICE ON A REGULAR BASIS AND
3 THEY'RE RECOGNIZED AS ONE OF THE BEST TRACKING GROUPS IN
4 THE SOUTHEAST. MY DOG HOLDS HER OWN WITH THE BEST OF
5 THEIRS, QUITE FRANKLY, BUT ---

6 Q WELL, GET TO YOUR DOG'S QUALIFICATIONS IN A MINUTE
7 BUT I'M TALKING ABOUT YOU.

8 A YES, SIR. I'M SORRY.

9 Q HOW LONG HAVE YOU BEEN DOING THIS?

10 A DOGS --- CANINE --- BLOODHOUNDS IN PARTICULAR ABOUT
11 THREE AND A HALF, FOUR YEARS NOW, SIR.

12 Q HAVE YOU TESTIFIED IN COURT BEFORE?

13 A YES, SIR, I HAVE.

14 Q HAVE YOU BEEN DECLARED AN EXPERT WITNESS BEFORE?

15 A YES, SIR, I HAVE.

16 Q IN FACT, HAVE YOU BEEN DECLARED AN EXPERT WITNESS AS
17 RECENTLY AS A FEW MONTHS AGO?

18 A YES, SIR, I HAVE.

19 MR. LIFSEY - YOUR HONOR, AT THIS POINT I WOULD
20 OFFER HIM AS AN EXPERT WITNESS IN THE FIELD OF BLOODHOUNDS
21 AND DOG-HANDLING AND DOG-HANDLING, BLOODHOUND HANDLING?

22 THE COURT - MR. FRICK, ANY QUESTIONS OR ANY
23 OBJECTION OR ---

24 CROSS EXAMINATION

25 BY MR. FRICK -

KARL ALLEN - CROSS BY MR. FRICK

184

1 Q TELL ME ABOUT THIS --- THE INTERNATIONAL BLOODHOUND
2 ASSOCIATION. ARE THERE ANY OTHER CERTIFYING AGENCIES?

3 A FIRST OFFICER IS THE NATIONAL POLICE BLOODHOUND
4 ASSOCIATION, NPBA, THEY ARE THE PRIMARY ---

5 Q I THOUGHT YOU SAID INTERNATIONAL.

6 A THEY ARE INTERNATIONAL, BUT THE NAME OF IT IS
7 NATIONAL POLICE BLOODHOUND ASSOCIATION. I'M SORRY. THE -
8 -- THEY ARE FOR THE UNITED STATES THE PRIMARY ORGANIZATION
9 THAT SETS THE STANDARDS FOR CERTIFICATION FOR BLOODHOUNDS
10 FOR TRACKING DOGS. THEY'VE BEEN DOING IT SINCE THE LATE
11 50'S. THEY WERE THE FIRST ORGANIZATION THAT DID IT
12 FORMALLY IN THE UNITED STATES AND ---

13 Q SO THERE ARE OTHER ORGANIZATIONS?

14 A THERE ARE A COUPLE OF OTHER ONES OUT THERE. I CANNOT
15 NAME THEM IN PARTICULAR RIGHT NOW. THEY'RE NOT NEARLY AS
16 LARGE NOR AS ADVANCED IN THEIR TRAINING.

17 MR. FRICK - OKAY. ALL RIGHT. AND WE JUST ---
18 JUST SO WE'RE CLEAR, SOLICITOR, WE'RE JUST DEALING WITH
19 THE OFFICER'S QUALIFICATIONS AT THIS TIME. CORRECT?

20 MR. LIFSEY - YES.

21 Q ABOUT HOW MANY HOURS A YEAR DO YOU SAY YOU DO IN ---

22 A HOURS PER YEAR? OH, I --- I DO A MINIMUM OF --- WITH
23 MY DOG PROBABLY TEN HOURS A WEEK EASILY. A MINIMUM ---
24 THERE ARE TIMES I DO EVEN MORE THAN THAT. NOW THAT I'M
25 STRICTLY DOING WITH THE DOG, I'VE --- I MEAN I REALLY

KARL ALLEN - RE-DIRECT BY MR. LIFSEY

185

1 COULDN'T TELL YOU HOW MANY HOURS I SPEND WITH THE DOG.
2 IT'S HUNDRED.

3 MR. FRICK - OKAY. THAT'S ALL THE QUESTION I
4 HAVE. THANK YOU. NO OBJECTION TO HIS QUALIFICATION AS AN
5 EXPERT IN DOG --- ARE WE CALLING IT TRAILING OR TRACKING?

6 MR. ALLEN - IT IS USED INTERCHANGEABLY.

7 MR. LIFSEY - BLOODHOUND HANDLING.

8 MR. ALLEN - THERE YOU GO.

9 THE COURT - SO QUALIFIED.

10 RE-DIRECT EXAMINATION

11 BY MR. LIFSEY -

12 Q NOW, LET ME TALK TO YOU A LITTLE BIT OR EXPLAIN TO
13 THE JURY A LITTLE BIT ABOUT YOUR DOG. WHAT DOG DO YOU
14 CURRENTLY HAVE NOW?

15 A RIGHT NOW I HAVE A FOUR YEAR OLD BLOODHOUND, BLACK
16 AND TAN BLOODHOUND. HER NAME IS LUCY. I'LL REFER TO HER
17 AS LUCY. I'VE HAD HER SINCE SHE WAS TEN WEEKS OF AGE,
18 STARTED HER TRAINING AT THAT TIME. TRAINING ON SIMPLE
19 TRACKS THAT SHE COULD SEE THE PERSON AT THE END OF THE
20 OBJECTIVE, THEN ADDING IN TURNS AND MAKING HER FIND PEOPLE
21 THAT WERE HIDDEN, STRETCHING OUT THE TRAILS OVER TIME AND
22 OVER DISTANCE, ADDING IN TURNS, OBSTACLES, BE IT CREEKS,
23 BE IT ROADWAYS AND THEN GOING TO PARKING LOTS AND THEN
24 GOING DOWN ROADWAYS, THINGS LIKE THAT, MAKING IT MORE AND
25 MORE DIFFICULT FOR THE DOG. SHE HAS IN THE PAST RUN

KARL ALLEN - RE-DIRECT BY MR. LIESEY

186

1 TRAILS, CERTIFIED TRACK --- TRAILING TRAILS AT FORTY-EIGHT
2 HOURS OF AGE. SHE'S DIFFERENTIATED SCENTS IN THE WOODS,
3 GRANTED IT WAS IDEAL CONDITIONS. SHE'S ACTUALLY
4 IDENTIFIED AND DIFFERENTIATED SCENTS IN THE WOODS UP TO
5 TEN DAYS OLD. SHE HAS RUN TRAILS UP TO EIGHT MILES IN
6 LENGTH AND AS I SAID, SHE'S --- I'VE TAKEN HER IN
7 PARTICULAR TO WEEK-LONG SEMINARS, ONE, TWO, THREE, FOUR OF
8 THEM IN YORK COUNTY, TWO IN NEW YORK, IN UP-STATE NEW
9 YORK, PARTICIPATING IN NPBA TRAINING CERTIFICATION. SHE
10 ALSO IS QUITE CAPABLE OF IDENTIFYING SCENT POOLS IN A
11 BUILDING, AROUND A BUILDING, DOING WHAT WE CALL A MISSING
12 MAN DRILL WHEREIN SHE IDENTIFIES A SCENT OF A PERSON WHO
13 IS NOT PRESENT AND SHE'LL --- SHE'LL BY HER BODY LANGUAGE
14 WHERE THAT INDIVIDUAL HAS BEEN INSIDE A BUILDING, AND THEN
15 FOLLOW OUT OF DOORS TO THE TERMINUS POINTS.

16 Q WOULD YOU DESCRIBE A LITTLE BIT FOR THE JURY HOW YOUR
17 DOG TRAILS SOMEBODY. WHAT --- WHAT DO YOU DO WHEN YOU PUT
18 THE DOG IN A SCENT, WHAT DOES THE DOG DO AND HOW DO YOU
19 KNOW WHAT THE DOG'S DOING? EXPLAIN IT.

20 A YES, SIR. THERE'S A NUMBER OF DIFFERENT WAYS THAT WE
21 CAN SCENT THE DOG WHICH MEANS STARTING A TRAIL. THE MOST
22 OFTEN IS WHAT WE CALL A DROP SCENT WHERE AN INDIVIDUAL RAN
23 BETWEEN TWO TREES AND THAT WAS THE LAST POINT HE WAS SEEN,
24 POINT LAST SCENE. I'LL TAKE THE DOG OVER THERE AND I'LL
25 GIVE HER THE COMMAND TO CHECK AND THEN FIND. WHAT SHE'S

KARL ALLEN - RE-DIRECT BY MR. LIFSEY

187

1 DOING IS SHE'S IDENTIFYING THE LATEST SCENT OF A HUMAN
2 BEING THAT HAS GONE THROUGH THERE, AND THERE'S A LOT OF
3 DIFFERENT FACTORS IN THAT. THERE --- SHE'LL ALSO PICK UP
4 THE PHEROMONES FROM AN INDIVIDUAL. SCENT IS CREATED BY
5 WHAT WE CALL EFFLUVIA, THE DEAD CELLS THAT ARE SLOUGHING
6 OFF OF OUR BODIES AT ANY ONE TIME. AS THEY WARM UP AND AS
7 THEY BREAK DOWN, THE BACTERIA CAUSES GAS FROM THOSE CELLS,
8 AND THAT GAS IS WHAT THE DOG IS SMELLING. OKAY? THEN
9 THEY ALSO WILL IDENTIFY THE PHEROMONES THAT AN INDIVIDUAL
10 GIVES OFF, AND WE GIVE OFF PHEROMONES WHEN WE'RE UNDER
11 STRESS, FEAR, PAIN, THOSE TYPES OF THINGS. SHE WILL
12 IDENTIFY THOSE AND SHE WILL FOLLOW THOSE IN COMBINATION
13 WITH A PERSON'S SCENT. THAT'S --- LIKE I SAID, THAT'S
14 WHAT WE CALL A DROP SCENT. A MISSING MAN SCENT IS IF WE
15 HAVE A CONTAINED AREA, FOR EXAMPLE, A HOUSE OR A LIVING
16 ROOM, WE'LL BRING ALL THE PEOPLE THAT HAVE BEEN IN THERE
17 IN THE LAST, YOU KNOW, TWELVE TO TWENTY-FOUR HOURS AND
18 I'LL LET HER SMELL EACH OF THOSE PEOPLE. I'LL TELL HER NO
19 AND THEN I'LL TELL HER TO CHECK AND FIND. AND WHAT SHE
20 DOES AT THAT POINT IS SHE IDENTIFIES THE SENT OF THE
21 PERSON WHO'S NOT THERE, AND SHE'LL GO THROUGH THE BUILDING
22 AND THEN OUT TO TRACK. SHE'S ALSO TRAINED TO TRACK OFF
23 OF, AS YOU'VE SEEN MOST MOVIES, A PIECE OF CLOTH, A HAT OR
24 A GLOVE THAT'S BEEN DROPPED. SHE CAN ALSO TRACK OFF OF
25 THE SEAT OF A VEHICLE. JUST ABOUT ANYTHING THE PERSON HAS

KARL ALLEN - RE-DIRECT BY MR. LIFSEY

188

1 TOUCHED, EVEN PLASTIC SODA BOTTLE, SODA CANS, SHE'S BEEN
2 CERTIFIED TO TRACK OFF OF THOSE.

3 Q ALL RIGHT. AND WHEN SHE BEGINS ARE THERE CERTAIN
4 CLUES YOU CAN GET FROM WATCHING HER TO TELL WHEN SHE'S ON
5 A TRAIL OR THAT SORT OF THING?

6 A ABSOLUTELY. MY DOG IN PARTICULAR SHE --- SHE USUALLY
7 TRACK --- WHEN SHE STARTS A TRACKS, SHE'LL START CIRCLING
8 COUNTER CLOCKWISE AND WHEN SHE HITS WHAT SHE THINKS IS THE
9 TRAIL IN THE DIRECTION OF THE TRAIL THAT'S GOING --- IF IT
10 STARTS RIGHT HERE, SHE'LL START AND SHE'LL MOVE OUT
11 COUNTER CLOCKWISE LIKE THIS AND THEN WHEN SHE HITS THE
12 TRAIL THAT'S LEADING THE INITIAL POINT, SHE WILL PULL
13 AGAINST HER HARNESS --- SHE'S IN A HARNESS --- AND SHE'LL
14 PULL REALLY HARD. IF I STAND STILL, SHE'LL CONTINUE
15 PULLING FOR ABOUT TWO SECONDS AND THAT'S WHEN I KNOW THAT
16 SHE IS ON THE TRAIL OF WHAT WE WANT.

17 Q GO AHEAD. CONTINUE. WHEN SHE FOLLOWS THE TRAIL,
18 WHEN DO YOU KNOW WHEN SHE'S FINISHED OR WHEN DO YOU KNOW
19 WHEN SHE REACHES SOMEBODY OR TELL --- TELL ME HOW THAT
20 WORKS.

21 A WELL, THERE'S --- THERE'S USUALLY --- MOST OFTEN
22 THERE'S TWO WAYS THAT A TRAIL ENDS, ESPECIALLY IN AN URBAN
23 ENVIRONMENT OR SUBURBAN ENVIRONMENT. IF THE PERSON GETS
24 IN A VEHICLE, THE SCENT IS CONTAINED IN THE VEHICLE. AS
25 THE PERSON DRIVES AWAY IT WAFFS OUT WINDOWS OR IS DRAWN BY

KARL ALLEN - RE-DIRECT BY MR. LIFSEY

189

1 THE CAR, SO SHE'LL GO AND ANYWHERE FROM TWENTY TO A
2 HUNDRED FEET AND YOU --- YOU CAN TELL BY HER BODY
3 LANGUAGE. HER HEAD STARTS TO COME UP. SHE STARTS
4 CHECKING AROUND. SHE'LL START HER CIRCLE AND THEN SHE
5 SIMPLY STOPS AND THAT'S HER --- SHE STOPS AND LOOKS AT ME
6 AND YOU KNOW YOU CAN CLEARLY TELL THAT THE TRAIL HAS
7 ENDED.

8 Q SO IN OTHER WORDS, IF SOMEONE WERE TO RUN FROM A
9 SCENE YOU WERE TRAILING AND GET INTO A VEHICLE, THERE'S A
10 SPECIFIC SIGNAL YOUR DOG --- YOU WOULD BE ABLE TELL THAT.

11 A YES, SIR. YES, SIR. ABSOLUTELY. AND WE TRAIN ON
12 THAT ON A REGULAR BASIS.

13 Q ON THE OTHER HAND, WHAT DOES YOUR DOG DO IN A
14 SITUATION WHERE THERE ARE MULTIPLE INDIVIDUALS AND ONE OF
15 THEM MIGHT BE THE PERSON'S SHE TRAILING? HOW DO YOU KNOW
16 WHICH ONE IT IS?

17 A SHE --- SHE WILL WALK INTO THE GROUP AND SHE'LL WALK
18 THROUGH THE GROUP. NORMALLY, SHE'LL --- SHE'LL GIVE A
19 SINGLE SCENT OR MAYBE --- A SNIFF, ONE OR TWO SNIFFS OF AN
20 INDIVIDUAL. SHE CONTINUES WALKING, HER HEAD COMES UP, HER
21 TAIL WILL BE AT ABOUT --- I'D SAY ABOUT TWO-THIRDS STAFF
22 AND THEN WHEN SHE GETS TO THE PERSON THAT SHE'S BEEN
23 TRAILING, SHE DOES ONE OF TWO THINGS. SHE EITHER DOES
24 WHAT WE CALL PAUSE UP, WHERE SHE RARES UP AND PUTS HER
25 PAWS ON THE INDIVIDUAL AND SAYS THIS IS THE PERSON, OR

KARL ALLEN - RE-DIRECT BY MR. LIFSEY

190

1 DEPENDING ON THE TEMPERATURE OR THE DISTANCE THE TRAIL HER
2 MOOD, WHAT SHE'LL DO IS LEAN ON THE INDIVIDUAL, STOP AND
3 THEN LOOK OVER HER SHOULDER AT ME. BOTH OF THEM ARE VERY
4 CLEAR INDICATORS AND AT THAT POINT SHE STOPS. SHE DOES
5 NOT TRAIL ANY FURTHER.

6 Q AND HAS LUCY DONE TRAILS LIKE THIS BEFORE, LIKE BOTH
7 TIMES YOU DESCRIBED LIKE THIS?

8 A YES, SIR. YES, SIR.

9 Q WHAT KIND OF SUCCESS RATE AND HOW SUCCESSFUL HAS LUCY
10 BEEN IN TRAILING, IN DOING TRAILS?

11 A IN HER TRAINING SHE HAS BEEN --- IN ACTUAL FINDS AND
12 TRAINING SHE'S ABOUT NINETY-EIGHT --- I BELIEVE THE LAST
13 TIME I CHECKED IT WAS ABOUT NINETY-EIGHT POINT EIGHT
14 PERCENT SUCCESSFUL.

15 Q NOW, OBVIOUSLY, THERE ARE FACTORS THAT CAN AFFECT THE
16 ABILITY TO TRAIL.

17 A YES, SIR.

18 Q ONE OF WHICH MIGHT BE HOW OLD THE TRAIL IS. IS THAT
19 RIGHT?

20 A YES, SIR.

21 Q DID I HEAR YOU EARLIER DESCRIBE HOW OLD OF TRAIL SHE
22 WAS ABLE TO FOLLOW IN THE WOODS IN OTHER SITUATIONS?

23 A YES, SIR. YES, SIR.

24 Q WHAT KIND OF TIME-FRAME IS SHE STILL ABLE TO TRACK
25 SOMEBODY?

KARL ALLEN - RE-DIRECT BY MR. LIFSEY

191

- 1 A OH, UH --- SHE --- AS I SAID, SHE HAS --- SHE'S BEEN
2 CERTIFIED IN TRAINING TO RUN FORTY-EIGHT --- NO, I'M
3 SORRY. I APOLOGIZE. THE LAST ONE THAT SHE DID WAS
4 SEVENTY-TWO HOURS, BUT SHE --- SHE ROUTINELY RUNS TWENTY-
5 FOUR, FORTY-EIGHT OLD TRAILS IN TRAINING.
- 6 Q ARE YOU AWARE OF --- YOU WERE INVOLVED IN THIS CASE -
7 --
- 8 A YES, SIR.
- 9 Q --- INVOLVING RANDOLPH FRAZIER AND THE BREAK-IN ON
10 [REDACTED] [REDACTED]. IS THAT RIGHT?
- 11 A YES, SIR.
- 12 Q ARE YOU AWARE OF WHAT KIND OF TIME DIFFERENCE IT WAS
13 BETWEEN WHEN THE --- AND IF YOU'RE NOT THAT'S FINE. I'VE
14 GOT OTHER WITNESSES, BUT IF YOU DO, HOW CLOSE IN TIME WERE
15 YOU OUT TO THE SCENE WITH LUCY IN RELATION TO WHEN THE
16 BURGLARY WAS CALLED IN? DO YOU KNOW?
- 17 A IT WAS --- IT WAS ACTUALLY WITHIN MINUTES WHEN I WAS
18 AT THE SCENE. HOWEVER, I DIDN'T RUN THE TRAIL UNTIL
19 TWENTY --- TWENTY-FIVE, THIRTY MINUTES AFTER THE ACTUAL
20 INCIDENT WAS DONE, AND THE REASON I DON'T DO THAT AND I
21 DON'T RUSH INTO THEM IS THE SCENT WILL ACTUALLY SETTLE AND
22 ON MOST DAYS, UNLESS THERE'S A HIGH WIND, THE SCENT WILL
23 SETTLE AND WILL ACTUALLY BE EASIER FOR THE DOG TO TRAIL
24 SOMEONE AFTER TWENTY TO THIRTY MINUTES BECAUSE THE SCENT
25 HAS ALREADY SETTLED DOWN AND THEY CAN PICK IT UP EASIER.

KARL ALLEN - RE-DIRECT BY MR. LIFSEY

192

1 Q WHEN YOU SAID LUCY HAS BEEN TRAINED IN TRAILS ON
2 TRAILS AS OLD AS FORTY-EIGHT TO SEVENTY-TWO HOURS OLD ---

3 A YES, SIR.

4 Q --- BUT IN THIS CASE YOU'RE TALKING WHAT TIME ---
5 TIME-FRAME DIFFERENCE?

6 A PERHAPS TWENTY TO THIRTY MINUTES.

7 Q ALL RIGHT. NOW, LET ME ASK YOU --- BEGIN TO ASK YOU
8 SPECIFICALLY ABOUT THIS CASE.

9 A YES, SIR.

10 Q HOW WERE YOU DISPATCHED TO [REDACTED]? WHAT DID YOU
11 FIND OUT? WHAT WERE YOU TOLD TO DO?

12 A I HEARD THE CALL. I WAS IN MY OFFICE AT MJC. I
13 HEARD THE CALL THAT THERE WAS A BURGLARY ---

14 Q WHERE WAS LUCY?

15 A SHE WAS IN THE OFFICE WITH ME ACTUALLY. AT THE TIME
16 SHE --- SHE STAYED IN THE KENNEL WITH ME IN THE OFFICE.
17 I GOT HER, LOADED HER IN THE VEHICLE. WE WENT TO --- WE
18 WERE HEADED TO [REDACTED] WHEN --- WHEN WE HEARD THAT
19 SOMEONE HAD BEEN DETAINED ON CHESTERFIELD, AND WE STOPPED
20 THERE.

21 Q ON CHESTERFIELD OR ON [REDACTED]

22 A ON CHESTERFIELD.

23 Q OKAY. GO AHEAD. I'M SORRY.

24 A WHEN I STOPPED THERE I SPOKE WITH CAPTAIN HUNTER AND
25 DETECTIVE PARSONS AND I TOLD DETECTIVE PARSONS THAT I'VE

KARL ALLEN - RE-DIRECT BY MR. LIFSEY

193

1 GOT MY DOG HERE, WOULD YOU LIKE ME TO RUN A CONFIRMATION
2 TRAIL OR A TRAIL TO SEE WHAT --- WHAT HAPPENED THERE, AND
3 HE ASKED ME TO DO SO AND AT THAT POINT MYSELF AND, I
4 BELIEVE SERGEANT SMALL WAS WITH ME, WE WENT TO THE
5 APARTMENT AND AFTER ASKING A FEW QUESTIONS OF THE VICTIM,
6 I PUT LUCY ON THE GROUND AND INITIATED THE TRAIL.

7 Q ALL RIGHT. I'M GOING TO SHOW YOU WHAT HAS BEEN
8 PREVIOUSLY MARKED AS FOR IDENTIFICATION STATE'S EXHIBIT 1.

9 A YES, SIR.

10 Q DO YOU --- ARE YOU FAMILIAR WITH THIS?

11 A YES, SIR, I CREATED IT.

12 Q OKAY. TELL ME WHAT THIS IS FIRST OF ALL.

13 A SIR, THAT IS A --- IT'S AN AERIAL PHOTOGRAPH OF THE
14 AREA INCLUDING THE VICTIM'S APARTMENT AND THE TRAIL THAT
15 LUCY RAN TO THE TERMINUS POINT.

16 Q NOW, I'M GOING TO PASS THIS AROUND SO EVERYBODY CAN
17 LOOK AT IT A LITTLE BIT LATER, BUT HAVE YOU MARKED UP HERE
18 --- I SEE START POINT.

19 A YES, SIR.

20 Q WHAT DOES THAT MEAN? WHAT IS THAT?

21 A THAT'S WHERE I PUT LUCY ON THE GROUND AND INITIATED
22 THE TRAIL.

23 Q AND WAS THAT THE APARTMENT THAT MS. SANDERS WAS ---
24 HAD BROKEN INTO?

25 A YES, SIR, I DID THAT RIGHT AT THE FRONT DOOR OF THE

KARL ALLEN - RE-DIRECT BY MR. LIFSEY

194

1 APARTMENT.

2 Q ALL RIGHT.

3 A AFTER SCENTING OFF OF MS. SANDERS.

4 Q I'M GOING TO LEAVE THIS UP HERE SO YOU CAN SORT OF
5 POINT AND DEMONSTRATE WHEN YOU NEED TO.

6 A ALL RIGHT.

7 Q BUT WHAT DID --- ONCE AGAIN, START --- WHAT DID YOU
8 DO WITH LUCY RIGHT THERE AT THE FRONT DOOR? TELL ME WHAT
9 HAPPENED.

10 A I ASKED MS. SANDERS IF ANYONE ELSE HAD BEEN IN THE
11 APARTMENT THE LAST TWELVE TO FORTY-EIGHT HOURS, SHE SAID
12 NO. I SCENTED LUCY ON HER, TOLD LUCY TO CHECK MS.
13 SANDERS. WHEN SHE DID, I TOLD HER NO, CHECK, FIND, WHICH
14 IS THE COMMAND TO IDENTIFY OTHER SCENTS. LUCY WENT INTO
15 THE APARTMENT. SHE IMMEDIATELY WENT INTO THE APARTMENT
16 PULLING EXTREMELY HARD AND WHEN A DOG PULLS THAT HARD,
17 IT'S USUALLY AN INDICATOR THAT THERE'S A LOT OF FEAR
18 PHEROMONES OR PAIN PHEROMONES IN THE AREA THE DOG HAS
19 PICKED UP ON. SHE WENT IN, IMMEDIATELY STARTED TO GO UP
20 THE STAIRS, WENT UP TO ABOUT THE TOP OF THE STAIRS, THEN
21 SHE CAME BACK DOWN, TOOK ME THROUGH THE LIVING ROOM,
22 THROUGH THE KITCHEN, OUT THE BACK DOOR, CIRCLED AROUND
23 RIGHT OUTSIDE THE BACK DOOR, SNIFFED AROUND A LITTLE BIT,
24 CAME BACK THROUGH, WENT STRAIGHT OUT THE FRONT DOOR AND
25 THEN MADE A LEFT IN FRONT OF THE APARTMENTS THEREBY

KARL ALLEN - RE-DIRECT BY MR. LIFSEY

195

1 TRAVELLING, I GUESS THAT'D BE WEST, ACROSS, DOWN THE
2 SIDEWALK RIGHT IN FRONT OF THE APARTMENTS, TO THE TREE
3 LINE ACROSS THE PARKING LOT. WE WENT RIGHT OVER THE ---
4 THERE'S A CABLE FENCE THERE, WENT THROUGH, TURNED LEFT
5 AGAIN, WHICH WOULD BE HEADED SOUTH TOWARDS ---

6 Q HAVE YOU MARKED ON HERE THE TRAIL ---

7 A YES, SIR. YES, SIR.

8 Q ALL RIGHT, GO AHEAD.

9 A ABSOLUTELY. IT IS ON THERE. AND ALSO I'VE ALSO
10 MARKED ON HERE ITEMS THAT --- SOME OF THE ITEMS WE
11 SPOTTED, MYSELF, AND/OR SERGEANT ---

12 Q HARTLEY, MAYBE?

13 A NO --- WELL, HARTLEY CAME BACK WITH ME, BUT I BELIEVE
14 --- I BELIEVE SERGEANT SMALL WAS WITH ME ON THE TRAIL. I
15 ALWAYS RUN A TRAIL WITH ANOTHER OFFICER AS OVER-WATCH JUST
16 FOR SECURITY PURPOSES. BUT WE --- WE SPOTTED A NUMBER OF
17 ITEMS AND NOTED THEIR LOCATIONS AS WE WERE MOVING ALONG,
18 SO WE MARKED THOSE ON THE RETURN TRIP AND THE TRAIL LED
19 UP, CROSSED OVER THE ROAD, THE NORTH SIDE OF CHESTERFIELD
20 TO THE SOUTH SIDE OF CHESTERFIELD AND THEN CONTINUED WEST
21 ON CHESTERFIELD AVENUE. THE --- AND YOU'LL NOTICE THAT
22 ALONG CHESTERFIELD AVENUE THE TRAIL ACTUALLY GOES RIGHT UP
23 TO THE FRONT OF HOUSES. THAT DOESN'T NECESSARILY MEAN THE
24 PERSON WE'RE TRACKING WENT TO THOSE HOUSES. THAT'S A
25 ROADWAY WITH A LOT OF TRAFFIC ON IT, AND AS TRAFFIC GOES

KARL ALLEN - RE-DIRECT BY MR. LIFSEY

196

1 DOWN THAT ROAD IT BLOWS THE SCENT UP TO THE HOUSES, THE
2 BUSHES AND UP THE WALKWAYS AND DRIVEWAYS, SO THE DOG, MY
3 DOG IN PARTICULAR, RUNS THE EDGE OF THE TRAIL AND SHE WENT
4 UP IN FRONT OF THE HOUSES, ACROSS A COUPLE OF PORCHES AND
5 THEN FINALLY CAME UP TO THE GROUP OF PEOPLE THAT WERE
6 STANDING AT THE END.

7 Q IS THAT WHERE YOU HAVE THE --- YOU HAVE A --- IT
8 LOOKS LIKE A YELLOW PEN MARKING THAT SAYS SUBJECT DETAINED
9 OR ---

10 A I HAVE TO --- YES, SIR. YES, SIR. I HAVE SUBJECT
11 DETAINED RIGHT THERE.

12 Q OKAY. ALL RIGHT. WHAT HAPPENED WHEN YOU GOT TO BACK
13 TO WHERE THE SUBJECT WAS DETAINED?

14 A LUCY WALKED PASSED A NUMBER OF OFFICERS WHO WERE
15 STANDING IN THE AREA. SHE GAVE ALL OF THEM EITHER A
16 SINGLE OR A DOUBLE SNIFF, WALKED UP TO MR. FRAZIER AND
17 LEANED HER LEFT SHOULDER UP AGAINST HIS LEGS, LOOKED OVER
18 HER RIGHT SHOULDER AT ME AND STOPPED. WITH ENCOURAGEMENT
19 SHE WOULD NOT CONTINUE TO TRAIL.

20 Q BASED ON YOUR EXPERIENCE AND TRAINING AS A BLOODHOUND
21 OFFICER, WHAT DOES THAT INDICATE WHEN SHE DOES THAT?

22 A THAT INDICATES THAT THIS WAS THE PERSON WHO WE WERE
23 TRACKING. IT WAS THE SCENT THAT SHE PICKED UP FROM THE
24 ORIGINAL POINT OF THE TRAIL.

25 Q AND YOU PICKED UP THAT SCENE --- AND SHE PICKED UP

KARL ALLEN - RE-DIRECT BY MR. LIFSEY

197

1 THAT SCENT AND TRAPPED THAT SCENT FROM MS. SANDERS'
2 RESIDENCE ---

3 A YES, SIR.

4 Q --- ALL THE WAY TO WHERE MR. FRAZIER WAS DETAINED?

5 A YES, SIR.

6 Q AND, IN FACT, INDICATED ON MR. FRAZIER?

7 A YES, SIR.

8 Q NOW, YOU SAID THERE WERE A NUMBER OF ITEMS SORT OF
9 DISCARDED ALONG THE WAY?

10 A YES, SIR.

11 Q DID --- AND YOU MARKED THOSE ON HERE.

12 A YES, SIR.

13 Q AFTER LUCY INDICATED ON MR. FRAZIER, DID YOU AND
14 BRENNER HARTLEY, WHO ALSO WORKS FOR THE LANCASTER POLICE
15 DEPARTMENT, GO BACK AND GET THOSE ITEMS?

16 A YES, SIR. YES, SIR. HE COLLECTED THEM AND I JUST --
17 - I WENT ALONG AND IDENTIFIED WHERE THEY WERE, WHERE I'D
18 SEEN THEM, AND I BELIEVE WE ACTUALLY EVEN FOUND A FEW
19 OTHERS THAT I HADN'T SEEN ORIGINALLY.

20 Q NOW, YOU INDICATED THAT YOU HAD PREPARED --- IS THIS
21 --- YOU HAD PREPARED THIS?

22 A YES, SIR, THAT IS --- THAT'S --- WHAT I NORMALLY ---
23 IF I HAVE ACCESS TO THE COMPUTER THAT CAN DO IT, I PREPARE
24 THAT ON ALL OF MY TRACKING REPORTS.

25 MR. LIFSEY - YOUR HONOR, I'D MOVE THIS INTO

KARL ALLEN - RE-CROSS BY MR. FRICK

198

1 EVIDENCE AS STATE'S EXHIBIT 1.

2 MR. FRICK - YOUR HONOR, I'D OBJECT ON THE
3 GROUNDS OF MY MOTION EARLIER THIS MORNING.

4 THE COURT - ALL RIGHT, IN SUBJECT TO THE PRIOR
5 OBJECTION.

6 (DOCUMENT MARKED INTO EVIDENCE AS STATE'S
7 EXHIBIT NUMBER 1.)

8 MR. LIFSEY - AND, YOUR HONOR, I'D LIKE TO
9 PUBLISH THIS TO THE JURY AND LET THEM TAKE A LOOK AT IT.

10 (DOCUMENT PUBLISHED TO THE JURY)

11 MR. LIFSEY - ULTIMATELY, YOUR HONOR, I DON'T
12 HAVE ANY FURTHER QUESTIONS FOR OFFICER ALLEN. BUT LIKE I
13 SAID, WE MIGHT WANT TO GIVE THE JURY A MINUTE OR TWO TO
14 LOOK AT THE ---

15 (WHEREUPON JURY VIEWS EXHIBIT)

16 MR. LIFSEY - THANK YOU, YOUR HONOR. I DON'T
17 HAVE ANY FURTHER QUESTIONS FOR THIS WITNESS.

18 THE COURT - YOUR WITNESS.

19 RE-CROSS EXAMINATION

20 BY MR. FRICK -

21 Q OFFICER, LET'S GO BACK TO LUCY FOR A SECOND. HOW
22 MANY TRAILS HAVE Y'ALL RUN IN THE TIME Y'ALL HAVE BEEN
23 TOGETHER?

24 A SEVERAL HUNDRED. I DON'T KNOW OFF THE TOP OF MY
25 HEAD, SIR.

KARL ALLEN - RE-CROSS BY MR. FRICK

199

1 Q OKAY. SEVERAL HUNDRED?

2 A YES, SIR.

3 Q THAT INCLUDES TRAINING AND ---

4 A AND ACTUAL, YES, SIR.

5 Q OKAY. HOW MANY ACTUALLY IN THE FIELD INVESTIGATING
6 CASES?

7 A I COULDN'T TELL YOU THAT OFF THE TOP OF MY HEAD
8 EITHER.

9 Q ROUGH GUESS.

10 A WELL OVER A HUNDRED I WOULD THINK.

11 Q OVER A HUNDRED?

12 A I WOULD THINK SO, YES, SIR.

13 Q DOG TRACKING CASES?

14 A YES, SIR.

15 Q IN LANCASTER?

16 A IN THE THREE YEARS, YES, SIR. I ALSO SUPPORTED
17 LANCASTER COUNTY, AS WELL.

18 Q OKAY. ALL RIGHT. AND YOU SAY HER ACCURACY RATE IS
19 A SHADE UNDER NINETY-NINE?

20 A YES, SIR.

21 Q OKAY. BUT STILL A LITTLE LESS THAN TWO PERCENT SHE
22 IS INCORRECT?

23 A JUST A LITTLE OVER ONE PERCENT, YES, SIR. A BMW
24 BREAKS DOWN EVERY ONCE IN A WHILE, TOO.

25 Q HOW LONG DID YOU SAY YOU AND LUCY HAVE BEEN TOGETHER?

KARL ALLEN - RE-CROSS BY MR. FRICK

200

1 A SINCE SHE WAS TEN WEEKS OF AGE, AND SHE'S ALMOST
2 THREE AND A HALF, ALMOST FOUR NOW.

3 Q OKAY. HER SPECIFIC TRAINING IS THE TRAILING OF
4 PEOPLE?

5 A YES, SIR.

6 Q OKAY. AND ANY OTHER KIND OF TRAINING THAT SHE'S HAD?

7 A MEANING?

8 Q I DON'T KNOW. YOU'RE THE DOG EXPERT. IF YOU NEED ME
9 TO ---

10 A I MEAN SHE'S --- IF YOU'RE ASKING IF SHE'S TRAINED
11 FOR NARCOTICS OR THINGS LIKE THAT, NO. NO.

12 Q OKAY. JUST SPECIFICALLY THIS ONE.

13 A SPECIFICALLY MAN TRAILING.

14 Q ALL RIGHT. ON FEBRUARY 5TH DO YOU HAVE ANY IDEA
15 ABOUT WHAT TIME YOU GOT TO THE SCENE?

16 A IT WOULD PROBABLY BEEN SOMEWHERE AROUND ELEVEN
17 TWENTY-THREE, TWENTY-FOUR, SOMEWHERE IN THAT VICINITY.

18 Q OKAY. ANY IDEA HOW LONG AFTER THIS CALL THAT WAS?

19 A IT WAS WITHIN MINUTES. WITHIN PROBABLY THREE, FOUR
20 MINUTES, BECAUSE I HEARD THE CALL GO OUT IN MY OFFICE AND
21 I GOT UP, PUT THE LEASH ON LUCY AND TOOK HER AND PUT HER
22 IN THE CAR.

23 Q WHEN YOU ARRIVE ON A SCENE, ARE YOU BRIEFED AS TO
24 WHAT'S GOING ON?

25 A YES, SIR.

KARL ALLEN - RE-CROSS BY MR. FRICK

201

1 Q YOU WERE AWARE A SUSPECT WAS IN CUSTODY?

2 A THAT A SUSPECT WAS BEING DETAINED, YES, SIR.

3 Q RIGHT.

4 A YES, SIR.

5 Q CUSTODY, DETAINED. THERE IS A DIFFERENCE. THERE'S
6 AN ARGUMENT THERE. WERE YOU AWARE OF WHO IT WAS AT THIS
7 TIME?

8 A ACTUALLY NO. NO. I SAW THE INDIVIDUAL BUT I DID NOT
9 KNOW WHO HE WAS. NO.

10 Q OKAY.

11 A AND FRANKLY, I DIDN'T PAY ATTENTION TO WHO IT WAS.
12 I DIDN'T WANT TO KNOW.

13 Q OKAY. SO YOU WENT BY A SPOT WHERE A BUNCH OF PEOPLE
14 WERE HOLDING A PERSON DETAINED?

15 A YES, SIR.

16 Q OKAY. BUT YOU DIDN'T PAY ATTENTION TO THAT. OKAY.

17 A DIDN'T PAY ATTENTION TO WHAT, SIR?

18 Q TO THE PERSON THAT WAS BEING HELD AND WHERE IT WAS.

19 A I SAW WHERE HE WAS AND I KNEW THAT HE WAS THERE, BUT
20 I DIDN'T PAY ATTENTION TO WHAT HIS IDENTITY WAS IS WHAT I
21 SAID, SIR.

22 Q BUT YOU WERE AWARE THAT HE WAS ON CHESTERFIELD
23 AVENUE?

24 A YES. YES.

25 Q ALL RIGHT. AND MS. SANDERS HAD INDICATED THAT NO ONE

KARL ALLEN - RE-CROSS BY MR. FRICK

202

- 1 HAD BEEN IN THE HOUSE WITHIN FORTY-EIGHT HOURS?
- 2 A TWELVE TO TWENTY-FOUR, SIR, I BELIEVE IS WHAT I SAID.
- 3 Q TWELVE --- OKAY.
- 4 A ASIDE FROM HERSELF..
- 5 Q OKAY. ALL RIGHT. BUT LUCY'S TRAINED TO TRACK FOR
- 6 TRAILS THAT ARE DAYS AND DAYS OLD.
- 7 A YES, SIR, BUT ON INITIATION OF TRAIL SHE KNOWS NOT TO
- 8 TRY TO PICK UP IN A HOUSE, YOU KNOW, IF SOMEBODY'S BEEN
- 9 THERE FOREVER. WHEN WE DO THE MISSING MAN ---
- 10 Q RIGHT, BECAUSE ---
- 11 A --- SPECIFIC ---
- 12 Q --- MS. SANDERS WAS THERE AND YOU TOLD HER NO ON
- 13 THAT. OKAY.
- 14 A CORRECT.
- 15 Q OKAY. BUT AS FAR AS ANY OTHER INDIVIDUALS THAT
- 16 COULD'VE BEEN IN THE HOUSE WITHIN THE LAST FEW DAYS, YOU
- 17 DON'T HAVE A CLUE?
- 18 A NO.
- 19 Q OKAY. TAKE ME INSIDE THE HOUSE. I KNOW WE'VE GOT
- 20 THE MAP, BUT I ---
- 21 A OKAY.
- 22 Q WHERE DO YOU START IN THE HOUSE?
- 23 A I STARTED RIGHT AT THE FRONT DOOR, SIR.
- 24 Q FRONT DOOR.
- 25 A YES, SIR.

KARL ALLEN - RE-CROSS BY MR. FRICK

203

1 Q OKAY. WHERE DO YOU GO?

2 A SHE WENT DIRECTLY INSIDE, HOOKED A SMALL RIGHT, WENT
3 UP THE STAIRS TO THE TOP OF THE STAIRS, CAME BACK DOWN,
4 CAME ALMOST EVEN WITH THE FRONT DOOR AGAIN, TOOK A RIGHT,
5 WENT THROUGH THE LIVING ROOM, INDICATED SOME SCENT POOL AT
6 THE BACK DOOR, THE KITCHEN AREA, WENT THROUGH THE BACK
7 DOOR, WENT OUT INTO THE BACK YARD, CIRCLED AROUND A COUPLE
8 OF TIMES AND THEN CAME BACK IN, INDICATED THAT THE FRESH
9 TRAIL, THE HOT TRAIL --- WHAT WE REFER TO AS A HOT TRAIL
10 WAS NOT IN THE BACK. AND A HOT TRAIL --- I KNOW WHAT
11 YOU'RE FIXING TO ASK.

12 Q NOW, EXPLAIN WHAT YOU MEAN HOT TRAIL NOT IN THE BACK.

13 A OKAY.

14 Q I THINK I FOLLOW THE HOT TRAIL, BUT IN THE BACK'S
15 KIND OF LOSING ME.

16 A A DOG INDICATES DIFFERENTLY ON A TRAIL. IF AN
17 INDIVIDUAL WERE TO SIMPLY WALK OUT THIS DOOR AND WALK DOWN
18 THE STREET, SHE'S GOING TO TRACK YOU IF I TELL HER TO DO
19 SO. OKAY? IF YOU GOT UP AND PULLED A GUN, WAIVED A GUN
20 AROUND, RAN OUT AND YOU WERE PUMPING A LOT OF FEAR
21 PHEROMONES AND YOU WERE RUNNING, THE DOG INDICATES
22 DIFFERENTLY. THEY PULL HARDER. LUCY IN PARTICULAR, HER
23 TAIL COMES DOWN TO ALMOST STRAIGHT OUT. SHE'LL SQUAT
24 DOWN. THE NOSE IS RIGHT DOWN ON THE FLOOR UNTIL SHE HITS
25 AN AREA WHERE THERE'S A SCENT POOL WHERE A PERSON HAS

KARL ALLEN - RE-CROSS BY MR. FRICK

204

1 LINGERED FOR ANY LENGTH OF TIME, AND THEN HER HEAD COMES
2 AND CHECKS AROUND AND INDICATES THAT THERE'S A SCENT POOL
3 THERE. IF THERE HAD BEEN SOMEBODY THAT WAS IN THAT HOUSE
4 PRIOR TO AND JUST WALKED OUT OF THE HOUSE, SHE WOULD NOT
5 HAVE INDICATED A HOT TRAIL. MY EXPERIENCE SHOWS FROM MY
6 DOG'S INDICATORS THAT WERE FEAR PHEROMONES AND THERE WAS
7 A LOT OF ANXIETY FROM WHOEVER THE TRAIL THAT SHE PICKED UP
8 THAT RAN OUT --- OUT THE FRONT DOOR, NOT SOMEBODY WHO JUST
9 CASUALLY WALKED IN AND LEFT. DOES THAT ANSWER YOUR
10 QUESTION, SIR? I'M SORRY.

11 Q SORT OF. THAT'LL BE GOOD ENOUGH.

12 A ALL RIGHT.

13 Q ARE THERE OTHER PHEROMONES THAT SOMEONE CAN LEAVE?

14 A CERTAINLY.

15 Q AND THE DOG IS ABLE TO DISTINGUISH BETWEEN A FEAR
16 PHEROMONE AND A HAPPY PHEROMONE?

17 A THEY INDICATE AND THEY'RE TRAINED ON BECAUSE OF THE
18 TYPE OF TRAILING THAT WE DO, THEY WORK OFF OF AND THEY
19 EXHIBIT DIFFERENT SIGNS FOR FEAR AND PAIN. THOSE ARE THE
20 PRIMARY THAT A DOG PICKS UP ON. THEY'RE THE STRONGEST ONE
21 THAT A BLOODHOUND WILL REACT TO.

22 Q OKAY. GOES OUT THE BACK DOOR. IS THERE A WINDOW
23 NEAR THAT BACK DOOR?

24 A IF I RECALL THERE'S ONE RIGHT BESIDE IT, YES, SIR.

25 Q DID LUCY GO TO THE WINDOW?

KARL ALLEN - RE-CROSS BY MR. FRICK

205

1 A SHE INDICATED RIGHT AROUND IT THAT THERE WAS A SCENT
2 POOL ON THE INSIDE AND THE OUTSIDE RIGHT THERE AT THE
3 WINDOW AND DOOR. YES, SIR.

4 Q HAPPY PHEROMONES OR UNHAPPY PHEROMONES?

5 A SHE WAS PULLING PRETTY HOT, SO I WOULD THINK THAT IT
6 WAS PROBABLY WHATEVER IT WAS THAT SHE PICKED UP AT THE
7 FRONT DOOR AND FRANKLY, I'VE NEVER HEARD OF HAPPY
8 PHEROMONES. I'M NOT SURE WHAT THAT WOULD BE.

9 Q WELL, YOU SAID THERE'S OTHER PHEROMONES SO I ---

10 A YES, SIR.

11 Q --- AND I'M NOT CLEAR AS TO WHAT THOSE ARE, ASIDE
12 FROM FEAR PHEROMONES.

13 A YES. SIR.

14 Q BUT THE WAY SHE INDICATES, SHE COULD DETERMINE
15 WHETHER IT'S FEAR THAT SHE SMELLS ---

16 A I CAN --- I CAN KNOW THAT SHE'S AFTER SOMETHING THAT
17 HAS BEEN DUMPED PRETTY STRONG FROM THE BODY. IT'S A
18 STRONG SMELL IS WHAT SHE GOES OFF OF.

19 Q WHAT IF IT WAS A REALLY HAPPY EVENT?

20 A I DON'T KNOW THAT SHE HAS EVER ENCOUNTERED A REALLY
21 HAPPY EVENT THAT SHE NEEDED TO TRAIL.

22 Q OKAY. SO YOU HEADING OUT THE BACK DOOR, GO DOWN THE
23 SIDEWALK, DOWN THE TREE LINE AND WE GET TO CHESTERFIELD
24 AVENUE, CROSSES CHESTERFIELD AVENUE.

25 A YES, SIR.

KARL ALLEN - RE-CROSS BY MR. FRICK

206

1 Q AM I FOLLOWING SO FAR?

2 A YES, SIR, GENERAL.

3 Q COUPLE THINGS KIND OF FOUND ALONG THE WAY?

4 A YES, SIR.

5 Q OKAY.

6 A CLOSE TO IT, NOT RIGHT ON IT, BUT CLOSE TO IT.

7 Q OKAY. DOES SHE HIT ON ANY OF THE THINGS?

8 A SHE'S NOT TRAINED TO DO THAT, SIR.

9 Q WELL, WOULDN'T THAT LEAVE PHEROMONES ON THE THINGS?

10 A NOT NECESSARILY. BLOODHOUNDS ARE TRAINED TO TRAIL
11 AFTER AN INDIVIDUAL. MOST OTHER POLICE DOGS SUCH AS OUR
12 GERMAN SHEPHERD THAT WE HAVE, BRUNO, HE'S TRAINED ON
13 ARTICLE SEARCHES. HE'S TRAINED TO GO PICK UP AND FIND AN
14 ITEM THAT A PERSON HAS LEFT THEIR SCENT ON. OKAY? LUCY
15 IS TRAINED TO RUN FOR THE PERSON'S SCENT. AND THE REASON
16 THAT IS IS BECAUSE IF I'M RUNNING FROM SOMEBODY AND I'VE
17 STOLEN SOMETHING, I CAN TAKE IT AND I CAN PITCH IT IN THE
18 WOODS UP WIND OF ME, AND IF MY DOG IS TRAINED TO GO TO
19 PICK THAT UP, LIKE SUCH AS BRUNO WOULD DO, THAT WOULD TAKE
20 ME OFF OF THE INDIVIDUAL'S TRAIL WHICH WOULD ACTUALLY BE
21 DOWNWIND BEING BLOWN BY THE WIND, SO NO, SHE DOES NOT
22 NORMALLY INDICATE ON INDIVIDUAL ITEMS. IF THEY HAPPEN TO
23 BE RIGHT ON THE TRAIL OR CLOSE TO IT, SHE JUST GOES RIGHT
24 OVER THEM.

25 Q OKAY. SO ---

KARL ALLEN - RE-CROSS BY MR. FRICK

207

1 A AND WE DISCOURAGE THAT AS A MATTER OF FACT.

2 Q SO THE TRAIL THAT SHE CAN PICK UP ARE THE PHEROMONES
3 THAT, THE EFFLUVIUM THAT COMES OFF A PERSON ---

4 A THE EFFLUVIA COMBINED WITH THE PHEROMONES OF THE
5 INDIVIDUAL.

6 Q THAT COMES OUT THROUGH CLOTHING, THROUGH SHOES?

7 A ABSOLUTELY, YES, SIR. YES. WE HAVE DEAD SKIN CELLS,
8 MILLIONS OF THEM, COMING OFF OF OUR FACE, OUR HAIR, OUR
9 EARS, OUR EYES, HANDS, ANYTHING.

10 Q BUT SHE CAN'T PICK UP PHEROMONES IN MY --- ON THIS
11 PEN IF I DROP IT ON THE FLOOR?

12 A PROBABLY NOT, SIR. SHE'S NOT TRAINED TO DO THAT.
13 YOU HAVE TO SPECIFICALLY TRAIN A DOG FOR ARTICLE
14 SEARCHING. IT'S A DIFFERENT TYPE OF SEARCH.

15 Q OKAY.

16 A I MEAN SHE CAN SMELL IT PROBABLY. I'M SURE SHE
17 COULD, BUT SHE'S NOT GOING TO INDICATE ON IT BECAUSE WE'VE
18 TRAINED HER NOT TO INDICATE ON ITEMS.

19 Q OKAY. ON THE SIDEWALK ON CHESTERFIELD I THINK ---
20 YOU GOT THE PICTURE ---

21 A YES, I'VE GOT ONE HERE. RIGHT HERE.

22 Q YES, THAT'S STATE'S EXHIBIT NUMBER 1. I'VE GOT IT
23 RIGHT. YOU SAID THAT THE TRAIL BLEW INTO THE YARDS AND ON
24 SOME PEOPLES' PORCHES AND WHATNOT?

25 A IT CAN, YES, SIR, AND, APPARENTLY, IT DID.

KARL ALLEN - RE-CROSS BY MR. FRICK

208

1 Q OKAY. DO THE PINPOINTS YOU HAVE ACCURATELY DEPICT OR
2 TO THE BEST THAT YOU CAN DEPICT ON ---

3 A TO THE BEST THAT I COULD. I MEAN I DIDN'T HAVE A ---
4 I USUALLY RUN WITH A GPS, BUT EVEN GPS ISN'T TO THE FOOT.

5 Q OKAY.

6 A THAT WAS JUST TO THE BEST OF MY KNOWLEDGE LOOKING AT
7 THE MAP, AT THE PHOTO RATHER.

8 Q RIGHT. WOULD THERE BE TWO EDGES TO A TRAIL? I MEAN
9 IF IT BLOWS OUT, ARE THEY'RE GOING TO BE TWO SIDES TO A
10 TRAIL?

11 A THEORETICALLY, BUT NORMALLY LUCY GOES TO THE
12 STRONGEST EDGE WHICH IS ALWAYS GOING TO BE THE DOWNWIND OR
13 DOWNHILL OR IN CERTAIN --- IF YOU HAVE A TEMPERATURE
14 INVERSION AT TWO O'CLOCK IN THE MORNING WITH HIGH HUMIDITY
15 IT'S GOING TO BE UPHILL. OKAY? BELIEVE OR NOT, YES.
16 YES.

17 Q WOW, THAT'S GOOD TRAINING YOU GOT THERE. I SWEAR.

18 A BUT SHE --- SHE DOESN'T KNOW THAT. SHE DOESN'T
19 UNDERSTAND THAT. ALL SHE KNOWS IS THAT'S WHERE THE
20 STRONGEST SCENT IS, AND SHE --- SHE TRAILS ALONG THAT.

21 Q HAVE YOU BEEN IN HERE FOR ANY OF THE TESTIMONY TODAY?

22 A YES, SIR.

23 Q OKAY. WERE YOU PRESENT WHEN THERE WAS TESTIMONY
24 ABOUT MR. FRAZIER BEING ON THE SIDEWALK?

25 A I --- YES, SIR, I GUESS SO, YES.

KARL ALLEN - RE-CROSS BY MR. FRICK

209

1 Q OKAY. WELL, I MEAN IF YOU WEREN'T, PLEASE ---

2 A YES, I --- NO, I'VE BEEN IN HERE ALL DAY, BUT I
3 SUPPOSE I'VE HEARD IT.

4 Q WELL, WHAT I'M LOOKING AT IS, THIS TRAIL RIGHT ALONG
5 THIS AREA --- TRY AND GIVE YOU SOME IDEA WHAT I'M LOOKING
6 AT --- RIGHT ALONG THE AREA WHERE YOU HAVE THE PINPOINT
7 FOR THE NECKLACE GOES FAR OFF THE SIDEWALK.

8 A YES, SIR. THAT IS NOT UNCOMMON WITH BLOODHOUND
9 TRAILING. AS I STATED, WHAT WE HAVE IS WHAT WE CALL A
10 SCENT CONE. AS YOUR EFFLUVIA HIT THE GROUND, IF A CAR
11 COMES BY, IF THERE'S A BREEZE BLOWING, AND IF I RECALL,
12 THERE WAS A SLIGHT NORTHERLY BREEZE THAT DAY, VERY SLIGHT,
13 BUT IT'S GOING TO --- IT'S GOING TO BLOW THAT UP TO A
14 POINT THAT STOPS AND THAT'S WHERE IT'S GOING TO GATHER,
15 THEREFORE, IT'S GOING TO BE THE STRONGEST POINT, SO IT'S -
16 -- IT'S VERY COMMON IF A PERSON WENT DOWN A SIDEWALK WITH
17 VEHICLES DRIVING BY, BECAUSE THE VEHICLES CAUSE THE
18 BLOWING EFFECT THAT A SLIGHT BREEZE WOULD, AS WELL, IT'S
19 ALL GOING TO GO TO THAT DOWNWIND SIDE.

20 Q IF ENOUGH CARS WENT BY, WOULD IT BLOW AWAY A TRAIL?

21 A I GUESS WITH TIME, BUT THE CARS WOULDN'T NECESSARILY
22 BLOW IT AWAY. IT WOULD BLOW IT UP TO THE FIRST VERTICAL
23 ITEM AND IT WOULD SIMPLY GO TO THE BOTTOM OF IT, BE IT THE
24 EDGE OF A HOUSE, BUSHES, HIGH GRASS, EVEN A CURB SOMETIMES
25 WILL DO IT.

KARL ALLEN - RE-CROSS BY MR. FRICK

210

1 Q WELL, HERE'S MY ISSUE. IF WE'VE GOT CARS GOING BY
2 AND IT'S GOING TO BLOW THE TRAIL RIGHT HERE NEAR THE
3 NECKLACE ALL THE WAY ONTO THIS GUY'S FRONT PORCH ---

4 A (INDICATING YES)

5 Q --- YET THE TRAIL UP HERE WHERE PRESUMABLY THE SAME
6 CARS WOULD'VE GONE BY IS STILL ON THE SIDEWALK AND THE ONE
7 CROSSING CHESTERFIELD IS STILL THERE, HOW DOES THAT
8 HAPPEN?

9 A WELL, IF YOU'LL ALSO LOOK WHERE THAT IS, YOU SEE
10 THOSE BUSHES WHERE THE LINE GOES RIGHT UP BESIDE ---

11 Q (INDICATING YES)

12 A --- THAT'S WHERE SHE WAS TRACKING. SHE WAS TRACKING
13 RIGHT ALONG THE BASE OF THOSE BUSHES. WHERE THOSE BUSHES
14 GO AWAY, SHE WENT FURTHER INTO EITHER THE DRIVEWAYS,
15 PARKING LOTS OR UP THE YARDS. SPECIFICALLY, YOU SEE RIGHT
16 THERE AT BELK STREET, SHE STARTED TO ACTUALLY GO UP BELK
17 STREET, SHE REALIZED THAT THE SCENT WAS DYING OUT, SO SHE
18 CROSSED OVER DOING A COUNTER CLOCKWISE PATTERN WHICH SHE'S
19 TRAINED TO DO AT INTERSECTIONS; SHE PICKS THE TRAIL BACK
20 UP. SHE GOES ACROSS THE GRASS WHERE IT IS, CAUGHT RIGHT
21 THERE AND RIGHT THERE WHERE IT SAYS ADDRESS BOOK, YOU SEE
22 THOSE BUSHES AND SUCH RIGHT THERE?

23 Q (INDICATING YES)

24 A SHE WAS PICKING IT UP RIGHT THERE, AND SHE WAS
25 JUMPING FROM BUSH TO BUSH. YOU SEE RIGHT THERE, THE

KARL ALLEN - RE-CROSS BY MR. FRICK

211

1 DRIVEWAY, SHE STARTED TO GO INTO THE DRIVEWAY RIGHT THERE
2 UNDER THE TWO S'S ON ADDRESS BOOK, THEN SHE CAME BACK OUT
3 --- THE SCENT STARTED TO FADE ON HER, SO SHE JUMPS BACK
4 OVER THERE TO THE BUSHES. SHE GOES INTO THAT BIG YARD
5 RIGHT THERE, ACROSS THAT PARKING LOT UP TO THE FRONT OF
6 THAT HOUSE WHERE IT WAS ALL STRONG, GOES ACROSS, THERE'S
7 A SMALL BUILDING RIGHT THERE AND IT IS UP AGAINST THOSE
8 TREES. SHE'S RIGHT UP THROUGH IN --- BESIDE THOSE BUSHES
9 AND TREES RIGHT THERE WHERE THIS SUBJECT IS DETAINED,
10 BECAUSE THAT'S HOW THE --- IT'S GOING TO --- THE SCENT ---

11 Q THE EFFLUVIA TREE ---

12 A --- IS GOING TO BE STOPPED BY BUSHES, HIGH GRASS,
13 ANYTHING THAT'S THERE THAT'S GOING TO STOP IT AND THAT'S
14 WHERE IT'S GOING TO GATHER AND BE THE STRONGEST. IT'S ---
15 EASIEST WAY TO ENVISION IT IS LIKE A MIST. IT'S BLOWING
16 IN AND WHEREVER IT HITS SOMETHING IT STOPS OR SNOW
17 ACTUALLY IS PROBABLY THE BEST --- IT'S LIKE DRIFTING SNOW.

18 Q YET IN THE MIDDLE OF CHESTERFIELD AVENUE WHERE WE
19 DON'T HAVE ANY BUSHES, WE DON'T HAVE ANY TREES, IT COMES
20 STRAIGHT ACROSS?

21 A YES, SIR. DOG IS TRAINED TO COME TO A STREET AND DO
22 A COUNTER CLOCKWISE PATTERN. SHE PICKED IT UP. I MEAN
23 IT'S GOING TO FADE RIGHT THERE, AND IT DID, BUT SHE WAS
24 ALREADY MOVING FROM NORTH TO SOUTH, SO SHE KNOWS THE TRAIL
25 IS GENERALLY GOING TO GO THAT WAY. IT'S THE SAME THING

KARL ALLEN - RE-CROSS BY MR. FRICK

212

1 WITH THE STREAM. IF SHE HITS A STREAM OF WATER, SHE'S
2 GOING TO GO DOWN-STREAM AND THEN COME BACK AND SHE'S GOING
3 TO HIT IT ON THE OTHER SIDE. OKAY? SAME THING WITH THE
4 STREET. SHE'S GOING TO COME ACROSS THERE. THE SCENT MAY
5 BLOW THIS WAY, MAY BLOW THAT WAY AND IT MAY BLOW THIS WAY,
6 BUT WHEN SHE HITS THERE, THAT SCENT --- THERE'S STILL
7 RESIDUAL SCENT THERE IN THE MIDDLE OF THAT STREET, AND
8 THERE WILL BE FOR HOURS. OKAY? AND SHE CAME STRAIGHT
9 ACROSS FOLLOWING THAT TRAIL, BECAUSE THAT'S THE HOTTEST
10 SPOT.

11 Q I THINK YOU SAID AT ONE POINT SHE STARTED TO HEAD
12 TOWARDS BELK, AND YOU KNOW, AT COUPLE POINTS THE TRAIL
13 GETS WEAK ---

14 A YES. RIGHT THERE.

15 Q --- AND SHE TRAILS OFF. WHAT DO YOU DO? DO YOU
16 CORRECT HER WHEN SHE ---

17 A NO, I ---

18 Q --- LOOKS LIKE SHE'S COMING OFF OF HER TRAIL?

19 A I DO NOT CORRECT HER. I LET HER DO HER JOB. I READ
20 HER. OKAY? IF SHE APPEARS TO BE CONFUSED, THEN I GO BACK
21 TO THE LAST POINT WHERE I KNEW THAT SHE WAS ON TRAIL. I
22 TELL HER TO --- AND I CORRECT HER AT THAT POINT AND SHE
23 RESUMES HER TRAIL.

24 Q HOW DO YOU DO THAT? I MEAN IS SHE LOOSE FOLLOWING
25 THE TRAIL BY HERSELF OR ---

KARL ALLEN - RE-CROSS BY MR. FRICK

213

1 A NO, SHE'S ALWAYS ON LEAD. I ALWAYS --- ALWAYS TRACK
2 ON LEAD. SHE MAINTAINS A CERTAIN AMOUNT OF PRESSURE ON MY
3 LEAD. OKAY?

4 Q HOW LONG IS THE LEAD?

5 A I'VE GOT A FIFTEEN FOOT LEAD THAT I NORMALLY RUN
6 WITH, AND IT'S A MAXIMUM OF FIFTEEN FEET AWAY FROM HER.
7 IF YOU GET TOO CLOSE TO A DOG YOU FEEL --- THEY FEEL LIKE
8 YOU'RE CROWDING THEM, GETTING IN THEIR WAY, YOU GET TOO
9 FAR AWAY, THEN YOU CAN'T FEEL WHAT THE DOG IS DOING.

10 Q HOW FAR AWAY WAS SHE ON THIS?

11 A WHAT DO YOU MEAN?

12 Q ANY IDEA? DID --- WAS SHE FIFTEEN FEET AWAY?

13 A NO, SHE WAS ON A --- SHE WAS ON A FIFTEEN FOOT LEAD,
14 SO SHE WOULD'VE BEEN ANYWHERE --- IF I WAS CROSSING THE
15 STREET, I CHOKED UP ON THE LEAD BECAUSE OF POTENTIAL OF
16 CARS. OKAY? WHEN SHE'S GOING DOWN AN OPEN AREA SUCH AS
17 SIDEWALK AND YARDS, I LET HER HAVE AS MUCH LEAD AS
18 POSSIBLE.

19 Q OKAY. FINAL QUESTION.

20 A YES, SIR.

21 Q THE POINT WHERE YOU GOT SUBJECT DETAINED ---

22 A YES, SIR.

23 Q --- IS THAT WHERE YOU DROVE BY AND SAW THE PEOPLE
24 BEFORE YOU STARTED THE TRAIL?

25 A YES, SIR.

1 MR. FRICK - OKAY. THAT'S ALL THE QUESTIONS I
2 HAVE. THANK YOU, SIR.

3 MR. ALLEN - THANK YOU.

4 MR. LIFSEY - I DON'T HAVE ANYTHING FURTHER FOR
5 THIS WITNESS.

6 THE COURT - THANK YOU, SIR.

7 MR. LIFSEY - I'D ASK THAT HE BE EXCUSED SINCE HE
8 HAS ANOTHER COMMITMENT TOMORROW.

9 MR. FRICK - NO OBJECTION, YOUR HONOR.

10 THE COURT - OKAY. LET'S STOP FOR THE EVENING.
11 LET'S FIRE BACK UP AT 9:30 IN THE MORNING. IS THAT ANY
12 PROBLEM WITH ANYBODY?

13 MR. FRICK - NO, SIR.

14 THE COURT - I'M GOING TO FORE-WARN THE JURY
15 WE'LL BREAK A LITTLE EARLY TOMORROW FOR LUNCH. WE
16 NORMALLY TRY TO RUN TO 12:30 OR 1:00, BUT TOMORROW WE'LL
17 RUN UNTIL ABOUT 11:20 AND WE'LL TAKE AN EARLY LUNCH AND WE
18 WILL COME BACK EARLIER. OKAY? OKAY. I NEED YOU BACK
19 HERE IN THE MORNING AT 9:30. WE MAY HAVE TO SHIFT
20 BUILDINGS TOMORROW AFTERNOON, BUT WE'LL GET THAT WORKED
21 OUT TOMORROW MORNING. REMEMBER, DON'T DISCUSS THE CASE
22 WITH ANYONE. Y'ALL HAVE A GOOD NIGHT.

23 (JURY EXITS THE COURTROOM)

24 THE COURT - ALL RIGHT, 9:30 IN THE MORNING.

25 (COURT IN RECESS FOR THE DAY AT 5:30 P.M.)

JOHN POOVEY - DIRECT BY MR. LIFSEY

215

1

* * * * *

2

(COURT RESUMES ON WEDNESDAY, SEPTEMBER 17, 2008)

3

THE COURT - READY?

4

MR. LIFSEY - YES, SIR, WE'RE READY.

5

THE COURT - MR. FRICK?

6

MR. FRICK - READY, YOUR HONOR.

7

THE COURT - BRING THEM IN.

8

(JURY ENTERS THE COURTROOM)

9

THE COURT - GOOD MORNING.

10

(JURORS RESPOND)

11

THE COURT - COUNSEL, YOU MAY APPROACH.

12

(BENCH CONFERENCE WAS HELD IN THE PRESENCE OF

13

THE JURY BUT OUT OF THE HEARING OF THE JURY WHICH WAS NOT

14

REPORTED.)

15

(DOCUMENT MARKED AS COURT'S EXHIBIT NUMBER 1.)

16

THE COURT - I'VE GOT YOUR MESSAGE.. WE'RE NOT

17

THROUGH WITH EVIDENCE YET. SOLICITOR?

18

MR. LIFSEY - YOUR HONOR, I'D CALL JOHN POOVEY TO

19

THE STAND, PLEASE.

20

JOHN POOVEY, AFTER BEING FIRST DULY SWORN.

21

TESTIFIES AS FOLLOWS:

22

DIRECT EXAMINATION

23

BY MR. LIFSEY -

24

Q WOULD YOU STATE YOUR FULL NAME, PLEASE, SIR?

25

A JOHN POOVEY.

JOHN POOVEY - DIRECT BY MR. LIFSEY

216

1 Q MR. POOVEY, WHAT DO YOU DO FOR A LIVING?

2 A I WORK FOR EVANS PETROLEUM COMPANY.

3 Q ALL RIGHT, BACK IN FEBRUARY OF THIS YEAR, 2008, WHAT
4 DID YOU DO FOR A LIVING THEN?

5 A I WAS A PATROL OFFICER AT THE LANCASTER POLICE
6 DEPARTMENT?

7 Q WERE YOU ON DUTY FEBRUARY 5TH, 2008?

8 A YES, I WAS.

9 Q WOULD YOU RELATE TO THE JURY AND TO THE COURT HOW YOU
10 FIRST CAME IN CONTACT WITH THE MAN YOU LATER LEARNED TO BE
11 RANDOLPH FRAZIER?

12 A WE --- THE PATROL DIVISION HAD BEEN DISPATCHED TO A
13 BURGLARY CALL IN THE [REDACTED] AREA. I DON'T
14 REMEMBER THE EXACT NUMBER. I WAS IN ROUTE TO THAT
15 LOCATION WHEN CAPTAIN HUNTER ADVISED THAT SHE HAD A ---
16 PASSED A SUBJECT THAT FIT THE DESCRIPTION THAT THE
17 DISPATCH HAD GIVEN OUT.

18 Q LET ME STOP YOU JUST A MINUTE. NOW, YOU TALK ABOUT -
19 -- WELL, FIRST LET ME ASK YOU TWO QUESTIONS. DO YOU
20 REMEMBER ABOUT HOW LONG IT WAS FROM WHEN YOU GOT THE ---
21 AND I'M NOT TALKING ABOUT MINUTES AND SECONDS EXACTLY, BUT
22 AS BEST YOU CAN TELL FROM WHEN THE CALL, THE DISPATCH, YOU
23 WERE DISPATCHED TO WHEN YOU GOT THE COMMUNICATION FROM
24 CAPTAIN HUNTER?

25 A IT CAME DIRECTLY BEHIND THE CALL AT [REDACTED]

JOHN POOVEY - DIRECT BY MR. LIFSEY

217

1 [REDACTED] WE WERE ADVISED THAT THERE HAD BEEN A
2 BURGLARY. WE WERE DISPATCHED TO THAT LOCATION. AS SOON
3 AS THE COMMUNICATIONS OFFICER GOT THROUGH GIVING OUT THAT
4 INFORMATION AND THE SQUELCH CLEAR ON THE RADIO, CAPTAIN
5 HUNTER DID THEN ADVISE THAT THERE WAS A SUBJECT WALKING ON
6 CHESTERFIELD AVENUE THAT COULD POSSIBLY BE THE SUBJECT AND
7 FITTING THAT DESCRIPTION.

8 Q GREAT. ALL RIGHT, THANK YOU. AND WHEN YOU TALK
9 ABOUT CAPTAIN HUNTER, YOU TALKING ABOUT SUSAN HUNTER, THE
10 LADY RIGHT HERE THAT WE'LL HEAR FROM IN A LITTLE BIT?

11 A YES, I AM.

12 Q OKAY. NOW, GO AHEAD. I INTERRUPTED YOU. WHEN YOU
13 GOT THIS COMMUNICATION FROM SUSAN HUNTER THAT SHE HAD HAD
14 SOMEBODY --- FROM CAPTAIN HUNTER THAT SHE HAD SOMEBODY ---
15 SEEN SOMEBODY THAT MET THE DESCRIPTION. IS THAT WHAT YOU
16 SAID?

17 A YES, SIR.

18 Q GO AHEAD.

19 A IF I MAY, COULD I REFER TO THE INCIDENT REPORT THAT
20 I ORIGINALLY TYPED?

21 Q YOU SURE CAN.

22 A I KNOW --- WE WERE LOOKING FOR BLACK MALE WITH A ---
23 WITH GRAY HAIR AND I PUT IN MY INCIDENT REPORT EXACTLY THE
24 CLOTHING DESCRIPTION I BELIEVE WAS A ---

25 Q IS THIS ---

JOHN POOVEY - DIRECT BY MR. LIFSEY

218

1 A THAT'S IT RIGHT THERE. IN MY INCIDENT REPORT IT
2 STATED IT WAS A BLACK MALE WEARING A BROWN JACKET AND HAD
3 GRAY HAIR AND THAT THE SUSPECT LEFT RUNNING TOWARD
4 CHESTERFIELD AVENUE. WHILE I WAS APPROACHING CHESTERFIELD
5 AVENUE GETTING CLOSE TO THE [REDACTED] AREA OF
6 THE CHESTERFIELD APARTMENT AREA, I OBSERVED THE SUSPECT OR
7 THE SUBJECT WALKING TOWARDS ME --- WALKING WEST TOWARDS ME
8 AND HE HAD ON A --- HE WASN'T WEARING THE JACKET. HE WAS
9 CARRYING THE JACKET IN HIS HANDS. HE HAD ON A GRAY COAT
10 AND HE HAD --- HAD ON A GRAY SHIRT, EXCUSE ME, AND HAD
11 GRAY HAIR.

12 Q ALL RIGHT. NOW, --- WELL, GO AHEAD. WHAT DID YOU DO
13 AT THAT POINT?

14 A CAPTAIN HUNTER WAS APPROACHING ME. SHE WAS HEADED
15 WEST. I WAS HEADING EAST ON CHESTERFIELD AVENUE. SHE HAD
16 --- WHEN SHE PASSED ME AND I PASSED THE SUBJECT IN
17 QUESTION, I CONTINUED TO LOOK IN MY REAR-VIEW MIRROR. AT
18 THAT TIME HE WAS APPROACHING A TELEPHONE POLE. I OBSERVED
19 HIM TAKE SOMETHING FROM HIS POCKET OR EITHER FROM UNDER
20 THE COAT AND THROW IT ON THE GROUND. I ADVISED CAPTAIN
21 HUNTER OF THAT AND I MADE A U-TURN, WENT BACK AND AT THAT
22 TIME I PULLED ALONG SIDE THE SUBJECT ACTUALLY A LITTLE BIT
23 IN FRONT OF HIM, EXITED MY VEHICLE AND STOPPED.

24 Q NOW, COULD YOU TELL WHAT HE HAD THROWN DOWN?

25 A NO, SIR, I COULD JUST TELL IT WAS A DARK OBJECT IS

JOHN POOVEY - DIRECT BY MR. LIFSEY

219

1 ALL I COULD TELL.

2 Q BUT HE HAD SOMETHING IN HIS HAND AND HE HAD --- COULD
3 YOU TELL ABOUT WHERE HE WAS WHEN HE THREW IT?

4 A IF YOU WERE TALKING AT STREET-WISE, HE WAS CLOSE TO
5 THE INTERSECTION OF, I BELIEVE IT'S KERSHAW AND
6 CHESTERFIELD AVENUE, AND IT WAS WITHIN FIVE TO EIGHT FEET
7 OF A TELEPHONE POLE NEAR THAT INTERSECTION.

8 Q DID YOU INVESTIGATE FURTHER WHAT HE HAD THROWN DOWN
9 OR DID CAPTAIN HUNTER INVESTIGATE THAT?

10 A CAPTAIN HUNTER DID.

11 Q OKAY. SO YOU BASICALLY DETAINED THE SUSPECT?

12 A YES, SIR.

13 Q IS THE PERSON YOU DETAINED HERE IN THE COURTROOM
14 TODAY?

15 A YES, SIR, HE IS.

16 Q COULD YOU IDENTIFY HIM, PLEASE?

17 A YES, SIR IT'S RANDOLPH FRAZIER.

18 Q YOU TALKING ABOUT THIS MAN SITTING RIGHT HERE IN THE
19 WHITISH SHIRT BESIDE MR. FRICK?

20 A YES, SIR, MINUS THE GRAY HAIR AT THE TIME.

21 Q ALL RIGHT. AND THAT'S WHAT I WAS GOING TO ASK YOU.
22 HE HAD AT THAT TIME GRAY HAIR?

23 A YES, SIR, HE DID.

24 Q YOU MENTIONED A JACKET. WAS HE WEARING IT, CARRYING?
25 WHAT WAS THE SITUATION?

JOHN POOVEY - DIRECT BY MR. LIFSEY

220

1 A AT THE TIME WHEN I EXITED MY VEHICLE AND TURNED
2 AROUND TO APPROACH HIM, HE HAD THE JACKET IN HIS HAND. AS
3 TO THE BEST OF MY MEMORY, HE HAD THE JACKET IN HIS HAND
4 AND DURING OUR CONVERSATION, I TOOK THE JACKET FROM HIM
5 AND LAID IT ON MY --- THE TRUNK OF MY PATROL CAR.

6 Q I'M GOING TO SHOW YOU WHAT HAS BEEN MARKED FOR
7 IDENTIFICATION AS STATE'S EXHIBIT 4 AND I KNOW YOU'VE
8 LOOKED AT IT BECAUSE --- IS THIS THE JACKET THAT YOU LAID
9 ON YOUR TRUNK?

10 A YES, SIR, IT APPEARS TO BE THE SAME COAT THAT WAS
11 LAID ON THE TRUNK OF MY PATROL CAR.

12 Q DID YOU TAKE IT INTO EVIDENCE OR DID YOU LET ONE OF
13 THE OTHER OFFICERS ---

14 A I THINK AT THE TIME THAT HE WAS TAKEN INTO CUSTODY I
15 TOOK THE JACKET WITH ME AND PLACED IT IN HIS PROPERTY IN
16 THE EVIDENCE ROOM IN OUR JAIL AREA, AND THEN I THINK
17 OFFICER --- OR SERGEANT PARSONS MAY HAVE RETRIEVED IT AND
18 PUT IT IN THE EVIDENCE FROM THERE.

19 Q OKAY. DO YOU NEED TO GLANCE AT THIS ONE TIME AND
20 MAKE SURE THAT'S WHAT YOU TOOK AND ALL?

21 A THIS IS THE CHAIN OF CUSTODY EVIDENCE FORM THAT
22 SERGEANT PARSONS FILLED OUT.

23 Q ALL RIGHT. DOES THIS JACKET APPEAR TO BE THAT
24 JACKET?

25 A YES, SIR, IT IS.

JOHN POOVEY - DIRECT BY MR. LIFSEY

221

1 Q ALL RIGHT. DID YOU NOTICE ANYTHING ELSE ABOUT WHAT
2 HE WAS WEARING?

3 A AT THE TIME HE CONTINUED TO WALK TOWARDS ME --- IF
4 YOU'D GIVE ME JUST A MOMENT, PLEASE. I THOUGHT HE HAD ON
5 GREEN DENIM PANTS OR SOME TYPE OF GREEN PANT AND THE BLACK
6 SHOES.

7 Q OKAY. NOW, I'M GOING TO SHOW YOU SOME SHOES. DO
8 THESE LOOK TO BE SIMILAR TO THE SHOES THAT HE HAD ON?

9 A YES, SIR.

10 Q NOW, YOU DID NOT TAKE CUSTODY OF HIS SHOES AT THAT
11 TIME?

12 A NO, SIR, I DID NOT.

13 Q HOLD OFF ON THAT. SO YOUR INVOLVEMENT AS A PATROL
14 OFFICER BASICALLY THEN IN THIS CASE ENDED AFTER YOU TOOK
15 HIM INTO CUSTODY. IS THAT CORRECT?

16 A YES, SIR.

17 Q YOU DID NOT DO ANY OF THE FURTHER INVESTIGATION ---

18 A NO, SIR, I DID NOT. I DID NO FURTHER INVESTIGATION
19 FROM THAT POINT.

20 Q AND EXPLAIN TO ME ONE MORE TIME FOR THE JURY, WHERE
21 WERE YOU WHEN YOU SAW HIM DROP THE ITEM OR THROW THE ITEM
22 THAT HE HAD IN HIS HAND?

23 A I HAD JUST PASSED HIM ON CHESTERFIELD AVENUE AND LIKE
24 --- AS I STATED, WHEN I PASSED HIM, I CONTINUED TO LOOK AT
25 HIM IN MY REAR-VIEW MIRROR BECAUSE I WAS AFRAID THAT IF HE

JOHN POOVEY -- CROSS BY MR. FRICK

222

1 WAS OUR SUSPECT THAT HE WAS GOING TO RUN TOWARDS BELK
2 STREET OR THREATT STREET, ANY OF THOSE SMALL STREETS THAT
3 LEAD INTO THE COUNTY, SO I WAS TRYING TO WATCH HIM, AND AS
4 I PASSED HIM, HE THREW DOWN SOMETHING NEAR THAT TELEPHONE
5 POLE AND THEN I MADE MY U-TURN AND WENT BACK TO HIM AND
6 ACTUALLY WENT FORWARD SO THAT HE --- WHEN I EXITED MY
7 VEHICLE HE WOULD HAVE TO APPROACH ME INSTEAD OF ME
8 APPROACHING HIM FROM BEHIND.

9 MR. LIFSEY - OKAY. ALL RIGHT. I DON'T THINK I
10 HAVE ANY FURTHER QUESTIONS FOR THIS WITNESS.

11 THE COURT - YOUR WITNESS.

12 MR. FRICK - THANK YOU.

13 CROSS EXAMINATION

14 BY MR. FRICK -

15 Q OFFICER POOVEY, WERE YOU DRIVING A MARKED CAR?

16 A YES, SIR, I WAS.

17 Q WERE LIGHTS AND SIRENS ON OR WERE YOU ---

18 A NO, SIR, THEY WERE NOT.

19 Q OKAY. BUT YOU WERE --- YOU WEREN'T POSSIBLY GOING
20 THE SPEED LIMIT, WERE YOU? WERE YOU GOING OVER IT A
21 LITTLE BIT?

22 A I WAS NOT IN EXCESS OF THE SPEED LIMIT. I WAS --- I
23 WAS AS CLOSE TO THE SPEED LIMIT OR MAYBE A MILE OR TWO
24 OVER, BUT NO I WAS NOT RUNNING CODE OR ANYTHING LIKE THAT.

25 Q OKAY. ALL RIGHT. AND I'M NOT TRYING TO GET YOU IN

JOHN POOVEY - CROSS BY MR. FRICK

223

1 TROUBLE.

2 A THAT'S FINE.

3 Q I'M --- I GUESS MY QUESTION IS YOU RESPONDED TO A
4 BURGLARY CALL; YOU WERE TRYING TO GET THERE AS QUICKLY AS
5 YOU COULD WITHOUT ---

6 A WELL, A BURGLARY IN PROGRESS AND WE WERE --- MOST OF
7 THE TIME WE WERE TAUGHT NOT TO RUN LIGHTS AND SIRENS
8 BECAUSE MOST OF THE TIME YOU'LL OUTRUN THE SUSPECT OR THE
9 SUSPECT WILL PASS YOU; YOU GET TUNNEL VISION; YOU DON'T
10 WATCH HIM, AND IF YOU'RE RUNNING LIGHTS AND SIRENS, THEN
11 THAT LETS HIM KNOW WHERE YOU ARE IN TO RELATION TO WHERE
12 HE IS SO ---

13 Q OKAY. WELL, MR. FRAZIER SAW YOU. RIGHT? YOU PASSED
14 BY HIM IN A MARKED CAR. CORRECT?

15 A YES, SIR, HE DID.

16 Q OKAY. AND YOU SAID HE WAS WALKING DOWN CHESTERFIELD?

17 A IN A BRISK MANNER.

18 Q OKAY.

19 A AND HE WAS SWEATING PROFUSELY WHEN I STOPPED HIM.

20 Q OH, OKAY; NOW, HE'S SWEATING. ALL RIGHT.

21 A WELL, IT'S IN MY ---

22 Q YES, SIR, I SAW IT WAS IN YOUR REPORT. ALL RIGHT.
23 BUT HE WAS WALKING?

24 A YES, SIR.

25 Q MARKED POLICE CAR GOES PASSED HIM AND HE CONTINUES

JOHN POOVEY - CROSS BY MR. FRICK

224

1 WALKING?

2 A YES, SIR.

3 Q OKAY. JUST TO CLARIFY, AND I KNOW YOU DIDN'T HAVE A
4 WATCH ON IT, BUT THE LENGTH OF TIME BETWEEN YOU HEARING
5 THE CALL OF THE DESCRIPTION OF A PERSON AND THE LENGTH OF
6 TIME THAT YOU HEAR CAPTAIN HUNTER SAY I'VE GOT A PERSON
7 WHO FITS THAT DESCRIPTION, ABOUT APPROXIMATELY HOW LONG
8 WAS THAT?

9 A IT WOULD'VE BEEN --- IN MY OPINION, IT WOULD'VE BEEN
10 LESS THAN A MINUTE, BECAUSE I WAS CLOSE TO THE
11 CHESTERFIELD AVENUE AREA. I CAN'T REMEMBER WHAT STREET,
12 SIDE STREET THAT I TURNED OFF OF TO GET ONTO CHESTERFIELD
13 AVENUE.

14 Q RIGHT.

15 A WE'VE GOT THE BURGLARY CALL, AND AS SOON AS WE GOT
16 THE BURGLARY CALL, THE SQUELCH ON THE RADIO CLEARED;
17 CAPTAIN HUNTER SAID SHE HAD A PERSON THAT FIT THAT
18 DESCRIPTION AND I WAS HEADED --- I WAS ALREADY HEADED IN
19 THAT DIRECTION.

20 Q RIGHT. OKAY. SO AS SOON AS THAT DESCRIPTION COMES
21 OVER THE RADIO, FINISHES UP, THERE'S A CALL THAT WE'VE GOT
22 SOMEONE THAT MEETS THAT DESCRIPTION?

23 A YES, SIR.

24 Q OKAY. AND THE DESCRIPTION THAT YOU HEAR OVER THE
25 RADIO IS A BLACK MALE --- CORRECT ME IF I'M WRONG. OKAY?

JOHN POOVEY - CROSS BY MR. FRICK

225

1 BLACK MALE, GRAY HAIR, WEARING A BROWN COAT RUNNING FROM

2 [REDACTED]

3 A TOWARDS CHESTERFIELD AVENUE.

4 Q RIGHT. OKAY. AND YOU GET THERE, MR. FRAZIER IS A

5 BLACK MALE WITH GRAY HAIR CARRYING A BLACK COAT WALKING ON

6 CHESTERFIELD AVENUE. AM I INCORRECT ON THAT?

7 A NO. NO, SIR, YOU'RE NOT.

8 Q OKAY. ALL RIGHT. SO THAT'S WHAT YOU SEE?

9 A YES, SIR.

10 Q OKAY. AND YOU BELIEVE THAT HE WAS WEARING A GREEN

11 TYPE OF PANTS?

12 A IT LOOKED TO BE SOME TYPE OF GREEN DENIM PANT OR SOME

13 TYPE OF GREEN PANT THAT HE HAD ON.

14 Q OKAY. AND YOU'VE IDENTIFIED THE JACKET THAT WE'VE

15 GOT HERE IN EVIDENCE AS THE ONE THAT MR. FRAZIER WAS

16 CARRYING?

17 A YES, SIR. THAT'S THE JACKET THAT I PUT INTO HIS

18 PROPERTY WHEN HE WAS INCARCERATED AT THE JAIL.

19 Q ALL RIGHT. WHEN YOU TURNED AROUND AND COME BACK ---

20 AND YOU SAID YOU WERE OBSERVING HIM WITH YOUR REAR-VIEW

21 MIRROR?

22 A YES, SIR.

23 Q AND STILL HEADING ---

24 A I HAD JUST PASSED HIM AND I MADE A EFFORT TO WATCH

25 HIM IN MY REAR-VIEW MIRROR.

JOHN POOVEY - CROSS BY MR. FRICK

226

- 1 Q OKAY. ALL RIGHT. AND THE DROPPING OF WHATEVER THIS
2 ITEM IS OCCURRED WHILE YOU WERE OBSERVING IN YOUR REAR-
3 VIEW MIRROR?
- 4 A YES, SIR.
- 5 Q AND STILL DRIVING DOWN CHESTERFIELD AVENUE?
- 6 A I WAS SLOWING DOWN TO MAKE MY U-TURN AT THAT TIME AND
7 I WATCHED HIM UNTIL I PROCEEDED TO MAKE MY U-TURN AND
8 APPROACH HIM.
- 9 Q OKAY. BUT YOU STILL OBSERVING WHAT'S IN FRONT OF YOU
10 TO MAKE SURE YOU'RE GOING TO BE OKAY ON YOUR U-TURN.
11 RIGHT?
- 12 A AS SOON AS I PASSED HIM I WAS SLOWING DOWN AND COMING
13 TO A STOP TO MAKE THAT U-TURN.
- 14 Q OKAY.
- 15 A YES, I'D ALREADY PULLED CLOSE TO THE CURB TO SLOW ---
- 16 Q OKAY.
- 17 A --- DOWN TO MAKE A LEGAL U-TURN TO GO BACK TO
18 APPROACH HIM.
- 19 Q OKAY. MY QUESTION IS, AT SOME POINT, HOWEVER, YOUR
20 GLANCE COMES AWAY FROM THERE TO MAKE SURE THAT IT'S A SAFE
21 U-TURN. AM I CORRECT?
- 22 A YES, SIR.
- 23 Q OKAY. SO YOU DIDN'T MAINTAIN ONE HUNDRED PERCENT
24 CONTACT ON MR. FRAZIER?
- 25 A I --- I KEPT MY CONTACT ON HIM UNTIL I MADE MY U-TURN

JOHN POOVEY - CROSS BY MR. FRICK

227

1 AND I HAD ALREADY OBSERVED HIM THROW SOME TYPE OF BLACK
2 OBJECT DOWN, BECAUSE I ADVISED CAPTAIN HUNTER THAT HE HAD
3 THROWN SOME TYPE OF OBJECT DOWN.

4 Q OKAY. ALL RIGHT. DON'T HAVE A CLUE WHAT THAT OBJECT
5 WAS THOUGH?

6 A I DIDN'T HAVE A CLUE.

7 Q OKAY. WHEN YOU COME BACK AROUND, YOU STOPPED MR.
8 FRAZIER.

9 A I RIDE PAST HIM; I EXIT MY VEHICLE AND STOP HIM AND
10 WE CARRY ON A --- OR A CONVERSATION.

11 Q OKAY. SO YOU QUESTION HIM ABOUT WHAT WAS GOING ON?

12 A I DID NOT QUESTION HIM ABOUT THE PARTICULAR BURGLARY.
13 I DID NOT. I ASKED HIM WHAT HIS NAME WAS, WHERE HE WAS
14 GOING AND JUST A GENERAL CONVERSATION WHERE HE WAS COMING
15 FROM.

16 Q OKAY. DID YOU PLACE CUFFS ON HIM?

17 A AFTER I REALIZED WHO HE WAS AND WE HAD BEEN ADVISED
18 EARLIER THAT HE WAS A PERSON IN QUESTION IN REFERENCE TO
19 SOME OTHER BURGLARIES AND I WAS ALSO --- HAD BEEN ADVISED
20 PREVIOUSLY THAT THE LAST TIME THAT HE WAS APPROACHED BY
21 POLICE OFFICERS ---

22 MR. LIFSEY - UH, WAIT, WAIT --- CAN I APPROACH
23 JUST A MINUTE.

24 (BENCH CONFERENCE WAS HELD IN THE PRESENCE OF
25 THE JURY BUT OUT OF THE HEARING OF THE JURY WHICH WAS NOT

JOHN POOVEY - CROSS BY MR. FRICK

228

1 REPORTED.)

2 Q SO YOU PLACED HIM IN CUFFS.

3 A YES, SIR.

4 Q WAS HE STANDING ON THE SIDE OF THE ROAD OR ---

5 A HE WAS STANDING ON THE SIDEWALK BETWEEN THE SIDEWALK
6 AND MY PATROL CAR.

7 Q OKAY. HOW LONG'D YOU REMAIN ON THE SCENE?

8 A TWENTY MINUTES.

9 Q TWENTY MINUTES?

10 A THAT'S A ESTIMATE. I CAN'T GIVE YOU AN EXACT TIME.

11 Q WERE YOU THERE DURING THE WHOLE PROCESS?

12 A YES, SIR, I WAS.

13 Q OKAY. DID YOU --- WERE YOU THE ONE THAT TRANSPORTED
14 HIM TO THE DETEN ---

15 A YES, SIR, I DID.

16 Q OKAY. DID YOU CONDUCT A PAT-DOWN SEARCH?

17 A I CONDUCTED A PAT-DOWN.

18 Q WAS ANYTHING FOUND ON HIM?

19 A I DIDN'T TAKE ANYTHING FROM HIM. I THINK --- WHAT I
20 DID, I THINK HE HAD MAYBE A CIGARETTE PACK OR SOMETHING
21 ELSE AND I LAID THOSE ITEMS AND STUFF ON THE TRUNK OF MY
22 PATROL CAR UNTIL HE WAS CARRIED TO THE JAIL.

23 Q OKAY. DO YOU REMEMBER ANYTHING ABOUT THAT CIGARETTE
24 PACK?

25 A NO, SIR, TO THE BEST OF MY KNOWLEDGE I DON'T

JOHN POOVEY - CROSS BY MR. FRICK

229

1 REMEMBER. I --- I CAN'T REMEMBER. I DO KNOW THAT I
2 DIDN'T TAKE --- AT THAT TIME THERE WAS NOTHING THAT I TOOK
3 FROM HIM THAT I THINK SERGEANT PARSONS TOOK INTO CUSTODY
4 AS EVIDENCE.

5 Q OKAY. SO WHATEVER YOU MIGHT HAVE TAKEN OFF OF HIM
6 INCLUDING THE CIGARETTE PACK, YOU DON'T HAVE A CLUE WHERE
7 IT IS?

8 A NOT UNLESS I HAVE THE BOOKING SHEET THAT ADVISES WHAT
9 I TOOK FROM HIM WHEN HE WAS PLACED INTO THE JAIL CELL. I
10 CAN'T --- I CAN'T TESTIFY TO THAT.

11 Q OKAY. AND AS FAR AS COLLECTING ANY EVIDENCE OR
12 FURTHERING THE INVESTIGATION, DID YOU PLAY ANY ROLE IN
13 THAT?

14 A NO, SIR, I DID NOT COLLECT ANY EVIDENCE.

15 Q OKAY. YOU ARE RESPONDING OFFICER AND THE ONE WHO
16 DETAINED THE SUSPECT?

17 A YES, SIR.

18 Q OKAY. YOU WERE THERE WHEN THE --- WHEN THE
19 IDENTIFICATION, THE SHOW-UP IDENTIFICATION OCCURRED BY THE
20 WITNESSES. CORRECT?

21 A YES, SIR.

22 Q WAS ANYBODY ELSE BESIDES POLICE OFFICERS AND MR.
23 FRAZIER?

24 A NO, SIR.

25 Q WAS THERE ANY OTHER BLACK MALE BESIDES MR. FRAZIER?

JOHN POOVEY - RE-DIRECT BY MR. LIFSEY

230

1 A TO MY KNOWLEDGE I DON'T THINK SO. I THINK MAYBE
2 LIEUTENANT KIRK MAY HAVE COME BY AND THEN HE GOT BACK IN
3 HIS VEHICLE AND LEFT. I DON'T KNOW IF HE STAYED OR --- TO
4 THE BEST OF MY RECOLLECTION, I'M NOT SURE.

5 Q BUT AS FAR AS TO THE BEST OF YOUR RECOLLECTION WHEN
6 THESE ---

7 A IT WAS JUST ME, MR. FRAZIER AND MAYBE TWO OTHER
8 POLICE OFFICERS ON THE SCENE AT THAT TIME.

9 Q OKAY. WAS EVERYBODY UNIFORMED?

10 A NO, SIR.

11 Q OKAY. WAS MR. FRAZIER IN HAND-CUFFS?

12 A YES, SIR, HE WAS. THAT WAS FOR HIS PROTECTION AND MY
13 PROTECTION.

14 MR. FRICK - OKAY. THAT'S ALL THE QUESTIONS I
15 GOT. THANK YOU, SIR.

16 MR. LIFSEY - MAY I BRIEFLY RE-DIRECT?

17 THE COURT - (INDICATING YES)

18 RE-DIRECT EXAMINATION

19 BY MR. LIFSEY -

20 Q LET ME ASK YOU, WHEN YOU --- DID YOU SEE ANYBODY ELSE
21 OUT ON CHESTERFIELD AVENUE THAT COMES ANYWHERE NEAR TO THE
22 DESCRIPTION OF RANDOLPH FRAZIER?

23 A NO, SIR, AT THAT TIME WHILE I WAS APPROACHING THAT
24 LOCATION THERE WAS NO ONE ELSE ON THE SIDEWALK IN THAT
25 VICINITY.

JOHN POOVEY - RE-CROSS BY MR. FRICK

231

1 Q DID YOU SEE ANYONE ELSE OUT THERE WITH THE ABILITY TO
2 THROW DOWN A BAG OF STOLEN JEWELRY?

3 A NO, SIR.

4 MR. LIFSEY - OKAY. I DON'T HAVE ANY FURTHER
5 QUESTIONS.

6 MR. FRICK - ONE QUICK QUESTION.

7 RE-CROSS EXAMINATION

8 BY MR. FRICK -

9 Q YOU SAID YOU WERE LOOKING IN THE REAR-VIEW MIRROR AT
10 MR. FRAZIER. WERE YOU LOOKING FOR ANYBODY OUT THERE AFTER
11 YOU SAW HIM?

12 A I WAS LOOKING FOR ANYBODY ON THE WAY TO THAT LOCATION
13 THAT FIT THAT DESCRIPTION.

14 Q OKAY. SO YOU'RE WATCHING THE ROAD IN FRONT OF YOU,
15 MAKING SURE THE CAR'S GOT A SAFE TURN, LOOKING AT MR.
16 FRAZIER DROP STUFF DOWN IN YOUR REAR-VIEW MIRROR AND
17 LOOKING FOR ANYBODY ELSE ON THE SCENE?

18 A AND THAT'S WHAT WE'RE TRAINED TO DO WHEN WE APPROACH
19 A SCENE. WE'RE TRAINED TO LOOK AND SEE WHAT'S LEAVING
20 THAT AREA.

21 MR. FRICK - OKAY. ALL RIGHT. THANK YOU, SIR.

22 MR. LIFSEY - I DON'T HAVE ANY FURTHER QUESTIONS.

23 THE COURT - ALL RIGHT, YOU MAY STEP DOWN.

24 MR. LIFSEY - SINCE THIS WITNESS --- MAY HE BE
25 EXCUSED?

SUSAN HUNTER - DIRECT BY MR. LIFSEY

232

1 MR. ERICK - NO OBJECTION.

2 THE COURT - WITNESS IS EXCUSED.

3 MR. LIFSEY - YOUR HONOR, I'D CALL SUSAN HUNTER
4 TO THE STAND, PLEASE.

5 SUSAN HUNTER, AFTER BEING FIRST DULY SWORN,
6 TESTIFIES AS FOLLOWS:

7 DIRECT EXAMINATION

8 BY MR. LIFSEY -

9 Q WOULD YOU STATE YOUR FULL NAME, PLEASE?

10 A SUSAN HUNTER.

11 Q MS. HUNTER, WHAT DO YOU DO FOR A LIVING?

12 A I AM A CAPTAIN HERE AT THE LANCASTER POLICE
13 DEPARTMENT.

14 Q AND HOW LONG HAVE YOU BEEN A POLICE OFFICER?

15 A THIS OCTOBER WILL BE TWENTY-NINE YEARS.

16 Q WERE YOU WORKING AS A POLICE OFFICE ON FEBRUARY 5TH
17 OF 2008?

18 A YES, SIR, I WAS.

19 Q DO YOU --- WOULD YOU RELATE TO THE JURY HOW YOU CAME
20 IN CONTACT WITH RANDOLPH FRAZIER?

21 A ON THE MORNING OF FEBRUARY THE 5TH I WAS TRAVELLING
22 IN TO TOWN ON CHESTERFIELD AVENUE. AS I WAS TRAVELLING
23 WEST ON CHESTERFIELD FROM 903 APPROXIMATELY A HUNDRED AND
24 FIFTY YARDS IN FRONT OF ME I OBSERVED A BLACK MALE CROSS
25 OVER FROM THE APARTMENTS ON CHESTERFIELD AVENUE ---

SUSAN HUNTER - DIRECT BY MR. LIFSEY

233

1 THEY'RE REFERRED TO AS CHESTERFIELD VILLAS. THOSE
2 APARTMENTS ARE ACTUALLY LOCATED IN FRONT OF [REDACTED]
3 [REDACTED] TO THE APARTMENTS WHERE THE INCIDENT TOOK PLACE
4 AT. AS I WAS TRAVELLING WEST ON CHESTERFIELD AND AFTER I
5 PASSED MR. FRAZIER ---

6 Q LET ME STOP YOU JUST A MINUTE, BECAUSE I WANT TO ASK
7 A QUESTION. I'M SHOWING YOU WHAT'S BEEN ADMITTED INTO
8 EVIDENCE --- I BELIEVE ADMITTED INTO EVIDENCE --- AS
9 STATE'S EXHIBIT 1, AND THERE IS A LINE DRAWN. YOU WERE
10 HERE FOR THAT TESTIMONY YESTERDAY. DID YOU HEAR THE ---
11 MR. ALLEN TESTIFY YESTERDAY?

12 A NO, SIR, I DID NOT.

13 Q I APOLOGIZE THEN. WHERE DID YOU SEE HIM CROSS
14 CHESTERFIELD AVENUE IF YOU CAN LOOK AT THAT PICTURE, ABOUT
15 WHERE?

16 A WHAT I SAW WAS IN THE VICINITY --- YOU'LL SEE THERE'S
17 THE APARTMENT COMPLEX AND WHERE I SAW HIM FROM WAS
18 ACTUALLY SOMEWHERE BETWEEN THE END OF THE APARTMENT AND
19 WHERE THAT GROVE OF TREES IS INDICATED ON THIS MAP AT ---

20 Q OKAY, AND YOU SAW HIM CROSS ---

21 A --- BUT HE WAS ALREADY --- HE WAS ALREADY OUT THERE
22 AT THE END OF THE DRIVEWAY.

23 Q DID YOU SEE HIM --- AND DID YOU SEE HIM THEN CROSS
24 CHESTERFIELD AVENUE?

25 A YES, SIR, I DID.

SUSAN HUNTER - DIRECT BY MR. LIFSEY

234

1 Q AND DID THE --- WHERE YOU SAW HIM TRAVEL ACROSS
2 CHESTERFIELD AVENUE WAS THAT CONSISTENT WITH THE MARKING -
3 -- THERE'S A PEN MARKING OR A LINE MARKING ON HERE --- IS
4 THAT CONSISTENT WITH THAT?

5 A YES, SIR, IT IS.

6 Q I'M SORRY. GO AHEAD. LET ME --- I'D INTERRUPTED
7 YOU, BUT PLEASE --- PLEASE CONTINUE.

8 A AND AS I WAS TRAVELLING ON --- WEST ON CHESTERFIELD
9 AVENUE, AT THAT POINT AFTER PASSING HIM I WAS GOING TO
10 ATTEMPT TO IDENTIFY WHO THE SUBJECT WAS. I WENT DOWN
11 CHESTERFIELD AVENUE AT WHICH POINT I TURNED AROUND AND I
12 CAME BACK UP CHESTERFIELD AVENUE AT THIS POINT TRAVELLING
13 EAST. AT THAT TIME I STILL DIDN'T GET A GOOD LOOK AT THE
14 INDIVIDUAL'S FACE. I TURNED ONTO A SMALL STREET CALLED
15 FAILE STREET, AND IT BASICALLY MAKES --- IT'S A SQUARE U-
16 TURN IS WHAT IT DOES. IT GOES FROM FAILE TO THREATT AND
17 BACK OUT ON BELK STREET. AS I WAS APPROACHING THE STOP
18 SIGN, THERE'S A CALL PUT OUT FROM DISPATCH ---

19 Q OKAY.

20 A --- THAT ADVISES THAT THERE'S BEEN A BURGLARY AT [REDACTED]
21 [REDACTED] AND THEY GAVE A DESCRIPTION OUT.
22 THE DESCRIPTION WAS A BLACK MALE, GRAY HAIR, WEARING A
23 BROWN COAT.

24 Q WAS THIS CONSISTENT IN GENERAL TERMS WITH THE MAN YOU
25 HAD SEEN EARLIER?

SUSAN HUNTER - DIRECT BY MR. LIFSEY

235

1 A YES, SIR, IT WAS.

2 Q WHAT DID YOU DO AT THAT POINT?

3 A AT THAT POINT AS I TURNED BACK OUT ONTO CHESTERFIELD
4 AVENUE, I ADVISED PATROL --- WENT OVER DISPATCH WHICH WAS
5 TO LET THEM KNOW THAT I HAD A SUBJECT THAT FIT THAT
6 DESCRIPTION THAT WAS WALKING ON CHESTERFIELD AVENUE.

7 Q OKAY. THEN WHAT HAPPENED?

8 A AS I WAS APPROACHING MR. FRAZIER, THERE WAS ALSO A
9 MARKED UNIT COMING IN FROM THE OPPOSITE DIRECTION. HE WAS
10 TRAVELLING EAST.

11 Q AND THAT WAS JOHN POOVEY WHO JUST TESTIFIED?

12 A YES, SIR, IT WAS.

13 Q GO AHEAD.

14 A AS I WAS GETTING TO THE POINT THAT I WAS GOING TO BE
15 PASSING MR. FRAZIER JUST PRIOR TO, HE REACHED INTO HIS
16 RIGHT FRONT PANTS POCKET ---

17 Q OKAY.

18 A --- AND AT THAT POINT I SAW HIM TAKE SOMETHING OUT OF
19 HIS POCKET.

20 Q COULD YOU --- WHAT DID YOU SEE AND WHAT DID IT APPEAR
21 TO BE OR COULD YOU TELL WHAT IT WAS?

22 A I COULDN'T TELL YOU WHAT IT WAS. IT WAS IN HIS HAND
23 AND IT WAS DARK IN COLOR.

24 Q OKAY.

25 A BUT AS I GOT TO HIM AND HE GOT CLOSER TO THE

SUSAN HUNTER - DIRECT BY MR. LIFSEY

236

1. TELEPHONE POLE, AS I WAS PASSING HIM HE WAS AT THE POLE.
2. AT THAT POINT I LOST CONTACT WITH WHATEVER HE HAD IN HIS
3. HAND.

4. Q ALL RIGHT, AND YOU SAY YOU LOST CONTACT. DID THE
5. TELEPHONE POLE BLOCK YOUR VIEW?

6. A YES, SIR, IT OBSTRUCTED MY VIEW.

7. Q ALL RIGHT. SO LET ME GET THIS STRAIGHT IN MY HEAD.
8. YOU SEE HIM REACH INTO HIS POCKET AND HAVE A BLACK OBJECT
9. IN HIS HAND ---

10. A YES, SIR.

11. Q --- AND THEN YOU LOSE TRACK --- YOU LOSE SIGHT OF HIM
12. MOMENTARILY BEHIND THE TELEPHONE POLE?

13. A YES, SIR, I DO.

14. Q THEN WHAT HAPPENED?

15. A I TURN AROUND.

16. Q OKAY.

17. A WHERE OFFICER POOVEY INDICATED THAT HE U-TURNED, I
18. TURNED AROUND AND CAME BACK THE OTHER DIRECTION. I ALSO
19. DID A U-TURN.

20. Q ALL RIGHT. AND THEN WHAT HAPPENED?

21. A OFFICER POOVEY AT THAT POINT HE APPROACHED MR.
22. FRAZIER AND AT THAT POINT BASED ON THE FACT THAT HE HAD
23. THAT ITEM IN HIS HAND I WENT BACK TO THE TELEPHONE POLE.

24. Q ALL RIGHT. LET ME STOP YOU THERE. SO I'M ASSUMING
25. THEN AFTER HE GETS STOPPED YOU DON'T SEE HIM WITH THIS

SUSAN HUNTER - DIRECT BY MR. LIFSEY

237

1 OBJECT.

2 A NO, SIR.

3 Q OKAY. AND SO YOU WENT BACK TO THE TELEPHONE POLE
4 WHICH IS THE LOCATION YOU HAD LAST SEEN HIM WITH THAT
5 OBJECT. IS THAT RIGHT?

6 A YES, SIR, IT WAS.

7 Q ALL RIGHT. WHAT DID YOU FIND THERE?

8 A THERE WAS A BLACK CLOTH BAG LAYING NEXT TO THE POLE
9 THAT CONTAINED SOME JEWELRY AND ONE OR TWO OF THE ITEMS
10 HAD ACTUALLY COME LOOSE AND HAD FALLEN ON THE GROUND.

11 MR. LIFSEY - CAN I HAVE THIS MARKED AS THE NEXT
12 EXHIBIT?

13 (ITEM MARKED INTO EVIDENCE AS STATE'S EXHIBIT
14 NUMBER 6.)

15 Q NOW, I'M GOING TO SHOW YOU WHAT HAS BEEN MARKED FOR
16 IDENTIFICATION PURPOSES AS STATE'S EXHIBIT 6. WHAT DOES
17 THAT APPEAR TO BE TO YOU?

18 A IT'S A SMALL BLACK CLOTH-TYPE BAG.

19 Q AND ARE THERE EVIDENTIARY NOTATIONS AS TO WHERE THAT
20 CAME FROM?

21 A YES, SIR, THERE IS.

22 Q WHAT DOES IT SAY?

23 A IT IS FROM ME TO SERGEANT PARSONS AND IT WAS WHAT I
24 PASSED OFF TO SERGEANT PARSONS WHEN HE ARRIVED ON THE
25 SCENE.

SUSAN HUNTER - DIRECT BY MR. LIFSEY

238

1 Q IS THIS THE BAG THAT YOU FOUND BY THE TELEPHONE POLE?

2 A YES, SIR, IT IS.

3 Q I'M GOING TO SHOW YOU A BAG THAT'S BEEN MARKED FOR
4 IDENTIFICATION AS STATE'S EXHIBIT 2 AND I THINK PREVIOUSLY
5 COMMENTED ON BY A WITNESS. WHAT ARE THOSE ITEMS?

6 A THEY'RE ITEMS OF JEWELRY.

7 Q OKAY. WHERE DID YOU FIND THOSE, OR DID YOU --- DID
8 YOU FIND THOSE ITEMS?

9 A I --- IF RECOLLECTION SERVES ME RIGHT, THE ONE ON
10 HERE I BELIEVE THAT'S GOT --- I THINK IT'S GOT SEXY ON IT
11 --- IT'S A CHAIN --- WAS ACTUALLY PARTIALLY LAYING ON THE
12 GROUND WHEN IT WAS FOUND. I DIDN'T ACTUALLY REMOVE ALL OF
13 THE CONTENTS ON THE --- FROM THE BAG AT THE SCENE, WHICH
14 AT THAT POINT, LIKE I SAID, I PASSED OFF TO SERGEANT
15 PARSONS.

16 Q I SEE. SO YOU PICKED UP THE BAG.

17 A YES, SIR.

18 Q WERE THERE THINGS IN THE BAG?

19 A YES, SIR, THERE WERE.

20 Q AND AT LEAST ONE ITEM PARTIALLY OUT OF THE BAG. IS
21 THAT CORRECT?

22 A THERE WAS A COUPLE OF THE ITEMS THAT WERE LAYING ON
23 THE GROUND.

24 Q AND DID YOU GIVE THOSE ITEMS AND THE BAG AND WHATEVER
25 WAS IN IT AND THE ITEMS TO DETECTIVE PARSONS?

SUSAN HUNTER - DIRECT BY MR. LIFSEY

239

1 A YES, I DID.

2 Q ALL RIGHT. ARE THESE --- DO THESE ITEMS,
3 EVIDENTIARY-WISE, DOES IT LOOK LIKE THOSE ITEMS YOU ---

4 A YES, SIR, IT DOES.

5 Q OKAY. ALL RIGHT, LET ME ASK YOU ABOUT FRAZIER'S
6 APPEARANCE. HE HAD GRAY HAIR AT THE TIME. IS THAT RIGHT?

7 A YES, SIR, HE DID.

8 Q DID HE HAVE A JACKET WITH HIM WHEN YOU SAW HIM AT ANY
9 TIME?

10 A YES, SIR, HE DID.

11 Q I'M GOING TO SHOW YOU WHAT HAS BEEN MARKED PREVIOUSLY
12 AS STATE'S EXHIBIT 4 AND WE TALKED A LOT ABOUT IT, AND
13 DOES THIS APPEAR TO BE THAT JACKET?

14 A YES, SIR, IT DOES.

15 Q AND YOU'VE LOOKED AT PREVIOUSLY TO YOUR TESTIMONY AT
16 MY REQUEST AND ALL. YOU'VE LOOKED AT THIS.

17 A YES, SIR.

18 Q AND THIS ALSO I ASSUME WAS TURNED OVER TO DETECTIVE
19 PARSONS?

20 A YES, SIR.

21 Q AND BASICALLY, DETECTIVE PARSONS ENDED UP BEING THE
22 CASE AGENT, THE ONE WHO ASSEMBLED ALL THE EVIDENCE ---

23 A YES, SIR, HE DID.

24 Q --- AND THE MAIN AGENT ON THIS CASE? ALL RIGHT. DID
25 YOU NOTICE ANYTHING ABOUT SHOES THAT RANDOLPH FRAZIER HAD

SUSAN HUNTER - DIRECT BY MR. LIFSEY

240

1 ON?

2 A HAD ON A PAIR OF BLACK DRESS SHOES.

3 Q AND I ASK YOU, BECAUSE I DON'T THINK YOU TOOK THE
4 SHOES ---

5 A NO, SIR.

6 Q --- BUT IS THIS GENERALLY CONSISTENT WITH THE SHOES
7 THAT HE HAD ON?

8 A YES, SIR, THEY ARE.

9 Q AFTER YOU GOT THE BAG, THE BLACK BAG THAT WE TALKED
10 ABOUT, THE JEWELRY THAT WE TALKED ABOUT, YOU HANDED THAT
11 OVER TO DETECTIVE PARSONS?

12 A YES, SIR, HE ARRIVED ON THE SCENE.

13 Q DID YOUR INVOLVEMENT IN THAT CASE THEN BASICALLY END
14 AT THAT POINT?

15 A YES, SIR.

16 Q OKAY. AND YOU TURNED IT OVER AND LET HIM BE THE
17 CHIEF INVESTIGATOR ON IT?

18 A YES, SIR, WHAT I'D TURNED IT OVER TO HIM FOR WAS TO
19 TAKE TO THE RESIDENCE TO THE BURGLARY TO SEE IF THERE WAS
20 ANY WAY THAT ANY OF THAT COULD POSSIBLY BE IDENTIFIED AS
21 BEING STOLEN PROPERTY.

22 Q I GOT YOU. THANK YOU FOR CLARIFYING THAT. SO HE
23 BASIC --- YOU HANDED THE STUFF IN THE BLACK BAG TO HIM TO
24 TAKE TO SHOW TO THE VICTIMS --- VICTIM OF THE BURGLARY.
25 IS THAT RIGHT?

SUSAN HUNTER - CROSS BY MR. FRICK

241

1 A YES, SIR.

2 Q I GOT YOU.

3 MR. LIFSEY - I DON'T BELIEVE I HAVE ANY FURTHER
4 QUESTIONS, JUDGE.

5 THE COURT - ANY QUESTIONS?

6 CROSS EXAMINATION

7 BY MR. FRICK -

8 Q CAPTAIN HUNTER, YOU --- WHEN YOU FIRST SEE THE PERSON
9 WHO YOU LATER IDENTIFY AS MR. FRAZIER, WHAT WAS HE DOING?

10 A WHEN I FIRST SAW HIM?

11 Q YES, MA'AM.

12 A HE WAS CROSSING THE ROAD FROM CHESTERFIELD --- FROM
13 ONE SIDE OF CHESTERFIELD AVENUE TO THE OTHER.

14 Q OKAY. THAT'S --- I BELIEVE YOU SAID --- I'M LOOKING
15 AT STATE'S NUMBER 1 --- THAT THERE IS AN APARTMENT COMPLEX
16 OVER HERE?

17 A I BELIEVE IT'S GOING TO BE THIS SET OF --- IT'S THE
18 FIRST APARTMENT COMPLEX AS YOU ENTER INTO --- ONTO
19 CHESTERFIELD AVENUE.

20 Q OKAY. THE APARTMENT COMPLEX WHERE THE BURGLARY
21 OCCURRED IS BACK UP HERE IN [REDACTED]?

22 A YES, SIR.

23 Q OKAY. YOU SEE HIM CROSSING FROM IN FRONT OF THE
24 CHESTERFIELD --- WHAT IS IT? CHESTERFIELD ARMS? WHAT'S
25 THE NAME OF IT?

SUSAN HUNTER - CROSS BY MR. FRICK

242

- 1 A I THINK IT'S CHESTERFIELD VILLAS.
- 2 Q CHESTERFIELD VILLAS. OKAY. AND HE IS WALKING?
- 3 A YES, SIR.
- 4 Q OKAY. CARRYING A JACKET?
- 5 A AT THAT POINT HE'S WEARING A JACKET.
- 6 Q OKAY. SO YOU SEE HIM TAKE A JACKET OFF?
- 7 A I DIDN'T SEE HIM TAKE IT OFF. THE NEXT ---
- 8 Q OKAY.
- 9 A AFTER I DID THE U-TURN AND WAS COMING BACK OUT OFF OF
- 10 BELK STREET ONTO CHESTERFIELD AVENUE, THE NEXT TIME HE WAS
- 11 SEEN HE WAS NOT WEARING THE JACKET. HE WAS CARRYING THE
- 12 JACKET.
- 13 Q I GOT TO ASK. HOW DO YOU SEE A MAN PULL SOMETHING
- 14 OUT OF HIS POCKET, BUT YOU DON'T SEE HIM TAKE HIS JACKET
- 15 OFF?
- 16 A WELL, IF I WAS TURNING AROUND ON HIM AND HE WAS THAT
- 17 FAR AHEAD OF ME AND HE WAS COMING DOWN CHESTERFIELD
- 18 AVENUE, AND IF I WAS TURNING AROUND, I WOULDN'T SEE HIM
- 19 TAKE IT OFF, BUT WITH --- IF HE'S A DISTANCE AND WHEN I
- 20 GET TO WHERE HE'S AT AND HE NO LONGER HAS IT ON, I'M
- 21 ASSUMING HE HAD TO TAKE IT OFF.
- 22 Q AND ALL THIS IS OCCURRING WHILE YOU SEE HIM REACH
- 23 INTO HIS POCKET AND PULL OUT A BAG?
- 24 A HE ALREADY HAS THE JACKET OFF WHEN HE'S REACHING INTO
- 25 HIS POCKET.

SUSAN HUNTER - CROSS BY MR. FRICK

243

1 Q OKAY. WHEN YOU SEE HIM REACH INTO HIS POCKET, ARE
2 YOU APPROACHING HIM?

3 A I'M RIDING TOWARDS HIM.

4 Q OKAY.

5 A AND I AM ABOUT IN LINE WITH HIM.

6 Q OKAY. AND THEN HE DISAPPEARS BEHIND A TELEPHONE
7 POLE?

8 A THERE'S A TELEPHONE POLE. I LOSE --- MY VIEW'S
9 OBSTRUCTED AT THAT POINT.

10 Q OKAY. YOU SEE HIM AND THEN YOU RECEIVE A CALL OF THE
11 BURGLARY?

12 A YES, SIR.

13 Q OKAY. WHEN YOU SEE HIM --- WELL, LET ME GO BACK.
14 THE DESCRIPTION IS GIVEN OUT AS FAR AS A SUSPECT. WHAT
15 DID YOU HEAR?

16 A BLACK MALE, GRAY HAIR AND A BROWN JACKET.

17 Q BROWN JACKET?

18 A YES, SIR.

19 Q OKAY. YOU WERE HERE WHEN OFFICER POOVEY WAS ON THE
20 STAND. HE SAID SOMETHING ABOUT PERSON RUNNING FROM
21 CHESTERFIELD --- I MEAN RUNNING FROM --- RUNNING FROM [REDACTED]

22 [REDACTED].

23 A THAT'S MY UNDERSTANDING THAT WAS THE TRAFFIC THAT WAS
24 RELAYED THAT THAT'S THE DIRECTION THAT THE SUBJECT LEFT
25 FROM WHEN HE LEFT [REDACTED] [REDACTED]

SUSAN HUNTER - CROSS BY MR. FRICK

244

1 Q OKAY. SO --- SO WHAT COMES OVER THE RADIO IS WE'RE
2 LOOKING FOR A BLACK MALE WITH A BROWN JACKET, GRAY HAIR,
3 RUNNING FROM [REDACTED]

4 A YES, SIR.

5 Q OKAY. DID YOU --- ONCE MR. FRAZIER WAS DETAINED,
6 DID YOU GO BACK AND SPEAK WITH HIM?

7 A NO, SIR.

8 Q OKAY. DID YOU GO BACK OVER TO WHERE HE WAS?

9 A JUST BRIEFLY.

10 Q JUST BRIEFLY?

11 A YES, SIR.

12 Q OKAY. WHAT'D YOU GO BACK OVER TO WHERE HE WAS FOR?

13 A HE WAS RIGHT WHERE I WAS AT. I MEAN I WAS STAYING ON
14 THE SCENE UNTIL WE FOUND OUT WHAT INFORMATION WE NEEDED TO
15 KNOW. SERGEANT PARSONS ARRIVED; THE JEWELRY WAS PASSED
16 AND WE WERE WAITING ON A REPLY AS TO WHETHER OR NOT THAT
17 WAS THE JEWELRY THAT WAS STOLEN.

18 Q OKAY.

19 A I MEAN WHEN WE HAVE OTHER OFFICERS THERE AND WE HAVE
20 SOMETHING MAJOR LIKE THAT HAPPEN, EVERYBODY JUST DOESN'T
21 CLEAR THE SCENE BECAUSE WE HAVE ---

22 Q HOLD ON. I'M JUST ASKING IF YOU TALKED TO HIM OR
23 NOT?

24 A NO, SIR.

25 Q IN FACT, DO YOU HAVE YOUR REPORT IN FRONT OF YOU?

SUSAN HUNTER - CROSS BY MR. FRICK

245

1 A YES, SIR, I DO.

2 Q DIDN'T YOU SAY THERE WAS NO NEED TO TALK TO HIM?

3 MR. LIFSEY - WELL, --- MAY I --- MAY I APPROACH
4 ABOUT THIS? I ---

5 (BENCH CONFERENCE WAS HELD IN THE PRESENCE OF
6 THE JURY BUT OUT OF THE HEARING OF THE JURY WHICH WAS NOT
7 REPORTED.)

8 Q WERE YOU THERE WHEN THE WITNESSES WERE BROUGHT BY?

9 A YES, SIR.

10 Q OKAY. WAS THERE ANYBODY ELSE --- ANY OTHER CIVILIANS
11 BESIDES MR. FRAZIER?

12 A NO, SIR.

13 Q OKAY. MR. FRAZIER HAND-CUFFED AT THE TIME?

14 A YES, SIR, HE WAS.

15 Q OKAY. WAS THERE ANY OTHER BLACK MALE?

16 A NO, SIR.

17 Q OKAY. AND HE DID NOT HAVE A COAT ON AT THE TIME THAT
18 THESE I.D.'S TAKE PLACE?

19 A NO, SIR, HE DID NOT.

20 Q OKAY. AND THE COAT THAT YOU SEE IS A BLACK COAT?

21 A YES, SIR, IT IS.

22 Q OKAY. YOU'D SAID SOMETHING --- THE BRACELET, THE
23 SEXY BRACELET. I THINK IT'S IN ONE OF THE EXHIBITS.

24 A YES, SIR.

25 Q I CAN'T REMEMBER THAT NUMBER RIGHT NOW. DID YOU SAY

SUSAN HUNTER - RE-DIRECT BY MR. LIFSEY

246

1 IT WAS IN THE BAG OR OUT OF THE BAG?

2 A WHEN I APPROACHED THE BAG ON THE GROUND AND I'M GOING
3 TO SAY THE WAY IT WAS DISCARDED, THE BAG WASN'T SEALED
4 TIGHTLY WHERE SAY LIKE IF YOU DROP IT, SOMETHING'S GOING
5 TO FALL OUT OF IT, AND THERE WAS --- THAT WAS ONE OF THE
6 ITEMS THAT I RECALL BEING ONE OF THE ITEMS THAT WAS
7 PARTIALLY --- BECAUSE THAT'S --- I GUESS JUST THE BRACELET
8 ITSELF AND THE SEXY ON IT'S WHAT CAUGHT MY ATTENTION.

9 Q SURE. OKAY.

10 MR. FRICK - ALL RIGHT. THAT'S ALL THE
11 QUESTIONS I HAVE. THANK YOU, MA'AM.

12 MR. LIFSEY - BRIEFLY ON RE-DIRECT.

13 RE-DIRECT EXAMINATION

14 BY MR. LIFSEY -

15 Q MR. FRICK ASKED YOU ABOUT THE RADIO TRAFFIC THAT
16 INDICATED A DESCRIPTION. DID IT ALSO -- THE RADIO TRAFFIC
17 ALSO INDICATE WHERE THE SUSPECT WAS HEADING FROM [REDACTED]

18 [REDACTED]

19 A TOWARDS CHESTERFIELD AVENUE.

20 Q AND WHERE WAS MR. FRAZIER SEEN BY YOU?

21 A ON CHESTERFIELD AVENUE, CROSSING CHESTERFIELD AVENUE.

22 Q DID YOU SEE ANYBODY ELSE OUT ON CHESTERFIELD AVENUE
23 THAT MET ANYTHING CLOSE TO THE DESCRIPTION GIVEN OUT?

24 A NO, SIR, I DID NOT.

25 Q WAS THERE ANYBODY ELSE OUT THERE THAT YOU SAW IN YOUR

SUSAN HUNTER - RE-CROSS BY MR. FRICK

247

1 --- BECAUSE YOU I GUESS WENT ONE, TWO, THREE TIMES, I
2 GUESS, OR TWO AND A HALF TIMES UP AND DOWN CHESTERFIELD
3 AVENUE AND ATTEMPTED TO TURN AROUND AND I.D. HIM. DID YOU
4 SEE ANYBODY ELSE OUT THERE?

5 A NO, SIR, I DID NOT.

6 Q DID YOU SEE ANYBODY THROW DOWN ANY BAG OF STOLEN
7 JEWELRY?

8 A NO, SIR, I DID NOT.

9 MR. LIFSEY - THANK YOU. I DON'T HAVE ANY
10 FURTHER QUESTIONS.

11 MR. FRICK - JUST BRIEFLY. ONE QUESTION.

12 RE-CROSS EXAMINATION

13 BY MR. FRICK -

14 Q BUT YOU TURNED WHEN YOU SAW MR. FRAZIER?

15 A EXPLAIN YOUR QUESTION, PLEASE. I DON'T UNDERSTAND --
16 -

17 Q THAT'S MY QUESTION. WHEN YOU SAW MR. FRAZIER YOU
18 TURNED. YES OR NO?

19 A AT WHAT POINT ARE YOU ASKING DID I TURN? I GUESS I
20 DON'T UNDERSTAND THE QUESTION.

21 MR. FRICK - OKAY. I'LL WITHDRAW MY QUESTION.
22 THANK YOU.

23 MR. LIFSEY - THANK YOU. YOU CAN STEP DOWN. MR.
24 SHE'S GOING TO GO GET MY NEXT WITNESS. I'M SORRY, JUDGE.
25 I THOUGHT HE --- HE MUST'VE STEPPED OUT OF THE COURTROOM.

BRENNER HARTLEY - DIRECT BY MR. LIFSEY

248

1 THE COURT - WHO'S IT GOING TO BE?

2 MR. LIFSEY - BRENNER HARTLEY. (PAUSE) I'M
3 GOING TO GO AHEAD AND MARK --- CAN I MARK A COUPLE OF
4 THINGS FOR IDENTIFICATION?

5 (DISCUSSION IS HELD BETWEEN COUNSEL OUT OF THE
6 HEARING OF THE JURY BETWEEN COUNSEL, WHICH WAS NOT
7 REPORTED.)

8 (DOCUMENTS MARKED FOR IDENTIFICATION AS STATE'S
9 EXHIBITS 7 AND 8.)

10 MR. LIFSEY - YOUR HONOR, I'D CALL BRENNER
11 HARTLEY TO THE STAND.

12 THE COURT - COME AROUND AND BE SWORN, PLEASE.

13 BRENNER HARTLEY, AFTER BEING FIRST DULY SWORN,
14 TESTIFIES AS FOLLOWS:

15 DIRECT EXAMINATION

16 BY MR. LIFSEY -

17 Q WOULD YOU STATE YOUR FULL NAME, PLEASE?

18 A BRENNER HARTLEY.

19 Q MR. HARTLEY, WHAT DO YOU DO FOR A LIVING, SIR?

20 A I'M A DETECTIVE WITH THE CITY OF LANCASTER.

21 Q HOW LONG HAVE YOU BEEN A POLICE OFFICER, SIR?

22 A SINCE MARCH OF 2008. OR EXCUSE ME, SINCE MARCH OF
23 2000. I'M SORRY.

24 Q I WAS GOING TO SAY. YOU SURPRISED ME, BECAUSE ---
25 LONGER THAN THAT. HOW LONG ---

BRENNER HARTLEY - DIRECT BY MR. LIFSEY

249

1 A MARCH OF 2000, SORRY.

2 Q MARCH OF 2000. OKAY. I FEEL A LITTLE BETTER. WERE
3 YOU A POLICE OFFICER AND ACTING ON DUTY ON FEBRUARY 5TH,
4 OF 2008?

5 A I WAS.

6 Q DID YOU ULTIMATELY --- DID YOU COME TO BE INVOLVED IN
7 THE CASE --- THIS CASE INVOLVING RANDOLPH FRAZIER AND THE
8 BREAK-IN OVER AT [REDACTED] [REDACTED]?

9 A I DID.

10 Q DID YOU --- TRY AND MAKE THIS AS QUICK AS I CAN ---
11 WHAT PART YOU HAD IN IT. WERE YOU INVOLVED --- DO YOU
12 KNOW WHO KARL ALLEN IS?

13 A I DO.

14 Q OKAY. AND HE WAS THE CANINE OFFICER AT THE TIME?

15 A HE WAS.

16 Q IN FACT, WERE YOU IN HERE YESTERDAY WHEN HE
17 TESTIFIED? I DON'T KNOW IF YOU WERE OR NOT.

18 A NO, SIR, I WASN'T.

19 Q OKAY. ALL RIGHT. DID YOU --- WERE YOU WITH KARL
20 ALLEN WHEN HE WAS RUNNING --- AT SOME POINT DID YOU GET
21 WITH KARL ALLEN THAT DAY?

22 A I DID.

23 Q DID YOU --- AFTER ALLEN HAD RUN THE TRAIL FROM THE
24 [REDACTED] [REDACTED] TO RANDOLPH FRAZIER, DID YOU ULTIMATELY WALK
25 BACK WITH ALLEN ALONG THAT TRAIL HE HAD RUN?

BRENNER HARTLEY - DIRECT BY MR. LIFSEY

250

1 A I DID.

2 Q AND AS PART OF THAT, DID YOU PICK UP ITEMS OF
3 EVIDENCE AS PART OF THAT?

4 A I DID.

5 Q I'M GOING TO BEGIN WITH, --- I'M GOING TO SHOW YOU
6 WHAT HAS ALREADY BEEN ADMITTED INTO EVIDENCE AS STATE'S
7 EXHIBIT 1 WHICH IS A MAP. DO YOU RECOGNIZE THAT ITEM?

8 A I DO.

9 Q ALL RIGHT. AND IS THERE A, BASICALLY, A TRAIL
10 REPRESENTING WHERE THE DOG TRAILED FROM THE SCENE AT [REDACTED]
11 [REDACTED] TO WHERE FRAZIER WAS APPREHENDED?

12 A THERE WAS. THERE IS. EXCUSE ME.

13 Q AND ARE THERE ITEMS MARKED THAT Y'ALL RECOVERED ON
14 THE WAY BACK?

15 A YES, SIR.

16 Q AND WERE YOU INVOLVED IN THAT RECOVERY OF THOSE
17 ITEMS?

18 A I WAS.

19 Q I'M GOING TO ASK YOU ABOUT A COUPLE OF THEM IN
20 PARTICULAR. LET'S SEE --- I'M GOING TO SHOW YOU THIS.

21 A OKAY.

22 Q WHAT IS THAT?

23 A THAT IS A CHECK DEBIT CARD REGISTER FROM BANK OF
24 AMERICA.

25 Q OKAY. AND IS THAT REFLECTED ON THIS DIAGRAM AS

BRENNER HARTLEY - DIRECT BY MR. LIFSEY

251

1 ADDRESS BOOK? IS THAT CORRECT?

2 A IT IS.

3 Q ALL RIGHT. WHAT IS THAT AND WHERE DID YOU FIND IT?

4 A LIKE I SAID, IT'S A DEBIT --- EXCUSE ME.--- CHECK AND
5 DEBIT CARD REGISTER FROM BANK OF AMERICA. I BELIEVE IT
6 WAS USED AS AN ADDRESS BOOK, AND WE LOCATED IT HERE ON THE
7 SIDEWALK JUST --- I BELIEVE THAT'S JUST EAST OF WHERE THE
8 SUSPECT WAS DETAINED.

9 Q SO IN OTHER WORDS BETWEEN [REDACTED] AND WHERE HE WAS
10 DETAINED, YOU FOUND THIS BOOK?

11 A I DID.

12 Q DID YOU EXAMINE THAT OR DID YOU JUST TURN IT OVER TO
13 PARSONS AND LET HIM EXAMINE IT?

14 A UH ---

15 Q I KNOW ULTIMATELY IT WAS TURNED OVER TO PARSONS. IS
16 THAT RIGHT?

17 A ULTIMATELY IT WAS TURNED OVER TO PARSONS. I LOOKED
18 AT WHAT WE HAD AND TURNED IT OVER TO DETECTIVE PARSONS.

19 Q I GOT YOU. IF YOU DON'T KNOW WHAT IT IS, I DON'T
20 WANT YOU TO --- BUT THIS IS THE PIECE OF EVIDENCE THAT YOU
21 FOUND AT THAT LOCATION THAT'S MARKED ADDRESS BOOK ---

22 A IT IS.

23 Q --- THAT YOU HANDED OVER TO DETECTIVE PARSONS?

24 A IT IS.

25 Q I'M GOING TO HAND YOU WHAT'S BEEN MARKED FOR

BRENNER HARTLEY - DIRECT BY MR. LIFSEY

252

1 IDENTIFICATION AS STATE'S EXHIBIT 7. CAN YOU TELL ME WHAT
2 THAT IS?

3 A IT'S A PACKAGE OF FULL FLAVOR SENECA CIGARETTES.

4 Q OKAY. WHERE WERE THOSE LOCATED?

5 A THESE WERE LOCATED JUST EAST OF WHERE THE SUSPECT WAS
6 DETAINED AND JUST EAST OF WHERE THE ADDRESS BOOK WAS
7 LOCATED ON THE SIDEWALK.

8 Q AND, IN FACT, IT IS DENOTED HERE CIGARETTE PACK. IS
9 THAT RIGHT?

10 A (INDICATING YES)

11 Q SO IN OTHER WORDS, THAT WAS SORT OF FURTHER ON BACK
12 TOWARD [REDACTED] FROM WHERE --- OF COURSE, NOT ONLY FROM
13 WHERE THE SUSPECT WAS DETAINED, BUT EVEN FURTHER ON BACK
14 FROM THE ADDRESS BOOK. IS THAT RIGHT?

15 A YES, SIR.

16 Q ALL RIGHT. NOW, I NOTICE THERE ARE --- IT LOOKS LIKE
17 THERE'S SOME BLACK STUFF ALL OVER THIS.

18 A YES, SIR.

19 Q WAS IS THAT AND WHAT DID YOU DO WITH THIS CIGARETTE
20 ITEM, ---

21 A WHEN I ---

22 Q --- CIGARETTE PACK?

23 A WHEN I GOT THIS CIGARETTE PACK, IT WAS SUITABLE FOR
24 ME TO PROCESS WITH A FUMING PROCESS.

25 Q ALL RIGHT. EXPLAIN TO THE JURY IF YOU WOULD WHAT IT

BRENNER HARTLEY - DIRECT BY MR. LIPSEY

253

1 MEANS TO FUME SOMETHING AND WHY YOU FUMED THAT.

2 A WHAT IT MEANS TO FUME SOMETHING IS BASICALLY TAKING
3 SUPER GLUE AND PUTTING IT ON TOP OF A HEATING ELEMENT AND
4 TURNING IT FROM A LIQUID TO A GASEOUS FORM. AND WHAT THAT
5 DOES IS ONCE IT TURNS INTO A GAS, IT ADHERES TO
6 FINGERPRINTS THAT ARE ON A PARTICULAR ITEM. WELL, THIS
7 WAS DONE WITH THE CIGARETTE PACK HERE AND ---

8 Q DID YOU DO THIS AS AN EFFORT TO LIFT FINGERPRINT FROM
9 ITEMS?

10 A YES, SIR, IT IS A TOOL THAT WE USE TO LIFT
11 FINGERPRINTS.

12 Q DID YOU DO THAT IN THIS CASE TO THAT ITEM?

13 A I DID.

14 Q ALL RIGHT. DID YOU MAKE SOME PROGRESS ON THAT?

15 A I DID.

16 Q ALL RIGHT. DID YOU DO ANYTHING --- OR WHAT --- WHAT
17 HAPPENED --- EXPLAIN --- I GUESS --- I STOPPED YOU. I
18 INTERRUPTED YOU. I'M SORRY, BUT IN THE MIDDLE OF THE ---
19 FUMING PROCESS TURNS OUT, LOOKS POSITIVE TO YOU, WHAT DO
20 YOU DO?

21 A I TURNED IT OVER TO DETECTIVE PARSONS AND HE FURTHER
22 PROCESSED --- MY UNDERSTANDING WAS THAT HE FURTHER
23 PROCESSED THE ITEM WITH BLACK POWDER, FINGERPRINT DUST AND
24 UM ---

25 Q SO BASICALLY THE PROCESS OF --- IT'S SORT OF A MULTI-

BRENNER HARTLEY - CROSS BY MR. FRICK

254

1 STEP PROCESS ---

2 A EXACTLY.

3 Q --- TO GET THE FINGERPRINTS, AND YOU DO THE FUMING,
4 HE DID ULTIMATELY DID THE BLACK POWDER AND THE LIFTING
5 LATER ON.

6 A YES, SIR.

7 Q AND I GUESS WE'RE GOING TO HEAR FROM SOMEBODY ELSE
8 WHO ANALYZED IT, BUT THAT'S THE --- YOU DID YOUR PORTION
9 OF IT.

10 A I DID.

11 Q AND YOU TURNED THAT EVIDENCE BACK OVER TO DETECTIVE
12 PARSONS.

13 A I DID.

14 MR. LIFSEY - I DON'T THINK I HAVE ANY FURTHER
15 QUESTIONS.

16 MR. FRICK - JUST BRIEFLY.

17 CROSS EXAMINATION

18 BY MR. FRICK -

19 Q YOU SAID THE PACK OF CIGARETTES WAS SUITABLE FOR THE
20 FUMING PROCESS.

21 A YES, SIR.

22 Q WERE THERE ITEMS NOT SUITABLE?

23 A WHEN I SAY SUITABLE FOR THE FUMING PROCESS IT HAS
24 WHAT I DEEM TO BE A GOOD SURFACE TO BE ABLE TO LIFT PRINTS
25 OFF OF.

BRENNER HARTLEY - CROSS BY MR. FRICK

255

- 1 Q OKAY. NOW, THE CIGARETTE PACK WAS IT --- DID ---
2 OKAY.
- 3 A IT'S GOT THE ---
- 4 Q HAS THAT STILL GOT THE CELLOPHANE ON IT?
- 5 A IT DOES.
- 6 Q ALL RIGHT. NOW, THE --- IT WAS DEEMED THAT THE
7 STATE'S EXHIBIT FOR I.D. NUMBER 8 WHAT WE'RE CALLING AN
8 ADDRESS BOOK ---
- 9 A (INDICATING YES)
- 10 Q --- THAT WAS DEEMED NOT SUITABLE.
- 11 A NOT BY ME, NO, SIR.
- 12 Q OKAY.
- 13 A I DID NOT FEEL THAT THAT WAS SUITABLE ENOUGH TO DEAL
14 WITH THAT BY ME.
- 15 Q OKAY. ARE YOU AWARE WAS THERE ANY ATTEMPT TO GET
16 FINGERPRINTS OFF OF IT?
- 17 A NOT THAT I'M AWARE OF.
- 18 Q OKAY. AND IN ANY OF THE JEWELRY INCLUDING THIS
19 LOCKET HERE, YOU'D AGREE THAT'S A --- IN COMPARISON TO THE
20 REST OF THE JEWELRY A FAIRLY SIZEABLE SURFACE HERE?
- 21 A COULD BE, YES, SIR.
- 22 Q OKAY. BUT YOU DEEMED THAT UNSUITABLE FOR THE FUMING
23 PROCESS?
- 24 A AS FAR AS JEWELRY GOES AND EVERYTHING, I DON'T
25 USUALLY LIKE TO DO THAT.

PAT PARSONS - DIRECT BY MR. LIFSEY

256

1 Q OKAY. WAS THERE ANY ATTEMPT TO LIFT ANY KIND OF
2 PRINTS OFF OF IT?

3 A NOT THAT I'M AWARE OF.

4 Q OKAY. WERE YOU INVOLVED WITH THE COLLECTION OF ANY
5 OTHER EVIDENCE ALONG THE WAY OR ANY FURTHER INVESTIGATION
6 IN THIS CASE?

7 A AS FAR AS THIS CASE GOES HERE?

8 Q (INDICATING YES)

9 A JUST WHAT I'VE SAID THAT'S I COLLECTED AND PROCESSES.

10 MR. FRICK - OKAY. THAT'S A NICE SUIT BY THE
11 WAY.

12 MR. HARTLEY - THANKS.

13 MR. FRICK - THAT'S ALL THE QUESTIONS I GOT.

14 MR. LIFSEY - I DON'T HAVE ANY FURTHER QUESTIONS
15 OF THIS WITNESS.

16 THE COURT - YOU MAY STEP DOWN.

17 MR. LIFSEY - YOUR HONOR, I WOULD CALL PAT
18 PARSONS TO THE STAND.

19 PAT PARSONS, AFTER BEING FIRST DULY SWORN,
20 TESTIFIES AS FOLLOWS:

21 DIRECT EXAMINATION

22 BY MR. LIFSEY -

23 Q STATE YOUR FULL NAME, PLEASE, SIR. WHEN YOU'RE
24 READY. I'M SORRY. I DIDN'T MEAN TO RUSH YOU.

25 A THAT'S FINE, SIR. ALBERT PATRICK PARSONS.

PAT PARSONS - DIRECT BY MR. LIFSEY

257

1 Q WHAT DO YOU DO FOR A LIVING, SIR?

2 A I'M A DETECTIVE WITH LANCASTER POLICE DEPARTMENT.

3 Q AND HOW LONG HAVE YOU BEEN A POLICE OFFICER?

4 A TWENTY-SIX YEARS.

5 Q WERE YOU INVOLVED --- OR HOW DID YOU COME TO BE
6 INVOLVED IN THIS CASE INVOLVING RANDOLPH FRAZIER AND THE
7 BREAK-IN AT [REDACTED]?

8 A I WAS OUT ON THE STREET THAT DAY. I HEARD THE CALL,
9 THE RADIO DISPATCH OF A BURGLARY IN PROGRESS, THAT THE
10 SUSPECT WAS SEEN RUNNING TOWARDS CHESTERFIELD AVENUE, SO
11 I STARTED HEADING THAT WAY.

12 Q ALL RIGHT. BY THE TIME YOU GOT THERE, WAS HE ALREADY
13 IN CUSTODY?

14 A HE WAS ALREADY DETAINED, YES, SIR.

15 Q DID YOU ULTIMATELY BECOME THE LEAD CASE AGENT ON THIS
16 CASE?

17 A I DID.

18 Q ALL RIGHT. AND JUST SO THE JURY UNDERSTANDS, WHAT IS
19 YOUR ROLE WHEN YOU'RE SORT OF THE LEAD --- EVERY
20 INVESTIGATION HAS A LEAD CASE AGENT, GENERALLY. IS THAT
21 RIGHT?

22 A THAT'S TURNED OVER TO OUR DIVISION, YES, SIR.

23 Q DETECTIVE DIVISION CASES. IS THAT RIGHT?

24 A CORRECT.

25 Q WHAT IS YOUR ROLE? WHAT DO YOU DO? WHAT KIND OF

PAT PARSONS - DIRECT BY MR. LIFSEY

258

1 THINGS DO YOU DO?

2 A RESPONSIBLE FOR THE ENTIRE PROCESSING OF THE CASE,
3 THE EVIDENCE, THE REPORT FORMS, WITNESSES, WITH THE AID OF
4 OTHER DETECTIVES, BUT ULTIMATELY YOU'RE RESPONSIBLE FOR
5 IT.

6 Q YOU'RE THE ONE WHO ULTIMATELY TAKES IN THE EVIDENCE
7 AND COORDINATES, COLLECTS EVERYTHING, GENERALLY?

8 A THAT'S CORRECT.

9 Q IS THAT RIGHT? GENERALLY?

10 A YES, SIR.

11 Q I MEAN YOU MAY NOT PICK UP EVERYTHING --- EXCUSE ME -
12 -- BUT YOU'RE SORT OF THE PERSON EVERYBODY GIVES THE
13 EVIDENCE TO. IS THAT RIGHT?

14 A YES, SIR.

15 Q IN THIS CASE. ALL RIGHT. DESCRIBE WHAT THE SCENE
16 LOOKED LIKE WHEN YOU GOT TO --- WHEN YOU FIRST ENCOUNTERED
17 RANDOLPH FRAZIER?

18 A HE WAS ON THE SIDEWALK, THE SOUTH SIDEWALK OF
19 CHESTERFIELD AVENUE BEING DETAINED; CAPTAIN HUNTER WAS
20 THERE; CORPORAL --- LANCE CORPORAL POOVEY WAS THERE. I
21 DON'T RECALL OTHER --- WHAT OTHER OFFICERS WERE THERE, BUT
22 I GOT THERE PROBABLY WITHIN A MINUTE OF THE TIME THAT HE
23 WAS DETAINED.

24 Q ALL RIGHT. WHEN YOU GOT THERE, WERE YOU GIVEN ITEMS
25 BY CAPTAIN HUNTER?

PAT PARSONS - DIRECT BY MR. LIFSEY

259

1 A I WAS.

2 Q WHAT WAS THAT?

3 A THERE WAS A BLACK CLOTH BAG THAT CONTAINS SOME
4 JEWELRY AND ALSO SOME BRACELET THAT SAYS SEXY BRACELET ON
5 IT.

6 Q I'M GOING TO SHOW YOU WHAT HAS BEEN MARKED FOR
7 IDENTIFICATION AS STATE'S EXHIBIT 6. WHAT IS THAT ITEM?

8 A THIS IS THE BLACK CLOTH BAG THAT CAPTAIN HUNTER
9 HANDED OVER TO ME ON THE SCENE THAT DAY.

10 Q OKAY. NOW, ULTIMATELY DID IT HAVE ITEMS IN THERE?

11 A IT DID.

12 Q BUT IT IS NOT NOW. YOU SEPARATED IT? IS THAT
13 CORRECT?

14 A THAT'S CORRECT.

15 Q IS THAT THE BLACK BAG THAT SUSAN HUNTER GAVE YOU FROM
16 THE SCENE?

17 A IT IS.

18 MR. LIFSEY - YOUR HONOR, I'D MOVE THIS INTO
19 EVIDENCE NOW, STATE'S EXHIBIT 6.

20 THE COURT - SUBJECT ---

21 MR. FRICK - DEFENSE OBJECTION AS STATED
22 PREVIOUSLY.

23 THE COURT - IN SUBJECT TO THAT PRIOR ---

24 (DOCUMENT MARKED INTO EVIDENCE AS STATE'S
25 EXHIBIT NUMBER 6.)

PAT PARSONS - DIRECT BY MR. LIFSEY

260

1 Q WHAT IS STATE'S EXHIBIT 2 THAT'S BEEN MARKED FOR
2 IDENTIFICATION? WHAT IS THAT?

3 A THIS IS JEWELRY OF SEXY --- A BRACELET THAT HAS SEXY
4 BRACELET ON IT, A WHITE GOLD RING, WHITE IN COLOR GOLD
5 RING, A LOCKET WITH A LASER PHOTO THAT TURNED OUT TO BE
6 MS. SHERIKA SANDERS' DAUGHTER'S PHOTO, A SILVER EARRING
7 AND A YELLOW METAL CHAIN.

8 Q ALL RIGHT. WHERE DID THOSE ITEMS COME FROM? I MEAN
9 NOT ULTIMATELY, BUT WHERE DID YOU FIRST SEE THOSE ITEMS?
10 I GUESS THAT'S THE BETTER WAY TO ASK THE QUESTION.

11 A WHEN CAPTAIN HUNTER GAVE THEM TO ME.

12 Q ALL RIGHT. AND THESE ARE THOSE ITEMS?

13 A THEY ARE.

14 MR. LIFSEY - I MOVE THESE INTO EVIDENCE AS
15 STATE'S EXHIBIT 2, I THINK I'VE NUMBERED THEM.

16 MR. FRICK - SAME THING, YOUR HONOR.

17 THE COURT - SAME NOTE.

18 MR. LIFSEY - ALL RIGHT.

19 (ITEMS MARKED INTO EVIDENCE AS STATE'S EXHIBIT
20 NUMBER 2.)

21 Q WHAT DID YOU DO WHEN YOU GOT THOSE ITEMS?

22 A I WENT TO THE [REDACTED] [REDACTED] [REDACTED] WHERE THE
23 BURGLARY WAS REPORTED, CONTACTED THE VICTIM, MS. SHERIKA
24 SANDERS, SHOWED HER THESE AND SHE POSITIVELY IDENTIFIED
25 THEM AS HERS.

PAT PARSONS - DIRECT BY MR. LIFSEY

261

1 Q AND THESE ITEMS THAT CAME FROM THE BLACK BAG ON THE
2 SIDE OF CHESTERFIELD AVENUE BY THE TELEPHONE POLE FROM
3 SUSAN HUNTER WERE ULTIMATELY IDENTIFIED BY THE VICTIM AS
4 BEING HER ITEMS?

5 A THAT'S CORRECT.

6 Q ALL RIGHT. LET ME SIT THOSE TO THE SIDE. NOW, WHAT
7 WAS RANDOLPH FRAZIER WEARING WHEN YOU FIRST SAW HIM?

8 A WHEN I FIRST SAW HIM HE HAD ON A GRAY, LIKE A T-
9 SHIRT, GRAY SHIRT, COLLAR-LESS I BELIEVE, HAD SOME GREEN
10 PANTS ON, AND HE HAD BLACK LEATHER SHOES.

11 Q I'M GOING TO SHOW YOU THESE SHOES. WHAT ARE THESE
12 SHOES?

13 A THESE ARE MENS BLACK LEATHER SHOES, SLIP-ON TYPE
14 DRESS SHOES.

15 Q OKAY. WHERE DID THOSE COME FROM?

16 A THE FEET OF RANDOLPH FRAZIER.

17 Q AND YOU GOT THOSE OFF OF HIS FEET?

18 A WELL, WHEN HE WAS TAKEN BACK TO THE BOOKING CELL, I
19 WENT BACK TO THE BACK AND RECOVERED THEM.

20 Q AND THESE ARE THOSE SAME SHOES?.

21 A THEY ARE.

22 MR. LIFSEY - YOUR HONOR, I'D MOVE THESE INTO
23 EVIDENCE AS STATE'S EXHIBIT 5.

24 MR. ERICK - SAME OBJECTION AS STATED PREVIOUSLY.

25 THE COURT - IN SUBJECT TO ---

PAT PARSONS - DIRECT BY MR. LIFSEY

262

1 MR. LIFSEY - I'M RUNNING OUT OF ROOM TO PUT
2 THESE, BUT I'M GOING TO SIT THEM RIGHT HERE.

3 (SHOES MARKED INTO EVIDENCE AS STATE'S EXHIBIT
4 NUMBER 5.)

5 Q DID YOU NOTICE ANY --- THERE'S BEEN MUCH DISCUSSION
6 IN THIS CASE ABOUT A JACKET.

7 A YES, SIR.

8 Q TELL ME WHERE --- DID YOU ULTIMATELY COME INTO
9 POSSESSION OF A LEATHER JACKET?

10 A I DID.

11 Q WHERE DID THAT COME FROM?

12 A WELL, IT WAS ACTUALLY ON THE REAR OF CORPORAL
13 POOVEY'S CAR, LANCE CORPORAL POOVEY'S CAR. I BELIEVE HE
14 HANDED IT --- TOLD ME THAT HE WAS WEARING THE JACKET. THE
15 JACKET WAS TRANSPORTED WITH HIM BACK TO THE JAIL, AND I
16 WENT TO THE JAIL AND RECEIVED --- RETRIEVED IT.

17 Q IS THIS JACKET THAT WE'VE BEEN HANDLING AND I GUESS
18 WE'VE TORN UP THE BAG A LITTLE BIT, BUT IS THIS THE JACKET
19 THAT WE'VE ALL BEEN TALKING ABOUT?

20 A THAT IS THE JACKET.

21 Q AND THAT SAME JACKET THAT YOU'VE GOT FROM POOVEY'S
22 HOOD ---

23 A TRUNK.

24 Q TRUNK. I'M SORRY.

25 A YES.

PAT PARSONS - DIRECT BY MR. LIFSEY

263

1 Q FROM POOVEY'S TRUNK.

2 MR. LIFSEY - YOUR HONOR, I'D MOVE THIS INTO
3 EVIDENCE AS ---

4 A I GOT IT FROM THE JAIL. THAT'S WHERE I FIRST I ---
5 FIRST PLACE I SAW IT WAS THE TRUNK OF THE CAR. I GOT IT
6 FROM THE JAIL.

7 MR. LIFSEY - I'D MOVE THIS INTO EVIDENCE AS
8 STATE'S EXHIBIT 4.

9 MR. FRICK - SAME OBJECTION.

10 THE COURT - IN SUBJECT TO SAME OBJECTION.

11 MR. LIFSEY - SIT IT DOWN HERE FOR LACK OF
12 SOMEWHERE BETTER TO SIT IT.

13 (JACKET MARKED INTO EVIDENCE AS STATE'S EXHIBIT
14 NUMBER 4.)

15 Q LET'S TALK ABOUT THE CIGARETTE PACK.

16 A YES, SIR.

17 Q WHAT IS --- WHERE DID YOU GET THIS AND WHAT DID YOU
18 DO WITH IT?

19 A I GOT IT --- OFFICER HART --- SERGEANT HARTLEY GOT IT
20 FROM THE ROADWAY. IT WAS DETERMINED AT THAT TIME THAT WE
21 WAS GOING TO PROCESS --- THAT HE WAS GOING TO FUME IT LIKE
22 HE EXPLAINED A LITTLE WHILE AGO.

23 Q NOW, I WAS GOING TO SAY TRY TO EXPLAIN AND LITTLE BIT
24 AND WHAT EXACTLY IS INVOLVED IN FUMING, HOW PRINTS ARE
25 RAISED FROM SOMETHING LIKE THIS?

PAT PARSONS - DIRECT BY MR. LIFSEY

264

1 A I WISH YOU WOULD HAVE ASKED SERGEANT HARTLEY THAT
2 QUESTION ACTUALLY.

3 Q AND I MAY ASK THE SLED AGENT. I'M SORRY. I DON'T
4 WANT TO PUT YOU IN A BAD SPOT.

5 A I HAVEN'T --- I HAVEN'T BEEN TRAINED IN THE FUMING
6 PROCESS.

7 Q WELL, OKAY. SO I DON'T WANT TO HAVE YOU TO ANSWER
8 ANYTHING YOU DON'T KNOW. I'M SORRY. HARTLEY FUMED IT.

9 A CORRECT.

10 Q WHAT DID YOU DO WITH IT AFTER IT WAS FUMED? MAYBE
11 THAT'S THE BEST WAY TO ASK THIS QUESTION.

12 A I GOT IT FROM SERGEANT HARTLEY, LOOKED AT IT. I
13 COULD SEE THAT THERE WAS VISIBLE PRINTS ON THERE, WHICH
14 THE FUMING PROCESS GOES WITH.

15 Q OKAY.

16 A I EVEN TOOK IT AND APPLIED BLACK POWDER TO THE PRINT,
17 AND WHEN YOU PUT THE BLACK POWDER TO THE PRINT --- AND
18 THEN I PUT A WHAT WE CALL A LIFTER, IT'S JUST A SMALL
19 PIECE OF ADHESIVE THAT YOU CAN SEE THROUGH, LIKE TAPE, PUT
20 IT OVER THE TOP OF WHERE THE PRINT WAS AND THEN I'D LIFT
21 IT OFF OF THERE, AND THEN I SUBMITTED THAT --- I SENT THAT
22 OFF TO SLED IN COLUMBIA. THERE WAS ACTUALLY TWO PRINTS
23 THAT I PULLED FROM THIS.

24 Q YOU PULLED TWO PRINTS.

25 A TWO PRINTS FROM THIS CIGARETTE PACK, YES, SIR.

PAT PARSONS - DIRECT BY MR. LIFSEY

265

1 Q SENT THOSE TO COLUMBIA.

2 A CORRECT.

3 MR. LIFSEY - I BEG THE COURT'S INDULGENCE JUST
4 A MINUTE. I SHOULD'VE GOTTEN SOMETHING EARLIER AND I'M
5 SORRY. I'M GOING TO HAVE THIS MARKED FOR IDENTIFICATION
6 PURPOSES.

7 (DOCUMENT MARKED FOR IDENTIFICATION AS STATE'S
8 EXHIBIT NUMBER 9.)

9 Q I'M GOING TO SHOW YOU A DOCUMENT THAT'S BEEN MARKED
10 AS STATE'S EXHIBIT 9 FOR IDENTIFICATION. WHAT IS THAT
11 ITEM?

12 A THIS IS A LANCASTER POLICE DEPARTMENT EVIDENCE FORM.
13 AND ON THIS FORM I'VE LISTED ITEMS NUMBER 30 AND 31, WHICH
14 IN THIS CASE WOULD'VE BEEN THE --- I TOLD YOU I TOOK TWO
15 PRINTS OFF THE CIGARETTE PACK AND EACH ONE OF THOSE HINGE
16 LIFTERS I MENTIONED ADHESIVE TAPE, THAT CLEAR --- THAT
17 WOULD'VE LIFTED A PRINT, EACH ONE OF THOSE WAS GIVEN A
18 NUMBER 30 AND 31.

19 Q SO THOSE ARE TWO SEPARATE WHAT YOU HOPED WOULD BE
20 FINGERPRINTS FROM --- FROM THIS CIGARETTE PACK?

21 A YES, SIR.

22 Q ALL RIGHT. AND WHAT DID YOU DO WITH THOSE?

23 A I SUBMITTED THOSE TO SLED WHICH MEANS THEY WERE
24 BAGGED INTO EVIDENCE AND SENT TO SLED FOR PROCESSING,
25 FURTHER PROCESSING.

PAT PARSONS - DIRECT BY MR. LIFSEY

266

1 MR. LIFSEY - I'D MOVE THIS INTO EVIDENCE AS
2 STATE'S EXHIBIT 9.

3 MR. FRICK - SAME OBJECTION PREVIOUSLY.

4 THE COURT - OKAY, IN WITH THAT OBJECTION.

5 MR. LIFSEY - ALL RIGHT.

6 (DOCUMENT MARKED INTO EVIDENCE AS STATE'S
7 EXHIBIT NUMBER 9.)

8 Q ALL RIGHT. SO YOU SENT THAT TO SLED ---

9 A YES, SIR.

10 Q --- AND I'M GOING TO HAVE --- I'LL HAVE THE SLED
11 AGENT TESTIFY IN A LITTLE BIT, BUT ULTIMATELY THE EVIDENCE
12 COMES BACK TO YOU FROM SLED ---

13 A IT DID.

14 Q --- ALONG WITH THEIR REPORT?

15 A CORRECT.

16 Q I'M GOING TO SHOW YOU WHAT HAS BEEN MARKED AS STATE'S
17 EXHIBIT 8 FOR IDENTIFICATION.

18 A YES, SIR. WHAT IS THAT AND WHERE DID YOU GET IT AND
19 --- WELL, FIRST OF ALL, LET'S TALK START WITH THAT. WHAT
20 IS IT AND WHERE'D YOU GET IT?

21 A IT'S A BANK AMERICA, BANK OF AMERICA REGISTER.

22 Q OKAY. WHERE DID YOU GET IT FROM?

23 A I GOT IT FROM SERGEANT HARTLEY.

24 Q WHO HAD FOUND IT ALONG ---

25 A CHESTERFIELD AVENUE.. CORRECT.

PAT PARSONS - DIRECT BY MR. LIFSEY

267

1 Q DID YOU LOOK AT IT?

2 A I DID.

3 Q OKAY, WHAT ALL'S IN THERE?

4 A THERE'S A PICTURE OF THE A FEMALE IN HERE. THERE'S
5 SEVERAL TELEPHONE NUMBERS. THERE'S ALSO A PIECE OF PAPER
6 WITH RANDOLPH FRAZIER'S NAME PRINTED ON IT.

7 Q OKAY.

8 A ALONG WITH THAT THERE'S A COUPLE OF --- TWO SEPARATE
9 TELEPHONE NUMBERS ON THAT --- ON THAT PIECE OF PAPER IN
10 THERE, ALSO.

11 Q SO IN THAT WHICH IS FOUND BETWEEN [REDACTED] AND
12 WHERE FRAZIER'S DETAINED IS HIS NAME.

13 A THE PAPER WITH HIS NAME ON IT, YES, SIR.

14 Q AND PHONE NUMBERS.

15 A PHONE NUMBER, YES.

16 Q DID YOU CALL THE PHONE NUMBERS?

17 A I DID. I CALLED TWO OF THE PHONE NUMBERS. ONE PHONE
18 NUMBER IS A KERSHAW NUMBER, STATED THEY DID NOT KNOW
19 RANDOLPH FRAZIER. THE OTHER LADY IN THE INFORMATION I DID
20 CONTACT HER AND SHE STATED THEY KNOW RANDOLPH FRAZIER BUT
21 HE DOES NOT LIVE THERE IS WHAT SHE TOLD ME.

22 MR. LIFSEY - YOUR HONOR, I'D MOVE THIS INTO
23 EVIDENCE AS THE NEXT STATE'S EXHIBIT.

24 MR. FRICK - SAME OBJECTION AS PREVIOUSLY.

25 THE COURT - IN SUBJECT TO PREVIOUS OBJECTION.

PAT PARSONS - DIRECT BY MR. LIFSEY

268

1 (DOCUMENT MARKED INTO EVIDENCE AS STATE'S
2 EXHIBIT NUMBER 8.)

3 MR. LIFSEY - I DON'T THINK --- I THINK I'VE
4 NEGLECTED TO PUT THE CIGARETTE PACK INTO EVIDENCE. I
5 WOULD MOVE IT INTO EVIDENCE, AS WELL.

6 MR. FRICK - SAME OBJECTION AS PREVIOUSLY.

7 THE COURT - IN SUBJECT TO PREVIOUS OBJECTION.

8 (CIGARETTE PACK MARKED INTO EVIDENCE AS STATE'S
9 EXHIBIT NUMBER 7.)

10 Q SO WERE YOU INVOLVED IN ACTUALLY THE --- ANY OF THE
11 I.D.'S BY THE WITNESSES IN THIS CASE?

12 A NO, I DIDN'T GO BACK THERE. I STAYED AT THE SCENE
13 AND PROCESSED THE SCENE.

14 Q BASICALLY WHAT YOU DID THEN IS --- OF COURSE, YOU
15 TOOK THE JEWELRY TO BE IDENTIFIED BY THE VICTIM?

16 A THAT'S CORRECT.

17 Q AND THEN YOU COLLECTED THE EVIDENCE, SENT IT TO SLED
18 AND THAT SORT OF THING AND ASSEMBLED IT FOR COURT?

19 A YES, SIR.

20 MR. LIFSEY - OKAY. I DON'T THINK I HAVE ANY
21 FURTHER QUESTIONS.

22 THE COURT - ANY QUESTIONS, MR. FRICK?

23 MR. FRICK - YES, SIR, YOUR HONOR, THANK YOU.

24 CROSS EXAMINATION

25 BY MR. FRICK -

PAT PARSONS - CROSS BY MR. FRICK

269

1 Q I ALWAYS GET CONFUSED. IS IT INVESTIGATOR OR
2 DETECTIVE?

3 A WE USE DETECTIVE. THE SHERIFF'S DEPARTMENT USES
4 INVESTIGATORS.

5 Q THANK YOU. I ALWAYS LEARN SOMETHING EVERY TIME.

6 A THEY CHANGE IT.

7 Q DETECTIVE PARSONS, YOU'VE BEEN IN LAW ENFORCEMENT
8 TWENTY-SIX YEARS?

9 A I HAVE.

10 Q WAS ALL THAT IN LANCASTER COUNTY?

11 A NO, SIR.

12 Q WHERE WAS THE OTHER?

13 A LOS ANGELES COUNTY AND IN THE AIR FORCE.

14 Q OKAY. WHERE'D YOU GET YOUR TRAINING?

15 A WHICH PART?

16 Q WELL, TO BECOME A DETECTIVE.

17 A I RECEIVED TRAINING IN THE AIR FORCE, HOMICIDE TYPE
18 INVESTIGATE, DETECTIVE DIVI --- LOS ANGELES COUNTY
19 SHERIFF'S DEPARTMENT AND FORMAL TRAINING SCHOOLS HERE TO
20 BE A DETECTIVE, ALSO.

21 Q OKAY. WAS IT YOUR ROLE TO COLLECT ANY EVIDENCE OR
22 JUST KIND OF MAKE SURE EVERYTHING GOT COLLECTED?

23 A IT COULD'VE BEEN --- IN THIS CASE I MADE SURE
24 EVERYTHING GOT COLLECTED. IT EASILY COULD'VE TURNED THE
25 OTHER WAY IF I'D HAPPENED UPON SOMETHING MYSELF. THERE

PAT PARSONS - CROSS BY MR. FRICK

270

1 WERE A COUPLE OF ITEMS THAT I TOOK IN MYSELF BUT --- YES,
2 THIS CASE WAS PRIMARILY --- I WAS JUST TRYING TO PUT
3 EVERYTHING TOGETHER.

4 Q OKAY. ASK YOU --- WHERE'D THE ADDRESS BOOK GO? THE
5 ADDRESS BOOK, AND I THINK WHAT I'M TALKING ABOUT IS
6 STATE'S NUMBER 8. AND YOU'VE OPENED IT UP AND YOU'VE
7 LOOKED THROUGH IT TO SEE WHAT WAS INSIDE OF IT.

8 A I HAVE.

9 Q OKAY. IS THERE ANYTHING IN THERE THAT SAYS THIS BOOK
10 BELONGS TO SO AND SO?

11 A ACTUALLY IN THE BOOK ITSELF?

12 Q (INDICATING YES)

13 A I DO NOT SEE ANYTHING THAT SAID --- THAT SAID THAT.

14 Q OKAY. SO WHAT WE'RE SAYING IS, THERE'S A PIECE OF
15 PAPER INSIDE ---

16 A THE BOOK.

17 Q --- THAT'S GOT RANDOLPH FRAZIER'S NAME ON IT..

18 A THAT'S CORRECT; SIR.

19 Q AND THERE'S SOME PHONE NUMBERS ---

20 A YES, SIR.

21 Q --- THAT ASIDE FROM SOMEONE SAYING, YES, KNOW HIM BUT
22 HE DON'T STAY HERE ---

23 A THAT'S RIGHT.

24 Q --- DON'T COME BACK TO RANDOLPH.

25 A CORRECT.

PAT PARSONS - CROSS BY MR. FRICK

271

1 Q OKAY. AND NO FINGERPRINTS, NO ATTEMPT TO GET
2 FINGERPRINTS OFF THE BOOK?

3 A THAT'S CORRECT.

4 Q OKAY. THE JEWELRY, NO FINGERPRINTS, NO ATTEMPT TO
5 GET FINGERPRINTS OF THAT?

6 A THAT'S CORRECT.

7 Q SO THE ITEMS THAT WE'VE GOT, THE ONLY ATTEMPT TO GET
8 FINGERPRINTS OFF OF IS THE PACK OF CIGARETTES?

9 A IN THIS CASE, YES, SIR.

10 Q OKAY. THE PACK OF CIGARETTES YOU GET FROM BRENNER
11 HARTLEY ---

12 A AFTER THE FUMING. YES. YES, SIR.

13 Q OKAY. ALL RIGHT. BUT HE WAS THE ONE WHO DISCOVERED
14 IT. WERE YOU AWARE OF WHERE HE DISCOVERED IT?

15 A WELL, I THINK KARL ALLEN ACTUALLY DISCOVERED IN THE
16 TRACK --- ON THE TRAIL TRACK AND ---

17 Q OKAY.

18 A --- UH ---

19 Q I THINK YOU SAID IN THE ROADWAY OR --- OR NEAR THE
20 ROADWAY.

21 A IT WAS ON THE SIDEWALK I BELIEVE IT WAS.

22 Q OKAY. ARE YOU AWARE OF THE DESCRIPTION THAT WAS
23 GIVEN BY THE VICTIM THAT WAS PUT OUT OVER THE RADIO?

24 A I AM.

25 Q WHAT WAS THE DESCRIPTION?

PAT PARSONS - CROSS BY MR. FRICK

272

1 A MALE BLACK, BROWN JACKET, GRAYISH HAIR, RUNNING
2 TOWARDS CHESTERFIELD AVENUE FROM [REDACTED]

3 Q OKAY. DID YOU COME UP AND SEE MR. FRAZIER?

4 A I DID.

5 Q OKAY. WHAT DID YOU NOTE HE WAS WEARING?

6 A AT THE TIME HE WAS WEARING A GRAY-COLORED SHIRT, NO
7 COLLAR I BELIEVE, GREENISH PANTS AND BLACK LEATHER SHOES.

8 Q OKAY. AND THE JACKET --- DID YOU EVER SEE THE
9 JACKET?

10 A OH, YES, SIR, I SAW IT.

11 Q BUT AT THE TIME RIGHT THERE DID YOU SEE IT?

12 A I DID.

13 Q OKAY.

14 A IT WAS ON THE TRUNK OF JOHN POOVEY'S CAR.

15 Q AND IT'S THE ONE WE'VE BEEN TALKING ABOUT?

16 A THAT'S THE ONE.

17 Q OKAY. AND IT'S CLEARLY BLACK.

18 A IN CERTAIN LIGHT.

19 Q YOU GOING TO GIVE ME THE LIGHT ARGUMENT, TOO?

20 A NO, SIR. IT'S A BLACK JACKET, SIR.

21 MR. FRICK - OKAY. THAT'S ALL THE QUESTION I
22 HAVE. THANK YOU, SIR.

23 MR. LIFSEY - LET ME ASK YOU ABOUT SOMETHING I
24 GUESS I SHOULD'VE ASKED BEFORE.

25 RE-DIRECT EXAMINATION

PAT PARSONS - RE-DIRECT BY MR. LIFSEY

273

1 BY MR. LIFSEY -

2 Q DID YOU INVESTIGATE THE --- DID YOU GO TO THE SCENE
3 OF WHERE THE BREAK-IN HAPPENED?

4 A I DID, SIR.

5 Q DID YOU --- WHAT DID YOU FIND OUT BY THE BACK DOOR
6 AND THE WINDOW OF MS. SHERIKA SANDER'S APARTMENT?

7 A I FOUND A SCREWDRIVER AND A LONG PIECE OF --- THIN
8 PIECE OF METAL.

9 Q DID YOU TAKE THOSE INTO EVIDENCE?

10 A I DID.

11 Q MAY I SEE THOSE, PLEASE, SIR.

12 A WANT ME TO GET THAT OUT FOR YOU?

13 Q YES, I'LL GET YOU TO DO THAT. CAN LEAVE THEM IN THE
14 --- YES, BRING THEM OUT SO THEY CAN SEE THEM AND I'LL PUT
15 THEM IN THE BAG.

16 A (WITNESS COMPLIES)

17 Q WHERE WERE --- HOLD THEM UP IF YOU WOULD, PLEASE,
18 SIR.

19 A (WITNESS COMPLIES)

20 Q SCREWDRIVER AND A --- WHERE WERE THOSE FOUND?

21 A BY THE REAR WINDOW OF MS. SANDER'S APARTMENT WHICH I
22 BELIEVE TO BE THE ENTRY POINT.

23 Q YOU SAID YOU'VE BEEN A POLICE OFFICE TWENTY ---

24 A SIX.

25 Q --- SIX YEARS.

PAT PARSONS - RE-DIRECT BY MR. LIFSEY

274

1 A YES.

2 Q HAVE YOU INVESTIGATED A LOT OF BURGLARIES AND BREAK-
3 INS OVER THAT TIME?

4 A I HAVE.

5 Q ARE THESE CONSISTENT WITH ITEMS THAT WOULD BE USED TO
6 GAIN ENTRY INTO A RESIDENCE?

7 A IN MY OPINION, YES.

8 Q OKAY. HOW WOULD THAT HAPPEN FOR THOSE OF US WHO ---
9 THAT IT MIGHT NOT APPEAR OBVIOUS TO US I MEAN?

10 A WELL, THIS IS SPECULATION BUT WHAT I THINK WOULD
11 HAPPEN, BUT YOU COULD USE THIS AS A PRYING TOOL TO PRY THE
12 WINDOW OPEN, BUT THIS IS A PERFECT DEVICE TO SLIDE BETWEEN
13 THE WINDOW, UPPER AND LOWER WINDOW TO REACH IN AND UNDO
14 THE LATCH.

15 Q OKAY. ALL RIGHT.

16 MR. LIFSEY - YOUR HONOR, I WOULD MOVE THESE ---

17 Q AND YOU TOOK THESE INTO EVIDENCE YOURSELF?

18 A I DID, SIR.

19 MR. LIFSEY - I'D MOVE THESE INTO EVIDENCE AS
20 WHATEVER STATE EXHIBIT IS NEXT. 10. STATE EXHIBIT NUMBER
21 10.

22 MR. FRICK - WHAT WAS THAT FOUNDATION AGAIN? I'M
23 SORRY.

24 MR. LIFSEY - HE FOUND THEM BY THE --- BY THE
25 WINDOW AND DOOR THAT GOT BROKEN INTO.

PAT PARSONS - RE-CROSS BY MR. FRICK

275

1 MR. FRICK - SAME OBJECTION AS STATED PREVIOUSLY.

2 THE COURT - IN SUBJECT TO PRIOR OBJECTION.

3 (ITEMS MARKED INTO EVIDENCE AS STATE'S EXHIBIT
4 NUMBER 10.)

5 MR. LIPSEY - THANK YOU. YOU CAN PUT THOSE BACK
6 IN THE THERE IF YOU WOULD. AND I DON'T BELIEVE I HAVE ANY
7 FURTHER QUESTIONS.

8 MR. FRICK - HOLD ON. TALKING ABOUT BURGLARY
9 TOOLS. LET ME SEE THEM.

10 RE-CROSS EXAMINATION

11 BY MR. FRICK -

12 Q OKAY, NOW, THIS IS A LONG THIN PIECE OF METAL.

13 A CORRECT.

14 Q UNABLE TO GET ANY FINGERPRINTS OFF OF IT.

15 A THAT'S RIGHT. YOU CAN SEE --- ACTUALLY YOU CAN SEE
16 ON THERE WHERE THAT'S BEEN TRIED. YOU'LL SEE IT ON YOUR
17 HAND WHEN YOU LET GO OF IT.

18 Q I SEE. YES, I SEE THAT THERE. Y'ALL ATTEMPTED BUT
19 COULDN'T GET ANY PRINTS OFF OF IT?

20 A THAT'S CORRECT, SIR. SAME THING HERE.

21 Q OKAY. SAID FOUND THESE BY THE WINDOW AT MS. SANDER'S
22 PLACE?

23 A THE REAR WINDOW.

24 Q OKAY. WELL, THEN LET'S TALK ABOUT THE ENTRY.

25 A OKAY.

PAT PARSONS - RE-CROSS BY MR. FRICK

276

1 Q THE WINDOW'S BROKEN?

2 A YES, SIR, IT'S THE RIGHT LOWER PANE WINDOW, I BELIEVE
3 IT IS.

4 Q OKAY. DID YOU FIND GLASS?

5 A WAS THERE GLASS BACK THERE? YES, SIR.

6 Q OKAY. DID YOU TAKE ANY OF THAT INTO CUSTODY OR ---

7 A I PROCESSED IT. I PROCESSED IT.

8 Q OKAY. ANYTHING OFF THAT?

9 A THERE WAS --- I LIFTED ONE PRINT --- ONE OF THE
10 EVIDENCE --- IT WAS A LARGE HINGE LIFTER. IT'S THE SAME
11 TYPE OF SMALL --- SMALL ONE THAT I USED ON THE PACKAGE,
12 BUT THIS IS A LARGER ONE, AND I LIFTED ONE PRINT WAS ---
13 WHAT I THOUGHT WAS A GOOD PRINT AND SENT THAT TO SLED AND
14 IT COME BACK NO IDENTIFICATION ON THAT ONE.

15 Q OKAY. SO WE'VE GOT A RATHER LARGE PIECE OF GLASS
16 WITH A PRINT ON IT, BUT IT'S NOT IDENTIFIED WITH MR.
17 FRAZIER?

18 A I DON'T RECALL THE SIZE OF THE GLASS, BUT YES, DIDN'T
19 COME BACK IDENTIFIABLE TO MR. FRAZIER.

20 Q OKAY.

21 A I DON'T KNOW WHOSE IT IS.

22 Q OKAY. THE SCREWDRIVER AND STUFF WAS FOUND OUTSIDE OF
23 THE HOUSE?

24 A YES, SIR. RIGHT OUTSIDE, THERE'S A CHAIR THAT WAS
25 SITTING RIGHT OUTSIDE THE --- LIKE A PLAST --- LIKE A

PAT PARSONS - RE-CROSS BY MR. FRICK

277

1 LITTLE LAWN CHAIR SITTING OUT THERE AND IT WAS SITTING ON
2 TOP OF THAT AND THE VICTIM SAID IT WAS NOT HERS.

3 Q OKAY. NOW, I GUESS I'M GOING TO ASK YOU TO SPECULATE
4 ON THIS. THAT'S WHAT THIS IS. YOUR SPECULATION AS TO HOW
5 ENTRY WAS GAINED INTO MS. SANDER'S APARTMENT WOULD BE
6 WHAT?

7 A MY SPECULATION WOULD BE EITHER --- I THINK IT'S
8 POSSIBLE --- SINCE WE'RE SPECULATING --- THAT HE ATTEMPTED
9 TO PRY IT OPEN WITH THIS BAR. WHEN THAT COULDN'T HAPPEN
10 THAT WINDOW PANE WAS ---. THAT LOWER WINDOW PANE WAS
11 BROKEN.

12 Q OKAY.

13 A AND REACH IN AND UNDO IT. AND THAT WOULD EXPLAIN THE
14 BLINDS BEING TORN DOWN AND STUFF LIKE MS. SANDERS
15 TESTIFIED TO.

16 Q OKAY. ENTRY GAINED THROUGH THE WINDOW OR THE DOOR?

17 A IT COULD BE EITHER ONE. THAT'D BE SPECULATION IN
18 THIS, BECAUSE HE COULD --- ONCE THE WINDOW WAS RAISED, HE
19 COULD'VE REACHED IN AND UNDONE THE DOOR ---

20 Q OKAY.

21 A --- BECAUSE IT'S RIGHT BESIDE OF IT.

22 Q OKAY. GET ANY FINGERPRINTS OFF THE DOORKNOB?

23 A NO, SIR, AND I TRIED.

24 Q OKAY. DID IT HAVE ONE OF THOSE --- THE BACK DOOR,
25 DID IT HAVE A STORM DOOR OR ANYTHING ON IT?

PAT PARSONS - RE-CROSS BY MR. FRICK

278

- 1 A NO.
- 2 Q OKAY. ANYTHING TAKEN OFF THE DOOR? ANY PRINTS OFF
- 3 THE DOOR?
- 4 A NO. I DID THE WHOLE DOOR ESPECIALLY AROUND THE KNOB
- 5 ITSELF AND NO, SIR.
- 6 Q OKAY. STRIKE PLATE ON THE DOOR OR DOOR FRAME,
- 7 EVERYTHING AROUND THE DOOR?
- 8 A EVERYTHING.
- 9 Q OKAY.
- 10 A THAT I DID, AROUND THAT AREA.
- 11 Q AND THE WINDOW ITSELF, TOO?
- 12 A THE WINDOW --- AND LIKE I SAID THAT ONE PRINT THAT
- 13 WAS GOOD ENOUGH TO SEND AWAY.
- 14 Q OKAY. INSIDE THE HOUSE WERE ANY PRINTS FOUND?
- 15 A NO, SIR.
- 16 Q WAS THERE ANY ATTEMPT TO TAKE PRINTS?
- 17 A AROUND THE T.V. WHERE THIS --- MS. SANDERS SAID HER
- 18 ITEMS WERE TAKEN FROM THE TOP OF THE T.V. IN THE LIVING
- 19 ROOM ---
- 20 Q (INDICATING YES)
- 21 A --- YES, SIR, I TRIED THAT AREA AND DIDN'T FIND ANY.
- 22 Q NOTHING ON THE TOP OF THE T.V.?
- 23 A CORRECT.
- 24 Q NOW, JUST SO I GOT IT STRAIGHT IN MY MIND, WE'RE NOT
- 25 --- WAS THIS ONE OF THOSE OLDER T.V.S OR THE FLAT SCREEN

PAT PARSONS - RE-CROSS BY MR. FRICK

279

1 T.V.? I MEAN ---

2 A NO, IT'S ONE WITH THE LARGE TOP, WITH THE WHITE TOP.
3 THERE WAS A LOT OF ITEMS SITTING UP THERE ON TOP ACTUALLY,
4 ---

5 Q OKAY.

6 A --- SO IT WOULD'VE BEEN A --- YES.

7 Q OKAY. HOW ABOUT ANY OF THOSE ITEMS? WERE ANY PRINTS
8 TAKEN OR ATTEMPTED FROM THOSE ITEMS?

9 A THERE WAS ATTEMPT AND NOTHING FOUND THERE.

10 Q NOTHING FOUND THERE. OKAY. OKAY. SO OUT OF ALL THE
11 STUFF THAT WE ATTEMPT TO GET PRINTS OFF OF YOU GOT
12 BASICALLY TWO HINGE LIFTERS THAT SLED LOOKS AT. AM I
13 CORRECT?

14 A THREE.

15 Q THREE.

16 A THE LARGE ONE FROM THE WINDOW ---

17 Q RIGHT.

18 A --- AND THE TWO FROM THE CIGARETTE PACK.

19 Q TWO FROM THE CIGARETTE PACK.

20 A YES, SIR.

21 Q OKAY. AND ARE YOU AWARE OF THOSE RESULTS?

22 A ONE OF THE --- ONE OF THE SMALL HINGE LIFTERS I AM.

23 Q OKAY.

24 A WELL, I'M AWARE OF ALL THE RESULTS ACTUALLY.

25 Q OKAY. AND THOSE ARE?

PAT PARSONS - RE-DIRECT BY MR. LIFSEY

280

1 A THE HINGE --- THE LARGE HINGE LIFTER WAS NO VALUE ---
2 WHERE THEY TYPE IT BACK --- IT'S NO VALUE FOR
3 IDENTIFICATION WHICH MEANS NOTHING. ONE OF THE OTHER
4 SMALL HINGE LIFTERS NO VALUE FOR IDENTIFICATION. THE
5 OTHER HINGE LIFTER COMES BACK TO MR. FRAZIER.

6 Q OKAY. AND THAT'S THE CIGARETTE PACK THAT'S FOUND IN
7 THE ROAD OR ---

8 A IN THE SIDEWALK.

9 Q --- NEAR THE SIDEWALK.

10 A YES, SIR.

11 MR. FRICK - I THINK THAT'S ALL I GOT. THANK
12 YOU, SIR.

13 MR. LIFSEY - I HATE TO BELABOR IT. COULD I JUST
14 ASK ANOTHER QUESTION, ONE BRIEF QUESTION, JUDGE?

15 THE COURT - (INDICATING YES)

16 RE-DIRECT EXAMINATION

17 BY MR. LIFSEY -

18 Q I KNOW ON T.V. WE GET FINGERPRINTS OFF EVERYTHING.

19 A YES, SIR.

20 Q IN YOUR EXPERIENCE AS A POLICE OFFICER IS IT --- HOW
21 COMMON IS --- I MEAN IS IT UNUSUAL NOT TO FIND --- I'LL
22 TELL YOU --- EXPLAIN ABOUT FINGERPRINTS AND HOW OFTEN YOU
23 GET THEM AND DON'T GET HIM.

24 A FINGERPRINTS VERY, VERY UNCOMMON TO ACTUALLY GET
25 FINGERPRINTS OFF OF A CRIME SCENE. THERE'S MANY FACTORS

PAT PARSONS - RE-CROSS BY MR. FRICK

281

1 INVOLVED. THE SURFACE THEY TOUCH WOULD BE VERY DIFFICULT
2 TO GET PRINTS OFF A LOT OF SURFACE, ROUGH TEXTURE SURFACE.
3 THE --- IF THE SUSPECT WAS WEARING ANYTHING OVER THEIR
4 HANDS. YOU KNOW, WE FIND THAT TO BE VERY COMMON,
5 DEPENDING ON A LOT OF FACTORS THERE, BUT MORE OFTEN THAN
6 NOT YOU WILL NOT GET BACK ANY PRINTS REGARDLESS HOW MANY
7 SEND IT. WE GET BACK --- THAT'S WHY I KNOW THAT TERM SO
8 WELL, NO VALUE FOR IDENTIFICATION.

9 MR. LIFSEY - I DON'T HAVE ANY FURTHER QUESTIONS.

10 MR. FRICK - JUDGE, IF I MAY ASK ONE BRIEFLY?

11 THE COURT - SURE.

12 RE-CROSS EXAMINATION

13 BY MR. FRICK -

14 Q WE'RE GETTING INTO HOW COMMON IS IT TO FIND
15 FINGERPRINTS.

16 A YES, SIR.

17 Q HOW COMMON IS IT TO HAVE A BURGLARY CALL?

18 A HOW COMMON?

19 Q (INDICATING YES)

20 A ALREADY OCCURRED OR IN PROCESS?

21 Q EITHER ONE. YOU TELL ME.

22 A VERY UNCOMMON TO GET ONE THAT'S IN PROGRESS AT THE
23 TIME.

24 Q RIGHT. OKAY.

25 A THAT'S VERY UNCOMMON. BURGLARY REPORTS COME ACROSS

PAT PARSONS - RE-CROSS BY MR. FRICK

282

1 OUR DESK QUITE OFTEN.

2 Q OKAY. AND AS FAR AS A CLEARANCE RATE ON THOSE, ANY
3 IDEA?

4 A YOU WOULD HAVE TO SPEAK TO CAPTAIN HOWARD ABOUT THAT.
5 SHE KEEPS ALL THOSE RECORDS, SIR.

6 Q I MEAN BUT --- BUT WOULD YOU HAVE ANY IDEA WHETHER --
7 - ARE A HUNDRED PERCENT OF THE CASES SOLVED?

8 A NO, SIR.

9 Q OKAY. IN FACT, WITH YOUR TWENTY-SIX YEARS OF
10 EXPERIENCE, ARE BURGLARY CASES DIFFICULT TO SOLVE?

11 A I CAN'T MAKE A BLANKET STATEMENT. IT DEPENDS ON THE
12 ---

13 Q I UNDERSTAND.

14 A IT DEPENDS ON WHAT'S GOING ON WITH THAT CASE.

15 Q OKAY. OF THE ONES YOU HAVE TO DEAL WITH, ARE THEY
16 MORE DIFFICULT OR LESS DIFFICULT?

17 A THAN ---

18 Q THAN ANY OTHER CASES. SAY A HOMICIDE. SAY --- I
19 MEAN WHATEVER YOU HAVE TO DEAL WITH.

20 A I CAN'T --- IT DEPENDS ON THE FACTORS OF THAT
21 PARTICULAR CASE. I CAN'T MAKE A BLANKET STATEMENT ON
22 THAT. I'M NOT TRYING TO BE DIFFICULT. I PROMISE YOU.
23 IT'S JUST HARD TO SAY.

24 Q I UNDERSTAND. I UNDERSTAND. I'M JUST ASKING BASED
25 ON YOUR TWENTY-SIX YEARS OF EXPERIENCE, GIVE US SOME KIND

PAT PARSONS - RE-CROSS BY MR. FRICK

283

1 OF WHAT YOUR PERSONAL EXPERIENCE HAS BEEN.

2 A MY PERSONAL EXPERIENCE? I'VE CLEARED A LOT OF
3 BURGLARIES, CLEARED A LOT OF HOMICIDES. I STILL HAVE SOME
4 THAT AREN'T CLEAR.

5 MR. FRICK - OKAY. THAT'S IT. THANK YOU.

6 MR. LIFSEY - I DON'T HAVE ANY FURTHER QUESTIONS.

7 THE COURT - THANK YOU, SIR.

8 MR. LIFSEY - YOUR HONOR, I'VE GOT ONE MORE
9 WITNESS I NEED TO COORDINATE WITH, AND THEN I THINK I'LL
10 BE THROUGH. IF I COULD HAVE FIVE MINUTES.

11 THE COURT - YOU GOT IT.

12 MR. LIFSEY - I APPRECIATE IT.

13 THE COURT - LADIES AND GENTLEMEN OF THE JURY, IF
14 YOU'LL STEP BACK TO YOUR ROOM AND RELAX JUST A MINUTE OR
15 TWO.

16 (JURY EXITS THE COURTROOM)

17 (RECESS TAKEN)

18 THE COURT - THE JURY'S COMING IN.

19 (JURY RETURNS TO THE COURTROOM)

20 MR. LIFSEY - THANK YOU. YOUR HONOR, COULD I
21 VERY BRIEFLY RECALL SUSAN HUNTER TO THE STAND, PLEASE?

22 THE COURT - YOU'RE STILL UNDER OATH, CAPTAIN.

23 SUSAN HUNTER, AFTER BEING PREVIOUSLY SWORN,

24 TESTIFIES AS FOLLOWS:

25 DIRECT EXAMINATION

SUSAN HUNTER - DIRECT BY MR. LIFSEY

284

1 BY MR. LIFSEY -

2 Q CAPTAIN HUNTER, THERE WAS SOME DISCUSSION OF WHAT
3 PROPERTY WAS TAKEN OR NOT TAKEN FROM RANDOLPH FRAZIER
4 AFTER HE WAS ARRESTED. DO YOU REMEMBER THAT DISCUSSION?

5 A YES, SIR, I DO.

6 Q AND POOVEY COULDN'T REMEMBER FOR SURE WHETHER HE TOOK
7 THE CIGARETTE PACK FROM HIM OR NOT DIRECTLY?

8 A YES, SIR.

9 Q ALL RIGHT. I'M GOING TO SHOW YOU --- WHAT IS THAT
10 DOCUMENT I'M SHOWING YOU?

11 A THIS IS WHAT WE REFER TO AS A BOOKING REPORT.

12 Q ALL RIGHT. AND WHAT IS A BOOKING REPORT HAVE ---
13 WELL, I KNOW IT HAS A LOT OF THINGS ON IT. BUT DOES IT
14 LIST PROPERTY ON IT?

15 A YES, SIR, IT'S DEFENDANT INFORMATION AS WELL AS
16 PROPERTY THAT'S TAKEN FROM THAT PERSON AT THE TIME THE
17 PERSON'S ARRESTED.

18 Q AND IS THERE OR ARE THERE A LIST OF ITEMS TAKEN FROM
19 RANDOLPH FRAZIER?

20 A YES, SIR, THERE ARE.

21 Q OKAY. IS A CIGARETTE PACK LISTED AS TAKEN FROM HIM?

22 A NO, SIR, IS NOT.

23 MR. LIFSEY - I MOVE THIS INTO EVIDENCE AS
24 STATE'S EXHIBIT 11.

25 MR. FRICK - SUBJECT TO THE SAME ---

SUSAN HUNTER - CROSS BY MR. FRICK

285

1 THE COURT - IN SUBJECT TO PREVIOUS OBJECTION.

2 MR. LIFSEY - I DON'T HAVE ANY FURTHER QUESTIONS
3 FOR THE CAPTAIN.

4 (DOCUMENT MARKED INTO EVIDENCE AS STATE'S
5 EXHIBIT NUMBER 11.)

6 MR. FRICK - A QUICK QUESTION, YOUR HONOR.

7 CROSS EXAMINATION

8 BY MR. FRICK -

9 Q YOU DIDN'T CONDUCT A PAT-DOWN. CORRECT?

10 A NO, SIR, I DID NOT.

11 Q POOVEY CONDUCTED THE PAT-DOWN.

12 A YES, SIR.

13 Q ITEMS ON THAT LIST WERE FOUND BY POOVEY?

14 A WHOEVER THE BOOKING OFFICER IS WOULD'VE BEEN FOUND AT
15 THE TIME.

16 Q OKAY.

17 A THOSE WOULD'VE BEEN THE ITEMS THAT WERE TAKEN FROM
18 HIM AT THE TIME HE WAS BROUGHT TO THE MUNICIPAL JUSTICE
19 CENTER OR JAIL.

20 MR. FRICK - OKAY. THAT'S ALL I GOT. THANK YOU,
21 MA'AM.

22 MR. LIFSEY - THANK YOU. YOUR HONOR, I'D CALL --
23 - THAT'S ALL I HAVE FOR YOU, CAPTAIN HUNTER. I'D CALL J.
24 P. PARROT TO THE STAND, PLEASE.

25 J. P. PARROT, AFTER BEING FIRST DULY SWORN.

J. P. PARROT - DIRECT BY MR. LIFSEY

286

1 TESTIFIES AS FOLLOWS:

2 CLERK - THANK YOU. PLEASE BE SEATED.

3 DIRECT EXAMINATION

4 BY MR. LIFSEY -

5 Q WOULD YOU STATE YOUR FULL NAME, PLEASE?

6 A MY NAME IS JEFF J. P. PARROT.

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

8 A I'M A SENIOR AGENT WITH THE STATE LAW ENFORCEMENT
9 DIVISION.

10 Q WHAT WE COMMONLY REFER TO AS SLED? IS THAT RIGHT?

11 A COMMONLY KNOWN AS SLED, YES, SIR.

12 Q HOW LONG HAVE YOU BEEN AN AGENT OF SLED?

13 A I'VE BEEN WITH SLED --- JANUARY WILL BE NINE YEARS.

14 Q WERE YOU A POLICE OFFICER ANYWHERE ELSE OR WAS THAT -

15 --

16 A YES, SIR. YES, SIR, I WAS WITH COLUMBIA P.D. PRIOR
17 TO THAT FOR FIVE YEARS AND THREE YEARS BEFORE THAT I WAS
18 WITH THE NEWBERRY COUNTY SHERIFF'S OFFICE, SO I'M IN ABOUT
19 MY SEVENTEENTH YEAR.

20 Q ALL RIGHT. WHAT DO YOU DO AT SLED? WHAT IS YOUR
21 JOB?

22 A CURRENTLY ASSIGNED TO THE LATENT PRINT CRIME SCENE
23 UNIT. PART OF MY JOB HAS TO DEAL WITH --- ACTUALLY
24 CONSIDERED A EXPERT AND PROFICIENT CERTIFIED, ALL THOSE --
25 - ALL THOSE THINGS IN THE AREAS OF SEVEN FIELDS OF

J. P. PARROT - DIRECT BY MR. LIFSEY

287

1 FORENSIC SCIENCE. THOSE AREAS WOULD BE CONSIDERED CRIME
2 SCENE PROCESSING, CRIME SCENE RECONSTRUCTION, LATENT PRINT
3 EXAMINATION, FOOT WEAR EXAMINATION, TIRE EXAMINATION,
4 BLOOD STAIN PARA-ANALYSIS AND IMPRESSION EVIDENCE.

5 Q ALL RIGHT. WELL, I'M GOING TO JUST CONCENTRATE ON
6 ONE OF THOSE, FINGERPRINTS. YOU ANALYZE FINGERPRINTS?

7 A YES, SIR, I DO.

8 Q WHAT KIND OF TRAINING HAVE YOU HAD AND BACKGROUND
9 HAVE YOU HAD IN THAT AREA?

10 A WELL, BACKGROUND STARTED ---

11 MR. FRICK - YOUR HONOR, I'LL STIPULATE TO THIS.
12 I'M AWARE OF HIS TRAINING. JUST TO EXPEDITE THE PROCESS -
13 -- I'M NOT GOING TO HAVE A PROBLEM. I KNOW HE'S GOING TO
14 OFFER HIM AS A EXPERT IN --- ARE WE GOING TO CALL IT
15 LATENT FINGERPRINTING OR ---

16 MR. PARROT - LATENT --- LATENT PRINT. LATENT
17 FINGERPRINT.

18 MR. FRICK - I'LL STIPULATE HE'S AN EXPERT.

19 MR. LIFSEY - IF HE'LL AGREE HE'S AN EXPERT, I
20 WOULD MOVE THAT HE BE FOUND AN EXPERT IN THE FIELD OF
21 LATENT PRINTS.

22 THE COURT - SO QUALIFIED.

23 Q IN YOUR JOB AS AN AGENT IN THE LATENT PRINT DIVISION,
24 ARE YOU ALSO GIVEN PRINTS TO ANALYZE FROM LOCAL LAW
25 ENFORCEMENT AGENCIES?

J. P. PARROT - DIRECT BY MR. LIFSEY

288

1 A YES, SIR, QUITE FREQUENTLY.

2 Q WERE YOU GIVEN SOME THINGS TO ANALYZE BY --- FROM THE
3 LANCASTER POLICE DEPARTMENT IN THIS CASE?

4 A YES, SIR, I WAS. I WAS GIVEN THREE BACKER CARDS.
5 THAT'S THE CARDS THAT THE LATENT LIFT OR THE TAPE LIFT IS
6 PLACED ON AT THE TIME AN ITEM IS PROCESSED AND THEN THOSE
7 ITEMS ARE GIVEN TO US TO TYPICALLY ANALYZE FOR COMPARISON
8 PURPOSES.

9 Q DID YOU ANALYZE ITEMS IN THIS CASE?

10 A YES, SIR, I DID.

11 Q EXPLAIN TO THE JURY WHAT YOU ANALYZED AND THEN WHAT
12 YOU FOUND AS A RESULT OF YOUR ANALYSIS?

13 A I WAS --- IN THIS PARTICULAR CASE I WAS GIVEN THREE
14 HINGE LIFTERS IS WHAT THEY WERE. IT'S THE ---

15 Q WHAT'S A HINGE LIFTER FOR PURPOSE ---

16 A WELL, A HINGE LIFTER IS A TWO FOR ONE BASICALLY.
17 YOU'RE GETTING THE TAPE AND THE BACKER CARD IN ONE, SO
18 WHAT THE OFFICER/AGENT, WHOEVER IT MAY BE THAT DOES THE
19 LIFT, WOULD LIFT THE TAPE PORTION OFF JUST FLAPPING IT UP
20 AND THEN ONCE THEY HAVE LIFTED THE IMPRESSION THEY FLAP IT
21 BACK DOWN ON THE BACKER CARD, SO IT'S --- IT'S ALL IN ONE
22 THING. RATHER THAN HAVING IT --- THE TAPE SEPARATE FROM
23 THE LIFT, THE BACKER CARD, IT'S ALL IN ONE.

24 Q AND THIS A FAIRLY COMMON THING, COMMON WAY IT'S DONE?

25 A YES, SIR, IT IS.

J. P. PARROT - DIRECT BY MR. LIFSEY

289

1 Q YOU HAD THREE HINGE LIFTERS TO ANALYZE.

2 A THAT'S CORRECT.

3 Q WHAT DID YOU --- WHAT'D YOU FIND?

4 A WELL, THE --- I HAD THREE --- THREE HINGE LIFTERS TO
5 LOOK AT IT. ONE OF THE LIFTS WAS A LARGER LIFT, ACTUALLY
6 HAD TWO IMPRESSIONS, TWO SEPARATE IMPRESSIONS ON THAT, SO
7 I SUB-ITEMED THOSE IMPRESSIONS. THE THIRD --- THE --- I'M
8 SORRY THE SMALLER HINGE LIFTER HAD ONE AND THEN ANOTHER
9 LINGE SHIFTER (SIC) LINGE --- HINGE LIFTER, I'M SORRY, HAD
10 ONE, SO BASICALLY FOUR IMPRESSIONS TOTAL.

11 Q GO AHEAD. WHAT'D YOU FIND?

12 A WITH THE LARGER HINGE LIFTER THAT --- LIKE I SAID
13 WITH THE TWO LIFTS ON THAT, ONE OF THE --- ONE OF THE
14 IMPRESSIONS WAS OF NO VALUE FOR IDENTIFICATION. THAT
15 TYPICALLY MEANS THAT THERE WAS JUST NOTHING --- NO
16 IDENTIFYING MINUTIA, NO CHARACTERISTICS THAT I WOULD USE
17 FOR THE PURPOSE OF ANY TYPE OF IDENTIFICATION.

18 Q OKAY.

19 A THE SECOND IMPRESSION THAT WAS ON THAT PARTICULAR
20 HINGE LIFT, THE LARGER ONE, WAS OF AN IMPRESSION THAT WAS
21 SLIGHTLY OFF THE NORM OF A NORMAL IMPRESSION THAT I WOULD
22 USE FOR COMPARISON ON A FINGERPRINT CARD THAT I'M GIVEN.
23 IN OTHER WORDS, WHERE A PERSON PUTS THEIR FINGERS DOWN TO
24 MAKE THAT IMPRESSION ON A FINGERPRINT CARD, THIS
25 PARTICULAR IMPRESSION I COULD TELL THROUGH MY EXPERIENCE

J. P. PARROT - DIRECT BY MR. LIFSEY

290

1 WAS THAT OF A PORTION A LITTLE FARTHER ON THE SIDE OF THE
2 FINGERPRINT AND TOWARDS THE TIP OF A FINGERPRINT, AND WHAT
3 WE CALL THAT IS AN AREA NOT REPRESENTED ON THE CARD, SO
4 THEREFORE, I HAD TO RENDER A NO CONCLUSION ANALYSIS OR
5 RESULT ON THAT PARTICULAR IMPRESSION.

6 Q SO TWO OF THOSE --- TWO OF THE HINGE LIFTERS YOU WERE
7 GIVEN WERE NOT ABLE TO DRAW A CONCLUSION AND IDENTIFY
8 ANYBODY IN PARTICULAR OUT OF THOSE TWO?

9 A WELL, ONE IMPRESSION ON ONE HINGE LIFTER AND THEN THE
10 ONE SMALLER HINGE LIFTER WAS THE SITUATION WHERE I HAD NO
11 VALUE FOR IDENTIFICATION. SO WORKING WITH THE FIRST ITEM
12 AND SLED'S ITEM LIST, ITEM NUMBER ONE, WAS TO US --- WAS
13 THE BIG HINGE LIFTER WITH TWO IMPRESSIONS ON IT, ONE BEING
14 NO VALUE FOR IDENTIFICATION AND THE OTHER IMPRESSION ON IT
15 BEING NO CONCLUSION BASED --- BASED BECAUSE --- BASED ON
16 THE FACT THAT THE AREA THAT I NEEDED TO MAKE MY
17 EXAMINATION WAS NOT REPRESENTED ON THE CARD I HAD TO THE
18 COMPARISON. NOW, THE SMALLER HINGE LIFTER, ITEM TWO, I
19 WAS ABLE TO DO A COMPARISON, ---

20 Q AND SO ---

21 A --- ITEM THREE WAS THE NO VALUE.

22 Q YOU EXPLAINED THE TWO ITEMS YOU COULDN'T --- YOU
23 DIDN'T --- YOU JUST EXPLAINED TWO ITEMS.

24 A YES, SIR.

25 Q I DON'T WANT TO --- I'M NOT A SCIENTIST EITHER, SO --

J. P. PARROT - DIRECT BY MR. LIFSEY

291

1 - BUT THAT YOU WERE ABLE TO MAKE AN IDENTIFICATION ON ONE
2 OF THE THREE ITEMS SUBMITTED TO YOU. IS THAT CORRECT?

3 A THAT'S CORRECT. ON ONE OF THE SMALL HINGE LIFTERS
4 THERE WAS AN IMPRESSION ON THAT HINGE LIFTER WHICH I WAS
5 ABLE TO COMPARE. IT WAS AN AREA REPRESENTED WITHIN THE
6 CARD I HAD TO MAKE A COMPARISON AGAINST AND THEREFORE, I
7 MADE THAT IDENTIFICATION TO A MR. RANDOLPH FRAZIER IN THAT
8 PARTICULAR HINGE LIFTER; THAT'S OUR ITEM NUMBER TWO.

9 Q AND ARE YOU ABLE TO SAY TO A REASONABLE DEGREE OF
10 SCIENTIFIC CERTAINTY THAT THAT PRINT WAS RANDOLPH
11 FRAZIER'S PRINT?

12 A OH, WITHOUT A DOUBT.

13 Q AND THAT WAS ON ONE OF THE --- THAT WAS ON THE SMALL
14 HINGE LIFTER?

15 A THAT'S CORRECT. IT WAS ON ONE OF THE SMALL HINGE
16 LIFTERS.

17 Q OKAY.

18 MR. LIFSEY - GIVE ME ONE SECOND.

19 Q DID YOU REDUCE YOUR FINDINGS TO WRITING, TO A WRITTEN
20 ---

21 A YES, SIR.

22 Q --- TO AN ACTUAL WRITTEN REPORT?

23 A YES.

24 Q MAY I SEE THAT, PLEASE?

25 A YES, SIR.

J. P. PARROT - CROSS BY MR. FRICK

292

1 Q AND MAYBE THIS IS A DUMB QUESTION, BUT EVERYBODY'S
2 ALREADY FIGURED OUT THAT --- BUT IN CASE THEY HAVEN'T ---
3 BECAUSE I JUST REALIZED IT --- THERE WAS A CARD SUBMITTED
4 --- THERE'S AN ITEM FOUR LISTED ON HERE.

5 A THAT'S CORRECT.

6 Q AND THAT WAS A FINGERPRINT CARD KNOWN TO BE RANDOLPH
7 FRAZIER.

8 A THAT'S CORRECT.

9 Q OKAY. SO YOU HAD TO HAVE SOMETHING TO COMPARE THE
10 FINGERPRINT THAT WAS GIVEN TO YOU TO.

11 A THAT'S CORRECT. FINGERPRINT CARD.

12 Q IS THIS REPORT YOUR REPORT THAT YOU GENERATED?

13 A YES, SIR.

14 MR. LIFSEY - YOUR HONOR, I MOVE THIS INTO
15 EVIDENCE AS THE NEXT STATE'S EXHIBIT.

16 MR. FRICK - NO, I'M NOT GOING TO OBJECT.

17 THE COURT - IN WITHOUT OBJECTION.

18 (DOCUMENT MARKED INTO EVIDENCE AS STATE'S
19 EXHIBIT NUMBER 12.)

20 MR. LIFSEY - I DON'T HAVE ANY FURTHER QUESTIONS.

21 MR. FRICK - COUPLE OF QUICK QUESTIONS.

22 THE COURT - SURE.

23 CROSS EXAMINATION

24 BY MR. FRICK -

25 Q YOU'RE NOT INVOLVED WITH COLLECTING ANY OF THE

J. P. PARROT - CROSS BY MR. FRICK

293

1 FINGERPRINTS. AM I CORRECT?

2 A NOT --- NOT IN THIS CASE, NO, SIR.

3 Q IN THIS CASE YOU DIDN'T COLLECT ANY FINGERPRINTS?

4 A NOT IN THIS CASE, NO, SIR.

5 Q YOU ONLY ANALYZED THE BACKERS AND HINGE LIFTERS THAT
6 ARE SUBMITTED TO YOU?

7 A IN THIS CASE, YES, SIR.

8 Q OKAY. AND IN THIS CASE YOU WERE SUBMITTED THREE,
9 FOUR ---

10 A THREE HINGE LIFTERS.

11 Q OKAY. AND THE CARD.

12 A AND THE CARD, YES, SIR.

13 Q ALL RIGHT. LONG AND SHORT OF IT IS, OF THREE HINGE
14 LIFTERS THAT YOU GOT, YOU'RE UNABLE TO IDENTIFY TWO OF
15 THEM WITH ANYBODY, BASED ON THE INFORMATION THAT YOU HAVE.

16 A KEEP GOING.

17 Q AND ONE OF THEM WAS MR. FRAZIER.

18 A THE --- TO MORE ACCURATELY ANSWER YOUR QUESTION,
19 BECAUSE THE ONE HINGE LIFTER ACTUALLY HAD TWO IMPRESSIONS
20 ON IT, THE ONE --- ONE OF THE IMPRESSIONS OF THE TWO WAS
21 OF NO VALUE.

22 Q OKAY.

23 A ONE --- THE OTHER ONE WAS NO CONCLUSION ---

24 Q OKAY.

25 A --- DUE TO THE AREA NOT REPRESENTED --- NOT BEING

J. P. PARROT - CROSS BY MR. FRICK

294

1 REPRESENTED ON THE CARD I HAD.

2 Q OKAY.

3 A THE SECOND ITEM FOR US, WHICH WAS THE SMALL HINGE
4 LIFTER WAS IDENTIFIED TO MR. FRAZIER. THE THIRD HINGE
5 LIFTER THAT I HAD TO ANALYZE WAS OF NO VALUE FOR ANY
6 IDENTIFICATION PURPOSES.

7 Q OKAY.

8 A SO IT HAD NO IDENTIFYING ---

9 Q I GUESS WHAT I'M TRYING TO DO IS GET A SLED AGENT TO
10 PUT IT IN LAYMEN'S TERMS. I KNOW THAT'S HARD TO DO.
11 THREE PRINTS, ONE OF THEM THAT YOU'RE CONCLUSIVELY ABLE TO
12 IDENTIFY AS MR. FRAZIER'S.

13 A CORRECT. THE OTHER --- THE OTHER BEING --- THE FACT
14 IS I CAN'T ELIMINATE YOUR --- I CAN'T ELIMINATE MR.
15 FRAZIER BECAUSE I DON'T ---

16 Q BUT YOU CAN'T INCLUDE HIM.

17 A --- BUT I CAN'T --- CORRECT. I CAN'T INCLUDE HIM AS
18 WELL, BECAUSE I DON'T HAVE ENOUGH INFORMATION TO COMPARE
19 AGAINST.

20 Q WERE YOU GIVEN INFORMATION AS TO WHERE THAT
21 FINGERPRINT CAME FROM?

22 A THE ONLY THING I HAD WAS THE INFORMATION LISTED ON
23 THE BACKER --- ON THE BACK OF THE CARD ITSELF OF THIS
24 LARGER HINGE LIFTER.

25 Q OKAY, SO ---

J. P. PARROT - CROSS BY MR. FRICK

295

1 A THAT'S THE ONLY ONE THAT HAD ---

2 Q THE ONE YOU WERE ABLE TO IDENTIFY YOU HAD NO
3 INFORMATION AS TO WHERE IT CAME FROM?

4 A CORRECT.

5 MR. FRICK - THAT'S ALL THE QUESTIONS I GOT.
6 THANK YOU.

7 MR. LIFSEY - I DON'T HAVE ANY FURTHER QUESTIONS
8 FOR THIS WITNESS. I'D ASK THAT HE BE EXCUSED.

9 THE COURT - ANY OBJECTION?

10 MR. FRICK - NO, SIR:

11 THE COURT - THANK YOU, SIR. WITNESS IS EXCUSED.

12 MR. LIFSEY - YOUR HONOR, AT THIS POINT I WOULD
13 INTRODUCE UNTO EVIDENCE --- OR HE CAN AGREE TO IF HE WANTS
14 TO --- THAT RANDOLPH FRAZIER HAS A PRIOR CONVICTION FOR
15 BURGLARY AND A PRIOR CONVICTION FOR HOUSE-BREAKING.

16 MR. FRICK - JUDGE, IF WE COULD APPROACH FOR ONE
17 SECOND.

18 (BENCH CONFERENCE WAS HELD IN THE PRESENCE OF
19 THE JURY BUT OUT OF THE HEARING OF THE JURY WHICH WAS NOT
20 REPORTED.)

21 THE COURT - ALL RIGHT, EVERYBODY'S IN AGREEMENT
22 THAT HE'S GOT TWO PRIOR CONVICTIONS, ONE BURGLARY, ONE
23 HOUSE-BREAKING.

24 MR. FRICK - YES.

25 THE COURT - OKAY.

1 MR. LIFSEY - TAKE ONE MOMENT, JUST ONE SECOND,
2 YOUR HONOR. YOUR HONOR, AT THIS POINT THE STATE WOULD
3 REST.

4 THE COURT - ALL RIGHT, WE'RE GOING TO STOP FOR
5 THE MORNING. I'VE GOT ANOTHER MATTER I'VE GOT TO TAKE
6 CARE OF. WHAT WE'RE GOING TO DO, WE'VE GOT TO SHIFT
7 BUILDINGS. THEY'VE GOT ANOTHER COURT SCHEDULED HERE THIS
8 AFTERNOON. THE COUNTY COUNCIL HAS GRACIOUSLY AGREED FOR
9 US TO MOVE OVER TO THE NEW COUNTY BUILDING AND USE THEIR
10 CHAMBERS. I'M GOING TO ASK THE JURY TO STEP BACK TO THE
11 JURY ROOM. MR. HAMMOND, THE CLERK OF COURT'S GOING TO
12 COME BACK TO YOU AND EXPLAIN THIS PROCESS OF WHERE YOU'RE
13 GOING TO NEED TO PARK, WHERE YOU GO. HE'S GOING TO SET A
14 TIME PROBABLY AROUND 12:15 OR SO. I'LL LEAVE THE FINAL
15 DECISION UP TO HIM WHEN YOU NEED TO BE THERE, BECAUSE HE'S
16 GOING TO ARRANGE LUNCH FOR THE JURY WHEN YOU GET THERE.
17 OKAY? SO HE'LL GO THROUGH THAT PROCESS WITH YOU. AS FAR
18 AS ACTUALLY GETTING BACK INTO THE TRIAL, IT'S PROBABLY
19 GOING TO BE 1:00 TO 1:15. I WOULD SAY PROBABLY 1:15 BY
20 THE TIME YOU FINISH LUNCH. SO IF Y'ALL WILL STEP BACK TO
21 THE ROOM, MR. HAMMOND WILL GIVE YOU THE INSTRUCTIONS AND
22 WE'LL HAVE EVERYBODY SHIFT OVER TO THE COUNTY BUILDING.

23 (JURY EXITS THE COURTROOM)

24 THE COURT - OKAY, EVERYBODY TRY TO BE BACK OVER
25 TO THE COUNTY BUILDING AT LEAST BY 1:00.

1 MR. LIFSEY - YES, SIR.

2 (COURT IN RECESS FOR LUNCH)

3 THE COURT - YOU MAY BE SEATED. THANK YOU.

4 CLERK - THEY'RE READY.

5 THE COURT - READY?

6 MR. FRICK - JUDGE, I THINK I GOT ONE QUESTION.

7 MR. LIFSEY AND I WERE TALKING ABOUT BRIEFLY AND I WANT TO
8 DO IT BEFORE THE JURY COMES IN. REGARDING THE ADDRESS
9 BOOK THAT IS NOW IN EVIDENCE. IT'S STILL IN THE SEALED
10 CONTAINER. WE OBVIOUSLY --- WE DIDN'T OPEN IT UP IN THE
11 COURSE OF THE TRIAL. I WOULD LIKE TO LOOK AT IT. I
12 HAVEN'T HAD AN OPPORTUNITY TO LOOK INSIDE OF IT. I WOULD
13 LIKE TO DO THAT BEFORE IT GOES BACK TO THE JURY BECAUSE I
14 BELIEVE THEY HAVE EVERY RIGHT TO BE ABLE TO OPEN UP THE
15 BAG AND LOOK INSIDE OF IT, AND I JUST WANTED TO BE AWARE
16 OF WHAT THE CONTENTS ARE BEFORE THEY SEE IT.

17 THE COURT - I AGREE WITH YOU UNLESS THERE'S SOME
18 REASON WE NEED TO BE PROTECTING THE INTEGRITY OF THE ---

19 MR. LIFSEY - I DON'T REALLY THINK THERE IS. MY
20 ONLY CONCERN IS IF THEY SAW IT INTRODU --- MAYBE WE OUGHT
21 TO TELL --- I MEAN I DON'T WANT THEM TO GET BACK THERE AND
22 SEE AN OPENED EVIDENCE BAG AND THINK WE'VE MESSED WITH IT,
23 THAT WE'VE DONE SOMETHING IMPROPER. I MEAN --- I'M TRYING
24 TO THINK OF --- I MEAN I GUESS HERE I AM TALKING OUT LOUD
25 INSTEAD OF PROPOSING SOMETHING, BUT I DON'T --- DO WE NEED

1 TO TELL THEM ---

2 THE COURT - YOU WANT TO LOOK IN IT FIRST,
3 THOUGH.

4 MR. FRICK - YES, SIR.

5 MR. LIFSEY - I'M FINE WITH HIM LOOKING AT IT.
6 I JUST --- IT --- YOU KNOW, IT'S NOT GOING TO BE SEALED UP
7 WHEN IT GOES BACK THERE, WHICH IS PROBABLY FINE. I JUST
8 DON'T WANT THE JURY THINKING, YOU KNOW --- I DON'T KNOW
9 WHAT HE'S GOING TO ARGUE, BUT IF HE'S BASICALLY GOING TO
10 ARGUE SOME VERSION OF A POLICE CONSPIRACY AGAINST MR.
11 FRAZIER I'D HATE FOR THERE TO BE A PIECE OF EVIDENCE THAT
12 LOOKS LIKE WE --- WE DID SOMETHING TO IT.

13 THE COURT - WHY DON'T BEFORE WE SEND THEM BACK,
14 I JUST --- JUST MAKE A REQUEST TO LOOK AT THE EVIDENCE AND
15 I'LL HAVE --- I'LL HAVE THE SOLICITOR GET IT OUT AND Y'ALL
16 CAN OPEN IT IN FRONT OF THE JURY ---

17 MR. LIFSEY - OKAY.

18 THE COURT - --- AND YOU TAKE A LOOK AT IT AND
19 THEN THEY'LL KNOW WHY IT'S OPEN.

20 MR. FRICK - THAT'LL BE FINE.

21 THE COURT - MOTIONS FOR THE RECORD?

22 MR. FRICK - DO YOU WANT ME TO DO MY D-V MOTION
23 AT THIS TIME OR --- WHEN YOU SAY MOTION ---

24 MR. LIFSEY - I'VE RESTED. I'VE RESTED.

25 THE COURT - HE RESTED.

299

1 MR. FRICK - OKAY. ALL RIGHT. YOUR HONOR, I
2 WOULD AT THIS TIME, BECAUSE I DIDN'T MAKE CONTEMPORANEOUS
3 OBJECTIONS TO SOME OF THE STUFF THAT I MADE MOTIONS IN
4 LIMINE PRIOR TO THE START OF THE CASE. I WOULD RENEW MY
5 MOTIONS IN REGARDS TO REQUIRING THE JONES FACTORS BE
6 APPLIED TO THE DOG-TRACKING EVIDENCE. I RENEW MY MOTIONS
7 IN REGARD TO THE SUPPRESSION EVIDENCE BASED ON MY ARGUMENT
8 THAT THE INITIAL STOP AND THE EVIDENCE OBTAINED FROM THE
9 VICINITY OF MR. FRAZIER IS VIOLATIVE OF HIS FOURTH
10 AMENDMENT RIGHTS AND RENEW MY MOTION IN REGARD TO EACH ONE
11 OF THE IDENTIFICATIONS. ALSO, I WOULD LIKE TO PUT BACK ON
12 THE RECORD MY CONCERN AND REQUEST. I THINK YESTERDAY MY
13 OFFICIAL MOTION WAS A MOTION FOR A MIS-TRIAL IN REGARDS TO
14 THE --- THE IDENTIFICATION OR LACK THEREOF OF MS.
15 STURDIVANT WHO WAS SHOWN AN I.D. AND I WAS NOT MADE AWARE
16 OF THE FACT THAT SHE WAS UNABLE TO IDENTIFY ANYBODY, AND
17 THAT WASN'T DISCLOSED TO ME UNTIL SHE TOOK THE STAND.
18 THOSE --- I WOULD LIKE TO JUST MOVE FORWARD ON THOSE
19 MOTIONS.

20 THE COURT - I THINK WE'VE DEVELOPED ALL THOSE ON
21 THE RECORD. I.D., IF I REMEMBER CORRECTLY, WAS MENTIONED
22 IN THE INCIDENT REPORT. RIGHT?

23 MR. LIFSEY - YES, SIR.

24 THE COURT - OKAY. ALL RIGHT, SO NOTED. I DON'T
25 KNOW OF ANY REASON I'D WANT TO REVERSE MYSELF ON ANY OF

1 THOSE THINGS.

2 MR. FRICK - THAT'S FINE. YOUR HONOR, AS FAR AS
3 DEFENSE'S CASE, WE HAVE NO WITNESSES TO CALL. I HAVE
4 SPOKEN TO MR. FRAZIER. PERHAPS, YOU'D LIKE TO DO SO AT
5 THIS TIME. IT IS MY UNDERSTANDING THAT HE DOES NOT WISH
6 TO TAKE THE STAND.

7 THE COURT - ALL RIGHT. MR. FRAZIER ---

8 MR. FRAZIER - YES, SIR.

9 THE COURT - --- I NEED TO SPEAK WITH YOU ABOUT
10 YOUR FIFTH AMENDMENT RIGHTS. I NEED TO ADVISE YOU THAT
11 YOU HAVE A RIGHT TO INVOKE THE PROTECTIONS GIVEN TO YOU BY
12 THE FIFTH AMENDMENT TO THE CONSTITUTION OF THE UNITED
13 STATES AND THE SIMILAR COUNTERPART PROVISION OF OUR STATE
14 CONSTITUTION. THE FIFTH AMENDMENT TO THE CONSTITUTION OF
15 THE UNITED STATES PROVIDES IN PART THAT NO PERSON SHALL BE
16 COMPELLED IN ANY CRIMINAL CASE TO BE A WITNESS AGAINST
17 HIMSELF. THAT PROVISION OF CONSTITUTIONAL LAW MEANS THAT
18 YOU CANNOT BE COMPELLED OR REQUIRED TO TESTIFY IN THIS
19 CASE. THIS IS A RIGHT AND A PRIVILEGE WHICH THE LAW
20 EXTENDS TO YOU. IT IS A PERSONAL PRIVILEGE AND NO ONE CAN
21 WAIVE THE RIGHT EXCEPT YOU. YOU HAVE A RIGHT NOT TO
22 TESTIFY, BUT YOU ALSO HAVE A RIGHT TO TESTIFY. I WILL
23 GRANT YOU THE RIGHT TO CONSULT YOUR ATTORNEY BEFORE YOU
24 MAKE A FINAL DECISION. IF YOU ELECT NOT TO TESTIFY, THIS
25 CANNOT BE USED BY THE STATE AS AN INFERENCE OF GUILT AND

301

1 YOUR ELECTION NOT TO TESTIFY CANNOT BE CONSIDERED BY THE
2 JURY IN ITS DELIBERATIONS. IF YOU ELECT TO TESTIFY AND
3 WAIVE THE PRIVILEGE EXTENDED TO YOU BY THE FIFTH AMENDMENT
4 OF THE CONSTITUTION OF THE UNITED STATES, I ADVISE YOU NOW
5 THAT YOU WILL THEN ASSUME THE ROLE OF A WITNESS IN THE
6 CASE AND YOU WILL WAIVE OR GIVE UP YOUR CONSTITUTIONAL
7 PRIVILEGE AGAINST SELF INCRIMINATIONS. THIS MEANS THAT IF
8 YOU VOLUNTARILY TAKE THE WITNESS STAND AND TESTIFY YOU
9 WILL THEN SUBJECT YOURSELF TO THE SAME RULES THAT GOVERN
10 ANY OTHER WITNESSES AND YOU MAY BE EXAMINED AND CROSS
11 EXAMINED ON ANY RELEVANT ISSUE IN THE CASE AND YOU MAY BE
12 IMPEACHED TO THE SAME EXTENT AS ANY OTHER WITNESS, ALL OF
13 WHICH, HOWEVER, WOULD BE SUBJECT TO THE RULES OF PROCEDURE
14 AND EVIDENCE. I FURTHER ADVISE YOU THAT IF YOU ELECT TO
15 TAKE THE WITNESS STAND AND TESTIFY THAT THIS DECISION ON
16 YOUR PART MUST BE MADE FREELY, VOLUNTARILY, INTELLIGENTLY
17 AND WITH KNOWLEDGE OF THE PROTECTIONS GIVEN TO YOU BY THE
18 FIFTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES
19 AND WITH KNOWLEDGE OF THE CONSEQUENCES OF YOUR ELECTION TO
20 TESTIFY. DO YOU UNDERSTAND WHAT I JUST WENT OVER WITH
21 YOU?

22 MR. FRAZIER - YES, I DO.

23 THE COURT - HAVE YOU DISCUSSED THESE ISSUES WITH
24 YOUR ATTORNEY?

25 MR. FRAZIER - YES, SIR.

1 THE COURT - HAVE YOU DISCUSSED WITH YOUR
2 ATTORNEY WHETHER YOU SHOULD OR SHOULD NOT TESTIFY?

3 MR. FRAZIER - YES, I HAVE.

4 THE COURT - DO YOU UNDERSTAND EVERYTHING THAT HE
5 HAS EXPLAINED TO YOU?

6 MR. FRAZIER - YES, SIR.

7 THE COURT - DO YOU HAVE ANY QUESTIONS ABOUT WHAT
8 HE MAY HAVE EXPLAINED TO YOU OR WHAT I JUST WENT OVER?

9 MR. FRAZIER - NO, I DON'T.

10 THE COURT - AND DO YOU WISH TO TESTIFY?

11 MR. FRAZIER - NO, SIR.

12 THE COURT - ALL RIGHT. GOT THAT.

13 MR. FRICK - YOUR HONOR, ONE LAST THING. I THINK
14 YOU'RE PROBABLY TALKING ABOUT THE CHARGING MOTION. IF YOU
15 WANT ME TO TAKE CARE OF THAT AT THIS TIME, I'LL BE GLAD TO
16 DO SO.

17 THE COURT - YOU KNOW, WE NEED TO NUMBER THAT
18 PARTICULAR ONE AND I WILL GIVE IT TO THE COURT REPORTER.
19 LET'S SEE. FIND OUT WHERE I PUT IT. WHICH NUMBER YOU
20 WANT ME TO REFER TO IT BY?

21 MR. FRICK - YOUR HONOR, I THINK IT WOULD
22 OFFICIALLY BE COURT EXHIBIT NUMBER 2. IF THAT ---

23 THE COURT - THE DOG CHARGE?

24 MR. FRICK - I DON'T THINK I PROVIDED IT TO HER.

25 THE COURT - I CAN GIVE HER THIS ONE.

303

1 MR. FRICK - THAT'LL BE FINE. I'LL PASS IT OVER
2 IF YOU WANT ME TO.

3 THE COURT - WELL, ON THAT WE REALLY DON'T NEED
4 A NUMBER. IT'D JUST BE THE DOG-TRACKING EVIDENCE CHARGE.
5 THE DEFENSE HAS REQUESTED THAT CHARGE. THE STATE OBJECTS
6 TO IT. I'VE REVIEWED IT. I DO NOT FIND THAT THAT IS
7 APPLICABLE SOUTH CAROLINA LAW AND I'M NOT GOING TO CHARGE
8 IT.

9 MR. FRICK - YOUR HONOR, IF I COULD JUST PUT ON
10 THE RECORD BRIEFLY WHY I'M ASKING FOR IT, IF YOU DON'T
11 MIND.

12 THE COURT - OKAY. COURT EXHIBIT.

13 (DOCUMENT MARKED COURT'S EXHIBIT NUMBER 2.)

14 MR. FRICK - JUDGE, IT'S --- IN MY REVIEW OF
15 SOUTH CAROLINA CASE LAW, THERE'S REALLY ONE CASE ON POINT
16 IN REGARD TO DOG-TRACKING EVIDENCE. WE TALKED ABOUT THAT
17 YESTERDAY, THE WHITE CASE. I DON'T HAVE A CITE FOR IT
18 RIGHT NOW, BUT I THINK IT'S IN THE RECORD SOMEWHERE. I
19 ALSO LOOKED AT NORTH CAROLINA WHO'S HAD SIGNIFICANTLY MORE
20 DOG-TRACKING CASES THAN SOUTH CAROLINA AND THE STATE OF
21 GEORGIA WHO HAS MORE DOG-TRACKING CASES. NONE OF THOSE
22 HAVE EVER DEALT WITH NOR HAS THE STATE OF SOUTH CAROLINA
23 DEALT WITH SPECIFICALLY WHETHER OR NOT A SPECIFIC CHARGE
24 IN REGARDS TO DOG-TRACKING EVIDENCE SHOULD BE GIVEN TO
25 JURIES. WHAT I'VE PROVIDED TO THE SOLICITOR AND TO THE

1 COURT IN MY ARGUMENT WAS A WASHINGTON STATE CASE. IT'S
2 STATE VS. ELLIS. IT'S AT 448 WASHINGTON APPELLATE 333.
3 IN THAT CASE THEY TALK ABOUT THAT IT IS A REQUIREMENT IN
4 WASHINGTON STATE THAT A DOG-TRACKING CHARGE CAN BE GIVEN.
5 WITH ALL CANDOR TO THE COURT, THEY DO APPLY A --- WHETHER
6 THERE WAS ANY HARM IN WHETHER OR NOT IT WAS NOT GIVEN. IF
7 THERE WAS SUFFICIENT EVIDENCE IT WOULDN'T HAVE HELPED
8 EITHER WAY, IT DOESN'T HAVE TO BE CHARGED, BUT IT'S MY
9 CONTENTION THAT IT SHOULD BE CHARGED. I CAN'T HELP THE
10 FACT THE STATE OF SOUTH CAROLINA'S NOT DEALT WITH IT. WE
11 JUST HAVE NOT DEVELOPED THIS AREA OF LAW AS EXTENSIVELY AS
12 SOME OTHER STATES HAVE, AND I WOULD HAVE REQUESTED AND
13 CERTAINLY UNDERSTAND THE COURT'S RULING. I'M NOT MAKING
14 THAT ARGUMENT NOW. I'M JUST PUTTING ON THE RECORD WHY I
15 WAS REQUESTING IT.

16 THE COURT - VERY GOOD. STATE?

17 MR. LIFSEY - YOUR HONOR, OUR POSITION WOULD BE
18 IT'S AN IMPROPER COMMENT ON EVIDENCE, THAT TO THE BEST OF
19 MY KNOWLEDGE THERE'S NO SIMILAR TYPE OF EVIDENCE IN SOUTH
20 CAROLINA WHERE A SIMILAR CHARGE IS REQUIRED. FURTHERMORE,
21 THAT JUDGE ANDERSON'S EXHAUSTIVE OPINION IN STATE VS.
22 WHITE --- IF THE COURT OF APPEALS WOULD'VE THOUGHT SUCH A
23 CHARGE IS NECESSARY, THAT WAS THE PLACE TO DO IT AND HE
24 DIDN'T DO IT, SO I POSE IT AS INCONSISTENT WITH PRIOR
25 SOUTH CAROLINA LAW OF ANY TYPE OF EVIDENCE AND

1 INCONSISTENT, AS WELL.

2 THE COURT - OKAY. ALL RIGHT. I BELIEVE WE'VE
3 GOT THAT PRESERVED.

4 MR. FRICK - NOTHING FURTHER, YOUR HONOR. DO YOU
5 WANT ME TO REST AT THIS TIME? I DON'T KNOW THAT I
6 NECESSARILY NEED TO DO IT IN FRONT OF THE JURY.

7 THE COURT - COME ON UP JUST A MINUTE.

8 (BENCH CONFERENCE WAS HELD WHICH WAS NOT
9 REPORTED.)

10 MR. FRICK - I APOLOGIZE, YOUR HONOR. WITH THE
11 CHANGE IN COURTROOMS AND ME JUMPING AHEAD TO JURY CHARGES,
12 I FAILED TO PUT ON THE RECORD AT THE RESTING OF THE
13 STATE'S CASE A MOTION FOR A DIRECTED VERDICT IN FAVOR OF
14 THE DEFENDANT ON THE INDICTMENT. I THINK IF YOU TAKE ---
15 AND I CERTAINLY UNDERSTAND THE COURT IS DEALING WITH
16 WHETHER THERE IS ANY EVIDENCE AT ALL, NOT THE WEIGHT OF
17 IT, BUT EVEN TAKING THE EVIDENCE IN THE LIGHT MOST
18 FAVORABLE TO THE STATE I THINK WE HAVE SOME QUESTIONABLE
19 EYE-WITNESS TESTIMONY THAT IS NOT CONSISTENT BASED ON THAT
20 AND THE OTHER EVIDENCE THAT HAS BEEN PRESENTED OR LACK
21 THEREOF, I THINK MY CLIENT IS ENTITLED TO A DIRECTED
22 VERDICT ON THE INDICTMENT.

23 THE COURT - ANYTHING FROM THE STATE?

24 MR. LIFSEY - YOUR HONOR, IN VIEW OF THE LIGHT
25 MOST FAVORABLE TO THE STATE, WHICH, OF COURSE, IS THE

1 STANDARD TO THIS STAGE, WE HAVE EYE-WITNESS IDENTIFICATION
2 BY THE VICTIM WHO FINDS HIM IN HER HOME. YOU HAVE ANOTHER
3 VICTIM --- ANOTHER WITNESS WHO I.D.S HIM RUNNING FROM THE
4 SCENE, HAVING FOUND A SHORT TIME LATER PROXIMITY OF THE
5 SCENE. WE WOULD ARGUE IN THE LIGHT MOST FAVORABLE TO THE
6 STATE HAVING HIM AT ONE POINT IN POSSESSION OF STOLEN
7 ITEMS AND I THINK IN THE LIGHT MOST FAVORABLE THAT
8 CERTAINLY CREATES A JURY QUESTION OF WHETHER HE'S GUILTY
9 OR NOT. AND I'VE INTRODUCED WITH --- WITH STIPULATION THE
10 PRIOR CONVICTION, SO WE'VE COVERED THAT ELEMENT.

11 THE COURT - I HAVE TO DENY THAT MOTION AT THIS
12 TIME. OKAY, NO EVIDENCE PRESENTED BY THE DEFENSE, SO
13 ARGUMENTS WILL REVERSE. I NEED --- YOU KNOW, I'M LIBERAL
14 WITH THE TIME, BUT ONCE YOU TELL ME HOW MUCH TIME YOU'RE
15 GOING TO USE, I EXPECT YOU TO LIVE BY IT. HOW LONG DO YOU
16 NEED TO ARGUE?

17 MR. LIFSEY - WELL, YOU KNOW, OF COURSE, MUCH
18 LIKE ON A WITNESS ON THE STAND, I'M SOMETIMES NOT GREAT ON
19 ESTIMATING TIMES, BUT I'M GENERALLY A SHORT ARGUER, JUDGE.
20 I WOULD THINK TEN TO FIFTEEN MINUTES. I DON'T SEE MYSELF
21 ARGUING MUCH LONGER THAN THAT. I USUALLY DON'T --- I'VE
22 RUN LONGER ON A MURDER CASE BEFORE, BUT I THINK TEN OR
23 FIFTEEN MINUTES IS ABOUT TOPS.

24 MR. FRICK - JUDGE, JUST TO BE ON THE SAFE SIDE,
25 I'D SAY THIRTY MINUTES. I DON'T KNOW THAT I'M GOING TO GO

1 THAT LONG, BUT I DON'T PLAN OUT MY ARGUMENTS AND THEY
2 SOMETIMES DEVELOP ON THEIR OWN WHILE I'M UP THERE, SO I
3 CAN'T SAY THAT I'M GOING TO BE DONE IN FIFTEEN MINUTES.
4 I WOULD JUST ASK YOU TO GIVE ME THAT AMOUNT OF TIME. LIKE
5 I SAID, I DON'T KNOW THAT I'M GOING TO USE IT.

6 THE COURT - OKAY, THIRTY AND THIRTY AND ---

7 MR. LIFSEY - THAT'LL BE FINE. I GUARANTEE YOU
8 I'M NOT GOING TO --- SOMEBODY NEEDS TO HIT ME IF I'M GOING
9 MORE THAN THIRTY MINUTES.

10 THE COURT - I DON'T KNOW THAT I --- YOU KNOW ---
11 I KNOW WHAT THE STATUTE SAYS AND ALL, BUT IF YOU USE ---
12 IF YOU HAPPEN TO USE THE FULL THIRTY MINUTES, I'LL JUST
13 SAY PLEASE START CLOSING OR --- I'LL SAY SOMETHING ABOUT -
14 -- I'LL GIVE YOU A FEW MINUTES TO CLOSE OUT. YOU READY?

15 MR. LIFSEY - YES, SIR.

16 MR. FRICK - YES, SIR.

17 THE COURT - BRING THEM IN.

18 (JURY RETURNS TO THE COURTROOM)

19 THE COURT - LADIES AND GENTLEMEN OF THE JURY, WE
20 NOW MOVE TO THE ARGUMENT PORTION OF THE CASE. SOLICITOR?

21 MR. LIFSEY - MAY IT PLEASE THE COURT, YOUR
22 HONOR. WHY DO WE HAVE JURIES? LET ME TELL YOU WHY I
23 THINK WE HAVE JURIES. I THINK WE HAVE JURIES BECAUSE WE
24 NEED A DOSE OF COMMON SENSE IN THE CRIMINAL JUSTICE
25 SYSTEM. WE WHO ARE LAWYERS AND JUDGES, PEOPLE WHO ARE

1 INVOLVED EVERY DAY TEND TO FOCUS ON MINUTIA; WE TEND TO
2 GET LOST IN THE DETAILS. WE TEND TO --- IF YOU'VE EVER
3 HEARD THIS EXPRESSION --- WE TEND TO MISS THE FOREST FOR
4 THE TREES. I THINK PART OF THE BEST THINGS THAT JURIES
5 BRING TO THE CRIMINAL JUSTICE SYSTEM IS A GOOD DOSE OF
6 COMMON SENSE, AND THAT'S WHAT I WOULD ASK YOU TO APPLY TO
7 THIS CASE IS GOOD COMMON SENSE ABOUT WHAT HAPPENED HERE.
8 THE JUDGE TOLD YOU THE WORD VERDICT COMES FROM LATIN AND
9 IT MEANS THE TRUTH, TO SEEK THE TRUTH, A TRUE SAYING.
10 WHAT IS THE TRUTH OF WHAT HAPPENED HERE? THE TRUTH OF
11 WHAT HAPPENED IS REALLY WITHOUT QUESTION. AND LET ME GO
12 OVER IT WITH YOU BRIEFLY. I'M NOT GOING TO TALK FOREVER
13 AND EVER ABOUT IT. I FEEL LIKE I NEED TO AT LEAST REVIEW
14 FOR YOU WHAT'S GOING ON. YOU HAVE THE TESTIMONY OF A LADY
15 NAMED SHERIKA SANDERS WHO CAME HOME AND FOUND RANDOLPH
16 FRAZIER IN HER APARTMENT. YOU HEARD HER SAY SHE DOESN'T
17 KNOW RANDOLPH FRAZIER. SHE DOESN'T HAVE ANYTHING AGAINST
18 HIM. WHY IN THE WORLD WOULD SHE MIS-IDENTIFY RANDOLPH
19 FRAZIER? SHE HAS NOTHING TO GAIN FROM SAYING RANDOLPH
20 FRAZIER WAS THE ONE IN HER APARTMENT. SURE SHE'S NOT
21 GREAT WITH TIME. OKAY? SHE'S NOT GREAT AT HOW LONG SHE
22 SAW HIM, BUT SHE TOLD YOU BEFORE IT CAME TIME TO TRY TO
23 ESTIMATE SECONDS AND MINUTES, SHE TOLD YOU HE CAME DOWN
24 THE STAIRS, HE GLANCED AT ME; I LOOKED AT HIS FACE; HE RAN
25 OUT THE FRONT DOOR AND I RAN OUT THE BACK DOOR, AND SHE

309

1 HAS NEVER, NEVER EXPRESSED ONE SHADOW OF A DOUBT THAT THAT
2 WAS THE PERSON THAT SHE IDENTIFIED SITTING ON THE SIDE ---
3 THE SIDEWALK WITH THE POLICE OFFICERS AND THAT SHE SAW
4 SITTING RIGHT OVER THERE NEXT TO MR. FRICK. SHE HAS NO
5 REASON TO LIE. BUT THAT'S NOT ALL WE PRESENTED. THAT
6 WOULD BE ENOUGH. THAT'S NOT ALL. THERE'S BEEN THE
7 TESTIMONY OF MS. PATRICIA CAUTHEN. AND MS. CAUTHEN'S A
8 CHARACTER, AND I'M SURE YOU GOT THAT FROM HER, BUT YOU
9 KNOW, YOU HAVE TO DECIDE AND JUDGE WHETHER YOU THINK
10 PEOPLE ARE TELLING THE TRUTH OR WHETHER THEY'RE LYING.
11 WHY WOULD SHE LIE? SURE, SHE'S A --- SHE'S A CHARACTER,
12 BUT AS SHE TOLD YOU SHE SAID --- AND I WROTE THIS DOWN
13 BECAUSE I FOUND IT INTERESTING AND SORT OF FUNNY, BUT
14 CLEARLY SHE SAID, I HAVE A LEARNING DISABILITY BUT I AIN'T
15 STUPID. SHE WAS SITTING THERE EATING HER CHICKEN AND
16 NOODLES --- LOOK, I DON'T KNOW MS. CAUTHEN, BUT SHE'S
17 PROBABLE ONE OF THESE PEOPLE --- AND MAYBE YOU'VE KNOWN
18 PEOPLE IN THIS IN YOUR LIFE --- SHE PROBABLY DOESN'T DO
19 MUCH IN HER LIFE EXCEPT SIT IN HER HOUSE AND LOOK OUT HER
20 FRONT DOOR AND SEE WHO WALKS BY. SHE SAW RANDOLPH FRAZIER
21 --- SHE CALLED HIM RANDY --- SAW RANDY GO BY. WHY WOULD
22 SHE LIE? WHY WOULD SHE MAKE UP ANYTHING? SO YOU BEGIN
23 WITH, YOU'VE GOT AN EYE-WITNESS WHO'S NEVER EXPRESSED ANY
24 DOUBT, SEES HIM IN HER HOUSE; YOU'VE GOT A NEIGHBOR WHO'S
25 NEVER EXPRESSED ANY DOUBT, SITTING THERE LOOKING OUT HER

1 FRONT DOOR THAT SEES HIM. WHEN I ADD THESE PIECES OF
2 EVIDENCE TO THIS PUZZLE, I ALSO WANT YOU TO THINK OF, WHAT
3 ARE THE ODDS THAT IT COULD BE ANYBODY ELSE? OKAY, AND
4 I'LL COME BACK TO THAT IN A MINUTE, ABOUT HOW RANDOLPH
5 FRAZIER MUST BE THE UNLUCKIEST MAN ON THE FACE --- HISTORY
6 OF THE EARTH IF WE ARE TO BELIEVE THAT IT'S ANYBODY OTHER
7 THAN HIM, BUT AS I ADD PIECES OF THIS, THINK ABOUT IT. SO
8 YOU'VE GOT --- YOU'VE GOT MS. SHERIKA SANDERS AND YOU'VE
9 GOT MS. PATRICIA CAUTHEN WHO I.D. --- YOU'VE GOT TWO EXTRA
10 PEOPLE, FRANK STRAIN AND DEIDRA STURDIVANT. NOW, LOOK
11 THEY DIDN'T COME IN HERE AND LIE TO YOU; THEY DIDN'T COME
12 IN HERE AND SAY, LOOK, I KNOW WHO IT WAS, I KNOW HIM.
13 THEY SAID --- TOLD YOU THE TRUTH. THEY SAID ALMOST
14 SIMULTANEOUS WITH THE SCREAMING AND THE HOLLERING, THEY
15 SAW A BLACK MAN WITH GRAY HAIR RUNNING AWAY FROM THE
16 APARTMENT COMPLEX. STRAIN GOES ON AND DESCRIBES
17 SPECIFICALLY THAT HE NOTICED THE BLACK SHOES, THAT IT'S
18 UNUSUAL THAT SOMEONE WOULD HAVE ON --- BE RUNNING WITH
19 DRESS SHOES ON. AND THEY BOTH TALK ABOUT THE LEATHER
20 JACKET. NOW, LOOK, AS BEST I CAN RECALL, THE ONLY ---
21 THERE'S BEEN LOTS OF DISCUSSION OF THIS LEATHER JACKET,
22 AND YOU'LL HAVE IT BACK THERE IN THE JURY ROOM, AND I
23 SUBMIT TO YOU, IF CAN LOOK AROUND AND HOLD IT IN THE LIGHT
24 IT DOES --- I MEAN CHAR --- WHAT'S THE DIFFERENCE BETWEEN
25 DARK GRAY AND BLACK. IS THERE A DIFFERENCE? NOW, I KNOW

311

1 THERE WAS ONE INDICATION OF IT COMING IN --- THE REPORT
2 COMING IN AS SOMEBODY REPORTED A BROWN JACKET, BUT WHAT IS
3 WITHOUT DISPUTE IS THAT A MAN WITH A LEATHER JACKET, AN
4 OLDER BLACK MALE WITH GRAY HAIR LIKE I GOT WAS RUNNING BY
5 A FRONT DOOR, WAS RUNNING AWAY FROM THIS APARTMENT COMPLEX
6 TOWARD CHESTERFIELD AVENUE. WHY WOULD ANY OF THOSE PEOPLE
7 MAKE THAT UP? THAT BY ITSELF WOULD BE ENOUGH, BUT THAT'S
8 NOT WHAT ALL WE GOT IN THIS CASE. WE GOT MORE. YOU GOT
9 JOHN POOVEY AND SUSAN HUNTER, TWO POLICE OFFICERS, WHO
10 HAPPEN TO BE ON CHESTERFIELD AVENUE. BOTH OF THEM
11 INDEPENDENT OF EACH OF OTHER SEE FRAZIER CARRYING
12 SOMETHING IN HIS HAND, A DARK SOMETHING IN HIS HAND. WHY
13 WOULD THEY MAKE THAT UP? WHY WOULD THAT BE A LIE? THEIR
14 STATEMENTS ARE PERFECTLY CONSISTENT WITH EACH OTHER.
15 POOVEY SAYS HE WENT BY AS THEY COME IN SORT OF OPPOSITE
16 DIRECTIONS AND POOVEY SEES HIM THROWN DOWN THE OBJECT BY
17 THE TELEPHONE POLE WHERE IT WAS ULTIMATELY FOUND. SUSAN
18 HUNTER SAYS SHE'S COMING IN THE OPPOSITE DIRECTION.
19 THERE'S A POINT WHERE THE TELEPHONE POLE BLOCKS HER VIEW.
20 HE HAS A BLACK --- AN ITEM IN HIS HAND, THE BLACK ITEM,
21 THE DARK-COLORED ITEM IN HIS HAND WHEN SHE --- WHEN HE'S -
22 --- BEFORE HE'S OBSTRUCTED BY THE TELEPHONE POLE AND WHEN
23 HE'S NOT HE DOESN'T. BUT LO AND BEHOLD, NEXT TO THE
24 TELEPHONE POLE IS A BLACK BAG WITH STOLEN JEWELRY IN IT,
25 PERFECTLY CONSISTENT WITH WHAT SUSAN HUNTER AND JOHN

1 POOVEY TOLD YOU AND PERFECTLY CONSISTENT WITH WHAT THE
2 EYE-WITNESSES SAY, THAT A BLACK MALE WITH GRAY HAIR AND A
3 LEATHER JACKET AND BLACK SHOES WAS RUNNING FROM EULA
4 STREET APARTMENTS TOWARD CHESTERFIELD AVENUE. THOSE ITEMS
5 IN THAT --- THAT WERE FOUND IN THAT BAG ARE IDENTIFIED BY
6 THE VICTIM AS BEING HER STUFF WITHOUT ANY DOUBT ABOUT
7 THAT. THAT ITSELF OUGHT TO BE ENOUGH TO CONVICT RANDOLPH
8 FRAZIER. IF THAT WEREN'T ENOUGH --- IT IS --- BUT IF IT
9 WEREN'T ENOUGH THEY GET THE DOG OUT. NOW, WHY WOULD THE
10 DOG LIE? THE DOG DOESN'T CARE WHO RANDOLPH FRAZIER IS.
11 KARL ALLEN, THE DOG-TRACKER DOESN'T CARE ABOUT --- IF
12 THERE'S ANYTHING THAT I TOOK FROM KARL ALLEN'S TESTIMONY
13 IS THAT'S A MAN WHO LOVES HIS JOB, AND THAT'S A MAN WHO
14 GETS FULFILLMENT IN LIFE FROM DEALING WITH THAT DOG AND
15 RUNNING WITH THAT DOG. HE DOESN'T CARE ABOUT RANDOLPH
16 FRAZIER. HE COULD CARE LESS ABOUT RANDOLPH FRAZIER. AND
17 THEY TAKE THAT BLOODHOUND WHO'S ACCURATELY SAID NINETY-
18 EIGHT POINT --- I THINK HE SAID EIGHT --- OR NINETY-EIGHT
19 POINT SOMETHING PERCENT ACCURATE AND HE STARTS THE TRAIL -
20 -- AND I'M GOING TO GET THE MAP OUT AND I WANT YOU TO HAVE
21 IT. YOU'RE GOING TO HAVE ALL THIS EVIDENCE BACK IN THE
22 BACK. OKAY? AND I WANT YOU TO LOOK AT EVERYTHING. BUT
23 HE STARTS THE TRAIL IN MS. SANDER'S APARTMENT, AND SEE,
24 IT'S NOT EVEN JUST IMPORTANT THAT THE DOG TRAILS TO
25 RANDOLPH FRAZIER --- OF COURSE THAT'S IMPORTANT BY ITSELF

313

1 --- THE DOG CORROBORATES WHAT SHERIKA SANDERS, WHAT
2 PATRICIA CAUTHEN, WHAT FRANK STRAIN AND WHAT DEIDRA
3 STURDIVANT TELL YOU, BECAUSE WHAT THEY --- THEY HAVE HIM
4 RUNNING FROM THE APARTMENTS TOWARD CHESTERFIELD AVENUE,
5 ENTIRELY CONSISTENT WITH WHAT THE DOG FINDS. THE DOG
6 TRAILS FROM [REDACTED] DOWN HERE, AND IT'S
7 DRAWN A LINE, CROSSES CHESTERFIELD AVENUE, WHICH BY THE
8 WAY IS CONSISTENT EXACTLY WITH WHAT SUSAN HUNTER TELLS
9 YOU, AND HE FOLLOWS ALONG AND THE DOG WALKS STRAIGHT UP TO
10 RANDOLPH FRAZIER AND SAYS THAT'S HIM. THE DOG PUTS HIS
11 NOSE THERE. NOW, I MEAN WHAT --- WHAT MORE IN THE WORLD
12 COULD YOU HAVE? BUT THAT'S STILL NOT ALL THAT WE HAVE IN
13 THIS CASE. YOU'VE GOT TWO PIECES OF EVIDENCE THAT WE'VE
14 INTRODUCED THAT RANDOLPH FRAZIER DROPS ALONG THE PATH
15 CORROBORATING THE WITNESSES WHO DESCRIBE HIS PATH FROM
16 [REDACTED] CORROBORATING LUCY THE DOG AND CORROBORATING
17 THESE OFFICERS WHO SEE HIM CROSSING --- CROSSING
18 CHESTERFIELD AVENUE AND GOING DOWN IT. YOU'VE GOT A BOOK
19 IN THERE, A CHECK REGISTER BOOK WITH RANDOLPH FRAZIER'S
20 NAME ON IT. HOW IN THE WORLD DID THAT GET THERE, EXCEPT
21 FOR RANDOLPH FRAZIER DROPPING IT WHEN HE'S RUNNING SCARED
22 THAT HE'S GOT --- BECAUSE HE GOT CAUGHT, BECAUSE HE GOT
23 WALKED IN ON IN THE MIDDLE OF A BURGLARY. BUT THAT'S NOT
24 ENOUGH, TOO. THAT'S NOT ALL YOU GOT, TOO. HE DROPS HIS
25 CIGARETTE PACK EVEN FURTHER ON BACK TOWARD [REDACTED] AND

1 HIS FINGERPRINTS ARE ON THE CIGARETTE PACK. I MEAN PLEASE
2 DO NOT GET LOST IN THE MINUTIA. WHAT IS THE TRUTH? USE
3 YOUR COMMON SENSE. WHAT --- HOW COULD IT BE --- I WANT
4 YOU TO ASK YOURSELVES THIS WHEN MR. FRICK'S TALKING. WHEN
5 MR. FRICK IS ARGUING ABOUT WHETHER THE COAT IS BROWN OR
6 BLACK OR GRAY, WHEN MR. FRICK'S ARGUING ABOUT HOW LONG
7 SHERIKA SANDERS LOOKED AT HIM. I WOULD LIKE YOU TO ASK
8 YOURSELF, WHAT ARE THE ODDS THAT ANY OTHER HUMAN BEING
9 COULD'VE DONE THIS BUT RANDOLPH FRAZIER, AND I SUBMIT TO
10 YOU IT'S ASTRONOMICAL. RANDOLPH FRAZIER WOULD HAPPEN TO
11 BE THE UNLUCKIEST HUMAN BEING ON THE FACE OF THIS EARTH
12 FOR THIS TO BE ANYBODY OTHER THAN HIM. I MEAN THINK ABOUT
13 WHAT HE'S ASKING YOU TO BELIEVE. HE CAN'T ARGUE THAT HE
14 WAS ON CHESTERFIELD AVENUE, BECAUSE THAT'S WHERE THEY
15 CAUGHT HIM. OKAY? SO HE'S GOT TO ARGUE THAT HE HAPPENS
16 TO BE WALKING BY CHESTERFIELD AVENUE AT THE SAME MOMENT
17 THAT ANOTHER BLACK MAN WITH GRAY HAIR WHO WEARS A LEATHER
18 JACKET AND WHO HAD ON BLACK DRESS SHOES HAPPENED TO BREAK
19 INTO SHERIKA SANDER'S APARTMENT, AND HE HAS TO HAVE YOU
20 BELIEVE THAT THAT MAN WHO LOOKS LIKE HIM AND LOOKS A LOT
21 LIKE HIM, LOOKS SO MUCH LIKE HIM THAT BOTH SHERIKA SANDERS
22 AND PATRICIA CAUTHEN BOTH MIS-IDENTIFY HIM. AND TO FUR --
23 - HE'S GOT TO HAVE YOU FURTHER BELIEVE THAT ON THIS
24 UNLUCKIEST DAY OF THE UNLUCKIEST HUMAN BEING ON EARTH THAT
25 SOMEONE ELSE DROPPED STOLEN GOODS RIGHT NEAR WHERE THEY

315

1 CAUGHT HIM, AND HE'S ALSO GOT TO HAVE YOU BELIEVE THAT
2 OFFICER POOVEY AND OFFICER HUNTER DON'T KNOW WHAT THEY'RE
3 TALKING ABOUT AND THEY MADE A MISTAKE WHEN THEY SAY THEY
4 SAW HIM WITH THAT BAG. HE'S GOT TO HAVE YOU BELIEVE THAT
5 SOMEHOW EITHER HE JUST HAPPENED TO DROP IT DOWN THE ROAD
6 OR SOMEBODY PLANTED IT OR SOMETHING THAT HIS NAME IS FOUND
7 ON THE PROPERTY ALONG THE PATH. AND HE'S GOT TO HAVE YOU
8 BELIEVE HIS FINGERPRINTS JUST HAPPENED TO BE ON THE
9 CIGARETTE PACK THAT HAPPENED TO BE ALONG THE PATH, AND
10 HE'S GOT TO HAVE YOU BELIEVE THAT THIS DOG SOMEHOW MAKES
11 A MISTAKE IN A FRESH TRAIL LESS THAN FIFTEEN OR TWENTY
12 MINUTES. I MEAN HOW IN THE WORLD COULD THAT CHAIN OF
13 CIRCUMSTANCES HAPPEN? YOUR JOB AS JURORS IS TO LOOK FOR
14 THE TRUTH. THE TRUTH IN THIS CASE IS RANDOLPH FRAZIER GOT
15 CAUGHT; HE WENT INTO THAT APARTMENT; HE SHOULDN'T HAVE
16 GONE IN THAT LADY'S APARTMENT AND SHE CAME --- HE WASN'T
17 COUNTING ON HER COMING HOME, BUT SHE CAME HOME AND SHE
18 SAID WHO IT WAS AND HE WASN'T COUNTING ON THAT AND HE
19 WASN'T COUNTING ON THE POLICE BEING RIGHT THERE ON THE
20 SCENE TO CATCH HIM. HE WASN'T COUNTING ON DROPPING THIS
21 STUFF ON THE WAY, AND HE WASN'T COUNTING ON LUCY THE DOG
22 TRACKING HIM DOWN. NO OTHER POSSIBLE EXPLANATION FOR THIS
23 EXCEPT THAT RANDOLPH FRAZIER IS GUILTY OF BURGLARY.

24 MR. FRICK - WELL, LADIES AND GENTLEMEN, I'VE
25 MADE SOME POINT TO START SPEAKING A LITTLE LOUDLY. DON'T

1 THINK THAT I'M YELLING AT YOU. NUMBER ONE, I'VE GOT A ---
2 THE COURT REPORTER'S WAY OVER HERE AND SHE'S GOT TO BE
3 ABLE TO TAKE DOWN WHAT I SAY. I TEND TO TALK A LITTLE
4 LOUD NATURALLY AND GET EXCITED MAKES IT A LITTLE MORE
5 LOUD, SO PLEASE DON'T THINK I'M YELLING AT YOU BECAUSE IT
6 PROBABLY WILL GET TO THAT POINT. AGAIN, I DO WANT TO
7 THANK YOU FOR YOUR SERVICE. I KNOW THE STATE THANKS YOU,
8 AS WELL. I TOLD YOU IT WASN'T GOING TO BE ALONG TRIAL AND
9 LO AND BEHOLD HERE WE ARE. JURY HAS THE CASE AND Y'ALL
10 ARE FIXING TO GO BACK AND TALK ABOUT THE EVIDENCE, TALK
11 ABOUT WHAT YOU SAW AND WHAT YOU HEARD AND WHAT YOU THINK
12 PEOPLE'S MOTIVATION AND BIAS OR HOW THEY MIGHT'VE EVEN
13 COME ABOUT WITH THEIR IDEAS. AND I'M GOING TO GIVE YOU MY
14 INTERPRETATION OF THAT IN A SECOND. I'M GOING TO GIVE YOU
15 SOME OF MY --- SOME OF WHAT I THINK THE JUDGE MAY TELL YOU
16 ABOUT THE LAW PROBABLY. AND, AGAIN, IF SOMETHING I SAY IS
17 DIFFERENT FROM HE TELLS YOU IGNORE WHAT I SAY AND LISTEN
18 TO HIM. BEAR IN MIND, LADIES AND GENTLEMEN, THE BURDEN OF
19 PROOF OF WHETHER MR. FRAZIER IS GUILTY OF BURGLARIZING MS.
20 SANDER'S HOUSE LIES RIGHT HERE, ENTIRELY RIGHT HERE. MR.
21 FRAZIER DOES NOT HAVE TO PROVE A THING. AS YOU WILL NOTE
22 AND SOME OF YOU MAY DISCUSS, MR. FRAZIER DID NOT TAKE THE
23 STAND AND TESTIFY; DEFENSE DID NOT PUT UP ANY WITNESSES.
24 DEFENDANT DOESN'T HAVE TO PROVE ANYTHING. AS WE ALL KNOW,
25 OUR SYSTEM DON'T WORK THAT WAY. YOU DON'T HAVE TO PROVE

317

1 THAT YOU'RE INNOCENT OF SOMETHING. THE STATE'S GOT TO
2 PROVE THAT YOU'RE GUILTY. SO PLEASE TAKE NO INFERENCE
3 FROM THE FACT THAT YOU DIDN'T SEE ME PUT UP ANY WITNESSES
4 AND YOU DIDN'T HEAR FROM MR. FRAZIER. HE DOESN'T HAVE TO
5 SAY A THING. I SUBMIT TO YOU FROM THE EVIDENCE YOU'VE
6 SEEN THERE IS PLENTY OF REASONABLE OF DOUBT. NOW, I'LL
7 GET TO THAT IN A SECOND. I CERTAINLY UNDERSTAND THAT
8 AFTER LISTENING TO SOLICITOR LIFSEY, YOU MUST THINK I'M
9 PROBABLY ABOUT THE STUPIDEST LAWYER IN THE WORLD TO BE
10 STANDING IN FRONT OF YOU TRYING TO ARGUE THAT, BUT LET ME
11 TELL YOU WHAT'S GOING ON. AS YOU'RE AWARE, THE REASON WHY
12 WE'RE STANDING HERE ON A BURGLARY FIRST CHARGE BECAUSE MR.
13 FRAZIER HAS BEEN IN TROUBLE BEFORE. AS YOU'RE AWARE, HE
14 HAS BEEN CONVICTED OF BURGLARY BEFORE. THAT'S WHY WE'RE
15 HERE ON A BURGLARY FIRST. AS I TOLD YOU IT'S NOT ONE OF
16 THOSE CIRCUMSTANCES WHEN IT'S A NIGHTTIME BURGLARY AND ALL
17 THAT. IT'S SIMPLY BECAUSE HE HAS A PRIOR RECORD. THE
18 STATE IS ASKING YOU TO CONSIDER HIS PAST TO USE AGAINST
19 HIM. NOW, THE JUDGE IS GOING TO CHARGE YOU AND TELL YOU
20 THAT YOU CANNOT CONSIDER THE FACT THAT HE HAS A PRIOR
21 RECORD AS EVIDENCE AGAINST HIM BUT IS ONLY ONE OF THE
22 ELEMENTS OF THE CHARGE. OKAY? I ASK YOU TO DO THAT.
23 DON'T HOLD THE FACT THAT HE HAS --- HE'S A MAN WHO IN THE
24 PAST HAS GOTTEN IN TROUBLE. DON'T HOLD THE FACT THAT HE
25 IS SITTING HERE TODAY ON A SIMILAR CHARGE --- DON'T MAKE

1 THE LEAP THAT JUST BECAUSE HE'S GOT A CONVICTION MEANS HE
2 MUST'VE DONE THIS. YOU HEARD DETECTIVE PARSONS TESTIFY
3 THAT THEY HAVE MANY, MANY BURGLARIES COME IN ON A WEEKLY
4 BASIS. MANY. I SUBMIT TO YOU THEY'VE GOT A LOT OF OTHER
5 CASES COMING IN ON A WEEKLY BASIS. THEY'VE GOT A LOT OF
6 WORK TO DO. AND LIKE EVERYBODY ELSE THEY'RE OVERWORKED
7 AND UNDERSTAFFED. THEY DO THE BEST THEY CAN, BUT THEY'VE
8 GOT TO SOLVE STUFF QUICKLY AND AS EASILY AS THEY CAN, AND
9 THEY DO THE BEST THEY CAN. I WILL TELL YOU THAT. THE
10 SOLICITOR WOULD HAVE YOU BELIEVE I'M GOING TO STAND UP
11 THERE AND TELL YOU THERE'S SOME GREAT HUGE CONSPIRACY
12 AGAINST RANDOLPH FRAZIER. NO. I'M NOT GOING TO DO THAT.
13 WHAT I WILL TELL YOU, HOWEVER, IS WE HAVE A BURGLARY. WE
14 HAVE A SUSPECT. WE HAVE AN IDENTIFICATION OF SOMEONE, A
15 VERY, VERY GENERAL --- AS I TOLD YOU AT THE BEGINNING A
16 VERY, VERY GENERAL IDENTIFICATION OF SOMEONE, A BLACK MALE
17 WEARING A JACKET RUNNING FROM THE APARTMENT TOWARD
18 CHESTERFIELD AVENUE. WHAT DOES CAPTAIN HUNTER SEE ON
19 CHESTERFIELD AVENUE? A BLACK MAN WITH A JACKET ON
20 CHESTERFIELD AVENUE. FIT THE DESCRIPTION. AS I TOLD YOU,
21 HE'S BEEN CONVICTED BEFORE. LAW ENFORCEMENT'S HAD PRIOR
22 DEALINGS WITH HIM. THEY MADE THAT LEAP. THEY HAD AN END
23 POINT. AND GO BACK TO RECONSTRUCT THE CASE. I TELL YOU,
24 LADIES AND GENTLEMEN, IT'S NOT CONSPIRACY. IT'S NOT THAT
25 THEY HOLD ANY PARTICULAR GRUDGE OR HATRED TOWARD MR.

319

1 FRAZIER, BUT THEY REVERSE ENGINEER THE CASE. IT'S KIND OF
2 LIKE WHEN YOU'RE IN SCHOOL --- AND I SAY MATH, BECAUSE I
3 WAS NO GOOD AT MATH --- WHEN IN THE BACK OF THE MATH BOOK
4 THEY GIVE YOU THE ANSWERS TO THE PROBLEM AND YOU TAKE THAT
5 ANSWER AND YOU WORK BACKWARDS TO FIGURE OUT HOW YOU GOT TO
6 THAT POINT. THAT'S WHAT WE'VE GOT HERE, LADIES AND
7 GENTLEMEN. WE'VE GOT A BLACK MAN WITH A LEATHER COAT AND
8 GRAY HAIR ON CHESTERFIELD AVENUE WHICH IS NOT FAR FROM A
9 BURGLARY. WE KNOW HIM. WE KNOW HE'S DONE THIS BEFORE.
10 LET'S STOP HIM. I SUGGEST TO YOU, LADIES AND GENTLEMEN,
11 YOU START AT THAT POINT. WHETHER YOU INTEND IT OR NOT,
12 THE EVIDENCE IS GOING TO SHOW THAT THAT MAN THAT YOU
13 STOPPED IS THE ONE WHO DID IT. IT'S JUST LIKE REVERSE
14 ENGINEERING THAT MATH PROBLEM. YOU'RE GOING TO FIGURE OUT
15 THE WAY TO GET BACK TO THE RIGHT ANSWER. THAT'S WHAT
16 HAPPENED. NOW, I GOT TO GET MY LIST SO I REMEMBER TO TALK
17 ABOUT THE WITNESSES. I HATE NOTES IN CLOSING, BUT I KNOW.
18 I'M GOING TO FORGET A NAME IF I DON'T HAVE THIS UP HERE
19 WITH ME. FIRST, MS. SANDERS WALKS IN. I'M NOT GOING TO
20 TELL YOU THAT'S NOT A SCARY MOMENT. IF YOU WALK IN YOUR
21 HOUSE AND SOMEBODY'S IN YOUR HOUSE, OF COURSE, YOU'RE
22 GOING TO BE SCARED. SHE'S LOOKING AROUND TRYING TO FIGURE
23 OUT WHAT GOES ON, WHAT'S GOING ON. SHE SEES --- SHE HEARS
24 FOOTSTEPS, LOOKS, THERE'S SOMEONE RIGHT THERE. HER
25 THOUGHT IS, I GOT TO GET OUT OF HERE, SO SHE TURNS AND

1 RUNS AWAY. I SUBMIT TO YOU THAT IF YOU'RE IN SOMEBODY'S
2 HOUSE AND SOMEONE COMES IN ON YOU, YOU GOING TO EXPECT
3 THAT YOUR FIRST THOUGHT'S GOING TO BE YOU NEED TO GET THE
4 HECK OUT OF THERE, TOO. SO NEITHER ONE OF THEM GOT A REAL
5 GOOD LOOK AT EACH OTHER. NOW, HE IS RIGHT ON ONE THING.
6 I'M GOING TO HARP ABOUT HER TIME, AND I CERTAINLY
7 UNDERSTAND THAT IN THAT EXPERIENCE YOU'RE NOT LOOKING AT
8 A WATCH; YOU DON'T KNOW EXACTLY HOW LONG, BUT SHE WAS
9 ADAMANT, ADAMANT. YOU SAW ME. I ASKED HER THREE TIMES.
10 ADAMANT SHE LOOKED HIM IN THE EYE FOR TWO MINUTES. NOW,
11 CERTAINLY SHE WASN'T LOOKING AT HIM FOR TWO MINUTES.
12 SHE'S INACCURATE ON THAT. SHE ALSO SAYS THAT HE'S GOT
13 BLUE JEANS AND A BROWN JACKET. NOW, OFFICER POOVEY TOLD
14 YOU WHEN HE SAW MR. FRAZIER HE HAD ON GREEN PANTS AND HE
15 WAS CARRYING A BLACK JACKET. YOU SEE OTHER WITNESSES
16 ALONG THE WAY, AND MS. SANDERS IS COMPLETELY ADAMANT,
17 COMPLETELY ADAMANT THAT THE MAN SHE SAW STANDING ON THE
18 SIDE OF THE ROAD IN CUSTODY WAS MR. FRAZIER. AND I'M NOT
19 SAYING SHE'S LYING. I'M NOT SAYING ANY OF THESE PEOPLE
20 ARE LYING, BUT HOW DO THEY GET TO THIS CONCLUSION? SHE
21 SEES SOMEBODY, I WOULD SUBMIT, FOR A SPLIT SECOND. THEY
22 BOTH TURN, BOTH HEAD IN OPPOSITE DIRECTIONS. SHE'S
23 COMPLETELY ADAMANT THAT SHE RECOGNIZES MR. FRAZIER'S FACE,
24 YET CAN'T TELL YOU A SINGLE DISTINGUISHING CHARACTERISTIC
25 OF IT EXCEPT I KNOW I SAW HIS FACE; IT WAS HIS FACE. HOW

321

1 DO YOU KNOW? BECAUSE IT WAS HIS FACE. OKAY. WHEN DID
2 SHE GET A GOOD LOOK AT HIS FACE? AFTER HE'S DETAINED ON
3 THE SIDE OF THE ROAD ON THE SIDEWALK IN HAND-CUFFS
4 SURROUNDED WITH NOTHING BUT WHITE PEOPLE WHO ARE POLICE
5 OFFICERS. NOW, I ASK YOU, LADIES AND GENTLEMEN, IF THAT'S
6 WHAT YOU SEE, THAT'S GOING TO STICK IN YOUR MIND. SO
7 CERTAINLY SHE'S GOING TO SAY --- FURTHERMORE SHE'S HAD
8 THIS TRAUMATIC INCIDENT, COMES IN THE HOUSE, SOMEONE IS IN
9 THERE, THEY PUT HER IN A POLICE CAR, WHICH I SUBMIT TO
10 YOU IS A LITTLE NERVE-RACKING IN AND OF ITSELF EVEN IF
11 YOU'RE NOT BEING TAKEN INTO CUSTODY, DRIVE HER TO THE
12 SCENE AND ASK HER IS THAT THE GUY.

13 THE COURT - MR. FRICK, I APOLOGIZE. WE NEED TO
14 TAKE A BRIEF RECESS.

15 MR. FRICK - YES, SIR.

16 THE COURT - LADIES AND GENTLEMEN, IF YOU'LL STEP
17 BACK TO YOUR JURY ROOM. I APOLOGIZE FOR THIS
18 INTERRUPTION, BUT IF YOU'LL STEP BACK JUST A MINUTE, WE'LL
19 BE RIGHT BACK.

20 (JURY EXITS THE COURTROOM)

21 (RECESS TAKEN)

22 (JURY ENTERS THE COURTROOM)

23 MR. FRICK - THANK YOU, YOUR HONOR. SEE, IF YOU
24 THOUGHT IT WAS LIKE IT WAS ON T.V. THAT SHOULD PROVE TO
25 YOU IT'S NOT. AS I WAS SAYING, MS. SANDERS MAKES HER

1 IDENTIFICATION. WHEN THEY TAKE HER TO THE SCENE TO ASK
2 HER TO IDENTIFY SOMEBODY, SHE SEES ONE PERSON, ONE PERSON.
3 LIMITED CHOICES. WHAT CHOICE IS SHE GOING TO MAKE? ASK
4 YOURSELF THAT QUESTION. LET'S TALK ABOUT THE OTHER
5 WITNESSES REAL QUICKLY. MS. CAUTHEN. ADMITTEDLY I HAD A
6 LITTLE BIT OF FUN WITH MS. CAUTHEN. I BY NO MEANS WAS
7 TRYING TO CALL HER STUPID. SHE'S CLEARLY NOT, BUT WE DID
8 HAVE A LITTLE FUN. SHE'S SITTING THERE AND THROUGH HER
9 DOOR THAT SHE'S GOT OPEN SHE SEES A FACE. AGAIN, THE SAME
10 THING. SHE CAN'T IDENTIFY ANYTHING ELSE. SAID ON THE
11 STAND SHE DIDN'T KNOW ABOUT A COAT, SHE DIDN'T KNOW ABOUT
12 CLOTHES, ANYTHING ELSE, BUT SHE KNEW THE FACE. WELL, HOW
13 DO YOU KNOW THE FACE? I KNOW THE FACE, BECAUSE I KNOW
14 WHAT I SAW. WELL, HOW DO YOU KNOW? HOW DO YOU KNOW? SHE
15 WAS UNABLE TO ANSWER THAT QUESTION. SAME THING WITH MS.
16 SANDERS. THEY PUT HER IN THE POLICE CAR; THEY DRIVE HER
17 TO THE SPOT WHERE THEY HAVE ONE PERSON DETAINED WHO LOOKS
18 DIFFERENT THAN EVERYBODY ELSE, AND DON'T GET ME WRONG,
19 LADIES AND GENTLEMEN, I'M NOT SAYING HE'S THE ONLY BLACK
20 MAN STANDING THERE TO PLAY A RACE CARD. THAT'S NOT WHAT
21 I'M SAYING. WHAT I'M SAYING IS HE'S THE ONLY PERSON WHO'S
22 A CIVILIAN WHO LOOKS DIFFERENT THAN THE OTHER PEOPLE
23 STANDING AROUND. THAT'S LIMITING HER CHOICES. SHE
24 COULDN'T HAVE SAID IT WAS ANYBODY ELSE BECAUSE THAT'S THE
25 ONLY PERSON THAT LOOKED LIKE WHAT SHE THOUGHT SHE SAW.

1 BUT SHE'S ADAMANT BUT CAN'T TELL YOU WHY. MR. FRANK
2 STRAIN WHO WAS A LITTLE UNCLEAR WHETHER HE WAS SITTING ON
3 HIS COUCH OR OUTSIDE WORKING ON HIS CAR, BUT HE DOESN'T
4 SEE MUCH OF ANYTHING. HE DOESN'T HAVE ANY FACE TO
5 IDENTIFY. HE SAYS HE SEES --- WELL, AT FIRST HE SAID HE
6 DIDN'T KNOW WHAT COLOR. IT WAS A DARK COAT, BUT YESTERDAY
7 HE WAS ABSOLUTELY ADAMANT IT WAS A BLACK COAT. THE DAY OF
8 THE INCIDENT HE COULDN'T TELL YOU WHAT COLOR IT WAS, BUT
9 YESTERDAY HE SURE COULD. HE WAS ADAMANT IT WAS A BLACK
10 COAT. CHANGES COLORS IN THE LIGHTS. WELL, GUESS WHAT,
11 LADIES AND GENTLEMEN, WE'RE IN A DIFFERENT COURTROOM WITH
12 DIFFERENT LIGHTING. DOES THAT LOOK DIFFERENT TO YOU?
13 Y'ALL WILL HAVE IT IN THE JURY ROOM. I THINK Y'ALL MIGHT
14 HAVE A WINDOW IN THERE. HOLD IT UP TO THE SUNLIGHT. DOES
15 IT LOOK DIFFERENT? DOES THIS POSSIBLY LOOK LIKE IT
16 COULD'VE BEEN A BROWN COAT? BROWN. REMEMBER THAT'S THE
17 IDENTIFICATION THE POLICE WAS GIVEN, BLACK MAN WEARING A
18 BROWN COAT, WEARING A BROWN COAT RUNNING. WHAT THEY FIND
19 IS A BLACK MAN CARRYING A BROWN COAT WALKING BRISKLY,
20 ACCORDING TO POOVEY, WALKING ON CHESTERFIELD AVENUE. WHAT
21 MR. STRAIN WAS SURE OF WERE HIS SHOES. THEY'RE IN
22 EVIDENCE. YOU'LL HAVE A CHANCE TO SEE THEM. ABSOLUTELY
23 CERTAIN. HE WAS SO CERTAIN HE IDENTIFIED THEM BEFORE MR.
24 LIFSEY LET HIM SEE HIM. AS SOON AS HE WAS WALKING UP
25 HERE, YES, THAT'S THE SHOES. HOW'S HE SO CERTAIN?

1 REMEMBER I ASKED HIM. I SAID YOU EVEN WERE ABLE TO
2 IDENTIFY BEFORE YOU GOT TO SEE THEM. YES, I KNOW THOSE
3 WERE THE SHOES. HE ADMITTED HE ONLY SAW THE STUFF FOR A
4 SPLIT SECOND AND HE'S FOCUSED IN ON THE SHOES. NOW,
5 HERE'S WHERE I REALLY WANT YOU TO LOOK. ALL THESE PEOPLE
6 ARE TAKEN TO THE SCENE TO SEE MR. FRAZIER IN HAND-CUFFS
7 STANDING ON THE SIDE OF THE ROAD SURROUNDED BY LAW
8 ENFORCEMENT. HE'S THE ONLY ONE WHO'S NOT LAW ENFORCEMENT.
9 HE'S THE ONLY CHOICE. MS. STURDIVANT, HOWEVER, REMEMBER
10 HER TESTIMONY? SHE'S THE ONE THEY SHOWED A LINE-UP TO.
11 SHE COULDN'T PICK HIM OUT. COULDN'T PICK MR. FRAZIER OUT.
12 COULDN'T IDENTIFY HIM. SHE'S THE ONLY WITNESS THE STATE
13 SHOWS YOU AS AN IDENTIFICATION WITNESS WHO WAS NOT PUT IN
14 A POLICE CAR, NOT DRIVEN TO THE SCENE, NOT LOOKING AT THE
15 MAN WHO IS SURROUNDED BY LAW ENFORCEMENT. THE ONLY ONE.
16 WHY CAN'T SHE IDENTIFY HIM THEN? BECAUSE SHE TESTIFIED
17 THAT SHE WAS TWENTY FEET AWAY AND COULD SEE HIS FACE BUT
18 WHEN SHOWN A LINE-UP, COULDN'T PICK ANYBODY OUT. REMEMBER
19 THAT. THE ONLY ONE WHO IS NOT DRIVEN TO THE SCENE, AT THE
20 SHOW-UP. NOW, LET'S GET TO LAW ENFORCEMENT. OFFICER
21 ALLEN WAS CLEARLY A TOUGH NUT TO CRACK. I'M NOT GOING TO
22 BE ABLE TO CROSS HIM UP. I KNOW THAT. I'M NOT STUPID
23 ENOUGH TO TRY TO DO THAT. TRY TO FIND OUT A LITTLE BIT
24 HOW THE TRACKING WORKS. OKAY. NOW THE ONLY REAL CONCERN
25 ABOUT ON THE TRACKING IS WE START AND WE GO ALL THE WAY

325

1 THROUGH THE TREES, WE CROSS OVER CHESTERFIELD AVENUE, WE
2 GO OVER HERE ON THE SIDEWALK WHERE ALL THE CARS GO BY AND
3 IT BLOWS THE SCENT INTO PEOPLE'S YARDS. IT BLOWS THE
4 SCENT INTO PEOPLE'S YARDS. WELL, WOULDN'T THESE SAME CARS
5 GO ACROSS CHESTERFIELD AVENUE RIGHT HERE WHERE THE SCENT
6 POOL IS HERE? YES, IT WOULD. WELL, HOW ARE YOU ABLE TO
7 TRACK HIM ACROSS THE STREET? WOULDN'T THE SCENT POOL BE
8 BLOWN ALL OVER THE PLACE? WELL, NO, NO, NO, IT'S STILL
9 THERE. IF IT'S ON THE SIDEWALK IT BLOWS IT AWAY. IF IT'S
10 IN THE MIDDLE OF THE ROAD --- WELL, THE SCENT WAS STOPPED
11 BY THE TREES, THE OBSTRUCTIONS. NO OBSTRUCTIONS IN THE
12 MIDDLE OF CHESTERFIELD AVENUE. WHEN THERE'S NO
13 OBSTRUCTION THE SCENT REMAINS, BUT WHERE YOU HAVE
14 OBSTRUCTIONS WELL, IT BLOWS INTO PEOPLE'S YARDS. NOW,
15 LET'S TALK ABOUT THE STUFF THEY FIND ALONG THE WAY. WE'LL
16 GET TO THE BAG IN A SECOND, BECAUSE I KNOW THAT'S THE BIG
17 ONE. WELL, WE'VE GOT THE JEWELRY SOMEWHERE. WELL, FIRST,
18 SINCE IT'S THE ONE I PICKED UP, LET'S TALK ABOUT THE
19 ADDRESS BOOK. MUST BE MR. FRAZIER'S ADDRESS BOOK BECAUSE
20 HIS NAME'S IN IT. IN IT. DOESN'T SAY THIS BELONGS TO
21 RANDOLPH FRAZIER, DOESN'T SAY IF YOU FIND, PLEASE CALL
22 RANDOLPH FRAZIER. WHAT IT SAYS --- IT'S GOT A PIECE OF
23 PAPER THAT HAS RANDOLPH FRAZIER'S NAME ON IT. WELL, ---
24 AND PHONE NUMBER. LET'S DON'T FORGET THE PHONE NUMBER,
25 BECAUSE CLEARLY MR. FRAZIER MUST HAVE NOT BE ABLE TO

1 REMEMBER HIS PHONE NUMBER SO HE'S GOT TO WRITE HIS OWN
2 PHONE NUMBER DOWN IN HIS ADDRESS BOOK. NOW, I KNOW THEY
3 CALLED AND NOBODY MATCHED UP TO MR. FRAZIER. BUT THERE'S
4 NO EVIDENCE THAT SAYS THAT THIS IS MR. FRAZIER. DID WE
5 GET ANY FINGERPRINTS OFF OF IT? NO. WASN'T SUITABLE FOR
6 THAT. WASN'T SUITABLE FOR THAT. HOW ABOUT THE JEWELRY?

7 THE COURT - MR. FRICK, YOU MAY OPEN THAT IF YOU
8 WOULD LIKE. IT HADN'T BEEN OPENED.

9 MR. FRICK - WHILE I'M DOING THAT, LET ME TALK TO
10 YOU ON THAT. THE BURGLARY TOOLS. THE BURGLARY TOOLS. WE
11 FOUND THIS PIECE OF METAL, THIS SCREWDRIVER OUTSIDE MS.
12 SANDER'S WINDOW. UNABLE TO GET ANY PRINTS OFF OF IT.
13 UNABLE TO MAKE ANY KIND OF POSITIVE IDENTIFICATION ON
14 THAT. AN OPINION --- AN OPINION BY DETECTIVE PARSONS THAT
15 THESE WERE TOOLS USED TO BREAK INTO THE HOUSE. NOTHING
16 FURTHER, BUT HIS OPINION. HOW ABOUT THE WINDOW? DID WE
17 GET ANY PRINTS OFF IT? FOUND SOMETHING THAT LOOKED LIKE
18 A PALM PRINT. COULDN'T IDENTIFY IT WITH RANDOLPH FRAZIER.
19 HAD HIS FINGERPRINTS AT SLED AND PALM PRINT AT SLED.
20 COULDN'T MATCH IT UP. THE WINDOW, SURROUNDING AREA, NO
21 FINGERPRINTS. THE DOOR, DOOR KNOB, DOOR JAM, STRIKE
22 PLATE, NO FINGERPRINTS. INSIDE THE HOUSE ON TOP OF THE
23 T.V., NO FINGERPRINTS. NOTHING ELSE, LADIES AND
24 GENTLEMEN. THE ONE FINGERPRINT THAT YOU GOT IS ON A PACK
25 OF CIGARETTES. THIS PACK OF CIGARETTES. THEY TAKE TWO

1 PRINTS OFF OF IT. ONE OF THEM'S MR. FRAZIER'S. CLEARLY
2 MR. FRAZIERS. NOW, THERE WAS SOME DISCUSSION BY MR.
3 POOVEY THAT HE FOUND SOME CIGARETTES ON MR. FRAZIER. ONCE
4 THAT'S DETERMINED WE PUT MS. HUNTER BACK ON THE STAND TO
5 SHOW YOU THE BOOKING SHEET, AND YOU'LL HAVE IT. THERE'S
6 NO CIGARETTES ON HERE. NO CIGARETTES. THE BOOKING SHEET
7 IS ONCE HE'S TAKEN INTO CUSTODY. POOVEY SAID HE GOT
8 CIGARETTES OFF OF HIM AT THE SCENE. NOT SAYING IT'S A
9 CONSPIRACY, LADIES AND GENTLEMEN. I'M SAYING IT GOT
10 TOSSED UP IN THERE. WE DON'T KNOW WHERE IT CAME FROM.
11 THEY GOING TO TELL YOU THEY FIND IT ON THE GROUND. I
12 DON'T KNOW. THAT'S FOR YOU TO DECIDE. THE JEWELRY.
13 YOU'LL HAVE THE JEWELRY BACK THERE WITH YOU. I ASK YOU TO
14 TAKE A LOOK AT THE LOCKET AND TELL ME IF THIS WAS HANDLED
15 BY SOMEONE THAT THEY COULDN'T TRY TO GET A FINGERPRINT OFF
16 OF IT. DIDN'T TRY TO GET A FINGERPRINT OFF OF IT, LADIES
17 AND GENTLEMEN. NOT WE COULDN'T GET ONE, DIDN'T TRY TO.
18 AND THE SLED REPORT SHOWS YOU THE FINGERPRINTS WE HAVE.
19 THE ONE. THE ONE ON THE CIGARETTE PACK. THAT'S IT,
20 LADIES AND GENTLEMEN. WE'VE GOT A MIS-IDENTIFICATION.
21 WE'VE GOT A JACKET THAT TURNS FROM BROWN TO GRAY TO DARK
22 TO BLACK, DEPENDING ON WHAT KIND OF LIGHT YOU GOT IT IN.
23 WE GOT A BLACK MALE WITH GRAY HAIR WITH BLUE JEANS WHO'S
24 ARRESTED WITH GREENISH PANTS ON. LADIES AND GENTLEMEN,
25 THEY'VE GOT TO PROVE THE CASE BEYOND A REASONABLE DOUBT.

1 I THINK IT'S CLEAR THERE'S A REASONABLE DOUBT. THERE'S
2 PLENTY OF QUESTION. THE SOLICITOR SAYS WHAT WOULD BE THE
3 ODDS. THE ODDS? ODDS? THIS ISN'T THE LOTTERY. WHERE IS
4 THE EVIDENCE? LADIES AND GENTLEMEN, I THINK YOU'LL SEE
5 WHAT I TALKED ABOUT, WHAT I TOLD YOU AT THE BEGINNING.
6 IT'S NOT A CONSPIRACY. I'M NOT SAYING THAT. I'M NOT
7 SAYING THEY GOT TOGETHER ON FEBRUARY THE 5TH AND SAID
8 LET'S PUT RANDOLPH FRAZIER IN JAIL TODAY. DIDN'T DO THAT.
9 WHAT HAPPENED WAS, MR. FRAZIER, AND THEY'RE FAMILIAR WITH,
10 WAS CROSSING CHESTERFIELD, WALKING ACROSS CHESTERFIELD.
11 OH, HE'S BROKE INTO A HOUSE. AN UNMARKED CAR --- SHE SAID
12 SHE WAS INCONSPICUOUSLY DRIVING. I SUBMIT TO YOU THAT IF
13 YOU SEE A CROWN VIC OR AN IMPALA, THEY PRETTY MUCH LOOK
14 LIKE A POLICE CAR. WHEN THIS INCONSPICUOUS POLICE CAR
15 GOES BY AND SHE NOTES THAT HE WAS KIND OF LOOKING AROUND
16 AND HE CONTINUES TO WALK, HE SEES A MARKED CAR COMING AT
17 HIM AND CONTINUES TO WALK. WELL, I --- SOMEONE WHO JUST
18 BROKE INTO A HOUSE TO BE WALKING AROUND WHILE POLICE IS
19 GOING UP AND DOWN THE ROAD. THEY TURNED ON HIM, STOP HIM,
20 DETAIN HIM, DON'T FIND ANYTHING ON HIM. THE BAG. GOT TO
21 TALK BRIEFLY ABOUT THE BAG, BECAUSE I KNOW IT'S GOING TO
22 BE AN ISSUE. WE DETERMINED IT'S A BAG ONCE WE FIND IT.
23 WE DON'T KNOW WHAT THE HECK IT IS WHEN WE SEE IT IN HIS
24 HAND. SAW HIM PUT HIS HAND IN HIS POCKET, PULL OUT A BAG.
25 CAPTAIN HUNTER SAYS NOW, HE GOT BEHIND A TELEPHONE POLE,

1 I COULDN'T SEE WHAT HAPPENED TO THE BAG. POOVEY SAYS,
2 WELL, WHILE I'M DRIVING DOWN THE ROAD HEADING TO A CALL,
3 I SEE FRAZIER, DECIDE I NEED TO TURN AROUND, BECAUSE I
4 HEAR SOMETHING ON THE RADIO. AS I'M LOOKING IN THE REAR-
5 VIEW MIRROR DOING A U-TURN, MAKING SURE I'M NOT PULLING
6 OUT IN FRONT OF SOMEBODY, I'M STILL LOOKING IN THE REAR-
7 VIEW MIRROR AT RANDOLPH FRAZIER, SEE HIM IN THE REAR-VIEW
8 MIRROR DROP THIS BAG. THAT IS SOME FINE HAND-EYE
9 COORDINATION IF I'VE EVER HEARD OF IT, LADIES AND
10 GENTLEMEN. THERE'S NO WAY HE COULD'VE MAINTAINED EYE
11 CONTACT LIKE THAT. NOW, WHAT GOT DROPPED? I DON'T KNOW.
12 DID RANDOLPH DROP ANYTHING? WHO KNOWS. DID THEY FIND A
13 BAG? WELL, THEY SAID THEY FOUND A BAG? IT HAD STUFF IN
14 IT. NOTHING IN THE BAG HAD RANDOLPH'S FINGERPRINT, YET
15 THE STUFF WAS SPRINKLED ALL DOWN THE TRAIL LIKE HANSEL AND
16 GRETTAL. EVEN ON THE DOG-TRACKING --- DOG-TRACKING. IF
17 I WALK THIS LINE WHICH Y'ALL HAVE SEEN ME DO QUITE
18 FREQUENTLY THIS AFTERNOON --- IF I WALK THIS LINE, A DOG
19 CAME COME THROUGH AND PICK UP MY MAYBE FEAR PHEROMONES. I
20 DON'T KNOW. APPARENTLY THERE AREN'T ANY HAPPY PHEROMONES
21 --- WHATEVER KIND OF PHEROMONES I'M LEAVING --- CAN PICK
22 UP THROUGH MY SHOES, THROUGH MY PANTS, THROUGH SOCKS, CAN
23 PICK UP WHAT TRAIL I'M LEAVING. IF I PICK UP THIS BAG,
24 THROW IT ON THE GROUND, EVEN THOUGH HE SAYS PHEROMONES
25 COME OUT IN MY HANDS, IF I THROW IT ON THE GROUND, LUCY

1 CAN'T SAY THAT I DROPPED THAT. NOW, I DON'T KNOW, LADIES
2 AND GENTLEMEN. Y'ALL GET TO DECIDE THIS CASE, NOT ME.
3 BUT I GO BACK TO THE ORIGINAL MATH SITUATION. YOU GOT A
4 PROBLEM TO FIGURE OUT. IT'S A DIFFICULT PROBLEM. YOU
5 NEED TO GET IT DONE QUICKLY. YOU LOOK AT THE ANSWER IN
6 THE BACK OF THE BOOK AND YOU FIGURE OUT HOW TO PROVE IT.
7 MR. FRAZIER WAS THE ANSWER AT THE BACK OF THE BOOK. THEY
8 HAD A BURGLARY IN PROGRESS. THEY WANTED TO SOLVE IT
9 QUICKLY. AND THAT'S WHAT WE WANT IS DECIDED. WE WANT LAW
10 ENFORCEMENT TO ARREST THE PEOPLE WHO COMMIT CRIMES. SO
11 WE ALL DO. IT'S OUR JOB. LADIES AND GENTLEMEN, AT THIS
12 POINT WE'VE GOT TO MAKE SURE THAT IT'S THE RIGHT PERSON
13 WE'RE TALKING ABOUT. NOW, WHEN YOU GET BACK THERE,
14 REMEMBER THIS, BEYOND A REASONABLE DOUBT. THERE'S NO
15 OTHER REASONABLE EXPLANATION BUT MR. FRAZIER WAS THE ONE
16 WHO WAS IN MS. SANDER'S HOUSE. NOT, I THINK MR. FRAZIER
17 WAS PROBABLY IN HER HOUSE. NOT, YOU KNOW, MR. FRAZIER
18 PROBABLY WAS IN HER HOUSE. NOT, IT MIGHT'VE BEEN HIM.
19 NO. COULD THERE HAVE BEEN SOMEWHERE ELSE? LOOK AT THE
20 EVIDENCE, LADIES AND GENTLEMEN. THEY WERE LOOKING FOR A
21 BLACK MAN, GRAY HAIR, BLUE JEANS RUNNING. WHAT WE FIND IS
22 A BLACK MAN WITH GRAY HAIR BUT IT WAS A BROWN COAT THAT HE
23 WAS WEARING. WHAT WE FIND IS A BLACK MAN WITH GRAY HAIR
24 CARRYING A BLACK JACKET WALKING DOWN CHESTERFIELD AVENUE.
25 IT'S NOT ENOUGH, LADIES AND GENTLEMEN. EVEN IF YOU THINK

331

1 MR. FRAZIER WAS THE ONE IN THE HOUSE, THE EVIDENCE YOU'VE
2 GOT IS NOT ENOUGH TO MEET THE STATE'S BURDEN, AND IF YOU
3 FEEL THAT WAY, IF YOU FEEL THEY HAVE NOT MET THAT BURDEN,
4 LADIES AND GENTLEMEN, YOU MUST VOTE NOT GUILTY. THEY MUST
5 MEET THE BURDEN. I SUBMIT TO YOU THEY HAVE NOT. YOU HAVE
6 THE EVIDENCE. TAKE --- PLEASE LOOK AT THIS MAP, THE
7 CHANGING COLOR COAT. PLEASE. ONCE YOU HAVE, I BELIEVE
8 YOU WILL FIND THEY HAVE NOT PROVED THEIR CASE. WE HAVE A
9 CASE OF MISTAKEN IDENTIFY. WE HAVE A CASE OF STARTING
10 FROM THE END OF THE PROBLEM REVERSE ENGINEERING, AND YOU
11 WILL FIND MR. FRAZIER NOT GUILTY OF BURGLARY FIRST. THANK
12 YOU FOR YOUR TIME. THANK YOU FOR YOUR ATTENTION. THANK
13 YOU FOR YOUR SERVICE.

14 THE COURT - I'M GOING TO MOVE OVER HERE WHERE I
15 SEE ALL OF YOU. HAVE AN OBSTRUCTION OVER THERE.
16 EVERYBODY OKAY? ANYBODY NEED A BRIEF RECESS?

17 (NO RESPONSE)

18 THE COURT - OKAY. I'M GOING TO CHARGE YOU THE
19 LAW AT THIS TIME. IT'LL TAKE A FEW MINUTES. IT'S NOT
20 GOING TO BE TREMENDOUSLY LONG, BUT IT WILL TAKE SOME TIME.
21 I WANT TO THANK YOU FOR YOUR TRIAL OF THIS CASE AND I WANT
22 TO THANK YOU FOR PAYING ATTENTION TO THIS CASE. I WATCHED
23 Y'ALL DURING THE PROGRESS OF THE TRIAL. ALL OF YOU HAVE
24 GIVEN THE ATTORNEYS AND THE WITNESSES YOUR DEVOTED
25 ATTENTION, AND I APPRECIATE YOU DOING THAT. IT IS MY DUTY

1 AT THIS TIME TO GIVE YOU THE LAW OF THE CASE, IN OTHER
2 WORDS TO CHARGE AND INSTRUCT YOU THE LAW APPLICABLE TO THE
3 CASE, AND IT IS YOUR DUTY AS JURORS TO ACCEPT AND APPLY
4 THE LAW AS I NOW STATE IT TO YOU. AS JURORS, IT IS YOUR
5 EXCLUSIVE DUTY TO DECIDE ALL THE ISSUES OF FACT IN THE
6 CASE AND FOR THAT PURPOSE TO DETERMINE THE EFFECT, THE
7 VALUE, THE WEIGHT AND THE TRUTH OF THE EVIDENCE. BOTH THE
8 STATE AND THE DEFENDANT HAVE A RIGHT TO EXPECT THAT YOU
9 WILL CONSCIENTIOUSLY CONSIDER AND EVALUATE THE EVIDENCE
10 AND APPLY THE LAW OF THE CASE THERETO TO THE END THAT BOTH
11 THE STATE OF SOUTH CAROLINA AND THE DEFENDANT WILL OBTAIN
12 A FAIR AND IMPARTIAL TRIAL IN THIS CASE. THE STATE OF
13 SOUTH CAROLINA BY THE BILL OF INDICTMENT IN THIS CASE
14 CHARGES THE DEFENDANT WITH THE OFFENSE OF BURGLARY FIRST
15 DEGREE. I WILL GIVE YOU A FULL CHARGE ON THE LAW OF THAT
16 SPECIFIC CHARGE IN A FEW MINUTES, BUT I WANT TO TALK WITH
17 YOU ABOUT SOME PRELIMINARY MATTERS BEFORE WE GET TO THAT.
18 NOW, TO THE CHARGE IN THE INDICTMENT THE DEFENDANT HAS
19 PLED NOT GUILTY, AND A PLEA OF NOT GUILTY BY A DEFENDANT
20 PLACES THE BURDEN OF PROOF ON THE STATE TO PROVE BY
21 EVIDENCE THE GUILT OF THE DEFENDANT BEYOND A REASONABLE
22 DOUBT BEFORE YOU THE JURY CAN FIND THE DEFENDANT GUILTY.
23 A DEFENDANT IS PRESUMED IN LAW INNOCENT OF THE CHARGE
24 CONTAINED IN AN INDICTMENT. IT'S A CARDINAL AND
25 FUNDAMENTAL RULE OF THE LAW OF EVIDENCE THAT A DEFENDANT

333

1 IRRESPECTIVE OF THE ENORMITY OF THE CHARGE AGAINST HIM
2 WILL ALWAYS BE PRESUMED INNOCENT OF THE CRIME FOR WHICH HE
3 IS INDICTED UNLESS AND UNTIL THE GUILT OF THE DEFENDANT
4 HAS BEEN PROVED BY EVIDENCE THAT SATISFIES YOU THE JURY OF
5 HIS GUILT BEYOND A REASONABLE DOUBT. PRESUMPTION OF
6 INNOCENCE IS NOT A MERE LEGAL THEORY, AND IT'S NOT JUST A
7 LEGAL PHRASE. THE PRESUMPTION OF INNOCENCE IS A
8 SUBSTANTIAL RIGHT TO WHICH EVERY ACCUSED IS ENTITLED. OUR
9 SUPREME COURT HAS DECLARED THAT THE PRESUMPTION OF
10 INNOCENCE IS LIKE A ROBE OF RIGHTEOUSNESS PLACED ABOUT THE
11 SHOULDERS OF A DEFENDANT AND IT REMAINS WITH HIM AND
12 ASSIGNS HIM TO THAT CLASS, THE INNOCENT, UNTIL THAT
13 PRESUMPTIVE ROBE HAS BEEN STRIPPED FROM HIS PERSON BY
14 EVIDENCE SATISFYING YOU THE JURY OF THE GUILT OF THE
15 DEFENDANT BEYOND A REASONABLE DOUBT. THE PRESUMPTION OF
16 INNOCENCE ACCOMPANIES A DEFENDANT FROM THE TIME OF HIS
17 ARRAIGNMENT AND APPEARANCE IN THE COURT AND CONTINUES WITH
18 THE DEFENDANT THROUGHOUT EVERY STAGE OF A TRIAL AND
19 CONTINUES WITH THE DEFENDANT AFTER YOU RETIRE TO THE JURY
20 ROOM TO DELIBERATE YOUR VERDICT. THE PRESUMPTION OF
21 INNOCENCE CONTINUES IN EXISTENCE TO THE BENEFIT OF THE
22 DEFENDANT UNTIL YOU THE JURY REACH THE CONCLUSION THAT THE
23 STATE HAS PROVED THE GUILT OF THE DEFENDANT BEYOND A
24 REASONABLE DOUBT. THE STATE IS NOT REQUIRED TO PROVE THE
25 GUILT OF A DEFENDANT BEYOND ALL DOUBT OR BEYOND EVERY

1 DOUBT BUT BEYOND A REASONABLE DOUBT. SOME OF YOU MAY HAVE
2 SERVED AS JURORS IN CIVIL CASES WHERE YOU WERE TOLD THAT
3 IT IS ONLY NECESSARY TO PROVE THAT A FACT IS MORE LIKELY
4 TRUE THAN NOT TRUE. IN CRIMINAL CASES THE GOVERNMENT'S
5 PROOF MUST BE MORE POWERFUL THAN THAT. IT MUST BE BEYOND
6 A REASONABLE DOUBT. PROOF BEYOND A REASONABLE DOUBT IS
7 PROOF THAT LEAVES YOU FIRMLY CONVINCED OF THE DEFENDANT'S
8 GUILT. THERE ARE VERY FEW THINGS IN THIS WORLD THAT WE
9 KNOW WITH ABSOLUTELY CERTAINTY, AND IN CRIMINAL CASES THE
10 LAW DOES NOT REQUIRE PROOF THAT OVERCOMES EVERY POSSIBLE
11 DOUBT. IF BASED ON YOUR CONSIDERATION OF THE EVIDENCE YOU
12 ARE FIRMLY CONVINCED THAT THE DEFENDANT IS GUILTY OF THE
13 CRIME CHARGED, YOU MUST FIND HIM GUILTY. IF ON THE OTHER
14 HAND YOU THINK THERE IS A REAL POSSIBILITY THAT HE IS NOT
15 GUILTY, THEN YOU MUST GIVE HIM THE BENEFIT OF THE DOUBT
16 AND FIND HIM NOT GUILTY. IF YOU HAVE A REASONABLE DOUBT
17 AS TO WHETHER DEFENDANT IS GUILTY OF BURGLARY FIRST, THEN
18 YOU MUST RESOLVE THAT DOUBT IN FAVOR OF THE DEFENDANT AND
19 FIND HIM NOT GUILTY OF BURGLARY FIRST. IF THEN UPON THE
20 WHOLE CASE YOU HAVE A REASONABLE DOUBT AS TO THE GUILT OR
21 THE INNOCENCE OF THE DEFENDANT, HE IS ENTITLED TO THAT
22 REASONABLE DOUBT AND WOULD BE ENTITLED TO AN ACQUITTAL AND
23 A VERDICT OF NOT GUILTY, BUT ON THE OTHER HAND, IF UPON
24 THE WHOLE CASE, YOU FIND THAT THE STATE HAS PROVED BY
25 EVIDENCE WHICH SATISFIES YOU THE JURY OF THE GUILT OF THE

335

1 DEFENDANT BEYOND A REASONABLE DOUBT, THEN IN SUCH
2 CIRCUMSTANCE IT WOULD EQUALLY BE YOUR DUTY TO CONVICT THE
3 DEFENDANT AND FIND HIM GUILTY. NOW, THE INDICTMENT THAT
4 YOU'VE HEARD ME MENTION SEVERAL TIMES I HAVE UP HERE ON
5 THE BENCH IS NOT EVIDENCE AND CANNOT BE CONSIDERED BY THE
6 JURY AS EVIDENCE IN THE CASE. AN INDICTMENT IS SIMPLY THE
7 FORMAL WRITTEN INSTRUMENT WHICH CONTAINS THE CHARGE
8 AGAINST THE DEFENDANT AND IT SERVES AS THE FORMAL DOCUMENT
9 BY WHICH THE CASE IS PROCESSED INTO THE COURT. DURING THE
10 TRIAL EACH OF US, YOU AND I HAVE CERTAIN DUTIES TO
11 PERFORM. AS THE TRIAL JUDGE IT IS MY RESPONSIBILITY TO
12 PROVIDE --- OR TO PRESIDE OVER THE TRIAL OF THE CASE, AND
13 I ALSO HAVE THE DUTY TO RULE UPON OR PASS UPON THE
14 ADMISSIBILITY OF THE EVIDENCE OFFERED DURING THE PROGRESS
15 OF THIS TRIAL. YOU ARE TO CONSIDER ONLY THE COMPETENT
16 EVIDENCE BEFORE YOU, AND YOU ARE TO ONLY CONSIDER THE
17 EVIDENCE THAT HAS BEEN PROPERLY ADMITTED TO YOU IN THE
18 COURSE OF THIS TRIAL. YOU ARE TO CONSIDER ONLY THE
19 TESTIMONY WHICH HAS BEEN PRESENTED FROM THIS WITNESS STAND
20 TOGETHER WITH ANY EXHIBITS ADMITTED INTO THE RECORD OF THE
21 CASE AND ANY STIPULATIONS OF COUNSEL MADE INTO THE RECORD
22 IF THERE BE ANY. YOU ARE TO DISREGARD AND DISABUSE FROM
23 YOUR MIND ANY TESTIMONY ORDERED STRICKEN FROM THE RECORD
24 OF THE CASE DURING THE PROGRESS OF THE TRIAL IF THERE BE
25 ANY. NOW, I ALSO HAVE THE ADDITIONAL DUTY TO CHARGE YOU

1 THE APPLICABLE LAW OF THE CASE. AS THE PRESIDING JUDGE I
2 AM THE SOLE JUDGE OF THE LAW OF THE CASE AND IT'S YOUR
3 DUTY TO ACCEPT AND APPLY THE LAW AS I STATE IT TO YOU. IF
4 YOU HAVE A PRECONCEIVED IDEA AS TO WHAT THE LAW IS OR WHAT
5 THE OUGHT TO BE IN THIS CASE AND IT SHOULD NOT AGREE WITH
6 WHAT I TELL YOU THE LAW IS, YOU ARE OBLIGATED UNDER YOUR
7 OATH TO ABANDON THIS PRECONCEPTION ON YOUR PART BECAUSE
8 YOU ARE SWORN TO ACCEPT THE LAW PRECISELY AS I STATE IT TO
9 YOU. IN EVERY CASE TRIED IN THIS COURT BEFORE A JURY, THE
10 JURY BECOMES THE SOLE AND EXCLUSIVE JUDGE OF THE FACTS OF
11 THE CASE. YOU THE JURY ARE THE JUDGE OF THE FACTS IN THIS
12 CASE. THE COURT IS THE JUDGE OF THE LAW IN THE CASE. THE
13 CONSTITUTION OF THIS STATE HAS DECLARED THAT A TRIAL JUDGE
14 SHALL NOT INTIMATE, STATE, COMMENT UPON OR MAKE ANY
15 STATEMENT TO A TRIAL JURY ABOUT THE FACTS IN A CASE.
16 SINCE YOU ARE THE SOLE JUDGE OF THE FACTS, YOU ARE NOT TO
17 INFER FROM ANYTHING THAT I'VE SAID DURING THE PROGRESS OF
18 THIS TRIAL IN RULING UPON THE ADMISSIBILITY OF EVIDENCE OR
19 OTHERWISE OR ANYTHING THAT I SAY TO YOU DURING THE COURSE
20 OF THIS CHARGE TO YOU THAT I HAVE AN OPINION ABOUT THE
21 FACTS IN THE CASE. THE LAW DOES NOT PERMIT ME TO HAVE AN
22 OPINION IN THE FACTS OF A CASE. IT IS A MATTER SOLELY FOR
23 YOU THE JURY TO DETERMINE. AS JURORS IT IS YOUR DUTY TO
24 DETERMINE AS I HAVE STATED TO YOU THE EFFECT, THE VALUE,
25 THE WEIGHT AND THE TRUTH OF THE EVIDENCE PRESENTED DURING

1 THE COURSE OF THIS TRIAL. NECESSARILY THEN YOU MUST
2 ASSESS THE CREDIBILITY OF THE WITNESSES WHO HAVE TESTIFIED
3 IN THIS CASE. CREDIBILITY IS SIMPLY A LEGALISTIC TERM
4 WHICH MEANS BELIEVABILITY. IT BECOMES YOUR DUTY THEN TO
5 ANALYZE AND EVALUATE THE EVIDENCE AND DETERMINE THAT
6 EVIDENCE WHICH CONVINCES YOU OF ITS TRUTH. I CHARGE YOU
7 THAT IN DETERMINING THE QUESTION OF THE CREDIBILITY OR
8 BELIEVABILITY OF THE WITNESSES, YOU MAY BELIEVE ONE
9 WITNESS AS AGAINST SEVERAL WITNESSES OR SEVERAL WITNESSES
10 AS AGAINST ONE WITNESS. YOU MAY BELIEVE A PART OF THE
11 TESTIMONY OF A WITNESS AND REJECT THE REMAINING PART OF
12 THE TESTIMONY OF THAT SAME WITNESS. YOU MAY BELIEVE THE
13 TESTIMONY OF A WITNESS IN ITS ENTIRETY OR REJECT THE
14 TESTIMONY OF A WITNESS IN ITS ENTIRETY. YOU MAY CONSIDER
15 WHETHER ANY WITNESS HAS EXHIBITED ANY INTEREST, ANY BIAS
16 OR ANY PREJUDICE IN THE CASE. YOU MAY CONSIDER THE
17 Demeanor OF A WITNESS AND THE APPEARANCE OF A WITNESS FROM
18 THE WITNESS STAND, AND YOU MAY CONSIDER THE OPPORTUNITY
19 FOR KNOWLEDGE CONCERNING THOSE THINGS ABOUT WHICH A
20 WITNESS TESTIFIED. AND IN DOING SO AND EXERCISING YOUR
21 MENTAL PROCESSES AND IN DETERMINING WHAT YOU CONSIDER TO
22 BE TRUE, THE LAW SIMPLY REQUIRES THAT YOU EXERCISE YOUR
23 GOOD JUDGMENT, YOUR COMMON SENSE, YOUR SENSE OF LOGIC AND
24 REASON AND YOUR EXPERIENCES IN LIFE. YOU THEN APPLY THE
25 ATTRIBUTES OF ABILITY TO THE EVIDENCE AND DETERMINE WHAT

1 YOU CONSIDER TO BE THE TRUTHFUL EVIDENCE AND THESE TRUE
2 STATE OF FACTS AS DETERMINED BY YOU THE JURY YOU TAKE AND
3 APPLY THE LAW AS STATE TO YOU AND THUS ARRIVE AT A TRUE
4 VERDICT IN THIS CASE. ONCE AGAIN, USE YOUR COMMON SENSE
5 AND YOUR SENSE OF LOGIC. BASE YOUR DECISION ON THE
6 EVIDENCE PROPERLY BEFORE YOU THAT'S BEEN PRESENTED IN THIS
7 CASE. YOU DO NOT DECIDE A CASE ON ANYTHING THAT YOU MAY
8 HAVE HEARD FROM OUTSIDE SOURCES. THIS CASE HAS NOTHING TO
9 DO WITH ANYTHING, ANY SHOW THAT YOU MAY HAVE SEEN ON
10 TELEVISION OR A MOVIE OR ANY THEATRICAL PERFORMANCE.
11 BOTTOM LINE, IT'S OFTEN SAID, YOU DO NOT LEAVE YOUR COMMON
12 SENSE AT THE COURTHOUSE DOOR WHEN YOU COME TO SERVE AS A
13 JURY OR A JUROR. AS I EXPLAINED TO YOU TO BEGIN WITH, YOU
14 ARE TO DECIDE THIS CASE ON THE COMPETENT EVIDENCE BEFORE
15 YOU. WHAT THE ATTORNEYS MAY SAY TO YOU IS NOT NECESSARILY
16 THE EVIDENCE. AS I SAID BEFORE, THEY MAY REPEAT THE
17 EVIDENCE; THEY MAY QUOTE THE EVIDENCE; THEY MAY REFER TO
18 SOMETHING THAT'S IN EVIDENCE, BUT WHAT THEY SAY IS NOT
19 NECESSARILY EVIDENCE. YOUR DECISION IS TO BE BASED ON THE
20 COMPETENT EVIDENCE THAT HAS BEEN PRESENTED TO YOU. YOU
21 HAVE HEARD TESTIMONY OF AN EYE-WITNESS IDENTIFICATION, IN
22 FACT, MORE THAN ONE AS FAR AS THE WITNESSES CONCERNING
23 EYE-WITNESS TESTIMONY. EYE-WITNESS TESTIMONY IS A
24 STATEMENT OF AN IMPRESSION BY THE WITNESS. AS WITH ANY
25 OTHER WITNESS YOU MUST FIRST DECIDE WHETHER THE EYE-

1 WITNESS IS TELLING THE TRUTH. YOU MUST ALSO DECIDE HOW
2 ACCURATE THE IDENTIFICATION WAS, WHETHER THE WITNESS, IN
3 FACT, SAW WHAT HE OR SHE THOUGHT HE OR SHE SAW GIVEN THE
4 EXTENT OF HOW MUCH OF AN OPPORTUNITY THE WITNESS HAD TO
5 OBSERVE THE OFFENDER AT THE TIME OF THE CONDUCT AND GIVEN
6 THE CIRCUMSTANCES UNDER WHICH THE WITNESS LATER MADE THE
7 IDENTIFICATION. CONSEQUENTLY, IT IS UP TO YOU TO
8 DETERMINE NOT ONLY TRUTHFULNESS BUT ALSO ACCURACY AND
9 RELIABILITY AS YOU ASSESS THE TESTIMONY OF A WITNESS. IN
10 EVALUATING THE EYE-WITNESS TESTIMONY YOU SHOULD CONSIDER
11 THAT THE STATE MUST PROVE THE IDENTITY OF THE DEFENDANT AS
12 A PERSON WHO COMMITTED A CRIME BEYOND A REASONABLE DOUBT.
13 THE LAW NEVER IMPOSES UPON A DEFENDANT IN A CRIMINAL CASE
14 THE BURDEN OR DUTY OF CALLING ANY WITNESSES OR PRODUCING
15 ANY EVIDENCE, AND THE DEFENDANT IN A CRIMINAL CASE HAS THE
16 RIGHT UNDER THE UNITED STATES CONSTITUTION AND THE SOUTH
17 CAROLINA CONSTITUTION NOT TO TAKE THE WITNESS STAND AND
18 TESTIFY. THE EXERCISE BY THE DEFENDANT OF THE RIGHT NOT
19 TO TESTIFY OR PRESENT EVIDENCE SHOULD NOT WEIGH IN THE
20 SLIGHTEST AGAINST THE DEFENDANT AND SHOULD PLAY NO ROLE IN
21 YOUR DISCUSSION AND DELIBERATIONS. NO INFERENCE OF ANY
22 KIND MAY BE DRAWN FROM THE ELECTION OF A DEFENDANT NOT TO
23 TESTIFY OR TO PRESENT ANY FORM OF EVIDENCE. IN PARTICULAR
24 NO PRESUMPTION OR INFERENCE OF GUILT MAY BE DRAWN FROM THE
25 FAILURE OR --- LET ME CORRECT THAT --- FROM THE ELECTION

1 OF A DEFENDANT NOT TO TESTIFY OR OFFER EVIDENCE. NOW, TO
2 THE SPECIFIC CHARGE. AND AS YOU HEARD, IT'S BURGLARY IN
3 THE FIRST DEGREE. UNDER SECTION 16-11-311 OF THE SOUTH
4 CAROLINA CODE OF LAWS, BURGLARY IN THE FIRST DEGREE IS
5 DEFINED AS THE ENTERING OF THE DWELLING HOUSE OF ANOTHER
6 WITHOUT CONSENT WITH THE INTENT TO COMMIT A CRIME THEREIN,
7 AS I WILL DEFINE FOR YOU, AND WHICH IS ACCOMPANIED BY ONE
8 OF THE FOLLOWING CIRCUMSTANCES. THIS PARTICULAR CASE,
9 THAT ALLEGED CIRCUMSTANCES IS THAT DEFENDANT HAS A PRIOR
10 RECORD OF TWO OR MORE CONVICTIONS FOR BURGLARY AND/OR
11 HOUSE-BREAKING. THERE ARE FOUR ESSENTIAL ELEMENTS TO THE
12 REQUIREMENT THAT THE DEFENDANT ENTER INTO THE DWELLING
13 HOUSE OF ANOTHER WITHOUT CONSENT WITH THE INTENT TO COMMIT
14 A CRIME. THEY ARE THAT, ONE, THERE MUST BE AN ENTERING.
15 THE STATE MUST PROVE THAT THERE WAS AN ENTERING, THAT IS,
16 THE DEFENDANT ACTUALLY WENT INSIDE THE HOUSE OR SOME PART
17 OF IT. IT IS NOT NECESSARY, HOWEVER, THAT THE ENTIRE BODY
18 OF THE DEFENDANT ENTERED THE HOUSE. THE SMALLEST ENTRY IS
19 SUFFICIENT, AND IT MAY BE ANY PART OF THE BODY AS A HAND
20 OR FOOT OR EVEN AN IMPLEMENT SUCH AS A HOOK OR OTHER
21 INSTRUMENT. NO FORCE NEED BE USED TO GAIN ENTRY. TWO,
22 THE ENTRY MUST BE MADE WITHOUT CONSENT. ASIDE FROM THE
23 USUAL AND NORMAL UNDERSTANDING OF THE PHRASE WITHOUT
24 CONSENT, THE TERM ENTRY ALSO MEANS TO ENTER A BUILDING BY
25 USING DECEPTION, ARTIFICE, TRICK OR MISREPRESENTATION TO

341

1 GAIN CONSENT TO ENTER FROM THE PERSON IN LAWFUL
2 POSSESSION. THREE, THE PLACE ENTERED MUST BE A DWELLING
3 HOUSE. THE TERM DWELLING HOUSE MEANS ANY BUILDING
4 INHABITED BY A PERSON OR PERSONS IN WHICH THEY CUSTOMARILY
5 SLEEP. A BUILDING CONSTRUCTED AS A DWELLING THAT HAS
6 NEVER BEEN OCCUPIED CANNOT BE CONSIDERED AS A DWELLING
7 WITHIN THE DEFINITION, BUT A TEMPORARY ABSENCE OF THE
8 INHABITANT OR INHABITANCE DOES NOT AFFECT THE BUILDING'S
9 CHARACTER AS SUCH. THE TERM DWELLING ALSO MEANS THE
10 LIVING QUARTERS OF A BUILDING USED OR NORMALLY USED FOR
11 SLEEPING, LIVING OR LODGING BY A PERSON. ALL HOUSES, OUT-
12 HOUSES, BUILDING, SHEDS AND ERECTIONS THAT ARE WITHIN TWO
13 HUNDRED YARDS OF A DWELLING SHALL BE CONSIDERED A PART OF
14 IT. THE DEFENDANT MUST HAVE AN INTENT TO COMMIT A CRIME.
15 THE MERE ENTRY INTO A DWELLING HOUSE WITHOUT CONSENT IS
16 NOT A VIOLATION OF THIS BURGLARY STATUTE. IT IS ONLY
17 WHERE THERE IS AN INTENT TO COMMIT A CRIME, WHETHER IT BE
18 A FELONY OR A MISDEMEANOR THAT THE CRIME IS COMPLETE.
19 PROOF OF INTENT NECESSARILY REST ON INFERENCE OF CONDUCT.
20 IT IS ESSENTIAL THAT THE FELONIOUS INTENT EXISTS AT THE
21 TIME OF ENTRY. IT IS NOT SUFFICIENT THAT THE FELONIOUS
22 INTENT IS FORMED AFTERWARDS. ON THE OTHER HAND, WHERE THE
23 INTENT EXISTS AT THE TIME OF ENTRY, IT IS NO DEFENSE THAT
24 THE INTENT WAS ABANDONED AFTER THE ENTRY. IT DOES NOT
25 MATTER THAT THE INTENDED CRIME WAS NOT COMPLETED. NOW,

1 ONE OF THE ELEMENTS OF FIRST DEGREE BURGLARY THAT THE
2 STATE MUST PROVE BEYOND A REASONABLE DOUBT UNDER SECTION
3 16-11-311 OF OUR CODE OF LAWS IS THAT THE DEFENDANT HAS A
4 PRIOR RECORD OF TWO OR MORE CONVICTIONS FOR BURGLARY
5 AND/OR HOUSE-BREAKING, AND IN THIS CASE THE PARTIES HAVE
6 AGREED TO, OR WHAT WE CALL STIPULATED, THAT THE DEFENDANT
7 DOES, IN FACT, HAVE TWO SUCH PRIOR CONVICTIONS. NOW, I
8 INSTRUCT YOU THAT TO THE EXTENT THAT THE STATE RELIES ON
9 THESE RECORDS TO PROVE PRIOR CONVICTIONS, YOU CANNOT, MUST
10 NOT, CONSIDER ANY PRIOR CONVICTIONS IN DETERMINING WHETHER
11 THE DEFENDANT IS GUILTY OF THE BURGLARY OF WHICH OR WITH
12 WHICH HE IS CHARGED IN THIS CASE. IN OTHER WORDS, IT ONLY
13 GOES AS PROOF OF ONE OF THE ELEMENTS OF FIRST DEGREE
14 BURGLARY. LADIES AND GENTLEMEN, YOU'RE NOT PARTISANS OR
15 ADVOCATES FOR THE STATE OF SOUTH CAROLINA OR FOR THE
16 DEFENDANT. YOU DO NOT SERVE AS JURORS TO REWARD FRIENDS
17 OR PUNISH ENEMIES. OBVIOUSLY, SUCH A PERVERTED SYSTEM OF
18 JUSTICE WOULD BE INTOLERABLE. YOU HAVE BEEN SELECTED BY
19 BOTH SIDES IN THIS CASE TO BE FAIR AND IMPARTIAL JURORS.
20 IT IS YOUR DUTY THEN BY YOUR JOINT DELIBERATIONS TO
21 DETERMINE THE TRUTH IN THIS CASE GIVING TO THE DEFENDANT
22 THE BENEFIT OF EVERY REASONABLE DOUBT ON EACH AND EVERY
23 ISSUE, THEN TO THE FACTS THAT YOU DETERMINE TO BE TRUE,
24 YOU THEN TAKE AND APPLY THE LAW WHICH HAS BEEN GIVEN TO
25 YOU BY THE COURT AND THUS ARRIVE AT A VERDICT WHICH DOES

1 SPEAK THE TRUTH OF THE CASE, FOR AS I TOLD YOU THE WORD
2 VERDICT IS A LATIN DERIVATIVE WORD MEANING A TRUE SAYING.
3 AND WHEN YOU HAVE ACCOMPLISHED THESE RESPONSIBILITIES YOU
4 WILL HAVE SATISFIED YOUR OATH AS JURORS, AND YOU WILL HAVE
5 DISCHARGED YOUR DUTY TO THE COURT. I'M NOW GOING TO SPEAK
6 WITH YOU ABOUT THE FORMS OF THE VERDICT IN THIS CASE. IF
7 THE STATE HAS FAILED TO PROVE THE GUILT OF THE DEFENDANT
8 BEYOND A REASONABLE DOUBT, YOUR VERDICT WOULD BE TWO
9 WORDS, NOT GUILTY. IF THE STATE HAS PROVED THE GUILT OF
10 THIS DEFENDANT BEYOND A REASONABLE DOUBT, YOUR VERDICT
11 WILL BE ONE WORD, GUILTY. THE VERDICT THAT YOU RENDER IN
12 THIS CASE MUST BE THE VERDICT OF EACH AND EVERY JUROR. IT
13 MUST BE YOUR UNANIMOUS VERDICT. ALL TWELVE DELIBERATING
14 JURORS MUST BE IN AGREEMENT ON THE VERDICT WHICH YOU
15 AUTHORIZE, MADAM FORE-LADY, TO WRITE FOR THE JURY. MADAM
16 FORE-LADY, YOU WILL HAVE THE INDICTMENT IN A FEW MINUTES.
17 ONCE THE JURY REACHES A VERDICT, IT WILL BE YOUR DUTY TO
18 WRITE IN THE APPROPRIATE VERDICT BACK HERE IN THIS BACK
19 LEFT-HAND CORNER WHERE IT SAYS VERDICT, WRITE IN THE
20 APPROPRIATE VERDICT. DO NOT GIVE ANY WEIGHT AS TO HOW I
21 MAY LIST THOSE VERDICTS, BUT ONCE AGAIN THERE'S TWO
22 POSSIBLE VERDICTS, GUILTY OR NOT GUILTY, WHATEVER IT IS
23 YOU WRITE IN HERE, SIGN YOUR NAME AND DATE IT WHERE IT
24 SAYS THE DATE. OKAY. I'M NOT SURE ABOUT THE OUT-LAY OF
25 THE JURY ROOM, BUT THERE WILL BE A BAILIFF POSTED NEARBY

1 IF YOU NEED ANY ASSISTANCE. WE WILL NEED YOU TO KNOCK ON
2 THE DOOR AND LET THE BAILIFF KNOW WHEN YOU'VE REACHED A
3 VERDICT, AND WE WILL RECEIVE IT IN COURT. DO NOT --- LET
4 ME REITERATE. YOUR VERDICT'S GOT TO BE A UNANIMOUS
5 VERDICT. ALL TWELVE HAVE GOT TO BE IN AGREEMENT. DO NOT
6 BEGIN YOUR DELIBERATIONS UNTIL I SEND THE INDICTMENT ALONG
7 WITH THE EXHIBITS BACK TO YOU AND GIVE YOU THE GO AHEAD.
8 OKAY? NOW, I NEED TO MAKE ARRANGEMENTS FOR THE TWO
9 ALTERNATES TO BE SEATED IN ANOTHER ROOM. MADAM FORE-LADY,
10 SHOULD YOU HAVE A JUROR TO REFUSE TO DELIBERATE, IN OTHER
11 WORDS, TO OBEY THEIR OATH AND DELIBERATE THIS CASE AS
12 REQUIRED BY THEIR OATH, YOU WILL IMMEDIATELY NOTIFY THE
13 COURT OF SUCH REFUSAL TO DELIBERATE AND THAT'S WHY WE HAVE
14 ALTERNATES. OKAY? I THINK I'VE COVERED EVERYTHING I
15 WANTED TO COVER WITH YOU. ALL RIGHT, I'M GOING TO ASK
16 Y'ALL TO STEP BACK AND LET ME CHECK IN WITH THE ATTORNEYS.
17 WE'VE GOT TO CHECK OFF THE LIST ON THE EXHIBITS AND AS
18 SOON AS WE SEND THE EXHIBITS BACK TO YOU ALONG WITH THE
19 INDICTMENT, Y'ALL MAY BEGIN YOUR DELIBERATIONS. MR.
20 BAILIFF, PLEASE MAKE SURE THAT THE TWO ALTERNATES REPORT
21 TO ANOTHER ROOM. OKAY. I KNOW WHAT I FORGOT. IF ANYBODY
22 WANTS A SMOKE BREAK OR YOU HAVE TO STOP DELIBERATIONS
23 BECAUSE SOMEBODY NEEDS TO GO TO THE BATHROOM, PLEASE DO
24 JUST THAT. STOP YOUR DELIBERATIONS UNTIL ALL TWELVE OF
25 YOU ARE BACK TOGETHER. OKAY? ALL RIGHT. IF Y'ALL WILL

1 FOLLOW MR. BAILIFF OUT.

2 (JURY EXITS THE COURTROOM)

3 THE COURT - ANYTHING FOR THE RECORD THAT WE
4 HADN'T ALREADY PUT ON?

5 MR. LIFSEY - NO, SIR, I DON'T HAVE ANY
6 OBJECTIONS TO YOUR CHARGE.

7 MR. FRICK - NO OBJECTIONS TO THE CHARGE. I
8 WOULD RE-NEW MY MOTIONS REGARDING THE DOG-TRACKING
9 EVIDENCE. I UNDERSTAND YOU'LL ALREADY RULED ON THAT.

10 THE COURT - OKAY, AND WE'VE GOT THAT PROPERLY
11 RECORDED. ALL RIGHT, IF Y'ALL WILL CHECK OFF ON THAT
12 EVIDENCE.

13 (DISCUSSION IS HELD BETWEEN COUNSEL AND COURT
14 REPORTER REGARDING EXHIBITS WHICH WAS NOT REPORTED.)

15 (JURY DELIBERATES AT 3:12 P.M.)

16 (COURT IN RECESS AWAITING VERDICT)

17 THE COURT - COUNSEL, BACK ON OUR CASE, I GOT A
18 REQUEST OF THE TRANSCRIPT OF POOVEY'S STATEMENT ON THE
19 STAND. AS YOU KNOW, WE DON'T HAVE AN IMMEDIATE
20 TRANSCRIPT, SO WE'LL HAVE TO BRING THEM BACK IN AND RE-
21 PLAY THE TESTIMONY. MADAM COURT REPORTER, IF YOU WILL
22 PROCEED TO LOCATE THAT TESTIMONY, WE WILL DO JUST THAT.
23 BE COURT EXHIBIT WHATEVER, TWO, THREE, FOUR.

24 (NOTE MARKED AS COURT'S EXHIBIT NUMBER 3.)

25 (BRIEF RECESS)

1 THE COURT - YOU MAY BE SEATED. MR. BAILIFF, IF
2 YOU'LL BRING THE JURY IN. CLERK, I NEED YOU TO BRING THE
3 TWO ALTERNATES IN.

4 CLERK - OKAY.

5 (JURY AND ALTERNATES RETURN TO THE COURTROOM AT
6 4:25 P.M.)

7 THE COURT - GOT EVERYBODY?

8 CLERK - YES, SIR.

9 THE COURT - MADAM FORE-LADY, WE DON'T HAVE
10 INSTANTANEOUS TRANSCRIPT ABILITY HERE, SO WHAT I'VE DONE,
11 I'VE HAD MADAM COURT REPORTER LOCATE THAT TESTIMONY ON THE
12 RECORDER. SHE IS AT THE BEGINNING OF IT. SHE WILL BEGIN
13 PLAYING IT. I WILL RELY ON YOU TO LET ME KNOW WHEN YOU
14 ARE SATISFIED AS FAR AS HOW MUCH YOU WANT TO HEAR ---

15 FORE-LADY - OKAY.

16 THE COURT - --- AND WE'LL CONTINUE UNTIL YOU
17 STOP US. OKAY? AND THE REQUEST WAS OFFICER POOVEY?

18 FORE-LADY - POOVEY'S TESTIMONY.

19 THE COURT - ALL RIGHT.

20 (WHEREUPON, OFFICER POOVEY'S TESTIMONY IS PLAYED
21 FOR THE JURY)

22 THE COURT - ANYTHING FURTHER, MADAM FORE-LADY?

23 FORE-LADY - NO, SIR.

24 THE COURT - IF THE TWELVE DELIBERATING JURORS
25 WILL RETURN TO THE ROOM AND I NEED THE TWO ALTERNATES CAN

1 STEP BACK WITH MR. HAMMOND.

2 (JURY AND ALTERNATES EXIT THE COURTROOM)

3 THE COURT - ANYTHING FOR THE RECORD?

4 MR. LIFSEY - NO, SIR.

5 MR. FRICK - NOTHING FROM DEFENSE.

6 THE COURT - ALL RIGHT, WE WILL TAKE FIVE MINUTES
7 AND WE'LL COME BACK AND DO SOME WORK ON SOME OTHER
8 PROBATION MATTERS.

9 (JURY FURTHER DELIBERATES AT 4:41 P.M.)

10 (COURT IN RECESS AWAITING VERDICT)

11 THE COURT - ALL RIGHT, I WANT TO MEET WITH
12 COUNSEL ON THIS CASE.

13 (BENCH CONFERENCE WAS HELD WHICH WAS NOT
14 REPORTED.)

15 (COURT IN RECESS AWAITING VERDICT)

16 THE COURT - ALL RIGHT, WE'VE GOT A VERDICT.

17 (PAUSE) WAITING ON THE DEFENDANT. OKAY, WE'RE READY.
18 DEFENDANT'S BACK.

19 (JURY RETURNS WITH VERDICT AT 5:35 P.M.)

20 (VERDICT HANDED UP TO THE COURT)

21 THE COURT - MR. CLERK. IT'S SIGNED AND DATE.
22 IF YOU WILL PUBLISH THE VERDICT.

23 CLERK - YES, SIR. CASE 2008-GS-29-469, THE
24 STATE OF SOUTH CAROLINA VERSUS RANDOLPH FRAZIER INDICTED
25 FOR BURGLARY IN THE FIRST DEGREE, WE THE JURY FIND THE

1 DEFENDANT GUILTY, SIGNED KIM MOSS, DATED 9/17/08. LADIES
2 AND GENTLEMEN OF THE JURY, IF THIS BE YOUR VERDICT, SAY SO
3 YOU ALL BY THE RAISING OF YOUR RIGHT HANDS.

4 (JURORS AFFIRM)

5 CLERK - LET THE RECORD REFLECT ALL JURORS RAISED
6 THEIR RIGHT HANDS.

7 THE COURT - THANK YOU, MR. CLERK. ANYTHING
8 FURTHER OF THE JURY?

9 MR. LIFSEY - NO, SIR, YOUR HONOR, NOT FROM THE
10 STATE.

11 MR. FRICK - WE'D REQUEST POLLING OF THE JURY.

12 THE COURT - MR. CLERK, IF YOU'LL POLL THE JURY.

13 CLERK - YES, SIR, YOUR HONOR. KIM MOSS, IS THIS
14 YOUR VERDICT AND IS THIS STILL YOUR VERDICT?

15 MS. MOSS - YES, SIR.

16 CLERK - GEORGE PLAYER, IS THIS YOUR VERDICT AND
17 IS THIS STILL YOUR VERDICT?

18 MR. PLAYER - YES, SIR.

19 CLERK - CHARLENE LOWERY, IS THIS YOUR VERDICT
20 AND IS THIS STILL YOUR VERDICT?

21 MS. LOWERY - YES, IT IS.

22 CLERK - MARLENE SIMPSON, IS THIS YOUR VERDICT
23 AND IS THIS STILL YOUR VERDICT?

24 MS. SIMPSON - YES.

25 CLERK - CHRISS FLYNN, IS THIS YOUR VERDICT AND

1 IS THIS STILL YOUR VERDICT?

2 MR. FLYNN - YES.

3 CLERK - MARY ANN BROWN, IS THIS YOUR VERDICT AND
4 IS THIS STILL YOUR VERDICT?

5 MS. BROWN - YES, SIR.

6 CLERK - MICHELLE MOORE, IS THIS YOUR VERDICT AND
7 IS THIS STILL YOUR VERDICT?

8 MS. MOORE - YES, SIR.

9 CLERK - VIRGINIA ADAMS, IS THIS YOUR VERDICT AND
10 IS THIS STILL YOUR VERDICT?

11 MS. ADAMS - YES, SIR.

12 CLERK - SHAMEKA RUFUS, IS THIS YOUR VERDICT AND
13 IS THIS STILL YOUR VERDICT?

14 MS. RUFUS - YES.

15 CLERK - LORI HINSON, IS THIS YOUR VERDICT AND IS
16 THIS STILL YOUR VERDICT?

17 MS. HINSON - YES, SIR.

18 CLERK - LISA RHYNER, IS THIS YOUR VERDICT AND IS
19 THIS STILL YOUR VERDICT?

20 MS. RHYNER - YES, SIR.

21 CLERK - ZELMA HAMMOND, IS THIS YOUR VERDICT AND
22 IS THIS STILL YOUR VERDICT?

23 MS. HAMMOND - YES.

24 THE COURT - THANK YOU, MR. CLERK.

25 CLERK - YES, SIR.

1 THE COURT - ALL RIGHT, IF EVERYBODY WILL RELAX,
2 WE'LL MOVE TO THE NEXT PHASE OF THE CASE WHICH WILL BE
3 MITIGATION AND SENTENCING. HEAR FROM THE STATE?

4 MR. LIFSEY - YOUR HONOR, I HAND UP TO THE COURT
5 A SENTENCING SHEET AND I'LL BE GLAD TO TELL YOU HIS RAP
6 SHEET AND THE STATE'S POSITION ON --- I DON'T KNOW IF YOU
7 NEED TO SIGN ANYTHING, BUT I'M GOING TO HAND UP A SENTENCE
8 SHEET I'VE PREPARED. I'LL BE GLAD TO TELL YOU --- I ---
9 HIS RAP SHEET --- HIS FULL RAP SHEET AND OUR POSITION ON
10 THE SENTENCING IF THE COURT'S READY FOR THAT NOW.

11 THE COURT - YOU MAY PROCEED.

12 MR. LIFSEY - YOUR HONOR, MR. RANDOLPH FRAZIER IS
13 A CAREER CRIMINAL WHOSE CRIMINAL HISTORY BEGINS BACK IN
14 1973. HE WAS CONVICTED IN 1973 OF DISORDERLY CONDUCT,
15 1974 CHARGED WITH BREAKING AND ENTERING, PLED TO A LESSER
16 OFFENSE OF TRESPASSING; 1979 HE HAD HIS FIRST HOUSE-
17 BREAKING CONVICTION AND RECEIVED A PROBATIONARY SENTENCE
18 AT THAT POINT. 1980 HE WAS CONVICTED OF ROBBERY. HE
19 RECEIVED TEN YEARS IN JAIL. 1985 BREAKING AND ENTERING
20 MULTIPLE COUNTS --- OR EXCUSE ME --- HE HAS AT LEAST ONE
21 OR TWO COUNTS OF BREAKING AND ENTERING IN 1985. HE
22 RECEIVED A FIVE-YEAR SENTENCE. ALSO, 19 --- AT THAT TIME,
23 IN ADDITION TO THAT HE RECEIVED A CONSECUTIVE SENTENCE ON
24 GRAND LARCENY AND HOUSE-BREAKING OF TEN YEARS SUSPENDED ON
25 THE SERVICE OF SIX YEARS IN JAIL AND THEN SOME PROBATION.

351

1 19 --- HE SPENT OBVIOUSLY SOME TIME IN PRISON AS A RESULT
2 OF THAT. 1992 RECEIVING STOLEN GOODS. 1993 GRAND
3 LARCENY, TEN YEARS. FORGERY, IT LOOKS LIKE HE RECEIVED A
4 FIVE-YEAR SENTENCE, MULTIPLE COUNTS OF FORGERY. HE HAD
5 BURGLARY CHARGES DISMISSED AS PART OF APPARENTLY SOME SORT
6 OF PLEA BARGAIN AT THAT TIME. BURGLARY AND --- OF COURSE,
7 HE HAD THAT BURGLARY CONVICTION FROM THE '90S THAT WE
8 INTRODUCED TO --- IN ADDITION TO THE --- AS PART OF THE
9 ELEMENTS OF THIS CRIME. 1997 HE WAS CHARGED WITH BURGLARY
10 BUT ALLOWED TO PLEAD TO PETTY LARCENY. HIS PAROLE WAS
11 REVOKED AT SOME POINT IN 1998. IN 2000 HE HAD A CRIMINAL
12 DOMESTIC VIOLENCE. ALSO IN THE YEAR 2000 HE WAS CONVICTED
13 OF MULTIPLE COUNTS POSSESSION OF STOLEN GOODS. THESE
14 WOULD'VE BEEN A THIRD OR SUBSEQUENT PROPERTY CRIME BECAUSE
15 OF HIS PRIORS AND HE WAS GIVEN FIVE YEARS IN PRISON ON
16 MULTIPLE CHARGES CONSECUTIVELY. ALSO CHARGED WITH FALSE
17 INFORMATION TO POLICE AND CONVICTED OF THAT AT THE TIME.
18 2001 HE WENT TO COURT ON AN ADDITIONAL PROPERTY CHARGE,
19 BUT IT LOOKS LIKE TO ME THAT THAT WAS RUN CONCURRENT WITH
20 THE OTHER THINGS. THAT MIGHT'VE BEEN ONE THAT WAS
21 NEGLECTED FROM THE FIRST TIME. 2001 HIS RAP SHEET SHOWS
22 A BURGLARY, TEN YEARS. I'M UNCLEAR WHETHER THAT WAS A
23 SEPARATE BURGLARY OR WHETHER THAT WAS A REVOCATION OF A
24 PRIOR PROBATIONARY SENTENCE, BUT HE WENT TO PRISON THEN.
25 PAROLE WAS REVOKED ON HIM AGAIN IN 2006. AS I SAID

1 EARLIER, AND I'M GOING TO SAY MY PEACE AND I'LL SIT DOWN,
2 RANDOLPH FRAZIER IS A CAREER CRIMINAL. THIS CASE THAT HE
3 WAS CONVICTED ON IS ONE OF THREE PENDING BURGLARY CHARGES
4 IN THIS COUNTY. THERE WAS, OF COURSE, THE ONE CASE THAT
5 WE WERE NOT ALLOWED TO GO FORWARD ON SIMULTANEOUS WITH
6 THIS ONE, BUT THERE'S ANOTHER PENDING BURGLARY CASE THAT
7 HAPPENED --- HE WAS OUT ON --- HE HAD --- FIRST DEGREE
8 BURGLARY, ALMOST IDENTICAL CIRCUMSTANCES TO THIS, IT'S
9 STILL PENDING. HE WAS RELEASED ON BOND ON THAT CHARGE AND
10 LESS THAN A MONTH LATER HE WAS ARRESTED ON THESE CHARGES.
11 WHEN HE WAS ARRESTED ON THIS CHARGE, HE TOLD LAW
12 ENFORCEMENT THIS, PAT PARSONS, HE SAID Y'ALL HAD ME DEAD
13 TO RIGHTS ON THE OTHER ONE AND I GOT AWAY WITH IT.
14 RANDOLPH FRAZIER IS A MAN THAT HAS NO RESPECT FOR OTHER
15 PEOPLE'S PROPERTY, AND HE'S GOT NO RESPECT FOR THE LAW AND
16 THE CRIMINAL JUSTICE SYSTEM. FIRST DEGREE BURGLARY
17 CARRIES AT LEAST FIFTEEN YEARS IN PRISON, AS THE COURT
18 KNOWS, CARRIES UP TO LIFE IN PRISON. AT SOME POINT PEOPLE
19 HAVE FORFEITED THE RIGHT TO LIVE IN A FREE SOCIETY.
20 RANDOLPH FRAZIER HAS DEMONSTRATED THROUGHOUT HIS LIFE THAT
21 HE CANNOT COMPLY AND LIVE OUTSIDE, THAT HE IS GOING TO
22 CONTINUE STEALING FROM PEOPLE AND BREAKING INTO PEOPLE'S
23 HOUSES AS LONG AS HE IS OUT. I ASK YOU ON BEHALF OF THE
24 LANCASTER POLICE DEPARTMENT AND THE CITIZENS OF THIS
25 COUNTY TO GIVE HIM A LIFE SENTENCE. THANK YOU.

1 THE COURT - MR. FRICK, I'LL HEAR FROM YOU.

2 MR. FRICK - YOUR HONOR, I WANT TO ADDRESS THE
3 LAST PART OF WHAT THE SOLICITOR HAS STATED. HE MENTIONED
4 THE FACT THAT MY CLIENT HAS HAD TWO PREVIOUS TRIALS AND HE
5 GETS ACQUITTED ON ONE AND HAS A HUNG JURY AND THERE WAS A
6 MIS-TRIAL ON THAT ONE. I THINK IT'S INAPPROPRIATE FOR YOU
7 TO CONSIDER THE FACT THAT MY CLIENT HAS EXERCISED HIS
8 RIGHT TO HAVE A TRIAL. I'D ASK YOU NOT TO TAKE THAT INTO
9 CONSIDERATION.

10 THE COURT - YOU'RE RIGHT.

11 MR. FRICK - I WOULD POINT OUT THAT HE WAS
12 ACQUITTED AT THE TRIAL AND THE LAST ONE THAT THE SOLICITOR
13 TALKS ABOUT THAT THERE WAS A MIS-TRIAL. IT IS PENDING AT
14 THIS TIME. THE JURY WAS UNABLE TO REACH A VERDICT. YOUR
15 HONOR, IN LISTENING TO THE RAP SHEET, CAN'T DISPUTE MY
16 CLIENT HAS A BAD RAP SHEET. WE'VE TALKED ABOUT THAT A
17 LOT. TALKED ABOUT IN TRIAL PREPARATION. TALKED ABOUT
18 THAT THAT'S WHY HE'S HERE TODAY. BUT FOR THE FACT THAT
19 HE'S GOT THIS RECORD, WE'RE TALKING ABOUT A BURGLARY
20 SECOND. WE'RE TALKING --- LOOKING UP TO FIFTEEN, NOT
21 STARTING AT FIFTEEN. IT'S A BIG DIFFERENCE. I
22 UNDERSTAND. YOUR HONOR, THE RAP SHEET IS FULL OF PROPERTY
23 CRIMES. HE'S HURT NO ONE IN HIS LIFE. IT'S A ARGUMENT
24 WHETHER HE'S A DANGER TO THE COMMUNITY. I WOULD SAY HE'S
25 NOT A DANGER TO PEOPLE. I WOULD SAY HE, PERHAPS, IF YOU

1 CALL HIM A DANGER, IT IS TO PROPERTY WHEN PEOPLE AREN'T
2 HOME. YOUR HONOR, HE IS A LIFE-LONG RESIDENT OF
3 LANCASTER. THERE IS --- LIKE I SAID NOTHING ON HIS RECORD
4 THAT IS VIOLENT AS FAR AS --- AS FAR VIOLENT TOWARD A
5 PERSON. THE LARGEST SENTENCE HE EVER RECEIVED WAS THAT
6 TEN-YEAR SENTENCE. IN SPEAKING TO MY CLIENT, WHAT THAT
7 WAS WAS A BURGLARY THIRD DEGREE SECOND OFFENSE THAT HE
8 TELLS ME HE WAS NOT ADVISED THAT HE COULD RECEIVE UP TO
9 TEN YEARS ON. THAT'S A MATTER THAT HE'S TAKING TO FEDERAL
10 COURT. HE IS STILL TRYING TO ADJUDICATE THAT AS NOT BEING
11 ADVISED OF HIS RIGHTS ON THAT ONE. I SAY THAT JUST SO YOU
12 UNDERSTAND WHAT HIS POSITION IS. JUDGE, HE'S FIFTY-FOUR
13 YEARS OLD. I FEAR THAT EVEN IF YOU IMPOSE THE MINIMUM
14 SENTENCE IT'S GOING TO BE A LIFE SENTENCE ON MR. FRAZIER.
15 IN MY EXPERIENCE THERE AREN'T TOO MANY PEOPLE IN THE
16 DEPARTMENT OF CORRECTIONS THAT ARE OVER THE AGE OF SIXTY-
17 SOMETHING. WHATEVER SENTENCE YOU GOING TO GIVE HIM IS
18 GOING TO GET HIM TO THAT POINT. I ASK YOU TO TAKE THAT
19 INTO CONSIDERATION. ALTHOUGH, HE HAS AN EXTENSIVE RECORD,
20 I ASK YOU TO TAKE INTO CONSIDERATION THAT IT IS PROPERTY
21 OFFENSES. I KNOW THAT THAT'S NOT --- THAT'S GOING TO BE
22 COLD COMFORT FOR THE COURT, BUT I THINK HE'S DUE SOME
23 CONSIDERATION ON THAT. JUDGE, HE'S GOT A DISABLED SISTER
24 THAT HE HELPS TAKE CARE OF. SHE'S TRIED TO DO THE BEST
25 FOR HER (SIC) AND HE'S TRIED TO DO HIS BEST FOR HER. SO

355

1 HE DOES HAVE PEOPLE IN THE COMMUNITY WHO CARE FOR HIM AND
2 MISS HIM AND LIKE TO SEE HIM HOME ONE DAY. I'D JUST ASK
3 YOU TO AT LEAST LET HIM SEE THAT CHANCE, YOUR HONOR.
4 THANK YOU.

5 THE COURT - AT THIS TIME I WANT TO TAKE A BRIEF
6 PAUSE FROM THE SENTENCING PHASE TO THANK COUNSEL FOR THEIR
7 PRESENTATION IN COURT. I APPRECIATE BOTH SIDES AND THEIR
8 PROFESSIONAL ABILITIES IN GETTING THIS CASE TRIED.
9 SHERIFF, I NEED YOU TO TAKE THE DEFENDANT, MR. FRAZIER,
10 SECURE HIM, PLEASE, AT THIS TIME.

11 (WHEREUPON, MR. FRAZIER IS SHACKLED AND HAND-
12 CUFFED)

13 THE COURT - THANK YOU, SHERIFF. MR. FRAZIER, AT
14 THIS TIME YOU MAY MAKE A STATEMENT TO THE COURT IF YOU SO
15 DESIRE. IF YOU DO NOT, I CERTAINLY UNDERSTAND THE
16 REASONING WHY, BUT THAT IS YOUR CHOICE. IS THERE ANYTHING
17 YOU'D LIKE TO SAY BEFORE SENTENCING?

18 MR. FRAZIER - NO, SIR.

19 THE COURT - I WANT YOU TO BE FULLY ADVISED AT
20 THIS TIME, YOU CERTAINLY HAVE A RIGHT TO APPEAL. YOU
21 PROBABLY AWARE THAT APPELLATE RIGHTS RUN TEN DAYS AFTER
22 SENTENCING. IN OTHER WORDS, YOU GOT TO FILE A NOTICE OF
23 APPEAL WITHIN TEN DAYS TO PRESERVE YOUR RIGHTS. I'M NOT -
24 -- MR. FRICK, I'M NOT GOING TO TAKE INTO CONSIDERATION ANY
25 OF THESE PENDING MATTERS AND WHAT'S HAPPENED HERE

1 RECENTLY, BUT WITH HIS RECORD I DON'T HAVE ANY CHOICE IN
2 THIS CASE AS I SEE IT, NOT LEGALLY, BUT IN REALITY I DON'T
3 HAVE ANY OTHER CHOICE. THAT'S ONE OF THE LONGEST RAP
4 SHEETS I'VE EVER HEARD, AND IT ALMOST MAKES ME WONDER
5 WHERE THE SYSTEM FAILED THAT HE WAS OUT TO DO THIS AGAIN.
6 I WAS OVER HERE TWO OR THREE YEARS AGO. WE WERE TRYING A
7 BURGLARY CASE, AND I ASKED THE JURY PANEL OF ABOUT FIFTY
8 JURORS THE QUESTION JUST AS WE ASKED IN THIS CASE, HOW
9 MANY OF YOU HAVE EVER HAD A BURGLARY COMMITTED WITH YOU,
10 AND I NEVER WILL FORGET IT, FIFTEEN PEOPLE OUT OF ABOUT
11 FIFTY STOOD UP THAT HAD THEIR HOMES BURGLARIZED. AND IT'S
12 NOT ONLY LANCASTER COUNTY. MY COUNTY'S JUST AS BAD. I
13 DON'T KNOW. IT'S JUST --- I DON'T KNOW WHAT IN THE WORLD
14 IS GOING THROUGH PEOPLE'S MIND THAT THEY JUST HAVE A RIGHT
15 TO GO INTO PEOPLE'S HOMES AND TAKE WHATEVER THEY WANT TO.
16 AND IT JUST AMAZES ME THAT MORE OF THEM HAVEN'T BEEN
17 CAUGHT IN THE ACT AND WE REALLY HADN'T HAD SOME TRUE
18 TRAGEDIES. MOST OF THE TIME IT WORKS THAT THE VICTIM
19 WINDS UP BEING THE ONE HURT INSTEAD OF THE PERPETRATOR,
20 BUT WE DEFINITELY HAVE A PROBLEM. AND I'M NOT GOING TO
21 SIT UP HERE AND PREACH A SERMON. I THINK THAT'S ENOUGH
22 SAID. THE SENTENCE OF THE COURT IS THAT RANDOLPH FRAZIER
23 BE CONFINED TO THE STATE DEPARTMENT OF CORRECTIONS FOR THE
24 TERM OF HIS NATURAL LIFE. WE CANNOT AFFORD TO HAVE HIM
25 BACK ON THE STREETS OF LANCASTER COUNTY. GOOD LUCK.

357

1 LADIES AND GENTLEMEN OF THE JURY, THANK YOU SO MUCH FOR
2 YOUR SERVICE. THANK YOU SO MUCH FOR YOUR PATIENCE WITH
3 THE COURT. I KNOW WE TOOK SOME BREAKS AND KEPT YOU
4 WAITING SOME PERIODS OF TIME. WE WERE NOT DRINKING COFFEE
5 AND EATING DONUTS AND HAVING A GOOD TIME. IT WAS JUST
6 SOME MATTERS OF LAW WE HAD TO TAKE UP AND OTHER MATTERS WE
7 WERE TRYING TO WORK OUT AND IF YOU HADN'T BEEN PATIENT
8 WITH US, IT PROBABLY WOULD'VE TAKEN LONGER TO GET THROUGH
9 THIS WEEK. GOOD NEWS --- THERE'S DOUBLE GOOD NEWS. WE'RE
10 THROUGH WITH THIS CASE, BUT YOU'RE ALSO THROUGH FOR THE
11 WEEK. WE'RE COMING BACK TOMORROW AND WE'LL BE WORKING ON
12 MATTERS THAT WE WON'T NEED A JURY FOR. SHOULD YOU BE
13 DRAWN IN THE FUTURE TO SERVE ON A JURY, I CERTAINLY
14 ENCOURAGE YOU TO DO SO. Y'ALL ARE THE CITIZENS OF
15 LANCASTER COUNTY. YOU KNOW MORE ABOUT WHAT'S GOING OVER
16 HERE THAN EVEN I DO, BUT, YOU KNOW, THE CRIMINAL JUSTICE
17 SYSTEM HAS TO PREVAIL IN LOOKING AFTER THE INTEREST OF THE
18 STATE AS WELL AS THAT OF THE DEFENDANT, AND WE HAVE TO
19 CALL ON YOU THE JURY TO COME IN AND MAKE THESE TOUGH
20 DECISIONS, AND I REALLY APPRECIATE Y'ALL COMING IN AND
21 HELPING US WITH THIS MATTER. A SERIOUS CASE AND I'M GLAD
22 ALL OF YOU TOOK IT SERIOUSLY. MR. HAMMOND, YOU AND I NEED
23 TO DEFEND OURSELVES IN THAT WE DO NOT WANT Y'ALL LOOKING
24 FOR US OR HAVING ANY BAD WORDS TOWARDS US ABOUT THE AMOUNT
25 OF YOUR PAYCHECK. PLEASE TAKE THAT UP WITH THE COUNTY

1 COUNCIL, BECAUSE WE DON'T HAVE ANY CONTROL OVER IT. WE
2 APOLOGIZE FOR IT. MAYBE THEY'LL DO BETTER IN THE FUTURE,
3 BUT HE'LL GIVE YOU AT LEAST THE GOOD NEWS ABOUT YOUR
4 CHECK.

5 (DISCUSSION IS HELD BETWEEN THE CLERK AND THE
6 JURY REGARDING CHECKS WHICH WAS NOT REPORTED.)

7 THE COURT - CONTACT THE CLERK'S OFFICE IF
8 THERE'S ANY PROBLEM. I WANT TO THANK THE ALTERNATES
9 ESPECIALLY FOR Y'ALL'S PATIENCE. I KNOW WE HAD YOU BACK
10 THERE IN A SMALL CLOSET. YOU SERVED IN CASE SOMEBODY
11 BECOMES INCAPACITATED AND THAT DIDN'T HAPPEN, AND I WANT
12 TO THANK YOU FOR HELPING US. ALL RIGHT, THE JURY'S
13 DISMISSED.

14 (END OF TRANSCRIPT)

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CERTIFICATE

I, SHIRLEY G. BROOM, THE UNDERSIGNED COURT REPORTER, HEREBY CERTIFY THAT THE FOREGOING 358 PAGES CONSTITUTE A TRUE RECORD OF PROCEEDINGS TAKEN IN THE CASE OF STATE OF SOUTH CAROLINA VS. RANDOLPH FRAZIER, AS TAKEN BY ME AT THE TIME AND PLACE STATED.

I DO FURTHER CERTIFY THAT THE PERSONS WERE PRESENT AS STATED, THAT I AM NOT OF COUNSEL FOR, RELATED TO, OR IN THE EMPLOYEE OF ANY OF THE PARTIES TO THIS ACTION AND THAT I HAVE NO INTEREST WHATSOEVER IN THE OUTCOME OF THIS CASE.

THIS THE 30th DAY OF Dec., 2008.


SHIRLEY G. BROOM
CIRCUIT COURT REPORTER
SIXTEENTH JUDICIAL CIRCUIT

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF LANCASTERRandolph Frazier

Full name and prison number (if any) of Applicant.

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

2011 CP 29 1253

FILED
OFFICE OF CLERK
OF COURT
SEP - 7 A 11:37
CLERK OF COURT
LANCASTER, S.C.INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Perry
2. Name and location of Court which imposed sentence General Sessions
3. Name(s) of co-defendant(s) (if any) /
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 08-65-29-469-470
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 9-16-08 9-17-08
 - (b) _____

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes _____
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. S.C. Court of Appeals _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Affirmed _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. April 13, 2011 _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. None _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

Prosecutorial Misconduct

- (a) Ineffective Assistance of Trial Counsel
 (b) Due Process Violation
 (c) Violation of 4th Amendment

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) memorandums will be filed when PCM
 (b) Counsel is appointed
 (c) _____

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? NO
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
 (d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. _____
 ii. _____
 iii. _____
 iv. _____

(b) the name and location of the Court in which each was filed:

- i. _____
 ii. _____
 iii. _____
 iv. _____

(c) the disposition thereof:

- i. _____
 ii. _____
 iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) _____

(b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? _____
- (b) your trial, if any? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NO
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. William Friele, Trial
- ii. Lancaster Public Defender Office
- iii. Celia Robinson, S.C. Indigent Defense
- (b) the proceedings at which each such attorney represented you:
- i. Trial
- ii. Appeal
- iii. _____
19. State clearly the relief you seek in filing this application:
Unsettled, reversed and Remanded for New Trial
20. Are you now under sentence from any other court that you have not challenged?
NO

STATE OF SOUTH CAROLINA)

County of LANCASTER)

VERIFICATION)

Randolph Frazier

I, Randolph Frazier, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

x Randolph Frazier

SWORN to and subscribed before me this 30
day of Aug, 2011.

Dwight Moore (L.S.)
Notary Public

My Commission Expires: Jan 28, 2018

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

Randolph Frazier

I, *+*, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

x Randolph Frazier
Applicant

SWORN or affirmed to and subscribed before me this

30 day of Aug, 2011.

Debra M. [Signature]
Notary Public

My Commission Expires: Jan 28, 2018

FILED
OFFICE OF CLERK
OF COURT
2011 SEP - 7 A 11:37
CLERK OF COURT
LANCASTER, SC

STATE OF SOUTH CAROLINA
COUNTY OF LANCASTER

FILED
OFFICE OF CLERK
OF COURT

2012 DEC 11 PM 4:04

IN THE COMMON PLEAS COURT

CLERK OF COURT

LANCASTER, SC DOCKET NO.: 2011-CP-29-1253

RANDOLPH FRAZIER, 268822

Applicant,

SUPPLEMENT TO APPLICATION
FOR POST CONVICTION RELIEF

-v-

STATE OF SOUTH CAROLINA

Respondent,

The Applicant, through undersigned Counsel, wishes to add this Supplement to his PCR Application filed on September 7, 2011.

SEE ATTACHMENT PAGES (2)

RESPECTFULLY SUBMITTED ON BEHALF OF
APPLICANT, Randolph Frazier



Charles T. Brooks, III
Attorney for Applicant
309 Broad Street
Post office Box 3512
Sumter, South Carolina, 29150
803-418-5708

December 7, 2012

STATE OF SOUTH CAROLINA
COUNTY OF LANCASTER

FILED
OFFICE OF CLERK
OF COURT

IN THE COURT OF COMMON PLEAS
OF THE SIXTH JUDICIAL CIRCUIT

2012 DEC 11 AM 1:04

Randolph Frazier, #268822

CLERK OF COURT
LANCASTER, SC

Case No.: 2011-CP-29-1253

Applicant.

vs.

State of South Carolina,
Respondent.

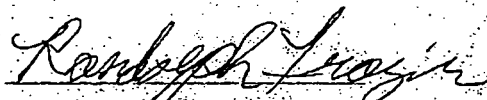
SUPPLEMENT TO APPLICATION FOR
POST CONVICTION RELIEF

come now the above name Applicant who would supplement his original application for post conviction relief to include the following additional grounds:

- A. Trial counsel was ineffective for failing to object to the solicitor's opening statement when he stated, and secondly, it is committed by someone with two prior convictions for burglary or housebreaking. You are going to hear evidence that Randolph Frazier has two prior convictions for burglary and one for housebreaking. See Tr.p. 122, 22 - p. 123, line 1.
- B. Trial counsel was ineffective for failing to object to the state sentencing Appellant to life in prison, when their is a fact, trial counsel and Appellant was never put on notice, ten days before Appellant trial in writing. See 17-25-45 (H).
- C. Trial counsel was ineffective in his opening statement when he stated, he has been convicted of a simple offense two times, that's why we're here talking about burglary first. See Tr.p. 125, Lines 2-4.
- D. Trial counsel was ineffective for failing to object to the solicitor vouching for the credibility of it's witness in closing argument. During closing argument the solicitor stated, now look they didn't come in here and lie to you; They didn't come in here and say look I know who it was, I know him. They said ... told you the truth. See Tr.p. 310, Lines 10-13.

E. The trial court committed legal error and abused its' discretion when he allowed counsel to represent Applicant in this case, when trial counsel said on the record he was not prepared for this case and had not did any investigation on this case for it to be called to trial.

Date: Nov 30, 2012


Randolph Frazier

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SIXTH JUDICIAL CIRCUIT
COUNTY OF LANCASTER	)	
	)	
Randolph Frazier, #172585,	)	2011-CP-29-1253
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed September 7, 2011, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lancaster County Clerk of Court. The Applicant was indicted at the April 2008 term of the Lancaster County Grand Jury for burglary – 1st degree (08-GS-29-0469)¹. He was represented by William P. Frick, Esquire. On September 17, 2008, the Applicant proceeded to trial where he was found guilty of the charge. He was sentenced by the Honorable Paul M. Burch to confinement for life for burglary – 1st degree.

The Applicant filed a timely Notice of Appeal. The South Carolina Court of Appeals affirmed his conviction and sentence. State v. Frazier, Op. No. 4818 (filed April 13, 2011, refilled June 10, 2011). Petitions for Rehearing were filed by both sides following the issuance of the Opinion. The Petitions were each denied, but the Court withdrew the original Opinion filed April

¹ Applicant was also indicted for an additional charge of burglary – 1st degree (08-GS-29-0470), which on Motion of Trial Counsel, was severed from the trial of the challenged indictment.

13, 2011, and substituted the Opinion filed June 10, 2011. The Remittitur was returned on August 19, 2011.

Attached herewith and incorporated herein are the records of the Lancaster County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, Applicant's appellate records, and the trial transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel, in that;
 - a. Counsel failed to object to Brady violations,
2. Due process violations;
3. Violation of 4th Amendment; and
4. Prosecutorial misconduct.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional

judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant also alleges due process violations and violations of his 4th Amendment rights. However, the Respondent submits that these allegations are without merit because the applicant has failed to specifically set forth the grounds upon which these allegations are based upon accordance with S.C. Code Ann. §17-27-50. The respondent moves for summary dismissal pursuant to S.C. Code Ann. §17-27-70 on the basis that there is no genuine issue of material fact which would

necessitate an evidentiary hearing and that these allegations should be dismissed as a matter of law.

Furthermore, it appears that the allegation regarding Applicant's 4th Amendment rights might raise a direct appeal issue that is procedurally barred by S.C. Code Ann. § 17-27-20(b) (2003). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). The Applicant could have raised this issue at trial or on appeal and it appears that he did so. Therefore, the Court should summarily dismiss this allegation.

V.

The Applicant further alleges prosecutorial misconduct. However, the Applicant fails to set forth with specificity the grounds upon which this alleged misconduct is based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." S.C. Code § 17-27-50 (2003). In an application for post-conviction relief, it is incumbent upon the Applicant to make at least a *prima facie* showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since the Applicant has failed to make even a *prima facie* showing, the Respondent would submit that this allegation should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. This allegation is so vague that it is impossible for the State to respond.

VI.

Each and every allegation contained within the application not hereinbefore expressly admitted, qualified or explained is hereby denied.

VII.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held solely on the allegations of ineffective assistance of counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

SUZANNE H. WHITE
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

, 2012.

1 STATE OF SOUTH CAROLINA
2 COURT OF COMMON PLEAS
3 COUNTY OF LANCASTER
4 2012-CP-12-01253
5

6 Randolph Frazier

7 vs.

8 State of South Carolina
9

10
11 Lancaster, South Carolina
12

13 October 2, 2013

14 Before the Honorable Clifton Newman
15

16 APPEARANCES

17 For the State: Suzanne White

18 For the Applicant: Charles Brooks
19

20 Reported by: Michael C. Watkins

21 Official Court Reporter
22
23
24
25

1	Randolph Frazier:	4
2	William Frick:	10
3	Certificate Page:	18

4

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NO EXHIBITS

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1 THE COURT: All right, Ms. White?

2 MS. WHITE: Thank you, Your Honor. This is the case of
3 Randolph Frazier versus the State, it's case number
4 2012-CP-29-1253. He is represented today by Mr. Brooks.
5 Mr. Frazier was indicted April of '08 for burglary first
6 degree, there was also a second charge, I believe, of
7 burglary first, but at the beginning of the trial after a
8 motion for severance they proceeded solely on one charge.
9 Based on prior convictions he received a sentence of life
10 without parole. There was an appeal, it was denied, the
11 remittitur was returned and he filed his application in
12 September of 2011. He has alleged various claims of
13 ineffective assistance of counsel, due process violations
14 and prosecutorial misconduct. So at this time I can turn it
15 over to Mr. Brooks.

16 THE COURT: Yes, sir, Mr. Brooks?

17 MR. BROOKS: May it please the Court, Judge? If I may
18 be able to call my client, Mr. Frazier, to the stand. He is
19 in a wheelchair.

20 THE COURT: All right.

21 MR. BROOKS: If I might ask one of the guards to roll
22 him on around. Ready, Judge?

23 THE COURT: Yes, sir.

24 The witness, RANDOLPH FRAZIER, was first duly
25 sworn and testified as follows:

1 DIRECT EXAMINATION

2 BY MR. BROOKS:

3 Q. Mr. Frazier.

4 A. Yes, sir.

5 Q. You brought this post conviction relief application,
6 Mr. Frick was your lawyer; is that correct?

7 A. That's correct.

8 Q. And you want to get a new trial; is that right?

9 A. Yes, sir.

10 Q. And you were found guilty of burglary first at a trial
11 and you've brought this PCR alleging that Mr. Frick did some
12 things wrong in representing you; is that right?

13 A. True.

14 Q. Okay. Now, what are you saying he did wrong?

15 A. Well, first of all I felt like the indictment I came to
16 court on during that time, I shouldn't have been tried on
17 because that wasn't an indictment I was supposed to come to
18 court on, it was switched by the Judge and the solicitor. I
19 came on one and was tried on the other one.

20 Q. All right. So you felt like -- you didn't feel that
21 you was adequately prepared for the one you went to trial
22 on.

23 A. True.

24 Q. Okay. And what -- go ahead.

25 A. Even Mr. Frick, he told the Judge that we weren't

1 prepared to go with this trial at that time. But the Judge
2 give the solicitor the benefit of the doubt and told him to
3 pick the one he wanted to try and that's what they done.
4 And also Mr. Frick told the Judge he hadn't investigated the
5 case, didn't know nothing about the case and he wasn't
6 prepared for the case but yet still he tried the case
7 anyway.

8 Q. Okay. And what else he did wrong?

9 A. Well, to my understanding I feel like I was tried by
10 ambush because of the way they done it, and, you know, the
11 courts -- I don't think the courts would allow them to do
12 that and, you know, to have me tried like that.

13 Q. Now, how old are you, Mr. Frazier?

14 A. I'm 60 years old.

15 Q. And I notice you are in a wheelchair and what -- you
16 have got some health problems.

17 A. Yes. I had a stroke after I was found guilty and went
18 to prison in 2010, I had a stroke.

19 Q. Now, you did appeal this case, right?

20 A. Yes, sir, I did.

21 Q. And that appeal was denied, it was denied, right?

22 A. Yes.

23 Q. And you said you had some issues about Mr. Frick's
24 representation that you found out during the appeal or after
25 the appeal?

1 A. Well, I found out during my appeal. I went to -- well,
2 SCDC have a state library, I went and I searched and looked
3 and found, you know, areas in the case and found, you know,
4 grounds that I could come back on and I filed them on the
5 grounds and here I am.

6 Q. Okay. What else are you saying Mr. Frick did wrong in
7 representing you?

8 A. Well, I feel like he should have postponed that trial
9 for a period of time until he could collect the evidence in
10 representing me in that case because there was no evidence
11 collected and never did, you know, tell the Judge that he --
12 like I said, he told the Judge he hadn't had any time to
13 investigate the case so he really didn't want to try the
14 case but the Judge insist that he try the case.

15 Q. And you felt that was unfair to you?

16 A. Yes, it was.

17 Q. All right. Anything else you want to say?

18 A. And another thing, some of the stuff they used in the
19 case to get me convicted of it was, you know, stuff from
20 another burglary, which they gave me that burglary ten days
21 later.

22 Q. So they were using -- you're saying they were using
23 evidence from another case to get you convicted in this
24 case.

25 A. Exactly.

1 Q. And that ain't right.

2 A. No, it's not.

3 Q. All right. Anything else?

4 A. Well, I was told during the -- before I went to trial
5 all of the evidence that they collected, or they say they
6 collected, it was, you know, they -- what they done. They
7 went and collected evidence that, you know, didn't even
8 amount to nothing to the case they was trying me on, but
9 they still used it, the Judge give the solicitor the benefit
10 of the doubt in the trial so I felt like that wasn't right.
11 And furthermore, the solicitor asked the Judge in his
12 chambers to give me a life sentence when they found me
13 guilty, and then he came out and told his protege, "Ask for
14 a life sentence on Mr. Frazier," which he did. And like I
15 said, I had to asked if -- during my pretrial hearing I
16 asked to get me the 15 years and he told me, he said --
17 Mr. Frick told me, said, "If you take it to trial and they
18 found you guilty you will get 20 years. I said, "Well, if I
19 take it to trial and get 20 years what am I looking at?"
20 And he said, "I can ask the solicitor try to make an
21 agreement to get you 15 years." So after the pretrial I
22 asked him to do that. So he said, "They're not going to
23 make any plea bargains," which you seen the paper I have on
24 the desk, it says they weren't going to make a plea bargain.
25 Q. That's right. Did they serve you with the notice to

1 seek life?

2 A. No. That's why I sent you the paperwork on that. I
3 even wrote Mr. Frick and asked him, and I wrote the clerk of
4 court, I have the paperwork, clerk of court say they wasn't
5 supposed to tell me they were going to seek a life sentence.
6 So the Judge asked him during the trial did they give me a
7 ten day notice and the solicitor said yes, but I never got
8 it.

9 Q. Okay.

10 A. And the clerk of court said Mr. Frick was supposed to
11 have gave me that.

12 Q. Okay. And you said you never got that from Mr. Frick?

13 A. I never got it.

14 Q. All right. Mr. Frazier, is there anything else you
15 want to tell Judge Newman why you should get your PCR
16 granted other than what you covered here this morning or
17 this afternoon?

18 A. Well, like I said, I feel like, you know, if the trial
19 would have went the way it should have I wouldn't be sitting
20 here today. But like I said, it was conspiracy of them
21 doing stuff to make the case against me because I had had
22 some prior run-ins with them, even though the stop, the
23 arrest and all of that, I mean, you know, and I felt like it
24 wasn't right and I knew it wasn't.

25 Q. All right. Anything else you want to tell the Court?

1 A. Not right offhand. I mean, you know, like I said, I
2 have got a lot of notes I had over there.

3 Q. A lot of stuff we filed with the Court.

4 A. Right.

5 Q. Other than that, anything else?

6 A. I'm just trying to sink this life sentence up off me.
7 If I could still get the ten -- I asked for him ten years
8 85, I could do eight years and four months, they would have
9 been appropriate but they wouldn't go along with the deal.
10 And after he told us they're going to give you 20 years so I
11 said, "What's the difference in 15 and five more so let's go
12 to trial," and that's what we done. And like I say, we
13 shouldn't even went to trial if he wasn't prepared and I
14 feel like he was ineffective if he wasn't prepared to go to
15 trial with the case, and he admitted that.

16 Q. Okay.

17 A. He wasn't ready.

18 Q. All right. Anything else?

19 A. That's all I have right now.

20 THE COURT: Answer any questions from the attorney
21 general.

22 MS. WHITE: Your Honor, I don't think we have any
23 questions of this witness at this time.

24 MR. BROOKS: Judge, that's the applicant's case.

25 MS. WHITE: Your Honor, the State would call William

1 Frick.

2 THE COURT: All right.

3 The witness, WILLIAM FRICK, was first duly
4 sworn and testified as follows:

5 DIRECT EXAMINATION

6 BY MS. WHITE:

7 Q. Mr. Frick, do you recall this trial?

8 A. I do.

9 Q. And in particular, do you recall any statements you
10 made about not being prepared to go or not on this?

11 A. Not on this trial. I represented Mr. Frazier
12 previously. We had a trial some couple of years before this
13 one and it was one of those that was kind of sprung on me
14 and I didn't really feel that I was ready to go forward on
15 that case and I asked Judge Lockemy at that trial for a
16 continuance based on needing to talk to Mr. Frazier a little
17 bit more, and that request was denied. We did go to trial
18 but we were successful on that trial, I don't recall that on
19 this particular case, though. But Mr. Frazier and I did
20 have more than one occasion to be in front of a judge in a
21 trial.

22 Q. And initially were you aware that this was going to be
23 a situation where the State was seeking life without parole?

24 A. Well, it was a burglary first, they did not LWOP him so
25 I received no notice for that. We were going to trial on a

1 burglary first based on Mr. Frazier's prior record, so they
2 didn't give me LWOP notice, they didn't have to give me LWOP
3 notice.

4 Q. So was this a situation because of prior convictions he
5 was a mandatory facing like the three strikes law or --

6 A. Well, the part of the burglary first statute that --
7 there's three ways you can get it. You get it if you break
8 into a house at nighttime. You get it if you become armed
9 or are armed when you go in, or if you've got a record of
10 two prior burglaries. Mr. Frazier fit into the two prior
11 burglary statute, and is actually an element of the offense
12 that the State is allowed to bring in front of a jury.

13 Q. And in regards to the evidence, he's made some
14 statements that there was evidence used not from this
15 burglary. Are you aware of what he's talking about?

16 A. I don't recall that. Bare in mind we had another
17 pending case, Mr. Frazier and I had had the trial where I
18 spoke of and he was acquitted on that matter. We had an
19 intervening trial between that one and the one we're here
20 today on where there was a hung jury. When the State put
21 Mr. Frazier's matter on the trial list I inquired as to
22 whether they were going to retry the one that was a hung
23 jury or the one we were going to trial on a new matter, they
24 told me they were going to trial on the new matter. So I
25 knew it was the one -- I think it was Chesterfield Village,

1 it was over here on Chesterfield Avenue and Mr. Frazier and
2 I spoke about that and what the evidence was on that case.

3 Q. And at the time did you feel prepared to proceed to
4 trial?

5 A. Yes.

6 MS. WHITE: I think that is all of the questions I have
7 at this time, Your Honor.

8 THE COURT: Mr. Brooks?

9 CROSS EXAMINATION

10 BY MR. BROOKS:

11 Q. Mr. Frick, and maybe I missed this one when Ms. White
12 was asking you these questions, did you receive notice to
13 seek life without parole?

14 A. No, it was not a LWOP case. I don't think they even
15 could have sought it based on his record, but because he
16 had -- he had more than two prior burglaries in his past.

17 Q. So basically he got life a sentence --

18 A. At the Judge, the Judge gave him --

19 Q. That's the Judge. Okay. Was there ever any plea
20 negotiations?

21 A. I know we had an offer and they wanted him to plead to
22 the trial that we had a mistrial on and they wanted him to
23 plead to this charge, I think that's all he had. They
24 wanted a whole lot of time, I can't remember whether it was
25 15 or 20 but I know we discussed it and he was not

1 interested in that. I know Mr. Frazier gave me a
2 counteroffer and I went back to the solicitor on that. If I
3 recall correctly I think his counteroffer was to come back
4 into the neighborhood that would put him at a max out at
5 65 percent, which I certainly understand, the solicitor was
6 never going to give us that offer. I spoke to the solicitor
7 about it but we did not get an offer that got him out of the
8 85 percent range and it became one of those situations where
9 we were looking at 15 to 20, given Mr. Frazier's age it
10 could be a life sentence at 85 percent anyway, so we spoke
11 about this and elected to go to trial.

12 Q. Okay. And you didn't ask for a continuance on this,
13 did you?

14 A. I don't recall asking for a continuance on this case.
15 I recall on the first trial we ever had together that I
16 specifically asked for a continuance, and I know the
17 language I used was I needed more time to prepare on it but
18 I don't recall doing that in this case, and I was ready to
19 go to trial on this one.

20 Q. Do you recall how long you had been on this case before
21 it went to trial?

22 A. I think Mr. Frazier had actually been arrested for this
23 before we went to trial on the middle charge. So Mr.
24 Frazier and I have been together for a long time and talked
25 about more than one case, and I know it had been ever since

1 his arrest on this charge that I had gone out and talked to
2 him about it.

3 Q. So what you're saying is you had an extensive working
4 relationship with Mr. Frazier.

5 A. We go back a ways, yes, sir. He quite frankly is one
6 of my favorite clients, I always liked talking to him.

7 Q. And basically you felt that the solicitor asked for the
8 life sentence at the conclusion of the case.

9 A. And I was surprised by that myself. I don't mean to
10 offend anybody in the room if they are by this, but law
11 enforcement in the City of Lancaster did not like Mr.
12 Frazier very much. If there was a burglary in the City of
13 Lancaster the first thing they do is look for Mr. Frazier,
14 and I don't mean that facetiously, I think that was actually
15 the way things conducted. I didn't expect that they were
16 going to ask for the life sentence, I was really, quite
17 frankly, surprised when the Judge gave him a life sentence,
18 but he did have a record that supports that and as
19 unfortunate as it is it was within the range that the Judge
20 gave him. Solicitor stood up and asked based on his prior
21 record to give him a life sentence, which that's not unusual
22 at the end of a trial for the solicitor to ask for the
23 maximum, I think they might have been as surprised as I was
24 to actually get it.

25 MR. BROOKS: All right. Beg the Court's indulgence,

1 Your Honor.

2 (Break in proceedings.)

3 MR. BROOKS: No other questions, Judge.

4 THE COURT: All right. Anything further?

5 MS. WHITE: Nothing from the State, Your Honor.

6 THE COURT: You may step down.

7 MS. WHITE: And the State has no other witnesses, Your
8 Honor.

9 THE COURT: All right. Any argument, Mr. Brooks.

10 MR. BROOKS: Judge, based on the testimony and the
11 paperwork we have filed with the Court we would respectfully
12 ask the Court to grant Mr. Frazier a new trial in this
13 matter. I feel we've proven ineffective assistance of
14 counsel by his testimony alone, and again, we would just
15 request the Court to grant him a new trial.

16 THE COURT: All right. What says the State?

17 MS. WHITE: Thank you, Your Honor. The State would
18 argue that in this situation applicant has failed to
19 demonstrate there was any deficient conduct on behalf of
20 counsel, and therefore no deficient conduct and no resulting
21 prejudice so we would argue that it should be denied.

22 THE COURT: Listening to the testimony and reviewing
23 the transcript it appears that Mr. Frick did all that he
24 could do for Mr. Frazier. The evidence seemed to be
25 overwhelming -- it was overwhelming that Mr. Frazier was

1 guilty of this first degree burglary. He had a jury trial
2 and he was convicted of first degree burglary. Mr. Frick
3 represented him well at trial, did all he could do to help
4 him but the evidence was too much for him to overcome. The
5 State has no obligation to plea bargain. If the State wants
6 to try a person for what they are indicted for the State can
7 try them for what they're indicted for, and he was indicted
8 for first degree burglary. The Judge made a special note of
9 Mr. Frazier's rap sheet and he said that's one of the
10 longest rap sheets that he has ever heard and it almost
11 makes him wonder where the system failed that he was out to
12 do this again. And the Judge commented that he had had a
13 court hearing in Lancaster County and had the jurors -- in
14 asking the jurors how many people have been victims of
15 burglary and about 15 of the jurors of 45 to 50 people,
16 almost one-third of them stood up and said that they'd had
17 their homes burglarized. So the Judge spoke about how bad
18 it was over here in Lancaster County and said to Mr. Frick
19 that we cannot afford to have him back on the streets of
20 Lancaster County again, and that based on this crime and
21 based on what the Judge thought was an appropriate sentence
22 he gave him a maximum sentence which is life in prison. So
23 that's the way it is in this case. There's nothing I can do
24 about it, there's nothing Mr. Frick can do about it, nothing
25 that Mr. Frazier can do about it. He has appealed the

1 conviction, the conviction was upheld by the appellate
2 courts and he has no basis to have the PCR granted. I deny
3 the PCR.

4 (End of the hearing.)

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I, the undersigned, Michael C. Watkins, Official Court Reporter for the Sixth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of the proceedings had and evidence introduced in the trial of the captioned case relative to appeal, in the Court of Common Pleas for Lancaster County, South Carolina, on the 5th day of August, 2013.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

May 5, 2014


Michael C. Watkins
Court Reporter

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SIXTH JUDICIAL CIRCUIT
COUNTY OF LANCASTER	)	
	)	
Randolph Frazier, #172585,	)	2011-CP-29-1253
	)	
Applicant,	)	
	)	
v.	)	ORDER OF DISMISSAL
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

FILED
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OF COURT
2013 DEC 16 AM 11:5
CLERK OF COURT
LANCASTER, SC

This matter comes before the Court by way of an Application for Post-Conviction Relief filed September 7, 2011. The Respondent made its Return on or about April 26, 2012. An evidentiary hearing into the matter was convened on August 5, 2013, at the Lancaster County Courthouse. The Applicant was present at the hearing and was represented by Charles T. Brooks III, Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. William P. Frick, Esquire, also testified. This Court also had before it a copy of the records of the Lancaster County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the Return, the Appellate Court records, and the trial transcript.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lancaster County Clerk of Court. The Applicant was indicted at the April 2008 term of the Lancaster County Grand Jury for burglary – 1st degree (08-

GS-29-0469)¹. He was represented by William P. Frick, Esquire. On September 17, 2008, the Applicant proceeded to trial where he was found guilty of the charge. He was sentenced by the Honorable Paul M. Burch to confinement for life for burglary – 1st degree.

The Applicant filed a timely Notice of Appeal. The South Carolina Court of Appeals affirmed his conviction and sentence. State v. Frazier, Op. No. 4818 (filed April 13, 2011, refilled June 10, 2011). Petitions for Rehearing were filed by both sides following the issuance of the Opinion. The Petitions were each denied, but the Court withdrew the original Opinion filed April 13, 2011, and substituted the Opinion filed June 10, 2011. The Remittitur was returned on August 19, 2011.

ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel, in that;
 - a. Counsel failed to object to Brady violations,
2. Due process violations;
3. Violation of 4th Amendment; and
4. Prosecutorial misconduct.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

¹ Applicant was also indicted for an additional charge of burglary – 1st degree (08-GS-29-0470), which on Motion of

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland).

Trial Counsel, was severed from the trial of the challenged indictment.

The Applicant testified that he was represented at trial by Counsel. Applicant testified that the indictment that the State proceeded on at trial was not the indictment that Applicant thought he would be tried on. Applicant testified that Counsel told him that he was unprepared for trial. Applicant testified that he believes that Counsel should have requested a continuance in order to prepare. Applicant also testified that some of the evidence at this trial was from another alleged burglary.

Counsel testified that he was prepared to represent Applicant at this trial. Counsel testified that he had represented the Applicant on prior charges and may have made statements regarding not being ready in those cases, but not in this case. Counsel testified that Applicant had previously been acquitted of burglary – 1st degree at a trial and then there was a hung jury at a second burglary trial, but he was not aware of evidence being used at trial related to any other burglary. Counsel testified that this was not a life without parole case at the Solicitor's request, but the judge gave Applicant a life sentence. Counsel testified that he was surprised that the Applicant received life. Counsel testified that the Solicitor had offered to let the Applicant plead guilty to two charges, but Applicant did not want to accept the offer because he wanted to be required to only serve 65% of a sentence and that was not ever offered.

This Court finds that the Applicant has failed to meet his burden of proof as to this claim. The Applicant offered no evidence or testimony that Counsel was deficient in his representation of the Applicant at trial. This Court finds that Counsel did all he could do for Applicant at trial. This Court also notes that the trial judge informed Applicant that the community could not afford to keep the Applicant on the streets and pointed out the length of Applicant's criminal history when sentencing the Applicant.

This Court also finds that there was overwhelming evidence of Applicant's guilt of this

charge; therefore, the Applicant was not prejudiced by any alleged deficient representation. Where there is overwhelming evidence of guilt, a trial counsel's deficient representation will not be prejudicial. Ford v. State, 314 S.C. 245, 442 S.E.2d 604 (1994); See also Humbert v. State, 345 S.C. 332, 548 S.E.2d 862 (2001); Geter v. State, 305 S.C. 365, 409 S.E.2d 344 (1991).

Due Process Violations

Although the Applicant raised this allegation in his application, the Applicant did not pursue this claim at the hearing. Therefore, this Court finds that the Applicant voluntarily abandoned this issue.

Violation of Fourth Amendment

Although the Applicant raised this allegation in his application, the Applicant did not pursue this claim at the hearing. Therefore, this Court finds that the Applicant voluntarily abandoned this issue.

Prosecutorial Misconduct

Although the Applicant raised this allegation in his application, the Applicant did not pursue this claim at the hearing. Therefore, this Court finds that the Applicant voluntarily abandoned this issue.

Summary

This Court finds in regards to the allegation of ineffective assistance of counsel, the Applicant's testimony is not credible. This Court further finds Counsel adequately conferred with the Applicant, conducted a proper investigation, was thoroughly competent in his representation, and that Counsel's conduct does not fall below the objective standard of reasonableness.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the

Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that Counsel committed either errors or omissions in his representation of the Applicant.

This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. This Court concludes the Applicant has not met his burden of proving Counsel failed to render reasonably effective assistance. See Frasier supra. Therefore, this allegation is denied.

CONCLUSION

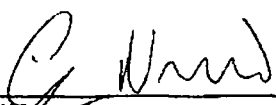
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court cautions Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 12 day of December, 2013.



Clinton Newman
Presiding Judge

WITNESSES

Parsons - LPD Del. #08-02196

f. K. v. u

DOCKET NO. 2008-GS-29-469

The State of South Carolina

County of Lancaster

COURT OF GENERAL SESSIONS

APRIL TERM 2008

ARREST WARRANT NUMBER/DOA

K276459 (DOA 2-5-08)

THE STATE

VS.

Randolph Frazier JR

ACTION OF GRAND JURY
TRUE BILL

J. D. Hammond
Foreperson of Grand Jury 2008

Date:

VERDICT

GUILTY

Indictment for

Burglary, First Degree

SC Code: §16-11-311(A)(2)

CDR Code: 0078

Class: Felony, EXM

CERTIFIED TO BE A TRUE COPY
12-11-08
JEFF HUMMOND
CLERK OF COMMON PLEAS
AND GENERAL SESSIONS COURT
LANCASTER COUNTY, S.C.

STATE OF SOUTH CAROLINA)
COUNTY OF LANCASTER)

INDICTMENT

At a Court of General Sessions, convened on April 3, 2008, the Grand Jurors of Lancaster County present upon their oath:

BURGLARY, FIRST DEGREE

That Randolph Frazier did in Lancaster County on or about February 5, 2008, enter the dwelling of Sherika Sanders without consent and with intent to commit a crime in the dwelling and Randolph Frazier has a prior record with two or more convictions for burglary or housebreaking or a combination of both in violation of §16-11-311(A)(2), *Code of Laws of South Carolina, (1976), as amended*.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Douglas A. Barfield, Jr., SOLICITOR