

VOLUME I OF III

STATE OF SOUTH CAROLINA

In The Supreme Court

RECEIVED

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APPEAL FROM SUMTER COUNTY

Howard P. King, Circuit Court Judge

S.C. Supreme Court

THE STATE,

RESPONDENT,

V.

MARCUS EVANS,

APPELLANT

RECORD ON APPEAL

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Appellate Defender

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STATE OF SOUTH CAROLINA

COUNTY OF LEE

COURT OF GENERAL SESSIONS

STATE OF S.C.,)
PLAINTIFF)

VS.)

TRANSCRIPT OF RECORD

2000-GS-31-10

VOLUME I OF IV

MARCUS EVANS, GILARON,)
TAYLOR, TRAVIS)
SINGLETON AND LAMONT)
WITHERSPOON,)
DEFENDANTS.)
-----)

BISHOPVILLE, SOUTH CAROLINA
DECEMBER 11 - 15, 2000

B E F O R E:

HONORABLE THOMAS W. COOPER, JR., JUDGE; AND A JURY.

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

DEBBIE T. NIELSEN, ASSISTANT SOLICITOR
ATTORNEY FOR THE PLAINTIFF

BRYAN DOBY, ESQUIRE
ATTORNEY FOR THE DEFENDANT EVANS

JIMMY ROGERS, ESQ.
ATTORNEY FOR THE DEFENDANT TAYLOR

MICHAEL JORDAN, ESQ.
ATTORNEY FOR THE DEFENDANT SINGLETON

CHIP FINNEY, ESQ.
ATTORNEY FOR THE DEFENDANT WITHERSPOON

KATHLEEN M. SIMMONS
CIRCUIT COURT REPORTER

<u>WITNESSES</u>	<u>DIRECT</u>	<u>I N D E X</u> <u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>

DANNY SIMON

NIELSEN	82			
JORDAN		88		
FINNEY		94		

J.D. DELLINGER

NIELSEN	96			
FINNEY		102		
DOBY		105		
JORDAN		106		

TRAVIS SINGLETON

JORDAN	109		125	
DOBY		116		
ROGERS		120		
NIELSEN		122		

J.D. DELLINGER

NIELSEN	137		154	
DOBY		141		
ROGERS		145		

LEONARD SCOTT

NIELSEN	161			
DOBY		167		

STEVEN JOHNSON

NIELSEN	169			
DOBY		175		
ROGERS		180		
COURT		182		

<u>WITNESSES</u>	<u>DIRECT</u>	<u>I N D E X</u> <u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>

DERRICK ALBERT

NIELSEN	185		194	
DOBY		188		
JORDAN		193		

MARTY OAKS

NIELSEN	196		212	
DOBY		203		
ROGERS		208		
FINNEY		212		

RODNEY YATES

NIELSEN	214			
DOBY		219		
ROGERS		224		
JORDAN		228		

DELVIN WAITERS

NIELSEN	229			
DOBY		235		
ROGERS		241		
JORDAN		243		

**** IN PRESENCE OF JURY ****

MARTY OAKS

NIELSEN	296		348	
DOBY		321		
ROGERS		329		
JORDAN		334		
FINNEY		343		

<u>WITNESSES</u>	<u>DIRECT</u>	<u>I N D E X</u> <u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>

LARRY DEBERRY

NIELSEN	355		404	
DOBY		368		
ROGERS		382		
JORDAN		391		
FINNEY		394		

DR. INEZ YACOB

NIELSEN	404		414	
ROGERS		413		

DELVIN WAITERS

NIELSEN	414			
DOBY		428		
ROGERS		434		
JORDAN		438		

AARON MONAHAN

NIELSEN	442			
FINNEY		449		

DONALD VICKERS

NIELSEN	451			
JORDAN		458		
FINNEY		459		

JENNIFER STONER

NIELSEN	467			
DOBY		475		
ROGERS		476		
JORDAN				

<u>WITNESSES</u>	<u>DIRECT</u>	<u>I N D E X</u> <u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>

DERRICK ALBERT

NIELSEN	478		504	
DOBY		492		
ROGERS		497		
JORDAN		503		

CHYAME BENN

NIELSEN	506		517, 521	
DOBY		514		
ROGERS		516		
FINNEY		519		
JORDAN		522		

LEONARD SCOTT

NIELSEN	523			
DOBY		541		
ROGERS		547		
JORDAN		550		
FINNEY		551		

WENDY BELL

NIELSEN	553			
ROGERS		556		
FINNEY		556		

STEVEN JOHNSON

NIELSEN	558			

J.D. DELLINGER

NIELSEN	574		635	
DOBY		594		
ROGERS		612		
JORDAN		623		
FINNEY		626		

<u>WITNESSES</u>	<u>DIRECT</u>	<u>I N D E X</u> <u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>

IRA PARNELL

NIELSEN	640		656	
DOBY		653		
ROGERS		655		

RODNEY YATES

NIELSEN	657		681	
DOBY		669		
ROGERS		674		
FINNEY		677		

DANIEL SIMON

NIELSEN	681		708	
DOBY		700		
ROGERS		702		
JORDAN		706		

STEVEN JOHNSON

NIELSEN	711			
DOBY		721		
ROGERS		729		

LATORIA DAVIS

DOBY	773			
ROGERS		783		
JORDAN		785		
FINNEY		787		
NIELSEN		792		

MARK GERALD

ROGERS	805			
NIELSEN		807		

<u>WITNESSES</u>	<u>DIRECT</u>	<u>I N D E X</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>

MAXINE WITHERSPOON

FINNEY	808				
NIELSEN			815		
JORDAN			816		

SARAH MCDANIEL

FINNEY	817				
NIELSEN			820		

LAMONT WITHERSPOON

FINNEY	820				
NIELSEN			855		
ROGERS			872		
JORDAN			876		

J.D. DELLINGER

NIELSEN	893				
FINNEY			894		
JORDAN			898		

CHARGE OF THE COURT: 982

VERDICT OF THE JURY: 1030

SENTENCE OF COURT : 1036

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
<u>STATE'S EXHIBITS</u>			
1	RIGHTS/STATEMENT	128	700
2	RIGHTS/STATEMENT	128	905
3	LINEUP	137	312
4	LINEUP	137	312
5	DIAGRAM	296	711
6	I.D. FORM WAITERS		428
7	I.D. FORM WAITERS		428
8	I.D. FORM SCOTT		532
9	I.D. FORM SCOTT		532
10	PHOTO		583
11	PHOTO		583
12	PHOTO		583
13	PHOTO		583
14	PHOTO		583
15	PHOTO		583
16	PHOTO		583
17	PHOTO		583
18	PHOTO		585
19	BOTTLE W/BULLET		642
20	BOTTLE W/BULLET		642
21	BROWN BAG W/BULLETS		653

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>

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22	LINEUP I.D. FORM YATES		667
23	LINEUP I.D. FORM YATES		667
24	AERIAL MAP		710
25	LINEUP I.D. FORM JOHNSON		719
26	LINEUP I.D. FORM JOHNSON		719

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1	PHOTO		602
2	PHOTO		602
3	PHOTO		602
4	PHOTO		602
5	PHOTO		602
6	PHOTO		602
7	PHOTO		602
8	PHOTO		602
9	PHOTO		602
10	PHOTO		602

COURT'S EXHIBITS

1	INDICTMENT	760
2	WARRANT	760
3	GRAND JURY REPORT	
4	QUESTION OF JURY 10:46 A.M.	

1 THE COURT: MADAM SOLICITOR, YOU CAN CALL YOUR CASE.

2 MS. NIELSEN: THANK YOU, YOUR HONOR. THE STATE CALLS
3 INDICTMENT 2000-GS-31-10, THE STATE VERSUS MARCUS EVANS
4 REPRESENTED BY BRYAN DOBY, TRAVIS SINGLETON REPRESENTED BY
5 MICHAEL JORDAN, GILARON TAYLOR REPRESENTED BY JAMES ROGERS
6 AND LAMONT WITHERSPOON REPRESENTED BY ERNEST FINNEY, III.

7 MARCUS EVANS AND GILARON TAYLOR ARE CHARGED WITH
8 MURDER, TRAVIS SINGLETON AND LAMONT WITHERSPOON ARE
9 CHARGED WITH ACCESSORY AFTER THE FACT AND MISPRISON OF A
10 FELONY AND THE STATE IS READY FOR TRIAL.

11 THE COURT: THANK YOU. LADIES AND GENTLEMEN, GIVE ME
12 YOUR ATTENTION FOR A FEW MOMENTS. AS YOU HAVE JUST HEARD
13 MS. NIELSEN ON BEHALF -- HAS CALLED THE CASE OF THE STATE
14 VERSUS MARCUS EVANS, GILARON TAYLOR, TRAVIS SINGLETON AND
15 LAMONT WITHERSPOON.

16 THESE INDIVIDUALS HAVE BEEN INDICTED BY THE
17 GRAND JURY OF LEE COUNTY. THE INDICTMENT CHARGES IN COUNT
18 ONE MURDER AND IT ALLEGES THAT MARCUS EVANS AND GILARON
19 TAYLOR DID IN LEE COUNTY ON OR ABOUT NOVEMBER THE 14TH,
20 1999 FELONIOUSLY, WILLFULLY AND WITH MALICE AFORETHOUGHT
21 KILL ONE HENRY SCOTT BY MEANS OF SHOOTING THE VICTIM AND
22 THAT THE VICTIM DIED AS A PROXIMATE RESULT THEREOF.

23 COUNT TWO OF THE INDICTMENT CHARGES ACCESSORY
24 AFTER THE FACT AND THAT COUNT ALLEGES THAT TRAVIS
25 SINGLETON AND LAMONT WITHERSPOON DID IN LEE COUNTY ON OR

1 ABOUT NOVEMBER THE 14TH, 1999, KNOWINGLY HID THE
2 COMMISSION AND THE COMPLETION OF A FELONY OF MURDER BY THE
3 PRINCIPAL FELONS, MARCUS EVANS AND GILARON TAYLOR, AID OR
4 BORE AND ASSIST THOSE FELONS TO ESCAPE DETECTION OR ARREST
5 OR OTHERWISE AVOID THE CONSEQUENCES OF THE CRIME IN
6 VIOLATION OF THE LAW.

7 COUNT THREE CHARGES MISPRISON OF A FELONY, AND
8 THAT COUNT ALLEGES THAT TRAVIS SINGLETON AND LAMONT
9 WITHERSPOON DID IN LEE COUNTY AT THE SAME TIME AND PLACE
10 WITHHOLD INFORMATION FROM THE SUMTER COUNTY SHERIFF'S
11 OFFICE AND OR THE LEE COUNTY SHERIFF'S OFFICE, LAW
12 ENFORCEMENT AGENCIES, CONCERNING THEIR KNOWLEDGE OF THE
13 KILLING OF HENRY SCOTT THUS ENGAGING IN CRIMINAL NEGLECT.

14 NOW LADIES AND GENTLEMEN, THE INDICTMENT THAT I
15 JUST READ TO YOU IS NOT EVIDENCE OR PROOF OF THE CHARGES
16 THAT IT CONTAINS. IT'S JUST A PIECE OF PAPER THAT HAS THE
17 CHARGES WRITTEN DOWN ON IT SO THAT YOU OR I OR ANYONE WHO
18 READS THE INDICTMENT WILL KNOW WHAT THIS CASE IS ALL ABOUT
19 AND WHAT THE CHARGES ARE ALL ABOUT.

20 LADIES AND GENTLEMEN, TO THE CHARGES CONTAINED
21 IN THE INDICTMENT, MR. EVANS, MR. TAYLOR, MR. SINGLETON
22 AND MR. WITHERSPOON HAVE ALL ENTERED PLEAS OF NOT GUILTY
23 AND HAVE REQUESTED A JURY TRIAL AT YOUR HANDS. GENTLEMEN,
24 MR. EVANS, MR. TAYLOR, MR. SINGLETON, MR. WITHERSPOON,
25 COULD EACH OF YOU PLEASE STAND AND FACE THE JURY OVER HERE

1 BEHIND YOU?

2 (ALL DEFENDANTS STOOD).

3 THE COURT: THANK YOU. YOU CAN BE SEATED.

4 (ALL DEFENDANTS SEATED).

5 THE COURT: LADIES AND GENTLEMEN, ARE ANY OF YOU ALL
6 RELATED BY BLOOD OR CONNECTED BY MARRIAGE TO ANY OF THESE
7 INDIVIDUALS CHARGED IN THE INDICTMENT, MR. EVANS, MR.
8 TAYLOR, MR. SINGLETON, MR. WITHERSPOON; IF SO, PLEASE
9 STAND.

10 ARE ANY OF YOU FRIENDS OR CASUAL ACQUAINTANCES
11 OR BUSINESS ASSOCIATES OR SOCIAL ACQUAINTANCES OR PEOPLE
12 WHO HAVE ANY DIRECT OR INDIRECT CONTACT WITH ANY OF THESE
13 INDIVIDUALS; IF SO, PLEASE STAND. THANK YOU.

14 LADIES AND GENTLEMEN, ACCORDING TO THE
15 INDICTMENT, THE CHARGES AROSE OUT OF AN INCIDENT WHICH
16 OCCURRED ON NOVEMBER THE 14TH OF LAST YEAR WHICH RESULTED
17 IN THE DEATH OF HENRY SCOTT. ARE ANY OF YOU RELATED BY
18 BLOOD OR CONNECTED BY MARRIAGE TO HENRY SCOTT; IF SO,
19 PLEASE STAND.

20 ARE ANY OF YOU FRIENDS OR CASUAL ACQUAINTANCES
21 OR BUSINESS ASSOCIATES OR SOCIAL ACQUAINTANCES OR PEOPLE
22 WHO HAVE ANY DIRECT OR INDIRECT CONTACT WITH MR. SCOTT; IF
23 SO, PLEASE STAND. THANK YOU.

24 LADIES AND GENTLEMEN, POTENTIAL WITNESSES IN
25 THIS CASE WHO MAY TESTIFY ON BEHALF OF THE STATE, AND I'M

1 GOING TO READ TO YOU A LIST OF NAMES, AND WHEN I FINISH
2 READING THIS LIST TO YOU, I'M GOING TO ASK YOU THE SAME
3 THING ABOUT THESE WITNESSES THAT I'VE ASKED YOU ABOUT THE
4 NAMES THAT I JUST READ TO YOU, THAT IS I WANT TO KNOW IF
5 YOU'RE KIN TO THEM BY BLOOD OR MARRIAGE, IF YOU HAVE ANY
6 CONNECTION, BUSINESS, SOCIAL, FRIENDSHIP, CASUAL
7 RELATIONSHIP OF ANY SORT WITH THEM.

8 POTENTIAL WITNESSES WHO MAY TESTIFY ON BEHALF OF
9 THE STATE ARE DANIEL SIMON, J.D. DELLINGER, LARRY DAVIS,
10 KELVIN WAITERS, CHYAME BENN, B-E-N-N, RODNEY YATES, MARTY
11 OAKS, STEVEN JOHNSON, LEONARD SCOTT. ARE ANY OF YOU
12 RELATED BY BLOOD OR CONNECTED BY MARRIAGE TO ANY OF THOSE
13 POTENTIAL WITNESSES; IF SO, PLEASE STAND. THANK YOU. YOU
14 CAN BE SEATED.

15 ARE ANY OF YOU FRIENDS OR CASUAL ACQUAINTANCES
16 OR BUSINESS ASSOCIATES OR SOCIAL ACQUAINTANCES OR PEOPLE
17 WHO HAVE ANY DIRECT OR INDIRECT CONTACT WITH ANY OF THOSE
18 WITNESSES; IF SO, PLEASE STAND. YES, MA'AM. YOUR NAME,
19 PLEASE MA'AM?

20 JUROR: CAROLYN G. WILSON.

21 THE COURT: MRS. WILSON?

22 THE CLERK: 168.

23 THE COURT: 158?

24 THE CLERK: 168.

25 THE COURT: MRS. WILSON, TELL ME WHO THE ASSOCIATION

1 IS WITH, PLEASE, MA'AM.

2 JUROR: STEVEN JOHNSON, CHURCH ASSOCIATION.

3 THE COURT: OKAY. YOU AND MR. JOHNSON GO TO THE SAME
4 CHURCH?

5 JUROR: YES, SIR.

6 THE COURT: WHAT CHURCH IS THAT, MRS. WILSON?

7 JUROR: CAVALIER.

8 THE COURT: ALL RIGHT. DO YOU HAVE ANY ASSOCIATION
9 WITH MR. JOHNSON OR HIS FAMILY OUTSIDE OF THE CHURCH.

10 JUROR: NO, SIR.

11 THE COURT: WOULD THAT ASSOCIATION, MRS. WILSON, THAT
12 IS THE FACT THAT YOU ALL GO TO THE SAME CHURCH, WOULD THAT
13 MAKE IT HARD FOR YOU TO BE A FAIR, IMPARTIAL JUROR IN A
14 CASE IN WHICH MR. JOHNSON IS LIKELY TO TESTIFY?

15 JUROR: NO, SIR.

16 THE COURT: YOU COULD SET THAT MATTER ASIDE THEN AND
17 DECIDE THIS CASE ON WHAT YOU HEAR IN COURT?

18 JUROR: YES, SIR.

19 THE COURT: THANK YOU, MRS. WILSON.

20 MS. NIELSEN: YOUR HONOR, WOULD YOUR LIST INCLUDE THE
21 NAME DERRICK ALBERT?

22 THE COURT: DERRICK ALBERT? THAT'S THE NAME. I READ
23 HALF, THE LAST HALF I WILL GET DOWN--

24 MS. NIELSEN: I THOUGHT I MISSED SOMETHING.

25 THE COURT: YOU DIDN'T. OTHER POTENTIAL WITNESSES

1 WHO MAY TESTIFY ON BEHALF OF THE STATE DR. INAZ YACoub,
2 Y-A-C-O-U-B.

3 MS. NIELSEN: YACoub.

4 THE COURT: DR. INAZ A. YACoub. IRA PARNELL,
5 JENNIFER STONER, WENDY BELL. MR. PARNELL, MRS. STONER AND
6 MRS. BELL ARE AGENTS OF STATE LAW ENFORCEMENT DIVISION.
7 GOT ELMORE LISTED HERE.

8 MS. NIELSEN: YES, SIR.

9 THE COURT: ALL RIGHT. DONALD VICKERS, ERIC MONOHAN,
10 GLORIA WILSON, DERRICK ALBERT. ANY OF YOU RELATED BY
11 BLOOD OR CONNECTED BY MARRIAGE TO ANY OF THOSE POTENTIAL
12 WITNESSES; IF SO, PLEASE STAND.

13 ARE ANY OF YOU FRIENDS OR CASUAL ACQUAINTANCES
14 OR BUSINESS ASSOCIATES OR SOCIAL ACQUAINTANCES OR PEOPLE
15 WHO HAVE ANY DIRECT OR INDIRECT CONTACT WITH ANY OF THOSE
16 PERSONS; IF SO PLEASE STAND. YES, MA'AM, YOUR NAME
17 PLEASE?

18 JUROR: JESSICA MARTIN.

19 THE COURT: MRS. MARTIN?

20 THE CLERK: 155.

21 THE COURT: MRS. MARTIN, WHO IS THE ASSOCIATION WITH,
22 PLEASE MA'AM?

23 JUROR: GLORIA WILSON.

24 THE COURT: GLORIA WILSON?

25 JUROR: YES, SIR.

1 THE COURT: WHAT IS THE NATURE OF THAT ASSOCIATION,
2 MA'AM?

3 JUROR: WE ALL LIVE IN THE SAME COMMUNITY.

4 THE COURT: LIVE IN THE SAME COMMUNITY? WHAT
5 COMMUNITY IS THAT PLEASE, MRS. MARTIN?

6 JUROR: ST. CHARLES COMMUNITY.

7 THE COURT: ST. JOHN?

8 JUROR: ST. CHARLES.

9 THE COURT: ST. CHARLES? OKAY. ARE YOU CLOSE
10 NEIGHBORS OF MRS. MARTIN, MRS. WILSON?

11 JUROR: YEAH.

12 THE COURT: HOW CLOSE DO YOU LIVE, NEXT DOOR OR DOWN
13 THE ROAD?

14 JUROR: RIGHT DOWN THE ROAD.

15 THE COURT: RIGHT DOWN THE ROAD? DOES SHE VISIT IN
16 YOU ALL'S HOME AND DO YOU ALL VISIT IN HERS FROM TIME TO
17 TIME?

18 JUROR: FROM TIME TO TIME.

19 THE COURT: ALL RIGHT. WOULD THAT ASSOCIATION THAT
20 YOU HAVE WITH MRS. WILSON, MRS. MARTIN, WOULD THAT MAKE IT
21 DIFFICULT FOR YOU TO BE A FAIR, IMPARTIAL JUROR IN A CASE
22 IN WHICH SHE IS LIKELY TO TESTIFY?

23 JUROR: NO.

24 THE COURT: YOU COULD SET THAT MATTER ASIDE THEN AND
25 DECIDE THIS CASE BASED UPON WHAT YOU WOULD HEAR IN COURT,

1 MRS. MARTIN? MRS. MARTIN, WOULD YOU PLEASE STAND? I HAVE
2 ONE MORE QUESTION TO ASK YOU. YOU COULD MAKE YOUR
3 DECISION AS A JUROR IN THIS CASE THEN ON THE BASIS OF WHAT
4 YOU WOULD HEAR IN COURT WITHOUT REGARD TO THE FACT THAT
5 YOU HAPPEN TO BE FRIENDS WITH THE WITNESS? COULD YOU DO
6 THAT?

7 JUROR: YEAH.

8 THE COURT: THANK YOU, MA'AM. LADIES AND GENTLEMEN,
9 OTHER POTENTIAL WITNESSES WHO MAY TESTIFY IN THE TRIAL OF
10 THIS CASE ARE MAXINE WITHERSPOON, SARAH MCDANIEL, TAMESHIA
11 WILLIS, WAYNE SIMS, MARK GERALD, STEVE MCLEOD. ARE ANY OF
12 YOU ALL RELATED BY BLOOD OR CONNECTED BY MARRIAGE TO ANY
13 OF THOSE WITNESSES?

14 ARE ANY OF YOU FRIENDS OR BUSINESS ASSOCIATES OR
15 SOCIAL ACQUAINTANCES OR PEOPLE WHO HAVE ANY DIRECT OF
16 INDIRECT CONTACT WITH ANY OF THOSE WITNESSES; IF SO,
17 PLEASE STAND. THANK YOU. YES, MA'AM, YOUR NAME PLEASE?

18 JUROR: GWENDOLYN SMITH.

19 THE COURT: MRS. SMITH? ALL RIGHT. LET ME GET YOU
20 LOCATED WITH US.

21 JUROR: 109.

22 THE COURT: THANK YOU, MRS. SMITH, 109. WHO IS THE
23 ASSOCIATION WITH, PLEASE?

24 JUROR: I KNOW MAXINE WITHERSPOON.

25 THE COURT: OKAY. DO YOU KNOW HER AS A CLOSE FRIEND

1 OR CASUAL FRIEND OR HOW WOULD YOU CHARACTERIZE THAT?

2 JUROR: WELL, WE WENT TO SCHOOL TOGETHER.

3 THE COURT: ALL RIGHT. SINCE THAT TIME, MRS. SMITH,
4 HAVE YOU MAINTAINED A WHOLE LOT OF CONTACT WITH HER?

5 JUROR: NO.

6 THE COURT: WOULD THAT PRIOR CONTACT, THE FACT THAT
7 YOU WERE IN SCHOOL WITH HER SOMETIME AGO MAKE IT HARD FOR
8 YOU TO BE FAIR AND IMPARTIAL AS A JUROR IN THIS CASE IN
9 WHICH SHE MAY TESTIFY?

10 JUROR: NO.

11 THE COURT: YOU'D SET THAT MATTER ASIDE THEN AND
12 DECIDE THIS CASE ON THE BASIS OF WHAT YOU WOULD HEAR IN
13 COURT?

14 JUROR: YEAH.

15 THE COURT: THANK YOU, MA'AM. THANK YOU, MRS.
16 SMITH. LADIES AND GENTLEMEN, THE INDICTMENT IN THIS CASE,
17 AND I REMIND YOU IT IS NOT EVIDENCE, OF COURSE, THE
18 INDICTMENT IN THIS CASE ALLEGES OR CHARGES OR AROSE OUT OF
19 AN INCIDENT WHICH OCCURRED ON NOVEMBER THE 14TH OF LAST
20 YEAR, THAT IS 1999, AT THE DAVIS COUNTRY CLUB ON THE
21 WYSAKIE MANVILLE ROAD.

22 THE INDICTMENT ALLEGES THAT A SHOOTING OCCURRED
23 RESULTING IN THE DEATH OF MR. HENRY SCOTT AS YOU KNOW. I
24 TELL YOU THAT NOT TO COMMENT UPON THE FACTS BECAUSE I HAVE
25 ALREADY TOLD YOU THE INDICTMENT IS NOT PROOF OF THE

1 FACTS.

2 I TELL YOU THAT SIMPLY TO LET YOU KNOW WHAT THE
3 CASE IS ALL ABOUT, WHAT THE CHARGES ARE ALL ABOUT SO THAT
4 YOU CAN TELL ME IF YOU KNOW ANYTHING ABOUT THIS CASE, THAT
5 IS IF YOU HAVE SEEN OR HEARD OR READ ANYTHING ABOUT THIS
6 CASE OR HAVE ANY KNOWLEDGE ABOUT THE CASE FROM ANY SOURCE
7 AT ALL, WOULD YOU PLEASE STAND. THANK YOU.

8 NOW LADIES AND GENTLEMEN, THE LAWYERS WHO WILL
9 BE INVOLVED IN THE TRIAL OF THIS CASE, MR. MARCUS EVANS IS
10 REPRESENTED -- EXCUSE ME. LET ME START WITH THE STATE. I
11 APOLOGIZE. ON BEHALF OF THE STATE, THE CASE WILL BE --
12 YES I'M SORRY. YOUR NAME PLEASE?

13 JUROR: VERNISKA LAWS.

14 THE COURT: MRS. LAWS. YES, MA'AM. I CAN'T HEAR
15 YOU.

16 JUROR: I WAS AT THE CLUB THAT NIGHT.

17 THE COURT: YOU WERE? OKAY. WELL, COME FORWARD,
18 MRS. LAWS. THANK YOU, MA'AM. YOU MIGHT END UP BEING A
19 WITNESS.

20 (WHEREUPON JUROR APPROACHED).

21 THE COURT: MRS. LAWS, STAND RIGHT THERE, PLEASE
22 MA'AM. MRS. LAWS, WE ARE STILL CHECKING ON YOUR JURY
23 SERVICE. YOU INDICATED YOU HAD PREVIOUSLY SERVED AS A
24 JUROR, SO WE ARE NOT GOING TO PUT YOUR NAME IN THE HOPPER
25 FOR THIS CASE IN ANY EVENT.

1 I WANT YOU TO STAY WITH US HOWEVER BECAUSE MRS.
2 LAWS INDICATED SHE HAD SERVED IN THE LAST THREE YEARS AND
3 ASKED TO BE EXEMPT FROM SERVICE. OBVIOUSLY WE HAVEN'T HAD
4 A CHANCE SINCE WE KNEW THIS THIS MORNING TO CHECK THROUGH
5 AND MAKE SURE SHE IS ENTITLED TO THE EXEMPTION.

6 SHE HAS INDICATED A DESIRE TO EXERCISE THAT
7 EXEMPTION IN ANY EVENT, SO WE ARE NOT GOING TO PUT HER
8 NAME IN THE HOPPER UNTIL WE COULD CLEAR THAT UP. DOES
9 THAT CREATE PROBLEMS FOR ANYBODY, GENTLEMEN?

10 MR. FINNEY: MAY WE APPROACH?

11 THE COURT: SURE.

12 (WHEREUPON A BENCH CONFERENCE WAS HAD.)

13 THE COURT: MRS. LAWS, IF YOU WOULD, PLEASE MA'AM, IF
14 YOU WOULD STEP RIGHT BACK OUT IN THAT CENTER AISLE. STAND
15 RIGHT BACK THERE.

16 (WHEREUPON A BENCH CONFERENCE WAS HAD.)

17 THE COURT: ALL RIGHT. MRS. LAWS, COME FORWARD,
18 PLEASE MA'AM. OTHER JUROR WAIT RIGHT THERE.

19 (WHEREUPON JUROR APPROACHED).

20 THE COURT: STILL WANT TO DO IT INDIVIDUALLY. YOUR
21 NAME, PLEASE MA'AM?

22 JUROR: SHANTAE GARDNER.

23 THE COURT: ALL RIGHT. IF YOU'LL STAND RIGHT THERE
24 WHERE YOU WERE. MRS. LAWS, YOU WERE A WITNESS?

25 JUROR: NO, I WASN'T A WITNESS.

1 THE COURT: YOU WERE NOT?

2 JUROR: NO.

3 THE COURT: YOU WERE AT THE CLUB WHEN ALL THIS
4 HAPPENED?

5 JUROR: UH-HUH.

6 THE COURT: AND WHAT WAS YOUR KNOWLEDGE ABOUT WHAT
7 WAS GOING ON AT THE TIME?

8 JUROR: OH, NO, I JUST WAS THERE THAT NIGHT. I DON'T
9 EVEN...

10 THE COURT: HAVE YOU EVER BEEN INTERVIEWED BY ANY OF
11 THE POLICE OFFICERS?

12 JUROR: NO.

13 THE COURT: NOBODY HAS EVER TAKEN A STATEMENT FROM
14 YOU?

15 JUROR: HUH-UH.

16 THE COURT: DID YOU SEE WHAT WENT ON?

17 JUROR: NO.

18 THE COURT: DID YOU HEAR THE SHOOTING?

19 JUROR: I HEARD IT, BUT I...

20 THE COURT: MA'AM?

21 JUROR: I DIDN'T SEE ANYTHING.

22 THE COURT: I SEE. WHERE WERE YOU WHEN THE SHOOTING
23 OCCURRED?

24 JUROR: ON THE INSIDE.

25 THE COURT: YOU WERE ON THE INSIDE?

1 JUROR: UH-HUH.

2 THE COURT: SINCE YOU GOT HERE THIS MORNING, HAVE YOU
3 DISCUSSED WHAT YOU JUST TOLD ME ABOUT WHAT YOU KNOW ABOUT
4 THIS WITH ANY OF THE OTHER JURORS?

5 JUROR: NO.

6 THE COURT: YOU HAVE NOT? OKAY. DID I UNDERSTAND
7 YOU TO SAY THAT IF YOU DID SERVE WITHIN THE LAST THREE
8 YEARS AS A JUROR, THAT YOU DID NOT WANT TO SERVE THIS WEEK
9 OR THAT YOU WERE WILLING TO SERVE?

10 JUROR: NO, I'M WILLING TO SERVE.

11 THE COURT: YOU ARE WILLING TO SERVE IN SPITE OF IT?
12 OKAY. SO YOU WERE THERE ON THE NIGHT WHEN IT HAPPENED BUT
13 YOU REALLY WEREN'T AN EYE WITNESS TO WHAT WAS GOING ON; IS
14 THAT RIGHT?

15 JUROR: YES.

16 THE COURT: ALL RIGHT. THANK YOU, MA'AM. YOU CAN GO
17 BACK. EXCUSE ME JUST A MINUTE. JUST ONE MINUTE, PLEASE
18 MA'AM. I'M SORRY.

19 (MR. JORDAN CONFERRING WITH COURT).

20 THE COURT: HAVE YOU DISCUSSED OR HEARD ANYBODY ELSE
21 DISCUSSING ON THE JURY PANEL ANYTHING ABOUT WHAT WENT ON
22 THAT NIGHT AT THE DAVIS CLUB?

23 JUROR: NO.

24 THE COURT: ALL RIGHT. DOES THAT ANSWER YOUR
25 QUESTION? ALL RIGHT. YOU CAN BACK -- ONE MORE THING

1 BEFORE YOU GO BACK. WHEN YOU GO BACK AND SIT DOWN, DON'T
2 SAY ANYTHING ABOUT THIS CASE TO ANYBODY YOU ARE SITTING
3 NEAR, OKAY? THANK YOU, MRS. LAWS. THANK YOU. ALL
4 RIGHT. NOW WE WILL TALK WITH YOU, PLEASE MA'AM.

5 THE CLERK: THIS IS JUROR NUMBER 40.

6 (APPROACHED BENCH).

7 THE COURT: MRS. LAWS WILL BE STOOD ASIDE FROM THE
8 TRIAL OF THIS CASE. YOUR NAME AGAIN?

9 JUROR: SHANTAE GARDNER.

10 THE COURT: MRS. GARDNER? YEAH. MRS. GARDNER, YOU
11 WERE THERE THE NIGHT IT HAPPENED?

12 JUROR: YES.

13 THE COURT: WHERE WERE YOU WHEN IT -- WHEN THIS WAS--

14 JUROR: IN THE CLUB.

15 THE COURT: YOU WERE INSIDE?

16 JUROR: UH-HUH.

17 THE COURT: AND THE SHOTS WERE FIRED OUTSIDE; IS THAT
18 RIGHT?

19 JUROR: YEAH.

20 THE COURT: DID YOU HEAR THEM?

21 JUROR: NO.

22 THE COURT: DID YOU SEE ANYTHING THAT WENT ON THAT
23 NIGHT?

24 JUROR: HUH UH.

25 THE COURT: WERE YOU EVER INTERVIEWED BY ANY LAW

1 ENFORCEMENT OFFICER, ANY INVESTIGATOR?

2 JUROR: NO.

3 THE COURT: HAVE YOU SINCE YOU GOT HERE TODAY, HAVE
4 YOU MADE ANY STATEMENT TO ANY OF THE FOLKS ON THE JURY
5 ABOUT WHAT YOU KNOW OR THE FACT THAT YOU WERE THERE THAT
6 NIGHT? HAVE YOU TALKED -- IN OTHER WORDS, HAVE YOU TALKED
7 IN CASUAL CONVERSATION WITH ANYBODY OUT THERE THAT YOU
8 HAVE BEEN SITTING WITH, MA'AM?

9 JUROR: NO.

10 THE COURT: YOU UNDERSTAND MY QUESTION?

11 JUROR: YES.

12 THE COURT: AND WHAT IS THE ANSWER?

13 JUROR: NO.

14 THE COURT: HAVE YOU HEARD ANYBODY ELSE OUT THERE ON
15 THE JURY PANEL DISCUSSING THE EVENTS THAT HAPPENED THAT
16 NIGHT?

17 JUROR: NO.

18 THE COURT: YOU HAVE NOT? ALL RIGHT. THANK YOU,
19 MA'AM. YOU CAN GO BACK AND HAVE A SEAT. PLEASE DON'T
20 DISCUSS THESE THINGS WITH ANYBODY ELSE. ALL RIGHT?

21 JUROR: OKAY.

22 THE COURT: THANK YOU. JUROR NUMBER 40 WILL BE STOOD
23 ASIDE AS A JUROR IN THIS CASE. ALL RIGHT. OKAY.

24 (BACK ON BENCH).

25 THE COURT: LADIES AND GENTLEMEN, ADDITIONAL

1 WITNESSES WHO MAY TESTIFY IN THE TRIAL OF THIS CASE ARE
2 LATORIA DAVIS, KENYA BARRETT AND ROBERT CROOM. ARE ANY OF
3 YOU ALL RELATED BY BLOOD OR CONNECTED BY MARRIAGE TO ANY
4 OF THOSE POTENTIAL WITNESSES; IF SO, PLEASE STAND.

5 ARE ANY OF YOU FRIENDS OR CASUAL ACQUAINTANCES
6 OR BUSINESS ASSOCIATES OR PEOPLE WHO HAVE ANY DIRECT OR
7 INDIRECT CONTACT WITH ANY OF THOSE POTENTIAL WITNESSES; IF
8 SO, PLEASE STAND.

9 LADIES AND GENTLEMEN, THE LAWYERS WHO WILL BE
10 INVOLVED IN THE PROSECUTION OF THIS CASE ON BEHALF OF THE
11 STATE THE CASE WILL BE PRESENTED BY ASSISTANT SOLICITOR
12 DEBBIE TRUETT NIELSEN OF THE LEE COUNTY SOLICITOR'S OFFICE
13 HERE IN THE THIRD JUDICIAL CIRCUIT AND MR. DUDLEY SALEEBY
14 WHO YOU HAVE ALREADY MET THIS MORNING.

15 ON BEHALF OF THE DEFENDANTS, THE DEFENDANT
16 MARCUS EVANS IS REPRESENTED BY MR. BRYAN DOBY OF THE LEE
17 COUNTY BAR. THE DEFENDANT GILARON TAYLOR IS REPRESENTED
18 BY MR. JIMMY ROGERS OF THE RICHLAND COUNTY BAR. THE
19 DEFENDANT TRAVIS SINGLETON IS REPRESENTED BY MR. MICHAEL
20 JORDAN OF THE SUMTER COUNTY BAR. THE DEFENDANT LAMONT
21 WITHERSPOON IS REPRESENT BY ERNEST A. FINNEY, III, CHIP
22 FINNEY, OF THE SUMTER COUNTY BAR.

23 (ATTORNEYS STOOD).

24 THE COURT: THANK YOU, GENTLEMEN. LADIES AND
25 GENTLEMEN, ARE ANY OF YOU ALL RELATED BY BLOOD OR

1 CONNECTED BY MARRIAGE TO ANY OF THESE LAWYERS OR DO YOU
2 HAVE ANY BUSINESS, SOCIAL OR OTHER RELATIONSHIP,
3 FRIENDSHIP, CASUAL ACQUAINTANCE WITH THEM INCLUDING EVER
4 HAVING BEEN REPRESENTED BY ANY OF THEM IN THE PAST; IF SO
5 PLEASE STAND. ALL RIGHT. WE WILL START AT THE VERY BACK
6 IN THE RED. YOUR NAME PLEASE, IN THE BACK?

7 JUROR: MY NAME IS--

8 THE CLERK: 45.

9 THE COURT: NUMBER 45 IS MRS. HARDNETT. MRS.
10 HARDNETT, TELL ME WHO YOU WERE REPRESENTED BY OR WHAT THE
11 ASSOCIATION IS, PLEASE MA'AM.

12 JUROR: MR. BRYAN DOBY.

13 THE COURT: ALL RIGHT. HAS HE REPRESENTED YOU IN THE
14 PAST?

15 JUROR: YES, HE HAS.

16 THE COURT: ALL RIGHT. WOULD THAT FACT, MRS.
17 HARDNETT, MAKE IT DIFFICULT FOR YOU TO BE A FAIR AND
18 IMPARTIAL JUROR IN A CASE IN WHICH HE IS ACTUALLY ONE OF
19 THE LAWYERS?

20 JUROR: NO.

21 THE COURT: YOU WOULD SET THAT MATTER ASIDE THEN AND
22 DECIDE THIS CASE BASED JUST UPON WHAT YOU WOULD HEAR IN
23 COURT?

24 JUROR: YES.

25 THE COURT: THANK YOU, MA'AM. YOU CAN BE SEATED.

1 YES, SIR, YOUR NAME IN THE JACKET THERE IN THE FRONT?

2 JUROR: BOBBY WILSON.

3 THE COURT: MR. WILSON? MR. WILSON, TELL ME ABOUT
4 THE ASSOCIATION, PLEASE SIR.

5 JUROR: I HAD A--

6 THE COURT: NO, SIR. JUST TELL ME WHO -- SOME OF
7 THESE GENTLEMEN REPRESENTED YOU IN THE PAST?

8 JUROR: YES, SIR, BRYAN DOBY.

9 THE COURT: MR. DOBY DID?

10 JUROR: YES, SIR.

11 THE COURT: ALL RIGHT, SIR. HOW LONG AGO WAS THAT,
12 MR. WILSON?

13 JUROR: ABOUT THREE YEARS, FOUR, MAYBE FOUR YEARS.

14 THE COURT: ALL RIGHT. WOULD THAT PRIOR ASSOCIATION,
15 MR. WILSON, MAKE IT DIFFICULT FOR YOU TO BE FAIR AND
16 IMPARTIAL AS A JUROR IN THIS CASE IF YOU WERE ASKED TO
17 SERVE?

18 JUROR: NO.

19 THE COURT: YOU CAN SET THAT PRIOR REPRESENTATION
20 ASIDE? IN OTHER WORDS, YOU COULD SET THAT MATTER ASIDE
21 AND DECIDE THIS CASE BASED ON WHAT YOU WOULD HEAR IN
22 COURT?

23 JUROR: YES.

24 THE COURT: WITHOUT REGARD TO WHO THE LAWYERS ARE?

25 JUROR: YES, SIR.

1 THE COURT: ALL RIGHT, SIR. THANK YOU, MR. WILSON.

2 YES, MA'AM ON THE AISLE, YOUR NAME PLEASE MA'AM.

3 JUROR: BETTY FULWOOD. NUMBER 39. MRS. FULWOOD,

4 TELL ME ABOUT THE ASSOCIATION, PLEASE.

5 JUROR: MS. TRUETT.

6 THE COURT: I'M SORRY?

7 JUROR: MS. TRUETT.

8 THE COURT: MS. TRUETT? HAS SHE REPRESENTED YOU IN
9 THE PAST?

10 JUROR: YES.

11 THE COURT: ALL RIGHT. WOULD THAT MAKE IT DIFFICULT
12 FOR YOU TO BE A FAIR AND AN IMPARTIAL JUROR IN A CASE IN
13 WHICH MS. NIELSEN IS ONE OF THE LAWYERS, MRS. FULWOOD?

14 JUROR: NO.

15 THE COURT: YOU COULD SET THAT MATTER ASIDE AND
16 DECIDE THIS CASE ON WHAT YOU WOULD HEAR IN COURT?

17 JUROR: YES, MA'AM.

18 THE COURT: THANK YOU, MA'AM. IN THE CENTER, YOUR
19 NAME PLEASE?

20 JUROR: MARSHAL FRANKLIN.

21 THE COURT: MRS. FRANKLIN IS JUROR NUMBER 38. TELL
22 ME ABOUT THE ASSOCIATION PLEASE, MRS. FRANKLIN.

23 JUROR: BRYAN DOBY.

24 THE COURT: MR. DOBY HAS REPRESENTED YOU IN THE
25 PAST?

1 JUROR: HE IS NOW.

2 THE COURT: HE IS REPRESENTING YOU NOW?

3 JUROR: YES.

4 THE COURT: ALL RIGHT. MRS. FRANKLIN, WE WILL STAND
5 YOU ASIDE AS A JUROR IN THE TRIAL OF THIS CASE AS MUCH AS
6 YOUR LAWYER IS REPRESENTING ONE OF THE INDIVIDUALS
7 INVOLVED IN THIS CASE. NUMBER 38 WILL BE STOOD ASIDE AS A
8 JUROR IN THIS CASE. THANK YOU, MA'AM. YOUR NAME.
9 PLEASE?

10 JUROR: BERNICE BOYKIN.

11 THE COURT: MRS. BOYKIN?

12 THE CLERK: 17.

13 THE COURT: JUROR NUMBER 17. MRS. BOYKIN, TELL ME
14 ABOUT THE REPRESENTATION, PLEASE MA'AM.

15 JUROR: BRYAN DOBY.

16 THE COURT: HE HAS REPRESENTED YOU IN THE PAST?

17 JUROR: YES, HE HAS.

18 THE COURT: WOULD THAT MAKE IT DIFFICULT FOR YOU TO
19 BE A FAIR AND IMPARTIAL JUROR IN THIS CASE?

20 JUROR: NO, SIR.

21 THE COURT: WOULD YOU BE ABLE TO SET THAT MATTER
22 ASIDE AND DECIDE THIS CASE ON THE MATTER OF WHAT YOU WOULD
23 HEAR IN COURT?

24 JUROR: YES.

25 THE COURT: THANK YOU, MRS. BOYKIN. NOW LADIES AND

1 GENTLEMEN, YOU UNDERSTAND FROM MY READING OF THE
2 INDICTMENT TO YOU, I REMIND YOU CONSTANTLY IT'S NOT PROOF
3 OF ANYTHING, IT'S JUST A PIECE OF PAPER THAT HAS CHARGES
4 WRITTEN DOWN ON IT, BUT YOU UNDERSTAND WHAT THE
5 ALLEGATIONS OR WHAT THE CHARGES ARE.

6 AND YOU UNDERSTAND THE CRIMES WITH WHICH THESE
7 INDIVIDUALS HAVE BEEN ACCUSED. SO I NEED TO FIND OUT FROM
8 YOU AT THIS POINT IN TIME IF ANY OF YOU OR ANY MEMBERS OF
9 YOUR IMMEDIATE FAMILY HAVE EVER HAD ANY INVOLVEMENT IN
10 THOSE TYPES OF CRIMES, AND THE CRIMES SPECIFICALLY CHARGED
11 IN THIS CASE ARE MURDER AND ACCESSORY AFTER THE FACT AND
12 MISPRISON OF A FELONY.

13 BUT I WANT TO KNOW IF ANY OF YOU OR ANY MEMBERS
14 OF YOUR IMMEDIATE FAMILY, THAT IS MEMBERS OF YOUR
15 HOUSEHOLD HAVE EVER BEEN INVOLVED IN ANY CRIME OF PERSONAL
16 VIOLENCE. PERSONAL VIOLENCE WOULD BE A CRIME LIKE MURDER
17 OR MANSLAUGHTER OR ASSAULT AND BATTERY WITH INTENT TO KILL
18 OR ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE.

19 IT COULD BE CRIMINAL DOMESTIC VIOLENCE, IT COULD
20 BE KIDNAPPING, CRIMINAL SEXUAL CONDUCT, ANY TYPE OF CRIME
21 OF PERSONAL VIOLENCE. I NEED TO KNOW IF YOU OR ANY
22 MEMBERS OF YOUR IMMEDIATE FAMILY HAVE EVER BEEN INVOLVED
23 IN ANY SUCH CRIME. THE INVOLVEMENT COULD HAVE BEEN AS A
24 DEFENDANT, THAT IS THE PERSON CHARGED WITH A CRIME, THE
25 INVOLVEMENT COULD HAVE BEEN AS A VICTIM OF THE CRIME OR IT

1 COULD HAVE BEEN AS A WITNESS.

2 SO FIRST OF ALL YOU NEED TO UNDERSTAND THAT THE
3 QUESTION DOES NOT ONLY APPLY TO YOU, IT APPLIES TO ANY
4 MEMBERS OF YOUR IMMEDIATE FAMILY, ANY MEMBERS OF YOUR
5 HOUSEHOLD. NOW, I'M GOING TO GET WAY DOWN THE LINE TO
6 NIECES AND NEPHEWS AND THIRD AND FOURTH COUSINS WAY OFF,
7 WE OBVIOUSLY ARE NOT ASKING, INQUIRING OF THAT BECAUSE
8 THERE ARE VERY FEW OF US WHO DON'T HAVE SOMEWHERE IN OUR
9 FAMILY LINE SOMEONE WHO WOULD QUALIFY UNDER QUESTIONS I
10 JUST ASKED YOU, BUT WHAT I WANT TO KNOW IS MEMBERS OF YOUR
11 IMMEDIATE FAMILY, MEMBERS OF YOUR HOUSEHOLD.

12 SECONDLY THE QUESTION APPLIES NOT ONLY TO THE
13 CRIME OF MURDER, IT INVOLVES TO ANY CRIME OF PERSONAL
14 VIOLENCE AS I HAVE JUST DEFINED THAT FOR YOU. AND FINALLY
15 IT APPLIES TO A WIDE RANGE OF POSSIBLE INVOLVEMENT IN THE
16 CRIME. YOU OR YOUR HOUSEHOLD MEMBER MIGHT HAVE BEEN THE
17 VICTIM OF THE CRIME OR YOU MIGHT HAVE BEEN A DEFENDANT IN
18 A CRIME OR YOU MIGHT HAVE BEEN A WITNESS TO A CRIME.

19 NOW, IF ANY OF THOSE THINGS APPLY TO YOU, I WANT
20 YOU TO FORM A LINE IN THE CENTER AISLE PLEASE RIGHT NOW
21 AND I'M GOING TO BRING YOU FORWARD ONE AT A TIME AND WE
22 WILL TALK WITH YOU PRIVATELY DOWN HERE AT SIDE BAR. SO IF
23 THOSE THINGS APPLY TO YOU, IF YOU'LL PLEASE FORM A LINE IN
24 THAT CENTER AISLE AT THIS TIME. THANK YOU.

25 (APPROACHED BENCH) .

1 THE COURT: IF YOU COME FORWARD, PLEASE MA'AM FIRST.
2 IF YOU HAVE ALREADY BEEN EXCUSED OR STOOD ASIDE, YOU DON'T
3 HAVE TO GET IN LINE. AND YOU, MRS. GARDNER, I BELIEVE IS
4 IT NUMBER 40? YOU HAVE ALREADY BEEN STOOD ASIDE, SO YOU
5 DON'T HAVE TO GET IN LINE. THANK YOU. YES, MA'AM, YOUR
6 NAME?

7 JUROR: BEVERLY RICHBURG.

8 THE COURT: MS. RICHBURG IS JUROR NUMBER 94. MRS.
9 RICHBURG, WAS IT YOU OR A FAMILY MEMBER THAT WAS
10 INVOLVED?

11 JUROR: MY HUSBAND.

12 THE COURT: YOUR HUSBAND?

13 JUROR: UH-HUH.

14 THE COURT: WHO IS YOUR HUSBAND?

15 JUROR: MARK RICHBURG.

16 THE COURT: WHAT WAS THE INVOLVEMENT?

17 JUROR: CRIMINAL DOMESTIC VIOLENCE.

18 THE COURT: THAT WAS AGAINST YOU?

19 JUROR: UH-HUH.

20 THE COURT: DID THAT OCCUR HERE IN LEE COUNTY?

21 JUROR: YES, IT DID.

22 THE COURT: HOW LONG AGO WAS IT?

23 JUROR: ABOUT A YEAR AND A HALF AGO OR TWO YEARS.

24 THE COURT: WAS HE PROSECUTED? DID HE GO TO COURT?

25 JUROR: YEAH, I THINK HE DID.

1 THE COURT: HE HAD TO GO TO COURT? DID YOU GO TO
2 COURT AND TESTIFY?

3 JUROR: NO.

4 THE COURT: YOU DID NOT? DID YOU INVOLVE YOURSELF
5 WITH THE INVESTIGATION OF THE CHARGE, THE OFFICER COME AND
6 TALK WITH YOU ABOUT IT?

7 JUROR: I THINK THE JUDGE DID.

8 THE COURT: THE JUDGE?

9 JUROR: YEAH.

10 THE COURT: THIS WAS DONE AT MAGISTRATE'S COURT?

11 JUROR: YES.

12 THE COURT: ALL RIGHT. MRS. RICHBURG, WOULD YOUR
13 INVOLVEMENT IN THAT PARTICULAR CASE -- YOU WERE THE VICTIM
14 OF THAT?

15 JUROR: YES.

16 THE COURT: WOULD YOUR INVOLVEMENT IN THAT CASE AS A
17 VICTIM OF CRIMINAL DOMESTIC VIOLENCE MAKE IT DIFFICULT FOR
18 YOU TO BE A FAIR AND IMPARTIAL JUROR IN A CASE INVOLVING
19 THESE ALLEGATIONS?

20 JUROR: NO.

21 THE COURT: YOU COULD SET ASIDE YOUR OWN PERSONAL
22 EXPERIENCE AND DECIDE THIS CASE ON THE BASIS OF WHAT YOU
23 WOULD HEAR IN COURT?

24 JUROR: YES, MA'AM.

25 THE COURT: YOU WOULD DO THAT, PLEASE MA'AM?

1 JUROR: YES.

2 THE COURT: THANK YOU, MRS. RICHBURG. YOU'RE FINE.
3 GO BACK AND HAVE A SEAT. YES, MA'AM, IF YOU COME FORWARD
4 PLEASE NEXT.

5 (APPROACHED BENCH) .

6 THE COURT: YOUR NAME, PLEASE MA'AM?

7 JUROR: RENNIE HARDNETT, NUMBER 45.

8 THE COURT: ALL RIGHT. MRS. HARDNETT, TELL ME WAS IT
9 YOU OR A FAMILY MEMBER THAT WAS INVOLVED?

10 JUROR: I WAS.

11 THE COURT: AND TELL ME THAT SITUATION, PLEASE MA'AM.

12 JUROR: TELL YOU ABOUT IT?

13 THE COURT: YES, MA'AM.

14 JUROR: I WAS ATTACKED BY A PERSON.

15 THE COURT: OKAY. WHERE DID THAT HAPPEN?

16 JUROR: HERE IN BISHOPVILLE.

17 THE COURT: HOW LONG AGO DID THAT HAPPEN?

18 JUROR: YEAR AND SOME MONTH.

19 THE COURT: OKAY. WAS THE PERSON WHO ATTACKED YOU
20 EVER CAUGHT?

21 JUROR: YES.

22 THE COURT: WAS HE PROSECUTED?

23 JUROR: YES.

24 THE COURT: OKAY. WHAT WAS HIS NAME?

25 JUROR: HER NAME.

1 THE COURT: HER NAME?

2 JUROR: HICKMON, FAITH HICKMON.

3 THE COURT: MRS. HICKMON? WAS THAT HANDLED IN
4 MAGISTRATE'S COURT OR WAS IT DONE HERE IN THIS COURTROOM?

5 JUROR: IT WAS DONE IN THIS COURT.

6 THE COURT: IT WAS? OKAY. AND WHO WAS THE SOLICITOR
7 THAT PROSECUTED THAT CASE?

8 JUROR: MS. TRUETT.

9 THE COURT: MRS. TRUETT? OKAY. NOW, THAT WAS WHAT
10 YOU WERE REFERRING TO EARLIER? DIDN'T YOU STAND AND
11 INDICATE...

12 JUROR: NO, I KNEW BRYAN. DIVORCE COURT.

13 THE COURT: OKAY. ALL RIGHT. WOULD YOUR INVOLVEMENT
14 IN A PARTICULAR CASE AND YOUR INVOLVEMENT WITH THE
15 SOLICITOR'S OFFICE IN THAT CASE MAKE IT DIFFICULT FOR YOU
16 TO BE A FAIR AND IMPARTIAL JUROR IN THIS PARTICULAR CASE
17 IF YOU WERE ASKED TO SERVE?

18 JUROR: NO.

19 THE COURT: YOU COULD SET ASIDE YOUR OWN EXPERIENCE
20 AND DECIDE THIS CASE ON THE BASIS OF WHAT YOU WOULD HEAR
21 IN COURT?

22 JUROR: SURE.

23 THE COURT: WOULD YOU DO THAT, PLEASE MA'AM?

24 JUROR: SURE...

25 THE COURT: THANK YOU, MRS. HARDNETT. YOU CAN HAVE A

1 SEAT. YES, MA'AM, YOUR NAME. IF YOU'LL COME FORWARD,
2 PLEASE MA'AM.

3 (APPROACHED BENCH).

4 JUROR: GOOD MORNING AGAIN.

5 THE COURT: YOUR NAME AGAIN, PLEASE MA'AM?

6 JUROR: LINDA BERING.

7 THE COURT: MRS. BERING, YOU INDICATED EARLIER THAT
8 YOU HAD BEEN I THINK CHARGED WITH CRIMINAL DOMESTIC
9 VIOLENCE IN MAGISTRATE'S COURT; IS THAT RIGHT?

10 JUROR: YES.

11 THE COURT: IS THAT YOU COMING FORWARD NOW OR IS THAT
12 SOMETHING--

13 JUROR: THAT'S IT.

14 THE COURT: THAT'S THE ONLY INVOLVEMENT YOU HAD?
15 MRS. BERING, WOULD THE FACT YOU WERE CHARGED WITH CRIMINAL
16 DOMESTIC VIOLENCE IN MAGISTRATE'S COURT, WOULD THAT MAKE
17 IT DIFFICULT FOR YOU TO BE A FAIR AND IMPARTIAL JUROR IN
18 THIS CASE INVOLVING THESE ALLEGATIONS?

19 JUROR: NO, SIR.

20 THE COURT: YOU COULD SET ASIDE YOUR OWN EXPERIENCE
21 AND DECIDE THIS CASE BASED ON WHAT YOU WOULD HEAR IN
22 COURT?

23 JUROR: YES, SIR.

24 THE COURT: YOU WILL DO THAT, MRS. BERING?

25 JUROR: YES.

1 THE COURT: THANK YOU SO MUCH. YOU CAN GO BACK AND
2 HAVE A SEAT. YES, MA'AM. IF YOU'LL COME FORWARD,
3 PLEASE.

4 (APPROACHED BENCH) .

5 THE COURT: YES, MA'AM. YOUR NAME, PLEASE MA'AM?

6 JUROR: SOLOMAN.

7 THE COURT: SOLOMAN?

8 JUROR: UH-HUH.

9 THE COURT: ALL RIGHT.

10 JUROR: IT'S 113.

11 THE COURT: THANK YOU. MRS. SOLOMAN, WAS IT YOU OR A
12 FAMILY MEMBER THAT WAS INVOLVED?

13 JUROR: FAMILY MEMBER, BROTHER.

14 THE COURT: YOUR BROTHER?

15 JUROR: UH-HUH.

16 THE COURT: AND WHAT WAS YOUR BROTHER'S NAME.

17 JUROR: THOMAS LOWERY.

18 THE COURT: THOMAS LOWERY?

19 JUROR: UH-HUH.

20 THE COURT: TELL ME ABOUT WHAT HAPPENED, WHAT WAS --
21 WAS HE CHARGED WITH A CRIME OR...

22 JUROR: YES.

23 THE COURT: AND WHAT WAS THE CRIME?

24 JUROR: MURDER.

25 THE COURT: WAS THAT HERE IN LEE COUNTY?

1 JUROR: UH-HUH.

2 THE COURT: AND HOW LONG AGO WAS THAT?

3 JUROR: ABOUT 25 YEARS.

4 THE COURT: 25 YEARS? HE OBVIOUSLY WAS PROSECUTED
5 FOR THAT?

6 JUROR: YES.

7 THE COURT: OKAY. AND WAS THE VICTIM A FAMILY MEMBER
8 OR WAS IT SOMEBODY ELSE?

9 JUROR: NO.

10 THE COURT: IT WASN'T? ALL RIGHT. MRS. SOLOMAN,
11 WOULD YOUR EXPERIENCE THROUGH THAT OF YOUR BROTHER
12 OBVIOUSLY 25 YEARS AGO, YOU AND HE WERE BOTH A LOT YOUNGER
13 OBVIOUSLY, WOULD THAT MAKE IT DIFFICULT FOR YOU AT THIS
14 TIME TO BE FAIR AND IMPARTIAL AS A JUROR INVOLVING
15 ALLEGATIONS OF A SIMILAR CRIME?

16 JUROR: NO, I WILL BE FAIR.

17 THE COURT: YOU COULD SET ASIDE YOUR OWN EXPERIENCE
18 AND DECIDE THIS CASE BASED ON WHAT YOU WOULD HEAR IN
19 COURT?

20 JUROR: YES.

21 THE COURT: AND YOU WILL DO THAT?

22 JUROR: YES.

23 THE COURT: THANK YOU, MA'AM.

24 MR. ROGERS: YOUR HONOR, MAY WE INQUIRE OF HER...

25 THE COURT: ALL RIGHT. MRS. SOLOMAN, TELL ME WHAT

1 WAS THE OUTCOME. YOU SAID HE WAS CHARGED WITH MURDER,
2 WHAT HAPPENED? WAS HE CONVICTED OF IT?

3 JUROR: YEAH.

4 THE COURT: AND WAS HE -- WHAT WAS THE SENTENCE?

5 JUROR: LIFE.

6 THE COURT: LIFE? IS HE STILL IN JAIL?

7 JUROR: UH-HUH.

8 THE COURT: OKAY. THANK YOU MA'AM, MRS. SOLOMAN.
9 OKAY.

10 (BACK ON BENCH).

11 THE COURT: LADIES AND GENTLEMEN, ARE ANY OF YOU OR
12 ANY MEMBERS OF YOUR IMMEDIATE FAMILY LAW ENFORCEMENT
13 OFFICERS, THAT IS HIGHWAY PATROL MEMBERS, POLICE OFFICERS,
14 CONSTABLE, CORRECTIONAL OFFICERS, PROBATION AGENT OR
15 EMPLOYED BY ANY LAW ENFORCEMENT OFFICE OR ANY PUBLIC
16 DEFENDER'S OFFICE, EITHER STATE, LOCAL OR FEDERAL PUBLIC
17 DEFENDER'S OFFICE?

18 IF ANY OF YOU OR ANY MEMBERS OF YOUR IMMEDIATE
19 FAMILY ARE EMPLOYED BY LAW ENFORCEMENT OR BY PUBLIC
20 DEFENDER'S OFFICE, AS I HAVE JUST DEFINED THAT TO YOU,
21 WOULD YOU PLEASE STAND AT THIS TIME? YES, MA'AM. WE HAVE
22 ALREADY STOOD YOU ASIDE, SO YOU DON'T HAVE TO STAND.
23 THANK YOU, MA'AM. APPRECIATE YOU STANDING AGAIN.

24 LADIES AND GENTLEMEN, ANY OF YOU ALL MEMBERS OF
25 OR CONTRIBUTORS TO ANY LAW ENFORCEMENT SUPPORT

1 ORGANIZATION OR VICTIMS RIGHTS ASSOCIATION SUCH AS CADRE,
2 CAVE OR THE LIKE; IF SO, PLEASE STAND. THANK YOU.

3 LADIES AND GENTLEMEN, HAVE ANY OF YOU ALL FORMED
4 OR EXPRESSED ANY OPINION AS TO THE GUILT OR THE INNOCENCE
5 OF ANY OF THESE DEFENDANTS; IF YOU HAVE, WOULD YOU PLEASE
6 STAND? ARE ANY OF YOU AWARE, THAT IS TO SAY ARE ANY OF
7 YOU CONSCIOUS OF ANY BIAS OR PREJUDICE YOU MIGHT FEEL FOR
8 OR AGAINST THE STATE OR FOR OR AGAINST THE DEFENDANTS; IF
9 SO, WOULD YOU PLEASE STAND?

10 DO ANY OF YOU KNOW OF ANY REASON OF ANY KIND
11 WHATSOEVER THEN THAT WOULD KEEP YOU FROM GIVING BOTH THE
12 STATE AND THE DEFENDANTS FAIR AND IMPARTIAL TRIALS? IF
13 YOU KNOW OF ANY SUCH REASON, WOULD YOU PLEASE STAND? MS.
14 NIELSEN, FURTHER QUESTIONS FROM THE STATE?

15 MS. NIELSEN: NO, SIR, YOUR HONOR.

16 THE COURT: THANK YOU. MR. DOBY ON BEHALF OF MR.
17 EVANS, ANY ADDITIONAL QUESTIONS?

18 MR. DOBY: NO, SIR.

19 THE COURT: MR. ROGERS?

20 MR. ROGERS: NO, SIR.

21 THE COURT: THANK YOU. MR. JORDAN?

22 MR. JORDAN: NO, YOUR HONOR.

23 THE COURT: THANK YOU. MR. FINNEY?

24 MR. FINNEY: NO, YOUR HONOR.

25 THE COURT: THANK YOU. ALL RIGHT. MADAM CLERK, YOU

1 MAY GIVE US THE JURY. THE STRIKES WILL BE TEN FOR THE
2 STATE, 20 FOR THE DEFENSE. WE WILL SELECT TWO
3 ALTERNATES. THE STRIKES WILL BE ONE FOR THE STATE, TWO
4 FOR THE DEFENSE.

5 THE CLERK: AS I CALL YOUR NAME, COME DOWN THE MIDDLE
6 AISLE, COME TO THE BENCH AND TURN AND FACE THE -- TURN AND
7 I WILL GIVE YOU INSTRUCTIONS AFTER THAT. JUROR NUMBER 39,
8 BETTY FULWOOD (BLACK FEMALE)

9 (APPROACHED BENCH) .

10 THE COURT: MRS. FULWOOD, YOU STAND RIGHT IN THE
11 CENTER. YOU'LL BE THE GUINEA PIG. EVERYBODY WILL LOOK AT
12 YOU AND KNOW HOW TO DO IT FROM NOW ON. THANK YOU, MRS.
13 FULWOOD. THAT'S WHERE TO STAY.

14 MR. FINNEY: YOUR HONOR, PLEASE. MAY WE APPROACH?

15 THE COURT: ALL RIGHT.

16 (WHEREUPON A BENCH CONFERENCE WAS HAD.)

17 THE COURT: MRS. FULWOOD, WOULD YOU MIND COMING
18 AROUND? I'VE GOT ONE MORE QUESTION I NEED TO ASK IN FRONT
19 OF THE JURORS. NO BIG DEAL. IT'S A CLARIFICATION, SO IF
20 YOU'LL COME RIGHT AROUND HERE.. STAND AROUND HERE.

21 (AT BENCH) .

22 MS. NIELSEN: PRESENT MRS. FULWOOD.

23 THE COURT: AS TO DEFENDANT EVANS?

24 MR. DOBY: SWEAR THE JUROR.

25 THE CLERK: AS TO DEFENDANT TAYLOR?

1 MR. ROGERS: PLEASE EXCUSE MRS. FULWOOD.

2 THE CLERK: HAVE A SEAT BACK WITH THE ENTIRE JURY
3 PANEL. JUROR NUMBER 57, LANA HOWELL (WHITE FEMALE).

4 (WHEREUPON THE JUROR APPROACHED).

5 MS. NIELSEN: PLEASE PRESENT MRS. HOWELL.

6 THE CLERK: AS TO DEFENDANT EVANS?

7 MR. DOBY: SWEAR THE JUROR.

8 THE CLERK: AS TO DEFENDANT TAYLOR?

9 MR. ROGERS: PLEASE SWEAR THE JUROR.

10 THE CLERK: AS TO DEFENDANT SINGLETON?

11 MR. JORDAN: SWEAR MRS. HOWELL.

12 THE CLERK: AS TO DEFENDANT WITHERSPOON?

13 MR. FINNEY: PLEASE EXCUSE MRS. HOWELL FROM THE TRIAL
14 OF THIS CASE.

15 THE CLERK: MRS. HOWELL, HAVE A SEAT BACK WITH THE
16 JURY, PLEASE. JUROR 108, BRENDA SLATER (BLACK FEMALE).

17 (WHEREUPON THE JUROR APPROACHED).

18 MS. NIELSEN: PLEASE PRESENT MRS. SLATER.

19 THE CLERK: AS TO DEFENDANT EVANS?

20 MR. DOBY: SWEAR THE JUROR.

21 THE CLERK: AS TO DEFENDANT TAYLOR?

22 MR. DOBY: PLEASE SWEAR MRS. SLATER.

23 THE CLERK: AS TO DEFENDANT SINGLETON?

24 MR. JORDAN: PLEASE SWEAR MRS. SLATER.

25 THE CLERK: AS TO THE DEFENDANT WITHERSPOON?

1 MR. FINNEY: PLEASE SWEAR THE JUROR.

2 THE CLERK: HAVE A SEAT IN OUR JURY BOX.

3 THE COURT: HAVE A SEAT ON THE BACK SEAT ON -- FOLLOW
4 THAT BACK ROW ALL THE WAY TO THE VERY BACK. THANK YOU,
5 MA'AM. JUROR NUMBER 47, AMANDA HATTON (WHITE FEMALE).

6 (WHEREUPON THE JUROR APPROACHED).

7 MS. NIELSEN: PLEASE PRESENT MRS. HATTON.

8 THE CLERK: AS TO DEFENDANT EVANS?

9 MR. DOBY: SWEAR THE JUROR.

10 THE CLERK: AS TO DEFENDANT TAYLOR?

11 MR. ROGERS: SWEAR MRS. HATTON.

12 THE CLERK: AS TO DEFENDANT SINGLETON?

13 MR. JORDAN: SWEAR MRS. HATTON.

14 THE CLERK: AS TO DEFENDANT WITHERSPOON?

15 MR. FINNEY: SWEAR THE JUROR.

16 THE CLERK: HAVE A SEAT IN OUR JURY BOX. JUROR 109,
17 GWENDOLYN SMITH (BLACK FEMALE).

18 (WHEREUPON THE JUROR APPROACHED).

19 MS. NIELSEN: PLEASE PRESENT MRS. SMITH.

20 THE CLERK: AS TO DEFENDANT EVANS?

21 MR. DOBY: EXCUSE THIS JUROR FROM THE TRIAL OF THIS
22 CASE.

23 THE CLERK: HAVE A SEAT BACK WITH OUR JURY PANEL.

24 JUROR NUMBER 75, HELEN MACK. (BLACK FEMALE).

25 (WHEREUPON THE JUROR APPROACHED).

1 MS. NIELSEN: PLEASE PRESENT MRS. MACK.

2 THE CLERK: AS TO DEFENDANT EVANS?

3 MR. DOBY: SWEAR THE JUROR.

4 THE CLERK: DEFENDANT TAYLOR?

5 MR. ROGERS: PLEASE SWEAR MRS. MACK.

6 THE CLERK: DEFENDANT SINGLETON?

7 MR. JORDAN: SWEAR MRS. MACK.

8 THE CLERK: DEFENDANT WITHERSPOON?

9 MR. FINNEY: SWEAR THE JUROR.

10 THE CLERK: HAVE A SEAT IN OUR JURY BOX. JUROR 120,
11 GEORGE WASHINGTON (BLACK MALE).

12 (WHEREUPON THE JUROR APPROACHED).

13 MS. NIELSEN: PLEASE EXCUSE MR. WASHINGTON FROM THE
14 TRIAL OF THIS CASE.

15 THE CLERK: MR. WASHINGTON, HAVE A SEAT BACK WITH OUR
16 JURY PANEL. JUROR NUMBER 11, CHRIS BENJAMIN (BLACK MALE).

17 (WHEREUPON THE JUROR APPROACHED).

18 MS. NIELSEN: PLEASE PRESENT MR. BENJAMIN.

19 THE CLERK: AS TO DEFENDANT EVANS?

20 MR. DOBY: SWEAR THE JUROR.

21 THE CLERK: DEFENDANT TAYLOR?

22 MR. ROGERS: PLEASE SWEAR MR. BENJAMIN.

23 THE CLERK: SINGLETON?

24 MR. JORDAN: PLEASE SWEAR MR. BENJAMIN.

25 THE CLERK: DEFENDANT WITHERSPOON?

1 MR. FINNEY: PLEASE SWEAR THE JUROR.

2 THE CLERK: HAVE A SEAT IN OUR JURY BOX. JUROR
3 NUMBER 18, WILLY BRAMLETT (WHITE FEMALE).

4 (WHEREUPON THE JUROR APPROACHED).

5 MR. DOBY: YOUR HONOR, MAY WE APPROACH THE BENCH?

6 THE COURT: YES, SIR.

7 (WHEREUPON A BENCH CONFERENCE WAS HAD.)

8 THE COURT: 'WE'RE TALKING ABOUT YOU BEHIND YOUR
9 BACK. NOT FAIR TO YOU.

10 (WHEREUPON A BENCH CONFERENCE WAS HAD.)

11 THE COURT: JUROR NUMBER 18 WILL BE STOOD ASIDE FROM
12 THE TRIAL.. THANK YOU.

13 THE CLERK: JUROR NUMBER 17, BERNICE BOYKIN (BLACK
14 FEMALE).

15 (WHEREUPON THE JUROR APPROACHED).

16 MS. NIELSEN: PLEASE PRESENT MRS. BOYKIN.

17 THE CLERK: AS TO DEFENDANT EVANS?

18 MR. DOBY: SWEAR THE JUROR.

19 THE CLERK: TAYLOR?

20 MR. ROGERS: PLEASE SWEAR MRS. BOYKIN.

21 THE CLERK: DEFENDANT SINGLETON?

22 MR. JORDAN: SWEAR MRS. BOYKIN.

23 THE CLERK: AND DEFENDANT WITHERSPOON?

24 MR. FINNEY: PLEASE SWEAR THE JUROR.

25 THE CLERK: HAVE A SEAT IN OUR JURY BOX. JUROR 168,

1 CAROLYN WILSON (BLACK FEMALE) .

2 (WHEREUPON THE JUROR APPROACHED) .

3 MS. NIELSEN: PLEASE PRESENT THE JUROR.

4 THE CLERK: AS TO DEFENDANT EVANS?

5 MR. DOBY: EXCUSE MRS. WILSON FROM THE TRIAL OF THIS
6 CASE.

7 THE CLERK: JUROR NUMBER 46, RENEE HARDNETT (BLACK
8 FEMALE) .

9 (WHEREUPON THE JUROR APPROACHED) .

10 MS. NIELSEN: PLEASE PRESENT MRS. HARDNETT.

11 THE CLERK: AS TO DEFENDANT EVANS?

12 MR. DOBY: EXCUSE MRS. HARDNETT FROM THE TRIAL OF
13 THIS CASE.

14 THE CLERK: HAVE A SEAT BACK IN THE JURY PANEL.
15 JUROR 138, SHERRY HERIOT (BLACK FEMALE) .

16 (WHEREUPON THE JUROR APPROACHED) .

17 MS. NIELSEN: PLEASE EXCUSE MRS. HERIOT FROM THE
18 TRIAL OF THIS CASE.

19 THE CLERK: JUROR NUMBER 17, WILLIE TONY (BLACK
20 MALE) .

21 (WHEREUPON THE JUROR APPROACHED) .

22 MS. NIELSEN: PLEASE PRESENT MR. TONY.

23 THE CLERK: AS TO DEFENDANT EVANS?

24 MR. DOBY: SWEAR THE JUROR.

25 THE CLERK: DEFENDANT TAYLOR?

1 MR. ROGERS: PLEASE SWEAR MR. TONY.

2 THE CLERK: DEFENDANT SINGLETON?

3 MR. JORDAN: SWEAR MR. TONY.

4 THE CLERK: DEFENDANT WITHERSPOON?

5 MR. FINNEY: ACCEPT THE JUROR.

6 THE CLERK: HAVE A SEAT IN OUR JURY BOX.

7 THE CLERK: JUROR NUMBER 88, MARY PARNELL (WHITE
8 FEMALE).

9 (WHEREUPON THE JUROR APPROACHED).

10 MS. NIELSEN: PLEASE PRESENT MR. PARNELL.

11 THE CLERK: AS TO DEFENDANT EVANS?

12 MR. DOBY: SWEAR THE JUROR.

13 THE CLERK: DEFENDANT TAYLOR?

14 MR. ROGERS: PLEASE EXCUSE MRS. PARNELL.

15 THE CLERK: JUROR NUMBER 21, ZONIA BROWN (WHITE
16 FEMALE).

17 (WHEREUPON THE JUROR APPROACHED).

18 MS. NIELSEN: PLEASE PRESENT MRS. BROWN.

19 THE CLERK: AS TO DEFENDANT EVANS?

20 MR. DOBY: SWEAR THE JUROR.

21 THE CLERK: DEFENDANT TAYLOR?

22 MR. ROGERS: SWEAR MRS. BROWN.

23 THE CLERK: DEFENDANT SINGLETON?

24 MR. JORDAN: WE WILL EXCUSE THIS JUROR.

25 THE CLERK: JUROR NUMBER 89, DENEKI MOSES (BLACK

1 FEMALE) .

2 (WHEREUPON THE JUROR APPROACHED) .

3 MS. NIELSEN: PRESENT MRS. MOSES.

4 THE CLERK: AS TO DEFENDANT EVANS?

5 MR. DOBY: SWEAR THE JUROR.

6 THE CLERK: DEFENDANT TAYLOR?

7 (WHEREUPON THERE WAS A PAUSE) .

8 MR. ROGERS: PLEASE SWEAR MRS. MOSES.

9 THE CLERK: DEFENDANT SINGLETON?

10 MR. JORDAN: COURT'S INDULGENCE.

11 THE COURT: ALL RIGHT.

12 MR. JORDAN: SWEAR MRS. MOSES.

13 THE CLERK: DEFENDANT WITHERSPOON?

14 MR. FINNEY: PLEASE EXCUSE MRS. MOSES FROM THE TRIAL
15 OF THIS CASE.

16 THE CLERK: JUROR 101, VASHTI RUBEN (BLACK FEMALE) .

17 (WHEREUPON THE JUROR APPROACHED) .

18 MS. NIELSEN: PLEASE PRESENT MRS. RUBEN.

19 THE CLERK: EXCUSE US ONE SECOND. AS TO DEFENDANT
20 EVANS?

21 MR. DOBY: SWEAR THE JUROR.

22 THE CLERK: DEFENDANT TAYLOR?

23 MR. ROGERS: PLEASE SWEAR MRS. RUBEN.

24 THE CLERK: DEFENDANT--

25 MR. JORDAN: SWEAR THE JUROR.

1 THE CLERK: DEFENDANT WITHERSPOON?

2 MR. FINNEY: SWEAR THE JUROR.

3 THE CLERK: JUROR NUMBER 35, HARRY EVANS (BLACK
4 MALE).

5 (WHEREUPON THE JUROR APPROACHED).

6 MS. NIELSEN: PLEASE PRESENT MR. EVANS.

7 THE CLERK: AS TO DEFENDANT EVANS?

8 MR. DOBY: SWEAR THE JUROR.

9 THE CLERK: DEFENDANT TAYLOR?

10 MR. ROGERS: PLEASE SWEAR MR. EVANS.

11 THE CLERK: DEFENDANT SINGLETON?

12 MR. JORDAN: SWEAR MR. EVANS.

13 THE CLERK: AND DEFENDANT WITHERSPOON?

14 MR. FINNEY: PLEASE SEAT THE JUROR.

15 THE CLERK: HAVE A SEAT IN THE JURY BOX. JUROR 131,
16 ALBERT JOHNSON, JR. (WHITE MALE).

17 (WHEREUPON THE JUROR APPROACHED).

18 MS. NIELSEN: PLEASE PRESENT MR. JOHNSON.

19 THE CLERK: AS TO DEFENDANT EVANS?

20 MR. DOBY: EXCUSE THE JUROR FROM THE TRIAL OF THIS
21 CASE.

22 THE CLERK: JUROR 136, CHERYL SIMS (BLACK FEMALE).

23 (WHEREUPON THE JUROR APPROACHED).

24 MS. NIELSEN: PLEASE PRESENT MRS. SIMS.

25 THE CLERK: AS TO DEFENDANT EVANS?

1 MR. DOBY: SWEAR THE JUROR.

2 THE CLERK: DEFENDANT TAYLOR?

3 MR. ROGERS: PLEASE SWEAR MRS. SIMS.

4 THE CLERK: DEFENDANT SINGLETON?

5 MR. JORDAN: COURT'S INDULGENCE.

6 (WHEREUPON THERE WAS A PAUSE).

7 MR. JORDAN: SWEAR THE JUROR.

8 THE CLERK: AND DEFENDANT WITHERSPOON?

9 MR. FINNEY: SWEAR THE JUROR.

10 THE CLERK: HAVE A SEAT IN OUR JURY BOX. JUROR 49,

11 CANDACE ANDERSON (WHITE FEMALE).

12 (WHEREUPON THE JUROR APPROACHED).

13 MS. NIELSEN: PLEASE PRESENT MRS. ANDERSON.

14 THE CLERK: AS TO DEFENDANT EVANS?

15 MR. DOBY: SWEAR THE JUROR.

16 THE CLERK: DEFENDANT TAYLOR?

17 MR. ROGERS: SWEAR MRS. ANDERSON.

18 THE CLERK: DEFENDANT SINGLETON?

19 MR. JORDAN: SWEAR MRS. ANDERSON.

20 THE CLERK: DEFENDANT WITHERSPOON?

21 MR. FINNEY: PLEASE EXCUSE THE JUROR.

22 THE CLERK: JUROR 135, SAMUEL HAWKINS (WHITE MALE).

23 (WHEREUPON JUROR APPROACHED).

24 MS. NIELSEN: PLEASE PRESENT MR. HAWKINS.

25 THE CLERK: AS TO DEFENDANT EVANS?

1 MR. DOBY: SWEAR THE JUROR.

2 THE CLERK: DEFENDANT TAYLOR?

3 MR. ROGERS: SWEAR THE JUROR.

4 THE CLERK: DEFENDANT SINGLETON?

5 MR. JORDAN: COURT'S INDULGENCE.

6 (WHEREUPON THERE WAS A PAUSE).

7 MR. JORDAN: EXCUSE THIS JUROR.

8 THE CLERK: JUROR NUMBER 8, EDMOND BALL (WHITE MALE).

9 (WHEREUPON THE JUROR APPROACHED).

10 MS. NIELSEN: PLEASE PRESENT MR. BALL.

11 THE CLERK: AS TO DEFENDANT EVANS?

12 MR. DOBY: SWEAR THE JUROR.

13 THE CLERK: DEFENDANT TAYLOR?

14 MR. ROGERS: PLEASE SWEAR DEFENDANT BALL.

15 THE CLERK: DEFENDANT SINGLETON?

16 MR. JORDAN: PLEASE EXCUSE THIS JUROR.

17 THE CLERK: JUROR NUMBER 48, BRENDA HAYES (WHITE
18 FEMALE).

19 (WHEREUPON THE JUROR APPROACHED).

20 MS. NIELSEN: PLEASE PRESENT MRS. HAYES.

21 THE CLERK: AS TO DEFENDANT EVANS?

22 MR. DOBY: SWEAR THE JUROR.

23 THE CLERK: DEFENDANT TAYLOR?

24 MR. ROGERS: SWEAR MRS. HAYES.

25 THE CLERK: DEFENDANT SINGLETON?

1 MR. JORDAN: SWEAR THIS JUROR.

2 THE CLERK: DEFENDANT WITHERSPOON?

3 MR. FINNEY: SWEAR THIS JUROR.

4 THE CLERK: HAVE A SEAT IN OUR JURY BOX. JUROR 58,
5 INAZ HUNTER (BLACK FEMALE).

6 (WHEREUPON THE JUROR APPROACHED).

7 MS. NIELSEN: PLEASE PRESENT MRS. HUNTER.

8 THE CLERK: AS TO DEFENDANT EVANS?

9 MR. DOBY: SWEAR THE JUROR.

10 THE CLERK: DEFENDANT TAYLOR?

11 MR. ROGERS: SWEAR MRS. HUNTER.

12 THE CLERK: DEFENDANT SINGLETON?

13 MR. JORDAN: SWEAR MRS. HUNTER.

14 THE CLERK: DEFENDANT WITHERSPOON?

15 MR. FINNEY: PLEASE SEAT THE JUROR.

16 THE CLERK: BE SEATED IN OUR JURY BOX. JUROR 113,
17 INELL SOLOMAN (BLACK FEMALE).

18 (WHEREUPON THE JUROR APPROACHED).

19 MS. NIELSEN: PLEASE EXCUSE MRS. SOLOMAN FROM THE
20 TRIAL OF THIS CASE.

21 THE CLERK: HAVE A SEAT BACK IN THE JURY PANEL.
22 JUROR 155, JESSE MARTIN (BLACK FEMALE).

23 (WHEREUPON THE JUROR APPROACHED).

24 MS. NIELSEN: PLEASE PRESENT THE JUROR.

25 THE CLERK: AS TO DEFENDANT EVANS?

1 MR. DOBY: SWEAR THE JUROR.

2 THE CLERK: DEFENDANT TAYLOR?

3 MR. ROGERS: PLEASE EXCUSE THE JUROR.

4 THE CLERK: JUROR 118, AVRIL HOOPLA (WHITE FEMALE).
5 (WHEREUPON THE JUROR APPROACHED)..

6 MS. NIELSEN: PLEASE PRESENT MRS. HOOPLA.

7 THE CLERK: AS TO DEFENDANT EVANS?

8 MR. DOBY: SWEAR THE JUROR.

9 THE CLERK: DEFENDANT TAYLOR?

10 MR. ROGERS: PLEASE SWEAR THE JUROR.

11 THE CLERK: DEFENDANT SINGLETON?

12 MR. JORDAN: PLEASE SWEAR THIS JUROR.

13 THE CLERK: DEFENDANT WITHERSPOON?

14 MR. FINNEY: PLEASE SWEAR THE JUROR.

15 THE CLERK: HAVE A SEAT IN THE JURY BOX.

16 THE COURT: WE WILL SELECT TWO ALTERNATES, MADAM
17 CLERK. STRIKES WILL BE ONE FOR THE STATE, TWO FOR THE
18 DEFENSE. ON EACH OF THE TWO...

19 THE CLERK: JUROR NUMBER 60, MELISSA JACKSON (BLACK
20 FEMALE).

21 (WHEREUPON THE JUROR APPROACHED).

22 MS. NIELSEN: PLEASE PRESENT MRS. JACKSON.

23 THE CLERK: AS TO DEFENDANT EVANS?

24 MR. DOBY: SWEAR THE JUROR.

25 THE CLERK: DEFENDANT TAYLOR?

1 MR. ROGERS: COURT'S INDULGENCE.

2 (WHEREUPON THERE WAS A PAUSE).

3 MR. DOBY: ARE THESE JOINT STRIKES OR...

4 THE COURT: THE WHOLE DEFENSE TEAM, FOUR OF YOU
5 TOGETHER HAVE TWO STRIKES EACH -- I MEAN TWO STRIKES
6 COLLECTIVELY. DIVIDED BY SIZE RATHER THAN BY...

7 MR. DOBY: I THINK JOINTLY THEN, YOUR HONOR, WE WOULD
8 ASK THIS JUROR BE SWORN.

9 THE COURT: ALL RIGHT. SHE BE SWORN? THANK YOU.

10 THE CLERK: YOU CAN HAVE A SEAT IN OUR JURY BOX.

11 JUROR 133, BOBBY WILSON (BLACK MALE).

12 (WHEREUPON THE JUROR APPROACHED).

13 MS. NIELSEN: PLEASE PRESENT MR. WILSON.

14 MR. DOBY: SWEAR THE JUROR.

15 THE CLERK: HAVE A SEAT IN OUR JURY BOX.

16 THE COURT: MS. NIELSEN, REGARDING THE JURY SELECTION
17 PROCESS, MA'AM, MS. NIELSEN, ARE THERE ANY MATTERS OF LAW
18 REGARDING THE JURY SECTION PROCESS THE STATE?

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

20 THE COURT: THANK YOU. MR. DOBY, ANY MATTERS OF LAW
21 REGARDING THE JURY SELECTION PROCESS FROM MR. EVANS?

22 MR. DOBY: YOUR HONOR, MAY I HAVE THE COURT'S
23 INDULGENCE FOR JUST ONE MINUTE, PLEASE?

24 THE COURT: ALL RIGHT.

25 (WHEREUPON THERE WAS A PAUSE)

1 (ATTORNEYS CONFERRING) .

2 MR. DOBY: NOTHING FROM DEFENDANT EVANS.

3 THE COURT: THANK YOU. MR. ROGERS, ANYTHING FROM MR.
4 TAYLOR?

5 MR. ROGERS: NO, YOUR HONOR.

6 THE COURT: THANK YOU. MR. JORDAN, FOR MR.
7 SINGLETON?

8 MR. JORDAN: NO, YOUR HONOR.

9 THE COURT: MR. FINNEY FROM MR. WITHERSPOON?

10 MR. FINNEY: NO, YOUR HONOR.

11 THE COURT: LADIES AND GENTLEMEN, YOU ALL HAVE BEEN
12 SELECTED AS JURORS IN THE TRIAL OF THIS CASE AND I
13 APPRECIATE VERY MUCH YOUR PATIENCE AS WE WORK THROUGH WHAT
14 HAS BEEN SOMETHING OF A LONG PROCESS SIMPLY BECAUSE OF THE
15 NUMBER OF INDIVIDUALS INVOLVED. WE ARE NOT GOING TO BE IN
16 A POSITION TO ACTUALLY START THE TRIAL OF THIS CASE UNTIL
17 TOMORROW MORNING AT 9:30.

18 WE HAVE SOME MORE WORK THAT WE NEED TO DO HERE
19 TODAY THIS AFTERNOON IN ORDER TO GET THE CASE READY TO BE
20 PRESENTED YOU TOMORROW MORNING, AND SO I'M GOING TO LET
21 YOU GO IN JUST A FEW MOMENTS WITH INSTRUCTIONS THAT YOU
22 ARE TO REPORT BACK TOMORROW MORNING AT 9:30 TO YOUR JURY
23 ROOM RIGHT ACROSS THE BACK HALL.

24 WHEN YOU LEAVE HERE, YOU WILL FOLLOW THE
25 BAILIFF, HE WILL SHOW YOU THE BACK WAY THAT YOU ARE TO

1 COME AND GO, AND THERE'S A JURY ROOM THAT YOU ALL WILL
2 REPORT TO FIRST THING IN THE MORNING AT 9:30. BUT BEFORE
3 I LET YOU GO TODAY, I NEED TO GIVE YOU SOME PRELIMINARY
4 INSTRUCTIONS TO BIND YOU OVER BETWEEN NOW AND TOMORROW
5 MORNING AT 9:30.

6 BEFORE WE START THE TRIAL AT 9:30 TOMORROW
7 MORNING, I WILL GIVE YOU SOME MORE COMPLETE INSTRUCTIONS
8 REGARDING YOUR SERVICE AS JURORS. BUT FOR NOW LET ME TELL
9 YOU THIS. I KNOW THAT YOU ALL DON'T KNOW ANYTHING ABOUT
10 THIS CASE. I HAVE ASKED YOU IF YOU KNEW ANYTHING ABOUT IT
11 AND YOU TOLD ME THAT YOU DIDN'T KNOW ANYTHING ABOUT IT AND
12 THAT'S THE WAY IT SHOULD BE.

13 THAT'S THE WAY IT HAS TO BE UNDER OUR LAW. WE
14 HAVE TO SELECT JURORS WHO ARE UNAWARE OF THE FACTS
15 SURROUNDING THE PARTICULAR CASE AND DON'T HAVE ANY
16 CONNECTION WITH THE INDIVIDUALS WHO ARE INVOLVED IN THE
17 CASE BECAUSE IT'S ONLY THROUGH THAT PROCESS THAT YOU CAN
18 BE FAIR AND IMPARTIAL AND DISPASSIONATE AND DISINTERESTED
19 OBSERVERS IN WHAT IS GOING ON IN THIS CASE, NOT ONLY
20 OBSERVERS BUT ALSO PARTICIPANTS WHEN THE TRIAL IS OVER AND
21 GET TO GO BACK THERE AND DISCUSS AND RENDER A VERDICT.

22 BUT DURING THE TRIAL ITSELF YOU CAN'T TALK ABOUT
23 THIS CASE AMONG YOURSELVES. AND CERTAINLY YOU CAN'T TALK
24 ABOUT IT NOW OR ANY ISSUES THAT YOU THINK MIGHT BE
25 INVOLVED. WHILE YOU DON'T KNOW ANYTHING ABOUT THE CASE,

1 YOU DO KNOW ABOUT THE ALLEGATIONS.

2 YOU DO KNOW WHAT THE CHARGES ARE AND YOU KNOW
3 WHERE AND WHEN IT HAPPENED BECAUSE WE TOLD YOU THOSE
4 THINGS. WELL, IT'S IMPROPER FOR YOU TO DISCUSS ANY ISSUES
5 THAT MIGHT BE INVOLVED IN THIS CASE OR TO ASK ANYBODY ELSE
6 IF THEY KNOW ANYTHING ABOUT THE CASE OR TO LET ANYBODY
7 ELSE TALK TO YOU ABOUT THIS CASE.

8 YOU CAN'T TRY TO FIND OUT ANYTHING ON YOUR OWN
9 ABOUT THIS CASE. YOU CAN'T EXPOSE YOURSELF TO ANY
10 KNOWLEDGE ABOUT THIS CASE OR ANY INFORMATION ABOUT THIS
11 CASE FROM ANY SOURCE OUTSIDE OF THIS COURTROOM. SO IF
12 SOMEONE SHOULD ASK YOU ABOUT THIS CASE AND ONCE YOU DOING
13 -- TELL THEM THAT YOU ARE A JUROR IN THE CASE AND THAT I
14 TOLD YOU YOU CAN'T TALK ABOUT THIS CASE, AND I'M PRETTY
15 SURE THAT WILL END THE DISCUSSION RIGHT THERE AND THEN.

16 BUT IF IT DOES NOT AND IF THEY KEEP ON TRYING TO
17 TALK WITH YOU AFTER YOU MADE THAT PLAIN TO THEM, THAT
18 YOU'RE A JUROR IN THIS CASE, JUST TRY TO FIND OUT WHO THEY
19 ARE, SEPARATE YOURSELVES FROM THEM AND FIND OUT WHO THEY
20 ARE AND YOU GET BACK TO COURT TOMORROW, LET ME KNOW WHO
21 THEY ARE. WE WILL TAKE CARE OF THAT MATTER FOR YOU.

22 YOU WILL FIND, LADIES AND GENTLEMEN, BEFORE YOU
23 BEGIN THE TRIAL OF THIS CASE YOU WILL TAKE AN OATH TO TRY
24 THE CASE ON THE BASIS OF WHAT YOU HEAR IN THIS COURTROOM,
25 AND THAT'S THE REASON THAT YOU CAN'T TRY TO FIND OUT

1 ANYTHING OUTSIDE OF THIS COURTROOM OR LET ANYBODY ELSE
2 TALK WITH YOU ABOUT IT OR DISCUSS IT AMONG YOURSELVES.

3 I WILL TELL YOU ALL MORE ABOUT THAT TOMORROW
4 BEFORE WE START THE TRIAL, BUT I JUST WANTED TO BIND YOU
5 OVER BETWEEN NOW AND THEN SO THAT YOU UNDERSTAND THOSE
6 RESTRICTIONS ON YOUR INVOLVEMENT AND ON YOUR DISCUSSIONS
7 AND YOUR KNOWLEDGE AND INFORMATION ABOUT THIS CASE WHILE
8 IT'S GOING ON.

9 LADIES AND GENTLEMEN, IF YOU WILL FOLLOW THE
10 BAILIFF RIGHT THROUGH THE DOOR, HE WILL SHOW YOU THE JURY
11 ROOM. PLEASE BE BACK IN THAT JURY ROOM AT 9:30 TOMORROW
12 MORNING. THANK YOU.

13 (WHEREUPON THE JURY LEFT THE COURTROOM AT 1:20 P.M.)

14 THE COURT: LADIES AND GENTLEMEN, MAYBE NOW YOU HAVE
15 AN IDEA OF WHY WE HAD TO GET ALL OF YOU BACK HERE TODAY,
16 TO INVOLVE OURSELVES IN THE JURY SELECTION PROCESS THAT WE
17 HAVE JUST COMPLETED.

18 (REMAINING PANEL EXCUSED).

19 (WHEREUPON THERE WAS A PAUSE).

20 THE COURT: REGARDING THE MATTER OF THE BOND, YOU
21 WISHED TO MAKE A MOTION REGARDING CONTINUATION OF BOND --
22 I CAN'T REMEMBER IF EVERYBODY TOLD ME ABOUT THAT. BE GLAD
23 TO HEAR FROM YOU IN THAT REGARD. WHOSE MOTION IS THAT ON
24 BEHALF OF?

25 MR. ROGERS: IT'S MINE, YOUR HONOR. I TAKE FOR ALL

1 DEFENDANTS THEY HAVE BEEN OUT ON BOND. TO MY KNOWLEDGE
2 THERE IS -- HAVE BEEN AT LEAST FOUR ROLL CALLS, MAYBE
3 MORE. THERE HAS NEVER BEEN A PROBLEM WITH ANY OF THESE
4 INDIVIDUALS COMING TO COURT THAT I'M AWARE OF AND SO FOR
5 THOSE REASONS I'M ASKING THAT THE BOND BE CONTINUED AND
6 THEY WILL BE ALLOWED TO STAY OUT OF JAIL PENDING THE
7 CONCLUSION OF THIS TRIAL.

8 THE COURT: MS. NIELSEN, ARE YOU AWARE OF ANY PROBLEM
9 WITH THEM MISSING ROLL CALLS TO YOUR KNOWLEDGE?

10 MS. NIELSEN: YOUR HONOR, NOT TO MY KNOWLEDGE. BUT I
11 WOULD BECAUSE OF THE SERIOUSNESS OF THE CHARGES AND THE
12 TWO DEFENDANTS WERE WITH MURDER, IT'S OUR POSITION THAT
13 THE CASE HAS BEEN CALLED AND THE BOND ISN'T IN EFFECT.

14 THE COURT: THANK YOU, MA'AM. I UNDERSTAND.
15 GENTLEMEN IF THE BOND PEOPLE FOR THESE INDIVIDUALS WILL
16 WILLING TO STAY ON THEIR BOND OR REMAIN BOUND IN SPITE OF
17 THE FACT THE CASE HAS BEEN CALLED, BE GLAD TO CONTINUE
18 THEM ON BOND DURING THE COURSE OF THE TRIAL. THE BOND BY
19 ITS TERMS SAYS OTHERWISE. ARE THERE BOND PEOPLE HANDY?
20 CAN YOU GET TO THEM?

21 MR. ROGERS: FOR MR. TAYLOR, IT IS MY UNDERSTANDING
22 THAT THEY POSTED THE BOND THEMSELVES. THEY POSTED --
23 PLEDGED A PIECE OF PROPERTY.

24 THE COURT: OKAY.

25 MR. ROGERS: SO THERE IS NO BONDING COMPANY.

1 THE COURT: THANK YOU. MR. FINNEY?

2 MR. FINNEY: YOUR HONOR, I HAVE THE BOND PAPER HERE,
3 MR. WITHERSPOON'S MOTHER AND GRANDMOTHER WHO ARE BOTH HERE
4 ARE ON HIS BOND.

5 THE COURT: ALL RIGHT.

6 MR. FINNEY: FOR \$10,000 P.R.

7 THE COURT: ALL RIGHT. THAT WILL BE MRS. MAXINE
8 WITHERSPOON AND MRS. SARA NATHANIEL?

9 MR. FINNEY: THAT'S CORRECT.

10 THE COURT: MRS. WITHERSPOON, MRS. NATHANIEL, IF
11 YOU'LL ALL PLEASE STAND WHERE YOU ARE. LADIES, YOU ALL
12 HAVE SIGNED THE BOND FOR MR. LAMONT WITHERSPOON, YOUR SON
13 AND YOUR GRANDSON. UNDER THE LAW, WHEN THE CASE IS CALLED
14 THE BOND CEASES TO BE OF ANY EFFECT.

15 HOWEVER, IF YOU ARE STILL WILLING TO REMAIN
16 BOUND ON THE BOND, I WILL ALLOW MR. WITHERSPOON TO REMAIN
17 FREE WHILE THE CASE IS ONGOING ASSUMING THERE IS NO
18 VIOLATION IN THE MEAN TIME. MRS. MAXINE WITHERSPOON, ARE
19 YOU WILLING TO REMAIN ON YOUR SON'S BOND DURING THE
20 TRIAL?

21 JUROR: YES, I AM.

22 THE COURT: MRS. NATHANIEL, ARE YOU?

23 JUROR: YES, SIR.

24 THE COURT: THANK YOU, MA'AM. I WILL ALLOW MR.
25 WITHERSPOON'S BOND TO CONTINUE IN FORCE AND EFFECT IN VIEW

1 OF THAT. THANK YOU. ALL RIGHT. MR. JORDAN, YOU'RE ON
2 YOUR FEET.

3 MR. JORDAN: MY CLIENT AS WELL IS THERE A \$10,000
4 APPEARANCE RECOGNIZANCE WITHOUT SURETY AND HE SIGNED A
5 LOAN HIMSELF.

6 THE COURT: ALL RIGHT. THEN I WILL CONTINUE ALLOW
7 HIS BOND TO REMAIN IN EFFECT. HE'S TO SIGN THE P.R. MR.
8 DOBY, WHAT ABOUT MR. EVANS?

9 MR. DOBY: MR. EVANS TELLS ME HE IS UNDER A HUNDRED
10 THOUSAND DOLLARS SURETY BOND AND THAT HE HIRED A BAIL
11 BONDSMAN, SURE ENOUGH BAIL BONDS, TRENHOLM (SIC) BAIL
12 BOND, YOUR HONOR.

13 THE COURT: ARE THEY LOCAL?

14 MR. DOBY: OUT OF SUMTER, YOUR HONOR.

15 THE COURT: ALL RIGHT. MR. DOBY, IF YOU CAN GET IN
16 TOUCH WITH THEM DURING THE LUNCH HOUR AND ASSUME THEY ARE
17 WILLING TO REMAIN ON THE BOND, I WILL ALLOW MR. EVANS TO
18 STAY OUT. GET IN TOUCH WITH YOU IN THAT PERIOD OF TIME.

19 MR. DOBY: YOUR HONOR, WE WILL TAKE CARE OF THE
20 ATTEMPT.

21 THE COURT: ALL RIGHT. PENDING THAT INFORMATION, I
22 WILL ASK MR. EVANS TO STAY HERE. HE WILL HAVE TO STAY
23 WITH US WHILE IT'S BEING DOWN. NOW GENTLEMEN, WHETHER YOU
24 ARE HERE OR NOT, WE ARE GOING TO START THIS TRIAL IN THE
25 MORNING. SO I'M SURE THAT YOUR LAWYERS NEED YOU HERE AND

1 I'M SURE THAT YOU UNDERSTAND I TRUST THAT YOU UNDERSTAND
2 THE NEED THAT YOU HAVE TO BE HERE.

3 BUT YOUR ABSENCE FROM THIS COURTROOM IS NOT
4 GOING TO STOP THE SHOW. WE ARE GOING TO START THE TRIAL
5 IN THE MORNING AT 9:30. IF YOU ARE HERE, YOU WILL BE
6 HERE. IF YOU ARE NOT, THERE WILL BE AN EMPTY CHAIR WHERE
7 YOU ARE SEATED.

8 THE TRIAL WILL GO FORWARD IN YOUR ABSENCE. MR.
9 EVANS, DO YOU UNDERSTAND THAT? DO YOU UNDERSTAND THE
10 TRIAL WILL GO FORWARD IN YOUR ABSENCE ASSUMING YOUR
11 BONDSMAN IS WILLING TO STAY ON YOUR BOND AND YOU'RE
12 ALLOWED TO LEAVE TODAY? DO YOU UNDERSTAND THAT THE TRIAL
13 WILL START TOMORROW WITH OR WITHOUT YOU?

14 MR. EVANS: YES, SIR.

15 THE COURT: ALL RIGHT. MR. TAYLOR, DO YOU UNDERSTAND
16 THAT?

17 MR. TAYLOR: YES, SIR.

18 THE COURT: DO YOU UNDERSTAND THAT, MR. SINGLETON?

19 MR. SINGLETON: YES, SIR.

20 THE COURT: MR. WITHERSPOON, DO YOU UNDERSTAND THAT?

21 MR. WITHERSPOON: YES, SIR.

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

23 ANYTHING FURTHER THEN? WE WILL BE IN RECESS AND START
24 BACK HERE AT 2:30. THAT'S AN HOUR OR SO. AND IS THERE
25 ANYTHING ELSE THEN BEFORE WE BREAK FOR LUNCH FROM THE

1 STATE, MS. NIELSEN?

2 MS. NIELSEN: NO, SIR, YOUR HONOR.

3 THE COURT: THANK YOU. MR. DOBY?

4 MR. DOBY: NO, SIR.

5 THE COURT: MR. ROGERS?

6 MR. ROGERS: NO, SIR, YOUR HONOR.

7 THE COURT: MR. JORDAN?

8 MR. JORDAN: NO, YOUR HONOR.

9 THE COURT: MR. FINNEY?

10 MR. FINNEY: NO, YOUR HONOR.

11 THE COURT: THANK YOU, GENTLEMEN. 2:30 THEN.

12 (WHEREUPON COURT WAS IN RECESS FOR LUNCH).

13 THE COURT: ALL RIGHT. MS. NIELSEN, LOOKS LIKE WE'VE
14 GOT EVERYBODY IN PLACE NOW.

15 MS. NIELSEN: YES, SIR.

16 THE COURT: OKAY. ~~WE HAVE FIRST OF ALL~~ PRETRIAL
17 ~~MOTIONS IN THIS CASE.~~ I WILL BEGIN WITH MEMORIALIZING OUR
18 PRETRIAL IN CHAMBERS CONFERENCE. IN CHAMBERS PRIOR TO THE
19 JURY SELECTION PROCESS IN THIS CASE, DEFENSE COUNSEL
20 RENEWED THEIR MOTIONS FOR DISCOVERY UNDER RULE FIVE AND
21 ~~BRADY.~~ I UNDERSTAND THAT THOSE RULES AND MOTIONS HAVE ALL
22 BEEN COMPLIED WITH. IS THAT RIGHT, MS. NIELSEN?

23 MS. NIELSEN: YES, SIR, YOUR HONOR.

24 THE COURT: THANK YOU. DEFENSE COUNSEL REQUESTED
25 THAT THE SOLICITOR'S OFFICE PROVIDE THEM WITH CRIMINAL

1 HISTORY OF RECORDS FOR ALL WITNESSES WHO WILL TESTIFY ON
2 BEHALF OF THE STATE. THAT INFORMATION WILL BE PROVIDED
3 BEFORE ANY OF THE DEFENSE COUNSEL HAVE TO CROSS-EXAMINE
4 ANY OF THOSE WITNESSES.

5 RECIPROCALLY ALL DEFENSE COUNSEL ARE TO FURNISH
6 TO THE STATE NO LATER THAN THE CLOSE OF THE STATE'S CASE
7 NAMES, ADDRESSES, SOCIAL SECURITY NUMBER, RACES AND
8 GENDERS, BIRTH DATES OF ANY WITNESSES THAT DEFENSE COUNSEL
9 INTENDS TO CALL IN THE PRESENTATION OF THEIR RESPECTIVE
10 CASES TO ENABLE THE STATE TO CONDUCT THE RECORDS SEARCH ON
11 THOSE INDIVIDUALS.

12 MOTION WAS MADE FOR SEQUESTRATION OF THE STATE'S
13 WITNESSES. IN REGARD TO THE FACT WITNESSES OF THE STATE,
14 THAT IS THOSE INDIVIDUALS WHO WERE SUPPOSEDLY EYE
15 WITNESSES WHO WERE THERE AT THE TIME WHO ARE GOING TO
16 TESTIFY AS TO THE FACTS OF THIS CASE, THAT MOTION WAS
17 GRANTED.

18 ONCE AGAIN THE RECIPROCAL MOTION AS TO THE
19 SEQUESTRATION OF DEFENSE FACT WITNESSES WAS ALSO GRANTED.
20 I HAVE LISTS OF SOME OF -- OF DEFENSE WITNESSES FROM TWO
21 OF THE DEFENDANTS IN THIS CASE. I WILL HAVE TO RELY UPON
22 ALL DEFENSE COUNSEL AS OFFICERS OF THE COURT, OF COURSE.
23 I HAVE THREE -- I'M SORRY. I HAVE THREE SETS OF
24 WITNESSES.

25 I WILL HAVE TO RELY ON DEFENSE COUNSEL AS

1 OFFICERS OF THE COURT TO ASSIST IN ADVISING ME AS TO WHO
2 THEIR WITNESSES ARE AND MAKING SURE THAT THE SEQUESTRATION
3 ORDER IS IN FORCE. THE NEXT MOTION THAT I HAVE IS A
4 MOTION BY MR. FINNEY ON BEHALF OF MR. WITHERSPOON FOR A
5 SEVERANCE OF HIS TRIAL FROM THAT OF THE REMAINING
6 CO-DEFENDANTS ON THE GROUNDS THAT HE WOULD BE PREJUDICED
7 BEING CHARGED WITH LESSER OFFENSES IN THIS CASE,
8 SPECIFICALLY ACCESSORY AFTER THE FACT AND MISPRISON OF A
9 FELONY IF HE HAS TO BE TRIED WITH CO-DEFENDANTS WHO ARE
10 CHARGED WITH MURDER. MR. FINNEY, BE GLAD TO HEAR FROM YOU
11 NOW IN REGARD TO THAT MOTION.

12 MR. FINNEY: YOUR HONOR, PLEASE. ON BEHALF OF LAMONT
13 WITHERSPOON I WOULD ASK THE COURT TO RESPECTFULLY CONSIDER
14 SEVERING OUR CASES BECAUSE WE FEEL THAT THERE WILL BE AN
15 ATMOSPHERE CREATED BY THE EVIDENCE THAT WILL TAKE OR
16 PREJUDICE MR. WITHERSPOON'S ABILITY TO SHOW THAT EVEN
17 THOUGH HE MAY HAVE BEEN PRESENT AND ACTING IN A FRIENDLY
18 MANNER TOWARDS OTHER PERSONS CHARGED IN THIS CRIME, THAT
19 HE WAS NOT ASSISTING THEM OR COOPERATING WITH THEM WHEN
20 THEY FIND OUT, WHEN THE JURY FINDS OUT THAT THE VICTIM IN
21 THIS CASE DID DIE AS THEY HAVE ALREADY FOUND OUT.

22 I THINK THAT THE ENVIRONMENT IN A MURDER CASE,
23 YOUR HONOR, IS VERY SUSCEPTIBLE TO EMOTIONAL AND
24 NON-EVIDENTIARY KINDS OF THINGS. I KNOW YOU AS A JUDGE
25 AND ME AS A LAWYER TRY TO KEEP THOSE THINGS OUT, BUT WHEN

1 YOU GOT A YOUNG MAN WHO IS NOT CHARGED AS BEING A
2 PRINCIPAL UNDER THE INDICTMENT, HE IS NOT EVEN CHARGED
3 WITH BEING IN A CONSPIRACY, HE IS MERELY CHARGED WITH
4 ASSISTING SOMEONE WHO SUPPOSEDLY KNEW ABOUT A CRIME IN
5 GETTING AWAY FROM A CRIME.

6 IT -- I THINK ESPECIALLY IN A CASE LIKE THIS
7 WHERE I THINK THE EVIDENCE IS GOING TO SHOW THAT THIS WAS
8 A -- SOMETHING THAT NOBODY COULD FORESEE, NOBODY
9 APPARENTLY PLANNED ON IT HAPPENING, IT JUST HAPPENED ONE
10 NIGHT AT A RURAL COUNTRY CLUB AND AS A RESULT A YOUNG MAN
11 LOST HIS LIFE.

12 I WOULD ASK THE COURT THERE WOULD BE NO
13 PREJUDICE TO THE STATE BY HAVING TO DO TWO TRIALS. THEIR
14 WITNESSES WOULD BE SIMILAR BUT NOT THE SAME BECAUSE QUITE
15 FRANKLY IN ORDER TO PROVE THE INTENT OF THE DEFENDANT
16 WITHERSPOON, YOU DON'T HAVE TO HAVE THESE WITNESSES WHO
17 SAY THAT I SAW BAD ACTS GOING ON BETWEEN OTHER PEOPLE, AND
18 I THINK THAT FURTHER COMPLICATES IT AS FAR AS I'M
19 CONCERNED, AS FAR AS MR. WITHERSPOON IS CONCERNED.

20 AND WE WOULD RESPECTFULLY ASK THE COURT BASED ON
21 THE FACT THAT THEY ARE CHARGED IN A SEPARATE ACT, SEPARATE
22 EVIDENCE HAS TO BE BROUGHT TO THIS COURT TO BE RULED ON BY
23 THE COURT AND BY THE JURY THAT THESE TWO YOUNG MEN OR
24 THESE -- MY YOUNG MAN -- I THINK MR. JORDAN IS JOINING ME
25 IN THE MOTION -- THAT THEY BE ALLOWED TO HAVE A SEPARATE

1 TRIAL.

2 THE COURT: MR. JORDAN, YOU RAISED THAT SAME MOTION,
3 JOINING THAT MOTION ON BEHALF OF MR. SINGLETON; IS THAT
4 RIGHT?

5 MR. JORDAN: YES, YOUR HONOR. I WOULD JOIN IN THAT
6 MOTION FOR ALL THE SAME GROUNDS AND WOULD LIKE TO ADD ONE
7 ADDITIONAL CONCERN I HAVE. YOUR HONOR, WHILE THE LAW
8 DOESN'T RECOGNIZE SEVERANCE AS A MATTER OF RIGHT, WHEN
9 THERE IS MERELY THE POSSIBILITY OF ANTAGONISTIC DEFENSES,
10 AS WE ALL KNOW IN TRIAL, OFTEN TIMES WHEN THAT COMES TO
11 LIGHT IT'S TOO LATE TO UNDO.

12 YOUR HONOR, BECAUSE WE HAVE NOT -- WE HAVE
13 CONCERTED JUST MINIMALLY IN THIS CASE AS FAR AS JURY
14 STRIKES AND THOSE TYPE MATTERS, I DON'T KNOW WHAT THE
15 OTHER FOLKS' DEFENSES WILL BE. AND CERTAINLY, YOUR HONOR,
16 WE WILL COME TO THE MATTER OF MY CLIENT'S STATEMENTS
17 SOMETIME.

18 BUT YOUR HONOR, AT THE POINT IN TIME WHERE THE
19 HINT OF ANTAGONISTIC DEFENSES COMES AROUND, IN MY OPINION
20 AT LEAST IT'S TOO LATE AT THAT POINT TO CURE THAT, YOUR
21 HONOR. SO WE WOULD JOIN IN THE MOTION FOR SEVERANCE. WE
22 BELIEVE THAT THERE IS NO PREJUDICE TO THE STATE.

23 IS IT FAIR TO GET -- GIVE US SEPARATE TRIALS IN
24 THIS MATTER AND WE WOULD ASK THE COURT TO STRONGLY
25 CONSIDER THAT IN LIGHT OF THE BRUTON ISSUES, IN LIGHT OF

1 STATEMENT ISSUES, IN LIGHT OF THE FACT THAT THERE --
2 PEOPLE, THESE TWO INDIVIDUALS CHARGED WITH DOING ENTIRELY
3 SEPARATE THINGS THAN THESE TWO INDIVIDUALS WERE DOING.

4 YOUR HONOR, ALSO WE WOULD ASK THE AVAILABILITY
5 OF CALLING THEM AS WITNESSES IN THE EVENT THAT THEIR CASES
6 WERE DISPOSED OF, WE WOULD HAVE THE ABILITY TO CALL THEM
7 AS TO WHETHER THE FACT THERE WAS ANY -- ANY KNOWLEDGE ON
8 THE PART OF THESE INDIVIDUALS. SO I WOULD ASK THE COURT
9 TO STRONGLY CONSIDER A SEVERANCE, YOUR HONOR. THANK YOU.

10 THE COURT: THANK YOU, MR. JORDAN, MR. FINNEY. ALL
11 RIGHT. MS. NIELSEN?

12 MS. NIELSEN: YOUR HONOR, IT'S OUR POSITION THERE
13 ISN'T ANY PREJUDICE TO ANY OF THE DEFENDANTS. THESE TWO
14 DEFENDANTS ARE NOT CHARGED WITH MURDER. THERE IS NO
15 ALLEGATION WHATSOEVER THAT THEY KNEW THIS WAS GOING TO
16 HAPPEN. THEY SIMPLY WERE INVOLVED IN IT AFTER IT
17 HAPPENED.

18 FROM THE STATE'S POINT OF VIEW, WE HAVE TO PROVE
19 THIS ENTIRE CASE TO TRY THEM SEPARATELY BECAUSE BOTH ARE
20 ACCESSORY AFTER THE FACT AND MISPRISON OF A FELONY. WE
21 GOT TO GO BACK AND PROVE THE ENTIRE CASE AGAIN TO PROVE
22 THAT THE FELONY WAS COMMITTED AND COMPLETED AT THE TIME
23 THAT THEY BECAME AN ACCESSORY AFTER OR WERE INVOLVED IN
24 MISPRISON OF A FELONY.

25 TO MY KNOWLEDGE, WHAT THEY TOLD ME SO FAR IS

1 THERE AREN'T ANY ANTAGONISTIC DEFENSES. THEY SAY WE
2 AREN'T GUILTY, WE DIDN'T DO ANYTHING.

3 THE COURT: OKAY. THANK YOU, MA'AM. MR. FINNEY, MR.
4 JORDAN? GENTLEMEN, AS THE MOVING PARTY YOU HAVE THE LAST
5 WORD. MR. FINNEY, ANYTHING TO ADD?

6 MR. FINNEY: NO, YOUR HONOR, BUT I DO THINK MR.
7 JORDAN'S POINT AND THE FACT WE ARE NOT CAPABLE OF CALLING
8 CO-DEFENDANTS CHARGED IN COUNT ONE AS WITNESSES IN THIS
9 PARTICULAR PROCEEDING WHEREAS IF YOU DID GIVE US SEPARATE
10 TRIALS WE WOULD HAVE THAT OPTION, YOU KNOW, OF COURSE
11 COUNSEL WOULD PROBABLY STAY HERE AND LISTEN TO THEM
12 TESTIFY IN THIS TRIAL TO SEE IF THEIR MEMORIES OR
13 RECOLLECTIONS WERE HELPFUL TO US, AND IF THEY WERE OF
14 COURSE, THAT WOULD BE AN OPTION THAT WOULD BE AVAILABLE TO
15 US IN A SECOND TRIAL THAT IS NOT AVAILABLE TO US NOW.
16 BECAUSE THEY ARE DEFENDANTS, WE CAN'T CALL THEM.

17 THE COURT: ALL RIGHT. THANK YOU.

18 MR. FINNEY: LET ME JUST SAY TOO, YOUR HONOR, GIVEN
19 THE VERDICT OR WORDING OF THE INDICTMENT IN COUNT TWO AND
20 COUNT THREE, IT APPEARS THAT YOU CANNOT BE GUILTY OF BOTH
21 COUNT TWO AND COUNT THREE. IT'S ONE OR THE OTHER.

22 I SAY THAT BECAUSE THE CLEAR LANGUAGE IN THE
23 INDICTMENT SAYS THAT IT WAS NOT THE INDICTMENT. THE CLEAR
24 LANGUAGE IN THE CASE LAW ON MISPRISON SAYS THAT IT IS NOT
25 AN ACT OF AN ACCESSORY.

1 I WOULD CITE YOU TO THE READING OF THE CRIMINAL
2 LAW OF SOUTH CAROLINA THIRD EDITION BY PROFESSOR MCINISH
3 WHICH SAYS THAT SOUTH CAROLINA RECOGNIZES THE COMMON LAW
4 MISDEMEANOR, MISPRISON OF A FELONY WHICH IS CRIMINAL
5 NEGLECT TO EITHER PREVENT A FELONY FROM BEING COMMITTED OR
6 TO BRING THE OFFENDER TO JUSTICE AFTER ITS COMMISSION --
7 AND HERE IS THE KEY LANGUAGE -- BUT WITHOUT SUCH PREVIOUS
8 CONCERT WITH OR SUBSEQUENT ASSISTANCE OF HIM AS WILL MAKE
9 HIM THE CONCEALER AND ACCESSORY BEFORE OR AFTER THE FACT.

10 AND IT CITES STATE VERSUS PARSON WHICH IS A 1980
11 CASE AND IT CITES C J S SECTION ON COMPOUNDING DEFENSES.
12 SO APPARENTLY UNDER THE STATUTE UNDER WHICH WE -- COMMON
13 LAW DECISION, YOU CAN'T BE GUILTY OF COUNT TWO AND THREE
14 AT THE SAME TIME; AND THEREFORE THE PROOF THAT IS OFFERED
15 BY THE STATE, EVEN THOUGH SHE WOULD HAVE TO HAVE A
16 SEPARATE TRIAL IF YOU GRANT THE MOTION, THAT PROOF WOULD
17 NOT BE THE SAME PROOF NECESSARY TO PROVE THE MURDER.

18 ALL SHE WOULD HAVE TO PROVE IS THAT THERE WAS A
19 CRIME. BUT SHE WOULD HAVE TO THEN ELECT APPARENTLY
20 WHETHER OR NOT IT WAS SOMETHING THAT ROSE TO THE STANDARD
21 OF A ACCESSORY OR WHETHER OR NOT IT WAS JUST A NEGLIGENT
22 -- A NEGLIGENT ACT, WHICH IS I GUESS A MISPRISON.

23 THE COURT: I THINK THAT THE CHARGES THEMSELVES ARE
24 PROBABLY MUTUALLY EXCLUDED CHARGES. I THINK THAT YOU ARE
25 RIGHT. I DON'T THINK YOU CAN BE CONVICTED OF BOTH OF

1 THEM, BUT I THINK POSSIBLY CAN BE CONVICTED OF EITHER OF
2 THEM IN THE PROPER CIRCUMSTANCE.

3 THE ACCESSORY AFTER THE FACT, OF COURSE,
4 REQUIRES THE KNOWLEDGE THAT THE CRIME WAS COMMITTED, SOME
5 ACT OF CONCERT IN EITHER ASSISTING OR THE ESCAPE, WHICH I
6 DON'T THINK TO BE THE CASE HERE, OR THE HIDING OF THE FACT
7 THIS THE INDIVIDUALS WERE INVOLVED OR ASSISTING IN
8 PREVENTING DETECTION OF THOSE INDIVIDUALS, AND THE INTENT
9 OF THAT THEIR ACTIONS PROVIDE THAT SORT OF RELIEF --
10 EITHER ESCAPE OR THE FAILURE.

11 THE MISPRISON OF A FELONY, OF COURSE, IS AS YOU
12 STATED IS A CRIMINAL NEGLIGENCE STANDARD AND IT IS A ENTIRELY
13 DIFFERENT STANDARD TO BE APPLIED. BUT I DON'T THINK THAT
14 THE FACT THAT THOSE -- THAT THE STATE COULD BE REQUIRED TO
15 ELECT ON THOSE, BETWEEN THOSE TWO PARTICULAR CHARGES
16 BECAUSE IT MIGHT BE THAT THEY COULD BE FOUND GUILTY OF
17 EITHER OR -- OF EITHER OF THEM DEPENDING UPON THE JURY'S
18 VIEW OF THE FACTS, THAT IS IF THE ACTIONS OF THE
19 DEFENDANTS CHARGED WITH THE MISPRISON AND THE ACCESSORY
20 ROSE TO THE INTENT TO PREVENT DETECTION OR TO AID AN
21 ESCAPE, THAT THE KNOWLEDGE OF THE CRIME HAD BEEN
22 COMMITTED, THAT WOULD BE ONE THING.

23 IF IT WAS NOT INTENT BUT CRIMINAL NEGLIGENCE THAT
24 WAS INVOLVED, A DIFFERENT STANDARD, OF COURSE THAN INTENT,
25 THEN THEY COULD BE GUILTY OF THE OTHER. THEY WOULD NOT BE

1 GUILTY OF BOTH. AND THE JURY WOULD BE INSTRUCTED IN THAT
2 REGARD AT THE APPROPRIATE TIME.

3 THE ISSUE OF THE SEVERANCE ITSELF IN THIS
4 PARTICULAR CASE, BECAUSE THE JURY HAS ALREADY BEEN
5 INSTRUCTED AND THEY WILL HAVE BEFORE THEM VERY CLEARLY THE
6 CHARGES -- ALTHOUGH THEY WON'T HAVE THE INDICTMENT, THEY
7 WILL HAVE THE CHARGES CLEARLY BEFORE THEM INDICATING THAT
8 THESE INDIVIDUALS ARE CHARGED WITH AND THE SPECIFIC
9 DIFFERENCE IN THOSE CHARGES.

10 BUT THE STATE DOES HAVE TO PROVE THE -- AS THE
11 FIRST ELEMENT OF ACCESSORY AFTER THE FACT, THE FACT THAT
12 THE CRIME ITSELF HAD BEEN COMPLETED, AND OF COURSE THEY
13 WILL BE ATTEMPTING TO DO THAT IN THIS PARTICULAR CASE.
14 GIVEN THE FACT THAT THE JURY IS NOT GOING TO BE CONFUSING
15 THE CHARGES, THEY WILL NOT BE ABLE TO CONFUSE THEM, THEY
16 WILL BE INSTRUCTED PROPERLY AND YOU ALL WILL TRY THE CASE
17 TO EDUCATE THEM PROPERLY, I CANNOT SEE HOW THEY WOULD
18 REACH AN IMPROPER VERDICT ON THAT BASIS.

19 NOW, THE ISSUE OF MOTIONS WHICH YOU HAVE RAISED,
20 OF COURSE, IS ALWAYS A VALID ISSUE AND THE ISSUE OF BRUTON
21 THAT YOU RAISED IS ALSO A VALID ISSUE. WE WILL BE DEALING
22 WITH BRUTON LATER TODAY, THIS AFTERNOON, WHEN I DEAL WITH
23 STATEMENTS.

24 RIGHT THIS MINUTE I'M NOT PREPARED TO RULE ON
25 THAT ASPECT BECAUSE IT MIGHT WELL BE THAT THE BRUTON

1 ISSUES DO RISE TO THE NATURE OF A PROBLEM THAT WOULD
2 CREATE PREJUDICE OR THAT WOULD VIOLATE THE STATE V BRUTON
3 STANDARDS, BRUTON VERSUS UNITED STATES STANDARD I SHOULD
4 SAY, IF THEY WERE TRIED IN THAT WAY.

5 I HAVE IN THE PAST FOUND MYSELF IN THE POSITION
6 OF STARTING A CASE WITH JOINT DEFENDANTS AND THEN HAD A
7 DEFENDANT ONE TIME CHANGE HIS TESTIMONY IN THE TRIAL WHICH
8 CAUSED ME TO GRANT A SEVERANCE AT THAT TIME AND --
9 SOMEWHAT SINGLY, BUT IT CAN BE DONE.

10 HOPEFULLY WE WILL BE ABLE TO CLEAN UP ALL THE
11 BRUTON ISSUES BEFORE WE EVEN GET INTO TRIAL, AND SO FAR AS
12 ANTAGONISTIC DEFENSE, I THINK GENTLEMEN, BOTH OF YOU
13 RECOGNIZE THAT IN AND OF THEMSELVES, ANTAGONISTIC DEFENSES
14 ARE NOT ENOUGH TO CREATE A SEVERANCE.

15 THE STATE IS -- THE STATE VERSUS ROOK, R-O-O-K,
16 IS A CASE THAT IS AUTHORITY TO THAT FOUND AT 177 S.E. 143,
17 IT'S AN OLD 1935 SUPREME COURT CASE, STILL GOOD LAW ON
18 THAT PARTICULAR ISSUE. THE STATE V LEONARD IS ALSO
19 ANOTHER CASE THAT STANDS FOR THAT SAME THING, MORE -- A
20 MORE RECENT CASE FOUND AT 339 S.E. 2ND 159, THE COURT OF
21 APPEALS CASE FROM 1996.

22 THAT CASE IS CITED IN THE CASE OF STATE V
23 DENNIS, SUPREME COURT CASE FROM 1999 FOUND AT THREE --
24 EXCUSE ME -- 523 S.E. 2ND 173. I LIVE LONG ENOUGH I'LL
25 KNOW HOW TO READ THIS COMPUTER SCREEN. IN THAT PARTICULAR

1 CASE THERE WERE INDIVIDUALS, CO-DEFENDANTS CHARGED WITH
2 MURDER AND THE SUPREME COURT SET OUT OR RESTATED
3 LONGSTANDING CASE LAW INDICATING THAT FIRST OF ALL THEY
4 ARE NOT ENTITLED TO SEPARATE TRIALS AS A MATTER OF RIGHT,
5 THAT PREJUDICE HAS TO BE SHOWN BEFORE THE SEVERANCE SHOULD
6 BE GRANTED, AND THE SUPREME COURT CAUTIONED US AT TRIAL
7 BENCH OF COURSE ALWAYS BE MINDFUL OF BRUTON ISSUES AND OF
8 PROBLEMS THAT CAN ARISE WITH STATEMENTS AND REDACTED
9 STATEMENTS.

10 I WILL BE MINDFUL OF THAT. BUT IN THE ABSENCE
11 OF PROBLEM THAT ARISES OUT OF THE BRUTON ISSUES, I CANNOT
12 SEE WHERE THE FACT THAT THESE INDIVIDUALS WERE ON TRIAL ON
13 A SINGLE INDICTMENT CHARGING SOME OF THEM WITH LESSER
14 OFFENSES GROWING OUT OF MORE SERIOUS CHARGES AGAINST
15 OTHERS IS DIFFICULT GROUNDS TO GRANT A SEVERANCE.

16 AS A MATTER OF FACT, I THINK THE JURY WOULD BE
17 IN A BETTER POSITION TO ASSESS THE CONDUCT OF ALL OF THEM
18 IN REGARDS TO EACH OTHER IF THE CASE TRIED IN A SINGLE
19 SETTING AS IT WILL BE IN THIS CASE SINCE I HAVE DENIED THE
20 MOTION FOR SEVERANCE.

21 OUR SUPREME COURT IN THE CASE ZAFIRO VERSUS
22 UNITED STATES, A UNITED STATES SUPREME COURT CASE, STANDS
23 FOR THE PROPOSITION THAT THE SEVERANCE SHOULD BE GRANTED
24 ONLY WHEN THERE IS A SERIOUS RISK THAT A JOINT TRIAL WOULD
25 COMPROMISE A SPECIFIC TRIAL RIGHT OF CO-DEFENDANT OR

1 PREVENT THE JURY FROM MAKING A RELIABLE JUDGMENT ABOUT A
2 CO-DEFENDANT'S GUILT.

3 I DON'T THINK THAT THAT WOULD OCCUR IN THESE
4 CIRCUMSTANCES. AS A MATTER OF FACT, I THINK THAT -- THAT
5 THE JURY WILL BE IN A BETTER POSITION TO UNDERSTAND THE
6 CONDUCT OF ALL OF THEM AS IT PLAYS OUT IN THIS PARTICULAR
7 CASE. ZAFIRO IS FOUND AT 506 UNITED STATES 541. IT'S A
8 UNITED STATES SUPREME COURT CASE. THE MOTION FOR
9 SEVERANCE THEN IS RESPECTFULLY DENIED.

10 MR. FINNEY: THANK YOU, YOUR HONOR.

11 THE COURT: THANK YOU. ALL RIGHT. NOW, WE HAVE GOT
12 THE JACKSON V DENO ISSUE, WE GOT THE IDENTIFICATION ISSUES
13 TO DEAL WITH. ARE THERE ANY OTHER PRETRIAL MOTIONS BEFORE
14 WE GET INTO THE TESTIMONY ON THOSE ISSUES IN ANY OF THE
15 DEFENDANTS, GENTLEMEN? ANY OTHER -- MR. DOBY, ANY OTHER
16 PRETRIAL MOTIONS ON MR. EVANS' BEHALF?

17 MR. DOBY: YOUR HONOR, OTHER THAN DEALING WITH THE
18 REDACTED STATEMENTS, PERHAPS IN THE IN-COURT
19 IDENTIFICATION WHICH WE ANTICIPATE -- THOSE ARE THE ONLY
20 TWO.

21 THE COURT: WE WILL TAKE THOSE UP IN CONTEXT OF
22 JACKSON V. DENO. MR. ROGERS, ON BEHALF OF MR. TAYLOR?

23 MR. ROGERS: JUDGE, I CAN'T THINK OF ANYTHING ELSE
24 OTHER THAN ON OUR RULE FIVE MOTIONS. IT IS OUR POSITION
25 THAT WE ARE ENTITLED TO INCIDENT REPORTS, AND I DIDN'T

1 KNOW WHEN YOU PLANNED TO GET INTO THAT.

2 THE COURT: OKAY. I WILL ADDRESS THAT BEFORE WE GET
3 ANY FURTHER ALONG IN THAT. ALL RIGHT. MR. JORDAN,
4 ANYTHING FURTHER ON MR. SINGLETON'S BEHALF?

5 MR. JORDAN: YOUR HONOR, I WOULD JUST RENEW OUR
6 DISCOVERY MOTION, FILED WRITTEN BRADY AND RULE FIVE MOTION
7 AT THE INCEPTION OF THE CASE. WE WOULD MOVE FOR ANY
8 THINGS THAT HAVE NOT BEEN TURNED OVER PREVIOUSLY WITH JUST
9 THIS DAY, SOME PHOTOGRAPHS, I WOULD -- JUST BRIEFLY HAD
10 THE OPPORTUNITY TO REVIEW THOSE WITH MY CLIENT.

11 I HAVE SEEN THE DIAGRAM. WE WOULD JUST MOVE
12 THAT ANY OTHER -- ANY OTHER THING DISCOVERABLE UNDER RULE
13 FIVE, DELINEATED UNDER RULE FIVE OR MADE DISCOVERABLE BY
14 BRADY AND ITS PROGENY BE TURNED OVER AT THIS TIME
15 INCLUDING ANY RECORDS OF ANY WOULD BE WITNESSES FOR THE
16 PROSECUTION. THANK YOU, YOUR HONOR.

17 THE COURT: ALL RIGHT. THANK YOU. MR. FINNEY, ANY
18 ADDITIONAL MOTIONS ON BEHALF OF MR. WITHERSPOON?

19 MR. FINNEY: NOTHING IN ADDITION, YOUR HONOR.

20 THE COURT: ALL RIGHT. THANK YOU.

21 MS. NIELSEN: YOUR HONOR, I DO HAVE 17 MORE
22 PHOTOGRAPHS. THESE ARE THE PHOTOGRAPHS THAT THEY PICKED
23 UP THIS MORNING. THE DEFENSE ATTORNEYS HAVE NOT HAD A
24 CHANCE TO LOOK AT THEM. THESE ARE SIMPLY THE PHOTOGRAPHS
25 OF THE DAVIS COUNTRY CLUB AND THE SURROUNDING SCENE THAT

1 WERE TAKEN AT DAYLIGHT SO THAT THE JURY COULD HAVE SOME
2 IDEA OF WHAT THE SCENE IS.

3 THE COURT: ALL RIGHT. HERE IS WHAT WE CAN DO. OF
4 COURSE THEY HAVE TIME TO LOOK AT THOSE THIS AFTERNOON IF
5 THEY CAN WHILE WE ARE GOING OVER THESE OTHER MATTERS.
6 FAILING THAT, AFTER WE RECESS FOR THE AFTERNOON, BOTH THEY
7 CAN REVIEW THOSE AND IF THERE ARE ANY EVIDENTIARY
8 PROBLEMS, WE CAN TAKE THEM UP TOMORROW MORNING BEFORE THEY
9 ARE PRESENTED TO THE JURY, BEFORE THEY ARE ALLOWED INTO
10 EVIDENCE. ALL RIGHT.

11 MS. NIELSEN, YOU HAVE HEARD THE SPECIFIC RENEWAL
12 OF THE BRADY AND RULE FIVE MOTIONS BY MR. JORDAN ON BEHALF
13 OF HIS CLIENT AND I'M SURE ALL OF THEM JOIN IN THAT
14 REGARD. MR. ROGERS ALSO SPECIFIC MOTION FOR DISCOVERY OF
15 THE INCIDENT REPORT. LET ME HEAR FROM YOU IN THAT
16 REGARD.

17 MS. NIELSEN: YOUR HONOR, I HAVE PROVIDED TO THEM
18 EVERYTHING THAT IS IN MY CASE FILE ALMOST. I HAVE NOT
19 PROVIDED THE INCIDENT REPORT. IT'S NOT IN POSSESSION OR
20 RULE FIVE DOES NOT ALLOW US TO DISCLOSE THE INCIDENT
21 REPORT.

22 I HAVE COMPLIED TO THE EXTENT THAT I HAVE GIVEN
23 THEM THE STATEMENTS OF ALL OF THE WITNESSES WHO WERE AT
24 THE SCENE, ALL -- ANYTHING I HAVE FROM SLED, WE -- FRIDAY
25 I RECEIVED INFORMATION FROM A SLED AGENT.

1 WE HAVE THE 16 SHELL CASINGS AT THE SCENE IN
2 REFERENCE TO WHICH ONE OF THOSE CAME FROM PARTICULAR
3 GUNS. WE DON'T HAVE ANY GUNS, BUT THERE ARE -- APPARENTLY
4 WERE FOUR CASINGS FROM FOUR SEPARATE GUNS. I FAXED THAT
5 TO THE DEFENSE ATTORNEYS AS SOON AS I RECEIVED IT FROM
6 SLED.

7 THERE IS NOT A WRITTEN REPORT AS THERE IS NOT
8 GOING TO BE ONE BECAUSE WE DIDN'T HAVE TIME TO DO IT.
9 HE'S ON ANNUAL LEAVE EVEN THOUGH HE WILL BE HERE TO
10 TESTIFY. BESIDES, I THINK I HAVE GIVEN THEM EVERYTHING I
11 HAVE.

12 THE COURT: ALL RIGHT. THANK YOU.

13 MS. NIELSEN: YOUR HONOR, I WILL ADD THAT I HAVE NOT
14 PREVIOUSLY SUPPLIED THE STATEMENTS OF TRAVIS SINGLETON AND
15 ON MR. WITHERSPOON TO THE OTHER TWO DEFENDANTS' ATTORNEYS
16 BUT BECAUSE WE COULDN'T GET INTO THE REDACTION OF THESE
17 STATEMENTS NOW GIVEN BOTH OF THEM A COPY OF THOSE
18 STATEMENTS.

19 THE COURT: THANK YOU, MA'AM. PRIOR TO ADOPTION OF
20 SOUTH CAROLINA RULES OF CRIMINAL PROCEDURE, THERE WERE
21 VERY LITTLE ACTUAL DISCOVERY IN THE CRIMINAL SIDE OF THE
22 COURT. RULE FIVE AND OR RULE FIVE HAS ADDRESSED CERTAIN
23 ASPECTS OF CRIMINAL DISCOVERY AND DISCLOSURE AND OF COURSE
24 THE BRADY VERSUS MARYLAND AND THE CASES THAT HAVE COME
25 DOWN FOLLOWING THE ADOPTION OF THAT PARTICULAR RULE

1 REQUIRING DISCLOSURE OF ANY EXCULPATORY INFORMATION AND
2 KNOWLEDGE, EVIDENCE HAS GENERATED A DUAL TRACK OF
3 DISCLOSURE.

4 RULE FIVE, HOWEVER, IS RATHER SPECIFIC IN WHAT
5 SHOULD BE AND SHOULD NOT BE ALLOWED INTO EVIDENCE.
6 NOTWITHSTANDING RULE FIVE, IF THERE IS IN EVIDENCE OR IF
7 THERE IS INCLUDED OR EXCLUDED BY RULE FIVE CERTAIN TYPES
8 OF INFORMATION THAT COMES UNDER ~~BRADY~~ VERSUS MARYLAND, AND
9 IT'S UNLIKELY THAT THAT WILL HAPPEN BECAUSE RULE FIVE IS
10 ADOPTED AND DRAFTED WITH BRADY IN MIND, BUT IN THE EVENT
11 THERE SHOULD BE -- THAT EXISTS, OBVIOUSLY BRADY VERSUS
12 MARYLAND STILL PROVIDES FOR THE -- FOR THE DISCLOSURE OF
13 THAT.

14 HOWEVER, SPECIFICALLY PROVIDED FOR IN RULE FIVE
15 A ONE D 2, INFORMATION NOT SUBJECT TO DISCLOSURE, THIS HAS
16 TO DO WITH DISCLOSURE OF EVIDENCE BY PROSECUTION EXCEPT AS
17 PROVIDED FOR ABOVE IN PARAGRAPH "A" WHICH HAS TO DO WITH
18 STATEMENT OF THE DEFENDANT, PARAGRAPH "B" WHICH HAS TO DO
19 WITH DEFENDANT'S PRIOR RECORD, PARAGRAPH "C" EXCUSE ME
20 PARAGRAPH "D" WHICH HAS TO DO WITH REPORTS AND
21 EXAMINATIONS, SCIENTIFIC TESTS AND THINGS OF THAT NATURE,
22 THIS RULE IS NOT AUTHORIZED THE DISCOVERY OR INSPECTION OF
23 REPORTS, MEMORANDA OR OTHER INTERNAL PROSECUTION DOCUMENTS
24 MADE BY THE ATTORNEY FOR THE PROSECUTION OR OTHER
25 PROSECUTION AGENTS IN CONNECTION WITH THE INVESTIGATION OR

1 PROSECUTION OF THE CASE OR EVEN OF STATEMENTS MADE BY
2 PROSECUTION WITNESSES OR RESPECTIVE PROSECUTION WITNESSES
3 PROVIDED OF COURSE THAT A WITNESS TESTIFIES, THEN BEFORE
4 CROSS-EXAMINATION THE DEFENSE COUNSEL MAY HAVE A RIGHT TO
5 LOOK AT THE STATEMENT.

6 AND SO IT IS CLEAR BY THE WORDING OF THE RULE AS
7 IT WAS DRAFTED THAT THOSE TYPES OF INVESTIGATORY
8 MEMORANDA, REPORTS MADE BY THE SOLICITOR'S OFFICE OR THE
9 INVESTIGATING AGENTS IN THIS PARTICULAR CASE ARE NOT
10 SUBJECT TO DISCLOSURE.

11 THE STATE TAKES THE POSITION IT WILL NOT REVEAL
12 THEM BECAUSE THEY ARE NOT SUBJECT TO DISCLOSURE. THE
13 STATE IS RIGHT IN THAT REGARD IN THE ABSENCE OF SOME
14 SHOWING THAT THERE IS A POSSIBLE BRADY VIOLATION OR
15 SOMETHING OF THAT NATURE WHICH REQUIRES THIS COURT PERHAPS
16 TO LOOK AT THE STATE'S FILE AND TO EXAMINE IT EN CAMERA TO
17 SATISFY THAT CONCERN. THE STATE IS ON SOLID GROUND IN
18 DECLINING TO DISCLOSE THE INCIDENT REPORTS AND THE MOTION
19 TO DISCLOSE THOSE IS RESPECTFULLY DENIED.

20 ALL RIGHT, GENTLEMEN AND LADIES. LET'S GO
21 FORWARD THEN WITH THE TESTIMONY EITHER ON THE JACKSON V
22 DENO OR THE IDENTIFICATION ISSUES. MS. NIELSEN, I WILL
23 TAKE THOSE IN WHAT ORDER YOU'VE GOT THE WITNESSES PREPARED
24 TO TESTIFY.

25 MR. JORDAN: WOULD YOU NOTE ON THE RECORD WE WOULD

1 ASK THE COURT REVIEW -- REVIEW THOSE DOCUMENTS EN CAMERA
2 AND JUST SEE IF IT MEETS THE COURT'S SATISFACTION THAT
3 THERE IS NO BRADY MATERIAL INVOLVED IN THOSE INCIDENT
4 REPORTS. THANK YOU.

5 THE COURT: I WILL BE GLAD TO. AT THE END OF THE DAY
6 TODAY, MS. NIELSEN, IF YOU WILL PROVIDE ME WITH THE
7 INCIDENT REPORTS, I WILL BE GLAD TO REVIEW THEM EN CAMERA
8 AND MAKE THAT FINDING.

9 MR. FINNEY: YOUR HONOR, PLEASE. IN THAT REGARD
10 WOULD IT BE YOUR RULING THAT IF A WITNESS, A LAW
11 ENFORCEMENT WITNESS IS CALLED TO THE STAND AND HE IS ASKED
12 WHETHER OR NOT HE PREPARED SUCH A REPORT IN THE USUAL
13 COURSE OF HIS INVESTIGATION AND BUSINESS AND HE ANSWERS IN
14 THE AFFIRMATIVE, COULD WE THEN -- DEFENSE COUNSEL THEN
15 HAVE AN OPPORTUNITY TO LOOK AT THE REPORT?

16 THE COURT: YOU MEAN DURING THE COURSE OF THE
17 EXAMINATION?

18 MR. FINNEY: YES, SIR.

19 THE COURT: IS THAT WHAT YOU ARE SAYING? I'LL HAVE
20 TO CROSS THAT BRIDGE WHEN WE GET TO IT. IT'S DONE ALL THE
21 TIME.

22 MR. FINNEY: YES, SIR.

23 THE COURT: AND CERTAINLY THE QUESTION IS AN
24 APPROPRIATE QUESTION AS YOU HAVE POSED IT. NOW, WHERE WE
25 CAN GO WITH IT AFTER THAT OF COURSE IS ANOTHER MATTER.

DANIEL SIMON - DIRECT BY NIELSEN

1 CLEARLY IF THERE IS SOMETHING IN THE REPORT THAT IS
2 INCONSISTENT WITH HIS TESTIMONY, I THINK HE'D BE ENTITLED
3 TO IT.

4 AND OBVIOUSLY IF THERE IS ANYTHING IN THERE THAT
5 IS EXCULPATORY, YOU WOULD BE ENTITLED TO IT IN ADVANCE AND
6 I WILL BE GLAD TO LOOK AT THOSE. AND IF THERE IS ANYTHING
7 IN THE TESTIMONY THAT I PERCEIVE TO BE INCONSISTENT, THE
8 INCIDENT REPORT, THEN THAT GETS INTO AN ENTIRELY DIFFERENT
9 MATTER AND I THINK YOU WOULD BE ENTITLED -- AT FIRST BLUSH
10 I THINK YOU WOULD BE ENTITLED TO EXPLORE IT. OKAY, MS.
11 NIELSEN?

12 MS. NIELSEN: COURT'S INDULGENCE.

13 THE COURT: YES, MA'AM.

14 (WHEREUPON THERE WAS A PAUSE).

15 MS. NIELSEN: STATE CALLS DANIEL SIMON.

16 THE COURT: COME FORWARD PLEASE AND BE SWORN.

17 DANIEL SIMON, BEING FIRST DULY SWORN,
18 TESTIFIED AS FOLLOWS:

19 DIRECT EXAMINATION BY MS. NIELSEN:

20 Q YOUR NAME IS DANNY SIMON?

21 A YES.

22 Q CAN YOU TELL THE COURT HOW YOU'RE EMPLOYED?

23 A I'M AN INVESTIGATOR WITH THE LEE COUNTY SHERIFF'S
24 OFFICE.

25 Q AND HOW LONG HAVE YOU BEEN AN INVESTIGATOR?

1 A APPROXIMATELY FIVE YEARS.

2 Q WERE YOU INVOLVED IN THE INVESTIGATION OF THIS
3 PARTICULAR CASE?

4 A YES, SIR.

5 Q YOU WERE ACTUALLY AT THE SCENE THE NIGHT THIS
6 HAPPENED?

7 A YES, MA'AM.

8 Q DID YOU TAKE STATEMENTS FROM ANY OF THE DEFENDANTS?

9 A YES, MA'AM.

10 Q WHAT DEFENDANTS DID YOU TAKE STATEMENTS FROM?

11 A TRAVIS SINGLETON AND -- TRAVIS SINGLETON.

12 Q HOW ABOUT LAMONT WITHERSPOON?

13 A I WAS PRESENT WHEN DELLINGER DID IT.

14 Q ALL RIGHT. SO YOU WERE ACTUALLY HANDLING THE
15 QUESTIONING OF TRAVIS SINGLETON?

16 A YES, MA'AM.

17 Q WAS J.D. DELLINGER PRESENT WITH YOU?

18 A HE WAS IN AND OUT, YES, MA'AM.

19 Q AND J.D. DELLINGER ACTUALLY HANDLED THE QUESTIONING
20 OF LAMONT WITHERSPOON?

21 A YES, SIR.

22 Q AND YOU WERE PRESENT?

23 A I WAS IN AND OUT ALSO.

24 Q OKAY. NOW, IN REFERENCE TO TRAVIS SINGLETON, CAN YOU
25 TELL US THE CIRCUMSTANCES BRIEFLY UNDER WHICH YOU CAME TO

1 GIVE YOUR STATEMENT?

2 A YES, MA'AM. WE PICKED HIM UP FROM HIS PLACE OF
3 EMPLOYMENT IN SUMTER AND BROUGHT HIM BACK TO OUR OFFICE--
4 IT WAS THE 15TH OF NOVEMBER - -- AND BROUGHT HIM BACK TO
5 THE SHERIFF'S OFFICE AND HE WAS MIRANDIZED AND THEN THAT'S
6 WHEN HE GAVE A STATEMENT.

7 Q WAS HE UNDER ARREST?

8 A NO, MA'AM.

9 Q AT THE TIME HE GAVE THE STATEMENT WAS HE UNDER
10 ARREST?

11 A HE WASN'T PLACED UNDER ARREST THEN UNTIL AFTER HE
12 GAVE THE STATEMENT.

13 Q OKAY. NOW, TELL US HOW YOU MIRANDIZED HIM.

14 A WE GOT A STANDARD MIRANDA FORM THAT IS ON THE
15 COMPUTER AND I READ IT FROM HIM OFF THE COMPUTER AND ASKED
16 HIM DID HE UNDERSTOOD AND MADE COPIES OF IT AND HE SIGNED
17 IT.

18 Q ALL RIGHT. WOULD YOU TELL US EXACTLY WHAT YOU READ
19 TO HIM.

20 A I READ FROM THE SCREEN YOU HAVE THE RIGHT TO REMAIN
21 SILENT, ANYTHING YOU SAY CAN AND WILL BE USED AGAINST YOU
22 IN A COURT OF LAW, YOU HAVE THE RIGHT TO TALK TO A LAWYER
23 FOR ADVICE BEFORE HE ASKS YOU ANY QUESTIONS AND HAVE HIM
24 OR HER PRESENT WITH YOU DURING QUESTIONING. IF YOU DO NOT
25 HAVE MONEY FOR LAWYER'S FEE, THE COURT WILL APPOINT ONE TO

1 REPRESENT YOU WITHOUT COST IF YOU WISH.

2 IF YOU DECIDE TO ANSWER QUESTIONS WITHOUT A
3 LAWYER PRESENT, YOU STILL HAVE THE RIGHT TO STOP ANSWERING
4 QUESTIONS AT ANY TIME. YOU ALSO HAVE THE RIGHT TO STOP
5 ANSWERING QUESTIONS AT ANY TIME UNTIL YOU TALK WITH A
6 LAWYER. AND I ASKED HIM TO READ OVER IT, HE READ IT, THEN
7 HE SIGNED IT.

8 Q AND DID HE INDICATE TO YOU THAT HE COULD READ?

9 A YES, MA'AM.

10 Q BUT YOU ALSO READ THEM TO HIM?

11 A YES, MA'AM.

12 Q DID HE INDICATE TO YOU THAT HE UNDERSTOOD WHAT YOU
13 WERE TELLING HIM?

14 A YES, MA'AM.

15 Q DID HE ALSO INDICATE THAT HE WAS WILLING TO MAKE A
16 STATEMENT TO YOU?

17 A YES, MA'AM. THEN I READ HIM THE WAIVER OF RIGHTS.
18 THIS READ I'M WILLING TO MAKE A STATEMENT AND ANSWER
19 QUESTIONS. I DO NOT WANT A LAWYER AT THIS TIME. I
20 UNDERSTAND AND KNOW WHAT I'M DOING, NO PROMISE OR THREATS
21 HAVE BEEN MADE TO ME, NO PRESSURE OR COERCION OF ANY KIND
22 HAS BEEN USED TO ME.

23 AND I FURTHER WENT ON TO EXPLAIN TO HIM THAT I'M
24 NOT GOING TO MAKE HIM GIVE ME A STATEMENT, IT'S GOING TO
25 BE FREE AND VOLUNTARY, I'M NOT GOING TO DEMAND HIM TO GIVE

1 ME ONE, THAT HE UNDERSTOOD THAT, EVERYTHING THAT WAS GOING
2 TO BE FREE AND VOLUNTARY, THEN HE SIGNED IT.

3 Q AND IN YOUR OPINION WAS IT FREE AND VOLUNTARY?

4 A YES, MA'AM.

5 Q DID YOU THREATEN HIM IN ANY WAY?

6 A NO.

7 Q TO GET HIM TO GIVE YOU A STATEMENT?

8 A NO, MA'AM.

9 Q DID YOU PROMISE HIM ANYTHING?

10 A NO, MA'AM.

11 Q DID YOU TWIST HIS ARM?

12 A NO, MA'AM.

13 Q DID YOU HIT HIM OVER THE HEAD?

14 A NO, MA'AM.

15 Q WHERE WERE YA'LL DOING THIS? WERE YA'LL IN YOUR
16 OFFICE?

17 A IT WAS IN THE SHERIFF'S OFFICE AT THAT TIME, AT THAT
18 TIME IT'S -- THE INVESTIGATOR'S OFFICE HAD THREE CUBICLE.
19 I WAS IN THE BACK CUBICLE, THE SPACE THAT I OCCUPIED AT
20 THIS -- THAT TIME.

21 Q ALL RIGHT. YOU SAID INVESTIGATOR DELLINGER WAS IN
22 AND OUT?

23 A YES, MA'AM. HIS OFFICE AT THAT TIME WAS LOCATED AT
24 THE FRONT OF WHERE HE MAKE A LOOP AROUND IN THE BEGINNING
25 OF THE INVESTIGATION SPACE IN THE SHERIFF'S OFFICE.

1 Q DID INVESTIGATOR DELLINGER IN YOUR PRESENCE THREATEN
2 OR COERCE TRAVIS SINGLETON INTO GIVING THE STATEMENT?

3 A NO, MA'AM.

4 Q DID YOU HAVE ANY TROUBLE UNDERSTANDING WHAT HE WAS
5 TELLING YOU?

6 A NO, MA'AM.

7 Q AND DID YOU PERCEIVE THAT HE HAD ANY TROUBLE
8 UNDERSTANDING WHAT YOU WERE TELLING HIM?

9 A EVERYTHING HE -- HE TOLD ME HE UNDERSTOOD EVERYTHING
10 I SAID AND IT APPEARED THAT HE UNDERSTOOD EVERYTHING I
11 SAID.

12 Q AND DURING THE TIME THAT INVESTIGATOR DELLINGER WAS
13 IN THERE, DID HE DO ANYTHING TO COERCE OR THREATEN TRAVIS
14 SINGLETON INTO GIVING A STATEMENT TO YOU?

15 A NO, MA'AM.

16 Q NOW, YOU SAID INVESTIGATOR DELLINGER ACTUALLY HANDLED
17 THE STATEMENT TAKEN FROM LAMONT WITHERSPOON, BUT YOU WERE
18 IN AND OUT --

19 A YES, MA'AM.

20 Q -- AT THAT TIME. DID YOU DO ANYTHING TO THREATEN OR
21 COERCE LAMONT WITHERSPOON INTO GIVING A STATEMENT?

22 A NO, MA'AM.

23 Q AND WHILE YOU WERE IN THE ROOM, DID YOU SEE J.D.
24 DELLINGER THREATEN OR COERCE HIM INTO GIVING A STATEMENT?

25 A NOT WHILE I WAS IN THE ROOM.

1 Q WERE YOU PRESENT WHEN THAT FORM WAS GONE OVER WITH
2 HIM?

3 A I CAN'T RECOLLECT I WAS ACTUALLY PRESENT WHEN HE READ
4 THIS OR NOT, BUT I WAS IN AND OUT.

5 Q DID YOU SIGNATURE OFF THE STATEMENT OR ON THE FORM?

6 A YES, MA'AM.

7 Q LAMONT WITHERSPOON DIDN'T ACTUALLY SIGN THIS; DID HE?

8 A NO, MA'AM. IF I -- IF I CAN REMEMBER CORRECTLY, HE
9 SAID THAT HE UNDERSTOOD BUT HE WAS ADVISED BY HIS ATTORNEY
10 NOT TO SIGN ANYTHING.

11 Q BUT YOUR NAME AND J.D. DELLINGER'S NAME ARE ON THERE
12 AS WITNESSES?

13 A YES, MA'AM.

14 Q PLEASE ANSWER ANY QUESTIONS THE DEFENSE ATTORNEYS
15 HAVE.

16 THE COURT: SINCE THIS DEALS WITH MR. SINGLETON, THE
17 STATEMENT MR. JORDAN, WE WILL START WITH YOU IN THE
18 CROSS-EXAMINATION.

19 MR. JORDAN: THANK YOU, YOUR HONOR.

20 CROSS-EXAMINATION BY MR. JORDAN:

21 Q SIMON, WHAT TIME DID YOU PICK UP MR. SINGLETON FROM
22 HIS JOB?

23 A IT WAS IN THE NEIGHBORHOOD BETWEEN 3 AND 4:00.

24 Q AND WHERE DID YOU -- SORRY?

25 A THAT WAS DURING THE DAYTIME, 4:00.

1 Q OKAY. AND WHERE DID YOU QUESTION HIM? WAS THAT DONE
2 IN SUMTER OR WAS THAT -- DID YA'LL COME ALL THE WAY BACK
3 TO LEE COUNTY?

4 A WE BROUGHT HIM BACK TO LEE COUNTY, LEE COUNTY
5 SHERIFF'S OFFICE.

6 Q YOU SEE HIM SITTING OVER HERE TODAY? YOU RECOGNIZE
7 THESE INDIVIDUALS?

8 A YES, SIR.

9 Q OKAY. WHICH ONE WAS TRAVIS?

10 A TRAVIS IS THE ONE IN THE BROWN LEATHER COAT.

11 Q OKAY. WHO PICKED HIM UP, YOURSELF AND MR. DELLINGER?

12 A I WAS DRIVING AND DELLINGER WAS RIDING WITH ME.

13 Q OKAY.

14 A DELLINGER WENT INSIDE IN THE PLANT AND SPOKE WITH I
15 THINK IT'S THE PLANT MANAGER OR SOMEONE IN THE PLANT AND
16 HE BROUGHT HIM BACK OUT.

17 Q OKAY. SO YOU STAYED IN THE CAR WHEN HE WENT TO GET
18 HIM?

19 A YES, SIR.

20 Q SO HE HAD SOME COMMUNICATIONS WITH MR. SINGLETON
21 BEFORE OUTSIDE OF YOUR PRESENCE?

22 A YES, SIR.

23 Q SO YOU DON'T KNOW WHAT WAS SAID DURING THAT TIME; DO
24 YOU?

25 A NO, SIR.

1 Q OKAY. DID YOU EVER DURING THE COURSE OF THE TIME YOU
2 SPENT WITH HIM WHICH BY MY CALCULATIONS IS AT LEAST TWO
3 HOURS, MAYBE TWO AND A HALF HOURS, DID YOU EVER ALLOW HIM
4 TO GO GET A DRINK OF WATER OR USE THE RESTROOM?

5 A NORMALLY WHEN WE -- WHEN I INTERVIEW SOMEBODY, I
6 ALWAYS ASK THEM IF THEY WANT ANYTHING TO DRINK OR
7 ANYTHING. HE MAY HAVE WHEN HE GOT A DRINK OR SOMETHING, I
8 MAY HAVE GOT HIM A DRINK. I JUST DON'T REMEMBER WHETHER I
9 DID OR NOT.

10 Q WAS THIS DONE AT YOUR DESK OR WAS THIS DONE IN AN
11 INTERROGATION ROOM THAT'S ISOLATED AND GOT ONE TABLE?

12 A IT WAS DONE AT THE DESK.

13 Q AT YOUR DESK? OKAY. AND WERE -- DURING THE TWO AND
14 A HALF HOURS THAT YOU TALKED TO HIM, WAS INVESTIGATOR
15 DELLINGER PRESENT THE WHOLE TIME, TOO?

16 A NO, SIR.

17 Q JUST YOU SOMETIMES AND THEN HIM SOMETIMES?

18 A I WAS THERE THE WHOLE ENTIRE TIME. INVESTIGATOR--

19 Q HE NEVER LEFT YOUR SIGHT?

20 A NO, SIR.

21 Q OKAY. NOW, YA'LL HAVE VIDEO EQUIPMENT; DON'T YOU?

22 A WE DON'T HAVE VIDEO EQUIPMENT, NO, SIR.

23 Q YA'LL HAVE AUDIO EQUIPMENT?

24 A WE HAVE AUDIO EQUIPMENT BUT WASN'T USING IT DURING
25 THIS TIME.

1 Q YOU DIDN'T RECORD THE STATEMENT HE GAVE; DID YOU?

2 A NO, SIR.

3 Q OKAY. DO YOU KNOW HOW FAR OR WHAT LEVEL OF EDUCATION
4 TRAVIS SINGLETON HAS?

5 A NO, SIR.

6 Q OKAY. DID YOU ASK -- YOU ASKED HIM IF HE COULD READ
7 AND WRITE?

8 A YES, SIR. I ASKED HIM DID HE UNDERSTOOD THE MIRANDA
9 AND HE SAID HE DID.

10 Q OKAY.

11 A AND HE SIGNED IT.

12 Q BUT NOW YA'LL DIDN'T ALLOW HIM TO WRITE HIS OWN
13 STATEMENT IN HIS OWN HANDWRITING; DID YOU?

14 A I ASKED HIM DID HE WANTED ME TO WRITE IT FOR HIM OR
15 HE WANTS TO WRITE IT, AND HE -- HE ELECTED FOR ME TO WRITE
16 IT AND I TOLD HIM I COULD WRITE IT FOR HIM OR EITHER I
17 WOULD TYPE IT UP; AND WHATEVER HE -- HE SAID TO ME, I
18 TYPED IT UP.

19 Q DID HE EVER -- DID HE EVER MAKE ANY INQUIRIES ABOUT A
20 LAWYER OR ANYTHING LIKE THAT WHEN YOU WERE TALKING TO HIM?

21 A NO, SIR.

22 Q DID HE LOOK LIKE HE WAS SCARED?

23 A YES, SIR. I MEAN, EVERYBODY IS NERVOUS WHEN THEY
24 COME UP TO BE AROUND LAW ENFORCEMENT OFFICIAL AT FIRST.

25 Q DID YOU EVER TELL HIM THAT YOU -- DID YOU EVER TELL

1 HIM HE WAS LYING TO YOU?

2 A NO, SIR.

3 Q DID MR. DELLINGER EVER TELL HIM HE WAS LYING TO HIM?

4 A NOT WHILE I WAS THERE..

5 Q OKAY. HOW LONG DID -- HOW LONG DID IT TAKE TO
6 ACTUALLY TRANSCRIBE THE STATEMENT? WERE YOU TYPING AS HE
7 WAS TALKING?

8 A YES, SIR.

9 Q OKAY.

10 A WE HAD INDICATED UP HERE THE DATE 11-15-99 AND THE
11 TIME IT STARTED, MILITARY TIME 1640, FOR REGULAR TIME IT'S
12 4:40 P.M. AND IT ENDED AT 6:34 P.M. SO RIGHT AT TWO
13 HOURS.

14 Q AND YOU GAVE HIM THE OPPORTUNITY TO READ WHAT YOU HAD
15 TYPED UP BEFORE, BEFORE SIGNING IT?

16 A I ALWAYS GIVE -- IF I'M TAKING A STATEMENT FROM THEM,
17 I ALWAYS GIVE THEM THE OPPORTUNITY TO READ IT AND I
18 ALWAYS -- AND I MAKE SURE THAT THEY READ IT.

19 Q OKAY. NOW, SO 1640 TO 1838, TWO HOURS.

20 A ABOUT TWO.

21 Q THAT'S HOW LONG IT TOOK?

22 A YES, SIR.

23 Q TO DO JUST ONE PAGE?

24 A NO, SIR. THAT'S THE ENTIRE STATEMENT.

25 Q OKAY. SO IT'S A PAGE AND A LITTLE BIT OF ANOTHER

1 ONE?

2 A YES, SIR.

3 Q OKAY. DID -- AT ANY TIME DID HE LOOK LIKE HE WAS
4 HESITANT TO TALK OR TO SIGN THESE THINGS?

5 A NO, SIR.

6 Q OKAY. AT ALL TIMES HE DID, YOU WERE SAYING
7 VOLUNTARILY, KNOWINGLY?

8 A YES, SIR.

9 Q OKAY. AND BUT IT TOOK -- TOOK TWO HOURS TO
10 ACCOMPLISH THE PAGE AND A QUARTER?

11 A YES, SIR.

12 Q OKAY. AND HE NEVER ONCE ASKED YOU TO STOP, HE DIDN'T
13 EVER ASK TO STOP THE QUESTIONS OR ANYTHING LIKE THAT?

14 A NO, SIR.

15 Q AND IT WAS A QUESTION ANSWER FORMAT; WASN'T IT?

16 A HE GAVE THE DETAILS IN HIS OWN WORDS.

17 Q AS YOU WERE QUESTIONING HIM.

18 A AS HE GAVE IT TO ME.

19 Q OKAY. SO YOU ARE SAYING BASICALLY YOU SAT DOWN, SAID
20 TELL ME WHAT YOU KNOW AND HE JUST STARTED GOING AND YOU
21 WERE TYPING?

22 A YES, SIR.

23 Q OKAY. YOU DIDN'T MAKE ANY SUGGESTION WHATSOEVER?

24 A NO, SIR. AND I'M NOT THE BEST TYPIST IN THE WORLD,
25 SO I MEAN THAT'S WHY I PROBABLY TOOK THAT LONG.

1 Q OKAY. AND NOW LET ME ASK YOU ONE MORE QUESTION. DID
2 THE MATTER OF ARREST OR BOND COME UP DURING YOUR
3 DISCUSSIONS?

4 A ARREST?

5 Q OF ARREST, BEING PLACED UNDER ARREST, THE THREATS OF
6 ARREST OR THE MATTER OF A BOND OR BAIL COME UP?

7 A HE WAS NEVER THREATENED LIKE I ADVISED YOU EARLIER.
8 HE WAS NEVER THREATENED DURING THE WHOLE PROCESS.

9 Q OKAY. WORD MURDER CHARGE WAS NEVER USED, NEVER
10 DISCUSSED?

11 A NOT PERTAINING TO HIM.

12 Q OKAY. THANK YOU. I DON'T HAVE ANY FURTHER
13 QUESTIONS.

14 THE COURT: THANK YOU. MR. FINNEY, ANY QUESTIONS?

15 MR. FINNEY: THANK YOU, YOUR HONOR. JUST A FEW.

16 CROSS-EXAMINATION BY MR. FINNEY:

17 Q INVESTIGATOR, AS FAR AS MY CLIENT MR. LAMONT
18 WITHERSPOON IS CONCERNED, I WANTED TO KNOW IF YOU COULD
19 IDENTIFY THIS VOLUNTARY MIRANDA STATEMENT. I GUESS YOU
20 GOT ONE IN FRONT OF YOU.

21 A YES, SIR.

22 Q WHOSE SIGNATURES APPEAR ON THAT STATEMENT?

23 A DELLINGER, OFFICER DELLINGER AND MYSELF.

24 Q ALL RIGHT. THAT'S ON THE 17TH?

25 A YES, SIR.

1 Q OF NOVEMBER?

2 A YES, SIR.

3 Q AND THAT'S HOW MANY DAYS AFTER YOU TALKED TO MR.
4 TRAVIS?

5 A TWO DAYS.

6 Q TWO DAYS. NOW, YOU SAID THAT -- EARLIER I THINK I
7 HEARD YOU SAY THAT MY CLIENT AGREED TO SPEAK WITH YOU BUT
8 HE DIDN'T WANT TO SIGN ANYTHING BECAUSE HIS LAWYER TOLD
9 HIM NOT TO SIGN ANYTHING?

10 A YES, SIR.

11 Q SO WAS THAT -- DO YOU REMEMBER HIM SPEAKING TO THE
12 LAWYER, TO ME, BEFORE YOU WENT AND SPOKE TO HIM?

13 A NO, SIR.

14 Q OKAY.

15 A HE -- HE TALKED TO OFFICER DELLINGER AND HE SAID THAT
16 HIS LAWYER SAID HE COULD TALK, BUT HE WAS NOT TO SIGN
17 ANYTHING.

18 Q ALL RIGHT. TELL ME SIR WHY IS IT THAT YOU DIDN'T PUT
19 A BEGINNING TIME OF THE WAIVER OF RIGHTS FORM FOR MR.
20 LAMONT?

21 A I THINK THAT SHOULD BE ON DIRECT TO DETECTIVE
22 DELLINGER.

23 Q HE DID THAT INTERVIEW?

24 A YES, SIR.

25 MR. FINNEY: YOUR HONOR, I HAVE NO MORE QUESTIONS.

1 THE COURT: THANK YOU. MR. DOBY?

2 MR. DOBY: NO QUESTIONS, YOUR HONOR.

3 THE COURT: THANK YOU. MR. ROGERS?

4 MR. ROGERS: NO QUESTIONS, YOUR HONOR.

5 THE COURT: THANK YOU. REDIRECT, MS. NIELSEN?

6 MS. NIELSEN: NO, SIR, YOUR HONOR.

7 THE COURT: THANK YOU. MR. SIMON, YOU CAN STEP
8 DOWN.

9 (WHEREUPON THE WITNESS LEFT THE STAND).

10 MS. NIELSEN: STATE CALLS J.D. DELLINGER.

11 THE COURT: MR. DELLINGER, COME FORWARD PLEASE SIR
12 AND BE SWORN.

13 J.D. DELLINGER, BEING FIRST DULY
14 SWORN, TESTIFIED AS FOLLOWS:

15 DIRECT EXAMINATION BY MS. NIELSEN:

16 Q YOUR NAME IS J.D. DELLINGER?

17 A YES, SIR.

18 Q YOU'RE AN INVESTIGATOR WITH THE LEE COUNTY SHERIFF'S
19 DEPARTMENT?

20 A YES, MA'AM.

21 Q WERE YOU INVOLVED IN TAKING A STATEMENT FROM TRAVIS
22 SINGLETON AND LAMONT WITHERSPOON?

23 A YES, MA'AM.

24 Q AND TRAVIS SINGLETON, INVESTIGATOR SIMON TESTIFIED HE
25 ACTUALLY CONDUCTED THAT INTERVIEW. WHAT DID YOU HAVE TO

1 DO FOR THE INTERVIEW OF TRAVIS SINGLETON?

2 A AS HE SAID EARLIER, I WAS IN AND OUT OF THE INTERVIEW
3 ROOM WHERE THEY WERE AT AND I RODE WITH HIM TO SUMTER
4 WHERE HE WAS PICKED UP. I WENT INSIDE AND SPOKE TO HIS
5 MANAGER AND BRIEFLY EXPLAINED TO THEM THE NATURE OF WHY WE
6 WERE PICKING THEM UP AND BRINGING HIM BACK TO LEE COUNTY.

7 Q WHAT DID YOU EXPLAIN TO TRAVIS SINGLETON?

8 A WE TOLD TRAVIS SINGLETON THAT WE WERE INVESTIGATING
9 THE SHOOTING AT THE CLUB. AND THE MAJORITY OF THE TIME
10 INSIDE WHILE I WAS SPEAKING TO THE MANAGER, MR. SINGLETON
11 WENT OUTSIDE AND SAT ON THE CURB.

12 AND THEN WHEN I WAS DONE SPEAKING TO THE MANAGER
13 AND GIVING HIM ENOUGH DETAILS TO EXPLAIN WHY I WAS TAKING
14 HIS EMPLOYEE AWAY, WENT OUTSIDE AND MR. SINGLETON GOT IN
15 THE CAR WITH US AND CAME BACK TO LEE COUNTY.

16 Q WAS HE UNDER ARREST AT THAT TIME?

17 A NO, HE WAS NOT. WE DIDN'T ACTUALLY INFORM HIM THAT
18 HE WAS UNDER ARREST UNTIL AFTER WE WERE DONE.

19 Q DID HE WENT WITH YOU VOLUNTARILY OR DID YOU TELL HIM
20 HE HAD TO GO?

21 A HE WENT WITH US. HE DIDN'T HAVE A PROBLEM WITH
22 THAT. LIKE I SAID, WHEN I WAS SPEAKING TO THE MANAGER OR
23 THE -- AT THE OFFICE THERE, HE WAS SITTING OUT WAITING AT
24 THE CURB FOR ME WHEN I CAME OUT AND CAME BACK OUT AND GOT
25 IN THE CAR, CAME BACK TO LEE COUNTY.

1 Q DID YOU THREATEN HIM IN ANY WAY TO GET HIM TO GO WITH
2 YOU?

3 A NO, MA'AM.

4 Q AT ANY TIME WHEN HE WAS IN THE OFFICE WITH
5 INVESTIGATOR SIMON, DID YOU THREATEN HIM OR COERCE HIM IN
6 ANY WAY TO GET HIM TO GIVE A STATEMENT?

7 A NO, MA'AM.

8 Q DID YOU SEE OFFICER SIMON THREATEN HIM OR COERCE HIM
9 IN ANY WAY TO GET HIM TO GIVE A STATEMENT?

10 A NO, MA'AM.

11 Q NOW, YA'LL WENT ALL THE WAY BACK FROM SUMTER WITH
12 THEM, RIGHT?

13 A YES, MA'AM.

14 Q WHERE WAS HE WORKING?

15 A I BELIEVE IT WAS SOME TYPE OF A APPAREL COMPANY ON
16 THE SOUTH SIDE OF SUMTER THERE. I DON'T RECALL THE NAME
17 OF IT.

18 Q ON THE WAY FROM SUMTER TO BISHOPVILLE, DID YA'LL
19 THREATEN OR COERCE HIM, EITHER ONE OF YOU?

20 A NO, MA'AM.

21 Q ALL RIGHT. IN REFERENCE TO THE STATEMENT OF LAMONT
22 WITHERSPOON, IT WAS DONE ON THE 17TH OF NOVEMBER?

23 A YES, MA'AM.

24 Q AND IT IS NOT SIGNED; IS THAT CORRECT?

25 A THAT'S CORRECT.

1 Q DID YOU ACTUALLY READ ANY RIGHTS TO LAMONT
2 WITHERSPOON?

3 A I READ HIM THE RIGHTS THERE ON THE MIRANDA FORM.

4 Q I WILL SHOW YOU THIS. IS THAT A COPY OF HIS -- THE
5 STATEMENT THAT YOU TOOK FROM HIM?

6 A YES, MA'AM.

7 Q AND WOULD YOU TELL US THE RIGHTS YOU READ TO HIM.

8 A YOU HAVE THE RIGHT TO REMAIN SILENT. ANYTHING YOU
9 SAY CAN AND WILL BE USED AGAINST YOU IN A COURT OF LAW,
10 YOU HAVE THE RIGHT TO TALK TO LAWYER FOR ADVICE, BEFORE HE
11 ASKS YOU ANY QUESTIONS, HAVE HIM OR HER PRESENT WITH YOU
12 DURING QUESTIONING.

13 IF YOU CANNOT AFFORD TO HIRE A LAWYER, ONE WILL
14 BE APPOINTED TO REPRESENT YOU BEFORE ANY QUESTIONING IF
15 YOU WISH. I HAVE READ THIS STATEMENT OF MY RIGHTS AND
16 UNDERSTAND WHAT MY RIGHTS ARE. I AM WILLING TO MAKE A
17 STATEMENT, ANSWERING QUESTIONS. I DO NOT WANT A LAWYER AT
18 THIS TIME.

19 I UNDERSTAND AND KNOW WHAT I AM DOING. NO
20 PROMISES OR THREATS HAVE BEEN MADE TO ME AND NO PRESSURE
21 OR COERCION OF ANY KIND HAS BEEN USED AGAINST ME.

22 Q DID HE THEREAFTER GIVE YOU A STATEMENT?

23 A YES, MA'AM.

24 Q DID YOU ASK HIM IF HE COULD READ AND WRITE?

25 A YES, MA'AM.

1 Q DID HE HAVE ANY APPEAR TO HAVE ANY DIFFICULTY TO YOU
2 IN UNDERSTANDING WHAT YOU WERE TELLING HIM?

3 A NO, MA'AM. HE SEEMED TO UNDERSTAND. THE BEST OF MY
4 RECOLLECTION HE EVEN INDICATED TO ME THAT HE HAD SOME
5 COLLEGE EDUCATION, SO THAT I WASN'T CONCERNED ABOUT HIM
6 UNDERSTANDING US.

7 Q DID YOU HIT HIM OR THREATEN HIM OR DO ANYTHING TO
8 FORCE HIM TO GIVE YOU A STATEMENT?

9 A NO, MA'AM.

10 Q WAS HIS STATEMENT TO YOU GIVEN FREELY AND
11 VOLUNTARILY?

12 A YES, MA'AM.

13 Q STATEMENT DOESN'T ACTUALLY INCRIMINATE ANYBODY; DOES
14 IT?

15 A NO.

16 Q NOW, THAT WAS NOT SIGNED. WOULD YOU EXPLAIN TO US
17 WHY IT'S NOT SIGNED BY HIM.

18 A AT THE CONCLUSION OF THIS, HE INDICATED TO ME THAT HE
19 WAS ADVISED BY HIS ATTORNEY, MR. FINNEY, NOT TO SIGN
20 ANYTHING, MAKE A -- I HAD MADE A NOTE IN MY HANDWRITING AT
21 THE BOTTOM OF THE THIRD PAGE OF THE STATEMENT INDICATING A
22 -- LAMONT READ THE STATEMENT, AGREES TO ITS CONTENTS, BUT
23 WAS ADVISED BY HIS ATTORNEY THEN IN PARENTHESIS FINNEY NOT
24 TO SIGN ANYTHING WITHOUT HIM.

25 Q WELL, DID HE TALK TO MR. FINNEY WHILE YA'LL HAD HIM

1 AT THE SHERIFF'S OFFICE?

2 A NO, MA'AM.

3 Q HE DIDN'T GO CALL A LAWYER OR TELL YOU HE WANTED TO
4 CALL A LAWYER?

5 A NO, MA'AM.

6 Q HE DIDN'T MENTION ANYTHING ABOUT A LAWYER UNTIL HE
7 HAD ALREADY GIVEN YOU A STATEMENT?

8 A THAT'S CORRECT. WHEN HE TALKED TO MR. FINNEY OR
9 AFTER THAT OR THEIR DISCUSSIONS, I DON'T KNOW.

10 Q HOW DID HE -- HOW DID YOU GET HIM IN TO GET A
11 STATEMENT FROM HIM?

12 A I CALLED HIS PLACE OF EMPLOYMENT AND SPOKE TO HIM AND
13 HE CAME VOLUNTARILY ON HIS OWN.

14 Q YOU DIDN'T GO GET HIM?

15 A NO, MA'AM.

16 Q NOW, DURING THE TIME THAT YOU WERE IN A ROOM, WERE
17 YOU IN YOUR OFFICE OR ANOTHER OFFICE?

18 A WE WERE IN AN OFFICE. WE WERE IN THE FRONT PART OF
19 THE BUILDING IN A -- AN OFFICE. THE -- IN THE FRONT
20 HALLWAY..

21 Q AND INVESTIGATOR SIMON CAME IN AND OUT SOME?

22 A YES, MA'AM.

23 Q DURING THE TIMES INVESTIGATOR SIMON WAS THERE, DID HE
24 DO ANYTHING TO THREATEN OR COERCE MR. WITHERSPOON TO GIVE
25 THE STATEMENT?

1 A NO, MA'AM.

2 Q PLEASE ANSWER ANY QUESTIONS THE DEFENSE ATTORNEYS
3 HAVE.

4 THE COURT: THANK YOU. MR. FINNEY, WE WILL START
5 WITH YOU SINCE THE STATEMENT WAS OF YOUR CLIENT.

6 MR. FINNEY: THANK YOU.

7 CROSS-EXAMINATION BY MR. FINNEY:

8 Q INVESTIGATOR DELLINGER, IF MR. LAMONT TOLD YOU AT THE
9 END OF THE STATEMENT THAT HIS LAWYER ADVISED HIM NOT TO
10 SIGN, HOW COME YOU DIDN'T SIGN THE MIRANDA PAPERS WHICH IS
11 AT THE BEGINNING OF THE STATEMENT?

12 A IT'S WHEN I READ HIM THE MIRANDA FORM.

13 Q YOU READ IT TO HIM AFTER HE GAVE THE STATEMENT?

14 A NO, I READ IT TO HIM AT THE BEGINNING OF IT.

15 Q SO HOW COME HE DIDN'T SIGN IT?

16 A HE INDICATED THAT HIS ATTORNEY MR. FINNEY ADVISED HIM
17 NOT TO SIGN IT.

18 Q SO IT WASN'T AT THE END OF THE FACT -- STATEMENT THAT
19 YOU KNEW ABOUT THAT?

20 A YES, IT WAS. IT'S WHEN I GAVE THEM ALL TO HIM TO
21 SIGN.

22 Q YOU READ THEM RIGHTS, THEN YOU --

23 A TALKED TO HIM.

24 Q -- ASKED HIM TO START TALKING ABOUT THE FACTS, THEN
25 YOU ASKED HIM TO SIGN IT AND THAT'S WHEN HE TOLD YOU HE

1 COULDN'T SIGN ANYTHING?

2 A THAT'S CORRECT.

3 Q OKAY.

4 A I TYPED IT, READ IT TO HIM, ASKED HIM IF THERE WAS
5 ANY CHANGES, CORRECTIONS OR UNDERSTANDING PREPARED ALL FOR
6 HIM TO SIGN.

7 Q ALL RIGHT. NORMALLY IS IT YOUR PROCEDURE TO HAVE THE
8 DEFENDANT SIGN HIS RIGHTS STATEMENT AFTER HE HAS GIVEN YOU
9 THE FACT STATEMENT, THIS PART HERE?

10 A I HAVE DONE IT BOTH WAYS. SOMETIMES I WILL HAVE THEM
11 DO THAT PRIOR TO AND SOMETIMES I WILL GIVE THEM ALL TO
12 THEM TO SIGN ALL AT ONE TIME AND ALL THREE PLACES.

13 Q IS IT YOUR PROCEDURE ON THE WAIVER OF RIGHTS FORM TO
14 FILL IN THE TIME THAT YOU BEGIN THE INTERVIEW?

15 A YES, I DO.

16 Q BUT THAT WASN'T DONE?

17 A NO, SIR.

18 Q ALL RIGHT. HAVE YOU EVER -- AND I DON'T KNOW HOW
19 MANY YEARS, BUT IN ALL THE YEARS YOU'VE BEEN IN LEE
20 COUNTY, HAVE YOU EVER TAPE RECORDED A STATEMENT FROM A
21 WITNESS WHO WAS A WITNESS TO A CRIME, WITNESS?

22 A HAVE I EVER TAPE RECORDED?

23 Q YES.

24 A I RECALL TAPE RECORDING ONE.

25 Q ONE?

1 A ONE STATEMENT.

2 Q BUT YOU DIDN'T TAPE RECORD ANY OF THE STATEMENTS THAT
3 YOU TOOK IN NOVEMBER OF 1999?

4 A NO, SIR.

5 Q AND DID YOU TYPE THIS I GUESS FULL PAGE, 3/4 PAGE
6 STATEMENT THAT IS SHOWN AS STARTING WITH THE WORDS EARLY
7 SUNDAY MORNING?

8 A YES, SIR.

9 Q DID YOU TYPE IT IN YOUR OFFICE WHILE HE WAS TALKING
10 TO YOU?

11 A I DON'T REMEMBER IF I USED THE COMPUTER IN THAT
12 OFFICE OR WE MOVED TO ANOTHER OFFICE, BUT WHAT I WOULD
13 TYPICALLY DO IS GO THROUGH THE SCENARIO WITH HIM AND
14 TYPICALLY ASK HIM WHAT HAPPENED, GET THEIR STORY, TALK TO
15 THEM ABOUT THAT AND TYPE THAT, PRINT THAT, ALLOW THEM TO
16 READ IT, MAKE ANY CHANGES OR ANY ERRORS OR TYPOS THAT I
17 HAVE DONE AND THEN CONCLUDE.

18 Q DID YOU GIVE HIM A COPY OF THIS STATEMENT EVEN THOUGH
19 HE DIDN'T SIGN IT TO TAKE WITH HIM SO THAT HE AND HIS
20 LAWYER COULD GO OVER IT?

21 A I DON'T RECALL IF I WOULD -- IF I PROVIDED HIM A COPY
22 OF THAT OR NOT. TYPICALLY WHEN I PROVIDE THEM A COPY OF
23 IT, I HAVE TO SIGN INDICATING THAT THEY RECEIVED A COPY.

24 Q AND THAT WAS NOT DONE?

25 A NO, SIR. THAT'S NOT ON THERE.

1 Q ALL RIGHT. DID YOU -- WHEN YOU WENT THROUGH THIS
2 WITH HIM, YOU WENT THROUGH CASUALLY SPEAKING WITH HIM,
3 NOBODY WAS TYPING THE FIRST TIME YOU WENT THERE?

4 A RIGHT. RIGHT, THAT'S CORRECT.

5 Q THEN YOU GO THROUGH IT AGAIN WHERE HE TALKS AND YOU
6 LISTEN AND THEN YOU'RE TYPING?

7 A RIGHT.

8 Q ALL RIGHT, SIR. THANK YOU.

9 MR. FINNEY: NOTHING FURTHER, YOUR HONOR.

10 THE COURT: THANK YOU. MR. DOBY?

11 CROSS-EXAMINATION BY MR. DOBY:

12 Q DETECTIVE, WERE THE HANDWRITTEN NOTES THAT YOU MADE
13 OR WERE THEY ALL THE NOTES YOU MADE FROM THE STATEMENT
14 CONTAINED IN THIS TYPEWRITTEN STATEMENT?

15 A I'M SORRY. I DIDN'T UNDERSTAND YOU, MR. DOBY.

16 Q DID YOU MAKE, TYPE -- DID YOU MAKE HANDWRITTEN NOTES
17 OF THE STATEMENT THAT WAS GIVEN TO YOU IN ADDITION TO THIS
18 TYPEWRITTEN STATEMENT?

19 A NO, SIR.

20 Q SO ALL THESE HANDWRITTEN OR WRITTEN NOTES THAT YOU
21 HAD THAT IS CONTAINED IN THIS STATEMENT?

22 A RIGHT.

23 Q DOES THIS STATEMENT CONTAIN OR THE STATEMENT THAT HE
24 GAVE TO YOU, THE ORAL STATEMENT THAT HE GAVE, HAVE THINGS
25 OTHER THAN WHAT IS TYPED IN YOUR STATEMENT?

1 A NO, SIR. WHATEVER HE WANTED TO -- WHATEVER HE TOLD
2 ME AND WHATEVER HE SAID TO ME WAS TYPED. AND AT THE
3 CONCLUSION OF THIS, WE -- I WENT OVER, DID I LEAVE
4 ANYTHING OUT, IS THERE ANYTHING NEED TO BE CHANGED AND
5 CORRECT ANY TYPING ERRORS THAT I MADE.

6 Q ALL RIGHT. SO THERE ARE NO OTHER STATEMENTS THAT HE
7 MADE TO YOU OTHER THAN WHAT IS CONTAINED IN THIS
8 TYPEWRITTEN STATEMENT?

9 A YES, SIR.

10 Q THANK YOU.

11 THE COURT: MR. ROGERS?

12 MR. ROGERS: NO QUESTIONS, YOUR HONOR.

13 THE COURT: THANK YOU. MR. JORDAN?

14 CROSS-EXAMINATION BY MR. JORDAN:

15 Q INVESTIGATOR DELLINGER, ISN'T IT TRUE THAT WITH
16 RESPECT TO TRAVIS SINGLETON, WHEN THIS STATEMENT WAS
17 ACCOMPLISHED, IT WAS A QUESTION AND ANSWER FORMAT; WAS IT
18 NOT?

19 A MR. SIMON USUALLY DOES THE INTERVIEWS, VERY SIMILAR
20 TO I. HE WOULD SIT DOWN, GO OVER THE MIRANDA FORM, THEN
21 ASK HIM WHAT HAPPENED OR WHAT DID YOU -- WHAT DO YOU
22 RECALL, LISTEN TO THEM GO THROUGH THAT ENTIRE STORY AND
23 THEN DO A BREAKDOWN AND START TYPING IT PART BY PART.

24 Q OKAY. AND THE WHOLE -- WERE YOU PRESENT DURING THE
25 WHOLE ENTIRE TWO HOURS THAT MR. SINGLETON WAS QUESTIONED?

1 A NO, SIR, I WAS NOT.

2 Q OKAY. YOU WERE PRESENT PART OF THE TIME?

3 A YES, SIR.

4 Q OKAY. WAS IT EVER IMPLIED TO HIM THAT OR WAS IT EVER
5 EXPRESSLY STATED THAT HE WAS LYING?

6 A TO MR. SINGLETON, NO.

7 Q OKAY. AND NO VIDEO OR AUDIO WAS USED. DID YA'LL
8 HAVE THOSE TOOLS AVAILABLE?

9 A I HAVE NEVER KNOWN TO DO A VIDEO. THEY ARE NOT SET
10 UP FOR THAT. I HAVE DONE ONE OTHER AUDIO TAPE INTERVIEW
11 ON ANOTHER CASE.

12 Q OKAY. DURING THE TWO HOURS OF TAKING THE STATEMENT,
13 DO YOU KNOW IF MR. SINGLETON WAS ALLOWED TO GET UP AND USE
14 THE RESTROOM OR WAS HE GIVEN ANYTHING TO -- FOOD, WATER,
15 ETC.?

16 A I CAN'T SPECIFICALLY RECALL IF MR. SINGLETON, AS
17 OFFICER SIMON TESTIFIED, TYPICALLY OFFER THEM AN
18 OPPORTUNITY TO GO TO THE RESTROOM, TYPICALLY OFFER THEM TO
19 BUY THEM A DRINK IF THEY WANT ONE, BUT I CAN'T HONESTLY
20 SAY THAT'S WHAT WAS DONE WITH MR. SINGLETON.

21 Q WAS BAIL OR BOND MENTIONED DURING THE QUESTION --
22 DURING THE QUESTIONING?

23 A NO, SIR.

24 Q OKAY. AND TO YOUR KNOWLEDGE, WAS ANY -- WAS ANY --
25 WAS THERE ANY IMPLICATION THAT CHARGES MIGHT BE

1 FORTHCOMING AND WHAT LEVEL THAT CHARGE WAS DEPENDING UPON
2 WHAT HE WOULD SAY?

3 A NO. THE WARRANTS WEREN'T SERVED AT THE CONCLUSION OF
4 THIS. THEY WERE--

5 Q WAS HE -- WAS MR. SINGLETON ALREADY A SUSPECT? IN
6 OTHER WORDS, DID YOU BRING A WARRANT AS A RESULT OF THE
7 STATEMENT OR WAS THAT ALREADY CONTEMPLATED?

8 A DID WE GET THE WARRANT AS A RESULT OF HIS STATEMENT?

9 Q YES, SIR.

10 A NO.

11 Q OKAY. SO YOU ALREADY KNEW HE WOULD BE CHARGED?

12 A (WHEREUPON SUBJECT INDICATED NODDING HEAD).

13 Q OKAY. THANK YOU. NO FURTHER QUESTIONS.

14 THE COURT: MS. NIELSEN, ANY REDIRECT?

15 MS. NIELSEN: NO, SIR, YOUR HONOR.

16 THE COURT: THANK YOU. YOU CAN STEP DOWN, OFFICER
17 DELLINGER.

18 (WHEREUPON THE WITNESS LEFT THE STAND) ..

19 THE COURT: ALL RIGHT. MS. NIELSEN, ANYTHING FURTHER
20 FROM THE STATE?

21 MS. NIELSEN: NOT IN REFERENCE TO JACKSON V DENO,
22 YOUR HONOR.

23 THE COURT: ALL RIGHT. MR. JORDAN, ANY EVIDENCE FROM
24 MR. SINGLETON ON JACKSON DENO?

25 MR. JORDAN: YES, YOUR HONOR. WE CALL TRAVIS

1 SINGLETON TO THE STAND.

2 THE COURT: MR. SINGLETON, COME FORWARD PLEASE SIR
3 AND BE SWORN.

4 TRAVIS SINGLETON, BEING FIRST
5 DULY SWORN, TESTIFIED AS FOLLOWS:

6 DIRECT EXAMINATION BY MR. JORDAN:

7 Q STATE YOUR NAME, SPELL YOUR LAST NAME...

8 A TRAVIS SINGLETON, S-I-N-G-L-E-T-O-N.

9 Q TRAVIS, YOU UNDERSTAND THIS HEARING IS SOLELY TO
10 DETERMINE WHAT HAPPENED ABOUT THE TIME THE STATEMENT WAS
11 GIVEN. AND WE WILL TRY TO LIMIT OUR TESTIMONY TO THAT
12 FIRST. TELL THE COURT A LITTLE BIT ABOUT YOURSELF, HOW
13 OLD YOU ARE AND YOUR EDUCATION, WHERE YOU WORK.

14 A I'M 23.

15 THE COURT: MR. SINGLETON, WOULD YOU PLEASE LEAN
16 FORWARD INTO THAT MICROPHONE RIGHT THERE. I'M HAVING SOME
17 DIFFICULTY. THANK YOU.

18 A I'M 23. I WENT TO 11TH GRADE HIGH SCHOOL.

19 Q WHERE DO YOU WORK?

20 A PEACE TEXTILE.

21 Q WHERE WERE YOU WORKING NOVEMBER 15TH OF LAST YEAR?

22 A PEACE TEXTILE.

23 Q OKAY. DID YOU EVER OBTAIN YOUR GED?

24 A NO, SIR.

25 Q HAVE YOU DONE ANYTHING, ANYTHING EDUCATION RELATED

1 SINCE YOU STOPPED HIGH SCHOOL?

2 A NO, SIR.

3 Q CAN YOU READ AND WRITE?

4 A YES, SIR.

5 Q PRETTY GOOD?

6 A YES, SIR.

7 Q OKAY. DO YOU RECALL GETTING PICKED UP BY MR. SIMON,
8 INVESTIGATOR SIMON, INVESTIGATOR DELLINGER AT PEACE
9 TEXTILES THIS TIME LAST YEAR?

10 A YES, SIR.

11 Q WHAT TIME WAS IT, DO YOU REMEMBER?

12 A ABOUT 4:00, YOU KNOW, BETWEEN 4:00 AND 4:30.

13 Q WHAT SHIFT WERE YOU WORKING THEN?

14 A FIRST SHIFT.

15 Q FIRST? SO YOU WERE ABOUT -- WHEN WOULD YOU HAVE
16 GOTTEN OFF?

17 A 5:00.

18 Q 5:00, SO IT WAS NEAR THE END OF YOUR SHIFT?

19 A YEAH.

20 Q HOW LONG HAD YOU BEEN WORKING AT PEACE TEXTILES?

21 A THEN ABOUT SEVEN MONTHS.

22 Q OKAY.

23 A AND-- YEAH ABOUT FIVE OR SIX OR SEVEN MONTHS,
24 SOMETHING LIKE THAT.

25 Q OKAY. WHO ACTUALLY CAME IN THE PLANT AND GOT YOU?

1 A DELLINGER.

2 Q DID HE TALK TO YOU THEN?

3 A NOT RIGHT THEN. HE SAID THEY WERE BRINGING ME DOWN
4 TO THE LAW ENFORCEMENT CENTER OVER HERE TO QUESTION ME
5 ABOUT A MURDER AT THE CLUB THAT HAPPENED THE PAST -- THE
6 PAST SATURDAY.

7 Q DID HE EVER IMPLY THAT YOU WERE INVOLVED IN IT OR
8 THAT YOU HAVE THAT FEELING THAT YOU WERE INVOLVED, THAT
9 THEY THOUGHT YOU WERE INVOLVED OR HAD SOMETHING TO DO WITH
10 IT?

11 A YEAH, THE WAY HE -- THE WAY HE WAS TALKING TO ME WHEN
12 I FIRST TALKED TO HIM ON THE PHONE WHEN HE GOT THERE,
13 YEAH.

14 Q SO YOU HAD A PREVIOUS PHONE CALL WITH HIM? DID YOU
15 KNOW HE WAS COMING?

16 A YEAH.

17 Q HE CALLED YOU AT WORK?

18 A UH-HUH.

19 Q SAID I'M COMING OVER THERE?

20 A YUP.

21 Q THEN THEY DROVE OVER AND GOT YOU?

22 A YEAH.

23 Q DID THE COMMUNICATIONS OCCUR IN THE CAR ON THE WAY
24 BACK?

25 A HUH-UH, NOT, NO, SIR.

1 Q OKAY. DID YOU RIDE BACK IN BISHOPVILLE? WHO DID YOU
2 SPEAK WITH FIRST, INVESTIGATOR SIMON OR INVESTIGATOR
3 DELLINGER?

4 A DELLINGER.

5 Q OKAY. WHERE DID YA'LL DO THIS? DID YA'LL GO IN A
6 ISOLATED ROOM OR DID YOU SIT DOWN NEAR THE DESK?

7 A IT WAS LIKE A ROOM FULL OF DIFFERENT DESK LIKE, YOU
8 KNOW, BOXES THEY GO IN TALK TO PEOPLE AND SIT BEHIND AND
9 DO THEIR WORK.

10 Q WAS IT YOU AND BOTH OF THEM OR JUST YOU AND ONE OF
11 THEM?

12 A ME AND DELLINGER FIRST, BUT THEN HE LEFT. I DON'T
13 KNOW WHERE HE WENT, CHANGED, SIMON CAME IN AFTER HE DID.

14 Q WHEN INVESTIGATOR DELLINGER WAS WITH YOU, DID HE MAKE
15 ANY COMMENTS OR ANYTHING TO YOU? WHAT WAS THE
16 ATMOSPHERE? WERE YOU NERVOUS AND WORRIED?

17 A YEAH, COULDN'T -- YEAH.

18 Q TELL ME EXACTLY WHAT HE HAD SAID TO YOU.

19 A ALL RIGHT. BEFORE WE CAME TO BISHOPVILLE, HE WAS
20 LIKE I TOLD HIM I HAD A JOB OUT THERE, I DIDN'T KNOW
21 ANYTHING ABOUT WHAT HAPPENED AT THE CLUB SATURDAY, BUT HE
22 -- HE CALLED ME A LIAR AND THEN HIM AND LIEUTENANT SIMON
23 BROUGHT ME DOWN HERE ANY WAY.

24 Q OKAY.

25 A OF COURSE BEING -- LOCKED ME UP.

1 Q WHEN WERE YOU ARRESTED, AFTER THE STATEMENT OR THE
2 FOLLOWING DAY?

3 A AFTER.

4 Q AFTER THE STATEMENT WAS GIVEN?

5 A YEAH.

6 Q SAME DAY?

7 A YUP.

8 Q HOW WAS THE STATEMENT TAKEN? WERE YOU -- DID THEY
9 EVER GIVE YOU THE OPPORTUNITY TO WRITE IT DOWN YOURSELF?

10 A NO.

11 Q DID YOU ASK --

12 A NO.

13 Q -- THEM TO DO IT?

14 A (SHOOK HEAD).

15 Q HE ASKED YOU THE QUESTIONS?

16 A YEAH, HE ASKED ME THE QUESTIONS, I ANSWERED THEM,
17 THEN AS I ANSWER THEM, HE TYPING THEM DOWN.

18 Q HE TYPED THEM DOWN? IT WAS QUESTION ANSWER?

19 A YUP.

20 Q YOU HAD AN OPPORTUNITY TO REVIEW YOUR STATEMENT; HAVE
21 YOU NOT?

22 A (NODDED).

23 Q LET ME ASK YOU, THIS IS AN ADVISEMENT OF RIGHTS FORM
24 THAT APPEARS TO HAVE YOUR NAME ON IT. IS THAT YOUR
25 SIGNATURE TWO TIMES DOWN AT THE BOTTOM OF THE FORM?

1 A YES, SIR.

2 Q DO YOU REMEMBER INVESTIGATOR SIMON GOING THROUGH THE
3 YOU DON'T HAVE TO TALK TO US, THAT -- THE RIGHTS THAT HE
4 JUST READ WHEN HE TESTIFIED? DO YOU REMEMBER THAT
5 STATEMENT?

6 A NO, HE SHOWED ME THIS. HE WAS LIKE I WANT -- I NEED
7 FOR YOU TO SIGN THIS PAPER RIGHT THERE AND SIGN RIGHT
8 THERE. I JUST....

9 Q ~~OKAY~~ OKAY. YOU DIDN'T GO OVER, YOU DIDN'T --

10 A NO.

11 Q -- ABSORB EACH INDIVIDUAL SECTION, BUT DID YOU KNOW
12 WHAT YOU WERE DOING? DID YOU KNOW YOU WERE GIVING HIM A
13 WRITTEN STATEMENT?

14 A YEAH.

15 Q OKAY. NOW, YOU HAVE HAD AN OPPORTUNITY TO REVIEW THE
16 STATEMENT, SO THAT IS YOUR SIGNATURE ON THE RIGHTS FORM.
17 AND IS THAT ALSO YOUR SIGNATURE TWO TIMES ON THE -- ON THE
18 STATEMENT, AND IT SAYS YOU WERE GIVEN A COPY. WERE YOU
19 GIVEN A COPY OF WHAT YOU SIGNED?

20 A YES. YES, SIR.

21 Q YOU WERE? OKAY. NOW, HAVING READ THROUGH THE
22 STATEMENT, IS THAT IDENTICAL TO WHAT HE TOLD YOU, AND LET
23 ME JUST PARAPHRASE. IS IT YOUR -- YOUR WORDS OR IS IT
24 MORE THEIR WORDS OR INVESTIGATOR SIMON'S WORDS?

25 A IT SOUNDS LIKE MORE THEIR WORDS.

1 Q OKAY. SO LINE ITEM BY LINE ITEM WHAT IS IN THERE,
2 SOME OF THEM ARE YOUR WORDS AND SOME OF THEM...

3 A YEAH, SOME OF THEM ARE.

4 Q SOME OF THEM ARE. NOW, WHY DIDN'T YOU SCRATCH
5 THROUGH OR MAKE ANY CORRECTIONS ON THAT? DID YOU HAVE
6 THAT OPPORTUNITY?

7 A HUH-UH.

8 Q DID YOU FEEL FREE TO DO WHATEVER YOU WANTED ON THAT
9 STATEMENT?

10 A I JUST-- IT WAS NOT - - I MEAN, I JUST--
11 THE COURT: I'M SORRY. MR.--

12 A HE JUST TOOK THE -- TOOK THE STATEMENT ON THE PAPER
13 AND GIVE ME TO SIGN.

14 Q WHY DID YOU SIGN IT?

15 A I DON'T KNOW. I JUST SIGNED.

16 Q DID YOU THINK THAT IF YOU SIGNED IT YOU WOULD GO
17 HOME?

18 A YEAH, I THOUGHT THEY WERE GOING TO LET ME GO, BUT
19 THAT'S WHEN THEY CAME AND LOCKED ME UP.

20 Q OKAY.

21 A LIEUTENANT SIMON, DETECTIVE SIMON.

22 Q OKAY. WAS THERE EVER ANY IMPLICATION OR THREAT THAT
23 THERE WERE CHARGES BEHIND THIS OR FOLLOWING THIS?

24 A HUH-UH.

25 Q OKAY.

1 A NO, SIR.

2 Q HOW LONG -- DO YOU REMEMBER HOW LONG YOU WERE IN
3 THERE IN THEIR AUTOMOBILE IN THEIR PRESENCE IN THEIR
4 CUSTODY AND GIVING THIS STATEMENT? WAS IT A LONG TIME?

5 A YEAH, IT'S BEEN -- WELL, I DIDN'T GIVE -- I DIDN'T
6 TALK IN THE CAR. DIDN'T SAY ANYTHING UNTIL WE GOT IN THE
7 OFFICE AT THE LAW ENFORCEMENT CENTER AND THAT'S ABOUT --
8 THAT'S ABOUT TWO HOURS.

9 Q OKAY. WELL, DID -- WHEN IT WAS IMPLIED TO YOU THAT
10 THEY THOUGHT YOU WERE LYING, WHAT DID YOU SAY?

11 A I SAID NO I'M NOT, AND IT'S JUST LIKE YOU'RE LYING, I
12 THINK YOU KNOW MORE THAN YOU DO.

13 Q DID YOU FEEL LIKE THEY WERE NOT SATISFIED WITH WHAT
14 YOU HAD TOLD THEM?

15 A YUP.

16 Q THAT THEY WANTED YOU TO SAY MORE?

17 A YUP.

18 Q THANK YOU.

19 MR. JORDAN: NO FURTHER QUESTIONS, JUDGE.

20 THE COURT: THANK YOU. MR. FINNEY?

21 MR. FINNEY: NO QUESTIONS.

22 THE COURT: THANK YOU. MR. DOBY?

23 CROSS-EXAMINATION BY MR. DOBY:

24 Q DID YOU GO BACK AND LOOK AT YOUR STATEMENT AGAIN?
25 HAVE YOU LOOKED AT YOUR STATEMENT SINCE YOU GAVE IT?

1 A (SHOOK HEAD).

2 Q YOU HAVE NOT?

3 A NO, SIR.

4 Q FROM YOUR REMEMBRANCE OF WHAT WAS WRITTEN AND YOU
5 SIGNED ON THIS STATEMENT, DID YOU GIVE A STATEMENT TO THE
6 POLICE, TELL THEM THINGS THAT WERE NOT CONTAINED ON THIS
7 PARTICULAR STATEMENT?

8 A CAN YOU -- CAN YOU ASK THE QUESTION AGAIN?

9 Q YEAH. THE STATEMENT THAT YOU WERE HANDWRITTEN THAT
10 YOU SIGNED OR WAS TYPED AND YOU SIGNED, DID YOU TELL THEM
11 THINGS THAT THEY DID NOT PUT ON THIS STATEMENT?

12 A NO, SIR.

13 Q DID -- EVERYTHING THAT YOU TOLD THEM WAS CONTAINED ON
14 THIS PARTICULAR STATEMENT?

15 A NOT EVERYTHING.

16 Q WELL, WHAT -- SO YOU DID TELL THEM THINGS OTHER THAN
17 WHAT WAS CONTAINED ON THE STATEMENT?

18 A (NO RESPONSE).

19 Q HAVE YOU SEEN THIS STATEMENT BEFORE?

20 A YEAH.

21 Q YOU HAVE?

22 A YES, SIR.

23 Q DID YOU READ THAT STATEMENT?

24 A YES, SIR.

25 Q DID YOU READ BOTH PAGES OF THE STATEMENT?

1 A YES, SIR.

2 Q WHEN YOU GOT -- READ WHAT I HAVE IN --

3 A YES, SIR.

4 Q -- RIGHT IN THERE. READ THAT SENTENCE FOR ME,
5 PLEASE.

6 A WHEN THEY GOT IN THE CAR, I HAD A FEELING THAT MARCUS
7 HAD WRONG SHOOT WITH -- WAS SHOOTING A GUN. WE WERE--

8 Q ALL RIGHT. WHEN YOU TOLD -- DID YOU TELL THE POLICE
9 THAT?

10 A NO.

11 Q DO YOU KNOW HOW IT GOT IN THE STATEMENT THEN?

12 A HUH-UH.

13 MS. NIELSEN: YOUR HONOR, I WOULD THINK THIS IS
14 BEYOND THE SCOPE OF WHETHER OR NOT THE STATEMENT IS
15 VOLUNTARY OR NOT.

16 MR. DOBY: THINK IT GOES DIRECTLY TO THE HEART OF
17 WHETHER IT'S VOLUNTARY AS TO WHETHER THEY WERE STATEMENTS
18 THAT HE GAVE THAT WERE NOT CONTAINED IN THIS, GOES TO THE
19 ISSUE OF WHETHER IT'S A VOLUNTARY STATEMENT.

20 THE COURT: WELL, IT GOES TO WHETHER HE MADE THE
21 STATEMENT AT ALL OR NOT. IT GOES TO THAT. I WILL ALLOW
22 YOU TO INQUIRE TO THAT. IT'S NOT -- IF HE DIDN'T MAKE IT,
23 THEN OBVIOUSLY VOLUNTARINESS DOESN'T ENTER INTO IT.
24 WHETHER HE MADE IT IS A THRESHOLD ISSUE HAS TO BE DEALT
25 WITH. I WILL LET HIM INQUIRE.

(WHEREUPON QUESTIONING RESUMED)

Q DID YOU MAKE THAT STATEMENT?

A NO, SIR.

Q NO, SIR? DID THE POLICE PRESSURE YOU INTO ALLOWING THAT TO BE PLACED INTO THE STATEMENT?

A NO, SIR.

Q YOU KNOW HOW IT GOT IN THE STATEMENT THEN?

A NO, SIR.

Q BUT YOU DIDN'T TELL THE POLICE THAT?

A NO, SIR.

Q ALL RIGHT. YOU ALSO TOLD THE POLICE SOMETHING ABOUT SOMETHING HITTING THE WINDOWS?

A YEAH, I TOLD THEM AFTER WE WAS GOING DOWN THE ROAD AND THEN COMING BACK TO SUMTER AFTER WE PASSED THE STORE, I HEARD A TAP ON THE WINDOW. I HEARD SOMETHING TAP

AGAINST THE WINDOW. I DIDN'T SAY...

Q WELL, DID YOU TELL THE POLICE THAT?

A YEAH.

Q DID THEY ASK YOU WHAT THAT TAPPING WAS?

A NO.

Q DID YOU TELL THEM WHAT THAT TAPPING WAS?

A BECAUSE I DIDN'T KNOW WHAT IT WAS. I WAS IN THE FRONT SEAT.

Q WERE THE WINDOWS ROLLED UP OR WERE THEY DOWN?

A THEY WERE DOWN. THEY WERE LIKE HALF WAY LIKE

1 CRACKED.

2 Q CRACKED?

3 A YES, SIR.

4 Q OKAY. WHEN THAT WAS PLACED IN THE STATEMENT, DID YOU
5 GO BACK AND READ THAT PRIOR TO YOUR SIGNING THE STATEMENT?

6 A NO, SIR, I JUST LOOK OVER -- REALLY HE TELL ME TO
7 SIGN THIS PAPER RIGHT HERE FIRST, GET TO SIGN THIS ONE.

8 Q SO HE TYPED AND WROTE THAT STATEMENT AND THEN TOLD
9 YOU TO SIGN IT?

10 A (NODDED).

11 Q DID HE GIVE YOU AN OPPORTUNITY TO READ IT BEFORE YOU
12 SIGNED IT?

13 A YEAH.

14 Q DID YOU READ IT?

15 A NO, I -- THAT'S WHEN I JUST LOOKED OVER, LOOKED OVER
16 TO SIGN IT.

17 Q ALL RIGHT. THANK YOU.

18 MR. DOBY: THAT'S ALL I HAVE, YOUR HONOR.

19 THE COURT: MR. ROGERS?

20 MR. ROGERS: JUST A COUPLE OF QUESTIONS.

21 CROSS-EXAMINATION BY MR. ROGERS:

22 Q MR. SINGLETON, DID THE OFFICER EVER TELL YOU THAT YOU
23 WERE A SUSPECT IN THIS CRIME?

24 A YES, SIR.

25 Q HE DID?

1 A (WHEREUPON SUBJECT INDICATED NODDING HEAD).

2 Q DID HE EVER TELL YOU THAT DEPENDING UPON WHAT YOU
3 SAID TO HIM YOU MAY OR MAY NOT BE CHARGED?

4 A NO, SIR.

5 Q WHAT DID YOU THINK BEFORE YOU GAVE THE STATEMENT
6 ABOUT WHETHER YOU WERE GOING TO BE FREE TO LEAVE AFTER YOU
7 GAVE THE STATEMENT?

8 A HE -- WELL, WHEN I GAVE HIM THE STATEMENT, I WAS
9 THINKING I WAS GOING HOME. I DIDN'T KNOW ANYTHING ABOUT
10 WHAT HAPPENED. I WAS JUST IN THE CAR, ME AND MY COUSIN
11 LAMONT.

12 Q DID YOU GO HOME?

13 A YEAH -- NO. THEY BROUGHT ME STRAIGHT -- THEY LOCKED
14 ME UP. AFTER THEY FINISHED QUESTIONING ME, THEY PUT ME IN
15 ANOTHER ROOM HAD ME SIT THERE FOR A COUPLE -- ABOUT AN
16 HOUR OR TWO, THEN COME IN AND CAME AND LOCK ALL OF US UP.

17 Q OKAY. SO THAT'S WHAT I'M TRYING TO GET AT. AFTER
18 YOU GAVE THIS STATEMENT, THEY TOOK YOU IMMEDIATELY TO BE
19 ARRESTED?

20 A NO, NOT RIGHT THEN. THEY JUST THEY HELD ME IN A
21 ROOM.

22 Q HOW LONG?

23 A BY MYSELF ABOUT AN HOWEVER, HOUR OR TWO.

24 Q ALL RIGHT. WHAT I'M GETTING AT, MR. SINGLETON, IS IF
25 YOU KNEW THAT BY GIVING THIS STATEMENT YOU COULD POSSIBLY

1 BE ARRESTED, WOULD YOU HAVE GIVEN THIS STATEMENT OR WOULD
2 YOU HAVE DECLINED TO MAKE THE STATEMENT?

3 A I WOULD HAVE DECLINED.

4 Q DID ANY OFFICER EVER TELL YOU THAT ONE OF THE
5 POSSIBILITIES OF YOU MAKING A STATEMENT WAS THAT YOU MIGHT
6 BE ARRESTED?

7 A NO, SIR.

8 MR. ROGERS: THANK YOU, YOUR HONOR.

9 THE COURT: ALL RIGHT. MS. NIELSEN,
10 CROSS-EXAMINATION?

11 CROSS-EXAMINATION BY MS. NIELSEN:

12 Q MR. SINGLETON, DIDN'T YOU JUST TESTIFY THAT THESE
13 OFFICERS TOLD YOU YOU WERE A SUSPECT? ISN'T THAT WHAT YOU
14 JUST SAID?

15 A EXCUSE ME?

16 Q THAT THESE OFFICERS TOLD YOU THAT YOU WERE A SUSPECT?

17 A YEAH, THEY DID.

18 Q BEFORE YOU GAVE A STATEMENT, THEY TOLD YOU THAT;
19 DIDN'T THEY?

20 A OH, NO. NO, THEY DIDN'T...

21 Q THEY TOLD YOU YOU WERE A SUSPECT AFTER YOU GAVE A
22 STATEMENT?

23 A THEY CAME AND GOT ME FROM THE JOB.

24 Q THEY TOLD YOU THEY WANTED TO TALK ABOUT--

25 A YEAH, THEY WANTED TO TALK ABOUT THE MURDER THAT

1 HAPPENED SATURDAY. THAT'S THE LAST TIME. THEN WE GOT
2 HERE AND I -- I GAVE -- I TOLD THEM WHAT HAPPENED.

3 Q WELL, WHEN IS IT THEY TOLD YOU YOU WERE A SUSPECT?

4 A WHEN THEY CAME AND GOT ME FROM THE JOB.

5 Q BEFORE YOU GAVE THE STATEMENT?

6 A YEAH.

7 Q OKAY. NOW, THEY WENT OVER THESE RIGHTS WITH YOU;
8 DIDN'T THEY?

9 A YEAH.

10 Q THEY TOLD YOU THAT YOU HAD THE RIGHT TO REMAIN
11 SILENT?

12 A NO, DIDN'T SAY ANYTHING. KEEP ME IN THE ROOM. ALL
13 THAT CAME UP AFTER I DONE -- AFTER I ALREADY TOLD THEM
14 ABOUT THE STATEMENT ABOUT WHAT HAPPENED WITH ME.

15 Q SO YOU ARE -- YOU ARE TELLING THE JUDGE THAT THIS
16 OFFICER DANNY SIMON DIDN'T READ YOU THESE RIGHTS BEFORE
17 YOU GAVE THE STATEMENT?

18 MR. JORDAN: OBJECTION. PITTING, YOUR HONOR.

19 THE COURT: EXCUSE ME? NO.

20 MR. JORDAN: BEG THE COURT -- SORRY.

21 THE COURT: HIS ANSWER I THINK IS ALREADY PITTED IN
22 AND OF ITSELF. I THINK SHE'S GOT A RIGHT TO CROSS-EXAMINE
23 HIM ON HIS ANSWER.

24 A COULD YOU ASK THE QUESTION AGAIN?

25 Q OFFICER SIMON DIDN'T TELL YOU YOU HAD THE RIGHT TO

1 REMAIN SILENT. THAT'S WHAT YOU'RE SAYING NOW?

2 A YEAH, THAT'S WHAT I'M SAYING. I NEVER TALKED TO HIM
3 UNTIL AFTER LIEUTENANT DELLINGER CAME IN THE ROOM, CAME IN
4 THE LITTLE BOX WITH ME AND TALKED TO ME AND HE LEFT. HE
5 COULDN'T CALM DOWN OR SOMETHING. I DON'T KNOW WHAT WAS
6 WRONG WITH HIM. COULDN'T CALM DOWN.

7 THAT'S WHEN LIEUTENANT SIMON CAME IN AND THEY
8 WENT -- THEY WENT OUT THE DOOR, THEY CAME -- LIEUTENANT
9 SIMON CAME BACK IN AND STARTED TALKING WITH ME. THEY KEPT
10 LEAVING THE ROOM, ASKED -- I DON'T KNOW WHAT HE WAS DOING.

11 Q ARE YOU SAYING THAT OFFICER SIMON DID NOT TELL YOU
12 YOU HAD THE RIGHT TO REMAIN SILENT?

13 A YEAH.

14 Q HE DIDN'T TELL YOU THAT?

15 A HUH-UH.

16 Q AND HE DIDN'T TELL YOU THAT ANYTHING YOU SAY CAN BE
17 USED AGAINST YOU IN A COURT OF LAW?

18 A NO.

19 Q AND HE DIDN'T TELL YOU THAT YOU HAVE THE RIGHT TO
20 TALK TO A LAWYER?

21 A (SHOOK HEAD).

22 Q THEY NEVER TOLD YOU THAT AT ALL?

23 A (SHOOK HEAD).

24 Q EVER?

25 A NO.

1 Q WELL, LET ME ASK YOU THIS. IF THEY DIDN'T TELL YOU
2 THIS, WHY DID YOU SIGN THIS FORM?

3 A JUST A QUICK, QUICK SIGN. I'M IN -- IN FOR NOTHING.

4 Q J.D. DELLINGER ACCORDING TO YOU HAD CALLED YOU A
5 LIAR; IS THAT RIGHT?

6 A YEAH.

7 Q AND YOU JUST SIGNED SOME FORM THAT LAW ENFORCEMENT
8 WANTED YOU TO SIGN AFTER THEY CALLED YOU A LIAR WITHOUT
9 READING IT. THAT'S WHAT YOU'RE TELLING US?

10 A YEAH, I GOT...

11 MS. NIELSEN: I DON'T HAVE ANY FURTHER QUESTIONS,
12 YOUR HONOR.

13 MR. JORDAN: FOLLOW-UP, YOUR HONOR?

14 THE COURT: YES, SIR.

15 REDIRECT EXAMINATION BY MR. JORDAN:

16 Q MR. SINGLETON, YOU JUST INDICATED YOU COULDN'T CALM
17 DOWN. WAS HE UPSET?

18 A I DON'T KNOW WHAT THE PROBLEM WAS.

19 Q WAS HE ANIMATED?

20 A ATTITUDE.

21 Q WAS HE--

22 A GOT AN ATTITUDE PROBLEM.

23 Q WAS HE RIGHT UP ON YOU IN -- AND IN YOUR FACE?

24 A NO, WHEN I WAS AT THE JOB, YEAH.

25 Q WAS HE ANGRY?

1 A ANGRY, ASKING ME ABOUT I TOLD HIM I DIDN'T KNOW WHAT
2 HAPPENED. HE WANTED TO KNOW -- I THINK YOU'RE LYING,
3 TRAVIS. I THINK YOU KNOW MORE THAN YOU DO. I MEAN, I
4 DON'T -- I DON'T KNOW WHAT HAPPENED. I DIDN'T SEE
5 ANYTHING.

6 Q SO DID HIS TENSIONS AND THE FACT THAT YOU COULDN'T
7 CALM DOWN, DID THAT ADD TO YOUR DILEMMA IN WHY YOU WERE --

8 A YEAH.

9 Q -- ADD TO YOU SIGNING THAT FORM BEFORE YOU REALLY
10 READ IT?

11 A YES, SIR.

12 Q OKAY.

13 A I DIDN'T...

14 Q SO HE LEFT, THEN THE OTHER GUY CAME IN. WAS HE CALM?

15 A YEAH, HE WAS -- SIMON WAS. HE WAS CALM.

16 Q OKAY. THANK YOU. NO FURTHER QUESTIONS.

17 THE COURT: ALL RIGHT. THANK YOU. YOU CAN STEP
18 DOWN.

19 (WHEREUPON THE WITNESS LEFT THE STAND).

20 THE COURT: ALL RIGHT. MR. JORDAN, ANY ADDITIONAL
21 EVIDENCE OR TESTIMONY IN REGARD TO MR. SINGLETON?

22 MR. JORDAN: NO, YOUR HONOR.

23 THE COURT: THANK YOU. MR. FINNEY, ANY EVIDENCE OR
24 TESTIMONY REGARDING MR. WITHERSPOON'S STATEMENT?

25 MR. FINNEY: NO, YOUR HONOR.

1 THE COURT: ALL RIGHT. GENTLEMEN, BE GLAD TO HEAR
2 MOTIONS, FIRST OF ALL MR. JORDAN, FROM YOU.

3 MR. JORDAN: MAY IT PLEASE THE COURT, YOUR HONOR.
4 CLEARLY MR. SINGLETON WAS A SUSPECT AND WAS GOING TO BE
5 CHARGED IN THE THING, MERE STRATEGY ON THEIR PART TO
6 QUESTION HIM FIRST BEFORE THEY ACTUALLY CHARGED HIM. I
7 DIDN'T UNDERSTAND HIS TESTIMONY TO BE THAT THEY TOLD ME I
8 WAS -- I WAS TO BE ARRESTED OR I WAS A -- I WAS A SUSPECT.

9 THE COURT: TESTIMONY WAS THAT THEY DIDN'T TELL HIM
10 WHETHER OR NOT HE WOULD BE CHARGED, BUT THEY TOLD HIM HE
11 WAS A SUSPECT BEFORE THEY PICKED HIM UP OR AS THEY PICKED
12 HIM UP FROM SUMTER.

13 MR. JORDAN: YOUR HONOR, I THINK INVESTIGATOR
14 DELLINGER'S TESTIMONY WAS CLEAR HE WOULD BE CHARGED AND HE
15 KNEW THAT EVEN BEFORE THEY QUESTIONED HIM.

16 THE COURT: RIGHT.

17 MR. JORDAN: I WOULD RAISE THE ISSUE THAT THIS
18 POTENTIALLY RENDERS HIS WAIVER OF RIGHTS INVALID. I THINK
19 CLEARLY, YOUR HONOR, YOU HAVE TO LOOK AT THE TOTALITY OF
20 THE CIRCUMSTANCES GIVEN THE INDIVIDUALS EXPERIENCE,
21 INTELLIGENCE AND BACKGROUNDS IN THE CASE LAW.

22 AND YOUR HONOR, I THINK THAT HIS TESTIMONY HAS
23 SHOWN THAT CIRCUMSTANCES DID EXIST WHICH INDICATE THAT HIS
24 WILL WAS OVERBORNE, THAT YOU KNOW HE -- SIMILARLY HERE.
25 TODAY WHEN THEY TOLD HIM THAT WAS WHAT HE HAD TO DO, HE

1 NEEDED TO SIGN THAT, THAT IS WHAT HE DID.

2 AND UNDER CROSS-EXAMINATION OR UNDER EXAMINATION
3 BY CO-COUNSEL OR OTHER DEFENSE COUNSEL, HE SAID YOU KNOW,
4 THEY TOLD ME TO SIGN IT, IT'S MORE WORDS, NO MORE THEIR
5 WORDS THAN MY WORDS, YOUR HONOR. UNDER THAT BASIS AND
6 UNDER THE CASE LAW WE WOULD ASK THE STATEMENT BE
7 EXCLUDED. THANK YOU.

8 THE COURT: THANK YOU. IF I COULD PLEASE, MS.
9 NIELSEN, IF YOU COULD ASK THE REPORTER AT THIS POINT IN
10 TIME TO MARK AS STATE'S EXHIBIT FOR IDENTIFICATION THE
11 RIGHTS STATEMENTS, THE WAIVER STATEMENTS AND THE
12 STATEMENTS THEMSELVES SO I CAN OPEN THEM PLEASE.

13 MS. NIELSEN: JUDGE, I HAVE THE COPY. I'M TRYING TO
14 FIND THE ORIGINAL.

15 THE COURT: NEED TO HAVE SOMETHING FOR THE RECORD. I
16 JUST NEED SOMETHING IN FRONT OF ME TO REFER TO.

17 MS. NIELSEN: MARKED AS STATE'S 1 FOR I.D., TRAVIS
18 SINGLETON'S STATEMENT. THE WAIVER OF RIGHTS FORM IS
19 ATTACHED TO THE FRONT OF THE STATEMENT.

20 MS. NIELSEN: STATE'S 2 IS THE WAIVER OF RIGHTS FORM
21 WITH THE STATEMENT ATTACHED THERETO OF LAMONT WITHERSPOON.

22 THE COURT: OKAY. THANK YOU.

23 (STATE'S EXHIBIT NO. 1 AND 2 MARKED FOR
24 IDENTIFICATION).

25 (WHEREUPON THERE WAS A PAUSE).

1 THE COURT: ALL RIGHT. HAVING CONSIDERED THE
2 EVIDENCE IN THIS CASE, I AM CONVINCED AND FIND THAT BEFORE
3 THE STATEMENTS MADE ALLEGEDLY BY MR. SINGLETON WERE IN
4 FACT THAT HE WAS FULLY ADVISED OF HIS RIGHTS UNDER THE
5 FIFTH AND SIXTH AMENDMENT TO THE CONSTITUTION AND HE WAS
6 ADVISED OF CONSTITUTIONAL SAFEGUARDS REQUIRED BY THE
7 MIRANDA CASE, STATE'S EXHIBITS NUMBER 1 FOR IDENTIFICATION
8 IN LARGE PRINT ALL CAPS HAS THE RIGHTS OUTLINED.

9 HE HAS SIGNED IMMEDIATELY BELOW THE RECITATION
10 OF HIS RIGHTS THAT HE HAD THE RIGHT TO REMAIN SILENT, THAT
11 ANYTHING THAT HE SAID WOULD BE USED AGAINST HIM IN COURT,
12 THAT HE HAD THE RIGHT TO ASK A LAWYER FOR ADVICE BEFORE
13 ANY QUESTIONS WERE ASKED AND HAD A LAWYER PRESENT, THAT IF
14 HE COULDN'T AFFORD A LAWYER, ONE WOULD BE APPOINTED TO
15 REPRESENT HIM, THAT IF HE DECIDED TO ANSWER QUESTIONS
16 WITHOUT A LAWYER PRESENT, HE'D STILL HAVE THE RIGHT TO
17 STOP ANSWERING AT ANY TIME AND HAVE THE RIGHT TO STOP
18 ANSWERING QUESTIONS ANY TIME TILL HE TALKED TO A LAWYER.

19 RIGHT BELOW THAT THE WORDING I HAVE READ THE
20 STATEMENT OF MY RIGHTS AND UNDERSTAND MY RIGHTS, WHAT MY
21 RIGHTS ARE, APPEARS THE SIGNATURE OF MR. SINGLETON THAT HE
22 HAS ACKNOWLEDGED. THE WAIVER OF RIGHTS APPEARS DIRECTLY
23 BELOW THAT.

24 IT SAYS I'M WILLING TO MAKE A STATEMENT AND
25 ANSWER QUESTIONS WITHOUT A LAWYER. I KNOW WHAT I'M

1 DOING. NO PROMISES, NO THREATS HAVE BEEN MADE, NO
2 PRESSURE USED AGAINST ME. THERE'S ATTACHED TO THAT A TWO
3 PAGE STATEMENT LABELED VOLUNTARY STATEMENT OR ACTUALLY A
4 PAGE AND A LITTLE BIT MORE ON THE SECOND PAGE.

5 SAYS HIS SIGNATURE APPEARS TWICE, AT THE TOP OF
6 THE SECOND PAGE AND BELOW THE BODY OF THE STATEMENT
7 ITSELF. ALL OF THESE THINGS OCCUR OF COURSE ACCORDING TO
8 HIS OWN TESTIMONY IN THE CONTEXT OF THE CASE WHERE HE HAD
9 BEEN CALLED A LIAR BY THE POLICE OFFICER BEFORE HE WAS
10 EVER PICKED UP.

11 WHEN HE WAS PICKED UP, HE WAS TOLD HE WAS A
12 SUSPECT PUTTING ON NOTICE OF COURSE OF THAT STATUS, BUT AT
13 THE SAME TIME HE INDICATED HE FULLY EXPECTED TO BE ABLE TO
14 GO HOME WHEN HE COMPLETED THE STATEMENT INDICATING THAT HE
15 FELT NO PRESSURE, NO THREATS OR COERCION IN THAT REGARD.
16 AS A MATTER OF FACT, UNTIL HE WAS ARRESTED HE THOUGHT HE
17 WAS ON HIS WAY HOME.

18 CLEARLY HE WAS ADVISED ALL OF HIS RIGHTS
19 REQUIRED UNDER THE LAW. THE STATEMENTS THAT ARE
20 ATTRIBUTED TO HIM WERE MADE KNOWINGLY AND INTELLIGENTLY
21 AND WITH THE WAIVER OF THOSE RIGHTS WHICH HAS BEEN
22 ACKNOWLEDGED TO BY THE -- HIS SIGNATURE AND ALSO BY MY
23 ASSESSMENT OF THE FACTS HAVE BEEN INTRODUCED IN THIS CASE
24 BY THE STATE.

25 SO THE STATEMENTS MADE WERE FREELY AND

1 VOLUNTARILY MADE WITHOUT DURESS, WITHOUT COERCION, WITHOUT
2 INFLUENCE OF REWARD OR PROMISE OR HOPE OF REWARD, CLEARLY
3 NO PROMISE OF LENIENCY, NO THREAT OF INJURY, AND I FIND
4 THAT THE STATE HAS BORNE ITS BURDEN AT THIS STAGE WHICH IS
5 BY THE PREPONDERANCE OR GREATER WEIGHT OF THE EVIDENCE AND
6 THAT THE STATEMENT IN AND OF ITSELF IS ADMISSIBLE AS
7 VOLUNTARILY GIVEN.

8 NOW, I HAVEN'T READ THEM NOTHING -- WE'VE GOT
9 BRUTON ISSUES THAT HAVE TO BE DEALT WITH, BUT THE
10 VOLUNTARINESS OF IT HAS BEEN DEALT WITH INSOFAR AS STATE'S
11 EXHIBIT NUMBER 1 FOR IDENTIFICATION IS CONCERNED.

12 AS TO STATE'S EXHIBIT NUMBER 2 FOR
13 IDENTIFICATION, STATEMENT NOT SIGNED BY MR. WITHERSPOON'S,
14 THE OFFICER HAS TESTIFIED HOWEVER THAT HE GAVE HIM HIS
15 RIGHTS, THAT HE UNDERSTOOD THOSE RIGHTS, THAT THE
16 STATEMENT WAS HIS STATEMENT AND THAT HE TYPED IT AND IT
17 TOOK A WHILE TO TYPE BECAUSE THE OFFICER TAKES A WHILE TO
18 TYPE THINGS LIKE SOME OF US DO WHO ARE NOT TRAINED IN THAT
19 REGARD.

20 THERE IS NO STATEMENT TO THE CONTRARY. IN THIS
21 REGARD I FIND THAT THE STATE HAS BORN ITS BURDEN IN THAT
22 REGARD. THE WAIVER OF RIGHTS WERE GIVEN TO MR.
23 WITHERSPOON, THAT HE HAD THE RIGHT TO REMAIN SILENT, THAT
24 ANYTHING HE SAID COULD AND WOULD BE USED AGAINST HIM IN
25 COURT, HAD THE RIGHT TO HAVE A LAWYER, TALK TO A LAWYER

1 BEFORE ONE -- BEFORE QUESTIONS WERE ASKED AND HAVE HIM
2 PRESENT, THAT ONE WOULD BE APPOINTED TO REPRESENT HIM IF
3 HE COULD NOT AFFORD ONE AND THAT HE UNDERSTOOD WHAT HIS
4 RIGHTS WERE.

5 HE SIGNED THE WAIVER OF THOSE -- EXCUSE ME --
6 THE WAIVER OF THOSE RIGHTS WERE PRESENTED TO HIM SIGNED BY
7 THE WITNESSES BUT WITH -- NOT BY MR. WITHERSPOON HIMSELF.
8 BOTH HAVE INDICATED, BOTH WITNESSES HAVE INDICATED THAT
9 THE STATEMENTS WERE MADE, THAT MIRANDA WARNINGS WERE
10 GIVEN, STATE'S EXHIBIT NUMBER 2 FOR IDENTIFICATION I ALSO
11 FIND TO HAVE BEEN FREELY AND VOLUNTARILY GIVEN AFTER A
12 FULL ASSESSMENT AND UNDERSTANDING OF THE WARNINGS OF THE
13 DEFENDANT THAT ARE LAID OUT THAT I JUST READ INTO THE
14 RECORD THAT HE KNOWINGLY AND INTELLIGENTLY WAIVED THOSE
15 RIGHTS IN MAKING THE STATEMENT, THAT THE STATEMENT WAS
16 FREELY AND VOLUNTARILY GIVEN WITHOUT THE DURESS OR
17 COERCION OR UNDUE INFLUENCE, WITHOUT REWARD, WITHOUT
18 PROMISE OR HOPE OF REWARD, WITHOUT ANY PROMISE OF LENIENCY
19 OR THREAT OF INJURY, NO COMPULSION OR INDUCEMENT OF ANY
20 KIND.

21 THE STATE HAVING MET ITS BURDEN IN THIS REGARD
22 BY THE GREATER WEIGHT OF THE EVIDENCE, WEIGHT FOR THE JURY
23 AS WE KNOW IS BEYOND A REASONABLE DOUBT. THE STATEMENT IS
24 ENTITLED TO ADMISSIBILITY ON THE ISSUE OF VOLUNTARINESS.

25 INsofar AS THE STATEMENT BY MR. SINGLETON, THAT

1 THERE IS ATTRIBUTED TO HIM A STATEMENT THAT HE DID NOT
2 MAKE, THAT IS A MATTER THAT I FIND THE STATE HAS BORNE ITS
3 BURDEN AT THIS STAGE BY THE GREATER WEIGHT OF THE EVIDENCE
4 AS HAVING BEEN INCLUDED IN THE GREATER STATEMENT THAT HE
5 GAVE.

6 THE JURY WILL BE ADVISED OF COURSE THAT IT HAS
7 TO FIND BEYOND A REASONABLE DOUBT THE STATEMENT WAS IN
8 FACT MADE, THAT THESE PURPOSES THE STATEMENTS ARE BOTH
9 ADMISSIBLE. THANK YOU. ALL RIGHT. WE HAVE THE
10 IDENTIFICATION LINE-UP I BELIEVE TO DEAL WITH? SORRY, MR.
11 FINNEY?

12 MR. FINNEY: JUST IF THE COURT WOULD ALLOW ME ON THE
13 THIRD PAGE OF THE SECOND EXHIBIT THERE IS A HANDWRITTEN
14 NOTE BY THE OFFICER. I JUST WONDERED IF WE COULD HAVE
15 THAT REMOVED SO THE JURY WOULDN'T HAVE TO CONSIDER THAT.

16 THE COURT: YES, SIR. I AGREE. THAT UNLESS A BIG
17 ISSUE IS MADE OF THE FACT IT IS NOT SIGNED, THEN OBVIOUSLY
18 THAT WOULD.

19 MR. FINNEY: WON'T MAKE AN ISSUE OUT OF THAT.

20 THE COURT: THAT WOULD NOT BE RELEVANT.

21 MS. NIELSEN: JUDGE, HOW ARE WE GOING TO EXPLAIN TO
22 THE JURY WHY WE HAVE GOT THIS STATEMENT THAT'S NOT
23 SIGNED? THEY DON'T MAKE A BIG ISSUE OUT OF IT, THE REASON
24 IT'S NOT SIGNED WAS BECAUSE HE HAD TALKED TO AN ATTORNEY,
25 TOLD HIM NOT TO SIGN IT.

1 MR. FINNEY: I DON'T MIND THE WITNESS TESTIFYING IF
2 THAT IS HIS OPINION. I DON'T MIND MY CLIENT STIPULATING
3 TO THAT. I JUST DON'T WANT IT -- OPINION BY THE OFFICER
4 PRINTED ON THE FORM.

5 THE COURT: I UNDERSTAND. IT WILL GO BEFORE THE JURY
6 IN THAT FASHION. MS. NIELSEN, IT'S GOING TO BE A QUESTION
7 SINCE THE STIPULATION IS THERE. THE FACT THAT IT MIGHT BE
8 WRITTEN DOWN THERE, THE STATEMENT OF THE OFFICER IN THAT
9 REGARD MAY CARRY SOME WEIGHT WITH IT, BUT CLEARLY NOBODY
10 IS GOING TO BE ABLE TO ARGUE ANY OTHER REASON FOR IT NOT
11 HAVING BEEN SIGNED.

12 AS A MATTER OF FACT, CONVERSELY YOU WOULD BE
13 ABLE TO ARGUE THE REASON IT WASN'T SIGNED BECAUSE LAWYER
14 TOLD HIM NOT TO.

15 MS. NIELSEN: JUDGE, OBVIOUSLY CAN'T ARGUE THAT
16 UNLESS HE GETS TO TESTIFY ABOUT IT.

17 THE COURT: BUT THEN IF IT'S A STIPULATION TO THAT
18 EFFECT, DON'T NEED TESTIMONY, JUST NEED STIPULATION.

19 MS. NIELSEN: YOU'RE SAYING YOU'RE GOING TO
20 STIPULATE?

21 MR. FINNEY: I WILL STIPULATE HE DID NOT SIGN IT
22 BECAUSE HE WAS ADVISED BY HIS ATTORNEY NOT TO SIGN IT. IF
23 HE DON'T, I WILL.

24 THE COURT: THAT'S ALL YOU NEED.

25 MS. NIELSEN: COURT'S INDULGENCE.

1 THE COURT: I WILL GRANT THAT MOTION. THAT -- UNLESS
2 IT'S MADE AN ISSUE SOME OTHER WAY. OKAY.

3 MS. NIELSEN: JUDGE, THE ONLY OTHER THING -- WE ARE
4 TAKING OUT SINCE HE WOULDN'T SIGN IT -- THE OFFICER ASKED
5 HIM YOU AGREE THIS IS WHAT YOU TOLD ME.

6 THE COURT: THAT'S ANOTHER MATTER ENTIRELY.

7 MS. NIELSEN: YES, SIR, JUDGE. BUT THAT IS WHY THE
8 NOTATION THAT IS ON THE STATEMENT IS BECAUSE HE AS AN
9 OFFICER ASKED HIM AND HE AGREED TO IT THAT -- THAT WAS
10 WHAT HE HAD SAID, HE WASN'T GOING TO SIGN IT BECAUSE HIS
11 LAWYER TOLD HIM NOT TO SIGN IT.

12 THE COURT: RIGHT. BUT YOU SEE THE OFFICER CAN
13 TESTIFY TO THAT. THE OFFICER CAN SAY HE READ THE
14 STATEMENT AND HE AGREED THAT THIS WAS WHAT WAS IN IT.

15 MS. NIELSEN: AS LONG AS THE OFFICER CAN TESTIFY TO
16 THAT, I DON'T HAVE A PROBLEM.

17 THE COURT: SURE, HE CAN SAY THAT. AND YOU KNOW THE
18 STIPULATION WILL BE THAT HE WAS ADVISED BY HIS LAWYER.
19 WHAT HE TOLD THE OFFICER, AS LONG AS THE GROUND WORK IS
20 THERE, IS ENTITLED TO BE ADMITTED BEFORE THIS JURY.

21 MS. NIELSEN: YES, SIR.

22 THE COURT: WHETHER IT'S WRITTEN DOWN HERE, WHETHER
23 IT'S THE OFFICER'S NOTE OR WHETHER IT'S WHAT THE OFFICER
24 TESTIFIED. YOU SEE, WHEN IT -- WHEN IT'S WRITTEN DOWN
25 HERE, IT SORT OF TAKES ON THE AURA OF THE STATEMENT OF A

1 PERSON.

2 MS. NIELSEN: I DON'T HAVE A PROBLEM WITH US TAKING
3 IT OFF THE STATEMENT AS LONG AS THE OFFICER CAN TESTIFY
4 ABOUT THE SAME THING.

5 THE COURT: WE CAN DO THAT. OKAY. WE CAN DO THAT.
6 OKAY. AS A MATTER OF FACT, THAT'S -- THAT'S FINE. ALL
7 RIGHT. LET'S GO ON THEN. IF THERE ARE NO OTHER
8 EVIDENTIARY MATTERS IN REGARD TO STATEMENTS, LET'S DEAL
9 THEN WITH -- I THINK HAD A LINE-UP ISSUE; IS THAT RIGHT?
10 TWO LINE-UPS?

11 MS. NIELSEN: YES, SIR. THERE ARE TWO LINE-UPS.

12 MR. ROGERS: I WANT TO BE CLEAR WITH -- ARE WE GOING
13 TO TAKE UP THE REDACTION OF MR. SINGLETON'S STATEMENT AT A
14 LATER TIME?

15 THE COURT: I HAVEN'T EVEN LOOKED AT THOSE STATEMENTS
16 AT THIS POINT IN TIME.

17 MR. ROGERS: WANT THAT TO SUFFICE?

18 THE COURT: AND IT WON'T. LET'S DO THIS. LET ME
19 LOOK AT THESE, LET ME HAVE A CHANCE TO READ THESE
20 STATEMENTS FIRST, AND IT MIGHT WELL BE THAT YOU ALL CAN
21 GET TOGETHER AND AGREE ON A REDACTION. IF YOU CAN, THEN
22 OBVIOUSLY THAT WILL TAKE CARE OF ITSELF.

23 IF IT WILL NOT, THEN I WILL BE GLAD TO DO WHAT I
24 NEED TO. WE HAVE ALL READ THE CASE OF KEVIN GRAY VERSUS
25 THE STATE OF MARYLAND. THE LAW IS BRUTON VERSUS UNITED

1 STATES, WE KNOW WHAT THEY SAY. IT'S A PRETTY -- IT'S NOT
2 A ROCKET SCIENCE I THINK TO GET THOSE THINGS REDACTED.
3 LET'S LEAVE THAT FOR ANOTHER TIME AND MOVE ON TO WHAT WE
4 NEED TO DO TO TAKE CARE OF TESTIMONY, OKAY?

5 MS. NIELSEN: THE STATE CALLS J.D. DELLINGER.

6 THE COURT: ALL RIGHT.

7 J.D. DELLINGER, BEING FIRST DULY
8 REMINDED OF OATH, TESTIFIED AS FOLLOWS:

9 DIRECT EXAMINATION BY MS. NIELSEN:

10 Q OFFICER DELLINGER --?

11 MS. NIELSEN: DO YA'LL OBJECT TO ME GOING AHEAD AND
12 MARKING THESE AS 3 AND 4 FOR I.D.?

13 (STATE'S EXHIBIT NO. 3 AND 4 MARKED FOR
14 IDENTIFICATION).

15 Q OFFICER DELLINGER, IN THE COURSE OF YOUR
16 INVESTIGATION OF THIS CASE, DID YOU HAVE AN OPPORTUNITY TO
17 PREPARE TWO LINE-UPS?

18 A YES, MA'AM.

19 Q AND I WILL SHOW YOU WHAT HAS BEEN MARKED AS STATE'S
20 EXHIBITS 3 AND 4 FOR IDENTIFICATION AND ASK YOU IF YOU
21 RECOGNIZE THOSE.

22 A YES, MA'AM.

23 Q ~~ARE~~ ARE THOSE THE LINE-UPS THAT YOU PREPARED?

24 A YES, MA'AM.

25 Q AND WOULD YOU TELL US BRIEFLY THE PROCESS YOU WENT

1 THROUGH TO PREPARE THOSE.

2 A WELL, THE STATE'S EXHIBIT 3 FOR IDENTIFICATION IS SIX
3 PHOTOGRAPHS THAT I HAD OBTAINED FROM THE SUMTER COUNTY LAW
4 ENFORCEMENT CENTER FROM THEIR BOOKING RECORDS. I
5 ATTEMPTED TO PICK PHOTOGRAPHS WITH SIMILAR COMPLEXIONS,
6 SIMILAR LIGHTING, SIMILAR FACIAL HAIR.

7 THE STATE'S EXHIBIT 4 FOR IDENTIFICATION IS
8 PHOTOGRAPHS THAT WERE OBTAINED FROM THE LEE COUNTY
9 DETENTION CENTER. THOSE ARE POLAROID PHOTOGRAPHS. AND
10 AGAIN I ATTEMPTED TO OBTAIN SIX PHOTOGRAPHS WITH SIMILAR
11 LIGHTING AND HAIR.

12 Q NOW, AFTER YOU PREPARED THOSE TWO LINE-UPS, DID YOU
13 SHOW THEM TO ANYONE?

14 A YES, MA'AM. I SHOWED THEM TO SEVERAL WITNESSES IN
15 THIS CASE.

16 Q ALL RIGHT. CAN YOU TELL US THE CIRCUMSTANCES UNDER
17 WHICH YOU SHOWED THEM TO WITNESSES?

18 A THEY WERE CALLED IN TO THE OFFICE TO BE INTERVIEWED
19 ABOUT THE SITUATION THAT HAD HAPPENED AT THE CLUB, THEN
20 THEY WERE SHOWN ONE LINE-UP AT A TIME INDIVIDUALLY AND
21 ASKED IF THEY COULD LOOK AT THOSE SIX PHOTOGRAPHS AND IF
22 THEY COULD IDENTIFY ANYBODY IN THOSE SIX PHOTOGRAPHS THAT
23 WAS INVOLVED IN THE INCIDENT AT THE CLUB.

24 Q DID YOU DO ANYTHING IN ANY WAY TO INDICATE TO ANYONE
25 WHO YOU WANTED THEM TO PICK OUT?

1 A NO, MA'AM.

2 Q WHAT WAS THE BASIS -- TELL US FIRST OF ALL WHO IS IN
3 LINE-UP "A".

4 A LINE-UP "A" IS WITH THE DEFENDANT MARCUS EVANS.

5 Q ALL RIGHT.

6 A LINE-UP "B" IS GILARON TAYLOR.

7 Q ALL RIGHT. AND CAN YOU TELL US WHO YOU SHOWED THESE
8 LINE-UPS TO?

9 A I SHOWED THEM TO DELVIN WATERS, MARTY OATS, STEVEN
10 JOHNSON, RODNEY YATES, LEONARD SCOTT AND DERRICK ALBERT.

11 Q NOW, EACH ONE OF THESE -- WELL, WHO WERE THESE
12 PEOPLE?

13 A THESE WERE INDIVIDUALS THAT WERE AT THE CLUB OUTSIDE
14 WHEN THE INCIDENT TOOK PLACE.

15 Q WHEN YOU SHOWED EACH ONE OF THESE PEOPLE THE LINE-UP,
16 WHO ELSE WAS PRESENT?

17 A SOMETIMES I WAS BY MYSELF, SOMETIMES INVESTIGATOR
18 SIMON WAS PRESENT, SOMETIMES -- THOSE ARE THE ONLY TWO
19 THAT I KNOW WERE PRESENT WHEN THE MAJORITY OF THE LINE-UPS
20 WERE DONE.

21 Q ALL RIGHT. AND DID YOU SHOW THE LINE-UPS TO EACH OF
22 THESE INDIVIDUALS SEPARATELY FROM THE OTHER INDIVIDUALS?

23 A YES. THERE WAS DIFFERENT TIMES AND DIFFERENT DATES
24 WHEN I WAS ABLE TO MAKE CONTACT WITH THE WITNESS AND
25 ARRANGE FOR THEM TO COME TO THE OFFICE TO TAKE A FORMAL.

1 STATEMENT AND SHOW THEM THE LINE-UPS.

2 Q HAD PRIOR TO SHOWING THEM THE LINE-UPS ANY OF THE
3 INDIVIDUALS THAT WERE SHOWN THE LINE-UPS, HAD YOU SHOWN
4 THEM ANY OTHER PHOTOGRAPHS?

5 A NO, MA'AM.

6 Q HAD YOU TAKEN THEM ANYWHERE SO THEY COULD LOOK AT THE
7 DEFENDANTS?

8 A NO, MA'AM.

9 Q DO YOU KNOW OF ANY OTHER THING THAT COULD HAVE
10 TAINTED THEIR IDENTIFICATIONS THAT THEY MADE WHEN YOU
11 SHOWED THEM LINE-UP?

12 A NOT THAT I'M AWARE OF, NO.

13 MS. NIELSEN: YOUR HONOR I'M NOT, I KNOW THAT THEY
14 ARE CHALLENGING THE LINE-UPS. I'M NOT SURE WHAT THE BASIS
15 OF THE LINE-UPS ARE. I COVERED HOW HE DID THEM AND WHAT
16 MANNER HE SHOWED THEM TO WITNESSES, AND IF THERE IS
17 SOMETHING ELSE I NEED TO COVER, I GUESS I NEED TO KNOW THE
18 BASIS OF WHAT THEIR OBJECTION IS TO THE LINE-UP TO BEGIN
19 WITH.

20 THE COURT: WELL, LET'S SEE FIRST OF ALL, OF COURSE
21 THEY HAVE A CHANCE TO CROSS-EXAMINE IN JUST A FEW
22 MOMENTS. THE -- WE ARE GUIDED SOMEWHAT IN NIEL VERSUS
23 BIGGERS AND TELFARES AS TO THE STANDARDS REGARDING THE
24 IDENTIFICATION, IN-COURT IDENTIFICATION AND PHOTOGRAPHIC
25 LINE-UPS, AND THE STANDARD IS WHETHER OR NOT THE METHOD IN

1 WHICH THESE THINGS WERE PRESENTED WAS SO SUGGESTIVE AS TO
2 INDICATE THAT THE IDENTIFICATION WAS TAINTED BY THE WAY
3 THAT THE OFFICER PRESENTED THE LINE-UP ITSELF. AND SO,
4 YOU KNOW, I THINK ESSENTIALLY YOU HAVE COVERED THESE
5 POINTS, BUT WE WILL GET A CHANCE TO REDIRECT.

6 MS. NIELSEN: THAT'S ALL I WILL ASK RIGHT NOW.

7 THE COURT: ALL RIGHT. LET'S START OUT MR. DOBY,
8 LINE-UP "A" I THINK REFERRED TO MR. EVANS. LINE-UP "B"
9 MR. TAYLOR, SO WE WILL START -- LET YOU CROSS-EXAMINE
10 FIRST.

11 CROSS-EXAMINATION BY MR. DOBY:

12 Q DETECTIVE, YOU SHOWED THIS LINE-UP TO HOW MANY
13 DIFFERENT WITNESSES?

14 A YOU ASKED HOW MANY?

15 Q HOW MANY.

16 A DELVIN WATERS, MARTY OAKS, STEVEN JOHNSON, RODNEY
17 YATES, LEONARD SCOTT AND DERRICK ALBERT.

18 Q SO SEVEN, SIX?

19 A I BELIEVE SO, MR. DOBY. THAT'S...

20 Q AND DID EACH ONE OF THOSE SIX WITNESSES VIEW THE SAME
21 PICTURES THAT YOU HAVE TODAY?

22 A YES, SIR.

23 Q AND WERE THEY PRESENTED IN THIS SAME MANNER?

24 A YES, SIR. THEY WERE IN THIS FOLDER IN THIS JACKET.

25 Q WERE THESE WITNESSES THAT YOU SHOWED THIS PHOTO I.D.

1 TO IN THE SAME ROOM OR WERE ANY OF THEM IN THE SAME ROOM
2 WHEN THE OTHER IDENTIFIED CERTAIN INDIVIDUALS ON THE
3 LINE-UP? DID YOU HAVE MORE THAN ONE WITNESS IN A ROOM AT
4 THE TIME?

5 A NO, SIR.

6 Q AND DID YOU HAVE THE PHOTO LINE-UP BEFORE OR AFTER
7 THE ARREST WARRANTS IN THIS CASE?

8 A I'D HAVE TO LOOK AT THE DATES OF THE -- ON THE ARREST
9 WARRANTS. I DON'T KNOW IF THESE WERE PHOTOGRAPHS WERE
10 FROM PREVIOUS ARRESTS OR WERE PHOTOGRAPHS CONCERNING THIS
11 ARREST WHEN THEY WERE BOOKED IN ON THESE CHARGES.

12 Q WERE THE -- THESE PHOTO LINE-UPS -- YOU GOT
13 STATEMENTS FROM THESE INDIVIDUAL WITNESSES AS WELL; IS
14 THAT RIGHT?

15 A YES, SIR.

16 Q WERE THESE PHOTO LINE-UPS DONE BEFORE OR AFTER THE
17 WRITTEN STATEMENTS THAT YOU RECEIVED?

18 A THEY WERE USUALLY DONE IN CONJUNCTION WITH. WHEN
19 THEY WERE TRYING TO EXPLAIN TO ME WHAT ROLE EACH
20 INDIVIDUAL WOULD HAVE, IT WAS SOMETIMES BENEFICIAL TO --
21 HELPFUL FOR THEM TO VIEW THE LINE-UP FIRST OR DURING THAT
22 AND THAT WOULD BE DONE THEN, AND THEN THEY CAN REFER TO --
23 IF THEY DIDN'T RECALL OR KNOW ANY NAMES, THE MAJORITY OF
24 THEM DIDN'T, THEN THEY WOULD GO REFER TO THAT PHOTOGRAPH.

25 Q SO THE MAJORITY OF THEM DID NOT KNOW THE NAMES?

1 A NO, SIR.

2 Q OKAY.

3 A I DON'T -- I DON'T RECALL ANY OF THEM PROVIDING ME A
4 NAME OF THE -- FROM ANY OF THE WITNESSES THAT IDENTIFIED
5 THEM. THE ONLY WAS GIVING IT TO -- MARCUS EVEN WENT BY A
6 NICKNAME OF COAL OR COKE, BUT THAT WAS THE ONLY
7 INFORMATION I HAD.

8 Q ALL RIGHT. DID ANY OF THE SIX WITNESSES THAT YOU
9 PRESENTED THIS PHOTO LINE-UP TO, WERE ANY OF THOSE UNABLE
10 TO MAKE A POSITIVE IDENTIFICATION ON THAT?

11 A IN LINE-UP "A"?

12 Q LINE-UP "A".

13 A NO.

14 Q SO YOU HAD SIX POSITIVE IDENTIFICATIONS ON LINE-UP
15 "A"?

16 A YES, SIR.

17 Q FROM EACH OF THOSE WITNESSES THAT YOU TESTIFIED TO?

18 A YES, SIR.

19 Q DID -- WERE ALL OF THOSE IDENTIFICATIONS DONE BY
20 MEANS OF A SHEET THAT YOU HAD THEM MARK I THINK YOU X'D
21 THE CIRCLE REPRESENTING PICTURES ONE, TWO, THREE, FOUR,
22 FIVE OR SIX?

23 A THE ONLY ONE THAT I KNOW OF THAT DOES NOT IS MARTY
24 OAKS. AND I'M NOT AWARE OF ANY FORM USED FOR THOSE
25 PHOTOGRAPHS. THE OTHERS MY RECOLLECTION IS THAT EACH

1 FILLED OUT THE FORM AND AS YOU DESCRIBED MARKED A CIRCLE
2 CORRESPONDING A NUMBER.

3 Q AND THAT WAS FOR THE OTHER FIVE WITNESSES OTHER THAN
4 WATERS?

5 A MARTY OAKS.

6 Q MARTY OAKS?

7 A YEAH, FROM MY UNDERSTANDING THAT IS NOT THOSE FORMS.

8 Q WAS HE UNABLE TO MAKE AN IDENTIFICATION OFF OF?

9 A NO, HE WAS ABLE TO MAKE IDENTIFICATION OFF OF THE
10 BOTH OF THOSE.

11 Q YOU JUST DIDN'T GET ANY WRITTEN CONFIRMATION OF THAT?

12 A THAT'S CORRECT.

13 Q IS THERE A REASON WHY THERE WAS NOT WRITTEN
14 CONFIRMATION?

15 A I DON'T RECALL, MR. DOBY, OF WHETHER I JUST DIDN'T
16 HAVE THE ACCESS TO THE FORM RIGHT THEN OR WHAT THE REASON
17 IS. ALL I KNOW IS THAT HE DID VIEW THE PHOTO LINE-UPS AND
18 I DO NOT HAVE THE FORMS IN THE FILE.

19 Q WERE THE WITNESSES THAT YOU HAD ASSEMBLED FOR THOSE
20 PHOTO LINE-UPS, WERE THEY CONTAINED OR WERE THESE
21 WITNESSES IN THE SHERIFF'S DEPARTMENT OR SOMEPLACE
22 TOGETHER PRIOR TO THEIR INDIVIDUAL IDENTIFICATION?

23 A DID I HAVE ALL THE WITNESSES THERE AT ONE TIME?

24 Q DID YOU HAVE ANY OF THE WITNESSES THERE PRIOR TO
25 THEIR INDIVIDUAL IDENTIFICATION?

1 A NO. THEY WERE NOT THERE TOGETHER OR ALL LINED UP OUT
2 IN THE HALLWAY WAITING TO COME IN AND VIEW IT. IT WAS ALL
3 INDIVIDUALLY, IT'S SEPARATE TIMES AND OCCASIONS.

4 Q WAS IT DONE AT THE SHERIFF'S DEPARTMENT?

5 A YES, SIR.

6 Q OKAY. THANK YOU. THAT'S ALL I HAVE.

7 THE COURT: ALL RIGHT. MR. ROGERS, SINCE MR. TAYLOR
8 WAS ALSO IDENTIFIED IN THE LINE-UP "B", YOU CAN
9 CROSS-EXAMINE.

10 MR. ROGERS: THANK YOU, YOUR HONOR.

11 CROSS-EXAMINATION BY MR. ROGERS:

12 Q OFFICER DELLINGER, FROM THE CONVERSATION THAT I HAVE
13 RECEIVED THROUGH THE DISCOVERY PROCESS, THE FIRST LINE-UP
14 YOU SHOWED TO ANYONE WAS TO STEVEN JOHNSON ON NOVEMBER
15 16TH; IS THAT CORRECT?

16 A IF THAT'S THE DATE COMPARED TO THE OTHER ONES, THAT
17 IS THE DATE THAT IS ON THE FORMS SHOWING WHEN MR. JOHNSON
18 VIEWED IT. I'D HAVE TO COMPARE THAT TO ALL THE OTHER
19 ONES.

20 Q I AM SHOWING YOU STEVEN JOHNSON'S.

21 A I HAVE THAT FORM RIGHT HERE.

22 Q SO YOU DID SHOW THAT ON THE 16TH?

23 A TO MR. JOHNSON, YES, SIR.

24 Q THAT'S CORRECT? AND THE 16TH WAS THE DAY THAT MR.
25 TAYLOR WAS ARRESTED?

1 A WITHOUT HAVING A COPY OF THE ARREST WARRANT, I DON'T
2 KNOW.

3 MR. ROGERS: COURT'S INDULGENCE, YOUR HONOR.

4 THE COURT: ALL RIGHT.

5 (WHEREUPON THERE WAS A PAUSE).

6 MR. ROGERS: APOLOGIZE TO THE COURT.

7 (WHEREUPON QUESTIONING RESUMED).

8 Q I WILL MOVE ON INVESTIGATOR TILL I CAN FIND IT. OH,
9 I HAVE IT RIGHT HERE. APOLOGIZE.

10 A YES, SIR.

11 Q OKAY. SO I TAKE IT -- WELL, YOU TELL ME. WHEN WAS
12 THAT WARRANT OBTAINED IN RELATION TO SHOWING MR. JOHNSON
13 THE PHOTOGRAPHIC LINE-UP?

14 A THIS WOULD HAVE BEEN AFTER THAT. IT'S MY -- I
15 BELIEVE THAT THIS PHOTOGRAPH ON MR. TAYLOR WAS THE
16 PHOTOGRAPH THAT WAS TAKEN AT THAT DAY AT THE JAIL. THAT'S
17 WHY IT'S A LEE COUNTY PHOTOGRAPH, THAT -- I DON'T BELIEVE
18 THERE IS A NOTATION ON THE BACK OF THE PHOTOGRAPH OF THE
19 DATE, SO I'M NOT ABSOLUTELY POSITIVE OF THAT.

20 Q AT THE -- SO THIS PICTURE OF MR. TAYLOR AND LINE-UP
21 "B" WAS TAKEN AT THE LEE COUNTY JAIL?

22 A YES, SIR. THEIR SYSTEM IS STILL A POLAROID SYSTEM.

23 Q SO YOU BROUGHT HIM INTO LEE COUNTY TO TAKE THAT
24 PICTURE?

25 A HE WAS AT THE LEE COUNTY JAIL WHEN THAT PICTURE WAS

1 TAKEN, YES, SIR.

2 Q WELL, HE HAD TO GET THERE SOMEHOW. DIDN'T YOU BRING
3 HIM THERE?

4 A YES, SIR. WE --

5 Q OKAY.

6 A -- PICKED HIM UP.

7 Q FROM SUMTER AND BROUGHT HIM TO LEE?

8 A RIGHT.

9 Q FOR THE PURPOSE OF TAKING A PICTURE, CORRECT?

10 A WELL, THAT'S THE PROCESS, THAT HE WOULD HAVE BEEN
11 DONE AT THE TIME HE'S BOOKED AND ARRESTED.

12 Q YES, BUT HE WASN'T BOOKED AND ARRESTED WHEN THIS
13 PHOTOGRAPH WAS TAKEN. HE WAS BOOKED AND ARRESTED BACK IN
14 SUMTER.

15 A NO, SIR.

16 Q OH, OKAY.

17 A HE WAS--

18 Q ALL RIGHT.

19 A HE WAS PICKED UP IN SUMTER.

20 Q I HAVE IT REVERSED I THINK.

21 A HE WAS PICKED UP IN SUMTER.

22 Q HE WAS PICKED UP IN SUMTER?

23 A AT WORK...

24 Q THAT'S WHEN THE PHOTOGRAPH WAS TAKEN?

25 A NO, SIR. HE WAS PICKED UP IN SUMTER, TRANSPORTED TO

1 LEE COUNTY WHERE THE WARRANT WAS SERVED ON HIM, PLACED IN
2 THE LEE COUNTY JAIL AND THE PHOTOGRAPH TAKEN, BOOKING
3 PROCESS.

4 Q OKAY. WHO WAS PRESENT WHEN THAT PHOTOGRAPH WAS
5 TAKEN, THE POLAROID?

6 A I DO NOT RECALL WHO WAS AT THE JAIL, WHO BOOKED HIM,
7 IN AND PHOTOGRAPHED HIM.

8 Q YOU DID NOT TAKE THAT PHOTOGRAPH?

9 A NO, SIR.

10 Q AND AT THE TIME THAT PHOTOGRAPH WAS OBTAINED, DID YOU
11 HAVE A DESCRIPTION OF THE SUSPECTS?

12 A YES.

13 Q AND WHAT -- THERE WAS NO DESCRIPTION?

14 A I WAS PROVIDED THEIR NAMES OF RON TAYLOR AND MARCUS
15 EVANS BY OTHER INDIVIDUALS AT THE VICTIM'S HOME ON SUNDAY,
16 THE FOLLOWING MORNING, AROUND LUNCH TIME.

17 Q OKAY. SO THESE WEREN'T EVEN WITNESSES THAT YOU GOT
18 RON TAYLOR'S NAME FROM?

19 A NO, SIR.

20 Q OKAY.

21 A THEY WERE INDIVIDUALS AT THE FAMILY'S HOME.

22 Q OKAY. MEMBER -- SOMEBODY THAT WAS AT THE VICTIM'S
23 HOME GAVE YOU RON TAYLOR'S NAME?

24 A AS HE--

25 Q AND AS A RESULT OF -- AND MARCUS --- AND AS A RESULT

1 OF THAT, YOU PUT THOSE TWO PHOTOGRAPHS IN A LINE-UP, IN
2 SEPARATE LINE-UPS?

3 A IN SEPARATE LINE-UPS. THAT AND IN CONJUNCTION WITH
4 THE FACT THAT THEY WERE STOPPED IN THE VEHICLE THAT
5 EVENING LEAVING THE CLUB.

6 Q AND YOU WERE AWARE OF THAT ON THE 16TH?

7 A YES, I WAS AWARE OF THAT.

8 Q SO THAT YOU DIDN'T MAKE ANY ATTEMPT WHEN YOU WERE
9 PUTTING TOGETHER LINE-UP "B" TO MAKE A PHOTOGRAPHIC
10 LINE-UP OF INDIVIDUALS THAT LOOKED SIMILAR. YOU JUST PUT
11 A PHOTOGRAPHIC LINE-UP TOGETHER AND THEN HAD RON TAYLOR'S
12 PICTURE IN IT?

13 A WELL, RON TAYLOR'S PICTURE WOULD BE THE POINT OF THE
14 PHOTOGRAPH LINE-UP AND THEN THE OTHER SURROUNDING
15 PHOTOGRAPHS TO BE COMPLIED WITH PHOTOGRAPHIC LINE-UP WOULD
16 BE SIMILAR PHOTOGRAPHS, SIMILAR IN APPEARANCE, SIMILAR IN
17 HEIGHT, SIMILAR IN BACKGROUND.

18 Q BUT YOU DIDN'T PUT THE PHOTOGRAPHIC LINE-UP TOGETHER
19 ON THE BASIS OF A DESCRIPTION?

20 A NO.

21 Q SO WHAT YOU DID WAS YOU LOOKED AT PHOTOS AND WHAT YOU
22 THOUGHT WERE SIMILAR, YOU CONTAINED, YOU PUT IN THE
23 PHOTOGRAPHIC SPREAD?

24 A THAT'S CORRECT.

25 Q ALL RIGHT. IF I CAN DRAW YOUR ATTENTION TO

1 PHOTOGRAPHIC LINE-UP "B", IS IT YOUR OPINION THEN NUMBER
2 SIX AND NUMBER FIVE ARE OF DARKER COMPLEXIONED THAN THE
3 REMAINING FOUR IN THE PHOTOGRAPHIC LINE-UP?

4 A NUMBER SIX IS -- DOES APPEAR TO BE SLIGHTLY DARKER,
5 BUT THE ENTIRE BACKGROUND IS DARKER AS WELL. IT'S
6 EXTREMELY DIFFICULT WHEN GOING THROUGH POLAROID
7 PHOTOGRAPHS TO GET SIX PHOTOGRAPHS OF PEOPLE THAT LOOK
8 ABSOLUTELY IDENTICAL, BUT THESE WERE WHAT I FELT CLOSE
9 ENOUGH IN APPEARANCE AND LIGHTING AND THINGS LIKE THAT TO
10 -- AS TO NOT PREJUDICE ANYONE.

11 Q REFERRING TO LINE-UP "B" AGAIN, DOES -- NUMBER TWO
12 APPEARS TO BE WEARING BRAIDS; DOES HE NOT?

13 A YES, HE DOES.

14 Q NUMBER THREE HAS NO FACIAL HAIR UNDER HIS NOSE AT
15 ALL; DOES HE? NOT APPARENT FROM--

16 A NOT APPARENT FROM THAT PHOTOGRAPH, NO, SIR.

17 Q OKAY. SO YOU WILL ADMIT THAT THERE ARE
18 DISSIMILARITIES IN PHOTOGRAPHIC LINE-UP "B"?

19 A YES.

20 Q OKAY.

21 A ANY TIME YOU GET ANY SIX PHOTOGRAPHS, THERE ARE --
22 WITH THE SIX SEPARATE PEOPLE -- THERE ARE DISSIMILARITIES.

23 Q YOU DON'T HAVE ONE IN BRAIDS AND THE OTHER FIVE NOT;
24 DO YOU--

25 A I HAD -- THE SUSPECT COULD HAVE PICKED OR THE VICTIM

1 COULD HAVE PICKED OUT ANYONE IN THAT LINE-UP, THAT -- I
2 PICKED OUT SIX INDIVIDUAL PHOTOGRAPHS THAT I FELT WOULD
3 NOT DRAW ANYONE'S ATTENTION TO ANY ONE PHOTOGRAPH AND--

4 Q OKAY. THAT WAS YOUR OPINION?

5 A YES, SIR.

6 Q OKAY. AND YOU DIDN'T KNOW WHAT RON TAYLOR LOOKED
7 LIKE TWO NIGHTS BEFORE? BY THAT I MEAN IF YOU HAD NO
8 DESCRIPTION FROM THE -- FROM ANY WITNESS, YOU WOULDN'T
9 KNOW IF HE HAD BRAIDS AND TOOK THEM OUT TWO DAYS LATER;
10 WOULD YOU?

11 A NO. OUR DESCRIPTIONS THE NIGHT OF THE INCIDENT WAS
12 EXTREMELY LIMITED.

13 Q AND DO YOU HAVE DESCRIPTIONS FROM THE NIGHT OF THE
14 INCIDENT?

15 A I DO NOT, NO, SIR.

16 Q WHO DOES?

17 A INVESTIGATOR SIMON.

18 Q I BELIEVE YOUR TESTIMONY WAS YOU SHOWED -- OKAY. SO
19 YOU SHOWED THE PHOTOGRAPHIC LINE-UP TO LEONARD SCOTT ON
20 THE 16TH. DO YOU KNOW WHEN YOU SHOWED THE OTHER
21 PHOTOGRAPHIC LINE-UPS TO THE OTHER WITNESSES?

22 A MY FORM SHOWS THAT DELVIN WAITERS VIEWED IT ON 11-19,
23 MARTY OAKS' STATEMENT WAS TAKEN ON 11-15, STEVEN JOHNSON'S
24 WAS 11-16, RODNEY YATES WAS 11-22, LEONARD SCOTT WAS
25 11-30.

1 Q OKAY. SO AT THE TIME THAT YOU SHOWED THE 11-20 AND
2 11-30 PHOTOGRAPHS, MR. TAYLOR HAD ALREADY BEEN IDENTIFIED
3 BY LEONARD SCOTT ON 11-16?

4 A YES, SIR.

5 Q OKAY. WAS THAT FACT COMMUNICATED TO ANY OF THE
6 POTENTIAL WITNESSES?

7 A NOT BY ME. AND IN FACT, THE INDIVIDUALS WERE ADVISED
8 NOT TO DISCUSS THAT WITH ME.

9 Q BUT ALL THESE PEOPLE KNOW EACH OTHER; DON'T THEY?

10 A YES.

11 Q DELVIN, MARTY, STEVEN, RODNEY, DERRICK AND LEONARD.
12 THEY ALL KNOW EACH OTHER?

13 A YES.

14 Q OKAY. DERRICK -- WAS DERRICK SHOWN THE PHOTOGRAPH?

15 A DERRICK ALBERT.

16 Q YES, BECAUSE I DIDN'T GET A LINE-UP FORM.

17 A ON DERRICK ALBERT?

18 Q WHEN YOU JUST SAID--

19 A DERRICK ALBERT WAS JUST SHOWED IT ON DECEMBER 8TH OF
20 2000.

21 Q HE IDENTIFIED...

22 A HE IDENTIFIED.

23 Q IDENTIFIED...

24 A IDENTIFIED MR. DOBY'S CLIENT. HE DID NOT IDENTIFY
25 YOUR CLIENT.

1 Q OKAY. AND ALSO MARTY OAKS WAS SHOWN THE PHOTOGRAPHIC
2 LINE-UP AND HE DID NOT IDENTIFY MR. TAYLOR?

3 A NO. THE ONLY MIS-IDENTIFICATION I HAVE IS BY DERRICK
4 ALBERT ON DECEMBER 8TH OF THIS YEAR. ALL THE OTHERS
5 IDENTIFIED THE TWO INDIVIDUALS.

6 Q I'M SORRY. LEONARD SCOTT. LEONARD SCOTT WAS SHOWN A
7 PHOTOGRAPHIC LINE-UP THAT HE DID NOT IDENTIFY MR. TAYLOR?

8 A THAT'S CORRECT.

9 Q OKAY. SO OUT OF THE SEVEN, SIX THAT YOU SHOWED, HE
10 WAS ONLY IDENTIFIED BY FOUR, THREE?

11 A THE ONLY ONES I KNOW THAT DIDN'T IDENTIFY HIM IS
12 DERRICK ALBERT AND LEONARD SCOTT.

13 Q OKAY. NOW, WHEN THE SUBSEQUENT PHOTO LINE-UPS WERE
14 SHOWN TO THE OTHER WITNESS, I BELIEVE YOUR TESTIMONY
15 EARLIER WAS THAT THEY WERE SHOWN THE PHOTOGRAPH, THE
16 LINE-UP SEPARATELY BUT THEY WERE BROUGHT IN TOGETHER?

17 A THE WITNESSES?

18 Q YES.

19 A NO, THEY WEREN'T BROUGHT IN TOGETHER.

20 Q SO THE WITNESSES DID NOT HAVE ANY CONTACT WITH EACH
21 OTHER AT THE TIME THEY WERE SHOWN THE PHOTOGRAPHIC
22 LINE-UP?

23 A NOT AT THE TIME AND NOT IN MY PRESENCE. NOW, WHAT
24 THEY DID OUTSIDE OF MY PRESENCE OR IN THEIR HOMES OR IN
25 THEIR COMMUNITY, I NO IDEA.

1 Q OKAY. AND DO YOU HAVE THE CAPABILITY OF TAPING THE
2 PROCESS OF VIEWING THE PHOTOGRAPHS?

3 A VIDEO TAPING?

4 Q YES.

5 A NO, IT'S THE -- IT -- IT'S NOT SET UP OR THEY DON'T
6 HAVE THE EQUIPMENT IN PLACE TO DO THAT.

7 Q I BELIEVE THAT'S ALL I HAVE. THANK YOU.

8 THE COURT: THANK YOU.

9 THE COURT: MR. JORDAN, DO YOU HAVE A DOG IN THE
10 FIGHT?

11 MR. JORDAN: NO QUESTIONS.

12 THE COURT: THANK YOU. MR. FINNEY?

13 MR. FINNEY: NO QUESTIONS.

14 THE COURT: THANK YOU. REDIRECT?

15 RE-DIRECT EXAMINATION BY MS. NIELSEN:

16 Q I BELIEVE YOU SAID YOU SHOWED THESE LINE-UPS TO
17 DIFFERENT INDIVIDUALS ON DIFFERENT DAYS. YOU -- WHAT DID
18 YOU SAY ABOUT TELLING THEM NOT TO DISCUSS IT WITH ANYBODY?

19 A AFTER THEY VIEWED THE LINE-UP AND GAVE THEIR
20 STATEMENT, THEY WERE -- ADVISED THEM NOT TO DISCUSS THE
21 LINE-UP OR THEIR CONVERSATIONS WITH OTHER INDIVIDUALS THAT
22 I MAY HAVE TO TALK TO IN THE FUTURE.

23 Q AND DO YOU HAVE ANY REASON TO THINK THAT ANYBODY
24 VIOLATED WHAT YOU TOLD THEM TO DO?

25 A I DON'T, NO, MA'AM.

1 Q WHEN YOU SHOWED THE LINE-UPS TO THE INDIVIDUALS, IS
2 THERE ANY HESITATION IN THEIR IDENTIFICATIONS?

3 A I WOULDN'T RECALL ANY HESITATION. IT MIGHT BE
4 STRICTLY MY OPINION THAT THEY WERE QUICKER TO PICK OUT MR.
5 DOBY'S CLIENT AND THAT WAS BECAUSE THEY WERE DRAWN MORE TO
6 HIM IN THEIR STATEMENTS BY HIM BEING MORE BOISTEROUS IN
7 THE BEGINNING OF THE ARGUMENT.

8 Q I DON'T HAVE ANY FURTHER QUESTIONS.

9 THE COURT: GIVE ME JUST A MINUTE. THE CRIME WAS
10 COMMITTED OCTOBER THE 14TH OF 1999. WOULD YOU GIVE ME THE
11 SCHEDULE AND SEQUENCE OF EACH WITNESS'S IDENTIFICATION OR
12 FIRST OF ALL AS TO EACH WITNESS, LOOK AT THE FORMS YOU
13 HAVE AND TELL ME WHEN EACH WITNESS SAW THE LINE-UP AND
14 WHAT EACH WITNESS'S FINDINGS WERE, PLEASE.

15 THE WITNESS: DELVIN WAITERS OBSERVED THE LINE-UP ON
16 11-19 OF '99.

17 THE COURT: OKAY. DELVIN WAITERS IDENTIFY ANYONE?

18 THE WITNESS: IN LINE-UP "A" HE IDENTIFIED THE
19 PHOTOGRAPH NUMBER ONE. AND IN LINE-UP "B" HE IDENTIFIED
20 PHOTOGRAPH NUMBER FIVE.

21 THE COURT: OKAY. THANK YOU.

22 THE WITNESS: DERRICK ALBERT VIEWED THE PHOTOGRAPH
23 LINE-UP ON DECEMBER 8TH OF 2000 AND PHOTOGRAPH LINE-UP "A"
24 HE IDENTIFIED SUBJECT NUMBER ONE AND IN LINE-UP "B" HE
25 IDENTIFIED SUBJECT NUMBER FOUR WHO IS NOT A DEFENDANT IN

1 THIS CASE.

2 THE COURT: OKAY.

3 THE WITNESS: STEVEN JOHNSON VIEWED IT ON NOVEMBER
4 16TH, 1999. IN LINE-UP "A" HE IDENTIFIED SUBJECT NUMBER
5 ONE AND IN LINE-UP "B" HE IDENTIFIED SUBJECT NUMBER 5.

6 RODNEY YATES VIEWED THE PHOTOGRAPHIC LINE-UP ON 11-22 OF
7 '99, PHOTOGRAPH LINE-UP "A" HE IDENTIFIED SUBJECT NUMBER
8 ONE AND LINE-UP "B" HE IDENTIFIED SUBJECT NUMBER FIVE.

9 LEONARD SCOTT VIEWED THE PHOTOGRAPHIC LINE-UP ON
10 11-30 OF '99, PHOTOGRAPHIC LINE-UP "A" HE IDENTIFIED
11 SUBJECT NUMBER ONE AND LINE-UP "B" HE IDENTIFIED -- HE DID
12 NOT IDENTIFY ANYONE. HE WAS UNABLE TO CLEARLY I.D.
13 ANYONE.

14 THE COURT: OKAY.

15 WITNESS: I DO NOT HAVE THE DATE OF WHEN MARTY OAKS
16 IDENTIFIED THE INDIVIDUALS OR WHEN HE VIEWED THE LINE-UP.
17 HE DID IDENTIFY THE SUBJECT NUMBER ONE IN "A" AND SUBJECT
18 NUMBER FIVE IN "B".

19 THE COURT: CAN YOU SET THE CONTEXT OF MR. OAKS'
20 IDENTIFICATION AS CLOSER TO THE TIME THAT THESE OTHER
21 INDIVIDUALS WERE OR THAT IS IN NOVEMBER AND DECEMBER OF --
22 NOVEMBER I SHOULD SAY OF 1999?

23 THE WITNESS: IT WOULD HAVE BEEN IN NOVEMBER OF
24 1999. MR. ALBERT WAS THE ONLY ONE THAT WAS EXTREMELY FAR
25 BEHIND THE OTHERS.

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

2 (WHEREUPON THERE WAS A PAUSE).

3 THE COURT: GENTLEMEN, MY QUESTIONS OF MR. DELLINGER
4 REALLY FOR MY IDENTIFICATION, YOU PROBABLY ALREADY HAVE
5 THE VIEW FORM TO VIEW THOSE DATES. HOWEVER, IF MY
6 QUESTIONS SUGGESTED ANY ADDITIONAL CROSS-EXAMINATION, I
7 WILL BE GLAD TO HEAR FROM YOU IN THAT REGARD. MR. DOBY?

8 MR. DOBY: NO, SIR, YOUR HONOR.

9 THE COURT: THANK YOU. MR. ROGERS?

10 MR. ROGERS: NO, YOUR HONOR.

11 THE COURT: THANK YOU. ANYTHING FURTHER, MS.
12 NIELSEN?

13 MS. NIELSEN: NO, SIR, YOUR HONOR.

14 THE COURT: THANK YOU. YOU CAN STEP DOWN, MR.
15 DELLINGER. THANK YOU.

16 (WHEREUPON THE WITNESS LEFT THE STAND).

17 THE COURT: GENTLEMEN, STATE'S EXHIBITS 3 AND 4 FOR
18 IDENTIFICATION, PLEASE? INsofar AS THE PHOTOGRAPHIC
19 LINE-UPS THEMSELVES ARE CONCERNED, THAT IS STATE'S EXHIBIT
20 3 AND 4 FOR IDENTIFICATION, WILL TAKE STATE'S I.D. 3 FIRST
21 OF ALL.

22 I FIND THAT THE PHOTOGRAPHS CONTAINED ON THAT
23 EXHIBIT WHICH IS SHOWN AS LINE-UP "A" ARE SUFFICIENTLY
24 SIMILAR, THEY EACH APPEAR TO BE LIGHTER COMPLEXIONED
25 AFRICAN AMERICANS, CLOSE CROPPED HAIR, THE FACIAL HAIR,

1 ONE GENTLEMEN HAS HAIR A LITTLE BIT LONGER THAN THE
2 OTHER. THAT IS NUMBER FIVE.

3 THESE ARE ALL ROUND AND RATHER FULL FACE. THOSE
4 -- THERE IS NOTHING SUGGESTIVE IN THE LINE-UP ITSELF NOR
5 IN THE WAY THAT IT WAS PRESENTED BY THE OFFICER THAT WOULD
6 LEAD ONE TO BELIEVE THAT THERE WAS ANY IMPERMISSIBLE
7 SUGGESTION AS TO WHICH OF THESE INDIVIDUALS SHOULD HAVE
8 BEEN IDENTIFIED.

9 AS TO LINE-UP "B", STATE'S EXHIBIT 4 FOR
10 IDENTIFICATION, THE QUALITY OF PHOTOGRAPHS ARE NOT AS GOOD
11 AS IT IS IN THE OTHER BECAUSE THESE ARE APPARENTLY
12 POLAROID. AND THESE ARE ALSO YOUNG AFRICAN AMERICAN MEN,
13 CLOSE CROPPED HAIR ON TOP ON FOUR OF THE FIVE, FOUR OF THE
14 SIX, TWO HAVE SLIGHTLY FULLER HEADS OF HAIR.

15 NUMBER TWO DOES HAVE PIG TAILS AND DREADLOCKS OR
16 SOMETHING, DREADLOCKS IN THE BACK. CAN'T TELL EXACTLY
17 WHAT IT IS. THAT WOULD BE MORE HARMFUL IF THE SUSPECT HAD
18 BEEN IDENTIFIED AS HAVING LONG HAIR WITH DREADLOCKS AND
19 HIS PHOTOGRAPH WAS THE ONLY ONE THAT WAS SHOWN IN THE
20 PICTURE AS HAVING DREADLOCKS. THAT WOULD CERTAINLY BE AN
21 IMPERMISSIBLE SUGGESTION.

22 HOWEVER, THE CONVERSE OF THAT IS NOT NECESSARILY
23 TRUE. MOREOVER, HAIRSTYLES AND EVEN FACIAL HAIR IN ALL
24 CAN BE SUBJECT TO CHANGE RELATIVELY EASILY AND THESE
25 IDENTIFICATIONS FOR MOST PART ARE GENERALLY MADE ON FACIAL

1 FEATURES AND NOT ON HAIR.

2 I CAN FIND NOTHING THEREFORE IMPROPER IN THE
3 COMPOSITION OF THE LINE-UP "B", STATE'S EXHIBIT 4 FOR
4 IDENTIFICATION NOR IN THE WAY THAT IT WAS PRESENTED THAT
5 WOULD INDICATE A LIKELIHOOD OF IMPERMISSIBLE SUGGESTION SO
6 AS TO GIVE RISE TO VERY SUBSTANTIAL LIKELIHOOD OF THIS
7 IDENTIFICATION.

8 NOW, ONE THING THAT I AM NOT ABLE TO TELL FROM
9 THE TESTIMONY BEFORE ME AS TO THE RELIABILITY OF THE
10 IDENTIFICATION GOES TO THE ISSUE OF THE LENGTH OF TIME
11 THESE INDIVIDUALS OBSERVED CONDITIONS UNDER WHICH THEY
12 OBSERVED, WHETHER OR NOT THEY IN FACT TALKED WITH EACH
13 OTHER DURING THE COURSE OF THE LINE-UP PROCESS ITSELF.

14 THE ONLY WAY TO DO THAT OF COURSE IS TO DO IT BY
15 TAKING OF TESTIMONY BRIEFLY OF EACH OF THE INDIVIDUALS,
16 AND ACCORDING TO MY COUNT, MR. WAITERS, MR. AL YATES,
17 SCOTT -- FOLKS, THERE ARE SIX INDIVIDUALS IN ALL, AND I
18 WILL HEAR THEIR TESTIMONY AND I WOULD SUGGEST, MADAM
19 SOLICITOR, THAT EACH OF THEM BE SEQUESTERED OR THAT THEY
20 ALL BE SEQUESTERED UNTIL EACH HAS TESTIFIED.

21 WE WILL START THAT THIS AFTERNOON IN ABOUT FIVE
22 MINUTES AND WE ARE GOING TO HAVE TO STOP ABOUT 5:15 OR
23 5:20. LET'S GET AS MUCH AS WE CAN DONE SO THAT WE CAN --
24 NOT GOING TO HOLD THIS JURY UP UNDULY TOMORROW.

25 MS. NIELSEN: JUDGE, I'M AFRAID THEY MAY BE GONE.

1 THE COURT: DO WE HAVE ANY OF THEM?

2 MS. NIELSEN: I WILL HAVE TO CHECK. I DIDN'T KNOW WE
3 WERE GOING TO NEED THEM AT THIS POINT, SO I DID NOT...

4 THE COURT: THAT'S FINE. THAT'S FINE. NORMALLY YOU
5 WOULD NOT. THE ISSUE CAME UP AT LEAST BY
6 CROSS-EXAMINATION THAT I WOULD SATISFY MYSELF BECAUSE THEY
7 WERE -- BECAUSE THEY WERE PREVIEWED AT DIFFERENT TIMES
8 BECAUSE THEY ALL KNEW EACH OTHER.

9 I WANT TO MAKE SURE THAT THAT MATTER IS DEALT
10 WITH. CERTAINLY IT WOULD GO TO WHETHER OR NOT THERE WAS
11 ANY SUGGESTION. SUGGESTION DOES NOT NECESSARILY HAVE TO
12 COME FROM A LAW ENFORCEMENT OBVIOUSLY. IF THERE IS ANY
13 SUGGESTIVENESS FROM ANY SOURCE AT ALL, THEN OBVIOUSLY I'D
14 HAVE TO DEAL WITH THAT.

15 SO CLEARLY THERE IS NOTHING IN THE PHYSICAL
16 MAKE-UP OF THE LINE-UP NOR IN THE WAY IT WAS PRESENTED BY
17 OFFICER DELLINGER THAT WOULD GIVE RISE TO THE LIKELIHOOD
18 OF UNDULY SUGGESTIVENESS. AND SO WE WILL DEAL WITH THESE
19 OTHER MATTERS AND I WOULD SUGGEST THAT YOU -- LET'S START
20 AT 9:00 IN THE MORNING.

21 MS. NIELSEN: JUDGE, I LOOKED AROUND. SOME OF THEM
22 ARE HERE.

23 THE COURT: OKAY.

24 MS. NIELSEN: WANT ME TO JUST START CALLING THEM?

25 THE COURT: YES, MA'AM.

1 MS. NIELSEN: STATE CALLS LEONARD SCOTT.

2 THE COURT: ALL RIGHT. IF THERE ARE ANY OTHERS IN
3 HERE, MS. NIELSEN, IF YOU CAN ASK THEM TO STEP OUTSIDE.
4 MR. SCOTT, YOU COME FORWARD PLEASE, WE ARE GOING TO SWEAR
5 YOU IN.

6 LEONARD SCOTT, BEING FIRST DULY
7 SWORN, TESTIFIED AS FOLLOWS:

8 THE COURT: MS. NIELSEN, HERE IS ALL YOU NEED TO --
9 STANDARDS SET OUT IN NIEL VERSUS BIGGERS. THE OPPORTUNITY
10 OF THE WITNESS TO VIEW THE CRIMINAL AT THE TIME OF THE
11 CRIME, THE DEGREE OF HIS INTENTION TO WHAT WAS GOING ON,
12 THE ACCURACY OF ANY PRIOR DESCRIPTION THAT HE MAY HAVE
13 MADE, IF HE KNEW HIM BEFOREHAND AND THE LEVEL OF CERTAINTY
14 THAT WAS SHOWN AT THE TIME THE INVESTIGATION WAS MADE
15 WHICH WAS ESTABLISHED I THINK BY THE OFFICER.

16 THE TIME ELAPSED BETWEEN THE TIME OF THE
17 IDENTIFICATION HAS ALSO BEEN ESTABLISHED BY THE OFFICER,
18 SO YOU DON'T NEED TO GO INTO THAT. YOU GO INTO THE
19 CIRCUMSTANCES UNDER WHICH THE IDENTIFICATION OR THE -- HIS
20 OPPORTUNITY TO VIEW AT THE TIME AND HIS ATTENTION FOR THE
21 OFFENSE AT THE TIME, ANY PRIOR IDENTIFICATION OR PRIOR
22 KNOWLEDGE HE MIGHT HAVE OF THE INDIVIDUAL IN QUESTION AND
23 ALSO WHETHER HE AND THE OTHERS DISCUSSED THE
24 IDENTIFICATION PROCESS ITSELF WHILE IT WAS ONGOING, THAT
25 WOULD BE BETWEEN NOVEMBER THE 16TH AND NOVEMBER THE 30TH

1 OF 1999.

2 DIRECT EXAMINATION BY MS. NIELSEN:

3 Q YOUR NAME IS LEONARD SCOTT?

4 A YES, MA'AM.

5 Q AND WERE YOU AT DAVIS COUNTRY CLUB ON THE NIGHT POP
6 WAS KILLED?

7 A YES, MA'AM.

8 Q YA'LL CALL HENRY SCOTT POP? THAT IS HIS NICKNAME?

9 A YES, MA'AM.

10 Q TELL US HOW YOU SAW WHAT HAPPENED. WHERE WERE YOU?

11 A WE WERE APPROACHING THE CLUB. AS WE WERE APPROACHING
12 THE CLUB, THAT WHEN POP AND ALL US BEEN GOING TOWARD THE
13 CLUB AND THAT WHEN THE ARGUMENT HAD STARTED.

14 Q AND LOOK IN THE COURTROOM AND TELL ME RIGHT NOW DO
15 YOU SEE THE PEOPLE THAT WERE ARGUING?

16 A YES, MA'AM.

17 Q AND WHERE ARE THEY?

18 A RIGHT THERE (POINTED).

19 Q ARE THEY BOTH IN HERE RIGHT NOW?

20 A YES, MA'AM.

21 Q WHEN YOU WERE SHOWN A LINE-UP, DO YOU REMEMBER
22 INVESTIGATOR DELLINGER SHOWING YOU THE LINE-UP?

23 A YES, MA'AM.

24 Q AND HE SHOWED YOU TWO LINE-UPS?

25 A YES, MA'AM.

1 Q BEFORE THAT -- YOU DIDN'T SEE THAT UNTIL NOVEMBER THE
2 30TH. BEFORE THAT, HAD YOU EVER TALKED TO ANY OF THE
3 OTHER GUYS ABOUT LOOKING AT LINE-UPS?

4 A NO, MA'AM.

5 Q HAD ANYBODY EVER SHOWN YOU ANY PHOTOGRAPHS OF ANY OF
6 THE SHOOTERS OR ANYBODY THAT WAS INVOLVED IN THIS PRIOR TO
7 THE DAY J.D. DELLINGER SHOWED THEM TO YOU?

8 A NO, MA'AM.

9 Q TELL US HOW YOU SAW THEM AT THE -- ON THE NIGHT THAT
10 IT HAPPENED. HOW COULD YOU SEE THEM?

11 A THEY WAS PARKED RIGHT THERE IN FRONT OF THE CLUB.

12 Q IS THERE ANY LIGHT THERE?

13 A YES.

14 Q IS THERE -- HOW MANY LIGHTS ARE OUT THERE?

15 A I SAY ABOUT TWO.

16 Q OKAY. WAS IT PRETTY LIGHT WHERE YA'LL WERE?

17 A SORT OF.

18 Q NOW, WHERE YOU PARKED THE CAR, IT WASN'T REAL LIGHT;
19 WAS IT?

20 A NO, MA'AM.

21 Q THE LIGHT IS OVER CLOSER TO THE CLUB?

22 A YES, MA'AM.

23 Q AND WHERE DID THE SHOOTING HAPPEN?

24 A IN FRONT OF THE CLUB.

25 Q DO YOU REMEMBER WHERE THE SHOOTING STARTED?

1 A NO, MA'AM.

2 Q WHEN OFFICER DELLINGER SHOWED YOU THE LINE-UPS, WHAT
3 DID HE SAY TO YOU?

4 A HE JUST SAID TO ME HE GOT SOME PICTURES TO SHOW ME TO
5 IDENTIFY.

6 Q WHAT DID HE ASK YOU TO IDENTIFY?

7 A THE SHOOTER.

8 Q DID HE SHOW YOU WHICH PERSON HE WANTED YOU TO
9 IDENTIFY?

10 A NO, MA'AM.

11 Q I AM GOING TO SHOW YOU WHAT HAS BEEN MARKED AS
12 STATE'S EXHIBIT NUMBER 3 FOR IDENTIFICATION. DID YOU SEE
13 THAT?

14 A YES, MA'AM.

15 Q AND DO YOU REMEMBER WHICH PERSON YOU PICKED OUT OF
16 THAT LINE-UP?

17 A YES, MA'AM.

18 Q WHICH ONE WAS THAT?

19 A NUMBER ONE.

20 Q AND I'M GOING TO SHOW YOU WHAT HAS BEEN MARKED AS
21 STATE'S EXHIBIT 4 FOR IDENTIFICATION. DO YOU REMEMBER
22 LOOKING AT THAT LINE-UP?

23 A YES, MA'AM.

24 Q AND WHICH PERSON DID YOU PICK OUT OF THAT LINE-UP?

25 A NOW? HUH?

1 Q DID YOU PICK ANYBODY OUT OF THAT LINE-UP?

2 A YES, MA'AM.

3 Q YOU THINK YOU DID?

4 A YES.

5 Q TAKE A MINUTE TO TELL ME ABOUT WHETHER YOU THINK YOU
6 PICKED SOMEBODY OUT OF THAT LINE-UP.

7 (WHEREUPON THERE WAS A PAUSE) .

8 Q LEONARD, DO YOU RECOGNIZE ANYBODY IN THAT LINE-UP
9 TODAY?

10 A YES.

11 Q OKAY. I'M GOING TO SHOW YOU THIS AND ASK YOU IF YOU
12 RECOGNIZE WHAT THIS IS.

13 A STATEMENT.

14 Q ALL RIGHT. AND WHAT IS ATTACHED TO THE STATEMENT?
15 THAT IS YOUR STATEMENT?

16 A YES, MA'AM.

17 Q ALL RIGHT. WHAT IS ATTACHED TO THAT? ARE THERE SOME
18 FORMS ATTACHED TO THAT?

19 A YEAH.

20 Q ARE THOSE SOME FORMS THAT YOU SIGNED?

21 A YES, MA'AM.

22 Q ALL RIGHT. IS ONE OF THOSE SAY THAT IT'S ABOUT PHOTO
23 LINE-UP "A"?

24 A YES, MA'AM.

25 Q AND WHO DOES -- DOES IT SHOW WHERE YOU MARKED

1 SOMEBODY ON THE PHOTO LINE-UP "A"?

2 A YEAH, NUMBER ONE.

3 Q ALL RIGHT. NOW, THE OTHER ONE FROM PHOTO LINE-UP
4 "B"?

5 A YES, MA'AM.

6 Q AND DOES IT SAY YOU PICKED ANYBODY OUT OF THAT ONE?
7 IS THIS ONE MARKED?

8 A NO, MA'AM.

9 Q OKAY. SO YOU DIDN'T PICK ANYBODY OUT OF THAT ONE;
10 DID YOU?

11 A NO.

12 Q OKAY.

13 THE COURT: YOU ANSWER THE QUESTION, PLEASE SIR.
14 ANSWER THE QUESTION.

15 (WHEREUPON QUESTIONING RESUMED).

16 Q DID YOU PICK ANYONE OUT?

17 A OH, NO, MA'AM.

18 THE COURT: THANK YOU.

19 (WHEREUPON QUESTIONING RESUMED).

20 Q NOW, DID ANYBODY SUGGEST TO YOU THAT YOU NEED TO PICK
21 OUT NUMBER ONE IN THIS LINE-UP?

22 A NO, MA'AM.

23 MS. NIELSEN: I DON'T HAVE ANY FURTHER QUESTIONS,
24 JUDGE.

25 THE COURT: ALL RIGHT. MR. DOBY?

1 CROSS-EXAMINATION BY MR. DOBY:

2 Q MR. SCOTT, CAN YOU HEAR ME ALL RIGHT?

3 A YES, SIR.

4 Q MR. SCOTT, DID YOU KNOW MARCUS EVANS OR SEEN THE
5 GENTLEMAN SITTING NEXT TO ME ANY BEFORE THAT PARTICULAR
6 NIGHT?

7 A NO, SIR.

8 Q DO YOU RECALL WHAT HE WAS WEARING THAT NIGHT?

9 A YES, SIR.

10 Q WHAT WAS IT?

11 A A PLAID SHIRT AND BLACK JEAN PANTS.

12 Q WHICH ONE IS MARCUS EVANS?

13 A NUMBER ONE, I MEAN THE FIRST ONE.

14 Q NUMBER ONE?

15 A YEAH.

16 Q YOU MEAN OFF OF THE PHOTO LINE-UP HE IS NUMBER ONE?

17 A NO, NOT ON THE PHOTO -- IN HERE, THE FIRST.

18 Q HE IS THE FIRST ONE?

19 A YES, SIR.

20 Q WHEN YOU GAVE A STATEMENT AT SOME POINT AND THEN YOU
21 WENT BACK AND HAD THIS PHOTO LINE-UP DONE; IS THAT RIGHT?

22 A NO, SIR.

23 Q SO YOU DID THE STATEMENT AND THE PHOTO LINE-UP ON THE
24 SAME DAY?

25 A YES, SIR.

1 Q WHAT DAY WAS THAT?

2 A THE 16TH.

3 Q THE 16TH?

4 A YEAH, I THINK.

5 Q YOU THINK THAT'S THE RIGHT DATE?

6 A WELL, I REALLY DON'T KNOW THE RIGHT DATE, BUT I KNOW
7 THAT -- I KNOW IT BEEN THE SAME DAY.

8 Q IT WAS THE SAME DAY AS WHAT?

9 A WHEN I HAD START -- I MEAN THE STATEMENT AND THE
10 PHOTOGRAPH.

11 Q ALL RIGHT. SO THE PHOTO LINE-UP AND THE STATEMENT
12 WERE DONE ON THE SAME DAY; IS THAT RIGHT? ISN'T THAT WHAT
13 YOU TOLD ME EARLIER?

14 A WILL YOU REPEAT THAT AGAIN?

15 Q YOU TOLD ME THE STATEMENT AND THE PHOTO LINE-UP WERE
16 DONE ON THE SAME DAY; IS THAT RIGHT?

17 A I CAN'T REMEMBER.

18 Q YOU DON'T REMEMBER THAT? HOW MANY PHOTO LINE-UPS
19 WERE YOU SHOWN?

20 A TWO.

21 Q I DON'T MEAN TO EMBARRASS YOU. CAN YOU READ AND
22 WRITE?

23 A YES, SIR.

24 Q DID YOU READ THE STATEMENT THAT YOU GAVE?

25 A YES, SIR.

1 Q DID YOU READ WHAT WAS CONTAINED ON THE PHOTO LINE-UP,
2 THE FORM THAT YOU SIGNED?

3 A YES, SIR.

4 Q OKAY. AND YOU WERE ABLE TO DO ALL OF THAT?

5 A YES, SIR.

6 Q OKAY. THANK YOU. THAT'S ALL I HAVE.

7 THE COURT: MR. ROGERS, MY UNDERSTANDING HE DID NOT
8 IDENTIFY MR. TAYLOR; IS THAT RIGHT?

9 MR. ROGERS: YES, SIR.

10 THE COURT: YOU WANT TO SEE IF YOU CAN TALK HIM INTO
11 AN IDENTIFICATION OR LEAVE IT WHERE IT IS?

12 MR. ROGERS: I WILL LEAVE IT WHERE IT IS.

13 THE COURT: THANK YOU. REDIRECT, MS. NIELSEN?

14 MS. NIELSEN: NO, SIR, YOUR HONOR.

15 THE COURT: THANK YOU. YOU CAN STEP DOWN, MR.

16 SCOTT.

17 (WHEREUPON THE WITNESS LEFT THE STAND) .

18 MS. NIELSEN: STEVEN JOHNSON.

19 (WITNESS IN COURTROOM) .

20 THE COURT: COME FORWARD PLEASE AND BE SWORN.

21 STEVEN JOHNSON, BEING FIRST DULY

22 SWORN, TESTIFIED AS FOLLOWS:

23 DIRECT EXAMINATION BY MS. NIELSEN:

24 Q YOUR NAME IS STEVEN JOHNSON?

25 A YES, MA'AM.

1 Q WERE YOU IN DAVIS COUNTY CLUB ON THE NIGHT HENRY
2 SCOTT GOT KILLED?

3 A YES, MA'AM.

4 Q DID YOU OBSERVE WHAT HAPPENED?

5 A YES, MA'AM.

6 Q AND TELL US WHERE YOU WERE IN RELATION TO THE PEOPLE
7 WHO WERE DOING THE SHOOTING.

8 A WHERE -- THE POSITION I WAS?

9 Q UH-HUH. IN RELATION--

10 THE COURT: HOW CLOSE, HOW FAR AWAY YOU WERE AWAY
11 FROM THEM WHEN THE SHOOTING HAPPENED.

12 A PROBABLY ABOUT 10 OR 15 FEETS FROM THEM.

13 Q TELL ME HOW FAR, FURTHER THAN THIS?

14 A YEAH, PROBABLY ABOUT FROM HERE TO WHERE THE FIRST SET
15 OF PEOPLE SITTING OUT THERE ARE.

16 Q ALL RIGHT. THAT MIGHT BE MORE THAN 10 OR 15 FEET,
17 BUT SO ABOUT AS FAR AS THE FIRST ROW OF THE SEATS OUT
18 THERE?

19 A YEAH.

20 Q AND WAS THERE A LIGHT THERE?

21 A YEAH, IT WAS LIGHT.

22 Q COULD YOU SEE THE PEOPLE WHO HAD THE GUNS?

23 A YEAH, I COULD SEE THEM.

24 Q AT SOME POINT DID YOU TALK TO EITHER OF THEM?

25 A NO, I NEVER SAID NOTHING TO THEM.

1 Q WAS IT LIGHT ENOUGH FOR YOU TO SEE WHAT THEY LOOKED
2 LIKE?

3 A YEAH.

4 Q DID YOU OBSERVE THEM HAVING A VERBAL ALTERCATION WITH
5 HENRY SCOTT?

6 A YEAH, I SEEN THEM ARGUING.

7 Q DID YOU SEE THEM AFTER THAT WHEN THE SHOOTING WAS
8 GOING ON?

9 A YEAH, I SEEN THEM SHOOTING.

10 Q ALL RIGHT. NOW YOU WERE SHOWN TWO LINE-UPS BY
11 INVESTIGATOR DELLINGER; IS THAT RIGHT?

12 A THAT'S RIGHT.

13 Q ALL RIGHT. AND I WANT YOU TO LOOK AT STATE'S EXHIBIT
14 3 FOR IDENTIFICATION. IS THAT ONE OF THE LINE-UPS YOU
15 WERE SHOWN?

16 A YES, MA'AM, IT WAS.

17 Q AND DO YOU REMEMBER WHO YOU PICKED OUT OF THAT
18 LINE-UP?

19 A I PICKED NUMBER ONE OUT OF THIS LINE-UP.

20 Q ALL RIGHT. AND THIS IS STATE'S EXHIBIT 4 FOR
21 IDENTIFICATION. DO YOU REMEMBER WHO YOU PICKED OUT OF
22 THAT LINE-UP?

23 A YES, I PICKED NUMBER FIVE OUT OF THAT.

24 Q ALL RIGHT. NOW, DID J.D. DELLINGER DO ANYTHING TO
25 TELL YOU WHO TO PICK OUT OF THESE LINE-UPS?

1 A NO, MA'AM.

2 Q WHEN HE SHOWED THEM TO YOU, WHAT DID HE DO?

3 A HE ASKED ME DID ANY OF THOSE LOOK LIKE ANYBODY THAT
4 WAS OUT THERE THAT NIGHT.

5 Q WHAT -- DID ANYBODY LOOK LIKE THOSE THAT -- ANYBODY
6 THAT WAS OUT THERE THAT NIGHT?

7 A YEAH.

8 Q AND DID HE JUST PUT THE LINE-UPS DOWN FOR YOU TO LOOK
9 AT THEM? HOW DID HE SHOW THEM TO YOU?

10 A SHOWED ME ONE LINE-UP.

11 Q SAY THAT AGAIN.

12 A HE SHOWED ME ONE LINE-UP AT A TIME.

13 Q OKAY. AND ALL HE DID WAS HE HANDED IT TO YOU?

14 A HE ASKED ME DID YOU KNOW ANY OF THOSE WHO WAS OUT
15 THERE IN THE SCENE OF THE CRIME.

16 Q WHEN HE TOOK -- DID HE LAY THE LINE-UP DOWN LIKE THIS
17 AND JUST ASKED YOU IF YOU KNEW ANYBODY IN IT?

18 A YES, MA'AM.

19 Q NOW, BETWEEN THE TIME -- NOW, I'M GOING TO SHOW YOU
20 THIS. IS THIS YOUR STATEMENT, THE STATEMENT THAT YOU GAVE
21 LAW ENFORCEMENT?

22 A YES, IT IS.

23 Q AND WHAT DATE IS IT?

24 A THE 15TH.

25 Q AND THE TWO PAGES ATTACHED TO IT, YOUR

1 IDENTIFICATIONS FROM THE LINE-UP? SPEAK UP?

2 A YES, MA'AM.

3 Q OKAY. SHE'S GOT TO GET DOWN WHAT YOU SAY AND THE
4 JUDGE HAS GOT TO BE ABLE TO HEAR YOU, OKAY?

5 A OKAY.

6 Q WHAT DAY DID YOU LOOK AT THE LINE-UP?

7 A ON THE 16TH.

8 Q OKAY. AND THAT'S THE DAY AFTER YOU GAVE YOUR
9 STATEMENT?

10 A YES, MA'AM.

11 Q DID YOU TALK TO ANYBODY ABOUT THE LINE-UP BEFORE YOU
12 LOOKED AT THEM?

13 A NO, MA'AM.

14 Q DID ANYBODY SHOW YOU ANY PICTURES OF ANYBODY BEFORE
15 YOU SAW THE LINE-UPS TO SUGGEST TO YOU WHO YOU WERE
16 SUPPOSED TO PICK OUT?

17 A NO, MA'AM. ONLY THING I REMEMBER -- I DON'T REMEMBER
18 IT WAS BEFORE THE LINE-UP OR AFTER THE LINE-UP WHEN THEY
19 HAD ONE IN A ROOM WITH A GREEN WINDOW WITH THE LIGHT ON,
20 ASKED ME WAS THAT ONE OF THEM, AND I IDENTIFIED THEM AS
21 BEING ONE OF THE SHOOTERS.

22 Q WHEN WAS THAT?

23 A THAT WAS THE DAY I THINK I GAVE MY STATEMENT.

24 Q WELL, TELL ME WHO DID THAT.

25 A J.D.

1 Q OKAY. AND DO YOU SEE IN THE ROOM THE PERSON THAT WAS
2 IN THE ROOM?

3 A YES, MA'AM.

4 Q WHO IS IT?

5 A THE ONE ON THE END OUT THERE.

6 Q SITTING BY MR. DOBY?

7 A YEAH.

8 Q AND DO YOU THINK THIS WAS ON THE DAY YOU GAVE YOUR
9 STATEMENT?

10 A EITHER THE DAY I GAVE MY STATEMENT OR THE DAY AFTER.

11 Q WELL, IT'S REAL IMPORTANT THAT WE KNOW WHICH ONE IT
12 WAS.

13 A I CAN'T REMEMBER.

14 Q I NEED YOU TO THINK ABOUT IT.

15 A I CAN'T REMEMBER WHICH ONE IT WAS.

16 Q WAS IT BEFORE OR AFTER YOU LOOKED AT THE LINE-UPS?

17 A I THINK IT WAS AFTER. I CAN'T REMEMBER WHICH ONE,
18 WHETHER IT WAS BEFORE AFTER THE LINE-UP.

19 MS. NIELSEN: COURT'S INDULGENCE, PLEASE.

20 THE COURT: OKAY.

21 (WHEREUPON THERE WAS A PAUSE).

22 (WHEREUPON QUESTIONING RESUMED).

23 Q IS THAT THE REASON YOU PICKED HIM OUT OF THAT
24 LINE-UP?

25 A NO, MA'AM. I IDENTIFIED HIM FROM THAT NIGHT AT THE

1 CLUB.

2 Q BECAUSE YOU SAW HIM THAT NIGHT?

3 A YEAH, SAW HIM THAT NIGHT.

4 Q THANK YOU. PLEASE ANSWER ANY QUESTIONS MR....

5 THE COURT: MR. JOHNSON, WHEN YOU WERE LOOKING
6 THROUGH THE GLASS AT THE PERSON, HOW MANY PEOPLE WERE IN
7 THAT LINE-UP THAT YOU WERE LOOKING AT WHEN YOU WERE RIGHT
8 THERE.

9 THE WITNESS: IT WAS JUST ONE PERSON.

10 THE COURT: ONE PERSON? AND WHICH PERSON WAS THAT
11 THAT -- YOU SAID THAT WAS MR. EVANS, THE ONE--

12 THE WITNESS: THE ONE ON THE END.

13 Q THE GENTLEMAN ON THE END OVER HERE?

14 A ON THE LEFT SIDE OF -- FROM FACING THIS WAY.

15 THE COURT: THANK YOU. MR. DOBY?

16 CROSS-EXAMINATION BY MR. DOBY:

17 Q SO THEY HAD MARCUS IN A ROOM, HE WAS SITTING THERE BY
18 HIMSELF?

19 A YES.

20 Q AND HE PUT YOU IN FRONT OF SOME MIRROR, TWO WAY
21 MIRROR OR SOMETHING IN THAT ROOM?

22 A YES.

23 Q AND YOU GOT A LOOK AT HIM THERE?

24 A YES.

25 Q AND YOUR TESTIMONY IS YOU DON'T KNOW WHETHER IT WAS

1 BEFORE OR AFTER THE PHOTO LINE-UP THAT YOU WERE SHOWN?

2 A NO, I CAN'T REMEMBER THAT, BUT IT WAS BEFORE.

3 Q WHO WAS PRESENT WHEN MR. EVANS WAS PUT IN THIS ROOM
4 AND YOU WERE PARADED IN FRONT OF THE MIRROR, WHO WAS
5 THERE?

6 A J.D. AND MR. DELLINGER.

7 Q WHO?

8 A J.D. AND MR. -- THE OTHER LAW ENFORCEMENT, DANIEL
9 SIMON.

10 Q THE TWO THAT ALREADY TESTIFIED TODAY?

11 A YES.

12 Q OKAY. AND DO YOU RECALL WHAT TIME THAT WAS DONE?

13 A THIS WAS LIKE AFTER I GAVE MY STATEMENT. I THINK
14 IT'S -- THINK IT WAS AFTER I GAVE MY STATEMENT.

15 Q AFTER YOU GAVE YOUR STATEMENT?

16 A YES.

17 Q AS A MATTER OF FACT, BECAUSE YOU GAVE YOUR STATEMENT
18 ON THE 15TH; DIDN'T YOU?

19 A YEAH.

20 Q YOU DIDN'T COME BACK WITH THE PHOTO LINE-UP UNTIL THE
21 NEXT DAY; IS THAT RIGHT?

22 A YES.

23 Q OKAY. SO YOU WOULD GIVE -- SO THE ORDER WAS YOU GAVE
24 A STATEMENT, YOU CAME BACK WITH A PHOTO LINE-UP THE NEXT
25 DAY, YOU DON'T KNOW WHETHER IT WAS BEFORE OR AFTER MR.

1 EVANS HAD BEEN PLACED IN THIS ROOM AND YOU HAD BEEN SHOWN
2 HIM SITTING IN THAT ROOM?

3 A I DON'T KNOW WHETHER OR NOT I WAS -- WHETHER OR NOT I
4 ALREADY HAD SEEN THE LINE-UP. I CAN'T REMEMBER THAT.

5 Q OKAY. WAS HE DRESSED IN PRISON CLOTHES?

6 A NO, SIR.

7 Q WHAT WAS HE DRESSED LIKE?

8 A REGULAR STREET CLOTHES.

9 Q WHAT DID THEY TELL YOU HE WAS SITTING IN THAT ROOM
10 FOR?

11 A THEY DIDN'T TELL ME, THEY JUST ASKED ME DID I
12 IDENTIFY HIM.

13 Q DID YOU KNOW HIM? THAT'S WHAT THEY ASKED YOU?

14 A NO, THEY ASKED ME COULD I IDENTIFY THEM AND THAT
15 WAS...

16 Q AND YOU DID?

17 A YEAH.

18 Q OKAY. WAS HE THE ONLY ONE SITTING IN THAT ROOM?

19 A I DON'T KNOW ONLY ONE SITTING IN THE ROOM.

20 Q WAS HE HANDCUFFED?

21 A NO, SIR.

22 Q HAVE LEG SHACKLES OR ANYTHING ELSE ON?

23 A NO.

24 Q HAD YOU BEEN TOLD THAT HE WAS UNDER ARREST AT THAT
25 POINT?

1 A NO, SIR, I WASN'T.

2 Q BEFORE OR AFTER THE PHOTO LINE-UP, WERE YOU TOLD THAT
3 MARCUS EVANS HAD BEEN ARRESTED?

4 A NO, SIR, I NEVER WAS TOLD HE WAS ARRESTED.

5 Q WHEN YOU PICKED OUT THE INDIVIDUALS ON THESE
6 LINE-UPS, WERE YOU THEN TOLD THAT THE PEOPLE THAT YOU
7 PICKED OUT HAD BEEN ARRESTED?

8 A NO, SIR, I HAVEN'T.

9 Q WHEN DID YOU SEE THESE PHOTO LINE-UPS FOR THE LAST
10 TIME?

11 A WELL, WE HAD CAME BACK DOWN HERE AND REVISED OUR
12 STATEMENT.

13 Q WHEN?

14 A I THINK IT WAS LAST WEEK.

15 Q YOU MEAN REFINALIZE. YOU GAVE ANOTHER STATEMENT AT
16 THAT POINT?

17 A NO, SIR.

18 Q WHO DID YOU TALK TO THEN?

19 A TO SOLICITOR.

20 Q AND YOU WERE SHOWN THOSE PHOTO LINE-UPS AT THAT TIME?

21 A YES.

22 Q WERE YOU TOLD THAT THERE WERE CERTAIN INDIVIDUALS IN
23 HERE THAT HAD BEEN ARRESTED AND THAT WERE GOING ON TRIAL?

24 A NO, THEY STILL DIDN'T TELL US THAT THEY WAS -- I
25 MEAN, THEY STILL DIDN'T TELL ME THAT, THAT'S -- I KNOW

1 THEY WAS BECAUSE I HAD SEEN IT IN THE PAPER.

2 Q YOU KNEW THEY WERE ARRESTED?

3 A YES.

4 Q OKAY. DID YOU SEE THE PHOTOGRAPHS IN THE PAPER?

5 A NO, SIR.

6 Q HOW DID YOU KNOW THAT NUMBER ONE AND FIVE WERE GOING
7 TO BE STANDING TRIAL TODAY?

8 A BECAUSE I SEEN THEM AT THE CRIME, AND THEN AFTER THEY
9 SHOWED ME THE PHOTO, TELL ME TO PICK THEM OUT, I NEVER
10 KNEW THEIR NAME OR NOTHING, BUT THAT WAS IT.

11 Q AND YOU WERE SHOWN THOSE PHOTO LINE-UPS AGAIN ABOUT A
12 WEEK AGO?

13 A YEAH.

14 Q WERE THE INDIVIDUALS NUMBER ONE AND FIVE RESPECTIVELY
15 ON THESE PHOTO I.D.'S, WERE YOU SHOWN THEIR PICTURES OTHER
16 THAN THROUGH THOSE PHOTO I.D.'S?

17 A NO, SIR.

18 Q OKAY. DID --- WERE YOU SHOWN ANY OF THE OTHER
19 DEFENDANTS SITTING IN THAT ROOM ALONE BEFORE OR AFTER YOUR
20 PHOTO I.D.?

21 A NO, SIR.

22 Q SO MR. EVANS WAS THE ONLY ONE THAT WAS STUCK IN THAT
23 ROOM AND THEY PARADED YOU BY?

24 A YES.

25 Q OKAY. THANK YOU. THAT'S ALL I HAVE.

1 THE COURT: REDIRECT, MS. -- EXCUSE ME. I'M SORRY.

2 MR. ROGERS?

3 MR. ROGERS: THANK YOU, YOUR HONOR.

4 CROSS-EXAMINATION BY MR. ROGERS:

5 Q MR. JOHNSON, WHAT WAS THE LIGHTING LIKE THAT NIGHT?

6 A SAY WHAT NOW?

7 Q WHAT WAS THE LIGHTING LIKE ON THE OUTSIDE OF THE CLUB
8 THAT NIGHT?

9 A MEAN IT ALWAYS SHINE, HAD THE DRIVING LIGHT.

10 Q HOW MANY LIGHTS DO YOU KNOW?

11 A I THINK IT'S A LIGHT ON THE FRONT OF THE CLUB AND
12 THEN IT'S ONE LIKE RIGHT AT THE DRIVEWAY LIKE ON THE -- ON
13 THE CORNER OF THE CLUB AT THE DRIVEWAY ALMOST.

14 Q WHAT ABOUT AS LIGHT AS IT IS IN HERE IS IT?

15 A IT WAS LIKE A REGULAR NIGHT LIGHT.

16 Q OKAY.. AND PEOPLE WERE THIS FAR AWAY FROM YOU?

17 A YEAH, IT WAS ABOUT THAT FAR.

18 Q AND IT ALL HAPPENED REAL FAST? HOW LONG DID IT TAKE?

19 A PROBABLY DIDN'T TAKE A MINUTE.

20 Q DIDN'T TAKE A MINUTE? LESS THAN 30 SECONDS YOU
21 THINK?

22 A MAYBE A LITTLE LONGER THAN 30 SECONDS.

23 Q COULD YOU SEE WHAT ANYBODY WAS WEARING?

24 A I COULDN'T REALLY IDENTIFY WHAT THEY WAS WEARING.

25 Q COULD YOU SEE -- COULD YOU TELL ANYTHING ABOUT HAIR

1 STYLE OR COLOR OR HOW THEY WERE WEARING IT?

2 A NO, SIR, I COULDN'T.

3 Q ABOUT CLOTHES?

4 A I MEAN...

5 Q SAID YOU DIDN'T SEE CLOTHES?

6 A I MEAN I DON'T REMEMBER WHAT THEY HAD ON.

7 Q OKAY. WHAT ABOUT THE GUN, WEAPON? DID YOU SEE A
8 GUN?

9 A YEAH, I SEEN THE GUN.

10 Q WHAT KIND OF GUN WAS IT?

11 A COULDN'T TELL YOU WHAT KIND IT WAS.

12 Q WERE YOU AFRAID?

13 A A LITTLE, NOT MUCH.

14 Q ARE YOU FRIENDS WITH MR. SCOTT'S FAMILY?

15 A WELL, THAT'S MY COUSIN.

16 Q YOUR COUSIN? COULD YOU TELL WHAT HAND THE PERSON HAD
17 THE GUN IN?

18 A SIR?

19 Q LEFT OR RIGHT HAND?

20 A RIGHT HAND.

21 Q DID YOU SEE MR. TAYLOR IN A TWO WAY MIRROR WHEN YOU
22 WENT TO THE POLICE STATION?

23 A NO, SIR, I DIDN'T.

24 Q THAT'S ALL I HAVE.

25 THE COURT: MS. NIELSEN, REDIRECT?

1 MS. NIELSEN: NO, SIR, YOUR HONOR.

2 THE COURT: THANK YOU. YOU CAN STEP DOWN, MR.
3 JOHNSON.

4 (WHEREUPON THE WITNESS LEFT THE STAND).

5 THE COURT: COULD I SEE MR. COPY OF MR. JOHNSON'S
6 STATEMENT, PLEASE, WITH THE ATTACHMENT?

7 (WHEREUPON THERE WAS A PAUSE).

8 THE COURT: IS MR. JOHNSON STILL IN COURTROOM? I
9 NEED TO TALK WITH HIM A MINUTE. ASK HIM TO STEP BACK IN.

10 (STEVEN JOHNSON BACK IN COURTROOM).

11 THE COURT: MR. JOHNSON, IF YOU'LL COME BACK, TAKE
12 THE STAND. I'VE JUST BEEN ABLE TO READ YOUR STATEMENT.

13 (WHEREUPON THE WITNESS RESUMED THE STAND)

14 EXAMINATION BY THE COURT:

15 Q I HAVE YOUR STATEMENT HERE IN FRONT OF ME. THE LAST
16 SENTENCE IN THE STATEMENT SAYS I KNOW THESE SAME GUYS FROM
17 A COUPLE MONTHS AGO ON JULY THE 4TH 1999, THAT SHOT MY CAR
18 UP AT THE WAFFLE HOUSE HERE IN LEE COUNTY. AND WHEN YOU
19 SAY I KNOW THESE SAME GUYS, WHO ARE YOU TALKING ABOUT?

20 A THE GUY ON THE FARTHEST END AND THE ONE NEXT TO HIM.

21 Q ARE YOU TALKING ABOUT TWO GUYS THAT YOU HAVE
22 IDENTIFIED FROM THE PICTURES?

23 A YES, SIR. YES.

24 Q YOU HAD SEEN THEM BEFORE?

25 A WELL, NOT REALLY.

1 Q WELL NOW, ON NOVEMBER THE 15TH YOU GAVE A STATEMENT
2 AND IT SAYS I KNOW THESE SAME GUYS FROM A COUPLE MONTHS
3 AGO FROM JULY, WHICH WOULD HAVE BEEN ABOUT FOUR MONTHS
4 BEFORE YOU GAVE A STATEMENT THAT SHOT MY CAR UP. HAD YOU
5 SEEN THESE GUYS AT THE TIME YOUR CAR WAS SHOT UP?

6 A NO, SIR.

7 Q SO YOU HAD NOT SEEN THEM BEFORE? ALL RIGHT.

8 A NO, SIR.

9 Q THANK YOU, SIR. THAT'S ALL I NEEDED. YOU CAN STEP
10 DOWN.

11 (WHEREUPON THE WITNESS LEFT THE STAND)

12 (WITNESS OUT OF ROOM) .

13 THE COURT: ALL RIGHT, SIR. READING FROM THE STATE V
14 ROGERS 210 S.E. 2ND 604 BEARS ON THESE ISSUES. I WILL
15 READ THAT OVERNIGHT, SUGGEST THAT YOU ALL DO THE SAME OR
16 AT LEAST, MR. DOBY, YOU DO THE SAME AND WE WILL TALK ABOUT
17 IT TOMORROW MORNING.

18 LET'S RESUME TOMORROW PLEASE AT -- CAN WE START
19 A QUARTER OF 9 IN THE MORNING, 8:45? LET'S START AT
20 8:45. I KNOW WE'VE GOT A PLEA WE NEED TO SQUEEZE IN.
21 WE'VE GOT A JURY COMING BACK AT 9:30. THIS TRIAL IS GOING
22 TO LAST ALL WEEK.

23 THE LAST THING I WANT TO DO ON TUESDAY MORNING
24 IS START TO KEEP THAT JURY BACK THERE FOR AN HOUR AND A
25 HALF WHILE WE GO THROUGH THESE. OBVIOUSLY I THINK WE HAVE

1 SEEN THE TESTIMONY OF THE WITNESSES TODAY, THAT THIS IS
2 NOT A NEEDLESS WASTE OF TIME, BUT IT'S RIGHT IMPORTANT FOR
3 THIS COURT'S DECISION ULTIMATELY ON SOME OF THESE ISSUES
4 BEFORE IT. I WILL SEE YOU ALL AT 8:45. THANK YOU.

5 MR. JORDAN: GET THAT CITE AGAIN?

6 THE COURT: STATE V ROGERS, 210 S.E. 2ND 604. GOT
7 THE SOUTH CAROLINA CITE.

8 MR. JORDAN: THAT'S FINE, YOUR HONOR.

9 THE COURT: THANK YOU. ALL RIGHT. MR. DOBY, WERE
10 YOU ABLE TO GET -- WERE YOU ABLE TO GET MR. EVANS'
11 BONDSMAN?

12 MR. DOBY: YOUR HONOR, I ASSUME THE BONDSMAN IS NO
13 LONGER IN THE BAIL BONDSMAN BUSINESS.

14 THE COURT: THAT MEANS THE BOND IS NO LONGER ANY
15 GOOD. THEREFORE, HE -- IF HE CAN OBTAIN ANOTHER BOND
16 PERSON TO GO ON HIS, YOU KNOW, TO BE BONDED FOR HIM OR TO
17 STAND IN HIS STEAD, I WILL BE GLAD TO ALLOW HIM TO GO
18 HOME. OTHERWISE HE WILL HAVE TO REMAIN IN CUSTODY. THE
19 BOND PERSON IS NO LONGER IN BUSINESS. ALL RIGHT. THANK
20 YOU FOLKS. 8:45 TOMORROW MORNING.

21 (WHEREUPON THIS CASE WAS IN RECESS FOR THE
22 EVENING)

23 DECEMBER 12, 2000.

24 THE COURT: LET'S PICK UP WITH WHERE WE LEFT OFF
25 YESTERDAY WITH THE CONTINUATION OF THE IDENTIFICATION

1 MATTERS THAT WE HAD HEARD FROM YESTERDAY, TESTIMONY OF TWO
2 OF THE SIX IDENTIFICATION WITNESSES, AND WE WILL PICK UP
3 MS. NIELSEN AT THAT POINT AND GO FORWARD WITH YOUR FIRST
4 ONE.

5 MS. NIELSEN: THE STATE CALLS DERRICK ALBERT.

6 THE COURT: MR. ALBERT?

7 (WITNESS IN COURTROOM)

8 DERRICK ALBERT, BEING FIRST DULY
9 SWORN, TESTIFIED AS FOLLOWS:

10 DIRECT EXAMINATION BY MS. NIELSEN:

11 Q YOUR NAME IS DERRICK ALBERT?

12 A YES, MA'AM.

13 Q MR. ALBERT, WERE YOU AT THE DAVIS COUNTRY CLUB ON THE
14 NIGHT THAT HENRY SCOTT WAS KILLED?

15 A YES, I WAS.

16 Q DID YOU SEE WHAT HAPPENED?

17 A YES, MA'AM.

18 Q DID YOU SEE ANYBODY DOING ANY SHOOTING?

19 A YES, MA'AM.

20 Q AT ANY POINT DID LAW ENFORCEMENT TALK TO YOU AFTER
21 THIS HAPPENED?

22 A NO, MA'AM.

23 Q WHEN WAS THE FIRST TIME YOU TALKED WITH ANYBODY FROM
24 LAW ENFORCEMENT?

25 A FRIDAY OF LAST WEEK.

1 Q AND IS THAT BECAUSE YOU WERE ISSUED A SUBPOENA?

2 A YES, MA'AM.

3 Q NOW, LAST WEEK -- I'M GOING TO SHOW YOU STATE'S
4 EXHIBITS 3 AND 4 FOR IDENTIFICATION. WERE YOU SHOWN THOSE
5 TWO LINE-UPS? WILL YOU LOOK AT THEM AND TELL ME WHETHER
6 YOU WERE SHOWN THOSE TWO LINE-UPS.

7 A YES, MA'AM.

8 Q AND WHAT IS MARKED AS STATE'S EXHIBIT 3 FOR
9 IDENTIFICATION, DID YOU IDENTIFY ANYBODY IN THAT LINE-UP
10 AS BEING AT THE CLUB INVOLVED IN THE SHOOTING THAT NIGHT?

11 A YES, MA'AM.

12 Q AND WHAT NUMBER DID YOU IDENTIFY?

13 A NUMBER ONE ON "A" AND NUMBER 4 ON "B".

14 Q NOW, NUMBER -- WHEN YOU -- WAIT A SECOND. WHEN YOU
15 WERE SHOWN THESE PHOTOGRAPHS IN THIS LINE-UP, DID ANYBODY
16 INDICATE TO YOU WHO YOU NEEDED TO PICK OUT OF THE LINE-UP?

17 A NO, MA'AM.

18 Q AND HAD ANYBODY EVER SHOWN YOU ANY OTHER PHOTOGRAPHS
19 OF THESE PEOPLE FOR YOU TO PICK THEM OUT OF A LINE-UP?

20 A NO, MA'AM.

21 Q HAD YOU EVER SEEN ANY OF THESE PEOPLE BEFORE?

22 A NO, MA'AM.

23 Q AND YOU WERE A FRIEND OF HENRY SCOTT'S?

24 A YES, MA'AM.

25 Q AND HAD YOU EVER SEEN EITHER ONE, ANY OF THESE

1 PEOPLE, THESE DEFENDANTS HERE, HAD YOU EVER SEEN ANY OF
2 THEM PRIOR TO THE NIGHT AT THE CLUB?

3 A NO, MA'AM.

4 Q DID ANYBODY TAKE YOU ANYWHERE AND SHOW YOU ANYBODY IN
5 A ROOM ANYWHERE FOR YOU TO GO IDENTIFY ANYBODY?

6 A NO, MA'AM.

7 Q HOW DID YOU PICK OUT THOSE PEOPLE IN THAT LINE-UP?

8 A I WAS POSITIVE ABOUT ONE OF THE SHOOTERS, BUT...

9 Q AND YOU SAID YOU'RE POSITIVE ABOUT ONE OF THE
10 SHOOTERS. WHICH LINE-UP IS THAT?

11 A "A" ONE.

12 Q THE PERSON NUMBER ONE ON LINE-UP "A"?

13 A YES, MA'AM.

14 Q AND SHOW US WHERE HE IS IN THE COURTROOM.

15 A ON THE FAR CORNER RIGHT THERE.

16 Q FIRST PERSON AT THE DEFENSE TABLE?

17 A YES, MA'AM.

18 Q ALL RIGHT. WHAT ABOUT THE OTHER LINE-UP?

19 A I WASN'T SURE ABOUT THE SECOND SHOOTER. I ONLY SAW
20 HIM AT A CERTAIN ANGLE.

21 Q OKAY. SO YOU SAID YOU PICKED OUT NUMBER FOUR IN THIS
22 LINE-UP?

23 A YES, MA'AM.

24 Q ARE YOU TELLING US YOU KNOW THAT THAT'S ONE OF THE
25 SHOOTERS?

1 A NO, I'M NOT SAYING THAT. I'M JUST SAYING THAT I SAW
2 HIM AT A SLIGHT ANGLE, SO I'M NOT SURE ABOUT THAT.

3 Q OKAY. AND NOBODY SUGGESTED TO YOU IN ANY WAY WHO YOU
4 SHOULD PICK OUT OF THOSE LINE-UPS?

5 A NO, MA'AM.

6 Q THERE WERE OTHER PEOPLE PRESENT IN THE ROOM WHEN WE
7 SHOWED YOU THOSE LINE-UPS; WEREN'T THERE?

8 A YES, MA'AM.

9 Q WAS ANY THERE?

10 A YES, MA'AM.

11 Q AND WHO SHOWED THEM TO YOU?

12 A THE INVESTIGATOR.

13 Q MR. DELLINGER?

14 A I DON'T KNOW HIS NAME, THE--

15 Q THE WHITE ONE SITTING--

16 A THE ONE WITH THE RED TIE.

17 Q PLEASE ANSWER ANY QUESTIONS THE DEFENSE ATTORNEYS
18 HAVE.

19 THE COURT: MR. DOBY?

20 CROSS-EXAMINATION BY MR. DOBY:

21 Q MR. ALBERT, THE FIRST TIME YOU TALKED TO THE POLICE
22 ABOUT WHAT YOU HAD SEEN WAS JUST LAST FRIDAY; IS THAT
23 CORRECT?

24 A YES, SIR.

25 Q YOU HADN'T COME FORWARD UNTIL THAT POINT?

1 A NO, SIR.

2 Q AND THE CLUB, HOW FAR WERE YOU FROM THE PERSON YOU
3 IDENTIFIED AS THE SHOOTER THERE IN "A" ONE? HOW FAR WERE
4 YOU FROM THAT INDIVIDUAL AT THE TIME THAT THE SHOOTING
5 OCCURRED?

6 A A FEW FEET, SIR.

7 Q A FEW FEET?

8 A YES, SIR.

9 Q HOW FAR? FROM ME TO YOU OR WAS IT FURTHER?

10 A COME A LITTLE CLOSER.

11 Q A LITTLE CLOSER?

12 A YES, SIR.

13 Q SOMEWHERE ABOUT RIGHT HERE?

14 A YES, SIR.

15 Q AND WHAT POSITION WERE YOU STANDING OR WHERE WERE YOU
16 STANDING WHEN THE SHOOTING OCCURRED?

17 A WHEN THE SHOOTING OCCURRED?

18 Q UH-HUH.

19 A I WAS STANDING ON LIKE A 90 DEGREE ANGLE FROM HIM.

20 Q ON A 90 DEGREE ANGLE?

21 A UH-HUH.

22 Q YOU WERE STANDING OFF TO THE SIDE LIKE THIS?

23 A I WAS STANDING...

24 Q YOU'RE LOOKING THIS WAY?

25 A NO, SIR, I WAS STANDING THE LEFT, THE LEFT SIDE. I

1 COULD SEE HIM ON MY RIGHT HAND SIDE.

2 Q OKAY. AND YOU WERE TURNED 90 DEGREES FROM THE
3 SHOOTING?

4 A I WAS TURNED FACING HIM, SIR.

5 Q YOU WERE TURNED FACING JUST LIKE THIS?

6 A YES.

7 Q AND WHAT WAS THE LIGHTING LIKE THAT NIGHT?

8 A WE WERE RIGHT IN THE LIGHT, SIR.

9 Q YOU WERE RIGHT IN THE LIGHT?

10 A YES, SIR.

11 Q SO YOU WERE RIGHT THERE WHEREAS I UNDERSTAND THERE'S
12 ONLY TWO LIGHTS THERE AT THE CLUB; IS THAT RIGHT?

13 A WELL, WHERE THE ARGUMENT STARTED IT WAS LIKE ONE
14 LIGHT, YOU KNOW WHAT I'M SAYING, ONE LIGHT BE RIGHT THERE,
15 SO I COULD SEE EVERYTHING THAT WAS GOING ON.

16 Q ALL RIGHT. HOW MANY PEOPLE WERE STANDING AROUND AT
17 THAT POINT?

18 A IT WAS A FEW MORE PEOPLE STANDING WITH HIM.

19 Q HOW MANY MORE?

20 A ABOUT THREE OR FOUR.

21 Q OKAY. AND YOU SAID THE ARGUMENT STARTED RIGHT THERE
22 AT THE CLUB UNDER THE LIGHT?

23 A YES, SIR.

24 Q THE SHOOTING -- I TAKE IT THEN THAT THE SHOOTING DID
25 NOT OCCUR UNDER THE LIGHT; DID IT?

1 A NO, SIR.

2 Q HOW FAR FROM THE LIGHT DID THE SHOOTING OCCUR?

3 A A FEW FEET, SIR.

4 Q WELL, HOW MANY IS A FEW FEET? GIVE ME SOME
5 DISTANCES. FURTHER FROM ME TO YOU OR IS IT FURTHER FROM
6 YOU TO THE WITNESSES SITTING IN THE COURTROOM?

7 A ABOUT FURTHER FROM ME TO WHERE THE WITNESS IS AT.

8 Q OKAY.

9 A JUST TO THE HIGHWAY, THE ROAD.

10 Q OKAY. AND SO IT WOULD HAVE BEEN FROM WHERE YOU ARE
11 SITTING UP TO WHERE THESE LADIES ARE SITTING ON THE FRONT
12 ROW RIGHT THERE?

13 A YOU CAN SAY ABOUT THAT FAR, SIR.

14 Q OKAY. AND THE ONLY LIGHT THAT WAS PRESENT THAT NIGHT
15 WAS AT THE CLUB; IS THAT RIGHT?

16 A YES, SIR.

17 Q SO HOW FAR WERE YOU FROM THE CLUB?

18 A FROM THE CLUB?

19 Q UH-HUH.

20 A ABOUT FROM HERE TO THAT FIRST ROW OF CHAIRS, SIR.

21 Q ALL RIGHT. SO THE LIGHT WAS FROM YOU TO THE FIRST
22 ROW OF CHAIRS AND THEN THE SHOOTING FROM YOU TO -- WHERE
23 THE SHOOTING OCCURRED WAS FROM WHERE YOU'RE SITTING TO THE
24 FIRST WITNESSES OR TO THE FIRST ROW WHERE THOSE LADIES
25 WERE SITTING; IS THAT RIGHT?

1 A YES, SIR.

2 Q ALL RIGHT. SO THAT -- THAT CUMULATIVE DISTANCE WAS
3 HOW FAR YOU WERE FROM A LIGHT WHEN THE SHOOTING OCCURRED;
4 IS THAT RIGHT?

5 A YES, SIR.

6 Q OKAY. DID -- WERE YOU SHOWN ANY OTHER PHOTOGRAPHS
7 WHEN YOU WERE SHOWN THOSE PHOTO LINE-UPS?

8 A NO, SIR.

9 Q WERE YOU SHOWN ANY MUG SHOTS OR ANYTHING ELSE?

10 A NO, SIR.

11 Q HAD YOU TALKED TO ANY OF THE WITNESSES THAT HAVE
12 GIVEN STATEMENTS AND DONE A PHOTO OR IDENTIFIED PEOPLE ON
13 A PHOTO LINE-UP PRIOR TO --

14 A NO, SIR.

15 Q -- TO FRIDAY?

16 A NO, SIR.

17 Q WERE YOU FRIENDS WITH THEM?

18 A YES, SIR.

19 Q DID YA'LL TALK ABOUT WHAT HAPPENED THAT NIGHT?

20 A NO, SIR.

21 Q SO THIS WAS YOUR FRIEND?

22 A YES, SIR.

23 Q BUT YA'LL DIDN'T TALK ABOUT WHAT HAPPENED, HIM
24 GETTING KILLED AT THE CLUB THAT NIGHT? IT DIDN'T OCCUR TO
25 YA'LL TO TALK ABOUT WHAT HAPPENED?

1 A WE TALKED ABOUT IT THAT NIGHT, SIR.

2 Q DID YOU TALK TO THE POLICE AT ALL THAT PARTICULAR
3 NIGHT?

4 A NO, SIR, I DIDN'T.

5 Q DID YOU STAY AROUND AFTER THE SHOOTING OR DID YOU
6 LEAVE?

7 A I STAYED THERE, SIR.

8 Q AND DID YOU SEE THE POLICEMAN THERE?

9 A YES, SIR.

10 Q BUT YOU DIDN'T GO UP AND MAKE ANY IDENTIFICATION?

11 A NO, I DIDN'T TALK TO HIM, SIR.

12 Q OKAY. THANK YOU. THAT'S ALL I HAVE.

13 THE COURT: MR. ROGERS, ANY QUESTIONS?

14 MR. ROGERS: NO QUESTIONS.

15 THE COURT: THANK YOU. MR. JORDAN, MR. FINNEY,
16 GENTLEMEN, ANY QUESTIONS?

17 MR. JORDAN: I JUST HAVE ONE.

18 CROSS-EXAMINATION BY MR. JORDAN:

19 Q WERE YOU AFRAID OF BEING CHARGED WITH ANYTHING IN
20 THIS MATTER BECAUSE YOU DIDN'T TALK?

21 A EXCUSE ME, SIR? I DON'T UNDERSTAND THE QUESTION.

22 Q DID ANY LAW ENFORCEMENT MEMBER TALK TO YOU ABOUT
23 BEING CHARGED IF YOU DIDN'T TELL THEM WHAT HAPPENED?

24 A NO, SIR.

25 Q THANK YOU.

1 THE COURT: MR. FINNEY?

2 MR. FINNEY: NO, YOUR HONOR.

3 THE COURT: THANK YOU. MS. NIELSEN, REDIRECT?

4 RE-DIRECT EXAMINATION BY MS. NIELSEN:

5 Q MR. ALBERT, HAD LAW ENFORCEMENT EVER TALKED TO YOU AT
6 ALL ABOUT THIS BEFORE LAST WEEK?

7 A NO, SIR. NO, MA'AM.

8 Q NOBODY EVER ASKED YOU ANY QUESTIONS?

9 A NO, MA'AM.

10 Q NOW, I ASKED YOU A WHILE AGO IF YOU HAD EVER SEEN ANY
11 OF THESE DEFENDANTS BEFORE AND YOU TOLD ME NO, AND I TOLD
12 YOU THERE WERE SOME THINGS WE PROBABLY COULDN'T TALK ABOUT
13 IN THE COURTROOM THAT YOU TALKED TO ME ABOUT. DO YOU
14 REMEMBER THAT?

15 A YES, SIR.

16 Q WELL, THAT'S WHEN THE JURY IS HERE. SO RIGHT NOW
17 WITH -- THE JUDGE IS HERE, YOU CAN TELL US ABOUT ANYTHING,
18 WHERE YOU HAVE EVER SEEN ANY OF THESE DEFENDANTS BEFORE.
19 HAD YOU EVER SEEN ANY OF THEM BEFORE?

20 A NO, MA'AM.

21 Q OKAY. THANK YOU. NOTHING FURTHER.

22 THE COURT: THANK YOU. YOU CAN STEP DOWN.

23 MR. ROGERS: YOUR HONOR, I WANT TO MAKE SURE THE
24 RECORD -- I THOUGHT THIS WITNESS WAS PUT UP BECAUSE HE
25 OSTENSIVELY IDENTIFIED MR. TAYLOR. IS THAT NOT CORRECT?

1 MS. NIELSEN: NO, SIR. HE DID NOT PICK OUT MR.
2 TAYLOR. ~~HE~~ PICKED OUT MR. EVANS.

3 MR. ROGERS: JUST WANT TO MAKE SURE.

4 THE COURT: YES. MR. ALBERT ONLY IDENTIFIED OR
5 CORRECTLY IDENTIFIED MR. EVANS. HE DID NOT CORRECTLY
6 IDENTIFY MR. TAYLOR.

7 MR. ROGERS: THANK YOU.

8 THE COURT: GOOD. THANK YOU. YOU STEP DOWN, MR.
9 ALBERT. THANK YOU.

10 (WHEREUPON THE WITNESS LEFT THE STAND) .

11 THE COURT: MS. NIELSEN?

12 MS. NIELSEN: COURT'S INDULGENCE, PLEASE.

13 THE COURT: OKAY.

14 (WHEREUPON THERE WAS A PAUSE) .

15 MS. NIELSEN: STATE CALLS MARTY OAKS.

16 MR. DOBY: MR. ALBERT IS STILL IN THE COURTROOM. I
17 WOULD ASK THE SEQUESTRATION -- EVEN THOUGH WE ARE NOT IN
18 THE TRIAL...

19 THE COURT: HE LEFT?

20 (WITNESS IN COURTROOM) .

21 THE COURT: ALL RIGHT. MADAM SOLICITOR, IF YOU'LL
22 MAKE SURE THESE WITNESSES ARE NOT IN COURT WHILE THE
23 OTHERS TESTIFY. MR. ALBERT WILL HAVE TO LEAVE THE
24 COURTROOM AS MR. OAKS TESTIFIES.

25 MS. NIELSEN: MR. ALBERT IS GONE.

MARTY OAKS - DIRECT BY NIELSEN

1 THE COURT: OKAY.

2 MARTY OAKS, BEING FIRST DULY
3 SWORN, TESTIFIED AS FOLLOWS:

4 DIRECT EXAMINATION BY MS. NIELSEN:

5 Q YOUR NAME IS MARTY OAKS?

6 A YES, MA'AM.

7 Q AND MARTY, WERE YOU AT DAVIS COUNTRY CLUB ON THE 14TH
8 OF NOVEMBER WHEN HENRY SCOTT GOT KILLED?

9 A YES, MA'AM.

10 Q DID YOU TALK TO THE POLICE AFTER THIS HAPPENED?

11 A YES, MA'AM.

12 Q DID YOU GIVE A STATEMENT?

13 A YES, MA'AM.

14 Q WERE YOU SHOWN SOME LINE-UPS BY INVESTIGATOR
15 DELLINGER?

16 A YES, MA'AM.

17 Q AND I'M GOING TO SHOW YOU WHAT IS MARKED AS COURT'S
18 -- EXCUSE ME -- STATE'S EXHIBIT 3 AND 4 FOR
19 IDENTIFICATION AND I'M GOING TO ASK YOU WERE YOU SHOWN
20 THOSE BY INVESTIGATOR DELLINGER?

21 A YES, MA'AM.

22 Q ALL RIGHT. WERE YOU ABLE TO -- FIRST OF ALL WHEN HE
23 SHOWED THEM TO YOU, HOW DID HE SHOW THEM TO YOU?

24 A HE SHOWED THEM -- THIS ONE FIRST.

25 Q WHICH IS LINE-UP "A"?

1 A YEAH, AND THEN HE SHOWED ME LINE-UP "B".

2 Q AND LINE-UP "A" IS STATE'S EXHIBIT 3 FOR
3 IDENTIFICATION. DID YOU PICK ANYBODY -- ALL RIGHT. WHEN
4 HE SHOWED THEM TO YOU, HE SHOWED YOU LINE-UP "A" FIRST.
5 WHAT DID HE SAY?

6 A HE TOLD ME -- HE ASKED ME COULD I IDENTIFY ONE OF THE
7 GUYS.

8 Q ALL RIGHT. AND DID YOU TELL HIM YOU COULD?

9 A YES, MA'AM.

10 Q AND WHO DID YOU IDENTIFY IN THAT LINE-UP?

11 A NUMBER ONE.

12 Q ALL RIGHT. AFTER HE SHOWED YOU THAT LINE-UP, DID HE
13 SHOW YOU LINE-UP "B"?

14 A YES, MA'AM.

15 Q AND WERE YOU ABLE TO IDENTIFY ANYBODY OUT OF THAT
16 LINE-UP?

17 A YES, MA'AM.

18 Q WHO DID YOU IDENTIFY OUT OF THAT LINE-UP?

19 A NUMBER FIVE.

20 Q NOW, THE PERSON THAT IS IN LINE-UP "A", DO YOU SEE
21 THAT PERSON IN THE COURTROOM?

22 A YES, MA'AM.

23 Q AND WHERE IS HE?

24 A RIGHT THERE (INDICATING).

25 Q TELL ME WHERE AT THAT TABLE HE IS SITTING.

1 A OH, RIGHT THERE AT THE FIRST TABLE, THE BEIGE...
2 (INDICATING).

3 Q WHAT PERSON IS HE AT THE FIRST TABLE?

4 A MARCUS.

5 Q WELL, YOU KNOW, DID YOU KNOW HIS NAME AT THE TIME
6 THIS HAPPENED?

7 A NO, MA'AM.

8 Q ALL RIGHT. YOU KNOW THAT -- YOU KNOW NOW THAT THAT
9 PERSON'S NAME IS MARCUS EVANS?

10 A YES, MA'AM.

11 Q AND THAT'S WHO YOU PICKED OUT ON LINE-UP "A"?

12 A YES, MA'AM.

13 Q NOW, HOW ABOUT THE PERSON THAT IS IN LINE-UP "B"?

14 A NUMBER FIVE.

15 Q ALL RIGHT. DO YOU SEE HIM IN THE COURTROOM?

16 A YES, MA'AM.

17 Q WHERE IS HE SITTING?

18 A RIGHT THERE (INDICATING).

19 Q WHAT -- STARTING AT THE -- FROM MR. EVANS, HOW FAR
20 DOWN THE TABLE IS THIS PERSON THAT YOU'RE SAYING IS NUMBER
21 FIVE?

22 A NUMBER FOUR.

23 Q HE LOOK A LITTLE DIFFERENT NOW THAN HE DID THE DAY
24 YOU SAW HIM?

25 A YES, MA'AM.

1 Q MAINLY WHAT'S DIFFERENT ABOUT HIM?

2 A HE GOT A HAIR CUT.

3 Q OTHERWISE HE LOOKS THE SAME?

4 A (WHEREUPON SUBJECT INDICATED NODDING HEAD).

5 Q NOW, WHILE THE INCIDENT WAS GOING ON AT THE CLUB,
6 TELL US ABOUT HOW YOU WERE ABLE TO SEE WHO WAS DOING
7 WHAT.

8 A WHEN -- WELL, WHEN WE WERE -- WELL...

9 Q YOU NEED TO SPEAK UP BECAUSE ALL THESE PEOPLE--

10 THE COURT: YOU CAN LEAN FORWARD INTO THAT
11 MICROPHONE. YOU HAVE TO GET A LITTLE BIT CLOSER TO IT AND
12 IT WILL PICK YOU UP. THAT'S GOOD. JUST MOVE FORWARD.

13 A WELL, WHEN WE FIRST GOT TO THE CLUB, IT WAS NUMBER
14 ONE IN LINE-UP "A", HE THE ONE THAT STARTED -- WHEN HE
15 STARTED, HE THE ONE THAT CALLED HENRY SCOTT BACK FROM THE
16 DOOR WHEN WE WERE AT THE CLUB AND THEN HE STARTED ARGUING
17 AND THIS AND THAT, THIS AND THAT.

18 Q AND HOW COULD YOU SEE HIM?

19 A HE BEEN STANDING IN THE PARKING LOT.

20 Q WHAT KIND OF LIGHT IS OUT THERE?

21 A HUH?

22 Q WHAT KIND OF LIGHT IS OUT THERE?

23 A YARD LIGHT.

24 Q HOW FAR AWAY FROM HIM WERE YOU?

25 A ABOUT TEN, FIFTEEN FEET.

1 Q TELL ME A DISTANCE IN THE COURTROOM.

2 A I -- ABOUT FROM HERE.

3 Q FROM WHERE, BACK HERE?

4 A ABOUT FROM HERE TO THE OTHER SIDE OF THEIR TABLE.

5 Q ABOUT THE OTHER SIDE OF THIS TABLE WHERE THE DEFENSE
6 ATTORNEYS ARE SITTING?

7 A YES, MA'AM.

8 Q AND IS THERE AN AERIAL LIGHT OUT THERE, A LIGHT ON A
9 POLE?

10 A YES, MA'AM.

11 Q OKAY. IS THAT THE KIND OF LIGHTING THERE IS? I
12 DON'T KNOW. I'M ASKING YOU.

13 A IT'S A LIGHT ON A POLE. IT'S A LIGHT RIGHT ON --
14 IT'S FRONT OF THE CLUB.

15 Q THERE'S A LIGHT ON THE FRONT OF THE CLUB, TOO?

16 A YES, MA'AM.

17 Q SO YOU COULD SEE THESE PEOPLE?

18 A YES, MA'AM.

19 Q ALL RIGHT. AND HOW ABOUT THE PERSON YOU IDENTIFIED
20 IN THE OTHER LINE-UP?

21 A NUMBER FIVE?

22 Q UH-HUH.

23 A HE ABOUT THE SAME DISTANCE. THEY WERE STANDING RIGHT
24 BESIDE EACH OTHER.

25 Q AND YOU SAID -- NOW, MARCUS EVANS STARTED TALKING TO

1 HENRY SCOTT. WHAT WAS NUMBER FIVE DOING?

2 A HE WASN'T SAYING NOTHING. HE WAS STANDING THERE.

3 Q IS THAT ALL HE EVER DID?

4 A YES, MA'AM. NO, THAT AIN'T ALL HE EVER DID, BUT HE
5 JUST AIN'T SAID NOTHING.

6 Q ALL RIGHT. AFTER THE SHOOTING STARTED, COULD YOU SEE
7 WHO WAS DOING THE SHOOTING?

8 A YES, MA'AM.

9 Q AND WHO WAS DOING THE SHOOTING?

10 A NUMBER ONE AND NUMBER FIVE.

11 Q HAD YOU EVER SEEN THEM BEFORE?

12 A HUH-UH.

13 Q YOU DIDN'T KNOW THEM?

14 A HUH-UH.

15 Q NOW, DID ANYBODY AT ANY TIME EVER SHOW YOU ANY
16 PHOTOGRAPHS AND TELL YOU THESE ARE THE PEOPLE THAT YOU
17 NEED TO PICK OUT OF THE LINE-UP?

18 A NO, MA'AM.

19 Q DID ANYBODY EVER TAKE YOU PAST A ROOM AND LET YOU SEE
20 SOMEBODY IN A ROOM AND ASK YOU IF YOU KNEW WHO THAT PERSON
21 WAS?

22 A YES, MA'AM.

23 Q AND WHO DID THAT?

24 A WHEN WE WENT -- WHEN I WENT TO THE POLICE STATION THE
25 NEXT DAY, HE HAD ALREADY CAUGHT NUMBER ONE. HE ASKED ME

1 IF THAT WAS THE GUY. I TOLD HIM YEAH.

2 Q WHAT KIND OF ROOM WAS HE IN?

3 A A ROOM WITH A MIRROR IN THE FRONT AND GLASS ON THE
4 OUTSIDE.

5 Q OKAY. AND HOW LONG WERE YOU THERE LOOKING AT HIM?

6 A NOT LONG.

7 Q NOW, WHEN YOU PICKED HIM OUT OF THE LINE-UP, DID YOU
8 PICK HIM OUT OF THE LINE-UP BECAUSE YOU HAD SEEN HIM IN
9 THAT ROOM?

10 A HUH-UH.

11 Q WHY DID YOU PICK HIM OUT OF THE LINE-UP?

12 A BECAUSE I SEEN HIM THAT NIGHT AT THE MURDER.

13 Q AND YOU KNEW IT WAS HIM WHEN YOU SAW HIM IN THE ROOM?

14 A YES, MA'AM.

15 Q DID YOU HAVE ANY TROUBLE PICKING THE SAME PERSON OUT
16 OF THE LINE-UP?

17 A HUH-UH.

18 Q THE -- DID THE FACT THAT YOU SAW HIM IN THAT ROOM
19 HAVE ANY INFLUENCE ON YOU PICKING HIM OUT OF THAT LINE-UP?

20 A SAY THAT AGAIN?

21 Q DID THE FACT THAT YOU SAW HIM IN THAT ROOM HAVE ANY
22 INFLUENCE ON WHO YOU PICKED OUT OF LINE-UP "A"?

23 A NO, MA'AM.

24 Q THANK YOU. PLEASE ANSWER ANY QUESTIONS THE DEFENSE
25 ATTORNEYS HAVE.

1 THE COURT: MR. DOBY?

2 CROSS-EXAMINATION BY MR. DOBY:

3 Q MR. OAKS, WHAT -- WHEN THE SHOOTING ACTUALLY STARTED,
4 HOW FAR WERE YOU FROM WHO YOU ALLEGED TO BE THE SHOOTERS?

5 A ABOUT FROM HERE TO THE OTHER SIDE OF THEIR TABLE.

6 Q FROM HERE TO THE OTHER SIDE OF THEIR TABLE? AND WERE
7 YOU STANDING SOME DISTANCE FROM THE CLUB AT THAT POINT?

8 A NO, I WAS STANDING RIGHT AT THE CLUB, RIGHT AT THE
9 WALL OF THE CLUB.

10 Q ALL RIGHT. SO YOU WERE STANDING RIGHT AT THE WALL OF
11 THE CLUB AND YET THE SHOOTING OCCURRED RIGHT ABOUT WHERE
12 THESE DEFENDANTS ARE SITTING; IS THAT RIGHT?

13 A UH-HUH.

14 Q AND YOU MENTIONED SOME YARD LIGHT. WHERE WAS THE
15 YARD LIGHT IN REFERENCE TO WHERE YOU WERE STANDING?

16 A LIKE ON THE SIDE.

17 Q ON THE SIDE?

18 A LIKE ON THE SIDE OF THE CLUB, ALMOST ON THE SIDE OF
19 THE CLUB, BUT THEY GOT A BIG LIGHT IN FRONT OF THE CLUB.

20 Q HOW FAR WAS THE LIGHT, THAT YARD LIGHT THAT YOU
21 DESCRIBED; HOW FAR WAS THAT FROM WHERE YOU WERE STANDING
22 WHEN THE SHOOTING OCCURRED?

23 A ABOUT FROM HERE -- ABOUT FROM HERE TO THE BLEACHERS
24 OUT THERE, THE SEATS OUT THERE.

25 Q OKAY. AND WHAT KIND OF YARD LIGHT WAS THAT? IS IT

1 JUST A SINGLE BULB OR IS IT ONE OF THESE STREET LIGHTS?
2 WHAT IS THE LIGHT?

3 A LIKE A STREET LIGHT ON A POLE.

4 Q DID YOU GIVE A DESCRIPTION OF THE SHOOTERS ON THE
5 NIGHT THAT THE SHOOTING OCCURRED? DID YOU TALK TO THE
6 POLICE THAT NIGHT?

7 A YES, SIR.

8 Q AND DO YOU RECALL WHAT YOUR DESCRIPTION OF THE
9 SHOOTERS WAS?

10 A UH-HUH. ONLY THING I COULD TELL THEM WHAT THEY HAD
11 ON.

12 Q THAT'S THE ONLY THING YOU COULD TELL THEM AT THAT
13 POINT?

14 A YES, SIR.

15 Q YOU DIDN'T GIVE A DESCRIPTION AS TO HOW THEY LOOKED
16 OTHER THAN WHAT THEY WERE WEARING?

17 A OH, YEAH. I TOLD THEM HOW THEY LOOKED AND WHAT THEY
18 HAD ON.

19 Q WELL, YOU JUST TOLD ME THAT YOU COULDN'T DO EXCEPT
20 WHAT THEY HAD ON. AND DID YOU GIVE THEM A DESCRIPTION OF
21 HOW THEY LOOKED?

22 A YEAH.

23 Q HOW DID YOU DESCRIBE THEM?

24 A LIGHT SKINNED, LOW HAIR CUT, SIDE BURNS.

25 Q ALL RIGHT. AND WHICH ONE WAS THAT? WAS THAT MARCUS

MARTY OAKS - CROSS BY DOBY

1 EVANS OR WAS THAT --

2 A MARCUS EVANS.

3 Q -- GILARON TAYLOR. DID YOU KNOW HIM AS MARCUS TAYLOR
4 ON THAT DATE?

5 A HUH-UH.

6 Q YOU NEVER SEEN HIM PRIOR TO THAT OCCASION?

7 A HUH-UH.

8 Q HOW LONG DID YOU VIEW MARCUS EVANS BEFORE YOU ALLEGED
9 THAT THE SHOOTING OCCURRED?

10 A WELL, WE PULL UP TO THE CLUB, I MEAN HE BEEN ALREADY
11 THERE IN THE PARKING LOT. THAT WHEN I SEEN HIM FOR THE
12 FIRST TIME.

13 Q ALL RIGHT. DID YOU GO INTO THE CLUB?

14 A NO.

15 Q YOU STAYED IN THE PARKING LOT?

16 A NO, I WENT TO THE DOOR.

17 Q ALL RIGHT. SO YOU WALKED ON TO THE DOOR?

18 A (WHEREUPON SUBJECT INDICATED NODDING HEAD).

19 Q DID YOU SEE MARCUS EVANS BEFORE YOU GOT TO THE DOOR?

20 A YEAH.

21 Q AND HOW FAR WERE YOU STANDING FROM HIM AT THAT POINT?

22 A I WALK PAST HIM.

23 Q YOU WALKED PAST HIM? NOTICE ANYTHING ABOUT HIM AT
24 THAT PARTICULAR TIME?

25 A HUH-UH.

1 Q HOW DID YOU KNOW YOU WALKED PAST HIM?

2 A BECAUSE HE BEEN THE ONE DID THE SHOOTING. HE WAS
3 STILL OUT THERE WHEN I COME BACK OUT THE DOOR. I WENT TO
4 SEE.

5 THE COURT: SAY THAT AGAIN. SHE COULDN'T HEAR WHAT
6 YOU SAID. COULD YOU REPEAT THAT ANSWER, PLEASE?

7 A I WENT TO SEE. I WENT TO THE DOOR TO SEE WHAT THEY
8 WERE CHARGING--

9 Q ALL RIGHT. SO YOU WALKED PAST HIM, DIDN'T NOTICE HIM
10 AT THAT TIME?

11 A NO.

12 Q ALL RIGHT. DID YOU SEE HIM SOME OTHER TIME OTHER
13 THAN WHEN YOU WALKED PAST HIM?

14 A YEAH, WHEN I CAME BACK OUT.

15 Q ALL RIGHT. AND THAT'S WHEN HE WAS SOME DISTANCE FROM
16 YOU AT THAT POINT?

17 A UH-HUH.

18 Q ALL RIGHT. SO REALLY THE ONLY WAY THAT YOU
19 IDENTIFIED MARCUS EVANS WAS BY SEEING HIM FROM YOU TO
20 WHERE THE BLEACHERS IN THE COURTROOM START; IS THAT RIGHT?

21 A YEAH.

22 Q THAT'S WHAT YOU ARE BASING YOUR IDENTIFICATION ON?

23 A YES, SIR.

24 Q AND IT WAS DARK THAT NIGHT?

25 A YES, SIR.

MARTY OAKS - CROSS BY DOBY

1 Q OKAY. AND YOU ALSO ARE BASING YOUR IDENTIFICATION ON
2 SEEING HIM IN THAT ROOM THAT YOU WALKED PAST; IS THAT
3 RIGHT?

4 A YEAH, THE ROOM AT THE POLICE STATION.

5 Q UH-HUH.

6 A YES, SIR.

7 Q AND WHICH ONE OF THE DETECTIVES TOOK YOU BY THAT
8 ROOM?

9 A J.D.

10 Q OKAY. THE WHITE FELLOW SITTING OVER THERE?

11 A YEAH.

12 Q OKAY. AND HOW LONG DID YOU LOOK AT HIM IN THE ROOM?

13 A NOT LONG. I WALKED IN THERE, LOOK IN THE MIRROR, I
14 KNOW THAT WAS HIM, WALK BACK OUT.

15 Q AND HE WAS THE ONLY ONE IN THE ROOM?

16 A YES, SIR.

17 Q WAS HE IN HANDCUFFS?

18 A HUH-UH.

19 Q SHACKLES?

20 A HUH-UH.

21 Q HAVE ON A PRISON UNIFORM?

22 A HUH-UH.

23 Q WHAT WAS HE WEARING?

24 A SAME THING HE HAD ON.

25 Q SAME THING HE HAD ON WHEN?

MARTY OAKS - CROSS BY ROGERS

1 A THE SAME NIGHT.

2 Q OKAY.

3 A THE FIRST NIGHT BEFORE.

4 Q ALL RIGHT. SO YOU ARE NOT ONLY -- HE HAD ON THE SAME
5 THING ON THE NIGHT THAT YOU ALLEGED THAT HE WAS DOING SOME
6 SHOOTING?

7 A YEAH.

8 Q OKAY. THANK YOU. THAT'S ALL I HAVE.

9 THE COURT: MR. ROGERS?

10 MR. ROGERS: THANK YOU, YOUR HONOR.

11 CROSS-EXAMINATION BY MR. ROGERS:

12 Q MR. OAKS, WHEN WERE YOU SHOWN LINE-UP "B"?

13 A HUH?

14 Q WHEN WERE YOU SHOWN LINE-UP "B"?

15 A WHEN WAS I SHOWN LINE-UP "B"?

16 Q YES.

17 A DECEMBER THE 8TH I THINK.

18 Q OF WHAT, THIS YEAR?

19 A YEAH.

20 Q AND WERE YOU GIVEN A FORM TO CHECK OR CIRCLE OR DID
21 YOU JUST TELL THEM ABOUT IT?

22 A HUH?

23 Q WERE YOU GIVEN A FORM LIKE THIS?

24 A HUH-UH.

25 Q OKAY. SO SOMEBODY JUST SHOWED YOU THIS PHOTOGRAPH?

MARTY OAKS - CROSS BY ROGERS

1 A UH-HUH.

2 Q OKAY. AND THAT WAS LAST WEEK?

3 A UH-HUH.

4 Q OKAY.

5 THE COURT: MR. OAKS, IF YOU WILL PLEASE SAY YES OR
6 NO INSTEAD OF UH-HUH OR HUH-UH. MAKES IT HARD FOR US TO
7 UNDERSTAND WHEN YOU DO THAT. THANK YOU.

8 Q NOW MR. OAKS, ON THE NIGHT THIS HAPPENED, YOU TALKED
9 TO THE POLICE?

10 A YES, SIR.

11 Q DID YOU GIVE A DESCRIPTION THEN OF THE SECOND PERSON
12 OR JUST ONE PERSON?

13 A THAT THE FIRST NIGHT, WAS JUST ONE.

14 Q ONE PERSON. SO DID YOU ONLY SEE ONE PERSON SHOOTING?

15 A YEAH.

16 Q OKAY. NOW, THIS ALL HAPPENED REAL FAST; DIDN'T IT?

17 A YES, IT DID.

18 Q AND IT WAS DARK. I MEAN, WHERE THE SHOOTING TOOK
19 PLACE WASN'T LIT LIKE IT IS IN HERE?

20 A YES, SIR.

21 Q AND YOU WOULD SAY IT HAPPENED IN LESS THAN HOW LONG,
22 30 SECONDS OR TEN SECONDS?

23 A I'D SAY IT HAPPENED IN LESS THAN A MINUTE.

24 Q LESS THAN A MINUTE. WERE YOU EVER TAKEN BY A ROOM TO
25 SEE MR. TAYLOR SITTING ALONE?

1 A NO, SIR.

2 Q HAD YOU TALKED TO ANY OF THE OTHER WITNESSES IN THIS
3 CASE --

4 A NO, SIR.

5 Q -- ABOUT WHAT THEY SAW?

6 A NO, SIR.

7 Q DID YOU TALK ABOUT THE SHOOTING AT THE CLUB?

8 A WHAT YOU MEAN, SINCE THIS?

9 Q NO, SINCE IT HAPPENED.

10 A OH, YEAH. I MEAN...

11 Q YOU TALKED THAT NIGHT. DID YOU TALK TO THE POLICE?

12 A YES, SIR.

13 Q OKAY. YOU TALKED THE NEXT DAY BECAUSE YOU WENT TO
14 THE POLICE STATION?

15 A YES, SIR.

16 Q OKAY. AFTER YOU WENT TO THE POLICE STATION THE NEXT
17 DAY, DID YOU TALK TO ANYBODY ABOUT WHAT HAPPENED THAT
18 NIGHT?

19 A NO, SIR, NOTHING OTHER THAN MY FAMILY.

20 Q ARE YOU RELATED TO THE SCOTTS?

21 A HUH?

22 Q ARE YOU RELATED TO THE SCOTTS?

23 A WHO?

24 Q YOU?

25 A THEM?

1 Q YES.

2 A HUH-UH.

3 Q ARE YOU RELATED TO THE VICTIM IN THE CASE?

4 A OH, YES, SIR.

5 Q OKAY.. SO DID YOU TALK TO THEM ABOUT IT?

6 A YES, SIR.

7 Q DID YOU KNOW LAST WEEK THAT OTHER PEOPLE HAD MADE
8 IDENTIFICATIONS IN THE FAMILY?

9 A ASK ME THAT AGAIN NOW?

10 Q WHEN YOU CAME IN LAST WEEK AND LOOKED AT LINE-UP "B"

11 --

12 A YES, SIR.

13 Q -- DID YOU KNOW AT THAT TIME THAT OTHER PEOPLE IN
14 YOUR FAMILY HAD MADE IDENTIFICATIONS?

15 A NO, SIR.

16 Q YOU DIDN'T? YOU DIDN'T TALK TO THEM ABOUT WHAT THEY
17 HAD DONE?

18 A HUH-UH.

19 Q DID YOU TALK TO THEM AT ALL ABOUT THE INCIDENT?

20 A PEOPLE WERE WITH US?

21 Q YES.

22 A YES, SIR.

23 Q OKAY. I BELIEVE THAT'S ALL. THANK YOU.

24 THE COURT: THANK YOU. MR. JORDAN, MR. FINNEY,

25 GENTLEMEN ANY QUESTIONS? NO, SIR. NO, SIR. YOU HAVE TO

MARTY OAKS - CROSS BY FINNEY

1 STAY RIGHT THERE, MR. OAKS. MR. JORDAN?

2 MR. JORDAN: NO QUESTIONS.

3 THE COURT: MR. FINNEY?

4 MR. FINNEY: CAN I ASK ONE QUESTION, YOUR HONOR?

5 CROSS-EXAMINATION BY MR. FINNEY:

6 Q YOUR DATE OF BIRTH IS 2-26-82?

7 A YES, SIR.

8 Q SO YOU ARE 17 YEARS OLD THE NIGHT THIS SHOOTING TOOK
9 PLACE?

10 A YES, SIR.

11 Q AND HAD YOU BEEN TO THAT NIGHTCLUB BEFORE?

12 A NO, SIR.

13 Q NEVER BEEN THERE BEFORE?

14 A NO, SIR.

15 Q WHEN YOU WENT TO GET IN THAT NIGHT, HOW COME YOU
16 DIDN'T GO IN?

17 A WELL, EVERYTHING WAS ABOUT TO BE OVER.

18 Q IT WAS ABOUT TO BE OVER AND SO YOU DECIDED NOT TO GO
19 IN?

20 A YEAH, WE WERE ABOUT TO LEAVE.

21 Q ALL RIGHT. ALL RIGHT, SIR. THANK YOU.

22 THE COURT: THANK YOU. MS. NIELSEN, REDIRECT?

23 RE-DIRECT EXAMINATION BY MS. NIELSEN:

24 Q MR. OAKS, ARE YOU SAYING THAT THESE TWO LINE-UPS
25 RIGHT HERE YOU NEVER SAW UNTIL LAST WEEK?

MARTY OAKS - REDIRECT BY NIELSEN

1 A NO. I SAW THIS LINE-UP WAY BEFORE I SAW THIS
2 LINE-UP.

3 THE COURT: WHICH ONE IS HE TALKING ABOUT, MS.
4 NIELSEN?

5 THE WITNESS: NUMBER "A", NUMBER ONE.

6 MS. NIELSEN: HE IS TALKING ABOUT STATE'S EXHIBIT 3
7 FOR IDENTIFICATION, WHICH IS LINE-UP "A".

8 (WHEREUPON QUESTIONING RESUMED).

9 Q WHEN DID YOU SEE THAT LINE-UP?

10 A LAST YEAR.

11 Q WHO SHOWED IT DO YOU?

12 A THIS LINE-UP RIGHT HERE?

13 Q UH-HUH.

14 A I PICKED HIM OUT AT THE POLICE STATION.

15 Q AND WHO SHOWED YOU THAT LINE-UP?

16 A J.D.

17 Q HOW ABOUT THE OTHER LINE-UP?

18 A HE SHOWED ME THAT ONE, TOO.

19 Q AND WHERE WAS THAT?

20 A THAT WAS AT HERE.

21 Q THAT WAS HERE?

22 A (WHEREUPON SUBJECT INDICATED NODDING HEAD).

23 Q AND WHEN WAS THAT?

24 A LAST WEEK.

25 Q LAST WEEK. SO WHAT YOU ARE SAYING THAT HE SHOWED YOU

RODNEY YATES - DIRECT BY NIELSEN

1 LINE-UP "A" SOMETIME LAST YEAR?

2 A UH-HUH. I PICKED LINE-UP "A" OUT THE NEXT DAY.

3 Q THE NEXT DAY?

4 A UH-HUH.

5 Q ALL RIGHT. AND LINE-UP "B", WHEN IS THE FIRST TIME
6 YOU EVER SAW IT?

7 A LAST WEEK WHEN HE SHOWED IT TO ME.

8 Q AND WHO SHOWED IT TO YOU?

9 A J.D.

10 Q ALL RIGHT. NOTHING FURTHER.

11 THE COURT: THANK YOU. YOU CAN STEP DOWN, MR. OAKS.

12 (WHEREUPON THE WITNESS LEFT THE STAND).

13 MS. NIELSEN: YOUR HONOR, WE WERE SUPPOSED TO DO THIS
14 PLEA AT 9:15.

15 THE COURT: HAVE TO KEEP ON TRACK WITH WHAT WE HAVE
16 GOT. I'VE GOT 14 PEOPLE BACK THERE GOING TO BE WITH US
17 ALL WEEK LONG MISSING WORK, MISSING EVERYTHING ELSE. I
18 WILL BE GLAD TO WORK THIS PLEA IN WHEN I CAN WHEN I HAVE
19 TO INCONVENIENCE ONE OR TWO AS OPPOSED TO 14. IT'S KIND
20 OF AN EASY CALL FOR ME TO MAKE. I'M SORRY.

21 MS. NIELSEN: STATE CALLS RONNIE YATES. RODNEY YATES

22 (WITNESS IN COURTROOM)

23 RODNEY YATES, BEING FIRST DULY
24 SWORN, TESTIFIED AS FOLLOWS:

25 DIRECT EXAMINATION BY MS. NIELSEN:

1 Q YOUR NAME IS RODNEY YATES?

2 A YES, MA'AM.

3 Q AND WERE YOU AT THE DAVIS COUNTRY CLUB ON THE NIGHT
4 THAT HENRY SCOTT WAS KILLED?

5 A YES, MA'AM.

6 Q WHO DID YOU GO THERE WITH?

7 A I DROVE.

8 Q WHO RODE WITH YOU?

9 A DERRICK.

10 Q DERRICK ALBERT?

11 A UH-HUH.

12 Q DID YOU KNOW ANY OF THE PEOPLE THAT WERE INVOLVED IN
13 THE SHOOTING?

14 A DID I KNOW THEM PERSONALLY?

15 Q HAD YOU EVER SEEN THEM BEFORE?

16 A NO.

17 Q NOW, TELL US WHAT YOU CAN SEE HAPPENING THAT NIGHT.

18 A WE WAS COMING UP TO THE CLUB, WE WAS KIND OF LATE,
19 AND TWO PEOPLE STARTED ARGUING WITH HIM.

20 Q HOW CLOSE WERE YOU TO THOSE TWO PEOPLE?

21 A I WAS PRETTY CLOSE.

22 Q HOW CLOSE IS PRETTY CLOSE?

23 A TWO OR THREE FEET AWAY.

24 Q ALL RIGHT. AND THEY STARTED ARGUING WITH WHO?

25 A HENRY.

1 Q AND DO YOU SEE IN THE COURTROOM THE TWO PEOPLE WHO
2 STARTED ARGUING WITH HIM?

3 A YES, MA'AM.

4 Q AND WOULD YOU TELL US WHERE THEY ARE SEATED.

5 A RIGHT THERE AND RIGHT THERE.

6 Q TELL US -- THAT'S THE DEFENSE TABLE. TELL US WHERE,
7 WHAT NUMBER STARTING FROM THE INSIDE WHERE THE AISLE IS,
8 WHAT NUMBERS THE TWO PEOPLE ARE SITTING AT THAT TABLE.

9 A THE FIRST PERSON AND THE FOURTH PERSON.

10 Q AND WERE YOU AT SOME POINT SHOWN A LINE-UP OF
11 INDIVIDUALS?

12 A YES, I WAS.

13 Q AND WHAT IS IN FRONT OF YOU ARE STATE'S EXHIBITS 3
14 AND 4 WHICH ARE LINE-UPS "A" AND "B". WERE YOU SHOWN
15 THOSE TWO LINE-UPS?

16 A YES, I WAS.

17 Q DO YOU REMEMBER WHEN YOU WERE SHOWN THOSE TWO
18 LINE-UPS?

19 A DON'T QUITE REMEMBER WHEN, BUT IT'S THE FIRST TIME I
20 TALKED WITH THE INVESTIGATORS.

21 Q NOW, DID YOU PICK ANYBODY OUT OF THOSE LINE-UPS?

22 A YES, I DID.

23 Q IN LINE-UP "A" WHICH IS STATE'S EXHIBIT 3 FOR
24 IDENTIFICATION, WHAT NUMBER DID YOU PICK OUT OF THAT
25 LINE-UP?

1 A ONE..

2 Q AND IN LINE-UP "B" WHICH IS STATE'S EXHIBIT 4 FOR
3 IDENTIFICATION, WHICH NUMBER DID YOU PICK OUT OF THAT
4 LINE-UP?

5 A ON WHICH ONE?

6 Q ON "B"?

7 A THIS ONE, FIVE.

8 Q NOW, WHO SHOWED YOU THE LINE-UPS?

9 A J.D.

10 Q AND HOW DID HE SHOW THEM TO YOU? WHAT DID HE DO?

11 A HE JUST -- HE JUST ASKED ME DO I THINK I CAN IDENTIFY
12 ANYBODY FROM THAT NIGHT AND I TOLD HIM YES, I COULD.

13 Q AND DID HE SHOW YOU BOTH LINE-UPS AT ONE TIME OR DID
14 HE SHOW THEM TO YOU ONE AT A TIME?

15 A HE SHOWED ME SEPARATELY. GAVE ME ONE, GAVE ME THE
16 OTHER.

17 Q DID HE SHOW YOU ANY OTHER KIND OF PHOTOGRAPHS?

18 A NO, HE DIDN'T.

19 Q NOW, ON THE NIGHT THAT THIS HAPPENED, WHAT KIND OF
20 LIGHT WAS OUT THERE? YOU SAID YOU WERE TWO OR THREE FEET
21 FROM THESE TWO PEOPLE AND HENRY SCOTT. WHAT KIND OF LIGHT
22 WAS OUT THERE?

23 A THERE WAS LIGHT UP PRETTY GOOD.

24 Q COULD YOU SEE PRETTY GOOD?

25 A YES, I COULD.

RODNEY YATES - DIRECT BY NIELSEN

1 Q SINCE THE TIME THAT -- DURING THE TIME THAT YOU WERE
2 GIVEN A STATEMENT -- LOOK AT THESE FORMS. DO YOU
3 RECOGNIZE THESE?

4 A YES.

5 Q AND DID YOU SIGN THAT?

6 A YES, I DID.

7 Q AND YOU MARKED A BLOCK ON THAT; DIDN'T YOU?

8 A UH-HUH.

9 Q AND WHAT BLOCK WAS MARKED?

10 A ONE.

11 Q AND DOES THAT HAVE AN "A" ON IT TO SHOW THAT WAS
12 LINE-UP "A"?

13 A YES, IT DOES.

14 Q AND DOES THE OTHER SHEET, IS THAT THE LINE-UP "B"?
15 OKAY. IS THAT THE LINE-UP "B"?

16 A YES, IT IS.

17 Q DID YOU MARK A BLOCK ON IT?

18 A YES, I DID.

19 Q WHAT MARK DID YOU BLOCK ON THAT ONE?

20 A FIVE.

21 Q AND WHAT DATE DID YOU DO THIS? DID YOU DATE IT?

22 A 11-22-99.

23 Q ALL RIGHT. BETWEEN THE TIME THIS HAPPENED ON
24 NOVEMBER THE 14TH AND THE TIME YOU LOOKED AT THOSE
25 LINE-UPS ON NOVEMBER THE 22ND, DID YOU TALK TO ANYBODY

1 ELSE WHO HAD LOOKED AT THAT LINE-UP?

2 A NO, I DIDN'T.

3 Q AND DISCUSSED WITH ANYBODY WHO YOU WERE SUPPOSED TO
4 PICK OUT OF THE LINE-UP?

5 A NO, I DIDN'T.

6 Q AND DID J.D. DELLINGER IN ANY WAY INDICATE TO YOU WHO
7 YOU NEED TO PICK OUT OF THE LINE-UP?

8 A NO, HE DIDN'T.

9 Q WHEN YOU IDENTIFIED NUMBER ONE AND NUMBER FIVE ON
10 THOSE LINE-UPS, HOW DID YOU IDENTIFY THEM?

11 A BECAUSE I WAS STANDING CLOSE ENOUGH TO THEM AT THE
12 CLUB SO I COULD SEE THEM.

13 Q AND YOU DIDN'T HAVE ANY PROBLEM IDENTIFYING THEM IN
14 THE LINE-UPS?

15 A NO.

16 Q YOU DON'T HAVE ANY PROBLEM IDENTIFYING THEM IN THE
17 COURTROOM?

18 A NO.

19 Q PLEASE ANSWER ANY QUESTIONS THE DEFENSE ATTORNEYS
20 HAVE.

21 THE COURT: MR. DOBY?

22 CROSS-EXAMINATION BY MR. DOBY:

23 Q MR. YATES, YOU GAVE A STATEMENT IN THIS CASE?

24 A YES, I DID.

25 Q A WRITTEN STATEMENT?

1 A HUH?

2 Q A WRITTEN STATEMENT?

3 A YES. WHAT YOU MEAN WRITTEN?

4 Q MEANING SOMEBODY TYPED IT OUT FOR YOU AND YOU SIGNED
5 IT?

6 A TYPED IT.

7 Q YOU DIDN'T TYPE YOURSELF?

8 A NO.

9 Q WHAT DATE DID YOU GIVE THAT STATEMENT ON?

10 A NOVEMBER 22ND, '99.

11 Q 22ND OF WHAT DAY?

12 A NOVEMBER, I BELIEVE. THAT'S BASICALLY WHAT THE TIME.

13 Q SO IT WAS ABOUT A WEEK AFTER THE SHOOTING AT THE CLUB
14 HAPPENED THAT YOU GAVE THIS STATEMENT?

15 A YEAH.

16 Q DID YOU TALK TO THE POLICE ON THE PARTICULAR -- ON
17 THE NIGHT THAT THE SHOOTING OCCURRED?

18 A NO.

19 Q DID YOU STAY AT THE CLUB AFTER THE SHOOTING OCCURRED
20 OR DID YOU LEAVE?

21 A I LEFT AND WENT TO THE HOSPITAL.

22 Q WHY DID YOU GO TO THE HOSPITAL?

23 A I WENT WITH HENRY.

24 Q OKAY. YOU RELATED TO MR. SCOTT?

25 A YES.

1 Q HOW ARE YOU RELATED?

2 A THAT'S MY BROTHER.

3 Q OKAY. AND WERE YOU ALREADY AT THE CLUB WHEN YOUR
4 BROTHER GOT THERE?

5 A WE ALL ARRIVED PROBABLY MINUTES OR TWO MINUTES BEHIND
6 EACH OTHER.

7 Q OKAY. AND SO WHEN YOU GOT TO THE CLUB, DID YOU SEE
8 ANY OF THE PEOPLE THAT YOU ALLEGED TO HAVE -- THE SHOOTERS
9 AT THE CLUB ALREADY?

10 A YES, THEY WAS ALREADY THERE.

11 Q AND WHEN YOU GOT THERE, DID YOU GO INTO THE CLUB?

12 A I DIDN'T QUITE GET A CHANCE TO MAKE IT INTO THE CLUB.

13 Q AND WHY IS THAT?

14 A BECAUSE BY THE TIME I GET TO THE DOOR, THAT'S WHEN
15 THE SHOOTING STARTED.

16 Q ALL RIGHT. SO YOU WERE WALKING -- WERE YOU WALKING
17 AWAY FROM WHERE THE SHOOTING OCCURRED WHEN IT HAPPENED?

18 A BASICALLY.

19 Q OKAY. WHEN YOU TURNED AROUND -- OR DID YOU TURN
20 AROUND AT THAT POINT?

21 A YES, I DID.

22 Q AND WERE YOU STANDING UNDER SOME LIGHT AT THAT POINT?

23 A YES, I WAS.

24 Q AND HOW FAR AWAY WAS THE SHOOTING GOING ON FROM YOU
25 AT THAT TIME?

1 A PROBABLY ABOUT NINE OR TEN FEET OR BETTER.

2 Q OKAY. SO YOU'RE SAYING THAT IT HAPPENED NINE OR TEN
3 FEET FROM THE CLUB, RIGHT THERE?

4 A YEAH, BASICALLY, YEAH.

5 Q ALL RIGHT.

6 A IN THE FRONT DOOR.

7 Q FROM THE FRONT DOOR?

8 A BY THE TIME I TURNED AROUND AND CAME BACK THROUGH THE
9 DOOR, ABOUT NINE OR TEN FEET.

10 Q ALL RIGHT. SO YOU ACTUALLY GOT INTO THE CLUB
11 ALREADY?

12 A NOT REALLY. I WAS AT -- GOING AT THE DOOR. I DIDN'T
13 GOT IN WHEN I HEARD THE FIRST SHOTS.

14 Q OKAY. HOW LONG -- WELL, WHEN YOU TURNED AROUND, WERE
15 THERE PEOPLE STANDING BEHIND YOU AT THAT POINT?

16 A NO.

17 Q NOBODY STANDING BEHIND YOU?

18 A BECAUSE I WAS LOOKING FOR -- FOR HENRY TO BE BEHIND
19 ME AND OTHER PEOPLE WAS RIDING WITH ME, BUT --

20 Q OKAY.

21 A -- NO ONE WAS BEHIND ME.

22 Q HOW LONG DID YOU SEE THE PERSON YOU IDENTIFIED IN
23 THAT PHOTOGRAPH NUMBER ONE, EXHIBIT 3 NUMBER ONE? HOW
24 LONG DID YOU SEE THAT INDIVIDUAL BEFORE YOU WENT INTO THE
25 CLUB?

1 A WHEN WE CAME UP, HE WAS ARGUING WITH HENRY ABOUT
2 SOMETHING THAT HAPPENED BEFORE. I DON'T KNOW WHAT WENT
3 ON, BUT HE WAS ARGUING WITH HIM AND SAYING I TOLD HIM I
4 DIDN'T COME OUT THERE FOR TONIGHT, JUST LEAVE THAT STUFF
5 ALONE, YOU KNOW WHAT I'M SAYING, SO I KEEP ON WALKING OFF
6 SAYING -- AFTER I SEE IT WAS JUST A STRUGGLE, I JUST
7 WALKED OFF, WENT TO GO IN THE CLUB. THAT'S WHEN THE FIRST
8 SHOT STARTED.

9 Q ALL RIGHT. SO HOW LONG DID YOU SEE THE INDIVIDUAL
10 IDENTIFIED AS NUMBER ONE BEFORE YOU WENT INTO THE CLUB?

11 A PROBABLY ABOUT THREE OR FOUR MINUTES. OTHER
12 COMMOTION GOING ON.

13 Q THEY WERE ARGUING THREE OR FOUR MINUTES OUTSIDE?

14 A UH-HUH.

15 Q AND DID YOU STAY OUTSIDE THE WHOLE TIME?

16 A YES.

17 Q AND WHEN YOU TURNED BACK AROUND, WHERE WAS THE
18 INDIVIDUAL YOU IDENTIFIED IN EXHIBIT NUMBER 3, PHOTOGRAPH
19 NUMBER ONE, WHERE WAS HE STANDING?

20 A WHEN THE SHOOTING?

21 Q UH-HUH.

22 A DIDN'T STAND NOWHERE, JUST STARTED RUNNING.

23 Q ALL RIGHT. AND WHICH DIRECTION DID HE RUN?

24 A I DON'T KNOW HOW THE CLUB SET UP, YOU KNOW WHAT I'M
25 SAYING, BUT...

1 Q YOU NEVER BEEN TO THE CLUB BEFORE?

2 A I BEEN THERE ONE TIME.

3 Q ALL RIGHT. SO WHEN THE SHOOTING HAPPENED, THE
4 INDIVIDUAL YOU DESCRIBED AS NUMBER ONE WAS RUNNING?

5 A YEAH.

6 Q OKAY. AND OVER WHAT TIME PERIOD DID THE SHOOTING
7 OCCUR? HOW MANY SECONDS DID IT TAKE?

8 A PROBABLY ANYWHERE FROM A MINUTE TO ABOUT 50 SECONDS.

9 Q QUICK?

10 A YEAH, PRETTY QUICK.

11 Q SO WHEN THE SHOOTING HAPPENED, THE PERSON YOU
12 IDENTIFIED AS NUMBER ONE, ALL YOU COULD SEE WAS HIS BACK
13 AT THAT POINT?

14 A YES.

15 Q OKAY. THANK YOU. THAT'S ALL I HAVE.

16 THE COURT: MR. ROGERS?

17 MR. ROGERS: THANK YOU, YOUR HONOR.

18 CROSS-EXAMINATION BY ROGERS:

19 Q MR. YATES, WHEN THE SHOOTING HAPPENED, HOW MANY
20 PEOPLE WERE OUT THERE IN FRONT OF THE CLUB?

21 A I CAN'T RECALL THAT.

22 Q SAY THAT AGAIN.

23 A I SAID I CAN'T RECALL ALL THAT, HOW MUCH PEOPLE WAS
24 IN THERE.

25 Q BUT THERE WERE OTHER PEOPLE BESIDES YOU AND THE

1 PEOPLE THAT CAME WITH YOU AND THE OTHER CAR THAT CAME
2 BEHIND YOU OR CAME BEFORE YOU DID.

3 A YEAH.

4 Q OKAY. YOU SAID YOU WALKED PAST YOUR BROTHER AND HE
5 WAS ARGUING WITH SOMEONE?

6 A UH-HUH.

7 Q AND THE PERSON THAT YOU IDENTIFIED IN THE SECOND
8 PHOTO LINE-UP IS -- AS NUMBER FIVE, YOU SAY HE WAS THERE?

9 A YEAH.

10 Q HE WAS STANDING OUT THERE?

11 A YES.

12 Q AND DID YOU HEAR HIM SAY ANYTHING?

13 A NO, HE WASN'T REALLY SAYING TOO MUCH.

14 Q WELL, OKAY. DID HE SAY ANYTHING?

15 A I DON'T KNOW. I KNOW HE DIDN'T SAY TOO MUCH, YOU
16 KNOW WHAT I'M SAYING. I DON'T KNOW WHAT ACTUALLY WAS
17 SAID, BUT I KNOW HE DIDN'T SAY TOO MUCH.

18 Q WHEN YOU WALKED TO THE CLUB AND WITH YOUR BACK TO
19 YOUR BROTHER, THAT'S WHEN YOU HEARD THE DISCUSSION?

20 A YEAH, THAT'S WHAT THEY ARGUING ABOUT. LIKE I SAID, I
21 TOLD HIM TO LEAVE IT ALONE, YOU KNOW WHAT -- I'M NO
22 CAUSING NO TROUBLE LIKE, AND THEY KEPT GOING ON AND ON AND
23 I TOLD MY BROTHER GO IN THE CLUB, AND I TURN AROUND, WENT
24 TO WALK OFF. BY THE TIME I GET TO THE DOOR, THAT'S WHEN I
25 HEARD THE SHOT.

1 Q THAT'S WHEN YOU HEARD THE SHOTS, YOU TURNED BACK
2 AROUND. AND WHEN YOU TURNED BACK AROUND AFTER YOU HEARD
3 THE SHOTS, WHAT DID YOU SEE?

4 A LIKE I TOLD HIM, I SAW THE TWO RUNNING OFF, YOU KNOW
5 WHAT I'M SAYING, RUNNING TOWARDS HENRY SHOOTING.

6 Q RUNNING TOWARDS HIM SHOOTING?

7 A YEAH.

8 Q DID YOU SEE A WEAPON IN NUMBER FIVE'S HAND?

9 A YEAH.

10 Q WHAT KIND?

11 A I DON'T KNOW ALL THAT. ALL I SAW WAS THE FIRE.

12 Q I'M SORRY?

13 A ALL I SAW WAS THE FIRE FROM THE GUN.

14 Q WHAT DID YOU DO?

15 A NOTHING. I JUST STARTED ARGUING, HOLLERING FOR MY
16 BROTHER.

17 Q YOU STOOD THERE AND WATCHED IT?

18 A AIN'T NOTHING I COULD DO.

19 Q NOW, THE LIGHT AT THE DOOR OF THE CLUB --

20 A UH-HUH.

21 Q -- WHAT KIND OF LIGHT IS IT? IS IT A NEON LIGHT OR
22 STREET LIGHT OR LIGHT BULB?

23 A IT'S MORE -- IT'S MORE -- IT'S MORE LIKE A STREET
24 LIGHT.

25 Q STREET LIGHT?

1 A YEAH.

2 Q THAT'S ON THE BUILDING? ARE YOU SAYING THERE IS A
3 LIGHT OVER THE DOOR AT THE CLUB?

4 A NO, IT'S ONE IN -- ONE IN THE PARK I BELIEVE.

5 Q ONE IN THE PARKING LOT?

6 A YEAH.

7 Q AND WHERE IS THERE ANOTHER LIGHT?

8 A LIKE I SAID, I ONLY BEEN OUT THERE ONE TIME, THAT WAS
9 THAT NIGHT. I AM SAYING I CAN'T RECALL EVERYTHING.

10 Q SO IT WAS DARK, IT WASN'T LIGHT LIGHT LIKE IT'S IN
11 HERE. IT WAS DARK?

12 A NO, IT WASN'T THAT DARK.

13 Q IT WASN'T THAT DARK?

14 A LIGHT ENOUGH FOR ME TO SEE.

15 Q HAD YOU EVER SEEN NUMBER FIVE BEFORE NOVEMBER 14TH?

16 A NO.

17 Q WHEN YOU CAME TO THE POLICE ON THE 22ND TO GIVE YOUR
18 STATEMENT, DID YOU KNOW ALREADY THAT STEVE JOHNSON HAD
19 MADE AN IDENTIFICATION?

20 A I DIDN'T TALK TO NONE OF THE BOYS YET.

21 Q DID YOU KNOW THAT ANYBODY HAD BEEN ARRESTED FOR THIS
22 INCIDENT?

23 A NO, SIR.

24 Q THANK YOU. THAT'S ALL.

25 THE COURT: MR. JORDAN, MR. FINNEY, ANY QUESTIONS

1 GENTLEMEN?

2 MR. JORDAN: JUST BRIEFLY, JUDGE.

3 CROSS-EXAMINATION BY MR. JORDAN:

4 Q HOW MANY PEOPLE WERE OUTSIDE THE CLUB WHEN THE
5 SHOOTING OCCURRED?

6 A I -- I ALREADY SAID I CAN'T RECALL.

7 Q MORE THAN 50?

8 A NO, IT WASN'T THAT MUCH.

9 Q MORE THAN 20?

10 A LIKE I SAID, I WASN'T WATCHING WHO WAS AROUND. WE
11 HAD JUST GOT THERE, YOU KNOW WHAT I'M SAYING.

12 Q WAS YOUR VIEW EVER OBSTRUCTED BY CARS?

13 A NO.

14 Q SO YOU DIDN'T DUCK DOWN AND HIDE BEHIND A CAR?

15 A NO.

16 Q YOU RAN TOWARD THE MAN BEING SHOT?

17 A HUH?

18 Q YOU RAN TOWARDS THE MAN BEING SHOT AT, YOUR BROTHER?

19 A BASICALLY AFTER HE STARTED GETTING SHOT, YEAH.

20 Q OKAY. AND YOU DON'T KNOW -- WOULD YOU SAY THERE WERE
21 MORE THAN A HUNDRED CARS OUTSIDE?

22 A LIKE I SAID, I WASN'T LOOKING FOR ALL OF THAT.

23 Q BUT I MEAN, THERE WERE CARS EVERYWHERE; WASN'T THERE?

24 A THERE WAS CARS, BUT I WASN'T LOOKING FOR ALL THAT.

25 Q OKAY. HOW FAR AWAY FROM THE CLUB DID YOU HAVE TO

1 PARK SINCE YOU GOT THERE LATE? DID YOU HAVE TO PARK BY
2 THE FIELD?

3 A HAD TO PARK ACROSS THE ROAD.

4 Q ACROSS THE ROAD?

5 A RIGHT ACROSS THE ROAD FROM THE CLUB, NOT TOO FAR FROM
6 WHERE THE FRONT DOOR ENTRANCE, BUT IT WAS ACROSS THE ROAD
7 FROM IT.

8 Q THANK YOU.

9 THE COURT: MR. FINNEY?

10 MR. FINNEY: NO, YOUR HONOR.

11 THE COURT: THANK YOU. MS. NIELSEN, REDIRECT?

12 MS. NIELSEN: NO, SIR, YOUR HONOR.

13 THE COURT: THANK YOU, MR. YATES. YOU CAN STEP DOWN.

14 (WHEREUPON THE WITNESS LEFT THE STAND)

15 (WITNESS IN COURTROOM)

16 DELVIN WAITERS, BEING FIRST DULY
17 SWORN, TESTIFIED AS FOLLOWS:

18 DIRECT EXAMINATION BY MS. NIELSEN:

19 Q YOUR NAME IS DELVIN WAITERS?

20 A YES.

21 Q YOU HAVE TO GET CLOSE TO THAT MICROPHONE.

22 A YES.

23 Q I HAVE GOT TO HEAR YOU. WERE YOU AT DAVIS COUNTRY
24 CLUB ON THE NIGHT THAT HENRY SCOTT WAS KILLED?

25 A YES.

1 Q WHO DID YOU GO TO THE CLUB WITH?

2 A I--

3 Q WHO?

4 A I DROVE.

5 Q WHO RODE WITH YOU?

6 A HENRY SCOTT.

7 Q NOW, YOU RECALL WHAT HAPPENED AFTER YA'LL GOT THERE?

8 A WE WAS WALKING TO THE DOORWAY AND....

9 Q PLEASE SPEAK UP, THE JUDGE--

10 A WE WAS WALKING TO THE DOORWAY AND--

11 THE COURT: THAT'S GOOD. IF YOU'LL DO JUST LIKE

12 THAT. DON'T BE AFRAID OF THAT MICROPHONE, MR. WAITERS.

13 THE NOISE STARTS COMING OUT, THAT'S THE WAY IT'S SUPPOSED

14 TO WORK, SO DON'T BACK OFF WHEN YOU HEAR YOUR VOICE. WE

15 NEED TO HEAR IT.

16 A WE WERE GOING ON OUR WAY TO THE DOORWAY AND HAD SOME

17 CONVERSATION WITH SOMEBODY AND THEY WAS ARGUING OR

18 WHATNOT. I ONLY TALKED TO THE YOUNG FELLOW AND AFTER

19 THAT...

20 Q YOU WENT AND TALKED TO WHAT YOUNG FELLOW?

21 A RIGHT HERE, THE LIGHT SKINNED ONE.

22 Q TELL US WHERE HE IS SITTING AT THE DEFENSE TABLE.

23 A TO THE LEFT.

24 Q IS HE THE FIRST ONE AT THE DEFENSE TABLE?

25 A YES.

Q NOW, WHY WERE YOU TALKING TO HIM?

A SEE WHAT WAS GOING ON.

Q WAS HE ARGUING WITH HENRY SCOTT?

A BASICALLY, YES.

Q OKAY. NOW, HOW MUCH LIGHT WAS OUT THERE? SO DID YOU KNOW HIM?

A NO.

Q NOW, HOW MUCH LIGHT WAS OUT THERE FOR YOU TO BE ABLE TO SEE?

A THE LIGHTS FROM OFF THE CLUB WERE FACING, YOU KNOW.

Q WAS IT LIGHT ENOUGH FOR YOU TO BE ABLE TO SEE PEOPLE'S FEATURES?

A PRETTY MUCH.

Q OKAY. DID YOU AT SOME POINT LOOK AT SOME LINE-UPS?

A YES.

Q AND DO YOU REMEMBER WHO SHOWED YOU THOSE?

A OFFICER DELLINGER.

Q OKAY. NOW, I AM GOING TO SHOW YOU WHAT IS MARKED AS STATE'S EXHIBITS 3 AND 4 FOR IDENTIFICATION WHICH ARE LINE-UPS "A" AND "B" AND I'M GOING TO ASK YOU IF THOSE ARE THE LINE-UPS THAT OFFICER DELLINGER SHOWED YOU.

A PRETTY MUCH.

Q AND DID YOU PICK SOMEBODY OUT OF THOSE LINE-UPS?

A YES.

Q WHEN HE SHOWED YOU THOSE LINE-UPS, WOULD YOU TELL US

1 WHAT HE DID TO SHOW THEM TO YOU?

2 A HE JUST SAT THEM DOWN ON THE DESK AND TOLD ME TO PICK
3 -- PICK A PICTURE.

4 Q AND WHAT -- WHAT EXACTLY -- WHAT DID HE TELL YOU TO
5 DO?

6 A EXACTLY? I DON'T WANT TO LIE, BUT KNOW -- BUT
7 BASICALLY I KNOW HE SAT THEM ON THE DESK AND SAY WHICH ONE
8 OF THESE WAS, YOU KNOW, WHO WAS THE SHOOTER.

9 Q HE ASKED YOU IF YOU COULD SEE THE SHOOTER IN THOSE
10 LINE-UPS?

11 A YES.

12 Q AND IN LINE-UP "A", DID YOU PICK SOMEBODY?

13 A YES.

14 Q WHO DID YOU PICK?

15 A NUMBER ONE.

16 Q AND IS THAT THE PERSON YOU HAVE ALREADY IDENTIFIED AS
17 THE PERSON THAT YOU WENT TO TALK TO?

18 A YES.

19 Q HOW ABOUT IN LINE-UP "B", WHICH IS STATE'S EXHIBIT
20 4. DID YOU PICK ANYBODY OUT OF THAT LINE-UP?

21 A FIVE.

22 Q AND WHAT DID HE HAVE TO DO WITH WHAT HAPPENED THAT
23 NIGHT?

24 A HE WAS A SHOOTER ALSO.

25 Q NOW, TELL US HOW YOU COULD SEE THEM SHOOTING, WHAT

1 WAS HAPPENING SO THAT YOU KNEW THEY WERE SHOOTING?

2 A COULD SEE THE FIRE COMING FROM OUT THE PISTOL.

3 Q OKAY. AND HOW FAR AWAY FROM THEM WERE YOU WHEN THE
4 SHOOTING WAS GOING ON?

5 A I WAS RIGHT IN THE DISTANCE.

6 Q YOU WERE?

7 A IN DISTANCE.

8 Q HOW FAR A DISTANCE? JUST LOOK AT THE COURTROOM AND
9 TELL ME APPROXIMATELY HOW FAR A DISTANCE FROM THE
10 COURTROOM.

11 A ABOUT FROM HERE TO -- PROBABLY TO THE SECOND ROW OF
12 BENCHES.

13 Q OKAY. BUT YOU -- AFTER WHATEVER HAPPENED STARTED
14 BETWEEN HENRY SCOTT AND MARCUS EVANS, WHO YOU IDENTIFIED
15 AS NUMBER ONE, YOU ACTUALLY WENT UP TO TALK TO THEM?

16 A WELL, I WENT UP TO HIM TO SEE WHAT WAS GOING ON, YES.

17 Q AND AT THE TIME THAT YOU WENT UP, WHERE WAS NUMBER
18 FIVE IN LINE-UP "B"?

19 A HE WAS RIGHT THERE.

20 Q SO HOW CLOSE WERE YOU TO THEM THEN?

21 A CLOSE AS THE MIKE IS TO ME.

22 Q AS CLOSE AS THAT MIKE IS TO YOU?

23 A YEAH.

24 Q SO YOU COULD SEE THEM WELL?

25 A PRETTY MUCH, YEAH.

1 Q NOW, I WANT TO SHOW YOU THESE FORMS, THESE TWO
2 FORMS. YOU IDENTIFIED THOSE?

3 A YES.

4 Q AND DID YOU SIGN THOSE?

5 A YES.

6 Q AND ON THIS ONE IT SAYS LINE-UP "A", WHAT BLOCK DID
7 YOU MARK?

8 A ONE.

9 Q WHAT DATE DID YOU DO THAT ON?

10 A ON THE 19TH.

11 Q AND THIS ONE IS MARKED LINE-UP "B", WHAT DATE DID YOU
12 DO THAT?

13 A FIVE, FIVE ON THE 19TH.

14 Q AND YOU MARKED NUMBER FIVE. BETWEEN THE DAY THAT
15 THIS HAPPENED, THE NIGHT IT HAPPENED AND THE TIME THAT YOU
16 IDENTIFIED THOSE AND MARKED ON THESE PAPERS IDENTIFYING
17 THESE PEOPLE IN THE LINE-UP, DID YOU DISCUSS WITH ANYBODY
18 ELSE WHO WAS OUT THERE ANYTHING ABOUT LOOKING AT LINE-UPS?

19 A NO.

20 Q DID ANYBODY EVER SHOW YOU ANY PHOTOGRAPHS THAT
21 WEREN'T IN THOSE LINE-UPS OF PEOPLE YOU WERE SUPPOSED TO
22 IDENTIFY?

23 A NO.

24 Q DID ANYBODY EVER TAKE YOU PAST A ROOM FOR YOU TO LOOK
25 AT ANYBODY IN A ROOM?

DELVIN WAITERS - CROSS BY DOBY

1 A NO.

2 Q SO HOW -- WHAT DID YOU BASE -- WHEN YOU TOLD J.D.
3 DELLINGER THAT NUMBER ONE AND NUMBER FIVE WERE THE
4 SHOOTERS, WHAT WERE YOU BASING THAT ON? HOW WERE YOU
5 TELLING HIM THAT YOU KNEW THOSE WERE THE SHOOTERS?

6 A BECAUSE I WAS -- I SAID -- LIKE I SAID, I SAW THE
7 FIRING FROM THE PISTOLS AND I SAW THE PEOPLE I WAS TALKING
8 TO.

9 Q AND YOU DIDN'T HAVE ANY TROUBLE IDENTIFYING THE SAME
10 PEOPLE IN THE COURTROOM TODAY?

11 A NO.

12 Q PLEASE ANSWER ANY QUESTIONS THE DEFENSE ATTORNEYS
13 HAVE.

14 THE COURT: MR. DOBY?

15 ~~CROSS-EXAMINATION BY MR. DOBY:~~

16 Q MR. WAITERS, HOW LONG DID YOU TALK TO THIS GENTLEMAN
17 SEATED NEXT TO ME?

18 A IT WAS A FEW MINUTES.

19 Q JUST A FEW MINUTES?

20 A YES.

21 Q AND WAS THAT RIGHT AT THE CLUB THEN? WHERE DID IT
22 HAPPEN?

23 A RIGHT IN FRONT OF IT, YES.

24 Q RIGHT IN FRONT OF THE CLUB?

25 A BASICALLY WHEN THE ARGUMENT TOOK PLACE.

1 Q SO IT'S FAIR TO SAY THAT YOU GOT A GOOD LOOK AT HIM?

2 A YES.

3 Q RIGHT THERE IN FRONT OF THE CLUB,, BUT THAT'S NOT
4 WHERE THE SHOOTING OCCURRED; DID IT?

5 A NO.

6 Q AS A MATTER OF FACT, THE SHOOTING OCCURRED I THINK
7 YOU TESTIFIED THAT IT WAS FROM WHERE YOU WERE SITTING TO
8 THE SECOND ROW OF BLEACHERS; IS THAT RIGHT?

9 A YEAH.

10 Q AND THE LIGHT THAT WAS THERE THAT YOU DESCRIBED --
11 THERE WAS A LIGHT AT THE CLUB THERE; IS THAT RIGHT?

12 A (WHEREUPON SUBJECT INDICATED NODDING HEAD) ..

13 Q IS THAT RIGHT?

14 A YES.

15 Q YOU HAVE TO ANSWER YES OR NO.

16 A YES.

17 Q THERE WAS NOT A LIGHT OUT WHERE THE SHOOTING
18 OCCURRED; IS THAT RIGHT?

19 A YES, THERE'S A NIGHT LIGHT RIGHT THERE.

20 Q A NIGHT LIGHT RIGHT WHERE THE SHOOTING OCCURRED?

21 A YES.

22 Q WHAT KIND OF LIGHT IS IT?

23 A A NIGHT LIGHT, A LIGHT ON A POLE.

24 Q LIGHT ON A POLE THERE?

25 A YES.

1 Q AND YOU WERE -- DID YOU AT SOME POINT GO INTO THE
2 CLUB?

3 A NO.

4 Q YOU NEVER WENT TO THE CLUB?

5 A NO.

6 Q SO YOU WERE STANDING OUTSIDE THE WHOLE TIME?

7 A YES.

8 Q WHEN THE SHOOTING OCCURRED, WHERE WAS THE FELLOW THAT
9 WAS SITTING NEXT TO ME? WHERE WAS HE STANDING?

10 A HE WALKED OFF FROM ME.

11 Q HE WALKED OFF?

12 A YES.

13 Q SO WHEN THE SHOOTING OCCURRED, HE WALKED OFF?

14 A YES. WHEN IT STARTED SHOOTING, HE -- HE WENT OFF TO
15 -- TOWARDS HENRY.

16 Q OKAY. SO HE WAS -- SO WHEN YOU SAW HIM, WHEN YOU
17 HEARD THE SHOTS BEGIN, HE WAS STANDING NEXT TO YOU?

18 A NO.

19 Q ALL RIGHT. THAT'S NOT WHAT YOU JUST TOLD ME.

20 A NO, IT WASN'T LIKE THAT. I WAS TALKING TO HIM, HE
21 LEFT FROM ME, WENT WALKING TOWARDS HENRY. THAT'S WHEN THE
22 SHOTS OCCURRED. THAT'S WHEN THE FIRING START.

23 Q ALL RIGHT. SO IT'S THEN FAIR TO SAY THAT YOU GOT A
24 BETTER LOOK AT HIM WHEN HE WAS STANDING THERE TALKING TO
25 YOU?

1 A YES.

2 Q THEN AFTER THE SHOOTING OCCURRED?

3 A PRETTY MUCH THE SAME BECAUSE--

4 Q BECAUSE HE WAS WALKING AWAY FROM YOU AT THAT POINT;
5 IS THAT RIGHT?

6 A YES.

7 Q HAD OBVIOUSLY HAD HIS BACK TO YOU AND HE WAS WALKING
8 AWAY FROM THE LIGHT THAT WAS RIGHT THERE BY THE CLUB; IS
9 THAT RIGHT?

10 A YES.

11 Q DID YOU GIVE A DESCRIPTION OF THE PERSON YOU
12 IDENTIFIED IN PHOTO LINE-UP "A" AS THE INDIVIDUAL NUMBER
13 ONE, DID YOU GIVE A DESCRIPTION TO THE POLICE ON THE NIGHT
14 THAT IT HAPPENED?

15 A THEY NEVER ASKED.

16 Q WHO WAS THERE? DID YOU TALK TO ANY POLICEMAN THERE?

17 A NO, THE POLICEMAN -- ALL THE POLICEMEN WAS INSIDE.
18 THEY CAME RUNNING OUTSIDE AFTER THE FACT.

19 Q ALL RIGHT. DID IT OCCUR TO YOU TO TELL THAT STORY TO
20 THE POLICE ON THAT PARTICULAR NIGHT?

21 A NO.

22 Q DID YOU LEAVE THE CLUB WHEN THE SHOOTING OCCURRED?

23 A AFTER THEY TOOK HENRY TO THE HOSPITAL, AFTER THEY
24 TOOK HENRY.

25 Q ARE YOU RELATED TO MR. SCOTT?

DELVIN WAITERS - CROSS BY DOBY

- 1 A NO.
- 2 Q FRIENDS WITH HIM?
- 3 A YEAH, I WAS, YEAH.
- 4 Q DID YOU GO TO THE CLUB WITH HIM THERE?
- 5 A HE WENT WITH ME.
- 6 Q HUH?
- 7 A HE WENT WITH ME.
- 8 Q OKAY. YOU WERE DRIVING?
- 9 A UH-HUH.
- 10 Q WAS IT YOUR CAR THAT WAS ACTUALLY SHOT THAT NIGHT?
- 11 A NO.
- 12 Q WAS NOT?
- 13 A NO.
- 14 Q OKAY. WHERE DID YOU HAVE TO PARK?
- 15 A EXCUSE ME?
- 16 Q WHERE DID YOU HAVE TO PARK THAT NIGHT?
- 17 A ON THE SIDE OF THE ROAD.
- 18 Q HOW FAR FROM THE CLUB?
- 19 A I SAY ABOUT 25 FEET, 20.
- 20 Q A LOT OF CARS OUT THAT NIGHT?
- 21 A YES, PRETTY MUCH.
- 22 Q OKAY. AND I THINK THAT YOU SAID THAT YOU KNEW THAT
- 23 SHOOTING WAS GOING ON BECAUSE YOU COULD SEE THE FLASH FROM
- 24 THE MUZZLE; IS THAT RIGHT?
- 25 A YES.

1 Q AND THAT'S HOW YOU KNEW THE SHOOTING WAS GOING ON?

2 A NO, I COULD SEE. I COULD SEE HIM CLEARLY.

3 Q YOU COULD SEE HIM CLEARLY? WHO DID YOU DESCRIBE AS
4 DOING THE SHOOTING TO THE POLICE?

5 A BOTH, NUMBER ONE AND NUMBER FIVE.

6 Q OKAY. DID YOU SEE -- DID YOU SEE NUMBER FIVE WHEN
7 YOU WENT UP AND WERE TALKING TO NUMBER ONE?

8 A YES.

9 Q YOU DID?

10 A YES.

11 Q BOTH STANDING THERE TOGETHER?

12 A YES.

13 Q AND THE SHOOTING HAPPENED, WHERE DID YOU SEE NUMBER
14 FIVE THAT YOU IDENTIFIED?

15 A WELL, RIGHT THEN I DON'T KNOW WHERE HE WENT, BUT I
16 SAW HIM WHEN HE PULL OUT THE GUN. HE WAS STANDING NEXT TO
17 A CAR AND THEY WASN'T TOO FAR APART FROM EACH OTHER.

18 Q ALL RIGHT. DID YOU SEE NUMBER ONE OR NUMBER FIVE
19 PULL OUT A GUN FIRST?

20 A I COULDN'T TELL YOU.

21 Q DON'T KNOW WHICH?

22 A PROBABLY I WOULD SAY ONE BECAUSE HE WAS WALKING
23 TOWARDS ME AT THE TIME.

24 Q MR. SCOTT HAVE A GUN?

25 A I DON'T KNOW.

1 Q DIDN'T SEE THAT?

2 A NO.

3 Q DID YOU SEE WHETHER HE WAS SHOOTING?

4 A NO.

5 Q COULDN'T SEE THAT?

6 A I DIDN'T SEE HIM SHOOT.

7 Q OKAY. THANK YOU. THAT'S ALL I HAVE.

8 THE COURT: MR. ROGERS?

9 CROSS-EXAMINATION BY MR. ROGERS:

10 Q MR. WATERS, THIS WHOLE THING HAPPENED KIND OF FAST?

11 A YES.

12 Q LESS THAN A MINUTE WHEN THE TIME YOU WALKED PAST MR.
13 SCOTT AND BETWEEN THAT TIME AND THE TIME YOU HEARD THE
14 SHOOTING, I MEAN HEARD THE SHOTS?

15 A NO.

16 Q NO, IT'S LESS THAN A MINUTE, NO IT'S LONGER THAN A
17 MINUTE?

18 A LONGER THAN A MINUTE.

19 Q LONGER THAN A MINUTE. SO YOU HEARD AN ARGUMENT, YOU
20 WENT TO TALK TO ONE OF THEM, CORRECT?

21 A TRUE.

22 Q AND THEN YOU WALKED AWAY, RIGHT?

23 A NO, I WAS RIGHT THERE. I NEVER WALKED.

24 Q YOU STOOD RIGHT THERE THE ENTIRE TIME?

25 A WHEN THEY STARTED SHOOTING, NO.

1 Q OKAY. THAT'S WHAT I'M TRYING TO GET AT, HOW LONG YOU
2 WERE RIGHT THERE.

3 A I WAS RIGHT THERE, I STAY THERE PROBABLY THERE FOR A
4 MINUTE.

5 Q ABOUT A MINUTE?

6 A A MINUTE OR TWO.

7 Q OKAY. WERE THERE OTHER PEOPLE OUT THERE BESIDES THE
8 PEOPLE WE HAVE ALREADY TALKED ABOUT, OUTSIDE IN FRONT OF
9 THE CLUB?

10 A NO, I CAN'T RECALL THAT.

11 Q DID YOU SEE ANY GIRLS STANDING THERE TALKING TO
12 NUMBER FIVE OR NUMBER ONE?

13 A NO.

14 Q NO?

15 A NO.

16 Q DID YOU EVER HAVE A CONVERSATION WITH NUMBER FIVE?

17 A NO.

18 Q DID YOU EVER HEAR NUMBER FIVE SAY ANYTHING?

19 A NO.

20 Q AND THEN THE NEXT TIME YOU SAW ANYTHING WAS WHEN THE
21 SHOTS OCCURRED?

22 A YES.

23 Q WELL, DIDN'T -- DIDN'T THE VICTIM GO BACK TO THE CAR
24 BEFORE THE SHOTS RANG OUT?

25 A I DON'T REMEMBER.

DELVIN WAITERS - CROSS BY JORDAN

1 Q YOU DON'T REMEMBER?

2 A NO.

3 Q OKAY. AGAIN DESCRIBE THE LIGHTS AS YOU SAW THEM THAT
4 NIGHT.

5 A THEY HAD AN OUTSIDE LIGHT, WE HAD THE LIGHTS ON THE
6 FRONT OF THE BUILDING, FRONT OF THE CLUB.

7 Q ALL RIGHT. WHERE YOU FIRST SAW NUMBER FIVE, WAS
8 THERE A LIGHT?

9 A I SAW THEM. WELL, THE LIGHT WAS OFF THE FRONT OF THE
10 CLUB LIGHT SHINING ON THEM. THERE WAS NO WAY I COULD MISS
11 THEM THOUGH.

12 Q HE WAS FACING THE CLUB OR WAS HIS BACK TO THE CLUB?

13 A YEAH, FACING THE CLUB.

14 Q WERE YOU FACING THE CLUB OR WAS YOUR BACK TO THE
15 CLUB?

16 A BASICALLY I WAS WALKING TO THE DOOR, SO I WAS ON THE
17 SIDE.

18 Q THAT'S ALL.

19 THE COURT: THANK YOU. MR. JORDAN, MR. FINNEY?

20 MR. JORDAN: BRIEFLY, YOUR HONOR.

21 CROSS-EXAMINATION BY MR. JORDAN:

22 Q WHO ARRIVED FIRST, THE POLICE OR THE AMBULANCE?

23 A THE POLICEMEN.

24 Q THEY WERE -- DID THEY COME OUT RIGHT AWAY?

25 A YEAH, THEY CAME OUT AFTER IT HAPPENED.

1 Q WHEN -- AND THE AMBULANCE OR EMS PEOPLE ARRIVED?

2 A YES, I SAY ABOUT 30, 35 MINUTES.

3 Q AND YOU STAYED THERE?

4 A YES.

5 Q THANK YOU.

6 THE COURT: MR. FINNEY?

7 MR. FINNEY: NOTHING, YOUR HONOR.

8 THE COURT: THANK YOU. MS. NIELSEN, REDIRECT?

9 MS. NIELSEN: NOTHING FURTHER, YOUR HONOR.

10 THE COURT: THANK YOU, MR. WAITERS. YOU CAN STEP
11 DOWN.

12 (WHEREUPON THE WITNESS LEFT THE STAND).

13 THE COURT: MS. NIELSEN, ANY OTHER EVIDENCE OR
14 TESTIMONY ON THE IDENTIFICATION ISSUE FROM THE STATE?

15 MS. NIELSEN: NO, SIR, YOUR HONOR.

16 THE COURT: THANK YOU. GENTLEMEN, IS THERE ANYTHING
17 FROM ON BEHALF OF THE DEFENSE BY WAY OF EVIDENCE OR
18 TESTIMONY TO OFFER ON THE ISSUE OF IDENTIFICATION, MR.
19 DOBY? SPEAKING OF EVIDENCE, NOT TALKING ABOUT ARGUMENT.

20 MR. DOBY: NO, SIR, YOUR HONOR.

21 THE COURT: THANK YOU. MR. ROGERS?

22 MR. ROGERS: NO, YOUR HONOR.

23 THE COURT: THANK YOU. MR. JORDAN?

24 MR. JORDAN: NO, YOUR HONOR.

25 THE COURT: MR. FINNEY?

1 MR. FINNEY: NO, YOUR HONOR.

2 THE COURT: THANK YOU.

3 THE COURT: ALL RIGHT. MR. DOBY, BE GLAD NOW TO HEAR
4 ARGUMENT ON BEHALF OF MR. EVANS AS TO THE IDENTIFICATION
5 OFFERED BY THE STATE.

6 MR. DOBY: YOUR HONOR, I BELIEVE WE ARE IN LIGHT OF
7 THOSE TWO WITNESSES IF I REMEMBER RIGHT, MR. MARTY OAKS
8 AND STEVEN JOHNSON, YOUR HONOR, BOTH OF THOSE WITNESSES
9 TESTIFIED THAT THEY HAD BEEN PARADED BY THE TWO WAY MIRROR
10 IN WHICH MY CLIENT WAS SITTING IN A ROOM BY HIMSELF.

11 AND I THINK ONE OF THE WITNESSES SAID THAT HE
12 DIDN'T KNOW WHETHER IT WAS BEFORE OR AFTER THE PHOTO
13 LINE-UP, BUT THE OTHER WITNESS, I THINK MARTY OAKS, SAID
14 HE THOUGHT IT WAS BEFORE THE PHOTO LINE-UP.

15 YOUR HONOR, BASED ON THOSE ONE MAN SHOW UP SORT
16 OF IDENTIFICATION THAT WAS DONE BY THE DETECTIVE IN THE
17 CASE, I BELIEVE THAT THE IN-COURT IDENTIFICATION AND THE
18 PHOTO LINE-UP WHICH HAS BEEN PRESENTED BY THE STATE, GOING
19 TO BE INTRODUCED INTO EVIDENCE AT AN APPROPRIATE TIME,
20 HAVE BEEN TAINTED TO THE POINT WHERE THEY ARE UNRELIABLE
21 AT THIS POINT.

22 YOUR HONOR, AS YOU REQUESTED READ STATE VERSUS
23 ROGERS CASE, YOUR HONOR, I THINK THAT THAT CASE IN --
24 DISTINGUISHED ON ITS FACT, ON THE FACTS OF THAT CASE, YOUR
25 HONOR, IN THAT CASE IT WAS A 35, 40 MINUTE IDENTIFICATION

1 OF THE DEFENDANT IN THAT CASE.

2 YOUR HONOR, TAKING INTO CONSIDERATION THOSE
3 FACTORS, I DO NOT BELIEVE THAT THE CASE -- THAT THE STATE
4 HAS PROVEN BY CLEAR AND CONVINCING EVIDENCE THAT THE
5 IN-COURT IDENTIFICATION WOULD BE BASED ON OBSERVATION OF
6 THE WITNESSES AS OPPOSED TO THIS ONE MAN SHOW UP THAT AT
7 LEAST THE POLICE HAD DONE.

8 YOUR HONOR, ALL OF THE WITNESSES TESTIFIED THAT
9 IT WAS THE -- A VERY QUICK, EXTREMELY SHORT TIME IN WHICH
10 THIS OCCURRED. WITNESSES TESTIFIED THAT THERE WAS LITTLE
11 LIGHTING THERE, THAT IT WAS DARK. I BELIEVE THAT AS A
12 MATTER OF FACT, MR. OAKS SAID THAT HE WAS SITTING OR THAT
13 HE WAS FROM THE WITNESS BOX ALL THE WAY TO THE FIRST ROW
14 OF THE BLEACHERS HERE IN THE COURTROOM.

15 YOUR HONOR, TAKING INTO CONSIDERATION THEIR
16 TESTIMONY, I BELIEVE THAT THE PHOTO LINE-UP OF THOSE TWO
17 WITNESSES AS WELL AS ANY IN-COURT IDENTIFICATION OUGHT TO
18 BE SUPPRESSED.

19 THE COURT: THANK YOU. MR. ROGERS, LET ME HEAR FROM
20 YOU.

21 MR. ROGERS: YOUR HONOR, MAY IT PLEASE THE COURT.
22 WITH RESPECT TO MR. TAYLOR AND THE IDENTIFICATION, THE
23 HEART OF OUR ARGUMENT TO THE THREE WITNESSES JOHNSON,
24 WAITERS AND RODNEY YATES AND NOT WITHSTANDING THE COURT'S
25 RULING YESTERDAY WITH RESPECT TO THE STATE'S EXHIBIT 4 FOR

1 IDENTIFICATION, IT IS OUR POSITION THAT THAT PHOTOGRAPHIC
2 LINE-UP WAS UNDULY SUGGESTIVE, THERE WERE NO DESCRIPTIONS
3 GIVEN OF THE ASSAILANTS BY ANY OF THESE WITNESSES.

4 MR. TAYLOR'S PICTURE WAS PLACED IN THAT
5 PHOTOGRAPHIC LINE-UP. AND I BELIEVE THAT IN A PROCESS OF
6 WEEDING OUT, I BELIEVE AT THE TIME OF THE INCIDENT ALL OF
7 THE DESCRIPTIONS WERE OF LIGHT SKINNED GUYS. AND I DRAW
8 THE COURT'S ATTENTION AGAIN TO STATE'S EXHIBIT 4, ONE
9 INDIVIDUAL DOES HAVE CORN ROWS, TWO OF THE INDIVIDUALS OR
10 THREE AT LEAST APPEAR TO BE DARKER THAN THE OTHERS AND
11 FROM A PROCESS OF ELIMINATION, THAT IS HOW THIS LINE-UP
12 THAT WE BELIEVE BECOMES UNDULY SUGGESTIVE. FOR THOSE
13 REASONS, YOUR HONOR, WE ARE ASKING THAT THE IN-COURT
14 IDENTIFICATION BE SUPPRESSED.

15 THE COURT: THANK YOU, MR. ROGERS. MS. NIELSEN?

16 MS. NIELSEN: YOUR HONOR, ALL OF THE WITNESSES
17 INCLUDING RODNEY OAKS AND STEVEN JOHNSON TESTIFIED FROM
18 THEIR INDEPENDENT KNOWLEDGE WHAT HAPPENED THAT NIGHT, THAT
19 THEY WERE ABLE TO IDENTIFY THESE TWO DEFENDANTS.

20 THEY -- EVEN MARTY OAKS AND STEVEN JOHNSON WHO
21 APPARENTLY WERE ALLOWED TO VIEW MARCUS EVANS IN A ROOM AT
22 THE SHERIFF'S OFFICE, TESTIFIED THAT THEIR IDENTIFICATION
23 OF THEM BOTH IN THE LINE-UP AND IN THIS COURTROOM WAS
24 BASED ON WHAT THEY HAD SEEN THAT NIGHT AT THE CLUB, NOT
25 BECAUSE THEY SAW HIM IN A ROOM AT THE SHERIFF'S OFFICE.

1 BUT JUDGE, EVEN IN THIS CASE IF YOU ASK US TO
2 LOOK AT BASICALLY SAME KIND OF CASE SAYS EVEN THE COURT IS
3 SAYING THAT THE SHOW UP WAS THE CONSTITUTIONAL VIOLATION
4 AS LONG AS THERE WAS OTHER COMPETENT EVIDENCE TO
5 SUBSTANTIATE THAT THE PERSON WHO WAS MAKING THE
6 IDENTIFICATION IS DOING THAT BASED UPON THEIR PERSONAL
7 KNOWLEDGE, THAT THEIR IN-COURT IDENTIFICATION IS STILL
8 OKAY.

9 AND IT'S OUR POSITION THAT THEY HAVE MADE THE
10 IDENTIFICATION BASED ON WHAT THEY SAW THAT NIGHT. THEY
11 HAVE ALL TESTIFIED THERE WAS SUFFICIENT LIGHT FOR THEM TO
12 SEE. SOME OF THEM WERE CLOSE ENOUGH SO THAT EVEN A LITTLE
13 BIT OF LIGHT, THEY WOULD HAVE BEEN ABLE TO IDENTIFY THEM.
14 THEY HAVE ALL DONE SO.

15 THE COURT: THANK YOU, MA'AM. THE RULING OF THE
16 COURT IS GOVERNED BY STANDARDS SET OUT BY OUR UNITED
17 STATES AND SOUTH CAROLINA SUPREME COURT CASE, UNITED
18 STATES COURT CASE OF NEIL, N-E-I-L VERSUS BIGGERS,
19 B-I-G-G-E-R-S, 409 U.S. 188, STOVALL, S-T-O-V-A-L-L,
20 VERSUS DENO, D-E-N-O, 388 UNITED STATES 293.

21 THE FACTORS THAT ARE BEING CONSIDERED IN
22 EVALUATING THE LIKELIHOOD OF MIS-IDENTIFICATION ARE FIRST
23 OF ALL THE OPPORTUNITY OF THE WITNESS TO VIEW THE CRIMINAL
24 AT THE TIME OF THE CRIME. BY ALL ACCOUNTS THIS WAS
25 SOMEWHAT BRIEF, BUT OBVIOUSLY RELATIVELY PRESSED IN TIME,

DELVIN WAITERS - CROSS BY JORDAN

1 BUT CERTAINLY THE EVENTS OCCURRED WITHIN CLEAR VIEW OF ALL
2 THE WITNESSES WHO TESTIFIED, THE DISTANCES DIFFERED TWO OR
3 THREE FEET AWAY DURING THE CONVERSATION TO A DISTANCE OF
4 WHAT THIS COURT DETERMINES TO BE ABOUT 30 FEET AT THE TIME
5 OF THE SHOOTING.

6 THE WITNESSES DEGREE OF ATTENTION, THAT WAS
7 SOMEWHAT FLEETING AS WELL OR I SHOULD SAY VARYING
8 DEPENDING UPON THE CIRCUMSTANCES. THE ATTENTION WAS
9 FOCUSED DURING THE ARGUMENT THEN DISTRACTED AS SOME OF THE
10 WITNESSES TURNED AWAY AND REFOCUSED AS THE SHOOTING
11 OCCURRED.

12 THE ACCURACY OF THE PRIOR DESCRIPTION OF BEFORE
13 IDENTIFICATION HERE IN THE COURTROOM OF COURSE VARIES FROM
14 ONE WITNESS TO ANOTHER, THE LENGTH OF TIME BETWEEN THE
15 CRIME AND THE CONFRONTATION ITSELF IN -- EXCEPT IN ONE
16 CASE, MOST ALL THESE INDIVIDUALS SAW THE LINE-UP WITHIN A
17 WEEK OR SO FOLLOWING THE CRIME.

18 ONE OF THEM SAW ONE LINE-UP JUST VERY RECENTLY.
19 THE LEVEL OF CERTAINTY DEMONSTRATED BY THE WITNESSES
20 CONFRONTATION, THOSE WHO PICKED OUT THE DEFENDANTS IN THIS
21 CASE APPARENTLY SHOWED NO UNCERTAINTY. SOME DID NOT PICK
22 THEM OUT AT ALL OF COURSE AT THAT TIME AND OBVIOUSLY WE
23 EVALUATE THEIR TESTIMONY ON THAT BASIS AS WELL.

24 NOW, MR. LEONARD SCOTT TESTIFIED FIRST IN THE EN
25 CAMERA PROCEEDING THAT HE IDENTIFIED MR. EVANS FROM

1 LINE-UP NUMBER ONE, EXCUSE ME, LINE-UP NUMBER "A", WHICH
2 IS STATE'S EXHIBIT 3 FOR IDENTIFICATION. I FIND THAT THE
3 IDENTIFICATION OF MR. EVANS IN THIS PARTICULAR CASE IS
4 ADMISSIBLE APPLYING THE STANDARDS THAT I HAVE JUST
5 MENTIONED.

6 MR. STEVEN JOHNSON TESTIFIED NEXT. HE
7 IDENTIFIED BOTH MR. TAYLOR AND MR. EVANS FROM THE
8 PHOTOGRAPHIC LINE-UP. HE INDICATED THAT HE SAID HE
9 COULDN'T TELL WHETHER IT WAS BEFORE OR AFTER THE LINE-UP,
10 THE SHOW UP THROUGH THE TWO WAY MIRROR THAT HE ACTUALLY
11 PICKED OUT THE LINE-UP, BUT HE DID SAY THAT THE LINE-UP
12 WAS ON THE DAY OF THE STATEMENT AND THAT -- EXCUSE ME.

13 HE SAW MARCUS IN THE ROOM BY HIMSELF AFTER HE
14 GAVE A STATEMENT AND THE PHOTO LINE-UP WAS SHOWN TO HIM
15 THE NEXT DAY. THAT IS CONSISTENT WITH THE EVIDENCE IN
16 THIS -- DATE OF THE STATEMENT IS NOVEMBER 15TH, 1999. THE
17 DATE OF THE LINE-UP IS NOVEMBER 16TH, 1999.

18 HE SAW MR. EVANS ONE DAY IN A ROOM BY HIMSELF
19 AND THE NEXT DAY HE WAS SHOWN A LINE-UP. THE BURDEN OF
20 PROOF IS ON THE STATE TO ESTABLISH BY CLEAR AND CONVINCING
21 EVIDENCE THAT THE IN-COURT IDENTIFICATION WAS BASED ON
22 OBSERVATIONS OF THE DEFENDANT OTHER THAN THROUGH THE SHOW
23 UP OR LINE-UP IDENTIFICATION.

24 THE CASE IS U.S. VERSUS WADE, UNITED STATES
25 SUPREME COURT CASE FOUND AT 388 U.S. 240. IN THIS

STATE OF SOUTH CAROLINA

COUNTY OF LEE

COURT OF GENERAL SESSIONS

STATE OF S.C.,)
 PLAINTIFF)

VS.)

MARCUS EVANS, GILARON,)
 TAYLOR, TRAVIS)
 SINGLETON AND LAMONT)
 WITHERSPOON,)
 DEFENDANTS.)
 -----)

TRANSCRIPT OF RECORD
 2000-GS-31-10
 VOLUME II OF IV

BISHOPVILLE, SOUTH CAROLINA
 DECEMBER 11 - 15, 2000

B E F O R E:

HONORABLE THOMAS W. COOPER, JR., JUDGE; AND A JURY.

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

DEBBIE T. NIELSEN, ASSISTANT SOLICITOR
 ATTORNEY FOR THE PLAINTIFF

BRYAN DOBY, ESQUIRE
 ATTORNEY FOR THE DEFENDANT EVANS

JIMMY ROGERS, ESQ.
 ATTORNEY FOR THE DEFENDANT TAYLOR

MICHAEL JORDAN, ESQ.
 ATTORNEY FOR THE DEFENDANT SINGLETON

CHIP FINNEY, ESQ.
 ATTORNEY FOR THE DEFENDANT WITHERSPOON

KATHLEEN M. SIMMONS
 CIRCUIT COURT REPORTER

1 PARTICULAR CASE WHILE MR. JOHNSON TESTIFIED THAT HE PICKED
2 HIM OUT ON THE BASIS OF WHAT HE HAD SEEN THE DAY BEFORE,
3 THERE IS NO INDEPENDENT AND CORROBORATING EVIDENCE IN THAT
4 REGARD OTHER THAN JUST HIS STATEMENT, THE STATEMENT ON ITS
5 FACE, I IDENTIFIED HIM IN THE LINE-UP ON THE BASIS OF WHAT
6 I HAD SEEN THE NIGHT BEFORE AT THE -- THE NIGHT OF THE
7 SHOOTING AT THE CLUB, NOT ON THE BASIS OF THE FACT THAT I
8 HAD SEEN HIM IN THE SHOW UP ROOM. I FIND THAT DOES NOT
9 MEET THE STANDARDS OF CLEAR AND CONVINCING EVIDENCE.

10 THE IDENTIFICATION BY MR. JOHNSON OF MR. TAYLOR
11 IS ADMISSIBLE. THE IDENTIFICATION OF MR. JOHNSON BY -- OF
12 MR. EVANS IS INADMISSIBLE. DERRICK ALBERT THEN TESTIFIED
13 HE IDENTIFIED MR. EVANS FROM LINE-UP "A". HE
14 MISIDENTIFIED OR DID NOT CORRECTLY IDENTIFY ANYONE ON
15 "B".

16 HIS IDENTIFICATION OF MR. EVANS IS ADMISSIBLE
17 APPLYING THE STANDARDS WHICH I HAVE JUST REFERRED TO. MR.
18 OAKS THEN TESTIFIED. MR. OAKS WAS SHOWN THE LINE-UP ON A
19 DATE THAT, WAS UNCERTAIN BECAUSE HE DID NOT FILL OUT ANY
20 DOCUMENTATION OR AT LEAST NONE WAS INTRODUCED.

21 HE DID HOWEVER PROPERLY IDENTIFY BOTH MR. EVANS
22 AND MR. TAYLOR FROM THE TWO LINE-UPS THAT WERE SHOWN TO
23 HIM. MR. OAKS LIKE MR. JOHNSON WAS ALSO ABLE TO SEE MR.
24 EVANS AT THE POLICE STATION BEFORE WE COULD PRESUME WERE
25 -- ALTHOUGH WE ARE NOT EXACTLY SURE BECAUSE THE DATE OF

1 THIS LINE-UP IS UNCERTAIN, BUT HE ALSO SAW MR. EVANS IN
2 THE SHOW UP.

3 HOWEVER UNLIKE MR. JOHNSON, HE HAD PREVIOUSLY
4 GIVEN A DESCRIPTION. HE TOLD THE POLICE OFFICERS WHAT
5 THEY LOOK LIKE, EVEN DESCRIBED THE CLOTHES AND SAW MR.
6 JOHNSON, OR EXCUSE ME, MR. EVANS WEARING THE SAME CLOTHES
7 IN THE SHOW UP WHENEVER HE SAW IT.

8 I FIND THEREFORE THAT THERE IS INDEPENDENT
9 CORROBORATING EVIDENCE THAT HE HAD PROVIDED INFORMATION TO
10 THE POLICE SUFFICIENT TO MEET THE STANDARD OF CLEAR AND
11 CONVINCING EVIDENCE, THAT IS IN-COURT IDENTIFICATION BASED
12 ACTUALLY ON HIS OBSERVATION AT THE SCENE AND NOT AS A
13 RESULT OF THE SHOW UP ITSELF. THEREFORE THE
14 IDENTIFICATION BY MR. OAKS FOR BOTH DEFENDANTS IS
15 ADMISSIBLE.

16 AS TO MR. YATES, MR. YATES TESTIFIED THAT HE
17 OBSERVED THE LINE-UPS ON -- OR ACTUALLY IT WAS THE
18 EVIDENCE INDICATES HE SAW THEM ON THE SECOND. HE PROPERLY
19 IDENTIFIED BOTH MR. EVANS AND MR. TAYLOR, AND HIS
20 IDENTIFICATION APPLYING THE STANDARDS THAT I HAVE ALREADY
21 INDICATED AS TO BOTH IS ADMISSIBLE.

22 AND FINALLY MR. MELVIN WAITERS TESTIFIED HE WAS
23 SHOWN THE LINE-UP ON NOVEMBER THE 19TH AND PROPERLY
24 IDENTIFIED BOTH MR. EVANS AND MR. TAYLOR FROM THE LINE-UPS
25 THAT WERE SHOWN TO HIM.

1 APPLYING THE STANDARDS THAT I HAVE JUST
2 REITERATED, I FIND THAT THE IDENTIFICATIONS OF BOTH ARE
3 ADMISSIBLE. THE COURT WILL NOTE EXCEPTIONS TO BOTH
4 COUNSEL OF ITS RULING IN REGARDS TO THOSE THINGS. ALL
5 RIGHT.

6 OBVIOUSLY, MS. NIELSEN, YOU ARE GOING TO NEED OF
7 COURSE A MINUTE OR TWO BEFORE THESE INDIVIDUALS TESTIFY,
8 AT LEAST SOME OF THEM, REGARDING PORTIONS OF THEIR
9 TESTIMONY THAT I HAVE RENDERED INADMISSIBLE BY VIRTUE OF
10 MY RULING, AND I WILL -- WE HAVE BEEN HERE FOR A WHILE.

11 AND I KNOW YOU HAVE GOT A PLEA THAT YOU WANT ME
12 TO GET IN AND I WILL BE GLAD TO GET TO THAT IN JUST A
13 MOMENT. WHY DON'T WE TAKE 15 MINUTES AT THIS POINT IN
14 TIME AND I WILL HAVE SOME ORDER SO THAT WE CAN START THIS
15 CASE AND I WILL SQUEEZE IN THAT PLEA IMMEDIATELY BEFORE WE
16 BRING IN THE JURY.

17 MS. NIELSEN: DO YOU WANT TO TAKE UP THE -- THE
18 STATEMENT NOW OR DO YOU WANT TO DO THAT...

19 THE COURT: PREPARED TO DO IT NOW IF YOU ALL HAVE HAD
20 A CHANCE TO LOOK AT IT. I HAVE NOT. IF YOU ALL TELL
21 ME...

22 MS. NIELSEN: WE DON'T HAVE AN AGREEMENT ON IT.
23 WE'VE HAD A CHANCE TO LOOK AT IT, BUT WE DON'T HAVE AN
24 AGREEMENT ON WHAT NEEDS TO BE REDACTED.

25 THE COURT: ALL RIGHT. WELL, LET ME DO THIS. LET ME

1 -- CAN I HAVE A COPY OF THOSE STATEMENTS? I DON'T HAVE A
2 COPY IN FRONT OF ME. CAN SOMEBODY FURNISH ME A COPY OF
3 IT?

4 MS. NIELSEN: JUDGE, THE ORIGINAL IS THEIR STATEMENTS
5 ALREADY MARKED.

6 THE COURT: ALL RIGHT. WHAT I WILL DO DURING THE
7 BREAK, I WILL HAVE MR. GRIFFIN MAKE COPIES OF THESE SO
8 THAT I CAN MARK THEM UP.

9 MS. NIELSEN: JUDGE, I HAVE GOT AN EXTRA COPY. I
10 WILL GIVE YOU A COPY.

11 (CONFERRING WITH DEFENSE ATTORNEYS).

12 MS. NIELSEN: JUDGE, I REALLY ONLY NEED TO LOOK AT
13 MR. SINGLETON'S STATEMENT.

14 THE COURT: MR. WITHERSPOON'S STATEMENT NEEDS NO
15 REDACTION THEN? ALL RIGHT. LET'S LOOK AT MR. SINGLETON'S
16 STATEMENT, AND GENTLEMEN TELL ME WHERE THE OBJECTION TO
17 THAT LIES. I HAVE NOT HAD A CHANCE TO INGEST THIS YET, SO
18 TELL ME WHERE THE OBJECTION LIES AND -- AND MR. DOBY, MR.
19 ROGERS, MR. FINNEY?

20 MR. ROGERS: JUDGE, LIKE SEVEN LINES UP FROM THE
21 BOTTOM ON THE FIRST PAGE OF MR. SINGLETON'S STATEMENT.

22 THE COURT: RIGHT.

23 MR. ROGERS: THE SENTENCE THAT BEGINS WHEN THEY GOT
24 IN THE CAR.

25 THE COURT: RIGHT.

1 MR. ROGERS: WE FEEL THAT SENTENCE SHOULD BE TAKEN
2 OUT.

3 MS. NIELSEN: YOUR HONOR, I AGREE THAT THAT SENTENCE
4 HAS TO BE REDACTED.

5 THE COURT: ALL RIGHT.

6 MR. ROGERS: I GUESS THE NEXT STATEMENT IS OKAY, AND
7 THEN WE OBJECT TO THE NEXT SENTENCE BEGINNING AFTER WE GOT
8 BACK ON THE HIGHWAY.

9 THE COURT: THE REFERENCE OF THE NEXT THREE
10 SENTENCES, SOMETHING BEING THROWN OUT THE WINDOW?

11 MR. ROGERS: YES, SIR, YOUR HONOR.

12 MR. DOBY: YES, SIR.

13 THE COURT: ALL RIGHT. MS. NIELSEN, WHAT SAYS THE
14 STATE TO THAT?

15 MS. NIELSEN: IT'S OUR POSITION THAT THAT DOES NOT
16 HAVE TO BE REDACTED. THAT DOES NOT -- ON ITS FACE IS NOT
17 INCULPATORY -- SEE IF I CAN GET THAT WORD OUT --
18 INCULPATORY OF THESE TWO DEFENDANTS WHILE ON ITS FACE, AND
19 IT'S MY UNDERSTANDING FROM CASE LAW THAT FOR IT TO BE
20 REDACTED IT'S GOT TO POINT SPECIFICALLY BY ITSELF ON ITS
21 FACE TO THESE TWO DEFENDANTS OR EITHER ONE OF THESE
22 DEFENDANTS, THE ONE WHERE WANTS REDACTED, HAVING COMMITTED
23 A CRIME OR DONE SOMETHING IN THE COMMISSION OF A CRIME.

24 THIS STATEMENT ON ITS FACE DOES NOT DO THAT.
25 AND WE ARE RELYING ON STATE VERSUS EVANS, WHICH IS A 1994

1 CASE 415 S.E. 2ND 47 WHERE A CO-DEFENDANT'S STATEMENT SAYS
2 -- THE CO-DEFENDANT'S STATEMENT SAID I WASN'T DRIVING ANY
3 WAY WHICH INDICATED THAT THE OTHER CO-DEFENDANT HAD TO
4 HAVE BEEN DRIVING, AND WHAT THE COURT SAYS WAS -- SAID WAS
5 THAT IN BRUTON THE SUPREME COURT HELD THAT THE DEFENDANT'S
6 RIGHT UNDER CONFIRMATION CLAUSE VIOLATED BY COMMISSION OF
7 NON-TESTIFYING CO-DEFENDANTS STATEMENT THAT INCRIMINATES A
8 DEFENDANT.

9 IT GOES ON TO SAY THAT IN THIS CASE THIS
10 STATEMENT DID NOT ON ITS FACE INCRIMINATE EVIDENCE
11 ALTHOUGH IT'S INCRIMINATING IMPORTS WAS CERTAINLY
12 INFERABLE FROM OTHER EVIDENCE THAT WAS PROPERLY ADMITTED
13 AGAINST HIM.

14 OBVIOUSLY IT'S OUR POSITION WHAT WENT OUT THE
15 WINDOW WAS A GUN, BUT THIS STATEMENT DOESN'T REFER TO THEM
16 THROWING GUNS OUT THE WINDOW AND THE ONLY WAY THAT I CAN
17 PROVE OR ATTEMPT TO CONVINCE THE JURY THAT THAT'S WHAT IT
18 WAS BY OTHER EVIDENCE AND NOT BY THIS STATEMENT ITSELF.

19 THE COURT: ALL RIGHT, GENTLEMEN. WANT TO RESPOND TO
20 THAT?

21 MR. DOBY: YOUR HONOR, WHEN YOU READ THE PART WHERE
22 IT ASKS TO BE REDACTED, IT TALKS ABOUT THEY THREW
23 SOMETHING OUT THE WINDOW OF THE CAR. YOUR HONOR, THERE
24 WERE FOUR PEOPLE IN THAT CAR, ONE OF THEM BEING MY
25 CLIENT.

1 AND SO I THINK THE DIRECT INDICATION IS THAT HE
2 HAD DONE SOMETHING. AND I THINK FOR THE VERY REASON THAT
3 THE STATE WANTS TO INTRODUCE THAT STATEMENT IS THE REASON
4 THAT IT OUGHT TO BE REDACTED BECAUSE THEY ARE GOING TO SAY
5 THAT THAT WAS THE GUN BEING THROWN OUT THE WINDOW AND IN
6 FURTHERANCE OF THE CRIME.

7 AND I DON'T HAVE AN OPPORTUNITY TO CALL MR.
8 SINGLETON OBVIOUSLY TO DETERMINE WHETHER OR NOT -- WHETHER
9 HE THOUGHT IT WAS A GUN BEING THREW OUT THE WINDOW OR
10 WHATEVER ELSE. SO THE INTRODUCTION OF THAT OUGHT TO BE
11 PROHIBITED FOR THE VERY REASON THAT COUNSEL SAID SHE
12 WANTED TO INTRODUCE IT BECAUSE SHE'S GOING TO USE IT TO
13 TRY TO SAY THAT MY CLIENT HAD DONE SOMETHING IN
14 FURTHERANCE OF THE CRIME AND THEREFORE IT OUGHT TO BE
15 REDACTED.

16 MR. ROGERS: YOUR HONOR, I JOIN THAT ARGUMENT. JUST
17 WISH TO ADD THIS IS EXACTLY WHAT I PERCEIVE -- THIS IS THE
18 ROOT OF THE PROBLEM THAT YOU HAVE A SITUATION WHERE ONLY
19 CROSS-EXAMINATION COULD ELICIT WHAT WAS THROWN OUT, COULD
20 HAVE BEEN A BEER CAN, IT COULD HAVE BEEN A CIGARETTE
21 LIGHTER, COULD HAVE BEEN ANYTHING NONINCRIMINATING TO THE
22 FACT THAT THE STATE WANTS IT IN CERTAINLY IS FOR IT'S
23 INCRIMINATING VALUE AS AN INDISPENSABLE ISSUE IN THIS
24 CASE, WHAT HAPPENED TO THE GUNS, AND THAT'S WHY THEY NEED
25 IT AND THAT'S EXACTLY WHAT BRUTON IS DESIGNED TO PREVENT.

1 THE COURT: THANK YOU. MR. FINNEY?

2 MR. FINNEY: THE STANDPOINT OF MR. WITHERSPOON AGREE
3 THAT THAT PART OUGHT TO BE EXCISED OUT OR REDACTED OUT.
4 FROM A MISPRISON OF A FELONY OR ACCESSORY STANDPOINT, I'M
5 NOT ABLE TO CROSS-EXAMINE THE MAKER OF THE STATEMENT.

6 AND I HAVE A UNIQUE POSITION THAT I WASN'T
7 INVOLVED DIRECTLY, BUT THAT THERE WAS SOME INDIRECT
8 ACTIVITY, I THINK I OUGHT TO BE ABLE TO CROSS-EXAMINE AND
9 EXPLORE IT AND THAT STATEMENT PUTS MY DRIVER IN A POSITION
10 OF PERHAPS KNOWING SOMETHING OR HEARING SOMETHING THAT I'M
11 NOT ABLE TO GET OUT ON THE RECORD.

12 AND I THINK, YOUR HONOR, THAT IT ACTUALLY MAY
13 JUST BE MORE THAN THAT SENTENCE THAT STARTS WITH AFTER WE
14 GOT BACK. I THINK HE WOULD HAVE TO GO ALL THE WAY DOWN TO
15 THE WORD SHORTLY.

16 THE COURT: THAT'S RIGHT. THAT'S WHAT I'M LOOKING
17 AT. IT'S THREE SENTENCES TOGETHER.

18 MR. FINNEY: YES, SIR.

19 (WHEREUPON THERE WAS A PAUSE).

20 THE COURT: AS I LIKE AT THE STATEMENT IN ITS
21 ENTIRETY, DOING IT NOW FOR THE FIRST TIME, THE IMPORTANCE
22 OF THE STATEMENT BY MR. SINGLETON, STATE'S EXHIBITS 1 FOR
23 IDENTIFICATION INDICATES THAT ALL FOUR OF THESE
24 INDIVIDUALS WERE IN THE VEHICLE.

25 THE CONTEXT OF IT IS THAT AFTER THE SHOOTING

1 OCCURRED, WE WERE ON OUR WAY BANK HOME WHEN THEY THREW
2 SOMETHING OUT OF THE WINDOW OF THE CAR. NOW, OBVIOUSLY
3 THAT IMPLICATES EVERYBODY EXCEPT THE SPEAKER HIMSELF. AND
4 TO THE EXTENT THAT THIS PERSON MIGHT BE CHARGED, IT
5 IMPLICATES HIM.

6 BUT THE PREJUDICE TO THE OTHERS IS FAR GREATER
7 THAN THE PROBATIVE VALUE ON THE ISSUE OF MISPRISON OR EVEN
8 ACCESSORY AFTER THE FACT. THERE IS A CLEAR INFERENCE
9 OBVIOUSLY AS MS. NIELSEN HAS INDICATED IS THREW THE GUN
10 OUT OF THE WINDOW.

11 THAT'S THE REASON THEY COULDN'T FIND IT. THAT
12 IS THE -- THAT'S THE STEREO TYPICAL OR QUINTESSENTIAL
13 BRUTON ISSUE. THE STATEMENT BY ONE CO-DEFENDANT THAT
14 IMPLICATES ANOTHER CO-DEFENDANT WHEN THE STATEMENT -- WHEN
15 THE PERSON WHO GAVE THE STATEMENT IS NOT TESTIFYING AND
16 THEREFORE THE CO-DEFENDANT WHO IS IMPLICATED BY THE
17 STATEMENT IS UNABLE BY CROSS-EXAMINATION TO PUT THAT
18 STATEMENT TO THE TEST OF PROOF, AS A DIRECT VIOLATION OF
19 THE CONFRONTATION OF CLAUSE AND THEREFORE VIOLATION OF THE
20 CASE OF BRUTON VERSUS UNITED STATES.

21 AND FOR THAT REASON THE STATEMENT BEGINNING FIVE
22 LINES FROM THE BOTTOM AFTER WE GOT BACK FROM THE HIGHWAY A
23 GOOD PIECE AWAY FROM THE CLUB, THEY THREW SOMETHING OUT OF
24 THE WINDOW IS BARRED. SOMETHING HIT THE WINDOW AS THEY
25 WERE THROWING IT OUT.

1 I DON'T KNOW IF THEY THREW IT OUT THE SAME
2 WINDOW OR IF THEY THREW IT OUT EACH PASSENGER WINDOW. ALL
3 MUST BE DELETED IN ORDER TO COMPLY WITH BRUTON. MS.
4 NIELSEN, THE ONLY WAY TO CLEAN THIS UP SO AS TO HAVE IT
5 INTRODUCED THROUGH MR. SINGLETON IS THROUGH MISPRISION OF
6 A FELONY OR THE OTHER CHARGE IS TO DELETE REFERENCE TO ANY
7 OF THE NAMES OF THOSE INDIVIDUALS IN THAT ISSUE.

8 I'M NOT SURE THAT THAT WOULD SERVE THE PURPOSE
9 EITHER, BUT CLEARLY THE STATEMENT NEEDS TO BE REDACTED AS
10 I HAVE INDICATED IN ORDER FOR IT TO BE ADMISSIBLE IN THE
11 EVENT THAT MR. SINGLETON HIMSELF DOES NOT TESTIFY. ALL
12 RIGHT.

13 MR. JORDAN: JUDGE, ONE -- DID YOU ALSO TAKE OUT THE
14 -- THEY AGREED TO TAKE OUT THE FIRST -- THANK YOU.

15 THE COURT: I DIDN'T HEAR YOUR QUESTION. DID YOU
16 HAVE--

17 MR. JORDAN: I REMEMBERED THAT THEY STIPULATED THAT
18 FIRST SENTENCE CAME OUT WHEN THEY...

19 THE COURT: THAT'S RIGHT. THAT'S RIGHT.

20 MR. JORDAN: JUDGE, I WOULD JUST, YOU KNOW, WE WOULD
21 HAVE A CONCERN IN THE MANNER IN WHICH THE STATEMENT IS
22 PRESENTED. I IMAGINE THAT THE OFFICER WILL JUST READ FROM
23 IT, BUT AS WE ARE CHARGED WITH MISPRISON, WE WOULD HAVE AN
24 INTEREST IN THE FORMAT IN WHICH IT'S PRESENTED TO THE
25 JURY, WHETHER IT'S SO THAT IT'S NOT PRESENTED IN AN

1 ATTEMPT TO SAY IT WAS MISLEADING. THANK YOU..

2 THE COURT: YOU MEAN YOU ARE CONCERNED ABOUT IN THE
3 STATEMENT IS SHOWN WITH OBVIOUS BLANKS IN IT?

4 MR. JORDAN: YES.

5 THE COURT: WELL, LET'S FIGURE OUT A WAY TO WORK THAT
6 OUT. MIGHT HAVE TO GO TO A WORD PROCESSOR AND SQUEEZE
7 THOSE THINGS IN AND DEAL WITH THAT.

8 MS. NIELSEN: JUDGE, THAT MIGHT WORK BETTER. I THINK
9 NORMALLY THE WAY USUALLY IS THE JUDGE HAS TO EXPLAIN TO
10 THE JURY THAT AS A MATTER OF LAW YOU HAD TO TAKE THEM OUT,
11 BUT I DON'T HAVE A PROBLEM WITH -- I THINK YA'LL CAN PUT
12 IT ON A WORD PROCESSOR AND SQUEEZE IT OUT. I MEAN, THAT
13 WOULD BE -- ACTUALLY BE BETTER.

14 THE COURT: YES, I THINK SO, TOO. AND IN FACT, THIS
15 UNLIKE SOME HANDWRITTEN STATEMENTS IT CAN'T BE CUT AND
16 PASTED, THIS ONE CAN BE. SO THAT WOULD BE THE BEST WAY TO
17 DO IT. ALL RIGHT. FOLKS, LET'S TAKE ABOUT TEN MINUTES.
18 THE JURY IS GOING TO BE MAD ENOUGH TO KILL US ALL BY ABOUT
19 THURSDAY.

20 MAYBE BY THURSDAY THEY WILL HAVE FORGOTTEN THE
21 FACT WE WASTED AN HOUR OF THEIR TIME ON TUESDAY MORNING.
22 LET'S TAKE TEN MINUTES TO GET OUR HOUSE IN ORDER AND START
23 PRESENTING THIS CASE, AND MS. NIELSEN, THE PLEA, CAN WE
24 SQUEEZE THAT IN REAL QUICKLY BEFORE THE JURY COMES IN?

25 MS. NIELSEN: YES, SIR.

THE COURT: ALL RIGHT.

(WHEREUPON A BRIEF RECESS WAS TAKEN) .

THE COURT: ALL RIGHT. MS. NIELSEN, NOW IS THE STATE
READY TO PROCEED?

MS. NIELSEN: YES, SIR.

THE COURT: GENTLEMEN FOR THE DEFENSE, ALL THE
DEFENDANTS READY TO PROCEED?

MR. DOBY: YES, SIR, YOUR HONOR.

MR. ROGERS: YES, YOUR HONOR.

MR. JORDAN: YES, YOUR HONOR.

MR. FINNEY: YES, YOUR HONOR.

THE COURT: THANK YOU. THE JURY WILL BE BROUGHT IN,
A FOREPERSON WILL BE APPOINTED AND SWORN AND BRIEF OPENING
STATEMENTS WILL BE MADE BY ALL OF YOU AND WE WILL START
THE TRIAL. BRING THE JURY IN, PLEASE.

(WHEREUPON THE JURY ENTERED THE COURTROOM AT 11:06
A.M.)

THE COURT: MRS. MACK? WHO IS MRS. MACK? MRS. MACK,
I WANT YOU TO SIT IN THAT FIRST CHAIR RIGHT THERE. YOU
CAN STAND RIGHT WHERE YOU ARE FOR THE TIME BEING, PLEASE
MA'AM. MRS. MACK, I'LL ASK YOU TO OCCUPY THAT CHAIR. I
WANT YOU TO SERVE AS THE FORELADY OF THAT JURY. ALL THIS
MEANS IS YOU'LL BE THE SPOKESMAN OF THE JURY.

WHEN THE TRIAL IS OVER, YOU WILL BE RESPONSIBLE
FOR WRITING THE VERDICT OF THE JURY. I WILL TELL YOU MORE

1 ABOUT THAT BEFORE YOU HAVE TO DO IT. RIGHT NOW ALL YOU
2 NEED TO KNOW IS YOU'VE GOT A RESERVED SEAT. YOU OCCUPY
3 THAT CHAIR THROUGHOUT THE TRIAL OF THIS CASE.

4 MRS. JACKSON, MRS. MELISSA JACKSON, WHERE IS
5 MRS. JACKSON? MRS. JACKSON, I'M GOING TO ASK YOU TO SIT
6 RIGHT -- SWAP PLACES WITH THIS LADY RIGHT BEHIND YOU
7 PLEASE BECAUSE YOU'RE AN ALTERNATE JUROR AND THE
8 ALTERNATES WILL SIT IN THAT PLACE, AND MR. BOBBY WILSON,
9 WHERE IS MR. WILSON?

10 MR. WILSON, YOU'RE IN THE RIGHT CHAIR ALREADY.
11 THANK YOU. MRS. JACKSON AND MR. WILSON, AS ALTERNATE
12 JURORS YOU WILL OCCUPY THOSE TWO CHAIRS. DOESN'T MATTER
13 WHICH DURING THE COURSE OF THIS TRIAL UNLESS I TELL YOU
14 SOME TIME DURING THE TRIAL TO SIT SOMEWHERE ELSE, OKAY?

15 THE REST OF YOU LADIES AND GENTLEMEN DON'T HAVE
16 RESERVED SEATS. PLEASE MOVE ALL THE WAY DOWN THOUGH WHEN
17 YOU COME IN FROM TIME TO TIME SO THAT YOU WON'T LEAVE AN
18 OPEN CHAIR BEYOND YOU THAT SOMEBODY HAS TO STEP ACROSS YOU
19 TO GET TO. THAT KIND OF PAINS BOTH OF YOU DURING THE
20 COURSE OF THE TRIAL.

21 LADIES AND GENTLEMEN, WE ARE GOING TO SWEAR YOU
22 IN NOW AS JURORS AND BEGIN THE TRIAL OF THIS CASE. PLEASE
23 PAY ATTENTION TO THE OATH THAT YOU'RE ABOUT TO TAKE. IT'S
24 AN IMPORTANT OATH. IT'S ARTFULLY WORDED AND IT IMPOSES A
25 CERTAIN OBLIGATION ON YOU THAT I WILL REMIND YOU OF DURING

1 THE TRIAL. MADAM CLERK, IF YOU WILL PLEASE SWEAR THE
2 JURY.

3 (WHEREUPON THE JURY WAS SWORN) .

4 THE COURT: LADIES AND GENTLEMEN, BEFORE WE GET ANY
5 FURTHER, LET ME APOLOGIZE TO YOU. WE KEPT YOU BACK THERE
6 FOR AN HOUR AND HALF THIS MORNING. GOT YOU IN AN HOUR AND
7 A HALF EARLY. BEFORE WE BEGIN ANY TRIAL, THERE IS ALWAYS
8 WORK TO BE DONE TO GET PRELIMINARY MATTERS OUT OF THE WAY
9 SO THAT WE CAN SORT OF CLEAR THE DECKS AND MAKE THINGS
10 SMOOTHER FOR PRESENTATION BEFORE YOU.

11 EVEN DURING THE TRIAL ITSELF THERE ARE
12 NECESSARILY INTERRUPTIONS FROM TIME TO TIME THAT MIGHT
13 COME UP ESPECIALLY WHEN WE HAVE FOUR INDIVIDUALS AND FOUR
14 LAWYERS ON THE DEFENSE SIDE AS WELL AS THE STATE'S, A GOOD
15 MANY WITNESSES TO DEAL WITH. THOSE THINGS ALL JUST MAKE
16 THE PROCESS A LITTLE BIT MORE COMPLEX FROM THE STANDPOINT
17 OF ADMINISTRATION.

18 DOESN'T MEAN THAT THIS CASE IS ANY MORE
19 IMPORTANT OR LESS IMPORTANT THAN ANY OTHER CASE THAT WE
20 TRY. IT IS SIMPLY BECAUSE OF THE NATURE OF THE NUMBER OF
21 INDIVIDUALS INVOLVED THAT IT OBVIOUSLY TAKES A LITTLE BIT
22 LONGER TO WORK THROUGH SOME OF THESE THINGS.

23 WE STAYED LATE YESTERDAY AFTERNOON AND WORKED
24 AND GOT BACK HERE EARLY THIS MORNING AND DID SOME MORE
25 WORK. WE DID THAT IN AN ATTEMPT NOT TO HAVE TO KEEP YOU

1 BACK THERE AS LONG AS WE DID THIS MORNING, BUT IN SPITE OF
2 THOSE EFFORTS, WE DID HAVE TO KEEP YOU BACK THERE UNTIL WE
3 RESOLVED ALL OF THOSE ISSUES WE HAD TO DEAL WITH OUTSIDE
4 OF YOUR PREFERENCE.

5 WANT TO APOLOGIZE IN ADVANCE FOR THAT. VERY
6 MINDFUL OF THE FACT WE BRING YOU TO THE TABLE AND THE
7 INCONVENIENCE WE CAUSED YOU, AND I CAN PROMISE YOU WE
8 DON'T TAKE YOUR TIME LIGHTLY. AND I WILL DO ALL THAT I
9 CAN TO SEE THAT WE DON'T CAUSE THAT INCONVENIENCE TO YOU
10 IN THE FUTURE.

11 ALTHOUGH I CAN SAY THAT WE DID USE THE TIME
12 WISELY AND IT WAS NECESSARY, IT WAS NOT SOMETHING THAT WE
13 JUST DID FLIPPANTLY AND WITHOUT REGARD TO YOUR
14 CONSIDERATIONS.

15 NOW LADIES AND GENTLEMEN, WE ARE GOING TO BEGIN
16 THIS TRIAL, AND BEFORE WE BEGIN THE TRIAL I WANTED TO TAKE
17 A FEW MINUTES TO TELL YOU WHAT THIS PROCESS IS ALL ABOUT
18 AND HOW IT WILL ACTUALLY UNFOLD BEFORE YOU PROCEDURALLY
19 OVER THE NEXT COUPLE OF DAYS AND TO PERHAPS GIVE YOU SOME
20 IDEA OF HOW THE PROCESS WORKS, AND HOPEFULLY AS I DO THAT
21 YOU WILL FEEL A LITTLE BIT MORE COMFORTABLE IN YOUR
22 POSITION AS JURORS.

23 OBVIOUSLY NONE OF YOU BEEN IN THIS POSITION, BUT
24 HOW MANY OF YOU HAVE EVER DONE IT BEFORE? HOW MANY OF YOU
25 HAVE EVER SERVED AS JURORS BEFORE IN ANY TYPE OF CASE?

1 HAVE YOU EVER DONE THAT? THAT'S NOT BAD. PRETTY GOOD BIT
2 OF EXPERIENCE.

3 WHEN I COME TO SMALL COUNTIES LIKE LEE COUNTY
4 AND MY HOME COUNTY OF CLARENDON COUNTY, DON'T HAVE A WHOLE
5 LOT OF PEOPLE, OCCASIONALLY FIND FOLKS WHO GET CALLED BACK
6 FOR JURY SERVICE ONE SORT OR ANOTHER MORE OFTEN WE DO IN
7 LARGE COUNTIES WHERE IT'S VERY UNUSUAL FOR ANYBODY TO
8 SERVE MORE THAN ONE TIME.

9 LET ME TELL YOU A LITTLE BIT ABOUT WHAT THIS
10 PROCESS IS ALL ABOUT. WHEN I FINISH TALKING TO YOU IN
11 JUST A MOMENT, MS. NIELSEN ON BEHALF OF THE STATE IS GOING
12 TO STAND BEFORE YOU AND SHE'S GOING TO MAKE AN OPENING
13 STATEMENT, AND IN HER OPENING STATEMENT SHE IS GOING TO
14 OUTLINE FOR YOU IN SORT OF A PREVIEW FASHION WHAT THIS
15 CASE IS ALL ABOUT.

16 I HAVE READ THE INDICTMENT TO YOU AND YOU KNOW
17 WHAT THE BARE CHARGES ARE, BUT YOU DON'T KNOW WHAT THIS
18 CASE IS ALL ABOUT BEYOND THAT, SO SHE'S GOING TO TELL YOU
19 A LITTLE BIT ABOUT WHAT THE CASE IS ALL ABOUT FROM THE
20 STATE'S PERSPECTIVE AND SHE MAY EVEN TELL YOU SOME OF WHAT
21 THE STATE MIGHT INTEND TO OFFER BY WAY OF PROOF IN SUPPORT
22 OF THE CHARGES THAT IT HAS BROUGHT IN THIS CASE.

23 WHEN SHE IS FINISHED MAKING HER OPENING
24 STATEMENT, THEN THE DEFENDANTS MR. EVANS BY MR. DOBY AND
25 MR. TAYLOR BY MR. ROGERS, MR. SINGLETON BY MR. JORDAN AND

1 MR. WITHERSPOON BY MR. FINNEY EACH HAVE THE RIGHT TO MAKE
2 OPENING STATEMENTS BEFORE YOU, BUT THEY DON'T HAVE ANY
3 OBLIGATION TO MAKE OPENING STATEMENTS, AND I WILL TELL YOU
4 WHY IN JUST A FEW MOMENTS.

5 AFTER THE OPENING STATEMENTS HAVE BEEN MADE,
6 LADIES AND GENTLEMEN, THEN YOU WILL ACTUALLY BEGIN TO SEE
7 AND HEAR THE REAL TRIAL DEVELOP AND UNFOLD BEFORE YOU AND
8 THAT WILL OCCUR THROUGH THE PRESENTATION OF WITNESSES WHO
9 WILL TAKE AN OATH, SIT IN THIS CHAIR RIGHT HERE BETWEEN ME
10 AND YOU AND ANSWER QUESTIONS THAT WILL BE PUT TO THEM BY
11 LAWYERS FOR ALL SIDES IN THIS CASE.

12 THE STATE WILL PRESENT EVIDENCE AND TESTIMONY
13 FIRST AND IT WILL CALL ITS WITNESSES FIRST. THAT'S THE
14 WAY THIS PROCESS WORKS. EVIDENCE MAY ALSO TAKE THE FORM
15 OF PHOTOGRAPHS OR DOCUMENTS OR ITEMS, THINGS LIKE THAT
16 THAT MAY COME INTO EVIDENCE UNDER OUR RULES.

17 THIS STATE AS I HAVE SAID WILL PRESENT ITS
18 EVIDENCE AND TESTIMONY FIRST. AND AFTER THE STATE HAS PUT
19 IN ITS CASE, THAT IS PRESENTED ALL OF ITS EVIDENCE AND
20 TESTIMONY, THEN THE DEFENDANTS EACH ONE OF THEM AND ALL OF
21 THEM HAVE A RIGHT TO PRESENT EVIDENCE AND TESTIMONY IF
22 THEY WANT TO BUT NONE OF THEM ARE UNDER AN OBLIGATION TO
23 PRESENT EVIDENCE AND TESTIMONY.

24 AND ONCE AGAIN I WILL TELL YOU WHY IN JUST A
25 MOMENT. BUT AFTER ALL OF THE EVIDENCE AND TESTIMONY HAS

1 BEEN PRESENTED THEN THE LAWYERS WILL COME BACK BEFORE YOU
2 AND MAKE THEIR CLOSING STATEMENTS, THEIR FINAL ARGUMENTS.

3 AND AFTER THAT HAS BEEN DONE, THEN I WILL
4 INSTRUCT YOU OR JUST TELL YOU WHAT THE LAW IS. YOU'RE NOT
5 EXPECTED TO KNOW WHAT THE LAW IS. WE BRING YOU IN FROM
6 YOUR JOBS AND FROM YOUR HOMES AND FROM EVERYWHERE ELSE
7 THAT YOU WOULD RATHER BE AND WE DON'T EXPECT YOU TO KNOW
8 THE LAW. THAT IS MY JOB.

9 I TELL YOU WHAT THE LAW IS. YOUR JOB HOWEVER IS
10 THE JOB THAT YOU JUST TOOK AN OATH TO DO AND THAT IS TO
11 WELL AND TRULY TRY THIS CASE AND A TRUE VERDICT RENDER
12 ACCORDING TO THE EVIDENCE. BECAUSE WHERE EVIDENCE IS
13 CONCERNED, LADIES AND GENTLEMEN, YOU ARE A JUDGE JUST LIKE
14 I'M A JUDGE OF THE LAW, YOU ARE THE JUDGE OF THE
15 EVIDENCE.

16 YOU WILL LISTEN TO WHAT THE WITNESSES SAY AND
17 YOU WILL LOOK AT THE ITEMS OF EVIDENCE. AND WHEN ALL HAS
18 BEEN SAID AND DONE, YOU WILL GO BACK THERE AND START TO
19 TALK ABOUT THAT EVIDENCE AND DISCUSS IT AMONG YOURSELVES
20 AND DECIDE HOW IMPORTANT IT IS AND WHETHER OR NOT YOU
21 BELIEVE IT BECAUSE THAT IS WHAT WE EXPECT YOU TO DO.

22 AND YOU DO THAT BY APPLYING THE SAME ABILITIES
23 THAT YOU HAVE IN THIS COURTROOM THAT YOU USE OUTSIDE OF
24 THIS COURTROOM EVERY DAY. EACH ONE OF YOU IN YOUR JOBS,
25 IN YOUR POSITIONS IN RAISING YOUR FAMILIES, IN DOING

1 WHATEVER YOU DO, USE THOSE QUALITIES EVERY DAY AWAY FROM
2 THIS COURTROOM THAT WE ASK YOU TO BRING TO BARE IN THIS
3 COURTROOM.

4 EVER SINCE YOU HAVE BEEN OLD ENOUGH TO MAKE UP
5 YOUR OWN MINDS ABOUT THINGS THAT YOU'RE TOLD AND THINGS
6 THAT YOU READ, YOU ARE APPLYING THE ABILITIES, YOU HAVE
7 BEEN APPLYING THE ABILITIES THAT WE ARE GOING TO ASK YOU
8 TO APPLY HERE IN THIS COURTROOM OVER THE NEXT COUPLE OF
9 DAYS.

10 WHEN YOU READ SOMETHING IN A NEWSPAPER OR IN A
11 MAGAZINE ARTICLE OR WHEN YOU HEAR SOMETHING ON THE
12 TELEVISION OR WHEN YOUR CHILDREN TELL YOU SOMETHING OR
13 YOUR EMPLOYER OR YOUR EMPLOYEE OR CUSTOMERS OR A FRIEND
14 TELLS YOU SOMETHING, THE FIRST THING THAT YOU DO IS TO
15 DECIDE WHETHER OR NOT YOU BELIEVE IT.

16 YOU DO THAT BY USING YOUR COMMON SENSE AND YOUR
17 SENSE OF LOGIC AND YOUR SENSE OF REASON AND YOUR SENSE OF
18 JUDGMENT. AND ONCE YOU DECIDE THAT YOU DO BELIEVE IT, OF
19 COURSE IF YOU DON'T BELIEVE IT YOU DON'T GIVE IT ANY
20 WEIGHT AT ALL, BUT ONCE YOU DECIDE THAT YOU DO BELIEVE IT,
21 THE NEXT THING YOU DECIDE IS HOW IMPORTANT THAT IS TO THE
22 DECISION YOU'RE GOING TO BE ASKED TO MAKE, WHAT VALUE DOES
23 IT HAVE AND HOW DOES IT WEIGH ON THE DECISION THAT YOU ARE
24 GOING TO BE ASKED TO MAKE.

25 WELL, THAT'S WHAT YOU DO IN THIS COURTROOM.

1 THAT IS EXACTLY WHAT YOU DO HERE. SO YOU ARE QUALIFIED,
2 EMINENTLY QUALIFIED TO DO THE JOB THAT WE HAVE IMPOSED
3 UPON YOU AND THAT YOU HAVE JUST TAKEN AN OATH TO DO.

4 NOW LADIES AND GENTLEMEN, WHILE YOU'RE JUDGES OF
5 THE EVIDENCE, IT'S REAL IMPORTANT THAT YOU UNDERSTAND WHAT
6 IS EVIDENCE AND WHAT IS NOT EVIDENCE. I HAVE TOLD YOU
7 WHAT IS EVIDENCE. THE TESTIMONY FROM THE WITNESS STAND
8 AND THE PHOTOGRAPHS, THE DOCUMENTS, THE ITEMS THAT YOU
9 WILL SEE HERE IN THIS COURTROOM AND THAT YOU WILL TAKE
10 WITH YOU IN THE JURY ROOM TO LOOK AT MORE CLOSELY, THAT IS
11 WHAT IS EVIDENCE.

12 THE OPENING STATEMENTS THE LAWYERS MAKE, THE
13 CLOSING STATEMENTS THAT THEY MAKE, THE QUESTIONS THAT THEY
14 ASK, THOSE THINGS ARE NOT EVIDENCE. YOUR VERDICT THEN HAS
15 TO REST NOT ON THE QUESTION BUT ON THE ANSWER TO THE
16 QUESTION ALONG WITH THOSE ITEMS AND THOSE DOCUMENTS THAT
17 WILL COME IN UNDER OUR RULES.

18 NOW LADIES AND GENTLEMEN, I TOLD YOU A FEW
19 MOMENTS AGO THAT THE STATE WOULD PRESENT EVIDENCE AND
20 TESTIMONY FIRST AND PRESENT AN OPENING STATEMENT FIRST AND
21 THE DEFENDANTS ARE UNDER NO OBLIGATION EITHER TO PRESENT
22 AN OPENING STATEMENT OR TO PRESENT EVIDENCE AND
23 TESTIMONY.

24 AND THE REASON FOR THIS IS AS YOU ALREADY KNOW,
25 THE DEFENDANTS IN THIS CASE HAVE PLED NOT GUILTY TO THESE

1 CHARGES. WHEN SOMEONE PLEADS NOT GUILTY TO A CHARGE IN
2 CRIMINAL COURT, UNDER THE LAW THAT PERSON IS PRESUMED TO
3 BE INNOCENT OF THAT CHARGE. YOU HAVE ALL HEARD
4 PRESUMPTION OF INNOCENCE ALL OF YOUR LIVES, PERHAPS SINCE
5 YOU WERE IN SCHOOL.

6 AND HOW MANY OF YOU ALSO HEARD OF THE PHRASE THE
7 STATE -- A PERSON IS INNOCENT UNTIL PROVEN GUILTY? HAVE
8 YOU EVER HEARD THAT? SURE YOU HAVE. THAT'S RIGHT. MOST
9 OF YOU HAVE ALREADY BECAUSE IT'S AN INTEGRAL PART OF OUR
10 SYSTEM OF JUSTICE.

11 IT IS A FUNDAMENTAL PART OF OUR CONSTITUTION.
12 IF YOU LOOK AT THAT PHRASE FOR JUST A MINUTE, INNOCENT
13 UNTIL PROVEN GUILTY. THE PHRASE DOESN'T SAY A THING IN
14 THE WORLD ABOUT HAVING TO PROVE INNOCENCE. AND WHAT THAT
15 MEANS PRACTICALLY IN THIS COURTROOM IS THIS.

16 WHEN SOMEONE PLEADS NOT GUILTY TO A CHARGE, THEY
17 DON'T HAVE TO TAKE THE STAND AND TRY TO CONVINCE YOU THAT
18 THEY ARE NOT GUILTY. THEY DON'T HAVE TO BRING IN OTHER
19 WITNESSES TO TAKE THIS STAND AND TRY TO MAKE YOU BELIEVE
20 THAT THEY DID NOT DO THE THING THAT THEY ARE CHARGED WITH
21 DOING.

22 THEY ARE PRESUMED UNDER THE LAW NOT TO HAVE DONE
23 THOSE THINGS. THEY ARE PRESUMED TO BE INNOCENT, SO THEY
24 DO NOT HAVE TO PROVE THEIR INNOCENCE. THE STATE HAS TO
25 PROVE GUILT. THAT IS WHERE THE BURDEN OF PROOF LIES. IT

1 LIES ON THE STATE.

2 AND THAT IS NOT JUST TRUE IN THIS CASE. IT'S
3 TRUE IN EVERY CASE BROUGHT IN THE CRIMINAL COURTS OF OUR
4 STATE. THE STATE HAS THE JOB OF CONVINCING ALL OF YOU OF
5 THE GUILT OF THE DEFENDANTS BEYOND A REASONABLE DOUBT
6 BEFORE YOU CAN CONVICT THEM AND FIND THEM GUILTY.

7 AND ESSENTIALLY WHAT THAT MEANS IS THIS. YOU
8 WILL BE LISTENING TO EVIDENCE AND TESTIMONY OVER THE NEXT
9 COUPLE OF DAYS. AND WHEN ALL HAS BEEN SAID AND DONE, YOU
10 CAN GO BACK THERE AND FINALLY START TALKING ABOUT IT. YOU
11 CAN'T TALK ABOUT IT DURING THE TRIAL.

12 BUT WHEN YOU HAVE HEARD ALL THAT'S GOING TO BE
13 SAID, YOU CAN GO BACK INTO YOUR JURY ROOM AND FINALLY
14 START TO TALK ABOUT IT AMONG YOURSELVES. AND WHEN YOU DO
15 THAT, YOU WILL START TO EVALUATE THAT EVIDENCE, YOU WILL
16 START TO WEIGH IT, DETERMINE ITS TRUTH AND YOU WILL BE
17 MAKING THE DECISION AS TO WHETHER OR NOT THE STATE HAS MET
18 THAT BURDEN OF PROOF.

19 IF THE STATE IS ABLE TO FIRMLY CONVINCE YOU THE
20 DEFENDANTS ARE GUILTY OF THE CRIMES CHARGED, THE STATE
21 WILL HAVE MET ITS BURDEN OF PROOF. BUT AFTER HEARING ALL
22 OF THE EVIDENCE AND CONSIDERING IT, IF YOU THINK THERE IS
23 STILL A REAL POSSIBILITY THAT THE DEFENDANTS ARE NOT
24 GUILTY, THE STATE WILL NOT HAVE MET ITS BURDEN OF PROOF
25 AND YOU WILL EXPRESS YOUR OPINION AS TO WHETHER OR NOT THE

1 STATE HAS MET ITS BURDEN OF PROOF WHILE WRITING A VERDICT
2 AT THE CONCLUSION OF THIS TRIAL OF EITHER GUILTY OR NOT
3 GUILTY.

4 AND IN THAT VERDICT WILL REST YOUR VIEW AND YOUR
5 OPINION AND YOUR DECISION ON WHETHER OR NOT THE STATE HAS
6 MET ITS BURDEN OF PROOF. THANK YOU, LADIES AND GENTLEMEN,
7 FOR YOUR ATTENTION TO THESE REMARKS AND PLEASE NOW GIVE
8 THAT SAME ATTENTION TO THE LAWYERS AS THEY PRESENT OPENING
9 STATEMENTS TO YOU. MS. NIELSEN?

10 MS. NIELSEN: MAY IT PLEASE THE COURT.

11 THE COURT: YES, MA'AM.

12 OPENING STATEMENT BY MS. NIELSEN.

13 GOOD MORNING, LADIES AND GENTLEMEN. AS THE
14 JUDGE TOLD YOU, MY NAME IS DEBBIE TRUETT NIELSEN AND I'M
15 THE RESIDENT ASSISTANT SOLICITOR FOR LEE COUNTY. I LIVE
16 HERE IN LEE COUNTY AND WORK IN THE SOLICITOR'S OFFICE
17 HERE.

18 BEFORE I TALK ABOUT THE CASE A LITTLE BIT, I
19 WANT TO TAKE THIS OPPORTUNITY ON BEHALF OF THE STATE TO
20 THANK YOU FOR BEING HERE. WE ALL KNOW IT'S GETTING CLOSE
21 TO CHRISTMAS, YA'LL COULD BE SOMEWHERE ELSE YA'LL WOULD
22 RATHER BE SOMEWHERE ELSE BESIDES HAVING TO SIT IN THIS
23 JURY BOX.

24 BUT WE STILL BELIEVE THAT OUR SYSTEM OF JUSTICE
25 IS THE BEST SYSTEM IN THE WORLD AND YA'LL KNOW IT HAS ITS

1 PROBLEMS, BUT THE FACT THAT WE HAVE PEOPLE LIKE YOU WHO
2 ARE WILLING TO SERVE AS JURORS IS REALLY WHAT MAKES OUR
3 SYSTEM WORK, SO ON BEHALF OF THE STATE I THANK YOU FOR
4 BEING HERE AND GIVING US YOUR TIME.

5 I AM NOT GOING TO GO A LOT INTO THE FACTS. I
6 HAVE HAD THAT STUFF EVERYONE IN THE WORLD HAS SEEMED TO
7 HAVE HAD LATELY, BUT I WANT TO TALK A LITTLE BIT ABOUT
8 WHAT THE CHARGES ARE. MOST OF THE THINGS I'M GOING TO ASK
9 YOU TO DO IS LISTEN TO THE EVIDENCE THAT'S GOING TO COME
10 FROM THIS WITNESS STAND AND LOOKING AT EXHIBITS.

11 NOTHING I SAY OR NOTHING THESE DEFENSE ATTORNEYS
12 SAY IS EVIDENCE. ALL OF THE EVIDENCE WILL COME FROM THIS
13 WITNESS STAND, PEOPLE TALKING AND TELLING YOU THINGS ARE
14 IMPORTANCE AND EXHIBITS THAT ARE INTRODUCED.

15 THIS IS GOING TO BE LITTLE BIT OF A HEAVY CASE,
16 LADIES AND GENTLEMEN. YA'LL ALREADY KNOW THIS WAS A
17 SHOOTING AT DAVIS COUNTRY CLUB OUT IN LEE COUNTY ON
18 MANVILLE ST. CHARLES HIGHWAY. AND THERE IS A LOT OF
19 SHOOTING GOING ON.

20 THE TESTIMONY IS GOING TO SHOW YOU THAT LAW
21 ENFORCEMENT RETRIEVED 15 SHELL CASINGS FROM THAT SCENE, SO
22 YOU CAN IMAGINE, LADIES AND GENTLEMEN, AND THAT THERE IS A
23 LOT GOING ON AND PEOPLE ARE DUCKING TRYING TO AVOID
24 BULLETS, BUT WE ARE GOING TO PUT UP A LOT OF WITNESSES,
25 FIVE OR SIX WITNESSES WHO WERE ACTUALLY AT THE SCENE WHEN

1 THE SHOOTING WAS GOING ON.

2 NOT ALL OF THEM ARE GOING TO REMEMBER EVERYTHING
3 EXACTLY THE SAME WAY BECAUSE SO MUCH IS GOING ON, LADIES
4 AND GENTLEMEN. CASES DON'T COME IN HERE NORMALLY TIED UP
5 IN NEAT LITTLE PACKAGES, SO WE CAN JUST PRESENT THEM TO
6 YOU, EXACTLY EVERYTHING THAT HAPPENED SO THAT IT'S TOTALLY
7 CLEAR.

8 THAT'S ONE REASON WE'VE GOT 12 JURORS IS FOR
9 YA'LL TO GET TOGETHER AND YA'LL TO DETERMINE WHAT ACTUALLY
10 HAPPENED SO YOU CAN MAKE A DECISION, SO THAT YOU CAN
11 RENDER A VERDICT. AS THE JUDGE HAS TOLD YOU, THE FIRST
12 TWO DEFENDANTS OVER HERE ARE MARCUS EVANS AND GILARON
13 TAYLOR ARE CHARGED WITH MURDERS FOR THE KILLING OF HENRY
14 SCOTT.

15 THE OTHER TWO DEFENDANTS, TRAVIS SINGLETON AND
16 LAMONT WITHERSPOON. LAMONT WITHERSPOON WAS DRIVING THE
17 CAR. TRAVIS SINGLETON WAS IN THE CAR THAT THESE OTHER TWO
18 DEFENDANTS WERE IN WHEN THEY ARRIVED AT THE CLUB AND WHEN
19 THEY LEFT.

20 OF COURSE, THE MURDER CHARGE IS THE MOST SERIOUS
21 OF THE TWO CHARGES, BUT OTHER CHARGES INVOLVED ARE
22 SERIOUS, SO YOU NEED TO PAY CLOSE ATTENTION TO ALL OF THE
23 TESTIMONY INCLUDING WHAT WE PRESENT TO TRY TO CONVINCE YOU
24 THAT THESE TWO DEFENDANTS ARE GUILTY EITHER OF ACCESSORY
25 AFTER THE FACT OR MISPRISON OF A FELONY.

1 AS FAR AS MURDER, LADIES AND GENTLEMEN, THE
2 TESTIMONY FROM THE WITNESSES IS GOING TO SHOW YOU THAT
3 GILARON TAYLOR AND MARCUS EVANS BOTH HAD GUNS THAT SHOT
4 HENRY SCOTT WHO TRIED TO GET AWAY FROM THEM.

5 HE -- AND ACTUALLY RETREATED TO HIS CAR AND GOT
6 A GUN HIMSELF. AND I SUBMIT, LADIES AND GENTLEMEN, WHEN
7 YOU HEAR THE EVIDENCE, YOU WILL KNOW THAT HE DIDN'T HAVE
8 ANY CHOICE. HE COULDN'T GET TO THE CLUB WITHOUT GOING
9 THROUGH THEM, THEY ALREADY HAD HIM, THEY HAD GOT OUT OF
10 THEIR CAR WITH GUNS, BUT HE WENT BACK TO HIS CAR AND AN
11 EYE WITNESS WILL TELL YOU HE WENT BACK TO THE CAR AND GOT
12 A GUN TO PROTECT HIMSELF.

13 YEAH, LADIES AND GENTLEMEN, HE IS DEAD AND I
14 SUBMIT TO YOU HE IS DEAD BECAUSE MARCUS EVANS STARTED THIS
15 AND GILARON TAYLOR HELPED HIM. AS FAR AS MISPRISON OF A
16 FELONY, ACCESSORY AFTER THE FACT OF THE OTHER TWO
17 DEFENDANTS, THE JUDGE IS GOING TO TELL YOU YOU CAN'T FIND
18 THEM GUILTY OF BOTH OF THOSE THINGS.

19 ACCESSORY AFTER THE FACT INVOLVES A LITTLE BIT
20 MORE ACTION BY SOMEBODY THAN MISPRISON A FELONY. THE
21 INDICTMENT ACTUALLY SAYS IS THAT MARCUS EVANS AND GILARON
22 TAYLOR, PRINCIPAL FELON COMMITTED THE MURDER, WERE AIDED
23 THEM OR ASSISTED AFTER THAT BY THESE TWO DEFENDANTS SO
24 THAT THEY WOULDN'T BE DETECTED.

25 MISPRISON OF A FELONY CHARGE SAYS THAT THEY

1 FAILED TO GIVE LAW ENFORCEMENT INFORMATION. SUMTER COUNTY
2 STOPPED THEM IN A CAR, IN A CAR AND TALKED TO THEM THAT
3 NIGHT AND LEE COUNTY LAW ENFORCEMENT OFFICERS ALSO ARRIVED
4 WHILE TALKING TO THEM.

5 AT THAT TIME THEY BASICALLY TOLD LAW ENFORCEMENT
6 ALL THEY KNEW THERE WAS A SHOOTING AT THE CLUB, DIDN'T
7 KNOW WHO WAS INVOLVED, THEY DIDN'T KNOW ANYBODY AND THAT
8 WAS THE BASIS OF THE MISPRISON OF A FELONY CHARGE. I ASK,
9 LADIES AND GENTLEMEN, THAT YOU LISTEN TO THE EVIDENCE AS
10 IT COMES IN.

11 IT'S GOING TO TAKE US AT LEAST TWO, THREE, FOUR
12 DAYS TO GET THROUGH THIS, SO I ASK YA'LL TO BE PATIENT.
13 LISTEN TO THE EVIDENCE. AND I SUBMIT TO YOU AFTER YOU
14 HAVE HEARD ALL OF THE EVIDENCE, YOU WILL FIND THESE
15 DEFENDANTS, ALL FOUR OF THESE DEFENDANTS, GUILTY. THANK
16 YOU.

17 THE COURT: THANK YOU, MS. NIELSEN. MR. DOBY ON
18 BEHALF OF YOUR CLIENT?

19 MR. DOBY: MAY IT PLEASE THE COURT, YOUR HONOR.

20 THE COURT: YES, SIR.

21 OPENING STATEMENT BY MR. DOBY.

22 GOOD MORNING LADIES AND GENTLEMEN. MY NAME IS
23 BRYAN DOBY. I PRACTICE LAW HERE IN BISHOPVILLE WITH JACOB
24 AND ROBERT JENNINGS. I HAVE THE PLEASURE TODAY OF
25 REPRESENTING MR. MARCUS EVANS WHO IS SEATED AT THE TABLE

1 WITH ME.

2 MR. EVANS HAS BEEN CHARGED WITH A CRIME. HE HAS
3 BEEN CHARGED WITH MURDER. HE HAS BEEN CHARGED WITH TAKING
4 THE LIFE OF HENRY SCOTT. LET ME SAY FROM THE BEGINNING ON
5 BEHALF OF MYSELF AND MARCUS THAT WE ARE TRULY SORRY THAT
6 MR. SCOTT DIED, SORRY FOR HIS FAMILY AND HIS LOVED ONES.

7 HOWEVER, HE DID NOT DO IT. HE HAS PLED NOT
8 GUILTY, AND THEREFORE YOU HAVE NOW BEEN CALLED AND
9 SUMMONSED TO HEAR THE CASE AND DETERMINE WHETHER HE IS
10 GUILTY OR INNOCENT. AND AS THE JUDGE HAS INDICATED TO
11 YOU, THE STATE OF SOUTH CAROLINA HAS THE BURDEN OF PROOF
12 IN THIS CASE.

13 THE STATE OF SOUTH CAROLINA MUST PROVE MARCUS
14 GUILTY BEYOND A REASONABLE DOUBT. AND THE JUDGE IS GOING
15 TO GIVE YOU SOME INSTRUCTIONS AT THE END OF THIS CASE
16 ABOUT WHAT REASONABLE DOUBT IS. REASONABLE DOUBT IS A
17 REASON THAT YOU BELIEVE TO HESITATE AND COME TO THE
18 OPINION THAT MARCUS WAS GUILTY.

19 IT'S AN EXTREMELY HIGH BURDEN THAT THE STATE
20 HAS. IT IS AN EXTREMELY HIGH BURDEN FOR A REASON, AND
21 THAT IS BECAUSE THE STATE IS SEEKING TO HOLD SOMEONE
22 GUILTY OF A VERY SERIOUS CRIME, VERY SERIOUS CRIME. YOU
23 ARE GOING TO HEAR TESTIMONY OVER THE NEXT COUPLE OF DAYS
24 FROM THIS WITNESS STAND.

25 YOUR JOB IS TO WEIGH THAT EVIDENCE, TO LOOK

1 THROUGH THAT EVIDENCE, TO TEST THAT EVIDENCE, TO PROBE
2 THAT EVIDENCE BECAUSE WHEN IT COMES RIGHT DOWN TO IT, AT
3 THE END OF THIS CASE YOU ARE GOING TO BE ASKED TO GIVE
4 YOUR OPINION AS TO WHETHER MARCUS EVANS WAS GUILTY.

5 NOW, THAT OPINION MUST BE HELD TO THE HIGH
6 STANDARD OF GUILTY BEYOND A REASONABLE DOUBT. IT'S NOT
7 OFTEN THAT THE STATE OF SOUTH CAROLINA HAS TO LISTEN TO
8 YOUR OPINIONS TO WHAT YOU HAVE TO SAY.

9 JURY DUTY MAY BE THE ONE PLACE THAT YOU GET TO
10 TELL THE STATE OF SOUTH CAROLINA WHAT YOU BELIEVE. IT'S
11 AN EXTREMELY IMPORTANT JOB THAT YOU HAVE. NO ONE ENVIES
12 THE JOB THAT YOU ARE GOING TO HAVE TO DO.

13 IT'S GOING TO BE AN EXTREMELY DIFFICULT CASE
14 BECAUSE YOU ARE GOING TO HAVE TO LISTEN TO ALL OF THE
15 TESTIMONY, YOU ARE GOING TO HAVE TO LISTEN AND PROBE AND
16 DETERMINE WHETHER YOU BELIEVE THAT THAT EVIDENCE MEETS THE
17 STANDARD, THE BURDEN OF GUILTY BEYOND A REASONABLE DOUBT
18 THAT THE STATE HAS TO PROVE TO YOU.

19 THERE IS NO DOUBT IN THIS CASE THAT THERE OUGHT
20 TO BE SYMPATHY FOR HENRY SCOTT'S FAMILY AND HIS LOVED
21 ONES. BUT YOU HAVE THE EXTREMELY DIFFICULT POSITION OF
22 PUTTING ASIDE ANY SYMPATHY THAT YOU MAY HAVE AND DECIDING
23 THIS CASE ON FACTS.

24 YOU ARE GOING TO HEAR TESTIMONY FROM WITNESSES.
25 WON'T GET A CHANCE TO ASK ANY QUESTIONS. STATE'S GOING TO

1 PRESENT THEIR WITNESSES. AT THIS POINT I'M ASKING YOU TO
2 LISTEN INTENTLY, CLOSELY. KEEP IN MIND THAT I'M GOING TO
3 BE TESTING -- THAT I AM TESTING THIS EVIDENCE, THIS CASE
4 THAT THE STATE IS PUTTING ON, AND AT THE END I AM GOING TO
5 HAVE TO WRITE A VERDICT.

6 AND YOU DETERMINE WHETHER THE STATE HAS MET ITS
7 BURDEN OF GUILTY BEYOND A REASONABLE DOUBT. MARCUS EVANS
8 HAS PLACED HIS TRUST, HAS PLACED HIS CASE, INTO YOUR
9 HANDS. IT'S GOING TO TAKE A COUPLE OF DAYS.

10 IT'S GOING TO BE DIFFICULT SOMETIMES FOR YOU TO
11 PAY ATTENTION TO ALL OF THE WITNESSES. HOWEVER, IT'S
12 VITALLY IMPORTANT TO MARCUS EVANS. I THANK YOU FOR YOUR
13 TIME AND ATTENTION THAT YOU ARE GOING TO GIVE TO THIS CASE
14 EVEN BEFORE WE START. AND REMEMBER WHAT YOUR JOB IS.
15 REMEMBER WHAT YOU'RE GOING TO BE CALLED UPON TO DO AT THE
16 END OF THIS CASE. THANK YOU.

17 THE COURT: THANK YOU, MR. DOBY. MR. ROGERS?

18 MR. ROGERS: MAY IT PLEASE THE COURT.

19 THE COURT: YES, SIR.

20 OPENING STATEMENT BY MR. ROGERS.

21 MADAM FOREMAN AND MEMBERS OF THE JURY, AS YOU
22 HEARD YESTERDAY MY NAME IS JIMMY ROGERS. I PRACTICE
23 PRIMARILY IN COLUMBIA AND I REPRESENT GILARON TAYLOR, THE
24 FOURTH MAN SEATED AT THE TABLE THERE. HE IS CHARGED WITH
25 MURDER.

1 THERE IS NO QUESTION THAT THE DEATH OF HENRY
2 SCOTT IS TRAGIC AND WINS YOUR SYMPATHIES, BUT YOU EACH
3 HAVE TAKEN AN OATH TO JUDGE THIS CASE ON THE EVIDENCE THAT
4 YOU HEAR FROM THE WITNESS STAND. YOU CAN'T LET YOUR
5 SYMPATHIES FOR MR. TAYLOR AND HIS FAMILY COLOR YOUR
6 JUDGMENT OR COLOR YOUR DECISION IN THIS CASE.

7 AS HIS HONOR TOLD YOU, THE STATE HAS THE BURDEN
8 OF SHOWING TO YOU THAT GILARON TAYLOR IS RESPONSIBLE FOR
9 THE MURDER, AND THAT IS A HEAVY BURDEN, AND THE STATE'S
10 EVIDENCE IN THIS CASE IS GOING TO PRIMARILY CONSIST OF
11 IDENTIFICATION TESTIMONY, EYE WITNESS TESTIMONY.

12 AND MOST PEOPLE THINK THAT IDENTIFICATION
13 TESTIMONY IS VERY STRONG TESTIMONY, BUT THAT IS WHAT YOU
14 ARE HERE TO DECIDE BECAUSE YOU SEE, PEOPLES BRAINS AREN'T
15 LIKE A VIDEO TAPE WHERE THEY CAN SEE AN EVENT AND THEN AT
16 A LATER TIME HAVE THE ABILITY TO RECALL JUST AS THEY HAVE
17 SEEN IT.

18 SOMETIMES EYE WITNESS TESTIMONY CAN BE VERY
19 RELIABLE, OTHER TIMES IT CANNOT. AND THE THINGS I ASK YOU
20 TO LISTEN FOR AS YOU ARE LISTENING TO THE TESTIMONY IN
21 THIS CASE ARE THE OPPORTUNITY THAT THE WITNESSES HAD TO
22 OBSERVE WHAT THEY SAY THEY OBSERVED, OTHER FACTORS THAT
23 AFFECT THAT, AND TO OBSERVE WHAT THE LIGHTING WAS LIKE,
24 HOW LONG THEY HAD TO OBSERVE THE EVENTS, DID THEY OBSERVE
25 THE EVENTS UNDER CALM AND STABLE CONDITIONS OR WERE THEY

1 OBSERVING THEM IN A HECTIC AND IN AN ERRATIC CONDITION.

2 ALL OF THOSE THINGS YOU CAN USE YOUR COMMON
3 SENSE, AFFECT A PERSON'S ABILITY TO OBTAIN THE
4 INFORMATION, TO SEIZE THE INFORMATION AND THEN THEY ARE
5 ASKED AT A LATER TIME MAYBE WEEKS OR MONTHS OR IN THIS
6 CASE MORE THAN A YEAR LATER THEY ARE ASKED TO COME TO
7 COURT AND TO RECALL TO YOU WHAT THEY HAVE SEEN, SO OFTEN
8 TIMES IT'S NOT EASY.

9 OFTEN TIMES IT IS, BUT THAT IS YOUR JOB YET TO
10 DETERMINE. A LOT WAS GOING ON OUT THERE THAT NIGHT. I
11 BELIEVE YOU'RE GOING TO HEAR TESTIMONY THAT PEOPLE -- WHEN
12 SHOTS RANG OUT, PEOPLE WERE RUNNING, RUNNING FOR THEIR
13 CARS.

14 THIS WAS A POPULAR NIGHT SPOT AND MANY PEOPLE
15 WERE THERE THAT NIGHT, SO IT WAS VERY HECTIC. AFTER YOU
16 HEAR ALL OF THE EVIDENCE, IT WILL BE YOUR JOB TO DETERMINE
17 WHAT IS THE TRUTH IN THIS CASE, WHAT ACTUALLY HAPPENED.
18 IF YOU THINK, IF YOU BELIEVE WHAT THE WITNESSES TELL YOU,
19 THINK THAT RON WAS OUT THERE AND RON PARTICIPATED IN THE
20 SHOOTING, THEN YOU HAVE TO RETURN A VERDICT OF GUILTY.

21 IF HOWEVER AFTER HEARING ALL OF THE EVIDENCE YOU
22 HAVE A DOUBT ABOUT WHAT THE STATE PUT FORTH TO YOU AS
23 THEIR VERSION OF THE EVENTS, THEN THAT IS A DOUBT THAT YOU
24 HAVE A REASON FOR. THAT IS A DOUBT THAT YOU CAN GIVE A
25 REASON.

1 YOU KNOW, OUR SYSTEM OF JUSTICE IS BASED ON THE
2 OLD ENGLISH SYSTEM OF JUSTICE THAT BASICALLY HAS THREE
3 FORMS OF VERDICT, GUILTY, NOT GUILTY AND NO PROOF. SO IF
4 YOU KNOW WHAT HAPPENED, YOU HAVE TO FIND HIM GUILTY. IF
5 YOU HAVE A DOUBT ABOUT WHAT HAPPENED, THEN YOU HAVE TO
6 FIND HIM NOT GUILTY.

7 AND IF YOU ARE NOT SURE, YOU JUST CAN'T FIGURE
8 OUT FROM ALL THE EVIDENCE THAT YOU HAVE HEARD, IT'S SO
9 CONFUSING YOU JUST DON'T KNOW WHAT HAPPENED, YOU STILL
10 HAVE TO RETURN A VERDICT OF NOT GUILTY.

11 I THINK IN THIS CASE AFTER YOU HEAR ALL OF THE
12 EVIDENCE FROM THE WITNESSES THAT ARE GOING TO TESTIFY, YOU
13 WILL HAVE A DOUBT ABOUT RON TAYLOR'S INVOLVEMENT AND YOU
14 WILL HAVE TO RETURN A VERDICT OF NOT GUILTY. THANK YOU.

15 THE COURT: THANK YOU, MR. ROGERS. MR. JORDAN?

16 MR. JORDAN: MAY IT PLEASE THE COURT.

17 THE COURT: YES, SIR.

18 OPENING STATEMENT BY MR. JORDAN.

19 LADIES AND GENTLEMEN OF THE JURY, MY NAME IS
20 MICHAEL JORDAN. I'M AN ATTORNEY FROM OVER IN SUMTER.
21 SCHWARTZ, DURANT AND MCLEOD. I REPRESENT MR. TRAVIS
22 SINGLETON WHO IS SEATED NEXT TO ME. BELIEVE WE ARE FIFTH
23 AND SIXTH DOWN COUNSEL TABLE.

24 EXPECT THE TRIAL WILL TAKE SEVERAL DAYS AND OF
25 NECESSITY IT WILL BE LONG BECAUSE WE HAVE GOT FOUR PEOPLE

1 CHARGED, AND EACH PERSON HAS THE RIGHT TO CROSS-EXAMINE
2 THE EVIDENCE, TO QUESTION THE EVIDENCE AND TO DO THOSE
3 THINGS.

4 IT'S IMPORTANT THAT YOU KEEP IN MIND THAT EACH
5 PERSON SITTING OVER THERE HAS AN INDIVIDUAL TRIAL. YOU
6 HAVE TO RETURN A VERDICT FOR EACH PERSON INDIVIDUALLY.
7 YOU HAVE TO WEIGH THE EVIDENCE IN LIGHT OF THE STANDARD
8 AND BURDEN OF PROOF THAT YOU HAVE HEARD BEYOND A
9 REASONABLE DOUBT OR HESITATE TO ACT.

10 YOU HAVE TO APPLY THAT -- EACH AND EVERY FACT
11 THAT YOU HEAR FROM THE STAND AND ALSO TO EACH AND EVERY
12 PERSON CHARGED. YOU WILL HEAR DEFENDANT, ACCUSED,
13 SUBJECT, BUT I ASK YOU TO CONSIDER, TAKE IN MIND THAT EACH
14 ONE OF THESE INDIVIDUALS, MY CLIENT IN PARTICULAR, HAS AN
15 IDENTITY, HAS A NAME AND A FACE.

16 WE ARE NOT JUST SUBJECTS OR DEFENDANTS. WE ARE
17 PEOPLE. AND THEY HAVE ASKED FOR A TRIAL AT YOUR HANDS
18 BECAUSE BASED ON THE JURY SERVICE, BASED UPON WHAT WE KNEW
19 ABOUT YOU, BASED ON WHAT WE SAW, WE BELIEVE THAT YOU 12
20 AND YOU TWO ALTERNATES WERE THE BEST SUITED TO TRY THIS
21 CASE.

22 WE HAVE ASKED FOR A TRIAL AT YOUR HANDS AND
23 ASKED THAT YOU RESERVE ANY AND ALL JUDGMENTS UNTIL THE
24 VERY END OF -- NECESSARILY THE TRIAL BEGINS WITH THE STATE
25 AND ALL THE EVIDENCE PUT FORWARD IS THEIRS.

1 THE DEFENSE HAS THE OPTION ONLY AT THE END OF
2 PUTTING UP ANY EVIDENCE THAT THEY SO CHOOSE, IF THEY SO
3 CHOOSE AND AGAIN THERE'S FOUR DEFENDANTS. THIS CASE, MY
4 CLIENT HAS BEEN CHARGED ONLY WITH ACCESSORY AFTER THE FACT
5 AND MISPRISON OF A FELONY.

6 AND FOR THEM TO SHOW OR PROVE ACCESSORY AFTER
7 THE FACT, THEY HAVE TO SHOW NUMBER ONE THAT A FELONY WAS
8 COMMITTED. I THINK YOU WILL HEAR TESTIMONY FROM THE
9 STAND, THERE WILL BE A QUESTION IN YOUR MIND AS TO WHO
10 WENT FOR THEIR GUN FIRST AND WHO DID THE SHOOTING AND WHO
11 DID THIS AND WHO DID THAT.

12 THEY'VE GOT TO PROVE THAT A FELONY WAS COMMITTED
13 BEFORE YOU EVEN GET TO ACCESSORY AFTER THE FACT. THEN
14 THEY HAVE TO SHOW THE ACCUSED IN THIS CASE, MY CLIENT MR.
15 SINGLETON, KNEW, HAD KNOWLEDGE THAT PRINCIPAL COMMITTED,
16 THAT HE HAD TO KNOW WHO DID IT.

17 NOT GOING TO BE ABLE TO PROVE THAT TO YOU. KEEP
18 THAT IN MIND. HE KNEW WHO DID AND THAT HE HARBORED OR
19 ASSISTED. NOT GOING TO BE ABLE TO PROVE THAT EITHER. MS.
20 NIELSEN IN HER OPENING HAS ALREADY CONCEDED THAT IT CANNOT
21 BE BOTH ACCESSORY AFTER THE FACT AND MISPRISON OF A
22 FELONY. THEY DON'T KNOW WHICH ONE IT IS.

23 THEY'RE PUTTING THEM BOTH TO YOU HOPING YOU WILL
24 SORT IT OUT, HOPING YOU WILL COMPLETE THAT TASK AND PICK
25 ONE BECAUSE THEY DON'T KNOW. THEY OF NECESSITY HAVE GOT

1 TO COME IN HERE AND SHOW THAT MY CLIENT KNEW OF THIS AND
2 THAT HE THAT HE ASSISTED OR HE MADE POSITIVE -- THAT
3 BRINGS US TO THE SECOND PART, MISPRISON.

4 AND I SUBMIT, LADIES AND GENTLEMEN, FROM THE
5 STAND THE TESTIMONY YOU WILL HEAR, YOU WILL RARELY HEAR MY
6 CLIENT'S NAME MENTIONED. TO PROVE MISPRISON OF A FELONY,
7 THAT ENTAILS CRIMINAL NEGLIGENCE AND IF I DON'T -- THE JUDGE
8 IS GOING TO INSTRUCT YOU AT THE END ON THE LAW, WHAT THE
9 ELEMENTS OF THE OFFENSE ARE, SO IF I MAKE A MISSTATEMENT
10 AT ALL TIMES, YOU GO BY WHAT HE SAYS.

11 BUT IT'S CRIMINAL NEGLIGENCE PREVENT FELONY FROM
12 BEING COMMITTED OR BRING ENDS TO JUSTICE. THERE WILL BE
13 NO TESTIMONY THAT TRAVIS SINGLETON KNEW THIS WAS
14 HAPPENING, COULD HAVE STOPPED ANYTHING.

15 THERE BE NO TESTIMONY THAT HE KNEW ANYTHING
16 OTHER THAN HE WAS HIS BROTHER, AND YOU WILL HEAR THAT FROM
17 THE STAND, OR THAT HE WAS -- THAT HE MADE A POSITIVE ACT
18 OF CONCEALMENT THAT KEPT THE OFFENDER FROM BEING BROUGHT
19 TO JUSTICE. AGAIN, HE DIDN'T KNOW ANYTHING.

20 I ENCOURAGE YOU TO WEIGH THE MISPRISON CHARGE OR
21 THIS ACT OF CONCEALMENT, THE HOLDING INFORMATION WHAT THE
22 INDICTMENT ALLEGES AGAINST SOMEONE CHARGED, RIGHT TO
23 REMAIN SILENT.

24 THE TEN COMMANDMENT OF OUR CRIMINAL JUSTICE
25 SYSTEM IS THE PRESUMPTION OF INNOCENCE AND THAT EXTENDS TO

1 THE RIGHT TO REMAIN SILENT. WHEN YOU HEAR ABOUT MIRANDA
2 RIGHTS AND YOU HEAR ABOUT TAKING STATEMENTS AND YOU WILL
3 HEAR MY CLIENT GAVE.

4 WHAT DID HE GIVE? THE PROBLEM IS THEY WEREN'T
5 HAPPY WITH IT. THEY WEREN'T HAPPY WITH IT BECAUSE IT
6 DIDN'T FILL IN THE GAPS AND IT DIDN'T CONNECT THE DOTS SO
7 THAT THEY HAD A FULL AND THOROUGH INVESTIGATION, SO THEY
8 -- HE'S IN THE MIDDLE, SO WHAT DO THEY DO? THEY PUT
9 LEVERAGE ON HIM.

10 HOW DO THEY PUT LEVERAGE ON HIM? WELL, YOU'RE
11 NOT TELLING US EVERYTHING YOU KNOW. WE'RE NOT HAPPY WITH
12 WHAT YOU'RE SAYING. I SUBMIT TO YOU THAT FOR YOU NOT TO
13 -- FOR MY CLIENT NOT TO HAVE BEEN CHARGED, HE WOULD HAVE
14 HAD TO MEET THE TEST OF SUBJECTIVE STANDARD THAT THEY SET
15 UP -- NOW YOU TELLING US THE TRUTH.

16 THAT IS IMPOSSIBLE TO DO. SO WEIGH IN YOUR MIND
17 MY CLIENT'S RIGHT TO REMAIN SILENT AGAINST THIS CHARGE OF
18 POSITIVELY CONCEALING INFORMATION AND ASK YOURSELF IS THAT
19 A LAW ENFORCEMENT TOOL, IS THAT AN INVESTIGATIVE TOOL USED
20 TO CONNECT THE DOTS IN OUR CASE TO SHOW US WHAT HAPPENED.
21 ALREADY SUBMITTED THAT IT CAN'T BE BOTH. THEY DON'T
22 KNOW.

23 LADIES AND GENTLEMEN, REASONABLE DOUBT, HESITATE
24 TO ACT ALREADY. YOU WILL SEE THAT THEY DON'T KNOW. YOU
25 ARE GOING TO HEAR ABOUT THE DAVIS COUNTRY CLUB OUT ON

1 MANVILLE ST. CHARLES ROAD, A BIG CLUB, LOTS OF PEOPLE GO
2 THERE.

3 IN THE NEIGHBORHOOD OF SEVERAL HUNDRED WERE
4 THERE THAT NIGHT, HUNDREDS INSIDE, MANY PEOPLE OUTSIDE.
5 IT WAS LATE AT NIGHT, SOME FOLKS CAME UP, YOU KNOW, THREE
6 OR FOUR IN THE MORNING THE CLUB IS ABOUT TO SHUT DOWN.
7 IT'S HARD TO PAY THAT COVER CHARGE AND GO IN KNOWING
8 THEY'RE GOING TO SHUT IT DOWN IN A FEW MINUTES.

9 SO PEOPLE WERE OUTSIDE. OUTSIDE YOU'RE GOING TO
10 HEAR THERE WERE HUNDREDS OF CARS, MANY CARS PARKED IN
11 FRONT OF THE CLUB BESIDE THE CLUB DOWN NEAR A FIELD IN
12 LIGHT OF ALL THESE PEOPLE CONGREGATING OUTSIDE, EARLY IN
13 THE -- LATE IN THE EVENING HOURS, EARLY IN THE MORNING
14 HOURS, DARK OUT, FEW STREET LIGHTS, A SHOOTING OCCURRED,
15 CHAOS, PEOPLE RUNNING, PEOPLE JUMPING IN THEIR CARS, SOME
16 PEOPLE WERE SITTING IN THEIR CARS IN NOVEMBER OF LAST
17 YEAR.

18 IT'S COLD. SOME PEOPLE WERE TRYING TO GET
19 WARM. AND YOU'RE GOING TO HEAR THE MIDST OF ALL THIS
20 CHAOS MY CLIENT'S BEING CHARGED BECAUSE HE DIDN'T SEE WHAT
21 HAPPENED. HE DIDN'T COME FORTH AND TELL THEM WHAT HAPPENED
22 SO THEY COULD CONNECT THE DOTS.

23 ALL SORTS OF OTHER -- YOU'RE GOING TO HEAR THE
24 STATE'S OWN WITNESSES TELL YOU I DIDN'T GO FORWARD
25 IMMEDIATELY, BUT THEY ARE NOT CHARGED. DOES THAT FAIR?

1 IS THAT REASONABLE? IS THAT MEET THE TESTS?

2 IN LIGHT OF THIS CHAOS AND THIS SHOOTING, YOU
3 HAVE GOT TO DISCERN WHAT HAPPENED, WHO DID WHAT AND WHO
4 KNEW ABOUT IT AND WHETHER OR NOT THEY MADE A POSITIVE ACT
5 OF CONCEALMENT. THE JUDGE IS GOING TO INSTRUCT YOU ON THE
6 LAW THAT FAILURE TO COME FORWARD AND MERE SILENCE IS NOT
7 ENOUGH. IT'S NOT ENOUGH.

8 IT HAS TO BE POSITIVE ACTS OF CONCEALMENT. SO
9 THEY HAVE GOT TO REACH IN AND SHOW YOU THAT THE
10 INDIVIDUALS CHARGED WITH MISPRISON KNEW THESE THINGS, KNEW
11 THESE THINGS.

12 THE JUDGE IS ALSO GOING TO INSTRUCT YOU THAT
13 MERE PRESENCE AT THE SCENE OF THE CRIME CAN NEVER BE
14 ENOUGH TO MAKE YOU GUILTY OF A CRIME. AND IT'S IN LIGHT
15 OF THAT THAT YOU HAVE GOT TO WEIGH ALL THESE THINGS AND
16 BACKGROUNDS, AND I SUGGEST THAT WHEN YOU LOOK AT IT ON THE
17 WHOLE, WHEN YOU HEARD WHAT COMES FROM THIS STAND, YOU WILL
18 SAY YEAH, LAW ENFORCEMENT TECHNIQUES, THAT'S WHAT THAT
19 WAS.

20 THAT'S WHAT THAT WAS. GUY DIDN'T KNOW ANYTHING
21 AND BECAUSE OF THAT HE WAS CHARGED AS LEVERAGE, AS A
22 LEVERAGE AND THAT'S WHAT WE ARE HERE TODAY ABOUT IS A
23 LEVERAGE. YOU ARE GOING TO HEAR THAT MY CLIENT COOPERATED
24 AND GAVE THEM A STATEMENT.

25 HE TALKED TO HIM THE NIGHT THAT -- AFTER THE

1 SHOOTING OCCURRED HE WAS IN A CAR, LEFT THE CLUB HEADED
2 BACK TO SUMTER, STOPPED BY THE POLICE, QUESTIONED, NAMES
3 AND I.D.'S TAKEN, NO INFERENCE, COOPERATIVE. PICKED BACK
4 UP LATER SEVERAL DAYS LATER AT HIS JOB AT SUMTER, BROUGHT
5 BACK OVER, QUESTIONED AGAIN, GAVE A STATEMENT.

6 HOW DOES THAT -- HOW IS THAT POSITIVE ACTS OF
7 CONCEALMENT? ASK YOU TO ASK YOURSELVES THAT. YOU CAN'T
8 HELP WHAT HE TOLD THEM DIDN'T SATISFY ABILITY TO CONNECT
9 THE DOTS, BUT HE MADE POSITIVE ACTS OF CORROBORATION IS
10 WHAT HE DID AND I SUBMIT TO YOU THAT WHEN YOU WEIGH WHAT
11 WAS DONE IN LIGHT OF THE CHARGES, THAT YOU WILL RETURN A
12 VERDICT OF NOT GUILTY, THAT IT WON'T MEET THE BURDEN OF
13 PROOF.

14 YOU WILL HAVE EVERY REASON TO HESITATE TO ACT
15 AND YOU WILL RETURN A VERDICT OF NOT GUILTY OF WHICHEVER
16 CHARGE THEY CHOOSE TO GO WITH AT THE END OF THE CASE.
17 THANK YOU.

18 THE COURT: THANK YOU, MR. JORDAN. MR. FINNEY ON
19 BEHALF OF MR. WITHERSPOON?

20 MR. FINNEY: MAY IT PLEASE THE COURT, YOUR HONOR.

21 THE COURT: YES, SIR.

22 OPENING STATEMENT BY MR. FINNEY.

23 LADIES AND GENTLEMEN, I DON'T KNOW THAT YOU CAN
24 SEE ME AND MY CLIENT BACK HERE IN THE CORNER. THIS IS
25 LAMONT WITHERSPOON. LAMONT IS 26 YEARS OF AGE. HE LIVES

1 IN SUMTER. IN COURT WITH HIM THIS MORNING IN THE RED
2 JACKET ON THE FIRST ROW IS HIS MOTHER, AND NEXT TO HER IS
3 HIS GRANDMOTHER AND DOWN HERE AT THE END ON THE FIRST ROW
4 IS HIS FIANCEE.

5 ALL OF THOSE PEOPLE LIVE IN SUMTER ALONG WITH ME
6 WHERE I PRACTICE. I HAVE BEEN PRACTICING LAW FOR 20
7 YEARS. LAMONT NEVER BEEN IN COURT BEFORE, SO THIS IS HIS
8 FIRST EXPERIENCE WITH BEING CHARGED, WITH BEING IN COURT
9 WHERE HE'S GOT TO FACE THE CHARGES AND HE'S GOING TO
10 ASSIST ME IN EVERY WAY HE CAN TO PRESENT HIS CASE ON THE
11 BEST POSSIBLE EVIDENCE WHICH IS THE -- WE ARE GOING TO TRY
12 TO ANSWER ANY QUESTION THAT THE JURY MAY HAVE ABOUT WHAT
13 HAPPENED ON NOVEMBER THE 15TH, 14TH, 1999.

14 THANK YOU, LAMONT. MY JOB IS TO PRESENT THE
15 EVIDENCE BASED ON WHAT I HAVE BEEN ABLE TO GATHER THROUGH
16 WORKING WITH THE FAMILY, WORKING WITH THE STATE OF SOUTH
17 CAROLINA, READING REPORTS. WE HAVE A TOUGH JOB AS LAWYERS
18 AND I KNOW SOMETIMES YOU FEEL THAT YOU MAY HAVE BECAUSE
19 YOU DON'T DO THIS EVERY DAY. YOU ARE PROBABLY A LITTLE
20 SCARED YOU ARE PROBABLY A LITTLE WORRIED OH MY GOSH, WHAT
21 HAVE I GOT MYSELF INTO?

22 I CAME TO TELL YOU TODAY THAT YOU HAVE GOT TWO
23 TOOLS TO DO THIS JOB THAT YOU MIGHT NOT EVEN KNOW ABOUT.
24 ONE OF THEM THE JUDGE IS GOING TO GIVE YOU AND THAT'S
25 CALLED THE LAW. IF YOU WILL APPLY THE LAW AS THE JUDGE

1 GIVES IT TO YOU, YOU WON'T HAVE ANY PROBLEM WITH THESE
2 DAYS.

3 YOU DON'T HAVE TO GO TO COLLEGE, YOU DON'T HAVE
4 TO HAVE BEEN TO LAW SCHOOL, DON'T HAVE TO READ ANY BOOKS,
5 DON'T HAVE TO WORRY ABOUT IT BECAUSE THE LAW WILL HELP YOU
6 DO THIS JOB. THE OTHER THING YOU HAVE GOT TO DO, YOU
7 BROUGHT TO COURT WITH YOU IS COMMON SENSE.

8 YOU KNOW, MOST OF YOU ARE OVER 18 YEARS OF AGE.
9 YOU KNOW HOW IT LOOKS AT 4:00 IN THE MORNING OUTSIDE, YOU
10 KNOW, IN A RURAL AREA. YOU KNOW IT'S NOT LIGHT LIKE
11 THIS. YOU KNOW OUTSIDE THE NIGHTCLUB, PEOPLE ARE NOT
12 SITTING OUT THERE READING BOOKS, READING NEWSPAPERS,
13 DRINKING COFFEE.

14 GUYS TRYING TO TALK TO THE GIRLS, THE GIRLS ARE
15 TRYING TO CHECK OUT WHAT THE OTHER GIRLS HAVE GOT ON.
16 IT'S A NIGHTCLUB. IT'S A SOCIAL SCENE. THERE'S A LOT OF
17 ACTION. PEOPLE ARE NOT WORRIED ABOUT ANYTHING. THEY ARE
18 THERE TO RELAX AND ENJOY.

19 AND RIGHT IN THE MIDDLE OF ALL OF THAT SOMETHING
20 HAPPENED. AND ALL OF A SUDDEN PEOPLE ARE CALLED ON TO
21 REMEMBER WHAT DID YOU SEE? WHO DID WHAT? HOW DID IT GO?
22 WE ARE GOING TO ASK YOU TO USE THE LAW THAT THE JUDGE
23 GIVES YOU IN THIS CASE.

24 LAMONT WITHERSPOON AND TRAVIS SINGLETON ARE
25 CHARGED RIGHT NOW WITH ACCESSORY AFTER THE FACT AND

1 MISPRISON OF A FELONY. THAT'S ALL THEY ARE CHARGED WITH.
2 AND THE -- AS MR. JORDAN SAID TO YOU VERY SIMPLY, THOSE
3 CHARGES CAME ABOUT BECAUSE THEY WERE RIDING IN A CAR, MY
4 CLIENT'S CAR, MY CLIENT WAS DRIVING, AND THEY CHARGED MY
5 CLIENT WITH KNOWING WHAT THESE OTHER GUYS WERE DOING.

6 NOW, THEY CHARGED THESE OTHER GUYS BUT THEY HAVE
7 TO PROVE THAT THE OTHER GUYS ARE EVEN THE ONES THAT DID
8 THE SHOOTING. WE DON'T KNOW THAT. THAT IS WHAT WE ARE
9 HERE TODAY TO FIND OUT. THEY CHARGED MY CLIENT WITH
10 KNOWING THAT THESE OTHER GUYS HAD DONE SOMETHING ELSE.

11 YOU ARE NOT GOING TO HEAR ANY WITNESSES COME
12 HERE AND SAY THAT MY GUY WAS HANGING AROUND MR. MARCUS AND
13 THE OTHER GENTLEMAN, MR. GILARON TAYLOR. THEY WENT TO THE
14 CLUB TOGETHER, BUT THEY WEREN'T HANGING AROUND EACH OTHER,
15 SO HOW CAN THE STATE CHARGE THESE GENTLEMEN WITH KNOWING
16 WHAT THESE OTHER GUYS WERE DOING?

17 THE SECOND THING THEY CHARGED HIM WITH IS
18 WITHHOLDING INFORMATION. NOW, WHEN THEY LEFT THE CLUB,
19 THEY ESCAPED, ALL OF THEM GET OUT THERE, THERE HAD JUST
20 BEEN A BAD SHOOTING. THE LADY SOLICITOR SAYS THERE WERE
21 15 SHELLS.

22 WE REALLY ARE READY, LADIES AND GENTLEMEN, WE
23 ARE NOT HERE WITH A REAL SERIOUS CRIME WHERE MORE THAN ONE
24 PERSON GOT HURT. WE DON'T KNOW HOW IN FACT ALL THOSE
25 SHOTS WERE FIRED, HOW MANY MORE PEOPLE DIDN'T GET HURT

1 BECAUSE THERE WERE A LOT OF PEOPLE OUT THERE.

2 THEY CHARGED MY CLIENT WITH WITHHOLDING
3 INFORMATION EVEN THOUGH THAT HE WAS LEAVING THE CLUB AFTER
4 HE LEFT FIVE OR TEN MILES DOWN THE ROAD, THE POLICE
5 OFFICERS FROM SUMTER COUNTY STOPPED THE CAR AND TALKED TO
6 EVERYBODY IN THE CAR. AND SEARCHED THE CAR AND HELD THE
7 CAR THERE UNTIL LEE COUNTY DEPUTIES CAME.

8 LEE COUNTY DEPUTIES TALKED WITH THEM. WHERE YOU
9 BEEN, WHAT YOU SEE, DA, DA, DA, TALK TO THEM AND THEN LET
10 THEM ALL GO HOME. AND MY CLIENT DROPPED OFF TWO BOYS IN
11 THE BACK SEAT BECAUSE THEY HAD A CAR AT A FRIEND'S HOUSE.
12 HE DROPPED THEM OFF AT THEIR CAR, THEN HE DROPPED OFF HIS
13 COUSIN TRAVIS, THEN HE WENT ON AND WENT TO SLEEP.

14 AND IT WAS DAYS LATER THAT THE OFFICER COME
15 KNOCKING ON THE DOOR, AND HIS JOB -- WE GOT INFORMATION
16 YOU WERE AT THE CLUB, WE'RE GOING TO ARREST YOU AND CHARGE
17 YOU. WE GOING TO FIND OUT AT THE END OF THIS CASE, LADIES
18 AND GENTLEMEN, THAT THESE TWO YOUNG MEN DIDN'T KNOW
19 ANYTHING ABOUT WHAT HAPPENED AT THE CLUB THAT NIGHT.

20 WHEN THE SHOTS RANG OUT, THEY GOT IN THEIR CAR
21 AND THEY WERE TRYING TO LEAVE. THEY ALL LEFT TOGETHER AND
22 THAT'S ALL THEY KNOW. LISTEN TO THE EVIDENCE CAREFULLY.
23 WE ARE GOING TO TRY TO ANSWER EVERY QUESTION WE CAN
24 BECAUSE WE WANT THIS YOUNG MAN TO GO BACK TO HIS FAMILY,
25 BACK TO HIS JOB THAT HE HAS HAD, BACK TO THE KIND OF LIFE

1 THAT HE WAS LIVING BEFORE HIS LIFE CHANGED ON NOVEMBER
2 15TH WHEN ALL OF THIS CAME DOWN.

3 AND WE THINK WITH YOUR HELP AND WITH THE HELP OF
4 THOSE TWO TOOLS THAT YOU GOT, YOU WILL BE ABLE TO ANSWER
5 THESE QUESTIONS AND RESOLVE THIS CASE FAIRLY. WE DON'T
6 WANT MR. SCOTT'S FAMILY TO BE BURDENED ANY MORE. THEY
7 WANT THE TRUTH.

8 THEY WANT TO KNOW WHO DID IT AND WHAT HAPPENED.
9 BUT YOU CANNOT BE JUDGED OR SWAYED BY SYMPATHY. YOU HAVE
10 TO BE JUDGED AND SWAYED BY FACTS. WE THANK YOU FOR YOUR
11 TIME AND ATTENTION.

12 WE WISH YOU A HAPPY HOLIDAY EVEN THOUGH WE'RE
13 GOING TO BE SPENDING IT TOGETHER IN SOME PLACE OTHER THAN
14 THE MALL. WE ARE GOING TO DO A GOOD JOB BECAUSE IN THIS
15 COUNTRY, THIS COUNTY, THESE PEOPLE, ALL OF THESE PEOPLE
16 WANT YOU TO DO YOUR JOB. WE HAVE BEEN WAITING A LONG TIME
17 TO GET TO THIS DAY. THANK YOU.

18 THE COURT: THANK YOU, MR. FINNEY. MS. NIELSEN, YOU
19 MAY CALL YOUR FIRST WITNESS.

20 MS. NIELSEN: STATE CALLS MARTY OAKS.

21 THE COURT: LADIES AND GENTLEMEN, THE WITNESSES ARE
22 BEING KEPT OUT OF THE COURTROOM. THAT'S THE REASON WE
23 HAVE TO CALL THEM.

24 MS. NIELSEN: YOUR HONOR, I HAVE A DIAGRAM.

25 (WITNESS IN COURTROOM)

1 MARTY OAKS, BEING FIRST DULY
2 SWORN, TESTIFIED AS FOLLOWS:

3 MS. NIELSEN: MARK THIS AS STATE'S EXHIBITS FOR
4 IDENTIFICATION SO THAT THE WITNESSES CAN USE IT TO
5 ILLUSTRATE TO THE JURY WHERE THEY WERE.

6 THE COURT: ALL RIGHT.

7 (STATE'S EXHIBIT NO. 5 MARKED FOR
8 IDENTIFICATION).

9 DIRECT EXAMINATION BY MS. NIELSEN:

10 Q WE HAVE A CLIP WE CAN CLIP THAT? YOUR NAME IS MARTY
11 OAKS?

12 A YES, MA'AM.

13 Q NOW MR. OAKS, I'M GOING TO STAND OVER HERE. AND YOU
14 HAVE GOT TO TALK LOUD ENOUGH SO EVERYBODY IN HERE CAN HEAR
15 YOU, ALL RIGHT?

16 A ALL RIGHT.

17 Q WOULD YOU TELL US HOW OLD YOU ARE?

18 A EIGHTEEN.

19 THE COURT: STATE'S 5 GENTLEMEN, ANY OBJECTION?

20 MR. DOBY: NO OBJECTION.

21 MR. ROGERS: NO OBJECTION.

22 MR. JORDAN: NO OBJECTION.

23 MR. FINNEY: NO OBJECTION FOR IDENTIFICATION.

24 THE COURT: WITHOUT OBJECTION STATE'S 5.

25 (STATE'S EXHIBIT NO. 5 MARKED FOR EVIDENCE.)

1 (WHEREUPON QUESTIONING RESUMED).

2 Q MR. OAKS, ON THE NIGHT OF NOVEMBER THE 14TH OF 1999,
3 WHERE DID YOU LIVE?

4 A 521 CAMDEN HIGHWAY.

5 Q IS THAT WHERE YOU STILL LIVE?

6 A HUH-UH.

7 Q WHAT CITY DO YOU LIVE IN NOW?

8 A DALZELL.

9 Q AND WHO DO YOU LIVE WITH?

10 A MY MOM.

11 Q AND LAST YEAR WHEN ON NOVEMBER THE 14TH, HOW OLD WERE
12 YOU?

13 A SEVENTEEN.

14 Q WERE YOU RELATED TO HENRY SCOTT?

15 A YES, MA'AM.

16 Q HOW WERE YOU RELATED TO HIM?

17 A HUH?

18 Q HOW WERE YOU RELATED TO HIM?

19 A HE MY FIRST COUSIN.

20 Q AND YOU WERE HOW OLD, 17 YEARS OLD LAST YEAR?

21 A YES, MA'AM.

22 Q CAN YOU TELL THE JURY WHAT YOU DID THAT NIGHT?

23 A WHAT YOU MEAN?

24 Q ON NOVEMBER THE 14TH LAST YEAR.

25 A WHEN? NOTHING REALLY. WENT TO THE COUNTRY CLUB.

1 Q YOU ARE GOING TO HAVE TO SPEAK INTO THAT MICROPHONE.

2 A ALL RIGHT.

3 Q YOU'RE GOING TO HAVE TO TALK SO THAT EVERYBODY CAN
4 HEAR YOU, OKAY?

5 A (WHEREUPON SUBJECT INDICATED NODDING HEAD).

6 Q ALL RIGHT. YOU SAID YOU WENT TO THE COUNTRY CLUB?

7 A YES, MA'AM.

8 Q NOW, YOU'RE TALKING ABOUT THE DAVIS COUNTRY CLUB?

9 A YES, MA'AM.

10 Q HAD YOU EVER BEEN THERE BEFORE?

11 A NO, MA'AM.

12 Q NOW, WHERE WERE YOU BEFORE YOU WENT TO THE DAVIS
13 COUNTRY CLUB?

14 A AT MY HOUSE.

15 Q AT YOUR HOME?

16 A NO, I WAS AT K.G.'S.

17 Q AT THE WHAT?

18 A KG'S.

19 Q WHAT IS THAT?

20 A A LITTLE CLUB ON BROAD STREET.

21 Q WHO DID YOU GO THERE WITH?

22 A ME, HENRY, RODNEY, DERRICK AND STEVEN.

23 Q ALL RIGHT. HENRY IS HENRY WHO?

24 A SCOTT.

25 Q RODNEY IS RODNEY WHO?

1 A YATES.

2 Q AND ARE YOU KIN TO RODNEY YATES, TOO?

3 A YES, MA'AM.

4 Q ALL RIGHT. STEVEN WHO? WHO IS STEVEN?

5 A STEVEN JOHNSON.

6 Q KIN TO HIM?

7 A NO, MA'AM.

8 Q ALL RIGHT. WHO ELSE DID YOU SAY WAS THERE?

9 A LEONARD SCOTT.

10 Q ARE YOU KIN TO LEONARD SCOTT? ARE YOU KIN TO LEONARD
11 SCOTT?

12 A NO, MA'AM.

13 Q AND WHO ELSE?

14 A DERRICK ALBERT.

15 Q ARE YOU KIN TO DERRICK?

16 A NO, MA'AM.

17 Q ANYBODY ELSE? WAS THERE ANYBODY ELSE?

18 A NO, MA'AM.

19 Q ALL RIGHT. SO YA'LL WERE IN THE CLUB ON BROAD
20 STREET. HOW DID YA'LL GET TO THE CLUB ON BROAD STREET?

21 A STEVEN CAR.

22 Q YOU WERE IN STEVEN'S CAR?

23 A (WHEREUPON SUBJECT INDICATED NODDING HEAD).

24 Q WAS THAT MORE THAN ONE CAR?

25 A YES, MA'AM.

1 Q WHO ELSE HAD CARS?

2 A RODNEY.

3 Q ANYBODY ELSE?

4 A NO, MA'AM.

5 Q ALL RIGHT. THAT'S WHEN YOU WENT TO THE CLUB ON BROAD
6 STREET IN SUMTER?

7 A (WHEREUPON SUBJECT INDICATED NODDING HEAD).

8 Q NOW, WHO DECIDED TO GO TO THE COUNTRY CLUB?

9 A HENRY.

10 Q AND YA'LL ALL JUST MET?

11 A YES, MA'AM.

12 Q DO YOU KNOW WHAT TIME IT WAS THAT YA'LL DECIDED TO GO
13 THERE?

14 A ABOUT 2:30, QUARTER TO 3.

15 Q IN THE MORNING?

16 A YES, MA'AM.

17 Q ALL RIGHT. NOW, YOU WERE 17 YEARS OLD. WHAT WERE
18 YOU DOING OUT AT THIS CLUB?

19 A NOTHING.

20 Q WERE YOU DRINKING?

21 A I NEVER.

22 Q WERE YOU DRINKING?

23 A NO, MA'AM.

24 Q WERE THE OTHER PEOPLE DRINKING?

25 A NOT -- THEY WENT IN WHILE THEY WERE WITH ME. I NEVER

1 WENT IN K.G.'S.

2 Q YOU STAYED OUTSIDE?

3 A YEAH, I BEEN TALKING TO SOMEONE.

4 Q YOU WERE OUTSIDE TALKING TO SOMEBODY?

5 A (WHEREUPON SUBJECT INDICATED NODDING HEAD).

6 Q WERE YOU TALKING TO ONE OF THESE GUYS OR WERE YOU
7 TALKING WITH SOMEONE ELSE?

8 A I'M TALKING TO A GIRL.

9 Q YOU WERE TALKING TO A GIRL? OKAY. WELL, THEN
10 EVERYBODY DECIDED TO GO TO THE COUNTRY CLUB ABOUT 2:30 OR
11 2:45. WHO DID YOU RIDE TO THE COUNTRY CLUB WITH?

12 A STEVEN JOHNSON, LEONARD SCOTT.

13 Q ALL RIGHT. NOW, WHO DID HENRY SCOTT RIDE WITH?
14 HENRY SCOTT RODE WITH DELVIN WAITERS?

15 A YES, MA'AM.

16 Q IS DELVIN WAITERS SOMEBODY YA'LL RAN INTO AT THE CLUB
17 ON BROAD STREET?

18 A NO, WE SAW HIM RIGHT BEFORE WE GOT TO THE CLUB.

19 Q WAS HE WITH YOU EARLIER?

20 A NO, MA'AM.

21 Q DID HE -- HE WENT TO THE CLUB ON BROAD STREET WITH
22 YOU?

23 A YES, MA'AM.

24 Q AND WAS -- HENRY SCOTT WASN'T RIDING WITH HIM TO
25 BEGIN WITH?

1 A HUH-UH.

2 Q WHO WAS HENRY SCOTT RIDING WITH TO BEGIN WITH?

3 A ME, STEVEN JOHNSON AND LEONARD SCOTT.

4 Q THEN HE GOT IN THE CAR WITH DELVIN WAITERS?

5 A YES, MA'AM.

6 Q NOW, WAS RODNEY YATES IN ANOTHER CAR?

7 A YES, MA'AM.

8 Q WHO WAS IN THE CAR WITH RODNEY WHEN YA'LL WENT TO THE
9 COUNTRY CLUB?

10 A DERRICK ALBERT.

11 Q ALL RIGHT. SO YA'LL ALL WENT AT SOMETIME?

12 A INSIDE THE COUNTRY CLUB.

13 Q NO, DID YA'LL ALL LEAVE THE CLUB IN SUMTER AT THE
14 SAME TIME TO GO TO THE COUNTRY CLUB?

15 A YES, SIR.

16 Q NOW, WHEN YA'LL ARRIVED AT THE COUNTRY CLUB, WHAT CAR
17 WAS THE FIRST CAR TO GET THERE, DO YOU REMEMBER?

18 A RODNEY CAR, RODNEY YATES' CAR.

19 Q AND WHERE DID RODNEY PARK?

20 A LIKE ON THE OTHER SIDE OF THE ROAD.

21 Q ACROSS FROM THE CLUB?

22 A YES, MA'AM.

23 Q ACROSS THE ACTUAL HIGHWAY?

24 A YES.

25 Q LIKE ON THE SIDE OF THE ROAD?

1 A YEAH, ON THE SIDE OF THE ROAD, OVER ON THE OTHER SIDE
2 OF THE STREET, ON THE OTHER SIDE OF THE WHITE LINE.

3 Q ALL RIGHT. AND WHICH CAR WAS THAT NEXT?

4 A STEVEN JOHNSON.

5 Q AND THAT'S THE CAR YOU WERE IN?

6 A YES, MA'AM.

7 Q WITH LEONARD SCOTT AND STEVEN JOHNSON?

8 A YES, MA'AM.

9 Q AND WHERE DID YA'LL PARK?

10 A RIGHT BEHIND THEM.

11 Q ALL RIGHT. AND THEN WHOSE CAR WAS LAST?

12 A DELVIN WAITERS.

13 Q AND THAT IS THE CAR THAT HENRY SCOTT WAS IN?

14 A YES, MA'AM.

15 Q WILL YOU COME DOWN HERE, AND I JUST WANT YOU TO POINT
16 TO THE JURY AND SHOW THEM FROM THE CLUB, SHOW THEM WHERE
17 THE CLUB IS ON THIS DIAGRAM.

18 THE COURT: STAND ON THE OTHER SIDE IF YOU WILL, MR.
19 OAKS, AND FACE THIS DIRECTION. STAND ON THE OTHER SIDE
20 THAT WAY ON THAT SIDE SO THAT YOU CAN SEE IT AND FACE BACK
21 IN THIS DIRECTION. THANK YOU.

22 Q JUST KIND OF STAND TO THE SIDE. STAND HERE BECAUSE
23 EVERYBODY HAS GOT TO SEE YOU. NOW, SHOW US WHERE THE CLUB
24 IS.

25 A RIGHT HERE (INDICATING).

1 Q OKAY. NOW, WHERE DID YA'LL PARK IN RELATION TO THE
2 CLUB?

3 A THIS THE HIGHWAY DOWN HERE, THIS THE HIGHWAY RIGHT
4 HERE.

5 Q THIS IS THE HIGHWAY RIGHT HERE?

6 A ON THE OTHER SIDE OF THE HIGHWAY, ON THIS SIDE.

7 THE COURT: MR. OAKS, I CAN BARELY HEAR YOU.

8 A ON THE OTHER SIDE OF THE HIGHWAY, ON THE OTHER SIDE
9 OF THE ROAD.

10 Q ALL RIGHT. ALL RIGHT. WHEN YA'LL GOT OUT, SHOW THE
11 JURY WHERE YOU WENT WHEN YA'LL GOT OUT THE CAR. SHOW THE
12 DIRECTION YOU WERE WALKING IN.

13 A LIKE WENT THROUGH THERE, WE WENT THROUGH HERE, WENT
14 TO THE CLUB AT THE DOOR RIGHT HERE.

15 Q YOU WENT ALL THE WAY TO THE DOOR?

16 A YES, MA'AM.

17 Q ALL RIGHT. WHAT IS THE NEXT THING THAT YOU REMEMBER
18 HAPPENING?

19 A THIS DUDE STARTED TALKING TRASH TO ME. I WENT TO
20 THE -- WHEN I GOT TO THE CLUB, WENT IN THE DOOR--

21 Q HOLD JUST A MINUTE. STAND BACK OVER HERE. USE THIS
22 TO POINT WHERE THINGS ARE SO THAT YOU WON'T HAVE TO STAND
23 IN FRONT OF IT.

24 A YOU GOT HERE, WENT -- I WENT IN THE DOOR, SEE HOW
25 MUCH THEY BEEN CHARGE AND CAME BACK OUT, AND WHEN I CAME

1 BACK OUT THE DOOR, HE ARGUING WITH THIS DUDE, THIS DUDE
2 WAS ARGUING.

3 Q WHO WAS ARGUING WITH WHO?

4 A MARCUS, HE WAS ARGUING WITH MARCUS EVANS.

5 Q WHO WAS ARGUING WITH MARCUS EVANS?

6 A HENRY SCOTT.

7 Q ALL RIGHT. DID YOU KNOW MARCUS EVANS?

8 A NO, MA'AM.

9 Q DID YOU -- DID YOU EVEN KNOW THAT -- THAT NIGHT DID
10 YOU KNOW THAT THE PERSON THAT HENRY SCOTT WAS ARGUING WITH
11 WAS NAMED MARCUS EVANS?

12 A THAT NIGHT THAT I KNOW?

13 Q DID YOU KNOW THAT?

14 A NO, MA'AM.

15 Q OKAY. YOU FOUND OUT HIS NAME SINCE THEN?

16 A UH-HUH.

17 Q OKAY. ALL RIGHT. SO THEY ARE ARGUING. CAN YOU HEAR
18 WHAT THEY ARE SAYING?

19 A YEAH, I CAN HEAR THEM. WELL, WHEN I COME BACK OUT, I
20 HEARD MARCUS EVANS, HE WAS LIKE WHAT'S UP NOW, YOU PUNK
21 MOTHER FUCKER. HE SAID GOING TO TALK TO YOU ABOUT IT, ALL
22 KINDS OF STUFF LIKE THAT.

23 Q EXACTLY WHERE WERE THEY WHEN THIS WAS HAPPENING?

24 A LIKE MARCUS WAS LIKE RIGHT OUT HERE IN -- I LIKE
25 RIGHT HERE IN FRONT OF THE CLUB, LITTLE GRASS PIECE RIGHT

1 HERE AND HENRY WAS UP HERE BY THE CLUB STANDING NEAR THE
2 CORNER OF THE WALL RIGHT THERE.

3 Q ALL RIGHT. DID YOU SEE THE CAR THAT MARCUS EVANS WAS
4 IN?

5 A YEAH.

6 Q DID YOU SEE THE CAR HE WAS IN? OR WHEN YOU FIRST SAW
7 HIM, WAS HE IN THE CAR OR WAS HE OUT?

8 A WHEN I FIRST SAW HIM? HE WAS OUT.

9 Q HE WAS STANDING WHERE?

10 A LIKE OUT IN HERE IN THIS LITTLE GRASS AREA FAR --
11 RIGHT HERE.

12 Q OKAY.

13 A IN FRONT OF THE CLUB.

14 Q ALL RIGHT. WHAT DID YOU SEE AFTER THAT?

15 A HE RODNEY YATES, HE BEEN TRYING TO TALK TO HIM SOME
16 TO LEAVE HIM ALONE, AND HE BEEN LIKE NAH, NAH, SO HE BEEN
17 LIKE STARTED WALKING UP ON HIM AND HENRY STARTED BACKING
18 UP AND BACKING UP AND BACKING UP REALLY SLOW, AND HE STUCK
19 -- HE KEPT ON, AND THEN WHEN OUT THERE HENRY GOT INTO THE
20 CAR AND TURN AROUND, THAT WHEN HE SHOOT AND THEN HIS
21 FRIEND RON TAYLOR STARTED SHOOTING, TOO.

22 Q NOW, DID YOU KNOW RON TAYLOR'S NAME THAT NIGHT?

23 A HUH?

24 Q DID YOU KNOW RON TAYLOR'S NAME THAT NIGHT?

25 A NO, MA'AM.

1 Q ALL RIGHT. NOW, DO YOU KNOW WHERE THE LIGHTS WERE
2 OUT THERE?

3 A ABOUT THEY THE LIGHT POLE. THERE'S A LIGHT POLE ON
4 THIS SIDE OF THE CLUB AND THEN THE OTHER PLACE LIKE ALMOST
5 IN THE BACK AND THERE'S A LIGHT POLE LIKE RIGHT OVER HERE.

6 Q WAS THERE ANY LIGHTS ON THE CLUB ITSELF?

7 A NO, MA'AM. YOU MEAN ON THE CLUB?

8 Q YES.

9 A NO, MA'AM. I MEAN BESIDE THE LITTLE LIGHTS ON THE
10 CORNER, THE LIGHT POST.

11 Q THERE'S SOME LIGHTS ON THE CORNERS?

12 A YEAH, I THINK.

13 Q OKAY. THIS IS THE ONLY TIME YOU HAVE EVER BEEN
14 THERE, RIGHT?

15 A YES.

16 Q HOW LONG DO YOU THINK YOU WERE THERE THE WHOLE TIME
17 YOU WERE THERE?

18 A ABOUT TEN MINUTES.

19 Q YOU HADN'T BEEN THERE LONG WHEN THE SHOOTING STARTED?

20 A YES, I WAS.

21 Q YOU JUST DROVE UP?

22 A HUH?

23 Q HAD YOU JUST DRIVEN UP WHEN THE SHOOTING STARTED?

24 A NO, THE SHOOTING STARTED AFTER WE GOT THERE.

25 Q OKAY. YA'LL HAD GOTTEN OUT OF THE CAR AND WENT UP TO

1 THE CLUB?

2 A YEAH.

3 Q YA'LL HADN'T GONE IN THE CLUB; HAD YOU?

4 A HUH-UH.

5 Q OKAY. YOU WANT TO STEP BACK DOWN FOR A MINUTE? I
6 MIGHT HAVE TO BRING YOU BACK UP IN A MINUTE.

7 (WHEREUPON THE WITNESS RESUMED THE STAND).

8 Q ALL RIGHT. NOW, YOU SAID THAT HENRY STARTED BACKING
9 UP. WILL YOU EXPLAIN TO US ABOUT THAT, MR. OAKS, PLEASE,
10 THAT HE WAS BACKING UP. WHAT DO YOU MEAN HE WAS BACKING
11 UP?

12 A HE WAS LIKE BACKING UP SLOW BECAUSE MARCUS WAS
13 WALKING UP ON HIM, YOU KNOW, LIKE HE WAS LIKE HAD HIS HAND
14 IN HIS BACK AND HE JUST STARTED BACKING UP AND BACKING UP.

15 Q WHAT DID -- HE HAD HIS HANDS WHERE?

16 A WHO, HENRY?

17 Q YOU SAID SOMEBODY HAD THEIR HANDS--

18 A I SAID HE WAS -- I SAID MARCUS STARTED WALKING UP ON
19 HIM, HAD HIS HAND IN HIS BACK AND HENRY STARTED LIKE
20 BACKING UP REAL SLOW.

21 Q AND CAN YOU SHOW US -- STAND UP AND SHOW THE JURY
22 ABOUT WHAT MARCUS EVANS WAS DOING.

23 A I MEAN, HE HAD HIS HANDS LIKE IN THE BACK UP LIKE --
24 I'M SORRY -- HAD HIS HANDS IN BACK OF HIM LIKE THIS, BUT
25 HE STILL HAD ONE OF HIS HANDS FREE.

1 Q OKAY. YOU CAN SIT DOWN NOW. CAN YOU HEAR EVERYTHING
2 THAT THEY WERE SAYING?

3 A WELL, HENRY WASN'T REALLY SAYING NOTHING.

4 Q WHO WAS DOING MOST OF THE TALKING?

5 A MARCUS EVANS.

6 Q AND COULD YOU TELL WHAT THEY WERE TALKING ABOUT?

7 A I AIN'T EVEN KNOW WHAT THEY WERE TALKING ABOUT. ONLY
8 THING I KNOW WHEN HE -- WHEN HE SEEN HENRY, HE WAS LIKE
9 WHAT'S UP NOW, MAN? HE BEEN LIKE DON'T TALK ABOUT IT, BE
10 ABOUT IT -- JUST TALK ALL THIS STUFF HE BEEN TALKING, THEN
11 TALKING SOMETHING.

12 Q DID YOU HEAR ANYTHING ELSE?

13 A NOT THAT I CAN RECALL, NOT RIGHT NOW.

14 Q NOW, YOU SAID HENRY WAS BACKING UP, AND WHAT DID YOU
15 SEE HENRY DO?

16 A NOTHING, HE JUST KEPT WALKING, BUT HE WAS BACKING UP
17 REAL SLOW.

18 Q OKAY. AND WHERE DID HENRY GO?

19 A HE WENT TO THE CAR.

20 Q DID YOU SEE WHAT HE DID WHEN HE GOT TO THE CAR?

21 A NO. ONLY THING I KNOW WHEN HE GOT -- WHEN HE CLOSE
22 THE CAR DOOR AND TURN AROUND, THAT'S WHEN THEY STARTED
23 SHOOTING HIM.

24 Q NOW, DID YOU EVER SEE HIM WITH A GUN?

25 A NO, MA'AM. I DID NEVER SEE HIM WITH A GUN.

1 Q NOW, DO YOU REMEMBER GIVING A STATEMENT TO LAW
2 ENFORCEMENT ON NOVEMBER THE 15TH OF LAST YEAR? DO YOU
3 REMEMBER GIVING A STATEMENT?

4 A YES, MA'AM.

5 Q CAN YOU LOOK AT THAT AND TELL ME IF THAT IS YOURS?

6 A YEAH.

7 Q THAT IS THE STATEMENT THAT YOU GAVE?

8 A YES, MA'AM.

9 Q WILL YOU LOOK DOWN THERE AND SEE IF IT SAYS ANYTHING
10 ABOUT WHETHER OR NOT HENRY HAD A GUN?

11 A IT DOES.

12 Q AND WHAT DOES IT SAY?

13 A HE WENT TO THE CAR AND GOT A...

14 THE COURT: I'M SORRY. COULD YOU READ THAT PLEASE
15 SIR?

16 A HE WENT TO THE CAR -- HOLD UP. HE WENT TO THE CAR
17 AND GOT A GUN.

18 Q AND YOU ARE TALKING ABOUT HENRY?

19 A YES, MA'AM.

20 Q ALL RIGHT. NOW, DID YOU WRITE THAT STATEMENT
21 YOURSELF?

22 A YES, MA'AM.

23 Q OKAY. SO IF YOU ARE SAYING THAT YOU DIDN'T SEE HIM
24 WITH YOUR GUN, WHY DOES THAT STATEMENT SAY HENRY GOT A
25 GUN?

1 A I MEAN, THAT'S WHAT I FIGURED AT THE TIME BECAUSE I
2 MEAN, I FIGURED THEY HAD GUNS FROM THE WAY THEY WERE
3 TALKING AND LIKE -- WELL, THEY BEEN ABOUT TO DO.

4 Q SO TELL THE JURY WHETHER YOU YOURSELF ACTUALLY SAW
5 HENRY GO GET A GUN.

6 A DID I ACTUALLY SEE HIM GO GET ONE?

7 Q DID YOU SEE HENRY GET A GUN?

8 A NO, MA'AM, I DIDN'T.

9 Q YOU THOUGHT HE GOT ONE?

10 A YES, MA'AM.

11 Q OKAY. NOW, YOU TOLD THE JURY YOU DIDN'T KNOW MARCUS
12 EVANS AND RON TAYLOR'S NAME THIS NIGHT.

13 A NO, MA'AM.

14 Q NOW, DID YOU -- WERE YOU CLOSE ENOUGH TO KNOW ABOUT
15 THERE TO SEE THEM AND WHAT THEY LOOKED LIKE?

16 A YES, MA'AM.

17 Q AND DID -- LATER ON WERE YOU SHOWN SOME LINE-UPS BY
18 INVESTIGATOR DELLINGER?

19 A YES, MA'AM.

20 Q I'M GOING TO SHOW YOU WHAT HAS BEEN MARKED AS STATE'S
21 EXHIBITS 3 AND 4 FOR IDENTIFICATION. YOU JUST TELL ME
22 WHETHER OR NOT YOU RECOGNIZE THESE, YES OR NO.

23 A YES, MA'AM.

24 Q AND WHAT ARE THESE?

25 A LINE-UPS.

1 Q ARE THESE THE LINE-UPS J.D. DELLINGER SHOWED YOU?

2 A YES, MA'AM.

3 MS. NIELSEN: YOUR HONOR, WE WOULD MOVE THESE IN NOW
4 AS STATE'S EXHIBITS 3 AND 4.

5 THE COURT: ALL RIGHT. SUBJECT TO OBJECTION, MR.
6 ROGERS PREVIOUSLY LODGED ON YOUR CLIENT IN REGARDS TO
7 NUMBER 4, ARE THERE ANY ADDITIONAL OBJECTIONS TO STATE'S 3
8 OR 4, GENTLEMEN?

9 MR. DOBY: NONE THAT HAVEN'T BEEN EXPRESSED ALREADY,
10 YOUR HONOR.

11 THE COURT: SIR?

12 MR. DOBY: NONE THAT HAVEN'T BEEN EXPRESSED ALREADY.

13 THE COURT: I UNDERSTAND. THANK YOU. MR. ROGERS,
14 ANY ADDITIONAL OBJECTION?

15 MR. ROGERS: NO ADDITIONAL OBJECTION.

16 THE COURT: ALL RIGHT. SUBJECT TO PRIOR OBJECTIONS,
17 STATE'S 3 AND 4 EVIDENCE THANK YOU.

18 (STATE'S EXHIBIT NO. 3 AND 4 MARKED FOR
19 EVIDENCE.)

20 (WHEREUPON QUESTIONING RESUMED).

21 Q NOW, AT THE TIME THAT YOU LOOKED AT THESE, DO YOU
22 REMEMBER WHEN YOU LOOKED AT LINE-UP "A" WHICH IS MARKED AS
23 STATE'S EXHIBIT 3? DO YOU REMEMBER WHEN J.D. DELLINGER
24 SHOWED YOU THAT?

25 A CAN YOU SAY THAT AGAIN?

1 Q DO YOU REMEMBER WHEN HE SHOWED YOU THAT LINE UP?

2 A YES, MA'AM.

3 Q WHEN WAS THAT?

4 A WHICH ONE, NUMBER "A", RIGHT HERE?

5 Q NUMBER "A". FIRST OF ALL, WHO DID -- WHAT NUMBER DID
6 YOU PICK OUT OF THAT LINE-UP?

7 A OUT OF THE FIRST ONE? THIS ONE RIGHT HERE.

8 Q UH-HUH.

9 A NUMBER ONE.

10 Q OKAY. WHEN DID YOU DO THAT? WHEN DID J.D. DELLINGER
11 SHOW YOU THAT LINE-UP FOR YOU TO PICK OUT NUMBER ONE?

12 THE COURT: HOW LONG AFTER THE SHOOTING WAS IT, MR.
13 OAKS, THAT YOU PICKED OUT THAT LINE-UP?

14 THE WITNESS: RIGHT HERE?

15 THE COURT: YES, SIR.

16 THE WITNESS: ABOUT LAST -- THIS YEAR. I THINK IT
17 WAS THIS -- I CAN'T REMEMBER THE DATE, BUT IT BEEN -- I
18 THINK IT BEEN THIS YEAR RIGHT HERE. THE EXACT DATE I
19 CAN'T REMEMBER.

20 (WHEREUPON QUESTIONING RESUMED).

21 Q AFTER YOU GAVE A STATEMENT IN NOVEMBER OF LAST YEAR,
22 DID J.D. DELLINGER SHOW YOU A LINE-UP THEN?

23 A HUH-UH. I DID WENT IN A ROOM.

24 THE COURT: I DON'T THINK THE DATE IS IN DISPUTE.

25 MAYBE YOU CAN SHOW HIM THE INFORMATION THAT HE RELIED

1 UPON. I DON'T THINK ANYBODY DISPUTES THE DATE IT WAS
2 SHOWN ON OR I ASSUME.

3 MS. NIELSEN: HE'S THE ONE WE DON'T HAVE ONE.

4 (WHEREUPON QUESTIONING RESUMED).

5 Q OKAY. YOU DON'T REMEMBER WHEN YOU LOOKED AT THE
6 LINE-UPS?

7 A HUH-UH.

8 Q OKAY. BUT J.D. DELLINGER SHOWED YOU BOTH OF THOSE
9 LINE-UPS?

10 A YES, MA'AM.

11 Q ALL RIGHT. AND AT -- YOU SAID YOU PICKED NUMBER ONE
12 OUT OF THAT FIRST ONE THAT IS MARKED AS STATE'S EXHIBIT 3
13 WHICH IS LINE-UP NUMBER "A". YOU PICKED NUMBER ONE?

14 A YES, MA'AM.

15 Q DO YOU TODAY IN THE COURTROOM SEE THE SAME PERSON
16 THAT YOU PICKED OUT AS NUMBER ONE?

17 A YES, MA'AM.

18 Q AND WHERE IS HE SITTING?

19 A NUMBER ONE ON THE TABLE RIGHT THERE.

20 Q IN THE BLACK ON?

21 A YES, MA'AM.

22 MS. NIELSEN: YOUR HONOR, WE WOULD HAVE THE RECORD
23 REFLECT HE HAS IDENTIFIED MARCUS EVANS.

24 THE COURT: YES, MA'AM.

25 (WHEREUPON QUESTIONING RESUMED).

1 Q NOW OUT OF THE LINE-UP, THE OTHER LINE-UP THAT IS
2 MARKED AS LINE-UP "B", DID YOU PICK SOMEBODY OUT OF THAT
3 LINE-UP?

4 A NUMBER FIVE.

5 Q AND TODAY IN THIS COURTROOM DO YOU SEE THE PERSON
6 THAT YOU PICKED OUT AS NUMBER FIVE IN THAT LINE-UP?

7 A YES, MA'AM.

8 Q AND WHERE IS HE?

9 A NUMBER FOUR ON THE TABLE RIGHT THERE.

10 Q AND HE HAS GOT ON A BROWN SUIT?

11 A YES, MA'AM.

12 MS. NIELSEN: YOUR HONOR, WE WOULD HAVE THE RECORD
13 REFLECT THAT HE HAS IDENTIFIED GILARON TAYLOR.

14 THE COURT: YES, MA'AM.

15 (WHEREUPON QUESTIONING RESUMED).

16 Q NOW, YOU DIDN'T KNOW THEIR NAMES ON NOVEMBER THE 14TH
17 OF LAST YEAR; DID YOU?

18 A NO, MA'AM.

19 Q NOW, PRIOR TO YOU PICKING THEM OUT OF THOSE LINE-UPS
20 RIGHT THERE, DID ANYBODY SHOW YOU ANY PHOTOGRAPHS OF THEM?

21 A NO, MA'AM.

22 Q DID YOU SEE ONE OF THEM SOMEWHERE ONE DAY?

23 A SINCE THE INCIDENT?

24 Q UH-HUH.

25 A NO, MA'AM.

1 Q OKAY. DID ANYBODY INDICATE TO YOU WHO YOU NEED TO
2 PICK OUT OF THOSE LINE-UPS?

3 A NO, MA'AM.

4 Q HOW DID -- HOW DID YOU KNOW TO PICK THOSE PEOPLE OUT
5 OF THOSE LINE-UPS?

6 A BECAUSE THEY WERE THE TWO PEOPLE THAT I SAW.

7 Q WHAT DID YOU SEE THEM DOING?

8 A SHOOTING.

9 Q DID YOU SEE BOTH OF THEM SHOOTING?

10 A WELL, ITEM NUMBER ONE, I SEEN FIRE COMING FROM HIS
11 DIRECTION, BUT ITEM NUMBER FIVE, I SAW HIS GUN AND THE
12 FIRE.

13 Q YOU SAW HIS GUN AND THE FIRE?

14 A YES.

15 Q AND WHO WERE THEY SHOOTING AT?

16 A HENRY SCOTT.

17 Q OKAY. ALL RIGHT. AFTER ALL THE SHOOTING WAS OVER,
18 WHERE WERE YOU?

19 A AFTER THE SHOOTING WAS OVER?

20 Q UH-HUH.

21 A WELL, I WENT OVER THERE BY MY -- BY HENRY WHERE HE
22 WAS AT LAYING BY A CAR IN THE PARKING LOT.

23 Q WHAT DID YOU DO?

24 A HUH?

25 Q WHAT DID YOU DO?

1 A WRAPPED MY COAT AROUND HIM.

2 Q OKAY. PRIOR TO YOU GOING OVER THERE, DID YOU SEE
3 WHERE THE SHOOTERS WENT?

4 A DOWN THE STREET AND JUMP IN THIS CADILLAC IN FRONT OF
5 THIS HOUSE RIGHT BESIDE THE CLUB.

6 Q AND WHAT COLOR WAS THAT CADILLAC?

7 A BURGUNDY.

8 Q HAD YOU SEEN THAT CAR BEFORE YOU SAW THEM GO TO GET
9 IN IT AFTER THE SHOOTING WAS OVER?

10 A YES, MA'AM.

11 Q WHERE DID YOU SEE IT BEFORE THEN?

12 A PARKED RIGHT IN THE DRIVEWAY OF THE CLUB.

13 Q NOW, COME DOWN HERE AND SHOW US WHICH DRIVEWAY YOU
14 ARE TALKING ABOUT. JUST GO AHEAD, USE YOUR FINGER BECAUSE
15 -- JUST SHOW THEM WE -- WHICH DRIVEWAY WERE THEY IN?

16 A RIGHT THERE (INDICATING).

17 Q NOW, THAT'S THE DRIVEWAY CLOSEST GOING OUT TOWARDS
18 HIGHWAY 15?

19 A YEAH, BUT THEY WENT -- THEY COME IN THIS WAY AND THEY
20 WENT OUT THAT WAY.

21 Q OKAY. BUT WHEN YOU GOT THERE, WHERE WAS THAT CAR?

22 A RIGHT HERE (INDICATING).

23 Q OKAY. YOU CAN GO BACK AND SIT DOWN AGAIN. WHEN THE
24 SHOOTING STARTED, WHERE WAS THAT CAR? DO YOU REMEMBER?

25 A IT HAD -- RIGHT BEFORE THE SHOOTING STARTED, IT HAD

1 MOVED, WENT TO THE OTHER SIDE OF THE PARKING LOT.

2 Q TO THE OTHER DRIVEWAY?

3 A YEAH.

4 Q WAS THAT AFTER THE ARGUMENT STARTED?

5 A UH-HUH.

6 Q DID YOU EVER SEE THE PEOPLE WHO WERE IN THAT CAR?

7 A HUH-UH. I SAW THE DRIVER WHICH WAS...

8 Q YOU SAW THE DRIVER?

9 A YES, MA'AM.

10 Q DID YOU SEE HIM IN THE ROOM?

11 A YES, MA'AM.

12 Q AND WHERE IS HE SITTING?

13 A RIGHT THERE.

14 Q IS THAT--

15 A BLUE SWEATER, LAST ONE ON THE TABLE.

16 MS. NIELSEN: HAVE THE RECORD REFLECT HE HAS

17 IDENTIFIED LAMONT WITHERSPOON.

18 Q ALL RIGHT. WHAT WERE YOU DOING WHEN THEY WERE GOING
19 BACK TO GET IN THIS CAR?

20 A WHO, THE TWO SHOOTERS?

21 Q YEAH.

22 A THEY BEEN STILL SHOOTING BACK TILL THEY GOT DOWN THE
23 ROAD IN FRONT OF HIS HOUSE AND THAT'S WHEN THE CADILLAC
24 STOPPED AND THEY--

25 Q THEY WERE SHOOTING WHILE THEY WERE RUNNING UP THERE?

1 A YEAH.

2 Q PLEASE ANSWER ANY QUESTIONS ALL THESE DEFENSE
3 ATTORNEYS HAVE.

4 THE COURT: MR. DOBY, YOU CAN CROSS-EXAMINE.

5 MR. DOBY: YOUR HONOR, MAY WE APPROACH FOR JUST A
6 SECOND?

7 THE COURT: YES, SIR.

8 (WHEREUPON A BENCH CONFERENCE WAS HELD).

9 THE COURT: LADIES AND GENTLEMEN, CAN I SEE YOU AT
10 SIDE BAR AGAIN? LADIES AND GENTLEMEN, TRYING TO KEEP YOU
11 FROM HAVING TO BE SENT OUT OF THE COURTROOM. MIGHT NOT BE
12 ABLE TO HELP IT.

13 (WHEREUPON A BENCH CONFERENCE WAS HELD).

14 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, I'M
15 SORRY. GOT A MATTER WE NEED TO TAKE UP OUT OF YOUR
16 PRESENCE. PLEASE DON'T DISCUSS THIS CASE WHILE YOU'RE IN
17 THE JURY ROOM. WE WILL GET YOU OUT AS SOON AS WE CAN.

18 (WHEREUPON THE JURY LEFT THE COURTROOM 12:24 P.M.)

19 THE COURT: MADAM REPORTER, IF YOU COULD PLEASE
20 LOCATE MR. OAKS' TESTIMONY THAT WAS GIVEN EN CAMERA THIS
21 MORNING. I THINK IT CAME OUT OF THE DIRECT EXAMINATION OR
22 EXCUSE ME CROSS-EXAMINATION BY MR. ROGERS AS I RECALL. IS
23 THAT YOUR -- YA'LLS RECOLLECTION, GENTLEMEN?

24 MR. ROGERS: JUDGE, I WANT TO SAY IT CAME OUT ON
25 DIRECT BECAUSE I WROTE IT DOWN ON THE DIRECT SIDE. IT'S

1 NOT SOMETHING I WANT TO CROSS HIM ABOUT.

2 THE COURT: OKAY. I SAW THAT IN THAT YOU DID ASK HIM
3 IF HE ONLY SAW ONE PERSON SHOOTING AND HE SAID YES, BUT IT
4 MAY HAVE WELL COME OUT ON DIRECT AS WELL.

5 MR. ROGERS: AT EITHER POINT, YOUR HONOR, WOULD BE
6 SUFFICIENT.

7 THE COURT: WHAT THEY ARE TRYING TO DETERMINE IS THE
8 TESTIMONY OF MR. OAKS IN WHICH HE TESTIFIED AS TO WHO HE
9 SAW SHOOTING AND OR WHERE HE SAW THE FIRE COMING FROM AND
10 WHICH INDIVIDUAL IT WAS.

11 WE WILL STAND DOWN FOR A MINUTE AND GIVE YOU A
12 CHANCE TO LOOK THAT UP, AND MR. OAKS YOU CAN STEP DOWN
13 FROM THE STAND BUT YOU CAN'T TALK ABOUT YOUR TESTIMONY
14 WHILE YOU'RE OFF THE STAND WITH ANYBODY; YOU UNDERSTAND
15 THAT? THANK YOU.

16 (WHEREUPON A BRIEF RECESS WAS TAKEN)

17 THE COURT: ALL RIGHT. MR. OAKS CAN RESUME THE
18 STAND.

19 (WITNESS BACK ON STAND)

20 THE COURT: GENTLEMEN, IT'S MY UNDERSTANDING THAT A
21 REVIEW OF THE RECORD INDICATES ONLY ONE SPOT WHERE MR.
22 OAKS TESTIFIED THAT HE SAW ONE PERSON SHOOTING. IS THAT
23 WHAT WE ARE TALKING ABOUT?

24 MR. ROGERS: YES, SIR, YOUR HONOR. THAT'S WHAT WE
25 FOUND.

1 THE COURT: OKAY. ALL RIGHT. YOU CAN CROSS-EXAMINE
2 ON THAT POINT AND IF THERE IS IN DISPUTE ABOUT WHETHER
3 THAT WAS THE TESTIMONY OR NOT I WILL DEAL WITH THAT, ALL
4 RIGHT? I WILL DEAL WITH THAT. BRING US THE JURY,
5 PLEASE.

6 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 12:49
7 P.M.)

8 THE COURT: LADIES AND GENTLEMEN, THANK YOU FOR YOUR
9 PATIENCE. WE WERE DEALING WITH SOME EVIDENTIARY MATTERS
10 OUTSIDE OF YOUR PRESENCE THAT WE HAD TO TAKE UP. WE'RE
11 NOW PREPARED TO GO FORWARD. MR. DOBY, YOU CAN
12 CROSS-EXAMINE.

13 MR. DOBY: MAY IT PLEASE THE COURT.

14 CROSS-EXAMINATION BY MR. DOBY:

15 Q MR. OAKS, DID YOU HAVE ANYTHING TO DRINK THAT NIGHT,
16 ALCOHOL TO DRINK THAT NIGHT?

17 A NO, SIR.

18 Q AND YOU HAD BEEN AT ONE CLUB IN SUMTER AND THEN YOU
19 DECIDED THAT YOU WERE GOING TO COME INTO THIS CLUB, THE
20 DAVIS COUNTRY CLUB; IS THAT RIGHT?

21 A YES, SIR.

22 Q AND WHEN YOU FIRST GOT TO DAVIS COUNTRY CLUB, I WANT
23 YOU TO COME BACK DOWN HERE, PLEASE.

24 (OFF STAND).

25 THE COURT: STAND ON THE OTHER SIDE AS ALWAYS, MR.

1 OAKS, PLEASE AND FACE THIS WAY, THANK YOU.

2 Q AND IF YOU WILL, POINT WHERE YOUR CAR WAS PARKED,
3 WHERE YA'LL PARKED.

4 A ON THIS SIDE OF THE ROAD.

5 Q ALL RIGHT. AND WAS IT ABOUT IN THAT LOCATION THAT
6 YOU WERE PARKED?

7 A ABOUT -- ABOUT RIGHT -- ABOUT RIGHT HERE.

8 Q ABOUT RIGHT THERE? AND MR. HENRY SCOTT HAD COME IN A
9 CAR THAT I THINK HAD PARKED RIGHT IN FRONT OF YOU; IS THAT
10 RIGHT?

11 A HUH-UH.

12 Q WAS IT BEHIND YOU?

13 A UH-HUH.

14 Q OKAY.

15 THE COURT: NO, SIR. MR. OAKS, IF YOU'LL PLEASE SIR
16 SAY YES OR NO SO WE CAN HEAR YOUR ANSWER AND THE COURT
17 REPORTER CAN RECORD IT PLEASE. THANK YOU.

18 THE WITNESS: ALL RIGHT.

19 (WHEREUPON QUESTIONING RESUMED).

20 Q ALL RIGHT. SO THE CAR THAT MR. SCOTT WAS IN WAS
21 PARKED IMMEDIATELY BEHIND THE CAR THAT YOU HAD ARRIVED IN;
22 IS THAT CORRECT?

23 A YES.

24 Q AND DID YOU -- WHEN YOU GOT OUT OF YOUR CAR, YOU
25 WALKED TOWARDS THE CLUB?

1 A YES, SIR.

2 Q YOU SAW SOMEBODY IN THIS GENERAL LOCATION RIGHT HERE
3 HAVING AN ARGUMENT WITH HENRY SCOTT?

4 A NO, SIR. YOU GOT THAT WRONG. WHEN I SAID THAT'S
5 WHAT -- WHERE I SAW ONE, I SAW MARCUS EVANS AND RON TAYLOR
6 AND WHEN I FIRST GOT TO THE CLUB, THAT'S THE PART --
7 THAT'S THE AREA THEY WERE STANDING IN.

8 Q OKAY.

9 A WHEN I FIRST GOT TO THE CLUB, THEY BEEN OUT THERE
10 ARGUING WITH NOBODY. THEY JUST OUT THERE.

11 Q YOU WALKED TO THE CLUB THEN?

12 A UH-HUH.

13 Q AND DID YOU ACTUALLY MAKE IT INSIDE OF THE CLUB?

14 A I WENT TO THE INSIDE TO THE DOOR TO SEE HOW MUCH THEY
15 WERE CHARGING.

16 Q AND YOU DIDN'T GO IN THE CLUB; DID YOU?

17 A HUH-UH.

18 Q ALL RIGHT. YOU WERE TALKING TO SOMEBODY, SOMEBODY
19 THAT COLLECTED MONEY AT THE DOOR?

20 A UH-HUH, ASKED HIM HOW MUCH HE WAS CHARGING.

21 Q ASSUME YOU HAD YOUR BACK TURNED THEN TO THE PARKING
22 LOT AREA; IS THAT RIGHT?

23 A YES, SIR.

24 Q THE REASON THAT YOU PARKED ON THE OTHER SIDE OF THE
25 ROAD IS BECAUSE THERE WERE A LOT OF CARS PARKED AROUND THE

1 CLUB THAT NIGHT; IS THAT RIGHT?

2 A YES, SIR.

3 Q AND THERE WERE A LOT OF PEOPLE THAT WERE MILLING
4 ABOUT OUTSIDE OF THE CLUB AS WELL; IS THAT RIGHT?

5 A I AIN'T KNOW HOW MUCH PEOPLE OUT THERE.

6 Q YOU DIDN'T NOTICE PEOPLE? MORE THAN FIVE, TEN, 15,
7 20?

8 A I AIN'T EVEN COUNT. I AIN'T EVEN WENT TO THE CLUB TO
9 COUNT NO HEAD. I DON'T KNOW HOW MANY PEOPLE BEEN OUT
10 THERE THAT NIGHT.

11 Q MORE PEOPLE THAN YOU CAN COUNT?

12 A I AIN'T KNOW. I JUST REMEMBER FACES. I DON'T
13 REMEMBER HOW MUCH PEOPLE BEEN OUT THERE.

14 Q SO WHEN YOU WALKED UP TO THE CLUB, YOU NEVER PASSED
15 SOMEONE YOU DESCRIBED AS MARCUS EVANS; DID YOU?

16 A YES, I DID.

17 Q WELL, MARCUS EVANS WAS SITTING -- WAS STANDING
18 SOMEWHERE OVER HERE WAS YOUR TESTIMONY?

19 A NO, THAT WAS NOT. I SAID RIGHT UP IN HERE IN THE
20 FRONT OF THE DOOR IN THIS LITTLE GRASS AREA RIGHT HERE.

21 Q SO HE WALKED -- SO YOU WALKED BY?

22 A I WALKED -- THIS THE DRIVEWAY. I WALKING THROUGH THE
23 DRIVEWAY. HE LIKE RIGHT OVER HERE. I PASSED HIM, WENT TO
24 THE DOOR.

25 Q ALL RIGHT. YOU WENT ON UP TO THE DOOR?

1 A UH-HUH.

2 Q AND THE LIGHTS THAT YOU DESCRIBED, IS THERE A LIGHT
3 SOMEWHERE IN THAT AREA?

4 A LIGHT ABOUT RIGHT HERE. THERE'S A LIGHT POLE.

5 Q OKAY. AND THERE WAS A LIGHT THAT I THINK YOU
6 DESCRIBED ON THE OTHER SIDE OF THE THING AS WELL; IS THAT
7 RIGHT?

8 A YEAH, ALMOST BACK FURTHER.

9 Q THAT DOESN'T PROVIDE ANY LIGHT THAT COMES TO THE
10 FRONT OF THE CLUB RIGHT THERE?

11 COURT REPORTER: I CAN'T HEAR HIM.

12 THE COURT: I'M SORRY. YOU'LL EITHER HAVE TO USE THE
13 MICROPHONE AT THE STAND OR JUST POINT. CAN'T WORK IT BOTH
14 WAYS. I'M SORRY, GENTLEMEN. YA'LL MIGHT HAVE TO BRING
15 THAT -- BRING THAT THING OVER HERE AND STAND IT UP WHERE
16 HE CAN SEE WHERE YOU ALL ARE. HE NEEDS TO USE THE
17 MICROPHONE.

18 (WHEREUPON THERE WAS A PAUSE).

19 THE COURT: ALL RIGHT. NOW MR. OAKS, YOU CAN USE
20 THAT STICK THAT YOU HAVE GOT AND SPEAK INTO THE MICROPHONE
21 AS HE ANSWERS QUESTIONS. THANK YOU.

22 (WHEREUPON QUESTIONING RESUMED).

23 Q SO THERE WAS A LIGHT AGAIN ON THIS SIDE OF THE CLUB
24 THAT REALLY PROVIDED NO -- NO LIGHT TO THE FRONT OF THE
25 CLUB THERE; IS THAT RIGHT?

1 A YES, SIR.

2 Q AND I THINK YOU DESCRIBED THAT THEY HAD A LIGHT MAYBE
3 ON THE OUTSIDE OF THE BUILDING AT SOME POINT?

4 A NO.

5 Q NO OTHER LIGHTS BESIDE THAT ONE ON THE OTHER SIDE OF
6 THE CLUB AND THE LIGHT POLE THAT YOU DESCRIBED; IS THAT
7 RIGHT?

8 A YEAH.

9 Q AND WERE THERE CARS THAT WERE PARKED IN THE DRIVEWAY
10 AND IN THIS AREA AND EVEN IN THE GRASSY AREA RIGHT THERE?

11 A JUST IN THE GRASSY AREA.

12 Q IN THE GRASSY AREA?

13 A WASN'T PARKED IN THE DRIVEWAY.

14 Q WAS THERE A CAR PARKED OVER HERE?

15 A YEAH.

16 Q THERE WAS A CAR PARKED OVER THERE?

17 A THAT BURGUNDY CADILLAC THAT DRIVE ON THE OTHER SIDE.

18 Q WELL, ALREADY THERE -- BECAUSE YOU WOULD HAVE PARKED
19 NEXT TO THE CLUB LIGHT THERE THEN?

20 A NO, SIR.

21 Q WELL THEN IT WAS FULL OF CARS AROUND THE CLUB THEN;
22 IS THAT RIGHT?

23 A YEAH.

24 Q THAT'S THE REASON YOU PARKED ON THE OTHER SIDE OF THE
25 ROAD; IS THAT RIGHT?

1 A YEAH.

2 Q OKAY. NOW, I THINK YOUR TESTIMONY WAS THAT WHEN YOU
3 WENT UP TO THE CLUB, YOU HEARD SOME SHOOTING AFTER THAT;
4 IS THAT RIGHT?

5 A (SHOOK HEAD).

6 Q YOU NEVER HEARD SHOOTING?

7 A HOLD UP. YOU SAY WHEN I WENT UP TO THE CLUB?

8 Q YEAH.

9 A I HEARD SOME SHOOTING?

10 Q YEAH.

11 A I AIN'T SAID THIS.

12 Q WELL, WHEN YOU WENT UP TO THE CLUB, YOU HAD YOUR BACK
13 TURNED; IS THAT RIGHT?

14 A YES, SIR.

15 Q DID YOU EVER COME AWAY FROM THE CLUB BEFORE THE
16 SHOOTING STARTED?

17 A NO, SIR. I WENT TO THE DOOR AND CAME BACK OUT AND I
18 WAS STANDING LIKE RIGHT HERE.

19 Q STANDING ABOUT RIGHT THERE?

20 A YES, SIR.

21 Q SO YOU'RE POINTING RIGHT NEXT TO THE CLUB RIGHT NEXT
22 TO THE BUILDING?

23 A RIGHT IN FRONT OF THE CLUB. I WAS LIKE IN THE
24 DRIVEWAY IN FRONT OF THE DOOR.

25 Q ALL RIGHT. AND THERE WERE -- THERE WERE THEN CARS

1 THAT ARE PARKED IN THIS AREA AND AT LEAST ONE CAR PARKED
2 OVER HERE AND SOME CARS PARKED IN THE GRASSY AREA; IS THAT
3 RIGHT?

4 A I MEAN CARS PARKED OVER THIS WAY, BUT THE DRIVEWAY IS
5 CLEAR.

6 Q OKAY. YOU SAID THAT YOU SAW ONLY ONE PERSON DOING
7 SOME SHOOTING; IS THAT RIGHT?

8 A UH-HUH.

9 Q OKAY. AND--

10 A THE REASON WHY I SAID THAT BECAUSE I SAW HIS GUN IN
11 HIS HAND SHOOTING.

12 Q ALL RIGHT. DID HENRY SCOTT ACTUALLY GET THE GUN OUT
13 OF HIS CAR?

14 A THAT I DON'T KNOW.

15 Q BECAUSE IT WAS TOO FAR FOR YOU TO SEE AT THAT POINT;
16 ISN'T THAT RIGHT?

17 A NO, SIR.

18 Q WELL, DID HE -- DID HE GO OVER THERE TOWARDS HIS CAR?

19 A YES, HE DID.

20 Q WHAT DID HE DO WHEN HE WAS GOING OVER TOWARDS THE
21 CAR?

22 A HE WENT IN THE CAR, BUT I NEVER SEEN HIM WITH A GUN.

23 Q HE WENT IN THE CAR?

24 A (WHEREUPON SUBJECT INDICATED NODDING HEAD).

25 Q BUT YOU --

1 A YES, SIR.

2 Q -- YOU NEVER SAW HIM WITH A GUN?

3 A HUH-UH.

4 Q YOU PUT IN YOUR STATEMENT THAT HE WENT TO GET HIS
5 GUN. DO YOU RECALL DOING THAT?

6 A YES, SIR.

7 Q BUT YOU ARE SAYING YOU NEVER SAW IT IN HIS HAND?

8 A NO, SIR.

9 Q WHAT KIND OF GUN DID HE HAVE?

10 A THAT I DON'T KNOW. I NEVER SAW HIM WITH A GUN.

11 Q WELL THEN, HOW DO YOU KNOW HE WENT BACK TO THE CAR TO
12 GET A GUN?

13 A HE IN -- THAT NIGHT I AIN'T EVEN KNOW.

14 Q YOU DON'T KNOW?

15 A I MEAN HE BEEN BACKING UP TO THE CAR. I MEAN, HE
16 BACK UP TO THE CAR. HE WENT IN THE CAR, BUT I NEVER SEEN
17 HIM WITH A GUN.

18 Q OKAY. ALL RIGHT. THANK YOU. THAT'S ALL I HAVE.

19 THE COURT: MR. -- NO, SIR, MR. -- SOME OTHER
20 QUESTIONS. MR. ROGERS?

21 MR. ROGERS: THANK YOU, YOUR HONOR.

22 CROSS-EXAMINATION BY MR. ROGERS:

23 Q MR. OAKS, WHEN MS. NIELSEN HAD YOU ON EXAMINATION
24 THIS MORNING, I BELIEVE YOU TESTIFIED YOU SAW TWO
25 SHOOTERS? NO? YOU ONLY SAW ONE PERSON SHOOT; IS THAT

1 CORRECT?

2 A YES, SIR.

3 Q OKAY.

4 A NO WAY I SAW HIM SHOOTING. I SAW THE GUN IN HIS
5 HAND.

6 Q THE GUN? WHOSE HANDS?

7 A RON TAYLOR.

8 Q ALL RIGHT. OKAY. YOU NEVER TOLD THE POLICE THAT;
9 DID YOU?

10 A YES, I DID.

11 Q NOW, YOU GAVE A STATEMENT TO THE POLICE -- WELL,
12 LET'S GO THROUGH THE CHRONOLOGY OF EVENTS. THE SHOOTING
13 HAPPENED NOVEMBER 14TH?

14 A UH-HUH.

15 Q EARLY MORNING HOURS; IS THAT CORRECT?

16 A UH-HUH.

17 Q THEN YOU GAVE A STATEMENT TO THE POLICE ON THE 15TH?

18 A UH-HUH.

19 Q AND ON THE 15TH YOU DIDN'T KNOW ANY NAMES?

20 A HUH-UH.

21 Q OKAY. AND YOU DIDN'T GIVE ANY DESCRIPTION OF ANYBODY
22 THAT YOU SAW SHOOTING?

23 A YES, I DID. I DID THAT NIGHT.

24 Q YOU GAVE A DESCRIPTION THAT NIGHT?

25 A UH-HUH.

1 Q TO WHO?

2 A TO A BISHOPVILLE POLICE.

3 Q OF ONE OR TWO PEOPLE?

4 A TWO.

5 Q TWO PEOPLE? AND DID YOU GIVE A HEIGHT AND WEIGHT
6 DESCRIPTION?

7 A AND MY HEIGHT.

8 Q NO, WHAT DID -- WHAT WAS THE DESCRIPTION YOU GAVE THE
9 BISHOPVILLE POLICE?

10 A I GAVE THEM THE -- I GAVE THEM MARCUS EVANS'
11 DESCRIPTION.

12 Q NO, YOU MISUNDERSTAND MY QUESTION. WHAT EXACTLY DID
13 YOU TELL THE POLICE WHEN YOU WERE GIVING THEM A
14 DESCRIPTION OF THE PEOPLE?

15 A OH, TWO LIGHT SKINNED DUDES ABOUT MY HEIGHT, SIDE
16 BURNS, AND I HAD TOLD THEM WITH A HAT, HAD ON A BLACK AND
17 WHITE PLAID SHIRT, BLACK JEANS, ONE HAD ON SOME BLACK
18 JEANS WITH A BLACK HOODIE AND A BLACK SWEATER CAP AND
19 CANDY IN HIS MOUTH, A LOLLY POP.

20 Q WHICH ONE HAD THE CANDY IN HIS MOUTH?

21 A RON TAYLOR.

22 Q OKAY. SO THEN YOU WERE NEVER ASKED TO LOOK AT ANY
23 PHOTOGRAPHIC SPREAD UNTIL LAST FRIDAY; IS THAT CORRECT?

24 A THE LINE-UP "B".

25 Q YOU GAVE A DESCRIPTION TO THE BISHOPVILLE POLICE THE

1 NIGHT THIS HAPPENED, CORRECT?

2 A YES, SIR.

3 Q AND THE NEXT DAY ON THE 15TH OF NOVEMBER YOU GAVE A
4 STATEMENT ABOUT WHAT HAPPENED?

5 A YES, SIR.

6 Q THAT IS YOUR STATEMENT?

7 A YES, SIR.

8 Q ANY DESCRIPTION IN THERE WHATSOEVER OF THE SHOOTERS?

9 A LET ME SEE. LET ME LOOK AT THIS.

10 Q SEE THIS?

11 A NO, SIR.

12 Q OKAY. DIDN'T GIVE A DESCRIPTION? ALL RIGHT. AND
13 YOU DO ADMIT THAT IN THAT STATEMENT THAT YOU PROVIDED TO
14 THE POLICE, YOU SAID THAT HENRY SCOTT WENT TO THE CAR TO
15 GET HIS GUN. YOU DIDN'T SAY A GUN AS YOU TOLD MS. NIELSEN
16 ON DIRECT. YOU SAID HIS GUN, CORRECT?

17 A YES, SIR.

18 Q BUT YOU ARE SAYING NOW THAT THAT'S BECAUSE YOU
19 THOUGHT HE WAS GOING TO GET HIS GUN?

20 A YES, SIR.

21 Q YOU KNEW HE HAD A GUN?

22 A NOT THAT NIGHT.

23 Q NOT THAT NIGHT. BUT YOU KNEW HE HAD A GUN?

24 A UH-HUH. YES, SIR.

25 Q ALL RIGHT. AND THEN YOU SAY IN YOUR STATEMENT THAT

1 THAT'S WHEN HE CAME BACK FROM THE CAR AFTER GETTING HIS
2 GUN, THAT'S WHEN THE SHOOTING STARTED?

3 A YES, SIR.

4 Q YOU DON'T EVEN SAY WHO STARTED SHOOTING FIRST; DO
5 YOU?

6 A -- UM--

7 Q IN YOUR STATEMENT.

8 A OH.

9 Q LOOK AT YOUR STATEMENT. DO YOU TELL THEM THE NEXT
10 DAY FROM YOUR STATEMENT WHO STARTED SHOOTING?

11 A NO, SIR.

12 Q OKAY. NOW, A YEAR AND A HALF LATER, OVER A YEAR
13 LATER YOU CAME -- LET ME HAVE THIS BACK, PLEASE. YOU CAME
14 UP HERE, RIGHT IN THIS COURTHOUSE?

15 A YES, SIR.

16 Q AND YOU WERE SHOWN THOSE TWO PHOTOGRAPHIC SPREADS,
17 PHOTOGRAPHIC LINE-UPS?

18 A YES, SIR.

19 Q WHAT WERE YOU ASKED TO WHEN YOU WERE SHOWN
20 PHOTOGRAPHIC LINE-UP "B"? WERE YOU ASKED ASK YOU PICK OUT
21 SOMEBODY YOU SAW THAT NIGHT?

22 A NO, I WAS JUST ASKED DO I RECOGNIZE ANYONE IN ANY OF
23 THESE PICTURES.

24 Q GOOD. DO YOU RECOGNIZE ANYONE IN THOSE PICTURES?

25 A FROM THAT NIGHT.

1 Q AND YOU DO?

2 A YES, SIR.

3 Q AND YOU DID?

4 A (WHEREUPON SUBJECT INDICATED NODDING HEAD).

5 Q LET ME JUST ASK YOU WHEN YOU SAW RON AND MARCUS IN
6 THIS AREA -- I'M SORRY -- RON AND -- YEAH; MARCUS IN THAT
7 AREA. DID YOU SEE THEM TALKING TO ANY GIRLS?

8 A I SEEN ONE GIRL AND I AIN'T KNOW WHO SHE IS.

9 Q WHAT DID SHE HAVE ON?

10 A I DON'T REMEMBER.

11 Q THIS HAPPENED VERY FAST; DIDN'T IT?

12 A YES.

13 Q NO FURTHER QUESTIONS.

14 THE COURT: THANK YOU. MR. JORDAN, ANY QUESTIONS?

15 MR. JORDAN: YEAH.

16 CROSS-EXAMINATION BY MR. JORDAN:

17 Q MR. OAKS, YOU HAD BEEN AT ANOTHER CLUB EARLIER THAT
18 DAY, YOU--

19 A YES.

20 Q YOU BEEN THERE SINCE ABOUT NOON?

21 A NO.

22 Q WHEN DID YOU GO TO JIGGERS?

23 A I WENT IN THAT NIGHT AND GOT MY A SODA.

24 Q I'M SORRY?

25 A I WENT IN THAT NIGHT AND GOT ME A SODA.

1 Q JIGGERS?

2 A YES, SIR.

3 Q YOU WEREN'T UP THERE THAT AFTERNOON?

4 A NO, SIR. I WAS UP THERE.

5 Q SHOOTING POOL?

6 A YEAH, THAT AFTERNOON.

7 Q OKAY. NOW, LET ME -- CAN YOU IDENTIFY THIS
8 STATEMENT? IS THAT YOUR SIGNATURE AT THE BOTTOM?

9 A RIGHT HERE?

10 Q UH-HUH.

11 A YES, SIR.

12 Q OKAY. AND DOESN'T THE STATEMENT SAY THAT YOU WERE AT
13 JIGGERS TILL NOON, NOON TO 12 SHOOTING POOL?

14 A NOON TO 12?

15 Q READ THE HIGHLIGHTED SECTION.

16 A (COMPLIES).

17 Q SO YOU WERE AT JIGGERS?

18 A YEAH, I WAS.

19 Q SO NOW YOU ARE SAYING YOU WERE THERE AND YOU WERE
20 THERE?

21 A YES.

22 Q THEN YOU WENT TO K.J.'S?

23 A YEAH.

24 Q OKAY. AND AT BOTH OF THOSE CLUBS, AT NO TIME DID YOU
25 HAVE ANY ALCOHOL OR BEER?

- 1 A HUH-UH.
- 2 Q OKAY. DO THEY CHECK I.D.'S AT EITHER JIGGERS OR
- 3 K.J.'S?
- 4 A I AIN'T GO TO K.J.'S.
- 5 Q YOU DIDN'T TO K.J.'S?
- 6 A I WENT THERE, BUT I NEVER WENT IN THERE.
- 7 Q OKAY. YOU STOOD IN THE PARKING LOT?
- 8 A NO, I'M SITTING IN THE CAR TALKING TO GIRL -- A GIRL.
- 9 Q TALKING TO A GIRL. HOW MANY GIRLS DID YOU TALK TO
- 10 THAT DAY?
- 11 A NONE BUT ONE.
- 12 Q JUST ONE? WHAT WAS HER NAME?
- 13 A SHARON.
- 14 Q WHAT DID SHE HAVE ON THAT NIGHT?
- 15 A I DON'T REMEMBER.
- 16 Q WAS IT COLD?
- 17 A YEAH, IT BEEN COLD.
- 18 Q DID SHE HAVE A SWEATER ON?
- 19 A (SHOOK HEAD).
- 20 Q NO?
- 21 A I AIN'T KNOW. I CAN'T REMEMBER.
- 22 Q DID SHE HAVE A HAT ON?
- 23 A NO, I KNEW SHE HAD NO HAT ON.
- 24 Q WAS SHE PRETTY?
- 25 A YEAH, IF I'M TALKING TO HER.

1 Q DID YOU TALK TO A DIFFERENT GIRL AT DAVIS COUNTRY
2 CLUB?

3 A (SHOOK HEAD).

4 Q DID YOU TALK TO ANY GIRLS AT DAVIS COUNTRY CLUB?

5 A (SHOOK HEAD).

6 Q WERE THERE ANY GIRLS OUT THERE ON THE OUTSIDE?

7 A UH-HUH. I SEEN ONE GIRL. I AIN'T KNOW HER.

8 Q DID YOU TALK TO HER?

9 A HUH-UH.

10 Q DID YOU TRY TO TALK TO HER?

11 A HUH-UH.

12 Q WHAT DID SHE HAVE ON?

13 A I CAN'T REMEMBER.

14 Q THERE WERE CARS ALL AROUND PARKED THERE?

15 A WHERE?

16 Q PARKED AROUND THE CLUB?

17 A WHERE TO?

18 Q THERE WERE CARS PARKED IN THIS AREA?

19 A YEAH.

20 Q IN FRONT OF THE CLUB? AND ON THE SIDE, THIS SIDE
21 STREET, THEY WERE PARKED OVER HERE?

22 A ON THE SIDE OVER HERE.

23 Q OVER HERE? THERE WERE CARS PARKED OVER HERE, TOO?

24 A YES, SIR.

25 Q ISN'T THERE A BALL FIELD BACK OVER HERE?

- 1 A I COULDN'T TELL YOU.
- 2 Q OKAY. THERE WERE CARS OVER HERE, TOO; IS THAT RIGHT?
- 3 A I GUESS -- I AIN'T OVER THERE.
- 4 Q NOW, WHEN THE CAR LEFT OUT, THE BURGUNDY CADILLAC,
- 5 DID IT LEAVE OUT THIS WAY OR THIS WAY? YOU CAN USE THIS
- 6 TO POINT TO SHOW.
- 7 A IT LEFT OUT GOING TOWARDS HIGHWAY 15, WOULD BE A LEFT
- 8 AS YOU LEAVING THE COUNTRY CLUB.
- 9 Q OKAY. SO THEY WENT DOWN THIS WAY?
- 10 A YES, SIR.
- 11 Q AND WHERE DID YOU SAY -- I'M SORRY. SHOW ME AGAIN
- 12 WHERE YOU SAID THAT THE INDIVIDUALS GOT IN THIS CAR. YOU
- 13 SAID --
- 14 A RIGHT.
- 15 Q -- RON AND MARCUS GOT IN THE CAR?
- 16 A THEY WENT DOWN HERE IN FRONT OF THE HOUSE.
- 17 Q FROM IN FRONT OF THIS HOUSE?
- 18 A YEAH, THIS HOUSE?
- 19 Q YOU TELL ME. I DIDN'T DRAW THE DIAGRAM.
- 20 A WELL, RIGHT LIKE DOWN HERE, FROM THIS HOUSE RIGHT --
- 21 THE HOUSE RIGHT NEXT TO THE CLUB.
- 22 Q AND THAT IS A LONG WAY DOWN FROM THE CLUB; ISN'T IT?
- 23 A NO.
- 24 Q HUNDRED FEET?
- 25 A HUH-UH.

1 Q MORE THAN A HUNDRED FEET?

2 A I AIN'T KNOW HOW LONG IT IS. RIGHT THERE TO THE
3 CLUB.

4 Q OKAY.

5 A YOU STAND IN THE CLUB PARKING LOT, YOU SEE THE HOUSE
6 FROM RIGHT THERE. THE HOUSE RIGHT THERE. STAY -- STOP
7 RIGHT THERE IN FRONT OF THE HOUSE.

8 Q NOW, IT'S DARK OUT THERE THAT NIGHT; WASN'T IT?

9 A IT DONE LIGHT ENOUGH TO SEE.

10 Q IT WAS COLD?

11 A YEAH.

12 Q DID YOU HAVE A COAT ON?

13 A YEAH.

14 Q THERE WERE A LOT OF PEOPLE OUTSIDE?

15 A (SHOOK HEAD).

16 Q NO?

17 A WHAT DO YOU CALL A LOT? I DON'T KNOW. I AIN'T COUNT
18 NO HEAD.

19 Q YOU DON'T KNOW HOW MANY PEOPLE WERE OUT THERE?

20 A NO.

21 Q HOW WELL DID YOU KNOW HENRY?

22 A ALL MY LIFE.

23 Q ALL YOUR LIFE?

24 A YEAH.

25 Q WHAT WAS HIS NICK NAME?

1 A POP.

2 Q POP? YOU KNEW HE CARRIED A GUN?

3 A HUH?

4 Q YOU SEEN HIS GUN BEFORE?

5 A UH-HUH. I MEAN...

6 Q DIFFERENT GUNS. HE HAD DIFFERENT GUNS AT DIFFERENT
7 TIMES; DIDN'T HE?

8 MS. NIELSEN: OBJECTION.

9 A NO.

10 THE COURT: SUSTAIN THE OBJECTION UNLESS IT'S SOME
11 FACTS TO SUPPORT THAT ARE IN EVIDENCE.

12 (WHEREUPON QUESTIONING RESUMED).

13 Q DID HE HAVE ANY OTHER NICKNAMES?

14 A HUH-UH..

15 Q NONE? YOU NEVER HEARD HIM CALLED ANYTHING ELSE?

16 A HUH-UH.

17 Q NEVER HEARD HIM CALLED NO LIMIT?

18 A HUH-UH.

19 THE COURT: MR. OAKS, HAVE TO GET YOU TO SAY YES OR
20 NO, PLEASE. NEITHER THE JURY AND THE COURT REPORTER CAN
21 UNDERSTAND A HUH-UH OR UH-HUH.

22 A NO, SIR.

23 Q HE WAS NEVER CALLED NO LIMIT?

24 A NO, SIR, NOT BY ME.

25 Q NOT BY YOU?

1 A I MEAN, I AIN'T KNOW WHAT ELSE TO DO. I AIN'T NEVER
2 HEARD NOBODY CALL HIM IT EITHER. YOU ASKING ME LIKE YOU
3 WAS NEVER CALLED THAT. I MEAN...

4 Q YOU EVER HEARD ANYBODY ELSE CALL HIM THAT?

5 A NO, SIR.

6 Q OKAY. YOU SPENT A LOT OF TIME WITH HIM, THOUGH.
7 SINCE HE WAS YOUR COUSIN?

8 A YES.

9 Q SPENT TIME OVER AT HIS HOUSE?

10 A YES.

11 Q DOING DIFFERENT THINGS?

12 A DOING DIFFERENT THINGS? WHAT DO YOU CALL DIFFERENT
13 THINGS?

14 Q YOU TELL ME WHAT KIND OF THINGS DID YA'LL DO
15 TOGETHER?

16 A WHAT YOU TALKING ABOUT?

17 MS. NIELSEN: YOUR HONOR, I OBJECT TO THE RELEVANCY.

18 THE COURT: I'M -- YEAH. REALLY, WHERE DOES THIS
19 GO? I CAN'T RECALL -- WELL, TELL ME WHERE THE RELEVANCE
20 OF THAT WOULD GO, MR. JORDAN.

21 MR. JORDAN: WELL, YOUR HONOR, HE IS -- HE HAS PUT IN
22 THE ISSUE HIS RELATIONSHIP WITH THE DECEASED OR THE
23 VICTIM. HE HAS SAID THAT HE KNEW HIM ALL HIS LIFE AND I
24 MERELY ASKED HIM ABOUT SPECIFIC INSTANCES. AND YOUR
25 HONOR, I ASKED HIM SPECIFICALLY IF HE HAD ONE NICKNAME.

1 HE SAID YES AND THEN I ASKED HIM THE OTHER, HE KIND OF
2 HEDGED ON THAT, THEN LATER SAID I NEVER CALLED HIM THAT.
3 I THINK IT GOES TO HIS VORACITY.

4 MS. NIELSEN: YOUR HONOR, I DON'T UNDERSTAND HIM
5 PARAPHRASING EVERYTHING THIS WITNESS HAS SAID BECAUSE HE
6 IS NOT SAYING EXACTLY WHAT THE WITNESS SAID.

7 THE COURT: NO, HE IS NOT AND I UNDERSTAND. I MEAN,
8 HE IS PARAPHRASING FOR -- OBVIOUSLY TRY TO REFRESH MY
9 MEMORY IN THAT REGARD. BUT HAS MR. OAKS IN HIS DIRECT
10 TESTIMONY -- MY MEMORY MIGHT BE INCORRECT -- DID HE
11 MENTION TRYING TO REMEMBER IF IT EVEN GOES TO MR.
12 SINGLETARY.

13 I WILL EXPLORE THAT AS A MATTER OF RESEARCH
14 DURING THE LUNCH HOUR JUST TO SEE EXACTLY HOW THAT GOES,
15 KIND OF FOCUS ON THINGS OTHER THAN WHAT FOR THIS JURY'S
16 CONSIDERATION.

17 MR. JORDAN: SURE, YOUR HONOR.

18 THE COURT: THANK YOU.

19 (WHEREUPON QUESTIONING RESUMED).

20 Q SO WHAT TIME DID YOU LEAVE THE CLUB?

21 A WHICH CLUB?

22 Q DAVIS COUNTRY CLUB THAT NIGHT.

23 A 3:30.

24 Q 3:30 IN THE MORNING?

25 A I CAN'T REMEMBER WHAT TIME IT WAS, BUT SOMEWHERE

1 AROUND THERE.

2 Q HAD THE POLICE COME OUTSIDE?

3 A UH-HUH.

4 Q OKAY.

5 A YES, SIR.

6 Q OKAY. YOU DIDN'T SEE -- YOU SAID YOU SAW THE
7 INDIVIDUALS IN THE BURGUNDY CADILLAC. YOU SAW THE DRIVER,
8 YOU DIDN'T SEE THE PASSENGER?

9 A NO, I DIDN'T.

10 Q OKAY. YOU NEVER ACTUALLY SAW MR. SINGLETON THERE
11 THAT NIGHT?

12 A HUH-UH.

13 Q OKAY. THANK YOU. NO FURTHER QUESTIONS.

14 THE COURT: THANK YOU. MR. FINNEY?

15 MR. FINNEY: MAY IT PLEASE THE COURT.

16 THE COURT: YES, SIR.

17 CROSS-EXAMINATION BY MR. FINNEY:

18 Q MR. OAKS, YOU SAY YOU SAW MY CLIENT LAMONT
19 WITHERSPOON?

20 A YES, SIR.

21 Q WHERE DID YOU SEE HIM FOR THE FIRST TIME?

22 A WHEN THE CAR PARKED RIGHT HERE, WHEN--

23 Q DID YOU SEE HIM DRIVE THE CAR UP THERE?

24 A NO, IT WAS ALREADY THERE.

25 Q THE CAR WAS ALREADY THERE WHEN YOU GOT THERE?

1 A YEAH, THE CAR WAS SITTING THERE RUNNING.

2 Q SO WHERE WAS HE WHEN YOU FIRST GOT THERE AND YOU GOT
3 OUT OF YOUR CAR?

4 A STANDING IN THE DOOR OF HIS CAR WITH THE DOOR OPEN.

5 Q STANDING IN THE DOORWAY OF HIS CAR?

6 A YES.

7 Q ALL RIGHT. AND THEN WHAT DID HE DO -- BECAUSE YOU
8 WERE ON YOUR WAY INSIDE THE CLUB.

9 A YES, SIR.

10 Q SO YOU WENT INSIDE TO THE TICKET BOOTH TO ASK HOW
11 MUCH IT COSTS?

12 A YES, SIR.

13 Q AND WHEN YOU CAME BACK OUT, WAS THE CAR STILL THERE
14 OR WAS IT GONE?

15 A IT BEEN GONE.

16 Q IT WAS GONE?

17 A YES, SIR.

18 Q WHERE WAS IT GOING TO?

19 A MUST BE -- I AIN'T KNOW.

20 Q YOU THINK HE MOVED THE CAR?

21 A YEAH.

22 Q NOW, WHILE THE CAR WAS GONE, WHEN YOU CAME BACK OUT
23 OF THE CLUB, THAT'S WHEN YOU SAY YOU HEARD AN ARGUMENT OR
24 IS THAT WHEN THE ARGUMENT TOOK PLACE?

25 A YEAH.

1 Q SO LAMONT WASN'T ANYWHERE AROUND THE ARGUMENT?

2 A NO.

3 Q DID YOU SEE THE CAR THAT LAMONT WAS IN AFTER THE
4 ARGUMENT STARTED?

5 A AFTER THE ARGUMENT STARTED?

6 Q YES, SIR.

7 A NO.

8 Q YOU DIDN'T SEE IT THEN? WHEN WAS THE NEXT TIME YOU
9 SAW THE CAR?

10 A AFTER THE SHOOTING?

11 Q AFTER THE SHOOTING. HAD IT STOPPED? HAD THE SHOTS
12 STOPPED WHEN YOU SAW THE CAR GOING DOWN THE ROAD GOING
13 TOWARDS SUMTER? HAD THE SHOTS STOPPED?

14 A NO.

15 Q THINK HARD NOW. YOU ARE UNDER OATH. I NEED YOU TO
16 TELL--

17 MS. NIELSEN: YOUR HONOR, HE HAS ASKED AND ANSWERED
18 THAT QUESTION.

19 MR. FINNEY: THE WITNESS IS LOOKING IN THE SKY, YOUR
20 HONOR, AND HE IS NOT SURE HE'S GOT THE RIGHT ANSWER. I
21 JUST WANT HIM TO HAVE THE RIGHT ANSWER.

22 THE COURT: WELL, I WILL LET YOU --

23 MR. FINNEY: CAN I ASK THE QUESTION AGAIN?

24 THE COURT: -- LET YOU ASK IT ONE MORE TIME, SEE WHAT
25 THE ANSWER IS GOING TO BE.

1 A I DON'T REMEMBER.

2 Q YOU DON'T REMEMBER?

3 THE COURT: THAT'S THE ANSWER.

4 Q ALL RIGHT. NOW, WHEN THE ARGUMENT WAS TALKING PLACE,
5 YOU DIDN'T SEE LAMONT AT ALL?

6 A HUH-UH.

7 Q WHEN THE ARGUMENT STARTED, DID YOU SEE ANYBODY WITH A
8 GUN IN THEIR HAND AT THAT POINT?

9 A NO, SIR.

10 Q IT WAS LATER ON THAT YOU SAY YOU SAW THESE GUNS?

11 A WHAT YOU MEAN LATER ON?

12 Q IT WAS AFTER SOME WORDS STARTED GOING BACK AND FORTH
13 THAT SOMEBODY STARTED SHOOTING?

14 A YES.

15 Q OKAY. WHEN THE CAR WENT DOWN -- THIS IS CALLED THE
16 MANVILLE ST. CHARLES HIGHWAY, THIS HIGHWAY RIGHT HERE.
17 WHEN THE CAR WENT DOWN THE HIGHWAY, DID IT GO ALL THE WAY
18 TO WHERE THIS DRIVEWAY IS ON THIS MAP HERE BEFORE IT
19 STOPPED AND THE GUYS GOT IN THE CAR?

20 A UH-HUH. YES, SIR.

21 Q YOU SURE OF THAT NOW?

22 A THE CAR STOPPED ABOUT RIGHT UP IN HERE, ABOUT RIGHT
23 THERE, I SAY ABOUT -- ABOUT RIGHT HERE.

24 Q ALL RIGHT. SOMEWHERE DOWN NEAR THAT DRIVEWAY WHERE
25 THE HOUSE IS?

1 A YES, SIR.

2 Q ALL RIGHT. AND THAT'S WHEN YOU SAW THE GUYS GET IN
3 THE BACK SEAT?

4 A YES, SIR.

5 Q NOW, ANSWER THIS. TELL THIS TO THE JURY. AT THE
6 TIME WHEN THE GUYS GOT IN THE BACK SEAT OF THAT CAR, WERE
7 OTHER PEOPLE RUNNING AND GETTING IN CARS AND DRIVING AWAY
8 FROM THE CLUB AT THAT POINT?

9 A NO, SIR.

10 Q NOBODY WAS MOVING?

11 A NO, SIR.

12 Q THAT WAS THE ONLY CAR THAT WAS MOVING?

13 A YES, SIR.

14 Q AND THE PEOPLE THAT WERE STANDING OUT IN FRONT OF THE
15 CLUB, THEY WEREN'T TRYING TO GO AND GET INTO THEIR CARS
16 AND LEAVE?

17 A THEY BEEN US.

18 Q SIR?

19 A THE PEOPLE THAT WAS LEAVING FROM THE CLUB, IT WAS US.

20 Q SO THE ONLY PEOPLE THAT WERE IN FRONT OF THE CLUB
21 WHERE THE FOUR GUYS AT THIS TABLE AND MR. SCOTT AND HIS
22 BUDDIES?

23 A I MEAN, OTHER PEOPLE WAS OUT THERE, BUT...

24 Q WELL, WHEN THEY HEARD THE BULLETS, WHEN THEY HEARD
25 THE GUNFIRE, WHAT DID THEY DO?

1 A DUCKED.

2 Q DUCKED? DID SOME OF THEM RUN FOR THEIR CARS?

3 A I AIN'T KNOW THAT.

4 Q THAT'S THE IMPORTANT THING. DO YOU KNOW WHETHER
5 ANYBODY ELSE DROVE AWAY FROM THAT CLUB BESIDES MY CLIENT?

6 A I DON'T KNOW.

7 Q YOU DON'T KNOW BECAUSE YOU WERE CONCERNED ABOUT MR.
8 SCOTT?

9 A YES.

10 Q YOU HAD JUST SEEN YOUR FRIEND GET SHOT?

11 A YES.

12 Q YOU TOOK OFF YOUR COAT AND PUT IT OVER HIM?

13 A YES.

14 Q YOU DON'T REMEMBER ANYTHING MUCH ABOUT WHAT ELSE WAS
15 GOING ON?

16 A NO, WORRIED ABOUT MY COUSIN.

17 Q TO YOUR KNOWLEDGE, DID MY CLIENT HAVE ANY WORDS WITH
18 YOU OR MR. SCOTT OR ANYBODY THAT WAS IN YOUR BOOTH THAT
19 NIGHT?

20 A NO, SIR.

21 Q THAT'S ALL I HAVE.

22 THE COURT: THANK YOU. MS. NIELSEN, REDIRECT?

23 RE-DIRECT EXAMINATION BY MS. NIELSEN:

24 Q MR. OAKS, YOU SAID YOU GAVE A DESCRIPTION THAT
25 NIGHT. DO YOU KNOW THE OFFICER WHO WAS WITH -- WHO YOU

1 GAVE THAT DESCRIPTION TO?

2 A I DON'T REMEMBER.

3 Q CAN YOU REMEMBER ANYTHING ABOUT WHAT HE LOOKS LIKE?

4 A HUH-UH.

5 Q DO YOU REMEMBER WHETHER HE WAS WHITE OR BLACK?

6 A I GAVE, I -- WELL, I GAVE A DESCRIPTION TO OFFICER
7 DANNY RIGHT HERE IN THE COURTROOM AND I GAVE A DESCRIPTION
8 TO ANOTHER WHITE POLICE, BUT AFTER THE AMBULANCE GOT
9 THERE...

10 Q NOW, YOU GAVE A DESCRIPTION. YOU SAID ONE OF THEM
11 HAD BLACK JEANS AND A PLAID SHIRT. WHICH ONE WAS THAT?

12 A MAURICE EVANS.

13 Q TELL US MORE ABOUT THE PLAID SHIRT AND WHAT HE LOOKED
14 LIKE.

15 A BLACK AND WHITE.

16 Q IT WAS BLACK AND WHITE?

17 A YES, MA'AM.

18 Q PLAID?

19 A LIKE...

20 Q OKAY. AND WHAT WAS THE OTHER DESCRIPTION YOU GAVE?

21 A SOME BLACK JEANS, BLACK HOODIE AND A SWEATER HAT...

22 Q AND A WHAT SWEATER?

23 A BLACK JEANS, A BLACK HOODIE AND A BLACK SWEATER CAP.

24 Q AND WHO WAS THAT?

25 A RON TAYLOR.

1 Q YOU ALSO SAID YOU GAVE A DESCRIPTION OF TWO LIGHT
2 SKINNED PEOPLE?

3 A I AIN'T HEAR YOU.

4 Q TWO LIGHT SKINNED PEOPLE?

5 A YES, MA'AM.

6 Q WITH SIDE BURNS.

7 A I SAID ONE WITH -- ONE HAD SIDE BURNS.

8 Q ALL RIGHT. ONE HAD SIDE BURNS. WHO HAD SIDE BURNS?

9 A MARCUS EVANS.

10 Q ALL RIGHT. NOW, YOU SAW THEM GO TO THE CADILLAC,
11 RIGHT?

12 A WHO?

13 Q THESE TWO GUYS.

14 A I SAW THEM GOT IN THE CADILLAC, WENT OUT FIRST, SAW
15 THEM.

16 Q DID YOU SEE ANY OF THE CARS LEAVE PRIOR TO THAT CAR
17 LEAVING?

18 A THAT'S -- SAY THAT AGAIN.

19 Q DID YOU SEE ANY OTHER CARS LEAVING PRIOR TO THEM
20 GETTING IN THE CADILLAC AND THE CADILLAC LEAVING?

21 A NO, MA'AM.

22 Q WHERE WAS MARCUS EVANS THE LAST TIME YOU SAW HIM?

23 A GETTING IN THE CAR, IN THE CADILLAC IN FRONT OF THIS
24 HOUSE BESIDE THE CLUB.

25 Q AND IMMEDIATELY PRIOR TO THEM GETTING IN THE CAR,

1 WHAT WAS HE DOING?

2 A JUMPING IN THE CAR.

3 Q COULD YOU SEE -- WAS THERE ANY GUNFIRE GOING ON AT
4 THIS TIME?

5 MR. DOBY: YOUR HONOR, I BELIEVE THAT'S BEYOND THE
6 SCOPE OF CROSS-EXAMINATION. I THINK SHE IS EXCEEDING THE
7 BOUNDS.

8 MS. NIELSEN: WELL JUDGE, THEY ASKED HIM ABOUT IT.

9 THE COURT: I THINK THE QUESTION WAS ASKED ABOUT HIS
10 MOVEMENT OF WHAT WAS GOING ON, WHO WAS LEAVING, WHERE
11 EVERYBODY WAS GOING, WHAT WAS HAPPENING, THE SHOOTING WAS
12 GOING ON AT THE TIME. THAT WAS COVERED. I THINK MR.
13 FINNEY WENT OVER THAT SPECIFICALLY.

14 (WHEREUPON QUESTIONING RESUMED).

15 Q AT THE TIME THAT ANYBODY WAS GETTING INTO THAT
16 CADILLAC, WAS THERE ANY GUNSHOTS GOING ON?

17 A NO, MA'AM.

18 Q AND HOW LONG BEFORE THAT WAS GUNSHOTS STOPPED?

19 A LONG ENOUGH FOR THE CAR TO GET FROM I RECKON OUT THE
20 SECOND DRIVEWAY TO DOWN THERE TO PICK THEM UP.

21 Q I DON'T HAVE ANY FURTHER QUESTIONS.

22 THE COURT: THANK YOU. YOU CAN STEP DOWN, MR. OAKS.

23 (WHEREUPON THE WITNESS LEFT THE STAND).

24 THE COURT: LADIES AND GENTLEMEN, I INTRUDED INTO
25 YOUR LUNCH HOUR IN ORDER TO TRY TO FINISH THE TESTIMONY OF

1 THIS WITNESS AND NOT BREAK YOU UP ANY MORE THAN I HAVE
2 ALREADY BROKEN UP IT UP THIS MORNING NECESSARILY.

3 AND SO I'M GOING TO SEND YOU TO LUNCH NOW AND
4 ASK THAT YOU PLEASE BE BACK IN THE JURY ROOM AT 2:30.
5 THAT'S AN HOUR AND TEN MINUTES. THINK THAT'S ENOUGH TIME
6 TO GIVE YOU A CHANCE TO GET A BITE TO EAT. PLEASE BE BACK
7 IN THE JURY ROOM ABOUT 2:30.

8 WE WILL CONTINUE THE AFTERNOON'S WORK AT THAT
9 TIME. PLEASE REMEMBER YOU ARE NOT TO DISCUSS THIS CASE
10 WITH YOURSELVES OR ANYONE ELSE WHILE YOU'RE OUT OF THE
11 COURTROOM. THANK YOU.

12 (WHEREUPON THE JURY LEFT THE COURTROOM AT 1:24 P.M.)

13 THE COURT: ALL RIGHT, FOLKS. ANYTHING BEFORE WE
14 BREAK FOR LUNCH FURTHER FROM THE STATE, MS. NIELSEN?

15 MS. NIELSEN: NO, SIR, YOUR HONOR.

16 THE COURT: FROM THE DEFENSE, MR. EVANS, MR. DOBY?

17 MR. DOBY: NO, SIR, YOUR HONOR.

18 THE COURT: MR. ROGERS?

19 MR. ROGERS: NO, YOUR HONOR.

20 THE COURT: THANK YOU. MR. JORDAN?

21 MR. JORDAN: YOUR HONOR, I JUST ASK THAT YOU HAVE THE
22 OPPORTUNITY TO REVIEW THE EN CAMERA INCIDENT REPORTS TO
23 MAKE A DETERMINATION, BRADY MATERIAL.

24 THE COURT: I HAVE NOT, BUT I WILL. I WILL ASK FOR
25 THOSE. THANK YOU. MR. FINNEY?

1 MR. FINNEY: NOTHING, YOUR HONOR.

2 THE COURT: THANK YOU. ALL RIGHT, GENTLEMEN. WE
3 WILL BE IN RECESS UNTIL 2:30. AND IF I COULD GET THOSE
4 INCIDENT REPORTS TO LOOK AT THEM, MS. NIELSEN, I'D
5 APPRECIATE IT.

6 (WHEREUPON COURT WAS IN RECESS FOR LUNCH).

7 THE COURT: ALL RIGHT. BRING THE JURY -- MR.
8 FINNEY?

9 MR. FINNEY: ONE GUY WENT TO THE BATHROOM.

10 THE COURT: WAIT JUST ONE SECOND. WE ARE ONE SHORT.

11 (WHEREUPON JURY ENTERED THE COURTROOM).

12 THE COURT: MADAM FORELADY AND LADIES AND GENTLEMEN,
13 THANK YOU VERY MUCH FOR YOUR RETURN. WE ARE READY NOW TO
14 START PROMPTLY ON TIME WITHOUT DELAYING ANY LONGER. WE
15 ARE GOING TO HAVE TO STOP THIS AFTERNOON AT AROUND 5:00
16 BECAUSE THE SWEARING IN CEREMONY OF CERTAIN COUNTY
17 OFFICIALS WILL BE HELD IN THIS COURTROOM SHORTLY AFTER 5
18 OR RIGHT AT 5, SO WE WILL HAVE TO STOP AROUND THAT TIME.

19 NORMALLY WE WOULD WORK A TRIAL LIKE THIS A
20 LITTLE LATER THAN FIVE TO TRY TO GET ALL THE WORK WE HAVE
21 GOT TO DO DONE OR TO DO DONE. WE ARE PREPARED TO START
22 EARLIER IN THE MORNING THAN 9:30. AND I WANTED YOU ALL TO
23 DISCUSS DURING YOUR AFTERNOON RECESS HOW EARLY IN THE
24 MORNING YOU ALL WOULD BE WILLING AND ABLE TO COME AND
25 BEGIN THE DAYS WORK.

1 OBVIOUSLY WE HAVE GOT TO DO THE WORK THAT'S
2 ASSIGNED TO US AND HOWEVER LONG IT TAKES IS HOW LONG IT'S
3 GOING TO TAKE. AND NO ONE CAN TELL CERTAINLY AT LEAST OF
4 ALL ME BECAUSE I DON'T KNOW WHAT ANY OF THESE WITNESSES
5 ARE GOING TO SAY, HOW LONG IT'S GOING TO TAKE TO EXAMINE
6 AND CROSS-EXAMINE.

7 NONE OF US CAN TELL HOW LONG THAT PROCESS WILL
8 TAKE. WE DO ALL WE CAN TO MOVE IT ALONG AS QUICKLY AS WE
9 CAN, BUT WE HAVE GOT THE UNCERTAINTY OF THAT TIME. WE ARE
10 WILLING TO START AT 9:00 INSTEAD OF 9:30, WILLING TO START
11 AT 8:30 IF YOU ALL WILL.

12 CHECK AMONG YOURSELVES PLEASE AND MADAM FORELADY
13 IF YOU COULD WHEN YOU COME BACK OUT THIS AFTERNOON LET ME
14 KNOW THE EARLIEST HOUR THAT YOU ALL ARE WILLING TO START,
15 OKAY? THANK YOU. ALL RIGHT.

16 THE STATE, LADIES AND GENTLEMEN, AS YOU RECALL
17 IS PUTTING IN EVIDENCE AND TESTIMONY. WE WILL PICK UP AT
18 THAT POINT NOW. MS. NIELSEN, YOU CAN CALL YOUR NEXT
19 WITNESS.

20 MS. NIELSEN: THANK YOU, YOUR HONOR. THE STATE CALLS
21 LARRY DEBERRY. JUDGE, THERE IS A WITNESS WHO WE HAVE
22 SUBPOENAED, LARRY DAVIS.

23 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, WHEN
24 YOU WERE QUALIFIED EARLIER BEFORE THIS TRIAL BEGAN AND I
25 READ THE LIST OF NAMES OF POTENTIAL WITNESSES TO YOU, ONE

1 OF THE NAMES THAT I READ WAS LARRY DAVIS. ACTUALLY MR.
2 DAVIS IS LARRY DEBERRY.

3 THIS IS MR. DEBERRY RIGHT HERE STANDS RIGHT BY
4 MS. NIELSEN. SINCE YOU DID NOT KNOW HIS NAME BECAUSE THAT
5 WAS THE ONLY NAME THAT MS. NIELSEN KNEW AND COULD GIVE US
6 AND GIVE YOU ON MONDAY, I NEED TO ASK YOU NOW IF ANY OF
7 YOU ALL ARE RELATED BY BLOOD OR CONNECTED BY MARRIAGE TO
8 MR. LARRY DEBERRY YOU SEE IN FRONT OF YOU OR IF ANY OF YOU
9 HAVE ANY BUSINESS SOCIAL CASUAL OR OTHER RELATIONSHIP WITH
10 MR. DEBERRY.

11 IF YOU DO, WOULD YOU RAISE YOUR HANDS AT THIS
12 TIME? THANK YOU, MA'AM. THE RECORD SHOULD REFLECT THAT
13 NO ONE ACKNOWLEDGES ANY RELATIONSHIP WITH MR. DEBERRY, MR.
14 DEBERRY, COME FORWARD PLEASE AND BE SWORN.

15 LARRY DEBERRY, BEING FIRST DULY
16 SWORN, TESTIFIED AS FOLLOWS:

17 DIRECT EXAMINATION BY MS. NIELSEN:

18 Q EVERYBODY CALLS YOU LARRY?

19 A YES, SIR.

20 Q TELL THE JURY WHERE YOU LIVE.

21 A LIVE IN COLUMBIA.

22 Q AND WHAT DO YOU DO FOR A LIVING?

23 A RUN THE DAVIS SOCIAL CLUB.

24 Q SO YOU ARE LIKE THE MANAGER?

25 A YES, MANAGER, PART OWNER.

1 Q AND PART OWNER? ON THE NIGHT OF NOVEMBER THE 14TH OF
2 LAST YEAR WERE YOU WORKING?

3 A EXCUSE ME?

4 Q ON NOVEMBER THE 14TH OF LAST YEAR, WERE YOU WORKING?

5 A YES, MA'AM.

6 Q AND YOU RECALL THE SHOOTING THAT OCCURRED OUTSIDE?

7 A YES, MA'AM.

8 Q DO YOU HAVE OFFICERS THERE AT THE CLUB? WHAT DO THEY
9 DO FOR YOU?

10 A THAT'S OUR SECURITY, MAKE SURE THINGS ARE SAFE FOR
11 EVERYBODY.

12 Q AND THESE WERE ACTUALLY POLICE OFFICERS WHO WHEN THEY
13 ARE OFF DUTY WORK FOR YOU?

14 A YES.

15 Q WERE THERE POLICE OFFICERS AT THE CLUB THAT NIGHT?

16 A YES, FOUR.

17 Q ALL RIGHT. DO YOU REMEMBER WHO THEY WERE?

18 A YES, I DO. I DON'T REMEMBER THEIR LAST NAMES, BUT I
19 KNOW THEM BY FIRST NAMES, YOU GOT DANNY, SERGEANT -- WELL,
20 HE WAS SERGEANT SIMON, SERGEANT SIMON, J.D. DELLINGER, DON
21 -- THINK IT'S FEDERAL I THINK HIS LAST NAME IS AND
22 CHARLES, CHARLES WHITE.

23 Q AND THEY ALL ACTUALLY WORK FOR THE SHERIFF'S OFFICE
24 BUT THAT NIGHT WERE WORKING SECURITY?

25 A YES.

1 Q ALL RIGHT. WOULD YOU LOOK AT THIS DRAWING THAT'S IN
2 FRONT OF YOU AND DOES THAT PRETTY WELL -- IT'S NOT DRAWN
3 TO SCALE, BUT THIS IS A PRETTY GOOD LAYOUT OF THE CLUBS
4 AND THE ROADS?

5 A BASICALLY.

6 Q AND YOU TAKE THIS RULER AND POINT OUT TO THE JURY
7 FIRST OF ALL WHAT ARE THESE THINGS ON THE FRONT OF THE
8 BUILDING?

9 A THIS IS THE DOOR.

10 Q ALL RIGHT. WHAT IS THAT OTHER THING?

11 A I'M NOT SURE.

12 Q OKAY. BUT THERE IS DOOR RIGHT THERE, RIGHT?

13 A THERE IS A DOOR.

14 Q OKAY.

15 A MAYBE A WINDOW, MAYBE THAT'S A WINDOW THERE.

16 Q IS THERE A WINDOW THERE?

17 A YEAH, BUT IT'S COVERED UP, CAN'T SEE OUT OF IT.

18 Q WOULD YOU POINT AND SHOW THE JURY -- YOU HAVE LIGHTS
19 OUTSIDE?

20 A YES.

21 Q WOULD YOU SHOW THE JURY WHERE THE LIGHTS ARE? FIRST
22 OF ALL TELL US WHAT KIND OF LIGHTS DO YOU HAVE OUTSIDE?

23 A BIG HEAVY LIGHTS.

24 Q HOW MANY DO YOU HAVE?

25 A BE FOUR.

1 Q AND WOULD YOU SHOW US WHERE THOSE ARE?

2 A ACTUALLY HAVE FIVE. THERE'S THREE OVER IN THIS AREA
3 WHICH IS ON THE BALL FIELD, ALONG THE LINES HERE AND
4 THERE'S ONE HERE ON THE CORNER, BIG ONE IN THE CORNER AND
5 THAT'S TWO IN THE YARD BACK THERE NEXT TO THE HOUSE.

6 Q ARE THERE ANY IN THE FRONT OF THE CLUB?

7 A YEAH. WE HAVE THE CLUB LIGHTS THAT'S ON THIS STREET
8 SIGN, THERE'S A POLE RIGHT HERE, RIGHT HERE ADJACENT TO
9 THE CLUB, THIS AREA. FURTHEST BACK PARK, LIGHTS ALL IN
10 THE BACK PARKING LOT.

11 Q ARE THERE ANY LIGHTS IN THIS GRASSY AREA?

12 A NO, THAT IS WHERE THE SIGN IS AT. THAT'S THE PARKING
13 LOT, BUT YOU CAN SEE THE LIGHTS IN THE CLUB, YOU GOT THAT
14 PRETTY -- THERE'S A POLE RIGHT HERE IN THE MIDDLE RIGHT
15 HERE.

16 Q UH-HUH.

17 A POLE RIGHT THERE.

18 Q WHAT KIND OF POLE?

19 A LIGHT POLE.

20 Q SO THERE IS A LIGHT?

21 A THERE IS A LIGHT POLE RIGHT HERE, YEAH.

22 Q AND YOU SAID THERE'S A LIGHT POLE?

23 A RIGHT HERE.

24 Q OKAY.

25 A IT'S LIGHT POLE RIGHT HERE.

1 Q SO HOW WELL LIGHTED IS THAT, IS THE PARKING AREA OUT
2 THERE AROUND THAT DRIVEWAY?

3 A PRETTY WELL BECAUSE BEFORE I GOT SECURITY, THEY
4 ADVISED ME OF HOW TO DO THAT, LIGHT THE PARKING LOT UP
5 MYSELF. WE DISCUSSED THAT.

6 Q OKAY. AND THAT WAS SO THAT YOU COULD--

7 A SO THEY CAN BE -- YEAH.

8 Q SO YOU CAN MONITOR WHAT WAS GOING ON OUTSIDE?

9 A EXACTLY BECAUSE THEY USUALLY -- THERE'S ONE OFFICER
10 ON THE OUTSIDE PATROLLING, BUT THERE WAS SOMETHING GOING
11 ON INSIDE AND HE WAS CALLED INSIDE AND I WAS LEFT OUT
12 THERE BY MYSELF.

13 Q ALL RIGHT. SO AT SOME POINT DID YOU GO OUTSIDE?

14 A YES.

15 Q AND WHEN YOU WENT OUTSIDE, WHAT WAS HAPPENING?

16 A IN THIS AREA HERE THERE WAS SOME GUYS ARGUING RIGHT
17 HERE, SO I WALKED HALF WAY THERE AND I DIDN'T RECOGNIZE
18 ANY OF THEM. I RECOGNIZED ONE, YOU KNOW, COME OUT THERE,
19 TWO, MAYBE ONCE OR TWICE.

20 Q NOW, THE LIGHT IS GOOD ENOUGH OVER THERE SO THAT YOU
21 COULD SEE THESE PEOPLE?

22 A YES.

23 Q AND KNEW THAT YOU DIDN'T KNOW THEM?

24 A YES.

25 Q ALL RIGHT. GO AHEAD.

1 A I RECOGNIZED ONE OF THE GUYS THAT COME OUT THE CLUB
2 SOMETIMES AND THE GIRL THAT COMES ALL THE TIME. SHE WAS
3 OUT THERE. AND I WAS GOING TO SEE WHAT WAS GOING ON, BUT
4 THEN WHEN I RECOGNIZED -- REALIZED THAT I DIDN'T KNOW TOO
5 MANY OF THEM, I WENT TO GO GET SOME HELP.

6 Q HOW MANY PEOPLE ARE YOU TALKING ABOUT WERE OUT THERE
7 ARGUING?

8 A FOUR OR FIVE.

9 Q DID YOU ACTUALLY HEAR ANYTHING?

10 A NO, I DIDN'T HEAR EXACTLY -- EXACT WORDS, JUST A
11 BUNCH OF YELLING.

12 Q OKAY. WHAT DID YOU DO? DO YOU KNOW WHAT TIME THIS
13 WAS?

14 A YEAH, ABOUT 3:45 BECAUSE I WAS JUST ABOUT TO CLOSE,
15 AND BEFORE THE CLOSE, THE PROCEDURE IS TO GO OUTSIDE AND
16 CLEAR THE PARKING LOT, YOU KNOW, MAKE SURE THERE'S NO
17 STRAGGLERS SITTING THERE TALKING THERE, STANDING THERE
18 TALKING, CLEAR THE PARKING LOTS, THEN LET EVERYBODY OUT,
19 YOU KNOW, SO SINCE THEY WERE BUSY, SINCE THEY WERE BUSY,
20 OUT THERE MYSELF.

21 Q WERE THERE A LOT OF PEOPLE INSIDE?

22 A THERE WAS A LOT OF PEOPLE INSIDE.

23 Q ALL RIGHT. SO YOU WENT OUTSIDE AND YOU REALIZED,
24 WERE YOU GOING TO GO TALK TO THESE PEOPLE?

25 A YEAH I WAS GOING TO ACTUALLY TALKING, BECAUSE USUALLY

1 I CAN TALK TO MY CUSTOMERS, THEY WILL LISTEN, THEY KNOW
2 WHO I AM. BUT LIKE I SAID, I DIDN'T KNOW THESE GUYS AND I
3 DIDN'T WANT TO TAKE THAT CHANCE.

4 Q SO WHAT DID YOU DO?

5 A I WENT BACK INSIDE TO GET SERGEANT SIMON.

6 Q HOW FAR ACTUALLY BACK INSIDE DID YOU GET?

7 A OH, NOT FAR AT ALL. SOON AS I CAME THROUGH THE
8 DOOR. HE WAS STANDING RIGHT NOT TOO FAR FROM THE FRONT
9 DOOR.

10 Q AND WHAT HAPPENED NEXT?

11 A OKAY. I WENT OUT FIRST. AT FIRST -- WELL, ON THE
12 WAY OUT I HEARD SHOTS FIRED AND I WAS YELLING BACK TO
13 SERGEANT SIMON SHOTS FIRED, HEAR SOMEBODY SHOOTING OUT
14 THERE. THEN WHEN I GOT TO THE DOOR, I LOOKED BACK WHERE
15 THE -- WHERE THEY WERE ARGUING AT AND I SEEN THE GUY ON
16 HIS KNEES.

17 Q DID YOU KNOW THAT GUY?

18 A NO, I NEVER SEEN HIM BEFORE.

19 Q OKAY.

20 A NEVER SEEN HIM BEFORE.

21 Q WHAT ELSE DID YOU SEE?

22 A I SEEN THE GUY STANDING BEHIND HIM POINTING DOWN AT
23 HIM AND THEN HE RAN UP THE ROAD.

24 Q NOW, DO YOU RECOGNIZE IN THE COURTROOM THE PERSON
25 THAT YOU SAW SHOOTING DOWN?

1 A YES, THAT MAN RIGHT THERE IN THE BLACK SWEATER.

2 Q AND SITTING AT THE DEFENSE TABLE, IS HE THE FIRST
3 PERSON AT THE DEFENSE TABLE?

4 A YES.

5 Q DO YOU KNOW HIS NAME?

6 A NO, I SEEN HIM A COUPLE OF TIMES AROUND THE CLUB, BUT
7 I DIDN'T KNOW -- THAT'S BASICALLY IT. DON'T KNOW HIM
8 PERSONALLY.

9 Q AND EXACTLY WHAT WAS HE DOING?

10 A WHEN I CAME OUT THERE I HEARD SHOTS FIRED, I HEARD
11 DIFFERENT, YOU KNOW, KIND OF SHOTS. I GUESS YOU KNOW I
12 DON'T KNOW HOW MANY GUNS, I JUST HEARD DIFFERENT SHOTS AND
13 I WAS YELLING BACK AT SERGEANT SIMON THAT YO, THEY ARE
14 SHOOTING OUTSIDE AND WAS THE FIRST ONE OUT THE DOOR.

15 WHEN I CAME OUT THE DOOR, THE GUY WAS ON HIS
16 KNEES. LIKE I SAID, THE OTHER GUY WAS POINTING DOWN, THEN
17 HE RAN UP THE ROAD AND START SHOOTING BACK TOWARD THE
18 CLUB.

19 Q WELL, WHEN HE WAS POINTING DOWN, WAS HE DOING
20 ANYTHING THEN?

21 A AFTER HE -- YEAH, HE RAN.

22 Q WELL, WERE YOU -- DO YOU MIND GETTING UP AND WILL YOU
23 GET ON -- JUST GET ON THE FLOOR ON YOUR KNEES AND SHOW THE
24 JURY THE POSITION THAT THE PERSON WHO WAS BEING SHOT WAS
25 IN.

1 A HE WAS ON HIS, HE WAS ON HIS KNEES AND...

2 Q WHERE WAS HIS HANDS?

3 A HIS HANDS WERE BY HIS SIDE.

4 Q COULD YOU SEE HIS HANDS?

5 A YEAH.

6 Q DID HE HAVE A GUN IN HIS HANDS?

7 A NO, I DIDN'T SEE THE GUN.

8 Q YOU COULD SEE HIS HANDS?

9 A YEAH, I COULD SEE HIS HANDS GOOD. I THOUGHT HE WAS
10 GOING TO CATCH HIMSELF WHEN HE FELL, BUT HE JUST FELL,
11 SO...

12 Q AND THEN WHAT HAPPENED AFTER THAT?

13 A THE GUY STARTED RUNNING UP THE STREET, UP THE ROAD
14 AND FIRING BACK TOWARD THE CLUB.

15 Q WHEN THE MAN WAS ON HIS KNEES, WAS ANYBODY SHOOTING
16 AT HIM THEN?

17 A IT WAS -- IT WAS PRACTICALLY OVER THEN AFTER THE --
18 AFTER I SAY THE GUY SHOT, TURNED AROUND, RAN UP THE ROAD,
19 THAT WAS IT FOR THE SHOOTING EXCEPT FOR LIKE I SAID THE
20 GUY SHOOTING TOWARDS THE CLUB.

21 Q WELL, I DON'T KNOW IF I MISSED THIS, BUT DID ANYBODY
22 SHOOT HIM AFTER YOU SAW HIM ON HIS KNEES?

23 A YES.

24 Q OKAY. HOW MANY TIMES DID YOU SEE SOMEBODY SHOOT HIM?

25 A JUST ONCE.

1 Q AND--

2 A JUST ONCE.

3 Q IS THAT THE PERSON YOU HAVE ALREADY IDENTIFIED?

4 A YES.

5 Q AND THAT'S THE FIRST DEFENDANT OVER HERE?

6 A EXCUSE ME? YES.

7 Q SITTING AT THE END OF THIS TABLE?

8 A YES.

9 MS. NIELSEN: YOUR HONOR, WE WOULD HAVE THE RECORD
10 REFLECT HE HAS IDENTIFIED MARCUS EVANS.

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

12 (WHEREUPON QUESTIONING RESUMED).

13 Q NOW, DID YOU SEE ANYBODY ELSE SHOOTING?

14 A NO BECAUSE NOBODY CAME BACK. WHEN I CAME BACK
15 OUTSIDE WITH LIEUTENANT SIMON, THERE WAS THREE GUYS
16 RUNNING BACK TOWARDS THE HOUSE AREA, BACK TOWARD THIS AREA
17 HERE WHICH IS NOT WELL LIT BECAUSE IT'S A PRIVATE AREA.
18 AND LIKE I SAID, I SEEN ABOUT THREE GUYS RUNNING THAT
19 WAY. IT WAS ABOUT MAYBE SEVEN PEOPLE OUTSIDE TOTAL.

20 Q TOTAL?

21 A TOTAL, YEAH, TOTAL. IT WASN'T CROWDED AT ALL.

22 Q DID YOU SEE ANY CARS MOVING?

23 A YEAH. ONE CAR RIGHT BEFORE I WENT BACK TO GET
24 SERGEANT SIMON ON THE WAY BACK OUT, ONE CAR.

25 Q AND WHERE WAS THAT CAR?

1 A ON THE ROAD, ON THIS ROAD HERE. WHEN I SEEN IT, IT
2 WAS COMING UP AROUND THE ROAD COMING AROUND THIS CURVE.
3 THERE'S A CURVE RIGHT HERE.

4 Q AND WHEN WAS THAT THAT YOU SAW THAT?

5 A AFTER THE SHOTS WERE FIRED. WELL, ALMOST ABOUT THE
6 SAME TIME BEFORE HE CAME OUT THERE.

7 Q WHEN YOU -- ALL RIGHT. AFTER YOU WENT IN AND YOU
8 SAID YOU YELLED BACK TO SERGEANT SIMON, TOLD HIM SHOTS
9 WERE FIRED, YOU CAME BACK OUT THE DOOR?

10 A I CAME BACK OUT THE DOOR.

11 Q DID YOU SEE THAT CAR THAT YOU WERE TALKING ABOUT
12 THEN?

13 A YES. WHEN I CAME BACK OUT, IT WAS ALMOST AT THE
14 CURVE, AT THIS CURVE HERE. AND WHEN I CAME BACK OUT THE
15 SECOND TIME, AND THEN--

16 Q WHAT KIND OF -- WHAT DID THAT CAR LOOK LIKE?

17 A IT WAS BURGUNDY CAR WITH WHITE TOP, A CADILLAC, OLDER
18 MODEL CADILLAC, AN OLDSMOBILE, OLD CAR. IT WASN'T MAYBE
19 '85, '84, '85.

20 Q OKAY. DID YOU SEE -- FROM WHERE YOU WERE STANDING,
21 COULD YOU SEE THAT CAR WHEN IT STOPPED OR AFTER IT
22 STOPPED?

23 A NO I COULDN'T BECAUSE IT WAS ALREADY IN -- IT WAS
24 ALREADY PASSING THE CURVE. AND I WAS HERE BEHIND MY TRUCK
25 LOOKING AT, YOU KNOW, WHAT'S GOING ON IN THIS AREA HERE.

1 Q AND THE PERSON THAT YOU SAW SHOOTING THAT YOU
2 IDENTIFIED MARCUS EVANS, WHERE DID HE GO?

3 A HE RAN UP THE ROAD, THIS ROAD RIGHT HERE.

4 Q SAME DIRECTION?

5 A YEAH, HE WAS FIRING BACK TOWARD THE CLUB.

6 Q DID YOU SEE ANY OTHER CARS THAT WERE MOVING?

7 A NO BECAUSE THE PEOPLE THAT WAS OUTSIDE WAS DUCKED AND
8 HIDING BEHIND CARS. NOBODY WAS ACTUALLY MOVING UNTIL
9 AFTER EVERYTHING STOPPED, THEN EVERYBODY, YOU KNOW, WHO
10 WAS LEFT OUT THERE JUMPED IN THEIR CARS AND LEFT.

11 Q AND YOU -- DO YOU HAVE ANY IDEA HOW MANY SHOTS YOU
12 ACTUALLY HEARD FIRED ALTOGETHER?

13 A ABOUT A TOTAL OF ALMOST FOUR TO FIVE SHOTS, BUT THEY
14 WEREN'T THE SAME SOUNDS. ONE WAS A LOW PITCH THAN THE
15 OTHER, LIKE MAYBE A -- A SMALLER GUN.

16 Q OKAY. SO YOU THINK YOU HEARD TWO GUNS FIRED?

17 A YEAH, I'M PRETTY SURE I HEARD TWO GUNS.

18 Q YOU SAID THERE WAS A GIRL OUT THERE. DO YOU KNOW
19 WHAT HER NAME IS?

20 A JUST KNOW HER FIRST NAME, NAME IS GLORIA.

21 MS. NIELSEN: COURT'S INDULGENCE.

22 THE COURT: ALL RIGHT.

23 (WHEREUPON THERE WAS A PAUSE).

24 (WHEREUPON QUESTIONING RESUMED).

25 Q AFTER THE SHOOTING WAS OVER AND -- WHAT DID YOU DO?

1 A I LOCKED THE FRONT DOOR OF THE CLUB.

2 Q WHEN DID YOU LOCK THAT FRONT DOOR?

3 A AT ALMOST 4:00, AFTER IT COMPLETELY STOPPED AND THE
4 OFFICERS GOT IN THE CAR AND, YOU KNOW, CHASED AFTER HIM.

5 Q WHAT OFFICERS GOT IN A CAR TO CHASE AFTER THEM?

6 A OH GOSH. AT THAT -- I CAN'T -- I THINK IT WAS
7 CHARLES WHITE THE ONE THAT CHASED AFTER THEM BECAUSE THE
8 REST WAS TRYING TO HELP ME WITH CROWD CONTROL.

9 Q SO YOU -- BUT YOU WENT BACK TO THE CLUB AND LOCKED
10 THE DOOR. WHAT WAS THE PURPOSE OF YOU LOCKING THE DOOR?

11 A BECAUSE I DIDN'T WANT NO PEOPLE COMING OUT AND
12 LOOKING AT THE BODY AND, YOU KNOW, OTHER STUFF START UP,
13 YOU KNOW, TEMPER START FLARING UP BEEN A WHOLE BIG MESS,
14 SO I JUST TOOK A CHANCE AND LOCKED THE DOOR. NOBODY KNEW
15 ANYTHING BECAUSE THE PARTY WAS STILL GOING ON. I TOLD THE
16 D J TO KEEP PLAYING AND NOBODY KNEW.

17 Q SO NOBODY WENT OUT?

18 A NOBODY WENT OUT THERE.

19 Q AFTER THE SHOTS WERE FIRED, DID ANYBODY GO OUT OF THE
20 CLUB --

21 A NO.

22 Q -- BESIDES EITHER YOU OR LAW ENFORCEMENT?

23 A THAT'S IT BECAUSE I HAD LAW ENFORCEMENT AT THE DOOR
24 TO MAKE SURE KEEP EVERYBODY BACK.

25 Q AFTER YOU WENT OUT THE FIRST TIME AND WENT BACK IN TO

1 GET OFFICER SIMON, DID ANYBODY GO OUT OF THE CLUB IN
2 BETWEEN THE TIME THAT YOU WENT IN AND CAME BACK OUT?

3 A NO, BECAUSE THEY WERE ALMOST -- I WAS EXACTLY STILL
4 AT THE DOORWAY BECAUSE I COULD -- I CAN SEE, I CAN SEE
5 DANNY FROM THE DOORWAY. I JUST WAVED TO HIM, YOU KNOW,
6 COME ON IN, NEED YOUR HELP.

7 Q DID ANYBODY COME IN AND OUT OF THE CLUB DURING THAT
8 TIME?

9 A NOT TO MY KNOWLEDGE, NO.

10 Q THEN AFTER THAT?

11 A AFTER THAT THEY WERE LOCKED DOWN.

12 Q OKAY. SO FROM AFTER -- BY THE TIME THE SHOOTING
13 ENDED, NOBODY COULD HAVE GOTTEN IN OR OUT --

14 A NO.

15 Q -- WITHOUT YA'LL KNOWING?

16 A WITHOUT US KNOWING.

17 Q PLEASE ANSWER ANY QUESTIONS THE DEFENSE MAY HAVE.

18 THE COURT: MR. DOBY, YOU CAN CROSS-EXAMINE.

19 CROSS-EXAMINATION BY MR. DOBY:

20 Q MR. DEBERRY, YOU HAVE ANY KIND OF WRITTEN STATEMENT
21 TO THE POLICE THAT PARTICULAR NIGHT?

22 A NO BECAUSE I WAS SUPPOSED TO GO WITH JOHN TO --
23 BECAUSE THEY HAD A CAR STOPPED IN SUMTER AND THEY TOLD ME
24 GET IN THE CAR AND LET'S GO SEE THESE GUYS, SEE IF THEY
25 DID IT, BUT THE OTHER OFFICER ALREADY LET THEM GO.

1 Q YOU -- YOU NEVER--

2 A I NEVER GIVE A WRITTEN STATEMENT BECAUSE THE NEXT
3 DATES -- LIKE I SAID, I LIVE IN COLUMBIA. THEY COULDN'T
4 GET IN TOUCH WITH ME UNTIL THAT NEXT WEEK.

5 Q LET ME BACK UP JUST A MINUTE. YOU SAY THAT THERE IS
6 REALLY ONE LIGHT IN FRONT OF THE CLUB, THAT'S IT RIGHT
7 THERE; IS THAT RIGHT?

8 A NO, THERE'S A LIGHT HERE RIGHT IN FRONT OF THE CLUB,
9 THERE'S A LIGHT ON THE CORNER OF THE CLUB RIGHT HERE AND
10 THEN THERE'S TWO AREAL LIGHTS IN MY GRANDMOTHER'S YARD,
11 ONE HERE AND ONE HERE.

12 Q OKAY. HOW FAR ARE THOSE LIGHTS FROM THE CLUB THERE,
13 THE ONES IN YOUR GRANDMOTHER'S YARD?

14 A . ABOUT 50 FEET FROM -- FROM THIS CORNER IT'S PROBABLY
15 RIGHT IN THE MIDDLE RIGHT HERE.

16 Q OKAY.

17 A RIGHT HERE.

18 Q THIS DIAGRAM RIGHT HERE SHOWS OR AT LEAST SOME
19 DISTANCE FROM THE CAR RIGHT HERE THE POLE BEING 71 FEET.
20 IS THAT ABOUT CORRECT?

21 A 71 FEET FROM -- FROM THE CLUB TO THIS FIRST POLE?

22 Q FROM THE POLE TO THE --

23 A THERE IS A POLE.

24 Q -- TO THE AUTOMOBILE THAT THEY HAVE SHOWN ON THAT
25 PHOTOGRAPH OR THAT THE DEPICTION--

1 A NO, IT'S MORE LIKE A LITTLE -- MAYBE 40 OR 50 FEET
2 FROM THAT POLE TO THIS AREA HERE.

3 Q ALL RIGHT.

4 A BECAUSE THERE IS A POLE LIGHT -- SAID THERE IS THE
5 DIRT ROAD AND THERE'S A POLE HERE, AREAL LIGHT HERE.

6 Q OKAY.

7 A THEN ACROSS THERE'S A LITTLE DIRT ROAD AND RIGHT IN
8 THIS CORNER IS THE CAR.

9 Q OKAY. AND YOU THINK IT'S MORE LIKE 30 OR 40 FEET?

10 A 30, IT'S NOT THAT FAR. NO, IT'S RIGHT ON THE EDGE OF
11 THE DIRT ROAD.

12 Q OKAY. WAS THE LIGHT THAT WAS -- THAT YOU DESCRIBED
13 BEING IN FRONT OF THE CLUB IN THE GRASSY AREA, WAS IT ON
14 THAT PARTICULAR NIGHT?

15 A YES.

16 Q WHAT KIND OF LIGHT IS THAT?

17 A IT'S ONE OF THE LIGHT RIGHT HERE?

18 Q YEAH.

19 A THE AREAL LIGHT WE PUT UP OURSELVES.

20 Q ALL RIGHT. AND YOU SAID YOU CAME OUT OF THE CLUB THE
21 FIRST TIME?

22 A UH-HUH.

23 Q AND I THINK YOUR TESTIMONY WAS YOU SAW FOUR OR FIVE
24 PEOPLE ARGUING AT THIS POINT?

25 A CORRECT.

1 Q IS THAT RIGHT?

2 A UH-HUH.

3 Q DID YOU SEE ANY OF THE INDIVIDUALS OR DID YOU GIVE A
4 DESCRIPTION OF ANY OF THOSE INDIVIDUALS THAT WERE ARGUING?

5 A THAT NIGHT?

6 Q UH-HUH.

7 A NO, JUST WHAT THEY WAS WEARING.

8 Q WHAT THEY WHAT?

9 A WHAT THEY WAS WEARING. I COULD SEE -- TELL WHAT THEY
10 WERE WEARING.

11 Q ALL RIGHT.

12 A AND I TOLD THE OFFICER WHAT THEY WERE WEARING, THAT'S
13 WHAT THEY WENT BY ON TO STOP THE CAR.

14 Q OKAY. SO YOU GAVE THE DESCRIPTION OF WHAT THEY WERE
15 WEARING THAT PARTICULAR NIGHT?

16 A RIGHT, THE GUYS ARGUING, .

17 Q OKAY.

18 A THE GUYS ARGUING.

19 Q OKAY. WERE THE GUYS THAT WERE ARGUING SEPARATE FROM
20 THE PEOPLE THAT YOU SAW SHOOTING?

21 A ONLY THE -- SIR, I ONLY SEEN ONE SHOOT, ONE PERSON
22 SHOOT.

23 Q ALL RIGHT.

24 A ONE THE SHOOTER. I COULDN'T TELL YOU WHAT THE OTHER
25 GUYS -- LIKE I SAID, WHEN I SEEN THE ONE PERSON SHOOTING I

1 SEEN THE OTHERS JUST RAN OFF INTO THE YARD HERE.

2 Q AND YOU GAVE A DESCRIPTION TO THE POLICE OF THE
3 PERSON THAT YOU THOUGHT WAS DOING THE SHOOTING; IS THAT
4 CORRECT?

5 A YES.

6 Q AND I THINK YOU SAID YOU GAVE THAT TO CHARLES WHITE?

7 A YES.

8 Q AND CHARLES WHITE WENT ON TO TRY TO STOP THE CAR?

9 A CORRECT.

10 Q YOU DIDN'T GO TO THE CAR THAT PARTICULAR NIGHT?

11 A NO BECAUSE THEY ALREADY LET HIM GO.

12 Q OKAY. WHEN CHARLES WHITE GOT THAT DESCRIPTION, WAS
13 HE HEADED IN THE SAME DIRECTION AS THE CAR THAT YOU
14 DESCRIBED LEAVING THE CLUB?

15 A YES.

16 Q OKAY. WHEN YOU FIRST HEARD SHOTS, YOU WERE IN THE
17 CLUB OR YOU WERE GOING BACK INTO THE CLUB?

18 A I WAS GOING OUT OF THE CLUB. I WAS COMING BACK OUT
19 OF THE CLUB AND I HEARD SHOTS. I WAS ALMOST -- I HAD THE
20 DOOR, YOU KNOW, OPEN AND I HEARD THE SHOTS AND I TURNED
21 AROUND AND SAID -- THEN I FIGURED SOME SHOTS OUT HERE.

22 Q ALL RIGHT.

23 A THEN WHEN I WENT OUT, THAT'S WHEN I SEEN THE GUY ON
24 HIS KNEES AND THE OTHER GUY WAS, YOU KNOW, BEHIND HIM,
25 THEN HE JUST SHOT AND HE TOOK OFF RUNNING AND STILL

1 SHOOTING.

2 Q HOW MANY SHOTS DID YOU HEAR BEFORE YOU GOT OUT OF THE
3 CLUB?

4 A SEVERAL. LIKE I SAY, ABOUT FOUR OR FIVE SHOTS BEFORE
5 I GOT BACK TO THE DOOR, THEN ANOTHER FOUR OR FIVE AFTER I
6 GOT OUTSIDE.

7 Q AND YOU BELIEVE THAT IT WAS MORE THAN ONE GUN
8 INVOLVED?

9 A YES, SIR.

10 Q WHEN -- ACTUALLY WHERE DID YOU SEE THE SHOOTING OCCUR
11 IN RELATION TO THE CLUB, SIR? POINT ME TO THE DOOR YOU
12 CAME OUT.

13 A I CAME OUT OF THIS DOOR AND THE SHOOTER CAME RIGHT
14 HERE BESIDE THIS CAR. IT WAS ALL HUDDLED IN THIS AREA
15 RIGHT HERE.

16 Q OKAY.

17 A THE GUY RAN BEHIND THE CAR TO THE ROAD HERE
18 SHOOTING. HE ONCE HE GOT TO THE ROAD, THE SHOTS WERE
19 FIRED BACK AND LOOKED BACK, HE STARTED SHOOTING BACK AND I
20 COULD TELL -- THE ONLY REASON I KEPT ON LOOKING BECAUSE I
21 COULD SEE FROM THE FLASH OF THE MUZZLE EXACTLY WHICH WAY
22 THE BULLETS WERE GOING. THEY WERE GOING, YOU KNOW, BACK
23 TOWARD THIS WAY.

24 Q SO YOU COULD SEE THE FLASH?

25 A I COULD SEE THE FLASH.

1 Q BETTER THAN YOU COULD ACTUALLY SEE THE SHOOTING GOING
2 ON?

3 A I COULD SEE HIM, YOU KNOW. I LOST VISION OF HIM WHEN
4 HE GOT TO THE ROAD IN THIS AREA HERE BECAUSE HE GOT -- IT
5 GETS DARK BACK, YOU KNOW, GETTING READY TO GO AROUND THAT
6 CURVE. I DON'T HAVE ANY LIGHTS GOING. AND THAT CURVE,
7 THAT'S NOT MY PROBLEM, THAT'S PRIVATE PROPERTY.

8 Q YOU HAVE KNOW HENRY SCOTT?

9 A NO.

10 Q DO YOU RECALL HIM -- SEEING HIM WHEN YOU CAME OUT OF
11 THE CLUB THE FIRST TIME WITH AN ARGUMENT GOING OUT?

12 A I DON'T KNOW WHO HENRY SCOTT IS. I COULDN'T TELL
13 YOU.

14 Q YOU HAVE NEVER SEEN HIM BEFORE BEST YOU KNOW?

15 A SEE, I SEE BETWEEN FOUR AND FIVE HUNDRED PEOPLE A
16 WEEKEND AND I CAN'T REMEMBER, YOU KNOW, NOT THE NAMES. I
17 CAN REMEMBER FACES, BUT NAMES, NO.

18 Q ALL RIGHT. AND I THINK YOU SAID YOU HAD A LOT OF
19 PEOPLE AT THE CLUB THERE THAT PARTICULAR NIGHT?

20 A YES, SIR.

21 Q WERE THERE -- WHEN YOU HAVE A LOT OF PEOPLE AT THE
22 CLUB, WHERE DO ALL THESE PEOPLE PARK?

23 A OH, WE HAVE A BIG PARKING AREA ON THE SIDE HERE WHERE
24 THE -- IT'S A BALL FIELD WHICH WE PUT UP EXTRA, YOU KNOW,
25 EXTRA LIGHTS HERE BEFORE WE MADE IT A PARKING LOT.

1 Q ALL RIGHT.

2 A AND WE HAVE LIKE LIGHTS HERE AND THERE'S ANOTHER
3 LIGHT LIKE I SAID COMING UP TOWARD THE CLUB. IT'S --
4 WELL, THE CITY GOT HEADLIGHTS ON THE ROAD, BISHOPVILLE GOT
5 LIGHTS ON THE ROAD. WE HAD TWO MORE LIGHTS.

6 Q ALL RIGHT. AND THERE WERE PEOPLE THAT THEN WERE
7 PARKED ON THE OTHER SIDE OF THE ROAD?

8 A YEAH, THERE WAS A -- THERE WAS SOME CARS ON THE OTHER
9 SIDE OF THE ROAD. A COUPLE CARS, NOT THAT MANY. WEREN'T
10 PROBABLY LIKE...

11 Q ABOUT AT LEAST ONE AUTOMOBILE PARKED OVER HERE I
12 THINK YOU SAID IN FRONT OF YOUR GRANDMOTHER'S HOME?

13 A NO. THERE'S A FEW PARKED OVER HERE. A FEW PARKED
14 OVER HERE.

15 Q HOW MANY CARS YOU RECKON PARKED OVER THERE?

16 A OH MY GOSH, MAYBE -- ABOUT SIX OR SEVEN.

17 Q HOW ABOUT RIGHT IN FRONT OF THE CLUB THERE?

18 A WHAT AREA YOU TALKING ABOUT, SIR?

19 Q RIGHT IN THE GRASSY AREA THAT YOU DESCRIBED. RIGHT
20 HERE IN THE FRONT IN THIS AREA?

21 A OH, THAT'S A LOT OF -- LOT OF CARS PARKED. PARKED
22 THERE, GO STRAIGHT IN THE DOOR.

23 Q -- OKAY. WERE THERE CARS THAT WERE PARKED IN THE
24 DRIVEWAY?

25 A IN THIS AREA HERE?

1 Q YES.

2 A YES, THE SECURITY CARS.

3 Q OKAY.

4 A AND SECURITY CAR PARKED IN THE DRIVEWAY AND THE OTHER
5 CARS ARE PARKED IN THIS AREA. THIS IS THE GRASSY AREA
6 RIGHT HERE AND SECURITY HAS THEIR CARS.

7 Q OKAY. POINT ME EXACTLY WHERE THAT -- THE SECURITY,
8 YOU'RE TALKING ABOUT THE POLICE?

9 A POLICE, YEAH.

10 Q POINT ME IN THE -- EXACTLY WHERE THE POLICE HAD THEIR
11 CARS PARKED. WERE THERE FOUR POLICE CARS?

12 A FOUR POLICE CARS.

13 Q OKAY.

14 A THERE WAS ONE IN THE GRASSY AREA, LET'S SEE. TWO
15 LINED UP RIGHT ACROSS FROM THE DOOR IN THAT PAVEMENT AREA
16 AND TRYING TO -- KIND OF ON THE CORNER OF THE CLUB.

17 Q ALL RIGHT. SO WHEN YOU CAME OUT OF THE CLUB THE
18 FIRST TIME, DID YOU HAVE TO GO AROUND THOSE POLICE CARS TO
19 GET TO THE DRIVEWAY?

20 A BETWEEN? NO, THERE WAS NOTHING HERE. THERE WAS
21 NOTHING IN HERE. LIKE I SAID, MOST -- LIKE I SAID,
22 SERGEANT SIMON CAR WAS HERE AND THE OTHER CARS WERE IN
23 FRONT OF HIM AND THERE'S ANOTHER CAR BY THE DOOR, ONE HERE
24 AND ONE HERE. THAT'S HOW YOU -- ONE HERE AND ONE AT THE
25 CORNER.

1 Q WELL, SO DID YOU ACTUALLY HAVE TO GO AROUND THOSE
2 CARS TO GET OUT THE FIRST TIME OR DID YOU ACTUALLY GET OUT
3 THE CLUB THAT FAR?

4 A I GOT OUT THE CLUB ON THE PART THAT WAS IN -- THAT
5 WAS MY CAR THAT WAS PARKED HERE. THAT'S THE CAR I WAS
6 BEHIND WHEN THE SHOOTING.

7 Q I DIDN'T HEAR THE LAST...

8 A THERE WAS ONLY ONE CAR RIGHT HERE IN THIS AREA HERE.
9 THAT WAS MY CAR. DON'T LIKE TO HAVE CARS PARKED HERE JUST
10 FOR REASON -- NOTHING HAPPEN TO NOBODY CAR, SEE. RIGHT
11 HERE, RIGHT EXACTLY IN FRONT OF THE BUILDING.

12 Q BUT YOU DESCRIBED WHERE SOME POLICE CARS WERE. WERE
13 THOSE THERE AT THE TIME THAT THE SHOOTING WAS GOING ON?

14 A YEAH, THEY BEEN THERE ALL NIGHT.

15 Q OKAY.

16 A THEY THERE FROM 11:30 TO 4.

17 Q SO THERE WERE SOME CARS RIGHT THERE IN FRONT OF THE
18 CLUB?

19 A IN THIS GRASSY AREA, YES.

20 Q OKAY. MAYBE I'M CONFUSED. YOU POINTED THAT THERE
21 WAS SOME CARS THAT WERE -- THAT WERE CLOSER TO OTHER THE
22 CLUB, THE POLICE CARS THAT WERE CLOSER TO THE CLUB A
23 MINUTE AGO.

24 A RIGHT. YOU ASKED WHERE THE POLICE CARS WERE AT. I
25 TOLD YOU GOING TO SERGEANT SIMON CAR RIGHT THERE ON THE

1 EDGE OF THE GRASSY AREA. SEE, I'M TRYING TO SEE HOW YA'LL
2 GOT THIS MAPPED HERE OUT, THIS CIRCLE. ACTUALLY HIS CAR,
3 IT WAS TWO -- TWO HERE IN THIS RIGHT AT THE EDGE OF THE
4 GRASSY AREA PARKED DIAGONALLY AND IT WAS ONE ON THIS
5 CORNER OF THE BUILDING, I GUESS ONE RIGHT HERE BESIDE.

6 Q ALL RIGHT. SO THERE WERE ACTUALLY THREE POLICE CARS
7 THERE IN FRONT OF THE BUILDING?

8 A YES.

9 Q BESIDES THE TWO POLICE CARS THAT WERE IN THE GRASSY
10 AREA, WERE THERE OTHER CARS THAT WERE PARKED IN THE GRASSY
11 AREA AS WELL?

12 A YES, YES, ABOUT SIX OR SEVEN.

13 Q OKAY. AND DID THAT GO FROM DRIVEWAY TO DRIVEWAY OR
14 WAS THERE A CIRCULAR DRIVEWAY THERE? THE CARS THAT WERE
15 PARKED IN FRONT OF YOUR CLUB, DID THEY GO FROM DRIVEWAY TO
16 DRIVEWAY?

17 A AS FAR AS WHICH WAY NOW? HERE'S THE CARS.

18 Q THAT'S WHAT I'M TALKING ABOUT.

19 A THESE ARE CARS HERE. NO, THE DRIVEWAY -- WHAT DO YOU
20 MEAN BY THAT? THEY COME OUT THIS END OR DID THEY COME
21 OUT -- BECAUSE THEY WOULD HAVE TO BACK UP.

22 Q WERE THERE ANY OTHERS -- WERE THERE ANY OTHER PLACES
23 FOR PEOPLE TO PARK THERE ON THE GRASSY PART OF THE CLUB?

24 A BESIDES THIS FRONT PART?

25 Q UH-HUH.

1 A NO, BESIDES THE BALL FIELD.

2 Q I'M TALKING ABOUT THAT PARTICULAR NIGHT, WERE THERE
3 ANY OTHER PLACES FOR PEOPLE TO PARK ON THE GRASSY AREA
4 WHERE YOU HAVE POINTED THERE OR WAS IT FILLED?

5 A IT WASN'T FILLED. IT WAS STILL SOME MORE SPOTS
6 HERE. LIKE I SAID, IT WAS TOWARD THE END OF THE NIGHT.
7 SOME PEOPLE ALREADY LEFT.

8 SOME LEFT AROUND 2 OR 3:00. BUT LIKE I SAID,
9 THERE WERE STILL SIX OR SEVEN CARS THERE. TRYING TO
10 EXPLAIN TO ME -- EXPLAIN TO ME WHAT YOU MEAN BY ANY OTHER
11 CARS IN THE GRASSY AREA. I MEAN, THIS CAN NEVER GET
12 FILLED OUT. GOT SO MUCH PARKING. YOU SAY IT'S FULL, IT
13 WASN'T FULL.

14 Q OKAY. DO YOU--

15 A THEY COULDN'T DRIVE FORWARD. THEY COULDN'T DRIVE
16 FORWARD BECAUSE OF THE POLICE CARS, YOU KNOW, COMING
17 ACROSS PARKED ACROSS.

18 Q OKAY.

19 A THEY HAD TO BACK OUT THAT WAY.

20 Q ALL RIGHT. BECAUSE THEY WERE PARKED CLOSEST TO THE
21 CLUB OVER THERE THEN?

22 A RIGHT.

23 Q AND THE SHOOTING THAT YOU DESCRIBED WAS HAPPENING ALL
24 THE WAY OVER HERE IN FRONT OF YOUR GRANDMOTHER'S HOME; IS
25 THAT RIGHT?

1 A NO, JUST TO THE CORNER OF THE YARD. LIKE I SAID, THE
2 HOME WAS OVER HERE. THIS IS THE CORNER OF THE YARD BEFORE
3 IT GETS TO THE CLUB.

4 Q ALL RIGHT.

5 A THE DIRT ROAD WHICH DIVIDES THAT.

6 Q OKAY. AND WHEN YOU SAW THE PERSON YOU DESCRIBED AS
7 THE SHOOTER --

8 A UH-HUH.

9 Q -- WAS THAT PERSON GOING AWAY FROM YOU AT THAT POINT?

10 A NO, HE WAS -- OKAY. AFTER HE SHOT, HE WENT IN THE
11 ROAD, RIGHT, THIS ROAD RIGHT HERE, AND HE TURNED AROUND
12 AND HE STARTED FIRING BACK.

13 Q RIGHT. AND THERE WAS THEN A CAR BETWEEN -- AT LEAST
14 ONE CAR BETWEEN YOU AND THE PERSON YOU ALLEGED WAS DOING
15 THE SHOOTING?

16 A YES, MINE.

17 Q ALL RIGHT. AND ANOTHER CAR OVER HERE THAT IS SHOWN
18 ON THIS PICTURE?

19 A THE FORD PROBE?

20 Q UH-HUH.

21 A YES.

22 Q ALL RIGHT.

23 A BUT IT DIDN'T -- THE SHOOTER STARTED -- HAPPENED
24 HERE. IT DIDN'T HAPPEN BEHIND -- IT HAPPENED HERE. AND
25 WHEN HE SHOT, HE RAN BEHIND THE CAR TO THE ROAD. HE

1 DIDN'T COME AROUND THE FRONT. HE WENT STRAIGHT BEHIND.

2 Q AND YOU SAW ONLY ONE PERSON SHOOTING THEN?

3 A YES, BUT LIKE I SAID, I COULDN'T TELL WHAT THE OTHER
4 ONES WERE DOING BECAUSE I WASN'T REALLY FOCUSED ON THAT.
5 I WAS FOCUSED ON EXACTLY WHAT I COULD, YOU KNOW, THE GUY
6 SHOOTING BACK TOWARD THE CLUB.

7 Q DID YOU SEE ANY LADIES THAT WERE STANDING AROUND
8 TALKING TO ANY OF THE PEOPLE THAT WERE THERE?

9 A YEAH, YES.

10 Q HOW MANY LADIES WERE THERE YOU RECKON?

11 A TWO THAT I KNOW OF, ANOTHER ONE I DIDN'T KNOW. BUT
12 WHEN THEY START, IT WAS LAYING DOWN ON THE GROUND IN THIS
13 AREA HERE AND ONE WAS LAYING DOWN BESIDE THE CAR, AND
14 GLORIA, SHE WAS STANDING RIGHT HERE. IT WAS A GIRL HERE,
15 A GIRL HERE AND A GIRL OVER HERE.

16 Q OKAY. DO YOU KNOW THE -- OTHER THAN GLORIA, DO YOU
17 KNOW THE GIRLS' NAMES?

18 A NO.

19 Q EVER SEEN THEM BEFORE?

20 A GLORIA WAS A REGULAR AND THAT'S THE ONLY REASON I
21 KNOW HER.

22 Q DIDN'T RECOGNIZE THE OTHER TWO?

23 A NO.

24 Q OKAY. THANK YOU. THAT'S ALL I HAVE.

25 THE COURT: MR. ROGERS?

1 CROSS-EXAMINATION BY MR. ROGERS:

2 Q MR. DEBERRY, ARE -- DID YOU KNOW MR. SCOTT?

3 A NO.

4 Q EVER MET HIM BEFORE?

5 A NEVER SEEN HIM.

6 Q NOW, IF I UNDERSTAND YOUR TESTIMONY, YOU CAME OUT OF
7 THE CLUB HERE; IS THAT RIGHT?

8 A CORRECT, SIR.

9 Q AND YOU SAW A GROUP OF PEOPLE, FOUR OR FIVE ARGUING?

10 A YES.

11 Q AND THEY WERE IN --

12 A THIS AREA HERE.

13 Q -- OVER HERE. AND YOU WENT BACK INTO THE CLUB?

14 A YES, SIR.

15 Q FOR WHAT PURPOSE?

16 A TO GETS HELP BECAUSE I SEEN THAT I DIDN'T RECOGNIZE
17 THESE GUYS, I WASN'T GOING TO TAKE THAT RESPONSIBILITY,
18 YOU KNOW, TRY TO SOLVE THE SITUATION MYSELF. IF I KNEW
19 THEM, IT WOULD BE A DIFFERENT STORY.

20 Q OKAY. IF I GET YOUR STORY STRAIGHT, YOU COME OUT THE
21 CLUB, YOU SEE AN ARGUMENT?

22 A YEAH, I WALKED TOWARDS -- I WALKED TOWARDS THEM. AND
23 THEN WHEN I GET CLOSER TO THEM AND SAY -- WELL, I ONLY
24 KNOW THE FEMALE AND YOU KNOW A COUPLE GUYS SEEN ONCE OR
25 TWICE BEFORE.

1 Q WAS THE FEMALE ARGUING?

2 A NO, NO. SHE WAS THERE JUST STANDING AROUND.

3 Q BUT IN THE GROUP THAT WAS ARGUING?

4 A IN THE GROUP, YES.

5 Q AND THEN DO YOU CARRY A GUN?

6 A NO. I HAD ONE IN MY TRUCK.

7 Q BUT YOU DIDN'T HAVE ONE THAT NIGHT?

8 A NO.

9 Q SO YOU GO BACK IN THE CLUB AFTER WHAT YOU PERCEIVED
10 AS AN ARGUMENT IN THE PARKING LOT TO GET AN OFFICER TO
11 COME ASSIST?

12 A CORRECT.

13 Q YOU THEN HEAR FOUR OR FIVE SHOTS?

14 A ON MY WAY BACK OUT THE CLUB, YES, SIR.

15 Q ALL RIGHT. I THOUGHT YOUR TESTIMONY WAS THAT YOU
16 WERE -- HAD GOTTEN INTO THE CLUB AND THEN AS YOU WERE ON
17 YOUR WAY BACK IS WHEN YOU HEARD THE SHOTS?

18 A HEARD THE SHOTS, YES, SIR.

19 Q OKAY. YOU HEAR FOUR OR FIVE SHOTS AND THEN YOU
20 PROCEED TO GO?

21 A THEN I GO, I GO AHEAD -- THEN I--

22 Q LET ME ASK THE QUESTION.

23 A OKAY.

24 Q I DON'T MEAN TO INTERRUPT YOU.

25 A GO AHEAD.

1 Q MAKE SURE YOU ANSWER WHAT I'M ASKING YOU. YOU HEAR
2 FOUR OR FIVE SHOTS AND THEN YOU GO OUTSIDE INTO THE
3 PARKING LOT WHERE THE TROUBLE LEAVES?

4 A CORRECT.

5 Q WHERE WAS THE OFFICER AT THIS THAT POINT, IN FRONT OF
6 YOU OR BEHIND YOU?

7 A BEHIND ME. HE WAS ABOUT A COUPLE OF STEPS BEHIND
8 ME. I WAS OUT THERE FIRST. HE HAD TO GET TO THE DOOR.
9 BY THE TIME HE GOT TO THE DOOR...

10 Q AND THERE WERE MORE THAN THE FOUR OR FIVE PEOPLE THAT
11 WERE STANDING IN THAT LOCATION OUT THERE IN FRONT OF THE
12 CLUB?

13 A CORRECT. MAYBE ABOUT...

14 Q YOUR TESTIMONY WAS THAT THERE WERE A LOT OF PEOPLE?

15 A NO, I NEVER SAID A LOT. SAID THERE WAS A FEW PEOPLE,
16 SAID ABOUT SIX OR SEVEN OTHERS.

17 Q SIX OR SEVEN OTHERS OTHER THAN THE GROUP?

18 A TOTALLY IT WAS ABOUT MAYBE TEN PEOPLE. I'M COUNTING
19 THE ONES THEY BE STANDING ON THIS SIDE OF THE CLUB WAY
20 OVER HERE, OPPOSITE SIDE GETTING IN THEIR CAR, GETTING
21 READY TO LEAVE AND THE FEW THAT WAS HERE.

22 Q SO IT'S YOUR TESTIMONY THAT APPROXIMATELY ONLY TEN
23 PEOPLE WERE OUTSIDE THE CLUB?

24 A APPROXIMATELY.

25 Q AND WHEN THE SHOTS RANG OUT, THOSE PEOPLE SCATTERED?

1 A YES, SIR.

2 Q ALL RIGHT. SOME RAN IN THIS DIRECTION TO THE -- TO
3 MY LEFT OF THE CLUB?

4 A YEAH.

5 Q AND SOME RAN TO THE RIGHT.

6 A BASICALLY MOST OF THEM JUST DROPPED DOWN WHERE THEY
7 WAS AT, MAYBE SOME OF THE GIRLS MIGHT HAVE JETTED OUT, BUT
8 SOME OF THE GUYS DROPPED WHERE THEY WAS AT. WASN'T TOO
9 MUCH RUNNING BESIDES THE FEW THAT WAS HERE, THEY RAN BACK
10 TOWARD THIS WAY.

11 Q AND WHERE WAS MR. SCOTT?

12 A WHO IS MR. SCOTT?

13 Q THE PERSON THAT GOT SHOT.

14 A HE WAS RIGHT HERE. HE WAS RIGHT HERE.

15 Q OKAY. DID YOU EVER SEE THAT PERSON GO FROM THIS
16 LOCATION TO CROSS MANVILLE ST. CHARLES HIGHWAY?

17 A MR. SCOTT?

18 Q YES.

19 A NO, HE -- I SEEN HIM WHEN I WENT IN. HE WAS IN THE
20 MIDDLE OF ABOUT THREE GUYS. THEY WERE ALL ARGUING. HE
21 WAS IN THE MIDDLE AND THAT'S THE ONLY PLACE I EVER SEEN
22 HIM.

23 Q AND THEN YOU GO BACK IN THE CLUB?

24 A GO BACK IN THE CLUB TO GET HELP.

25 Q AND WITHIN SECONDS?

1 A YEAH, BECAUSE I WAS RIGHT -- RIGHT THERE.

2 Q RIGHT THERE AT THE DOOR ALMOST IMMEDIATELY YOU HEAR
3 THE SHOTS?

4 A IMMEDIATELY WHEN I COME BACK, OPEN THE DOOR BECAUSE I
5 COME BACK THE DOOR, HEAR THE SHOTS, TURN BACK AROUND TO
6 DANNY. I SAID DAN, THERE'S SOME SHOTS OUT HERE. I COME
7 OUT THE DOOR, SEE MY GUY ON HIS KNEES AND THE OTHER GUY
8 POINTING DOWN AND HE STARTED RUNNING.

9 Q DID YOU SEE HIM WITH A WEAPON?

10 A NO.

11 Q WAS THERE ANYTHING OBSTRUCTING YOUR VIEW? TALK ABOUT
12 POLICE CARS AND YOUR CAR--

13 A YEAH, THERE WAS.

14 Q WHERE -- THE POLICE CARS WERE HERE?

15 A UH-HUH.

16 Q AND YOUR CAR WAS...

17 A MY CAR WAS RIGHT HERE. AND BETWEEN HERE AND HERE,
18 NOTHING.

19 Q OKAY.

20 A JUST A LITTLE DIRT ROAD AND THE CORNER.

21 Q NOTHING OBSTRUCTING YOUR VIEW?

22 A NO.

23 Q NO? AND YOU GAVE A DESCRIPTION TO MR. DELLINGER?

24 A I GAVE TO CHARLES WHITE AND I THINK I GAVE ONE TO
25 DANNY.

1 Q BUT MR. DELLINGER WAS THERE?

2 A WHO IS MR. DELLINGER?

3 Q I'M SORRY, THE OFFICER SITTING AT THE--

4 A OH, OKAY. I'M NOT SURE IF I GAVE HIM ONE. THEY ALL
5 ASKED ME. I TOLD THEM THE SAME THING.

6 Q HE WAS THERE?

7 A HE WAS THERE.

8 Q OKAY.

9 A THEN OTHER TWO THAT CAME LATER.

10 Q OKAY. AND THAT'S THE LAST TIME YOU TALKED TO ANY LAW
11 ENFORCEMENT OFFICERS ABOUT THIS CASE UNTIL--

12 A NO, SERGEANT SIMON -- AT THE TIME SERGEANT SIMON, HE
13 ASKED ME FOR A STATEMENT. BUT LIKE I SAID, I LIVE IN
14 COLUMBIA. IT WAS HARD TO CATCH UP WITH ME BACK AND FORTH,
15 AND AT THAT TIME WE WAS GOING THROUGH SOME OTHER STUFF
16 WITH SHERIFF'S DEPARTMENT WITH ONE OF THE MAJOR.

17 Q AT THE TIME YOU'D NEVER GIVEN A STATEMENT OR A
18 WRITTEN STATEMENT OF THE EVENTS THAT OCCURRED?

19 A NO.

20 Q HAVE YOU HAD ANY PROBLEMS AT THE CLUB SINCE NOVEMBER
21 14TH?

22 MS. NIELSEN: OBJECTION, YOUR HONOR, RELEVANCE.

23 THE COURT: WHAT WOULD THE RELEVANCE OF THAT BE, MR.
24 ROGERS?

25 MR. ROGERS: TESTING HIS CREDIBILITY. HE DIDN'T GIVE

1 A STATEMENT. HE IS REMEMBERING ALL THESE FACTS. I WANT
2 TO KNOW IF THERE ARE OTHER INCIDENTS THAT HAVE HAPPENED
3 SINCE THEN SO THE JURY CAN DETERMINE IF HE CAN REMEMBER
4 SOMETHING OVER A YEAR AGO..

5 THE COURT: I WILL LET YOU DO IT. YOU CAN ANSWER THE
6 QUESTION.

7 (WHEREUPON QUESTIONING RESUMED).

8 Q HAVE YOU HAD ANY PROBLEMS, ANY SHOOTINGS AT THE
9 CLUB?

10 A YES, I HAD ONE OTHER INCIDENT EARLIER THIS YEAR,
11 ANOTHER SHOOTING.

12 Q DID YOU GIVE A STATEMENT TO THE POLICE IN THAT ONE?

13 A WELL, ACTUALLY NO BECAUSE I DIDN'T SEE THAT ONE.
14 DIDN'T SEE. BUT DAN SAID THAT'S THE FIRST ONE I EVER HAD
15 THERE, SO OF COURSE I'M GOING TO REMEMBER.

16 Q THAT'S THE FIRST TIME?

17 A THE FIRST SHOT FIRED AT THE CLUB.

18 Q OKAY. WERE YOU CONCERNED THAT THERE WAS A SHOOTING
19 AT YOUR CLUB?

20 A OF COURSE. WHY YOU THINK I WENT BACK OUT THERE IN
21 THE LINE OF FIRE? I DID EVERYTHING BUT STOP THAT BULLET
22 FOR THAT GUY, EVERYTHING I COULD. I MEAN, I WASN'T
23 SCARED. I MEAN, I BEEN THROUGH THIS BEFORE.

24 Q AND WHEN -- YOU BEEN THROUGH WHAT BEFORE?

25 A THE SHOOTING AND STUFF LIKE THAT BEFORE.

1 Q SHOT AT BEFORE?

2 A YEAH, IN THE ARMY.

3 Q AND YOU NEVER TOOK IT UPON YOURSELF IN A YEAR TO GO
4 TO THE POLICE AND TELL THEM WHAT YOU KNEW?

5 A THEY KNEW WHAT I KNEW.

6 Q WHEN IS THE FIRST TIME YOU HAD AN OPPORTUNITY TO LOOK
7 AT ANY PHOTO LINE-UP?

8 A NONE.

9 Q YOU NEVER LOOKED AT THOSE TWO PHOTO LINE-UPS SITTING
10 THERE BEFORE YOU?

11 A (SHOOK HEAD) .

12 Q NO?

13 A (SHOOK HEAD) .

14 MR. ROGERS: YOUR HONOR, I'D INSTRUCT THE WITNESS TO
15 ANSWER. I DON'T KNOW IF HE ANSWERED OR NOT.

16 THE COURT: ALL RIGHT. MR. DEBERRY, AFTER YOU
17 EXAMINED THE THINGS HE REFERRED YOU TO, IF HE WILL ANSWER
18 YOUR QUESTION.

19 A I AM SORRY. I THOUGHT I SAID NO.

20 Q I'M SORRY. HAVE YOU LOOKED AT THOSE TWO PHOTO
21 LINE-UPS THERE BEFORE YOU?

22 A NO, I HAVEN'T.

23 Q WERE YOU CONTACTED CONCERNING YOUR TESTIMONY AT THIS
24 TRIAL?

25 A DID THEY CALL ME TO COME OUT THERE?

1 Q YES.

2 A YES, THEY DID.

3 Q AND WHEN WAS THAT?

4 A LAST WEEK.

5 Q AND WHEN THEY CALLED YOU, DID THEY TALK TO YOU ABOUT
6 THE CASE?

7 A NO, BECAUSE I DIDN'T -- I DIDN'T COME UNTIL TODAY.

8 Q SO THE FIRST TIME ANYBODY KNEW THAT YOU SAW THE
9 SHOOTING WAS TODAY?

10 A NO, IT WAS THAT NIGHT.

11 Q IT WAS THAT NIGHT?

12 A YEAH. LIKE I SAID, ASKED FOR A STATEMENT BUT
13 EVERYTHING WAS GOING SO CRAZY I DIDN'T GET A CHANCE TO GET
14 BACK TO WORK..

15 Q SO FROM THAT NIGHT TILL LAST WEEK, YOU HAVEN'T TALKED
16 TO ANYBODY ABOUT THE CASE?

17 A NO, THEY ONLY TOLD ME -- THEY LET ME KNOW, YOU NOW
18 KNOW, WHEN THE CASE WAS GOING TO COME UP, THEY WOULD LET
19 ME KNOW. I SAID FINE.

20 Q DID YOU TELL ANYBODY THAT NIGHT THAT YOU COULD
21 IDENTIFY THE SHOOTERS?

22 A YES, THE OFFICER. THAT'S WHY THEY WENT AND ASKED ME
23 TO COME TO THE CAR TO IDENTIFY THE SHOOTERS, BUT LIKE I
24 SAID, THEY ALREADY LET THEM GO.

25 Q AND THEY NEVER SHOWED YOU A PHOTO LINE-UP?

1 A NO.

2 MR. ROGERS: NO MORE QUESTIONS.

3 THE COURT: ALL RIGHT. MR. JORDAN?

4 MR. JORDAN: THANK YOU, YOUR HONOR.

5 CROSS-EXAMINATION BY MR. JORDAN:

6 Q MR. DEBERRY, DID YOU HAVE A COVER CHARGE?

7 A YES.

8 Q DOES THAT VARY?

9 A YES, IT DOES.

10 Q IT DOES? AND WHAT TIME DO YOU NORMALLY CLOSE THE
11 DOORS AS FAR AS NOT CONTINUING LETTING PEOPLE COME IN?

12 A 4:00.

13 Q 4:00? IS THAT STRICTLY A TIME ELEMENT OR DO YOU HAVE
14 A CAPACITY? IN OTHER WORDS, WE GOT THIS MANY PEOPLE IN
15 HERE, THAT'S IT'S--

16 A NO, THAT'S IT. THAT'S THE TIME. THAT'S THE TIME.
17 THAT'S THE TIME OUR SECURITY STARTS CLOCKING OUT, YOU
18 KNOW. YOU HAVE TO GO. I DON'T KEEP THEM THERE ALL
19 NIGHT. WHEN THEY LEAVE, MY PEOPLE LEAVE.

20 Q WHAT IS YOUR POLICY ON PEOPLE CONGREGATING IN THE
21 PARKING LOT?

22 A THEY CAN'T. THAT'S WHY I WENT AND GOT SECURITY.
23 THAT'S WHY WE DO CHECKS EVERY NIGHT BEFORE WE CLOSE.

24 Q NO LOITERING?

25 A EXCUSE ME?

1 Q NO LOITERING?

2 A NO LOITERING.

3 Q YOU'RE NOT IN THE CLUB?

4 A BIG SIGN IN FRONT OF THE DOOR NO LOITERING.

5 Q WHAT ABOUT PEOPLE WHO COME UP THERE LATE IN THE
6 EVENING OR EARLY MORNING HOURS AND ELECT AFTER THEY ARE
7 TOLD TO GO, THEY ELECT NOT TO COME INSIDE? ARE THEY TOLD
8 THAT YOU CAN'T LOITER?

9 A THEY ARE TOLD TO LEAVE.

10 Q TOLD TO LEAVE?

11 A THAT'S WHY I KEEP A COVER CHARGE SO IT DOESN'T GET
12 THAT WAY. I LET THEM KNOW WE ARE ABOUT TO CLOSE, BUT IF
13 YOU WANT TO PAY THIS RIDICULOUS AMOUNT OF MONEY, YOU GO
14 AHEAD. I PUT IT UP THERE JUST SO I WON'T HAVE PEOPLE COME
15 IN LATE NIGHT CAUSING TROUBLES, YOU KNOW. I'M READY TO
16 CLOSE, LESS PEOPLE THE BETTER.

17 Q AND THEN FROM TIME TO TIME AS NIGHT GOES ON, THERE'S
18 A CONGREGATION OF FOLKS OUTSIDE THERE ASKING TO PARK?

19 A YES, USUALLY TWO SECURITY OFFICERS ON THE OUTSIDE
20 DOING THAT, BUT THIS PARTICULAR NIGHT THERE WAS SOMETHING
21 GOING ON INSIDE. I DON'T KNOW WHAT WAS ON THE OUTSIDE.

22 Q YA'LL SERVE ALCOHOL, RIGHT?

23 A BUT THAT STOPS AT 2:00.

24 Q I'M SORRY?

25 A THAT STOPS AT 2:00.

1 Q OKAY. WHAT ABOUT -- WHAT ABOUT UNDER AGE FOLKS UNDER
2 21, WHAT IS THE POLICY ON DEALING WITH THEM?

3 A NOTHING.

4 Q THEY ARE NOT?

5 A AS POLICY, NO.

6 Q THEY ARE TURNED AWAY?

7 A. . . TURNED AWAY. MIGHT SLIP THROUGH WITH A FAKE I.D.,
8 BUT YOU'RE GOING TO HAVE A COUPLE THAT GETS IN THERE, BUT
9 WE KNOW THEY IN THERE, THEY ESCORT THEM OUT.

10 Q I JUST LOOK INSIDE THE FRONT DOOR. THERE'S A LITTLE
11 TURN IN THE WALL AND THERE'S A CHAIR RIGHT THERE. IS THAT
12 WHERE YOUR I.D. CHECKER SITS?

13 A NO, THE I.D. CHECKER SITS AT THE FRONT DOOR.

14 Q THE FRONT DOOR?

15 A LIKE I SAID, USUALLY OFFICER OUT THERE CHECKING
16 I.D.'S SAY AT 3:45, NOT NEEDED UP THERE, HE WANT TO GO
17 INSIDE BECAUSE THERE WAS A SITUATION INSIDE AND I SAID IT
18 WAS TIME TO CLOSE, LET'S GET EVERYTHING IN ORDER SO WE CAN
19 OPEN THESE DOORS AND LET THEM OUT. THAT'S WHERE ALL FOUR
20 WAS AT.

21 Q ALL THAT PARKING YOU GOT AVAILABLE, DO CARS PARK ON
22 THE OPPOSITE SIDE OF THE MANVILLE ST. CHARLES ROAD?

23 A VERY FEW TIMES. IT'S GOT TO BE AWFUL CROWDED IN
24 THERE FOR THEM TO DO THAT BECAUSE GOT ENOUGH PARKING FOR
25 THAT.

1 Q IS -- THAT OBSTRUCTS THAT ROADWAY; DOESN'T IT? YOU
2 GOT A DITCH ON THE OTHER SIDE?

3 A THERE'S A DITCH ON THE OTHER SIDE SO THEY DON'T PARK
4 IN THE ROAD. MORE LIKE ALMOST IN THE DITCH. LIKE I SAID,
5 ONLY A FEW TIMES THEY DO THAT.

6 Q THERE'S NOT MUCH ROOM OUT THERE; IS IT?

7 A NO.

8 Q CAR CAN'T HARDLY FIT OVER THERE WITHOUT FITTING
9 SOMEWHERE IN THE ROAD?

10 A LITTLE BIT MIGHT BE IN THE ROAD.

11 Q THANK YOU. I DON'T HAVE ANY FURTHER QUESTIONS.

12 THE COURT: MR. FINNEY?

13 MR. FINNEY: MAY IT PLEASE THE COURT.

14 THE COURT: YES, SIR.

15 CROSS-EXAMINATION BY MR. FINNEY:

16 Q MR. DEBERRY, IS IT YOUR TESTIMONY TODAY THAT YOU HAVE
17 NOT GONE OVER YOUR STATEMENT WITH THE SOLICITOR'S OFFICE
18 BEFORE TODAY?

19 A BEFORE TODAY.

20 Q YOU NEVER SAW THIS MAP BEFORE TODAY?

21 A NOT BEFORE TODAY.

22 Q ALL RIGHT. DID YOU SEE IT EARLIER TODAY BEFORE YOU
23 GOT ON THE STAND DURING THE LUNCH HOUR?

24 A I GLANCED AT IT. THAT'S WHAT IT WAS. I SAID IT LOOK
25 LIKE THE CLUB. I SAID IT'S THE CLUB.

1 Q WHERE DID YOU SEE IT INSIDE THE COURTROOM OR IN
2 SOMEBODY'S OFFICE?

3 A INSIDE THE COURTROOM. I CAME IN, EVERYBODY WAS GONE,
4 LOOK LIKE THE CLUB.

5 Q ALL RIGHT. NOW, THE TESTIMONY YOU GAVE IS THAT YOU
6 SAW THIS BURGUNDY CADILLAC --

7 A YEAH.

8 Q -- WITH A WHITE TOP?

9 A CORRECT.

10 Q WHERE DID YOU SEE THAT AT?

11 A WHEN I SEEN IT, IT WAS ALMOST -- IT WAS HERE BY THAT
12 TIME.

13 Q WAS IT MOVING?

14 A IT WAS MOVING, YES.

15 Q ALL RIGHT. AND DID YOU SEE IT STOP?

16 A NO, I COULDN'T SEE AROUND THE CURVE.

17 Q DID YOU SEE SOMEBODY GET IN IT?

18 A NO, I DIDN'T SEE THAT. CAN'T TELL YOU THAT.

19 Q SO YOU SAW A BURGUNDY CADILLAC MOVE, AND THE FIRST
20 TIME YOU SAW IT WAS PAST THE CAR WHERE THE YOUNG MAN GOT
21 SHOT?

22 A CORRECT. CORRECT AND IT WAS A YOUNG MAN STANDING
23 HERE, RIGHT HERE AND HE SAID LARRY, THE GUYS ARE GETTING
24 IN THE CAR, TELL -- TELL THE POLICE.

25 Q SAY THAT AGAIN, SIR?

1 A THERE WAS A GUY STANDING RIGHT IN THIS AREA HERE AND
2 HE SAID LARRY, THEY GETTING IN THE CAR BECAUSE BY THAT--

3 Q WHO IS LARRY?

4 A ME, THEY CALL ME LARRY.

5 Q OKAY.

6 A BY THAT TIME THE SHOOTER HAD ALREADY STOPPED AND I'M
7 WALKING TOWARDS WHERE IT HAPPENED AT AND THIS GUY YELLS TO
8 ME LARRY, THEY'RE GETTING IN THE CAR. THEN I GO TELL THE
9 POLICE OFFICER THAT'S WHAT THE GUY TOLD ME, YOU KNOW.

10 Q DIDN'T YOU SAY A FEW MINUTES AGO WHEN YOU CAME OUT
11 THE CLUB THAT THERE WERE OTHER PEOPLE LEAVING TO GET IN
12 THEIR CARS?

13 A NO, I DIDN'T SAY THAT. I SAID THEY WAS RUNNING AND
14 THERE WERE SOME ON THE GROUND.

15 Q I'M TALKING ABOUT BEFORE THE SHOOTING.

16 A BEFORE THE SHOOTING, YEAH.

17 Q WEREN'T THERE PEOPLE LEAVING THE CLUB GETTING IN
18 THEIR CARS?

19 A AT 3:45 THERE WAS A COUPLE PEOPLE GOING TOWARD THEIR
20 CARS, YES. THERE WERE PEOPLE THAT WERE RIGHT IN THIS AREA
21 OVER HERE BEHIND THE CLUB.

22 Q RIGHT. SO ONCE THOSE PEOPLE GOT IN THEIR CARS AND
23 CRANKED IT UP--

24 A AFTER WHEN THE FIRING STOPPED, NOBODY WAS DOING
25 NOTHING. EVERYBODY WAS STANDING, YOU KNOW, TRYING TO

1 FIGURE OUT WHERE THE FIRES COMING FROM, SCREAMING AND
2 DUCKING DOWN.

3 Q NOW MR. DEBERRY, ISN'T IT TRUE THAT THIS IS YOUR
4 FIRST SHOOTING, YOU ARE NOT EXPERIENCED WITH THE SITUATION
5 OF HAVING SHOTS FIRED AT YOUR NIGHTCLUB?

6 A NO, BUT I EXPERIENCED WITH SHOTS FIRED WHILE I'M AT
7 THE DOOR--

8 Q SIR?

9 A I HAVE EXPERIENCE WITH SHOTS BEING FIRED AT ME.

10 Q OKAY.

11 A SO, I MEAN--

12 Q AND WHAT IS YOUR REACTION WHEN SHOTS ARE BEING FIRED
13 AT YOU?

14 A I'M GOING TO SEE WHERE THEY'RE COMING FROM.

15 Q DID YOU GET UP ON YOUR TOES TO LOOK OVER THESE CARS?

16 A HAVE TO LOOK OVER THE CARS BECAUSE I WAS SITTING. I
17 WAS STANDING RIGHT HERE.

18 Q RIGHT.

19 A AND IT HAPPENED RIGHT HERE. THERE WAS NOTHING IN
20 BETWEEN ME AND THIS AREA HERE.

21 Q WELL, DIDN'T YOU SAY -- EXCUSE ME, SIR. DID YOU SAY
22 THERE WERE PEOPLE RUNNING IN THE FIELD THIS WAY GOING
23 TOWARD THE HOUSE?

24 A NO, THEY START FIELD -- YEAH, THREE OR FOUR GUYS.

25 Q DIDN'T YOU SAY THREE -- THERE WERE THREE OR FOUR

1 PEOPLE?

2 A YOU ASKED ME IF I COULD, YOU KNOW, SOMETHING
3 OBSTRUCTING MY VIEW THERE AND I TOLD YOU NO.

4 Q OKAY.

5 A THAT'S YOU ASKED ME.

6 Q YOU DIDN'T TAKE ANY CONCERN FOR YOURSELF AS FAR AS
7 KIND OF GETTING DOWN OR MAKING SURE--

8 A LIKE I SAID, I SEEN WHICH WAY THE ROUNDS WERE COMING
9 FROM.

10 Q OKAY.

11 A SO I KNOW I WASN'T NO GREAT DANGER. I WANTED TO --
12 TO SEE IF ANYBODY WAS GOING TO GET HIT OR ANY OF MY
13 CUSTOMERS ELSE GOT HURT. THAT WAS MY MAIN CONCERN WAS MY
14 CUSTOMERS.

15 Q YOU WERE STANDING IN THIS AREA HERE?

16 A EXACTLY.

17 Q THE MAN WAS FIRING SHOTS HERE?

18 A THAT'S RIGHT.

19 Q AND YOU COULD TELL--

20 A FIRING SHOTS UP HERE, FROM HERE, FROM HERE.

21 Q WHICH WAY WAS HE SHOOTING?

22 A TO HERE, BACK THIS WAY.

23 Q BACK TOWARDS THE CLUB?

24 A NO, NO, BACK TOWARDS THIS ROAD HERE. THEY -- IT WAS
25 NONE OF THEM HIT THE CLUB. ALL THE SHOTS WENT PROBABLY

1 STRAIGHT BACK DOWN.

2 Q HOW DO YOU KNOW HE WASN'T FIRING IN THE AIR?

3 A BECAUSE I COULD SEE THE LEVEL OF THE FIRING COME
4 THROUGH THE GUN.

5 Q AND THE FIRE THAT WAS COMING FROM THE GUN?

6 A UH-HUH.

7 Q YOU COULDN'T TELL WHICH WAY THE BULLETS WAS GOING;
8 COULD YOU?

9 A YEAH, FROM THE DIRECTION FROM FIRE YOU CAN.

10 Q WELL, SINCE IT'S DARK OUT THERE, PITCH BLACK DARK AT
11 4:00?

12 A THAT'S EASY TO SEE THE FIRE.

13 Q RIGHT, BUT YOU CAN'T SEE WHICH WAY THE HANDLE OR THE
14 BULLET IS POINTING; CAN YOU?

15 A YOU CAN IF YOU CAN TELL THE WAY THE -- IF YOU LOOK AT
16 THE FIRE, YOU SEE THE FIRE IS COMING FROM, YOU KNOW.

17 Q NOT GOING FOR YOU--

18 A I'M NOT...

19 Q I'M SAYING YOU'RE SURE UNDER YOUR OATH THAT YOU KNOW
20 WHICH WAY THE BULLETS WERE FIRED?

21 A POSITIVE.

22 Q AND THE BULLETS WERE FIRING DOWN THE ROAD?

23 A IF I WAS -- IF I WASN'T SURE, I WOULDN'T BE LOOKING
24 AT HIM.

25 Q OKAY.

1 A I WOULD BE DUCKING.

2 Q YOUR TESTIMONY IS THE BULLETS WERE FIRING DOWN THE
3 ROAD?

4 A FIRING MORE TOWARD THIS WAY HERE, YOU KNOW. HE WAS
5 RUNNING THIS WAY. HE WASN'T ACTUALLY LOOKING. HE LOOKED
6 MAYBE TWICE SHOOTING AND THE REST OF THE TIME HE LOOKED
7 THE OPPOSITE WAY.

8 Q HE WAS FIRING FLAT, WASN'T FIRING UP?

9 A HE WAS FIRING FLAT.

10 Q AND TO YOUR KNOWLEDGE, CAN -- WERE ANY OF THE CARS
11 PARKED IN ANY OF THESE SPACES HIT BY ANY OF THOSE BULLETS?

12 A NOT TO MY KNOWLEDGE.

13 Q ALL RIGHT, SIR. NOW, ON THE OCCASION OF YOUR TELLING
14 THE OFFICERS THAT YOU HAD SEEN THE GUY DOING THE SHOOTING
15 --

16 A UH-HUH.

17 Q -- AND YOU HAD SEEN A BURGUNDY AND WHITE CAR?

18 A YES.

19 Q YOU SAID THEY STARTED TO PUT YOU IN AFTER THE CAR,
20 BUT ANY WAY ONE OFFICER LEFT AND WENT AND GOT IN THE CAR
21 AND CHASED THE BURGUNDY CAR?

22 A CORRECT.

23 Q THEN THEY STOPPED THE BURGUNDY CAR. YOU GOT WORD
24 THAT THEY STOPPED THE BURGUNDY CAR?

25 A YEAH.

1 Q THEY HAD IT ON THE SIDE OF THE ROAD?

2 A CORRECT.

3 Q SOMEBODY WAS SUPPOSED TO TAKE YOU DOWN THERE?

4 MS. NIELSEN: YOUR HONOR, I OBJECT. HE'S ACTUALLY
5 ASKING HIM ABOUT WHETHER HE KNOWS SOME HEARSAY AND I THINK
6 THAT THE ANSWER HE IS ELICITING IS YES, I KNOW IT'S
7 HEARSAY.

8 THE WITNESS: I AM GOING BY WHAT THEY TOLD ME.

9 THE COURT: WAIT A SECOND, MR. DEBERRY. LET ME MAKE
10 SURE I UNDERSTAND. I THINK HE'S -- MR. FINNEY, AS I
11 UNDERSTAND, IS ASKING THE QUESTIONS ABOUT INFORMATION THAT
12 HE DID RECEIVE THAT NIGHT ABOUT CARS BEING STOPPED AND
13 WHETHER HE WAS GOING TO GO THERE OR NOT. I THINK THAT'S
14 ALREADY BEEN TESTIFIED TO AND PROBABLY DOESN'T GO TO THE
15 TRUTH OF THE MATTER ASSERTED ANY WAY, SIMPLY TO SHOW ITS
16 IMPACT ONLY, MR. DEBERRY. I WILL ALLOW HIM TO
17 CROSS-EXAMINE HIM. GO AHEAD.

18 (WHEREUPON QUESTIONING RESUMED).

19 Q MR. DEBERRY, YOU WERE ASKED -- YOU WERE ASKED BY ONE
20 OF THE OFFICERS TO GO TO THE SCENE WHERE THE CADILLAC WAS?

21 A WORD WAS WE THINK WE GOT AN IDENTIFICATION, YOU KNOW,
22 YOU WANT TO GO WITH THIS OFFICER TO IDENTIFY HIM. WE
23 WAITING AROUND THERE, THEY SAID, YOU KNOW, SAID WELL NEVER
24 MIND. THAT'S WHY, NEVER MIND. I DON'T KNOW WHY OR WHAT
25 THEY SAID, NEVER MIND.

1 Q AND THEN AFTER THE NEVER MIND, YOU DIDN'T GO ANYWHERE
2 AND NOBODY BROUGHT ANYBODY BACK FOR YOU TO LOOK AT?

3 A NO, AND I WAS THERE TILL SIX.

4 Q ALL RIGHT. IF I TOLD YOU THAT THE DISTANCE FROM THIS
5 POINT RIGHT HERE WHERE THE FRONT TIRE OF THE CAR IS TO
6 THIS POINT WHERE THAT DRIVEWAY IS 210 FEET, WOULD YOU
7 DISAGREE WITH ME?

8 A YEAH, I WOULD HAVE TO DISAGREE. IT'S NOT THAT FAR.

9 Q TELL ME ABOUT HOW FAR IT IS YOU THINK.

10 A MAYBE ABOUT A HUNDRED, A LITTLE OVER A HUNDRED. YOU
11 TALKING CORNER TO CORNER, FROM RIGHT HERE TO...

12 Q FROM THAT CORNER TO THAT CORNER.

13 A SEE, THIS IS A BAD KIND OF ILLUSTRATION BUT THIS
14 POINT, IT'S NOT -- IT'S NOT BECAUSE IT'S ON A ROAD, THE
15 DRIVEWAY.

16 Q THE DRIVEWAY TO THAT HOUSE?

17 A YEAH, THAT'S ABOUT A HUNDRED FEET. I MEAN -- FEET.

18 Q IT'S NOT 200 FEET? OKAY. IS IT POSSIBLE -- WELL,
19 LET ME ASK YOU FIRST. THE PEOPLE THAT YOU SAW RUNNING
20 FROM THIS AREA GOING THIS WAY, DO YOU BELIEVE THAT THEY
21 WERE GOING TO GET IN THEIR CARS RIGHT AFTER THE SHOOTING
22 STOPPED?

23 A NO, I CAN'T SAY WHERE THEY WERE GOING.

24 Q OKAY.

25 A I LOST FOCUS ON THEM.

1 Q BUT THERE WERE CARS IN THAT AREA?

2 A YEAH, TWO CARS IN THAT AREA.

3 Q AND IF THEY HAD BEEN GETTING IN THEIR CARS TO LEAVE
4 THE NIGHTCLUB, WOULD THEY HAVE COME OUT OF THIS DRIVEWAY
5 DOWN TO THE MANVILLE ST. CHARLES HIGHWAY TO LEAVE THE
6 CLUB?

7 A ACTUALLY THEY CAN COME ANYWHERE IN THIS AREA OUT THE
8 CLUB, NOT HAVE TO GO THROUGH THE DRIVEWAY. THE DRIVEWAY
9 IS A LITTLE BIT FURTHER. WON'T HAVE TO GO TO THE
10 DRIVEWAY.

11 Q YOU SAY THE DRIVEWAY IS A HUNDRED FEET?

12 A YEAH, FROM EDGE TO EDGE IS ABOUT A HUNDRED FEET.

13 Q YES?

14 A LITTLE OVER A HUNDRED FEET.

15 Q OVER A HUNDRED FEET?

16 A YEAH, I'D SAY 120 FEET.

17 Q AND THERE'S NO LIGHTS?

18 A THERE'S A LIGHT RIGHT HERE IN THE FRONT YARD.

19 Q THERE'S NO LIGHTS ON THIS STREET SIDE?

20 A YEAH, HER LIGHT.

21 Q ON THE STREET SIDE. ON THE STREET. THIS LIGHT
22 YOU'RE TALKING ABOUT HERE, IT'S NOT MARKED ON HERE?

23 A IT'S NOT -- IT'S A LIGHT IN THE FRONT YARD.

24 Q OKAY. ISN'T THAT LIGHT THAT YOU'RE TALKING ABOUT ON
25 THE POLE?

1 A YES, IT IS.

2 Q ISN'T IT CLOSER TO THE HOUSE THAN TO THE STREET?

3 A NO, IT'S CLOSER TO THE STREET.

4 Q CLOSER TO THE STREET?

5 A CLOSER TO THE STREET BECAUSE IT'S TWO -- ACTUALLY
6 THERE'S ONE HERE AND ONE ON THE EDGE OF THE STREET HERE.

7 Q PAST THE DRIVEWAY?

8 A PAST THE DRIVEWAY.

9 Q OKAY. THANK YOU, SIR.

10 REDIRECT EXAMINATION BY MS. NIELSEN:

11 Q YOU SAID YOU MADE A DESCRIPTION TO LAW ENFORCEMENT.
12 I THINK YOU SAID TO CHALKY -- WHITE?

13 A YES, SIR.

14 Q WILL YOU TELL US WHAT THAT DESCRIPTION WAS?

15 A TOLD HIM IT WAS A -- TOLD HIM IT WAS A GUY DOING THE
16 SHOOTING WAS A LIGHT SKINNED FELLOW I SEEN BEFORE A COUPLE
17 TIMES THROUGHOUT. HE WAS WEARING A FLOWERED SHIRT, AND
18 THREE OTHER GUYS AROUND HIM WEARING LIKE T-SHIRTS, COLORED
19 T-SHIRTS, COLORED T-SHIRT.

20 Q A FLOWERED SHIRT?

21 A PAINTED. IT WAS YELLOW, RED, ALL KIND OF DIFFERENT
22 COLORS OF THE SHIRT.

23 Q AND THAT WAS THE GUY THAT YOU SAW DOING THE SHOOTING?

24 A CORRECT. THAT'S THE ONLY THING, THE -- LIKE I SAID,
25 I DIDN'T KNOW THE OTHER GUYS. IT WAS KIND OF HOT OUT

DR. YACoub - DIRECT BY NIELSEN

1 THERE. IT WAS T-SHIRTS AND COLORED SHIRTS.

2 Q OKAY..

3 THE COURT: YOU CAN STEP DOWN, MR. DEBERRY. THANK
4 YOU.

5 (WHEREUPON THE WITNESS LEFT THE STAND)

6 DR. INEZ YACoub, BEING FIRST DULY
7 SWORN, TESTIFIED AS FOLLOWS:

8 DIRECT EXAMINATION BY MS. NIELSEN:

9 Q DR. YACoub, WOULD YOU TELL THE JURY HOW YOU ARE
10 EMPLOYED.

11 A I'M A PHYSICIAN AND A PATHOLOGIST. I'M EMPLOYED AT
12 PATHOLOGY ASSOCIATES.

13 Q AND HOW LONG HAVE YOU BEEN A PATHOLOGIST?

14 A I HAVE BEEN WORKING AS PATHOLOGY FOR ABOUT FIVE
15 YEARS. BEFORE THAT I HAD DONE--

16 THE COURT: COULDN'T HEAR THAT ANSWER, DOCTOR. FIRST
17 PART YOU BEEN WORKING ABOUT FIVE YEARS. IF YOU'LL PICK UP
18 AT THAT POINT. REPEAT THE ANSWER.

19 A BEFORE THAT I DID AN ANATOMIC AND CLINICAL PATHOLOGY
20 TRAINING..

21 Q SAY THAT AGAIN.

22 A BEFORE THE FIVE YEARS, I HAVE DONE ANATOMIC AND
23 CLINICAL PATHOLOGY TRAINING.

24 Q AND WHERE DID YOU DO ANATOMIC AND CLINICAL PATHOLOGY
25 TRAINING?

1 A AT THE UNIVERSITY OF ALABAMA AT BIRMINGHAM.

2 Q AND YOU ARE A PHYSICIAN. WHERE DID YOU GET YOUR
3 ACTUAL LICENSE TO BE A DOCTOR?

4 A I'M LICENSED TO BE A DOCTOR IN SOUTH CAROLINA AND
5 WEST VIRGINIA.

6 Q AND HOW LONG?

7 MR. ROGERS: WE WOULD STIPULATE TO THE DOCTOR'S
8 QUALIFICATIONS AS A PATHOLOGIST.

9 MS. NIELSEN: ALL OF YA'LL?

10 MR. FINNEY: ALL.

11 THE COURT: YES, MA'AM. YA'LL SHARE IN THE
12 STIPULATION?

13 MR. DOBY: YES, YOUR HONOR.

14 MR. JORDAN: YES.

15 THE COURT: LADIES AND GENTLEMEN, COUNSEL HAVE ALL
16 STIPULATED DR. YACoub IS CERTIFIED AS AN EXPERT IN THE
17 FIELD OF PATHOLOGY. THAT SIMPLY MEANS SHE IS ABLE TO
18 RENDER HER OPINIONS IN THIS FIELD. YOU ARE NOT BOUND BY
19 THOSE OPINIONS. YOU GIVE THEM THE WEIGHT YOU THINK
20 THEY'RE ENTITLED TO RECEIVE, BUT HER QUALIFICATIONS AS A
21 PATHOLOGIST HAVE BEEN STIPULATED. THANK YOU.

22 (WHEREUPON QUESTIONING RESUMED).

23 Q DR. YACoub, DID YOU PERFORM AN AUTOPSY ON THE BODY OF
24 HENRY SCOTT?

25 A YES, I DID.

1 Q COULD YOU TELL THE JURY WHERE YOU PERFORMED THE
2 AUTOPSY?

3 A THAT AUTOPSY WAS PERFORMED ON NOVEMBER 14TH OF 1999.

4 Q AT 9 P.M.?

5 A AT 1 P.M.

6 Q 1 P.M. IN THE AFTERNOON. NOW, BEFORE--

7 THE COURT: WHAT IS THAT DATE AGAIN.

8 MS. NIELSEN: NOVEMBER THE 14TH.

9 THE COURT: OKAY. THANK YOU.

10 MS. NIELSEN: AT 1 P.M.

11 THE COURT: 1 P.M.? THANK YOU.

12 (WHEREUPON QUESTIONING RESUMED).

13 Q AND YOUR REPORT INDICATES THE DATE AND TIME OF THE
14 INCIDENT, AND WHAT TIME WAS THAT?

15 A THE INFORMATION I GOT FROM THE CORONER WAS THAT THIS
16 WAS ON NOVEMBER THE 14TH, 1999 AROUND 3:42 A.M.

17 Q ALL RIGHT. NOW, BEFORE WE GO INTO YOUR ACTUAL
18 FINDINGS, WOULD YOU GIVE US A BRIEF DESCRIPTION OF THE
19 BODY HEIGHT, WEIGHT. DO YOU HAVE THAT INFORMATION?

20 A THE BODY WAS THAT OF A BLACK MAN. HIS LENGTH WAS 5
21 FEET 7 AND A HALF INCHES, APPROXIMATELY WEIGHT OF 150
22 POUNDS. HE ARRIVED WITH NO CLOTHES ON WHICH THE CLOTHES
23 CAME WITH THE BODY IN A BAG. THIS WAS EVIDENCE THAT HE
24 HAD HAD SOME MEDICAL TREATMENT BEFORE HE CAME TO THE
25 MORGUE.

1 Q DID HE HAVE ANY TATTOOS?

2 A YES, HE DID. HE HAD A TATOO ON THE LEFT ARM WITH THE
3 INSCRIPTION OF THUG LIFE AND CRAZY.

4 Q THUG, LIFE AND CRAZY. DO YOU KNOW HOW OLD HE WAS?

5 A HIS DATE OF BIRTH WAS THIS AUTHORIZATION FOR AN
6 AUTOPSY IS BEING 1-1-78 WHICH MAKE HIM 21 YEARS OLD.

7 Q NOW, YOU EXAMINED HIS BODY AND DID YOU FIND THE
8 GUNSHOT WOUNDS TO HIS BODY?

9 A YES, I HAVE. HIS BODY -- AND THEY WERE FIVE GUNSHOT
10 WOUNDS ON THE BODY. THERE WERE THREE GUNSHOT WOUNDS TO
11 THE BACK, TWO OF THEM WERE THROUGH AND THROUGH WOUNDS,
12 BULLET ENTERED AND EXITED. THE THIRD WOUND TO THE BACK
13 WAS A GUNSHOT WOUND. THE BULLET REMAINED IN THE BODY.

14 WE RETRIEVED THAT. A GUNSHOT WOUND TO THE RIGHT
15 KNEE THAT WAS THROUGH AND THROUGH AND THE GUNSHOT WOUND TO
16 THE LEFT KNEE WHICH PENETRATED AND THERE WAS A BULLET.

17 COURT REPORTER: I'M SORRY.

18 A BULLET TO THE LEFT KNEE AND -- I MEAN A GUNSHOT WOUND
19 TO THE LEFT KNEE AND THE BULLET REMAINED IN THE BODY AND
20 WE DID RETRIEVE THAT BULLET.

21 Q ALL RIGHT. SO HE WAS SHOT IN THE LEFT KNEE AND RIGHT
22 KNEE?

23 A CORRECT.

24 Q AND WERE THOSE SHOTS -- DID THOSE SHOTS ENTER THE
25 BODY FROM THE FRONT OR FROM THE BACK?

1 A THREE GUNSHOT WOUNDS WERE TO THE BACK. THE GUNSHOT
2 WOUNDS TO THE LEFT KNEE WAS ON THE FRONT IN THE INNER
3 ASPECT OF THE KNEE. THE GUNSHOT WOUND TO THE RIGHT SIDE.
4 I EXAMINED THE CLOTHES AND THERE WAS A HOLE IN THE RIGHT
5 SIDE OF THE LEG ASPECT OF THE PANTS, BUT THERE WAS NO HOLE
6 ON THE BACK OF THE PANTS WHICH LED ME TO INTERPRET THIS AS
7 BEING ENTERING FROM THE FRONT AND THEN COMING OUT ON THE
8 BACK.

9 THAT WOUND ON THE KNEE APPEARED IRREGULAR AND
10 THERE IS A POSSIBILITY THAT IF THE LEG OF THE PANTS WAS
11 VERY HIGH UP ABOVE THE WOUND ON THE KNEE, THAT IT'S
12 POSSIBLY THAT HE WAS SHOT IN THE BACK. BUT IN THIS
13 SITUATION, THE LEG OF THE PANTS HAD TO BE HIGH UP TO MAKE
14 NO HOLE IN THE BACK OF THE PANTS YET MAKE AN EXIT HOLE IN
15 THE FRONT OF THE PANTS.

16 Q SO IN YOUR OPINION WERE THE WOUNDS TO HIS KNEES, WAS
17 HE SHOT FROM THE FRONT OR SHOT FROM THE BACK?

18 A THE WOUNDS ON THE LEFT KNEE WAS IN MY OPINION THE
19 WOUND THAT A PERSON WOULD GET IF YOU WERE SHOT FROM THE
20 FRONT. THE WOUND ON THE RIGHT KNEE, IF THE PANTS -- IF
21 THE LEG PANTS WAS DOWN, THEN YOU WOULD HAVE GOTTEN THE
22 WOUND ON THE LEFT KNEE FROM THE FRONT ALSO, AND THEN THE
23 BULLET WOULD HAVE COME OUT AND THEN FALLEN ONTO THE PANTS
24 BECAUSE THERE WAS NO HOLE IN THE BACK OF THE PANTS TO
25 MATCH THE EXIT HOLE.

1 Q SO IS IT YOUR OPINION THAT WOUND IS FROM THE FRONT OR
2 THE BACK?

3 A THE WOUND ON THE RIGHT KNEE?

4 THE COURT: YES, MA'AM.

5 Q YES.

6 A THERE ARE TWO POSSIBILITIES. IF HE WAS STANDING UP
7 AND HE WAS WEARING THE PANTS, THEN HE WOULD HAVE BEEN SHOT
8 FROM THE FRONT. IF HE WAS LYING DOWN AND THE LEG PANTS
9 WERE HIGH UP, PULLED UP, THEN IT'S POSSIBLE THAT HE WOULD
10 HAVE BEEN SHOT FROM THE BACK OF THE RIGHT KNEE.

11 Q YOUR AUTOPSY REPORT SAYS THAT THIS IS AN ENTRANCE
12 WOUND ON HIS RIGHT KNEE.

13 A RIGHT, AND THIS IS -- THIS IS MY OPINION BASED ON
14 FINDING AN ENTRANCE HOLE ON THE OVERLYING PANTS BUT YET
15 FINDING NOTHING ON THE BACK OF THE LEG. BUT IF I HAD NO
16 PANTS TO EXAMINE AND JUST EXAMINED THE APPEARANCE OF THE
17 ENTRANCE AND EXIT WOUNDS, IT'S POSSIBLE THAT HE COULD HAVE
18 GOTTEN THE SHOT ON THE RIGHT KNEE FROM THE BACK, BUT THE
19 SHOT ON THE LEFT KNEE, MY OPINION IS FROM THE FRONT
20 BECAUSE THE BULLET WAS STILL IN THE BODY. THERE WAS ONE
21 ENTRANCE HOLE ON THE MEDIAL ASPECT OF THE LEFT KNEE.

22 Q ALL RIGHT. HOW MANY GUNSHOT WOUNDS DID HE HAVE
23 BESIDES THE TWO TO HIS KNEES?

24 A EXCUSE ME? CAN YOU REPEAT THIS QUESTION?

25 Q HOW MANY OTHER GUNSHOT WOUNDS DID HE HAVE BESIDE THE

1 TWO TO HIS KNEES? WERE THE TWO TO HIS KNEES FATAL GUNSHOT
2 WOUNDS?

3 A THEY WERE NOT FATAL IN THE SENSE THAT HE HAD BLED A
4 LOT FROM OR THAT THEY DAMAGED IMPORTANT VESSELS THAT BLED
5 OUT SOME, BUT THEY WOULD HAVE RESULTED IN PAIN AND
6 PROBABLY LED HIM TO FALL DOWN. BUT THE WOUNDS IN THE
7 UPPER -- THE WOUNDS IN THE BACK ARE WOUNDS THAT HAVE
8 RESULTED IN DAMAGE TO VITAL STRUCTURES.

9 FOR EXAMPLE, THE UPPER TWO WOUNDS IN THE BACK,
10 ONE THROUGH THE LUNG, AND THEY RESULTED IN BLEEDING. AND
11 THE WOUNDS IN THE LOWER BACK DAMAGED A LARGE VESSEL AND
12 RESULTED IN 11 HUNDRED CC'S OF PELVIC ACADEMY (SIC) THAT
13 LED TO HIS ULTIMATE DEATH.

14 Q THESE GUNSHOTS WOUNDS WERE ALL IN HIS BACK, THEY
15 ENTERED IN HIS BACK?

16 A THAT'S CORRECT.

17 Q AND IN YOUR OPINION, WHICH ONE OF THESE WOUNDS CAUSED
18 HIM TO DIE?

19 A THE GUNSHOT WOUNDS TO THE BACK ALL RESULTED IN
20 BLEEDING. THE WOUND THE LOWER BACK RESULTED IN THE MOST
21 BLEEDING, SO THE WOUNDS IN THE UPPER BACK DID NOT HELP HIM
22 EITHER BECAUSE THE LUNG WAS PERFORATED AND THAT WOULD MAKE
23 A PERSON UNABLE TO BREATHE. THAT COMPOUNDED WITH THE
24 BLOOD LOSS WOULD GIVE A PERSON--

25 THE COURT: SHE COULDN'T GET THE LAST PART OF THAT

1 ANSWER, DOCTOR. IF YOU'LL AT SOME POINT IN TIME -- AFTER
2 YOU SAID THE VERY LAST PHRASE, YOU MENTIONED -- WE COULD
3 NOT PICK THAT UP, I'M SORRY.

4 THE WITNESS: THE WOUND IN THE LOWER BACK RESULTED IN
5 1100 CC'S OF BLOOD IN THE PERITONEAL CAVITY. THE WOUNDS
6 IN THE UPPER BACK RESULTED IN BLEEDING AS WELL AS
7 PERFORATION OF THE LUNG WHICH WOULD MAKE A PERSON HAVE
8 DIFFICULTY BREATHING AND WOULD RESULT IN DEATH.

9 (WHEREUPON QUESTIONING RESUMED).

10 Q IN YOUR OPINION, HOW LONG WOULD IT TAKE A PERSON TO
11 DIE FROM THESE WOUNDS?

12 A 1100 CC'S OF BLOOD AND 400 CC'S OF BLOOD, ABOUT 500
13 CC'S OF BLOOD THAT WE COULD MEASURE, COULD NOT MEASURE
14 BLOOD IN THE DECEDENT'S BLOOD ON THE CLOTHES, BUT THIS IS
15 A LOSS OF LARGE AMOUNT OF BLOOD QUICKLY. IT COULD TAKE
16 SEVERAL MINUTES FOR A PERSON TO DIE FROM RAPID AMOUNT OF
17 BLOOD LOSS.

18 Q SO IT'S YOUR OPINION THAT THE PERSON WOULD DIE WITHIN
19 MINUTES WITHOUT MEDICAL TREATMENT?

20 A CORRECT.

21 Q AND DO YOU HAVE AN OPINION AS TO WHETHER HE ACTUALLY
22 DIED IN SEVERAL MINUTES?

23 A I DIDN'T HEAR THE QUESTION. I'M SORRY.

24 Q DO YOU HAVE AN OPINION AS TO WHETHER HE ACTUALLY DIED
25 WITHIN MINUTES?

1 A YES.

2 Q AND WHAT IS THAT OPINION?

3 A IT'S MY OPINION BASED ON MY EDUCATION, MEDICAL
4 TRAINING AND EXPERIENCE THAT HE DIED WITHIN MINUTES OF THE
5 SHOOTING.

6 MS. NIELSEN: COURT'S INDULGENCE, PLEASE.

7 THE COURT: YES, MA'AM.

8 (WHEREUPON THERE WAS A PAUSE).

9 MS. NIELSEN: PLEASE ANSWER ANY QUESTIONS THE DEFENSE
10 ATTORNEYS HAVE.

11 THE COURT: MR. DOBY, MR.--

12 MR. DOBY: NOTHING, YOUR HONOR.

13 THE COURT: MR. ROGERS?

14 CROSS-EXAMINATION BY MR. ROGERS:

15 Q DR. YACOB, IF I CAN DIRECT YOUR ATTENTION TO PAGE 2
16 OF YOUR AUTOPSY REPORT UNDER AUTOPSY PROTOCOL NUMBER TWO.
17 YOU FOUND A RED LOLLY POP IN THE CLOTHES, IN THE CLOTHING?

18 A YES.

19 Q THANK YOU.

20 THE COURT: MR. JORDAN?

21 MR. JORDAN: NO QUESTIONS, YOUR HONOR.

22 THE COURT: THANK YOU. MR. FINNEY?

23 MR. FINNEY: NO QUESTIONS, YOUR HONOR.

24 THE COURT: THANK YOU. REDIRECT ON THAT NARROW
25 POINT, MS. NIELSEN?

1 RE-DIRECT EXAMINATION BY MS. NIELSEN:

2 Q YOU DON'T KNOW HOW THAT RED LOLLY POP GOT THERE; DO
3 YOU? YOU DO NOT KNOW HOW THAT LOLLY POP GOT IN THE
4 POCKET; DO YOU?

5 A NO.

6 MS. NIELSEN: I DON'T HAVE ANY FURTHER QUESTIONS.

7 THE COURT: THANK YOU, DOCTOR. YOU CAN STEP DOWN,
8 AND WITHOUT OBJECTION DR. YACOB CAN BE EXCUSED. THANK
9 YOU.

10 (WHEREUPON THE WITNESS LEFT THE STAND).

11 MS. NIELSEN: THE STATE CALLS DELVIN WAITERS.

12 THE COURT: ALL RIGHT. IF YOU COULD SUMMON MR.
13 WAITERS.

14 (WITNESS IN COURTROOM).

15 THE COURT: MR. WAITERS, COME FORWARD PLEASE AND BE
16 SWORN.

17 DELVIN WAITERS, BEING FIRST DULY
18 SWORN, TESTIFIED AS FOLLOWS:

19 DIRECT EXAMINATION BY MS. NIELSEN:

20 Q YOUR NAME IS DELVIN WAITERS?

21 A YES.

22 Q MR. WAITERS, WHERE DO YOU LIVE?

23 A EXCUSE ME?

24 Q WHERE DO YOU LIVE?

25 A P O BOX 34 HORATIO, OZWEGO ROAD.

1 Q YOU LIVE IN HORATIO, SOUTH CAROLINA?

2 A YES, YEAH.

3 Q WHERE DO YOU WORK?

4 A GOLD KIST. GOLD KIST.

5 Q I NEED YOU TO SPEAK UP BECAUSE EVERYBODY HAS GOT TO
6 HEAR YOU TOO, OKAY?

7 THE COURT: LEAN FORWARD INTO THAT MICROPHONE IN
8 FRONT OF YOU, MR. WAITERS. THAT WILL PICK UP YOUR VOICE
9 VERY WELL. THANK YOU.

10 (WHEREUPON QUESTIONING RESUMED).

11 Q NOW MR. WAITERS, BEFORE WE START TALKING ABOUT
12 NOVEMBER THE 14TH, I NEED TO ASK YOU ARE YOU THE SAME
13 DELVIN WAITERS WHO WAS CONVICTED OF ASSAULT AND BATTERY
14 WITH INTENT TO KILL IN NOVEMBER OF 1994?

15 A YES.

16 Q AND ON NOVEMBER THE 14TH OF LAST YEAR, DID YOU HAVE
17 AN OCCASION TO GO TO DAVIS COUNTRY CLUB HERE IN LEE
18 COUNTY?

19 A EXCUSE ME?

20 Q DID YOU GO TO DAVIS COUNTRY CLUB HERE IN LEE COUNTY?

21 A YES.

22 Q HOW DID IT COME ABOUT THAT YOU WENT TO THE COUNTRY
23 CLUB?

24 A I MET UP WITH HENRY SCOTT AT BURGER KING AND WE WENT
25 TO A CLUB, AND THEN AFTER THAT WENT TO DAVIS COUNTRY CLUB.

1 Q WHERE DID YOU GO BEFORE YOU WENT TO DAVIS COUNTRY
2 CLUB?

3 A I REALLY DON'T KNOW THE NAME OF THE CLUB. IT'S A
4 CLUB ON BROAD STREET.

5 Q IT WAS ON BROAD STREET?

6 A YES.

7 Q IN SUMTER?

8 A YES.

9 Q NOW, WHO DROVE -- WHO DROVE? DID YOU DRIVE TO THE
10 COUNTRY CLUB?

11 A YES.

12 Q WHOSE CAR DID YOU DRIVE?

13 A MINE.

14 Q AND WHO RODE WITH YOU?

15 A HENRY SCOTT.

16 Q YA'LL WERE FRIENDS?

17 A YES.

18 Q AND HAD YOU EVER BEEN TO THE COUNTRY CLUB BEFORE?

19 A YES.

20 Q AND YOU KNEW HOW TO GET THERE?

21 A YES.

22 Q YOU SEE THIS DRAWING RIGHT BESIDE YOU?

23 A (WHEREUPON SUBJECT INDICATED NODDING HEAD).

24 Q AND NOT WONDERFUL, BUT A PRETTY FAIR REPRESENTATION
25 OF THE CLUB AND THE ROADS?

1 A EXCUSE ME?

2 Q IS THAT A PRETTY FAIR REPRESENTATION OF THE CLUB AND
3 THE ROADS LEADING UP TO AROUND THE CLUB?

4 A YES, PRETTY GOOD.

5 Q AND NOW WHEN YOU ARRIVED, WHERE DID YOU PARK YOUR
6 CAR?

7 A ON THE SIDE OF THE ROAD RIGHT IN FRONT. WELL--

8 Q FIRST OF ALL, YOU SEE WHERE THE FRONT OF THE CLUB IS?

9 A YES.

10 Q WOULD YOU TAKE THAT RULER AND SHOW THE JURY WHERE IN
11 RELATION TO THE FRONT DOOR OF THE CLUB IT WAS THAT YOU
12 PARKED YOUR CAR?

13 A THIS IS THE FRONT, SO HAD TO HAVE BEEN LIKE NOT
14 EXACTLY IN THE FRONT OF THE CLUB, BUT LIKE -- LIKE IN A
15 SLANT DIAGONAL PIECE DOWN THE ROAD AND ON THE OTHER SIDE
16 OF THE STREET.

17 Q ON THE OTHER SIDE OF WHAT STREET?

18 A OF THE HIGHWAY.

19 Q THE ONE THAT RUNS IN FRONT OF THE CLUB?

20 A YES.

21 Q SO TAKE THAT POINTER AND SHOW THE JURY IF YOU SEE THE
22 FRONT OF THE CLUB.

23 A YES.

24 Q AND THIS SAYS MANVILLE ST. CHARLES HIGHWAY?

25 A UH-HUH.

1 Q NOW, SHOW THEM WHERE YOU PARKED.

2 A PROBABLY LIKE THIS (INDICATING).

3 Q OKAY. THAT IS WHERE YOU PARKED?

4 A YES.

5 Q NOW, YOU PARKED ON LIKE THE SHOULDER OF THE ROAD?

6 A YES.

7 Q AND WAS YOUR CAR THE FIRST CAR, THE SECOND CAR, THE
8 THIRD CAR OUT? HOW MANY CARS WERE PARKED THERE?

9 A IT WAS IN THE MIDDLE OF SEVERAL OTHER CARS. I MEAN,
10 YOU KNOW, THERE WERE SEVERAL OTHER CARS ON THAT -- ON THE
11 SIDE OF THE ROAD.

12 Q NOW, SOME OTHER FRIENDS OF YA'LL WENT WITH YA'LL AT
13 THE SAME TIME TO GO OUT THERE?

14 A YES.

15 Q WHO DO YOU REMEMBER WHO THEY WERE?

16 A I DON'T REALLY KNOW THEIR REAL NAMES.

17 Q ALL RIGHT. BUT YOU AND POP WERE IN THE CAR TOGETHER;
18 IS THAT RIGHT?

19 A WHO?

20 Q HENRY SCOTT?

21 A YES.

22 Q YA'LL CALL HIM POP; DON'T YOU?

23 A I CALL HIM HENRY.

24 Q YOU CALL HIM HENRY?

25 A YES.

1 Q OKAY. WHEN YA'LL GOT THERE AND YOU -- DID YOU PARK
2 YOUR CAR?

3 A YES.

4 Q WHAT DID YOU DO AFTER YOU PARKED YOUR CAR?

5 A LOCKED THE DOORS, GOT OUT...

6 Q YOU LOCKED THE DOORS?

7 A YES.

8 Q ALL RIGHT. DID HENRY HAVE KEYS TO YOUR CAR?

9 A HE ASKED FOR THEM.

10 Q HE ASKED FOR THEM?

11 A YES.

12 Q WHEN WAS THAT?

13 A THAT WAS IN THE -- IN FRONT OF THE CLUB.

14 Q WHAT DID YOU DO? YOU GOT OUT THE CAR AND YOU LOCKED
15 THE DOORS. WHAT DID YOU DO?

16 A WALKED TOWARDS THE CLUB.

17 Q WHAT DID--

18 A WENT IN THE CLUB.

19 Q WHAT DID HENRY DO?

20 A WE WAS WALKING TOGETHER.

21 Q WALKING TOWARDS THE CLUB?

22 A YES.

23 Q YA'LL WERE ALL ACROSS THE ROAD?

24 A YES.

25 Q ALL RIGHT. WHAT IS THE NEXT THING THAT HAPPENED?

1 A HE ASKED FOR THE KEYS AS WE WERE GOING -- PROPERTY OF
2 THE COUNTRY CLUB.

3 Q DID HE TELL YOU WHY HE WANTED THE KEYS?

4 A NO.

5 Q WHAT HAPPENED AFTER THAT?

6 A THAT'S WHEN WE WAS UP TO THE DOORWAY AND THE
7 CONVERSATION STARTED, AND THEN I WENT TO TALK TO ONE OF
8 THE GUYS, SEE WHAT WAS GOING ON.

9 Q WHO WAS THE CONFRONTATION BETWEEN?

10 A HENRY AND THE YOUNG FELLOW RIGHT THERE.

11 Q WHICH FELLOW?

12 A ON THE END.

13 Q DID YOU KNOW HIS NAME THAT NIGHT?

14 A EXCUSE ME?

15 Q DID YOU KNOW HIS NAME ON NOVEMBER 14TH?

16 A NO.

17 Q DID YOU HEAR WHAT WAS BEING SAID?

18 A I CAN'T REMEMBER.

19 Q DO YOU REMEMBER WHO SAID SOMETHING FIRST?

20 A NO.

21 Q ALL RIGHT. SO WHAT IS THE NEXT THING YOU DO
22 REMEMBER?

23 A EXCUSE ME?

24 Q WHAT IS THE NEXT THING YOU DO REMEMBER?

25 A THEN AFTER THAT, THEN HE WALKED OFF AND I SAW THE

1 GUNFIRE AND THEN -- THAT WAS THAT...

2 Q WHO DID YOU SEE FIRING GUNS?

3 A I SAW THE YOUNG FELLOW RIGHT HERE AND THE YOUNG
4 FELLOW RIGHT THERE IS.

5 Q ALL RIGHT. THE FELLOW AT THE EDGE OF THE TABLE?

6 A YES.

7 Q THE FIRST ONE WITH THE BLACK ON?

8 A YES.

9 Q THAT'S THE ONE FELLOW THERE. WHO WAS THE OTHER
10 FELLOW?

11 A THE YOUNG FELLOW RIGHT HERE (INDICATING).

12 Q THE BROWN SUIT?

13 A YES.

14 MS. NIELSEN: YOUR HONOR, WE WOULD HAVE THE RECORD
15 IDENTIFY HE HAS IDENTIFIED THE MARCUS EVANS AND GILARON
16 TAYLOR.

17 THE COURT: YES, MA'AM.

18 (WHEREUPON QUESTIONING RESUMED).

19 Q DID YOU KNOW EITHER ONE OF THEM THEN?

20 A NO.

21 Q HAD YOU EVER SEEN THEM BEFORE THAT NIGHT?

22 A NO.

23 Q HOW MANY PEOPLE DID YOU SEE FIRING GUNS?

24 A TWO.

25 Q AND WHAT TWO DID YOU SEE FIRING GUNS?

1 A MARCUS EVANS AND THE FELLOW IN THE BROWN SUIT AND THE
2 BLACK, THE BLACK SHOES.

3 Q DID YOU EVER SEE HENRY SCOTT GO TO THE CAR?

4 A EXCUSE ME?

5 Q DID YOU SEE HENRY SCOTT GO TO THE CAR?

6 A NO.

7 Q DID YOU GIVE HIM THE KEYS?

8 A YES.

9 Q OKAY. BUT YOU DIDN'T SEE HIM GO TO THE CAR?

10 A NO.

11 Q DID YOU GO TO THE FRONT OF THE CLUB?

12 A EXCUSE ME?

13 Q DID YOU GO TO THE FRONT OF THE CLUB?

14 A YES, I WAS IN FRONT OF THE CLUB.

15 Q DID YOU GO IN THE CLUB?

16 A NO.

17 Q DID YOU TALK TO ANYBODY AT THE FRONT OF THE CLUB?

18 A THIS GUY WAS AROUND WHO RODE WITH US.

19 Q DO YOU KNOW WHO HE WAS?

20 A I MEAN THE GUY WHO I RODE IN THE OTHER CAR.

21 Q OKAY. NOW, WHERE WERE YOU WHEN THIS ARGUMENT STARTED
22 BETWEEN HENRY AND THESE OTHER TWO GUYS?

23 A WALKING TOWARDS THE DOOR OF THE CLUB.

24 Q AND TELL ME EXACTLY WHAT HAPPENED.

25 A THE ARGUMENT TOOK PLACE.

1 Q HENRY SCOTT IS RIGHT BESIDE YOU; IS THAT RIGHT?

2 A HE WAS IN THE CROWD.

3 Q WHO ELSE WAS IN THAT CROWD?

4 A I DON'T KNOW THE OTHER FELLOW'S NAME.

5 Q BUT THEY WERE WITH THE GUY THAT CAME WITH YA'LL?

6 A YES, YES.

7 Q WELL NOW, WHEN DID YOU GIVE HENRY SCOTT THE KEYS TO
8 THE CAR?

9 A WHEN WE GOT ON THE PROPERTY OF DAVIS SOCIAL CLUB.

10 Q DID YOU SEE WHAT HE DID WITH THE KEYS?

11 A PUT THEM IN HIS POCKET.

12 Q AND WHAT IS THE NEXT THING THAT YOU REMEMBER
13 HAPPENING?

14 A THAT'S WHEN THE ARGUMENT TOOK PLACE AND I WENT STEP
15 TO THE YOUNG FELLOW IN THE BLACK SWEATER TO SEE WHAT WAS
16 GOING ON.

17 Q AND WHAT DID YOU SAY TO HIM?

18 A I WAS ASKING HIM WHAT WAS GOING ON, YOU KNOW, WHY ARE
19 YOU AND MY MAN, YOU KNOW, HAVING A CONFRONTATION.

20 Q AND WHAT DID HE SAY TO YOU?

21 A I REALLY DON'T REMEMBER.

22 Q WELL, WAS HE UPSET? WAS HE BEING CALM? WHAT WAS HE
23 DOING?

24 A HE WAS TALKING TO ME LIKE, YOU KNOW, MAN LIKE -- HE
25 WAS JUST TALKING TO ME. HE WASN'T ACTING UP OR NOTHING

1 LIKE THAT.

2 Q THEN WHAT IS THE NEXT THING YOU REMEMBER?

3 A THAT'S WHEN HE WALKED AWAY.

4 Q AND WHAT HAPPENED NEXT?

5 A HE STARTED SHOOTING.

6 Q WHO STARTED SHOOTING?

7 A THE YOUNG MAN IN THE BLACK SWEATER.

8 Q WHO WAS THE FIRST PERSON WHO STARTED SHOOTING?

9 A HE WAS.

10 Q ALL RIGHT. AND WHO ELSE WAS SHOOTING AFTER THAT?

11 A THE YOUNG FELLOW IN THE BROWN SUIT.

12 Q NOW, YOU ACTUALLY TALKED TO LAW ENFORCEMENT AFTER
13 THIS HAPPENED; DIDN'T YOU?

14 A YES.

15 Q AND DID YOU GIVE THEM A STATEMENT?

16 A YES.

17 Q NOW, DID YOU SEE HENRY GO TO YOUR CAR?

18 A NO.

19 Q I'M GOING TO HAND YOU THIS AND ASK YOU IF YOU
20 RECOGNIZE WHAT THIS IS.

21 A YES.

22 Q AND IS THAT YOUR STATEMENT THAT YOU GAVE?

23 A UH-HUH.

24 Q WHAT DID -- YOU NEED TO ANSWER SO EVERYBODY CAN HEAR
25 YOU.

1 A YES.

2 Q AND WHAT DAY DID YOU GIVE THAT STATEMENT TO LAW
3 ENFORCEMENT?

4 A NOVEMBER 14TH, 1999.

5 Q AND WOULD YOU READ THAT, PLEASE AND TELL ME IF IT IN
6 THERE SAYS SOMETHING ABOUT HENRY GOING TO THE CAR?

7 A YES.

8 Q DOES IT SAY THAT?

9 A YES.

10 Q SO DOES THAT REFRESH YOUR MEMORY ON WHETHER HENRY
11 WENT TO THE CAR?

12 A WELL, NO, REALLY DOESN'T.

13 Q OKAY. YOU DON'T REMEMBER?

14 A YES.

15 Q WELL, THAT WAS TAKEN THE DAY AFTER IT HAPPENED,
16 WASN'T IT, OR A COUPLE OF DAYS LATER?

17 A COUPLE OF DAYS LATER.

18 Q SO YOU THINK YOUR MEMORY WAS BETTER THEN?

19 A YES.

20 Q AND THAT STATEMENT DOES SAY THAT YOU SAW HENRY GO TO
21 THE CAR?

22 A YES.

23 Q DOES IT SAY ANYTHING ABOUT YOU SEEING HENRY GET A
24 GUN?

25 A NO.

1 Q DID YOU SEE HENRY GET A GUN?

2 A NO.

3 Q I'M GOING TO SHOW YOU STATE'S EXHIBITS 3 AND 4 AND
4 ASK YOU HAVE YOU EVER SEEN THOSE BEFORE?

5 A YES.

6 Q AND DO YOU REMEMBER WHO SHOWED YOU THOSE?

7 A DETECTIVE DELLINGER.

8 Q DID YOU PICK SOMEBODY OUT OF LINE-UP "A" WHICH IS
9 STATE'S EXHIBIT 3?

10 A EXCUSE ME?

11 Q THIS LINE-UP, LINE-UP "A"?

12 A UH-HUH.

13 Q WHICH IS STATE'S EXHIBIT 3, DID YOU PICK SOMEBODY OUT
14 OF THAT LINE-UP?

15 A YES.

16 Q AND WHAT NUMBER DID YOU PICK OUT OF THAT LINE-UP?

17 A NUMBER ONE.

18 Q AND WHICH PERSON IS NUMBER ONE?

19 A THE YOUNG FELLOW IN THE BLACK SWEATER.

20 Q WHICH IS MARCUS EVANS. YOU KNOW THAT'S HIS NAME NOW?

21 A (WHEREUPON SUBJECT INDICATED NODDING HEAD).

22 Q YES OR NO?

23 A YES.

24 Q OUT OF LINE-UP "B", WHICH IS STATE'S EXHIBIT 4, DID
25 YOU PICK SOMEBODY OUT OF THAT LINE-UP?

1 A YES.

2 Q AND WHAT NUMBER DID YOU PICK OUT OF THAT LINE-UP?

3 A NUMBER FIVE.

4 Q AND CAN YOU IDENTIFY THAT PERSON IN THE COURTROOM?

5 A THE YOUNG FELLOW IN THE BROWN SUIT.

6 Q AND HIS NAME YOU KNOW NOW AS GILARON TAYLOR?

7 A (WHEREUPON SUBJECT INDICATED NODDING HEAD).

8 Q DOES HE LOOK ANY DIFFERENT TODAY THAN HE DID IN THAT
9 PICTURE?

10 A YES.

11 Q AND DID HE -- DOES HE LOOK ANY DIFFERENT TODAY THAN
12 HE DID WHEN YOU SAW HIM ON NOVEMBER THE 14TH?

13 A OH, FROM THIS PICTURE HERE?

14 Q DOES HE LOOK ANY DIFFERENT?

15 A TALKING ABOUT NOW? YEAH, HE GOT A HAIRCUT.

16 Q HE GOT A HAIR CUT. OKAY. I AM GOING TO SHOW YOU
17 THESE TWO DOCUMENTS AND ASK YOU IF YOU RECOGNIZE THESE.

18 A YES.

19 Q AND WHAT ARE THOSE?

20 A THESE ARE THE PICTURE...

21 COURT REPORTER: I COULDN'T HEAR.

22 A THAT WAS MARKED ON THE PICTURE. I MARKED THEM.

23 Q AND DID YOU SIGN THOSE?

24 A YES.

25 MS. NIELSEN: YOUR HONOR, WE WOULD MOVE THESE IN AS

1 STATE'S EXHIBITS 6 AND 7.

2 THE COURT: ANY OBJECTION FROM DEFENSE COUNSEL,
3 GENTLEMEN?

4 MR. DOBY: NO OBJECTION.

5 MR. ROGERS: NO, SIR.

6 THE COURT: THANK YOU. HEARING NONE, STATE'S
7 EXHIBITS NEXT WITHOUT OBJECTION.

8 (STATE'S EXHIBIT NO. 6 AND 7 MARKED FOR
9 EVIDENCE.)

10 (WHEREUPON QUESTIONING RESUMED).

11 Q AFTER THE SHOOTING ENDED, WHAT DID YOU DO?

12 A STAND AROUND FOR A SECOND AND AFTER THAT, I LEFT.

13 Q SPEAK UP.

14 A AFTER THE AMBULANCE LEFT, I LEFT.

15 Q PLEASE ANSWER ANY QUESTIONS THE DEFENSE ATTORNEYS
16 HAVE.

17 THE COURT: MR. DOBY, YOU CAN CROSS-EXAMINE.

18 CROSS-EXAMINATION BY MR. DOBY:

19 Q MR. WAITERS, YOU SAW SOMEONE THERE IN FRONT OF THE
20 CLUB AND I THINK YOU SAID THAT THAT WAS MARCUS EVANS AND I
21 THINK YOU ACTUALLY TALKED TO HIM; ISN'T THAT RIGHT?

22 A YES, RIGHT.

23 Q AND POINT OUT ON THAT DIAGRAM WHERE YOU SAW MARCUS
24 EVANS THE FIRST TIME.

25 A IN THE FRONT RIGHT IN FRONT OF THE CLUB.

1 Q IN THE FRONT OF THE CLUB RIGHT THERE?

2 A YES.

3 Q HOW FAR WAS HE IN FROM THE CLUB? HOW MANY FEET DO
4 YOU RECKON IT WAS?

5 A ABOUT 15, 20 FEET MAYBE.

6 Q OKAY. DID YOU NOTICE ANY CARS THAT WERE PARKED RIGHT
7 THERE BY THE CLUB?

8 A I CAN'T REMEMBER. WELL, IN FRONT OF THE CLUB, YES.
9 IN FRONT OF THE CLUB, YES.

10 Q HOW MANY CARS DO YOU RECKON WERE PARKED IN FRONT OF
11 THE CLUB THERE?

12 A I DIDN'T COUNT. I DON'T KNOW.

13 Q A LOT OF THEM?

14 A YEAH.

15 Q OKAY. AS A MATTER OF FACT, THERE WERE SO MANY YOU
16 HAD TO PARK ON THE OTHER SIDE OF THE ROAD?

17 A EXACTLY.

18 Q RIGHT?

19 A YES.

20 Q OKAY. AND DO YOU RECALL THERE BEING LIGHTS ON THAT
21 CLUB OTHER THAN THE -- THIS HAS BEEN DESCRIBED AS A POLE
22 HAVING A LIGHT ON IT RIGHT THERE. DO YOU RECALL ANY OTHER
23 LIGHTS BEING PRESENT?

24 A YES, GOT A LIGHT IN THE FRONT AND RIGHT IN FRONT OF
25 THE CLUB AT THE -- ONE OF THE OUTSIDE LIGHTS.

1 Q ALL RIGHT. IS THAT CONNECTED TO THE CLUB ITSELF?

2 A NO, IT'S ON A POLE.

3 Q ALL RIGHT. AND POINT ME WHERE EXACTLY THAT LIGHT IS
4 BECAUSE IT'S ONE PUT ON THIS DIAGRAM THAT THERE IS A LIGHT
5 RIGHT HERE. DO YOU BELIEVE THAT -- WHERE IS A LIGHT OTHER
6 THAN THAT AT THE CLUB?

7 A YES, IT'S ANOTHER ONE IN FRONT OF THE CLUB.

8 Q OKAY. AND DO YOU RECALL WHETHER THERE WERE LIGHTS TO
9 THE LEFT OR TO THE RIGHT OF THE CLUB IN EITHER OF THE
10 FIELDS OR IN FRONT OF THOSE HOMES?

11 A EXCUSE ME?

12 Q DO YOU RECALL THERE BEING OTHER LIGHTS THERE THAT
13 NIGHT EITHER TO THE LEFT OR TO THE RIGHT OF THE CLUB ON
14 THE BALL FIELD OR PERHAPS IN FRONT OF THE HOME THAT IS
15 SHOWN ON THIS DIAGRAM?

16 A YOU GOT A HOUSE, I THINK IT'S A WHITE HOUSE IN THE
17 BACK THAT HAS A LIGHT, OUTSIDE LIGHT ON.

18 Q ALL RIGHT. HOW LONG IS IT IN THE FRONT OF THE CLUB
19 TO WHERE YOU PARKED? HOW MANY FEET DO YOU RECKON THAT
20 WOULD BE?

21 A ANYWHERE FROM 25, I SAY 25 FEET, SOMETHING.

22 Q 25 FEET?

23 A SOMETHING LIKE THAT.

24 Q SO IT WOULD HAVE TAKEN YOU JUST A SECOND TO WALK TO
25 THE CLUB RIGHT THERE THEN, RIGHT?

1 A YEAH, WITHIN --- DEPENDS ON HOW FAST YOU WALK.

2 Q NOW, YOU WERE ASKED EARLIER WHETHER YOU GAVE THE KEYS
3 TO MR. HENRY SCOTT TO GO BACK TO YOUR CAR AND I THINK YOU
4 DID GIVE HIM SOME KEYS; IS THAT RIGHT?

5 A YES.

6 Q DID YOU KNOW WHETHER HE HAD A GUN IN THE CAR THAT
7 PARTICULAR NIGHT?

8 A NO.

9 Q DO YOU KNOW FOR WHAT REASON HE WOULD HAVE GOTTEN THE
10 KEYS TO GO BACK TO THE CAR THEN?

11 A NO.

12 Q WAS HE GOING TO GO SOMEWHERE ELSE OR WERE YA'LL WHERE
13 YOU WANTED TO BE?

14 A WE WERE WHERE WE WANTED TO BE RIGHT THEN.

15 Q OKAY. WHAT WAS THE REASON THEN FOR GIVING HIM THE
16 KEYS?

17 A HE ASKED FOR THEM.

18 Q DID YOU DRIVE THERE?

19 A YES.

20 Q WAS HE GOING TO DRIVE HOME?

21 A NO.

22 Q OKAY. YOU SAW MARCUS EVANS STANDING IN FRONT OF THE
23 CLUB AND YOU TALKED TO HIM, RIGHT?

24 A YES.

25 Q AS A MATTER OF FACT, WHEN THE SHOTS FIRED, MARCUS

1 EVANS WAS FAIRLY CLOSE TO YOU, RIGHT?

2 A YES.

3 Q AND MARCUS EVANS -- I THINK YOUR EARLIER TESTIMONY
4 WAS THAT YOU HEARD SHOTS AND MARCUS EVANS WALKED AWAY,
5 RIGHT?

6 A EXCUSE ME?

7 Q YOU HEARD SHOTS FROM SOMEWHERE AND MARCUS EVANS
8 WALKED AWAY?

9 A NO, I DIDN'T SAY THAT.

10 Q MARCUS EVANS WAS AT THE FRONT OF THE CLUB AND YOU
11 WERE THERE ALSO?

12 A YES.

13 Q BUT THE SHOOTING OCCURRED AT THIS CAR THAT IS SOME
14 DISTANCE FROM THE CLUB THERE, CORRECT?

15 A AFTER HE WALKED OFF FROM IT, YES.

16 Q HUH?

17 A AFTER HE WALKED OFF FROM HIM.

18 Q AFTER HE WALKED IT OFF?

19 A YES.

20 Q DID YOU SEE ANYBODY ELSE THERE WITH MARCUS EVANS?

21 A THE YOUNG FELLOW IN THE BROWN SUIT.

22 Q DID YOU SEE TWO LADIES THERE WITH THEM?

23 A NO.

24 Q SO THERE WERE NOT TWO LADIES WAS YOUR TESTIMONY THEN?

25 A I CAN'T RECALL, SIR.

1 Q RIGHT? YOU DON'T RECALL WHAT THE CONVERSATION
2 BETWEEN YOU AND MARCUS EVANS WAS?

3 A I ASKED HIM WHAT WAS GOING ON BETWEEN HIM AND HENRY.

4 Q AND THEN I THINK YOUR TESTIMONY WAS YOU DON'T
5 REMEMBER WHAT HAPPENED OR YOU DON'T REMEMBER WHAT WAS SAID
6 AFTER THAT, RIGHT?

7 A YES.

8 Q HAD YOU BEEN DRINKING THAT NIGHT?

9 A NO.

10 Q DID YOU DESCRIBE WHAT MARCUS EVANS WAS WEARING TO THE
11 POLICE THAT NIGHT?

12 A NO.

13 Q DID THEY ASK YOU?

14 A NO.

15 Q DID YOU GIVE A STATEMENT THAT PARTICULAR NIGHT?

16 A NO, NO, I DIDN'T.

17 Q THIS HAPPENED ON NOVEMBER THE 14TH?

18 A YES.

19 Q AND YOU GAVE YOUR STATEMENT ON THE SAME DAY?

20 A EXCUSE ME?

21 Q YOU GAVE A STATEMENT ON THE SAME DAY; DIDN'T YOU?

22 A THE SAME DAY OF WHAT?

23 Q A STATEMENT, THE WRITTEN STATEMENT?

24 A GIVE THIS HERE.

25 Q THAT WAS ON THE SAME DAY?

1 A YES.

2 Q AND THEY DIDN'T ASK YOU FOR A DESCRIPTION OF THE
3 CLOTHING?

4 A I CAN'T REMEMBER. I CAN'T REMEMBER.

5 Q YOU DIDN'T REMEMBER WHAT HE WAS WEARING?

6 A I CAN'T REMEMBER WHETHER HE ASKED -- WHETHER DID HE
7 ASK ME THAT.

8 Q OKAY. IT WASN'T CONTAINED IN YOUR STATEMENT.

9 A NO, I DON'T SEE IT.

10 Q DID YOU RECALL SEEING LARRY DEBERRY?

11 A NO.

12 Q WAS MARCUS EVANS WEARING A FLOWERED SHIRT, COLORED
13 T-SHIRT OR SOME SORT OF A PAINTED T-SHIRT?

14 A I DON'T KNOW.

15 Q HUH?

16 A I CAN'T REMEMBER.

17 Q YOU DON'T REMEMBER THAT?

18 A NO.

19 Q OKAY. THANK YOU. THAT'S ALL I HAVE.

20 THE COURT: MR. ROGERS?

21 MR. ROGERS: THANK YOU, YOUR HONOR.

22 CROSS-EXAMINATION BY MR. ROGERS:

23 Q MR. WAITERS, THERE ARE TWO THINGS DIFFERENT FROM THE
24 STATEMENT THAT YOU GAVE ON THE 14TH AND WHAT YOU HAVE
25 TESTIFIED TO HERE IN COURT TODAY; ISN'T THAT TRUE?

1 A YES.

2 Q OKAY. AND THE TWO THINGS ARE YOU DIDN'T KNOW PEOPLES
3 NAMES BECAUSE IN YOUR STATEMENT YOU REFER TO THE PEOPLE AS
4 GUYS, CORRECT?

5 A YES.

6 Q AND YOU LEFT OUT THE PART ABOUT HENRY GOING TO THE
7 CAR, CORRECT?

8 A YES.

9 Q AND THE REASON YOU LEFT THAT OUT BECAUSE YOU DIDN'T
10 WANT IT TO BE -- LOOK LIKE HENRY WENT TO GET A GUN?

11 A NO, THAT'S NOT IT.

12 Q HAD HENRY BEEN DRINKING THAT NIGHT?

13 A NO, NOT THAT I CAN RECALL.

14 Q HOW LONG HAD YOU BEEN WITH HIM?

15 A ABOUT I'D SAY PROBABLY AN HOUR.

16 Q JUST AN HOUR?

17 A YES.

18 Q YOU WEREN'T WITH HIM AT THE OTHER CLUB?

19 A YES.

20 Q OH, YOU WERE?

21 A YES.

22 Q BUT YOU WERE ONLY IN HIS COMPANY AN HOUR?

23 A YES.

24 Q OKAY. YOU DID -- HAVE NOT EVER SEEN RON TAYLOR
25 BEFORE NOVEMBER 14TH?

1 A EXCUSE ME?

2 Q YOU HAD NEVER SEEN RON TAYLOR BEFORE THAT NIGHT?

3 A NO, I HAVEN'T.

4 Q OKAY. AND YOU HAVEN'T EVER SEEN HIM SINCE?

5 A (SHOOK HEAD).

6 Q OKAY. THERE CAME A TIME ON THE 19TH OF NOVEMBER YOU
7 WERE SHOWN THIS PHOTOGRAPH, NUMBER "B", PHOTOGRAPHIC
8 LINE-UP SPREAD?

9 A UH-HUH.

10 Q WHAT WERE YOU TOLD WHEN YOU WERE SHOWN THAT PHOTO?

11 A HE ASKED ME WHICH WAS THE -- WHICH ONE OF THE
12 PICTURES MATCHED THE DESCRIPTION.

13 Q DESCRIPTION. AND YOU HAD GIVEN A DESCRIPTION?

14 A EXCUSE ME?

15 Q YOU HAD GIVEN A DESCRIPTION?

16 A I WROTE IT. NO, I POINTED OUT THE PEOPLE.

17 Q BUT THAT'S ALL RIGHT. LET ME GO BACK. YOU HAD NOT
18 GIVEN A DESCRIPTION OF THE PEOPLE WHO HAD DONE THE
19 SHOOTING?

20 A NO.

21 Q EITHER THAT NIGHT OR ON THE 19TH?

22 A NO.

23 Q OKAY. BUT YOU WERE CALLED BACK IN ON THE 19TH AFTER
24 YOU HAD GIVEN A STATEMENT?

25 A NO. WHEN I GAVE THE STATEMENT, I POINTED OUT THE

1 PICTURES.

2 Q ALL RIGHT. DO YOU HAVE A COPY OF -- YES. AND YOU
3 GAVE YOUR STATEMENT ON THE 14TH, CORRECT?

4 A UH-HUH.

5 Q THE SAME DAY, AND THEN IF YOU TURN OVER TO THE SECOND
6 PART WHEN YOU LOOKED AT THE PHOTOGRAPHIC LINE-UP WAS THE
7 19TH, CORRECT?

8 A YES.

9 Q OKAY. AT 5:00 IN THE AFTERNOON?

10 A YES.

11 Q SO YOU DIDN'T DO IT AT THE SAME TIME?

12 A I DID IT ALL THE SAME DAY.

13 Q WELL, HOW DO YOU -- HOW DO YOU EXPLAIN THAT YOUR
14 STATEMENT SAYS THE 14TH AND THE IDENTIFICATION WAS DONE ON
15 THE 19TH?

16 A I DID IT THE SAME DAY. I CAME DOWN ONCE.

17 Q YOU DID IT ALL IN ONE DAY?

18 MS. NIELSEN: YOUR HONOR, MAY I SEE THE STATEMENT
19 THAT MR. ROGERS IS HANDING HIM?

20 Q I -- I'M MISTAKEN. YOU DIDN'T GIVE YOUR STATEMENT ON
21 THE 14TH, YOU GAVE YOUR STATEMENT ON THE 19TH.

22 A YES.

23 Q ALL AT ONE TIME?

24 A YES.

25 Q AND DID YOU GIVE A DESCRIPTION ON THE 19TH OF THE

1 PERSONS THAT YOU SAW DOING THE SHOOTING?

2 A WELL, I POINTED OUT THE PICTURES.

3 Q THAT'S NOT WHAT I ASKED YOU.

4 A NO.

5 Q DID YOU GIVE A DESCRIPTION?

6 A NO.

7 Q YOU WERE JUST SHOWN THIS LINE-UP AND YOU WERE ASKED
8 WHAT?

9 A WHICH ONE OF THESE PICTURES WERE THE GUY SHOOTING,
10 WHICH ONE OF THE GUYS THAT WAS DOING THE SHOOTING.

11 Q YOU SURE YOU WEREN'T ASKED BY ONE OF THE GUYS IN THE
12 PICTURES THAT YOU SAW THAT NIGHT?

13 A WELL, IT COULD HAVE BEEN THAT.

14 Q OKAY. THAT'S DIFFICULT; ISN'T IT? THAT IS A
15 DIFFICULT QUESTION. OKAY.

16 MR. ROGERS: THAT'S ALL. THANK YOU.

17 THE COURT: THANK YOU. MR. JORDAN?

18 MR. JORDAN: MAY IT PLEASE THE COURT, YOUR HONOR.

19 THE COURT: YES, SIR.

20 CROSS-EXAMINATION BY MR. JORDAN:

21 Q MR. WAITERS, HAD YOU BEEN AT JIGGERS EARLIER?

22 A NO.

23 Q K.J.'S?

24 A IT WAS -- I WAS AT A CLUB ON BROAD STREET. I DON'T
25 KNOW THE NAME OF THE CLUB.

1 Q IS THAT WHERE YOU MET UP WITH HENRY AND THE OTHER
2 FELLOWS?

3 A I MET UP WITH THEM. I SAW THEM AT BURGER KING AND WE
4 RODE TO K.J.'S, BUT THAT'S WHEN WE ALL GOT OUT OF THE CARS
5 AND STARTED COMMUNICATING OR WHATEVER.

6 Q YOU HAVE ANYTHING TO DRINK AT ANY OF THOSE CLUBS?

7 A NO.

8 Q OKAY. AND YOU NEVER MADE IT INSIDE THE COUNTRY CLUB;
9 DID YOU?

10 A NO.

11 Q AND YOU -- DID YOU WALK UP AND INQUIRE ABOUT THE
12 COVER?

13 A EXCUSE ME?

14 Q DID YOU WALK UP TO THE DOOR AND ASK THEM WHAT THE
15 COVER CHARGE WAS?

16 A I CAN'T REMEMBER.

17 Q OKAY. WERE YOU ASKED TO LEAVE AT ANY POINT IN TIME
18 FROM THE COUNTRY CLUB?

19 A NO.

20 Q DO YOU KNOW IF HENRY WAS DRINKING?

21 A EXCUSE ME?

22 Q DO YOU KNOW IF HENRY WAS DRINKING THAT NIGHT?

23 A NO.

24 Q YOU DON'T KNOW?

25 A NO, SIR.

1 Q WHAT ABOUT LEONARD SCOTT OR STEVEN JOHNSON? DO YOU
2 KNOW THEM?

3 A YES.

4 Q WERE THEY DRINKING?

5 A NO. EXCUSE ME?

6 Q WERE THEY DRINKING?

7 A I DON'T KNOW.

8 Q WHAT ABOUT DERRICK ALBERT AND RODNEY, DO YOU KNOW IF
9 THEY WERE?

10 A NO.

11 Q THANK YOU. NO FURTHER QUESTIONS.

12 THE COURT: THANK YOU. MR. FINNEY?

13 MR. FINNEY: NO QUESTIONS.

14 THE COURT: THANK YOU. REDIRECT, MS. NIELSEN?

15 MS. NIELSEN: NOTHING FURTHER, YOUR HONOR.

16 THE COURT: THANK YOU. YOU CAN STEP DOWN, MR.

17 WAITERS.

18 (WHEREUPON THE WITNESS LEFT THE STAND).

19 THE COURT: LADIES AND GENTLEMEN, WE WILL TAKE
20 ADVANTAGE OF THIS BREAK IN THE PROCEEDINGS TO TAKE A BRIEF
21 AFTERNOON RECESS. WE WILL GET YOU BACK OUT HERE IN ABOUT
22 NO LATER THAN 15 MINUTES TO CONCLUDE THE AFTERNOON'S
23 WORK. WE HAVE TO STOP THIS AFTERNOON AT 5 FOR REASONS
24 THAT I HAVE ALREADY GIVEN YOU. PLEASE REMEMBER AS ALWAYS
25 THAT YOU'RE NOT TO DISCUSS THIS CASE AMONG YOURSELVES

1 WHILE YOU'RE IN THE JURY ROOM. THANK YOU.

2 (WHEREUPON THE JURY LEFT THE COURTROOM).

3 THE COURT: FOLKS, WE WILL BE IN RECESS.

4 (WHEREUPON A BRIEF RECESS WAS TAKEN).

5 MR. ROGERS: BEFORE WE BEGIN, MS. NIELSEN ASKED US AT
6 THE BREAK IF WE WOULD NOT OBJECT TO EXCUSE MR. WAITERS AND
7 WE DO NOT.

8 MS. NIELSEN: HOW ABOUT MR. DEBERRY?

9 MR. ROGERS: WE DON'T OBJECT TO HIM BEING EXCUSED.

10 THE COURT: THANK YOU. THEN BOTH OF THEM WILL BE
11 EXCUSED. ALL RIGHT. ALL NOW READY FOR THE JURY, FOLKS?

12 MS. NIELSEN: YES, SIR.

13 THE COURT: THANK YOU. YOU CAN BRING US A JURY.

14 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 4:28
15 P.M.)

16 THE COURT: MADAM FORELADY, YOU HAVE DISCUSSED WITH
17 THE JURY THE EARLIEST TIME THAT THEY WOULD BE WILLING TO
18 COME IN THE MORNING AND START. WHAT IS THE CONSENSUS OF
19 THE JURY IN THAT REGARDS?

20 FORELADY: 9 A.M.

21 THE COURT: THANK YOU. APPRECIATE THAT. WE WILL
22 START IN THE MORNING AT 9. ALL RIGHT. YOU CAN CALL YOUR
23 NEXT WITNESS, MS. NIELSEN.

24 MS. NIELSEN: THE STATE CALLS AARON MONAHAN.

25 THE COURT: COME FORWARD PLEASE, MR. MONAHAN AND BE

1 SWORN.

2 AARON MONAHAN, BEING FIRST DULY
3 SWORN, TESTIFIED AS FOLLOWS:

4 DIRECT EXAMINATION BY MS. NIELSEN:

5 Q MR. MONAHAN, WOULD YOU TELL THE JURY HOW YOU ARE
6 EMPLOYED?

7 A I AM EMPLOYED WITH THE SUMTER COUNTY SHERIFF'S
8 DEPARTMENT.

9 Q AND HOW LONG HAVE YOU BEEN EMPLOYED WITH THE SUMTER
10 COUNTY SHERIFF'S DEPARTMENT?

11 A I HAVE BEEN EMPLOYED FOR THREE YEARS AND
12 APPROXIMATELY THREE MONTHS.

13 Q AND HAVE YOU -- IS THAT YOUR ENTIRE TIME OF BEING IN
14 LAW ENFORCEMENT?

15 A NO, IT IS NOT.

16 Q WHERE WERE YOU IN LAW ENFORCEMENT BESIDES THE
17 SHERIFF'S OFFICE IN SUMTER?

18 A I WAS EMPLOYED FOR A YEAR AND A HALF IN THE TOWN OF
19 PROGMAN (SIC).

20 Q NOW, DO YOU RECALL RECEIVING A CALL OR HEARING A BE
21 ON THE LOOKOUT, A BOLO, FOR A CAR ON NOVEMBER THE 14TH OF
22 LAST YEAR WHILE YOU WERE WORKING?

23 A YES, I DO.

24 Q AND DO YOU REMEMBER WHAT THAT BOLO WAS?

25 A IT WAS FOR I BELIEVE A CADILLAC, BURGUNDY IN COLOR.

1 Q WHERE WERE YOU WHEN YOU HEARD THAT OVER THE RADIO?

2 A I WAS JUST LEAVING OUR JAIL WHICH IS ON 15 NORTH.

3 Q WAS THAT ON HIGHWAY 15?

4 A YES, IT IS.

5 Q AND WHERE IS THAT IN RELATION TO ACTUALLY THE CITY OF
6 SUMTER?

7 A THE JAIL IS ACTUALLY ABOUT A MILE TO A MILE AND A
8 HALF NORTH OF SUMTER CITY.

9 Q IS IT CLOSE TO THE OVERPASS THERE WHERE I THINK IT'S
10 378 OR 76?

11 A YEAH, IT'S ABOUT A MILE AND A HALF FROM THE OVERPASS.

12 Q COMING BACK TOWARDS BISHOPVILLE?

13 A YES, IT IS.

14 Q SO YOU WERE LEAVING THE JAIL AND YOU GOT THAT. WHERE
15 DID YOU GO?

16 A HAD BEEN TRAVELING NORTHBOUND ON HIGHWAY 15 TOWARDS
17 LEE COUNTY.

18 Q YOU WERE IN SUMTER COUNTY?

19 A YES, I WAS.

20 Q YOU DIDN'T GO INTO LEE COUNTY?

21 A NO, I DID NOT.

22 Q DID YOU SEE A CAR THAT MATCHED THE DESCRIPTION THAT
23 YOU HAD HEARD?

24 A YES. I REMEMBER SEEING A VEHICLE PASS ME. IT WAS A
25 RED TO BURGUNDY IN COLOR TRAVELING AT AN EXTREME HIGH RATE

1 OF SPEED.

2 Q AND WAS EXTREME HIGH RATE OF SPEED-- HOW DID YOU
3 DETERMINE THAT?

4 A VISUALLY THE VEHICLE LOOKED LIKE IT WAS TRAVELING
5 BETWEEN 90 AND A HUNDRED MILES PER HOUR.

6 Q DO YOU HAVE SOME--

7 MR. JORDAN: JUDGE, I OBJECT TO THAT.

8 THE COURT: THE BASIS OF THE OBJECTION?

9 MR. JORDAN: THE BASIS OF THAT OPINION WHETHER IT'S
10 QUALIFIED TO MAKE THAT ESTIMATE JUST PURELY ON
11 INSPECTION. I THINK USUALLY IT TAKES AN ACCIDENT
12 RECONSTRUCTIONIST TO ESTIMATE SPEED.

13 THE COURT: NO, SIR.

14 MR. JORDAN: I SAY IMPROPER FOUNDATION. I MOVE TO
15 STRIKE.

16 THE COURT: BE GLAD FOR HER TO SET THE FOUNDATION AS
17 TO WHEN, HOW LONG HE OBSERVED THE VEHICLE AND WHAT
18 CIRCUMSTANCES HE DID, BUT THIS SPECIFIC CASE SINCE IT'S A
19 LAY PERSON SPECIFIES TO SPEED, LAID THE FOUNDATION. NEXT
20 QUESTION, PLEASE.

21 (WHEREUPON QUESTIONING RESUMED).

22 Q HAVE YOU HAD ANY EXPERIENCE WITH JUDGING THE SPEED OF
23 CARS?

24 A YES, I HAVE.

25 Q WOULD YOU TELL US WHAT THAT EXPERIENCE IS.

1 A BEEN RADAR OPERATOR FOR THE TOWN OF PINWOOD FOR A
2 YEAR AND A HALF AND I ALSO COMPLETED THE ACADEMY'S RADAR
3 TRAINING AND THAT INCLUDES VISUAL SPEED ESTIMATION.

4 Q AND HOW LONG A TIME DID YOU HAVE TO OBSERVE THIS
5 VEHICLE?

6 A APPROXIMATELY A SECOND AND A HALF.

7 Q AND IS THAT -- WHY DID YOU ONLY HAVE A CHANCE TO
8 OBSERVE IT FOR A SECOND AND A HALF?

9 A THE RATE OF SPEED IT WAS TRAVELING.

10 THE COURT: ALL RIGHT. I FIND THAT SUFFICIENT
11 FOUNDATION -- TO LAY THE FOUNDATION FOR THE WITNESSES
12 TESTIMONY AS IS. THE OBJECTION GOES MORE TO THE WEIGHT
13 THAT THE JURY MIGHT GIVE IT. BUT HE'S QUALIFIED UNDER
14 CASE LAW AND UNDER THE RULE TO RENDER AN OPINION AS TO
15 SPEED. SPECIFIC CASE IS CASE OF STATE VERSUS BATTLE,
16 B-A-T-T-L-E, 304 S.C. 191.

17 (WHEREUPON QUESTIONING RESUMED).

18 Q AT THE TIME YOU PASSED THE CAR AND YOU REALIZED IT
19 MIGHT FIT THE BOLO DESCRIPTION, WHAT DID YOU DO?

20 A I IMMEDIATELY NOTIFIED OUR DISPATCH AND MY LIEUTENANT
21 WHO WAS TRAVELING NOT FAR BEHIND ME.

22 Q DID YOU NOTIFIED YOUR LIEUTENANT, WHAT IS HIS NAME?

23 A THAT WOULD BE LIEUTENANT DONNIE VICKERS.

24 Q ALL RIGHT. THEN WHAT DID YOU DO?

25 A I TURNED AROUND ON THE VEHICLE.

1 Q NOW, EXACTLY -- CAN YOU TELL US EXACTLY WHERE ON
2 HIGHWAY 15 YOU WERE WHEN YOU SAW THE VEHICLE?

3 A IT WAS JUST COMING OUT OF THE CURVE BEFORE DUBOSE
4 SIDING ROAD.

5 Q WHERE IS DUBOSE SIDING ROAD?

6 A IT'S--

7 Q ARE THERE ANY BUILDINGS OR ANY LANDMARKS THAT THE
8 JURY MIGHT BE FAMILIAR WITH?

9 A THERE'S A WHITES ONE STOP WHICH IS FOXWORTH MILL
10 WHICH IS ABOUT A MILE AND A HALF TO TWO MILES DOWN THE
11 ROAD SOUTH OF THAT.

12 Q WHICH SIDE OF THE ROAD TO -- YOU'RE GOING TOWARDS
13 BISHOPVILLE, WHICH SIDE OF THE ROAD WOULD IT BE ON?

14 A BE ON THE LEFT SIDE OF THE ROAD.

15 Q IS THAT A GAS STATION?

16 A YES, IT IS.

17 Q ALL RIGHT. AND THAT'S WHERE YOU FIRST SAW THE CAR.
18 IT WAS GOING TOWARDS SUMTER?

19 A YES, IT WAS.

20 Q AND WHAT DID YOU DO?

21 A I AFTER RADIOING TO OUR DISPATCH AND NOTIFYING MY
22 LIEUTENANT, I TURNED AROUND ON THE VEHICLE.

23 Q AND WHAT IS THE NEXT THING THAT HAPPENED?

24 A I PROCEEDED TOWARDS THE DIRECTION OF THE VEHICLE WAS
25 TRAVELING.

1 Q AND DID YOU SEE THE VEHICLE AGAIN?

2 A YES, I DID. MY LIEUTENANT WHO WAITED FOR THE VEHICLE
3 TO CATCH UP TO HIM HAD STOPPED IT.

4 Q AND WHEN YOU ARRIVED, DID HE HAVE HIM STOPPED?

5 A YES, HE DID.

6 Q WAS LIEUTENANT VICKERS IN OR OUT OF THE CAR WHEN YOU
7 GOT BACK?

8 A HE WAS WAITING IN THE VEHICLE.

9 Q WHEN YOU GOT BACK THERE, WHAT DID YA'LL DO?

10 A I WENT TO THE RIGHT REAR QUARTER PANEL OF THE VEHICLE
11 AS A COVER OFFICER, LIEUTENANT VICKERS WENT AND SPOKE TO
12 THE DRIVER.

13 Q COULD YOU HEAR WHAT THEY WERE SAYING?

14 A BITS AND PIECES. I WAS MAINLY PAYING ATTENTION ON
15 THE OCCUPANTS INSIDE OF THE VEHICLE.

16 Q WHAT ELSE DID YA'LL DO?

17 A LIEUTENANT VICKERS DID HAVE THE DRIVER LEAVE THE
18 VEHICLE AND HE DID CHECK HIS LICENSE.

19 Q WHAT KIND OF CAR WERE YOU IN?

20 A I WAS IN A FORD CROWN VICTORIA.

21 Q IS IT A MARKED CAR?

22 A YES, IT WAS.

23 Q DID YOU HAVE LIGHTS ON THAT CAR?

24 A YES, I DID.

25 Q DID YOU EVER ACTIVATE THEM?

1 A EXCUSE ME?

2 Q DID YOU EVER ACTIVATE YOUR LIGHTS?

3 A I ACTIVATED MY LIGHTS ONCE I CAME ON SCENE WHERE
4 LIEUTENANT VICKERS HAD THE VEHICLE STOPPED.

5 Q HOW FAST WERE YOU GOING WHEN YOU THINK -- WHEN YOU
6 TOOK YOU TO BACK UP TO CATCH UP WITH WHERE THE VEHICLE WAS
7 STOPPED?

8 A I WAS TRAVELING APPROXIMATELY THE SAME RATE OF SPEED
9 THAT THEY HAD PASSED ME TO TRY TO CATCH HIM. I FIGURED
10 ABOUT 90 TO A HUNDRED MILES PER HOUR.

11 Q BUT BY THE TIME YOU GOT THERE, LIEUTENANT VICKERS
12 ALREADY HAD THEM STOPPED?

13 A YES, HE DID.

14 Q WHAT COLOR IS YOUR CAR?

15 A MY CAR IS WHITE WITH BROWN AND YELLOW STRIPES.

16 Q DOES IT SAY SUMTER COUNTY SHERIFF'S DEPARTMENT?

17 A YES, IT DOES.

18 Q AND WHERE ARE THE THINGS THAT SAY SUMTER COUNTY
19 SHERIFF'S DEPARTMENT?

20 A ON THE SIDE OF THE VEHICLE AND ACROSS THE BACK.

21 Q ALL RIGHT. WHAT ELSE HAPPENED? WHAT ELSE HAPPENED
22 WHEN YOU WERE AT THE SCENE WHERE THE CAR WAS ACTUALLY
23 STOPPED?

24 A AFTER LIEUTENANT VICKERS HAD RAN THE DRIVERS LICENSE,
25 THE LEE COUNTY UNITS WERE SOON ON SCENE.

1 Q DID YOU SPEAK TO ANY OF THE PEOPLE IN THE CAR?

2 A NO, I DID NOT.

3 Q THANK YOU. PLEASE ANSWER ANY QUESTIONS THE DEFENSE
4 ATTORNEYS HAVE.

5 THE COURT: MR. DOBY?

6 MR. DOBY: NO, SIR, YOUR HONOR.

7 THE COURT: THANK YOU. MR. ROGERS?

8 MR. ROGERS: NO QUESTIONS.

9 THE COURT: THANK YOU. MR. JORDAN?

10 MR. JORDAN: COURT'S INDULGENCE.

11 THE COURT: THANK YOU.

12 (WHEREUPON THERE WAS A PAUSE).

13 MR. JORDAN: NO QUESTIONS, YOUR HONOR.

14 THE COURT: THANK YOU. MR. FINNEY?

15 CROSS-EXAMINATION BY MR. FINNEY:

16 Q MR. -- EXCUSE ME. OFFICER MONAHAN, YOU SEE THIS CAR
17 DRIVE AWAY THAT LATE AT NIGHT 90 TO A HUNDRED MILES AN
18 HOUR, YOU STOP THE GUYS AND THEY CHECK OUT, THEY CHECK OUT
19 THEY HAD THEIR LICENSES AND EVERYTHING? AND THEN WHAT
20 ACTION DID YOU TAKE AFTER YOU CHECKED THEM OUT AFTER LEE
21 COUNTY CAME UP?

22 A WE STAYED ON SCENE WHILE LEE COUNTY WERE SPEAKING TO
23 THE GENTLEMEN. WE WERE JUST THERE AS A SUPPORTIVE ROLE.

24 Q AND DID LEE COUNTY LEFT?

25 A YES.

1 Q DID YOU SPEAK TO ANY OF THE PEOPLE IN THE CAR?

2 A NO, I DID NOT.

3 Q THANK YOU. PLEASE ANSWER ANY QUESTIONS THE DEFENSE
4 ATTORNEYS HAVE.

5 THE COURT: MR. DOBY?

6 MR. DOBY: NO, SIR, YOUR HONOR.

7 THE COURT: THANK YOU. MR. ROGERS?

8 MR. ROGERS: NO QUESTIONS.

9 THE COURT: THANK YOU. MR. JORDAN?

10 MR. JORDAN: COURT'S INDULGENCE.

11 THE COURT: THANK YOU.

12 (WHEREUPON THERE WAS A PAUSE).

13 MR. JORDAN: NO QUESTIONS, YOUR HONOR.

14 THE COURT: THANK YOU. MR. FINNEY?

15 CROSS-EXAMINATION BY MR. FINNEY:

16 Q MR. -- EXCUSE ME. OFFICER MONAHAN, YOU SEE THIS CAR
17 DRIVE AWAY THAT LATE AT NIGHT 90 TO A HUNDRED MILES AN
18 HOUR, YOU STOP THE GUYS AND THEY CHECK OUT, THEY CHECK OUT
19 THEY HAD THEIR LICENSES AND EVERYTHING? AND THEN WHAT
20 ACTION DID YOU TAKE AFTER YOU CHECKED THEM OUT AFTER LEE
21 COUNTY CAME UP?

22 A WE STAYED ON SCENE WHILE LEE COUNTY WERE SPEAKING TO
23 THE GENTLEMEN. WE WERE JUST THERE AS A SUPPORTIVE ROLE.

24 Q AND DID LEE COUNTY LEFT?

25 A YES.

1 Q THEY DIDN'T TAKE ANY OF THE GENTLEMEN OUT OF THE CAR?

2 A THE GENTLEMEN WERE ALL EXITED OUT OF THE VEHICLE.

3 Q BUT THEY DIDN'T TAKE ANYBODY WITH THEM INTO CUSTODY?

4 A NO, SIR.

5 Q YOU DIDN'T TAKE ANYBODY WITH YOU IN CUSTODY?

6 A NO, SIR.

7 Q HOW COME YOU DIDN'T GIVE SOMEBODY A SPEEDING TICKET
8 FOR GOING 90 MILES AN HOUR?

9 A WE TURNED IT OVER TO LEE COUNTY.

10 Q BUT THE VIOLATION OCCURRED IN SUMTER COUNTY?

11 A YES, SIR.

12 Q THE VIOLATION OCCURRED IN YOUR PRESENCE?

13 A YES, SIR.

14 Q NO TICKETS WERE WRITTEN?

15 A NO, SIR.

16 Q DID YOU CHECK ANYBODY THAT NIGHT TO SEE IF THERE WAS
17 ANY BLOOD SPLATTERS ON THEIR CLOTHES?

18 A NO, SIR, I DID NOT.

19 Q DID YOU CHECK ANYBODY'S FEET THAT NIGHT TO SEE IF
20 THERE WAS ANY BLOOD ON THEIR FEET?

21 A NO, SIR, I DID NOT.

22 Q DID LEE COUNTY DO THAT?

23 A NOT THAT I KNOW.

24 Q IN YOUR PRESENCE?

25 A NOT THAT I KNOW OF.

1 Q NOTHING FURTHER.

2 THE COURT: THANK YOU. MS. NIELSEN, RE-DIRECT?

3 MS. NIELSEN: NOTHING FURTHER, YOUR HONOR.

4 THE COURT: MA'AM?

5 MS. NIELSEN: NOTHING FURTHER.

6 THE COURT: THANK YOU. MR. MONAHAN, YOU CAN STEP
7 DOWN. THANK YOU, SIR.

8 (WHEREUPON THE WITNESS LEFT THE STAND).

9 MS. NIELSEN: STATE CALLS DONALD VICKERS.

10 (WHEREUPON THERE WAS A PAUSE).

11 MS. NIELSEN: ASK MR. MONAHAN BE EXCUSED.

12 THE COURT: WITHOUT OBJECTION HE IS EXCUSED. ASK MR.
13 VICKERS TO STEP INTO THE COURTROOM, PLEASE MA'AM.

14 (WITNESS IN COURTROOM).

15 THE COURT: MR. VICKERS, COME FORWARD PLEASE SIR AND
16 PUT YOUR LEFT HAND ON THE BIBLE THERE AND RAISE YOUR
17 RIGHT.

18 DONALD VICKERS, BEING FIRST DULY
19 SWORN, TESTIFIED AS FOLLOWS:

20 DIRECT EXAMINATION BY MS. NIELSEN:

21 Q YOUR NAME IS DONNIE VICKERS?

22 A IT'S DONALD WAYNE VICKERS.

23 Q CALL YOUR DONNIE?

24 A YES, MA'AM.

25 Q YOU WORK FOR THE SUMTER COUNTY SHERIFF'S DEPARTMENT?

1 A YES, MA'AM. SINCE 1988.

2 Q YOU ARE A LIEUTENANT NOW?

3 A YES, MA'AM, I AM.

4 Q WERE YOU INVOLVED IN THE STOP OF THIS CAR ON NOVEMBER
5 THE 14TH, 1999.

6 A YES, MA'AM, I WAS.

7 Q WOULD YOU TELL US HOW YOU BECAME INVOLVED IN THIS?

8 A WE HAD A BOLO OVER THE RADIO IN REFERENCE TO A MAROON
9 CADILLAC POSSIBLY COMING FROM LEE COUNTY THAT HAD BEEN
10 INVOLVED IN A SHOOTING OR A 1075 AS PUT OVER THE RADIO.

11 Q ALL RIGHT. AND DID YOU HAVE SOME RADIO CONTACT WITH
12 OFFICER MONAHAN?

13 A YES, I DID.

14 Q AND DID HE ADVISE YOU A CAR WAS COMING IN THE
15 DIRECTION WHERE YOU WERE?

16 A YES. HE WAS A FEW MINUTES AHEAD OF ME AND HE RADIOED
17 ME AND TOLD ME THAT THERE WAS A VEHICLE MATCHING THAT
18 DESCRIPTION HEADING TOWARDS ME AT A HIGH RATE OF SPEED.

19 Q AND DID YOU SEE THIS VEHICLE?

20 A YES, I DID.

21 Q AND WHAT KIND OF VEHICLE WAS IT?

22 A IT WAS A MAROON CADILLAC.

23 Q WHAT DID YOU DO?

24 A I WAITED ON THE VEHICLE AND WENT PAST HIM AND TURNED
25 AROUND AND INITIATED A TRAFFIC STOP ON HIM.

1 Q WHERE WAS THIS? WHERE WERE YOU?

2 A JUST BEFORE WHITES SMITH ON HIGHWAY 15 SOUTH.

3 Q AND CAN YOU TELL THE JURY WHERE WHITES MILL IS?

4 A WHITES MILL IS MAYBE TWO MILES ON BISHOPVILLE SIDE OF
5 SUMTER.

6 Q IS THERE ANYTHING DISTINCTIVE ABOUT WHITES MILL SO
7 THE JURY WOULD KNOW WHERE THAT IS?

8 A IT'S A NICE POND ON BOTH SIDES OF THE ROADS.

9 Q IT'S NOT THAT POND; IS IT?

10 A THAT'S THE ONE.

11 Q YOU DON'T KNOW ANY OTHER ONES THAT HAVE CYPRESS TREES
12 ANYWHERE AROUND; DO YOU?

13 A NOT ON 15.

14 Q NOT ON HIGHWAY 15? EXPLAIN WHAT CYPRESS TREES ARE,
15 MAKE SURE THE JURY KNOWS WHICH.

16 A THE TREE WITH A BIG KNOT AT THE BOTTOM OF IT IS ALL I
17 CAN TELL YOU.

18 Q THEY GROW IN THE WATER?

19 A YES.

20 Q THE WATER ON BOTH SIDES OF 15?

21 A YES, MA'AM.

22 Q AND THAT IS WHERE YA'LL CALL WHITING MILL?

23 A YEAH, THAT WHOLE AREA WAS WHITES MILL. THERE'S A
24 STREET CALLED WHITES MILL BEFORE YOU GET TO THE POND
25 ITSELF ON THE BISHOPVILLE SIDE, BUT WHEN I CALLED TO STOP,

1 A CORRECT.

2 Q DID HE SAY ANYTHING ABOUT WHY THEY WERE DRIVING SO
3 FAST?

4 A I DIDN'T SEE THEM DRIVE FAST. I'M NOT RADAR
5 CERTIFIED AND WHAT I -- WHEN THEY APPROACHED ME, THEY WERE
6 -- THEY WEREN'T OR DIDN'T APPEAR TO BE GOING FAST. I
7 DIDN'T ASK THEM WHY THEY WERE GOING FAST.

8 Q ALL RIGHT. WHAT ELSE DID YOU DO?

9 A AFTER HE TOLD US THAT, IT WASN'T BUT A MATTER OF
10 MINUTES WHEN LEE COUNTY SHOWED UP. AS A MATTER OF FACT,
11 SEVERAL CARS FROM LEE COUNTY.

12 Q AND WHAT DID LEE COUNTY DO ONCE THEY GOT THERE?

13 A WE TURNED THEM OVER TO THEM AND THEY TALKED TO THEM.

14 Q WHAT TIME DID YOU MAKE THIS STOP? DO YOU KNOW THAT?

15 A YES, THE TIME THAT I CALLED IT IN WAS 3:54 AND 20
16 SECONDS.

17 Q AND IS THAT THE TIME YOU ACTUALLY INITIALLY STOPPED
18 THE CAR?

19 A THAT'S THE TIME I CALLED IT IN, ACTIVATED MY BLUE
20 LIGHTS AND THEN THE CAR PROBABLY PULLED OVER A FEW
21 SECONDS. HE DIDN'T -- HE DIDN'T GO FAR BEFORE HE PULLED
22 OVER.

23 Q AND HE PULLED OVER AND EVERYTHING. YOU CUT YOUR BLUE
24 LIGHT ON WHEN HE PULLED OVER?

25 A OH, YES.

1 Q NOW, HAVE YOU DRIVEN THE DISTANCE BETWEEN WHERE YOU
2 MADE THAT STOP AND THE ROAD GOING TO THAT CLUB WHICH IS
3 THE MANVILLE ST. CHARLES ROAD?

4 A I DID APPROACH, YES.

5 Q CAN YOU TELL ME HOW FAR IT IS, YES?

6 A FROM THE PLACE I MADE THE STOP?

7 Q TO WHERE YOU STOPPED THEM.

8 A FROM WHITES MILL JUST AFTER THE BRIDGE TO MANVILLE IS
9 11.55 MILES.

10 Q 11 POINT?

11 A 55.

12 Q AND DID YOU ALSO TRAVEL DOWN THE MANVILLE ST. CHARLES
13 HIGHWAY TO THE DAVIS COUNTRY CLUB?

14 A YES.

15 Q AND HOW FAR A DISTANCE IS IT DOWN THAT ROAD TO BEFORE
16 YOU GET TO THE CLUB?

17 A 2.65.

18 Q ALL RIGHT. SO DO YOU HAVE THE TOTAL DISTANCE FROM
19 THE CLUB TO WHERE THE ACTUAL STOP THE CAR WAS MADE?

20 A 14.2.

21 Q DID YOU QUESTION ANYBODY BESIDES THE DRIVER?

22 A NO, MA'AM.

23 Q AND WHAT DID HE -- DID HE TELL YOU ANYTHING EXCEPT
24 THAT THEY PULLED UP, HEARD SHOTS AND LEFT?

25 A THAT'S ALL HE TOLD ME.

1 Q AND YOU ASKED HIM NO QUESTIONS?

2 A NO.

3 Q AND WHEN LEE COUNTY GOT THERE, DID YA'LL STAY THERE
4 WHILE LEE COUNTY WAS TALKING TO HIM?

5 A YES, WE DID.

6 Q DO YOU KNOW HOW LONG YA'LL STAYED AT THE STOP?

7 A WE LEFT AT 4:21.

8 Q AND WHAT TIME DID YOU ACTUALLY GET OUT OF THE CAR?
9 YOU CALLED IN AT 3:54, BUT YOU WAITED FOR OFFICER MONAHAN
10 TO ARRIVE?

11 A HE ARRIVED APPROXIMATELY 3:56 AND TWO SECONDS, NOT
12 QUITE TWO MINUTES.

13 Q AND YOU GOT OUT OF THE CAR ABOUT 3:56 AND DIDN'T
14 LEAVE THE SCENE UNTIL 4:21?

15 A THAT'S CORRECT.

16 Q WELL, WHAT WAS GOING ON DURING THAT TIME?

17 A LEE COUNTY WAS TALKING TO THEM.

18 Q WAS LEE COUNTY DOING ANYTHING ELSE?

19 A ONE GENTLEMAN WAS TALKING TO THEM AND ONE WAS
20 SEARCHING THE VEHICLE.

21 Q BUT YA'LL JUST KIND OF THERE AS BACK-UP?

22 A YES.

23 Q PLEASE ANSWER ANY QUESTIONS THE DEFENSE ATTORNEYS
24 HAVE.

25 THE COURT: MR. DOBY?

1 MR. DOBY: NO, SIR, YOUR HONOR.

2 THE COURT: THANK YOU. MR. ROGERS?

3 MR. ROGERS: NO QUESTIONS, YOUR HONOR.

4 THE COURT: MR. JORDAN?

5 MR. JORDAN: JUST BRIEFLY, YOUR HONOR.

6 CROSS-EXAMINATION BY MR. JORDAN:

7 Q OFFICER, THE INDIVIDUALS IN THE CAR WERE COOPERATIVE;
8 WERE THEY NOT?

9 A YES, SIR.

10 Q THEY RESPONDED TO VERBAL COMMANDS?

11 A THEY DID EVERYTHING I ASKED.

12 Q EVERYTHING YOU ASKED?

13 A YES, SIR.

14 Q WEREN'T COMBATIVE IN ANY WAY, SHAPE OR FORM?

15 A NO, SIR.

16 Q DID YOU -- DID YOU GET A GOOD LOOK AT THEIR
17 APPEARANCE? YOU DIDN'T NOTICE ANYTHING OUT OF THE
18 ORDINARY?

19 A NO, SIR.

20 Q OKAY. WHAT I MEAN BY THAT IS OFTEN TIMES WE HEAR
21 BLOODSHOT EYES, UNSTEADY ON THEIR FEET, THAT SORT OF
22 THING. THEY WERE JUST -- THEY WERE COOPERATIVE, YOU
23 DIDN'T NOTICE ANYTHING OUT OF THE ORDINARY?

24 A NO, SIR. I DIDN'T CHECK THEM FOR HAVING ALCOHOL.

25 Q THANK YOU.

1 CROSS-EXAMINATION BY MR. FINNEY:

2 Q GOOD AFTERNOON. DID YOU PREPARE AN INCIDENT REPORT?

3 A NO, SIR.

4 Q I SAW YOU REFERRING TO SOMETHING TODAY.

5 A YES, SIR.

6 Q THOSE ARE NOTES YOU HAD?

7 A NO, SIR.

8 Q WHERE DID YOU GET THEM FROM?

9 A FROM OUR DISPATCH.

10 Q ALL RIGHT. AND IT'S A TIME SHEET?

11 A IT'S A -- OUR DISPATCH IS ON COMPUTER AND EVERYTHING
12 WE DO GOES ON COMPUTER.

13 Q SO THE COMPUTER TELLS YOU WHAT KIND OF CALL CAME OUT
14 TO MAKE IT A BOLO?

15 A I DON'T KNOW IF THAT'S ON THERE.

16 Q YOU SAID IT WAS 1075?

17 A YEAH, THAT CAME THROUGH DISPATCH, YES.

18 Q IS THAT ON THAT SHEET?

19 A NO, SIR.

20 Q OKAY. SO WHAT IS A 1075?

21 A IT'S A SHOOTING INCIDENT.

22 Q OKAY. HAD YOU HAD ANY OTHER INFORMATION BESIDES
23 THERE WAS A SHOOTING?

24 A THAT IT WAS A SHOOTING IN A BURGUNDY COLORED VEHICLE.

25 Q AND WHAT I'M ASKING ABOUT AT THE SHOOTING DID YOU GET

1 ANY INFORMATION THAT SOMEBODY HAD BEEN SHOT OR JUST THAT
2 SHOTS WERE FIRED?

3 A JUST SHOTS WERE FIRED.

4 Q OKAY. NOW, LET'S -- WHEN LEE COUNTY CAME, YOU ALL OR
5 YOU BACKED THEM UP AND THEY CHECKED THE CAR?

6 A YES, SIR.

7 Q AND THEY STAYED THERE FOR ABOUT 20 MINUTES?

8 A ROUGHLY, SIR, YES.

9 Q HOW MANY CARS WOULD YOU SAY CAME?

10 A THREE, POSSIBLY FOUR.

11 Q THREE OR FOUR CARS FROM LEE COUNTY?

12 A YES.

13 Q YOU DIDN'T EVER FILE AN INCIDENT REPORT IN THIS?

14 A NO, SIR.

15 Q NOW?

16 A NO, SIR.

17 Q DO YOU KNOW WHETHER FOR EXAMPLE THEY GOT YOUR NAME
18 AND TAG NUMBER TO PUT ON THEIR INCIDENT REPORT?

19 A I DON'T BELIEVE THEY ASKED ME THAT, SIR.

20 Q THANK YOU SIR. NOTHING FURTHER.

21 THE COURT: MS. NIELSEN, REDIRECT?

22 MS. NIELSEN: NO, SIR, YOUR HONOR.

23 THE COURT: THANK YOU. YOU CAN STEP DOWN, LIEUTENANT
24 AND WITHOUT OBJECTION YOU CAN BE EXCUSED. THANK YOU FOR
25 COMING.

1 (WHEREUPON THE WITNESS LEFT THE STAND) .

2 THE COURT: LADIES AND GENTLEMEN, THIS IS A GOOD
3 PLACE FOR US TO STOP FOR THE DAY IN VIEW OF THE FACT WE
4 HAVE TO CLEAR THE COURTROOM AND MAKE WAY FOR THE SWEARING
5 IN OF COUNTY OFFICIALS BY 5:00, SO I'M GOING TO SEND YOU
6 HOME FOR THE NIGHT AND APPRECIATE VERY MUCH YOUR
7 WILLINGNESS TO COME TO WORK A LITTLE EARLY TOMORROW
8 MORNING AT 9:00.

9 SO I ASK THAT YOU PLEASE ASSEMBLE IN THE JURY
10 ROOM TOMORROW MORNING AT 9:00. REMEMBER AS ALWAYS NOT TO
11 TALK ABOUT THIS CASE AMONG YOURSELVES WHEN YOU ASSEMBLE
12 THERE TOMORROW AND NOT TO TALK ABOUT IT WITH ANYBODY ELSE
13 WHILE YOU'RE OUT OF THE COURTROOM, NOT TO EXPOSE
14 YOURSELVES TO ANY INFORMATION ABOUT THE CASE FROM ANY
15 SOURCE AT ALL. HAVE A GOOD NIGHT. THANK YOU VERY MUCH.
16 WE WILL SEE YOU TOMORROW AT 9:00.

17 (WHEREUPON THE JURY LEFT THE COURTROOM AT 4:52 P.M.)

18 THE COURT: GENTLEMEN; ONE OF THE LAST QUESTIONS
19 ABOUT INCIDENT REPORTS REMINDED ME AT LUNCH TIME I HAD
20 INDEED OBSERVED THE INCIDENT REPORT, SINGLE INCIDENT
21 REPORT GENERATED AS A RESULT OF THIS.

22 I OBSERVED THAT. IT IS AN ABSOLUTE MODEL FOR
23 CONCISENESS. I THINK PROBABLY ENCOMPASSES ABOUT 12 LINES
24 ON A SINGLE SHEET OF PAPER. THERE IS NOTHING IN THE
25 INCIDENT REPORT THAT WOULD MAKE IT DISCOVERABLE OUTSIDE OF

1 RULE FIVE, THAT IS NOTHING UNDER BRADY, NOTHING
2 EXCULPATORY IN THAT REGARD THAT WOULD MAKE IT
3 DISCOVERABLE.

4 I HAVE SATISFIED MYSELF INsofar AS THAT IS
5 CONCERNED. ALL RIGHT, FOLKS. ANYTHING FROM THE STATE
6 BEFORE WE BREAK FOR THE DAY, MS. NIELSEN?

7 MS. NIELSEN: NO, SIR, YOUR HONOR.

8 THE COURT: THANK YOU. MR. DOBY, IF YOU CAN FURNISH
9 ME THAT INFORMATION REGARDING THE BOND PERSON, I WILL BE
10 GLAD TO DEAL WITH IT. BE HERE FOR A WHILE FOR THE
11 SWEARING IN.

12 MR. DOBY: YES, SIR.

13 THE COURT: MR. ROGERS, ANYTHING FURTHER?

14 MR. ROGERS: NO, SIR, YOUR HONOR.

15 THE COURT: MR. JORDAN?

16 MR. JORDAN: NO, YOUR HONOR.

17 THE COURT: MR. FINNEY?

18 MR. FINNEY: NO, YOUR HONOR.

19 THE COURT: THANK YOU, GENTLEMEN. 9:00 TOMORROW
20 MORNING THEN.

21 (WHEREUPON THIS CASE WAS IN RECESS FOR THE
22 EVENING)

23 DECEMBER 13, 2000.

24 THE COURT: IS THE STATE READY TO PROCEED, MS.
25 NIELSEN?

1 MS. NIELSEN: I NEED TO MAKE A MOTION THAT I
2 DISCUSSED WITH THE DEFENSE ATTORNEYS AND WITH YOU.

3 THE COURT: ALL RIGHT.

4 MS. NIELSEN: IN REFERENCE TO STEVEN JOHNSON WHEN HE
5 WAS ON THE STAND.

6 THE COURT: I'M SORRY. REFERENCE TO WHO?

7 MS. NIELSEN: STEVEN JOHNSON.

8 THE COURT: YES, MA'AM.

9 MS. NIELSEN: HE IS A WITNESS WHO YOU RULED THAT HIS
10 IDENTIFICATION OF MARCUS EVANS WAS INADMISSIBLE.

11 THE COURT: RIGHT.

12 MS. NIELSEN: FRIDAY I MET WITH WITNESSES AND I
13 ACTUALLY CONFUSED TWO WITNESSES YESTERDAY. WHEN DERRICK
14 ALBERT WAS ON THE STAND AND I ASKED HIM IF HE HAD EVER
15 SEEN MARCUS EVANS, BEFORE HE TOLD ME NO I SAID, YOU KNOW,
16 YOU TALKED ABOUT THERE WAS SOME THINGS THAT YOU MIGHT NOT
17 BE ABLE TO SAY IN FRONT OF THE JURY BECAUSE I THOUGHT THAT
18 HE WAS THE PERSON WHO HAD TOLD ME ABOUT HIS PRIOR
19 KNOWLEDGE OF MARCUS EVANS, AND IN FACT IT WAS STEVEN
20 JOHNSON.

21 I ADVISED MR. DOBY FRIDAY AFTERNOON AFTER STEVEN
22 JOHNSON ADVISED ME OF A PRIOR VERBAL INCIDENT BETWEEN
23 MARCUS EVANS AND HENRY SCOTT, THE VICTIM, THAT OCCURRED AT
24 THE HUDDLE HOUSE IN SUMTER TWO TO THREE MONTHS PRIOR TO
25 THE SHOOTING AT WHICH TIME MARCUS EVANS ACTUALLY SAID I

1 JUST WANT YOU TO KNOW I'M GOING TO BE THE PERSON WHO IS
2 GOING TO PUT YOU IN YOUR GRAVE.

3 THE COURT: MARCUS EVANS TOLD THAT TO THE--

4 MS. NIELSEN: TO THE VICTIM.

5 THE COURT: TO THE VICTIM? IN WHOSE PRESENCE WAS
6 THAT SAID?

7 MS. NIELSEN: STEVEN JOHNSON. GILARON TAYLOR WAS --
8 ALSO MR. MARCUS EVANS. GILARON TAYLOR DID NOT MAKE ANY
9 COMMENTS. HE WAS JUST THERE WITH MARCUS EVANS. IT WAS
10 SAID TO HENRY SCOTT IN STEVEN JOHNSON'S PRESENCE.

11 THE COURT: OKAY.

12 MS. NIELSEN: AS I SAID, THOUGHT THAT DERRICK ALBERT
13 WAS THE ONE WHO TOLD ME ABOUT THAT STATEMENT WHICH WAS WHY
14 I QUESTIONED HIM THE WAY I QUESTIONED HIM WHEN HE IS ON
15 THE STAND. SO I'M IMPRESSING ON THE COURT ALLOW ME TO PUT
16 STEVEN JOHNSON BACK UP AND -- OUT OF THE PRESENCE OF THE
17 JURY TO GO INTO THIS TO ESTABLISH THAT HE HAS KNOWN MARCUS
18 EVANS AND GILARON TAYLOR BOTH IN THE PAST AS FAR AS HIS
19 IDENTIFICATION OF MARCUS EVANS.

20 ALSO JUDGE IT'S OUR POSITION THAT THIS PRIOR
21 STATEMENT OUGHT TO BE ADMISSIBLE IN THIS CASE TO PROVE
22 MOTIVE, TO PROVE THE STATE OF MIND OF THE VICTIM AT THE
23 TIME OF THE SHOOTING AND ALSO TO ESTABLISH MALICE
24 AFORETHOUGHT IN REFERENCE TO THE CHARGE OF MURDER.

25 THE COURT: THE PRIOR STATEMENT ITSELF MAY VERY WELL

1 BE ADMISSIBLE DEPENDING UPON WHEN IT WAS SAID AND OF
2 COURSE HOW FAR IN ADVANCE THEY ARE. I AM NOT SURE THAT ON
3 THE ISSUE OF IDENTIFICATION THAT -- FRANKLY NOT SURE ON
4 THE ISSUE OF IDENTIFICATION IT'S THAT VITAL IN THE CASE,
5 HAVING HAD FOUR OF THE SIX WITNESSES IDENTIFY -- AT LEAST
6 FOUR OF THE SIX IDENTIFY MR. EVANS ALREADY EITHER IN
7 CAMERA PROCEEDINGS OR IN OPEN COURT AS THE PERSON THEY SAW
8 SHOOTING OR WITH THE GUN OR THE FIRE COMING FROM HIS HAND,
9 SO I'M NOT SURE THAT YOU NEED THAT.

10 MOTIVE OF COURSE IS NOT AN ELEMENT OF THE CRIME
11 WHICH -- BUT THE OTHER TWO THINGS THAT, THE STATE OF MIND
12 OF THE VICTIM AS WELL AS MALICE I THINK MAY VERY WELL BE
13 -- MAY BE SUBJECT TO PROOF. I JUST HAVE TO SEE THE
14 CONTEXT OF THAT AND DETERMINE THE TIMEFRAME OF ALL OF
15 THESE THINGS. IS MR. JOHNSON GOING TO BE ONE OF YOUR
16 EARLY WITNESSES TODAY?

17 MS. NIELSEN: YOUR HONOR, I CAN PUT UP SOME OTHER
18 WITNESSES AND PUT HIM UP LATER OR IF...

19 THE COURT: I'D RATHER DO THAT. HERE IS THE -- THE
20 JURY TOLD ME THEY WANTED ALL THIS. I HAVEN'T DELAYED THIS
21 ON YOUR ACCOUNT THIS MORNING, I DELAYED IT AT THE REQUEST
22 OF DEFENSE COUNSEL AND WITH GOOD REASON I THINK, BUT I'M
23 RELUCTANT -- WHEN THE JURY TELLS ME THEY ARE READY TO COME
24 TO WORK EARLY, I GET THEM HERE EARLY AND WE DON'T START
25 WORK UNTIL LATE.

1 IF WE HAVE GOT STUFF OF THIS NATURE TO DO IN THE
2 FUTURE ON BOTH SIDES, I WOULD SUGGEST THAT WE START BEFORE
3 THE JURY TELLS ME THEY ARE READY TO GO TO WORK BECAUSE
4 FROM HERE ON OUT I'M NOT GOING TO PUT THIS JURY OUT ANY
5 MORE.

6 I'M GOING TO START EXACTLY WHEN I SAY WE ARE
7 GOING TO START. IF YA'LL GOT SOME TALKING TO DO, YOU'RE
8 GOING TO HAVE TO DO IT OUTSIDE OF THE CONTEXT OF THE TRIAL
9 SCHEDULE. GOING TO HAVE TO FIND SOME OTHER TIME TO DO IT
10 BECAUSE I'M NOT GOING TO DELAY THIS AND WASTE THIS JURY'S
11 TIME ANOTHER SECOND. BRING IN THE JURY, PLEASE.

12 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 9:37
13 A.M.)

14 THE COURT: LADIES AND GENTLEMEN, YOU GOT HERE EARLY
15 AND I'M SORRY I DIDN'T GET YOU OUT HERE EARLY. I HAD
16 ANOTHER JURY PANEL TO DEAL WITH. WE HAD SOME OTHER
17 MATTERS TO DEAL WITH THAT CAME UP AT THE LAST MINUTE
18 REGARDING THIS PARTICULAR CASE, MOTIONS I HAD TO HEAR, AND
19 I DIDN'T KNOW ABOUT THOSE THINGS UNTIL I GOT HERE THIS
20 MORNING. I PROMISE YOU THIS.

21 MY PLEDGE TO YOU THIS. FROM HERE ON OUT IF I
22 ASK YOU TO BE HERE AT A CERTAIN TIME, YOU'RE GOING TO BE
23 IN THE COURTROOM AT THAT TIME. IF THE LAWYERS ARE NOT
24 HERE, IF THE WITNESSES ARE NOT HERE, THE PARTIES ARE NOT
25 HERE, YOU AND I WILL BE HERE, BUT I'M NOT GOING TO DELAY

1 YOU ALL ONE MORE SECOND.

2 I APPRECIATE THE INTRUSION THAT WE HAVE MADE
3 INTO YOUR TIME AND I APOLOGIZE FOR THE FUTURE, THE FACT
4 THAT I HAVE NOT BEEN ABLE TO GET YOU OUT HERE, THAT I GOT
5 YOU HERE EARLY, YOU TOLD ME YOU WERE WILLING TO COME TO
6 WORK EARLY AND I DID NOT PUT YOU TO WORK WHEN YOU TOLD ME
7 YOU WERE WILLING TO WORK.

8 I'M SORRY ABOUT THAT. I CAN ASSURE YOU IT WILL
9 NOT HAPPEN AGAIN. ALL RIGHT. MADAM SOLICITOR, YOU CAN
10 CALL YOUR NEXT WITNESS.

11 MS..NIELSEN: THE STATE CALLS JENNIFER STONER.

12 JENNIFER STONER, BEING FIRST DULY
13 SWORN, TESTIFIED AS FOLLOWS:

14 DIRECT EXAMINATION BY MS. NIELSEN:

15 Q MRS. STONER, WOULD YOU TELL THE JURY HOW YOU ARE
16 EMPLOYED?

17 A I'M EMPLOYED BY THE SOUTH CAROLINA LAW ENFORCEMENT
18 DIVISION IN THE TRACE EVIDENCE LAB.

19 Q AND IS SOUTH CAROLINA LAW ENFORCEMENT DIVISION
20 COMMONLY KNOWN AS SLED?

21 A YES, MA'AM.

22 Q HOW LONG HAVE YOU WORKED FOR SLED?

23 A I HAVE BEEN THERE A LITTLE BIT OVER THREE YEARS.

24 Q AND WHAT KIND OF TRAINING DO YOU HAVE FOR YOUR JOB AT
25 SLED IN TRACE EVIDENCE?

1 A I HAVE A BACHELOR OF SCIENCE DEGREE IN CHEMISTRY AND
2 I HAVE ALSO -- I AM CURRENTLY IN TRAINING IN THE TRACE
3 EVIDENCE DEPARTMENT IN OUR TRAINING DEPARTMENT, WE GO
4 THROUGH SECTIONS AND AS YOU COMPLETE A SECTION, YOU'RE LET
5 GO IN THAT SECTION. I'M CURRENTLY IN THAT PROGRAM. I AM
6 ALSO RECEIVING TRAINING FROM MY SUPERVISOR AND FROM
7 SEVERAL CLASSES I HAVE ATTENDED.

8 Q HAVE YOU EVER TESTIFIED BEFORE?

9 A YES, I HAVE.

10 Q APPROXIMATELY HOW MANY TIMES?

11 A APPROXIMATELY 19 TIMES.

12 Q AND HAVE ALL OF THOSE BEEN IN REFERENCE TO TRACE
13 EVIDENCE?

14 A NO, FIVE HAVE BEEN IN REFERENCE TO TRACE EVIDENCE AND
15 THE REMAINDER WERE DRUG ANALYSIS.

16 Q AND TRACE EVIDENCE WHAT DO YA'LL DO?

17 A IN THE TRACE DEPARTMENT WE PERFORM A VARIETY OF
18 ANALYSIS. WE DO PAINT EXAMS WHERE WE MATCH PAINT TO
19 VEHICLES OR FOUND ON VICTIM'S CLOTHING TO GUNSHOT RESIDUE
20 EXAMS WHICH IS WE TEST KITS TAKEN FROM THE HANDS OF
21 SUSPECTED SHOOTERS, VICTIMS OF SHOOTERS TO SEE IF THERE IS
22 ANY RESIDUE THAT INDICATES THEY HAD FIRED A WEAPON OR BEEN
23 NEAR A WEAPON.

24 WE DO DISTANCE DETERMINATION ON SHOOTING
25 VICTIMS. WE TEST THE AREA AROUND THE HOLES IN CLOTHING TO

1 TELL HOW FAR THE BARREL WAS FROM THE VICTIM AT THE TIME OF
2 THE SHOOTING. WE ALSO DO FIBER EXAMS AND WE DO SOME HAIR
3 EXAMS AND TRACE EVIDENCE EXAMS AND EXPLOSIVE ANALYSIS.

4 Q IN THIS PARTICULAR CASE, WHAT WERE YOU INVOLVED WITH?
5 WHAT KIND OF TESTS WERE YOU PERFORMING?

6 A I PERFORMED A GUNSHOT RESIDUE TEST.

7 MS. NIELSEN: YOUR HONOR, WE WOULD OFFER HER AS AN
8 EXPERT IN GUNSHOT WOUND AND TRACE EVIDENCE.

9 THE COURT: ALL RIGHT. MR. DOBY, ANY VOIR DIRE IN
10 THIS REGARD?

11 MR. DOBY: NO, SIR, YOUR HONOR.

12 THE COURT: THANK YOU. MR. ROGERS?

13 MR. ROGERS: NO, YOUR HONOR.

14 THE COURT: THANK YOU. MR. JORDAN, MR. FINNEY, I
15 DON'T THINK YA'LL ARE DIRECTLY INVOLVED IN THE TRACE
16 EVIDENCE, BUT DO YOU HAVE ANY VOIR DIRE THAT YOU WISH TO
17 OFFER?

18 MR. FINNEY: NO, YOUR HONOR.

19 MR. JORDAN: NO, YOUR HONOR.

20 THE COURT: ALL RIGHT. WITHOUT OBJECTION THEN MRS.
21 STONER IS QUALIFIED AS AN EXPERT IN THE FIELD OF GUNSHOT
22 RESIDUE, TRACE EVIDENCE ANALYSIS. THANK YOU.

23 (WHEREUPON QUESTIONING RESUMED).

24 Q MRS. STONER, WOULD YOU TELL THE JURY EXACTLY WHAT
25 EVIDENCE YOU RECEIVED IN THIS CASE.

1 A IN THIS CASE I RECEIVED A GUNSHOT RESIDUE KIT FROM A
2 HENRY SCOTT.

3 Q AND WHO DELIVERED THAT TO SLED?

4 A ACCORDING TO THE PAPERWORK IT WAS DELIVERED BY ALFRED
5 ELMORE.

6 Q AND WHAT DID YOU DO WITH THE KIT? THIS WAS A KIT,
7 GUNSHOT RESIDUE KIT ON HENRY SCOTT?

8 A YES, IT WAS.

9 Q WHAT DID YOU DO WITH THAT KIT?

10 A WHEN WE -- EXCUSE ME. WHEN WE RECEIVE THE KITS, WE
11 CHECK THEM TO MAKE CERTAIN THEY ARE SEALED, THAT ALL THE
12 INFORMATION IS INTACT ON THE KIT. WE THEN PERFORM CALLED
13 PREPARATORY WORK FOR THE KIT, WE PREPARE THE EVIDENCE TO
14 BE ABLE TO DO ANALYSIS ON IT.

15 I THEN I PREPARED IT AND I RAN IT ON AN
16 INSTRUMENT CALLED A CHOME -- MASSPECTROMETER WHICH WHEN
17 INTRODUCED AS SAMPLE TO IT, IT BREAKS DOWN EVERYTHING THAT
18 IS PRESENT TO THE ELEMENTAL FORM AND GIVES YOU A RAW COUNT
19 OF ELEMENTS THAT ARE PRESENT IN THE KIT.

20 Q YOU SAID YOU CHECKED TO SEE IF IT WAS SEALED. WHAT
21 -- HOW IS IT SEALED?

22 A DIFFERENT KITS -- NORMALLY IF YOU RECEIVE A COMMON
23 KIT THAT SOUTH CAROLINA PROVIDES, IT WILL HAVE A SEAL ON
24 THE BACK, AND THIS WILL ACTUALLY BE INSIDE OF AN ENVELOPE
25 WHICH HAS THE SEAL ON THE OUTSIDE OF THE ENVELOPE. SOME

1 OF THE KITS ARE THERE IN LITTLE PLASTIC CONTAINERS, THE
2 ONES THAT ARE PARTIAL KITS, THAT ONLY CONTAIN THE SWABS,
3 THEY WILL HAVE EVIDENCE TAPED AROUND THEM AND THEY WILL BE
4 SEALED IN AN ENVELOPE ALSO.

5 Q AND HOW WAS THIS ONE SEALED?

6 A I DON'T HAVE IT HERE, BUT I'M ASSUMING IT WAS IN A --
7 I THINK THIS ONE WAS IN A PLASTIC CONTAINER OR EXCUSE ME
8 IT COULD ALSO BE IN -- SOMETIMES WHEN THEY'RE TAKEN AT
9 AUTOPSY IT WILL BE IN A HEAT SEALED BAG INSIDE A PLASTIC
10 -- I MEAN INSIDE A MANILA CONTAINER.

11 Q BUT IT WAS SEALED IN A MANILA CONTAINER WHEN YOU
12 RECEIVED IT?

13 A YES, IT WAS.

14 Q ALL RIGHT. NOW, YOU WENT THROUGH THIS MACHINE AND
15 WHAT IS IT YOU WERE TESTING FOR?

16 A WE TEST -- IN GUNSHOT RESIDUE, WHENEVER A -- I HAVE A
17 PICTURE, IF YOU'D LIKE TO SEE IT. THIS IS KIND OF LARGE
18 SCALE. IF YOU CAN SEE THIS IS ON A AIRCRAFT CARRIER.
19 THIS IS WHAT THE CLOUD OF GUNSHOT RESIDUE LOOKS LIKE WHEN
20 IT LEAVES A WEAPON.

21 NOW, WITH HANDGUNS IT'S A LOT SMALLER BUT THAT'S
22 THE BASIC WAY IT COMES OUT OF THE GUN AND ENVELOPES THE
23 AREA AROUND THE WEAPON. WE TEST FOR THE ELEMENTS THAT ARE
24 GOING TO BE FOUND IN THIS CLOUD THAT MAY BE DEPOSITED ON
25 THE HAND. THE ELEMENTS WE LOOK FOR ARE BARIUM, ANTIMONIUM

1 LEAD.

2 Q BARIUM, ANTIMONIUM AND LEAD?

3 A YES, MA'AM.

4 Q TELL US THE RESULTS OF THE TESTS THAT YOU DID ON THE
5 SWABS THAT YOU RECEIVED FROM HENRY SCOTT IN THAT GSR KIT.

6 A IN THE SAMPLE SUBMITTED IN THE CASE LABELED HENRY
7 SCOTT, THE AMOUNT OF METAL DETECTED DID NOT INDICATE THE
8 PRESENCE OF GUNSHOT RESIDUE.

9 Q AND IN YOUR OPINION DOES THAT MEAN HE DID NOT OR --
10 DID NOT SHOOT A GUN?

11 A IN MY OPINION SINCE THE VICTIM IS DECEASED, I BELIEVE
12 HE DID NOT FIRE A WEAPON.

13 Q IT MAKES A DIFFERENCE, DOESN'T IT, IN YOUR OPINION
14 THOUGH ABOUT WHETHER A PERSON DIED QUICKLY OR NOT, BUT IS
15 THAT RIGHT?

16 A THAT IS CORRECT.

17 Q WOULD YOU EXPLAIN TO THE JURY WHY THAT MAKES A
18 DIFFERENCE?

19 A IF YOU HAVE A LIVE SUSPECT OR A SUBJECT WHO IS -- WHO
20 THEY THINK HAS FIRED A WEAPON OR BEEN NEAR A WEAPON, ONCE
21 THE INCIDENT IS OVER THE RESIDUE THAT IS DEPOSITED ON
22 THEIR HANDS -- THE BEST YOU CAN COMPARE IT TO IS IF YOU'RE
23 BAKING AND YOU GOT FLOUR ON YOUR HANDS, IT'S A LIGHT
24 DUSTING THAT COVERS YOUR HAND.

25 IF YOU'RE LIVING, ANYTHING YOU DO AFTER THAT

1 INCIDENT IS GOING TO REMOVE THAT RESIDUE. IF YOU WASH
2 YOUR HANDS, IT'S GOING TO BE TOTALLY GONE. IF YOU PUT
3 YOUR HAND IN YOUR POCKET, YOU'RE GOING TO WIPE IT OFF. IF
4 YOU SWEAT, WHEN YOU HAVE SWEATY PALMS, THE RESIDUE IS
5 GOING TO COME OFF.

6 AND WHEN YOU'RE LIVING, YOUR BODY IS NATURALLY
7 GOING TO ABSORB THOSE ELEMENTS. SO AFTER A TIME FRAME OF
8 SIX HOURS AFTER THE INCIDENT, WE NO LONGER COLLECT THE
9 KITS OR TEST KITS THAT ARE TAKEN AFTER THAT TIME BECAUSE
10 YOU DON'T EXPECT TO FIND ANY RESIDUE.

11 Q DO YA'LL TAKE THEM ON A LIVE PERSON?

12 A YES, THAT'S A LIVE PERSON. ON A DECEASED INDIVIDUAL,
13 ONCE THE PERSON IS DECEASED, THE MAJORITY OF THOSE FACTORS
14 THAT CONTRIBUTE TO REMOVAL OF GUNSHOT RESIDUE NO LONGER
15 APPLY. IF YOU'RE DECEASED, YOU'RE NOT GOING TO BE ABLE TO
16 WASH YOUR HANDS, YOU'RE NOT GOING TO SWEAT AND YOU'RE NOT
17 GOING TO PUT YOUR HANDS IN YOUR POCKETS OR ANY OF THOSE
18 THINGS.

19 WHEN YOU'RE DECEASED, YOU ALSO NO LONGER ABSORB
20 THE RESIDUE. WHAT'S THERE AT THE TIME YOU DIED IS GOING
21 TO STAY ON YOUR HANDS UNLESS IT'S REMOVED BY AN OUTSIDE
22 SOURCE. SAY BRAIN EMPATHY (SIC) OR IF YOU'RE LAYING IN
23 WATER, IT'D HAVE TO BE REMOVED BY SOMETHING OTHER THAN THE
24 VICTIM.

25 Q AND IN THIS CASE YOU SAID YOU WERE LOOKING FOR THREE

1 SPECIFIC METALS?

2 A CORRECT.

3 Q HOW COULD A PERSON GET ALL THREE OF THOSE METALS ON
4 THEIR HANDS OTHER THAN SHOOTING A GUN?

5 A THE MAJORITY OF THESE METALS, THE BARIUM -- BARIUM IS
6 THE LEAST INDICATIVE OF GUNSHOT RESIDUE BECAUSE YOU HAVE
7 BARIUM IN MAKEUP. YOU PUT MAKEUP ON IN THE MORNING, YOUR
8 HANDS HAVE BARIUM ON THEM. LATEX GLOVES HAVE POWDER ON
9 THEM, ARE BARIUM BASED. THEY WILL HAVE BARIUM.

10 THE LEAD IN THE ANTIMONIUM ARE A LITTLE BIT MORE
11 DIFFICULT TO GET A COMBINATION. LEAD IN THE ENVIRONMENT
12 TODAY IS BEING TAKEN OUT OF THE ENVIRONMENT BECAUSE OF
13 HEALTH HAZARDS. ANTIMONIUM IS USED AS A FIRE RETARDANT IN
14 SOME CLOTHING, BUT YOU'RE NOT GOING TO FIND IN COMBINATION
15 WITH LEAD IN THESE CLOTHES, SO NORMALLY REALLY THE ONLY
16 THING YOU CAN FIND IN COMBINATION IS IN GUNSHOT RESIDUE.

17 Q TO FIND ALL THREE METALS?

18 A YEAH, TO FIND BARIUM, ANTIMONIUM AND LEAD.

19 Q AND IS THAT THE REASON THAT TO HAVE A POSITIVE TEST,
20 YOU HAVE TO HAVE A CERTAIN LEVEL OF -- AS ALL THREE OF
21 THOSE?

22 A YES, YOU DO.

23 Q IN THIS CASE YOU DID NOT HAVE A POSITIVE LEVEL ON ANY
24 OF THEM?

25 A I DID NOT.

1 Q THANK YOU. PLEASE ANSWER ANY QUESTIONS THE DEFENSE
2 ATTORNEYS MAY HAVE.

3 THE COURT: MR. DOBY, YOU CAN CROSS-EXAMINE.

4 CROSS-EXAMINATION BY MR. DOBY:

5 Q MRS. STONER, DO YOU KNOW WHEN THE GUNSHOT RESIDUE KIT
6 WAS ACTUALLY PERFORMED ON MR. HENRY SCOTT?

7 A ON THE PAPERWORK THAT I RECEIVED WHICH COPY, BEING
8 THIS WAS ON A -- BEING WE COPY WHEN IT'S COLLECTED, THE
9 ONLY THING I HAD WAS THE DATE OF TWO SWABS WHICH WAS
10 11-4-99.

11 Q SO YOU DON'T KNOW WHAT TIME ON THAT PARTICULAR DATE,
12 AND THE ONLY INFORMATION YOU HAVE WAS DONE ON THAT
13 PARTICULAR DAY IS THAT SHEET?

14 A CORRECT.

15 Q YOU WEREN'T PRESENT AND YOU DIDN'T COLLECT THE
16 SAMPLE?

17 A I DID NOT.

18 Q AND YOU DO NOT KNOW WHAT MEDICAL PROCEDURES WERE
19 PERFORMED ON MR. HENRY SCOTT PRIOR TO THE GUNSHOT RESIDUE
20 KIT BEING COLLECTED?

21 A I DO NOT.

22 Q AND YOU DON'T KNOW WHETHER HANDS WERE WASHED, THAT
23 THEY WERE EXPOSED TO WATER IF THEY WERE EXPOSED TO OTHER
24 CHEMICALS OR ANYTHING ELSE DURING THAT TIME?

25 A I HAVE NO KNOWLEDGE OF THAT.

1 Q AND THERE, AS YOU SAID, THERE ARE MANY THINGS THAT
2 WOULD DIG OFF THAT RESIDUE INCLUDING THINGS LIKE WATER.
3 OTHER LIQUID CAN TAKE THAT OFF AS WELL?

4 A CORRECT.

5 Q TIME CAN TAKE THAT OFF AS WELL?

6 A NOT ON A DECEASED INDIVIDUAL. I MEAN, THE OTHER
7 PEOPLE COME UP, IF THE DECEASED INDIVIDUAL IS LYING THERE
8 AND NOTHING IS HAPPENING, NO, TIME IS NOT GOING TO REMOVE
9 IT FROM THE DECEASED'S HANDS. IT HAS TO BE AN OUTSIDE
10 FORCE.

11 Q DO YOU KNOW WHETHER THE GUNSHOT RESIDUE KIT WAS DONE
12 ON BOTH HANDS OR JUST ONE HANDS?

13 A IT WAS DONE ON BOTH HANDS.

14 Q AND THE GUNSHOTS RESIDUE KIT, DO YOU KNOW WHO
15 ACTUALLY TOOK THE SAMPLE?

16 A ALL I HAD WAS MY NOTES IT WAS COLLECTED AT AUTOPSY.

17 Q SO YOU DON'T KNOW WHO TOOK THE SAMPLE?

18 A NO, I DON'T.

19 Q THE -- I BELIEVE THAT'S ALL I HAVE. THANK YOU.

20 THE COURT: THANK YOU. MR. ROGERS?

21 MR. ROGERS: THANK YOU, YOUR HONOR.

22 CROSS-EXAMINATION BY MR. ROGERS:-

23 Q GOOD MORNING. GOOD MORNING. I'M JIMMY ROGERS. DO
24 YOU REMEMBER HAVING A CONVERSATION WITH ME SEVERAL WEEKS
25 AGO RELATING TO THIS CASE, I SPOKE TO YOU ON THE PHONE?

1 A I WASN'T SURE. I HAVE BEEN TESTIFYING A LOT THESE
2 PAST TWO WEEKS AND I HAVE TALKED TO A LOT OF PEOPLE, SO
3 I'M NOT EXACTLY CERTAIN.

4 Q AND I ASKED YOU HYPOTHETICALLY THAT IF THERE WERE
5 EVIDENCE THAT THE VICTIM HAD SHOT A WEAPON, HOW COULD THAT
6 ACCOUNT FOR YOUR FACTOR; DO YOU RECALL THAT? AND I
7 BELIEVE YOUR RESPONSE WAS THAT THERE WERE SOMETHING
8 EXTERNALLY COULD HAVE HAPPENED.

9 A CORRECT.

10 Q AND I TAKE IT BY THAT I MEAN EITHER IT WASHED OFF, IT
11 WAS RAINING OR SOMEBODY WIPED IT OFF?

12 A CORRECT.

13 Q SO LET ME MAKE SURE I UNDERSTAND WHAT YOUR TESTIMONY
14 IS. EVEN THOUGH YOU DID NOT FIND THE PRESENCE OF GUNSHOT
15 RESIDUE, IT IS POSSIBLE THAT THE WEAPON STILL COULD HAVE
16 BEEN FIRED BY THIS PERSON IF HIS HANDS HAD BEEN SOMEHOW
17 WIPED.

18 A SOMEHOW WIPED. IT'S POSSIBLE.

19 Q THANK YOU.

20 THE COURT: THANK YOU. MR. JORDAN?

21 MR. JORDAN: NO, YOUR HONOR.

22 THE COURT: THANK YOU. MR. FINNEY?

23 MR. FINNEY: THANK YOU, YOUR HONOR.

24 THE COURT: THANK YOU, SIR. MA'AM, MS. NIELSEN?
25 THANK YOU..

1 MS. NIELSEN: NOTHING FURTHER, YOUR HONOR. WE WOULD
2 ASK MRS. STONER BE EXCUSED.

3 THE COURT: THANK YOU. WITHOUT OBJECTION, MRS.
4 STONER, YOU CAN BE EXCUSED. THANK YOU FOR COMING.

5 (WHEREUPON THE WITNESS LEFT THE STAND).

6 MS. NIELSEN: THE STATE CALLS DERRICK ALBERT.

7 THE COURT: MR. DERRICK ALBERT, PLEASE. PLEASE
8 SUMMON DERRICK ALBERT. THANK YOU.

9 (WITNESS IN COURTROOM)

10 DERRICK ALBERT, BEING FIRST DULY
11 SWORN, TESTIFIED AS FOLLOWS:

12 DIRECT EXAMINATION BY MS. NIELSEN:

13 Q MR. ALBERT, HOW OLD ARE YOU?

14 A TWENTY-FOUR.

15 Q AND WHERE DO YOU LIVE?

16 A I STAY IN DALZELL.

17 Q AND IS THAT IN SUMTER COUNTY?

18 A YES, MA'AM.

19 Q DO YOU WORK?

20 A NOT AT THIS TIME.

21 Q NOW, ARE YOU THE SAME DERRICK ALBERT THAT WAS
22 CONVICTED ON AUGUST THE 1ST, 1996 OF GRAND LARCENY, THREE
23 COUNTS OF BREAKING INTO AUTOMOBILES AND SIMPLE PETTY
24 LARCENY?

25 A YES, MA'AM.

1 Q NOW, DID YOU KNOW HENRY SCOTT?

2 A (NO RESPONSE).

3 THE COURT: DID YOU UNDERSTAND THE QUESTION?

4 THE WITNESS: YES, MA'AM.

5 (WHEREUPON QUESTIONING RESUMED).

6 Q WERE YOU A FRIEND OF HIS?

7 A YES, MA'AM.

8 Q DID YOU GO TO THE DAVIS COUNTRY CLUB ON THE NIGHT OF
9 NOVEMBER THE 14TH, 1999?

10 A YES, MA'AM, I DID.

11 Q WHO WERE YOU RIDING WITH?

12 A ARE RODNEY YATES.

13 Q WHO WAS DRIVING?

14 A HE WAS.

15 Q AND WHEN YA'LL WENT THERE, DID YA'LL GO WITH SOME
16 OTHER PEOPLE THAT WERE IN SOME OTHER CARS?

17 A YES, MA'AM.

18 Q DO YOU REMEMBER WHICH CAR ARRIVED FIRST?

19 A NO, MA'AM, I DON'T.

20 Q DO YOU REMEMBER WHERE YA'LL PARKED WHEN YOU GOT
21 THERE?

22 A YES, MA'AM.

23 Q THERE IS A DIAGRAM UP HERE BESIDE YOU. COULD YOU
24 TAKE THIS RULER THAT MRS. WATKINS IS GOING TO HAND YOU AND
25 -- YOU SAID THIS DESIGNATION. THIS IS THE MANVILLE ST.

1 CHARLES HIGHWAY. DO YOU RECOGNIZE THIS AS THE CLUB?

2 A YES, MA'AM.

3 Q WELL, SHOW THE JURY WHERE YOU AND RODNEY YATES PARKED
4 WHEN YA'LL ARRIVED THERE.

5 A WE WAS PARKED OVER HERE IN THE GRASS, ALL THREE OF
6 OUR CARS BEEN RIGHT BEHIND EACH OTHER.

7 Q THE CAR THAT HENRY SCOTT IN, ONE OF THE CARS THAT
8 PARKED BEHIND YA'LL?

9 A YES, MA'AM. HIS CAR WAS PARKED IN FRONT OF US.

10 Q IT WAS PARKED IN FRONT OF YA'LL?

11 A EXCUSE ME?

12 Q IT WAS PARKED IN FRONT OF YA'LL?

13 A YES, MA'AM.

14 Q WHEN YA'LL PARKED, WHICH WAY DID YA'LL COME IN?

15 A WE CAME IN THIS HERE.

16 Q AND WHEN YA'LL CAME IN, WERE YA'LL STILL -- CARS
17 PARKED STILL FACING THAT WAY?

18 A NO, MA'AM.

19 Q ALL RIGHT. SHOW THE JURY -- TAKE THAT POINTER AND
20 SHOW THE JURY HOW YA'LL ENDED UP PARKING IN THE DIRECTION
21 THE CAR WAS PARKED AND WHERE YA'LL PARKED THE CAR.

22 A WE JUST TURN THE CARS AROUND, TURN THE CARS AROUND
23 THE ROAD FACING LIKE THE WAY WE CAME.

24 Q SO YA'LL WERE FACING BACK TOWARDS HIGHWAY 15?

25 A YES, MA'AM.

1 Q ALL RIGHT. TELL US WHAT YOU REMEMBER NEXT ABOUT WHAT
2 HAPPENED.

3 A WELL, WE GOT TO THE CLUB, WE ALL GOT OUT THE CAR THE
4 SAME TIME, STARTED WALKING INTO THE CLUB. I WAS GOING TO
5 SEE HOW MUCH THEY WERE CHARGING TO GET IN THE CLUB. AND
6 WHEN I GOT TO THE DOOR, I STOPPED AND I LOOKED BACK AND I
7 SAW HENRY ARGUING WITH THIS DUDE, SO I WALKED BACK, YOU
8 KNOW WHAT I'M SAYING, OBSERVE, YOU KNOW WHAT I'M SAYING,
9 SEE WHAT WAS GOING ON, AND THE DUDES STEADY ARGUING WITH
10 -- I DIDN'T RECALL ALL THAT CONVERSATION. I JUST HEARD A
11 FEW WORDS.

12 Q ALL RIGHT. TELL THE JURY WHAT YOU DID HEAR.

13 A DUDES, YOU KNOW WHAT I'M SAYING, YOU KNOW WHAT I'M
14 SAYING, FUCK YOU AND FUCK THAT, YOU KNOW WHAT I'M SAYING,
15 YOU KNOW, I'LL KILL YOU, STUFF LIKE THAT, YOU KNOW WHAT
16 I'M SAYING.

17 Q NOW, DO YOU RECOGNIZE IN THE COURTROOM THE PERSON WHO
18 SAID THAT?

19 A I RECOGNIZE ONE OF THEM.

20 Q ALL RIGHT. WERE THERE -- YOU SAID THAT THERE WAS ONE
21 DUDE ARGUING WITH HENRY SCOTT?

22 A YES, MA'AM.

23 Q DO YOU RECOGNIZE THAT PERSON?

24 A YES, MA'AM.

25 Q WOULD YOU TELL THE JURY WHERE HE IS IN THE COURTROOM?

1 A THE ONE IN THE CORNER.

2 Q AND WHAT HAS HE GOT ON?

3 A LIKE A BLACK SWEATER.

4 Q IS HE THE FIRST PERSON SITTING AT THE DEFENSE TABLE?

5 A YES, MA'AM.

6 MS. NIELSEN: YOUR HONOR, WE WOULD HAVE THE RECORD
7 REFLECT THAT HE HAS IDENTIFIED MARCUS EVANS.

8 THE COURT: YES, MA'AM.

9 (WHEREUPON QUESTIONING RESUMED).

10 Q NOW, DID YOU KNOW MARCUS EVANS BEFORE THAT NIGHT?

11 A NO, MA'AM.

12 Q AND DID LAW ENFORCEMENT EVER TALK TO YOU OR SHOW YOU
13 A LINE-UP OF HIM?

14 A NO, MA'AM.

15 Q SO AFTER THIS HAPPENED, YOU DIDN'T GIVE A STATEMENT?

16 A NO, MA'AM.

17 Q WERE YOU SHOWN A LINE-UP AT SOME POINT IN TIME?

18 A I WAS SHOWN ONE LAST WEEK ON FRIDAY.

19 Q I'M GOING TO SHOW YOU WHAT HAS BEEN MARKED AS STATE'S
20 EXHIBIT 3 AND ASK YOU TO -- WERE YOU SHOWN THAT LINE-UP?

21 A YES, MA'AM.

22 Q AND DID YOU PICK A PERSON OUT OF THAT LINE-UP?

23 A YES, MA'AM.

24 Q WHAT NUMBER DID YOU PICK?

25 A A ONE.

1 Q NUMBER ONE? AND IS NUMBER ONE THE SAME PERSON YOU
2 HAVE IDENTIFIED IN THE COURTROOM?

3 A YES, MA'AM.

4 Q NOW, WHO SHOWED YOU THIS LINE-UP?

5 A INVESTIGATOR...

6 Q DO YOU KNOW WHAT HIS NAME IS?

7 A NO, BUT I KNOW HE'S THE...

8 Q TELL US WHAT HE LOOKS LIKE.

9 A THE WHITE DUDE IN THE SUIT.

10 Q SITTING OUT AT THE TALE WHERE I AM SITTING?

11 A YES, MA'AM.

12 Q DID HE -- DID YOU ALSO LOOK AT LINE-UP "B"?

13 A YES, MA'AM, I DID.

14 Q DID YOU IDENTIFY ANYBODY ON THAT LINE-UP?

15 A YES, MA'AM.

16 Q WELL, WHO DID YOU IDENTIFY TO THAT LINE-UP?

17 A FOUR.

18 Q AND DO YOU RECOGNIZE IN THE COURTROOM ANYBODY THAT IS
19 NUMBER FOUR IN THAT LINE-UP?

20 A NO, MA'AM.

21 Q NOW, WHEN YOU IDENTIFIED NUMBER FOUR, WHAT WERE YOU
22 IDENTIFYING NUMBER FOUR FOR? WHAT--

23 A AS ONE OF THE SHOOTERS.

24 Q ARE YOU SURE THAT THAT'S ONE OF THE SHOOTERS?

25 A NO, MA'AM. LIKE I TOLD -- LIKE I SAID BEFORE, I SAW

1 THE OTHER SHOOTERS FROM THE SIDE, FROM A BACK ANGLE. I
2 NEVER LOOKED DIRECTLY IN HIS FACE.

3 Q YOU LOOKED DIRECTLY AT MARCUS EVANS' FACE?

4 A YES, MA'AM.

5 Q DID YOU ACTUALLY TRY TO TALK WITH MARCUS EVANS?

6 A NO, MA'AM.

7 Q ALL RIGHT. YOU SAID THAT YOU SAW HENRY ARGUING WITH
8 HIM. AND DID YOU GO TO WHERE THEY WERE?

9 A I DIDN'T -- I DIDN'T APPROACH HARDLY UPON HIM, YOU
10 KNOW.

11 Q SAY THAT AGAIN.

12 A I DID NOT APPROACHED ALL THE WAY UPON HIM.

13 Q YOU WENT TO THE DOOR OF THE CLUB. DID YOU ACTUALLY
14 GO IN FRONT OF THE CLUB?

15 A NO, MA'AM.

16 Q WHY DID YOU NOT GO IN THE CLUB?

17 A NO, MA'AM, BECAUSE I HEARD THE ARGUMENT. I STOPPED
18 TO TURN AROUND TO SEE WHAT WAS GOING ON.

19 Q ALL RIGHT. SO AFTER YOU STOPPED AND TURNED AROUND,
20 WHAT DID YOU DO NEXT?

21 A I STARTED WALKING BACK TO WHERE THEY WERE STANDING
22 AT.

23 Q AND HOW CLOSE DID YOU GET TO HENRY AND MARCUS EVANS?

24 A FROM ABOUT WHERE I'M SITTING AT RIGHT NOW TO ABOUT TO
25 THAT WINDOW.

1 Q TO THIS WINDOW?

2 A YES, MA'AM.

3 Q WELL, HOW ABOUT FROM WHERE I AM STANDING FROM YOU,
4 TELL ME HOW FAR -- FAR BACKWARDS I NEED TO GO FORWARD OR
5 BACKWARDS.

6 A I DIDN'T UNDERSTAND THE QUESTION. SAY THAT AGAIN.

7 Q SAY USING ME -- I'LL WALK FORWARD OR BACKWARDS. TELL
8 ME WHETHER YOU WERE CLOSER OR FURTHER AWAY THAN WHERE I AM
9 RIGHT NOW.

10 A NOW, WHERE YOU AT RIGHT NOW.

11 Q SO YOU WERE ABOUT THIS DISTANCE?

12 A YES, MA'AM.

13 Q OKAY. AND WHAT KIND OF LIGHT WAS THERE THAT YOU WERE
14 ABLE TO SEE MARCUS EVANS?

15 A WHERE WE WERE STANDING AT -- IT WAS RIGHT IN FRONT OF
16 THE CLUB. THERE WAS A LIGHT RIGHT THERE.

17 Q HOW ABOUT TAKE THAT YARD STICK AND POINT OUT TO THE
18 JURY WHERE YOU WERE TALKING ABOUT. YOU SAID THERE IS A
19 LIGHT RIGHT THERE IN FRONT OF THE CLUB.

20 A THE LIGHT WAS RIGHT UP IN HERE.

21 Q ALL RIGHT. AND WHERE WERE YA'LL STANDING?

22 A IT WAS STANDING ON -- WE WERE STANDING OVER HERE. I
23 WAS NEAR THE DRIVEWAY. THEY WERE STANDING OVER HERE AND
24 THERE WAS A CAR PARKED -- THERE WAS CARS PARKED OVER HERE.

25 Q SO THEY WERE ACTUALLY STANDING IN THAT GRASSY AREA

1 AND NOT IN THE DRIVEWAY?

2 A YEAH, THEY WERE STANDING IN THE GRASSY AREA.

3 Q YOU WERE IN THE DRIVEWAY?

4 A YES, MA'AM.

5 Q EXCEPT FOR THE POLICE CARS THAT WERE PARKED IN THE
6 DRIVEWAY IN FRONT OF THE DOOR, WERE THERE ANY OTHER CARS
7 ON THE DRIVEWAY?

8 A NO, MA'AM. I DIDN'T SEE NO OTHER CARS.

9 Q OKAY. NOW, DO YOU KNOW WHERE THE REST OF THE PEOPLE
10 THAT WERE WITH YOU WERE?

11 A THEY WERE STANDING AROUND HENRY.

12 Q ALL RIGHT. SO YOU WALKED BACK TOWARDS THEM AND WHAT
13 HAPPENED NEXT?

14 A THAT'S WHEN I HEARD BOTH OF THEM ARGUING, BOTH OF
15 THEM ARGUING.

16 Q ALL RIGHT. THEN WHAT HAPPENED?

17 A WHEN THEY STARTED ARGUING, LIKE I SAY, I ONLY HEARD A
18 FEW WORDS. THE WORDS I DID HEARD WAS SAYING FUCK THIS AND
19 FUCK THAT, YOU KNOW WHAT I'M SAYING, AND THEN I HEARD
20 HENRY SAY I AIN'T SCARED OF YOU, SO HE SAID I KILL YOU.

21 Q WHO SAID I'LL KILL YOU?

22 A THE DEFENDANT RIGHT THERE ON THE CORNER.

23 Q THE ONE YOU ALREADY IDENTIFIED OUT OF THE LINE-UP?

24 A YES, MA'AM.

25 Q WHAT HAPPENED NEXT?

1 A THEN HE PUT HIS HAND BEHIND HIS BACK AND HE STARTED
2 GRABBING THE BACK OVER HIS SHIRT.

3 Q SHOW US HOW HE WAS DOING THAT. STAND UP AND SHOW THE
4 JURY WHAT HE WAS DOING.

5 A LIKE THIS (INDICATING).

6 Q OKAY. WAS HE SAYING ANYTHING AT THE TIME HE WAS
7 DOING THAT?

8 A YES, MA'AM.

9 Q WHAT WAS HE SAYING?

10 A HE WAS STILL SAYING THAT I'LL KILL YOU.

11 Q DID HE SAY I'LL KILL YOU ONE TIME OR MORE THAN ONE
12 TIME?

13 A NO MORE THAN ONE TIME.

14 Q DID YOU HEAR HENRY SAY ANYTHING BESIDES I AIN'T
15 SCARED OF YOU?

16 A NO, MA'AM.

17 Q OKAY. ALL RIGHT. AFTER THAT WHAT HAPPENED?

18 A THEN HE STARTED WALKING UP ON HIM AND HENRY STARTED
19 WALKING BACK.

20 Q WHO STARTED WALKING FROM WHO?

21 A THE DEFENDANT I PICKED OUT.

22 Q AND WHAT WAS HENRY DOING?

23 A HE WAS WALKING BACK -- WALKING BACK FROM HIM.

24 Q HE WAS -- WAS HE HAD TO -- DID HE HAVE HIS BACK
25 TURNED TO HIM OR WAS HE FACING HIM?

1 A HE WAS STILL FACING HIM.

2 Q AND SO HE WAS WALKING BACKWARDS?

3 A YES, MA'AM.

4 Q ALL RIGHT. WHAT HAPPENED AFTER THAT?

5 A THEN HE KEPT APPROACHING HIM.

6 Q WHO KEPT APPROACHING HIM?

7 A THE DEFENDANT I PICKED OUT.

8 Q OKAY. AND HE KEPT APPROACHING HENRY?

9 A YES, MA'AM.

10 Q OKAY. WHAT HAPPENED NEXT?

11 A HE KEPT APPROACHING HIM, HE KEPT SAYING FUCK YOU AND
12 FUCK THAT, YOU KNOW WHAT I'M SAYING, THEN AT THAT POINT IN
13 TIME HENRY TURNED AROUND AND HE RAN TO THE CAR, THEN HE
14 WENT TO THE CAR, AND WHEN I SAW HE CAME BACK FROM THE CAR
15 HE WAS STILL IN THE ROAD. THE DEFENDANT THEN RAN INTO THE
16 ROAD WHERE HE WAS AT, PULLED OUT A HANDGUN AND STARTED
17 SHOOTING.

18 Q IS THIS THE DEFENDANT THAT YOU HAVE IDENTIFIED?

19 A YES, MA'AM.

20 Q AND DID -- WHO -- DO YOU KNOW WHO FIRED THE FIRST
21 SHOT?

22 A YES, MA'AM.

23 Q WHO FIRED THE FIRST SHOT?

24 A THE DEFENDANT I PICKED OUT.

25 Q ALL RIGHT. WHAT DID YOU SEE OR HEAR AFTER THAT?

1 A ALL I HEARD WAS GUNSHOTS.

2 Q NOW, CAN YOU SHOW -- TAKE THAT POINTER AND SHOW US
3 WHERE HENRY WAS AND WHERE MARCUS EVANS WAS WHEN THE FIRST
4 SHOTS WERE FIRED.

5 A THE DEFENDANT WAS RIGHT UP IN HERE IN THIS AREA RIGHT
6 HERE. HENRY WAS RIGHT UP IN HERE IN THIS AREA BECAUSE OUR
7 CAR WAS PARKED ALONG THIS SIDE RIGHT HERE. HE WASN'T TOO
8 FAR. HE WASN'T TOO FAR FROM THE VEHICLE HE WAS RIDING IN.

9 Q NOW, DID YOU ACTUALLY SEE A GUN IN HENRY'S HAND?

10 A YES, MA'AM.

11 Q AND DID YOU SEE HIM FIRE A GUN?

12 A NO, MA'AM.

13 Q ALL RIGHT. DID YOU SEE GUNFIRE FROM ANYWHERE BESIDES
14 WHERE MARCUS EVANS WAS?

15 A YES, MA'AM.

16 Q WHERE DID YOU SEE GUNFIRE?

17 A FROM THE SIDE WHERE HENRY WAS STANDING ON.

18 Q IS THAT THE ONLY PLACE?

19 A YES, MA'AM.

20 Q DO YOU KNOW WHO WAS SHOOTING THE GUN THAT CAUSED THAT
21 GUNFIRE?

22 A NO, MA'AM, NOT ON THE SIDE HENRY WAS STANDING ON.

23 Q AND YOU ACTUALLY SAW HENRY GET A GUN FROM THE CAR,
24 THOUGH OR DID YOU--

25 A I SAW HIM WENT TO THE CAR. WHEN HE CAME OUT THE CAR,

1 I SAW HE HAD A GUN.

2 Q DO YOU KNOW WHAT KIND OF GUN IT WAS?

3 A NO, MA'AM.

4 Q DO YOU KNOW WHAT COLOR IT WAS?

5 A THINK IT WAS A BLACK GUN.

6 Q AFTER YOU SAW HENRY GET THAT GUN OUT OF THE CAR, DID
7 YOU EVER SEE THAT GUN AGAIN?

8 A NO, MA'AM.

9 Q ALL RIGHT. MARCUS EVANS STARTED FIRING. TELL ME --
10 TELL US EXACTLY WHAT ELSE YOU SAW AFTER THAT.

11 A AT THAT POINT IN TIME HENRY PROCEEDED TO RUN BACK
12 TOWARDS THE CLUB, AND WE WAS STANDING AT -- THAT'S WHEN
13 THE SECOND GUN HAD CAME UP AND BEGAN FIRING AT HIM AND HE
14 FELL DOWN ON THE GROUND, OTHER GUN COME AROUND TO HIM AND
15 JUST KEPT SHOOTING HIM.

16 Q YOU DIDN'T SEE THAT PERSON WELL ENOUGH TO KNOW WHO
17 THEY WERE?

18 A NO, MA'AM.

19 Q NOW, WHAT WAS HENRY DOING?

20 A HE WAS ON THE GROUND.

21 Q HE WAS ON THE GROUND?

22 A YES, MA'AM.

23 Q WAS HE TRYING TO GET UP OR WAS HE LAYING ON THE
24 GROUND?

25 A TRYING TO GET BACK UP.

1 Q CAN YOU SHOW THE JURY ON THAT DIAGRAM WHERE HENRY WAS
2 AT THIS POINT IN TIME?

3 A RIGHT OVER IN HERE IN THIS AREA. I MEAN, THE CAR
4 PARKED CLOSE TO THE ROAD. HE WAS RIGHT OVER HERE AT THIS
5 TIME.

6 Q AND WHEN EVERYTHING WAS OVER, WHERE WAS HENRY?

7 A IN THAT SAME SPOT.

8 Q NOW, DID YOU GO OVER THERE TO WHERE HE WAS AFTER THE
9 SHOOTING WAS OVER?

10 A YES, MA'AM.

11 Q AND WHAT IF ANYTHING DID YOU DO?

12 A I HELD HIS HEAD AND TALKED TO HIM TILL THE AMBULANCE
13 GOT THERE.

14 Q COULD HE TALK TO YOU?

15 A NO, MA'AM.

16 Q COULD YOU TELL IF HE WAS BREATHING OR NOT?

17 A NO, MA'AM.

18 Q DID YOU SEE THE GUN THERE THAT YOU HAD SEEN HIM GET
19 OUT OF THE CAR?

20 A NO, MA'AM.

21 MS. NIELSEN: COURT'S INDULGENCE, PLEASE.

22 THE COURT: YES, MA'AM.

23 (WHEREUPON THERE WAS A PAUSE).

24 MS. NIELSEN: PLEASE ANSWER ANY QUESTIONS THE DEFENSE
25 ATTORNEYS HAVE.

1 THE COURT: MR. DOBY, YOU CAN CROSS-EXAMINE.

2 CROSS-EXAMINATION BY MR. DOBY:

3 Q YOU HAD NEVER SEEN THE FELLOW YOU PICKED OUT OF THIS
4 LINE-UP PRIOR TO THIS NIGHT; IS THAT RIGHT?

5 A YES, SIR.

6 Q AND WHEN YOU SAID THIS ARGUMENT WAS GOING ON, YOU HAD
7 ALREADY WALKED TO THE CLUB AND WERE SOME DISTANCE FROM
8 WHERE THE ARGUMENT WAS GOING ON, CORRECT?

9 A YES, SIR.

10 Q AND YOU WOULD AGREE WITH ME THEN THAT THE LIGHT THAT
11 WAS AVAILABLE THAT NIGHT WAS CLOSER TO THE CLUB THAN WHERE
12 THE SHOOTING OCCURRED; WOULDN'T YOU?

13 A NO, SIR.

14 Q THE LIGHT WAS CLOSER TO THE CAR OUT THERE THAT YOU
15 DESCRIBED THAN TO THE CLUB?

16 A THE LIGHT CLOSER TO WHERE THEY WERE STANDING AT WHEN
17 THE ARGUMENT STARTED.

18 Q OKAY. BUT AS THE SHOOTING OCCURRED, THEY WERE GOING
19 AWAY FROM THE AVAILABLE LIGHT THAT WAS THERE; IS THAT
20 RIGHT?

21 A NO, SIR. IT WAS RIGHT UP IN, RIGHT AROUND THE SAME
22 AREA.

23 Q WELL, WAS THERE A LIGHT OUT HERE THEN? WAS THERE A
24 LIGHT OUT HERE BY THE CAR?

25 A NO, SIR, I DON'T THINK IT WAS.

1 Q ALL RIGHT. SO THE SHOOTING THEN OCCURRED AWAY FROM
2 WHERE THE AUTOMOBILE WAS?

3 A YES, SIR, NOT TOO FAR FROM THE AUTOMOBILE.

4 Q OKAY. WHEN THE SHOOTING OCCURRED, WERE YOU THEN
5 STANDING FAIRLY CLOSE TO THE CLUB THERE?

6 A NO, SIR.

7 Q DID YOU COME ON -- WERE YOU COMING OUT AWAY FROM THE
8 CLUB?

9 A I WAS RIGHT THERE IN THE DRIVEWAY WHEN THE SHOOTING
10 STARTED.

11 Q OKAY. THAT IS SOME DISTANCE FROM THE CLUB THOUGH; IS
12 THAT RIGHT?

13 A YES, SIR.

14 Q AND AS A MATTER OF FACT, I THINK YOU DESCRIBED THE
15 PERSON THAT YOU SAID DID THE SHOOTING TO START WITH WAS
16 ACTUALLY RUNNING AWAY FROM THE CLUB, CORRECT?

17 A AFTER THE SHOOTING, SIR.

18 Q AFTER THE SHOOTING? NOW, YOU DESCRIBED THAT -- THAT
19 EVERYONE BEFORE THE SHOOTING WAS RUNNING AWAY FROM THE
20 CLUB; DIDN'T YOU?

21 A NO, SIR, I DON'T THINK I DID.

22 Q YOU DESCRIBED THE SHOOTING FROM -- OCCURRING OUT
23 THERE IN THE ROAD, RIGHT?

24 A YES, SIR.

25 Q AND THAT IS NOT WHERE THE ARGUMENT OCCURRED; WAS IT?

1 A NO, SIR.

2 Q ALL RIGHT. SO THE SHOOTING OCCURRED SOMETIME AFTER
3 THE ARGUMENT; DIDN'T IT?

4 A YES, SIR.

5 Q AND AS A MATTER OF FACT, THE PERSON YOU DESCRIBED AND
6 POINTED OUT AS MY CLIENT WAS RUNNING AWAY AT THE TIME,
7 CORRECT?

8 A NO, SIR, HE WAS STANDING IN THE ROAD.

9 Q STANDING IN THE ROAD?

10 A YES, SIR.

11 Q THAT'S NOT WHERE THE ARGUMENT OCCURRED THOUGH; WAS
12 IT?

13 A NO, NO, SIR.

14 Q SO HE WAS GETTING OUT?

15 A GETTING OUT OF WHAT?

16 Q GETTING AWAY FROM THE CLUB THERE?

17 A NO, HE WAS STANDING IN THE ROAD.

18 Q NOT WHERE THE ARGUMENT OCCURRED. HE MOVED?

19 A NO. WHERE THE ARGUMENT OCCURRED, IT OCCURRED IN THE
20 AREA WHERE THE GRASS WAS AT.

21 Q ALL RIGHT. SO YOU SAW HENRY SCOTT GO TO THE CAR AND
22 GET A GUN?

23 A YES, SIR.

24 Q CORRECT? AND YOU NEVER SAW THAT GUN AFTER THE
25 SHOOTING; DID YOU?

1 A NO, SIR.

2 Q DO YOU KNOW WHAT HAPPENED TO THAT GUN?

3 A NO, SIR.

4 Q YOU WERE LOOKING AT HENRY SCOTT THE WHOLE TIME THAT
5 THIS SHOOTING WAS GOING ON?

6 A I WAS LOOKING AT EVERYONE, SIR.

7 Q AS A MATTER OF FACT, YOU WERE PROBABLY SCARED;
8 WEREN'T YOU?

9 A KIND OF, SIR.

10 Q AND I IMAGINE THAT YOU DUCKED, YOU GOT DOWN ON THE
11 GROUND, HID BEHIND SOME AUTOMOBILES; DIDN'T YOU?

12 A NO, SIR.

13 Q SO YOU WERE JUST STANDING THERE AS THESE BULLETS WERE
14 FLYING?

15 A YES, SIR.

16 Q AND DID YOU ACTUALLY GO TOWARDS HENRY SCOTT?

17 A AFTER THE SHOOTING I DID.

18 Q OKAY. SO YOU DID -- YOU WEREN'T GOING FORWARD DURING
19 THE SHOOTING THEN?

20 A WHEN THEY WERE SHOOTING, I WAS STANDING IN ONE SPOT.

21 Q ALL RIGHT. NOW, YOU -- DID YOU GIVE A DESCRIPTION TO
22 THE POLICE THAT NIGHT OF THE SHOOTERS?

23 A NO, SIR.

24 Q AS A MATTER OF FACT, YOU DIDN'T EVEN TALK TO THE
25 POLICE ABOUT THIS UNTIL LAST WEEK; IS THAT CORRECT?

1 A YES, SIR.

2 Q BUT YOU WERE THERE AT THE SCENE, CORRECT?

3 A YES, SIR.

4 Q STAYED THERE SOME TIME AFTER THIS SHOOTING OCCURRED?

5 A YES, SIR.

6 Q DID YOU GIVE A DESCRIPTION OF THE CLOTHING THAT THESE
7 PEOPLE WERE WEARING THAT YOU SAID WERE SHOOTERS?

8 A NO, SIR.

9 Q DO YOU REMEMBER WHAT THE SHOOTERS WERE WEARING?

10 A NO, SIR.

11 Q OKAY. EITHER ONE OF THE PEOPLE THAT YOU DESCRIBED AS
12 SHOOTING, YOU DON'T REMEMBER WHAT THEY WERE WEARING?

13 A NO, SIR.

14 Q DO YOU REMEMBER HENRY SCOTT FIRING HIS GUN?

15 A NO, SIR.

16 Q DID -- ARE YOU SAYING THAT YOU DID NOT SEE OR THAT HE
17 DID NOT FIRE THE GUN?

18 A I DID NOT SEE.

19 Q IS IT POSSIBLE THAT HE HAD FIRED THE GUN?

20 A POSSIBLE.

21 Q OKAY. BUT YOU DIDN'T SEE THAT?

22 A NO.

23 Q OKAY. AS A MATTER OF FACT, YOU DESCRIBED MY CLIENT
24 AS BEING ON THIS SIDE OF THE AUTOMOBILE, IS THAT RIGHT,
25 TOWARDS THE ROAD?

1 A YES, SIR.

2 Q OKAY. AND WHERE DID YOU -- WHERE DID YOU SAY THAT
3 MR. HENRY SCOTT DIED? WHERE WAS HIS BODY?

4 A CLOSE TO THAT CAR ON THAT PICTURE.

5 Q WHICH SIDE?

6 A ON THE PASSENGER'S SIDE.

7 Q WHICH ONE WOULD BE THE PASSENGER'S SIDE?

8 A THIS SIDE.

9 Q OKAY. WHEN YOU FIRST GOT TO THE CLUB, WERE THERE A
10 LOT OF PEOPLE STANDING AROUND OUTSIDE?

11 A YES, SIR.

12 Q WHEN DID YOU GET TO THE CLUB?

13 A I'M NOT MISTAKEN ON TIME, AFTER 1:00, SIR.

14 Q SO THERE WAS A LOT OF PEOPLE AT THE CLUB?

15 A YES, SIR.

16 Q A LOT OF CARS PARKED AROUND THERE AS WELL?

17 A YES, SIR.

18 Q OKAY. THANK YOU. THAT'S ALL I HAVE.

19 THE COURT: MR. ROGERS, YOU MAY CROSS-EXAMINE.

20 MR. ROGERS: THANK YOU, YOUR HONOR.

21 CROSS-EXAMINATION BY MR. ROGERS:

22 Q MR. ALBERT, YOU ARE FRIENDS WITH DELVIN WAITERS?

23 A I KNOW HIM, SIR.

24 Q YOU FRIENDS WITH MARTY OAKS?

25 A YES, SIR.

1 Q AND YOU'RE FRIENDS WITH STEVEN JOHNSON?

2 A YES, SIR.

3 Q YOU ARE FRIENDS WITH RODNEY YATES?

4 A YES, SIR.

5 Q AND LEONARD SCOTT?

6 A YES, SIR.

7 Q OKAY. YA'LL ALL WENT THERE TOGETHER?

8 A YES, SIR.

9 Q ALL RIGHT. NOW, YOU WERE SHOWN THIS LINE-UP,
10 CORRECT?

11 A YES, SIR.

12 Q AND YOU IDENTIFIED NUMBER FOUR AS THE SECOND SHOOTER?

13 A YES, SIR.

14 Q AND I BELIEVE--

15 THE COURT: WHAT IS THAT NUMBER, PLEASE SIR?

16 MR. ROGERS: SORRY, YOUR HONOR. IT'S STATE'S EXHIBIT

17 3.

18 THE COURT: THANK YOU, SIR.

19 MR. ROGERS: I BELIEVE.

20 THE COURT: 3 OR 4?

21 MR. ROGERS: 4. THANK YOU.

22 (WHEREUPON QUESTIONING RESUMED).

23 Q NOW, I BELIEVE YOU JUST TESTIFIED THAT WHEN THE
24 SHOOTING BROKE OUT THAT YOU SAW GUNFIRE COMING FROM THE
25 SIDE THAT HENRY WAS STANDING ON?

1 A YES, SIR.

2 Q SO THAT WOULD HAVE BEEN IN THE ROAD?

3 A YES, SIR.

4 Q ON -- IN THIS SIDE?

5 A YES, SIR.

6 Q AND THAT IS THE PERSON THAT YOU TOLD THE POLICE WAS
7 THIS INDIVIDUAL RIGHT HERE?

8 A NO, SIR.

9 Q WELL, YOU IDENTIFIED ONE SHOOTER AS NUMBER ONE FROM
10 STATE'S EXHIBIT 3; DIDN'T YOU?

11 A YES, SIR.

12 Q AND YOU IDENTIFIED A SECOND SHOOTER AS NUMBER FOUR
13 FROM STATE'S EXHIBIT 4, CORRECT?

14 A YES, SIR.

15 Q SO THAT PERSON PRESUMABLY IS THE PERSON THAT YOU SAW
16 STANDING NEAR HENRY, CORRECT?

17 A NO, SIR, THAT IS NOT CORRECT.

18 Q WELL, HOW MANY PEOPLE WERE FIRING?

19 A I ONLY SAW TWO PEOPLE FIRING.

20 Q ALL RIGHT. THE PERSON THAT YOU HAVE ALREADY
21 IDENTIFIED AS NUMBER ONE?

22 A YES, SIR.

23 Q AND THIS PERSON IN NUMBER FOUR, IS NUMBER FOUR?

24 A THE PERSON IDENTIFIED NUMBER FOUR RIGHT HERE, THAT
25 WAS THE SHOOTER I SEEN WALK OVER TO HIM WHEN HE WENT