

VOLUME II OF III

STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM SUMTER COUNTY

Howard P. King, Circuit Court Judge

RECEIVED

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S.C. Supreme Court

THE STATE,

RESPONDENT,

V.

MARCUS EVANS,

APPELLANT

RECORD ON APPEAL

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DERRICK ALBERT - CROSS BY ROGERS

1 AROUND. THAT WAS THE SECOND SHOOTER I SAW.

2 Q NUMBER FOUR?

3 A YEAH.

4 Q RIGHT. WHEN DID SOMEONE TELL YOU THAT NUMBER FOUR
5 THAT YOU SAID WAS THE SECOND SHOOTER WAS NOT THE PERSON
6 THAT IS ON TRIAL HERE TODAY?

7 A NO ONE TOLD ME THAT. LIKE I SAID, I COULDN'T MAKE A
8 POSITIVE I.D., YOU KNOW WHAT I'M SAYING, OF THE SHOOTER.

9 Q WELL, YOU DID I.D. THE SECOND SHOOTER. YOU SAID IT
10 WAS NUMBER FOUR?

11 A I SAID FROM THE SIDE ANGLE IT DID LOOK LIKE HIM.

12 Q BUT NUMBER FOUR AND NUMBER FIVE LOOK ANYTHING ALIKE?

13 A NO, SIR.

14 Q DIFFERENT COMPLEXIONS; AREN'T THEY?

15 A YES, SIR.

16 Q NUMBER FOUR IS DARKER THAN NUMBER FIVE, CORRECT?

17 A YES, SIR.

18 Q ALL RIGHT. NOW, YOU -- WHEN THE SHOTS RANG OUT, YOU
19 WERE LOOKING AT HENRY SCOTT?

20 A I WAS LOOKING AT EVERYONE, SIR.

21 Q AND SO ONE OF THE PEOPLE YOU WERE LOOKING AT WAS
22 HENRY SCOTT?

23 A YES, SIR.

24 Q AND HE WAS FIRING?

25 A I DON'T KNOW THAT FOR SURE, SIR.

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 III 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 Q OKAY. SO IT'S YOUR TESTIMONY HERE TODAY THAT HENRY
2 SCOTT WENT BACK TO THE CAR, GOT HIS GUN, SOMEBODY FIRED AT
3 HIM FIRST AND HE NEVER FIRED BACK?

4 A YES, SIR. LIKE I SAID, I DON'T KNOW IF HE FIRED OR
5 NOT.

6 Q BASED ON WHAT YOU KNOW ABOUT HENRY SCOTT, WOULDN'T HE
7 HAVE FIRED BACK?

8 MS. NIELSEN: OBJECTION.

9 A IT'S NOT WHAT I KNOW.

10 THE COURT: I SUSTAIN THAT OBJECTION. THERE IS NO
11 FOUNDATION UNLESS YOU CAN LAY SOME MORE OF A FOUNDATION.

12 MR. ROGERS: VERY WELL, YOUR HONOR.

13 (WHEREUPON QUESTIONING RESUMED).

14 Q YOU KNOW HENRY SCOTT; DON'T YOU?

15 A YEAH, I KNOW HIM.

16 Q YOU KNOWN HIM MOST OF YOUR LIFE?

17 A YES, SIR.

18 Q OKAY. BASED ON WHAT YOU KNOW ABOUT HIM, IF HE HAD A
19 GUN IN HIS HAND AND SOMEBODY IS FIRING AT HIM, WOULDN'T HE
20 FIRE BACK?

21 A I DON'T KNOW, SIR.

22 Q YOU DON'T KNOW. NOW, YOU WENT OVER TO HIM AS YOU
23 TESTIFIED ON DIRECT AND HELD HIS HEAD?

24 A YES, SIR.

25 Q DID YOU PUT A -- YOUR COAT AROUND HIM?

1 A NO, SIR.

2 Q AND HOW LONG DID YOU HOLD HIS HEAD?

3 A TILL THE AMBULANCE GOT THERE UNTIL -- OVER 20
4 MINUTES.

5 Q OKAY. WHEN YOU WENT OVER TO HIM, WHERE WAS THE GUN
6 THAT WAS IN HIS HAND?

7 A I DIDN'T SEE NO GUN, SIR.

8 Q DID YOU GO DIRECTLY TO HIM?

9 A NO, IT WAS MORE PEOPLE STANDING AROUND HIM.

10 Q SO THERE WERE OTHER PEOPLE THAT GOT TO HIM BEFORE YOU
11 DID?

12 A YES, SIR.

13 Q WHO WERE THEY?

14 A EXCUSE ME?

15 Q WHO WERE THEY?

16 A LIKE I SAID, A LOT OF PEOPLE OUT THERE.

17 Q YOU DON'T KNOW ANYBODY THAT WAS OVER THERE WITH HIM
18 WHEN YOU GOT TO HIM?

19 A I RECOGNIZED SOME OF THE PEOPLE THAT WAS WITH ME.

20 Q THAT'S WHAT I'M ASKING YOU.

21 A YEAH, I RECOGNIZE RODNEY YATES.

22 Q OKAY. WHO ELSE?

23 A AND MARTY OAKS.

24 Q ANYONE ELSE?

25 A NO.

1 Q OKAY. SO THEY WERE THERE BEFORE YOU GOT THERE?

2 A YEAH.

3 Q OKAY. AND LET ME JUST ASK YOU THIS, IF YOU KNOW.

4 DID YOU SEE MR. SCOTT FALL?

5 A YES, I DID.

6 Q OKAY. SO FROM THE TIME THAT HE FELL TO THE TIME YOU
7 GOT TO HIM, HOW MUCH TIME ELAPSED TO HOLD HIS HEAD? HOW
8 MUCH TIME WENT BY, A MINUTE, SECONDS, HAVE ANY IDEA?

9 A NO, SIR.

10 Q ALL RIGHT.

11 MR. ROGERS: THAT'S ALL I HAVE. THANK YOU.

12 THE COURT: THANK YOU. MR. JORDAN?

13 CROSS-EXAMINATION BY MR. JORDAN:

14 Q MR. ALBERT, IT WAS DARK OUT THERE WAS IT NOT?

15 A EXCUSE ME?

16 Q IT WAS DARK OUT THERE; WAS IT NOT?

17 A IT WAS NIGHT TIME.

18 Q IT WAS DARK WHEREVER IN THE PARKING LOT AND DIFFERENT
19 PLACES WHERE THERE WASN'T A LIGHT, IT WAS DARK?

20 A YES, SIR.

21 Q SO IT WAS HARD -- AND THERE WAS SHOOTING GOING ON.
22 DID YOU EVER DUCK DOWN, LAY ON THE GROUND?

23 A NO, SIR.

24 Q OKAY. DID YOU SEE OTHER PEOPLE GETTING DOWN?

25 A NO, SIR.

1 Q DIDN'T SEE ANYBODY DUCK?

2 A NO, I SEEN SOME PEOPLE RUNNING.

3 Q OKAY. AWAY, RUNNING AWAY FROM WHERE THE COMMOTION
4 IS?

5 A YES, SIR.

6 Q THANK YOU. NO FURTHER QUESTIONS.

7 THE COURT: THANK YOU. MR. FINNEY?

8 MR. FINNEY: NO QUESTIONS.

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

10 RE-DIRECT EXAMINATION BY MS. NIELSEN:

11 Q YOU SAID THERE WERE A LOT OF PEOPLE OUTSIDE. HOW
12 MANY PEOPLE ARE A LOT OF PEOPLE?

13 A I SAY ABOUT MORE THAN 20 PEOPLE STANDING UP OUTSIDE
14 OF THE CLUB.

15 Q WOULD THAT INCLUDE YOU AND YOUR FRIENDS?

16 A NO, MA'AM.

17 Q WHERE WERE THESE PEOPLE?

18 A ON THE OTHER SIDE OF THE PARKING LOT.

19 Q IN FRONT OF THE CLUB AND ON THIS SIDE OF THE CLUB
20 WHERE THAT CAR IS PARKED, WERE THERE PEOPLE STANDING
21 AROUND OVER THERE?

22 A THERE WERE PEOPLE WHERE THAT CAR WAS PARKED AT RIGHT
23 THERE.

24 Q BESIDES YOU AND PEOPLE THAT YOU KNEW OR THESE
25 DEFENDANTS?

1 A YES, MA'AM.

2 Q OKAY.

3 MR. ROGERS: OBJECTION.

4 THE COURT: YES, SIR. EXCUSE ME. I SUSTAIN THE
5 OBJECTION AS TO THE FORM OF THE QUESTION.

6 (WHEREUPON QUESTIONING RESUMED).

7 Q ARE ANY OF THE PEOPLE, ANY OF THESE DEFENDANTS -- WE
8 ARE NOT SAYING ALL THE DEFENDANTS WERE THERE -- HOW MANY
9 PEOPLE DID YOU SEE AROUND THAT CAR?

10 A THEY WASN'T STANDING DIRECTLY BY THE CAR. THEY WERE
11 STANDING IN THE AREA OF THE CAR. IT WAS ABOUT 20 PEOPLE.

12 Q ALL ON THAT SIDE?

13 A YEAH, ON THAT SIDE.

14 Q OKAY. I JUST THOUGHT YOU TOLD ME THEY WERE ON THE
15 OTHER SIDE. SO YOU ARE TELLING ME THERE WERE MORE PEOPLE
16 ON THE OTHER SIDE?

17 A NO, I SAW PEOPLE ON THIS SIDE WHERE THAT CAR IS AT.

18 Q OKAY. POINT TO US AND SHOW US WHERE THESE PEOPLE
19 WERE.

20 A IT WAS A BUNCH OF CARS PARKED ON THIS SIDE, PEOPLE
21 YOU KNOW WHAT I'M SAYING, JUST IN DIFFERENT SPOTS JUST
22 STANDING AROUND.

23 Q AROUND OTHER CARS?

24 A YEAH.

25 Q BESIDES HENRY AND PEOPLE THAT WERE THERE, HOW MANY

1 PEOPLE WERE AROUND THAT CAR AT THE TIME OF THE SHOOTING?

2 A WHICH CAR?

3 Q THAT CAR, THE ONE THAT IS ON THAT DIAGRAM.

4 A AT THE TIME OF THE SHOOTING?

5 Q UH-HUH.

6 A I DIDN'T SEE NO ONE AROUND THE CAR.

7 Q ALL RIGHT. HENRY END UP OVER THERE BY THAT CAR?

8 A YES, MA'AM.

9 Q I DON'T HAVE ANY FURTHER QUESTIONS.

10 THE COURT: THANK YOU. YOU CAN STEP DOWN, MR.

11 ALBERT.

12 (WHEREUPON THE WITNESS LEFT THE STAND).

13 MS. NIELSEN: THE STATE CALLS CHYAME BENN.

14 (WITNESS IN COURTROOM).

15 THE COURT: COME FORWARD PLEASE AND BE SWORN. COME
16 RIGHT DOWN HERE IN FRONT OF THE COURT REPORTER, PLEASE.

17 CHYAME BENN, BEING FIRST DULY
18 SWORN, TESTIFIED AS FOLLOWS:

19 DIRECT EXAMINATION BY MS. NIELSEN:

20 Q YOUR NAME IS CHYAME BENN?

21 A UH-HUH.

22 Q MS. BENN, YOU HAVE GOT TO SPEAK INTO THAT
23 MICROPHONE. YOU HAVE GOT TO TALK LOUD ENOUGH SO THAT ALL
24 THESE PEOPLE OVER HERE CAN HEAR YOU AND THE JURY AND THE
25 JUDGE AND THIS COURT REPORTER AND ME, OKAY?

1 A OKAY.

2 Q YOU GOT TO TALK LOUDER THAN THAT.

3 THE COURT: THE MICROPHONE WILL DO IT FOR YOU, MS.

4 BENN, IF YOU WILL LEAN FORWARD INTO THAT MICROPHONE.

5 Q GET CLOSER TO THAT MICROPHONE.

6 THE COURT: IT WILL TAKE CARE OF IT.

7 Q MS. BENN, WHERE DO YOU LIVE?

8 A 510 MAPLE DRIVE.

9 Q CAN YOU GET CLOSER TO THE MICROPHONE?

10 A 510 MAPLE DRIVE.

11 Q MAPLE DRIVE IS HERE IN BISHOPVILLE?

12 A YES.

13 Q WHERE DO YOU WORK?

14 A WAL-MART IN CAMDEN.

15 Q HOW OLD ARE YOU?

16 A TWENTY-ONE.

17 Q DID YOU GO TO THE DAVIS COUNTRY CLUB ON THE NIGHT OF
18 NOVEMBER THE 13TH, 14TH OF 1999?

19 A YES.

20 Q AND DO YOU REMEMBER WHAT TIME YOU GOT THERE?

21 A GOT THERE AROUND ABOUT -- SAY AROUND ABOUT 12, 12:30.

22 Q ABOUT MIDNIGHT WHEN YOU GOT THERE?

23 A YES.

24 Q WHO DID YOU GO THERE WITH?

25 A I WENT BY MYSELF.

1 Q I NEED YOU TO SPEAK UP.

2 A I DROVE.

3 Q OKAY. WAS ANYBODY WITH YOU?

4 A YEAH, TWO OTHER -- THERE WAS ONLY ONE GIRL.

5 Q OKAY. NOW, THERE IS A DIAGRAM RIGHT BESIDE YOU.

6 WOULD YOU TAKE THAT YARD STICK RIGHT THERE AND SHOW THE
7 JURY WHERE YOUR CAR WAS PARKED.

8 A RIGHT THERE (INDICATING).

9 Q IS THAT YOUR CAR THAT'S ON THE DIAGRAM?

10 A UH-HUH.

11 Q NOW, THAT'S WHERE YOU PARKED YOUR CAR WHEN YOU GOT
12 THERE?

13 A YEAH.

14 Q NOW, DO YOU REMEMBER SOME SHOOTING THAT OCCURRED?

15 A WHEN I WAS IN THE CLUB AND IT WAS HOT, SO WHEN I CAME
16 OUTSIDE, WASN'T EVEN FIVE MINUTES BEFORE THE SHOOTING
17 START.

18 Q AND YOU WENT OUTSIDE. YOU JUST WENT OUTSIDE BECAUSE
19 YOU WERE HOT?

20 A UH-HUH.

21 Q DID YOU GO OUTSIDE BY YOURSELF OR WITH SOMEBODY ELSE?

22 A ME AND A GUY, DONALD.

23 Q AND WHEN YOU WENT OUTSIDE, SHOW US WHERE YOU WERE.

24 WHERE DID YOU GO? USE THAT THING. POINT TO...

25 A THIS ONE RIGHT HERE.

1 Q THAT IS THE FRONT OF THE CLUB. WHERE DID YOU GO?

2 A I WENT LIKE TO THE SIDE RIGHT ON THIS SIDE WHERE THE
3 DOOR AT OVER BY THE CLUB.

4 Q OKAY. HOW ABOUT POINT OUT WHERE THAT IS.

5 A THIS SIDE OF THE CLUB RIGHT HERE, RIGHT...

6 Q THAT'S ONE END OF THE CLUB.

7 A TRYING TO FIGURE IT OUT. I WAS ON THIS SIDE RIGHT
8 HERE.

9 Q THERE IS A DOOR. IS THERE A DOOR OVER THERE ON THAT
10 END OF THE CLUB?

11 A YEAH, THAT'S WHERE THEY BRING THE EQUIPMENT IN AT.

12 Q IS THAT WHERE YOU WERE STANDING?

13 A UH-HUH.

14 Q ALL RIGHT. COULD YOU SEE YOUR CAR FROM WHERE YOU
15 WERE STANDING?

16 A YEAH, I COULD HAVE.

17 Q TELL ME -- YOU SAID YOU HADN'T BEEN OUTSIDE BUT ABOUT
18 FIVE MINUTES AND YOU HEARD SHOOTING?

19 A UH-HUH.

20 Q DID YOU SEE OR HEAR ANYTHING PRIOR TO HEARING
21 GUNSHOTS?

22 A NO.

23 Q YOU WERE JUST STANDING OVER THERE TALKING TO THE GUY?

24 A UH-HUH.

25 Q AND WHEN YOU HEARD THE GUNSHOTS, WHAT DID YOU DO AND

1 WHAT ELSE DID YOU SEE?

2 A WHEN I HEARD THE GUNSHOTS, BY -- WHEN I TURNED
3 AROUND, ALL I SAW WAS A DARK SKINNED GUY. COULDN'T TELL
4 YOU HOW HE LOOKED OR WHATEVER. I DROPPED TO THE GROUND.

5 Q DID YOU ACTUALLY SEE ANYBODY SHOOTING?

6 A NO, I JUST HEARD THE GUNSHOT.

7 Q DID YOU SEE ANYBODY RUNNING?

8 A THE DARK SKINNED DUDE. WHEN I GOT ON THE GROUND, I
9 WENT CRAWLING AROUND THE CAR AND THAT'S WHEN I WAS, YOU
10 KNOW, I TURNED TO MY RIGHT AND I WAS LOOKING TOWARDS MY
11 CAR, AND THE GUY WAS JUST RUNNING BACK ON THE -- RUNNING
12 BACK TOWARDS THIS WAY, SAME THING I TOLD THEM BEFORE.

13 Q RUNNING BACK TOWARDS WHERE?

14 A RUNNING BACK TO -- MY CAR WAS FACING THIS WAY. HE
15 WAS RUNNING LIKE TOWARDS BACK LIKE GOING BACK DOWN 15.

16 Q ALL RIGHT. JUST TAKE THAT RULER AND SHOW THE JURY
17 WHERE HE RAN.

18 A I WAS RIGHT HERE. WHEN I TURNED AROUND, WHEN I GOT
19 ON HIS LINE, AS A MATTER OF FACT, I CRAWLED AROUND THE
20 CAR. AND WHEN I LOOKED AROUND THE CAR, MY CAR WAS -- I
21 WAS PEEPING OVER THIS WAY AND THE GUY WAS RUNNING BACK
22 THIS WAY.

23 Q NOW, DID YOU SEE THE GUY THAT GOT SHOT?

24 A POP? HE WAS JUST STANDING UP LIKE THIS.

25 Q DID YOU KNOW HIM?

1 A NEVER KNOWN HIM. I NEVER SEEN HIM A DAY IN MY LIFE.

2 Q HOW DID YOU KNOW HE WAS POP?

3 A BECAUSE YA'LL TOLD ME. I MEAN...

4 Q YA'LL CALL HIM THAT -- THAT WAS HIS NICKNAME?

5 A THAT'S WHAT I WAS HEARING.

6 Q BUT ON THE NIGHT OF NOVEMBER THE 15TH, THE 14TH,
7 1999, DID YOU KNOW THE GUY THAT GOT SHOT?

8 A NO.

9 Q DID YOU KNOW WHAT HIS NAME WAS THEN?

10 A NO.

11 Q SO TELL ME WHERE -- SHOW US. TAKE THAT MARKER THING
12 AND SHOW THE JURY WHERE YOU SAW HIM.

13 A POP WAS ON THE RIGHT SIDE OF MY CAR JUST STANDING AT
14 THERE WITH HIS HANDS UP ON THE RIGHT SIDE ON THE
15 PASSENGER'S SIDE.

16 Q OKAY.. NOW, PUT THAT DOWN AND SHOW US WHERE HIS HANDS
17 WERE.

18 A IN THE AIR LIKE THIS (INDICATING)..

19 Q AND WHAT WAS HE DOING?

20 A HE WAS JUST LIKE THIS (INDICATING)..

21 Q HE HAD ANYTHING IN HIS HANDS?

22 A I DIDN'T SEE ANYTHING.

23 Q COULD YOU SEE HIS HANDS?

24 A YEAH, HIS HANDS WAS UP.

25 Q IF THERE HAD BEEN A GUN IN HIS HAND, COULD YOU HAVE

1 SEEN IT?

2 A POSSIBLY.

3 Q DID YOU HEAR HIM SAY ANYTHING?

4 A NO.

5 Q YOUR STATEMENT, YOU GAVE A STATEMENT. DO YOU
6 REMEMBER THAT? AND DO YOU REMEMBER YOU SAID YOU HEARD A
7 GUY SCREAMING?

8 A THAT WAS AFTER.

9 Q AFTER WHAT?

10 A THAT WAS AFTER, WHEN EVERYTHING WAS OVER WITH, HE
11 SCREAMED.

12 Q WHO WAS SCREAMING?

13 A I GUESS IT WAS POP. IT HAD TO HAVE BEEN HIM.

14 Q WELL, COULD YOU SEE HIM TO KNOW IT WAS HIM?

15 A NO, NOT REALLY.

16 Q AND WHEN HE HAD HIS HANDS UP IN THE AIR, YOU DIDN'T
17 HEAR HIM SAY ANYTHING?

18 A HUH-UH.

19 MS. NIELSEN: COURT'S INDULGENCE, PLEASE.

20 THE COURT: ALL RIGHT.

21 (WHEREUPON THERE WAS A PAUSE).

22 (WHEREUPON QUESTIONING RESUMED).

23 Q DID YOUR CAR GET SHOT?

24 A YES, IT DID.

25 Q HOW MANY SHOTS DID IT HAVE, DO YOU KNOW?

1 A I THINK IT WAS ONE. THAT'S THE ONLY -- IT WAS IN THE
2 ROOF LIKE NEAR THE DRIVER'S SIDE.

3 Q WERE THERE ANY OTHER SHOTS THAT YOU REMEMBER?

4 A NO.

5 Q AFTER YOU SAW HENRY SCOTT WITH HIS HANDS UP LIKE
6 THIS, DID YOU SEE WHAT HAPPENED TO HIM AFTER THAT?

7 A HE JUST FELL.

8 Q TO THE GROUND?

9 A YEAH.

10 Q DID YOU EVER GO OVER THERE WHERE HE WAS?

11 A YEAH.

12 Q DID YOU SEE HIM?

13 A WHEN I RAN TO THE CAR, ME AND RODNEY, THAT'S HIS
14 NAME, ME AND HIM RAN BACK AT THE SAME TIME. RODNEY
15 GRABBED HIM. I WAS GOING TO CHECK MY CAR. I JUST STOPPED
16 AND JUST LOOKED AT HIM LIKE THAT, BUT RODNEY WAS HOLDING
17 HIM.

18 Q RODNEY WAS HOLDING HIM?

19 A UH-HUH.

20 Q WAS HENRY SCOTT MAKING ANY NOISE AT THAT TIME?

21 A NO.

22 Q PLEASE ANSWER ANY QUESTIONS THE DEFENSE ATTORNEYS
23 HAVE.

24 THE COURT: MR. DOBY?

25 CROSS-EXAMINATION BY MR. DOBY:

1 Q MS. BENN, YOU GAVE A WRITTEN STATEMENT TO THE POLICE;
2 DID YOU NOT?

3 A YES, I DID.

4 Q DID YOU REVIEW THAT WRITTEN STATEMENT BEFORE YOU
5 TESTIFIED TODAY?

6 A NO.

7 Q WHEN IS THE LAST TIME YOU SAW THAT WRITTEN STATEMENT?

8 A I HAVEN'T SEEN IT.

9 Q OKAY. DOES THAT LOOK LIKE THE STATEMENT THAT YOU
10 GAVE?

11 A YEAH.

12 Q IN THAT STATEMENT WHERE YOU GAVE THAT NIGHT SOON
13 AFTER THIS OCCURRED, DID YOU NOT?

14 A YEAH, THE SAME DAY.

15 Q SAME DAY?

16 A UH-HUH.

17 Q AS SOON AS ASSUME THE SHOOTING WAS FRESH IN YOUR MIND
18 AT THAT POINT?

19 A YEAH, I GUESS.

20 Q THAT STATEMENT DOESN'T SAY ANYTHING ABOUT HENRY SCOTT
21 HOLDING HIS HANDS UP AT ANY POINT; DOES IT?

22 A I HAD TOLD HIM THAT. WHETHER HE WROTE IT DOWN, I
23 MEAN, I DIDN'T SEEN IT SINCE, YOU KNOW, WHEN HE WAS
24 WRITING. I HAVEN'T SEEN IT.

25 Q ALL RIGHT. SO HE WROTE OUT THE STATEMENT?

1 A YEAH, THE SHERIFF, YEAH.

2 Q UH-HUH. YOU SIGNED THE STATEMENT?

3 A UH-HUH.

4 Q OKAY. YOU ONLY DESCRIBED ONE SHOOTER IN YOUR
5 STATEMENT; DID YOU NOT?

6 A I SAID IT WAS A DARK SKINNED DUDE. I DON'T KNOW WHO
7 HE WAS. I COULDN'T TELL YOU HOW HE LOOKED. ALL I COULD
8 TELL YOU HE WAS DARK SKINNED.

9 Q A DARK SKINNED FELLOW?

10 A YEAH.

11 Q REMEMBER WHAT HE WAS WEARING?

12 A NO.

13 Q JUST REMEMBER HIM HAVING DARK SKIN?

14 A YEAH.

15 Q AND HE WAS RUNNING AWAY FROM THE CLUB?

16 A YEAH.

17 Q AS A MATTER OF FACT, THERE WERE A LOT OF PEOPLE THAT
18 WERE RUNNING AWAY FROM THE CLUB AT THAT POINT, AND I THINK
19 YOU SAID THAT IN YOUR STATEMENT; DID YOU NOT?

20 A YEAH.

21 Q WHEN THAT HAPPENED?

22 A DURING THE TIME.

23 Q ALL OF A SUDDEN CHAOS OCCURS?

24 A DURING THE TIME, NOBODY WAS -- PEOPLE WAS OUT THERE,
25 BUT HE WAS THE ONLY ONE THAT I SEEN RUNNING FROM THE CLUB,

1 RUNNING AWAY FROM THE CLUB TOWARDS THAT. THAT'S THE ONLY
2 ONE I SAW.

3 Q I THINK IN THE STATEMENT YOU SAID THERE WERE A LOT OF
4 PEOPLE RUNNING AND PEOPLE WERE GETTING IN CARS AND
5 LEAVING?

6 A THAT WAS AFTER HEARING THE GUNSHOTS.

7 Q SO AT THAT POINT, CHAOS, PEOPLE ARE RUNNING
8 EVERYWHERE, GETTING IN CARS AND LEAVING?

9 A YES.

10 Q OKAY. THANK YOU. THAT'S ALL I HAVE.

11 THE COURT: MR. ROGERS?

12 CROSS-EXAMINATION BY MR. ROGERS:

13 Q MS. BENN, WHEN YOU SAW THIS -- YOU HAVE IDENTIFIED
14 THE PERSON THAT YOU SAW AS SHOOTING AS A DARK SKINNED GUY,
15 CORRECT?

16 A YEAH.

17 Q AND HE WAS RUNNING IN THAT GENERAL DIRECTION?

18 A YEAH.

19 Q AND THAT WAS NOT POP?

20 A NO.

21 Q POP WAS DARK SKINNED; WASN'T HE?

22 A I DON'T KNOW. NO, WHEN I RAN UP TO THE CAR, IT WAS
23 SOME BROWN SKINNED DUDE.

24 Q BROWN SKINNED GUY. SO THE GUY YOU SAW RUNNING WAS A
25 DARK SKINNED GUY?

1 A DARK SKIN.

2 Q AND WHEN YOU SAW POP, DID YOU SEE HIM GET SHOT?

3 A ALL I SAW WHEN HE WAS STANDING BY THE CAR, HE WAS
4 LIKE THIS (INDICATING).

5 Q OKAY.

6 A THE NEXT THING I KNOW, HE FELL TO THE GROUND.

7 Q AND YOU DIDN'T SEE HIM GET SHOT IN THE FRONT; DID
8 YOU?

9 A I DON'T KNOW.

10 Q YOU DON'T KNOW? OKAY. THANK YOU, MS. BENN.

11 THE COURT: MR. JORDAN?

12 MR. JORDAN: NO QUESTIONS, YOUR HONOR.

13 THE COURT: THANK YOU. MR. FINNEY?

14 MR. FINNEY: NO QUESTIONS.

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

16 RE-DIRECT EXAMINATION BY MS. NIELSEN:

17 Q MS. BENN, NEED YOU TO LOOK AT THIS STATEMENT. IS
18 THIS A STATEMENT THAT YOU GAVE?

19 A YES.

20 Q THAT STATEMENT JUST SAYS IT WAS A YOUNG BLACK MALE
21 WHO WAS RUNNING. IS THAT WHAT IT SAYS?

22 A UH-HUH.

23 Q AND ABOUT THE CARS, YOU SAID THAT THERE WERE A LOT OF
24 PEOPLE GETTING IN THEIR CARS AND LEAVING?

25 A THAT WAS AFTER, LIKE WHEN THEY -- WHEN THEY FOUND OUT

1 PEOPLE WAS SHOOTING, THEY LEFT, AND THIS -- THIS GUY WHEN
2 I SEEN RUNNING, THIS WAS BEFORE EVERYBODY WAS RUNNING,
3 RUNNING OUT THE CLUB.

4 Q THAT WAS BEFORE WHAT?

5 A THIS WAS BEFORE EVERYBODY WAS COMING OUT, YOU KNOW,
6 RUNNING TO GET IN THEIR CARS AND LEAVE.

7 Q OKAY. ALL RIGHT. DID YOU SEE WHERE HE WENT?

8 A NO.

9 Q WAS THERE A CAR THAT HE WAS RUNNING TOWARDS THAT YOU
10 SAW?

11 A NO, I DON'T KNOW.

12 Q SO YOU DON'T KNOW WHERE HE WENT?

13 A NO.

14 Q DID YOU SEE A CAR ANYWHERE NEAR WHERE HE WENT?

15 A NO, I COULDN'T TELL YOU.

16 Q HOW ABOUT LOOK AT THE LAST SENTENCE, LAST TWO LINES
17 OF YOUR STATEMENT AND TELL ME WHAT THE LAST TWO LINES
18 SAY.

19 A THE LAST TWO LINES?

20 COURT REPORTER: I CAN'T HEAR.

21 THE COURT: SORRY.

22 A I SAW A CAR LEAVING IN A HURRY IN THE DIRECTION THE
23 SHOOTER RAN, BUT I DON'T KNOW WHAT TYPE CAR.

24 Q SO YOU DID SEE A CAR LEAVING FROM WHERE THE SHOOTER
25 WENT?

1 A YEAH.

2 Q OKAY. I DON'T HAVE ANY FURTHER QUESTIONS.

3 THE COURT: THANK YOU. MS. BENN, YOU CAN STEP DOWN.

4 MR. FINNEY: YOUR HONOR? IN PLIGHT OF THOSE LAST
5 QUESTIONS MAY I ASK THE WITNESS--

6 THE COURT: I AGREE THAT WAS SOME NEW MATTER. YOU
7 CAN GO AHEAD.

8 CROSS-EXAMINATION BY MR. FINNEY:

9 Q MY NAME IS CHIP FINNEY. I JUST WANT TO ASK YOU A
10 QUESTION. THE STATEMENT THAT MS. TRUETT JUST SHOWED YOU,
11 DID YOU WRITE IT OUT BY HAND OR DID THE OFFICER WRITE IT
12 OUT?

13 A THE OFFICER WROTE IT OUT.

14 Q SO THIS IS NOT YOUR WRITING ON THIS STATEMENT?

15 A NO, IT ISN'T.

16 Q SO CAN YOU TELL US WHY THIS MORNING WHEN SHE ASKED
17 YOU IF YOU SAW A CAR YOU SAID NO, BUT WHEN SHE SHOWED YOU
18 THE STATEMENT YOU SAID YES?

19 A THIS WAS A YEAR AGO.

20 Q OKAY.

21 A SO I HAD TO -- THAT REFRESHED MY MEMORY. LIKE I
22 SAID, I HAVEN'T SEEN ANY STATEMENT SINCE, YOU KNOW, THE
23 OFFICER WROTE IT.

24 Q OKAY.

25 A THIS WAS A YEAR AGO.

1 Q ARE YOU -- DO YOU REMEMBER SEEING THAT CAR NOW THAT
2 YOUR MEMORY HAS BEEN REFRESHED?

3 A YES, BUT I COULDN'T TELL YOU WHAT KIND OF CAR. IT
4 WAS, YOU KNOW, IT WAS DARK IN THAT AREA.

5 Q WAS THERE ONLY ONE CAR LEAVING?

6 A AT THAT TIME, YES.

7 Q OKAY. AND CAN YOU POINT OUT WHERE IT WAS, WHERE YOU
8 SAW IT FOR THE FIRST TIME?

9 A WHEN I SEEN THE CAR, IT WAS GOING BACK TOWARDS THIS
10 WAY.

11 Q OKAY. YOU KNOW WHERE THE CAR STARTED FROM?

12 A NO, I COULDN'T TELL YOU THAT.

13 Q DO YOU KNOW WHERE THAT CAR WAS EVEN AT THE NIGHT
14 CLUB?

15 A IT WAS TURNING OUT.

16 Q OKAY. TURNING OUT OF WHERE?

17 A OUT OF THE LITTLE GRASS. I COULDN'T TELL YOU WHERE
18 THE CAR WAS PARKED AT.

19 Q I UNDERSTAND, BUT THAT'S WHAT I'M ASKING YOU. I
20 DIDN'T KNOW IF YOU WERE TELLING ME THAT CAR WAS COMING
21 FROM THE CLUB. NOW, YOU ARE SAYING IT WAS COMING OUT OF
22 THE PARKING AREA?

23 A WHERE ALL THE REST OF THE CARS WAS.

24 Q RIGHT. WHERE WAS THAT?

25 A IT WAS OVER IN THIS AREA.

1 Q OKAY. AND THAT DRIVEWAY, WOULD THE CAR HAD TO HAVE
2 MADE A LEFT TURN OUT ON TO THE PAVED ROAD?

3 A WHEN I SEEN IT, IT WAS GOING LEFT.

4 Q YES, MA'AM. SO DID -- DID THE CAR COME OUT THE
5 DRIVEWAY AND MAKE A LEFT TURN ON THE PAVED ROAD?

6 A YES, YES.

7 Q OKAY. THAT'S WHAT YOU SAW?

8 A YES.

9 Q THANK YOU, MA'AM. THAT'S ALL I NEED.

10 THE COURT: MS. NIELSEN, ANY FOLLOW-UP?

11 MS. NIELSEN: YES, SIR.

12 RE-DIRECT EXAMINATION BY MS. NIELSEN:

13 Q SHOW US -- DO YOU KNOW WHERE THAT HOUSE IS BESIDE THE
14 CLUB?

15 A UH-HUH, YEAH.

16 Q ALL RIGHT. WHAT DRIVEWAY DID YOU SEE THIS CAR COME
17 FROM?

18 A IT WAS MORE CARS -- MY CAR WAS RIGHT HERE AND IT WAS
19 A WHOLE BUNCH OF CARS OVER HERE. IT WAS COMING OUT THIS
20 WAY, BECAUSE WHEN I SEEN IT IT MADE THE LEFT.

21 Q BUT YOU DON'T HAVE ANY IDEA WHAT THAT CAR LOOKED
22 LIKE?

23 A NO.

24 Q SO IT MADE A LEFT TO GO BACK TOWARDS 15?

25 A UH-HUH.

1 Q THANK YOU. NOTHING FURTHER.

2 MR. JORDAN: JUDGE?

3 THE COURT: MR. JORDAN?

4 CROSS-EXAMINATION BY MR. JORDAN:

5 Q MA'AM, WERE YOU GIVEN A COPY OF YOUR STATEMENT THAT
6 NIGHT?

7 A NO.

8 Q WERE YOU ALLOWED -- DID YOU LOOK AT A COPY OF YOUR
9 STATEMENT BEFORE JUST NOW?

10 A NO.

11 Q THANK YOU.

12 MR. JORDAN: YOUR HONOR, NOTE A MOTION.

13 THE COURT: ANYTHING FURTHER, GENTLEMEN?

14 MR. DOBY: NO, SIR.

15 THE COURT: THANK YOU. YOU CAN STEP DOWN, MS. BENN.

16 (WHEREUPON THE WITNESS LEFT THE STAND).

17 MS. NIELSEN: YOUR HONOR, WE WOULD ASK THAT MS. BENN
18 BE EXCUSED.

19 THE COURT: WITHOUT OBJECTION, GENTLEMEN?

20 MR. DOBY: NO OBJECTION.

21 MR. FINNEY: NO.

22 MR. ROGERS: NO.

23 MR. JORDAN: NO.

24 MS. NIELSEN: THE STATE CALLS LEONARD SCOTT.

25 THE COURT: LEONARD SCOTT, PLEASE.

(WITNESS IN COURTROOM)

LEONARD SCOTT, BEING FIRST DULY
SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY MS. NIELSEN:

Q LEONARD, HOW OLD ARE YOU?

A TWENTY-EIGHT.

Q AND WHERE DO YOU LIVE?

A (NO RESPONSE).

Q DO YOU LIVE IN SUMTER OR CAMDEN OR LEE COUNTY? WHERE
DO YOU LIVE?

A SUMTER COUNTY.

Q WHO DO YOU LIVE WITH?

A MY FIANCEE.

Q OKAY. DO YOU WORK?

A YES.

Q WHERE DO YOU WORK?

A INTERLAKE.

Q IS THAT IN SUMTER?

A YES, YES, MA'AM.

Q OKAY. DO YOU KNOW -- DID YOU KNOW HENRY SCOTT?

A YES, MA'AM.

Q ARE YOU RELATED TO HIM?

A YES.

Q HOW ARE YOU RELATED TO HIM?

A MY NEPHEW.

1 Q AND HOW IS HE YOUR NEPHEW?

2 A THAT MY SISTER SON.

3 Q AND WHAT IS YOUR SISTER'S NAME?

4 A ANNIE OAKS.

5 Q IS SHE IN THE COURTROOM?

6 A YES, MA'AM.

7 Q WHERE IS SHE SITTING?

8 A RIGHT THERE (INDICATING).

9 Q SHE LEFT? IS SHE STILL IN HERE RIGHT THIS MINUTE?
10 THAT THING IS IN YOUR WAY; ISN'T IT?

11 A YEAH.

12 Q WAS SHE SITTING IN HERE EARLIER?

13 A YES, MA'AM.

14 Q OKAY. AND THAT IS HIS MAMA AND THAT IS YOUR SISTER?

15 A YES, MA'AM.

16 Q ALL RIGHT. DO YOU REMEMBER GOING TO DAVIS COUNTRY
17 CLUB ON NOVEMBER THE 14TH OF LAST YEAR?

18 A YES, MA'AM.

19 Q WHO DID YOU GO THERE WITH?

20 A ME, STEVEN AND MARTY.

21 Q NOW, STEVEN IS STEVEN JOHNSON?

22 A YES, MA'AM.

23 Q AND MARTY IS MARTY OAKS?

24 A YES, MA'AM.

25 Q SO YOU ACTUALLY RODE IN THE CAR WITH THEM?

1 A YES, MA'AM.

2 Q WHO WAS DRIVING THAT CAR?

3 A STEVEN.

4 Q OKAY. NOW, DO YOU REMEMBER ABOUT WHAT TIME IT WAS

5 WHEN YOU GOT THERE?

6 A NO, MA'AM.

7 Q WAS IT LATE AT NIGHT?

8 A YES, MA'AM.

9 Q WAS IT AFTER 12:00?

10 A YES, MA'AM.

11 Q WHERE HAD YOU BEEN BEFORE THAT?

12 A THE K.J.'S.

13 Q AND IS THAT ONE OF THE BARS THAT WAS -- THE CLUB THAT

14 WAS ON BROAD STREET IN SUMTER?

15 A YES, MA'AM.

16 Q DID YOU KNOW DELVIN WAITERS?

17 A YES, MA'AM.

18 Q WAS HE A FRIEND OF YOURS?

19 A YES.

20 Q ALL RIGHT. NOW, YOU DROVE. YOU WERE RIDING IN THE

21 CAR WITH STEVEN AND MARTY. TELL US WHAT HAPPENED WHEN

22 YA'LL GOT TO THE DAVIS COUNTRY CLUB.

23 A THAT WE APPROACHING THE CLUB--

24 Q CAN YOU TAKE THAT RULER THAT'S IN FRONT OF YOU AND ON

25 THAT DIAGRAM RIGHT THERE -- SEE THAT DIAGRAM --

- 1 A YEAH.
- 2 Q -- THAT SHOWS THE CLUB AND THE ROAD? YOU SEE THAT
- 3 CIRCULAR DRIVEWAY? THAT'S THE DRIVEWAY IN FRONT OF THE
- 4 CLUB.
- 5 A UH-HUH.
- 6 Q AND YOU SEE THE HIGHWAY DOWN THERE?
- 7 A RIGHT HERE?
- 8 Q THAT'S THE HIGHWAY RIGHT THERE.
- 9 A OH.
- 10 Q NOW, SHOW THE JURY WITH THAT POINTER WHERE YA'LL
- 11 PARKED WHEN YA'LL GOT THERE.
- 12 A ALL THREE CARS HAD PARKED RIGHT ON THE SIDE OF THE
- 13 ROAD.
- 14 Q OKAY. NOT DIRECTLY IN FRONT OF THE CLUB?
- 15 A NO, NOT -- NO, MA'AM.
- 16 Q NOW, DID YA'LL ALL GET OUT THE SAME TIME OR DID YOU
- 17 START WALKING TO THE CLUB?
- 18 A NO, MA'AM.
- 19 Q ALL RIGHT. TELL ME WHAT HAPPENED.
- 20 A AT FIRST THAT WHEN THERE BEEN ME, STEVEN AND MARTY
- 21 WAS APPROACHING THE CLUB.
- 22 Q ALL RIGHT. WHAT HAPPENED NEXT?
- 23 A AND RODNEY AND HENRY -- MARTY, HENRY AND DERRICK,
- 24 THEY WAS RIGHT BEHIND US.
- 25 Q SO YA'LL WEREN'T RIGHT TOGETHER BUT YA'LL WERE ALL

1 CLOSE TOGETHER?

2 A HUH?

3 Q YA'LL WERE CLOSE TOGETHER?

4 A NO, MA'AM.

5 Q NO? WELL, HOW FAR BEHIND YOU WERE THEY?

6 A THEY WAS -- THEY BEEN -- LIKE I SAY, THEY BEEN LIKE
7 ABOUT TWO OR THREE FEETS.

8 Q TWO OR THREE FEET BEHIND YOU?

9 A YEAH.

10 Q THAT'S PRETTY CLOSE; ISN'T IT?

11 A YEAH.

12 Q OKAY. NOW, WHEN YOU -- WHEN YOU GOT OUT OF THE CAR,
13 WHERE DID YA'LL GO?

14 A APPROACHING THE CLUB.

15 Q YEAH. TAKE THAT THING AND POINT OUT TO THE JURY
16 WHERE YOU WENT.

17 A I MEAN, AFTER WE GOT OUT THE CAR, WE WERE GOING
18 TOWARDS THE CLUB, YOU KNOW, GETTING READY TO DO--

19 THE COURT: KEEP YOUR VOICE UP, PLEASE SIR.

20 A I SAID, YOU KNOW, AFTER WE HAD GOT OUT THE CARS --

21 THE COURT: THANK YOU.

22 A -- AND WE WAS APPROACHING THE CLUB AND THAT, AND THAT
23 WHEN, WHEN EVERYTHING STARTED TO OCCUR.

24 Q AND WHERE WAS EVERYTHING THAT YOU SAID STARTED.
25 WHERE DID IT START OCCURRING?

1 A RIGHT, RIGHT HERE LIKE IN THE FRONT RIGHT THERE.

2 Q OKAY. NOW, WHAT HAPPENED? WHAT STARTED OCCURRING?

3 A THE ARGUMENTS.

4 Q WHO WAS ARGUING?

5 A WELL, THAT WHEN SEE ME AND MY NEPHEW AS WE WERE
6 APPROACHING THE CLUB, AND THAT WHEN ONE OF THE FELLOWS HAD
7 START ARGUING WITH HIM.

8 Q ALL RIGHT. DID YOU KNOW WHO THAT FELLOW WAS?

9 A LIKE I SAID, I REALLY DON'T EVEN KNOW HIM, YOU KNOW,
10 BUT...

11 Q ALL RIGHT. WHO STARTED THE ARGUMENT? DID HENRY
12 START THE ARGUMENT OR DID SOMEBODY ELSE START THE
13 ARGUMENT?

14 A NO, THE DUDE, HE STARTED THE ARGUMENT FIRST.

15 Q ALL RIGHT. NOW, DO YOU RECOGNIZE IN THE COURTROOM
16 THAT PERSON WHO STARTED ARGUING?

17 A YES.

18 Q WHERE IS HE SITTING?

19 A RIGHT THERE (INDICATING).

20 Q NOW, IN RELATION TO THIS DEFENSE TABLE, WHERE IS HE
21 SITTING AT THE DEFENSE TABLE?

22 A RIGHT THERE ON THE FIRST, FIRST ONE.

23 Q THE BLACK ON?

24 A YES. YES, MA'AM .

25 MS. NIELSEN: YOUR HONOR, WE WOULD HAVE THE RECORD

1 REFLECT THAT HE HAS IDENTIFIED MARCUS EVANS.

2 THE COURT: YES, MA'AM.

3 (WHEREUPON QUESTIONING RESUMED).

4 Q NOW, YOU DIDN'T KNOW HIS NAME WAS MARCUS EVANS; DID
5 YOU?

6 A NO, MA'AM.

7 Q NOW, BEFORE WE GO ANY FURTHER ABOUT WHAT ACTUALLY
8 HAPPENED THAT NIGHT, AT SOME POINT DID SOMEBODY SHOW YOU
9 THESE TWO LINE-UPS THAT ARE STATE'S EXHIBITS 3 AND 4?

10 A NO, MA'AM.

11 Q DID YOU EVER LOOK AT THOSE?

12 A YES, MA'AM.

13 Q OKAY. WHO SHOWED YOU THOSE?

14 A J.D.

15 Q ALL RIGHT. AND WHEN HE SHOWED THEM TO YOU, HOW DID
16 HE SHOW THEM TO YOU? DID HE GIVE YOU BOTH OF THEM AT ONE
17 TIME OR DID HE SHOW THEM TO YOU ONE AT A TIME? HOW DID HE
18 DO IT?

19 A HE SHOWED ME ONE OF THEM, LIKE ONE AT A TIME.

20 Q OKAY. DO YOU KNOW WHICH ONE HE SHOWED YOU FIRST?

21 A THIS ONE.

22 Q AND THIS IS STATE'S EXHIBIT 3? IS THAT 3?

23 A YEAH.

24 Q OKAY. NOW, DID YOU PICK SOMEBODY OUT OF THAT
25 LINE-UP?

1 A YES, MA'AM.

2 Q AND WHAT NUMBER DID YOU PICK OUT OF THAT LINE-UP?

3 A NUMBER ONE.

4 Q DID J.D. DELLINGER TELL YOU WHO HE WANTED YOU TO PICK

5 OUT OF THAT LINE-UP?

6 A NO, MA'AM.

7 Q WHY DID YOU PICK NUMBER ONE OUT OF THAT LINE-UP?

8 A BECAUSE HE WAS THE ONE OF THE SHOOTERS.

9 Q OKAY. DID YOU RECOGNIZE HIM FROM THAT NIGHT?

10 A YES, MA'AM.

11 Q OKAY. NOW, I AM GOING TO SHOW YOU THIS FORM AND ASK

12 YOU IF YOU RECOGNIZE THIS.

13 A YES, MA'AM. YES, MA'AM.

14 Q AND WHAT IS THAT?

15 A THE WITNESS LINE-UP.

16 Q DID YOU SIGN THAT?

17 A YES, MA'AM.

18 Q DID YOU MARK ON THAT FORM?

19 A YES, MA'AM.

20 Q WHAT DID YOU MARK?

21 A AN "X".

22 Q AND WHERE DID YOU MARK AN "X"?

23 A NUMBER ONE.

24 Q ALL RIGHT. AND DOES THAT AT THE TOP SAY THAT IT'S

25 FROM LINE-UP "A"?

1 A YES, MA'AM.

2 Q NOW, I AM GOING TO SHOW YOU ANOTHER FORM. FIRST OF
3 ALL LET'S LOOK AT THIS. YOU SEE THIS LINE-UP?

4 A YEAH.

5 Q AND THIS IS STATE'S EXHIBIT 4?

6 A YES.

7 Q DID J.D. DELLINGER SHOW YOU THAT LINE-UP?

8 A YEAH.

9 Q DID YOU PICK ANYBODY OUT OF THAT LINE-UP?

10 A NO, MA'AM.

11 Q AND I AM GOING TO SHOW YOU THIS OTHER FORM. IS THAT
12 ANOTHER FORM JUST LIKE THE ONE YOU HAVE ALREADY LOOKED AT?

13 A YES, MA'AM.

14 Q AND DID YOU MARK ANY CIRCLES ON THAT FORM?

15 A NO, MA'AM.

16 Q AND WHY DIDN'T YOU MARK ANY CIRCLES ON THAT FORM?

17 A BECAUSE I REALLY COULDN'T REMEMBER.

18 Q YOU COULDN'T IDENTIFY ANYBODY IN THIS LINE-UP; COULD
19 YOU?

20 A NO, NO, MA'AM.

21 Q SO YOU DIDN'T MARK A CIRCLE ON THAT FORM?

22 A NO, MA'AM.

23 MS. NIELSEN: YOUR HONOR, WE WOULD MOVE THESE IN AS
24 STATE'S EXHIBITS 8 AND 9.

25 THE COURT: 8 AND 9?

1 MS. NIELSEN: YES, SIR.

2 THE COURT: ANY OBJECTION, GENTLEMEN?

3 MR. DOBY: NO, SIR.

4 THE COURT: HEARING NO OBJECTION, STATE'S 8 AND 9.

5 (STATE'S EXHIBITS NO. 8 AND 9 MARKED FOR
6 EVIDENCE.)

7 (WHEREUPON QUESTIONING RESUMED).

8 Q ALL RIGHT. SO MARCUS EVANS STARTED AN ARGUMENT.
9 TELL US WHAT HAPPENED AFTER THAT.

10 A TALKING ABOUT AFTER THE ARGUMENT?

11 Q WHEN THE ARG -- DID YOU HEAR ANYTHING THAT MARCUS
12 EVER OR HENRY WERE SAYING?

13 A I JUST -- NO, THEY JUST WAS ARGUING.

14 Q WELL, COULD YOU HEAR WHAT THEY WERE ARGUING ABOUT?

15 A WELL, THEY WAS ARGUING ABOUT SAY WHAT -- WELL, ASKED
16 WHAT, YOU KNOW, WHAT HE GOING TO DO NOW, YOU KNOW WHAT I'M
17 SAYING, THEY CAN HANDLE THIS RIGHT NOW.

18 Q WHO SAID THAT?

19 A MARCUS.

20 Q AND WHAT WAS HENRY DOING?

21 A YOU KNOW, HE BEEN DOING -- HE BEEN ARGUING BACK, YOU
22 KNOW.

23 Q OKAY. WHAT HAPPENED AFTER THAT?

24 A THAT WHEN EVERYTHING START, START-UP.

25 Q ALL RIGHT. WHAT STARTED UP?

1 A THAT WHEN EVERYTHING STARTED UP, YOU KNOW, ABOUT...

2 Q ALL RIGHT. TELL ME. WHAT DID YOU SEE MARCUS EVANS
3 DO?

4 A I MEAN, HE WAS, YOU KNOW WHAT I'M SAYING, HE WAS JUST
5 STANDING THERE. THEY WAS ARGUING. AND THAT WHEN
6 EVERYTHING, YOU KNOW WHAT I'M SAYING, EVERYTHING STARTED
7 GOING ON AND THEY WAS ARGUING, AND THAT WHEN EVERYTHING,
8 YOU KNOW WHAT I'M SAYING, EVERYTHING JUST STARTED
9 HAPPENING.

10 Q I'M TRYING TO GET YOU TO TELL US WHAT WAS HAPPENING.

11 A OH, WHAT WAS HAPPENING WAS THAT WHEN THEY START
12 ARGUING AND THAT WHEN WHAT YOU CALL -- I MEAN MARCUS WAS--

13 Q WHAT DID MARCUS DO OR SAY?

14 A HUH?

15 Q WHAT DID MARCUS EVANS DO OR SAY?

16 A THAT WAS, YOU KNOW WHAT I'M SAYING, THEY CAN HANDLE
17 THIS RIGHT NOW.

18 Q AND WHAT HAPPENED AFTER THAT?

19 A THAT WHEN...

20 Q LEONARD, DID YOU SEE ANYBODY WITH GUNS?

21 A NO, MA'AM.

22 Q OKAY. DID YOU SEE ANY GUNFIRE?

23 A NO, MA'AM..

24 Q OKAY. WELL, HOW DID YOU PICK -- YOU SAID THAT YOU
25 PICKED ONE OF THE SHOOTERS OUT OF THAT LINE-UP BUT YOU

1 DIDN'T SEE ANYBODY SHOOTING OR SEE ANY GUNS. HOW DID YOU
2 PICK HIM OUT AS A SHOOTER?

3 A I MEAN HOW, YOU KNOW, HOW IT WAS WHEN THEY BEEN
4 ARGUING, THAT WHEN, YOU KNOW, HE -- HE WAS GOING IN HIS
5 BACK REACHING FOR HIS, YOU KNOW, I RECKON A GUN.

6 Q WHO WAS REACHING FOR A GUN?

7 A MARCUS.

8 Q TELL US HOW YOU KNOW THAT.

9 A BECAUSE, YOU KNOW, WHEN THEY BEEN ARGUING, WE BEEN
10 RIGHT -- WHEN THE -- WHEN IT OCCURRED, THAT YOU KNOW WHEN
11 EVERYBODY BEEN OUT THERE WHEN THEY BEEN ARGUING.

12 Q HOW CLOSE WERE YOU WHEN THEY WERE ARGUING?

13 A I, YOU KNOW, I BEEN RIGHT THERE WHEN THEY WERE
14 ARGUING.

15 Q OKAY. AND YOU COULD SEE WHO WAS ARGUING, RIGHT?

16 OKAY. NOW, TELL ME ABOUT THE SHOOTING.

17 A THAT WHEN THEY START, YOU KNOW, THEY START SHOOTING.

18 Q WHO STARTED SHOOTING?

19 A MARCUS.

20 Q OKAY. WHO WAS HE SHOOTING AT?

21 A POP.

22 Q IS POP HENRY SCOTT?

23 A YEAH, HENRY SCOTT, YES.

24 Q YA'LL CALL HIM POP, THAT'S HIS NICK NAME?

25 A YES, MA'AM.

1 Q NOW, WHAT WAS HENRY DOING? WHAT WAS POP DOING?

2 A HE WAS, YOU KNOW, YOU KNOW, ARGUING. THAT WHEN HE
3 WENT AND -- HE WENT AND GOT HIS GUN.

4 Q AND WHERE DID HE GO TO GET A GUN?

5 A FROM THE CAR.

6 Q NOW, YOU SAW HIM GO TO THE CAR. DID YOU SEE HIM GO
7 TO THE CAR?

8 A YES, MA'AM.

9 Q ALL RIGHT. DID YOU TRY TO STOP HIM FROM GOING TO THE
10 CAR?

11 A YES, MA'AM.

12 Q WHY DID YOU TRY TO STOP HIM FROM GOING TO THE CAR?

13 A BECAUSE, YOU KNOW, I BEEN TRYING TO, YOU KNOW, STOP
14 -- STOP THIS RIOT.

15 Q BUT POP WENT TO THE CAR ANY WAY?

16 A YES, MA'AM.

17 Q NOW, DID YOU SEE HIM GET THE GUN?

18 A NO.

19 Q DID YOU SEE POP WITH A GUN?

20 A NO, MA'AM.

21 Q ALL RIGHT, LEONARD. DO YOU REMEMBER GIVING A
22 STATEMENT TO LAW ENFORCEMENT?

23 A YES, MA'AM.

24 Q AND LOOK AT THAT AND TELL ME IF THAT IS YOUR
25 STATEMENT.

- 1 A YES, MA'AM.
- 2 Q NOW, WILL YOU LOOK IN THERE AND SEE IF IT SAYS
3 ANYTHING ABOUT YOU SEEING POP AND WANTING TO GET THE GUN
4 AND IF YOU SAW A GUN OR NOT.
- 5 A YEAH. YES, MA'AM.
- 6 Q ALL RIGHT. WHAT DOES IT SAY? DOES THAT REFRESH YOUR
7 MEMORY ABOUT WHAT HAPPENED?
- 8 A YES, MA'AM.
- 9 Q DOES IT SAY THAT YOU SAW POP GO TO GET A GUN?
- 10 A YES, MA'AM.
- 11 Q AND WHAT KIND OF GUN DID YOU SEE?
- 12 A A BLACK PISTOL.
- 13 Q NOW, DID YOU ACTUALLY SEE THAT, THE BLACK PISTOL?
- 14 A YES, MA'AM.
- 15 Q OKAY. AND YOU SAW HENRY GET THAT?
- 16 A YES, MA'AM.
- 17 Q NOW, YOU SAW HENRY GET THE GUN. DID YOU SEE HIM FIRE
18 THE GUN?
- 19 A NO, MA'AM.
- 20 Q DID YOU SEE SOME GUNFIRE OR DID YOU JUST HEAR
21 GUNFIRE?
- 22 A I JUST HAD HEARD GUNFIRE.
- 23 Q WHAT DID YOU DO WHEN YOU -- WHEN THE SHOTS STARTED?
- 24 A DUCK DOWN.
- 25 Q OKAY. YOU DUCKED DOWN. DID YOU HEAR A LOT OF SHOTS?

1 A YEAH.

2 Q ALL RIGHT. DID YOU SEE WHAT HAPPENED TO HENRY AFTER
3 HE WAS SHOT?

4 A HE WAS, YOU KNOW, LYING ON THE GROUND.

5 Q OKAY. HE WAS LYING ON THE GROUND. DID YOU GO OVER
6 THERE WHERE HE WAS?

7 A YES, MA'AM.

8 Q OKAY. TAKE THAT THING AND SHOW THE JURY WHERE HENRY
9 WAS AFTER THE SHOOTING WAS OVER.

10 A HE WAS -- THE CAR, HE WAS LAYING RIGHT THERE ON THE
11 SIDE RIGHT THERE.

12 Q OKAY. NOW, DO YOU REMEMBER WHAT MARCUS EVANS HAD
13 ON? DO YOU WANT YOUR STATEMENT AGAIN?

14 A YEAH.

15 Q LOOK IN THERE AND SEE IF YOU GAVE A DESCRIPTION OF
16 WHAT MARCUS EVANS HAD ON.

17 A BLACK PANTS WITH A PLAID BLACKISH SHIRT.

18 Q DOES IT SAY IT HAD SOME WHITE IN THE SHIRT? JUST
19 READ WHAT THAT SENTENCE SAYS.

20 A BACK PANTS AND A PLAID BLACKISH WITH WHITE IN IT
21 SHIRT, YES.

22 Q OKAY. AND IT SAYS YOU COULDN'T REMEMBER WHAT THE
23 OTHER PERSON HAD ON?

24 A NO, MA'AM.

25 Q ALL RIGHT. DID YOU SEE TWO GUYS RUNNING SOMEWHERE?

- 1 A YES, MA'AM.
- 2 Q WHERE WERE THEY GOING?
- 3 A DOWN THE ROAD, HIGHWAY 15.
- 4 Q WERE THEY GOING TO A CAR?
- 5 A YES, MA'AM.
- 6 Q AND WHAT DID THAT CAR LOOK LIKE?
- 7 A A BURGUNDY CADILLAC.
- 8 Q DID YOU SEE THAT BURGUNDY CADILLAC?
- 9 A YES.
- 10 Q NOW, HAD YOU SEEN THAT BURGUNDY CADILLAC BEFORE THE
11 SHOOTING?
- 12 A YES, MA'AM.
- 13 Q CAN YOU TAKE THAT POINTER AND SHOW THE JURY WHERE
14 THAT BURGUNDY CADILLAC WAS WHEN YOU FIRST SAW IT?
- 15 A IT WAS PARKED RIGHT THERE WITH THE -- AT THE FRONT.
- 16 Q AND WHEN WAS THAT THAT YOU SAW IT PARKED THERE, DO
17 YOU REMEMBER?
- 18 A YES, THAT WHEN, YOU KNOW, WE WAS GOING TO THE CLUB,
19 GETTING READY TO GO INTO THE CLUB.
- 20 Q ALL RIGHT. WHEN YOU SAW IT PARKED OUT THERE, DID YOU
21 SEE ANY PEOPLE IN IT OR BESIDE IT?
- 22 A YES.
- 23 Q TELL US ABOUT THAT.
- 24 A I MEAN, YOU KNOW, I JUST SAW FOUR DUDES.
- 25 Q YOU SAW WHAT?

- 1 A FOUR GUYS.
- 2 Q YOU SAW FOUR GUYS?
- 3 A YEAH.
- 4 Q WHERE WERE THOSE FOUR GUYS?
- 5 A THEY WAS STANDING RIGHT THERE BY THE CAR.
- 6 Q WELL, DID YOU KNOW ANY OF THOSE GUYS?
- 7 A NO, I DIDN'T KNOW NONE OF THEM.
- 8 Q WERE ANY OF THEM ANYBODY YOU RECOGNIZE NOW?
- 9 A YES.
- 10 Q WHO DID YOU SEE THAT YOU RECOGNIZE NOW?
- 11 A REPEAT THAT AGAIN.
- 12 Q AT THE TIME THAT YOU SAW FOUR GUYS SAID YOU DIDN'T
- 13 RECOGNIZE, YOU DIDN'T KNOW ANY OF THEM, RIGHT?
- 14 A NO, I DIDN'T KNOW NONE OF THEM.
- 15 Q DO YOU NOW KNOW WHO ANY OF THEM WERE?
- 16 A YEAH.
- 17 Q WHO DO YOU KNOW NOW?
- 18 A THE FOUR GUYS RIGHT THERE.
- 19 Q YOU ARE SAYING YOU -- THESE FOUR GUYS?
- 20 A YES, MA'AM.
- 21 Q ALL RIGHT, LEONARD. WHEN YOU SAW THE FOUR GUYS WHEN
- 22 YA'LL FIRST GOT THERE, WERE THEY IN THE CAR OR OUT OF THE
- 23 CAR?
- 24 A THEY WAS OUT THE CAR.
- 25 Q ALL FOUR OF THEM?

1 A YEAH.

2 Q NOW, WHEN YA'LL WERE GOING UP TO THE CLUB, WHEN YA'LL
3 WERE WALKING TOWARDS THE CLUB --

4 A YES.

5 Q -- WHAT DID THESE FOUR GUYS DO?

6 A I'M -- I MEAN, THAT WASN'T EVEN, YOU KNOW, THAT WHEN
7 THE ARGUMENT STARTED, HE JUST...

8 Q HOW MANY OF THE GUYS THAT WERE AT THE CAR WERE
9 INVOLVED IN THE ARGUMENT?

10 A ONE.

11 Q OKAY. AND IS THAT MARCUS EVANS OR IS THAT SOMEBODY
12 ELSE?

13 A NO, THAT'S MARCUS EVANS.

14 Q NOW, YOU NEVER SAW OR DID YOU SEE ANYTHING THAT THOSE
15 OTHER THREE GUYS DID?

16 A NO, I DON'T REMEMBER, NO.

17 Q NOW, YOU SAID THAT WHEN YOU FIRST SAW THE CAR WHEN
18 YA'LL GOT TO THE CLUB, IT WAS UP THERE CLOSE TO THE SIDE
19 OF THE CLUB?

20 A YEAH.

21 Q DID YOU SEE IT MOVE FROM THERE?

22 A YES, MA'AM.

23 Q TELL US WHERE YOU SAW IT MOVE.

24 A IT WAS -- WHAT THEY DID AFTER THIS, IT HAD BACKED UP
25 WHERE THE CAR BEEN LIKE THAT AND IT BACKED.

1 Q YOU NEED TO SPEAK UP, NOW.

2 A THE CAR WAS RIGHT THERE AND IT BACKED UP, THEN IT
3 WENT ON I'M GOING TO SAY AROUND HERE.

4 Q AND THEN WHERE DID IT GO?

5 A ON THE ROAD.

6 Q OKAY. NOW, WHEN DID IT MOVE FROM THERE AND GO AROUND
7 THAT ROAD AND COME BACK OUT ON THE HIGHWAY? WHEN WAS
8 THAT?

9 A REPEAT THAT AGAIN.

10 Q WHEN YOU SAW THE CAR MOVED, MOVE --

11 A YEAH.

12 Q -- WAS THAT BEFORE, DURING OR AFTER THE SHOOTING?

13 A AFTER.

14 MS. NIELSEN: COURT'S INDULGENCE, PLEASE.

15 THE COURT: YES, MA'AM.

16 (WHEREUPON THERE WAS A PAUSE).

17 (WHEREUPON QUESTIONING RESUMED).

18 MS. NIELSEN: PLEASE -- LEONARD, PLEASE ANSWER ANY
19 QUESTIONS THE DEFENSE ATTORNEYS HAVE.

20 THE COURT: MR. DOBY, YOU CAN CROSS-EXAMINE.

21 CROSS-EXAMINATION BY MR. DOBY:

22 Q MR. SCOTT, HOW DO YOU KNOW THAT FELLOW'S NAME IS
23 MARCUS EVANS?

24 A BY THE LINE-UP.

25 Q DOES IT GOT A NAME ON THE LINE-UP?

1 A NO, SIR.

2 Q DID THE POLICE TELL YOU THE NAMES OF THOSE PEOPLE
3 THAT -- BEFORE YOU TOOK THE LINE-UP?

4 A NO, SIR.

5 Q SO HOW DID YOU COME UP WITH THE NAME OF MARCUS EVANS,
6 DID THE POLICE TELL YOU?

7 A YES.

8 Q OKAY. DO YOU REMEMBER WHEN THEY TOLD YOU --

9 A NO, I DON'T REMEMBER.

10 Q -- BEFORE OR AFTER YOU GAVE THAT STATEMENT THAT YOU
11 HAVE THERE?

12 A THAT WERE AFTER.

13 Q AFTER THE STATEMENT? YOU GAVE THIS STATEMENT ON
14 NOVEMBER THE 15TH?

15 A YES.

16 Q WHICH WOULD HAVE BEEN THE DAY AFTER THIS HAPPENED; IS
17 THAT RIGHT?

18 A YES, SIR.

19 Q DID YOU COME UP TO THE POLICE OR DID THEY GO OUT TO
20 YOUR HOUSE?

21 A THEY, NO, I COME DOWN -- I COME TO -- I COME HERE.

22 Q OKAY. AND YOU TALKED -- THERE'S TWO WITNESSES ON
23 THERE, DANIEL SIMON AND J.D. DELLINGER; IS THAT RIGHT?

24 A YES, SIR.

25 Q SO YOU GAVE THEM THIS STATEMENT, RIGHT?

1 A YES, SIR.

2 Q AND THEN THEY TYPED THIS STATEMENT, YOU LOOKED AT IT,
3 YOU SIGNED IT; CORRECT?

4 A YES, SIR.

5 Q AND THAT WAS A DAY AFTER THIS OCCURRED, CORRECT?

6 A YES, SIR.

7 Q NOW, ON THAT STATEMENT YOU SAY WHEN YOU GOT TO THE
8 CLUB THERE WAS SOME GUYS STANDING BY A BURGUNDY CADILLAC
9 AND YOU BELIEVE THAT IT WAS THREE OF THEM, CORRECT?

10 A NO.

11 Q YOU DON'T SAY THAT IN YOUR STATEMENT?

12 A NO.

13 Q LET ME POINT YOU TO THIS SENTENCE. YOU START RIGHT
14 THERE. I DON'T KNOW ANY OF THE GUYS. I THINK IT WAS
15 THREE OF THEM. ISN'T THAT WHAT IS IN YOUR STATEMENT?

16 THE COURT: MR. SCOTT, IS THAT WHAT YOUR STATEMENT
17 SAYS?

18 THE WITNESS: I'M TRYING TO SEE.

19 THE COURT: WILL YOU PUBLISH THAT PART OF THE
20 STATEMENT PLEASE, MR. DOBY? ASK HIM IF YOU READ IT
21 CORRECTLY. LET'S SEE IF YOU CAN GET AN ANSWER OUT OF HIM
22 THAT WAY.

23 (WHEREUPON QUESTIONING RESUMED).

24 Q MR. SCOTT, IN YOUR STATEMENT YOU SAY I DIDN'T KNOW
25 ANY OF THE GUYS. I THINK IT WAS THREE OF THEM.

1 THE COURT: DID HE READ THAT CORRECTLY, MR. SCOTT?

2 THE WITNESS: YES.

3 THE COURT: OKAY. THANK YOU. MOVE ON.

4 A YEAH.

5 Q NOW, MR. SCOTT, YOU ALSO STATE -- SAY IN THAT
6 STATEMENT IMMEDIATELY AFTER THAT SENTENCE AT THAT TIME MY
7 NEPHEW HENRY SCOTT WENT BACK TO THE CAR AND GOT HIS GUN,
8 CORRECT?

9 A YES, SIR.

10 Q IN THAT STATEMENT YOU DON'T MENTION ANYTHING ABOUT
11 ANY ARGUMENTS; DO YOU?

12 A NO.

13 Q HENRY SCOTT WENT BACK TO HIS CAR, HE HAD THE GUN IN
14 HIS HAND. THAT IS WHAT YOU SAY IN YOUR STATEMENT; DON'T
15 YOU? AS A MATTER OF FACT, YOU SAY I GRABBED HIM FROM
16 BEHIND, TALKING ABOUT HENRY SCOTT, BUT HE PULLED AWAY AND
17 WENT TO THE CAR AND GOT A BLACK PISTOL, CORRECT?

18 A YES.

19 Q SO HE HAD THE GUN IN HIS HAND, CORRECT?

20 A I DON'T REMEMBER SEEING NO GUN.

21 Q ALL RIGHT. YOU GAVE THIS STATEMENT TO THE POLICE THE
22 DAY AFTER IT HAPPENED, CORRECT?

23 A YEAH.

24 Q NOW, YOU THEN GO ON AND SAY HENRY CAME BACK WALKING
25 BACK TO WHERE THE GUYS WAS AT, THAT'S WHEN I HEARD ABOUT

1 TEN ROUNDS WENT OFF. I DUCKED DOWN FOR A COUPLE OF
2 SECONDS. YOU DUCKED WHILE THIS WAS GOING ON?

3 A YES.

4 Q YOU THEN SAY THE VERY NEXT THING IN YOUR STATEMENT I
5 DUCKED DOWN FOR A COUPLE OF SECONDS, THEN I RAN OVER TO
6 WHERE HENRY WAS LYING ON THE GROUND, CORRECT?

7 A YEAH.

8 Q AT NO TIME IN YOUR STATEMENT THAT YOU GAVE TO THE
9 POLICE THE DAY AFTER THIS OCCURRED DID YOU DESCRIBE THE
10 SHOOTING ITSELF?

11 A YES.

12 Q YOU DO?

13 A REPEAT THAT AGAIN, NOW.

14 Q AT NO TIME IN THE STATEMENT THAT YOU GAVE TO THE
15 POLICE DID YOU DESCRIBE HOW THE SHOOTING OCCURRED. IS
16 THAT TRUE, MR. SCOTT?

17 A REPEAT THAT AGAIN.

18 Q YOU SAY AND CORRECT ME IF I DON'T READ IT CORRECTLY,
19 BUT YOUR STATEMENT SAYS I DUCKED DOWN FOR A COUPLE OF
20 SECONDS, THEN I RAN OVER TO WHERE HENRY WAS LYING DOWN ON
21 THE GROUND. YOU DON'T DESCRIBE HOW THE SHOOTING OCCURRED
22 IN YOUR STATEMENT; DO YOU?

23 A YEAH, HE WAS DUCKED -- I MEAN, I WAS DUCKING DOWN AND
24 HE WAS NOT DOWN ON THE GROUND.

25 Q SO YOU DUCKED DOWN AND THE NEXT THING YOU REMEMBER IS

1 GOING OVER TO WHERE HENRY SCOTT WAS LYING ON THE GROUND?

2 A YES.

3 Q YOU DESCRIBE THAT YOU HEARD SHOTS GOING ON IN YOUR
4 STATEMENT.

5 A YEAH.

6 Q YOU DO NOT DESCRIBE THE WAY THAT THE SHOOTING
7 OCCURRED; DID YOU?

8 A NO.

9 Q OKAY. NOW, YOU ALSO GAVE A DESCRIPTION THAT NIGHT OF
10 WHAT YOU SAID THE GUY WHO WAS DOING THE SHOOTING WAS
11 WEARING BLACK PANTS AND A BLACK PLAIDISH WITH SOME WHITE
12 IN IT SHIRT, CORRECT?

13 A YEAH.

14 Q BUT THEN YOU GO AROUND AGAIN WITH NO PRIOR MENTION OF
15 ANY BUT THAT ONE PERSON AND THEN YOU DESCRIBE TWO
16 SHOOTERS.

17 A YEAH.

18 Q ALL RIGHT. SO IN THE STATEMENT YOU DON'T SAY
19 ANYTHING EXCEPT ONE SHOOTER TO BEGIN WITH, CORRECT?

20 A YEAH.

21 Q AND THEN -- OH BY THE WAY, THERE HAPPENS TO BE
22 ANOTHER SHOOTER AS WELL. IS THAT RIGHT, MR. SCOTT?

23 A REPEAT THAT AGAIN.

24 Q YOU DESCRIBE ONLY ONE SHOOTER DURING YOUR STATEMENT?

25 A YEAH.

1 Q AND THEN THE LAST PART SAYS THERE WERE TWO SHOOTERS?

2 A YEAH.

3 Q YOU NEVER DESCRIBE BUT ONE SHOOTER IN THE FIRST PART
4 OF YOUR STATEMENT?

5 A YEAH, YES, SIR.

6 Q AND THEN THE SECOND -- THE LAST PART SAYS THAT THERE
7 WERE MORE THAN ONE SHOOTER.

8 A YES, SIR, YEAH.

9 Q YOU CAN'T -- DID YOU GIVE A DESCRIPTION TO THE POLICE
10 OF WHAT THIS SECOND SHOOTER WAS WEARING?

11 A NO, SIR.

12 Q YOU AT ONE POINT SAID THAT YOU HAD NEVER SEEN ANYONE
13 WITH GUNS AND DIDN'T SEE THE GUNFIRE ITSELF TO MS.
14 NIELSEN; IS THAT RIGHT?

15 A YES, SIR.

16 Q YOU WERE DUCKING DOWN WHILE THESE SHOTS WERE BEING
17 FIRED, CORRECT?

18 A YES, SIR.

19 Q OKAY. THANK YOU. THAT'S ALL I HAVE.

20 THE COURT: MR. ROGERS, YOU MAY CROSS-EXAMINE.

21 CROSS-EXAMINATION BY MR. ROGERS:

22 Q MAY IT PLEASE THE COURT. MR. SCOTT, BASICALLY WHAT
23 YOU ARE SAYING ABOUT WHAT YOU TESTIFIED HERE TODAY THAT IS
24 THAT YOU SAW RON TAYLOR OUT THERE, BUT HE WASN'T ONE OF
25 THE SHOOTERS; ISN'T THAT RIGHT?

1 A NO, I AIN'T SAYING THAT.

2 Q OKAY. YOU GAVE A STATEMENT ON THE 15TH AND YOU SAY
3 YOU SAW TWO PEOPLE SHOOTING?

4 A YEAH.

5 Q DID YOU ACTUALLY SEE TWO PEOPLE SHOOTING MR. SCOTT OR
6 YOU JUST SAYING WHAT YOU HEARD PEOPLE SAY?

7 A NO.

8 Q YOU ACTUALLY SAW TWO PEOPLE?

9 A YEAH.

10 Q OKAY. AND YOU TOLD THEM THAT THE NEXT DAY FROM THE
11 -- WHEN THIS HAPPENED?

12 A YES, SIR.

13 Q OKAY. AND THEN TWO WEEKS LATER YOU WERE SHOWN
14 STATE'S EXHIBIT 3, A PHOTO LINE-UP?

15 A YEAH.

16 Q AND YOU WERE ASKED COULD YOU IDENTIFY ANYBODY FROM
17 THAT LINE-UP AS ONE OF THE SHOOTERS?

18 A YEAH.

19 Q AND YOU COULD NOT?

20 A NO.

21 Q OKAY. BUT THEN TODAY IN COURT, YOU WEREN'T ASKED
22 WHEN YOU WERE LOOKING AT -- ASKED TO LOOK AT THIS LINE-UP
23 TWO WEEKS LATER, DID YOU SEE ANYBODY IN THAT LINE-UP THAT
24 WAS OUT THERE THAT NIGHT; WERE YOU--

25 A REPEAT THAT AGAIN.

1 Q YOU WERE NOT ASKED WHEN THE POLICE SHOWED YOU THIS
2 LINE-UP DO YOU SEE ANYBODY IN THAT LINE-UP THAT WAS OUT
3 THERE THAT NIGHT. YOU WEREN'T ASKED THAT?

4 MS. NIELSEN: YOUR HONOR, HE SAID STATE'S EXHIBIT 3
5 WHICH IS THE LINE-UP.

6 MR. ROGERS: I APOLOGIZE.

7 MS. NIELSEN: ARE YOU LOOKING AT THE OTHER ONE?

8 MR. ROGERS: I APOLOGIZE. IT'S 4.

9 THE COURT: RIGHT.

10 (WHEREUPON QUESTIONING RESUMED).

11 Q ALL RIGHT. LET ME GO THROUGH IT AGAIN. YOU WERE NOT
12 ASKED TO IDENTIFY THE PEOPLE THAT WERE OUT THERE; WERE
13 YOU?

14 A YEAH.

15 Q YOU WERE ASKED TO IDENTIFY THE PEOPLE THAT WERE OUT
16 THERE OR THE PEOPLE THAT WERE SHOOTING?

17 A NO, THE PEOPLE THAT WERE SHOOTING.

18 Q RIGHT. MS. NIELSEN JUST ASKED YOU IN COURT JUST NOW
19 DO YOU SEE ANYBODY THAT WAS OUT THERE AND YOU SAID THE
20 FOUR GUYS, RIGHT?

21 A YES, YEAH.

22 Q OKAY. BUT WHEN YOU WERE ASKED TWO WEEKS AFTER THE
23 SHOOTING IF YOU COULD LOOK AT THIS AND SEE IF YOU
24 RECOGNIZED ANYONE AS ONE OF THE SHOOTERS, YOU COULD NOT?

25 A NO.

1 Q ALL RIGHT. NOW, AFTER THE GUNFIRE YOU WENT OVER TO
2 WHERE MR. SCOTT WAS?

3 A YES.

4 Q WERE YOU THE FIRST PERSON THERE?

5 A NO.

6 Q WERE THERE OTHER PEOPLE AROUND HIS BODY, AROUND HIM?

7 A YES.

8 Q DID YOU DO ANYTHING TO HIM, HOLD HIM, PUT A COAT OVER
9 HIM OR ANYTHING LIKE THAT?

10 A NO.

11 Q DID YOU SEE HIS GUN, THE BLACK PISTOL THAT HE HAD
12 GOTTEN FROM THE CAR THERE WHEN YOU WENT OVER TO THE BODY?

13 A NO.

14 Q ALL RIGHT. THANK YOU, MR. SCOTT.

15 THE COURT: THANK YOU. MR. JORDAN?

16 MR. JORDAN: MAY IT PLEASE THE COURT.

17 CROSS-EXAMINATION BY MR. JORDAN:

18 Q MR. SCOTT, YOU DIDN'T SEE MY CLIENT ANYWHERE AROUND
19 AT THE TIME OF THE SHOOTING OR SHORTLY THEREAFTER; DID
20 YOU, SIR?

21 A NO.

22 Q THANK YOU.

23 THE COURT: MR. FINNEY?

24 MR. FINNEY: MAY IT PLEASE THE COURT.

25 CROSS-EXAMINATION BY MR. FINNEY:

1 Q MR. SCOTT, DID YOU SEE MY CLIENT ANYWHERE AROUND AT
2 THE TIME OF THE SHOOTING OR ANY TIME AFTER?

3 A NO.

4 MR. FINNEY: NOTHING FURTHER.

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

6 MS. NIELSEN: YOUR HONOR, I DON'T HAVE ANY FURTHER
7 QUESTIONS.

8 THE COURT: THANK YOU. MR. SCOTT, YOU CAN STEP
9 DOWN.

10 (WHEREUPON THE WITNESS LEFT THE STAND).

11 THE COURT: LADIES AND GENTLEMEN, WE WILL STOP AT
12 THIS POINT FOR THE MORNING RECESS. I WILL SEND YOU TO
13 YOUR JURY ROOM FOR JUST A FEW MOMENTS. WE WILL GET YOU
14 BACK OUT AT 11:30 TO CONTINUE THE MORNING'S WORK. PLEASE
15 DON'T DISCUSS THIS CASE AMONG YOURSELVES WHILE YOU'RE IN
16 THE JURY ROOM. THANK YOU.

17 (WHEREUPON THE JURY LEFT THE COURTROOM AT 11:18
18 A.M.).

19 THE COURT: ALL RIGHT, FOLKS. WE WILL TAKE ABOUT 15
20 MINUTES. THANK YOU.

21 (WHEREUPON A BRIEF RECESS WAS TAKEN).

22 MS. NIELSEN: I'D LIKE TO RENEW MY MOTION AGAIN THAT
23 I HAVE HIM COME IN OUTSIDE THE PRESENCE OF THE JURY,
24 TESTIFY ABOUT HIS PRIOR OPPORTUNITY TO SEE MARCUS EVANS IN
25 REFERENCE TO THE IDENTIFICATION BASICALLY MESSED UP AND

1 ABOUT THE STATEMENT THAT WAS MADE IN HIS PRESENCE.

2 THE COURT: ALL RIGHT. DO YOU HAVE A COPY OF HIS
3 STATEMENT THAT WAS TAKEN?

4 MS. NIELSEN: BEG THE COURT, YOUR HONOR? DID MR.
5 JOHNSON GIVE A WRITTEN STATEMENT?

6 MS. NIELSEN: YES, SIR.

7 THE COURT: COULD I SEE THAT? I DON'T WANT TO SEE
8 HOW MANY STORIES WE ARE GOING TO GET. ALREADY GOT ONE.
9 LOOKS LIKE WE ARE GOING TO GET TWO. LOOKS LIKE THIS
10 STATEMENT IS GOING TO BE THREE. HE'S GOING TO TESTIFY
11 THAT AGAIN THAT WOULD BE FOUR.

12 I'M JUST WONDERING EXACTLY WHERE ALL OF THIS
13 MIGHT WILL LEADING. THANK YOU, MA'AM. IS MR. JOHNSON
14 GOING TO BE YOUR NEXT WITNESS?

15 MS. NIELSEN: JUDGE, HE DIDN'T HAVE TO BE. GOT
16 SOMEBODY FROM SLED HERE WHO IS GOING TO BE MY FIRST
17 WITNESS. I DON'T THINK SHE WILL TAKE BUT A FEW MINUTES.

18 THE COURT: LET ME DO THIS. LET'S GO AHEAD AND LET
19 HER TESTIFY OR HIM TESTIFY AND LET ME SEND THIS JURY TO
20 LUNCH AFTER THAT AND TAKE MR. JOHNSON'S TESTIMONY DURING
21 THE LUNCH HOUR. CAN WE DO THAT?

22 MS. NIELSEN: YES, SIR.

23 THE COURT: ALL RIGHT. LET'S WORK IT THAT WAY,
24 THEN. I WILL -- I WILL BE ABLE TO DO IT WITHOUT DELAYING
25 THE JURY. THANK YOU. BRING US THE JURY.

1 BAILIFF: YES, SIR.

2 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 11:37
3 A.M.)

4 THE COURT: THANK YOU, LADIES AND GENTLEMEN. WE PICK
5 UP WITH WHERE WE LEFT OFF NOW AS THE STATE CONTINUES TO
6 CALL WITNESSES IN ITS BEHALF. MS. NIELSEN, YOU CAN CALL
7 YOUR NEXT WITNESS.

8 MS. NIELSEN: THANK YOU, YOUR HONOR. THE STATE CALLS
9 WENDY BELL.

10 THE COURT: WENDY BELL, PLEASE.

11 WENDY BELL, BEING FIRST DULY
12 SWORN, TESTIFIED AS FOLLOWS:

13 DIRECT EXAMINATION BY MS. NIELSEN:

14 Q MRS. BELL, COULD YOU TELL THE JURY HOW YOU'RE
15 EMPLOYED?

16 A I'M A TOXICOLOGIST AT THE SOUTH CAROLINA LAW
17 ENFORCEMENT DIVISION, MORE COMMONLY KNOWN AS SLED.

18 Q AND WHAT DOES TOXICOLOGY DO?

19 A MY JOB IS TO ANALYZE BODY FLUIDS SUCH AS BLOOD AND
20 URINE FOR THE PRESENCE OF ALCOHOL OR DRUGS OR POISON.

21 MS. NIELSEN: WILL YA'LL STIPULATE SHE IS AN EXPERT
22 IN FORENSIC TOXICOLOGY?

23 MR. FINNEY: WITHOUT OBJECTION.

24 MR. DOBY: YES, SIR.

25 THE COURT: HEARING NO OBJECTION, MRS. BELL IS

WENDY BELL - DIRECT BY NIELSEN

1 QUALIFIED AS AN EXPERT IN FORENSIC TOXICOLOGY. YES,
2 MA'AM.

3 (WHEREUPON QUESTIONING RESUMED).

4 Q MRS. BELL, DID YOU RECEIVE SOME BLOOD FROM -- TAKEN
5 FROM HENRY SCOTT?

6 A I DID. I RECEIVED A PACKAGE OF BLOOD, THE TUBES WERE
7 LABELED HENRY SCOTT.

8 Q DO YOU HAVE ANYTHING TO INDICATE HOW THAT BLOOD WAS
9 TAKEN OR WHO TOOK IT?

10 A I HAVE THE EVIDENCE BAG WHICH WAS PRESENTED TO ME AND
11 THERE IS A SAMPLE LABELED FROM ONE OF THE TUBES OF BLOOD
12 WITH THE MARKING ON IT HENRY SCOTT. THE EVIDENCE BAG
13 APPEARS TO BE HAVE BEEN BROUGHT IN BY CONNER ELMORE ON
14 NOVEMBER 16TH, 1999. HE PLACED THE SAMPLE ONE IN THIS
15 BAG, THEN SEALED IT, AND HIS INITIALS ARE ON THE BAG.

16 Q YOU DON'T KNOW HOW HE GOT IT?

17 A I DO NOT.

18 Q DID YOU PERFORM A TOXICOLOGY EXAMINATION OF THAT
19 BLOOD?

20 A I DID.

21 Q AND CAN YOU TELL US THE RESULTS OF THAT IN REFERENCE
22 FIRST OF ALL TO ALCOHOL.

23 A IN THIS CASE I RECEIVED BLOOD, BILE, OCULAR BRAIN AND
24 LIVER AND I PERFORMED TESTS ON THE BLOOD AND OCULAR, AND
25 THE BLOOD I FOUND A BLOOD ALCOHOL CONTENT OF POINT 273

1 PERCENT, AND IN THE OCULAR POINT 217 PERCENT.

2 Q WHY IS IT DIFFERENT IN THOSE TWO THINGS?

3 A SIMPLY A MATTER OF THE METABOLISM OF ALCOHOL IN YOUR
4 BODY. THE BLOOD IS PROBABLY THE MORE ACCURATE LEVEL, BUT
5 ALCOHOL DOES DIFFUSE INTO THE EYE FLUID OF A PERSON, SO WE
6 OFTEN ANALYZE THAT AS WELL TO MAKE SURE THAT THE LEVELS
7 ARE AT LEAST SIMILAR. YOU WOULD EXPECT TO SEE SIMILAR
8 RANGES, WHICH THESE ARE.

9 THE COURT: GIVE ME THE OCULAR READING AGAIN PLEASE,
10 MRS. BELL.

11 THE WITNESS: IT WAS A POINT 217 PERCENT.

12 THE COURT: THANK YOU, MA'AM.

13 (WHEREUPON QUESTIONING RESUMED).

14 Q ALL RIGHT. DID YOU ALSO TEST FOR DRUGS?

15 A WE DO. IN THIS TYPE OF CASE WHICH IT WAS LOGGED IN
16 AS A HOMICIDE GUNSHOT, IT IS STANDARD FOR US TO PERFORM AN
17 ALCOHOL ANALYSIS AS WELL AS A DRUG SCREEN. AND OUR SCREEN
18 COVERS FOR CLASSES OF ABUSED DRUGS AND THE SCREEN IN THIS
19 CASE WAS NEGATIVE.

20 Q AND CLASSES OF ABUSED DRUGS, WHAT DO YOU TEST FOR?

21 A IN THIS CASE WE TEST FOR BARBITURATES WHICH ARE
22 SEDATIVES.

23 Q SEDATIVES?

24 A TYPE OF DOPE -- DOPAMINE, WHICH IS ALSO A CLASS OF
25 SEDATIVES COMMONLY ABUSED. WE TEST FOR COCAINE AND

WENDY BELL - CROSS BY ROGERS

1 OPIATES, WHICH OPIATE COVERS DRUGS SUCH AS MORPHINE,
2 HEROIN, DRUGS OF THAT TYPE.

3 Q AND HE WAS NEGATIVE FOR ALL OF THOSE?

4 A HE WAS NEGATIVE FOR ALL OF THOSE CLASSES.

5 Q PLEASE ANSWER ANY QUESTIONS THE DEFENSE ATTORNEYS
6 HAVE.

7 THE COURT: MR. DOBY?

8 MR. DOBY: NO, SIR, YOUR HONOR.

9 THE COURT: THANK YOU. MR. ROGERS?

10 CROSS-EXAMINATION BY MR. ROGERS:

11 Q THE READING OF BLOOD ALCOHOL 273 IS ALMOST THREE
12 TIMES WHAT WE KNOW AS THE LEGAL LIMIT IN SOUTH CAROLINA?

13 A THAT IS CORRECT.

14 MR. ROGERS: THANK YOU.

15 THE COURT: MR. JORDAN?

16 MR. JORDAN: NO QUESTIONS, YOUR HONOR.

17 THE COURT: THANK YOU. MR. FINNEY?

18 CROSS-EXAMINATION BY MR. FINNEY:

19 Q JUST ONE QUESTION. MRS. BELL, DO YOU TEST FOR
20 MARIJUANA USE?

21 A NOT UNLESS WE HAVE A HISTORY. THIS CASE THAT TEST
22 WAS NOT PERFORMED. THERE WAS NO HISTORY.

23 Q I JUST WANT TO ASK THE QUESTION. YOU SAID THE
24 STANDARD PROTOCOL IN A GUNSHOT MURDER CASE IS THAT YOU
25 TEST FOR DRUGS THAT ARE ABUSED OR COULD BE ABUSED?

1 A WE HAVE A STANDARD PANEL OF FOUR CLASSES. IF THERE
2 IS A HISTORY OF MARIJUANA OR IF THAT IS SUSPECTED, THEY
3 USUALLY TRY TO. WE TRY TO ASK FOR A HISTORY, AND IF WE
4 HAVE THAT, WE PERFORM MARIJUANA. MARIJUANA IS A SLIGHTLY
5 DIFFERENT DRUG AND IT REQUIRES A LITTLE MORE INDEPTH TEST,
6 SO THAT'S NOT ON OUR STANDARD PROTOCOL, BUT WE WILL
7 PERFORM IT IF IT'S A HISTORY THERE.

8 Q ALL RIGHT. THANK YOU.

9 THE COURT: REDIRECT, MS. NIELSEN?

10 MS. NIELSEN: NO, SIR, YOUR HONOR. WE WOULD ASK THAT
11 MRS. BELL BE EXCUSED.

12 THE COURT: THANK YOU.

13 MR. FINNEY: NO OBJECTION.

14 THE COURT: WITHOUT OBJECTION, MRS. BELL, YOU CAN
15 STEP DOWN AND BE EXCUSED. THANK YOU FOR COMING.

16 (WHEREUPON THE WITNESS LEFT THE STAND).

17 THE COURT: MS. NIELSEN, I BELIEVE BEFORE WE TAKE THE
18 NEXT WITNESS WE NEED TO DEAL WITH THOSE MATTERS OUT OF THE
19 PRESENCE OF THE JURY; IS THAT CORRECT?

20 MS. NIELSEN: YES, SIR.

21 THE COURT: LADIES AND GENTLEMEN, IT'S A LITTLE EARLY
22 TO SEND YOU TO LUNCH; BUT WE DO HAVE A MATTER I NEED TO
23 TAKE CARE OF OUT OUTSIDE OF YOUR PRESENCE, AND RATHER THAN
24 KEEP YOU OUT THERE IN THE JURY ROOM AND WASTE YOUR TIME
25 WHILE WE DO THAT, I'LL SEND YOU TO LUNCH A LITTLE EARLY

STEVEN JOHNSON - DIRECT BY NIELSEN

1 ASK THAT YOU BE BACK A LITTLE EARLY SO YOU CAN CONTINUE
2 YOUR AFTERNOON'S WORK.

3 WE WON'T BE WASTING YOUR TIME. WANT YOU TO BE
4 BACK IN THE JURY ROOM AT 1:00. THAT'S AN HOUR AND 15
5 MINUTES. SHOULD GIVE YOU ENOUGH TIME TO GET A BITE TO
6 EAT. MIGHT HAVE TO WORK UP AN APPETITE BEFORE YOU CAN EAT
7 THIS EARLY.

8 BUT IN ANY EVENT, IF YOU'LL PLEASE GET A BITE TO
9 EAT AND BE BACK IN THE JURY ROOM AT 1:00. WE WILL RESUME
10 THE AFTERNOON'S WORK AT 1:00 THIS AFTERNOON. PLEASE
11 REMEMBER NOT TO DISCUSS THIS CASE AMONG YOURSELVES OR WITH
12 ANYONE ELSE WHILE YOU'RE OUT OF THE COURTROOM. THANK
13 YOU.

14 (WHEREUPON THE JURY LEFT THE COURTROOM AT 11:42 A.M.)

15 THE COURT: ALL RIGHT. MS. NIELSEN, LET'S CALL MR.
16 JOHNSON AND DEAL WITH THAT MATTER NEXT.

17 MS. NIELSEN: STEVEN JOHNSON?

18 (WITNESS IN COURTROOM).

19 THE COURT: MR. JOHNSON, IF YOU WILL COME FORWARD.
20 YOU ARE STILL UNDER OATH FROM THE EARLIER TIME YOU
21 TESTIFIED. COME AROUND, PLEASE SIR.

22 STEVEN JOHNSON, BEING FIRST DULY
23 REMINDED OF OATH, TESTIFIED AS FOLLOWS:

24 DIRECT EXAMINATION BY MS. NIELSEN:

25 Q MR. JOHNSON, DO YOU REMEMBER WHEN YOU TESTIFIED THE

1 OTHER DAY, YOU WERE THERE, TESTIFIED?

2 A YES, MA'AM.

3 Q I DIDN'T ASK YOU WHETHER YOU HAD EVER SEEN MARCUS
4 EVANS OR GILARON TAYLOR PRIOR TO NOVEMBER THE 14TH OF LAST
5 YEAR; DID I?

6 A NO, MA'AM.

7 Q COULD YOU TELL THE COURT WHETHER IN THE PAST BEFORE
8 THAT YOU HAD EVER HAD AN OPPORTUNITY TO SEE MARCUS TAYLOR
9 AND OR GILARON TAYLOR?

10 A YES, MA'AM, I DID.

11 Q CAN YOU TELL THE COURT ABOUT THAT.

12 A IT WAS ONE SATURDAY NIGHT AT THE CLUB--

13 THE COURT: SPEAK INTO THAT MICROPHONE, PLEASE SIR.

14 A ONE SATURDAY NIGHT AT THE HUDDLE HOUSE IN SUMTER WHEN
15 WE HAD RUN INTO--

16 Q SPEAK UP.

17 THE COURT: SATURDAY NIGHT, HUDDLE HOUSE IN SUMTER,
18 THEN YOUR VOICE DROPPED OFF AND I DIDN'T HEAR THE REST.
19 WHAT ELSE DID YOU SAY?

20 A WE WERE -- IT WAS ONE SATURDAY NIGHT WE WAS AT THE
21 HUDDLE HOUSE IN SUMTER.

22 Q WHO WAS AT THE HUDDLE HOUSE IN SUMTER?

23 A ME AND POP ARRIVED AT THE HUDDLE HOUSE IN SUMTER
24 WHERE THE DEFENDANT, THOSE TWO RIGHT THERE, WAS ALREADY IN
25 THERE EATING WHEN WE CAME IN, AND I REMEMBER ONE ON THE

1 END WAS SAYING YEAH, THAT IS ME--

2 Q THE ONE ON THE END WAS THE ONE WHO HAS ON THE KHAKI
3 COLORED SHIRT NOW?

4 A YES, MA'AM.

5 Q NOW, DO YOU -- FIRST OF ALL BEFORE WE -- DO YOU
6 REMEMBER WHEN THIS WAS?

7 A THIS WAS AFTER THE CAR GOT SHOT UP AND I GOT BACK
8 FROM THE SHOP.

9 Q ALL RIGHT. WHEN WAS THAT?

10 A LIKE A COUPLE OF MONTHS AFTER THAT.

11 Q A COUPLE OF MONTHS AFTER WHAT?

12 A AFTER MY CAR GOT SHOT UP AT THE WAFFLE HOUSE HERE IN
13 BISHOPVILLE.

14 Q WHEN DID YOUR CAR GET SHOT UP?

15 A THE 4TH OF JULY NIGHT.

16 Q SO THIS THING AT THE HUDDLE HOUSE WAS A COUPLE OF
17 MONTHS AFTER THE 4TH OF JULY?

18 A YES, MA'AM.

19 Q NOW, WHERE WERE YOU AND HENRY SCOTT IN THE HUDDLE
20 HOUSE?

21 A WE WERE ALL ORDERING OUR FOOD.

22 Q ALL RIGHT. AND WHAT HAPPENED?

23 A THAT'S WHEN ONE -- THE ONE ON THE FAR END SAID HE HAD
24 HIS SPEED SAYING YEAH. THAT ME.

25 Q WHO WAS HE TALKING TO?

1 A POP.

2 Q OKAY. AND WHAT DID POP SAY?

3 A FIRST HE WASN'T SAYING NOTHING AND THEN THAT WHEN HE
4 START TALKING BACK TO HIM.

5 Q WHO STARTED TALKING? TELL ME THE NAMES, DON'T JUST--

6 A POP STARTED TELLING HIM WELL, YOU NEED TO LEAVE THAT
7 ALONE, GO AHEAD AND LEAVE THAT ALONE, BUT HE BEEN I HOPE
8 YOU REMEMBER THIS, I'LL BE THE ONE TO PUT YOU IN YOUR
9 GRAVE.

10 Q WHO SAID THAT?

11 A THE ONE ON THE FAR END.

12 Q DID THAT MAKE YOU REMEMBER HIM?

13 A YEAH, I REMEMBER HIM.

14 Q IS THAT THE ONLY TIME YOU EVER SEEN HIM BESIDES
15 NOVEMBER THE 14TH?

16 A NO.

17 Q TELL US IF YOU HAVE SEEN HIM OTHER TIMES.

18 A THAT'S THE ONLY OTHER TIME I REALLY HAVE SEEN HIM.

19 Q OKAY.

20 A AND THAT'S WHEN HE TOLD ME THAT THOSE THE ONE THAT
21 SHOT MY CAR UP.

22 Q WHO TOLD YOU THAT?

23 A POP TOLD ME THAT.

24 Q DID THAT MAKE YOU REMEMBER MARCUS EVANS?

25 A YEAH, I KIND OF REMEMBER HIM FROM THAT THEN.

1 Q WHEN YOU SAW MARCUS, THE PERSON THAT YOU IDENTIFIED
2 AS NUMBER ONE IN THAT LINE-UP ON NOVEMBER THE 14TH, DID
3 YOU RECOGNIZE HIM THEN?

4 A YEAH, I RECOGNIZED HIM.

5 Q FROM HAVING SEEN HIM BEFORE?

6 A YES, MA'AM.

7 Q WAS HE ALONE?

8 A NO, HIM AND THE OTHER -- ABOUT THREE PEOPLE.

9 Q ALL RIGHT. SOMEBODY ELSE SITTING AT THIS TABLE?

10 A YES, MA'AM.

11 Q WHAT -- COUNTING FROM THE END IN THE MIDDLE OF THE
12 COURTROOM, WHO ELSE -- WHAT NUMBER OF ON THAT TABLE, WHERE
13 IS THAT PERSON SITTING THERE YOU ALSO SAW?

14 A NUMBER FOUR, THE FOURTH GUY.

15 Q THE FOURTH PERSON OVER HERE WITH THE SWEATER ON?

16 A YES, MA'AM.

17 Q WHEN YOU PICKED MARCUS EVANS OUT OF THAT LINE-UP, WHY
18 DID YOU PICK HIM OUT OF THAT LINE-UP?

19 A BECAUSE I SAW HIM THIS NIGHT AT THE CLUB AND I SEEN
20 HIM WHAT HE KNEW HIM.

21 Q YOU HAD SEEN HIM BEFORE THEN, SO YOU ALREADY KNEW
22 HIM?

23 A YES, MA'AM.

24 MS. NIELSEN: YOUR HONOR, I THINK THAT'S ALL THE
25 QUESTIONS I HAVE.

1 THE COURT: ALL RIGHT. MS. NIELSEN, ARE YOU -- THE
2 MOTION GOES TO THE COURT'S EARLIER RULING ON
3 IDENTIFICATION RATHER THAN ON THE STATEMENT; IS THAT
4 CORRECT?

5 MS. NIELSEN: YOUR HONOR, I JUST TESTIFY ABOUT BOTH
6 OF IT SO THAT THAT'S HIS COMPLETE TESTIMONY ABOUT AS FAR
7 AS BOTH ISSUES ARE CONCERNED. IN REFERENCE TO THE COURT'S
8 EARLIER RULING WHERE I DID NOT GET HIM TO TESTIFY ABOUT
9 HIS PREVIOUS OPPORTUNITY TO HAVE SEEN THIS DEFENDANT WHICH
10 HELPED HIM TO BE ABLE TO IDENTIFY ANY OF THEM WHICH I
11 BELIEVE WAS PROBABLY PART OF THE REASON THAT THE COURT
12 FOUND THAT HIS IDENTIFICATION WAS INADMISSIBLE BECAUSE
13 THERE WAS NOTHING TO BACK UP ANYTHING EXCEPT THAT HE HAD
14 SEEN HIM THAT NIGHT AND THEN WHEN MR. DELLINGER WALKED HIM
15 BY THE MIRROR....

16 THE COURT: THAT'S CORRECT. AS A MATTER OF FACT, I
17 THINK I MAY HAVE EVEN STATED THAT ON THE RECORD WHEN I WAS
18 MAKING MY RULING IN THAT REGARD. ALL RIGHT. I HAVE
19 PREVIOUSLY RULED THAT HIS IDENTIFICATION OF MR. TAYLOR WAS
20 ADMISSIBLE BECAUSE THAT HAD NOT BEEN TAINTED IN ANY WAY,
21 AND I RULED HIS IDENTIFICATION OF MR. EVANS IN COURT -- SO
22 MR. DOBY, I WILL HEAR FROM YOU IN THAT REGARD.

23 MR. DOBY: YOUR HONOR, OF COURSE WE WOULD OBJECT TO
24 GOING BACK AFTER THE POINT. I THINK THE TIME BEFORE THAT
25 RULING THAT HAS NOW COME IN PAST. YOUR HONOR, ALSO HE

1 HASN'T TESTIFIED ABOUT HOW LONG THAT HE HAD SEEN MY CLIENT
2 IN. I THINK IT WAS THE HUDDLE HOUSE IS WHAT HE DESCRIBED,
3 APPARENTLY WAS A VERY SHORT OCCASION.

4 YOUR HONOR, THAT WAS ACCORDING TO HIS TESTIMONY
5 IT WAS A COUPLE OF MONTHS AFTER HIS CAR WAS SHOT IN JULY
6 WHICH WOULD PUT THIS, YOUR HONOR, SOMETIME EARLIER IN 1999
7 WHEN THE INCIDENT OCCURRED AT THE CLUB THAT WE ARE TRYING
8 NOW. YOUR HONOR, I DON'T THINK THERE HAS BEEN SUFFICIENT
9 CONNECTION BETWEEN THOSE TWO DATES AND TIMES WHAT HAS
10 OVERCOME THE COURT'S EARLIER RULING IN THAT REGARD.

11 THE COURT: THE TESTIMONY THAT WAS GIVEN EN CAMERA OF
12 COURSE DID NOT ADDRESS -- DID NOT ADDRESS ANY OF THIS. I
13 DID CALL HIM BACK AND I ASKED HIM IF HE -- ABOUT HIS
14 STATEMENT AND HE SAID HE KNEW HE GUY A COUPLE MONTHS AGO
15 THAT SHOT UP HIS CAR. HE TOLD ME HE DID NOT.

16 AND OF COURSE I CAN SEE NOW WHAT HE IS REFERRING
17 TO IS THE FACT THAT HE DID NOT KNOW THEM, HE DID NOT SEE
18 THEM, IT WAS MR. HENRY SCOTT APPARENTLY HAD FURNISHED THAT
19 INFORMATION IN CONNECTION WITH THOSE TWO GUYS TO THE
20 SHOOTING OF HIS VEHICLE HERE IN THE WAFFLE HOUSE.

21 THE CASES WHICH I HAVE CITED EARLIER, THE ROGERS
22 CASE MORE SPECIFICALLY HAD TO DO WITH CASE WHERE WE HAVE
23 ALL READ ABOUT I THINK A YOUNG 13 YEAR OLD WAS PICKED UP
24 BY SOMEONE AND WAS IN THE CAR WITH HIM FOR AROUND 45
25 MINUTES IN BROAD DAYLIGHT, HAD A CHANCE TO OBSERVE HIM,

1 EXCUSE ME, AND LATER THE ONE PERSON SHOW-UP WAS HELD NOT
2 TO RENDER HER IN-COURT IDENTIFICATION INADMISSIBLE BECAUSE
3 OF THE FACT THAT SHE DID HAVE THAT LENGTH OF TIME TO
4 OBSERVE.

5 IN THIS PARTICULAR CASE THE TESTIMONY EN CAMERA
6 WAS THAT THERE WAS A RELATIVELY FLEETING GLANCE, SAID
7 THERE WAS LIGHT ENOUGH FOR HIM TO SEE AND THAT HE SAW THE
8 SHOOTING AND HE DIDN'T TALK WITH PEOPLE, HE WAS 10 TO 15
9 FEET AWAY AT ONE POINT IN TIME.

10 NO ONE ASKED HIM ABOUT THE PRIOR CONNECTION. I
11 WAS NOT AWARE OF IT. HE TESTIFIES NOW THAT HE HAD A
12 CONFRONTATION WITH THESE PEOPLE. ACCORDING TO THE ROUGH
13 MATH IT WOULD BE TWO MONTHS BEFORE THE FOURTH OF JULY, TWO
14 MONTHS AFTER, SOMETIME EARLY IN SEPTEMBER.

15 THIS OCCURRED IN MID NOVEMBER THEREFORE TWO
16 MONTHS FOLLOWING THE INCIDENT IN THE HUDDLE HOUSE IN
17 SUMTER THIS WOULD HAVE APPARENTLY HAVE OCCURRED. THAT IS
18 INDEPENDENT CORROBORATION ENOUGH TO SATISFY ME THAT THE
19 ONE PERSON SHOW-UP WAS NOT THE BASIS OF HIS
20 IDENTIFICATION.

21 HE TESTIFIED INDEED EVEN EN CAMERA THAT HIS
22 IDENTIFICATION WAS BASED ON HIS OBSERVATION OF HIM THE
23 NIGHT BEFORE. HOWEVER, THAT WAS UNSUPPORTED AND
24 UNSUBSTANTIATED BY ANYTHING ELSE OTHER THAN JUST HIS
25 STATEMENT IN THAT REGARD.

1 HAD I KNOWN THEN THAT HE HAD SEEN THESE
2 INDIVIDUALS BEFORE THAT, HE WAS AWARE OF WHO THEY WERE IF
3 NOT BY NAME AT LEAST BY SIGHT, AND THEIR CIRCUMSTANCES
4 SURROUNDING, I WOULD HAVE RULED DIFFERENTLY AT THAT TIME.
5 BUT SINCE NOW I HAVE THE BENEFIT OF THIS INFORMATION, THE
6 FACT THAT INDEED HE HAD AN OPPORTUNITY TO OBSERVE THE
7 DEFENDANT BEFORE THE INCIDENT IN QUESTION AND KNEW WHO HE
8 WAS, THOSE CIRCUMSTANCES IN MY OPINION CORROBORATE HIS
9 IN-COURT IDENTIFICATION, HIS IDENTIFICATION FROM THE
10 LINE-UP, AND I FIND THAT THE ONE PERSON SHOW-UP ALTHOUGH
11 OBVIOUSLY PROBLEMATIC DOES NOT RENDER THE IN-COURT
12 IDENTIFICATION INADMISSIBLE.

13 IT IS NOT IMPERMISSIBLY SUGGESTIVE AS THE LAW
14 REQUIRES. SO THE IN LIMINE RULING GIVEN EARLIER IS
15 VACATED AND I WILL ALLOW HIM TO TESTIFY AS TO THE
16 IDENTIFICATION OF BOTH MR. TAYLOR AND MR. EVANS.

17 REGARDING THE STATEMENT ITSELF THAT WAS MADE TWO
18 MONTHS BEFORE, THAT STATEMENT WOULD APPEAR TO BE AN
19 ADMISSIBLE STATEMENT UNDER THE RULES. I WILL BE GLAD TO
20 HEAR ARGUMENT ON THAT ISSUE. HOWEVER, MR. DOBY, IF YOU
21 WOULD WANT TO RENDER IT OR WE HAVE GOT THE LUNCH HOUR IF
22 YOU WANT TO CHECK THE LAW ON THAT, 801 OF COURSE IS A --
23 IS ONE OF THE APPLICABLE RULES.

24 801 D 2 IS ONE OF THE APPLICABLE RULES OF
25 EVIDENCE THAT MAY APPLY IN THIS PARTICULAR CASE. IT IS

1 THE RULE THAT SAYS WHAT IS NOT HEARSAY, SO I DON'T THINK
2 WE ARE TALKING ABOUT A HEARSAY EXCEPTION. WE ARE TALKING
3 ABOUT WHETHER OR NOT THIS IS ACTUALLY HEARSAY.

4 I DON'T THINK THAT IT IS HEARSAY. THE QUESTION
5 THEN BECOMES WHETHER OR NOT IT -- IS IT ACTUALLY
6 ADMISSIBLE OR INADMISSIBLE FOR SOME OTHER REASON. I
7 RECOMMEND YOUR READING IN THIS CASE, THE CASE OF STATE
8 VERSUS ROY BECK JUNIOR, CASE WHICH CAME DOWN, IT'S NOT
9 EVEN ON OUR COMPUTER YET, BUT IT'S IN YOUR ADVANCE SHEETS,
10 SOMETIME SINCE JULY, TRIED IN RICHLAND COUNTY.

11 I HAVE A LITTLE BIT OF KNOWLEDGE ABOUT THAT. I
12 WAS THE TRIAL JUDGE IN THAT PARTICULAR CASE. THAT
13 INVOLVES STATEMENTS MADE BY A DEFENDANT SOMETIME BEFORE
14 TRIAL JUXTAPOSE RULE THAT THOSE WERE ADMISSIBLE UNDER THE
15 SAME RULE WE JUST CITED.

16 STATE VERSUS ROY BECK, JR. CHECK THE ADVANCE
17 SHEETS, BUT I THINK IT APPLIES IN THIS PARTICULAR CASE.
18 ALL RIGHT. ANYTHING ELSE BEFORE WE BREAK FOR LUNCH, MS.
19 NIELSEN, FROM THE STATE?

20 MS. NIELSEN: YOUR HONOR, REGARDLESS OF HOW YOU RULE
21 ON THE HUDDLE HOUSE STATEMENT, I'D ASK YOU -- I DON'T
22 BELIEVE THAT MR. JOHNSON CAN TESTIFY ABOUT THE WAFFLE
23 HOUSE INCIDENT BECAUSE THAT IS --

24 THE COURT: CLEARLY NOT, CLEARLY.

25 MS. NIELSEN: -- HEARSAY. BUT I'D JUST LIKE YOU TO

1 EXPLAIN TO HIM TO MAKE CERTAIN WE DON'T HAVE ANY PROBLEMS
2 THAT HE CANNOT TESTIFY ABOUT THE WAFFLE HOUSE INCIDENT AT
3 ALL.

4 THE COURT: THAT'S RIGHT. MR. JOHNSON, WHEN YOU
5 TESTIFY BEFORE THE JURY, YOU CANNOT MAKE ANY REFERENCE TO
6 THE INCIDENT INVOLVING YOUR CAR BEING SHOT UP HERE AT THE
7 WAFFLE HOUSE. FIRST OF ALL THE ONLY WAY YOU HAVE ANY
8 INFORMATION AS TO WHO DID THAT AND WHAT MR. HENRY SCOTT
9 TOLD YOU.

10 YOU TOLD ME YOU DIDN'T KNOW ON YOUR OWN. HE IS
11 NOT HERE OBVIOUSLY, SO HE CANNOT BE CROSS-EXAMINED ON
12 THAT. HE CAN'T BE QUESTIONED ON THAT. WHEN YOU ARE ASKED
13 IF YOU ARE ASKED WHEN YOU HAD THIS RUN-IN IN THE HUDDLE
14 HUDDLE HOUSE, YOU CAN MENTION A COUPLE OF MONTHS AFTER THE
15 FOURTH OF JULY IF YOU WANT TO IF THIS IS THE RIGHT ANSWER,
16 BUT YOU CANNOT TIE IT TO THE TIME YOUR CAR WAS SHOT. DO
17 YOU UNDERSTAND THAT?

18 THE WITNESS: YES.

19 THE COURT: THANK YOU. YOU CAN STEP DOWN.

20 (WHEREUPON THE WITNESS LEFT THE STAND).

21 MS. NIELSEN: THANK YOU, YOUR HONOR. THAT'S ALL FROM
22 THE STATE.

23 THE COURT: ALL RIGHT. MR. DOBY, ANYTHING FROM MR.
24 EVANS BEFORE WE BREAK FOR LUNCH?

25 MR. DOBY: YOUR HONOR, NOTHING ABOUT THE TRIAL, BUT I

1 DO HAVE A STATEMENT FROM THE BONDING COMPANY SAID THEY ARE
2 WILLING TO GO ON HIS BOND WHILE HE IS ON TRIAL.

3 THE COURT: ALL RIGHT. I WILL -- I WILL ADDRESS THAT
4 AT THE END OF THE DAY. KEEP HIM IN CUSTODY DURING THE DAY
5 AND I WILL BE GLAD TO -- IF YOU LET ME REVIEW THAT DURING
6 LUNCH AND I WILL REINSTATE THAT AT THE END OF THE DAY IF
7 THAT'S -- IF IT'S STILL THE SAME BONDSMAN.

8 MR. DOBY: THANK YOU, YOUR HONOR.

9 THE COURT: MR. ROGERS, ANYTHING ON BEHALF OF MR.
10 TAYLOR?

11 MR. ROGERS: NO, YOUR HONOR.

12 THE COURT: THANK YOU. MR. JORDAN?

13 MR. JORDAN: NO, YOUR HONOR.

14 THE COURT: MR. FINNEY?

15 MR. FINNEY: NO, YOUR HONOR.

16 THE COURT: 1:00 THEN. GOT AN HOUR. THANK YOU.

17 (WHEREUPON COURT WAS IN RECESS FOR LUNCH).

18 THE COURT: ALL RIGHT. MS. NIELSEN, IS THE STATE
19 READY TO PROCEED?

20 MS. NIELSEN: YES, SIR, JUDGE. YOU WANT TO GIVE US A
21 RULING ON THE USE OF THAT STATEMENT?

22 THE COURT: BE GLAD TO HEAR FROM YOU IN THAT REGARD.
23 MR. DOBY, I BELIEVE IT'S YOUR CLIENT THAT IS IMPACTED BY
24 IT.

25 MR. DOBY: YES, SIR. YOUR HONOR, FROM THE REVIEW OF

1 THAT -- THE STATE LOOK AT. IN THAT CASE, YOUR HONOR,
2 THERE WAS A SPECIFIC PLAN AND SCHEME THAT WAS INVOLVED
3 WITH THAT DEFENDANT FOR EFFECT, AND I THINK WHAT HE TRIED
4 TO DO WAS HAVE SOME PLAN OR SCHEME THAT WAS WITH THE OTHER
5 PERSON TO GET THE ESCORT TO COME TO THE HOUSE WHERE HE WAS
6 ROBBED AND ULTIMATELY MURDERED THAT ESCORT.

7 YOUR HONOR, I WOULD DISTINGUISH THAT BECK CASE
8 ON ITS FACTS BECAUSE IT WAS A SPECIFIC PLAN OR SCHEME
9 WOULD -- WHAT YOU HAVE IN THIS CASE IS NOT A SPECIFIC PLAN
10 OR SCHEME, IT'S SORT OF LIKE A, YOU KNOW, ALMOST JUST SORT
11 OF WORDS OF ANGER AS OPPOSED TO A SPECIFIC PLAN THAT I AM
12 GOING TO KILL YOU.

13 AND THAT WAS NOT A CASE FOR WHAT I WROTE DOWN
14 WHAT STEVEN JOHNSON HAD SAID. YOUR HONOR, I WOULD
15 THEREFORE DISTINGUISH THAT BECK CASE ON ITS FACTS FROM ITS
16 FACTS AS WELL AS, YOUR HONOR, POINT OUT THAT OF COURSE
17 THAT STATEMENT IF ALLOWED TO BE MADE BY STEVEN JOHNSON
18 WOULD BE EXTREMELY PREJUDICIAL.

19 AND I THINK THAT THERE HAS TO BE SOME WEIGHING
20 OF THE PREJUDICIAL VERSUS THE PROBATIVE VALUE ON THAT
21 STATEMENT THAT IS SET FORTH IN THE BECK CASE. YOUR HONOR,
22 WHILE THE BECK CASE CERTAINLY GOES FOR -- TO SAY THAT TIME
23 FRAME IS NOT A PROBLEM, WE DO HAVE TWO MONTHS IN THIS
24 CASE, YOUR HONOR, AND THERE IS SOME TIME DIFFERENCE
25 BETWEEN THOSE TWO.

1 IT'S A NON-SPECIFIC TYPE OF THREAT AND I BELIEVE
2 THAT IT IS ADMISSIBLE FOR THOSE REASONS.

3 THE COURT: MR. DOBY, YOU HAVE READ THE CASES I HAVE
4 OBVIOUSLY, BUT IT'S MY RECOLLECTION USED THE COMMON SCHEME
5 OR PLAN WITH ONLY ONE OF HIS BASIS FOR ALLOWING THE
6 STATEMENT. AM I NOT CORRECT IN THAT REGARD?

7 MR. DOBY: I THINK ACTUALLY IT WAS ALLOWED IN UNDER
8 THE LYLES -- LYLES COMMON PLAN OR SCHEME. AND THE SUPREME
9 COURT OR COURT OF APPEALS SAID THAT THAT WAS REALLY NOT
10 THE RIGHT STANDARD TO TAKE A LOOK AT BECAUSE THAT WAS IT'S
11 -- WAS A STATEMENT AS OPPOSED TO AN ACT OR A SPECIFIC
12 THING THAT WAS DONE.

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

14 (WHEREUPON THERE WAS A PAUSE).

15 THE COURT: ALL RIGHT. I WAS ANALYZING VOLUMES OF
16 EVIDENCE THAT MIGHT APPLY TO THE STATE AND CIRCUMSTANCES
17 UNDER WHICH THEY MIGHT -- THE STATEMENT MIGHT BE
18 ADMISSIBLE. IF WE WERE DEALING WITH ISSUES OF
19 SELF-DEFENSE ITSELF, BE THE STATE OF MIND OF THE VICTIM,
20 MAY VERY WELL BE AN ISSUE.

21 THAT IS NOT THE CASE HERE. THE GENERAL CANDOR
22 OF EVER -- RAISED IS THAT THE PARTIES WHO ARE ACCUSED DID
23 NOT DO THE SHOOTING, THEREFORE SELF-DEFENSE WOULD NOT BE A
24 DEFENSE TO THAT. THE STATE OF MIND OF THE DECLARANT WOULD
25 BE A HEARSAY EXCEPTION.

1 THESE STATEMENTS WERE UTTERED SOMETIME, SOME TWO
2 MONTHS BEFORE THE ACTUAL SHOOTING OCCURRED, SO THE STATE
3 OF MIND EXCEPTION TO HEARSAY RULE WOULD NOT APPLY. I
4 SIMPLY FOLLOW THE RULE OF 801 D 2 IN WHICH I FIND THAT
5 THIS IS NOT HEARSAY BECAUSE FIRST OF ALL IT IS AN
6 ADMISSION BY A PARTY OPPONENT OR IN THIS PARTICULAR CASE A
7 CRIMINAL DEFENDANT.

8 STATE VERSUS GOOD, G-O-O-D, 417 SOUTHEASTERN 2ND
9 643 MAKES AN OUT OF COURT ADMISSION OF CRIMINAL DEFENDANT
10 ADMISSIBLE. IT SEEMS TO ME THAT AN OUT OF COURT THREAT
11 WOULD COME WITHIN THAT SAME PURVIEW, THAT SAME TYPE OF
12 ANALYSIS WOULD BE APPLIED IN THIS PARTICULAR CASE IN AS
13 MUCH AS IT IS A STATEMENT OF THE RULE CHARACTERIZES IT AS
14 PARTY OPPONENT.

15 CLEARLY UNDER THE LAW A CRIMINAL DEFENDANT
16 QUALIFIES AS A PARTY OPPONENT UNDER THE LAW AND FOR THAT
17 REASON I FIND IN AND HOLD THAT THE STATEMENT MADE BY --
18 ALLEGEDLY MADE BY ONE OF THE DEFENDANTS IN THIS PARTICULAR
19 CASE TO THE DECEDENT IN THE PRESENCE OF MR. JOHNSON WOULD
20 BE ADMISSIBLE IN THIS PARTICULAR CASE. OBVIOUSLY MR.
21 JOHNSON IS HERE AND SUBJECT TO CROSS-EXAMINATION.

22 WE DON'T HAVE ANY -- ANY CONFRONTATION PROBLEMS
23 IN THAT REGARD. ACTUALLY THE MOST RELEVANT I THINK AREA
24 OF INQUIRY IS 403 BALANCING TEST BETWEEN THE PROBATIVE
25 VALUE OF THE PREJUDICIAL IMPACT.

1 EVEN IF I BALANCE THAT, I FIND THAT IT IS
2 PROBATIVE ON THE ISSUE. GIVEN THE ISSUES THAT ARE
3 INVOLVED IN THIS PARTICULAR CASE, CLEARLY ITS PREJUDICE,
4 IT WOULDN'T BE OFFERED, BUT NONETHELESS THE FACT THAT IT
5 IS MORE PROBATIVE THAN PREJUDICIAL GIVEN ALL OF THESE
6 ISSUES ACCORDING TO MY VIEW OF THE EVALUATION, I WILL
7 ALLOW MR. JOHNSON TO TESTIFY IN THAT REGARD.

8 I NOTE EXCEPTION OF DEFENSE COUNSEL TO THE
9 COURT'S RULING AND THE RECORD GOES FORWARD PROTECTED FOR
10 APPELLATE PURPOSES. ALL RIGHT. MS. NIELSEN, IS THE STATE
11 NOW READY TO PROCEED?

12 MS. NIELSEN: YES, SIR.

13 THE COURT: ALL RIGHT. GENTLEMEN, ARE ALL DEFENDANTS
14 READY TO PROCEED?

15 MR. FINNEY: YES, YOUR HONOR.

16 MR. DOBY: YES, YOUR HONOR.

17 MR. ROGERS: YES, YOUR HONOR.

18 MR. JORDAN: READY, YOUR HONOR.

19 THE COURT: ALL RIGHT. BRING US THE JURY PLEASE
20 SIR.

21 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 1:19
22 P.M.)

23 THE COURT: LADIES AND GENTLEMEN, WE CONTINUE THE
24 AFTERNOON'S WORK NOW AS THE STATE CONTINUES TO OFFER
25 EVIDENCE AND TESTIMONY IN SUPPORT OF THE CHARGES IT IS

J.D. DELLINGER - DIRECT BY NIELSEN

1 BRINGING. MS. NIELSEN, YOU CAN CALL YOUR NEXT WITNESS.

2 MS. NIELSEN: THE STATE CALLS J.D. DELLINGER.

3 THE COURT: MR. DELLINGER, COME FORWARD, PLEASE SIR
4 AND BE SWORN.

5 J.D. DELLINGER, BEING FIRST DULY
6 SWORN, TESTIFIED AS FOLLOWS:

7 DIRECT EXAMINATION BY MS. NIELSEN:

8 Q YOUR NAME IS J.D. DELLINGER?

9 A YES, MA'AM.

10 Q WOULD YOU TELL THE JURY HOW YOU ARE EMPLOYED?

11 A I'M EMPLOYED AS AN INVESTIGATOR WITH THE LEE COUNTY
12 SHERIFF'S DEPARTMENT.

13 Q HOW LONG HAVE YOU BEEN IN LAW ENFORCEMENT?

14 A SINCE JULY OF 1989.

15 Q AND DID YOU WORK FOR THE SHERIFF'S OFFICE ALL THAT
16 TIME?

17 A NO, MA'AM. I INITIALLY STARTED WITH THE BISHOPVILLE
18 POLICE DEPARTMENT AND THEN MOVED TO THE LEE COUNTY
19 SHERIFF'S DEPARTMENT.

20 Q YOU ARE AN ACTUAL INVESTIGATOR WITH THE SHERIFF'S
21 DEPARTMENT?

22 A YES, MA'AM.

23 Q HOW LONG HAVE YOU BEEN IN INVESTIGATIONS?

24 A SINCE 1994.

25 Q NOW, ON THE NIGHT OF NOVEMBER THE 14TH, 1999 WERE YOU

1 ACTUALLY AT THE DAVIS COUNTRY CLUB?

2 A YES, MA'AM.

3 Q COULD YOU TELL US WHAT YOU RECALL ABOUT WHAT HAPPENED
4 THAT NIGHT.

5 A I WAS ON THE INSIDE WHEN IT WAS BROUGHT TO MY
6 ATTENTION THAT THERE WAS A PROBLEM ON THE OUTSIDE, AND I
7 WENT TO THE FRONT DOOR AND WENT TO THE OUTSIDE OF THE
8 CLUB. WHEN I GOT OUTSIDE, MR. DAVIS WHO IS THE MANAGER OF
9 THE CLUB WAS ALREADY OUTSIDE. LIEUTENANT--

10 Q HOLD ON A SECOND. YOU SAID MR. DAVIS. ARE YOU
11 TALKING ABOUT MR. DEBERRY?

12 A YES.

13 Q THE MAN WHO TESTIFIED YESTERDAY?

14 A YES, MA'AM.

15 Q OKAY.

16 A LIEUTENANT SIMON WITH THE SHERIFF'S DEPARTMENT WAS
17 ALSO ALREADY OUTSIDE OF THE CLUB.

18 Q ALL RIGHT. WHAT WAS HAPPENING?

19 A WHEN I GOT OUT THERE, MY ATTENTION WAS DRAWN TO THE
20 VICTIM LAYING ON THE GROUND BESIDE A SILVER LIGHT COLORED
21 FORD PROBÉ. THERE WAS PROBABLY SEVEN OR EIGHT INDIVIDUALS
22 OUT THERE ALONG WITH MR. DEBERRY AND LIEUTENANT SIMON.

23 Q THERE WERE SEVEN OR EIGHT INDIVIDUALS?

24 A YES, MA'AM. I REMEMBER THE TWO FEMALES AND SEVERAL
25 STANDING AROUND THE VICTIM.

1 Q AND THIS WAS PEOPLE -- WERE THESE PEOPLE OVER NEAR
2 THE CAR?

3 A YES, MA'AM.

4 Q WOULD YOU TAKE ONE OF THESE MARKERS AND ON THAT
5 DIAGRAM -- FIRST OF ALL THERE ARE SOME MEASUREMENTS AND
6 THINGS ON THAT DIAGRAM. WHAT DO THOSE REPRESENT?

7 A THE MEASUREMENTS THAT ARE ON THERE?

8 Q SPECIFICALLY ALL OF THESE, THE LITTLE DOTTED LINES.

9 A THOSE ARE MEASUREMENTS TO SHELL CASINGS AND PIECES OF
10 LEAD THAT I COLLECTED THAT NIGHT.

11 Q ALL RIGHT. CAN YOU WITHOUT MESSING UP WHAT IS
12 ALREADY ON THERE DRAW ON THAT DIAGRAM THE POSITION OF THE
13 BODY WHEN YOU CAME OUTSIDE?

14 A IT WILL BE OVERLAPPING SOME OF THE MEASUREMENTS, BUT
15 THE BODY WAS ON THE PASSENGER'S SIDE OF THE CAR NEAR THE
16 FRONT TIRE.

17 Q OKAY. ALL RIGHT. SO YOU WERE DRAWN TO THE VICTIM,
18 THE VICTIM AND HE WAS NEAR THE FRONT TIRE. WOULD YOU
19 DESCRIBE THE POSITION HE WAS IN?

20 A HE WAS LAYING ON HIS BACK, BACK LOOKING STRAIGHT UP.

21 Q ALL RIGHT. HAD SOMEBODY CALLED THE EMS AT SOME
22 POINT?

23 A YES, MA'AM.

24 Q NOW, WAS HE TALKING OR MAKING ANY NOISE? DID HE SEEM
25 TO BE ALIVE?

1 A HE WAS MAKING NOISE, BUT THERE WAS NOT ANYTHING
2 UNDERSTANDABLE AS FAR AS WORDS OR COMMUNICATIONS.

3 Q DID YOU OBSERVE ANY WOUNDS?

4 A I SAW BLOOD IN HIS CHEST AREA. THAT WAS -- THAT WAS
5 ALL I SAW.

6 Q ALL RIGHT. WHAT DID YOU DO NEXT?

7 A I WENT BACK TO THE CLUB DOOR TO KEEP ALL OF THE
8 INDIVIDUALS THAT WERE AT THE CLUB ON THE INSIDE OF THE
9 CLUB.

10 Q AND HOW DID YA'LL ACCOMPLISH THAT?

11 A WE ACTUALLY LOCKED THE DOOR AND STOOD IN FRONT OF THE
12 DOOR PROHIBITING ANYBODY ELSE FROM EXITING.

13 Q SO YOU -- AFTER THE DOOR WAS LOCKED, YOU WERE INSIDE
14 THE CLUB?

15 A NO, MA'AM. I WAS STANDING OUTSIDE THE DOOR IN THE
16 FRONT OF THE DOOR.

17 Q ALL RIGHT. WHY DID YOU LOCK THE DOOR OR WHY DID YOU
18 HAVE THE DOOR LOCKED?

19 A THE AMBULANCE HAD NOT ARRIVED THERE YET. THERE WAS
20 -- I KNEW THERE WAS SEVERAL HUNDRED PEOPLE ON THE INSIDE
21 OF THE CLUB. I DID NOT WANT THOSE INDIVIDUALS TO COME
22 OUTSIDE THE CLUB AND INTERFERE WITH THE VICTIM OR
23 INTERFERE WITH THE AMBULANCE GETTING THERE, TREATING THE
24 PATIENT AND BEING ABLE TO LEAVE.

25 Q DID YOU ACTUALLY CALL 911 OR RADIO? HOW DO YA'LL DO

1 THAT TO NOTIFY THEM?

2 A WE HAVE PORTABLE RADIOS OR WALKIE TALKIES THAT WE CAN
3 COMMUNICATE WITH CENTRAL DISPATCH TO GET DISPATCH RESCUE.

4 Q AND DID YOU DO THAT OR DID SOMEBODY ELSE?

5 A I DID NOT DO THAT.

6 Q ALL RIGHT. WHAT OTHER INVOLVEMENT DID YOU HAVE AND
7 WHAT HAPPENED THAT NIGHT WHILE YOU WERE AT THE SCENE OR
8 ANYTHING ELSE?

9 A WELL, THERE WAS FOUR OFFICERS THERE INITIALLY. TWO
10 OF THOSE OFFICERS, CHARLES WHITE AND LIEUTENANT SIMON LEFT
11 THE CLUB LEAVING ONLY ME AND ONE OTHER OFFICER THERE.
12 THAT OFFICER STAYED OVER NEAR THE VEHICLE AND THE CASINGS
13 AND I STAYED AT THE DOOR OF THE CLUB KEEPING ALL THE
14 PATRONS INSIDE.

15 ONCE THE RESCUE SQUAD WAS THERE, DID WHAT
16 TREATMENT THEY COULD AND HAD THE VICTIM LOADED AND WAS
17 GONE, THEN WE STARTED TO LET THE INDIVIDUALS WHO WERE
18 INSIDE THE CLUB OUT OF THE CLUB AND ATTEMPT TO GET THEM
19 OUT OF THE AREA AS QUICK AS POSSIBLE.

20 Q NOW, DID THAT -- WERE YOU ABLE TO ACTUALLY PRESERVE
21 THE SCENE OUTSIDE?

22 A I WAS ABLE TO PRESERVE IT TO MAINTAIN SOME INTEGRITY
23 OF IT. IF THE INDIVIDUALS WOULD HAVE BEEN LET OUT RIGHT
24 AWAY, I WOULDN'T HAVE HAD ANY INTEGRITY. IT WAS STILL NOT
25 IDEAL. IDEALLY YOU WOULDN'T ALLOW ANYBODY INTO YOUR CRIME

1 SCENE OR CRIME AREA AND THERE'S NO WAY I WAS ABLE TO DO
2 THAT.

3 THERE WAS VEHICLES PARKED AROUND THERE.
4 INDIVIDUALS HAD TO GET IN THEIR VEHICLES TO LEAVE, SO I
5 WAS LIMITED IN WHAT I COULD DO AND COULDN'T DO.

6 Q AND HOW MANY PEOPLE DO YOU THINK WERE INSIDE THE
7 CLUB?

8 A PROBABLY FIVE HUNDRED PEOPLE.

9 Q AND WHAT WAS THE -- HOW WERE THOSE PEOPLE ACTING WHEN
10 THEY WERE LOCKED IN THERE FOR A WHILE?

11 A THEY WEREN'T EXTREMELY HAPPY.

12 Q SO YOU HAD TO LET THEM OUT. WERE CARS PARKED ON BOTH
13 SIDES OF THE BUILDING ACROSS THE STREET AND RIGHT IN FRONT
14 OF THE RESIDENTIAL AREA, CARS WERE PARKED ALL THOSE AREAS?

15 A YES, MA'AM. VEHICLES WERE PARKED ALL OVER IN THIS
16 AREA, ON THIS SIDE OF THE ROADWAY DIRECTLY IN FRONT OF THE
17 CLUB AS WELL AS A BASEBALL FIELD AREA OVER HERE THAT IS
18 NOT IN THIS DIAGRAM.

19 Q SO DO PEOPLE HAVE TO WALK THROUGH AND AROUND THIS
20 AREA WHERE EVERYTHING ACTUALLY HAPPENED?

21 A THERE WASN'T ANY WALKING HERE EXCEPT TO PEOPLE WHO
22 WERE -- HAD TO GET TO VEHICLES THAT WERE ADJACENT TO HERE,
23 BUT THERE WAS CAR TRAFFIC GOING DOWN THIS ROAD HERE WHERE
24 CASINGS AND BULLETS AND LEAD -- LEAD WERE.

25 Q AND YOU SAID YOU ACTUALLY WENT OUT AND FOUND CASINGS

1 AND?

2 A AFTER EVERYONE HAD LEFT THE CLUB, THE VICTIM WAS
3 REMOVED AND THINGS SLOWED DOWN, YES, WE ACTUALLY WALKED
4 THAT AREA LOOKING FOR ANY SHELL CASINGS OR LEAD AND NOTED
5 WHERE THEY WERE MARKED THEM AND COLLECTED THEM..

6 Q NOW, ON THAT DIAGRAM THE SHELL CASINGS -- AND HOW
7 MANY SHELL CASINGS WERE THERE?

8 A THERE WAS SHELL CASINGS, LIVE AMMUNITION AND PIECES
9 OF LEAD, TOTAL OF 18.

10 Q ALL RIGHT. HOW MANY PIECES OF LEAD WERE THERE?

11 A TWO.

12 Q AND HOW MANY LIVE AMMUNITION?

13 A ONE LIVE.

14 Q SO THAT LEAVES HOW MANY?

15 A FIFTEEN.

16 Q FOR -- THAT WERE ACTUALLY SPENT SHELL CASINGS?

17 A SPENT SEMIAUTOMATIC SHELL CASINGS, YES, MA'AM.

18 Q ALL RIGHT. NOW, ON THAT DIAGRAM -- DO YOU HAVE THEM
19 NUMBERED?

20 A YES, MA'AM. THEY ARE NUMBERED ONE THROUGH 18.

21 Q AND YOU ACTUALLY YOURSELF RETRIEVED THOSE FROM THE
22 SCENE?

23 A YES, MA'AM.

24 Q AND THIS DIAGRAM, WOULD YOU EXPLAIN TO THE JURY WHAT
25 YOUR -- THE LITTLE LINES THAT YOU HAVE GOT, THE LITTLE

1 NUMBERS AND LITTLE LINES. WOULD YOU EXPLAIN TO THEM WHAT
2 THOSE INDICATE.

3 A THE NUMBERS WOULD INDICATE WHERE THE SHELL CASING OR
4 LEAD OR BULLET WAS FOUND AND A LINE WOULD BE A DOTTED LINE
5 WOULD BE TO THE REFERENCE POINT THAT I MEASURED FROM,
6 WHETHER IT BE THE FRONT TIRE, THE REAR TIRE OF THE
7 DRIVER'S SIDE TIRE.

8 WHATEVER MY REFERENCE POINTS OF WHERE I MEASURED
9 THE TWO, THERE WAS A BROKEN OR DOTTED LINE DRAWN TO THEN
10 WHERE I FOUND THE -- THE ARTICLE.

11 Q WERE SOME OF THEM ACTUALLY FOUND IN THE ROAD?

12 A YES, MA'AM, SOME WERE ACTUALLY IN THE PAVED PORTION
13 OF THE ROADWAY.

14 Q CAN YOU TELL THE JURY WHETHER OR NOT THOSE CAME FROM
15 WHATEVER HAPPENED THAT NIGHT?

16 A ABSOLUTELY NO.

17 Q AND CAN YOU TELL THEM WHETHER OR NOT ANY OF THEM HAVE
18 BEEN MOVED FROM THE PLACE THEY ORIGINALLY WERE OR WHERE
19 THEY ARE ON YOUR DIAGRAM AS WHERE THEY ORIGINALLY WERE?
20 DO YOU KNOW THAT?

21 A COULD THEY HAVE BEEN MOVED?

22 Q YES.

23 A YES, THEY COULD HAVE BEEN MOVED. IF A VEHICLE HIT
24 THEM OR JUST THE WIND FROM OTHER VEHICLES, IT COULD HAVE
25 BLOWN THEM AND MOVED THEM, YES.

1 Q DO YOU HAVE TRAINING IN BALLISTICS?

2 A I HAVE INVESTIGATED SEVERAL SHOOTINGS AND--

3 Q YOU HAVE DONE SHELL CASINGS?

4 A YES, MA'AM.

5 Q DO YOU KNOW HOW FAR A SHELL CASING USUALLY GOES WHEN
6 IT'S EJECTED FROM A GUN?

7 MR. FINNEY: NO, MA'AM.

8 THE COURT: SUSTAIN THAT OBJECTION. HAVE TO LAY SOME
9 MORE FOUNDATION. FIRST OF ALL DON'T KNOW WHAT KIND OF
10 GUN, HANDGUN, RIFLE, WHAT CALIBER.

11 MS. NIELSEN: I WILL ASK THIS ONE.

12 THE COURT: THANK YOU.

13 (WHEREUPON QUESTIONING RESUMED).

14 Q BUT THOSE POINTS ON THERE SHOW EXACTLY WHERE YOU
15 PICKED THEM UP FROM?

16 A YES, MA'AM.

17 Q AND I AM GOING TO SHOW YOU SOME PHOTOGRAPHS AND I'M
18 JUST GOING TO ASK YOU TO LOOK AT THEM AND TELL ME WHETHER
19 YOU CAN IDENTIFY THOSE. JUST GENERALLY CAN YOU TELL ME
20 YES OR NO ARE THEY A FAIR AND ACCURATE REPRESENTATION OF
21 WHAT THEY DEPICT?

22 A YES, MA'AM. THEY ARE PHOTOGRAPHS OF THE CLUB AND THE
23 AREA.

24 Q AND HOW MANY PHOTOGRAPHS ARE THERE?

25 A EIGHT.

1 (WHEREUPON THERE WAS A PAUSE).

2 MS. NIELSEN: YOUR HONOR, WANT TO ASK THAT THESE BE
3 MARKED AS STATE'S EXHIBITS NUMBER 8 -- 10 THROUGH 17.

4 MS. NIELSEN: ANY OBJECTION?

5 MR. FINNEY: NONE, YOUR HONOR.

6 THE COURT: THANK YOU. WITHOUT OBJECTION STATE'S 10
7 THROUGH 17 INTO EVIDENCE.

8 (STATE'S EXHIBIT NO. 10, 11, 12, 13, 14, 15, 16
9 AND 17 MARKED FOR EVIDENCE.)

10 (WHEREUPON QUESTIONING RESUMED)..

11 Q WOULD YOU TAKE WHAT'S MARKED AS STATE'S EXHIBITS 10
12 THROUGH 17 AND REQUEST YOU STAND IN FRONT OF THE JURY AND
13 JUST EXPLAIN WHAT EACH PHOTOGRAPH DEPICTS.

14 (WHEREUPON THE WITNESS LEFT THE STAND).

15 Q WILL YOU EXPLAIN TO THE JURY WHAT IS DEPICTED IN EACH
16 OF THOSE PICTURES.

17 A STATE'S EXHIBIT 13 SHOWS THE MARKEE SIGN DIRECTLY IN
18 FRONT OF THE CLUB, A LIGHT POLE AND LIGHTS DIRECTLY IN
19 FRONT OF THE CLUB AND IN THE BACKGROUND ANOTHER LIGHT
20 TOWARDS THE OTHER BASEBALL FIELD AND YOU CAN SEE THE
21 SECOND DRIVEWAY THAT COMES AROUND TOWARDS THE FRONT AND
22 THE GRASSY AREA THAT'S BEEN DISCUSSED EARLIER.

23 STATE'S EXHIBIT 14 SHOWS AN OVERVIEW OF ALSO THE
24 FRONT OF THE CLUB, YOU CAN SEE THE MARKEE SIGN AGAIN, THE
25 SAME LIGHT, A LIGHT POLE ON THE CORNER OF THE BUILDING,

1 THE FRONT DOOR OF THE CLUB, THE FIRST DRIVEWAY AND A
2 GRASSY PARKING AREA.

3 SHOWS A VIEW FROM THE -- STATE'S EXHIBIT 15
4 SHOWS A VIEW FROM THE FRONT DOOR AREA LOOKING BACK TOWARDS
5 WHERE THE CAR WAS PARKED AND THE VICTIM'S BODY WAS FOUND
6 TOWARDS THE FIRST DRIVEWAY IN THE GRASSY AREA HERE ON THE
7 RIGHT.

8 STATE'S EXHIBIT 16 AGAIN SHOWS THE FRONT OF THE
9 CLUB AND THE LIGHT POLE AND THE MARKEE SIGN, THE FIRST
10 DRIVEWAY IN THE GRASS PARKING AREA. STATE'S EXHIBIT 17 IS
11 A VIEW OF THE -- THE ROADWAY. AND LOOKING BACK TOWARDS
12 THE BASEBALL FIELD, YOU WOULD JUST BARELY SEE THE MARKEE
13 SIGN AND ANOTHER LIGHT.

14 STATE'S EXHIBIT 10 IS JUST THE FRONT PARKING
15 AREA. YOU CAN JUST SEE THE CORNER OF THE CLUB AND THE
16 MARKEE SIGN AND LIGHT. STATE'S 11 AND 12 APPEAR TO ME TO
17 BE THE SAME PICTURE.

18 IT SHOWS THE ROADWAY, THE FIRST DRIVEWAY, A
19 LIGHT POLE THAT IS IN FRONT OF THE HOUSE OR RESIDENCE NEXT
20 TO THE CLUB AND THE CURVE IN THE ROADWAY AS YOU GO BACK
21 TOWARDS HIGHWAY 15.

22 Q THANK YOU. YOU CAN SIT BACK DOWN.

23 (WHEREUPON THE WITNESS RESUMED THE STAND).

24 MS. NIELSEN: JUDGE, I THINK I HAVE GOT ONE MORE
25 PHOTOGRAPH. MARK THIS AS STATE'S 18.

1 (STATE'S EXHIBIT NO. 18 MARKED FOR EVIDENCE.)

2 (WHEREUPON QUESTIONING RESUMED) .

3 Q YOU CAN STAY SEATED. WHAT IS THAT A PHOTOGRAPH OF?

4 A THE FRONT OF THE CLUB.

5 Q DO YOU SEE THE THINGS ON THE BUILDING RIGHT HERE? AT
6 THE TOP, WHAT ARE THOSE?

7 A THOSE ARE SETS OF EIGHT FOOT FLUORESCENT TUBE LIGHTS.

8 Q WHEN THE CLUB IS OPEN AT NIGHT, ARE THOSE ON?

9 A YES, MA'AM. THERE IS ONE OPEN -- I MEAN ON DIRECTLY
10 ABOVE THE DOOR AND THEN IN THE -- EACH SIDE OF THE ROOF
11 LINE.

12 Q WERE THEY ON THAT NIGHT?

13 A YES, MA'AM.

14 Q WOULD YOU GET UP AND SHOW THE JURY ON THAT PHOTOGRAPH
15 WHERE THOSE LIGHTS ARE.

16 (WHEREUPON THE WITNESS LEFT THE STAND) .

17 A THERE IS ONE ON -- IN EACH SIDE OF THE -- A -- HERE
18 AND THERE'S ANOTHER EIGHT FOOT LIGHT FLUORESCENT TUBE
19 LIGHT DIRECTLY ABOVE THE DOORWAY.

20 (WHEREUPON THE WITNESS RESUMED THE STAND) .

21 Q THANK YOU. NOW, HAVE YOU ACTUALLY GONE OUT? DID YOU
22 DO IT BECAUSE I REQUESTED YOU GO OUT AND MEASURE THIS
23 DISTANCE RIGHT IN THERE?

24 A YES, MA'AM.

25 Q WOULD YOU -- BETWEEN THOSE TWO DRIVEWAYS, WOULD YOU

1 TELL THE JURY WHAT THE DISTANCE IS FROM ONE DRIVEWAY --
2 THE MIDDLE OF ONE DRIVEWAY TO THE MIDDLE OF THE OTHER ONE
3 OR HOWEVER YOU MEASURED IT.

4 A FROM THIS POINT OF THE GRASS TO THIS POINT HERE WAS
5 157 FEET. FROM THIS POINT OF THE DRIVEWAY ACROSS TO THE
6 OTHER SIDE WAS AN ADDITIONAL 54 FEET.

7 Q BUT IS 54 FEET THE WIDTH OF THE DRIVEWAY BACK THERE?

8 A OF THAT FIRST DRIVEWAY, TURNING INTO THE CLUB, YES,
9 MA'AM.

10 Q ALL RIGHT. AND DO YOU KNOW HOW FAR IT IS FROM THAT
11 CAR TO THE BUILDING?

12 A FROM THE CAR TO THE BUILDING? IT'S 71 FEET FROM THIS
13 LIGHT POLE HERE TO THE FRONT TIRE OF THE VEHICLE. AND
14 IT'S AN ADDITIONAL FROM THIS LIGHT POLE TO THE CORNER OF
15 THE BUILDING, 24 FEET.

16 Q ALL RIGHT. WHAT OTHER INVOLVEMENT DID YOU HAVE IN
17 THE CASE? WHAT ELSE DID YOU DO?

18 A PREPARED THE PHOTOGRAPH LINE-UPS.

19 Q CAN YOU TELL US HOW THAT CAME ABOUT THAT YOU PREPARED
20 THE PHOTOGRAPHIC LINE-UPS?

21 A I WAS GIVEN THE NAMES OF THOSE INDIVIDUALS AT THE
22 VICTIM'S HOME THAT SUNDAY AROUND NOON WHEN I WENT THERE TO
23 SPEAK TO THE MOTHER AND THEN ALSO CONFIRMED WITH
24 LIEUTENANT SIMON WHO WAS OUT OF TOWN THAT THOSE WERE THE--

25 MR. ROGERS: OBJECTION.

1 THE COURT: I SUSTAIN THE OBJECTION AS TO WHAT
2 LIEUTENANT SIMON SAID. THANK YOU.

3 (WHEREUPON QUESTIONING RESUMED).

4 Q ALL RIGHT. AS A RESULT OF YOUR INVESTIGATION, DID
5 YOU PREPARE TWO LINE-UPS?

6 A YES, MA'AM.

7 Q AND I AM GOING TO SHOW YOU STATE'S EXHIBITS 3 AND 4
8 AND ASK YOU IF THOSE ARE THE LINE-UPS THAT YOU PREPARED?

9 A YES, MA'AM.

10 Q AND IS STATE'S EXHIBIT 3, WHICH YOU MARKED THAT AS
11 LINE-UP "A"?

12 A YES, MA'AM.

13 Q WELL, WHOSE PHOTOGRAPH WAS IN THAT LINE-UP?

14 A MARCUS.

15 Q INVOLVED IN THIS CASE?

16 A MARCUS EVANS IS THE FIRST PHOTOGRAPH IN THE UPPER
17 LEFT HAND CORNER, WHO IS THE DEFENDANT HERE IN THE KHAKI
18 SHIRT.

19 Q NOW, IN THE OTHER LINE-UP WHICH IS YOU MARKED AS "B"
20 WHICH IS STATE'S EXHIBIT 4, WHAT DEFENDANT DOES THE LINE
21 -- INVOLVED IN THIS CASE IS IN THAT LINE-UP?

22 A NUMBER FIVE IS MR. GILARON TAYLOR WHO IS THE
23 DEFENDANT WHO IS THE FOURTH ONE OVER FROM THE -- MY LEFT.

24 Q NOW, DID YOU SHOW THOSE LINE-UPS TO PEOPLE WHO HAD
25 BEEN WITNESSES AT THE SCENE THAT NIGHT?

1 A YES, MA'AM.

2 Q DO YOU RECALL SPECIFICALLY WHO YOU SHOWED THEM TO?

3 A NO, MA'AM. I KNOW THAT I SHOWED THEM TO SEVERAL OF
4 THE WITNESSES THAT WERE OUT THERE THAT NIGHT. I KNOW THAT
5 ONE OF THEM WAS JUST AS LATE AS LAST WEEK WHEN THOSE WERE
6 SHOWN. I KNOW THAT LEONARD SCOTT SAW THE LINE-UP, STEVEN
7 JOHNSON, MARTY OAKS, RODNEY YATES, DELVIN WAITERS.

8 Q AT ANY TIME DID YOU SHOW THOSE LINE-UPS, DID YOU IN
9 ANY WAY INDICATE WHO THE PEOPLE SHOULD PICK OUT OF THOSE
10 LINE-UPS?

11 A NO, MA'AM.

12 Q SHOW -- EXPLAIN TO THE JURY HOW YOU GO ABOUT SHOWING
13 LINE-UPS TO SOMEBODY.

14 A WELL, I WOULD HAVE TAKEN THE SIX PHOTOGRAPHS THAT ARE
15 IN THE LINE-UP, STAPLED IT INTO A FOLDER, HAD THE WITNESS
16 OR INDIVIDUAL THERE THAT I WANTED TO SHOW TO THEM, HAND IT
17 TO THEM, ASK THEM TO LOOK AT THE SIX PHOTOGRAPHS AND ASK
18 IF THEY CAN IDENTIFY ANYBODY INVOLVED IN THE INCIDENT THAT
19 NIGHT. AND THEN WHEN I WAS DONE WITH LINE-UP "A", I WOULD
20 HAVE TAKEN THAT AND THEN SHOWED THEM LINE-UP "B".

21 Q WERE YOU ALSO INVOLVED IN THE TAKING OF A COUPLE OF
22 STATEMENTS?

23 A YES, MA'AM.

24 Q I'M GOING TO SHOW YOU WHAT HAS BEEN MARKED AS STATE'S
25 EXHIBIT NUMBER 2 FOR IDENTIFICATION AND ASK IF YOU CAN

1 IDENTIFY THAT.

2 A YES, MA'AM.

3 Q AND WHAT IS THAT?

4 A THAT IS A -- THE STATEMENT OF LAMONT WITHERSPOON WHO
5 WAS THE LAST DEFENDANT ON THE FAR RIGHT.

6 Q AND WHO TOOK THIS STATEMENT?

7 A I TOOK THIS STATEMENT ACTUALLY, TYPED IT. LIEUTENANT
8 SIMON WAS IN AND OUT OF THE ROOM WHILE IT WAS BEING TAKEN.

9 Q DID LAMONT WITHERSPOON EVER SIGN THIS?

10 A NO, MA'AM.

11 Q DID YOU READ HIM THE RIGHTS THAT ARE ON THE TOP OF
12 THIS?

13 A YES, MA'AM.

14 Q AND DID YOU EXPLAIN TO THE JURY WHAT RIGHTS YOU READ
15 TO HIM?

16 A I READ ALL OF THE RIGHTS THAT ARE ON THIS FORM HERE,
17 SPECIFICALLY YOU HAVE THE RIGHT TO REMAIN SILENT, ANYTHING
18 YOU SAY CAN AND WILL BE USED AGAINST YOU IN A COURT OF
19 LAW, YOU HAVE THE RIGHT TO TALK TO A LAWYER FOR ADVICE
20 BEFORE WE ASK YOU ANY QUESTIONS AND HAVE HIM OR HER
21 PRESENT WITH YOU DURING QUESTIONING.

22 IF YOU CANNOT AFFORD TO HIRE A LAWYER, ONE WILL
23 BE APPOINTED TO REPRESENT YOU BEFORE ANY QUESTIONING IF
24 YOU WISH. I HAVE READ THIS STATEMENT OF MY RIGHTS AND I
25 UNDERSTAND WHAT MY RIGHTS ARE.

1 THE SECOND PART IS I'M WILLING TO MAKE A
2 STATEMENT AND ANSWER QUESTIONS. I DO NOT WANT A LAWYER AT
3 THIS TIME. I UNDERSTAND AND KNOW WHAT I AM DOING. NO
4 PROMISES OR THREATS HAVE BEEN MADE TO ME AND NO PRESSURE
5 OR COERCION OF ANY KIND HAS BEEN USED AGAINST ME.

6 MS. NIELSEN: YOUR HONOR, MAY WE APPROACH?

7 THE COURT: YES, MA'AM.

8 (WHEREUPON A BENCH CONFERENCE WAS HELD).

9 (WHEREUPON QUESTIONING RESUMED).

10 Q ON WHAT DATE DID YOU TAKE THAT STATEMENT FROM HIM?

11 A NOVEMBER 17TH, 1999.

12 Q AND DID YOU COERCE HIM INTO GIVING THE STATEMENT?

13 A NO, MA'AM.

14 Q WOULD YOU JUST READ THE STATEMENT, THE PART THAT --
15 TELL YOU WHERE. THAT'S THE STATEMENT ITSELF. WILL YOU
16 READ IT TO THE JURY, PLEASE.

17 A YES, MA'AM. IT STARTS OFF WITH THE INFORMATION OF
18 LAMONT WITHERSPOON, DATE OF BIRTH 1-5-74, 238 WILLIAMS
19 STREET, SUMTER, SOUTH CAROLINA, 29150. SOCIAL SECURITY OF
20 248-63-3536. FIRST LINE IS EARLY SUNDAY MORNING 11-14-99
21 I HAD -- ABOUT 3:30 A.M. I WENT TO THE COUNTRY CLUB IN LEE
22 COUNTY.

23 I WAS DRIVING MY 1989 BURGUNDY CADILLAC. TRAVIS
24 SINGLETON, MARCUS EVANS AND PARENTHESIS COAL AND RON WERE
25 RIDING IN THE CAR WITH ME. WHEN WE GOT THERE, I PARKED BY

1 THE FIRST DRIVE, NOT REALLY IN A PARKING SPOT. WE GOT OUT
2 AND WENT TO GO IN THE CLUB.

3 THEY WERE CHARGING \$10 AND MY COUSIN DIDN'T HAVE
4 ANY MONEY, SO I SAID THAT WAS TOO MUCH AS LATE AS IT WAS.
5 WE WERE STANDING OUTSIDE TALKING TO PEOPLE. IT WAS COLD
6 OUTSIDE TO ME AND I KNEW WE WEREN'T GOING INTO THE CLUB
7 AND A GROUP OF FELLOWS WAS BY MY CAR, SO I MOVED IT OVER
8 TO THE OTHER PARKING LOT.

9 TRAVIS, MY COUSIN, CAME WITH ME. AFTER WE
10 PARKED THE CAR, WE GOT OUT AND TALKED A FEW MINUTES. THEN
11 I HEARD SOME SHOTS. TRAVIS AND I GOT BACK IN THE CAR AND
12 STARTED THE CAR UP. WE WERE SITTING AND WAITING FOR RON
13 AND COAL TO COME TO THE CAR SO WE COULD LEAVE.

14 I REALIZED THEY WERE NOT COMING, SO I PULLED OUT
15 ON TO THE ROAD TO LOOK FOR THEM. WHILE I WAS ON THE ROAD,
16 WHEN I GOT IN FRONT OF THE FIRST DRIVEWAY, I STOPPED TO
17 TURN INTO THE DRIVE. SOMETHING THAT SOUNDED LIKE A SHOT
18 OR ROCK HIT MY CAR.

19 I MOVED ON DOWN THE ROAD STILL LOOKING FOR
20 MARCUS AND RON. A CAR PULLED OUT OF THE PARKING AREA IN
21 FRONT OF ME, THEN I SAW MARCUS AND RON TRYING TO GET MY
22 ATTENTION. THEY JOGGED UP TO THE CAR AND GOT IN THE BACK
23 SEAT. WE WENT ON DOWN THE ROAD WHILE IN THE CAR IN FRONT
24 OF US DRIVING FAST.

25 WE GOT ON HIGHWAY 15. I CONTINUED TO FOLLOW THE

1 CAR IN FRONT OF ME AT A HIGH RATE OF SPEED. THEN THE
2 POLICE PULLED US OVER. I GOT OUT AND SPOKE TO THE POLICE
3 AND THE LEE COUNTY POLICE CAME. THEY ASKED IF THEY COULD
4 LOOK IN MY CAR AND THEY DID.

5 THEY TOOK OUR NAMES AND INFORMATION AND LET US
6 GO. I TOOK RON AND COAL TO TIGER'S HOUSE AND THEN DROPPED
7 TRAVIS OFF AT HIS HOUSE BEFORE I WENT HOME.

8 Q AND THAT WAS THE ENTIRE STATEMENT HE GAVE YOU?

9 A YES, MA'AM.

10 Q ON THOSE FORMS GIVE HIM TO SIGN AND HE HAS NOT SIGNED
11 THEM; HAS HE?

12 A NO, MA'AM, HE HAS NOT.

13 Q WHOSE NAME DOES IT APPEAR ON THERE?

14 A MY.

15 Q WHOSE SIGNATURE?

16 A THERE IS -- THE TWO SIGNATURES ARE ON THERE UNDER THE
17 WITNESS AS ONE IS MY SIGNATURE AND THE OTHER IS LIEUTENANT
18 SIMON'S SIGNATURE.

19 Q AND DO YOU KNOW WHY HE WOULDN'T SIGN? YOU GAVE HIM
20 THE STATEMENT?

21 A YES, MA'AM.

22 Q DID HE TELL YOU WHY HE WOULDN'T SIGN IT?

23 A YES, MA'AM. HE ADVISED ME THAT HIS ATTORNEY MR.
24 FINNEY TOLD HIM NOT TO SIGN ANYTHING ABOUT THAT.

25 Q DID HE TALK TO MR. FINNEY WHILE HE WAS IN THERE WITH

1 YOU?

2 A NO, MA'AM.

3 Q NOW, THE SHELL CASINGS AND THE LEAD OF THAT UNFIRED
4 BULLET ON THE SCENE, WHAT DID YOU DO WITH THOSE?

5 A THEY WERE DELIVERED TO SLED OR THE SOUTH CAROLINA LAW
6 ENFORCEMENT DIVISION FOR EXAMINATION.

7 MS. NIELSEN: COURT'S INDULGENCE PLEASE.

8 THE COURT: YES, MA'AM.

9 (WHEREUPON THERE WAS A PAUSE).

10 (WHEREUPON QUESTIONING RESUMED).

11 Q DID SOME OFFICERS LEAVE THE SCENE AFTER THE SHOOTING?

12 A YES, MA'AM. TWO OF THE FOUR OFFICERS, CHARLES WHITE
13 AND LIEUTENANT SIMON LEFT THE CLUB AFTER THE SHOOTING
14 LEAVING JUST MYSELF AND OFFICER DON FARROW AT THE SCENE.

15 Q AND AT SOME POINT DID YOU CALL THEM BACK?

16 A YES, MA'AM.

17 Q NOW, DO YOU KNOW WHAT KIND OF -- WHEN THAT WAS AND
18 WHY THAT WAS?

19 A I CALLED THEM BACK BECAUSE IT WAS ONLY TWO OFFICERS
20 THERE AND THAT'S THE NUMBER OF PEOPLE THERE WHO WERE
21 AGITATED AND EXCITED THAT I WAS UNCOMFORTABLE WITH THAT
22 SITUATION OF THE ODDS OF TWO TO FIVE HUNDRED.

23 Q AND CHECK -- CHARLES WHITE, DOES HE WORK FOR THE
24 SHERIFF'S OFFICE?

25 A NO, MA'AM. HE IS NO LONGER EMPLOYED WITH THE

1 SHERIFF'S OFFICE NOW. HE WAS AT THAT TIME.

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

4 THE COURT: MR. DOBY?

5 CROSS-EXAMINATION BY MR. DOBY:

6 Q DETECTIVE, WHEN YOU CAME OUTSIDE OF THE CLUB,
7 EVERYTHING HAD BASICALLY SORT OF STOPPED AT THAT POINT; IS
8 THAT RIGHT?

9 A NO, EVERYTHING HADN'T STOPPED. THE OFFICERS WERE
10 STILL MOVING, THERE WAS STILL INDIVIDUALS THERE BY THE
11 VICTIM'S BODY.

12 Q ALL RIGHT. DID YOU SEE ANY OTHER INDIVIDUALS RUNNING
13 AWAY OR TO THE SCENE AT THAT POINT?

14 A NO, I DID NOT SEE ANYONE RUNNING AWAY OR ANY SHOTS --
15 HEARD ANY SHOTS OR ANYTHING LIKE THAT.

16 Q DID YOU ACTUALLY HEAR THE SHOTS?

17 A NO, I DID NOT.

18 Q YOU WERE INSIDE THE CLUB?

19 A I WAS INSIDE THE CLUB.

20 Q NOISY?

21 A EXTREMELY LOUD.

22 Q LOT OF PEOPLE MOVING AROUND INSIDE THE CLUB THEN?

23 A YES, SIR.

24 Q OKAY. SO WHEN YOU GOT OUTSIDE, YOU SAW THE VICTIM
25 LYING ON THE GROUND?

1 A YES, SIR.

2 Q SOME PEOPLE STANDING AROUND HIM?

3 A YES, SIR.

4 Q AND DID YOU GET THE NAMES OF THE PEOPLE THAT WERE
5 STANDING AROUND THE VICTIM?

6 A NO, I DID NOT.

7 Q NOT AT THAT TIME. DID YOU SUBSEQUENTLY TO THE
8 IMMEDIATE TIME THAT YOU WENT OUT, DID YOU GET THEIR NAMES?

9 A I DID NOT, NO, NOT AT THAT IMMEDIATE TIME. THERE WAS
10 TOO MUCH COMMOTION GOING ON. THOSE INDIVIDUALS WERE
11 EXTREMELY AGITATED AND UPSET WONDERING WHY THE RESCUE
12 SQUAD WAS TAKING SO LONG AND ALSO STILL HAD A NUMBER OF
13 PEOPLE INSIDE THE CLUB WHO WERE GETTING PROGRESSIVELY MORE
14 UPSET.

15 Q DID YOU STAY THERE WITH THE VICTIM OR DID YOU GO BACK
16 TO THE CLUB?

17 A I WENT OVER TO THE VICTIM AND THEN WENT BACK TO THE
18 CLUB, FRONT DOOR OF THE CLUB.

19 Q OKAY. AND DID YOU STAY THERE AT THE FRONT DOOR OF
20 THE CLUB UNTIL THE RESCUE SQUAD ARRIVED?

21 A UNTIL THE RESCUE SQUAD ARRIVED AND LEFT.

22 Q OKAY. AND WAS THERE ANY OFFICER THAT WAS STANDING
23 THEN OVER BY THE VICTIM DURING THIS TIME?

24 A YES, SIR, OFFICER--

25 Q WHO IS THAT?

1 A DON FARROW WAS OVER THERE WHILE I WAS AT THE DOOR.

2 Q OKAY. DID YOU SUBSEQUENTLY COLLECT FROM HIM ANY
3 NAMES OF PERSONS THAT WERE CONGREGATED AROUND THE BODY AT
4 THAT POINT?

5 A NO.

6 Q DO YOU KNOW IF HE OBTAINED THOSE NAMES?

7 A I HAVE NO IDEA.

8 Q DID YOU TALK TO ANY OF THE WITNESSES THAT PARTICULAR
9 NIGHT?

10 A NO, SIR.

11 Q OKAY. AFTER THESE -- I THINK YOU DESCRIBED SOME FIVE
12 HUNDRED PEOPLE IN THE CLUB. AT SOME POINT THEY WERE LET
13 OUT OF THE CLUB AND THAT'S WHEN YOU DID THIS DIAGRAM,
14 CORRECT?

15 A AFTER THEY WERE LET OUT OF THE CLUB AND AFTER THEY
16 HAD ALL LEFT THE AREA, YES.

17 Q OKAY. AND AS YOU DESCRIBED, PERHAPS PEOPLE WERE
18 WALKING ON THE ROADWAY THERE, THEIR CARS GOING BY?

19 A YES, SIR, THEY COULD HAVE.

20 Q OKAY. YOU ARE NOT TELLING US THEN THAT THIS CRIME
21 SCENE REALLY HAD MUCH INTEGRITY AT ALL?

22 A IT HAD SOME INTEGRITY, BUT IT WAS NOWHERE NEAR WHAT
23 WE CALL AN IDEAL SITUATION. IDEALLY WE WOULD NOT LIKE
24 ANYONE IN THE CRIME SCENE. USUALLY IT'S CONTAINED A STORE
25 OR HOUSE OR YARD AREA AND WE CAN PROHIBIT ANYBODY FROM

1 GOING IN THERE TILL IT'S PROCESSED. WE WERE UNABLE TO DO
2 THAT IN THIS SITUATION.

3 Q WHEN YOU CAME OUT OF THE CLUB, WERE THERE CARS THAT
4 WERE PARKED IMMEDIATELY IN FRONT OF THE CLUB?

5 A WERE THERE -- I DON'T -- I DON'T UNDERSTAND WHAT
6 YOU'RE TALKING ABOUT.

7 Q YOU DESCRIBED COMING OUT THE FRONT DOOR OF THE CLUB
8 THERE, RIGHT?

9 A YES, SIR.

10 Q WERE THERE CARS THAT WERE PARKED IMMEDIATELY IN FRONT
11 OF THE CLUB?

12 A IN THIS GRASSY AREA HERE.

13 Q GRASSY AREA AND IN THE DRIVEWAY AND EVEN CLOSER TO
14 THE CLUB THAN THE DRIVEWAY?

15 A THE PATROL VEHICLES ARE -- OUR DEPUTY'S VEHICLES WERE
16 PARKED ALONG THE FRONT AREA, THEN THERE WAS CARS IN THE
17 GRASS AREA ALSO.

18 Q ALL RIGHT. WERE THERE THEN FOUR PATROL VEHICLES THAT
19 WERE PARKED IN THE FRONT?

20 A YES, SIR.

21 Q AND WERE THEY ALL PARKED IN THE DRIVEWAY WHERE YOU
22 DESCRIBED?

23 A YEAH, THEY WOULD HAVE BEEN PARKED TOWARDS THE FRONT
24 OF THE CLUB IN THE DRIVE AREA THERE.

25 Q ALL RIGHT. SO THERE IS SUFFICIENT ROOM THERE TO PARK

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1 AT LEAST FOUR AUTOMOBILES FROM THE FRONT END TO TAIL END
2 THEN, RIGHT?

3 A YES, SIR.

4 Q OKAY. AND YOU TOOK SOME MEASUREMENTS, AND FROM THE
5 CLUB ITSELF, THE DISTANCE TO THE AUTOMOBILE WAS 71 FEET
6 PLUS 24 FEET; IS THAT CORRECT?

7 A FROM THIS LIGHT POLE HERE TO THE VEHICLE WAS I
8 BELIEVE IT UP THERE 71 FEET, THEN FROM THIS LIGHT POLE TO
9 THE CORNER OF THE CLUB THERE WAS 24 AND A HALF FEET.

10 Q OKAY. DID YOU NOTICE ANY OTHER AUTOMOBILES THAT WERE
11 PARKED NEXT TO THE VEHICLE YOU HAVE IN THE DIAGRAM?

12 A NOTICE THEM WHEN?

13 Q WHEN YOU WENT OUTSIDE AFTER AT LEAST YOU WERE TOLD
14 THERE WAS SOME COMMOTION GOING ON?

15 A WAS THERE VEHICLES OUT THERE? YES, THERE WAS
16 VEHICLES PARKED NEXT TO AND BEHIND IN THIS AREA HERE AS
17 WELL AS ACROSS THE STREET IN HERE.

18 Q OKAY. AND YOU -- WHEN YOU WENT OUT OF THE CLUB THE
19 FIRST TIME?

20 A YES, SIR.

21 Q HOW MANY PEOPLE DID YOU SEE OUTSIDE?

22 A AS I SAID EARLIER, MY ATTENTION WAS DRAWN TO THE
23 VICTIM ON THE GROUND. I RECALL TWO FEMALES OUT THERE AND
24 SEVEN OR EIGHT INDIVIDUALS DIRECTLY AROUND HIM.

25 Q OKAY. SEE ANYBODY ELSE TO THE LEFT OR TO THE RIGHT?

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1 A TO THE RIGHT AS I CAME OUT THE CLUB?

2 Q UH-HUH.

3 A I HONESTLY DID NOT LOOK TO MY BACK OR TO MY RIGHT
4 BECAUSE THE COMMOTION AND THE ATTENTION WAS DRAWN TO THE
5 LEFT.

6 Q OKAY.

7 A AND THAT'S WHERE THE OFFICERS WERE AND THAT'S WHERE
8 MY IMMEDIATE ATTENTION WENT TO.

9 Q DID YOU EXAMINE ANY OTHER VEHICLES TO DETERMINE
10 WHETHER ANY BULLET HOLES IN ANY OTHER VEHICLES THERE AT
11 THE SCENE?

12 A NO, I DID NOT. I DID NOT LOOK, CHECK ANY OTHER
13 VEHICLES. THIS VEHICLE HERE HAD A -- A FAIRLY OBVIOUS
14 BULLET HOLE IN THE HOOD, ROOF AREA OF IT. I DID NOT CHECK
15 ANY OTHER VEHICLES.

16 Q OKAY. COULD YOU TELL FROM WHICH DIRECTION THAT
17 BULLET HAD COME TO MAKE THAT PARTICULAR DENT IN THE HOOD?

18 A IT WOULD BE MY OPINION THAT IT CAME FROM THE FRONT OF
19 THAT VEHICLE. IT WAS SEEM TO BE TEARDROP SHAPED AND KIND
20 OF SKIMMED TOWARDS THE FRONT AND EXPANDED GOING BACK
21 TOWARDS...

22 Q AND THE FRONT OF THAT VEHICLE IS POINTED IN WHICH
23 DIRECTION?

24 A THE FRONT OF THE VEHICLE IS HERE POINTING BACK
25 TOWARDS THE CLUB. THIS WAS THE -- THIS AREA IS THE REAR

1 OF THE VEHICLE.

2 Q OKAY.

3 A THE REAR OF THE VEHICLE WOULD BE GOING TOWARDS
4 HIGHWAY 15.

5 Q AS YOU COLLECTED THESE SHELL CASINGS, YOU FOUND SHELL
6 CASINGS FOR 380'S AND 45'S; IS THAT CORRECT?

7 A YES.

8 Q DID THE -- AND YOU GOT YOUR DIAGRAM HERE. YOU HAVE
9 GOT -- THE DISTANCE THAT YOU FOUND THEM AFTER EVERYBODY
10 HAD CLEARED THE WAY IS ON THE DIAGRAM, CORRECT?

11 A THAT'S CORRECT.

12 Q OKAY. YOU DON'T KNOW WHETHER THEY WERE CLOSER,
13 FURTHER, WHERE THEY WERE AT THE TIME OF THE ACTUAL
14 SHOOTING, BUT THAT'S WHAT YOU FOUND?

15 A THAT'S WHAT I FOUND AFTER EVERYTHING WAS CALMED DOWN
16 WHERE I COULD MEASURE AND COLLECT THINGS.

17 Q WHO TOOK THE PHOTOGRAPHS THAT YOU HAD EARLIER
18 DESCRIBED?

19 A LIEUTENANT SIMON TOOK THOSE PHOTOGRAPHS.

20 Q DID YOU TAKE PHOTOGRAPHS THE NIGHT THAT THIS
21 OCCURRED?

22 A I TOOK SOME PHOTOGRAPHS OF THE VEHICLE, YES.

23 Q WERE THERE PHOTOGRAPHS TAKEN OF THE SCENE THAT NIGHT?

24 A THE MAJORITY OF THE PHOTOGRAPHS WERE TAKEN TO THE
25 VEHICLE IN THE SURROUNDING AREA OF THE VEHICLE THERE.

1 Q DID YOU TAKE THOSE PHOTOGRAPHS?

2 A YES.

3 Q OKAY. DO YOU HAVE THOSE?

4 A I DO NOT HAVE THEM UP HERE WITH ME, NO, SIR.

5 Q WHERE ARE THEY?

6 A AT THE SOLICITOR'S TABLE, I BELIEVE.

7 Q DID YOU TAKE SOME PHOTOGRAPHS ON A NIGHT OTHER THAN
8 THE NIGHT WHICH THE SHOOTING OCCURRED?

9 A NO, SIR.

10 Q SO ALL OF THE PHOTOGRAPHS THAT YOU HAD TAKEN WERE
11 TAKEN ON THAT PARTICULAR NIGHT?

12 A THAT'S CORRECT.

13 Q OKAY. COULD YOU GET THOSE?

14 A (OFF STAND).

15 Q WHAT KIND OF CAMERA DO YOU HAVE?

16 A IT'S A 35 MILLIMETER CAMERA.

17 Q DOES IT HAVE A FLASH ON IT?

18 A YES, SIR.

19 Q DID YOU USE THE FLASH TO TAKE THESE PHOTOGRAPHS?

20 A YES, SIR.

21 Q AND ALL OF THOSE PHOTOGRAPHS ARE TAKEN WITH THE
22 FLASH?

23 A YES, SIR.

24 Q OKAY. DO YOU MIND IF I EXAMINE THOSE?

25 MR. JORDAN: YOUR HONOR, MAY WE APPROACH?

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1 THE COURT: SURE.

2 (WHEREUPON A BENCH CONFERENCE WAS HELD).

3 THE COURT: MADAM REPORTER PLEASE NOTE A RENEWAL OF
4 THE MOTION MADE AT SIDE BAR. WE WILL TAKE THAT UP OUT OF
5 THE PRESENCE OF THE JURY.

6 MS. NIELSEN: YOUR HONOR, I THINK WE NEED TO APPROACH
7 AGAIN.

8 THE COURT: ALL RIGHT. RIGHT HERE.

9 (WHEREUPON A BENCH CONFERENCE WAS HELD).

10 (WHEREUPON QUESTIONING RESUMED).

11 Q DETECTIVE DELLINGER, WHEN YOU TOOK THE PHOTOGRAPHS,
12 DID YOU GET TWO -- DID YOU GET DUPLICATE ORIGINALS WHEN
13 YOU WENT TO HAVE THOSE PHOTOGRAPHS DEVELOPED?

14 A YES, SIR.

15 Q OKAY. SO THE PICTURES THAT YOU HAVE GOT, YOU HAVE
16 GOT TWO OF EACH ONE, RIGHT?

17 A YES, SIR.

18 Q OKAY. DETECTIVE, IF YOU WILL PICK OUT ONE OF EACH OF
19 THOSE PHOTOGRAPHS THAT YOU TOOK.

20 MR. DOBY: YOUR HONOR, I HAVE TEN PHOTOGRAPHS. I
21 WOULD ASK THAT THOSE BE MADE DEFENDANT'S 1 THROUGH 10.

22 THE COURT: ALL RIGHT. DEFENDANT EVANS' 1 THROUGH
23 10.

24 (DEFENDANT EVANS' EXHIBIT NO. 1, 2, 3, 4, 5, 6,
25 7, 8, 9 AND 10 MARKED FOR EVIDENCE.)

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1 (WHEREUPON QUESTIONING RESUMED).

2 Q DETECTIVE, IF YOU WILL COME DOWN HERE PLEASE AND HAND
3 YOU WHAT HAS BEEN MARKED DEFENDANT'S EXHIBIT 1 THROUGH
4 10. IF YOU WILL SHOW US WHAT THAT IS, PLEASE.

5 A THAT IS THE FRONT WINDSHIELD OF THE VEHICLE AND IT
6 SHOWS THE BULLET HOLE ALMOST -- THE BULLET HOLE IS ALMOST
7 IN THE CENTER OF THE ROOF OF THE VEHICLE.

8 Q HOW FAR AWAY FROM THAT VEHICLE WERE YOU WHEN YOU
9 TOOK--

10 A I WAS STANDING DIRECTLY IN FRONT OF THE VEHICLE.

11 Q ALL RIGHT. LET ME ASK YOU ON ALL OF THESE
12 PHOTOGRAPHS DID YOU HAVE ANYTHING TO ILLUMINATE THE AREA
13 OTHER THAN YOUR FLASH AND THE NATURAL LIGHTING THAT WAS
14 THERE?

15 A IT WOULD BE JUST THE FLASH AND THE NATURAL LIGHTING
16 THERE, BUT A CAMERA WHEN IT PROCESSES THE FILM FOCUSES ON
17 WHAT YOU HAVE IN--

18 Q I ASKED YOU SIMPLY WAS THERE ANY LIGHT THAT
19 ILLUMINATED THE AREA OTHER THAN THE FLASH AND THE NATURAL
20 LIGHTING?

21 MS. NIELSEN: YOUR HONOR, HE IS TRYING TO EXPLAIN HIS
22 ANSWER.

23 MR. DOBY: NO, SIR. YOUR HONOR, I THINK HE'S GOING
24 INTO SOMETHING I DIDN'T ASK HIM. HE'S NOT QUALIFIED.

25 THE COURT: FIRST OF ALL LET HIM ANSWER THE QUESTION

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1 WHETHER OR NOT THERE WAS ANYTHING IN ADDITION TO THAT. IF
2 HE NEEDS TO EXPLAIN THAT ANSWER BEYOND THAT, I WILL LET
3 HIM DO THAT.

4 THE FIRST QUESTION WAS WAS THERE ANYTHING OTHER
5 THAN FLASH AND THE NATURAL LIGHTING FROM THE AREA THAT
6 ILLUMINATED THE PHOTOGRAPHS THAT WERE TAKEN THERE. WOULD
7 YOU ANSWER THAT QUESTION FIRST.

8 THE WITNESS: THERE IS NOTHING ELSE OTHER THAN THE
9 FLASH OF THE LIGHTED -- THE NATURAL LIGHT THAT IS THERE
10 USED IN THAT PHOTOGRAPH.

11 THE COURT: ALL RIGHT. YOU CAN EXPLAIN THAT ANSWER.

12 THE WITNESS: BUT A CAMERA WILL FOCUS ON THE POINT OF
13 THE FLASH DEPENDING UPON THE SETTINGS YOU HAVE THE CAMERA
14 SET AT.

15 (WHEREUPON QUESTIONING RESUMED).

16 Q DURING -- YOU ARE A POLICE DETECTIVE, CORRECT?

17 A YES, SIR.

18 Q YOU'RE NOT A PROFESSIONAL PHOTOGRAPHER?

19 A I HAVE TAKEN AN 80 HOUR COURSE IN POLICE PHOTOGRAPHY.

20 Q ALL RIGHT. YOUR PHOTOGRAPHS WERE TAKEN THOUGH UNDER
21 THE NATURAL LIGHTING THAT WAS PRESENT ON THAT NIGHT PLUS
22 THE FLASH THAT YOUR CAMERA HAS, CORRECT?

23 A YES, AND A CAMERA WILL FOCUS ON THE FLASH AND NOT THE
24 -- WHAT IS IN THE BACKGROUND OR FOREGROUND DEPENDING UPON
25 THE SETTINGS OF THE FLASH AND THE CAMERA.

1 Q ALL RIGHT. LET ME SHOW YOU WHAT HAS BEEN MARKED AS
2 DEFENDANT'S EXHIBIT NUMBER 3 THEN. THAT SHOWS WHAT,
3 DETECTIVE?

4 A THAT SHOWS THE ROADWAY, THE REAR OF THE TWO VEHICLES
5 THERE, THE EIGHT FOOT TUBE LIGHTS THAT I DISCUSSED IN THE
6 A FRAME AND ABOVE THE DOOR AND THE MARKEE SIGN.

7 Q OKAY. NOW, HOW FAR WERE YOU FROM THAT CAR WHEN YOU
8 TOOK THAT PHOTOGRAPH?

9 A PROBABLY 25, 30 FEET.

10 Q OKAY. AND FROM THAT CAR THEN IT'S ANOTHER AS YOU
11 DESCRIBED 71 FEET TO A LIGHT POLE. CAN YOU SEE THE LIGHT
12 POLE ON THAT PHOTOGRAPH?

13 A YOU CAN SEE THE LIGHT THERE IN THE UPPER RIGHT HAND
14 CORNER OF THIS PICTURE. YOU CANNOT SEE THE POLE THAT'S--

15 Q OR THE RIGHT -- YOU CAN SEE WHERE THE LIGHT POLE IS.

16 A RIGHT. YOU CAN SEE THAT SPOT WHERE THE LIGHT IS ON
17 TOP OF THE POLE THERE, BUT YOU CANNOT ACTUALLY SEE THE
18 POLE PART.

19 Q OKAY. AND LET ME SHOW YOU WHAT HAS BEEN MARKED
20 DEFENDANT'S EXHIBIT NUMBER 2 AND ASK YOU IF YOU CAN
21 IDENTIFY WHAT IS IN THAT PHOTOGRAPH?

22 A THAT IS THE REAR OF THE VEHICLE, THE LICENSE PLATE
23 AREA, THE REAR BUMPER AND THEN ANY FOREGROUND YOU CAN SEE
24 THE MARKEE SIGN AND THE TUBE LIGHTS DOWN, THE STREET
25 LIGHTS, THE WHITE LINE OF THE HIGHWAY.

1 Q AND YOU ALSO SEE IN THAT PHOTOGRAPH WHERE THERE IS
2 SOME ORANGE CONES?

3 A THERE ARE ACTUALLY RED CUPS.

4 Q RED CUPS?

5 A YES, SIR.

6 Q AND DO THOSE RED CUPS THEN CORRESPOND WITH WHERE YOU
7 HAVE MARKED ON YOUR EXHIBIT OR YOUR DIAGRAM WHERE YOU
8 FOUND SHELL CASINGS, LEAD AND UNSPENT BULLETS?

9 A YES, SIR.

10 Q OKAY. SO THAT IS WHAT THOSE CONES THEN REPRESENT?

11 A YES, SIR.

12 Q OKAY. AND AGAIN SHOWING THE VEHICLE I ASSUME -- AND
13 THAT'S DEFENDANT'S NUMBER 4.

14 A THIS IS THE PASSENGER'S SIDE TIRE OF THE VEHICLE
15 LOOKING OUT INTO THE ROADWAY. THIS WOULD BE THE REAR
16 PASSENGER SIDE TIRE OF THE VEHICLE.

17 Q OKAY. AND LET ME ASK YOU. THIS IS DEFENDANT'S
18 NUMBER 5. CAN YOU IDENTIFY WHAT HAS BEEN IN THAT
19 PHOTOGRAPH?

20 A THE ROADWAY AND THE DRIVER'S SIDE OF THE VEHICLE.

21 Q OKAY. AND HOW FAR WERE YOU FROM THAT VEHICLE WHEN
22 YOU TOOK THE PHOTOGRAPH?

23 A I WAS IN THE GRASS ON THE OTHER SIDE OF THE ROAD
24 PROBABLY 25 FEET OR SO.

25 Q ALL RIGHT. AND ON THIS DIAGRAM THEN WERE YOU

1 SOMEWHERE OVER HERE PERHAPS?

2 A I THINK I WAS MORE DIRECTLY ACROSS THE -- FROM THE --
3 FROM THE REAR TIRE AND IN HERE.

4 Q OKAY.

5 A THE GRASS AREA HERE.

6 Q AND IN THAT PHOTOGRAPH AS WELL YOU CAN SEE SOME -- DO
7 YOU SEE ANY LIGHTS THAT ARE COMING FROM THE CLUB OR FROM
8 THE LIGHT POLES IN THAT PHOTOGRAPH?

9 A YES, IN THE UPPER LEFT HAND CORNER YOU CAN AGAIN SEE
10 THE DOT OF THE LIGHT.

11 Q SEE WHERE THE DOT OF THE LIGHT IS THERE?

12 A YEAH.

13 Q OKAY.. AND LET ME SHOW YOU DEFENDANT'S NUMBER 6. ASK
14 YOU WHAT THAT IS, PLEASE.

15 A THIS WOULD BE THE FRONT PARKING AREA IN THE DRIVEWAY
16 AREA, THE FIRST DRIVEWAY WHERE ARTICLES WERE FOUND.

17 Q OKAY. DEFENDANT'S NUMBER 7.

18 A THE PASSENGER'S SIDE OF THE VEHICLE, SHOWS THE ENTIRE
19 PASSENGER SIDE OF THE VEHICLE.

20 Q ALL RIGHT. DEFENDANT'S NUMBER 8 SHOWING THAT VEHICLE
21 AS WELL?

22 A SHOWS THAT VEHICLE AGAIN FROM THE RIGHT REAR PORTION
23 OF THE VEHICLE.

24 Q AND THAT SHOWS ALSO SOME CONES OR SOME CUPS THAT YOU
25 PLACED?

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1 A YES, SIR.

2 Q CORRESPONDING TO THE SHELL CASINGS AND OTHER THINGS
3 THAT YOU HAVE?

4 A YES, SIR.

5 Q OKAY. AND AGAIN THAT'S DEFENDANT'S NO...

6 A NINE.

7 Q NINE.

8 A AND WOULD BE FROM THE FRONT DRIVER'S SIDE ANGLE OF
9 THE VEHICLE.

10 Q OKAY. AND FINALLY DEFENDANT'S NUMBER 10, TELL ME
11 WHAT THAT SHOWS.

12 A AGAIN THAT SHOWS THE -- FROM THE -- FROM THE CLUB
13 AREA ON THE CUPS OR CONES NEAR THE FRONT, FIRST DRIVEWAY.

14 Q OKAY. NOW, DETECTIVE YOU TOOK THOSE PHOTOGRAPHS HOW
15 LONG AFTER THE INCIDENT OCCURRED?

16 A IT WAS THAT SAME EVENING, SHORTLY AFTER THE THINGS
17 CALMED DOWN AND WAS ABLE TO GET OUT EQUIPMENT TO --
18 MEASURING DEVICES AND THINGS LIKE THAT.

19 Q OKAY. DID YOU TAKE ANY OTHER PHOTOGRAPHS THAT NIGHT
20 BESIDES THOSE?

21 A NO, SIR.

22 Q NONE?

23 A NO, SIR.

24 Q DID YOU ACTUALLY PREPARE THE DIAGRAM?

25 A THE ONE YOU HAVE IN YOUR HAND?

1 Q YES.

2 A THE ONE IN YOUR HANDS?

3 Q UH-HUH.

4 A YES.

5 Q AND DID YOU PLACE THE MARKINGS ON THAT DIAGRAM?

6 A NO, SIR.

7 Q OKAY. DETECTIVE, DID YOU RECOVER ANY GUNS FROM THE
8 SCENE?

9 A NO, SIR.

10 Q DID NOT?

11 A NO, SIR.

12 Q DETECTIVE, DO YOU RECALL A PRELIMINARY HEARING THAT
13 WAS HELD IN THIS CASE?

14 A YES, SIR, THERE WERE PRELIMINARY HEARINGS HELD.

15 Q WERE YOU ASKED ABOUT GUNS AT THAT TIME?

16 A I HONESTLY DON'T RECALL, MR. DOBY.

17 Q OKAY. HAVE YOU REVIEWED ANY TESTIMONY FROM THAT
18 PRELIMINARY HEARING PRIOR TO YOUR TESTIMONY TODAY?

19 A NO, SIR.

20 MS. NIELSEN: YOUR HONOR, MAY I BE PROVIDED A COPY OF
21 WHAT HE IS USING?

22 MR. DOBY: YOUR HONOR, I HAVE THE SEALED ORIGINAL
23 THAT I WOULD PROPOSE TO USE IN THIS CASE.

24 THE COURT: ALL RIGHT, SIR.

25 MR. DOBY: MAY I?

1 THE COURT: THAT'S THE TESTIMONY OF THIS WITNESS
2 TAKEN UNDER OATH?

3 MR. DOBY: IT IS, YOUR HONOR.

4 THE COURT: YOU'RE ENTITLED TO DO THAT UNDER THE
5 RULE.

6 MR. DOBY: OKAY.

7 (WHEREUPON QUESTIONING RESUMED).

8 Q DETECTIVE, THIS WAS ACTUALLY THE PRELIMINARY HEARING
9 OF TRAVIS SINGLETON. DO YOU RECALL TESTIFYING AT THAT
10 PARTICULAR HEARING?

11 A INDEPENDENTLY, MR. DOBY, NO, I DON'T.

12 Q SPECIFICALLY REFERRING YOU TO PAGE 8 OF THAT
13 TESTIMONY, LINE 2. DO YOU HAVE THAT?

14 A YES, SIR.

15 Q THE QUESTION THAT WAS POSED TO YOU BY MICHAEL JORDAN
16 WAS OKAY, HAVE ANY GUNS BEEN RECOVERED? THERE HAVE BEEN
17 TWO GUNS RECOVERED.

18 A THAT'S CORRECT.

19 Q THAT WAS YOUR ANSWER TO THAT QUESTION?

20 A THAT'S CORRECT.

21 Q HAVE THEY BEEN SENT TO SLED FOR TESTING? YES, THEY
22 HAVE. WAS THAT THE CORRECT?

23 A NO WEAPONS HAVE BEEN SENT TO SLED FOR TESTING.

24 Q ALL RIGHT. THE QUESTION THAT WAS POSED TO YOU IN
25 THIS PRELIMINARY HEARING WAS HAVE THEY BEEN SENT TO SLED

1 FOR TESTING? AND YOUR ANSWER TO THAT QUESTION WAS YES,
2 THEY HAVE.

3 A YES, THIS IS WHAT THE ANSWER THERE IN WRITING.

4 Q HAS THAT TESTING BEEN RECEIVED YET? NO. THAT WAS
5 CORRECT, THAT IS A CORRECT READING OF WHAT IS CONTAINED ON
6 THE PRELIMINARY HEARING?

7 A THAT'S CORRECT.

8 Q IS THAT CORRECT?

9 A THAT'S CORRECT.

10 Q AND YOU WERE ASKED COULD YOU IDENTIFY THE CALIBERS,
11 AND YOU SAID THAT THERE WAS A 380 CALIBER AND A 45
12 CALIBER; IS THAT CORRECT?

13 A THAT IS WHAT IS IN HERE. THERE WAS NEVER A 380
14 CALIBER WEAPON FOUND. THERE WAS 380 AND 45 CALIBER
15 AMMUNITION AND SHELL CASING FOUND AND COLLECTED.

16 Q ALL RIGHT. TODAY YOUR TESTIMONY IS THAT THERE WERE
17 NO GUNS RECOVERED.

18 A A GUN WAS BROUGHT TO ME BY THE VICTIM'S FATHER, BUT
19 NO GUNS WERE COLLECTED THERE AT THAT SCENE.

20 Q WHERE IS THAT GUN?

21 A THAT IS IN THE EVIDENCE VAULT.

22 Q DID YOU SEND THAT TO SLED FOR TESTING?

23 A NO, IT WAS NOT.

24 Q THANK YOU. THAT'S ALL I HAVE.

25 THE COURT: THANK YOU. MR. ROGERS?

1 MR. ROGERS: YES, YOUR HONOR.

2 THE COURT: YOU CAN CROSS-EXAMINE.

3 CROSS-EXAMINATION BY MR. ROGERS:

4 Q DETECTIVE DELLINGER, ARE YOU THE MAIN CASE
5 INVESTIGATOR IN THIS CASE?

6 A MYSELF AND INVESTIGATOR SIMON WERE.

7 Q AND YOU ARE FAMILIAR WITH ALL THE INVESTIGATION AND
8 EVERYTHING THAT HAS GONE ON FROM YOUR STANDPOINT IN THIS
9 CASE?

10 A I WOULDN'T SAY EVERYTHING THAT WAS GONE ON, BUT...

11 Q OKAY. NOW, YOU WERE THE DETECTIVE THAT PUT TOGETHER
12 THESE PHOTO LINE-UPS?

13 A YES, SIR.

14 Q AND I TAKE IT THAT YOU HAVE HAD TRAINING AT THE
15 ACADEMY ABOUT IDENTIFICATION TESTIMONY AND OUT OF COURT
16 IDENTIFICATION PROCEDURES?

17 A I WOULDN'T SAY AT THE ACADEMY. THEY PROBABLY WOULD
18 HAVE COME FROM ACTUAL DEALING WITH CASES AND BEING
19 PRESENTED CASES IN COURT.

20 Q AND YOU ARE AWARE, ARE YOU NOT, THAT THERE ARE
21 SEVERAL DIFFERENT TYPES OF OUT OF COURT IDENTIFICATION
22 PROCEDURES?

23 A YES.

24 Q SOME THAT ARE MORE RELIABLE THAN OTHERS?

25 A I WOULDN'T HAVE ANY INFORMATION ON WHICH WOULD BE

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1 MORE.

2 Q WELL, LET'S TALK ABOUT THAT. ONE IS A LIVE LINE-UP
3 WHERE YOU ACTUALLY BRING LIVE PEOPLE IN TO BE VIEWED BY A
4 WITNESS; ISN'T THAT CORRECT?

5 A YES, SIR.

6 Q AND ISN'T THAT THE MOST RELIABLE METHOD OF DOING AN
7 OUT OF COURT IDENTIFICATION BECAUSE YOU HAVE LIVE PEOPLE
8 THERE?

9 A I WOULDN'T KNOW. I HAVE NEVER DONE A LIVE PERSON
10 LINE-UP. WE HAVE NEVER HAD THE ABILITY TO BRING THE
11 SUSPECT AND FIVE OR SIX OTHER INDIVIDUALS IN.

12 Q SO YOU HAVE NEVER DONE A LIVE LINE-UP?

13 A NO, I HAVE NEVER DONE A LIVE LINE-UP WITH FIVE OR SIX
14 INDIVIDUALS AND A SUSPECT.

15 Q BUT YOU WOULD NOT DISPUTE THAT IS A MORE RELIABLE WAY
16 OF DOING A LINE-UP PROCEDURE THAN A PHOTOGRAPHIC LINE-UP
17 THAN WHERE YOU ARE USED -- USING PHOTOS?

18 A I WOULDN'T BE IN POSITION TO DISPUTE IT, BUT I
19 WOULDN'T BE IN POSITION TO AGREE WITH IT EITHER.

20 Q I'M SORRY. YOU WEREN'T TAUGHT THAT AT THE ACADEMY TO
21 BECOME AN OFFICER ABOUT THE VARIOUS WAYS OF CONDUCTING AN
22 OUT OF COURT LINE-UP?

23 A I DON'T HAVE -- I DON'T KNOW THAT THAT'S THE MOST
24 ACCURATE OR THE LEAST ACCURATE. I DON'T HAVE ANY
25 INFORMATION ON THAT.

1 Q WELL, THERE IS ANOTHER WAY OF CONDUCTING AN OUT OF
2 COURT IDENTIFICATION AND THAT IS TO SHOW A WITNESS ONE
3 PICTURE OF A SUSPECT; ISN'T THAT CORRECT? ISN'T THAT A
4 PROCEDURE THAT IS USED?

5 A COULD THAT BE USED, I GUESS, YES.

6 Q ALL RIGHT. AND THAT IS LEAST LESS RELIABLE THAN THE
7 PREVIOUS TWO THAT I MENTIONED BECAUSE JUST BY SHOWING ONE
8 PHOTOGRAPH TO AN INDIVIDUAL CAN SOMETIMES SUGGEST TO THAT
9 INDIVIDUAL THAT THAT IS THE PERSON; ISN'T THAT CORRECT?

10 A RIGHT, THERE WOULD BE A SAFE ASSUMPTION THAT WOULD BE
11 THE ONE PERSON SINCE THAT'S THE ONLY ONE PICTURE.

12 Q AND THE SAME WAY IF YOU HAD SOMEONE IN CUSTODY, YOU
13 KNOW, IN HANDCUFFS AND YOU BROUGHT THAT PERSON BACK TO SAY
14 THE SCENE OF A CRIME, THAT IT IS A METHOD BUT IT IS A LESS
15 RELIABLE METHOD. WOULD YOU AGREE WITH THAT?

16 A AT THAT THE -- THAT WOULD DEPEND UPON WHEN IT
17 HAPPENED AND WHEN THE SHOW-UP OR THE INDIVIDUAL WAS
18 BROUGHT BACK.

19 Q THAT WOULD DEPEND ON A NUMBER OF FACTORS THAT
20 OCCURRED DURING THE INCIDENT, CORRECT?

21 A YEAH.

22 Q LIKE THE LENGTH OF TIME THE PERSON HAD TO OBSERVE THE
23 SUSPECT?

24 A COULD THOSE BE FACTORS, YES.

25 Q YES, WHAT THE LIGHTING WAS LIKE.

1 A YES.

2 Q HOW FAR THAT PERSON WAS FROM THE WITNESS WHO SUPPOSED
3 TO BE MAKING THE IDENTIFICATION?

4 A YES.

5 Q SO ALL OF THOSE THINGS AFFECT A PERSON'S ABILITY TO
6 OBSERVE THE EVENT AND THEN LATER RECALL IT. YOU LEARNED
7 ALL OF THIS?

8 A YES.

9 Q YOU KNOW THIS, RIGHT?

10 A YES.

11 Q OKAY. SO THAT IN THIS CASE OR IN A NORMAL CASE, YOU
12 USUALLY GET A DESCRIPTION OF THE SUSPECT AND FROM THAT
13 DESCRIPTION YOU THE OFFICER, WHEN YOU ARE DOING A PHOTO
14 LINE-UP OR A LIVE LINE-UP, TRY TO PUT PEOPLE IN THAT
15 LINE-UP THAT FITS THE DESCRIPTION, MOST CLOSELY FITS THE
16 DESCRIPTION, CORRECT?

17 A I'M NOT SURE I REALLY UNDERSTOOD THAT QUESTION.

18 Q OKAY. WELL, LET ME ASK IT ANOTHER WAY. IF SOMEONE
19 WAS ROBBED BY A BLACK MALE AND YOU WERE CONDUCTING A PHOTO
20 LINE-UP, YOU WOULDN'T HAVE SIX WHITE MALES AND ONE BLACK
21 MALE IN THE PHOTO LINE-UP; WOULD YOU?

22 A NO, SIR.

23 Q BECAUSE THAT WOULD SUGGEST WHO NOT TO PICK OUT?

24 A YES, SIR.

25 Q SO YOU REALIZE THAT LINE-UPS AND THE WAY THEY ARE PUT

1 TOGETHER CAN SUGGEST TO THE PERSON WHO TO PICK OUT?

2 A IF THE LINEUP WAS PREPARED THE WAY YOU JUST GAVE ME,
3 THE HYPOTHESIS, THAT WOULD BE SUGGESTIVE, SO YES.

4 Q OKAY. SO THAT IN THIS CASE WE DIDN'T HAVE A
5 DESCRIPTION GIVEN OF THE ASSAILANT, DID WE, OTHER THAN--

6 A NO, SIR.

7 Q DID WE?

8 A NO, SIR.

9 Q NONE OF THE WITNESSES THAT YOU TALKED TO OR THAT YOU
10 WERE AWARE OF BEFORE YOU PUT THE LINE-UP TOGETHER GAVE YOU
11 A DESCRIPTION?

12 A NO, SIR.

13 Q OKAY. BASED ON YOUR TESTIMONY HERE TODAY, YOU WENT
14 TO THE VICTIM'S FAMILY AND SOMEHOW LEARNED THE NAME OF RON
15 TAYLOR AND AS A RESULT OF THAT, YOU PUT RON TAYLOR'S
16 PICTURE INTO STATE'S EXHIBIT 4, CORRECT?

17 A THAT'S CORRECT.

18 Q ALL RIGHT. SO WITHOUT ANY DESCRIPTION OR ANYTHING,
19 YOU PREPARED THIS LINE-UP -- AND I SHOW YOU STATE'S
20 EXHIBIT 4.

21 A YES, SIR.

22 Q AND YOU TRIED TO PUT PEOPLE THAT ARE -- THAT LOOK
23 SIMILAR.

24 A YES, SIR.

25 Q OKAY.

1 A AND WE BASE THAT ON THE PHOTOGRAPHS AND THE RESOURCES
2 YOU HAVE AVAILABLE.

3 Q ALL RIGHT. AND IN THIS LINE-UP, IN STATE'S EXHIBIT
4 3, WE HAVE AN INDIVIDUAL THAT HAS BRAIDS; DON'T WE?

5 A YES, SIR.

6 Q AND WE HAVE AT LEAST LOOKING AT FOUR AND SIX AND
7 POSSIBLY ONE AND TWO INDIVIDUALS THAT ARE DARKER
8 COMPLETED THAN NUMBER FIVE WHICH IS RON TAYLOR, CORRECT?

9 A I DON'T -- NUMBER FOUR SEEMS TO BE DARKER COMPLETED
10 THAN NUMBER SIX, SEEM TO BE DARKER COMPLETED AND--

11 Q ALL RIGHT. SO WHAT COULD POSSIBLY HAPPEN IS THAT A
12 PERSON WILL LOOK AT THAT LINE-UP AND SAY OKAY, I KNOW IT'S
13 NOT SIX, I KNOW IT'S NOT FOUR, I KNOW IT'S NOT TWO, YOU
14 KNOW, BECAUSE OF THE WAY THAT THESE PICTURES ARE, THEN
15 THEY MUST -- I HAVE ALREADY ELIMINATED THREE PEOPLE AND I
16 ONLY HAVE THREE PEOPLE TO CHOOSE FROM, CORRECT?

17 A I MEAN, I HAVE NO IDEA WHAT THE THOUGHT PROCESS OF AN
18 INDIVIDUAL WHO WOULD BE SITTING DOWN AND LOOKING AT THIS
19 PICTURE. BEFORE WE COULD ELIMINATE THOSE INDIVIDUALS HE'D
20 HAVE TO KNOW WHAT THE INDIVIDUAL HE IS PICKING OUT LOOKS
21 LIKE.

22 Q THAT'S RIGHT. AND IN THIS CASE THEY PICKED OUT THE
23 PERSON THAT THEY SAW AT THE CLUB, CORRECT?

24 A SEVERAL OF THE WITNESSES IDENTIFIED NUMBER FIVE, YES.

25 Q ALL RIGHT.

1 A NOW, YOU WERE PRESENT IN COURT WHEN I ASKED SOME OF
2 THE WITNESSES WHAT THEY WERE ASKED BY YOU WHEN YOU SHOWED
3 THEM THAT PHOTOGRAPHIC LINE-UP. DO YOU RECALL
4 SPECIFICALLY WHETHER YOU SAID SHOW ME SOMEBODY IN THIS
5 LINE-UP THAT YOU SAW THAT NIGHT OR SHOW ME SOMEONE IN THIS
6 LINE-UP THAT COMMITTED THE SHOOTING THAT NIGHT?

7 Q CAN YOU SAY TODAY WHAT YOU TOLD THEM WHEN YOU SHOWED
8 THEM THOSE PHOTOGRAPHS?

9 A I WOULD HAVE SAID INVOLVED IN THE INCIDENT. I
10 WOULDN'T HAVE--

11 Q DO YOU HAVE ANY NOTES?

12 A NO, SIR.

13 Q OKAY. SO YOU ARE REMEMBERING THAT INDEPENDENTLY.
14 IT'S NOT POSSIBLE THAT YOU COULD HAVE SAID LOOK AT THE
15 PHOTOGRAPHIC LINE-UP AND TELL ME IF YOU SEE ANYBODY THAT
16 YOU SAW THAT NIGHT?

17 A IT WOULDN'T MAKE ANY SENSE TO ME TO ASK IS IT THE
18 SHOOTER AND THEN SAY NO, BUT IT WAS SOMEONE WHO WAS WITH
19 THE SHOOTER OR STANDING BESIDES THEM BECAUSE I WOULD WANT
20 TO KNOW THAT ALSO, SO I WOULDN'T HAVE LIMITED MYSELF TO
21 SAY IS THAT ONLY THE SHOOTER BECAUSE I WOULD HAVE BEEN
22 LOOKING FOR ANYBODY THAT WOULD HAVE BEEN INVOLVED IN THE
23 INCIDENT.

24 Q THAT'S RIGHT. SO WOULDN'T YOU HAVE ASKED DO YOU SEE
25 ANYBODY IN THE PHOTO LINE-UP THAT YOU SAW THAT NIGHT?

1 ISN'T THAT POSSIBLE?

2 A I WOULD HAVE LIMITED IT TO INVOLVED, SAW THAT NIGHT
3 INVOLVED IN THE INCIDENT.

4 Q OKAY. ALL RIGHT. BUT YOU DON'T HAVE ANY NOTES TO
5 CORROBORATE THAT?

6 A NO.

7 Q DID YOU TAKE ANY NOTES IN CONNECTION WITH ANY OF THE
8 WITNESSES THAT YOU TALKED TO WITH PREPARING ANY OF THE
9 LINE-UPS OR ANY NOTES IN CONNECTION WITH ANYTHING THAT YOU
10 DID IN CONNECTION WITH THIS CASE?

11 A DO I HAVE NOTES?

12 Q YES.

13 A YES. IN REFERENCE TO THE LINE-UPS THAT -- AND THE
14 SHOWING THE WITNESSES, NO.

15 Q OKAY. SO THAT YOU WERE TOLD BY SOMEBODY, GIVEN THE
16 NAME OF RON TAYLOR, YOU PUT RON TAYLOR'S PICTURE IN
17 STATE'S EXHIBIT 3 AND--

18 A ACTUALLY STATE'S EXHIBIT 4.

19 Q I'M SORRY. THANK YOU. STATE'S EXHIBIT 4. AND THE
20 FIRST PERSON THAT IDENTIFIED RON TAYLOR AS BEING INVOLVED,
21 THAT IDENTIFICATION OCCURRED ON THE 16TH, CORRECT?

22 A I BELIEVE SO, YES, SIR.

23 Q ALL RIGHT. DID YOU DO ANYTHING ELSE OTHER THAN SHOW
24 THE PHOTOGRAPHIC LINE-UP TO OTHER WITNESSES? DID YOU DO
25 ANYTHING ELSE, DO YOU HAVE ANY OTHER EVIDENCE THAT

1 IMPLICATES RON IN THIS OFFENSE OTHER THAN THE WITNESSES,
2 SHOWING THE WITNESSES PHOTO?

3 A THE -- OTHER THAN THE WITNESSES IDENTIFICATION?

4 Q YES, OTHER THAN THE WITNESSES IDENTIFICATION.

5 A NO, SIR.

6 Q ALL RIGHT. NOW, WHEN YOU SHOWED DERRICK ALBERT
7 STATE'S EXHIBIT 4, HE PICKED OUT NUMBER FOUR?

8 A THAT'S CORRECT.

9 Q OKAY. DID YOU DO ANYTHING BY WAY OF INVESTIGATION AS
10 A RESULT OF THAT IDENTIFICATION BY MR. ALBERT?

11 A OF WHO NUMBER FOUR WAS?

12 Q YES.

13 A NO.

14 Q DID IT CAUSE YOU ANY CONCERN THAT HE HAD PICKED OUT
15 SOMEBODY THAT YOU DIDN'T THINK WAS THE RIGHT PERSON?

16 A IT CAUSED ME A CONCERN BECAUSE HE DID NOT IDENTIFY
17 NUMBER FIVE.

18 Q OKAY. BUT YOU DIDN'T DO ANYTHING?

19 A NO, SIR.

20 Q LIKE SAY OH, WE MAY HAVE THE WRONG GUY.

21 A NO BECAUSE I HAVE NO INFORMATION, NO INDICATION THAT
22 NUMBER FOUR WAS THERE. THESE PHOTOGRAPHS CAME FROM A -- A
23 RESOURCE THAT WE HAVE AT THE JAIL, NOT THAT HE WAS ALSO
24 THERE AT THE CLUB AND COULD ALSO HAVE BEEN INVOLVED.

25 Q OKAY. LAST AREA I WANT TO GET TO IS ALL OF THE

1 WITNESSES WHO TOLD THAT MR. SCOTT HAD A WEAPON. MOST OF
2 THE WITNESSES THAT YOU TALKED TO, I DON'T KNOW.

3 A SEVERAL OF THEM DID. I DON'T KNOW ABOUT -- I
4 WOULDN'T SAY THAT ALL OF THEM WITHOUT REVIEWING EACH ONE
5 OF THEM.

6 Q AND YOU JUST TESTIFIED THAT YOU WERE BROUGHT A GUN BY
7 THE VICTIM'S FATHER?

8 A THAT'S CORRECT.

9 Q DO YOU THINK THAT'S THE GUN MR. TAYLOR HAD?

10 A I HAVE -- MR. TAYLOR HAD?

11 Q I'M SORRY. MR. SCOTT HAD?

12 A I DON'T KNOW WHAT GUN MR. TAYLOR HAD AND I DON'T KNOW
13 WHAT GUN MR. SCOTT HAD EITHER. THAT WAS MY PROBLEM WITH
14 THAT. THERE WAS NO WAY, BY A WITNESS OR INDIVIDUAL OR
15 SOMETHING DIRECT TO TIE THAT GUN TO THIS SCENE.

16 Q WELL, BUT YOU KNEW HE WAS SUPPOSED TO HAVE HAD A
17 GUN?

18 A YES.

19 Q AND YOU KNEW THAT MINUTES, CERTAINLY BY THE TIME YOU
20 GOT THERE OR AT LEAST THE OTHER POLICE OFFICERS THAT CAME
21 OUT OF THE CLUB, THERE WAS NOT A GUN.

22 A THAT'S CORRECT.

23 Q DID YOU MAKE ANY EFFORT TO LOCATE HIS WEAPON?

24 A YES.

25 Q WHAT DID YOU DO?

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1 A WE SPOKE TO AND INTERVIEWED EVERYONE THAT WAS THERE
2 AND SPECIFICALLY TALKED TO HIM AND DISCUSSED THAT WITH
3 HIM.

4 Q IN THAT -- THAT'S THE WITNESSES IN THIS CASE?

5 A THAT'S CORRECT.

6 Q AND THEY TOLD YOU THEY DIDN'T KNOW?

7 A THAT'S CORRECT.

8 Q AND THAT'S -- THAT SAT WELL WITH YOU?

9 A I KNEW THAT THERE WAS A -- WAS COMFORTABLE THAT THERE
10 WAS A GUN THERE AND THAT THERE -- WHEN WE GOT THERE OR
11 WHEN WE GOT CONTROL OF IT, THERE WAS NOT A GUN THERE.
12 WHAT HAPPENED TO IT, I DON'T KNOW.

13 Q I MEAN, HERE YOU HAVE CHARGED THESE FOLKS WITH NOT
14 TELLING YOU THE TRUTH. THAT DIDN'T CONCERN YOU ABOUT THE
15 STATE'S WITNESSES THAT HERE YOU HAD A WEAPON, EVERYBODY
16 SAYS HE HAD A WEAPON AND THEN SECONDS LATER THE WEAPON IS
17 GONE. IT DIDN'T JUST DISAPPEAR.

18 A THAT'S CORRECT. I DON'T KNOW WHERE THE WEAPON WENT.

19 Q SO YOU DIDN'T CONDUCT ANY INVESTIGATION WITH RESPECT
20 TO THAT WEAPON, THAT WEAPON?

21 A I DID WHAT WE COULD DO IN TALKING TO THEM AND
22 INTERVIEWING THEM AND ATTEMPTING TO FIND OUT ANY
23 INFORMATION OF WHAT HAPPENED TO THAT GUN.

24 Q YOU BELIEVED THEM, DIDN'T YOU? YOU JUST BELIEVED
25 THEM TELLING YOU THAT THEY DIDN'T TAKE A WEAPON. DID YOU

1 CONDUCT A SEARCH OF ANY OF THE WITNESSES?

2 A A SEARCH?

3 Q HOMES, HOMES?

4 A NO.

5 Q SO YOU DID NOTHING ABOUT THAT WEAPON?

6 A OTHER THAN TALK TO AND INTERVIEW THEM AND TRY AND
7 ASCERTAIN FROM THEM WHAT HAPPENED TO THE WEAPON THAT HE
8 HAD.

9 Q AND THEN YOU DON'T THINK THIS LINE-UP -- WELL, LET ME
10 ASK YOU THIS WAY. ISN'T IT POSSIBLE THAT THE PEOPLE THAT
11 PICKED OUT NUMBER FIVE PICKED HIM OUT BECAUSE HE WAS AT
12 THE CLUB THAT NIGHT AND THAT'S THE ONLY PERSON'S PICTURE
13 FROM THE CLUB THAT NIGHT THAT'S IN THAT EXHIBIT?

14 A NO, I THINK THE INDIVIDUALS PICKED HIM OUT WERE CLEAR
15 IN DESCRIBING WHAT HE DID AND WHAT HE DIDN'T DO.

16 Q OKAY. THANK YOU.

17 THE COURT: MR. JORDAN?

18 MR. JORDAN: BRIEFLY, YOUR HONOR.

19 CROSS-EXAMINATION BY MR. JORDAN:

20 Q INVESTIGATOR, ON LINE-UP "A", PICTURE NUMBER FOUR,
21 THAT IS IN FACT TRAVIS SINGLETON, IS IT NOT, MY CLIENT
22 SEATED OVER THERE?

23 A NUMBER FOUR?

24 Q YES, SIR.

25 A I HAVE NO IDEA IF THAT IS MR. SINGLETON OR NOT.

- 1 Q YOU DON'T KNOW?
- 2 A NO.
- 3 Q OKAY. IF IT IN FACT IS MY CLIENT, YOU WILL AGREE
- 4 WITH ME THAT NOT ONE PERSON SHOWN THESE LINE-UPS EVER
- 5 CHECKED OFF AN "X" FOR NUMBER FOUR IN LINE-UP "A"; DO YOU
- 6 AGREE?
- 7 A HAS ANYBODY LINE-UP NUMBER FOUR AND LINE-UP "A"?
- 8 Q LINE-UP "A", NUMBER FOUR?
- 9 A NO.
- 10 Q NOBODY CHECKED THAT OFF?
- 11 A NO.
- 12 Q ACCORDING TO YOUR PREVIOUS TESTIMONY, YOUR QUESTION
- 13 TO THEM WAS DO YOU SEE ANYBODY THAT WAS INVOLVED IN THAT
- 14 INCIDENT THAT NIGHT.
- 15 A THAT'S CORRECT.
- 16 Q OKAY. YOU DIDN'T MENTION -- YOU DIDN'T SAY SHOOTING.
- 17 YOU SAID THAT INCIDENT?
- 18 A THAT'S CORRECT.
- 19 Q OKAY. SO IF WE ASSUME THAT THAT IS MR. SINGLETON --
- 20 YOU HEARD MR. LEONARD SCOTT'S TESTIMONY; DID YOU NOT?
- 21 A YES.
- 22 Q AND HE SAT UP HERE AND SAID THOSE FOUR FOLKS; IS THAT
- 23 RIGHT?
- 24 A THAT'S CORRECT.
- 25 Q OKAY. AND YOU AGREE WITH ME THAT WHEN HE WAS SHOWN

1 LINEUP "A" THAT HE DIDN'T MARK OFF, HE DID NOT MARK OFF
2 NUMBER FOUR ON LINE-UP "A" AS BEING PART OF THAT INCIDENT;
3 DID HE?

4 A NO, SIR, HE DIDN'T.

5 Q SO IF WE ASSUME THAT THAT IS TRAVIS SINGLETON, MR.
6 SCOTT FOR THE FIRST TIME TODAY HAS POINTED TO THIS, HAS
7 POINTED TO MR. SINGLETON AS BEING THERE THAT NIGHT?

8 A THAT'S CORRECT.

9 Q OKAY. NOW, YOU WERE -- YOU WERE EMPLOYED THAT
10 EVENING BY THE PUB? YOU WERE OFF DUTY?

11 A THAT'S CORRECT.

12 Q WHAT IS THE SHERIFF'S DEPARTMENT'S POLICY WITH
13 REGARDS TO IF YOU ARE FIRST ON THE SCENE BUT YOU ARE OFF
14 DUTY, DO THEY SEND SOMEBODY ON DUTY TO INVESTIGATE?

15 A TO INVESTIGATE?

16 Q YES. AFTER THE -- AFTER THE INCIDENT HAD BEEN
17 REPORTED, WOULD THE SHERIFF'S DEPARTMENT HAVE SENT
18 SOMEBODY WHO WAS ON DUTY OR WOULD IT THEN BECOME YOUR
19 RESPONSIBILITY EVEN THOUGH YOU'RE OFF DUTY, EMPLOYED BY
20 THE COUNTRY CLUB?

21 A IT WOULD HAVE STILL BEEN OUR RESPONSIBILITY THERE.
22 THEY WOULDN'T BE CONCERNED WITH WHETHER WE WERE OFF DUTY
23 OR ON DUTY.

24 Q OKAY. WOULD THAT BE ANY PROBLEM KNOWING THAT YOU
25 HAVE A DUTY AS A SHERIFF'S DEPUTY AND ALSO SINCE YOU HAVE

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1 A DUTY TO THE PUB AS SECURITY, DID YOU BALANCE THOSE --
2 AND YOU HAVE ALREADY MENTIONED THAT YOU HAD ALL THESE
3 PEOPLE WHO WERE AGGRAVATED AND WANTED TO LEAVE, YOU GOT A
4 DUTY TO THE CLUB AS IT'S SECURITY OFFICER, YOU GOT A DUTY
5 TO THE SHERIFF'S DEPARTMENT TO DO A CLEAN INVESTIGATION
6 AND CRIME SCENE, HOW DID YOU BALANCE THOSE TWO?

7 A WELL AT THAT POINT MY CONCERN WAS THE -- WAS THE
8 CRIME SCENE AND THE SECURITY AND SAFETY OF ME AND THE
9 OTHER OFFICERS THERE.

10 Q SO YOU DIDN'T -- THERE WAS NO -- YOU DIDN'T PERCEIVE
11 THAT AS A CONFLICT OR A PROBLEM?

12 A NO. WHEN IT -- A CHOICE BETWEEN MY SAFETY AND
13 SECURITY, I'M ALWAYS GOING TO GO WITH MINE AND THE OTHER
14 OFFICERS' SAFETY.

15 Q AND YOUR INVESTIGATIVE CONCERNS AND OBLIGATIONS
16 OVERRODE THOSE DUTIES AND OBLIGATIONS YOU OWED MR. DEBERRY
17 AS HIS EMPLOYEE?

18 A THAT'S CORRECT.

19 Q THANK YOU. NO FURTHER QUESTIONS.

20 THE COURT: MR. FINNEY?

21 MR. FINNEY: MAY IT PLEASE THE COURT.

22 THE COURT: YES, SIR.

23 CROSS-EXAMINATION BY MR. FINNEY:

24 Q ALL RIGHT. SOMEBODY ASKED YOU -- ONE OF THE LAWYERS
25 ASKED YOU IF YOU WERE THE CHIEF INVESTIGATING OFFICER?

1 A THAT'S CORRECT.

2 Q YOU WERE THE LIEUTENANT ON THE CASE. THE OTHER
3 INVESTIGATOR IS A SERGEANT?

4 A THAT'S NOT CORRECT.

5 Q I'M ASKING. I DON'T KNOW.

6 A NO. IN FACT, MR. SIMON IS ACTUALLY LIEUTENANT.

7 Q OKAY. BOTH OF YOU ARE LIEUTENANTS?

8 A NO, I AM NOT A LIEUTENANT.

9 Q I'M SORRY. FIRST THING I WANT TO ASK YOU ABOUT IS
10 THE DIAGRAM. DID YOU DRAW IT?

11 A NO, SIR.

12 Q OKAY. YOU WENT OUT THIS WEEK TO THE CLUB AND TOOK
13 SOME MEASUREMENTS?

14 A YES, SIR.

15 Q ALL RIGHT. AND YOU MEASURED THE GRASSY AREA FROM
16 DRIVEWAY TO DRIVEWAY?

17 A YES, SIR.

18 Q DID YOU MEASURE FROM THE CAR WHERE THE CAR -- THE
19 FORD ESCORT ON THE DIAGRAM -- DID YOU MEASURE THAT
20 DISTANCE DOWN TO THE DRIVEWAY IN FRONT OF THE HOUSE?

21 A NO, SIR, I DID NOT.

22 Q ALL RIGHT. YOU HAVE BEEN OUT THERE AND YOU HAVE SEEN
23 IT WITH YOUR EYES. WOULD YOU AGREE WITH ME THAT IT IS A
24 FURTHER DISTANCE FROM THE CORNER WHERE THE CAR IS LOCATED
25 HERE TO THIS CORNER HERE, THAT THIS IS A FURTHER DISTANCE

1 THAN IT IS ACROSS THE FRONT OF THE CLUB?

2 A I -- NO, I DON'T THINK THAT THAT'S ACCURATE, NO.

3 Q YOU DIDN'T ANSWER MY QUESTION. ANSWER MY QUESTION
4 THEN I WILL ASK YOU IF THIS IS ACCURATE -- IS IT A FURTHER
5 DISTANCE? YOU MEASURED THIS DISTANCE HERE AS 157 FEET.

6 A THAT'S CORRECT.

7 Q IS IT FURTHER THAN 157 FEET FROM THIS CORNER TO THIS
8 CORNER?

9 A NO.

10 Q YOU THINK IT'S THE SAME OR SHORTER?

11 A I WOULD -- I THINK IT WOULD BE SLIGHTLY SHORTER, YES.

12 Q ALL RIGHT. YOU THINK IT'S LESS THAN 157 FEET?

13 A YES, SIR.

14 Q ALL RIGHT. NOW, THIS DIAGRAM IS NOT DRAWN TO SCALE.
15 WOULD YOU AGREE WITH THAT?

16 A THAT'S CORRECT.

17 Q ALL RIGHT. THE DRIVEWAY AREA ON THIS DIAGRAM APPEARS
18 TO BE BIGGER THAN THE CLUB?

19 A YES, SIR.

20 Q YOU LOOK AT THE PICTURES, YOU TELL THAT'S NOT TRUE;
21 IS IT?

22 A THAT'S CORRECT. IT'S NOWHERE NEAR TO ANY SCALE EVEN.

23 Q SO NONE OF THESE DISTANCES ARE MEASURED OUT TO ANY
24 PRECISE ABOUT -- IT'S JUST TRYING TO SHOW THE JURY AND
25 KIND OF WHAT WAS GOING ON OUT THERE?

1 A THAT'S CORRECT.

2 Q ALL RIGHT. ALL RIGHT, SIR. AT THE TIME YOU SAID
3 THAT YOU TOOK STATEMENT FROM LAMONT --

4 A YES, SIR.

5 Q -- HE HAD BEEN ARRESTED IN SUMTER?

6 A NO, HE HADN'T BEEN ARRESTED IN SUMTER.

7 Q DO YOU REMEMBER HAVING A KIND OF A MEETING OR AT
8 LEAST WE MET YOU AND I AND LAMONT WERE AT THE JAIL IN
9 SUMTER WHEN YOU WERE GOING TO PICK HIM UP AND BRING HIM
10 OVER TO BISHOPVILLE THAT I CAME OUT THERE AND TALKED WITH
11 YOU ALL?

12 A I REMEMBER HAVING SEVERAL DISCUSSIONS WITH YOU, YES.

13 Q ALL RIGHT. THEY WERE AT THE JAIL IN SUMTER?

14 A I REMEMBER ONE CONVERSATION AT THE JAIL IN SUMTER.

15 Q ALL RIGHT. AND AT THAT TIME I INFORMED HIM OR YOU --
16 WERE YOU PRESENT WHEN I TOLD HIM TO GO AHEAD AND GO WITH
17 YOU?

18 A YES.

19 Q ALL RIGHT. AND AS A RESULT OF GOING WITH YOU, WHERE
20 DID YOU TAKE HIM?

21 A I BELIEVE THAT WE WENT TO AN AREA WHERE THEY WERE
22 STOPPED.

23 Q ALL RIGHT. OUT ON THE ROADWAY?

24 A YES.

25 Q HE SHOWED YOU THAT?

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1 A YES.

2 Q ALL RIGHT. DID HE THEN -- DID YOU ALL GO ON TO LEE
3 COUNTY TO YOUR OFFICE?

4 A YEAH.

5 Q AND HE GAVE THIS STATEMENT WHILE YOU TYPED IT UP?

6 A YES.

7 Q ALL RIGHT. AND THEN AFTER HE GAVE THE STATEMENT, HE
8 INFORMED YOU THAT HIS ATTORNEY DIDN'T WANT HIM TO SIGN
9 ANYTHING UNTIL WE HAD HAD A CHANCE TO READ IT.

10 A THAT'S CORRECT.

11 Q ALL RIGHT. AFTER YOU TOOK HIM BACK FROM YOUR OFFICE
12 IN LEE COUNTY, DID YOU TAKE HIM BACK TO SUMTER?

13 A I DON'T REMEMBER IF I TOOK HIM BACK TO SUMTER OR I
14 PLACED HIM BACK IN OUR JAIL IN THE TRANSPORT TEAM.

15 Q AND SOMEBODY ELSE TRANSPORTED HIM?

16 A THAT'S RIGHT.

17 Q DID HE EVER HAVE A COPY OF THIS STATEMENT GIVEN TO
18 HIM BY YOU?

19 A I DON'T RECALL IF HE WAS PROVIDED A COPY WITH THIS OR
20 NOT.

21 Q SO AS FAR AS YOU KNOW, HE NEVER GOT TO SHOW ME THE
22 STATEMENT AND IT NEVER GOT SIGNED?

23 A I KNOW THAT IT NEVER GOT SIGNED BY YOUR CLIENT.

24 Q OKAY. DID ANYBODY THAT YOU TALKED TO THROUGHOUT THE
25 INVESTIGATION IDENTIFY LAMONT AS BEING -- LAMONT BEING MY

1 CLIENT -- AS BEING INVOLVED IN THIS SITUATION IN ANY WAY?

2 A AS IN...

3 Q ARGUING?

4 A NO.

5 Q SHOOTING, PUSHING, CURSING, ANYTHING?

6 A NO.

7 Q ALL RIGHT. DID ANYBODY THAT YOU TALKED TO SAY THAT
8 LAMONT WAS, YOU KNOW, INVOLVED? DID THEY -- DID ANYBODY
9 POINT HIM OUT TO YOU AS BEING SOMEBODY YOU--

10 A OUR CONNECTION WITH LAMONT WAS THE -- WAS THE VEHICLE
11 AND DRIVING THE VEHICLE.

12 Q ALL RIGHT. THE OFFICERS THAT STOPPED THE VEHICLE
13 WHEN IT WAS LEAVING THE CLUB THAT NIGHT CHECKED OUT
14 LAMONT'S I.D., GOT HIS NAME AND ADDRESS AND THAT'S HOW YOU
15 WERE ABLE TO CONTACT HIM?

16 A YES..

17 Q AND HE GAVE THEM THAT INFORMATION?

18 A THAT'S MY UNDERSTANDING.

19 Q ALL RIGHT. DID THE OFFICERS THAT NIGHT GET ANY OTHER
20 INFORMATION ON TRAVIS OR THE OTHER GENTLEMEN IN THE CAR?

21 MS. NIELSEN: YOUR HONOR, I OBJECT. OFFICER
22 DELLINGER WAS NOT THERE, SO HE DOESN'T KNOW.

23 Q I SEE. YOU NEVER DID GO DOWN THERE?

24 A NO, I STAYED AT THE CLUB AT THE SCENE.

25 Q OKAY. IS THERE ANYTHING THAT YOU KNOW OF THAT LAMONT

1 WAS ASKED TO DO THAT HE DID NOT DO?

2 A YES.

3 Q WHAT WAS THAT?

4 A PROVIDE HIS VEHICLE FOR PHOTOGRAPHS AND EXAMINATION.

5 Q OKAY. AND THAT'S THE BURGUNDY CADILLAC?

6 A YEAH.

7 Q WHEN DID YOU ASK HIM THAT?

8 A WE SPOKE TO HIM ABOUT THAT IN SUMTER AND IN FACT IN
9 YOUR PRESENCE.

10 Q OKAY.

11 A HERE.

12 Q AND WERE YOU EVER TOLD THAT THROUGH ME OR THROUGH
13 LAMONT THAT YOU COULD NOT SEE THE VEHICLE?

14 A NO, YOU SAID THAT YOU -- THAT WOULD BE ARRANGED
15 AND...

16 Q DO YOU KNOW OF ANY TIME THAT YOU CALLED MY OFFICE OR
17 CALLED LAMONT'S HOME AND ASKED HIM TO HAVE THE VEHICLE AT
18 A CERTAIN PLACE AT A CERTAIN TIME TO TAKE PICTURES OF IT
19 OR EXAMINE IT AND HE DID NOT COMPLY OR I DID NOT COMPLY?

20 A NO.

21 Q OKAY. IT JUST NEVER GOT DONE?

22 A THAT'S RIGHT.

23 Q ALL RIGHT. IN FACT, THE PICTURES THAT YOU ALL PUT
24 INTO EVIDENCE OF THE NIGHTCLUB, AND I'M REFERRING TO
25 STATE'S EXHIBIT I THINK IT'S 11 THROUGH 18, THESE COLOR

1 PHOTOGRAPHS, THESE WERE TAKEN WITHIN THE LAST WEEK OR TWO
2 OR THREE?

3 A I BELIEVE SO.

4 Q THESE WEREN'T DONE LAST YEAR AROUND THE TIME OF THE
5 CRIME?

6 A NO, SIR.

7 Q ALL RIGHT. THE REASON YOU WANTED TO SEE LAMONT'S CAR
8 TO LOOK AT IT WAS BECAUSE OF THE STATEMENT WHERE HE SAYS
9 HE THOUGHT SOMETHING HIT THE CAR THAT NIGHT?

10 A THAT'S CORRECT.

11 Q ALL RIGHT. DO YOU HAVE ANY INFORMATION THAT LAMONT
12 WITHERSPOON WITHHELD ANY INFORMATION FROM YOU OR ANY OTHER
13 OFFICER?

14 A DO I HAVE ANY INFORMATION ABOUT THAT?

15 Q YES.

16 A WHAT DO YOU MEAN BY INFORMATION?

17 Q HAVE YOU BEEN INVESTIGATING THIS CASE AND FOUND ANY
18 REASON TO BELIEVE THAT LAMONT HAS WITHHELD ANY INFORMATION
19 FROM YOU OR ANY OF YOUR OTHER OFFICERS?

20 A YES.

21 Q WHAT INFORMATION DID HE WITHHOLD?

22 A I DON'T FINDS IT CONCEIVABLE THAT THE SHOOTING --

23 Q EXCUSE ME, SIR?

24 A -- THE--

25 Q I'M GOING TO HAVE TO ASK YOU. TELL ME ABOUT THE

1 INFORMATION, NOT YOUR INFORMATION. DON'T MIND YOU GIVING
2 AN OPINION, BUT I NEED TO KNOW FROM YOUR INVESTIGATION
3 WHAT AREAS DO YOU BELIEVE THAT YOU ASKED LAMONT ABOUT AND
4 HE WITHHELD INFORMATION THAT HE HAD FROM YOU?

5 A ABOUT...

6 MS. NIELSEN: YOUR HONOR, I BELIEVE WE NEED TO
7 APPROACH.

8 THE COURT: PRETTY WIDE OPEN QUESTION, YOU KNOW. YOU
9 MIGHT HAVE SOME PROBLEMS WITH THOSE. I CAN SEE THE
10 POINT. FOLKS, WHY DON'T YOU APPROACH JUST A MINUTE AND
11 LET'S SEE IF WE CAN GET IT CLEARED UP. LADIES AND
12 GENTLEMEN, WE KEEP WHISPERING BEHIND YOUR BACK TO TRY TO
13 KEEP FROM HAVING TO SEND YOU OUT UNNECESSARILY INTO THE
14 JURY ROOM.

15 I KNOW IT'S RUDE, BUT IF YOU EVER GET REAL
16 CURIOUS ABOUT WHAT WE ARE TALKING ABOUT, I ALWAYS TELL
17 JURORS WHEN YOUR ROLE IN THIS CASE IS OVER, IF YOU WANT TO
18 KNOW WHAT WE WERE WHISPERING ABOUT, IF YOU'LL COME BACK
19 AND ASK ME, IF I CAN REMEMBER, I'LL TELL YOU.

20 (WHEREUPON A BENCH CONFERENCE WAS HELD).

21 MR. FINNEY: YOUR HONOR, I WITHDRAW THE QUESTION.

22 THE COURT: THANK YOU.

23 MR. FINNEY: THANK THE WITNESS FOR HIS TIME.

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

25 RE-DIRECT EXAMINATION BY MS. NIELSEN:

1 Q OFFICER DELLINGER, YOU WERE AT THE CLUB THAT NIGHT --

2 A YES, MA'AM.

3 Q -- ON NOVEMBER THE 14TH. NOW, THOSE PHOTOGRAPHS THAT
4 YOU TOOK, DO YOU HAVE THEM?

5 A YES, MA'AM. I THINK THESE ARE THE DOUBLE SET. DON'T
6 KNOW WHERE THE PUBLISHED SET IS.

7 Q WHEN YOU WERE TRYING TO EXPLAIN SOMETHING ABOUT HOW A
8 CAMERA FOCUSES, AND I DON'T KNOW EXACTLY WHAT YOU WERE
9 TRYING TO EXPLAIN, BUT YOU NEVER GOT TO EXPLAIN IT, SO
10 WOULD YOU EXPLAIN TO THE JURY NOW WHAT YOU WERE TALKING
11 ABOUT ABOUT THE CAMERA FOCUSING ON THE FLASH OUT AT THE --
12 DIDN'T REALLY UNDERSTAND WHAT YOU WERE TALKING ABOUT.

13 A WELL, A CAMERA WILL FOCUS AND CONCENTRATE ON THE
14 FLASH AND THE LIGHT THAT IS CLOSEST TO IT AND BRIGHTEST TO
15 PROCESS THE FILM. WHAT ACTUALLY HAPPENED IS A SMALL
16 WINDOW OPENS UP AND EXPOSES THE FILM AND WHATEVER LIGHT IS
17 ALLOWED TO COME IN THROUGH THE LENS PROCESSES AND ON THE
18 FILM AND THEN THE SHUTTER CLOSSES.

19 Q ALL RIGHT. NOW, THOSE PHOTOGRAPHS YOU TOOK THAT
20 NIGHT, IF YOU'LL LOOK AT THOSE PHOTOGRAPHS. FROM YOUR
21 BEING THERE THAT NIGHT, DO THOSE PHOTOGRAPHS APPEAR TO BE
22 LIGHTER, DARKER OR THE SAME AS THE SCENE ACTUALLY LOOKED
23 TO THE NAKED EYE WHEN YOU WERE OUT THERE THAT NIGHT?

24 A THE BACKGROUND OF ALL THE PHOTOGRAPHS APPEARS TO BE
25 DARKER. WHAT IS ACTUALLY IN SOME OF THE DIRECT AREAS IN

1 FRONT OF THE PHOTOGRAPHS IS ACTUALLY SOMEWHAT LIGHTER
2 BECAUSE OF THE LIGHTING FACTOR.

3 Q THEY DON'T EXACTLY REFLECT HOW THEY WOULD APPEAR TO
4 THE NAKED EYE?

5 A NO. IN FACT, THERE ARE LIGHTS -- THERE'S SOME LIGHTS
6 THAT YOU CAN.

7 Q WHAT LIGHTS THAT YOU CAN SEE, WHAT ARE THESE LIGHTS
8 ON THE STATE'S EXHIBITS -- DEFENDANT 1?

9 A THESE, THE LIGHTS HERE ARE THE HEADLIGHTS OF A
10 VEHICLE.

11 Q DO THEY APPEAR AS BRIGHT AS THEY WOULD APPEAR AT THE
12 SCENE?

13 A NO, MA'AM.

14 Q AREN'T ANY PHOTOGRAPHS OF THE AERIAL LIGHTS OR ARE
15 THERE?

16 A YES, MA'AM.

17 Q YOU GOT THOSE?

18 A THE--

19 Q THIS IS STATE'S EXHIBIT 3. IS THERE AN AERIAL LIGHT
20 IN THERE?

21 A THAT THERE'S AN AERIAL LIGHT YOU CAN SEE ALL THE WAY
22 IN THE FAR LEFT HAND PART OF THIS PICTURE. IT'S JUST A
23 SMALL DOT AND THEN ANOTHER SMALL DOT THAT IS AN AERIAL
24 LIGHT HERE TO THE RIGHT OF THE CLUB AND THEN THE THREE
25 SETS OF TUBE LIGHTS ABOVE THE A FRAME AND ABOVE THE DOOR

1 OF THE CLUB.

2 Q AND IN THAT PHOTOGRAPH, DOES IT APPEAR THAT ANYTHING
3 IS ILLUMINATED UNDER THOSE LIGHTS?

4 A NO, MA'AM.

5 Q IN FACT, IS ANYTHING ILLUMINATED UNDER THOSE LIGHTS?

6 A THE LIGHTING IS BETTER THAN IT APPEARS IN THOSE
7 PHOTOGRAPHS.

8 Q ONE OTHER -- AND YOU TESTIFIED ABOUT SOMEBODY, THE
9 VICTIM'S FATHER BRINGING YOU A GUN.

10 A YES, MA'AM.

11 Q AND YOU DIDN'T TAKE THAT GUN TO SLED?

12 A NO, MA'AM.

13 Q CAN YOU EXPLAIN WHY YOU DIDN'T TAKE IT TO SLED?

14 A I HAD NO DIRECT INFORMATION, WITNESS STATEMENT OR
15 ANYTHING TO CONNECT THIS TO THIS SCENE OR THIS INCIDENT.

16 Q ALL RIGHT. SO LET'S SAY YOU HAD SENT IT TO SLED AND
17 IT MATCHED SOME OF THE SHELL CASINGS. WOULD THAT HAVE
18 TOLD YOU ANYTHING?

19 MR. DOBY: OBJECTION, YOUR HONOR. I THINK SHE'S
20 GETTING INTO LEADING THE WITNESS.

21 THE COURT: LET'S -- THAT WOULD BE LEADING. I WILL
22 SUSTAIN THAT OBJECTION.

23 (WHEREUPON QUESTIONING RESUMED).

24 Q WHAT IF ANYTHING WOULD YOU HAVE BEEN ABLE TO TELL IF
25 IT HAD MATCHED SOME OF THOSE CASINGS?

1 A THAT SOMEONE HAD FIRED THAT GUN AND THAT GUN WENT TO
2 THOSE CASINGS.

3 Q AND WOULD YOU -- DID YOU HAVE ANY WAY OF DETERMINING
4 WHO --

5 A NO.

6 Q -- MIGHT HAVE DONE THAT?

7 A NO.

8 Q I DON'T HAVE ANY FURTHER QUESTIONS.

9 THE COURT: ALL RIGHT. THANK YOU. YOU CAN STEP
10 DOWN, MR. DELLINGER.

11 (WHEREUPON THE WITNESS LEFT THE STAND).

12 THE COURT: LADIES AND GENTLEMEN, WE WILL TAKE AN
13 AFTERNOON RECESS AT THIS POINT IN TIME FOR 15 MINUTES. WE
14 WILL KEEP YOU BACK THERE. PLEASE REMEMBER AS ALWAYS NOT
15 TO DISCUSS THIS CASE AMONG YOURSELVES WHILE YOU'RE IN THE
16 JURY ROOM. GET YOU BACK OUT IN 15 MINUTES TO RESUME THE
17 AFTERNOON'S WORK.

18 (WHEREUPON THE JURY LEFT THE COURTROOM AT 2:52 P.M.)

19 THE COURT: MADAM REPORTER, PLEASE LET THE RECORD
20 REFLECT A SIDE BAR CONFERENCE PRIOR TO INTRODUCTION OF
21 DEFENDANT EVANS' PHOTOGRAPHS I THINK EXHIBITS 1 THROUGH
22 10. MR. JORDAN MADE A MOTION JOINED BY MR. FINNEY ON
23 BEHALF OF THEIR RESPECTIVE CLIENTS RENEWING THEIR MOTIONS
24 FOR SEVERANCE BECAUSE THE INTRODUCTION OF EVIDENCE BY ONE
25 DEFENDANT PRECLUDES ALL OF THE DEFENDANTS FROM MAKING THE

1 FINAL ARGUMENT IN THE CASE.

2 THE CASE OF STATE VERSUS CROWE, C-R-O-W-E WHICH
3 IS CITED 358 S.C. -- VOLUME 258 SOUTH CAROLINA PAGE 258 IS
4 THE AUTHORITY FOR THE DENIAL OF THAT MOTION. IN THAT
5 PARTICULAR CASE, TWO CO-DEFENDANTS CHARGED WITH A ROBBERY
6 AND MURDER, BOTH ON THE TRIAL, ONE MOVED FOR A SEVERANCE
7 ON THE BASIS OF FACT, THE OTHER WAS GOING TO INTRODUCE
8 EVIDENCE AND HE WAS NOT.

9 THE SUPREME COURT SAID THAT'S NOT A BASIS FOR
10 GRANTING THE SEVERANCE. AUTHORITY OF STATE VERSUS CROWE
11 THEN IS THE AUTHORITY THAT I'M RELYING ON BY THE COURT IN
12 DENYING THE MOTION. ALL RIGHT, FOLKS. LET'S TAKE ABOUT
13 15 MINUTES. THANK YOU.

14 (WHEREUPON A BRIEF RECESS WAS TAKEN).

15 THE COURT: MS. NIELSEN, IS THE STATE READY TO
16 PROCEED?

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

18 THE COURT: GENTLEMEN, THE DEFENSE ALL READY?

19 MR. DOBY: YES, SIR.

20 MR. ROGERS: YES, SIR.

21 MR. JORDAN: YES, SIR.

22 MR. FINNEY: YES, SIR.

23 THE COURT: THANK YOU. YOU CAN BRING US THE JURY.

24 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 3:12
25 P.M.)

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1 THE COURT: THANK YOU, LADIES AND GENTLEMEN. WE
2 CONTINUE NOW AS THE STATE OFFERS ADDITIONAL EVIDENCE AND
3 TESTIMONY. MS. NIELSEN, YOU CAN CALL YOUR NEXT WITNESS.

4 MS. NIELSEN: THE STATE CALLS IRA PARNELL.

5 THE COURT: MR. PARNELL, COME AROUND PLEASE SIR AND
6 BE SWORN.

7 IRA PARNELL, BEING FIRST DULY SWORN,
8 TESTIFIED AS FOLLOWS:

9 DIRECT EXAMINATION BY MS. NIELSEN:

10 Q YOUR NAME IS IRA PARNELL?

11 A YES, MA'AM.

12 Q MR. PARNELL, CAN YOU TELL THE JURY HOW YOU'RE
13 EMPLOYED?

14 A I'M EMPLOYED BY SLED, STATE LAW ENFORCEMENT
15 DIVISION. I AM THE SUPERVISOR OF THE FIREARMS TOOL MARK
16 IDENTIFICATION LABORATORY AT SLED HEADQUARTERS IN
17 COLUMBIA.

18 Q HOW LONG HAVE YOU BEEN EMPLOYED BY SLED?

19 A 28 YEARS.

20 Q AND AS DURING YOUR TENURE AT SLED, HAVE YOU DONE
21 OTHER THINGS BESIDES FIREARMS?

22 A YES, MA'AM.

23 Q WHAT ELSE HAVE YOU DONE?

24 A I HAVE BEEN QUALIFIED AND PARTICIPATED IN CRIME SCENE
25 SEARCHES; FINGERPRINT ANALYSIS, TOOLMARKS, TIRE TREAD

1 ANALYSIS AND OTHER ASSOCIATED FIELDS THAT GO ALONG WITH
2 WHAT USED TO BE THE FIREARMS LAB .

3 MS. NIELSEN: YOUR HONOR, WE WOULD ASK THE DEFENSE
4 ATTORNEYS STIPULATE THAT HE IS AN EXPERT IN BALLISTICS AND
5 FIREARM IDENTIFICATION AND ALSO IN CRIME SCENE
6 INVESTIGATION.

7 THE COURT: GENTLEMEN, ANY OF YOU WISH TO VOIR DIRE
8 MR. PARNELL ON THAT QUALIFICATION?

9 MR. JORDAN: NO, YOUR HONOR.

10 MR. DOBY: NO, YOUR HONOR. WE STIPULATE.

11 THE COURT: WITHOUT OBJECTION MR. PARNELL IS SO
12 QUALIFIED.

13 (WHEREUPON QUESTIONING RESUMED) .

14 Q IN REFERENCE TO THIS CASE, DID YOU RECEIVE TWO
15 BULLETS THAT WERE TAKEN FROM THE BODY OF HENRY SCOTT?

16 A YES, MA'AM, I DID.

17 Q AND COULD YOU TELL THE JURY WHAT YOU DETERMINED, IF
18 ANYTHING, ABOUT THOSE BULLETS?

19 A I FIRST EXAMINED THESE TWO PROJECTILES, TWO BULLETS
20 TO DETERMINE WHAT CALIBER THEY WERE. I DETERMINED THEM TO
21 BE 380 AUTO CALIBER PROJECTILES OR BULLETS AND THAT THEY
22 WERE BOTH FIRED IN ONE GUN.

23 Q DO YOU HAVE THOSE WITH YOU?

24 A YES, MA'AM.

25 Q YOU DID NOT HAVE A GUN TO COMPARE THEM TO; IS THAT

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1 CORRECT?

2 A THAT'S CORRECT.

3 Q COULD YOU OPEN THAT? AND YOU HAVE TWO VIALS?

4 A YES, MA'AM. EACH CONTAINING ONE FIRED BULLET.

5 MS. NIELSEN: YOUR HONOR, WE WOULD OFFER THESE AS
6 STATE'S EXHIBITS 19 AND 20.

7 MR. ROGERS: NO OBJECTION.

8 THE COURT: WITHOUT OBJECTION, GENTLEMEN? STATE'S 19
9 AND 20 HEARING NO OBJECTION IN EVIDENCE.

10 (STATE'S EXHIBIT NO. 19 AND 20 MARKED FOR
11 EVIDENCE.)

12 (WHEREUPON QUESTIONING RESUMED).

13 Q NOW, DID YOU ALSO RECEIVE SOME OTHER ITEMS FROM
14 OFFICER DELLINGER IN REFERENCE TO THIS CASE?

15 A YES, MA'AM, I DID.

16 Q WHAT DID YOU RECEIVE?

17 A I RECEIVED A TOTAL OF NINE FIRED 380 AUTO CALIBER
18 CARTRIDGE CASES. I RECEIVED -- CORRECTION. TEN FIRED 380
19 AUTO CALIBER CARTRIDGE CASES. I RECEIVED FIVE FIRED 45
20 AUTO CALIBER CARTRIDGE CASINGS. I RECEIVED ONE FIRED 380
21 AUTO CALIBER BULLET, ONE FIRED 45 AUTO CALIBER BULLET AND
22 ONE UNFIRED 45 AUTO CALIBER CARTRIDGE.

23 Q ALL RIGHT. TEN FIRED 380'S. WHAT DO YOU ACTUALLY
24 HAVE? ARE THOSE SHELL CASINGS?

25 A YES, MA'AM.

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1 Q OKAY. AND HOW ABOUT THE FIVE FIRED 45'S?

2 A FIVE SHELL CASINGS ALSO.

3 Q THEN YOU SAID YOU HAD ONE FIRED 380. WHAT IS THAT?

4 A THAT'S THE ONE FIRED BULLET. IT'S THE PROJECTILE
5 WHERE THE LEAD PART OF THE BULLET--

6 Q BY CASING THE ACTUAL LEAD --

7 A YES, MA'AM.

8 Q -- BULLET. AND IS THAT TRUE ALSO OF THE FIRED 45?

9 A YES, MA'AM, IT IS.

10 Q THEN YOU HAVE ONE UNFIRED 45?

11 A YES, MA'AM.

12 Q FIRED FROM THE GUN?

13 A THAT IS A LIVE ROUND, YES.

14 Q NOW, WHAT IF ANYTHING COULD YOU TELL ABOUT THESE, THE
15 SHELL CASINGS?

16 A I'M GOING TO START WITH THE 380 AUTO CALIBER
17 CARTRIDGE CASING OR SHELL CASINGS. I FOUND
18 MICROSCOPICALLY THAT SIX OF THE FIRED 380 AUTO CALIBER
19 CARTRIDGE CASES WERE FIRED FROM ONE GUN.

20 Q ALL RIGHT. NOW, YOU -- HAVE YOU HAD A COPY OF THE
21 DIAGRAM, AND ON THIS IT'S BEEN MARKED THE SAME DIAGRAM,
22 THE NUMBER HAS BEEN MARKED ON HERE?

23 A YES, MA'AM.

24 Q WOULD YOU TELL US WHICH OF THOSE SIX, WHAT NUMBERS
25 THEY ARE ON THIS CHART? I COULDN'T FIND MY MAGIC MARKERS,

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1 BUT WE GAVE YOU SOME PENS AND I'D LIKE FOR YOU TO TAKE ONE
2 OF THOSE PENS AND CIRCLE ON THAT CHART THOSE SIX THAT WERE
3 FIRED BY ONE GUN.

4 A ALL RIGHT. MAY IT PLEASE THE COURT, YOUR HONOR?
5 THE COURT: YES, SIR.

6 (OFF STAND).

7 A ANY COLOR PREFERENCES?

8 Q USE A DIFFERENT COLOR.

9 A I WILL USE THE YELLOW HIGHLIGHTER FOR THE FIRST SIX.
10 THIS YELLOW IS HARD TO SEE. I APOLOGIZE FOR THAT. BUT I
11 DETERMINED AS ON THE DIAGRAM HERE NUMBERS FIVE, SIX --
12 EXCUSE ME, LET'S SEE. I THINK FIVE IS IN THIS GROUP --
13 NO, THAT'S A 45.

14 THIS DIAGRAM IS TURNED SLIGHTLY DIFFERENT.
15 OKAY. AS INDICATED ON THE DIAGRAM, NUMBERS ONE, SIX,
16 SEVEN, 11, 12 AND 14 ARE ALL 380 AUTO FIRED, AUTO CALIBER
17 FIRED SHELL CASINGS, THEY WERE ALL FIRED IN ONE FIREARM.

18 Q WHAT ABOUT THE OTHER FOUR FIRED 380'S?

19 A OKAY. THE -- THERE'S ANOTHER GROUP OF THREE.

20 Q FIRED BY ONE GUN?

21 A FIRED BY ONE GUN. THESE WERE NUMBERS THREE -- NUMBER
22 THREE, NUMBER 16 AND NUMBER 17.

23 THE COURT: WHAT COLOR ARE THEY MARKED?

24 THE WITNESS: THESE ARE RED, SIR.

25 THE COURT: RED? THANK YOU.

1 A THOSE WERE ALL FIRED FROM ONE FIREARM, BUT DIFFERENT
2 FROM THE OTHER 380.

3 Q OKAY. AND THEN THERE'S ONE OTHER 380 SHELL CASING.

4 A YES, MA'AM. I HAD ONE SINGLE 380 AUTO CALIBER
5 CARTRIDGE CASE THAT WAS FIRED FROM STILL A THIRD PISTOL OR
6 FIREARM. AND I THINK, YOUR HONOR, THIS IS GOING TO BE
7 BLACK. YES, SIR. THAT'S GOING TO BE NUMBER 13 IS
8 INDICATED ON THE DIAGRAM HERE. AND THEN I HAD THE FIVE
9 FIRED 45'S AUTO CALIBER CARTRIDGE CASES WHICH WERE -- THIS
10 IS GOING TO BE BLUE, YOUR HONOR.

11 THE COURT: OKAY. ALL FIRE FROM -- FIRED FROM A
12 SINGLE WEAPON?

13 THE WITNESS: YES, SIR, FROM ONE FIREARM. THAT'S
14 GOING TO BE NUMBERS FIVE, NUMBER EIGHT, NUMBER NINE,
15 NUMBER 10 AND NUMBER....

16 Q ALL RIGHT. I BELIEVE THAT LEAVES NUMBERS FOUR, 15
17 AND 18. AND CAN YOU TELL ME WHICH ONES THEY ARE, WHAT ARE
18 THEY? ONLY GOT ONE FIRED 380, ONE FIRED 45 AND ONE FIRED
19 45?

20 A YES, MA'AM. THE ONES WE HAVE LEFT. NUMBER FOUR AS
21 INDICATED ON THE DIAGRAM IS A FIRED 380 AUTO CALIBER
22 BULLET, WHICH IS THE LEAD END OF THE BULLET.

23 Q NOW, COULD YOU TELL WHETHER NUMBER FOUR WAS FIRED BY
24 ANY OF THESE 380'S THAT YOU HAD SHELL CASINGS ON?

25 A NO, MA'AM. THERE IS NO WAY TO ASSOCIATE THE

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1 CARTRIDGE CASE WITH THE FIRED BULLET. THERE IS NO
2 MARKINGS THAT ARE COMMON FROM ONE TO THE OTHER. IT'S THE
3 SAME CALIBER, BUT I COULDN'T TELL WHETHER THEY WERE
4 ASSOCIATED IN ANY WAY.

5 Q HOW ABOUT NUMBER 15, WHICH IS ANOTHER -- WHICH IS THE
6 FIRED 45?

7 A YES, MA'AM. NUMBER 15 IS A FIRED 45 AUTO CALIBER
8 PROJECTILE OR BULLET. AND IT'S -- IT'S THE SAME BRAND AND
9 TYPE AND IS MANUFACTURED BY THE SAME COMPANY, WINCHESTER,
10 AS THE UNFIRED CARTRIDGE WHICH IS ITEM NUMBER 18 AS
11 INDICATED ON THE DIAGRAM.

12 Q AND CAN YOU TELL ANYTHING ABOUT IT IN COMPARISON WITH
13 THE FIVE SHELL CASINGS FROM THE FIRED 45?

14 A NO, MA'AM. IT COULDN'T -- THIS PARTICULAR BULLET
15 COULD HAVE BEEN FIRED OUT OF ANY ONE OF THE FIVE OR FROM
16 ANOTHER CARTRIDGE CASING.

17 Q AND WAS THERE ANYTHING THAT YOU COULD TELL ABOUT ITEM
18 18 WHICH IS THAT UNFIRED 45 BULLET?

19 A NOTHING OTHER THAN IT WAS THE SAME CALIBER, BRAND AND
20 TYPE AS THE NUMBER 15 FIRED BULLET AND THE SAME BRAND AS
21 THE FIVE SHELL CASINGS THAT WERE RECOVERED AT THE SCENE.

22 Q IN YOUR EXPERIENCE IN BALLISTICS, YOU HAVE TRAINING
23 ABOUT GUNS IN GENERAL AND HOW FAR PROJECTILES GO AND HOW
24 FAR CASINGS WILL EJECT?

25 A YES, MA'AM.

1 Q AND OBVIOUSLY PROBABLY DEPENDS ON THE CALIBER OF THE
2 GUN, BUT WOULD YOU JUST EXPLAIN TO THE JURY A LITTLE BIT
3 ABOUT HOW THAT WORKS AND GENERALLY HOW FAR IN YOUR
4 EXPERIENCE BULLETS ARE EJECTED AND THE CASINGS WILL
5 EJECT.

6 A HERE AGAIN THIS, AS SOLICITOR NIELSEN SAID, IT
7 DEPENDS A LOT ON THE CALIBER OF THE GUN. THOSE GUNS THAT
8 ARE MORE POWERFUL HAVE MORE UMP SO TO SPEAK TO THEIR
9 EJECTION. LET ME EXPLAIN THIS REALLY QUICK WHAT WE ARE
10 TALKING ABOUT HERE ABOUT EJECTION PATTERN.

11 THE FIREARMS THAT FIRED THESE COMPONENTS HERE,
12 THE 45'S AND THE 380'S ARE WHAT I FEEL TO BE SEMIAUTOMATIC
13 WEAPONS. NOW, SEMIAUTOMATIC IS ONE WHERE YOU PULL THE
14 TRIGGER AND IT FIRES. THE GUN AUTOMATICALLY EXTRACTS OR
15 PULLS THE FIRED SHELL CASING BACK AND IT EJECTS OR KICKS
16 IT OUT OF THE GUN AND IT PICKS UP ANOTHER UNFIRED
17 CARTRIDGE OUT OF THE CLIP OR THE MAGAZINE AND LOADS IT IN
18 THE BARREL AUTOMATICALLY BY ITSELF.

19 AND EACH TIME YOU PULL THE TRIGGER, THIS WHOLE
20 CYCLE GOES THROUGH, IT FIRES, IT PULLS THE SHELL CASING
21 OUT, EJECTS IT OUT OF THE GUN, GOES BACK FORWARD, PICKS UP
22 A NEW CARTRIDGE AND IS READY TO SHOOT AGAIN UNTIL THE GUN
23 IS EMPTY, ALL -- ALL IN THE MAGAZINE OR THE CLIP ARE
24 EXPENDED.

25 NOW, HOW FAR THAT CARTRIDGE CASE IS EJECTED OR

1 EXPULSED DEPENDS ON A LOT OF VARIABLES. IF YOU ARE
2 HOLDING THE GUN STRAIGHT UP, THEN THEY TEND TO GO UP AND
3 TO THE RIGHT ANYWHERE FROM THREE TO FIVE FEET NORMALLY ON
4 A REASONABLY SOFT SURFACE.

5 NOW, IF THEY HIT A HARD LINOLEUM FLOOR, HIT THE
6 PAVEMENT, ANY KIND OF A HARD SOMETHING THAT THEY COULD
7 SKID ON, THEY MAY WIND UP FROM HERE TO THE JURY BOX. BUT
8 NORMALLY IF THEY JUST GO UP AND COME DOWN THERE'S THREE TO
9 FIVE FEET AWAY FROM THE GUN.

10 IF YOU TURN THE GUN SLIGHTLY THIS WAY, IT'S
11 GOING TO THROW THEM A LITTLE FURTHER BECAUSE IT'S GOT A
12 LITTLE MORE ARCH TO IT. YOU TURN THE GUN THIS WAY IT'S
13 GOING TO THROW THEM CLOSER DOWN WHICH WOULD MAKE IT A
14 LITTLE CLOSER TO THE SHOOTER.

15 SO IT REALLY DEPENDS UPON A WHOLE LOT OF
16 VARIABLES AS TO EXACTLY WHERE A CARTRIDGE CASING WOULD
17 WIND UP, AND THAT DOES NOT TAKE INTO ACCOUNT ANY EXTERNAL
18 FORCES SUCH AS SOMEBODY WALKING BY AND ACTUALLY ACCIDENTLY
19 KICKING ONE OR MOVING IT AROUND IN THAT WAY.

20 Q AND SO YOU CAN'T TELL ANYTHING FROM LOOKING AT THIS
21 CASING ABOUT WHETHER OR NOT WHERE THEY ARE ON THAT DIAGRAM
22 WAS ACTUALLY WHERE THEY WERE EJECTED OR CAN YOU?

23 A NO, MA'AM.

24 Q WAS THERE ANYTHING ABOUT ANY BULLETS TO INDICATE THAT
25 THEY HAD BEEN STEPPED ON, RUN OVER OR ANYTHING ELSE?

1 A YES, MA'AM. SEVERAL OF THE CARTRIDGE CASINGS WERE
2 DENTED OR DAMAGED CONSISTENT WITH BEING STEPPED ON OR RUN
3 OVER ON A ROCKY OR A GRAVEL TYPE SURFACE. I HAVE SEEN
4 THIS MANY MANY TIMES, AND WHAT I SAW ON SEVERAL OF THESE
5 SHELL CASINGS INDICATE THAT THEY HAD INDEED BEEN STEPPED
6 ON OR RUN OVER.

7 Q OKAY. NOW, CAN YOU TELL US ANYTHING ABOUT HOW LONG
8 THEY HAD BEEN THERE?

9 A NO, MA'AM. ALL I CAN TELL YOU IS THAT THEY WERE --
10 NONE OF THEM WERE WEATHERED OR TARNISHED TO THE POINT THAT
11 I FELT LIKE THEY HAD BEEN ANY WEATHER FOR THE -- IN THE
12 WEATHER FOR A PERIOD OF TIME. THEY WERE ALL FAIRLY SHINY
13 AND NOT NECESSARILY NEW LOOKING, BUT THEY WERE NOT
14 TARNISHED OR RUSTED OR NO INDICATION THERE THAT THERE HAD
15 BEEN ANY WEATHERING AT THE TIME.

16 Q NOW, YOU ALSO AS A BALLISTICS EXPERT IN YOUR CRIME
17 SCENE WORK YOU HAD DEALT BEFORE WITH FINDINGS OF HOW FAR A
18 GUN WAS AT THE TIME IT WAS SHOT AND HOW FAR AWAY FROM THE
19 PERSON?

20 A YES, MA'AM, BECAUSE DISTANCE DETERMINATION, I HAVE
21 DONE MANY MANY OF THOSE.

22 Q IF THE AUTOPSY REPORT ON HENRY SCOTT INDICATED THAT
23 THERE WAS NO SOOT, GUNPOWDER PARTICLES OR GUNPOWDER
24 TATTOOES OBSERVED AROUND ANY OF THE WOUNDS, CAN YOU
25 EXPLAIN TO THE JURY WHAT THAT MEANS?

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1 A THAT LANGUAGE IS INDICATIVE OF WHAT WE CALL A DISTANT
2 GUNSHOT WHICH CAN BE ANYWHERE FROM TWO TO THREE FEET AWAY
3 TO, YOU KNOW, A HUNDRED YARDS AWAY. ONCE THE FIREARM
4 INVOLVED CEASES TO DEPOSIT GUNPOWDER RESIDUE ABOUT TWO TO
5 THREE FEET DEPENDING ON THE GUN, ANYTHING PAST THAT IS
6 WHAT WE CALL DISTANT GUNSHOT.

7 AND THE LACK OF SOOT INDICATES THAT IT WAS NOT A
8 CLOSE CONTACT OR A CONTACT WOUND. THE LACK OF POWDER
9 PARTICLES OR RESIDUE THERE INDICATES THAT IT WAS PROBABLY
10 FARTHER THAN TWO FEET AWAY.

11 Q I'M JUST GOING TO SHOW YOU THIS DOCUMENT. AND DO YOU
12 RECOGNIZE WHAT THAT IS?

13 A YES, MA'AM. IT APPEARS TO BE THE AUTOPSY REPORT ON
14 HENRY SCOTT PREPARED BY NEWBERRY PATHOLOGY ASSOCIATES.

15 Q AND WOULD YOU REVIEW ON PAGES THREE AND FOUR AND --
16 AS THE DESCRIPTION OF THE GUNSHOT WOUNDS. WOULD YOU
17 REVIEW THAT AND SEE IF ALL OF THE GUNSHOT WOUNDS IN FACT
18 ARE CONSISTENT WITH WHAT I JUST ASKED YOU.

19 A YES, MA'AM. IN EACH CASE, AND I'M REFERRING TO
20 THERE'S FIVE SEPARATE NUMBERS, NUMBERED ONE THROUGH FIVE.
21 IN EACH CASE THE SAME PHRASE WAS IN EACH ONE SAYS NO SOOT,
22 GUNPOWDER PARTICLES OR POWDER OR TATTOOES ARE OBSERVED AND
23 THE ENTRANCE WOUNDS OR AROUND THE CORRESPONDING GUNSHOT
24 HOLE.

25 Q THANK YOU. NOW, ALSO IN YOUR EXPERIENCE WITH THE

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1 CRIME SCENE AND BALLISTICS, DO YOU HAVE ANY KNOWLEDGE
2 ABOUT BLOOD SPATTER AND HOW A WOUND BLEEDS?

3 A AS THEY RELATE TO PROXIMITY OF THE MUZZLE OF A GUN TO
4 A VICTIM, I HAVE HAD SOME EXPERIENCE IN THAT REGARD, BUT
5 NOT TO INTERPRETING GUN SPATTER -- I MEAN -- EXCUSE ME
6 BLOOD SPATTER.

7 Q CAN YOU GIVE US AN OPINION ABOUT WHETHER OR NOT
8 SOMEBODY SHOOTING FROM A DISTANCE OF GREATER THAN TWO FEET
9 WILL GET BLOOD ON THEM?

10 A I WOULD NOT EXPECT TO FIND A GREAT AMOUNT OF BLOOD
11 SPATTER ON THE ACTUAL SHOOTER FROM A DISTANCE OF GREATER
12 THAN TWO FEET. THE REASON BEING WHAT CAUSES BLOOD SPATTER
13 IS THE IMPACT OF THE BULLET WITH TISSUE WHICH IS OF COURSE
14 LOADED WITH BLOOD.

15 AND THE CLOSER THE WEAPON IS TO THE PERSON THAT
16 IS BEING SHOT, THE MORE GASES AND THE MORE HYDRAULIC FORCE
17 IS GOING TO BE APPLIED TO THAT SKIN AND TO THAT BLOOD.
18 THE FURTHER AWAY YOU GET, THE GASES DISSIPATE BEFORE THEY
19 HAVE A CHANCE TO ACTUALLY SUCK THE BLOOD SPATTER BACK IN
20 THE DIRECTION THE SHOT WAS FIRED FROM.

21 SO NORMALLY PAST THREE FEET OR PAST TWO FEET
22 RATHER I WOULD NOT EXPECT TO FIND A GREAT DEAL OF BLOOD
23 SPATTER AS WE CALL IT ON THE ACTUAL SHOOTER.

24 Q THANK YOU.

25 MS. NIELSEN: YOUR HONOR, I WOULD LIKE TO MOVE ALL OF

IRA PARNELL - DIRECT BY NIELSEN

1 THESE BULLETS AND CASINGS INTO EVIDENCE, AND UNLESS
2 SOMEBODY HAS AN OBJECTION, HE HAD THEM IN ONE ENVELOPE, WE
3 COULD JUST MARK IT AS ONE EXHIBIT UNLESS SOMEBODY OBJECTS
4 TO THAT.

5 THE COURT: GENTLEMEN, ANY OBJECTION FIRST OF ALL TO
6 THE ADMISSIBILITY OF ANY OF THE ITEMS OF EVIDENCE, AND
7 THERE ARE 18 ITEMS OF EVIDENCE; IS THAT CORRECT?

8 MS. NIELSEN: YES, SIR.

9 THE COURT: ANY OBJECTION, MR. DOBY ON MR. EVANS'
10 BEHALF?

11 MR. DOBY: NO, SIR, YOUR HONOR.

12 THE COURT: MR. ROGERS?

13 MR. ROGERS: NO, YOUR HONOR.

14 THE COURT: THANK YOU. MR. JORDAN, MR. FINNEY,
15 GENTLEMEN?

16 MR. JORDAN: NO, YOUR HONOR.

17 MR. FINNEY: NO, YOUR HONOR.

18 THE COURT: THANK YOU. THEY ARE DESIGNATED EITHER
19 BECAUSE THEY'RE IN SEPARATE CASING OR SOMEHOW ANOTHER TO
20 SEPARATE THEM FROM EACHOTHER; IS THAT CORRECT?

21 MS. NIELSEN: YES, SIR.

22 THE COURT: MARK THEM AS A SINGLE EXHIBIT.

23 MS. NIELSEN: THEY IN FACT ARE NUMBERED ACCORDING TO
24 THE NUMBERS THAT ARE ON THE DIAGRAM.

25 THE COURT: RIGHT. THAT WILL BE STATE'S NEXT.

(STATE'S EXHIBIT NO. 21 MARKED FOR EVIDENCE.)

(WHEREUPON QUESTIONING RESUMED).

Q MR. PARNELL, PLEASE ANSWER ANY QUESTIONS THE DEFENSE ATTORNEYS MAY HAVE.

MR. DOBY: MR. DOBY?

CROSS-EXAMINATION BY MR. DOBY:

Q MR. PARNELL, FROM YOUR ANALYSIS OF THESE SHELL CASINGS, YOU ARE ABLE TO DETERMINE THAT THERE WERE AT LEAST FOUR GUNS INVOLVED ACCORDING TO YOUR TESTIMONY; IS THAT CORRECT?

A THAT'S CORRECT.

Q JUST BASED ON THE SPENT SHELL CASINGS, WERE YOU ABLE TO DETERMINE WHAT TYPE OF WEAPON THAT THOSE SHELL CASINGS WERE EXTRACTED FROM?

A NOT REALLY, NOTHING PAST WHAT I FEEL TO BE A SEMIAUTOMATIC FIREARM.

Q OKAY.

A THE BRAND OR TYPE I COULDN'T TELL YOU.

Q NOTHING SPECIAL ABOUT THE EXTRACTOR OR THE EJECTOR THAT WOULD GIVE YOU ANY INDICATION OF THE TYPE OF FIREARM THAT THAT WAS?

A NO, SIR.

Q THAT WAS USED IN--

A NO, SIR.

Q OKAY. YOU HAVE DETERMINED THAT ITEM SEVEN AND EIGHT

1 WHICH WERE THE BULLETS THAT YOU DESCRIBED THAT WERE
2 RETRIEVED FROM MR. SCOTT'S BODY WERE SHOT BY A 380 AUTO;
3 IS THAT CORRECT?

4 A YES, SIR, THAT'S CORRECT.

5 Q AND YOU WERE ALSO ABLE TO DETERMINE THAT THEY WERE
6 SHOT BY THE SAME FIREARM?

7 A THAT'S CORRECT.

8 Q OKAY. AND BASED ON THE RIFLING CHARACTERISTICS OF
9 THOSE TWO BULLETS, YOU WERE ABLE TO DETERMINE THE TYPE OF
10 WEAPON THAT WAS USED AS WELL; IS THAT CORRECT?

11 A YES, SIR, I WAS, WHICH IS QUITE CHARACTERISTIC. IT'S
12 ONLY ONE BRAND OF FIREARM THAT COULD HAVE FIRED THOSE TWO
13 BULLETS.

14 Q THAT WAS A HIGHPOINT?

15 A HIGHPOINT SEMIAUTOMATIC PISTOL.

16 Q THAT'S A FAIRLY COMMON PISTOL?

17 A YES, SIR.

18 Q A LOT OF THEM AROUND?

19 A YES, SIR.

20 Q 380 IS PRETTY COMMON CALIBER?

21 A YES, SIR, IT IS.

22 Q OKAY. YOU WERE NEVER GIVEN ANY FIREARMS TO TEST IN
23 THIS INVESTIGATION; WERE YOU?

24 A NO, SIR.

25 Q AS PART OF THE SLED INVESTIGATION, DO YOU HAVE

IRA PARNELL - CROSS BY ROGERS

1 FINGERPRINT ANALYSIS AVAILABLE TO YOU?

2 A YES, SIR, THE FINGERPRINT ANALYSIS LAB IS JUST ACROSS
3 THE HALL FROM THE FIREARMS.

4 Q OKAY. AND WHEN YOU'RE TALKING ABOUT A 380 AUTO, I
5 MEAN TYPICALLY YOU ARE TALKING ABOUT A SEMIAUTOMATIC
6 WEAPON, AND I THINK YOU SAID IT WAS A SEMIAUTOMATIC
7 WEAPON; IS THAT CORRECT?

8 A THAT WOULD BE MY OPINION, YES, SIR.

9 Q SOMEONE WHEN THEY'RE LOADING THAT INTO THE MAGAZINE
10 WOULD BE TOUCHING THOSE CARTRIDGES?

11 A YES.

12 Q OKAY. DID YOU HAVE THESE CASINGS EXAMINED FOR
13 FINGERPRINTS?

14 A NO, SIR, I DID NOT.

15 Q AND THE PLACE THAT THAT WOULD HAVE BEEN DONE WAS
16 DIRECTLY ACROSS FROM YOUR OFFICE THERE?

17 A IT WAS, YES, SIR.

18 Q THANK YOU. THAT'S ALL I HAVE.

19 THE COURT: MR. ROGERS?

20 MR. ROGERS: THANK YOU, YOUR HONOR.

21 CROSS-EXAMINATION BY MR. ROGERS:

22 Q MR. PARNELL, TESTIMONY WAS THAT ONE OR MORE OF THE
23 SHOTS WERE FIRED BY SOMEONE STANDING DIRECTLY OVER THE
24 BODY, I GUESS WITHIN TWO OR THREE FEET, YOU WOULD EXPECT
25 THAT PERSON TO HAVE BLOOD SPATTER ON THEM; WOULDN'T YOU?

IRA PARNELL - REDIRECT BY NIELSEN

1 A I WOULD SAY PROBABLY CLOSER THAN TWO FEET. PAST TWO
2 FEET BACK, I WOULD -- I WOULD NOT EXPECT TO FIND A WHOLE
3 LOT OF BLOOD SPATTER ON THE SHOE.

4 Q ALL RIGHT. THANK YOU.

5 A YES, SIR.

6 THE COURT: MR. JORDAN?

7 MR. JORDAN: NO QUESTIONS, YOUR HONOR.

8 THE COURT: THANK YOU. MR. FINNEY?

9 MR. FINNEY: NOTHING, YOUR HONOR.

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

11 REDIRECT EXAMINATION BY MS. NIELSEN:

12 Q I DON'T REMEMBER WHETHER YOU TOLD ME PART OF THIS
13 INVESTIGATION YOU DONE FINGERPRINT IN YOUR PAST?

14 A YES, MA'AM.

15 Q HOW LIKELY IS IT FOR YOU TO FIND FINGERPRINTS ON
16 FIRED SHELL CASINGS?

17 A FINGERPRINTS ARE MADE UP OF OILS AND PERSPIRATION
18 THAT THEY ARE EXUDED BY THE FRICTION SKIN ON THE INSIDE OF
19 YOUR FINGER, THUMBS, PALMS AND THE BOTTOM OF YOUR FEET,
20 THAT WOULD BE FOOTPRINTS ON YOUR FEET. THE FINGERPRINT
21 PORTION IS LEFT THERE BY THE OILS IN THE PERSPIRATION.

22 AND WHAT NORMALLY HAPPENS DURING THE FIRING OF
23 THE CARTRIDGE, THE EXCESSIVE HEAT THAT IS GENERATED WILL
24 EITHER EVAPORATE OR MELT IT AWAY BASICALLY ANY RESIDUE
25 THAT MIGHT BE ON A FIRED SHELL CASING. I CAN'T RECALL

RODNEY YATES - DIRECT BY NIELSEN

1 HAVING MUCH, IF ANY, SUCCESS ON FIRED SHELL CASINGS.

2 UNFIRED CARTRIDGES ARE HOT MATTER AND WE HAVE
3 HAD SUCCESS THERE, BUT ON FIRED CARTRIDGE CASES IT'S VERY
4 UNLIKELY THAT DUE TO THE HEAT AND THE CYCLE OF THE GUN
5 THAT THERE WOULD BE ANYTHING OF VALUE LEFT ON A SHELL
6 CASING.

7 MS. NIELSEN: THANK YOU. NOTHING FURTHER.

8 THE COURT: THANK YOU. YOU CAN STEP DOWN, MR.
9 PARNELL.

10 MS. NIELSEN: YOUR HONOR, WE WOULD ASK HE BE EXCUSED.

11 THE COURT: WITHOUT OBJECTION MR. PARNELL CAN BE
12 EXCUSED.

13 (WHEREUPON THE WITNESS LEFT THE STAND).

14 THE COURT: MS. NIELSEN?

15 MS. NIELSEN: THE STATE CALLS RODNEY YATES.

16 THE COURT: RODNEY YATES, PLEASE.

17 (WITNESS IN COURTROOM).

18 THE COURT: MR. YATES, PLEASE COME FORWARD AND BE
19 SWORN.

20 RODNEY YATES, BEING FIRST DULY SWORN,
21 TESTIFIED AS FOLLOWS:

22 DIRECT EXAMINATION BY MS. NIELSEN:

23 Q YOUR NAME IS RODNEY YATES?

24 A YES, MA'AM.

25 Q MR. YATES, WHERE DO YOU LIVE?

- 1 A WHERE DO I LIVE? DALZELL.
- 2 Q THAT'S IN SUMTER COUNTY?
- 3 A YES, MA'AM.
- 4 Q HOW OLD ARE YOU?
- 5 A I'M 25.
- 6 Q DO YOU WORK?
- 7 A YES, I DO.
- 8 Q WHERE DO YOU WORK?
- 9 A CAROLINA GOLD KIST.
- 10 Q WERE YOU RELATED TO HENRY SCOTT?
- 11 A YES, I WAS.
- 12 Q HOW WERE YOU RELATED TO HIM?
- 13 A THAT'S MY HALF BROTHER.
- 14 Q NOW, YA'LL HAVE THE SAME MOTHER OR SAME DADDY?
- 15 A SAME FATHER.
- 16 Q IS HE IN THE COURTROOM?
- 17 A YES, HE IS.
- 18 Q WHERE IS HE?
- 19 A RIGHT THERE.
- 20 Q IS HE IN -- THE ONE IN THE PLAID SHIRT?
- 21 A YES, HE DOES.
- 22 Q AND THE LADY SITTING NEXT TO HIM IS ANNIE OAKS?
- 23 A YES, IT IS.
- 24 Q IS THAT YOUR MOTHER?
- 25 A NO, IT'S NOT.

RODNEY YATES - DIRECT BY NIELSEN

1 Q WAS THAT HENRY'S MOTHER?

2 A YES, SHE IS.

3 Q AND WHO DID YOU GO OUT TO DAVIS COUNTRY CLUB WITH?

4 A DERRICK ALBERT.

5 Q WITH DERRICK ALBERT?

6 A UH-HUH.

7 Q YA'LL -- YOU WERE RODE IN HIS CAR OR HE RODE IN YOUR
8 CAR?

9 A NO, MY CAR.

10 Q ALL RIGHT. WHEN YOU ARRIVED THERE, YOU WERE DRIVING,
11 DO YOU SEE THIS DIAGRAM OF THE CLUB AND THE ROAD? IT'S
12 NOT TO SCALE, BUT YOU KIND OF SEE WHERE EVERYTHING IS?

13 A YES.

14 Q DO YOU SEE WHERE THE CLUB IS?

15 A UH-HUH.

16 Q AND THE DRIVEWAY IN FRONT?

17 A YES, MA'AM.

18 Q CAN YOU TAKE THAT YARD STICK AND SHOW THE JURY
19 APPROXIMATELY WHERE YOU PARKED WHEN YOU GOT THERE.

20 A I WAS RIGHT DOWN HERE ACROSS THE STREET, ACROSS THE
21 ROAD FROM THE CLUB.

22 Q WERE YOU PARKED ON LIKE THE SHOULDER OF THE ROAD?

23 A YES, I WAS.

24 Q AND WHICH WAY WAS YOUR CAR FACING AFTER YOU PARKED?

25 A IT WAS FACING THIS WAY GOING UP -- JUST PULLED ON THE

1 SIDE OF THE ROAD.

2 Q WHICH WAY DID YOU COME IN FROM?

3 A I CAME FROM THIS WAY HERE (INDICATING).

4 Q NOW, WHAT HAPPENED AFTER YOU GOT THERE AND PARKED THE
5 CAR?

6 A WELL, ONCE I GOT THERE, HENRY AND DUKE WAS ALREADY
7 THERE.

8 Q WHO IS DUKE?

9 A IT'S DELVIN WEEKS.

10 Q THAT'S DELVIN WAITERS?

11 A UH-HUH.

12 Q OKAY.

13 A THAT'S WHO HENRY WAS RIDING WITH. HE WAS ALREADY
14 THERE.

15 Q ALL RIGHT. WHAT HAPPENED?

16 A WHEN I WALKED UP TO THE -- ALMOST TO THE DOOR, HENRY
17 SCOTT, HE WAS ARGUING..

18 Q WHO WAS TALKING?

19 A MA'AM?

20 Q SOMEBODY WAS ARGUING?

21 A UH-HUH.

22 Q WHO WAS ARGUING?

23 A THAT MAN RIGHT THERE (INDICATING).

24 Q WHAT MAN RIGHT WHERE?

25 A THE FIRST DUDE RIGHT THERE.

RODNEY YATES - DIRECT BY NIELSEN

1 Q SITTING AT THE DEFENSE TABLE ACROSS FROM YOU?

2 A YES.

3 MS. NIELSEN: HAVE THE RECORD REFLECT HE IDENTIFIED
4 THE DEFENDANT.

5 THE COURT: YES, MA'AM.

6 (WHEREUPON QUESTIONING RESUMED).

7 Q DID YOU KNOW THIS GUY?

8 A NO, I DIDN'T.

9 Q TO YOUR KNOWLEDGE HAD YOU EVER SEEN HIM BEFORE THAT
10 NIGHT?

11 A NO, I DIDN'T.

12 Q ALL RIGHT. TELL US WHAT -- WHAT DID YOU HEAR? DID
13 YOU HEAR ANYBODY SAY ANYTHING, HENRY OR MARCUS EVANS, DID
14 YOU HEAR THEM, WHAT THEY WERE SAYING TO EACH OTHER?

15 A WELL, THE ONLY THING I REALLY HEARD THEM SAYING WAS,
16 YOU KNOW WHAT I'M SAYING, HE AIN'T GOT NO PROBLEM WITH
17 NOBODY ELSE BUT HENRY, YOU KNOW WHAT I'M SAYING. HE WAS
18 CALLING HIM OUT NAME, PUNK, ALL THIS AND THAT.

19 Q HE CALLED WHAT?

20 A CALLED HIM A PUNK, YOU KNOW WHAT I'M SAYING, KEEP
21 ARGUING. I DON'T KNOW WHAT IT'S SAYING. LIKE I SAID, I
22 DON'T KNOW. I NEVER SAW HIM BEFORE, DON'T KNOW WHAT HE
23 WAS ARGUING ABOUT, YOU KNOW WHAT I'M SAYING. ONLY THING I
24 TOLD HENRY WAS LET'S JUST GO IN THE CLUB.

25 Q ALL RIGHT. HOW ABOUT TAKE THAT YARD STICK AGAIN AND

1 POINT TO WHERE IT WAS THAT YOU SAW THEM ARGUING.

2 A IT WAS ABOUT RIGHT UP IN HERE, RIGHT UP IN THERE.

3 Q AND DID YOU GO UP TO THE CLUB?

4 A YES, I WENT TO THE DOOR.

5 Q WAS THAT BEFORE OR AFTER YOU SAW THEM ARGUING?

6 A THAT WAS -- THAT WAS AFTER, YOU KNOW WHAT I'M SAYING,
7 BECAUSE I TOLD THEM JUST LEAVE IT ALONE, LET'S JUST GO ON
8 IN THE CLUB.

9 Q ALL RIGHT. AT THE TIME THAT YOU SAW THEM ARGUING,
10 HOW CLOSE WERE YOU TO MARCUS EVANS AND HENRY?

11 A I WAS REAL CLOSE.

12 Q HOW MANY FEET?

13 A PROBABLY TWO OR THREE, PROBABLY NOT EVEN THAT.

14 Q HOW MUCH LIGHT WAS OUT THERE FOR YOU TO BE ABLE TO
15 SEE WHAT WAS GOING ON?

16 A THERE WAS PLENTY OF LIGHT.

17 Q NOW, WHILE I'M TALKING ABOUT THAT, LET ME SHOW YOU
18 SOME PHOTOGRAPHS. I'M GOING TO SHOW YOU DEFENDANT'S
19 EXHIBITS 2 AND 3 AND I AM GOING TO ASK YOU DID -- WITH YOU
20 BEING AT THE CLUB THAT NIGHT, DID THE SCENE APPEAR LIGHT
21 OR DARKER OR THE SAME AS YOU SEE IN THOSE PHOTOGRAPHS?

22 A THE SCENE?

23 Q YEAH.

24 A TO MY SIGHT? IT WAS LIGHT.

25 Q OKAY. ALL RIGHT. SO YOU WALKED UP TO THE CLUB?

RODNEY YATES - DIRECT BY NIELSEN

1 A UH-HUH.

2 Q AND WHAT HAPPENED NEXT?

3 A THEY WAS -- WHEN I WALKED UP, AS SOON AS I GOT TO THE
4 DOOR I HEARD GUNSHOTS.

5 Q WHAT HAPPENED THEN?

6 A WHEN I TURN AROUND, I SAW JUST TWO LIGHT SKINNED GUYS
7 RUNNING AWAY SHOOTING TOWARDS WHERE HENRY WAS, WHERE HE
8 WAS STANDING AT.

9 Q WAS ONE OF THOSE MARCUS EVANS?

10 A YES, IT WAS.

11 Q ALL RIGHT. NOW, HOW FAR AWAY WERE YOU FROM HENRY
12 THEN?

13 A HOW FAR AWAY WAS I FROM HIM?

14 Q UH-HUH.

15 A I WAS ABOUT 15 OR 20 FEET FROM HIM THEN.

16 Q AND WHAT COULD YOU SEE HAPPENING?

17 A HUH?

18 Q WHAT COULD YOU SEE HAPPENING? WHAT WAS HAPPENING TO
19 HENRY?

20 A HE -- I THINK HE HAD GOT SHOT FIRST AND HE FALL DOWN
21 OR WAS TRYING TO GET BACK UP, AND THEN HE JUST -- I THINK
22 HE GOT SHOT AGAIN AND JUST FALL DOWN AND COULDN'T GET BACK
23 UP NO MORE. AND LIKE I SAID, YOU KNOW WHAT I'M SAYING,
24 ONCE THEY GOT OFF A CERTAIN DISTANCE, I DON'T KNOW WHICH
25 ONE IT WAS, BUT SOMEONE RAN ACROSS AND STARTED SHOOTING

1 DOWN ON HIM.

2 Q DID YOU AT SOME POINT SEE THE PEOPLE WHO WERE FIRING
3 THEIR GUNS?

4 A NO, I DID NOT REALLY.

5 Q I'M GOING TO SHOW YOU THIS AND ASK YOU IF YOU CAN
6 RECOGNIZE THIS.

7 A YES, I DO.

8 Q AND WHAT IS THAT?

9 A IT'S MY STATEMENT.

10 Q WHEN DID YOU GIVE THAT STATEMENT?

11 A THINK IT WAS THE 22ND.

12 Q IT'S NOT DATED OVER THERE; IS IT?

13 A NO.

14 Q BUT YOU DID GIVE THIS TO LAW ENFORCEMENT?

15 A YES, I DID.

16 Q DOES IT SAY ANYTHING IN THERE ABOUT WHETHER YOU SAW
17 THE SHOOTERS?

18 A YEAH, THE SHOOTER WAS LIGHT SKINNED FELLOW, BUT LIKE
19 I SAY, I DIDN'T KNOW HIM THEN SO I COULDN'T CALL HIM NO
20 NAME.

21 Q HOW MANY LIGHT SKINNED FELLOWS?

22 A TWO.

23 Q SO DID YOU OR DID YOU NOT SEE PEOPLE SHOOTING?

24 A YEAH, I SAW PEOPLE SHOOTING. YES, I DID THE--

25 Q AND HOW MANY PEOPLE DID YOU SEE SHOOTING?

1 A TWO.

2 Q COULD YOU ACTUALLY SEE GUNS IN THEIR HANDS?

3 A YES, I COULD.

4 Q I'M GOING TO SHOW YOU TWO FORMS AND ASK YOU IF YOU
5 RECOGNIZE THESE TWO FORMS.

6 A YES, I DO.

7 Q WHAT ARE THOSE FORMS?

8 A THOSE ARE THE FORMS THAT CAME FROM THE PHOTO LINE-UP.

9 MS. NIELSEN: JUDGE, I'M MISSING ONE OF THE
10 LINE-UPS.

11 THE COURT: GENTLEMEN, THE PHOTO LINE-UPS ON THE
12 TABLE -- OVER ON THE TABLE ON DEFENSE COUNSEL ANYWHERE?

13 MS. NIELSEN: JUDGE, WE HAD IT.

14 (WHEREUPON QUESTIONING RESUMED).

15 Q NOW, I AM GOING TO SHOW YOU STATE'S EXHIBITS 3 AND 4,
16 AND THIS IS STATE'S EXHIBIT 3 THAT'S GOT AN "A" OVER
17 HERE.

18 A UH-HUH.

19 Q TELL ME IF YOU PICKED SOMEBODY OUT OF THAT LINE-UP.

20 A YES, I PICKED NUMBER ONE.

21 Q AND I'LL ASK YOU IF YOU FILLED OUT THIS FORM?

22 A YES, I DID.

23 Q TO -- INDICATING THAT YOU PICKED OUT NUMBER 1?

24 A YES, I DID.

25 Q AND DO YOU SEE IN THE COURTROOM THE PERSON YOU PICKED

1 OUT IN THAT LINE-UP?

2 A YES, I DO.

3 Q AND WHERE IS HE?

4 A RIGHT THERE (INDICATING).

5 Q FIRST ONE?

6 A YES.

7 MS. NIELSEN: AGAIN JUDGE, FOR THE RECORD, MARCUS
8 EVANS.

9 THE COURT: YES, MA'AM.

10 (WHEREUPON QUESTIONING RESUMED).

11 Q IN STATE'S EXHIBIT 4 WHICH SAYS LINE-UP "B", DID YOU
12 PICK SOMEBODY OUT OF THAT LINE-UP?

13 A YES, I DID.

14 Q AND DOES THIS FORM INDICATE WHO YOU PICKED OUT?

15 A YES, I DO.

16 Q AND WHO DID YOU PICK OUT AND INDICATE THAT YOU PICKED
17 OUT?

18 A THE DEFENDANT RIGHT THERE (INDICATING).

19 Q THE FOURTH PERSON AT THIS TABLE?

20 A UH-HUH.

21 MS. NIELSEN: JUDGE, AGAIN GILARON TAYLOR.

22 THE COURT: YES, MA'AM.

23 MS. NIELSEN: JUDGE, WE WOULD MOVE THESE IN AS 22 AND

24 23.

25 THE COURT: THAT WAS HIS FORM?

1 MS. NIELSEN: YES, SIR.

2 THE COURT: ANY OBJECTION, GENTLEMEN, TO 22 AND 23?

3 MR. FINNEY: NO OBJECTION.

4 MR. JORDAN: NO OBJECTION, YOUR HONOR.

5 (STATE'S EXHIBITS NO. 22 AND 23 MARKED FOR
6 EVIDENCE.)

7 (WHEREUPON QUESTIONING RESUMED).

8 Q NOW, AT THE TIME THAT YOU PICKED THESE PEOPLE OUT OF
9 THE LINE-UP, WHO SHOWED YOU THESE LINE-UPS?

10 A I THINK IT WAS J.D.

11 Q AND DID HE INDICATE TO YOU IN ANY WAY WHO YOU SHOULD
12 PICK OUT OF THOSE LINE-UPS?

13 A NO, HE DIDN'T.

14 Q DID HE SHOW YOU ANY OTHER PHOTOGRAPH ABOUT PICKING
15 FROM--

16 A NO, HE DIDN'T.

17 Q AFTER THE SHOOTING WAS OVER, DID YOU SEE WHERE THE
18 SHOOTERS WENT?

19 A YES, THEY WENT RUNNING DOWN THE ROAD.

20 Q AND DID YOU SEE WHAT THEY DID?

21 A THEY -- WELL, THEY WERE STILL SHOOTING AS THEY WAS
22 RUNNING, BUT ONCE THEY GOT DOWN THE ROAD THEY GOT PICKED
23 UP.

24 Q AND DID YOU SEE WHAT KIND OF CAR PICKED THEM UP?

25 A IT'S A BURGUNDY CADILLAC.

RODNEY YATES - DIRECT BY NIELSEN

1 Q AND DID -- HAD YOU SEEN THAT BURGUNDY CADILLAC
2 EARLIER BEFORE THE SHOOTING?

3 A YEAH, IT WAS PARKED LIKE RIGHT UP IN...

4 Q TELL US WHERE IT WAS PARKED.

5 A PARKED LIKE RIGHT UP HERE IN FRONT OF THE DOOR.

6 Q BUT ACTUALLY IN THE DRIVEWAY?

7 A NO, IT WAS MORE LIKE ON THE SIDE OF -- ON THE SIDE OF
8 THE DRIVEWAY.

9 Q AND DID YOU SEE ANYBODY NEAR THAT CAR?

10 A I CAN'T REALLY SAY THAT BECAUSE I WASN'T REALLY
11 PAYING THAT MUCH ATTENTION TO THE CAR.

12 Q DO YOU -- DID YOU KNOW WHETHER OR NOT HENRY SCOTT
13 OWNED THE GUN OR...

14 A NOT SURE IF HE OWNED IT OR NOT. HE WASN'T RIDING
15 WITH ME, SO YOU KNOW WHAT I'M SAYING. WE WAS TOGETHER ALL
16 NIGHT AND I NEVER SAW ONE, SO WHETHER HE HAD ONE OR NOT I
17 CAN'T SAY.

18 Q DID YOU SEE HIM GO TO THE CAR AND GET ONE?

19 A NO, I DIDN'T SEE ONE.

20 Q AFTER THE SHOOTING STOPPED, DID YOU GO OVER TO WHERE
21 HE WAS?

22 A YES, I DID.

23 Q DID YOU SEE ANY GUNS ON THE GROUND OR ANYWHERE NEAR
24 HIM?

25 A NO.

1 MS. NIELSEN: COURT'S INDULGENCE, PLEASE.

2 THE COURT: YES, MA'AM.

3 (WHEREUPON THERE WAS A PAUSE).

4 MS. NIELSEN: PLEASE ANSWER ANY QUESTIONS THE DEFENSE
5 ATTORNEYS HAVE.

6 THE COURT: MR. DOBY, YOU MAY EXAMINE.

7 CROSS-EXAMINATION BY MR. DOBY:

8 Q MR. YATES, YOU TALKED TO THE POLICE THAT NIGHT?

9 A NO, I DIDN'T.

10 Q DIDN'T GIVE ANY KIND OF STATEMENT TO THE POLICE THAT
11 PARTICULAR NIGHT?

12 A NO, I DIDN'T.

13 Q DO YOU KNOW -- YOU WERE ASKED ABOUT A STATEMENT. DO
14 YOU RECALL WHEN YOU GAVE THAT STATEMENT?

15 A IT WAS ON THE 22ND.

16 Q 22ND?

17 A UH-HUH.

18 Q NOW, I BELIEVE YOU SAID YOU WENT UP TO THE CLUB OR
19 WERE WALKING UP TO THE CLUB AND MR. SCOTT HAD AN ARGUMENT
20 WITH SOMEBODY, CORRECT?

21 A YEAH.

22 Q DID YOU ACTUALLY GO INTO THE CLUB?

23 A NO, I NEVER MADE IT INTO THE CLUB.

24 Q DID YOU GO UP TO THE DOOR?

25 A GOT TO THE DOOR.

RODNEY YATES - CROSS BY DOBY

1 Q DID YOU ASK HOW MUCH IT WAS TO GET IN?

2 A NO, BECAUSE SOMEONE ALREADY TOLD ME ON THE WAY OUT IT
3 WAS \$15, SO I DON'T ACTUALLY KNOW HOW MUCH IT COST.

4 Q YOU DECIDED NOT TO GO INTO THE CLUB AT THAT POINT?

5 A I WAS HEADED TO THE CLUB. I WAS GOING IN
6 REGARDLESS. I WAS GOING TO GO IN.

7 Q OKAY. WHERE DID YOU SEE THE ARGUMENT TAKING PLACE?

8 A IT WAS ABOUT -- ABOUT RIGHT UP IN HERE (INDICATING).

9 Q ABOUT RIGHT IN THERE?

10 A YEAH.

11 Q HOW LONG DID IT TAKE YOU TO WALK UP TO THE DOOR FROM
12 WHERE THE ARGUMENT HAPPENED?

13 A NO MORE THAN ABOUT FIVE OR TEN SECONDS.

14 Q OKAY. SO IN THAT -- WHEN YOU GOT UP TO THE DOOR, DID
15 YOU IMMEDIATELY HEAR SHOTS BEING FIRED AT THAT POINT?

16 A YEAH, BASICALLY WHEN I GOT TO THE DOOR, YES I DID.

17 Q OKAY. YOU TESTIFIED YOU DIDN'T SEE MR. SCOTT GO TO
18 THE CAR TO GET A GUN.

19 A NO, I DIDN'T SEE THAT PART.

20 Q ALL RIGHT. DID HE HAVE ENOUGH TIME TO GO TO THE CAR
21 AND GET A GUN?

22 A I CAN'T SAY. I CAN'T SAY BECAUSE LIKE I SAID, THEY
23 WERE STANDING THERE ARGUING AND I TOLD LET'S JUST GO IN
24 THE CLUB, DIDN'T COME OUT HERE FOR THAT TO, YOU KNOW WHAT
25 I'M SAYING. I TURN AROUND TO WALK UP, YOU KNOW WHAT I'M

RODNEY YATES - CROSS BY DOBY

1 SAYING, THINKING HE WAS BEHIND ME AND HE WASN'T.

2 Q OKAY. AND DID YOU GIVE A DESCRIPTION OF THE CLOTHING
3 THAT PEOPLE WERE WEARING THAT WERE DOING THE SHOOTING THAT
4 NIGHT?

5 A NO, I DIDN'T.

6 Q OKAY. DID -- WHEN YOU GOT UP TO THE CLUB, WERE THERE
7 STILL -- WAS THERE A LINE TO GET INTO THE DOOR OR DID YOU
8 GO IMMEDIATELY UP TO THE DOOR?

9 A IT WASN'T A LINE.

10 Q NO LINE TO GET IN?

11 A HUH-UH.

12 Q OKAY. DID YOU TALK TO SOMEBODY WHILE YOU WERE THERE
13 AT THE DOOR?

14 A NO.

15 Q SO YOU WALKED UP THERE, WALKED BACK AT THAT POINT?

16 A I DIDN'T WALK BACK. ONCE I HEARD THE SHOTS, I TURNED
17 AROUND.

18 Q ALL RIGHT. WERE YOU RUNNING TOWARDS THE SHOTS?

19 A NO, I WASN'T RUNNING TOWARDS THEM.

20 Q YOU DUCK, GET DOWN ON THE GROUND?

21 A NO, I DIDN'T DUCK.

22 Q HIDE BEHIND THE CAR?

23 A NO.

24 Q DID YOU SEE POLICE CARS THAT WERE PARKED RIGHT THERE
25 IN FRONT OF THE CLUB?

RODNEY YATES - CROSS BY DOBY

1 A I'M NOT SURE. I THOUGHT I SAW ONE, BUT I AM NOT
2 POSITIVE.

3 Q OKAY. YOU ARE NOT POSITIVE THAT THERE WAS JUST ONE
4 OR COULD THERE HAVE BEEN MORE THAN--

5 A COULD HAVE BEEN MORE, I'M NOT SURE. I KNOW THERE WAS
6 -- I THINK IT WAS OWN BY LEONARD SCOTT. NOT SURE ABOUT
7 THAT.

8 Q ALL RIGHT, YOU MAYBE REMEMBER ONE CAR THAT WAS PARKED
9 THERE?

10 A YEAH.

11 Q AND YOU SAID THAT AT ONE POINT YOU WERE 15 TO 20 FEET
12 FROM THE PERSON YOU DESCRIBED AS MARCUS. WHERE WERE YOU
13 WHEN YOU WERE 15 OR 20 FEET FROM HIM?

14 A I NEVER SAID I WAS 15 OR 20 FEET FROM MARCUS.

15 Q YOU DIDN'T?

16 A NO.

17 Q HOW CLOSE DID YOU GET TO MARCUS?

18 A I WAS NO MORE THAN ABOUT TWO OR THREE STEPS AWAY FROM
19 HIM.

20 Q OKAY. WHEN YOU HEARD THE SHOTS?

21 A UH-HUH.

22 Q YOU SAW SOMEBODY RUNNING IN THAT DIRECTION AT THAT
23 POINT, CORRECT?

24 A RUNNING TOWARDS HENRY.

25 Q OKAY. DID YOU GIVE A DESCRIPTION OF THAT PERSON TO

1 THE POLICE?

2 A NO, I DIDN'T.

3 Q OKAY.

4 A I KNOW HE'S LIGHT SKINNED BECAUSE...

5 Q ALL RIGHT. YOU SURE LIGHT SKINNED?

6 A UH-HUH.

7 Q PANTS?

8 A HUH?

9 Q COLOR PANTS?

10 A I DIDN'T GIVE ALL OF THAT. I WASN'T LOOKING AT ALL
11 THAT.

12 Q SHIRT, JACKET?

13 A DIDN'T GIVE NONE OF THAT.

14 Q OKAY. DID DETECTIVE DELLINGER WHEN HE GAVE YOU THESE
15 LINE-UPS --

16 A UH-HUH.

17 Q -- DO YOU RECALL READING THE LANGUAGE THAT IS ON THIS
18 LINE-UP?

19 A THE LANGUAGE?

20 Q UH-HUH. YOU SIGNED THAT STATEMENT, CORRECT?

21 A YES, I DID.

22 Q AS A MATTER OF FACT, THAT LANGUAGE SAYS IS HAD YOU
23 PREVIOUSLY SEEN ONE OR MORE OF THESE PERSONS IN THE
24 LINE-UP, CORRECT?

25 A UH-HUH.

RODNEY YATES - CROSS BY ROGERS

1 Q AND YOU HAD -- YOU DESCRIBED SEEING MARCUS OUT THERE
2 THAT PARTICULAR NIGHT?

3 A UH-HUH.

4 Q OKAY. THANK YOU. THAT'S ALL I HAVE.

5 THE COURT: MR. ROGERS?

6 CROSS-EXAMINATION BY MR. ROGERS:

7 Q MR. YATES, OUT OF ALL THE THINGS THAT YOU CLAIM TO
8 HAVE SEEN THAT NIGHT --

9 A UH-HUH.

10 Q -- THE ONE AND ONLY THING THAT YOU DIDN'T SEE WAS POP
11 GOING TO THE CAR TO GET HIS GUN?

12 A I DIDN'T SEE THAT.

13 Q OKAY. YOUR TESTIMONY IS YOU WALKED UP, POP WAS THERE
14 ARGUING, YOU THEN WALKED ON TO THE DOOR AND THEN RIGHT
15 AFTER THAT YOU HEARD SHOTS?

16 A IT WASN'T, YOU KNOW WHAT I'M SAYING, RIGHT AFTER.
17 LIKE I SAID, I HAD TIME TO TELL HIM COME ON, LET'S JUST GO
18 IN THE CLUB LAST TIME, TELL HIM WE DIDN'T COME OUT THERE
19 FOR THAT THAT NIGHT.

20 Q TOLD HIM TO COME WITH YOU. DID YOU THINK HE WAS
21 BEHIND YOU WHEN YOU WENT TO THE DOOR?

22 A I THOUGHT SO.

23 Q GOT TO THE DOOR, FOUND OUT HOW MUCH IT COST, YOU
24 DECIDED YOU WEREN'T GOING TO GET IN AND YOU HEARD
25 GUNSHOTS?

RODNEY YATES - CROSS BY ROGERS

1 A NO, I WAS GOING TO GO IN.

2 Q YOU WERE GOING TO GO IN?

3 A YES, I WAS.

4 Q AND YOU HEARD GUNSHOTS?

5 A YES, I DID.

6 Q THAT WOULDN'T HAVE GIVEN HIM ENOUGH TIME ACCORDING TO
7 YOU TO WALK FROM WHERE YOU LAST SAW HIM BACK ACROSS THE
8 STREET TO GET A GUN AND TO COME BACK OUT; WOULD IT?

9 A I DON'T KNOW.

10 Q YOU DON'T KNOW. YOU JUST DIDN'T SEE ANY OF THAT?

11 A I SEEN THAT.

12 Q BUT YOU WANT THE JURY TO BELIEVE YOU SAW EVERYTHING
13 ELSE?

14 A I MEAN THAT PART YES, BECAUSE YOU KNOW WHAT I'M
15 SAYING, LIKE I SAID, I TURNED MY BACK.

16 Q WE KNOW THERE WERE FOUR GUNS. DID YOU HAVE A GUN?

17 A NO, I DON'T.

18 Q YOU DIDN'T SHOOT?

19 A NO, I DIDN'T.

20 Q SOMEBODY WAS SHOOTING AT YOUR HALF BROTHER AND YOU
21 DIDN'T SHOOT?

22 A I DIDN'T HAVE NO GUN.

23 Q YOU DIDN'T SEE HIM WITH A GUN?

24 A NO, I DIDN'T. I DIDN'T SEE NO GUN.

25 Q WERE YOU THE FIRST PERSON TO HIM ON THE GROUND?

RODNEY YATES - CROSS BY ROGERS

1 A YES, I WAS.

2 Q YOU WERE THE FIRST PERSON?

3 A FIRST PERSON.

4 Q AND YOU DIDN'T SEE A GUN?

5 A LIKE SAYING I DIDN'T TRY TO OBSERVE ALL AROUND HIM OR
6 NOTHING LIKE THAT. WHEN I GOT TO HIM, I DIDN'T SEE NO
7 GUN.

8 Q WHAT DID YOU DO WHEN YOU GOT TO HIM?

9 A I GRABBED HIM.

10 Q AND DID WHAT?

11 A HOLD HIM.

12 Q DID YOU PUT YOUR COAT AROUND HIM?

13 A YES, I DID.

14 Q NOW, WHEN YOU GAVE YOUR STATEMENT, YOU DESCRIBED THE
15 SHOOTERS AS TWO LIGHT SKINNED GUYS?

16 A YEAH.

17 Q BETWEEN THE TIME OF THE 14TH AND THE 22ND, HAD YOU
18 TALKED TO ANYBODY ELSE THAT WAS OUT THERE WITH YOUR GROUP
19 ABOUT THE SHOOTING?

20 A I DIDN'T TALK WITH NOBODY. TALK WITH MY FATHER,
21 EITHER MY DAD.

22 Q DID YOU GO TO THE HOSPITAL THAT NIGHT?

23 A YES, I DID.

24 Q OKAY. THEN I TAKE IT AT SOME POINT YOU CAME HOME?

25 A UH-HUH.

1 Q AND YOU ARE TELLING THIS JURY THAT YOU AND NONE OF
2 THE OTHER PEOPLE THAT WENT WITH YOUR GROUP THAT NIGHT WHEN
3 THE OTHER TWO CARS BEFORE YOU TALKED TO THE POLICE EVER
4 TALKED ABOUT WHAT HAPPENED?

5 A I AIN'T NEVER TALKED TO NOBODY. I DIDN'T EVEN WENT
6 TO MY GRANDMOTHER HOUSE. I STAYED IN MY HOUSE.

7 Q AND THIS WAS YOUR HALF BROTHER?

8 A THAT'S MY HALF BROTHER.

9 Q THANK YOU. NOTHING FURTHER.

10 THE COURT: MR. JORDAN?

11 MR. JORDAN: NO QUESTIONS, YOUR HONOR.

12 THE COURT: THANK YOU. MR. FINNEY?

13 MR. FINNEY: MAY IT PLEASE THE COURT.

14 THE COURT: YES, SIR.

15 CROSS-EXAMINATION BY MR. FINNEY:

16 Q MR. YATES, PLEASE LET ME ASK YOU A FEW QUESTIONS.
17 YOU TESTIFIED A LITTLE WHILE AGO THAT YOU SAW A BURGUNDY
18 CADILLAC IN THIS AREA RIGHT IN HERE?

19 A NO, I NEVER SAID THAT. IT WAS RIGHT UP IN HERE.

20 Q IT WAS ON THE GRASS?

21 A IT WAS MORE LIKE ON THE GRASS, YES.

22 Q ON THE GRASS?

23 A YEAH.

24 Q ALL RIGHT. WAS THERE ANYTHING UNUSUAL ABOUT THAT
25 CAR? WERE THE LIGHTS ON, WAS IT RUNNING, WAS THE MUSIC

1 PLAYING LOUD, ANYTHING LIKE THAT?

2 A DIDN'T SEE NONE OF THAT.

3 Q DIDN'T SEE THAT? YOU WALKED PAST THIS AREA, PAST
4 YOUR BROTHER?

5 A I DIDN'T WALK PAST HIM.

6 Q HE WAS WALKING WITH YOU?

7 A HE WAS A LITTLE AHEAD OF ME.

8 Q HE WAS AHEAD OF YOU?

9 A YEAH.

10 Q HE WAS ARGUING WITH SOMEBODY?

11 A YES, HE WAS.

12 Q SO YOU KIND OF TAPPED HIM ON THE SHOULDER, SAID COME
13 ON, LEAVE THAT ALONE, COME ON LET'S GO?

14 A YEAH.

15 Q AND YOU WALKED ON INTO THE CLUB?

16 A YEAH, I DIDN'T WALK INTO THE CLUB. I WENT TO THE
17 CLUB TO THE DOOR, GOT TO THE DOOR?

18 Q GOT TO THE DOOR.

19 A UH-HUH.

20 Q AND YOU WERE GOING TO GO ON, DIDN'T YOU GO ON IN?

21 A NO, I DIDN'T.

22 Q DIDN'T GO IN?

23 A DIDN'T HAVE A CHANCE.

24 Q AND WHAT STOPPED YOU FROM GOING IN?

25 A GUNSHOTS.

RODNEY YATES - CROSS BY FINNEY

1 Q YOU HEARD THE SHOTS?

2 A YES, I DID.

3 Q ALL RIGHT. WHEN YOU CAME OUT, YOU SAW THESE PEOPLE
4 RUNNING?

5 A UH-HUH.

6 Q WHEN WAS THE NEXT TIME YOU SAW THE BURGUNDY CADILLAC?

7 A PARKED DOWN THE ROAD.

8 Q WHERE?

9 A ABOUT RIGHT -- IT WAS ABOUT RIGHT UP IN HERE
10 (INDICATING).

11 Q WAS IT NEAR THE DRIVEWAY THAT IS SHOWN ON THIS MAP
12 HERE?

13 A LIKE I SAID -- LIKE I SAID, I'M NOT FAMILIAR WITH
14 THAT AREA, YOU KNOW WHAT I'M SAYING, I CAN'T TELL YOU.

15 Q BUT ON THE ROAD GOING THIS WAY?

16 A YEAH.

17 Q WHAT WAS THE CAR DOING WHEN YOU SAW IT?

18 A PICKING UP THE FELLOWS.

19 Q OKAY. AND THE FELLOWS GOT IN?

20 A YEAH.

21 Q AND THE CAR DROVE OFF?

22 A YES, SIR.

23 Q BY THAT TIME WAS ALL THE SHOTS FIRED OR DID YOU HEAR
24 ADDITIONAL GUNSHOTS?

25 A I'M NOT SURE. I THOUGHT I DID, BUT YOU KNOW WHAT I'M

1 SAYING.

2 Q YOU THOUGHT YOU HEARD SOME MORE GUNSHOTS?

3 A YES, I DID.

4 Q WERE OTHER PEOPLE ON -- OUTSIDE THE CLUB AT THIS
5 TIME?

6 A YES, IT WAS.

7 Q WERE PEOPLE RUNNING TO GET TO THEIR CARS OR GET AWAY
8 FROM THE FRONT AREA OF THE CLUB?

9 A I CAN'T SAY ALL THAT BECAUSE LIKE I SAID, I WAS ON
10 THE GROUND WITH HENRY.

11 Q YOU WERE ON THE GROUND WITH HENRY BY THAT TIME?

12 A YES, I WAS.

13 Q ALL RIGHT. WHILE YOU WERE ON THE GROUND WITH HENRY
14 --

15 A UH-HUH.

16 Q -- YOU THINK THAT YOU HEARD OTHER SHOTS?

17 A LIKE I SAID, ONCE THEY GOT DOWN THE ROAD, I SAW THEM
18 GETTING IN THE CAR. DIDN'T KNOW IF THEY WERE STILL
19 SHOOTING OR NOT, SO YOU KNOW WHAT I'M SAYING. ONCE THEY
20 PULL OFF, I DIDN'T HEAR NO SHOTS.

21 Q OKAY. BUT OTHER PEOPLE WERE OUTSIDE. DID YOU HEAR
22 OTHER PEOPLE RUNNING BY YOU WHILE YOU'RE WITHIN -- ON THE
23 GROUND WITH HIM?

24 A I HEARD A LOT OF PEOPLE HOLLERING AND STUFF.

25 Q OKAY. THANK YOU, SIR. NOTHING FURTHER.

RODNEY YATES - REDIRECT BY NIELSEN

1 THE COURT: MS. NIELSEN, REDIRECT?

2 REDIRECT EXAMINATION BY MS. NIELSEN:

3 Q RODNEY, WHEN YOU FIRST GOT THERE, WAS THERE A LOT OF
4 PEOPLE OUTSIDE?

5 A I CAN'T SAY THAT. I WASN'T TRYING TO VISUALIZE ON
6 EVERYBODY.

7 Q ALL RIGHT. WHEN YOU WERE WALKING UP TO THE DOOR,
8 WERE THERE A BUNCH OF PEOPLE RIGHT THERE WHERE YOU WERE?

9 A NO, THERE WASN'T A LOT OF PEOPLE TO THE DOOR.

10 Q THERE WERE A LOT OF CARS THERE?

11 A YES, THERE WAS.

12 Q I DON'T HAVE ANY FURTHER QUESTIONS.

13 THE COURT: THANK YOU. YOU CAN STEP DOWN, MR.
14 YATES.

15 (WHEREUPON THE WITNESS LEFT THE STAND).

16 MS. NIELSEN: THE STATE CALLS DANIEL SIMON.

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

19 DIRECT EXAMINATION BY MS. NIELSEN:

20 Q AND YOU ARE EMPLOYED BY THE LEE COUNTY SHERIFF'S
21 OFFICE?

22 A YES, MA'AM.

23 Q AND HOW ARE YOU EMPLOYED BY THEM? WHAT DO YOU DO?

24 A I'M A LIEUTENANT IN INVESTIGATION DEPARTMENT.

25 Q HOW LONG HAVE YOU BEEN IN LAW ENFORCEMENT?

1 A DECEMBER 3RD WILL BE 13 YEARS.

2 Q YOU WORK FOR THE BISHOPVILLE POLICE DEPARTMENT?

3 A YES, MA'AM.

4 Q BEFORE YOU CAME WITH THE SHERIFF'S OFFICE?

5 A SEVEN AND A HALF YEARS.

6 Q FOR BISHOPVILLE?

7 A YES, MA'AM.

8 Q DID THE REST OF YOUR 13 YEARS YOU WORK FOR THE
9 SHERIFF'S OFFICE?

10 A YES, MA'AM.

11 Q NOW, WERE YOU WORKING SECURITY AT THE COUNTRY CLUB
12 THIS NIGHT?

13 A YES, MA'AM.

14 Q TELL US WHAT IS THE FIRST THING YOU REMEMBER ABOUT
15 THE EVENTS?

16 A A LITTLE STRUGGLE. WE HAD A LITTLE PROBLEM ON THE
17 INSIDE OF THE CLUB. LARRY CAME TO ME ABOUT 3:30 SAID WE
18 HAD ABOUT 30 MORE MINUTES TO GO BEFORE HE TURNED THE
19 LIGHTS ON, AND AT THAT TIME THEY HAD A LITTLE PROBLEM AT
20 THE FRONT.

21 AT THAT TIME OFFICER -- WAS LIEUTENANT DELLINGER
22 AT THAT TIME. DEPUTY DON FARRELL WAS AT THE FRONT AND
23 DEPUTY CHUCKIE WHITE WAS AT THE FRONT TRYING TO STOP THE
24 PROBLEM THAT THEY HAD UP FRONT.

25 Q ALL RIGHT. WHAT HAPPENED NEXT?

1 A WHEN LARRY CAME IN THERE, HE CAME BACK, SAID HE HAD A
2 LITTLE PROBLEM ON THE OUTSIDE AND HE WANTED ME TO GO OUT
3 THERE WITH HIM TO HELP HIM CLEAR UP COMMOTION. BY THE
4 TIME I COULD GET TO THE DOOR, I COULD HEARD -- I HEARD
5 ABOUT TEN ROUNDS GOING OFF.

6 AS I EXITED THE DOOR, I SAW A PERSON WITH LIGHT
7 COLORED COMPLEXION, CLOTHES FIRING BACK TOWARD THE CLUB
8 RUNNING DOWN THE ROAD.

9 Q NOW, WHEN YOU WERE IN THE CLUB, DID YOU REMEMBER
10 LARRY DEBERRY INDICATING TO YOU THAT SHOTS HAD BEEN FIRED
11 OUTSIDE?

12 A BY THE TIME HE GOT IN THE CLUB AND STARTED TALKING TO
13 ME, WE -- HE SAID THAT LET'S GO ON THE OUTSIDE, HAD LITTLE
14 PROBLEM. BY THE TIME WE STARTED WALKING TOWARD THE DOOR,
15 THAT'S WHEN I HEARD THE SHOTS BEING FIRED.

16 Q OKAY. BUT DID HE INDICATE TO YOU THAT -- DO YOU
17 REMEMBER HIM INDICATING TO YOU THAT SHOTS WERE FIRED?

18 A HE TOLD ME THAT SHOTS WERE BEING FIRED AS WE WAS
19 GOING TO THE DOOR.

20 Q THOSE ARE THE SAME ONES YOU COULD HEAR?

21 A YES, MA'AM.

22 Q AND YOU HEARD HOW MANY YOU THINK?

23 A ESTIMATE AROUND AS I WAS GOING TO THE DOOR A SERIES
24 OF AROUND TEN.

25 Q ALL RIGHT. AND WHAT HAPPENED NEXT?

1 A AS I EXITED THE DOOR, I HEARD PROBABLY ABOUT FIVE OR
2 SIX MORE, MAYBE FIVE, OR FOUR TO FIVE GOING OFF. I DUCKED
3 DOWN AND RAN TOWARD MY VEHICLE THAT WAS PARKED IN THE
4 FRONT OF THE CLUB, SO...

5 Q SHOW US WHERE YOUR VEHICLE WAS PARKED.

6 A IT WAS PARKED ABOUT RIGHT HERE (INDICATING).

7 Q THAT ACTUALLY IN THE DRIVEWAY?

8 A NO, MA'AM. IT'S ON THE SIDE OF THE GRASS AREA. HE
9 HAD SOME VEHICLE THAT WAS PARKED PARALLEL WITH THE CLUB
10 AND WE NORMALLY PARK ADJACENT TO THE ROADWAY, THAT'S IN
11 THE CLUB -- IN THE FRONT OF THE CLUB.

12 Q ACTUALLY IN THE GRASSY AREA?

13 A YES, MA'AM.

14 Q WERE OTHER -- WHERE WERE THE OTHER SECURITY VEHICLES
15 BESIDES YOURS?

16 A I WANT TO SAY TWO MORE WAS BEHIND ME AND ONE WAS OVER
17 THERE.

18 Q ALL RIGHT. WHAT HAPPENED NEXT?

19 A LIKE I SAID, I COULD SEE SOMEONE FIRING BACK TOWARD
20 THE CLUB. I COULD ONLY SEE A FLASH OF IT, THE MUZZLE, IN
21 THE DIRECTION OF THE CLUB AND A PERSON THAT WAS RUNNING
22 HAD A LIGHT COMPLEXIONED CLOTHES ON.

23 Q WELL, TELL ME WHAT THAT MEANS.

24 A I COULDN'T REALLY TELL EXACTLY WHAT COLOR CLOTHES
25 THEY WAS, BUT IT WAS A LIGHTER COLOR TOP.

1 Q WOULD YOU -- WERE YOU IN A DISTANCE WHERE YOU COULD
2 TELL WHETHER IT WAS A SOLID OR A PRINT OR A PLAID OR...

3 A NO, MA'AM.

4 Q AND CAN YOU POINT OUT ON THE DIAGRAM WHERE YOU FIRST
5 SAW THIS PERSON?

6 A AS I RAN OUT THE DOOR, HE WAS IN -- RIGHT ABOUT IN
7 THIS GENERAL AREA FIRING BACK.

8 Q IN THE ROAD?

9 A YES, MA'AM.

10 Q AND DID YOU SEE WHERE HE WENT?

11 A HE JUST RAN IN THAT DIRECTION. AND AS I GOT TO MY
12 VEHICLE, SOMEONE SAID THAT THEY WAS GETTING INTO A
13 BURGUNDY CADILLAC, BURGUNDY AND WHITE CADILLAC.

14 Q AND WHAT DID YOU DO?

15 A BY THAT TIME DEPUTY CHARLES WHITE, HE RAN ON THE
16 OUTSIDE AND I IMMEDIATELY CALLED DISPATCH AND ADVISED THEM
17 THAT WE HAD A 1075, WHICH IS A SHOOTING INCIDENT, AND WE
18 HAD A PERSON DOWN ON THE GROUND.

19 Q DO YOU KNOW WHAT TIME HE DISPATCHED THIS CALL?

20 A 3:42.

21 Q SO 3:42 A.M.?

22 A YES, MA'AM.

23 Q NOW, WHAT DOES IT MEAN THAT YOU DISPATCH A CALL?
24 WHAT DID YOU DO?

25 A I PRESSED MY MICROPHONE, MY WALKIE TALKIE, AND

DANIEL SIMON - DIRECT BY NIELSEN

1 RADIOED TO DISPATCH THE ONE THAT WAS ACTUALLY HANDLING THE
2 CALL WAS DISPATCHING OUR CALLS FOR THE POLICE DEPARTMENT.

3 Q AND WHAT DID YOU TELL THEM AT THAT TIME?

4 A TOLD THEM THAT I NEED SOME 1078, WHICH IS ASSISTANCE,
5 AND WE HAD A PERSON THAT WAS SHOT AND NEEDED RESCUE, 1052
6 IMMEDIATELY. 1052 IS AN AMBULANCE.

7 Q SO EMS WOULD COME?

8 A YES, MA'AM.

9 Q WHEN DID -- THAT TIME DID YOU PUT A BOLO OUT FOR THE
10 CAR?

11 A YES, MA'AM.

12 Q ALL RIGHT.

13 A CORRECTION. DEPUTY WHITE PUT OUT THE BOLO.

14 Q WERE YA'LL -- YA'LL CAN'T BOTH CALL THEN ON WALKIE
15 TALKIES AT THE SAME TIME; CAN YOU?

16 A NO, MA'AM. I AT THAT TIME RAN UP TOWARD WHERE MR.
17 SCOTT WAS ON THE GROUND, BRIEFLY CHECKED ON HIM AND RAN
18 BACK TO MY VEHICLE.

19 Q OKAY. WHO DISPATCHED FIRST? WHO CALLED OVER THE
20 RADIO FIRST, YOU OR CHARLES WHITE?

21 A I CALLED IN THE 1075 FIRST.

22 Q OKAY. WHEN YOU FINISHED DOING THAT, YOU DID WHAT?

23 A I RAN UP TOWARD WHERE MR. SCOTT WAS ON THE GROUND,
24 AND AT THAT TIME DEPUTY WHITE, HE HAD ALREADY EXITED THE
25 CLUB.

1 Q HE HAD ALREADY EXITED THE CLUB?

2 A YES, MA'AM.

3 Q AND WHAT DID HE DO?

4 A HE ALSO CALLED DISPATCH AND I ASSUME HE HEARD THE
5 SAME THING, THAT A BURGUNDY AND WHITE CADILLAC AND HE SAID
6 -- HE GAVE OUT THE BOLO.

7 Q SO WAS THAT -- YOU DISPATCHED AT 3:42, SO
8 APPROXIMATELY WHAT TIME WAS IT THAT THE BOLO WENT OUT?

9 A APPROXIMATELY A MINUTE AFTER.

10 Q AND WHAT DID YOU DO AFTER THAT? YOU CHECKED ON THEM?

11 A I CHECKED ON MR. SCOTT.

12 Q WHAT WAS HIS CONDITION WHEN YOU CHECKED ON HIM?

13 A HE WAS DOWN ON THE GROUND. I DON'T KNOW WHO WAS
14 AROUND HIM, BUT SOMEONE WAS HOLDING HIM.

15 Q AND WHAT ELSE? WAS THERE ANYTHING ELSE ABOUT HIS
16 CONDITION?

17 A I NOTICED THAT HE WAS SHOT.

18 Q ALL RIGHT. THEN WHAT HAPPENED NEXT?

19 A I RAN BACK TO MY VEHICLE. DEPUTY WHITE, HE HAD
20 ALREADY GOT IN HIS VEHICLE AND HE EXITED THE PARKING LOT,
21 I GOT IN MY VEHICLE AND EXITED THE PARKING LOT, AND WE
22 WENT IN THE DIRECTION WHERE THEY SAID THAT THE CADILLAC
23 WAS ON THE MANVILLE ST. CHARLES HIGHWAY HEADED TOWARDS
24 HIGHWAY 15.

25 Q SO YOU WENT DOWN MANVILLE ST. CHARLES HIGHWAY TOWARDS

1 15?

2 A YES, MA'AM.

3 Q DID YOU EVENTUALLY COME -- DID YOU LEAVE HIGHWAY 15
4 FOR A WHILE?

5 A YES, MA'AM. WE GOT ON THE HIGHWAY 15. SOMEONE CAME
6 BACK ON THE RADIO AND SAID IT'S POSSIBLE THE SAME GUY SAID
7 HAD AN ARGUMENT AT WAFFLE HOUSE AROUND JULY FOURTH.

8 MR. DOBY: OBJECTION.

9 THE COURT: SUSTAINED. LADIES AND GENTLEMEN, THAT
10 DOESN'T HAVE ANYTHING TO DO WITH THIS CASE. DISREGARD
11 THAT. THAT HAS NOTHING TO DO WITH THIS. THANK YOU.

12 (WHEREUPON QUESTIONING RESUMED).

13 Q DON'T TELL ME WHAT ANYBODY SAID, OKAY? DID YOU GO
14 OFF OF HIGHWAY 15 FOR A WHILE?

15 A YES, MA'AM. YOU TURN ONTO HIGHWAY 441.

16 Q DID YOU LEAVE 441 AND COME BACK TO 15?

17 A YES, MA'AM.

18 Q HOW LONG DO YOU THINK IT WAS THAT YOU WERE OFF ON 441
19 BEFORE YOU GOT BACK TO 15?

20 A FIVE MINUTES.

21 Q AND AS A RESULT OF RADIO COMMUNICATIONS, DID YOU GO
22 TO A LOCATION ON THE HIGHWAY 15?

23 A YES, MA'AM. WHEN OUR DISPATCHER GAVE OUT A BOLO,
24 THEY GAVE OUT A BOLO ON A REGIONAL CHANNEL WHICH ALERTED
25 SUMTER THAT THIS VEHICLE POSSIBLY COULD BE HEADED THEIR

1 DIRECTION. SUMTER CAME BACK A SHORT TIME LATER AND SAID
2 THAT THEY HAD THAT VEHICLE, A VEHICLE FITTING THAT
3 DESCRIPTION, STOPPED ON HIGHWAY 15 BY WHITES MILL.

4 Q SO DID YOU GO TO WHITES MILL?

5 A YES, MA'AM.

6 Q ALL RIGHT. WHEN YOU GOT THERE, WHAT HAPPENED?

7 A WHEN WE GOT THERE, TWO SUMTER COUNTY DEPUTIES HAD
8 ALREADY HAD THE CAR STOPPED. CHARLES WHITE AND MYSELF --
9 CHARLES WHITE WAS AHEAD OF ME AND I WAS BEHIND HIM.
10 DEPUTY WHITE WAS DRIVING A WHITE AND BROWN MARKED VEHICLE
11 AND I WAS DRIVING A BLUE UNMARKED VEHICLE.

12 WHEN WE APPROACH THE VEHICLE, THEY TOLD US THAT
13 THEY HAD THE VEHICLE STOPPED AND I TALKED TO LAMONT
14 WITHERSPOON.

15 Q ALL RIGHT. YOU TALKED TO LAMONT WITHERSPOON. DID
16 YOU TALK TO ANY OF THE OTHER PASSENGERS IN THE CAR?

17 A I TALKED TO ALL THE PASSENGERS IN THE CAR, BUT LAMONT
18 WITHERSPOON WAS THE FIRST ONE I TALKED TO.

19 Q WHAT POSITION WAS HE IN IN THE CAR?

20 A HE WAS IN THE DRIVER'S SEAT.

21 Q AND WHAT IF ANYTHING DID YOU ASK HIM AND TALK TO HIM
22 ABOUT?

23 A I ASKED HIM WHETHER THEY WAS COMING INTO DAVIS
24 COUNTRY CLUB AND HE SAID YES, AND I ASKED HIM DID HE HEARD
25 ANY GUNSHOT FIRE, AND HE SAID YES. AND I ALSO ASKED HIM

DANIEL SIMON - DIRECT BY NIELSEN

1 DID HE SAW ANYBODY SHOOT AND HE SAID HE DIDN'T, HE JUST
2 HEARD THE GUNSHOT BEING FIRED AND THEY LEFT.

3 Q ALL RIGHT. WHAT ELSE HAPPENED?

4 A I GOT THIS INFORMATION AND TOLD HIM THAT WE MAY BE
5 GETTING BACK IN CONTACT WITH HIM IN THE NEXT COUPLE OF
6 DAYS. I ALSO ASKED HIM FOR CONSENT TO SEARCH HIS VEHICLE
7 AND HE GAVE ME A VALID CONSENT TO SEARCH THE VEHICLE.

8 Q ALL RIGHT. WHAT DID YOU SEARCH THE VEHICLE FOR?

9 A WE SEARCHED THE VEHICLE FOR WEAPONS.

10 Q WERE THE OCCUPANTS IN THE VEHICLE ADVISED THAT YA'LL
11 WERE SEARCHING THE VEHICLE FOR WEAPONS?

12 A YES, MA'AM.

13 Q DID YOU FIND ANY WEAPONS?

14 A NO, MA'AM.

15 Q DID YOU TALK TO THE OTHER OCCUPANTS OF THE VEHICLE?

16 A YES, MA'AM. I TALKED TO THEM INDIVIDUALLY, SAME
17 THING APPLIED. I ASKED THEM WHERE THE -- WHETHER THEY HAD
18 BEEN TO THE CLUB, AND THE SECOND PERSON I TALKED WAS
19 TRAVIS SINGLETON. HE SITTING IN THE FRONT PASSENGER'S
20 SEAT.

21 Q ALL RIGHT. AND EXACTLY WHAT DID YOU ASK HIM?

22 A I ASKED HIM DID HE WENT TO THE CLUB AND HE SAID YES,
23 AND I ASKED HIM DID HE HEARD ANY SHOTS BEEN FIRED AND HE
24 SAID YES. I ASKED HIM DID HE KNOW WHO WAS SHOOTING THE
25 GUN? HE SAID HE DIDN'T.

1 Q SO HE ACTUALLY DENIED KNOWING THEY WERE SHOOTING?

2 A YES, MA'AM. I ALSO GOT HIS INFORMATION AND TOLD HIM
3 THAT I WOULD BE BACK IN CONTACT WITH HIM IF ANYTHING ELSE
4 COME UP.

5 Q DID YOU ALSO DO THAT WITH THE TWO OTHER PASSENGERS?

6 A YES, MA'AM.

7 Q HOW WERE -- WHAT WAS THE Demeanor OF THESE FOUR GUYS
8 IN THIS CAR?

9 A LAMONT WAS REAL POLITE. HE WAS A LITTLE NERVOUS.
10 TRAVIS, HE WAS A LITTLE NERVOUS. ALL OF THEM WAS REAL --
11 REAL POLITE TO ME.

12 Q OKAY. ALL RIGHT. YOU SAID THEY WERE NERVOUS. HOW
13 ABOUT THE OTHER ONES?

14 A MARCUS EVANS AND TAYLOR, THEY DIDN'T SHOW ANY FEAR.

15 Q THEY WEREN'T NERVOUS?

16 A NO, MA'AM.

17 Q ALL RIGHT. AFTER YOU SEARCHED THE GUNS, GOT --
18 QUESTIONED THEM, WHAT DID YOU DO?

19 A WE RADIOED -- WE WAS RADIOED BACK, ASKED FOR
20 DESCRIPTION OF CLOTHING. I CAN'T REMEMBER WHO CALLED ME
21 BACK ON THE RADIO AND SAID THAT THE PERSON HAD ON A BLACK
22 HOODED TOP. NO ONE IN THE VEHICLE THAT WE SEARCHED AND
23 TALKED TO HAD ON A BLACK HOODED TOP. THE VEHICLE THAT WE
24 STOPPED, THE DESCRIPTION WAS GIVEN OUT AS A BURGUNDY AND
25 WHITE CADILLAC AND THIS CAR WAS BURGUNDY.

DANIEL SIMON - DIRECT BY NIELSEN

1 Q SO WHAT DID YOU DO?

2 A BY THAT TIME LIEUTENANT DELLINGER CALLED BACK AND
3 SAID THAT THE PEOPLE AT THE CLUB WAS GETTING A LITTLE
4 ROWDY AND HE NEEDED US BACK AS SOON AS POSSIBLE FOR
5 OFFICER SAFETY. I HAD HAD ALL OF THEIR INFORMATION. WE
6 THEN WENT BACK TO THE CLUB.

7 Q DID YOU HAVE ENOUGH INFORMATION TO DETAIN THEM?

8 A NO, MA'AM. FROM THE DESCRIPTION -- AND WE DIDN'T
9 FIND ANY WEAPONS. I DIDN'T ACTUALLY SEE THEM EYE TO EYE,
10 I DIDN'T HAVE ENOUGH INFORMATION TO DETAIN THEM.

11 Q DID YOU GO BACK TO THE CLUB?

12 A YES, MA'AM. ON OUR WAY BACK, WE MET A BURGUNDY AND
13 WHITE CADILLAC, THAT DESCRIPTION THAT THEY GAVE US. WE
14 STOPPED THAT VEHICLE JUST AS WE GOT INTO LEE COUNTY AND
15 DEPUTY WHITE RECOGNIZED THE PERSON WHO WAS DRIVING THE
16 CAR. HE HAD BEEN IN THE CLUB DURING THE SHOOTING
17 INCIDENT.

18 Q HE HAD ACTUALLY BEEN INSIDE THE CLUB?

19 A YES, MA'AM. HE SAID HE REMEMBERED TALKING TO HIM
20 WHILE HE WAS IN THE CLUB.

21 Q SO YA'LL KNEW HE WASN'T OUTSIDE?

22 A YES, MA'AM.

23 Q THERE WAS A LOT OF PEOPLE IN THE CLUB; AREN'T THERE?

24 A I WOULD ESTIMATE BETWEEN FOUR AND FIVE HUNDRED.

25 Q WHAT IS THE PROCEDURE ABOUT PEOPLE BEING OUTSIDE?

1 A NORMALLY WE LET THEM GO OUTSIDE JUST TO COOL OFF,
2 STAY OUT MAYBE FIVE OR TEN MINUTES JUST TO COOL OFF, BUT
3 NOWHERE IN THE PARKING LOT.

4 Q BUT IS IT POSTED NO LOITERING?

5 A IT'S POSTED ON THE WALL OF THE OUTSIDE AS WELL AS THE
6 DOOR OF THE CLUB.

7 Q AND WHO CHECKS TO MAKE SURE THAT PEOPLE AREN'T JUST
8 HANGING AROUND OUTSIDE?

9 A WE DO A WALK THROUGH PERIODICALLY, BUT OUR MAIN FOCUS
10 IS ON THE INSIDE OF THE CLUB.

11 Q YA'LL HAVE MUCH PROBLEM WITH PEOPLE LOITERING
12 OUTSIDE?

13 A NO TOO OFTEN, NOT UNLESS WE HAVE A HUGE CROWD IN THE
14 SUMMER TIME WHERE THEY NORMALLY GET REAL HOT ON THE
15 INSIDE.

16 Q DOESN'T GET THAT HOT IN THE WINTER TIME?

17 A IT GETS HOT, BUT NOT AS WARM AS IT DOES IN THE SUMMER
18 TIME.

19 Q THIS DIAGRAM UP HERE, WHO PREPARED THAT DIAGRAM?

20 A I DID.

21 Q YOU PUT SOME MARKINGS ON IT FOR THE SHELL CASINGS AND
22 YOU DREW THE DIAGRAM?

23 A YES, MA'AM.

24 Q AND IT'S NOT TO SCALE; IS IT?

25 A YES, MA'AM.

1 MS. NIELSEN: YOUR HONOR WE WOULD MOVE THIS DIAGRAM
2 IN NOW AS STATE'S EXHIBIT 5.

3 THE COURT: ANY OBJECTION, GENTLEMEN. STATE'S 5?

4 MR. ROGERS: YES, YOUR HONOR. CAN WE APPROACH?

5 THE COURT: YES.

6 (WHEREUPON A BENCH CONFERENCE WAS HELD).

7 THE COURT: ALL RIGHT. I WILL HOLD THE RULING ON
8 ADMISSIBILITY OF STATE'S EXHIBIT 5 IN OBEYANCE UNTIL WE
9 CAN GET SOME ADDITIONAL EVIDENCE IN THAT REGARD. THANK
10 YOU. STATE'S EXHIBIT 5 IS STILL FOR IDENTIFICATION ONLY.
11 ALL RIGHT. MS. NIELSEN, YOU CAN RESUME.

12 (WHEREUPON QUESTIONING RESUMED).

13 Q ALL RIGHT. DID YOU ACTUALLY GO TO THE AUTOPSY?

14 A YES, MA'AM.

15 Q AND YOU WERE PRESENT WHEN THOSE BULLETS WERE REMOVED?

16 A YES, MA'AM.

17 Q DID YOU WATCH DR. YACoub SWAB HENRY SCOTT'S HANDS?

18 A YES, MA'AM.

19 Q DO YOU KNOW ANYTHING ABOUT HOW TO DO THOSE GUNSHOT
20 WOUNDS KIT? HAVE YOU EVER DONE ONE?

21 A YES, MA'AM.

22 Q TELL US BRIEFLY WHAT YOU DO WHEN YOU DO ONE OF THOSE
23 KITS.

24 A IT'S ALREADY IN THE CONTAINER AND INSTRUCTIONS. TAKE
25 A SWAB AND YOU PUT THE SOLUTION THAT THEY HAVE IN THE

1 LITTLE BOTTLE ON THE SWAB AND SWAB THE APEX OF THE HAND,
2 ALSO THE BACK OF YOUR HANDS AND IN THE PALM.

3 Q AND DID YOU WATCH HER DO THAT TO HIS HANDS?

4 A YES, MA'AM.

5 Q SHE SWABBED ALL OVER HIS HANDS?

6 A YES, MA'AM.

7 Q THANK YOU. AFTER YOU ACTUALLY TOOK -- I BELIEVE YOU
8 TOOK THE BLOOD FROM THE BLOOD TEST, THE BULLETS, AND THE
9 GSR KIT FROM THE AUTOPSY; IS THAT RIGHT?

10 A YES, MA'AM.

11 Q WHAT DID YOU DO WITH THOSE ITEMS?

12 A I BROUGHT THEM BACK TO THE SHERIFF'S OFFICE. WE
13 DIDN'T HAVE A REFRIGERATOR AT THAT TIME, SO WE HAD TO PUT
14 THEM IN THE MORGUE. I PUT THEM IN THE COOLER, ONE OF THE
15 COOLERS THAT'S LOCATED IN THE MORGUE.

16 Q AND WHO IS THE CURRENT OWNER, WHO HAS CONTROL OF THAT
17 COOLER?

18 A ALFRED YOUNG.

19 Q DID HE ACTUALLY DELIVER EVERYTHING TO SLED?

20 A YES, MA'AM.

21 Q IN ADDITION TO THE LIGHT POLE THAT YOU ACTUALLY PUT
22 ON THIS DIAGRAM, IS THERE ANOTHER LIGHT POLE IN THE FRONT
23 OF THIS CLUB?

24 A YES, MA'AM.

25 Q WILL YOU GET DOWN THERE AND MARK ON THE DIAGRAM WHERE

1 THAT POLE IS.

2 A (COMPLIES.)

3 Q I AM GOING TO SHOW YOU STATE'S EXHIBIT 13 AND ASK YOU
4 IF YOU CAN SEE THAT LIGHT POLE IN THAT PICTURE.

5 A YES, MA'AM.

6 Q DOES -- THAT LIGHT ON THAT LIGHT?

7 A YES, MA'AM.

8 Q AND I'M ALSO GOING TO SHOW YOU DEFENDANT'S EXHIBITS 1
9 THROUGH 10 AND ASK YOU DO -- YOU WERE AT THE SCENE. DO
10 THOSE PICTURES APPEAR TO BE DARKER, LIGHTER OR THE SAME AS
11 WHAT YOU CAN SEE WITH YOUR NAKED EYE THAT NIGHT?

12 A MUCH LIGHTER, MUCH LIGHTER.

13 Q WHAT IS MUCH LIGHTER?

14 A YOU HAVE GOT TWO, THE LIGHTS THAT'S LOCATED
15 UNDERNEATH THERE THE WORDS HERE IN THE CLUB IS WELL
16 LIGHTED IN THAT AREA. YOU ALSO GOT A LIGHT OVER HERE IN
17 THE CORNER, YOU HAVE GOT ONE IN THE FRONT OF THE CLUB AS
18 WELL ON THE SIDES OF THE CLUB.

19 Q SO YOU SAID SOMETHING WAS MUCH LIGHTER. WAS IT MUCH
20 LIGHTER AT THE SCENE OR ARE THOSE PICTURES MUCH LIGHTER,
21 WHICH ONE?

22 A IT'S MUCH LIGHTER AT THE SCENE BECAUSE THESE PICTURES
23 ARE A WHOLE LOT MORE DARKER.

24 Q AND IF YOU ARE OUTSIDE YOURSELF IN THIS AREA OVER
25 HERE RIGHT UNDER WHERE THE LIGHTS ARE, COULD YOU DISCERN

1 PEOPLE'S FACES YOURSELF?

2 A IN THIS PARTICULAR AREA HERE?

3 Q AROUND WHERE THE LIGHT POLES ARE.

4 A YES, MA'AM.

5 Q NOW, DID YOU ALSO TAKE A STATEMENT FROM TRAVIS
6 SINGLETON?

7 A YES, MA'AM.

8 (WHEREUPON THERE WAS A PAUSE).

9 Q I'M GOING TO SHOW YOU WHAT HAS BEEN MARKED AS STATE'S
10 EXHIBIT NO. 1 FOR IDENTIFICATION AND ASK YOU IF YOU
11 RECOGNIZE THAT.

12 A YES, MA'AM.

13 Q AND THERE IS A RIGHTS FORM ON THE FRONT OF THAT. DID
14 HE SIGN THIS?

15 A YES, MA'AM.

16 Q DID YOU EXPLAIN TOO HIM WHAT ALL THOSE THINGS MEANT?

17 A YES, MA'AM.

18 Q AND HE SEEMED TO UNDERSTAND THAT?

19 A HE SEEMED TO UNDERSTAND IT.

20 Q WOULD YOU JUST READ THE STATEMENT INTO EVIDENCE.

21 A START WITH MIRANDA.

22 Q JUST THE STATEMENT, THE STATEMENT ITSELF.

23 A ON SATURDAY 11-13-99 JUST BEFORE IT GOT DARK, WE WAS
24 AT FRANKLIN WHITE HOUSE IN SUMTER NEAR CROSWELL STORE.

25 MARCUS EVANS, RON, DON'T KNOW HIS LAST NAME AND LAMONT

DANIEL SIMON - DIRECT BY NIELSEN

1 WITHERSPOON. WE WENT THERE TO WATCH THE BOXING MATCH
2 BETWEEN LEWIS AND EVANDER HOLYFIELD.

3 WE ALWAYS SITTING AROUND DRINKING AND HAVING
4 FUN. AFTER THE FIGHT WAS OVER, WE WENT TO LAMONT
5 WITHERSPOON MOTHER HOUSE THAT'S LOCATED ON WILLIAMS
6 STREET. SHORTLY AFTER WE GOT TO LAMONT HOUSE, FRANKLIN
7 WHITE DROVE UP. HIS MOTHER HAD SOME FRIENDS THERE WHEN WE
8 ARRIVED.

9 IT WAS SOME TIME AFTER MIDNIGHT WHEN WE GOT TO
10 LAMONT MOTHER'S HOUSE. WE STAYED THERE I GUESS ABOUT AN
11 HOUR. AFTER WE LEFT OUT OF THE HOUSE, WE STOOD AROUND IN
12 HIS MOTHER FRONT YARD DISCUSSING WHAT WAS GOING TO DO
13 NEXT. WE STAYED IN THE FRONT YARD FOR ABOUT TEN OR
14 FIFTEEN MINUTES WHEN SOMEONE SAID LET'S GO TO THE COUNTRY
15 CLUB.

16 WE LEFT LAMONT MOTHER HOUSE AND CAME OVER TO THE
17 COUNTRY CLUB THAT'S LOCATED IN LEE COUNTY. AFTER WE GOT
18 TO THE CLUB, LAMONT AND I WENT TO THE DOOR WHERE A MAN WAS
19 TAKING UP THE MONEY. HE TOLD US THAT -- HE TOLD US WAS
20 \$10 TO GET IN.

21 LAMONT TOLD HIM THAT THAT WAS TOO MUCH FOR HIM
22 TO PAY FOR THE BOTH OF US. RON AND MARCUS NEVER CAME
23 INSIDE THE CLUB. LAMONT AND I WENT BACK TO THE CAR. WE
24 DIDN'T GET IN THE CAR AFTER WE GOT TO IT. WE STOOD BESIDE
25 IT BY THE TRUNK. THE CAR BELONGED TO LAMONT, A BURGUNDY

1 CADILLAC.

2 WE STOOD THERE TALKING TILL WE GOT COLD. WE
3 THEN GOT BACK IN THE CAR WE STAYED THERE ON THE OUTSIDE
4 ABOUT FIVE MINUTES. WE GOT -- AS WE WAS IN THE CAR TO GET
5 WARM, I HEARD SEVERAL GUNSHOT WENT OFF. WE WERE PARKED BY
6 THE SECOND DRIVEWAY.

7 AFTER WE HEARD THE SHOT, WE RODE IN FRONT OF THE
8 CLUB TO SEE WHAT HAD HAPPENED AFTER THE CROWD SCATTERED --
9 CORRECTION, WE DIDN'T SEE ANYONE FIRING A GUN, BUT WE
10 HEARD THE GUN WENT OFF. SHORTLY AFTER THAT TIME HAD
11 STOPPED. THAT'S WHEN I SEEN ANOTHER GROUP FORM BY THE
12 FIRST DRIVEWAY.

13 RON AND MARCUS GOT IN THE CAR AND WE LEFT. WE
14 WERE ON OUR WAY BACK TO SUMTER COUNTY. WERE ON OUR WAY
15 BACK HOME. SHORTLY AFTER THAT WE WERE STOPPED BY THE
16 POLICE. I DIDN'T KNOW IF IT WAS SUMTER COUNTY OR LEE
17 COUNTY THAT STOPPED US.

18 AFTER WE WERE STOPPED, I KNOW THAT BOTH SUMTER
19 AND LEE COUNTY POLICE WERE THERE. I NOTICED THAT BY THE
20 CAR. THEY PATTED US DOWN AND SEARCHED THE CAR. THEY ALSO
21 TOOK OUR NAMES AND THEY LET US GO..

22 Q AND HE SIGNED THAT?

23 A YES, MA'AM.

24 Q AND YOU SIGNED THAT?

25 A YES, MA'AM.

1 MS. NIELSEN: YOUR HONOR, WE WOULD MOVE THIS IN.

2 THE COURT: ANY OBJECTION TO STATE'S 1?

3 MR. FINNEY: NO OBJECTION.

4 MR. JORDAN: NO, YOUR HONOR.

5 THE COURT: THANK YOU. HEARING NONE, STATE'S 1 IN
6 EVIDENCE.

7 (STATE'S EXHIBIT NO. 1 MARKED FOR EVIDENCE.).

8 MS. NIELSEN: THANK YOU, YOUR HONOR.

9 (WHEREUPON QUESTIONING RESUMED).

10 Q LIEUTENANT SIMON, PLEASE ANSWER ANY QUESTIONS THE
11 DEFENSE ATTORNEYS HAVE.

12 THE COURT: MR. DOBY?

13 CROSS-EXAMINATION BY MR. DOBY:

14 Q LIEUTENANT, WHEN YOU WENT OUTSIDE AND WALKED OVER TO
15 WHERE MR. LEONARD SCOTT WAS LAYING ON THE GROUND, YOU THEN
16 WENT BACK TO THE GUN?

17 A NO, MA'AM. NO, SIR.

18 Q SO YOU STAYED OUT THERE WITH?

19 A AFTER I CHECKED ON HIM BRIEFLY AND THAT'S WHEN DEPUTY
20 WHITE PULLED OUT, I GOT INTO MY VEHICLE AND I GOT BEHIND
21 HIM.

22 Q OKAY. SO YA'LL THEN -- HOW LONG AFTER YOU HEARD THE
23 FIRST SHOT DID YOU PULL OUT WITH YOUR VEHICLE -- AND I
24 ASSUME YOU WERE GOING BACK TOWARDS HIGHWAY 15, RIGHT?

25 A YES, SIR.

- 1 Q OKAY.
- 2 A ESTIMATE TWO TO THREE MINUTES TOTAL.
- 3 Q OKAY. AND YOU THEN HEADED TOWARDS SUMTER. AND AT
- 4 SOME POINT I ASSUME YOU WERE TOLD BY THE SUMTER SHERIFF'S
- 5 DEPARTMENT THAT THEY HAD A VEHICLE STOPPED?
- 6 A YES, SIR, WHICH WAS ON HIGHWAY 441 WHEN WE GOT THAT
- 7 INFORMATION.
- 8 Q ALL RIGHT. SO--
- 9 A WE CAME BACK TO HIGHWAY 15 AND MET WITH THEM.
- 10 Q PROCEEDED ON UP TO WHITE'S MILL THERE?
- 11 A YES, SIR.
- 12 Q OKAY. YOU GOT MY CLIENT, MARCUS EVANS, OUT OF THE
- 13 CAR?
- 14 A YES, SIR.
- 15 Q AND HE WAS COOPERATIVE AND POLITE I THINK YOU
- 16 DESCRIBED; IS THAT RIGHT?
- 17 A YES, SIR.
- 18 Q OKAY. YOU DID YOUR INVESTIGATION THEN AT THAT TIME
- 19 AND ALLOWED MARCUS AS WELL AS ALL OF THE OTHER OCCUPANTS
- 20 TO GET BACK IN THEIR CAR AND LEAVE, CORRECT?
- 21 A AFTER I GOT ALL THEIR INFORMATION AND AFTER
- 22 LIEUTENANT DELLINGER HAD CALLED BACK AND SAID HE NEEDS
- 23 ASSISTANCE BACK AT THE CLUB BECAUSE THE PEOPLE WAS GETTING
- 24 A LITTLE UPSET.
- 25 Q OKAY. YOU ACTUALLY SEARCHED THE CAR?

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1 A I DIDN'T PERSONALLY SEARCHED IT. DEPUTY WHITE AND
2 SOME OF THE SUMTER COUNTY SEARCHED IT.

3 Q YOU WERE PRESENT WHEN THEY WERE SEARCHING THE CAR?

4 A YES, SIR.

5 Q YOU SAW WHAT THEY WERE DOING?

6 A YES, SIR.

7 Q SEARCHED THE ENTIRE AUTOMOBILE?

8 A I SAW THEM SEARCHING THE CAR, THEN THEY WENT IN THE
9 TRUNK AND THEN IN THE INTERIOR OF THE VEHICLE.

10 Q OKAY. DID YOU SEE THEM MISS ANY SPOT IN THE CAR?

11 A I CAN'T SAY WHETHER I SAW THEM THAT OR NOT BECAUSE I
12 WAS INTERVIEWING THE PASSENGERS.

13 Q OKAY. AND YOU WERE SPECIFICALLY LOOKING FOR THE
14 PERSON WITH THE BLACK HOODED TOP ON?

15 A THE INFORMATION THAT I RECEIVED WHILE I WAS THERE,
16 THAT'S WHAT I WAS LOOKING FOR. THE DESCRIPTION THAT THEY
17 GAVE ME DIDN'T MATCH UP.

18 Q OKAY. THANK YOU. THAT'S ALL I HAVE.

19 THE COURT: MR. ROGERS?

20 MR. ROGERS: THANK YOU, YOUR HONOR.

21 CROSS-EXAMINATION BY MR. ROGERS:

22 Q DETECTIVE, SOME TIME -- HOW LONG HAD YOU BEEN A
23 POLICE OFFICER ON THE NIGHT THIS HAPPENED, NOVEMBER THE
24 14TH?

25 A HOW LONG HAVE I BEEN A POLICE OFFICER?

1 Q HOW LONG HAD YOU BEEN A POLICE OFFICER ON THE NIGHT
2 THIS HAPPENED?

3 A 11 AND A HALF YEARS.

4 Q 11 AND A HALF?

5 A GOING ON 12.

6 Q AND IF I UNDERSTOOD YOUR TESTIMONY, YOU HEARD THE TEN
7 SHOTS, YOU WENT OUT THE DOOR. YOU ACTUALLY SAW SOMEONE
8 SHOOTING, CORRECT?

9 A YES, SIR.

10 Q AND YOU ACTUALLY SAW THE PERSON SHOOTING GET INTO
11 THIS BURGUNDY AND WHITE CADILLAC?

12 A I DIDN'T SAY THAT. I SAID I SAW HIM RUNNING DOWN THE
13 ROAD AND SOMEONE SAID HE GOT INTO THE BURGUNDY CADILLAC.

14 Q YOU DIDN'T SEE THAT YOURSELF?

15 A I DIDN'T SEE THAT. I SAW THE MUZZLE OF THE GUN
16 FLASH, BUT I DIDN'T SAY I SAW ANYBODY AT A CAR.

17 Q BUT YOU SAW THE PERSON RUN AND JUMP INTO THE CAR?

18 A NO, I DIDN'T. I SAW THE PERSON RUNNING DOWN THE ROAD
19 AND SOMEONE IN THE CROWD SAID THEY GOT INTO A BURGUNDY AND
20 WHITE CAR.

21 Q SO YOU NEVER SAW THE CAR?

22 A I DIDN'T SEE THE CAR, NO, SIR.

23 Q OKAY. OKAY. AND YOU NEVER SAW, BUT YOU DID SEE THE
24 PERSON SHOOTING?

25 A I SAW A SILHOUETTE OF THE PERSON SHOOTING AND THE

1 FLASHING OF THE GUN.

2 Q AND YOU WERE AT THE FRONT DOOR IN THIS AREA?

3 A I WAS COMING OUT OF THE CLUB. NOW, WHERE I WAS AT,
4 IT WAS BETWEEN HERE AND GOING TO MY VEHICLE WHEN I SAW HIM
5 RUNNING DOWN THE ROAD. TO SAY SPECIFICALLY WHERE I WAS
6 AT, I CAN'T TELL YOU THAT.

7 Q OKAY. SO IT WAS A DISTANCE?

8 A YES, SIR.

9 Q AND IT WAS DARK?

10 A YES, SIR.

11 Q AND YOU COULDN'T--

12 A IT WAS WELL LITTED (SIC) WHERE I WAS AT, BUT WHERE HE
13 WAS AT I COULDN'T RECOGNIZE HIM.

14 Q AND THEN YOU JUMPED IN YOUR CAR AFTER YOU REALIZED
15 SOMEBODY HAD BEEN SHOT AND YOU FOLLOWED THE OTHER POLICE
16 OFFICER?

17 A AFTER I CHECKED ON MR. SCOTT, WE WENT AND PROCEEDED
18 BEHIND.

19 Q AND THEN KNOWING THE DESCRIPTION AND KNOWING THAT IT
20 WAS A BURGUNDY AND WHITE CADILLAC THAT SOMEBODY HAD SAID
21 THEY GOTTEN INTO, THAT IS WHY YOU DIDN'T FEEL THAT THE CAR
22 YOU HAD STOPPED ON HIGHWAY 15 WAS THE RIGHT CAR?

23 A HIS CAR WAS BURGUNDY. ALL OF THE DESCRIPTION THEY
24 GAVE US IT WAS BURGUNDY AND WHITE.

25 Q THIS WASN'T THE FIRST MURDER YOU HAVE INVESTIGATED?

1 A NO, SIR.

2 Q OKAY. AND SO THERE WAS NOTHING ABOUT BEING AT THE
3 CAR BASED ON YOUR EXPERIENCE AND YOUR INVESTIGATORY SENSES
4 THAT MADE YOU THINK THAT WAS THE PEOPLE?

5 A THAT'S WHY I GOT INFORMATION IN CASE IF IT WAS THEM,
6 THEN I COULD CHECK BACK ON THEM LATER ON, AND WITH FOUR OR
7 FIVE HUNDRED PEOPLE AND TWO OFFICERS, THEIR SAFETY KEEPING
8 ANYBODY ELSE FROM GETTING HURT.

9 Q YEAH, BUT YOU ARE NOT TELLING THIS JURY THAT YOU
10 WOULD LET SOME SHOOTERS GO BECAUSE OF A CROWD IN A CLUB;
11 WOULD YOU? I MEAN, YOU DIDN'T THINK THESE WERE THE PEOPLE
12 OR YOU NEVER WOULD HAVE LET THEM GO, CORRECT?

13 A I DIDN'T HAVE ENOUGH INFORMATION TO BELIEVE THAT THEY
14 WERE THE PEOPLE.

15 Q AND IF YOU DID, YOU WOULD HAVE HELD THEM?

16 A IF I DID, YES.

17 Q OR IF YOU HAD THOUGHT THEY WERE THE PEOPLE, YOU'D
18 HAVE HELD THEM FOR AT LEAST SOMEBODY FROM THE CLUB TO COME
19 DOWN AND VIEW THEM OR TOOK THEM BACK TO THE CLUB TO HAVE
20 SOMEBODY LOOK AT THEM?

21 A IF I--

22 Q IF YOU HAD HAD THAT FEELING RIGHT THERE ON 15, YOU'D
23 HAVE DONE SOMETHING OTHER THAN LET THEM GO?

24 A IF I HAD ENOUGH EVIDENCE TO DO IT, I WOULD.

25 Q THANK YOU.

1 THE COURT: MR. JORDAN?

2 MR. JORDAN: MAY IT PLEASE THE COURT.

3 THE COURT: OKAY.

4 CROSS-EXAMINATION BY MR. JORDAN:

5 Q INVESTIGATOR, YOU SAW THE SHOOTER RUNNING DOWN THE
6 ROAD?

7 A YES, SIR.

8 Q SO OBVIOUSLY THE CAR DIDN'T MAKE IT EASY ON THEM.
9 THEY WERE RUNNING DOWN THE ROAD TO GO FORWARD THAT WAY,
10 RIGHT?

11 A REPEAT YOURSELF?

12 Q OKAY. LET ME JUST REPHRASE. THEY WERE RUNNING DOWN
13 THE ROAD AFTER SOMETHING. IN OTHER WORDS, IT WASN'T JUST
14 A STEP IN SITUATION OR A COUPLE STEPS, THEY HAD TO RUN
15 DOWN THE ROAD?

16 A HE WAS RUNNING AND FIRING BACK.

17 Q A DISTANCE. OKAY. FIRING BACK. NOW, YOU GOT IN
18 YOUR CAR, YOU WENT DOWN 441, GOT BACK AND YOU CAME --
19 AFTER YOU WERE RADIOED FROM SUMTER, YOU CAME BACK AND YOU
20 WENT TO WHITES MILL AND THE SUMTER LAW ENFORCEMENT HAD
21 STOPPED THE CADILLAC?

22 A YES, SIR.

23 Q AND YOU IDENTIFIED OR QUESTIONED EACH ONE, IDENTIFIED
24 THEM BY THEIR I.D. CARDS AND THEY ALL COOPERATED?

25 A YES, SIR.

1 Q IS THAT RIGHT? AND AT THAT TIME YOU SPOKE BRIEFLY TO
2 TRAVIS SINGLETON?

3 A YES, SIR.

4 Q YOU SAID HE WAS NERVOUS?

5 A YES, SIR.

6 Q AND EVERYTHING THAT HE TOLD YOU THAT NIGHT, YOU
7 HAVEN'T HEARD ANYTHING FROM ANY OF THESE WITNESSES TO
8 REFUTE THE SPECIFICS OF THE LITTLE BIT THAT HE TOLD YOU?

9 A THAT'S CORRECT.

10 Q OKAY. AND THIS STATEMENT THAT YOU JUST READ INTO
11 EVIDENCE, THE STATEMENT THAT HE GAVE YOU, THE VOLUNTARY
12 STATEMENT AFTER HE HAD WAIVED HIS MIRANDA RIGHTS AND
13 SPOKEN WITH YOU, EVERYTHING THAT YOU JUST READ, NONE OF
14 THEM STATE'S WITNESSES HAVE REFUTED ANY OF THAT EITHER;
15 HAVE THEY?

16 A THAT'S RIGHT.

17 Q OKAY. AND THEN YOU HAVE HEARD THAT EYE WITNESSES
18 SAID THERE WERE GUNS, THERE ARE NO -- THERE WERE NO GUNS,
19 HE DID HAVE A GUN, HE DIDN'T HAVE A GUN, BUT NONE OF THEM
20 HAVE BEEN CHARGED WITH ANYTHING IN ANY FASHION WITH LYING
21 TO POLICE; HAVE THEY?

22 A NO, THEY HAVEN'T.

23 Q OKAY. AND YOU DON'T HAVE ANYTHING, ANY INDEPENDENT
24 EVIDENCE TO REFUTE WHAT IS IN MR. SINGLETON'S STATEMENT?

25 THE FACT OF THE MATTER IS HE COOPERATED?

1 A HE COOPERATED.

2 Q TO THE EXTENT OF HIS ABILITIES HE COOPERATED?

3 A YES, SIR, AT THE SCENE HE DID.

4 Q NOW, YOU SKIPPED ONE SECTION OF HIS STATEMENT.
5 DOESN'T -- IF YOU PICK BACK UP--

6 A I DON'T HAVE IT.

7 Q OKAY. IS THIS IT RIGHT HERE? IF YOU'D LOOK JUST A
8 FEW LINES FROM THE BOTTOM. HE DOESN'T HE SAY SHORTLY
9 AFTER THE CROWD -- IF YOU JUST START READING THERE. LET'S
10 SEE. SHORTLY AFTER THAT THE CROWD -- WHAT DOES THAT
11 SENTENCE SAY?

12 A SHORTLY AFTER THE CROWDS SCATTERED AND RUN IN ALL
13 DIFFERENT WAYS.

14 Q THAT IMPLIES TO YOU THERE WERE MANY PEOPLE OUT THERE,
15 THEY SCATTERED, PEOPLE WERE GOING DIFFERENT DIRECTIONS; IS
16 THAT RIGHT?

17 A YES, SIR.

18 Q THANK YOU. I DON'T HAVE ANYTHING FURTHER.

19 THE COURT: MR. FINNEY?

20 MR. FINNEY: NOTHING, YOUR HONOR.

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

22 REDIRECT EXAMINATION BY MS. NIELSEN:

23 Q INVESTIGATOR SIMON, YOU WERE OUT THERE. YOU HEARD
24 THE SHOTS WHILE YOU WERE COMING OUT THE DOOR, RIGHT?

25 A YES, MA'AM.

1 Q WERE THERE HUNDREDS OF PEOPLE OUTSIDE?

2 A I WOULD SAY MAYBE TEN PEOPLE AT THE MOST.

3 Q NOW, YOU REALLY WEREN'T FOCUSED ON THE OTHER SIDE OF
4 THE CLUB WHERE THE BASEBALL FIELD WAS; WERE YOU?

5 A I DIDN'T EVEN LOOK IN THAT DIRECTION.

6 Q SO WHEN YOU WERE TALKING ABOUT TEN PEOPLE BEING
7 OUTSIDE, YOU ARE NOT EVEN CONSIDERING THAT AREA?

8 A I WAS TEN PEOPLE IN THIS GENERAL AREA OVER HERE.

9 Q PLEASE ANSWER ANY QUESTIONS THE DEFENSE ATTORNEYS
10 HAVE.

11 THE COURT: THEY HAVE ALREADY HAD THAT.

12 MS. NIELSEN: WELL, LET ME ASK YOU ABOUT THIS MAP.
13 THINK THEY SAID THEY WILL STIPULATE. THIS IS ONE OF
14 BLOW-UP OF THE CLUB FROM A TAX MAP AND I BELIEVE THEY SAID
15 THEY WILL STIPULATE DO THIS AS A.

16 THE COURT: THAT'S AN AERIAL PHOTOGRAPH. WHAT IS
17 DEPICTED? STATE'S 5 IS THAT WHAT WE ARE TALKING ABOUT,
18 GENTLEMEN?

19 MS. NIELSEN: YES, SIR.

20 THE COURT: THE LOCATION. LADIES AND GENTLEMEN, THE
21 PHOTOGRAPH THAT IS ABOUT TO BE ENTERED INTO EVIDENCE IS AN
22 AERIAL PHOTOGRAPH OF THE DAVIS COUNTRY CLUB. THE DIAGRAM
23 HERE, STATE'S EXHIBITS 5 WERE ADMITTEDLY NOT TO SCALE.
24 THAT MEANS THAT THE DISTANCES THAT ARE SHOWN ON THAT IN
25 THE SIZES THAT THINGS ARE NOT EXACTLY AS THEY WOULD APPEAR

1 IF YOU WERE TO GO OUT THERE AND LOOK AT IT.

2 THE AERIAL PHOTOGRAPH DOES APPEAR AS IF YOU
3 WOULD GO OUT THERE AND LOOK AT IT, SO THE AERIAL
4 PHOTOGRAPH WILL PROVIDE FOR YOU THE NECESSARY SCALE, THAT
5 IS TO SAY THE RESPECTIVE POSITIONS OF THINGS, THE LOCATION
6 THE, RESPECTIVE SIZES AND DISTANCES THAT MIGHT BE INVOLVED
7 IN THIS CASE.

8 YOU CAN GIVE IT ALL THE WEIGHT THAT YOU THINK IT
9 SHOULD RECEIVE FOR THE PURPOSE OF THOSE THINGS IS FOR YOU
10 TO PUT THEM BOTH TOGETHER. BOTH STATE'S EXHIBIT 5 AND THE
11 AERIAL PHOTOGRAPH WHICH WILL GET A NUMBER IN A MOMENT WHEN
12 I FINISH TALKING SO THE COURT REPORTER CAN PUT A STICKER
13 ON IT.

14 AND PLEASE KEEP IN MIND THAT STATE'S 5 IS NOT TO
15 SCALE. IT DOES NOT ACCURATELY REFLECT THE DISTANCE
16 BETWEEN DRIVEWAYS AND OTHER THINGS OF THAT NATURE, SO AND
17 IT'S NOT INTENDED TO DO.

18 EVERYBODY INDICATED ALL ALONG IT'S NOT INTENDED
19 TO. ALL RIGHT. MARK THE AERIAL IF YOU WOULD PLEASE,
20 MA'AM.

21 (STATE'S EXHIBIT NO. 24 MARKED FOR EVIDENCE.)

22 THE COURT: STATE'S 24 IN EVIDENCE. AND WHERE THAT
23 IN EVIDENTLY ALLOW STATE'S 5 NOW IN EVIDENCE. OKAY?
24 THANK YOU, MR. SIMON. YOU CAN STEP DOWN.

25 (WHEREUPON THE WITNESS LEFT THE STAND).

1 (STATE'S EXHIBIT NO. 5 MARKED FOR EVIDENCE.)

2 MS. NIELSEN: MS. NIELSEN, CALL YOUR NEXT WITNESS.

3 MS. NIELSEN: THE STATE CALLS STEVEN JOHNSON.

4 THE COURT: STEVEN JOHNSON, PLEASE.

5 (WITNESS IN COURTROOM)

6 STEVEN JOHNSON, BEING FIRST DULY

7 SWORN, TESTIFIED AS FOLLOWS:

8 DIRECT EXAMINATION BY MS. NIELSEN:

9 Q YOUR NAME IS STEVEN JOHNSON?

10 A YES, MA'AM.

11 Q HOW OLD ARE YOU?

12 A TWENTY-FOUR.

13 Q DO YOU WORK?

14 A YES, MA'AM.

15 Q WHERE DO YOU WORK?

16 A BROAD RIVER TRANSPORT.

17 THE COURT: SORRY?

18 A BROAD WAYS TRANSPORT.

19 THE COURT: THANK YOU.

20 Q I NEED YOU TO SPEAK UP. SPEAK INTO THAT MICROPHONE
21 SO ALL OF US CAN HEAR YOU, OKAY? AND THE JURY HAS TO HEAR
22 WHAT YOU HAVE TO SAY, TOO. DID YOU GO TO OUT TO DAVIS
23 COUNTRY CLUB ON THE NIGHT OF NOVEMBER THE 14TH OF LAST
24 YEAR?

25 A YES, MA'AM.

1 Q AND HAD YOU EVER BEEN THERE BEFORE?

2 A YES, MA'AM.

3 Q WHERE DO YOU LIVE? YOU LIVE IN SUMTER COUNTY OR LEE
4 COUNTY?

5 A IN SUMTER COUNTY.

6 Q BUT YOU HAVE BEEN TO LEE COUNTY TO THE COUNTRY CLUB
7 BEFORE?

8 A YES, MA'AM.

9 Q YOU DO KNOW IT'S IN LEE COUNTY; DON'T YOU?

10 A YES, MA'AM.

11 Q DO YOU KNOW WHAT ROAD, NAME OF THE ROAD?

12 A ST. CHARLES MANVILLE ROAD.

13 Q NOW, WHO DID YOU GO WITH THAT NIGHT?

14 A ME, MARTY OAKS, LEONARD SCOTT ARRIVE THERE TOGETHER.

15 Q ALL RIGHT. YOU AND RONNIE OAKS AND SCOTT. WHO WAS
16 DRIVING?

17 A I WAS DRIVING.

18 Q CAN YOU TAKE THAT RULER THAT'S IN FRONT OF YOU AND ON
19 THAT LITTLE DIAGRAM WOULD YOU SHOW THE JURY WHERE YOU
20 PARKED WHEN YOU GOT THERE.

21 A PARKED ON THE SIDE OF THE ROAD RIGHT UP IN HERE ON
22 THIS SIDE OF THE ROAD.

23 Q AND WAS THERE TWO OTHER CARS OF PEOPLE WITH YOU?

24 A YES, MA'AM.

25 Q AND DID YA'LL ALL PARK RIGHT THERE?

1 A YES, MA'AM.

2 Q ONE BEHIND THE OTHER?

3 A YES, MA'AM.

4 Q AFTER YOU PARKED THE CAR, WHAT DID YOU DO?

5 A I GOT OUT AND WALKED UP TO THE CLUB.

6 Q SHOW US -- TAKE THAT THING, SHOW WHICH DIRECTION YOU
7 WERE GOING IN.

8 A I WAS HEADING UP THIS LITTLE DRIVEWAY TOWARDS THE
9 DOOR.

10 Q ALL RIGHT. AND WHERE WAS EVERYBODY ELSE, THE OTHER
11 PEOPLE THAT WERE WITH YOU FROM THE OTHER CARS AND MARTY
12 OAKS AND LEONARD SCOTT WHO ACTUALLY DROVE WITH YOU?

13 A ME AND MARTY OAKS AND LEONARD SCOTT WE WAS ALMOST UP
14 TO THE DOOR. RODNEY AND DERRICK WERE LIKE NOT TOO FAR
15 FROM BEHIND US AND POP AND DUKE, WAITERS WAS STILL KIND OF
16 IN THE ROAD.

17 Q POP AND DUKE, THAT'S HENRY SCOTT AND DELVIN WAITERS?

18 A YES, MA'AM.

19 Q ALL RIGHT. TELL ME WHAT HAPPENED NEXT.

20 A AFTER THEY WERE COME WALKING UP, THAT'S WHEN I SEEN
21 THEM FOUR GUYS GETTING OUT OF THE CADILLAC PARKED LIKE
22 RIGHT IN HERE.

23 Q YOU SAW WHAT?

24 A FOUR GUYS STANDING UP IN LIKE AT A CADILLAC, RIGHT UP
25 IN HERE AT A CADILLAC, STANDING UP BY THE DOOR OF THE

1 CADILLAC.

2 Q WHAT COLOR WAS THE CADILLAC, DO YOU REMEMBER THAT?

3 A IT WAS A BURGUNDY CADILLAC.

4 Q ALL RIGHT. WHAT IS THE NEXT THING YOU REMEMBER?

5 A AND I REMEMBER TWO OF THEM WALKING UP ALONG THE FRONT
6 WITH POP AND DELVIN WAITERS, AND THE ONE ON THE FAR END,
7 HE STARTED SAYING SOMETHING. I COULDN'T TRANSLATE WHAT HE
8 WAS SAYING. I WAS TOO CLOSE TO THE DOOR TO HEAR WHAT HE
9 WAS SAYING.

10 Q COULD YOU SEE WHO THESE PEOPLE WERE?

11 A YES, MA'AM.

12 Q DID YOU KNOW THEIR NAMES?

13 A I CAN'T SAY THAT, NOW.

14 Q YOU DON'T KNOW THEIR NAMES?

15 A NO, I DON'T KNOW THEIR NAMES.

16 Q OKAY. HAD YOU EVER SEEN THOSE TWO PEOPLE BEFORE THAT
17 NIGHT?

18 A YES, MA'AM.

19 Q DO YOU SEE THEM IN THE COURTROOM?

20 A YES, MA'AM.

21 Q WOULD YOU SHOW THEM -- TELL US WHERE THEY ARE.

22 A IT'S THE FIRST ONE AND THE FOURTH ONE.

23 Q AT THE DEFENSE TABLE?

24 A YES, MA'AM.

25 MS. NIELSEN: YOUR HONOR, WE WOULD HAVE THE RECORD

1 REFLECT AGAIN MARCUS EVANS AND GILARON TAYLOR.

2 THE COURT: YES, MA'AM.

3 (WHEREUPON QUESTIONING RESUMED).

4 Q NOW, WHERE DID THEY GO TO? WHERE WERE THEY -- WHERE
5 DID THEY GO TO AND WHERE WAS HENRY SCOTT?

6 A THEY WAS LIKE RIGHT UP IN HERE.

7 Q ALL RIGHT.

8 A WHEN THE ARGUING STARTED.

9 Q COULD YOU HEAR WHAT ANYBODY WAS SAYING?

10 A NO, MA'AM, I COULD NOT.

11 Q WHAT DID YOU DO?

12 A THE WHOLE TIME I'M STANDING THERE AND LOOKED.

13 Q YOU WERE STANDING THERE LOOKING?

14 A YES, MA'AM.

15 Q WHAT IS THE NEXT THING THAT HAPPENED?

16 A THAT'S WHEN I SAW POP BACKING OFF FROM THEM AND
17 HEADING TOWARDS THE CAR. AND WHEN I HEARD THE SHOTS BEING
18 FIRED AND WHEN I HEARD THAT, I FIRST I JUMPED BACK AND
19 LOOKED AND I SEEN POP GRABBING HIS RIGHT LEG IN THE FRONT,
20 ALMOST IN THE FRONT OF HIS CAR WERE PARKED ALONG THE FIRST
21 CAR PARKED IN THE DRIVEWAY ON THE OTHER SIDE RIGHT THERE.

22 AND WHEN HE LIKE -- WHEN HE WENT TO GO SIT UP
23 AND COME LIKE UP TO THE LEFT, THAT'S WHEN I SAW THE OTHER
24 GUY BEEN RIGHT HERE LIKE KIND OF RAN UP AND STARTED
25 SHOOTING ON HIM AND HE JUST RAN OFF AND THE OTHER ONE RAN

1 DOWN THE ROAD SHOOTING BACK UP TOWARDS THIS WAY.

2 Q WHICH ONE DID YOU SEE RUNNING UP FROM THE BACK?

3 A THE ONE FROM -- THE FOURTH ONE DOWN.

4 Q OKAY. AND WHAT WAS HE DOING?

5 A HE WAS -- HE RAN UP ON HIM FIRING SHOTS AT HIM.

6 Q AND WAS POP FACING HIM OR DID HE HAVE HIS BACK TO
7 HIM?

8 A HE HAD HIS BACK TURNED TO HIM BECAUSE HE WAS LIKE AT
9 AN ANGLE TRYING TO GET UP.

10 Q ALL RIGHT. DID YOU SEE WHAT THE FIRST ONE, MARCUS
11 EVANS WAS DOING?

12 A HE WAS STILL -- HE WAS GOING DOWN THE HIGHWAY FIRING
13 BACK, SHOOTING SHOTS BACK.

14 Q DID YOU ACTUALLY SEE WHEN THE FIRING OF THE GUNS
15 STARTED?

16 A NO, I REALLY COULDN'T SEE WHEN THEY STARTED. IT'S --
17 WHEN I FIRST HEARD IT, I BEEN LIKE, YOU KNOW, TRYING TO
18 SEE WHERE THEY WERE COMING FROM.

19 Q WHEN THE GUNS STARTED FIRING, WERE YOU FACING WHERE
20 THEY WERE BEING FIRED OR DID YOU HAVE YOUR BACK TO HIM?

21 A NO, I WAS FACING -- I WAS LOOKING THE WHOLE TIME.

22 Q OKAY. AND HOW FAR AWAY WERE YOU FROM WHERE
23 EVERYTHING WAS HAPPENING?

24 A ABOUT LIKE FROM HERE TO WHERE THE FIRST SET OF PEOPLE
25 IN THE STANDS.

1 Q AND HOW CLOSE WAS POP WHEN THE GUNFIRE STARTED TO THE
2 TWO DEFENDANTS THAT YOU IDENTIFIED?

3 A HE WAS ALMOST OVER HERE IN THE FRONT OF THIS CAR LIKE
4 RIGHT HERE, ALMOST IN FRONT OF IT, IN THE DRIVEWAY.

5 Q DID YOU SEE WHO FIRED THE FIRST SHOT?

6 A NO, MA'AM, I COULDN'T SEE. I DIDN'T MOVE AFTER THE
7 FIRST SHOT.

8 Q DID YOU SEE HENRY SCOTT GO TO HIS CAR TO GET A GUN?

9 A I SEEN HIM WENT TO THE CAR, RAN TO THE CAR, BUT I
10 DON'T KNOW WHETHER HE GET A GUN. I THOUGHT HE WAS
11 SHOOTING BACK.

12 Q YOU THOUGHT HE WAS SHOOTING?

13 A (NO RESPONSE).

14 Q DID YOU ACTUALLY SEE THE GUN IN HIS HAND?

15 A NO, MA'AM. WHEN HE WAS GOING DOWN, I SAID -- DIDN'T
16 SEE NO GUN. I SEEN HIM GRAB HIS LEG LIKE HE WAS HIT IN
17 THE LEG OR SOMETHING.

18 Q IS HE RIGHT HANDED OR LEFT HANDED?

19 A I THINK HE'S RIGHT HANDED.

20 Q NOW, I AM GOING TO SHOW YOU STATE'S EXHIBITS 3 AND 4
21 AND ASK YOU IF YOU SAW THOSE LINE-UPS. DID SOMEBODY SHOW
22 YOU THOSE?

23 A I DON'T REMEMBER EXACTLY IF THIS IS THE SAME ONE THEY
24 SHOWED ME, BUT IT WAS SIMILAR TO IT.

25 Q ALL RIGHT. DID YOU PICK SOMEBODY OUT OF A LINE-UP

1 THEY SHOWED YOU?

2 A YES, MA'AM.

3 Q OKAY. AND THIS ONE IS LINE-UP "A". WHAT NUMBER DID
4 YOU PICK OUT OF LINE-UP "A"?

5 A NUMBER ONE.

6 Q OKAY. AND WHAT NUMBER DID YOU PICK OUT OF LINE-UP
7 "B"?

8 A NUMBER FIVE.

9 Q OKAY. DO YOU RECOGNIZE IN THOSE LINE-UPS THE PEOPLE
10 THAT YOU PICKED OUT?

11 A YES, MA'AM.

12 Q AND WHO ARE THEY?

13 A THOSE WERE THE ONES WHO BEEN DOING THE SHOOTING.

14 Q OKAY. AND IN THAT FIRST LINE-UP, DO YOU RECOGNIZE
15 WHO NUMBER ONE IS?

16 A YES, MA'AM.

17 Q AND DO YOU THINK THAT'S THE PHOTOGRAPH YOU PICKED
18 OUT?

19 A YES, MA'AM, IT'S THE ONE.

20 Q AND YOU MARKED NUMBER ONE ON THIS SHEET?

21 A YES, MA'AM.

22 Q OKAY. WHAT DATE DID YOU LOOK AT THESE LINE-UPS? IS
23 IT ON THAT FORM?

24 A YES, MA'AM.

25 Q WHAT DATE IS IT?

1 A ON THE 16TH.

2 Q 16TH OF WHAT?

3 A NOVEMBER.

4 Q OF 1999?

5 A YES, MA'AM.

6 Q AND YOU SIGNED BOTH OF THESE?

7 A YES, MA'AM.

8 MS. NIELSEN: YOUR HONOR, WE WOULD MOVE THESE IN AS
9 STATE'S EXHIBITS 25 AND 26.

10 THE COURT: ALL RIGHT. ANY OBJECTION, GENTLEMEN, TO
11 STATE'S 25 AND 26?

12 MR. DOBY: NO, SIR.

13 MR. JORDAN: NO, YOUR HONOR.

14 MR. FINNEY: NO, YOUR HONOR.

15 THE COURT: HEARING NONE, NO OBJECTION. 25 AND 26 IN
16 EVIDENCE.

17 (STATE'S EXHIBITS NO. 25 AND 26 MARKED FOR
18 EVIDENCE.)

19 (WHEREUPON QUESTIONING RESUMED).

20 Q NOW, DID OFFICER DELLINGER SHOW YOU THE LINE-UP?

21 A YES, MA'AM.

22 Q DID HE INDICATE TO YOU WHO YOU SHOULD PICK OUT?

23 A NO, MA'AM.

24 Q AND YOU INDICATED THAT YOU HAD SEEN THESE TWO PEOPLE
25 THAT YOU PICKED OUT PRIOR TO NOVEMBER THE 14TH, 1999?

1 A YES, MA'AM.

2 Q DO YOU RECALL WHEN IT WAS WHEN YOU HAD SEEN THEM
3 BEFOREHAND?

4 A IT WAS A FEW MONTHS BEFORE THE INCIDENT AT THE
5 NIGHTCLUB AT THE HUDDLE HOUSE IN SUMTER.

6 Q WHO WERE YOU WITH AT THE HUDDLE HOUSE A FEW MONTHS
7 BEFORE?

8 A I WAS WITH POP THEN. WELL, HE WAS WITH ME.

9 Q HENRY SCOTT WAS WITH YOU?

10 A YES, MA'AM.

11 Q AND YA'LL WENT IN THE HUDDLE HOUSE?

12 A YES, MA'AM.

13 Q WHAT WERE YOU GOING THERE TO DO?

14 A GOING TO GETTING SOMETHING TO EAT.

15 Q TO THE HUDDLE HOUSE IS -- YA'LL WERE GOING THERE TO
16 GET SOMETHING TO EAT?

17 A YES, MA'AM.

18 Q ALL RIGHT. WHAT HAPPENED AFTER YOU GOT IN THERE?

19 A WHEN WE GOT IN THERE, THE ONE ON THE END AND THE
20 FOURTH ONE, THEY WAS IN THERE AND WE WAS UP ORDERING FOOD
21 AND THE ONE ON THE END GOT UP AND SAID YEAH, THAT'S ME,
22 YEAH, IT'S ME.

23 Q YEAH, THAT'S ME?

24 A YEAH, AND THAT THEY WERE GOING OUT THE DOOR, HE SAID
25 YOU REMEMBER THIS, I'M GOING TO BE THE ONE TO PUT YOU IN

1 YOUR GRAVE.

2 Q WHO DID HE TELL THAT TO?

3 A TO POP.

4 MS. NIELSEN: COURT'S INDULGENCE.

5 THE COURT: OKAY.

6 MS. NIELSEN: PLEASE ANSWER ANY QUESTIONS THE DEFENSE
7 ATTORNEYS HAVE.

8 THE COURT: MR. DOBY, YOU CAN CROSS-EXAMINE.

9 CROSS-EXAMINATION BY MR. DOBY:

10 Q MR. JOHNSON, WERE THERE OFFICERS IN THE HUDDLE HOUSE
11 THAT NIGHT?

12 A IT WAS A SECURITY GUARD, I THINK.

13 Q SECURITY GUARD IN THERE?

14 A YEAH, HE WAS OUTSIDE -- WAS SECURITY GUARD OUTSIDE.

15 Q OKAY. YOU GAVE A STATEMENT TO THE POLICE ON I THINK
16 YOU SAID THE 15TH OF NOVEMBER OF 1999, CORRECT?

17 A SIR, THAT'S CORRECT.

18 Q AND YOU DID A LINE-UP ON NOVEMBER THE 16TH?

19 A YES, SIR.

20 Q THE DATE AFTER?

21 A YES.

22 Q AS A MATTER OF FACT, YOU WENT THERE TO TALK TO
23 DETECTIVE DELLINGER ON NOVEMBER THE 15TH OF 1999; IS THAT
24 RIGHT?

25 A YES, SIR.

1 Q THAT'S WHO YOU GAVE THE STATEMENT TO?

2 A NO, SIR, GAVE THE STATEMENT TO DANIEL SIMON.

3 Q WERE THEY BOTH PRESENT?

4 A OFFICER DELLINGER WAS IN AND OUT.

5 Q OKAY. BECAUSE HE -- BECAUSE HE ACTUALLY WITNESSED
6 YOUR STATEMENT AS WELL; DID HE NOT?

7 A YEAH, UH-HUH.

8 Q AND YOU HAD BEEN TAKEN BY A TWO WAY MIRROR PRIOR TO
9 YOUR STATEMENT; HADN'T YOU?

10 A LIKE I SAID, I DON'T REMEMBER WHETHER OR NOT IT WAS
11 BEFORE THE STATEMENT OR AFTER THE STATEMENT. I CAN'T
12 REMEMBER.

13 Q WELL AND WHAT THEY HAD WAS MY CLIENT, MARCUS EVANS,
14 SITTING IN THIS ROOM AND YOU WERE WALKED BY THE ROOM THAT
15 HE WAS SITTING IN, CORRECT?

16 A NO, THEY -- WHEN THEY DID THAT, I WAS -- THEY TAKE ME
17 IN A ROOM, TELL ME COULD I IDENTIFY THIS MAN SITTING IN
18 THERE.

19 Q WELL, YOU HAD BEEN TAKEN BY THIS TWO WAY MIRROR AND
20 MY CLIENT WAS SITTING IN THAT ROOM; WASN'T HE?

21 A YES.

22 Q AND SO YOU HAD LOOKED IN THAT TWO WAY MIRROR AND SEEN
23 MY CLIENT SITTING THERE, CORRECT?

24 A YES.

25 Q AND THAT WAS BEFORE YOU DID ANY LINE-UP THAT YOU WERE

1 SHOWN?

2 A LIKE I SAID, I DON'T REMEMBER THAT.

3 Q WELL, WAS IT ON THE SAME DAY YOU GAVE YOUR STATEMENT?

4 A I DON'T REMEMBER.

5 Q DON'T REMEMBER WHETHER IT WAS THE SAME DAY, BUT YOU
6 GAVE YOUR STATEMENT ONE DAY AND YOU CAME AND DID THIS
7 FELLOW LINE-UP THE NEXT DAY?

8 A I DON'T REMEMBER. I SAID THAT.

9 Q YOU DON'T REMEMBER THAT?

10 A NO.

11 Q WHEN YOU DID THIS PHOTO LINE-UP, DID YOU DO IT IN THE
12 SAME PLACE THAT YOU DID THE STATEMENT?

13 A YES.

14 Q SAME POLICE DEPARTMENT THERE?

15 A YES.

16 Q OKAY. NOW, WHEN YOU GAVE THIS STATEMENT ON NOVEMBER
17 THE 15TH AND WHEN YOU DID THIS LINE-UP ON NOVEMBER THE
18 16TH OF 1999, YOU DIDN'T TELL THE DETECTIVES ABOUT THIS
19 INCIDENT THAT YOU DESCRIBED AT THE HUDDLE HOUSE IN SUMTER;
20 DID YOU?

21 A NO, SIR, I DIDN'T.

22 Q AND YOU HAD SEEN YOUR FRIEND SHOT AND KILLED A DAY
23 BEFORE YOU GAVE THE STATEMENT AND YOU ARE SAYING THAT YOU
24 HAD SEEN THAT PERSON TWO MONTHS BEFORE IN THE HUDDLE HOUSE
25 MAKE THREATS BUT YOU DIDN'T PUT IT IN YOUR STATEMENT ON

1 NOVEMBER THE 15TH; DID YOU?

2 A NO, SIR.

3 Q OKAY. NOW, DID YOU GIVE A DESCRIPTION OF THE PEOPLE
4 THAT WERE DOING THE SHOOTING TO THE POLICE?

5 A NO, SIR, I DIDN'T.

6 Q DID YOU TALK TO THE POLICE THAT NIGHT?

7 A YES, SIR.

8 Q WHO DID YOU TALK TO?

9 A I CAN'T REMEMBER WHICH ONE IT WAS, BUT I THINK IT WAS
10 -- WAS OFFICER DON SOMETHING.

11 Q DID YOU GIVE HIM A DESCRIPTION OF THE PERSON THAT DID
12 THE--

13 A NO, I DIDN'T GIVE HIM A DESCRIPTION, BUT I TOLD HIM
14 THEY WERE GOING BACK TOWARDS 15.

15 Q BACK TOWARDS 15?

16 A UH-HUH.

17 Q DID YOU TELL HIM IT WAS A BURGUNDY AND WHITE
18 CADILLAC?

19 A YEAH, I TOLD THEM PART -- THINK IT WAS A BURGUNDY AND
20 WHITE CADILLAC.

21 Q THAT'S WHAT?

22 A BURGUNDY CADILLAC.

23 Q WELL NOW, YOU SAID BURGUNDY AND WHITE. DID YOU TELL
24 THEM IT WAS BURGUNDY AND WHITE CADILLAC?

25 A I THINK I DID.

1 Q YOU THINK YOU DID? OKAY. WHEN THE SHOOTING ACTUALLY
2 OCCURRED, POINT OUT WHERE YOU WERE STANDING.

3 A (INDICATING) STANDING RIGHT IN HERE.

4 Q YOU WERE RIGHT THERE AT THE CLUB?

5 A YEAH, RIGHT AT ALMOST AT -- I WAS ALMOST AT THE
6 CORNER, YOU KNOW, RIGHT UP IN...

7 Q ALL RIGHT. AND DID YOU SEE MR. SCOTT GO BACK TO HIS
8 CAR AND GET A GUN?

9 A YEAH, I SEEN HIM WENT TOWARDS THE CAR. WHEN HE GOT
10 TO THE CAR, THAT WHEN I START -- I HEARD THE GUNSHOT FIRE.

11 Q AS A MATTER OF FACT, YOU SAID IN YOUR STATEMENT I
12 KNOW THAT POP GOT A COUPLE OF ROUNDS, WHICH MEANS HE SHOT?

13 A YEAH, I THINK HE WAS SHOOTING.

14 Q OKAY. SO NOW YOU ARE PRETTY SURE THAT HE HAD A GUN?

15 A NO, I CAN'T REALLY SAY THAT BECAUSE WHEN I SAW HIM
16 GOING DOWN, SEE HE WAS GRABBING HIS LEG RIGHT IN HERE
17 TRYING TO GET LEVERAGE, SO...

18 Q SIR, PULL OUT YOUR STATEMENT AGAIN THAT YOU GAVE ON
19 NOVEMBER THE 15TH OF 1999. DO YOU HAVE THAT?

20 A YEAH.

21 Q HAVE YOU READ THAT PRIOR TO YOUR TESTIMONY TODAY?

22 A YES, SIR.

23 Q HOW MANY TIMES HAVE YOU READ THAT SINCE LAST
24 NOVEMBER?

25 A THE OTHER DAY WHEN THEY GAVE IT TO ME.

1 Q YOU DIDN'T LOOK AT IT BEFORE THE OTHER DAY?

2 A NO.

3 Q OKAY. DID YOU REVIEW IT TODAY BEFORE YOU TESTIFIED?

4 A YES.

5 Q OKAY. AND THEN YOU GOT IN YOUR STATEMENT, AND I'M
6 SPECIFICALLY LOOKING AT THIS PART RIGHT HERE. YOU SEE
7 THAT ON YOUR STATEMENT?

8 A YES.

9 Q IS THAT THE STATEMENT IN YOUR HANDS?

10 A YES.

11 Q OKAY. AND IT SAYS ON THERE I KNOW THAT POP GOT A
12 COUPLE OF ROUNDS, CORRECT?

13 A YEAH.

14 Q WHICH MEANS THAT MR. SCOTT SHOT HIS GUN THAT DAY,
15 RIGHT?

16 A YEAH, I GUESS.

17 Q OKAY. WHEN YOU SAW MR. SCOTT GO BACK TO THE CAR, DID
18 YOU THINK HE WAS GOING TO GET A GUN?

19 A I DON'T KNOW WHAT HE WAS GOING BACK TO THE CAR FOR.

20 Q OKAY. WHEN HE WENT BACK TO THE CAR -- AND IT WAS
21 PARKED ON THE OTHER SIDE OF THE MANVILLE ST. CHARLES
22 HIGHWAY RIGHT THERE; IS THAT RIGHT?

23 A UH-HUH.

24 Q WHEN HE GOT BACK TO THE CAR AND GOT HIS GUN, YOU WERE
25 STILL STANDING UP THERE AT THE CLUB?

1 A NOW SEE, I DON'T KNOW HE BEEN GETTING A GUN OR NOT,
2 BUT I STILL WAS STANDING AT THE CLUB.

3 Q OKAY. AND THEN YOU HEARD THE GUNSHOTS?

4 A YEAH, I HEARD THE GUNSHOTS.

5 Q AND DID YOU GET BEHIND ONE OF THE CARS AT THAT POINT?

6 A NO, I STAYED WHERE I WAS AT.

7 Q SO YOU WERE STANDING UP AS THESE BULLETS WERE BEING
8 FIRED AROUND YOU?

9 A YEAH.

10 Q OKAY. HOW MANY ROUNDS DID YOU HEAR FIRED?

11 A I HEARD SEVERAL. I DON'T KNOW HOW...

12 Q OKAY. AND MR. SCOTT WAS FIRING ROUNDS?

13 A I THINK HE MAYBE FIRED A COUPLE OF ROUNDS.

14 Q OKAY. AND YOU DESCRIBED MY CLIENT AS IN RUNNING DOWN
15 THE ROAD, CORRECT?

16 A YEAH, RUNNING DOWN THE ROAD SHOOTING BACK.

17 Q HE WAS HEADED BACK TOWARDS HIGHWAY 15?

18 A YES, HE WAS.

19 Q OKAY. AND WHEN YOU SAW THE FIRST ROUND BEING FIRED,
20 WHERE WAS MR. SCOTT?

21 A I DON'T KNOW WHERE -- WHERE THE FIRST ROUNDS, WHO
22 FIRED THE FIRST ROUNDS OR -- ALL I HEARD GUNSHOTS START
23 COMING OUT.

24 Q AND THEN YOU SAW MY CLIENT RUNNING DOWN THE ROAD?

25 A YEAH, AFTER HE BEEN FALLING DOWN GRABBING HIS LEG.

1 Q WHO WAS FALLING DOWN GRABBING HIS LEG?

2 A POP.

3 Q OKAY. MY CLIENT WAS RUNNING DOWN THE ROAD AT THAT
4 POINT?

5 A NO, HE WASN'T. HE DIDN'T START RUNNING TILL AFTER
6 POP WENT DOWN GRABBING HIS LEG.

7 Q OKAY. SHOW ME WHERE ON THIS DIAGRAM YOU SAW MARCUS
8 WHEN YOU HEARD THE FIRST SHOT.

9 A I CAN'T REALLY SAY WHEN I HEARD THE FIRST. ALL I
10 KNOW I HEARD GUNSHOTS START FIRING.

11 Q YOU DON'T KNOW WHERE MY CLIENT WAS?

12 A DURING THE TIME HE WAS LIKE RIGHT UP IN HERE
13 SOMEWHERE.

14 Q ALL RIGHT. WHERE WAS MR. SCOTT THEN?

15 A HE WAS ALMOST STILL IN FRONT OF THAT CAR.

16 Q AND MY CLIENT YOU SAW THEN RUN DOWN THE ROAD?

17 A YEAH, HE WAS GOING DOWN. THAT WHEN HE STARTED GOING
18 DOWN THE ROAD FIRING SHOTS BACK.

19 Q MR. SCOTT FIRING DURING THAT TIME AS WELL?

20 A I CAN'T REALLY SAY. I STILL HEAR GUNSHOTS. I'M
21 HEARING GUNSHOTS COMING FROM THIS SIDE, TOO.

22 Q OKAY. DID YOU GIVE A DESCRIPTION OF WHAT MY CLIENT
23 WAS WEARING TO THE POLICE AT ANY TIME AFTER THIS INCIDENT
24 OCCURRED?

25 A NO, SIR.

1 Q DID YOU GIVE A DESCRIPTION OF WHAT ANY OF THE PEOPLE
2 THAT YOU DESCRIBED AS SHOOTING WERE WEARING THAT NIGHT?

3 A NO, I DIDN'T.

4 Q OKAY. THANK YOU. THAT'S ALL I HAVE.

5 THE COURT: MR. ROGERS?

6 CROSS-EXAMINATION BY MR. ROGERS:

7 Q MR. JOHNSON, MR. SCOTT WAS YOUR COUSIN?

8 A YES, SIR.

9 Q AND HAD YA'LL BEEN DRINKING THAT DAY?

10 A NO, I DON'T DRINK.

11 Q YOU DON'T DRINK?

12 A NO.

13 Q DO YOU KNOW IF HE HAD?

14 A YEAH, I KNOW HE BEEN DRINKING.

15 Q HE HAD? COULD YOU TELL?

16 A NO, YOU COULDN'T TELL.

17 Q COULDN'T TELL? THIS ALL HAPPENED REAL FAST; DIDN'T
18 IT?

19 A YES.

20 Q ALL OF THE SHOOTING AND EVERYTHING. AND IT WASN'T
21 AS LIGHT OUT THERE AS IT IS NOW IN HERE?

22 A IT WAS LIGHT ENOUGH WHERE YOU COULD SEE. YOU COULD
23 SEE EVERYTHING IN FRONT OF THE CLUB.

24 Q BUT THERE WERE SHADOWS. I MEAN, THERE WERE PARTS OF
25 THE AREA THAT WERE NOT LIT AS WELL AS OTHER PARTS,

1 CORRECT?

2 A THE AREA, ALL THIS?

3 Q UH-HUH.

4 A IS A NIGHT LIGHT RIGHT HERE. IT'S ON THIS SIDE OF
5 THE CLUB. YOU CAN SEE EVERYTHING THAT -- FROM THAT.

6 Q OKAY. SO IF I AM STANDING TO THE LEFT OF THAT LIGHT
7 THAT YOU ARE TALKING ABOUT, IT'S GOING TO BE A SHADOW ON
8 THIS SIDE OF MY FACE; ISN'T IT? IF THE LIGHT IS OVER
9 HERE, IT'S GOING TO BE A SHADOW OVER HERE, CORRECT?

10 A I GUESS.

11 Q OKAY. AND YOU CAN TESTIFIED THAT YOU SAW POP GO GET
12 HIS GUN?

13 A I DIDN'T SAY I SAW HIM GO GET THE GUN. I SAID I SAW
14 HIM GOING TO THE CAR.

15 Q RAN TO THE CAR. POP THEN RAN TO DUKE'S CAR, CAME
16 BACK WITH A GUN AND ALL OF A SUDDEN GUNSHOTS STARTED
17 FIRING BETWEEN POP AND THE GUYS. THAT'S WHAT YOU SAW,
18 RIGHT? YOU HAVE TO SAY YES BECAUSE SHE'S GOT TO TAKE IT
19 DOWN. YES OR NO. SHE'S GOT TO TAKE IT DOWN. THAT'S WHAT
20 YOU SAID THE NEXT DAY?

21 A THAT'S WHAT I SAID.

22 Q OKAY. SO WHAT I AM TRYING TO GET AT IS THAT ALL OF
23 THE TIME YOU WERE NOT FOCUSED ON THE INDIVIDUALS' FACES,
24 CORRECT?

25 A I MEAN, I'M SAYING I'M LOOKING DOWN THE WHOLE TIME.

1 Q I UNDERSTAND THAT, BUT THE WHOLE TIME YOU WERE NOT
2 BECAUSE AT LEAST PART OF THE TIME YOU WERE LOOKING AT A
3 GUN THAT POP HAD.

4 A NO, I CAN'T SAY I WAS REALLY LOOKING AT THE GUN WHERE
5 HE HAD.

6 Q WELL, I MEAN, YOU UNDERSTAND WHAT I'M SAYING, THAT IF
7 YOU TELL SOMEBODY YOU SAW ME WITH A PEN IN MY HAND,
8 OBVIOUSLY YOU HAD TO LOOK TO SEE THE PEN AND NOT LOOK AT
9 MY FACE AT SOME POINT TO SEE THE PEN. SO THE ENTIRE TIME
10 YOU WERE NOT FOCUSED ON THESE INDIVIDUALS' FACES. THAT'S
11 ALL I AM TRYING TO GET YOU TO SAY. ISN'T THAT TRUE?

12 A YES.

13 Q OKAY. NOW, YOU HAVE -- YEAH, STATE'S EXHIBIT 25,
14 THIS IS WHAT -- LET'S DO THE OTHER ONE. THE LINE-UP "B".
15 THIS IS WHAT YOU WERE GIVEN WHEN YOU WERE SHOWN THE
16 LINEUP, CORRECT?

17 A YES.

18 Q AND IT SAID NUMBER ONE IF YOU HAVE PREVIOUSLY SEEN
19 ONE OR MORE PERSONS IN THE LINE-UP, PLACE AN "X". OKAY.
20 AND ALL I AM TRYING TO GET -- ALL I AM TRYING TO GET AT IS
21 DID YOU MARK THE "X" BECAUSE THAT WAS THE PERSON THAT YOU
22 SAW OUT THERE THAT NIGHT?

23 A I MARKED THE "X" BECAUSE THAT'S THE PERSON THAT I SAW
24 DOING THE SHOOTING THAT NIGHT.

25 Q ALL RIGHT. NOW, COULD YOU BE MISTAKEN AT ALL?

1 A NO, SIR.

2 Q NOT AT ALL?

3 A (SHOOK HEAD).

4 Q OKAY. THANK YOU.

5 THE COURT: MR. JORDAN?

6 MR. JORDAN: NO QUESTIONS, YOUR HONOR.

7 THE COURT: THANK YOU. MR. FINNEY?

8 MR. FINNEY: NO QUESTIONS.

9 THE COURT: REDIRECT, MS. NIELSEN?

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

11 THE COURT: THANK YOU. YOU CAN STEP DOWN, MR.

12 JOHNSON.

13 (WHEREUPON THE WITNESS LEFT THE STAND).

14 MS. NIELSEN: YOUR HONOR, THE STATE RESTS.

15 THE COURT: THANK YOU. LADIES AND GENTLEMEN, THE
16 STATE HAS RESTED ITS CASE IN CHIEF AND THAT'S THE REASON
17 WE WORKED A LITTLE LATER TODAY BECAUSE I BELIEVE WE WERE
18 HEADED TO THE END OF THE CASE. I WANTED TO TRY TO GET IT
19 ALL IN TODAY IF I COULD AND APPRECIATE YA'LL COMING AND
20 WORKING LATE.

21 I WISH I COULD SAY YOU GET PAID OVERTIME FOR
22 THIS, BUT YOU REALLY DON'T. GIVE YOU THE BAD NEWS ABOUT
23 THAT BEFORE I TURN YOU LOOSE WHEN THIS TRIAL IS OVER. I'M
24 GOING TO LET YOU GO NOW FOR THE NIGHT, LADIES AND
25 GENTLEMEN.

1 CAN YOU ALL BE BACK AT 9:00 TOMORROW? IS THAT
2 OKAY? ANYBODY WHO CANNOT BE BACK AT 9 IN THE MORNING, IF
3 YOU'LL LET ME KNOW. YOU HAVE A PROBLEM AT 9?

4 JUROR: I HAVE SOMETHING I'D LIKE TO DO.

5 THE COURT: ALL RIGHT, SIR. SO YOU WON'T BE ABLE TO
6 BE BACK UNTIL 9:30 TOMORROW?

7 JUROR: RIGHT.

8 THE COURT: ALL RIGHT, SIR. WE WILL START BACK THEN
9 AT 9:30 TOMORROW MORNING. AND LADIES AND GENTLEMEN, I
10 REMIND YOU AS ALWAYS WHEN YOU GET BACK AT 9:30 TOMORROW,
11 PLEASE DON'T DISCUSS THIS CASE AMONG YOURSELVES IN THE
12 JURY ROOM.

13 OVERNIGHT DON'T TALK WITH ANYBODY ELSE, DON'T
14 LET ANYBODY ELSE TALK WITH YOU ABOUT IT. DON'T EXPOSE
15 YOURSELF TO ANY INFORMATION THAT MIGHT SHORTEN THE NEWS
16 MEDIA, TELEVISION, NEWSPAPER OR WHATEVER IT IS. YOU PUT
17 THOSE THINGS ASIDE AND YOU CAN PICK UP A PAPER WHEN THE
18 TRIAL IS OVER, WHEN YOUR ROLE HAS ENDED IF YOU WANT TO
19 READ IT, BUT NOT DURING THE TRIAL ITSELF. THANK YOU,
20 LADIES AND GENTLEMEN. I WILL SEE YOU ALL TOMORROW AT
21 9:30.

22 (WHEREUPON THE JURY LEFT THE COURTROOM AT 5:18 P.M.)

23 THE COURT: GENTLEMEN, IF I CAN RESERVE MOTIONS UNTIL
24 IN THE MORNING IF THAT IS ALL RIGHT WITH YOU. I WILL BE
25 BACK AT 9:00 TO DEAL WITH THOSE MOTIONS IF THAT IS OKAY

1 BECAUSE TODAY IS -- THE HOUR IS LATE. ALL RIGHT.

2 MR. DOBY, MR. EVANS HAS LISTED THREE POTENTIAL
3 WITNESSES. THEY WILL BE AVAILABLE TO BE READY TO START
4 FIRST THING IN THE MORNING?

5 MR. DOBY: I BELIEVE THAT THEY WILL, YOUR HONOR.

6 THE COURT: THANK YOU. MR. TAYLOR HAS LISTED TWO
7 POTENTIAL WITNESSES. THEY WILL BE PREPARED TO GO IN THE
8 MORNING IMMEDIATELY AFTER PRESENTATION OF THE CASE?

9 MR. ROGERS: YES, YOUR HONOR. YOU WANT THEM HERE IN
10 THE MORNING?

11 THE COURT: WELL, WHENEVER -- I DON'T WANT US TO HAVE
12 ANY DEAD TIME BETWEEN WHEN ONE STOPS AND THE OTHER STARTS,
13 SO YOU MIGHT CAN CHECK WITH MR. DOBY IF HE DOESN'T COVER
14 IN THAT REGARD, OKAY? ALL RIGHT. AND THEN I HAVE NO LIST
15 OF WITNESSES FOR MR. SINGLETON.

16 I HAVE GOT MR. WITHERSPOON'S WITNESSES, AND
17 GENTLEMEN YOU ALL CAN CONFER AMONG YOURSELVES. I DON'T
18 NEED TO KNOW WHO YOU'RE GOING TO CALL OR WHAT ORDER
19 THEY'RE GOING TO BE CALLED IN. ALL I NEED TO BE ASSURED
20 OF IS THAT WE DON'T HAVE ANY DEAD TIME. OBVIOUSLY THE
21 WEEK IS GETTING LATE AND SO I WANT TO BE SURE WE CAN MAKE
22 MAXIMUM USE OF ALL OF THE TIME THAT'S AVAILABLE TO US.
23 MS. NIELSEN?

24 MS. NIELSEN: WE NEED, IF THEY HAVE ANY POTENTIAL
25 WITNESSES, WE NEED THEIR NAMES, BIRTH DATES, SOCIAL

1 SECURITY NUMBERS AND IF WE CAN'T GET THAT UNTIL THE
2 MORNING, WE WILL HAVE A PROBLEM.

3 THE COURT: RIGHT. THAT WILL -- IN ACCORDS WITH MY
4 EARLIER RULINGS, THAT HAS TO BE GIVEN NOW THAT THE STATE'S
5 CASE IS IN AND SHE ADDRESSED IT, SO IF YOU WILL LEAVE THAT
6 INFORMATION WITH HER TODAY BEFORE YOU LEAVE. MR. DOBY, I
7 HAVE RECEIVED THE NOTATION THAT THE BOND PERSON IS STILL
8 WILLING TO BE ON MR. EVANS' BOND AND I WILL ACKNOWLEDGE
9 THAT.

10 HE WILL BE CONTINUED ON THE SAME BOND HE HAS
11 BEEN UNDER SO FAR. THAT MEANS YOU WON'T HAVE TO TAKE MR.
12 EVANS' BACK UNLESS HE HAS TO BE PROCESSED OUT OR SOMETHING
13 LIKE THAT. NOT SURE HOW...

14 (CONFERRING WITH DEPUTY).

15 THE COURT: ANYTHING IN ADDITION FROM THE STATE
16 BEFORE WE BREAK FOR THE DAY?

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

18 THE COURT: THANK YOU FOR WORKING LATE. APPRECIATE
19 THAT. MR. DOBY, ANYTHING ADDITIONAL FROM MR. EVANS BEFORE
20 WE BREAK?

21 MR. DOBY: NO, SIR, YOUR HONOR.

22 THE COURT: MR. ROGERS?

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

24 THE COURT: MR. JORDAN?

25 MR. JORDAN: NO, YOUR HONOR.

1 THE COURT: MR. FINNEY?

2 MR. FINNEY: NO, YOUR HONOR.

3 THE COURT: THANK YOU, GENTLEMEN. SEE YOU ALL. I
4 WILL BE BACK AT 9:00 TOMORROW MORNING. THE JURY WILL BE
5 BACK AT 9:30. THANK YOU.

6 (WHEREUPON THIS CASE WAS IN RECESS FOR THE
7 EVENING)
8 DECEMBER 14, 2000.

9 THE COURT: ALL RIGHT. THE STATE NOW HAVING RESTED,
10 MR. DOBY, I WILL BE GLAD TO HEAR MOTIONS FIRST OF ALL FROM
11 YOU ON BEHALF OF MR. EVANS.

12 MR. DOBY: YOUR HONOR, WE WOULD ASK THE COURT TO
13 DIRECT A VERDICT OF NOT GUILTY AS TO MARCUS EVANS, YOUR
14 HONOR, BASED ON THE WEIGHT OF THE EVIDENCE, TESTIMONY
15 PRESENTED. WE DON'T THINK THE STATE HAS CARRIED ITS
16 BURDEN IN THIS CASE TO PROVE THE EVIDENCE BEYOND A
17 REASONABLE DOUBT AND I WOULD ASK FOR A DIRECTED VERDICT.

18 THE COURT: ALL RIGHT. THANK YOU, SIR. MR. ROGERS,
19 LET ME HEAR FROM YOU ON BEHALF OF MR. TAYLOR AT THE SAME
20 TIME, THEN I WILL RULE ON BOTH OF THOSE MOTIONS.

21 MR. ROGERS: VERY WELL, YOUR HONOR. ON BEHALF OF MR.
22 TAYLOR, I TOO WOULD MAKE A MOTION FOR DIRECTED VERDICT.
23 TAKING ALL THE EVIDENCE IN THE LIGHT MOST FAVORABLE TO THE
24 GOVERNMENT, IT IS OUR POSITION THEY HAVE FAILED TO MAKE A
25 FOUNDATION CASE, AND FOR THOSE REASONS AND ALL THE EARLIER

1 OBJECTIONS AND MOTIONS, WE WOULD ASK FOR A DIRECTED
2 VERDICT.

3 THE COURT: THANK YOU, GENTLEMEN. AS TO MR. EVANS
4 AND MR. TAYLOR, THE MOTIONS FOR DIRECTED VERDICT ARE
5 RESPECTFULLY DENIED. RULE 19 OF THE RULES OF CRIMINAL
6 PROCEDURE OF COURSE SETS OUT THE CASE STANDARD OF CASES
7 CITED THEREUNDER, THE PERIMETER OF WHICH THESE ARE
8 MEASURED.

9 FIRST OF ALL AS WE KNOW THE EVIDENCE HAS TO BE
10 TAKEN IN THE LIGHT MOST FAVORABLE TO THE STATE AND IF
11 THERE IS ANY DIRECT EVIDENCE OR ANY SUBSTANTIAL
12 CIRCUMSTANTIAL EVIDENCE WHICH REASONABLY TENDS TO PROVE
13 THE GUILT OF THE ACCUSED, THEN THE MOTION MUST BE DENIED.

14 AND THIS SECTION OR FOR THE PURPOSE OF THIS
15 MOTION IN ANY EVENT OF COURSE I AM ONLY CONCERNED WITH
16 WHETHER OR NOT THE EVIDENCE IS IN EXISTENCE, NOT HOW IT
17 SHOULD WEIGH.

18 THERE IS EVIDENCE OBVIOUSLY BOTH DIRECT AND
19 CIRCUMSTANTIAL AS TO MR. EVANS' AND MR. TAYLOR'S DIRECT
20 INVOLVEMENT IN THE SHOOTING, EYE WITNESS TESTIMONY IN MANY
21 INSTANCES AND THAT IN SOME CASES WHERE THERE IS PERHAPS A
22 GAP THAT MIGHT EXIST IN CERTAIN OF THE WITNESSES TESTIMONY
23 AS TO WHETHER OR NOT THEY SAW THE GUN IN THE HANDS OR THE
24 ACTUAL BULLET STRIKE FROM THE GUN, THERE IS -- THAT GAP IS
25 ADEQUATELY FILLED BY CIRCUMSTANTIAL EVIDENCE.

1. FOR THAT REASON THE MOTIONS FOR DIRECTED VERDICT
2. ON BEHALF OF THOSE GENTLEMEN ARE RESPECTFULLY DENIED. ALL
3. RIGHT. MR. FINNEY, BE GLAD TO HEAR FROM YOU ON BEHALF OF
4. MR. WITHERSPOON.

5. MR. FINNEY: MAY IT PLEASE THE COURT. YOUR HONOR,
6. AS TO COUNT TWO OF THE INDICTMENT CHARGING MR. WITHERSPOON
7. WITH ACCESSORY AFTER THE FACT, WE WOULD ASK THE COURT TO
8. DIRECT A VERDICT OF NOT GUILTY FEELING THAT THE ACCUSED
9. MUST HAVE KNOWLEDGE THAT THE PRINCIPAL COMMITTED THE
10. FELONY.

11. NO WITNESS FOR THE STATE HAS TOLD THIS COURT
12. THAT LAMONT WITHERSPOON HAD KNOWLEDGE THAT THE PRINCIPALS
13. ACTED TAKING THE LIFE OF THE VICTIM. NO STATEMENT BY ANY
14. CO-DEFENDANT WAS MADE TO THIS COURT SHOWING KNOWLEDGE OF
15. LAMONT WITHERSPOON THAT THE PRINCIPALS HAD ACTED
16. ILLEGALLY.

17. IN ADDITION, YOUR HONOR, THERE WAS NO EVIDENCE
18. THAT DISCUSSION BETWEEN LAMONT AND THE PRINCIPAL BEFORE OR
19. AFTER THE SHOOTING WHICH WOULD HAVE IMPUTED KNOWLEDGE OF
20. THEIR ACTS TO HIM. FURTHER THERE IS NO EVIDENCE OF A
21. CRIME -- OTHER CRIME WAS FOUND AT THE STOP OF THE CAR THAT
22. NIGHT OR DURING THE ENSUING INVESTIGATION TO SHOW LAMONT
23. HAD ANY KNOWLEDGE OF THE PRINCIPAL ACTIVITY THAT EVENING.

24. PART OF THE ACCESSORY AFTER THE FACT IS THAT
25. THERE MUST BE PROOF THAT HE, LAMONT, ENABLED THE PRINCIPAL

1 FELON TO ESCAPE DETECTION OR ARREST. I WOULD POINT OUT TO
2 THE COURT THAT LAMONT STOPPED THE CAR ON THE WAY HOME AS
3 DIRECTED BY THE LAW ENFORCEMENT OFFICERS, NO INTERFERENCE
4 AND GAVE THEM NO INTERFERENCE IN THE POLICE INVESTIGATION
5 AT THAT POINT AFTERWARDS.

6 LAMONT TURNED HIMSELF IN WHEN REQUESTED BY LEE
7 COUNTY OFFICERS TO COME TO THE SCENE BACK HERE TO SUMTER
8 COUNTY, EXCUSE ME LEE COUNTY, AND LAMONT GAVE A WRITTEN
9 STATEMENT THAT HAS NOT BEEN REFUTED BY ANY WITNESS OR
10 EVIDENTIARY FACT.

11 IN ADDITION, LAMONT'S STATEMENT ACTUALLY
12 ACKNOWLEDGES THE PRESENCE OF THE TWO OTHER CO-DEFENDANTS
13 WHO ACTUALLY CHARGED WITH A FELONY INSTEAD OF SAYING I
14 DON'T KNOW WHO WAS IN THE CAR OR ANYTHING LIKE THAT. AND
15 THOSE ARE THE REASONS I WOULD ASK THE COURT TO DISMISS
16 THIS ACTION AGAINST LAMONT WITHERSPOON AS TO COUNT TWO.

17 THE COURT: ALL RIGHT. LET ME SEE A COPY OF HIS
18 STATEMENT. I READ IT BEFORE. NOT SURE. ONE MIGHT BE IN
19 OR FOR I.D.

20 MR. FINNEY: I HAVE IT RIGHT HERE.

21 MS. NIELSEN: THAT'S THE ONLY THING WE LEFT WE NEED
22 TO DO IS FIX -- TAKE THIS OFF OF THIS.

23 (SOLICITOR AND MR. FINNEY CONFERRING).

24 THE COURT: MS. NIELSEN, LET ME HEAR FROM YOU IN
25 RESPONSE TO MR. FINNEY'S MOTION IN THAT REGARD.

1 MS. NIELSEN: YOUR HONOR, IF YOU WOULD TAKE THIS CASE
2 IN THE LIGHT AS MR. WITHERSPOON, OBVIOUSLY
3 CIRCUMSTANTIAL. HIS OWN STATEMENT, JUDGE, SAYS THAT HE
4 LEFT THE SCENE, HE IS OUT ON HIGHWAY 15 MANY MILES AWAY
5 FROM WHERE THE SHOOTING ACTUALLY OCCURRED TRAVELING AT 90
6 TO A HUNDRED MILES AN HOUR.

7 HE DID NOT TELL THE POLICE THAT NIGHT THAT
8 EITHER A ROCK OR SHOT HAD HIT HIS CAR, HAD THE GUN SO THAT
9 WOULD HAVE GIVEN DANNY SIMON A REASON TO DETAIN THEM AT
10 THE SCENE. THE TOTAL CIRCUMSTANCES SURROUNDING WHAT
11 HAPPENED, JUDGE, THEIR PEOPLE FOUND OUT AT THE CLUB BASED
12 UPON WHAT EVIDENCE WE PUT FORWARD WHO MAY NOT HAVE BEEN
13 ABLE TO RECOGNIZE THAT THESE ARE THE TWO PEOPLE WHO WERE
14 INVOLVED IN THIS, BUT LAMONT WITHERSPOON KNEW THESE TWO
15 DEFENDANTS.

16 THIS IS NOT A HUGE AREA OUT THERE. ALL THIS
17 STUFF OCCURRED IN A SMALL AREA, AND IT'S OUR POSITION THAT
18 BASED ON THE EVIDENCE, IT -- AND THE CONCLUSION OF THESE
19 OFFICERS CAME THROUGH TO CHARGE THEM WITH ACCESSORY, THEY
20 ACTUALLY CHARGED THEM WITH ACCESSORY AFTER THE FACT WAS
21 BASED ON THE FACT THAT BASED ON ALL THE CIRCUMSTANCES,
22 THEY CAME TO THE CONCLUSION THAT THERE WAS NO POSSIBLE WAY
23 THAT THEY COULD NOT HAVE KNOWN THAT THESE TWO DEFENDANTS
24 WERE INVOLVED IN THIS WHEN THEY LEFT THAT CLUB.

25 JUDGE, THE GUNS WERE NOT THROWN OUT AT THE

1 SCENE. THE GUNS HAD TO HAVE BEEN THROWN OUT AFTER THEY
2 GOT OUT IN THE CAR. THE CERTAINLY COULD CERTAINLY COME --
3 BASED ON EVIDENCE CONCLUDES WHICH I'M TENDING TO ARGUE IN
4 MY CLOSING ARGUMENT ONE OF TWO THINGS, THAT LAMONT
5 WITHERSPOON WAS INTENTIONALLY TRYING TO GET THEM AWAY FROM
6 THERE SO THAT THEY WOULDN'T BE DETAINED WHICH WAS THE
7 REASON HE WAS TRAVELING AS FAST AS HE WAS OR IN THE
8 ALTERNATIVE STILL BASED ON HIM HAVING KNOWLEDGE THAT THEY
9 DID IT THAT HE WAS TRYING TO GET AWAY FROM THERE BECAUSE
10 HE WAS AFRAID THOSE FRIENDS WERE THE GUY THAT WERE SHOT
11 WERE GOING TO COME AFTER HIM.

12 OTHERWISE JUDGE, ONCE THEY GOT TO HIGHWAY 15
13 THERE IS NO LOGICAL EXPLANATION FOR WHY HE WAS TRAVELING
14 AT THIS SPEED OF 90 TO A HUNDRED MILES AN HOUR. AND WHEN
15 THESE OFFICERS STOPPED HIM AND HE TOLD THEM THAT THEY KNEW
16 ANYTHING INCLUDING THAT AND WHICH IS IN HIS STATEMENT
17 ABOUT A ROCK OR A SHOT HITTING HIS CAR, THEN -- OR HAD HE
18 TOLD HIM THAT THESE TWO DEFENDANTS WEREN'T AT THE CAR AT
19 THE TIME THE ROCK OR SHOT HIT HIS CAR, THEN THEY COME
20 JOGGING UP TO HIS CAR AND GET IN THE CAR.

21 HE DIDN'T TELL THEM ANY OF THAT THAT NIGHT.
22 IT'S OUR POSITION THAT IS AT LEAST MISPRISON OF A FELONY.

23 THE COURT: ALL RIGHT. WITH RESPECT TO BE ACCESSORY
24 AFTER THE FACT THE MOTION ACCESSORY AFTER THE FACT IN THIS
25 REGARD -- THE TESTIMONY IS ALL OVER THE LOT OBVIOUSLY ON

1 MR. SINGLETON AND MR. WITHERSPOON.

2 ONE INDIVIDUAL SAYS THAT THEY WERE PRESENT
3 STANDING AROUND WHEN THE ARGUMENT BEGAN. NO ONE I THINK
4 INDICATES THAT THEY WERE IN THE VICINITY WHEN THE SHOOTING
5 ACTUALLY OCCURRED. THIS IS THE TESTIMONY, THAT THEY WERE
6 IN CLOSE PROXIMITY TO THE SHOOTING WHEN IT OCCURRED.

7 MR. YATES TESTIFIED YESTERDAY THAT HE SAW THE
8 SHOOTERS RUNNING DOWN THE ROAD SHOOTING AND THEY WERE
9 PICKED UP BY A BURGUNDY CADILLAC. CIRCUMSTANTIALLY THAT
10 EVIDENCE IS CAPABLE OF THE INFERENCE THAT THESE
11 INDIVIDUALS, HE SAID SHOOTERS. THE REST OF THE TESTIMONY
12 IS ONLY ONE RUNNING DOWN THE ROAD SHOOTING. HIS TESTIMONY
13 WHETHER PERTAINS TO ONE OR BOTH I THINK IS INSIGNIFICANT
14 FOR THE PURPOSES OF THIS RULING.

15 AND THERE WERE SEVERAL OTHER WITNESSES WHO
16 TESTIFIED THAT ONE OF THE SHOOTERS AT LEAST WAS RUNNING
17 DOWN THE ROAD SHOOTING BACK TOWARDS THE CLUB. THAT
18 TESTIMONY HAS BEEN CORROBORATED ON MORE THAN ONE OCCASION
19 BY SEVERAL WITNESSES AT WHICH POINT THEY WERE PICKED UP IN
20 SHORT PROXIMITY THEREAFTER BY A BURGUNDY CADILLAC WHICH
21 ADMITTEDLY WAS DRIVEN IN THIS CASE BY MR. WITHERSPOON.

22 THE CLEAR INFERENCE THAT CAN BE DRAWN FROM THAT,
23 FROM THAT TYPE OF EVIDENCE IS THAT THE DRIVER OF THE CAR
24 WOULD HAVE KNOWN THAT OR CERTAINLY SHOULD HAVE KNOWN THAT
25 THIS PERSON RUNNING DOWN THE ROAD SHOOTING A GUN THAT

1 EVERYBODY -- SEVERAL OTHER WITNESSES TESTIFIED WAS INDEED
2 SHOOTING A GUN, PICKED THEM UP IN THE CAR. AT THAT POINT
3 IN TIME WAS INDEED -- WAS AT LEAST INVOLVED IN THE
4 SHOOTING. NOW, AT THAT POINT IN TIME THERE IS NOTHING TO
5 INDICATE THAT THE FELONY, THAT IS THE MURDER ITSELF, HAD
6 BEEN COMPLETED.

7 ALL THESE THINGS WERE JUST IN PROGRESS. AS TO
8 WHETHER OR NOT THESE INDIVIDUALS ACTUALLY KNEW THAT
9 SOMEONE WAS SHOT, WAS SHOT AND KILLED, SHOT AND WOUNDED,
10 IS A MATTER OF SOME -- SOME CONJECTURE. AND THE FIRST
11 ELEMENT OF ACCESSORY AFTER THE FACT APPLIES TO THE FELONY
12 HAS BEEN COMPLETED AND THE ACCUSED MUST HAVE KNOWLEDGE
13 THAT THE PRINCIPAL COMMITTED THE FELONY. WHERE DO WE HAVE
14 THAT INJECTED INTO THIS, MS. NIELSEN?

15 MS. NIELSEN: YOUR HONOR, LARRY DEBERRY TESTIFIED
16 THERE'S ONLY ONE CAR, BUT THERE WAS ONLY ONE CAR MAYBE AND
17 THAT CAR WAS COMING DOWN THE HIGHWAY ACROSS THE GRASSY
18 AREA IN FRONT OF THE CLUB WHILE THE SHOOTING WAS STILL
19 GOING ON AND GOES DOWN THE ROAD.

20 THE SHOOTER IS STILL RUNNING IN THE DIRECTION OF
21 THAT CAR, IS GOING AND GETS IN THAT CAR AND THEN AT THE
22 TIME THAT THE SHOOTER GETS TO THE CAR, THE SHOOTING HAS
23 STOPPED. SO WHATEVER IS HAPPENING WITH THE SHOOTING IS AT
24 THAT POINT COMPLETE.

25 AND I SUBMIT THESE TWO GUYS GOT IN THE CAR WITH

1 THE GUNS -- IN MR. WITHERSPOON'S CAR WITH THE GUN. AFTER
2 IT WAS COMPLETED, THEY GET IN THE CAR WITH THE GUNS AND
3 IT'S OUR CONTENTION THAT A JURY CAN INFER FROM THAT THAT
4 IT WAS COMPLETED WHEN THEY GOT IN THE CAR.

5 HIS STATEMENT ALSO SAYS MARCUS EVANS AND GILARON
6 TAYLOR WERE SOMEHOW MOTIONING TO HIM TO COME GET THEM TO
7 -- YET ALL THE EVIDENCE IS IS THAT THEY'RE RUNNING TO THE
8 CAR AND SOMEONE, AT LEAST ONE OF THEM IS SHOOTING BACK AT
9 THE CLUB AND YET HE TELLS THEM IN THE STATEMENT THEY ARE
10 MOTIONING FOR HIM TO STOP, FOR THEM TO COME GET THEM.

11 I SUBMIT THAT IS INCONSISTENT WITH WHAT THE
12 EVIDENCE IS, AT LEAST ONE OF THE SHOOTERS. THEY PROBABLY
13 -- TESTIMONY ACTUALLY BOTH OF THE SHOOTERS ARE SHOOTING
14 BACK, BUT THE SHOOTING STOPPED AND THE SHOOTING STOPPED AT
15 THE TIME THAT THESE TWO DEFENDANTS GOT IN THAT CAR WITH
16 THE GUNS BECAUSE THE GUNS WERE NOT AT THE SCENE. THEY HAD
17 TO HAVE TAKEN THE GUNS. THEY WERE ON THEM.

18 THE COURT: I WOULD CONCEDE ALL OF THAT. THEY ARE
19 CHARGED WITH KNOWING OF THE COMMISSION AND COMPLETION OF A
20 FELONY OF MURDER. AND WHERE DO WE HAVE KNOWLEDGE OF
21 THAT? CLEARLY THEY EITHER KNEW OR SHOULD CLEARLY HAVE
22 KNOWN THAT THERE WAS SHOOTING GOING ON, THE TESTIMONY IS I
23 THINK AS YOU JUST ACCURATELY SURMISED OR SUMMARIZED IS
24 PRETTY MUCH THE WAY MOST OF THE WITNESSES TESTIFIED. BUT
25 WHERE IS THERE EVIDENCE OF THE KNOWLEDGE OF THE COMPLETION

1 OF THE FELONY OF MURDER?

2 MS. NIELSEN: WELL, YOUR HONOR, AT THE TIME WHAT
3 HAPPENED LATER ON DOWN THE ROAD WHEN THEY ARE STILL
4 TRAVELING, THEY ARE TRAVELING 90 TO A HUNDRED MILES AN
5 HOUR TRYING TO GET AWAY FROM THERE SO WE SUBMIT THE POLICE
6 WON'T CATCH THEM AND THEY ARE TRAVELING 90 TO A HUNDRED
7 MILES AN HOUR DOWN HIGHWAY 15. AT SOME POINT IN THERE
8 THESE DEFENDANTS HAD TO HAVE THROWN THOSE GUNS OUT THE
9 WINDOW.

10 THE JURY CAN CERTAINLY DETERMINE FROM
11 CIRCUMSTANCES THAT THEY HAD TO THROW THE GUNS OUT THE
12 WINDOW. IT'S OUR POSITION THEY COULDN'T HAVE DONE THIS
13 WITHOUT THE OTHER TWO PEOPLE IN THE CAR KNOWING THAT THEY
14 DID IT.

15 THE COURT: I THINK THE THROWING OF THE GUNS OUT THE
16 WINDOW GOES MORE TO COUNT THREE THAN IT DOES TO COUNT
17 TWO.

18 MS. NIELSEN: WELL, YOUR HONOR, IT'S OUR POSITION
19 THAT IT'S THE -- IT'S THE QUESTION OF FACT FOR THE JURY TO
20 DETERMINE WHETHER OR NOT WHAT THEY DID IS ACTUALLY
21 ACCESSORY AFTER THE FACT, I.E. THAT THEY WERE TRYING TO
22 ACTUALLY COVER THIS UP TO THE EXTENT THAT THESE BOYS WOULD
23 NOT BE ARRESTED AND WHETHER IT'S ACCESSORY OR MISPRISON OF
24 THE FELONY BASED ON ALL OF THE CIRCUMSTANCES I THINK IS A
25 QUESTION OF FACT FOR THE JURY.

1 THE COURT: BUT THERE HAS TO BE SOME EVIDENCE OF AN
2 ELEMENT OF A CRIME TO ALLOW IT TO GO TO A JURY. IN ANY
3 EVENT, I AGREE THAT ALL OF THE EVIDENCE WERE IN THAT IT
4 WOULD BE -- IF THERE WAS EVIDENCE BEFORE THIS JURY FROM
5 WHICH THEY COULD DETERMINE THAT THESE INDIVIDUALS KNEW
6 THAT SOMEONE, ANYONE HAD BEEN SHOT, WHETHER SHOT AND
7 KILLED OR SHOT AND WOUNDED WOULD BE PERHAPS AN
8 INSIGNIFICANCE AT THIS POINT IN TIME.

9 INDIVIDUAL DOESN'T HAVE TO DIE ON THE SPOT
10 OBVIOUSLY, BE DEAD BEFORE THEY GET IN THE CAR TO LEAVE TO
11 MAKE THESE FOLKS ACCESSORY AFTER THE FACT OF MURDER SO
12 LONG AS THEY HAVE SOME INFORMATION OR SHOULD HAVE KNOWN
13 INFORMATION ABOUT -- ABOUT THE FACT THAT THERE WAS
14 ACTUALLY A SHOOTING IN WHICH SOMEONE WAS INJURED.

15 AND I'M TRYING TO FIGURE OUT WHERE -- I MEAN
16 TRYING TO STRETCH CIRCUMSTANTIAL EVIDENCE QUITE FRANKLY.
17 THE EVIDENCE BEING THAT THEY WERE AROUND THERE BEFORE THE
18 SHOOTING STARTED. WHERE THEY WERE WHEN THE SHOOTING
19 STARTED IS A QUESTION THAT I REALLY DON'T RECALL THE
20 EVIDENCE ON. CAN YOU HELP ME ON THAT, WHERE THESE WERE,
21 THESE TWO INDIVIDUALS WHEN THE SHOOTING STARTED? DO YOU
22 HAVE ANY TESTIMONY IN THAT REGARD?

23 MS. NIELSEN: YOUR HONOR, SOME OF THE WITNESSES SAY
24 THAT THEY WERE RIGHT THERE, FIRST DRIVEWAY OR NEAR THE
25 FIRST DRIVEWAY. I BELIEVE ONE WITNESS SAID THEY HAD MOVED

1 THE CAR FROM THE FIRST DRIVEWAY TO THE OTHER SIDE.

2 THE COURT: HE DID.

3 MS. NIELSEN: I THINK ONE WITNESS SAID THAT. A
4 COUPLE OTHER WITNESSES SAID THE CAR WAS UP CLOSER TO THE
5 CLUB. LARRY DEBERRY SAID THAT THE CAR WHICH IS THE ONLY
6 CAR THAT IS MOVING IS ON HIGHWAY 15 WHEN HE COMES BACK OUT
7 WHICH IS DURING THE SAME TIME HE SEES THAT CAR GOING DOWN
8 HIGHWAY 15, THEN HE SEES MARCUS EVANS SHOOT HENRY SCOTT IN
9 THE BACK.

10 THE COURT: OKAY.

11 MR. FINNEY: MARTY OAKS IS THE WITNESS WHO TESTIFIED
12 THAT AFTER WALKING BY THE FELLOWS, THEY -- HE SAW -- HE
13 WENT TO THE CLUB, TURNED AROUND AND HE CAME BACK, THE CAR
14 WASN'T THERE ANY LONGER AND HE WAS THE ONE THAT TESTIFIED
15 THAT THE CAR WAS WAY DOWN THE ROAD BY THE TIME THE
16 SHOOTING STOPPED AND THAT THE GUYS WERE, YOU KNOW, TRYING
17 TO GET IN THE CAR, GOING TO THAT CAR.

18 THAT WAS WAY DOWN THE ROAD. NO WITNESS IN THIS
19 CASE HAS PUT THE CAR AT THE SCENE OF THE SHOOTING AT THE
20 TIME THAT THE ARGUMENT BROKE OUT OR THE SHOOTING BROKE
21 OUT. THERE IS A GAP IN THE EVIDENCE. THE CAR WAS THERE.
22 BY LAMONT'S OWN STATEMENT IT WAS THERE FOR A MOMENT WHILE
23 HE CHECKED THE PRICE OF ADMISSION.

24 HE DID MOVE THE CAR. THERE IS NO -- NO REFUTING
25 THAT IN THEIR EVIDENCE AND TESTIMONY AND THERE IS NO

1 ADDRESSING THAT IN ANY OF THE STATE'S WITNESSES CASE THAT
2 HE WAS ANYWHERE AROUND THE SHOOTING. THE CAR HAD TO MOVE
3 BECAUSE EVERYBODY SAW IT AT THE END OF THE ROAD AT THE --
4 WHILE THE SHOOTING WAS GOING ON. AND THAT'S WHY WE SAY
5 CLEARLY THAT AS TO THE ACCESSORY COUNT, THE PROOF IS JUST
6 NOT THERE.

7 THE COURT: ALL RIGHT. THANK YOU. MR. JORDAN, AS TO
8 COUNT TWO.

9 MR. JORDAN: CERTAINLY, YOUR HONOR. I APOLOGIZE TO
10 THE COURT AND ALL THOSE PRESENT FOR MY TARDINESS. YOUR
11 HONOR, CLEARLY AS TO COUNT TWO, THE ACCESSORY CHARGE,
12 UNDER THE READING OF STATE VERSUS LEGGETTE, THE STATE HAS
13 TO PROVE THOSE THREE ELEMENTS THAT THE COURT HAS ALREADY
14 MENTIONED, THAT THE FELONY IS COMPLETED AND THAT -- THAT
15 THE ACCUSED HAD KNOWLEDGE THAT THE FELONY HAD BEEN
16 COMPLETED AND THAT THE ACCUSED HARBORED OR ASSISTED.

17 YOUR HONOR, IN THE CASE OF MY CLIENT, HE HAS NOT
18 BEEN PLACED IN A POSITION TO VIEW THE -- TO VIEW THE
19 ACTUAL SHOOTING. AND HIS PICTURE ACTUALLY WAS IN THE
20 LINE-UP. NOBODY LISTED HIM.

21 ONLY ONE WITNESS TOOK THE STAND AND SAID THOSE
22 FOUR GUYS. THAT WAS LEONARD SCOTT. LEONARD SCOTT HAD NOT
23 EVEN PICKED MY CLIENT OUT OF THE PHOTO LINE-UP IN WHICH
24 HIS PICTURE WAS PRESENT. SO CLEARLY NO EVIDENCE, NO
25 COMPETENT EVIDENCE. PUTS MY CLIENT IN A POSITION WHERE HE

1 HAS WITNESSED ANYTHING, IS IN ANY POSITION TO KNOW WHAT
2 HAS HAPPENED MUCH LESS THAT A FELONY HAS BEEN COMMITTED.

3 YOUR HONOR, MY CLIENT IS ALSO -- THERE IS NO
4 EVIDENCE THAT HE WAS ANYTHING OTHER THAN A PASSENGER IN
5 THE CAR, SO HE COULDN'T HAVE ASSISTED. THERE IS NO
6 EVIDENCE THAT HE OPENED THE DOOR OR THAT HE HAD ANY, IN
7 ANY WAY SHAPE OR FORM ANY MANNER OR MEASURE OF CONTROL OF
8 THE VEHICLE SUCH AS TO HARBOR OR ASSIST THESE INDIVIDUALS,
9 THE ALLEGED SHOOTERS.

10 SO CLEARLY ACCESSORY AFTER THE FACT FAILS IN
11 BOTH EVIDENCE OF KNOWLEDGE AND EVIDENCE OF ANY
12 ASSISTANCE. AND YOUR HONOR, THE LAW REQUIRES THAT THERE
13 BE SOMETHING MORE THAN JUST TO ALLOW THE JURY TO SPECULATE
14 OR TO HAVE SUSPICION THAT HE IS GUILTY AND THERE HAS BEEN
15 NO COMPETENT EVIDENCE.

16 YOUR HONOR HAS RECOGNIZED EARLY ON IN ITS
17 COMMENTS ABOUT THE RIGHT OF CONFRONTATION. VERY FEW
18 WITNESSES, IF ANY, MENTION MY CLIENT BY NAME. IT WAS ONLY
19 LAW ENFORCEMENT OFFICERS. AND MR. -- INVESTIGATOR SIMON
20 SAID HE HAD NO EVIDENCE THAT MY CLIENT -- THAT REFUTED
21 WHAT MY CLIENT SAID OR PITTED WHAT HE SAID, WAS IN
22 CONTRADICTION TO WHAT THEY HAD LEARNED.

23 SO CLEARLY, YOUR HONOR, AS FAR AS COUNT TWO,
24 ACCESSORY AFTER THE FACT, THERE IS A FAILURE OF IN OUR
25 OPINION ANY EVIDENCE, AND TO ALLOW IT TO GO TO THE JURY

1 MERELY ALLOWS THEM TO SPECULATE AND TO HAVE SUSPICIONS.
2 IT'S PURELY A CIRCUMSTANTIAL CASE IN THAT REGARD AND WE
3 SUBMIT THAT IT'S INSUFFICIENT AT THIS POINT, DOES NOT MEET
4 THE TEST AND A DIRECTED VERDICT SHOULD BE -- ON COUNT TWO.

5 THE COURT: ALL RIGHT. AS TO COUNT TWO, ACCESSORY
6 AFTER THE FACT, THE MOTION FOR DIRECTED VERDICT ON BEHALF
7 OF MR. TRAVIS SINGLETON IS GRANTED ON THE BASIS OF THE
8 FACT THAT THERE IS NO COMPETENT EVIDENCE OF KNOWLEDGE OF
9 THE COMPLETED FELONY, NO COMPETENT EVIDENCE OF ANY
10 ASSISTANCE BEING RENDERED AS REQUIRED BY LAW.

11 THE MOTION FOR DIRECTED VERDICT ON BEHALF OF
12 LAMONT WITHERSPOON IS GRANTED. THERE IS NO COMPETENT
13 EVIDENCE AS TO KNOWLEDGE OF THE COMPLETION OF A FELONY
14 GIVEN THE TOTALITY OF THE CIRCUMSTANCES. AS TO COUNT
15 THREE, MISPRISON OF A FELONY, I WILL NOTE YOUR MOTION FOR
16 A DIRECTED VERDICT, GENTLEMEN, ON BOTH CASES. THAT MOTION
17 IS DENIED.

18 MR. FINNEY: YOUR HONOR, WE HAVEN'T ARGUED THAT.

19 THE COURT: YES, SIR. I'M -- I WILL BE GLAD TO HEAR
20 YOUR ARGUMENT, BUT LET ME TELL YOU WHERE I AM COMING
21 FROM.

22 MR. FINNEY: ALL RIGHT, SIR.

23 THE COURT: MR. SINGLETON IN HIS STATEMENT
24 ACKNOWLEDGED THAT THEY WERE DRIVING DOWN THE ROAD, SOME
25 THINGS WERE THROWN OUT. THERE IS COMPETENT EVIDENCE FROM

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 IV 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

1 EVERY WITNESS THERE THAT THERE WAS WEAPONS IN THE HANDS OF
2 THESE TWO INDIVIDUALS WHEN THEY WERE RUNNING DOWN THE ROAD
3 OF THE CLUB THAT WERE NOT FOUND AT THE SCENE.

4 THE PURE AND STRONG INFERENCE THAT HAS TO BE
5 DRAWN FROM THAT IS THAT SOMEWHERE BETWEEN THE CLUB AND THE
6 TIME THE CAR WAS STOPPED NEAR WHITES MILL THOSE WEAPONS
7 HAD BEEN DISPOSED OF. IF YOU BELIEVE MR. SINGLETON'S
8 STATEMENT, WHICH IS NOT IN EVIDENCE FRANKLY AND BECAUSE OF
9 THE NATURE OF THE JOINT TRIAL THAT IS BEING UNDERTAKEN IN
10 THIS REGARD IT WON'T GO INTO -- AT LEAST A PORTION OF IT
11 WON'T, THE JURY WON'T KNOW ABOUT IT, AND TO THAT EXTENT
12 THIS COURT CAN ONLY DRAW INFERENCES OR JUST POINT IT OUT I
13 THINK AS BEING EVIDENCE OF THE INFERENCE WHICH I THOUGHT
14 THAT THE WEAPONS HAD TO BE DISPOSED OF SOMEWHERE ALONG THE
15 ROAD.

16 NOW, IN THAT REGARD WHEN THE OFFICERS GOT THERE,
17 THERE WAS NOTHING THAT WAS SAID, NOBODY -- NO ONE AT THAT
18 POINT IN TIME INDICATED THESE TWO FELLOWS GOT IN THIS CAR
19 WITH GUNS IN THEIR HANDS. EVERYBODY KNEW THAT THE
20 SHOOTING HAD OCCURRED. THAT WAS PRETTY CLEAR FROM
21 EVERYONE'S ASSESSMENT AT THE TIME.

22 THE POLICE OFFICERS OBVIOUSLY WERE NOT TOLD
23 THAT. ALTHOUGH I WILL SAY THAT MR. SINGLETON IN A
24 SUBSEQUENT STATEMENT ON THE SIDE OF THE ROAD THROUGH A
25 SUBSEQUENT STATEMENT DID APPARENTLY HEDGE ON THAT REGARD

1 AND INDICATE THAT HE KNEW SOMETHING WAS THROWN OUT BUT HE
2 DIDN'T KNOW WHAT IT WAS, AND HE ALSO INDICATED
3 SUBSEQUENTLY THAT WHEN THEY CAME BACK, HE HAD SOME IDEA
4 THAT THEY HAD BEEN INVOLVED IN A SHOOTING, THAT THEY HAD
5 BEEN INVOLVED IN A SHOOTING.

6 AS I SAY, NONE OF THAT EVIDENCE GOES TO THE JURY
7 BECAUSE MR. SINGLETON IS BEING TRIED ALONG WITH THE OTHER
8 DEFENDANTS IN THIS PARTICULAR CASE. NONETHELESS, I THINK
9 THAT THERE IS EVIDENCE IN THIS REGARD WHICH INDICATES THAT
10 THESE INDIVIDUALS WHEN THEY WERE MAKING STATEMENTS TO THE
11 POLICE OFFICERS ON THE ROADSIDE DID NOT MAKE SUBSEQUENT
12 STATEMENTS TO THE POLICE OFFICERS, WERE MAKING STATEMENTS
13 WHICH THEY KNEW TO BE INCORRECT AND THOSE STATEMENTS ALONG
14 THOSE LINES CONCEALED INFORMATION THAT ACCORDING TO THE
15 DEFINITION OF MISPRISON OF A FELONY COMMITTED CRIMINAL
16 NEGLECT TO BRING AN OFFENDER TO JUSTICE AFTER THE
17 COMMISSION OF A CRIME WITHOUT SUCH INVOLVEMENT HOWEVER AS
18 WOULD LEAD TO MAKING HIM ACCESSORY WHICH I HAVE ALREADY
19 RULED AGAINST IN BOTH OF THESE INSTANCES.

20 I THINK THAT CLEARLY THERE IS EVIDENCE FROM
21 WHICH THE JURY COULD CONCLUDE THAT THESE TWO, BOTH OF
22 THEM, WERE AWARE OF THE FACT THAT A SHOOTING HAD IN FACT
23 OCCURRED AND THAT UNLIKE THE CRIME OF ACCESSORY AFTER THE
24 FACT WHICH REQUIRES KNOWLEDGE OF A COMPLETED FELONY, THE
25 COMMON LAW WHICH SETS OUT THE DEFINITION OF MISPRISON OF A

1 FELONY DOES NOT GO THAT FAR.

2 IT SIMPLY DESCRIBES THAT IT IS CRIMINAL NEGLECT
3 EITHER TO PREVENT A FELONY FROM BEING COMMITTED OR TO
4 BRING THE OFFENDER TO JUSTICE AFTER ITS COMMISSION. IN
5 THIS PARTICULAR CASE KNOWLEDGE OF THE FACT THAT THERE WAS
6 A SHOOTING, WHETHER OR NOT ANYONE WAS STRUCK, WHETHER THEY
7 KNEW ANYONE WAS STRUCK AT THE TIME, CERTAINLY WHEN THEY
8 WERE STOPPED BY THE POLICE OFFICERS THEY MAY HAVE BEEN
9 TOLD SOMETHING THEY DID KNOW THAT THERE WAS A SHOOTING AND
10 SOMEONE HAD DIED.

11 THE INFORMATION WAS NOT GIVEN THAT GUNS WERE
12 THROWN OUT BY THE TWO PRINCIPALS, AND FOR THAT REASON I
13 THINK THAT THERE IS CIRCUMSTANTIAL EVIDENCE SUFFICIENT TO
14 SURVIVE THE MOTION FOR DIRECTED VERDICT BASED ON THE
15 CRIMINAL NEGLIGENCE DEFINED UNDER THE LAW AS THE ACT OF
16 DOING THE NEGLIGENT ACT KNOWINGLY, THE ACTOR MUST REALIZE
17 HE IS ACTING NEGLIGENTLY.

18 THE EVIDENCE IN SUCH A CASE MUST CONVINCE THE
19 JURY OF NOT ONLY WAS HE ACTING NEGLIGENTLY BUT HE WAS
20 AWARE OF HIS NEGLIGENCE IN THIS PARTICULAR CASE. IT IS A
21 CONSCIOUS DISREGARD OF THE CREATION OF THE RISK THAT
22 DISTINGUISHES RECKLESSNESS OR CRIMINAL NEGLIGENCE FROM
23 ORDINARY NEGLIGENCE.

24 THEY COULD NOT HAVE SEEN THESE INDIVIDUALS RUN
25 DOWN THAT ROAD, JUMP INTO THE CAR AS SOME WITNESSES HAVE

1 TESTIFIED, FURTHER WHILE THERE WERE BULLETS FLYING ALL
2 OVER THE ROAD WITHOUT KNOWING THESE INDIVIDUALS WERE
3 INVOLVED IN A SHOOTING.

4 SUBSEQUENTLY WHEN THEY FOUND OUT THE DEFENDANT
5 WAS SHOOTING, THEY DID NOT COME FORWARD WITH INFORMATION
6 OR THEY CONCEALED INFORMATION AS TO MR. WITHERSPOON WHO
7 WAS CONCEALED EVEN IN HIS STATEMENT.

8 I WILL SAY THIS. MR. SINGLETON IN HIS STATEMENT
9 AS I SAID EARLIER INDICATED HE THOUGHT THEY WERE THROWING
10 SOMETHING OUT. HE DIDN'T KNOW WHAT IT WAS. HE THOUGHT
11 THEY WERE THROWING SOMETHING OUT. THAT WAS THE STATEMENT
12 THAT WAS GIVEN SOME TIME AFTER.

13 I THINK THAT MR. SINGLETON'S -- THE EVIDENCE AS
14 TO MR. SINGLETON GOES PURELY TO THE FACT THAT IT WAS
15 CONCEALMENT AT THE ROADSIDE STOP. THAT'S THE ONLY BASIS
16 UPON WHICH I WILL ALLOW HIS CASE TO GO TO THE JURY. HIS
17 STATEMENT I THINK WAS NOT -- IS NOT EVIDENCE OF
18 CONCEALMENT.

19 HE TOLD THE POLICE OFFICERS PRETTY MUCH WHAT HE
20 HEARD HE THOUGHT HAD HAPPENED. IN ADDITION TO THAT, THE
21 CASE OF STATE VERSUS CARSON FOUND AT 262 SOUTHEASTERN 2ND
22 918 IS THE ONLY CASE THAT WE HAVE MISPRISON OF A FELONY
23 WHICH DEALS WITH THE FIFTH AMENDMENT ISSUES THAT ARE
24 RAISED BY THAT COMMON LAW CRIME.

25 GENTLEMEN, I HAVE RULED IN THAT REGARD BECAUSE

1 OF MY VIEW OF THE EVIDENCE. IF YOU WANT TO PUT ANYTHING
2 ELSE ON THE RECORD QUICKLY, I WILL ALLOW YOU TO DO IT SO
3 THAT WE CAN GO AHEAD AND GET STARTED WITH THE REST OF THE
4 THIS TRIAL.

5 MR. FINNEY: YOUR HONOR, PLEASE. I MUST
6 RESPECTFULLY ASK THE COURT TO ALLOW ME TO MAKE AN OFFER OF
7 PROOF.

8 THE COURT: OKAY.

9 MR. FINNEY: YOUR HONOR, PLEASE. I WOULD LIKE TO PUT
10 IN AS EVIDENCE THAT A COPY OF THE ARREST WARRANT DATED
11 NOVEMBER 16TH, 1999. THIS IS CHARGING LAMONT WITHERSPOON
12 WITH ACCESSORY AFTER THE FACT. MY CLIENT WAS NEVER
13 CHARGED WITH MISPRISON OF A FELONY BY VIRTUE OF A WARRANT
14 BEING INTRODUCED AGAINST HIM AND SERVED ON HIM.

15 I DO ALSO WANT TO PUT INTO EVIDENCE A COPY OF
16 THE INDICTMENT ISSUED BY THE GRAND JURY OF LEE COUNTY ON
17 FEBRUARY THE 14TH, 2000 WHICH CONTAINS TWO COUNTS. COUNT
18 ONE IS MURDER, COUNT TWO IS ACCESSORY AFTER THE FACT
19 CHARGING TRAVIS SINGLETON AND LAMONT WITHERSPOON WITH THAT
20 CHARGE.

21 THERE WAS NO CHARGE OF MISPRISON OF A FELONY
22 LODGED AGAINST THESE GENTLEMEN UNTIL SOMETIME IN...

23 THE COURT: FEBRUARY OF THIS YEAR. THE INDICTMENT IS
24 DATED FEBRUARY THE 14TH OF THIS YEAR CHARGES THEM WITH
25 MISPRISON.

1 MR. FINNEY: THAT'S WHY I'M ASKING THIS COURT TO PUT
2 THIS IN AS AN EXHIBIT. I WOULD ASK THE COURT TO LOOK AT
3 THE SAME INDICTMENT. I DON'T THINK THEY WERE CHARGED WITH
4 MISPRISON IN FEBRUARY. I THINK THAT WAS DONE LATER AND
5 THE DATE WAS NOT CHANGED ON THE SUBSEQUENT INDICTMENT.

6 MS. NIELSEN: YOUR HONOR, IN FACT THIS INDICTMENT WAS
7 AMENDED AND WENT BEFORE THE GRAND JURY LAST WEEK, HAD THAT
8 MISPRISON OF A FELONY CHARGE WHICH I ADDED TO THE
9 INDICTMENT AFTER I WORKED ON THIS CASE AND DETERMINED WHAT
10 I THOUGHT THE FACTS WERE.

11 I DON'T HAVE MUCH TO DO WITH HOW THEY ACTUALLY
12 -- HOW THEY TYPE THESE, BUT THE INDICTMENT THAT YOU HAVE
13 PROBABLY HAD A DIFFERENT -- WELL, NO. WE STILL GOT SAME
14 GRAND JURY. JUDGE, I HAVE A LETTER.

15 THE COURT: I'M JUST ACTING ON WHAT YOU ALL HANDED
16 ME. I DON'T TYPE THESE EITHER.

17 MR. FINNEY: HERE IS THE INDICTMENT.

18 MS. NIELSEN: JUDGE, ALL I CAN SAY IS THAT SHE -- SHE
19 ACTUALLY RETYPED THIS INDICTMENT COMPLETELY AND ACTUALLY
20 PUT AMENDED UP THERE, BUT SHE APPARENTLY DIDN'T CHANGE
21 WHAT TERM OF COURT WAS. HOWEVER, I WOULD THINK THAT THE
22 LETTER THE CLERK'S OFFICE HAS WOULD SHOW THIS INDICTMENT
23 WENT BEFORE THE GRAND JURY.

24 THE COURT: WELL, THE FORELADY HAS SIGNED IT AS
25 EVIDENCE OF THAT?

1 MS. NIELSEN: YES, SIR. I'M TALKING ABOUT THIS PAST
2 WEEK, WEEK BEFORE LAST.

3 THE COURT: ALL RIGHT. ALL RIGHT. MR. FINNEY, LET
4 ME HEAR FROM YOU FURTHER IN THAT REGARD, AND LET'S -- WE
5 CAN GO FORWARD SUBJECT TO THAT MOTION AND I WILL RE-VISIT
6 THAT DURING RESEARCH OF TIME. NOT GOING TO TAKE ANY MORE
7 TIME.

8 MR. FINNEY: THE SUBJECT OF -- OBVIOUSLY WHAT I'M
9 TELLING YOU, YOUR HONOR, IS TRYING TO SHOW YOU THAT THERE
10 WAS NO EXPLANATION OF ANYBODY TO CHARGE MY CLIENT WITH
11 MISPRISON OF A FELONY. NOW, I JUST WANT TO ADDRESS ONE
12 THING FOR THE ARGUMENT THIS MORNING.

13 THE COURT: OKAY.

14 MR. FINNEY: MR. WITHERSPOON'S STATEMENT DOES NOT
15 SAY ANYTHING ABOUT HEARING ABOUT ANY GUNS COMING OUT OF
16 THE DOOR OR KNOWING ABOUT ANY GUNS COMING OUT OF THE
17 DOOR. THE STATE HAS PRESENTED NO EVIDENCE TO SAY THAT
18 LAMONT KNEW THAT THE GUNS HAD BEEN ASSOCIATED WITH THE
19 SHOOTERS OR THE PEOPLE THAT WERE IN HIS CAR AND THAT HE
20 KNEW THAT THERE HAD BEEN SOME ILLEGAL ACTIVITY BASED ON
21 THE PEOPLE THAT WERE IN HIS CAR.

22 AND TO HOLD MR. WITHERSPOON, TO IMPUTE TO HIM
23 THE KNOWLEDGE THAT MR. SINGLETON HAD, I JUST THINK, YOUR
24 HONOR, IS NOT -- IS NOT A FAIR ASSESSMENT OF THE
25 SITUATION.

1 I CAN UNDERSTAND THAT IF YOU THINK MR.
2 WITHERSPOON OR MR. SINGLETON KNEW THAT SOMETHING WAS GOING
3 ON, HE CERTAINLY MIGHT BE AT LEAST SUBJECT TO BE GOING IN
4 FRONT OF A JURY ON MISPRISON, BUT MR. WITHERSPOON DIDN'T
5 KNOW THAT, DIDN'T SAY THAT, AND THE THING IS THAT THERE IS
6 NOTHING TO REFUTE THAT KNOWLEDGE IN THE EVIDENCE.

7 EVEN MR. TRAVIS DOESN'T SAY THAT LAMONT AND I
8 HEARD SOMETHING OR LAMONT AND I LOOKED AT EACH OTHER WHEN
9 WE HEARD SOMETHING. IT DOESN'T SAY THAT AND I DON'T
10 BELIEVE THAT MR. WITHERSPOON'S KNOWLEDGE OF WHAT HE SAW,
11 WHAT HE HEARD.

12 I MEAN, MR. DEBERRY SAYS THAT THERE WAS ONLY ONE
13 REASON THEY'D BE SPEEDING. YOUR HONOR, IF YOU WERE AT A
14 CLUB LATE AT NIGHT AND PEOPLE WERE SHOOTING AND YOU LEFT,
15 YOU'D BE SO THANKFUL TO BE ON THE ROAD YOU'D BE FLYING
16 HOME TO GET HOME.

17 THE COURT: NO QUESTION ABOUT THAT. THERE'S A LOT OF
18 REASONS I'D BE HEADED HOME AS FAST AS I COULD IF PEOPLE
19 WERE SHOOTING. I AGREE WITH THAT.

20 MR. FINNEY: I AGREE AND ASK THE COURT TO PLEASE
21 CONSIDER THIS -- IS A CHARGE THAT JUST GOT STUCK IN THE
22 LAST WEEK OR TWO, IT IS NOT BASED ON THE EVIDENCE THAT THE
23 INVESTIGATING OFFICERS HAD AND CERTAINLY NOT BASED ON THE
24 EVIDENCE THAT THERE -- MAYBE MR. TRAVIS HAD OR SOMEBODY
25 ELSE HAD BASED ON HIS STATEMENT AND BASED ON THE EVIDENCE

1 BY THE STATE.

2 HE DID NOT HAVE -- HE DID NOT WITHHOLD
3 INFORMATION FROM THE SUMTER COUNTY OR LEE COUNTY
4 OFFICERS. I WOULD ASK THE COURT TO MAKE AN EXHIBIT OF THE
5 ARREST WARRANT AND OF THE FIRST INDICTMENT WHICH I HAVE.

6 THE COURT: MARK AS A EXHIBIT.

7 MR. FINNEY: NOW GIVING TO THE COURT REPORTER.

8 MR. JORDAN: YOUR HONOR, I THINK CLEARLY UNDER THE
9 LAW OF STATE VERSUS CARLINSON, THE KNOWLEDGE REQUIREMENT
10 GOES TO CONCEALMENT OF A FELONY.

11 YOUR HONOR, IT WOULD BE OUR POSITION THAT THAT
12 IS IN ESSENCE THE STATEMENT AS UNDER KNOWLEDGE OF THE
13 FELONY COMMITTED IN THE ACCESSORY AFTER THE FACT CHARGE
14 WHICH THE COURT HAS ALREADY QUESTIONED AND GRANTED THE
15 DIRECTED VERDICT.

16 SO YOUR HONOR, CLEARLY NO WITNESS HAS PLACED
17 THESE INDIVIDUALS IN A POSITION TO KNOW WHAT HAPPENED
18 RIGHT THERE ON THE SCENE AT THAT SHOOTING. YOUR HONOR,
19 THE CASE OF STATE VERSUS CARSON IDENTIFIES THIS INDIVIDUAL
20 AS AN EYE WITNESS TO A CRIME. NOBODY HAS POINTED OUT OUR
21 INDIVIDUALS EVEN MY CLIENT AS AN EYE WITNESS TO THAT
22 OFFENSE.

23 AGAIN, THE STATE'S OWN CASE ELICITED FROM THE
24 STAND VIA OFFICER SIMON THAT HE HAD NOTHING TO SHOW THAT
25 MY CLIENT WAS WITHHOLDING ANY INFORMATION OR DID NOT TELL

1 THE TRUTH.

2 (COURT'S EXHIBIT NO. 1 AND 2 MARKED FOR
3 IDENTIFICATION).

4 MR. JORDAN: AND THAT IS THE STANDARDS WE HAVE. YOUR
5 HONOR, THE COURT HAS RECOGNIZED WHAT IS IN HIS -- MY
6 CLIENT'S STATEMENT AS FAR AS GUNS BEING THROWN OUT THE
7 WINDOW, BUT I WOULD AGAIN STATE THAT MS. NIELSEN HAS
8 CHOSEN TO TRY THESE DEFENDANTS JOINTLY.

9 THAT PART OF THE STATEMENT HAS BEEN REDACTED SO
10 THE JURY HAS HEARD NOTHING OF IT. THERE IS NOTHING TO GO
11 TO THE JURY THAT INDICATES THAT MY CLIENT IS NOT, HAS NOT
12 COME FORWARD, HAS NOT TOLD ALL HE KNOWS.

13 YOUR HONOR, THIS PARTICULAR FACT SITUATION
14 THREATENS TO STAND THE MERE PRESENCE, MERE KNOWLEDGE
15 CHARGE AND THE LAW IN THAT REGARD ON ITS HEAD. CLEARLY
16 IT'S THE LAW OF THIS STATE THAT MERE PRESENCE, MERE
17 KNOWLEDGE IS INSUFFICIENT.

18 AND WHEN YOU WEIGH THOSE, WE WILL HAVE THE COURT
19 TO CHARGE -- WHEN YOU WEIGH THOSE AGAINST THE CARSON CASE
20 AND MISPRISON OF A FELONY, YOUR HONOR, CLEARLY WE BELIEVE
21 THAT IT'S JUST INSUFFICIENT TO SHOW ANYTHING OTHER THAN
22 THESE GUYS WERE MERELY PRESENT, WERE NOT ASSOCIATED IN
23 THIS AND THE STATES OWN TESTIMONY WAS THAT THEY DIDN'T
24 HAVE ANYTHING TO SHOW THAT IT WAS -- TO CONTRADICT WHAT MY
25 CLIENT SAID. WE'D ASK THE COURT TO RECONSIDER.

1 THE COURT: THANK YOU. LET ME DEAL WITH MR. FINNEY'S
2 ARGUMENT FIRST. THAT IS THE FACT THAT THERE IS NOTHING IN
3 MR. WITHERSPOON'S STATEMENT THAT SAYS HE SAW OR HEARD OR
4 KNEW ANYTHING ABOUT ANY GUNS BEING THROWN FROM THE WINDOW
5 IS EXACTLY RIGHT.

6 OF COURSE HE DOES NOT. AND EVEN IF I DISREGARD
7 THAT PART OF MR. SINGLETON'S STATEMENT, THIS SAYS HE WAS
8 AWARE OF THIS AND AS YOU CORRECTLY POINTED OUT, MR.
9 FINNEY.

10 I SHOULD NOT IMPUTE MR. SINGLETON'S KNOWLEDGE TO
11 MR. WITHERSPOON IN THIS REGARD. WHAT WE DO HAVE IS THIS.
12 WE HAVE EVIDENCE, TESTIMONY OF AN EYE WITNESS WHO SAID TWO
13 FELLOWS RUNNING DOWN THE ROAD SHOOTING BACK OVER THEIR
14 SHOULDERS AT THE CLUB. THEY RUN AND THEY JUMP INTO A
15 BURGUNDY CADILLAC. THEY SPEED OFF.

16 SOME TEN TO 12 MILES DOWN THE ROAD THEY ARE
17 STOPPED. EVERYBODY GETS OUT AND SAYS WELL, THERE ARE NO
18 GUNS THERE OBVIOUSLY, SO THE GUNS HAVE BEEN DISPOSED OF.
19 I THINK THAT THAT IS ALMOST -- IT IS CONCLUSIVE. WE HAVE
20 TO ASSUME THAT THE GUNS ARE DISPOSED OF IF YOU BELIEVE THE
21 EVIDENCE OF THE WITNESSES, AND THAT'S A JURY ISSUE, THAT
22 THE GUNS WERE DISPOSED OF SOMETIME BETWEEN THE TIME THEY
23 GOT IN THE CAR AND THE TIME THE CAR WAS STOPPED.

24 NOW, THEN I THINK IT ALSO BECOMES A JURY ISSUE
25 AS TO WHETHER OR NOT THE DRIVER OF THE CAR GOES DOWN THE

1 ROAD 90 OR A HUNDRED MILES AN HOUR WOULD KNOW SOMEBODY LET
2 DOWN THE WINDOW THREW SOME GUNS OUT.

3 FEW TIMES IN MY YOUTH I WAS FOOLISH ENOUGH TO
4 RIDE IN AN AUTOMOBILE THAT SPEEDS. PRETTY OBVIOUS IF
5 SOMEBODY WOULD LET DOWN THE WINDOW TO THROW SOMETHING OUT
6 THE WINDOW, I THINK ESPECIALLY FOR THE DRIVER WOULD BE
7 COGNIZANT OF THAT.

8 AND AS TO MRS. MYSON AND WHEN THE POLICE
9 OFFICERS STOPPED THEM, THERE IS NO ONE INDICATES THAT.
10 THE POLICE OFFICERS CANDIDLY I CAN'T RECALL ALL THE
11 INFORMATION THEY WERE GIVEN BY THE POLICE OFFICERS OTHER
12 THAN THE FACT THERE WAS A SHOOTING AT THE CLUB THEY WERE
13 TRYING TO INVESTIGATE AND THEY WERE TOLD AT THAT POINT IN
14 TIME THAT BY THE FOLKS IN THE CAR THAT THEY HAD BEEN
15 DRIVEN OFF AND THEY HEARD THE SHOOTING.

16 BUT WHETHER OR NOT THERE IS ANY DIRECT EVIDENCE
17 IN MR. WITHERSPOON'S CASE, HE KNEW THE GUN WAS BEING
18 THROWN OUT, CLEARLY THE JURY CAN INFER SUBSTANTIALLY THAT
19 HE WAS AWARE OF THAT AND IN NO INSTANCE DID HE COME
20 FORWARD AND INDICATE HIS FULL KNOWLEDGE OF WHAT THE OTHER
21 WITNESSES SAY OCCURRED.

22 I REALIZE, OF COURSE, WE HAVE GOT A DIFFERENCE.
23 THEY SAY ONE THING, THE OTHERS SAY THE OTHER, BUT I'M
24 TAKING THIS EVIDENCE IN THE LIGHT MOST FAVORABLE TO THE
25 STATE AND THAT IN MY OPINION IS EVIDENCE OF CONCEALMENT

1 UNDER THE STATUTE.

2 NOW AS TO MR. SINGLETON, IF MERE PRESENCE -- THE
3 MERE KNOWLEDGE IS A FACTOR TO BE TAKEN INTO ACCOUNT IN THE
4 CASE OF ACCESSORY AFTER THE FACT, AND OBVIOUSLY WHEN THE
5 JURY IS BEING CHARGED TO ACCESSORY AFTER THE FACT, THEY
6 ARE CHARGED WITH MERE PRESENCE AT THE SCENE OF A CRIME
7 ABOUT -- WITHOUT MORE OBVIOUSLY AS INSUFFICIENT IN THAT
8 PARTICULAR REGARD.

9 BUT AS IN THE CASE OF STATE VERSUS CARSON, MERE
10 PRESENCE OF THAT PARTICULAR OFFENSE, TO FIT THAT
11 PARTICULAR CRIME WAS INDEED WHAT GOT HIM INVOLVED AND THE
12 FACT THAT SUBSEQUENTLY DENIED BEING THERE, DENIED KNOWING
13 ANYTHING ABOUT THE INCIDENT INITIALLY AND THEN
14 SUBSEQUENTLY CAME BACK AND MADE A STATEMENT, SAID I WAS
15 THERE BUT -- BUT I DON'T KNOW A THING ABOUT WHAT HAPPENED,
16 THAT WAS EXACTLY THE BASIS OF THE SUPREME COURT SUSTAINING
17 THE CONVICTION OF CARSON IN THAT PARTICULAR CASE.

18 IN THIS CASE THE JURY CAN CONCLUDE THAT THESE
19 INDIVIDUALS WERE THERE AND THAT THEY DID NOT IN MR.
20 SINGLETON'S CASE INITIALLY AT THE ROADSIDE STOP PROVIDE
21 THE POLICE OFFICERS WITH THE INFORMATION THAT WOULD HAVE
22 PERHAPS GENERATED MORE INVESTIGATION ON BEHALF OF THE
23 POLICE OFFICERS IN THAT REGARD.

24 AND UNLIKE ACCESSORY AFTER THE FACT, IT DOES NOT
25 APPEAR THAT MISPRISON IS AS OFFENSE SPECIFIC IN REGARD TO

1 THE CRIME, BUT NONETHELESS AT THE TIME WHETHER OR NOT THEY
2 KNEW THAT THE CRIME HAD BEEN COMMITTED AT THE TIME THEY
3 LEFT IS INSIGNIFICANT.

4 WHAT THEIR KNOWLEDGE AT THE TIME THEY WERE
5 STOPPED BY THE POLICE OFFICERS, QUESTIONED BY THE POLICE
6 OFFICERS IS THE TIME THAT IS SIGNIFICANT IN THIS REGARD.
7 THEY WERE TOLD BY THE POLICE OFFICERS THE SHOOTING. THEY
8 CONCEALED INFORMATION AND FOR THAT REASON THE MOTION ON
9 MISPRISON COUNT IS RESPECTFULLY DENIED LEAVING OPEN THE
10 ISSUE THAT MR. FINNEY HAS RAISED ABOUT THE COMMON -- I
11 HAVE GOT TO LOOK MORE AT THAT DURING THE LUNCH HOUR OR, OF
12 COURSE, DURING THE DAY.

13 I WAS NOT AWARE OF THAT UNTIL YOU JUST RAISED
14 IT, SO I WILL INVESTIGATE THAT FURTHER. ALL RIGHT. ARE
15 WE READY TO PROCEED NOW, FOLKS? BRING IN THE JURY,
16 PLEASE.

17 MR. ROGERS: JUDGE--

18 THE COURT: FOLKS, BETTER BE GOOD. LET'S HEAR IT.
19 YES, SIR.

20 MR. ROGERS: THE STATE HAS RESTED AS I UNDERSTAND.

21 THE COURT: YES, SIR.

22 MR. ROGERS: AND AS OF LAST NIGHT, I -- MY CLIENT AT
23 LEAST WAS PLANNING ON TESTIFYING. HE HAS INFORMED ME THIS
24 MORNING THAT AFTER SOME REFLECTION HE HAS CHANGED HIS MIND
25 AND DECIDED NOT TO TESTIFY, AND I AM SIMPLY ASKING THE

1 COURT TO MAKE AN INQUIRY WITH MR. TAYLOR.

2 THE COURT: THAT'S--

3 MR. DOBY: LIKEWISE FOR MARCUS EVANS AS WELL, YOUR
4 HONOR.

5 THE COURT: ALL RIGHT. YOU'RE RIGHT. I SHOULDN'T
6 HAVE RUSHED YOU THROUGH. MR. EVANS, MR. TAYLOR, GENTLEMEN
7 IF YOU WILL STAND IN PLACE RIGHT WHERE YOU ARE. PLEASE
8 RAISE YOUR RIGHT HAND.

9 MARCUS EVANS AND GILARON TAYLOR, BEING
10 FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

11 THE COURT: THANK YOU. YOU ALL CAN BE SEATED. MR.
12 EVANS, MR. TAYLOR, YOU MAY BE CALLED AS WITNESSES IN THIS
13 CASE ON YOUR OWN BEHALF. I AM NOT SURE OF WHAT YOUR
14 DECISION IS. BEFORE YOU REACH THAT DECISION HOWEVER, I
15 HAVE TO TELL YOU ABOUT THE PROTECTIONS THAT ARE GIVEN TO
16 YOU BY THE FIFTH AMENDMENT OF OUR UNITED STATES
17 CONSTITUTION AND BY SIMILAR PROVISIONS OF OUR SOUTH
18 CAROLINA CONSTITUTION.

19 OUR UNITED STATES CONSTITUTION SAYS THAT NO
20 PERSON CAN BE COMPELLED IN ANY CRIMINAL PROCEEDING TO BE A
21 WITNESS AGAINST HIMSELF. AND WHAT THIS MEANS IS THAT YOU
22 CANNOT BE FORCED OR COMPELLED TO TESTIFY AGAINST YOURSELF
23 IN THIS PARTICULAR CASE. MR. EVANS, DO YOU UNDERSTAND
24 THAT?

25 MR. EVANS: YES, SIR.

1 THE COURT: MR. TAYLOR, DO YOU?

2 MR. TAYLOR: YES, SIR.

3 THE COURT: IF YOU CHOOSE NOT TO TESTIFY, AS YOU HAVE
4 A PERFECT RIGHT TO DO, THE JURY WILL BE INSTRUCTED THAT
5 THEY CANNOT TAKE THAT INTO ACCOUNT IN DECIDING THE
6 QUESTION OF YOUR GUILT OR YOUR INNOCENCE, THAT THEY CANNOT
7 HOLD THAT AGAINST YOU IN ANY WAY WHATSOEVER.

8 AS A MATTER OF FACT, THEY WILL BE INSTRUCTED
9 THAT THEY CANNOT EVEN DISCUSS THAT IN THE JURY ROOM IN THE
10 CONSIDERATION OF YOUR GUILT OR YOUR INNOCENCE. DO YOU
11 UNDERSTAND THAT, MR. EVANS?

12 MR. EVANS: YES, SIR.

13 THE COURT: DO YOU UNDERSTAND THAT, MR. TAYLOR?

14 MR. TAYLOR: YES, SIR.

15 THE COURT: NOW, IF YOU GIVE UP OR WAIVE THE
16 PROTECTION WHICH IS GIVEN TO YOU BY THE CONSTITUTION AS I
17 HAVE JUST DECLARED THAT TO YOU AND TAKE THE STAND, YOU
18 WILL THEN BE SUBJECT TO THE SAME RULES OF EVIDENCE AND
19 LAWS THAT GOVERN EVERY OTHER WITNESS.

20 YOU WILL TAKE THE STAND, YOU CAN BE EXAMINED BY
21 YOUR LAWYER AND YOU CAN BE CROSS-EXAMINED BY THE OTHER
22 LAWYERS FOR THE STATE IN THIS CASE INCLUDING THE LAWYER
23 FOR THE STATE ON ANY ISSUE THAT IS RELEVANT IN THIS
24 PARTICULAR CASE. YOU WOULD BE SUBJECT TO IMPEACHMENT TO
25 THE SAME EXTENT AS ANY OTHER WITNESS. MR. EVANS, DO YOU

1 UNDERSTAND THAT?

2 MR. EVANS: YES, SIR.

3 THE COURT: MR. TAYLOR, DO YOU?

4 MR. TAYLOR: YES, SIR.

5 THE COURT: SO IF YOU TAKE THE STAND AND TESTIFY IN
6 THIS CASE, IT MUST BE WITH A FULL KNOWLEDGE OF THE RIGHTS
7 THAT YOU HAVE UNDER THE FIFTH AMENDMENT AND YOUR DECISION
8 TO TAKE THE STAND MUST BE MADE KNOWINGLY AND INTELLIGENTLY
9 AND OF YOUR OWN FREE WILL AND ACCORD. MR. EVANS, DO YOU
10 UNDERSTAND THAT?

11 MR. EVANS: YES, SIR.

12 THE COURT: MR. TAYLOR, DO YOU UNDERSTAND THAT?

13 MR. TAYLOR: YES, SIR.

14 THE COURT: MR. EVANS, DO YOU HAVE ANY QUESTIONS THAT
15 YOU WANT TO ASK ME ABOUT YOUR RIGHT TO TESTIFY OR YOUR
16 RIGHT NOT TO TESTIFY?

17 MR. EVANS: NO, SIR.

18 THE COURT: MR. TAYLOR, DO YOU?

19 MR. TAYLOR: NO, SIR.

20 THE COURT: ALL RIGHT. MR. DOBY, DOES THAT COVER THE
21 POINTS SUFFICIENTLY FOR YOU ON BEHALF OF MR. EVANS?

22 MR. DOBY: YES, SIR, YOUR HONOR.

23 THE COURT: MR. ROGERS, ON BEHALF OF MR. TAYLOR?

24 MR. ROGERS: IT DOES.

25 THE COURT: ALL RIGHT. NOW GENTLEMEN, ARE WE READY

1 FOR THE JURY?

2 MR. ROGERS: YES, YOUR HONOR, WITH ONE CAVEAT. IN
3 LIGHT OF THAT, I CONTACTED MY WITNESS THIS MORNING AND I
4 WAS NOT AWARE THAT THEY WERE NOT GOING TO TESTIFY. I HAVE
5 THEM TO BE HERE AT 11:00. I JUST ASK THE COURT FOR SOME
6 CONSIDERATION --

7 THE COURT: THAT WILL PROBABLY BE--

8 MR. ROGERS: -- IN THAT REGARDS.

9 THE COURT: IF WE HAVE TO SKIP AROUND AND TAKE UP,
10 CALL WITNESSES OUT OF ORDER, WE CAN DO THAT.

11 MR. ROGERS: THAT WILL BE FINE.

12 MS. NIELSEN: JUST FOR THE RECORD, I HAVE BEEN
13 PROVIDED FIVE WITNESS NAMES, THREE FOR THE DEFENDANT, ONE
14 FOR MR. ROGERS AND ONE FROM MR. DOBY. WE HAVE RECORDS ON
15 THOSE FIVE INDIVIDUALS, BUT I DON'T HAVE ANY MORE, SO I
16 DON'T WANT ANY SURPRISES LATER.

17 THE COURT: THAT'S IT. MR. DOBY, IS MR. EVANS READY
18 TO PROCEED?

19 MR. DOBY: YES, SIR, YOUR HONOR.

20 THE COURT: ALL RIGHT. IS MR. EVANS GOING TO
21 TESTIFY?

22 MR. DOBY: YOUR HONOR, HE TELLS ME HE IS NOT GOING TO
23 TESTIFY.

24 THE COURT: ALL RIGHT. DO YOU HAVE ANY OTHER
25 WITNESSES THAT YOU WILL OFFER ON BEHALF OF MR. EVANS?

1 MR. DOBY: I DO, YOUR HONOR.

2 THE COURT: ALL RIGHT. GOOD. JUST TRYING TO MAKE
3 SURE I DIDN'T GET THE JURY OUT HERE THEN HAVE TO REORDER
4 THINGS. SO YOUR WITNESS WILL PROBABLY TAKE IT PART OF THE
5 TIME BETWEEN NOW AND 11:00 IN ANY EVENT, RIGHT?

6 MR. DOBY: FAIRLY SHORT, YOUR HONOR.

7 THE COURT: ALL RIGHT. AFTER MR. EVANS RESTS, MR.
8 ROGERS, IF MR. TAYLOR'S WITNESSES ARE NOT HERE, MR.
9 JORDAN, DO YOU HAVE YOUR WITNESSES HERE PREPARED TO GO
10 FORWARD?

11 MR. JORDAN: YOUR HONOR, WE DON'T HAVE ANY WITNESSES,
12 AND AS OF YESTERDAY MY CLIENT INTENDED TO TESTIFY. I ASK
13 THAT YOU INSTRUCT HIM THAT ALL OF HIS CONSTITUTIONAL
14 RIGHTS ALL THAT YOU HAVE JUST GONE OVER -- HE WAS PAYING
15 ATTENTION -- APPLY TO HIM AS WELL.

16 I BELIEVE IT IS STILL OUR INTENTION HE DOES NOT
17 WISH TO TAKE THE STAND. WE DO NOT HAVE ANY CHARACTER
18 WITNESSES OR ANY OTHER WITNESSES.

19 THE COURT: ALL RIGHT. MR. FINNEY, WHAT ABOUT MR.
20 WITHERSPOON? IF WE GET TO HIM EARLY ON THIS MORNING, IS
21 HE PREPARED?

22 MR. FINNEY: HE WILL TAKE THE STAND AND HE HAS HIS
23 MOTHER, HIS FIANCEE AND HIS GRANDMOTHER HERE. THEY WILL
24 BE FAIRLY SHORT.

25 THE COURT: ALL RIGHT. THAT'S FINE. I APPRECIATE

1 THAT.

2 MS. NIELSEN: AND YOUR HONOR, I BELIEVE THOSE ARE
3 PEOPLE THAT HAVE BEEN IN THE COURTROOM. WERE THEY NOT
4 SUPPOSED TO BE SEQUESTERED?

5 MR. FINNEY: THEY WERE, THEY ARE NOT FACT WITNESSES.
6 THEY WEREN'T AT THE CLUB. THAT WAS MY INSTRUCTION THAT
7 ANYBODY THAT WAS A FACT WITNESS...

8 THE COURT: THAT'S RIGHT.

9 MR. FINNEY: THAT HIS MOTHER IS GOING TO TESTIFY
10 ABOUT A PARTY THAT SHE HAD AT HER HOUSE THAT HE WAS AT
11 EARLIER THAT EVENING, BUT THAT HE LEFT THE PARTY GOING
12 WITH THE FELLOWS DOWN TO THE COUNTRY CLUB, SO I MEAN
13 THAT'S ALL HER TESTIMONY IS GOING TO BE ABOUT.

14 THE COURT: THAT'S RIGHT. IT WAS ONLY FACT WITNESSES
15 THAT WERE SUPPOSED TO BE SEQUESTERED. MR. DOBY?

16 MR. DOBY: YOUR HONOR, I HAVE MY WITNESS AROUND DOWN
17 THE HALL. WHENEVER YOU ARE READY, I WILL GET HER.

18 THE COURT: ALL RIGHT. THANK YOU. MR. SINGLETON AND
19 MR. WITHERSPOON, GENTLEMEN, LET ME GET YOU TO STAND AND
20 RAISE YOUR RIGHT HANDS.

21 MR. SINGLETON AND MR. WITHERSPOON,
22 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

23 THE COURT: MR. SINGLETON, MR. WITHERSPOON, YOU JUST
24 HEARD ME REVIEW WITH MR. EVANS AND MR. TAYLOR THEIR
25 CONSTITUTIONAL RIGHTS REGARDING TESTIFYING OR NOT

1 TESTIFYING IN THIS CASE. THE SAME RIGHTS WHICH I HAVE
2 EXPLAINED TO THEM IN YOUR PRESENCE AND ON THIS RECORD ALSO
3 APPLY TO YOU ALL.

4 THAT MEANS YOU HAVE GOT THE RIGHT TO TESTIFY AND
5 YOU ALSO HAVE THE RIGHT NOT TO TESTIFY. YOU HAVE THE SAME
6 RIGHTS AGAINST SELF INCRIMINATION THAT I HAVE EXPLAINED TO
7 THEM. YOU CANNOT BE FORCED OR COMPELLED TO TESTIFY IN
8 THIS CASE AGAINST YOURSELVES.

9 IF YOU GIVE UP THAT RIGHT TO TESTIFY AND TAKE
10 THE STAND, JUST AS I INDICATED TO THOSE TWO, YOU WILL BE
11 SUBJECT TO CROSS-EXAMINATION BY THE LAWYERS IN THIS CASE
12 AND YOU CAN BE IMPEACHED, CONTRADICTED TO THE SAME EXTENT
13 THAT ANY OTHER WITNESSES CAN BE.

14 MR. SINGLETON, DID YOU HEAR ME WHERE I REVIEWED
15 WITH MR. EVANS AND MR. TAYLOR THEIR RIGHTS REGARDING
16 TESTIFYING AND NOT TESTIFYING?

17 MR. SINGLETON: YES, SIR.

18 THE COURT: EXCUSE ME?

19 MR. SINGLETON: YES, SIR.

20 THE COURT: DO YOU UNDERSTAND THOSE SAME RIGHTS APPLY
21 TO YOU?

22 MR. SINGLETON: YES, SIR.

23 THE COURT: DO YOU HAVE ANY QUESTIONS THAT YOU WANT
24 TO ASK ME ABOUT YOUR RIGHT TO TESTIFY OR NOT TO TESTIFY?

25 MR. SINGLETON: NO, SIR.

1 THE COURT: MR. WITHERSPOON, YOU HAVE HEARD ME
2 EXPLAIN THOSE RIGHTS?

3 MR. WITHERSPOON: YES, SIR.

4 THE COURT: AND DO YOU UNDERSTAND THAT THOSE SAME
5 RIGHTS APPLY TO YOU?

6 MR. WITHERSPOON: YES, SIR.

7 THE COURT: DO YOU HAVE ANY QUESTIONS THAT YOU WANT
8 TO ASK ME ABOUT YOUR RIGHT TO TESTIFY OR NOT TO TESTIFY?

9 MR. WITHERSPOON: NO, SIR.

10 THE COURT: THANK YOU. ALL RIGHT. MR. JORDAN, DOES
11 THAT COVER MATTERS SUFFICIENTLY FOR MR. SINGLETON?

12 MR. JORDAN: YES, YOUR HONOR.

13 THE COURT: AND MR. FINNEY, I THINK MR. WITHERSPOON
14 IS GOING TO TESTIFY IN ANY EVENT; IS THAT RIGHT?

15 MR. FINNEY: YES, SIR.

16 THE COURT: ALL RIGHT. YOU CAN BRING HER IN. BRING
17 IN THE JURY, PLEASE SIR.

18 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 10:19
19 A.M.)

20 THE COURT: LADIES AND GENTLEMEN, THE STATE RESTED
21 ITS CASE LATE YESTERDAY AFTERNOON AS YOU RECALL. WE HAVE
22 BEEN HERE THIS MORNING DEALING WITH MATTERS OF LAW THAT WE
23 ALSO HAVE TO DEAL, ALWAYS HAVE TO DEAL WITH IN CASES OF
24 THIS SORT AFTER THE STATE HAS RESTED ITS CASE.

25 AND NOW WE ARE PREPARED TO GO FORWARD. AS YOU

LATORIA DAVIS - DIRECT BY DOBY

1 KNOW, THE DEFENDANTS DON'T HAVE ANY OBLIGATION TO PRESENT
2 EVIDENCE OR TESTIMONY, BUT THEY HAVE THE RIGHT TO PRESENT
3 EVIDENCE AND TESTIMONY IF THEY CHOOSE TO DO SO. WE TURN
4 FIRST OF ALL TO MR. DOBY ON BEHALF OF MR. EVANS. MR.
5 DOBY?

6 MR. DOBY: MAY IT PLEASE THE COURT. YOUR HONOR, I
7 CALL LATORIA DAVIS.

8 THE COURT: MS. DAVIS, COME FORWARD PLEASE MA'AM AND
9 BE SWORN.

10 LATORIA DAVIS, BEING FIRST DULY
11 SWORN, TESTIFIED AS FOLLOWS:

12 DIRECT EXAMINATION BY MR. DOBY:

13 Q LATORIA, WHERE DO YOU LIVE?

14 A SUMTER, SOUTH CAROLINA.

15 Q AND ARE YOU A NATIVE OF SUMTER?

16 A YES, SIR.

17 Q AND YOU MARRIED, HAVE A FAMILY?

18 A I'M SINGLE. I HAVE A DAUGHTER.

19 Q OKAY. HOW OLD IS YOUR DAUGHTER?

20 A FOUR YEARS OLD.

21 Q OKAY. AND WHERE DO YOU WORK THERE IN SUMTER?

22 A WITH DISTRICT 17 AT CHESTNUT OAKS MIDDLE SCHOOL.

23 Q OKAY. NOW LATORIA, DO YOU KNOW MARCUS EVANS?

24 A YES, SIR.

25 Q HOW LONG HAVE YOU KNOWN MARCUS EVANS?

- 1 A PROBABLY SINCE GRADE SCHOOL.
- 2 Q OKAY. AND YOU ALSO KNOW MR. RON TAYLOR?
- 3 A YES, SIR.
- 4 Q MR. WITHERSPOON?
- 5 A YES, SIR.
- 6 Q AND MR. TRAVIS AS WELL?
- 7 A YES, SIR.
- 8 Q HOW LONG HAVE YOU KNOWN THEM?
- 9 A PRETTY MUCH ALL OF ABOUT GRADE SCHOOL. MR. TAYLOR
- 10 PROBABLY ABOUT THREE OR FOUR YEARS.
- 11 Q AND YOU BASICALLY GREW UP WITH MOST OF THEM THEN?
- 12 A YES, SIR.
- 13 Q HOW OLD ARE YOU?
- 14 A TWENTY-FOUR.
- 15 Q BEFORE NOVEMBER THE 14TH OF 1999, WERE YOU HAVING A
- 16 RELATIONSHIP WITH MARCUS EVANS?
- 17 A YES, SIR.
- 18 Q WOULD YOU CALL YOURSELF BOYFRIEND GIRLFRIEND?
- 19 A YES, SIR.
- 20 Q OKAY. WERE YOU SUPPOSED TO HAVE SEEN MARCUS EVANS
- 21 THAT NIGHT PRIOR TO DAVIS COUNTRY CLUB?
- 22 A YES, SIR.
- 23 Q AND WHERE WERE YOU SUPPOSED TO SEE HIM?
- 24 A I WAS SUPPOSED TO SEE HIM AT HIS SISTER'S HOUSE AT
- 25 HIS MOTHER'S BIRTHDAY PARTY.

1 Q AND DID HE GO TO HIS MOTHER'S BIRTHDAY PARTY?

2 A NO, SIR, THEY WENT TO ANOTHER ENGAGEMENT.

3 Q OKAY. SO HE WENT TO SOMEBODY ELSE'S HOUSE?

4 A UH-HUH.

5 Q ANOTHER PARTY?

6 A YES, SIR..

7 Q FROM WHAT YOU UNDERSTAND. AND WERE YOU SORT OF MAD
8 WITH HIM THEN?

9 A YES, SIR.

10 Q OKAY. AND WHAT TIME WAS HE SUPPOSED TO BE THERE AT?

11 A WELL, THERE THEY WERE SUPPOSED TO COME AFTER THE
12 FIGHT. IT WAS A FIGHT ON TELEVISION. HE WAS SUPPOSED TO
13 COME TO HIS SISTER'S HOUSE AFTER THEY WATCHED THE FIGHT ON
14 TELEVISION.

15 Q OKAY. AND WHEN WAS THE FIRST TIME THAT YOU SAW THEM
16 -- HIM THEN ON NOVEMBER THE 14TH OF 1999?

17 A AT THE CLUB.

18 Q OKAY. AND WHAT TIME DID YOU GO TO THE CLUB THAT
19 NIGHT?

20 A PROBABLY WAS AROUND 1:30, SOMEWHERE AROUND 1:30,
21 2:00, SOMEWHERE UP IN THERE.

22 Q DID YOU ACTUALLY GO INTO THE CLUB?

23 A NO, SIR.

24 Q YOU WERE OUTSIDE OF THE CLUB?

25 A YES, SIR.

1 Q DO YOU RECALL MARCUS COMING UP TO THE CLUB AT SOME
2 POINT THAT NIGHT?

3 A YES, SIR.

4 Q AND DO YOU REMEMBER ABOUT WHAT TIME THAT WAS?

5 A I'M NOT SURE.

6 Q AND WHAT HAPPENED WHEN HE GOT TO THE CLUB THERE?

7 A WELL, I WAS SITTING IN THE CAR IN FRONT OF THE CLUB
8 AND THEY WALKED TO THE DOOR AND THEN THEY CAME BACK FROM
9 THE DOOR AND I WAS PARKED IN FRONT OF THE CAR AND--

10 Q WHOSE CAR WAS IT?

11 A MY CAR.

12 Q OKAY. DID YOU DRIVE THERE?

13 A UH-HUH.

14 Q ALL RIGHT. AND IF YOU WILL TAKE THE POINTER AND SHOW
15 US ON THAT DIAGRAM WHERE YOUR CAR WAS PARKED. THIS BEING
16 THE CLUB RIGHT HERE, THIS BEING THE CLUB AND THAT BEING
17 THE DRIVEWAY IN FRONT OF THE CLUB RIGHT THERE. YOU TELL
18 US WHERE YOU PARKED.

19 THE COURT: CAN YOU ALL SEE THAT ON THE END DOWN
20 THERE? CAN YOU?

21 A MY CAR WAS RIGHT HERE BEHIND THE POLICE OFFICER'S CAR
22 ON THE GRASS LIKE THIS. THIS IS RIGHT LIKE A DIRT PATHWAY
23 ROADWAY.

24 Q OKAY. AND WHAT KIND OF CAR DID YOU HAVE?

25 A A TOYOTA COROLLA.

1 Q DO YOU RECALL THERE BEING OTHER CARS PARKED IN THE
2 GENERAL AREA THERE?

3 A JUST A COUPLE MORE POLICE CARS UP HERE.

4 Q WHERE WERE THOSE POLICE CARS PARKED?

5 A DIRECTLY IN FRONT LIKE SOME FACING THIS WAY, THEN
6 MINE WAS BEHIND THE POLICE CAR FACING -- THEY WERE FACING
7 EACH OTHER YOU COULD SAY.

8 Q WAS YOUR CAR PARKED FAIRLY CLOSE TO THE POLICE CAR?

9 A UH-HUH, DIRECTLY BEHIND IT.

10 Q ALL RIGHT. AND WERE THERE A LOT OF PEOPLE THAT WERE
11 STANDING AROUND OUTSIDE?

12 A NOT AT FIRST.

13 Q ALL RIGHT. HOW ABOUT AFTER MARCUS GOT THERE, WERE
14 THERE A LOT OF PEOPLE STANDING AROUND?

15 A COULD HAVE BEEN LIKE 15, 20 MINUTES AFTER, YEAH.

16 Q OKAY. AND WHAT HAPPENED WHEN MARCUS -- WHEN YOU
17 FIRST SAW MARCUS, WHERE WAS HE?

18 A STANDING RIGHT IN FRONT OF THE -- RIGHT IN FRONT OF
19 MY CAR BY THE POLICE CAR.

20 Q ALL RIGHT. DID HE COME UP TO YOU OR DID YOU APPROACH
21 HIM?

22 A I WENT UP TO HIM.

23 Q OKAY. AND DID YOU HAVE A DISCUSSION WITH HIM THEN?

24 A UH-HUH.

25 Q WERE YOU FUSSING AT HIM?

1 A UH-HUH.

2 THE COURT: IF YOU'LL SAY YES OR NO, PLEASE MA'AM.

3 A I'M SORRY. YES, SIR.

4 Q NOT COMING TO HIS MOTHER'S PARTY?

5 A YES, SIR AND FUSSING BECAUSE --

6 Q OKAY.

7 A -- HE WASN'T SUPPOSED TO BE OUT THERE. I WASN'T
8 SUPPOSED TO BE OUT THERE EITHER.

9 Q OKAY. AND SO YOU HAD A DISCUSSION WITH HIM THERE.
10 HOW LONG DID THAT LAST?

11 A PROBABLY ABOUT 15 MINUTES, AROUND 15, YEAH.

12 Q OKAY. AND DURING THAT DISCUSSION, DID ANYONE ELSE
13 COME UP AND TALK TO YOU OR TO MARCUS?

14 A A BUNCH OF BOYS WERE AROUND THE CAR LIKE RIGHT IN
15 FRONT OF THE CAR.

16 Q OKAY. AND WHAT HAPPENED AFTER THEY CAME UP TO THE
17 FRONT OF THE CAR THERE?

18 A THEY WERE I GUESS -- WELL, FIRST OF ALL BEFORE -- LET
19 ME GET THIS STRAIGHT. WHEN THEY WAS IN FRONT OF THE CAR,
20 DID -- IN THE CAR, THEN WHEN THE BOYS CAME UP I WAS
21 SITTING IN THE CAR AT THE TIME AND I SAW SOME BOYS LIKE IN
22 FRONT OF MARCUS AND THINGS JUST DIDN'T LOOK RIGHT, SO I
23 GOT OUT THE CAR AND I TOLD HIM COME ON LET'S GO, LET'S GET
24 IN THE CAR.

25 I WAS IN FRONT OF MY CAR. I WAS LIKE AROUND MY

1 CAR AT THIS TIME. SO AFTER THAT--

2 Q WHEN YOU SAY YOU ALL, WHO WAS WE?

3 A A BUNCH OF BOYS AND ME, RON AND MARCUS.

4 Q OKAY.

5 A AND A BOY WALKED OFF AND THAT'S -- ASSUME WAS THE
6 VICTIM WALKED OFF FROM THE REST OF THE CROWD.

7 Q DID YOU KNOW WHO THAT PERSON WAS?

8 A NO, SIR.

9 Q HAD YOU EVER SEEN HIM BEFORE?

10 A NO, SIR.

11 Q HAD YOU EVER SEEN ANY OF THE INDIVIDUALS THAT YOU
12 DESCRIBED AS BEING AROUND YOUR CAR BEFORE THAT NIGHT?

13 A NO, SIR.

14 Q DID YOU KNOW ANY OF THEIR NAMES?

15 A NO, SIR.

16 Q OKAY. GO AHEAD. TELL US.

17 A AND WHILE WE WAS STANDING BY THE CAR, WE SAW MARK
18 COME ON, LET'S GET INTO THE CAR. SO MARK SAY LET'S GO.
19 THEN BY THE TIME, YOU KNOW, WE WAS PASSING AWAY TALKING
20 ABOUT GETTING IN THE CAR AND STUFF, SOME FIRE STARTED
21 COMING FROM BEHIND ME.

22 Q ALL RIGHT. AND WHERE WAS MARCUS STANDING WHEN YOU
23 FIRST HEARD THAT?

24 A ON THE DRIVER'S SIDE. BOTH OF US WAS STANDING ON THE
25 DRIVER SIDE OF MY CAR.

1 Q ALL RIGHT. AND AFTER YOU HEARD THE FIRE, WHAT
2 HAPPENED THEN?

3 A MARCUS TOLD ME TO GET DOWN AND I PANICKED. COUPLE
4 MORE SHOTS FIRED AND I KIND OF LIKE JUMPED UP AND GRABBED
5 THE TAIL OF MY CAR -- MY COAT, I'M SORRY. WE WERE RUNNING
6 TOWARDS THE CLUB AND HE PUSHED ME IN THE CLUB. WHEN I GOT
7 IN THE CLUB, HE WASN'T BEHIND ME.

8 Q OKAY. DID YOU -- YOU HEARD GUNSHOTS IS WHY YOU
9 PANICKED?

10 A UH-HUH.

11 Q OKAY. COULD YOU TELL FROM WHICH DIRECTION THOSE
12 GUNSHOTS WERE COMING FROM?

13 A STANDING LIKE THIS, WAS COMING FROM TOWARDS BACK ME.
14 STAND BEHIND ME AND MARCUS STANDING FACE TO FACE. IT WAS
15 COMING LIKE FROM THE BACK.

16 Q AND DID YOU EVER SEE WHO WAS DOING THAT SHOOTING?

17 A NO, SIR.

18 Q AND DO YOU RECALL HOW MANY SHOTS YOU HEARD BEFORE YOU
19 STARTED TOWARDS THE CLUB?

20 A NOT EXACTLY. I DIDN'T COUNT THEM.

21 Q WAS IT A QUICK PROCESS OR DID IT TAKE SOME TIME?
22 WHAT DO YOU REMEMBER ABOUT THE TIME THAT WAS INVOLVED?

23 A JUST HEARD LIKE A FEW I GUESS POP, POP, POP. I GUESS
24 I REALLY DIDN'T KIND OF -- REALLY NOT SURE. I CAN'T SAY.

25 Q DO YOU KNOW HOW MANY SECONDS IT TOOK FROM THE TIME

1 THAT YOU HEARD THE FIRST SHOT UNTIL THE TIME THAT YOU
2 HEARD THE LAST SHOT?

3 A NO, SIR.

4 Q DID YOU EVER HEAR ANY SHOTS AFTER YOU HAD GOTTEN INTO
5 THE CLUB?

6 A I DISTINCTIVELY REMEMBER HEARING ONE AND THAT'S WHEN
7 THE POLICE OFFICERS LEAVING OUT THE CLUB, THE BLACK
8 OFFICER AND I HEARD ONE SHOT.

9 Q OKAY.

10 A AND DIDN'T HEAR ANY MORE AFTER THAT.

11 Q DID YOU KNOW THAT OFFICER PRIOR TO NOVEMBER THE 14TH
12 OF '99? HAD YOU EVER SEEN HIM BEFORE?

13 A YEAH.

14 Q WAS LIEUTENANT DANIEL SIMON WHO IS SEATED AT THE
15 TABLE OVER THERE?

16 A YEAH.

17 Q OKAY. SO YOU SAW HIM COMING OUT OF THE CLUB?

18 A UH-HUH.

19 Q DID YOU SEE WHAT HE DID AFTER HE GOT OUT OF THE CLUB?

20 A NO, SIR. PROBABLY ABOUT TWO OR THREE MINUTES AFTER
21 WE WENT OUT, NO MORE THAN FIVE MINUTES AFTER HE WENT OUT
22 AFTER I GOT IN MY CAR AND I LEFT.

23 Q OKAY. NOW, WHEN YOU WERE GOING TOWARDS THE CLUB, WAS
24 MARCUS IN FRONT, BACK OR WHERE WAS HE?

25 A WE WAS TOGETHER. HE HAD LIKE THE BOTTOM OF MY

1 JACKET. WE RAN IN BETWEEN. LIKE I SAID, THE POLICE CAR
2 WAS RIGHT HERE, MY CAR WAS HERE. WE RAN IN BETWEEN THE
3 CARS TO GET TO THE CLUB. THE DOOR IS PROBABLY RIGHT HERE,
4 PARKED RIGHT HERE, SO WE RAN IN BETWEEN THE CARS AND UP TO
5 THE DOOR.

6 Q OKAY. AND AFTER YOU GOT UP TO THE DOOR, DID YOU SEE
7 MARCUS AFTER THAT?

8 A NOT ONCE I GOT IN, NO, SIR.

9 Q OKAY. WERE THERE PEOPLE COMING OUT OF THE CLUB AT
10 THAT TIME?

11 A ONLY PERSON I REMEMBER COMING OUT WAS THE POLICE
12 OFFICER.

13 Q OKAY. WHEN YOU WENT BACK OUTSIDE, DID YOU SEE
14 MARCUS?

15 A NO, SIR.

16 Q YOU GAVE A STATEMENT TO THE POLICE AS WELL I BELIEVE
17 SOMETIME AFTER THAT; IS THAT CORRECT?

18 A I SURE DID.

19 Q OKAY. AND YOU GAVE A WRITTEN STATEMENT?

20 A YES, SIR.

21 Q AND THAT'S WHAT YOU TOLD THEM?

22 A UH-HUH.

23 Q OKAY. DID -- WHEN YOU WENT INTO THE CLUB, DO YOU
24 KNOW HOW LONG AFTER YOU WENT INTO THE CLUB THAT YOU HEARD
25 THAT FINAL SHOT?

1 A COULD HAVE BEEN -- NO, SOON AS I GOT IN THERE, A
2 COUPLE -- ABOUT PROBABLY A MINUTE, NOT EVEN A MINUTE, I
3 HEARD JUST ONE SHOT AND HE CAME OUT.

4 Q OKAY.

5 A AND THAT'S ALL I CAN REMEMBER HEARING.

6 Q ALL RIGHT. YOU DIDN'T SEE MARCUS AGAIN THAT NIGHT?

7 A LATER ON, YES, SIR.

8 Q LATER ON?

9 A UH-HUH.

10 Q WHERE DID YOU SEE HIM LATER ON?

11 A AT MY HOUSE.

12 Q OKAY. DID HE COME TO YOUR HOUSE?

13 A UH-HUH.

14 Q OKAY. THANK YOU. ANSWER ANY QUESTIONS THE OTHER
15 LAWYERS FOR THE DEFENSE MAY HAVE.

16 THE COURT: MR. ROGERS?

17 MR. ROGERS: THANK YOU, YOUR HONOR.

18 CROSS-EXAMINATION BY MR. ROGERS:

19 Q MS. DAVIS, AS I UNDERSTAND YOUR TESTIMONY, YOU WERE
20 STANDING THERE TALKING TO MARCUS AND WHERE WAS RON?

21 A ON THE BACK OF THE POLICE CAR IN FRONT OF MY CAR.

22 Q OKAY. AND THAT WAS RIGHT THERE IN FRONT OF THE CLUB?

23 A UH-HUH.

24 Q AND SO IT'S -- AND SOME LATER POINT YOU FIRST HEARD
25 SHOTS?

1 A UH-HUH.

2 Q AND YOUR TESTIMONY WAS COMING FROM BEHIND YOU, SO
3 WOULD THAT HAVE BEEN TOWARD THE DIRECTION OF THE STREET?

4 A YEAH, TOWARDS THIS.

5 Q OKAY. AND WHEN YOU HEARD THOSE SHOTS, WHERE WAS RON
6 THEN?

7 A WHEN I HEARD THE SHOTS, LIKE I SAID, WE ALL RAN
8 TOWARDS THE CLUB.

9 Q OKAY. AND YOU SAW RON RUN?

10 A YEAH, I SAW HIM RUN LIKE RIGHT UP -- LIKE HE'S ON THE
11 BACK OF THE CAR. MY CAR IS RIGHT HERE. IT'S A LITTLE
12 PATHWAY RIGHT HERE, SO ALL HE HAD TO DO WAS RUN OUT
13 TOWARDS THIS WAY, AND I SAW HIM RUN OUT TOWARDS THAT WAY,
14 BUT I DON'T KNOW WHERE HE WENT AFTER THAT.

15 Q OKAY. AND THEN YOU RAN ON AND WERE PUSHED IN THE
16 CLUB?

17 A UH-HUH.

18 Q AND YOU DIDN'T SEE MARCUS AFTER THAT?

19 A NO, SIR.

20 Q AND YOU DIDN'T SEE RON?

21 A NO, SIR.

22 Q BUT CLEARLY THE FIRE THAT YOU SAW AND HEARD CAME FROM
23 THE STREET DIRECTION?

24 A THAT I HEARD, YES, SIR.

25 Q THANK YOU. OH, LET ME ASK YOU THIS. HOW MANY PEOPLE

1 WERE STANDING OUT THERE AT THAT TIME IF YOU RECALL?

2 A I CAN'T REMEMBER HOW MANY.

3 Q OKAY. THANK YOU, MS. DAVIS.

4 THE COURT: MR. JORDAN?

5 CROSS-EXAMINATION BY MR. JORDAN:

6 Q MS. DAVIS, WHEN YOU GOT IN YOUR AUTOMOBILE AND LEFT,
7 WERE OTHER PEOPLE LEAVING AS WELL?

8 A NO, SIR.

9 Q NO?

10 A I DIDN'T SEE NOBODY ELSE LEFT, NO, SIR.

11 Q AND DID YOU NOTICE THAT THEY HAD PEOPLE LOCKED IN THE
12 CLUB OR--

13 A NO, SIR. I WAS ABLE TO GET OUT FREE.

14 Q YOU WERE ABLE TO GET OUT?

15 A UH-HUH.

16 Q OKAY. HOW MANY PEOPLE WERE STANDING OUTSIDE AS YOU
17 WERE LEAVING?

18 A WELL, I SAW THE VICTIM LYING ON THE FLOOR AND I GUESS
19 THE GUYS AROUND MY CAR WERE AROUND HIM. THAT'S ALL I
20 COULD REMEMBER BEING OUT THERE.

21 Q HOW MANY CARS WERE PARKED OUT THERE, CAN YOU GIVE ME
22 A ROUGH GUESS? IT WAS PACKED THAT NIGHT; WASN'T IT?

23 A OH YEAH, IT WAS PACKED.

24 Q AND YOU ACTUALLY MADE IT INSIDE THE CLUB?

25 A WELL, WHEN THE SHOTS WERE FIRED, I DIDN'T GO IN PRIOR

- 1 TO THAT..
- 2 Q YOU DIDN'T GO IN PRIOR?
- 3 A HUH-UH.
- 4 Q AND YOU KNOW TRAVIS SINGLETON, RIGHT?
- 5 A YES.
- 6 Q DID YOU SEE HIM ANYWHERE AROUND THAT NIGHT?
- 7 A YES, SIR, I SAW HIM EARLIER THAT NIGHT.
- 8 Q EARLIER THAT NIGHT?
- 9 A LIKE AROUND MY CAR.
- 10 Q BEHIND YOUR CAR?
- 11 A UH-HUH.
- 12 Q DID YOU KNOW IF HE GOT INSIDE THE CLUB?
- 13 A NO, SIR.
- 14 Q OKAY. AND HE WASN'T STAND -- DO YOU -- DO YOU KNOW
- 15 IF HE WENT BACK TO HIS CAR OR WHERE HE WAS WHEN YOU
- 16 STARTED RUNNING TO THE DOOR?
- 17 A NO, SIR.
- 18 Q OKAY. BUT YOU DIDN'T SEE HIM WHEN YOU WENT TO
- 19 LEAVE? YOU DIDN'T SEE HIM AROUND THAT AREA; DID YOU?
- 20 A NO, SIR.
- 21 Q OKAY.
- 22 MR. JORDAN: THANK YOU, YOUR HONOR.
- 23 THE COURT: MR. FINNEY?
- 24 MR. FINNEY: MAY IT PLEASE THE COURT.
- 25 THE COURT: YES, SIR.

1 CROSS-EXAMINATION BY MR. FINNEY:

2 Q MS. DAVIS, DO YOU KNOW LAMONT?

3 A YES, SIR.

4 Q KNOWN HIM A LONG TIME?

5 A YES, SIR.

6 Q ALL RIGHT. DID YOU KNOW WHERE LAMONT WAS EARLIER
7 THAT EVENING?

8 A NO, SIR. WELL, WHEN I SAW THE HOUSE ALL OF THEM WERE
9 AT THE FIGHT. I DON'T KNOW WHERE THEY WERE PRIOR TO --
10 AFTER THEY GOT TO HIS MOM'S HOUSE, NO, SIR.

11 Q AND WHEN YOU GOT TO THE CLUB THAT EVENING, WHEN YOU
12 GOT TO THE CLUB, YOU WERE IN YOUR TOYOTA?

13 A UH-HUH, YES, SIR.

14 Q DID YOU SEE LAMONT'S CAR PULL UP?

15 A YES, SIR.

16 Q OKAY. WHERE DID HE PULL UP AT?

17 A THEY PULLED UP LIKE DIRECTLY BEHIND -- WELL, IT'S A
18 DRIVEWAY RIGHT HERE. A FEW CARS BEHIND THAT WAY I SAW
19 THEM IN MY REAR VIEW MIRROR.

20 Q SHOW US ON THE MAP.

21 A OKAY. MY CAR IS PARKED RIGHT HERE. IT'S A LITTLE
22 DRIVEWAY RIGHT HERE THAT TAKES YOU TOWARDS THIS ROAD RIGHT
23 HERE. THEY COULD PARKED OVER HERE WITH SOME OTHER CARS.

24 Q OKAY. I WANT YOU TO UNDERSTAND -- YOU HAVEN'T BEEN
25 IN COURT WITH US THIS WEEK; HAVE YOU?

1 A NO, SIR.

2 Q YOU SEE THIS CURVE LINE HERE? THESE TWO CURVED LINES
3 ARE SUPPOSED TO BE THE DRIVEWAY, THE FRONT OF THE CLUB.
4 DOES THAT LOOK RIGHT TO YOU? DOES THAT LOOK LIKE THE WAY
5 IT IS IN FRONT OF THAT NIGHTCLUB?

6 A I KNOW.

7 Q THIS IS SUPPOSED TO BE A GRASSY AREA HERE. THIS IS
8 THE HIGHWAY?

9 A THERE'S THE HIGHWAY.

10 Q AND THIS IS SUPPOSED TO BE A GRASSY AREA WITH A CAR
11 PARK AND KIND OF A DRIVE-THRU WHERE THE POLICE CARS THEY
12 SAY WERE PARKED IN THIS AREA HERE.

13 A UH-HUH.

14 Q SO WHAT IS THIS RIGHT HERE? IS IT--

15 A A LITTLE LIKE A DIRT PIECE RIGHT HERE.

16 Q WELL, WE DON'T -- I MEAN, THAT IS SUPPOSED TO BE THE
17 FRONT AREA?

18 MS. NIELSEN: YOUR HONOR, I ASK THAT HE NOT ASK HIM
19 QUESTIONS, THAT HE ASK HER QUESTIONS.

20 THE COURT: HE IS TRYING TO ORIENT HER TO WHAT IS
21 OBVIOUSLY AN INACCURATE AND NOT TO SCALE DRAWING.

22 MS. NIELSEN: HAVE PHOTOGRAPHS THAT MIGHT MAKE IT
23 EASIER.

24 THE COURT: THAT WILL BE FINE. LOOK AT THE
25 PHOTOGRAPH THAT'S IN EVIDENCE OF THE AERIAL

1 PHOTOGRAPH....

2 (WHEREUPON QUESTIONING RESUMED).

3 Q I AM SHOWING YOU STATE'S EXHIBIT NUMBER 18. CAN YOU
4 SEE THAT? WHAT DOES THAT SHOW?

5 A IT'S LIKE A LITTLE DRIVEWAY RIGHT HERE.

6 Q DOES THE DRIVEWAY ON THIS PICTURE COME ALL THE WAY UP
7 TO THE CAR?

8 A I WAS PARKED SOMEWHERE UP IN HERE.

9 Q BE UP ON THE LEFT OF THAT PICTURE?

10 A THE CLUB IS RIGHT HERE. I WAS PARKED SOMEWHERE UP ON
11 THIS SIDE.

12 Q ALL RIGHT. NOW, ARE YOU CONFUSED BECAUSE THIS LINE
13 IS HERE?

14 A YEAH.

15 Q ALL RIGHT. SO REALLY THE DRIVEWAY KIND OF
16 GOES ALL THE WAY -- THIS WHOLE FRONT AREA OF THIS CLUB IS
17 THE DRIVEWAY.

18 A IT'S A LITTLE PIECE THAT YOU ARE NOT ALLOWED TO
19 PARK. NOBODY IS PARKING RIGHT HERE. POLICE CARS OVER
20 HERE IN LIKE IN FRONT OF IT.

21 Q ALL RIGHT. SO WHEN -- YOUR CAR WAS IN THIS AREA IN
22 FRONT OF THE CLUB? I'M GOING TO ASK YOU, JUST TELL US
23 AGAIN. YOU SAY IN THAT PICTURE --

24 A UH-HUH.

25 Q -- YOU -- LET ME SHOW YOU ANOTHER PICTURE, STATE'S

1 EXHIBIT NUMBER 10. IS THAT A BETTER PICTURE OR CAN --
2 LOOK AT STATE'S EXHIBIT NUMBER 13.

3 A OKAY. OKAY. LIKE RIGHT ACROSS FROM WHERE THIS JEEP
4 IS RIGHT HERE.

5 Q WHEN YOU SAY ACROSS, WHAT DO YOU MEAN?

6 A LIKE BACK OVER. SEE, THIS JEEP IS RIGHT HERE. I WAS
7 LIKE -- COULD HAVE BEEN IN FRONT OF THAT JEEP.

8 Q ALL RIGHT. WAS YOUR JEEP OR WAS YOUR CAR POINTING
9 THE SAME WAY YOUR CAR WAS?

10 A POINTING TOWARDS THE CAR.

11 Q POINTING TOWARDS THE CAR?

12 A UH-HUH.

13 Q ALL RIGHT. AND SO WHERE THAT JEEP IS RIGHT THERE IN
14 THAT PICTURE --

15 A SHOULD HAVE BEEN A POLICE CAR.

16 Q -- THERE SHOULD BEEN A POLICE CAR?

17 A UH-HUH.

18 Q THAT IS STATE'S EXHIBIT NUMBER 10. AND WOULD THAT --
19 CAN YOU POINT ON THE MAP TO JUST GENERALLY WHERE THAT AREA
20 IN IS--.

21 A THAT'S THE CURVE SO COULD HAVE BEEN RIGHT HERE.

22 Q RIGHT IN THAT AREA?

23 A THE WAY IT LOOKS.

24 Q WHERE DID YOU SEE LAMONT'S CAR WHEN IT PULLED UP?

25 A LIKE IT'S THE CARS THAT PARKED BEHIND -- WELL, IT'S A

1 LITTLE PATHWAY OVER HERE, SO COULD HAVE BEEN OVER HERE.

2 Q SOMEWHERE IN THIS AREA?

3 A WITH THESE CARS OVER HERE.

4 Q OKAY. DID YOU SEE LAMONT GET OUT?

5 A NO, I DON'T REMEMBER SEEING LAMONT.

6 Q ALL RIGHT. SO AFTER WHEN HIS CAR PULLED OUT -- WHEN
7 HIS CAR PULLED UP, DID YOU SEE MARCUS GET OUT?

8 A UH-HUH.

9 Q ALL RIGHT. AND THIS IS WHAT DREW YOUR ATTENTION?

10 A UH-HUH.

11 Q YOU GOT OUT OF YOUR CAR THEN?

12 A UH-HUH.

13 Q YOU STARTED--

14 THE COURT: PLEASE, MA'AM, IF YOU'LL SAY YES OR NO.

15 THE WITNESS: I'M SORRY.

16 THE COURT: THANK YOU.

17 THE WITNESS: YES, SIR.

18 (WHEREUPON QUESTIONING RESUMED).

19 Q YOU STARTED TALKING TO MARCUS?

20 A YES, SIR.

21 Q DID YOU SEE WHAT HAPPENED TO LAMONT?

22 A NO, SIR. I SAW ALL OF THEM GOT IN THE CAR AT FIRST.
23 ALL OF THEM TRIED TO WALK IN THE CLUB AND I GUESS IT WAS
24 TOO MUCH OR WHATEVER, THEY DIDN'T GO IN.

25 Q ALL RIGHT.

1 A SO LIKE I SAID, AT THAT TIME I DON'T KNOW WHERE
2 LAMONT WENT AFTER THAT. I DON'T REMEMBER SEEING HIM.

3 Q YOU DON'T REMEMBER SEEING LAMONT?

4 A AFTER THAT.

5 Q DO YOU REMEMBER SEEING HIS CAR?

6 A NOT AFTER THAT.

7 Q ALL RIGHT. AND THEN AFTER THE SHOTS WERE FIRED, YOU
8 WENT IN THE CLUB. YOU DIDN'T SEE LAMONT AFTER THAT?

9 A NO, SIR.

10 Q ALL RIGHT: NOTHING FURTHER.

11 THE COURT: THANK YOU. MS. NIELSEN?

12 CROSS-EXAMINATION BY MS. NIELSEN:

13 Q MS. DAVIS, HOW LONG HAVE YOU BEEN MARCUS EVANS'
14 GIRLFRIEND?

15 A ABOUT TWO YEARS.

16 Q YOU SAID YOU HAVE--

17 A ~~OFF~~ AND ON IT'S BEEN ABOUT TEN OFF AND ON.

18 Q TEN YEARS?

19 A I DON'T DOUBT THAT LIKE OFF AND ON RELATIONSHIPS, BUT
20 STEADY TWO YEARS.

21 Q BUT YOU HAVE BEEN SEEING HIM OFF AND ON FOR TEN YEARS
22 IS WHAT YOU'RE SAYING?

23 A UH-HUH.

24 Q YOU SAID YOU HAD A DAUGHTER. IS THAT HIS CHILD?

25 A NO, IT'S NOT.

1 Q NOW, YOU SAID YOU WORKED AT CHESTNUT OAKS MIDDLE
2 SCHOOL?

3 A YES, MA'AM.

4 Q WHAT DO YOU DO THERE?

5 A CUSTODIAN.

6 Q AND YOU HAVE KNOWN ALL OF THESE DEFENDANTS WITH THE
7 EXCEPTION OF GILARON TAYLOR SINCE YA'LL WERE IN GRADE
8 SCHOOL?

9 A NO, I KNEW LAMONT SINCE HIGH SCHOOL AND TRAVIS SINCE
10 MIDDLE SCHOOL.

11 Q AND--

12 A MARCUS SINCE GRADE SCHOOL.

13 Q MARCUS SINCE GRADE SCHOOL. HOW LONG HAVE YOU KNOWN
14 MR. TAYLOR?

15 A ABOUT THREE OR FOUR YEARS.

16 Q THEY WERE ALL FRIENDS OF YOURS; AREN'T THEY?

17 A YES, MA'AM.

18 Q NOW, YOU KNOW THAT MARCUS HAS A GUN; DON'T YOU?

19 A NO, MA'AM.

20 Q YOU'RE TELLING THIS JURY YOU HAVE NEVER SEEN IT
21 BEFORE?

22 A YES, MA'AM, I'M TELLING I NEVER SEEN IT BEFORE.

23 Q NOW, I BELIEVE THAT WHAT YOU SAID IS WHEN YOU GOT
24 THERE, YOU CAME AND PARKED RIGHT IN THIS AREA SOMEWHERE?

25 A NOW THAT I SEE THE PICTURE, IT WAS THIS AREA LIKE I

1 SAID, RIGHT IN FRONT OF THIS WAY POINTING THIS WAY.

2 Q I AM GOING TO SHOW YOU WHAT IS MARKED AS STATE'S
3 EXHIBIT 13. AND YOU RECOGNIZE THAT; DON'T YOU?

4 A IT'S THE HIGHWAY.

5 Q NOW, IS THAT A GRASSY AREA WHERE THE SIGN IS THERE?

6 A NO, I WASN'T PARKED THERE.

7 Q OKAY. SO AND THEN THERE'S A GRASSY AREA. THIS -- IS
8 THIS THE GRASSY AREA RIGHT HERE?

9 A THAT'S WHAT THIS IS? THAT WHAT'S YOU'RE ASKING ME?

10 Q UH-HUH.

11 A I WOULD ASSUME SO.

12 Q IS THERE A LIGHT POLE IN THAT GRASSY AREA?

13 A I SEE ONE HERE, YES.

14 Q WELL, DO YOU REMEMBER WHETHER IT WAS ONE THERE THAT
15 NIGHT OR NOT?

16 A NO, BECAUSE I WASN'T PARKED RIGHT THERE.

17 Q WELL, IF THIS IS THE LIGHT POLE --

18 A UH-HUH.

19 Q -- SHOW US WHERE YOU WERE PARKED.

20 A HAD TO BE RIGHT HERE.

21 Q NOW, IS THERE ANOTHER LIGHT POLE RIGHT HERE?

22 A YEAH, YEAH, IT SURE IS.

23 Q OKAY. MS. DAVIS, WHEN YOU ARE OUT IN THAT PARKING
24 LOT, ALL THE LIGHTS ARE ON, YOU CAN SEE PEOPLE OUT IN THAT
25 PARKING LOT; CAN'T YOU?

1 A YES, MA'AM.

2 Q IT'S NOT DARK; IS IT?

3 A NO, IT'S NOT.

4 Q IN THE STATEMENT THAT YOU GAVE OFFICER DELLINGER ON
5 NOVEMBER THE 16TH OF LAST YEAR --

6 A UH-HUH, YES, MA'AM.

7 Q -- YOU SAID YOU WROTE THIS; DIDN'T YOU?

8 A YES, MA'AM.

9 Q I WAS TRYING TO GET PARK FROM THE CAR BECAUSE I SAW
10 HAND MOTIONS AND SAW A FIGHT WAS ABOUT TO OCCUR. IS THAT
11 WHAT YOU SAID?

12 A I SAID SOMETHING, PAPER MIGHT HAVE SAID A FIGHT, BUT
13 I WASN'T SURE WHAT WAS ABOUT TO OCCUR. I WAS IN THE FIGHT
14 WHEN I SAW THE BOY.

15 Q I WILL SHOW YOU THIS.

16 A I KNOW WHAT I WROTE.

17 Q I WILL SHOW YOU THIS, ASK IF YOU CAN IDENTIFY IT. IS
18 THAT YOUR HANDWRITING?

19 A IT SURE IS.

20 Q WOULD YOU READ THIS SENTENCE STARTING RIGHT THERE.

21 A I WAS TRYING TO GET MARCUS IN THE CAR BECAUSE I SAW
22 HAND MOTIONS AND I THOUGHT A FIGHT WAS ABOUT TO OCCUR.

23 Q NOW, YOU REFUSED TO SIGN THAT; DIDN'T YOU?

24 A YES, BECAUSE HE TOLD ME I DIDN'T HAVE TO SIGN, SO I
25 DIDN'T SIGN.

1 Q THE OFFICER TOLD YOU YOU DIDN'T HAVE TO SIGN IT, SO
2 YOU JUST DIDN'T SIGN IT?

3 A SURE DIDN'T.

4 Q DO YOU KNOW WHY IT SAYS REFUSED TO SIGN ON THERE?

5 A BECAUSE I DIDN'T SIGN IT.

6 Q YOU DIDN'T SIGN IT AND YOU DIDN'T FINISH THAT
7 STATEMENT; DID YOU? IT STOPS. YOU QUIT WRITING; DIDN'T
8 YOU? WHAT DOES THE VERY LAST SENTENCE SAY?

9 A I ALSO--

10 Q AND YOU JUST QUIT WRITING IT; DIDN'T YOU?

11 A YES, MA'AM.

12 Q BECAUSE ANYTHING YOU SAID WAS GOING TO IMPLICATE YOUR
13 BOYFRIEND; WASN'T IT?

14 A NO, MA'AM, IT SURE WASN'T.

15 Q THEN WHY DID YOU REFUSE TO FINISH THE STATEMENT?

16 A IF I KNEW I DIDN'T HAVE TO WRITE IT, I WOULDN'T HAVE
17 WROTE IT ANY WAY. HE TOLD ME ALL THIS AFTER I WAS IN THE
18 MIDST OF WRITING.

19 Q MS. DAVIS, YOU WEREN'T CHARGED WITH A CRIME; WERE
20 YOU?

21 A I SURE WASN'T.

22 Q AND ALL LAW ENFORCEMENT WAS DOING WAS TRYING TO FIND
23 OUT WHAT HAPPENED AT THE CLUB THAT NIGHT; WEREN'T THEY?

24 A SURE WAS.

25 Q YOU WERE PRESENT OUTSIDE?

1 A YES, MA'AM.

2 Q WHEN THE SHOOTING STARTED?

3 A YES, MA'AM.

4 Q AND ALL THEY WERE TRYING TO GET YOU TO DO WAS TELL
5 THEM WHAT YOU KNEW HAPPENED?

6 A YES, MA'AM.

7 Q ABOUT WHAT HAPPENED. AND YET YOU REFUSED TO SIGN
8 THAT STATEMENT AND WOULDN'T HAVE GIVEN THEM ONE IF THEY
9 TOLD YOU YOU DIDN'T HAVE TO GIVE ONE?

10 A YES, SIR.

11 Q THAT'S WHAT YOU'RE TELLING THIS JURY?

12 A THAT'S WHAT I SAID. IF I KNEW I DIDN'T HAVE TO WRITE
13 IT, I WOULDN'T HAVE WRITTEN IT.

14 Q YOU JUST WOULDN'T HAVE TOLD ANYTHING.

15 A I TOLD THEM, BUT I SAID I WOULDN'T HAVE WRITTEN A
16 STATEMENT.

17 Q WELL, WHAT DIFFERENCE WOULD IT HAVE MADE ABOUT
18 WRITING A STATEMENT?

19 A IT DOESN'T MAKE A DIFFERENCE ABOUT LOT OF THINGS. I
20 DIDN'T KNOW THAT, THEY TOLD ME AFTER I -- WHILE IN
21 DISCUSSION WITH THEM.

22 Q WHAT ARE YOU TALKING ABOUT?

23 A LIKE HE TOLD ME THAT I DIDN'T HAVE TO SIGN THE
24 STATEMENT, I DIDN'T HAVE TO WRITE THE STATEMENT.

25 Q AND SO BEING A GOOD CITIZEN YOU ARE, YOU SAID OKAY,

1 WELL, I'M NOT GOING TO GIVE YOU ONE.

2 A NO, I GAVE IT TO HIM. I JUST DIDN'T SIGN IT.

3 Q YOU DIDN'T FINISH IT; DID YOU?

4 A BECAUSE I HAD NO ONE TO SAY WHEN I FINISH WRITING.
5 HE PROBABLY ASKED ME A COUPLE MORE QUESTIONS, THAT'S WHY
6 HE SAID HAND MOTION, WHAT KIND OF HAND MOTIONS. WHEN I
7 TOLD HIM AT -- FIRST OF ALL, WHEN I TOLD HIM ABOUT IT, I
8 TOLD HIM THAT THINGS DIDN'T LOOK RIGHT.

9 HE ASKED WHAT DO I MEAN THINGS DIDN'T LOOK
10 RIGHT? I SAID YOU CAN UNDERSTAND FROM SITUATION WHEN YOU
11 SEE THINGS, BUT SOMETHING IS NOT RIGHT.

12 Q WELL, WHAT KIND OF HAND MOTIONS DID YOU SEE WHAT --
13 WHY DON'T YOU TELL US THAT NOW?

14 A I JUST LIKE, YOU KNOW.

15 Q WELL, WHO WAS DOING THAT?

16 A THE BOY AND I JUST SAW...

17 Q WHAT BOYS?

18 A I DON'T KNOW THE BOYS, MS. NIELSEN.

19 Q BUT IT WASN'T MARCUS, YOUR BOYFRIEND; WASN'T HE?

20 A I DIDN'T SEE HAND MOTION, BUT I SAW HIS HEAD LIKE
21 KIND OF LIKE -- BUT I CAN'T SAY HE SAID WORDS BECAUSE I
22 WASN'T OVER THERE AT THAT TIME.

23 Q HOW MANY PEOPLE WERE STANDING OUTSIDE THE CLUB WHEN
24 YOU GOT OUT THERE?

25 A I'M NOT SURE. DIDN'T COUNT THEM.

- 1 Q WHAT KIND OF CLOTHES DID MARCUS EVANS HAVE ON?
- 2 A PLAID, DARK PLAID SHIRT.
- 3 Q WAS IT BLACK AND WHITE PLAID? IT WAS BLACK AND WHITE
- 4 PLAID; WASN'T IT?
- 5 A I DON'T REMEMBER WHITE.
- 6 Q WELL, IT WAS PLAID. WHAT OTHER COLORS WERE IN IT?
- 7 A DARK PLAID.
- 8 Q DARK WHAT?
- 9 A BLACK, PROBABLY GREEN, ALL OF THEM WAS DARK. WHITE
- 10 IS A COLOR THAT STANDS OUT. I WOULD REMEMBER WHITE.
- 11 Q WHAT COLOR PANTS DID HE HAVE ON?
- 12 A I'M NOT SURE. I DON'T REMEMBER.
- 13 Q WHAT COLOR WAS LAMONT WASHINGTON'S CAR?
- 14 A BURGUNDY.
- 15 Q NOW--
- 16 A MR. WITHERSPOON.
- 17 Q I'M SORRY, WITHERSPOON. ACCORDING TO YOUR TESTIMONY,
- 18 THEY ARE PARKED OVER HERE SOMEWHERE?
- 19 A UH-HUH, YES, MA'AM.
- 20 Q NOW, YOU'RE OUTSIDE. HOW LONG ARE YOU INSIDE WHEN
- 21 YOU SAY THAT MARCUS PUSHED YOU IN THE CLUB?
- 22 A WOULD HAVE BEEN NO MORE THAN FIVE MINUTES.
- 23 Q HOW COULD YOU MANAGE TO GET OUT WHEN NOBODY ELSE
- 24 COULD GET OUT?
- 25 A WELL, SOMEBODY ELSE DID GET OUT.

1 Q WHO GOT OUT?

2 A ME AND ANOTHER GIRL.

3 Q WHAT WAS HER NAME?

4 A KENYA BARRETT.

5 Q WHO?

6 A KENYA BARRETT.

7 Q SO YOU ARE SAYING THAT SOMEBODY ELSE GOT OUT. THIS
8 IS WHEN THE SHOOTING IS STILL GOING ON OR IS THE SHOOTING
9 OVER?

10 A IT'S OVER.

11 Q HOW MANY SHOTS DID YOU HEAR ALTOGETHER?

12 A I DON'T REMEMBER. I DIDN'T COUNT THEM.

13 Q BUT WHAT YOU ARE TELLING THE JURY IS THERE -- THOSE
14 SHOTS CAME FROM SOMEWHERE BEHIND YOU FROM SOMEWHERE?

15 A FROM SIDE WAYS, YES, MA'AM.

16 Q POINT OUT TO ME WHERE ON THIS DIAGRAM YOU'RE SAYING
17 YOU THINK THEY CAME FROM.

18 A FROM BEHIND. I'M PARKED RIGHT HERE. THEY CAME FROM
19 BEHIND. THESE CAME FROM THE SIDE CAME FROM -- CAME FROM
20 BEHIND THESE BEHIND WHERE MY CAR WAS PARKED.

21 Q WHEN YOU CAME BACK OUT, WHEN YOU MANAGED TO GET BACK
22 OUT OF THE CLUB ALONG WITH -- WHAT DID YOU TELL HER HER
23 NAME WAS, KENYA BARRETT?

24 A YES, MA'AM.

25 Q HOW MANY PEOPLE DID YOU SEE OUTSIDE THE CLUB THEN?

1 A LIKE I SAID, I DIDN'T COUNT. I SAW THE VICTIM OUT ON
2 THE FLOOR AND SOME PEOPLE AROUND HIM. I GOT IN MY CAR AND
3 LEFT.

4 Q WHERE WAS MARCUS?

5 A I DIDN'T SEE HIM.

6 Q YOU WEREN'T CONCERNED ABOUT WHERE MARCUS WAS?

7 A WELL, I PROBABLY WAS CONCERNED, BUT I DIDN'T SEE
8 HIM. WAS I SUPPOSED TO GO LOOK FOR HIM? I GOT IN MY CAR
9 AND LOOK FOR HIM.

10 Q I DON'T KNOW. HE IS YOUR BOYFRIEND. HE'S NOT MY
11 BOYFRIEND.

12 A I KNOW.

13 Q WERE YOU NOT CONCERNED ENOUGH WITH SHOOTING GOING
14 OUTSIDE AND HE DIDN'T COME IN THE CLUB WITH YOU TO FIGURE
15 OUT WHERE HE WAS?

16 A WELL, ONCE I SAW THAT WASN'T HIM LYING, HE WASN'T
17 WITH THE GROUP OVER, HERE. I LEFT.

18 Q HE WASN'T AT THE SCENE ANY MORE; WAS HE?

19 A NO, HE WAS GONE I GUESS IF HE WASN'T OUT THERE.

20 Q WAS LAMONT WITHERSPOON'S CAR STILL THERE WHEN YOU
21 CAME BACK OUT?

22 A I DIDN'T SEE IT. I DIDN'T LOOK FOR IT.

23 Q DID YOU SEE TRAVIS SINGLETON?

24 A I SURE DIDN'T.

25 Q DID YOU SEE GILARON TAYLOR?

1 A I SURE DIDN'T.

2 Q DID YOU SEE LAMONT WITHERSPOON?

3 A I SURE DIDN'T.

4 Q SO THEY WERE GONE; WEREN'T THEY?

5 A I GUESS SO.

6 Q WELL, MS. DAVIS, IF THEY HAD BEEN STANDING OUT THERE
7 CLOSE TO WHERE THEIR CAR WAS OR WHERE YOUR CAR WAS, YOU
8 WOULD HAVE SEEN THEM. WOULD YOU NOT HAVE SEEN THEM?

9 A IF THEY WERE THERE.

10 Q SO THEY WERE GONE?

11 A I GUESS SO.

12 Q AND THE BURGUNDY CADILLAC?

13 A I GUESS SO.

14 Q WITH THE GUN?

15 MR. FINNEY: OBJECTION.

16 MR. ROGERS: OBJECTION.

17 MS. NIELSEN: I DON'T HAVE ANYTHING FURTHER.

18 THE COURT: THANK YOU.

19 MR. JORDAN: JUDGE, I ASK FOR A CURATIVE INSTRUCTION
20 AS WELL.

21 THE COURT: LADIES AND GENTLEMEN, I HAVE ALREADY TOLD
22 YOU FIRST OF ALL I MAY NEED GET SOME CURATIVE INSTRUCTIONS
23 INSOFAR AS THE SPECTATORS ARE CONCERNED. LADIES AND
24 GENTLEMEN, THOSE OF YOU WHO SIT IN THIS COURT SIT HERE AT
25 THE PLEASURE OF THIS COURT. THAT MEANS YOU DON'T HAVE A

1 RIGHT TO BE HERE.

2 YOU SIT HERE BECAUSE WE ALLOW YOU TO BE HERE AS
3 LONG AS YOU BEHAVE YOURSELF AND DON'T DISTRACT FROM THE
4 PROCEEDINGS. THESE ARE SERIOUS PROCEEDINGS. I AM SURE
5 ALL OF YOU UNDERSTAND THAT ON EITHER SIDE OF THE AISLE.
6 ANYTHING THAT DISTRACTS AWAY FROM THIS PROCEEDING
7 DISTRACTS AWAY FROM THE JURY'S ATTENTION.

8 WE CAN'T ALLOW THAT AND I'M SURE YOU UNDERSTAND
9 THAT. AND IF YOU FEEL LIKE YOU'RE GOING TO HAVE SOME
10 DIFFICULTY CONTROLLING YOURSELF WHILE THESE PROCEEDINGS
11 ARE GOING ON, I'M GOING TO HAVE TO ASK YOU TO LEAVE.

12 IF YOU STAY HERE, I EXPECT YOU TO DO JUST WHAT
13 YOU HAVE BEEN GOOD ENOUGH TO DO ALL THROUGHOUT THESE
14 PROCEEDINGS AND THAT IS TO SIT THERE QUIETLY. YOU DON'T
15 HAVE TO AGREE OR DISAGREE WITH WHAT IS GOING ON. YOU
16 SIMPLY HAVE TO MAKE SURE YOU DON'T DO ANYTHING TO DISTRACT
17 FROM IT.

18 NOW LADIES AND GENTLEMEN, BACK TO THE ISSUE AT
19 HAND. AS I TOLD YOU BEFORE THE TRIAL STARTED, WHAT THE
20 LAWYERS SAY IS NOT EVIDENCE. IF THERE WAS SOME WAY TO GET
21 THE TESTIMONY BEFORE YOU WITHOUT THE LAWYERS' INVOLVEMENT,
22 WE COULD DO IT, BUT THERE IS NO WAY TO DO IT OTHER THAN
23 HAVE THE LAWYERS ASK QUESTIONS, BUT THE LAWYERS'
24 QUESTIONS, THE LAWYERS' STATEMENTS ARE NOT EVIDENCE.

25 YOUR VERDICT CANNOT AND IT MUST NOT REST UPON

1 THOSE THINGS. IT MUST REST UPON THE TESTIMONY FROM THIS
2 WITNESS CHAIR RIGHT HERE AND THE ITEMS AND THE DOCUMENTS
3 THAT YOU HAVE ALREADY SEEN. MR. DOBY, YOU CAN
4 CROSS-EXAMINE OR REDIRECT, I'M SORRY.

5 MR. DOBY: YOUR HONOR, I HAVE NO FURTHER QUESTIONS.

6 THE COURT: THANK YOU. MS. DAVIS, YOU CAN STEP
7 DOWN.

8 (WHEREUPON THE WITNESS LEFT THE STAND).

9 MR. DOBY: YOUR HONOR, THE DEFENSE FOR MARCUS EVANS
10 RESTS.

11 THE COURT: LADIES AND GENTLEMEN, MR. EVANS HAS
12 RESTED HIS CASE AT THIS POINT. WE TURN TO THE OTHER
13 DEFENDANTS WHO LIKEWISE HAVE THE RIGHT BUT HAVE NO
14 OBLIGATION TO INTRODUCE EVIDENCE AND TESTIMONY. MR.
15 ROGERS, I UNDERSTAND YOUR WITNESSES WILL BE HERE AT A
16 LATER TIME? ARE THEY HERE NOW?

17 MR. ROGERS: YES, YOUR HONOR. I BELIEVE HE IS. IF I
18 COULD JUST CHECK FOR A MOMENT.

19 THE COURT: ALL RIGHT.

20 (WHEREUPON THERE WAS A PAUSE).

21 THE COURT: MR. ROGERS, YOU CAN CALL YOUR WITNESS.

22 MR. ROGERS: YOUR HONOR, WE CALL MR. MARK GERALD.

23 (WITNESS IN COURTROOM).

24 THE COURT: MR. GERALD, COME FORWARD PLEASE AND BE
25 SWORN.

MARK GERALD - DIRECT BY ROGERS

1 MARK GERALD, BEING FIRST DULY SWORN,
2 TESTIFIED AS FOLLOWS:

3 DIRECT EXAMINATION BY MR. ROGERS:

4 Q MR. GERALD, WHERE DO YOU LIVE?

5 A I'M FROM MULLINS, SOUTH CAROLINA.

6 Q AND HOW ARE YOU EMPLOYED?

7 A BOYS BASKETBALL COACH AND ASSISTANT PRINCIPAL.

8 Q AND WHERE IS THAT?

9 A AT MULLINS HIGH SCHOOL.

10 Q AT MULLINS HIGH SCHOOL?

11 A YES.

12 Q DID YOU COME OVER HERE THIS MORNING AT MY REQUEST?

13 A YES, SIR.

14 Q ALL RIGHT. DO YOU KNOW GILARON TAYLOR?

15 A YES, SIR.

16 Q HOW DO YOU KNOW HIM?

17 A HE WAS ON MY BASKETBALL TEAM HIS JUNIOR AND SENIOR
18 YEAR OF HIGH SCHOOL.

19 Q AND THAT WAS AT MULLINS HIGH SCHOOL?

20 A YES, SIR.

21 Q SO YOU WERE HIS BASKETBALL COACH?

22 A YES.

23 Q DID HE GRADUATE FROM HIGH SCHOOL?

24 A YES, SIR.

25 Q DO YOU KNOW WHAT HE DID AFTER THAT?

1 A I THINK HE WENT INTO THE SERVICE FOR A WHILE. I'M
2 NOT EXACTLY SURE.

3 Q ALL RIGHT. BASED ON -- AND HOW LONG WOULD YOU SAY
4 YOU HAVE KNOWN HIM?

5 A FOR THOSE TWO YEARS WE WERE, YOU KNOW, I SAW HIM
6 EVERY DAY IN MY BASKETBALL SEASON AND I THINK HE CAME OUT
7 MAYBE ONCE OR TWICE AFTER HE GRADUATED.

8 Q BASED ON YOUR ASSOCIATION--

9 MS. NIELSEN: YOUR HONOR, MAY WE APPROACH?

10 THE COURT: YES, MA'AM.

11 (WHEREUPON A BENCH CONFERENCE WAS HELD).

12 (WHEREUPON QUESTIONING RESUMED).

13 Q MR. GERALD, BASED ON YOUR ASSOCIATION AND KNOWLEDGE
14 OF GILARON TAYLOR, DO YOU KNOW WHAT HIS REPUTATION IN THE
15 COMMUNITY IS FOR GOOD CHARACTER?

16 A HE WOULD -- HE HAD GOOD CHARACTER AND, YOU KNOW, HE
17 WAS AN UPSTANDING YOUNG MAN, WELL GROOMED AND I NEVER KNOW
18 HIM TO GET INTO ANY TROUBLE.

19 Q AND I HAVE TOLD YOU THE ALLEGATIONS OF THIS ACTION.
20 AND KNOWING THOSE ALLEGATIONS, IS YOUR OPINION OF HIS
21 CHARACTER IN THE COMMUNITY THE SAME?

22 A YES, SIR.

23 Q THANK YOU, MR. GERALD. APPRECIATE YOU COMING IN.
24 ANSWER ANY QUESTIONS ANY OF THE OTHER ATTORNEYS HAVE.

25 THE COURT: MR. JORDAN?

MARK GERALD - CROSS BY NIELSEN

1 MR. JORDAN: NO, YOUR HONOR.

2 THE COURT: THANK YOU. MR. FINNEY?

3 MR. FINNEY: NO, YOUR HONOR.

4 THE COURT: THANK YOU. MS. NIELSEN?

5 CROSS-EXAMINATION BY MS. NIELSEN:

6 Q MR. GERALD, YOU LIVE IN MULLINS?

7 A YES, SIR. YES, MA'AM.

8 Q MR. TAYLOR DOESN'T LIVE IN MULLINS ANY MORE; DOES HE?

9 A NO, MA'AM.

10 Q HOW LONG HAS IT BEEN SINCE YOU HAVE SEEN HIM BEFORE
11 TODAY?

12 A MAYBE TWO TO THREE YEARS.

13 Q SO YOU ACTUALLY DON'T KNOW WHAT HIS -- HE HAS BEEN
14 DOING IN THAT TWO OR THREE YEARS; DO YOU?

15 A NO, MA'AM.

16 Q AND YOU EVER BEEN TO THE DAVIS COUNTRY CLUB YOURSELF?

17 A NO, MA'AM.

18 Q AND YOU DON'T HAVE ANY IDEA WHAT HAPPENED AT THE
19 DAVIS COUNTRY CLUB ON NOVEMBER THE 14TH OF 1999; DO YOU?

20 A NO, MA'AM.

21 Q I DON'T HAVE ANY FURTHER QUESTIONS.

22 THE COURT: THANK YOU.

23 MR. ROGERS: CAN MR. DAVIS BE EXCUSED?

24 MR. DOBY: I HAVE NONE, YOUR HONOR.

25 THE COURT: ANYTHING FURTHER, MR. ROGERS?

1 MR. ROGERS: NO, YOUR HONOR.

2 THE COURT: YES, SIR. THE WITNESS CAN BE EXCUSED
3 WITHOUT OBJECTION. THANK YOU, MR. GERALD, FOR COMING.
4 YOU ARE FREE TO GO.

5 (WHEREUPON THE WITNESS LEFT THE STAND).

6 MR. ROGERS: THAT WOULD BE THE CASE FOR MR. TAYLOR,
7 YOUR HONOR.

8 THE COURT: THANK YOU. MR. JORDAN ON BEHALF OF MR.
9 SINGLETON?

10 MR. JORDAN: YOUR HONOR, WE DON'T HAVE ANY
11 TESTIMONY. THANK YOU.

12 THE COURT: ALL RIGHT. MR. FINNEY ON BEHALF OF MR.
13 WITHERSPOON?

14 MR. FINNEY: CALL MRS. MAXINE WITHERSPOON.

15 THE COURT: MRS. MAXINE WITHERSPOON, COME FORWARD
16 PLEASE MA'AM AND BE SWORN.

17 MAXINE WITHERSPOON, BEING FIRST DULY
18 SWORN, TESTIFIED AS FOLLOWS:

19 DIRECT EXAMINATION BY MR. FINNEY:

20 Q WHERE DO YOU LIVE?

21 A 238 WEST MIMS STREET, SUMTER, SOUTH CAROLINA.

22 Q WHERE ARE YOU EMPLOYED?

23 A NATIONAL HEALTHCARE.

24 Q HOW LONG HAVE YOU BEEN THERE?

25 A I HAVE TWO JOBS THERE. I HAVE BEEN EMPLOYED BY NEOLA

1 BRAXTON FOR SIX YEARS AND NATIONAL HEALTHCARE ITSELF FOR
2 ABOUT TWO MONTHS NOW.

3 Q ARE YOU WHAT THEY CALL A NURSE'S AID?

4 A NO, SIR, I'M A PRIVATE SITTER.

5 Q ALL RIGHT. HOW MANY CHILDREN DO YOU HAVE?

6 A JUST ONE, BUT I HAVE LEGAL CUSTODY OF MY NIECE.

7 Q ALL RIGHT. AND YOUR ONE CHILD IS YOUR SON LAMONT?

8 A LAMONT, YES, SIR.

9 Q THINK LAMONT IS 26 YEARS OLD NOW?

10 A YES, SIR.

11 Q HAS HE LIVED WITH YOU ALL HIS LIFE?

12 A YES, SIR.

13 Q DOES HE LIVE WITH YOU NOW?

14 A NOT AT THIS TIME.

15 Q ALL RIGHT. DOES HE HAVE HIS OWN HOUSE?

16 A YES, SIR.

17 Q AND DOES HE HAVE A GIRLFRIEND? DOES HE LIVE WITH
18 HER?

19 A YES, SIR.

20 Q HAS SHE BEEN IN COURT WITH US ALL WEEK?

21 A THE WHOLE TIME.

22 Q ALL RIGHT. AND HAVE YOU BEEN HERE ALL WEEK?

23 A THE WHOLE TIME.

24 Q ALL RIGHT. YOU ALL -- YOU BROUGHT, RAISED LAMONT IN
25 SUMTER?

- 1 A YES, SIR.
- 2 Q ALL RIGHT. AND AFTER SCHOOL DID HE--
- 3 A HE GRADUATED, THEN HE WENT ON TO CHARLESTON SOUTHERN
- 4 AND GRADUATED FROM THERE WITH A BACHELOR OF SCIENCE
- 5 DEGREE.
- 6 Q HOW DID HE GET TO CHARLESTON SOUTHERN UNIVERSITY?
- 7 A HE HAD A SCHOLARSHIP FOR -- FOUR YEAR SCHOLARSHIP
- 8 THAT HE WENT FOR PLAYING FOOTBALL.
- 9 Q DID HE PLAY FOOTBALL DOWN THERE?
- 10 A YES, SIR.
- 11 Q ALL RIGHT. HE GRADUATED FROM CHARLESTON SOUTHERN?
- 12 A YES, SIR.
- 13 Q WHAT DID HE DO AFTER THAT?
- 14 A HE FOUND A JOB WORKING AT SUMTER PACKAGING AND THEN
- 15 ME AND I CALL HER MIMI BUT HER NAME IS DEMESHIA, THEY
- 16 MOVED TOGETHER AND THEY BEEN TOGETHER SINCE.
- 17 Q ALL RIGHT. AND HAS HE BEEN WORKING AT SUMTER
- 18 PACKAGING FOR...
- 19 A EVER SINCE HE GRADUATED FROM CHARLESTON SOUTHERN.
- 20 Q ALL RIGHT. NOW, AS FAR AS LAMONT IS CONCERNED, AS
- 21 FAR AS THIS CHASE IS CONCERNED, YOU REMEMBER THE EVENTS
- 22 THAT WERE HAPPENING AROUND THIS NIGHT IN NOVEMBER IN 1999?
- 23 A YES, SIR.
- 24 Q DID YOU HAPPEN TO HAVE A PARTY AT YOUR HOUSE THAT
- 25 NIGHT?

1 A YES, SIR.

2 Q AND WHAT WAS THE NATURE OF THE PARTY?

3 A I BELONG TO A LADY'S ORGANIZATION CALLED SILK AND
4 THAT NIGHT THEY WERE -- THERE WAS A FIGHT AND SOME OF THE
5 GIRLS THERE MARRIED AND THEIR HUSBANDS WENT OUT TO SEE THE
6 FIGHT AT VARIOUS PLACES AND THE LADIES ALL CAME TO MY
7 HOUSE.

8 Q ALL RIGHT. AND YOU ALL HAD A LITTLE HOUSE PARTY?

9 A WELL, NOT PARTY. WE JUST SITTING THERE WATCHING
10 MOVIES ON T.V. AND WE COOK. WE ALL GOT TOGETHER AND COOK
11 US SOMETHING TO EAT.

12 Q ALL RIGHT. AND DID YOU SEE MARCUS AT SOME TIME? DID
13 HE -- EXCUSE ME. I SAID MARCUS, I MEANT LAMONT. DID YOU
14 SEE LAMONT THAT NIGHT AROUND THE TIME THE FIGHT WAS OVER?

15 A YES, SIR.

16 Q DID HE COME TO YOUR HOUSE?

17 A YES, SIR.

18 Q ALL RIGHT. DID THE OTHER FELLOWS -- DID YOU KNOW
19 TRAVIS?

20 A YES, SIR.

21 Q AND RON AND MARCUS?

22 A YES, SIR.

23 Q AND HOW DO YOU KNOW THESE GUYS?

24 A TRAVIS IS MY COUSIN BY -- BECAUSE HIS GRANDFATHER AND
25 MY MOTHER, SISTERS AND BROTHER. RON, I DON'T VERY MUCH

1 KNOW HIM THAT WELL, BUT HE DATED MY NIECE FOR A WHILE, AND
2 MARCUS, MARCUS OLDEST BROTHER IS MY NEPHEW.

3 Q ALL RIGHT. AND SO YOU HAVE KNOWN SOME OF THESE GUYS
4 A LONG TIME?

5 A YES, SIR.

6 Q ALL RIGHT. DID YOU HAPPEN TO HAVE ALL OF THESE GUYS
7 AT YOUR HOUSE THAT NIGHT?

8 A THEY CAME AFTER THE FIGHT WAS OVER. TRAVIS AND
9 LAMONT CAME FIRST.

10 Q ALL RIGHT.

11 A AND MAYBE 30 MINUTES OR SO, I'M GIVING AND TAKING A
12 LITTLE, MARCUS AND RON AND TIGER CAME.

13 Q OKAY. WHO IS TIGER, ANOTHER FRIEND?

14 A ANOTHER FRIEND.

15 Q ALL RIGHT. AT SOME POINT THAT EVENING DID MARCUS AND
16 TRAVIS GET IN THE CADILLAC AND LEAVE?

17 A I CAN'T SAY BECAUSE I DIDN'T -- WHEN THEY LEFT, I
18 DON'T KNOW WHO THEY LEFT WITH OR WHAT CAR THEY GOT IN OR
19 ANYTHING LIKE THAT BECAUSE I DIDN'T GO OUTSIDE WITH THEM.

20 Q ALL RIGHT. AFTER -- IN OTHER WORDS SO THE EVENING
21 KIND OF WENT OVER, EVERYBODY LEFT YOUR HOUSE, YOU WENT ON
22 TO BED. THE NEXT DAY DID YOU HEAR ANYTHING ABOUT THERE
23 HAD BEEN A SHOOTING OR ANYTHING LIKE THAT?

24 A I HEARD THERE HAD BEEN A SHOOTING AT THE CLUB, YES.

25 Q ALL RIGHT. DID YOU TALK TO LAMONT ABOUT IT?

1 A YES, I DID.

2 Q AND WHAT DID HE TELL YOU?

3 A HE TOLD ME, SAID HE HEARD IT WAS A SHOOTING AT THE
4 CLUB AND SOMEONE CALLED HIM AND TOLD HIM IT WAS A SHOOTING
5 AND THAT THEY WEREN'T SURE, BUT THEY ASSUMED THAT THEY--

6 MS. NIELSEN: OBJECTION. OBJECTION.

7 THE WITNESS: THEY WERE IN--

8 MR. FINNEY: YOU CAN'T SAY ANYTHING ABOUT WHAT
9 ANYBODY ELSE SAID.

10 A I'M SORRY.

11 Q AND SO AFTER THAT DID YOU LEARN THAT THE POLICE
12 OFFICERS HAD COME TO SPEAK WITH YOUR SON?

13 A LAMONT CALLED ME MONDAY MORNING AT WORK AND TOLD ME
14 THAT THE POLICE WANTED HIM TO COME DOWN HERE TO
15 BISHOPVILLE TO TALK TO THEM CONCERNING I GUESS WHAT
16 HAPPENED AT THE CLUB THAT SATURDAY NIGHT.

17 Q ALL RIGHT.

18 A AND I TOLD THEM TO WAIT AND I WOULD COME WITH THEM.

19 Q ALL RIGHT. AND DID YOU GO TO BISHOPVILLE WITH HIM?

20 A YES, I DID.

21 Q AND DID HE SPEAK AND TALK WITH THE OFFICERS?

22 A YES, HE DID.

23 Q ALL RIGHT. AT SOME POINT WAS HE ARRESTED?

24 A LATER ON AFTER -- WELL, THEY TALKED TO LAMONT.
25 BEFORE I WENT IN THE ROOM THEY TALKED TO LAMONT ALONE.

1 THEN OFFICER DELLINGER, I THINK THAT'S HIS NAME, HE TOLD
2 ME I COULD COME INTO THE ROOM AND HE QUESTIONED LAMONT
3 SOME MORE AND HE TOLD LAMONT, SAID THAT HE WASN'T GOING TO
4 DO ANYTHING TO HIM RIGHT THEN UNTIL HE TALKED TO TRAVIS.

5 Q ALL RIGHT. AND THEN ANY WAY THE INVESTIGATION
6 STARTED AS A RESULT YOU HIRED MY LAW FIRM TO ASSIST
7 LAMONT?

8 A AFTER THEY HAD ARRESTED LAMONT, I CAME HOME AND
9 CALLED YOU MAYBE ABOUT 6:30 THAT EVENING AND CALLED YOU.

10 Q ALL RIGHT. AND WERE YOU AWARE THAT LAMONT GAVE A
11 WRITTEN STATEMENT IN THIS CASE?

12 A NO, NOT REALLY.

13 Q ALL RIGHT. DID YOU -- HAVE YOU EVER HEARD ANYTHING
14 ABOUT LAMONT BEING INVOLVED WITH THE SHOOTING THAT --

15 A NO, SIR.

16 Q -- THAT YOU HEARD THAT YOU HAVEN'T TOLD THE COPS
17 ABOUT OR--

18 A NO, SIR.

19 Q ANYTHING LIKE THAT?

20 A NO, SIR.

21 Q HAS LAMONT EVER TOLD YOU THAT HE WAS INVOLVED WITH
22 THE SHOOTING, THAT HE KNEW SOMETHING ABOUT THE SHOOTING OR
23 ANYTHING LIKE THAT?

24 A NO, SIR.

25 Q ALL RIGHT. THANK YOU. I WANT YOU TO ANSWER ANY

1 QUESTIONS ANYBODY ELSE MAY HAVE FOR YOU.

2 A YES, SIR.

3 THE COURT: MS. NIELSEN, YOU CAN CROSS-EXAMINE.

4 CROSS-EXAMINATION BY MS. NIELSEN:

5 Q MR. WITHERSPOON, LAMONT IS YOUR SON AND YOU LOVE HIM?

6 A YES, MA'AM.

7 Q YOU WEREN'T AT DAVIS COUNTRY CLUB ON NOVEMBER THE
8 14TH?

9 A NO, MA'AM.

10 Q 1999?

11 A NO, MA'AM.

12 Q YOU DON'T HAVE A CLUE AS TO WHAT HAPPENED OUT THERE
13 THAT NIGHT; DO YOU?

14 A NO, MA'AM.

15 Q AND LAMONT DIDN'T TELL YOU HIS CAR GOT HIT BY A SHOT
16 OR A ROCK THAT NIGHT?

17 A I DIDN'T LEARN THAT UNTIL OFFICER DELLINGER.

18 Q BUT HE DIDN'T TELL YOU THAT; DID HE?

19 A NO, MA'AM.

20 Q I DON'T HAVE ANY FURTHER QUESTIONS.

21 MR. FINNEY: THANK YOU.

22 MR. JORDAN: YOUR HONOR?

23 MR. FINNEY: SORRY.

24 THE COURT: MR. DOBY?

25 MR. DOBY: NO, SIR, YOUR HONOR.

1 THE COURT: MR. ROGERS?

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

3 THE COURT: MR. JORDAN?

4 MR. JORDAN: YES, YOUR HONOR.

5 CROSS-EXAMINATION BY MR. JORDAN:

6 Q MRS. WITHERSPOON, YOU KNOWN TRAVIS A LONG TIME?

7 A ALL HIS LIFE.

8 Q WHERE DOES HE WORK?

9 A I DON'T KNOW THE NAME OF THE PLACE. I THINK IT'S
10 U.S. TEXTILES OR...

11 Q PEACE TEXTILES; IS THAT RIGHT?

12 A YES, SIR.

13 Q BEEN THERE A WHILE?

14 A YES, SIR.

15 Q OKAY. AND YOU -- HE IS YOUR COUSIN?

16 A RIGHT..

17 Q OKAY. DO YOU SEE HIS MOTHER IN THE COURTROOM?

18 A YES, SIR.

19 Q HAS SHE BEEN HERE ALL WEEK?

20 A THE WHOLE TIME.

21 Q ALL RIGHT. ARE YA'LL STILL -- DO TRAVIS AND LAMONT
22 STILL STICK AROUND TOGETHER? THEY STILL--

23 A YES, SIR, THEY COUSINS NATURALLY.

24 Q OKAY. DOES HE STILL COME OVER TO YOUR HOUSE?

25 A YES, SIR.

SARAH MCDANIEL - DIRECT BY FINNEY

1 Q OKAY. DOES LAMONT GO OVER TO HIS HOUSE?

2 A YES, SIR.

3 Q THANK YOU. NO FURTHER QUESTIONS.

4 THE COURT: NOW MR. FINNEY, BACK TO YOU.

5 MR. FINNEY: THANK YOU, YOUR HONOR. NOTHING MORE.

6 I ASK THE WITNESS BE EXCUSED.

7 THE COURT: THANK YOU. MS. WITHERSPOON, YOU CAN STEP
8 DOWN AND WITHOUT OBJECTION YOU CAN BE EXCUSED. THANK YOU,
9 MA'AM.

10 (WHEREUPON THE WITNESS LEFT THE STAND).

11 MR. FINNEY: MRS. SARAH NATHANIEL.

12 THE COURT: COME AROUND, PLEASE MA'AM AND BE SWORN.

13 SARAH NATHANIEL, BEING FIRST DULY

14 SWORN, TESTIFIED AS FOLLOWS:

15 DIRECT EXAMINATION BY MR. FINNEY:

16 Q MRS. NATHANIEL, WHERE DO YOU LIVE?

17 A 105 FOSSIL STREET, SUMTER CAROLINA.

18 Q HOW LONG HAVE YOU LIVED IN SUMTER?

19 A 41 YEARS.

20 Q AND YOU ARE THE GRANDMOTHER OF LAMONT WITHERSPOON?

21 A YES.

22 Q I HATE TO HAVE TO CALL YOU TO COURT TODAY. HAVE YOU
23 EVER BEEN IN COURT BEFORE TO TESTIFY BEFORE?

24 A NO.

25 Q ALL RIGHT. YOU UNDERSTAND THAT IT'S AN IMPORTANT DAY

1 FOR LAMONT?

2 A YES.

3 Q ALL RIGHT. DO YOU KNOW ALL THESE GUYS?

4 A YES, SIR.

5 Q YOU KNOW TRAVIS?

6 A YES, SIR.

7 Q BECAUSE HE'S COUSIN. DO YOU KNOW RON AND MARCUS?

8 A YES.

9 Q OKAY. I'M JUST GOING TO ASK YOU A FEW QUESTIONS
10 BECAUSE I KNOW MS. NIELSEN IS GOING TO ASK YOU. YOU
11 WEREN'T AT THE CLUB THAT NIGHT?

12 A NO.

13 Q YOU DON'T KNOW WHAT HAPPENED?

14 A HUH-UH.

15 Q DO YOU KNOW YOUR GRANDSON?

16 A YES.

17 Q HAVE YOU WATCHED HIM GROW UP AND DEVELOP?

18 A YES.

19 Q HAVE YOU BEEN INVOLVED WITH HIS LIFE ALL THROUGH
20 THESE YEARS THAT HE IS 25, 26 YEARS?

21 A YES.

22 Q HAS ANYBODY ELSE IN YOUR FAMILY EVER GRADUATED AND
23 GONE TO COLLEGE?

24 A YES.

25 Q OKAY. AND SO HE WASN'T THE FIRST?

1 A NO.

2 Q OKAY. WOULD YOU SAY THAT HE HAS A GOOD REPUTATION IN
3 THE COMMUNITY?

4 A SURE, YES.

5 Q AND HAVE YOU BEEN ABLE TO SEE THAT REPUTATION OVER
6 THE YEARS?

7 A YES.

8 Q ALL RIGHT. WOULD YOU SAY THAT HE HAS GOOD MANNERS TO
9 PEOPLE AND RESPECTS OTHER PEOPLE?

10 A OH, YES. OH, YES.

11 Q HAVE YOU EVER HAD TO GET ON HIM OR CHASTISE HIM OR
12 TRY TO TURN HIM AROUND OR HAS HE ALWAYS BEEN ON THE RIGHT
13 PATH?

14 A YES, I HAVE TALKED TO HIM AS A GRANDMOTHER.

15 Q YES, MA'AM.

16 A GET A LITTLE LOUD SOMETIME OR SOMETHING LIKE THAT, I
17 WOULD QUIET HIM DOWN.

18 Q YES, MA'AM.

19 A UH-HUH.

20 Q HAS HE EVER BEEN ANY TROUBLE TO YOU OR HIS MOTHER?

21 A NO.

22 Q I THANK YOU FOR COMING TODAY. I WANTED YOU TO TELL
23 THE JURY WHAT YOU THOUGHT ABOUT HIM. ANSWER ANY QUESTIONS
24 THESE LAWYERS MAY HAVE.

25 THE COURT: MS. NIELSEN?

1 CROSS-EXAMINATION BY MS. NIELSEN:

2 Q MRS. NATHANIEL, YOU LOVE YOUR GRANDSON?

3 A YES.

4 Q I GUESS THAT'S ALL QUESTIONS I NEED TO ASK YOU. MR.
5 FINNEY ASKED THE QUESTIONS I WAS GOING TO ASK YOU, SO
6 THANK YOU FOR BEING HERE.

7 THE COURT: MR. DOBY?

8 MR. DOBY: NO, YOUR HONOR.

9 THE COURT: MR. ROGERS?

10 MR. ROGERS: NO, YOUR HONOR.

11 THE COURT: MR. JORDAN?

12 MR. JORDAN: NO, YOUR HONOR.

13 THE COURT: THANK YOU. MRS. NATHANIEL, YOU CAN STEP
14 DOWN.

15 (WHEREUPON THE WITNESS LEFT THE STAND).

16 MR. FINNEY: CALL LAMONT WITHERSPOON

17 LAMONT WITHERSPOON, BEING FIRST DULY
18 SWORN, TESTIFIED AS FOLLOWS:

19 DIRECT EXAMINATION BY MR. FINNEY:

20 Q LAMONT, TELL US WHERE YOU LIVE.

21 A 10 PINE HILL COURT, SUMTER, SOUTH CAROLINA.

22 Q HOW LONG HAVE YOU LIVED THERE?

23 A ABOUT THREE YEARS, GOING ON THREE YEARS IN JUNE.

24 Q ALL RIGHT. WHO DO YOU LIVE THERE WITH?

25 A WITH MY FIANCEE, MS. TERESA WILLIS.

- 1 Q MRS. WILLIS IS BACK THERE IN COURT?
- 2 A YES, SIR.
- 3 Q TELL US A LITTLE BIT ABOUT YOURSELF. LET THE JURY
- 4 UNDERSTAND. YOU WERE BORN IN SUMTER?
- 5 A NO, SIR, I WAS BORN IN GERMANY.
- 6 Q ALL RIGHT. AND GREW UP IN SUMTER?
- 7 A YES, SIR.
- 8 Q WENT TO HIGH SCHOOL?
- 9 A SUMTER HIGH.
- 10 Q WHAT YEAR DID YOU GRADUATE?
- 11 A 1992.
- 12 Q WERE YOU A FOOTBALL PLAYER AT SUMTER HIGH?
- 13 A YES, SIR.
- 14 Q WHAT POSITION?
- 15 A CORNER BACK.
- 16 Q AND YOU PLAYED THERE? DID YOU LETTER IN THE SPORT?
- 17 A YES, SIR.
- 18 Q ALL RIGHT. THEN YOU GRADUATED IN WHAT YEAR?
- 19 A 1992.
- 20 Q ALL RIGHT. WHAT DID YOU DO AFTER THAT?
- 21 A I GOT -- RECEIVED A FOUR YEAR SCHOLARSHIP TO GO TO
- 22 CHARLESTON SOUTHERN UNIVERSITY.
- 23 Q THAT IS IN CHARLESTON, SOUTH CAROLINA?
- 24 A YES, SIR.
- 25 Q ALL RIGHT. AND THE SCHOLARSHIP WAS A ATHLETIC

1 SCHOLARSHIP?

2 A YES, SIR.

3 Q AND DID YOU PLAY FOOTBALL AND STUDY AT CHARLESTON
4 SOUTHERN?

5 A YES, SIR.

6 Q ALL RIGHT. WHAT DID YOU -- WHAT COURSES DID YOU
7 MAJOR?

8 A I MAJORED IN BUSINESS MANAGEMENT.

9 Q ALL RIGHT. AND YOU RECEIVED WHAT KIND OF DEGREE?

10 A BACHELOR OF SCIENCE DEGREE.

11 Q ALL RIGHT, SIR. DID YOU HAVE ANY OUTSTANDING
12 ACCOMPLISHMENTS AS A FOOTBALL PLAYER?

13. A YES, SIR.

14 Q TELL US ABOUT THOSE.

15 A I WAS NBSC PLAYER OF THE YEAR ONCE AND DOWN IN
16 CHARLESTON. I WAS TRI-COUNTY PLAYER OF THE YEAR ONCE.

17 Q AND THIS IS AS DEFENSIVE BACK?

18 A YES, SIR.

19 Q ALL RIGHT, SIR. NOW, ONCE YOU GOT BACK TO SUMTER
20 AFTER COLLEGE, DID YOU START WORKING?

21 A YES, SIR.

22 Q WHAT DO YOU DO?

23 A I'M A MACHINE OPERATOR AT SUMTER PACKAGING IN SUMTER.

24 Q HAVE YOU BEEN LOOKING FOR OTHER WORK?

25 A YES, SIR.

1 Q ALL RIGHT, SIR. AND HOW LONG HAVE YOU BEEN WITH
2 SUMTER PACKAGING?

3 A I WAS THERE SINCE '97.

4 Q ALL RIGHT. NOW, DO YOU OWN A CAR?

5 A YES, SIR.

6 Q WHAT KIND OF CAR IS IT?

7 A A 1989 CADILLAC SEDAN DEVILLE.

8 Q AND DOES IT HAVE ANY WHITE ON IT?

9 A NO, SIR.

10 Q WHAT COLOR IS IT?

11 A IT'S BURGUNDY AND IT'S TRIMMED WITH GREY AT THE
12 BOTTOM.

13 Q GRAY?

14 A YES, SIR.

15 Q ON THE BOTTOM?

16 A YES, SIR.

17 Q ALL RIGHT. AND THIS CADILLAC, HOW LONG HAVE YOU HAD
18 IT?

19 A I SAY ABOUT TWO YEARS.

20 Q ABOUT TWO YEARS AND IS IT YOUR MAIN TRANSPORTATION?

21 A YES, SIR.

22 Q ALL RIGHT. WHEN YOU WORK, DO YOU WORK IN THE
23 MORNINGS FROM EIGHT TO FIVE OR WHAT?

24 A I WORK FROM 3 TO 11:30.

25 Q 3 TO 11:30 IS THAT CONSIDERED SECOND SHIFT?

1 A YES, SIR.

2 Q ALL RIGHT, SIR. AND DO YOU WORK ON FRIDAY NIGHTS AND
3 SATURDAY NIGHTS AND SUNDAY NIGHTS?

4 A I WORK ON FRIDAY NIGHTS AND SOMETIMES ON SATURDAYS.

5 Q ALL RIGHT.

6 A IN THE MORNINGS ON SATURDAYS AND WE DO WORK ON
7 SATURDAYS.

8 Q ON THE OCCASION OF NOVEMBER THE 14TH, 1999, WAS THAT
9 A SATURDAY?

10 A YES, SIR.

11 Q ALL RIGHT. OR MAYBE IT WAS A -- THE 14TH WAS A
12 SUNDAY, BUT --

13 A YES, SIR.

14 Q -- STARTED SATURDAY WAS THE 13TH.

15 A YES, SIR.

16 Q DID YOU HAVE TO WORK THAT DAY, THE 13TH?

17 A NO, SIR.

18 Q ALL RIGHT. DID YOU HAVE OCCASION TO FIND OUT THAT
19 THERE WAS A WHAT THEY CALL PROFESSIONAL FIGHT OF SOME
20 KIND?

21 A YES, SIR.

22 Q WAS IT COMING ON T.V.?

23 A YES, SIR.

24 Q DID YOU HAVE TO PAY FOR IT TO WATCH IT ON T.V.?

25 A YES, SIR.

1 Q ALL RIGHT. WHO WAS GOING TO HAVE THE FIGHT? WHO WAS
2 GOING TO PAY FOR IT AND GET IT HOOKED UP AND HAVE THE
3 FIGHT?

4 A MY BEST FRIEND TIGER OR NAME FRANKLIN WHITE, BUT WE
5 CALLED HIM TIGER.

6 Q RIGHT.

7 A HE HAD INFORMED ME EARLIER IN THE WEEK THAT HE WAS
8 GOING TO HAVE THE FIGHT AT HIS HOUSE AND HE WANTED ME TO
9 HELP HIM WITH SOME FOOD AND THINGS BECAUSE HE WAS GOING TO
10 INVITE A LOT OF PEOPLE TO COME OVER.

11 Q WELL, THE PEOPLE AT HIS HOUSE, WAS IT MOSTLY GUYS?

12 A YES, SIR.

13 Q ALL RIGHT. AND SO TIGER WAS GOING TO PAY THE MONEY
14 TO GET THE FIGHT HOOKED UP?

15 A YES, SIR.

16 Q WHAT TIME WOULD YOU SAY YOU GOT OVER TO TIGER'S
17 HOUSE?

18 A I WOULD SAY IT WAS -- I GOT THERE IT WAS ABOUT SIX OR
19 SEVEN THAT EVENING.

20 Q ALL RIGHT. AND THAT WAS TO BE A SATURDAY. HOW DID
21 YOU GET THERE?

22 A I DROVE MY CAR.

23 Q DID ANYBODY GO WITH YOU?

24 A TRAVIS SINGLETON, MY COUSIN.

25 Q NOW YOU AND TRAVIS, YA'LL HANG TOGETHER A LOT?

1 A NO, SIR. WE DON'T HANG TOGETHER A LOT. WHEN I SEEN
2 HIM A LOT BECAUSE MY GRANDMOTHER, YOU KNOW, HE BE AT MY
3 GRANDMOTHER HOUSE AND I SEE, YOU KNOW, HIS FAMILY.
4 EVERYBODY USUALLY MEETS UP AT HIS MOTHER HOUSE IS RIGHT
5 DOWN THE STREET AND I BE THERE A LOT.

6 Q ALL RIGHT. HIS MOTHER'S HOUSE IS RIGHT DOWN THE
7 STREET FROM YOUR HOUSE OR YOUR--

8 A FROM MY GRANDMOTHER'S HOUSE, ON THE SAME STREET.

9 Q ALL RIGHT. NOW, WHEN YOU GOT TO THE FIGHT, DID YOU
10 -- YOU AND TRAVIS GOT THERE TOGETHER, YOU STAYED THERE
11 TOGETHER?

12 A YES, SIR, BASICALLY.

13 Q ALL RIGHT. WHEN IF EVER DID YOU HAVE OCCASION TO
14 MEET RON AND MARCUS?

15 A I THINK RON AND MARCUS CAME AT LATER ON THAT NIGHT
16 ABOUT NINE OR TEN OR SO, SOMETHING LIKE THAT.

17 Q ALL RIGHT. THEY CAME TO TIGER'S HOUSE?

18 A YES, SIR.

19 Q DID YOU KNOW THESE GUYS BEFORE YOU -- BEFORE THIS
20 NIGHT?

21 A YES, SIR.

22 Q OKAY. HOW LONG HAD YOU KNOWN MARCUS AND RON?

23 A WELL, I KNOWN MARCUS BECAUSE BASICALLY PROBABLY ALL
24 HIS LIFE BECAUSE MY FIRST COUSIN -- WELL, MY UNCLE'S SON
25 IS MARCUS' OLDEST BROTHER AND BASICALLY I KNOW HIM ALL HIS

1 LIFE. HIS FATHER -- AS FAR AS RON, I MET RON -- I SAY I
2 KNOW HIM ABOUT PROBABLY A YEAR OR SO, BUT I DON'T REALLY
3 KNOW HIM KNOW HIM TO, YOU KNOW, JUST LIKE I DON'T KNOW HIS
4 LAST NAME UNTIL THIS, ALL OF THIS HAPPENED.

5 Q OKAY. SO YA'LL WERE LOOKING AT THE FIGHT. AFTER THE
6 FIGHT WAS OVER, DID YOU DO ANYTHING? WHAT DID YOU DO?

7 A AFTER THE FIGHT WAS OVER, I, YOU KNOW, WE WAS
8 DRINKING AT TIGER HOUSE AND I GOT HUNGRY, AND AFTER THE
9 FIGHT WAS OVER I TOLD TRAVIS LET'S GO, YOU KNOW, I WAS
10 READY TO GO, AND I TALKED TO MY MOTHER ON THE PHONE FROM
11 TIGER'S HOUSE AND SHE HAD INFORMED ME THAT HER CLUB --
12 SHE'S IN A WOMAN'S CLUB AND THAT THEY WAS HAVING LIKE A
13 FISH FRY AND CHICKEN OVER THERE, AND SHE SAID IF I WANTED
14 TO COME GET A PLATE THAT, YOU KNOW, I COULD COME AND GET
15 ONE.

16 SO I TOLD TRAVIS LET'S GO SINCE THE FIGHT WAS
17 OVER AND I TOLD TIGER THAT I WAS GOING OVER TO MY MOTHER'S
18 HOUSE AND THAT WHAT SHE WAS HAVING, SO ME AND TRAVIS LEFT.

19 Q ALL RIGHT. DRIVING IN YOUR CAR YOU AND TRAVIS LEFT?

20 A YES, SIR.

21 Q YOU LEFT THE OTHER GUYS BACK AT TIGER'S HOUSE?

22 A YES, SIR.

23 Q YOU WENT AND HAD SOME OF THAT CHICKEN AND SOME OF
24 THAT FISH?

25 A YES, SIR.

1 Q ABOUT WHAT TIME WAS IT WHEN YOU WERE AT YOUR MOM'S
2 HOUSE IF YOU CAN REMEMBER?

3 A I SAY IT WAS SOMEWHERE AROUND 12 OR A LITTLE AFTER 12
4 OR SOMETHING LIKE THAT.

5 Q ABOUT MIDNIGHT GETTING READY TO TURN INTO SUNDAY
6 MORNING?

7 A YES, SIR.

8 Q ALL RIGHT. AT SOME POINT DID SOME OTHER PEOPLE
9 ARRIVE AT YOUR MOTHER'S HOUSE?

10 A YES, SIR. I SAY ABOUT 30 MINUTES TO AN HOUR OR SO I
11 GUESS AFTER I HAD ALREADY EATEN AND I WAS SITTING AROUND
12 DRINKING SOME MORE BEER THAT MY MOTHER HAD OVER THERE AND
13 TIGER CAME UP WITH MARCUS AND RON.

14 Q WHO -- WHAT CAR DID THEY COME UP IN?

15 A TIGER CAR.

16 Q ALL RIGHT. AND SO THE THREE OF THEM CAME IN. DID
17 THEY COME THERE AND EAT?

18 A I THINK -- I DON'T -- I AM NOT SURE. I THINK
19 TIGER'S. I KNOW TIGER ATE. I AM NOT SURE ABOUT MARCUS
20 AND RON.

21 Q ALL RIGHT. AFTER THAT GROUP GOT THERE, DID -- WAS
22 THERE SOMEBODY THAT MADE THE DECISION TO GO TO THE COUNTRY
23 CLUB IN BISHOPVILLE?

24 A FIRST WE WERE IN THERE, AND LIKE I SAID, MY MOTHER
25 HAD SOME MORE BEER, WE WAS DRINKING AND YOU KNOW JUST

LAMONT WITHERSPOON - DIRECT BY FINNEY

1 CHATTING BECAUSE OF THE -- I KNOW A LOT OF HER FRIENDS AND
2 TIGER KNOW A LOT OF HER FRIENDS IN THE CLUB, YOU KNOW. WE
3 WERE TALKING, AND WHEN EVERYBODY WAS LEAVING, WE WENT
4 OUT. I THINK ME -- TIGER LEFT WITH A GIRLFRIEND OF HIS
5 AND HE LEFT HIS CAR WITH MARCUS AND TOLD MARCUS TO TAKE
6 HIS CAR HOME.

7 SO WHEN EVERYBODY HAD LEFT, ME, MARCUS AND
8 TRAVIS WERE OUT IN MY MOTHER'S FRONT YARD TALKING AND
9 STILL DRINKING A LITTLE BIT.

10 Q DID YOU ALL HAVE ANY DISCUSSION AT THAT POINT ABOUT
11 GOING ANYWHERE?

12 A YES. WE WERE STANDING AROUND AND EVERYBODY WAS LIKE
13 WHAT YA'LL WANT TO DO AND LET'S GO OUT AND ALL OF THAT,
14 BUT YOU KNOW, IT WAS REAL LATE AND I DIDN'T REALLY WANT TO
15 GO NOWHERE BECAUSE I WAS PRETTY MUCH INTOXICATED HIGHLY,
16 AND I WAS PRETTY MUCH AT MY LIMIT WHERE IT FELT LIKE I
17 WANTED TO GO HOME AND LAY DOWN, BUT ME AND MY GIRLFRIEND
18 HAD HAD AN ARGUMENT EARLIER THAT NIGHT AND I GUESS I
19 WANTED TO PAY HER BACK BY COMING HOME LATE AND MAKING HER
20 UPSET BY STAYING OUT AS LATE AS -- THAT I COULD, SO I WAS
21 JUST STANDING AROUND AND I THINK SOMEBODY SUGGESTED THAT
22 LET'S GO RIDE TO THE COUNTRY CLUB, AND SINCE I WAS ALREADY
23 UPSET WITH MY GIRLFRIEND, I WANTED TO MAKE HER UPSET, SO I
24 DECIDE WELL I WILL RIDE.

25 Q ALL RIGHT. SO HOW DID IT HAPPEN? DID YOU HAPPEN --

1 DID ALL OF YA'LL GET IN THE CADILLAC AND START ON TO
2 BISHOPVILLE?

3 A NO, SIR.

4 Q ALL RIGHT. TELL ME WHAT HAPPENED.

5 A AFTER WE DECIDE WE WERE GOING TO GO TO THE COUNTRY
6 CLUB, MARCUS SAID WELL, WHICH CAR ARE WE GOING TO RIDE
7 IN? AND I WAS LIKE IT DON'T MATTER, YOU KNOW, I WILL
8 DRIVE MY CAR, YOU KNOW, IF YOU KNOW, IT'S NOT A PROBLEM.
9 HE WAS LIKE IT'S ONLY FOUR OF US, IT'S NO NEED TO DRIVE
10 TWO CARS. SO I SAID THAT WAS FINE, THAT I WOULD DRIVE.

11 Q SO DID MARCUS AT THIS POINT WAS DRIVING TIGER'S CAR?

12 A YES, SIR.

13 Q WHERE DID YA'LL GO FIRST?

14 A WELL, FIRST MARCUS RON HAD -- MARCUS INFORMED ME TO
15 PICK HIM UP FROM TIGER'S HOUSE THAT HE WAS GOING TO DO
16 DROP TIGER'S CAR OFF. SO THEY WENT AHEAD AND LEFT, I
17 THINK I WENT BACK IN AND TOLD MY MOTHER THAT I WAS LEAVING
18 AND THAT'S WHEN ME AND TRAVIS GOT IN MY CAR AND HE THEN GO
19 TO TIGER'S HOUSE.

20 Q AND THAT'S WHERE YOU PICKED UP MARCUS AND RON?

21 A YES, SIR.

22 Q YOU WERE DRIVING THE CADILLAC?

23 A YES, SIR.

24 Q WHERE WAS TRAVIS?

25 A ON THE PASSENGER'S SIDE.

1 Q FRONT SEAT?

2 A FRONT SEAT, YES, SIR.

3 Q ALL RIGHT. AND MARCUS AND RON WERE IN THE BACK SEAT?

4 A WHEN WE GOT IN THE CADILLAC, YES, SIR.

5 Q RIGHT. OKAY. SO YOU PICKED HIM UP AT TIGER'S HOUSE?

6 A YES, SIR.

7 Q AND YA'LL WENT ON TO BISHOPVILLE?

8 A YES, SIR.

9 Q IT TAKES YOU ABOUT HOW LONG TO GET THERE TO THE CLUB?

10 A I SAY ABOUT 15 TO 20 MINUTES.

11 Q ALL RIGHT. WHEN YOU GOT THERE, IT WAS WHAT TIME OF
12 NIGHT YOU SUSPECT?

13 A IT WAS RIGHT ABOUT -- RIGHT AROUND 3:00 OR AFTER 3,
14 SOMETHING LIKE THAT.

15 Q YOU HAVE A WATCH ON?

16 A NO, SIR.

17 Q YOU WEAR A WATCH?

18 A NO, SIR.

19 Q OKAY. WHEN YOU GET TO THE CLUB, THIS IS THE DAVIS
20 COUNTRY CLUB. HAVE YOU BEEN THERE BEFORE?

21 A THIS WAS ABOUT THE THIRD OR FOURTH TIME THAT I HAVE
22 BEEN. I HAVE BEEN THERE A COUPLE OF TIMES LIKE WHEN I
23 COME HOME FROM COLLEGE, I REMEMBER GOING AND LIKE
24 HOLIDAYS. I WENT A COUPLE OF TIMES LIKE THAT.

25 Q ALL RIGHT. SO YOU GET TO THE COUNTRY CLUB. DO YOU

1 REMEMBER PULLING UP?

2 A YES, SIR.

3 Q ALL RIGHT. CAN YOU TELL US BY USING THAT POINTER
4 WHERE DID YOU PUT YOUR CAR WHEN YOU PULLED UP.

5 A WHEN WE FIRST GOT THERE, JUST COME AND I CAME RIGHT
6 UP IN THIS AREA RIGHT HERE AND I PULLED OVER TO THE RIGHT
7 AND PARKED RIGHT UP IN THERE.

8 Q ALL RIGHT. WERE THERE A LOT OF CARS OUT THERE?

9 A YES, SIR.

10 Q ALL RIGHT. TELL US ABOUT THE LIGHTING OUT THERE. IS
11 THERE A LOT OF LIGHT OUT THERE?

12 A IT'S LIGHT POLES ALL OVER, I GUESS. I DON'T REALLY
13 REMEMBER, BUT IT'S LIGHTS OUT THERE.

14 Q OKAY. IS IT A WELL LIT AREA? CAN YOU SEE FROM WHERE
15 YOU PARKED THE CAR? CAN YOU SEE ALL THE WAY ACROSS TO THE
16 OTHER SIDE OF THE CLUB?

17 A I THINK LIKE RIGHT IN FRONT OF ALL THE -- IN FRONT OF
18 THE CLUB YOU CAN SEE PRETTY GOOD, AND I -- I GUESS LIKE I
19 THINK IT'S -- I REMEMBER A LIGHT BEING SOMEWHERE AROUND UP
20 IN THIS AREA RIGHT HERE, AND YOU CAN SEE UP IN THAT AREA
21 RIGHT THERE.

22 Q ALL RIGHT. YOU PARKED IN CAR HERE AND THE FOUR GUYS,
23 ALL YA'LL GOT OUT?

24 A FIRST WHEN WE GOT THERE WE SAT THERE BECAUSE
25 BASICALLY -- WELL, MY INTENTION WAS I THOUGHT IT WAS GOING

1 REALLY GO THERE, YOU KNOW, A LOT OF TIMES YOU GO TO CLUBS
2 AND CLUBS ABOUT TO -- LIGHTS OUT, YOU GO JUST -- I KNOW MY
3 FIANCEE IS IN HERE, BUT YOU KNOW, YOU GO TO SEE WHO IS
4 THERE, TO SEE THE GIRLS LEAVING AND WHAT THEY GOT ON AND
5 THINGS LIKE THAT.

6 Q AND SO YA'LL KIND OF SAT THERE FOR A WHILE?

7 A YES, SIR.

8 Q ALL RIGHT. AND THEN DID YA'LL DECIDE TO GO TO THE
9 DOOR?

10 A YES, SIR, BECAUSE I DON'T REMEMBER WHAT WAS SAID BUT
11 SOMEONE WAS LIKE WELL, WHAT YA'LL WANT TO DO, WANT TO SEE
12 WHETHER WE GET IN BECAUSE IT MIGHT BE FREE SINCE HOW LATE
13 IT IS, SO WE DECIDED TO GET OUT AND GO SEE WHETHER THE
14 CLUB WAS FREE.

15 Q ALL RIGHT. SO DID YOU WALK UP TO THE DOOR?

16 A YES, SIR.

17 Q WAS ANYBODY WITH YOU?

18 A ME -- WELL, TRAVIS ALREADY HAD TOLD ME THAT HE DIDN'T
19 HAVE ANY MONEY AND THAT IF IT WAS PAYING, WOULD I PAY HIS
20 WAY AND I TOLD HIM THAT I WOULD PAY HIS WAY IF, YOU KNOW,
21 ALL OF US DECIDED TO GO IN. SO I REMEMBER ME AND TRAVIS,
22 ALL OF US WALKING TOWARDS THE DOOR AND I REMEMBER THE ONLY
23 ONE THAT I -- I THINK I REMEMBER WAS RIGHT AT THE WHERE
24 YOU GO IN THE DOOR, YOU GOT TO MAKE A RIGHT I THINK AND
25 IT'S LIKE A BOOTH YOU GO UP TO.

1 YOU REALLY CAN'T SEE, BUT IT'S LIKE A MOVIE
2 THEATRE WHERE YOU CAN STICK YOUR MONEY IN. WE WENT UP TO
3 THAT BOOTH AND I WAS TALKING TO THE GUY AND ABOUT HOW MUCH
4 WAS IT TO GET IN AND HE SAID \$10 AND I WAS TRYING TO
5 NEGOTIATE. I WAS LIKE TELLING HIM IT WAS ALREADY 3:00, I
6 MEAN THE CLUB IS ABOUT TO BE OVER WITH, HOW ABOUT CUTTING
7 IT HALF PRICE OR SOMETHING, YOU KNOW, AND HE KEPT SAYING
8 NO, \$10, \$10.

9 SO THAT'S WHEN I LOOKED AROUND, TRAVIS WAS RIGHT
10 BEHIND ME AND I'M NOT SURE -- I DON'T REMEMBER SEEING
11 MARCUS OR RON RIGHT AT THAT TIME, SO I TOLD TRAVIS, I SAID
12 THAT'S TOO MUCH, YOU KNOW, I AIN'T -- I'M NOT SPENDING
13 SINCE HE WANTED ME TO PAY HIS WAY THAT, WOULD HAVE BEEN
14 \$20 I WOULD HAVE HAD TO PAY FOR ABOUT 30 MINUTES OR SO,
15 AND I SAID THAT IS A WASTE OF MONEY AND THAT'S TOO MUCH,
16 SO WE TURNED AROUND, WENT BACK OUTSIDE AND THAT'S WHEN I
17 SEEN MARCUS AT A GRAY --- WELL, TORY'S CAR.

18 Q LATORIA, THE YOUNG LADY THAT TESTIFIED?

19 A YES, SIR.

20 Q MARCUS WAS TALKING TO LATORIA?

21 A YES, SIR.

22 Q ALL RIGHT. SO WHAT DID YOU AND TRAVIS DO THEN?

23 A WE WALKED ON OUT AND I THINK I TOLD MARCUS THAT THEY
24 STILL CHARGING \$10, YOU KNOW, LIKE THAT. AND HIM AND TORY
25 WAS IN A DISCUSSION, AND THEN I REALLY DON'T REMEMBER

1 WHERE RON WAS AT THE TIME. I THINK HE WAS SOMEWHERE
2 AROUND RIGHT UP AROUND -- I JUST DON'T RECALL SEEING HIS
3 FACE.

4 Q ALL RIGHT. SO YOU AND TRAVIS COME OUT THE FRONT
5 DOOR, COME BY WHERE THE LATORIA'S CAR WAS?

6 A YES, SIR.

7 Q AND THEN YOU ALL WERE ON YOUR WAY WHERE?

8 A FIRST WE WERE JUST STANDING THERE FIRST. MARCUS LIKE
9 I SAID WAS TALKING TO TORY AND ME AND TRAVIS WERE JUST
10 STANDING THERE AND WE WERE TALKING AND TRAVIS WENT TELLING
11 ME THAT HE WAS COLD, AND IT WAS REAL COLD THAT NIGHT, AND
12 HE DIDN'T EVEN HAVE ON A JACKET, HE HAD ON A SHORT SLEEVE
13 SHIRT AND HE KEPT TELLING ME THAT IT WAS COLD, AND I
14 REMEMBER WHEN HE SAID IT WAS COLD, THAT I GLANCED OVER TO
15 MY RIGHT BECAUSE WE WERE STANDING, YOU KNOW.

16 MY CAR WAS TO THE RIGHT AND I GLANCED OVER AT MY
17 CAR AND I COULD SEE THAT IT WAS SOME PEOPLE ON THE
18 PASSENGER SIDE OF MY CAR LIKE. WHERE I WAS PULLED IN, THE
19 CARS THEY WERE PARKED SIMULTANEOUSLY THAT WAY RIGHT THERE
20 AND I WAS JUST PARKED, YOU KNOW, LIKE THAT AND I THOUGHT
21 MAYBE I HAD THEM BLOCKED IN OR WHATEVER, I DON'T KNOW.
22 AND PLUS I DIDN'T WANT NO ONE STANDING RIGHT BY MY CAR
23 BECAUSE I JUST HAD PAID LIKE \$1500 JUST TO HAVE THAT ONE
24 SIDE PAINTED BECAUSE I WAS IN A CAR ACCIDENT.

25 AND SO ANY WAY HE KEPT TELLING ME HE WAS COLD.

1 I TOLD HIM TO COME ON WITH ME TO THE CAR. SO WHEN WE GOT
2 TO THE CAR, I CRANKED THE CAR AND I LET THE HEAT RUN AND I
3 WAS THINKING THAT MAYBE WHEN MARCUS AND THEM SEEN THE CAR
4 CRANKED THAT THEY WOULD COME TO THE CAR AND -- BECAUSE I
5 WAS READY TO GO AT THAT TIME.

6 NOTHING WAS REALLY GOING ON, AND SO I WAS
7 THINKING THAT THEY WERE COME TO THE CAR AND I PROBABLY --
8 I WAS GOING TO SAY THAT I'M READY TO GO, WHETHER YOU GOING
9 TO STAY WITH TORY OR WHAT, BUT HE NEVER REALLY PAID ME ANY
10 ATTENTION. RON NEVER CAME TO THE CAR.

11 Q SO YOU AND TRAVIS SAT IN THE CAR AND TRIED TO GET
12 WARM?

13 A YES, SIR.

14 Q ALL RIGHT. DID YOU EVER MOVE THE CAR FROM THE
15 POSITION IT WAS IN ON THE FRONT OF THE CLUB?

16 A YES, SIR.

17 Q HOW DID YOU MOVE IT? DID YOU PULL FORWARD OR PULL
18 BACK?

19 A I PULLED BACKWARDS.

20 Q AND WHEN YOU MOVED BACKWARD, DID YOU MOVE BACKWARDS
21 ALL THE WAY TO THE HIGHWAY TO THE PAVED HIGHWAY?

22 A YES, SIR.

23 Q ALL RIGHT. AT THIS POINT WHEN YOU MOVED BACK TO THE
24 HIGHWAY, WHAT WAS YOUR INTENTION?

25 A WELL, THE REASON THEY TOLD YOU I WENT TO THE CAR

1 BECAUSE I THOUGHT THAT THESE PEOPLE MAYBE WERE WAITING FOR
2 ME TO MOVE OR WHATEVER AND THEN JUST STANDING RIGHT BY MY
3 CAR. I DIDN'T WANT THEM THERE.

4 SO AFTER ME AND TRAVIS GOT IN THE CAR, WHEN THE
5 CAR WAS CRANKED, YOU KNOW, WE WERE STILL TALKING AND
6 TRAVIS WAS LIKE -- REALLY WHEN TRAVIS WAS INTOXICATED,
7 HE'S LIKE OUT OF IT BASICALLY. AND HE KEPT SAYING WELL
8 YEAH, JUST TALKING. I'M READY TO GO. I'M LIKE MAN, I'M
9 READY TO GO TOO, IT'S LATE.

10 Q LET ME ASK YOU THIS. WERE YOU IN A PARKING SPACE?

11 A NO, SIR.

12 Q ALL RIGHT. WERE YOU ON THE ACTUAL -- LOOK AT THOSE
13 PICTURES IN FRONT OF YOU AND SEE IF YOU SEE THE AREA WHERE
14 YOU THINK YOUR CAR WAS.

15 A I THINK MY CAR WAS IN THIS AREA RIGHT UP IN HERE
16 (INDICATING).

17 Q ALL RIGHT. LOOK ON THE BACK OF THAT PICTURE AND TELL
18 US WHICH PICTURE YOU ARE LOOKING AT.

19 A STATE'S EXHIBITS 18.

20 Q OKAY. ARE YOU ON THE CENTER OF THAT PICTURE, THE
21 LEFT SIDE OR THE RIGHT SIDE, WHERE YOUR CAR WOULD HAVE
22 BEEN?

23 A MOSTLY THE RIGHT SIDE.

24 Q ALL RIGHT. AND THE HEADLIGHTS OF YOUR CAR, IF THE
25 HEADLIGHTS OF YOUR CAR HAD BEEN ON, WOULD THEY HAVE BEEN

1 POINTED AT THE SIDE OF THE CLUB, THE FRONT DOOR OF THE
2 CLUB OR THE, YOU KNOW, THE...

3 A THE SIDE OF THE CLUB.

4 Q THIS SIDE?

5 A YES, SIR.

6 Q SO YOUR CAR WAS POINTED MORE LIKE FACING THE SIDE OF
7 THE CLUB?

8 A YES, SIR.

9 Q ALL RIGHT. BUT IT WASN'T THERE PARKING SPACE?

10 A NO, SIR.

11 Q SO YOU DECIDED TO MOVE IT?

12 A EXCUSE ME, YES, SIR.

13 Q YOU BACKED OUT?

14 A YES, SIR.

15 Q AND WHERE DID YOU GO WITH THE CAR?

16 A WELL, I DECIDED TO MOVE BECAUSE I FELT, LIKE I SAID.
17 I HAD THESE PEOPLE BLOCKED IN AND I WANTED TO GO FIND A
18 PARK AND SO I BACKED OUT AND BACKED OUT ON TO THE ROADWAY
19 AND I WENT OVER TO THIS OTHER SIDE OVER HERE WHERE -- THIS
20 NOT SHOWN OVER HERE, IT'S A BASEBALL FIELD I THINK.

21 Q LET ME SEE IF I CAN GET YOU A PICTURE. I ASK YOU TO
22 LOOK AT STATE'S EXHIBIT 16 AND 17 AND TELL ME. LET ME ASK
23 YOU TO LOOK AT STATE'S EXHIBIT 24 WHICH IS AN AERIAL
24 PHOTOGRAPH. CAN YOU SEE THE ROADWAY THERE AND THE CLUB?

25 A YES, SIR.

1 Q ALL RIGHT. LET'S STAND -- GO OVER HERE A SECOND.
2 WHERE ARE THOSE PICTURE?

3 A ALL RIGHT.

4 Q SHOW US WHERE THE CLUB IS ON THE PICTURE.

5 A THIS IS THE CLUB RIGHT HERE.

6 Q ALL RIGHT. AND WHEN YOU BACKED OUT, CAN YOU SHOW US
7 WHERE YOU BACKED OUT THE CAR?

8 A THERE IS THE CIRCLE.

9 Q YES, SIR.

10 A RIGHT HERE. I BACKED OUT AND CAME OVER HERE, THIS
11 WAY RIGHT HERE.

12 Q AND WHERE IS THE BALL FIELD AREA?

13 A I THINK THE BALL FIELD AREA IS OVER IN THIS AREA
14 RIGHT UP IN HERE (INDICATING)..

15 Q AND THAT'S WHERE YOU WERE HEADED TO?

16 A YES, SIR.

17 Q TRY TO FIND A PARKING SPACE?

18 A YES, SIR.

19 Q DID YOU GET OVER THERE?

20 A YES, SIR.

21 Q AND DID YOU FIND A PARKING SPACE?

22 A YES, SIR.

23 Q ALL RIGHT. HAVE A SEAT. YOU AND TRAVIS STILL IN THE
24 CAR?

25 A YES, SIR.

1 Q HOW LONG HAS IT BEEN NOW SINCE YOU GOT IN THE CAR
2 FROM THE TIME YOU GOT IN THE CAR, BACKED OUT, DROVE OVER
3 TO THE BALL FIELD AREA AND PARKED THE CAR, HOW MUCH TIME
4 WOULD YOU SAY HAS GONE BY?

5 A I SAY BETWEEN ABOUT THREE TO FIVE MINUTES OR SO.

6 Q ALL RIGHT. WHEN YOU GET THE CAR PARKED OVER IN THE
7 BALL FIELD AREA, WHAT DO YOU DO THEN?

8 A WHEN I GOT OVER THERE AND PARKED, FIRST WE SAT THERE
9 FOR A MINUTE, NOT A MINUTE BUT YOU KNOW WHAT I'M SAYING A
10 MINUTE, JUST TO GET OUT. WENT OVER THERE AND I PARKED,
11 PUT THE CAR IN PARK, I DIDN'T CUT IT OFF INITIALLY
12 BECAUSE, YOU KNOW, IT'S STILL LETTING THE HEAT BLOW AND
13 THAT'S WHEN I WAS JUST TALKING TO TRAVIS AND KEPT SAYING
14 WE WERE READY TO GO, AND I WAS LIKE YEAH, I'M LIKE YOU
15 KNOW, LET'S WALK BACK UP HERE TO SEE WHAT'S GOING ON,
16 WHETHER THEY READY TO GO OR WHAT, YOU KNOW. AND SO AT
17 THAT TIME THAT'S WHEN I STEPPED OUT OF THE CAR AND --

18 Q CUT THE CAR OFF?

19 A -- CUT THE CAR OFF YES, SIR, STEPPED OUT OF THE CAR
20 AND I SHUT MY DOOR AND TRAVIS WAS LAGGING BEHIND AND HE
21 WAS GETTING OUT AND HE SHUT HIS DOOR AND HE WAS -- THINK
22 HE WAS LIKE COMING AROUND AND I WAS STANDING WAITING FOR
23 HIM AND THAT'S WHEN I START HEARING SHOTS GO OFF.

24 Q WHERE WERE THE SHOTS COMING FROM, THE SOUNDS YOU WERE
25 HEARING?

1 A I GUESS SOMEWHERE ON THERE SIDE, OVER ON THIS SIDE OF
2 THE CLUB, ON THE OTHER SIDE OF THE CLUB.

3 Q WHERE WAS YOUR CAR? IF YOU CAN JUST GIVE US ON THIS
4 MAP JUST AS CLOSE AS YOU CAN PUT IT.

5 A IF THIS IS THE BASEBALL FIELD OVER IN THIS AREA,
6 WOULD SOMEBODY BE RIGHT UP IN THAT AREA OVER THERE.

7 Q ALL RIGHT. HOW FAR FROM THE ROAD, FROM THE ROAD TO
8 YOUR CAR WOULD YOU HAVE BEEN? WERE YOU OFF THE ROAD OR
9 WERE YOU CLOSE TO THE ROAD?

10 A I WASN'T CLOSE TO THE ROAD BECAUSE IT WAS TWO SETS OF
11 PARKS. IT WAS LIKE PEOPLE PARKED LIKE WHEN YOU FIRST TURN
12 IN, I THINK IT WAS A ROW OF PEOPLE PARKED AND THEN IT'S
13 LIKE BETWEEN THEM, IT'S WHERE YOU CAN -- EXCUSE ME --
14 WHERE YOU CAN DRIVE THE -- I GUESS OTHER PEOPLE TURN IN
15 THERE COULD COME BETWEEN THOSE CARS.

16 Q YES, SIR.

17 A AND SO I WAS PARKED LIKE IN THE SECOND ROW.

18 Q ALL RIGHT, SIR. AND THEN AT THIS POINT WHEN YOU GOT
19 OUT THE CAR, YOU AND TRAVIS AND YOU HEARD THE SHOTS, WHAT
20 DID YOU DO AS FAR AS YOUR ATTENTION? DID YOU -- DID YOU
21 TURN YOUR ATTENTION TO THE CLUB AREA?

22 A NO, SIR.

23 Q ALL RIGHT. WHAT DID YOU DO THEN?

24 A I TOLD TRAVIS, I SAID TRAVIS, GET BACK IN THE CAR,
25 SOMEBODY SHOOTING.

1 Q OKAY. SO BOTH OF YA'LL GOT BACK IN THE CAR?

2 A YES, SIR.

3 Q AT THIS POINT WAS THERE A LOT OF PEOPLE? CAN YOU
4 REMEMBER? I MEAN, IN THIS AREA ON THE WHAT I WOULD
5 CONSIDER THE LEFT SIDE OF THE CLUB OR THE CENTER SIDE,
6 CENTER AREA OF THE CLUB, WERE THERE A LOT OF PEOPLE OUT
7 THERE?

8 A I WOULD SAY IT WAS ABOUT WHERE OVER THERE WHERE WE
9 WERE, IT WAS A COUPLE OF PEOPLE STANDING AROUND TALKING,
10 YOU KNOW, MINGLING, AND I GUESS I WOULD SAY ABOUT 20 OR SO
11 PEOPLE NOT ON JUST THAT SIDE, BUT I GUESS FROM WHERE I SAW
12 THE WHOLE TIME.

13 Q ALL RIGHT, SIR. YOU HEARD THE SHOTS?

14 A YES, SIR.

15 Q YOU TOLD TRAVIS TO LET'S GET BACK IN THE CAR?

16 A YES, SIR.

17 Q WHAT DID YOU DO THEN?

18 A I CRANKED THE CAR BACK UP AND I WAS SITTING THERE
19 WAITING FOR MARCUS AND RON TO COME ON TO THE CAR.

20 Q ALL RIGHT. AND WHAT WAS YOUR INTENTION AT THAT
21 POINT?

22 A MY INTENTION WAS AT THAT POINT WAS TO WAIT FOR THEM
23 TO COME TO THE CAR, AND AS SOON AS THEY GOT TO THE CAR TO
24 LEAVE.

25 Q ALL RIGHT, SIR. NOW, WHEN AFTER A MINUTE THAT THEY

1 DIDN'T COME TO THE CAR --

2 A YES, SIR.

3 Q -- WHAT DID YOU DO THEN?

4 A WELL, LIKE I SAID, SOMEBODY SHOOTING BASICALLY
5 EVERYBODY THAT HAS INKLING TO RUN. I KNOW I WOULD RUN IF
6 I'M AROUND THE SHOTS AND I WAS FIGURING THEY WERE GOING TO
7 COME RUNNING TO THE CAR, AND I GAVE THEM TIME THAT IF THEY
8 WERE RUNNING FROM -- LAST I SEEN THIS AND THAT THEY SHOULD
9 HAVE BEEN TO THE CAR, THAT THEY SHOULD HAVE BEEN THERE.

10 Q ALL RIGHT.

11 A AND SO AT THIS TIME I KIND OF I THINK I OPENED MY
12 DOOR AND I YELLED OUT -- THINKING LIKE WHERE YOU GETTING
13 YOUR CAR WHERE YOU KNOCK YOUR FEET OFF. I STOOD UP ON
14 THAT SO I COULD GET SOME HEIGHT TO SEE BACK IN FRONT OF
15 THE CLUB THE LAST TIME WHERE I SEEN THEM, SO I COULD SEE
16 THEM, AND I WAS YELLING YO, YO LIKE THAT, BUT I -- I
17 DIDN'T SEE THEM AND I COULDN'T -- AND DIDN'T SEEM LIKE NO
18 ONE RECOGNIZED MY VOICE, SO I GOT BACK IN THE CAR.

19 Q ALL RIGHT. WHAT DID YOU DO THEN?

20 A AT THAT TIME I PROCEEDED TO PULL OUT OF THE PARKING
21 LOT AND CAME BACK AND GOT ON THE ROAD WHEN I WAS RIDING
22 REAL SLOW. I DIDN'T EVEN MASH THE GAS, YOU KNOW, YOU
23 KNOW, YOU GOT YOUR FOOT OFF THE BRAKE.

24 Q YOU CAME OUT OF THE PARKING LOT ON TO THE PAVED ROAD?

25 A YES, SIR.

1 Q AND YOU -- WHAT, YOU WENT TO THE LEFT?

2 A I WENT TO MY LEFT, YES, SIR.

3 Q ALL RIGHT. COMING DOWN IN THE AREA IN FRONT OF THE
4 NIGHT CLUB?

5 A YES, SIR.

6 Q ON THE PAVED ROAD?

7 A YES, SIR.

8 Q WHAT WOULD YOU -- WHAT WERE YOU DOING AT THAT POINT?

9 A AT THAT POINT I WAS JUST LOOKING SCALING THE PARKING
10 LOT UP IN FRONT OF THE CLUB TO SEE WHETHER I COULD SEE
11 MARCUS OR RONNIE.

12 Q ALL RIGHT. AND YOU AND TRAVIS WERE IN THE CAR, YOUR
13 CAR WAS COMING DOWN THE HIGHWAY?

14 A YES, SIR.

15 Q ALL RIGHT. WHAT HAPPENED NEXT?

16 A WELL, LIKE I SAY, I WASN'T DRIVING REAL FAST AND I
17 WAS, YOU KNOW, BASICALLY BECAUSE THE LAST TIME I SEEN THEM
18 WAS UP IN THIS AREA AND I WAS DRIVING CREEPING ALONG AND,
19 YOU KNOW, I WAS THINKING ABOUT THAT SINCE I SEEN THEM UP
20 -- THE LAST TIME I SEEN THEM WAS UP THERE AND I WAS GOING
21 TO TURN BACK UP IN THAT TURN.

22 Q YOU WERE GOING TO TURN BACK IN THIS AREA?

23 A THAT WHAT WAS IN MY MIND TO DO.

24 Q ALL RIGHT.

25 A SO AS I GOT UP TO THAT POINT, IT WAS A GROUP OF

1 GUYS. STANDING, I SEEN A BIG A GROUP OF PEOPLE RIGHT UP
2 IN THAT POINT, RIGHT UP IN SOMEWHERE UP IN HERE, SO AND
3 TRAVIS SAID TO ME THAT THERE GO MARCUS. I GUESS HE
4 THOUGHT ONE OF THEM WAS MARCUS, SO AT THAT POINT I STOPPED
5 AND I TRIED TO LOOK IN THE -- COULD SEE WHETHER ONE OF THE
6 GUYS WAS MARCUS AND...

7 Q WAS IT EASY FOR YOU WHEN YOU SAY YOU TRIED TO LOOK IN
8 THE CROWD, WHAT WAS -- WAS IT -- WHAT WAS STOPPING YOU
9 FROM LOOKING IN THE CROWD?

10 A WELL, MIGHT -- IT SEEMED LIKE PEOPLE WERE MOVING ALL
11 AROUND AND IT WASN'T EASY FOR ME JUST TO PICK HIM OUT.

12 Q ALL RIGHT.

13 A AND SO I TRIED TO FOCUS TO SEE WHERE I SEEN HIM.
14 LIKE AS SOON AS I STOP, SOMETHING HIT UP AGAINST MY CAR.

15 Q AS SOON AS YOU STOPPED SOMETHING HIT UP AGAINST YOUR
16 CAR?

17 A YES, SIR.

18 Q WHAT DID IT SOUND LIKE?

19 A I DIDN'T HERE A POW OR ANYTHING, BUT I HEARD
20 SOMETHING HIT THE CAR WAS JUST LIKE SOMETHING, MAYBE LIKE
21 SOMETHING SOMEBODY COULD HAVE THROWN OR SO. I'M NOT SURE.

22 Q ALL RIGHT. WHAT WAS YOUR REACTION AT THAT POINT?

23 A WELL, MY REACTION AT THAT POINT WAS THAT I ALREADY
24 HAD HEARD SHOTS, THAT I FIGURED SOMEBODY OBVIOUSLY WAS
25 STILL SHOOTING OR SO, SO I TOLD TRAVIS INSTINCT CAME OUT

1 MY MOUTH WAS TRAVIS, GET DOWN. I THINK SOMEBODY STILL
2 SHOOTING. SO BOTH OF US GOT DOWN IN THE CAR LIKE THIS.

3 AND I'M DRIVING LIKE THAT AND I HIT THE GAS
4 PRETTY HARD, BUT I'M STILL I HAD MY EYES TO THE LEFT
5 LOOKING IN THE PARKING LOT JUST IN CASE I SEE MARCUS OR
6 RON. AND AT THAT POINT I JUST HIT THE GAS AND BASICALLY I
7 WAS HOPING THAT I DIDN'T SEE THEM, SO I DIDN'T HAVE TO
8 STOP.

9 Q I UNDERSTAND.

10 A AND I WAS GOING --

11 (WHEREUPON THE WITNESS RESUMED THE STAND).

12 A -- THIS POINT RIGHT HERE AND BY THE TIME I GOT UP TO
13 THIS DRIVEWAY HERE IS A WHITE CAR, I GUESS THEY WERE
14 PANICKING FROM THE SHOTS OR TRYING TO GET AWAY FROM THE
15 CLUB ALSO. I HAD THE RIGHT OF WAY, BUT THEY DIDN'T STOP.
16 WHEN I WAS COMING UP TO THIS POINT, SEEMED LIKE THEY
17 WASN'T GOING TO STOP AND THEY DIDN'T. THEY CAME ON OUT
18 AND MADE A LEFT.

19 Q SO THE CAR YOU SAY -- YOU SAY WAS A WHITE CAR CAME
20 OUT OF THIS DRIVEWAY?

21 A UH-HUH.

22 Q MADE A LEFT ON TO THE ROADWAY IN FRONT OF YOU?

23 A YES, SIR.

24 Q ALL RIGHT. WHAT HAPPENED TO YOUR CAR WHEN YOU SAW
25 THE WHITE CAR?

1 A WHEN I SAW THE WHITE CAR, I STOPPED.

2 Q WHY WAS THAT?

3 A TO LET THEM GO ON OUT JUST TO KEEP FROM -- IF THEY
4 WASN'T GOING TO STOP, I WASN'T GOING TO STOP, SOMEBODY
5 PROBABLY WOULD HAVE ENDED UP RUNNING INTO EACH OTHER.

6 Q ALL RIGHT. WHAT HAPPENED TO YOUR CAR AT THE TIME
7 WHEN YOUR CAR STOPPED HERE ON THE HIGHWAY?

8 A NOTHING, IT JUST STOPPED.

9 Q ALL RIGHT.

10 A I CAME TO A STOP AND THAT'S WHEN TRAVIS SAID THERE
11 THEY GO.

12 Q THERE THEY GO.

13 A THAT'S WHAT HE SAID.

14 Q ALL RIGHT. AND AT THAT POINT WHAT HAPPENED?

15 A I LOOKED TO MY LEFT AND I SAW HANDS WAIVING UP IN
16 THIS AREA OVER IN HERE.

17 Q UP IN THE AREA OVER?

18 A IN THIS PARKING LOT AREA OVER TO MY LEFT.

19 Q IN FRONT OF THIS HOUSE?

20 A YES, SIR.

21 Q ALL RIGHT. AND DID -- DID YOU SEE MARCUS AND RON?

22 A I DIDN'T -- I COULDN'T IDENTIFY WHO IT WAS AND I
23 DIDN'T SEE HOW MANY, I JUST SEEN HANDS. I DIDN'T LOOK AT
24 THEM. WHEN I SEEN HANDS AND HE SAID THERE THEY GO, I
25 THOUGHT THAT THAT WAS THEM.

1 Q ALL RIGHT. AND SO DID MARCUS AND RON GET IN THE CAR?

2 A MARCUS AND RON RAN UP TO THE CAR, GOT -- AND THEY GOT
3 IN THE CAR.

4 Q GOT IN THE BACK SEAT?

5 A YES, SIR.

6 Q WHAT DID YOU DO THEN?

7 A WELL, FIRST WHEN THEY GOT IN THE CAR, RON GOT IN ON
8 THE --

9 Q PASSENGER'S SIDE?

10 A -- THE PASSENGER'S SIDE, SLIDE IN THE BACK. AND
11 MARCUS GOT TO THE CAR, HE OPENED THE DOOR. HE DIDN'T JUMP
12 IN, HE JUST OPENED THE DOOR AND HE WAS LOOKING BACK KIND
13 OF LIKE PAUSED AND LOOKED BACK TOWARDS THE CLUB LIKE
14 THAT. AND I SAID GET IN MAN, LIKE THAT. AND THAT'S WHEN
15 HE JUMPED IN. AND I SAID MAN, I THINK SOMEBODY SHOT AT MY
16 CAR, I'M NOT SURE, LIKE THAT.

17 Q UH-HUH.

18 A AND THEN THAT'S WHEN I JUST FLOORED AND WE RODE OFF.

19 Q ALL RIGHT. YOU RODE OFF DOWN THE ROAD GOING TOWARDS
20 SUMTER?

21 A YEAH, GOING TOWARDS 15.

22 Q ALL RIGHT.

23 A YES, SIR.

24 Q WHEN YOU GOT TO 15, YOU MADE A LEFT TURN GOING
25 TOWARDS SUMTER?

1 A I GOT TO 15, I CAUGHT UP -- ALREADY HAD CAUGHT UP
2 WITH THE CAR, THE WHITE CAR THAT PULLED OUT IN FRONT OF
3 ME, THEY MADE A LEFT GOING TOWARDS SUMTER AND I MADE A
4 LEFT RIGHT BEHIND THEM.

5 Q AND SO BOTH OF THESE CARS, THE WHITE CAR AND YOUR CAR
6 CADILLAC GOING DOWN 15?

7 A YES, SIR.

8 Q YOU TOLD US THAT THE OFFICERS WHEN YOU GAVE THIS
9 STATEMENT WE GOT TO 15 TO -- YOU CONTINUED TO FOLLOW THE
10 CAR IN FRONT OF ME AT A HIGH RATE OF SPEED?

11 A YES, SIR.

12 Q WERE YOU DRIVING FAST BECAUSE THE CAR IN FRONT OF YOU
13 WAS DRIVING FAST OR WHY WERE YOU DRIVING FAST?

14 A BECAUSE BASICALLY I ALREADY HEARD SHOTS AND THEN I --
15 I DIDN'T HEAR THE SHOT THAT I THOUGHT WAS A SHOT THAT HIT
16 MY CAR, BUT I THOUGHT IT WAS AND THEN ALSO LIKE WHEN I WAS
17 -- WHEN I STOPPED, WHEN TRAVIS -- WHEN I SAW THE HANDS
18 WAVING, I WAS LOOKING IN MY REAR VIEW MIRROR BECAUSE I
19 NEVER SAW MARCUS RUN UP TO THE CAR.

20 I WAS LOOKING AT MY REAR VIEW MIRROR THE WHOLE
21 TIME BECAUSE I SAW HEADLIGHTS ON THE ROAD BEHIND ME AND I
22 WAS THINKING, I DON'T KNOW WHY, SOMEBODY THREW SOMETHING
23 OR MAYBE THEY SHOT OR WHAT AND I WAS THINKING THAT THESE
24 JUST MIGHT BE THE GUYS OR WHATEVER THAT THREW SOMETHING OR
25 WHATEVER COMING AFTER ME, AND I JUST HAD MY EYES ON THAT

1 CAR, MAKE SURE THAT CAR WASN'T COMING CLOSE TO ME AT THAT
2 TIME.

3 Q ALL RIGHT. SO THE REASON YOU WERE TRAVELING AT A
4 HIGH RATE OF SPEED BECAUSE YOU DIDN'T KNOW WHAT WAS GOING
5 ON BEHIND YOU?

6 A YES, SIR.

7 Q ALL RIGHT. THE CAR IN FRONT OF YOU, BOTH OF YA'LL
8 CONTINUED TO GO TO SUMTER?

9 A YES, SIR.

10 Q HOW FAST WOULD YOU SAY YOU WERE GOING?

11 A WELL, IF I WAS GOING BETWEEN 90 AND A HUNDRED, THEY
12 HAD TO HAVE BEEN GOING 105 OR SO, BUT WE WASN'T GOING THAT
13 FAST. I WAS GOING FAST AND I WANTED TO HURRY UP AND GET
14 HOME AND I INTENDED TO PASS THE CAR, BUT I INSTEAD OF
15 PASSING IT, I SAID I STAYED BEHIND IT BECAUSE THEY WERE
16 DRIVING PRETTY FAST ALSO, SO I THINK WE WERE GOING
17 PROBABLY -- I KNOW THE SPEED LIMIT 55 AND WE WERE GOING
18 PROBABLY AND 75, SOMEWHERE AROUND UP IN THERE, 80.

19 Q ALL RIGHT. NOW, AT SOME POINT A POLICE OFFICER PUT
20 THE BLUE LIGHT ON YOU?

21 A YES, SIR.

22 Q AND HE PULLED YOUR CAR OVER?

23 A YES, SIR.

24 Q AND IT TURNED OUT BE A SUMTER DEPUTY?

25 A YES, SIR.

1 Q ALL RIGHT. DID HE TALK TO YOU?

2 A YES, SIR.

3 Q DID YOU ANSWER HIS QUESTIONS?

4 A YES, SIR.

5 Q HE WANTED TO SEE YOUR DRIVER'S LICENSE?

6 A YES, SIR.

7 Q ALL RIGHT. DID HE -- DID YOU INTERFERE WITH HIS
8 TALKING TO YOU OR INVESTIGATION OR ANY WAY -- IN ANY WAY
9 INTERFERE WITH WHAT HE WAS TRYING TO DO?

10 A NO, SIR.

11 Q ALL RIGHT. AT SOME POINT YOU WAITED THERE ON THE
12 SIDE OF THE ROAD UNTIL SOME OTHER OFFICERS FROM LEE COUNTY
13 CAME?

14 A YES, SIR.

15 Q HOW LONG WAS THAT?

16 A I SAY IT WAS ABOUT -- I GUESS ABOUT FIVE MINUTES OR
17 SO.

18 Q DID YOU HAVE TO STAND OUTSIDE THE CAR THAT TIME, THAT
19 TIME OR DID HE ALLOW YOU TO SIT IN THE CAR?

20 A I THINK I WAS IN -- I WAS IN THE CAR WITH THE SUMTER
21 COUNTY DEPUTY.

22 Q YOU WERE SITTING IN THE POLICE CAR?

23 A YES, SIR.

24 Q OKAY. AND THE OTHER GUYS?

25 A I THINK THEY WERE SITTING IN THE CAR, AND SUMTER

1 COUNTY DEPUTY WAS STANDING BESIDE MY CAR ON THE
2 PASSENGER'S SIDE.

3 Q I SEE. ALL RIGHT. AND THEN DID LEE COUNTY DEPUTY
4 CAME, TALKED TO YOU ALL?

5 A YES, SIR.

6 Q WHAT DID YOU TELL THE LEE COUNTY DEPUTY AS FAR AS HIS
7 QUESTIONS, WHAT DID YOU TELL HIM HAD HAPPENED TO YOU THAT
8 NIGHT?

9 A HE ASKED ME WAS I AT THE CLUB AND I SAID YES, SIR.
10 AND HE SAID DID I HEAR THE SHOTS, AND I SAID YES, SIR.
11 AND THEN HE ASKED WHERE WAS I PARKED DURING THE SHOOTING
12 WHEN I FIRST HEARD THE SHOTS AND I SAID I WAS OVER THERE
13 BY THE BASEBALL FIELD.

14 AND HE ASKED WHAT DID WE DO WHEN -- DID I SEE
15 WHO -- HE ASKED DID I SEE WHO WAS SHOOTING, AND I SAID NO,
16 SIR. THEN HE SAID WHAT DID YOU DO THERE, AND I SAID WE
17 LEFT.

18 Q AND DID HE ASK YOU MUCH OF ANYTHING ELSE?

19 A HE DIDN'T ASK ANYTHING ELSE. HE JUST -- WELL, HE
20 ASKED FOR INFORMATION AS FAR AS --

21 Q NAME?

22 A -- NAME.

23 Q ADDRESS PHONE NUMBER?

24 A YES, SIR.

25 Q YOU GAVE ALL OF THAT TO HIM?

1 A YES, SIR.

2 Q ALL RIGHT. AND THAT IS WHAT HAPPENED?

3 A YES, SIR.

4 Q DID YOU SEE ANYONE FIRING A GUN THAT NIGHT?

5 A I DIDN'T SEE NO -- I HEARD. THE ONLY THING I KNEW
6 THAT SOMEBODY WAS SHOOTING WAS I HEARD THE SHOTS, BUT I
7 DIDN'T SEE NO ONE SHOOTING.

8 Q ALL RIGHT. DID YOU SEE ANYBODY RUNNING DOWN THE ROAD
9 FIRING A WEAPON AS THEY WERE COMING TOWARD YOUR CAR?

10 A NO, SIR.

11 Q ALL RIGHT. WHEN YOU GAVE YOUR STATEMENT -- I DON'T
12 KNOW IF THIS IS DATED. LOOKS LIKE THE 17TH. THE 17TH OF
13 NOVEMBER, DID YOU GIVE A STATEMENT TO THE OFFICERS?

14 A YES, SIR.

15 Q AND YOU AND I HAD TALKED BY THEN; IS THAT RIGHT?

16 A YES, SIR.

17 Q AND WHAT DID I TELL YOU TO DO?

18 A YOU TOLD ME TO GO ALONG WITH THEM AND COOPERATE WITH
19 THEM, AND THEY ASKED FOR A STATEMENT, GIVE THEM A
20 STATEMENT, YOU DON'T SIGN IT UNTIL YOU READ IT.

21 Q ALL RIGHT. AND WHEN YOU FINISHED GIVING THE
22 STATEMENT, DID THEY TYPE IT UP?

23 A YES, SIR.

24 Q DID THEY SHOW IT TO YOU AND ASK YOU TO SIGN IT?

25 A YES, SIR.

1 Q AND WHAT DID YOU TELL THEM?

2 A I TOLD THEM MY LAWYER SAID THAT FOR ME NOT TO SIGN
3 ANYTHING UNTIL HE READS IT.

4 Q ALL RIGHT. AND DID THEY GIVE YOU A COPY OF THE
5 STATEMENT?

6 A NO, SIR.

7 Q HAVE YOU EVER BEEN GIVEN A COPY OF THE STATEMENT?

8 A NO, SIR.

9 Q ALL RIGHT. THE STATEMENT THAT THE OFFICER TOOK FROM
10 YOU HE READ TO THIS JURY YESTERDAY?

11 A YES, SIR.

12 Q WAS THERE ANYTHING IN THAT STATEMENT THAT WAS NOT
13 TRUE?

14 A NO, SIR.

15 Q ALL RIGHT. DID YOU KNOW MR. HENRY SCOTT?

16 A NO, SIR.

17 Q DID YOU WISH HIM ANY HARM FOR HIM OR ANY -- ANYBODY
18 TO HURT HIM THAT NIGHT?

19 A NO, SIR. BUT LIKE I TOLD HIS MOTHER AT MY BOND
20 HEARING--

21 MS. NIELSEN: YOUR HONOR, I OBJECT TO THE RELEVANCE
22 OF THIS.

23 THE COURT: NO, I WILL ALLOW THE QUESTION. IT'S--
24 (WHEREUPON QUESTIONING RESUMED).

25 Q I DON'T THINK YOU CAN SAY WHAT YOU TOLD HIS MOTHER.

1 YOU HAD A CONVERSATION WITH HIS MOTHER?

2 A WELL, I DIDN'T HAVE A CONVERSATION DIRECTLY BUT I WAS
3 ABLE TO SAY SOMETHING AT MY BOND HEARING TOWARDS THE
4 FAMILY.

5 Q ALL RIGHT. YOU TOLD THEM WHAT YOUR FEELINGS WERE?

6 A YES, SIR.

7 Q AND YOU DIDN'T -- DID YOU DO ANYTHING THAT NIGHT? IS
8 THERE ANYTHING YOU WOULD DO DIFFERENTLY THAT NIGHT IF YOU
9 HAD TO DO IT OVER RIGHT NOW?

10 A NO, SIR.

11 Q ALL RIGHT. THANK YOU, SIR. ANSWER ANY QUESTIONS
12 THESE LAWYERS MAY HAVE FOR YOU.

13 THE COURT: MS. NIELSEN, YOU MAY CROSS-EXAMINE.

14 CROSS-EXAMINATION BY MS. NIELSEN:

15 Q MR. WITHERSPOON, YOU SAID TRAVIS SINGLETON WAS COLD
16 BECAUSE HE HAD ON A SHORT SLEEVE SHIRT?

17 A YES, SIR. I MEAN YES, MA'AM.

18 Q GILARON TAYLOR HAD ON A BLACK HOODIE; DIDN'T HE?

19 A I DON'T EVEN REMEMBER WHAT I HAD ON THAT NIGHT,
20 MA'AM.

21 Q YOU DON'T REMEMBER WHAT MARCUS HAD ON EITHER?

22 A NO, MA'AM.

23 Q NOW, AFTER YOU GOT TO THE CLUB, WHAT YOU ARE TELLING
24 US IS YOU PARKED WHERE? SHOW ME AGAIN WHERE YOU SAY YOU
25 PARKED.

1 A I PULLED UP IN THIS AREA AND I KIND OF PULLED OVER TO
2 THE RIGHT, I GUESS IT WAS RIGHT, UP IN THIS AREA RIGHT
3 HERE.

4 Q ALL RIGHT. AND YA'LL GET OUT AND WALK TO THE DOOR?

5 A YES, MA'AM.

6 Q NOW, WHEN YOU WALKED TO THE DOOR, IS LATORIA DAVIS'
7 CAR THERE FOR YA'LL TO WALK PAST?

8 A I DIDN'T PAY IT ANY ATTENTION. I DON'T REMEMBER
9 SEEING IT.

10 Q SO YOU DON'T KNOW WHETHER SHE WAS THERE OR NOT?

11 A NOT WHILE WE WERE WALKING UP THERE. I DIDN'T PAY IT
12 ANY ATTENTION.

13 Q BUT WHEN YOU CAME BACK OUT, SHE WAS THERE?

14 A WHEN I CAME BACK OUT, MARCUS WAS AT HER CAR.

15 Q ALL RIGHT. AND YOU GOT IN YOUR CAR. DID YOU TALK TO
16 MARCUS THEN?

17 A WHEN?

18 Q WHEN YOU CAME BACK OUT, DID YOU TALK TO MARCUS?

19 A YES, MA'AM. I TOLD HIM THAT I WASN'T GOING TO GO IN
20 THE CLUB BECAUSE THE PRICE.

21 Q WHAT ELSE DID YOU TELL HIM?

22 A THAT WAS IT.

23 Q OKAY. DID YOU TALK TO RON TAYLOR?

24 A NO, MA'AM. LIKE I SAID, I DON'T EVEN REMEMBER
25 EXACTLY WHERE RON WAS AT DURING THAT TIME.

1 Q WELL, WHERE WAS RON THE LAST TIME YOU SAW HIM?

2 A WALKING, ALL OVER IS WHEN WE GOT OUT THE CAR, WE WAS
3 WALKING TOWARDS THE DOOR OF THE CLUB LIKE GOING TO GO IN
4 THE CLUB AND THAT -- I THOUGHT ALL FOUR OF US WAS IN A
5 LINE.

6 Q POINT WITH THAT THING AND SHOW US WHERE RON TAYLOR
7 WAS THE LAST TIME YOU SAW HIM.

8 A WE WAS OVER HERE. I GUESS WE WAS GETTING OUT OF MY
9 CAR AND WAS WALKING TOWARDS THE DOOR OF THE CLUB.

10 Q ALL RIGHT. DIDN'T GO IN THE CLUB WITH YOU, RIGHT?

11 A NO, MA'AM.

12 Q IF HE HAD GONE IN THE CLUB BEHIND YOU, WHEN YOU
13 TURNED AROUND YOU WOULD HAVE SEEN HIM; WOULDN'T YOU?

14 A YES, MA'AM.

15 Q AND MARCUS EVANS DIDN'T GO IN BECAUSE YOU TURNED
16 AROUND, YOU'D HAVE SEEN HIM; WOULDN'T YOU?

17 A YES, MA'AM.

18 Q THEY COULDN'T GET PAST THE DOOR WITHOUT PAYING,
19 RIGHT?

20 A I COULDN'T GET PAST -- I KNOW A LOT OF PEOPLE THAT
21 HAD SNUCK IN THAT CLUB, MA'AM.

22 Q I'M NOT TALKING ABOUT WHAT HAPPENED ON ANOTHER
23 NIGHT. ON THAT NIGHT, YOU WERE STANDING AT THE TICKET
24 WINDOW?

25 A OH, YES, MA'AM.

1 Q HAD THEY WALKED PAST YOU AND SNUCK IN, YOU WOULD HAVE
2 SEEN THEM; WOULDN'T YOU?

3 A YES, MA'AM, I SHOULD HAVE.

4 Q THEY DIDN'T SNEAK PAST YOU; DID THEY?

5 A NO, MA'AM.

6 Q NOBODY CAME PAST YOU RIGHT THEN; DID THEY?

7 A NOT THAT I RECALL.

8 Q NOW, SO YOU DIDN'T TALK TO RON TAYLOR WHEN YOU CAME
9 BACK OUT?

10 A NO, MA'AM.

11 Q AND THE ONLY THING YOU TOLD MARCUS EVANS IS THAT YOU
12 WEREN'T GOING IN BECAUSE YA'LL WEREN'T GOING TO PAY THAT
13 MUCH TO GET IN THAT LATE?

14 A YES, MA'AM, BECAUSE HE WAS IN A CONVERSATION WITH
15 TORY.

16 Q SO THAT'S ALL THE CONVERSATIONS YOU HAD WITH HIM?

17 A YES, MA'AM.

18 Q NOW WHEN YOU DROVE UP, HOW MANY PEOPLE WERE STANDING
19 DOWN IN THIS AREA OUT THERE?

20 A WHERE, WHICH AREA?

21 Q SAY BETWEEN HERE AND HERE.

22 A I'M NOT SURE. I JUST REMEMBER I GUESS SEEING A
23 COUPLE OF PEOPLE HERE AND THERE STANDING AROUND. IT
24 WASN'T LIKE A THOUSAND, A LOT OF PEOPLE, BUT A COUPLE OF
25 PEOPLE HERE AND THERE.

1 Q IT WASN'T A HUNDRED PEOPLE OUT THERE. THERE WASN'T
2 50 PEOPLE OUT THERE; WERE THERE?

3 A I DON'T THINK IT WOULD HAVE BEEN 50 IN ANY ONE GROUP,
4 NO, MA'AM.

5 Q THERE IS A PRETTY GOOD BIT OF LIGHT OUT THERE TOO;
6 ISN'T THERE?

7 A YES, MA'AM.

8 Q NOW, IF THERE HAD BEEN 50 PEOPLE OUT THERE, YOU WOULD
9 KNOW THAT THERE WERE 50 PEOPLE OUT THERE; WOULDN'T YOU?

10 A IN THAT AREA, YES, MA'AM.

11 Q WE ARE NOT TALKING ABOUT OVER THERE ON THE BASEBALL
12 FIELD WHERE YOU ARE TALKING ABOUT.

13 A NO, MA'AM.

14 Q WHEN YOU SAY AND YOU LEFT AND WENT AND PARKED IN THE
15 BASEBALL FIELD, USING THIS COURTROOM FOR DISTANCE, HOW FAR
16 AWAY FROM THE CLUB DID YOU GO TO PARK YOUR CAR?

17 A FOR A DISTANCE? PROBABLY BE FROM -- I GUESS FROM ME
18 TO THE DOOR TO THE WALL TO THE DOOR OF THE CLUB. I MEAN,
19 RIGHT UP IN THAT AREA OR SOMETHING. I DON'T...

20 Q YOU'RE SAYING THAT BASEBALL FIELD IS ABOUT THE
21 DISTANCE OF THIS COURTROOM?

22 A WELL, I AM NOT SURE HOW FAR. I WENT OVER THERE. I
23 DON'T KNOW THE DISTANCE EXACTLY OF HOW FAR OFF I WAS
24 PARKED.

25 Q USING THIS PHOTOGRAPH, THERE IS AN AERIAL PHOTOGRAPH

1 AND THERE IS THE CLUB. IS THIS THE BASEBALL FIELD BACK
2 OVER HERE OR OVER HERE?

3 A THERE IS THE WHITE BUILDING, I THINK BASEBALL FIELD
4 RIGHT BY THE WHITE BUILDING.

5 Q SO OVER HERE ON THIS SIDE?

6 A I DON'T REALLY -- I KNOW THAT IT'S A WHITE BUILDING
7 AND I THINK THE FENCE WITH A BASEBALL FIELD I GUESS IT'S
8 UP IN THIS AREA RIGHT UP IN HERE. I KNOW YOU PARK. IF
9 YOU COME -- YOU GO AND YOU PARK BETWEEN THIS AREA RIGHT
10 HERE. THAT'S WHERE THE PARKS ARE.

11 Q YOU THINK IT'S ABOUT THE DISTANCE OF THIS COURTROOM?

12 A I THINK SO, FROM WHERE MY CAR WAS AT, I THINK SO.

13 Q NOW, ON THAT SIDE OF THE CLUB HOW MANY LIGHTS ARE
14 THERE?

15 A I'M NOT SURE, MS. NIELSEN.

16 Q THERE ARE LIGHTS OVER HERE ON THIS SIDE OF THE CLUB;
17 AREN'T THERE?

18 A I THINK IT WAS LIGHTS OVER THERE.

19 Q THERE ISN'T ANYWHERE AROUND, RIGHT AROUND THAT CLUB
20 THAT IS DARK; IS IT?

21 A ON THIS SIDE OVER HERE?

22 Q ON EITHER SIDE.

23 A THAT'S DARK AS THERE?

24 Q THAT'S DARK.

25 A I DON'T THINK SO.

1 Q OKAY. SO WHAT YOU TOLD US IS THAT YOU GO OVER THERE
2 AND YOU GET OUT THE CAR?

3 A NOT SOON AS WE GOT OVER THERE. WHEN I GOT OVER
4 THERE, I WENT AND I PARKED AND WE -- ME AND TRAVIS WERE
5 STILL CONVERSATING AS FAR AS HE WAS READY TO GO, I'M READY
6 TO GO, THAT BACK AND FORTH AND ALL OF THAT AND THAT'S WHEN
7 I WAS LIKE WELL, LET'S -- LET'S WALK UP HERE AND SEE
8 WHAT'S GOING ON AND TELL THEM THAT WE ARE READY TO GO.

9 Q SO YOU GOT OUT OF THE CAR, AND AS SOON AS YOU GOT OUT
10 OF THE CAR YOU HEARD SOME SHOTS?

11 A NO, WHEN I GOT OUT THE CAR, I GOT A CHANCE -- I CUT
12 THE CAR OFF, GOT OUT THE CAR, CLOSE THE DOOR AND TRAVIS
13 WAS LAGGING BEHIND ME. HE GOT OUT AND CLOSE THE DOOR AND
14 HE WAS COME AROUND AND THAT'S WHEN I HEARD THE SHOTS.

15 Q WELL, HOW CLOSE TO THE CLUB WERE YOU WHEN YOU HEARD
16 THE SHOTS?

17 A STANDING RIGHT BY MY CAR.

18 Q SO BASICALLY AS SOON AS YOU GOT OUT OF THE CAR YOU
19 HEARD THE SHOTS?

20 A YES, MA'AM.

21 Q WELL, WHEN YOU WERE OVER THERE, HOW MANY SHOTS DID
22 YOU HEAR?

23 A I'M NOT SURE. WHEN THEY STARTED GOING OFF, THAT'S
24 WHEN I HEARD THE FIRST ONE. I JUST STARTED GOING JUMPING
25 IN THE CAR, GETTING IN THE CAR.

1 Q OKAY. WHEN YOU ARE CREEPING ALONG IN FRONT OF THE
2 CLUB, CAN YOU HEAR SHOTS THEN?

3 A NO, MA'AM.

4 Q SO ALL SHOOTING IS OVER BEFORE YOU GET ON THE
5 HIGHWAY?

6 A I DIDN'T HEAR ANY SHOTS WHEN I WAS GOING BY THAT
7 CLUB.

8 Q AFTER YOU GOT IN YOUR CAR, DID YOU HEAR ANY SHOTS?

9 A NO, MA'AM.

10 Q ALL THE SHOTS HAPPENED BEFORE YOU GOT IN YOUR CAR?

11 A AT THAT TIME I DIDN'T HEAR ANY SHOTS WHILE WHEN I GOT
12 INTO MY CAR. I DON'T RECALL HEARING SHOTS. I ONLY HEARD
13 SHOTS WHEN I WAS STANDING OUTSIDE. I HEARD THEM CLEARLY.

14 Q AND WHEN SOMETHING HIT YOUR CAR, THAT COULD HAVE BEEN
15 A SHOT, YOU DIDN'T HEAR IT EITHER?

16 A I DIDN'T HEAR POW, BUT I HEARD SOMETHING HIT THE CAR.

17 Q SO YOU ARE INSIDE THE CAR AND YOU CAN'T HEAR ANY
18 SHOTS WHILE YOU'RE INSIDE THE CAR?

19 A I DIDN'T HEAR ANY.

20 Q DID YOU--

21 MR. FINNEY: I'M GOING TO INTERPOSE AN OBJECTION.

22 THE WITNESS ANSWERED THE QUESTION THAT HE DID NOT HEAR ANY
23 SHOTS AFTER HE GOT IN.

24 THE COURT: IT'S BEEN ASKED AND ANSWERED, MS.
25 NIELSEN.

1 (WHEREUPON QUESTIONING RESUMED) .

2 Q DID YOU HAVE MUSIC ON IN THE CAR?

3 A YES, MA'AM.

4 Q HOW LOUD WAS IT?

5 A NOT VERY LOUD.

6 Q WELL--

7 A I MEAN--

8 Q SHOTS WERE PRETTY LOUD; AREN'T THEY?

9 A IT'S LOUD. THE MUSIC WAS LOUD ENOUGH TO HEAR, BUT IT
10 WASN'T JAMMING SITTING THERE. WOULDN'T HAVE THE RADIO
11 TURNED ALL THE WAY UP JAMMING.

12 Q WELL, WHAT I'M ASKING YOU WAS IT LOUD ENOUGH SO THAT
13 YOU WOULDN'T HAVE BEEN ABLE TO HEAR SHOTS ABOVE IT?

14 A I GUESS IF THE SHOTS WERE DIRECTLY UP ON ME, I
15 PROBABLY COULD HEAR.

16 Q WELL, YOU ARE THE LENGTH OF THE COURTROOM FROM THE
17 CLUB?

18 A WELL, LIKE I SAID, ONCE I GOT IN THE CAR, MAYBE I
19 WASN'T PAYING ATTENTION TO THE SHOTS OR TRYING TO HEAR
20 THEM, BUT I JUST DIDN'T HEAR ANY SHOTS, HEAR ANY MORE
21 SHOTS.

22 Q NOW, YOU SAID YOU SAW SOMEBODY WAVING THEIR ARMS,
23 RIGHT?

24 A YES, YES, MA'AM.

25 Q AND IN YOUR STATEMENT YOU GAVE TO THE POLICE, WHAT

1 YOU SAID WAS SPECIFICALLY WAS I SAW MARCUS AND RON TRYING
2 TO GET MY ATTENTION; IS THAT RIGHT?

3 MS. NIELSEN: ASK IF HE NEEDS THAT TO REFRESH HIS
4 MEMORY. IF HE TELLS ME HE NEEDS THAT, WE WILL HAND IT TO
5 HIM.

6 THE COURT: IF THE QUESTION IS GIVING HIM ANY
7 PROBLEM, HE HAS A RIGHT TO--

8 A COULD YOU SHOW ME WHERE YOU ARE TALKING ABOUT?

9 Q ALL RIGHT. START WITH THAT SENTENCE. READ THAT
10 SENTENCE.

11 A CAR PULLED OUT OF THE PARKING AREA IN FRONT OF ME.
12 THEN I SAW MARCUS AND RON TRYING TO GET MY ATTENTION.

13 Q THAT'S NOT WHAT YOU ARE SAYING TODAY; IS IT?

14 A WELL, BASICALLY IT'S THE SAME THING, SAME THING.
15 WHAT I WAS ASSUMING WAS THAT TRAVIS -- WHEN TRAVIS SAID
16 THAT THERE THEY GO, I ASSUMING HE WAS TALKING ABOUT MARCUS
17 AND RON, AND WHEN I SAW THE HANDS, I GUESS HE KNEW WHAT HE
18 WAS TALKING ABOUT. THAT WAS MARCUS AND RON.

19 Q BUT YOU DIDN'T ACTUALLY KNOW THAT MARCUS AND RON WERE
20 TRYING TO GET YOUR ATTENTION BECAUSE YOU JUST SAID YOU
21 COULDN'T TELL THAT IT WAS THEM?

22 A YES, YES, MA'AM, BUT I -- I DIDN'T KNOW ANYBODY ELSE
23 THAT HAD EVER BEEN WAIVING ME DOWN.

24 Q ALL RIGHT. SHOW ME ON THAT DIAGRAM WHERE THEY WERE
25 WHEN THE PEOPLE WERE WAIVING THEIR ARMS THAT WE GUESS ARE

1 MARCUS AND RON SO SHOW--

2 A I GUESS IT WAS WHEN I GOT TO THIS POINT TRAVIS SAID
3 THERE THEY GO, LOOK TO MY LEFT AND IN THIS AREA IN THE
4 PARKING LOT WITH CARS ALL UP IN THIS AREA I SEEN SOMEBODY
5 WAIVING.

6 Q ALL RIGHT. SO WHETHER DID THEY COME FROM? TAKE THAT
7 THING AND SHOW US HOW THEY CAME TO GET IN YOUR CAR.

8 A LIKE I SAID, I DIDN'T WATCH THEM RUN UP TO THE CAR
9 BECAUSE I SAW HEADLIGHTS IN MY REAR VIEW MIRROR. WHEN I
10 STOPPED, I LOOKED IN MY REAR VIEW MIRROR AND I SAW
11 HEADLIGHTS IN MY REAR VIEW MIRROR. I DIDN'T EXAMINE THEM
12 COME UP TO THE CAR.

13 Q GIVE US THE DESCRIPTION OF THE CAR YOU SAID CAME OUT
14 OF THAT OTHER PARKING LOT?

15 A A WHITE SMALL CAR. I DON'T KNOW WHAT KIND OF CAR IT
16 WAS.

17 Q HOW MANY PEOPLE DID IT LOOK LIKE IT HAD IN IT?

18 A I'M NOT SURE. I THINK, I KNOW, I REMEMBER SEEING
19 HAIR, SO I THINK IT WAS FEMALES IN THE CAR IN THE FRONT.

20 Q NOW, WHERE DID YOU FIRST BECOME AWARE THAT THERE WAS
21 A CAR BEHIND YOU?

22 A WHEN I FIRST STOPPED, WHEN I STOPPED AT THIS POINT
23 RIGHT AT -- RIGHT AT THIS DRIVEWAY WHEN THE CAR PULLED OUT
24 IN FRONT OF ME AND TRAVIS SAID THERE THEY GO -- AS I
25 LOOKED TO THE LEFT AND I SAW THE HANDS WAVING, I LOOKED IN

1 MY REAR VIEW MIRROR AND THAT'S WHEN I SEEN THE HEADLIGHTS.

2 Q SO THERE WAS A CAR BEHIND YOU AND A CAR IN FRONT OF
3 YOU?

4 A IT WASN'T A CAR. I DON'T KNOW. IT WASN'T RIGHT
5 RIGHT BEHIND ME. IT WAS LIKE I SAY THE HEADLIGHTS OF A
6 CAR IN MY MIRROR. IT WASN'T RIGHT ON MY TAIL RIGHT UP ON
7 ME.

8 Q WELL THEN, WHY WERE YOU WORRIED ABOUT THAT CAR?

9 A BECAUSE AT THAT POINT, LIKE I SAID, I HEARD SOMETHING
10 HIT UP AGAINST MY CAR. AND WHEN I SAW THE HEADLIGHTS OF
11 THIS CAR LIKE FURTHER BEHIND ME, I WAS THINKING WELL,
12 POPPED IN MY MIND I WAS ALREADY SCARED THAT THIS MIGHT BE
13 SOMEBODY FOR WHATEVER REASON THAT THREW SOMETHING OR
14 WHATEVER AGAINST MY CAR COMING AFTER ME OR COMING AFTER MY
15 CAR.

16 Q WAS THERE A BULLET HOLE IN YOUR CAR AFTER THIS
17 INCIDENT?

18 A NOT A HOLE, NO, MA'AM.

19 Q WELL, WAS THERE SOMETHING THAT LOOKED LIKE A BULLET
20 HIT YOUR CAR? HAVE YOU GOT A PICTURE OF THAT?

21 A NO, MA'AM.

22 Q DID LOOK LIKE A BULLET HOLE OR THAT A BULLET HIT IT?

23 A IT LOOKED LIKE JUST LIKE YOU GOT A STOP SIGN, YOU
24 WERE LITTLE, YOU TAKE A ROCK AND HIT THE STOP SIGN AND THE
25 DENT MADE IN THAT STOP SIGN, LIKE THAT.

1 Q WHEN YOU GOT TO HIGHWAY 15, WAS THIS OTHER CAR STILL
2 BEHIND YOU?

3 A NO, MA'AM.

4 Q WELL, YOU DIDN'T HAVE TO WORRY ABOUT HIM ANY MORE;
5 DID YOU?

6 A NO, MA'AM.

7 Q SO WHEN YOU GOT ON HIGHWAY 15, YOU HAD TO STOP AT THE
8 STOP SIGN BEFORE YOU GOT ON HIGHWAY 15; DIDN'T YOU?

9 A YES, MA'AM.

10 Q THAT OTHER CAR IN FRONT OF YOU STOP AT THAT STOP
11 SIGN?

12 A LIKE I SAID, I DON'T KNOW WHETHER, I ASSUME THEY
13 STOPPED AND THAT'S HOW I CAUGHT UP TO THEM BECAUSE THEY --
14 WHEN THEY PULLED OUT, THEY KEPT -- THEY WENT ON, I STOP TO
15 LET THEM GO ON. THAT'S WHEN I WAITED TILL MARCUS AND RON
16 GOT IN THE CAR.

17 Q A WHITE CAR, YOU SAID YOU CAUGHT UP TO THEM?

18 A YES, MA'AM.

19 Q WELL, WHERE DID YOU CATCH UP TO THEM AT?

20 A WHEN I GOT UP TO THEM, THEY WAS MAKING A LEFT TURN ON
21 TO 15.

22 Q THEY WEREN'T TRAVELING VERY FAST AT THAT POINT IN
23 TIME; WERE THEY?

24 A THEY WERE PICKING UP SPEED TURNING. THEY WAS IN THE
25 PROCESS OF TURNING.

1 Q WELL, THEY COULDN'T HAVE BEEN GOING TOO FAST IF THEY
2 WERE TURNING; COULD THEY?

3 A THAT'S WHAT I'M SAYING. THEY TURN WHILE THEY WERE
4 TURNING. THAT'S WHAT I'M SAYING. THEY MADE A LEFT AND
5 AFTER THEY MADE THE LEFT, THEY WERE IN THE PROCESS OF
6 PICKING UP SPEED.

7 Q DID YOU STOP AT THE STOP SIGN?

8 A NO, I DIDN'T.

9 Q YOU DIDN'T?

10 A NO. I SLOWED DOWN AND, YOU KNOW, IT'S DARK UP IN
11 THAT AREA AND I DIDN'T SEE ANY HEADLIGHTS COMING IN THIS
12 OTHER DIRECTION. I DIDN'T -- I DIDN'T EVEN STOP. I
13 SLOWED DOWN ENOUGH WHERE I COULD MAKE A SAFE TURN AND I
14 TURNED.

15 Q WELL, YOU HAD TO SLOW DOWN A PRETTY GOOD BIT TO MAKE
16 A SAFE TURN; DIDN'T YOU?

17 A YES, MA'AM.

18 Q HOW FAST WERE YOU GOING?

19 A WHEN?

20 Q WHEN YOU MADE THE TURN?

21 A I'M NOT SURE. I KNOW I WASN'T PROBABLY ABOUT 15, 10
22 MILES PER HOUR I GUESS.

23 Q AND THAT OTHER CAR IS NOT BEHIND YOU ANY MORE, RIGHT?

24 A NOT THAT I SEEN, NO, MA'AM.

25 Q WELL, IF IT WAS BACK THERE, WHAT WOULDN'T YOU HAVE

1 BEEN ABLE TO SEE IT IN YOUR--

2 A I WOULD, YES, MA'AM.

3 Q IN YOUR MIRROR?

4 A YES, MA'AM.

5 MS. NIELSEN: COURT'S INDULGENCE.

6 THE COURT: YES, MA'AM.

7 (WHEREUPON THERE WAS A PAUSE).

8 (WHEREUPON QUESTIONING RESUMED).

9 Q AND IT'S YOUR TESTIMONY THAT YOU NEVER EVER SAW THE
10 FIRE FROM ANY GUN?

11 A NO, MA'AM.

12 Q YOU NEVER SAW ANYBODY SHOOTING?

13 A NO, MA'AM, I NEVER...

14 Q YOU DIDN'T SEE ANYBODY RUNNING BEHIND YOUR CAR
15 SHOOTING?

16 A NO, MA'AM. IF I HAD SEEN SOMEBODY RUN AFTER MY CAR
17 SHOOTING, THEY WOULD HAVE BEEN LEFT.

18 Q AND MR. WITHERSPOON, SOMEBODY ROLLED DOWN THE WINDOWS
19 IN THE CAR, YOU'D KNOW IT; WOULDN'T YOU? WINDOWS WEREN'T
20 DOWN IN YOUR CAR; WERE THEY?

21 A WHILE WE WERE ON HIGHWAY 15 THE WINDOW ALREADY WAS
22 CRACKED. I CRACKED MY WINDOW BECAUSE TRAVIS WAS SMOKING A
23 CIGARETTE AND I THINK MARCUS WAS. I KNOW MARCUS SMOKED
24 AND SMOKE WAS IN THE CAR.

25 Q WELL, YOU MUST NOT BE TOO SCARED AT THAT POINT IF

1 YA'LL ARE CRACKING WINDOWS AND SMOKING CIGARETTES?

2 A I WASN'T ROLLING ANY WINDOWS. I HAVE ELECTRONIC
3 WINDOWS. I MASH MY BUTTON, CRACK THE WINDOW BECAUSE SMOKE
4 WAS IN THE CAR.

5 Q AT THAT POINT THEN YOU ARE THINKING ABOUT NORMAL
6 EVERY DAY THINGS? YOU ARE NOT TALKING ABOUT BEING TOO
7 SCARED; ARE YOU?

8 A NO, MA'AM. I WAS THINKING ABOUT GETTING HOME. ALL I
9 WAS THINKING ABOUT WAS GETTING HOME BECAUSE SOMEBODY
10 SHOOTING AT A CLUB I DON'T NEVER...

11 Q OKAY. HOW MANY WINDOWS ARE IN THE CAR?

12 A HOW MANY WINDOWS?

13 Q HOW MANY WINDOWS?

14 A THAT CAN ROLL DOWN?

15 Q YEAH.

16 A FOUR.

17 Q THERE IS FOUR WINDOWS ROLLED DOWN?

18 A YES, MA'AM.

19 Q AND HOW MANY -- PLEASE TELL US HOW MANY OF THOSE
20 WINDOWS WERE DOWN.

21 A I'M NOT SURE. I KNOW MINE WAS DOWN, TRAVIS CRACKED
22 HIS AND I ASSUME ONE WAS IN THE BACK WAS DOWN. I'M NOT
23 SURE.

24 Q WHY, TELL WHY DO YOU ASSUME THAT?

25 A BECAUSE SMOKE WAS IN THE CAR AND I -- LIKE I SAID, IT

1 WAS A PRETTY HEAVY SMOKE AND MARCUS SMOKES AND I'M PRETTY
2 SURE YOU SMOKING AND YOU RIDING IN THE CAR, YOU CRACK YOUR
3 WINDOW.

4 Q MARCUS WAS SMOKING AND TRAVIS SINGLETON?

5 A I ASSUME. I SEEN TRAVIS SMOKING AND I ASSUME MARCUS
6 WAS BECAUSE SMOKE WAS KIND OF HEAVY IN THE CAR.

7 Q WERE EITHER ONE OF THE BACK WINDOWS DOWN?

8 A I'M NOT SURE.

9 Q ARE YOU TELLING THIS JURY THAT IF YOU ARE IN A CAR
10 AND YOUR CAR AND YOU'RE DRIVING AND SOMEBODY PUTS A WINDOW
11 DOWN IN THE BACK, YOU DON'T KNOW WHETHER THEY PUT IT DOWN
12 OR NOT?

13 A I KNOW THE WINDOW WASN'T ALL THE WAY DOWN, BUT I AM
14 NOT SURE. LIKE I SAID, IT WAS NOISE ALREADY MADE IN THE
15 CAR FROM MY WINDOW BEING CRACKED. TRAVIS' WINDOW WAS
16 CRACKED AND I KNOW THEY WERE SMOKING. I AM NOT SURE
17 WHETHER MARCUS CRACKED HIS WINDOW OR NOT.

18 Q TELL US AGAIN ABOUT WHAT HAPPENED. YOU SAID NOW RON
19 TAYLOR GOT IN THE CAR FIRST.

20 A YES, MA'AM.

21 Q AND MARCUS IS DOING WHAT?

22 A WHEN MARCUS GOT UP TO THE CAR, RON GOT ON IN THE CAR
23 BUT HE GOT UP TO THE CAR, MARCUS OPENED HIS DOOR AND HE'S
24 KIND OF LIKE STANDING THERE, LOOK LIKE HE'S ABOUT TO GET
25 IN BUT HE HESITATE AND HE LOOK BACK TOWARDS THE CLUB.

1 Q THEY ARRIVE AT THE CAR AT EXACTLY THE SAME TIME?

2 A I'LL SAY NOT EXACTLY THE SAME. WELL, RON GOT ON IN
3 AND WHEN RON CLOSE HIS DOOR, I GUESS GOT IN MARCUS DOOR
4 OPEN.

5 Q I'M ASKING YOU DID THEY ARRIVE AT THE CAR AT THE SAME
6 TIME?

7 A LIKE I SAID, I DIDN'T EVEN SEEN THEM RUN UP TO THE
8 CAR. I WASN'T WATCHING THEM AS THEY RAN UP TO THE CAR,
9 BUT I REMEMBER RON GETTING IN THE CAR, AND ABOUT RIGHT AT
10 THE TIME RON, THOSE SHUT RON'S DOOR, MARCUS DOOR OPEN.

11 Q THAT'S BECAUSE AT THIS TIME YOU'RE LOOKING AT THE
12 MISFIRE, YOUR HEADLIGHTS IN YOUR BACK MIRROR?

13 A THAT'S -- THAT'S WHEN I WAS STOPPED AND I WAS LOOKING
14 IN MY REAR VIEW MIRROR AND I SAW HEADLIGHTS.

15 Q I DON'T HAVE ANY FURTHER QUESTIONS.

16 THE COURT: THANK YOU. MR. DOBY?

17 MR. DOBY: NO, YOUR HONOR.

18 THE COURT: THANK YOU. MR. ROGERS?

19 MR. ROGERS: JUST A COUPLE OF QUESTIONS.

20 CROSS-EXAMINATION BY MR. ROGERS:

21 Q MR. WITHERSPOON, I BELIEVE YOU TESTIFIED THAT I GUESS
22 BEFORE NOVEMBER 14TH OF LAST YEAR YOU HAD KNOWN RON ABOUT
23 A YEAR BEFORE THAT?

24 A YES, SIR.

25 Q OKAY. AND IN THAT YEAR PERIOD, YOU ARE NOT AWARE OF

1 ANY TROUBLE THAT HE HAS BEEN IN AND HE HAS NEVER GOTTEN IN
2 ANY TROUBLE TO YOUR KNOWLEDGE?

3 A NO, SIR. FROM THE FIRST TIME I MET HIM, RON SEEM TO
4 BE LIKE A PRETTY BOY OR A NICE GROOMED GUY.

5 Q OKAY. DID YOU KNOW HE HAD BEEN IN THE AIR FORCE?

6 A I HEARD MY FRIEND TIGER TALKING ABOUT THAT HE WAS IN
7 THE SERVICE.

8 Q OKAY. AND DID YOU KNOW OF YOUR OWN KNOWLEDGE WHETHER
9 RON WORKED?

10 A WHEN I FIRST MET HIM?

11 Q YES.

12 A NO, I DIDN'T.

13 Q DID YOU KNOW IF HE WAS WORKING DURING THIS TIME?

14 A THIS TIME, YES, SIR.

15 Q OKAY. BUT YOU DON'T KNOW WHAT?

16 A I THINK HE WAS WORKING AT BOSCH, I THINK.

17 Q BOSCH?

18 A AT THIS TIME.

19 Q OKAY. NOW, I'M NOT GOING TO GO THROUGH YOUR ENTIRE
20 TESTIMONY, BUT I JUST WANT TO GET A COUPLE OF THINGS
21 STRAIGHT. YA'LL ALL GOT OUT TO GO TO THE CLUB?

22 A YES, SIR.

23 Q YOU WENT UP TO THE DOOR AND YOU LEFT RON AND MARCUS
24 OUTSIDE?

25 A WHEN WE GOT OUT OF THE CAR, I WAS LIKE THE LEADER

1 BECAUSE I WANTED TO MAKE SURE THE PRICE WASN'T TOO HIGH
2 FOR ME AND TRAVIS AND ALL THE REST OF THEM. WE LIKE GOT
3 OUT OF THE CAR. I GUESS WE WALKING LIKE NOT SIDE BY SIDE,
4 BUT THEY WERE BEHIND ME.

5 Q OKAY. AND WHEN YOU CAME OUT OF THE CLUB, YOU SAW
6 MARCUS TALKING TO LATORIA?

7 A YES, SIR.

8 Q BUT YOU DIDN'T SEE RON?

9 A I DON'T RECALL SEEING HIS FACE AT THAT TIME.

10 Q AND THEN YOU WENT ON TO YOUR CAR?

11 A I STOOD UP THERE FOR A MINUTE AND THAT'S WHEN I TOLD
12 MARCUS THAT THE PRICE WAS TOO HIGH IN THE CLUB AND ME AND
13 TRAVIS WERE -- AND MARCUS WERE TALKING TO TORY, HE WENT ON
14 BACK TALKING TO TORY, ME AND TRAVIS.

15 Q OKAY. AND THEN AFTER YOU HAD PARKED AT THE PARK IN
16 THE BASEBALL FIELD, THEY CAME A POINT THAT YOU HEARD
17 GUNSHOTS?

18 A YES, SIR.

19 Q YOU JUMPED IN YOUR CAR AND YOU PULLED DOWN THIS ROAD
20 RIGHT HERE?

21 A YES, SIR.

22 Q YOU WERE LOOKING FOR RON AND MARCUS?

23 A YES, SIR.

24 Q AND YOU SAW TWO FIGURES THAT YOU COULDN'T RECOGNIZE?

25 A I DIDN'T -- I DIDN'T SAY TWO FIGURES, I ONLY SAW

1 HANDS.

2 Q YOU SAW HANDS?

3 A JUST LIKE HANDS WAVING.

4 Q BUT YOU SAW SOMEBODY AND YOU DIDN'T KNOW WHO IT WAS?

5 A NO, SIR.

6 Q IT WAS ACTUALLY SOMEBODY THAT YOU REALLY KNEW?

7 A WELL THEN, YOU THINK THAT -- LIKE I SAID, I WOULDN'T
8 THINK ANYBODY ELSE WOULD HAVE BEEN WAIVING ME DOWN TO PICK
9 THEM UP.

10 Q OKAY.

11 A OR TRYING TO STOP ME..

12 Q AND WHEN THEY -- HERE THEY AUTOMATICALLY GOT BACK IN
13 YOUR CAR WAS WAY UP HERE AT THIS DRIVEWAY?

14 A YES, SIR.

15 Q BECAUSE YOU HAD STOPPED TO LET THAT OTHER CAR OUT?

16 A YES, SIR.

17 Q OKAY.. AND I BELIEVE YOUR TESTIMONY WAS THAT RON GOT
18 IN THE PASSENGER REAR SIDE?

19 A YES, SIR.

20 Q SO THAT MEANS HE RAN AROUND YOUR CAR AND GOT IN?

21 A YES, SIR.

22 Q OKAY. YOU SAID YOU DIDN'T REMEMBER WHAT RON HAD ON.
23 IF I TOLD YOU THAT HE HAD ON BLACK JEANS AND A GREEN
24 PULL-OVER, WOULD THAT REFRESH YOUR MEMORY ABOUT WHAT HE
25 HAD ON?

1 A NO, SIR.

2 Q YOU JUST DON'T REMEMBER?

3 A I DON'T EVEN REMEMBER WHAT I WAS WEARING LIKE I SAID.

4 Q OKAY. THE CAR THAT WAS BEHIND YOU, THE ONE YOU WERE
5 FOCUSED ON WITH THE HEADLIGHTS --

6 A YES, SIR.

7 Q -- COULD YOU EVER TELL WHAT COLOR OR WHAT KIND OF CAR
8 THAT WAS?

9 A NO, SIR.

10 Q OKAY. THANK YOU, MR. WITHERSPOON.

11 THE COURT: MR. JORDAN?

12 MR. JORDAN: THANK YOU.

13 CROSS-EXAMINATION BY MR. JORDAN:

14 Q MR. WITHERSPOON, IT WAS COLD THAT NIGHT?

15 A YES, SIR.

16 Q TRAVIS HAD FORGOT HIS COAT?

17 A I DON'T KNOW WHETHER HE FORGOT IT, BUT HE DIDN'T HAVE
18 ONE ON.

19 Q SO HE WAS SHIVERING?

20 A YES, SIR.

21 Q DOING THAT? AND YA'LL HAD SOME BEERS TO DRINK?

22 A YES, SIR.

23 Q HOW MANY HAD YOU HAD?

24 A TOO MUCH.

25 Q TOO MANY?

- 1 A YES, SIR.
- 2 Q HAD TRAVIS HAD A FEW HIMSELF?
- 3 A A GOOD MANY SO, YES, SIR.
- 4 Q OKAY. AND THE -- HOW MANY CARS WERE OUT THERE
- 5 ROUGHLY WHEN YOU ARRIVED? IT WAS PRETTY PACKED, TOO MANY
- 6 TO COUNT?
- 7 A YEAH, IT WAS PRETTY PACKED.
- 8 Q TIGHT, TIGHT PARKING?
- 9 A YES, SIR.
- 10 Q OKAY. NUMBER OF PEOPLE OUTSIDE? WAS THERE MORE THAN
- 11 20?
- 12 A I -- IT WASN'T A LOT OF PEOPLE OUTSIDE, BUT I GUESS
- 13 IT WOULD HAVE BEEN SOMEWHERE AROUND, YOU KNOW, PEOPLE HERE
- 14 AND THERE, I GUESS ABOUT 20 PEOPLE OR SO.
- 15 Q DIFFERENT GROUPS?
- 16 A YES, SIR.
- 17 Q THERE WAS A GROUP OVER BY YOUR CAR?
- 18 A YES, SIR.
- 19 Q AND YOU MOVED IT?
- 20 A UH-HUH.
- 21 Q THEN THERE WAS A GROUP IN FRONT OF THE CLUB?
- 22 A I--
- 23 Q OR OUT NEAR THIS SIGN OR OVER TOWARDS THE FIRST
- 24 DRIVEWAY?
- 25 A I AM NOT SURE.

1 Q NOW, WAS THIS A LAST MINUTE DECISION TO GO OUT TO THE
2 CLUB?

3 A YES, SIR.

4 Q SO YA'LL DIDN'T HAVE ANY SPECIFIC PLANS?

5 A NO, SIR.

6 Q AND YOUR REASON FOR GOING OUT THERE WAS TO MAKE YOUR
7 FIANCEE MAD, RIGHT?

8 A YES, SIR.

9 Q DID IT WORK?

10 A NO, BECAUSE SHE WAS ASLEEP WHEN I GOT HOME.

11 Q AND WHEN YA'LL -- AFTER YA'LL GOT DOWN THE ROAD,
12 SUMTER COUNTY PULLED YOU OVER?

13 A YES, SIR.

14 Q AND YOU WEREN'T GIVEN ANY TICKETS OR ANYTHING FOR
15 SPEEDING; WERE YOU?

16 A NO, SIR.

17 Q ALL RIGHT. DID HE EVEN SAY ANYTHING ABOUT THAT,
18 WHAT'S YOUR HURRY OR ANYTHING?

19 A NO, SIR. I TOLD HIM -- WHEN HE PULLED ME OVER, HE
20 TOLD ME THAT MY CAR HAD FIT THE DESCRIPTION OF -- SAID LEE
21 COUNTY CALLED, SAID IT WAS AN ARMED ROBBERY, SAID MY CAR
22 FIT THE DESCRIPTION OF AN ARMED ROBBERY AND HE ASKED ME
23 ~~WAS I DRINKING~~ AND I TOLD HIM YES, SIR, I WAS DRINKING AND
24 I TOLD HIM I WAS SPEEDING BECAUSE ME AND THE CAR THAT WAS
25 RIGHT IN FRONT OF US BOTH OF US COMING FROM A CLUB AND

1 SOMEBODY WAS SHOOTING.

2 Q DID HE -- DID HE TRY TO GIVE YOU ANY KIND OF FIELD
3 SOBRIETY TEST OR DID HE SAY ANYTHING?

4 A NO, SIR. HE STARTED TALKING ABOUT SOMETHING THAT
5 HAPPENED AT THIS OTHER CLUB CALLED THE FROZEN PARADISE.

6 Q HOW LONG WERE YOU -- HOW LONG WERE YOU STOPPED BY
7 SUMTER COUNTY BEFORE LEE COUNTY GOT THERE?

8 A I SAY IT WAS ABOUT FIVE MINUTES OR SO.

9 Q OKAY. AND THEN DID YOU RECOGNIZE -- DID YOU
10 RECOGNIZE THE LEE COUNTY OFFICERS AS BEING MR. SIMON WHO
11 IS AT--

12 A YES, SIR.

13 Q WHO TESTIFIED EARLIER?

14 A YES, SIR.

15 Q OKAY. AND HE SPOKE TO YOU?

16 A YES, SIR.

17 Q AND HE SEPARATED YA'LL?

18 A YES, SIR.

19 Q OR HE TALKED TO YOU INDIVIDUALLY?

20 A YES, SIR.

21 Q NOT AS A GROUP? OKAY. AND DID HE TAKE TO YOU ONE BY
22 ONE AND THEN WHEN HE WAS FINISHED WITH ONE PERSON SAID GO
23 OVER, STAND OVER THERE, GET BACK IN THE CAR?

24 A YES, SIR.

25 Q HE TALKED TO TRAVIS, TOO; DIDN'T HE?

1 A YES, SIR.

2 Q HE TRAVIS -- TO MARCUS?

3 A YES, SIR.

4 Q AND HE TALKED TO RON?

5 A YES, SIR.

6 Q AND THEN HE TOLD YA'LL TO GO ON?

7 A YES, SIR.

8 Q HE TOOK ALL OF YOUR INFORMATION?

9 A YES, SIR.

10 Q AND LOOKED AT YOUR I.D.'S?

11 A I DON'T KNOW WHETHER HE LOOKED AT THEM, OUR I.D.'S,
12 BUT I REMEMBER THE OTHER ONES DID. I THINK HE JUST TOOK
13 DOWN INFORMATION. I'M NOT SURE.

14 Q OKAY. AND THEN HE TOLD YOU I MIGHT BE GETTING BACK
15 IN TOUCH WITH YOU OR SOMETHING LIKE THAT OR DID HE TELL
16 YOU THAT?

17 A HE TOLD ME THAT IF HE NEED TO GET IN TOUCH WITH ME
18 THAT HE WOULD CALL, GET IN TOUCH WITH ME.

19 Q OKAY. AND HE LATER DID GET IN TOUCH WITH YOU?

20 A NOT HIM.

21 Q OKAY.. DID ONE OF THE OTHER OFFICERS?

22 A YES, SIR.

23 Q AND THEY BROUGHT YOU OVER TO LEE COUNTY?

24 A YES, SIR.

25 Q AT THE SAME TIME DID THEY BRING TRAVIS?

1 A NO, SIR.

2 Q THEY DIDN'T?

3 A NO, SIR.

4 Q DID YOU LATER SEE TRAVIS TALKING WITH THEM?

5 A NO, SIR.

6 Q OKAY. YOU DIDN'T -- YOU DON'T KNOW IF HE -- DID YOU
7 EVER SEE HIM GIVE THEM ANY MORE INFORMATION IN A
8 STATEMENT OR ANYTHING LIKE THAT?

9 A NO, SIR.

10 Q OKAY. AND YOU COOPERATED WITH THEM, TOLD THEM WHAT
11 YOU KNEW?

12 A YES, SIR.

13 Q OKAY. WHEN YOU WERE -- WHEN YOU WERE OUT THERE, WERE
14 YOU TRYING TO IDENTIFY WHO WAS THERE AND TAKE NOTE OF WHAT
15 WAS GOING ON OR WERE YOU MORE CONCERNED WITH MAKING YOUR
16 FIANCEE MAD?

17 A WHEN?

18 Q I MEAN, WERE YOU TRYING TO REMEMBER PLACES AND THINGS
19 AND WHERE PEOPLE STOOD WHEN YOU WERE OUT THERE?

20 A NO, SIR.

21 Q DID YOU HAVE ANY PROBLEM TO TRY TO IDENTIFY THESE
22 FOLKS?

23 A NO, SIR.

24 Q OKAY. WERE PEOPLE SCATTERING AS YOU WERE LEAVING?

25 A WHEN THE SHOTS RANG OFF, PEOPLE CAME -- I THINK IT

1 WAS LIKE MAYBE ABOUT TWO OR THREE PEOPLE RAN OVER INTO THE
2 PARKING LOT WHERE I WAS AT, AND I REMEMBER -- I DON'T
3 KNOW, ONE CAR OR TWO CARS LEAVING, BUT THEY WENT THE OTHER
4 WAY DOWN BACK THAT WAY.

5 Q YEAH. AND DID YOU -- LEONARD SCOTT TOOK THE STAND
6 AND SAID THOSE, THOSE FOUR. DID YOU SEE HIM OUT THERE
7 THAT NIGHT?

8 A NO, SIR.

9 Q OKAY. THANK YOU. I DON'T ANY FURTHER QUESTIONS.

10 THE COURT: MR. FINNEY, REDIRECT?

11 MR. FINNEY: NO, YOUR HONOR.

12 THE COURT: THANK YOU. YOU STEP DOWN, MR.

13 WITHERSPOON.

14 (WHEREUPON THE WITNESS LEFT THE STAND).

15 MR. FINNEY: YOUR HONOR, WE REST THE CASE.

16 THE COURT: THANK YOU, SIR. LADIES AND GENTLEMEN,
17 YOU HAVE NOW HEARD ALL OF THE EVIDENCE AND TESTIMONY THAT
18 YOU WILL HEAR FROM THE DEFENDANTS IN THE PRESENTATION OF
19 THEIR RESPECTIVE CASES IN THIS REGARD.

20 I'M GOING TO SEND YOU TO YOUR ROOM. OBVIOUSLY
21 YOU HAVE BEEN OUT HERE A LONG TIME THIS MORNING. WE ARE
22 MINDFUL OF THAT. WE WILL TAKE A BRIEF RECESS. THE STATE
23 HAS THE OPPORTUNITY IF IT WISHES TO INTRODUCE REPLY
24 EVIDENCE TO RESPOND TO THE EVIDENCE THAT THE DEFENSE HAS
25 INTRODUCED.

1 IT CANNOT INTRODUCE NEW MATTERS AT THIS TIME, SO
2 MS. NIELSEN WILL NEED A FEW MINUTES TO DECIDE WHETHER SHE
3 IS GOING TO DO THAT AND WE WILL GIVE HER THAT TIME. I
4 WILL GET YOU OUT SHORTLY. PLEASE DON'T TALK ABOUT THIS
5 CASE AMONG YOURSELVES WHILE YOU'RE IN THE JURY ROOM.

6 (WHEREUPON THE JURY LEFT THE COURTROOM AT 12:09 P.M.)

7 THE COURT: MS. NIELSEN, DOES THE STATE AT THIS TIME
8 WISH TO OFFER ANY REPLY EVIDENCE OR TESTIMONY?

9 MS. NIELSEN: YOUR HONOR, I DON'T THINK SO, BUT I
10 WOULD LIKE A COUPLE OF MINUTES TO TALK TO THE OFFICERS.

11 THE COURT: I WILL GIVE YOU THAT. IN ADDITION TO
12 THAT, MS. NIELSEN, CAN YOU OR THE CLERK MIGHT BE THE ONE
13 TO GET ME THE GRAND JURY REPORT FOR THE TERM IN WHICH THE
14 INDICTMENT WAS AMENDED. IF I COULD GET THAT FROM THE
15 CLERK.

16 IF YOU WILL LET THEM KNOW WHAT DATE IT WAS
17 PRESENTED SO THEY CAN FURNISH IT. STAND DOWN AND BE IN
18 RECESS FOR 15 MINUTES. THANK YOU.

19 (WHEREUPON A BRIEF RECESS WAS TAKEN).

20 THE COURT: MS. NIELSEN I WILL BRING THE JURY IN AND
21 LET YOU REST IN THE PRESENCE OF THE JURY, JUST ANNOUNCE
22 THERE IS NOTHING IN REPLY, THEN I WILL GIVE THE
23 INSTRUCTIONS, WE WILL BREAK AND BE BACK AT 2:00 TO ARGUE,
24 AND THEN IN THE MEAN TIME I NEED TO DEAL WITH -- BETWEEN
25 NOW AND THEN I NEED TO DEAL WITH THE ISSUE OF THE

1 INDICTMENT AND JUST HEAR FROM YOU BOTH ON THE RECORD IN
2 THAT REGARD SINCE I THINK LARGELY WHAT WE HAVE DONE UP TO
3 THIS POINT HAS BEEN AN IN CHAMBERS CONFERENCE, OKAY?

4 MS. NIELSEN: THANK YOU, YOUR HONOR.

5 THE COURT: ALL RIGHT. BRING US THE JURY, PLEASE,
6 SIR.

7 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 12:40
8 P.M.).

9 THE COURT: THANK YOU, LADIES AND GENTLEMEN. AS YOU
10 KNOW, THE STATE HAS THE OPPORTUNITY IF IT CHOOSES TO OFFER
11 REPLY TESTIMONY AT THIS TIME, AND I TURN TO MS. NIELSEN.
12 MS. NIELSEN?

13 MS. NIELSEN: YOUR HONOR, THE STATE HAS NO REPLY
14 TESTIMONY AND WE AGAIN REST.

15 THE COURT: THANK YOU. LADIES AND GENTLEMEN, THE
16 STATE HAS NOW RESTED ITS CASE. THAT MEANS YOU HAVE HEARD
17 ALL OF THE EVIDENCE AND TESTIMONY THAT YOU WILL HEAR IN
18 THE TRIAL OF THIS CASE FROM ALL SIDES. YOU HAVE YET TO
19 HEAR THE ARGUMENTS THAT THE LAWYERS WILL PRESENT TO YOU
20 AND THE CHARGE ON THE LAW WHICH I WILL GIVE YOU AFTER THAT
21 HAS BEEN DONE.

22 AND HERE IS THE SCHEDULE WE ARE GOING TO FOLLOW
23 IN THAT REGARD. WE ARE GOING TO BREAK FOR LUNCH NOW AND
24 GET YOU BACK IN THE JURY ROOM AT 2:00. AT 2:00 YOU ARE TO
25 COME BACK OUT AND YOU WILL HEAR THE ARGUMENTS THAT THE

1 LAWYERS WILL PRESENT.

2 THEY WILL PRESENT THEIR FINAL ARGUMENTS, AND IN
3 THESE ARGUMENTS THEY ARE ALLOWED TO SUMMARIZE THE EVIDENCE
4 WHICH HAS BEEN PRESENTED TO YOU AND SUBMIT TO YOU
5 INFERENCES OR CONCLUSIONS THAT THEY CLAIM YOU SHOULD DRAW
6 FROM THE EVIDENCE. THAT IS THE REASON WE CALL THEM
7 ARGUMENTS BECAUSE THEY ARE ALLOWED TO SUBMIT TO YOU
8 INFERENCES AND THINGS LIKE THAT THAT THEY CLAIM YOU SHOULD
9 DRAW.

10 THEY ARGUE THE POSITIONS IN OTHER WORDS IN FAVOR
11 OF THEIR RESPECTIVE POSITIONS IN THIS PARTICULAR CASE.
12 NOW AFTER THE ARGUMENTS HAVE BEEN DONE, BECAUSE IT'S GOING
13 TO BE BY THAT TIME WE START AT 2, THE ARGUMENTS WILL HAVE
14 TO BREAK TO SEPARATE THEM BECAUSE THERE ARE OBVIOUSLY A
15 GOOD MANY OF THEM.

16 FOUR ARGUMENTS FOR DEFENDANTS, ONE ARGUMENT FOR
17 THE STATE, AND YOU CAN'T SIT HERE AND LISTEN TO FIVE
18 ARGUMENTS AT ONE TIME. WE WILL HAVE TO BREAK. THE
19 ESSENCE OF IT IS THAT ENTIRE PROCESS WILL TAKE SLIGHTLY
20 MORE THAN TWO HOURS, PERHAPS TWO HOURS AND A HALF.

21 IF WE START AT 2:00 AND IF WE FACTOR IN A BREAK,
22 IT WILL BE 4:30 OR SO BEFORE THE ARGUMENTS ARE COMPLETED
23 THIS AFTERNOON. THERE WOULD REMAIN FOR YOU THE CHARGE ON
24 THE LAW WHICH I MUST GIVE YOU AFTER THE ARGUMENTS HAVE
25 BEEN DONE. THAT IS THE LEGAL INSTRUCTION, WHAT LAW

1 APPLIES IN THIS PARTICULAR CASE.

2 THAT WOULD TAKE AT LEAST ANOTHER 45 MINUTES FOR
3 ME TO ACCOMPLISH. NOW, IF WE TRY TO DO ALL OF THAT TODAY,
4 IT WOULD BE AFTER 5:00, PERHAPS AFTER 5:30 BEFORE YOU EVEN
5 GOT THIS CASE IN YOUR HANDS TO BEGIN YOUR DELIBERATIONS.

6 WE DON'T WANT YOU TO BEGIN YOUR DELIBERATIONS AT
7 5:30 IN THE AFTERNOON FOR MANY REASONS, NOT THE LEAST OF
8 WHICH IS UNDER THE LAW WITHOUT CONSENT OF THE ATTORNEYS I
9 CAN'T SEPARATE YOU AND LET YOU GO HOME AFTER YOU STARTED
10 DELIBERATING IN A CRIMINAL CASE.

11 YOU HAVE TO STAY TOGETHER UNTIL YOU HAVE REACHED
12 A VERDICT ONCE YOU BEGIN YOUR DELIBERATIONS. NOW, WHETHER
13 THAT WILL BE THE CASE IN THIS CASE OR NOT, I DON'T KNOW
14 BUT I AM NOT GOING TO START OFF BY ASKING THE CASE
15 DELIVERED TO YOU AT 5:30 IN THE AFTERNOON AND PUTTING YOU
16 IN A POSITION WHERE YOU HAVE GOT TO FEEL LIKE YOU'RE
17 COMPELLED TO RUSH TO JUDGMENT AND DELIVER A VERDICT ON A
18 CASE THAT YOU HAVE BEEN HEARING FOR THREE DAYS, THREE AND
19 A HALF DAYS, THREE DAYS, WITHIN THE SPAN OF AN HOUR OR
20 SO.

21 AND SO WHAT WE WILL DO IS WE WILL COME BACK
22 TOMORROW MORNING AT 9:00 AND IF ALL OF YOU CAN DO THAT.
23 IF NOT, WE WILL COME AT 9:30. I WILL INQUIRE OF YOU AGAIN
24 IN THAT REGARD THIS AFTERNOON. WHEN YOU COME BACK IN THE
25 MORNING, I WILL INSTRUCT YOU ON THE LAW AND THEN YOU CAN

1 GO TO YOUR JURY ROOM AND YOU WILL START DELIBERATIONS
2 TOMORROW MORNING.

3 SO THE SCHEDULE THIS AFTERNOON IS THE LAWYERS
4 WILL PRESENT THEIR ARGUMENTS TO YOU AND TOMORROW MORNING
5 YOU WILL COME BACK AND HEAR THE INSTRUCTIONS ON THE LAW
6 WHICH I WILL GIVE YOU AND THEN YOU WILL BE FREE TO
7 DELIBERATE AND REACH A VERDICT IN THE CASE.

8 I TELL YOU THAT, LADIES AND GENTLEMEN, SO THAT
9 YOU WILL KNOW THAT WE DO HAVE A PLAN SUCH AS IT IS AND WE
10 DO HAVE A SCHEDULE AS IT IS. I'M SURE IT MIGHT BE
11 INCONVENIENT FOR YOU ALL TO HAVE TO COME BACK TOMORROW AS
12 IT IS NO DOUBT FOR ALL OF US, BUT CONVENIENCE IS NOT
13 REALLY THE THING THAT DRIVES THE MACHINERY OF JUSTICE.

14 WE TRY TO MINIMIZE INCONVENIENCE AS I HAVE TOLD
15 YOU ALREADY, BUT THERE ARE TIMES WHEN WE CANNOT ELIMINATE
16 IT ENTIRELY AND THIS IS ONE OF THOSE CASES. AND SO I
17 APOLOGIZE AGAIN TO YOU FOR THAT FURTHER INCONVENIENCE, BUT
18 I APPRECIATE THE WILLINGNESS THAT YOU HAVE SHOWN IN
19 SUBMITTING YOURSELVES TO THE SERVICE AND I APPRECIATE THE
20 ATTENTION YOU HAVE BEEN GIVING ALL WEEK TO THE TESTIMONY
21 YOU HAVE BEEN HEARING.

22 LADIES AND GENTLEMEN, IF YOU'LL ENJOY YOUR
23 LUNCH. PLEASE BE BACK IN THE JURY ROOM AT 2:00. WE WILL
24 CONCLUDE THE AFTERNOON'S WORK BEGINNING AT 2 WITH THE
25 ARGUMENTS AND THE LAW. THANK YOU. DON'T DISCUSS THE CASE

1 AMONG YOURSELVES OR WITH ANYONE ELSE WHILE YOU'RE OUT OF
2 THE COURTROOM. THANK YOU.

3 (WHEREUPON THE JURY LEFT THE COURTROOM AT 12:45 P.M.)

4 THE COURT: ALL RIGHT. FOLKS, WE'LL NOW DEAL WITH
5 THE ISSUE OF THE INDICTMENT.

6 MR. ROGERS: YOUR HONOR, BEFORE WE DO THAT CAN WE
7 RENEW OUR MOTIONS FOR DIRECTED VERDICT AT THIS TIME?

8 THE COURT: SURE. YOU CAN DO THAT. NOT SURE -- I
9 WILL NOTE FOR THE RECORD, GENTLEMEN, THE RENEWAL OF ALL
10 MOTIONS THAT WERE MADE AT THE CONCLUSION OF THE STATE'S
11 CASE AND THE RENEWAL OF THE RULINGS WHICH I MADE AT THAT
12 PARTICULAR TIME.

13 BUT IF THERE ARE ANY ADDITIONAL MOTIONS OR ANY
14 ADDITIONAL GROUNDS FOR THE MOTIONS THAT YOU HAVE ALREADY
15 MADE BASED ON THE TESTIMONY OFFERED DURING ANY OF THE
16 DEFENDANTS' CASES, I WILL BE GLAD TO DEAL WITH THOSE. NOW
17 MR. ROGERS, FOR ANY OF YOU -- MR. DOBY, I'LL START WITH
18 YOU.

19 MR. DOBY: NO, SIR, YOUR HONOR.

20 MR. ROGERS: NO, SIR YOUR HONOR.

21 THE COURT: MR. JORDAN?

22 MR. JORDAN: YOUR HONOR, I'D LIKE TO PUT ON THE
23 RECORD THAT WITH REGARD TO THE CHARGE OF MISPRISON OF A
24 FELONY, I CAN'T CITE YOU ANY CASE LAW THAT SAYS THAT IT'S
25 A SPECIFIC INTENT CRIME. HOWEVER, AFTER READING THE

1 DEFINITION AND APPLICABLE TERMS FOR IT IN THE CASE OF
2 STATE VERSUS CARSON, THAT CASE HOLDS THAT THERE MUST BE
3 SOME POSITIVE ACTS OF CONCEALMENT.

4 YOUR HONOR, IN MY READING OF THAT I READ THAT TO
5 REQUIRE A SPECIFIC INTENT. THEREFORE, YOUR HONOR, I WOULD
6 LIKE TO ADD TO MY MOTION THAT THERE HAS BEEN NO PROOF HERE
7 FROM WHICH THE SPECIFIC MENS REA OR CRIMINAL INTENT OR
8 CRIMINAL MINDSET HAS BEEN PUT INTO EVIDENCE OF MY CLIENT,
9 THEREFORE AGAIN I RENEW MY MOTION FOR DIRECTED VERDICT.

10 AND ALSO LIKE TO ADD, YOUR HONOR, THAT TESTIMONY
11 FROM THE STAND INDICATES THAT THERE WAS SOME
12 INTOXICATION. I BELIEVE MR. FINNEY'S CLIENT TESTIFIED
13 THAT HE HAD HAD A LOT TO DRINK AS WELL AS MY CLIENT, AND
14 IT WOULD BE OUR POSITION, AT LEAST MY POSITION, THAT
15 INTOXICATION CAN, ALTHOUGH IT'S NEVER A DEFENSE, VOLUNTARY
16 INTOXICATION IS NEVER A DEFENSE, CAN NEGATE SPECIFIC
17 INTENT. THANK YOU, YOUR HONOR. JUST LIKE TO ADD THAT.

18 THE COURT: THANK YOU. I'M NOT SURE ABOUT MISPRISON
19 BEING A CRIME OF SPECIFIC INTENT WHEN IT IS A CRIME OF
20 CRIMINAL NEGLIGENCE. AND FRANKLY I AM NOT SURE -- WE CAN
21 PROBABLY HAVE A GOOD LAW SCHOOL DISCUSSION ABOUT WHETHER
22 IN THE TORTS CONTEXT WE ARE TALKING ABOUT INTENTIONAL
23 TORTS OR ONE OF NEGLIGENCE, BUT I DON'T THINK THAT IF IT
24 IS A CRIME OF SPECIFIC INTENT THAT THE PROOF FAILS IN THAT
25 REGARD.

1 INTENT IS ALWAYS TO BE DETERMINED FROM THE
2 CIRCUMSTANCES WE KNOW WHICH SURROUNDS THE GIVEN
3 SITUATION. AND I THINK WE HAVE PUT ENOUGH ON THE RECORD
4 BY WAY OF ARGUMENT AND DISCUSSION IN THAT REGARD TO
5 SURVIVE THE MOTION ONCE AGAIN, AND SO I WILL RESPECTFULLY
6 DENY YOUR MOTION ON THOSE ADDITIONAL GROUNDS. MR.
7 FINNEY?

8 MR. FINNEY: I JUST RENEW THE MOTIONS, YOUR HONOR,
9 IN LIGHT OF THE TESTIMONY THAT YOU HEARD IN THE REBUTTAL,
10 I ASK THAT YOU TO RECONSIDER YOUR DECISION ON THE
11 WITHHOLDING INFORMATION AGAINST CHARGES AGAINST LAMONT
12 WITHERSPOON.

13 THE COURT: I NOTE THAT. AND CLEARLY IT'S A
14 CIRCUMSTANTIAL EVIDENCE CASE AGAINST YOUR CLIENT AND YOU
15 WILL GET A CHARGE IN THAT REGARD. BUT I DO THINK THAT
16 TAKING ALL OF THAT EVIDENCE IN THE LIGHT MOST FAVORABLE TO
17 THE STATE THAT IT COULD CONCLUDES GUILT ON THAT PARTICULAR
18 CHARGE AS WE PREVIOUSLY HAD DISCUSSED. ALL RIGHT.

19 MS. NIELSEN: YOUR HONOR?

20 THE COURT: MS. NIELSEN?

21 MS. NIELSEN: JUST IN REFERENCE TO THE VOLUNTARY
22 INTOXICATION, SINCE WE TALKED ABOUT, WON'T FORGET ABOUT IT
23 LATER, DO YOU INTEND TO CHARGE THAT THAT IS NOT A
24 DEFENSE?

25 THE COURT: WELL, I WILL BE GLAD TO IF IT'S GOING TO

1 BE BROUGHT UP, YOU KNOW.

2 MS. NIELSEN: JUDGE, MR. WITHERSPOON CERTAINLY
3 ESTABLISHED FOR THE JURY ON THE STAND THAT HE WAS HIGHLY
4 INTOXICATED AND IT CERTAINLY IS CONCEIVABLE THE DEFENSE IS
5 GOING TO ARGUE THAT THAT'S PART OF THE REASON HE ACTED THE
6 WAY HE ACTED.

7 THE COURT: IF I HEAR THAT IN ARGUMENT, I WILL CHARGE
8 VOLUNTARY INTOXICATION NOT BEING A DEFENSE, YES, MA'AM.
9 THANK YOU.

10 MS. NIELSEN: THANK YOU.

11 THE COURT: ALL RIGHT. MADAM REPORTER, THE RECORD
12 WILL REFLECT THAT IN CHAMBERS A FEW MOMENTS AGO I WAS
13 BROUGHT THE GRAND JURY REPORTS FOR THE -- DO YOU HAVE IT
14 WITH YOU FOR THE 30TH OF NOVEMBER? THE GRAND JURY MET ON
15 THAT DAY AND REPORTED TRUE BILLS ON 40 INDICTMENTS WHICH
16 ARE NUMBERED HERE.

17 THE INDICTMENT WHICH WE ARE ACTING ON IN THIS
18 PARTICULAR CASE ACCORDING TO THE INFORMATION PROVIDED BY
19 THE STATE WAS PRESENTED TO THAT GRAND JURY IN AN AMENDED
20 FORM, THAT IS TO SAY THE ORIGINAL INDICTMENT DATED
21 FEBRUARY THE 14TH CONTAINED TWO COUNTS, COUNT ONE MURDER,
22 COUNT TWO ACCESSORY AFTER THE FACT.

23 THE INDICTMENT WHICH HAS BEEN PRESENTED TO THIS
24 COURT IN WHICH WE HAVE QUALIFIED THE JURY ON AND INDEED
25 TRIED THIS CASE ON AT THIS POINT HAS A THIRD COUNT

1 CHARGING MISPRISON OF A FELONY AGAINST MR. SINGLETON, MR.
2 WITHERSPOON.

3 THAT INDICTMENT, THE NEW INDICTMENT, IS REGULAR
4 ON ITS FACE, IT'S SIGNED BY THE FORELADY, MRS. DICKERSON,
5 IT IS DATED HOWEVER FEBRUARY THE 14TH OF 2000. CONTAINS
6 THE SAME DATE AS THE EARLIER, THE ORIGINAL INDICTMENT.
7 THAT INDICTMENT, DO YOU HAVE THE INDICTMENT?

8 MS. NIELSEN: YOUR HONOR, I HAVE THE ORIGINAL
9 INDICTMENT IF YOU WANT IT.

10 THE COURT: OKAY. LET ME HAVE ONE OF THEM, THE ONE
11 WE'VE BEEN OPERATING ON SO FAR.

12 MS. NIELSEN: JUDGE, AND I ALSO HAVE THE ORIGINAL
13 INDICTMENT THAT ONLY HAS THE TWO COUNTS ON IT IF YOU WANT
14 TO PUT IT IN THE RECORD.

15 THE COURT: OKAY. THANK YOU, MA'AM. THE INDICTMENT,
16 THE ORIGINAL INDICTMENT FEBRUARY THE 14TH OF THIS YEAR IS
17 2000-GS-31-10. THE AMENDED INDICTMENT IS CAPTIONED
18 AMENDED INDICTMENT, CONTAINS THAT SAME NUMBER. AND AS I
19 SAY, APPEARS ON ITS FACE TO BE REGULAR.

20 IT'S MARKED TRUE BILL SIGNED BY MRS. DICKERSON
21 JUST AS THE ORIGINAL INDICTMENT WAS. THE FACT THAT IT
22 DOES NOT APPEAR ON THE REPORT IN AND OF ITSELF IN THIS
23 CASE IS SOMEWHAT TROUBLESOME, BUT I SUPPOSE IF THEY HAVE
24 ALREADY ACTED ON IT AT ONE TIME, THAT THERE MIGHT BE SOME
25 EXPLANATION AS TO WHY IT DOES NOT APPEAR IN THIS

1 PARTICULAR CASE.

2 MR. DELLINGER, ONE OF THE INVESTIGATING OFFICERS
3 IN THIS CASE WAS OFFERED BY THE STATE ON THE PROFFER THAT
4 HE PRESENTED THE THIRD CHARGE, THE NEW CHARGE OF MISPRISON
5 TO THE GRAND JURY AND IT MET ON THE 30TH. AND MR.
6 DELLINGER, I WILL BE GLAD TO HEAR FROM YOU IN THAT
7 REGARD. IF YOU WILL COME AROUND AND TAKE THE STAND,
8 PLEASE SIR, STILL BEING UNDER OATH.

9 J.D. DELLINGER, BEING FIRST DULY
10 REMINDED OF OATH, TESTIFIED AS FOLLOWS:

11 THE COURT: I SHOW YOU THE INDICTMENT MARKED AMENDED
12 INDICTMENT THAT HAS THE THIRD CAUSE OF ACTION IN THIS
13 REGARD, MR. DELLINGER. AND MS. NIELSEN, YOU CAN EXAMINE
14 THE WITNESS.

15 DIRECT EXAMINATION BY MS. NIELSEN:

16 Q OFFICER DELLINGER, WHEN THE GRAND JURY MET, DID I
17 DISCUSS WITH YOU TAKING THE AMENDED INDICTMENT INTO THE
18 GRAND JURY?

19 A YES, MA'AM.

20 Q AND DID YOU -- WERE YOU GIVEN THAT AMENDED INDICTMENT
21 TO TAKE INTO THE GRAND JURY?

22 A YES, MA'AM.

23 Q DID YOU GO INTO THE GRAND JURY AND EXPLAIN WE WERE
24 AMENDING THIS AND ADDING THE COUNT OF MISPRISON OF A
25 FELONY?

1 A I EXPLAINED WE WERE ADDING THE MISPRISON OF A FELONY
2 AND EXPLAINED THAT.

3 Q AND DID THEY ASK ANY QUESTIONS ABOUT IT?

4 A NO, THEY DID NOT ASK ANY QUESTIONS ABOUT IT. THEY
5 WAS ASKED THE QUESTION HAD THEY NOT ALREADY HEARD THE
6 CASE, AND I INFORMED THEM THAT THEY HAD HEARD THE CASE OF
7 THE REST OF THE INDICTMENT, BUT THAT WAS AN ADDITIONAL.

8 Q THEY DON'T ACTUALLY SIGN ANY OF THE INDICTMENTS WHILE
9 YOU ARE IN THERE; DO THEY?

10 A NO, MA'AM.

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

13 THE COURT: THE INDICTMENT THAT YOU HAVE IN YOUR
14 HANDS THERE, MR. DELLINGER, IS THE ONE YOU PRESENTED TO
15 THEM AT THAT TIME ON NOVEMBER THE 30TH?

16 THE WITNESS: YES, SIR.

17 THE COURT: ALL RIGHT. THANK YOU. MR. FINNEY?

18 CROSS-EXAMINATION BY MR. FINNEY:

19 Q MR. DELLINGER, YOU DIDN'T PRESENT ANY TESTIMONY TO
20 THE GRAND JURY IN NOVEMBER OF 2000?

21 A IN NOVEMBER OF 2000?

22 Q YES, SIR.

23 A JUST BEFORE THIS TERM OF COURT?

24 Q ISN'T THAT WHEN THAT IS DATED, NOVEMBER OF 2000?

25 THE COURT: THAT'S WHEN IT WAS -- THAT WAS WHEN IT

1 WAS SUBMITTED ACCORDING TO THE REPORT NOVEMBER 30TH,
2 2000. THE INDICTMENT ITSELF IS DATED FEBRUARY 2000.

3 MR. FINNEY: EXCUSE ME, YOUR HONOR. NOVEMBER THE
4 30TH.

5 THE COURT: YES, SIR.

6 (WHEREUPON QUESTIONING RESUMED).

7 Q NOVEMBER THE 30TH, 2000 YOU WENT INTO THE GRAND JURY
8 ROOM WITH A NEW PIECE OF PAPER WITH THREE COUNTS ON IT; IS
9 THAT RIGHT?

10 A THAT'S CORRECT.

11 Q AND THE GRAND JURY RECEIVED THAT INDICTMENT FORM FROM
12 YOU?

13 A THAT'S CORRECT.

14 Q BUT YOU DIDN'T TESTIFY BEFORE THE GRAND JURY AS TO
15 THE FACTS IN THE NEW COUNT?

16 A THAT'S NOT CORRECT. I DID OFFER TESTIMONY AND OF WHY
17 THAT WAS BEING ADDED, THE NEW CHARGE.

18 Q YOU OFFERED TESTIMONY OR AN EXPLANATION?

19 A I OFFERED TESTIMONY, TOLD THEM BASICALLY ABOUT THE
20 BEING STOPPED BY SUMTER AND THE LEE COUNTY LIEUTENANT
21 SIMON SPEAKING TO THEM.

22 Q ALL RIGHT. AND AFTERWARDS YOU WERE EXCUSED FROM THE
23 ROOM?

24 A THAT'S CORRECT.

25 Q AND BASED ON WHAT YOU SEE, THE GRAND JURY FORELADY

1 SIGNED THE DOCUMENT?

2 A I HAVE NO IDEA. THEY -- I PRESENT ALL OF THE
3 INDICTMENTS, GIVE THEM TESTIMONY ON ALL OF THE INDICTMENTS
4 I PRESENT AND THEN THEY EXCUSE ME IN THE ROOM TO -- I
5 ASSUME TO RESUME DISCUSSION OR DO THEIR ASSIGNMENT.

6 Q WAS ANOTHER ARREST WARRANT ISSUED AGAINST TRAVIS
7 SINGLETON OR LAMONT WITHERSPOON FOR MISPRISON OF A FELONY?

8 A NO, SIR.

9 Q WAS A BOND HEARING HELD FOR TRAVIS SINGLETON OR
10 LAMONT WITHERSPOON FOR MISPRISON OF A FELONY?

11 A NOT THAT I'M AWARE OF, SIR.

12 Q LOOKING AT THE INDICTMENT FROM FEBRUARY OF 2000,
13 WHICH HAS TWO COUNTS ON IT, THE INDICTMENT THAT WAS
14 PREPARED FROM NOVEMBER IS ON A DIFFERENT SHEET OF PAPER,
15 IT WASN'T JUST ADDED TO THE ORIGINAL; ISN'T THAT CORRECT?

16 A YOU ARE SHOWING...

17 Q THE NEW COUNTS, YES, SIR. THE NEW COUNT WASN'T ADDED
18 TO THE ORIGINAL, IT WAS PUT ON A NEW PIECE OF PAPER, ON A
19 NEW INDICTMENT FORM; IS THAT CORRECT?

20 A I WAS GIVEN ANOTHER -- A SEPARATE PIECE OF PAPER WITH
21 -- YES, SIR.

22 Q WITH THREE COUNTS ON IT; IS THAT IT? IS THAT THE ONE
23 YOU'RE LOOKING AT THERE?

24 A YES, SIR.

25 Q AND ON THE BACK OF IT IT SAYS COURT OF GENERAL

1 SESSIONS, FEBRUARY TERM, 2000?

2 A THAT'S CORRECT.

3 Q AND IT HAS EVERYBODY'S NAME, DEFENDANTS AND IT HAD
4 MISPRISON OF A FELONY ADDED ON THE BACK OF THE FORM I'M
5 LOOKING AT?

6 A DOESN'T SAY ADDED BUT SAYS MISPRISON OF A FELONY,
7 YES, SIR.

8 Q IT'S BEEN ADDED COMPARED TO THE ORIGINAL FORM?

9 A YES, THAT IS ON THIS FORM AND IT IS NOT ON THIS FORM.

10 Q AND ARE EITHER FORMS DATED BY THE GRAND JURY FOREMAN?

11 A I WOULD HAVE NO IDEA ABOUT THAT.

12 Q WELL, I'M JUST SAYING IN THE AREA WHERE IT SAYS
13 ACTION BY THE GRAND JURY, ARE EITHER FORM DATED?

14 A IT JUST -- I JUST SEE TRUE BILL AND A SIGNATURE.

15 Q NO DATE? YOU DON'T SEE ANY DATE?

16 A NO, SIR.

17 Q THEN ON THE REPORT OF INDICTMENTS IT HAS BEEN TOLD TO
18 US THAT THERE IS NO 2000-GS-31-10 LISTED ON THE REPORT
19 THAT DAY.

20 A THAT'S WHAT HAS BEEN TOLD TO YOU. I HAVE NEVER SEEN
21 THAT REPORT. I DON'T KNOW ANYTHING ABOUT THAT.

22 MR. FINNEY: I HAVE NOTHING FURTHER, YOUR HONOR.

23 THE COURT: THANK YOU. IF I COULD PLEASE MARK THE --
24 HAVE THE GRAND JURY REPORT MARKED AS A COURT'S EXHIBIT AND
25 THEN YOU THEY CAN TAKE THAT OUT AND SUBSTITUTE A COPY OF

1 THE ORIGINAL. EXCUSE ME, MR. DELLINGER, BEFORE YOU STEP
2 DOWN. MR. JORDAN, DO YOU HAVE ANY QUESTIONS?

3 MR. JORDAN: JUST BRIEFLY.

4 THE COURT: MR. JORDAN HAS SOME QUESTIONS FOR YOU.

5 CROSS-EXAMINATION BY MR. JORDAN:

6 Q INVESTIGATOR, DO YOU RECALL WHETHER YOU TOLD THEM
7 THAT IT WAS AN AMENDED OR INITIAL INDICTMENT?

8 A NO, SIR. I DON'T RECALL THAT SPECIFICALLY. I
9 REMEMBER TELLING THEM THAT WE HAD PREVIOUSLY PRESENTED
10 FACTS CONCERNING THE OVERALL MURDER CASE AND ACCESSORY.

11 Q OKAY. AND SO YOU DIDN'T DISCUSS WITH THEM WHETHER
12 THIS WAS IN FACT A REPLACEMENT OR JUST AN ADDITIONAL OR
13 SUPPLEMENTAL INDICTMENT?

14 A NO, SIR.

15 Q OKAY. AND CLEARLY IT SAID THAT IT INDICATES ON THE
16 FACE OF IT NOTWITHSTANDING THE FACT THAT IT WENT IN
17 NOVEMBER, IT INDICATES ON THE FACE OF IT THAT THE
18 GENERAL -- THE GRAND JURORS WERE ASSEMBLED FEBRUARY 14TH,
19 2000 ON BOTH THE FRONT AND THE BACK?

20 A IS THE DATE FEBRUARY OF 2000 ON THE FORM?

21 Q YES, SIR.

22 A YES, SIR, THE FORM.

23 Q INDICATING THAT'S WHEN THE GRAND JURY MET; IS THAT
24 RIGHT?

25 A I DON'T HAVE ANY IDEA WHAT THAT INDICATES. THE DATE

1 OF FEBRUARY OF 2000 WAS ON THE FORM, YES.

2 Q OKAY. AND THEN IN -- AND NOWHERE WAS THAT MARKED OFF
3 OR INDICATED. IT WAS THE SAME -- WAS IT THE SAME GRAND
4 JURY THAT MET IN FEBRUARY?

5 A I BELIEVE SO.

6 Q THANK YOU. NO FURTHER QUESTIONS.

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

9 (WHEREUPON THE WITNESS LEFT THE STAND).

10 THE COURT: MR. JORDAN, MR. FINNEY, BE GLAD TO HEAR.

11 MR. FINNEY: I'D LIKE TO ASK THE COURT TO PLEASE
12 RECONSIDER YOUR EARLIER DECISION NOW THAT WE HAVE A
13 ADDITIONAL ELEMENT THAT THE INDICTMENT HAS NOT BEEN
14 PRESENTED IN WHAT WE CONSIDER A REGULAR AND PROPER
15 MANNER.

16 THE ADDITIONAL CHARGE WAS ADDED, SIX, EIGHT
17 MONTHS LATER AFTER THE ORIGINAL INDICTMENT. THERE SEEMS
18 TO BE SOME IMPROPRIETY AS TO HOW IT WAS HANDLED BY THE
19 GRAND JURY. THERE IS NO -- THAT'S BASICALLY A SECRET
20 HEARING IN THERE.

21 WE DON'T HAVE A TRANSCRIPT WE CAN LISTEN TO AND
22 I JUST THINK ON BEHALF OF MR. WITHERSPOON, THESE ARE VERY
23 IMPORTANT FACTS AND SITUATIONS THAT HAVE TO BE HANDLED
24 PROPERLY, AND IN MY OPINION BECAUSE YOU HAVE ALREADY
25 KNOCKED OUT COUNT TWO OF THE ORIGINAL INDICTMENT, IF WE

1 HAVE BEEN PROCEEDING UNDER THE ORIGINAL INDICTMENT, WE
2 WOULD NOT BE HERE NOW.

3 THE COURT: THAT'S TRUE.

4 MR. FINNEY: AND I'M ASKING THE COURT TO CONSIDER THE
5 ADDITIONAL INFORMATION THAT HAS COME IN AND RESPECTFULLY
6 REQUEST THAT WE BE DISMISSED FROM THIS.

7 MR. JORDAN: YOUR HONOR, I'D JUST ADD TO THAT THAT
8 CLEARLY THE NATURE OF THE CHANGE OF THE INDICTMENT OR THE
9 AMENDMENT TO THE INDICTMENT CHANGES THE NATURE OF THE
10 OFFENSE AND ACTUALLY EVEN ADDS AN ADDITIONAL DEFENSE, SO
11 IT'S NOT SOMETHING THAT CAN BE AMENDED WITHOUT A PROPER
12 PROCEEDING AND I WOULD CALL INTO QUESTION THE FACT THAT IT
13 SAYS THE GRAND JURY CONVENED FEBRUARY 14TH, 2000.

14 THAT IS ENTIRELY INACCURATE, AND THIS GRAND JURY
15 MET IN NOVEMBER TO DECIDE THIS INDICTMENT AND IT IS NOT
16 INDICATED AS A SUPPLEMENTAL INDICTMENT, OR IN ADDITION,
17 IT'S A REPLACEMENT FOR THE OTHERS, SO I BELIEVE THAT'S
18 IT. THANK YOU, YOUR HONOR.

19 THE COURT: THANK YOU. THE CHARACTERIZATION OF THE
20 INDICTMENT AS AN AMENDED ONE WHILE IT IS SEMANTICALLY
21 TRUE, THAT IS AN OLD INDICTMENT WAS ADDED TO AND THAT
22 SIMPLY WAS AMENDED, LEGALLY IT IS NOT TECHNICALLY AN
23 AMENDED INDICTMENT.

24 UNDER THE LAW AN INDICTMENT MAY BE AMENDED ONLY
25 IF THE AMENDMENT DOES NOT ALTER THE CHANGES OR THE CHARGES :

1 I SHOULD SAY, PURSUANT TO CASE LAW OF STATUTE, STATE
2 VERSUS BRITT, B-R-I-T-T, 111 SOUTHEASTERN 2ND 669, 1960
3 SUPREME COURT CASE.

4 STATE VERSUS SIDESWELL, OLDER CASE 1910 SUPREME
5 COURT CASE HELD AN INDICTMENT MAY NOT BE AMENDED DUE TO A
6 VARIANCE OF PROOF ESPECIALLY WHERE THE OFFENSE CONSTITUTES
7 ANOTHER OR SEPARATE OFFENSE. BUT WHAT THAT MEANS, OF
8 COURSE, IS THE TYPICAL AMENDMENT IN COURT DURING OR AFTER
9 A TRIAL OR PERHAPS IN THE MIDST OF A GUILTY PLEA BECAUSE
10 CLEARLY THE INDICTMENT THAT HAS BEEN PRESENTED TO THE
11 GRAND JURY AND REPORTED OUT AS A TRUE BILLED INDICTMENT IS
12 NOT LEGALLY AN AMENDED INDICTMENT UNDER THE LAW.

13 AND IN THIS PARTICULAR CASE WHAT WE HAVE IS AN
14 INDICTMENT THAT ON ITS FACE WAS DELIVERED TO THE GRAND
15 JURY ON NOVEMBER THE 30TH OF THIS YEAR IN BLANK FORM, THAT
16 IS TO SAY WITH NO ACTION OF THE GRAND JURY ON THE BACK OF
17 IT.

18 IT WAS REPORTED OUT WITH A SIGNATURE OF THE
19 FORELADY ON SAY TRUE BILL. NOW, THERE ARE TWO THINGS,
20 THERE ARE TWO IRREGULARITIES THAT APPEAR OF COURSE THAT
21 CREATE THE SITUATION. AND IN THE EVENT OF AN ADVERSE
22 OUTCOME, OBVIOUSLY WILL BE RIGHT GROUNDS FOR APPEAL AND
23 POST CONVICTION RELIEF AND PROCEEDINGS FROM NOW ON.

24 AND OBVIOUSLY NONE OF US WANT THESE MATTERS TO
25 GO ON ON THE BASIS OF SOME SORT OF TECHNICALITY, BUT AT

1 THE SAME TIME THE TWO VARIANCES ARE FIRST OF ALL THAT IT
2 INDICATES THAT THE GRAND JURORS MET ON FEBRUARY 14TH TO
3 CONSIDER THE NEW, THE AMENDED INDICTMENT WITH THE THIRD
4 COUNT ADDED.

5 CLEARLY THAT WAS NOT THE CASE. THE GRAND JURY
6 MET ON NOVEMBER THE 30TH. THAT DOES NOT APPEAR TO BE IN
7 DISPUTE. BUT THE GRAND JURY REPORT OF NOVEMBER THE 30TH
8 DOES NOT REFLECT THE -- THIS PARTICULAR NUMBERED
9 INDICTMENT AS HAVING BEEN ACTED ON.

10 SO THERE IS AN INCONSISTENCY BETWEEN THE
11 INDICTMENT ITSELF WHICH INDICATES AN ACTION WAS TAKEN
12 BECAUSE THE FORELADY HAD SIGNED IT AND THE REPORTS WHICH
13 DOES NOT INDICATE THE ACTION OF THE GRAND JURY. NOW, IT
14 IS OBVIOUS OF COURSE THAT THE INDICTMENTS THEMSELVES
15 CANNOT BE AMENDED DURING THE TRIAL OF THAT CASE PAST THE
16 CASE HAS BEGUN OVER OBJECTION.

17 THAT WOULD DEPRIVE THE COURT OF JURISDICTION.
18 BUT IN THIS PARTICULAR CASE WHAT APPEARS TO HAVE HAPPENED
19 WAS THAT THE INDICTMENT WAS PRESENTED IN PROPER FORM WITH
20 A NEW CHARGE ADDED, A CORRECT CHARGE DID NOT HAVE A
21 WARRANT TO UNDERLIE IT, IT WAS A DIRECT PRESENTMENT OF THE
22 THIRD COUNT WHICH IS A ACCEPTABLE UNDER OUR LAW.

23 THE GRAND JURY HEARD THE TESTIMONY AS MR.
24 DELLINGER HAS TESTIFIED AS TO THE THIRD COUNT. THEY
25 RETURNED A TRUE BILL. I CANNOT OFFER ANY EXPLANATION AS

1 TO WHY IT CANNOT APPEAR ON THE REPORTS. HOWEVER, DID NOT
2 FIND THOSE THINGS TO BE FATAL ESPECIALLY AT THIS STAGE.

3 THE STATEMENT WHICH IS IN QUESTION AND WHICH IS
4 BEING ARGUED TODAY WAS READ TO THE JURY BEFORE THE JURY
5 SELECTION PROCESS BEGAN, WAS READ IN THE PRESENCE OF
6 COUNSEL FOR BOTH SIDES AND THEIR REPRESENTATIVE PARTIES.
7 THE THIRD COUNT WAS READ NAMING MR. SINGLETON, MR.
8 WITHERSPOON AS BEING CHARGED WITH MISPRISON OF A FELONY.

9 NO OBJECTION, NO MOTION TO QUASH OCCURRED AS A
10 RESULT OF THAT READING. SUBSEQUENTLY THE JURY WAS
11 SELECTED ON THE BASIS OF THAT INDICTMENT. THE GRAND JURY
12 WAS THEN SWORN. STATE V YOUNG STANDS FOR THE PROPOSITION
13 THAT MOTIONS TO QUASH AN INDICTMENT BECAUSE OF
14 IRREGULARITY HAVE TO BE MADE BEFORE THE JURY ITSELF IS
15 SWORN.

16 133 SOUTHEASTERN 2ND 210, A 1963 SUPREME COURT
17 SAYS, STATES V HUTTO WHICH CAME DOWN FIVE YEARS LATER 1968
18 HELD THAT THE FAILURE TO OBJECT CONSTITUTES A WAIVER.
19 THAT'S AT 165 SOUTHEASTERN 2ND 72. IN ANY EVENT, THE
20 IRREGULARITY, IF IT CAN BE CALLED IS SO INSIGNIFICANT IN
21 MY VIEW AS TO CREATE SIMPLY AN ADMINISTRATIVE OR EVEN A
22 SCRIVENER'S TYPE OF MISTAKE.

23 HAD THE PAGE AT THE TOP BEEN DATED NOVEMBER THE
24 30TH, THAT IS TO SAY A INCONVENIENT DATE LISTED AS
25 NOVEMBER THE 30TH, THERE WOULD HAVE BEEN NO DIFFICULTY

1 INSOFAR AS THE INDICTMENT ITSELF IS CONCERNED.

2 NOW, AS I SAY, I CANNOT COMMENT UPON THE REASONS
3 AS TO WHY IT WAS NOT INCLUDED ON THE REPORT. ALL I CAN
4 SAY IS THAT THE OFFICER TESTIFIED THAT HE REPORTED IT AND
5 THAT IT WAS SIGNED A TRUE BILL ALONG WITH THE OTHER
6 INDICTMENTS.

7 AS TO WHETHER IT SHOULD BE BEFORE THIS COURT
8 QUITE FRANKLY NEEDS TO CONDUCT SOME SORT OF AN INQUIRY
9 INTO THE FORELADY OF THE JURY AND TO THE MEMBERS OF THE
10 GRAND JURY WHO WERE PRESENT ON NOVEMBER THE 30TH, FRANKLY
11 THAT MIGHT VERY WELL BE NECESSARY TO SEE IF AN AMENDED
12 REPORT OF THE GRAND JURY MAY NOT BE NECESSARY AND THE
13 OUTCOME OF THAT MIGHT DETERMINE THIS AFTER THE FACT.

14 I WILL LEAVE THE RECORD OPEN ON THAT ISSUE AND
15 WILL NOT MAKE ANY RULINGS IN THAT REGARD SUBJECT TO THAT
16 BEING LEFT OPEN. HOWEVER, MOTION TO DISMISS ON THE BASIS
17 OF THE GROUND RAISED BY MR. JORDAN AND MR. FINNEY ARE
18 RESPECTFULLY DENIED.

19 MR. JORDAN: BRIEFLY, WOULD WE HAD TO THAT -- THAT WE
20 ARE, WE'D JUST LIKE THE RECORD TO REFLECT WE SUBMIT
21 IRRESPECTIVE OF ANY WAIVER QUESTIONS THAT THE COURT HAS
22 BEEN DEPRIVED OF SUBJECT MATTERS JURISDICTION ON THAT --
23 ON THAT COUNT. THANK YOU, YOUR HONOR.

24 THE COURT: GOOD. AND THAT'S LEGITIMATE GROUNDS.
25 ALL RIGHT. OKAY. FOLKS. LET'S GIVE YOU ALL A CHANCE TO

1 GET YOUR THOUGHTS TOGETHER. WE HAVE GOT 50 MINUTES BEFORE
2 THE JURY WILL BE BACK TO START ARGUMENTS. BE IN RECESS
3 FOR 50 MINUTES.

4 (WHEREUPON COURT WAS IN RECESS FOR LUNCH).

5 MS. NIELSEN: YOUR HONOR, I HAVE FIXED THE LAST PAGE
6 OF LAMONT WITHERSPOON'S STATEMENT. I JUST PUT A PIECE OF
7 PAPER OF IT AND COPIED IT AND MR. FINNEY SAYS THAT IT IS
8 PERFECT.

9 (STATE'S EXHIBIT NO. 2 MARKED FOR EVIDENCE.)

10 THE COURT: VERY GOOD. THANK YOU. ALL RIGHT. MR.
11 DOBY, IS THE DEFENSE READY TO START ON BEHALF OF MR.
12 EVANS?

13 MR. DOBY: YES, SIR, YOUR HONOR.

14 THE COURT: MR. ROGERS, ON BEHALF OF MR. TAYLOR?

15 MR. ROGERS: YES, SIR. HOWEVER, I WOULD LIKE TO
16 BRING SOMETHING TO THE COURT'S ATTENTION. THE TESTIMONY
17 OF LATOYIA DAVIS THIS MORNING REVEALED COULD POSSIBLY BE
18 CONSTRUED IF BELIEVED TO ALLOW THE JURY TO FIND VOLUNTARY
19 MANSLAUGHTER.

20 I HAVE DISCUSSED THIS MATTER WITH MR. TAYLOR,
21 TOLD HIM WHAT HIS OPTIONS WERE IN THAT REGARD AND HE HAS
22 SPECIFICALLY ASKED ME NOT TO REQUEST FOR A CHARGE OF
23 VOLUNTARY MANSLAUGHTER, BUT I WANTED TO BRING THAT TO THE
24 COURT'S ATTENTION BECAUSE OF VARIOUS REASONS, BUT I DO
25 THINK THAT THAT TESTIMONY DOES SET IT UP FOR THAT FINDING

1 AND THE JURY COULD SO FIND.

2 THE COURT: ALL RIGHT, SIR. I NOTE THAT, THAT THE
3 MANSLAUGHTER CHARGE HAD BEEN STRETCHED TO COVER A RIGHT
4 WIDE AREA FROM TIME TO TIME, I UNDERSTAND THAT, AND AS A
5 MATTER OF STRATEGY YOU ALL HAVE CONSCIOUSLY DECIDED NOT TO
6 SEEK THAT CHARGE; IS THAT RIGHT?

7 MR. ROGERS: YES.

8 THE COURT: ALL RIGHT. THANK YOU, SIR. I NOTE THAT
9 AND THE RECORD IS PROTECTED IN THAT REGARD. MR. JORDAN,
10 IS THE DEFENSE OF MR. SINGLETON READY TO PROCEED?

11 MR. JORDAN: YES, YOUR HONOR.

12 THE COURT: MR. FINNEY, MR. WITHERSPOON READY?

13 MR. FINNEY: YES, SIR, YOUR HONOR.

14 THE COURT: STATE READY?

15 MS. NIELSEN: YES, SIR. IN REFERENCE TO VOLUNTARY
16 MANSLAUGHTER, JUDGE, BASED UPON THE TESTIMONY, I EXPECTED
17 YOU TO CHARGE VOLUNTARY MANSLAUGHTER. THE ONLY THING THAT
18 CONCERNS ME ABOUT THIS IS MR. DOBY HAS NOT STATED A
19 POSITION ON THIS IS THAT I BELIEVE THAT IF VOLUNTARY
20 MANSLAUGHTER WAS A PROPER CHARGE AND THE DEFENSE DOES NOT
21 REQUEST IT, IF THESE DEFENDANTS SHOULD BE CONVICTED OF
22 THIRD, THAT IS GOING TO BE REVERSIBLE ON A P.C.R.

23 TO CLEAR UP THE RECORD, IF THEY ARE NOT GOING TO
24 REQUEST SOMETHING THEY WERE DOING AS A STRATEGIC MATTER,
25 THEN I THINK BOTH OF THE DEFENDANTS WERE CHARGED WITH

1 MURDER NEED TO STATE THAT FOR THE RECORD BEFORE WE HAVE A
2 DETERMINATION ABOUT WHETHER THAT IS GOING TO BE CHARGED.

3 THE COURT: ALSO A RECENT CASE WHERE THE JUDGE
4 CHARGED VOLUNTARY MANSLAUGHTER OVER OBJECTION OF DEFENSE
5 COUNSEL AND THAT WAS SENT BACK AS WELL, SO IT'S A DOUBLE
6 EDGED SWORD. MR. DOBY, WHAT SAYS THE DEFENDANT, MR.
7 EVANS, ON THE ISSUE OF VOLUNTARY MANSLAUGHTER?

8 MR. DOBY: YOUR HONOR, MY CLIENT TELLS ME THAT HE
9 DOES NOT WANT THE COURT TO CHARGE VOLUNTARY MANSLAUGHTER.
10 I WILL SAY, YOUR HONOR, FOR THE RECORD THAT IS AGAINST MY
11 SUGGESTION.

12 THE COURT: ALL RIGHT. THANK YOU.

13 MR. ROGERS: I'D LIKE TO ADD MINE TOO, YOUR HONOR, I
14 HAVE ADVISED HIM THAT IT SHOULD BE CHARGED AND HE
15 SPECIFICALLY DID NOT WANT IT TO BE CHARGED.

16 THE COURT: GENTLEMEN, MR. EVANS, MR. TAYLOR, YOU
17 HEARD YOUR COUNSEL INDICATE THOSE THINGS TO ME AND I TAKE
18 IT YOU ARE IN AGREEMENT WITH THE WAY MR. DOBY AND MR.
19 ROGERS HAVE ADVISED THE COURT. MR. EVANS, YOU ARE AWARE
20 OF THE CHARGE OF VOLUNTARY MANSLAUGHTER AND YOU HAVE
21 CONSCIOUSLY AND KNOWINGLY INDICATED TO MR. DOBY THAT YOU
22 DO NOT WISH THE COURT TO CHARGE THE JURY ON VOLUNTARY
23 MANSLAUGHTER. IS THAT RIGHT, MR. EVANS?

24 MR. JORDAN: WHILE THEY DISCUSS THAT, COULD I CLEAR
25 UP ONE ASPECT?

1 THE COURT: DOES THAT ANSWER YOUR QUESTION?

2 MR. JORDAN: ANSWERS ALL MY QUESTIONS.

3 THE COURT: ALL RIGHT, MR. EVANS, BACK TO YOU. I
4 HAVE ASKED YOU IF YOU WERE IN AGREEMENT WITH MR. DOBY'S
5 STATEMENT TO THE COURT THAT HE HAD SUGGESTED OR
6 RECOMMENDED THAT YOU SEEK A CHARGE ON VOLUNTARY
7 MANSLAUGHTER AND YOU THOUGHT ABOUT THAT AND VOLUNTARILY,
8 KNOWINGLY HAVE CHOSEN NOT TO ASK FOR THAT; IS THAT
9 CORRECT, MR. EVANS?

10 MR. DOBY: SINCE YOU HAVE ASKED THAT, HE HAS AGAIN
11 CHANGED HIS MIND. WE WOULD LIKE TO HAVE THE CHARGE OF
12 VOLUNTARY MANSLAUGHTER TO THE JURY.

13 THE COURT: ALL RIGHT. MR. ROGERS, WHERE DOES THAT
14 LEAVE US WITH MR. TAYLOR?

15 MR. ROGERS: THE SAME WITH MR. TAYLOR. HE
16 MISUNDERSTOOD EARLIER AND HE CHANGED HIS MIND AND WE ARE
17 REQUESTING A VOLUNTARY MANSLAUGHTER CHARGE.

18 THE COURT: ALL RIGHT. DOES THE STATE CONCUR IN
19 THAT, MS. NIELSEN?

20 MS. NIELSEN: JUDGE, I THINK THAT IT'S PROPER UNDER
21 THE FACTS THAT ARE BEFORE THIS JURY.

22 THE COURT: ALL RIGHT. IT'S A STRETCH, BUT I AGREE
23 THAT IT'S ENOUGH ESPECIALLY IF HE REQUESTED IT IN THIS
24 REGARD. ENOUGH AMBIVALENCE IN THE TESTIMONY I THINK TO
25 BRING THAT ABOUT. ALL RIGHT.

1 MS. NIELSEN: HAVE ONE OTHER QUESTION. THE CARSON
2 CASE, THE LANGUAGE AT THE END OF THAT CASE SAYS THAT
3 BASICALLY THE PERSON IS EITHER THE ACCESSORY BEFORE OR
4 AFTER THE FACT, BUT CONCEAL VALUABLE INFORMATION FROM
5 INVESTIGATING OFFICERS, THAT IS ENOUGH TO CONSTITUTE
6 MISPRISON OF A FELONY. I WANT TO MAKE SURE THAT I TALK
7 ABOUT THAT WITH THE JURY, THAT I'M OKAY.

8 THE COURT: YOU ARE FINE. AS I SAID, MERE SILENCE OR
9 FAILURE TO COME FORWARD IS NOT ENOUGH. THERE HAS TO BE
10 SOME POSITIVE ACTS OF CONCEALMENT, SO THAT'S -- YOU ARE
11 RIGHT.

12 MS. NIELSEN: THANK YOU, YOUR HONOR.

13 THE COURT: OKAY. THANK YOU. EVERYBODY NOW READY TO
14 GO? EVERYBODY NOT READY? HEARING NO OBJECTION, MR.
15 MCDUFFY, YOU CAN BRING US THE JURY.

16 (WHEREUPON THE JURY ENTERED THE COURTROOM).

17 THE COURT: MADAM FORELADY AND LADIES AND GENTLEMEN
18 OF THE JURY, THE EVIDENCE IS ALL NOW IN AS YOU KNOW AND WE
19 NOW GO TO THE FINAL PHASES OF THIS CASE. THE FIRST OF
20 THOSE FINAL PHASES CONSISTS OF THE ARGUMENTS THAT THE
21 LAWYERS WILL MAKE TO YOU.

22 BEFORE THEY BEGIN THEIR ARGUMENTS, LET ME TELL
23 YOU THAT BEFORE THIS TRIAL BEGAN I TOLD YOU THAT THERE
24 WERE THREE SEPARATE CHARGES CONTAINED IN THE INDICTMENT.
25 ONE WAS THE CHARGE OF MURDER ALLEGED IN THE INDICTMENT

1 AGAINST MR. EVANS AND MR. TAYLOR.

2 ANOTHER CHARGE WAS ACCESSORY AFTER THE FACT OF
3 MURDER CHARGED AGAINST MR. SINGLETON, MR. WITHERSPOON.
4 THE FINAL CHARGE WAS MISPRISON OF A FELONY CHARGE AGAINST
5 MR. SINGLETON AND MR. WITHERSPOON.

6 NOW LADIES AND GENTLEMEN, TOMORROW WHEN I'M
7 INSTRUCTING YOU AS TO WHAT THE LAW IS, I WILL TELL YOU
8 WHAT THE ELEMENTS OF THOSE CHARGES ARE SO THAT YOU WON'T
9 HAVE TO WORRY ABOUT THAT OVERNIGHT AND WONDER WHAT WE MEAN
10 WHEN WE TALK ABOUT MURDER OR MISPRISON OF A FELONY.

11 IN ANY EVENT, WE WILL NOT HAVE TO WORRY ABOUT
12 ACCESSORY AFTER THE FACT. I HAVE RULED AS A MATTER OF LAW
13 THAT THE COUNT OF ACCESSORY AFTER THE FACT SHOULD NOT BE
14 PRESENTED TO YOU FOR YOUR DETERMINATION. NOW, ON THE
15 OTHER CHARGES, LADIES AND GENTLEMEN, THAT DOESN'T MEAN A
16 THING.

17 THE FACT THAT I HAVE DISMISSED ONE CHARGE AND
18 RULED AS A MATTER OF LAW THAT THAT CHARGE SHOULD NOT GO TO
19 YOU HAS ABSOLUTELY NO BEARING WHATSOEVER ON THE CHARGE OF
20 MURDER AGAINST MR. EVANS AND MR. TAYLOR AND THE CHARGE OF
21 MISPRISON OF A FELONY AGAINST MR. SINGLETON, MR.
22 WITHERSPOON.

23 THOSE CHARGES ARE STILL ALIVE. THE BURDEN OF
24 PROOF IS STILL ON THE STATE TO PROVE THOSE THINGS TO YOUR
25 SATISFACTION. YOU WILL MAKE THAT DECISION TOMORROW AFTER

1 YOU HAVE HEARD THE CHARGE ON THE LAW WHICH I WILL GIVE
2 YOU.

3 I SIMPLY WANTED YOU TO UNDERSTAND THE CHARGE OF
4 ACCESSORY AFTER THE FACT IS NO LONGER FOR YOUR
5 CONSIDERATION AND SO YOU WILL NOT HEAR THE STATE NOR ANY
6 OF THE DEFENSE LAWYERS REFER TO THAT AND THAT'S THE REASON
7 WHY.

8 NOW LADIES AND GENTLEMEN, UNDER THE THEORY THAT
9 WE OPERATE, THE DEFENDANTS WILL PRESENT THE FIRST OF THE
10 FINAL ARGUMENTS. MR. DOBY ON BEHALF OF MR. EVANS FOLLOWED
11 BY MR. ROGERS AND THEN MR. JORDAN, MR. FINNEY ON BEHALF OF
12 THEIR REPRESENTATIVE CLIENTS.

13 AND AFTER THOSE GENTLEMEN HAVE ALL PRESENTED
14 THEIR FINAL ARGUMENTS, MS. NIELSEN ON BEHALF OF THE STATE
15 WILL MAKE THE LAST OF THE FINAL ARGUMENTS. THE STATE
16 ARGUES LAST BECAUSE THE STATE HAS THE BURDEN OF PROOF, AND
17 THAT'S THE ORDER THAT WE WILL FOLLOW.

18 AND AS YOU KNOW WHEN THE FINAL ARGUMENTS ARE
19 CONCLUDED TODAY, WE WILL RECESS FOR THE DAY, RESUME
20 TOMORROW MORNING AT 9:00. LADIES AND GENTLEMEN, YOU HAVE
21 INDEED BEEN ATTENTIVE. IT'S BEEN A LONG TRIAL AND YOU
22 UNDERSTAND THAT THE TIMING OF THESE THINGS IS NEVER
23 CONVENIENT.

24 BUT WE CAN'T PLAN THESE THINGS AROUND
25 CONVENIENCE, AND SO WE APPRECIATE THE GOOD HUMOR AND

1 PATIENCE THAT YOU HAVE SHOWN, FOR YOUR PATIENCE, YOUR
2 WILLINGNESS TO BE HERE, YOUR ATTENTION AND YOUR
3 PROMPTNESS.

4 ALL OF THOSE THINGS ARE HALLMARKS OF A GOOD JURY
5 AND WE APPRECIATE THAT. IT'S IMPORTANT HOWEVER THAT YOU
6 STILL CONTINUE TO PAY ATTENTION TO THE LAWYERS NOW AND TO
7 THE COURT TOMORROW. MR. DOBY?

8 MR. DOBY: MAY IT PLEASE THE COURT.

9 THE COURT: YES, SIR.

10 CLOSING ARGUMENT BY MR. DOBY:

11 LADIES AND GENTLEMEN, YOU HAVE HEARD THREE DAYS
12 OF TESTIMONY. YOU HAVE HEARD MANY WITNESSES. YOU ARE NOW
13 GOING TO HEAR SOME ARGUMENTS FROM THE LAWYERS. THE ORDER
14 IS GOING TO BE MYSELF AS WELL AS THE OTHER DEFENDANTS GET
15 TO HAVE THEIR LAWYERS ARGUE TO YOU FIRST, AND THE REASON
16 THAT IS IS BECAUSE THE STATE OF SOUTH CAROLINA HAS THE
17 BURDEN OF PROOF IN THIS CASE WHICH MEANS THAT THEY MUST
18 PROVE THE CRIMES WERE COMMITTED BY MY CLIENT AND EACH OF
19 THE OTHER DEFENDANTS, WHETHER THEY ARE ENTITLED TO A
20 VERDICT OF GUILTY FROM YOUR HANDS.

21 YOU SEE, YOU ARE THE CRIMINAL JUSTICE SYSTEM
22 TODAY IN LEE COUNTY. YOU AND YOU ALONE GIVE YOUR OPINION
23 ON THE FACTS AND WHETHER IN FACT THESE DEFENDANTS, MARCUS
24 AND OTHERS HAVE BEEN PROVEN GUILTY BEYOND A REASONABLE
25 DOUBT. IT'S AN EXTREMELY DIFFICULT AND IMPORTANT DUTY

1 THAT YOU HAVE.

2 YOU ARE THE CRIMINAL JUSTICE SYSTEM. YOU HAVE
3 BEEN ASKED TO RENDER JUSTICE IN THIS CASE. AND MAKE NO
4 MISTAKE ABOUT IT, YOU SHOULD GIVE JUSTICE TO MR. HENRY
5 SCOTT'S FAMILY. BUT THE QUESTION IS WHAT IS THAT
6 JUSTICE. BECAUSE MARCUS EVANS ALSO COMMANDS JUSTICE FROM
7 YOUR HANDS.

8 HIS FATE HAS BEEN PLACED INTO YOUR HANDS, AND
9 IT'S BEEN PLACED INTO YOUR HANDS WITH THE TESTIMONY THAT
10 HAS BEEN PRESENTED IN THIS CASE. AND YOU HAVE TO GO BACK
11 AND WEIGH THAT EVIDENCE AND WEIGH WHAT TESTIMONY TO PICK
12 AND CHOOSE AS TO WHAT YOU BELIEVE TO BE THE TRUTH, WHAT
13 YOU BELIEVE NOT TO BE THE TRUTH, AND YOU ARE GOING TO
14 WEIGH THAT EVIDENCE.

15 YOU ARE GOING TO LISTEN TO THE WITNESSES AND YOU
16 ARE GOING TO GO BACK THERE AND IF YOUR MIND YOU'RE GOING
17 TO BE PUTTING THOSE THINGS TOGETHER. AND WHEN YOU LOOK AT
18 THAT TESTIMONY, KEEP IN MIND A COUPLE OF THINGS.

19 ONE, LOOK AND SEE WHETHER THE TESTIMONY OF THE
20 WITNESSES WAS SUPPORTED BY THE OTHER WITNESSES. SEE
21 WHETHER THERE WERE INCONSISTENCIES IN THOSE STATEMENTS
22 THAT WERE MADE BY THOSE WITNESSES THAT TESTIFIED. I
23 SUBMIT TO YOU THAT IS A VERY IMPORTANT THING TO DO.

24 YOU WILL ALSO GET TO WEIGH WHAT WEIGHT YOU PUT
25 ON THAT TESTIMONY OF WHAT THE LAW SAYS MAYBE BIAS, SOME

1 REASON YOU WOULD WANT TO TESTIFY IN A CERTAIN WAY. AND
2 MS. NIELSEN IS GOING TO GET UP AND SHE IS GOING TO
3 TESTIFY -- SHE IS GOING TO TELL YOU DON'T BELIEVE
4 WITNESSES THAT WERE PUT UP BY THE DEFENDANTS.

5 DON'T BELIEVE LATOYIA DAVIS BECAUSE SHE IS
6 MARCUS' GIRLFRIEND. YOU ALSO GET TO TEST THE STATE'S
7 EVIDENCE IN THAT SAME REGARD, BECAUSE MAKE NO BONES ABOUT
8 IT, EACH AND EVERYONE WANTS TO HAVE JUSTICE DONE FOR THE
9 DEATH OF HENRY SCOTT. THE WITNESSES WHO HAVE TESTIFIED ON
10 BEHALF OF THE STATE WANT JUSTICE TO BE DONE.

11 THEY WANT SOMEBODY TO BE PUNISHED BECAUSE THEY
12 KILLED -- THEY SAID THEY KILLED A FRIEND OR A FAMILY
13 MEMBER, AND I CAN FULLY UNDERSTAND THAT. NOBODY WANTS TO
14 LOSE THAT FAMILY MEMBER OR FRIEND. THE TESTIMONY WAS I
15 BELIEVE AT BEST CONFLICTING AS TO WHAT HAPPENED THAT
16 NIGHT.

17 AND WHEN YOU GO BACK, THAT BURDEN OF PROOF THAT
18 THE JUDGE IS GOING TO CHARGE YOU ABOUT REQUIRES YOU TO
19 LOOK AT THE EVIDENCE AND NOT SAY, YOU KNOW, WELL MAYBE
20 THERE WAS ENOUGH EVIDENCE THERE TO CONVICT, BUT THAT IS
21 NOT THE STANDARD TO BE APPLIED.

22 THE STANDARD IS BEYOND A REASONABLE DOUBT,
23 BEYOND ANY HESITATION. IF THE CONTRADICTORY EVIDENCE,
24 STATEMENTS, MAKE YOU HESITATE IN BELIEVING THAT THE STATE
25 HAS PROVEN ITS CASE, YOU MUST FIND NOT GUILTY. THE JUDGE

1 IS GOING TO CHARGE YOU THAT.

2 THERE WERE SEVERAL PEOPLE THAT GOT UP AND
3 TESTIFIED IN THIS CASE ABOUT WHAT HAPPENED THAT NIGHT, AND
4 I SUBMIT TO YOU YOU ARE GOING TO HAVE SOME PHOTOGRAPHS.
5 THERE ARE SOME PHOTOGRAPHS THAT YOU ARE GOING TO SEE ABOUT
6 THE SCENE IN THE DAYTIME.

7 YOU ARE ALSO GOING TO GET TO SEE THESE
8 PHOTOGRAPHS OF THE SCENE AT NIGHT, AND I BELIEVE THEY ARE
9 IMPORTANT BECAUSE THEY SHOW YOU THE CONDITION OF THE
10 LIGHTING ON THAT NIGHT. THEY WERE TAKEN AFTER THE
11 SHOOTING BUT THAT SAME NIGHT. TAKE A LOOK AT THOSE.

12 DETECTIVE DELLINGER WANTS TO SAY WELL, CAMERA
13 FOCUSES ON THE LIGHT THAT'S NEAREST. HE HAD TO USE A
14 FLASH TO TAKE THOSE PHOTOGRAPHS. I WONDER WHY. HOW COULD
15 YOU MAKE A CAMERA APPEAR DARKER THAN WHAT THE PHOTOGRAPH
16 IS? I DON'T KNOW, BUT I THINK THOSE ARE IMPORTANT.

17 THE WITNESSES, ALL OF THEM THAT IDENTIFIED
18 PEOPLE IN THIS PHOTO LINE-UP WERE GIVEN THIS WITNESS
19 LINE-UP IDENTIFICATION FORM, AND I BELIEVE THAT THE
20 LANGUAGE IN THIS FORM IS IMPORTANT BECAUSE IT SAYS IF YOU
21 PREVIOUSLY SEEN ONE OR MORE OF THE PERSONS IN THE LINE-UP,
22 PLACE AN "X" IN THE APPROPRIATE CIRCLE CORRESPONDING THE
23 NUMBER OF PERSONS IN THE LINE-UP.

24 WELL, I BELIEVE AND I THINK THE TESTIMONY
25 SUPPORTS IT IS, THAT THERE IS SOME LIGHTS ON THE BUILDING

1 HERE, THERE IS A LIGHT POLE ON THE SIDE OF THE CLUB AND
2 THERE'S SOME LIGHT POLE OVER HERE. TESTIMONY WAS FROM
3 THIS LIGHT POLE TO WHERE THE SHOOTING HAPPENED WAS 71
4 FEET, 71 FEET.

5 IS THE LIGHT COMING FROM THAT? THE STATE IS
6 TALKING ABOUT LIGHTING UP THIS PARTICULAR AREA? IT'S
7 COMING FROM THIS DIRECTION. IT'S COMING FROM THIS
8 DIRECTION. EVERY ONE OF THE WITNESSES TOLD YOU THAT
9 THINGS WERE GOING AWAY FROM THEM, PEOPLE WERE GOING AWAY
10 FROM THEM, AND THAT IS IMPORTANT BECAUSE EACH ONE OF THE
11 WITNESSES, NO CONTRADICTION, WAS ABLE TO SEE IN THIS
12 PARTICULAR AREA CLOSER TO THE CLUB.

13 MARCUS EVANS NEVER DISPUTED THAT HE WAS AT THE
14 CLUB THAT NIGHT. NEVER DISPUTED THAT. THE WITNESSES THAT
15 PICKED OUT MARCUS EVANS SAID THEY SAW HIM IN THIS
16 PARTICULAR AREA. THAT MAKES SENSE BECAUSE THERE IS MORE
17 LIGHT RIGHT THERE. SURE IT MAKES SENSE.

18 THEY COULD SEE RIGHT THERE. THE QUESTION IS
19 WHAT HAPPENED OVER HERE. AND YOU GET FURTHER AWAY FROM
20 THAT LIGHT, WHAT HAPPENS? YOU GET SHADOWS. YOU ARE NOT
21 ABLE TO SEE AS WELL AND THAT'S PRECISELY WHAT HAPPENED IN
22 THIS CASE.

23 NOW WITNESSES, MARTY OAKS, MADE A DESCRIPTION OF
24 A PERSON WEARING. I WROTE IT DOWN AS I BELIEVE HE SAID
25 BLACK JEANS, PLAID SHIRT WITH WHITE IN IT AND HAD SIDE

1 BURNS.

2 YOU ARE GOING TO HAVE THIS PHOTO LINE-UP RIGHT
3 HERE WHERE HE SAID THAT THE PERSON NUMBER ONE, MARCUS
4 EVANS, IS WHO WAS PICKED OUT. YOU ARE GOING TO HAVE
5 THIS. AND I WANT YOU TO LOOK AND SEE IF THAT LOOKS LIKE
6 SIDE BURNS. IT DOES NOT. IS THAT SOME DOUBT? I BELIEVE
7 IT IS.

8 YOU HAVE HEARD FROM LARRY DEBERRY. MR. DEBERRY
9 HAD A LOT OF PEOPLE AT THE CLUB THERE THAT NIGHT, A LOT OF
10 PEOPLE, VARIOUS NUMBERS OF THEM MENTIONED IN THIS TRIAL,
11 BUT I DON'T THINK THERE IS ANY QUESTION BUT THAT THERE
12 WERE PEOPLE OUTSIDE OF THE CLUB THAT NIGHT, 20 MAYBE
13 MORE.

14 MR. DEBERRY COMES OUTSIDE, HE DOESN'T RECALL ANY
15 OF THE CARS THAT WERE PARKED ALONG HERE, BUT I BELIEVE
16 THAT THERE WERE CARS PARKED THERE AND I THINK THAT THE
17 EVIDENCE IN THIS CASE SHOWS THAT, BUT WE DIDN'T SEE ANY OF
18 THAT.

19 BUT WHAT HIS TESTIMONY WAS THAT MARCUS HAD FIRED
20 INTO THE BACK OF HENRY SCOTT. I WROTE THAT DOWN I BELIEVE
21 JUST LIKE HE SAID. WELL, ANOTHER WITNESS TESTIFIED,
22 STEVEN JOHNSON, HE HAD SEEN MARCUS AND MARCUS WAS NOT THE
23 ONE THAT FIRED IN HENRY SCOTT'S BACK.

24 WAS STEVE JOHNSON'S TESTIMONY AND LARRY
25 DEBERRY'S TESTIMONY CONTRADICTORY? BELIEVE THAT IT WAS.

1 IS THAT DOUBT? I BELIEVE THAT IT IS. YOU ALSO HEARD
2 LARRY DEBERRY GIVE A DESCRIPTION OF THE PERSON THAT WAS
3 DOING THE SHOOTING AS LIGHT SKINNED, A FLOWERED SHIRT OR A
4 COLORED T-SHIRT OR SOMETHING THAT WAS PAINTED ON.

5 DID ANY OF THE WITNESSES TESTIFY THAT THAT IS
6 WHAT MARCUS EVANS WAS WEARING THAT NIGHT? NO, ABSOLUTELY
7 NONE. HE WAS THE ONLY ONE THAT GAVE A DESCRIPTION OF THAT
8 TYPE. IS THAT DOUBT? I BELIEVE THAT IT IS.

9 DELVIN WAITERS TESTIFIED THAT IN FACT WHEN HE
10 WALKED BY, HE HAD SEEN MARCUS BUT THAT NOBODY WAS ACTING
11 UP. HE DIDN'T SEE ANY ARGUMENT OR ANYTHING OUT THERE.
12 YOU HAD TESTIMONY FROM TWO DEPUTIES FROM SUMTER COUNTY
13 THAT SAID THAT THEY HAD STOPPED A CAR, TALKED WITH
14 EVERYBODY, THEY WERE COOPERATIVE, THEY ALLOWED THEM TO
15 SEARCH THE CAR WHEN THE LEE COUNTY DEPUTIES HAD GOTTEN
16 THERE.

17 AND WHEN THE LEE COUNTY DEPUTIES GOT THERE, I
18 THINK IT'S IMPORTANT FOR YOU TO REMEMBER THAT IN FACT
19 LIEUTENANT SIMON SAID I HAD BEEN RADIOED THE DESCRIPTION
20 OF THE PERSON AND HE TESTIFIED THAT HE HAD ALSO SEEN
21 SOMEBODY WEARING LIGHT CLOTHING RUNNING ON THE ROAD AND
22 SHOOTING, LIGHT CLOTHING.

23 WHEN LIEUTENANT SIMON GOT TO THE CAR, HE TALKED
24 WITH EVERYBODY. HE HAD BEEN INVESTIGATING FOR YEARS, A
25 GOOD DETECTIVE, BUT YET THERE WAS NO ARREST AT THE SCENE.

1 AND I SUBMIT TO YOU THE REASON THAT THERE WAS NO ARREST IS
2 BECAUSE NO ONE FIT THE DESCRIPTION OF THE PERSON THAT HAD
3 DONE THE SHOOTING.

4 NO ONE IN THAT CAR FIT THE DESCRIPTION AND THAT
5 IS WHY THEY WERE ALLOWED TO GO HOME. LIEUTENANT SIMON
6 SAYS SOMEBODY COMMITTED A MURDER WOULD HAVE BEEN IN THAT
7 CAR, THEY WOULD HAVE BEEN IN JAIL THAT NIGHT. THEY
8 WOULDN'T HAVE GOT...

9 NOW, DERRICK ALBERT SAID HE NEVER GOT VERY CLOSE
10 TO MARCUS. DIDN'T GIVE ANY DESCRIPTION. LOTS OF PEOPLE
11 OUTSIDE, A DARK NIGHT, SOME 3:30, 3:40 IN THE MORNING IS
12 WHEN THIS OCCURRED. YOU HEARD FROM A WITNESS THAT I
13 BELIEVE WAS VERY IMPORTANT TO THIS CASE, MS. CHYAME BENN,
14 WHO TESTIFIED FROM THAT STAND.

15 AND IF YOU WILL REMEMBER, HER TESTIMONY WAS SHE
16 SAW ONE PERSON SHOOTING AND THAT WAS A DARK SKINNED MAN.
17 AND IF YOU LOOK AT MARCUS EVANS, HE IS NOT A DARK SKINNED
18 MAN. HER TESTIMONY WAS SHE WAS STANDING BY THE DOOR.

19 I BELIEVE SHE SAID SHE WAS STANDING SOMEWHERE
20 FAIRLY CLOSE TO THE CLUB RIGHT THERE, AND THAT DARK
21 SKINNED MAN SHOOTING, ONE MAN AND SHE WAS OUTSIDE THE
22 WHOLE TIME, BUT SHE SAW THAT DARK SKINNED MAN SHOOTING.
23 DOES THAT MATCH MARCUS EVANS? HAVE THE PHOTO LINE-UP.
24 DOESN'T MATCH MARCUS EVANS.

25 YOU ALSO HEARD FROM LEONARD SCOTT AND I BELIEVE

1 YOU REMEMBER BACK TO MR. SCOTT'S TESTIMONY, HE SAID THAT
2 HENRY SCOTT HAD GONE TO THE CAR TO GET A GUN, I BELIEVE
3 ACTUALLY TRIED TO STOP HIM AT SOME POINT, BUT HE WENT BACK
4 TO GET A GUN, SAID HE NEVER SAW ANYBODY FIRE AT HIM. HE
5 GOT DOWN.

6 HE NEVER SAW WHO WAS DOING THE SHOOTING. AND
7 YOU KNOW, YOU MIGHT SAY WELL, YOU KNOW, THE BUSINESS ABOUT
8 WHETHER HENRY SCOTT HAD A GUN, WHAT DIFFERENCE DOES THAT
9 MAKE?

10 I BELIEVE IT MAKES A DIFFERENCE BECAUSE WHETHER
11 YOU VIEW ALL OF THE WITNESSES TESTIMONY, I BELIEVE THEY
12 WANT TO MAKE IT AS FAVORABLE AS THEY COULD TO HENRY SCOTT
13 AND AS BAD AS THEY COULD TO THESE DEFENDANTS BECAUSE IT
14 DOESN'T LOOK VERY GOOD IF MR. HENRY SCOTT HAD A GUN IN HIS
15 HAND.

16 IT JUST DOESN'T LOOK VERY GOOD. AND YOU AS THE
17 JURY HAVE THE RIGHT TO ASK WHAT HAPPENED TO THAT GUN
18 BECAUSE IT WILL GIVE YOU SOME INDICATION OR A BETTER
19 INDICATION OF WHAT THE TRUTH WAS. NOW, THE DETECTIVE IN
20 HIS PRELIMINARY HEARING SAID THAT WE HAD RECOVERED TWO
21 GUNS.

22 WE HAD RECOVERED TWO GUNS. ONE OF THEM A 380
23 AUTOMATIC AND ONE OF THEM A 45. IS IT A COINCIDENCE THOSE
24 WERE THE SAME KIND OF SHELLS THAT WERE RECOVERED FROM THE
25 SCENE? I DON'T THINK THAT IT IS.

1 YOU HAVE THE RIGHT TO ASK AND DEMAND FROM THE
2 STATE TO PROVE THE GUILT AND THAT INCLUDES ASKING FROM THE
3 STATE WHY DIDN'T YOU HAVE THAT GUN THAT WAS GIVEN TO YOU
4 TESTED, AND IF YOU ONLY GOT ONE GUN, WHERE IS THE OTHER
5 GUN THAT YOU WERE GIVEN, BECAUSE DETECTIVE DELLINGER HAD
6 NO ANSWER.

7 I BELIEVE THAT THAT IS A DOUBT IN THE STATE'S
8 CASE. YOU CAN LOOK AT THE STATES CASE WITH THAT HARD EYE
9 AND TEST IT. AND DOES IT MAKE SENSE? DETECTIVE DELLINGER
10 DIDN'T HAVE THAT GUN TESTED.

11 MR. IRA PARNELL CAME AND TESTIFIED THAT WELL,
12 THE TWO BULLETS THAT WERE RECOVERED FROM MR. HENRY SCOTT'S
13 BODY WERE SHOT BY A 380 AUTO. I WONDER IF THE GUN THAT
14 DETECTIVE DELLINGER HAS IS THE ONE THAT WAS USED TO MURDER
15 HENRY SCOTT. HE DIDN'T ANSWER THAT QUANDRY.

16 I WONDER WHAT CALIBER IT WAS. I WONDER WHERE
17 THEY GOT THE GUN BECAUSE THEY NEVER TOLD YOU WHERE THEY
18 GOT THE GUN. STEVEN JOHNSON TOLD YOU I HAD SEEN MARCUS
19 EVANS AND RON TAYLOR BEFORE THIS AT SOME HUDDLE HOUSE IN
20 SUMTER SOME MONTHS BEFORE THIS.

21 AND THERE WAS AN ACCUSATION THAT MARCUS SAID I'M
22 GOING TO PUT YOU IN YOUR GRAVE. I BELIEVE THAT'S EXACTLY
23 WHAT HE SAID. AND IF YOU REMEMBER BACK TO HIS TESTIMONY,
24 HE GAVE A STATEMENT THE DAY AFTER THIS OCCURRED, THE DAY
25 AFTER THE SHOOTING, AND IN THAT STATEMENT HE DOESN'T SAY

1 THAT I HAD SEEN THAT MAN BEFORE AND THAT HE HAD THREATENED
2 TO KILL HENRY SCOTT.

3 IF IN FACT I HAD SEEN MY FRIEND SHOT AND KILLED
4 THE DAY BEFORE AND I HAD SEEN THAT MAN MAKE THE THREAT
5 BEFORE, I CAN ASSURE YOU I'D HAVE PUT IT IN THAT
6 STATEMENT. THAT IS IMPORTANT. THAT WOULD HAVE BEEN
7 IMPORTANT TO THE POLICE.

8 HIS TESTIMONY WAS I NEVER SAID ANYTHING ABOUT
9 THAT UNTIL THE LAST COUPLE OF WEEKS. DOES THAT MAKE SENSE
10 THAT SOMEONE WOULD KEEP THAT TO THEMSELVES FOR A YEAR
11 AFTER SOMEONE GETS SHOT? IT DOESN'T MAKE SENSE. I SUBMIT
12 TO YOU THAT THAT NEVER HAPPENED.

13 WHY WASN'T IT IN THE STATEMENT? THAT IS REASON
14 FOR DOUBT. YOU HEARD TESTIMONY ALSO FROM LIEUTENANT SIMON
15 ABOUT WHAT HE HAD DONE. COMES OUT OF THE CLUB, SEES MR.
16 HENRY SCOTT ON THE GROUND, HE GETS IN HIS CAR WITHIN A
17 COUPLE OF MINUTES GOES TO THE SCENE WHERE THERE IS A CAR
18 STOPPED MATCHES A DESCRIPTION.

19 BUT YOU KNOW, LADIES AND GENTLEMEN, THERE WAS
20 ALSO A DESCRIPTION GIVEN OF THAT CAR AS A BURGUNDY AND
21 WHITE CADILLAC, A BURGUNDY AND WHITE CADILLAC. THAT CAME
22 FROM ONE OF THE WITNESSES FOR THE STATE THAT WAS THERE.
23 DOES THAT RAISE SOME DOUBT.

24 I BELIEVE THAT IT DOES. LADIES AND GENTLEMEN,
25 YOU MUST VIEW THE STATE'S CASE AS A WHOLE AND TEST AND

1 EXAMINE THAT EVIDENCE. AND WHEN YOU DO THAT, IT MUST RISE
2 TO THE LEVEL OF GUILTY BEYOND A REASONABLE DOUBT.

3 AND IF THERE IS THAT HESITATION, IF THERE IS
4 THAT REASON THAT YOU CAN PUT A FINGER ON, AND I BELIEVE
5 THAT THERE ARE MANY IN THIS CASE, IF THERE IS THAT REASON
6 THAT THEY -- THEN THE STATE HAS NOT PROVEN BEYOND A
7 REASONABLE DOUBT YOU MUST FIND MARCUS EVANS NOT GUILTY.

8 EASY FOR ME TO SAY. THOSE ARE JUST WORDS,
9 RIGHT? WELL, THEY ARE MORE THAN WORDS TO MARCUS EVANS
10 BECAUSE HE IS ON TRIAL CHARGED WITH A VERY, VERY SERIOUS
11 CRIME. FOR MARCUS EVANS YOU ARE THE CRIMINAL JUSTICE
12 SYSTEM AND HE HAS PLACED HIS HANDS AND TRUST IN YOU.
13 MARCUS HAD BEEN HERE WITH HIS MOTHER ALL WEEK.

14 SHE HAS BEEN HERE WITH HIM. AND YOU MAY THINK
15 WELL, WHY DIDN'T MARCUS TESTIFY? THE JUDGE IS GOING TO
16 GIVE YOU A CHARGE YOU CANNOT HOLD THAT AGAINST HIM AND YOU
17 CANNOT HOLD THAT AGAINST HIM.

18 WHAT YOUR REAL BURDEN AND QUESTION IN THIS CASE
19 IS WHETHER IN FACT THE STATE HAS PROVEN BEYOND A
20 REASONABLE DOUBT THAT MARCUS EVANS WAS THE ONE THAT KILLED
21 HENRY SCOTT, AND TEST AND PROBE THAT EVIDENCE. I THANK
22 YOU ON BEHALF OF MYSELF, MARCUS THANKS YOU, HIS MOTHER
23 THANKS YOU.

24 I AM NOT GOING TO GET ANOTHER OPPORTUNITY TO
25 TALK TO YOU. THIS IS THE LAST TIME I'M GOING TO GET TO

1 TALK TO YOU. AS YOU GO THROUGH AND YOU LISTEN TO THE
2 STATE PRESENT ITS CLOSING ARGUMENT, THINK ABOUT THOSE
3 QUESTIONS. THINK ABOUT THE PROOF THAT THEY HAVE PUT
4 BEFORE YOU.

5 THINK ABOUT IF THEY HAVE ANSWERED THE QUESTIONS
6 THAT HAVE BEEN RAISED BECAUSE THAT IS REALLY WHAT MY JOB
7 IS. MY JOB IS TO RAISE THOSE QUESTIONS. BUT IT'S MORE
8 THAN JUST A JOB. IT'S A RESPONSIBILITY TO PRESENT TO YOU
9 THE EVIDENCE IN YOUR QUEST TO SEEK JUSTICE BECAUSE THAT IS
10 WHAT YOU HAVE TO DO.

11 I'M ASKING ON BEHALF OF MARCUS FOR THAT JUSTICE
12 TO BE ADMINISTERED FAIRLY AND I KNOW THAT YOU WILL DO
13 THAT. THANK YOU.

14 THE COURT: THANK YOU, MR. DOBY. MR. ROGERS?

15 MR. ROGERS: MAY IT PLEASE THE COURT.

16 THE COURT: YES, SIR.

17 CLOSING ARGUMENT BY MR. ROGERS:

18 MADAM FORELADY AND MEMBERS OF THE JURY, I TOO ON
19 BEHALF OF RON TAYLOR AND HIS FAMILY, HIS MOTHER JUST
20 WALKED IN, SHE HAS BEEN HERE ALL WEEK, TO THANK YOU FOR
21 YOUR ATTENTION IN THIS CASE.

22 IT'S BEEN A LONG CASE, BUT IT'S BEEN A VERY
23 IMPORTANT CASE. IT'S IMPORTANT TO THE SCOTTS FAMILY OF
24 COURSE AND IT'S IMPORTANT TO MR. TAYLOR BECAUSE HIS
25 LIBERTY IS ON STAKE, SO ON BEHALF OF HIS FAMILY I WANT TO

1 THANK YOU.

2 HE DIDN'T TESTIFY IN THIS CASE AND JUDGE COOPER
3 WILL TELL YOU THAT YOU CAN'T CONSIDER THAT ONE WAY OR THE
4 OTHER. YOU CAN'T. THAT CAN'T ENTER INTO YOUR
5 DELIBERATIONS AND YOU CAN'T SPECULATE. OUR SYSTEM OF
6 JUSTICE GIVES AN INDIVIDUAL A CONSTITUTIONAL RIGHT NOT TO
7 TESTIFY, AND THAT IS WHAT HE HAS EXERCISED IN THIS TRIAL.

8 NOW, I TOLD YOU INITIALLY THE STATE HAS THE
9 BURDEN OF PROVING RON'S GUILT BEYOND A REASONABLE DOUBT.
10 THE QUESTION FOR YOU IS HAVE THEY DONE THAT JOB. THIS
11 CASE CONSISTS OF IDENTIFICATION TESTIMONY.

12 AND AS I TALKED TO YOU IN MY OPENING ABOUT A
13 PERSON'S MIND NOT BEING A VIDEOTAPE, NOT BEING ABLE TO
14 RECORD EVENTS THEN LATER SPIT THEM OUT TO YOU, AND YOU
15 HEARD THE CROSS-EXAMINATION, WHAT WE WENT THROUGH WITH
16 EVERY WITNESS WHO HAS MADE IT IN-COURT IDENTIFICATION, AND
17 I WAS THINKING ABOUT WHAT WAYS LAST NIGHT WHEN I WAS
18 PREPARING MY ARGUMENT TO FOCUS ON WEAPON, FOCUS LIGHTING,
19 HOW LONG IT TOOK AND HOW FAR THE PEOPLE WERE AWAY FROM
20 EACH OTHER TO TRY TO DRIVE HOME THE POINT THAT SOMETIMES
21 PEOPLE ARE MISTAKEN.

22 YOU KNOW, I DON'T KNOW HOW OFTEN IT'S HAPPENED
23 TO YOU THAT, YOU KNOW, YOU WERE AT THE MALL AND SOMEBODY
24 CAME UP TO YOU AND MISTOOK YOU FOR SOMEONE ELSE OR SAY
25 DIDN'T I SEE YOU AT THE MALL LAST WEEK AND IT WASN'T YOU?

1 I MEAN, PEOPLE DO LOOK SIMILAR.

2 PEOPLE DO SOMETIMES MAKE MISTAKES, BUT YOU THINK
3 IN A SITUATION THIS SERIOUSNESS THAT WOULDN'T HAPPEN, BUT
4 MR. WITHERSPOON THIS MORNING ELOQUENTLY GAVE THE EXAMPLE
5 THAT I COULDN'T THINK OF LAST NIGHT. HE COULDN'T
6 RECOGNIZE HIS OWN FRIENDS THAT NIGHT IN THE DARK, SOMEONE
7 RUNNING TO HIM AFTER GUNSHOTS HAD BEEN FIRED. HE SAID
8 YEAH, I SAW THESE PEOPLE RUNNING, DIDN'T KNOW IT WAS UNTIL
9 THEY GOT TO THE CAR AND OH, IT'S RON AND MARCUS.

10 AND I SUBMIT TO YOU THAT THAT IS SOMETHING
11 SIMILAR TO WHAT HAPPENED THAT NIGHT. WHAT I THINK REALLY
12 HAPPENED IS THESE FOLKS IDENTIFIED RON BECAUSE RON WAS OUT
13 THERE. NO DISPUTE RON WAS THERE. THE DISPUTE IS WHETHER
14 RON FIRED THE SHOTS.

15 AND WE SUGGEST TO YOU THAT THE STATE HAS FAILED
16 TO PROVE THAT. NOW, LET'S TALK ABOUT THE CHRONOLOGY OF
17 EVENTS AND HOW IT GOT TO RON. THIS HAPPENED ON NOVEMBER
18 14TH.

19 NOW, AND WE DON'T KNOW WHO, FROM -- HAVE FROM
20 THE VICTIM'S FAMILY, FROM THE SCOTTS FAMILY, TOLD -- GAVE
21 THE POLICE RON TAYLOR'S NAME. WE DON'T KNOW WHO. WE
22 DON'T KNOW IF IT WAS SOMEBODY THAT WAS OUT THERE. WE
23 DON'T KNOW IF IT WAS A WITNESS OR WHO IT WAS.

24 BUT AS A RESULT OF THAT THEY PUT RON'S PICTURE
25 INTO STATE'S EXHIBIT 4, THIS PHOTO LINE-UP. AND MR. STEVE.

1 JOHNSON ON THE 16TH IDENTIFIED RON TAYLOR. AFTER THAT
2 IDENTIFICATION, A WARRANT WAS OBTAINED FOR RON'S ARREST
3 AND THAT IS ABSOLUTELY ALL THAT HAPPENED BEFORE RON GOT
4 ARRESTED.

5 SOMEBODY SAID RON TAYLOR, THEY PUT HIS PICTURE
6 IN THIS LINE-UP, SOMEBODY ON THE 16TH SAID IT WAS RON
7 TAYLOR AND HE WAS ARRESTED. AND THEY HAVE DONE ABSOLUTELY
8 NOTHING ELSE, NO OTHER EVIDENCE OTHER THAN THE
9 IDENTIFICATION THAT I WILL TALK ABOUT, ABSOLUTELY NO OTHER
10 EVIDENCE IN A TWO DAY PERIOD TO IMPLICATE RON.

11 IT WAS ONLY ON THE BASIS OF THAT ONE
12 IDENTIFICATION THAT HE WAS ARRESTED. ONE CAME IN LATER,
13 BUT HE WAS ONLY ARRESTED BECAUSE MR. JOHNSON SAID IT WAS
14 HIM. WHAT IS INTERESTING THOUGH IS THAT WE KNOW THAT
15 DERRICK ALBERT CAME IN AND IDENTIFIED THE SECOND SHOOTER
16 AS NUMBER FOUR.

17 NOW, WHAT WOULD HAVE HAPPENED IF THEY HAD TALKED
18 TO DERRICK ALBERT ON THE 16TH AND DERRICK SAID IT WAS
19 NUMBER FOUR? WOULD THEY HAVE ARRESTED RON? THEY HAD ONE
20 PERSON SAYING NUMBER FOUR AND ONE PERSON SAYING NUMBER
21 FIVE.

22 WE DON'T KNOW, BUT WE KNOW THAT A WITNESS CAME
23 IN AND SAID THAT PERSON WAS NUMBER FOUR. THAT HAPPENED
24 LATER. THEY DISREGARDED THAT. THEY DIDN'T CARE ABOUT
25 THAT BECAUSE AT THAT POINT THEY HAD OTHER PEOPLE WHO HAVE

1 IDENTIFIED RON. AND WHO ARE THEY?

2 COUSIN, COUSIN, FRIENDS, BROTHER, UNCLE. NOW,
3 HIS HONOR WILL TELL YOU THAT YOU HAVE THE RIGHT TO, IN
4 JUDGING THE CREDIBILITY OF THE WITNESSES, TAKE INTO
5 CONSIDERATION ANY BIAS THAT THEY MAY HAVE. AND HOW DO WE
6 KNOW THAT THESE WITNESSES HAVE EXHIBITED SOME EVIDENCE OF
7 BIAS ? BY THEIR OWN STATEMENTS.

8 EACH AND EVERY ONE OF THOSE PEOPLE, STEVEN
9 JOHNSON WHO IS A COUSIN, MARTY OAKS WHO IS A COUSIN,
10 DELVIN WAITERS WHO IS A FRIEND, RODNEY YATES WHO IS A
11 BROTHER, LEONARD SCOTT WHO IS AN UNCLE. EVERY LAST ONE OF
12 THOSE PEOPLE SAID IN THEIR STATEMENTS WHEN THEY GAVE THE
13 STATEMENTS TO THE POLICE THAT HENRY SCOTT HAD A GUN, BUT
14 EVERY LAST ONE OF THOSE FOLKS WHEN THEY GOT ON THIS
15 WITNESS STAND THIS WEEK ALL SAID HE DIDN'T HAVE A GUN.

16 NOW, WHY IS THAT SIGNIFICANT? I SUGGEST TO YOU
17 IT'S SIGNIFICANT BECAUSE NUMBER ONE IT IMPEACHES THEM.
18 IMPEACHMENT IS WHEN A WITNESS SAYS ONE THING ON ONE HAND
19 ON ONE DAY AND A DIFFERENT THING ON A DIFFERENT DAY. HOW
20 DO YOU KNOW WHAT TO BELIEVE?

21 I LIKE TO USE THE EXAMPLE I TELL PEOPLE I TOLD
22 YOU I WAS 49 ON MONDAY, WOULDN'T HAVE ANY REASON TO
23 DISPUTE THAT. IF I TOLD YOU TODAY I WAS 51, YOU WOULDN'T
24 KNOW AND ON THE ISSUE OF HOW OLD I AM, AND I KNOW PEOPLE
25 SAY LAWYERS DON'T ALWAYS TELL THE TRUTH, BUT ON THE ISSUE

1 OF HOW OLD I AM, YOU WOULD NEED SOME OBJECTIVE PROOF, NOT
2 JUST WHAT I SAID. YOU WOULD WANT TO SEE MY BIRTH
3 CERTIFICATE OR MY DRIVER'S LICENSE IF YOU WERE CALLED UPON
4 TO DETERMINE HOW OLD I WAS.

5 THE SAME THING HERE. HERE THESE WITNESSES ON
6 THE ONE HAND, EVERY LAST ONE OF THEM, SAID THAT MR. SCOTT
7 WENT TO HIS CAR, GOT HIS GUN AND THEN THE GUNFIRE
8 STARTED. BUT IN COURT THEY ALL SAID I DON'T KNOW ABOUT
9 THAT, WE DIDN'T SEE THAT, THAT DIDN'T HAPPEN.

10 THERE WAS AN ARGUMENT HAPPENED. THEY WALKED UP,
11 SAW THESE TWO LIGHT SKINNED GUYS, THE NEXT THING WE KNEW
12 OUR FRIEND WAS ON THE GROUND SHOT. AN INCONSISTENT
13 STATEMENT. AND YOU ARE ENTITLED TO VIEW THOSE
14 INCONSISTENT STATEMENTS WHEN TESTING THEIR CREDIBILITY,
15 THEIR RELIABILITY, THEIR BELIEVABILITY BECAUSE AFTER ALL,
16 THAT'S WHAT THE STATE IS ASKING YOU TO DO, TO BELIEVE WHAT
17 THEY ARE TELLING YOU, BELIEVE THEM BECAUSE THEY WERE
18 THERE. YOU WEREN'T, THEY WERE. CAN YOU BELIEVE THEM?

19 WOULD YOU BELIEVE THEM IN A SERIOUS DECISION YOU
20 HAD TO MAKE WHEN YOU KNOW THAT ON AN IMPORTANT ISSUE THEY
21 ON THE ONE HAND SAID ONE THING AND ON THE OTHER SAID
22 SOMETHING DIFFERENT? NOW, WE TALKED ABOUT RELIABILITY OF
23 THE IDENTIFICATION.

24 WHAT USUALLY HAPPENS IN A SITUATION LIKE THIS IS
25 A PERSON VIEWS A SUSPECT, MAKES A DESCRIPTION, ON THE

1 OTHER HAND, THEN IF THAT PERSON IS SUBSEQUENTLY CAUGHT,
2 THAT DESCRIPTIVE TEST, THE RELIABILITY OF THE PERSON, OF
3 THE WITNESS.

4 USUALLY YOU HAVE A CASE WHERE IT'S CORROBORATED
5 BY OTHER OBJECTIVE EVIDENCE, BUT LET'S JUST SAY THE
6 WITNESS SAID THE ASSAILANT WAS 5'10", 140 POUNDS, BROWN
7 CURLY HAIR, LIGHT EYES. THEN THEY BRING IN A PERSON THAT
8 FITS THAT DESCRIPTION, AND THEN YOU HAVE OTHER EVIDENCE,
9 OTHER OBJECTIVE EVIDENCE THAT CORROBORATES HIS GUILT.

10 THEN YOU CAN TEST. THAT'S HOW YOU TEST THE
11 RELIABILITY OF WHAT THAT PERSON SAW. OH YEAH, HE DOES
12 MATCH THE DESCRIPTION THAT WAS GIVEN RIGHT AFTER THIS
13 EVENT HAPPENED. WE DON'T HAVE THAT HERE. AND WHAT I
14 SUGGEST TO YOU HAS HAPPENED IS THAT THESE FOLKS FOR SOME
15 REASON HAVE PICKED RON OUT OF THIS LINE-UP BECAUSE THEY
16 SAW RON THAT NIGHT.

17 AND THAT'S THE QUESTION THAT WAS ASKED THEM. IT
18 WAS ASKED IF YOU HAVE PREVIOUSLY SEEN ONE OR MORE OF THE
19 PERSONS IN THE LINE-UP, PLACE AN "X". DIDN'T SAY IF YOU
20 SAW A PERSON THAT COMMITTED THE CRIME, IF YOU SAW THE
21 SHOOTER, IF YOU SAW THE PEOPLE THAT WERE SHOOTING, IT SAYS
22 PUT AN "X" BY THE SPOT OF THE PERSON THAT YOU SAW. THAT
23 IS WHAT THEY DID.

24 THEY SAW RON THAT NIGHT AND THEY PUT THE "X" IN
25 THAT SPOT. HOW EASY IS THAT? A CASE OF MISTAKEN

1 IDENTITY. AND THE REASON THAT THE BUSINESS ABOUT THE GUN
2 IS SO IMPORTANT IS BECAUSE IT GIVES YOU SOME IDEA OF WHAT
3 THEY WERE THINKING.

4 IT'S -- IT'S KIND OF ANALOGOUS TO A BOYFRIEND
5 GIRLFRIEND SITUATION WHERE THE BOYFRIEND GETS KIND OF
6 CAUGHT AND HE DIDN'T GO SEE HIS GIRLFRIEND THAT NIGHT AND
7 HE SAYS OH, I WAS WITH MY BUDDIES AND THE GIRLFRIEND LATER
8 FINDS OUT THAT NO, HE WAS WITH ANOTHER GIRL.

9 CAN SHE EVER, EVER TRUST WHAT HE SAYS TO HER
10 AGAIN BECAUSE HE HAS ON THE ONE HAND SAID ONE THING AND ON
11 THE OTHER HAND SAID ANOTHER? AND I SUGGEST TO YOU THAT IS
12 WHAT WE HAVE HERE. FIRST SAID THEY DIDN'T SEE A GUN AND
13 NOW THEY SAY THEY DO, AND THAT IS IMPORTANT BECAUSE THAT
14 ESTABLISHES WHO THE AGGRESSOR WAS.

15 I MEAN, BASICALLY EVERYBODY'S TALKING ABOUT THE
16 SAME THING, EVERYBODY'S STORIES ARE CONSISTENT. MR. SCOTT
17 CAME OUT THERE. WITH ALL DUE RESPECT, HE WAS THE
18 AGGRESSOR. HE CAME OUT THERE, THIS ARGUMENT STARTED. NO
19 ONE SAYS THEY SAW ANY WEAPONS UNTIL AFTER HE WENT BACK TO
20 THE CAR. ONE PERSON SAID EVEN TRIED TO STOP HIM BECAUSE
21 THEY KNEW HE WAS GOING TO GET HIS GUN.

22 HE WENT BACK TO THE CAR AND THEN SHOTS WERE
23 FIRED. NOW, WHAT KIND OF SENSE DOES THAT MAKE? IF AN
24 ARGUMENT WAS ENSUING BETWEEN TWO PEOPLE AND THEN ONE
25 PERSON GOES BACK TO GET A GUN, WHO STARTED FIRING FIRST?

1 WELL, NOBODY SEEMS TO KNOW, BUT IT ONLY MAKES
2 SENSE HE WOULDN'T HAVE COME OUT WITH A GUN AND STOOD THERE
3 AND LET SOMEBODY FIRE ON HIM. THAT WAS THE WHOLE REASON
4 HE WENT TO GET HIS GUN, AND THAT'S WHY IT'S SIGNIFICANT
5 THAT WE DON'T HAVE A WEAPON IN THIS CASE.

6 WHERE IS THE GUN HE HAD? SOMEBODY TOOK IT. IT
7 DIDN'T DISAPPEAR. ONE OF THE -- AND IN AN EFFORT TO
8 PROTECT HIM, YOU KNOW, I DON'T IMPUTE ANY ILL WILL TO
9 THESE WITNESSES. THEY ARE DOING WHAT HUMAN NATURE EXPECTS
10 YOU TO DO.

11 MY FRIEND WAS SHOOTING, I'M GOING TO DO WHAT I
12 CAN TO PROTECT MY FRIEND. SOMEBODY SAID THEY WENT OVER TO
13 THE BODY FIRST, CRADLED THE BODY. WHERE IS THE GUN? NOW,
14 THEY CALL THE SLED PERSON, MRS. STONER TO TESTIFY THERE
15 WAS NO GUNPOWDER RESIDUE ON HIS HANDS, BUT STEVEN JOHNSON
16 TOLD YOU HE SHOT.

17 NOBODY ELSE WOULD THAT TO -- GIVE IT TO MR.
18 JOHNSON. HE IS THE ONLY ONE THAT SAID YES, HE GOT OFF A
19 COUPLE ROUNDS. HE WAS THE ONLY ONE WILLING TO ADMIT THAT
20 HE SHOT. I SUGGEST TO YOU THAT SOMEBODY HAD TO HAVE WIPED
21 HIS HANDS.

22 THE TEST RESULTS SAID THEY FOUND NO GUNPOWDER
23 RESIDUE. ON THE OTHER HAND WE HAVE AT LEAST ONE WITNESS
24 THAT SAYS HE WAS SHOOTING. THERE IS JUST NO OTHER WAY TO
25 GET THERE. THE EXPERT SAID THE ONLY WAY SHE COULD HAVE,

1 THE ONLY WAY HER CONCLUSION COULD BE POSSIBLE AND THAT IF
2 HE FIRED A WEAPON IS THAT SOMEBODY HAD TO HAVE WIPED HIS
3 HANDS.

4 THE ONLY PERSON THAT WOULD HAVE A MOTIVE TO DO
5 THAT, HAVE A REASON TO DO THAT, WOULD BE SOMEBODY WHO WAS
6 TRYING TO PROTECT HIM. I MEAN, IT IS JUST COMMON SENSE.
7 THIS ISN'T SOMETHING YOU HAVE TO FIGURE OUT WITH A SLIDE
8 RULE. SO THEY DID NOTHING ELSE OTHER THAN THE
9 IDENTIFICATIONS, THE SUBJECTIVE IDENTIFICATIONS OF RON.

10 NO OBJECTIVE EVIDENCE WHATSOEVER. DIDN'T FIND
11 ANY WEAPONS ON RON, HE DIDN'T MATCH THE DESCRIPTION. WHAT
12 LITTLE DESCRIPTION WAS GIVEN, BLACK MALE, LIGHT SKINNED,
13 SIDES BURNS I GUESS, BUT DETECTIVE SIMON WHO STOPPED THE
14 CAR MINUTES AFTER THE SHOOTING OCCURRED, AND YOU HEARD HOW
15 LONG HE HAS BEEN ON THE POLICE FORCE, HE IS SOMEWHAT OF AN
16 EXPERIENCED OFFICER.

17 DO YOU THINK FOR ONE MINUTE IF HE HAD AN INKLING
18 THAT THESE WERE THE GUYS, RON OR ANYBODY ELSE WAS INVOLVED
19 IN THIS SHOOTING, HE WOULD HAVE LET THEM GO TO PROTECT
20 FIVE HUNDRED PEOPLE AT A CLUB? THAT DOESN'T MAKE ANY
21 SENSE. HE COULD HAVE HELD THEM THERE FOR BACK-UP.

22 HE COULD HAVE CALLED A SWAT TEAM TO THE CLUB.
23 HE COULD HAVE HELD THEM THERE. I MEAN, TO SAY THAT OH
24 YEAH, WELL I WAS MORE CONCERNED ABOUT FIVE HUNDRED PEOPLE
25 IN THE CLUB THAN I WAS ABOUT A CAR FULL OF POTENTIAL

1 MURDERERS. THAT DOESN'T MAKE ANY SENSE.

2 WHAT DOES MAKE SENSE IS THAT HE STOPPED THE CAR
3 BASED ON THE INFORMATION THAT HE HAD. NOTHING IN THE CAR
4 FITS. THE DESCRIPTION DIDN'T MATCH. CLOTHES DIDN'T
5 MATCH, NO GUNS, NO EVIDENCE WHATSOEVER OF A CRIME HAVING
6 RECENTLY BEEN COMMITTED.

7 I KNOW MS. NIELSEN IS GOING TO GET UP HERE AND
8 SAY MUST HAVE THROWN THE GUNS OUT THE WINDOW. WELL, SHE
9 IS ASKING YOU TO GUESS. SHE DIDN'T PUT ON ANY EVIDENCE
10 ABOUT THAT. SHE DIDN'T PUT ON ANY EVIDENCE THAT THEY WENT
11 ALONG THAT ROUTE, ROUTE 15 OR MANVILLE ST. CHARLES HIGHWAY
12 AND TRIED TO SEARCH IN A LOW CASE WHERE ON THE RIGHT SIDE
13 OF THE ROAD A WEAPON COULD HAVE BEEN FOUND.

14 THEY DIDN'T TRY. THEY DIDN'T DO ANYTHING ELSE
15 BUT THIS. SHOW SOMEBODY THE PHOTOGRAPHIC SPREAD. THEY
16 DIDN'T GO TO RON'S HOUSE AND SEARCH HIS HOUSE FOR
17 CLOTHES. THEY DIDN'T GO TO RON'S HOUSE AND SEARCH HIS
18 HOUSE FOR WEAPONS.

19 THEY DIDN'T EVEN GO TO RON'S HOUSE AND SEARCH
20 HIS HOUSE FOR SHELL CASINGS, SHELLS THAT THEY COULD HAVE
21 MATCHED TO THE CASES THAT THEY FOUND OUT THERE ON THE
22 GROUND. AND OBVIOUSLY WE KNOW THAT IT WAS A SHOOTOUT
23 BECAUSE THERE WERE 15 SHELL CASINGS ON THE GROUND AND WE
24 KNOW THAT THERE WERE FOUR GUNS.

25 THOSE THINGS ARE OBJECTIVE PIECES OF EVIDENCE.

1 THE EXPERTS TOLD YOU I FOUND FOUR SHELL CASINGS, I MEAN
2 SHELL CASES FROM FOUR DIFFERENT GUNS. WHO HAD THE OTHER
3 GUNS? THESE WITNESSES SAY THE TWO SHOOTERS DID, BUT WHERE
4 ARE THE OTHER TWO GUNS? DID THEY HAVE GUNS?

5 WELL, OF COURSE THEY ARE NOT GOING TO ADMIT THEY
6 WERE OUT THERE SHOOTING. DID THEY SHOOT MR. SCOTT? NO,
7 THEY ARE NOT GOING TO ADMIT THAT. WE KNOW THERE WERE FOUR
8 GUNS, AND THE ABSENCE OF EVIDENCE IS THE REASON TO DOUBT
9 AND THAT THEY DIDN'T EVEN TRY TO FINGERPRINT THE SHELLS
10 THAT THEY HAD.

11 I MEAN, YOU KNOW, THE EXPERT SAID YEAH, WELL YOU
12 KNOW, MY EXPERIENCE HAS BEEN USUALLY CAN'T GET
13 FINGERPRINTS OFF A SHELL, BUT YOU DON'T KNOW UNTIL YOU
14 TRY. COULD HAVE BEEN AN EASY MATTER SINCE THEY HAD ALL
15 THE EVIDENCE TO JUST TRY.

16 NOW, JUST BRIEFLY MR. DEBERRY WHO IS THE ONLY
17 ONE WHO WAS NOT A FRIEND OR FAMILY MEMBER WHO MADE AN
18 IDENTIFICATION, AND I ONLY ASK YOU TO CONSIDER THAT HE
19 NEVER TALKED TO THE POLICE, NEVER GAVE A DESCRIPTION,
20 NEVER MADE AN IDENTIFICATION RIGHT AFTER THE END, BUT HE
21 COMES IN COURT A YEAR AND A HALF LATER AND SAYS OH YEAH,
22 IT'S THEM, I REMEMBER FROM OVER A YEAR AND A HALF AGO OR
23 OVER A YEAR AGO.

24 THAT TO SAY HIM OUT THERE THAT NIGHT OUT OF
25 HUNDREDS AND THOUSANDS OF PEOPLE HE MUST HAVE SEEN, HAD TO

1 HAVE SEEN BETWEEN NOVEMBER 12TH OF 1999 AND DECEMBER 17TH
2 OF 2000. HE HAD TO HAVE SEEN THOUSANDS OF PEOPLE, BUT HE
3 REMEMBERS THOSE PEOPLE.

4 YOU TEST IT, YOU JUDGE IT. YOU KNOW, DOES HE
5 HAVE AN INTEREST? DOES HE HAVE SOME STAKE IN MAKING SURE
6 THAT SOMEBODY IS CONVICTED FOR A SHOOTING AT HIS CLUB SO
7 THAT HE CAN KEEP HAVING PEOPLE COME TO A CLUB? CAN'T HAVE
8 A CLUB WHERE SOMEBODY HAD BEEN SHOT AND NEVER FOUND TO
9 ANYBODY.

10 WHO IS GOING TO COME TO THE CLUB? SO I JUST ASK
11 YOU TO THINK ABOUT WHAT HE MAY HAVE AT STAKE IN HIS
12 IDENTIFICATION. AND OH BY THE WAY, WHEN THE FAMILY
13 MEMBERS AND THE COUSINS AND FRIENDS MAKE THE
14 IDENTIFICATION, DON'T YOU THINK THEY TALKED ABOUT THIS
15 CASE?

16 I ASKED SOMEBODY HAVE YOU TALKED ABOUT IT? NO,
17 NO, WE DIDN'T TALK ABOUT IT. I MEAN, HERE THEIR FRIEND
18 AND FAMILY MEMBER WAS SHOT AND THEY NEVER TALKED ABOUT
19 IT? USE YOUR COMMON SENSE. AND HOW EASY -- DON'T YOU
20 THINK ONCE SOMEBODY SAID HEY MAN, I WENT DOWN TO THE
21 POLICE TODAY, POLICE STATION TODAY AND SHOWED ME A LINE-UP
22 I PICKED OUT NUMBER FIVE.

23 THEN THE NEXT PERSON WHO IS SHOWN THIS VERY SAME
24 LINE-UP, THEY DIDN'T CHANGE THE ORDER AROUND AT ALL, ALL
25 HAD TO DO WAS THE NEXT PERSON THAT WENT DOWN THERE ON THE

1 19TH PICKED OUT NUMBER FIVE. NEXT PERSON GOES ON THE
2 22ND, PICKS OUT NUMBER FIVE.

3 THE NEXT PERSON, LEONARD SCOTT, GOES ON THE
4 30TH, PICKS OUT NUMBER FIVE. I MEAN, DON'T YOU THINK IF
5 THEY WERE TRYING TO MAKE SURE THAT THAT IDENTIFICATION WAS
6 RELIABLE, HAVE THEM AROUND? WHAT DID THEY SAY? YOU
7 DIDN'T HEAR ANYTHING ABOUT WHAT THEY SAY WITH DERRICK
8 ALBERT MISIDENTIFIED NUMBER FOUR AS THE SHOOTER.

9 THEY DIDN'T SAY WELL, THEY -- THIS DOESN'T QUITE
10 SQUARE. WE DON'T CARE ABOUT THAT, WE GOT FOUR PEOPLE THAT
11 SAYS IT'S HIM, SO WE JUST WON'T -- FORGET ABOUT IT. THIS
12 IS THE KIND OF EVIDENCE THAT THEY WANT YOU TO CONVICT
13 SOMEBODY ON?

14 ONE VERSION IS CONSISTENT WITH EVERYBODY ELSE'S,
15 BUT I WANTED YOU TO LOOK AT THIS AERIAL MAP BECAUSE IT
16 KIND OF GIVES YOU A BETTER IDEA THAN THIS EXHIBIT THAT IS
17 NOT DRAWN TO SCALE. SHE WAS PUSHED IN THE DOOR IN THE
18 FRONT OF THE CLUB AFTER SHE HEARS THE SHOOTING.
19 THEY ARE WITH HER.

20 THEN THEY RUN IN THIS DIRECTION, EVERYBODY IS
21 RUNNING, THEN MR. WITHERSPOON PICKS THEM UP WAY UP HERE.
22 WHEN HE STOPS FOR A CAR THAT IS COMING OUT REAL FAST, THEN
23 HE PICKS THEM UP. THAT IS CONSISTENT WITH WHAT EVERYBODY
24 ELSE HAS SAID, WITH WHAT MR. WITHERSPOON HAS SAID AND IT'S
25 CONSISTENT BASICALLY WITH WHAT THE STATE'S WITNESSES

1 SAID. EVERYBODY WAS RUNNING.

2 WHO WAS IN THE CAR BEHIND MR. WITHERSPOON? WE
3 DON'T KNOW WHO THAT WAS. WE DON'T KNOW IF THAT WAS THE
4 RED CADILLAC. WE DON'T KNOW WHAT OTHER CARS GOT OUT, A
5 BURGUNDY CADILLAC WITH WHITE TOP. I WANT TO EMPHASIZE AND
6 THIS CAR WAS NOT A WHITE TOP.

7 BUT I THOUGHT IT WAS -- AND YOU CAN GET A SENSE
8 OF THESE THINGS, AND THAT'S WHAT YOU HAVE TO DO, YOU HAVE
9 TO GET A FEEL FOR THE PERSON THAT IS TESTIFYING. I MEAN,
10 WHEN MR. WITHERSPOON SAID, AND HE COULDN'T HAVE SAID IT
11 ANY BETTER WHEN HE SAID THIS MORNING LOOK, IF SOMEBODY HAD
12 BEEN RUNNING TO MY CAR SHOOTING WEAPONS, THEY'D HAVE BEEN
13 LEFT.

14 I WASN'T OUT THERE FOR THAT. IF SOMEBODY HAD
15 BEEN COMING TO MY CAR SHOOTING A WEAPON, I WOULD HAVE
16 LEFT. DOESN'T THAT MAKE SENSE? ISN'T THAT CONSISTENT
17 WITH EVERYTHING ELSE YOU HAVE HEARD IN THIS CASE? SHOTS
18 BROKE OUT, THEY WERE OUT THERE, THEY RAN LIKE EVERYBODY
19 ELSE DID, RAN AND JUMPED IN THEIR CAR.

20 WHO IS MORE BELIEVABLE? WHO IS MORE CREDIBLE?
21 NOW, IT PUTS UP CHARACTER EVIDENCE AND RON AND I DID THAT,
22 WAS CHARACTER EVIDENCE IS ANOTHER REASON TO DOUBT. IT
23 ESTABLISHES REASONABLE DOUBT IF YOU BELIEVE THE CHARACTER
24 EVIDENCE.

25 ADMITTEDLY MR. GERALD HASN'T SEEN RON IN A WHILE

1 MAYBE BECAUSE RON HAD BEEN IN THE SERVICE, BUT HE KNEW OF
2 NOTHING NEGATIVE THAT HE COULD REPORT ABOUT RON. ANOTHER
3 REASON TO DOUBT. THE ABSENCE OF EVIDENCE, RON'S
4 CHARACTER, THE WAY THIS HAPPENED, THE BIAS AND MOTIVES OF
5 THE EYE WITNESSES, THOSE ARE ALL THINGS THAT YOU HAVE TO
6 CONSIDER.

7 ALL THINGS THAT CAN GIVE YOU REASON TO DOUBT. I
8 TOLD YOU IN THE BEGINNING OF COURSE MR. SCOTT'S DEATH IS A
9 REAL TRAGEDY, BUT PLEASE DON'T COMPOUND THAT TRAGEDY BY
10 CONVICTING THE WRONG PERSON.

11 THE COURT: THANK YOU, MR. ROGERS. MR. JORDAN?

12 MR. JORDAN: THANK YOU, YOUR HONOR.

13 CLOSING ARGUMENT BY MR. JORDAN:

14 LADIES AND GENTLEMEN, I THANK YOU FOR YOUR
15 ATTENTION ON BEHALF OF MYSELF, MY CLIENT MR. SINGLETON,
16 HIS MOTHER WHO SITS BEHIND US. WITH A NAME LIKE MINE,
17 JUST LIKE ANY LAWYER, I GUESS I LIKE A GRAND STAND.

18 I FEEL LIKE DURING THIS TRIAL KIND OF SAT THERE,
19 HADN'T REALLY OPENED UP ON ANYTHING. I THINK DURING THE
20 TRIAL I COUNTED THE TIMES THAT MY CLIENT'S NAME HAD BEEN
21 MENTIONED, PROBABLY WOULDN'T USE ALL OF THE FINGERS ON
22 BOTH HANDS.

23 THEN MOST OF THOSE TIMES I WAS THE ONE
24 MENTIONING IT. THERE WAS NO TESTIMONY THAT PUT MR.
25 SINGLETON IN A POSITION TO SEE ANYTHING. THE STATE'S OWN

1 WITNESSES, THEY HAVE HAD WITNESSES WHO WERE IN AND ABOUT
2 THE AREA AND THEY HAD TROUBLE COMING IN THIS COURTROOM AND
3 SAYING EXACTLY WHAT HAPPENED.

4 SHOTS WERE BEING FIRED. PEOPLE WERE DUCKING.
5 AT LEAST ONE PERSON WAS GETTING IN THEIR CAR AND LEAVING
6 AND NOBODY PUT MY CLIENT IN ANY POSITION TO SEE WHAT
7 HAPPENED. HOW COULD HE KNOW THAT? HE HAS BEEN CHARGED
8 WITH MISPRISON OF A FELONY.

9 AND HIS HONOR IS GOING TO INSTRUCT YOU ON THAT,
10 GIVE YOU THE LAW ON THAT. AND BASICALLY IT'S A POSITIVE
11 -- SOME POSITIVE ACTS OF CONCEALMENT. WELL, HE HAD TO
12 KNOW SOMETHING TO CONCEAL IT. HE WAS IN NO POSITION TO
13 SEE ANYTHING.

14 THEY ARE JUST NOT SATISFIED WITH THAT. I SPOKE
15 TO YOU IN THE VERY BEGINNING ABOUT LEVERAGE, ABOUT
16 PRESSURE, AND I SUBMIT TO YOU THAT THAT IS WHAT WAS
17 CREATED HERE. TRYING TO GET WHAT THEY WANTED TO HEAR, NOT
18 WHAT IS TRUE.

19 IT JUST WASN'T THERE AND THAT IS WHY WE ARE
20 HERE. YOU RECALL THAT I THINK I TOLD YOU IN MY OPENING
21 AND SET OUT THE SCENE, IT WAS DARK THAT NIGHT, IT WAS
22 COLD. YOU HEARD TESTIMONY THAT TRAVIS HAD FORGOTTEN HIS
23 COAT. THEY HAD BEEN DRINKING A LITTLE BIT AND HE HAD
24 FORGOTTEN
25 HIS COAT AND HE WAS COLD.

1 DIDN'T HAVE ANY MONEY ON HIM AND LAMONT DIDN'T
2 WANT TO PAY FOR BOTH OF THEM TO GET IN THE CLUB WITH IT
3 BEING SO LATE, SO THEY STOOD OUTSIDE, WENT AND GOT BACK IN
4 THE CAR, MOVED THEIR CAR FROM OVER HERE TO OVER HERE,
5 CLEARLY NOT IN A POSITION TO SEE ANYTHING.

6 HAS THAT BEEN REFUTED BY ANY OF THE WITNESSES,
7 WHERE THEY WERE? AND I SUBMIT THAT YOU WILL HAVE THESE
8 PICTURES BACK THERE AND I ASK YOU -- THERE'S NUMBER FOUR,
9 MY CLIENT. YOU MIGHT THINK WELL, THAT IS A DANGEROUS
10 THING, HAVING YOUR PICTURE ON THERE, BUT THERE IS NOTHING
11 MORE THAN -- NO IMPLICATION FROM THIS WHATSOEVER.

12 AND I SUBMIT TO YOU THAT IN THIS VERY CASE THE
13 FACT THAT HIS PICTURE IS ON THERE AND NOT ONE OF THESE
14 PEOPLE WHO WAS ASKED DID YOU PICK OUT PEOPLE WHO WERE
15 INVOLVED IN THIS, NOT ONE OF THEM SAID THIS PERSON. WHAT
16 DOES THAT DO?

17 THAT CREATES CONFLICT, THAT CREATES IMPEACHMENT
18 AND THAT DISPUTES WHAT MR. JOHNSON TOLD YOU FROM THIS
19 STAND. THOSE FOUR. I SAW THOSE FOUR OUT THERE. WELL,
20 WHEN HE DID THIS LINE-UP BACK IN THIS, HIS MEMORY WAS
21 FRESHER WHEN HE DID HIS LINE-UP, AND YOU WILL HAVE THEM
22 BACK THERE, HIS LINE-UP "A" AND YOU WILL HAVE LEONARD
23 SCOTT, DELVIN WAITERS AND MR. JOHNSON, THINK WE GOT HERE.

24 DIDN'T PUT THEM ANYWHERE IN THERE. YET TODAY HE
25 COMES IN AND SAYS THOSE FOUR. WHY DID HE SAY THAT? WHAT

1 WAS HE TRYING TO DO IN HERE TODAY VERSUS WHAT HE WAS JUST
2 TRYING TO DO BACK WHEN THIS THING WAS FRESH IN HIS
3 MEMORY? NOT ONE WITNESS HAS PUT MY CLIENT IN A POSITION
4 TO KNOW.

5 WHAT COULD HE HAVE TO POSITIVELY CONCEAL?
6 NOTHING. LET'S LOOK AT IN LIGHT OF ALL OF THAT, HE
7 COULDN'T HAVE, HE WASN'T IN A POSITION. LET'S LOOK AT
8 WHAT HE DID. LOTS OF TIMES YOU CAN MAKE INFERENCES BASED
9 UPON CONDUCT. WHEN THE CAR IS STOPPED, WHAT DOES HE DO?

10 GIVES HIM HIS I.D., TELLS HIM HIS NAME, GETS OUT
11 OF THE CAR, CAR SEARCHED, COOPERATES, LITTLE NERVOUS, WELL
12 YOU KNOW, SPEEDING DOWN ROADS, YOU BEEN DRINKING, YOU BEEN
13 AT A CLUB, COPS STOP YOU. I GET NERVOUS ANY TIME I SEE
14 BLUE LIGHTS.

15 WHAT DOES THAT -- WHAT DOES THAT -- HOW DOES
16 THAT IMPLICATE HIM? WHAT HAS HE DONE? INVESTIGATOR SIMON
17 HIMSELF TESTIFIED HE COOPERATED. HE TOLD THEM -- TOLD
18 THEM I MIGHT GET BACK IN TOUCH WITH HIM. I TOOK HIS I.D.
19 HE DIDN'T DO ANYTHING THAT NIGHT.

20 AND THEN WHEN I ASKED INVESTIGATOR SIMON IF HE
21 HAD ANY PROOF, ANY EVIDENCE WHATSOEVER THAT CONTRADICTED
22 OR REFUTED WHAT MY CLIENT MR. SINGLETON SAID, HE HAD NONE
23 YET HERE WE ARE. THEN WHAT HAPPENED NEXT? THEY GO TO HIS
24 JOB AND THEY PICK HIM UP, AGAIN GOES WITH HIM, SIGNS --
25 HIS MIRANDA RIGHTS ARE READ, HE SIGNS THE FORM, HE

1 COOPERATES.

2 THEY TYPE A STATEMENT, HE SIGNS IT. YOU WILL
3 HAVE THAT. AND AGAIN WHAT IS HE POSITIVELY DISPUTING?
4 WHAT HAS HE DONE NOT TO HELP THIS THING ALONG? ONE OF THE
5 WITNESSES CALLED MS. LATORIA SAID I DIDN'T SIGN MY
6 STATEMENT. I INDICATED SHE WAS WRITING -- ALSO AND THEN
7 JUST STOPPED.

8 AND MS. NIELSEN WENT GOODNESS GRACIOUS, TEN
9 MINUTES ON TRYING TO TRIP HER UP THERE BECAUSE SHE HAD
10 BEEN HELPING OR DONE SOMETHING. BUT YET SHE IS NOT
11 CHARGED. IS THE LAW APPLIED EVEN HANDEDLY IN THIS CASE?
12 I SUBMIT SEVERAL OF THEIR WITNESSES COULD BE CHARGED WITH
13 MISPRISON BUT THEY ARE NOT BECAUSE THERE'S NO -- BEARS NO
14 INTEREST TO THEM AND IT MUDDIES UP THEIR CASE, SO WE ARE
15 BEING CHARGED WITH THAT.

16 AND I SUBMIT THAT YOU HAVE TO -- WE ARE A
17 COUNTRY OF LAWS. NOT OF MEN. LAWS HAVE TO APPLY EVEN
18 HANDEDLY. TO SEEK JUSTICE YOU MUST DO JUSTICE. AND I ASK
19 YOU HAS IT BEEN APPLIED EVEN HANDEDLY HERE? HAS IT BEEN
20 APPLIED ACROSS THE BOARD? AND I SUBMIT IT HAS NOT.

21 IRRESPECTIVE OF THAT, I BELIEVE INVESTIGATOR
22 SIMON'S TESTIMONY SPEAKS FOR ITSELF ON THIS ISSUE. HE
23 COOPERATED. HE DID WHAT I DID ASK HIM AND I DON'T HAVE
24 ANYTHING TO REFUTE THE STATEMENT OR TO CONTRADICT. SO
25 WHAT ELSE COULD HE HAVE DONE? I CAN'T FILL IN THE GAPS

1 FOR YOU.

2 WE DON'T HAVE ANYTHING TO OFFER. I FAIL TO SEE
3 HOW THEY CAN SAY THAT IT'S NOT THE TRUTH UNTIL WE SAY IT
4 IS, UNTIL YOU CONNECT THE DOTS FOR US, WE STILL CONTROL
5 WHETHER YOU WILL BE CHARGED OR NOT. MS. NIELSEN IS GOING
6 TO ASK YOU, SHE GOING TO SAY, YOU KNOW, THEY WERE THERE,
7 YOU KNOW, THEY WERE THERE IN THE CAR, YOU KNOW, THEY KNOW
8 SOMETHING.

9 SHE'S GOING TO TRY TO DO THE SAME AND SAY THAT
10 IT'S JUST INCONCEIVABLE, BUT I SUBMIT TO YOU THAT BASED ON
11 THE FACTS AND THE EVIDENCE WHICH YOU HAVE HEARD WHICH IS
12 THE ONLY THING THAT YOU CAN PROPERLY CONSIDER IN THAT JURY
13 ROOM, THERE HAD BEEN NO LOGICAL CONNECTION TO IMPUTE SOME
14 KNOWLEDGE TO MY CLIENT THAT HE POSITIVELY CONCEALED. HE
15 HELPED.

16 HE TOLD THEM WHAT HE KNEW AND THAT'S ALL HE
17 COULD DO. YOU CAN'T SAY THAT HE HAD TO KNOW SOMETHING.
18 YOU HAVE GOT TO PROVE IT IN THIS COURTROOM FROM THIS STAND
19 AND FROM THE EVIDENCE. YOU CAN'T JUST COME IN HERE AND
20 SAY SOMETHING SMELLS FISHY, SOMETHING LOOKS BAD, THEREFORE
21 THEY ARE GUILTY OF SOMETHING.

22 AND I ASK WHEN YOU CONSIDER ALL OF THIS AND YOU
23 LOOK AT SEVEN OR EIGHT TIMES HIS NAME WAS MENTIONED,
24 NOTHING PUT HIM IN A POSITION TO SEE ANYTHING TO GIVE TO
25 -- TO TELL THEM WHO THE SHOOTER WAS. MR. SIMON

1 TESTIFIED. INVESTIGATOR SIMON TESTIFIED WHEN THEY STOPPED
2 HIM ON THE ROAD THAT DAY, HE SAID I WAS AT THE CLUB, I
3 HEARD SHOTS, ALL WHICH ARE CONSISTENT, ALL OF WHICH HAVE
4 BEEN CORROBORATED. I DIDN'T KNOW HE WAS DOING THE
5 SHOOTING AND AT THAT POINT THEY MADE A JUDGMENT CALL, SAID
6 GO ON.

7 I WILL BE IN TOUCH WITH YOU IF I NEED TO TALK TO
8 YOU FURTHER. AT THAT POINT IN TIME THEY SAID THEN -- THEY
9 WENT BACK TO HIM AGAIN AND HE GAVE A STATEMENT, AND AGAIN
10 HE SAID THE SAME THING. WHAT IS LEFT?

11 WHAT HAS HE DONE IN THIS CASE THAT 10 OR 12
12 OTHER PEOPLE DIDN'T DO THE SAME THING AT THE CLUB, PEOPLE
13 WHO WERE IN A POSITION TO SEE THIS? THE TESTIMONY WAS
14 THAT FROM THEIR OWN WITNESSES THAT THE CAR WAS DOWN THE
15 ROAD WHEN THE OTHER GENTLEMEN, -- IF AND I SUBMIT TO YOU
16 THAT -- I MEAN, I'M JUMPING FORWARD IN MY ARGUMENT.

17 YOU HAVE -- YOU HAVE GOT TO COME TO THE POINT
18 AND DECIDE WHETHER ANY FELONY WAS COMMITTED, WHETHER ANY
19 OF THIS, WHETHER THEIR EVIDENCE IS SUFFICIENT BEFORE YOU
20 EVEN GET DOWN TOWARDS THE END OF THE TABLE HERE AND I
21 SUBMIT THAT THE EVIDENCE PRESENTED SHOWED THAT THE CAR WAS
22 DOWN THE ROAD.

23 THAT WASN'T MAKING IT EASY ON ANYBODY. AND HOW
24 WOULD THAT PUT SOMEBODY A POSITION TO SEE WHO WAS DOING
25 THE SHOOTING AND WHETHER OR NOT A FELONY WAS COMMITTED?

1 IT'S SIMPLY NOT THERE IN THIS CASE, LADIES AND GENTLEMEN.

2 IT'S SIMPLY THE STATE HAS NOT PROVEN BEYOND A
3 REASONABLE DOUBT THAT MY CLIENT KNEW SOMETHING, THAT HE
4 POSITIVELY CONCEALED IT AND HE IS GUILTY OF MISPRISON OF A
5 FELONY. I TOLD YOU AT THE BEGINNING THE SIMPLE DEFINITION
6 OF REASONABLE DOUBT IS A HESITATION TO ACT.

7 AND I SUBMIT THAT THAT ALL IS HERE, THAT THERE
8 IS NOTHING THAT HAS BEEN PRESENTED TO YOU IN THIS
9 COURTROOM THAT SHOWS MY CLIENT WAS ARGUING, HAS THIS
10 KNOWLEDGE AND HAS KEEPING AN OFFENDER FROM BEING BROUGHT
11 TO JUSTICE OR THAT HE IS POSITIVELY CONCEALING.

12 IT SIMPLY WASN'T PROVEN AND IT'S NOT ENOUGH TO
13 SPECULATE OR CONJECTURE THAT OH, MAYBE HE KNEW SOMETHING.
14 IT HAS TO BE PROVEN FROM THAT STAND. IF NOT, I ASK YOU TO
15 RETURN A VERDICT OF NOT GUILTY. THANK YOU.

16 THE COURT: THANK YOU. ALL RIGHT, LADIES AND
17 GENTLEMEN OF THE JURY, YOU HEARD THREE OF THE FINAL
18 ARGUMENTS. THERE ARE TWO MORE YET TO GO AND THIS IS A
19 GOOD TIME TO TAKE THE RECESS. I THINK THE BREAK IS UP FOR
20 THE AFTERNOON, SO WE WILL TAKE A BRIEF RECESS NO MORE THAN
21 15 MINUTES.

22 WE WILL START BACK AGAIN AT 3:30 AND CONCLUDE
23 THE AFTERNOON'S WORK AT THAT TIME. PLEASE DO NOT YET
24 DISCUSS THIS CASE AMONG YOURSELVES WHILE YOU'RE IN THE
25 JURY ROOM. THANK YOU.

1 (WHEREUPON THE JURY LEFT THE COURTROOM AT 3:19 P.M.)

2 THE COURT: ALL RIGHT, FOLKS. WE WILL TAKE ABOUT 15
3 MINUTES. THANK YOU.

4 (WHEREUPON A BRIEF RECESS WAS TAKEN).

5 THE COURT: MR. FINNEY, READY TO PROCEED?

6 MR. FINNEY: YES, SIR.

7 THE COURT: STATE READY?

8 MS. NIELSEN: YES, SIR.

9 THE COURT: THANK YOU. YOU CAN BRING US THE JURY,
10 PLEASE.

11 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 3:34
12 P.M.)

13 THE COURT: LADIES AND GENTLEMEN, WE PICK UP WITH
14 WHERE WE LEFT OFF NOW AS MR. FINNEY OFFERS THE FINAL
15 ARGUMENT ON BEHALF OF MR. WITHERSPOON. MR. FINNEY?

16 MR. FINNEY: MAY IT PLEASE THE COURT.

17 THE COURT: YES, SIR.

18 CLOSING ARGUMENT BY MR. FINNEY:

19 LADIES AND GENTLEMEN, I HAVE THE OPPORTUNITY AT
20 THIS TIME TO BRING SOME CLOSING REMARKS TO YOU AND I FIND
21 MYSELF BEING A LITTLE UPSET AND I THINK I'M UPSET FOR TWO
22 REASONS. THE FIRST REASON IS THAT BECAUSE OF THE ORDER
23 THAT I'M IN, ALL THESE LAWYERS HAVE SAID ALL THE GOOD
24 STUFF THAT I MEANT TO GET UP HERE AND SAY.

25 THE SECOND REASON I'M UPSET HAS MORE TO DO WITH

1 THAT MAN SITTING OVER THERE IN THE BLUE SHIRT AND THAT
2 GRANDMOTHER WHO HELPED RAISE HIM AND THAT MOTHER WHO IS
3 STILL HELPING RAISE HIM.

4 IT HAS TO DO WITH THE FACT THAT HE HAS HAD ON
5 HIS NAME MARKED BLACK MARKED FOR THE LAST 15 MONTHS,
6 ALMOST 15, EVER SINCE THE POLICE OFFICERS ASKED HIM TO
7 COME TO BISHOPVILLE, HE CAME TO BISHOPVILLE AND THEY
8 TALKED WITH HIM AND TOLD HIM TO GO SIT IN THIS ROOM, AND
9 WHEN HE CAME BACK THERE WAS AN ARREST WARRANT AND THEY
10 CHARGED THAT YOUNG MAN WITH BREAKING THE LAW OF SOUTH
11 CAROLINA.

12 KIND OF UPSETS ME BECAUSE AFTER YOU SIT FOR
13 YEARS AND YEARS LIKE I HAVE DONE NEXT TO NICE YOUNG MEN
14 AND REPRESENT THEM IN THIS COURT, YOU REALIZE THAT IT IS A
15 VERY HARD THING TO HAVE YOUR NAME DRAGGED THROUGH THE MUD
16 LIKE THIS. SOME PEOPLE DESERVE IT.

17 I WOULD THINK LAMONT SAYS HE DIDN'T DESERVE THE
18 FACT HE WAS TRYING TO MAKE HIS GIRLFRIEND MAD -- HE DIDN'T
19 DESERVE TO HAVE TO GO THROUGH ALL THIS AND I HOPE YOU WILL
20 AGREE WITH ME.

21 AND HE AND TRAVIS SINGLETON WERE CHARGED WITH
22 THE FACT THAT THEY ON NOVEMBER 14TH, 1999 IN LEE COUNTY
23 WITHHELD INFORMATION FROM THE SUMTER COUNTY SHERIFF'S
24 OFFICE AND THE LEE COUNTY SHERIFF'S OFFICE OR OTHER LAW
25 ENFORCEMENT AGENCIES CONCERNING THEIR KNOWLEDGE OF THE

1 KILLING OF HENRY SCOTT THUS ENGAGING IN CRIMINAL NEGLECT.

2 THAT IS WHAT THEY SAY. WE STILL DON'T KNOW WHAT
3 IT IS THAT THEY SUPPOSEDLY DID BY WITHHOLDING
4 INFORMATION. WHAT INFORMATION DID THEY WITHHOLD? HOW DID
5 THEY OBSTRUCT THE INVESTIGATION OF THE LAW ENFORCEMENT
6 AGENCIES?

7 WHERE IS THIS PROOF THAT THE STATE HAS TO BRING
8 TO YOU TO CONVINCE YOU BEYOND A REASONABLE DOUBT? AS WE
9 SIT HERE RIGHT NOW, THE STATE OF SOUTH CAROLINA HAS NOT
10 EVEN CONVICTED ANYBODY OF KILLING HENRY SCOTT. FOR ALL WE
11 KNOW, IF THIS JURY DOESN'T FIND ENOUGH EVIDENCE TO CONVICT
12 THE MEN WHO ARE CHARGED IN COUNT ONE, THE INVESTIGATION IS
13 STILL ON.

14 WHAT DID LAMONT WITHERSPOON DO TO WITHHOLD
15 INFORMATION? I HAVE ASKED MYSELF THAT QUESTION SINCE
16 MONDAY WHEN WE GOT HERE. WHAT IS MS. NIELSEN GOING TO
17 BRING TO THIS JURY TO PROVE THAT THIS YOUNG MAN VIOLATED
18 THE LAW OF SOUTH CAROLINA AND DESERVE TO HAVE THIS MAN
19 MARK TAPED OVER HIM FOR THE REST OF HIS LIFE?

20 THIS IS A CRIMINAL MISDEMEANOR THAT WILL BE
21 HANGING OVER HIM, BE ON HIS RECORD THE REST OF HIS LIFE.
22 WHERE IS THE PROOF? WELL, THE BEST I CAN FIGURE OUT IS
23 THAT SHE WANTS TO KNOW WHY IF THE WITNESSES CAN BE
24 BELIEVED FROM HER SIDE THAT THERE WERE MEN RUNNING DOWN
25 THE STREET FIRING WHEN THEY GOT INTO THE CAR, HOW COME

1 LAMONT DIDN'T KNOW THAT THEY WERE SHOOTING AND HOW COME HE
2 DIDN'T KNOW THAT THEY GOT IN THE CAR OR EITHER HAD GUNS OR
3 JUST FIRED GUNS OR SOMETHING LIKE THAT?

4 SHE WANTS -- SHE -- HER POSITION IS I CANNOT
5 BELIEVE THAT LAMONT DIDN'T SEE WHO WAS SHOOTING THE GUN.
6 MS. NIELSEN DOES NOT GET TO MAKE UP THE FACTS. THE FACTS
7 ARE AS WE FIND THEM. THE FACTS ARE THAT THERE WERE FOUR
8 GUNS THAT NIGHT, BUT NOBODY HAS BROUGHT ANY GUNS INTO THIS
9 COURT.

10 THE FACTS ARE THAT ACCORDING TO SOME OF THE
11 EVIDENCE TWO GUNS HAVE BEEN FOUND, THEY WERE NEVER
12 TESTED. THE FACTS ARE THAT NOBODY SAID THAT LAMONT WAS
13 STANDING AROUND THE ARGUMENT WHEN IT TOOK PLACE, IF THE
14 ARGUMENT DID TAKE PLACE, OR THAT HE WAS AROUND SHOOTERS
15 THAT HE BROUGHT TO THE CLUB BECAUSE IT DISPUTED THE PEOPLE
16 HE BROUGHT TO THE CLUB WERE THE SHOOTERS.

17 IT IS NOT DISPUTED BY ANY EVIDENCE THAT I HEARD
18 IN THIS TRIAL THAT LAMONT PARKED HIS CAR, WENT INTO THE
19 CLUB, CAME BECOME OUT, MOVED THE CAR. NONE OF MS.
20 NIELSEN'S WITNESSES HAVE A CAR LEAVING THIS AREA HERE IN
21 FRONT OF THE NIGHTCLUB WHEN THE SHOOTING TAKES PLACE OR
22 WHEN THE SHOOTING WAS OVER.

23 THEY ALL SAID -- SOME OF THEM SAID THEY SAW THE
24 CAR HERE WHEN IT CAME UP. AND THEY ALL SAID THE NEXT TIME
25 THEY SAW THE CAR WAS WHEN IT WAS GOING DOWN THE ROAD GOING

1 BACK TO SUMTER. WHAT DID THE CAR DO IN THE MEAN TIME?

2 WELL, THERE IS ONLY ONE OR TWO PEOPLE THAT YOU
3 COULD GET THAT INFORMATION FROM. ONE OF THE PEOPLE IS
4 MARTY OAKS. IF YOU REMEMBER HIS TESTIMONY, I BELIEVE YOU
5 WILL REMEMBER THAT HE SAID THREE IMPORTANT THINGS. HE SAW
6 THE CAR MOVE AWAY BEFORE THE ARGUMENT TOOK PLACE.

7 HE SAW THE CAR MOVE AWAY FROM THIS FRONT AREA
8 HERE. MARTY OAKS DID. WELL, SOMEBODY HAD TO BE DRIVING.
9 IT WAS HIS CAR. COMMON SENSE WILL TELL YOU THAT LAMONT
10 WAS MOVING THE CAR AWAY. THAT IS EXACTLY WHAT LAMONT
11 SAID.

12 THE SECOND THING YOU GOT FROM MR. OAKS IS THAT
13 HE SAW -- EXCUSE ME. I HAVE TO READ MY NOTES. HE SAW THE
14 PICK UP, HE SAW THE PICK UP OF THE MEN THAT GOT INTO THE
15 BACK OF THE CAR NEAR THE DRIVEWAY AREA DOWN THE STREET.
16 HE SAID HE SAW THE CAR STOP, MEN GOT IN, BUT IT GOES DOWN
17 THE ROAD FROM THE CLUB.

18 THAT IS CONSISTENT WITH WHAT LAMONT TOLD YOU IN
19 HIS STATEMENT AND FROM HIS TESTIMONY THIS MORNING. IT'S
20 ALSO CONSISTENT WITH TRAVIS' STATEMENT BECAUSE TRAVIS SAID
21 THEY HAD LEFT THIS AREA AFTER THE SHOTS HAD FIRED, THEY
22 WERE LOOKING FOR RON AND MARCUS.

23 LAMONT WAS NOT THE KIND OF FELLOW WHO THOUGHT OF
24 HIMSELF -- HE WAS TRYING TO GET THE FELLOWS HE BROUGHT
25 WITH HIM AWAY FROM THERE, IF THEY WANTED TO RIDE. IF THEY

1 WERE IN OTHER PLACES IF THEY WERE HIDING IN OTHER CARS
2 TRYING TO BUCK BULLETS OR WHETHER HE WAS GOING TO
3 UNDERSTAND THAT HE WAS AT THE POINT WHEN HE GOT UP HERE
4 AND HEARD THIS THING HIT THE BACK OF HIS CAR, HE WAS AT
5 THE POINT WHERE I AM LEAVING HERE BECAUSE MY SAFETY IS MY
6 FIRST CONCERN.

7 AND HE WOULD HAVE LEFT THEM THERE HAD IT NOT
8 BEEN FOR THAT OTHER CAR COMING OUT OF THIS DRIVEWAY
9 BECAUSE THAT CAR WAS IN A HURRY. YOU HEARD TESTIMONY,
10 EVIDENCE AS TO A WHITE CAR. CAN YOU BELIEVE MARCUS AND
11 RON AND TRAVIS AND LAMONT WHEN THEY TELL YOU THINGS? JUST
12 LIKE THEIR LAWYER SAID, WEIGH THE CREDIBILITY.

13 SEE HOW IT FITS. DO YOU REMEMBER THE LADY MS.
14 CHYAME BENN WHEN SHE CAME? SHE WAS THE FIRST WITNESS IN
15 THIS WHOLE CASE WHO SAID THAT AFTER SHE HEARD THE SHOTS IN
16 THIS AREA OF THE CORNER OF THE CLUB, BECAUSE I THINK HER
17 FRIEND PUSHED HER TO THE GROUND, SHE DID GET TO SEE A CAR
18 COMING OUT OF THIS DRIVEWAY MAKING A LEFT AND GOING DOWN?

19 SHE SAW A CAR. WE CONTEND THAT IS THE CAR THAT
20 MADE LAMONT STOP THAT NIGHT. AND DURING THAT PROCESS,
21 THAT IS WHEN RON AND MARCUS GOT A CHANCE TO CATCH UP WITH
22 THE CAR AND GET IN. LAMONT DOES NOT KNOW WHAT ANYBODY
23 ELSE WAS DOING THAT NIGHT WITH THE EXCEPTION OF HIMSELF
24 AND HE TOLD THE OFFICERS THAT IN NOVEMBER -- HE WROTE A
25 STATEMENT OUT NOBODY EVER CAME UP AND SAID HE LIED IN HIS

1 STATEMENT, HE DIDN'T TELL THE TRUTH.

2 NOBODY BROUGHT ANY WITNESSES HERE TO SAY THIS
3 PART OF THE STATEMENT CAN'T BE RIGHT BECAUSE WE FOUND SO
4 AND SO. IT IS UNREFUTED. AND WE HAVE THIS OTHER WITNESS
5 MS. BENN FROM THE STATE WHO SAID THE SAME THING, WHITE
6 CAR, A CAR CAME OUT GOING VERY FAST.

7 SHE SAW IT PULLING AWAY FROM THE CLUB. ALL OF
8 THESE LAWYERS HAVE TALKED ABOUT THE INCONSISTENCIES
9 BETWEEN WHAT YOU HEARD ON ONE SIDE, HEARD FROM THE SAME
10 WITNESSES. MS. NIELSEN HAD TO GET UP HERE AND SCHOOL
11 SEVERAL OF HER OWN WITNESSES.

12 THAT IS NOT HER FAULT. MS. SOLICITOR IS THE
13 SOLICITOR OF THE THIRD CIRCUIT. SHE DOES NOT GET TO TELL
14 THESE PEOPLE WHAT TO SAY. THEY COME IN HERE AND THEY MAKE
15 UP WHAT THEY REMEMBER AS THE HUMAN MIND CAN DEVELOP THE
16 BEST THEY CAN.

17 SOME OF THEM DO A GOOD JOB, SOME OF THEM DO A
18 POOR JOB. SOMETHING YOU SHOULD CONSIDER LAWYER ROGERS
19 SAYS THAT BELIEVABILITY THAT -- NOT ONLY DO YOU WANT TO
20 WEIGH WHAT A WITNESS HAS TO SAY AND HOW THEY SAY IT, AND
21 HOW, WHAT KIND OF STATEMENT THEY HAVE, ARE THEY TRYING TO
22 HELP THE SCOTT FAMILY OR WHATEVER?

23 BUT BELIEVE IF YOU ARE NOT TELLING THE TRUTH,
24 YOU'RE SURELY NOT GOING TO BE ABLE TO PUT A WHOLE LOT INTO
25 IT. YOU HEARD MY CLIENT TESTIFY 20 OR 30 MINUTES THIS

1 MORNING. DID YOU HEAR ANYTHING UNRELIABLE? I GAVE YOU AS
2 MUCH AS I COULD IN 15 TO 30 MINUTES.

3 I HAD TO TAKE 25 YEARS OF LIFE AND PACK IT INTO
4 30 MINUTES. I HAD TO TALK A LITTLE BIT ABOUT HIS
5 BACKGROUND, LITTLE BIT ABOUT HIS FAMILY, LITTLE BIT ABOUT
6 HIS WORK, THEN WE TALK ABOUT WHAT HE DID THAT NIGHT.

7 THE JUDGMENTS HE MADE, YOU HAVE GOT TO PUT THEM
8 RIGHT THERE IN YOUR HANDS. LADIES AND GENTLEMEN, WE COULD
9 TALK ALL DAY LONG ABOUT MISPRISON OF A FELONY. I COULD
10 BECAUSE I LIKE TO TALK AND I'M INTERESTED IN HELPING THAT
11 YOUNG MAN.

12 I WANT YOU TO KNOW THAT THIS EXHIBIT WHICH HAS
13 BEEN MARKED STATE'S EXHIBIT NUMBER 5 IS NOT DRAWN TO
14 SCALE. WHAT THAT MEANS IS THAT THESE DISTANCES AND THESE
15 OBJECTS IN THIS PICTURE SOME ARE CLOSER, SOME ARE FURTHER
16 AWAY.

17 WE WANT YOU TO LOOK WHEN YOU GET IN THE JURY
18 ROOM AT STATE'S EXHIBIT 15, STATE'S EXHIBIT 11, STATE'S
19 EXHIBIT 14. STATE'S EXHIBIT 1 SHOWS THE AREA OF THE
20 DRIVEWAY WHERE THIS OTHER CAR CAME OUT ACCORDING TO MS.
21 BENN AND WHERE MY CLIENT STOPPED HIS CAR AND DURING THAT
22 FEW SECONDS THAT HE STOPPED THIS CAR TO LET THIS OTHER CAR
23 SO THERE WOULDN'T BE NO ACCIDENT, THAT'S WHEN THESE GUYS
24 GOT IN THE BACK SEAT, RON AND MARCUS.

25 I WANT YOU TO SEE THIS AREA. THIS PICTURE,

1 STATE'S EXHIBIT 11, WAS TAKEN FROM THIS POINT RIGHT HERE
2 LOOKING THAT WAY. LOOKING DOWN TOWARDS HIGHWAY 15 WHERE
3 YOU GO TO SUMTER, GO TO HIGHWAY 15, PICTURE TAKEN RIGHT
4 HERE.

5 WHOEVER TOOK THIS PICTURE WAS STANDING IN FRONT
6 OF THE NIGHTCLUB POINTING THIS CAMERA THIS WAY. THE AREA
7 RIGHT WHERE THE FRONT OF THE PICTURE WOULD HAVE BEEN THE
8 AREA WHERE THE CAR WAS ACCORDING TO THE STATE. AND
9 EVERYTHING ELSE IN THIS PICTURE -- THIS IS A DAY LIGHT
10 PICTURE.

11 THERE IS NOT A SINGLE LIGHT ANYWHERE TO BE SEEN
12 IN THAT AREA. THERE IS A TELEPHONE POLE THERE, I BELIEVE
13 YOU WILL SEE THAT HAS A TRANSFORMER ON TOP. THIS AREA AT
14 3:45 IN THE MORNING ON NOVEMBER THE 14TH, '99 FROM THIS
15 POINT RIGHT HERE GOES ALL THE WAY DOWN TO WHERE THIS
16 DRIVEWAY COMES OUT. IT'S IN THIS PICTURE. THERE IS NOT A
17 SINGLE LIGHT.

18 AND YET ALL OF THESE WITNESSES SAW MEN RUNNING,
19 SAW MEN GETTING IN THE CARS. I TELL YOU THAT THAT IS
20 EVIDENCE THAT YOU NEED TO CONSIDER VERY CLOSELY. THESE
21 OTHER PICTURES, STATE'S EXHIBIT 15 SHOWS THE SAME AREA
22 EXCEPT IT'S TAKEN A LITTLE BIT CLOSER.

23 YOU CAN ACTUALLY SEE THE SHADOW OF THE NIGHTCLUB
24 AT THE BOTTOM OF THIS PICTURE, SO WHOEVER TOOK THIS
25 PICTURE WAS ACTUALLY STANDING PRETTY CLOSE TO THE

1 NIGHTCLUB SHOWING THAT AREA GOING AWAY FROM THE NIGHTCLUB
2 WHERE THE CAR WAS AND BACK DOWN THAT WAY, TO THE WAY THE
3 CADILLAC GONE.

4 SAME LIGHT POLE WITH THE -- TRANSFORMER ON IT'S
5 -- THE LIGHT, THE ONLY LIGHT IN THIS PICTURE WOULD HAVE
6 BEEN THIS LIGHT. SEE, THIS PERSON WHO TOOK THIS PICTURE
7 WOULD HAVE BEEN STANDING PRETTY CLOSE TO THE CLUB LOOKING
8 THIS WAY.

9 THERE IS A LIGHT THERE 71 FEET FROM THE CAR, NO
10 LIGHTS DOWN IN THIS AREA. WHAT MS. NIELSEN WANTS YOU TO
11 SEE IS THAT LAMONT SHOULD HAVE BEEN ABLE TO SEE WHO WAS
12 TRYING TO GET IN THE CAR AS HE WAS TRYING TO PICK UP HIS
13 BUDDIES WHO SHE HAD TO PROVE.

14 NOW, SHE HADN'T PROVEN LAMONT KNEW THAT THEY HAD
15 GUNS, THAT THEY HAD A BEEF WITH HENRY SCOTT, THAT THEY
16 SHOT HENRY SCOTT, THEY SHOT AT OTHER PEOPLE AND THEY LEFT
17 RUNNING WITH THE GUN.

18 SHE HAS NOT PROVED ANY OF THOSE FIVE THINGS.
19 SHE SAYS DON'T WORRY ABOUT THAT. WE GOT PEOPLE WHO SAID
20 THEY GOT IN THE CADILLAC. WHEN THEY GOT IN THE CADILLAC,
21 WHOEVER WAS DRIVING THE CADILLAC HAD TO KNOW. THEN DOWN
22 THE ROAD WHEN THE POLICE OFFICER STOPPED HIM, IT'S NOT
23 ENOUGH THAT HE STOPPED.

24 HE DIDN'T RUN. HE DIDN'T DO WHAT THEY CALL
25 FAILURE TO STOP FOR A BLUE LIGHT. HE DIDN'T TRY TO SWITCH

1 DRIVERS AND PASSENGERS AND GET SOMEBODY ELSE UNDER THE
2 WHEEL. HE DIDN'T DO ANYTHING TO SAY MY NAME IS TONY THE
3 TIGER, I'M FROM NEW YORK.

4 HE DID NOT WITHHOLD OR CONCEAL ANYTHING. HE
5 COOPERATED. OFFICER SAID THAT. BUT THEY GOT THE CHARGE,
6 SO THEY GOT TO USE SOMETHING TO KEEP HIM IN, SO THEY SAY
7 AT THAT MOMENT HE SHOULD HAVE TOLD THE OFFICER WHAT? WHAT
8 DOES MS. NIELSEN WANT HIM TO TELL THE OFFICERS AT THAT
9 POINT?

10 THAT DID THE BEST HE COULD TO GET HIMSELF OUT OF
11 THERE AND HE DID THE BEST HE COULD TO GET HIS BUDDIES OUT
12 OF THERE? WHAT PROOF DID MS. NIELSEN BRING YOU THAT
13 LAMONT WITHERSPOON KNEW THAT THIS, HIS FRIENDS, HIS
14 BUDDIES IN THE BACK SEAT HAD BEEN INVOLVED IN THE
15 SHOOTING?

16 THAT THAT SHOOTING HAD LED TO THE DEATH OF HENRY
17 SCOTT? NO INFORMATION. NO INFORMATION. I COULD GO ON
18 AND ON. I WANT YOU TO CONSIDER LAMONT'S REPUTATION. I
19 THINK HE GAVE GOOD EVIDENCE OF THAT. I WANT YOU TO
20 CONSIDER THE CREDIBILITY OF HIM AS A WITNESS AND WHETHER
21 OR NOT ANYBODY WAS ABLE TO SHOW YOU THAT WHAT HE TOLD THE
22 POLICE IN THE STATEMENT OVER A YEAR AGO AND WHAT HE TOLD
23 YOU ON THE STAND THIS MORNING HAS ANY DEFECTS, WHETHER
24 IT'S REFUTED AT ALL.

25 THERE IS SUCH A THING AS EVIDENCE AND THERE IS

1 SUCH A THING AS SPECULATION -- OR SPECULATION. THE LAW
2 SAYS IN A CASE LIKE THIS, AND I BELIEVE THE JUDGE WILL
3 TELL YOU YOU CAN USE TWO KINDS OF EVIDENCE, DIRECT
4 EVIDENCE, CIRCUMSTANTIAL EVIDENCE.

5 DIRECT EVIDENCE IS WHERE YOU SAW SOMETHING,
6 SMELLED SOMETHING, HEARD SOMETHING, TOUCHED SOMETHING.
7 CIRCUMSTANTIAL EVIDENCE IS GOOD EVIDENCE, BUT YOU MUST USE
8 A HIGHER TEST OF WHETHER OR NOT IT WILL WORK IN A CASE.

9 WHEN YOU ARE LOOKING TO CONVICT A MAN AND GIVE
10 HIM A RECORD, IF YOU'RE ONLY GOING TO USE CIRCUMSTANCES,
11 WHICH IS WHAT THE CASE IS HERE TODAY, THE CIRCUMSTANCES
12 MUST ONLY POINT TO ONE CONCLUSION, IF YOU AS A JURY DECIDE
13 IN THAT ROOM BACK THERE THAT THERE IS ANOTHER WAY THAT
14 THIS CASE COULD HAVE HAPPENED BESIDES THE WAY MS. NIELSEN
15 SAID IT COULD HAVE HAPPENED.

16 MS. NIELSEN SAYS THOSE BOYS WERE DRIVING THAT
17 CADILLAC AND THEY SHOULD HAVE KNOWN THAT THE OTHER YOUNG
18 MEN WHO WERE RUNNING DOWN THE STREET HAD GUNS, THEY GOT IN
19 THE CAR AFTER HAVING FIRED THE GUN. THAT'S WHAT MS.
20 NIELSEN SAYS.

21 MY CLIENT SAYS WE HEARD SHOTS, WE GOT SCARED.
22 WE LOOKED FOR THE OTHER GUYS, WE DIDN'T SEE THEM, WE
23 DECIDED TO CREEP BY THE CLUB. WE WERE CREEPING WHEN OUR
24 CAR GOT HIT, I GOT SCARED, I STARTED PULLING OFF FAST. I
25 WAS GETTING OUT OF THERE. I DIDN'T HEAR NOBODY SHOOT

1 AFTER I STARTED ON THE ROADWAY GOING OUT.

2 THAT IS WHAT LAMONT SAID. IF YOU BELIEVE THIS
3 COULD HAVE HAPPENED THE WAY LAMONT SAID USING THE
4 CIRCUMSTANTIAL EVIDENCE, YOU CANNOT CONVICT HIM IF YOU
5 BELIEVE THAT THAT COULD HAVE HAPPENED. THE ONLY WAY YOU
6 CAN USE CIRCUMSTANTIAL EVIDENCE TO CONVICT IS IF IT ONLY
7 COULD HAVE HAPPENED THE WAY MS. NIELSEN SAID.

8 THAT'S A HIGH TEST. I ASK YOU TO CONSIDER IT
9 GREATLY BECAUSE THIS YOUNG MAN'S FUTURE IS IN YOUR HANDS
10 ABOUT THIS. HE SAYS HE DID NOT SEE WHO WAS SHOOTING THAT
11 NIGHT. HE SAYS HE DID NOT SEE ANYONE GET IN THE CAR WITH
12 A GUN THAT NIGHT THAT WOULD HAVE LED HIM TO UNDERSTAND
13 THAT OH, THESE GUYS GOT GUNS, THEY MUST HAVE BEEN
14 SHOOTING.

15 IT DIDN'T HAPPEN LIKE THAT. EVERYONE WAS
16 SCARED. RIGHT NOW WE ARE HERE TO DECIDE BASED ON THE
17 EVIDENCE THAT THEY BROUGHT US WAS THERE ENOUGH PROOF TO
18 PROVE THAT THOSE YOUNG MEN WERE THE SHOOTERS AND WHETHER
19 OR NOT THERE WAS ENOUGH PROOF TO KNOW THAT THAT YOUNG MAN
20 KNEW THAT FACT.

21 IF YOU DON'T KNOW ABOUT THIS, YOU CAN'T KNOW
22 ABOUT THAT. I TALKED TO YOU ABOUT WHAT OTHER PEOPLE
23 SAID. I TALKED TO YOU ABOUT WHAT MY CLIENT SAID. NOW,
24 IT'S TIME FOR YOU ALL TO ACT TOGETHER.

25 THE REASON WE PUT 12 PEOPLE ON A JURY IS BECAUSE

1 WE WANTED YOUR VARIOUS EXPERIENCES THAT YOU ALL HAVE.
2 SOME OF YOU ARE STUDENTS, SOME OF YOU WORK, SOME OF YOU
3 ARE MOTHERS, SOME OF YOU ARE FATHERS.

4 USE ALL OF YOUR EXPERIENCE IN THE JURY ROOM.
5 EVERYONE HAD A GOAL. I'M ASKING EACH OF YOU TO USE YOUR
6 OATH TO MAKE IT HAPPEN AND TO UNDERSTAND THAT YOU HAVE A
7 -- BECAUSE YOU HEARD THE EVIDENCE, YOU TALK ABOUT IT AND
8 MAKE AN AGREEMENT ON IT, BUT YOU HAVE THE RIGHT TO BELIEVE
9 WHAT YOU BELIEVE.

10 YOU DON'T COME TO THIS CONCLUSION AT THE END OF
11 THE DAY BY SAYING WELL, SIX PEOPLE BELIEVE THIS, FOUR
12 PEOPLE BELIEVE THAT, SO WE ARE GOING TO GO WITH SIX. IT
13 DOESN'T WORK THAT WAY. YOU HAVE TO COME OUT WITH A
14 UNANIMOUS VERDICT.

15 BUT YOU ALSO HAVE TO STICK TO YOUR CONVICTIONS
16 AND BELIEVE WHAT YOU HEARD AND WHAT YOU BELIEVE AND YOUR
17 COMMON SENSE MAKES SENSE. I HOPE YOU WILL TALK TOGETHER.
18 I HOPE YOU WILL WORK TOGETHER AND I HOPE YOU WILL COME TO
19 THE CONCLUSION THAT TRAVIS AND LAMONT ARE NOT GUILTY OF
20 MISPRISON OF A FELONY BECAUSE THEY DID NOT WRONGFULLY
21 WITHHOLD ANY INFORMATION AND HAVE NOT UP UNTIL THIS TIME.
22 THANK YOU.

23 THE COURT: THANK YOU, MR. FINNEY. MS. NIELSEN?

24 MS. NIELSEN: MAY IT PLEASE THE COURT.

25 THE COURT: YES, MA'AM.

1 CLOSING ARGUMENT BY MS. NIELSEN:

2 PRETTY HARD JOB FOR ME TO HAVE TO FOLLOW ALL
3 FOUR OF THOSE ATTORNEYS. I WILL DO THE BEST I CAN. I
4 WANT TO THANK YOU AGAIN FOR YOUR ATTENTION. WE HAVE TAKEN
5 UP A PRETTY GOOD BIT OF YOUR TIME ALREADY AND GOING TO BE
6 A WHILE LONGER BEFORE IT'S OVER, BUT I WATCHED YOU SOME
7 DURING THE TRIAL WHEN I HAD A CHANCE AND I WAS PAYING VERY
8 CLOSE ATTENTION AND IT'S PRETTY MESSY EVIDENCE ON BEHALF
9 OF THE STATE.

10 I THANK YOU FOR YOUR ATTENTION. NOW I WANT TO
11 TALK ABOUT THE LAW AND THE JUDGE WILL LET YOU KNOW GILARON
12 TAYLOR AND MARCUS EVANS ARE CHARGED WITH MURDER. IN
13 ADDITION TO THE CHARGE OF MURDER, THE JUDGE IS GOING TO
14 CHARGE YOU ON THE CRIME OF VOLUNTARY MANSLAUGHTER WHICH IS
15 IN SOME CASES A LESSER INCLUDED OFFENSE OF MURDER.

16 FIRST OF ALL WANT TO TALK ABOUT MURDER. WE
17 DON'T ACTUALLY HAVE PREMEDITATED MURDER IN THE STATE OF
18 SOUTH CAROLINA. WHAT WE HAVE IS OUR KILLING OF ANOTHER
19 PERSON WITH MALICE AFORETHOUGHT. THE JUDGE IS GOING TO
20 GIVE YOU A LONG CHARGE TOMORROW.

21 BUT SIMPLY MALICE AFORETHOUGHT IS TRANSLATED IN
22 LATIN MEANS TO THINK THE BAD THOUGHTS AHEAD OF TIME. OUR
23 LAW DOES NOT REQUIRE THAT THAT MALICE BE IN THE PERSON'S
24 MIND ANY SPECIFIC AMOUNT OF TIME. PREMEDITATED MAKES YOU
25 THINK OH, THEY'RE GOING TO DO THIS A YEAR AGO OR A WEEK

1 AGO.

2 AND IT CAN BE, BUT NOW IT'S GOING TO BE THERE
3 FOR A WEEK, CAN BE THERE FOR A YEAR, BUT IT ALSO CAN BE
4 THERE FOR A MINUTE OR ONLY A SECOND AS LONG AS THE PERSON
5 HAS DECIDED THAT THEY'RE GOING TO KILL SOMEBODY, THAT
6 THEY'RE GOING TO CARRY OUT AN ACT CAUSES SOMEBODY TO DIE.

7 NOW, MANSLAUGHTER ON THE OTHER HAND, OR WHAT WE
8 NORMALLY CALL HEAT OF PASSION KIND, THE MOST COMMON
9 EXAMPLE IS A SPOUSE COMING HOME AND FINDING THEIR SPOUSE
10 IN BED WITH SOMEBODY ELSE AND GRABBING A GUN AND SHOOTING
11 THEM BEFORE THEY ACTUALLY HAVE TIME TO THINK ABOUT WHAT
12 THEY ARE DOING.

13 IT'S COOLING OFF PERIOD. AND BECAUSE THE PERSON
14 DIDN'T HAVE TIME TO COOL OFF, WELL THE LAW SAYS WELL
15 THAT'S VOLUNTARY MANSLAUGHTER BECAUSE THE PERSON ACTED
16 BEFORE THEY HAD TIME TO THINK ABOUT WHAT THEY ARE DOING.
17 NOW, I SUBMIT TO YOU THAT THIS CASE, THIS IS MURDER, THIS
18 ISN'T VOLUNTARY MANSLAUGHTER.

19 FIGHTS, WHEN PEOPLE GET IN FIGHTS, SOMETIMES
20 PEOPLE GET IN A FIGHT WILL RESULT IN A DEATH. THAT IS IN
21 FACT A VOLUNTARY MANSLAUGHTER. YOU GET TO DETERMINE
22 MALICE BY THINGS -- ONE OF THE THINGS YOU CAN USE IS A
23 PERSON SAYS I'M GOING TO KILL YOU.

24 ONE OF THE WITNESSES, I THINK IT WAS DERRICK
25 ALBERT SAID MARCUS EVANS TOLD HENRY SCOTT I'M GOING TO

1 KILL YOU. STEVEN JOHNSON, THEY WANT YOU TO BELIEVE STEVEN
2 JOHNSON MADE THIS UP WHEN HE CAME AND TOLD YOU ABOUT THAT
3 INCIDENT AT THE HUDDLE HOUSE BECAUSE MARCUS EVANS, GILARON
4 TAYLOR WITH HIM TOLD HENRY SCOTT, YOU REMEMBER THIS, I'M
5 GOING TO BE THE PERSON WHO IS GOING TO PUT YOU IN YOUR
6 GRAVE.

7 YOU CAN INFER MALICE FROM THE USE OF A DEADLY
8 WEAPON. YOU CAN ALSO INFER MALICE FROM THE WAY THE PERSON
9 WAS KILLED. AND I WANT YOU TO REMEMBER IN THIS CASE WHAT
10 WE HAVE GOT IS TWO GUNSHOT WOUNDS TO HIS KNEES, TWO
11 CRIPPLING GUNSHOT WOUNDS.

12 DR. YACoub, THE PATHOLOGIST, TOLD YOU THAT THOSE
13 WOUNDS WOULD HAVE MADE HIM FALL DOWN. SHE ALSO TOLD YOU
14 THAT IN HER OPINION FATAL BLOW SHOTS FROM THE FRONT. ONE
15 OF THEM POSSIBLE SHE SAID DEPENDING UPON WHETHER HIS
16 CLOTHES HAD BEEN MOVED, SHE USED HIS CLOTHES TO HELP
17 DETERMINE THAT.

18 HIS PANTS HAD BEEN IN A CERTAIN POSITION THAT IT
19 WAS POSSIBLE, THAT IT COULD HAVE BEEN SHOT FROM THE BACK,
20 BUT IT WAS HER OPINION THAT BOTH OF THEM WERE FROM THE
21 FRONT. ONE LEFT KNEE, THE BULLET DIDN'T COME OUT. IT
22 WENT IN THE FRONT AND DIDN'T COME OUT THE BACK, TO ONE --
23 TO HIS RIGHT KNEE WENT ALL THE WAY THROUGH.

24 SO HE'S GOT TWO WHAT I SUBMIT TO YOU ARE
25 GUNSHOTS WOUNDS THAT ARE CRIPPLED HIM IN HIS KNEES BECAUSE

1 HE GOT THREE FATAL GUNSHOT WOUNDS TO HIS BACK, THREE
2 GUNSHOT WOUNDS TO HIS BACK, ANY OF WHICH COULD HAVE CAUSED
3 HIM TO DIE BY ITSELF.

4 AND THAT THREE ENDED UP CAUSING LOSS OF BLOOD,
5 BUT SHE TOLD YOU ALL THREE OF THOSE WOUNDS WERE FATAL
6 WOUNDS ALL TO HIS BACK. AND I SUBMIT TO YOU THAT THAT
7 SHOWS MALICE. NOW, OF COURSE AFTER LISTENING TO ALL OF
8 THEIR ARGUMENTS, THEIR ARGUMENT TO YOU REALLY IS DON'T
9 BELIEVE ANYTHING ANY OF THE STATE'S WITNESSES SAID BECAUSE
10 THEY HAVE GOT THIS GIANT CONSPIRACY TO COME IN HERE AND
11 TELL YA'LL A BUNCH OF STORIES ABOUT WHAT HAPPENED.

12 DON'T BELIEVE ANYTHING THEY TOLD YOU. SO DON'T
13 BELIEVE STEVEN JOHNSON, DON'T BELIEVE ANY OF THEM. WELL,
14 LADIES AND GENTLEMEN, THIS IS MESSY, THIS IS A SHOOTOUT
15 OUTSIDE A CLUB. THERE WERE A LOT OF BULLETS LYING
16 AROUND.

17 THERE WERE NOT A HUNDRED PEOPLE OUT THERE NOW,
18 MIND YOU. THERE WEREN'T THAT MANY PEOPLE. BUT MARCUS
19 EVANS AND GILARON TAYLOR -- MARCUS EVANS IS THE ONE WHO
20 STARTED IT, THE ONE WHO JUMPED UP AS SOON AS HENRY SCOTT
21 GOT THERE AND STARTED RUNNING HIS MOUTH ABOUT WHAT HE WAS
22 GOING TO DO.

23 THEY INTENDED TO DO THIS. HE ALREADY TOLD THEM
24 I'M GOING PUT YOU IN YOUR GRAVE. AND THEY ARE OUT AT A
25 NIGHTCLUB, AND LADIES AND GENTLEMEN, I AM NOT TRYING TO

1 CONVINCE YOU OR THE STATE IS NOT THAT IT WAS LIKE DAYLIGHT
2 OUT IN THAT PARKING LOT.

3 BUT THERE IS A LOT MORE LIGHT THAN WHAT THEY
4 WANT YOU TO THINK. YOU KNOW THERE WAS ENOUGH LIGHT FOR
5 PEOPLE TO SEE WHO THEY WERE TALKING TO AND WHAT WAS GOING
6 ON. AND IN DIFFERENT PLACES A LOT OF THESE PROBABLY WORSE
7 THAN OTHER PLACES.

8 THE INCONSISTENCIES IN THESE WITNESSES. I TELL
9 YOU LADIES AND GENTLEMEN, IF THIS WAS A CONSPIRACY THEY
10 WERE GOING TO COME IN HERE AND MAKE SOMETHING UP TO TELL
11 YA'LL, I SUBMIT TO YOU THEY'D HAVE DONE A BETTER JOB THAN
12 THEY DID.

13 SURELY THEY COULD HAVE GOTTEN TOGETHER AT LEAST
14 AND GONE OUT THERE OR SOMETHING AND SAID WELL, THEY HAD TO
15 LOOK AT A DIAGRAM OF THE BLOOD, TAKING IT A LITTLE BIT
16 MORE CONSISTENT ABOUT WHERE EVERYTHING HAPPENED.

17 I SUBMIT TO YOU, LADIES AND GENTLEMEN, THAT THE
18 REASON THEY'RE NOT CONSISTENT IS BECAUSE NOBODY SAW THIS
19 STUFF FROM THE SAME VIEWPOINT, THEY WEREN'T ALL STANDING
20 THAT EXACTLY IN THE SAME PLACE.

21 THEY COME IN HERE ALL BEEN ABLE TO SAY OKAY,
22 YES, SIR, EVERY SINGLE ONE OF US WAS STANDING RIGHT HERE,
23 THIS IS EXACTLY WHERE IT HAPPENED. AND I SUBMIT YOU CAN
24 WORRY ABOUT THE TESTIMONY THEN BECAUSE THERE IS NO WAY IN
25 THE WORLD THAT WITH WAS GOING ON AT THE CLUB THAT NIGHT

1 THAT EVERYBODY OUT THERE COULD HAVE SEEN THE SAME THING OR
2 WOULD HAVE EVEN INTERPRETED IT THE SAME WAY, YOU KNOW.

3 ONE OF THE REASONS WE GOT 12 OF YA'LL IS BECAUSE
4 TWO PEOPLE CAN HEAR THE SAME SENTENCE AND THINK IT MEANS
5 TWO DIFFERENT THINGS. TWO PEOPLE CAN SEE THE SAME ACT AND
6 THINK IT MEANS TWO DIFFERENT THINGS. ALL THIS TESTIMONY
7 THAT CAME FROM THIS STAND, YA'LL GET BACK IN AND TALK
8 ABOUT IT AND I SUBMIT THAT YA'LL ARE NOT GOING TO ALL
9 UNDERSTAND THE SAME THINGS THE SAME WAY.

10 THAT IS WHY WE HAVE 12 OF YOU. THEY SAID WELL,
11 YOU COLLECTIVELY CAN GET BACK THERE AND DETERMINE TO THE
12 BEST OF YOUR ABILITY BASED UPON WHAT EVIDENCE THERE IS
13 WHAT HAPPENED. NOW, I DON'T DECIDE WHO ARE GOING TO BE
14 WITNESSES TO A CRIME.

15 J.D. DELLINGER AND DANNY SIMON DIDN'T FIND OUT
16 WHO WERE GOING TO BE THE WITNESSES TO THIS CRIME. THOSE
17 TWO BOYS RIGHT THERE DECIDED. THEY'RE THE ONES WHO
18 DECIDED TO GO THIS WHEN AND WHAT THEY DID IT. THEY DID IT
19 OUTSIDE IN THAT DARK CLUB, BUT THERE WEREN'T MANY PEOPLE
20 OUT IN THE YARD AND WEREN'T A HUNDRED PEOPLE OUT THERE
21 STANDING AROUND MILLING AROUND.

22 MAYBE THERE WAS 20. OBVIOUSLY I DON'T KNOW, BUT
23 MAYBE THERE WERE 20. THE BURDEN OF PROOF, LADIES AND
24 GENTLEMEN, IS ALWAYS ON THE STATE. THE DEFENDANTS DON'T
25 HAVE TO PROVE ANYTHING. BUT WE HAVE PROVE THIS CASE TO

1 YOU BEYOND A REASONABLE DOUBT.

2 BUT LADIES AND GENTLEMEN, A REASONABLE DOUBT
3 DOESN'T MEAN THAT BECAUSE SOME QUESTION ISN'T ANSWERED
4 THAT'S OKAY, THAT'S REASONABLE ENOUGH. NO CASE EVER IS
5 GOING TO COME BEFORE THE JURY WHERE EVERY SINGLE QUESTION
6 THAT SOMEBODY CAN THINK OF IS ANSWERED.

7 PEOPLE WHO COMMIT CRIMES ARE HOPING THEY'RE NOT
8 GOING TO GET CAUGHT. A LOT OF TIMES PEOPLE COVERING UP
9 THINGS PEOPLE ARE DOING. NOW, ON THE MISPRISON OF A
10 FELONY CHARGE WITH THESE TWO, WE NEVER TRIED TO ALLUDE
11 THAT TRAVIS SINGLETON AND LAMONT WITHERSPOON HAD ANY IDEA
12 THAT THIS SHOOTING WAS GOING TO TAKE PLACE.

13 WE DON'T BELIEVE THAT. WE ARE NOT TRYING TO
14 CONVINCE YOU THAT THEY DID. WE DO SUBMIT, LADIES AND
15 GENTLEMEN, THOUGH THAT BASED ON WHAT HAPPENED OUT THERE,
16 THERE IS NO POSSIBLE WAY THAT THEY DID NOT KNOW MORE THAN
17 WHAT THEY TOLD THE POLICE THAT NIGHT.

18 WE ARE NOT TRYING TO CONVINCE YOU THAT THEY SAW
19 EVERY SINGLE THING THAT HAPPENED THERE. BUT LADIES AND
20 GENTLEMEN, WHAT THOSE BOYS DIDN'T LEAVE THE GUNS AT THE
21 SCENE. THEY HAD TO HAVE THROWN THOSE GUNS OUT THE
22 WINDOW.

23 THAT CAR WAS STOPPED 12 MINUTES AFTER THIS CALL
24 WAS DISPATCHED BY DANNY SIMON, 12 MINUTES. SO SOMETIME IN
25 THAT 12 MINUTES, LADIES AND GENTLEMEN, THEY THREW THOSE

1 GUNS AWAY. AND I WILL ASK LAMONT WITHERSPOON ABOUT THE
2 WINDOW.

3 HE SAID HE HASN'T ANSWERED THAT. HE HAS HAD A
4 YEAR TO FIGURE OUT AN ANSWER FOR THAT. OH, THEY ASK ME
5 ABOUT THROWING GUNS OUT THE WINDOW? I MEAN, THEY KNOW LAW
6 ENFORCEMENT HAS TO BELIEVE THEY THREW THE GUNS OUT THE
7 WINDOW. THEY WEREN'T THERE WHEN THE CAR WAS SEARCHED AND
8 HE SAYS OKAY.

9 WELL, THEY WERE SMOKING CIGARETTES, MUST HAVE
10 HAD THE WINDOW DOWN. NOW LADIES AND GENTLEMEN, HE'S GOING
11 BETWEEN 90 AND A HUNDRED MILES AN HOUR, YOU KNOW. HE TOLD
12 YOU HE WON'T TELL THE POLICE HE WAS GOING THAT FAST, GOING
13 75 OR 80, STILL PRETTY FAST, LADIES AND GENTLEMEN.

14 BUT THAT OFFICER TESTIFIED HAS A LOT OF
15 EXPERIENCE ESTIMATING HOW FAST CARS ARE GOING. RADIOED
16 THAT THIS CAR THAT WAS GOING AT A VERY HIGH RATE OF SPEED?
17 HE TOLD YOU THEY WERE GOING 90 TO A HUNDRED MILES AN
18 HOUR. I SUBMIT TO YOU THAT MAKES SENSE PROBABLY AS FAR AS
19 WHEN THEY FIRST LEFT THE CLUB.

20 THEIR DEFENSE, THOSE BOYS ARE SCARED. WHEN THEY
21 FIND OUT, WELL THEY'LL BE. THOSE TWO BOYS YOU'D HAVE BEEN
22 SCARED TOO. THEY GOT SOME GUY SHOOTERS, THEY DIDN'T HAVE
23 ANYTHING TO DO WITH THE SHOOTING, SO YEAH, THEY PROBABLY
24 WERE SCARED.

25 BUT LADIES AND GENTLEMEN, NOBODY SAW A CAR COME

1 FROM THEIR CAR COME MOVING DOWN HERE. ANOTHER MAY HAVE
2 COME, BUT NOBODY SAW ANOTHER CAR COMING FROM DOWN HERE, A
3 CAR BEHIND HIM. THERE MAY HAVE BEEN ONE IN FRONT OF HIM.
4 HIS STATEMENT TALKS ABOUT THAT CAR IN FRONT OF HIM.
5 STATEMENT DOESN'T MENTION THE CAR HEADLIGHTS BEHIND HIM.

6 TOLD YA'LL THAT TODAY. HAD TO GIVE YOU SOME
7 EXPLANATION WHY HE'S DRIVING THAT FAST WHEN HE GETS OUT TO
8 HIGHWAY 15. NOW, IT'S BETWEEN TWO AND A HALF TO THREE
9 MILES FROM THE CLUB TILL YOU GET TO HIGHWAY 15.

10 HE HAD TO SLOW DOWN APPRECIABLY AND HE ADMITTED
11 AT LEAST HE DIDN'T STOP FOR THE STOP SIGN, BUT HE SLOWED
12 DOWN TO 20 MILES AN HOUR. BUT THAT CAR IS NOT BEHIND
13 HIM. THERE IS NOT A CAR BEHIND HIM THEN. WHY ONCE HE
14 GETS OUT ON 15 IS HE TRAVELING THAT FAST?

15 JUST BECAUSE HE WANTS TO GET HOME? LADIES AND
16 GENTLEMEN, THAT DOESN'T MAKE ANY SENSE. MAKES SENSE HE
17 LEFT SOMEBODY FOLLOWING BEHIND HIM. GIVE YOU TWO OTHER
18 POSSIBLE REASONS WHY HE WAS DRIVING THAT FAST. ONE IS
19 THAT HE KNEW THEY HAD DONE IT, HE IS SECONDLY TRYING TO
20 GET THESE BOYS OUT OF THERE SO NOBODY GETS CAUGHT.

21 THE OTHER ONE IS YEAH, HE WAS SCARED BECAUSE HE
22 WAS AFRAID, HE KNEW THEY HAD GUN. THEY HAD BEEN IN AN
23 ALTERCATION AND THERE HAD BEEN SHOOTING THAT THOSE TWO
24 BOYS WERE INVOLVED IN.

25 MAY NOT HAVE KNOWN EXACTLY WHAT THEIR SPECIFIC

1 INVOLVEMENT WAS, BUT HE KNEW THOSE TWO BOYS WERE
2 INVOLVED. AND HERE IS WHAT HE -- THAT HENRY SCOTT'S
3 FRIENDS, ALL THOSE WITNESSES WHERE YOU BROUGHT UP HERE
4 CONSPIRED TO TELL YOU ALL A BIG STORY THAT THEY WERE GOING
5 TO COME GET HIM.

6 SAYS THERE IS A POSSIBILITY -- THAT DIDN'T HAVE
7 ANY RESPONSIBILITY. YA'LL THINK ABOUT -- OBVIOUSLY DO YOU
8 THINK IF LAMONT WITHERSPOON THAT NIGHT HAD TOLD DANNY
9 SIMON THAT HIS CAR WAS POSSIBLY HIT BY A SHOT FROM A GUN
10 THAT DANNY SIMON WOULD HAVE KEPT THAT CAR THERE?

11 THAT IS POSSIBLE EVIDENCE. THEY MIGHT HAVE
12 FOUND THE BULLETS. HE DIDN'T PUT THAT IN HIS STATEMENT.
13 HE DIDN'T TELL THEM THAT THAT NIGHT. THAT ALONE I SUBMIT
14 TO YOU IS ENOUGH TO PROVE MISPRISON OF A FELONY AND IT'S
15 ENOUGH PRETTY MUCH FOR DANNY SIMON TO HOLD THAT CAR.

16 YOU KNOW, AT THE TIME THEY WERE STOPPED, 12
17 MINUTES AFTER IT HAPPENED, THEY ARE THERE ABOUT 20 OR 25
18 MORE MINUTES WHILE THEY SEARCH THE CAR, DON'T FIND A GUN.
19 DANNY SIMON WITH THE DESCRIPTION HE HAD WASN'T SUFFICIENT
20 OF EITHER THE CAR OR THE CLOTHES FOR HIM TO MAKE AN
21 ARREST, TO HOLD THEM, NO GUN.

22 BASICALLY, DON'T HAVE GUNS THERE, HAVE NO
23 BULLETS. WHAT ARE THEY HOLDING? HE IS TRYING TO GET THE
24 DESCRIPTION. HE TOLD THEM WHILE HE WAS OUT THERE I WAS
25 TRYING TO GET A DESCRIPTION. THE ONLY DESCRIPTION HE HAD

1 WAS A BLACK HOODIE WHICH CAME FROM MARTY OAKS.

2 THAT'S WHAT MARTY OAKS TOLD HIM. LADIES AND
3 GENTLEMEN, I DON'T KNOW BECAUSE THEY DIDN'T THROW CLOTHES
4 OUT THE WINDOW. THE TRUTH OF THE MATTER IS NOBODY TOLD
5 YOU WHAT GILARON TAYLOR HAD ON. THE ONLY REAL
6 DESCRIPTIONS OF ANYBODY IS LATORIA DAVIS TRYING TO
7 DESCRIBE WHAT HER BOYFRIEND MARCUS EVANS HAD ON.

8 YOU KNOW, THEY HAVE A BIG DEAL ALL DURING THIS
9 TRIAL ABOUT THE FACT THAT THE STATE'S WITNESSES COULD NOT
10 TELL YA'LL WHAT KIND OF CLOTHES THESE TWO SHOOTERS HAD
11 ON. THEN LAMONT WITHERSPOON GETS ON HERE. HE'S BEEN WITH
12 THEM FOR HOURS. HE'S BEEN IN THE CAR WITH THEM AND HE
13 CAN'T EVEN TELL YOU WHAT THEY HAD ON.

14 I SUBMIT, LADIES AND GENTLEMEN, IT'S REALLY NOT
15 THAT SURPRISING, ESPECIALLY MALES. YOU KNOW LADIES MORE
16 LIKELY TO PAY ATTENTION TO WHAT PEOPLE HAVE ON, BUT THAT
17 NIGHT WHEN ALL THIS STUFF WAS GOING ON, THOSE STATE
18 WITNESSES, THEY WEREN'T LOOKING TO SEE WHAT THESE BOYS
19 WERE WEARING. THIS HAPPENED QUICKLY.

20 THEY WERE FACING THE PEOPLE WHO DID IT. FOR ALL
21 THE INCONSISTENCIES, THERE ARE SOME CONSISTENCIES. IT'S
22 NOT LIKE EVERYTHING THE STATE HAS TOLD YOU, WITNESSES HAVE
23 TOLD YOU HAVE BEEN INCONSISTENT. THIS WASN'T DONE IN SLOW
24 MOTION.

25 DIDN'T HAVE A STILL STOP EVERYTHING AND SAY

1 OKAY, RIGHT THIS SECOND THIS PERSON IS HERE, THIS PERSON
2 IS HERE, THIS PERSON IS HERE. THERE IS MOVEMENT GOING ON
3 EVERYWHERE, HAPPENED QUICKLY. GOT LOST IN MY NOTES HERE.
4 THINGS ARE CONSISTENT.

5 SEVERAL WITNESSES HAVE TESTIFIED THAT MARCUS
6 EVANS STARTED THIS AS SOON AS HENRY SCOTT WALKED UP. HE
7 WON'T MESS ANYBODY UP. HE WASN'T INTERESTED IN ANYBODY
8 ELSE. HE STARTED THIS WITH HENRY SCOTT, THE PERSON HE WAS
9 TRYING TO START IT WITH, THE PERSON HE WANTED TO START IT
10 WITH.

11 HAD NO IDEA, CANNOT TELL YOU? NO WITNESSES WHO
12 COULD TELL YOU WHAT THE PROBLEM BETWEEN HENRY SCOTT AND
13 MARCUS EVANS WAS. BUT APPARENTLY THERE WAS ONE. AT LEAST
14 A COUPLE OF WITNESSES DEMONSTRATED TO YOU, ACTUALLY STOOD
15 UP AND DEMONSTRATED TO YOU MARCUS EVANS WAS GOING LIKE
16 THIS LIKE HE WAS GOING TO GET A GUN.

17 ONE WITNESS SAID HE TOLD HIM I'M GOING TO KILL
18 YOU. COUPLE OF WITNESSES SAID HE WAS BACKING UP BEFORE HE
19 RAN TO GO GET THAT GUN BECAUSE THESE GUYS ARE IN FRONT OF
20 HIM AND HE IS BACKING UP.

21 BUT THE MAIN CONSISTENCY, LADIES AND GENTLEMEN,
22 IS THE PART THAT THEY REALLY CAN'T GET AROUND THE FACT
23 THAT THEY WANT YOU TO BELIEVE THAT EVERYBODY IS -- GOT
24 TOGETHER, COME IN HERE AND TELL YOU STORIES ABOUT THESE
25 LINE-UPS.

1 NOW LADIES AND GENTLEMEN, THEY WANT YOU TO
2 BELIEVE IS THAT SIX PEOPLE MISIDENTIFIED MARCUS EVANS.
3 AND THEN THEY WANT YOU TO BELIEVE THAT FOUR PEOPLE,
4 EXCLUDING LARRY, SO SIX PEOPLE EXCLUDING LARRY DEBERRY
5 FOUR PEOPLE MISIDENTIFIED GILARON TAYLOR. LADIES AND
6 GENTLEMEN, THAT IS NOT BELIEVABLE. THAT IS NOT REASONABLE
7 TO BELIEVE THAT THAT MANY PEOPLE MISIDENTIFIED NUMBER ONE
8 IN THIS LINE-UP AND NUMBER FIVE IN THIS LINE-UP.

9 WHAT THEY REALLY WANT YOU TO BELIEVE IS THAT
10 THEY ALL GOT TOGETHER AND DECIDED FOR WHATEVER REASON TO
11 COME HERE, THEY TALKED ABOUT IT BEFORE THEY WENT TO THE
12 LINE-UP, THEY PICKED THE SAME PERSON OUT SO THEY COULD
13 COME IN HERE AND FOR NO REASON THAT WE KNOW OF TRY TO
14 CONVICT OF MURDER TWO GUYS WHO DIDN'T DO ANYTHING.

15 LADIES AND GENTLEMEN, THAT IS JUST NOT
16 REASONABLE. THEY MAY HAVE BEEN TRYING TO COERCE STUFF A
17 LITTLE BIT ON THE SIDE OF HENRY SCOTT WHO IS THEIR
18 FRIEND. THEY STRIKE YOU AS PEOPLE WHO ARE GOING TO COME
19 IN HERE AND JUST BOLD FACE LIE TO YOU TO TRY TO CONVICT AN
20 INNOCENT PERSON?

21 I SUBMIT TO YOU THEY DIDN'T. STEVEN JOHNSON WAS
22 MY LAST WITNESS, THEY TOLD YOU HE IS NOT CREDIBLE ON THE
23 ISSUE OF -- DO YOU RECALL HIM, LADIES AND GENTLEMEN? AND
24 I SUBMIT TO YOU HE WAS ABOUT AS CREDIBLE AS A WITNESS
25 COULD BE. HE ADMITTED POP HAD A GUN.

1 A LOT OF TALK ABOUT WHETHER POP HAD A GUN,
2 WHETHER POP SHOT A GUN. IT'S A DIFFERENCE, DID POP HAVE A
3 GUN? YEAH, POP HAD A GUN. SOMEBODY SAID POP SHOT A GUN.
4 NOW YOU ASK HIM HOW DO YOU KNOW THAT POP SHOT A GUN? WHAT
5 HAPPENED SO THAT YOU KNOW THAT HE SHOT THE GUN?

6 THE ONLY PERSON COULD REALLY ANSWER THAT WELL
7 WAS PROBABLY DERRICK ALBERT AND HE SAID WELL, I DID SEEN
8 POP PULL THE TRIGGER. I SAW GUNFIRE COMING FROM WHERE POP
9 WAS AND AT THE TIME THAT WAS HAPPENING, I COULD SEE THOSE
10 TWO BOYS, TWO SHOOTERS WERE OVER HERE.

11 SO DID HE SHOOT A GUN? LADIES AND GENTLEMEN,
12 MAYBE, MAYBE NOT. I SUBMIT OUR WITNESSES SAY THEY CAN'T
13 SHOOT A GUN, YEAH THE GUNSHOT RESIDUE KIT WE SENT TO SLED
14 ON THE VICTIM, THE STATE DID, TO TRY TO GET SCIENTIFIC OF
15 EVIDENCE OF WHETHER OR NOT HE HAD FIRED A GUN OR NOT.

16 NOW HE DIED. SHE TOLD YOU SOMEBODY DIES, YOU
17 QUIT ABSORBING STUFF AND SO BY THE TIME HE GOT TO THE
18 AUTOPSY, SLUGS WOULD HAVE STILL BEEN THERE, BUT YEAH
19 SOMEBODY COULD WIPE IT OFF.

20 LADIES AND GENTLEMEN, IT'S POSSIBLE NOBODY
21 INTENTIONALLY WIPED IT OFF. NOW, THESE GUYS ARE OVER
22 THERE HOLDING A FRIEND MAY HAVE SOMETHING IN HIS HANDS.
23 THEY MAY HAVE RUBBED IT OFF WHICH SHE SAID WAS -- LEVELS
24 WEREN'T EVEN CLOSE.

25 IT'S LIKE SOMEBODY WASHED HIS HANDS OFF. WELL,

1 THINK PARAMEDICS WASHED HIS HANDS OFF? THINK THOSE GUYS
2 THAT ARE STANDING THERE, HIS FRIENDS WHO WERE WORRIED
3 ABOUT WHAT HE IS DIED? THINK THEY SAT THERE AND WASHED
4 HIS HANDS OFF? AND WHAT HAPPENED TO THE GUN? HE HAD A
5 GUN.

6 WHAT ELSE? LET'S GO OVER LARRY DEBERRY. LARRY
7 DEBERRY, NO MATTER WHAT THEY SAY HANGING AROUND. LARRY
8 DEBERRY CAME IN HERE, NEVER BEEN ON THE STAND, NEVER
9 LOOKED AT THE LINE-UP. I GOT HIM UP HERE TO TESTIFY ABOUT
10 WHAT HE HAD SEEN THAT NIGHT WHEN IT HAPPENED AND IN HIS
11 TESTIMONY HE ALSO POINTED AT MARCUS EVANS, SAID I SAW THAT
12 GUY SHOOT THE VICTIM WHO WAS ON HIS KNEES IN THE BACK.

13 I HAD HIM GOT DOWN HERE ON HIS KNEES, WHERE WERE
14 HIS HANDS? AND HE HAD HIS HANDS DOWN LIKE THERE, HIS
15 HANDS DOWN ON HIS LEG. MS. BENN WAS AND GET WITNESS, WHAT
16 DID SHE SAY? SHE HAD -- HE HAD HIS HANDS ON THE AIR,
17 SHOT, HAD HIS HANDS IN THE AIR.

18 DON'T YOU THINK SHE COULD SEE HE HAD HIS HAND IN
19 THE AIR? SHE COULDN'T TELL WHETHER HE HAD A GUN IN HIS
20 HANDS? SHE SAID SHE DIDN'T SEE IT, BUT DON'T YOU THINK
21 SHE'D BE ABLE TO SEE IT IF HE HAD ONE IN HIS HANDS?

22 I SUBMIT, LADIES AND GENTLEMEN, THAT THEY
23 STARTED THIS, THEY STARTED IT AND THEY INTENDED TO END IT
24 WHICH THEY DID. MR. ROGERS WAS TALKING ABOUT DERRICK
25 ALBERT PICKED OUT OUT OF THAT LINE-UP AND HE DID. THAT IS

1 WHAT HE DID, BUT HE'D ALSO GIVEN LAW ENFORCEMENT A
2 STATEMENT THEY HAD TALKED TO HIM, HIS NAME WAS LISTED ON
3 THE OTHER STATEMENTS THAT LAST WEEK WAS THE FIRST TIME HE
4 CAME.

5 THIS IS OVER THE YEAR SINCE IT HAPPENED AND I
6 EXPLAINED TO YA'LL ON THE STAND I DIDN'T BOTH -- I SAW
7 THAT FROM THE SIDE, BUT HE POSITIVELY IDENTIFIED MARCUS
8 EVANS. LARRY DEBERRY IS NOT SUPPOSED TO BE ABLE TO
9 IDENTIFY HIM EITHER BECAUSE IT HAPPENED A YEAR AGO.

10 MR. ROGERS SAYS THIS FORM, THEY TALKED A LOT
11 ABOUT THIS FORM, THE LINE-UP FORM, THIS IS A STANDARD
12 FORM. IT'S A STANDARD FORM USED IN LINE-UPS. SHERIFF'S
13 OFFICE HAS LINE-UPS. WELL, IT'S SAID THAT YOU SEEN ONE
14 PERSON IN IF LINE-UP.

15 . WELL, IF THEY PUT -- IF YOU SEEN ONE MORE THAN
16 PERSON INVOLVED IN THE SHOOTING AND THEY HAVE A DIFFERENT
17 FORM FOR EVERY KIND OF CRIME, SO WHEN THEY ALL THOSE BOYS
18 KNEW THEY WERE TALKING TO HIM ABOUT WHO SHOT HENRY SCOTT.
19 THAT IS WHAT THEY WERE ASKING THEM TO IDENTIFY. AND MR.
20 ROGERS TRIED TO GET STEVEN JOHNSON SAY HE SAID THAT IS WHO
21 YOU IDENTIFY, WHICH IS SOMEBODY.

22 STEVEN JOHNSON SAID NO, SIR, I WAS IDENTIFYING
23 THE SHOOTER. HENRY SCOTT AND HIS FRIENDS WENT THERE TO
24 HAVE A GOOD TIME. DIDN'T KNOW MARCUS EVANS WAS GOING TO
25 BE THERE AND GILARON TAYLOR WHEN THEY GOT THERE. LAMONT

1 WITHERSPOON AND TRAVIS SINGLETON THEY WERE IN A BAD PLACE
2 IN A WRONG PLACE AT THE WRONG TIME WITH THE WRONG PEOPLE.

3 MAYBE THEY WERE INTOXICATED, BUT LADIES AND
4 GENTLEMEN, HAD THEY TOLD LAW ENFORCEMENT ANYTHING BESIDES
5 ALL WE FLOW IS THE SHOOTING. THAT'S ALL WE KNOW? THEY
6 TOLD THEM A LITTLE BIT. OH, THE CAR MIGHT HAVE GOT HIT BY
7 A BULLET. OH, WELL THEY MIGHT HAVE THROWN THE GUNS OUT
8 THE WINDOW, THIS CASE WOULD BE COMPLETELY DIFFERENT.

9 WE MIGHT HAVE GUNS, LAW ENFORCEMENT WOULD HAVE
10 KNOWN WHERE TO GO LOOK FOR THE GUNS, THEY MIGHT HAVE GOT
11 FINGERPRINTS OFF THE GUNS, THEY MIGHT HAVE BEEN ABLE TO
12 MATCH THE BULLETS TO THE GUNS, THEY MIGHT HAVE HAD A GSR
13 KIT FROM THEIR HANDS BECAUSE THEY WERE STOPPED WITHIN 10
14 OR 12 MINUTES.

15 BUT BECAUSE THEY DIDN'T, DANNY SIMON DIDN'T HAVE
16 ENOUGH TO HOLD THEM AND HE LET'S THEM GO. YOU KNOW,
17 LAMONT WITHERSPOON'S MOTHER AND GRANDMOTHER SEEM LIKE
18 REALLY NICE PEOPLE. YOU KNOW, THESE ARE FOUR NICE LOOKING
19 YOUNG MEN.

20 AND LADIES AND GENTLEMEN, IT'S CLOSE TO
21 CHRISTMAS AND WE KNOW THAT IT'S HARD FOR YOU NOT TO LET
22 SYMPATHY OR COMPASSION PLAY A PART IN YOUR DECISION, BUT
23 WHEN YOU TOOK AN OATH TO BE FAIR AND IMPARTIAL, YOU TOOK
24 AN OATH NOT TO ALLOW COMPASSION OR SYMPATHY TO PLAY A PART
25 IN YOUR DECISION TO REACH A VERDICT THAT IS JUST.

1 WELL, WE ARE ASKING YOU TO DO SO, TO RETURN A
2 VERDICT THAT DOES DO JUSTICE. GILARON TAYLOR, MARCUS
3 EVANS, ALMOST GOT AWAY WITH MURDER. AND ONE OF THE
4 REASONS THEY ALMOST GOT AWAY WITH MURDER IS BECAUSE THOSE
5 TWO BOYS OVER THERE KEPT QUIET WHEN QUESTIONED BY LAW
6 ENFORCEMENT.

7 WHATEVER THE THING WAS BETWEEN HENRY SCOTT AND
8 MARCUS EVANS ABOUT MARCUS EVANS STARTED THIS, HE WAS OUT
9 THERE FOR, SUBMIT HE MIGHT HAVE STUCK IN THAT GUN BECAUSE
10 HE THOUGHT HE WAS GOING TO GET A GUN FIGHT WASN'T -- HE
11 PUSHED HER IN THE CLUB BACK HERE.

12 THESE TWO BOYS ACTED IN CONCERT, DECIDED TO DO
13 WHAT THEY HAVE ALREADY THREATENED TO DO, WHAT MARCUS EVANS
14 ALREADY THREATENED TO DO WHICH WAS PUT HENRY SCOTT IN HIS
15 GRAVE. AND HE DID THAT. AND LADIES AND GENTLEMEN, I ASK
16 YOU BY YOUR VERDICT TO NOT LET THEM GET AWAY WITH MURDER.
17 THANK YOU.

18 THE COURT: THANK YOU, MS. NIELSEN. LADIES AND
19 GENTLEMEN, I TOLD YOU AT THIS STAGE WE WERE GOING TO
20 RECESS FOR THE AFTERNOON BECAUSE I STILL HAVE TO CHARGE
21 YOU ON THE LAW AND THAT WOULD TAKE ABOUT FORTY-FIVE
22 MINUTES, AND FOR REASONS I ALREADY EXPLAINED TO YOU WE
23 WILL STOP AT THIS POINT AND GET YOU BACK IN THE MORNING.

24 I WANT TO COMMEND THE LAWYERS FOR THEIR WISE USE
25 OF YOUR TIME. BEFORE WE BEGAN THOSE ARGUMENTS I ASKED

1 THEM HOW LONG THEY MIGHT TAKE. I ALWAYS DO THAT BEFORE WE
2 BEGIN THE FINAL ARGUMENTS SO THAT I WILL KNOW IN MY
3 PLANNING WHEN TO BREAK THE PROCESS UP AND GIVE YOU SOME
4 IDEAS OF HOW LONG WE WILL BE HERE, AND ALL FIVE OF THE
5 LAWYERS INVOLVED TOLD ME HOW LONG THEY WOULD TAKE.

6 AND QUITE OFTEN WHEN I ASK LAWYERS THAT, LASTLY
7 GET ONE MAYBE TWO THAT WILL COME WITHIN THE TIME FRAME
8 THAT THEY TELL ME IN TWO MONTHS I HAVE BEEN ON THE BENCH,
9 NINE YEARS, AND IT'S THE FIRST TIME IN NINE YEARS I HAVE
10 ALL FIVE LAWYERS STAY WITHIN THE TIMEFRAME THEY GAVE ME,
11 AND I APPRECIATE THAT BECAUSE IT MEANS THEY USED MY TIME
12 WISELY, USED YOUR TIME WISELY AND ARE MINDFUL OF THE
13 INTRUSION WE MAKE INTO YOUR LIVES.

14 THEIR WORK IN THE CASE HAS NOW ENDED. TOMORROW
15 MORNING I WILL COMPLETE MY WORK IN THE CASE AND THEN YOU
16 WILL BEGIN YOUR REAL WORK ON THIS CASE. AND SO I SEND YOU
17 HOME FOR THE NIGHT, LADIES AND GENTLEMEN, AND ASK YOU TO
18 COME BACK IN THE MORNING AT 9:00.

19 DOES THAT CREATE A PROBLEM FOR ANYBODY? IF IT
20 DOES, WE WILL MAKE SOME ADJUSTMENTS. ANYONE WHO CANNOT BE
21 HERE AT 9:00 IN THE MORNING? IF SO WILL, YOU RAISE YOUR
22 HANDS? WHEN YOU GET HERE AT 9:00 IN THE MORNING, YOU
23 REPORT TO THE JURY ROOM JUST AS YOU HAVE BEEN DOING ALL
24 WEEK, BUT YOU WILL NOT TALK ABOUT THIS CASE AT THAT TIME.

25 YOU HAVE HEARD ALL OF THE EVIDENCE. YOU HAVE

1 HEARD THE FINAL THE ARGUMENTS THAT THE LAWYERS HAVE MADE,
2 BUT YOU HAVE NOT YET HEARD THE LAW AND YOU WILL NOT KNOW
3 HOW TO EVALUATE THE EVIDENCE THAT YOU HAVE HEARD AND THE
4 EVIDENCE UPON WHICH YOUR VERDICT MUST BE BASED UNTIL YOU
5 HAVE HEARD THE LAW BECAUSE YOU MUST APPLY THE EVIDENCE
6 THAT YOU FIND TO THE LAW THAT I WILL GIVE YOU AND YOU
7 WON'T KNOW WHAT THE LAW IS UNTIL TOMORROW MORNING AFTER MY
8 CHARGE.

9 AND SO FOR THAT REASON IT'S STILL IMPORTANT THAT
10 YOU NOT DISCUSS THIS CASE AMONG YOURSELVES WHEN YOU GET
11 INTO THE JURY ROOM AT 9:00 TOMORROW MORNING. I REMIND YOU
12 AGAIN OF COURSE NOT TO TALK WITH ANYBODY ELSE ABOUT IT
13 OVERNIGHT OR TO LET ANYBODY ELSE TALK WITH YOU ABOUT IT
14 NOR TO EXPOSE YOURSELF TO ANY SOURCE OF INFORMATION THAT
15 MIGHT BE OUT THERE ABOUT THIS CASE FROM ANY SOURCE AT
16 ALL.

17 THANK YOU AGAIN FOR YOUR WORK ON THIS CASE,
18 LADIES AND GENTLEMEN. HAVE A SAFE TRIP HOME. I WILL SEE
19 YOU TOMORROW MORNING AT 9:00.

20 (WHEREUPON THE JURY LEFT THE COURTROOM AT 4:25 P.M.)

21 THE COURT: ALL RIGHT. MS. NIELSEN, FROM THE STATE,
22 IS THERE ANYTHING BEFORE WE BREAK FOR THE DAY?

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

24 THE COURT: THANK YOU. MR. DOBY?

25 MR. DOBY: NO, YOUR HONOR.

1 THE COURT: MR. ROGERS?

2 MR. ROGERS: NO, YOUR HONOR.

3 THE COURT: MR. JORDAN?

4 MR. JORDAN: NO, YOUR HONOR.

5 THE COURT: MR. FINNEY?

6 MR. FINNEY: NO, YOUR HONOR.

7 THE COURT: THANK YOU. 9:00 IN THE MORNING,

8 GENTLEMEN AND LADIES.

9 (WHEREUPON THIS CASE WAS IN RECESS FOR THE
10 EVENING)

11 DECEMBER 15TH, 2000.

12 THE COURT: MR. DOBY, IS MR. EVANS ON HIS WAY?

13 MR. DOBY: YES, SIR, YOUR HONOR. THAT IS MY
14 INFORMATION.

15 THE COURT: WE ARE GOING TO HAVE TO START. I DON'T
16 KNOW HOW ELSE TO DEAL WITH THAT. OBVIOUSLY HE IS ON HIS
17 WAY. DO YOU KNOW IF HE IS OUTSIDE OF THE COURTHOUSE
18 GROUNDS, IS ONE THING. IF HE IS BETWEEN HERE AND HIS
19 HOME, THAT'S ANOTHER. DO YOU HAVE ANY IDEA?

20 MR. DOBY: NO, SIR, YOUR HONOR.

21 THE COURT: ALL RIGHT. BRING IN THE JURY, PLEASE.

22 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 9:04
23 A.M.)

24 CHARGE OF THE COURT.

25 GOOD MORNING, MADAM FORELADY AND MEMBERS OF THE

1 JURY AND THANK YOU AGAIN FOR YOUR EARLY AND PROMPT RETURN
2 THIS MORNING AS WE PREPARE NOW TO ENTER INTO THE VERY
3 FINAL PHASE OF THE TRIAL OF THIS CASE WHICH WILL CONSIST
4 OF THE CHARGE THAT I WILL GIVE YOU, THE INSTRUCTIONS ON
5 THE LAW THAT I WILL GIVE YOU, AND AFTER THAT YOU WILL
6 FINALLY GO TO YOUR JURY ROOM AND BE ABLE TO START TALKING
7 ABOUT THIS CASE AMONG YOURSELVES.

8 I COMMENDED THE LAWYERS YESTERDAY FOR THEIR
9 PROMPTNESS AND FOR THEIR WISE USE OF YOUR TIME AND I
10 COMMEND YOU THIS MORNING IN ADVANCE OF ANY VERDICT THAT
11 YOU MIGHT REACH BECAUSE MY COMMENTS ARE NOT BASED UPON
12 VERDICTS, NOT BASED UPON OUTCOMES, THEY ARE BASED UPON
13 YOUR PERFORMANCE AS JURORS AND YOUR ATTENDANCE AND YOUR
14 PROMPTNESS AND YOUR ATTENTION AND IN THE THOUGHTFUL
15 DELIBERATIONS THAT I KNOW YOU WILL GIVE IN THE VERY
16 IMPORTANT ISSUES THAT YOU HAVE TO DECIDE.

17 AND YOU HAVE -- IN THAT REGARD YOU HAVE
18 CERTAINLY DISCHARGED THE OATH THAT WE HAVE IMPOSED UPON
19 YOU THUS FAR AND WE STILL HAVE IMPORTANT WORK YET TO BE
20 DONE. BUT YOU CONTINUE TO PERFORM YOUR DUTIES AS JURORS
21 IN THESE DELIBERATIVE STAGES AS YOU HAVE IN THE STAGE OF
22 LISTENING, PAYING ATTENTION AND BEING ON TIME, YOU WILL
23 HAVE DISCHARGED THE OATH THAT WE HAVE IMPOSED UPON YOU
24 BEFORE THIS TRIAL BEGAN A FEW DAYS AGO.

25 IT IS MY DUTY NOW, LADIES AND GENTLEMEN, UNDER

1 OUR CONSTITUTION TO INSTRUCT YOU OR CHARGE YOU OR TELL YOU
2 AS TO WHAT THE LAW IS IN THIS PARTICULAR CASE. AND IT IS
3 YOUR DUTY AS JURORS TO ACCEPT THE LAW AND TO APPLY IT AS I
4 NOW STATE IT TO YOU.

5 AS JURORS IT IS YOUR EXCLUSIVE DUTY TO DECIDE
6 ALL ISSUES OF FACT IN THIS CASE AND FOR THAT PURPOSE YOU
7 HAVE TO DETERMINE THE EFFECT AND THE VALUE AND THE WEIGHT
8 AND THE TRUTH OF THE EVIDENCE AND TESTIMONY THAT YOU HAVE
9 HEARD BECAUSE BOTH THE STATE AND THE DEFENDANT HAVE -- THE
10 DEFENDANTS HAVE THE RIGHT TO EXPECT THAT YOU WILL
11 CONSCIENTIOUSLY CONSIDER AND EVALUATE THE EVIDENCE AND
12 THAT YOU WILL APPLY THE LAW OF THE CASE TO THAT EVIDENCE
13 TO THE END THAT BOTH THE STATE AND THE DEFENDANTS WILL
14 RECEIVE A FAIR AND IMPARTIAL TRIAL AT YOUR HANDS.

15 THROUGHOUT THE COURSE OF THIS CHARGE, MADAM
16 FORELADY AND MEMBERS OF THE JURY, WHEN I USE THE WORD
17 DEFENDANTS I AM REFERRING TO MR. MARCUS EVANS, MR. GILARON
18 TAYLOR, MR. TRAVIS SINGLETON AND MR. LAMONT WITHERSPOON.
19 THESE GENTLEMEN HAVE BEEN INDICTED BY THE GRAND JURY OF
20 LEE COUNTY.

21 AND THE INDICTMENT READS IN PART AS FOLLOWS.
22 COUNT ONE CHARGES MARCUS EVANS AND GILARON TAYLOR, THESE
23 GENTLEMEN HERE THAT SIT ON THIS END OF THE TABLE, THE
24 FIRST AND FOURTH SEATED, WITH THE CRIME OF MURDER. AND
25 THAT CHARGE ALLEGES THAT THEY DID HERE IN LEE COUNTY ON OR

1 ABOUT NOVEMBER THE 14TH, 1999, KNOWINGLY, WILLFULLY AND
2 WITH MALICE AFORETHOUGHT KILL ONE HENRY SCOTT BY MEANS OF
3 SHOOTING THE VICTIM AND THAT THE VICTIM DIED AS A
4 APPROXIMATE RESULT THEREOF.

5 COUNT TWO OF THE INDICTMENT HAS BEEN DISMISSED
6 BY ME, THAT IS THE CHARGE OF ACCESSORY AFTER THE FACT.
7 AND I REMIND YOU AGAIN NOW AS I TOLD YOU DURING THE COURSE
8 OF THE TRIAL THAT THAT MEANS ABSOLUTELY NOTHING WHATSOEVER
9 IN REGARD TO THESE OTHER CHARGES.

10 YOU DON'T REACH ANY CONCLUSION OR DRAW ANY
11 INFERENCE WHATSOEVER REGARDING THE OTHER CHARGES BY VIRTUE
12 OF THE FACT THAT I HAVE BY OPERATION OF LAW DISMISSED ONE
13 OF THESE.

14 COUNT THREE OF THE INDICTMENT CHARGES MISPRISON
15 OF A FELONY AND THAT COUNT OF THE INDICTMENT ALLEGES OR
16 CHARGES MR. TRAVIS SINGLETON WHO IS THIRD FROM THE END AND
17 LAMONT WITHERSPOON WHO SITS ON THAT END DID IN LEE COUNTY
18 ON OR ABOUT NOVEMBER THE 14TH, 1999, WITHHOLD INFORMATION
19 FROM SUMTER COUNTY SHERIFF'S OFFICE AND OR THE LEE COUNTY
20 SHERIFF'S OFFICE, LAW ENFORCEMENT AGENCIES, CONCERNING
21 THEIR KNOWLEDGE OF THE KILLING OF HENRY SCOTT, THUS
22 ENGAGING IN CRIMINAL NEGLECT.

23 I REMIND YOU AGAIN, LADIES AND GENTLEMEN, AS I
24 DID BEFORE THIS TRIAL BEGAN THAT THE INDICTMENT ITSELF IS
25 NOT EVIDENCE OR PROOF OF THE CHARGES IT CONTAINS. IT'S

1 JUST A PIECE OF PAPER THAT HAS THE CHARGES WRITTEN DOWN ON
2 IT SO THAT YOU OR I OR ANYONE ELSE WHO READS IT WILL KNOW
3 WHAT THIS CASE IS ALL ABOUT AND YOU WILL UNDERSTAND WHAT
4 THESE CHARGES ARE.

5 TO THE CHARGES CONTAINED IN THE INDICTMENT, MR.
6 EVANS, MR. TAYLOR, MR. SINGLETON AND MR. WITHERSPOON HAVE
7 ENTERED PLEAS OF NOT GUILTY. NOW, THE LEGAL EFFECT OF A
8 PLEA OF NOT GUILTY BY A DEFENDANT IN A CRIMINAL CASE IS TO
9 PLACE THE BURDEN OF PROOF ON THE STATE TO PROVE BY
10 EVIDENCE THE GUILT OF THE DEFENDANTS BEYOND A REASONABLE
11 DOUBT BEFORE YOU CAN CONVICT THEM AND FIND THEM GUILTY.

12 THE DEFENDANTS ARE PRESUMED IN LAW INNOCENT OF
13 THE CHARGES CONTAINED IN THE INDICTMENT. IT IS A
14 FUNDAMENTAL RULE OF OUR LAW OF EVIDENCE THAT THE
15 DEFENDANT, REGARDLESS OF THE NATURE OF THE CHARGE OR THE
16 SERIOUSNESS OVER THE CHARGES AGAINST HIM WILL ALWAYS BE
17 PRESUMED INNOCENT OF THE CHARGES CONTAINED IN THE
18 INDICTMENT UNLESS AND UNTIL HIS GUILT HAS BEEN PROVEN,
19 PROVEN BY EVIDENCE THAT SATISFIES YOU OF THAT GUILT BEYOND
20 A REASONABLE DOUBT.

21 NOW, THIS PRESUMPTION OF INNOCENCE IS NOT A MERE
22 LEGAL THEORY. SIT NOT A LENGTHY EMPTY LEGAL PHRASE. THE
23 PRESUMPTION OF INNOCENCE HAS BEEN LIKENED TO A ROBE OF
24 RIGHTEOUSNESS WHICH IS PLACED ABOUT THE SHOULDERS OF THE
25 DEFENDANT AND IT ASSIGNS TO THAT DEFENDANT THE CLASS KNOWN

1 AS THE INNOCENT.

2 AND THAT PRESUMPTIVE ROBE OF RIGHTEOUSNESS
3 REMAINS ABOUT THE SHOULDERS OF THE DEFENDANT UNLESS AND
4 UNTIL IT HAS BEEN STRIPPED FROM HIS PERSON BY EVIDENCE
5 THAT SATISFIES YOU THE JURY OF HIS GUILT BEYOND A
6 REASONABLE DOUBT.

7 THE PRESUMPTION OF INNOCENCE ACCOMPANIES A
8 DEFENDANT FROM THE TIME OF HIS ARREST. IT FOLLOWS HIM
9 THROUGHOUT HIS APPEARANCE IN THIS COURTROOM AND THROUGHOUT
10 THE TRIAL. INDEED IT EVEN CONTINUES TO EXIST TO HIS
11 BENEFIT AS YOU GO INTO THE JURY ROOM TO DELIBERATE AND
12 REACH A VERDICT IN THIS CASE.

13 THE PRESUMPTION OF INNOCENCE CONTINUES IN
14 EXISTENCE UNTIL YOU THE JURY REACH THE CONCLUSION THAT HIS
15 GUILT HAS BEEN PROVEN BEYOND A REASONABLE DOUBT. SO THAT
16 IS THE BURDEN THEN ON THE STATE TO PROVE GUILT BEYOND A
17 REASONABLE DOUBT.

18 SOME OF YOU TOLD ME THAT YOU HAD SERVED AS
19 JURORS IN OTHER CASES BEFORE AND YOU MAY HAVE SERVED AS
20 JURORS IN CIVIL CASES. AND IN CIVIL CASES YOU ARE ONLY
21 TOLD THAT IT IS NECESSARY TO PROVE THAT A FACT IS MORE
22 LIKELY TRUE THAN NOT TRUE IN ORDER TO FOR THE SIDE THAT
23 HAS THE BURDEN TO PREVAIL.

24 BUT IN CRIMINAL CASES, THE STATE'S PROOF HAS TO
25 BE MORE POWERFUL THAN THAT. HERE IT HAS TO BE BEYOND A

1 REASONABLE DOUBT. AND SO WHAT THEN DO WE MEAN BY BEYOND A
2 REASONABLE DOUBT? PROOF BEYOND A REASONABLE DOUBT IS
3 PROOF THAT LEAVES YOU FIRMLY CONVINCED OF THE DEFENDANT'S
4 GUILT.

5 NOW LADIES AND GENTLEMEN, THERE ARE VERY FEW
6 THINGS THAT YOU AND I KNOW IN THIS WORLD WITH ABSOLUTE
7 CERTAINTY. AND IN CRIMINAL CASES THE LAW DOES NOT REQUIRE
8 PROOF THAT OVERCOMES EVERY POSSIBLE DOUBT.

9 AND SO IF BASED UPON YOUR CONSIDERATION OF THE
10 EVIDENCE YOU ARE FIRMLY CONVINCED THAT A DEFENDANT IS
11 GUILTY OF THE CRIME CHARGED, YOU MUST FIND HIM GUILTY.

12 IF ON THE OTHER HAND YOU THINK THERE IS A REAL
13 POSSIBILITY THAT HE IS NOT GUILTY, YOU MUST GIVE HIM THE
14 BENEFIT OF THE DOUBT AND FIND HIM NOT GUILTY. NOW
15 REASONABLE DOUBT MIGHT ARISE FROM THE EVIDENCE THAT HAS
16 BEEN PRESENTED IN THE CASE OR IT MIGHT ARISE FROM THE LACK
17 OF EVIDENCE IN THE CASE.

18 BUT YOU LADIES AND GENTLEMEN HAVE TO DECIDE
19 WHETHER OR NOT REASONABLE DOUBT EXISTS AS TO THE GUILT OF
20 THE DEFENDANT IN THIS CASE. I TELL YOU THAT EACH
21 DEFENDANT IS ENTITLED TO EVERY REASONABLE DOUBT WHICH
22 ARISES IN A CASE.

23 AND SO IF ON ANY ISSUE OF FACT WHICH IS
24 NECESSARY OR ESSENTIAL TO A CONVICTION AND A VERDICT OF
25 GUILTY YOU HAVE A REASONABLE DOUBT AS TO HOW THAT ISSUE

1 SHOULD BE RESOLVED, IT IS YOUR DUTY TO RESOLVE THAT
2 REASONABLE DOUBT IN FAVOR OF THE DEFENDANT.

3 A DEFENDANT, LADIES AND GENTLEMEN, IS NEVER
4 REQUIRED TO PROVE HIS INNOCENCE, BUT THE STATE IS REQUIRED
5 IN LAW TO PROVE EVERY ESSENTIAL ELEMENT OF THE OFFENSE
6 CHARGED AGAINST HIM AND MUST SATISFY YOU OF HIS GUILT
7 BEYOND A REASONABLE DOUBT BEFORE YOU CAN CONVICT HIM AND
8 FIND HIM GUILTY.

9 AND SO IF THEN I INSTRUCT YOU NOW AND I
10 EMPHASIZE THE FACT THAT A DEFENDANT DID NOT TESTIFY IN HIS
11 OWN BEHALF IS NOT A FACTOR TO BE CONSIDERED BY YOU IN YOUR
12 CONSIDERATION AND YOUR DELIBERATION ON THE QUESTION OF HIS
13 GUILT OR INNOCENCE.

14 IT MUST NOT BE CONSIDERED BY YOU IN ANY MANNER
15 WHATSOEVER AGAINST A DEFENDANT OR MITIGATE AGAINST HIM IN
16 ANY RESPECT WHATSOEVER BECAUSE A DEFENDANT HAS A
17 CONSTITUTIONAL RIGHT TO REMAIN SILENT, AND IF HE CHOOSES
18 TO ASSERT THAT CONSTITUTIONAL RIGHT, THAT FACT CANNOT AND
19 MUST NOT BE HELD AGAINST HIM.

20 AND SO UNDER YOUR OATH THEN YOU ARE TO REACH NO
21 INFERENCE, DRAW NO CONCLUSION WHATSOEVER FROM THE FACT
22 THAT A DEFENDANT IN THIS CASE DID NOT HIMSELF TESTIFY.
23 THE FACT THAT THIS DEFENDANT DID NOT TESTIFY SHOULD NOT
24 EVEN BE DISCUSSED BY YOU IN THE JURY ROOM BECAUSE THE
25 BURDEN IS AS I HAVE TOLD YOU ON THE STATE.

1 THERE IS NO BURDEN UPON A DEFENDANT TO PROVE
2 INNOCENCE. THE BURDEN OF PROOF REMAINS ON THE STATE TO
3 PROVE GUILT BEYOND A REASONABLE DOUBT. AND THE FACT THAT
4 A DEFENDANT DID NOT TESTIFY IS NOT A FACTOR TO BE
5 CONSIDERED BY YOU IN DETERMINING THE GUILT OR THE
6 INNOCENCE OF THE DEFENDANT.

7 SO LADIES AND GENTLEMEN, IF THEN UPON THE WHOLE
8 CASE YOU HAVE GOT A REASONABLE DOUBT AS TO THE GUILT OR
9 THE INNOCENCE OF THE DEFENDANT IN THIS CASE, HE IS
10 ENTITLED TO THAT REASONABLE DOUBT AND WOULD BE ENTITLED TO
11 AN ACQUITTAL AND A VERDICT OF NOT GUILTY.

12 BUT ON THE OTHER HAND, IF UPON THE WHOLE CASE
13 YOU FIND THAT THE STATE HAS PROVEN BY EVIDENCE THAT
14 SATISFIES YOU THE JURY OF THE GUILT OF THE DEFENDANT
15 BEYOND A REASONABLE DOUBT, THEN IN SUCH CIRCUMSTANCES IT
16 IS EQUALLY YOUR DUTY TO CONVICT THE DEFENDANT AND TO FIND
17 HIM GUILTY -- DEFENDANTS, EXCUSE ME.

18 NOW LADIES AND GENTLEMEN, DURING THE TRIAL EACH
19 OF US YOU AND I HAVE CERTAIN DUTIES TO PERFORM. AS THE
20 TRIAL JUDGE IT'S MY JOB TO PRESIDE OVER THE TRIAL OF THIS
21 CASE. AND I ALSO HAVE THE DUTY TO RULE UPON OR PASS UPON
22 THE ADMISSIBILITY OF THE EVIDENCE WHICH HAS BEEN OFFERED
23 DURING THE COURSE OF THIS TRIAL.

24 AND YOU'RE TO CONSIDER ONLY THE COMPETENT
25 EVIDENCE THAT HAS BEEN INTRODUCED BEFORE YOU AND TO

1 DISREGARD AND REMOVE FROM YOUR MIND ANY TESTIMONY OR
2 ANYTHING THAT I HAVE ORDERED STRICKEN FROM THE RECORD OF
3 THIS CASE DURING THE TRIAL.

4 THAT MEANS YOU ARE TO CONSIDER ONLY THE
5 TESTIMONY WHICH HAS BEEN OFFERED FROM THIS WITNESS STAND
6 RIGHT HERE TOGETHER WITH THE EXHIBITS, THE ITEMS, THE
7 PHOTOGRAPHS AND THOSE TYPES OF THINGS THAT HAVE BEEN
8 ENTERED INTO THE RECORD AS EVIDENCE.

9 I HAVE THE ADDITIONAL DUTY NOW TO CHARGE YOU AS
10 TO THE APPLICABLE LAW OF THE CASE. AS THE PRESIDING JUDGE
11 I AM MADE THE SOLE JUDGE OF THE LAW OF THE CASE AND IT IS
12 YOUR DUTY AS JURORS TO ACCEPT THE LAW PRECISELY AS I NOW
13 STATE IT TO YOU.

14 YOU MAY HAVE BROUGHT WITH YOU INTO YOUR SERVICE
15 THIS WEEK AS JURORS SOME IDEAS ABOUT WHAT YOU THINK THE
16 LAW IS FROM YOUR STUDY OR WATCHING THE T.V., PERSONAL
17 EXPERIENCES. YOU MAY HAVE BROUGHT WITH YOU INTO YOUR
18 SERVICE AS JURORS THIS WEEK SOME PREFERENCES, SOME WANTS
19 THAT YOU WOULD LIKE FOR THE LAW TO BE.

20 WELL, I TELL YOU NOW, LADIES AND GENTLEMEN, THAT
21 IF YOUR PRECONCEIVED IDEAS ABOUT THE LAW OR IF YOUR
22 PREFERENCES ABOUT THE LAW DISAGREE WITH WHAT I AM TELLING
23 YOU NOW THE LAW ACTUALLY IS, UNDER YOUR OATH YOU ARE BOUND
24 TO FORGET YOUR IDEAS ABOUT THE LAW AND WHAT YOU THINK THE
25 LAW IS OR WHAT YOU WOULD LIKE FOR THE LAW TO BE BECAUSE

1 YOU ARE OBLIGATED UNDER THAT OATH TO ACCEPT THE LAW
2 PRECISELY AS I NOW STATE IT TO YOU.

3 NOW, WHILE I'M THE JUDGE OF THE LAW, LADIES AND
4 GENTLEMEN, YOU ARE THE SOLE AND EXCLUSIVE JUDGE OF THE
5 FACTS. OUR CONSTITUTION HAS DECLARED THAT A TRIAL JUDGE
6 CAN'T COMMENT ON THE FACTS OF THE CASE. I CAN'T MAKE ANY
7 STATEMENT TO YOU ABOUT THE FACTS IN A CASE.

8 I CAN'T GIVE YOU ANY HINT THAT HOW I MIGHT FEEL
9 ABOUT THE FACTS IN THIS CASE OR ANY OPINION THAT I MIGHT
10 HAVE. AND SINCE YOU ARE THE SOLE JUDGE OF THE FACTS, YOU
11 ARE NOT TO GATHER FROM ANYTHING THAT I HAVE SAID DURING
12 THE COURSE OF THIS TRIAL OR ANYTHING THAT I SAY TO YOU NOW
13 THAT I HAVE AN OPINION ABOUT THE FACTS OF THE CASE.

14 I TELL YOU LADIES AND GENTLEMEN THE LAW DOES NOT
15 PERMIT ME TO HAVE AN OPINION ABOUT THE FACTS. THAT IS
16 SOLELY A MATTER FOR YOU TO DETERMINE. AND SO AS JURORS
17 THEN IT BECOMES YOUR DUTY TO DECIDE AS I HAVE TOLD YOU THE
18 EFFECT, THE VALUE, THE WEIGHT AND THE TRUTH OF THE
19 EVIDENCE WHICH HAS BEEN PRESENTED DURING THE TRIAL.

20 NOW, AS YOU DETERMINE WHAT THE FACTS OF THE CASE
21 ARE, YOU MUST NECESSARILY PASS UPON THE CREDIBILITY OR THE
22 BELIEVABILITY OF THE WITNESSES WHO HAVE TESTIFIED AND YOU
23 HAVE TO DECIDE THE VALUE AND THE WEIGHT THAT YOU WILL GIVE
24 TO THEIR TESTIMONY.

25 AS YOU MAKE THIS DECISION, THERE ARE A LOT OF

1 THINGS THAT YOU MAY AND THAT YOU SHOULD TAKE INTO
2 ACCOUNT. FOR EXAMPLE, YOU CAN TAKE INTO ACCOUNT THE
3 APPEARANCE, THE MANNER OF THE WITNESS AS HE OR SHE
4 TESTIFIED HERE FROM THE WITNESS STAND. WE SOMETIMES CALL
5 THAT THE Demeanor OF THE WITNESS.

6 WAS A WITNESS FORTHRIGHT OR WAS A WITNESS
7 HESITANT? WAS A WITNESS'S TESTIMONY CONSISTENT OR DID IT
8 CONTAIN DISCREPANCIES? WHAT WAS THE ABILITY OF THAT
9 WITNESS TO KNOW THE THINGS THAT HE OR SHE WAS TELLING YOU
10 ABOUT?

11 DID THE WITNESS HAVE A CAUSE OR A REASON TO BE
12 BIASED OR PREJUDICED IN FAVOR OF HIS OR HER TESTIMONY? IN
13 OTHER WORDS, DID THE WITNESS HAVE AN INTEREST TO BE SERVED
14 BY THAT TESTIMONY? WAS THE TESTIMONY OF A WITNESS MADE
15 STRONGER BY OTHER EVIDENCE AND TESTIMONY IN THE CASE OR
16 WAS IT MADE WEAKER BY OTHER EVIDENCE AND TESTIMONY IN THE
17 CASE?

18 YOU HAVE HEARD THE TESTIMONY OF WITNESSES IN
19 THIS CASE WHO HAVE BEEN QUALIFIED AS EXPERTS IN CERTAIN
20 FIELDS. UNDER OUR LAW, THE TESTIMONY OF WITNESSES WHO
21 HAVE SPECIAL KNOWLEDGE OR SKILL OR EXPERIENCE OR TRAINING
22 IN CERTAIN FIELDS ARE ALLOWED TO BE GIVEN TO YOU AND FOR
23 THEM TO GIVE OPINIONS BASED ON THOSE MATTERS IN WHICH THEY
24 ARE SKILLED OR TRAINED OR HAVE SOME EXPERIENCE.

25 NOW, AS YOU DETERMINE THE WEIGHT THAT YOU WILL

1 GIVE TO EXPERT OPINION TESTIMONY, YOU SHOULD CONSIDER THE
2 QUALIFICATIONS AND THE CREDIBILITY OF THAT EXPERT AND THE
3 REASONS GIVEN FOR HIS OR HER TESTIMONY. IN OTHER WORDS,
4 YOU ARE NOT BOUND BY EXPERT OPINION TESTIMONY.

5 YOU ARE TO GIVE IT THE WEIGHT THAT YOU THINK IT
6 IS ENTITLED TO RECEIVE. THERE HAS ALSO BEEN ADMITTED INTO
7 THE RECORD OF THIS CASE EVIDENCE OF PRIOR CRIMINAL RECORDS
8 OF A WITNESS OR WITNESSES WHO HAVE TESTIFIED. THAT
9 EVIDENCE WAS ADMITTED FOR A LIMITED PURPOSE AND YOU MAY
10 CONSIDER IT ONLY FOR THAT LIMITED PURPOSE.

11 THAT EVIDENCE WAS ADMITTED ONLY FOR THE PURPOSE
12 OF HELPING YOU TO EVALUATE THE CREDIBILITY OR THE
13 BELIEVABILITY OF THE TESTIMONY OFFERED BY THAT WITNESS.
14 AND SO YOU CAN GIVE THE EVIDENCE ON A CRIMINAL RECORD OF A
15 WITNESS THE WEIGHT AND THE VALUE IF ANY THAT YOU THINK IT
16 SHOULD RECEIVE ON THE SOLE ISSUE OF THE CREDIBILITY OR THE
17 BELIEVABILITY OF TESTIMONY OFFERED BY THAT WITNESS.

18 LADIES AND GENTLEMEN, AS JURORS YOU HAVE GOT THE
19 RIGHT TO BELIEVE A SMALL PORTION OF THE TESTIMONY OF A
20 SINGLE WITNESS AND TO DISBELIEVE THE LARGER PORTION OF THE
21 TESTIMONY OF THAT SAME WITNESS OR THE OTHER WAY AROUND OR
22 YOU CAN BELIEVE EVERYTHING THAT A WITNESS TELLS YOU OR
23 NONE OF WHAT A WITNESS TELLS YOU.

24 YOU CAN BELIEVE ONE WITNESS OVER SEVERAL OR
25 SEVERAL OVER ONE. BUT YOU DON'T EXERCISE THESE

1 CONSIDERATIONS ARBITRARILY, LADIES AND GENTLEMEN. THERE
2 HAS GOT TO BE SOME GOOD REASON IN THE RECORD FOR YOU TO DO
3 THAT BECAUSE WHAT THE LAW REQUIRES OF YOU, LADIES AND
4 GENTLEMEN, IS THAT YOU EXERCISE YOUR COMMON SENSE, YOUR
5 MENTAL PROCESS AND YOU DETERMINE WHAT YOU CONSIDER TO BE
6 TRUE BY USING YOUR SENSE OF LOGIC AND REASON AND YOUR
7 EXPERIENCES IN LIFE.

8 YOU APPLY THOSE ABILITIES THAT EACH OF YOU HAS
9 AND THAT EACH OF YOU BRINGS FROM YOUR VARIOUS BACKGROUND
10 AND YOUR VARYING WALKS OF LIFE TO BARE ON WHAT YOU HAVE
11 HEARD IN THIS COURTROOM AND YOU APPLY THOSE ABILITIES TO
12 WHAT YOU HAVE HEARD.

13 AND WHEN YOU DO THAT, YOU WILL DETERMINE THE
14 TRUTH OF THIS CASE, AND ONCE YOU HAVE DETERMINED THE TRUTH
15 OF THIS CASE, YOU WILL TAKE THE TRUTH THAT YOU FIND AND
16 APPLY IT TO THE LAW THAT I NOW GIVE YOU AND ARRIVE AT A
17 VERDICT THAT SPEAKS THE TRUTH OF THIS CASE.

18 NOW LADIES AND GENTLEMEN, I WANT TO INSTRUCT YOU
19 SPECIFICALLY ON THE LAW AS IT APPLIES TO THE CHARGES WHICH
20 ARE CONTAINED IN THE INDICTMENT. AND SO I AM GOING TO
21 CHARGE YOU FIRST ON THE LAW AS IT APPLIES TO THE CHARGE OF
22 MURDER.

23 I WILL TELL YOU LADIES AND GENTLEMEN THAT THERE
24 IS EMBRACED WITHIN THE CHARGE OF MURDER IN THIS INDICTMENT
25 WHAT THE LAW CALLS A LESSER INCLUDED CHARGE OF VOLUNTARY

1 MANSLAUGHTER.

2 THE INDICTMENT DOES NOT USE THE WORD VOLUNTARY
3 MANSLAUGHTER. IT IS NOT CONTAINED IN THE INDICTMENT
4 ITSELF, BUT BY OPERATION OF LAW, THE GREATER CHARGE OF
5 MURDER CONTAINS A LESSER CHARGE OF VOLUNTARY
6 MANSLAUGHTER.

7 SO I AM GOING TO DEFINE FOR YOU AND EXPLAIN TO
8 YOU FIRST OF ALL THE CRIME OF MURDER AS IT IS DEFINED
9 UNDER THE LAW AND THEN I AM GOING TO EXPLAIN AND DEFINE
10 FOR YOU THE CRIME OF VOLUNTARY MANSLAUGHTER AS THE LAW
11 DEFINES IT. I WILL BEGIN WITH THE CRIME OF MURDER.

12 MURDER IS DESCRIBED BY THE LAW AS THE KILLING OF
13 ANY PERSON WITH MALICE AFORETHOUGHT EITHER EXPRESS OR
14 IMPLIED. NOW, IN ORDER FOR THE STATE TO PROVE A DEFENDANT
15 GUILTY OF MURDER, IT MUST BE PROVEN BEYOND A REASONABLE
16 DOUBT THAT A DEFENDANT DID KILL A PERSON AND THAT THE
17 KILLING WAS DONE WITH MALICE AFORETHOUGHT.

18 NOW I TELL YOU LADIES AND GENTLEMEN, THE STATE
19 IS NOT REQUIRED TO PROVE ANY MOTIVE FOR THE KILLING, BUT
20 IT IS REQUIRED TO PROVE MALICE. AND SO WHAT DO WE MEAN BY
21 MALICE?

22 MALICE IS THE INTENTIONAL DOING OF A WRONGFUL
23 ACT WITHOUT JUST CAUSE OR EXCUSE AND WITH AN INTENT TO
24 INFLICT INJURY. MALICE AFORETHOUGHT IS THE DELIBERATE AND
25 WELL FORMED PURPOSE TO DO THE UNLAWFUL ACT.

1 AFORETHOUGHT MEANS THAT THE INTENTION TO DO THE
2 UNLAWFUL ACT WAS CONCEIVED OR PLANNED SOMETIME BEFORE THE
3 ACTUAL COMMISSION OF THE UNLAWFUL ACT, BUT THE MALICE NEED
4 NOT EXIST FOR ANY PARTICULAR LENGTH OF TIME PRIOR TO THE
5 ACT OR BEFORE THE ACT.

6 MALICE IS A WORD THAT SUGGESTS A WICKEDNESS OR A
7 HATRED OR A DETERMINATION TO DO WHAT ONE KNOWS TO BE WRONG
8 WITHOUT JUST CAUSE OR EXCUSE OR LEGAL PROVOCATION.

9 MALICE NEED NOT BE IN THE MIND OF THE ONE DOING
10 THE ACT FOR ANY PARTICULAR LENGTH OF TIME BEFORE THE ACT
11 OF KILLING IN ORDER TO RENDER THE KILLING MURDER. IF IT
12 IS PRESENT IN THE MIND OF THE ONE DOING THE KILLING ANY
13 LENGTH OF TIME BEFORE THE ACT, THEN ITS PRESENCE WOULD BE
14 SUFFICIENT TO RENDER THE KILLING MURDER.

15 MALICE MAY BE EXPRESS MALICE OR IT MAY BE
16 INFERRED. MALICE IS SAID TO BE EXPRESS MALICE WHERE THERE
17 IS SHOWN A VIOLENT, DELIBERATE INTENTION TO UNLAWFULLY
18 TAKE AWAY THE LIFE OF ANOTHER HUMAN BEING. MALICE MAY BE
19 INFERRED WHERE NO EXCUSE OR LEGAL PROVOCATION FOR THE
20 KILLING APPEARS AND WHEN CIRCUMSTANCES ATTENDING A KILLING
21 SHOW AN ABANDONED HEART OR A MALIGNANT HEART, A HEART
22 FATALLY BENT UPON MISCHIEF.

23 THE LAW SAYS THAT IF ONE INTENTIONALLY KILLS
24 ANOTHER WITH A DEADLY WEAPON, THE INFERENCE OF MALICE MAY
25 ARISE. NOW, A DEADLY WEAPON IS ANY OBJECT WHICH

1 REASONABLY COULD BE USED TO CAUSE BODILY HARM. MALICE MAY
2 BE ALSO INFERRED FROM THE USE OF A DEADLY WEAPON.

3 YOU AS A JURY ARE PERMITTED TO INFER MALICE FROM
4 THE CONDUCT OF A DEFENDANT IN THE USE OR HANDLING OF A
5 DEADLY WEAPON IF SUCH CONDUCT RESULTS DIRECTLY IN THE
6 DEATH OF ANOTHER AND IF SUCH CONDUCT IS SO INEXCUSABLE, SO
7 AGGRAVATED AND SO GROSSLY RECKLESS AS TO SHOW AN ACTUAL
8 INTENTIONAL DISREGARD OF CONSEQUENCES TO HUMAN LIFE, A
9 CONDUCT SUFFICIENT TO SHOW A DELIBERATE, INTENTIONAL
10 DESIGN TO USE OR HANDLE A DEADLY WEAPON SO AS TO ENDANGER
11 THE LIFE OF ANOTHER OR OF OTHERS WITHOUT JUST CAUSE OR
12 EXCUSE IS SUFFICIENT TO RAISE AN INFERENCE OF MALICE.

13 AND SO IF FACTS ARE PROVEN BEYOND A REASONABLE
14 DOUBT SUFFICIENT TO RAISE AN INFERENCE OF MALICE FROM THE
15 USE OF A DEADLY WEAPON TO YOUR SATISFACTION, THIS
16 INFERENCE WOULD SIMPLY BE AN EVIDENTIARY FACT TO BE TAKEN
17 INTO CONSIDERATION BY YOU ALONG WITH ALL OF THE OTHER
18 EVIDENCE IN THE CASE BEARING ON THE ISSUE OF MALICE AND
19 YOU CAN GIVE IT SUCH WEIGHT AS YOU DETERMINE IT SHOULD
20 RECEIVE.

21 I TELL YOU THAT THE DEFENDANT IS NOT REQUIRED TO
22 PROVE THE ABSENCE OF MALICE. THE STATE IS REQUIRED TO
23 PROVE THE PRESENCE OF MALICE BEYOND A REASONABLE DOUBT.
24 NOW LADIES AND GENTLEMEN, THAT IS THE LAW OF MURDER.

25 NOW I DEFINE FOR YOU THE LAW OF VOLUNTARY