

VOL. I of II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Greenville County

G. Edward Welmaker, Circuit Court Judge

RECEIVED

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S.C. Supreme Court

ZACHARY FOWLER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000489

APPENDIX

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IN THE COURT OF GENERAL SESSIONS

COUNTY OF GREENVILLE

THE STATE,

VERSUS

ZACHARY M. FOWLER,

DEFENDANT.

07-GS-23-245 THROUGH 249
TRANSCRIPT OF RECORD

VOLUME 1 - AUGUST 13, 2007

AUGUST 13-15, 2007
GREENVILLE, SOUTH CAROLINA

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* FOR PURPOSES OF JACKSON v. DENNO ONLY

MATTERS AND MOTIONS

1 **THE COURT:** ALL RIGHT. WE ARE ON THE RECORD NOW IN THE
2 STATE VERSUS ZACHARY FOWLER. AND ANY MOTIONS BY THE STATE BEFORE
3 WE BEGIN THE JURY SELECTION?

4 **MR. MOYER:** I DON'T HAVE ANY MOTIONS, YOUR HONOR. I THINK
5 I WILL HAVE SOME RESPONSES TO THE REQUESTED VOIR DIRE. AND I
6 THINK THERE MAY BE -- I'M ANTICIPATING A JACKSON v. DENNO.

7 **THE COURT:** OKAY.

8 **MR. MOYER:** WE'RE PREPARED TO DO THAT.

9 **THE COURT:** YES, SIR.

10 YES, SIR, MR. CREECH. GOOD MORNING.

11 **MR. CREECH:** GOOD MORNING, JUDGE. WE HAVE A MOTION TO
12 SUPPRESS THE STATEMENT OR A JACKSON v. DENNO HEARING TO DETERMINE
13 THE VOLUNTARINESS OF THE STATEMENT AND ALSO WE'D ASK FOR A
14 SUPPRESSION MOTION AS TO EVIDENCE THAT WAS SEIZED IN THIS CASE.

15 **THE COURT:** OKAY. ALL RIGHT. WHICH ONE DO YOU WISH TO DO
16 FIRST?

17 **MR. CREECH:** PROBABLY DO THE JACKSON v. DENNO FIRST.

18 **THE COURT:** OKAY.

19 **MR. MOYER:** ARE WE GOING TO DO THAT PRIOR TO DRAWING THE
20 JURY?

21 **THE COURT:** HOW LONG DO Y'ALL THINK IT WILL TAKE?

22 **MR. CREECH:** IT COULD TAKE A WHILE, JUDGE. I THINK IT
23 WOULD BE BEST TO GO AHEAD AND DRAW A JURY AND THEN WE CAN GO
24 AHEAD AND DO THE MOTIONS.

25 **THE COURT:** OKAY. WHAT ABOUT THE VOIR DIRE?

MATTERS AND MOTIONS

1 **MR. MOYER:** DO YOU HAVE HIS REQUESTS?

2 **THE COURT:** YES, SIR.

3 **MR. MOYER:** I WOULD OBJECT TO THEM STARTING OFF WITH NUMBER
4 ONE, THE ISSUE OF RACIAL ETHNICITY. AS I UNDERSTAND *STATE v.*
5 *CASON*, A 1995 CASE, VOIR DIRE QUESTIONS ABOUT RACE ARE ONLY
6 REQUIRED WHEN THERE ARE SPECIAL CIRCUMSTANCES LIKE A DEATH
7 PENALTY CASE OR WHERE RACE IS AN INTEGRAL PART OF THE CASE, NOT
8 JUST WHERE THE VICTIM AND DEFENDANT ARE DIFFERENT RACES. AND SO
9 I KNOW OF NO WAY THAT -- IT'S NOT A RACIALLY MOTIVATED CRIME BY
10 ANY MEANS. SO I KNOW OF NO REASON WHY THERE WOULD BE ANY REASON
11 TO ASK THAT QUESTION.

12 DO YOU WANT ME TO MOVE ON WITH THE OTHERS OR...

13 **THE COURT:** YES, SIR, GO AHEAD.

14 **MR. MOYER:** NUMBER 2, 3, 5, 6, 7, AND 8 AND NUMBER 17, YOUR
15 HONOR, AS I UNDERSTAND THOSE QUESTIONS THEY ARE ALL ENTITLED,
16 ESSENTIALLY, JUST TO GET PERSONAL INFORMATION FROM THE JURORS.

17 NOW, AS I UNDERSTAND *STATE v. SMART*, THE DEFENDANT IS NOT
18 ENTITLED TO DEVELOP A PERSONALITY PROFILE OF THE JURORS. SO IT
19 IS MY CONTENTION THAT IS ALL THOSE QUESTIONS ARE REALLY INTENDED
20 TO DO. THEY ARE NOT TO DETERMINE WHETHER A JUROR CAN BE FAIR AND
21 IMPARTIAL.

22 NUMBERS 4, 15, 16, AND 18 THROUGH 21, YOUR HONOR, I THINK
23 ALL OF THOSE QUESTIONS -- ALL THOSE ISSUES ARE COVERED BY YOUR
24 CHARGE, BY YOUR STANDARD CHARGE. THESE ARE ASKING MORE SPECIFIC
25 -- MORE -- JUST TRYING TO NARROW IT IN A LITTLE MORE. BUT YOUR

MATTERS AND MOTIONS

1 STANDARD CHARGE TO THE JURY SHOULD COVER EVERY ONE OF THOSE
2 ISSUES.

3 AND THEN FINALLY, YOUR HONOR, NUMBERS 9 THROUGH 14, ALL THEY
4 ARE, YOUR HONOR, IS JUST HAND-PICKED LEGAL INSTRUCTIONS THAT ARE
5 GOING TO BE COVERED IN YOUR CHARGE AT THE END OF THIS CASE. THE
6 JURY SWEARS AN OATH THAT IT WILL FOLLOW THE LAW THAT YOUR HONOR
7 WILL INSTRUCT THEM ON, AND THIS HANDPICKING CERTAIN LEGAL
8 INSTRUCTIONS AND ASKING QUESTIONS SORT OF REVOLVING AROUND THOSE
9 WOULD PUT UNDUE EMPHASIS ON CERTAIN AREAS OF THE LAW AND IT WOULD
10 JUST BE UNNECESSARY.

11 THE COURT: YES, SIR, MR. CREECH.

12 MR. CREECH: THANK YOU, JUDGE. I WOULD OBVIOUSLY ASK THAT
13 YOU CHARGE ALL OF THOSE. YOU KNOW, WE'RE TRYING TO GET A FAIR
14 JURY FOR MY CLIENT. WE'RE TRYING TO FIGURE OUT, YOU KNOW, WHAT
15 IF ANY KIND OF BIASES THEY MAY HAVE. A STANDARD QUESTION, DO YOU
16 HAVE A BIAS THAT YOU ARE AWARE OF? I'M GOING TO ASK THE TRIAL
17 COURT TO GO INTO A LITTLE BIT MORE DEPTH WITH THE JURORS SO THAT
18 THEY CAN DETERMINE THAT AND SO WE CAN DETERMINE THAT AS WELL,
19 BASED ON THEIR RESPONSES TO CERTAIN QUESTIONS.

20 SO A LOT OF THESE ARE LEGAL PRINCIPLES, JUDGE, YES. WE'RE
21 ALL OBVIOUSLY FAMILIAR WITH THEM AS OFFICERS OF THE COURT AND THE
22 COURT ITSELF. SOME OF THE JURORS MAY NOT, YOU KNOW, THEY MAY NOT
23 THINK THAT. THEY MAY HAVE A DIFFERENT VIEW, AND THEY MAY THINK,
24 GOSH, YOU KNOW, IF THIS GUY WAS CHARGED, THEN IN MY VIEW THEY'RE
25 GUILTY. YOU KNOW, I THINK WE'RE ENTITLED TO THAT KIND OF THING

MATTERS AND MOTIONS

1 EVEN IF YOU TELL THEM, HEY, THEY MAY HAVE A -- THEY MAY HAVE SOME
2 SORT OF PREDISPOSITION BEFORE THEY EVEN STEP FOOT IN THE JURY BOX
3 AS TO THAT.

4 SO WE WOULD ASK THAT -- WE DON'T THINK THESE ARE OBTRUSIVE
5 IN ANY WAY. IF SOMEBODY THAT'S BEEN IN THE ARMY OR SERVED IN A
6 CONFLICT OR WAR, I MEAN, THEY WOULD ALMOST -- I DON'T THINK THAT
7 WOULD BE TOO INTRUSIVE OF US TO ASK THAT TO KNOW THAT.

8 THE COURT: WHAT DOES THAT HAVE TO DO WITH CASE? I MEAN, I
9 DON'T KNOW ANYTHING ABOUT THE CASE.

10 MR. CREECH: WELL, YOUR HONOR, OBVIOUSLY, THERE IS A
11 KILLING OR A SHOOTING. SOMEONE HAS DIED. AND THE FACT THAT
12 SOMEONE MAY HAVE SERVED IN THE MILITARY BEFORE, YOU KNOW, THEY
13 MAY UNDERSTAND WHY SOMEBODY WOULD DO THAT OR HOW IT COULD HAPPEN
14 MORE SO THAN SOMEBODY THAT DOESN'T. SO WE THINK THAT THAT'S A
15 RELEVANT QUESTION TO ASK. I UNDERSTAND THAT IT'S TOTALLY IN YOUR
16 DISCRETION AS TO WHAT QUESTIONS TO ASK IN VOIR DIRE.

17 THIS IS A VERY SERIOUS CHARGE. MR. FOWLER IS LOOKING AT A
18 VERY LONG PRISON SENTENCE IF HE IS CONVICTED, AND WE JUST SIMPLY
19 WOULD ASK THE COURT TO ASK THESE QUESTIONS TO HELP US INSURE A
20 FAIR JURY.

21 THE COURT: ALL RIGHT, SIR. (PAUSE)

22 ALL RIGHT. I APPRECIATE YOUR ARGUMENTS. YOU KNOW, I WOULD
23 AGREE WITH THE STATE THAT THE QUESTIONS ASKED ARE COVERED BY THE
24 LEGAL PRINCIPLES THAT APPLY TO THE CASE AND THE JURY TAKES AN
25 OATH TO FOLLOW, AND IT'S PRESUMED THEY DO FOLLOW THEM.

MATTERS AND MOTIONS

1 OTHERWISE, THEY WOULD NOT BE ABLE TO SWEAR TO THE OATH IN GOOD
2 CONSCIENCE. AND CERTAINLY, IF WE HAVE ANYBODY WHO CAN'T AGREE TO
3 THAT, THEY WILL -- IT WILL BE REVEALED AT THAT TIME. I GO OVER
4 ALL THESE PRINCIPLES OF LAW REPEATEDLY WITH THE JURY, AND SO I'M
5 NOT GOING TO CHARGE 9 THROUGH 14.

6 AS TO PROPOSED VOIR DIRE OF THE DEFENDANT NUMBER 1, I DON'T
7 KNOW OF ANY REASON WHY RACE IS AN ISSUE IN THE CASE. I HAVEN'T
8 HEARD OF ANY REASON WHY IT IS. AND I DO BELIEVE THE THAT CASON
9 DECISION DOES NOT REQUIRE ME TO ASK ABOUT RACIAL ISSUES OR INJECT
10 THAT ISSUE INTO SOMETHING THAT IS NOT NEEDED RAISED.

11 AND AS FAR AS NUMBER 2, I DON'T KNOW WHY THAT WOULD BE
12 PARTICULARLY RELEVANT TO THE POINT WHERE I WOULD NEED TO ASK IT,
13 SO I'M NOT GOING TO ASK THAT.

14 IS THERE AN OBJECTION TO NUMBER 3?

15 MR. MOYER: YES, SIR.

16 THE COURT: OKAY.

17 MR. MOYER: THE SAME REASON.

18 THE COURT: YEAH. WELL, LIKEWISE, I DON'T BELIEVE IT
19 SHOULD BE ASKED.

20 NUMBER 4, AGAIN, IS ASKING WHETHER THE JURY CAN MAKE AN
21 INDEPENDENT DECISION, AND I WILL CERTAINLY GO OVER WITH THEM
22 THEIR OBLIGATION TO DECIDE THE CASE FOR THEMSELVES INDIVIDUALLY
23 AND THAT THEIR VOTE AS A JUROR IS THEIR VOTE.

24 WHAT ABOUT NUMBER 5, WAS THERE AN OBJECTION TO THAT?

25 MR. MOYER: YES, SIR, 5, 6, 7, AND 8, ALL ARE OBJECTED TO

MATTERS AND MOTIONS

1 FOR THE SAME REASONS AS 2 AND 3.

2 THE COURT: OKAY. . ALL RIGHT. IS THERE EVIDENCE ABOUT DRUG
3 USE? AGAIN, I DON'T KNOW ANYTHING ABOUT THE CASE.

4 MR. CREECH: YES, YOUR HONOR. THE DECEASED HAD COCAINE
5 METABOLITES IN HER SYSTEM AT THE AUTOPSY, AND THERE WAS A -- SO
6 SHE WAS ADDICTED TO COCAINE, CRACK COCAINE. SO THERE IS MULTIPLE
7 EVIDENCE, MULTIPLE WITNESSES THAT THIS WAS AN ATTEMPTED DRUG
8 TRANSACTION THAT WAS ENGAGED IN THIS CASE -- INVOLVED IN THIS
9 CASE.

10 THE COURT: ALL RIGHT. WELL, I'M NOT GOING TO ASK ANY VOIR
11 DIRE QUESTION ABOUT IT.

12 SIX, SEVEN AND EIGHT, AGAIN, I DON'T SEE THE RELEVANCE OF
13 THAT TO THE POINT WHERE IT NEEDS TO BE ASKED.

14 AND AGAIN, 15 THROUGH 21 -- 15 THROUGH 18, I WOULD DECLINE
15 TO ASK THOSE. I WILL ASK 19 AND 20. OF COURSE, I'VE ALREADY
16 ASKED THEM THAT DOWNSTAIRS. AND 21, I'LL GO OVER THAT WITH THEM
17 AS WELL. SO I WILL ASK 19 AND 21.

18 MR. CREECH: JUDGE, WE WOULD SPECIFICALLY REQUEST, YOU
19 KNOW, WHETHER YOU OR A CLOSE FRIEND -- NUMBER 15, AS TO WHETHER
20 YOU EVER SERVED AS A LAW ENFORCEMENT OFFICER?

21 THE COURT: OKAY. I'LL ASK THAT. YEAH.

22 MR. CREECH: AND THEN NUMBER 16, AGAIN, ANY CLOSE FRIENDS
23 OR RELATIVES, EITHER POLICE OR LAW ENFORCEMENT OFFICIALS THAT
24 MIGHT IMPAIR YOUR ABILITY TO BE ABLE TO GIVE EITHER SIDE IN THIS
25 CASE A FAIR TRIAL? I THINK THAT'S A FAIR SUBJECT OF INQUIRY.

MATTERS AND MOTIONS

1 **THE COURT:** WHAT IS THE STATE'S POSITION ON THAT?

2 **MR. MOYER:** I DON'T OPPOSE THAT.

3 **THE COURT:** OKAY. ALL RIGHT.

4 **MR. CREECH:** AND THEN FINALLY WE JUST ASK THAT YOU ASK
5 NUMBER 17. YOU KNOW, SOME PEOPLE - I MEAN, THERE ARE A
6 PROLIFERATION OF ONLINE WEBSITES AND ALL THAT KIND OF STUFF. I
7 MEAN, SOME PEOPLE MAY HAVE AN INTEREST IN THE LAW AND READ AND
8 FORM OPINIONS OF WHAT THEY THINK THE LAW IS. SO WE WOULD ASK
9 THAT YOU ASK THEM ABOUT NUMBER 17. IF ANYBODY EVER WENT TO LAW
10 SCHOOL, FOR INSTANCE, GRADUATED FOR INSTANCE.

11 **THE COURT:** WELL, I'M GOING TO TELL THEM WHAT THE LAW IS
12 THAT APPLIES TO THE CASE, AND THEY'RE BOUND TO FOLLOW THAT LAW
13 WHETHER THEY AGREE WITH IT OR NOT. SO I'M NOT GOING TO ASK THEM
14 THE EXTENT OF THEIR INDEPENDENT FORAYS INTO LEGAL STUDIES.

15 OKAY. ANYTHING ELSE?

16 **MR. MOYER:** NOT REGARDING JURY SELECTION, YOUR HONOR.

17 **THE COURT:** MR. CREECH?

18 **MR. CREECH:** NO, YOUR HONOR.

19 **THE COURT:** ALL RIGHT. DOES THE STATE HAVE A WITNESS LIST?

20 **MR. MOYER:** YES, SIR. I HANDED IT UP TO THE CLERK.

21 **MADAME CLERK:** HERE YOU GO, SIR.

22 **THE COURT:** WE CAN GO AHEAD AND CALL THEM UP THEN.

23 HOW LONG DO Y'ALL EXPECT THE CASE TO TAKE?

24 **MR. MOYER:** THIS IS A HARD ONE FOR ME, JUDGE. I INITIALLY
25 -- I THINK THERE IS A GOOD CHANCE, DEPENDING ON HOW LONG THE

VOIR DIRE

1 MOTIONS GO, THAT I SHOULD BE ABLE TO WRAP MY CASE UP LATE
2 TOMORROW, TOMORROW AFTERNOON. THAT'S MY HOPE.

3 MR. CREECH: I WOULD THINK -- I WOULD TEND TO AGREE WITH
4 THAT, YOUR HONOR.

5 (AT EASE AWAITING JURY PANEL FROM 11:11 TO 11:15 A.M.)

6 (JURY PANEL ENTERS COURTROOM AT 11:15 A.M.)

7 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, GOOD MORNING.
8 WE'RE ABOUT TO BEGIN THE CASE OF THE STATE VERSUS ZACHARY MARQUIS
9 FOWLER.

10 MR. FOWLER, SIR, IF YOU WOULD, JUST STAND UP AND TURN AROUND
11 SO EVERYBODY CAN SEE YOU AND KNOW WHO YOU ARE, SIR. (DEFENDANT
12 COMPLIES) OKAY. THANK YOU.

13 THIS IS A CRIMINAL CASE, AS I MENTIONED TO YOU DOWNSTAIRS.
14 THIS CASE WILL BE IN GENERAL SESSIONS COURT, AND THAT'S THE ONLY
15 COURT WE HAVE GOING THIS WEEK. GENERAL SESSIONS IS WHERE THE
16 CRIMINAL CASES ARE TRIED, AND THIS MATTER IS A CRIMINAL MATTER
17 AND WE'RE GOING TO NOW SELECT A JURY, AND I NEED TO INSURE THAT
18 WE CAN HAVE A JURY THAT CAN BE FAIR BOTH TO THE STATE AND TO MR.
19 FOWLER AND CAN BE IMPARTIAL AND NOT HAVE ANY BIAS OR PREJUDICE
20 ABOUT THIS MATTER WHATSOEVER. SO I'M GOING TO ASK SOME QUESTIONS
21 ALONG THOSE LINES.

22 AGAIN, AS WE DID DOWNSTAIRS, IF YOU HAVE SOME DOUBT ABOUT
23 WHETHER YOU SHOULD RESPOND, PLEASE RESOLVE THAT DOUBT IN FAVOR OF
24 RESPONDING, AND IT IS ESSENTIAL THAT WE HAVE ACCURATE AND
25 TRUTHFUL INFORMATION. SO LISTEN TO THE QUESTIONS VERY CAREFULLY.

VOIR DIRE

1 THERE ARE A NUMBER OF CHARGES IN THIS CASE, AND I'M GOING TO GO
2 OVER CHARGES WITH YOU. BUT BEFORE I DO THAT, LET ME EXPLAIN SOME
3 PRINCIPLES THAT APPLY TO CRIMINAL CASES THAT YOU WILL HAVE TO
4 APPLY AND USE DURING THIS CASE AND IN YOUR DELIBERATIONS.

5 THE FIRST PRINCIPLE IS THAT MR. FOWLER IS PRESUMED INNOCENT
6 OF ANY CHARGE AGAINST HIM. UNDER OUR SYSTEM OF JUSTICE, ANYONE,
7 NO MATTER HOW SERIOUS THE CHARGE MAY BE OR WHAT THE NATURE OF THE
8 CHARGE IS, IS ALWAYS PRESUMED INNOCENT. MR. FOWLER DOESN'T HAVE
9 TO PROVE ANYTHING TO YOU HERE TODAY OR DURING THIS TRIAL. HE
10 DOESN'T HAVE TO EXPLAIN HIMSELF.

11 HE HAS PLED NOT GUILTY TO THESE CHARGES, AND THAT PUTS THE
12 BURDEN OF PROOF ON THE STATE. MR. FOWLER DOESN'T HAVE ANY BURDEN
13 WHATSOEVER. HE DOESN'T HAVE TO PRODUCE EVIDENCE DURING THE TRIAL
14 OR SAY ANYTHING. HE CAN REMAIN SILENT IF HE CHOOSES TO, ALTHOUGH
15 HE CERTAINLY HAS THE RIGHT TO OFFER ANY EVIDENCE. BUT HE ALSO
16 HAS THE ABSOLUTE RIGHT TO REMAIN SILENT. THE STATE HAS THE
17 BURDEN OF PROOF AND MR. FOWLER CAN ONLY BE CONVICTED IF THE JURY
18 UNANIMOUSLY FINDS THE STATE HAS PROVEN EACH AND EVERY ELEMENT OF
19 EACH CRIME BEYOND A REASONABLE DOUBT.

20 NOW I'M GOING TO READ TO YOU SOME LANGUAGE FROM EACH
21 INDICTMENT THAT MR. FOWLER IS CHARGED IN. AN INDICTMENT IS NOT
22 EVIDENCE. IT ISN'T PROOF OF ANYTHING. IT DOESN'T EVEN CREATE A
23 SUSPICION OF GUILT OR ANY KIND OF PRESUMPTION OF GUILT. INSTEAD,
24 ~~AN INDICTMENT IS JUST A PIECE OF PAPER. IT IS THE TICKET, SO TO~~
25 SPEAK, THAT ALLOWS THE STATE TO COME IN THIS COURTROOM DOOR AND

VOIR DIRE.

1 BEGIN THE CASE AGAINST MR. FOWLER. AND IT LETS MR. FOWLER, LIKE
2 ANYONE CHARGED WITH A CRIME, KNOW WHAT THEY ARE CHARGED WITH. SO
3 THESE ALLEGATIONS ARE SIMPLY THAT; THEY ARE ALLEGATIONS AND THEY
4 AREN'T EVIDENCE. I AM GOING TO READ TO YOU THE ALLEGATIONS AT
5 THIS TIME FROM THE INDICTMENTS.

6 THE FIRST INDICTMENT IS CASE NUMBER 07-GS-23-245. IT
7 ALLEGES THAT ZACHARY MARQUIS FOWLER DID IN GREENVILLE COUNTY, ON
8 OR ABOUT THE 7TH DAY OF JUNE 2006, UNLAWFULLY AND WITH MALICE
9 AFORETHOUGHT KILL SUSAN GALLOWAY BY MEANS OF SHOOTING HER AND
10 THAT SUSAN GALLOWAY DIED AS A PROXIMATE RESULT THEREOF. THIS IS
11 IN VIOLATION OF SECTION 16-3-10 OF THE SOUTH CAROLINA CODE OF
12 LAWS.

13 THE SECOND INDICTMENT IS CASE NUMBER 246, AND IT ALLEGES
14 THAT MR. FOWLER IN COUNT ONE DID IN GREENVILLE COUNTY, ON OR
15 ABOUT THE 7TH DAY OF JUNE 2006, WHILE ARMED WITH A DEADLY WEAPON
16 OR WHILE ALLEGING EITHER BY ACTION OR WORDS HE WAS ARMED WHILE
17 USING A REPRESENTATIVE OF A DEADLY WEAPON OR ANY OBJECT WHICH A
18 PERSON PRESENT DURING THE COMMISSION OF THE ROBBERY WOULD
19 REASONABLY BELIEVE TO BE A DEADLY WEAPON TAKE BY MEANS OF FORCE
20 OR INTIMIDATION GOODS OR MONIES DESCRIBED AS CASH FROM THE PERSON
21 OF SUSAN -- OR PRESENCE OF SUSAN GALLOWAY AND GARY POWELL AND OR
22 RONALD ALAN HARRIS. THIS IS IN VIOLATION OF SECTION 16-11-330 OF
23 THE SOUTH CAROLINA CODE OF LAWS.

24 COUNT TWO OF THAT SAME INDICTMENT ALLEGES THAT MR. FOWLER
25 DID IN GREENVILLE COUNTY, ON OR ABOUT THE 7TH DAY OF JUNE 2006,

VOIR DIRE

1 POSSESS OR VISIBLY DISPLAY A FIREARM DURING THE COMMISSION OR
2 ATTEMPTED COMMISSION OF A VIOLENT CRIME, TO WIT, ARMED ROBBERY.

3 THE NEXT INDICTMENT IS CASE NUMBER 247. IT ALLEGES THAT MR.
4 FOWLER DID IN GREENVILLE COUNTY, ON OR ABOUT THE 7TH DAY OF JUNE
5 2006, WITH MALICE AFORETHOUGHT COMMIT AN ASSAULT ON RONALD ALAN
6 HARRIS, AND THE DEFENDANT HAD THE APPARENT PRESENT ABILITY TO
7 COMPLETE THE ACT. THIS IS IN VIOLATION OF THE COMMON LAW OF THE
8 STATE OF SOUTH CAROLINA.

9 CASE NUMBER 248 ALLEGES THAT MR. FOWLER DID IN GREENVILLE
10 COUNTY, ON OR ABOUT THE 7TH DAY OF JUNE 2006, WILLFULLY,
11 UNLAWFULLY AND WITH MALICE AFORETHOUGHT, EITHER EXPRESS OR
12 IMPLIED, COMMIT AN ASSAULT AND BATTERY UPON GARY POWELL. THIS IS
13 IN VIOLATION OF SECTION 16-3-620 OF THE SOUTH CAROLINA CODE OF
14 LAWS.

15 AND FINALLY, IN CASE NUMBER 249, THE INDICTMENT ALLEGES THAT
16 MR. FOWLER DID IN GREENVILLE COUNTY, ON OR ABOUT THE 7TH DAY OF
17 JUNE 2006, WHILE AT AVENUE, GREENVILLE, SOUTH
18 CAROLINA, WILLFULLY AND UNLAWFULLY HAVE IN HIS POSSESSION AND
19 UNDER HIS CONTROL A PISTOL, SAID DEFENDANT BEING UNDER THE AGE OF
20 21. THIS IS IN VIOLATION OF SECTION 16-23-30 OF THE SOUTH
21 CAROLINA CODE OF LAWS.

22 NOW, THOSE ARE THE ALLEGATIONS CONTAINED IN THESE
23 INDICTMENTS. AND AGAIN, THAT'S ALL THEY ARE. THEY AREN'T
24 EVIDENCE OF ANYTHING. THEY AREN'T PROOF OF ANYTHING. THEY ARE
25 SIMPLY THE FORMAL WAY THE STATE IS ABLE TO START THE CASE. AND

VOIR DIRE

1 AGAIN, MR. FOWLER HAS PLED NOT GUILTY TO EACH ONE OF THESE
2 CHARGES. AND IF YOU ARE SELECTED AS A JUROR IN THIS CASE, YOUR
3 JOB WILL BE TO DETERMINE WHETHER THE STATE HAS MET ITS BURDEN OF
4 PROVING EACH ELEMENT OF EACH CRIME BEYOND A REASONABLE DOUBT AND
5 DETERMINE WHETHER THE STATE HAS DONE SO.

6 AGAIN, MR. FOWLER HAS PLED NOT GUILTY. THAT PUTS THE BURDEN
7 OF PROOF ON THE STATE. HE IS PRESUMED INNOCENT AT THIS STAGE AND
8 CAN ONLY BE CONVICTED IF THERE IS PROOF BEYOND A REASONABLE DOUBT
9 AS TO EACH ELEMENT OF EACH CRIME. AND YOU WILL HAVE TO CONSIDER
10 EACH CRIME SEPARATELY.

11 NOW, I NEED TO KNOW IF ANY OF YOU ARE RELATED BY BLOOD OR
12 MARRIAGE TO ZACHARY MARQUIS FOWLER. IF SO, PLEASE STAND.

13 (PAUSE) (NO RESPONSE)

14 IS ANYONE RELATED BY BLOOD OR MARRIAGE TO ANY OF THE VICTIMS
15 IN THIS CASE? THAT WOULD BE SUSAN GALLOWAY, GARY POWELL OR
16 RONALD ALAN HARRIS. (PAUSE) (NO RESPONSE)

17 DOES ANYONE HAVE ANY PERSONAL, SOCIAL OR BUSINESS
18 RELATIONSHIP WITH MR. FOWLER OR MR. HARRIS OR MS. GALLOWAY OR MR.
19 POWELL? IF SO, PLEASE STAND. (PAUSE) (NO RESPONSE)

20 I'M GOING TO READ TO YOU NOW A LIST OF PEOPLE WHO MAY
21 TESTIFY IN THIS CASE. PLEASE LISTEN CAREFULLY TO THESE NAMES
22 BECAUSE I'M GOING TO ASK IF YOU KNOW ANY OF THESE PEOPLE OR ARE
23 RELATED TO THEM. AND THE PEOPLE WHO MAY TESTIFY IN THIS CASE
24 INCLUDE: RONALD HARRIS, GARY MICHAEL POWELL, MATT MOORE, JODY
25 JONES, MARY SHAW, CALVIN COX, JANICE BROWN, CARY CANE, ALMEDA

VOIR DIRE

1 FOWLER, BRIAN SNIPES, DIANA TISDALE, VALENCIA SULLIVAN, TIM
2 MARTIN, MATT MAY, MONTY MIZE -- THAT'S M-I-Z-E -- BEN COTHRAN,
3 JOHN HAMLETT, TIM CONROY -- AND I BELIEVE MR. CONROY IS HERE IN
4 THE COURTROOM -- AND MATT JUSTICE, COLLIS FLAVELL OR FLAVELL --
5 AND I APOLOGIZE IF I MISPRONOUNCED THAT -- BRIAN MILLER, DAR
6 SHAW, RON LENDWAY -- THAT'S L-E-N-D-W-A-Y -- APRIL DEITZ -- D-E-
7 I-T-Z -- JAMES ARMSTRONG, RENE SHERBERT, KARA BENNICK, ISRAEL
8 FLOUNDERS, RENE PRUITT, RACHEL BOWMAN, CRYSTAL ESTES-MILLER, ERIC
9 SHIRLEY, ERIK CHRISTENSEN AND ERIC S. MCGILL.

10 IS ANYONE RELATED BY BLOOD OR MARRIAGE TO ANY OF THOSE
11 PEOPLE I'VE JUST LISTED OR DOES ANYONE HAVE ANY PERSONAL, SOCIAL
12 OR BUSINESS RELATIONSHIP WITH ANY OF THOSE PEOPLE? IF SO, PLEASE
13 STAND. (PAUSE)

14 TELL ME YOUR NAME, SIR.

15 JUROR 113: HENRY ROGERS.

16 THE COURT: MR. ROGERS.

17 JUROR 113: YES. JANICE BROWN, I WORK WITH HER. I'M NOT
18 CERTAIN OF JANICE'S LAST NAME, BUT I DO BELIEVE I SAW HER COMING
19 IN.

20 THE COURT: OKAY. THAT'S FINE. THANK YOU, SIR. DO YOU
21 FEEL THAT GIVEN YOUR WORK RELATIONSHIP WITH HER IF YOU ARE SEATED
22 AS A JUROR YOU WOULD BE ABLE TO DECIDE THIS CASE FAIRLY AND
23 IMPARTIALLY? AND LET ME EXPAND ON THAT A LITTLE BIT. IF YOU ARE
24 SEATED AS A JUROR, SIR, PART OF YOUR JOB WILL BE TO DETERMINE
25 WHETHER THE WITNESSES ARE CREDIBLE, WHETHER THEY ARE BELIEVABLE.

VOIR DIRE

1 AND GIVEN THAT YOU WORK WITH MS. BROWN, IS THAT GOING TO CAUSE
2 YOU ANY PROBLEM WHATSOEVER IN DISCHARGING YOUR OBLIGATION AS A
3 JUROR OR WOULD IT CAUSE YOU TO BE UNDULY PARTIAL TO EITHER THE
4 STATE OR MR. FOWLER?

5 JUROR 113: NO, SIR.

6 THE COURT: YOU COULD DECIDE THIS CASE SOLELY ON THE
7 EVIDENCE AND THE LAW AND PUT ANY RELATIONSHIP THAT YOU HAVE AT
8 WORK WITH MS. BROWN ASIDE?

9 JUROR NUMBER 113: YES, SIR.

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

11 YES, SIR.

12 JUROR NUMBER 23: I WENT TO HIGH SCHOOL WITH MR. CONROY.

13 THE COURT: OKAY. AND, MR. COOTER, WOULD THAT AFFECT YOUR
14 ABILITY TO BE FAIR AND IMPARTIAL, BEARING IN MIND YOU HAVE TO
15 DETERMINE THE CREDIBILITY OF THE WITNESSES?

16 JUROR NUMBER 23: NO, SIR.

17 THE COURT: YOU COULD DECIDE THE CASE SOLELY ON THE
18 EVIDENCE AND THE LAW?

19 JUROR NUMBER 23: YES, SIR.

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

21 I'M GOING TO ASK THE ATTORNEYS WHO ARE INVOLVED IN THIS CASE
22 TO STAND AND INTRODUCE THEMSELVES AND THE PEOPLE WHO ARE AT THE
23 TABLE WITH THEM.

24 YES, SIR, MR. MOYER.

25 MR. MOYER: MY NAME IS MARK MOYER. I'M AN ASSISTANT

VOIR DIRE

1 SOLICITOR REPRESENTING THE STATE. SEATED NEXT TO ME IS MS.
2 MARTHA LYNCH WHO WORKS IN OUR OFFICE AND WILL ALSO BE ASSISTING
3 ME. YOU'VE ALREADY BEEN INTRODUCED TO DETECTIVE TIM CONROY WITH
4 THE GREENVILLE POLICE DEPARTMENT.

5 THE COURT: THANK YOU, SIR.

6 YES, SIR, MR. CREECH.

7 MR. CREECH: THANK YOU, JUDGE.

8 GOOD MORNING. MY NAME IS TOM CREECH. I'M AN ATTORNEY HERE
9 IN GREENVILLE. I REPRESENT ZACHARY FOWLER IN THIS CASE. AND
10 THIS IS MY PARALEGAL LAURIE JENSEN (PHONETIC).

11 THE COURT: ALL RIGHT. THANK YOU, MR. CREECH.

12 IS ANYONE RELATED BY BLOOD OR MARRIAGE TO THE ATTORNEYS OR
13 THE PEOPLE SITTING AT THEIR TABLE? IF SO, PLEASE STAND. (PAUSE)
14 (NO RESPONSE)

15 DOES ANYONE HAVE ANY PERSONAL, SOCIAL OR BUSINESS
16 RELATIONSHIP WITH THE ATTORNEYS OR ANYONE AT THEIR TABLE? IF SO,
17 PLEASE STAND.

18 YES, SIR, MR. COOTER.

19 JUROR NUMBER 23: MR. CREECH AND I ALSO HAVE PRIOR
20 KNOWLEDGE OF EACH OTHER.

21 THE COURT: PRIOR KNOWLEDGE ABOUT WHAT?

22 JUROR NUMBER 23: WE WENT TO HIGH SCHOOL TOGETHER.

23 THE COURT: OH, OKAY. ALL RIGHT.

24 (LAUGHTER IN THE COURTROOM)

25 THE COURT: ALL RIGHT. AND AGAIN, COULD YOU BE FAIR AND

VOIR DIRE

1 IMPARTIAL IN THIS CASE AND BE FAIR TO BOTH THE STATE AND MR.
2 FOWLER?

3 JUROR NUMBER 23: YES, SIR.

4 THE COURT: AND YOU COULD DECIDE THIS CASE SOLELY ON THE
5 EVIDENCE AND THE LAW?

6 JUROR NUMBER 23: YES, SIR.

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

8 DOES ANYONE KNOW ANYTHING ABOUT THIS CASE OTHER THAN WHAT
9 YOU'VE HEARD HERE THIS MORNING? IF SO, PLEASE STAND. (PAUSE)
10 (NO RESPONSE)

11 HAS ANYBODY TALKED WITH ANYONE ABOUT THIS CASE OR HEARD
12 ANYTHING ABOUT THIS CASE BEFORE COMING IN THIS COURTROOM JUST A
13 FEW MOMENTS AGO? IF SO, PLEASE STAND. (PAUSE) (NO RESPONSE)

14 DO ANY OF YOU HAVE ANY RELIGIOUS, MORAL OR PHILOSOPHICAL
15 BELIEFS THAT WOULD AFFECT YOUR ABILITY TO SIT AS A JUROR IN A
16 CRIMINAL CASE AND BE FAIR AND IMPARTIAL TO BOTH THERE STATE AND
17 THE ACCUSED? IF SO, PLEASE STAND. (PAUSE) (NO RESPONSE)

18 HAVE ANY OF YOU OR ANY MEMBER OF YOUR IMMEDIATE FAMILY OR
19 CLOSE PERSONAL FRIENDS SERVED AS A LAW ENFORCEMENT OFFICER OR
20 APPLIED FOR EMPLOYMENT AS A LAW ENFORCEMENT OFFICER OR
21 PROSECUTOR, PRISON GUARD OR PROBATION OFFICER, PAROLE OFFICER OR
22 PRIVATE SECURITY OFFICER OR SECURITY GUARD? IF SO, PLEASE STAND.
23 (PAUSE)

24 ALL RIGHT. WE'RE GOING TO START OVER HERE TO MY LEFT. YES,
25 SIR. TELL ME YOUR NAME.

VOIR DIRE

1 JUROR NUMBER 43: WALT GREGORY.

2 THE COURT: YES, SIR, GO AHEAD.

3 JUROR NUMBER 43: I HAVE A BROTHER WHO IS A SHERIFF'S DEPUTY
4 WITH ANDERSON COUNTY.

5 THE COURT: ALL RIGHT. THANK YOU.

6 MR. CREECH: JUDGE, I COULDN'T GET HIS NAME OR HIS JUROR
7 NUMBER.

8 THE COURT: YES, SIR. TELL US YOUR -- DO YOU KNOW YOUR
9 JUROR NUMBER?

10 JUROR NUMBER 43: FORTY-THREE.

11 THE COURT: MR. GREGORY, YEAH. OKAY. THANK YOU.

12 JUROR NUMBER 48: MY BROTHER WAS A POLICE OFFICER IN
13 GREENVILLE, NORTH CAROLINA.

14 THE COURT: TELL ME YOUR NAME, MA'AM.

15 JUROR NUMBER 48: BETH HEATH. OR MARY HEATH.

16 THE COURT: WHAT WAS YOUR LAST NAME?

17 JUROR NUMBER 48: HEATH.

18 THE COURT: HEATH, YES. AND YOUR BROTHER WORKED FOR WHICH
19 DEPARTMENT?

20 JUROR NUMBER 48: IN -- I BELIEVE IT WAS SNOW HILL --
21 AYDEN, NORTH CAROLINA.

22 THE COURT: OKAY. THANK YOU.

23 YES, MA'AM.

24 ~~JUROR NUMBER 72: ALAINA MAITLAND. MY HUSBAND USED TO BE A~~
25 PROBATION AGENT HERE IN GREENVILLE COUNTY.

VOIR DIRE

1 THE COURT: THANK YOU.

2 JUROR NUMBER 114: I'M SHELBY ROGERS. MY BROTHER-IN-LAW IS
3 A CORRECTIONAL OFFICER AT A CORRECTIONAL FACILITY. MY OTHER
4 BROTHER-IN-LAW WAS A U.S. MARSHALL, AND MY UNCLE IS A POLICEMAN.

5 THE COURT: THANK YOU, YES, MA'AM.

6 JUROR NUMBER 92: MY NAME IS HOLLY NOLLER AND MY BROTHER
7 WAS A POLICE OFFICER IN ST PETERSBURG, FLORIDA, AND HE WAS ALSO A
8 PROSECUTOR AND NOW HE'S WITH THE FLORIDA DEPARTMENT OF LAW
9 ENFORCEMENT DEFENDING POLICE OFFICERS.

10 THE COURT: THANK YOU, MA'AM.

11 JUROR NUMBER 119: I'M FORD SCOTT, JUROR NUMBER 119. I
12 HAVE A BROTHER IN LAW ENFORCEMENT UP IN NORTH CAROLINA.

13 THE COURT: THANK YOU, MR. SCOTT.

14 OKAY. ALL OF YOU WHO JUST RESPONDED TO THAT QUESTION, DO
15 ANY OF YOU BELIEVE BECAUSE OF THE FACT THAT THE FAMILY MEMBER WAS
16 EMPLOYED OR IS EMPLOYED WITH A LAW ENFORCEMENT AGENCY THAT YOU
17 COULD NOT BE FAIR AND IMPARTIAL TO EITHER THE STATE OR MR. FOWLER
18 IN THIS CASE? IF SO, PLEASE STAND. (PAUSE) (NO RESPONSE)

19 HAVE ANY OF YOU HAD ANY INTERACTIONS WITH POLICE OR LAW
20 ENFORCEMENT, WHETHER IT IS POSITIVE OR NEGATIVE, THAT MIGHT KEEP
21 YOU FROM BEING FAIR AND IMPARTIAL TO EITHER THE STATE OR MR.
22 FOWLER IN THIS CASE? AND THAT WOULD INCLUDE ANY INTERACTIONS
23 THAT YOUR FAMILY MEMBERS OR CLOSE PERSONAL FRIENDS MAY HAVE HAD
24 THAT YOU ARE AWARE OF. (PAUSE)

25 OKAY. I'LL TELL YOU WHAT -- WE'RE GOING TO -- I'M GOING TO

VOIR DIRE

1 GET YOU TO COME DOWN HERE AND WE'LL TALK TO YOU A LITTLE BIT IN
2 JUST A SECOND. ALL RIGHT? I'M GOING TO ASK SOME OTHER QUESTIONS
3 THAT MAY REQUIRE US TO HAVE A LITTLE MORE PRIVATE DIALOGUE, SO
4 I'LL GIVE YOU THE OPPORTUNITY TO COME DOWN.

5 HAVE ANY OF YOU OR ANY MEMBER OF YOUR IMMEDIATE FAMILY OR A
6 CLOSE PERSONAL FRIEND EVER BEEN A VICTIM OF OR CHARGED WITH A
7 VIOLENT CRIME? IF SO, PLEASE STAND. AND AGAIN, IF YOU NEED TO
8 RESPOND TO THIS QUESTION, WE CAN DO SO DOWN HERE WITH THE COURT
9 REPORTER AND NOT OUT IN FRONT OF ANYBODY ELSE. SO WHY DON'T WE
10 JUST GO AHEAD AND FORM A LINE HERE AT THE BAR, AND I'LL GET YOU
11 TO COME DOWN. SIR, YOU COME ON DOWN TOO. YOU WANTED TO RESPOND
12 TO THAT EARLIER QUESTION.

13 JUST STOP RIGHT THERE. THANK YOU. YES, MA'AM. (PAUSE)

14 OKAY. YES, MA'AM. COME ON UP.

15 (THE FOLLOWING TAKES PLACE AT THE COURT REPORTER'S STATION
16 OUTSIDE THE HEARING OF THE JURY PANEL)

17 THE COURT: OKAY. MS. KOFFSKEY'S GOT TO BE ABLE TO HEAR
18 WHAT YOU SAY. YES, MA'AM. OKAY. WHAT HAPPENED?

19 JUROR NUMBER 145: ONE OF MY SON'S IN A HIT AND RUN AND IN
20 THE PROCESS A LADY WAS KILLED. AND MY OTHER SON WAS TAKEN IN FOR
21 ATTEMPTED MURDER. THEY DON'T KNOW IF IT'S TRUE OR NOT, BUT
22 SOMEONE CLAIMED THAT HE DID.

23 THE COURT: IT'S STILL PENDING?

24 JUROR NUMBER 145: HE'S STILL IN DETENTION. THE OTHER ONE,
25 IT WAS AN ACCIDENT. IT WASN'T DELIBERATE. IT WAS JUST AN

VOIR DIRE

1 ACCIDENT. HE HAS TO COME BACK SOMETIME NEXT MONTH TO STAND
2 BEFORE THE JUDGE.

3 THE COURT: IS THAT IN GREENVILLE?

4 JUROR NUMBER 145: YES.

5 THE COURT: SO, OKAY. ONE OF YOUR SONS IS CURRENTLY BEING
6 CHARGED AND THE OTHER MAY BE CHARGED -- WAS ALREADY CHARGED.

7 JUROR NUMBER 145: WELL, HE -- HOW CAN I SAY -- HE WAS
8 CHARGED. IT WAS AN ACCIDENT, YOU KNOW, FAR AS THE CAR. THE
9 OTHER ONE, NOTHING HAS COME ABOUT YET. HE IS STILL IN DETENTION.

10 THE COURT: WHAT IS HE CHARGED WITH?

11 JUROR NUMBER 145: THEY SAID ATTEMPTED MURDER. SO...

12 THE COURT: OKAY. WHAT IS HIS NAME?

13 JUROR NUMBER 145: JAMAL BRYANT.

14 THE COURT: BRYANT. OKAY.

15 JUROR NUMBER 145: YES.

16 THE COURT: ALL RIGHT. GIVEN THE FACT YOUR FAMILY HAS HAD
17 THAT RECENT EXPERIENCE WITH LAW ENFORCEMENT AND APPARENTLY THERE
18 IS A PENDING CHARGE AGAINST MR. BRYANT, COULD YOU STILL BE FAIR
19 TO THE STATE AND THE DEFENSE?

20 JUROR NUMBER 145: I'LL BE HONEST. I REALLY DON'T KNOW. I
21 HAVE MIXED---

22 THE COURT: I UNDERSTAND. I'M GOING TO EXCUSE YOU. I'M
23 GOING TO EXCUSE YOU FROM THE CASE. THANK YOU, MA'AM.

24 JUROR NUMBER 145: (RETURNS TO HER SEAT) (PAUSE)

25 JUROR NUMBER 158: NO DISRESPECT TO YOU, YOUR HONOR, BUT I

VOIR DIRE

1 DO NOT BELIEVE IN THE CRIMINAL JUSTICE SYSTEM. IN MAY 2002 I WAS
2 CONVICTED FOR SOMETHING I DIDN'T DO. EVER SINCE THEN I HAVEN'T
3 BELIEVED IN THE JUSTICE SYSTEM.

4 THE COURT: THAT WAS A DUS?

5 JUROR NUMBER 158: WHAT DO YOU MEAN DUS?

6 THE COURT: WEREN'T YOU THE GUY WHO HAD THE DUS?

7 JUROR NUMBER 158: (INDICATES NEGATIVE RESPONSE)

8 THE COURT: ALL RIGHT. WE'LL EXCUSE YOU FROM THE CASE.

9 JUROR NUMBER 158: DO I SIT DOWN?

10 THE COURT: YEAH.

11 JUROR NUMBER 158: (RETURNS TO SEAT) (PAUSE)

12 THE COURT: MR. HOLLOWAY?

13 JUROR NUMBER 54: YES, SIR. YOU ASKED HAD I EVER BEEN A
14 PART OF A VIOLENT OR WHATNOT. MY EX-WIFE WAS RAPED BY MY BEST
15 FRIEND. I DON'T KNOW ABOUT THAT.

16 THE COURT: ALL RIGHT. MR. HOLLOWAY, THIS IS A CRIMINAL
17 CASE. WOULD THAT EXPERIENCE KEEP YOU FROM GIVING EITHER SIDE A
18 FAIR TRIAL IN THIS CASE?

19 JUROR NUMBER 54: I DON'T THINK SO.

20 THE COURT: WELL, DO YOU FEEL YOU CAN PUT THAT EPISODE
21 ASIDE AND NOT LET IT ENTER YOUR THOUGHTS OR DECISION MAKING
22 PROCESS IN THIS CASE?

23 JUROR NUMBER 54: I THINK SO.

24 THE COURT: WELL---

25 JUROR NUMBER 54: I STILL HAVE ANGER ABOUT IT, BUT YEAH.

VOIR DIRE

1 THE COURT: OKAY. THIS IS A CRIMINAL CASE. SOMEONE IS
2 ACCUSED OF COMMITTING A VIOLENT CRIME. SO DO YOU THINK GIVEN
3 WHAT HAPPENED TO YOUR EX-WIFE YOU MIGHT LET THAT SEEP INTO THIS
4 CASE SOMEWHAT, EVEN UNCONSCIOUSLY?

5 JUROR NUMBER 54: YEAH.

6 THE COURT: ALL RIGHT. I'M GOING TO EXCUSE YOU. ALL
7 RIGHT. THANK YOU.

8 JUROR NUMBER 54: (RETURNS TO SEAT) (PAUSE)

9 THE COURT: HOW ARE YOU DOING?

10 JUROR NUMBER 39: I WASN'T SURE. DID YOU SAY MYSELF
11 PERSONALLY OR A FAMILY MEMBER? MY WIFE'S SISTER AND HER THREE
12 CHILDREN WERE MURDERED IN COLUMBUS, GEORGIA, 10 TO 15 YEARS AGO,
13 SOMETHING LIKE THAT.

14 THE COURT: WELL, THIS IS A CASE ALLEGING MURDER AND
15 VIOLENT CRIME. DO YOU BELIEVE YOU CAN BE FAIR AND IMPARTIAL
16 GIVEN THE EXPERIENCE WITH YOUR WIFE'S SISTER AND DECIDE THIS CASE
17 SOLELY ON THE EVIDENCE AND THE LAW?

18 JUROR NUMBER 39: I THINK SO.

19 THE COURT: OKAY. THANK YOU, SIR. (PAUSE)

20 JUROR NUMBER 114: I'M SHELBY ROGERS.

21 THE COURT: MS. ROGERS.

22 JUROR NUMBER 114: I WAS RAPED IN MY OWN HOME AFTER I FOUND
23 SOMEONE BREAKING IN IN 1997. BUT IT'S STILL---

24 THE COURT: I UNDERSTAND.

25 JUROR NUMBER 114: I'M SORRY.

VOIR DIRE

1 THE COURT: TAKE YOUR TIME. ALL RIGHT. DO YOU FEEL THAT
2 THAT'S SOMETHING THAT IS STILL GOING TO BE IN THE BACK OF YOUR
3 MIND SITTING ON THIS CASE?

4 JUROR NUMBER 114: IF THERE IS RAPE INVOLVED, YES.

5 MR. MOYER: THERE ARE NO ALLEGATIONS OF RAPE OR ANYTHING
6 SEXUAL IN THIS CASE.

7 THE COURT: THERE IS NOTHING SEXUAL.

8 JUROR NUMBER 114: THEN I'LL BE OKAY.

9 THE COURT: DO YOU STILL FEEL OKAY---

10 JUROR NUMBER 114: YEAH. WITH EVERYBODY IN MY FAMILY BEING
11 LAW ENFORCEMENT, YOU KNOW, I'M OKAY WITH IT. I JUST HAVE A HARD
12 TIME WITH RAPES.

13 THE COURT: I UNDERSTAND.

14 JUROR NUMBER 114: I'M SORRY.

15 THE COURT: YOU CAN DECIDE THE CASE SOLELY ON THE EVIDENCE
16 AND THE LAW?

17 JUROR NUMBER 114: YES.

18 THE COURT: THANK YOU.

19 (COUNSEL OFF RECORD)

20 THE COURT: MR. COOTER.

21 JUROR NUMBER 23: I WAS HELD UP AT GUNPOINT IN ATLANTA, AND
22 MY MOTHER IN A SEPARATE INCIDENT WAS ALSO HELD UP AT GUNPOINT IN
23 ATLANTA AS WELL.

24 THE COURT: OKAY. DO YOU BELIEVE YOU CAN PUT THOSE
25 EXPERIENCES ASIDE AND DECIDE THIS CASE SOLELY ON THE EVIDENCE AND

VOIR DIRE

1 THE LAW?

2 JUROR NUMBER 23: YES, SIR.

3 THE COURT: YOU CAN BE FAIR AND IMPARTIAL?

4 JUROR NUMBER 23: YES, SIR.

5 THE COURT: THANK YOU.

6 JUROR NUMBER 23: (RETURNS TO SEAT) (PAUSE)

7 JUROR NUMBER 31: I HAVEN'T HAD ANY FAMILY MEMBERS. BUT I
8 REMEMBER ONE OF THE NAMES, VALENCIA SULLIVAN. I COULDN'T
9 REMEMBER WHERE I HEARD THE NAME FROM. I THINK IT'S A RELATIVE OF
10 ONE OF MINE. I COULDN'T REMEMBER HER NAME. I JUST HAD TO BE
11 HONEST.

12 THE COURT: SURE.

13 JUROR NUMBER 31: I DON'T KNOW, BUT I DON'T KNOW.

14 THE COURT: YOU DON'T KNOW HER?

15 JUROR NUMBER 31: NO. I JUST KNEW THE NAME SOUNDED
16 FAMILIAR. I WAS TRYING TO REMEMBER WHERE I KNEW IT FROM. BUT I
17 HAVE TO BE HONEST. SO...

18 THE COURT: SO IF SHE'S A WITNESS IT'S NOT GOING TO CAUSE
19 YOU ANY PROBLEM?

20 JUROR NUMBER 31: NO.

21 THE COURT: YOU DON'T KNOW ANYTHING ABOUT HER THAT WOULD
22 MAKE YOU TREAT HER UNFAIRLY OR TREAT HER IN A WAY THAT WASN'T
23 IMPARTIAL?

24 JUROR NUMBER 31: NO.

25 THE COURT: OKAY. ALL RIGHT.

VOIR DIRE

1 JUROR NUMBER 31: (RETURNS TO SEAT) (PAUSE)

2 THE COURT: GO AHEAD.

3 MR. CREECH: I'D JUST LIKE TO PUT ON THE RECORD THE
4 DEFENDANT WOULD MOVE TO STRIKE FOR CAUSE JUROR NUMBER 114, CRIME
5 VICTIM. MY OBSERVATIONS OF HER, I DON'T THINK SHE CAN BE FAIR AN
6 IMPARTIAL. SHE OBVIOUSLY HAD -- THE EXPERIENCE SHE DESCRIBED,
7 THE WAY SHE LOOKED AT ME, IS A HEINOUS CRIME. I DON'T THINK SHE
8 CAN BE FAIR AND IMPARTIAL IN THIS CASE. I MOVE THAT SHE BE
9 STRUCK FOR CAUSE.

10 ALSO, MR. COOTER, WHO WAS JUROR NUMBER 23. HE AND HIS
11 MOTHER WERE A VICTIM OF AN ARMED ROBBERY IN ATLANTA. THAT KIND
12 OF THING, HE'S GOING TO HAVE DIRECT PERSONAL EXPERIENCE WITH THE
13 CRIME THAT'S BEEN CHARGED IN THIS CASE. I'D ASK THAT HE BE
14 STRUCK FOR CAUSE AS WELL.

15 MR. MOYER: I THINK IT'S SPECULATION ON THE PART OF THE
16 DEFENSE TO TRY TO EXTRAPOLATE WHAT HE THINKS IS THEIR STATE OF
17 MIND. BOTH JURORS UNEQUIVOCALLY AND CLEARLY, IN A CLEAR VOICE,
18 LOOKED THE JUDGE IN THE EYE AND SAID VERY CLEARLY THAT THEY COULD
19 BE FAIR AND IMPARTIAL.

20 THE COURT: OKAY. I HAVE TO RESPECTFULLY DENY YOUR MOTION,
21 MR. CREECH, ON THOSE JURORS. I DIDN'T FIND ANYTHING IN THE
22 DEMEANOR THAT WOULD CAUSE ME TO BELIEVE THEY WOULDN'T FOLLOW
23 THEIR OATH AND BE FAIR AND IMPARTIAL.

24 ANYTHING FURTHER?

25 MR. MOYER: NO.

VOIR DIRE

1 MR. CREECH: NO.

2 THE COURT: ANY OTHER VOIR DIRE QUESTIONS?

3 MR. MOYER: NO.

4 MR. CREECH: WOULD YOU ASK THE JURY IF ANYBODY HAS WORKED
5 IN LAW ENFORCEMENT? I KNOW WE'VE ASKED---

6 THE COURT: YEAH.

7 (END OF DISCUSSION AT COURT REPORTER'S STATION)

8 (JUDGE RETURNS TO THE BENCH)

9 (MADAME CLERK AND THE COURT -- OFF RECORD DISCUSSION)

10 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, HAVE ANY OF
11 YOU -- I KNOW WE ASKED ABOUT YOUR FAMILY MEMBERS AND PERHAPS I
12 DIDN'T ASK ABOUT YOUR PERSONALLY. HAVE ANY OF YOU PERSONALLY
13 WORKED FOR LAW ENFORCEMENT, BEEN EMPLOYED BY THE SOLICITOR'S
14 OFFICE OR ANY PROSECUTOR'S OFFICE OR THE PROBATION OFFICE OR
15 PAROLE AGENCY? IF SO, PLEASE STAND. (PAUSE)

16 YES, SIR.

17 JUROR NUMBER 97: I WAS WITH THE GEORGIA BUREAU OF
18 INVESTIGATION.

19 THE COURT: RIGHT. THANK YOU.

20 JUROR NUMBER 97: I WAS WITH THE OFFICE OF THE TREASURER.

21 THE COURT: AND WOULD THAT PREVENT YOU, SIR, FROM BEING
22 FAIR AND IMPARTIAL TO EITHER THE STATE OR THE DEFENSE?

23 JUROR NUMBER 97: I DON'T THINK SO.

24 THE COURT: YOU CAN PUT YOUR EXPERIENCE ASIDE AND DECIDE
25 THIS CASE SOLELY ON THE EVIDENCE AND THE LAW?

VOIR DIRE

1 JUROR NUMBER 97: YES, SIR.

2 THE COURT: MR. PEARSON. THANK YOU.

3 ARE ANY OF YOU MEMBERS OF OR CONTRIBUTE TO, WHETHER IT'S
4 YOUR TIME OR YOUR MONEY, TO ANY ORGANIZATION WHOSE PRIMARY
5 CONCERN IS THE PROMOTION OF LAW ENFORCEMENT OR VICTIM'S RIGHTS?
6 IF SO, PLEASE STAND. (PAUSE) (NO RESPONSE)

7 DO ANY OF YOU KNOW OF ANY REASON WHY YOU COULDN'T BE FAIR
8 AND IMPARTIAL TO EITHER THE STATE OR MR. FOWLER IN THIS CASE? IF
9 SO, PLEASE STAND. (PAUSE)

10 OKAY. YOU -- JUST COME DOWN HERE AND WE'LL TALK TO YOU
11 AGAIN, SIR.

12 (THE FOLLOWING TAKES PLACE AT THE COURT REPORTER'S STATION
13 OUTSIDE THE HEARING OF THE JURY PANEL)

14 THE COURT: MR. GIBSON.

15 JUROR NUMBER 39: I WAS ON THE JURY HERE FOUR OR FIVE YEARS
16 AGO IN A CASE. IT WAS AN ASSAULT AND BATTERY CASE. I'M NOT A
17 HUNDRED PERCENT SURE THAT MR. FOWLER WASN'T THE DEFENDANT IN THAT
18 CASE AS WELL. I DON'T KNOW.

19 THE COURT: WHY DO YOU THINK THAT?

20 JUROR NUMBER 39: THE NAMES SOUNDS FAMILIAR AND HE LOOKS
21 LIKE HIM. SO I DON'T KNOW. I'M NOT A HUNDRED PERCENT CERTAIN,
22 BUT---

23 THE COURT: WHAT DID THE JURY DO ON THAT CASE?

24 ~~JUROR NUMBER 39: WE HUNG.~~

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

VOIR DIRE

1 DO Y'ALL HAVE ANY QUESTIONS?

2 MR. CREECH: I DO NOT, NO.

3 THE COURT: ANY QUESTIONS, MR. MOYER?

4 MR. MOYER: NO.

5 THE COURT: DO YOU THINK THAT'S GOING TO KEEP YOU FROM
6 BEING FAIR IN THIS CASE?

7 JUROR NUMBER 39: IF I KNEW THAT IT WASN'T THE SAME PERSON,
8 I WOULD SAY NO. BUT UNLESS I KNOW A HUNDRED PERCENT SURE THAT
9 IT'S NOT THE SAME PERCENT, THEN I THINK THAT I WOULD -- I MAY
10 HAVE DIFFICULTY. I DON'T KNOW HOW TO ---

11 THE COURT: I'M JUST GOING TO EXCUSE YOU. OKAY?

12 JUROR NUMBER 39: OKAY. THANK YOU. (RETURNS TO SEAT)

13 (END OF DISCUSSION AT COURT REPORTER'S STATION)

14 (JUDGE RETURNS TO THE BENCH)

15 THE COURT: OKAY. ANY FURTHER VOIR DIRE FROM THE STATE?

16 MR. MOYER: NONE FROM THE STATE, YOUR HONOR.

17 THE COURT: FROM THE DEFENDANT?

18 MR. CREECH: NONE, YOUR HONOR.

19 THE COURT: OKAY. ALL RIGHT. WE'RE GOING TO PROCEED NOW
20 WITH THE SELECTION PROCESS.

21 YES, MA'AM, MS. TROUP.

22 MADAME CLERK: AS I CALL YOUR NAME, WOULD YOU PLEASE BRING
23 YOUR THINGS YOU HAVE WITH YOU AND COME AND STAND RIGHT IN FRONT
24 OF THIS PODIUM AND TURN AND FACE THE ATTORNEYS.

25 MR. CREECH: JUDGE, MAY I HAVE A STRIKE SHEET? WE WERE NO

JURY SELECTION

1 PROVIDED WITH---

2 THE COURT: YOU'VE GOT THE LIST. SO WE'RE GOING TO --

3 MADAME CLERK: (OFF RECORD WITH THE COURT) JUROR NUMBER 4,
4 MAZEN ABUSHANAB (BLACK MALE).

5 THE COURT: JUST -- I'LL TELL YOU WHAT. I'M SORRY. WHEN
6 YOUR NAME IS CALLED, JUST STAND UP WHERE YOU ARE. OKAY? BECAUSE
7 THE ATTORNEYS HAVE THE RIGHT TO---

8 MADAME CLERK: OKAY.

9 THE COURT: OKAY. AND THEN SHE'LL TELL YOU IF YOU NEED TO
10 COME FORWARD, ALL RIGHT?

11 MR. MOYER: PLEASE EXCUSE THE JUROR IN THIS CASE.

12 MADAME CLERK: SIR, YOU MAY BE SEATED. YOU'VE BEEN EXCUSED
13 FROM THIS CASE.

14 JUROR 146, RICHARD WILLIAMS (WHITE MALE). WHAT SAYS THE
15 STATE?

16 MR. MOYER: PLEASE PRESENT MR. WILLIAMS.

17 MADAME CLERK: WHAT SAYS THE DEFENDANT?

18 MR. CREECH: (PAUSE) PLEASE SWEAR THE JUROR.

19 MADAME CLERK: MR. WILLIAMS, PLEASE BRING YOUR THINGS AND
20 HAVE A SEAT IN THE JURY BOX.

21 JUROR 81, LYNNE MEIER (WHITE FEMALE). (PAUSE) WHAT SAYS
22 THE STATE?

23 MR. MOYER: PLEASE PRESENT MS. MEIER.

24 MADAME CLERK: WHAT SAYS THE DEFENDANT?

25 MR. CREECH: (PAUSE) PLEASE EXCUSE MS. MEIER.

JURY SELECTION

1 **MADAME CLERK:** MS. MEIER, YOU MAY BE SEATED. YOU HAVE BEEN
2 EXCUSED FROM THIS CASE.

3 JUROR 17, ROY BYARS (WHITE MALE). (PAUSE) WHAT SAYS THE
4 STATE?

5 **MR. MOYER:** (PAUSE) PLEASE EXCUSE THE JUROR IN THIS CASE.

6 **MADAME CLERK:** SIR, YOU MAY BE SEATED. YOU HAVE BEEN
7 EXCUSED IN THIS CASE.

8 JUROR NUMBER 30, DOUGLAS DUFFIE (WHITE MALE). (PAUSE) WHAT
9 SAYS THE STATE?

10 **MR. MOYER:** (PAUSE) PLEASE PRESENT MR. DUFFIE.

11 **MADAME CLERK:** WHAT SAYS THE DEFENDANT?

12 **MR. CREECH:** (PAUSE) PLEASE EXCUSE MR. DUFFIE.

13 **MADAME CLERK:** MR. DUFFIE, YOU MAY BE SEATED. YOU HAVE
14 BEEN EXCUSED FROM THIS CASE.

15 JUROR 105, JOEL RICE (WHITE MALE). (PAUSE) WHAT SAYS THE
16 STATE?

17 **MR. MOYER:** (PAUSE) PLEASE PRESENT MR. RICE.

18 **MADAME CLERK:** WHAT SAYS THE DEFENDANT?

19 **MR. CREECH:** (PAUSE) PLEASE SWEAR MR. RICE.

20 **MADAME CLERK:** MR. RICE, PLEASE COME HAVE A SEAT IN THE
21 JURY BOX.

22 JUROR 23, MARK COOTER (WHITE MALE). (PAUSE) WHAT SAYS THE
23 STATE?

24 **MR. MOYER:** (PAUSE) PLEASE PRESENT MR. COOTER.

25 **MADAME CLERK:** WHAT SAYS THE DEFENDANT?

JURY SELECTION

1 MR. CREECH: PLEASE EXCUSE MR. COOTER.

2 MADAME CLERK: SIR, YOU MAY BE SEATED. YOU HAVE BEEN
3 EXCUSED FROM THIS CASE.

4 JUROR 135, JAMES THOMAS (WHITE MALE). (PAUSE) WHAT SAYS
5 THE STATE?

6 MR. MOYER: (PAUSE) PLEASE PRESENT MR. THOMAS.

7 MADAME CLERK: WHAT SAYS THE DEFENDANT?

8 MR. CREECH: (PAUSE) PLEASE SWEAR MR. THOMAS.

9 MADAME CLERK: MR. THOMAS, PLEASE COME HAVE A SEAT IN THE
10 JURY BOX.

11 JUROR 107, CARLA RICHARDS (WHITE FEMALE) (PAUSE) WHAT SAYS
12 THE STATE?

13 MR. MOYER: (PAUSE) PLEASE PRESENT MS. RICHARDS.

14 MADAME CLERK: WHAT SAYS THE DEFENDANT?

15 MR. CREECH: (PAUSE) PLEASE SWEAR DR. RICHARDS.

16 MADAME CLERK: PLEASE COME HAVE A SEAT IN THE JURY BOX.

17 JUROR 157, CURTIS THOMASON (BLACK MALE). (PAUSE) WHAT SAYS
18 THE STATE?

19 MR. MOYER: PLEASE PRESENT MR. THOMASON.

20 MADAME CLERK: WHAT SAYS THE DEFENDANT?

21 MR. CREECH: (PAUSE) PLEASE SWEAR MR. THOMASON.

22 MADAME CLERK: SIR, PLEASE COME HAVE A SEAT IN THE JURY
23 BOX.

24 JUROR 118, KATHERINE SCHMIDT (WHITE FEMALE). (PAUSE) WHAT
25 SAYS THE STATE?

JURY SELECTION

1 MR. MOYER: (PAUSE) PLEASE PRESENT MS. SCHMIDT.

2 MADAME CLERK: WHAT SAYS THE DEFENDANT?

3 MR. CREECH: (PAUSE) PLEASE PRESENT -- PLEASE SWEAR THE
4 JUROR.

5 MADAME CLERK: MS. SCHMIDT, PLEASE COME HAVE A SEAT IN THE
6 JURY BOX.

7 JUROR 27, ROBERT DIAL (BLACK MALE). (PAUSE) WHAT SAYS THE
8 STATE?

9 MR. MOYER: (PAUSE) PLEASE EXCUSE THE JUROR.

10 MADAME CLERK: MR. DIAL, YOU MAY BE SEATED. YOU HAVE BEEN
11 EXCUSED FROM THIS CASE.

12 JUROR 97, CHARLES PEARSON (WHITE MALE). (PAUSE) WHAT SAYS
13 THE STATE?

14 MR. MOYER: (PAUSE) PLEASE PRESENT MR. PEARSON.

15 MADAME CLERK: WHAT SAYS THE DEFENDANT?

16 MR. CREECH: (PAUSE) PLEASE EXCUSE MR. PEARSON.

17 MADAME CLERK: SIR, YOU MAY BE SEATED. YOU HAVE BEEN
18 EXCUSED FROM THIS CASE.

19 JUROR 124, BONNIE SHNIPES (WHITE FEMALE). (PAUSE) WHAT
20 SAYS THE STATE?

21 MR. MOYER: PLEASE PRESENT MS. SHNIPES.

22 MADAME CLERK: WHAT SAYS THE DEFENDANT?

23 MR. CREECH: (PAUSE) PLEASE SWEAR THE JUROR.

24 MADAME CLERK: MA'AM, PLEASE COME HAVE A SEAT IN THE JURY
25 BOX.

JURY SELECTION

1 JUROR 48, MARY HEATH (WHITE FEMALE). (PAUSE) WHAT SAYS THE
2 STATE?

3 MR. MOYER: (PAUSE) PLEASE PRESENT MS. HEATH.

4 MADAME CLERK: WHAT SAYS THE DEFENDANT?

5 MR. CREECH: (PAUSE) PLEASE EXCUSE THIS JUROR.

6 MADAME CLERK: MA'AM, YOU MAY BE SEATED. YOU HAVE BEEN
7 EXCUSED FROM THIS CASE.

8 MADAME CLERK: JUROR 32, PETER MIERKE (WHITE MALE). (PAUSE)

9 MR. MOYER: I'M SORRY. I DIDN'T HEAR YOU.

10 MADAME CLERK: PETER MIERKE, NUMBER 82.

11 MR. MOYER: (PAUSE) PLEASE PRESENT MR. MIERKE.

12 MADAME CLERK: WHAT SAYS THE DEFENDANT?

13 MR. CREECH: (PAUSE) PLEASE SWEAR THE JUROR.

14 MADAME CLERK: SIR, PLEASE COME HAVE A SEAT IN THE JURY
15 BOX.

16 JUROR 13, STEVEN BOUKNIGHT (WHITE MALE). (PAUSE) WHAT SAYS
17 THE STATE?

18 MR. MOYER: PLEASE PRESENT MR. BOUKNIGHT.

19 MADAME CLERK: WHAT SAYS THE DEFENDANT?

20 MR. CREECH: (PAUSE) PLEASE EXCUSE THIS JUROR.

21 MADAME CLERK: SIR, YOU MAY BE SEATED. YOU HAVE BEEN
22 EXCUSED IN THIS CASE.

23 JUROR 92, HOLLY NOLLER (WHITE FEMALE). NOLLER OR NOLLER?

24 ~~JUROR NUMBER 92:~~ NOLLER.

25 MADAME CLERK: THANK YOU. (PAUSE) WHAT SAYS THE STATE?

JURY SELECTION

1 MR. MOYER: PLEASE PRESENT MS. NOLLER.

2 MADAME CLERK: WHAT SAYS THE DEFENDANT?

3 MR. CREECH: (PAUSE) PLEASE EXCUSE THIS JUROR.

4 MADAME CLERK: MA'AM, YOU BE SEATED. YOU HAVE BEEN EXCUSED
5 IN THIS CASE.

6 JUROR 138, ROBERT VANDERMEY (WHITE MALE). (PAUSE) WHAT
7 SAYS THE STATE?

8 MR. MOYER: (PAUSE) PLEASE PRESENT MR. VANDERMEY.

9 MADAME CLERK: WHAT SAY STATE DEFENDANT?

10 MR. CREECH: (PAUSE) PLEASE SWEAR THE JUROR.

11 MADAME CLERK: MR. VANDERMEY, PLEASE HAVE A SEAT IN THE
12 JURY BOX.

13 JUROR 43, WALTER GREGORY (WHITE MALE). (PAUSE) WHAT SAYS
14 THE STATE?

15 MR. MOYER: (PAUSE) PLEASE PRESENT MR. GREGORY.

16 MADAME CLERK: WHAT SAYS THE DEFENDANT?

17 MR. CREECH: (PAUSE) PLEASE EXCUSE THIS JUROR.

18 MADAME CLERK: SIR, YOU MAY BE SEATED. YOU'VE BEEN
19 EXCUSED IN THIS CASE.

20 JUROR 38, RUTH GARCIA (HISPANIC FEMALE). (PAUSE) WHAT SAYS
21 THE STATE?

22 MR. MOYER: PLEASE PRESENT MS. GARCIA.

23 MADAME CLERK: WHAT SAYS THE DEFENDANT?

24 MR. CREECH: (PAUSE) PLEASE SWEAR THE JUROR.

25 MADAME CLERK: MS. GARCIA, PLEASE HAVE A SEAT IN THE JURY

JURY SELECTION

1 BOX.

2 JUROR 151, JUDY AXSOM (WHITE FEMALE). (PAUSE) WHAT SAYS
3 THE STATE?

4 MR. MOYER: (PAUSE) PLEASE PRESENT MS. AXSOM.

5 MADAME CLERK: WHAT SAYS THE DEFENDANT?

6 MR. CREECH: (PAUSE) PLEASE SWEAR THE JUROR.

7 MADAME CLERK: MS. AXSOM, PLEASE HAVE SEAT IN THE JURY BOX.

8 JUROR 119, FORD SCOTT (WHITE MALE). (PAUSE) WHAT SAYS THE
9 STATE?

10 MR. MOYER: (PAUSE) PLEASE PRESENT MR. SCOTT.

11 MADAME CLERK: WHAT SAYS THE DEFENDANT?

12 MR. CREECH: (PAUSE) PLEASE EXCUSE MR. SCOTT.

13 MADAME CLERK: SIR, YOU MAY BE SEATED. YOU'VE BEEN EXCUSED
14 FROM THIS CASE.

15 MR. CREECH: MAY WE APPROACH, JUDGE?

16 THE COURT: DO YOU NEED TO---

17 MR. CREECH: PLEASE, JUST BRIEFLY.

18 THE COURT: YEAH, COME ON.

19 MR. CREECH: (OFF RECORD WITH MADAME CLERK)

20 MADAME CLERK: JUROR NUMBER 5, GEORGE BARR (WHITE MALE).

21 (PAUSE) WHAT SAYS THE STATE?

22 MR. MOYER: (PAUSE) PLEASE EXCUSE THE JUROR IN THIS CASE.

23 MADAME CLERK: SIR, YOU MAY BE SEATED. YOU HAVE BEEN

24 EXCUSED IN THIS CASE.

25 JUROR 22, CAROL CLARK (WHITE FEMALE). (PAUSE) WHAT SAYS

JURY SELECTION

1 THE STATE?

2 MR. MOYER: PLEASE PRESENT MS. CLARK.

3 MADAME CLERK: WHAT SAYS THE DEFENDANT?

4 MR. CREECH: (PAUSE) PLEASE SWEAR THE JUROR.

5 MADAME CLERK: MS. CLARK, PLEASE HAVE A SEAT IN THE JURY
6 BOX.

7 THE COURT: OKAY. WE'RE GOING TO HAVE TWO ALTERNATES. THE
8 STRIKES ARE ONE FOR THE STATE AND TWO FOR THE DEFENSE AS TO EACH
9 ALTERNATE.

10 MADAME CLERK: JUROR NUMBER 2, BENJAMIN ABDO (WHITE MALE).

11 (PAUSE) WHAT SAYS THE STATE?

12 MR. MOYER: PLEASE EXCUSE THE JUROR IN THIS CASE.

13 MADAME CLERK: SIR, YOU MAY BE SEATED. YOU'VE BEEN EXCUSED
14 FROM THIS CASE.

15 JUROR NUMBER 60, RICHARD HURLEY (WHITE MALE). WHAT SAYS THE
16 STATE?

17 MR. MOYER: PLEASE PRESENT MR. HURLEY.

18 MADAME CLERK: WHAT SAYS THE DEFENDANT?

19 MR. CREECH: (PAUSE) PLEASE EXCUSE MR. HURLEY.

20 MADAME CLERK: MR. HURLEY, YOU MAY BE SEATED. YOU HAVE BEEN
21 EXCUSED FROM THIS CASE.

22 JUROR 90, EDWARD NEVES (WHITE MALE). (PAUSE) WHAT SAYS THE
23 STATE?

24 MR. MOYER: (PAUSE) PLEASE PRESENT MR. NEVES.

25 MADAME CLERK: WHAT SAYS THE DEFENDANT?

JURY SELECTION

1 MR. CREECH: (PAUSE) PLEASE SWEAR THE JUROR.

2 MADAME CLERK: SIR, PLEASE HAVE A SEAT IN THE JURY BOX.

3 JUROR 112, MAURICIO RODRIGUEZ (HISPANIC MALE). (PAUSE)

4 WHAT SAYS THE STATE?

5 MR. MOYER: PLEASE PRESENT MR. RODRIGUEZ.

6 MADAME CLERK: WHAT SAYS THE DEFENDANT?

7 MR. CREECH: (PAUSE) PLEASE SWEAR THE JUROR.

8 MADAME CLERK: MR. RODRIGUEZ, PLEASE HAVE A SEAT IN THE
9 JURY BOX.

10 THE COURT: ALL RIGHT. ANY MATTERS OR MOTIONS RELATED TO
11 THE SELECTION OR COMPOSITION OF THE JURY FROM THE STATE?

12 MR. MOYER: NOT FROM THE STATE, YOUR HONOR.

13 THE COURT: DEFENSE?

14 MR. CREECH: NOT FROM THE DEFENSE, YOUR HONOR.

15 THE COURT: OKAY. I FIND THE SELECTION PROCESS COMPLIED
16 WITH THE STATUTORY MANDATE OF BATSON VERSUS KENTUCKY AND J.E.B.
17 VERSUS ALABAMA.

18 LADIES AND GENTLEMEN, YOU'VE BEEN SELECTED TO BE THE JURY IN
19 THE CASE OF THE STATE VERSUS ZACHARY M. FOWLER, AND WE ARE GOING
20 TO BEGIN THE CASE AT APPROXIMATELY TWO O'CLOCK. SO IF YOU WILL
21 JUST BE BACK IN YOUR JURY ROOM AT TWO O'CLOCK. AND THE BAILIFF
22 WILL SHOW YOU WHERE YOUR JURY ROOM IS. MS. OWENS IS GOING TO
23 ESCORT YOU RIGHT ACROSS THE HALL. IT'S JUST RIGHT ACROSS THE
24 HALL THERE. THAT'S WHERE YOU WILL NEED TO RETURN PROMPTLY AT TWO

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1 O'CLOCK. DON'T TALK ABOUT THE CASE WITH ANYONE OR DO ANY KIND OF
2 OUTSIDE INVESTIGATION. YOU HAVE TO CONFINE YOUR DECISION TO WHAT
3 YOU HEAR DURING THIS TRIAL, AND THE TRIAL HASN'T STARTED YET. SO
4 YOU CERTAINLY COULDN'T TALK ABOUT THE CASE. WE'LL SEE YOU BACK
5 AT TWO O'CLOCK. THANK YOU VERY MUCH.

6 (JURY EXITS COURTROOM AT 12:16 P.M.)

7 THE COURT: ALL RIGHT. THOSE OF YOU WHO WEREN'T CHOSEN,
8 YOU ARE EXCUSED FOR THE REST OF THE DAY. JUST CALL BACK AT 6:00.
9 DIAL THE NUMBER YOU HAVE BEEN PROVIDED, AND THEY WILL GIVE YOU
10 FURTHER INSTRUCTIONS AT THAT TIME. THANK YOU FOR YOUR PATIENCE
11 AND YOUR COOPERATION WITH US THIS MORNING.

12 (BALANCE OF PANEL DISMISSED AT 12:16 P.M.)

13 THE COURT: OKAY. IS EVERYONE READY TO PROCEED WITH THE
14 JACKSON v. DENNO?

15 MR. MOYER: WE ARE, YOUR HONOR.

16 MR. CREECH: WE ARE, YOUR HONOR.

17 THE COURT: YES, SIR.

18 MR. MOYER: THE STATE WOULD CALL INVESTIGATOR TIM CONROY TO
19 THE STAND.

20 TIM CONROY, HAVING BEEN DULY SWORN,
21 TESTIFIED AS FOLLOWS:

22 MADAME CLERK: PLEASE STATE YOUR FULL NAME FOR THE RECORD.

23 WITNESS: TIMOTHY MICHAEL CONROY.

24 DIRECT EXAMINATION BY MR. MOYER:

25 Q WHERE ARE YOU EMPLOYED?

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1 A GREENVILLE POLICE DEPARTMENT.

2 Q ARE YOU AN INVESTIGATOR WITH THE POLICE DEPARTMENT?

3 A THAT'S CORRECT.

4 Q HOW LONG HAVE YOU BEEN WITH THE POLICE DEPARTMENT?

5 A A LITTLE OVER ELEVEN AND A HALF YEARS.

6 Q DID YOU PARTICIPATE IN THE INVESTIGATION OF THIS INCIDENT?

7 A I DID.

8 Q WHAT WAS THE DATE THAT BEGAN? WHEN WAS THE DATE OF THE
9 INCIDENT?

10 A I BELIEVE IT WAS JUNE 7TH, 2006.

11 Q OKAY. YOU SOUND A LITTLE UNSURE OF YOURSELF. WOULD YOU
12 LIKE TO TAKE A -- WOULD IT REFRESH YOUR MEMORY TO LOOK AT YOUR
13 REPORT?

14 A YES.

15 Q (HANDS DOCUMENT TO WITNESS)

16 A (REVIEWS DOCUMENT)

17 MR. CREECH: YOUR HONOR, I'D ASK THE COURT TO SEQUESTER
18 EVERYONE DURING THIS HEARING. I WOULD, OF COURSE, MAKE THAT
19 MOTION ONCE WE GET GOING IN THE TRIAL, BUT, YOU KNOW, I WOULD ASK
20 THAT YOU GO AHEAD AND DO THAT NOW.

21 MR. MOYER: YOUR HONOR, I WOULD OPPOSE THAT. I THINK THE
22 DEFENSE HAS TO MAKE SOME SHOWING. SEQUESTRATION IS NOT AUTOMATIC
23 IN SOUTH CAROLINA STATE COURTS. I THINK WITHOUT SOME SHOWING BY
24 THE DEFENSE OF SOME COMPELLING REASON, I DON'T THINK THERE IS ANY
25 REASON TO SEQUESTER WITNESSES.

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1 **THE COURT:** WELL, WHO ARE YOUR WITNESSES IN THE JACKSON v.
2 DENNO HEARING?

3 **MR. MOYER:** FOR THE JACKSON v. DENNO IT WOULD BE
4 INVESTIGATOR CONROY, INVESTIGATOR JUSTICE, PERHAPS TWO OTHERS,
5 INVESTIGATORS MILLER AND HAMLETT.

6 **THE COURT:** ALL RIGHT. WELL, TO THE EXTENT THAT ANYONE IS
7 GOING TO TESTIFY, IS THERE ANYONE ELSE THAT YOU ANTICIPATE
8 CALLING, MR. CREECH?

9 **MR. CREECH:** YES, YOUR HONOR. I MAY CALL JANICE BROWN.

10 **THE COURT:** OKAY. WELL, THE PEOPLE WHO WERE LISTED, I WILL
11 GRANT YOUR MOTION BASED ON RULE 615 TO SEQUESTER THOSE WITNESSES
12 DURING THIS HEARING. IF ANYONE IS ON THE WITNESS LIST IDENTIFIED
13 AS A POTENTIAL WITNESS, I WILL SEQUESTER THEM DURING THE TRIAL.
14 I DON'T KNOW WHO THE PEOPLE ARE, SO Y'ALL WILL HAVE TO HELP
15 MONITOR THAT AND MAKE SURE THAT NO ONE ATTENDS ANY PART OF THE
16 TRIAL WHEN THEY'RE NOT SUPPOSED TO BE IN THE COURTROOM BECAUSE
17 THAT COULD TRIGGER A MISTRIAL. OKAY? SO---

18 **MR. MOYER:** LET ME MAKE SURE I UNDERSTAND YOU. THAT WAS
19 FOR THE HEARING AND THE TRIAL?

20 **THE COURT:** YES, SIR. THAT'S CORRECT.

21 **MR. MOYER:** WITH THE EXCEPTION OF THE VICTIMS, YOUR HONOR?

22 **THE COURT:** THEY'RE NOT COVERED, RIGHT. THEY'RE ALLOWED TO
23 BE IN. AND OF COURSE MR. CONROY IS THE STATE'S AGENT FOR
24 PURPOSES OF THE RULE, SO HE CERTAINLY CAN BE IN HERE THROUGHOUT
25 THE TRIAL.

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1 (PAUSE)

2 Q ALL RIGHT. SO WHAT WAS THE DATE THEN THAT YOU MET WITH THE
3 DEFENDANT?

4 A JUNE 7TH OF 2006.

5 Q OKAY. AND THAT WAS ABOUT HOW LONG AFTER THE INCIDENT TOOK
6 PLACE?

7 A A COUPLE HOURS, THREE HOURS.

8 Q OKAY. AND WHERE DID YOU FIRST SPEAK TO HIM?

9 A AT

10 Q WHAT LED YOU TO THAT RESIDENCE?

11 A I LEARNED FROM ANOTHER INVESTIGATOR THAT A CO-DEFENDANT
12 PAWNED A JACK, AND CHECKING RECORDS BROUGHT ME TO THAT ADDRESS.

13 Q OKAY. AND WHAT IS THE SIGNIFICANCE OF A CO-DEFENDANT PAWNED
14 A JACK? THAT'S HOW YOU GOT THE NAME OF THIS CO-DEFENDANT?

15 A THAT IS CORRECT.

16 Q OKAY. AND SO THAT WAS THE ADDRESS OF THIS CO-DEFENDANT
17 THEN, DRIVE?

18 A IT WAS -- THE ADDRESS THAT WAS GIVEN ON THE DRIVER'S LICENSE
19 WAS ALICE DRIVE. I CHECKED THROUGH OUR RECORDS DIVISION AND SHE
20 WAS A VICTIM OF A PETIT LARCENY A COUPLE MONTHS PRIOR TO THIS
21 INCIDENT, AND THAT ADDRESS SHE GAVE WAS

22 Q AND WAS THAT PERSON'S NAME?

23 A DIANE TISDALE.

24 Q ~~ALL RIGHT. NOW, DID ANYBODY GO WITH YOU TO~~
25 DRIVE?

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1 A DETECTIVE HAMLETT AND DETECTIVE JUSTICE.

2 THE COURT: HOW DO YOU SPELL THE NAME OF THAT STREET?

3 MR. MOYER: APPALOOSA? I HAVE A-P-P-A-L-O-O-S-A.

4 Q IS THAT CORRECT, MR. CONROY?

5 A I BELIEVE SO.

6 Q ALL RIGHT. NOW, WHAT WAS THE FIRST THING YOU NOTICED WHEN
7 YOU ARRIVED AT THE LOCATION?

8 A AS I WAS PULLING UP APPALOOSA I SAW A BLUE BUICK CENTURY
9 WITH RUST COMING THROUGH THE PAINT, AND THAT WAS THE SUSPECT
10 VEHICLE GIVEN TO US -- OR THE DESCRIPTION.

11 Q OKAY. SO THAT MATCHED THE DESCRIPTION?

12 A IT DID MATCH THE DESCRIPTION.

13 Q OKAY. DO YOU KNOW BY WHOM THAT HAD BEEN GIVEN?

14 A BY ONE OF THE VICTIMS IN THE VEHICLE.

15 Q ALL RIGHT. AND HOW CLOSE WAS THAT TO ?

16 A IT WAS PARKED RIGHT IN FRONT OF THE DOOR.

17 Q ALL RIGHT. WHAT DID YOU DO AFTER NOTICING THIS CAR THERE?

18 A DETECTIVE JUSTICE AND I WENT TO THE FRONT DOOR AS DETECTIVE
19 HAMLETT WENT TO THE BACK DOOR. I KNOCKED ON THE FRONT DOOR AND I
20 HEARD SOMEONE ASK "WHO'S THERE?" I SAID, "IT'S TIM." MR. FOWLER
21 OPENED THE DOOR. I IDENTIFIED MYSELF AS A DETECTIVE WITH THE
22 GREENVILLE POLICE DEPARTMENT.

23 Q DID YOU OBTAIN -- HOW WERE YOU DRESSED?

24 A I WAS WEARING A TIE, AND I HAD MY SERVICE WEAPON AND BADGE
25 ON MY BELT.

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- 1 Q OKAY. ALL RIGHT. NOW, WHAT WAS THE REACTION -- YOU SAID
2 THE PERSON THAT CAME TO THE DOOR WAS ZACHARY FOWLER; IS THAT---
- 3 A THAT'S CORRECT.
- 4 Q ---THE DEFENDANT IN THIS CASE?
- 5 A IT IS.
- 6 Q AND WHAT WAS -- WHAT DID YOU NOTICE ABOUT HIS DEMEANOR WHEN
7 HE OPENED THE DOOR AND YOU WERE STANDING THERE WITH YOUR BADGE
8 AND SERVICE WEAPON?
- 9 A HE WAS EXTREMELY NERVOUS, JITTERY. HE LOOKED LIKE HE -- IT
10 WOULD APPEAR TO ME THAT HE WAS WANTING TO RUN.
- 11 Q OKAY. WHAT ABOUT HIS MANNER LED TO YOU---
- 12 A JUST LOOKING AROUND, VERY NERVOUS, SHAKING.
- 13 Q AND ONCE YOU SAW THAT, WHAT DID YOU DO?
- 14 A I ASKED HIM IF I COULD PLACE HIM IN HANDCUFFS. HE WAS NOT
15 UNDER ARREST. I WAS JUST GOING TO PLACE HIM IN HANDCUFFS TO
16 DETAIN HIM.
- 17 Q ALL RIGHT. AND SO DO YOU TELL HIM WHETHER OR NOT HE'D BEEN
18 CHARGED WITH -- HE WAS BEING CHARGED WITH A CRIME AT THAT POINT?
- 19 A I TOLD HIM HE WAS NOT BEING CHARGED WITH ANYTHING. I WAS
20 JUST INVESTIGATING A SHOOTING.
- 21 Q OKAY. AND -- AFTER YOU PLACED HIM IN HANDCUFFS, WHAT DID
22 YOU DO WITH HIM?
- 23 A I PLACED HIM IN THE FRONT SEAT OF MY CAR. IT WAS WARM OUT.
24 I PLACED HIM IN THE FRONT SEAT OF MY CAR CUFFED BEHIND THE BACK
25 AND WITH THE AIR CONDITIONER RUNNING. AT THAT TIME I --

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1 DETECTIVE JUSTICE STOOD BY WITH HIM, AND I COULD SEE INSIDE THE
2 DOOR, WHICH WAS OPEN, AND THERE WAS A FEMALE INSIDE.

3 Q OKAY. NOW, DID YOU GET IN THE CAR WITH HIM?

4 A NOT AT THAT POINT, NO, SIR.

5 Q OKAY. AND WHAT DID YOU DO?

6 A I ASKED THE FEMALE IF I COULD COME IN. SHE SAID SHE COULD
7 -- OR SAID I COULD COME IN. I WENT IN, ASKED HER HER NAME. SHE
8 SAID IT WAS VALENCIA SULLIVAN. I ASKED HER IF ANYBODY WAS HOME
9 WITH HER. SHE SAID NO. I SAID, "IS DIANE TISDALE HERE?" SHE
10 SAID SHE WAS NOT FAMILIAR WITH DIANE.

11 Q OKAY. WHAT DID YOU DO THEN?

12 A I ASKED HER IF I COULD WALK THROUGH HER APARTMENT TO SEE IF
13 DIANE WAS THERE. I WALKED THROUGH AND I CAME BACK AND SAID, "YOU
14 DON'T KNOW A DIANE TISDALE?" SHE SAID, "I KNOW A NICKI TISDALE."
15 AND I ASKED WHERE NICKI WAS. SHE SAID SHE WAS AT WORK AT THE
16 SPINX AT PENDLETON AND EASLEY BRIDGE.

17 Q ALL RIGHT. AND THEN DID YOU GO OUT AND SPEAK TO THE
18 DEFENDANT THEN?

19 A I DID. I ADVISED HIM I WAS INVESTIGATING A HOMICIDE
20 INVESTIGATION.

21 Q OKAY. AND DID YOU GO OVER HIS RIGHTS WITH HIM AT THAT TIME?

22 A I DID. AT THIS TIME I SAT IN THE CAR, AND HE SAID HE WANTED
23 TO TALK. I ADVISED HIM BEFORE WE SPOKE I WOULD HAVE TO ADVISE
24 HIM OF HIS RIGHTS.

25 Q OKAY. AND HOW DID YOU ADVISE HIM OF HIS RIGHTS?

JACKSON v. DENNO
TIM CONROY - DIRECT BY MR. MOYER

1 A I KEEP THE RIGHTS WAIVER IN MY WALLET, AND I TOOK IT OUT AND
2 READ IT TO HIM.

3 Q OKAY. AND YOU HAVE THE -- THAT RIGHTS DOCUMENT WITH YOU
4 TODAY?

5 A I DO.

6 Q AND WOULD YOU READ INTO THE RECORD WHAT RIGHTS YOU WENT OVER
7 WITH HIM?

8 A IT SAYS, "YOU HAVE THE RIGHT TO REMAIN SILENT. ANYTHING YOU
9 SAY CAN BE USED AGAINST YOU IN A COURT OF LAW. YOU HAVE THE
10 RIGHT TO TALK TO AN ATTORNEY AND HAVE HIM OR HER PRESENT WITH YOU
11 WHILE YOU ARE BEING QUESTIONED. IF YOU CAN'T AFFORD TO HIRE AN
12 ATTORNEY, ONE WILL BE APPOINTED TO REPRESENT YOU BEFORE ANY
13 QUESTION, IF YOU WISH. IF YOU DECIDE TO ANSWER -- YOU CAN DECIDE
14 AT ANY TIME TO EXERCISE THESE RIGHTS AND NOT ANSWER ANY QUESTIONS
15 OR MAKE ANY STATEMENTS. DO YOU UNDERSTAND THESE RIGHTS I'VE
16 EXPLAINED TO YOU? HAVING THESE RIGHTS IN MIND, DO YOU WISH TO
17 TALK TO US NOW?"

18 Q ALL RIGHT. AND SO AFTER YOU READ THOSE RIGHTS TO HIM, DID
19 HE HAVE ANY RESPONSE?

20 A HE SAID HE DID WANT TO TALK TO ME.

21 Q DID YOU TELL HIM WHAT YOU WERE INVESTIGATING?

22 A I DID. IT WAS A HOMICIDE INVESTIGATION.

23 Q WHAT DID YOU TELL HIM?

24 A I ADVISED HIM I WAS INVESTIGATING A HOMICIDE.

25 Q SO AT THAT POINT YOU WERE AWARE THAT THE VICTIM HAD -- ONE

JACKSON v. DENNO
TIM CONROY - DIRECT BY MR. MOYER

1 OF THE VICTIMS HAD DIED?

2 A THAT'S CORRECT.

3 Q ALL RIGHT. DID YOU TELL HIM WHAT YOU INTENDED TO DO WITH
4 REGARD TO THE RESIDENCE AND THE CAR?

5 A I DID. I ADVISED HIM I WAS GOING TO GET A SEARCH WARRANT
6 FOR THE RESIDENCE AND THE VEHICLE.

7 Q DID HE HAVE ANY RESPONSE TO THAT?

8 A HE SAID I DON'T NEED ANYTHING, A SEARCH WARRANT, I COULD GO
9 IN AND LOOK IN BOTH. HE FURTHER STATED, "IF YOU DON'T FIND
10 ANYTHING, AM I FREE TO GO?" OR "AM I OFF THE HOOK?" AS HE
11 STATED.

12 Q AND WHAT DID YOU SAY TO THAT?

13 A I SAID, NO, HE WAS NOT GOING TO BE FREE TO GO UNTIL HE WAS
14 CLEARED AS A SUSPECT.

15 Q ALL RIGHT. NOW, AFTER READING THE DEFENDANT HIS RIGHTS AND
16 HAVING THIS CONVERSATION WHERE DID YOU GO?

17 A I WENT BACK INSIDE.

18 Q WHAT DID YOU DO WITH THE DEFENDANT?

19 A I LEFT HIM IN MY VEHICLE WITH DETECTIVE JUSTICE.

20 Q OKAY. WAS YOUR CAR RUNNING?

21 A IT WAS RUNNING.

22 Q WERE THE WINDOWS DOWN IN THE CAR?

23 A I BELIEVE THE PASSENGER WINDOW WAS UP AND THE DRIVER'S
24 WINDOW WAS DOWN. THE AIR WAS ON.

25 Q NOW, DID YOU SPEAK TO THE DEFENDANT AGAIN THERE ON THE

JACKSON v. DENNO
TIM CONROY - DIRECT BY MR. MOYER

1 SCENE?

2 A I DID.

3 Q WHERE DID THAT TAKE PLACE?

4 A AFTER I CAME BACK OUTSIDE I SPOKE WITH HIM AGAIN IN THE
5 VEHICLE, AND SERGEANT MILLER SAID HE WANTED TO TALK. I SAT IN
6 THE CAR WITH HIM, AND HE SAID HE WANTED TO GET EVERYTHING OFF HIS
7 CHEST AND GIVE US THE GUN.

8 Q OKAY. SO ANOTHER OFFICER THERE ON THE SCENE THEN TOLD YOU
9 THAT?

10 A THAT'S CORRECT.

11 Q AND WHEN -- ALL RIGHT. SO DID YOU GET BACK IN THE CAR WITH
12 THE DEFENDANT?

13 A FOR A BRIEF MOMENT I DID. HE SAID HE WANTED TO SHOW US
14 WHERE THE GUN WAS.

15 Q AND WHAT DID YOU SAY TO THE DEFENDANT? TELL ME ABOUT THAT
16 CONVERSATION WITH THE DEFENDANT ABOUT -- AT THAT TIME.

17 A AT THAT TIME I ASKED HIM IF HE WANTED TO POINT IT OUT TO US.
18 WE GOT OUT OF THE CAR AND HE STOOD AT THE FRONT OF THE DOOR -- OR
19 THE FRONT HOUSE DOOR AND KIND OF NODDED TOWARDS THE CABINET THAT
20 THE GUN WAS UNDER. WE GOT BACK IN THE VEHICLE, AND I ASKED HIM
21 IF HE WANTED TO GO TO THE LAW ENFORCEMENT CENTER TO TALK. HE
22 SAID HE WANTED TO GET EVERYTHING OFF HIS CHEST AND TALK TO US.
23 HE WOULD GO.

24 Q OKAY. SO WHERE DID YOU TAKE HIM--

25 A AT THAT TIME WE WENT TO THE LAW ENFORCEMENT CENTER, AND HE

JACKSON v. DENNO
TIM CONROY - DIRECT BY MR. MOYER

1 WAS PLACED IN AN INTERVIEW ROOM.

2 Q AND TELL ME ABOUT THAT INTERVIEW ROOM. WHAT -- DESCRIBE IT.

3 A IT'S AN APPROXIMATELY 10 BY 10 ROOM. THERE ARE DOORS AND
4 WINDOWS UP ON TOP OF THE WALL -- ONE OF THE WALLS. IT'S GOT A
5 TABLE AND THREE OR FOUR CHAIRS IN THERE.

6 Q OKAY. AND ABOUT WHAT TIME WAS IT THEN THAT YOU WERE
7 SPEAKING TO HIM?

8 A I BELIEVE THAT WAS AROUND 5:15. LET ME MAKE SURE. AROUND
9 5:15, 5:30, I SPOKE TO HIM.

10 Q AND THE INCIDENT HAD TAKEN PLACE AROUND WHAT TIME?

11 A ABOUT 1:30.

12 Q NOW WAS HE KEPT SECURE THERE?

13 A HE WAS HANDCUFFED TO THE CHAIR.

14 Q DID YOU HAVE AN ARREST WARRANT FOR HIM AT THIS TIME?

15 A NO, I DID NOT.

16 Q BUT HE WAS IN CUSTODY, RIGHT, HE WAS IN---

17 A THAT'S CORRECT.

18 Q OKAY. NOW, DURING THE TIME YOU SPOKE TO HIM WAS THE
19 DEFENDANT DENIED ACCESS TO ANY CONVENIENCES HE MAY HAVE ASKED
20 FOR, LIKE TELEPHONE OR BATHROOM OR SOMETHING TO DRINK?

21 A NO.

22 Q DID HE COMPLAIN ABOUT ANY INJURIES OR PHYSICAL DISCOMFORT?

23 A NO, HE DID NOT.

24 Q NOW, EVEN THOUGH YOU HAD DONE SO ALREADY, DID YOU ADVISE HIM
25 AGAIN OF HIS CONSTITUTIONAL RIGHTS?

JACKSON v. DENNO
TIM CONROY - DIRECT BY MR. MOYER

1 A YES, I DID.

2 Q HOW DID YOU DO IT THIS TIME?

3 A THIS TIME I HAD A FORM. I ASKED HIM HIS FULL NAME. I WROTE
4 THAT ON THE TOP LEFT CORNER OF THE FORM. I THEN ASKED HIM HOW
5 FAR HE WENT IN HIGH SCHOOL. HE SAID HE GRADUATED FROM WOODMONT
6 HIGH SCHOOL. I ASKED HIM IF HE COULD READ AND WRITE, AND HE
7 STATED THAT HE COULD READ AND WRITE. I HAD HIM---

8 Q LET ME ASK YOU TO HOLD ON A MOMENT.

9 A OKAY. I'M SORRY.

10 ("YOUR RIGHTS" DOCUMENT MARKED AS STATE'S EXHIBIT NUMBER 1
11 FOR PURPOSES OF IDENTIFICATION ONLY)

12 Q I'M GOING TO HAND YOU STATE'S EXHIBIT NUMBER 1. IF YOU
13 COULD, TAKE A LOOK AT IT AND TELL THE COURT IF YOU CAN IDENTIFY
14 WHAT I JUST HANDED YOU.

15 A YES. THIS IS HIS WAIVER OF RIGHTS -- OR HIS RIGHTS FORM,
16 WHICH IS---

17 Q AND HOW ARE YOU ABLE TO RECOGNIZE IT?

18 A HE'S INITIALED IT AND SIGNED IT.

19 Q HAS ANYONE ELSE SIGNED IT?

20 A AS WELL AS I SIGNED IT AND DETECTIVE HAMLETT SIGNED IT.

21 Q AND THE DATE?

22 A THE DATE IS JUNE 7TH, 2006.

23 Q IS THAT A TRUE AND ACCURATE COPY OF THAT RIGHTS FORM THAT
24 YOU WENT OVER WITH THE DEFENDANT?

25 A YES, IT IS.

JACKSON v. DENNO
TIM CONROY - DIRECT BY MR. MOYER

1 Q DO YOU SUBMIT THERE ARE NO SUBSTANTIAL DIFFERENCES BETWEEN
2 IT AND THE ORIGINAL?

3 A NO.

4 Q IT HASN'T BEEN CHANGED IN ANY SUBSTANTIAL WAY SINCE JUNE 7TH,
5 2006?

6 A NO, SIR.

7 MR. MOYER: AT THIS TIME, I WOULD MOVE TO HAVE STATE'S
8 EXHIBIT NUMBER 1 MOVED INTO EVIDENCE FOR PURPOSES OF THIS
9 HEARING.

10 MR. CREECH: NO OBJECTION FOR THE HEARING, YOUR HONOR.

11 THE COURT: OKAY. IT'S IN EVIDENCE.

12 (STATE'S EXHIBIT NUMBER 1, "YOUR RIGHTS," MOVED INTO
13 EVIDENCE FOR THE PURPOSE OF THE JACKSON v. DENNO HEARING ONLY)

14 Q ALL RIGHT. AND DID YOU MARK THE TIME OF THE FORM?

15 A I DID. IT WAS 17:30, WHICH IS 5:30 P.M.

16 Q ALL RIGHT. NOW, YOU ALREADY TOLD US YOU TALKED TO HIM ABOUT
17 HOW FAR HE WENT IN SCHOOL AND IF HE COULD READ AND WRITE. DID
18 YOU -- HOW EXACTLY DID YOU GO OVER THAT FORM WITH THE DEFENDANT?

19 A I ASKED HIM TO READ THE FIRST LINE OUT LOUD TO ME, WHICH HE
20 DID SO, AND THEN HE CONTINUED TO READ EACH LINE AFTER THAT OUT
21 LOUD TO ME AS WELL AND INITIALING BY EACH LINE STATING THAT HE
22 UNDERSTOOD IT.

23 Q YOU HAD HIM INITIAL EACH LINE?

24 A THAT'S CORRECT.

25 Q TO INDICATE THAT HE UNDERSTOOD?

JACKSON v. DENNO
TIM CONROY - DIRECT BY MR. MOYER

1 A THAT'S CORRECT.

2 Q DID YOU EXPLAIN ANY ASPECTS OF THAT FORM TO THE DEFENDANT?

3 A WHEN WE GOT DOWN TO THE WORD "COERCION," I ASKED HIM IF HE
4 UNDERSTOOD WHAT COERCION MEANT. HE SAID HE DIDN'T. I EXPLAINED
5 THAT IT COULD BE MENTAL OR PHYSICAL PRESSURE TRYING TO GET HIM TO
6 FORCE -- OR TRYING TO GET HIM TO DO OR SAY SOMETHING THAT HE
7 DIDN'T WANT TO DO OR SAY.

8 Q ALL RIGHT. NOW, DOES THAT HAVE THE SAME RIGHTS LISTED AS
9 YOU READ TO THE DEFENDANT---

10 A YES, SIR.

11 Q ---ON THE CARD EARLIER?

12 A YES, SIR.

13 Q ALL RIGHT. NOW, DID THE DEFENDANT'S ANSWERS TO YOUR
14 QUESTIONS APPEAR TO BE RATIONAL AND RESPONSIVE?

15 A THEY DID.

16 Q DID HE APPEAR TO BE SUFFERING FROM THE EFFECTS OF ANY
17 SUBSTANCES TO THE EXTENT IT WOULD DETRACT FROM HIS ABILITY TO
18 UNDERSTAND THE RIGHTS?

19 A NO, SIR.

20 Q HOW OLD WAS HE?

21 A HE WAS 20 YEARS OLD.

22 Q WERE THERE ANY THREATS MADE OR WAS THERE ANY COERCION MADE
23 IN ORDER TO GET HIM TO SIGN THE FORM AND GIVE THE STATEMENT?

24 A NO, THERE WAS NOT.

25 Q WAS THERE ANY INTIMIDATION?

JACKSON v. DENNO
TIM CONROY - DIRECT BY MR. MOYER

1 A NO.

2 Q WERE THERE ANY PROMISES OR HOPE OF REWARD LAID OUT TO HIM TO
3 GET HIM TO SPEAK TO YOU ABOUT WHAT HAPPENED?

4 A NO, SIR.

5 Q IN YOUR OPINION DID HE UNDERSTAND THE RIGHTS?

6 A HE DID UNDERSTAND THE RIGHTS.

7 Q AFTER YOU READ OVER THOSE RIGHTS DID YOU -- IS THERE ANY
8 OTHER ASPECT ON THAT FORM THAT DISCUSSES WHETHER OR NOT HE WISHED
9 TO WAIVE THOSE RIGHTS?

10 A THE WAIVER OF RIGHTS DOWN AT THE BOTTOM.

11 Q AND DID YOU READ THAT TO THE DEFENDANT AS WELL?

12 A YES, I DID.

13 Q AND AFTER HE WAS MADE AWARE OF THAT WAIVER OF HIS RIGHTS,
14 WHAT WAS HIS RESPONSE TO THOSE RIGHTS?

15 A HE STATED THAT HE WISHED TO TALK AND GET IT -- GET THE
16 SITUATION -- INCIDENT OFF HIS CHEST.

17 Q AND DID HE SIGN THE DOCUMENT INDICATING THAT HE WISHED TO
18 WAIVE HIS RIGHTS?

19 A YES, HE DID.

20 Q DID HE EVER CHANGE HIS MIND AT ANY TIME WHILE YOU WERE
21 MEETING WITH HIM AND ASK TO STOP QUESTIONING BECAUSE HE WANTED AN
22 ATTORNEY?

23 A NO, HE DID NOT.

24 Q ALL RIGHT. SO THE DEFENDANT THEN INDICATED THAT HE WANTED
25 TO TALK TO YOU. DID HE GIVE A STATEMENT?

JACKSON v. DENNO
TIM CONROY - DIRECT BY MR. MOYER

1 A HE DID GIVE A STATEMENT.

2 Q DID YOU HAVE THE STATEMENT PUT IN WRITING?

3 A I DID.

4 (DEFENDANT'S STATEMENT MARKED AS STATE'S EXHIBIT NUMBER 2
5 FOR PURPOSES OF IDENTIFICATION ONLY)

6 Q LET ME GIVE YOU STATE'S EXHIBIT NUMBER 2. IF YOU WOULD,
7 TAKE A LOOK AT STATE'S EXHIBIT NUMBER 2 AND TELL THE COURT IF YOU
8 CAN IDENTIFY THAT.

9 A (REVIEWS DOCUMENT) YES, THIS IS THE STATEMENT THAT WAS
10 GIVEN BY ZACHARY FOWLER. IT'S INITIALED AND SIGNED, SAME CASE
11 NUMBER AND DATE.

12 Q OKAY. AND THAT'S AN ACCURATE COPY OF THE STATEMENT THAT YOU
13 TOOK THAT DAY?

14 A THAT IS CORRECT.

15 Q AND IS IT IN SUBSTANTIALLY THE SAME CONDITION NOW AS IT WAS
16 ON JUNE 7TH WHEN YOU TOOK THE STATEMENT?

17 A YES, SIR.

18 MR. MOYER: AT THIS TIME WE'D MOVE STATE'S EXHIBIT NUMBER 2
19 INTO EVIDENCE FOR PURPOSES OF THIS HEARING.

20 MR. CREECH: NO OBJECTION, YOUR HONOR.

21 THE COURT: ALL RIGHT. IT'S IN EVIDENCE.

22 (STATEMENT OF DEFENDANT, STATE'S EXHIBIT NUMBER 2, MOVED
23 INTO EVIDENCE FOR THE PURPOSE OF THIS HEARING ONLY)

24 Q ~~ALL RIGHT. NOW, HOW DID YOU GO ABOUT TAKING WHAT HE TOLD~~
25 YOU AND GETTING IT INTO THAT WRITTEN FORMAT BEFORE YOU THERE?

JACKSON v. DENNO
TIM CONROY - DIRECT BY MR. MOYER

- 1 A I ASKED MR. FOWLER IF HE -- I ADVISED HIM WE COULD DO IT ONE
2 OF TWO WAYS. HE COULD TELL ME THE SITUATION THAT HAPPENED THIS
3 DAY OR I COULD ASK HIM QUESTIONS AND HE COULD ANSWER. HE OPTED
4 TO JUST TELL ME EVERYTHING THAT HAPPENED THAT DAY, STARTING
5 EARLIER IN THE DAY, AND I JUST -- I JOTTED HIS NOTES DOWN ON A
6 PIECE OF PAPER. I WENT OVER THE NOTES WITH HIM AND ASKED HIM IF
7 IT WAS ACCURATE, AND THEN I WENT AND TYPED IT.
- 8 Q NOW, SO DID YOU HAVE TO PROMPT ANY QUESTIONS?
- 9 A NO, SIR, I DID NOT.
- 10 Q SO HE JUST STARTED TALKING UNTIL HE FINISHED AND YOU WROTE
11 DOWN AS HE TOLD YOU WHAT HAD HAPPENED?
- 12 A THAT'S CORRECT.
- 13 Q NOW, WHEN YOU -- SO AFTER YOU HAD WRITTEN IT DOWN, YOU READ
14 YOUR HANDWRITTEN VERSION OVER TO HIM?
- 15 A YES, I DID.
- 16 Q AND DID HE WANT TO ADD OR DETRACT FROM ANYTHING?
- 17 A HE WANTED TO ADD AT THE VERY END THAT HE DID ALL OF THIS OUT
18 OF SELF-DEFENSE.
- 19 Q AND DID YOU ADD THAT?
- 20 A I DID ADD THAT.
- 21 Q THAT IS THE LAST LINE, OBVIOUSLY?
- 22 A YES, SIR.
- 23 Q DID HE WANT TO ADD ANYTHING OR CHANGE ANYTHING?
- 24 A NOT AFTER -- NO, SIR.
- 25 Q OTHER THAN THAT? OKAY. ALL RIGHT. NOW -- SO AFTER YOU HAD

JACKSON v. DENNO
TIM CONROY - DIRECT BY MR. MOYER

1 IT IN THAT HANDWRITTEN FORM WHAT DID YOU DO WITH THAT?

2 A I WENT TO MY OFFICE AND TYPED IT UP EXACTLY THE WAY IT WAS
3 HANDWRITTEN AND BROUGHT IT BACK TO HIM, HAD HIM -- I READ IT TO
4 HIM, THEN I HAD HIM READ OVER IT AGAIN TO MAKE SURE IT WAS ALL --
5 IT WAS ACCURATE.

6 Q OKAY. AND AFTER YOU READ IT TO HIM AND AFTER HE READ IT
7 AGAIN, DID HE WANT TO CHANGE ANYTHING IN THAT STATEMENT?

8 A HE DID NOT WISH TO CHANGE ANYTHING.

9 Q DID HE MAKE ANY MARKS ON THAT DOCUMENT INDICATING THAT THAT
10 WAS HIS STATEMENT?

11 A HE SIGNED THE STATEMENT AND INITIALED EACH PARAGRAPH.

12 Q OKAY. AND HE INITIALED EACH PARAGRAPH?

13 A YES, SIR.

14 Q AND WHAT DID YOU TELL HIM ABOUT INITIALING THE PARAGRAPHS?

15 A I JUST ASKED HIM IF HE WOULD INITIAL EACH PARAGRAPH. THAT
16 WAY I COULDN'T ADD OR TAKE ANYTHING AWAY FROM THAT PARAGRAPH.

17 Q WOULD YOU READ THE STATEMENT, THEN, FOR THE RECORD?

18 A YES. IT SAYS, "I AM NOT UNDER THE INFLUENCE OF DRUGS OR
19 ALCOHOL AT THIS TIME AND I DID GIVE DETECTIVE CONROY PERMISSION
20 TO TYPE THIS STATEMENT FOR ME. THE FOLLOWING STATEMENT IS IN MY
21 WORDS: I MET DIANE TISDALE, NICKI, AND VALENCIA SULLIVAN AT
22 ABOUT NOON, 6/7/06 AT DRIVE. WE ALL GOT INTO A
23 BLUE BUICK CENTURY. I DO NOT KNOW WHOSE CAR IT IS, BUT NICKI
24 ALWAYS DRIVES IT. WE WENT TO RED'S PAWN SHOP ON PENDLETON STREET
25 TO PAWN A JACK FOR SOME GAS MONEY. SOME WHITE GIRL CAME UP TO ME

JACKSON V. DENNO
TIM CONROY - DIRECT BY MR. MOYER

1 AND TALKED TO ME ABOUT SOME JEWELRY. JUST SHOOTING THE SHIT
2 REALLY. SHE WAS WITH TWO OTHER WHITE GUYS.

3 SHE ASKED ME IF I HAD ANY CRACK. I TOLD HER YEAH. I WAS
4 GOING TO FLEX HER BECAUSE I DIDN'T HAVE ANY CRACK. I TOLD HER TO
5 FOLLOW ME. I WAS DRIVING.

6 WE WENT OVER TO THE AREA OF PENDLETON ROAD AND WOODLAWN. I
7 STOPPED IN THE MIDDLE OF THE ROAD. MY GIRLFRIEND VALENCIA WAS IN
8 THE FRONT SEAT. SHE GOT OUT BECAUSE THE DRIVER'S DOOR WAS
9 BROKEN, AND I CLIMBED OVER AND GOT OUT OF THE PASSENGER DOOR.

10 THE OTHER CAR PULLED UP ON THE DRIVER'S SIDE. I WALKED
11 BEHIND MY CAR BETWEEN THE TWO CARS. I STOOD IN FRONT -- I STOOD
12 BETWEEN THE FRONT SEAT AND THE BACK SEAT. I REACHED IN MY POCKET
13 TO GET THE FLEX AND REALIZED I DIDN'T HAVE ANY, AND THE GUY IN
14 THE DRIVER'S SEAT -- THERE WAS A GUY IN THE DRIVER'S SEAT, AND
15 THE FEMALE IN THE FRONT PASSENGER AND ANOTHER GUY IN THE BACK
16 PASSENGER SEAT. THE GUY IN THE BACK PASSENGER SEAT HAD MONEY IN
17 HIS RIGHT HAND AND HIS LEFT HAND WAS IN HIS POCKET.

18 I REACHED IN MY LEFT POCKET FOR THE FLEX, AND MY RIGHT HAND
19 WAS IN MY RIGHT POCKET ON MY GUN. WHEN THE GUY IN THE BACK SEAT
20 PULLED HIS HAND OUT OF HIS POCKET I DIDN'T KNOW WHAT HE WAS
21 DOING. I FREAKED OUT AND PULLED MY GUN OUT AND SHOT IN THE
22 DIRECTION OF ALL THREE PEOPLE. I SHOT ONE TIME AT EACH PERSON.
23 I THINK I HIT THE DRIVER. I SAW BLOOD ALL OVER HIS RIGHT SIDE OF
24 THE CHEST AND STOMACH AREA.

25 AFTER I SHOT THE FEMALE I COULD SEE HER RIGHT HAND PROPPED

JACKSON v. DENNO

TIM CONROY - DIRECT BY MR. MOYER

1 UP ON THE DOOR WITH MONEY IN IT. I GRABBED THE MONEY OUT OF HER
2 HAND. THERE WERE TWO \$20 BILLS. ONE OF THEM TORE."

3 Q ONE OF THEM WHAT?

4 A TORE. "I THEN RAN BACK TO MY CAR, JUMPED IN AND VALENCIA
5 WAS IN THE DRIVER'S SEAT. I GOT IN THE FRONT PASSENGER SEAT.
6 VALENCIA DROVE OFF SLOWLY. I THEN CROSSED OVER HER AND BEGAN TO
7 DRIVE. I DROVE TO DRIVE AND SAT DOWN AND CHILLED
8 OUT. I SMOKED A CIGARETTE AND THEN WE WENT TO EAT. WE CHILLED
9 OUT FOR ABOUT AN HOUR AND A HALF AT PETE'S ON WHITE HORSE ROAD.
10 THAT IS WHERE I SPENT THE MONEY I STOLE FROM THAT GIRL. WE WENT
11 BACK TO THE HOUSE AND SHORTLY AFTER THE POLICE SHOWED UP. I
12 SHOWED THE DETECTIVES THE GUN THAT I USED TO KILL THAT LADY. I
13 DID ALL OF THIS OUT OF SELF-DEFENSE. I THOUGHT THEY WERE GOING
14 TO ROB ME."

15 Q OKAY. NOW, WHEN HE WAS TALKING TO YOU ABOUT THE PART WHERE
16 HE SAID THE MONEY TORE, ABOUT TAKING THE MONEY FROM SUSAN
17 GALLOWAY, WHAT -- HOW DID HE REACT?

18 A HE SAID -- HE WAS LAUGHING WHEN HE SAID THIS, AND HE SAID,
19 "I SHOULD NOT LAUGH, BUT THAT BITCH PISSED ME OFF BECAUSE SHE
20 WOULDN'T LET GO OF THE MONEY AND IT TORE."

21 Q ALL RIGHT. NOW, ARE YOU -- DID YOU PARTICIPATE IN THE
22 SEARCH OF THE RESIDENCE?

23 A NO, I DID NOT.

24 Q DO YOU KNOW WHEN -- WHETHER IT TOOK PLACE THAT DAY OR NOT?

25 A IT DID TAKE PLACE THAT DAY.

JACKSON v. DENNO
TIM CONROY - CROSS BY MR. CREECH

1 Q AFTER YOU HAD TAKEN THE DEFENDANT BACK TO THE LAW
2 ENFORCEMENT CENTER?

3 A THAT'S CORRECT.

4 MR. MOYER: OKAY. PLEASE ANSWER ANY QUESTIONS THE DEFENSE
5 MIGHT HAVE.

6 WITNESS: OKAY.

7 THE COURT: MR. CREECH, CROSS EXAMINATION.

8 CROSS EXAMINATION BY MR. CREECH:

9 Q DETECTIVE CONROY, YOU RECEIVED A DESCRIPTION OF THE VEHICLE.
10 WHAT WAS THE DESCRIPTION THAT YOU RECEIVED?

11 A IT WAS A LIGHT BLUE WITH RUST COLOR. I BELIEVE IT WAS A - I
12 HAVE TO REFER TO MY NOTES TO SEE EXACTLY WHAT TYPE OF VEHICLE THE
13 DESCRIPTION WAS. (REVIEWS NOTES) I RECEIVED IT WAS AN OLDER
14 CUTLASS LOOKING VEHICLE WITH RUST COMING THROUGH THE PAINT.

15 Q AN OLDER BLUE CUTLASS LOOKING VEHICLE?

16 A YES, SIR.

17 Q WHO GAVE YOU THAT DESCRIPTION?

18 A ONE OF THE VICTIMS IN THE VEHICLE.

19 Q GAVE IT TO YOU?

20 A HE GAVE IT TO DETECTIVE FLAVELL.

21 Q FLAVELL. AND THEN FLAVELL RELAYED THAT TO YOU?

22 A THAT'S CORRECT.

23 Q SO YOU HAD -- PRIOR TO GOING TO THIS LOCATION THE ONLY
24 INFORMATION YOU HAD WAS THIS WAS AN OLDER BLUE CUTLASS LOOKING
25 CAR; IS THAT RIGHT?

JACKSON v. DENNO
TIM CONROY - CROSS BY MR. CREECH

1 A THAT'S NOT THE ONLY INFORMATION I HAD. THAT IS THE
2 INFORMATION ON THE VEHICLE.

3 Q RIGHT. AND WHAT WAS THE DESCRIPTION OF THE DEFENDANT?

4 A BLACK MALE.

5 Q OKAY.

6 A TALL, THIN.

7 Q BLACK MALE. AND WHAT WAS THE DESCRIPTION OF ANYONE ELSE
8 THAT YOU HAD?

9 A THERE WAS TWO FEMALES. BUT I ALSO LEARNED THAT THERE WAS A
10 JACK PAWNED BY THESE INDIVIDUALS AT A PAWN SHOP.

11 Q YOU LEARNED THAT IT HAD BEEN PAWNED BY THESE INDIVIDUALS OR
12 YOU LEARNED THAT IT HAD BEEN PAWNED BY ONE OF THE FEMALES?

13 A ONE OF THE FEMALES THAT WAS WITH...

14 Q OKAY. YOU DIDN'T KNOW THAT. YOU JUST KNEW THAT ONE OF THE
15 FEMALES -- YOU HAD BEEN TOLD THAT ONE OF THE FEMALES HAD PAWNED A
16 JACK; IS THAT RIGHT?

17 A I DIDN'T KNOW WHAT?

18 Q YOU DIDN'T KNOW WHETHER SHE HAD BEEN -- WHETHER THEY HAD ALL
19 PAWNED IT. YOU JUST KNEW THE INFORMATION FROM THE PAWN SHOP; IS
20 THAT RIGHT?

21 A I KNEW THAT SOMEONE IN THE DEFENDANT'S PARTY PAWNED A JACK
22 AT THE PAWN SHOP. THAT'S CORRECT.

23 Q AND THAT RELAYED BACK TO -- YOU GOT THAT NAME AND THAT WAS
24 NICKI TISDALE; IS THAT CORRECT?

25 A DIANE TISDALE, YES. NICKI.

JACKSON v. DENNO
TIM CONROY - CROSS BY MR. CREECH

1 Q OKAY. THEN YOU RAN THAT INTO RECORDS AND FOUND OUT THAT SHE
2 HAD AN ADDRESS AT ALICE DRIVE?

3 A NO, SIR. I RAN HER DRIVER'S LICENSE AND FOUND THAT SHE HAD
4 AN ADDRESS AT ALICE DRIVE.

5 Q AND THEN YOU RAN HER NAME IN RECORDS AND FOUND THAT SHE
6 LIVED AT APPALOOSA; IS THAT CORRECT?

7 A SHE WAS A VICTIM OF A CRIME AT APPALOOSA, YES.

8 Q OKAY. AND DID YOU HAVE ANY KIND OF PHYSICAL DESCRIPTION OF
9 HER EXCEPT FOR THE BLACK FEMALE?

10 A I DID NOT.

11 Q WHEN YOU ARRIVED ON SCENE WHAT -- SO WHEN YOU WENT ON THE
12 PREMISES THE INFORMATION THAT YOU HAD WAS THAT A NICKI TISDALE
13 HAD PAWNED A JACK AND THAT SHE LIVED AT ; IS THAT
14 RIGHT?

15 A THAT'S WHAT I GATHERED THROUGH THE INVESTIGATION.

16 Q AND YOU HAD A BLUE BUICK. AND THAT INFORMATION ABOUT THE
17 CAR WAS A BLUE OLDER LOOKING CUTLASS; IS THAT RIGHT?

18 A THAT'S CORRECT.

19 Q AND THAT A BLACK MALE --- YOU HAD INFORMATION ABOUT A BLACK
20 MALE, JUST A BLACK MALE; IS THAT CORRECT?

21 A THAT'S CORRECT.

22 Q AND THAT'S WHAT YOU HAD PRIOR TO GOING ONTO THE PREMISES AT
23 , CORRECT?

24 A YES, SIR.

25 Q NOW, WHEN YOU WENT ONTO THE PREMISES, YOU WENT AND KNOCKED

JACKSON v. DENNO
TIM CONROY - CROSS BY MR. CREECH

1 ON THE DOOR, DID YOU ANNOUNCE THAT YOU WERE WITH THE GREENVILLE
2 CITY POLICE DEPARTMENT?

3 A HE ASKED WHO WAS THERE. I SAID IT WAS TIM.

4 Q OKAY.

5 A WHEN HE OPENED THE DOOR, I IDENTIFIED MYSELF AS A POLICE
6 OFFICER.

7 Q AND IS THIS LOCATION IN THE CITY OR COUNTY OF GREENVILLE?

8 A IT'S IN GREENVILLE COUNTY.

9 Q NOT IN THE CITY, CORRECT?

10 A THAT IS CORRECT.

11 Q AND YOU TOLD HIM YOU WERE INVESTIGATING A SHOOTING?

12 A WHEN HE ANSWERED THE DOOR, I ADVISED HIM I WAS INVESTIGATING
13 A SHOOTING.

14 Q AND THEN WHAT DID YOU -- AFTER THEY OPENED THE DOOR, WHERE
15 DID YOU GO?

16 A AFTER HE WAS IN THE CAR, I LOOKED INSIDE AND ASKED THE
17 FEMALE SITTING INSIDE IF I COULD COME IN. SHE STATED I COULD.

18 Q AND WHO WAS THAT PERSON, DID YOU KNOW?

19 A VALENCIA SULLIVAN. I DID NOT KNOW HER AT THE TIME.

20 Q AND AT THE TIME YOU DID NOT KNOW THAT WAS VALENCIA SULLIVAN?

21 YOU DIDN'T KNOW IT WAS NICKI TISDALE? YOU DIDN'T KNOW WHO IT
22 WAS, CORRECT?

23 A THAT'S CORRECT.

24 Q OKAY. AND THEN -- AND DID YOU DETERMINE WHO THE OWNER OF
25 THE TRAILER WAS AT THAT TIME? DID YOU KNOW?

JACKSON v. DENNO
TIM CONROY - CROSS BY MR. CREECH

1 A I DID NOT KNOW AT THAT TIME, NO, SIR.

2 Q DID YOU KNOW WHO THE RENTER OF THE TRAILER WAS AT THAT TIME?

3 A I DID NOT.

4 Q DID YOU KNOW WHO LIVED AT THAT TRAILER?

5 A I DID NOT KNOW AT THAT TIME.

6 Q DID YOU KNOW WHETHER THE PERSON INSIDE THE HOUSE LIVED AT
7 THAT TRAILER?

8 A NO, SIR.

9 Q AND BECAUSE SHE SAID COME ON IN, YOU WENT INSIDE; IS THAT
10 RIGHT?

11 A THAT'S CORRECT. THAT'S WHAT WE DID.

12 Q DID SHE INTRODUCE HERSELF TO YOU?

13 A I ASKED HER HER NAME.

14 Q DID YOU ASK FOR ID?

15 A NO, I DID NOT AT THAT TIME, I BELIEVE.

16 Q AND YOU TOLD HER THAT YOU WANTED TO TALK WITH HER; IS THAT
17 RIGHT?

18 A I DID SAY -- I ASKED IF DIANE TISDALE WAS THERE.

19 Q AND WAS THE AIR CONDITIONING ON IN THE TRAILER?

20 A I DO NOT RECALL. I DON'T KNOW.

21 Q I'M SORRY?

22 A I DO NOT RECALL.

23 Q OKAY. BUT YOU FELT LIKE IT WAS NECESSARY TO TAKE MR. FOWLER
24 OUT INTO THE BACK SEAT OF THE CAR?

25 A NO, SIR, THE FRONT SEAT OF MY CAR.

JACKSON v. DENNO
TIM CONROY - CROSS BY MR. CREECH

1 Q YOU FELT LIKE YOU NEEDED TO TAKE HIM OUT TO THE FRONT SEAT
2 OF YOUR CAR BECAUSE THE -- IT WAS HOT OUTSIDE AND YOU WANTED TO
3 GIVE HIM A BREAK IN THE AIR CONDITIONING?

4 A AND I ALSO DID NOT WANT -- IF THEY WERE INVOLVED IN THE
5 INVESTIGATION, I DIDN'T WANT THEM HEARING WHAT WAS GOING ON.

6 Q YOU DIDN'T---

7 A I WANTED VALENCIA AND MR. FOWLER TO BE SEPARATE.

8 Q OKAY. AND WAS THERE NOWHERE ELSE IN THE TRAILER THAT YOU
9 COULD HAVE TAKEN MR. FOWLER?

10 A HE WAS STANDING BESIDE MY CAR. IT WAS RUNNING. I FIGURED
11 IT WAS COOL.

12 Q SO YOU SEPARATED THE TWO; IS THAT RIGHT?

13 A THAT IS.

14 Q NOW, WHEN YOU DETAINED MR. FOWLER, WHAT WAS YOUR REASON FOR
15 DETAINING HIM?

16 A I WAS WAITING FOR A PHOTO LINEUP. ANOTHER DETECTIVE WAS
17 GOING TO DO A PHOTO LINEUP.

18 Q SO YOUR REASON THEN WAS YOU TOLD HIM HE WAS NOT UNDER ARREST
19 AND HE WASN'T BEING CHARGED; IS THAT RIGHT?

20 A I SAID HE WAS NOT BEING CHARGED AT THIS TIME.

21 Q OKAY. AND YOU PUT HANDCUFFS ON HIM?

22 A THAT'S CORRECT.

23 Q YOU TOOK HIM AND PUT HIM IN THE FRONT SEAT OF THE CAR AND HE
24 WAS BEING DETAINED SO THAT A PHOTO LINEUP COULD BE---

25 A THAT'S CORRECT.

JACKSON v. DENNO
TIM CONROY - CROSS BY MR. CREECH

1 Q ---ASSEMBLED; IS THAT RIGHT?

2 A YES, SIR.

3 Q AND WHO WAS ASSEMBLING THE PHOTO LINEUP?

4 A I BELIEVE IT WAS DETECTIVE BRADFORD. I COULD BE MISTAKEN.

5 Q AND WHAT'S DETECTIVE BRADFORD'S FULL NAME?

6 A BOBBY BRADFORD. ROBERT BRADFORD.

7 Q OKAY. AND DID HE EVER ASSEMBLE A PHOTO LINEUP?

8 A I DON'T KNOW IF IT WAS -- IT WAS NEVER SHOWN IF HE ASSEMBLED
9 ONE.

10 Q OKAY. IT WAS NEVER SHOWN TO WHO?

11 A TO THE VICTIMS.

12 Q SO HOW LONG -- DID YOU GET IN THE CAR IMMEDIATELY WITH MR.
13 FOWLER?

14 A AFTER I TALKED TO VALENCIA, I WOULD SAY -- I'D SAY TEN
15 MINUTES LATER, TEN, FIFTEEN MINUTES LATER I GOT IN THE CAR.

16 Q AND YOU TOOK HIM AND PUT HIM IN YOUR CAR, CAME BACK INSIDE
17 AND TALKED TO VALENCIA FOR TEN OR FIFTEEN MINUTES, THEN WENT BACK
18 OUT TO HIM IN THE CAR; IS THAT RIGHT?

19 A THAT IS CORRECT.

20 Q AND WHEN DID YOU READ HIM HIS RIGHTS?

21 A I WOULD SAY TEN OR FIFTEEN MINUTES WOULD PROBABLY BE A LONG
22 PORTION OF TIME BECAUSE I WENT IN AND TALKED TO VALENCIA FOR A
23 COUPLE OF MINUTES, WALKED THROUGH THE HOUSE AND WENT BACK OUT,
24 AND I ADVISED HIM OF HIS RIGHTS.

25 Q OKAY. WHO WAS THERE PRESENT IN ADDITION TO VALENCIA WHEN

JACKSON v. DENNO
TIM CONROY - CROSS BY MR. CREECH

1 YOU TALKED TO HER?

2 A HAMLETT, DETECTIVE HAMLETT. JOHN HAMLETT.

3 Q AND WHAT DID YOU TALK TO VALENCIA ABOUT BEFORE YOU WENT OUT
4 AND TALKED WITH MR. FOWLER?

5 A I ASKED HER IF -- SHE ASKED WHAT WE NEEDED, AND I ADVISED
6 HER WE WERE INVESTIGATING A HOMICIDE AND ASKED HER IF SHE HAD ANY
7 KNOWLEDGE OF IT.

8 Q OKAY. AND WHAT DID SHE SAY?

9 A SHE SAID -- AT THAT TIME I BELIEVE SHE SAID -- SHE DIDN'T
10 TALK ABOUT IT. AND I WENT BACK OUT BECAUSE MR. FULLER WAS IN THE
11 VEHICLE -- OR FOWLER WAS IN THE VEHICLE.

12 Q SO SHE TOLD YOU THEN THAT SHE DIDN'T HAVE ANYTHING -- THAT
13 SHE DIDN'T KNOW ABOUT IT? WHAT DID SHE SAY?

14 A SHE SAID SHE WASN'T -- SHE DIDN'T WANT TO TALK ABOUT IT AT
15 THAT TIME. ALL THE EVIDENCE THAT WAS OBSERVED BY ME, I CALLED
16 AND GOT A SEARCH WARRANT OBTAINED SO WE COULD SEARCH THE
17 RESIDENCE.

18 Q I'M SORRY. I COULDN'T HEAR THAT LAST ANSWER. WHAT WAS...

19 A WITH ALL THE VISUAL EVIDENCE IN THE APARTMENT, I CALLED
20 ANOTHER DETECTIVE TO GET A SEARCH WARRANT ON THE RESIDENCE. SO I
21 DIDN'T REALLY QUESTION HER AT THAT TIME.

22 Q WHAT DID YOU SEE IN THE RESIDENCE?

23 A MARIJUANA, BULLETS.

24 Q ALL RIGHT. SO MARIJUANA AND BULLETS. AND YOU GOT A SEARCH
25 WARRANT BASED ON THAT THERE WAS MARIJUANA IN THE HOUSE TO SEARCH

JACKSON v. DENNO
TIM CONROY - CROSS BY MR. CREECH

1 FOR OTHER DRUGS OR MARIJUANA?

2 A I BELIEVE, AND WITH ALL OF THE OTHER EVIDENCE.

3 Q WHAT DID YOU SEE IN THE TRAILER?

4 A THE MARIJUANA AND THE BULLETS.

5 Q SO BASED ON YOU SAW BULLETS -- WERE THERE BULLETS IN THE
6 BOX?

7 A THERE WAS -- YES, SIR.

8 Q SO YOU SAW BULLETS IN A BOX AND MARIJUANA, AND BASED ON THAT
9 WHAT DID YOU GET THE SEARCH WARRANT FOR?

10 A BASED ON THAT FOR OTHER EVIDENCE INVOLVED IN THE HOMICIDE
11 INVESTIGATION.

12 Q AND IT WAS BASED JUST ON SEEING BULLETS AND MARIJUANA IN THE
13 HOUSE; IS THAT CORRECT?

14 A NO, SIR, THAT'S NOT ALL. THERE WAS THE EVIDENCE IN
15 REFERENCE TO THE HOMICIDE AS WELL. THE LOCATION, THE VEHICLE
16 MATCHING THE DESCRIPTION.

17 Q AND YOU RELATED THAT INFORMATION TO WHICH OFFICER?

18 A MONTY MIZE, DETECTIVE MIZE.

19 Q DID YOU SEE ANY OTHER EVIDENCE BESIDES THE MARIJUANA?

20 A I THINK THERE WAS SOME OTHER NARCOTICS ON THE TABLE WITH THE
21 MARIJUANA.

22 Q NOW, WHEN YOU WENT INTO THE CAR WHAT WAS THE -- HAD ANY
23 OTHER OFFICERS TALKED TO MR. FOWLER WHILE YOU WERE INSIDE WITH
24 VALENCIA?

25 A I DON'T BELIEVE SO.

JACKSON v. DENNO
TIM CONROY - CROSS BY MR. CREECH

1 Q SO HE WAS OUT THERE IN THE CAR BY HIMSELF DURING THAT PERIOD
2 OF TIME?

3 A DETECTIVE JUSTICE WAS STANDING BESIDE THE VEHICLE.

4 Q OKAY. AND HE WAS HANDCUFFED; IS THAT CORRECT?

5 A THAT IS CORRECT.

6 Q HE WAS DEFINITELY NOT FREE TO LEAVE; IS THAT RIGHT?

7 A THAT'S CORRECT.

8 Q HE WAS BEING DETAINED FOR -- SO THAT A PHOTO LINEUP COULD BE
9 PUT TOGETHER; IS THAT RIGHT?

10 A THAT'S CORRECT.

11 Q AND THEN WHAT -- WHAT DID YOU DO AT THAT POINT?

12 A WHEN I WENT BACK OUT THERE, HE SAID HE WANTED TO TALK. I
13 ADVISED HIM -- THAT IS THE TIME I ADVISED HIM OF HIS RIGHTS.

14 Q OKAY. AND THOSE ARE THE RIGHTS THAT YOU READ TO HIM OFF THE
15 CARD; IS THAT RIGHT?

16 A THAT'S CORRECT.

17 Q AND YOU READ THAT TO HIM INSIDE THE CAR; IS THAT RIGHT?

18 A THAT'S CORRECT.

19 Q YOU WEREN'T OUTSIDE WHEN YOU READ IT TO HIM?

20 A NO, SIR. I WAS SITTING IN THE DRIVER'S SEAT.

21 Q AND HE WAS IN HANDCUFFS?

22 A THAT'S CORRECT.

23 Q AND WHAT DID HE -- WHAT MOTIVATED YOU TO READ HIM HIS
24 RIGHTS?

25 A HE SAID HE DID WANT TO TALK, AND I ADVISED HIM THAT---

JACKSON v. DENNO
TIM CONROY - CROSS BY MR. CREECH

- 1 Q SO HE TOLD YOU -- WAS THAT IN THE CAR?
- 2 A THAT WAS IN THE CAR.
- 3 Q HE SAID, "I WANT TO TALK." WHAT DID HE MEAN, I WANT TO TALK
- 4 ABOUT...
- 5 A I DON'T KNOW WHAT HE WANTED TO TALK ABOUT. HE ASKED WHAT
- 6 WAS GOING ON, AND I ADVISED THAT WE'RE GETTING A SEARCH WARRANT
- 7 FOR HIS VEHICLE AND RESIDENCE, AND HE SAID, "YOU DON'T NEED ONE."
- 8 I SAID, "I'M GOING TO ADVISE YOU OF YOUR RIGHTS."
- 9 Q AND YOU HAD ALREADY CALLED DETECTIVE MIZE AT THAT POINT TO
- 10 GET THE SEARCH WARRANT?
- 11 A THAT IS CORRECT.
- 12 Q OR WERE YOU PLANNING TO GET THE SEARCH WARRANT?
- 13 A I CALLED HIM TO GET THE SEARCH WARRANT.
- 14 Q OKAY. AND THEN ONCE -- AND HOW LONG DID YOU SPEAK WITH MR.
- 15 FOWLER IN THE CAR?
- 16 A AFTER ADVISING HIM OF HIS RIGHTS AND -- TEN MINUTES,
- 17 Q AND DID YOU ASK HIM SPECIFIC QUESTIONS IN THE CAR?
- 18 A NO, SIR, I DID NOT.
- 19 Q DID YOU ASK HIM WHAT HAPPENED?
- 20 A I ADVISED HIM I WAS INVESTIGATING A HOMICIDE INVESTIGATION.
- 21 I DIDN'T ASK HIM WHAT HAPPENED.
- 22 Q OKAY. SO YOU JUST SAID -- WERE SITTING IN THE CAR
- 23 INVESTIGATING A HOMICIDE AND YOU DIDN'T ASK ANY QUESTIONS; IS
- 24 THAT RIGHT?
- 25 A THAT'S CORRECT.

JACKSON v. DENNO
TIM CONROY - CROSS BY MR. CREECH

1 Q OKAY. AND DID HE -- WHAT DID HE TELL YOU?

2 A HE SAID, I "DON'T NEED A SEARCH WARRANT FOR THE VEHICLE OR
3 CAR, GO AHEAD AND LOOK. IF YOU DON'T FIND ANYTHING, THEN I'M OFF
4 THE HOOK."

5 Q AND WHY DID YOU TELL HIM THAT YOU WERE GETTING A SEARCH
6 WARRANT?

7 A TO LOOK FOR EVIDENCE IN RELATION TO THE HOMICIDE.

8 Q AND WHY WERE YOU TELLING HIM THAT?

9 A BECAUSE HE WAS ASKING WHAT WE WERE DOING THERE, AND I SAID,
10 YOU KNOW -- HE WAS ASKING WHEN HE COULD LEAVE, AND I SAID, "WE'RE
11 GOING TO GET A SEARCH WARRANT."

12 Q AND WHEN YOU WERE GETTING THE SEARCH WARRANT WERE YOU
13 TELLING HIM YOU WERE GETTING THE SEARCH WARRANT TO GET HIM TO
14 TALK ABOUT THE CASE AT ALL?

15 A NO, SIR.

16 Q AND SO HOW LONG DID THE -- DID HE -- WHAT DID HE SAY AGAIN,
17 AFTER THAT? DID HE JUST ASK WHAT YOU WERE DOING AND THAT WAS IT?

18 A YEAH. I MEAN, HE ASKED IF I WAS -- I ADVISED HIM I WAS
19 GETTING A SEARCH WARRANT.

20 Q OKAY. AND Y'ALL SAT IN THE CAR FOR TEN MINUTES AND THAT'S
21 ALL HE ASKED ABOUT?

22 A WELL, AFTER READING AND ADVISING HIM OF HIS RIGHTS AND ALL
23 THAT, YES.

24 Q AND THEN YOU GOT BACK OUT OF THE CAR; IS THAT RIGHT?

25 A THAT'S CORRECT.

JACKSON v. DENNO
TIM CONROY - CROSS BY MR. CREECH

- 1 Q AND DID YOU GET HIM OUT OF THE CAR AT THAT POINT?
- 2 A NO, SIR, HE WAS SITTING IN THE CAR.
- 3 Q YOU KEPT HIM IN THE CAR; IS THAT CORRECT?
- 4 A UH-HUH (AFFIRMATIVE).
- 5 Q WHAT DID HE -- AND WHERE DID YOU GO?
- 6 A I WENT BACK INSIDE.
- 7 Q AND WHY DID YOU GO BACK INSIDE?
- 8 A TO TALK TO VALENCIA. AT THAT TIME VALENCIA, BEING ADVISED
- 9 OF HER RIGHTS, STATED THAT HE WAS THE -- HE WAS THE SHOOTER, THAT
- 10 SHE HAD NOTHING TO DO WITH IT.
- 11 Q ALL RIGHT. I'M SORRY. COULD YOU -- YOU WENT BACK INSIDE TO
- 12 TALK TO VALENCIA; IS THAT CORRECT?
- 13 A THAT'S CORRECT.
- 14 Q ALL RIGHT. WHO WAS INSIDE WITH VALENCIA?
- 15 A JOHN HAMLETT.
- 16 Q INVESTIGATOR HAMLETT?
- 17 A UH-HUH (AFFIRMATIVE).
- 18 Q OKAY. I MEAN, DETECTIVE HAMLETT WITH THE CITY?
- 19 A YES. UH-HUH (AFFIRMATIVE).
- 20 Q HE WAS IN THERE WITH HER?
- 21 A THAT'S CORRECT.
- 22 Q AND YOU WENT IN AND TALKED TO HER?
- 23 A THAT'S CORRECT.
- 24 Q WHAT DID SHE TELL YOU?
- 25 A AFTER SHE WAS ADVISED OF HER RIGHTS SHE SAID SHE HAD NOTHING

JACKSON v. DENNO
TIM CONROY - CROSS BY MR. CREECH

1 TO DO WITH IT AND POINTED AT THE CAR AND SAID, "HE'S THE ONE THAT
2 DID THE SHOOTING."

3 Q SO SHE POINTED OUT AT THE CAR AND SHE SAID, "HE WAS ONE THAT
4 DID THE SHOOTING"?

5 A OUT OF THE APARTMENT.

6 Q SHE POINTED OUTSIDE THE TRAILER INTO THE CAR AND SHE SAID,
7 "HE'S THE ONE THAT DID THE SHOOTING"?

8 A UH-HUH (AFFIRMATIVE).

9 Q IS THAT WHAT SHE SAID?

10 A SOMETHING -- I DIDN'T HAVE ANYTHING TO DO WITH IT. HE DID
11 IT ALONE. I DON'T KNOW...

12 Q I DIDN'T HAVE ANYTHING TO DO WITH IT---

13 A UH-HUH (AFFIRMATIVE).

14 Q ---HE DID IT ALONE OR HE'S THE ONE THAT DID THE SHOOTING.
15 WHICH ONE WAS IT?

16 A LET ME REFER TO MY NOTES. (PAUSE) SHE SAID, "I DID NOT
17 HAVE ANYTHING TO DO WITH THIS. HE IS THE ONE THAT SHOT THEM."
18 AND SHE POINTED IN THE DIRECTION OF FOWLER.

19 Q SO HE'S THE ONE THAT SHOT THE WOMAN?

20 A SHOT THEM.

21 Q SHOT THEM. OKAY. AND THEN AFTER YOU -- HOW LONG DID YOU
22 STAY IN THERE AND TALK WITH HER?

23 A A VERY BRIEF TIME. SHE SAID SHE WOULD GO TO THE LAW
24 ENFORCEMENT CENTER, SO I LET DETECTIVE HAMLETT TAKE HER TO THE
25 LAW ENFORCEMENT CENTER.

JACKSON v. DENNO
TIM CONROY - CROSS BY MR. CREECH

1 Q OKAY. SO YOU LET -- SO HAMLETT THEN TOOK HER TO THE LAW
2 ENFORCEMENT CENTER?

3 A THAT'S CORRECT.

4 Q AND YOU WENT BACK OUTSIDE; IS THAT RIGHT?

5 A UH-HUH (AFFIRMATIVE).

6 Q AND WAS MR. FOWLER STILL IN THE CAR?

7 A HE WAS STILL IN THE CAR.

8 Q ALL RIGHT. NOW WHAT -- DID YOU GET BACK IN THE CAR AND TALK
9 TO HIM?

10 A NO, I -- I DID NOT. DETECTIVE -- SERGEANT MILLER SAID THAT
11 HE WANTED TO GET EVERYTHING OFF HIS CHEST. HE SHOWED UP IN THE
12 MEANTIME WHILE I WAS INSIDE. THAT'S WHEN HE SAID THAT HE WANTED
13 TO POINT A GUN OUT TO US. AND I SAT BACK IN THE CAR WITH HIM. I
14 SAID, YOU KNOW, ASKED HIM, "DO YOU WANT TO GET THIS OFF YOUR
15 CHEST?" HE SAID, "YEAH. I WANT TO SHOW YOU GUYS THE GUN." WE
16 GOT BACK OUT OF THE CAR AND STOOD AT THE FRONT DOOR.

17 Q OKAY. SO WHILE YOU WERE INSIDE SERGEANT MILLER CAME ON THE
18 SCENE?

19 A THAT'S CORRECT.

20 Q AND YOU WERE -- DID YOU RADIO SERGEANT MILLER AND HAVE HIM
21 COME OUT ON THE SCENE OR DID HE JUST SHOW UP?

22 A HE SHOWED UP.

23 Q ALL RIGHT. AND NO ONE ASKED HIM TO COME TO THAT LOCATION;
24 IS THAT RIGHT?

25 A SOMEBODY ASKED HIM. I DON'T KNOW IF SOMEBODY ASKED HIM OR

JACKSON v. DENNO
TIM CONROY - CROSS BY MR. CREECH

1 IF HE SHOWED UP. I DON'T KNOW HOW HE CAME ACROSS COMING TO THAT
2 LOCATION.

3 Q OKAY. HE GOT IN THE CAR WITH MR. FOWLER; IS THAT CORRECT?

4 A THAT'S CORRECT.

5 Q AND YOU WEREN'T A PARTY TO THAT CONVERSATION?

6 A NO, SIR.

7 Q ALL RIGHT. DO YOU KNOW WHAT SERGEANT MILLER AND MR. FOWLER
8 TALKED ABOUT?

9 A I DON'T KNOW SPECIFIC QUESTIONS, NO.

10 Q OKAY. AND WHAT DID MR. FOWLER TELL MR. MILLER GENERALLY?
11 WHERE THE GUN WAS?

12 A YEAH. WHEN I GOT OUT THERE, SERGEANT MILLER SAID, "HE WANTS
13 TO GET IT OFF HIS CHEST. HE WANTS TO SHOW YOU WHERE THE GUN IS."

14 Q HE WANTS TO GET IT OFF HIS CHEST AND HE---

15 A "SHOW YOU WHERE THE GUN IS."

16 Q SHOW YOU WHERE THE GUN -- SO WHEN YOU GOT BACK TO THE CAR AT
17 THAT POINT?

18 A YES.

19 Q OKAY. AND THEN TELL ME WHAT---

20 A AND I SAID, YOU KNOW, "I UNDERSTAND YOU WANT TO GET IT OFF
21 YOUR CHEST AND SHOW US THE GUN." HE SAID, "YEAH, I DO. I WANT
22 TO COME CLEAN." SO AT THAT TIME I -- WE WALKED INTO THE FRONT
23 DOOR AND HE SAID, "IT'S UNDER THAT CHEST" AND NODDED TO A PIECE
24 OF FURNITURE.

25 Q OKAY. AND WAS HE IN HANDCUFFS WHEN THAT HAPPENED?

JACKSON v. DENNO
TIM CONROY - CROSS BY MR. CREECH

- 1 A THAT IS CORRECT.
- 2 Q ALL RIGHT. AND WAS HE FREE TO LEAVE?
- 3 A NO, SIR.
- 4 Q SO HE WAS BEING DETAINED; IS THAT CORRECT?
- 5 A THAT'S CORRECT.
- 6 Q ALL RIGHT. AND HAD BEEN DETAINED?
- 7 A THAT'S CORRECT.
- 8 Q OKAY. WHEN DID YOU GUYS DECIDE NOT TO GET A PHOTO LINEUP?
- 9 A AFTER THE STATEMENT FROM VALENCIA AND THE CONFESSION FROM
- 10 HIM.
- 11 Q SO ONCE VALENCIA SAID, "HE'S THE ONE THAT DID IT. HE'S THE
- 12 ONE THAT SHOT THAT LADY," Y'ALL CALLED OFF THE PHOTO LINEUP; IS
- 13 THAT RIGHT?
- 14 A WE NEVER CALLED IT OFF. IT JUST NEVER SHOWED UP. AND THEN
- 15 HE POINTED THE GUN OUT TO US AND I FIGURED THERE WAS NO REASON TO
- 16 SHOW THE PHOTO LINEUP.
- 17 Q OKAY. WHEN YOU WENT DOWN TO THE -- DETECTIVE HAMLETT TOOK
- 18 MS. TISDALE DOWN TO -- EXCUSE ME, MS. SULLIVAN DOWN TO THE LAW
- 19 ENFORCEMENT CENTER AND YOU ARRIVED LATER; IS THAT CORRECT?
- 20 A THAT IS CORRECT.
- 21 Q ABOUT HOW MUCH LATER AFTER DID YOU---
- 22 A I GUESS I GOT TO THE LAW ENFORCEMENT CENTER A QUARTER AFTER,
- 23 TWENTY AFTER 5:00. I DON'T KNOW. MAYBE HE GOT THERE...
- 24 Q AND DID YOU ALLOW -- WAS MS. TISDALE DOWN THERE AT THAT
- 25 POINT?

JACKSON v. DENNO
TIM CONROY - CROSS BY MR. CREECH

- 1 A I BELIEVE SHE WAS TALKING TO DETECTIVE FLAVELL, YES.
- 2 Q AND WHAT -- DO YOU KNOW WHAT TIME MS. TISDALE GOT TO THE
- 3 DETENTION CENTER -- OR THE LAW ENFORCEMENT CENTER?
- 4 A I DON'T KNOW WHAT TIME. WHEN I FOUND OUT MS. TISDALE WAS
- 5 WORKING AT THE SPINX, I CALLED DETECTIVE FLAVELL AND HE RESPONDED
- 6 THERE. SO I DON'T KNOW WHAT TIME HE GOT THERE.
- 7 Q AND YOU DIDN'T TALK TO TISDALE PRIOR TO THIS, CORRECT? .
- 8 A THAT'S CORRECT.
- 9 Q NOW, WHEN YOU SPOKE WITH MR. SULLIVAN WHAT DID -- YOU WERE
- 10 ASKING HIM IF HE WAS UNDER THE INFLUENCE OF ANY ALCOHOL OR DRUGS?
- 11 A MR. FOWLER?
- 12 Q MR. FOWLER.
- 13 A THAT'S CORRECT.
- 14 Q ALL RIGHT. AND HE DID NOT APPEAR TO BE TO YOU; IS THAT
- 15 CORRECT?
- 16 A THAT IS CORRECT.
- 17 Q WHAT DID HE -- AND YOU WERE TAKING NOTES; IS THAT RIGHT?
- 18 A THAT IS CORRECT.
- 19 Q IS THAT A COMMON PRACTICE OF YOURS, TO TAKE NOTES WHEN YOU
- 20 START AN INTERROGATION OR QUESTIONING?
- 21 A YES, IT IS.
- 22 Q AND DID YOU MAKE THOSE NOTES PART OF YOUR CASE FILE?
- 23 A AFTER I TYPED THE STATEMENT UP, NO, SIR, I DID NOT. NO.
- 24 Q WHAT DID YOU DO WITH THOSE NOTES?
- 25 A I DISCARDED THEM.

JACKSON v. DENNO
TIM CONROY - CROSS BY MR. CREECH

1 Q YOU JUST THREW THEM AWAY?

2 A EITHER SHREDDED THEM OR PUT THEM IN A SHREDDING BIN.

3 Q ALL RIGHT. SO YOU DON'T HAVE THOSE NOTES IN YOUR
4 POSSESSION?

5 A I DO NOT HAVE THOSE, NO, SIR.

6 Q AND YOU WROTE UP WHAT MR. FOWLER TOLD YOU; IS THAT RIGHT?

7 A THAT'S CORRECT.

8 Q OKAY. NOW, YOU VERBALLY INTERVIEWED MR. FOWLER FIRST. WAS
9 THERE ANYTHING THAT HE TOLD YOU VERBALLY THAT YOU DIDN'T PUT IN
10 YOUR STATEMENT?

11 A ARE YOU GOING BACK TO THE TIME OF THE HOUSE OR -- WHEN I SAT
12 IN THE OFFICE, IN THE INTERVIEW ROOM, I ASKED HIM EITHER HE COULD
13 TELL ME THE STORY OR I COULD ASK QUESTIONS. HE OPTED TO TELL ME
14 THE STORY. I DON'T -- AT THAT POINT I DON'T BELIEVE THERE WAS
15 ANYTHING THAT WAS LEFT OUT FROM WHEN I STARTED TAKING NOTES.

16 Q DID HE TELL YOU VERBALLY THAT HE THOUGHT THE GUY HAD A GUN?

17 A I THINK HE SAID HE FREAKED OUT WHEN THE GUY PULLED HIS HAND
18 OUT OF HIS POCKET.

19 Q WHAT DOES YOUR REPORT SAY?

20 A MY REPORT, READING OVER IT THE OTHER NIGHT, SAID -- (PAUSE)
21 MY REPORT SAID HE HAD HIS RIGHT HAND IN HIS POCKET, HOLDING HIS
22 PISTOL. THAT'S REFERRING TO MR. FOWLER. HARRIS PULLED HIS HAND
23 OUT OF HIS POCKET AND HE THOUGHT HE HAD A GUN.

24 Q AND HE THOUGHT HE HAD A GUN?

25 A THAT'S WHAT I WROTE IN MY REPORT.

JACKSON v. DENNO

TIM CONROY - CROSS BY MR. CREECH

1 Q AND WHO IS HE?

2 A I GUESS MR. HARRIS HE WAS REFERRING TO.

3 Q MR. FOWLER THOUGHT THAT MR. HARRIS HAD A GUN?

4 A THAT'S WHAT I WROTE IN MY REPORT, AND I DON'T KNOW -- I
5 GUESS I WAS JUST TYPING THAT BECAUSE I THOUGHT HE WAS REPLYING
6 THAT. BUT HE NEVER TOLD ME THAT HE HAD A GUN.

7 Q OKAY. SO HE TOLD YOU THAT VERBALLY?

8 A NO. HE NEVER ME HE HAD A GUN VERBALLY. I GUESS I IMPLIED
9 THAT WHILE I WAS TYPING MY REPORT.

10 Q OKAY. YOU'VE GOT IN YOUR REPORT HERE THAT HE SAID HE
11 THOUGHT HE HAD A GUN. HE DIDN'T TELL YOU THAT?

12 A NO, SIR. HE DID NOT TELL ME THAT.

13 Q THAT'S JUST WHAT YOU---

14 A I GUESS THAT'S -- WHEN I WAS GOING BACK SEVERAL DAYS LATER
15 TYPING MY REPORT, I GUESS THAT'S WHAT I THOUGHT HE WAS IMPLYING,
16 BUT HE NEVER TOLD ME HE HAD A GUN.

17 Q AND THEN YOU JUST WROTE OUT -- WHEN YOU WROTE OUT THE
18 STATEMENT YOU HAD HIM SIGN IT; IS THAT RIGHT?

19 A I WROTE THE STATEMENT. I READ IT TO HIM, MADE ANY NECESSARY
20 CHANGES, AND THEN I TYPED THE STATEMENT.

21 Q AND YOU DIDN'T PUT ANYTHING IN THE STATEMENT ABOUT YOU
22 THOUGHT HE HAD A GUN?

23 A NO, SIR, BECAUSE HE DID NOT TELL ME HE THOUGHT HE HAD A GUN.

24 Q OKAY. WAS THERE ANYTHING ELSE THAT YOU WROTE IN YOUR
25 STATEMENT THAT -- OR THAT YOU WROTE IN YOUR REPORT THAT HE TOLD

JACKSON v. DENNO
TIM CONROY - CROSS BY MR. CREECH

1 YOU THAT HE TOLD YOU THAT YOU DIDN'T PUT IN YOUR STATEMENT -- HIS
2 STATEMENT?

3 A NOT THAT I'M AWARE OF, NO, SIR.

4 MR. CREECH: BEG THE COURT'S INDULGENCE, JUDGE.

5 THE COURT: YES, SIR. TAKE YOUR TIME.

6 Q NOW, THIS STATEMENT THAT YOU SAY HE MADE, THE SECOND TO THE
7 LAST SENTENCE IN THE SECOND PARAGRAPH OF YOUR REPORT ON PAGE
8 THREE OF YOUR REPORT THAT SAYS, "AS HE WAS TELLING ME THIS HE WAS
9 LAUGHING, SAYING THAT HE SHOULD NOT LAUGH BUT THAT BITCH PISSED
10 HIM OFF BECAUSE SHE WOULDN'T LET GO OF THE MONEY AND SHE TORE
11 IT."

12 YOU WROTE THAT IN YOUR REPORT AND OF COURSE THAT'S NOT
13 INCLUDED IN THIS STATEMENT. DID HE SAY THAT TO YOU OR IS THAT
14 SOMETHING THAT YOU THOUGHT HE WAS IMPLYING?

15 A NO, SIR. HE SAID THAT.

16 Q HE SAID THAT?

17 A THAT'S CORRECT.

18 Q BUT THEN HE DIDN'T SAY ANYTHING ABOUT HOW HE THOUGHT HE HAD
19 A GUN?

20 A NO, SIR.

21 Q ALL RIGHT. OKAY. DID -- NOW, DID HE EVER TELL YOU ANYTHING
22 ABOUT A RED BAG?

23 A NO, HE DID NOT.

24 Q HE NEVER SAID ANYTHING ABOUT A RED BAG?

25 A NO, SIR.

JACKSON v. DENNO
TIM CONROY - CROSS BY MR. CREECH

- 1 Q DID YOU EVER HEAR ABOUT A RED BAG?
- 2 A NOT THROUGHOUT THIS INVESTIGATION. NO, I DID NOT.
- 3 Q YOU KIND OF HESITATED AND SAID "NOT THROUGHOUT THIS
- 4 INVESTIGATION."
- 5 A WELL, I HEARD ABOUT A RED BAG A COUPLE DAYS AGO.
- 6 Q OKAY. WHAT DID YOU HEAR ABOUT IT?
- 7 A I HEARD THAT MR. FOWLER PROBABLY -- POSSIBLY HAD A RED BAG
- 8 THAT HE DROPPED IN THE CAR. THAT'S ALL I...
- 9 Q MR. FOWLER HAD A RED BAG THAT HE POSSIBLY DROPPED IN THE
- 10 CAR; IS THAT WHAT YOU SAID?
- 11 A THAT'S CORRECT.
- 12 Q IN WHICH CAR?
- 13 A THE VICTIM'S CAR.
- 14 Q OKAY. AND WHO TOLD YOU THAT?
- 15 A THE SOLICITOR.
- 16 Q DO YOU KNOW HOW THE SOLICITOR KNEW THAT?
- 17 A I HAVE NO IDEA.
- 18 Q DID HE TELL YOU THAT HE HAD THE -- STRIKE THAT, YOUR HONOR.
- 19 WERE THE VICTIMS ABLE TO GIVE YOU ANY KIND OF LICENSE TAG
- 20 NUMBER OF THE CAR?
- 21 A NO, SIR.
- 22 Q AND YOU DID NOT HAVE A NAME OF THE PEOPLE AT THE HOUSE? YOU
- 23 HAD A NAME OF A POSSIBLE RESIDENT. BUT WHEN YOU GOT THERE YOU
- 24 ~~DIDN'T HAVE EITHER VALENCIA SULLIVAN'S NAME OR ZACHARY FOWLER'S~~
- 25 NAME; IS THAT RIGHT?

JACKSON v. DENNO

TIM CONROY - REDIRECT BY MR. MOYER

1 A THAT'S CORRECT.

2 MR. CREECH: YOUR HONOR, I HAVE NO FURTHER QUESTIONS AT
3 THIS TIME.

4 MR. MOYER: JUST A COUPLE FOLLOW-UP QUESTIONS, YOUR HONOR.

5 THE COURT: REDIRECT. GO AHEAD.

6 REDIRECT EXAMINATION BY MR. MOYER:

7 Q YOU DIDN'T TAKE THE STATEMENT OF ONE OF THE VICTIMS NAMED
8 GARY POWELL, DID YOU?

9 A NO, I DID NOT.

10 Q SO YOU WEREN'T AWARE THAT HE MADE REFERENCE TO A RED BAG IN
11 HIS STATEMENT?

12 A NO, I DID NOT. I WAS NOT.

13 Q ALL RIGHT. JUST TO MAKE SURE WE'RE CLEAR ON THIS, WHAT IS
14 THE CONNECTION OF THIS PAWN SHOP TO YOUR DEVELOPING THIS DIANA
15 TISDALE AS A PERSON OF INTEREST?

16 A WE LEARNED THAT SOMEONE IN THIS PARTY PAWNED A JACK AT RED'S
17 PAWN SHOP. INVESTIGATOR---

18 Q SOMEONE IN WHICH PARTY?

19 A THE DEFENDANT'S PARTY.

20 Q OKAY. AND DO YOU KNOW WHAT THE TIME FRAME WAS IN RELATION
21 TO THE SHOOTING?

22 A YES. IT WAS JUST A FEW MINUTES BEFORE THE SHOOTING---

23 Q OKAY.

24 A ---THAT A JACK WAS PAWNED AT THE PAWN SHOP.

25 Q AND WHEN THEY GOT THAT INFORMATION HOW FAR WAS THAT PAWN

JACKSON v. DENNO
TIM CONROY - REDIRECT BY MR. MOYER

1 SHOP FROM THE INCIDENT LOCATION?

2 A A QUARTER OF A MILE.

3 Q WAS AN OFFICER SENT TO THAT LOCATION?

4 A THERE WAS AN OFFICER SENT.

5 Q AND THAT'S WHERE YOU GOT THIS NAME, DIANE TISDALE?

6 A THAT'S CORRECT.

7 Q OKAY. AND WERE YOU -- DID YOU HAVE A DESCRIPTION OF THE
8 SHOOTER?

9 A JUST A BLACK MALE, TALL, THIN. THAT WAS IT.

10 Q TALL, THIN. OLD, YOUNG?

11 A YOUNG.

12 Q YOUNG. ALL RIGHT. WHEN YOU WENT OUT TO WAS
13 THERE ANY -- WAS THERE A DEPUTY WITH YOU OR ANYONE WITH DEPUTY
14 POWERS WITH YOU?

15 A INVESTIGATOR HAMLETT HAD -- WAS SWORN AS A DEPUTY.

16 Q HE WAS SWORN AS A DEPUTY AT THAT TIME?

17 A YES, SIR.

18 Q DO YOU KNOW HOW THAT -- HE WORKED AT THE POLICE DEPARTMENT
19 THOUGH, RIGHT?

20 A YES, SIR. THE SHERIFF SWORE HIM IN BECAUSE HE WAS IN THE
21 WARRANTS DIVISION.

22 Q SO HE WORKED IN THE WARRANTS DIVISION AT THE TIME?

23 A NOT AT THE TIME, NO, SIR. HE WAS -- JUST PRIOR TO THIS
24 INCIDENT HE WAS WORKING IN THE WARRANTS DIVISION.

25 MR. MOYER: OKAY. I HAVE NOTHING FURTHER.

JACKSON v. DENNO
MATT JUSTICE - DIRECT BY MR. MOYER

1 THE COURT: ANY RECROSS?

2 MR. CREECH: NO FURTHER QUESTIONS RIGHT NOW!

3 THE COURT: ALL RIGHT. THANK YOU, DETECTIVE CONROY. YOU
4 MAY STEP DOWN, SIR.

5 WITNESS: THANK YOU.

6 (WITNESS STEPS DOWN AT 1:11 P.M.)

7 MR. MOYER: YOUR HONOR, I WOULD CALL MATT JUSTICE.

8 (PAUSE)

9 MR. CREECH: YOUR HONOR, MAY WE TAKE JUST A BRIEF BATHROOM
10 BREAK?

11 THE COURT: SURE.

12 MR. CREECH: I APOLOGIZE.

13 THE COURT: THAT'S FINE. WE'LL TAKE A BREAK. TAKE ABOUT
14 FIVE MINUTES. ALL RIGHT.

15 MR. CREECH: OF COURSE, EVERYBODY KNOWS WE'RE NOT SUPPOSED
16 TO TALK ABOUT THE CASE WHILE WE'RE IN THE MIDST OF A HEARING.
17 JUST WANT TO MAKE SURE THE WITNESSES ARE AWARE OF THAT.

18 THE COURT: OKAY. ALL RIGHT.

19 (A RECESS WAS TAKEN FROM 1:11 TO 1:19 P.M.)

20 THE COURT: OKAY. YES, SIR, MR. MOYER.

21 MR. MOYER: THE STATE WOULD CALL MATT JUSTICE TO THE STAND.

22 MATT JUSTICE, HAVING BEEN DULY SWORN,
23 TESTIFIED AS FOLLOWS:

24 MADAME CLERK: PLEASE STATE YOUR FULL NAME FOR THE RECORD.

25 WITNESS: MATTHEW EVATT JUSTICE.

JACKSON V. DENNO
MATT JUSTICE - DIRECT BY MR. MOYER

1 DIRECT EXAMINATION BY MR. MOYER:

2 Q WHERE DID YOU WORK IN JUNE OF LAST YEAR?

3 A GREENVILLE CITY POLICE DEPARTMENT.

4 Q HOW LONG WERE YOU IN LAW ENFORCEMENT?

5 A ELEVEN YEARS AND ELEVEN MONTHS.

6 Q WHAT WAS YOUR POSITION IN 2006?

7 A INVESTIGATOR IN CRIMES AGAINST PERSONS.

8 Q OKAY. WITH THE GREENVILLE POLICE DEPARTMENT?

9 A YES, SIR.

10 Q ALL RIGHT. NOW, DID YOU HAVE ANY CONTACT WITH THE DEFENDANT
11 IN RELATION TO THE INVESTIGATION OF THE HOMICIDE THAT TOOK PLACE
12 ON JUNE 7TH, 2006?

13 A HAVE ANY CONTACT WITH HIM?

14 Q YES.

15 A YES.

16 Q YOU SAID YES?

17 A YES, SIR.

18 Q OKAY. AND WHERE DID THAT TAKE PLACE?

19 A I FIRST MADE CONTACT WITH HIM AT DRIVE.

20 Q OKAY. AND WERE YOU WITH INVESTIGATOR CONROY AT THE DOOR
21 WHEN THE DEFENDANT CAME TO THE DOOR?

22 A YES, SIR.

23 Q ALL RIGHT. DID YOU REMAIN WITH THE DEFENDANT THERE AT THAT
24 LOCATION?

25 A YES, SIR.

JACKSON v. DENNO
MATT JUSTICE - DIRECT BY MR. MOYER

1 Q NOW, WHAT WAS -- HOW WOULD YOU DESCRIBE THE MANNERISMS AND
2 THE DEMEANOR OF THE DEFENDANT WHEN HE CAME TO THE DOOR AND YOU
3 AND DETECTIVE CONROY WERE THERE?

4 A VERY NERVOUS, LOOKING LEFT TO RIGHT. VERY NERVOUS ACTIONS.

5 Q AND WHAT DID THAT LEAD YOU TO BELIEVE THAT HE MIGHT BE READY
6 TO DO?

7 A FLEE.

8 Q OKAY. IN YOUR EXPERIENCE AS A LAW ENFORCEMENT OFFICER HAVE
9 YOU SEEN PEOPLE FLEE IN SITUATIONS LIKE THAT ONE?

10 A WHEN FIRST APPROACHED BY POLICE?

11 Q YEAH.

12 A YES. VERY COMMON.

13 Q MANY TIMES, YOU SAY?

14 A YES.

15 Q NOW, WHEN THE DEFENDANT WAS PLACED INTO INVESTIGATOR
16 CONROY'S VEHICLE, WHERE DID YOU STAND? WHERE WERE YOU?

17 A OUTSIDE THE VEHICLE AT THE DRIVER DOOR.

18 Q WAS THE WINDOW OPEN WHEN INVESTIGATOR CONROY TOOK HIM INTO
19 THE CAR INITIALLY AND SPOKE TO HIM?

20 A YES, SIR.

21 Q COULD YOU HEAR WHAT WAS TAKING PLACE INSIDE?

22 A YES, SIR.

23 Q AND YOU WERE -- YOU WERE ON WHICH SIDE OF THE CAR?

24 A THE DRIVER'S DOOR, THE DRIVER WINDOW.

25 Q DID YOU HEAR INVESTIGATOR CONROY GOING OVER THE RIGHTS WITH

JACKSON v. DENNO
MATT JUSTICE - DIRECT BY MR. MOYER

1 THE DEFENDANT?

2 A YES, SIR, I DID.

3 Q DID YOU HEAR ANY CONVERSATION ABOUT A SEARCH THAT MAY TAKE
4 PLACE OF THAT RESIDENCE AND THE VEHICLE?

5 A YES.

6 Q OKAY. AND WHAT WAS THAT CONVERSATION?

7 A I'LL HAVE TO REFER TO MY NOTES.

8 Q OKAY.

9 A (PAUSE) THAT DETECTIVE CONROY EXPLAINED TO ZACHARY FOWLER
10 AFTER THE RIGHTS THAT, YOU KNOW, HE WAS IN THE PROCESS OF
11 OBTAINING A SEARCH WARRANT FOR DRIVE AND THE BLUE
12 BUICK THAT WAS ALSO PARKED AT THAT LOCATION. ZACHARY REPLIED
13 THAT "YOU DON'T NEED A SEARCH WARRANT. YOU CAN GO AHEAD AND GO
14 IN AND SEARCH THE TRAILER AND THE CAR."

15 Q OKAY. NOW, AFTER INVESTIGATOR CONROY WAS TAKEN -- OR LEFT
16 THE DEFENDANT DID YOU HAVE ANY CONVERSATIONS WITH THE DEFENDANT
17 WHILE JUST YOU AND HE WERE ALONE TOGETHER?

18 A NO. NOT DIRECTLY, NO.

19 Q OKAY. NOT AT THAT TIME?

20 A NO, SIR.

21 Q WAS THE DEFENDANT TAKEN OUT OF THE VEHICLE?

22 A YES, SIR. HE WAS OUT OF THE VEHICLE.

23 Q AND WAS ANYTHING SAID TO YOU BY THE DEFENDANT WHILE YOU WERE
24 WITH HIM?

25 A YES. HE -- RIGHT BEFORE -- AT ONE POINT -- AFTER I WAS

JACKSON v. DENNO

MATT JUSTICE - DIRECT BY MR. MOYER

1 INTRODUCED, HE KNEW MY NAME. WHEN ME AND DETECTIVE CONROY WERE
2 AT THE FRONT DOOR AFTER DETECTIVE CONROY HAD SPOKEN WITH HIM,
3 DETECTIVE CONROY HAD WALKED OFF. HE WAS OUTSIDE THE VEHICLE.
4 MR. FOWLER LOOKED AT ME DIRECTLY IN THE FACE AND SAID, "JUSTICE,"
5 REFERRING TO MY LAST NAME, JUSTICE, "MAN, I'M GUILTY. I---"

6 Q USE THE WORD HE USED.

7 A SIR?

8 Q YOU CAN USE THE WORD THAT---

9 A OKAY. HE SAID, "SIR--" HE SAID, "JUSTICE, MAN, I'M GUILTY.
10 I FUCKED UP TODAY. THIS WASN'T TO GO DOWN LIKE THIS."

11 Q OKAY. NOW, HAD YOU ASKED HIM ANY QUESTIONS TO GET THIS
12 RESPONSE?

13 A NO.

14 Q DID YOU SAY ANYTHING BACK TO HIM AFTER HE SAID THAT?

15 A NO, SIR.

16 Q NOW, WERE YOU -- DID YOU PARTICIPATE IN THE SEARCH OF THE
17 RESIDENCE THERE?

18 A YES, SIR.

19 Q AND THAT TOOK PLACE THAT SAME DAY?

20 A YES, SIR.

21 Q DID YOU -- DID YOU --

22 MR. MOYER: OKAY. PLEASE ANSWER ANY QUESTIONS THE DEFENSE
23 MAY HAVE.

24 THE COURT: CROSS EXAMINATION, MR. CREECH.

25 MR. CREECH: THANK YOU, YOUR HONOR.

JACKSON v. DENNO
MATT JUSTICE - CROSS BY MR. CREECH

1 CROSS EXAMINATION BY MR. CREECH:

2 Q DETECTIVE JUSTICE, YOU GOT -- YOU WENT TO WITH
3 CONROY AND HAMLETT; IS THAT RIGHT?

4 A YES, SIR.

5 Q AND YOU STAYED OUTSIDE ON THE PORCH WHEN THEY WENT INSIDE---

6 A YES, SIR.

7 Q ---IS THAT CORRECT?

8 A YES, SIR.

9 Q OKAY. DID YOU EVER SPEAK WITH VALENCIA SULLIVAN AT ALL?

10 A NO, SIR.

11 Q ALL RIGHT.

12 A I DON'T RECALL SPEAKING WITH VALENCIA.

13 Q YOU HEARD -- YOU SAW CONROY BRING DOWN MR. FOWLER TO PUT HIM
14 IN THE CAR; IS THAT RIGHT?

15 A MR. FOWLER APPROACHED THE DOOR AND STEPPED OUT TO MYSELF AND
16 DETECTIVE CONROY.

17 Q OKAY. AND YOU HAD NOT BEEN TO THE SCENE AT ALL THAT DAY; IS
18 THAT RIGHT?

19 A NO, SIR.

20 Q YOU HAD BEEN AT THE HOSPITAL; IS THAT RIGHT?

21 A YES, SIR.

22 Q AND YOU TALKED WITH GARY POWELL AT THE HOSPITAL; IS THAT
23 RIGHT?

24 A YES, SIR.

25 Q AND YOU TOOK A STATEMENT FROM HIM?

JACKSON v. DENNO
MATT JUSTICE - CROSS BY MR. CREECH

- 1 A YES, SIR.
- 2 Q OKAY. AND HE TOLD YOU ABOUT A BLUE CUTLASS OR SOMETHING
3 LIKE THAT OR A BLUE BUICK; DO YOU REMEMBER?
- 4 A A BLUE BUICK.
- 5 Q HE DIDN'T GIVE YOU A TAG NUMBER OR ANYTHING LIKE THAT?
- 6 A NO, SIR, NOT A TAG NUMBER. NO, SIR.
- 7 Q AND DID HE GIVE YOU THE DESCRIPTION OF A SUSPECT?
- 8 A YES, SIR.
- 9 Q WHAT WAS THAT DESCRIPTION?
- 10 A I BELIEVE IT WAS A TALL, SKINNY, BLACK MALE.
- 11 Q OKAY. AND THAT WAS IT, RIGHT?
- 12 A LET ME REFER TO MY NOTES. HE WENT IN -- HIS STATEMENT WENT
13 IN DESCRIBING A SHIRT HE ALSO HAD THAT THE SUSPECT WAS WEARING, A
14 RED SHIRT, I BELIEVE IT WAS.
- 15 Q WHAT WAS THE -- HOW LONG HAD YOU BEEN THERE BEFORE SERGEANT
16 MILLER ARRIVED? HOW LONG HAD YOU BEEN AT BEFORE
17 SERGEANT MILLER ARRIVED?
- 18 A I'M NOT SURE OF THE TIME FRAME, HOW IT---
- 19 Q DID SERGEANT MILLER ASK YOU IF MR. FOWLER'S RIGHTS HAD BEEN
20 READ TO HIM?
- 21 A YES. AS HE APPROACHED THE VEHICLE, HE DID.
- 22 Q OKAY. AND MR. FOWLER WAS STILL IN THE CAR; IS THAT CORRECT?
- 23 A YES, SIR.
- 24 Q AND HOW LONG -- SERGEANT MILLER GOT IN THE CAR WITH MR.
25 FOWLER; IS THAT RIGHT?

JACKSON v. DENNO

MATT JUSTICE - CROSS BY MR. CREECH

- 1 A YES, SIR.
- 2 Q AND HOW LONG DID THEY TALK?
- 3 A NOT LONG. IT WASN'T A LONG CONVERSATION.
- 4 Q WELL, WAS IT A MINUTE, TEN MINUTES?
- 5 A I'D SAY FROM A MINUTE TO FIVE MINUTES. IT WASN'T A LONG
- 6 CONVERSATION. IF I HAD TO GIVE A TIME FRAME BRACKET, IT WASN'T A
- 7 VERY LONG CONVERSATION.
- 8 Q DID YOU HEAR WHAT WAS SAID IN THAT CAR?
- 9 A NO, SIR, I COULDN'T.
- 10 Q WHY WAS THAT?
- 11 A BY THAT TIME, DETECTIVE CONROY HAD EXITED THE VEHICLE BEFORE
- 12 SERGEANT MILLER HAD WALKED UP. THE VEHICLE -- THE WINDOWS WERE
- 13 UP AND THE AIR CONDITIONER WAS ON. IT WAS RATHER WARM THAT DAY,
- 14 AND SERGEANT MILLER SAT IN THE VEHICLE AND THE DRIVER WINDOW WAS
- 15 UP.
- 16 Q NOW, DID YOU HEAR MR. FOWLER SAY TO DETECTIVE CONROY, "IF
- 17 YOU SEARCH THE VEHICLE AND THE TRAILER, THEN I'M OFF THE HOOK.
- 18 YOU'RE GOING TO LET ME OFF"? DID YOU HEAR HIM SAY THAT?
- 19 A REFERRING TO WHEN HE WAS EXPLAINING OBTAINING THE SEARCH
- 20 WARRANT?
- 21 Q RIGHT.
- 22 A HE REPLIED BACK, "Y'ALL CAN GO AHEAD AND SEARCH. IF Y'ALL
- 23 FIND ANYTHING DOES THIS MEAN Y'ALL ARE GOING TO LET ME GO?"
- 24 Q OKAY. AND WHAT WAS CONROY'S RESPONSE, DO YOU RECALL?
- 25 A NO, SIR.

JACKSON v. DENNO
MATT JUSTICE - CROSS BY MR. CREECH

1 Q WHAT WAS THE -- AND WAS DETECTIVE MIZE GETTING THE SEARCH
2 WARRANT AT THAT TIME, TO YOUR KNOWLEDGE?

3 A TO MY KNOWLEDGE, HE WAS.

4 Q WHAT TIME WAS THIS?

5 A I DON'T KNOW. I WASN'T INVOLVED IN CONTACTING SERGEANT -- I
6 MEAN, DETECTIVE MIZE OR---

7 Q OKAY. BUT AT THE TIME YOU HEARD ABOUT THE SEARCH WARRANT
8 BEING OBTAINED, WHEN YOU HEARD THAT, ABOUT WHAT TIME WAS IT,
9 ABOUT THREE O'CLOCK IN THE AFTERNOON?

10 A IT WAS A SHORT TIME AFTER WE HAD GOTTEN TO APPALOOSA DRIVE.
11 MAYBE 30 MINUTES AFTER WE HAD GOTTEN TO APPALOOSA.

12 Q OKAY. SO WOULD THAT BE ABOUT THREE O'CLOCK IN THE
13 AFTERNOON?

14 A I WOULD SAY IN THAT GENERAL AREA, YES, SIR.

15 Q AND YOU WAITED FOR THEM TO COME BACK WITH SEARCH WARRANTS
16 LATER ON THAT AFTERNOON; IS THAT RIGHT?

17 A YES, SIR. MYSELF AND A GREENVILLE COUNTY INVESTIGATOR AND A
18 GREENVILLE COUNTY UNIFORM PATROL OFFICER.

19 Q OKAY. WHAT TIME DID IT GET THERE?

20 A SERGEANT MILLER RETURNED AT 5:55 P.M. TO WITH
21 THE SEARCH WARRANTS.

22 Q OKAY. AND YOU DON'T KNOW WHAT TIME DETECTIVE MIZE GOT THE
23 SEARCH WARRANT, RIGHT?

24 A NO, SIR.

25 Q NOW, WHEN MR. FOWLER SAID THAT THIS -- YOU SAY THAT HE SAID,

JACKSON v. DENNO

MATT JUSTICE - REDIRECT BY MR. MOYER

1 "JUSTICE, I'M GUILTY," ET CETERA, ET CETERA. WAS HE STILL BEING

2 -- WAS HE STILL IN HANDCUFFS AT THAT POINT?

3 A YES, SIR.

4 Q HAD HE BEEN ARRESTED, DO YOU KNOW?

5 A NO, SIR.

6 Q HE WAS DETAINED, CORRECT?

7 A YES, SIR.

8 Q NOT FREE TO LEAVE; IS THAT RIGHT?

9 A CORRECT.

10 Q WERE YOU INSIDE AT ALL WHEN -- OR DID YOU EVER HEAR VALENCIA
11 SULLIVAN SAY, "HE'S THE ONE THAT SHOT THE GUY"?

12 A NO, SIR.

13 Q YOU---

14 A I NEVER ENTERED THE TRAILER UNTIL THE EXECUTION OF THE
15 SEARCH WARRANT.

16 MR. CREECH: THANK YOU, YOUR HONOR. I HAVE NO FURTHER
17 QUESTIONS.

18 THE COURT: ALL RIGHT. ANY REDIRECT?

19 MR. MOYER: A COUPLE OF QUESTIONS.

20 REDIRECT EXAMINATION BY MR. MOYER:

21 Q DID YOU SEE A RED SHIRT IN THE RESIDENCE?

22 A YES.

23 Q AND WAS IT OUT IN THE OPEN?

24 A (PAUSE TO REVIEW NOTES) YES, SIR.

25 Q WAS IT ON A CABINET?

JACKSON v. DENNO

MATT JUSTICE - RECROSS BY MR. CREECH

1 A IT WAS ON TOP OF THE -- ON TOP OF A DRESSER. IT WAS A --
2 THERE WAS THE RED T-SHIRT SITTING ON A DRESSER TOP. THERE WAS A
3 DRESSER IN THE DEN. IN PLACE OF AN ENTERTAINMENT WAS A DRESSER-
4 TYPE.

5 Q OKAY. WAS THE DEFENDANT TALL AND SKINNY?

6 A IN MY OPINION?

7 Q YEAH.

8 A YEAH. THIN, YES, SIR.

9 Q AND THAT'S THE WAY GARY POWELL DESCRIBED HIM TO YOU?

10 A YES, SIR.

11 Q AND GARY POWELL DESCRIBED THE BUICK AS, YOU ALREADY
12 TESTIFIED, A BLUE BUICK? YOU SAID A MID-EIGHTIES BLUE BUICK?

13 A MID-EIGHTIES BLUE BUICK. HE WAS ADAMANT ABOUT SPECIFYING
14 THE DRIVER DOOR DIDN'T OPEN.

15 Q OKAY. AND FOUR-DOOR?

16 A YES, SIR.

17 Q DID YOU EVER CHECK THE DRIVER'S DOOR?

18 A YES, SIR. AT THE TIME OF THE EXECUTION OF THE SEARCH
19 WARRANT, YES, SIR. AND IT DID NOT OPEN. IT WAS NOT IN
20 OPERATIONAL CONDITION.

21 MR. MOYER: OKAY. NOTHING FURTHER.

22 RECROSS EXAMINATION BY MR. CREECH:

23 Q NOW, YOU SAY YOU SAW THAT RED SHIRT. NOT WHILE YOU WERE OUT
24 THERE PRIOR TO THE EXECUTION OF THE SEARCH WARRANT. YOU NEVER
25 WENT IN THE TRAILER PRIOR TO THE EXECUTION OF THE SEARCH WARRANT?

JACKSON v. DENNO
BRIAN MILLER - DIRECT BY MR. MOYER

1 A NO. THE RED T-SHIRT WAS FOUND DURING THE EXECUTION OF THE
2 SEARCH WARRANT, YES, SIR.

3 Q AND SO PRIOR TO THAT YOU NEVER SAW A RED T-SHIRT; IS THAT
4 RIGHT?

5 A CORRECT.

6 MR. CREECH: (PAUSE) THANK YOU. NO FURTHER QUESTIONS.

7 MR. MOYER: NO FURTHER QUESTIONS. WE CALL SERGEANT BRIAN
8 MILLER.

9 BRIAN MILLER, HAVING BEEN DULY
10 SWORN, TESTIFIED AS FOLLOWS:

11 MADAME CLERK: PLEASE STATE YOUR FULL NAME FOR THE RECORD.

12 WITNESS: STEVEN BRIAN MILLER.

13 DIRECT EXAMINATION BY MR. MOYER:

14 Q YOU WORK FOR THE GREENVILLE POLICE DEPARTMENT?

15 A I DO.

16 Q DID YOU WORK FOR THE GREENVILLE POLICE DEPARTMENT IN 2006,
17 JUNE?

18 A I DID.

19 Q WHAT WAS YOUR POSITION THEN?

20 A I WAS SERGEANT OVER HOMICIDE AND BURGLARY.

21 Q NOW LET ME TAKE YOU BACK TO JUNE THE 7TH OF 2006, LAST YEAR.

22 DID YOU RESPOND TO DRIVE IN RELATION TO THIS

23 INVESTIGATION ON ZACHARY FOWLER?

24 A I DID.

25 Q AND WERE THERE OTHER OFFICERS ALREADY THERE?

JACKSON v. DENNO
BRIAN MILLER - DIRECT BY MR. MOYER

1 A YES.

2 Q DID YOU SEE THE DEFENDANT IN THIS CASE THERE ON THE SCENE?

3 A I DID.

4 Q AND WHERE DID YOU SEE HIM?

5 A HE WAS SITTING IN THE PASSENGER SEAT OF DETECTIVE CONROY'S
6 VEHICLE.

7 Q OKAY. AND DID YOU HAVE ANY INTERACTION WITH HIM?

8 A I DID.

9 Q WHAT LED TO THAT?

10 A WHEN I WALKED UP I SAW HIM IN THE VEHICLE, AND HE MADE A
11 MOTION KIND OF TO COME OVER THERE. I OPENED THE DOOR UP, SAT
12 NEXT TO HIM, AND WE HAD A SHORT DISCUSSION ABOUT WHAT KIND OF
13 TOOK PLACE. HE SAID HE WAS READY TO GET IT OFF HIS CHEST.

14 Q HE SAID -- CAN YOU TELL US WHAT THE DISCUSSION WAS ABOUT?

15 A YEAH. WE TALKED AND HE JUST SAID -- HE KIND OF HAD HIS HEAD
16 DOWN. HE WAS LIKE, "IT JUST WASN'T SUPPOSED TO GO THIS WAY."
17 AND I CAN'T REMEMBER I ASKED HIM BUT HE SAID, "YOU KNOW, I'LL
18 SHOW YOU WHERE THE GUN IS. I WANT TO COME CLEAN ON THIS."

19 Q OKAY. AND WHEN HE SAID THAT WHAT WAS YOUR RESPONSE? WHAT
20 DID YOU DO?

21 A WELL, I WAS TRYING TO -- I DIDN'T KNOW IF DETECTIVE CONROY
22 HAD INTERVIEWED YET. I TRIED TO BACK OUT OF THE CONVERSATION TO
23 LET TIM COME ON OUT THERE AND START THE INTERVIEW. I TOLD HIM TO
24 HOLD WHAT HE HAD AND I'D GET THE DETECTIVE OUT THERE, AND I KIND
25 OF BACKED OUT. THAT'S WHEN I GOT DETECTIVE CONROY.

JACKSON v. DENNO

BRIAN MILLER - CROSS BY MR. CREECH

1 Q OKAY. DID YOU HAVE ANY MORE INTERACTION WITH HIM?

2 A YES. WE TALKED GOING INTO THE BUILDING. WHEN WE -- AFTER
3 EVERYTHING WAS DONE AT APPALOOSA, WE TRANSPORTED HIM AND TALKED
4 TO HIM A LITTLE BIT GOING INTO THE BUILDING.

5 Q OKAY. INTO THE LAW ENFORCEMENT CENTER?

6 A YES, SIR. YEAH.

7 Q NOW, DID YOU -- AFTER HE TOLD YOU WHAT HE TOLD YOU IN THE
8 CAR, DID YOU HAVE A CONVERSATION WITH DETECTIVE CONROY?

9 A I DID.

10 Q WHAT DID YOU TELL DETECTIVE CONROY?

11 A I JUST TOLD HIM HE WANTED TO TALK ABOUT WHAT HAPPENED. HE
12 WANTED TO COME CLEAN.

13 MR. MOYER: OKAY. NOTHING FURTHER.

14 THE COURT: CROSS EXAMINATION.

15 CROSS EXAMINATION BY MR. CREECH:

16 Q SERGEANT MILLER, YOU NEVER READ HIM HIS RIGHTS; IS THAT
17 CORRECT?

18 A NO, SIR, I DIDN'T.

19 Q OKAY. AND YOU NEVER DID A REPORT IN THIS CASE AT ALL; IS
20 THAT CORRECT?

21 A NO, SIR, I DIDN'T.

22 Q OKAY. AND MR. FOWLER, WHAT IS IT YOU'RE SAYING MR. FOWLER
23 SAID TO YOU IN THE CAR?

24 A HE JUST -- HE WAS MUMBLING ABOUT WHATEVER TOOK PLACE AT THE
25 INCIDENT WASN'T SUPPOSED TO GO THIS WAY AND THAT HE WANTED TO

JACKSON v. DENNO
BRIAN MILLER - CROSS BY MR. CREECH

1 HELP HIMSELF OUT. HE SAID, "I'LL SHOW YOU THE GUN," AND HE
2 WANTED TO COME CLEAN WITH WHAT HAPPENED. AND WHEN HE DID THAT, I
3 WAS TRYING TO STOP HIM AND NOT ASK HIM, YOU KNOW, TOO MUCH,
4 BECAUSE I DIDN'T KNOW, YOU KNOW, WHO HAD INTERVIEWED HIM. I HAD
5 JUST PULLED UP ON THE SCENE. I GOT OUT OF THE VEHICLE AND GOT
6 DETECTIVE CONROY.

7 Q BUT YOU KNEW HIS RIGHTS HAD BEEN READ TO HIM---

8 A YES, I ASKED -- I REMEMBER TALKING TO DETECTIVE JUSTICE
9 ABOUT HIS BEING MIRANDIZED, YES.

10 Q NOW, WHEN YOU WERE IN THE CAR WITH HIM DID YOU EVER TELL HIM
11 THAT, YOU KNOW, HIS GIRLFRIEND COULD BE LOOKING AT LIFE WITHOUT
12 PAROLE UNLESS HE GAVE A STATEMENT?

13 A NO, ABSOLUTELY NOT. HIS GIRLFRIEND WAS NOT MENTIONED.

14 Q YOU NEVER SAID THAT TO HIM?

15 A NO, SIR.

16 Q DID YOU EVER SAY THAT UNLESS YOU GIVE A STATEMENT YOU COULD
17 GET A SENTENCE OF LIFE WITHOUT PAROLE?

18 A NO. NO, SIR. NOTHING LIKE THAT WAS SPOKEN ABOUT.

19 Q DID YOU EVER TELL HIM THAT IF HE COOPERATED HE COULD GET A
20 SHORTER SENTENCE?

21 A NO.

22 Q YOU SPOKE WITH HIM DOWN AT THE LAW ENFORCEMENT CENTER AS
23 WELL; IS THAT CORRECT?

24 A YES, SIR.

25 Q AND WHAT DID YOU TALK WITH HIM ABOUT DOWN THERE?

JACKSON v. DENNO

BRIAN MILLER - CROSS BY MR. CREECH

1 A WELL, TO BACKTRACK, HE LOOKED FAMILIAR TO ME, AND NOW I KNOW
2 -- MOST OF HIS FAMILY IS OUT IN THE HALLWAY. I WENT TO SCHOOL
3 WITH HALF OF THEM, AND I'VE COACHED HIS NEPHEWS, TYREE, I
4 BELIEVE. HE LOOKED FAMILIAR AND HE GRAVITATED TOWARD ME, AND WE
5 JUST SPOKE ABOUT HE WENT TO WOODMONT. I HAVE A SON ROUGHLY HIS
6 AGE, AND WE JUST -- REALLY JUST SPOKE CASUAL CONVERSATION.

7 Q AND THAT WAS JUST YOU AND HIM DOWN AT THE LAW ENFORCEMENT
8 CENTER?

9 A TIM WAS WITH ME.

10 Q IN THE SAME ROOM?

11 A NO, NO. WE WERE WALKING IN THE BUILDING.

12 Q DID YOU EVER SAY ANYTHING TO HIM LIKE THE ONLY WAY HE COULD
13 HELP HIMSELF WAS TO COME CLEAN AND HE WOULD GET LESS TIME, GET
14 FAVORABLE TREATMENT, ET CETERA?

15 A NOTHING WAS PROMISED TO HIM AT ALL.

16 Q DID YOU EVER MAKE ANY STATEMENT LIKE THAT?

17 A NO, SIR.

18 MR. CREECH: YOUR HONOR, I'VE GOT NO FURTHER QUESTIONS.

19 MR. MOYER: NOTHING FURTHER.

20 THE COURT: ALL RIGHT. THANK YOU, SERGEANT. YOU MAY STEP
21 DOWN, SIR.

22 WITNESS: YES, SIR.

23 (WITNESS STEPS DOWN AT 1:40 P.M.)

24 MR. MOYER: YOUR HONOR, THOSE ARE ALL THE WITNESSES I HAVE
25 AT THIS TIME.

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JANICE BROWN - DIRECT BY MR. CREECH

1 **THE COURT:** OKAY. MR. CREECH.

2 **MR. CREECH:** YOUR HONOR, I'D LIKE TO CALL JANICE BROWN,
3 PLEASE.

4 AND, YOUR HONOR, WE WOULD ALSO MAKE A MOTION TO EXCLUDE ANY
5 TESTIMONY THAT HE'S GOING TO HAVE AT TRIAL AS TO STATEMENTS MADE
6 BY MY CLIENT, AS HE NEVER DID A REPORT IN THIS CASE, SERGEANT
7 MILLER, AND WE'VE NOT BEEN PROVIDED WITH ANY STATEMENTS THAT MY
8 CLIENT MAY HAVE MADE TO SERGEANT MILLER WHILE HE WAS IN THE CAR
9 OR AT ANY TIME DURING THE ENTIRE DAY. UNDER RULE 5 WE'RE
10 ENTITLED TO ANY STATEMENTS THAT HE MADE TO LAW ENFORCEMENT.

11 **MR. MOYER:** WELL, JUDGE, IT'S REFERENCED IN THE REPORT. I
12 MEAN, THERE ARE TWO OFFICERS WHO SAID SERGEANT MILLER CAME UP AND
13 TOLD US THE DEFENDANT SAID HE WANTED TO TALK AND SO -- THEY BOTH
14 WROTE THAT IN THE REPORT. SO THERE'S NO RULE 5 DISCOVERY -- I
15 MEAN, NO RULE 5 VIOLATION.

16 **THE COURT:** OKAY. WELL, LET'S GO AHEAD AND DO THIS. WE'LL
17 TAKE THAT UP IN A LITTLE BIT.

18 **JANICE BROWN, HAVING BEEN DULY SWORN,**
19 TESTIFIED AS FOLLOWS:

20 **MADAME CLERK:** PLEASE STATE YOUR FULL NAME FOR THE RECORD.

21 **WITNESS:** JANICE ROBERTA BROWN.

22 **DIRECT EXAMINATION BY MR. CREECH:**

23 **Q** THANK YOU, MS. BROWN. I HAVE JUST A FEW QUESTIONS FOR YOU.

24 DO YOU REMEMBER -- AFTER ZACHARY GOT ARRESTED IN THIS CASE
25 AND HE WAS DOWNTOWN, DO YOU REMEMBER SPEAKING WITH A DETECTIVE

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1 WITH THE CITY POLICE DEPARTMENT?

2 A YES, SIR.

3 Q DO YOU HAPPEN TO REMEMBER THAT DETECTIVE'S NAME?

4 A NOT RIGHT OFFHAND.

5 Q WHO WAS THAT? WHO WERE YOU TOLD THAT DETECTIVE WAS OR WHAT
6 WAS HIS ROLE IN THIS CASE? CAN YOU REMEMBER?

7 A I CALLED DOWNTOWN TO FIND OUT WHO WAS THE ARRESTING OFFICERS
8 AND STUFF, AND THEY TOLD ME THE MAN'S NAME AND GAVE ME A
9 TELEPHONE NUMBER, AND THAT'S HOW I CONTACTED HIM.

10 Q ALL RIGHT. AND WHAT DID YOU -- YOU CONTACTED HIM. AND DID
11 YOU TALK TO HIM?

12 A YES. I CALLED AND HE WAS OUT OF THE OFFICE AT THE TIME, AND
13 HE RETURNED MY CALL BACK LATER THAT EVENING.

14 Q OKAY. WHAT -- DID HE SAY ANYTHING ABOUT A STATEMENT THAT
15 ZACHARY MAY HAVE GIVEN TO HIM OR TO LAW ENFORCEMENT?

16 A WELL, HE DIDN'T REALLY GO INTO DETAILS ABOUT THE CASE NO
17 MORE THAN HE TOLD ME THAT HE THOUGHT IT WAS A DRUG DEAL THAT WENT
18 BAD, AND THAT WHEN THEY WENT, YOU KNOW, WENT TO THE HOUSE TO
19 ARREST HIM AND ALL THAT -- HOW ZACHARY COOPERATED WITH THEM. BUT
20 AS FAR AS DETAILS, HE DIDN'T REALLY.

21 Q DID HE SAY ANYTHING ABOUT BECAUSE ZACHARY COOPERATED---

22 MR. MOYER: I WOULD OBJECT TO THIS AS HEARSAY AND THERE'S
23 BEEN NO FOUNDATION LAID UNDER RULE 613 OR ANY OTHER -- ANY OTHER
24 EXCEPTION THAT I CAN THINK OF WHY THIS WOULD BE ADMISSIBLE.

25 MR. CREECH: YOUR HONOR, IT'S ADMISSIBLE. WHAT WE WOULD

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1 INTEND TO SHOW IS THAT ONE OF THE DETECTIVES TOLD HER, "NOW THAT
2 HE'S COOPERATED WE CAN HELP HIM" OR "WHEN HE'S COOPERATED WE'RE
3 GOING TO HELP HIM GET A SHORTER SENTENCE." THAT'S MY
4 UNDERSTANDING OF HER TESTIMONY. SO THAT WOULD -- THAT'S GOING TO
5 GO TO THE VOLUNTARINESS OF ANY KIND OF STATEMENT HE MADE, YOU
6 KNOW, OR PROMISES THAT WERE MADE TO HIM.

7 THE COURT: OKAY. KEEP ON GOING.

8 Q DID THE DETECTIVE, MS. BROWN, SAY ANYTHING ABOUT WHAT COULD
9 HAPPEN NOW THAT HE'S COOPERATED?

10 A NO. HE DIDN'T GIVE ME ANY DETAILS. HE JUST SAID THAT HE
11 WOULD WORK WITH HIM AND DO ALL HE COULD FOR HIM.

12 Q BECAUSE HE HAD COOPERATED?

13 A BECAUSE HE HAD COOPERATED WITH THEM WHEN THEY WENT -- WHEN
14 HE WENT TO, YOU KNOW, ARREST HIM OR WHATEVER.

15 MR. CREECH: OKAY. THANK YOU. THAT'S ALL I HAVE, YOUR
16 HONOR.

17 MR. MOYER: JUST A COUPLE QUESTIONS, MA'AM.

18 CROSS EXAMINATION BY MR. MOYER:

19 Q I'M SORRY. I DIDN'T CATCH -- WHAT IS YOUR INTEREST IN THE
20 CASE?

21 A I'M ZACHARY FOWLER'S AUNT, BUT I'M HIS LEGAL GUARDIAN.

22 Q OKAY. SO HOW LONG DID YOU -- HOW LONG HAVE YOU BEEN HIS
23 LEGAL GUARDIAN?

24 A SINCE HE WAS EIGHT YEARS OLD.

25 Q OKAY. WAS HE LIVING WITH YOU AT THE TIME?

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JANICE BROWN - CROSS BY MR. MOYER

1 A HE STAYED WITH ME ON THE WEEKENDS---

2 Q OKAY.

3 A ---AND PRETTY MUCH I HAD HIM ALL THE TIME, EXCEPT FOR DURING
4 THE WEEK HE STAYED WITH HIS MOTHER.

5 Q SO HE WAS 20 YEARS OLD AT THE TIME? HE WAS 20 YEARS OLD AT
6 THE TIME, RIGHT?

7 A AT THE TIME THE INCIDENT HAPPENED.

8 Q YEAH.

9 A BUT HE'S -- I RAISED HIM PRETTY MUCH ALL HIS LIFE.

10 Q OKAY. DO YOU KNOW WHEN HE MOVED OUT OF YOUR HOUSE?

11 A I WOULD SAY ABOUT A YEAR, YEAR AND A HALF, IF IT WAS THAT
12 LONG---

13 Q PRIOR TO THE INCIDENT?

14 A PRIOR TO THIS.

15 Q OKAY. SO THAT EXPLAINS YOUR INTEREST IN THE CASE; BECAUSE
16 YOU'RE HIS GUARDIAN?

17 A YES.

18 Q AND THAT'S WHY YOU CALLED THE POLICE?

19 A YES.

20 Q AND YOU CALLED ASKING FOR A SPECIFIC DETECTIVE?

21 A I WANTED TO KNOW WHAT HAD HAPPENED.

22 Q RIGHT.

23 A IT'S---

24 Q THAT WASN'T MY QUESTION. I UNDERSTAND THAT'S WHY YOU
25 CALLED. I'M ASKING, WHEN YOU CALLED WERE YOU ASKING FOR A

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1 PARTICULAR DETECTIVE?

2 A NO, I CALLED AND ASKED WHO WAS THE DETECTIVE ON THE CASE.

3 Q OKAY. DID THEY GIVE YOU A NAME?

4 A YES.

5 Q WHAT WAS THE NAME?

6 A IT WAS---

7 Q YOU DON'T REMEMBER?

8 A I DON'T REMEMBER.

9 Q AND SO THEY SAID -- LET ME GET THIS RIGHT -- THAT THAT
10 DETECTIVE WASN'T THERE AT THE TIME, IS THAT..

11 A WHAT DO YOU MEAN? THERE WHERE?

12 Q I MEAN, HE WASN'T AVAILABLE.

13 A HE WASN'T AVAILABLE. I LEFT A MESSAGE AND HE CALLED ME
14 BACK.

15 Q AND HE CALLED YOU BACK?

16 A YES.

17 Q OKAY. BUT YOU CAN'T TELL US TODAY WHO IT WAS YOU SPOKE TO?

18 A I'M NOT SURE. I HAD NOTES WHERE I HAD WROTE DOWN, BUT I
19 MISPLACED IT AND I'M NOT SURE.

20 Q OKAY. DO YOU REMEMBER WHEN -- HOW LONG AFTER YOUR --
21 ZACHARY GOT ARRESTED THAT THIS WAS?

22 A ZACHARY CALLED ME THAT MORNING FROM THE DETENTION CENTER,
23 AND THAT DAY WAS MY SISTER-IN-LAW'S FUNERAL. AND AFTER THE
24 FUNERAL I WAS IN TOUCH WITH THIS DETECTIVE.

25 Q SO IT WAS THE SAME DAY?

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1 A SAME DAY.

2 Q SO IT WOULD HAVE BEEN PRETTY LATE IN THE EVENING THEN?

3 A YES. PROBABLY 4:00, 5:00, SOMEWHERE.

4 Q HE CALLED YOU BACK THE SAME DAY?

5 A YES, SIR. IT COULD HAVE BEEN A LITTLE EARLIER. I'M NOT
6 SURE WHEN MY SISTER'S FUNERAL WAS.

7 Q AND HE TOLD YOU THAT ZACHARY WAS COOPERATIVE AND THAT THEY
8 WERE GOING TO TRY TO HELP HIM OUT?

9 A YES, SIR.

10 Q IS THAT THE WORDS THAT HE USED?

11 A TO THAT EXTENT.

12 Q OKAY.

13 MR. MOYER: I HAVE NOTHING FURTHER FOR THIS WITNESS.

14 MR. CREECH: NOTHING FURTHER, YOUR HONOR.

15 THE COURT: THANK YOU, MS. BROWN. YOU MAY STEP DOWN.

16 (WITNESS STEPS DOWN AT 1:46 P.M.)

17 MR. MOYER: YOUR HONOR, I WOULD -- YOU CAN STEP DOWN. I
18 WOULD MOVE THAT HER TESTIMONY BE STRICKEN FOR PURPOSES OF THIS
19 HEARING IN THAT IT WAS HEARSAY. AND AGAIN, I KNOW OF NO
20 EXCEPTIONS, CERTAINLY UNDER RULE 613, WITH HER BEING UNABLE TO
21 IDENTIFY THE PERSON AND SO FORTH. I WOULD MOVE THAT IT BE
22 EXCLUDED.

23 MR. CREECH: AND, YOUR HONOR, I WOULD JUST SAY THIS IS A
24 HEARING TO DETERMINE THE VOLUNTARINESS OF THE STATEMENT, YOU
25 KNOW, ANY PROMISES OR EFFORTS TO COOPERATE. SO I THINK IT'S

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1 PERFECTLY RELEVANT. SHE'S JUST GIVING HER RECOLLECTION --
2 RECALLING STATEMENTS THAT WERE MADE TO HER. I WOULD THINK THE
3 RULES AT THE HEARING LIKE THIS WOULD BE SOMEWHAT RELAXED. I
4 MEAN, IT'S NOT LIKE THE CITY POLICE CAN MAKE ADMISSIONS OR YOU
5 KNOW WHAT EXCEPTION IT WOULD FALL UNDER THE HEARSAY -- YOU KNOW,
6 ANY EXCEPTION TO THE HEARSAY RULE.

7 THE COURT: ALL RIGHT. WELL, I NOTE THE OBJECTION TO IT.
8 I'LL CONSIDER WHETHER TO GRANT THAT OR NOT.

9 ANY ARGUMENT ON THE ACTUAL ADMISSION OF THE STATEMENTS?

10 MR. CREECH: YOUR HONOR, IF I MAY JUST...

11 THE COURT: YES, SIR.

12 MR. CREECH: TWO SECONDS. (OFF RECORD WITH CLIENT) THANK
13 YOU, YOUR HONOR. WE'RE NOT GOING TO CALL ANY OTHER WITNESSES.

14 THE COURT: OKAY. ANY ARGUMENTS?

15 MR. CREECH: YOUR HONOR, AS TO THE STATEMENT THAT WAS
16 OBTAINED, FOR THE MOST PART THEY WENT INTO THE RESIDENCE, TOOK
17 HIM INTO CUSTODY IMMEDIATELY, PUT HANDCUFFS ON HIM AND TOOK HIM
18 BACK TO THE CAR, AND THEN OBVIOUSLY TOOK OTHER -- TOOK SOME
19 VERBAL STATEMENTS FROM HIM AND THEN WRITTEN STATEMENTS. BUT HE
20 WAS IN CUSTODY IN HANDCUFFS THE ENTIRE TIME, AND IT WAS NOT TO
21 SEPARATE TWO PEOPLE FROM INSIDE THE CAR -- I MEAN, FROM THE TWO
22 PEOPLE THAT WERE IN THE HOUSE. HE WAS TOLD HE WAS NOT UNDER
23 ARREST. BUT THEN THEY READ THE MIRANDA RIGHTS TO HIM, INDICATING
24 ANYTHING YOU SAY CAN BE HELD AGAINST YOU, ET CETERA. SO HE'S
25 GETTING MIXED MESSAGES IN TERMS OF WHETHER I'VE BEEN -- YOU KNOW,

MATTERS AND MOTIONS

1 AM I A SUSPECT? AM I -- YOU'RE SAYING YOU'RE NOT UNDER ARREST,
2 LEADING HIM TO BELIEVE THAT HE'S NOT A SUSPECT IN AN EFFORT TO
3 GET A STATEMENT. BUT THIS STARTED ABOUT -- HE WAS IN THEIR
4 CUSTODY FOR, I THINK, MAYBE A COUPLE OF HOURS, ACCORDING TO THE
5 TESTIMONY OF THE OFFICER. SO THAT WOULD BE OUR PRIMARY ARGUMENT,
6 IS THAT IT WAS COERCED.

7 MR. MOYER: YOUR HONOR, I DON'T THINK THERE'S ANY EVIDENCE
8 IN THE RECORD THAT THIS WAS COERCED. THE OFFICERS TOLD HIM HE
9 WAS NOT BEING CHARGED, HE WAS NOT BEING ARRESTED AND BEING
10 CHARGED AT THE TIME. THERE'S NO DOUBT HE WAS IN CUSTODY. AND
11 THEY TOOK HIM -- THEY DID TAKE HIM INTO AN INVESTIGATORY SEIZURE
12 AT THE MOMENT THEY SAW HIM. THEY CERTAINLY HAD EVERY REASON TO
13 DO SO. HE WAS A SUSPECT IN THE CASE. HE WAS CONNECTED TO THE
14 CASE THROUGH THIS PAWN SHOP WHERE A PERSON WHO WAS WITH THE
15 SHOOTER HAD PAWNED A JACK JUST MOMENTS BEFORE THE SHOOTING. THEY
16 KNEW THERE WAS A TALL, SKINNY, BLACK MALE. HER ADDRESS WAS
17 . THE OFFICERS GO TO . THEY SEE A CAR
18 THAT MATCHES THE DESCRIPTION OF THE CAR THAT WAS INVOLVED IN THE
19 SHOOTING. HE CAME TO THE DOOR. HE WAS ACTING NERVOUS. HE WAS
20 ACTING SUSPICIOUS. HE WAS ACTING LIKE HE WAS GOING TO RUN. SO
21 THEY CERTAINLY HAD EVERY REASON UNDER THE WARDLAW CASE TO TAKE
22 HIM INTO A BRIEF INVESTIGATORY SEIZURE. AND THEN AS TIME WENT ON
23 HE STARTED SAYING HE WANTED TO TALK. ONE OF THE PEOPLE INSIDE
24 POINTED HIM OUT AS BEING THE SHOOTER. HE THEN STARTS MAKING
25 STATEMENTS AS HE WENT ALONG THAT LED THESE OFFICERS TO CERTAINLY

MATTERS AND MOTIONS

1 HAVE EVERY REASON THAT HE WAS A SUSPECT IN THE CASE.

2 AND AS YOU KNOW, YOUR HONOR, ALL THERE HAS TO BE IS
3 REASONABLE SUSPICION THAT CRIMINAL ACTIVITY IS AFOOT IN ORDER FOR
4 THEM TO SEIZE HIM AT THAT TIME. AND THEN ONCE HE WAS SEIZED,
5 YOUR HONOR, THE OFFICERS NEVER -- THERE'S NO -- THERE'S NO
6 TESTIMONY OR EVIDENCE IN THE RECORD THAT ANY OFFICER EVER SAID TO
7 HIM ANY THREATS, ANY INDUCEMENTS, THAT FROM THE VERY MOMENT THEY
8 STARTED TALKING TO HIM HE SAID, "I WANT TO GIVE IT UP. I WANT TO
9 TELL YOU WHAT HAPPENED."

10 SO I THINK, YOU KNOW, UNDER THE TOTALITY OF THE
11 CIRCUMSTANCES OF THIS CASE, YOUR HONOR, I WOULD ARGUE THAT THE
12 STATEMENTS -- ALL THE STATEMENTS THAT HAVE BEEN TESTIFIED TO ARE
13 CERTAINLY VOLUNTARY.

14 THE COURT: MR. CREECH, ANYTHING FURTHER?

15 MR. CREECH: NOTHING FURTHER, YOUR HONOR.

16 THE COURT: I'M A LITTLE UNCLEAR ON THE SEQUENCE OF EVENTS
17 AS FAR AS THE KNOWLEDGE THAT THE POLICE HAD OF THE PAWN OF THE
18 JACK, WHICH I ASSUME IS A CAR JACK. IS THAT WHAT IT WAS?

19 MR. MOYER: YES, YOUR HONOR.

20 THE COURT: OKAY. DID I MISS SOMETHING OR WAS THE PAWNING
21 DONE AFTER THE KILLING?

22 MR. MOYER: YOUR HONOR, THE TESTIMONY WAS THAT VERY SHORTLY
23 BEFORE THE SHOOTING AND THE KILLING THAT THE DEFENDANT HAD BEEN
24 SEEN AT A PAWN SHOP -- OR OUTSIDE. HE WASN'T IDENTIFIED AS THE
25 DEFENDANT AT THE TIME. BUT THAT A MAN AND WOMAN HAD BEEN AT A

MATTERS AND MOTIONS

1 PAWN SHOP AND THAT THIS WOMAN PAWNED A JACK, AND THAT'S HOW THEY
2 WERE ABLE TO GET THIS WOMAN'S NAME. THEY KNEW THAT THE PEOPLE
3 INVOLVED IN PAWNING THIS JACK WERE THE PEOPLE THAT WERE INVOLVED
4 IN THE SHOOTING THAT HAPPENED VERY SHORTLY THEREAFTER.

5 THE COURT: WELL, WHO TESTIFIED ABOUT THAT?

6 MR. MOYER: INVESTIGATOR CONROY.

7 THE COURT: HOW DID -- WHAT'S THE LINK? I DON'T -- I
8 MISSED THE CONNECTION BETWEEN THE PAWNING AND THE SHOOTING AND
9 HOW THEY---

10 MR. MOYER: I WASN'T TRYING TO GO INTO THAT IN AS MUCH
11 DETAIL, YOUR HONOR, BECAUSE I WASN'T QUITE SURE THAT WE WERE
12 GOING TO BE TALKING ABOUT AN INVESTIGATORY DETENTION AT THIS
13 HEARING. BUT WHAT HAPPENED IS THAT'S WHERE THE VICTIM AND THE
14 DEFENDANT MET. THE VICTIM WAS AT THE PAWN SHOP TO PAWN
15 SOMETHING. THE DEFENDANT WAS AT THE PAWN SHOP TO PAWN SOMETHING.
16 SO THE VICTIM SAW -- THAT'S WHERE THEY MET UP. AND THEN THEY
17 LEFT TOGETHER AND IT LED TO THE SHOOTING. THEY LEFT TOGETHER,
18 AND A FEW MINUTES LATER THE DEFENDANT APPROACHED THE VICTIMS' CAR
19 TO SELL THEM -- SELL ONE OF THE VICTIMS CRACK, AND THAT'S WHEN
20 THE SHOOTING TOOK PLACE. IN FACT, THAT IS ALSO IN THE
21 DEFENDANT'S STATEMENT AS WELL. SO---

22 THE COURT: OKAY. WELL---

23 MR. MOYER: ---THERE'S EVIDENCE OF THAT.

24 THE COURT: HAND THE STATEMENT TO ME, PLEASE.

25 COURT REPORTER: (COMPLIES)

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1 **THE COURT:** THANK YOU. (PAUSE) SO SOMEBODY AT THE PAWN
2 SHOP WAS ABLE TO IDENTIFY MS. TISDALE, IS THAT---

3 **MR. MOYER:** YES, THROUGH THE PAWN SHOP RECORDS.

4 **THE COURT:** I MEAN, IS THAT -- THAT'S UNDISPUTED; IS THAT
5 RIGHT?

6 **MR. CREECH:** THERE WAS SOMETHING PAWNED IN HER NAME.

7 **THE COURT:** OKAY.

8 **MR. CREECH:** THE JACK WAS PAWNED IN HER NAME. BUT NO ONE
9 -- THAT'S WHERE THE INVESTIGATORS LEARNED -- THEY LEARNED HER
10 NAME SUBSEQUENTLY. THAT DIDN'T COME FROM THE PEOPLE INSIDE THE
11 PAWN SHOP.

12 **THE COURT:** (PAUSE) WELL, I'LL TELL YOU WHAT, I KNOW
13 EVERYBODY WANTS TO GO TO LUNCH, AND OF COURSE THE JURY IS COMING
14 BACK IN FIVE MINUTES. I GUESS WHEN WE GET BACK I MIGHT WANT THE
15 STATE TO ELABORATE ON THE CONNECTION BETWEEN THE PAWN SHOP AND
16 THE ARRIVAL AT APPALOOSA DRIVE. IF YOU WANT TO PRESENT FURTHER
17 TESTIMONY ON THAT, I'LL BE GLAD TO HEAR IT.

18 **MR. MOYER:** WE WILL.

19 **THE COURT:** ALL RIGHT. WELL, LET'S -- WE'LL JUST TRY TO BE
20 BACK AT 2:30 AND START UP THEN.

21 IF Y'ALL HAVE GOT SOME COKE OR SOMETHING OR SOFT DRINKS FOR
22 THE JURY, JUST TELL THEM THAT WE'LL TRY TO RESUME AS SOON AS WE
23 CAN BUT WE WERE WORKING HERE UNTIL ABOUT TWO O'CLOCK, AND YOU
24 DON'T HAVE TO SAY ANYTHING ELSE. ALL RIGHT? THANK YOU, MA'AM.
25 (TO THE BAILIFF)

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COLLIS FLAVELL - DIRECT BY MR. MOYER

1 OKAY. WE'LL SEE YOU BACK AT 2:30.

2 (A LUNCH RECESS WAS TAKEN FROM 1:57 TO 2:52 P.M.)

3 THE COURT: OKAY. I'M SORRY WE'RE RUNNING LATE. THAT'S MY
4 FAULT.

5 YES, SIR, MR. MOYER.

6 MR. MOYER: THE STATE WOULD CALL INVESTIGATOR COLLIS
7 FLAVELL.

8 COLLIS FLAVELL, HAVING BEEN DULY SWORN,
9 TESTIFIED AS FOLLOWS:

10 MADAME CLERK: PLEASE STATE YOUR FULL NAME FOR THE RECORD.

11 WITNESS: IT'S COLLIS FLAVELL.

12 DIRECT EXAMINATION BY MR. MOYER:

13 Q AND YOU ARE EMPLOYED WITH THE GREENVILLE POLICE DEPARTMENT?

14 A I AM.

15 Q OKAY. AND YOU'RE AN INVESTIGATOR WITH THE POLICE
16 DEPARTMENT?

17 A YES.

18 Q DID YOU RESPOND TO AVENUE ON JUNE THE 7TH OF
19 2006?

20 A YES, I DID.

21 Q NOW, WHEN YOU ARRIVED WERE THERE OTHER OFFICERS ON THE
22 SCENE?

23 A YES, THERE WERE.

24 Q WERE THE VICTIMS STILL THERE?

25 A YES.

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1 Q OKAY. WERE YOU CALLED OUT TO THAT SCENE PRETTY MUCH RIGHT
2 AWAY?

3 A YES. AS SOON AS THE CALL CAME OVER THE RADIO WE RESPONDED
4 FROM THE LAW ENFORCEMENT CENTER.

5 Q SO ABOUT HOW LONG AFTER WOULD YOU SAY DO YOU ESTIMATE THAT
6 YOU ARRIVED THERE?

7 A TEN, FIFTEEN MINUTES.

8 Q OKAY. NOW, WHEN YOU ARRIVED THERE AT AVENUE
9 DID YOU SPEAK TO ANY OF THE VICTIMS IN THE CASE?

10 A I DID.

11 Q OKAY. AND WHO WAS THAT?

12 A I BELIEVE IT WAS MR. HARRIS. YEAH, IT WAS MR. HARRIS.

13 Q OKAY. AND HE TOLD YOU THAT HE WAS PRESENT WHEN THIS
14 INCIDENT TOOK PLACE?

15 A ACTUALLY AN OFFICER ON THE SCENE POINTED HIM OUT TO ME AND I
16 APPROACHED HIM, TOOK HIM TO MY VEHICLE, PUT HIM IN MY VEHICLE,
17 AND AT THAT POINT HE TOLD ME THAT HE WAS A PASSENGER IN THE
18 VICTIMS' VEHICLE.

19 Q OKAY. AND DID HE TELL YOU ABOUT THE ACTUAL SHOOTING, WHAT
20 HAD TAKEN PLACE THERE?

21 A HE DID.

22 Q OKAY. AND WHAT DID HE TELL YOU TOOK PLACE RIGHT THERE AT
23 AVENUE WHEN THIS INCIDENT TOOK PLACE?

24 A PREVIOUS TO OR RIGHT THERE ON THE SPOT?

25 Q WELL, RIGHT THERE ON THE SPOT. DID HE TALK TO YOU ABOUT WHO

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1 WAS SHOT AT OR WHETHER PEOPLE WERE SHOT AT OR SO FORTH?

2 A YEAH. HE STATED HE WAS IN THE BACK SEAT OF THE VICTIMS'
3 VEHICLE. I BELIEVE IT'S GALLOWAY -- I CAN'T REMEMBER HER FIRST
4 NAME -- WAS THE DRIVER, AND THEN THERE WAS ANOTHER MALE
5 PASSENGER. I THINK GALLOWAY WAS A PASSENGER. THERE WAS A MALE
6 DRIVER.

7 Q OKAY. AND DID YOU TALK TO HIM AT ALL -- WAS HE ABLE TO
8 PROVIDE ANY INFORMATION ABOUT THE IDENTITY OF WHO HAD DONE THIS?

9 A HE DID. HE STATED TO ME THAT THEY HAD JUST BEEN TO A PAWN
10 SHOP AND WHILE AT THAT PAWN SHOP THAT THE BLACK MALE THAT DID THE
11 SHOOTING HAD CARRIED A HYDRAULIC -- HE DESCRIBED IT AS A
12 HYDRAULIC JACK -- INTO THE PAWN SHOP.

13 Q OKAY. NOW, WHEN YOU GOT THAT INFORMATION WHAT DID YOU DO?

14 A I IMMEDIATELY NOTIFIED INVESTIGATOR JOHN HAMLETT, WHO WAS
15 ALSO OUT ON THE SCENE, I THINK VIA NEXTEL, AND ASKED HIM TO GO TO
16 RED'S PAWN SHOP, WHICH IS PROBABLY THREE BLOCKS FROM THIS
17 INCIDENT LOCATION AND CHECK AND SEE IF ANYBODY HAD JUST PAWNED A
18 HYDRAULIC JACK.

19 Q OKAY. AND DO YOU KNOW IF INVESTIGATOR HAMLETT WENT OVER
20 THERE?

21 A HE DID. HE CALLED ME BACK AND SAID THAT A JACK HAD BEEN
22 PAWNED AND HE WAS IN THE PROCESS OF OBTAINING A PAWN TICKET.

23 Q OKAY. AND THEN YOU LEFT THAT SCENE THEN?

24 A YES. I TOOK MR. HARRIS TO THE LAW ENFORCEMENT CENTER AND
25 TOOK A WRITTEN STATEMENT FROM HIM.

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1 MR. MOYER: OKAY. PLEASE ANSWER ANY QUESTIONS THE DEFENSE
2 MIGHT HAVE.

3 CROSS EXAMINATION BY MR. CREECH:

4 Q DETECTIVE FLAVELL, WHEN YOU TOOK MR. HARRIS TO THE LAW
5 ENFORCEMENT CENTER YOU TOOK A STATEMENT FROM HIM, RIGHT?

6 A YES.

7 Q AND YOU DIDN'T SHOW HIM A PHOTO LINEUP AT THAT POINT, DID
8 YOU?

9 A NO.

10 Q DO YOU KNOW IF ONE WAS EVER SHOWN TO HIM?

11 A I DO NOT.

12 Q OKAY. DID YOU EVER SEE A PHOTO LINEUP IN THIS CASE?

13 A WITH MY DEALINGS IN IT, NO.

14 Q OKAY. I MEAN, DID YOU EVER SEE A PHOTO LINEUP IN THIS CASE,
15 YES OR NO?

16 A WITH MY DEALINGS IN THIS CASE, NO, I DID NOT.

17 Q OKAY. AND WHAT DO YOU MEAN "WITH MY DEALINGS IN THIS CASE"?

18 A THE EXTENT OF MY INVESTIGATION IN THIS CASE, I DON'T KNOW IF
19 ANOTHER INVESTIGATOR LATER SHOWED THE LINEUP. I DON'T KNOW THAT.

20 Q BUT YOU NEVER DID?

21 A NO.

22 Q YOU NEVER SAW ONE; IS THAT RIGHT?

23 A THAT'S CORRECT.

24 Q NOW, DID YOU KNOW -- DID YOU KNOW WHO WAS
25 DRIVE AT THE TIME?

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1 A NO.

2 Q ALL RIGHT. DID YOU KNOW WHETHER -- OR WHO LIVED AT
3 DRIVE?

4 A NO.

5 Q DID YOU KNOW WHO WAS AT THE -- ONCE YOU GOT THE INFORMATION
6 ABOUT THE PAWN TICKET, DID YOU KNOW WHO WAS LIVING AT
7 DRIVE?

8 A NO, I DID NOT.

9 Q DID YOU EVER GO TO DRIVE?

10 A I DON'T BELIEVE I DID.

11 Q HOW DID MR. HARRIS GET BACK TO -- WHERE WAS HE GOING BACK
12 TO?

13 A PICKENS COUNTY.

14 Q AND DO YOU KNOW WHERE IN PICKENS COUNTY?

15 A I DON'T.

16 Q HOW DID HE GET BACK THERE, DO YOU KNOW?

17 A I BELIEVE IF I'M NOT MISTAKEN WE HAD -- IN FACT, I DO.

18 OFFICER MIKE AIKEN LIVES IN PICKENS, AND I CALLED HIM BEFORE WE
19 LEFT WORK AND ASKED HIM IF HE COULD TAKE MR. HARRIS BACK TOWARDS
20 PICKENS.

21 Q OKAY. BUT YOU PERSONALLY DID NOT TAKE HIM; IS THAT CORRECT?

22 A I DID NOT.

23 Q HOW LONG WAS MR. HARRIS AT THE LAW ENFORCEMENT CENTER?

24 A I DON'T KNOW EXACTLY. PROBABLY AN HOUR. MAYBE A LITTLE BIT
25 LONGER.

JACKSON v. DENNO

COLLIS FLAVELL - CROSS BY MR. CREECH

1 Q AFTER YOU MET WITH HIM WHERE DID YOU THEN GO?

2 A I WENT TO THE SPINX STATION LOCATED AT PENDLETON STREET AND
3 ACADEMY STREET.

4 Q DO YOU REMEMBER GOING BACK TO THE SCENE AFTER LEAVING THE
5 LAW ENFORCEMENT CENTER?

6 A I KNOW I WENT BACK TO THE ORIGINAL HOUSE -- OR TO A HOUSE
7 THAT WE HAD AN ADDRESS OF THE PERSON THAT PAWNED THE JACK AND
8 FOUND OUT THAT SHE NO LONGER LIVED THERE, WHICH WAS I WOULD HAVE
9 WENT BY THE SCENE.

10 Q DID YOU EVER SEE THE PAWN TICKET IN THIS CASE?

11 A I DON'T KNOW IF I EVER ACTUALLY LAID EYES ON IT, NO.

12 Q DO YOU KNOW IF THERE'S AN ADDRESS ON THAT PAWN TICKET?

13 A YES, THERE WAS.

14 Q WAS IT DRIVE?

15 A I BELIEVE IT WAS AN ADDRESS IN FOUNTAIN INN.

16 Q SO THE INFORMATION THAT YOU HAD FROM THE PAWN SHOP WAS THAT
17 AN ITEM HAD BEEN PAWNED TO A PERSON WITH AN ADDRESS IN FOUNTAIN
18 INN; IS THAT CORRECT?

19 A IT HAD BEEN PAWNED BY A PERSON IN FOUNTAIN INN, YES. WITH A
20 FOUNTAIN INN ADDRESS.

21 Q NOW, YOU WENT DOWN AND -- YOU TOOK CUSTODY OF MS. TISDALE,
22 IS THAT RIGHT, FROM THE SPINX, DIANA TISDALE?

23 A I WENT DOWN AND GOT MS. TISDALE, YES.

24 Q OKAY. AND TOOK HER TO THE LAW ENFORCEMENT CENTER?

25 A THAT'S CORRECT.

JACKSON v. DENNO

COLLIS FLAVELL - REDIRECT BY MR. MOYER

1 Q OKAY. AND DID SHE GIVE YOU A STATEMENT; IS THAT RIGHT?

2 A YES.

3 Q AND IN THAT STATEMENT SHE DENIED EVER BEING ANYWHERE, IS
4 THAT CORRECT? ESSENTIALLY SHE NEVER ADMITTED TO BEING AT THE
5 SCENE IN THAT STATEMENT SHE GAVE TO YOU?

6 MR. MOYER: YOUR HONOR, I WOULD -- I WOULD OBJECT TO THIS
7 AS HAVING NO RELEVANCE FOR THE PURPOSE OF THIS HEARING.

8 THE COURT: OVERRULED. I'LL LET HIM GO AHEAD.

9 A TISDALE SAID THAT SHE TOOK ZACHARY AND VALENCIA TO A PAWN
10 SHOP TO PAWN A JACK. TISDALE STATED THAT SHE PAWNED THE JACK
11 BECAUSE ZACHARY DID NOT HAVE HIS ID. SHE SAID SHE THEN DROPPED
12 ZACHARY AND VALENCIA OFF AT A RED LIGHT AND WENT HOME.

13 MR. CREECH: I HAVE NO FURTHER QUESTIONS, YOUR HONOR.

14 REDIRECT EXAMINATION BY MR. MOYER:

15 Q DO YOU REMEMBER WHEN IT WAS THAT YOU TOOK THAT STATEMENT
16 FROM HER?

17 A IT WOULD HAVE BEEN AFTER I TOOK MR. HARRIS. I WENT BACK AND
18 CHECKED THE ADDRESS, FOUND OUT SHE NO LONGER LIVED THERE, AND
19 INFORMATION WAS RELAYED TO ME THAT SHE WAS POSSIBLY AT THE SPINX
20 STATION. I WENT TO THE SPINX STATION. I WAS GIVEN THE NICKNAME
21 OF NICKI. WHEN I WALKED INTO THE SPINX STATION, SHE WAS WEARING
22 A NAMETAG THAT SAID NICKI. I WAITED IN LINE, JUST LIKE I WAS A
23 CUSTOMER, AND I ASKED HER IF I COULD SPEAK TO HER, AND SHE CAME
24 AROUND THE COUNTER AND WALKED OUTSIDE WITH ME.

25 Q AND YOU GOT THAT INFORMATION ABOUT WHERE SHE MAY BE FROM

JACKSON v. DENNO

JOHN HAMLETT - DIRECT BY MR. MOYER

1 INVESTIGATOR CONROY?

2 A CONROY CALLED ME AND SAID THAT SHE WAS AT THE SPINX STATION.

3 Q INVESTIGATOR CONROY WAS AT ?

4 A YES.

5 MR. MOYER: OKAY. NOTHING FURTHER.

6 MR. CREECH: NO FURTHER QUESTIONS.

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

8 (WITNESS STEPS DOWN AT 3:01 P.M.)

9 MR. MOYER: THE STATE WOULD CALL OFFICER HAMLETT.
10 INVESTIGATOR HAMLETT.

11 JOHN HAMLETT, HAVING BEEN DULY SWORN,
12 TESTIFIED AS FOLLOWS:

13 MADAME CLERK: PLEASE STATE YOUR FULL NAME FOR THE RECORD.

14 WITNESS: JOHN FITZGERALD HAMLETT.

15 DIRECT EXAMINATION BY MR. MOYER:

16 Q ARE YOU EMPLOYED WITH THE GREENVILLE POLICE DEPARTMENT?

17 A YES, I AM.

18 Q AND YOU ARE AN INVESTIGATOR WITH THE POLICE DEPARTMENT?

19 A YES, I AM.

20 Q DID YOU PARTICIAPTE IN THE INVESTIGATION OF THE INCIDENT
21 THAT TOOK PLACE AT AVENUE ON JUNE THE 7TH OF LAST
22 YEAR?

23 A YES, I DID.

24 Q OKAY. AND WHERE DID YOU GO FIRST WHEN YOU GOT NOTICE OF
25 THIS CALL?

JACKSON v. DENNO

JOHN HAMLETT - DIRECT BY MR. MOYER

1 A I DROVE TO THE AREA. THEY HAD GIVEN A DESCRIPTION OF THE
2 SUSPECT VEHICLE, AND I CHECKED THE IMMEDIATE AREA FOR A SUSPECT
3 VEHICLE.

4 Q OKAY. AND THEN AFTER YOU DID THAT, WHERE DID YOU GO?

5 A I WENT TO THE SCENE. DETECTIVES CONROY AND FLAVELL WERE
6 ALREADY THERE. I MET WITH DETECTIVE FLAVELL, ASKED HIM IF THERE
7 WAS ANY WAY I COULD ASSIST HIM, AND HE ASKED ME TO GO UP AND
8 CHECK SOME INFORMATION AT A PAWN SHOP.

9 Q OKAY. AND WHAT INFORMATION WERE YOU ASKED TO CHECK?

10 A HE TOLD ME THAT HE THOUGHT THAT ONE OF THE PERSONS INVOLVED
11 IN THIS INCIDENT HAD EITHER PAWNED OR SOLD A JACK AT RED'S PAWN
12 SHOP LOCATED IN WEST GREENVILLE PLAZA. HE ASKED ME TO GO UP
13 THERE AND SEE IF I COULD FIND OUT WHO THAT WAS.

14 Q OKAY. AND SO YOU WENT TO RED'S PAWN SHOP THEN?

15 A I DID.

16 Q ABOUT HOW FAR AWAY WAS THAT FROM WHERE YOU WERE?

17 A THAT IS APPROXIMATELY THREE TO FOUR BLOCKS AWAY.

18 Q ALL RIGHT. AND WHO DID YOU SPEAK WITH AT RED'S PAWN SHOP?

19 A I SPOKE WITH A YOUNG MAN NAMED BRIAN SNIPES WHO WORKS WITH
20 THE OWNER AND RUNS -- HE WAS RUNNING THE SHOP AT THE TIME.

21 Q DID YOU COLLECT ANYTHING THERE?

22 A I DID.

23 Q WHAT DID YOU COLLECT?

24 A I ASKED HIM IF ANYONE HAD COME IN AND SOLD OR PAWNED A JACK.
25 HE STATED THAT THEY DID. I COLLECTED A JACK, A FLOOR JACK, THE

JACKSON v. DENNO
JOHN HAMLETT - DIRECT BY MR. MOYER

1 HANDLE TO THAT FLOOR JACK AND ALSO THE PAWN TICKET THAT WAS
2 COMPLETED FOR THE SALE.

3 Q OKAY. AND WHEN YOU TOOK THOSE -- ALL RIGHT.

4 (PAWN TICKET MARKED AS STATE'S EXHIBIT NUMBER 3 FOR PURPOSES
5 OF IDENTIFICATION ONLY)

6 Q LET ME HAND YOU STATE'S EXHIBIT NUMBER 3. CAN YOU TAKE A
7 LOOK AT THAT AND CAN YOU RECOGNIZE WHAT THAT IS?

8 A I DO.

9 Q WHAT IS THAT?

10 A THIS IS A COPY OF THE PAWN TICKET THAT WAS FILLED OUT FOR
11 THE SALE OF THE -- OR THE PURCHASE OF THE JACK.

12 Q IS THAT THE PAWN TICKET THAT YOU GOT FROM BRIAN SNIPES?

13 A IT IS.

14 Q AND THAT'S THE PAWN TICKET THAT HE SAID WAS USED FOR THE
15 SALE OF THAT JACK TO HIM?

16 A THAT'S CORRECT.

17 Q OKAY.

18 MR. MOYER: YOUR HONOR, AT THIS TIME WE WOULD OFFER STATE'S
19 EXHIBIT NUMBER 3 INTO EVIDENCE.

20 MR. CREECH: JUST FOR THE PURPOSE OF THIS HEARING, YOUR
21 HONOR.

22 MR. MOYER: CORRECT.

23 THE COURT: ALL RIGHT. IT'S IN EVIDENCE.

24 (PAWN TICKET, STATE'S EXHIBIT NUMBER 3, MOVED INTO EVIDENCE
25 FOR THE PURPOSES OF THIS HEARING ONLY)

JACKSON v. DENNO

JOHN HAMLETT - DIRECT BY MR. MOYER

- 1 Q ALL RIGHT. SO YOU COLLECTED THAT PAWN TICKET. IS THERE A
2 NAME ON THAT PAWN TICKET?
- 3 A YES, THERE IS.
- 4 Q AND WHAT IS THE NAME?
- 5 A DIANA N. TISDALE.
- 6 Q DOES IT HAVE A DATE OF BIRTH?
- 7 A IT DOES. IT IS OF '84.
- 8 Q AND THERE'S AN ADDRESS ON THERE TOO, ISN'T THERE?
- 9 A YES, THERE IS.
- 10 Q WHAT IS THAT?
- 11 A DRIVE.
- 12 Q ANY CITY, TOWN, ZIPS ASSOCIATED WITH IT?
- 13 A NO.
- 14 Q OKAY. AND WHAT IS THE TIME? OR IS THERE A TIME LISTED ON
15 THE PAWN TICKET AS TO WHEN THAT PAWN -- THAT JACK WAS PAWNED?
- 16 A YES, THERE IS.
- 17 Q AND WHAT IS THAT TIME?
- 18 A 1:20 P.M.
- 19 Q AND THE CALL CAME IN TO THIS INCIDENT ABOUT 1:30, IS THAT
20 RIGHT, AS FAR AS TO THE POLICE ABOUT THE SHOOTING?
- 21 A THAT'S CORRECT.
- 22 Q DID BRIAN SNIPES DESCRIBE THE PERSON TO YOU?
- 23 A HE DID.
- 24 Q AND HOW DID HE DESCRIBE HIM?
- 25 A HE STATED THERE WERE ACTUALLY TWO PERSONS THAT CAME IN

JACKSON v. DENNO
JOHN HAMLETT - DIRECT BY MR. MOYER

1 TOGETHER. HE STATED THAT THERE WAS A BLACK MALE AND A BLACK
2 FEMALE. THE BLACK MALE HAD THE JACK WITH HIM. HE STATED THAT --
3 I'M REFERRING TO MY NOTES. HE STATED THAT THE FEMALE WHO
4 COMPLETED THE TICKET, THE DIANA TISDALE, AS IT TURNS OUT -- I
5 ASKED HIM ABOUT THE INFORMATION ON THE TICKET, WHICH WAS THE
6 HEIGHT WAS 5'9", WEIGHT 228 POUNDS. HE STATED THAT WAS ABOUT
7 CORRECT. HE STATED THAT SHE WAS WEARING A LOOSE FITTING BLUE AND
8 YELLOW SHIRT THAT WAS OPEN IN THE FRONT EXPOSING THE TOP OF HER
9 BREASTS. HE STATED THAT THE BLACK MALE WAS APPROXIMATELY 5'10",
10 160 POUNDS WITH BRAIDED HAIR. HE STATED THAT HE WAS WEARING A
11 LARGE RED T-SHIRT WITH POSSIBLY SOME TYPE OF A GRAY DESIGN ON THE
12 FRONT.

13 Q OKAY. WHEN YOU GOT THAT INFORMATION, WHAT DID YOU DO WITH
14 THE INFORMATION YOU JUST LEARNED FROM BRIAN SNIPES?

15 A I TOLD DETECTIVE FLAVELL. I CALLED HIM ON THE NEXTEL AND
16 TOLD HIM THAT I HAD THE JACK AND THE PAWN TICKET. I ASKED HIM
17 WHAT HE WANTED ME TO DO. HE ASKED ME TO SECURE IT, BRING IT BACK
18 TO THE SCENE TO TURN OVER TO ID, WHO WAS DOWN THERE PROCESSING
19 THE SCENE.

20 Q OKAY. AFTER DOING ALL THAT DID YOU GO TO -- DID YOU GO TO
21 WITH THE INVESTIGATORS CONROY AND JUSTICE?

22 A YES, I DID.

23 Q DID YOU ENTER THE RESIDENCE?

24 A YES, I DID.

25 Q DID YOU SEE THE DEFENDANT AT THAT LOCATION?

JACKSON v. DENNO

JOHN HAMLETT - DIRECT BY MR. MOYER

1 A I DID. I SAW HIM BRIEFLY, STANDING JUST OUTSIDE THE FRONT
2 DOOR WITH DETECTIVE JUSTICE.

3 Q DO YOU REMEMBER WHETHER OR NOT HE HAD BRAIDED HAIR?

4 A HE DID HAVE BRAIDED HAIR, YES.

5 Q OKAY. NOW, WHEN YOU WENT INTO THE RESIDENCE, DID YOU SEE
6 ANYTHING THAT CAUGHT YOUR ATTENTION?

7 A I DID.

8 Q WHAT WAS THAT?

9 A WHEN I WALKED INTO THE LIVING ROOM OR THE COMMON AREA, I
10 LOOKED TO MY LEFT, WHICH WAS THE BACK -- THAT WAS FACING THE BACK
11 WALL OF THE TRAILER, AND I SAW A BOX OF NINE MILLIMETER
12 CARTRIDGES ON THE FLOOR BESIDE A CHAIR.

13 Q WAS THAT OUT IN THE OPEN?

14 A IT WAS OUT IN THE OPEN.

15 Q DID YOU HAVE TO MOVE ANYTHING TO SEE IT OR---

16 A NO. IT WAS JUST ON THE FLOOR BESIDE A CHAIR.

17 Q OKAY. DO YOU REMEMBER ANY CLOTHING OR ANYTHING LAYING
18 ABOUT?

19 A YES. BACK OVER TO MY RIGHT WHEN I WAS STANDING THERE AND I
20 SAW THE BOX OF CARTRIDGES I SAW -- IT LOOKED LIKE A CABINET OF
21 SOME SORT AGAINST ANOTHER WALL, AND IT HAD A RED T-SHIRT LAYING
22 ON IT, AND I COULD SEE SOME TYPE OF A GRAY DESIGN ON IT, AND IT
23 WAS ALSO IN PLAIN VIEW.

24 Q OKAY. WERE YOU EMPLOYED WITH THE GREENVILLE POLICE
25 DEPARTMENT AT THE TIME?

JACKSON v. DENNO
JOHN HAMLETT - CROSS BY MR. CREECH

1 A THAT'S CORRECT.

2 Q DID YOU HAVE ANY OTHER -- DID YOU HAVE A RELATIONSHIP WITH
3 THE SHERIFF'S OFFICE?

4 A I DID.

5 Q WHAT WAS THAT?

6 A I HAD A SPECIAL DEPUTY'S COMMISSION. I HAD SERVED ON THE
7 WARRANT TEAM WITH THE POLICE DEPARTMENT, AND WE HAD AN AGREEMENT
8 WITH THE SHERIFF'S OFFICE, BECAUSE LOOKING FOR INDIVIDUALS WITH
9 WARRANTS ON THEM, OFTENTIMES YOU'RE CROSSING FROM CITY TO COUNTY.
10 SO I HAD A SPECIAL DEPUTY'S COMMISSION WITH THE SHERIFF'S OFFICE.

11 MR. MOYER: PLEASE ANSWER ANY QUESTIONS THE DEFENSE MAY
12 HAVE.

13 CROSS EXAMINATION BY MR. CREECH:

14 Q DETECTIVE HAMLETT, WHEN YOU WENT TO THE PAWN SHOP YOU GOT
15 THE PAWN TICKET; IS THAT CORRECT?

16 A YES, SIR.

17 Q AND YOU SAW AN ADDRESS ON THERE THAT SAID VERY FINE DRIVE,
18 AND A NAME, NICKI TISDALE; IS THAT CORRECT?

19 A THAT'S CORRECT.

20 Q YOU RELAYED THAT ON TO OTHER INVESTIGATORS; IS THAT RIGHT?

21 A THAT'S CORRECT.

22 Q NOW, WAS THERE EVER AN EFFORT MADE TO TRACK DOWN THAT
23 ADDRESS FOR MS. TISDALE?

24 A I DON'T KNOW.

25 Q YOU NEVER DID---

JACKSON v. DENNO
JOHN HAMLETT - CROSS BY MR. CREECH

1 A NOT ON MY PART.

2 Q OKAY. DID THE -- AND THEN YOU WENT TO THE -- YOU THEN WENT
3 TO WITH DETECTIVE CONROY AND JUSTICE; IS THAT
4 RIGHT?

5 A THAT'S CORRECT.

6 Q AND YOU WENT AROUND BACK; IS THAT CORRECT?

7 A THAT'S CORRECT.

8 Q WHO LET YOU IN THE BACK DOOR, DO YOU KNOW?

9 A DETECTIVE CONROY.

10 Q OKAY. AND DO YOU KNOW HOW HE GOT IN? HE WENT IN THROUGH
11 THE FRONT DOOR; IS THAT RIGHT?

12 A THAT IS CORRECT.

13 Q OKAY. WERE YOU ABLE TO HEAR IF HE WAS -- IF HE ASKED THE
14 PERSON WHO ANSWERED THE DOOR WHO THEY WERE OR ANYTHING LIKE THAT?

15 A I COULDN'T HEAR ANYTHING FROM MY POSITION.

16 Q YOU COULDN'T HEAR ANYTHING THAT DETECTIVE CONROY SAID OR
17 TALKED ABOUT WITH THE PERSON AT THE FRONT DOOR; IS THAT CORRECT?

18 A THAT'S CORRECT.

19 Q AND, NOW, WHEN YOU WENT INSIDE AND YOU SAW A BLACK FEMALE;
20 IS THAT CORRECT?

21 A I DID.

22 Q AND A BLACK MALE?

23 A THAT'S CORRECT.

24 Q DID YOU THEN ASK THEM, "ARE YOU NICKI TISDALE?" OR "ARE YOU
25 DIANA NICKI TISDALE?"

JACKSON v. DENNO
JOHN HAMLETT - CROSS BY MR. CREECH

- 1 A NO.
- 2 Q OKAY. SO YOU DID NOT KNOW WHO THOSE PEOPLE WERE, CORRECT?
- 3 A THAT'S CORRECT.
- 4 Q ALL RIGHT. AND IN FACT THEY -- DID THEY EVER TELL YOU THAT
- 5 THEY WERE -- DID THE FEMALE EVER TELL YOU THAT SHE WAS NICKI
- 6 TISDALE?
- 7 A NO, SHE DIDN'T.
- 8 Q SHE TOLD YOU SHE WAS SOMEBODY ELSE; IS THAT RIGHT?
- 9 A THAT'S CORRECT.
- 10 Q OKAY. SHE WAS DETAINED; IS THAT RIGHT?
- 11 A YES.
- 12 Q OKAY. AND WHAT WAS THE REASON FOR DETAINING HER?
- 13 A I HAVEN'T -- I DON'T KNOW. DETECTIVE CONROY ASKED ME TO
- 14 STAY THERE WITH HER WHILE HE WENT OUTSIDE, AND I ASSUME HE WAS
- 15 SPEAKING WITH THE OTHER INDIVIDUAL THAT WAS IN THE TRAILER.
- 16 Q NOW, DO YOU REMEMBER HIM COMING BACK INSIDE?
- 17 A I DO.
- 18 Q AND DO YOU REMEMBER HIM TALKING WITH MS. TISDALE?
- 19 A NO. I DON'T THINK MS. TISDALE WAS THERE AT THE TIME.
- 20 Q DO YOU REMEMBER HIM TALKING WITH MS. SULLIVAN, WHO WAS
- 21 THERE?
- 22 A I DO.
- 23 Q OKAY. AND AFTER DETECTIVE CONROY CAME BACK IN THE HOUSE
- 24 WHERE YOU HAD BEEN STANDING BY WITH MS. SULLIVAN; IS THAT RIGHT?
- 25 A THAT'S CORRECT.

JACKSON v. DENNO
JOHN HAMLETT - CROSS BY MR. CREECH

- 1 Q AND HE TALKED TO HER; IS THAT CORRECT?
- 2 A HE DID.
- 3 Q NOW, DO YOU REMEMBER HER SAYING ANYTHING LIKE HE'S THE ONE
- 4 THAT SHOT THEM OR SOMETHING LIKE THAT?
- 5 A NO.
- 6 Q OKAY. WHAT DID YOU DO UPON LEAVING ?
- 7 A I TRANSPORTED MS. SULLIVAN TO THE LAW ENFORCEMENT CENTER AND
- 8 TOOK HER UPSTAIRS AND TURNED HER OVER TO DETECTIVE FLAVELL, WHO I
- 9 ASSUMED WAS GOING TO TAKE A STATEMENT FROM HER.
- 10 Q OKAY. DID YOU TAKE A STATEMENT FROM FLAVELL -- I MEAN, FROM
- 11 SULLIVAN?
- 12 A I DID NOT.
- 13 Q DID YOU TAKE A STATEMENT IN THIS CASE AT ALL?
- 14 A I DID NOT.
- 15 Q DID YOU WITNESS A STATEMENT -- OR DID YOU WITNESS ANYONE
- 16 GIVE A STATEMENT?
- 17 A I DID.
- 18 Q WHO WAS THAT?
- 19 A THE DEFENDANT.
- 20 Q OKAY. SO YOU WERE IN THE ROOM AS HE WAS PROVIDING A
- 21 STATEMENT TO DETECTIVE CONROY; IS THAT CORRECT?
- 22 A YES, SIR.
- 23 Q OKAY. DO YOU REMEMBER THE DEFENDANT SAYING THAT HE THOUGHT
- 24 THE PERSON HAD A GUN? DO YOU REMEMBER HIM SAYING THAT?
- 25 A I DON'T RECALL HIM SAYING THAT, NO.

JACKSON v. DENNO

JOHN HAMLETT - CROSS BY MR. CREECH

1 Q DID YOU TAKE ANY NOTES OF THE CONVERSATION OR THE QUESTIONS
2 THAT WERE ASKED?

3 A NO.

4 Q DO YOU REMEMBER HIM SAYING THAT HE WAS ACTING IN SELF-
5 DEFENSE?

6 A NO.

7 Q YOU DON'T RECALL HIM SAYING THAT?

8 A NO, I DON'T.

9 Q AND YOU JUST CAN'T RECALL; IS THAT CORRECT?

10 A THAT'S CORRECT. I DON'T REMEMBER HIM SAYING THAT.

11 Q DID YOU, DETECTIVE HAMLETT, EVER SAY TO HIM THAT HE WOULD
12 RECEIVE HELP IF HE COOPERATED BY GIVING A STATEMENT?

13 A NO.

14 Q DID YOU EVER OFFER HIM ANYTHING OR DID YOU EVER PROMISE HIM
15 ANYTHING FOR THE STATEMENT THAT HE GAVE?

16 A NO, SIR.

17 Q DID YOU EVER SAY TO HIM IF YOU GIVE A STATEMENT THAT WE CAN
18 GET THE SOLICITOR'S OFFICE TO TRY TO GET YOU A REDUCED SENTENCE
19 OR ANYTHING LIKE THAT?

20 A NO, SIR.

21 Q DO YOU REMEMBER EVER TALKING WITH HIS AUNT, OR HIS GUARDIAN
22 OR ANY OF HIS FAMILY MEMBERS?

23 A NO, SIR.

24 Q HOW LONG -- AT DETECTIVE JUSTICE WAS THERE
25 TOO?

JACKSON v. DENNO

JOHN HAMLETT - CROSS BY MR. CREECH

1 A THAT'S CORRECT.

2 Q WERE YOU EVER OUTSIDE WITH DETECTIVE JUSTICE?

3 A NO. NEVER WAS. I WAS INSIDE THE TRAILER WITH MS. SULLIVAN.

4 Q THE WHOLE TIME?

5 A THE WHOLE TIME.

6 Q OKAY. AND YOU KNEW THAT WAS NOT NICKI TISDALE; IS THAT
7 RIGHT?

8 A THAT'S CORRECT.

9 Q AND YOU KNEW THAT---

10 A WELL, I KNEW THAT SHE TOLD ME THAT HER NAME WAS VALENCIA
11 SULLIVAN.

12 Q OKAY.

13 A SO I DIDN'T KNOW IF IT WAS HER OR NOT.

14 Q DID YOU EVER REQUEST TO SEE ID OR ANYTHING LIKE THAT FROM
15 HER?

16 A NO.

17 Q BUT SHE -- SO AS FAR AS YOU KNEW, MS. TISDALE WAS NOT
18 PRESENT AT THE LOCATION; IS THAT CORRECT?

19 A THAT'S CORRECT.

20 Q , THAT'S CORRECT?

21 A AS FAR AS I KNEW, THAT'S CORRECT.

22 MR. CREECH: NO FURTHER QUESTIONS, YOUR HONOR.

23 THE COURT: MR. MOYER?

24 MR. MOYER: NOTHING FURTHER.

25 THE COURT: ALL RIGHT. THANK YOU, SIR. YOU MAY STEP DOWN.

MATTERS AND MOTIONS

1 (WITNESS STEPS DOWN AT 3:15 P.M.)

2 MR. MOYER: YOUR HONOR, I DON'T HAVE ANY FURTHER WITNESSES
3 AT THIS TIME.

4 THE COURT: OKAY. ALL RIGHT. ANY FURTHER ARGUMENT ON THE
5 MOTION?

6 MR. CREECH: AS TO THE STATEMENTS, YOUR HONOR, THE
7 VOLUNTARINESS OF THE STATEMENT? NO FURTHER ARGUMENT.

8 THE COURT: ALL RIGHT. I FIND THAT THE STATE HAS MET ITS
9 BURDEN OF PROVING THE STATEMENTS WERE MADE VOLUNTARILY AND AFTER
10 THE GIVING OF MIRANDA WARNINGS. THE EVIDENCE IS CLEAR AND
11 CONVINCING THAT THE MIRANDA WAIVER WAS GIVEN AND THE CONFESSION
12 WAS VOLUNTARILY, KNOWINGLY AND INTELLIGENTLY MADE. I'M BASING
13 THAT ON THE EVIDENCE I'VE HEARD.

14 ALSO THE INITIAL DETENTION OF MR. FOWLER WAS JUSTIFIED BY
15 THE REASONABLE SUSPICION. OBVIOUSLY THERE HAD BEEN A FATAL
16 KILLING. I KNOW THAT'S REDUNDANT. BUT THERE HAD BEEN A HOMICIDE
17 THAT WAS BEING INVESTIGATED BY INVESTIGATOR CONROY, AND HE HAD
18 REASON TO BELIEVE THAT SOMEONE WAS ARMED AND DANGEROUS. BASED ON
19 ALL THE CIRCUMSTANCES, I FIND IT WAS PROPER FOR HIM TO PLACE MR.
20 FOWLER UNDER DETENTION.

21 AND THE ENCOUNTER -- OR THE INTERROGATION, RATHER, WAS MORE
22 IN THE NATURE OF A VOLUNTARY STATEMENT GIVEN BY MR. FOWLER.
23 THERE WASN'T AN INTERROGATION LIKE WOULD YOU HAVE AT A DETENTION
24 CENTER OR LAW ENFORCEMENT CENTER OR JAIL. THIS WAS MORE LIKE A
25 POLICE-CITIZEN ENCOUNTER THAT LATER WAS TAKEN TO THE PATROL CAR.

MATTERS AND MOTIONS

1 BUT THERE WAS NO EVIDENCE OF COERCION AND NO SHOWING THAT HIS
2 WILL WAS EVER BORNE IN ANY WAY. IN FACT ALL THE REQUIRED
3 WARNINGS WERE GIVEN AND THE STATEMENTS WERE GIVEN VOLUNTARILY.
4 SO THEY ARE ADMISSIBLE.

5 AS FAR AS THE ORAL STATEMENT THAT I BELIEVE IT WAS TESTIFIED
6 TO BY SERGEANT MILLER, WHAT IS THE STATE'S POSITION ON THAT AGAIN
7 AS FAR AS RULE 5?

8 MR. MOYER: THIS -- THE CONTENT OF THE STATEMENT TO
9 SERGEANT MILLER WAS ACTUALLY DETAILED IN TWO DIFFERENT REPORTS BY
10 OTHER OFFICERS. SO THE DEFENDANT WAS MADE AWARE OF THE CONTENT
11 OF THAT DISCUSSION WITH SERGEANT MILLER.

12 MR. CREECH: AND, YOUR HONOR, WHAT -- SERGEANT MILLER NEVER
13 DID A REPORT IN THE CASE, SO I DIDN'T KNOW WHAT HE WAS GOING TO
14 GET UP HERE AND SAY THAT MY CLIENT SAID. SERGEANT -- THERE IS
15 SOME REFERENCE IN OTHER REPORTS THAT SERGEANT MILLER SAID THAT HE
16 WANTS TO COME CLEAN OR SOMETHING LIKE THAT. BUT THERE WAS NO --
17 THAT'S WHAT SERGEANT MILLER SAID TO THE OTHER OFFICERS, OKAY? I
18 JUST DON'T WANT SERGEANT MILLER GETTING UP ON THE STAND AND
19 TESTIFYING AS TO WHAT THE DEFENDANT TOLD HIM. I'VE ASKED FOR
20 DETAILS. I DON'T KNOW IF HE'S GOING TO TESTIFY ANY DIFFERENTLY
21 IN THE TRIAL AS TO ANY FURTHER DETAILS OF THE STATEMENT THAT
22 HAPPENED IN THE VEHICLE. BUT THE ONLY STATEMENT THAT I'M AWARE
23 OF IS SERGEANT MILLER SAYING TO THE OTHER OFFICERS SOMETHING
24 LIKE, "HE WANTS TO COME CLEAN" OR "HE WANTS TO GO DOWN AND GET IT
25 OFF HIS CHEST," SOMETHING LIKE THAT. YOU KNOW, I DON'T KNOW IF

MATTERS AND MOTIONS

1 THE DEFENDANT SAID, "I WANT TO GET IT OFF MY CHEST." I THINK
2 THAT'S WHAT SERGEANT MILLER SAID TO THE OTHER OFFICERS AFTER
3 SPEAKING WITH MY CLIENT.

4 SO MY MOTION IS JUST MERELY TO -- I HAVEN'T BEEN PROVIDED
5 WITH ANY STATEMENTS THAT MY CLIENT MADE TO SERGEANT MILLER,
6 EITHER THROUGH SERGEANT MILLER'S REPORT OR ANYTHING ELSE BECAUSE,
7 OBVIOUSLY, HE DIDN'T DO ONE IN THIS CASE.

8 THE COURT: OKAY. I THINK THAT'S JUST A MATTER OF CROSS
9 EXAMINATION. I THINK THE DISCOVERY RULES HAVE BEEN COMPLIED
10 WITH. ANYTHING FURTHER?

11 MR. MOYER: YOUR HONOR, I WOULD JUST SAY THAT AT THIS POINT
12 I AM PREPARED TO PUT WITNESSES UP TO TALK ABOUT THE SEARCH
13 WARRANT THAT WAS TAKEN OUT. I KNOW MR. CREECH'S NEXT MOTION IS
14 GOING TO BE SUPPRESSION OF PHYSICAL EVIDENCE THAT WAS TAKEN AS A
15 RESULT OF THE SEARCH. HOWEVER, YOUR HONOR, AT THIS POINT I WOULD
16 ARGUE THAT IT IS UNNECESSARY FOR US TO PUT ANY FURTHER EVIDENCE
17 INTO THE RECORD. THE EVIDENCE THAT CAME OUT IN THE JACKSON v.
18 DENNO HEARING, YOUR HONOR, WOULD SUPPORT THAT THE DEFENDANT GAVE
19 CONSENT VOLUNTARILY, NOT THE PRODUCT OF ANY DURESS OR COERCION,
20 FOR OFFICERS TO SEARCH THE RESIDENCE. AND THAT BEING THE CASE,
21 WE WOULD ASK YOUR HONOR TO RULE ON THE CONSENT ISSUE AND PERHAPS
22 SHORTEN THIS. WE DON'T NEED TO GO INTO THE SEARCH WARRANT.

23 MR. CREECH: AND I WOULD SAY THAT THE CONSENT WAS NOT
24 VALIDLY OBTAINED. THEY GET CONSENT ON -- THERE'S NO EVIDENCE AS
25 TO WHO THE RESIDENT OWNER OF THE TRAILER WAS AND WHETHER THERE

MATTERS AND MOTIONS

1 WAS VALID CONSENT FROM EITHER MR. FOWLER OR MS. SULLIVAN. AND
2 ALSO, THE SEARCH WARRANTS THEMSELVES, WE WOULD LIKE TO BRING THE
3 COURT'S ATTENTION TO THE SEARCH WARRANTS THEMSELVES AND THE LACK
4 OF INFORMATION IN THESE SEARCH WARRANTS. AND WE WANT TO
5 OBVIOUSLY HAVE THE OFFICER WHO SWORE OUT THE SEARCH WARRANTS
6 BEFORE THE MAGISTRATE TO DETERMINE THAT ISSUE. WE DON'T THINK
7 THE CONSENT -- JUST ON WHAT WE'VE HEARD SO FAR THAT THEY OBTAINED
8 CONSENT FROM THE PROPER PERSON IN TERMS OF, YOU KNOW, THE OWNER
9 OR RESIDENT. THEY HAD NO CLUE OF THE OWNER OR RESIDENT. THEY
10 HAD SOME IDEA THAT TISDALE WAS THE RESIDENT, BUT THAT'S IT.

11 MR. MOYER: MY RESPONSE TO THAT, YOUR HONOR, IS IT REALLY
12 DOESN'T MATTER. I MEAN, HE -- LET'S ASSUME THAT IT WAS NOT DONE
13 WITH THE CONSENT OF AN ACTUAL OWNER. THE DEFENDANT, HE CAN'T --
14 HE JUST DOESN'T HAVE STANDING TO CONTEST THAT. SO HE EITHER --
15 SO HE CAN'T CONTEST WHETHER OR NOT THIS SEARCH WAS DONE WITH
16 CONSENT BASED ON ANOTHER PERSON'S CONSENT.

17 ONE THING HE COULD CONTEST IS WHETHER OR NOT IT WAS DONE IN
18 VIOLATION OF HIMSELF GIVING CONSENT. AND THE OFFICER VERY
19 CLEARLY STATED HE DIDN'T EVEN ASK THE DEFENDANT FOR CONSENT. THE
20 DEFENDANT -- WHEN HE TOLD THE DEFENDANT HE WAS GOING TO GET A
21 SEARCH WARRANT, THE DEFENDANT CAME RIGHT OUT AND SAID, "LISTEN,
22 YOU DON'T NEED A SEARCH WARRANT. YOU CAN SEARCH THE HOUSE. YOU
23 CAN SEARCH THE CAR." SO IT CERTAINLY WAS WITHOUT ANY COERCION OR
24 DURESS.

25 THE COURT: WHAT WAS THE CASE THAT CAME OUT EARLIER THIS

MATTERS AND MOTIONS

1 YEAR OR LAST YEAR ABOUT A CO-TENANT OR SOMEONE, A SPOUSE---

2 MR. MOYER: THE VICTOR MISSOURI? WAS THAT THE VICTOR
3 MISSOURI CASE?

4 THE COURT: IT MAY BE. I DON'T...

5 MR. MOYER: WELL, I KNOW -- AS I UNDERSTAND IT, IT
6 CERTAINLY SAID THAT A CO-TENANT -- THAT IF A CO-TENANT, IF THAT'S
7 A WORD, OBJECTED TO THE CONSENT, EVEN THOUGH---

8 THE COURT: RIGHT.

9 MR. MOYER: ---THE MAJORITY OWNER GAVE CONSENT THAT THE
10 OFFICER WOULD NOT HAVE CONSENT. AND SO I WOULD ARGUE THAT CASE
11 WOULD NOT HAVE BEARING ON THIS ISSUE.

12 THE COURT: WELL, WHAT FRUITS ARE YOU ACTUALLY TRYING TO
13 EXCLUDE, MR. CREECH?

14 MR. CREECH: WELL, FIRST OFF, WE WOULD -- WE THINK THE
15 ARREST -- WE THINK WHEN THEY WENT AND TOOK HIM INTO CUSTODY,
16 ESSENTIALLY, WENT UP THERE AND HANDCUFFED HIM, THAT THEY DIDN'T
17 HAVE ENOUGH EVIDENCE AT THAT POINT. SO WE WOULD ASK THAT THE
18 ARREST BE SUPPRESSED. WE ALSO ASK THAT ANY SEARCH OF THE HOUSE
19 AND ANY EVIDENCE TAKEN BY MEANS OF THE SEARCH WARRANT -- THE ONLY
20 TIME THEY GOT EVIDENCE OUT OF THE HOUSE WAS AFTER THEY GOT A
21 SEARCH WARRANT AND CAME BACK AND GATHERED THE EVIDENCE PURSUANT
22 TO A SEARCH WARRANT, WHICH WAS A GUN, BULLETS, MARIJUANA, A BONG,
23 I THINK SOME ARTIFICIAL CRACK COCAINE, AND HE -- AND THEN SO FROM
24 THE TIME THEY INITIALLY WENT TO APPALOOSA DRIVE TO THE TIME THEY
25 GOT THE SEARCH WARRANT WAS ABOUT TWO HOURS. AFTER THEY HAD LEFT

MATTERS AND MOTIONS

1 APPALOOSA DRIVE WITH MR. FOWLER AND WITH MS. SULLIVAN, ABOUT TWO
2 HOURS AFTER THAT, THEY WENT BACK WITH THE SEARCH WARRANT OF THE
3 PREMISES AND ACTUALLY COLLECTED THE EVIDENCE.

4 THE COURT: BUT I THOUGHT THEY -- I HEARD TESTIMONY THAT
5 THEY TOOK MR. FOWLER BACK TO THE HOUSE AND HE POINTED OUT -- TOLD
6 THEM WHERE THE GUN WAS.

7 MR. CREECH: THERE WAS TESTIMONY THAT THEY TOOK HIM INSIDE
8 THE HOUSE AND HE POINTED OVER TOWARDS A CABINET OR SOMETHING LIKE
9 THAT AND THAT THEY DIDN'T COLLECT THE GUN AT THAT POINT.

10 THE COURT: OH, OKAY.

11 MR. CREECH: THEY JUST LEFT AND THEN THEY WENT AND GOT A
12 SEARCH WARRANT AND CAME BACK. WE WOULD LIKE TO CHALLENGE THE
13 FACIAL VALIDITY OF THE SEARCH WARRANT.

14 MR. MOYER: WELL, MY ARGUMENT, YOUR HONOR, IS THAT IT
15 REALLY DOESN'T MATTER WHETHER THE SEARCH WARRANT WAS VALID OR
16 NOT. BASED ON THE INDEPENDENT SOURCE DOCTRINE, IF THERE'S AN
17 INDEPENDENT SOURCE THAT VALIDATES THE SEARCH, THAT THAT ALONE IS
18 ENOUGH. SO THERE'S REALLY NO REASON TO GO INTO THE SEARCH
19 WARRANT. THE DEFENDANT GAVE CONSENT AND, YOU KNOW, THE OFFICERS
20 WERE JUST -- WERE BEING EXTRA CAREFUL AND WENT AND GOT A SEARCH
21 WARRANT. BUT THAT DOESN'T NEGATE THE FACT THE DEFENDANT HAD
22 ALREADY GIVEN CONSENT.

23 THE COURT: THAT'S THE INDEPENDENT SOURCE, HIS---

24 MR. MOYER: MY UNDERSTANDING, YOUR HONOR.

25 THE COURT: BUT WHO -- WHOSE HOUSE WAS IT?

MATTERS AND MOTIONS

1 MR. MOYER: IT WAS BEING RENTED BY DIANA TISDALE.

2 THE COURT: WAS HE LIVING THERE OR DO WE KNOW...

3 MR. MOYER: OH, YES, HE WAS LIVING THERE AT THE TIME. SHE
4 WOULD TESTIFY THAT HE HAD BEEN STAYING THERE FOR A FEW WEEKS.

5 THE COURT: SO, MR. MOYER, YOUR ARGUMENT IS THAT HE DOESN'T
6 HAVE STANDING TO OBJECT TO IT, FIRST OF ALL, RIGHT?

7 MR. MOYER: YES, SIR.

8 THE COURT: AND THEN HE CONSENTED TO IT?

9 MR. MOYER: YES. ALTHOUGH HE DOESN'T HAVE STANDING TO
10 CONTEST WHETHER OR NOT CONSENT WAS GIVEN BY OTHER PEOPLE WHO
11 LIVED THERE.

12 THE COURT: OKAY. ALL RIGHT.

13 MR. MOYER: AND SO HE, ARGUABLY, WOULD HAVE STANDING TO
14 OBJECT BASED ON THE MISSOURI CASE, OBJECT HIMSELF TO SEARCH.
15 HOWEVER, HE NEVER OBJECTED TO THE OFFICERS SEARCHING AND, IN
16 ADDITION, HE SAID THEY COULD. SO HE NOT ONLY DID NOT OBJECT TO
17 THE SEARCH AFTER ANOTHER RESIDENT ALLOWED THE OFFICERS TO COME
18 IN, HE NOT ONLY DIDN'T OBJECT TO THAT, BUT HE SAID GO AHEAD AND
19 SEARCH. YOU DON'T NEED TO GET A SEARCH WARRANT.

20 THE COURT: WAS THERE EVIDENCE THAT ANOTHER PERSON
21 CONSENTED? I DON'T KNOW -- DID I HEAR THAT?

22 MR. MOYER: THERE'S---

23 THE COURT: DID I HEAR THAT TESTIMONY?

24 MR. MOYER: YES. THERE WAS EVIDENCE THAT WHEN INVESTIGATOR
25 CONROY APPROACHED THE HOUSE HE SAID, "MAY I COME IN?" NOW, I'M

MATTERS AND MOTIONS

1 PROBABLY GOING A LITTLE TOO FAR. THEY DIDN'T ASK HER FOR CONSENT
2 TO SEARCH THE HOUSE. THEY -- SHE ALLOWED THEM TO COME IN. SO
3 THEY NEVER ASKED HER. THE DEFENDANT HIMSELF IS THE ONE WHO SAID
4 GO AHEAD AND SEARCH.

5 MR. CREECH: IT'S MY UNDERSTANDING THE DEFENDANT WAS AT THE
6 DOOR AND -- I DON'T THINK THEY HAVE -- I DON'T THINK I REMEMBER
7 HEARING ANYTHING ABOUT HER SAYING -- WELL, THERE WAS SOME
8 TESTIMONY ABOUT SOMETHING LIKE, "CAN I COME IN?" OR SOMETHING
9 LIKE THAT FROM DETECTIVE CONROY. AGAIN, CONROY DIDN'T KNOW WHO
10 SHE WAS OR ANYTHING ABOUT HER, OTHER THAN SHE WAS A BLACK FEMALE.

11 THE COURT: WELL, WHY WOULDN'T THE PLACING OF HANDCUFFS ON
12 HIM CONSTITUTE JUST AN INVESTIGATORY DETENTION, MR. CREECH? I
13 MEAN, THAT'S---

14 MR. CREECH: WELL, DETECTIVE CONROY STATED THAT THEY WERE
15 DETAINING HIM SO A PHOTO LINEUP COULD BE PUT TOGETHER.

16 THE COURT: WELL, THEY HADN'T REMOVED HIM EXCEPT TO THE
17 CAR, RIGHT?

18 MR. CREECH: RIGHT. BUT HE WAS CLEARLY NOT FREE TO LEAVE
19 AND IN THEIR CUSTODY EVEN THOUGH THEY TOLD HIM HE WAS NOT UNDER
20 ARREST. BUT HE WAS -- WHEN THEY PUT HIM IN THE CAR, INVESTIGATOR
21 CONROY SAID THAT HE WAS BEING DETAINED SO THAT A PHOTO LINEUP
22 COULD BE PUT TOGETHER.

23 THE COURT: AND HOW CLOSE FROM THE PLACING OF THE HANDCUFFS
24 ON TO THE STATEMENTS GIVEN HIS PURPORTED CONSENT TO SEARCH WERE
25 -- WAS THAT IN TIME?

MATTERS AND MOTIONS

1 **MR. CREECH:** WELL, DETECTIVE CONROY TESTIFIED THAT I THINK
2 HE WENT OUT TO THE CAR TWO TIMES, AND I CAN'T REMEMBER IF IT WAS
3 IN THE FIRST OR THE SECOND CONVERSATION THAT HE HAD WITH MR.
4 FOWLER. THE REPORT REFLECTS ONLY ONE CONVERSATION THAT LASTED
5 ABOUT 20 MINUTES. HE DID GO INSIDE THE HOUSE AND SPEAK AND DID
6 ESSENTIALLY A WALKTHROUGH WITH MS. SULLIVAN, WHO WAS INSIDE THE
7 HOUSE, BEFORE HE WENT BACK OUT AND TALKED TO MR. FOWLER, WHO WAS
8 IN THE CAR AT THAT POINT.

9 BUT THE -- AND THE OFFICERS, THEY HAD INFORMATION THAT A
10 NICKI TISDALE -- THAT NICKI TISDALE HAD BEEN A VICTIM OF A PETIT
11 LARCENY AT THAT ADDRESS. I DON'T KNOW IF THERE WAS ANY
12 INFORMATION THAT SHE RESIDED THERE ON THE POLICE REPORTS. CONROY
13 SAID HE CALLED INTO THE RECORDS DIVISION AND FOUND OUT THERE WAS
14 A PETIT LARCENY OR SOMETHING OR ASSAULT OR SOMETHING AT THAT
15 ADDRESS INVOLVING A NICKI TISDALE. THEY DIDN'T -- AND THEY HAD
16 HER NAME ON A PAWN TICKET BUT THEY -- YOU KNOW, THEY IMMEDIATELY
17 DETAIN HIM WHEN THEY GET THERE AND ENTERED THE HOUSE.

18 **THE COURT:** (PAUSE) WELL, OKAY. MR. MOYER, YOU CAN CALL
19 ANY OTHER WITNESSES YOU THINK YOU NEED TO IN RESPONSE TO MR.
20 CREECH'S MOTION TO SUPPRESS BASED ON THE SEARCH WARRANT OR SEARCH
21 ISSUE RATHER.

22 **MR. MOYER:** AM I TO TAKE THEN THAT YOU ARE NOT RULING THAT
23 THE SEARCH WAS CONSENSUAL BASED ON---

24 **THE COURT:** WELL, I'M NOT SURE I UNDERSTAND THE STATE'S
25 POSITION. IT'S -- OR THE DEFENSE'S POSITION, FOR THAT MATTER.

MATTERS AND MOTIONS

1 BUT THAT MAY BE MY OWN LIMITATIONS.

2 BUT IF I UNDERSTAND IT, MR. CREECH, YOU ARE ARGUING THAT THE
3 SEARCH SHOULD BE THROWN OUT BECAUSE THE ARREST WAS WITHOUT
4 PROBABLE CAUSE AND THAT HE WAS IN FACT ARRESTED OR SEIZED AND
5 THERE WASN'T A REASONABLE SUSPICION THAT COMPORTED WITH THE
6 FOURTH AMENDMENT. IS THAT RIGHT?

7 MR. CREECH: THAT'S PART OF IT. AND ALSO -- FIRST OF ALL,
8 ANY CONSENT THAT HE MAY HAVE GIVEN WAS NOT PROPER CONSENT TO
9 SEARCH AS IT HASN'T BEEN ESTABLISHED THAT HE WAS THE -- IT HASN'T
10 BEEN ESTABLISHED WHO WAS WHO, I MEAN, WHO OWNED IT, WHO LIVED
11 THERE, WHO RENTED IT, ET CETERA. AND THEN WE WOULD ALSO QUESTION
12 VALIDITY BECAUSE HE WAS IN CUSTODY AND IN HANDCUFFS WHEN THE
13 CONSENT WAS GIVEN. SO IT'S A QUESTION OF WHETHER THAT WAS FREELY
14 AND VOLUNTARILY GIVEN. SO -- AND THEN FINALLY OUR MOTION WOULD
15 BE AS TO -- JUST AS TO THE SEARCH WARRANT WHEN WE GET TO THAT
16 ISSUE.

17 THE COURT: WELL, HOW WOULD HE HAVE STANDING? HOW DO YOU
18 RESPOND TO THAT ARGUMENT?

19 MR. CREECH: WELL, IT WOULD COME DOWN TO WHETHER HE HAD A
20 RIGHT TO PRIVACY AND THE PREMISES SEARCHED. AND IT'S -- HE HAD
21 BEEN STAYING THERE AT NIGHT. I THINK HE'D HAVE -- IF HE'D BEEN
22 STAYING THERE, I THINK HE'D HAVE A RIGHT TO PRIVACY IN THE AREAS
23 TO SEARCH AND SO CERTAINLY HE WOULD CERTAINLY HAVE STANDING TO
24 OBJECT, AND ESPECIALLY IF THEY SEEK TO INTRODUCE THAT EVIDENCE
25 INTO EVIDENCE AGAINST HIM.

MATTERS AND MOTIONS

1 **MR. MOYER:** BUT THE ONLY EVIDENCE IN THE RECORD, YOUR
2 HONOR, IS THAT NOBODY DID DENY THE OFFICER PERMISSION TO SEARCH
3 AND THAT THE DEFENDANT IN FACT SAID THE OFFICERS COULD SEARCH,
4 THE OFFICERS HAD VALID CONSENT. THE FACT THAT HE WAS IN CUFFS OR
5 IN CUSTODY IS -- UNDER *STATE V. LAZARUS BRANNON*, THE COURT RULED
6 THAT BEING IN CUSTODY ALONE IS NOT ENOUGH TO DEMONSTRATE A
7 COERCED CONSENT TO SEARCH. IN THAT CASE THE COURT RULED THAT
8 THERE WERE NO OVERT ACTS OR THREATS OF FORCE AGAINST THE
9 DEFENDANT, NOR PROMISES. THEREFORE, IT DID NOT VITIATE THE
10 CONSENT THAT WAS GIVEN.

11 IN THIS CASE WE HAVE THE SAME THING. THE DEFENDANT WAS IN
12 CUFFS, BUT IT WAS THE MOST BENIGN ENCOUNTER THAT CAN BE IMAGINED
13 FOR SOMEONE IN CUFFS. HE WAS PLACED IN CUSTODY. HE WAS PUT IN A
14 POLICE CAR WHERE THERE WAS AIR CONDITIONING FOR HIS COMFORT. HE
15 WAS TOLD HE WAS NOT UNDER ARREST YET, BUT THIS IS, YOU KNOW, A
16 CUSTODIAL SITUATION WHILE THEY ARE INVESTIGATING A HOMICIDE.
17 THEY NEVER ASKED HIM FOR CONSENT. THEY NEVER TOLD HIM, "IF YOU
18 DON'T GIVE US CONSENT, WE'LL DO THIS OR THAT." HE JUST SAID,
19 "YOU MAY SEARCH THE RESIDENCE." AND SO THE FACT THAT HE WAS IN
20 CUSTODY WOULD NOT COME INTO PLAY UNDER THE DECISION.

21 **MR. CREECH:** THEY CERTAINLY TOLD HIM THEY WERE GETTING
22 SEARCH WARRANTS.

23 **THE COURT:** YEAH. HE SAID, "YOU DON'T NEED TO."

24 **MR. CREECH:** RIGHT. SO THERE WAS THIS, YOU KNOW, WE ARE
25 GOING TO DO THIS AND WE ARE GETTING SEARCH WARRANTS, ET CETERA.

MATTERS AND MOTIONS

1 **MR. MOYER:** IF I COULD RESPOND TO THAT. IN *STATE V. GREEN*,
2 THE OFFICERS THREATENED A PERSON AND SAID, "IF YOU DON'T GIVE US
3 CONSENT, WE'RE GOING TO GO GET A SEARCH WARRANT." IN THIS CASE,
4 IT WASN'T -- THE OFFICER JUST MENTIONED THAT THEY WERE DOING IT
5 AND DIDN'T ASK. HE JUST AGAIN SAID, "NO, YOU DON'T NEED TO DO
6 THAT. GO AHEAD AND SEARCH."

7 **MR. CREECH:** AND OF COURSE THERE IS EVIDENCE THAT THEY WENT
8 AND OBTAINED SEARCH WARRANTS. THEY DIDN'T COLLECT ANY EVIDENCE
9 THERE AT THE SCENE. THEY DIDN'T TAKE ANY -- YOU KNOW, THEY
10 DIDN'T TAKE THE WEAPON THERE, YOU KNOW, THEY'RE SAYING HE POINTED
11 OUT TO THEM. THEY DIDN'T TAKE ANY EVIDENCE WHEN THEY WERE THERE
12 THE FIRST TIME. THEY CAME BACK WITH THE SEARCH WARRANT TO DO THE
13 SEARCH OF THE RESIDENCE, AND THAT'S WHEN THEY ACTUALLY GATHERED
14 THE -- GATHERED THE EVIDENCE.

15 **THE COURT:** WHAT DOES THAT HAVE TO DO WITH THE ANALYSIS ON
16 THE FOURTH AMENDMENT ISSUE? THAT'S JUST THEIR DECISION TO DO IT
17 THAT WAY, RIGHT?

18 **MR. CREECH:** WELL, IT'S STILL A -- EVIDENCE WAS SEIZED
19 PURSUANT TO A SEARCH WARRANT. THERE IS CLEAR DELINEATION IN TIME
20 OF ABOUT TWO, TWO AND A HALF HOURS BEFORE THEY CAME BACK WITH A
21 SEARCH WARRANT.

22 **THE COURT:** OKAY. I UNDERSTAND YOUR ARGUMENT, MR. CREECH,
23 AND YOU MAKE A GOOD ARGUMENT, SIR. BUT, AGAIN, YOU KNOW, I THINK
24 ~~THE CASE IS SIMILAR TO FLORIDA V. ROYER. EVEN THOUGH IT'S -- THE~~
25 ANALYSIS IS MUCH DIFFERENT, THE PRINCIPLES OF LAW ARE THE SAME.

MATTERS AND MOTIONS

1 AND I THINK THEY EXPRESSED IN THAT CASE THAT SOMEONE BEING
2 NERVOUS. HERE WE HAVE TESTIMONY THAT MR. FOWLER WAS SHAKING AND
3 APPEARED TO BE ABOUT TO FLEE. AGAIN, OFFICER CONROY WAS
4 INVESTIGATING A SHOOTING. HE TOLD HIM THAT. HE CERTAINLY HAD
5 REASON TO BE WARY OF THE WHOLE SITUATION AND FOR HIS SAFETY AND
6 THE SAFETY OF EVERYONE ELSE, GIVEN THE DESCRIPTIONS OF THE TALL,
7 THIN, BLACK MALE THAT DOVETAILED WITH THE DESCRIPTION OF THE
8 VEHICLE AND THE INFORMATION THEY HAD GLEANED FROM THE PAWN SHOP
9 INVESTIGATION, IT APPEARED THAT THESE WERE SUSPECTS OR PEOPLE OF
10 INTEREST TO A VIOLENT CRIME, AND HE HAD A REASONABLE SUSPICION TO
11 PLACE MR. FOWLER IN INVESTIGATORY DETENTION. AND THAT'S WHEN THE
12 STATEMENTS WERE MADE, WHICH I'VE ALREADY RULED WERE ADMISSIBLE
13 AND WERE VOLUNTARILY MADE.

14 AND I FURTHER FIND THE CONSENT HE GAVE WAS NOT COERCED AND
15 WAS GIVEN VOLUNTARILY, FREELY AND THERE WAS CERTAINLY NO PRESSURE
16 PLACED ON MR. FOWLER. HIS WILL WASN'T OVERBORNE. AND ONCE
17 AGAIN, HIS STATEMENT WAS SOMEWHAT SPONTANEOUS AND THERE WAS NO
18 TACTIC OR RUSE USED ON HIM THAT HAS ANY CONSTITUTIONAL
19 SIGNIFICANCE. SO I FIND THAT HIS CONSENT WAS FREELY GIVEN.
20 BASED ON THAT CONSENT THEY DID SEARCH. SO I RESPECTFULLY DENY
21 THE MOTION.

22 ANYTHING FURTHER AT THIS TIME?

23 MR. MOYER: NOT FROM THE STATE, YOUR HONOR.

24 MR. CREECH: AND, YOUR HONOR, WE JUST -- WE WOULD -- WE
25 WOULD OBVIOUSLY LIKE TO MAKE THE SEARCH WARRANTS POSSIBLY PART OF

MATTERS AND MOTIONS

1 THE RECORD---

2 THE COURT: OKAY.

3 MR. CREECH: ---THE COURT'S RECORD SO THAT THE -- AND JUST
4 REQUEST THAT WE AT LEAST CALL THE AFFIANT OF THE SEARCH WARRANTS
5 TO PROFFER HIS TESTIMONY AS TO WHAT HIS REASON WAS FOR OBTAINING
6 THE SEARCH WARRANTS.

7 THE COURT: OKAY. I'LL CERTAINLY LET YOU DO THAT, SIR.
8 BUT I -- AGAIN, I'M A LITTLE -- I'M HAVING A HARD TIME GETTING MY
9 HANDS AROUND THIS ARGUMENT. AND IF THE GUN AND OTHER ITEMS WERE
10 NOT TAKEN UNTIL AFTER THE SEARCH WARRANT WAS GIVEN, YOUR
11 ARGUMENT, MR. CREECH, IS THAT THE CONSENT IS IRRELEVANT; IS THAT
12 RIGHT?

13 MR. CREECH: YES, YOUR HONOR.

14 THE COURT: AND, MR. MOYER, HOW DO YOU RESPOND TO THAT?

15 MR. MOYER: I DON'T SEE HOW THAT -- I DON'T UNDERSTAND THE
16 LOGIC OR THE LEGAL BASIS FOR THAT. THE FACT THAT AN OFFICER WILL
17 GO THE EXTRA STEP AND FIND ANOTHER BASIS FOR A SEARCH, I DON'T
18 UNDERSTAND HOW THAT WE NEGATE AN INDEPENDENT SOURCE. AND---

19 THE COURT: THAT GOES BY TO STANDING, RIGHT?

20 MR. MOYER: I THINK THAT ALONG WITH THE FACT THAT HE HAD
21 ALREADY GIVEN CONSENT -- WELL, I'M NOT QUITE SURE.

22 THE COURT: WELL, I MEAN, IF I GIVE CONSENT TO SEARCH YOUR
23 HOUSE, I DON'T HAVE THE RIGHT TO DO THAT, CORRECT?

24 MR. MOYER: CORRECT. I UNDERSTAND.

25 THE COURT: OKAY. YOU SEE WHAT I'M SAYING?

MATTERS AND MOTIONS

1 **MR. MOYER:** YEAH.

2 **THE COURT:** AND THEN IF THE POLICE GO THERE AND FIND
3 SOMETHING THAT INCRIMINATES ME AND I SAY, "WELL, I COULDN'T
4 CONSENT TO THAT. YOU DIDN'T HAVE PROBABLE CAUSE TO SEARCH MR.
5 MOYER'S HOUSE." THEN YOUR ARGUMENT WOULD BE, WELL, I DON'T HAVE
6 STANDING TO OBJECT TO THAT SEARCH, RIGHT?

7 **MR. MOYER:** YES, THAT WOULD BE THE CASE.

8 **THE COURT:** SO, MR. CREECH, HELP ME OUT HERE. WHAT AM I
9 MISSING?

10 **MR. CREECH:** WELL, AGAIN, THE STANDING -- IF THE EVIDENCE
11 INCRIMINATES YOU, AGAIN, I THINK HE'S GOT TO -- IT HAS TO HAVE
12 BEEN ESTABLISHED PRECISELY WHO WAS THE RENTER. I THINK THERE HAS
13 BEEN EVIDENCE THAT NICKI TISDALE WAS RENTING THE PLACE. CLEARLY,
14 THESE PEOPLE THAT THEY TALKED TO THAT DAY WAS NOT NICKI TISDALE.
15 THEY DID NOT OBTAIN CONSENT FROM HER. SO IF THEY ASKED HIM -- IF
16 THEY SAID, "WE'RE GOING TO GO GET A SEARCH WARRANT," HE SAID,
17 "YOU CAN LOOK," AND THEN THEY WENT IN THERE AND LOOKED AND LEFT,
18 AND THEN THEY CAME BACK WITH A SEARCH WARRANT. THE AFFIANT'S
19 REASON FOR THE SEARCH WARRANT WAS NOT THAT THEY HAD CONSENT OR
20 ANYTHING BUT THAT WE THINK THAT THERE MAY BE EVIDENCE HERE
21 SOMEWHERE. IT'S NOT A VERY DETAILED RECITATION.

22 **THE COURT:** WELL, YOU GO AHEAD AND PUT UP WHATEVER YOU NEED
23 TO OR PROFFER WHATEVER EVIDENCE YOU NEED TO, MR. CREECH, AND --
24 GO AHEAD.

25 **MR. CREECH:** THANK YOU, YOUR HONOR. WE CALL DETECTIVE

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MONTY MIZE - DIRECT BY MR. MOYER

1 MIZE.

2 THE COURT: ALL RIGHT.

3 MONTY MIZE, HAVING BEEN DULY SWORN,
4 TESTIFIED AS FOLLOWS:

5 MADAME CLERK: PLEASE STATE YOUR NAME FOR THE RECORD.

6 WITNESS: WILLIAM MONTY MIZE.

7 DIRECT EXAMINATION BY MR. CREECH:

8 Q DETECTIVE MIZE, WHERE ARE YOU EMPLOYED?

9 A GREENVILLE CITY POLICE DEPARTMENT.

10 Q AND WERE YOU INVOLVED IN AN INVESTIGATION OF ZACHARY FOWLER
11 IN A HOMICIDE THAT OCCURRED ON JUNE 7TH, 2003?

12 A SLIGHTLY, YES.

13 Q SLIGHTLY. OKAY. DID YOU -- WHAT WAS YOUR ROLE IN THE
14 INVESTIGATION?

15 A I WAS ASKED TO OBTAIN A SEARCH WARRANT.

16 Q OKAY. AND WHERE WERE YOU WHEN YOU GOT THE CALL TO GO GET A
17 SEARCH WARRANT?

18 A AT THE LAW ENFORCEMENT CENTER.

19 Q AND WHO CALLED YOU?

20 A DETECTIVE CONROY.

21 Q ALL RIGHT. AND WHAT DID -- DID YOU END UP GOING AND GETTING
22 THE SEARCH WARRANT?

23 A I DID.

24 Q OKAY. ABOUT WHAT TIME DID YOU GET A CALL FROM DETECTIVE
25 CONROY?

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1 A I WOULD THINK PROBABLY ABOUT 4:00 OR 4:30 IN THE AFTERNOON.

2 Q OKAY.

3 A I'M NOT REAL SURE ABOUT THAT.

4 Q AND WHAT DID DETECTIVE CONROY TELL YOU?

5 A JUST BASICALLY WHAT I NEEDED TO PUT ON THE SEARCH WARRANT.

6 I ASKED HIM FOR THE INFORMATION ON THE HOUSE AND WHERE IT WAS

7 LOCATED, THAT TYPE OF THING, AND THE CAR.

8 Q TAKE A LOOK AT THESE TWO DOCUMENTS.

9 MR. CREECH: MARK THESE AS DEFENDANT'S EXHIBITS.

10 (SEARCH WARRANT MARKED AS DEFENDANT'S EXHIBIT NUMBER 1 FOR
11 PURPOSES OF IDENTIFICATION ONLY)

12 (SEARCH WARRANT DEFENDANT'S EXHIBIT NUMBER 2 FOR PURPOSES OF
13 IDENTIFICATION ONLY)

14 Q I'M HANDING YOU WHAT'S BEEN MARKED DEFENDANT'S EXHIBITS
15 NUMBER 1 AND 2. CAN YOU TELL ME WHAT THOSE ARE?

16 A THIS WAS THE SEARCH WARRANT FOR THE CAR, AND -- I'M SORRY.
17 I BELIEVE THIS ONE IS FOR THE HOUSE AND THIS ONE IS FOR THE CAR.

18 Q OKAY. WHICH? CAN YOU REFER TO THOSE BY NUMBER PLEASE?

19 A ALL RIGHT. LET ME JUST MAKE SURE. (PAUSE TO REVIEW
20 EXHIBITS) LET ME SEE THAT ONE AGAIN, TOM, JUST TO MAKE SURE I
21 KNOW WHICH ONE IT IS. (PAUSE) IS THIS NOT THE SAME ONES, TOM?

22 (MR. CREECH AND WITNESS REVIEW DOCUMENTS)

23 (MR. CREECH OFF RECORD WITH COURT REPORTER)

24 (SEARCH WARRANT FOR RESIDENCE MARKED AS DEFENDANT'S EXHIBIT
25 NUMBER 1 FOR PURPOSES OF IDENTIFICATION ONLY)

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1 (SEARCH WARRANT FOR VEHICLE MARKED AS DEFENDANT'S EXHIBIT
2 NUBMER 2 FOR PURPOSES OF IDENTIFICATION ONLY)

3 Q IF YOU COULD, TELL ME WHAT DEFENSE EXHIBIT NUMBER 1 IS
4 PLEASE.

5 A OKAY. THIS WOULD BE THE HOUSE.

6 Q OKAY. COULD YOU TELL ME WHAT DEFENSE EXHIBIT NUMBER --
7 DEFENDANT'S EXHIBIT NUMBER 2, CAN YOU TELL ME WHAT THAT IS?

8 A THIS WOULD BE THE SEARCH WARRANT FOR THE CAR.

9 Q OKAY. AND WHAT IS YOUR -- WHAT WAS THE CAR -- HOW WAS THE
10 CAR DESCRIBED IN THE SEARCH WARRANT TO THE MAGISTRATE?

11 A HOW WAS IT DESCRIBED TO THE MAGISTRATE?

12 Q YES.

13 A THE WAY I PUT IT ON HERE.

14 Q AND WHAT -- HOW DID YOU DESCRIBE IT?

15 A A BLUE BUICK CENTURY FOUR-DOOR WITH TAG NUMBER SC

16 Q OKAY. AND WHAT WAS THE REASON FOR YOUR BELIEF THAT THE
17 PROPERTY SOUGHT WAS IN THE SUBJECT CAR?

18 A AGAIN, I WAS BASING THIS ON THE INFORMATION THAT DETECTIVE
19 CONROY HAD PROVIDED TO ME THAT I THEN TYPED UP ON THE SEARCH
20 WARRANT AND RELAYED THAT TO JUDGE HUDSON, WHO I GOT TO SIGN THIS
21 SEARCH WARRANT.

22 Q OKAY. AND JUDGE HUDSON IS A COUNTY MAGISTRATE; IS THAT
23 CORRECT?

24 A HE IS.

25 Q AND YOU ARE A CITY POLICE OFFICER; IS THAT CORRECT?

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- 1 A THAT'S CORRECT.
- 2 Q AND WHAT WAS THE -- IS THE INFORMATION THAT YOU GAVE HIM --
- 3 CAN YOU READ THAT, PLEASE?
- 4 A THIS RIGHT HERE IS WHAT YOU WANT ME TO READ?
- 5 Q YEAH, IF THAT'S THE INFORMATION YOU GAVE HIM.
- 6 A "A BLUE BUICK CENTURY FOUR-DOOR WITH TAG NUMBER SC
- 7 HAS BEEN IDENTIFIED AS THE VEHICLE THAT THE SUSPECT EXITED OUT OF
- 8 AT THE SCENE OF A MURDER THAT OCCURRED AT AVENUE. IT
- 9 WAS LOCATED AT DRIVE. THE DRIVER OF THE VEHICLE IS
- 10 ALSO THE LEGAL RESIDENT OF DRIVE."
- 11 Q OKAY. AND IS THAT WHAT YOU READ TO THE MAGISTRATE; IS THAT
- 12 CORRECT?
- 13 A THIS IS THE FORM -- THIS IS THE COPY OF THE ONE I GAVE HIM.
- 14 Q OKAY. AND DID YOU SAY ANYTHING ELSE TO THE MAGISTRATE OR IS
- 15 THAT WHAT YOU TOLD HIM AND HE READ IT AND THEN SIGNED IT; IS THAT
- 16 CORRECT?
- 17 A THAT'S -- I HANDED IT TO HIM AND HE READ IT. THAT'S ALL IT
- 18 WAS.
- 19 Q THAT'S ALL IT WAS?
- 20 A UH-HUH (AFFIRMATIVE).
- 21 Q OKAY. AND NOW ON DEFENSE EXHIBIT NUMBER 1, THAT WAS -- WHAT
- 22 WAS YOUR REASON FOR -- WHAT WAS YOUR REASON FOR BELIEVING THAT
- 23 THERE WAS PROPERTY SOUGHT PURSUANT TO THAT SEARCH WARRANT?
- 24 A IT WAS -- AGAIN, IT WAS RELAYED TO ME BY DETECTIVE CONROY
- 25 THAT A HOUSE WAS LOCATED IN FRONT -- I MEAN, THAT THE CAR WAS

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1 LOCATED IN FRONT OF THIS HOUSE AT DRIVE AND THAT
2 ALSO THE -- THE REGISTERED OWNER OF THE CAR LIVED AT
3 DRIVE.

4 Q OKAY. AND THE -- AND THAT'S WHAT YOU TOLD THE MAGISTRATE;
5 IS THAT CORRECT?

6 A THAT'S WHAT HE READ, YES, SIR.

7 Q ALL RIGHT. AND THAT WAS -- THERE WAS NO OTHER INFORMATION
8 GLEANED OR PROVIDED TO THE MAGISTRATE; IS THAT CORRECT?

9 A NO, SIR.

10 Q DID YOU TELL THE MAGISTRATE THAT ALL OF YOUR INFORMATION WAS
11 COMING FROM DETECTIVE CONROY?

12 A I DON'T KNOW THAT I ACTUALLY TOLD HIM THAT. HE ASKED IF
13 THAT'S -- AGAIN, FOR ME TO SWEAR THAT I KNEW THAT THIS WOULD BE
14 TRUE AND I WAS RELAYING THE FACTS FROM DETECTIVE CONROY.

15 Q OKAY. BUT -- OKAY. DID YOU SAY THAT I WAS RELAYING THESE
16 FACTS FROM DETECTIVE CONROY OR DID YOU JUST---

17 A NO.

18 Q YOU DID NOT SAY THAT?

19 A NO, I DID NOT.

20 Q OKAY. AND THAT GOES FOR BOTH DEFENSE EXHIBITS NUMBER 1 AND
21 2; IS THAT CORRECT?

22 A YES.

23 Q THAT ARE HERE FOR THE PURPOSES OF JUST THIS HEARING.

24 MR. CREECH: OKAY. I HAVE NO FURTHER QUESTIONS AT THIS
25 TIME.

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1 Q OH. LET ME ASK ONE MORE QUESTION. YOU NEVER WENT TO
2 DRIVE YOURSELF; IS THAT RIGHT?

3 A I DID NOT.

4 Q OKAY. AND YOUR INFORMATION WAS JUST COMING FROM DETECTIVE
5 CONROY, CORRECT?

6 A CORRECT.

7 Q AND YOU DID NOT -- AND YOU JUST WENT -- AND WHAT YOU READ
8 OUT ON THE SEARCH WARRANTS HERE, THAT'S WHAT YOU TOLD THE
9 MAGISTRATE; IS THAT CORRECT?

10 A CORRECT.

11 Q OKAY. SO NOW YOU DIDN'T HAVE PERSONAL KNOWLEDGE OF THOSE
12 FACTS; IS THAT RIGHT? YOUR KNOWLEDGE WAS COMING FROM THIRD
13 PARTY, THIRD-HAND FROM DETECTIVE CONROY?

14 A CORRECT.

15 Q AND ON THAT SEARCH WARRANT IT DETERMINED THAT MR. FOWLER WAS
16 THE LEGAL RESIDENT OF THE PREMISES; IS THAT CORRECT?

17 A I BELIEVE THAT'S CORRECT. AS FAR AS I KNOW, WHOEVER THE CAR
18 IS REGISTERED TO WAS -- LIVED AT --

19 Q OKAY. AND DOES IT SAY ZACHARY FOWLER IS A LEGAL RESIDENT OF
20 THAT---

21 A IT DOESN'T LIST A NAME ON HERE. I THINK ALL IT SAYS IS THE
22 SUSPECT.

23 Q OKAY. IT SAYS THE DRIVER OF THE VEHICLE IS ALSO THE LEGAL
24 RESIDENT AT ---

25 A OKAY.

MATTERS AND MOTIONS

1 Q ---IS THAT CORRECT?

2 A THAT'S WHAT IT -- YES.

3 Q OKAY. AND DID YOU SERVE THE SEARCH WARRANT?

4 A NO, I DID NOT.

5 Q OKAY. DID YOU DO A RETURN OF THE SEARCH WARRANT?

6 A NO, I DID NOT.

7 MR. CREECH: OKAY. THANK YOU. NO FURTHER QUESTIONS, YOUR
8 HONOR.

9 MR. MOYER: I DON'T HAVE ANY QUESTIONS.

10 MR. CREECH: THANK YOU, YOUR HONOR.

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

12 (WITNESS STEPS DOWN AT 3:52 P.M.)

13 MR. CREECH: YOUR HONOR, I'D JUST LIKE TO RENEW MY MOTIONS.

14 THE COURT: OKAY. WHAT'S YOUR ARGUMENT SPECIFICALLY ABOUT
15 THE SEARCH WARRANT, MR. CREECH?

16 MR. CREECH: SPECIFICALLY, YOUR HONOR, THAT THE AFFIANT
17 DIDN'T HAVE PERSONAL KNOWLEDGE OF THE FACTS AS STATED IN THE
18 SEARCH WARRANT. HE GOT THE INFORMATION THIRD-HAND FROM DETECTIVE
19 CONROY. IT WAS NOT RELAYED TO THE MAGISTRATE THAT THAT
20 INFORMATION WAS COMING THIRD-HAND FROM DETECTIVE CONROY. THE
21 OFFICER STATED, YOU KNOW, APPARENTLY ON THE SEARCH WARRANT, THAT
22 IT WAS HIS PERSONAL KNOWLEDGE OR HE HAD PERSONAL KNOWLEDGE OF THE
23 FACTS. IT WAS NEVER TOLD TO THE MAGISTRATE THIS IS NOT MY
24 PERSONAL KNOWLEDGE; THIS IS COMING THIRD HAND FROM ANOTHER
25 OFFICER. SO WE WOULD SAY THAT HE OBVIOUSLY HAD NO PERSONAL

MATTERS AND MOTIONS

1 KNOWLEDGE OF THE FACTS SET FORTH IN THE AFFIDAVIT AND THAT THE
2 FACTS -- OR THE REASON AS SET FORTH IS NOT SUFFICIENT -- IS NOT
3 SUFFICIENT PROBABLE CAUSE FOR THE WARRANT TO BE ISSUED.

4 THE COURT: ALL RIGHT, MR. MOYER.

5 MR. MOYER: I'M NOT SURE WHAT WE'RE ACTUALLY ARGUING IN
6 THIS MOTION. JUST FOR THE RECORD, I WOULD SAY THAT CERTAINLY
7 THERE IS PLENTY OF CASE LAW OUT THERE THAT THE -- THAT HEARSAY IS
8 CERTAINLY ADMISSIBLE WHEN PROVIDING AN AFFIDAVIT TO A MAGISTRATE
9 FOR A SEARCH WARRANT. SO THAT CERTAINLY DIDN'T VIOLATE -- DIDN'T
10 VIOLATE ANY CONSTITUTIONAL ISSUE REGARDING THE ISSUANCE OF THE
11 SEARCH WARRANT.

12 THE COURT: WELL, AGAIN, I FIND THAT THE DEFENDANT, MR.
13 FOWLER, DOES NOT HAVE STANDING TO OBJECT TO THE SEARCH WARRANT.
14 THE FOURTH AMENDMENT RIGHT IS A PERSONAL RIGHT. IT CAN'T BE
15 VICARIOUSLY ASSERTED BY SOMEONE ELSE. AND HE BEARS THE BURDEN OF
16 SHOWING HE HAD A LEGITIMATE EXPECTATION OF PRIVACY IN THE PLACES
17 TO BE SEARCHED, AND I HAVEN'T HEARD ANY EVIDENCE THAT WOULD
18 SUPPORT ANY EXPECTATION OF PRIVACY OTHER THAN THE FACT HE WAS
19 THERE.

20 SO I FIND THAT BOTH UNDER THE FOURTH AMENDMENT AND UNDER THE
21 SOUTH CAROLINA CONSTITUTION ARTICLE 1 SECTION 10 THAT THE SEARCH
22 WAS -- CAN'T BE CHALLENGED ON THAT GROUND BY MR. FOWLER. AND
23 ALTERNATIVELY, THERE WAS CONSENT GIVEN. EVEN IF HE DID HAVE A
24 LEGITIMATE EXPECTATION OF PRIVACY, I THINK THE CASE IS A LOT
25 DIFFERENT THAN CASES SUCH AS THE GEORGIA V RANDOLPH CASE.

MATTERS AND MOTIONS

1 AND THERE ARE -- THERE WAS PERMISSION GIVEN AT SOME POINT BY
2 THE ACTUAL OCCUPANTS OF THE HOME OTHER THAN MR. FOWLER, IF I
3 RECALL THE TESTIMONY ACCURATELY. AND THEREFORE, IT ALL GOES BACK
4 TO WHETHER THE INITIAL ENCOUNTER WHEN HE WAS PLACED IN HANDCUFFS
5 COMPORTED WITH THE FOURTH AMENDMENT, WHICH I FOUND ALREADY TO BE
6 A REASONABLE ACTION ON THE PART OF AGENT CONROY. AND THEREFORE,
7 ONCE THAT WAS FOUND TO BE PROPER -- AND I ALSO FOUND THAT MR.
8 FOWLER'S FIFTH AMENDMENT RIGHTS WERE ADHERED TO AND RESPECTED IN
9 THE CONTEXT OF BOTH THE CONSENT AND THE STATEMENT HE GAVE, SO I
10 FIND THE FEDERAL AND STATE CONSTITUTIONAL PROVISIONS REGARDING
11 SEARCH AND SEIZURE AND SELF-INCRIMINATION HAVE NOT BEEN VIOLATED
12 AND THAT THE EVIDENCE IS ADMISSIBLE.

13 I WOULD POINT OUT FURTHER THAT EVEN IF MR. FOWLER HAD
14 REFUSED TO CONSENT TO THE SEARCH, CERTAINLY THE HOMEOWNER HAS THE
15 RIGHT TO SUBSEQUENTLY GRANT CONSENT. THAT WAS ESTABLISHED IN THE
16 STATE *v. FLOWERS* CASE. AND THIS IS NOT A SITUATION LIKE *GEORGIA*
17 *v. RANDOLPH* WHERE ONE TENANT OF A SHARED DWELLING GAVE CONSENT
18 BUT THE OTHER WHO WAS PRESENT REFUSED. INSTEAD, HERE WE HAVE
19 CONSENT GIVEN AND NO STANDING TO CHALLENGE, EVEN IF THAT CONSENT
20 WAS WRONGFULLY OBTAINED.

21 ALL RIGHT. ANYTHING FURTHER?

22 MR. MOYER: NO, YOUR HONOR.

23 MR. CREECH: NOTHING, YOUR HONOR.

24 THE COURT: OKAY.

25 MR. MOYER: CAN WE TAKE JUST A QUICK BREAK BEFORE WE BRING

PRELIMINARY INSTRUCTION BY THE COURT

1 THE JURY?

2 THE COURT: YEAH. WE'LL TAKE ABOUT A FIVE-MINUTE BREAK.
3 JUST LET EVERYBODY GET COMFORTABLE BEFORE WE BRING THE JURY IN
4 HERE AND SEE WHAT STEAM IS COMING OUT OF THEIR EARS. OKAY?
5 THANK YOU.

6 (A RECESS WAS TAKEN FROM 3:58 TO 4:10 P.M.)

7 (BENCH CONFERENCE OFF RECORD FROM 4:10 TO 4:12 P.M.)

8 THE COURT: OKAY. ARE Y'ALL READY FOR THE JURY?

9 MR. MOYER: THE STATE'S READY.

10 MR. CREECH: THE DEFENSE IS READY.

11 (JURY REENTERS COURTROOM AT 4:13 P.M.)

12 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, WE'RE ABOUT
13 TO BEGIN THE TRIAL OF THE STATE VERSUS ZACHARY M. FOWLER. I KNOW
14 YOU'VE BEEN BACK THERE SOME TIME, AND I APOLOGIZE FOR THAT. IT
15 IS SOMETIMES DIFFICULT TO PREDICT WHEN WE ARE GOING TO BE READY
16 TO GO AND USUALLY IT DOES NOT TAKE THAT LONG. BUT WE HAD SOME
17 ISSUES THAT CAME UP, AND WE'VE BEEN OUT HERE WORKING ON THEM.
18 AND WE ACTUALLY WORKED ON THEM UNTIL ABOUT TWO O'CLOCK, AND THEN
19 Y'ALL WERE BACK AND NOBODY IN HERE HAD AN OPPORTUNITY TO HAVE A
20 BREAK. SO WE HAD TO TAKE A BREAK TO LET EVERYBODY GET
21 COMFORTABLE.

22 AS I'VE SAID BEFORE, SERVING ON A JURY HAS BEEN LIKENED TO
23 BEING IN AN AIRPORT WAITING FOR AN UNSCHEDULED FLIGHT TO DEPART,
24 AND I KNOW Y'ALL FEEL LIKE YOU'VE BEEN SITTING ON THE TARMAC A
25 LONG TIME THIS AFTERNOON. SO I APOLOGIZE FOR THAT BUT, BELIEVE

PRELIMINARY INSTRUCTION BY THE COURT

1 ME, IT'S UNAVOIDABLE, AND HOPEFULLY WE'LL STREAMLINE MATTERS AND
2 MAKE THIS CASE MOVE A LITTLE FASTER BECAUSE WE'VE BEEN WORKING
3 OUT HERE ON SOME ISSUES THAT WILL HOPEFULLY DO THAT.

4 BUT I, AGAIN, WANT TO THANK YOU FOR YOUR SERVICE AND FOR
5 YOUR CONTRIBUTION TO YOUR COMMUNITY BY BEING HER THIS WEEK AND
6 SERVING ON A JURY. THE RIGHT TO THE JURY TRIAL IS A VALUABLE AND
7 IMPORTANT RIGHT. THOMAS JEFFERSON SAID IT'S THE MOST VALUABLE
8 RIGHT OF ALL BECAUSE IT GUARANTEES ALL OF OUR OTHER RIGHTS, AND I
9 KNOW THAT YOU WOULDN'T BE HERE UNLESS YOU BELIEVED THAT TO SOME
10 DEGREE. SO WE APPRECIATE THAT AND WE'RE GOING TO TRY TO MAKE
11 THINGS MOVE SMOOTHLY FROM HERE ON OUT. AND I CERTAINLY TAKE
12 RESPONSIBILITY FOR THAT NOT HAPPENING SO FAR.

13 NOW, LET ME TRY TO INTRODUCE SOME OF THE PEOPLE YOU HAVEN'T
14 MET YET. YOU MET THE LAWYERS DURING THE EARLIER PROCESS WE HAD
15 BEFORE WE SELECTED THE JURY. I INTRODUCED MYSELF TO YOU. AGAIN,
16 MY NAME IS GARY HILL. I AM ONE OF THE CIRCUIT JUDGES HERE IN
17 GREENVILLE AND PICKENS COUNTIES.

18 AND I ALSO WANT TO INTRODUCE TO YOU MS. DAWN KOFFSKEY, WHO
19 IS SITTING RIGHT IN FRONT OF ME. SHE IS THE COURT REPORTER.
20 CIRCUIT COURT IS A COURT OF RECORD. EVERY WORD THAT IS SAID IS
21 TAKEN DOWN AND THAT IS WHAT SHE IS DOING. SHE DOES THAT AND
22 KEEPS UP WITH THE EXHIBITS AND MAKES SURE EVERYTHING IS IN ORDER.

23 THEN TO HER RIGHT IS MS. MARY TROUP. AS YOU SAW THIS
24 MORNING, SHE HELPS WITH THE JURY SELECTION AND SHE IS WITH THE
25 CLERK OF COURT'S OFFICE.

PRELIMINARY INSTRUCTION BY THE COURT

1 AND THEN YOU MET THE BAILIFFS, I KNOW, MR. LYNCH AND MS.
2 OWENS. YOU HAVE SPENT PROBABLY MORE TIME THAN EITHER OF Y'ALL
3 WANTED TO WITH EACH OTHER THIS AFTERNOON. BUT THEY ARE HERE FOR
4 YOUR ASSISTANCE AND COMFORT AND TO MAKE SURE THAT YOUR STAY WITH
5 US IS AS PLEASANT AS POSSIBLE.

6 AND UP HERE ON THE BENCH WITH ME IS MY LAW CLERK, HUGH
7 DUBOSE. HE IS A RECENT GRADUATE OF THE LAW SCHOOL DOWN IN SOUTH
8 CAROLINA IN COLUMBIA, AND HE HELPS ME RESEARCH AND PREPARE FOR
9 CASES.

10 ALL OF US HAVE TAKEN AN OATH TO DO OUR JOBS, AND YOU'RE
11 GOING TO TAKE AN OATH TOO. I'M GOING TO TELL YOU WHAT YOUR JOB
12 IS, YOUR ROLE IS, IN THIS PROCESS AFTER YOU TAKE THAT OATH. BUT
13 LISTEN CAREFULLY TO IT BECAUSE IT'S BEEN AROUND A LONG TIME AND
14 IT'S A TIME-HONORED OATH. AND THE WORDS IN IT WILL TELL YOU IN A
15 NUTSHELL WHAT YOU NEED TO KNOW TO BE A GOOD JUROR.

16 SO, YES, MA'AM, MS. TROUP.

17 **MADAME CLERK:** PLEASE STAND AND RAISE YOUR RIGHT HAND FOR
18 THE OATH IN THIS CASE. (ALL JURORS COMPLY) THE PROPER RESPONSE
19 IS "I WILL."

20 YOU SHALL WELL AND TRULY TRY THE CASES 2007-GS-23-245, THE
21 STATE VERSUS ZACHARY MARQUIS FOWLER INDICTED FOR MURDER, 246 FOR
22 ARMED ROBBERY AND POSSESSION OF A WEAPON DURING THE COMMISSION OF
23 A VIOLENT CRIME, 247 FOR ASSAULT WITH INTENT TO KILL, 248 FOR
24 ASSAULT AND BATTER WITH INTENT TO KILL, 249 FOR POSSESSION OF A
25 PISTOL WHEN UNDER 21 YEARS OF AGE, AND A TRUE VERDICT RENDER

PRELIMINARY INSTRUCTION BY THE COURT

1 ACCORDING TO THE LAW AND THE EVIDENCE SO HELP YOU GOD. I WILL.
2 (ALL JURORS RESPOND AFFIRMATIVELY) THANK YOU. PLEASE BE SEATED.

3 (JURY PLACED UNDER OATH AT 4:17 P.M.)

4 THE COURT: ALL RIGHT. THANK YOU VERY MUCH.

5 LADIES AND GENTLEMEN, THE JUSTICE SYSTEM WE HAVE IN SOUTH
6 CAROLINA GIVES YOU AND I DISTINCT ROLES. MY JOB IS THREEFOLD.
7 THE FIRST JOB I HAVE IS TO TRY TO RUN THINGS EFFICIENTLY, WHICH I
8 HAVEN'T BEEN DOING TOO GOOD OF A JOB OF SO FAR.

9 THE SECOND JOB I HAVE IS I RULE ON THE ADMISSIBILITY OF
10 EVIDENCE. IF DURING THE COURSE OF THIS TRIAL ONE SIDE OBJECTS TO
11 EVIDENCE BEING INTRODUCED, THEN I WOULD DETERMINE WHETHER IT IS
12 EVIDENCE YOU CAN CONSIDER. IF I SUSTAIN THE OBJECTION, THAT
13 MEANS THE EVIDENCE IS PROPER. IF I -- EXCUSE ME, THE EVIDENCE IS
14 IMPROPER. IF I OVERRULE THE OBJECTION, THAT MEANS THE EVIDENCE
15 IS SOMETHING YOU CAN CONSIDER.

16 THE LAST JOB I HAVE IS TO BE THE JUDGE OF THE LAW. AT THE
17 END OF THE CASE I AM GOING TO INSTRUCT YOU ON WHAT SOME OF THE
18 LAW IS YOU ARE TO APPLY TO THIS CASE. I WILL TELL YOU ABOUT THE
19 ELEMENTS OF THE CRIME AND DEFINE FOR YOU THE TERM REASONABLE
20 DOUBT AND THINGS OF THAT NATURE.

21 THOSE ARE MY JOBS. I'M THE JUDGE OF THE LAW UNDER OUR
22 SYSTEM. AND AS I ALLUDED TO THIS MORNING, YOU'RE THE JUDGES OF
23 THE FACTS. WHEN IT COMES TO DETERMINING THE FACTS OF THE CASE,
24 YOUR BADGE MAY AS WELL SAY JUDGE INSTEAD OF JUROR BECAUSE OUR
25 SYSTEM OF JUSTICE GRANTS TO THE JURY THE SOLE AND EXCLUSIVE RIGHT

PRELIMINARY INSTRUCTION BY THE COURT

1 TO DETERMINE THE FACTS OF A CASE. I CAN'T COMMENT ON THE FACTS
2 OF THIS CASE AND TELL YOU WHAT I THINK THE FACTS ARE OR WHAT I
3 THINK THE VERDICT SHOULD BE. THAT, INSTEAD, IS SOLELY YOUR
4 DECISION.

5 HOW DO YOU DETERMINE WHAT THE FACTS ARE? YOU DO THAT BY
6 USING THE EVIDENCE IN THE CASE. THAT'S THE ONLY BASIS YOU CAN
7 USE FOR DETERMINING WHAT FACTS ARE. AND EVIDENCE CONSISTS OF TWO
8 SOURCES. THE FIRST IS THE ONE YOU'RE PROBABLY MOST FAMILIAR
9 WITH, WHICH IS THE SWORN TESTIMONY OF A WITNESS. I EXPECT WE
10 WILL HAVE IN THIS CASE PEOPLE WHO COME IN AND ARE SWORN AND UNDER
11 OATH AND WILL TELL YOU THINGS THEY KNOW ABOUT THE CASE OR
12 INFORMATION THAT THEY HAVE ABOUT THE CASE, THINGS THEY'VE SEEN OR
13 HEARD OR OBSERVED IN SOME MANNER. THE SECOND SOURCE OF EVIDENCE
14 AND BASIS FOR WHICH YOU CAN DETERMINE THE FACTS IS BY WAY OF AN
15 EXHIBIT. WE MAY HAVE IN THIS CASE EXHIBITS, AND EXHIBITS ARE
16 SIMPLY A PHYSICAL, TANGIBLE THING YOU CAN SEE AND FEEL AND TOUCH.
17 IT COULD BE A PHOTOGRAPH. IT COULD BE A PIECE OF PAPER. IT
18 COULD BE ANYTHING. BUT YOU WILL KNOW IT IS SOMETHING THAT YOU
19 CAN CONSIDER AND YOU WILL KNOW IT IS EVIDENCE BECAUSE AT THE END
20 OF THE CASE YOU WILL HAVE IT BACK IN THE JURY ROOM WITH YOU, AND
21 IT WILL HAVE A LITTLE STICKER ON IT THAT SAYS EXHIBIT NUMBER SO
22 AND SO.

23 SO SWORN TESTIMONY OF WITNESSES AND EXHIBITS ARE THE SOLE
24 SOURCES OF EVIDENCE FROM WHICH YOU CAN DETERMINE THE FACTS IN THE
25 CASE.

PRELIMINARY INSTRUCTION BY THE COURT

1 THERE ARE CERTAIN THINGS THAT AREN'T EVIDENCE AND FROM WHICH
2 YOU MAY NOT DETERMINE THE FACTS. WHAT THE LAWYERS SAY IS NOT
3 EVIDENCE BECAUSE THEY ARE NOT WITNESSES. THEY ARE HERE TO HELP
4 YOU INTERPRET THE EVIDENCE AND REPRESENT THEIR CLIENTS TO THE
5 BEST OF THEIR ABILITY. BUT CERTAINLY WHAT THEY SAY IS NOT
6 TESTIMONY. THEY ARE HELPING YOU INTERPRET THE EVIDENCE AND
7 TESTIMONY YOU ARE GOING TO HEAR DURING THIS TRIAL. LIKEWISE,
8 ANYTHING YOU HEAR OR SEE WHILE COURT IS NOT IN SESSION IS NOT
9 EVIDENCE AND YOU MAY NOT CONSIDER THAT IN REACHING YOUR VERDICT.

10 NOW, IN DETERMINING THE FACTS YOU WILL HAVE TO NECESSARILY
11 DETERMINE THE CREDIBILITY OF EACH WITNESS THAT TESTIFIES AND EACH
12 EXHIBIT THAT IS ENTERED. AND CREDIBILITY SIMPLY MEANS
13 BELIEVABILITY. DO YOU BELIEVE THE WITNESS? DO YOU BELIEVE THE
14 EXHIBIT? IS IT WORTHY OF BELIEF?

15 AND THERE ARE MANY THINGS YOU CAN USE TO DETERMINE IF
16 SOMEONE IS TELLING THE TRUTH OR WHETHER SOMETHING IS WORTHY OF
17 BELIEF. OBVIOUSLY, YOU CAN CONSIDER HOW THEY ACT ON THE WITNESS
18 STAND, WHETHER THEY GIVE TESTIMONY THAT IS HESITANT OR
19 FORTHRIGHT. HOW DOES THEIR TESTIMONY STACK UP AGAINST THE OTHER
20 EVIDENCE YOU'RE GOING TO HEAR IN THE CASE, WHETHER THE WITNESS
21 HAS SOME INTEREST IN THE OUTCOME OF THIS CASE, THAT IS, WHETHER
22 THEY ARE BIASED FOR ONE SIDE OR AGAINST THE OTHER OR HAVE SOME
23 PREJUDICE THAT THEY ARE INFLUENCED BY DURING THEIR TESTIMONY.
24 YOU CAN ALSO USE ANYTHING YOU USE IN YOUR DAY-TO-DAY LIFE IN
25 DETERMINING WHETHER SOMEONE IS WORTH OF BELIEF BECAUSE YOU

PRELIMINARY INSTRUCTION BY THE COURT

1 CERTAINLY DON'T SURRENDER YOUR COMMON SENSE BY COMING INTO THE
2 COURTHOUSE AND REPORTING FOR JURY DUTY.

3 NOW, YOU CERTAINLY WOULD ALSO NOT DECIDE THIS MATTER OF
4 CREDIBILITY ARBITRARILY. YOU WOULD HAVE A GOOD REASON FOR
5 DETERMINING WHY YOU BELIEVE SOMEONE OF SOUND REASON, WHY
6 SOMETHING IS WORTHY OF BELIEF, AND YOU WOULDN'T DO IT
7 FRIVOLOUSLY. YOUR JOB IS EXTREMELY IMPORTANT. I KNOW YOU WILL
8 DO YOUR JOB CONSCIENTIOUSLY AND DILIGENTLY. BUT PLEASE
9 UNDERSTAND HOW IMPORTANT YOUR JOB IS.

10 YOU MAY READ IN THE PAPER EVERY NOW AND THEN ABOUT A CASE
11 THAT'S BEEN REVERSED ON APPEAL. WHEN THAT HAPPENS THAT MEANS THE
12 JUDGE MADE A MISTAKE ON THE LAW. OUR SYSTEM OF JUSTICE ALLOWS A
13 MISTAKE ON THE LAW TO BE CORRECTED ON APPEAL, BUT IT DOES NOT
14 ALLOW FOR A MISTAKE OF FACT TO BE CORRECTED ON APPEAL. AND WHAT
15 THAT MEANS IS THIS, A JURY'S DETERMINATION AS TO WHAT THE FACTS
16 ARE IS ALMOST ALWAYS FINAL IN OUR SYSTEM OF JUSTICE. SO PLEASE
17 TRY TO KEEP KEEN ATTENTION THROUGHOUT THIS TRIAL. AND WE'RE
18 GOING TO TRY TO TAKE BREAKS ABOUT EVERY HOUR AND A HALF OR TWO
19 HOURS, AND WE'RE NOT GOING TO GO BUT MAYBE ANOTHER HOUR TODAY
20 BECAUSE WE'VE HAD A TOUGH TIME GETTING STARTED. BUT WE WILL
21 TYPICALLY TAKE ABOUT AN HOUR AND A HALF TO TWO HOURS OF TESTIMONY
22 AND THEN HAVE A BREAK. SO WE'LL TRY TO KEEP YOU FRESH.

23 I KNOW IT'S HARD TO SIT THERE FOR LONG PERIODS OF TIME AND
24 LISTEN TO TESTIMONY. BUT AS WE ALL KNOW, IT'S RIGHT WHEN YOU
25 START LETTING YOUR MIND WANDER THAT SOMETHING IMPORTANT HAPPENS.

PRELIMINARY INSTRUCTION BY THE COURT

1 SO PLEASE TRY TO KEEP CLOSE ATTENTION.

2 AND LET ME TELL YOU THAT THIS IS A CRIMINAL MATTER, AS YOU
3 KNOW. AND YOU'VE HEARD THE CHARGES. I READ THE INDICTMENTS TO
4 YOU EARLIER. AND THE CHARGES ARE THAT MR. FOWLER IS HERE FOR
5 TODAY ARE ARMED ROBBERY, POSSESSION OF A WEAPON DURING THE
6 COMMISSION OF A VIOLENT CRIME, ASSAULT WITH INTENT TO KILL,
7 ASSAULT AND BATTERY WITH INTENT TO KILL, MURDER AND POSSESSION OF
8 A PISTOL UNDER THE AGE OF 21. THESE INDICTMENTS, AS I SAID TO
9 YOU EARLIER, ARE NOT EVIDENCE. OKAY? THEY DON'T FORM THE BASIS
10 OF SOMETHING FROM WHICH YOU CAN RENDER YOUR DECISION. THEY'RE
11 NOT WITNESSES, OBVIOUSLY, AND THEY'RE NOT EXHIBITS IN THE CASE.
12 THEY ARE SIMPLY ALLEGATIONS, AND AT THIS POINT MR. FOWLER, WHO
13 HAS PLED NOT GUILTY, IS PRESUMED INNOCENT. AND THAT PRESUMPTION
14 OF INNOCENCE WILL REMAIN WITH HIM AND HE WILL ENJOY THAT
15 PRESUMPTION OF INNOCENCE THROUGHOUT THIS TRIAL, AND THAT
16 PRESUMPTION OF INNOCENCE CAN ONLY BE REMOVED IF AND ONLY IF YOU
17 FIND THE STATE HAS PROVEN EACH AND EVERY ELEMENT OF THE CRIME
18 BEYOND A REASONABLE DOUBT. AND YOU WILL HAVE TO CONSIDER EACH
19 CHARGE SEPARATELY, AND AT THE END OF THE CASE I WILL GIVE YOU A
20 VERDICT FORM THAT HAS EACH CHARGE LISTED SEPARATELY. AND YOU
21 WILL HAVE TO DETERMINE WHETHER THE STATE HAS MET ITS BURDEN OF
22 PROOF AS TO EACH CHARGE.

23 MR. FOWLER HAS NO BURDEN OF PROOF. HE DOESN'T HAVE TO
24 EXPLAIN HIMSELF OR OFFER ANY EXPLANATION OR EVIDENCE WHATSOEVER.
25 INSTEAD, IT IS THE STATE'S BURDEN AND THAT BURDEN CAN ONLY BE MET

PRELIMINARY INSTRUCTION BY THE COURT

1 BY PROOF BEYOND A REASONABLE DOUBT. PROOF BEYOND A REASONABLE
2 DOUBT -- I WILL AMPLIFY THIS A LITTLE BIT IN MY FINAL
3 INSTRUCTIONS TO YOU. BUT PROOF BEYOND A REASONABLE DOUBT IS
4 PROOF THAT LEAVES YOU FIRMLY CONVINCED OF THE DEFENDANT'S GUILT.
5 AND A REASONABLE DOUBT IS THE KIND OF DOUBT THAT WILL CAUSE A
6 CONSCIENTIOUS, HONEST AND SINCERE PERSON TO HESITATE TO ACT IN A
7 MATTER IMPORTANT IN THEIR OWN AFFAIRS. AT THIS STAGE, AGAIN, MR.
8 FOWLER IS PRESUMED INNOCENT AND THE BURDEN IS ON THE STATE.

9 NOW LET ME TALK A LITTLE BIT ABOUT THE STRUCTURE OF A
10 CRIMINAL TRIAL. HOW MANY OF Y'ALL HAVE SERVED ON A CRIMINAL
11 TRIAL JURY BEFORE? IF YOU WOULD JUST RAISE YOUR HAND? (PAUSE)
12 OKAY. WELL, YOU, SIR, MAY BE AWARE OF THIS, AND OTHERS OF YOU
13 MAY BE AS WELL. A CRIMINAL TRIAL HAS A CERTAIN STRUCTURE TO IT.
14 IN JUST A MOMENT WE WILL HAVE THE OPENING STATEMENT OF THE
15 SOLICITOR OR THE PROSECUTOR, AND MR. MOYER WILL GIVE AN OPENING
16 STATEMENT WHERE HE OUTLINES THE EVIDENCE HE THINKS IS GOING TO BE
17 PRODUCED DURING THE TRIAL AND WHAT THE EVIDENCE IS GOING TO SHOW.

18 AFTER THAT, MR. FOWLER HAS THE OBLIGATION -- EXCUSE ME, THE
19 OPPORTUNITY BUT NOT THE OBLIGATION TO GIVE AN OPENING STATEMENT.
20 AND I SAY HE HAS THE OPPORTUNITY BUT NOT THE OBLIGATION BECAUSE,
21 AGAIN, HE DOESN'T HAVE TO PROVE ANYTHING TO YOU. HE CERTAINLY
22 CAN GIVE AN OPENING STATEMENT, BUT HE'S NOT REQUIRED TO.

23 AND AFTER YOU HEAR THE OPENING STATEMENTS, YOU WILL THEN
24 HEAR THE STATE BEGIN ITS PRESENTATION OF THE EVIDENCE. AFTER THE
25 STATE COMPLETES ITS PRESENTATION OF THE EVIDENCE -- AND DURING

PRELIMINARY INSTRUCTION BY THE COURT

1 THAT PHASE OF THE TRIAL, OF COURSE, MR. FOWLER'S ATTORNEY CAN
2 CROSS EXAMINE THE STATE'S EVIDENCE AND CONFRONT IT. AFTER YOU
3 HEAR THE STATE'S PRESENTATION OF THE EVIDENCE, MR. FOWLER, AGAIN,
4 WILL HAVE THE OPPORTUNITY BUT NOT THE OBLIGATION TO PRESENT ANY
5 EVIDENCE HE WISHES TO.

6 AFTER YOU HAVE HEARD ALL OF THE EVIDENCE, WE WILL THEN HAVE
7 THE CLOSING ARGUMENTS OF THE ATTORNEYS WHERE THEY WILL TRY TO
8 TELL YOU WHAT THE EVIDENCE SHOWED AND WHAT THEY THINK YOUR
9 VERDICT SHOULD BE. AND THEN I WILL GIVE YOU THE INSTRUCTION ON
10 THE LAW YOU ARE TO APPLY TO THE CASE, AND THEN THE CASE WILL BE
11 IN YOUR HANDS FOR A DECISION AND FOR A VERDICT.

12 NOW, UNTIL WE REACH THAT POINT, THAT IS, WHEN WE'VE HEARD
13 ALL THE EVIDENCE AND HEARD ALL THE ARGUMENTS OF THE LAWYERS AND
14 YOU'VE BEEN GIVEN THE LAW YOU ARE TO APPLY TO THIS MATTER, YOU
15 ARE NOT TO DISCUSS THIS CASE WITH ANYONE OR DO ANY OUTSIDE
16 INVESTIGATION. WE SPENT A GOOD DEAL OF TIME THIS MORNING, AND SO
17 DID YOU, TRYING TO FIND A JURY THAT COULD BE FAIR AND IMPARTIAL
18 AND NOT HAVE ANY PREDISPOSITIONS ABOUT THIS CASE, AND WE WANT TO
19 KEEP YOU THAT WAY THROUGHOUT THIS PROCESS. YOU MAY HEAR A
20 WITNESS THIS AFTERNOON WHO SAYS SOMETHING AND TESTIFIES ABOUT
21 SOMETHING AND IF OVER THE OVERNIGHT RECESS YOU STARTED TALKING
22 ABOUT THAT WITH SOMEONE ABOUT WHAT THAT WITNESS SAID OR DIDN'T
23 SAY OR SHOULD HAVE SAID, YOU ARE STARTING TO MAKE UP YOUR MIND
24 AND DRAW CONCLUSIONS ABOUT THE CASE. AND YOU MAY HEAR A WITNESS
25 TOMORROW WHO SAYS SOMETHING COMPLETELY DIFFERENT THAN A WITNESS

OPENING STATEMENTS - BY MR. MOYER

1 THIS AFTERNOON OR IN THE MORNING. SO KEEP AN OPEN MIND. A TRIAL
2 IS OFTEN LIKE A JIGSAW PUZZLE AND IT HAS TO BE PRESENTED ONE
3 PIECE AT A TIME. AND DON'T TALK ABOUT THE CASE WITH ANYONE OR DO
4 ANY KIND OF OUTSIDE INVESTIGATION.

5 NOW, LADIES AND GENTLEMEN, WE HAVE FINE ATTORNEYS IN THIS
6 CASE AND THESE ATTORNEYS ARE ADVOCATES FOR THEIR CLIENTS AND
7 THEY'RE GOING TO REPRESENT THEIR CLIENTS ZEALOUSLY AND TO THE
8 BEST OF THEIR ABILITIES.

9 YOU AND I ARE NOT ADVOCATES. WE DON'T HAVE ANY FRIENDS TO
10 REWARD OR ENEMIES TO PUNISH IN THIS PROCESS. INSTEAD, OUR ROLE
11 IS TO BE NEUTRAL, AND YOUR ROLE, SPECIFICALLY, IS TO DETERMINE
12 WHETHER THE STATE HAS MET ITS BURDEN OF PROOF.

13 SO I APPRECIATE YOUR ATTENTION TO ME DURING THESE REMARKS,
14 AND I NOW WILL ASK MR. MOYER TO GIVE THE OPENING STATEMENT. YES,
15 SIR.

16 MR. MOYER: GOOD MORNING, LADIES AND GENTLEMEN. I
17 INTRODUCED MYSELF, I'M MARK MOYER. I KNOW I ALREADY HAVE DONE
18 SO, BUT IT'S BEEN A LITTLE WHILE AGO, SO JUST IN CASE Y'ALL HAVE
19 FORGOTTEN. I'M AN ASSISTANT SOLICITOR HERE IN GREENVILLE COUNTY.

20 ASSISTANT SOLICITORS, WHAT OUR JOB IS, IS WE REPRESENT THE
21 STATE IN CRIMINAL MATTERS. JUST ABOUT EVERY OTHER STATE, EVERY
22 OTHER JURISDICTION, CALLS THERE PROSECUTORS PROSECUTING ATTORNEYS
23 OR DISTRICT ATTORNEYS. SO IF YOU ARE FROM ANOTHER STATE, THAT'S
24 PROBABLY THE TERM YOU ARE FAMILIAR WITH. IT'S THE SAME THING IN
25 SOUTH CAROLINA. WE JUST CALL THEM SOLICITORS. IT'S AN OLD TERM

OPENING STATEMENTS - BY MR. MOYER

1 THAT HASN'T BEEN CHANGED.

2 NOW, WHAT I'M GOING TO DO HERE IN JUST A FEW MOMENTS, THEN
3 I'M GOING TO GIVE THIS OPENING STATEMENT, IS I'M GOING TO GIVE
4 YOU A LITTLE PREVIEW ABOUT WHAT YOU'RE GOING TO HEAR IN THIS
5 CASE. I'M GOING TO TALK A LITTLE BIT ABOUT THE LAW AND TELL YOU
6 A LITTLE BIT ABOUT WHAT YOU'RE GOING TO HEAR FROM WITNESSES IN
7 THIS CASE WHO ARE GOING TO TESTIFY. SO FAR ALL YOU KNOW ABOUT
8 THIS CASE, I BELIEVE, IS JUST THE CHARGES. HIS HONOR HAS READ
9 THE INDICTMENTS TO YOU, SO YOU KNOW WHAT THE DEFENDANT IS CHARGED
10 WITH HERE.

11 SO LET ME FIRST START BY TELLING YOU THIS, THAT IN A
12 NUTSHELL WHAT THIS CASE ABOUT, IT'S ABOUT THIS DEFENDANT ON JUNE
13 THE 7TH OF LAST YEAR APPROACHING A CAR CONTAINING THREE PEOPLE --
14 SUSAN GALLOWAY, MIKE -- GARY MICHAEL POWELL AND RON HARRIS --
15 APPROACHING THAT CAR FOR THE PURPORTED PURPOSE OF SELLING SOME
16 CRACK COCAINE TO THE FEMALE WHO WAS IN THAT CAR, SUSAN GALLOWAY.
17 AND YOU'RE GOING TO HEAR, LADIES AND GENTLEMEN, THAT WHEN HE GOT
18 TO THE CAR INSTEAD OF PULLING OUT CRACK COCAINE TO SELL TO THIS
19 WOMAN, HE PULLED OUT A NINE MILLIMETER, SEMI-AUTOMATIC PISTOL AND
20 HE -- YOU'RE GOING TO HEAR TESTIMONY THAT AS HE REACHED INTO THE
21 CAR TO GRAB FOR THE MONEY THAT THAT WOMAN HAD OUT AND AS THE
22 DRIVER, MICHAEL POWELL, ATTEMPTED TO DRIVE AWAY, THIS DEFENDANT
23 OPENED FIRE AT ALL THREE PEOPLE IN THAT CAR, HITTING SUSAN
24 GALLOWAY AND KILLING HER, HITTING GARY MICHAEL POWELL AND
25 WOUNDING HIM, AND SOMEHOW MISSING RON HARRIS, WHO WAS IN THE BACK

OPENING STATEMENTS - BY MR. MOYER

1 SEAT.

2 NOW, HIS HONOR IS GOING TO INSTRUCT YOU FULLY ON THE LAW AT
3 THE END OF THIS CASE, AND HE'S GOING TO FULLY EXPLAIN WHAT THESE
4 DIFFERENT CHARGES MEAN AND THE ELEMENTS OR THE STEPPING STONES
5 FOR EACH OF THESE CHARGES. I THOUGHT IT MIGHT BE HELPFUL FOR ME
6 JUST TO MENTION THEM TO YOU AND JUST GIVE YOU A BRIEF EXPLANATION
7 OF WHAT THE CHARGES ARE. A COUPLE OF THEM ARE REALLY SELF-
8 EXPLANATORY.

9 POSSESSION OF A PISTOL BY A PERSON UNDER THE AGE OF 21,
10 WELL, THE TITLE OF THAT CHARGE REALLY EXPLAINS WHAT IT IS. IN
11 ORDER TO OWN A PISTOL -- IN ORDER TO BE IN POSSESSION OF A
12 PISTOL, YOU HAVE TO BE 21 YEARS OF AGE. IF YOU'RE NOT, IT'S A
13 CRIME.

14 ALL RIGHT. ANOTHER CHARGE IS POSSESSION OF A FIREARM BY A
15 PERSON WHO -- DURING THE COMMISSION OF A VIOLENT CRIME. AGAIN,
16 VERY SELF-EXPLANATORY. IF YOU ARE IN POSSESSION OF A KNIFE OR
17 FIREARM WHILE COMMITTING A VIOLENT CRIME, THEN YOU ARE GUILTY OF
18 THAT OFFENSE. VIOLENT CRIMES INCLUDE THE CHARGE THAT THAT
19 INDICTMENT IS ASSOCIATED WITH, ARMED ROBBERY. SO IF HE HAS A
20 HANDGUN WHILE COMMITTING AN ARMED ROBBERY, HE IS GUILTY OF THAT
21 FIREARMS CHARGE AS WELL.

22 ALL RIGHT. LET'S MOVE ON TO ARMED ROBBERY. ARMED ROBBERY
23 IS A TYPE OF THEFT. IT'S A TYPE OF STEALING. AND THERE ARE
24 ACTUALLY MANY DIFFERENT KINDS. TO GIVE YOU AN EXAMPLE, IF A
25 WALLET WERE UP FOR SALE AT WAL-MART AND SOMEBODY TOOK IT, IT

OPENING STATEMENTS - BY MR. MOYER

1 WOULD BE SHOPLIFTING. IF I LEFT IT ON THE TABLE HERE AND WALKED
2 OUT OF THE ROOM AND SOMEBODY WALKED UP AND TOOK IT, IT WOULD BE
3 LARCENY. IT COULD BE INVOLVED IN A PURSE SNATCHING TOO. ROBBERY
4 IS THIS, ROBBERY IS THE TAKING OF PROPERTY OR MONEY FROM THE
5 PERSON OR PRESENCE OF ANOTHER THROUGH FORCE OR INTIMIDATION. SO
6 IF THIS IS ON MY PERSON OR VERY CLOSE TO ME AND SOMEONE TAKES IT
7 FROM ME BY FORCE OR INTIMIDATION, THEN IT'S ROBBERY. NOW, WHAT
8 MAKES IT THE NEXT STEP UP, THE ARMED ROBBERY, IS IF WHILE THAT
9 PERSON COMMITS THE ROBBERY THEY HAVE A GUN OR EVEN A FAKE GUN.
10 EVEN A REPRESENTATION OF A GUN WOULD BE ENOUGH. THAT WOULD BE
11 ARMED ROBBERY.

12 ALL RIGHT. I'M GOING TO TALK ABOUT THE FINAL THREE CHARGES
13 TOGETHER BECAUSE REALLY THEY ARE THE SAME EXCEPT FOR ONE PART,
14 ONE LITTLE ELEMENT, MURDER, ASSAULT AND BATTERY WITH INTENT TO
15 KILL AND ASSAULT WITH INTENT TO KILL. THEY ARE ALL THE SAME
16 EXCEPT FOR WHAT HAPPENS TO THE VICTIM. IF THE VICTIM IS KILLED,
17 IT'S MURDER. IF THE VICTIM IS WOUNDED, IT'S ASSAULT AND BATTERY
18 WITH INTENT TO KILL. AND IF THE VICTIM IS JUST THE VICTIM OF AN
19 ASSAULT WITH NO INJURY, THEN IT'S ASSAULT WITH INTENT TO KILL.
20 SO, ESSENTIALLY, THE KEY TO THESE THREE CHARGES IS A LEGAL
21 CONCEPT CALLED MALICE. SO IF THERE IS A KILLING WITH MALICE,
22 IT'S MURDER. IF THERE IS AN ASSAULT AND BATTERY WITH MALICE,
23 IT'S ASSAULT AND BATTERY WITH INTENT TO KILL. AND IF THERE IS AN
24 ASSAULT WITH MALICE, THEN IT'S ASSAULT WITH INTENT TO KILL.

25 WELL, YOU MAY BE WONDERING, WHAT'S THE DIFFERENCE BETWEEN

OPENING STATEMENTS - BY MR. MOYER

1 ASSAULT AND BATTERY AND ASSAULT? IT'S ONE OF THE TERMS THAT WE
2 THINK OF AS BEING INTERCHANGEABLE. THERE'S ACTUALLY A
3 DIFFERENCE. AND THE BEST WAY TO EXPLAIN IT IS BY USING AN
4 EXAMPLE. IF SOMEONE WERE TO TAKE A SWING AT YOU, A PUNCH, A
5 BLOW, THE SWING WOULD BE AN ASSAULT. IF THE BLOW LANDED, THAT
6 WOULD BE A BATTERY. SO AN ASSAULT IS AN ATTEMPT TO DO INJURY. A
7 BATTERY IS THE ACTUAL LANDING OF THE BLOW OR THE INJURY. SO YOU
8 CAN HAVE AN ASSAULT AND BATTERY BY SOMEONE SWINGING AND HITTING.
9 IF YOU SWING AND MISS, IT'S JUST AN ASSAULT. IF YOU THROW A ROCK
10 AT SOMEBODY, THAT'S THE ASSAULT. IF IT HITS THE OTHER PERSON,
11 IT'S ASSAULT AND BATTERY. SO THAT'S THE DISTINCTION BETWEEN
12 THOSE TWO CHARGES.

13 NOW LET'S TALK ABOUT THAT MALICE CHARGE. WHAT DOES THAT
14 MEAN? IT'S A LEGAL TERM. IT HAS THE CONNOTATION OF ILL WILL.
15 THE DEFINITION IT'S A DOING OF A WRONGFUL ACT WITHOUT JUST CAUSE
16 OR EXCUSE.

17 AND YOU MAY BE WONDERING TO YOURSELF, HOW AM I SUPPOSED TO
18 DETERMINE IF SOMEBODY HAS MALICE? I MEAN, THAT'S AN EMOTION,
19 RIGHT? OR AT LEAST A STATE OF MIND, RIGHT? MALICE? WELL, UNDER
20 THE LAW, THE LAW DOESN'T REQUIRE US TO HAVE TO READ SOMEBODY'S
21 MIND, BECAUSE UNDER THE LAW MALICE CAN BE EXPRESS OR IT CAN BE
22 INFERRED. IN CERTAIN RARE SITUATIONS A PERSON WILL SAY SOMETHING
23 TO INDICATE THEIR ILL WILL OR HATRED OR LEAVE A NOTE OR MAYBE
24 EVIDENCE OF PLANNING THAT EXPRESSLY SHOWS THE MALICE. BUT NOT
25 ALL TIME. AND UNDER THE LAW YOU CAN INFER FROM THE CIRCUMSTANCES

OPENING STATEMENTS - BY MR. MOYER

1 THAT THERE WAS MALICE. AND ONE WAY UNDER THE LAW YOU CAN DO THAT
2 IS BY USE OF A DEADLY WEAPON. UNDER THE LAW THAT WOULD BE ENOUGH
3 FOR YOU AS JURORS TO FIND THERE IS MALICE IN THIS SITUATION.

4 ALL RIGHT. WHAT ABOUT THE REST OF THAT TERM, MALICE
5 AFORETHOUGHT? THAT DOES NOT MEAN THAT A CRIME LIKE THIS, THE
6 ASSAULT OR THE KILLING HAS TO BE PLANNED OR EVEN THOUGHT ABOUT
7 AHEAD OF TIME. ALL THAT MEANS IS THAT AT THE TIME OF THE ASSAULT
8 OR AT THE TIME OF THE KILLING THIS MALICE EXISTED.

9 ONE FINAL POINT ABOUT THIS, AND THAT IS THE PARTICULAR WAY
10 THIS MURDER AND ASSAULT TOOK PLACE IS GOING TO BE IMPORTANT IN
11 THIS CASE AS WELL BECAUSE, AGAIN, UNDER THE LAW, WHEN A -- WHEN
12 AN ASSAULT OR A KILLING TAKES PLACE DURING THE COMMISSION OF A
13 DANGEROUS FELONY, LIKE AN ARMED ROBBERY, THAT WOULD SATISFY THE
14 MALICE ELEMENT AS WELL.

15 ALL RIGHT. NOW, HIS HONOR HAS -- I DON'T KNOW IF YOU
16 REMEMBER, WHEN WE WERE DOWNSTAIRS HIS HONOR SAID SOMETHING TO THE
17 EFFECT OF HE HOPES THAT THIS WON'T SEEM LIKE WHAT YOU HAVE SEEN
18 ON TELEVISION ABOUT TRIALS. I THINK MOST PEOPLE WHO HAVEN'T BEEN
19 IN A TRIAL, THEY GET THEIR IDEAS OF WHAT TRIALS ARE LIKE FROM
20 MOVIES OR TV. AND MAYBE THAT GIVES ONE AN APPROXIMATION OF WHAT
21 IT'S LIKE, BUT AS YOU'VE PROBABLY SEEN ALREADY, THAT'S -- THERE
22 ARE A LOT OF DIFFERENCES, AND THE DIFFERENCES CAN BE RATHER
23 PROFOUND. YOU'RE GOING TO FIND THAT OBVIOUSLY A CASE LIKE THIS
24 ISN'T GOING TO WRAPPED UP IN AN HOUR. IT'S NOT GOING TO BE ALL
25 ENTERTAINING. IT'S NOT GOING TO BE ALL COMPELLING. SOME

OPENING STATEMENTS - BY MR. MOYER

1 WITNESSES ARE GOING TO BE MORE INTERESTING. SOME WITNESSES ARE
2 GOING TO BE LESS INTERESTING. AND THAT IS BY THE NATURE OF WHAT
3 WE'RE DOING. AND YOU MAY BE WONDERING, WELL, WHY IS THIS WITNESS
4 EVEN TESTIFYING? HE IS BORING. HE'S JUST MAYBE TALKING ABOUT
5 TAKING SOME EVIDENCE. WELL, THERE ARE RULES THAT HAVE TO BE
6 FOLLOWED, SO I HOPE YOU KEEP THAT IN MIND AS WELL. I'VE OFTEN
7 SAID THAT, YOU KNOW, LET'S BE REAL. THIS ISN'T TV. IF THIS WERE
8 TV, I'D BE HANDSOME AND I'D BE MUCH MORE ARTICULATE UP HERE
9 BEFORE YOU TO KEEP YOUR ATTENTION. BUT THAT'S NOT THE CASE.

10 NOW, I'M GOING TO TRY TO PRESENT THESE WITNESSES TO YOU IN
11 AS LOGICAL AN ORDER AS POSSIBLE. WE ARE GOING TO HAVE TO STEP
12 OUT OF ORDER SOMEWHAT. IN FACT, THE VERY FIRST WITNESS IS GOING
13 TO BE A DOCTOR WHO WE'VE GOT TO FIT IN HIS TESTIMONY TODAY. SO
14 KEEP THAT IN MIND. THE TRIAL IS NOT GOING TO TAKE A REAL LONG
15 TIME. IT'S VERY HARD, IF NOT IMPOSSIBLE, TO ANTICIPATE HOW LONG
16 THESE THINGS WILL TAKE. BUT I HOPE WE WILL BE ABLE TO HAVE ALL
17 THE STATE'S EVIDENCE TO YOU BY WEDNESDAY MORNING.

18 LET ME JUST FINISH UP HERE BY JUST GIVING YOU A BRIEF
19 OVERVIEW OF WHAT YOU'RE GOING TO HEAR FROM THOSE WITNESSES.
20 YOU'RE GOING TO HEAR, LADIES AND GENTLEMEN, THAT JUST BY CHANCE,
21 A LITTLE AFTER ONE O'CLOCK IN THE AFTERNOON ON JUNE THE 7TH OF
22 2006, SUSAN GALLOWAY AND THE TWO PEOPLE SHE WAS WITH END UP AT
23 RED PAWN'S SHOP AT THE SAME TIME AS THIS DEFENDANT AND TWO PEOPLE
24 HE IS WITH GO TO RED'S PAWN SHOP. SUSAN GALLOWAY GOES IN THE
25 PAWN SHOP AND PAWNS A NECKLACE FOR \$40. YOU'RE GOING TO HEAR

OPENING STATEMENTS - BY MR. MOYER

1 TESTIMONY THAT THIS DEFENDANT AND A FEMALE WHO WAS WITH HIM WENT
2 INTO THE PAWN SHOP AND HE PAWNED A JACK AND GOT \$5 FOR IT.

3 THE TESTIMONY IS GOING TO BE THAT SUSAN GALLOWAY AND THIS
4 DEFENDANT STRUCK UP A CONVERSATION, AND THE CONVERSATION RESULTED
5 IN SUSAN GALLOWAY AGREEING TO PURCHASE SOME CRACK COCAINE FROM
6 THIS DEFENDANT.

7 AND YOU'RE GOING TO HEAR, LADIES AND GENTLEMEN, THAT THEY
8 LEFT THAT PAWN SHOP AND THEY DIDN'T GO VERY FAR. THEY DROVE
9 MAYBE A FEW BLOCKS. AND YOU'RE GOING TO HEAR TESTIMONY THAT THE
10 DEFENDANT STOPPED HIS VEHICLE IN THE MIDDLE OF THE ROAD ON 17
11 WOODLAWN AVENUE, NOT A VERY BUSY ROAD. AND YOU'RE GOING TO HEAR
12 TESTIMONY THAT THE VICTIM, GARY MICHAEL POWELL, STOPPED HIS CAR
13 VERY CLOSE TO, JUST A LITTLE BIT BEHIND IT.

14 AND YOU'RE GOING TO HEAR TESTIMONY THAT THE DEFENDANT GOT
15 OUT OF HIS CAR, WALKED OVER TO THE VICTIMS' CAR ON THE
16 PASSENGER'S SIDE WINDOW WITH THE WINDOW DOWN, AND, AGAIN, INSTEAD
17 OF PULLING OUT CRACK COCAINE TO SELL HER, AS HE HAS SAID, HE HAD
18 A PISTOL. AND YOU'RE GOING TO HEAR TESTIMONY THAT HE HAD THIS
19 NINE MILLIMETER, SEMI-AUTOMATIC PISTOL WHICH HE PRESENTED AT THE
20 VICTIMS, AND AS HE GRABBED FOR THE MONEY FROM SUSAN GALLOWAY'S
21 HANDS, TELLING HER, "GIVE ME THE MONEY AND EVERYTHING WILL BE
22 OKAY." AND YOU'RE GOING TO HEAR TESTIMONY THAT HE SAYS TO THE
23 DRIVER, GARY MICHAEL POWELL, "DON'T MOVE. DON'T LEAVE."

24 BUT YOU'RE GOING TO HEAR TESTIMONY THAT NEITHER OF THOSE
25 PEOPLE DID WHAT HE SAID. SUSAN GALLOWAY KEPT HER GRIP ON THE

OPENING STATEMENTS - BY MR. MOYER

1 MONEY. GARY MICHAEL POWELL TRIED TO GET OUT OF THERE WITH A MAN
2 WITH A GUN POINTED IN HIS WINDOW.

3 AND YOU'RE GOING TO HEAR TESTIMONY THAT THE DEFENDANT, IN
4 RESPONSE, SHOT AT EACH ONE OF THOSE PEOPLE. HE SHOT AT SUSAN
5 GALLOWAY IN THE PASSENGER SEAT, STRIKING HER IN THE SHOULDER, THE
6 BULLET GOING THROUGH THE FLESHY PART OF HER ARM, INTO HER CHEST,
7 THROUGH HER TORSO, STRIKING SOME VITAL ORGANS, AND OUT THE SMALL
8 OF HER BACK, LEAVING HER TO BLEED TO DEATH. YOU'RE GOING TO HEAR
9 TESTIMONY THAT GARY MICHAEL POWELL IS SHOT IN THE ARM, A THROUGH
10 AND THROUGH SHOT IN HIS RIGHT ARM. YOU'RE GOING TO HEAR THAT THE
11 BULLET TRAVELS INTO HIS STOMACH AND GOES THROUGH HIS BLADDER AND
12 RESTS IN HIS PELVIS, LEAVING HIM WOUNDED. YOU'RE GOING TO HEAR
13 TESTIMONY THAT THE DEFENDANT THEN SHOOTS AT RON HARRIS IN THE
14 BACK SEAT, MISSING HIM. AND YOU'RE GOING TO HEAR TESTIMONY THAT
15 AS THE DEFENDANT IS TRYING TO GRAB THE MONEY OUT OF THE VICTIM'S
16 HANDS, ONE OF THOSE \$20 BILLS RIPS IN HALF BECAUSE SHE'S GRIPPING
17 IT SO HARD. BUT YOU'RE GOING TO HEAR THAT HE IS ABLE TO GET A
18 \$20 BILL FROM HIS HANDS, WHICH HE THEN TAKES FROM HER AND LEAVES
19 WITH HIS TWO COMPANIONS AND TAKES THEM TO A PETE'S RESTAURANT AND
20 BUYS CHEESEBURGERS. THAT'S GOING TO BE TESTIMONY THAT YOU'RE
21 GOING TO HEAR IN THIS CASE.

22 THANK YOU.

23 THE COURT: THANK YOU, MR. MOYER.

24 YES, SIR, MR. CREECH.

25 MR. CREECH: THANK YOU, YOUR HONOR..

OPENING STATEMENTS - BY MR. CREECH

1 GOOD AFTERNOON, LADIES AND GENTLEMEN. MY NAME IS TOM
2 CREECH. I'M AN ATTORNEY HERE IN GREENVILLE. THE -- OBVIOUSLY
3 MR. MOYER IS NOT A WITNESS IN THIS CASE, AND HE'S AN ADVOCATE AND
4 YOU'VE HEARD WHAT HE BELIEVES IS THE VERSION OF WHAT HAPPENED IN
5 THIS CASE. YOU ARE JUDGES OF THE FACTS, AND YOU'RE GOING TO HAVE
6 TO MAKE THE FINAL DETERMINATION.

7 I KNOW YOU ARE SITTING THERE RIGHT NOW AND YOU THINK YOU
8 PROBABLY KNOW WHAT HAPPENED, BASED ON WHAT HE SAID, BUT THAT IS
9 NOT WHAT HAPPENED. THAT IS NOT EVERYTHING THAT HAPPENED. THERE
10 ARE THINGS THAT YOU HAVE NOT BEEN TOLD. SO THAT'S WHY I WOULD
11 ASK YOU NOT TO MAKE A DECISION, OBVIOUSLY, RIGHT NOW.

12 JUNE THE 7TH, 2006, GARY MICHAEL POWELL, SUSAN GALLOWAY AND A
13 FELLOW FROM LOUISIANA, A GUY NAMED RON HARRIS, THEY HAD ALL BEEN
14 SPENDING THE NIGHT TOGETHER. THEY ARE GROWN ADULTS, OKAY?
15 THEY'RE NOT CHILDREN. THEY WERE ALL SPENDING THE NIGHT TOGETHER,
16 AND THEY WOKE UP THAT NIGHT -- I MEAN, THAT NEXT MORNING AND
17 THERE WAS SOMETHING THAT THEY WANTED THAT DAY. THIS WAS NOT THE
18 FIRST TIME THAT THEY WANTED THIS, AT LEAST IT WAS NOT FOR SUSAN
19 GALLOWAY AND GARY MICHAEL POWELL. THEY MADE DECISIONS, CONSCIOUS
20 DECISIONS, YEARS BEFORE THIS DATE TO ENGAGE IN ACTIVITY, AND THEY
21 BECAME ADDICTED. A POWERFUL ADDICTION.

22 AND THEY WOKE UP THAT MORNING AND THAT ADDICTION WAS THERE
23 LIKE IT IS EVERY MORNING. THEY MADE A DECISION TO DRIVE OVER
24 HERE TO GREENVILLE COUNTY FROM PICKENS COUNTY TO GO TO A PAWN
25 SHOP. YOU SEE, RON HARRIS IS UP HERE FROM LOUISIANA VISITING A

OPENING STATEMENTS - BY MR. CREECH

1 FRIEND. THEY WORKED TOGETHER, I THINK, ON A TUG BOAT OR
2 SOMETHING. THE FRIEND LIVES IN PICKENS COUNTY. THEY LEAVE THAT
3 HOUSE, SUSAN GALLOWAY'S HOUSE THAT MORNING, AND THEY SAY, WE'RE
4 GOING TO TAKE YOU, RON, BACK OVER TO YOUR FRIEND'S HOUSE. YOU'VE
5 COME ALL THIS WAY BUT INSTEAD OF STAYING WITH HIM YOU CAN COME
6 STAY WITH US. WELL, SO, THEY LEAVE AND THEY COME OVER TO
7 GREENVILLE COUNTY.

8 BEFORE THEY TAKE HIM OVER TO HIS FRIEND'S HOUSE THEY COME TO
9 GREENVILLE COUNTY TO A PAWN SHOP, AND SUSAN GALLOWAY GOES INTO
10 THAT PAWN SHOP, AND SHE TAKES A NECKLACE THAT SHE HAS AND SHE
11 PAWNS IT. WHILE SHE IS IN THAT PAWN SHOP SHE SEES A YOUNG MAN,
12 AND SHE SEES IN HIM WHAT SHE WANTS. THE SOLICITOR DIDN'T TELL
13 YOU THIS, BUT SUSAN GALLOWAY WALKED UP TO THIS YOUNG MAN. HE WAS
14 THERE AT THE PAWN SHOP. SHE APPROACHED HIM, AND SHE ASKED HIM IN
15 THE MIDDLE OF A PAWN SHOP, A PUBLIC PLACE, PEOPLE COMING AND
16 GOING, SHE ASKED HIM FOR DRUGS. SHE ASKED HIM FOR CRACK COCAINE.
17 SHE DID NOT KNOW HIM FROM ADAM'S HOUSE CAT. AND THIS ADDICTION
18 THAT SHE HAS IS FUELING HER THIS DAY, LEADS HER TO AN ABSOLUTE
19 STRANGER IN A PUBLIC PLACE AND ASKS HIM, "I WANT TO BUY CRACK
20 COCAINE" OR "CAN YOU SELL ME CRACK COCAINE?" OKAY?

21 SHE LEAVES THE STORE, GOES OUT TO HER CAR -- OR IN THE CAR
22 THAT SHE CAME OVER WITH. GARY MICHAEL POWELL IS DRIVING THIS
23 CAR. IT'S A SILVER FORD ESCORT STATION WAGON WITH A TEMPORARY
24 LICENSE TAG ON THE BAG THAT'S EXPIRED. AND SHE GOES AND SITS IN
25 THE CAR AND MR. FOWLER COMES WALKING OUT. SHE GETS OUT, TALKS TO

OPENING STATEMENTS - BY MR. CREECH

1 HIM AGAIN, AND THEY LEAVE. THEY ARE IN THE PARKING LOT OF THE
2 PAWN SHOP. THIS IS ALL OVER IN WEST GREENVILLE.

3 THEY START TO PULL OUT OF THE PARKING LOT FIRST. THEY WAVE
4 HIM -- WITNESSES WILL SAY THEY WAVE HIM IN FRONT OF THEM, AND HE
5 TAKES A LEFT OUT OF THE PARKING LOT. THEY TAKE A LEFT OUT OF THE
6 PARKING LOT. GARY MICHAEL POWELL TAKES A LEFT OUT OF THE PARKING
7 LOT, GOES UP THE STREET. MR. FOWLER, DRIVING, HIS FRIEND AND --
8 GIRLFRIEND IN THE PASSENGER SEAT, FRIEND IN THE BACK SEAT, THEY
9 TAKE A RIGHT OFF OF PENDLETON. WELL, GARY MICHAEL POWELL SEES
10 THEM AND THEY TAKE A RIGHT OFF OF PENDLETON. THEY FOLLOW HIM.
11 INSTEAD OF GOING HOME, INSTEAD OF GOING ANYWHERE ELSE, THEY
12 FOLLOWED HIM. HE GOES UNDER A RAILROAD TRESTLE. SO DO THEY.
13 AND HE COMES UP TO -- TAKES A LEFT ONTO WOODLAWN AVENUE. THEY
14 TAKE A LEFT ONTO WOODLAWN AVENUE. AND HE PULLS ON THE STREET AND
15 THEY PULL UP BESIDE HIM AND THEY STOP.

16 HE GETS OUT OF HIS CAR. HIS DRIVER SIDE DOOR DOES NOT OPEN
17 IN THIS CAR, AND THEY KNOW THAT. THEY PULL UP BESIDE THAT CAR,
18 THAT DOOR. HE GETS OUT. HE GOES OVER TO THEIR CAR. THE WINDOWS
19 ARE DOWN. HE DOESN'T KNOW THESE PEOPLE. SUSAN GALLOWAY --
20 THERE'S DISCUSSION ABOUT BUYING DRUGS FROM HIM. HE PUTS -- SHE
21 PUTS HER HAND OUT. HE GOES TO GET THE MONEY. THE FELLOW IN THE
22 BACK SEAT, RON HARRIS, SUDDENLY, WITHOUT WARNING, PUTS HIS HAND
23 IN HIS POCKET. SUSAN GALLOWAY YANKS BACK THE MONEY THAT WAS IN
24 HER HAND. THE DRIVER, NEVER MAKING EYE CONTACT, LOOKING STRAIGHT
25 AHEAD. ALL OF THIS HAPPENED IN A SUDDEN, IN A MOMENT. THE HAND

ERIC MCGILL - DIRECT BY MR. MOYER

1 IN HIS LEFT POCKET IN THE BACK SEAT, THE MONEY BEING JERKED BACK
2 IN THE FRONT SEAT BY MS. GALLOWAY, ZACHARY FOWLER BECOMES
3 NERVOUS, SCARED AND THINKS THAT RIGHT THEN AND THERE SOMEONE IS
4 GOING TO PULL OUT A GUN AND SHOOT HIM. HE TAKES OUT A GUN AND HE
5 SHOOTS INTO THE CAR.

6 HE SHOT BECAUSE HE WANTED TO LIVE. HE SHOT SO THAT HE
7 WOULDN'T JUST FALL DEAD ON THAT STREET. AND FROM ALL OF THE
8 APPEARANCES AND WHAT HE BELIEVED HE WAS ABOUT TO BE A VICTIM AND
9 HE REACTED.

10 ZACHARY FOWLER, WE THINK THIS EVIDENCE IS GOING TO SHOW,
11 ACTED REASONABLE. YOU'RE GOING TO HEAR ABOUT THE EVIDENCE THAT
12 WE INTRODUCE THAT WE BELIEVE WILL SHOW THAT. AT THE END OF THIS
13 CASE WE THINK ZACHARY FOWLER ACTED IN A SUDDEN HEAT OF PASSION
14 UPON SEEING WHAT HE THOUGHT WAS A GUN AND THAT A GUN WAS ABOUT TO
15 BE PULLED OUT ON HIM AND, IN AN EFFORT TO SAVE HIS OWN LIFE, SHOT
16 INTO THE CAR. THEREFORE, WE THINK AND WE BELIEVE THIS EVIDENCE
17 AT THE END OF THE DAY AFTER YOU HEAR THE TESTIMONY -- AND THE
18 STATE WILL NOT HAVE MET ITS BURDEN OF PROOF AND THAT ZACHARY
19 FOWLER WILL BE NOT GUILTY. THANK YOU.

20 THE COURT: THANK YOU, MR. CREECH.

21 YES, SIR, MR. MOYER. YOU CAN CALL YOUR FIRST WITNESS.

22 MR. MOYER: WE CALL DR. ERIC MCGILL.

23 ERIC MCGILL, M.D., HAVING BEEN DULY
24 SWORN, TESTIFIED AS FOLLOWS:

25 MADAME CLERK: PLEASE STATE YOUR FULL NAME FOR THE RECORD.

ERIC MCGILL -- DIRECT BY MR. MOYER

1 WITNESS: ERIC SMALL MCGILL.

2 DIRECT EXAMINATION BY MR. MOYER

3 Q ALL RIGHT, DR. MCGILL. THANK YOU FOR BEING HERE.

4 WHERE ARE YOU EMPLOYED?

5 A GREENVILLE MEMORIAL HOSPITAL.

6 Q WHAT DO YOU DO AT GREENVILLE MEMORIAL HOSPITAL?

7 A I PRACTICE GENERAL SURGERY AND TRAUMA AND EMERGENCY SURGERY.

8 Q HOW LONG HAVE YOU DONE THIS?

9 A SINCE 1997.

10 Q HOW LONG HAVE YOU BEEN A DOCTOR?

11 A I GRADUATED MEDICAL SCHOOL IN 1991.

12 Q OKAY. AND WHAT LICENSES DO YOU HAVE AS A DOCTOR? WHAT

13 LICENSES DO YOU HAVE?

14 A SOUTH CAROLINA MEDICAL LICENSE.

15 Q ALL RIGHT. AND HOW ABOUT YOUR EDUCATIONAL BACKGROUND?

16 A STARTING AT COLLEGE?

17 Q YES.

18 A I WENT TO THE UNIVERSITY OF SOUTH CAROLINA FROM '83 TO '87,

19 MEDICAL SCHOOL OF '87 TO '91, AND GENERAL SURGERY TRAINING FROM

20 '91 TO '97, AND BOARD CERTIFIED IN GENERAL SURGERY AND BEEN

21 PRACTICING SURGERY SINCE 1997.

22 Q OKAY. DO YOU HAVE ANY EXPERIENCE, TRAINING AND DEALINGS

23 WITH TRAUMA PATIENTS?

24 A YES.

25 Q AND HOW DOES THAT COME ABOUT?

ERIC MCGILL - DIRECT BY MR. MOYER

1 A OUR GROUP IS CONTRACTED WITH GREENVILLE MEMORIAL HOSPITAL TO
2 COVER THE EMERGENCY SURGERY AND TRAUMA, AND THEN ATLS, WHICH IS
3 ADVANCED TRAUMA LIFE SUPPORT, I'M CERTIFIED AS AN INSTRUCTOR, AND
4 THEN PERIODICALLY GO TO MEETINGS AROUND THE COUNTRY FOR UPDATES
5 IN TRAUMA SURGERY.

6 Q ALL RIGHT. NOW, WERE YOU INVOLVED IN THE MEDICAL TREATMENT
7 OF GARY MICHAEL POWER IN JUNE OF 2006?

8 A YES.

9 Q AND WHERE DID THAT TAKE PLACE?

10 A AT GREENVILLE MEMORIAL HOSPITAL.

11 Q WHY WAS HE ADMITTED INTO THE HOSPITAL?

12 A HE CAME INTO OUR TRAUMA AREA IN THE EMERGENCY ROOM FOR A
13 GUNSHOT WOUND.

14 Q OKAY. AND WHERE WAS THE GUNSHOT WOUND?

15 A IN HIS ARM AND ABDOMEN.

16 Q OKAY. AND HOW ABOUT THE WOUND TO HIS ARM, CAN YOU---

17 A IF I RECALL, IT WAS JUST A THROUGH AND THROUGH WOUND.

18 Q DO YOU RECALL WHICH ARM IT WAS?

19 A I THINK THE LEFT ARM, BUT I'M NOT POSITIVE.

20 Q WOULD IT HELP YOU IF YOU HAD A CHANCE TO TAKE A LOOK AT YOUR
21 -- AT THE RECORDS?

22 A SURE.

23 Q TAKE A MOMENT JUST TO LOOK THROUGH THESE RECORDS TO SEE IF...

24 A YEAH, THE RIGHT ARM. WHICH FROM WHAT I DO AS A TRAUMA
25 SURGEON, I'M MORE CONCERNED WITH THE CHEST, ABDOMEN, AND THE

ERIC MCGILL - DIRECT BY MR. MOYER

1 EXTREMITY INJURIES ARE TREATED BY ORTHOPEDIC DOCTORS.

2 Q OKAY. SO THE WOUND TO HIS ARM WASN'T REALLY LIFE

3 THREATENING THEN?

4 A PROBABLY NOT. ANY GUNSHOT WOUND TO THE BODY CAN BE LIFE

5 THREATENING, BUT THE MORE LIFE THREATENING ISSUE TO HIM WAS HIS

6 ABDOMEN.

7 Q OKAY. AND SO THE WOUND TO HIS ARM WAS THROUGH AND THROUGH?

8 A CORRECT.

9 Q DO YOU RECALL WHERE, WAS IT HIS UPPER ARM, LOWER ARM?

10 A I THINK IT WAS HIS FOREARM.

11 Q OKAY. NOW TELL US ABOUT THE WOUND TO HIS ABDOMEN.

12 A WHEN WE SAW HIM HE HAD A VERY TENDER ABDOMEN WITH BLOOD IN

13 HIS URINE, AND HE HAD WHAT APPEARED TO BE ALMOST A TANGENTIAL

14 WOUND TO HIS ABDOMEN AS WELL AS ONE THAT ACTUALLY WENT INTO THE

15 ABDOMINAL CAVITY.

16 Q OKAY. AND WHEN WAS IT THAT HE CAME INTO THE HOSPITAL?

17 A IT WAS IN THE MORNING, I BELIEVE. I'M NOT SURE OF THE TIME.

18 Q DO YOU HAVE THE DATE?

19 A THE DATE OF SURGERY IS THE DAY HE CAME IN WAS JUNE THE 7TH.

20 Q OKAY. BUT YOU'RE NOT SURE ABOUT THE TIME THOUGH?

21 A NOT EXACTLY.

22 Q OKAY. NOW, WHAT KIND OF SURGERY WAS REQUIRED?

23 A WE DID AN EXPLORATORY LAPAROTOMY AND REPAIRED THE BLADDER.

24 Q WHAT IS A LAPAROTOMY?

25 A WHEN YOU OPEN SOMEBODY'S ABDOMEN, YOU TYPICALLY GO THROUGH

ERIC MCGILL - DIRECT BY MR. MOYER

1 THE MIDLINE AND EXPOSE THE ABDOMINAL CONTENTS TO LOOK FOR THE
2 TYPE OF INJURIES THE INDIVIDUAL HAS.

3 Q OKAY. AND WHAT WAS WRONG WITH HIS BLADDER?

4 A HE HAD A HOLE, THROUGH AND THROUGH HOLE, THROUGH THE
5 BLADDER, WHICH WAS BLEEDING AND LEAKING URINE THROUGHOUT HIS
6 ABDOMINAL CAVITY.

7 Q SO YOU SAID THROUGH AND THROUGH. IT ENTERED ONE SIDE AND
8 CAME OUT THE OTHER?

9 A THAT'S RIGHT.

10 Q AND WHERE EXACTLY IS THE BLADDER?

11 A LOW DOWN IN THE PELVIS.

12 Q OKAY.

13 A IN THE PUBIC BONE.

14 Q SO IT WOULD BE DOWN SOMEWHERE WHERE I'M POINTING NOW?

15 A THAT'S CORRECT.

16 Q OKAY. AND WHAT WAS ACCOMPLISHED DURING THE SURGERY?

17 A WE EXPLORED THE ABDOMINAL CAVITY, LIVER, SPLEEN, PANCREAS,
18 STOMACH, SMALL BOWEL, LARGE BOWEL, RECTUM, KIDNEYS AND BLADDER.
19 AND THE ONLY INJURY THAT WE FOUND WAS THE INJURY TO HIS BLADDER,
20 WHICH WAS REPAIRED.

21 Q OKAY. DO YOU KNOW HOW IT WAS REPAIRED?

22 A BASICALLY, I CALLED A UROLOGIST IN TO HELP US. AND WE
23 USUALLY REPAIR IN TWO LAYERS.

24 Q OKAY. AND WAS THE SURGERY A SUCCESS THEN?

25 A IT WAS.

ERIC MCGILL - DIRECT BY MR. MOYER

1 Q WHEN WAS -- OH, DID YOU FIND ANY PROJECTILES?

2 A THERE WAS A BULLET SEEN ON THE X-RAY NEAR THE HIP.

3 Q WAS IT TAKEN OUT?

4 A IT WAS NOT.

5 Q AND WHAT IS THE REASON FOR THAT?

6 A TYPICALLY IF A BULLET IS FAIRLY DEEP WITHIN THE BODY WE DO
7 NOT TAKE IT OUT BECAUSE IT CAUSES MORE DAMAGE TRYING TO FIND THE
8 BULLET THAN JUST LEAVING IT IN. TYPICALLY THE BODY WILL WALL OF
9 THE BULLET, FORM A LITTLE CAPSULE AROUND IT, AND THERE IS NO HARM
10 IN LEAVING A BULLET IN.

11 Q OKAY. AS FAR AS YOU KNOW IS IT STILL IN HIM TODAY?

12 A AS FAR AS I KNOW.

13 Q WHEN WAS HE RELEASED FROM THE HOSPITAL?

14 A HE WAS IN FOR ABOUT A WEEK. I'D HAVE TO LOOK AT THE RECORD
15 TO GIVE YOU THE EXACT DATE. (PAUSE) HE WAS ADMITTED ON JUNE THE
16 7TH AND DISCHARGED ON JUNE THE 14TH.

17 Q OKAY. NOW, DO YOU REMEMBER TAKING A LOOK AT SOME
18 PHOTOGRAPHS THAT WERE TAKEN?

19 A I DO.

20 Q IF YOU HAD A CHANCE TO LOOK AT THOSE AGAIN WOULD YOU BE ABLE
21 TO DESCRIBE A LITTLE BETTER WHERE THE -- EXACTLY WHERE THE
22 INJURIES WERE? IF YOU HAD A CHANCE TO LOOK AT THEM, WOULD THAT
23 HELP YOU BE ABLE TO---

24 A YES. THAT'D BE GREAT.

25 Q OKAY. (HANDS PHOTOGRAPHS TO WITNESS) OKAY. IF YOU WOULD

ERIC MCGILL - DIRECT BY MR. MOYER

1 JUST BE ABLE TO TAKE A LOOK THROUGH THOSE PHOTOGRAPHS AND -- DO
2 YOU RECOGNIZE THOSE AS PHOTOGRAPHS BEING TAKEN OF GARY MICHAEL
3 POWELL?

4 A I DO.

5 Q AND LOOKING AT THOSE CAN YOU TELL US WITH A LITTLE MORE
6 SPECIFICITY WHERE THE WOUND TO THE ARM WAS?

7 A IT WAS LIKE RIGHT THROUGH THE MID- TO LOWER FOREARM.

8 Q THE LOWER FOREARM OF HIS RIGHT ARM?

9 A RIGHT.

10 Q AND HOW ABOUT TO HIS TORSO?

11 A HIS TORSO HAD---

12 Q IF YOU COULD HOLD THE -- THE PHOTOGRAPHS AREN'T IN EVIDENCE,
13 SO IF YOU COULD, HOLD THOSE DOWN.

14 A OKAY.

15 Q THANK YOU.

16 A OKAY. THE ABDOMINAL WOUNDS THERE WERE THREE AND PARALLEL
17 AND ONE APPEARED IT COULD HAVE POTENTIALLY BEEN TANGENTIAL AND
18 THEN ANOTHER ONE INTO THE ABDOMEN.

19 Q OKAY. AND TELL US, IN CASE SOME OF US DON'T UNDERSTAND,
20 WHAT DOES TANGENTIAL MEAN?

21 A LIKE IF YOU LOOK AT A SPHERE AND THE CENTER OF THE SPHERE
22 BEING THE IMPORTANT PART AND THE OUTER ASPECT NOT BEING, AND IT
23 JUST GOES THROUGH AND THROUGH WITHOUT ACTUALLY ENTERING THROUGH
24 THE ABDOMEN.

25 Q OKAY.

ERIC MCGILL - CROSS BY MR. CREECH

1 A IF THAT MAKES SENSE.

2 Q YES. AND IF YOU COULD, JUST AS A FINAL QUESTION, WOULD YOU
3 BE ABLE TO STAND UP AND JUST SORT OF SHOW US USING YOUR OWN BODY
4 WHERE THOSE WOUNDS WERE IN HIS TORSO?

5 A (STANDS UP) YES. APPROXIMATELY HERE, HERE, AND HERE
6 (INDICATING).

7 Q ON HIS RIGHT SIDE?

8 A ON HIS RIGHT SIDE.

9 Q OKAY. ONE MOMENT, PLEASE.

10 MR. MOYER: PLEASE ANSWER ANY QUESTIONS THE DEFENSE MAY
11 HAVE.

12 CROSS EXAMINATION BY MR. CREECH:

13 Q THANK YOU FOR BEING HERE DR. MCGILL. DO YOU -- YOU SAY
14 THERE WERE THREE WOUNDS RIGHT AROUND HERE (INDICATING); IS THAT
15 CORRECT?

16 A CORRECT.

17 Q THERE WAS ALSO A WOUND HERE (INDICATING)?

18 A CORRECT.

19 Q AND THEN A WOUND HERE WHERE THE BULLET CAME THROUGH.
20 (INDICATING)?

21 A THAT'S CORRECT.

22 Q SO HE WOULD HAVE A TOTAL OF FIVE WOUNDS SO TO SPEAK; IS THAT
23 CORRECT?

24 A THAT'S RIGHT.

25 Q OKAY. AND IT WAS DESCRIBED IN THE RECORDS THAT HE HAD THREE

MATT MAY - DIRECT BY MR. MOYER

1 OPEN WOUNDS IN HIS ABDOMEN; IS THAT RIGHT?

2 A THAT'S RIGHT.

3 Q OKAY. AND YOU WERE ABLE TO FIND ONE BULLET; IS THAT
4 CORRECT?

5 A THAT'S CORRECT.

6 Q AND TO YOUR KNOWLEDGE IT'S STILL IN HIS HIP AREA?

7 A HIP AREA.

8 MR. CREECH: OKAY. THANK YOU. I HAVE NO FURTHER
9 QUESTIONS.

10 THE COURT: ANY REDIRECT?

11 MR. MOYER: NO, REDIRECT, YOUR HONOR.

12 THE COURT: ALL RIGHT.

13 MR. MOYER: WE ASK THAT HE BE EXCUSED.

14 THE COURT: YES, SIR. DOCTOR, YOU ARE EXCUSED. THANK YOU
15 VERY MUCH, SIR.

16 WITNESS: THANK YOU.

17 MR. MOYER: THE STATE WILL CALL MATT MAY.

18 MATT MAY, HAVING BEEN DULY SWORN,

19 TESTIFIED AS FOLLOWS:

20 MADAME CLERK: PLEASE STATE YOUR FULL NAME FOR THE RECORD.

21 WITNESS: MATTHEW TYLER MAY.

22 DIRECT EXAMINATION BY MR. MOYER:

23 Q WHERE DO YOU WORK, SIR?

24 A PRESENTLY AT THE GREENVILLE COUNTY SHERIFF'S OFFICE.

25 Q AND WHERE DID YOU WORK LAST YEAR ABOUT -- WELL, IN JUNE OF

MATT MAY - DIRECT BY MR. MOYER

1 2006?

2 A GREENVILLE CITY POLICE DEPARTMENT.

3 Q WHAT DID YOU DO -- HOW LONG HAVE YOU BEEN IN LAW
4 ENFORCEMENT?

5 A AROUND SEVEN YEARS.

6 Q WHAT DID YOU DO WITH THE GREENVILLE POLICE DEPARTMENT, LAST
7 YEAR ON JUNE 7TH, 2006?

8 A I WAS A PATROL OFFICER.

9 Q AND TELL US, WHAT DOES A PATROL OFFICER DO? WHAT ARE THE
10 DUTIES OF A PATROL OFFICER?

11 A ANSWER 911 CALLS FOR SERVICE.

12 Q DOES THAT INCLUDE REALLY THE WHOLE GAMUT OF CALLS---

13 A YES, SIR.

14 Q ---FROM SEEMINGLY INSIGNIFICANT ALL THE WAY UP TO VERY
15 SERIOUS CHARGES?

16 A YES, SIR.

17 Q ALL RIGHT. NOW, WERE YOU WORKING ON JUNE 7TH OF 2006?

18 A YES, SIR.

19 Q DID YOU GET A CALL AROUND THE MIDDLE OF THE DAY?

20 A YES, SIR. I BELIEVE IT WAS AROUND 1:30.

21 Q OKAY. AND WHAT WAS THE LOCATION THAT YOU WERE CALLED TO
22 RESPOND TO?

23 A AVENUE.

24 Q DID IT TAKE YOU LONG TO GET THERE?

25 A NO, SIR. FIVE MINUTES.

MATT MAY - DIRECT BY MR. MOYER

- 1 Q AND AS FAR AS THE TIMES THAT YOU GOT THE CALL AND THE TIMES
2 THAT YOU RESPONDED, DID YOU PUT THOSE IN YOUR REPORT?
- 3 A YES, SIR.
- 4 Q WOULD IT REFRESH YOUR MEMORY FOR YOU TO TAKE A LOOK AT THE
5 REPORT AS FAR AS THE EXACT TIMES?
- 6 A I BELIEVE IT WAS 13:25 AND 13:30.
- 7 Q OKAY. WOULD YOU LIKE TO TAKE A LOOK?
- 8 A YES, SIR.
- 9 Q (HANDS DOCUMENT TO WITNESS) IS THAT YOUR REPORT?
- 10 A YES, SIR.
- 11 Q AND SO WHAT WAS THE TIME YOU GOT THE CALL?
- 12 A 13:25.
- 13 Q AND THAT'S MILITARY TIME FOR---
- 14 A 1:25.
- 15 Q 1:25. AND SO YOU RESPONDED -- YOU ARRIVED AT 1:30?
- 16 A YES, SIR.
- 17 Q NOW, WHAT WAS THE NATURE OF THE CALL?
- 18 A IT WASN'T VERY DESCRIPTIVE. JUST A SHOTS FIRED, POSSIBLE
19 VICTIM, UNKNOWN SUSPECTS, UNKNOWN VICTIMS.
- 20 Q ALL RIGHT. AT THE TIME YOU GOT THE CALL DID YOU KNOW
21 WHETHER OR NOT ANYBODY HAD BEEN WOUNDED OR KILLED OR ANYTHING OR
22 HIT WITH A BULLET?
- 23 A WHEN THEY GAVE OUT THE CALL THEY GAVE OUT THERE WAS POSSIBLY
24 A GUNSHOT VICTIM.
- 25 Q AND WHAT WAS THE LOCATION?

MATT MAY - DIRECT BY MR. MOYER

1. A AVENUE.

2 Q AND THAT'S IN GREENVILLE COUNTY?

3 A IT'S IN THE CITY LIMITS OF GREENVILLE, YES, SIR.

4 Q OKAY. AND WERE YOU THE FIRST OFFICER TO ARRIVE?

5 A YES, SIR.

6 Q WHAT DID YOU FIND WHEN YOU ARRIVED THERE AT THAT LOCATION?

7 A WHEN I ARRIVED I NOTICED THE VICTIMS' FORD STATION WAGON
8 SITTING STATIONARY ON THE LEFT SIDE OF THE ROAD RIGHT NEXT TO THE
9 CHURCH WITH TWO OCCUPANTS IN IT.

10 Q AND DID YOU KNOW AT THIS POINT WHETHER THIS WAS A SUSPECT
11 CARE OR A VICTIMS' CAR OR DID YOU KNOW ANY DETAILS LIKE THAT?

12 A I DIDN'T KNOW IF IT WAS THE VICTIM OR THE SUSPECT, NO, SIR.

13 Q SO WHAT DID YOU DO?

14 A I DREW MY WEAPON AND APPROACHED THE VEHICLE CAUTIOUSLY.

15 Q OKAY. DID YOU SAY ANYTHING?

16 A I ASKED THE OCCUPANTS INSIDE THE VEHICLE TO PLACE THEIR
17 HANDS ON THE CEILING WHERE I COULD CLEARLY SEE THEM.

18 Q AND WHAT WAS THEIR RESPONSE?

19 A THEY TOLD ME THEY COULD NOT BECAUSE THEY HAD BEEN SHOT.

20 (PHOTOGRAPH MARKED STATE'S EXHIBIT NUMBER 4 FOR PURPOSES OF
21 IDENTIFICATION ONLY)

22 (PHOTOGRAPH MARKED AS STATE'S EXHIBIT NUMBER 5 FOR PURPOSES
23 OF IDENTIFICATION ONLY)

24 Q ALL RIGHT. AND LET ME SHOW YOU WHAT'S MARKED AS STATE'S
25 EXHIBITS NUMBERS 4 AND 5. IF YOU COULD, TAKE JUST A MINUTE TO

MATT MAY - DIRECT BY MR. MOYER

1 LOOK AT THOSE TWO PHOTOGRAPHS. DO YOU RECOGNIZE WHAT IS SHOWN IN
2 THOSE TWO PICTURES?

3 A IT'S THE VICTIMS' VEHICLE.

4 Q OKAY. AND ARE THEY TRUE AND ACCURATE REPRESENTATIONS OF THE
5 WAY THE VICTIMS' VEHICLE LOOKED AT AVENUE ON JUNE 7TH
6 OF LAST YEAR?

7 A WHEN I FIRST SAW THE VEHICLE THE DOORS WERE CLOSED. BUT,
8 YES, SIR.

9 Q OTHER THAN THAT?

10 A OTHER THAN THAT, YEAH.

11 MR. MOYER: AT THIS TIME WE'D MOVE TO HAVE STATE'S EXHIBITS
12 4 AND 5.

13 MR. CREECH: I'M GOING TO HAVE TO TAKE A LOOK AT THOSE.

14 THE COURT: ALL RIGHT, SIR.

15 MR. CREECH: (REVIEWS STATE'S EXHIBITS 4 AND 5) I HAVE NO
16 OBJECTION, YOUR HONOR.

17 THE COURT: OKAY. THEY'RE IN EVIDENCE.

18 (PHOTOGRAPH, STATE'S EXHIBIT NUMBER 4, MOVED INTO EVIDENCE)

19 (PHOTOGRAPH, STATE'S EXHIBIT NUMBER 5, MOVED INTO EVIDENCE)

20 Q OKAY. NOW FOR THE BENCH AND THE JURY WE'RE GOING TO SHOW
21 THE PHOTOGRAPHS ON THE SCENE. IF YOU CAN'T SEE FROM WHERE YOU
22 ARE, I ASK YOU TO STEP DOWN. THIS IS A LASER POINTER FOR -- YOU
23 CAN PUSH THAT BUTTON -- FOR BEING ABLE TO DESCRIBE TO THE JURY
24 WHAT WE'RE SEEING.

25 LET'S START OUT WITH STATE'S EXHIBIT NUMBER 4. OKAY. ALL

MATT MAY - DIRECT BY MR. MOYER

1 RIGHT. ALL RIGHT. YOU MENTIONED THAT THIS EXHIBIT DEPICTS THE
2 CAR OF THE VICTIMS WHEN YOU SAW IT?

3 A YES, SIR..

4 Q CAN YOU POINT THAT CAR OUT TO THE JURY?

5 A (COMPLIES) THAT VEHICLE.

6 Q AND YOU SAID OTHER THAN THE DOORS WERE CLOSED THAT'S ABOUT
7 HOW IT LOOKED ON THAT DAY?

8 A YES, SIR.

9 Q IS THE STREET -- IS THAT WOODLAWN AVENUE THAT WE SEE?

10 A YES, SIR.

11 Q I'M GOING TO SHOW YOU STATE'S EXHIBIT NUMBER 5. COULD YOU
12 TELL THE JURY WHAT IT IS YOU SEE IN THAT PICTURE?

13 A THAT'S ALSO THE VICTIMS' VEHICLE, JUST FROM A DIFFERENT
14 ANGLE.

15 Q OKAY. THANK YOU.

16 NOW, SO YOU TOLD US THAT YOU APPROACHED THE CAR. WHAT DID
17 YOU FIND WHEN YOU APPROACHED THE CAR?

18 A I APPROACHED THE DRIVER'S SIDE. I HAD A TRAINING OFFICER
19 THAT APPROACHED THE PASSENGER SIDE. ONCE I GOT TO THE PASSENGER
20 SIDE OF THE VEHICLE I NOTICED THAT MR. POWELL HAD A -- WAS
21 BLEEDING QUITE HEAVILY FROM HIS ABDOMEN. HE TOLD ME HE HAD BEEN
22 SHOT APPROXIMATELY THREE TIMES. ABOUT THAT TIME THE EMS UNIT WAS
23 KIND OF RIGHT BEHIND ME. I ADVISED THEM THAT HE HAD BEEN SHOT
24 THREE TIMES AND MS. GALLOWAY HAD BEEN SHOT ONE TIME. THEY BEGAN
25 TREATING MR. POWELL AND TRANSPORTED HIM. AND SHORTLY THEREAFTER

MATT MAY - DIRECT BY MR. MOYER

1 THEY TRANSPORTED MRS. GALLOWAY.

2 Q SO WAS EMS THERE FAIRLY QUICKLY?

3 A THEY WERE RIGHT BEHIND ME.

4 Q AND YOU HAVE TO ACTUALLY GO AND CLEAR A SCENE LIKE THAT
5 BEFORE YOU ALLOW EMS TO COME IN; IS THAT RIGHT?

6 A YES, SIR.

7 Q AND YOU WERE ABLE TO CLEAR IT PRETTY QUICKLY?

8 A YES, SIR.

9 Q ALL RIGHT. NOW, AFTER YOU TURNED THE CAR AND THE -- LET ME
10 ASK YOU THIS. BACK UP. HOW MANY OCCUPANTS WERE IN THE CAR?

11 A TWO.

12 Q ONE ON THE DRIVER'S SIDE?

13 A THE FRONT -- THE DRIVER FRONT SEAT AND THE FRONT PASSENGER
14 SEAT.

15 Q AND WHO WAS IN THE FRONT PASSENGER SEAT?

16 A MR. POWELL WAS IN THE DRIVER'S SEAT AND MRS. GALLOWAY WAS IN
17 THE FRONT PASSENGER SEAT.

18 Q OKAY. DID YOU SEE RON HARRIS?

19 A I SPOKE TO MR. HARRIS LATER ON.

20 Q OKAY. WHAT DID YOU DO -- AFTER EMS TURNED THEIR ATTENTION
21 TO THE VICTIM, WHAT DID YOU DO?

22 A KIND OF THE STANDARD OPERATING PROCEDURE, NOTIFY THE
23 SUPERVISOR, NOTIFY DETECTIVES, STARTED TO SEE IF THERE WERE
24 WITNESSES, AND I THINK THAT WAS ABOUT THE TIME THAT MR. MOORE HAD
25 FLAGGED SOME OFFICERS DOWN ABOUT MR. HARRIS.

MATT MAY - DIRECT BY MR. MOYER

1 Q OKAY. AND WHAT DID YOU WITH REGARD TO MR. HARRIS?

2 A HE WAS STANDING OVER AT TUCKER'S SODA SHOP. I WAVED HIM
3 ACROSS THE ROAD. HE CAME OVER TO ME AND ADVISED THAT HE WAS
4 INSIDE---

5 MR. CREECH: OBJECTION, YOUR HONOR. NO HEARSAY.

6 THE COURT: OKAY. SUSTAINED.

7 Q OKAY. SO DID YOU TELL ANYBODY ABOUT MR. HARRIS BEING THERE?

8 A YES, SIR.

9 Q WHO DID YOU TELL?

10 A SERGEANT MILLER.

11 Q OKAY. AND DID YOU SEE THE OTHER -- DID YOU SEE OFFICERS
12 TURNING THEIR ATTENTION AND DIRECTION TO MR. HARRIS?

13 A YES, SIR.

14 Q OKAY. DID YOU STAY THERE WHILE THE DETECTIVES AND FORENSICS
15 OFFICERS DID THEIR WORK AT THE SCENE?

16 A YES, SIR.

17 Q AND WHAT WAS YOUR RESPONSIBILITIES WHILE THAT WAS TAKING
18 PLACE?

19 A CRIME SCENE PROTECTION AND THE ORIGINAL INCIDENT REPORT AND
20 TOWING THE VEHICLE.

21 Q OKAY. AND AT WHAT POINT DID YOU LEAVE?

22 A MAYBE TWO OR THREE HOURS LATER. I DON'T KNOW THE EXACT
23 TIME.

24 Q DID YOU STAY UNTIL EVERYTHING WAS WRAPPED UP THERE?

25 A I WAS THE LAST ONE TO LEAVE, YES, SIR.

MATT MAY - CROSS BY MR. CREECH

1 MR. MOYER: OKAY. PLEASE ANSWER ANY QUESTIONS THE DEFENSE
2 MAY HAVE.

3 THE COURT: CROSS EXAMINATION, MR. CREECH.

4 MR. CREECH: THANK YOU.

5 CROSS EXAMINATION BY MR. CREECH:

6 Q DEPUTY MAY; IS THAT RIGHT?

7 A YES, SIR.

8 Q OKAY. IT'S NOW DEPUTY?

9 A UH-HUH (AFFIRMATIVE).

10 Q IT USED TO BE OFFICER; IS THAT RIGHT?

11 A YES, SIR.

12 Q HOW LONG HAVE YOU BEEN IN LAW ENFORCEMENT?

13 A AROUND SEVEN YEARS.

14 Q AND YOU WORK ON THE ROAD; IS THAT RIGHT?

15 A YES, SIR.

16 Q AND ON THE ROAD YOU'RE ANSWERING ALL TYPES OF CALLS?

17 A (INDICATES AFFIRMATIVE RESPONSE)

18 Q DO YOU MAKE TRAFFIC STOPS?

19 A YES, SIR.

20 Q AND WHEN YOU APPROACH A VEHICLE THAT YOU'RE MAKING A TRAFFIC
21 STOP, A STRANGE VEHICLE, DO YOU PREFER AS AN OFFICER TO SEE THE
22 PERSON'S HANDS WHEN YOU ARE APPROACHING THAT VEHICLE?

23 A YES, SIR.

24 Q SO IF YOU PULL OVER A CAR AND YOU GET OUT OF YOUR CAR AND
25 YOU'RE WALKING UP THERE, YOU WANT TO SEE, LIKE, HANDS ON A

MATT MAY - CROSS BY MR. CREECH

1 STEERING WHEEL; THAT MAKES YOU FEEL GOOD, RIGHT?

2 A YES, SIR.

3 Q BECAUSE WHEN YOU SEE THOSE HANDS ON THE STEERING WHEEL IT
4 GIVES YOU AN IDEA THAT, NO ONE'S, ONE, GOT A WEAPON IN THEIR HAND
5 OR IF THEY START DOING A QUICK REACH, YOU'RE GOING TO KNOW; IS
6 THAT CORRECT?

7 A THAT IS CORRECT.

8 Q WHEN YOU WENT OUT THERE THAT DAY WERE YOU THE FIRST OFFICER
9 ON THE SCENE?

10 A YES, SIR.

11 Q OKAY. AND WHERE WERE YOU PRIOR TO GOING TO THAT LOCATION?

12 A I DO NOT RECALL.

13 Q OKAY.

14 A I DO NOT RECALL.

15 Q ALL RIGHT. DID YOU SEE RON HARRIS WALKING DOWN THE STREET
16 OR ANYTHING LIKE THAT ON YOUR WAY TO THE SCENE?

17 A I DO NOT RECALL.

18 Q DID YOU APPROACH FROM THAT DIRECTION OF TUCKER'S SODA SHOP,
19 WHICH IS RIGHT ACROSS THE STREET?

20 A YES, SIR.

21 Q AND WHEN YOU RODE PAST THERE YOU DIDN'T SEE A MAN WALKING
22 ALONG THE ROAD OR ANYTHING LIKE THAT; IS THAT CORRECT?

23 A THERE WAS A FEW PEOPLE STANDING IN THE PARKING LOT OF

24 TUCKER'S, BUT I COULDN'T TELL YOU IF IT WAS MR. HARRIS.

25 Q YOU WERE NOT FLAGGED DOWN BY HIM AT THAT TIME; IS THAT

MATT MAY - CROSS BY MR. CREECH

1 RIGHT?

2 A NO, SIR.

3 Q YOU WENT ON TO THE INCIDENT LOCATION?

4 A THAT'S CORRECT.

5 Q DO YOU KNOW -- IF YOU KNOW THE ANSWER TO THIS QUESTION, DO
6 YOU KNOW WHO FIRST CALLED THE POLICE?

7 A NO, SIR.

8 Q YOU DON'T KNOW IF IT WAS RON HARRIS?

9 A I DO NOT KNOW.

10 Q WHEN YOU ARRIVED ON THE SCENE YOU WERE ASKING THEM TO SHOW
11 YOU -- OR TO PUT THEIR HANDS ON THE CEILING; IS THAT RIGHT?

12 A THAT'S CORRECT.

13 Q SO YOU COULD SEE THEIR HANDS; IS THAT CORRECT?

14 A YES, SIR.

15 Q NO ONE WAS IN THE BACK SEAT OF THAT STATION WAGON, THAT GRAY
16 STATION WAGON, RIGHT?

17 A NO, SIR.

18 Q IT WAS EMPTY. DID YOU DO A SEARCH OF THE CAR AT ANY POINT?

19 A NO, SIR.

20 Q DID YOU DO A VISUAL INSPECTION OF THE INSIDE OF THE CAR?

21 A YES, SIR.

22 Q DID YOU DO A VISUAL INSPECTION OF THE BACK SEAT OF THE CAR?

23 A YES.

24 Q DO YOU REMEMBER SEEING A RED BAG IN THE BACK SEAT OF THAT
25 CAR?

MATT MAY - CROSS BY MR. CREECH

1 A NO, SIR.

2 Q DO YOU REMEMBER SEEING A RED BAG RIGHT AT THE -- NEAR THE
3 AREA WHERE RON HARRIS WOULD HAVE BEEN SITTING?

4 A I DO NOT RECALL.

5 Q OKAY. DID YOU NOT SEE ONE OR DO YOU NOT RECALL SEEING ONE?

6 A I DO NOT RECALL SEEING ONE.

7 Q YOU DON'T RECALL SEEING ONE; IS THAT CORRECT? IT DIDN'T
8 STAND OUT IN YOUR MEMORY; IS THAT RIGHT?

9 A NO, SIR. THAT'S RIGHT.

10 Q NOW, EVENTUALLY EMS ARRIVED AND YOU ASSISTED EMS AS THEY GOT
11 THE PEOPLE OUT OF THE CAR; IS THAT CORRECT?

12 A THAT'S CORRECT.

13 Q ALL RIGHT. DID MR. -- DID MR. POWELL MAKE ANY STATEMENTS TO
14 YOU AT THAT POINT?

15 A NO, SIR.

16 Q DID MS. GALLOWAY MAKE ANY STATEMENTS TO YOU?

17 A YES, SIR.

18 Q AFTER EMS GOT ON THE SCENE AND THEY GOT THE PEOPLE OUT OF
19 THE CAR DID YOU REMEMBER LOOKING ON THE FRONT SEAT OF THE CAR AND
20 SEEING ANYTHING?

21 A YES, SIR.

22 Q WHAT DO YOU REMEMBER SEEING ON THE FRONT SEAT OF THE CAR?

23 A IT WASN'T ON THE FRONT SEAT. IT WAS IN THE CONSOLE.

24 Q YOU SAW SOMETHING IN THE CONSOLE. I'M ASKING WHAT DID YOU
25 SEE IN THE FRONT SEAT OF THE CAR?

MATT MAY -- REDIRECT BY MR. MOYER

1 A BLOOD.

2 Q DO YOU REMEMBER SEEING A \$20 BILL ON THE FRONT SEAT OF THAT
3 CAR?

4 A NO, SIR.

5 Q DID YOU EVER TELL A FORENSICS OFFICER THAT YOU SAW A \$20
6 BILL ON THE FRONT SEAT OF THE CAR?

7 A ON THE FRONT SEAT? NO, SIR.

8 Q OKAY. YOU NEVER TOLD ANY FORENSICS OFFICERS THAT YOU SAW A
9 \$20 BILL ON THE FRONT SEAT OF THE CAR; IS THAT CORRECT?

10 A NOT ON THE FRONT SEAT.

11 MR. CREECH: ALL RIGHT. I HAVE NO FURTHER QUESTIONS, YOUR
12 HONOR.

13 MR. MOYER: REAL QUICK FOLLOW UP.

14 REDIRECT EXAMINATION BY MR. MOYER:

15 Q YOU DIDN'T EXAMINE THE MONEY THAT YOU SAW IN THE CAR, DID
16 YOU?

17 A NO, SIR.

18 Q YOU DIDN'T PICK IT UP OR TOUCH IT?

19 A NO, SIR.

20 Q AS FAR AS THE SEARCH OF THE CAR AND SEARCH OF EVERYTHING
21 ELSE, THAT'S SOMETHING YOU LEAVE UP TO THE DETECTIVES AND THE
22 FORENSICS OFFICERS; IS THAT RIGHT?

23 A YES, SIR.

24 MR. MOYER: NOTHING FURTHER.

25 MR. CREECH: JUST BRIEFLY.

MATT MAY - RECROSS BY MR. CREECH

1 RECROSS EXAMINATION BY MR. CREECH:

2 Q DO YOU REMEMBER TELLING A FORENSICS OFFICER THAT THE WIND
3 CAME ALONG AND BLEW THAT \$20 BILL OFF THE FRONT SEAT?

4 A NO, SIR.

5 Q YOU DIDN'T TELL HIM THAT?

6 A NO, SIR.

7 MR. CREECH: OKAY. NO FURTHER QUESTIONS.

8 MR. MOYER: THE STATE WOULD CALL BEN COTHRAN.

9 THE COURT: YES, SIR. YOU CAN STEP DOWN. THANK YOU,
10 DEPUTY.

11 (WITNESS STEPS DOWN AT 5:16 P.M.)

12 BEN COTHRAN, HAVING BEEN DULY SWORN,
13 TESTIFIED AS FOLLOWS:

14 MADAME CLERK: PLEASE STATE YOUR FULL NAME FOR THE RECORD.

15 WITNESS: BENJAMIN HENRY COTHRAN.

16 DIRECT EXAMINATION BY MR. MOYER:

17 Q WHERE ARE YOU EMPLOYED?

18 A GREENVILLE CITY POLICE DEPARTMENT.

19 Q HOW LONG HAVE YOU WORKED FOR THE CITY POLICE DEPARTMENT?

20 A A LITTLE BETTER THAN THREE AND A HALF YEARS.

21 Q WHAT IS YOUR POSITION?

22 A I'M A ROAD PATROL OFFICER.

23 Q ARE YOU REFERRED TO OFTEN AS A UNIFORM OFFICER?

24 A YES, SIR.

25 Q WERE YOU WORKING ON JUNE 7TH OF LAST YEAR?

BEN COTHRAN - DIRECT BY MR. MOYER

1 A YES, SIR, I WAS.

2 Q DID YOU RECEIVE A CALL TO WOODLAWN AVENUE?

3 A YES, SIR.

4 Q ALL RIGHT. DID YOU -- YOU SAY YOU GOT A CALL. DID YOU
5 RESPOND OUT THERE TO THAT LOCATION?

6 A YES, SIR.

7 Q WERE YOU THE FIRST OFFICER ON THE SCENE?

8 A NO, SIR, I WAS NOT.

9 Q OKAY. WHEN YOU ARRIVED WERE THERE MANY OFFICERS THERE?

10 A (PAUSE) I KNOW THERE WERE AT LEAST FOUR ON SCENE WHEN I
11 ARRIVED.

12 Q OKAY. WHAT WAS -- WERE YOU ASKED TO DO ANYTHING WHEN YOU
13 FIRST ARRIVED THERE?

14 A YES, SIR. I WAS REQUESTED TO BLOCK OFF THE END OF THE
15 STREET AT THE INTERSECTION OF WOODLAWN AND IOLA.

16 Q ALL RIGHT. NOW, DID YOU AT A LATER TIME PARTICIPATE IN
17 LOOKING FOR ANY POTENTIAL EVIDENCE IN THE CASE?

18 A YES, SIR, I DID.

19 Q AND WHERE WERE YOU LOOKING AND WHAT WERE YOU LOOKING FOR?

20 A I WAS LOOKING FOR ANYTHING THAT MIGHT BE CONNECTED TO THE
21 CRIME ITSELF, ANYWHERE IN THE GENERAL VICINITY OF THE VEHICLE
22 THAT WAS STILL PARKED THERE WHEN I ARRIVED.

23 Q OKAY. NOW, DID YOU LOOK IN THE VEHICLE ITSELF?

24 A NO, SIR, I DID NOT.

25 Q WELL, WHEN YOU WERE OUT LOOKING AROUND DID YOU FIND

BEN COTHRAN - DIRECT BY MR. MOYER

1 ANYTHING?

2 A YES, SIR, I DID.

3 Q AND WHAT DID YOU FIND?

4 A I LOCATED A BRASS NINE MILLIMETER CASING APPROXIMATELY 25 TO
5 30 FEET TOWARD THE REAR OF THE VEHICLE, LYING TOWARD THE MIDDLE
6 LINE.

7 Q NOW WAS THIS PRIOR TO THE FORENSICS OFFICERS ARRIVING?

8 A YES, SIR, IT WAS.

9 Q WHAT DID YOU DO WITH REGARD TO THAT SHELL CASING YOU FOUND?

10 A I REMOVED A BLANK SHEET OF PAPER FROM MY NOTEBOOK. I MARKED
11 IT NEAR THE CASING SO AS NOT TO DISTURB IT AND HELD DOWN THE
12 PIECE OF PAPER WITH A ROCK.

13 Q OKAY. AND WHEN THE FORENSICS OFFICERS ARRIVED DID YOU POINT
14 IT OUT TO THEM?

15 A YES, SIR, I POINTED IT OUT TO SERGEANT SHAW.

16 Q WAS IT MOVED OR PICKED UP OR ALTERED IN ANY WAY BEFORE THE
17 FORENSICS OFFICERS GOT THERE?

18 A NO, SIR.

19 (PHOTOGRAPH MARKED AS STATE'S EXHIBIT NUMBER 6 FOR PURPOSES
20 OF IDENTIFICATION ONLY)

21 (PHOTOGRAPH MARKED AS STATE'S EXHIBIT NUMBER 7 FOR PURPOSES
22 OF IDENTIFICATION ONLY)

23 (PHOTOGRAPH MARKED AS STATE'S EXHIBIT NUMBER 8 FOR PURPOSES
24 OF IDENTIFICATION ONLY)

25 Q I'M GOING TO HAND YOU -- I'M GOING TO HAND YOU STATE'S

BEN COTHRAN - DIRECT BY MR. MOYER

1 EXHIBITS NUMBER 6, 7, AND 8. IF YOU WOULD, JUST TAKE A MINUTE TO
2 LOOK AT THOSE AND TELL US IF YOU RECOGNIZE WHAT IS DEPICTED IN
3 EACH ONE OF THOSE PHOTOGRAPHS.

4 A (COMPLIES) YES, SIR.

5 Q OKAY. AND WHAT IS DEPICTED?

6 A THE BRASS CASING THAT I LOCATED IN THE MIDDLE OF THE ROAD, A
7 PICTURE OF THE ROCK HOLDING DOWN THE NOTEPAD TO PREVENT THE WIND
8 FROM BLOWING IT OFF.

9 Q OKAY. AND ARE THEY TRUE AND ACCURATE REPRESENTATIONS OF THE
10 WAY THAT THAT LOCATION LOOKED ON JUNE THE 7TH OF 2006?

11 A YES, SIR.

12 MR. MOYER: YOUR HONOR, AT THIS TIME WE'D MOVE TO HAVE
13 STATE'S EXHIBIT 6, 7, AND 8 INTO EVIDENCE.

14 MR. CREECH: NO OBJECTION, YOUR HONOR.

15 THE COURT: ALL RIGHT. THEY'RE IN EVIDENCE.

16 (PHOTOGRAPH, STATE'S EXHIBIT NUMBER 6, MOVED INTO EVIDENCE)

17 (PHOTOGRAPH, STATE'S EXHIBIT NUMBER 7, MOVED INTO EVIDENCE)

18 (PHOTOGRAPH, STATE'S EXHIBIT NUMBER 8, MOVED INTO EVIDENCE)

19 Q I HAND YOU A LASER POINTER.

20 A YES, SIR.

21 Q I'M GOING TO START OFF WITH AN EXHIBIT THAT'S ALREADY IN
22 EVIDENCE, STATE'S EXHIBIT NUMBER 4. FIRST OFF, YOU TOLD US WHEN
23 YOU FIRST ARRIVED YOU WENT TO IOLA STREET. CAN YOU SHOW US WHERE
24 IOLA STREET IS ON THAT PHOTOGRAPH?

25 A YES, SIR. THAT PATROL CAR THERE IS MINE. IOLA STREET IS

BEN COTHRAN - CROSS BY MR. CREECH

1 JUST PAST THE EDGE, RIGHT ALONG IN THROUGH THERE (INDICATING).

2 Q OKAY. SO IF ONE WERE TRAVELING IN THE DIRECTION OF THAT
3 ESCORT THERE WITH THE DOORS OPEN, IOLA STREET GOES UP AND TO THE
4 LEFT?

5 A YES, SIR.

6 Q DO YOU KNOW IF IT GOES TO THE RIGHT?

7 A IT DOES NOT. IT DEAD ENDS RIGHT THERE.

8 Q ALL RIGHT. NOW LET ME SHOW YOU STATE'S EXHIBIT NUMBER 8.
9 CAN YOU POINT OUT WHAT YOU DESCRIBED AS THE ROCK WITH THE PAPER
10 ON IT?

11 A IT'S RIGHT THERE (INDICATING).

12 Q AND STATE'S EXHIBIT NUMBER 7?

13 A ONCE AGAIN, THE ROCK WITH THE PAPER (INDICATING).

14 Q CAN YOU SEE THE SHELL CASING IN THAT PHOTOGRAPH?

15 A YES, SIR. IT'S APPROXIMATELY THE ONE O'CLOCK POSITION.
16 RIGHT THERE (INDICATING).

17 Q AND FINALLY, STATE' EXHIBIT NUMBER 6.

18 A THAT'S THE CASING I FOUND LYING IN THE MIDDLE OF THE ROAD,
19 SIR (INDICATING).

20 MR. MOYER: OKAY. THANKS. PLEASE ANSWER ANY QUESTIONS THE
21 DEFENSE MIGHT HAVE.

22 THE COURT: CROSS EXAMINATION.

23 CROSS EXAMINATION BY MR. CREECH:

24 Q OFFICER COTHRAN, YOU -- THIS SHELL CASING THAT YOU SAW WAS
25 25 OR 30 FEET BEHIND THE VEHICLE; IS THAT RIGHT?

BEN COTHRAN - CROSS BY MR. CREECH

1 A APPROXIMATELY.

2 Q OKAY. AND DO YOU HAVE ANY PERSONAL KNOWLEDGE OF HOW IT GOT
3 SO FAR BACK?

4 A NO, SIR.

5 Q OKAY. DID YOU DO AN INSPECTION OR A SEARCH OF THE VEHICLE
6 AT ALL?

7 A NO, SIR, I DID NOT.

8 Q DID YOU GO UP AND LOOK INSIDE OF THE VEHICLE AT ALL?

9 A NO, SIR, I DID NOT.

10 Q OKAY. DO YOU REMEMBER TELLING OR DID YOU SPEAK WITH ANY OF
11 THE FORENSICS OFFICERS WHEN THEY ARRIVED ON THE SCENE?

12 A OTHER THAN I BELIEVE IT WAS SERGEANT SHAW, WHO I BELIEVE I
13 TOLD I LOCATED THAT CASING AND POINTED IT OUT TO WHERE I HAD
14 POSTED IT WITH A PAPER FROM MY PAD.

15 Q OKAY. SO YOU SPOKE WITH SHAW AND POINTED IT OUT; IS THAT
16 RIGHT?

17 A YES, SIR.

18 Q DID YOU TELL SERGEANT SHAW OR THE FORENSICS GROUP THAT YOU
19 HAD SEEN A \$20 BILL IN THE FRONT SEAT OF THE CAR? DID YOU TELL
20 HIM THAT?

21 A NO, SIR, I DID NOT.

22 Q OKAY. AND SO -- AND YOU DIDN'T TELL HIM THAT THE WIND CAME
23 ALONG AND BLEW IT OFF; IS THAT RIGHT?

24 A THE \$20 BILL OR THE PIECE OF PAPER THAT I HAD MARKING---

25 Q THE \$20 BILL.

BEN COTHRAN - CROSS BY MR. CREECH

- 1 A NO, SIR, I DID NOT.
- 2 Q OKAY. AND YOU WENT UP AND RETURNED TO FIND WITNESSES -- IF
- 3 THERE WERE ANY WITNESSES; IS THAT CORRECT?
- 4 A YES, SIR.
- 5 Q WERE YOU ABLE TO LOCATE ANY WITNESSES?
- 6 A YES, SIR.
- 7 Q AND WHAT WAS THE -- WHO WAS THE WITNESS THAT YOU FOUND?
- 8 A THE WITNESS I TALKED TO WAS MARY SHAW.
- 9 Q OKAY. AND WHERE DID -- WHERE WAS MARY SHAW; DO YOU KNOW?
- 10 A SHE WAS RESIDING AT , JUST PAST WHERE MY PATROL
- 11 VEHICLE WAS PARKED.
- 12 Q IF WE MAYBE TAKE A LOOK AT THAT PICTURE AGAIN -- (PAUSE)
- 13 LOOKING AT THIS PICTURE, WHERE IS -- WHAT SIDE OF THE --
- 14 THIS IS WOODLAWN, CORRECT?
- 15 A YES, SIR.
- 16 Q ALL RIGHT. AND WHAT SIDE OF THE STREET WAS HER -- WAS
- 17 ; WAS IT ON THIS SIDE OR OVER HERE?
- 18 A TO THE LEFT.
- 19 Q SO THIS---
- 20 A THIS HOUSE (INDICATING).
- 21 Q RIGHT THERE---
- 22 A YES, SIR.
- 23 Q ---THAT'S ; IS THAT CORRECT?
- 24 A TO THE BEST OF MY KNOWLEDGE, YES, SIR.
- 25 Q ALL RIGHT. NOW, WAS SHE STANDING OUT IN THE YARD WHEN YOU

BEN COTHRAN - CROSS BY MR. CREECH

1 WENT AND SPOKE TO HER?

2 A YES, SIR.

3 Q AND DID SHE SAY -- YOU DON'T HAVE TO TELL ME WHAT SHE SAID,
4 OBVIOUSLY. BUT DID SHE INDICATE TO YOU WHETHER SHE WAS A WITNESS
5 AND SAW THINGS?

6 A YES, SIR.

7 Q OKAY. AND HOW FAR AWAY WOULD YOU SAY SHE WAS STANDING AT
8 THE TIME?

9 A BALLPARK GUESS WOULD BE BETWEEN 65 AND 75 YARDS.

10 Q OKAY. ALMOST THREE-QUARTERS OF A FOOTBALL FIELD?

11 A APPROXIMATELY, YES, SIR.

12 Q OKAY. AND DO YOU KNOW IF SHE HAD HER BACK TO THE -- DO YOU
13 KNOW WHAT SHE WAS DOING OUT IN THE YARD?

14 A SHE INDICATED TO ME, I BELIEVE, SHE WAS WASHING HER CAR AT
15 THE TIME.

16 Q OKAY. WERE YOU ABLE TO TALK WITH ANY OTHER WITNESSES IN
17 THIS CASE AT ALL?

18 A NO, SIR.

19 Q YOU WEREN'T ABLE TO LOCATE ANY OTHER EYEWITNESSES; IS THAT
20 CORRECT?

21 A CORRECT.

22 Q DID YOU TAKE ANY EVIDENCE INTO CUSTODY, INTO YOUR CUSTODY,
23 IN THIS CASE?

24 A NOTHING OTHER THAN MARY SHAW'S STATEMENT.

25 Q ALL RIGHT. SO YOU DIDN'T COLLECT ANY EVIDENCE ON THE SCENE

MARY SHAW - DIRECT BY MR. MOYER

1 OR ANYTHING LIKE THAT?

2 A NO, SIR.

3 Q YOU DID NO SEARCH OF THE VEHICLE; IS THAT CORRECT?

4 A NO, SIR. CORRECT.

5 Q OKAY. AND YOU SAW THAT SHELL CASING 25 TO 35 FEET BEHIND
6 THE CAR; IS THAT RIGHT?

7 A YES, SIR.

8 MR. CREECH: THANK YOU. I HAVE NO FURTHER QUESTIONS.

9 MR. MOYER: NOTHING FURTHER. WE'D CALL MARY SHAW.

10 (WITNESS STEPS DOWN AT 5:26 P.M.)

11 MARY SHAW, HAVING BEEN DULY SWORN,

12 TESTIFIED AS FOLLOWS:

13 MADAME CLERK: PLEASE STATE YOUR FULL NAME FOR THE RECORD.

14 WITNESS: MARY SHAW.

15 DIRECT EXAMINATION BY MR. MOYER:

16 Q ALL RIGHT. MS. SHAW, I'M GOING TO ASK YOU A FEW QUESTIONS
17 ABOUT THIS CASE. HOW OLD ARE YOU?

18 A TWENTY-SIX.

19 Q WHERE DID YOU LIVE IN JUNE OF LAST YEAR?

20 A AVENUE.

21 Q LET ME ASK YOU TO JUST MOVE JUST A TOUCH CLOSER TO THE
22 MICROPHONE AND MAYBE PULL IT TOWARDS YOU SO WE CAN MAKE SURE WE
23 HEAR YOU.

24 A (COMPLIES)

25 Q SAY AGAIN WHERE YOU LIVED.

MARY SHAW - DIRECT BY MR. MOYER

1 A AVENUE.

2 Q OKAY. HOW LONG HAD YOU LIVED THERE AT THAT TIME?

3 A ABOUT 25 YEARS.

4 Q OKAY. MOST -- JUST ABOUT ALL YOUR LIFE?

5 A YES.

6 Q YOU WERE LIVING THERE WITH YOUR MOM AND DAD?

7 A MY MOM AND MY DAUGHTER.

8 Q OKAY. NOW LET ME ASK YOU THIS FIRST OFF THE BAT: DO YOU

9 KNOW ANYBODY INVOLVED IN THIS CASE? DO YOU KNOW THE DEFENDANT,
10 ZACHARY FOWLER?

11 A NO.

12 Q DO YOU KNOW RON HARRIS OR GARY MICHAEL POWELL OR SUSAN
13 GALLOWAY?

14 A NO.

15 Q DO YOU KNOW VALENCIA SULLIVAN OR DIANA TISDALE?

16 A NO.

17 Q OKAY. WERE YOU AT HOME ON THE DAY OF THE SHOOTING THAT
18 HAPPENED OUT THERE ON WOODLAWN AVENUE?

19 A YES.

20 Q WHAT WERE YOU DOING?

21 A WASHING MY CAR.

22 Q WHERE WERE YOU WHEN YOU WERE WASHING YOUR CAR?

23 A IN FRONT OF THE HOUSE.

24 Q I'M GOING TO SHOW YOU SOMETHING THAT'S ALREADY IN EVIDENCE,
25 STATE'S EXHIBIT NUMBER 4. AND IF YOU COULD, CAN YOU SEE YOUR

MARY SHAW - DIRECT BY MR. MOYER

1 HOUSE IN THIS PICTURE?

2 A YES.

3 Q AND YOU HAVE LOOKED AT THIS PICTURE ONCE BEFORE, RIGHT?

4 A YES.

5 Q AND YOU SAW YOU WERE WASHING YOUR CAR. CAN YOU SEE THE -- I

6 DON'T KNOW IF YOU CAN SEE YOUR CAR OR NOT, BUT CAN YOU SEE THE

7 STREET WHERE YOUR CAR WAS?

8 A YES.

9 Q AND WHAT IS THE CLOSEST ROAD TO WHERE YOU LIVE?

10 A IOLA.

11 Q IOLA. OKAY. REAL QUICK, WE'RE GOING TO PUT THIS UP HERE ON

12 THE SCREEN. NOW, FOR THE PURPOSE OF THE JURY, I'M GOING TO USE

13 THIS POINTER HERE. CAN YOU SEE WHERE I AM POINTING?

14 A YES.

15 Q OKAY. AND WHAT AM I POINTING AT HERE?

16 A THAT'S MY HOUSE.

17 Q OKAY. AND YOUR CAR, WAS IT OUT HERE ON WOODLAWN AVENUE IN

18 FRONT OF YOUR HOUSE?

19 A YES.

20 Q I DON'T KNOW IF YOU CAN SEE FROM THERE, BUT THERE WAS

21 ACTUALLY A CAR ON THE STREET HERE. IS THAT OVER CLOSE TO WHERE

22 YOU WERE?

23 A YES.

24 Q OKAY. ALL RIGHT. NOW, DID YOU SEE SOME CARS STOPPED ON

25 WOODLAWN AVENUE WHILE YOU WERE OUT WASHING YOUR CAR?

MARY SHAW - DIRECT BY MR. MOYER

- 1 A YES.
- 2 Q AND WHAT COLOR WERE THE TWO CARS?
- 3 A THERE WAS A BLUE CAR AND A GRAY CAR.
- 4 Q A BLUE CAR AND A GRAY CAR, YOU SAID?
- 5 A YES.
- 6 Q AND DID YOU SEE ANY PEOPLE GET OUT OF EITHER ONE OF THE
- 7 CARS?
- 8 A YES.
- 9 Q AND OUT OF WHICH -- COULD YOU TELL IF IT WAS A MAN OR A
- 10 WOMAN?
- 11 A A MALE.
- 12 Q AND DID HE -- WHICH CAR DID HE GET OUT OF, THE BLUE CAR OR
- 13 THE GRAY CAR?
- 14 A THE BLUE CAR.
- 15 Q AND WHAT DID HE DO?
- 16 A HE WENT UP TO THE GRAY CAR.
- 17 Q OKAY. AND WHICH SIDE OF THE GRAY CAR DID HE GO UP TO?
- 18 A THE PASSENGER SIDE.
- 19 Q AND WHAT DID HE DO WHEN HE GOT UP TO THE CAR?
- 20 A HE LEANED IN THE PASSENGER SIDE.
- 21 Q AND THEN WHAT HAPPENED AFTER HE LEANED IN?
- 22 A I HEARD A NOISE.
- 23 Q WHAT DID THE NOISE SOUND LIKE?
- 24 A GUNFIRE.
- 25 Q OKAY. HOW MANY NOISES LIKE THAT DID YOU HEAR?

MARY SHAW - DIRECT BY MR. MOYER

- 1 A THREE.
- 2 Q AND WHAT DID PERSON DO THEN AFTER YOU HEARD THIS NOISE?
- 3 A HE GOT IN THE CAR AND LEFT.
- 4 Q INTO THE BLUE CAR?
- 5 A YES.
- 6 Q AND WHAT HAPPENED TO THE BLUE CAR THEN?
- 7 A IT WENT UP IOLA.
- 8 Q OKAY. SO IT CAME UP -- DROVE SORT OF TOWARDS YOU?
- 9 A UH-HUH (AFFIRMATIVE).
- 10 Q AND THEN TURNED DOWN IOLA?
- 11 A UH-HUH (AFFIRMATIVE).
- 12 Q DID YOU SEE INTO THE CAR AS IT DROVE OFF?
- 13 A YES.
- 14 Q AND WHAT DID YOU SEE IN THE CAR?
- 15 A THE MALE LOOKED OVER AND WAVED.
- 16 Q OKAY. THE MALE THAT HAD GOTTEN OUT OF THE CAR EARLIER AND
- 17 WALKED OVER TO THE OTHER CAR?
- 18 A YES.
- 19 Q OKAY. WELL, DID YOU LOOK BACK OVER AT THE GRAY CAR?
- 20 A THE GRAY CAR WAS, LIKE, MOVING IN SLOW MOTION, LIKE
- 21 EVERYBODY WAS DEAD OR SOMETHING.
- 22 Q ALL RIGHT. DID IT MOVE VERY FAR?
- 23 A NO.
- 24 Q AND DID IT KEEP MOVING OR DID IT STOP?
- 25 A IT STOPPED.

MARY SHAW - DIRECT BY MR. MOYER

1 Q ALL RIGHT. WHAT DID YOU DO WHEN YOU SAW THIS?

2 A I CALLED THE POLICE.

3 Q DID YOU SEE ANYBODY IN OR AROUND THE GRAY CAR AFTER THE BLUE
4 CAR LEFT?

5 A A PASSENGER GOT OUT OF THE BACK SEAT OF THE CAR AND RAN.

6 Q DID YOU SEE WHERE HE RAN?

7 A HE RAN TO THE RIGHT.

8 Q OKAY. IS THERE ANY BUSINESS---

9 A A FIELD.

10 Q ARE THERE ANY BUSINESSES OR ANYTHING OVER IN THE DIRECTION
11 WHERE HE RAN?

12 A IT'S ACROSS FROM TUCKER SODA SHOP.

13 (PHOTOGRAPH MARKED AS STATE'S EXHIBIT NUMBER 9 FOR PURPOSES
14 OF IDENTIFICATION ONLY)

15 Q OKAY. (PAUSE) I'M GOING TO SHOW YOU STATE'S EXHIBIT NUMBER
16 9. CAN YOU TAKE A LOOK AT THAT? THE BLUE CAR YOU SAW, DID IT
17 LOOK ANYTHING LIKE THAT ONE?

18 A YES.

19 MR. MOYER: YOUR HONOR, AT THIS TIME, I WOULD MOVE,
20 PURSUANT TO RULE 104(B) THAT IT'S FURTHER ADMISSIBILITY WILL BE
21 ESTABLISHED THROUGH LATER WITNESSES, BUT I WOULD MOVE THAT
22 STATE'S EXHIBIT NUMBER 9 BE ENTERED INTO EVIDENCE.

23 MR. CREECH: I WOULD JUST OBJECT AS TO THE FOUNDATION AND
24 LACK OF AUTHENTICATION.

25 THE COURT: ALL RIGHT. OVERRULED. GO AHEAD.

MARY SHAW - CROSS BY MR. CREECH

1 (STATE'S EXHIBIT NUMBER 9, PHOTOGRAPH, MOVED INTO EVIDENCE)

2 Q THAT'S THE CAR YOU SAID LOOKED LIKE THE ONE YOU SAW?

3 A YES.

4 MR. MOYER: ALL RIGHT. PLEASE ANSWER ANY QUESTIONS THAT
5 THE DEFENSE HAS.

6 MR. CREECH: THANK YOU, MS. SHAW.

7 CROSS EXAMINATION BY MR. CREECH:

8 Q NOW, YOU WERE WASHING YOUR CAR; IS THAT CORRECT?

9 A YES.

10 Q AND YOU SAY WERE ABOUT 75 YARDS AWAY FROM THIS LOCATION;
11 WOULD THAT BE CORRECT?

12 A ABOUT 75 YARDS? I DON'T KNOW HOW FAR IT IS.

13 Q YOU DON'T KNOW HOW FAR IT IS?

14 A IT'S NOT THAT FAR FROM MY HOUSE.

15 Q AND YOU WERE WASHING YOUR CAR; IS THAT RIGHT?

16 A YES.

17 Q OKAY. AND WAS YOUR BACK TO THE TUCKER'S AREA?

18 A NO.

19 Q YOU WERE FACING THAT WAY?

20 A YEAH.

21 Q OKAY. AND YOU SAW THE CARS COME INTO THE STREET, IS THAT --
22 COME DOWN WOODLAWN; IS THAT RIGHT?

23 A YES.

24 Q OKAY. DO YOU REMEMBER IF YOU SAW SOMEONE GET OUT OF THE
25 CAR?

MARY SHAW - CROSS BY MR. CREECH

- 1 A YES.
- 2 Q BEFORE YOU SAW A MALE GET OUT OF THE CAR DID IT LOOK LIKE
- 3 THE TWO PEOPLE WERE TALKING BETWEEN THE TWO CARS -- OR THE
- 4 OCCUPANTS OF THE TWO CARS WERE TALKING TO EACH OTHER BACK AND
- 5 FORTH?
- 6 A NO.
- 7 Q OKAY. DO YOU REMEMBER TELLING THE OFFICER THAT IN THE
- 8 STATEMENT THAT YOU GAVE HIM?
- 9 A THAT THEY WERE TALKING?
- 10 Q YEAH.
- 11 A I DON'T REMEMBER.
- 12 Q OKAY. DO YOU REMEMBER PUTTING IN YOUR STATEMENT THAT YOU
- 13 SAW THEM TALKING BACK AND FORTH?
- 14 A NO, I DON'T REMEMBER.
- 15 Q IF YOU CAN JUST TAKE A LOOK AT THAT, IS THAT YOUR
- 16 HANDWRITING?
- 17 A YES.
- 18 Q IS THAT THE STATEMENT -- IS THAT YOUR STATEMENT?
- 19 A (REVIEWS DOCUMENT) YES.
- 20 Q OKAY. AND IN THAT STATEMENT DOES IT SAY THAT -- "TWO CARS
- 21 BESIDE EACH OTHER TALKING;" IS THAT CORRECT?
- 22 A YES.
- 23 Q OKAY. AND SO DOES THAT -- AND THAT WAS AT THE TIME THAT YOU
- 24 WITNESSED -- RIGHT AFTER YOU WITNESSED THIS; IS THAT CORRECT?
- 25 A SAY THAT AGAIN.

MARY SHAW - CROSS BY MR. CREECH

1 Q THIS STATEMENT WAS GIVEN ON THE DAY THAT YOU SAW ALL THIS
2 TAKE PLACE---

3 A YES.

4 Q ---BACK ON JUNE THE 7TH OF 2003? YOU SAID YOU WERE WASHING
5 YOUR CAR AND THEY'RE TALKING; IS THAT CORRECT?

6 A YES.

7 Q OKAY. AND YOU SAY YOU SAW HIM GET OUT OF THE CAR. DO YOU
8 REMEMBER -- DO YOU REMEMBER IF YOU SAW THIS CONTINUED TALKING OR
9 TALKING ONCE THIS MALE GOT UP TO THE WINDOW OF THE CAR?

10 A IT WASN'T -- THEY WASN'T TALKING LONG.

11 Q OKAY. BUT THEY WERE TALKING BACK AND FORTH; IS THAT
12 CORRECT?

13 A HE WAS AT HIS WINDOW, ON THE PASSENGER-SIDE WINDOW.

14 Q OKAY. BUT THEY WERE TALKING FROM THE PERSON STANDING
15 OUTSIDE OF THE CAR AS YOU'RE COMING OUT; IS THAT RIGHT?

16 A HE WAS JUST LEANED IN THE CAR.

17 Q OKAY. AND THEN HE LEANED IN -- THIS PERSON YOU SAW LEANED
18 IN THE CAR; IS THAT CORRECT?

19 A YES.

20 Q AND THEN YOU HEARD -- HOW MANY GUNSHOTS DID YOU HEAR?

21 A THREE.

22 Q ARE YOU SURE THAT YOU HEARD THREE GUNSHOTS; IS THAT CORRECT?

23 A YES.

24 Q OKAY. AND WERE YOU -- WHEN YOU SAW HIM GET OUT OF THE CAR
25 WAS YOUR ATTENTION FOCUSED ON THEM THE ENTIRE TIME?

MARY SHAW - CROSS BY MR. CREECH

1 A NO.

2 Q IT WAS NOT?

3 A NO.

4 Q AND YOU WERE WASHING YOUR CAR; IS THAT CORRECT?

5 A YES.

6 Q AND SO YOU WOULD HAVE BEEN DISTRACTED WASHING YOUR CAR, IS
7 THAT RIGHT, OR PAYING MORE ATTENTION TO THAT AS OPPOSED TO WHAT
8 WAS GOING ON DOWN THE STREET; IS THAT CORRECT?

9 A NO. I MEAN, IF THEY WAS IN THE MIDDLE OF THE ROAD, YOU
10 CAN'T HELP BUT TO PAY ATTENTION TO IT.

11 Q OKAY. AND YOU SAW HIM -- YOU SAW THE CARS TALKING BACK AND
12 FORTH?

13 A (INDICATES AFFIRMATIVE RESPONSE)

14 Q DO YOU REMEMBER SEEING A RED BAG AT ALL?

15 A NO.

16 Q ALL RIGHT. AND HOW MUCH TIME ELAPSED BETWEEN WHEN HE GOT
17 OUT OF HIS CAR, THIS PERSON, AND WHEN YOU SAW -- YOU HEARD THREE
18 GUNSHOTS?

19 A PROBABLY FIVE MINUTES OR LESS.

20 Q FIVE MINUTES OR LESS.

21 MR. CREECH: THANK YOU. I HAVE NO FURTHER QUESTIONS.

22 MR. MOYER: NOTHING FURTHER.

23 THE COURT: OKAY. THANK YOU, MA'AM. YOU MAY STEP DOWN.

24 (WITNESS STEPS DOWN AT 5:38 P.M.)

25 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, WE'RE GOING

MATTERS AND MOTIONS

1 TO GO AHEAD AND RECESS FOR THE EVENING, AND WE'RE GOING TO RESUME
2 TOMORROW MORNING. JUST BE IN THE JURY ROOM AT 9:15 AND WE WILL
3 TRY TO BEGIN THE CASE PROMPTLY AT THAT TIME.

4 DON'T TALK ABOUT THE CASE. CONTINUE TO KEEP AN OPEN MIND.
5 DON'T DO ANY KIND OF OUTSIDE INVESTIGATION.

6 I HOPE YOU HAVE A NICE EVENING. THANK YOU VERY MUCH.

7 (JURY EXITS COURTROOM AT 5:39 P.M.)

8 THE COURT: OKAY. ANYTHING FURTHER?

9 MR. CREECH: JUDGE, I JUST HAVE ONE LITTLE MOTION TO ASK
10 THE COURT MAYBE TO ALLOW THE JURORS TO TAKE NOTES. I WISH I HAD
11 DONE THAT AT THE START OF THE TRIAL. I DON'T KNOW WHAT YOUR
12 PRACTICE IS ON THAT BUT I ASK---

13 THE COURT: THEY CAN TAKE NOTES IF THEY WANT. I'LL TELL
14 THEM THEY CAN IF THEY WANT TO. I'LL INSTRUCT THEM ON THAT.
15 USUALLY THEY ASK IF THEY WANT TO.

16 DO YOU HAVE ANY PROBLEM WITH ME DOING THAT?

17 MR. MOYER: NO. LIKE YOU SAID, USUALLY IT HAPPENS WHEN
18 THEY ASK. I'M A LITTLE CONCERNED ABOUT NOW WHEN WE'RE GOING TO
19 BE ON THE FIFTH WITNESS SORT OF PRODDING THEM INTO -- I WOULD
20 PREFER THAT IF THEY ASK TO TAKE NOTES, THEN YES. BUT I THINK IT
21 MAY HAVE SOME BEARING ON THEIR THOUGHTS ABOUT THE CASE TO HAVE
22 THEM START TAKING NOTES IN THE MIDDLE OF A TRIAL.

23 THE COURT: DO YOU WANT ME TO SAY THAT MR. CREECH WANTS
24 THEM TO TAKE NOTES? (LAUGHTER IN THE COURTROOM)

25 MR. CREECH: THAT'S FINE. THAT'S FINE, JUDGE.

MATTERS AND MOTIONS

1 THE COURT: WELL, JUST REMIND ME IN THE MORNING. I'D BE
2 INCLINED TO JUST TELL THEM THEY CAN. THEY USUALLY DON'T KNOW
3 THEY CAN.

4 LET ME, BEFORE WE GO, PUT A COUPLE THINGS ON THE RECORD. I
5 WANT TO MAKE AN ALTERNATIVE FINDING THAT EVEN IF MR. FOWLER HAD
6 STANDING TO OBJECT TO THE SEARCH WARRANT AND HIS CONSENT WAS NOT
7 EFFECTIVE THAT THE SEARCH WARRANT FOR BOTH THE CAR AND THE HOUSE,
8 WHICH ARE EXHIBITS 1 AND 2 FOR IDENTIFICATION, DEFENDANT'S
9 EXHIBITS 1 AND 2 FOR IDENTIFICATION, CLEARLY DEMONSTRATE THAT THE
10 AFFIDAVIT OF DETECTIVE MIZE CONTAINS SUFFICIENT SWORN TESTIMONY
11 TO ESTABLISH PROBABLE CAUSE. HE STATES THAT THE BLUE BUICK WAS
12 IDENTIFIED AS A VEHICLE A SUSPECT EXITED OUT OF AT THE SCENE OF A
13 MURDER THAT OCCURRED AND THAT CERTAINLY DEMONSTRATES A FAIR
14 PROBABILITY THAT A CRIME OCCURRED AND WHOEVER THE SUSPECT WAS WAS
15 SUSPECT IN THAT OR IN BEING AN ACCESSORY OR PERHAPS EVEN SOMEONE
16 WHO FAILED TO COME FORWARD WITH EVIDENCE ABOUT A CRIME, AND I
17 BELIEVE THAT SATISFIES THE FOURTH AMENDMENT OF THE SOUTH CAROLINA
18 CONSTITUTION AND SECTION 17-13-140.

19 AS FAR AS THE STATEMENT GOES, LET ME FURTHER FIND THAT THIS
20 IS NOT A SITUATION LIKE WE HAD IN THE KAUPP VERSUS TEXAS --
21 EXCUSE ME -- K-A-U-P-P VERSUS TEXAS, 123 S.Ct. 1843 2003 DECISION
22 WHERE A SUSPECT WAS DETAINED OVERNIGHT AFTER BEING TAKEN FROM HIS
23 HOME AT 3:00 A.M. AT THE AGE OF 17 WITHOUT A WARRANT WHERE THE
24 SUPREME COURT FOUND THAT WAS AN UNREASONABLE SEIZURE THAT
25 REQUIRED SUPPRESSION OF A SUBSEQUENT CONFESSION.

MATTERS AND MOTIONS

1 HERE IT WAS REASONABLE FOR DETECTIVE CONROY TO SEPARATE MR.
2 FOWLER FROM THE OTHER RESIDENTS OF THE TRAILER ON APPALOOSA
3 AVENUE. EVEN IF THE SEIZURE CONVERTED INTO AN ARREST, I FIND
4 THAT THERE WAS NO INTENTIONAL MISCONDUCT, EVEN IF THE DETENTION
5 EXCEEDED THE SCOPE OF THE FOURTH AMENDMENT. I FIND THAT THERE
6 WAS MIRANDA WARNINGS THEN GIVEN, AND THE LENGTH OF TIME BETWEEN
7 THE PLACING HIM IN HANDCUFFS IN THE BACK OF THE PATROL CAR AND
8 HIS STATEMENT WAS VERY SHORT. IN FACT, HE WAS PLACED IN THERE,
9 IN PART, FOR HIS OWN COMFORT AS WELL AS SAFETY BECAUSE AT THAT
10 POINT THE ROLES OF THE INDIVIDUALS WERE NOT CLEARLY KNOWN.

11 SO I CERTAINLY FIND THE CONFESSION THAT YOU MADE -- OR
12 STATEMENT THAT HE MADE WAS A PRODUCT OF AN ESSENTIALLY FREE AND
13 UNCONSTRAINED CHOICE. THERE WAS NO ELEMENT OF COERCION. THERE
14 WAS NO EVIDENCE MR. FOWLER WAS SOMEWHAT IMMATURE OR SOMEHOW
15 IMMATURE, NO EVIDENCE ABOUT HIS LACK OF EDUCATION OR IMPAIRED
16 PHYSICAL OR MENTAL HEALTH. THEREFORE, ANY TAIN'T THERE WAS IN THE
17 INITIAL SEIZURE OR EVEN IF IT AMOUNTED TO AN ARREST WAS PURGED BY
18 THE MIRANDA WARNINGS AND SUBSEQUENT CONDUCT BY THE OFFICERS AND
19 HIS STATEMENT -- AND THE ADMISSIBILITY OF HIS STATEMENT WOULDN'T
20 VIOLATE THE FOURTH AND FIFTH AMENDMENTS, AND I FIND THE OFFICERS'
21 ACTIONS WERE REASONABLE.

22 ALL RIGHT. THANK YOU VERY MUCH.

23 (RECESS FOR THE DAY AT 5:44 P.M.)

24

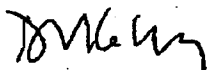
25

CERTIFICATE

I, THE UNDERSIGNED, DAWN V. KOFFSKEY, OFFICIAL COURT REPORTER FOR THE 13TH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR GREENVILLE COUNTY, SOUTH CAROLINA, ON THE 13TH DAY OF AUGUST 2007.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST TO ANY PARTY HERETO.

APRIL 1, 2008


DAWN V. KOFFSKEY
COURT REPORTER

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF GENERAL SESSIONS

THE STATE,

VERSUS

ZACHARY M. FOWLER,

DEFENDANT.

07-GS-23-245 THROUGH 249
TRANSCRIPT OF RECORD

VOLUME 2 - AUGUST 14, 2007

AUGUST 13-15, 2007
GREENVILLE, SOUTH CAROLINA

B E F O R E:

THE HONORABLE D. GARRISON HILL

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

L. MARK MOYER, Esquire
Assistant Solicitor

THOMAS CREECH, Esquire
Attorney for the Defendant

DAWN V. KOFFSKEY
COURT REPORTER

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* FOR PURPOSES OF JACKSON v. DENNO ONLY

RON HARRIS - DIRECT BY MR. MOYER

1 (TRIAL RESUMED AT 9:48 A.M. ON 8-14-07)

2 (JURY ENTERS COURTROOM AT 9:48 A.M.)

3 THE COURT: OKAY. GOOD MORNING, LADIES AND GENTLEMEN.

4 WE'RE GOING TO RESUME THE PRESENTATION OF EVIDENCE.

5 YES, SIR, MR. MOYER.

6 MR. MOYER: THE STATE WOULD CALL RON HARRIS.

7 RON HARRIS, HAVING BEEN DULY SWORN,

8 TESTIFIED AS FOLLOWS:

9 MADAME CLERK: PLEASE STATE YOUR FULL NAME FOR THE RECORD.

10 WITNESS: RONALD ALAN HARRIS.

11 DIRECT EXAMINATION BY MR. MOYER:

12 Q ALL RIGHT. MR. HARRIS, HOW OLD ARE YOU?

13 A FORTY-ONE.

14 Q WHERE DO YOU LIVE?

15 A CUTOFF, LOUISIANA.

16 Q ALL RIGHT. AND WHERE DO YOU WORK?

17 A UNITED TUGS.

18 Q WHAT KIND OF BUSINESS IS UNITED TUGS?

19 A IT'S AN OFFSHORE TUG BUSINESS. WE TOW OFFSHORE BARGES

20 OFFSHORE TO THE RIGS AND STUFF.

21 Q I'M SORRY. SAY THAT AGAIN?

22 A WE TOW THE BARGES TO THE RIGS AND STUFF FOR THE OIL FIELD.

23 Q OKAY. IS THAT PRETTY HARD WORK?

24 A IT'S NOT REAL HARD, NO.

25 Q YOU SPEND SOME TIME OUT ON A BOAT. HOW LONG ARE YOU OUT ON

RON HARRIS - DIRECT BY MR. MOYER

1 THE WATER FOR ANY ONE TIME?

2 A USUALLY TWO OR THREE MONTHS.

3 Q AND HOW LONG HAVE YOU WORKED FOR UNITED TUG?

4 A TWELVE YEARS.

5 Q WHAT DO YOU DO FOR THEM?

6 A I'M AN UNLICENSED ENGINEER.

7 Q SO AS AN ENGINEER WHAT ARE YOUR DUTIES ON THE TUG?

8 A THE MAINTENANCE ON THE ENGINES, THE ENGINE ON THE WINCH,
9 THINGS LIKE THAT.

10 Q OKAY. BEFORE YOU WORKED FOR UNITED TUG WERE YOU ALSO IN
11 OTHER SHIPPING RELATED INDUSTRY PRIOR TO THAT?

12 A YES, SIR. I WORKED FOR AMERICAN GULF, PUSH BOATS INSIDE THE
13 RIVER.

14 Q OKAY. LET ME TAKE YOU TO JUNE THE 7TH OF 2006. WHERE WERE
15 YOU ON THAT DAY?

16 A I WAS WITH GARY MICHAEL POWELL AND SUSAN GALLOWAY.

17 Q WHAT BROUGHT YOU TO SOUTH CAROLINA?

18 A MY FRIEND, BILLY PARRIS, THAT I WORKED WITH AT UNITED TUGS.
19 HE LIVES IN PICKENS.

20 Q SO YOU CAME UP HERE WITH HIM?

21 A YES, SIR.

22 Q YOU HAD BEEN HERE BEFORE?

23 A YES, SIR.

24 Q AND SO YOU MENTIONED EARLIER WORK A LOT. YOU'RE IN A BOAT
25 FOR TWO EVEN UP TO THREE MONTHS AT TIMES. DO YOU GET, LIKE,

RON HARRIS - DIRECT BY MR. MOYER

1 EXTENDED PERIODS OF TIME OFF THEN?

2 A TWO WEEKS.

3 Q NOW, SO DID YOU STAY WITH HIS FAMILY WHEN YOU WERE HERE?

4 A EXCUSE ME?

5 Q DID YOU STAY WITH BILLY PARRIS AND HIS FAMILY WHILE YOU WERE
6 HERE?

7 A YES.

8 Q ALL RIGHT. WHAT ABOUT JUNE THE 7TH OF 2006, THE NIGHT
9 PREVIOUS, WHERE DID YOU SPEND THE NIGHT THEN?

10 A AT SUSAN GALLOWAY'S HOUSE.

11 Q HOW LONG HAD YOU BEEN IN SOUTH CAROLINA AT THAT POINT?

12 A I THINK IT WAS ONLY A COUPLE DAYS, MAYBE A FEW DAYS.

13 Q AND WAS BILLY PARRIS -- HE HAD A GIRLFRIEND?

14 A YEAH, HE MARRIED HER THIS YEAR.

15 Q OKAY. AND SO YOU WERE LEAVING HIM ALONE WITH HIS GIRLFRIEND
16 THAT NIGHT?

17 A YES, SIR.

18 Q ALL RIGHT. NOW, HOW DID YOU KNOW MIKE POWELL?

19 A HE'S A FRIEND OF BILLY PARRIS' AND HIS BROTHERS. JUST ABOUT
20 EVERYBODY I MET AROUND THERE KNOWS MIKE POWELL. SO I MET HIM SIX
21 OR SEVEN YEARS AGO.

22 Q ALL RIGHT. AND SUSAN GALLOWAY, WHEN DID YOU MEET HER?

23 A JUNE 6TH, THE NIGHT WE GOT TO OUR HOUSE.

24 Q OKAY. DID YOU KNOW HER HUSBAND?

25 A NO, SIR. I MET HIM THE MORNING OF JUNE 7TH WHEN HE WOKE UP.

RON HARRIS - DIRECT BY MR. MOYER

1 Q SO HE WAS THERE THAT NIGHT AS WELL?

2 A YES.

3 Q NOW, DID YOU SEE -- ALL RIGHT. NOW, WHAT TIME DID YOU LEAVE
4 THE GALLOWAY RESIDENCE ON JUNE THE 7TH, AROUND WHAT TIME OF DAY
5 WAS IT?

6 A MAYBE AROUND NOON OR AFTERNOON. I'M NOT SURE.

7 Q ALL RIGHT. AND DID YOU LEAVE IN A CAR?

8 A YES.

9 Q AND WHERE WERE YOU HEADED?

10 A WE WERE HEADED -- HE WAS GOING TO BRING ME BACK TO BILLY
11 PARRIS' HOUSE, GARY WAS.

12 Q ALL RIGHT. SO WHO WAS DRIVING THE CAR?

13 A GARY POWELL.

14 Q OKAY. DID YOU GO RIGHT HOME OR WAS THERE ANYWHERE ELSE---

15 A NO. WE STOPPED AT A GAS STATION AND PUT GAS IN THE CAR AND
16 GOT SOME GATORADES AND A DR. PEPPER, AND THEN LEFT THERE AND THEN
17 STOPPED AT A PAWN SHOP.

18 Q AND HAD YOU EVER BEEN TO THIS PAWN SHOP BEFORE AS FAR AS YOU
19 KNOW?

20 A I HAD NEVER BEEN IN THAT AREA AT ALL BEFORE.

21 Q OKAY. SO YOU WEREN'T FAMILIAR WITH THAT AREA?

22 A NO, SIR.

23 Q THE GALLOWAY RESIDENCE, DO YOU KNOW WHERE THAT IS?

24 A NO, SIR.

25 Q YOU COULDN'T EVEN TELL US THAT? HOW ABOUT BILLY PARRIS,

RON HARRIS - DIRECT BY MR. MOYER

1 WHERE DID HE LIVE?

2 A HE LIVES IN PICKENS. HIS MOTHER LIVES ON OLD FOX RIDGE
3 ROAD. I THINK HIS STREET WHERE HE IS LIVING NOW IS CIRCLE DRIVE
4 OR CIRCLE STREET OR SOMETHING LIKE THAT.

5 Q OKAY. ALL RIGHT. NOW, WHEN YOU GOT TO THE PAWN SHOP WHAT
6 HAPPENED THERE?

7 A SUSAN GOT OUT OF THE CAR AND WENT INTO THE PAWN SHOP.

8 Q WHERE HAD SHE BEEN IN THE CAR?

9 A SHE WAS SITTING IN THE FRONT PASSENGER SIDE.

10 Q OKAY. WHERE WERE YOU SITTING?

11 A RIGHT BEHIND HER.

12 Q WHAT ABOUT YOU AND MIKE, WHAT DID Y'ALL DO?

13 A WE STAYED IN THE CAR. WE WERE SMOKING A CIGARETTE AND YOU
14 COULDN'T SMOKE INSIDE.

15 Q DID YOU EVER GO IN THE PAWN SHOP?

16 A NO, SIR.

17 Q ALL RIGHT. WHAT HAPPENED WHILE YOU WERE THERE WAITING ON
18 SUSAN?

19 A A CAR PULLED UP AND A BLACK MALE GOT OUT AND WENT INTO THE
20 PAWN SHOP.

21 Q OKAY. NOW, WHAT DID THE CAR LOOK LIKE THAT SHOWED UP?

22 A IT WAS LIKE A BLUE, LIKE, OLDER MODEL CUTLASS LOOKING CAR
23 KIND OF.

24 Q LET ME SHOW YOU STATE'S EXHIBIT NUMBER 9. CAN YOU RECOGNIZE
25 WHAT'S IN THAT PHOTOGRAPH?

RON HARRIS - DIRECT BY MR. MOYER

1 A YES. THAT LOOKS LIKE THE CAR THAT WAS AT THE PAWN SHOP.

2 Q OKAY. ALL RIGHT. NOW, WHEN THIS CAR PULLED UP WHAT DID YOU
3 SAY HAPPENED?

4 A THE BLACK MALE GOT OUT OF THE PASSENGER SIDE AND WENT IN.

5 Q DID YOU NOTICE HOW MANY PEOPLE WERE IN THE CAR?

6 A THERE WERE THREE.

7 Q WHERE WERE THEY ALL?

8 A THERE WAS HIM AND A WOMAN IN THE FRONT, AND THERE WAS
9 SOMEONE IN THE BACK SEAT.

10 Q ALL RIGHT. OKAY. NOW, SO HE WALKED INTO THE PAWN SHOP.
11 DID YOU SEE HIM ANY MORE?

12 A HE HAD COME BACK OUT AND HIM AND ONE OF THE WOMEN WENT
13 INSIDE AND HE WAS CARRYING A JACK.

14 Q WHEN YOU SAY A JACK, ARE YOU TALKING ABOUT A -- CAN YOU
15 DESCRIBE THE JACK A LITTLE BIT?

16 A IT LOOKED TO ME TO BE LIKE A HYDRAULIC JACK FOR LIKE A CAR,
17 JACKING UP A CAR OR SOMETHING IS WHAT IT LOOKED TO ME TO BE. I'M
18 NOT SURE IF THAT'S EXACTLY WHAT IT WAS.

19 Q OKAY. NOW, SO THEY WENT IN THE PAWN SHOP. AND THEN WHAT'S
20 THE NEXT THING YOU NOTICED?

21 A SUSAN CAME OUT AND SHE GOT IN THE CAR AND SHE HAD SAID THAT
22 "HE GAVE ME \$40 FOR THE NECKLACE," AND SHE HAD TOLD GARY TO WAIT.

23 Q ALL RIGHT. NOW, DID YOU SEE THE GUY FROM THE BLUE CAR ANY
24 MORE?

25 A YES, HE CAME BACK OUT.

RON HARRIS - DIRECT BY MR. MOYER

1 Q WHAT HAPPENED AFTER HE CAME OUT? TO HIM AND THEN GOT BACK IN
2 THE CAR AND SAID TO FOLLOW HIM.

3 A SUSAN GOT OUT AND TALKED

4 Q DID YOU OVERHEAR THE CONVERSATION SHE HAD WITH HIM?

5 A NO, SIR.

6 Q ALL RIGHT. SO SHE GOT BACK IN THE CAR. DID Y'ALL LEAVE?

7 A YES, SIR.

8 Q AND TELL US ABOUT HOW YOU LEFT. DID YOU LEAVE ALONE OR DID
9 YOU SEE THE BLUE CAR ANY MORE?

10 A WE BACKED OUT AND PULLED AWAY A LITTLE WAYS, LIKE UP TOWARDS
11 THE STREET TO GET OUT OF THE PARKING LOT THERE. AND THEN THE
12 BLUE CAR WENT PASSED US AND WE HAD FOLLOWED THEM.

13 Q OKAY. NOW, WAS THERE ANY TALK IN THE CAR ABOUT WHAT WAS
14 GOING TO TAKE PLACE?

15 A I HEARD HER SAY SOMETHING ABOUT CRACK.

16 Q WHEN WAS THAT?

17 A ACTUALLY, THAT WAS BEFORE WE EVEN LEFT HER HOUSE, I THINK.

18 Q AND WHO WAS SHE TALKING TO ABOUT THAT?

19 A GARY.

20 Q ALL RIGHT. NOW, WHERE DID Y'ALL GO WHEN YOU LEFT THE PAWN
21 SHOP?

22 A WE WENT UNDER A BRIDGE -- I THINK IT WAS RAILROAD TRACKS --
23 AND HAD TAKEN A LEFT AND A RIGHT AND THE BLUE CAR STOPPED. THERE
24 WAS A CHURCH RIGHT THERE. AND GARY STOPPED KIND OF BEHIND HIM
25 BUT ON THE DRIVER'S SIDE.

RON HARRIS - DIRECT BY MR. MOYER

1 Q OKAY. AND DESCRIBE THAT A LITTLE BIT. CAN YOU GIVE US AN
2 IDEA HOW CLOSE Y'ALL'S CAR WAS TO THE BLUE CAR?

3 A LIKE HER -- SUSAN'S DOOR WOULD HAVE BEEN LIKE KIND OF ABOUT
4 WHERE THE BACK -- WHERE THE BUMPER, BACK BUMPER TO HIS CAR WAS.

5 Q OKAY.

6 A LIKE AROUND THAT AREA.

7 Q AND WAS THERE MUCH ROOM? LET'S SAY THIS IS THE BLUE CAR AND
8 THIS IS Y'ALL'S CAR. WAS THERE---

9 A IT WAS PRETTY CLOSE. IT WASN'T -- I CAN'T REMEMBER EXACTLY
10 HOW FAR, BUT IT WAS CLOSE.

11 Q ENOUGH ROOM FOR A PERSON TO WALK THROUGH?

12 A YES.

13 Q OKAY. NOW, WHAT HAPPENED WHEN THE BLUE CAR STOPPED AND THEN
14 Y'ALL STOPPED?

15 A THE BLACK MALE GOT OUT OF THE CAR.

16 Q IS THIS THE SAME MAN YOU HAD SEEN GO IN THE PAWN SHOP A
17 LITTLE BIT EARLIER?

18 A YES, SIR.

19 Q AND WHICH SIDE OF THE CAR DID HE GET OUT?

20 A THE PASSENGER SIDE.

21 Q AND WHAT DID HE DO WHEN HE GOT OUT OF THE CAR?

22 A HE CAME AROUND THE BACK OF THE CAR AND WALKED UP TO THE CAR
23 WITH A GUN IN HIS HAND---

24 Q AND WHAT WAS---

25 A ---POINTED AT US.

RON HARRIS - DIRECT BY MR. MOYER

1 Q OKAY. I STARTED TO INTERRUPT YOU THERE WHILE YOU WERE
2 TALKING.

3 TELL US AGAIN WHAT HE DID.

4 A HE CAME AROUND THE BACK OF THE CAR WITH A GUN IN HIS HAND.
5 HE HAD IT LIKE TOWARD HIS SIDE HERE (INDICATING) POINTED AT US.

6 Q WHEN DID YOU NOTICE THE GUN?

7 A WHEN HE CAME AROUND THE BACK OF THE CAR.

8 Q NOW, WAS HE SAYING ANYTHING?

9 A HE WAS SAYING, JUST GIVE ME THE MONEY AND EVERYTHING WILL BE
10 OKAY.

11 Q AND WHAT WAS YOUR REACTION? AT WHAT POINT DID HE START
12 SAYING THIS?

13 A AS HE WAS WALKING UP TO GARY'S CAR.

14 Q SO BEFORE HE HAD ACTUALLY STOPPED IN FRONT OF Y'ALL'S CAR?

15 A (INDICATES AFFIRMATIVE NOD)

16 Q AND WHAT WAS YOUR REACTION WHEN YOU SAW THE GUN AND YOU
17 HEARD THIS?

18 A I WAS IN SHOCK. I JUST SAT THERE AND -- I DON'T REALLY
19 REMEMBER MOVING OR ANYTHING. I JUST WAS SCARED.

20 Q HAD ANYTHING LIKE THIS EVER HAPPENED BEFORE?

21 A NO, SIR.

22 Q WHEN HE GOT OVER TO Y'ALL'S CAR WHERE DID HE GO?

23 A TO SUSAN'S WINDOW.

24 Q AND WHAT DID HE DO WHEN HE GOT TO SUSAN'S WINDOW? I'M
25 SORRY. BEFORE I ASK YOU THAT QUESTION, WAS HER WINDOW UP OR

RON HARRIS - DIRECT BY MR. MOYER

1 DOWN?

2 A DOWN. ALL THE WINDOWS WERE DOWN.

3 Q DID Y'ALL HAVE AIR CONDITIONING IN THE CAR?

4 A I DON'T KNOW IF THERE WAS AIR CONDITIONING IN THE CAR OR
5 NOT. I DON'T THINK THERE WAS. I THINK THAT'S WHY WE HAD THE
6 WINDOWS DOWN.

7 Q OKAY. AND WHAT HAPPENED WHEN HE GOT OVER TO SUSAN'S WINDOW?

8 A HE WAS STANDING BY HER DOOR. ALL I COULD SEE WAS, LIKE, THE
9 BACK OF HER HEAD, BECAUSE I WAS BEHIND HER IN THE SEAT. AND HE
10 WAS TELLING HER, "JUST GIVE ME THE MONEY AND EVERYTHING WILL BE
11 OKAY."

12 Q I'M SORRY. WHO WAS SAYING THAT?

13 A THE BLACK MALE.

14 Q OKAY. AND HE WAS SAYING WHAT AGAIN?

15 A HE WAS SAYING, "JUST GIVE ME THE MONEY AND EVERYTHING WILL
16 BE OKAY." AND SHE KEPT SAYING NO. AND THEN---

17 Q WHAT WAS MIKE DOING?

18 MR. CREECH: I OBJECT TO THE LAST COMMENT AS TO WHAT SHE
19 WAS SAYING. HEARSAY.

20 MR. MOYER: IT WOULD BE BOTH 803 -- 2 AND 3 -- EXCITED
21 UTTERANCE AND---

22 THE COURT: OKAY. I OVERRULE THE OBJECTION.

23 Q SO SHE SAID NO MORE THAN ONE TIME?

24 A YEAH. I DON'T KNOW HOW MANY TIMES, BUT IT WAS MORE THAN
25 ONE. IT WAS A FEW TIMES. SHE WAS SAYING, LIKE, "NO. NO."

RON HARRIS - DIRECT BY MR. MOYER

1 Q AND DID HE REPEAT WHAT HE HAD SAID TO HER AGAIN?

2 A YES.

3 Q AND WHAT WAS MIKE DOING?

4 A I DON'T THINK HE NOTICED RIGHT AT THE TIME BECAUSE I LOOKED
5 OVER AT HIM AND HE HAD LOOKED OUT THE PASSENGER SIDE AND, LIKE,
6 FREAKED OUT, YOU KNOW. HE SEEN THE GUN AT THAT POINT, I KNOW,
7 BECAUSE I SEEN HIM JUMP A LITTLE. AND HE TRIED TO PUT THE CAR IN
8 GEAR, AND THE BLACK MALE TOLD HIM, "DON'T DO IT."

9 Q AND WHAT DID HE DO WHEN THE MAN SAID, "DON'T DO IT"?

10 A HE MOVED HIS HAND AWAY FROM THE STICK SHIFT.

11 Q AND WHAT WOULD THIS MAN DO WHEN HE MOVED HIS HAND AWAY FROM
12 THE STICK SHIFT?

13 A HE WAS TRYING TO TELL HER TO "GIVE ME THE MONEY AND
14 EVERYTHING WOULD BE OKAY."

15 Q ALL RIGHT. AND THEN WHAT EVENTUALLY HAPPENED?

16 A HE STARTED SHOOTING.

17 Q OKAY. AND DID HE -- WHO DID HE -- COULD YOU TELL WHO HE
18 SHOT AT FIRST OR WHERE HE SHOT?

19 A IT LOOKED LIKE HE SHOT SUSAN FIRST, LIKE HE WAS SHOOTING
20 DOWN TOWARD SUSAN.

21 Q AND THEN WHAT DID HE DO AFTER HE SHOT SUSAN?

22 A THEN HE SHOT GARY.

23 Q DID YOU SEE HIM POINT THE GUN AT GARY AND SHOOT?

24 A YES.

25 Q THEN WHAT DID HE DO AFTER HE SHOT GARY?

RON HARRIS - DIRECT BY MR. MOYER

1 A HE TURNED AND, LIKE, LOOKED DOWN LIKE THIS OVER THE TOP OF
2 SUSAN'S HEAD AND POINTED THE GUN AT ME, AND I DOVE OVER TO TRY TO
3 GET OUT THE OTHER DOOR, BUT---

4 Q WHERE DID HE POINT THE GUN AT YOU, WHAT PART OF YOUR BODY?

5 A MY HEAD.

6 Q AND WHERE WAS HE WHEN HE DID THIS?

7 A HE WAS STILL AT SUSAN'S WINDOW.

8 Q AND SO WHAT DID HE DO WHEN HE POINTED THE GUN AT YOUR HEAD?

9 A I DOVE, AND THEN I TRIED GETTING OUT THE OTHER DOOR. BUT
10 THE SEAT BELT WAS ON, AND I HEARD ANOTHER GUNSHOT.

11 Q NOW, WHEN HE CAME UP TO YOUR CAR DID HE EVER SHOW ANY DRUGS
12 OR NARCOTICS OR ANYTHING?

13 A NO, SIR.

14 Q DID HE EVER SAY ANYTHING ABOUT DRUGS?

15 A NO, SIR.

16 Q DID YOU EVER SAY ANYTHING DURING THIS WHOLE ORDEAL?

17 A NO, SIR.

18 Q DO YOU -- NOW, WHILE HE WAS AT THE WINDOW WITH GARY MICHAEL
19 POWELL AND SUSAN GALLOWAY DO YOU REMEMBER IF HE WAS PAYING MUCH
20 ATTENTION TO YOU BACK IN THE BACK SEAT?

21 A I DIDN'T NOTICE HIM LOOKING REALLY BACK AT ME. I -- HE WAS
22 TRYING -- I GUESS HE WAS TRYING TO GET THE MONEY FROM SUSAN.

23 Q AND DO YOU REMEMBER WHAT YOU WERE DOING WHILE HE WAS HAVING
24 THAT INTERACTION WITH---

25 A I WAS WATCHING -- I WAS LOOKING AT THE GUN AND AT HIM AND...

RON HARRIS - DIRECT BY MR. MOYER

1 Q HOW LONG DID THIS ORDEAL TAKE PLACE?

2 A IT WASN'T LONG. I COULDN'T TELL YOU EXACTLY HOW LONG, BUT
3 IT WAS FAST.

4 Q OKAY. NOW, AFTER YOU DUCKED DOWN AND YOU HEARD THE SHOT,
5 WHAT HAPPENED NEXT?

6 A I HEARD THE CAR PULL AWAY, AND I SAT UP. I FELT SOMETHING
7 IN MY STOMACH AND THERE WAS A HOLE IN MY SHIRT. AND I LOOKED
8 OVER AT GARY -- I COULD SEE BETWEEN THE SEATS -- AND HE WAS
9 HOLDING HIS HANDS AND HE WAS BLEEDING REAL BAD. SUSAN WAS
10 ROCKING BACK AND FORTH AND, LIKE, MOANING. SHE -- IT'S HARD TO
11 EXPLAIN THE SOUNDS, BUT -- AND I THOUGHT I HAD BEEN SHOT BECAUSE
12 I FELT SOMETHING, BUT I HAD NO BLOOD ON ME OR...

13 Q OKAY. WAS THERE ANY ATTEMPT TO LEAVE THE AREA?

14 A I TOLD GARY, "GO SOMEWHERE WHERE WE CAN GET HELP," AND HE --
15 THE CAR WOULDN'T GO.

16 Q WHEN YOU SAT UP AFTER YOU HEARD THE CAR GOING AWAY DID YOU
17 SEE THE BLUE CAR ANY MORE?

18 A NO, SIR.

19 Q ALL RIGHT. HOW LONG DID YOU STAY IN THE CAR THEN?

20 A I DON'T RECALL. ANOTHER CAR PULLED UP AND THERE WAS TWO
21 BLACK LADIES IN IT, AND THEY ASKED WHAT HAPPENED. I TOLD THEM WE
22 HAD BEEN SHOT AND THEY SAID, "DO YOU NEED HELP?" AND I SAID,
23 "YES." AND THEY SAID, "WE'RE GOING TO GO GET HELP." AND I THINK
24 THEY BACKED BACK UP TOWARDS THE STREET BACK BEHIND WHERE WE WERE.

25 Q OKAY. AND SO YOU STAYED IN THE CAR A LITTLE BIT LONGER

RON HARRIS - DIRECT BY MR. MOYER

1 AFTER THAT?

2 A YES. IT SEEMED LIKE IT JUST WAS TAKING FOREVER, AND I GOT
3 OUT OF THE CAR AND I RAN OVER TO -- THERE WAS A RESTAURANT ON THE
4 RIGHT SIDE, AND I RAN ACROSS THE STREET. THERE WAS A GENTLEMAN
5 GETTING OUT OF HIS CAR, GOING INTO THE LITTLE RESTAURANT, AND I
6 ASKED HIM IF HE HAD A CELL PHONE, AND HE SAID YES. I SAID,
7 "COULD YOU CALL 911? WE'VE JUST BEEN SHOT." AND HE GOT ON THE
8 PHONE AND CALLED 911.

9 Q AND WHAT DID YOU DO AFTER THIS MAN CALLED 911?

10 A I WENT INTO THE RESTAURANT. I TOLD THEM THAT WE HAD BEEN
11 SHOT, MY FRIENDS WERE SHOT AND BLEEDING. I DIDN'T KNOW WHERE I
12 WAS. I WAS SCARED, AND I WAS TRYING TO FIND MY FRIEND'S PHONE
13 NUMBERS, BILLY'S PHONE NUMBERS, SO I COULD TELL HIM WHAT HAPPENED
14 SO HE COULD COME. AND I WAITED THERE UNTIL THE POLICE CAME, AND
15 THEN I WENT BACK ACROSS THE STREET AND TOLD THE POLICE THAT I WAS
16 IN THE CAR.

17 Q WHEN YOU SPOKE TO THE POLICE OFFICER DID YOU DESCRIBE THE
18 CAR YOU HAD SEEN?

19 A YES.

20 Q DID YOU TELL HIM ABOUT WHERE YOU HAD FIRST SEEN THIS PERSON?

21 A YES, SIR.

22 Q BEING AT THE PAWN SHOP, RED'S PAWN SHOP?

23 A YES. I DIDN'T KNOW IT WAS RED'S PAWN SHOP, BUT I TOLD HIM
24 THE PAWN SHOP ON THE OTHER SIDE OF THE BRIDGE. AND HE SAID RED'S
25 PAWN SHOP RIGHT AWAY.

RON HARRIS - CROSS BY MR. CREECH

1 Q THAT'S PRETTY CLOSE THEN TO WHERE Y'ALL WERE---

2 A I DON'T THINK IT WAS ABOUT THREE OR FOUR BLOCKS.

3 Q NOW, THE PERSON WHO DID THIS TO YOU, HAD YOU EVER SEEN HIM
4 BEFORE?

5 A NO, SIR.

6 Q OKAY. DID YOU GET A GOOD ENOUGH LOOK AT HIM---

7 A YES, SIR.

8 Q ---TO BE ABLE TO RECOGNIZE HIM? CAN YOU RECOGNIZE HIM NOW
9 OR...

10 A YES, SIR.

11 Q COULD YOU POINT HIM OUT TO THE JURY?

12 A SITTING RIGHT THERE IN THE WHITE SHIRT (INDICATING THE
13 DEFENDANT). HIS HAIR IS DIFFERENT THOUGH.

14 Q HIS HAIR -- HOW -- IN WHAT WAY IS IT DIFFERENT?

15 A IT WAS LONGER. HE HAD -- I DON'T KNOW IF YOU CALL THEM
16 CURLS OR DREADLOCKS. IT WAS SOMETHING TO THAT TYPE.

17 MR. MOYER: OKAY. PLEASE ANSWER ANY QUESTIONS THE DEFENSE
18 WOULD HAVE.

19 THE COURT: CROSS EXAMINATION, MR. CREECH.

20 CROSS EXAMINATION BY MR. CREECH:

21 Q MR. HARRIS, YOU SAID THAT MIKE FREAKED OUT; IS THAT RIGHT?

22 A WELL, HE JUST -- WHEN HE -- HE LOOKED AND SEEN THE GUN, HE
23 JUST KIND OF, YOU KNOW, WENT (DEMONSTRATING) LIKE THAT.

24 Q AND THEN HE TOOK HIS HAND OFF THE GEAR -- OR HE REACHED FOR
25 THE GEAR?

RON HARRIS - CROSS BY MR. CREECH

1 A HE REACHED FOR THE GEAR SHIFT.

2 Q DO YOU KNOW IF HE REACHED IN HIS POCKET?

3 A NO, SIR. HE NEVER---

4 Q ALL RIGHT. NOW, DO YOU REMEMBER GIVING THE INVESTIGATORS A
5 STATEMENT IN THIS CASE?

6 A YES.

7 Q DID YOU EVER TELL THE INVESTIGATORS THAT MIKE FREAKED OUT?

8 A NO, I DON'T THINK -- I DON'T REMEMBER THAT.

9 Q YOU DON'T REMEMBER PUTTING THAT IN YOUR STATEMENT? YOU
10 DIDN'T TELL THEM THAT?

11 A I DON'T REMEMBER.

12 Q YOU DON'T REMEMBER. DO YOU REMEMBER IF -- DO YOU REMEMBER
13 IF YOU TOLD THEM THAT HE REACHED IN HIS POCKET?

14 A NO, I DON'T THINK I EVER SAID THAT.

15 Q DID YOU EVER TELL THEM THAT HE THEN REACHED FOR THE GEAR?

16 A I THOUGHT I TOLD HIM THAT HE WAS REACHING FOR IT TO TRY TO
17 GET -- TO LEAVE, YES.

18 Q OKAY. DID THE -- WHERE YOU WERE SITTING WERE YOU ABLE TO
19 SEE SUSAN GALLOWAY?

20 A JUST THE BACK OF HER HEAD.

21 Q OKAY. AND DO YOU REMEMBER IF YOU TOLD THE INVESTIGATORS YOU
22 COULD SEE THE BACK OF HER HEAD?

23 A I DON'T REMEMBER.

24 Q YOU DON'T REMEMBER?

25 A NO, I DON'T REMEMBER IF THEY ASKED ME. I DON'T REMEMBER IF

RON HARRIS - CROSS BY MR. CREECH

1 THE INVESTIGATORS EVER ASKED ME "HOW MUCH OF SUSAN COULD YOU
2 SEE?" OR "COULD YOU SEE THE BACK OF HER HEAD?"

3 Q WAS THE -- WERE YOU ABLE TO SEE SUSAN'S ARM?

4 A NO.

5 Q WERE YOU ABLE TO SEE IF SUSAN HAD ANY MONEY?

6 A NO.

7 Q WERE YOU ABLE TO SEE IF THIS BLACK MALE EVER GOT ANY MONEY?

8 A NO, SIR, I NEVER SEEN IF HE GOT MONEY OR NOT.

9 Q WHEN YOU SAY WHEN HE GOT OUT OF THE CAR YOU WERE ABLE TO SEE
10 HIM AS SOON AS HE GOT OUT OF THE CAR THAT HE HAD A GUN; IS THAT
11 RIGHT?

12 A AFTER HE WALKED AROUND THE BACK OF HIS CAR.

13 Q AND DID YOU TELL THE INVESTIGATORS THAT?

14 A YES.

15 Q THAT YOU COULD SEE IT AS SOON AS HE WALKED AROUND THE CAR;
16 IS THAT RIGHT?

17 A I'M PRETTY SURE I TOLD THEM WHEN HE WALKED UP TO THE CAR HE
18 HAD A GUN IN HIS HANDS.

19 Q I'M NOT TALKING ABOUT WALKING UP TO THE CAR. WHEN HE WALKED
20 AROUND HIS CAR.

21 A WELL, THAT'S WHAT HE WAS DOING, HE WAS WALKING UP TO THE CAR
22 FROM BEHIND HIS CAR.

23 Q DID YOU TELL THE INVESTIGATORS THAT YOU COULD SEE A GUN IN
24 HIS HAND WHEN HE WALKED AROUND HIS CAR?

25 A I'M PRETTY SURE I DID.

RON HARRIS - CROSS BY MR. CREECH

1 Q OKAY. AND DID THEY PUT THIS IN YOUR STATEMENT?

2 A I DON'T KNOW, SIR.

3 Q CAN YOU LOOK AT THAT AND TELL ME IF THAT'S YOUR STATEMENT?

4 A (COMPLIES) YES, SIR. (PAUSE) YES, SIR, THIS IS---

5 Q IT SAYS WHEN HE WALKED UP TO THE CAR---

6 A NO. IT SAYS, "I SAW HE HAD A GUN WHEN HE GOT UP TO CAR."

7 IN MY STATEMENT IT SAYS. (PAUSE)

8 Q (READING STATEMENT AND INDICATING)

9 A THAT'S WHAT I JUST...

10 Q YOU SAID, "I SAW HE HAD A GUN WHEN HE GOT UP TO CAR." I'M
11 SAYING WHEN HE WALKED AROUND THE SIDE OF HIS CAR, YOU TOLD
12 INVESTIGATORS THAT. BUT THAT PART IS NOT IN THE STATEMENT; IS
13 THAT RIGHT?

14 A NO, IT ISN'T.

15 Q OKAY. SO THERE WAS THAT THAT THEY DID NOT PUT IN YOUR
16 STATEMENT. YOU KNEW THIS DAY THAT THEY WERE GOING TO LOOK TO BUY
17 CRACK; IS THAT RIGHT?

18 A AT THE PAWN SHOP AFTER THAT, YES. AT THAT POINT I DID.

19 Q BUT YOU KNEW THAT MORNING THAT THEY HAD BEEN TALKING ABOUT
20 BUYING CRACK.

21 A I JUST HEARD SOMETHING SAID ABOUT CRACK.

22 Q ALL RIGHT. SO DID YOU KNOW SUSAN GALLOWAY SMOKED CRACK?

23 A I DIDN'T KNOW HER TILL THAT PREVIOUS NIGHT. NO, I DIDN'T
24 KNOW.

25 Q DID YOU KNOW MIKE POWELL SMOKED CRACK?

RON HARRIS - CROSS BY MR. CREECH

1 A NO, SIR.

2 Q WHEN YOU HEARD THEM TALKING ABOUT SMOKING CRACK YOU STILL
3 WANTED TO HANG OUT WITH THEM?

4 A HE WAS BRINGING ME HOME -- OR BACK TO BILLY'S HOUSE.

5 Q ALL RIGHT. YOU COULDN'T CALL BILLY TO COME AND PICK YOU UP?

6 A I COULD HAVE, I GUESS, YEAH.

7 Q IT NEVER CONCERNED YOU THAT YOU WERE GOING WITH TWO PEOPLE
8 TO BUY CRACK COCAINE?

9 A I DIDN'T KNOW THAT WE WERE UNTIL AFTER THE PAWN SHOP, RIGHT
10 AFTER WE GOT TO THE PAWN SHOP.

11 Q YOU NEVER SAID, "GET ME OUT OF HERE. TAKE ME HOME. I DON'T
12 WANT ANY PART OF THIS"?

13 A NO, SIR.

14 Q SO YOU WILLINGLY, VOLUNTARILY WENT WITH THEM; IS THAT RIGHT?

15 A YES, SIR.

16 Q DID THE -- WHEN THIS BLACK MALE GOT OUT OF THE CAR YOU SAY
17 YOU SAW HIM WITH A GUN AT THAT POINT. DID YOU SEE HIM WITH A RED
18 BAG?

19 A NO, SIR.

20 Q NOT AT ALL?

21 A NO, SIR.

22 Q AND YOU HAD MONEY ON YOU AS WELL; IS THAT CORRECT?

23 A YES, SIR.

24 Q HOW MUCH MONEY DID YOU HAVE ON YOU?

25 A I HAD OVER \$200 IN MY POCKET.

RON HARRIS - CROSS BY MR. CREECH

1 Q YOU HAD \$200 IN YOUR POCKET. I'M SORRY. YOU HAD \$200 IN
2 CASH IN YOUR POCKET?

3 A YEAH, OVER 200.

4 Q AND YOU KNEW THEY WERE GOING TO BUY CRACK?

5 A YES, SIR.

6 Q YOU WEREN'T GOING TO USE THAT \$200 TO BUY CRACK, WERE YOU?

7 A NO, SIR.

8 Q YOU WEREN'T GOING TO LOAN THEM \$200 SO THAT THEY COULD BUY
9 CRACK, WERE YOU?

10 A NO, SIR.

11 Q DID YOU PULL THAT \$200 OUT AND PUT IT IN YOUR LAP WHEN HE
12 WALKED UP TO THE DOOR?

13 A NO, SIR.

14 Q YOU NEVER TOLD HIM, "I WANT \$200 WORTH OF CRACK"?

15 A NO, SIR.

16 Q ARE YOU SURE?

17 A YES, SIR.

18 Q YOU NEVER REACHED IN YOUR LEFT POCKET?

19 A NO, SIR.

20 Q YOU NEVER TRIED TO GET A GUN?

21 A NO, SIR.

22 Q DID YOU HAVE A GUN ON YOU THAT DAY?

23 A NO, SIR.

24 Q WERE YOU AWARE THAT GARY MICHAEL POWELL IN HIS CAR THERE
25 WERE LATER FOUND TWO .22 CALIBER BULLETS?

RON HARRIS - CROSS BY MR. CREECH

1 A I WAS TOLD THAT A FEW MONTHS AGO. I DIDN'T KNOW AT THE
2 TIME.

3 Q THERE WERE TWO .22 CALIBER BULLETS FOUND IN HIS CAR.

4 A I DIDN'T KNOW THAT AT THE TIME, BUT I DO NOW.

5 Q DID YOU KNOW IF GARY MICHAEL POWELL HAD GUNS AT HIS HOUSE?

6 A I DON'T THINK HE HAS A GUN.

7 Q DID HE HAVE ANY GUNS IN HIS CAR?

8 A NO, SIR, NOT THAT I SEEN.

9 Q HE NEVER GAVE YOU A GUN TO GET RID OF THAT DAY?

10 A NO, SIR.

11 Q YOU CAME ALL THE WAY UP FROM LOUISIANA. DID YOU DRIVE UP
12 HERE YOURSELF?

13 A NO. MY FRIEND BILLY DROVE.

14 Q AND BILLY TOLD YOU THAT NIGHT, ALL OF A SUDDEN, YOU'RE OUT
15 OF MY HOUSE. YOU'VE GOT TO GO STAY WITH MY FRIEND SUSAN---

16 A NO. THAT WAS MY CHOICE. I WENT WITH GARY.

17 Q DID YOU KNOW GARY MICHAEL POWELL?

18 A YES.

19 Q DID YOU CALL HIM GARY OR DID YOU CALL HIM MIKE?

20 A I KNOW HIM BY MIKE, BUT THEY TOLD ME HIS NAME'S GARY MICHAEL
21 POWELL. SO...

22 Q SO YOU WANTED TO GO SPEND THE NIGHT WITH HIM?

23 A YES. I LEFT WITH HIM.

24 Q BUT YOU DIDN'T SPEND THE NIGHT WITH HIM; IS THAT RIGHT?

25 A YES.

RON HARRIS - CROSS BY MR. CREECH

1 Q NOT AT HIS HOUSE?

2 A NO. NOT AT HIS HOUSE, NO.

3 Q DID YOU EVER TELL THE INVESTIGATORS THAT YOU SPENT -- YOU
4 WENT -- OR YOU SPENT THE NIGHT WITH MIKE POWELL?

5 A I DON'T RECALL. I THOUGHT I TOLD THEM WE WENT OVER TO
6 SUSAN'S THE NIGHT BEFORE.

7 Q AND YOU SPENT THE NIGHT AT SUSAN'S, A COMPLETE STRANGER TO
8 YOU, CORRECT?

9 A YES, WITH GARY. AND HER HUSBAND WAS THERE.

10 Q WHICH HAND DID YOU SAY THIS MAN HAD THE GUN IN?

11 A HIS RIGHT HAND.

12 Q HIS RIGHT HAND; IS THAT RIGHT? AND HE CAME AROUND THE CAR,
13 AROUND THE CORNER AND HE TURNED LIKE THIS AND YOU COULD SEE FROM
14 OVER THERE THAT HE HAD A GUN IN HIS HAND; IS THAT CORRECT?

15 A WHEN HE CAME TOWARDS THE CAR, HE WAS FACING US.

16 Q WHEN HE CAME LIKE THIS. BUT WHEN HE GOT OUT OF HIS CAR---

17 A I COULDN'T SEE WHEN HE GOT OUT.

18 Q WHEN HE CAME AROUND THE CORNER?

19 A YES. HE WAS WALKING STRAIGHT UP TO THE CAR.

20 Q AND HOW MUCH -- YOU SAID THERE WAS, WHAT, ABOUT FIVE FEET IN
21 BETWEEN?

22 A YES, I GUESS ABOUT THAT MUCH.

23 Q IF SOMEONE IN THAT CAR HAD HAD A GUN AND THIS YOUNG MAN WAS
24 STANDING AT THE WINDOW AND SOMEBODY PULLS IT OUT OR GETS IT OUT
25 QUICK ENOUGH AND HE TURNS AROUND HE'S GOING TO GET SHOT IN THE

RON HARRIS - CROSS BY MR. CREECH

1 BACK, ISN'T HE?

2 A YES.

3 Q AND YOU KNEW, EVERYONE IN YOUR CAR KNEW, THAT THE FRONT
4 DRIVER'S DOOR DID NOT OPEN; IS THAT RIGHT?

5 A I DIDN'T NOTICE THAT.

6 Q YOU DIDN'T NOTICE THAT WHEN HE GOT INTO THE---

7 A I NEVER---

8 Q ---PULLED INTO THE PARKING LOT?

9 A I NEVER KNEW ABOUT THE DOOR UNTIL RECENTLY.

10 Q DID YOU SEE THAT HE GOT OUT OF THE FRONT PASSENGER SIDE?

11 A YES, SIR.

12 Q AND HE WAS DRIVING?

13 A I DON'T REMEMBER IF HE WAS DRIVING OR NOT.

14 Q OKAY. YOU SAW TWO PEOPLE IN THE FRONT SEAT?

15 A YES, SIR.

16 Q YOU SAW HIM GET OUT AND YOU DIDN'T SEE HIM CRAWL OVER?

17 A NO.

18 Q YOU DIDN'T SEE HIM GET OUT OF THE DRIVER'S SIDE DOOR?

19 A NO, SIR. I SEEN HIM GET OUT OF THE PASSENGER SIDE DOOR.

20 Q BUT HIS DRIVER'S DOOR DID NOT OPEN; IS THAT CORRECT?

21 A THAT'S WHAT I'M TOLD NOW, YES.

22 Q WHEN SUSAN GOT BACK IN THE CAR WITH YOU HOW LONG WAS SHE --

23 FIRST OF ALL, HOW LONG WAS SHE IN THE PAWN SHOP?

24 A A FEW MINUTES. I'M NOT SURE. IT SEEMED LIKE A WHILE. LONG
25 ENOUGH TO SMOKE A CIGARETTE, I KNOW THAT.

RON HARRIS - CROSS BY MR. CREECH

1 Q AND WHEN SHE GOT BACK IN THE CAR DID SHE SAY, "WE'RE GOING
2 TO GO BUY SOME DOPE"?

3 A NO. SHE TOLD MIKE TO WAIT.

4 Q SHE TOLD MIKE TO WAIT?

5 A YEAH.

6 Q DO YOU KNOW WHY SHE SAID WAIT?

7 A I DON'T.

8 Q DO YOU THINK THAT SHE WAS WAITING ON THIS YOUNG MAN TO COME
9 OUT OF THE PAWN SHOP?

10 A WELL, THAT'S WHAT IT ENDED UP BEING, YES.

11 Q AND THEN MIKE POWELL FOLLOWED THIS CAR; IS THAT CORRECT?

12 A YES.

13 Q DID YOU EVER SAY, "I'M FEELING UNEASY ABOUT THIS"?

14 A I NEVER SAID ANYTHING.

15 Q YOU NEVER TOLD MIKE TO TAKE YOU HOME?

16 A NO.

17 Q AND YOU GATHERED ON THAT RIDE BETWEEN THE PAWN SHOP AND THE
18 LOCATION THAT THIS WAS GOING TO BE A DRUG DEAL; IS THAT CORRECT?

19 A YES, SIR.

20 Q IF HE WALKS UP AND SEES SOMEBODY FLINCH, OR REACH, OR FREAK
21 OUT, DO YOU THINK IT'S REASONABLE FOR HIM TO THINK THAT SOMEBODY
22 MIGHT HAVE A GUN?

23 MR. MOYER: OBJECTION, YOUR HONOR. SPECULATION.

24 THE COURT: SUSTAINED.

25 MR. CREECH: NO FURTHER QUESTIONS.

RON HARRIS - REDIRECT BY MR. MOYER

1 THE COURT: REDIRECT.

2 MR. MOYER: A COUPLE OTHER QUESTIONS.

3 REDIRECT EXAMINATION BY MR. MOYER:

4 Q LET ME MAKE SURE I WAS CLEAR ON THIS. WHICH SIDE OF THE
5 BLUE CAR WERE YOU ALL ON?

6 A EXCUSE ME?

7 Q WHICH SIDE TO THE BLUE CAR WERE YOU -- LIKE IF THIS IS THE
8 BLUE CAR GOING THIS DIRECTION AND Y'ALL WERE COMING BEHIND, DID
9 YOU GO TO THE RIGHT SIDE AND STOP OR TO THE LEFT SIDE AND STOP?

10 A WE WERE ON THE DRIVER'S SIDE, BUT NOT EXACTLY SIDE BY SIDE.
11 WE WERE TOWARDS THE BACK.

12 Q SO YOU CAME ALONG BEHIND AND THEN (DEMONSTRATING)...

13 A YEAH, LIKE THAT.

14 Q OKAY. DO YOU OWN A GUN?

15 A NO, SIR.

16 Q DO YOU HAVE A GOOD JOB?

17 A YES, SIR.

18 Q HOW MUCH MONEY DO YOU MAKE A YEAR?

19 A LAST YEAR I MADE OVER \$90,000.

20 Q OVER \$90,000.

21 MR. CREECH: YOUR HONOR, I OBJECT TO THE RELEVANCE OF THAT
22 QUESTION.

23 THE COURT: SUSTAINED.

24 Q DO YOU -- DO YOU HAVE DRUG TESTS ASSOCIATED WITH YOUR WORK?

25 A YES, SIR.

RON HARRIS - RECROSS BY MR. CREECH

1 MR. CREECH: OBJECTION, YOUR HONOR. RELEVANCE.

2 MR. MOYER: YOUR HONOR, THIS IS IN REPLY TO THE

3 INSINUATION---

4 THE COURT: OKAY. I'LL ALLOW IT. GO AHEAD.

5 A YES, SIR. THEY RANDOMLY CHECK.

6 Q AND WHAT HAPPENS IF YOU FLUNK A DRUG TEST?

7 A YOU'RE FIRED.

8 MR. MOYER: OKAY. NOTHING FURTHER.

9 RECROSS EXAMINATION BY MR. CREECH:

10 Q WERE YOU EVER TESTED AROUND THIS TIME PERIOD?

11 A I COULDN'T TELL YOU EXACTLY. NO, I'M NOT SURE.

12 Q AND YOU WERE UP HERE FOR TWO WEEKS?

13 A YES, SIR.

14 Q DID YOU KNOW IF YOU WERE GOING TO BE TESTED ANY TIME SOON?

15 A NO, SIR. THEY DON'T TELL YOU. THEY JUST COME TO THE BOAT
16 AND TEST EVERYBODY ON THE BOAT.

17 Q OKAY. AND -- BUT YOU CAN'T REMEMBER IF YOU HAD BEEN TESTED
18 OR IF YOU HAVE ANY -- HAVE YOU EVER HAD ANY POSITIVE TESTS?

19 A NO. I'VE NEVER HAD A POSITIVE TEST.

20 Q WELL, DID YOU THINK THAT MAYBE BECAUSE YOU WERE UP HERE IN
21 GREENVILLE FOR THE FIRST TIME YOU COULD TRY SOMETHING NEW?

22 A NO, SIR. THAT'S NOT WHAT I WAS THINKING.

23 MR. CREECH: NO FURTHER QUESTIONS, YOUR HONOR.

24 MR. MOYER: NOTHING FURTHER.

25 THE COURT: THANK YOU. YOU MAY STEP DOWN, SIR.

GARY MICHAEL POWELL - DIRECT BY MR. MOYER

(WITNESS STEPS DOWN AT 10:20 A.M.)

MR. MOYER: THE STATE CALLS GARY MICHAEL POWELL.

GARY MICHAEL POWELL, HAVING BEEN DULY
SWORN, TESTIFIED AS FOLLOWS:

MADAME CLERK: PLEASE STATE YOUR FULL NAME FOR THE RECORD.

WITNESS: GARY MICHAEL POWELL.

DIRECT EXAMINATION BY MR. MOYER:

Q ALL RIGHT. YOU MAY BE A TOUCH CLOSE TO THE MICROPHONE.

HOW OLD ARE YOU?

A FORTY-FOUR.

Q WHERE DO YOU LIVE?

A ROAD IN PICKENS.

Q HOW LONG HAVE YOU LIVED THERE?

A FORTY-FOUR YEARS.

Q DID YOU -- WERE YOU WORKING PRIOR TO THIS INCIDENT?

A YES, I WAS.

Q AND WHAT DID YOU DO AT THAT TIME?

A MOBILE HOME TRANSPORT AND SET UPS.

Q HAVE YOU WORKED SINCE?

A NO, I HAVEN'T.

Q ALL RIGHT. NOW, YOU HAVE HAD SOME MILITARY EXPERIENCE?

A YES, SIR.

Q WHEN WAS THAT?

A IN -- FROM 1980 TO 1986.

Q WHAT DID YOU DO?

GARY MICHAEL POWELL - DIRECT BY MR. MOYER

1 A I WAS A COMMUNICATIONS SPECIALIST IN THE SOUTH CAROLINA ARMY
2 NATIONAL GUARD.

3 Q ALL RIGHT. NOW LET ME TAKE YOU TO JUNE THE 7TH OF 2006. YOU
4 LIVED AT THE SAME RESIDENCE YOU JUST TOLD US ABOUT BACK THEN?

5 A YES, SIR.

6 Q WHO DID YOU LIVE WITH?

7 A SONYA CHAVIS.

8 Q AND HOW LONG HAVE YOU BEEN WITH HER?

9 A FIFTEEN YEARS.

10 Q STILL WITH HER?

11 A YES.

12 Q WERE YOU WITH MIKE POWELL AND SUSAN GALLOWAY ON THE NIGHT OF
13 JUNE THE 6TH AND DAY OF JUNE THE 7TH OF 2006?

14 A I WAS WITH RONALD HARRIS AND SUSAN GALLOWAY.

15 Q OKAY. AND HOW LONG HAD YOU KNOWN SUSAN GALLOWAY?

16 A ABOUT SEVEN OR EIGHT YEARS. WE WERE DISTANT COUSINS, BUT WE
17 JUST REUNITED AT MY DAD'S FUNERAL BACK IN '99.

18 Q ALL RIGHT. NOW, ON JUNE THE 7TH OF 2006, WHOSE CAR WERE YOU
19 IN?

20 A MINE.

21 Q AND WHAT KIND OF CAR DID YOU HAVE?

22 A A '91 ESCORT STATION WAGON.

23 Q LET ME SHOW YOU STATE'S EXHIBITS NUMBER 4 AND 5. CAN YOU
24 LOOK AT THE CAR THAT IS SHOWN IN THOSE PICTURES? DO YOU
25 RECOGNIZE IT?

GARY MICHAEL POWELL - DIRECT BY MR. MOYER

1 A YES, SIR, I DO.

2 Q AND WHAT DO YOU RECOGNIZE IT AS?

3 A AS BEING MY CAR.

4 Q ALL RIGHT. NOW, HOW LONG HAD YOU HAD THE CAR ABOUT WHEN
5 THIS HAPPENED?

6 A PROBABLY THREE MONTHS OR SO.

7 Q WHAT KIND OF SHAPE WAS IT IN?

8 A IT WASN'T IN VERY GOOD SHAPE. IT HAD BEEN SITTING FOR FOUR
9 OR FIVE YEARS PRIOR TO ME GETTING IT.

10 Q OKAY. SO HOW DID IT RUN? HOW WELL DID IT RUN?

11 A IT HAD A PROBLEM WITH THE CLUTCH WOULD LOSE PRIME WHEN YOU
12 HAD IT IN GEAR. YOU COULDN'T SIT AT A RED LIGHT. YOU'D HAVE TO
13 PUT IT IN NEUTRAL, YOU KNOW. IT'S KIND OF HARD TO DESCRIBE.

14 Q SO WOULD IT STALL OUT ON YOU SOMETIMES?

15 A YES, SIR. OR IT WOULD TAKE OFF ON ITS OWN, YOU KNOW, IF YOU
16 HAD YOUR CLUTCH IN. YOU HAD TO HAVE IT IN NEUTRAL SO IT WOULDN'T
17 JUST PULL OFF.

18 Q ALL RIGHT. NOW, DID YOU -- WHEN YOU GOT THE CAR WAS THERE
19 MUCH STUFF IN IT?

20 A IT WAS JUST LOADED WITH TRASH, AND I HADN'T CLEANED IT OUT A
21 WHOLE LOT, YOU KNOW, BECAUSE I WAS STILL IN THE PROCESS OF
22 GETTING THE NOOKS AND CRANNIES OUT OF IT.

23 Q DO YOU OWN A PISTOL?

24 A NO, SIR.

25 Q A RIFLE?

GARY MICHAEL POWELL - DIRECT BY MR. MOYER

1 A NO, SIR.

2 Q DO YOU HAVE A .22?

3 A NO, SIR.

4 Q NOW, DID YOU KNOW THAT THERE WAS A COUPLE OF .22 BULLETS
5 FOUND ON THE FLOOR?

6 A YES, SIR. THEY WAS -- THEY WERE SCATTERED THROUGHOUT THE
7 CAR WHEN I GOT IT.

8 Q OKAY. SO THERE WAS MORE THAN TWO WHEN YOU GOT IT?

9 A YES, SIR.

10 Q DID YOU GET SOME OF THEM OUT?

11 A YEAH. I DIDN'T -- I DIDN'T REALLY CLEAN THEM OUT BECAUSE I
12 DIDN'T HAVE NOTHING TO DO WITH THEM. I DIDN'T OWN A GUN. SO...

13 Q NOW, WERE YOU WITH RON AND SUSAN WHEN THEY WENT TO THE PAWN
14 SHOP ON JUNE 7TH?

15 A I WAS.

16 Q OKAY. AND WERE YOU DRIVING?

17 A YES, SIR.

18 Q DO YOU RECALL WHAT HAPPENED WHEN Y'ALL STOPPED AT THE PAWN
19 SHOP?

20 A YES, SIR. WE WERE SITTING OUTSIDE AND SUSAN HAD WENT IN AND
21 A BLUE BUICK PULLED UP BESIDE US. I NOTICED THE DRIVER DOOR
22 DIDN'T OPEN BECAUSE TWO PEOPLE GOT OUT OF THE PASSENGER SIDE.

23 Q OKAY. NOW LET ME SHOW YOU STATE'S EXHIBIT NUMBER 9. CAN
24 YOU RECOGNIZE WHAT IS SHOWN IN THAT PHOTOGRAPH?

25 A THAT'S THE CAR. THAT'S THE CAR THAT PULLED UP BESIDE US AT

GARY MICHAEL POWELL - DIRECT BY MR. MOYER

1 THE PAWN SHOP.

2 Q ALL RIGHT. NOW, DID YOU TAKE MUCH NOTICE OF WHAT THE PEOPLE
3 WHO GOT OUT OF THE CAR DID?

4 A NOT REALLY. I WASN'T, YOU KNOW, REAL FOCUSED ON WHAT THEY
5 WERE DOING.

6 Q ALL RIGHT. DO YOU REMEMBER SEEING SUSAN WHEN SHE CAME OUT?

7 A YES, SIR.

8 Q AND WHAT DID YOU NOTICE ABOUT WHAT SHE DID OR WHAT HAPPENED
9 WITH HER WHEN SHE CAME OUT OF THE CAR?

10 A SHE---

11 Q I'M SORRY, WHEN SHE CAME OUT OF THE PAWN SHOP.

12 A SHE TURNED AROUND AND SPOKE WITH THE YOUNG BLACK GUY.

13 Q OKAY. THE GUY WHO HAD GOTTEN OUT OF THE BLUE CAR?

14 A YES, SIR.

15 Q ALL RIGHT. AND COULD YOU OVERHEAR ANYTHING ABOUT WHAT HE
16 SAID?

17 A NO, SIR, I COULDN'T.

18 Q ALL RIGHT. AND SO Y'ALL LEFT THE PAWNSHOP THEN?

19 A YES.

20 Q WHERE DID Y'ALL GO WHEN YOU LEFT THE PAWN SHOP?

21 A WE PULLED OUT OF THE PAWN SHOP, TOOK A LEFT, A RIGHT, A
22 LEFT, THEN A RIGHT AND STOPPED. HE -- THEY STOPPED. I DON'T
23 KNOW WHO WAS DRIVING.

24 Q NOW, WHEN YOU WERE HEADING OVER IN THAT DIRECTION DID YOU
25 KNOW -- DID YOU KNOW WHY YOU WERE FOLLOWING THAT BLUE CAR?

GARY MICHAEL POWELL - DIRECT BY MR. MOYER

1 A YES.

2 Q WHAT WAS THE REASON FOR FOLLOWING THE BLUE CAR?

3 A PURCHASING SOME COCAINE.

4 Q AND WHO WAS GOING TO PURCHASE IT?

5 A SHE WAS.

6 Q DID YOU HAVE ANY MONEY ON YOU?

7 A NO, I DIDN'T.

8 Q WERE YOU GOING TO PURCHASE ANY?

9 A NO, SIR.

10 Q HOW DID YOU KNOW THAT'S WHAT SHE WAS GOING TO DO?

11 A I'M NOT SURE EXACTLY WHEN SHE MENTIONED IT, BUT I ASSUMED
12 THAT AS SHE WAS SPEAKING WITH HIM, YOU KNOW.

13 Q DO YOU KNOW HOW MUCH MONEY SHE GOT FROM THE PAWN SHOP?

14 MR. CREECH: OBJECTION, YOUR HONOR.

15 MR. MOYER: IT'S ALREADY BEEN TESTIFIED TO, YOUR HONOR.

16 MR. CREECH: MY OBJECTION WAS ABOUT THE COMMENT HE MADE
17 EARLIER ABOUT THE ASSUMING THAT'S WHAT SHE WAS GOING TO DO WHEN
18 SHE WAS TALKING TO---

19 THE COURT: ALL RIGHT. I'LL SUSTAIN THE OBJECTION.

20 Q ALL RIGHT. SO WHEN -- ALL RIGHT. SO WHEN YOU GOT ON THIS
21 STREET YOU SAID ONE OF THE CARS STOPPED -- OR THE CAR AHEAD OF
22 YOU STOPPED, THE BLUE CAR STOPPED?

23 A YES, SIR.

24 Q WHAT DID YOU DO?

25 A I STOPPED ABOUT A CAR LENGTH BEHIND HIM TO THE LEFT SIDE.

GARY MICHAEL POWELL - DIRECT BY MR. MOYER

1 Q AND WHAT HAPPENED WHEN YOU STOPPED? WHAT DID YOU SEE?

2 A HE GOT OUT OF THE CAR---

3 Q WHICH SIDE OF THE CAR DID HE GET OUT?

4 A THE PASSENGER SIDE. ---AND REACHED IN THE BAG AND GOT
5 SOMETHING. AND WHEN HE CAME AROUND THE NEXT THING I KNEW HE WAS
6 TRYING TO GRAB THE MONEY. I GUESS I WAS KIND OF LOOKING, MAKING
7 SURE, YOU KNOW, WE HAD THE ROAD BLOCKED.

8 Q OKAY. YOU SAID HE GOT SOMETHING OUT OF HIS BAG. WHAT -
9 COULD YOU SEE WHAT HE GOT?

10 A IT APPEARED TO BE A RED BAG.

11 Q AND THEN WHEN HE GOT AROUND TO Y'ALL'S CAR, YOU SAID HE
12 TRIED TO GET THE MONEY. WHO HAD MONEY?

13 A SUSAN.

14 Q AND WHAT WAS SHE DOING WITH THE MONEY?

15 A SHE HAD IT IN HER HAND, AND SHE WAS RESISTING FROM HIM
16 TAKING IT.

17 Q OKAY. NOW, DID YOU KNOW THIS MAN?

18 A NO, SIR.

19 Q AS FAR AS YOU KNOW HAD YOU EVER SEEN HIM BEFORE

20 A NO, SIR.

21 Q ALL RIGHT. AND THEN WHAT HAPPENED THEN? WHAT DID SUSAN -
22 DID SHE SAY ANYTHING WHILE HE WAS REACHING?

23 A I'M NOT SURE EXACTLY WHAT SHE SAID. BUT, YES, SHE WAS
24 TELLING HIM NO.

25 Q AND WAS HE SAYING ANYTHING?

GARY MICHAEL POWELL - DIRECT BY MR. MOYER

1 A I'M NOT SURE. I COULDN'T TELL YOU EXACTLY WHAT WAS SAID.

2 Q OKAY. BUT WAS HE SPEAKING?

3 A YES.

4 Q DO YOU REMEMBER IF HE SAID ANYTHING TO YOU?

5 MR. CREECH: OBJECTION, YOUR HONOR. HE JUST ANSWERED THE
6 QUESTION AND SAID HE COULDN'T REMEMBER.

7 THE COURT: OKAY. OVERRULED.

8 Q DID HE SAY ANYTHING TO YOU?

9 A IT WAS LIKE, NO, DON'T. I'M NOT SURE IF HE WAS SAYING IT TO
10 ME OR TO HER, YOU KNOW.

11 Q AND WHAT WERE YOU DOING WHEN YOU NOTICED?

12 A I WAS GOING TO TRY TO PUT IT IN GEAR AND GET ON OUT OF
13 THERE.

14 Q ALL RIGHT. NOW, DID YOU EVER SEE ANYTHING IN HIS HAND, EVER
15 SEE HIM HOLDING ANYTHING?

16 A YES, SIR. HE WAS HOLDING A SEMI-AUTOMATIC GUN.

17 Q AND WHAT WAS HE DOING WITH THE GUN?

18 A WELL, THE NEXT THING I KNEW, I WAS SHOT.

19 Q TELL US ABOUT THAT. WAS ANYBODY ELSE SHOT? WHAT DO YOU
20 REMEMBER ABOUT WHEN HE SHOT?

21 A YES. HE SHOT HER, AND IT SEEMED LIKE I TRIED TO PUT IT IN
22 GEAR AND TAKE OFF, AND THEN I WAS SHOT THROUGH THE ARM AND IN THE
23 LOWER ABDOMEN.

24 Q AND DO YOU REMEMBER WHAT HAPPENED AFTER YOU GOT SHOT?

25 A RON -- I ASKED RON HAD HE BEEN -- I SPOKE. I SAID, "RON,

GARY MICHAEL POWELL - DIRECT BY MR. MOYER

1 I'VE BEEN HIT. HOW BAD HAVE YOU BEEN HIT?"

2 Q WELL, LET ME BACK UP JUST A LITTLE BIT. RIGHT AFTER HE SHOT
3 YOU DID YOU NOTICE OR SEE HIM DO ANYTHING ELSE WITH REGARD TO
4 ANYBODY ELSE IN THE CAR?

5 A HE SHOT AT RON.

6 Q WAS THAT BEFORE OR AFTER HE SHOT AT YOU?

7 A IT WAS AFTER.

8 Q OKAY. AND DID YOU SEE THAT TAKE PLACE AND DID YOU SEE HIM
9 DO THAT?

10 A YES, SIR.

11 Q NOW, WHEN HE SHOT YOU DID YOU TRY TO MOVE OR TRY TO DUCK OR
12 ANYTHING LIKE THAT?

13 A I COULDN'T BECAUSE THE SEATBELT COMES ACROSS. IT JUST -- I
14 GUESS WHEN THE BULLET HIT ME, YOU KNOW, THE SHOCK OF IT KIND OF
15 -- THE SEAT BELT HAD ME LOCKED DOWN.

16 Q AND WHAT ABOUT SUSAN, DID YOU KNOW WHETHER OR NOT SHE HAD
17 BEEN SHOT?

18 A YEAH, SHE WAS TRYING TO ROCK AND MOAN AND, YOU KNOW,
19 CARRYING ON.

20 Q OKAY. SO AFTER THIS MAN SHOT AT Y'ALL WHAT DID HE DO?

21 A HE JUST CASUALLY WALKED AROUND AND GOT IN THE CAR AND DROVE
22 -- THEY EASED OFF.

23 Q DO YOU REMEMBER WHAT YOU DID AFTER THEY LEFT?

24 A I TRIED TO GET THE CAR STARTED, AND IT WOULDN'T START SO I
25 JUST KIND OF -- WITH THE CLUTCH, YOU KNOW, I COULDN'T PUMP THE

GARY MICHAEL POWELL - DIRECT BY MR. MOYER

1 CLUTCH UP. SO IT JUST, YOU KNOW, WOULD -- HAVE YOU EVER TRIED TO
2 START A STRAIGHT DRIVE IN GEAR HOW IT WILL JUST...THAT'S ALL I
3 COULD DO.

4 Q WHEN THIS MAN WALKED UP TO Y'ALL'S CAR DID HE EVER SHOW ANY
5 DRUGS?

6 A NO, SIR.

7 Q DID HE EVER SAY ANYTHING ABOUT DRUGS?

8 A NOTHING WAS SAID ABOUT DRUGS.

9 Q DID YOU EVER SEE WHETHER OR NOT HE GOT MONEY AWAY FROM
10 SUSAN?

11 A I THOUGHT HE HAD GOT THE MONEY OUT OF HER HAND.

12 Q BUT YOU WEREN'T -- YOU DIDN'T KNOW FOR SURE?

13 A DIDN'T KNOW FOR SURE.

14 Q ALL RIGHT. NOW, DID YOU SAY ANYTHING TO RON AFTER HE LEFT?

15 A YES. I ASKED HIM WAS HE ABLE TO GO DIAL 911 HISSELF. HE
16 HAD LEFT HIS CELL PHONE, SO I ASKED HIM TO PERSONALLY GET A PHONE
17 TO DIAL 911.

18 Q AND WHAT DID YOU DO WHILE HE LEFT?

19 A I JUST SAT THERE AND TRIED TO CALM HER DOWN AND CONSOLE HER,
20 YOU KNOW. BEING IN THE MILITARY, YOU KNOW, YOU KIND OF LEARN TO
21 TAKE DEEP BREATHS AND SUCH. IT WAS HOT THAT DAY.

22 Q HOW WAS SHE DOING? I MEAN, WAS SHE CONSCIOUS?

23 A YEAH, SHE WAS CONSCIOUS. JUST RIGHT BEFORE THE AMBULANCE
24 GOT THERE SHE JUST BOWED HER HEAD AND SAID A PRAYER.

25 MR. CREECH: OBJECT, YOUR HONOR, AS TO HEARSAY.

GARY MICHAEL POWELL - DIRECT BY MR. MOYER

1 THE COURT: OVERRULED.

2 Q SO DID YOU STAY IN THE CAR UNTIL THE POLICE AND EMS ARRIVED?

3 A YES, I DID.

4 Q YOU WERE TAKEN TO THE HOSPITAL?

5 A YES, SIR.

6 Q AND DO YOU REMEMBER OFFICERS COMING TO TALK TO YOU IN THE
7 HOSPITAL?

8 A YES, I DO.

9 Q HOW WERE YOU FEELING AT THIS TIME?

10 A OH. I WAS IN EXTREME PAIN.

11 Q AND DID THE OFFICERS TALK TO YOU ABOUT WHAT HAPPENED?

12 A YES, THEY DID.

13 Q AND NOW HOW LONG HAD YOU -- DID YOU STAY THERE IN THE
14 HOSPITAL?

15 A I WAS THERE A WEEK.

16 Q AND YOU UNDERWENT SOME SURGERY LIKE WAS DESCRIBED BY THE
17 DOCTOR?

18 A YES, SIR.

19 Q HAVE YOU HAD ANY LINGERING EFFECTS PHYSICALLY FROM THIS?

20 A YES, I DO.

21 Q AND WHAT IS THAT?

22 A BLOOD IN MY STOOL, IN MY URINE, PAIN AT ALL TIMES. I HAVE A
23 BULLET LEFT IN MY HIP.

24 Q WHERE'S THE PAIN?

25 A ALL AROUND.

GARY MICHAEL POWELL - CROSS BY MR. CREECH

1 Q AND DO YOU HAVE ANY LINGERING EFFECTS EMOTIONALLY?

2 A YES, I DO.

3 Q WHAT?

4 A NIGHTMARES.

5 MR. MOYER: OKAY. PLEASE ANSWER DEFENSE COUNSEL HAS.

6 THE COURT: CROSS EXAMINATION, MR. CREECH.

7 CROSS EXAMINATION BY MR. CREECH:

8 Q MR. POWELL, LET'S BE CLEAR. YOU HAVE BEEN USING COCAINE --
9 USED COCAINE FOR YEARS---

10 A NO, SIR.

11 MR. MOYER: I OBJECT TO THE RELEVANCY OF THAT QUESTION.

12 THE COURT: OVERRULED. GO AHEAD.

13 Q YOU USED IT YEARS PRIOR TO THIS INCIDENT; IS THAT CORRECT?

14 A NO, SIR.

15 Q YOU USED IT IN THE SIX-MONTH TIME PERIOD PRIOR TO THIS
16 ACCIDENT; IS THAT CORRECT?

17 A I'VE USED IT BEFORE.

18 Q OKAY. YOU USED IT IN THE SIX-MONTH TIME PERIOD PRIOR TO
19 THIS ACCIDENT?

20 A I'VE USED IT BEFORE.

21 MR. CREECH: YOUR HONOR, I ASK YOU TO INSTRUCT THE WITNESS
22 TO ANSWER THE QUESTION.

23 THE COURT: SIR, IF YOU CAN ANSWER THE QUESTION YES OR NO,
24 YOU NEED TO.

25 A I'M NOT UNDERSTANDING YOU.

GARY MICHAEL POWELL - CROSS BY MR. CREECH

1 Q DID YOU USE COCAINE IN THE SIX-MONTH PERIOD OF TIME LEADING
2 UP TO THIS ACCIDENT?

3 A IN THE SIX-MONTH PERIOD OF TIME?

4 Q LEADING UP TO THIS ACCIDENT.

5 A I HAVE USED IT BEFORE.

6 Q SO THE ANSWER TO THAT QUESTION WOULD BE YES; IS THAT
7 CORRECT?

8 A I'M NOT SURE. I'M NOT SURE. YOU'RE SAYING I USED IT SIX
9 MONTHS BEFORE.

10 Q I WANT TO KNOW IF YOU USED COCAINE WITHIN THE LAST SIX
11 MONTHS OF THE DATE OF THIS INCIDENT?

12 A OH, SIX MONTHS. JUNE THE 6TH -- JUNE THE 7TH OF LAST YEAR?

13 Q YES.

14 A YES.

15 Q SO IN THE SIX-MONTH PERIOD LEADING UP TO THE ACCIDENT YOU
16 HAD BEEN USING COCAINE; IS THAT CORRECT?

17 A I'M NOT UNDERSTANDING YOUR QUESTION.

18 Q OKAY. BEFORE THE ACCIDENT WHEN WAS THE LAST TIME YOU HAD
19 USED COCAINE?

20 A THE NIGHT BEFORE.

21 Q THE NIGHT BEFORE THIS OCCURRED. AND YOU WOKE UP AND TALKED
22 TO SUSAN GALLOWAY ABOUT BUYING MORE COCAINE THAT DAY; IS THAT
23 RIGHT?

24 A NO, SIR.

25 Q YOU DID NOT SAY THAT?

GARY MICHAEL POWELL - CROSS BY MR. CREECH

1 A AT SOME POINT IT WAS MENTIONED.

2 Q ALL RIGHT. SO THAT WOULD BE A YES TO MY QUESTION.

3 DID YOU -- AND THEN Y'ALL DECIDED TO COME OVER TO A PAWN
4 SHOP; IS THAT RIGHT?

5 A SHE LIVES JUST RIGHT NEAR THE GREENVILLE COUNTY LINE.

6 Q YOU CAME INTO GREENVILLE?

7 A ABOUT THREE MILES.

8 Q THEN YOU WERE GOING BACK TO PICKENS; IS THAT RIGHT?

9 A ABOUT THREE MILES.

10 Q AND I GUESS THERE WERE NO PAWN SHOPS IN PICKENS COUNTY THAT
11 YOU COULD HAVE GONE TO?

12 A SHE DEALT WITH RED'S PAWN SHOP.

13 Q SO SHE WAS A FREQUENT USER OF PAWNING THINGS AT RED'S PAWN
14 SHOP; IS THAT RIGHT?

15 A SHE BOUGHT A KEYBOARD FROM THERE.

16 Q OKAY. AND YOU CAME OVER IN THAT CAR. YOU SAY THAT CAR WAS
17 YOURS. BUT HAD YOU REGISTERED IT WITH THE STATE?

18 A THE CAR WAS IN MY MOTHER'S NAME, THE INSURANCE WAS.

19 Q BUT HAD YOU REGISTERED THE CAR IN YOUR NAME WITH THE STATE
20 OF SOUTH CAROLINA?

21 A NO. NO, SIR.

22 Q AND YOU DIDN'T DO THAT SO YOU COULD AVOID BEING DETECTED
23 WHILE DRIVING THAT CAR, DID YOU?

24 A NO, SIR. THE CAR HADN'T BEEN MECHANICALLY SOUND ENOUGH TO
25 WHERE WHETHER I KNEW IF I WAS GOING TO BE ABLE TO FIX IT.

GARY MICHAEL POWELL -- CROSS BY MR. CREECH

1 Q YOU SAID WHEN THIS BLACK MAN CAME UP TO YOUR SIDE -- CAME UP
2 TO THE CAR DO YOU REMEMBER TELLING THE POLICE THAT HE CAME UP TO
3 YOUR WINDOW?

4 A EVERY WINDOW IN THAT CAR IS MINE.

5 Q OKAY. YOU REMEMBER GIVING A STATEMENT TO POLICE; IS THAT
6 RIGHT?

7 A YES, SIR.

8 Q AND IN THAT STATEMENT YOU SAID, "HE GOT A RED BAG OUT OF HIS
9 BACK SEAT AND WALKED UP TO MY WINDOW."

10 A MY WINDOW BEING MY WINDOW. EVERY WINDOW IN THAT CAR IS
11 MINE. I WAS IN EXCRUCIATING PAIN, SIR.

12 Q OKAY. SO ARE YOU SAYING THIS STATEMENT IS WRONG?

13 A NO, SIR, I'M NOT.

14 Q ALL RIGHT. SO YOU DIDN'T MEAN "MY WINDOW" MEANING, LIKE,
15 THE WINDOW RIGHT THERE THAT YOU ROLL UP AND DOWN WITH---

16 A MY WINDOW MEANING THE PASSENGER WINDOW BEING MINE, THE BACK
17 WINDOW BEING MINE.

18 Q SO YOU'RE TRYING TO SAY THAT EVERY WINDOW IN THAT CAR WAS
19 YOURS; THAT'S HOW YOU REFER TO WINDOWS? YOUR CAR'S PASSENGER
20 WINDOW, YOU CALL IT YOUR WINDOW; IS THAT RIGHT?

21 A SIR, I'M TRYING TO TELL YOU. THAT RIGHT THERE WAS TAKEN AND
22 ME IN THE E.R.

23 Q ALL RIGHT. SO THERE WERE SOME THINGS THIS OFFICER TOOK IN
24 THIS STATEMENT THAT WEREN'T EXACTLY CLEAR; IS THAT WHAT YOU'RE
25 SAYING?

GARY MICHAEL POWELL - CROSS BY MR. CREECH

1 A NO, SIR.

2 Q WELL, WHAT IS IT?

3 A "MY WINDOW" MEANING THAT BEING MY WINDOW.

4 Q AND YOU DIDN'T MEAN THE WINDOW RIGHT THERE BESIDE YOU THAT
5 YOU ROLL UP AND DOWN?

6 A NO, SIR.

7 Q AND DID YOU CLARIFY THAT IN THIS STATEMENT?

8 MR. MOYER: YOUR HONOR, I OBJECT. IT'S BEEN ASKED AND
9 ANSWERED.

10 THE COURT: OVERRULED.

11 Q YOU DIDN'T CLARIFY THAT IN THIS STATEMENT, DID YOU?

12 A NO, SIR.

13 Q YOU LED THEM TO BELIEVE THAT HE WALKED OVER TO YOUR WINDOW;
14 IS THAT RIGHT?

15 A I DIDN'T -- I DIDN'T SAY IT LIKE IT SHOULD HAVE BEEN SAID.

16 Q OKAY. YOU DIDN'T SAY -- IT WASN'T WRITTEN DOWN LIKE YOU
17 SAID IT; IS THAT WHAT YOU'RE TRYING TO SAY?

18 A NO. I'M NOT SAYING THAT. I'M SAYING THAT I PROBABLY SHOULD
19 HAVE SAID HE CAME OVER TO HER WINDOW.

20 Q WELL, YOU'RE SAYING THAT NOW. I'M TALKING ABOUT AT THE
21 TIME.

22 YOU ALSO SAID IN THAT STATEMENT THAT HE GOT A RED BAG OUT OF
23 HIS BACK SEAT, AND ARE YOU SAYING THAT HE DIDN'T DO THAT NOW?

24 A NO, SIR, I'M NOT SAYING THAT.

25 Q SO YOU SAW HIM GET A RED BAG OUT OF THE BACK SEAT OF THAT

GARY MICHAEL POWELL - CROSS BY MR. CREECH

1 CAR; IS THAT RIGHT?

2 A IF THAT'S WHAT I'VE GOT IN MY STATEMENT, THAT'S WHAT I SEEN
3 THAT DAY.

4 Q OKAY. AND HE WALKED UP TO MY WINDOW. DOES THE SAME ANSWER
5 APPLY TO THAT STATEMENT AS WELL?

6 A THAT'S RIGHT.

7 Q AND HE PULLED OUT A BLACK HANDGUN WITH WOOD GRIPS ON IT. SO
8 HE PULLED IT OUT OF THE RED BAG?

9 A IF THAT'S WHAT'S IN THE STATEMENT.

10 Q OKAY. AND IT HAD WOODEN GRIPS ON IT. DO YOU KNOW IF THAT
11 GUN HAS WOODEN GRIPS ON IT?

12 A NO, SIR.

13 Q IT DOES NOT, DOES IT? SO DID THE OFFICERS NOT GET THAT
14 RIGHT IN YOUR STATEMENT?

15 A AGAIN, I WAS IN PAIN. I DON'T -- I DON'T KNOW WHERE I COME
16 UP WITH THE WOOD GRIPS.

17 Q AND THE RED BAG THAT YOU SAW, DO YOU KNOW IF ANYTHING WAS IN
18 THAT RED BAG?

19 A NO, SIR.

20 Q SO YOU CAN'T SAY ONE WAY OR THE OTHER, CORRECT? IS THAT
21 RIGHT?

22 A NO, SIR.

23 Q NOW, DO YOU FREQUENTLY KEEP A TIRE IRON DOWN BY THE LEFT
24 SIDE OF YOUR CAR OF YOUR CHAIR, SEAT IN THE CAR?

25 A NO, SIR.

GARY MICHAEL POWELL - CROSS BY MR. CREECH

1 Q WAS THERE A TIRE IRON THERE IN THAT CAR ON THAT DAY LIKE
2 THAT?

3 A I DON'T KNOW.

4 Q YOU DON'T KNOW. AND DO YOU FREQUENTLY KEEP .22 CALIBER
5 BULLETS IN YOUR CAR?

6 A THERE WERE SOME IN THERE.

7 Q YOU JUST LEFT THEM IN THERE; IS THAT RIGHT?

8 A YES, SIR.

9 Q AND IT'S YOUR TESTIMONY YOU HAVE NO IDEA HOW THEY GOT THERE;
10 IS THAT RIGHT?

11 A THEY WERE IN THE -- THEY WERE IN THERE WHEN I BOUGHT THE
12 CAR.

13 Q YOU DIDN'T HAVE A .22 CALIBER GUN?

14 A NO, SIR.

15 Q AND YOU DIDN'T HAVE A .22 CALIBER GUN ON YOU THAT DAY; IS
16 THAT RIGHT?

17 A NO, SIR.

18 Q WHEN THIS BLACK MALE GOT OUT OF THE CAR AND CAME TO THE
19 SIDE, YOU TESTIFIED EARLIER HE DIDN'T COME UP AND JUST START
20 SHOOTING IN THE CAR, DID HE?

21 A NOT RIGHT AWAY.

22 Q THERE WAS AN INTERACTION BETWEEN YOU FOLKS IN THE CAR AND
23 HIM; IS THAT RIGHT?

24 A YES, HE COME TO ROB -- TO ROB US.

25 Q HE CAME UP AND HE STARTED TALKING; IS THAT RIGHT?

GARY MICHAEL POWELL - CROSS BY MR. CREECH

1 A THE WAY I REMEMBER IT IS THAT HE HAD THE MONEY AND WAS
2 SAYING, "DON'T DO IT. EVERYTHING WILL BE OKAY."

3 Q AND SUSAN HELD OUT MONEY FOR HIM; IS THAT RIGHT?

4 A SHE HAD MONEY IN HER HAND.

5 Q AND SUSAN WANTED TO GIVE HIM THAT MONEY BECAUSE SHE WANTED
6 TO BUY CRACK COCAINE; IS THAT RIGHT?

7 A YES.

8 Q SHE WANTED HIM TO HAVE IT; IS THAT CORRECT?

9 A (PAUSE) NOT...

10 Q WHAT'S -- WHAT'S YOUR ANSWER? SHE WAS GIVING IT TO HIM,
11 WASN'T SHE?

12 A SHE HAD IT IN HER HAND AND HE TRIED TO GRAB IT.

13 Q SHE HAD IT IN HER HAND. SHE KNEW THIS WAS A DRUG DEAL. SHE
14 WAS GOING TO GIVE IT TO HIM SO THAT HE COULD HAVE IT, RIGHT?

15 A (NO RESPONSE)

16 Q IS THAT RIGHT?

17 A I GUESS.

18 Q OKAY. AND DID YOU SEE WHAT -- HOW MUCH MONEY SHE HAD IN HER
19 HAND?

20 A FORTY DOLLARS.

21 Q AND WAS IT TWO TWENTIES?

22 A I THINK SO.

23 Q I'M SORRY?

24 A I THINK SO.

25 Q YOU THINK SO. DID YOU SEE HER GET TWO \$20 BILLS OUT OF HER

GARY MICHAEL POWELL - CROSS BY MR. CREECH

1 POCKETBOOK?

2 A NO, I DIDN'T.

3 Q OKAY. DID YOU -- WHEN YOU LEFT THE PAWN SHOP YOU AND SUSAN
4 HAD A CONVERSATION ABOUT BUYING CRACK, RIGHT?

5 A SOMEWHAT.

6 Q YOU KNEW YOU WERE GOING TO BUY CRACK; IS THAT RIGHT?

7 A SHE TOLD ME TO FOLLOW THAT CAR.

8 Q AND DID YOU EVER SEE ANY MONEY TEAR OR RIP?

9 A I'M NOT SURE.

10 Q YOU'RE NOT SURE. YOU DON'T REMEMBER IF YOU SAW MONEY BEING
11 TORN OR RIPPED; IS THAT RIGHT? IS THAT YOUR TESTIMONY?

12 A THAT'S RIGHT.

13 Q YOU NEVER SAW, LIKE, A \$20 BILL JUST BEING CLEAN RIPPED IN
14 HALF?

15 A I DIDN'T SEE NOBODY DO THAT.

16 Q DID SUSAN GALLOWAY HAVE THAT RIPPED \$20 BILL ON HER BEFORE
17 THIS INCIDENT TOOK PLACE?

18 A NO, SIR, I WOULDN'T THINK SO.

19 Q WAS Y'ALL TALKING SITTING IN YOUR CAR AND TALKING TO HIM
20 BEFORE HE GOT OUT DID SHE SHOW HIM THE MONEY AT THAT POINT?

21 A SAY AGAIN.

22 Q WHEN Y'ALL PULLED UP BESIDE HIM AND YOU KNEW---

23 A WE DIDN'T PULL UP BESIDE HIM.

24 Q OKAY. WHEN YOU PULLED UP ALONG NEXT TO HIM, OKAY, YOU KNEW
25 THAT HIS DRIVER DOOR DID NOT OPEN, CORRECT? YOU KNEW THAT

GARY MICHAEL POWELL - CROSS BY MR. CREECH

1 PERSONALLY?

2 A UH-HUH (AFFIRMATIVE).

3 Q YOU HAD WITNESSED THAT AT THE PAWN SHOP; IS THAT RIGHT?

4 A CORRECT.

5 Q YET YOU PULLED UP ON THAT SIDE OF THE CAR ANYWAY?

6 A CORRECT.

7 Q AND YOU SAW -- WAS THERE ANY DISCUSSION BETWEEN YOU AND HIM
8 OR HIM AND SUSAN BEFORE HE GOT OUT?

9 A NO, SIR.

10 Q ALL RIGHT. SO THERE WAS NO TALKING GOING BACK AND FORTH---

11 A NO, SIR.

12 Q ---IS THAT YOUR TESTIMONY?

13 A RIGHT.

14 Q OKAY. AND WHEN HE GOT OUT HE DIDN'T START SHOOTING
15 IMMEDIATELY; IS THAT RIGHT?

16 A NO. HE TRIED TO GET THE MONEY FIRST.

17 Q DO YOU REMEMBER REACHING IN YOUR POCKET?

18 A I DID NOT.

19 Q DID YOU EVER TELL ANYBODY THAT YOU REACHED IN YOUR POCKET
20 AND THEN THE SHOOTING STARTED?

21 A NO, I DIDN'T.

22 Q ARE YOU SURE ABOUT THAT?

23 A PRETTY SURE.

24 Q DID YOU EVER TALK TO THE ASSISTANT CORONER IN THIS CASE?

25 A I DON'T KNOW IF I DID OR NOT.

GARY MICHAEL POWELL - CROSS BY MR. CREECH

1 Q DID YOU EVER TELL HER THAT THE SUSPECT WALKED UP TO THE CAR
2 AND ATTEMPTED TO MAKE A DRUG DEAL WITH THE DRIVER, WHICH WOULD
3 HAVE BEEN YOU? THE SUSPECT ASKED FOR MONEY, AND YOU REACHED IN
4 YOUR POCKET AND THE SUSPECT STARTED SHOOTING HIS GUN?

5 A NO.

6 Q THAT'S NOT CORRECT? YOU DIDN'T---

7 A I DON'T REMEMBER---

8 Q DID YOU TELL HER THAT?

9 A I DON'T THINK SO.

10 Q YOU NEVER SAID THAT TO ANY LAW ENFORCEMENT INVESTIGATOR?

11 A I DON'T THINK SO.

12 Q SO IF YOU DIDN'T SAY THAT THEN THE INVESTIGATORS JUST PUT
13 THAT---

14 MR. MOYER: OBJECTION, YOUR HONOR. NO FOUNDATION LAID FOR
15 THAT COMMENT -- FOR THAT QUESTION.

16 THE COURT: OVERRULED. GO AHEAD.

17 Q SO IF YOU DIDN'T SAY THAT THE INVESTIGATORS JUST PUT THAT IN
18 THE STATEMENT; IS THAT CORRECT?

19 A WELL, I DON'T REMEMBER SAYING IT.

20 Q OKAY. NOW, WHEN MR. FOWLER, IF HE'S STANDING THERE AT THE
21 THAT CAR -- OKAY? -- AND IF HE SEES WHAT'S GOING ON IN THE CAR
22 AND HE TRIES TO TURN AROUND AND RUN AND SOMEBODY IN THAT CAR IS
23 WITH A GUN, THEY COULD TURN AROUND AND JUST SHOOT HIM RIGHT IN
24 THE BACK; ISN'T THAT RIGHT?

25 A WELL, IF WE'D HAVE HAD A GUN, HE WOULD HAVE GOT SHOT IN THE

BRIAN SNIPES - DIRECT BY MR. MOYER

1 BACK.

2 Q IF YOU'D HAVE HAD A GUN, HE'D HAVE GOTTEN SHOT IN THE BACK;
3 IS THAT RIGHT?

4 A I'M TALKING ABOUT AFTER HE SHOT US.

5 MR. CREECH: NO FURTHER QUESTIONS, YOUR HONOR.

6 MR. MOYER: NOTHING FURTHER, YOUR HONOR.

7 THE COURT: THANK YOU, SIR. YOU CAN STEP DOWN.

8 (WITNESS STEPS DOWN AT 10:49 A.M.)

9 MR. MOYER: THE STATE WOULD CALL BRIAN SNIPES.

10 BRIAN SNIPES, HAVING BEEN DULY SWORN,
11 TESTIFIED AS FOLLOWS:

12 MADAME CLERK: STATE YOUR FULL NAME FOR THE RECORD, PLEASE.

13 WITNESS: BRIAN JAMES SNIPES.

14 DIRECT EXAMINATION BY MR. MOYER:

15 Q ALL RIGHT, SIR. HOW OLD ARE YOU?

16 A TWENTY-ONE.

17 Q WHERE DO YOU WORK?

18 A RED'S PAWN SHOP.

19 Q HOW LONG HAVE YOU WORKED THERE?

20 A ABOUT THREE YEARS.

21 Q ALL RIGHT. DID YOU WORK THERE IN JUNE OF 2006?

22 A YES, I DID.

23 Q WERE YOU WORKING THERE ON THE DAY OF THE SHOOTING THAT
24 HAPPENED DOWN THE ROAD FROM WHERE YOU WORKED?

25 A YES, I WAS.

BRIAN SNIPES - DIRECT BY MR. MOYER

1 Q JUNE THE 7TH. OKAY. DID YOU BRING ANYTHING TODAY IN
2 RESPONSE TO THE SUBPOENA?

3 A A TICKET.

4 (PAWN TICKET MARKED AS STATE'S EXHIBIT NUMBER 10 FOR
5 PURPOSES OF IDENTIFICATION ONLY)

6 Q OKAY. I'M GOING TO HAND YOU WHAT'S BEEN MARKED AS STATE'S
7 EXHIBIT NUMBER 10. JUST TAKE A LOOK AT THAT. CAN YOU TELL US
8 WHAT THAT IS?

9 A IT'S A PAWN TICKET.

10 Q WHAT'S THE PAWN TICKET NUMBER?

11 A 67795.

12 Q AND HOW IS A PAWN TICKET LIKE THAT TAKEN?

13 A WHEN SOMEBODY PAWNS OR SELLS SOMETHING, WE WRITE IT DOWN,
14 TAKE THEIR ID, WRITE ALL THE INFORMATION DOWN, WHAT THE ITEM WAS,
15 HOW MUCH THE TRANSACTION WAS FOR, ALL THAT.

16 Q OKAY. NOW, AFTER THE PAWN TRANSACTION IS FINISHED, WHAT DO
17 YOU DO WITH THE TICKET?

18 A IF THEY PAWN SOMETHING, THEY GET A COPY OF IT, POLICE
19 DEPARTMENT GETS A COPY OF IT, AND WE KEEP A COPY OF IT, THE PINK
20 COPY. THIS IS OUR COPY HERE.

21 Q OKAY. SO THE COPY THAT YOU HAVE THERE, IS THAT THE COPY
22 THAT YOU KEEP IN THE COURSE OF YOUR REGULARLY CONDUCTED BUSINESS?

23 A YES, IT IS.

24 Q AND DO YOU HAVE ACCESS TO THOSE COPIES, TO THAT INFORMATION,
25 AS A REGULAR PART OF YOUR JOB?

BRIAN SNIPES - DIRECT BY MR. MOYER

1 A YES, I DO.

2 Q ALL RIGHT. NOW, THIS PAWN TICKET FOR THIS TRANSACTION TOOK
3 PLACE ON WHAT DAY?

4 A JUNE 7TH, 2006.

5 Q AND IS THIS SUBSTANTIALLY IN THE SAME CONDITION NOW AS IT
6 WAS BACK ON THAT DAY?

7 A YEAH.

8 MR. MOYER: YOUR HONOR, AT THIS TIME WE'D MOVE STATE'S
9 EXHIBIT NUMBER 10 INTO EVIDENCE.

10 MR. CREECH: MAY I TAKE A QUICK LOOK AT IT. (REVIEWS
11 DOCUMENT) (PAUSE) NO OBJECTION, YOUR HONOR.

12 THE COURT: OKAY. IT'S IN EVIDENCE.

13 (PAWN TICKET, STATE'S EXHIBIT NUMBER 10, MOVED INTO
14 EVIDENCE)

15 Q OKAY. LET ME -- YOU TOLD US THE DATE THAT THAT PAWN TICKET
16 WAS TAKEN. LET ME ASK YOU A FEW OTHER QUESTIONS ABOUT IT. WHAT
17 WAS PAWNED?

18 A IT WAS A HERRINGBONE NECKLACE.

19 Q AND WHO PAWNED IT?

20 A SUSAN GALLOWAY.

21 Q DID YOU KNOW SUSAN GALLOWAY?

22 A SHE WAS A CUSTOMER OF OURS.

23 Q NOW, HOW MUCH MONEY DID YOU GIVE HER FOR THE NECKLACE?

24 A FORTY DOLLARS.

25 Q AND WHAT TIME WAS THAT TRANSACTION DONE?

BRIAN SNIPES - DIRECT BY MR. MOYER

- 1 A AT 1:12 P.M.
- 2 Q NOW AFTER -- WELL, WHILE SHE WAS THERE DID ANYBODY ELSE COME
- 3 INTO THE PAWN SHOP?
- 4 A THERE WAS A GUY AND A GIRL CAME IN WITH A FLOOR JACK.
- 5 Q CAN YOU TELL US -- REMEMBER ANYTHING ABOUT THEM, GENDER,
- 6 RACE, ANYTHING LIKE THAT?
- 7 A IT WAS A BLACK MALE AND A BLACK FEMALE.
- 8 Q WERE THEY YOUNG, OLD?
- 9 A YOUNG.
- 10 Q ALL RIGHT. AND WHAT DID THEY DO WHEN THEY CAME IN?
- 11 A THEY SOLD THEIR FLOOR JACK.
- 12 Q HAD YOU SEEN THEM EARLIER THAT DAY?
- 13 A THEY CAME IN EARLIER THAT MORNING.
- 14 Q DID THEY HAVE ANYTHING WITH THEM THEN?
- 15 A THEY HAD THE FLOOR JACK, AND THEY MIGHT HAVE HAD ANOTHER
- 16 ITEM WITH THEM. BUT THEY LEFT WITH IT.
- 17 Q OKAY. AND THEY CAME BACK -- WHEN THEY CAME BACK THE SECOND
- 18 TIME WHILE SUSAN GALLOWAY WAS THERE, DID THEY PAWN THE FLOOR
- 19 JACK?
- 20 A THEY SOLD IT.
- 21 Q OKAY. THEY SOLD IT TO YOU?
- 22 A UH-HUH (AFFIRMATIVE).
- 23 Q AND HOW MUCH MONEY DID YOU GIVE THEM FOR IT?
- 24 A I THINK IT WAS, LIKE, \$5.
- 25 Q OKAY. DID YOU HAVE A PAWN TICKET FOR THAT AS WELL?

BRIAN SNIPES - DIRECT BY MR. MOYER

1 A I HAVE NONE. I DON'T HAVE IT WITH ME.

2 Q OKAY. AND WHAT DID YOU DO WITH THAT PAWN TICKET?

3 A THE POLICE DEPARTMENT TOOK IT WHEN THEY CAME AFTER THE
4 INCIDENT.

5 Q THE WHOLE PAWN TICKET?

6 A YEAH.

7 Q ALL THREE PARTS OF IT?

8 A (INDICATES AFFIRMATIVE RESPONSE)

9 Q AND DID THE POLICE OFFICER TAKE ANYTHING ELSE?

10 A THEY TOOK THE FLOOR JACK WITH THEM.

11 Q AND SO YOU GAVE THEM THE FLOOR JACK AND THE PAWN TICKET THAT
12 THOSE PEOPLE HAD PAWNED?

13 A YES.

14 Q AND DO YOU REMEMBER, WAS IT THE GUY OR THE GIRL WHO PAWNED
15 THE FLOOR JACK?

16 A IT WAS THE GIRL.

17 Q AND SO SHE IS THE ONE WHO -- WHAT IS REQUIRED -- IF YOU'RE
18 GOING TO PAWN SOMETHING, WHAT DO YOU NEED TO BE ABLE TO PAWN
19 SOMETHING?

20 A YOU HAVE TO HAVE AN ID OR A DRIVER'S LICENSE.

21 Q AND IF YOU DON'T HAVE ONE, WHAT HAPPENS?

22 A YOU CAN'T DO ANYTHING WITH IT.

23 MR. MOYER: ALL RIGHT. PLEASE ANSWER ANY QUESTIONS THE
24 DEFENSE MAY HAVE.

25 CROSS EXAMINATION BY MR. CREECH:

BRIAN SNIPES - CROSS BY MR. CREECH

1 Q MR. SNIPES, THANK YOU FOR BEING HERE.

2 A UH-HUH (AFFIRMATIVE).

3 Q CAN YOU READ THE SIGNATURE OF THE PERSON WHO PAWNED THAT
4 HERRINGBONE NECKLACE?

5 A NO, I CAN'T.

6 Q ALL RIGHT. DOES IT SAY -- DOES IT LOOK LIKE SUSAN GALLOWAY?

7 A I CAN'T MAKE IT OUT. IT'S A SCRIBBLE.

8 Q DOES THAT LOOK LIKE SUSAN TO YOU?

9 A NO.

10 Q DOES IT LOOK LIKE THE WORD "BABY"?

11 A THAT'S WHAT IT LOOKS LIKE.

12 Q DOES THAT SECOND WORD LOOK LIKE THE WORD "FAT"?

13 A YEAH, IT DOES.

14 Q "BABY FAT?"

15 A THAT'S WHAT IT SAYS.

16 Q OKAY. NOT SUSAN GALLOWAY; IS THAT RIGHT?

17 A NO.

18 Q DO YOU KNOW IF SUSAN GALLOWAY HAD AN ALIAS?

19 A I DON'T.

20 Q OF BABY FAT?

21 A I DON'T HAVE NO IDEA.

22 Q NOW, YOU SAY THAT JACK WAS PAWNED FOR \$5. ARE YOU SURE THAT
23 IT WAS \$5? COULD IT HAVE BEEN MORE? ARE YOU RELYING ON YOUR
24 MEMORY?

25 A YEAH, I'M RELYING ON MEMORY. AS FAR AS I CAN REMEMBER, IT

BRIAN SNIPES - REDIRECT BY MR. MOYER

1 WAS.

2 Q THAT WAS OVER A YEAR AGO; IS THAT CORRECT?

3 A UH-HUH (AFFIRMATIVE).

4 MR. CREECH: THANK YOU. NO FURTHER QUESTIONS.

5 MR. MOYER: A COUPLE FOLLOW-UP QUESTIONS.

6 REDIRECT EXAMINATION BY MR. MOYER:

7 Q IS YOUR NAME WRITTEN ON THE TOP OF THE PAWN TICKET THOUGH?

8 A YES, IT IS.

9 Q OKAY. AND WHATEVER YOU SOLD THAT JACK FOR WOULD YOU HAVE
10 LISTED THAT FIGURE ON THAT OTHER PAWN TICKET JUST LIKE YOU DID ON
11 THIS ONE?

12 A UH-HUH (AFFIRMATIVE). YEAH.

13 MR. MOYER: NOTHING FURTHER.

14 THE COURT: ANY RECROSS?

15 MR. CREECH: NONE, YOUR HONOR.

16 THE COURT: ALL RIGHT. THANK YOU, MR. SNIPES. YOU MAY
17 STEP DOWN.

18 MR. MOYER: I'D ASK THAT HE BE EXCUSED.

19 THE COURT: ANY OBJECTION?

20 MR. CREECH: I DON'T, YOUR HONOR. BUT IF SOMETHING COMES
21 UP IF WE NEED TO GET HIM BACK, I JUST ASK THAT HE GO ON THAT
22 CONDITION.

23 MR. MOYER: SURE. THAT CAN BE DONE.

24 THE COURT: ALL RIGHT. OKAY, SIR. JUST REMAIN AVAILABLE
25 IF YOU NEED TO BE RECALLED.

BRIAN SNIPES - REDIRECT BY MR. MOYER

1 (WITNESS STEPS DOWN AT 10:56 A.M.)

2 MR. MOYER: MAY WE APPROACH REAL QUICK?

3 THE COURT: SURE.

4 (BRIEF BENCH CONFERENCE OFF RECORD)

5 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, WE'RE GOING
6 TO TAKE A RECESS. DON'T TALK ABOUT THE CASE. CONTINUE TO KEEP
7 AN OPEN MIND. AND IF YOU WOULD, WHILE YOU'RE BACK THERE ON
8 BREAK, IF YOU WOULD ELECT SOMEONE TO BE THE FOREPERSON OF THE
9 JURY AND WRITE THEIR NAME DOWN ON A SHEET OF PAPER AND GIVE IT TO
10 THE BAILIFF. OKAY? THANK YOU.

11 (JURY EXITS COURTROOM AT 10:57 A.M.)

12 THE COURT: OKAY. WE'LL TRY TO RESUME AT ABOUT TEN AFTER.
13 I DON'T KNOW IF THEY'RE GOING TO DO THAT PLEA OR NOT, BUT I'M
14 SURE I'LL BE THE LAST TO KNOW.

15 (A RECESS WAS TAKEN FROM 10:57 TO 11:18 A.M.)

16 (PAWN TICKET FOR JACK MARKED AS STATE'S EXHIBIT NUMBER 11
17 FOR PURPOSES OF IDENTIFICATION ONLY)

18 (PHOTOGRAPH MARKED AS STATE'S EXHIBIT NUMBER 12 FOR PURPOSES
19 OF IDENTIFICATION ONLY)

20 THE COURT: GO AHEAD AND BRING THEM IN.

21 (JURY REENTERS COURTROOM AT 11:20 A.M.)

22 THE COURT: OKAY. MR. WRIGHT, YOU'VE BEEN SELECTED TO BE
23 THE FOREMAN OF THE JURY, AND THAT MEANS YOU'LL BE THE LIAISON
24 BETWEEN THE COURT AND THE JURY IF ANY COMMUNICATION NEEDS TO BE
25 MADE. AND I CAN ONLY COMMUNICATE WITH YOU IN WRITING, SO JUST

JOHN HAMLETT - DIRECT BY MR. MOYER.

1 SEND A NOTE IF YOU NEED TO, AND I WILL RESPOND BY A NOTE OR HERE
2 IN OPEN COURT ON THE RECORD. ALL RIGHT.

3 YES, SIR, MR. MOYER.

4 MR. MOYER: THE STATE WOULD CALL INVESTIGATOR HAMLETT.

5 JOHN F. HAMLETT, HAVING BEEN DULY SWORN,
6 TESTIFIED AS FOLLOWS:

7 MADAME CLERK: PLEASE STATE YOUR FULL NAME FOR THE RECORD.

8 WITNESS: JOHN F. HAMLETT.

9 DIRECT EXAMINATION BY MR. MOYER:

10 Q WHERE ARE YOU EMPLOYED?

11 A WITH THE GREENVILLE POLICE DEPARTMENT.

12 Q HOW LONG HAVE YOU BEEN IN LAW ENFORCEMENT?

13 A JUST OVER 22 YEARS.

14 Q HOW LONG HAVE YOU BEEN WITH THE GREENVILLE POLICE
15 DEPARTMENT?

16 A FOR JUST OVER 22 YEARS.

17 Q SO YOU'VE BEEN WITH THE POLICE DEPARTMENT YOUR WHOLE LAW
18 ENFORCEMENT CAREER?

19 A YES, I HAVE.

20 Q WHAT WAS YOUR POSITION IN THE GREENVILLE POLICE DEPARTMENT
21 ON JUNE THE 7TH OF LAST YEAR?

22 A I WAS ASSIGNED TO THE DETECTIVE DIVISION?

23 Q NOW, DID YOU PARTICIPATE IN THE INVESTIGATION OF THIS
24 INCIDENT?

25 A YES, I DID.

JOHN HAMLETT - DIRECT BY MR. MOYER

1 Q WHERE DID YOU GO FIRST?

2 A WHEN I HEARD THE CALL GO OUT ON THE RADIO I DROVE TO THE
3 SCENE, OR THE AREA OF THE SCENE. I DIDN'T GO DIRECTLY TO THE
4 SCENE BECAUSE THERE WERE ALREADY OFFICERS THERE. I HEARD A
5 SUSPECT VEHICLE DESCRIPTION OF A BLUE BUICK FOUR-DOOR, AND I
6 CHECKED THE AREA FOR THAT VEHICLE.

7 Q LET ME ASK YOU TO PLEASE BRING THE MICROPHONE A LITTLE BIT
8 CLOSER TO YOU.

9 A OKAY.

10 Q THANK YOU. ALL RIGHT. AND THE SCENE WAS WHAT LOCATION?

11 A WOODLAWN AVENUE.

12 Q OKAY. WHEN YOU ARRIVED WERE OTHER OFFICERS THERE?

13 A WHEN I ARRIVED ON THE SCENE PATROL OFFICERS WERE THERE AND
14 DETECTIVES CONROY AND FLAVELL WERE THERE.

15 Q OKAY. AND DID YOU STAY ON THE SCENE THERE OR DID YOU GO
16 SOMEWHERE ELSE?

17 A I MET BRIEFLY WITH DETECTIVE FLAVELL TO SEE HOW I COULD BE
18 OF ASSISTANCE IN THE INVESTIGATION, AND HE ASKED ME TO GO UP TO A
19 PAWN SHOP AND CHECK ON SOME PROPERTY UP THERE.

20 Q OKAY. COULD YOU SEE WHO INVESTIGATOR FLAVELL WAS SPEAKING
21 TO?

22 A HE TOLD ME THAT HE HAD ONE OF THE PEOPLE THAT WAS IN THE CAR
23 DURING THE TIME OF THE SHOOTING IN THE VEHICLE WITH HIM.

24 Q ALL RIGHT. AND SO YOU WENT TO RED'S PAWN SHOP THEN?

25 A YES, SIR.

JOHN HAMLETT - DIRECT BY MR. MOYER

1 Q AND WHAT IS THE LOCATION OF RED'S PAWN SHOP?

2 A IT IS -- I BELIEVE IT'S 1225 PENDLETON STREET. IT'S IN WEST
3 GREENVILLE PLAZA.

4 Q AND HOW FAR IS THAT LOCATION FROM WHERE YOU WERE?

5 A APPROXIMATELY THREE BLOCKS. THREE OR FOUR BLOCKS.

6 Q NOW, WHEN YOU WENT TO RED'S PAWN SHOP WHAT IS THAT YOU WERE
7 -- WHAT WAS YOUR PURPOSE OF GOING THERE? WHAT WERE YOU GOING
8 THERE TO FIND OUT OR TO GET OR...

9 A DETECTIVE FLAVELL TOLD ME THAT ONE OF THE PERSONS INVOLVED
10 MAY HAVE PAWNED OR SOLD A JACK AT THAT LOCATION JUST PRIOR TO THE
11 INCIDENT. HE ASKED ME TO GO UP THERE AND SEE IF THAT WAS THE
12 CASE.

13 Q ALL RIGHT. AND WHEN YOU GOT THERE WHO DID YOU SPEAK WITH?

14 A WHEN I ARRIVED ON THE SCENE, I SPOKE WITH BRIAN SNIPES. HE
15 WAS RUNNING THE SHOP AT THE TIME. AND I ASKED HIM IF SOMEONE HAD
16 COME IN RECENTLY IN THE PAST FEW MINUTES AND SOLD OR PAWNED A
17 JACK.

18 Q OKAY. AND DID YOU TAKE ANYTHING WITH YOU? DID YOU COLLECT
19 ANYTHING FROM THAT SCENE?

20 A I DID. HE TOLD ME THAT APPROXIMATELY 30 MINUTES BEFORE I
21 CAME IN A BLACK FEMALE AND A BLACK MALE HAD ENTERED THE PAWN SHOP
22 WITH A RED FLOOR JACK AND A HANDLE AND THAT THEY HAD PURCHASED
23 THOSE ITEMS FROM THEM. AND SO I SECURED THE JACK, THE HANDLE AND
24 ALSO THE PAWN TICKET, WHICH WAS COMPLETED FOR THE PURCHASE.

25 Q OKAY. I'M GOING TO HAND YOU STATE'S EXHIBIT NUMBER 11. IF

JOHN HAMLETT - DIRECT BY MR. MOYER

1 YOU WOULD, JUST TAKE A LOOK AT IT AND SEE IF YOU CAN RECOGNIZE
2 WHAT THAT IS.

3 A YES, I CAN.

4 Q WHAT IS IT?

5 A IT IS A PAWN TICKET FROM RED'S PAWN SHOP, AND THE TICKET
6 NUMBER IS 67796.

7 Q OKAY. AND HOW DID THAT PAWN TICKET -- HOW AND WHEN DID THAT
8 COME INTO YOUR POSSESSION?

9 A WHEN I ASKED MR. SNIPES IF ANYONE HAD SOLD A JACK TO HIM, HE
10 TOLD ME THAT, YES, THEY HAD. HE PULLED THE PAWN TICKET OUT OF A
11 REGISTRY OF TICKETS THAT THEY KEEP AS THEY COMPLETE THEM. THEY
12 PUT THEM IN A BOX.

13 Q OKAY. NOW, DOES IT -- IS IT IN ANY DIFFERENT APPEARANCE NOW
14 THAN IT WAS WHEN YOU GOT IT FROM MR. SNIPES?

15 A IT IS.

16 Q OKAY. AND DESCRIBE THE DIFFERENCE?

17 A THE WRITING THAT WAS COMPLETED ON HERE IN BLUE INK, IT'S
18 SMEARED AND BLURRY.

19 Q OKAY. AND ARE YOU AWARE -- WHAT DID YOU DO WITH THAT TICKET
20 AFTER YOU GOT IT?

21 A I SECURED THE TICKET AND THE JACK AND THE JACK HANDLE AND
22 COMPLETED A PROPERTY AND EVIDENCE FORM, WHICH WAS SIGNED BY MR.
23 SNIPES, SAYING THAT I WAS TAKING THE PROPERTY FROM HIM AND PUT IT
24 IN MY VEHICLE, AND I TRANSPORTED IT BACK TO THE SCENE.

25 Q AND WHAT DID YOU DO WITH IT WHEN YOU GOT ON THE SCENE?

JOHN HAMLETT - DIRECT BY MR. MOYER

1 A SERGEANT SHAW WITH ID WAS THERE. I KEPT IT IN MY VEHICLE
2 THE ENTIRE TIME UNTIL HE WAS FINISHED PROCESSING THE CRIME SCENE
3 WHERE THE SHOOTING HAD OCCURRED, AND THEN I TURNED IT OVER TO
4 HIM.

5 Q AND YOU TURNED IT OVER TO HIM FOR WHAT PURPOSE? I MEAN, WHY
6 DID YOU GIVE IT TO HIM?

7 A IT WAS EVIDENCE OF A CRIME -- OR RELATED TO THE CRIME, AND
8 ALSO TO SEE IF ANY LATENT FINGERPRINTS COULD BE OBTAINED FROM THE
9 PROPERTY.

10 Q SO AFTER YOU GAVE IT TO INVESTIGATOR SHAW -- WELL, AT THE
11 TIME YOU GAVE IT TO INVESTIGATOR SHAW, WAS IT STILL IN THE SAME
12 CONDITION AS WHEN YOU PICKED IT UP?

13 A YES IT WAS.

14 Q OKAY.

15 A AND WHEN I SECURED ALL THE PROPERTY, OF COURSE, I HAD GLOVES
16 ON SO I DIDN'T LEAVE MY FINGERPRINTS ON IT.

17 Q OKAY. NO FURTHER QUESTIONS ABOUT THAT AT THIS TIME.

18 (PAUSE)

19 ALL RIGHT. NOW, JUST TO MAKE SURE WE'RE CLEAR ON THIS, THE
20 -- IN ADDITION TO THAT PAWN TICKET, YOU DID COLLECT THE JACK AS
21 WELL?

22 A THE JACK AND THE HANDLE TO THE JACK.

23 Q AND WHAT DID YOU DO WITH THAT?

24 A I SECURED THEM IN MY VEHICLE, DROVE DIRECTLY BACK TO THE
25 SCENE AND ONCE SERGEANT SHAW WAS FINISHED WITH THE SCENE, I

JOHN HAMLETT - DIRECT BY MR. MOYER

1 TURNED THEM OVER TO HIM.

2 Q NOW, DID YOU -- THE INFORMATION THAT YOU GOT AT RED'S PAWN
3 SHOP, DID YOU GIVE THAT INFORMATION TO OFFICERS AT THE SCENE?

4 A I DID.

5 Q AND WERE YOU ABLE AT THAT TIME TO GET A NAME OF THE PERSON
6 WHO WAS ASSOCIATED WITH THAT PAWN TICKET?

7 A YES. I GAVE THIS INFORMATION TO DETECTIVE CONROY. THE NAME
8 ON THE TICKET WAS DIANA---

9 MR. CREECH: I OBJECT, YOUR HONOR, TO THIS INFORMATION.
10 IT'S HEARSAY.

11 MR. MOYER: YOUR HONOR, IT'S NOT OFFERED FOR THE TRUTH OF
12 THE MATTER ASSERTED. IT'S OFFERED TO SHOW WHY THE OFFICERS ACTED
13 AS THEY DID AS THEY CONTINUED THE INVESTIGATION. ALSO, THE PAWN
14 TICKET WILL BE ENTERED INTO EVIDENCE UNDER RULE 104(B). I WOULD
15 ASK THAT THE TESTIMONY BE ADMITTED SUBJECT TO THAT.

16 THE COURT: ALL RIGHT. I OVERRULE THE OBJECTION.

17 Q AND WHAT WAS THE NAME?

18 A THE NAME ON THE TICKET WAS DIANA N. TISDALE. I GAVE THAT
19 INFORMATION TO DETECTIVE CONROY.

20 Q AND AFTER YOU FINISHED THERE DID YOU GO ANYWHERE ELSE WITH
21 REGARDS TO THIS CASE?

22 A I DID.

23 Q AND YOU WENT WITH WHOM?

24 A MYSELF, DETECTIVE CONROY AND DETECTIVE JUSTICE WENT TO
25 DRIVE, WHICH IS LOCATED IN THE COUNTY.

JOHN HAMLETT - DIRECT BY MR. MOYER

1 Q NOW, WHEN YOU GOT THERE WHAT DID YOU -- WHAT, IF ANYTHING,
2 DID YOU SEE THERE THAT GRABBED YOUR ATTENTION?

3 A I WAS IN THE LEAD VEHICLE, AND AS SOON AS I SAW THE ADDRESS
4 THE FIRST THING THAT I SAW THAT CAUGHT MY ATTENTION WAS A BLUE
5 FOUR-DOOR BUICK SITTING IN THE DRIVEWAY DIRECTLY BESIDE THE
6 TRAILER.

7 Q NOW, WHEN -- AFTER YOU SAW THAT WHAT DID YOU AND THE OTHER
8 INVESTIGATORS DO?

9 A BY NEXTEL COMMUNICATIONS I TOLD DETECTIVE CONROY THAT IT
10 APPEARED THE SUSPECT VEHICLE WAS IN THE DRIVEWAY AND THAT I WOULD
11 GO TO THE REAR OF THE RESIDENCE AND HE AND DETECTIVE JUSTICE
12 COULD GO TO THE FRONT.

13 Q OKAY. AND THEN AT SOME POINT DID YOU ENTER THE RESIDENCE?

14 A I DID.

15 Q WAS THE DEFENDANT IN THE RESIDENCE AT THAT TIME?

16 A HE WAS NOT. HE WAS JUST OUTSIDE THE FRONT DOOR WITH
17 DETECTIVE JUSTICE.

18 Q OKAY. AND WHEN YOU WENT IN THE RESIDENCE, DID YOU SEE
19 ANYTHING THAT CAUGHT YOUR ATTENTION?

20 A YES, I DID.

21 Q AND WHAT DID YOU SEE?

22 A AS WE ENTERED THE LIVING ROOM AREA I LOOKED TO THE REAR WALL
23 OF THE TRAILER AND ON THE FLOOR BESIDE A CHAIR LYING IN PLAIN
24 VIEW WAS A BOX OF WINCHESTER WESTERN NINE MILLIMETER CARTRIDGES
25 LYING ON THE FLOOR.

JOHN HAMLETT - DIRECT BY MR. MOYER

1 Q OKAY. I'M GOING TO SHOW YOU STATE'S EXHIBIT NUMBER 12. CAN
2 YOU TAKE A LOOK AT THAT PHOTOGRAPH?

3 A YES, SIR.

4 Q AND DO YOU RECOGNIZE WHAT IS SHOWN IN THAT PHOTOGRAPH?

5 A YES, SIR, I DO.

6 Q AND WHAT DOES THAT PHOTOGRAPH DEPICT?

7 A THERE IS A BOX OF WINCHESTER WESTERN NINE MILLIMETER
8 CARTRIDGES AGAINST THE REAR WALL BESIDE A CHAIR.

9 Q AND THE LOCATION OF THAT, WHAT THAT PHOTOGRAPH IS SHOWING,
10 WHAT IS THE GENERAL LOCATION THAT THAT IS SHOWING?

11 A IT'S IN THE LIVING ROOM AREA. THERE IS A PALLET OR A BED
12 LAYING IN THE FLOOR. BUT IT'S OF THE LIVING ROOM AREA, AND THIS
13 IS A PICTURE TAKEN FACING THE BACK WALL OF THE TRAILER.

14 Q OKAY. OF ?

15 A OF , THAT'S CORRECT.

16 Q AND SO APPALOOSA, THE RESIDENCE THERE IS A TRAILER?

17 A IT IS.

18 Q IS THAT A FAIR AND ACCURATE REPRESENTATION OF WHAT YOU SAW
19 WHEN YOU ENTERED THAT RESIDENCE?

20 A YES, SIR. THIS IS EXACTLY WHAT I SAW.

21 MR. MOYER: MOVE TO HAVE STATE'S EXHIBIT 12 ENTERED IN
22 EVIDENCE.

23 IT'S WHAT I JUST SHOWED YOU. DO YOU WANT TO SEE IT AGAIN?

24 MR. CREECH: (REVIEWING EXHIBIT) NO OBJECTION, YOUR HONOR.

25 THE COURT: ALL RIGHT.. IT'S IN EVIDENCE.

JOHN HAMLETT - CROSS BY MR. CREECH

1 (STATE'S EXHIBIT NUMBER 12, PHOTOGRAPH, MOVED INTO EVIDENCE)

2 Q ALL RIGHT. I'M GOING TO GIVE YOU A LASER POINTER. THERE'S

3 A BUTTON RIGHT THERE.

4 A OKAY.

5 Q JUST FOR THE JUROR'S POINT OF VIEW COULD YOU TELL WHAT IS

6 DEPICTED IN THIS PHOTOGRAPH?

7 A YES. AS WE ENTERED THE TRAILER WE ENTERED FROM THIS

8 DIRECTION, THE BOX OF NINE MILLIMETER CARTRIDGES IS RIGHT THERE,

9 AND THIS IS THE REAR WALL OF THE TRAILER.

10 Q OKAY. DID YOU TOUCH OR HANDLE IT OR DO ANYTHING WITH IT?

11 A NO, SIR.

12 Q AND WHAT IS THAT ON THE BED IN THIS AREA?

13 A THESE ARE THREE BOXES FROM, LIKE, A PETE'S OR A CLOCK

14 RESTAURANT THAT WERE LYING ON THE BED.

15 Q WAS THERE FOOD IN THE BOXES?

16 A THERE WAS FOOD IN THE BOX. IT APPEARED TO BE PARTIALLY

17 CONSUMED.

18 MR. MOYER: I HAVE NOTHING FURTHER AT THIS TIME FOR THIS

19 WITNESS.

20 THE COURT: CROSS EXAMINATION, MR. CREECH.

21 MR. CREECH: YES, YOUR HONOR. THANK YOU.

22 CROSS EXAMINATION BY MR. CREECH:

23 Q DETECTIVE HAMLETT, NOW, YOU WENT TO THE -- DID YOU EVER GO

24 BACK TO SEE WHO PAWNED A BRACELET OR DID YOU EVER GO BACK AND GET

25 A BRACELET OR ANYTHING LIKE THAT?

JOHN HAMLETT - CROSS BY MR. CREECH

1 A NO, SIR.

2 Q OKAY. DO YOU KNOW WHATEVER HAPPENED TO THAT BRACELET THAT
3 WAS PAWNED BY MS. GALLOWAY?

4 A NO, SIR.

5 Q AND DO YOU KNOW IF SHE GOES BY THE NAME BABY FAT?

6 A NO, SIR. I HAVE NO IDEA.

7 Q WHEN YOU WENT TO DRIVE YOU ALSO MET WITH A
8 WOMAN THERE NAMED VALENCIA SULLIVAN; IS THAT CORRECT?

9 A I DID.

10 Q ALL RIGHT. AND DID YOU EVER HEAR VALENCIA SULLIVAN SAY
11 ANYTHING LIKE "ZACH FOWLER IS THE ONE THAT SHOT HIM" OR ANYTHING
12 LIKE THAT? DID YOU EVER HEAR HER SAY THAT?

13 A NO.

14 MR. CREECH: THANK YOU.

15 MR. MOYER: NOTHING FURTHER FOR THIS WITNESS.

16 MR. CREECH: WELL, YOUR HONOR, I---

17 MR. MOYER: OH, I'M SORRY.

18 MR. CREECH: ---HADN'T STOPPED.

19 MR. MOYER: I APOLOGIZE.

20 MR. CREECH: (PAUSE) THANK YOU, YOUR HONOR. NO FURTHER
21 QUESTIONS.

22 MR. MOYER: NOTHING ELSE.

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

24 (WITNESS EXCUSED AT 10:34 A.M.)

25 MR. MOYER: THE STATE WOULD CALL DAR SHAW.

DAR SHAW - DIRECT BY MR. MOYER

1 DAR SHAW, HAVING BEEN DULY SWORN,
2 TESTIFIED AS FOLLOWS:

3 MADAME CLERK: PLEASE STATE YOUR FULL NAME FOR THE RECORD.

4 WITNESS: DARWIN SHAW, S-H-A-W.

5 DIRECT EXAMINATION BY MR. MOYER:

6 Q WHERE ARE YOU EMPLOYED?

7 A THE GREENVILLE COUNTY FORENSIC DIVISION.

8 Q HOW LONG HAVE YOU BEEN IN LAW ENFORCEMENT?

9 A THIRTY YEARS.

10 Q HOW LONG HAVE YOU BEEN WITH THE FORENSICS DIVISION?

11 A NINE YEARS.

12 Q TELL THE JURY A LITTLE BIT ABOUT WHAT DOES A FORENSICS
13 OFFICER DO AND WHAT THE JOB ENTAILS.

14 A TYPICALLY WE ARE REQUESTED TO RESPOND TO SCENES BY AGENCIES
15 WITHIN GREENVILLE COUNTY, THE CITY POLICE DEPARTMENT, THE COUNTY
16 AND ALL THE MUNICIPALITIES. WE ASSIST THEM WITH INVESTIGATIONS,
17 WHICH INCLUDES THE COLLECTION OF EVIDENCE, TAKING OF PHOTOGRAPHS,
18 DIAGRAMS, IF NECESSARY, AND OTHER TYPES OF PROCESSING THAT THEY
19 FEEL THAT THEY ARE UNQUALIFIED TO DO.

20 Q OKAY. NOW, WERE YOU CALLED OUT TO THE CRIME SCENE IN THE
21 CASE OF THE INCIDENT THAT OCCURRED ON WOODLAWN AVENUE ON JUNE 7TH
22 OF LAST YEAR?

23 A YES, I WAS.

24 Q AND WHAT TIME DID YOU GO THERE?

25 A I GOT THE CALL ABOUT FIVE MINUTES TILL 2:00. I BELIEVE I

DAR SHAW - DIRECT BY MR. MOYER

1 ARRIVED ABOUT TEN MINUTES AFTER 2:00.

2 Q AND THEN WHEN DID YOU FINISH UP?

3 A CLOSE TO FOUR O'CLOCK.

4 Q NOW, WHEN YOU ARRIVED ON THE SCENE DID YOU TAKE THE
5 PHOTOGRAPHS OF THE SCENE THAT WE HAVE SEEN?

6 A I DID.

7 Q NOW, DID YOU COLLECT ANY EVIDENCE?

8 A YES, I DID.

9 Q ALL RIGHT. LET'S TALK A LITTLE BIT ABOUT THE -- ABOUT
10 SOMETHING THAT -- WAS ANYTHING POINTED OUT TO YOU WHEN YOU
11 ARRIVED FOR YOU TO COLLECT?

12 A YES. UPON MY ARRIVAL I ORIGINALLY SPOKE WITH SERGEANT
13 MILLER. I ASKED HIM WHAT THE SITUATION WAS AS FAR AS THE SCENE
14 WAS CONCERNED, AND HE INDICATED THAT THE SHELL CASING HAD BEEN
15 FOUND ON THE GROUND BEHIND THE VICTIM'S VEHICLE AND THERE HAD
16 BEEN A PIECE OF PAPER OR A ROCK, SOMETHING TO DESIGNATE WHERE
17 THAT SHELL CASING WAS AT.

18 Q OKAY. AND WHEN YOU SAW THAT DID YOU -- WHAT DID YOU DO WITH
19 REGARDS TO THAT ITEM?

20 A OF COURSE, I PHOTOGRAPHED THE ENTIRE SCENE BEFORE ANY OTHER
21 ACTIONS WERE TAKEN. BEFORE WE MOVE ANYTHING I TYPICALLY TAKE
22 MEASUREMENTS, AND IN THIS CASE I TOOK THE MEASUREMENTS OF A SCENE
23 DIAGRAM SO THAT I COULD PUT THE VEHICLE BACK IN PLACE AND ANY
24 POTENTIAL EVIDENCE THAT MAY BE RECOVERED.

25 Q OKAY. AND THEN AFTER THIS ITEM WAS POINTED OUT TO YOU ON

DAR SHAW - DIRECT BY MR. MOYER

1 THE STREET WHAT DID YOU DO WITH REGARDS TO IT?

2 A AFTER IT WAS PHOTOGRAPHED I COLLECTED IT AND PUT IT INTO A
3 COIN ENVELOPE AND IT WAS IN MY POSSESSION.

4 (ENVELOPE CONTAINING NINE MILLIMETER CASING, ITEM DS1,
5 MARKED AS STATE'S EXHIBIT NUMBER 13 FOR PURPOSES OF
6 IDENTIFICATION ONLY)

7 Q I'M GOING TO HAND YOU STATE'S EXHIBIT NUMBER 13. WOULD YOU
8 TAKE A LOOK AT THAT AND CAN YOU SAY WHETHER OR NOT YOU CAN
9 RECOGNIZE WHAT I JUST HANDED YOU?

10 A THIS IS A COIN ENVELOPE THAT -- IT DENOTES THERE'S A NINE
11 MILLIMETER SHELL CASING FROM THE STREET. IT'S A WINCHESTER NINE
12 MILLIMETER LUGER, AND IT WAS NOTED AS DS1. DS ARE MY INITIALS,
13 AND THEN THE NUMBER ONE DENOTES THAT'S THE FIRST PIECE OF
14 EVIDENCE THAT WAS COLLECTED.

15 Q OKAY. AND AFTER YOU PUT IT IN THE COIN ENVELOPE WHAT DID
16 YOU DO WITH IT?

17 A IT WAS IN MY POSSESSION UNTIL AFTER I CLEARED THE SCENE AND
18 WENT BACK TO OUR OFFICE, AND IT WAS PLACED ON MY EVIDENCE SHELF.

19 Q AND HOW LONG DID YOU KEEP IT ON YOUR EVIDENCE SHELF?

20 A IT WAS PROBABLY A WEEK, I WOULD IMAGINE, BEFORE IT WENT INTO
21 PROPERTY AND EVIDENCE.

22 Q OKAY. AND WHEN YOU TOOK IT -- WHAT IS PROPERTY AND
23 EVIDENCE?

24 A PROPERTY AND EVIDENCE IS A SECURED FACILITY AT THE LAW
25 ENFORCEMENT CENTER WHERE ALL EVIDENCE WHETHER IT BE FOUND

DAR SHAW - DIRECT BY MR. MOYER

1 PROPERTY, COLLECTED EVIDENCE FROM A SCENE, IT GETS LOGGED INTO
2 THIS FACILITY THAT'S CONTROLLED BY THE DEPARTMENT OF PUBLIC
3 SAFETY, AND THEY ACTUALLY DOCUMENT AND TAKE CONTROL OF ALL
4 EVIDENCE SO THERE'S A PERMANENT STORAGE OR TEMPORARY STORAGE FOR
5 THAT.

6 Q ALL RIGHT. AND DOES JUST ANYBODY HAVE ACCESS TO THAT AREA
7 OR...

8 A ONLY EMPLOYEES OF THE RECORDS DIVISION -- OF THE PROPERTY
9 AND EVIDENCE DIVISION.

10 Q OKAY. AND WHEN YOU TAKE SOMETHING THERE DO YOU FILL OUT
11 DOCUMENTATION THAT YOU'RE PUTTING SOMETHING IN?

12 A THAT'S CORRECT.

13 Q AND DID YOU FILL OUT DOCUMENTATION ON THIS ITEM?

14 A YES, SIR, I DID.

15 Q AND DOES THAT INDICATE WHAT DAY YOU PUT THAT ITEM INTO
16 PROPERTY AND EVIDENCE?

17 A IT DOES. IT WAS -- THE ORIGINAL DATE WAS JUNE 7TH, 2006, IS
18 WHEN IT WAS COLLECTED, AND IT WENT INTO PROPERTY AND EVIDENCE ON
19 THE 13TH AT 3:50 IN THE AFTERNOON.

20 Q AND DURING THAT WEEK PERIOD OF TIME YOU SAID IT WAS ON YOUR
21 EVIDENCE SHELF. TELL US ABOUT YOUR EVIDENCE SHELF.

22 A WE HAVE A -- EACH TECHNICIAN HAS A SHELF WHERE EVIDENCE IS
23 PLACED AS A TEMPORARY HOLDING AREA UNTIL WE GET THE OPPORTUNITY
24 TO PROCESS OR PACKAGE THAT EVIDENCE. OUR CALLS DON'T STOP ONCE
25 WE COLLECT EVIDENCE AND GO BACK YOU CAN TURN AROUND AND GO TO TWO

DAR SHAW - DIRECT BY MR. MOYER

1 OR THREE MORE CALLS THE SAME DAY. SO IT GETS PUT ON OUR SHELF.
2 WHEN THE OPPORTUNITY ARISES WHERE WE CAN GET TO IT, PROCESS IT
3 FOR PRINTS OR WHATEVER OTHER TYPE OF TESTING NEEDS TO BE DONE,
4 THEN WE PACKAGE IT AND PUT IT INTO PROPERTY AND EVIDENCE.

5 Q OKAY. AND IS THAT AREA A SECURE AREA AS WELL?

6 A THAT IS CORRECT. IT IS.

7 Q AND WHO ALL HAS ACCESS TO THAT AREA?

8 A ONLY TECHNICIANS AND EMPLOYEES FROM THE FORENSIC DIVISION.

9 (CASING FROM PEPSI BOTTLE MARKED, ITEM DS8, AS STATE'S
10 EXHIBIT NUMBER 14 FOR PURPOSES OF IDENTIFICATION ONLY)

11 Q OKAY. I'M GOING TO HAND YOU STATE'S EXHIBIT NUMBER 14. AND
12 CAN YOU TAKE A LOOK AT THAT AND CAN YOU IDENTIFY WHAT I JUST
13 HANDED YOU?

14 A THIS IS A SHELL CASING FROM INSIDE OF A PEPSI BOTTLE. IT
15 WAS ON THE REAR DRIVER'S SIDE FLOORBOARD INSIDE THE VEHICLE. IT
16 WAS ALSO A NINE MILLIMETER WINCHESTER LUGER. IT WAS DENOTED AS
17 DS8, WHICH IS MY INITIALS AND THE NUMBER EIGHT, WHICH WAS THE
18 NUMBER I ASSIGNED TO THIS PARTICULAR PIECE OF EVIDENCE.

19 Q OKAY. AND WHERE AND WHEN DID YOU FIND THAT ITEM?

20 A IT WAS AS I WAS CONTINUING THE PROCESSING OF THE INTERIOR OF
21 THE VEHICLE I FOUND IT. THERE WAS A PEPSI BOTTLE THAT HAD A HOLE
22 CUT OUT IN THE SIDE OF THE BOTTLE AND SOMEHOW THE SHELL CASING
23 ENDED UP INSIDE OF THIS PEPSI BOTTLE ON THE BACK FLOORBOARD.

24 Q DID YOU TAKE A PHOTOGRAPH OF THOSE AREAS?

25 A YES, SIR, I DID.

DAR SHAW - DIRECT BY MR. MOYER

1 (PHOTOGRAPH MARKED AS STATE'S EXHIBIT NUMBER 15 FOR PURPOSES
2 OF IDENTIFICATION ONLY)

3 (PHOTOGRAPH MARKED AS STATE'S EXHIBIT NUMBER 16 FOR PURPOSES
4 OF IDENTIFICATION ONLY)

5 Q I'M GOING TO HAND YOU STATE'S EXHIBITS NUMBER 15 AND 16.
6 CAN YOU TELL THE JURY WHAT IS DEPICTED IN THOSE PHOTOGRAPHS?

7 A NUMBER 16 IS A PHOTOGRAPH THAT I TOOK OF THE SHELL CASING
8 INSIDE OF A PEPSI BOTTLE ON THE FLOORBOARD. NUMBER 15 IS
9 ACTUALLY A CLOSE-UP OF THE---

10 Q DON'T -- IT HASN'T BEEN INTRODUCED YET. JUST DROP IT. IT'S
11 A CLOSE-UP OF WHAT NOW?

12 A A CLOSE-UP OF THE PEPSI BOTTLE WITH THE SHELL CASING INSIDE.

13 Q OKAY. AND ARE THEY ACCURATE REPRESENTATIONS OF THE WAY THAT
14 SHELL CASING LOOKED WHEN YOU SAW THEM IN THE CAR ON JUNE THE 7TH
15 OF LAST YEAR?

16 A YES, IT IS.

17 Q NOW, LET ME ASK YOU THIS: I THINK -- IT SEEMS LIKE A BASIC
18 QUESTION. JUST TO MAKE SURE WE ALL KNOW WHAT WE MEAN, WHAT DO
19 YOU MEAN BY A SPENT SHELL CASING?

20 A THE TERMINOLOGY THAT IS USED IF A -- A CARTRIDGE IS AN
21 UNFIRED SHELL, WHETHER IT BE A NINE MILLIMETER, .38. IF IT'S
22 UNFIRED, IT'S A CARTRIDGE. ONCE THE WEAPON HAS BEEN FIRED, THE
23 PROJECTILE IS GONE, THEN YOU HAVE AN EMPTY CASING, WHICH IS WHAT
24 IS LEFT AFTER THE PROJECTILE HAS BEEN FIRED.

25 Q OKAY. AND THAT'S WHAT THAT IS, BOTH THAT EXHIBIT AND THE

DAR SHAW - DIRECT BY MR. MOYER

1 PHOTOGRAPHS THAT YOU HAVE THERE?

2 A THAT'S CORRECT.

3 Q ALL RIGHT. AND WHAT WAS THE CALIBER?

4 A IT WAS A NINE MILLIMETER.

5 MR. MOYER: AT THIS TIME I WOULD MOVE TO HAVE STATE'S
6 EXHIBITS 15 AND 16 ENTERED INTO EVIDENCE.

7 MR. CREECH: NO OBJECTION, YOUR HONOR.

8 THE COURT: OKAY. THEY'RE IN EVIDENCE.

9 (STATE'S EXHIBIT NUMBER 15, PHOTOGRAPH, MOVED INTO EVIDENCE)

10 (STATE'S EXHIBIT NUMBER 16, PHOTOGRAPH, MOVED INTO EVIDENCE)

11 Q JUST FOR THE JURY'S BENEFIT, IF YOU COULD -- I'M GOING TO
12 HAND YOU A LASER POINTER -- CAN YOU -- FIRST TELL THE JURY WHAT
13 IT IS YOU SEE IN THAT PHOTOGRAPH?

14 A IT'S A PHOTOGRAPH THAT WAS TAKEN FROM OUTSIDE OF THE REAR
15 DRIVER'S DOOR. THE DOOR WAS OPEN, AND THE PHOTOGRAPH WAS TAKEN
16 ON THE FLOORBOARD BEHIND THE DRIVER'S SEAT. THIS IS A PEPSI
17 BOTTLE THAT A HOLE HAS BEEN CUT IN THE SIDE OF THE BOTTLE, AND
18 INSIDE IS WHERE THE NINE MILLIMETER SHELL CASING WAS LOCATED.

19 Q OKAY. AND STATE'S EXHIBIT NUMBER 15?

20 A THIS AGAIN IS JUST A LARGER PHOTOGRAPH OF THE SHELL CASING
21 INSIDE OF THE PEPSI BOTTLE.

22 Q OKAY. AND SO WHEN YOU COLLECTED THIS SHELL CASING TELL US
23 AGAIN WHAT YOU DID WITH IT.

24 A IT WAS ALSO PLACED INTO A COIN ENVELOPE AND PLACED ON MY
25 EVIDENCE SHELF UNTIL IT WAS LATER PACKAGED AND PUT INTO PROPERTY

DAR SHAW - DIRECT BY MR. MOYER

1 AND EVIDENCE.

2 Q DID YOU PUT IT INTO PROPERTY AND EVIDENCE ON THE SAME DAY AS
3 YOU PUT THE OTHER SHELL CASING INTO PROPERTY AND EVIDENCE?

4 A YES, I DID.

5 Q AND DID YOU KEEP IT WITHIN THAT EVIDENCE LOCKER AREA THAT
6 YOU HAD DESCRIBED EARLIER?

7 A YES, I DID.

8 Q OKAY. NOW -- (PAUSE)

9 (HALF OF \$20 BILL MARKED AS STATE'S EXHIBIT NUMBER 17 FOR
10 PURPOSES OF IDENTIFICATION ONLY)

11 Q OKAY. I'M GOING TO HAND YOU STATE'S EXHIBIT NUMBER 17 AND,
12 IF YOU WOULD, TAKE A LOOK AT THAT AND CAN YOU IDENTIFY WHAT THAT
13 IS?

14 A THIS IS A COIN ENVELOPE. IT INDICATES THAT INSIDE IS A HALF
15 OF A \$20 BILL WHICH WAS LOCATED BETWEEN THE CENTER CONSOLE AND
16 THE DRIVER'S SEAT.

17 Q OKAY. AND DID YOU LOCATE THAT?

18 A YES, SIR, I DID.

19 Q AND WHEN YOU FOUND IT WHAT DID YOU DO WITH IT?

20 A ORIGINALLY I WAS ADVISED THAT THIS \$20 BILL WAS ON THE FRONT
21 PASSENGER SEAT. I COULDN'T LOCATE IT AT FIRST. AND WITH THE
22 DOORS BEING OPENED IT APPEARS THAT THE WIND HAD BLOWN THE BILL IN
23 BETWEEN THE CENTER CONSOLE AND THE DRIVER'S SEAT. I PHOTOGRAPHED
24 IT AND THEN COLLECTED IT.

25 (PHOTOGRAPH MARKED AS STATE'S EXHIBIT NUMBER 18 FOR PURPOSES

DAR SHAW - DIRECT BY MR. MOYER

1 OF IDENTIFICATION ONLY)

2 (PHOTOGRAPH MARKED AS STATE'S EXHIBIT NUMBER 19 FOR PURPOSES
3 OF IDENTIFICATION ONLY)

4 Q I'M GOING TO HAND YOU STATE'S EXHIBIT NUMBERS 18 AND 19.
5 WILL YOU JUST TAKE A LOOK AT THEM AND TELL US, CAN YOU IDENTIFY
6 WHAT IS SHOWN IN THOSE PHOTOGRAPHS?

7 A YES, SIR, I CAN.

8 Q AND WHAT DO THOSE PHOTOGRAPHS SHOW?

9 A NUMBER 18 IS A DISTANCE PHOTOGRAPH TAKEN OF A BILL WHICH WAS
10 LOCATED BETWEEN THE CENTER CONSOLE AND THE DRIVER'S SEAT, AND
11 NUMBER 19 IS ACTUALLY A CLOSE-UP OF THE SAME BILL IN THE POSITION
12 THAT IT WAS LOCATED.

13 Q OKAY. AND THOSE PICTURES, ARE THEY ACCURATE AND TRUE
14 REPRESENTATIONS OF THAT BILL AS YOU SAW IT ON JUNE 7TH, 2006?

15 A YES, IT IS.

16 MR. MOYER: AT THIS TIME WE'D MOVE TO HAVE STATE'S EXHIBITS
17 18 AND 19 INTO EVIDENCE.

18 MR. CREECH: I WOULD JUST OBJECT ON RULE 403 AS TO THE---

19 THE COURT: OKAY. ALL RIGHT. CAN I SEE THEM REAL QUICK?

20 MR. MOYER: (PRESENTS EXHIBITS TO THE COURT FOR REVIEW)

21 THE COURT: OKAY. I OVERRULE THE OBJECTION. THEY'RE IN
22 EVIDENCE.

23 (PHOTOGRAPH, STATE'S EXHIBIT NUMBER 18, MOVED INTO EVIDENCE)

24 (PHOTOGRAPH, STATE'S EXHIBIT NUMBER 19, MOVED INTO EVIDENCE)

25 Q OKAY. NOW, IF YOU WOULD, I THINK YOU STILL HAVE THE LASER

DAR SHAW - DIRECT BY MR. MOYER

1 POINTER. CAN YOU FIRST TELL THE JURY WHAT IT IS YOU SEE IN
2 EXHIBIT NUMBER 18?

3 A THIS IS A PHOTOGRAPH THAT I TOOK FROM THE PASSENGER SIDE OF
4 THE VEHICLE. THERE WAS A -- WHAT I LATER FOUND TO BE A TORN \$20
5 BILL WAS BETWEEN THE CENTER CONSOLE AND THE DRIVER'S SEAT.

6 Q AND STATE'S EXHIBIT 19?

7 A THAT IS A CLOSE-UP OF THE SAME BILL PRIOR TO BEING
8 COLLECTED.

9 Q AND CAN YOU -- LET ME ASK YOU, IF YOU WOULD, TO OPEN THE
10 PACKAGE IN WHICH YOU SAID YOU PUT THE \$20 BILL, AND TELL ME IF
11 YOU CAN RECOGNIZE WHAT IT IS YOU SEE IN IT?

12 A (COMPLIES)

13 Q HOLD IT DOWN BECAUSE IT'S NOT IN EVIDENCE YET. HOLD IT
14 UNDER THE BAR, IF YOU WOULD.

15 A (COMPLIES) YES, SIR. THIS IS A TORN \$20 BILL THAT I
16 COLLECTED FROM INSIDE THE VEHICLE.

17 Q AND IS IT IN SUBSTANTIALLY THE SAME CONDITION NOW AS IT WAS
18 WHEN YOU COLLECTED IT ON JUNE THE 7TH OF LAST YEAR?

19 A YES, SIR, IT IS.

20 MR. MOYER: AT THIS TIME I WOULD MOVE TO HAVE STATE'S
21 EXHIBIT NUMBER 17 INTO EVIDENCE.

22 MR. CREECH: NO OBJECTION, YOUR HONOR.

23 THE COURT: IT'S IN EVIDENCE.

24 (TORN \$20 BILL, STATE'S EXHIBIT NUMBER 17, MOVED INTO
25 EVIDENCE)

DAR SHAW - DIRECT BY MR. MOYER

1 Q AND WOULD YOU NOW HOLD THAT UP SO THE JURY CAN SEE IT.

2 A (COMPLIES)

3 Q OKAY. AND PLEASE, IF YOU WOULD, PUT IT BACK IN THE
4 ENVELOPE.

5 A (COMPLIES)

6 Q ALL RIGHT. NOW, DID YOU COLLECT ANYTHING ELSE FROM THE
7 SCENE, FROM ANY OTHER OFFICER?

8 A YES, SIR, I DID.

9 Q AND WHAT WAS THAT?

10 A I COLLECTED A JACK. IT WAS A HYDRAULIC JACK WITH A HANDLE
11 AS WELL AS A THREE-PAGE PAWN TICKET.

12 Q AND THE HYDRAULIC JACK, WHO DID YOU SAY YOU GOT IT FROM?

13 A I GOT IT FROM INVESTIGATOR HAMLETT WITH THE POLICE
14 DEPARTMENT.

15 Q AND WHAT DID YOU DO AFTER YOU TOOK IT FROM HIM?

16 A I PUT IT INTO MY VEHICLE. HE HAD FILLED OUT A PROPERTY AND
17 EVIDENCE FORM. ANY TIME THERE IS A TRANSFER OF EVIDENCE FROM ONE
18 OFFICER TO ANOTHER WE WANT TO KEEP THE CHAIN OF CUSTODY, SO HE
19 FILLED OUT A PROPERTY AND EVIDENCE SHEET AND SIGNED THOSE ITEMS
20 OVER TO ME, AND I PUT THEM INTO MY VEHICLE.

21 Q OKAY. AND THEN WHAT DID YOU END UP DOING WITH THE JACK
22 AFTER YOU PUT IT IN YOUR VEHICLE?

23 A AFTER I CLEARED THE SCENE AND WENT BACK TO OUR OFFICE I
24 PROCESSED THE JACK AND THE HANDLE USING POWDER ON THE JACK AND ON
25 THE HANDLE, AND I ALSO PROCESSED THE PAPER DOCUMENTS, THE PAWN

DAR SHAW - DIRECT BY MR. MOYER

1 SHEETS, USING A CHEMICAL WHICH IS CALLED NINHYDRIN, AND IT'S USED
2 TO BRING UP FINGERPRINTS OFF OF PAPER DOCUMENTS. SO I PROCESSED
3 ALL OF THOSE. PRIOR TO DOING THE DOCUMENTS, I PHOTOCOPIED THEM
4 FIRST.

5 Q OKAY. LET ME ASK YOU ABOUT THAT. I'M GOING TO HAND YOU
6 WHAT'S ALREADY BEEN MARKED AS STATE'S EXHIBIT NUMBER 11. AND IF
7 YOU COULD, TAKE A MOMENT TO LOOK AT STATE'S EXHIBIT NUMBER 11 AND
8 TELL THE JURY, DO YOU RECOGNIZE WHAT THAT IS?

9 A (REVIEWS DOCUMENT) YES, THIS IS A PAWN TICKET, NUMBER 67796
10 TO RED'S PAWN BROKERS -- OR FROM RED'S PAWN BROKERS. AND THIS IS
11 ONE OF THE ITEMS THAT I COLLECTED FROM INVESTIGATOR HAMLETT.

12 Q OKAY. NOW, AFTER YOU COLLECTED IT FROM INVESTIGATOR
13 HAMLETT, DID YOU HAVE TO DO ANYTHING TO THAT PARTICULAR DOCUMENT
14 THAT WOULD CHANGE THE APPEARANCE OR LOOK OF IT?

15 A I DID. THAT'S WHY IT WAS PHOTOCOPIED. NINHYDRIN IS AN
16 ACETONE-BASED CHEMICAL, LIKE IN FINGERNAIL POLISH REMOVER.
17 ANYTHING THAT IS WRITTEN IN INK, IF THERE'S A SIGNATURE THAT'S
18 DONE IN INK, IF IT'S PUT IN ACETONE, A LOT OF TIMES THAT
19 SIGNATURE WILL DISAPPEAR. SO WE PHOTOCOPY IT PRIOR TO PROCESSING
20 IT WITH NINHYDRIN.

21 Q OKAY. NOW, OTHER THAN THOSE DIFFERENCES THAT CAME ABOUT AS
22 A RESULT OF WHAT YOU DID TO THE DOCUMENT, DO YOU SEE ANYTHING
23 ELSE, ANY ADDITIONS OR CHANGES TO THAT DOCUMENT?

24 A NOT THAT I SEE, NO.

25 (PHOTOCOPY OF PAWN TICKET 67796 MARKED AS STATE'S EXHIBIT

DAR SHAW - DIRECT BY MR. MOYER

1 NUMBER 20 FOR PURPOSES OF IDENTIFICATION ONLY)

2 Q OKAY. LET ME HAND YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT
3 NUMBER 20. CAN YOU TAKE A LOOK AT THAT AND TELL US IF YOU
4 RECOGNIZE IT.

5 A (REVIEWS EXHIBIT) YES, SIR, I DO.

6 Q OKAY. AND WHAT DO YOU RECOGNIZE IT AS?

7 A THIS IS A PHOTOCOPY OF THE FRONT PAGE, THE WHITE COPY OF THE
8 SAME PAWN TICKET, 67706, FROM RED'S PAWN BROKERS, INC.

9 Q IS THAT THE PHOTOCOPY THAT YOU MADE?

10 A YES, SIR, IT IS.

11 Q AND DO YOU SEE ANY SUBSTANTIAL OR MATERIAL CHANGES TO THAT
12 DOCUMENT SINCE YOU MADE THE PHOTOCOPY ON THE DATE YOU JUST
13 MENTIONED?

14 A NO, SIR.

15 MR. MOYER: YOUR HONOR, AT THIS TIME I MOVE TO HAVE STATE'S
16 EXHIBIT NUMBER 20 INTO EVIDENCE.

17 MR. CREECH: AND I JUST OBJECT ON AUTHENTICATION AND
18 HEARSAY, YOUR HONOR.

19 THE COURT: ALL RIGHT. OVERRULED.

20 (PHOTOCOPY OF PAWN TICKET, STATE'S EXHIBIT NUMBER 20, MOVED
21 INTO EVIDENCE)

22 Q ALL RIGHT. AND IF YOU WOULD, TAKE THAT -- LOOKING AT THAT
23 DOCUMENT, WHAT IS THE NAME OF THE PERSON WHO PAWNED AN ITEM ON
24 THAT DOCUMENT?

25 A THE NAME IS DIANA, THE MIDDLE INITIAL "N," LAST NAME

DAR SHAW - DIRECT BY MR. MOYER

1 TISDALE, T-I-S-D-A-L-E.

2 Q AND WHAT IS THE ITEM THAT IS PAWNED?

3 A THE ITEM IS A PRO-LIFT TWO-TON JACK.

4 Q AND HOW MUCH MONEY WAS EXCHANGED FOR THE PAWNING OF THAT
5 ITEM?

6 A FIVE DOLLARS.

7 Q WHAT IS THE DATE AND TIME LISTED?

8 A THE TIME WAS 1:20 P.M., DATED JUNE 7TH, 2006.

9 Q ALL RIGHT. NOW, LET ME ASK YOU AGAIN ABOUT WHAT -- YOU
10 MENTIONED ABOUT PROCESSING THE FINGERPRINTS. WHAT DID YOU -- IS
11 IT PART OF YOUR JOB AS A FORENSICS OFFICER TO TRY TO FIND
12 FINGERPRINTS RELATED TO CRIMINAL ACTIVITY?

13 A YES, SIR, IT IS.

14 Q AND DID YOU TRY TO DO THAT IN THIS CASE?

15 A YES, SIR, I DID.

16 Q WERE YOU ABLE TO DO ANYTHING AT THE ACTUAL SCENE?

17 A NO, SIR. I PROCESSED THE DRIVER'S SIDE, WHICH THE INITIAL
18 INFORMATION I HAD WAS THAT THE SUSPECT HAD BEEN ON THE DRIVER'S
19 SIDE OF THE VEHICLE. SO I PROCESSED THE ROOF, THE DOOR, ANY
20 AREAS THAT MAY HAVE BEEN TOUCHED BY ANYONE, WHETHER IT BE A
21 VICTIM OR ANYBODY WHO IS NOT AN OCCUPANT.

22 Q OKAY. AND WERE YOU ABLE TO FIND ANYTHING?

23 A NO, SIR, NONE THAT WERE COMPARABLE.

24 Q NOW, DID YOU PROCESS ANYTHING ELSE?

25 A I BELIEVE I ONLY DID THE JACK AND THE PAWN SHEET.

DAR SHAW - DIRECT BY MR. MOYER

1 (LATENT CARDS MARKED AS STATE'S EXHIBIT NUMBER 21 FOR
2 PURPOSES OF IDENTIFICATION ONLY)

3 Q NOW, I'M GOING TO HAND YOU STATE'S EXHIBIT NUMBER 21. AND
4 IF YOU WOULD, LOOK THROUGH THAT ENVELOPE AND TELL US WHAT IS IN
5 -- WHAT THE CONTENTS OF THAT ENVELOPE ARE.

6 A (REVIEWS EXHIBIT) THESE ARE LATENT CARDS THAT HAVE
7 POTENTIAL LATENT FINGERPRINTS ON THEM. IT'S ACTUALLY UNDER TAPE.
8 THERE'S A PROCESS THAT WE USE FOR COLLECTING FINGERPRINTS, WHICH
9 INCLUDES THE USE OF POWDERS AND THEN PUTTING TAPE OVER THAT PRINT
10 THAT HAS BEEN DEVELOPED AND THEN IS PERMANENTLY PLACE ON A LATENT
11 CARD, WHICH WOULD BE A FINGERPRINT CARD.

12 Q OKAY. AND HOW MANY WERE YOU ABLE TO -- HOW MANY OF THESE
13 FINGERPRINTS WERE YOU ABLE TO SAVE IN THIS WAY YOU JUST TOLD US?

14 A THERE WERE ACTUALLY TWO ON THE JACK, TWO PRINTS THAT WERE ON
15 THAT JACK. THE OTHERS ARE ACTUALLY PHOTOCOPIES, WHICH WOULD HAVE
16 BEEN DONE BY SERGEANT SHERBERT, AND NOT FROM WHAT I HAVE DONE.
17 IT'S -- THE JACK WAS DONE USING THE POWDER AND THE TAPE. WHEN
18 YOU USE NINHYDRIN TO BRING UP A FINGERPRINT, IT MAKES IT VISIBLE
19 ON THE PAPER DOCUMENT. I THEN HAVE TO PHOTOGRAPH IT USING OUR
20 IMAGE ENHANCEMENT SYSTEM. WE CAPTURE THAT IMAGE, PUT IT ON A ZIP
21 DISK AND THEN THAT ZIP DISK IS THEN SENT TO OUR LATENT DIVISION
22 ALONG WITH THE ORIGINAL DOCUMENTS, AND THEN THEY'LL DO A
23 COMPARISON AND MAKE IT AN ACTUAL PAPER PRINT OFF OF -- OFF OF
24 THAT DOCUMENT.

25 Q OKAY. SO JUST MAKE SURE WE GOT THIS RIGHT. SO OF THOSE 11

DAR SHAW - DIRECT BY MR. MOYER

1 PRINT CARDS IN THERE TWO CAME OFF THE JACK?

2 A THAT'S CORRECT.

3 Q TWO OF THOSE CARDS CAME OFF THE JACK. AND THE OTHER NINE
4 CAME OFF THAT PAWN TICKET?

5 A RIGHT. OF ALL THREE COPIES WHERE ANY POSSIBLE PRINTS WERE
6 THAT WERE VISIBLE, I PHOTOGRAPHED EACH ONE AND SET THOSE PRINTS
7 UP OFF OF THE PAWN SHEET.

8 Q OKAY. NOW, AFTER YOU DID THOSE -- GOT THOSE TWO
9 FINGERPRINTS OFF OF THAT JACK, WHAT DID YOU DO WITH THOSE CARDS
10 THAT YOU MADE THAT DISPLAYED THE FINGERPRINTS THAT YOU FOUND?

11 A ANY TIME WE HAVE PRINTS THAT WE DEVELOP AND THEY ARE PUT ON
12 THESE CARDS, WE FILL OUT THE FRONT PART OF OUR LATENT CARD, WHICH
13 INDICATES THE DATE, THE ADDRESS WHERE THE ITEM WAS COLLECTED
14 FROM, THE TYPE OF CALL AND A -- YOU TRY TO GIVE AS MUCH DETAIL
15 DESCRIPTION AS YOU CAN AS FAR AS WHERE THAT FINGERPRINT CAME
16 FROM. ONCE THOSE ARE COMPILED, THEN WE HAVE TO FILL OUT A LATENT
17 ENVELOPE AND IN THAT ENVELOPE IT ALSO HAS THE TYPE OF CALL THAT
18 YOU WENT ON, VICTIM INFORMATION, THE DATE, WHERE IT WAS PROCESSED
19 AT, AND WHO ACTUALLY THE TECHNICIAN WAS THAT PROCESSED IT AND WHO
20 THE INVESTIGATING OFFICER IS. TYPICALLY WE PUT THAT LATENT
21 ENVELOPE WITH OUR LATENTS INTO A LOCKED BOX, WHICH THE CAPTAIN
22 AND THE LATENT EXAMINERS ARE THE ONLY ONES WHO HAVE ACCESS TO
23 THAT BOX. HOWEVER, BECAUSE OF THIS BEING A DEATH INVESTIGATION,
24 TO TRY TO EXPEDITE IT I HAND CARRIED ALL OF THESE UP TO SERGEANT
25 SHERBERT IN THE LATENT DIVISION.

DAR SHAW - DIRECT BY MR. MOYER

1 Q ALL RIGHT. AND DO YOU DO THAT THE SAME DAY AS YOU GOT THE
2 FINGERPRINTS?

3 A YES, I DID.

4 Q THE NIGHT OF JUNE 7TH?

5 A YES, I DID. IT WAS.

6 Q ALL RIGHT. NOW, A FEW FINAL QUESTIONS. BACK TO THE SCENE,
7 WHEN YOU COLLECTED THE SHELL CASINGS AND SO FORTH---

8 A YES, SIR.

9 Q ---AT AVENUE, YOU SEARCHED THE CAR?

10 A YES, SIR, I DID.

11 Q AND IT WAS -- JUST TO MAKE SURE WE'RE CLEAR ON THIS, IS THIS
12 THE CAR THAT IS DISPLAYED HERE IN STATE'S EXHIBITS NUMBER 4 AND
13 5?

14 A YES, SIR, THAT'S CORRECT.

15 Q OKAY. AND WHAT KIND OF CAR WAS THAT?

16 A IT WAS A FORD ESCORT STATION WAGON?

17 Q HOW MANY DOORS?

18 A IT'S A FOUR-DOOR WITH A HATCHBACK.

19 Q AND YOU FOUND A COUPLE OF LIVE BULLETS IN THE CAR AS WELL;
20 IS THAT RIGHT?

21 A YES, SIR, I DID.

22 Q WHERE WERE THEY?

23 A THEY WERE ON THE FLOORBOARD, THE DRIVER'S FLOORBOARD. ONE,
24 I BELIEVE, WAS UNDER THE PEDALS AND ONE WAS UP NEXT TO THE
25 RUNNING BOARD AS YOU GET IN THE CAR. THEY WERE .22 CALIBER LONG

DAR SHAW - CROSS BY MR. CREECH

1 RIFLES.

2 Q HOW WOULD YOU DESCRIBE THE INTERIOR OF THAT CAR, WAS IT NEAT
3 OR DIRTY OR...

4 A IT WAS VERY CLUTTERED. THERE WERE ITEMS, AGAIN, FOOD
5 WRAPPERS, THAT TYPE OF THING, ALL OVER THE INTERIOR OF THE
6 VEHICLE, INCLUDING THE FLOOR BOARDS.

7 Q DID YOU FIND ANY FIREARMS IN THE GUN -- I'M SORRY, ANY
8 FIREARMS IN THE CAR?

9 A NO, SIR, I DID NOT.

10 MR. MOYER: ALL RIGHT. PLEASE ANSWER ANY QUESTIONS THE
11 DEFENSE MIGHT HAVE.

12 CROSS EXAMINATION BY MR. CREECH:

13 Q SERGEANT SHAW, WHEN YOU WENT OUT TO THE SCENE WHO WAS THE
14 FIRST OFFICER YOU SPOKE TO; DO YOU REMEMBER?

15 A SERGEANT MILLER, I BELIEVE.

16 Q OKAY. AND YOU HAD A CONVERSATION WITH HIM; IS THAT CORRECT?

17 A THAT'S CORRECT.

18 Q OKAY. AND IS HE THE OFFICER WHO TOLD YOU ABOUT THE \$20 BILL
19 ON THE FRONT SEAT?

20 A SIR, I CAN'T RECALL IF HE IS SPECIFICALLY THE ONE OR NOT.
21 THERE WERE OTHER INVESTIGATORS AND OFFICERS ON SCENE.

22 Q OKAY. IS THAT YOUR REPORT, SERGEANT SHAW?

23 A (REVIEWS DOCUMENT) YES, SIR, THAT'S A COPY OF MY REPORT.
24 YES, SIR.

25 Q YOU BROUGHT YOUR ORIGINAL WITH YOU TODAY; IS THAT CORRECT?

DAR SHAW - CROSS BY MR. CREECH

1 A THIS IS ALSO A COPY, SIR.

2 Q THAT'S A COPY TOO. AND ON THE FIRST PAGE OF YOUR REPORT
3 DOES IT SAY IN THERE "UPON ARRIVING ON THE SCENE," YOU, "THE
4 RESPONDING OFFICER WAS ADVISED THAT A \$20 BILL HAD BEEN ON THE
5 FRONT SEAT OF THE CAR; IS THAT RIGHT?

6 A YES, SIR. THAT'S CORRECT.

7 Q OKAY. NO ONE SAID THAT HALF OF A \$20 BILL HAD BEEN SEEN ON
8 THE FRONT SEAT; IS THAT RIGHT?

9 A I BELIEVE THAT'S CORRECT.

10 Q AND THEN IT SAID "BUT APPARENTLY THAT BILL HAD BLOWN OFF IN
11 THE WIND," IS WHAT YOU WERE THINKING; IS THAT CORRECT?

12 A IT WAS NOT ON THE FRONT SEAT WHERE I WAS TOLD THAT IT WAS.

13 Q OKAY. AND THEN YOU LOOKED FURTHER INSIDE THE CAR AND YOU
14 SAW SOME CRUMPLED UP WHAT LOOKED LIKE TO BE MONEY, GOT IT OUT,
15 OPENED IT UP, AND IT TURNED OUT IT WAS HALF OF A \$20 BILL; IS
16 THAT CORRECT?

17 A THAT'S CORRECT. AFTER IT WAS PHOTOGRAPHED, YES.

18 Q DO YOU KNOW IF THERE WAS EVER A \$20 BILL, A FULL \$20 BILL,
19 IN THE CAR?

20 A NO, SIR, I DON'T.

21 Q OKAY. BUT YOU WERE TOLD THAT THERE WAS A \$20 BILL IN THE
22 CAR; IS THAT RIGHT?

23 A THAT'S CORRECT.

24 Q OKAY. THIS \$20 THAT YOU PREVIOUSLY IDENTIFIED, THAT'S THE
25 RIPPED BILL; IS THAT CORRECT?

DAR SHAW - CROSS BY MR. CREECH

1 A YES, SIR.

2 Q OKAY. AND IT WASN'T TORN DIAGONALLY DOWN LIKE THIS, IT WAS
3 RIPPED RIGHT ACROSS THE HALF OF THAT \$20 BILL; IS THAT RIGHT?

4 A THAT HAS NOT BEEN TAMPERED WITH, TO MY KNOWLEDGE, FROM THE
5 TIME I COLLECTED IT.

6 Q OKAY. NOW, DID YOU EVER FIND ANOTHER HALF OF A \$20 BILL
7 ANYWHERE?

8 A NO, SIR, I DID NOT.

9 Q WHEN YOU ARRIVED ON SCENE AND ALSO AS A FORENSICS OFFICER --
10 AND YOU ACTUALLY MAY HAVE BEEN THERE FOR A WHILE, DID YOU SUGGEST
11 TO SERGEANT MILLER THAT A GUNSHOT RESIDUE TEST NEEDED TO BE
12 PERFORMED UPON THE PEOPLE WHO HAD BEEN IN THAT CAR; IS THAT
13 CORRECT?

14 A THAT IS STANDARD PROTOCOL.

15 Q STANDARD PROTOCOL---

16 A AS FAR AS THE FORENSIC DIVISION, ANY TIME WE'RE REQUESTED TO
17 RESPOND TO SCENES WHERE A WEAPON HAS BEEN FIRED IT'S NORMALLY
18 REQUESTED BY THE AGENCY BUT IT'S A STANDARD PROCEDURE THAT WE DO
19 THAT.

20 Q OKAY. AND DO YOU KNOW IF -- FIRST OF ALL, COULD YOU EXPLAIN
21 TO THE JURY, WHAT IS A GUNSHOT RESIDUE TEST?

22 A A GUNSHOT RESIDUE TEST -- THERE ARE TWO DIFFERENT TYPES.
23 THERE'S AN S.E.L. WHICH IS THE SCANNING ELECTRON MICROSCOPE TEST,
24 WHICH IS LIKE A SMALL DABBER, LIKE FLYPAPER, AND WHAT YOU DO IS
25 YOU DAB THE HANDS OR A PARTICULAR AREA. YOU CAN DO A FIXED

DAR SHAW - CROSS BY MR. CREECH

1 OBJECT, LIKE A STEERING WHEEL OR THE TOP OF A CAR. THERE ARE
2 THREE PARTS. THERE'S ANTIMONY, BARIUM AND LEAD. THOSE THREE
3 PARTICLES ARE -- WHEN THEY ARE FUSED TOGETHER IT MAKES A GUNSHOT
4 PARTICLE. THAT'S THE ONLY TIME THAT THOSE THREE COMPONENTS ARE
5 TOGETHER IS WHEN A WEAPON'S BEEN FIRED. SO WHAT WE'LL DO IS
6 WE'LL TAKE AND DO A DABBER. WE'LL DO THE GUNSHOT RESIDUE TEST ON
7 EITHER HANDS OR STATIONARY OBJECTS IN ORDER TO TRY TO LOCATE
8 GUNSHOT PARTICLES.

9 Q OKAY. AND WHAT ARE THE TEST -- WHAT IS THE RANGE OF TEST
10 RESULTS IN A GUNSHOT RESIDUE TEST?

11 A I DON'T HAVE THE ANSWER TO THAT, SIR.

12 Q YOU DON'T -- I'M NOT SAYING IN THIS PARTICULAR CASE. I'M
13 JUST SAYING IN GENERAL.

14 A NO, SIR, I DON'T HAVE THE ANSWER -- I'M NOT -- NO, SIR. I
15 CONDUCT THE TEST AND THEY SEND IN FOR ANALYSIS.

16 Q OKAY. AND DO YOU KNOW WHO -- UPON WHOM THE GUNSHOT RESIDUE
17 TESTS WERE PERFORMED IN THIS CASE?

18 A JAMES ARMSTRONG, I BELIEVE, IS OUR FIREARMS EXAMINER.

19 Q OKAY.

20 A AND IF IT WAS SENT TO OUR LAB, THEN HE WOULD BE THE
21 TECHNICIAN THAT WOULD HAVE DONE THAT.

22 Q DO YOU KNOW FROM WHOM THE SAMPLES WERE TAKEN IN THIS CASE BY
23 FORENSICS?

24 A NO, SIR. I DID NOT DO ANY.

25 Q DID YOU ASK ANY OF YOUR FELLOW FORENSICS OFFICERS TO GO TAKE

APRIL DIETZ - DIRECT BY MR. MOYER

1 GUNSHOT RESIDUE TESTS FROM ANYONE?

2 A YES, I DID.

3 Q AND WHO DID YOU ASK TO TAKE THEM?

4 A TECHNICIAN LANGLEY.

5 Q OKAY. AND WHO WAS HE SUPPOSED TO TAKE THE GUNSHOT RESIDUE
6 TEST FROM?

7 A THE TWO -- EXCUSE ME. GO AHEAD.

8 Q I'M SORRY. WHO WAS HE SUPPOSED TO COLLECT THE GUNSHOT
9 RESIDUE FROM?

10 A THE TWO VICTIMS AT THE HOSPITAL.

11 Q OKAY. AND DO YOU KNOW IF A GUNSHOT RESIDUE TEST WAS EVER
12 PERFORMED ON THE PASSENGER IN THE BACK SEAT?

13 A I'M NOT AWARE OF THAT, NO.

14 MR. CREBCH: THANK YOU. NO FURTHER QUESTIONS.

15 MR. MOYER: NOTHING, YOUR HONOR.

16 THE COURT: THANK YOU, SIR. YOU MAY STEP DOWN.

17 (WITNESS STEPS DOWN AT 12:11 P.M.)

18 MR. MOYER: WE CALL APRIL DIETZ.

19 APRIL DIETZ, HAVING BEEN DULY SWORN,

20 TESTIFIED AS FOLLOWS:

21 MADAME CLERK: PLEASE STATE YOUR FULL NAME FOR THE RECORD.

22 WITNESS: APRIL J. DIETZ.

23 DIRECT EXAMINATION BY MR. MOYER:

24 Q OKAY. WHERE ARE YOU EMPLOYED?

25 A I WORK FOR THE GREENVILLE COUNTY DEPARTMENT OF PUBLIC SAFETY

APRIL DIETZ - DIRECT BY MR. MOYER

1 FORENSIC DIVISION.

2 Q WHAT DO YOU DO WITH THE GREENVILLE COUNTY FORENSIC DIVISION?

3 A I'M AN EVIDENCE TECHNICIAN.

4 Q ALL RIGHT. SO YOU DO THE SAME SORT OF THING THAT

5 INVESTIGATOR SHAW DOES WHO JUST TESTIFIED?

6 A YES.

7 Q ALL RIGHT. HOW LONG HAVE YOU BEEN WITH FORENSICS?

8 A I BEGAN EMPLOYMENT THERE IN FEBRUARY OF 2005.

9 Q WERE YOU CALLED OUT -- DID YOU DO ANY WORK WITH REGARD TO
10 THE INCIDENT THAT TOOK PLACE ON WOODLAWN AVENUE ON JUNE 7TH OF
11 2006?

12 A I WAS REQUESTED TO RESPOND TO A RESIDENCE IN GREENVILLE
13 COUNTY, BELIEVED TO BE THE SUSPECT'S RESIDENCE, AT
14 COURT, IN REFERENCE TO A SEARCH WARRANT BEING SERVED AT THAT
15 LOCATION.

16 Q ALL RIGHT. AND WHAT TIME DID YOU GET THE CALL?

17 A CAN I REFER TO MY NOTES JUST FOR TIME?

18 Q OKAY.

19 A (REVIEWS DOCUMENT) THE EXACT TIME THE CALL WAS RECEIVED BY
20 ME WAS 1800 HOURS. 6:00 P.M. THAT DATE.

21 Q OKAY. WHAT TIME DID YOU ARRIVE OUT THERE?

22 A ARRIVAL TIME WAS AT 1815 HOURS, 15 MINUTES LATER.

23 Q AND WHAT TIME DID YOU FINISH UP?

24 A I CLEARED THE LOCATION, THE TOTAL CALL ITSELF, AT 7:40 IN
25 THE EVENING, 1940 HOURS.

APRIL DIETZ - DIRECT BY MR. MOYER

1 Q ALL RIGHT. AND TELL ME AGAIN, WHAT WAS THE LOCATION OF
2 WHERE THIS TOOK PLACE?

3 A I RESPONDED TO DRIVE, I BELIEVE, LOT B IN
4 GREENVILLE, SOUTH CAROLINA.

5 Q OKAY. DID YOU TAKE PHOTOGRAPHS OF THE OUTSIDE OF THAT
6 RESIDENCE AS WELL?

7 A YES.

8 Q AND WHAT ALL DID YOU FOCUS ON THERE?

9 A WHEN I ARRIVED IT WAS -- I WAS ADVISED THAT A SEARCH WARRANT
10 HAD BEEN SERVED AT THAT LOCATION AND VARIOUS ITEMS OF EVIDENTIARY
11 VALUE WERE LOCATED AND THEY WOULD NEED TO BE PHOTOGRAPHED AND
12 COLLECTED.

13 Q OKAY. DID YOU -- WAS THERE ANYTHING OUTSIDE THAT YOU
14 FOCUSED ON WHEN YOU TOOK THE PHOTOGRAPHS?

15 A THERE WAS A VEHICLE THAT THEY REQUESTED SOME PHOTOGRAPHS TO
16 BE TAKEN OF.

17 Q I'M GOING TO SHOW YOU FIRST STATE'S EXHIBIT NUMBER 9, WHICH
18 IS ALREADY IN EVIDENCE. DO YOU RECOGNIZE WHAT IS SHOWN IN
19 STATE'S EXHIBIT 9?

20 A THAT WAS THE VEHICLE THAT WAS PARKED BESIDE THE HOME THAT I
21 WAS AT, THE RESIDENCE.

22 (PHOTOGRAPH MARKED AS STATE'S EXHIBIT NUMBER 22 FOR PURPOSES
23 OF IDENTIFICATION ONLY)

24 (PHOTOGRAPH MARKED AS STATE'S EXHIBIT NUMBER 23 FOR PURPOSES
25 OF IDENTIFICATION ONLY)

APRIL DIETZ - DIRECT BY MR. MOYER

1 Q OKAY. NOW, IF YOU WOULD, TAKE A LOOK AT STATE'S EXHIBITS
2 NUMBERS 22 AND 23. CAN YOU RECOGNIZE WHAT IS IN THOSE
3 PHOTOGRAPHS?

4 A THAT WAS THE SAME VEHICLE.

5 Q OKAY. AND ARE ALL THESE -- THE VEHICLE THAT YOU JUST
6 MENTIONED AS BEING THERE ON JUNE THE 7TH OF 2006, ARE THESE
7 PHOTOGRAPHS TRUE AND ACCURATE REPRESENTATIONS OF THE WAY THAT
8 VEHICLE LOOKED ON THAT DAY?

9 A YES.

10 MR. MOYER: YOUR HONOR, AT THIS TIME I WOULD MOVE TO HAVE
11 STATE'S EXHIBITS 22 AND 23 INTO EVIDENCE.

12 MR. CREECH: YOUR HONOR, WE HAVE NO OBJECTION.

13 THE COURT: OKAY. THEY'RE IN EVIDENCE.

14 (PHOTOGRAPH, STATE'S EXHIBIT NUMBER 22, MOVED INTO EVIDENCE)

15 (PHOTOGRAPH, STATE'S EXHIBIT NUMBER 23, MOVED INTO EVIDENCE)

16 Q JUST REAL BRIEFLY, THIS IS STATE'S EXHIBIT NUMBER 23. IS
17 THAT THE LOCATION IN RELATION TO THE RESIDENCE WHERE THAT VEHICLE
18 WAS WHEN YOU SAW IT?

19 A YES.

20 Q SO THE VEHICLE HADN'T BEEN MOVED OR ANYTHING AFTER YOU GOT
21 THERE TO TAKE THAT PHOTOGRAPH?

22 A NO.

23 Q AND IS THAT THE RESIDENCE THAT YOU THEN WENT IN FOR THE
24 COLLECTION OF EVIDENCE?

25 A YES.

APRIL DIETZ - DIRECT BY MR. MOYER

1 Q OKAY. (PAUSE) ALL RIGHT. NOW, SO YOU MENTIONED THAT YOU
2 COLLECTED SOME EVIDENCE THERE?

3 A YES, I DID.

4 Q OKAY. I'M GOING TO HAND YOU --

5 (BOX OF WINCHESTER AMMUNITION MARKED AS STATE'S EXHIBIT
6 NUMBER 24 FOR PURPOSES OF IDENTIFICATION ONLY)

7 Q I'M GOING TO HAND YOU STATE'S EXHIBIT NUMBER 24. IF YOU
8 WOULD, JUST TAKE A LOOK AT IT, AND CAN YOU TELL US WHAT IS SHOWN
9 IN THAT EXHIBIT?

10 A THIS WAS A -- I'M SORRY. THIS WAS A WINCHESTER AMMUNITION
11 BOX THAT WAS INSIDE OF THE LIVING ROOM AREA OF THE RESIDENCE THAT
12 I PHOTOGRAPHED AND THEN COLLECTED. IT CONTAINED SOME UNFIRED
13 ROUNDS, 15 UNFIRED ROUNDS IN ALL, INSIDE OF THE BOX. THE WHOLE
14 BOX WAS COLLECTED FROM THAT LOCATION.

15 Q AND WHAT CALIBER ROUNDS WERE THEY?

16 A I THINK THEY WERE NINE MILLIMETER LUGERS.

17 Q OKAY. AND YOU SAID YOU PHOTOGRAPHED IT FIRST?

18 A I DID.

19 Q LET ME SHOW YOU STATE'S EXHIBIT NUMBER 12. IT'S ALREADY IN
20 EVIDENCE. CAN YOU SEE THE BOX IN THAT PHOTOGRAPH?

21 A YES.

22 Q AND IF YOU COULD -- I'M NOT GOING TO BOTHER WITH PUTTING IT
23 UP ON THE SCREEN -- BUT CAN YOU JUST SORT OF POINT, IS IT AGAINST
24 THE WALL THERE OF THE RESIDENCE?

25 A YES. THIS IS LIKE A LIVING ROOM AREA WITH A MATTRESS HERE,

APRIL DIETZ - DIRECT BY MR. MOYER

1 A BUNCH OF ITEMS AROUND, BUT THE BOX -- THERE'S A WINDOW THERE.
2 IT WAS BELOW THE WINDOW ON THE FLOOR.

3 Q OKAY. HOW ARE YOU ABLE TO RECOGNIZE THE ACTUAL PHYSICAL
4 EVIDENCE THAT'S IN FRONT OF YOU AS BEING THE BOX THAT YOU
5 COLLECTED FROM THE HOUSE?

6 A IT'S DOCUMENTED ON MY P AND E SHEET AND ON THE BAG THAT I
7 PLACED IT IN AND PUT IT IN P AND E. THAT'S WHAT I COLLECTED.
8 THAT'S WHAT WAS ON THE BOX.

9 Q SO WHEN YOU COLLECTED THAT ITEM DID YOU PUT IT IN THE
10 PACKAGING THAT IT'S IN NOW?

11 A YES.

12 Q AND DID YOU WRITE ON THE PACKAGING?

13 A I DID.

14 Q WHAT DID YOU WRITE?

15 A A DESCRIPTION OF WHAT WAS COLLECTED, WHAT WAS INSIDE OF IT,
16 AND THEN ALSO IT WAS WRITTEN ON THE P AND E SHEET.

17 Q OKAY.

18 MR. MOYER: YOUR HONOR, AT THIS TIME I WOULD MOVE TO HAVE
19 STATE'S EXHIBIT NUMBER 24 INTO EVIDENCE.

20 MR. CREECH: I DON'T HAVE AN OBJECTION.

21 THE COURT: IT'S IN EVIDENCE.

22 (BOX OF WINCHESTER AMMUNITION, STATE'S EXHIBIT NUMBER 24,
23 MOVED INTO EVIDENCE)

24 Q OKAY. I OPENED THE PACKAGING. WOULD YOU JUST TAKE THE ITEM
25 OUT AND SHOW IT TO THE JURY.

APRIL DIETZ - DIRECT BY MR. MOYER

1 A (COMPLIES) YOU WANT ME TO OPEN IT UP AS WELL AND SHOW THEM
2 THE ROUNDS?

3 Q YES.

4 A LET ME GET IT OPEN. (PAUSE)

5 Q OKAY. AND DOES THAT CONTAIN 15 SHELLS?

6 A (INDICATES AFFIRMATIVE RESPONSE)

7 Q WHEN YOU COLLECTED IT DID IT CONTAIN 15 BULLETS?

8 A IT DID.

9 (HANDGUN MARKED AS STATE'S EXHIBIT NUMBER 25 FOR PURPOSES OF
10 IDENTIFICATION ONLY)

11 Q NOW, DID YOU -- FURTHER, LET ME SHOW YOU WHAT'S BEEN MARKED
12 AS STATE'S EXHIBIT NUMBER 25.

13 MR. MOYER: AND IF IT PLEASE THE COURT, I WOULD JUST SAY
14 THAT I'M HANDING A FIREARM TO THE WITNESS AND THAT THIS HAS
15 ALREADY BEEN CLEARED WITH SECURITY.

16 THE COURT: ALL RIGHT.

17 A I'M SORRY. DO YOU WANT ME TO OPEN THIS?

18 Q YES. PLEASE OPEN IT AND JUST LOOK AT IT YOURSELF AT THIS
19 POINT AND TELL ME IF YOU CAN RECOGNIZE WHAT I JUST HANDED YOU.

20 A (COMPLIES) THIS IS AN ITEM OF EVIDENCE I COLLECTED AT THE
21 SCENE THAT WAS LOCATED INSIDE OF THE LIVING ROOM AREA OF
22 RESIDENCE.

23 Q OKAY. AND HOW ARE YOU ABLE TO RECOGNIZE IT?

24 A THE ITEM WAS COLLECTED BY MYSELF AND PROCESSED BY ME AND
25 ALSO PACKAGED BY ME AND PLACED IN THIS BOX.

APRIL DIETZ - DIRECT BY MR. MOYER

1 Q AND DID YOU MAKE ANY MARKINGS ON THAT BOX?

2 A ON THE BOX I HAVE SOME INITIALS AND THE DATE OF WHEN IT WAS
3 PLACE INTO -- PACKAGED.

4 Q AND WHEN WAS IT PACKAGED AND COLLECTED?

5 A THE DATE IT WAS COLLECTED WAS THE DATE THAT I WAS AT THE
6 SCENE, WHICH WAS ON THE 7TH OF JUNE. THE DATE THAT IT WAS PLACE
7 INTO P AND E WOULD BE ON THE 13TH OF JUNE, ALONG WITH OTHER ITEMS
8 OF EVIDENCE FROM THAT LOCATION THAT WERE COLLECTED.

9 Q AND WHAT DID YOU DO WITH IT BETWEEN THE 7TH AND THE 13TH?

10 A ITEMS OF EVIDENCE COLLECTED AT SCENES, EACH TECHNICIAN HAS
11 AN EVIDENCE SHELF IN A SECURE AREA OF THE CRIME SCENE OFFICE.
12 THOSE ITEMS ARE PLACED ON THE SHELF UNTIL SUCH TIME WE ARE ABLE
13 TO PROCESS THOSE ITEMS. ONCE THEY ARE PROCESSED, WE THEN PACKAGE
14 THEM AND SUBMIT THEM TO P AND E. WHATEVER DATE WE ARE ABLE TO
15 TAKE THEM TO P AND E, WE DO.

16 Q NOW, WHEN YOU COLLECTED IT DID YOU MARK THE SERIAL NUMBER?

17 A I DID.

18 Q AND WHAT WAS THE SERIAL NUMBER WHEN YOU COLLECTED IT?

19 A THE SERIAL NUMBER I HAVE LISTED HERE IN MY REPORT AND ON THE
20 P AND E SHEET, YOU WANT ME TO READ THAT OFF TO YOU?

21 Q YES.

22 A IT'S A4E88 THAT WAS INSCRIBED ON A KEL TEC P11 NINE
23 MILLIMETER LUGER HANDGUN.

24 Q AND IF YOU WOULD, TAKE A LOOK AT THE EXHIBIT AND CAN YOU
25 SEE THE SERIAL NUMBER ON THERE?

APRIL DIETZ - DIRECT BY MR. MOYER

1 A GIVE ME JUST A SECOND. IT'S SECURED. (PAUSE) EVERY WEAPON
2 IS A LITTLE DIFFERENT. THE SERIAL NUMBER IS IMPRINTED ON THE
3 BACK JUST ABOVE THE HANDGRIP OF THE HANDGUN.

4 Q AND WHAT IS THE SERIAL NUMBER?

5 A IT IS A4E88.

6 Q IS THAT THE SAME SERIAL NUMBER AS THE ITEM AS YOU MARKED IT
7 ON THE 7TH WHEN YOU COLLECTED IT?

8 A YES, IT IS.

9 MR. MOYER: YOUR HONOR, AT THIS TIME I WOULD MOVE TO HAVE
10 STATE'S EXHIBIT NUMBER 25 INTO EVIDENCE.

11 MR. CREECH: NO OBJECTION, YOUR HONOR.

12 (STATE'S EXHIBIT NUMBER 25, HANDGUN, MOVED INTO EVIDENCE)

13 (PHOTOGRAPH MARKED AS STATE'S EXHIBIT NUMBER 26 FOR PURPOSES
14 OF IDENTIFICATION ONLY)

15 (PHOTOGRAPH MARKED AS STATE'S EXHIBIT NUMBER 27 FOR PURPOSES
16 OF IDENTIFICATION ONLY)

17 (PHOTOGRAPH MARKED AS STATE'S EXHIBIT NUMBER 28 FOR PURPOSES
18 OF IDENTIFICATION ONLY)

19 Q OKAY. BEFORE WE SHOW THE ITEM, LET ME ASK YOU A QUESTION.
20 DID YOU PHOTOGRAPH IT AT THE LOCATION WHERE IT WAS FOUND?

21 A YES.

22 Q ALL RIGHT. DID YOU MOVE IT AT ALL BEFORE YOU PHOTOGRAPHED
23 IT?

24 A IT WAS PHOTOGRAPHED IN THE LOCATION AS IT WAS AS I SAW IT
25 WHEN I ARRIVED, AND THEN ONCE REMOVED FROM THAT LOCATION TO

APRIL DIETZ - DIRECT BY MR. MOYER

1 ACTUALLY SHOW WHAT IT WAS, BECAUSE IT WAS WRAPPED UP WHEN I FIRST
2 OBSERVED IT. WHEN I GOT THERE YOU COULD NOT SEE IT.

3 Q WOULD YOU TAKE A LOOK AT STATE'S EXHIBITS 26, 27 AND 28,
4 JUST TAKE A MINUTE, AND FLIP THROUGH THEM AND TELL US IF YOU CAN
5 IDENTIFY THAT.

6 A (REVIEWS EXHIBITS) THE FIRST PHOTOGRAPH IS OF A DRESSER
7 THAT WAS IN THE LIVING AREA, LIKE A BEDROOM DRESSER THAT WAS IN
8 THE LIVING AREA. THE SECOND PHOTOGRAPH IS A SMALL BUNDLE THAT
9 WAS SHOWN TO ME BY OFFICERS AT THE SCENE THAT THEY HAD LOCATED
10 UNDERNEATH -- IN A PORTION UNDERNEATH OF THE DRESSER SOMEWHAT
11 CONCEALED. AND THEN THE THIRD PHOTOGRAPH IS AN ACTUAL PHOTOGRAPH
12 OF THIS ITEM ONCE UNWRAPPED FROM, I BELIEVE IT WAS, A PILLOWCASE.
13 WHEN IT WAS UNWRAPPED I TOOK A PICTURE OF IT AS IT WAS WRAPPED UP
14 INSIDE OF THERE.

15 Q OKAY. AND ARE THEY TRUE AND ACCURATE REPRESENTATIONS OF THE
16 WAY IT LOOKED WHEN YOU PHOTOGRAPHED IT AND FOUND IT?

17 A YES.

18 MR. MOYER: YOUR HONOR, AT THIS TIME I WOULD MAKE -- OR
19 MOVE TO HAVE STATE'S EXHIBITS NUMBER 26, 27 AND 28 INTO EVIDENCE.

20 MR. CREECH: I HAVE NO OBJECTION, YOUR HONOR.

21 THE COURT: ALL RIGHT. THEY'RE IN EVIDENCE.

22 (PHOTOGRAPH, STATE'S EXHIBIT NUMBER 26, MOVED INTO EVIDENCE)

23 (PHOTOGRAPH, STATE'S EXHIBIT NUMBER 27, MOVED INTO EVIDENCE)

24 (PHOTOGRAPH, STATE'S EXHIBIT NUMBER 28, MOVED INTO EVIDENCE)

25 Q CAN YOU GIVE US -- OKAY. FIRST OFF, TELL THE JURY WHAT IT

APRIL DIETZ - DIRECT BY MR. MOYER

1 IS YOU SEE IN STATE'S EXHIBIT 27.

2 A WHEN I ENTERED INTO THE FRONT DOOR OF THE RESIDENCE THIS
3 APPEARED TO BE A DRESSER TO ME, LIKE A BEDROOM DRESSER, BUT IT
4 WAS IN THE LIVING ROOM AREA. THAT IS HOW I OBSERVED IT. ON THE
5 FAR, IT WOULD BE, THE RIGHT-HAND CORNER WHERE THE GLASS SHOULD BE
6 ON THE SMALL -- IT'S LIKE A DOOR -- A LITTLE SMALL CABINET DOOR,
7 THERE WAS NO GLASS THERE. I WAS ADVISED THAT EVIDENCE WAS
8 POSSIBLY -- POSSIBLE EVIDENCE WAS LOCATED UP UNDERNEATH OF THERE.
9 AND PRIOR TO MY ARRIVAL OFFICERS HAD REMOVED A BOTTOM PORTION OF
10 THE DRESSER, I GUESS IT WOULD BE LIKE THE -- NOT THE VERY BOTTOM
11 BUT LIKE A SMALL AREA HAD TO BE LIFTED IN ORDER TO SEE THE
12 EVIDENCE THAT WAS HIDDEN, APPEARED TO BE HIDDEN UNDERNEATH OF IT.

13 Q DO YOU HAVE THE LASER POINTER IN FRONT OF YOU?

14 A YES.

15 Q YOU CAN USE THAT. CAN YOU GIVE US AN IDEA OF WHERE THE DOOR
16 TO THIS TRAILER IS IN RELATION TO -- TO THE ACTUAL TRAILER?

17 A THE DOOR -- THE MAIN ENTRANCE TO THE TRAILER?

18 Q THE MAIN ENTRANCE.

19 A WHERE I AM STANDING IS JUST INSIDE OF THE FRONT DOOR, FACING
20 THAT. I WOULD HAVE JUST BEEN STANDING RIGHT INSIDE TAKING
21 OVERALL PHOTOGRAPHS IN A CLOCKWISE MOTION, STANDING AT THE DOOR.

22 Q SO THAT PHOTOGRAPH THEN IS TAKEN FROM THE VANTAGE POINT OF
23 THE FRONT DOOR?

24 A YES.

25 Q OKAY. AND CAN YOU POINT OUT USING THE LASER POINTER WHERE

APRIL DIETZ - DIRECT BY MR. MOYER

1 IT IS YOU FOUND THAT FIREARM?

2 A YES. LET ME GET THIS THING WORKING. RIGHT IN THAT AREA
3 THERE. IT'S NOT VISIBLE BY THIS PARTICULAR PICTURE. THIS --
4 THERE'S AN OPENING RIGHT HERE. ON THIS SIDE OF THE DRESSER
5 THERE'S A GLASS PARTITION OR GLASS FACING. IT'S MISSING ON THIS
6 DRESSER. THE FIREARM WAS LOCATED JUST INSIDE ON THE FLOOR. THE
7 BOTTOM SHELF OF THE DRESSER HAD BEEN LIFTED UP PRIOR TO MY
8 ARRIVAL SO THAT THAT COULD BE SEEN. I COULD NOT SEE IT FROM
9 WHERE I WAS STANDING THERE, BUT THAT IS WHERE IT WAS.

10 Q STATE'S EXHIBIT 28. WOULD YOU TELL THE JURY WHAT IS IN THAT
11 PHOTOGRAPH?

12 A I'M DOING MORE CLOSE-UP PHOTOGRAPHS OF THE VARIOUS ITEMS OF
13 EVIDENCE INSIDE OF THE LIVING ROOM AREA. WHEN I GOT TO THE
14 DRESSER THE FIREARM WAS WRAPPED IN THIS, I BELIEVE IT WAS A
15 PILLOWCASE. THIS PORTION RIGHT HERE IS THE BOTTOM SHELF THAT HAD
16 ALREADY BEEN LIFTED UP PRIOR TO MY ARRIVAL. I'M GUESSING THAT IT
17 HAD LAIN FLAT DOWN ALONG THIS AREA HERE WHERE IT COULD NOT BE
18 SEEN. BUT IT HAD ALREADY BEEN MOVED WHEN I GOT THERE.

19 Q STATE'S EXHIBIT 26.

20 A THAT IS THE FIREARM ONCE UNWRAPPED FROM THAT PILLOWCASE.
21 THAT IS A PHOTOGRAPH OF IT JUST AS IT WAS AS I UNWRAPPED IT.

22 Q OKAY. NOW, WOULD YOU JUST HOLD UP THE BOX THAT CONTAINS THE
23 FIREARM THE BEST WAY YOU CAN FOR THE JURY TO SEE? LEAVE IT IN
24 THE BOX, IF YOU WOULD.

25 A OKAY. (COMPLIES)

APRIL DIETZ - DIRECT BY MR. MOYER

1 Q OKAY. NOW, WHAT IS TO THE -- OKAY. YOU CAN HOLD IT BACK
2 DOWN. AS YOU LOOK AT THE FIREARM THERE IS SOMETHING TO THE
3 RIGHT. WHAT IS THAT?

4 A THAT IS METAL MAGAZINE CLIP THAT WAS INSIDE OF THE FIREARM
5 WHEN I COLLECTED IT.

6 Q AND WAS IT IN THE GUN WHEN YOU SAW IT?

7 A YES.

8 Q AND YOU SAY YOU TOOK IT OUT?

9 A YES.

10 Q WAS THE GUN LOADED?

11 A YES.

12 Q AND HOW MANY BULLETS WERE IN THE GUN?

13 A IT WAS EIGHT UNFIRED ROUNDS INSIDE OF THE WEAPON.

14 (EIGHT UNFIRED ROUNDS MARKED AS STATE'S EXHIBIT NUMBER 29
15 FOR PURPOSES OF IDENTIFICATION ONLY)

16 Q I'M GOING TO HAND YOU STATE'S EXHIBIT NUMBER 29. CAN YOU
17 TELL US WHAT THAT IS?

18 A THESE ARE THE ACTUAL UNFIRED ROUNDS, EIGHT UNFIRED ROUNDS,
19 THAT I REMOVED FROM THE FIREARM AND PLACED IN THE SEPARATE
20 PACKAGING AND PUT INTO P AND E.

21 Q HOW ARE YOU ABLE TO IDENTIFY THEM?

22 A WHEN THEY WERE REMOVED FROM THE FIREARM, THEY WERE REMOVED
23 AT THE LOCATION BY ME PRIOR TO MY LEAVING, AND THEN PLACED --
24 LIKE I SAY, PLACED INTO SEPARATE PACKAGING AND LABELED AND PLACED
25 INTO P AND E.

APRIL DIETZ - DIRECT BY MR. MOYER

1 Q OKAY. AND SO WHAT DATE DID YOU PLACE THAT INTO P AND E?

2 A THIS WAS ALSO PLACED INTO P AND E ON THE 13TH OF JUNE ALONG
3 WITH ALL OF THE OTHER ITEMS OF EVIDENCE I COLLECTED FROM THAT
4 SCENE.

5 Q AND IT WAS KEPT FROM JUNE THE 7TH TILL JUNE 13TH IN THAT
6 SECURE LOCATION?

7 A YES.

8 Q ALL RIGHT.

9 MR. MOYER: YOUR HONOR, I'D MOVE STATE'S EXHIBIT 29 INTO
10 EVIDENCE.

11 MR. CREECH: NO OBJECTION, YOUR HONOR.

12 THE COURT: LET ME SEE Y'ALL UP HERE FOR A SECOND.

13 (BRIEF BENCH CONFERENCE OFF RECORD)

14 THE COURT: OKAY. IT'S IN EVIDENCE.

15 LADIES AND GENTLEMEN, WE HAVE VERY STRICT PROTOCOLS ABOUT
16 FIREARMS WHEN THEY ARE INTRODUCED INTO EVIDENCE IN CASES. THE
17 FIREARM HAS BEEN CHECKED BY THE FINE SECURITY WE HAVE HERE AT
18 THIS COURTHOUSE VERY THOROUGHLY, AND THE AMMUNITION IS KEPT
19 SEPARATE FROM THE FIREARM. IT'S BEEN DISABLED AS YOU CAN SEE.
20 SO I JUST WANTED TO INFORM YOU THAT THERE ARE NO SAFETY CONCERNS
21 WITH THAT.

22 YES, SIR, GO AHEAD.

23 (STATE'S EXHIBIT NUMBER 29, EIGHT UNFIRED ROUNDS, MOVED INTO
24 EVIDENCE)

25 MR. MOYER: THANK YOU, YOUR HONOR.

APRIL DIETZ - DIRECT BY MR. MOYER

1 Q WHAT DID YOU DO WITH THE PISTOL AFTER YOU COLLECTED IT AND
2 TOOK IT BACK TO YOUR OFFICE? DID YOU DO ANYTHING WITH THE
3 FIREARM AND THE BULLETS?

4 A SEVERAL ITEMS OF EVIDENCE COLLECTED AT THAT SCENE WERE
5 PROCESSED FOR ANY POSSIBLE LATENT PRINTS. AT THE CRIME SCENE
6 OFFICE THEY WERE PROCESSED.

7 Q AND DID YOU PULL ANYTHING OFF THEM THAT YOU DID ANYTHING
8 WITH?

9 A FROM MY REPORT IT STATES THAT I DID TURN IN -- I PROCESSED
10 ALL THESE ITEMS OF EVIDENCE THAT I COULD WITH A POSITIVE RESULT.
11 WHEN POSITIVE RESULTS ARE RECEIVED THEY ARE IN TURN PLACED ON A
12 LATENT LIFT CARD WITH ALL OF THE INFORMATION FROM THE ITEM THAT
13 THEY WERE COLLECTED FROM AND SUBMITTED TO THE DEPARTMENT OF
14 PUBLIC SAFETY'S LATENT DIVISION FOR THEIR EXAMINATION TO SEE IF
15 THERE'S ANY MATCHES MADE ON THE PRINT.

16 Q SO WHEN YOU SAY A POSITIVE RESULT, WHAT PARTICULAR ITEM, THE
17 GUN OR THE CLIP OR THE BULLETS?

18 A WHEN WE DO THE LATENT LIFT CARDS, THAT INFORMATION IS
19 WRITTEN ON THE CARD ITSELF. I DO NOT HAVE THE CARD BECAUSE IT
20 WAS TURNED IN, SO I'M NOT SURE AT THIS POINT WHAT THE ACTUAL
21 LATENT CAME FROM, WHICH ITEM.

22 (LATENT PRINT CARD MARKED AS STATE'S EXHIBIT NUMBER 30 FOR
23 PURPOSES OF IDENTIFICATION ONLY)

24 Q OKAY. CAN YOU TAKE A LOOK AT STATE'S EXHIBIT NUMBER 30?
25 JUST TAKE A LOOK AT IT AND SEE IF YOU CAN RECOGNIZE WHAT THAT IS.

APRIL DIETZ - DIRECT BY MR. MOYER

1 A (COMPLIES) YES. THIS IS MY LATENT CARD THAT I TURNED IN.
2 IT WAS ONE POSITIVE RESULT TURNED IN FOR A POSSIBLE LATENT THAT
3 THE DEPARTMENT OF PUBLIC SAFETY THEN TOOK FROM THERE. DO YOU
4 WANT TO KNOW---

5 Q YES. WHERE DID IT COME FROM?

6 A THE LATENT LIFT WAS FROM A METAL SLIDE AREA ON THE FIREARM,
7 THE ITEM THAT I JUST SHOWED TO YOU A FEW MOMENTS AGO. ON THE
8 SLIDE AREA RIGHT SIDE NEXT TO THE BARREL, THERE WAS A POSSIBLE
9 POSITIVE RESULT FROM THAT WHICH I TURNED IN.

10 Q ALL RIGHT. NOW, YOU DON'T KNOW -- OR DO YOU? DO YOU KNOW
11 WHETHER THAT PRINT WAS GOOD ENOUGH TO MAKE COMPARISONS WITH OR
12 NOT?

13 A I WAS ADVISED IT WAS NON-COMPARABLE.

14 Q ALL RIGHT. NOW, DID YOU EVER DO ANYTHING WITH REGARDS TO
15 THE FORD ESCORT, THE OTHER CAR?

16 A YES.

17 Q AND WHAT DID YOU -- WHAT WERE YOU REQUESTED TO DO WITH
18 REGARDS TO IT?

19 A THE FOLLOWING DAY, ON THE 8TH OF JUNE, I WAS REQUESTED BY --
20 I SHOULDN'T SAY I WAS REQUESTED PERSONALLY. DETECTIVE CONROY
21 WITH GREENVILLE CITY POLICE DEPARTMENT CALLED THE FORENSICS
22 OFFICE AND SPOKE WITH ME AND STATED THAT THE VEHICLE WOULD NEED
23 TO BE -- THERE WAS A POSSIBLE PROJECTILE INSIDE OF THE VEHICLE
24 THAT HAD NOT BEEN LOCATED. THEY WANTED TO TRY TO ATTEMPT TO
25 LOCATE THAT PROJECTILE, IF POSSIBLE, AGAIN, GO THROUGH AND SEARCH

APRIL DIETZ - DIRECT BY MR. MOYER

1 THE VEHICLE AGAIN.

2 Q OKAY. AND SO YOU DID THAT ON JUNE THE 8TH THEN?

3 A YES.

4 Q AND AROUND WHAT TIME WAS IT THAT YOU DID THAT?

5 A I DO NOT HAVE AN EXACT TIME LISTED ON MY SHEET HERE, ON MY
6 REPORT. SO I DON'T HAVE THAT INFORMATION.

7 Q OKAY. NOW, WHERE DID YOU GO TO DO IT?

8 A I WENT TO CITY WRECKER -- IT'S WHERE THE VEHICLE HAD BEEN
9 TOWED TO -- WHICH IS LOCATED AT 40 RUTHERFORD STREET IN
10 GREENVILLE, SOUTH CAROLINA.

11 Q OKAY. AND WHAT WAS THE VEHICLE THAT YOU SEARCHED AT THAT
12 LOCATION?

13 A JUST A MOMENT. I HAVE LISTED IN MY REPORT THAT I WENT TO
14 RECOVER A PROJECTILE FROM A VEHICLE. I DO NOT HAVE THE VEHICLE
15 INFORMATION LISTED ON MY REPORT.

16 Q OKAY. BUT YOU WERE WITH INVESTIGATOR CONROY?

17 A HE DID COME TO THE SCENE, YES.

18 Q OKAY. NOW, AND THAT WAS THE CAR THAT INVESTIGATOR CONROY
19 WANTED YOU TO LOOK IN?

20 A YES.

21 Q NOW TELL US ABOUT THE INTERIOR OF THE CAR. HOW WOULD YOU
22 DESCRIBE IT?

23 A THE INTERIOR OF THE VEHICLE WAS CLUTTERED. IT HAD A LOT OF
24 DEBRIS, WHAT I WOULD SAY WOULD BE TRASH. I MEAN, I DON'T KNOW.
25 IT HAD A LOT OF ITEMS INSIDE OF IT, FRONT AND BACK SEATS, STAINS,

APRIL DIETZ - DIRECT BY MR. MOYER

1 SOME MAYBE TEARING AND STUFF ON THE UPHOLSTERY. IT APPEARED TO
2 BE AN OLDER TYPE VEHICLE.

3 Q AND WERE YOU ABLE TO LOCATE WHAT IT IS YOU SET OUT TO LOOK
4 FOR?

5 A YES.

6 Q AND TELL US ABOUT HOW YOU FOUND IT.

7 A WHEN I ARRIVED I NOTICED THE VEHICLE WAS CLUTTERED. THERE
8 WAS A LOT OF ITEMS TO GO THROUGH. I BEGAN SEARCHING THROUGH THE
9 VARIOUS DEBRIS AND STUFF IN THE FLOORBOARDS AND WHATNOT, TRYING
10 TO LOCATE THIS PROJECTILE. I WAS NOT ABLE TO LOCATE IT AT FIRST.
11 I WENT AROUND TO THE FRONT PASSENGER SEAT, WHICH IS WHERE THE
12 VICTIM HAD BEEN SITTING, I HAD BEEN TOLD, AND NOTED THAT THERE
13 WAS SOME SUSPECTED BLOOD ON THE BACK OF THE SEAT AND IN THE
14 MIDDLE CONSOLE AREA. I BEGAN TO CONCENTRATE A LITTLE BIT MORE ON
15 THE BACK OF THE SEAT, NOT KNOWING IF THE PROJECTILE HAD ACTUALLY
16 EXITED THROUGH. I DIDN'T SEE ANY TEARS ON THE BACK OF THE SEAT.
17 ON THE FRONT OF THE SEAT I KIND OF WENT TO SEE IF THERE WERE ANY
18 TYPE OF PROTRUSIONS THAT WERE, YOU KNOW, THAT I COULD FEEL OR
19 ANYTHING THAT I COULD SEE THAT MIGHT SUGGEST THAT THE PROJECTILE
20 WAS STILL INSIDE THE SEAT IN BETWEEN. THERE WAS A SMALL TEAR
21 THAT I NOTED IN THE CENTER AREA OF A SPOT OF SUSPECTED BLOOD ON
22 THAT SEAT. AFTER INSPECTING IT I DIDN'T SEE ANYTHING. I DIDN'T
23 FEEL ANYTHING.

24 I CONTINUED TO SEARCH. I WALKED BACK AROUND TO THE DRIVER'S
25 SIDE OF THE VEHICLE AND BEGAN TO LOOK INTO THE BACK AREA OF THE

APRIL DIETZ - DIRECT BY MR. MOYER

1 SEAT AGAIN AND FLOORBOARDS, AND I NOTICED A SMALL GLINT, A SMALL
2 REFLECTION OF SOMETHING IN THE BACK OF THE SEAT. WHERE THE SEATS
3 FOLD -- I GUESS THEY WERE FOLDING SEATS THAT FOLDED FORWARD --
4 THERE WAS A SMALL PIECE OF VINYL THERE THAT CONNECTS THAT BOTTOM
5 PORTION IN THE BACK, AND IN THAT FOLD I SAW THERE I THOUGHT TO BE
6 A METAL -- A PIECE OF METAL, AND PHOTOGRAPHED IT AT THAT TIME.
7 AND IT TURNED OUT THAT THAT WAS A PROJECTILE THAT WAS LODGED
8 THERE IN BETWEEN THE SEAT.

9 (PHOTOGRAPH MARKED AS STATE'S EXHIBIT NUMBER 31 FOR PURPOSES
10 OF IDENTIFICATION ONLY)

11 (PHOTOGRAPH MARKED AS STATE'S EXHIBIT NUMBER 32 FOR PURPOSES
12 OF IDENTIFICATION ONLY)

13 (PROJECTILE MARKED AS STATE'S EXHIBIT NUMBER 33 FOR PURPOSES
14 OF IDENTIFICATION ONLY)

15 Q LET ME HAND YOU FIRST STATE'S EXHIBIT 33, AND TAKE A LOOK AT
16 IT AND SEE IF YOU CAN RECOGNIZE WHAT THAT IS.

17 A THIS IS THE ONE SUSPECTED PROJECTILE RECOVERED FROM THE
18 FRONT PASSENGER SEAT -- OR, I'M SORRY, FROM THE PASSENGER SEAT
19 AREA LOCATED IN THAT VINYL THAT I COLLECTED THAT DAY.

20 Q SO IS THAT THE PROJECTILE THAT YOU WERE JUST TALKING ABOUT
21 THAT YOU LOCATED?

22 A YES, THIS WOULD BE IT. THIS IS MY P AND E SHEET ALONG WITH
23 THE EVIDENCE THAT I WROTE ON IT, SO IT WOULD BE.

24 Q ALL RIGHT. AND THEN AFTER YOU COLLECTED IT YOU PUT IT IN
25 THE ENVELOPE THAT'S RIGHT THERE?

APRIL DIETZ - DIRECT BY MR. MOYER

1 A I DID.

2 Q AND DID YOU DO THE WRITING ON THE ENVELOPE?

3 A YES.

4 Q OKAY. AND DID YOU NOTE ON THERE WHERE YOU FOUND IT, WHEN
5 YOU FOUND IT?

6 A YES.

7 Q AND THEN WHAT DID YOU DO WITH IT -- AFTER YOU COLLECTED THAT
8 PROJECTILE AND PUT IT IN THE ENVELOPE, WHAT DID YOU DO WITH THE
9 ENVELOPE?

10 A THIS ENVELOPE ALONG WITH ALL THE OTHER EVIDENCE, THIS WAS
11 COLLECTED ON THE 8TH, WAS PLACED WITH ALL THE OTHER EVIDENCE ON
12 THE 13TH INTO THE PROPERTY AND EVIDENCE SECTION.

13 Q IN BETWEEN THE 8TH AND THE 13TH WHERE WAS IT?

14 A IT WAS ON MY EVIDENCE SHELF.

15 Q AND THAT'S THE EVIDENCE SHELF THAT'S BEEN SPOKEN TO ABOUT AS
16 BEING IN A SECURE AREA THAT NO ONE ELSE IS---

17 A THAT'S CORRECT.

18 Q IF YOU WOULD, TAKE A LOOK AT STATE'S EXHIBITS NUMBERS 31 AND
19 32. AND CAN YOU RECOGNIZE WHAT IS DEPICTED IN THOSE?

20 A YES.

21 Q WHAT IS THAT?

22 A THIS IS -- WHEN I BEGAN TO -- WHEN I WENT TO WALK BACK
23 AROUND TO THE PASS -- I'M SORRY, THE DRIVER'S SIDE BACK DOOR AND
24 LOOKED IN TO BEGIN SEARCHING, THAT'S WHEN I NOTICED THE SMALL
25 GLINT OR PIECE OF METAL IN THAT FOLD. I IMMEDIATELY WENT AND GOT

APRIL DIETZ -- CROSS BY MR. CREECH

1 MY CAMERA AND TOOK A PICTURE OF IT, AN OVERALL PHOTOGRAPH OF IT,
2 TO SHOW WHERE I SAW IT, AND THEN I TOOK A CLOSE-UP SHOT OF THE
3 ITEM BEFORE I REMOVED IT FROM THE FOLD OF THE SEAT.

4 Q ARE THEY ACCURATE REPRESENTATIONS OF THAT PROJECTILE YOU
5 COLLECTED ON JUNE THE 8TH OF 2006?

6 A YES.

7 (COUNSEL OFF RECORD)

8 MR. CREECH: YOUR HONOR, I HAVE NO OBJECTION.

9 THE COURT: IT'S IN EVIDENCE.

10 (PHOTOGRAPH, STATE'S EXHIBIT NUMBER 31, MOVED INTO EVIDENCE)

11 (PHOTOGRAPH, STATE'S EXHIBIT NUMBER 32, MOVED INTO EVIDENCE)

12 Q ALL RIGHT. WOULD YOU USE THE LASER POINTER TO SHOW THE AREA
13 WHERE YOU SAW THAT PROJECTILE?

14 A THERE -- THIS IS THE PASSENGER SEAT. WHEN I OPENED THE BACK
15 DRIVER'S SIDE DOOR AND BEGAN LOOKING AROUND, THAT IS WHERE I
16 NOTATED THAT METAL FRAGMENT OR -- I WAS UNSURE OF WHAT IT WAS AT
17 THE TIME.

18 Q ALL RIGHT. STATE'S EXHIBIT NUMBER 31, CAN YOU POINT IT OUT
19 ON STATE'S EXHIBIT 31?

20 A YES, IT'S RIGHT THERE.

21 MR. MOYER: ALL RIGHT. THANK YOU. PLEASE ANSWER ANY
22 QUESTIONS THE DEFENSE MAY HAVE.

23 CROSS EXAMINATION BY MR. CREECH:

24 Q MS. DIETZ, YOU DIDN'T LOCATE ANY OTHER PROJECTILES IN THIS
25 CASE; IS THAT CORRECT?

APRIL DIETZ - CROSS BY MR. CREECH

1 A I DID NOT.

2 Q AND THE -- YOU FOUND EIGHT UNFIRED ROUNDS IN THE GUN; IS
3 THAT RIGHT?

4 A THAT'S CORRECT.

5 Q AND SEVEN IN THE MAGAZINE AND ONE IN THE CHAMBER; IS THAT
6 RIGHT?

7 A I BELIEVE SO, YES.

8 Q ALL RIGHT. AND DID YOU FIND ANY OTHER -- DID YOU FIND
9 ANOTHER MAGAZINE IN THE HOUSE?

10 A THERE WAS A MAGAZINE THAT HAD BEEN POINTED OUT TO ME. THERE
11 WAS A PURSE LYING ON THE MATTRESS INSIDE OF THE LIVING ROOM AREA,
12 THE MATTRESS THAT WAS ON THE FLOOR. THERE WAS A PURSE ON TOP OF
13 THE MATTRESS. JUST ON THE TOP OF THE PURSE, THE PURSE WAS
14 UNZIPPED, THERE WAS ANOTHER CLIP, A MAGAZINE CONTAINING ROUNDS IN
15 THAT PURSE.

16 Q THAT MAGAZINE OR CLIP, IT HAD BULLETS IN IT TOO; IS THAT
17 CORRECT?

18 A IT DID.

19 Q DO YOU REMEMBER HOW MANY IT HAD IN IT?

20 A IF I CAN REFER TO MY REPORT HERE. (PAUSE) THERE WERE TEN
21 UNFIRED ROUNDS INSIDE OF THAT METAL CLIP FROM INSIDE THE PURSE.

22 Q AND THAT WAS A BLACK, LADY'S PURSE, LADY'S HANDBAG; IS THAT
23 CORRECT?

24 A IT WAS A BLACK PURSE.

25 MR. CREECH: THANK YOU. I HAVE NO FURTHER QUESTIONS.

MATTERS AND MOTIONS

1 **MR. MOYER:** NOTHING ELSE.

2 **THE COURT:** OKAY. THANK YOU, MS. DIETZ. YOU CAN STEP DOWN.

3 **WITNESS:** THANK YOU.

4 (WITNESS STEPS DOWN AT 12:42 P.M.)

5 **THE COURT:** ALL RIGHT. LADIES AND GENTLEMEN, WE'RE GOING
6 TO GO AHEAD AND RECESS FOR LUNCH. JUST BE BACK IN YOUR JURY ROOM
7 AT TWO O'CLOCK AND WE'LL RESUME THE TRIAL AT THAT TIME. DON'T
8 TALK ABOUT THE CASE. CONTINUE TO KEEP AN OPEN MIND, AND DON'T DO
9 ANY OUTSIDE INVESTIGATION.

10 (JURY EXITS COURTROOM AT 12:42 P.M.)

11 **THE COURT:** OKAY. WE'LL SEE Y'ALL BACK AT 2:00. THANK
12 YOU.

13 (A LUNCH RECESS WAS TAKEN FROM 12:42 TO 2:06 P.M.)

14 **MR. CREECH:** YOUR HONOR, I'D LIKE TO PUT SOMETHING ON THE
15 RECORD.

16 **THE COURT:** YES, SIR, MR. CREECH.

17 **MR. CREECH:** AS TO THE GUN, I JUST WANTED TO RESTATE MY
18 PREVIOUS OBJECTION AS TO THE ILLEGAL SEARCH AND SEIZURE FOURTH
19 AMENDMENT VIOLATION OF THE SOUTH CAROLINA CONSTITUTION AND STATE
20 THOSE OBJECTIONS ON THE RECORD AND THEN MY PREVIOUS RESPONSE WHEN
21 THE GUN WAS INTRODUCED.

22 **THE COURT:** YES, SIR. OKAY. ANY PREVIOUS ARGUMENTS YOU
23 MADE REGARDING THE SEARCH AND SEIZURE ARE INCORPORATED.

24 OKAY. ANYTHING BEFORE WE BRING THE JURY IN?

25 **MR. CREECH:** NOTHING FROM THE DEFENSE, YOUR HONOR.

RENE SHERBERT - DIRECT BY MR. MOYER.

1 **THE COURT:** THANK YOU.

2 (JURY REENTERS COURTROOM AT 2:07 P.M.)

3 **THE COURT:** IS EVERYBODY COMFORTABLE WITH THE TEMPERATURE?

4 (PAUSE). OKAY. ALL RIGHT. WELL, I DISAVOW ANY RESPONSIBILITY
5 FOR THAT.

6 GO AHEAD, MR. MOYER.

7 **MR. MOYER:** THE STATE WOULD CALL RENE SHERBERT.

8 **RENE SHERBERT,** HAVING BEEN DULY SWORN,
9 TESTIFIED AS FOLLOWS:

10 **MADAME CLERK:** PLEASE STATE YOUR FULL NAME FOR THE RECORD.

11 **WITNESS:** RENE FOSTER SHERBERT.

12 **DIRECT EXAMINATION BY MR. MOYER:**

13 **Q** WHERE DO YOU WORK?

14 **A** I WORK WITH THE GREENVILLE COUNTY DEPARTMENT OF PUBLIC
15 SAFETY FORENSIC DIVISION.

16 **Q** WHAT DO YOU DO?

17 **A** I'M A SERGEANT AND LATENT PRINT EXAMINER.

18 **Q** WHAT DOES A LATENT PRINT EXAMINER DO?

19 **A** A LATENT PRINT EXAMINER RECEIVES FINGERPRINT, FOOTWEAR AND
20 TIRE TRACK EVIDENCE THAT IS SUBMITTED TO US BY OUR OWN CRIME
21 SCENE SECTION OR BY OTHER AGENCIES THAT ARE IN AND AROUND
22 GREENVILLE COUNTY.

23 **Q** HOW LONG HAVE YOU BEEN EMPLOYED BY GREENVILLE COUNTY?

24 **A** I'VE BEEN LAW ENFORCEMENT OVER 24 YEARS, AND I'VE BEEN WITH
25 GREENVILLE COUNTY FOR 22.

RENE SHERBERT - DIRECT BY MR. MOYER

1 Q NOW, WHAT SPECIALIZED TRAINING AND EDUCATION DO YOU HAVE AS
2 IT RELATES TO LAW ENFORCEMENT AND FORENSICS?

3 A OKAY. I'M A CERTIFIED LAW ENFORCEMENT OFFICER BY THE SOUTH
4 CAROLINA CRIMINAL JUSTICE ACADEMY. AND AS A LATENT PRINT
5 EXAMINER I HAVE RECEIVED COUNTLESS HOURS OF TRAINING AND
6 CERTIFICATION AND INTRODUCTION TO FINGERPRINT EXAMINATION AND
7 CLASSIFICATION, ADVANCED FINGERPRINT SCHOOL AT THE FBI ACADEMY,
8 THE COMBINED ADVANCED RIDGEOLOGY DEMYSTIFYING PALM PRINTS
9 TRAINING COURSE IN TUCSON, ARIZONA, AS WELL AS PALM PRINT,
10 DEMYSTIFYING PALM PRINTS, A SEPARATE COURSE FOR THAT, AND OTHER
11 TRAINING. I ALSO HAVE AN ASSOCIATE'S DEGREE IN CRIMINAL JUSTICE.

12 Q OKAY. COULD YOU TELL THE JURY WHAT WE MEAN WHEN WE USE THE
13 WORD "LATENT PRINT"?

14 A TYPICALLY, IN THE LATENT COMMUNITY, A LATENT PRINT REFERS TO
15 SOMETHING THAT'S HIDDEN. LATENT MEANS HIDDEN. IT CAN'T BE SEEN
16 WITH THE NAKED EYE. IT HAS TO BE PROCESSED OR DEVELOPED IN ORDER
17 TO BE SEEN AND AT WHICH TIME IT'S EITHER PHOTOGRAPHED OR LIFTED
18 WITH TAPE OR SOME KIND OF GEL LIFT OR SOMETHING LIKE THAT. BUT
19 WHEN I SAY I "RECEIVE LATENTS," THEN IT'S FINGERPRINTS THAT HAVE
20 BEEN SUBMITTED TO ME OR TO OUR OFFICE BY OUR CRIME SCENE OFFICERS
21 OR OTHER AGENCIES. IT'S A PRINT THAT IS AN UNKNOWN PRINT. WE
22 DON'T KNOW WHO IT BELONGS TO AT THE TIME WE RECEIVE IT.

23 Q AND WHAT DO YOU MEAN BY AN INKED PRINT?

24 A AN INKED PRINT IS AN KNOWN PRINT. WHEN WE RECORD PEOPLE'S
25 FINGERPRINTS, WE EITHER USE A THIN LAYER OF BLACK PRINTER'S INK

RENE SHERBERT - DIRECT BY MR. MOYER

1 APPLIED IT TO THE FINGER AND THEN ROLL THE FINGER ON A
2 FINGERPRINT CARD, WHICH IS BASICALLY JUST A WHITE CARD, AND THAT
3 TRANSFERS THE IMPRESSION OF THE RIDGES, THE FINGERPRINT RIDGES,
4 ONTO THE CARD SO THAT YOU CAN DO A COMPARISON AND LOOK AT THEM.
5 AND THEN TODAY'S TECHNOLOGY, WE HAVE LIVE SCAN MACHINES THAT
6 BASICALLY TAKE A PICTURE OF THE IMAGE OF THE FINGERPRINT AND THEN
7 PRINT IT OFF ON A FINGERPRINT CARD. SO IT CAN BE INKED OR IT CAN
8 BE IMAGES THAT HAVE BEEN TRANSFERRED, LIKE PRINTED ON FROM A
9 COPIER BASICALLY.

10 Q AND WHAT -- HOW ARE FINGERPRINTS COMPARED AND IDENTIFIED?

11 A FINGERPRINTS ARE COMPARED AND IDENTIFIED BY COMPARING THE
12 SIZE AND SHAPE IN EACH ONE TO THE OTHER AND THE PARTICULAR
13 DETAILS THAT ARE IN THEM FROM ONE TO THE OTHER AND COMPARING THEM
14 TO SEE IF THEY BOTH ARE IN AGREEMENT WITH ONE ANOTHER.

15 MR. MOYER: OKAY. YOUR HONOR, ACTUALLY, AT THIS TIME, I
16 WOULD MOVE TO HAVE SERGEANT RENE SHERBERT QUALIFIED AS AN EXPERT
17 IN FINGERPRINT IDENTIFICATION.

18 MR. CREECH: NO OBJECTION, YOUR HONOR.

19 THE COURT: OKAY. SHE IS QUALIFIED.

20 LADIES AND GENTLEMEN, TYPICALLY WITNESSES WHO COME IN AND
21 TESTIFY CAN ONLY TESTIFY ABOUT THINGS THEY HAVE OBSERVED
22 FIRSTHAND OR HAVE SOME PERSONAL KNOWLEDGE ABOUT. THERE IS AN
23 EXCEPTION FOR PEOPLE WHO BY THEIR EDUCATION, TRAINING OR
24 EXPERIENCE HAVE SOME SKILL IN THEIR RESPECTIVE FIELD, AND THEY
25 ARE KNOWN AS EXPERT WITNESSES AND THEY CAN GIVE THEIR OPINIONS AS

RENE SHERBERT - DIRECT BY MR. MOYER

1 TO FACTS THEY HAVE OBSERVED, UNLIKE OTHER WITNESSES WHO CANNOT
2 GIVE THEIR OPINIONS. BUT YOU ARE TO JUDGE THE CREDIBILITY OF AN
3 EXPERT WITNESS IN THE SAME WAY YOU WOULD JUDGE THE CREDIBILITY OF
4 ANY OTHER WITNESS. IN THAT REGARD, WHETHER YOU DEEM THEM WORTHY
5 TO BELIEVE IS ENTIRELY UP TO YOU. OKAY? THANK YOU.

6 Q A COUPLE QUESTIONS ABOUT THAT. HOW IS IT POSSIBLE FOR A
7 PERSON TO LEAVE A FINGERPRINT ON A SURFACE?

8 A THE WAY THAT WE LEAVE FINGERPRINTS ON A SURFACE IS, IF YOU
9 LOOK AT YOUR HANDS OR THE BOTTOM OF YOUR FEET, THE LINES, THE
10 RAISED PORTIONS OF SKIN THAT YOU SEE, ON TOP OF THE RIDGES ARE
11 SITUATED PORES. THEY ARE SWEAT PORES. AND WE EXUDE WATER AND
12 SALT FROM THEM, AND SOMETIMES WE PICK UP CONTAMINANTS FROM, SAY,
13 OUR FACE, MAKEUP, OR THE OILY AREAS OF OUR FACE, OR WE TOUCH FOOD
14 OR OTHER CONTAMINANTS. AND WHEN YOU COME IN CONTACT WITH A
15 SURFACE, THOSE RAISED PORTIONS OF SKIN, THE LINES THAT YOU SEE
16 WHEN YOU LOOK AT YOUR FINGERS, WHEN YOU TOUCH A SURFACE THOSE
17 RAISED PORTIONS OF SKIN COME IN CONTACT WITH THAT SURFACE. AND
18 THEN WHEN YOU LIFT IT AWAY, THAT RESIDUE REMAINS THERE, BE IT
19 WATER, SALT, A COMBINATION OF THAT, OR SOME OILS OR OTHER LIQUIDS
20 OR THINGS LIKE THAT. YOU LEAVE THAT ON THE SURFACE, AND THAT'S
21 WHERE WE CALL IT LATENT, THAT YOU CANNOT SEE IT UNTIL IT IS
22 DEVELOPED.

23 Q ARE FINGERPRINTS ALWAYS LEFT BEHIND WHEN SOMEONE TOUCHES A
24 SURFACE?

25 A A LOT OF TIMES FINGERPRINTS ARE LEFT BEHIND. SOMETIMES

RENE SHERBERT - DIRECT BY MR. MOYER

1 THEY'RE NOT OR THEY'RE, YOU KNOW, THEY'RE NOT IDENTIFIABLE OR YOU
2 CAN'T FIND THEM OR YOU CAN'T SEE THEM. A LOT DEPENDS ON THE
3 SURFACE THAT YOU'VE TOUCHED. IF IT'S A, YOU KNOW, SMOOTH, FLAT
4 SHINY SURFACE AND IT'S CLEAN, THE CHANCES ARE BETTER THAT A PRINT
5 WILL BE LEFT THERE AND THAT YOU'LL BE ABLE TO FIND IT. AND IF
6 IT'S REALLY ROUGH, IT'S DIRTY, IT'S WET AT THE TIME IT'S TOUCHED,
7 IT'S GREASY, ANYTHING LIKE THAT, THOSE CAN BECOME BARRIERS TO
8 PREVENT CONTACT WITH A SURFACE, AND, YOU KNOW, YOU MAY NOT LEAVE
9 A PRINT OR A COMPARABLE PRINT AT THAT TIME.

10 Q NOW, DID YOU HAVE OCCASION TO MAKE AN EXAMINATION OF
11 FINGERPRINTS IN THIS CASE?

12 A YES, SIR, I DID.

13 Q I'M GOING TO HAND YOU STATE'S EXHIBITS NUMBERS 21 AND NUMBER
14 11. IF YOU COULD, TAKE A LOOK AT THE TWO AND SAY IF YOU CAN
15 IDENTIFY THEM.

16 A (REVIEWS EXHIBITS) YES, SIR. STATE'S EXHIBIT MARKED AS
17 NUMBER 11, THESE ARE PAWN TICKETS THAT WERE RECEIVED BY ME IN
18 THIS PARTICULAR CASE, AND THEY HAVE MY INITIALS ON THEM AS WELL.

19 Q OKAY. AND WHEN DID THEY COME INTO YOUR POSSESSION?

20 A THESE I RECEIVED ON JUNE THE 7TH OF 2006.

21 Q AND AFTER YOU RECEIVED THAT EXHIBIT DID YOU KEEP IT IN YOUR
22 CUSTODY UNTIL TODAY?

23 A THE PAWN TICKET, NUMBER 11, REMAINED IN MY CUSTODY IN THE
24 CASE FILE.

25 Q DID YOU BRING IT TO COURT TODAY?

RENE SHERBERT - DIRECT BY MR. MOYER

1 A YES, SIR, I DID BRING IT WITH ME.

2 MR. MOYER: AT THIS TIME WE'D MOVE STATE'S EXHIBIT NUMBER
3 11 INTO EVIDENCE.

4 MR. CREECH: SUBJECT TO MY PREVIOUS OBJECTION.

5 THE COURT: ALL RIGHT. OKAY. IT'S IN EVIDENCE.

6 (PAWN TICKET, STATE'S EXHIBIT NUMBER 11, MOVED INTO
7 EVIDENCE)

8 Q OKAY. NOW, IF YOU WOULD, LOOK AT STATE'S EXHIBIT NUMBER 21,
9 WHICH IS AN ENVELOPE CONTAINING 11 DIFFERENT CARDS. CAN YOU LOOK
10 AT THOSE AND TELL US IF YOU RECOGNIZE THOSE?

11 A (REVIEWS EXHIBIT) YES, SIR, I DO. THESE ARE THE 11 LATENT
12 LIFTS THAT I RECEIVED, AGAIN, ON JUNE THE 7TH OF 2006.

13 Q AND HOW ARE YOU ABLE TO RECOGNIZE THEM?

14 A ONE OF THEM HAS -- WELL, THEY ALL CAME IN THIS ENVELOPE,
15 WHICH IS A LATENT -- WHAT WE CALL A LATENT ENVELOPE, AND IN THE
16 BOTTOM LEFT-HAND CORNER ARE MY INITIALS, THE DATE THAT I RECEIVED
17 THEM. OVER TO THE RIGHT CORNER IS HOW MANY I RECEIVED, THAT
18 THERE IS PALM IN HERE AND IMAGES ON ENHANCEMENT ALSO. AND THEN I
19 HAVE WRITING ACROSS THE TOP AND I HAVE WRITING ACROSS THE BACK,
20 ALL OF WHICH HAVE MY INITIALS BESIDE THEM.

21 Q AFTER YOU RECEIVED THEM ON THE 7TH, YOU SAY?

22 A YES, SIR. JUNE THE 7TH, 2006.

23 Q AND WHERE HAVE THEY BEEN FROM THAT DATE UNTIL TODAY?

24 A THEY'VE BEEN LOCKED IN THE CASE FILE IN OUR OFFICE.

25 MR. MOYER: AT THIS TIME WE'D MOVE TO HAVE STATE'S EXHIBIT

RENE SHERBERT - DIRECT BY MR. MOYER

1 NUMBER 21 INTO EVIDENCE.

2 MR. CREECH: SUBJECT TO MY PREVIOUS OBJECTION, YOUR HONOR.

3 THE COURT: OKAY. IT'S IN EVIDENCE.

4 (ENVELOPE OF LATENT CARDS, STATE'S EXHIBIT NUMBER 21, MOVED
5 INTO EVIDENCE)

6 Q OKAY. NOW, DID YOU USE THE CARDS THAT ARE IN THAT ENVELOPE
7 FOR THE PURPOSE OF ATTEMPTING TO DO ANY FINGERPRINT COMPARISON IN
8 THIS CASE?

9 A YES, SIR, I DID. I COMPARED THE LATENTS THAT WERE SUBMITTED
10 TO ME IN MY OFFICE ON THAT PARTICULAR DATE, JUNE THE 7TH, WITH
11 KNOWN FINGERPRINTS.

12 Q OKAY. NOW, OF THE CARDS IN THE ENVELOPE, NINE OF THEM CAME
13 FROM THE PAWN TICKET; IS THAT CORRECT?

14 A YES, SIR. THAT'S CORRECT. NINE OF THEM CAME FROM THE PAWN
15 TICKET.

16 Q AND WERE YOU ABLE TO MAKE ANY IDENTIFICATION WITH THOSE?

17 A NONE OF THOSE PRINTS WERE IDENTIFIED AS BELONGING TO ANYONE,
18 NO KNOWN INDIVIDUALS.

19 Q OKAY. WERE THEY JUST NOT OF SUFFICIENT QUALITY OR---

20 A SOME WERE NOT OF ENOUGH QUALITY TO DO A COMPARISON WITH,
21 WHICH IS, YOU KNOW, COMMONPLACE. OTHERS WERE AND THEY JUST WERE
22 NOT IDENTIFIED WITH ANYONE THAT WE HAD TO EXAMINE.

23 Q NOW, STATE'S EXHIBIT -- THE REMAINING TWO FINGERPRINTS CAME
24 FROM THE JACK?

25 A YES, SIR. THAT'S CORRECT.

RENE SHERBERT - DIRECT BY MR. MOYER

1 Q AND WILL YOU TELL US WHAT THE RESULT OF YOUR ANALYSIS WAS
2 REGARDING THOSE TWO REMAINING FINGERPRINT CARDS?

3 A OKAY. ON LATENT LIFT NUMBER 10, IT'S LISTED THAT THIS
4 LATENT, WHICH IS THE LIFT ON THE TAPE, CAME FROM THE TOP OF A
5 PRO-LIFT HYDRAULIC JACK ON TOP OF LABEL. AND THERE IS A LITTLE
6 DIAGRAM WITH AN "X" MARKING THE SPOT OF THE APPROXIMATE LOCATION
7 OF WHERE IT CAME. AND THAT PARTICULAR LIFT WAS NOT IDENTIFIED AS
8 BELONGING TO ANYONE. THEN LATENT LIFT NUMBER 11 -- THIS IS 11 OF
9 11 -- AND THIS IS FROM THE LEFT SIDE OF A PRO-LIFT HYDRAULIC
10 JACK. AND AGAIN, THERE IS A DIAGRAM WITH AN "X" MARKING THE SPOT
11 OF THE APPROXIMATE LOCATION OF WHERE THIS LIFT CAME FROM. AND
12 THAT WAS COMPARED TO AND IDENTIFIED AS BELONGING TO THE NUMBER 1,
13 WHICH IS THE RIGHT THUMB, OF ZACHARY FOWLER.

14 Q OKAY. WERE YOU ALSO GIVEN A FINGERPRINT FROM FORENSICS
15 OFFICER DIETZ?

16 A YES. FORENSIC OFFICER DIETZ ALSO SUBMITTED LATENTS TO THIS
17 OFFICE.

18 Q AND WERE YOU ABLE TO DO ANYTHING WITH THAT LATENT? IT WAS
19 FROM A GUN, I BELIEVE?

20 A I DON'T HAVE IT IN FRONT OF ME, SO...

21 Q OKAY. IF YOU HAD A CHANCE TO LOOK AT YOUR REPORT, WOULD
22 THAT...

23 A I DON'T HAVE THE REPORT ON THAT OR THE LATENT ENVELOPE.

24 Q OKAY.

25 A I JUST DON'T REMEMBER WHAT EXACTLY IT CAME OFF OF.

RENE SHERBERT - DIRECT BY MR. MOYER

1 Q COULD YOU TAKE A LOOK AT STATE'S EXHIBIT NUMBER 30?

2 A OKAY.

3 Q AND CAN YOU RECOGNIZE THAT?

4 A AGAIN, THIS IS A LATENT ENVELOPE, AND IT WAS RECEIVED BY ME
5 -- IT HAS MY INITIALS ON IT -- ON JUNE THE 12TH OF 2006. AND IT
6 HAS ONE LATENT LIFT THAT IS COLLECTED FROM A METAL SLIDE AREA,
7 RIGHT SIDE NEXT TO BARREL IF HOLDING AND POINTING WEAPON OUT.
8 AND THE PARTICULAR LIFT ON IT IS NOT COMPARABLE, AND THERE'S NOT
9 ENOUGH DETAIL THERE TO SAY ANYTHING ABOUT IT AS FAR AS WHAT IT IS
10 OR WHO IT MIGHT BELONG TO. IT'S JUST NOT COMPARABLE.

11 Q SO YOU COULDN'T SAY IT DOES OR IT DOESN'T MATCH SOMEBODY; IS
12 THAT RIGHT?

13 A THAT'S CORRECT. THERE'S NOT ENOUGH THERE TO COMPARE IT WITH
14 SOMEONE.

15 DO YOU WANT ME TO PUT THOSE BACK?

16 MR. MOYER: OKAY. PLEASE ANSWER ANY QUESTIONS THE DEFENSE
17 HAS.

18 WITNESS: YES, SIR.

19 THE COURT: CROSS EXAMINATION, MR. CREECH?

20 MR. CREECH: I HAVE NO QUESTIONS FOR THIS WITNESS.

21 THE COURT: ALL RIGHT. THANK YOU, MA'AM. YOU CAN STEP
22 DOWN.

23 WITNESS: THANK YOU, SIR.

24 (WITNESS STEPS DOWN AT 2:20 P.M.)

25 MR. MOYER: THE STATE WOULD CALL RON LENDWAY.

RON LENDWAY - DIRECT BY MR. MOYER

1 RON LENDWAY, HAVING BEEN DULY SWORN,
2 TESTIFIED AS FOLLOWS:

3 **MADAME CLERK:** PLEASE STATE YOUR FULL NAME FOR THE RECORD.

4 **WITNESS:** RONALD DAVID LENDWAY.

5 **DIRECT EXAMINATION BY MR. MOYER:**

6 **Q** WHERE DO YOU WORK?

7 **A** GREENVILLE COUNTY DEPARTMENT OF PUBLIC SAFETY, FORENSICS
8 DIVISION.

9 **Q** HOW LONG HAVE YOU BEEN WITH THE FORENSICS DIVISION?

10 **A** OVER SIX YEARS.

11 **Q** LET ME JUST ASK YOU A COUPLE OF QUESTIONS. DID YOU DO ANY
12 WORK IN RELATION TO THE INCIDENT THAT TOOK PLACE ON JUNE THE 7TH,
13 2006?

14 **A** YES.

15 **Q** WHERE DID YOU GO?

16 **A** I WAS FIRST REQUESTED TO GO TO GREENVILLE MEMORIAL HOSPITAL.

17 **Q** AND AROUND -- THAT WAS ON JUNE THE 7TH, 2006?

18 **A** YES.

19 **Q** AND WHAT TIME DID YOU GO THERE?

20 **A** I RECEIVED A CALL APPROXIMATELY 2:23 IN THE AFTERNOON. I
21 ARRIVED AT APPROXIMATELY 2:50.

22 **Q** AND WAS SUSAN GALLOWAY THERE WHEN YOU ARRIVED?

23 **A** I WAS TOLD THAT SHE WAS. I FIRST WENT TO THE TRAUMA BAY AT
24 THE EMERGENCY ROOM, AND WHEN I GOT THERE THEY HAD ADVISED ME THAT
25 MS. GALLOWAY WAS TRANSFERRED FROM THE TRAUMA BAY TO THE OPERATING

RON LENDWAY - DIRECT BY MR. MOYER

1 ROOM.

2 Q WERE YOU PRESENT -- WERE YOU THERE WHEN SHE DIED?

3 A I WAS IN THE HOSPITAL AND I WAS ADVISED WHILE I WAS THERE
4 THAT SHE HAD DIED.

5 Q WHAT DID YOU DO WITH THAT INFORMATION?

6 A I CONTACTED SERGEANT SHAW.

7 Q WAS HE STILL AT THE CRIME SCENE?

8 A WHEN I CALLED HIM I ADVISED HIM I WAS OUT WITH ONE OF THE
9 INDIVIDUALS IN THE VEHICLE WHO HAD BEEN SHOT. I WAS ADVISED BY
10 OFFICER JUSTICE THAT MS. GALLOWAY HAD DIED. I THEN CALLED
11 SERGEANT SHAW WITH MY CELL PHONE AND ADVISED SERGEANT SHAW THAT
12 SHE HAD PASSED AWAY.

13 Q NOW, WHEN YOU WERE AT THE HOSPITAL DID YOU COLLECT ANY
14 PERSONAL BELONGINGS OF SUSAN GALLOWAY?

15 A YES, I DID.

16 Q AND DID THAT INCLUDE A PURSE?

17 A YES.

18 Q WHERE DID YOU GET THOSE ITEMS?

19 A THEY WERE NEAR THE ENTRANCE TO THE TRAUMA BAY.

20 Q AND WHAT DID YOU DO WITH IT WHEN YOU COLLECTED IT?

21 A I COLLECTED THE PURSE. I ALSO COLLECTED THE CLOTHING TO MR.
22 POWELL AND ALSO WITH THAT PURSE I COLLECTED A PAIR OF JEANS THAT
23 BELONGED TO MS. GALLOWAY.

24 Q AND WHAT DID YOU END UP DOING WITH THE PURSE?

25 A I TOOK ALL THOSE ITEMS AND I BROUGHT THEM BACK TO THE CRIME

RON LENDWAY - DIRECT BY MR. MOYER

1 SCENE OFFICE AND PLACED THEM IN OUR EVIDENCE ROOM.

2 Q AND AFTER YOU PLACED -- DID THAT INCLUDE THE PURSE?

3 A YES.

4 Q AND WHAT DID YOU END UP DOING WITH THE PURSE AFTER YOU
5 BROUGHT IT THERE?

6 A INVESTIGATOR CONROY HAD CONTACTED ME AND HE ADVISED ME THAT
7 HE WAS WANTING TO RELEASE THE PURSE, AND HE CAME OVER TO OUR
8 OFFICE TO OBTAIN THE PURSE WITH A PROPERTY AND EVIDENCE SHEET.

9 Q OKAY. AND WHAT WAS THE DATE OF THAT?

10 A THAT WAS JUNE 13TH.

11 Q WERE YOU PRESENT WHEN INVESTIGATOR CONROY GOT THE PURSE?

12 A YES, I WAS.

13 Q WERE YOU PRESENT WHEN HE GAVE IT TO WHOMEVER HE WAS GIVING
14 IT TO?

15 A YES, I WAS.

16 Q WERE YOU PRESENT WHEN HE SEARCHED THE PURSE?

17 A YES, I WAS.

18 Q AND DID YOU SEE WHAT, IF ANYTHING, HE FOUND IN THE PURSE?

19 A YES, I DID.

20 Q WHAT WAS IT?

21 A HE FOUND A SPENT CASING, CARTRIDGE CASING.

22 Q DO YOU KNOW WHAT CALIBER?

23 A I CAN'T RECALL THE CALIBER. HE ADVISED THAT HE WOULD TAKE
24 THAT AND PLACE THAT INTO EVIDENCE.

25 Q SO YOU DIDN'T HAVE ANYTHING TO DO WITH THE SPENT SHELL

RON LENDWAY - CROSS BY MR. CREECH

1 CASING AFTER HE TOOK IT?

2 A RIGHT.

3 MR. MOYER: OKAY. NOTHING FURTHER.

4 CROSS EXAMINATION BY MR. CREECH:

5 Q OFFICER LENDWAY, ON JUNE THE 7TH YOU WENT STRAIGHT TO THE
6 HOSPITAL; IS THAT RIGHT?

7 A RIGHT.

8 Q THAT AFTERNOON. DID YOU MEET WITH MR. GARY MICHAEL POWELL
9 UP THERE?

10 A YES.

11 Q DID YOU TALK WITH HIM OR TAKE ANY KIND OF WRITTEN STATEMENT
12 FROM HIM?

13 A I DIDN'T TAKE ANY WRITTEN STATEMENT. HE HAD BEEN SHOT AND
14 HE WAS IN SOME OBVIOUS PAIN, AND HE WAS ALSO BEING TREATED BY THE
15 HOSPITAL STAFF. SO I COULDN'T REALLY TALK TO HIM A WHOLE LOT,
16 BUT I WAS ABLE TO TALK TO HIM FOR JUST A LITTLE BIT.

17 Q AND HE TOLD YOU HE HAD BEEN SHOT; IS THAT CORRECT?

18 A RIGHT.

19 Q AND DID HE TELL YOU THAT HE HAD BEEN SHOT AFTER HE HAD
20 REACHED IN HIS POCKET; DID HE MAKE THAT STATEMENT TO YOU?

21 A NO, SIR.

22 Q OKAY. AND THEN YOU WENT BACK ON THE 8TH OF JUNE; IS THAT
23 RIGHT?

24 A RIGHT. TO THE GREENVILLE COUNTY MORGUE.

25 Q OKAY. YOU WENT TO THE MORGUE ON THE 8TH OF JUNE, THE DAY

MATT JUSTICE - DIRECT BY MR. MOYER

1 AFTER THE SHOOTING?

2 A RIGHT.

3 Q AND YOUR PURPOSE FOR GOING THERE WAS TO PERFORM A GUNSHOT

4 RESIDUE TEST ON THE HANDS OF SUSAN GALLOWAY; IS THAT CORRECT?

5 A THAT'S ONE OF THE THINGS I DID, YES.

6 Q OKAY. AND YOU HAD BEEN INSTRUCTED TO GO THERE. EXPLAIN

7 WHAT YOU DID OR WHAT YOU SAW WHEN YOU WENT TO THE MORGUE IN TERMS

8 OF WHAT WAS ON MS. GALLOWAY'S HANDS?

9 A WHAT WERE ON HER HANDS?

10 Q YES, AT THAT POINT.

11 A THERE WAS BROWN PAPER BAGS SECURED OVER BOTH HANDS.

12 Q ALL RIGHT. AND DID YOU THEN DO THE GUNSHOT RESIDUE TEST

13 DABBER ON HER HANDS?

14 A ONCE THE BAGS WERE REMOVED, YES.

15 MR. CREECH: NO FURTHER QUESTIONS.

16 MR. MOYER: NOTHING FURTHER.

17 THE COURT: ALL RIGHT. YOU MAY STEP DOWN, OFFICER LENDWAY.

18 (WITNESS STEPS DOWN AT 2:26 P.M.)

19 MR. MOYER: THE STATE WOULD CALL MATT JUSTICE.

20 MATT JUSTICE, HAVING BEEN DULY SWORN,

21 TESTIFIED AS FOLLOWS:

22 MADAME CLERK: PLEASE STATE YOUR FULL NAME FOR THE RECORD.

23 WITNESS: MATTHEW EVATT JUSTICE.

24 DIRECT EXAMINATION BY MR. MOYER:

25 Q WHERE DID YOU WORK IN JUNE OF 2006?

MATT JUSTICE - DIRECT BY MR. MOYER

1 A GREENVILLE CITY POLICE DEPARTMENT.

2 Q HOW LONG WERE YOU IN LAW ENFORCEMENT?

3 A ELEVEN YEARS AND ELEVEN MONTHS.

4 Q WAS THAT ALL WITH THE GREENVILLE POLICE DEPARTMENT?

5 A YES, SIR.

6 Q ARE YOU NOW RETIRED?

7 A YES, SIR.

8 Q IS THAT A MEDICAL RETIREMENT?

9 A YES, SIR.

10 Q WHAT WAS YOUR POSITION IN JUNE OF 2006?

11 A I WAS AN INVESTIGATOR.

12 Q OKAY. AND DID YOU PARTICIPATE IN THE CASE FROM WOODLAWN
13 AVENUE ON JUNE 7TH OF LAST YEAR?

14 A YES, SIR.

15 Q NOW, WHEN YOU -- WHEN YOU FIRST GOT INVOLVED, WHERE DID YOU
16 GO FIRST?

17 A I WAS NOTIFIED ON THAT DAY BY SERGEANT MILLER TO RESPOND TO
18 THE GREENVILLE MEMORIAL HOSPITAL IN REFERENCE CHECKING ON THE
19 STATUS OF TWO GUNSHOT VICTIMS.

20 Q OKAY. WHAT WAS TAKING PLACE WITH SUSAN GALLOWAY WHEN YOU
21 ARRIVED THERE?

22 A WHEN I ARRIVED AT GREENVILLE MEMORIAL HOSPITAL THE MEDICAL
23 STAFF IN THE E.R. WAS TREATING -- WORKING ON MS. GALLOWAY.

24 Q OKAY. WERE YOU THERE WHEN SHE DIED?

25 A YES, SIR.

MATT JUSTICE - DIRECT BY MR. MOYER

1 Q DID YOU SEE HER PERSONAL BELONGINGS WHILE YOU WERE THERE?

2 A YES, SIR.

3 Q AND WHAT DID YOU -- HOW DID YOU -- HOW DID THAT COME ABOUT?
4 HOW DID YOU GET THOSE?

5 A SHE WAS TRANSPORTED FROM THE TRAUMA BAY UP TO THE OPERATING
6 ROOM. IN THE COURSE OF HER BEING TRANSPORTED, ONE OF THE MEDICAL
7 STAFF FROM MEMORIAL HOSPITAL HAD GATHERED UP HER PERSONAL
8 BELONGINGS AND PLACED THEM TOGETHER JUST RIGHT OUTSIDE THE TRAUMA
9 BAY DOOR AND SHOWED ME THE LOCATION OF THEM.

10 Q OKAY. AND WHAT DID YOU DO WHEN YOU SAW THE LOCATION OF THE
11 BELONGINGS?

12 A I STOOD BY WITH THEM, AND SHORTLY AFTER THAT A GREENVILLE
13 COUNTY FORENSICS UNIT ARRIVED AT GREENVILLE MEMORIAL AND HE TOOK
14 POSSESSION OF THEM.

15 Q OKAY. NOW, WHEN YOU -- YOU SAID YOU WERE THERE WHEN YOU
16 LEARNED THAT SHE DIED. WHAT DID YOU DO WITH THAT INFORMATION;
17 DID YOU NOTIFY ANYBODY?

18 A AT THAT TIME ONCE SHE WAS -- ONCE SHE WAS TRANSPORTED TO THE
19 OPERATING ROOM, A SHORT TIME LATER ONE OF THE MEDICAL STAFF HAD
20 LOCATED ME DOWN IN THE EMERGENCY ROOM WHERE I WAS SPEAKING WITH
21 THE SECOND MALE VICTIM AND NOTIFIED ME OF THE DEATH OF MS.
22 GALLOWAY.

23 Q OKAY. NOW, DID YOU GO TO THE SCENE AFTER YOU LEFT THE
24 HOSPITAL?

25 A I WAS IN ROUTE. AFTER OBTAINING A STATEMENT I WAS IN ROUTE

MATT JUSTICE - DIRECT BY MR. MOYER

1 FROM MEMORIAL HOSPITAL TO THE INCIDENT LOCATION WHERE AT THE
2 INTERSECTION OF PENDLETON AND LOIS I RAN INTO DETECTIVE CONROY
3 AND DETECTIVE HAMLETT.

4 Q OKAY. AND WHEN YOU RAN INTO THEM DID YOU SPEAK TO THEM?

5 A YES, I DID.

6 Q AFTER SPEAKING TO THEM, WHERE DID YOU GO?

7 A AFTER SPEAKING WITH THEM I FOLLOWED THEM TO
8 DRIVE.

9 Q NOW, WHAT DID YOU SEE WHEN YOU GOT TO DRIVE?

10 A WHEN I ARRIVED AT DRIVE THE FIRST THING I
11 NOTICED WAS A BLUE, MID-EIGHTY -- WHAT APPEARED TO BE A MID-
12 EIGHTIES FOUR-DOOR BUICK PARKED IN THE DRIVEWAY OF A -- IT WAS
13 LIKE A TAN AND BROWN TRAILER RESIDENCE.

14 Q AND WHY DID THAT CATCH YOUR ATTENTION?

15 A THE DESCRIPTION OF THE VEHICLE THAT THE SECOND GUNSHOT MALE
16 VICTIM AT THE HOSPITAL HAD DESCRIBED TO ME IN A STATEMENT WHAT
17 THE SUSPECT VEHICLE WAS.

18 Q LET ME HOW YOU STATE'S EXHIBIT NUMBER 23.

19 A YES, SIR.

20 Q IS THE THAT VEHICLE THAT YOU SAW?

21 A YES, SIR.

22 Q IS THAT THE -- IS THAT ?

23 A YES, SIR.

24 Q AND IS THAT THE RELATION THAT DARK BLUE BUICK WAS TO THE
25 TRAILER WHEN YOU SAW IT? IN OTHER WORDS, WAS IT RIGHT IN FRONT

MATT JUSTICE - DIRECT BY MR. MOYER

1 OF THE DOOR LIKE IT IS IN THAT PHOTOGRAPH?

2 A YES, SIR.

3 Q ALL RIGHT. NOW, AFTER YOU SAW THAT VEHICLE PARKED AT

4 , WHAT DID -- WHAT DID Y'ALL DO?

5 A AT THAT TIME MYSELF, DETECTIVE CONROY AND DETECTIVE HAMLETT,

6 ONCE WE ARRIVED THERE MYSELF AND DETECTIVE CONROY WENT TO THE

7 FRONT DOOR. DETECTIVE HAMLETT WENT TO THE REAR DOOR OF THE

8 TRAILER.

9 Q OKAY. DID ANYONE KNOCK ON THE DOOR?

10 A DETECTIVE CONROY DID.

11 Q AND DID ANYBODY COME TO THE DOOR?

12 A MR. FOWLER. ZACHARY FOWLER.

13 Q ARE YOU REFERRING TO THE DEFENDANT IN THIS CASE?

14 A YES, SIR.

15 Q HE CAME TO THE FRONT DOOR WHEN Y'ALL KNOCKED ON IT?

16 A YES, SIR.

17 Q OKAY. AND DID Y'ALL HAVE A BRIEF CONVERSATION WITH HIM

18 THERE?

19 A DETECTIVE CONROY DID. ONCE THE DOOR WAS OPENED, DETECTIVE

20 CONROY IDENTIFIED HIMSELF AND I AS INVESTIGATORS WITH THE

21 GREENVILLE CITY POLICE DEPARTMENT.

22 Q OKAY. AND DID Y'ALL HAVE BADGES?

23 A YES, SIR, WE DID.

24 Q DID Y'ALL HAVE WEAPONS?

25 A YES, SIR.

MATT JUSTICE - DIRECT BY MR. MOYER

1 Q VISIBLE?

2 A YES, SIR.

3 Q WERE THEY ON YOUR SIDE OR DID YOU HAVE THEM OUT?

4 A NO, THEY WERE ON OUR HIP. THEY WERE RETAINED IN THE HOLSTER
5 ON THE HIP.

6 Q OKAY. NOW, HOW WAS THE DEFENDANT ACTING WHEN HE CAME TO THE
7 DOOR?

8 A WHEN THE DOOR OPENED, DETECTIVE CONROY INTRODUCED WHO WE
9 WERE. AT THAT TIME HE BECAME EXTREMELY NERVOUS, HANDS, BODY
10 STARTED SHAKING NERVOUSLY, AND BEGAN LOOKING LEFT AND RIGHT UP
11 AND DOWN THE DRIVEWAY IN FRONT OF THE TRAILER.

12 Q AND WHAT DID THAT LOOK LIKE TO YOU, HIS MOVEMENTS?

13 A FROM MY PAST EXPERIENCE OF OVER ELEVEN YEARS IN LAW
14 ENFORCEMENT IT SHOWED SIGNS INDICATING SOMEONE GETTING READY TO
15 ATTEMPT TO FLEE, TO RUN.

16 Q OKAY. AND WAS HE ACTUALLY TAKEN INTO CUSTODY AT THAT POINT?
17 WAS HE SECURED?

18 A AT THAT TIME DETECTIVE CONROY ADVISED HIM HE WAS NOT UNDER
19 ARREST BUT DID APPLY HANDCUFFS, AND ZACHARY FOWLER COMPLIED.

20 Q OKAY. NOW, AND WHERE WAS THE DEFENDANT THEN PLACED?

21 A AT THAT TIME HE WAS TAKEN TO DETECTIVE CONROY'S VEHICLE THAT
22 WAS PARKED BEHIND THE BLUE BUICK AND PLACED IN THE FRONT
23 PASSENGER SEAT.

24 Q OKAY. WHAT DID YOU DO WHEN HE WAS PLACED IN THE PASSENGER
25 SEAT OF DETECTIVE CONROY'S CAR?

MATT JUSTICE - DIRECT BY MR. MOYER

1 A ONCE HE WAS PLACED IN THE FRONT PASSENGER SEAT OF THE CAR
2 DETECTIVE CONROY HAD A SEAT IN THE DRIVER'S SEAT. I STOOD BY THE
3 DRIVER DOOR -- THE WINDOW WAS DOWN -- AND LISTENED TO DETECTIVE
4 CONROY ADVISE -- MIRANDIZE ZACHARY FOWLER OF HIS RIGHTS.

5 Q WHEN YOU SAY "MIRANDIZE," YOU HEARD DETECTIVE CONROY
6 ACTUALLY READ HIS RIGHTS TO HIM?

7 A YES, SIR.

8 Q WAS THE WINDOW DOWN, COULD YOU HEAR?

9 A YES, SIR.

10 Q ALL RIGHT. NOW, AT SOME POINT DID YOU HEAR A CONVERSATION
11 BETWEEN DETECTIVE CONROY AND THE DEFENDANT IN WHICH THERE WAS A
12 DISCUSSION ABOUT SEARCHING THE RESIDENCE AND/OR THE CAR?

13 A YES, SIR. BEFORE THE RIGHTS WERE READ DETECTIVE CONROY
14 EXPLAINED TO HIM THAT WE WERE INVESTIGATING AN INCIDENT THAT
15 OCCURRED IN THE WOODLAWN AREA AVENUE, THAT BEFORE HE SPOKE OR
16 RESPONDED TO ANYTHING HE HAD TO ADVISE HIM OF HIS RIGHTS.
17 DETECTIVE CONROY WENT IN, MIRANDIZED HIM OF HIS RIGHTS, AND THEN
18 EXPLAINED TO HIM THAT WE WERE GOING TO OBTAIN A SEARCH WARRANT
19 FOR DRIVE AND A SEARCH WARRANT FOR THE BLUE BUICK
20 IN THE DRIVEWAY. ONCE THAT WAS SAID ZACHARY FOWLER STATED THERE
21 WAS NO REASON, GAVE CONSENT TO DETECTIVE CONROY, STATED, "YOU CAN
22 GO AHEAD AND SEARCH THE TRAILER AND THE CAR. AND IF YOU DON'T
23 FIND ANYTHING DOES THAT MEAN I'M OFF THE HOOK? ARE YOU GOING TO
24 LET ME GO?"

25 Q OKAY. NOW, DO YOU REMEMBER WHAT DETECTIVE CONROY SAID IN

MATT JUSTICE - DIRECT BY MR. MOYER

1 RESPONSE TO THAT?

2 MR. CREECH: I'M GOING TO OBJECT TO HEARSAY.

3 MR. MOYER: I'LL RETRACT THE QUESTION. I'LL RETRACT THAT
4 QUESTION.

5 Q DID YOU REMAIN WITH THE DEFENDANT AT THE VEHICLE THEN?

6 A YES, I DID. SHORTLY AFTER THAT IS WHEN DETECTIVE CONROY
7 EXITED OUT OF THE VEHICLE -- IT WAS RATHER WARM THAT DAY --
8 ROLLED THE WINDOWS UP AND TURNED THE AIR CONDITIONER ON. I
9 STAYED BY THE VEHICLE WHERE THE DEFENDANT WAS LOCATED.

10 Q OKAY. NOW, WHILE YOU WERE STILL THERE ON THE SCENE WAS THE
11 DEFENDANT TAKEN OUT OF THE VEHICLE? AT A LATER TIME WHILE YOU
12 WERE THERE AT WAS THE DEFENDANT TAKEN OUT OF
13 DETECTIVE CONROY'S CAR?

14 A YES.

15 Q AND DURING THAT TIME DID THE DEFENDANT SAY ANYTHING TO YOU?

16 A YES. BEFORE DETECTIVE -- MOMENTS BEFORE DETECTIVE CONROY
17 LEFT THE SCENE WITH THE -- DRIVE WITH THE
18 DEFENDANT, HE WAS BRIEFING OTHER OFFICERS THERE, INVESTIGATORS
19 THERE, ZACHARY FOWLER WAS STANDING BESIDE ME, STILL IN HANDCUFFS,
20 MADE THE STATEMENT THAT DETECTIVE JUSTICE -- I'M SORRY. HE SAID,
21 "JUSTICE, MAN. I'M GUILTY. I FUCKED UP TODAY. THIS WASN'T TO
22 GO DOWN LIKE THIS," AND JUST RESTED AGAINST THE CAR.

23 Q NOW, HAD YOU ASKED HIM ANY QUESTIONS BEFORE HE SAID THAT?

24 A NO.

25 Q AFTER HE SAID THAT DID YOU SAY ANYTHING BACK TO HIM?

MATT JUSTICE - DIRECT BY MR. MOYER

1 A DID NOT REPLY.

2 Q ALL RIGHT. NOW DID -- WHEN DETECTIVE CONROY TOOK THE
3 DEFENDANT AWAY FROM DID YOU STAY THERE AT THE
4 RESIDENCE?

5 A YES, SIR, I DID.

6 Q AND DID YOU STAY AND PARTICIPATE IN THE SEARCH THAT TOOK
7 PLACE AT THE RESIDENCE?

8 A YES, SIR, I DID.

9 Q ALL RIGHT. NOW, WE'RE GOING TO TALK ABOUT SOME EVIDENCE
10 THAT HAS ALREADY BEEN INTRODUCED. LET ME JUST ASK YOU REAL
11 BRIEFLY ABOUT THEM. DO YOU REMEMBER SEEING A BOX OF AMMUNITION?

12 A YES, SIR, IT WAS IN THE -- WHAT I CALL THE FRONT ROOM OR THE
13 LIVING ROOM OF THE TRAILER.

14 Q OKAY. AND WHERE -- CAN YOU DESCRIBE WHERE IN THE TRAILER IT
15 WAS?

16 A IF YOU COME IN THE FRONT DOOR, YOU HAVE A KITCHEN
17 IMMEDIATELY TO YOUR RIGHT AND A LIVING ROOM IMMEDIATELY THAT YOUR
18 ENTERING INTO FROM THE FOYER. THE KITCHEN AND THE LIVING ROOM IS
19 DIVIDED FROM THE KITCHEN COUNTERTOP. TO THE LEFT INTO THE LIVING
20 ROOM IS A WINDOW, AND UP UNDER THE WINDOW WAS A WHITE BOX OF, I
21 BELIEVE IT WAS, NINE MILLIMETER WINCHESTER AMMUNITION.

22 Q AND LOOKING AT STATE'S EXHIBIT NUMBER 12, CAN YOU SEE THE
23 AMMUNITION BOX DISPLAYED IN THAT PHOTOGRAPH?

24 A YES, SIR, I CAN.

25 Q IS THAT WHERE IT WAS WHEN YOU SAW IT?

MATT JUSTICE - DIRECT BY MR. MOYER

1 A YES, SIR.

2 Q ALL RIGHT. AND DID YOU SEE A FIREARM?

3 A YES, SIR.

4 Q AND WHO ACTUALLY FIRST FOUND THE FIREARM?

5 A TO MY UNDER -- IT WAS ME WHO LOCATED THE FIREARM.

6 Q AND IF YOU WOULD, TAKE A LOOK AT STATE'S EXHIBIT NUMBER 27.

7 CAN YOU SEE WHERE THE FIREARM IS LOCATED IN THAT PHOTOGRAPH?

8 A YES, I CAN. THIS DRESSER HERE BESIDE THE TV, THERE'S A

9 GLASS MISSING OUT OF THIS DOOR. UNDER THE DRESSER YOU SEE A VERY

10 LIGHT GRAY CLOTH MATERIAL FROM THE PHOTO UP UNDER THE DRESSER,

11 AND THAT'S WHERE IT WAS LOCATED.

12 Q OKAY. WHEN YOU FOUND THAT AND WHEN YOU FOUND THE BOX OF

13 AMMUNITION DID YOU COLLECT IT OR WHAT DID YOU DO REGARDING THAT?

14 A THE GREENVILLE COUNTY FORENSIC UNIT, DIAZ -- DIETZ, I

15 BELIEVE IS THE CORRECT PRONUNCIATION OF HER NAME, SHE WAS WITH

16 US. THE EVIDENCE WAS POINTED OUT AND SHE COLLECTED AND

17 TRANSPORTED IT.

18 Q OKAY. WAS IT MOVED PRIOR TO YOUR POINTING IT OUT TO THE

19 FORENSICS OFFICER?

20 A NO.

21 Q SO IT WAS KEPT WHERE IT WAS UNTIL SHE SAW IT AND

22 PHOTOGRAPHED IT AND COLLECTED IT?

23 A CORRECT.

24 (WHITE ROCKLIKE SUBSTANCE MARKED AS STATE'S EXHIBIT NUMBER

25 34 FOR PURPOSES OF IDENTIFICATION ONLY)

MATT JUSTICE - DIRECT BY MR. MOYER

1 Q I'M GOING TO HAND YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT
2 NUMBER 34. CAN YOU TAKE A LOOK AT IT AND CAN YOU RECOGNIZE WHAT
3 I'VE HANDED YOU?

4 A YES, SIR.

5 Q WHAT IS IT?

6 A THIS IS A -- WHAT I DESCRIBED IN MY REPORT AS A WHITE
7 ROCKLIKE SUBSTANCE THAT APPEARED FACE VALUE TO BE CRACK COCAINE
8 THAT WAS LAYING ON THE KITCHEN COUNTER LOCATED BESIDE ANOTHER --
9 A CLEAR BAG THAT HAD A GREEN LEAFY SUBSTANCE IN IT.

10 Q OKAY. NOW WHEN YOU SAW IT THERE YOU SAID IT LOOKED TO YOU
11 LIKE WHAT YOU KNOW TO BE---

12 A CRACK.

13 Q ---CRACK COCAINE? HAVE YOU SEEN A LOT OF CRACK COCAINE IN
14 YOUR EXPERIENCE AS A LAW ENFORCEMENT OFFICER?

15 A YES, I HAVE.

16 Q OKAY. SO DID THAT LOOK PRETTY CONVINCINGLY TO YOU AS CRACK
17 COCAINE?

18 A YES, SIR.

19 Q ARE YOU FAMILIAR WITH THE TERM "FLEX"?

20 A YES, SIR.

21 Q WHAT IS THAT WORD?

22 A THE BEST WAY I CAN DESCRIBE FLEX IS A SUBSTANCE MADE TO LOOK
23 -- A FALSE CRACK ROCK. IT'S A SUBSTANCE MADE TO LOOK LIKE CRACK,
24 LIKE A CRACK ROCK, BUT IT'S ARTIFICIAL. IT'S NOT.

25 Q AND WHAT IS IT USED FOR?

MATT JUSTICE - DIRECT BY MR. MOYER

1 A PEOPLE -- DRUG DEALERS ON THE STREET OR PEOPLE THAT WANT TO
2 TRY TO SELL, THEY WILL SELL THIS INSTEAD OF CRACK COCAINE, TRYING
3 TO MAKE QUICK MONEY.

4 MR. CREECH: OBJECT TO THAT RESPONSE, YOUR HONOR, UNDER 403
5 AND BALANCING.

6 THE COURT: OKAY. OVERRULED. GO AHEAD.

7 Q OKAY. WHAT DID YOU DO WITH THAT AFTER YOU COLLECTED IT?

8 A SECURED IT AND TOOK IT TO OUR DEPARTMENT EVIDENCE STORAGE
9 ROOM AND REQUESTED A CHEMICAL ANALYSIS TO BE DONE AND TESTED IT
10 TO SEE IF IT WAS CRACK.

11 Q OKAY. SO THAT'S NOT SOMETHING YOU CAN DO THEN?

12 A NO.

13 Q WHEN DID YOU PLACE IT INTO THE PROPERTY AND EVIDENCE ROOM?

14 A WHEN I HAD RETURNED BACK TO THE LAW ENFORCEMENT CENTER AFTER
15 THE EXECUTION OF THE SEARCH WARRANT.

16 Q SO THE SAME DAY?

17 A YES, SIR.

18 Q OKAY. AND WHEN YOU TURNED IT INTO THE PROPERTY AND EVIDENCE
19 ROOM WAS IT PACKAGED IN SUCH A WAY THAT YOU COULD PUT SOME
20 IDENTIFYING FEATURES ON IT?

21 A YES, SIR. IT HAS THE DATE AND THE CASE NUMBER. MY INITIALS
22 ARE RIGHT HERE, M.J., AND G.P.D., GREENVILLE POLICE DEPARTMENT,
23 ON THE ORIGINAL PACKAGE.

24 Q OKAY. ALL RIGHT. DID YOU SEARCH THE CAR AS WELL?

25 A YES, SIR.

MATT JUSTICE - DIRECT BY MR. MOYER

1 Q THE BLUE BUICK?

2 A YES, SIR.

3 Q WAS ANYTHING COLLECTED FROM IT?

4 A A SOUTH CAROLINA DRIVER'S LICENSE -- A FEMALE'S SOUTH
5 CAROLINA D.L.

6 Q AND WHOSE D.L.? WHAT WAS THE NAME ON THE D.L.?

7 A IT WAS A DIANA TISDALE. IT WAS A SOUTH CAROLINA BEGINNER'S
8 PERMIT. SOUTH CAROLINA D.L. NUMBER

9 Q ALL RIGHT. DID YOU PAY ANY ATTENTION TO THE DRIVER'S DOOR
10 WHILE THE CAR -- AUTOMOBILE WAS SEARCHED?

11 A I DID. DURING THE EXECUTION OF THE SEARCH WARRANT I CHECKED
12 TO SEE IF THE DRIVER'S DOOR WAS OPERABLE, MEANING OPENING AND
13 CLOSING PROPERLY. IT WOULD NOT.

14 (PHOTOGRAPH MARKED AS STATE'S EXHIBIT NUMBER 35 FOR PURPOSES
15 OF IDENTIFICATION ONLY)

16 Q OKAY. I'M GOING TO HAND YOU STATE'S EXHIBIT NUMBER 35. CAN
17 YOU LOOK AT THAT PHOTOGRAPH AND CAN YOU TELL US WHAT IS DEPICTED
18 IN STATE'S EXHIBIT 35?

19 A YES, SIR.

20 Q WHAT IS -- DON'T -- I DON'T WANT YOU TO SHOW IT TO THE JURY.

21 A OH, OKAY.

22 Q I JUST WANT YOU TO LOOK AT IT YOURSELF.

23 A WHAT IS DEPICTED IN HERE IS THE SINGLE WHITE ROCKLIKE
24 SUBSTANCE ON THE KITCHEN COUNTER AND THE CLEAR BAG---

25 Q NOW, IS THAT THE COUNTER THAT YOU SAW -- IS THAT A TRUE AND

MATT JUSTICE - CROSS BY MR. CREECH

1 ACCURATE REPRESENTATION OF THAT COUNTER AND THAT ROCKLIKE
2 SUBSTANCE THAT YOU COLLECTED ON---

3 A YES, SIR.

4 Q ---ON JUNE THE 7TH, 2006?

5 A YES, SIR.

6 MR. MOYER: AT THIS TIME I'D MOVE TO HAVE STATE'S EXHIBIT
7 NUMBER 35 INTO EVIDENCE.

8 MR. CREECH: YOUR HONOR, I JUST OBJECT UNDER RULE 403 AS TO
9 WHAT'S IN THE PICTURE.

10 THE COURT: LET ME SEE. ALL RIGHT. I'M GOING TO SUSTAIN
11 THE OBJECTION. THANK YOU.

12 MR. MOYER: ALL RIGHT. I HAVE NO FURTHER QUESTIONS FOR
13 THIS WITNESS.

14 CROSS EXAMINATION BY MR. CREECH:

15 Q DETECTIVE JUSTICE, YOU ARE NO LONGER WITH THE CITY POLICE;
16 IS THAT RIGHT?

17 A THAT'S CORRECT.

18 Q YOU'RE ON MEDICAL RETIREMENT; IS THAT CORRECT?

19 A YES, SIR.

20 Q OKAY. DURING THE 11 YEARS ON THE FORCE WHEN YOU WERE ON THE
21 CITY POLICE HAD YOU EVER -- DID YOU EVER WORK ON THE ROAD?

22 A YES, SIR, I HAVE.

23 Q OKAY. AND DID YOU EVER WALK UP ON A CAR THAT MAY HAVE
24 STRANGERS IN IT AND FELT LIKE THERE MAY BE A DANGER INSIDE THAT
25 CAR JUST FROM A GUT REACTION YOU HAD BASED ON YOUR EXPERIENCE?

MATT JUSTICE - CROSS BY MR. CREECH

1 A YES, I HAVE.

2 Q HAVE YOU EVER HAD OCCASION TO THINK SOMEONE WAS GOING TO
3 PULL A GUN ON YOU INSIDE A CAR?

4 A YES.

5 Q AND HAVE YOU EVER HAD TO PULL A GUN ON SOMEONE AS A POLICE
6 OFFICER?

7 A YES, SIR.

8 Q NOW, HAVE YOU EVER -- WHEN YOU WERE A POLICE OFFICER DID YOU
9 EVER -- IT'S OBVIOUSLY A VERY DANGEROUS JOB; IS THAT RIGHT?

10 A YES, SIR.

11 Q AND HAD YOU EVER THOUGHT THAT IF YOU WERE EVER IN A
12 CONFRONTATION IF SOMEONE PULLED A GUN AND SHOT YOU, MAYBE YOU
13 WOULDN'T BE GOING HOME THAT NIGHT; DID THAT THOUGHT EVER CROSS
14 YOUR MIND?

15 A YES, SIR.

16 Q AND IF IT CAME DOWN TO THAT PERSON SHOOTING YOU OR YOU
17 SHOOTING THEM, YOU WOULDN'T HESITATE TO SHOOT FIRST; IS THAT
18 CORRECT?

19 A COULD YOU RE-ASK IT?

20 Q YOU WOULDN'T HESITATE TO SHOOT FIRST, IS THAT RIGHT, TO SAVE
21 YOUR OWN LIFE?

22 A IF IT FELL INTO ABILITY, OPPORTUNITY, AND JEOPARDY WHERE I
23 FELT MY LIFE WAS IN JEOPARDY OF BEING TAKEN AND THE PERSON HAD
24 THE ABILITY TO DO IT.

25 Q YOU WOULD SHOOT; IS THAT CORRECT?

MATT JUSTICE - CROSS BY MR. CREECH

1 A YES, SIR.

2 Q OKAY. AND DID YOU EVER -- WERE YOU EVER IN THAT POSITION?

3 DID YOU EVER HAVE TO SHOOT SOMEONE AS A CITY POLICE OFFICER?

4 A NO, SIR.

5 Q DID YOU EVER HAVE TO PULL A GUN ON SOMEONE AND ORDER THEM

6 OUT OF THE CAR BECAUSE OF MOVEMENTS WITHIN THE CAR?

7 A YES, SIR.

8 Q IS THAT TRUE?

9 A YES, SIR.

10 Q AND IS ONE OF THE THINGS THAT YOU MAYBE LOOKED AT WAS WHAT

11 THEY WERE DOING WITH THEIR HANDS; WAS THAT A FACTOR IN TRYING TO

12 MAKE THAT DECISION WHEN YOU APPROACHED A STRANGE VEHICLE?

13 A YES, SIR.

14 Q OKAY. YOU WENT TO THE HOSPITAL FIRST; IS THAT CORRECT?

15 A YES, SIR.

16 Q AND AT THE HOSPITAL YOU SPOKE TO GARY MICHAEL POWELL; IS

17 THAT RIGHT?

18 A YES, SIR.

19 Q AND YOU TOOK A WRITTEN STATEMENT FROM HIM; IS THAT RIGHT?

20 A YES, SIR.

21 Q OKAY. AND IN THAT -- AND -- IS THAT THE STATEMENT THAT YOU

22 TOOK FROM HIM?

23 A YES, SIR.

24 Q OKAY. AND IN THAT STATEMENT DOES HE SAY THAT THE PERSON

25 CAME UP TO HIS -- IS IT "MY WINDOW," I THINK IN THAT STATEMENT?

MATT JUSTICE - CROSS BY MR. CREECH

- 1 A (REVIEWS STATEMENT) YES, SIR.
- 2 Q OKAY. AND WERE THOSE HIS WORDS AS YOU TOOK THEM DOWN?
- 3 A YES, SIR.
- 4 Q OKAY. DID YOU USE ANY NOTES OR ANYTHING LIKE THAT WHEN YOU
- 5 TOOK HIS STATEMENT OR DID YOU JUST LISTEN TO HIM AND WRITE IT
- 6 DOWN?
- 7 A LISTENED TO HIM AND WROTE IT DOWN AND READ IT BACK TO HIM
- 8 WORD FOR WORD, YES, SIR.
- 9 Q READ IT BACK TO HIM WORD FOR WORD?
- 10 A YES, SIR.
- 11 Q AND HE SIGNED IT AND ACKNOWLEDGED THAT WAS HIS STATEMENT; IS
- 12 THAT CORRECT?
- 13 A YES, SIR.
- 14 Q OKAY . AND HE SAYS "MY WINDOW," THAT WOULD APPEAR TO BE
- 15 INCORRECT; IS THAT RIGHT?
- 16 A THAT'S WHAT WAS SAID TO ME WHEN I TOOK THE STATEMENT.
- 17 Q OKAY. DO YOU KNOW IF YOU GOT THAT PART IN THE STATEMENT OR
- 18 DID HE TELL YOU ANOTHER WINDOW?
- 19 A I READ IT BACK TO HIM WORD FOR WORD.
- 20 Q OKAY. AND HE ALSO TALKED ABOUT THIS RED BAG, IS THAT RIGHT?
- 21 HE PUT THAT IN HIS STATEMENT?
- 22 A YES.
- 23 Q AND DID HE TELL YOU THAT THE PERSON WHO CAME UP ON THE CAR
- 24 ABOUT PULLING OUT A GUN FROM A RED BAG; IS THAT CORRECT?
- 25 A YES.

MATT JUSTICE - CROSS BY MR. CREECH

1 Q AND HE TOLD -- AND THAT'S WHAT HE TOLD YOU?

2 A (PAUSE) HE STATED, "HE GOT A RED BAG OUT HIS BACK SEAT,
3 WALKED UP TO MY WINDOW. HE PULLED OUT A BLACK HANDGUN WITH WOOD
4 GRIPS ON IT AND POINTED IT AT ME." HE DIDN'T SPECIFY IF THE GUN
5 CAME FROM THE RED BAG OR SOMEWHERE ELSE ON HIS BODY.

6 Q OKAY. DID YOU ASK HIM THAT OR DID YOU FOLLOW THAT? DO YOU
7 REMEMBER IF HE TOLD YOU VERBALLY HE PULLED IT OUT OF A RED BAG?

8 A I DON'T REMEMBER IF HE TOLD ME VERBALLY OR NOT.

9 Q OKAY. SOMETIMES SOMETHING CAN BE TOLD VERBALLY TO YOU WHILE
10 YOU TAKE A STATEMENT AND WOULD IT BE INCLUDED IN THE WRITTEN
11 STATEMENT; IS THAT CORRECT?

12 A WHEN I'M TAKING A STATEMENT, YES, IF THEY TELL ME SOMETHING
13 VERBALLY, I WILL WRITE IT, IF I'M WRITING THE STATEMENT FOR THEM.
14 HE WAS INJURED DUE TO A GUNSHOT WOUND TO HIS HAND AND COULDN'T
15 WRITE. THAT'S WHY I WAS WRITING THE STATEMENT.

16 Q OKAY.

17 A AND I WROTE IT AS -- I WROTE THE STATEMENT AS HE TOLD ME IT
18 HAPPENED.

19 Q OKAY. NOW, WHEN YOU WERE A CITY POLICE OFFICER DID YOU
20 EVER, LET'S SAY, HAVE TO ARREST SOMEONE THAT HAD COCAINE IN THEIR
21 SYSTEM OR WAS HIGH ON COCAINE OR ANYTHING LIKE THAT?

22 A YES.

23 Q AND A PERSON LIKE THAT, FROM YOUR EXPERIENCE, WOULD A PERSON
24 LIKE THAT BE MORE AGGRESSIVE OR HARDER TO ARREST AT TIMES?

25 A I WOULDN'T SAY THAT. FROM MY EXPERIENCE IN OVER 11 YEARS OF

MATT JUSTICE - CROSS BY MR. CREECH

1 LAW ENFORCEMENT, DRUGS HAVE DIFFERENT EFFECTS ON PEOPLE. SO I
2 CAN'T SAY IF IT MAKES EVERYONE THE SAME, BECAUSE FROM MY
3 EXPERIENCE IT DOESN'T.

4 Q BUT SOME PEOPLE THAT YOU'VE ARRESTED WHO ARE ON COCAINE,
5 THEY COULD BE MORE AGGRESSIVE, IS THAT CORRECT, WHEN YOU
6 ENCOUNTER THOSE PEOPLE ON THE JOB; IS THAT RIGHT?

7 A I HAVE HAD TO STRUGGLE WITH PEOPLE ON COKE THAT WERE
8 CURRENTLY ON COCAINE AT THE TIME.

9 Q OKAY. HAVE YOU EVER TAKEN A STATEMENT -- WHEN SOMEBODY
10 GIVES YOU A VERBAL STATEMENT AND YOU'VE WRITTEN IT DOWN, HAVE YOU
11 EVER LEFT SOMETHING OUT OF A VERBAL STATEMENT THAT YOU PUT INTO
12 THE WRITTEN STATEMENT? HAS THAT EVER HAPPENED TO YOU?

13 A NOT THAT I RECALL. BECAUSE BEFORE I HAVE HIM SIGN IT, WE
14 BOTH -- I READ IT BACK TO THEM WORD FOR WORD AND THEY TELL ME YES
15 OR NO.

16 Q OKAY. SO WHEN YOU'VE BEEN TOLD SOMETHING VERBALLY, YOU'VE
17 NEVER LEFT IT OUT, EVER, IN YOUR 11 YEARS WITH THE POLICE
18 DEPARTMENT; IS THAT RIGHT?

19 A I CAN'T RECALL A CERTAIN INCIDENT.

20 Q OKAY. BUT YOU WOULD ADMIT THAT IT IS DIFFICULT TO REMEMBER
21 WHAT SOMEBODY TOLD YOU WORD FOR WORD AND WRITE IT DOWN WORD FOR
22 WORD; IS THAT RIGHT?

23 A IT IS, YES.

24 Q AND THERE'S THAT PROCESS OF TAKING IT FROM THEM AND PUTTING
25 IT ON PAPER, ESPECIALLY IF YOU HAVEN'T BEEN TAKING NOTES; IS THAT

MATT JUSTICE - REDIRECT BY MR. MOYER

1 CORRECT?

2 A YES, SIR.

3 MR. CREECH: OKAY. THANK YOU. I HAVE NO FURTHER
4 QUESTIONS.

5 MR. MOYER: A COUPLE OF FOLLOW-UP QUESTIONS.

6 REDIRECT EXAMINATION BY MR. MOYER:

7 Q WHEN YOU TALKED TO GARY POWELL HE WAS IN THE EMERGENCY ROOM?

8 A HE WAS IN THE TRAUMA BAY.

9 Q OKAY. AND HE WAS ABOUT TO GO INTO SURGERY?

10 A YES, SIR.

11 Q AND SO IT'S SAFE TO SAY AT THAT POINT HE THOUGHT HE'D BEEN
12 SHOT, WHAT, THREE OR FOUR TIMES?

13 A YES, SIR.

14 Q SO IT'S SAFE TO SAY -- IN FACT, WERE Y'ALL EVEN SURE HE WAS
15 GOING TO LIVE OR NOT?

16 A NO, SIR. NO.

17 Q AT THE TIME YOU SPOKE TO HIM YOU WEREN'T SURE?

18 A NO, SIR.

19 Q IS THAT ONE OF THE REASONS WHY YOU WANTED TO GET THE
20 STATEMENT FROM HIM THERE IN THE HOSPITAL?

21 A YES, SIR.

22 Q BEFORE HE WENT INTO SURGERY? IN FACT, HE WASN'T EVEN
23 CAPABLE OF WRITING A STATEMENT ON HIS OWN, WAS HE?

24 A THAT IS CORRECT, YES, SIR.

25 MR. MOYER: OKAY. NOTHING FURTHER.

BRIAN MILLER - DIRECT BY MR. MOYER

1 MR. CREECH: I HAVE NO FURTHER QUESTIONS, YOUR HONOR.

2 THE COURT: ALL RIGHT. THANK YOU, OFFICER JUSTICE..

3 WITNESS: YES, SIR.

4 MR. MOYER: THE STATE CALLS SERGEANT BRIAN MILLER.

5 YOUR HONOR, WE'D ASK HE BE EXCUSED.

6 THE COURT: ANY OBJECTION?

7 MR. CREECH: NO OBJECTION, YOUR HONOR.

8 THE COURT: YES, SIR, YOU ARE EXCUSED.

9 (WITNESS EXCUSED AT 2:55 P.M.)

10 BRIAN MILLER, HAVING BEEN DULY SWORN,
11 TESTIFIED AS FOLLOWS:

12 MADAME CLERK: PLEASE STATE YOUR FULL NAME FOR THE RECORD.

13 WITNESS: STEVEN BRIAN MILLER.

14 DIRECT EXAMINATION BY MR. MOYER:

15 Q ALL RIGHT. AND WHERE DO YOU WORK?

16 A THE GREENVILLE CITY POLICE DEPARTMENT.

17 Q HOW LONG HAVE YOU BEEN WITH THE GREENVILLE CITY POLICE
18 DEPARTMENT?

19 A IT WILL BE 17 YEARS THIS NOVEMBER.

20 Q WHAT IS YOUR POSITION?

21 A CURRENTLY I'M A SERGEANT OVER VICE AND NARCOTICS.

22 Q IS THAT WHAT YOU WERE DOING IN JUNE OF 2006?

23 A NO.

24 Q WHAT WERE YOU DOING THEN?

25 A I WAS ACTING SUPERVISOR OVER HOMICIDE AND BURGLARY AT THE

BRIAN MILLER - DIRECT BY MR. MOYER

1 POLICE DEPARTMENT.

2 Q OKAY. NOW LET ME TAKE YOU BACK TO JUNE -- TO THAT DATE,
3 JUNE 7TH, 2006. DID YOU RESPOND OUT TO DRIVE?

4 A I DID.

5 Q WERE THERE OTHER OFFICERS THERE?

6 A THERE WERE.

7 Q NOW, WHEN YOU ARRIVED OUT THERE DID YOU SEE THE DEFENDANT?

8 A I DID ONCE I EXITED MY VEHICLE.

9 Q OKAY. AND WHERE WAS HE WHEN YOU SAW HIM?

10 A HE WAS IN THE PASSENGER SEAT OF DETECTIVE CONROY'S VEHICLE.

11 Q OKAY. AND DID YOU HAVE ANY INTERACTION WITH HIM?

12 A I DID.

13 Q HOW DID THAT COME ABOUT?

14 A WHEN I PULLED UP I MADE CONTACT WITH DETECTIVE JUSTICE, WHO
15 JUST TESTIFIED, AND GAVE HIM THE SEARCH WARRANT, WHICH HAD BEEN
16 GIVEN TO ME. I RELAYED IT THERE. AS I WAS WALKING PAST HIM ZACH
17 MADE A MOTION FOR ME TO COME OVER TO THE CAR, AND I ENTERED THE
18 CAR.

19 Q OKAY. AND WHEN YOU GOT OVER THERE WHAT TOOK PLACE?

20 A WELL, WHEN I ENTERED THE CAR, HE HAD HIS HEAD DOWN. HE
21 MUMBLED SOMETHING TO THE EFFECT OF, YOU KNOW, "THIS WASN'T
22 SUPPOSED TO HAPPEN."

23 MR. CREECH: OBJECT, YOUR HONOR, AS TO MY PREVIOUS
24 OBJECTION.

25 THE COURT: YES, SIR. OKAY. THAT'S SO NOTED BUT

BRIAN MILLER - DIRECT BY MR. MOYER

1 OVERRULED. GO AHEAD.

2 Q OKAY. WHAT DID HE SAY?

3 A HE HAD HIS HEAD DOWN MUMBLING, LIKE THIS. HE SAID, "THIS
4 WASN'T SUPPOSED TO HAPPEN THIS WAY." AND I SAID, "WHAT'S GOING
5 ON?" I DIDN'T KNOW HIS NAME AT THAT TIME. AND HE SAID THAT HE
6 WANTED TO COME CLEAN AND GET ALL OF THIS OFF HIS CHEST, AND WE
7 SPOKE VERY BRIEFLY. AND I SAID, WELL -- I DON'T RECALL
8 EVERYTHING HE SAID. HE SAID THAT, YOU KNOW, HE WOULD SHOW US THE
9 WEAPON THAT WAS USED.

10 MR. CREECH: OBJECT AGAIN, YOUR HONOR. SAME OBJECTION.

11 THE COURT: OKAY. OVERRULED. GO AHEAD.

12 Q NOW, WHEN HE TOLD YOU THIS, THAT HE WANTED TO COME CLEAN AND
13 SHOW YOU WHERE THE GUN IS, WHAT DID YOU DO AT THAT POINT?

14 A WELL, HE CAUGHT ME OFF GUARD SOMEWHAT, BUT IMMEDIATELY I
15 TRIED TO BACK OUT OF THE CONVERSATION A LITTLE BIT SO I COULD
16 TALK TO DETECTIVE CONROY. HE WAS THE LEAD INVESTIGATOR ON THE
17 CASE. I WANTED TIM TO TAKE OVER THE INTERVIEW IF MR. FOWLER
18 DECIDED TO TELL US EXACTLY WHAT HAPPENED. SO I WAS SORT OF KIND
19 OF BACKING MY WAY OUT OF IT, AND THEN I SLOWLY WENT AND GOT TIM.

20 Q OKAY. AND WHAT DID YOU TELL INVESTIGATOR CONROY?

21 A I JUST TOLD HIM THAT HE WAS WILLING TO SHOW US THE GUN AND
22 HE WAS WANTING TO COME CLEAN WITH WHAT HAPPENED.

23 Q OKAY. AND THEN DID YOU TURN HIM OVER TO INVESTIGATOR CONROY
24 THEN?

25 A YES. TIM MADE CONTACT WITH HIM.

BRIAN MILLER - CROSS BY MR. CREECH

1 Q AND HE HANDLED THE -- AS FAR AS CONTACT WITH THE DEFENDANT
2 WHETHER HE DID WANT TO TELL WHAT HAPPENED---

3 A YES.

4 Q ---YOU LEFT THAT UP TO INVESTIGATOR CONROY?

5 A YES. I DIDN'T HAVE ANY MORE CONTACT WITH HIM UNTIL WE GOT
6 TO THE LAW ENFORCEMENT CENTER.

7 MR. MOYER: OKAY. PLEASE ANSWER ANY QUESTIONS THE DEFENSE
8 MAY HAVE.

9 CROSS EXAMINATION BY MR. CREECH:

10 Q SERGEANT MILLER, WERE YOU IN UNIFORM THAT DAY?

11 A NO, SIR, I WASN'T.

12 Q AND YOU JUST WALKED UP PLAIN CLOTHES; IS THAT RIGHT?

13 A I HAD A SUIT ON, ROUGHLY LIKE THIS.

14 Q AND MR. FOWLER WAS IN THE BACK SEAT OF THIS -- OR IN THE
15 SEAT OF THE CAR; IS THAT RIGHT?

16 A HE WAS IN THE FRONT PASSENGER SEAT TO THE RIGHT. I PULLED
17 UP THIS WAY. THE BUICK CENTURY WAS IN FRONT OF ME. DETECTIVE
18 CONROY'S CAR WAS TO THE RIGHT. AND ZACH WAS IN THE FRONT
19 PASSENGER SEAT, FROM WHAT I REMEMBER.

20 Q AND HE WAS -- HAD BEEN HANDCUFFED AT THAT POINT AND WAS PUT
21 IN THE CAR; IS THAT RIGHT?

22 A I REMEMBER HIM BEING HANDCUFFED.

23 Q OKAY. AND SO YOU SAID HE WAVED YOU OVER?

24 A HE MADE A MOTION. HE MADE A MOTION TOWARD ME WHEN I LOOKED
25 OVER.

BRIAN MILLER - CROSS BY MR. CREECH

1 Q SO HE WAS HANDCUFFED SO HE WAVED YOUR OVER? THAT HAPPENED
2 WHEN HE WAS HANDCUFFED?

3 A NO. IT WAS JUST EYE CONTACT. I REMEMBER A MOTION BEING
4 MADE OF, LIKE, MAYBE A HEAD BOB OR TO MEET EYE CONTACT AND MAYBE
5 LIKE THIS (DEMONSTRATING). BUT HE WAS HANDCUFFED. I REMEMBER
6 THAT.

7 Q YOU TESTIFIED EARLIER HE WAVED YOU OVER.

8 A OKAY.

9 Q THAT'S NOT ACCURATE, IS IT?

10 A NO. I CAN'T BE ABSOLUTELY CERTAIN.

11 Q AND YOU WEREN'T WEARING A POLICE UNIFORM, SO IT'S NOT LIKE
12 HE KNEW YOU WERE A POLICE OFFICER OR ANYTHING LIKE THAT; IS THAT
13 RIGHT?

14 A I ASSUME NO, SIR.

15 Q OKAY. AND THEN YOU GOT IN THE CAR WITH HIM; IS THAT RIGHT?
16 AND WERE THE DOORS LOCKED IN THE CAR?

17 A I DON'T REMEMBER.

18 Q OKAY. THAT WAS THE REST OF YOUR INTERACTION WITH HIM?

19 A YEAH, IT WAS ABOUT A ONE- TO TWO-MINUTE CONVERSATION.

20 Q NOW, DO YOU KNOW IF THERE WAS EVER A PHOTO LINEUP THAT WAS
21 PREPARED IN THIS CASE?

22 A NO, SIR.

23 Q DID YOU EVER PRESENT ONE TO ANYONE?

24 A ABSOLUTELY NOT. NO, SIR.

25 Q DID YOU EVER INSTRUCT TO HAVE AN OFFICER PUT TOGETHER A

BRIAN MILLER - CROSS BY MR. CREECH

1 PHOTO LINEUP TO SEE IF THEY COULD MAKE AN IDENTIFICATION IN THIS
2 CASE?

3 A NO.

4 Q YOU NEVER DID THAT?

5 A NO.

6 Q WHILE YOU WERE IN THE CAR WITH ZACHARY DID YOU EVER SAY TO
7 HIM SOMETHING LIKE, "IF YOU DON'T COME CLEAN, YOUR GIRLFRIEND IS
8 GOING TO GET LIFE IN PRISON"?

9 A NO, ABSOLUTELY NOT.

10 Q YOU NEVER MADE THAT THREAT TO HIM?

11 A NO, SIR.

12 Q YOU NEVER SAID, "I CAN HELP YOU IF YOU GIVE A STATEMENT"?

13 A NO.

14 Q AND IT WAS JUST YOU TWO IN THIS CAR; IS THAT RIGHT?

15 A YES, SIR, IT WAS ME AND ZACH.

16 Q AND THE WINDOWS WERE ROLLED UP, CORRECT?

17 A YES, SIR.

18 Q AND BEFORE YOU TALKED TO HIM DID YOU PERSONALLY READ HIS
19 RIGHTS TO HIM?

20 A NO, I PERSONALLY DID NOT.

21 MR. CREECH: THANK YOU. I HAVE NO FURTHER QUESTIONS.

22 WITNESS: THANK YOU.

23 MR. MOYER: ONE FOLLOW-UP.

24 REDIRECT EXAMINATION BY MR. MOYER

25 Q WERE YOU AWARE THAT HIS RIGHTS HAD BEEN ALREADY READ TO HIM?

BRIAN MILLER - REDIRECT BY MR. MOYER

1 A YES, SIR. WHEN I CAME OUT AND MADE CONTACT WITH DETECTIVE
2 JUSTICE, I ASKED HIM IF HE HAD BEEN MIRANDIZED. I DIDN'T ASK HIM
3 WHO DID IT. I JUST ASKED HIM GENERALLY IF HE HAD BEEN
4 MIRANDIZED.

5 MR. MOYER: OKAY. NOTHING ELSE FOR THIS WITNESS.

6 MR. CREECH: NO FURTHER QUESTIONS, YOUR HONOR.

7 THE COURT: ALL RIGHT. THANK YOU, SERGEANT MILLER.

8 WITNESS: THANK YOU.

9 MR. MOYER: THE STATE WOULD CALL JAMES ARMSTRONG.

10 JAMES ARMSTRONG, HAVING BEEN DULY SWORN,
11 TESTIFIED AS FOLLOWS:

12 MADAME CLERK: STATE YOUR FULL NAME FOR THE RECORD.

13 WITNESS: JAMES WILLIAM ARMSTRONG.

14 DIRECT EXAMINATION BY MR. MOYER:

15 Q ALL RIGHT. BY WHOM ARE YOU EMPLOYED?

16 A I'M EMPLOYED BY THE GREENVILLE COUNTY DEPARTMENT OF PUBLIC
17 SAFETY FORENSIC DIVISION CRIME LABORATORY.

18 Q AND WHAT DO YOU DO WITH THE DEPARTMENT OF PUBLIC SAFETY?

19 A I HAVE A DUAL FUNCTION. I'M A FORENSIC DRUG CHEMIST AND A
20 FORENSIC FIREARMS EXAMINER.

21 Q ALL RIGHT. LET'S -- WELL, OF THOSE TWO DIFFERENT FUNCTIONS,
22 WHICH WOULD YOU SAY -- HOW DO YOU SPLIT UP YOUR TIME BETWEEN THE
23 FIREARMS AND---

24 A AT THE MOMENT, ABOUT 50 PERCENT OF MY TIME IS ON EACH SIDE.

25 Q OKAY. WELL, LET'S ASK YOU FIRST ABOUT FIREARMS. HOW LONG

JAMES ARMSTRONG - DIRECT BY MR. MOYER

1 HAVE YOU BEEN A FIREARMS EXAMINER?

2 A APPROXIMATELY SEVEN YEARS.

3 Q AND WHAT DOES YOUR WORK IN FIREARMS CONSIST OF?

4 A I IDENTIFY FIREARMS BY MAKE, MODEL, SERIAL NUMBER, IMPORTER
5 TYPES AND WHAT COUNTRY THEY ARE MADE IN. I ALSO IDENTIFY
6 AMMUNITION COMPONENTS AND THEN DO MICROSCOPIC COMPARISONS TO
7 IDENTIFY THE COMPONENTS TO A FIREARM IF THEY WERE FIRED FROM THAT
8 FIREARM OR NOT.

9 Q AND WHAT EDUCATION AND TRAINING HAVE YOU RECEIVED IN
10 FIREARMS EXAMINATION?

11 A I'VE BEEN TRAINED BY THE GREENVILLE COUNTY S.W.A.T. TEAM IN
12 TERMS OF THE NOMENCLATURE, FUNCTION AND USE OF ALL OF THEIR
13 FIREARMS. I HAVE TOURED NINE DIFFERENT FIREARMS MANUFACTURING
14 FACILITIES WHERE I'VE SEEN THE MANUFACTURING OF FIREARMS FROM RAW
15 MATERIALS TO FINISHED PRODUCT. I TRAINED UNDER THE GUIDANCE OF A
16 RETIRED FIREARM EXAMINER FOR APPROXIMATELY FOUR YEARS DOING
17 FIREARM EXAMINATION. HE RETIRED FROM THE PHILADELPHIA P.D. I'VE
18 ATTENDED NUMEROUS SCHOOLS BY ALCOHOL, TOBACCO AND FIREARMS AND
19 EXPLOSIVES TO DO FIREARM IDENTIFICATION, SERIAL NUMBER
20 RESTORATION, GUNSHOT RESIDUE PATTERN TESTING. I'VE TESTIFIED IN
21 FEDERAL, STATE AND LOCAL COURT NO FEWER THAN 11 TIMES AS AN
22 EXPERT IN FIREARMS IDENTIFICATION.

23 Q ALL RIGHT. ARE YOU A MEMBER OF ANY TRADE ORGANIZATIONS?

24 A I'M A MEMBER OF THE ASSOCIATION OF FIREARM AND TOOL MARK
25 EXAMINERS.

JAMES ARMSTRONG - DIRECT BY MR. MOYER

1 Q OKAY. HOW MANY FIREARMS WOULD YOU SAY YOU HAVE EXAMINED
2 OVER YOUR SEVEN YEARS, DID YOU SAY?

3 A APPROXIMATELY TWO OR THREE THOUSAND.

4 Q AND IS IT A REGULAR FUNCTION OF YOUR JOB IN FIREARMS
5 EXAMINATION TO DO COMPARISONS, THE IDENTIFICATIONS THAT YOU
6 TALKED ABOUT?

7 A YES, SIR, IT IS.

8 Q ALL RIGHT. AND YOU ALREADY MENTIONED YOU'VE BEEN QUALIFIED
9 AS AN EXPERT IN COURT 11 TIMES?

10 A YES, SIR.

11 MR. MOYER: YOUR HONOR, AT THIS TIME I MOVE TO HAVE JAMES
12 ARMSTRONG QUALIFIED AS AN EXPERT IN FIREARMS EXAMINATION.

13 THE COURT: MR. CREECH---

14 MR. CREECH: NONE AS TO HIS QUALIFICATION, YOUR HONOR.

15 THE COURT: OKAY. HE'S QUALIFIED. YES, SIR, GO AHEAD.

16 Q ALL RIGHT. NOW, HAVE YOU BEEN SUBMITTED EVIDENCE IN THIS
17 CASE FOR THE PURPOSE OF EXAMINATION?

18 A YES, SIR, I WAS.

19 Q I'M GOING TO START OFF BY HANDING YOU WHAT'S ALREADY BEEN
20 MARKED AS STATE'S EXHIBIT NUMBER 33, THEN OVER HERE STATE'S
21 EXHIBITS NUMBERS 13 AND 14. LET ME START OFF WITH STATE'S
22 EXHIBIT NUMBER 33. CAN YOU IDENTIFY WHAT THAT IS?

23 A YES, SIR, I CAN.

24 Q AND WHAT IS IT?

25 A THIS WAS A SEALED ENVELOPE. IT HAS MY INITIALS AND THE DATE

JAMES ARMSTRONG - DIRECT BY MR. MOYER

1 WHICH I SEALED IT, AND IT ALSO HAD INITIALS AND DATE UNDERNEATH
2 WHERE I OPENED THE CONTAINER. THIS CORRESPONDS WITH THE PROPERTY
3 AND EVIDENCE SHEET AS ITEM AJD1, WHICH IS ONE PROJECTILE -- OR
4 LISTED AS ONE PROJECTILE RECOVERED FROM PASSENGER SEAT OF ABOVE-
5 LISTED SUSPECT VEHICLE.

6 Q OKAY. AND THAT WAS IN YOUR POSSESSION?

7 A YES, SIR, IT WAS.

8 Q WHEN WAS THAT IN YOUR POSSESSION?

9 A I SIGNED IT OUT ON JUNE 15TH, 2006, AT 4:15 IN THE AFTERNOON.

10 Q OKAY. AND YOU SIGNED IT OUT OF THE PROPERTY AND EVIDENCE
11 ROOM?

12 A THAT'S CORRECT.

13 Q OKAY. HAD IT BEEN IN THE PROPERTY AND EVIDENCE ROOM BETWEEN
14 JUNE THE 8TH AND JUNE THE 15TH OF 2007?

15 A IT WAS SIGNED INTO PROPERTY BY ISRAEL FLANDERS (PHONETIC) ON
16 JUNE THE 13TH AT 10:49 A.M.

17 Q JUNE THE 13TH?

18 A YES, SIR.

19 Q AND THEN YOU GOT IT OUT ON JUNE THE 15TH?

20 A THAT'S CORRECT.

21 Q ALL RIGHT. NOW IF YOU WOULD MOVE ON TO STATE'S EXHIBITS
22 NUMBER 13 AND 14, I BELIEVE. CAN YOU IDENTIFY WHAT THOSE ITEMS
23 ARE?

24 A (REVIEWS EXHIBITS) YES, SIR, I CAN.

25 Q AND HOW CAN YOU IDENTIFY WHAT THEY ARE AND WHAT ARE THEY?

JAMES ARMSTRONG - DIRECT BY MR. MOYER

1 A I HAVE MY INITIALS AND THE DATE WHICH I HAD OPENED UP THIS
2 -- EACH ENVELOPE UNDERNEATH THE RED EVIDENCE CASE. AND MY NAME
3 IS ALSO -- AND MY INITIALS AND THE DATE WHICH I SEALED UP THIS
4 CONTAINER ARE ALSO ON THE BACK OF THE EVIDENCE TAPE ON THE TOP
5 AND SIDES AS WELL AS MY NAME IS PRINTED AND SIGNED ON THE
6 PROPERTY SHEET THAT CORRESPONDS TO THIS ITEM.

7 Q OKAY. AND WHEN DID YOU -- WHEN WERE THEY IN YOUR CUSTODY?

8 A I SIGNED THESE OUT ON JUNE 15TH AT 4:15 IN THE YEAR 2006.

9 Q WHEN DID YOU FINISH WITH THOSE ITEMS?

10 A I RETURNED THEM TO THE PROPERTY AND EVIDENCE ROOM ON JUNE
11 21ST.

12 Q ALL RIGHT. AND DID YOU DO THE SAME WITH STATE'S EXHIBIT
13 NUMBER 33?

14 A YES, SIR, I DID.

15 Q OKAY.

16 MR. MOYER: AT THIS TIME I WOULD MOVE TO HAVE STATE'S
17 EXHIBITS 14, 15 AND 33 INTO EVIDENCE.

18 MR. CREECH: (OFF RECORD WITH MR. MOYER, REVIEWS EXHIBITS)
19 YOUR HONOR, AS TO 13, 14 AND 33, WE HAVE NO OBJECTION.

20 THE COURT: OKAY. THEY'RE IN EVIDENCE.

21 (CASING FROM STREET, STATE'S EXHIBIT NUMBER 13, MOVED INTO
22 EVIDENCE)

23 (CASING FROM BOTTLE, STATE'S EXHIBIT NUMBER 14, MOVED INTO
24 EVIDENCE)

25 (PROJECTILE FROM SEAT, STATE'S EXHIBIT NUMBER 33, MOVED INTO

JAMES ARMSTRONG - DIRECT BY MR. MOYER

1 EVIDENCE)

2 Q LET ME CLARIFY. IS THAT 13, 14 AND 33?

3 A YES, SIR.

4 Q OKAY. ALL RIGHT. NOW LET ME HAND YOU WHAT IS ALREADY IN
5 EVIDENCE, STATE'S EXHIBIT NUMBER 25. COULD YOU TAKE A LOOK AT
6 THAT AND TELL US WAS THAT IN YOUR POSSESSION?

7 A YES, SIR, IT WAS.

8 Q AND WHAT IS IT AND WHEN WAS IT IN YOUR POSSESSION?

9 A THIS IS LABELED AS ITEM AD5, WHICH IS A KEL TEC
10 SEMIAUTOMATIC PISTOL, MODEL P11, WITH A SERIAL NUMBER OF A4E88.
11 IT'S A NINE MILLIMETER.

12 Q OKAY. AND WHEN YOU LOOKED -- LET ME ASK YOU A FEW THINGS
13 ABOUT THAT -- ABOUT THAT EXHIBIT. WHAT MAKE OF GUN IS THAT?

14 A KEL TEC.

15 Q WHAT STYLE OF PISTOL IS THAT?

16 A IT'S A SEMIAUTOMATIC PISTOL.

17 Q WHAT DOES THAT MEAN?

18 A FOR EACH PULL OF THE TRIGGER THE FIRE PIN WILL FALL, THE
19 CARTRIDGE WILL IGNITE A SMALL EXPLOSION INSIDE, AND THE SLIDE
20 WILL OPERATE AND FEED ANOTHER CARTRIDGE INTO THE CHAMBER FOR
21 EVERY BULLET UNTIL IT IS EITHER OUT OF AMMO OR A MALFUNCTION
22 OCCURS.

23 Q OKAY. SO TO FIRE THAT GUN ONCE DO YOU HAVE TO DO ANYTHING
24 MECHANICALLY TO GET IT TO FIRE AGAIN?

25 A NO, SIR.

JAMES ARMSTRONG - DIRECT BY MR. MOYER

- 1 Q JUST PULL THE TRIGGER?
- 2 A JUST PULL THE TRIGGER.
- 3 Q DID YOU TEST FIRE THE GUN?
- 4 A YES, SIR, I DID.
- 5 Q WAS IT OPERABLE?
- 6 A YES, SIR, IT IS.
- 7 Q NOW, DID YOU DO SO USING ANY BULLETS THAT CAME WITH IT OR
- 8 DID YOU USE YOUR OWN BULLETS?
- 9 A I USED REFERENCE AMMO THAT WAS IN MY OWN SUPPLY.
- 10 Q NOW, WERE YOU GIVEN SOME BULLETS ALONG WITH THAT EXHIBIT?
- 11 A YES, SIR.
- 12 Q AND HOW MANY?
- 13 A IT WAS ITEM AD1A, WHICH HAD TEN CARTRIDGES, AND ITEM AD2 WAS
- 14 A WINCHESTER BOX CONTAINING 15 CARTRIDGES.
- 15 Q OKAY. AND THAT WAS A BOX OF CARTRIDGES?
- 16 A YES, SIR.
- 17 Q OKAY. NOW, WERE YOU ALSO -- WAS THAT -- WITH THE CLIP THAT
- 18 CAME WITH THE FIREARM, WAS THE CLIP IN THE GUN?
- 19 A IT WAS IN THE BOX I RECEIVED. IT WAS NOT INSIDE THE FIREARM
- 20 AT THAT TIME.
- 21 Q OKAY. I'M GOING TO TAKE AWAY STATE'S EXHIBIT NUMBER 25 FROM
- 22 YOU FOR JUST A MOMENT, AND I'M GOING TO HAND YOU STATE'S EXHIBIT
- 23 NUMBER 29. IT'S ALREADY INTO EVIDENCE. CAN YOU TELL US, WAS
- 24 THAT IN YOUR POSSESSION?
- 25 A (REVIEWS EXHIBIT) YES, SIR, IT WAS.

JAMES ARMSTRONG - DIRECT BY MR. MOYER

1 Q AND WHAT IS IT?

2 A IT IS ITEM AD5B, WHICH IS EIGHT CARTRIDGES MARKED BY
3 WINCHESTER AND CALIBER NINE MILLIMETER LUGER CONSTRUCTED OF BRASS
4 WITH FULL METAL JACKETED PROJECTILES.

5 Q OKAY. AND HOW MANY BULLETS WERE IN THERE?

6 A EIGHT.

7 Q OKAY. AND ARE THEY THE BULLETS THAT CAME ALONG WITH AD --
8 THIS IS AD5 AND AD5A; IS THAT CORRECT?

9 A THAT'S CORRECT.

10 Q AND ARE THOSE THE BULLETS THAT CAME ALONG AD5 AND AD5A?

11 A YES, SIR.

12 Q NOW, HOW MANY BULLETS DOES A GUN LIKE THAT -- HOW MANY
13 BULLETS WILL THIS GUN HOLD?

14 A THAT PARTICULAR FIREARM WITH THAT SUBMITTED MAGAZINE, WHICH
15 IS ITEM AD5A, WILL HOLD -- EXCUSE ME -- WILL HOLD A CAPACITY OF
16 TEN CARTRIDGES.

17 Q THAT'S HOW MANY THE CLIP WILL HOLD?

18 A THIS PARTICULAR MAGAZINE, YES, SIR.

19 Q NOW WHAT IF YOU HAD ONE IN THE CHAMBER?

20 A THAT WOULD BE 11 -- IN THE CHAMBER WOULD BE 11 TOTAL.

21 Q SO THAT GUN CAN -- IF YOU HAD IT FULL TO THE GILLS IT WOULD
22 HOLD 11?

23 A THAT'S CORRECT.

24 Q AND 18 CAME ALONG WITH IT?

25 A THAT'S CORRECT.

JAMES ARMSTRONG - DIRECT BY MR. MOYER

1 Q NOW, WHEN YOU MENTIONED TEN SHELL CASINGS, WERE YOU ALSO
2 GIVEN THE -- JUST A CLIP WITH AMMUNITION THAT CAME FROM A PURSE?

3 A I DID HAVE A PISTOL MAGAZINE THAT HAD A CAPACITY OF 12. IT
4 WAS ITEM AD1.

5 Q OKAY. NOW, THE EIGHT BULLETS THAT YOU LOOKED AT, WHAT MAKE
6 WERE THEY? THE EIGHT BULLETS THAT CAME ALONG WITH THE GUN IN
7 THAT CLIP?

8 A THEY WERE WINCHESTER.

9 Q OKAY. AND WHAT CALIBER?

10 A NINE MILLIMETER LUGER.

11 Q AND ARE THEY THE PROPER BULLETS AND CALIBER FOR THAT
12 HANDGUN?

13 A YES, SIR, THEY ARE.

14 Q I'M GOING TO HAND YOU STATE'S EXHIBIT NUMBER 24. CAN YOU
15 JUST TAKE A LOOK AT THAT?

16 A (REVIEWS EXHIBIT) YES, SIR.

17 Q OKAY. AND WAS THAT IN YOUR POSSESSION IN RELATION TO THIS
18 CASE?

19 A YES, SIR, IT WAS.

20 Q AND WHEN DID YOU HAVE IT?

21 A I KNOW THAT I OPENED THIS ITEM ON JUNE 16TH. I PROBABLY
22 SIGNED IT OUT AS WELL ON THE 15TH.

23 Q AND WHAT IS STATE'S EXHIBIT NUMBER 24?

24 A THIS IS DESCRIBED AS ITEM AD2, WHICH IS A WINCHESTER BOX
25 CONTAINING 15 CARTRIDGES MARKETED BY WINCHESTER AND CALIBER NINE

JAMES ARMSTRONG - DIRECT BY MR. MOYER

1 MILLIMETER LUGER.

2 Q NOW, WOULD THE 15 BULLETS THAT ARE IN THAT BOX, COULD THEY
3 BE FIRED FROM THIS GUN?

4 A YES, SIR, THEY COULD. YES, SIR.

5 Q ALL RIGHT. NOW, LET ME ASK YOU ABOUT STATE'S EXHIBITS
6 NUMBERS 13, 14 AND 33. LET'S START WITH STATE'S EXHIBITS 13 AND
7 14. WHAT ARE THEY?

8 A (REVIEWS EXHIBITS) THEY ARE LABELED AS ITEMS DS1 AND DS8.
9 DS1 AND DS8 ARE TWO FIRED CARTRIDGES CASINGS MARKED BY
10 WINCHESTER AND CALIBER NINE MILLIMETER LUGER.

11 Q OKAY. AND WHAT DID YOU DO WITH THEM?

12 A I INVENTORIED THE CONTENTS, MADE SURE THEY WERE THE SAME
13 MANUFACTURER. I LABELED THE CONTENTS WITH THE ITEM NUMBER AND
14 THEN I LOOKED AT THEM MICROSCOPICALLY TO COMPARE THEM TO EACH
15 OTHER TO SEE IF THEY WERE FIRED FROM THE SAME GUN, AND THEN
16 COMPARED THEM TO ITEM AD5, THE PISTOL, AND MADE MY CONCLUSIONS
17 FROM THERE.

18 (SHELL CASING MARKED AS STATE'S EXHIBIT NUMBER 36 FOR
19 PURPOSES OF IDENTIFICATION ONLY)

20 Q OKAY. AND DID YOU HAVE ANY OTHER SPENT SHELL CASINGS?

21 A YES, SIR. WE HAD ITEM TMC1.

22 Q I'M GOING TO HAND YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT
23 NUMBER 36. CAN YOU TAKE A LOOK AT THAT AND TELL US WHAT THAT IS?

24 A (REVIEWS EXHIBIT) THE ITEM IN THE BAG IS ITEM TMC1, WHICH
25 IS LABELED AS A NINE MILLIMETER LUGER WINCHESTER SHELL CASING.

JAMES ARMSTRONG - DIRECT BY MR. MOYER

1 Q OKAY. AND WAS THAT IN YOUR POSSESSION?

2 A YES, SIR, IT WAS.

3 Q AND WHEN WAS THAT IN YOUR POSSESSION?

4 A I SIGNED IT OUT ON JUNE 15TH, 2006, AT 4:15 IN THE AFTERNOON.

5 Q OKAY. AND DID YOU DO ANY EXAMINATION WITH REGARDS TO IT?

6 A YES, SIR, I DID.

7 Q AND WHAT EXAMINATION DID YOU DO OF THAT?

8 A IT WAS THE SAME AS ITEMS DS1 AND DS8, WHICH ARE ITEMS 13 AND
9 14. I MICROSCOPICALLY COMPARED THEM TO EACH OTHER AND IDENTIFIED
10 THEM AND ALSO MARKED THE CASE WITH THE ITEM NUMBER AND MY
11 INITIALS.

12 Q AND WHAT DID YOU DO WITH STATE'S EXHIBIT NUMBER 33 WHEN YOU
13 WERE FINISHED WITH IT?

14 A ONCE I WAS FINISHED WITH IT, IT WENT INTO MY LOCKER AND
15 WAITED FOR PEER REVIEW. ONCE EVERYTHING WAS DONE WITH PEER
16 REVIEW, IT WAS TAKEN DOWN TO PROPERTY AND EVIDENCE FOR STORAGE.

17 Q IS THAT WHERE YOU GOT IT FROM?

18 A THAT'S CORRECT.

19 Q AND WHAT DATE DID YOU GET IT FROM THE PROPERTY AND EVIDENCE
20 ROOM?

21 A JUNE 15TH.

22 MR. MOYER: YOUR HONOR, AT THIS TIME I WOULD MOVE TO HAVE
23 STATE'S EXHIBIT NUMBER 36 ENTERED INTO EVIDENCE.

24 MR. CREECH: (REVIEWS EXHIBIT)

25 MR. MOYER: AND I'LL MOVE IT PURSUANT TO RULE 104(B)

JAMES ARMSTRONG - DIRECT BY MR. MOYER

1 SUBJECT TO THE COMPLETION OF THE CHAIN BEING ESTABLISHED WITH ONE
2 FURTHER WITNESS.

3 MR. CREECH: YOUR HONOR, I JUST OBJECT. THE CHAIN HASN'T
4 BEEN ESTABLISHED.

5 THE COURT: OKAY. PURSUANT TO RULE 104 I WILL ALLOW IT IN
6 AT THIS TIME.

7 (SHELL CASING, STATE'S EXHIBIT NUMBER 36, MOVED INTO
8 EVIDENCE)

9 Q ALL RIGHT. SO LET'S -- JUST TO SUMMARIZE, EXHIBIT 13, 14
10 AND 15 ARE ALL SHELL CASINGS; IS THAT RIGHT?

11 A ITEMS 13, 14 AND 36, YES, SIR.

12 Q THEY'RE ALL SHELL CASINGS?

13 A THAT'S CORRECT.

14 Q AND YOUR INITIAL TESTING OF IT WAS TO TEST THEM ALL TOGETHER
15 AGAINST ONE ANOTHER?

16 A YES, SIR.

17 Q AND WHAT WAS YOUR CONCLUSION?

18 A THEY WERE FIRED FROM THE SAME FIREARM -- OR FIRED IN THE
19 SAME FIREARM.

20 Q OKAY. THEN DID YOU DO ANY EXAMINATION OF THOSE THREE SHELL
21 CASINGS WITH THIS FIREARM?

22 A YES, SIR, I DID.

23 Q AND WHAT EXAMINATION WAS THAT AND WHAT DID YOU CONCLUDE?

24 MR. CREECH: OBJECTION, YOUR HONOR. UNDER STATE V.
25 COUNCIL, THERE'S NO FOUNDATION FOR HIS OPINION AT THIS POINT.

MATTERS AND MOTIONS

1 **MR. MOYER:** I THINK HE'S ALREADY BEEN QUALIFIED AS AN
2 EXPERT, YOUR HONOR.

3 **THE COURT:** ALL RIGHT. I'LL TELL YOU WHAT. THIS IS A GOOD
4 TIME FOR A BREAK. WE'LL GO AHEAD AND TAKE A BREAK.

5 LADIES AND GENTLEMEN, DON'T TALK ABOUT THE CASE. CONTINUE
6 TO KEEP AN OPEN MIND, AND WE'LL BE BACK WITH YOU AS SOON AS WE
7 CAN. ALL RIGHT. THANK YOU.

8 (JURY EXITS COURTROOM AT 3:21 P.M.)

9 **THE COURT:** YES, SIR, MR. CREECH.

10 **MR. CREECH:** JUDGE, MY OBJECTION IS NOT TO HIS
11 QUALIFICATIONS PER SE. IT'S JUST TO HIS METHODOLOGIES THAT HE'S
12 EMPLOYED IN ARRIVING AT HIS FINAL OPINION. IF I DIDN'T HEAR
13 SOMETHING AND I'M MISTAKEN, THEN I'LL APOLOGIZE TO THE COURT.

14 **THE COURT:** OKAY. NO---

15 **MR. CREECH:** I JUST HEARD HE WAS AN OPINION EXPERT AND
16 THAT'S HIS OPINION.

17 **THE COURT:** YOU'RE TALKING ABOUT THE SCIENCE OF COMPARING
18 FIRED PROJECTILES TO THE SUBJECT GUN BARREL YOU WANT MORE
19 FOUNDATION ON, IS THAT -- IS THAT WHAT YOU'RE---

20 **MR. CREECH:** THAT'S WHAT MY OBJECTION IS.

21 **THE COURT:** ALL RIGHT. OKAY.

22 OKAY. YES, SIR, MR. MOYER.

23 **MR. MOYER:** WELL, YOUR HONOR, I THINK WHEN HE WAS QUALIFIED
24 AS AN EXPERT IN FIREARMS THAT WOULD ENCOMPASS ALL THE SCIENCE
25 THAT'S INCLUDED. I MEAN, I CAN LAY A FURTHER FOUNDATION WITH HIM

MATTERS AND MOTIONS

1 AT THIS POINT, BUT I'M NOT -- I THINK THE OBJECTION SHOULD HAVE
2 BEEN MADE WHEN HE WAS -- BEFORE HE WAS QUALIFIED AS AN EXPERT.

3 THE COURT: WELL, WHY DON'T YOU GO AHEAD AND -- GO AHEAD
4 AND LAY A FOUNDATION ABOUT THE RELIABILITY---

5 MR. MOYER: OKAY.

6 THE COURT: ---OF THE SCIENCE. AND I THINK TECHNICALLY
7 COUNCIL WOULD REQUIRE THAT.

8 BY MR. MOYER:

9 Q ALL RIGHT. MR. ARMSTRONG, TELL US ABOUT THE METHODOLOGY
10 THAT YOU USED IN ORDER TO COME UP WITH YOUR OPINION IN THIS CASE
11 AND ACTUALLY FOR ALL THE TYPE OF EXAMINATIONS THAT YOU DO FOR
12 ANALYSIS LIKE THIS.

13 A YES, SIR. WHEN A FIREARM IS FIRED, THERE -- ESPECIALLY LIKE
14 THE SEMIAUTOMATIC PISTOL IN THIS CASE, IT LEAVES ANYWHERE FROM
15 FOUR TO SIX FINGERPRINTS LEFT BEHIND ON THE EVIDENCE WHICH IS
16 FIRED. ESPECIALLY A SEMI-AUTO, MOST OF THEM LEAVE AROUND SIX.
17 YOU HAVE THE FIRING PIN IMPRESSION, WHICH IS A CLASS
18 CHARACTERISTIC FROM THE FIREARM ITSELF AS IT STRIKES THE PRIMER
19 OF THE CARTRIDGE CASE. YOU THEN HAVE BREECH FACE IMPRESSIONS
20 WHICH ARE UNIQUE BECAUSE IT'S MADE BY A MACHINE. THOSE MACHINES
21 ARE MADE OF TOOLS, WHICH AS TOOLS DULL THEY PICK UP GRIT. THAT
22 LEAVES DIFFERENT STRIATIONS ON THE BREECH FACE. THE BREECH FACE
23 MARKS ARE CALLED IMPRESSION MARKS, NOT STRIATED. THEY'RE
24 IMPRESSED STRIATIONS, NOT A HORIZONTAL MOVEMENT OR A VERTICAL
25 MOVEMENT OF THE STRIATIONS. THEY'RE JUST IMPRESSED. THOSE MARKS

MATTERS AND MOTIONS

1 ARE LEFT BEHIND ON THE BREECH FACE OR THE HEAD OF THE CARTRIDGE
2 CASE, ESPECIALLY THE PRIMER AREA. THOSE ARE TWO. YOU THEN ALSO
3 HAVE CHAMBER MARKS. THE CHAMBER MARKS ARE ON THE CARTRIDGE CASE
4 ITSELF WHERE THE CARTRIDGE FITS INSIDE THE CHAMBER. THE CHAMBER
5 IS ALSO MADE BY TOOLS, WHICH THEN LEAVES TOOL MARKS BEHIND.
6 THOSE TOOL MARKS ARE THEN IMPRESSED AND SCRATCHED ONTO A
7 CARTRIDGE CASE. YOU ALSO HAVE EXTRACTOR AND EJECTOR. THE
8 EXTRACTOR IS LIKE A -- IT'S ANOTHER TOOL THAT GRABS THAT
9 CARTRIDGE CASE BY ITS NECK OR HEAD AND PULLS IT BACKWARDS. AS IT
10 PULLS IT ALSO TEARS SOME OF THE METAL BEHIND. AS IT TEARS THAT
11 METAL IT LEAVES INDIVIDUAL CHARACTERISTICS BEHIND FROM THAT ONE
12 PIECE. IT ALSO HITS THE EJECTOR. AS IT HITS THE EJECTOR, IT'S
13 ANOTHER PIECE OF METAL OR ANOTHER TOOL. WHEN IT HITS IT LEAVES
14 THAT IMPRESSION BEHIND AS WELL. SO YOU HAVE THOSE ON A FIRED
15 CARTRIDGE CASE. THE PROJECTILE GOES DOWN THE BARREL. AS IT IS
16 GOING DOWN THE BARREL IT IS PICKING UP THE STRIATIONS FROM THE
17 LANDS AND GROOVES WHICH ARE MADE BY A TOOL. THOSE TOOLS CREATE
18 THE LANDS AND GROOVES IN THE BARREL WHICH THEY ARE UNIQUE TO A
19 ONE INDIVIDUAL FIREARM BECAUSE IT IS A TOOL WHICH IS WEARING
20 DOWN, PICKING UP GRIT, PICKING UP OTHER PIECES OF METAL. AND
21 THEN IT ALSO DEPENDS AFTER IT IS MADE HOW THE GUN IS CLEANED, IF
22 IT'S ABUSIVE, IF IT'S IN DIRT, FIRED THROUGH DIRTY CONDITIONS.
23 THOSE ARE THE INDIVIDUAL CHARACTERISTICS ON A FIREARM. IT'S
24 BASICALLY LIKE A FINGERPRINT FOR A FIREARM. NO TWO FIREARMS ARE
25 IDENTICALLY THE SAME.

MATTERS AND MOTIONS

1 Q NOW, IS -- THIS SCIENCE THAT YOU JUST DESCRIBED TO US, IS
2 THIS WHAT YOU LEARNED THROUGH THE EDUCATION AND TRAINING THAT I
3 ASKED YOU ABOUT EARLIER?

4 A YES, SIR, IT IS.

5 Q IS THIS SCIENCE GENERALLY ACCEPTED IN THE LAW ENFORCEMENT
6 COMMUNITY?

7 A YES, SIR, IT IS.

8 Q CAN YOU TELL US WHAT OTHER LAW ENFORCEMENT APPLICATIONS THIS
9 CAN HAVE OR WHETHER LAW ENFORCEMENT AGENCIES USE THIS PARTICULAR
10 TYPE OF SCIENCE?

11 A EVERY LAW ENFORCEMENT AGENCY THAT I KNOW OF THAT HAS FIREARM
12 LABS USE THE SAME TYPE OF SCIENCE.

13 Q OKAY. HAVE YOU BEEN -- LIKE DOES A.T.F. AND THE F.B.I. USE
14 THIS PARTICULAR SCIENCE?

15 A YES, SIR.

16 Q HAVE YOU BEEN TO ANY OTHER LABORATORIES?

17 A YES, SIR, I HAVE.

18 Q HAVE YOU PERSONALLY WITNESSED THIS SAME SCIENCE BEING USED
19 IN OTHER LABORATORIES?

20 A YES, SIR, I HAVE.

21 Q IS THIS SCIENCE SUBJECT TO PEER REVIEW?

22 A YES, SIR, IT IS. WE HAVE 100 PERCENT PEER REVIEW IN OUR
23 OFFICE.

24 Q OKAY. AND DOES THE SCIENCE HAVE OTHER APPLICATIONS OUTSIDE
25 OF LAW ENFORCEMENT THAT YOU ARE AWARE OF?

MATTERS AND MOTIONS

1 A IT MAY, YES, SIR.

2 Q THAT'S NOT SOMETHING YOU FOLLOW UP ON THOUGH?

3 A NO, SIR.

4 Q WHAT ABOUT YOUR LAB? TELL US A LITTLE BIT ABOUT YOUR LAB AS
5 FAR AS THE SET UP OF THE LAB IN WHICH YOU WORK.

6 A THE LAB IS LOCATED IN THE BASEMENT OF THE LAW ENFORCEMENT
7 CENTER, WHICH IS A SECURED ENVIRONMENT WHICH IS BEHIND A LOCKED
8 DOOR. ALL OF OUR EVIDENCE IS STORED BEHIND TWO LOCKED DOORS AS
9 WELL AS IN AN INDIVIDUAL LOCKER WHICH ONLY THE EXAMINER HAS A KEY
10 FOR. EVERYTHING -- ALL THE KEYS ARE MONITORED. WE ONLY HAVE
11 THREE KEYS THAT HAVE ACCESS TO MY LAB AT THIS TIME: THE OTHER
12 FIREARMS EXAMINER, MYSELF AND MY LAB SUPERVISOR.

13 EVERYTHING, AS I SAID, IS PEER REVIEWED. ONCE I COMPLETE A
14 CASE, WRITE A REPORT, I THEN CALL IN THE OTHER EXAMINER. WE PEER
15 REVIEW THE CASE COMPLETELY FROM START TO FINISH BY LOOKING
16 THROUGH THE MICROSCOPE AT EVERY INDIVIDUAL THING AND CONFIRMING
17 EACH CALL WE MAKE.

18 Q HOW ABOUT THE EQUIPMENT IN YOUR LABORATORY? ARE YOU
19 FAMILIAR WITH WHERE THAT CAME FROM OR HOW YOU GOT IT?

20 A YES. WE HAVE TWO MICROSCOPES IN THE LAB AT THIS TIME. WE
21 HAVE A LEICA UFM FULL AND A LEEDS MICROSCOPE. THOSE ARE THE TWO
22 MAIN COMPANIES THAT ARE PRODUCING MICROSCOPES FOR FIREARMS
23 EXAMINERS IN THE UNITED STATES AT THIS TIME.

24 Q OKAY. AND SO THIS EQUIPMENT THAT YOU HAVE AND YOU USE, IS
25 IT COMMON EQUIPMENT THAT IS USED IN OTHER LABORATORIES THAT DEAL

JAMES ARMSTRONG - DIRECT CONTINUES BY MR. MOYER

1 WITH THIS TYPE OF SCIENCE?

2 A IT'S EXACTLY THE SAME, YES, SIR.

3 Q AND DO YOU KNOW WHO MADE THE DECISION TO PURCHASE THOSE
4 PARTICULAR PIECES OF EQUIPMENT?

5 A MARK STEPP, A RETIRED FIREARMS EXAMINER, AND MYSELF WERE THE
6 MAIN TWO OF THOSE TWO PIECES, YES.

7 MR. MOYER: YOUR HONOR, I WOULD SUBMIT THE WITNESS FOR ANY
8 QUESTIONS BY MR. CREECH, IF HE HAS ANY.

9 MR. CREECH: I HAVE NO QUESTIONS, YOUR HONOR. I WITHDRAW
10 MY OBJECTION BASED ON THE FOUNDATION.

11 THE COURT: OKAY. WELL, I FIND IT MEETS STATE VERSUS
12 COUNCIL AND STATE VERSUS JONES AND THE REQUIREMENTS, OF COURSE,
13 OF RULE 702 AND RULE 403. THE PROBATIVE VALUE OF THE EVIDENCE
14 FAR OUTWEIGHS ANY PREJUDICE IT MIGHT HAVE.

15 OKAY. LET'S ALL TAKE A BREAK AND WE'LL TRY TO START BACK AT
16 ABOUT TWENTY TILL. OKAY.

17 (A RECESS WAS TAKEN FROM 3:29 TO 3:46 P.M.)

18 THE COURT: OKAY. BRING THE JURY ON IN.

19 (JURY REENTERS COURTROOM AT 3:48 P.M.)

20 THE COURT: OKAY. THE OBJECTION HAS BEEN WITHDRAWN. YES,
21 SIR, MR. MOYER. GO AHEAD.

22 DIRECT EXAMINATION OF JAMES ARMSTRONG CONTINUES BY MR. MOYER:

23 Q MR. ARMSTRONG, LET'S JUST BACK UP TO WHERE WE WERE WHEN WE
24 TOOK THE BREAK. THERE WERE THREE FIRED SHELL CASINGS. AND WERE
25 YOU ABLE TO MATCH THOSE AS BEING SHOT FROM A PARTICULAR FIREARM?

JAMES ARMSTRONG - DIRECT CONTINUES BY MR. MOYER

1. A YES, I WAS.
2. Q AND WHAT FIREARM?
3. A ITEM AD5A.
4. Q THE FIREARM THAT WAS JUST IN FRONT---
5. A AD5 -- YES, SIR.
6. Q STATE'S EXHIBIT 25?
7. A THAT'S CORRECT.
8. Q OKAY. NOW, JUST TELL US BRIEFLY IN A NUTSHELL HOW IT IS
9. THAT YOU ARE ABLE TO MAKE A COMPARISON OF SHELL CASINGS WITH A
10. GUN.
11. A IN THIS CASE, WHEN A FIREARM IS FIRED, THE FIRING PIN
12. STRIKES THE PRIMER, THE PRIMER IGNITES THE CHARGE, THAT CHARGE
13. BURNS THE POWDER INSIDE THE CARTRIDGE CASE. THE PRESSURE WHICH
14. IS FROM THE BURNING POWDER THEN EXPANDS THE CASING IN 360
15. DEGREES. AS IT IS BEING EXPANDED, THE CARTRIDGE CASE IS BEING
16. PUSHED BACKWARDS AGAINST WHAT THEY CALL A BREECH FACE. THAT'S
17. WHERE IT HOUSES THE FIRING PIN ITSELF. AS THAT BREECH FACE WAS
18. MADE AT THE FACTORY IT'S MADE BY MACHINES. THOSE MACHINES LEAVE
19. TOOL MARKS BEHIND ON THAT PIECE OF METAL WHICH ARE UNIQUE TO THAT
20. FIREARM, AND THEN THOSE IMPRESSIONS THERE ARE IMPRESSED ONTO THE
21. HEAD STAMP REGION OR THE HEAD OF THE CARTRIDGE CASE AS WELL AS
22. ANY CHAMBER MARKS WHERE IT IS EXPANDING AROUND AND THEN OTHER
23. MARKS AS WELL LIKE THE EXTRACTOR AND EJECTOR MARKS.
24. Q OKAY. ALL RIGHT. LET'S MOVE ON TO STATE'S EXHIBIT NUMBER,
25. I THINK IT'S, 33, THE PROJECTILE.

JAMES ARMSTRONG - DIRECT CONTINUES BY MR. MOYER

1 A YES, SIR.

2 Q OKAY. AND THAT IS A BULLET, RIGHT?

3 A THAT'S CORRECT.

4 Q AND THAT BULLET WAS PUT INTO EVIDENCE BY WHOM?

5 A BY APRIL DIETZ.

6 Q OKAY. AND JUST TO REFRESH YOUR MEMORY, THAT'S THE BULLET
7 THEN THAT CAME OUT OF THE VICTIM'S CAR OUT OF THE SEAT?

8 A THAT'S CORRECT.

9 Q OKAY. NOW, WERE YOU ABLE TO -- FIRST OFF, WHEN YOU EXAMINED
10 THAT BULLET TELL US A LITTLE BIT ABOUT WHAT YOU WERE ABLE TO
11 DETERMINE ABOUT IT OR ITS CALIBER, SIZE, INFORMATION LIKE THAT.

12 A OKAY. STATE'S EXHIBIT 33 WAS MY ITEM NUMBER AJD1. I FOUND
13 IT TO BE A FIRED BULLET SPECIMEN, CALIBER NINE MILLIMETER, WITH
14 THE GENERAL RIFLING CHARACTERISTICS OF SIX LANDS AND GROOVES, A
15 RIGHT-HAND DIRECTION OF TWISTS. IT WAS A COPPER FULL METAL JACK
16 DESIGN. IT HAD A WEIGHT OF 115 GRAINS, AND ONE SIDE WAS
17 FLATTENED FROM THE BASED EDGE AND IT WAS A LITTLE BIT OUT OF
18 ROUND. AND I MARKED IT ON THE BASE AS ITEM AJD1 OVER JWA FOR
19 IDENTIFICATION.

20 Q CAN YOU TELL WHAT CALIBER THAT IS?

21 A NINE MILLIMETER.

22 Q OKAY. AND CAN YOU JUST OPEN THAT PACKAGE AND JUST BEST YOU
23 CAN SHOW THE JURY THAT ITEM?

24 A YES, SIR. (COMPLIES)

25 Q OKAY. IT'S AWFULLY SMALL, SO I DON'T KNOW IF YOU CAN SEE IT

JAMES ARMSTRONG - DIRECT CONTINUES BY MR. MOYER

1 VERY WELL.

2 WERE YOU ABLE TO DO ANY EXAMINATION OF THAT BULLET IN
3 CONJUNCTION WITH THE PISTOL?

4 A YES, SIR. I MICROSCOPICALLY COMPARED IT TO THE FIREARM.

5 Q OKAY. AND HOW ARE YOU ABLE TO DO A COMPARISON -- YOU TOLD
6 US ABOUT THE SHELL CASINGS. HOW ARE YOU ABLE TO DO COMPARE A
7 BULLET AGAINST A GUN?

8 A WHEN I GENERATE MY TEST FIRES WE PUT IN A LIVE CARTRIDGE,
9 WHICH HAS THE CARTRIDGE CASE AS WELL AS A PROJECTILE IN IT. WE
10 FIRE THAT CARTRIDGE IN THE FIREARM, WHICH THEN THE PROJECTILE
11 GOES DOWN THE BARREL LEAVING THE MARKINGS AND IT IS COLLECTED IN
12 A BULLET RECOVERY TANK, WHICH IS FULL OF WATER. IT IS MADE OUT
13 OF STAINLESS STEEL. THE WATER STOPS THE BULLET. I THEN COLLECT
14 IT FROM THE TANK AND DO MY COMPARISONS FROM THOSE TEST SHOTS.

15 Q OKAY. AND HOW DO YOU COMPARE? I MEAN, HOW CAN A BULLET BE
16 -- HOW CAN YOU SAY WHETHER OR NOT A BULLET CAME FROM A PARTICULAR
17 FIREARM?

18 A THE BARREL OF THE FIREARM IS BASICALLY LIKE A -- IT'S A
19 FINGERPRINT. THAT BARREL IS MADE BY MACHINES. THE MACHINES,
20 THEY HAVE EDGES ON THE TOOLS WHICH GENERATE THE RIFLING DOWN THE
21 BARREL, WHICH THEY HAVE RAISED AND LOWERED PARTS INSIDE THE
22 BARREL. YOU HAVE A LAND IN THE BARREL, WHICH IS THE RAISED
23 PORTION. AND YOU HAVE A GROOVE. THOSE AREAS ARE MADE BY
24 MACHINES, WHICH THEY ARE CUT OR HAMMER FORWARD OR WHATNOT, BUT
25 ALL THOSE PROCESSES WHICH THEY MAKE THE BARREL MAKE A UNIQUE

JAMES ARMSTRONG. - DIRECT CONTINUES BY MR. MOYER

1 STRIATION DOWN THAT BARREL. THAT UNIQUE STRIATION IS THE
2 FINGERPRINT FOR THE FIREARM TO GO FOR THE PROJECTILE.

3 ONCE I RETRIEVE THE ITEM FROM MY TEST SHOTS I MOUNT THE --
4 MY EVIDENCE PROJECTILE ON THE LEFT-HAND SIDE OF MY SCOPE. I HAVE
5 A COMPARISON MICROSCOPE. THE KNOWN OR THE TEST FIRE IS MOUNTED
6 ON THE RIGHT-HAND SIDE OF MY SCOPE. I THEN COMPARE THE
7 STRIATIONS OF THE LANDS AND GROOVES TO EACH OTHER, AND WHEN I SEE
8 ANYTHING THAT LINES UP, I THEN MAKE A MARK AS A REFERENCE POINT.
9 THEN I COMPARE THE OTHER LANDS AND GROOVES TO SEE IF THEY ALL
10 AGREE FOR ALL THE STRIATIONS THROUGHOUT THE ENTIRE PROJECTILE.

11 Q OKAY. AND WHAT WAS THE RESULT OF YOUR ANALYSIS OF THAT
12 FIRED BULLET WITH THIS PISTOL?

13 A THE ITEM AJD1, WHICH IS STATE'S EXHIBIT 33, FIRED BULLET
14 SPECIMEN, WAS FIRED FROM ITEM AD5 PISTOL.

15 Q THE AD5 PISTOL IS RIGHT HERE, STATE'S EXHIBIT 25?

16 A THAT'S CORRECT.

17 Q OKAY. AND FINALLY, IF YOU WOULD, JUST OPEN THE PACKAGES
18 THAT HAVE THOSE SPENT SHELL CASINGS IN THEM.

19 A (COMPLIES)

20 Q ARE THE PROJECTILES IN THERE? I'M SORRY, THE SPENT SHELL
21 CASINGS?

22 A YES, SIR, THEY ARE.

23 Q CAN YOU JUST HOLD ONE UP?

24 A (COMPLIES)

25 Q I DON'T KNOW IF WE CAN SEE THEM VERY WELL FROM THIS

JAMES ARMSTRONG - DIRECT CONTINUES BY MR. MOYER

1 DISTANCE. OKAY. IF YOU WOULD, JUST RETURN THEM TO THE PACKAGES.

2 A (COMPLIES)

3 Q NOW, DID YOU ALSO LOOK AT TWO .22 BULLETS THAT WERE
4 COLLECTED BY THE FORENSICS OFFICER?

5 A YES, SIR, I DID.

6 Q WHAT OBSERVATIONS, IF ANY, DID YOU HAVE ABOUT THOSE BULLETS?

7 A I NOTICED THAT THEY WERE TWO CARTRIDGES THAT WERE MARKED
8 BY REMINGTON. THEY WERE CALIBER .22 LONG RIFLE. THEY WERE
9 CONSTRUCTED OF BRASS CASES WITH COPPER WASHED LEAD PROJECTILES,
10 AND THEY BOTH HAD SUBSTANTIALLY CORRODED.

11 Q DO BULLETS CORRODE EASILY?

12 A IF THEY ARE STORED IN A DAMP ENVIRONMENT, A LOT OF TIMES THE
13 OXIDATION WILL SET IN A LITTLE FASTER. BUT THEY DO CORRODE OVER
14 TIME, YES, SIR.

15 Q ALL RIGHT. NOW LET ME MOVE ON TO ANOTHER ASPECT OF YOUR
16 JOB. YOU TALKED ABOUT DRUG ANALYSIS. YOU DO ANALYSIS OF
17 CONTROLLED SUBSTANCES?

18 A YES, SIR.

19 Q WHAT DO WE MEAN BY CONTROLLED SUBSTANCES?

20 A CONTROLLED SUBSTANCE IS ANYTHING THAT IS LISTED UNDER THE
21 FEDERAL STATUTES AS SCHEDULE I THROUGH V CONTROLLED SUBSTANCE.
22 WE ALSO REPORT OUT PRESCRIPTION SUBSTANCES AS WELL AS NO CONTROL
23 SUBSTANCES.

24 Q OKAY. NOW, HOW LONG HAVE YOU DONE THIS AS A JOB?

25 A ELEVEN AND A HALF YEARS.

JAMES ARMSTRONG - DIRECT CONTINUES BY MR. MOYER

1 Q AND WHAT DOES YOUR WORK IN THE ANALYSIS OF DRUGS AND
2 CONTROLLED SUBSTANCES CONSIST OF?

3 A I IDENTIFY UNKNOWN POWDERS, ROCK SUBSTANCES, PLANT MATERIALS
4 AND THEN REPORT OUT MY FINDINGS, WHETHER IT BE A DRUG OR A
5 CONTROLLED SUBSTANCE OR NOT.

6 Q OKAY. NOW, WHAT ALL KINDS OF DRUGS DO YOU TEST?

7 A ANY DRUG THAT IS KNOWN RIGHT NOW.

8 Q OKAY. CAN YOU TEST MARIJUANA?

9 A MARIJUANA, LSD, HALLUCINOGENIC MUSHROOMS, COCAINE, CRACK,
10 HEROIN, PCP, YOU NAME IT, METHAMPHETAMINE, AMPHETAMINES,
11 METHYLENE DIOXYMETHAMPHETAMINE, ANY OF THOSE DERIVATIVES AS WELL.

12 Q CAN YOU JUST GENERALLY DESCRIBE FOR US WHAT CRACK COCAINE
13 LOOKS LIKE?

14 A CRACK COCAINE GENERALLY HAS AN OFF-WHITE APPEARANCE. IT
15 KIND OF REMINDS ME OF AS A DRIED UP FRENCH FRY THAT MAY HAVE
16 FALLEN DOWN ON THE FLOORBOARD OF YOUR CAR. IF YOU GET THAT
17 LITTLE FRENCH FRY AND CHOP IT UP IN LITTLE SQUARES, THAT KIND OF
18 HAS THE GENERAL APPEARANCE OF WHAT IS KNOWN AS CRACK COCAINE.

19 Q WHAT EDUCATION AND TRAINING HAVE YOU HAD TO DO DRUG
20 ANALYSIS?

21 A I HAVE A BACHELOR OF SCIENCE DEGREE IN CHEMISTRY FROM
22 ERSKINE COLLEGE. I HAVE TRAINED IN THE AREA OF DRUG
23 IDENTIFICATION APPROXIMATELY A YEAR UNDER THE DIRECTION OF OUR
24 LAB SUPERVISOR. I HAVE ATTENDED THE FORENSIC CHEMIST SEMINAR
25 SPONSORED BY THE DRUG ENFORCEMENT ADMINISTRATION IN WASHINGTON,

JAMES ARMSTRONG - DIRECT CONTINUES BY MR. MOYER

1 D.C. I HAVE ATTENDED NUMEROUS INSTRUMENTAL ANALYSIS SCHOOLS
2 CONCERNING THE INSTRUMENTS I USE IN MY ANALYSIS. I HAVE
3 TESTIFIED NO FEWER THAN A HUNDRED TIMES AS AN EXPERT IN DRUG
4 IDENTIFICATION IN FEDERAL, STATE AND LOCAL COURTS.

5 Q OKAY.

6 MR. MOYER: AT THIS TIME I WOULD MOVE TO HAVE MR. ARMSTRONG
7 QUALIFIED AS AN EXPERT IN DRUG IDENTIFICATION.

8 MR. CREECH: NO OBJECTION, YOUR HONOR.

9 THE COURT: OKAY. HE IS QUALIFIED.

10 Q I'M GOING TO HAND YOU STATE'S EXHIBIT NUMBER 34. HAS THAT
11 BEEN IN YOUR POSSESSION?

12 A YES, SIR, IT HAS.

13 Q AND WHEN WAS THAT IN YOUR POSSESSION?

14 A I OPENED IT ON JUNE 15TH AND SEALED IT ON JUNE 15TH, 2006.

15 Q AND WHERE DID YOU GET IT FROM?

16 A THE PROPERTY AND EVIDENCE ROOM.

17 Q AND FOR WHAT PURPOSE DID YOU GET IT?

18 A TO DO AN ANALYSIS ON A ROCK SUBSTANCE.

19 Q AND WHEN YOU FINISHED WITH IT WHAT DID YOU DO WITH IT?

20 A ONCE I COMPLETED MY ANALYSIS IT WAS SEALED UP IN THIS OUTER
21 BAG WITH MY INITIALS AND THE DOUBLE HEAT SEAL. THEN I TOOK IT
22 BACK TO OUR PROPERTY AND EVIDENCE ROOM FOR STORAGE.

23 Q WHILE IT WAS IN YOUR POSSESSION -- IN YOUR CUSTODY DID YOU
24 KEEP IT IN YOUR POSSESSION?

25 A YES, SIR, I DID.

JAMES ARMSTRONG - DIRECT CONTINUES BY MR. MOYER

1 Q DID YOU TAKE IT BACK TO THE PROPERTY AND EVIDENCE ROOM
2 YOURSELF WHEN YOU WERE FINISHED WITH IT?

3 A YES, SIR, I DID.

4 Q DID YOU PICK IT UP THERE YOURSELF?

5 A YES, SIR, I DID.

6 MR. MOYER: YOUR HONOR, AT THIS TIME I WOULD MOVE TO HAVE
7 STATE'S EXHIBIT 34 INTO EVIDENCE.

8 MR. CREECH: SUBJECT TO MY PREVIOUS OBJECTIONS, YOUR HONOR.

9 THE COURT: OKAY. IT'S IN EVIDENCE.

10 (STATE'S EXHIBIT NUMBER 34, WHITE ROCKLIKE SUBSTANCE, MOVED
11 INTO EVIDENCE)

12 Q ALL RIGHT. NOW, SO YOU DID PERFORM AN ANALYSIS ON THAT
13 PARTICULAR ITEM?

14 A YES, SIR, I DID.

15 Q AND WHAT WAS THE RESULT OF YOUR ANALYSIS?

16 A I FOUND THE -- THIS ITEM TO BE, ITEM MJ2, A ROCK SUBSTANCE,
17 AND I FOUND NO CONTROLLED SUBSTANCE TO BE DETECTED.

18 Q SO IT IS NOT AN ILLEGAL DRUG?

19 A THAT'S CORRECT.

20 Q CAN YOU SAY WHAT IT IS?

21 A MY DATA INDICATED THAT IT MAY BE A WAX OR PARAFFIN-TYPE
22 SUBSTANCE.

23 MR. MOYER: ALL RIGHT. PLEASE ANSWER ANY QUESTIONS THE
24 DEFENSE MIGHT HAVE.

25 THE COURT: CROSS EXAMINATION, MR. CREECH.

JAMES ARMSTRONG - CROSS BY MR. CREECH

1 MR. CREECH: THANK YOU, YOUR HONOR.

2 CROSS EXAMINATION BY MR. CREECH:

3 Q DID YOU BRING YOUR FULL REPORT WITH YOU TODAY TO THE
4 COURTROOM?

5 A MY REPORT? YES, SIR.

6 Q MAY I TAKE A LOOK AT IT?

7 A YES, SIR.

8 Q IS THIS THE EXTENT OF YOUR REPORT?

9 A THAT'S OUR REPORT, YES, SIR.

10 Q OKAY. DO YOU HAVE ANY OTHER NOTES OR ANY OTHER MATERIALS
11 ABOUT THIS?

12 A YES, SIR. MY REQUEST AND MY NOTES FROM DOING THE CASE, YES,
13 SIR.

14 Q OKAY. AND THIS STUFF RIGHT HERE IS NOT CRACK COCAINE; IS
15 THAT RIGHT?

16 A THAT'S CORRECT.

17 Q IT'S FAKE CRACK COCAINE, THAT'S YOUR---

18 A IT'S A ROCK OF NO CONTROLLED SUBSTANCE.

19 Q OKAY. AND YOU SAID IT LOOKS LIKE WAX; IS THAT RIGHT?

20 A IT APPEARED TO BE BY MY DATA THAT IT MAY BE A WAX OR A
21 PARAFFIN-TYPE SUBSTANCE.

22 Q OKAY. AND HAVE YOU IN THE COURSE OF YOUR EMPLOYMENT WITH
23 THE GREENVILLE COUNTY FORENSICS -- OR COMMUNITY SERVICES HAVE YOU
24 TESTED SUBSTANCES BEFORE AND IT TURNS OUT TO BE A NON-CONTROLLED
25 SUBSTANCE?

JAMES ARMSTRONG - CROSS BY MR. CREECH

- 1 A EVERY DAY, YES, SIR.
- 2 Q ALL RIGHT. SO JUST FAKE STUFF IS WHAT I'M TALKING ABOUT?
- 3 A YES, SIR.
- 4 Q SO IT'S OUT THERE ON THE STREET; IS THAT RIGHT?
- 5 A YES, SIR.
- 6 Q HAVE YOU EVER HEARD OF SOMEBODY, YOU KNOW -- HAVE YOU EVER
- 7 TESTED SOMETHING OFFICERS THOUGHT WAS LIKE MARIJUANA AND IT TURNS
- 8 OUT IT'S LIKE OREGANO OR SOMETHING?
- 9 A YES, SIR.
- 10 Q NOW, WHEN YOU RECEIVED THIS GUN IT WAS EMPTY; IS THAT RIGHT?
- 11 A YES, SIR.
- 12 Q THE MAGAZINE HAD BEEN TAKEN OUT OF IT?
- 13 A IT WAS INSIDE THE BOX. YES, SIR, IT WAS TAKEN OUT.
- 14 Q AND HAD THE MAGAZINE BEEN EMPTIED WHEN YOU EXAMINED IT?
- 15 A YES, SIR.
- 16 Q AND DID YOU EXAMINE -- DID YOU EMPTY THAT MAGAZINE?
- 17 A NO, SIR.
- 18 Q ARE YOU AWARE OF WHETHER THIS GUN HAD A SAFETY FEATURE ON IT
- 19 OR NOT?
- 20 A THE KEL TEC P11'S MAIN SAFETY FEATURE IS THE TRIGGER
- 21 MECHANISM ITSELF. IT IS A DOUBLE-ACTION ONLY PISTOL.
- 22 Q OKAY. SO ARE YOU AWARE IF IT HAD A SAFETY DEVICE ON IT?
- 23 A IT DOES NOT HAVE AN EXTERNAL SAFETY, NO, SIR.
- 24 Q AND SO WHEN YOU EXAMINED IT THEN, OBVIOUSLY THE SAFETY
- 25 MECHANISM -- THERE WAS NO SAFETY MECHANISM?

JAMES ARMSTRONG - CROSS BY MR. CREECH

1 A THAT'S CORRECT. NO EXTERNAL SAFETY MECHANISM.

2 Q THERE WAS ONLY -- HOW DOES THE TRIGGER -- EXPLAIN THAT,
3 PLEASE, TO THE JURY.

4 A A DOUBLE-ACTION ONLY PISTOL OR FIREARM, IT TAKES MORE
5 PRESSURE TO PULL THE TRIGGER TO GET THE MECHANISM TO COCK AND
6 THEN FIRE THAN JUST A SINGLE ACTION PISTOL. THE DOUBLE ACTION --
7 MAIN SAFETY ON DOUBLE-ACTION ONLY PISTOLS IS JUST THE TRIGGER
8 PULL ITSELF BEING A LITTLE GREATER THAN A SINGLE ACTION PULL.

9 Q OKAY. AND WERE YOU -- IN THIS CASE WERE YOU OFFERING ANY
10 EVIDENCE OF THE DIRECTION OF TRAVEL OF THE BULLETS OR ANYTHING?

11 A NO, SIR.

12 Q AND YOU NEVER WENT OUT TO THE SCENE; IS THAT CORRECT?

13 A THAT'S CORRECT.

14 Q YOU HAVE NO EXPLANATION FOR WHY THE SHELL CASING WAS FOUND
15 25 OR 30 FEET BEHIND THE VEHICLE IN THIS CASE---

16 A NO EXPLANATION.

17 Q AND DO YOU KNOW IF THERE WAS EVER A THIRD BULLET FOUND IN
18 THIS CASE?

19 A I HAVE NO IDEA, NO, SIR.

20 Q IS THAT THE ONLY BULLET THAT YOU TESTED?

21 A I BELIEVE SO.

22 Q OKAY. AND DID YOU PERSONALLY SEE THE BULLET REMOVED FROM
23 THIS VEHICLE?

24 A NO, SIR.

25 MR. CREECH: THANK YOU. I HAVE NO FURTHER QUESTIONS.

ERIK CHRISTENSEN - DIRECT BY MR. MOYER

1 **MR. MOYER:** NOTHING FURTHER OF THIS WITNESS.

2 **THE COURT:** THANK YOU, MR. ARMSTRONG.

3 **WITNESS:** THANK YOU.

4 (WITNESS STEPS DOWN AT 4:04 P.M.)

5 **MR. MOYER:** WE CALL DR. ERIK CHRISTENSEN.

6 **ERIK CHRISTENSEN, HAVING BEEN DULY SWORN,**
7 **TESTIFIED AS FOLLOWS:**

8 **MADAME CLERK:** PLEASE STATE YOUR FULL NAME FOR THE RECORD.

9 **WITNESS:** ERIK DEAN CHRISTENSEN.

10 **DIRECT EXAMINATION BY MR. MOYER:**

11 **Q** AND WHERE ARE YOU EMPLOYED?

12 **A** I'M CURRENTLY EMPLOYED BY PATHOLOGY ASSOCIATES OF
13 GREENVILLE, AND I ALSO HAVE AN APPOINTMENT AS MEDICAL EXAMINER
14 FOR GREENVILLE COUNTY.

15 **Q** SO WHAT -- HOW MANY MEDICAL EXAMINERS DO WE HAVE IN
16 GREENVILLE COUNTY?

17 **A** THERE ARE TWO OF US.

18 **Q** YOU AND?

19 **A** DR. MICHAEL WARD.

20 **Q** HOW LONG HAVE YOU HELD THESE POSITIONS?

21 **A** I'VE BEEN HERE IN GREENVILLE SINCE 2002.

22 **Q** AND WHAT IS YOUR PROFESSION? TELL US A LITTLE BIT ABOUT IT.

23 **A** OKAY. I AM CURRENTLY EMPLOYED AS A FORENSIC PATHOLOGIST.

24 ~~FORENSIC PATHOLOGY IS A SPECIALTY OF MEDICINE -- A SUBSPECIALTY~~
25 OF PATHOLOGY. PATHOLOGY IS A SPECIALTY OF MEDICINE, JUST LIKE

ERIK CHRISTENSEN - DIRECT BY MR. MOYER

1 SURGERY OR INTERNAL MEDICINE. PATHOLOGY IS A SPECIALTY THAT
2 DEALS WITH THE DIAGNOSIS OF DISEASES AND CAUSES OF DEATH BY MEANS
3 OF ANALYZING BODY FLUIDS, TISSUE SAMPLES, CELL SAMPLES AND OTHER
4 THINGS OF THAT NATURE AS WELL AS AUTOPSIES TO DETERMINE THE
5 PRESENCE OR ABSENCE OF DISEASE, INJURY AND OTHER PROCESSES.
6 FORENSIC PATHOLOGY SPECIFICALLY IS THE APPLICATION OF PATHOLOGIC
7 PRINCIPLES TO THE DIAGNOSIS OF CAUSE AND MANNER OF DEATH IN THE
8 SETTING OF UNNATURAL OR OTHERWISE VIOLENT DEATHS.

9 Q ALL RIGHT. NOW, HAVE YOU WORKED ANYWHERE ELSE PRIOR TO
10 GREENVILLE MEMORIAL HOSPITAL IN FORENSIC PATHOLOGY?

11 A SURE. YEAH. PRIOR TO ARRIVING HERE IN GREENVILLE I WAS
12 EMPLOYED AS ASSISTANT CHIEF MEDICAL EXAMINER FOR THE COMMONWEALTH
13 OF VIRGINIA IN RICHMOND, A POSITION I HELD FOR TWO YEARS PRIOR TO
14 COMING HERE.

15 Q OKAY. AND YOU WERE WITH FORT BRAGG AS WELL, RIGHT?

16 A I ALSO DID FORENSIC AUTOPSIES FOR THE MILITARY DURING MY
17 TIME IN THE ARMY AT FORT BRAGG AND ALSO AT FORT LEWIS WASHINGTON.

18 Q OKAY. AND TELL US ABOUT YOUR EDUCATIONAL BACKGROUND, YOUR
19 MEDICAL LICENSING, ANY BOARDS YOU MAY BE...

20 A SURE. I HAVE A BACHELOR'S DEGREE IN PHILOSOPHY FROM BRIGHAM
21 YOUNG UNIVERSITY. I HAVE A -- MY MEDICAL DEGREE IS FROM THE
22 UNIVERSITY OF VIRGINIA IN CHARLOTTESVILLE. SUBSEQUENT TO MY
23 MEDICAL SCHOOL I DID AN INTERNSHIP IN PEDIATRICS AT WALTER REED
24 ARMY MEDICAL CENTER, AND THEN I SUBSEQUENTLY DID MY PATHOLOGY
25 TRAINING IN ANATOMIC AND CLINICAL PATHOLOGY IN FORT LEWIS

ERIK CHRISTENSEN - DIRECT BY MR. MOYER

1 WASHINGTON, AND THEN FOLLOWING THAT I DID MY FELLOWSHIP TRAINING
2 IN FORENSIC PATHOLOGY AT THE OFFICE OF THE CHIEF MEDICAL EXAMINER
3 IN RICHMOND. AND SINCE THAT TIME I'VE BEEN BOARD CERTIFIED IN
4 ANATOMIC AND CLINICAL PATHOLOGY AS WELL AS AS FORENSIC PATHOLOGY
5 BY THE AMERICAN BOARD OF PATHOLOGY.

6 Q AND HAVE YOU BEEN QUALIFIED AS AN EXPERT IN FORENSIC
7 PATHOLOGY?

8 A I HAVE, MANY TIMES.

9 Q BOTH HERE AND IN OTHER JURISDICTIONS?

10 A HERE AND IN VIRGINIA AS WELL.

11 MR. MOYER: AT THIS TIME WE'D OFFER DR. CHRISTENSEN AS AN
12 EXPERT IN FORENSIC PATHOLOGY?

13 THE COURT: ANY VOIR DIRE, MR. CREECH?

14 MR. CREECH: NO VOIR DIRE, YOUR HONOR, AND NO OBJECTION.

15 THE COURT: ALL RIGHT. HE'S QUALIFIED.

16 Q ALL RIGHT. DR. CHRISTENSEN, DID YOU PERFORM A FORENSIC
17 AUTOPSY ON SUSAN GALLOWAY?

18 A I DID.

19 Q WHAT DATE?

20 A ON THE 8TH OF JUNE LAST YEAR.

21 Q WHAT TIME?

22 A IT BEGAN AT 9:15.

23 Q WHEN WAS MS. GALLOWAY PRONOUNCED DEAD?

24 A THE PREVIOUS DAY AT 3:13 IN THE AFTERNOON.

25 Q WHERE WAS THIS AUTOPSY CONDUCTED?

ERIK CHRISTENSEN - DIRECT BY MR. MOYER

1 A ALL THE AUTOPSIES THAT ARE DONE FOR THE COUNTY ARE CONDUCTED
2 AT THE MORGUE AT GREENVILLE MEMORIAL HOSPITAL.

3 Q NOW, WHEN YOU EXAMINED MS. GALLOWAY DID YOU FIND ANY
4 EVIDENCE OF INJURY OR TRAUMA?

5 A YES.

6 Q DID YOU MAKE A DIAGRAM PRIOR TO COMING TO COURT THAT WOULD
7 ASSIST IN DESCRIBING THE EVIDENCE OF TRAUMA YOU FOUND?

8 A YES, I DID.

9 (AUTOPSY DIAGRAM MARKED AS STATE'S EXHIBIT NUMBER 37 FOR
10 PURPOSES OF IDENTIFICATION ONLY)

11 Q I'M GOING TO HAND YOU STATE'S EXHIBIT NUMBER 37. CAN YOU
12 RECOGNIZE WHAT THAT IS?

13 A YES.

14 Q AND WHAT IS THAT?

15 A THAT'S A DIAGRAM THAT I MADE DEPICTING THE GUNSHOT WOUNDS OF
16 MS. GALLOWAY.

17 MR. MOYER: YOUR HONOR, AT THIS TIME WE'D MOVE STATE'S
18 EXHIBIT 37 INTO EVIDENCE.

19 MR. CREECH: NO OBJECTION, YOUR HONOR.

20 THE COURT: IT'S IN EVIDENCE.

21 (AUTOPSY DIAGRAM, STATE'S EXHIBIT NUMBER 37, MOVED INTO
22 EVIDENCE)

23 Q OKAY. THERE'S A LASER POINTER IN FRONT OF YOU. CAN YOU SEE
24 THE DIAGRAM UP HERE FROM WHERE YOU ARE SEATED?

25 A YES, SIR.

ERIK CHRISTENSEN - DIRECT BY MR. MOYER

1 Q ALL RIGHT. NOW, IF YOU WOULD, USING THE DIAGRAM PLEASE
2 EXPLAIN THE EVIDENCE OF TRAUMA THAT YOU FOUND TO SUSAN GALLOWAY.

3 A OKAY. WE FOUND IN MS. GALLOWAY EVIDENCE OF A SINGLE GUNSHOT
4 WOUND THAT ENTERED HER BODY HERE IN THE RIGHT UPPER ARM,
5 TRAVERSED THE SOFT TISSUES IN THE BACK OF THE ARM, EXITED HER ARM
6 HERE, THEN RE-ENTERED HER CHEST -- OR RE-ENTERED HER BODY IN HER
7 CHEST HERE ON THE RIGHT SIDE OF HER CHEST, THEN CROSSED MULTIPLE
8 ORGANS IN HER CHEST AND UPPER ABDOMEN AND EXITED THE BODY THROUGH
9 A WOUND HERE IN HER LEFT FLANK.

10 Q SO THERE'S ACTUALLY A TOTAL OF HOW MANY WOUNDS?

11 A SHE HAS FOUR TOTAL HOLES IN HER BODY CAUSED BY ONE BULLET.

12 Q OKAY. NOW, AS IT WENT THROUGH HER ARM -- YOU TOLD US HER
13 RIGHT ARM?

14 A OH-HUH (AFFIRMATIVE).

15 Q -- DID IT HIT ANY BONE?

16 A NO.

17 Q OKAY. HOW, TELL US WHAT IT IS THE LED YOU TO DETERMINE THAT
18 ALTHOUGH THERE ARE FOUR DIFFERENT WOUNDS IT WAS FROM ONE BULLET?

19 A OKAY. THERE ARE FEATURES OF THIS THAT TELL ME THIS WHEN I
20 LOOK AT THESE THINGS. FIRST, THE ENTRANCE WOUND HERE ON THE ARM
21 IS SURROUNDED BY WHAT WE CALL STIPPLING. THERE IS -- WHEN A GUN
22 IS FIRED AT ANYTHING -- BUT AT A PERSON IN PARTICULAR IS HOW I'M
23 FAMILIAR WITH IT -- THERE ARE SEVERAL THINGS THAT COME OUT THE
24 END OF A GUN. THE BULLET, OBVIOUSLY, IS ONE OF THEM, AND THAT
25 TRAVELS THE FURTHEST OF ALL THE THINGS THAT COME OUT. BUT THERE

ERIK CHRISTENSEN - DIRECT BY MR. MOYER

1 ARE OTHER THINGS THAT COME OUT AS WELL, ONE OF WHICH IS PARTIALLY
2 BURNED GUNPOWDER, WHICH TRAVELS, GENERALLY, A FEW INCHES TO A FEW
3 FEET, DEPENDING ON THE SPECIFIC WEAPON. AND IF THE PERSON IS IN
4 CLOSE ENOUGH PROXIMITY TO THAT WHEN IT'S FIRED, NOT ONLY WILL THE
5 BULLET ENTER THE BODY BUT THE BODY WILL BE STRUCK BY THESE PIECES
6 OF UNBURNED POWDER, WHICH IS WHAT IS SEEN ON HER ARM HERE AROUND
7 THIS ENTRANCE WOUND. THOSE ARE CHARACTERISTIC OF AN ENTRANCE
8 WOUND AND -- OF AN ENTRANCE WOUND THAT WE'D CALL INTERMEDIATE
9 RANGE. THAT MEANS IT'S NOT A CONTACT WOUND. IT'S NOT REAL
10 CLOSE. THERE'S NO SOOT. THERE'S NO SEARING THAT YOU GET FROM
11 THE FLAME THAT ALSO COMES OUT. BUT THE POWDER HAS LEFT A MARK ON
12 THE SKIN THAT TELLS US THIS IS A RELATIVELY CLOSE RANGE WOUND.

13 Q GENERALLY WHAT DO YOU CONSIDER TO BE AN INTERMEDIATE RANGE?

14 A AS I MENTIONED, A FEW INCHES TO A FEW FEET. IT WILL DEPEND
15 ON THE WEAPON. IF YOU HAVE THE SPECIFIC WEAPON AND THE TYPE OF
16 AMMUNITION THAT'S USED YOU CAN DO TEST FIRING AND NARROW THAT
17 RANGE SUBSTANTIALLY. SO THAT TELLS ME THAT'S AN ENTRANCE WOUND.

18 THE PATH, THERE'S AN UNINTERRUPTED PATH FROM THAT WOUND TO
19 THIS WOUND IN THE ARM. TYPICALLY AN EXIT WOUND JUST LOOKS LIKE A
20 SMALL CUT ON THE SKIN. WHEN IT IS UP AGAINST SOMETHING ELSE IT
21 TAKES ON QUALITIES THAT WE DESCRIBE AS SHORING. IT'S HELD UP
22 AGAINST SOMETHING AND SO THERE IS - GENERALLY, ABRASION AROUND
23 THE WOUND IS THE MAIN THING THAT WE SEE THAT TELLS ME THIS ISN'T
24 THE TYPICAL EXIT WOUND, BUT THERE IS ABRASION AROUND THIS WOUND,
25 AND THIS WOUND ALSO LINES UP IN LOCATION WITH THIS WOUND, WHICH

ERIK CHRISTENSEN - DIRECT BY MR. MOYER

1 ALSO HAS A SOMEWHAT BROADER THAN NORMAL AMOUNT OF ABRASION AROUND
2 THE WOUND THAT TELLS ME THAT THOSE TWO ARE TOGETHER AT THE TIME
3 THE BULLET PASSED THROUGH THERE. SO THIS IS AN EXIT HERE AND
4 THEN A RE-ENTRY TO THE BODY HERE, AND THEN THERE IS AN
5 UNINTERRUPTED PATH FROM THIS WOUND THROUGH THE LUNG, THROUGH THE
6 DIAPHRAGM, PANCREAS, KIDNEY AND THE SOFT TISSUES OF THE BODY
7 BEFORE IT EXITS THE FLANK HERE. AGAIN, THERE ARE NO
8 CHARACTERISTICS OF THIS WOUND TO SUGGEST THAT IT'S AN EXIT WOUND
9 -- OR THAT IT'S AN ENTRANCE WOUND, AND IT HAS MORE TYPICAL
10 FEATURES WITH AN EXIT WOUND.

11 Q OKAY. AND WHAT DIRECTION WAS THIS PROJECTILE, THIS BULLET,
12 TRAVELLING?

13 A THE ONLY COMMENT GOES THROUGH HER BODY DIRECTION OF TRAVEL
14 IS HOW IT GOES THROUGH HER BODY, AND IT BASICALLY GOES FROM HER
15 ARM, ACROSS HER ARM, THROUGH HER BODY, MOVING IN A RIGHT TO LEFT
16 DIRECTION, DOWNWARD AND FROM FRONT TO BACK. BUT THAT DOESN'T
17 REALLY SAY ANYTHING ABOUT THE -- YOU KNOW, HOW SHE WAS
18 POSITIONED. THAT'S JUST RELEVANT TO ANATOMIC POSITION THAT'S HOW
19 THE BULLET TRAVELLED THROUGH HER BODY.

20 Q OKAY. NOW, WHAT YOU DESCRIBED AS SHORING THEN, THAT WAS
21 WITH THE WOUND ON THE INSIDE OF HER ARM?

22 A YES, SIR.

23 Q AND SO DOES THAT LEAD YOU TO BELIEVE THAT -- WAS THAT
24 CONSISTENT WITH HER ARM BEING UP AGAINST HER BODY--

25 A YES, IT IS.

ERIK CHRISTENSEN - DIRECT BY MR. MOYER

1 Q ---WHEN SHE WAS SHOT?

2 A YES.

3 Q NOW, DID YOU FIND ANY OTHER SIGNS OF TRAUMA OR INJURY?

4 A NO.

5 Q WERE YOU ABLE TO FORM A MEDICAL OPINION WITHIN A REASONABLE
6 DEGREE OF MEDICAL CERTAINTY AS TO THE CAUSE OF DEATH?

7 A YES.

8 Q AND WHAT IS THAT?

9 A THE CAUSE OF DEATH WAS THE GUNSHOT WOUND OF HER CHEST,
10 SPECIFICALLY THE CHEST PORTION OF THE WOUND. IT'S A SINGLE WOUND
11 THROUGH THE ARM AND CHEST, BUT THE INJURIES IN HER CHEST ARE WHAT
12 LED TO HER DEATH.

13 Q AND WHAT WOULD BE -- WHAT WOULD BE THE ACTUAL PHYSICAL CAUSE
14 OF DEATH? I MEAN, WHAT IS GOING ON TO CAUSE---

15 A THE MECHANISM OF DEATH IN MOST GUNSHOT WOUNDS OUTSIDE OF THE
16 HEAD IS BY EXSANGUINATION. THE PERSON BLEEDS UNTIL -- EITHER
17 INTERNALLY OR EXTERNALLY UNTIL THE NO LONGER HAVE SUFFICIENT
18 BLOOD TO MAINTAIN CONSCIOUSNESS AND LIFE.

19 Q HOW LONG WOULD A TYPE OF DEATH LIKE THIS, HOW LONG WOULD IT
20 TAKE? WOULD IT BE IMMEDIATE OR WOULD IT TAKE TIME?

21 A IT WOULD BE RELATIVELY QUICK. IT WOULD NOT BE IMMEDIATE. A
22 BULLET THAT DOES NOT GO THROUGH THE HEART, THIS CAUSED INJURY TO
23 A LUNG, CAUSED INJURY TO HER LIVER, CAUSED INJURY TO HER PANCREAS
24 AND KIDNEY. ALL OF THOSE WILL BLEED FAIRLY PROFUSELY BUT
25 CERTAINLY NOT IMMEDIATELY, AND IT MIGHT TAKE AS MUCH AS, YOU

ERIK CHRISTENSEN - DIRECT BY MR. MOYER

1 KNOW, A COUPLE OF MINUTES OR EVEN LONGER, DEPENDING ON THE
2 CIRCUMSTANCES, HOW MUCH ADRENALINE SHE HAS FLOWING AND ALL THOSE
3 SORTS OF THINGS. BUT IT WOULD NOT BE IMMEDIATE.

4 Q WELL, THE FACT THAT -- IS IT CONSISTENT WITH AN INCIDENT
5 TAKING PLACE AT 1:30 IN THE AFTERNOON AND HAVING A TIME OF DEATH
6 BEING 3:15?

7 A SURE. I MEAN, WHAT THAT SUGGESTS, WE KNOW THAT SHE SURVIVED
8 LONG ENOUGH TO MAKE IT TO THE HOSPITAL TO UNDERGO SURGERY. THIS
9 WAS NOT IMMEDIATELY LIFE ENDING. IT ALLOWED HER TO SURVIVE LONG
10 ENOUGH TO GET TO MEDICAL CARE BUT ULTIMATELY LED TO HER DEMISE.

11 Q OKAY. AND YOU DID RUN TOXICOLOGY?

12 A YES, WE DID.

13 Q DO YOU DO THAT WITH EVERYBODY YOU DO AN AUTOPSY ON?

14 A EVERYBODY WHERE WE POSSIBLY CAN, YES.

15 Q AND SHE HAD A CONTROLLED SUBSTANCE IN HER SYSTEM?

16 A YES. WE FOUND EVIDENCE OF COCAINE METABOLITES IN HER SYSTEM
17 AS WELL AS A LOW LEVEL OF TYLENOL.

18 Q CAN YOU TELL FROM THAT WHETHER OR NOT IT'S FROM CRACK
19 COCAINE OR POWDER COCAINE?

20 A CANNOT.

21 Q SO ALL YOU KNOW IS COCAINE?

22 A CORRECT.

23 Q ALL RIGHT. NOW LET ME ASK YOU SOME FURTHER QUESTIONS. HAVE
24 YOU LOOKED AT THE MEDICAL RECORDS OF A GARY POWELL?

25 A NOT TO MY KNOWLEDGE.

ERIK CHRISTENSEN - DIRECT BY MR. MOYER

1 Q OKAY. GARY MICHAEL POWELL---

2 A OH, YES, YES, YES. I APOLOGIZE, YES. WHEN WE MET IN
3 CONFERENCE, YES, THOSE ARE THE RECORDS YOU SHOWED ME. I DIDN'T
4 RECALL THE NAME.

5 Q OKAY. AND YOU LOOKED AT PHOTOGRAPHS AS WELL?

6 A I DID.

7 Q AND ARE YOU ABLE BY LOOKING AT THOSE RECORDS AND THOSE
8 PHOTOGRAPHS TO FORM ANY OPINION AS TO THE NUMBER OF GUNSHOT
9 WOUNDS THAT HE SUFFERED?

10 A YES.

11 MR. CREECH: I'D JUST OBJECT TO THIS EVIDENCE, YOUR HONOR,
12 BASED ON RULE 5.

13 MR. MOYER: UNDER RULE -- WELL, ALL OF THESE RECORDS HAVE
14 BEEN PROVIDED TO THE DEFENSE UNDER RULE 5. BUT WE'RE PROCEEDING
15 UNDER RULE 703 AS FAR AS THE---

16 THE COURT: ALL RIGHT. OVERRULED. GO AHEAD.

17 Q AND WHAT IS YOUR OPINION AS TO THE NUMBER OF GUNSHOT WOUNDS
18 THAT HE SUFFERED?

19 A I -- OFF THE TOP OF MY HEAD I DON'T RECALL. DO YOU HAVE
20 THOSE AGAIN? I COULD LOOK AT THEM.

21 Q LOOK AT TAB "G" FOR THE PHOTOGRAPHS AND TAB "M" FOR THE
22 RECORDS.

23 A (REVIEWS DOCUMENTS) OKAY. YES, HE HAS WOUNDS IN HIS BODY
24 CONSISTENT WITH AT LEAST TWO SEPARATE GUNSHOT WOUNDS.

25 Q OKAY. AND TELL US ABOUT -- THERE WAS ONE THROUGH HIS TORSO?

ERIK CHRISTENSEN - DIRECT BY MR. MOYER

1 A CORRECT. YES. HE HAS IN HIS FLANK THREE GUNSHOT WOUNDS
2 SORT OF LINED UP IN A ROW, WHICH, AGAIN, JUST FROM THE
3 PHOTOGRAPHS, THEY'RE LINEAR. THEY'RE CONSISTENT WITH AN
4 ENTRANCE, AN EXIT AND A RE-EXIT -- OR A RE-ENTRANCE TO THE BODY.

5 Q IS THAT -- IN WHAT DIRECTION ARE THOSE THREE WOUNDS?

6 A I'M NOT SURE WHAT YOU MEAN.

7 Q LIKE IF YOU WERE TO LINE THEM UP, ARE THEY HORIZONTAL,
8 VERTICAL?

9 A THEY'RE VERTICAL, ROUGHLY VERTICAL.

10 Q SO IS THAT CONSISTENT WITH A PROJECTILE COMING IN A DOWNWARD
11 MOTION TOWARDS HIM?

12 A IT WOULD BE CONSISTENT, YES.

13 Q AND WHAT ABOUT -- WHERE IS THE OTHER WOUND TO HIS BODY?

14 A THE OTHER ONE APPEARS TO BE THROUGH HIS ARM.

15 Q OKAY.

16 A WITH AN ENTRANCE -- WHAT APPEARS TO BE AN ENTRANCE WOUND ON
17 THE BACK OF THE ARM AND AN EXIT IN THE SOFT FLESHY PART OF THE
18 ARM.

19 Q OKAY. NOW, IS IT POSSIBLE FOR THE ARM TO HAVE BEEN LINED UP
20 IN SUCH A WAY THAT THE SAME BULLET THAT WENT THROUGH HIS ARM ALSO
21 ENTERED HIS ABDOMEN?

22 A IT APPEARS FROM THE PHOTOGRAPHS THAT THAT'S POSSIBLE, YES.

23 Q OKAY.

24 MR. MOYER: OKAY. NOTHING FURTHER.

25 CROSS EXAMINATION BY MR. CREECH:

ERIK CHRISTENSEN - CROSS BY MR. CREECH

- 1 Q DR. CHRISTENSEN, YOU NEVER TREATED MR. POWELL AS A PATIENT?
- 2 A I DID NOT.
- 3 Q YOU NEVER SAW HIM?
- 4 A DID NOT.
- 5 Q YOU'RE NOT GIVING AN OPINION ON HIS MEDICAL CONDITION
- 6 BECAUSE YOU NEVER TREATED HIM; IS THAT CORRECT?
- 7 A THAT'S CORRECT.
- 8 Q OKAY. SO THAT'S JUST YOUR -- THE OPINION THAT YOU'VE JUST
- 9 GIVEN THEN IS JUST A TOTAL SPECULATION ON YOUR PART; IS THAT
- 10 RIGHT?
- 11 A WELL, IT'S BASED ON MY EDUCATION OF LOOKING AT WOUNDS.
- 12 BASED ON THE APPEARANCE OF THE WOUNDS IT'S AN OPINION BASED ON
- 13 THE APPEARANCE OF THE WOUNDS.
- 14 Q OKAY. AND YOU WEREN'T IN THE OPERATING ROOM AT THE TIME?
- 15 A I WAS NOT.
- 16 Q NOW YOU SAY THAT THIS -- THE SOOT OR WAS IT THE---
- 17 A STIPPLING.
- 18 Q THE STIPPLING---
- 19 A UH-HUH (AFFIRMATIVE).
- 20 Q ---ON THE OUTSIDE OF HER ARM?
- 21 A YES.
- 22 Q AND YOU SAY THAT INDICATES THAT THIS WAS FIRED FROM
- 23 INTERMEDIATE RANGE; IS THAT RIGHT?
- 24 A YES, SIR.
- 25 Q AND INTERMEDIATE RANGE COULD BE ONE FOOT TO THREE FEET; IS

ERIK CHRISTENSEN - CROSS BY MR. CREECH

1 THAT CORRECT?

2 A IT COULD BE A LITTLE LESS THAN THAT, IT COULD BE A LITTLE
3 MORE THAN THAT, DEPENDING ON THE WEAPON. BUT, YEAH, SOMEWHERE IN
4 THAT GENERAL BALLPARK.

5 Q OKAY. NOW IN -- WHEN YOU EXAMINED HER DID YOU HAVE HER
6 CLOTHES WITH YOU?

7 A I BELIEVE SO, BUT I HONESTLY DON'T REMEMBER OFF THE TOP OF
8 MY HEAD. LET'S SEE. (REVIEWS RECORDS) NO. SHE WAS UNCLAD AT
9 THE TIME I EXAMINED HER.

10 Q DID YOU EVER EXAMINE HER CLOTHES FOR ANY KIND OF GUNSHOT
11 RESIDUE OR STIPPLING OR SOOT---

12 A NOT---

13 Q ---OR ANYTHING?

14 A NO. THAT'S NOT -- NO. THERE ARE SOMETIMES I WILL LOOK AT
15 CLOTHING. CERTAINLY, IF WE HAVE THE CLOTHING AVAILABLE, WE WILL
16 LOOK AT IT TO CORRELATE THE FINDINGS ON THE CLOTHING WITH WHAT WE
17 FIND ON THE BODY. IN THIS CASE I WOULD GUESS THAT HER CLOTHES
18 WERE REMOVED DURING -- INCIDENT TO MEDICAL CARE AND WERE
19 PREVIOUSLY COLLECTED.

20 Q THE WOUNDS THAT YOU LOOKED AT, SHE DID NOT HAVE ANY WOUND TO
21 HER HANDS; IS THAT CORRECT?

22 A SHE DID NOT.

23 Q NOR DID SHE HAVE A WOUND TO THE BACK OF HER WRIST; IS THAT
24 CORRECT?

25 A NO, SIR, SHE DID NOT.

TIM CONROY - DIRECT BY MR. MOYER

1 Q AND IT'S YOUR OPINION THAT HER ARMS WERE UP BESIDE HER; IS
2 THAT RIGHT?

3 A YES.

4 Q OKAY. SHE WAS NOT -- THERE WAS NO EVIDENCE OF ANY WOUNDS TO
5 HER BACK, THE TOP OF HER BACK; IS THAT CORRECT?

6 A NO, SIR.

7 Q ON THE RIGHT SIDE?

8 A NO.

9 MR. CREECH: OKAY. THANK YOU. I HAVE NO FURTHER
10 QUESTIONS.

11 MR. MOYER: NOTHING FURTHER.

12 THE COURT: THANK YOU, DR. CHRISTENSEN.

13 (WITNESS STEPS DOWN AT 4:21 P.M.)

14 MR. MOYER: THE STATE WOULD CALL INVESTIGATOR TIM CONROY.

15 TIM CONROY, HAVING BEEN DULY SWORN,
16 TESTIFIED AS FOLLOWS:

17 MADAME CLERK: PLEASE STATE YOUR FULL NAME FOR THE RECORD.

18 WITNESS: TIMOTHY MICHAEL CONROY.

19 DIRECT EXAMINATION BY MR. MOYER:

20 Q INVESTIGATOR CONROY, LET ME START OFF BY CLARIFYING ONE ITEM
21 OF EVIDENCE THAT WE TALKED ABOUT JUST A SHORT WHILE AGO. LET ME
22 ASK YOU FIRST, WHERE ARE YOU EMPLOYED?

23 A THE GREENVILLE POLICE DEPARTMENT.

24 Q HOW LONG HAVE YOU WORKED FOR THE GREENVILLE POLICE
25 DEPARTMENT?

TIM CONROY - DIRECT BY MR. MOYER

1 A A LITTLE OVER 11 AND A HALF YEARS.

2 Q WHAT IS YOUR POSITION WITH THE POLICE DEPARTMENT?

3 A I'M A DETECTIVE.

4 Q AND HOW LONG HAVE YOU BEEN A DETECTIVE WITH THE POLICE
5 DEPARTMENT?

6 A FOR APPROXIMATELY THE PAST SIX YEARS IN THE DETECTIVE
7 DIVISION. IN THE DIVISION I'M IN NOW, IT'S APPROXIMATELY ABOUT A
8 YEAR AND A HALF.

9 Q AND DID YOU PARTICIPATE IN THE INVESTIGATION OF THIS
10 INCIDENT?

11 A I DID.

12 Q ALL RIGHT. NOW, AT ANY POINT DID YOU EVER HAVE POSSESSION
13 OF SUSAN GALLOWAY'S PURSE?

14 A YES, I DID.

15 Q AND WHEN DID THAT HAPPEN AND WHY?

16 A I'M NOT EXACTLY -- LET ME REFER TO MY NOTES ON THE EXACT
17 DATE. (PAUSE) DO YOU HAVE A COPY OF THE PROPERTY AND EVIDENCE
18 SHEET?

19 Q OKAY. (PAUSE) LET ME START OFF, WITHOUT GIVING THE DATE,
20 CAN YOU TELL US WHAT THE REASON WAS THAT YOU HAD HER PURSE IN
21 YOUR POSSESSION?

22 A YES. I RECEIVED A CALL FROM A FAMILY MEMBER STATING THAT
23 SHE WANTED TO GET HER PROPERTY -- PURSE BACK. I WENT TO THE
24 FORENSICS OFFICE AND MET WITH INVESTIGATOR LENDWAY, AND HE TURNED
25 THE PURSE OVER TO ME.

TIM CONROY - DIRECT BY MR. MOYER

1 Q OKAY. IF YOU HAD A CHANCE TO TAKE A LOOK AT YOUR REPORT
2 WOULD THAT REFRESH YOUR MEMORY OF WHAT DAY THAT WAS?

3 A IT WOULD. (REVIEWS DOCUMENT) IT WAS ON JUNE 13TH OF 2006.

4 Q OKAY. AND SO YOU GOT HER PURSE FROM WHOM THEN?

5 A I GOT HER PURSE FROM RON LENDWAY WITH THE FORENSICS
6 DIVISION.

7 Q OKAY. AND WHEN YOU GOT IT FROM RON LENDWAY WHAT DID YOU DO
8 WITH IT?

9 A I TURNED IT OVER TO EDNA GALLOWAY. PRIOR TO TURNING IT OVER
10 TO HER I LOOKED THROUGH IT.

11 Q AND WHAT, IF ANYTHING, DID YOU FIND IN THE PURSE?

12 A I LOCATED A SHELL CASING, NINE MILLIMETER LUGER SHELL
13 CASING.

14 Q LET ME HAND YOU STATE'S EXHIBIT NUMBER 36. IF YOU COULD,
15 JUST TAKE A MINUTE TO LOOK AT THAT.

16 A (COMPLIES) YES, THIS IS GOING TO BE IT.

17 Q THAT'S THE SHELL CASING THAT JAMES ARMSTRONG TESTIFIED TO A
18 LITTLE WHILE AGO THAT HE MATCHED TO THE GUN?

19 A THAT'S CORRECT.

20 Q AND THAT WAS FOUND IN SUSAN GALLOWAY'S PURSE?

21 A THAT'S CORRECT.

22 Q OKAY. LET ME TAKE YOU TO JUNE THE 7TH OR 2006. YOU
23 PARTICIPATED IN THE INVESTIGATION OF THIS INCIDENT. WHERE DID
24 YOU GO FIRST?

25 A I WENT TO WOODLAWN AVENUE.

TIM CONROY - DIRECT BY MR. MOYER

1 Q AND WERE THE -- WERE SUSAN GALLOWAY AND GARY MICHAEL POWELL
2 PRESENT AT THAT LOCATION WHEN YOU ARRIVED?

3 A NO, THEY WERE NOT. THEY WERE ALREADY TRANSPORTED TO THE
4 HOSPITAL.

5 Q WERE OTHER OFFICERS AND INVESTIGATORS THERE?

6 A YES, THEY WERE.

7 Q AND DID YOU SPEAK TO THE OTHER OFFICERS AND INVESTIGATORS TO
8 DETERMINE WHAT HAD BEEN LEARNED UP UNTIL THAT POINT?

9 A YES, I DID.

10 Q AND DID YOU SPEAK TO INVESTIGATOR HAMLETT?

11 A I DID.

12 Q NOW, AT THE TIME YOU ARRIVED HAD HE BEEN TO RED PAWN'S SHOP?

13 A I BELIEVE -- AT THE TIME I ARRIVED HE WAS NOT AT RED'S PAWN
14 SHOP.

15 Q DID YOU SPEAK TO HIM WHEN HE CAME BACK?

16 A YES, I DID.

17 Q ALL RIGHT. AND BASED ON THAT DID YOU DEVELOP A PERSON OF
18 INTEREST IN THIS CASE?

19 A YES, SIR.

20 Q AND WHO WAS THAT?

21 A DIANE TISDALE.

22 Q AND HOW WAS IT THAT SHE WAS DEVELOPED AS A PERSON OF
23 INTEREST?

24 A ONE OF THE -- RON WAS IN THE VICTIM'S VEHICLE AND HE SAID
25 THAT THEY WERE AT THE PAWN SHOP AND SOMEONE FROM THE SUSPECT'S

TIM CONROY - DIRECT BY MR. MOYER

1 VEHICLE PAWNED A JACK, AND IT TURNED OUT THAT SHE PAWNED A JACK
2 JUST PRIOR TO THIS INCIDENT.

3 Q OKAY. AND DID YOU ATTEMPT TO FIND HER?

4 A YES, I DID.

5 Q AND WHAT DID YOU DO TO ATTEMPT TO FIND HER?

6 A I RAN HER NAME AND DATE OF BIRTH THROUGH OUR SOUTH CAROLINA
7 DMV AND CAME UP WITH THE ADDRESS OF DRIVE ON HER
8 LICENSE. I WENT BY THERE AND WAS UNABLE TO LOCATE HER THERE. I
9 THEN CALLED OUR RECORDS DIVISION TO SEE IF SHE WAS A VICTIM OR A
10 SUSPECT IN A RECENT CRIME, AND IT TURNED OUT THAT SHE WAS A
11 VICTIM A COUPLE MONTHS PRIOR, AND IT GAVE THE ADDRESS AS
12 DRIVE.

13 Q ALL RIGHT. AND WHEN YOU LEARNED THAT ADDRESS FOR HER WHAT
14 DID Y'ALL DO?

15 A I WENT WITH DETECTIVE JUSTICE AND HAMLETT AND WE DROVE OUT
16 TO DRIVE.

17 Q AND AROUND WHAT TIME WAS IT THAT YOU WENT OVER TO THAT
18 LOCATION?

19 A AROUND 4:15 OR 4:30.

20 Q AT WHAT POINT -- AT THAT POINT HAD YOU LEARN THAT THIS WAS A
21 HOMICIDE INVESTIGATION?

22 A YES, I DID.

23 Q AND WHAT WAS THE FIRST THING YOU NOTICED WHEN YOU ARRIVED AT
24 ?

25 A AS WE TURNED ON THE STREET WE WERE PULLING UP TO THE HOUSE

TIM CONROY - DIRECT BY MR. MOYER

1 WE NOTICED A BLUE BUICK SITTING IN FRONT OF
2 MATCHING THE DESCRIPTION GIVEN.

3 Q AND HOW CLOSE TO APPALOOSA WAS THAT BLUE BUICK?

4 A THE VEHICLE WAS SITTING DIRECTLY IN FRONT OF THE TRAILER.

5 Q AS DEPICTED IN THE PHOTOGRAPHS THAT ARE IN EVIDENCE?

6 A THAT IS CORRECT.

7 Q AND DESCRIBE THE RESIDENCE?

8 A IT'S A SINGLEWIDE TRAILER, BEIGE WITH A BROWN STRIPE AROUND
9 IT.

10 Q WHEN YOU NOTICED THE CAR AT THIS PARTICULAR RESIDENCE THAT
11 YOU ARE DEVELOPED INTEREST IN WHAT DID YOU ALL DO AT THAT POINT?

12 A WE DISCUSSED HOW WE COULD ENTER THE PROPERTY. MYSELF AND
13 DETECTIVE JUSTICE WENT TO THE FRONT DOOR AND DETECTIVE HAMLETT
14 WENT TO THE BACK DOOR.

15 Q HOW WERE YOU ALL DRESSED?

16 A I HAD A TIE AND A SHIRT ON WITH MY BADGE AND GUN ON MY
17 WAIST.

18 Q AND WAS YOUR BADGE VISIBLE?

19 A IT WAS CLEARLY VISIBLE.

20 Q AND DID YOU HAVE YOUR FIREARMS WITH YOU?

21 A YES, SIR.

22 Q DID YOU HAVE YOUR FIREARMS DRAWN?

23 A NO, SIR, IT WAS IN MY HOLSTER.

24 Q OKAY. ALL RIGHT. NOW, WHEN YOU GOT UP -- WHEN YOU AND
25 INVESTIGATOR JUSTICE GOT UP TO THE DOOR, WHAT TOOK PLACE?

TIM CONROY - DIRECT BY MR. MOYER

1 A I KNOCKED ON THE DOOR, AND I COULD HEAR SOMEONE SAY, "WHO IS
2 IT?" I ADVISED---

3 Q WAS IT A MALE OR FEMALE?

4 A IT WAS A MALE. I ADVISED IT WAS TIM. HE OPENED THE DOOR.
5 ONCE THE DOOR WAS OPEN. THE MALE ANSWERED THE DOOR. ONCE THE
6 DOOR WAS OPEN, I ADVISED I WAS TIM CONROY WITH THE GREENVILLE
7 POLICE DEPARTMENT.

8 Q WHO ANSWERED THE DOOR?

9 A ZACHARY FOWLER.

10 Q OKAY. IS IT THE DEFENDANT IN THIS CASE?

11 A YES, IT IS.

12 Q DID HE LOOK ANY DIFFERENT AT THAT TIME?

13 A AT THAT TIME HE HAD BRAIDS, LONGER HAIR.

14 Q AND HOW WAS HE ACTING WHEN HE CAME TO THE DOOR?

15 A HE WAS EXTREMELY NERVOUS, SHAKING, LOOKING AROUND.

16 Q AND WHAT DID YOU DO WHEN HE CAME TO THE DOOR AND YOU SAW HIM
17 ACTING IN THIS WAY?

18 A I GRABBED HIS WAISTBAND AND ADVISED HIM I WAS INVESTIGATING
19 A SHOOTING, AND I WAS GOING TO PLACE HANDCUFFS ON HIM JUST TO
20 DETAIN HIM. HE WAS NOT UNDER ARREST AT THE TIME.

21 Q DID YOU TELL HIM HE WAS BEING CHARGED---

22 A I TOLD HIM HE WAS NOT UNDER ARREST AT THE TIME.

23 Q ALL RIGHT. NOW, COULD YOU SEE INTO THE TRAILER AT THAT
24 TIME?

25 A I COULD. I SAW A BLACK FEMALE SITTING -- OR INSIDE THE

TIM CONROY - DIRECT BY MR. MOYER

1 TRAILER.

2 Q AND SHE WAS LATER DETERMINED TO BE?

3 A VALENCIA SULLIVAN.

4 Q NOW, DID YOU SEEK PERMISSION TO ANSWER THE TRAILER?

5 A I DID. I ASKED HER IF I COULD COME IN. SHE ADVISED THAT I
6 COULD COME IN. I ASKED HER NAME. SHE SAID IT WAS VALENCIA
7 SULLIVAN. I ASKED HER IF DIANE WAS HOME, AND SHE SAID SHE DID
8 NOT KNOW ANYBODY BY DIANE. I AGAIN ASKED HER IF DIANE WAS HOME
9 AND SHE SAID NO AND GAVE ME PERMISSION TO LOOK THROUGH THE
10 TRAILER, WALK THROUGH THE TRAILER TO SEE IF SHE WAS THERE.

11 Q AND WAS -- DID THE DEFENDANT -- WAS HE INSIDE THE TRAILER AT
12 THIS TIME?

13 A HE WAS STANDING OUTSIDE THE TRAILER WITH DETECTIVE JUSTICE.

14 Q OKAY. AND DID YOU LOCATE ANYBODY ELSE IN THE TRAILER?

15 A OTHER THAN -- NOT OTHER THAN VALENCIA SULLIVAN.

16 Q NOW, AFTER -- DID YOU SPEAK TO VALENCIA SOME MORE?

17 A I DID.

18 Q AND AFTER SPEAKING TO HER DID YOU GIVE INSTRUCTIONS TO ANY
19 OTHER OFFICERS TO GO ATTEMPT TO FIND ANYBODY ELSE?

20 A YES. AFTER I ASKED -- AGAIN I ASKED VALENCIA IF DIANE
21 SULLIVAN WAS HOME -- OR EXCUSE ME, DIANE TISDALE WAS HOME. SHE
22 SAID, "I KNOW A NICKI TISDALE. I KNOW HER AS NICKI." SHE STATED
23 SHE DROPPED HER OFF AT WORK AT THE SPINX AT PENDLETON AND
24 ACADEMY.

25 Q HAVE YOU SUBSEQUENTLY LEARN THAT DIANE TISDALE'S MIDDLE NAME

TIM CONROY - DIRECT BY MR. MOYER

1 IS NICKI?

2 A THAT IS CORRECT.

3 Q NOW, WHAT DID YOU DO WITH VALENCIA AT THAT POINT?

4 A AT THAT POINT I ASKED HER TO SIT IN THE JAIL WITH DETECTIVE
5 HAMLETT AND I WENT BACK OUTSIDE AND TALKED TO ZACHARY FOWLER.

6 Q AND DID YOU TALK TO HIM RIGHT THERE ON THE PORCH OR WHERE
7 DID YOU GO?

8 A NO, I PLACED HIM IN THE FRONT SEAT OF MY CAR BECAUSE IT WAS
9 WARM OUT. I PLACED HIM IN THE FRONT SEAT, TURNED THE AIR
10 CONDITIONER ON AND HE SAID THAT -- HE ASKED WHAT WAS GOING ON. I
11 SAID WE WERE INVESTIGATING A HOMICIDE INVESTIGATION, AND WE WERE
12 GOING TO OBTAIN A SEARCH WARRANT FOR HIS RESIDENCE AND VEHICLE.

13 Q OKAY. AND WHAT WAS HIS RESPONSE WHEN YOU SAID THAT?

14 A HE SAID, "YOU DON'T NEED A SEARCH WARRANT. YOU CAN GO LOOK.
15 IF YOU DON'T FIND ANYTHING, THAT MEANS I'M OFF THE HOOK."

16 Q AND WHAT DID YOU SAY?

17 A I SAID, "NO, IT DOESN'T MEAN YOU'RE OFF THE HOOK. YOU'RE
18 NOT OFF THE HOOK UNTIL YOU'RE CLEARED."

19 Q NOW, DID YOU GO OVER HIS RIGHTS WITH HIM?

20 A I DID.

21 Q TELL US HOW YOU DID THAT.

22 A I HAD A MIRANDA WARNINGS IN MY POCKET, AND I READ THEM TO
23 HIM.

24 Q OKAY. AND DID YOU -- DO YOU HAVE A LITTLE CARD OR
25 SOMETHING?

TIM CONROY - DIRECT BY MR. MOYER

1 A THAT'S CORRECT.

2 Q AND DID YOU ACTUALLY TAKE THE CARD OUT OF YOUR POCKET?

3 A I DID.

4 Q DO YOU HAVE THAT CARD WITH YOU TODAY?

5 A I DO.

6 Q WOULD YOU JUST READ THE RIGHTS INTO THE RECORD AS YOU READ
7 THEM TO THE DEFENDANT ON THAT DAY?

8 A I WILL. IT SAYS, YOU HAVE THE RIGHT TO REMAIN SILENT.

9 ANYTHING YOU SAY CAN BE USED AGAINST YOU IN A COURT OF LAW. YOU
10 HAVE THE RIGHT TO TALK TO AN ATTORNEY AND HAVE HIM OR HER PRESENT
11 WITH YOU WHILE YOU'RE BEING QUESTIONED. IF YOU CAN'T AFFORD TO
12 HIRE AN ATTORNEY, ONE WILL BE APPOINTED TO REPRESENT YOU BEFORE
13 QUESTIONING -- BEFORE ANY QUESTIONING, IF YOU WISH. IF YOU
14 DECIDE TO -- YOU CAN DECIDE AT ANY TIME TO EXERCISE THESE RIGHTS
15 AND NOT ANSWER QUESTIONS OR MAKE STATEMENTS. DO YOU UNDERSTAND
16 THESE RIGHTS I'VE EXPLAINED TO YOU? HAVING THESE RIGHTS IN MIND,
17 DO YOU WISH TO TALK NOW?

18 Q AND WHEN YOU READ THOSE RIGHTS TO HIM, WHAT WAS HIS
19 RESPONSE?

20 A HE SAID HE UNDERSTOOD IT -- UNDERSTOOD THEM.

21 Q OKAY. AND DID HE GIVE YOU ANY INDICATION AT THAT TIME ABOUT
22 WHETHER HE WANTED TO TALK TO YOU OR NOT?

23 A HE SAID HE DID WANT TO TALK.

24 Q DID YOU TELL HIM WHAT KIND OF CRIME YOU WERE INVESTIGATING?

25 A I DID. A HOMICIDE INVESTIGATION.

TIM CONROY - DIRECT BY MR. MOYER

1 Q NOW, AFTER READING THE DEFENDANT HIS RIGHTS AND HAVING THAT
2 CONVERSATION ABOUT THE CONSENT TO SEARCH THE TRAILER, WHERE DID
3 YOU GO?

4 A I THEN WENT INSIDE AND TALKED TO VALENCIA AGAIN. I LEFT
5 DETECTIVE JUSTICE AT THE VEHICLE WITH HIM.

6 Q OKAY. AND AFTER YOU SPOKE TO VALENCIA AGAIN DID YOU SPEAK
7 TO THE DEFENDANT ANYMORE?

8 A YES, I DID.

9 Q AND WHERE DID THAT TAKE PLACE?

10 A THAT TOOK PLACE BACK AT MY VEHICLE.

11 Q AND WHAT LED TO YOU GOING AND TALKING TO HIM AGAIN?

12 A WHEN I CAME BACK OUT TO MY VEHICLE SERGEANT MILLER SAID THAT
13 HE WANTED TO TALK. HE WANTED TO GET IT OFF HIS CHEST AND POINT
14 OUT THE GUN TO US.

15 Q OKAY. AND SO YOU GOT BACK IN THE CAR WITH THE DEFENDANT?

16 A I DID.

17 Q AND WHAT WAS THE CONVERSATION WITH THE DEFENDANT AT THIS
18 TIME?

19 A HE SAID HE WANTED TO COME CLEAN AND GET EVERYTHING OFF HIS
20 CHEST AND SHOWED US WHERE THE GUN WAS.

21 Q NOW, DID YOU TAKE THE DEFENDANT OUT OF THE CAR?

22 A I DID.

23 Q AND WHERE DID YOU GO WITH HIM?

24 A I BROUGHT HIM UP TO THE FRONT DOOR OF THE TRAILER, AND HE
25 NODDED AT A LOCATION WHERE THE GUN WAS.

TIM CONROY - DIRECT BY MR. MOYER

1 Q AND WHAT LOCATION DID HE NOD AT?

2 A THERE'S A CHEST. IF YOU LOOK IN THE TRAILER, LOOK OVER TO
3 YOUR LEFT AND THERE'S A CHEST OR A SEVERAL DRAWERS AND A CABINET
4 ON YOUR LEFT AND HE POINTED TO THE RIGHT CABINET.

5 Q ALL RIGHT. AND LET ME SHOW YOU STATE'S EXHIBIT NUMBER 27.
6 IS THE ITEM OF FURNITURE THAT HE POINTED TOWARDS OR INDICATED
7 TOWARDS SHOWN IN THAT PHOTOGRAPH?

8 A YES, IT IS.

9 Q OKAY. AND DID HE EVEN -- WAS HE ABLE TO SPECIFY WHERE ON
10 THE PIECE OF THE FURNITURE IT WAS?

11 A YES. HE SAID IT'S IN THE LAST CABINET, AND IF YOU PICK UP
12 THE BOTTOM OF IT, IT'S UNDER THERE.

13 Q ALL RIGHT. AFTER YOU TOOK HIM TO THE TRAILER DID YOU --
14 WHAT DID YOU DO WITH HIM AT THAT POINT?

15 A AT THAT POINT I ASKED HIM IF HE WOULD COME DOWN TO THE LAW
16 ENFORCEMENT CENTER AND TALK TO ME AND HE SAID HE WOULD. I PUT
17 HIM BACK IN THE CAR, AND WE WENT TO THE LAW ENFORCEMENT CENTER.

18 Q OKAY. AND DID DETECTIVES JUSTICE AND HAMLETT STAY THERE AT
19 THE RESIDENCE?

20 A THEY DID.

21 Q ALL RIGHT. NOW---

22 A EXCUSE ME. I THINK HAMLETT HAS PREVIOUSLY GONE. I THINK
23 JUSTICE WAS THE ONLY ONE THERE.

24 Q OKAY. NOW, WHERE -- WHERE DID YOU TAKE HIM THEN?

25 A TO THE LAW ENFORCEMENT CENTER.

TIM CONROY - DIRECT BY MR. MOYER

- 1 Q WHERE AT THE LAW ENFORCEMENT CENTER DID YOU TAKE HIM?
- 2 A I BROUGHT HIM TO AN INTERVIEW ROOM IN MY OFFICE.
- 3 Q AND AROUND WHAT TIME WAS IT THAT YOU WENT THERE?
- 4 A AROUND 5:30.
- 5 Q AND WAS HE KEPT SECURE? WAS HE KEPT IN CUSTODY?
- 6 A HE WAS. HE WAS HANDCUFFED TO A CHAIR IN THE INTERVIEW ROOM.
- 7 Q NOW, DID YOU HAVE AN ARREST WARRANT FOR HIM AT THIS TIME?
- 8 A I DID NOT HAVE AN ARREST WARRANT. NO, SIR.
- 9 Q DESCRIBE THE ROOM THAT HE WAS IN?
- 10 A THE ROOM IS APPROXIMATELY A TEN-BY-TEN ROOM. IT'S GOT A
- 11 DOOR. IT'S GOT A TABLE, THREE OR FOUR CHAIRS IN IT. IT'S GOT A
- 12 WINDOW ON ONE OF THE WALLS UP TOWARDS THE CEILING.
- 13 Q WHAT IS THE ROOM USED FOR?
- 14 A INTERVIEWS OF SUSPECTS OR VICTIMS, JUST TO TAKE STATEMENTS
- 15 IN.
- 16 Q SO NOT JUST FOR SUSPECTS, FOR VICTIMS AND WITNESSES TO?
- 17 A THAT'S CORRECT.
- 18 Q WHEN YOU WERE MEETING WITH HIM DID OFFICERS COME INTO THE
- 19 ROOM?
- 20 A YES, SIR.
- 21 Q DO YOU REMEMBER WHO THE OTHER OFFICERS WERE?
- 22 A DETECTIVE HAMLETT CAME IN THE ROOM.
- 23 Q WAS THE DOOR OPEN OR SHUT, DO YOU REMEMBER?
- 24 A THE DOOR WAS OPEN AT THAT TIME, I BELIEVE.
- 25 Q ALL RIGHT. NOW, DURING THE TIME THAT YOU MET AND SPOKE TO

TIM CONROY - DIRECT BY MR. MOYER

1 THE DEFENDANT WAS HE DENIED ACCESS TO ANY CONVENIENCES THAT HE
2 MAY NEED, LIKE BATHROOM OR SOMETHING TO DRINK OR ANYTHING LIKE
3 THAT?

4 A NO, SIR.

5 Q DID HE COMPLAIN OF ANY INJURIES OR PHYSICAL DISCOMFORT?

6 A NO, HE DID NOT.

7 Q NOW, EVEN THOUGH YOU HAD DONE SO ALREADY, DID YOU
8 NONETHELESS ADVISE HIM AGAIN OF HIS CONSTITUTIONAL RIGHTS?

9 A YES, I DID.

10 Q AND WHAT METHOD DID YOU USE TO DO IT AT THIS TIME?

11 A THIS TIME I HAD A FORM AND SHOWED HIM -- READ HIM A FORM.
12 PRIOR TO---

13 Q DID YOU---

14 A GO AHEAD.

15 Q NO, PLEASE TELL ME. YOU WERE SAYING...

16 A PRIOR TO READING THE FORM I ASKED HIM HIS FULL NAME. I
17 DOCUMENTED THAT ON THE TOP LEFT CORNER. I ALSO ASKED HIM HOW FAR
18 HE WENT IN SCHOOL AND IF HE COULD READ AND WRITE.

19 Q OKAY. LET ME SHOW YOU STATE'S EXHIBIT NUMBER 1. IS THAT
20 THE FORM THAT YOU USED?

21 A YES, SIR.

22 Q AND HOW ARE YOU ABLE TO RECOGNIZE IT?

23 A IT'S GOT THE CASE NUMBER, MR. FOWLER'S INITIALS AND
24 SIGNATURE AS WELL AS MINE AND DETECTIVE HAMLETT'S.

25 MR. MOYER: OKAY. YOUR HONOR, AT THIS TIME, WE'D MOVE

TIM CONROY - DIRECT BY MR. MOYER

1 STATE'S EXHIBIT NUMBER 1 INTO EVIDENCE.

2 MR. CREECH: SUBJECT TO MY PREVIOUS OBJECTIONS, YOUR HONOR.

3 THE COURT: OKAY. IT'S IN EVIDENCE.

4 (RIGHTS FORM, STATE'S EXHIBIT NUMBER 1, MOVED INTO EVIDENCE)

5 Q ALL RIGHT. AND YOU SAID YOU ASKED HIM IF HE COULD READ AND
6 WRITE?

7 A THAT'S CORRECT.

8 Q WHAT WAS HIS RESPONSE TO THAT?

9 A HE STATED HE COULD, AND HE ALSO GRADUATED FROM WOODMONT HIGH
10 SCHOOL.

11 Q OKAY. AND WHAT ARE THE -- LET ME ASK YOU THIS, HOW DID YOU
12 GO OVER THAT PARTICULAR FORM WITH HIM? EXPLAIN TO THE JURY.

13 A THIS TIME I HAD HIM READ THE FIRST LINE OUT LOUD TO ME, AND
14 THEN HE CONTINUED TO READ THE REST OF THE FORM OUT LOUD TO ME AND
15 INITIALED ON EACH -- BESIDE EACH LINE STATING THAT HE UNDERSTOOD
16 IT.

17 Q STATING THAT HE UNDERSTOOD?

18 A THAT'S CORRECT.

19 Q SO DO HIS INITIALS APPEAR ON EACH LINE?

20 A THAT IS CORRECT.

21 Q AND YOU ASKED HIM ONLY TO INITIAL IF HE UNDERSTOOD THAT
22 RIGHT?

23 A YES.

24 Q DID YOU HAVE TO EXPLAIN ANY ASPECTS -- OR DID YOU EXPLAIN
25 ANY WORDS OR ASPECTS OF THE FORM?

TIM CONROY - DIRECT BY MR. MOYER

1 A WHEN WE GOT DOWN TO THE WORD COERCION I ASKED HIM IF HE
2 UNDERSTOOD WHAT IT MEANT. HE STATED HE DIDN'T. I ADVISED HIM IT
3 COULD BE MENTAL OR PHYSICAL PRESSURE, TRYING TO GET HIM TO DO OR
4 SAY SOMETHING THAT HE DID NOT WANT TO DO OR SAY. I WASN'T
5 FORCING HIM TO DO ANYTHING.

6 Q OKAY. LET ME ASK YOU JUST TO PUBLISH THE PARTICULAR RIGHTS.
7 LET ME ASK YOU THIS, ARE THE RIGHTS ON THAT FORM ARE THEY THE
8 SAME RIGHTS YOU READ TO HIM WHILE HE WAS SITTING IN THE CAR?

9 A YES, SIR.

10 Q OKAY. AND YOU WENT OVER EACH ONE OF THOSE PARTICULAR RIGHTS
11 AND HE INITIALED EACH ONE?

12 A THAT'S CORRECT.

13 Q OKAY. NOW, DID HIS ANSWERS TO YOUR QUESTIONS APPEAR TO BE
14 RATIONAL AND RESPONSIVE?

15 A THEY DID.

16 Q DID HE APPEAR TO BE SUFFERING FROM THE EFFECTS OF ALCOHOL OR
17 DRUGS TO ANY EXTENT THAT WOULD DETRACT FROM HIS ABILITY TO
18 UNDERSTAND THE RIGHTS?

19 A NO, SIR.

20 Q HOW OLD WAS HE?

21 A TWENTY YEARS OLD.

22 Q WHAT IS HIS BIRTHDAY?

23 A I BELIEVE IT IS -- (REVIEWS DOCUMENTS) -- NOVEMBER 10TH OF
24 1985.

25 Q OKAY. WERE THERE ANY THREATS OR ANY COERCION MADE IN ORDER

TIM CONROY - DIRECT BY MR. MOYER

1 TO GET HIM TO SIGN THE FORM AND GIVE A STATEMENT?

2 A NO, SIR.

3 Q WAS THERE ANY INTIMIDATION?

4 A NO, SIR.

5 Q WERE THERE ANY PROMISES OR HOPE OF REWARD HELD OUT TO HIM TO
6 GET HIM TO SPEAK TO YOU ABOUT WHAT HAPPENED?

7 A NO, SIR.

8 Q NOW, I'M NOT JUST TALKING ABOUT YOU. DID ANY OTHER
9 OFFICERS---

10 A NO, SIR.

11 Q ---THREATEN OR COERCE OR INTIMIDATE OR MAKE PROMISES?

12 A NO, SIR.

13 Q NOW, IN YOUR OPINION DID HE UNDERSTAND THE RIGHTS?

14 A YES, SIR, HE DID.

15 Q DID HE DO ANYTHING TO INDICATE TO YOU THAT HE UNDERSTOOD THE
16 RIGHTS?

17 A HE STATED HE UNDERSTOOD THEM AND INITIALED BY EACH ONE.

18 Q ALL RIGHT. DID HE EVER CHANGE HIS MIND AT ANY POINT WHILE
19 YOU WERE TALKING TO HIM AND ASK TO STOP QUESTIONS BECAUSE HE
20 WANTED AN ATTORNEY?

21 A NO, SIR.

22 Q NOW, AFTER YOU WENT OVER THE FORM WITH HIM -- OR OVER THE
23 RIGHTS WITH HIM WHAT WAS HIS REACTION AS TO WHETHER OR NOT HE
24 WISHED TO WAIVE OR EXERCISE HIS RIGHTS?

25 A HE STATED HE WANTED TO TALK TO ME AFTER WE WENT OVER THESE.

TIM CONROY - DIRECT BY MR. MOYER

1 Q OKAY. AND IS THERE A PART ON THAT FORM WHERE SOMEBODY CAN
2 INDICATE WHETHER OR NOT THEY WANT TO WAIVE THE RIGHTS?

3 A YES, SIR, THERE IS A WAIVER OF RIGHTS, WHICH HE ALSO
4 INITIALED.

5 Q OKAY. AND WOULD YOU READ THE WAIVER OF RIGHTS?

6 A IT SAYS, "I HAVE READ THIS STATEMENT OF MY RIGHTS AND I
7 UNDERSTAND WHAT MY RIGHTS ARE. I AM WILLING TO MAKE A STATEMENT
8 AND ANSWER QUESTIONS. I DO NOT WANT A LAWYER AT THIS TIME. I
9 UNDERSTAND AND KNOW WHAT I AM DOING. NO PROMISES OR THREATS HAVE
10 BEEN MADE TO ME AND NO PRESSURE OR COERCION OF ANY KIND ARE BEING
11 USED AGAINST ME."

12 Q ALL RIGHT. AND DID -- THEN AFTER THAT WAS EXPLAINED TO HIM
13 AND HE READ IT OR YOU READ IT TO HIM WHAT WAS -- WHAT MARKINGS,
14 IF ANY, DID HE MAKE ON IT?

15 A HE INITIALED THE BEGINNING AND ENDING OF THAT PARAGRAPH AND
16 ALSO CIRCLED THE WORD "COERCION" AND INITIALED BY THE WORD
17 "COERCION" AND THEN SIGNED THE DOCUMENT.

18 Q OKAY. NOW, DID HE INDICATE THAT HE WANTED TO GIVE YOU A
19 WRITTEN STATEMENT?

20 A YES.

21 Q DID HE SHOW ANY RELUCTANCE ABOUT IT?

22 A NO, SIR.

23 Q AND AFTER INDICATING HE WANTED TO GIVE THAT STATEMENT DID
24 YOU HAVE THE STATEMENT PUT INTO WRITING?

25 A I DID.

TIM CONROY - DIRECT BY MR. MOYER

1 Q I SHOW YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT NUMBER 2.

2 CAN YOU RECOGNIZE WHAT THAT IS?

3 A YES, SIR. THIS WAS THE STATEMENT THAT WAS TYPED THAT DAY.

4 Q HOW DO YOU RECOGNIZE IT?

5 A MR. FOWLER'S INITIALS ARE BESIDE EACH PARAGRAPH AS WELL AS
6 HIS SIGNATURE.

7 Q IS YOUR SIGNATURE ON THE FORM?

8 A MY SIGNATURE AS WELL AS SERGEANT MILLER'S SIGNATURE IS ON
9 THE FORM.

10 Q IS IT DATED?

11 A THE DATE AND THE CASE NUMBER ARE ALSO ON THE FORM.

12 MR. MOYER: AT THIS TIME WE'D MOVE TO HAVE STATE'S EXHIBIT
13 NUMBER 2 INTO EVIDENCE.

14 MR. CREECH: AGAIN, YOUR HONOR, JUST SUBJECT TO MY PREVIOUS
15 OBJECTION.

16 THE COURT: ALL RIGHT. IT'S IN EVIDENCE.

17 (STATEMENT, STATE'S EXHIBIT NUMBER 2, MOVED INTO EVIDENCE)

18 Q ALL RIGHT. NOW, HOW DID YOU TAKE WHAT HE TOLD YOU -- HOW
19 DOES IT GET FROM THAT TO THIS TYPEWRITTEN FORM IN FRONT OF YOU
20 NOW?

21 A I ASKED MR. FOWLER WHICH WAY HE FELT MORE COMFORTABLE WITH
22 EXPLAINING THE INCIDENT THAT TOOK PLACE. I ASKED HIM -- I COULD
23 TELL HIM -- I COULD ASK HIM QUESTIONS AND DO -- OR HE COULD JUST
24 TELL ME, START FROM THAT DAY AND TELL ME THE EVENTS OF THAT DAY.

25 Q WHICH DID HE WISH TO DO?

TIM CONROY - DIRECT BY MR. MOYER

1 A HE WISHED TO -- HE OPTED JUST TO TELL ME THE EVENTS OF THAT
2 DAY.

3 Q SO THIS STATEMENT THEN, WAS IT PROMPTED OR WAS IT GIVEN
4 THROUGH ANY PROMPTS BY YOU AS FAR AS QUESTIONS?

5 A NO, SIR.

6 Q DID YOU TELL HIM DETAILS OF WHAT THE INVESTIGATION HAD
7 REVEALED TO THAT POINT, LIKE THE LOCATION OF THE INCIDENT?

8 A I BELIEVE I TOLD HIM I WAS INVESTIGATING A HOMICIDE THAT
9 WORKED ON -- THAT OCCURRED ON WOODLAWN AVENUE.

10 Q OKAY. DID YOU TELL HIM THE NUMBER OF VICTIMS?

11 A I DON'T RECALL.

12 Q NOW, SO AFTER HE TOLD YOU THAT WAS THE WAY IN WHICH HE
13 WANTED TO TELL YOU WHAT HAPPENED, HOW DID YOU GO ABOUT PUTTING
14 THAT DOWN ON PAPER?

15 A AS HE WAS TELLING ME WHAT HAPPENED I TOOK NOTES, WROTE WHAT
16 HE WAS TELLING ME DOWN. AND AFTER HE GOT FINISHED TELLING ME I
17 ASKED HIM IF EVERYTHING READ CORRECT -- IF EVERYTHING WAS CORRECT
18 OR IF THERE WAS ANYTHING ELSE HE WANTED TO ADD. AND HE SAID
19 EVERYTHING WAS CORRECT BUT HE DID WISH TO ADD SOMETHING.

20 Q OKAY.

21 A AND I SAID, YOU KNOW, "YOU CAN ADD WHATEVER YOU WANT." AND
22 HE SAID, "I WANT TO ADD I DID THIS OUT OF SELF-DEFENSE. I
23 THOUGHT THEY WERE GOING TO ROB ME."

24 Q OKAY. DID YOU INCLUDE THAT IN THE STATEMENT?

25 A I DID.

TIM CONROY - DIRECT BY MR. MOYER

1 Q SO BEFORE HE TOLD YOU THIS EXTRA PART HE WANTED TO ADD DID
2 YOU LET HIM READ YOUR NOTES? DID YOU READ IT OUT TO HIM?

3 A I READ OUT LOUD TO HIM.

4 Q OTHER THAN THAT PART THAT HE WANTED TO ADD, DID HE WANT TO
5 CHANGE ANYTHING?

6 A NO, SIR.

7 Q ALL RIGHT. AND SO AFTER HE TOLD YOU THAT AND YOU MADE THAT
8 ONE ADDITION WHAT DID YOU DO WITH THE STATEMENT THAT HE HAD GIVEN
9 YOU?

10 A I THEN WENT TO MY OFFICE AND TYPED IT UP. AFTER I WAS
11 FINISHED TYPING IT, I BROUGHT IT BACK TO HIM. I READ IT OUT LOUD
12 TO HIM, AND THEN I TURNED IT FOR HIM TO READ OUT LOUD -- OR TO
13 READ TO HIMSELF, AND IF EVERYTHING WAS CORRECT OR IF HE AGREED
14 EVERYTHING -- HE DIDN'T WISH TO MAKE ANY CHANGES, HE WAS TO
15 INITIAL BESIDE EACH PARAGRAPH, AND HE INITIALED BESIDE EACH
16 PARAGRAPH AS WELL AS SIGNED IT STATING IT WAS CORRECT.

17 Q AND SO THE FORM THAT'S ACTUALLY IN FRONT OF YOU NOW, OTHER
18 THAN THE INITIALS, THAT'S WHAT YOU GAVE HIM AND HAD HIM READ?

19 A THAT'S CORRECT.

20 Q HE DIDN'T WANT TO MAKE ANY CHANGES OR ADDITIONS?

21 A NO, SIR.

22 Q ALL RIGHT. NOW, AFTER HE READ IT, DID HE DO ANYTHING TO
23 INDICATE THAT IT WAS HIS STATEMENT?

24 A HE SIGNED THE BOTTOM OF THE FORM AND INITIALED THE
25 PARAGRAPHS.

TIM CONROY - DIRECT BY MR. MOYER

1 Q ALL RIGHT. AT THIS TIME LET ME -- I WOULD ASK YOU TO
2 PUBLISH THE STATEMENT TO THE JURY. READ IT TO THE JURY.
3 A OKAY. IT SAYS, "I AM NOT UNDER THE INFLUENCE OF ANY DRUGS
4 OR ALCOHOL AT THIS TIME. I DID GIVE DETECTIVE CONROY PERMISSION
5 TO TYPE THIS STATEMENT FOR ME. THE FOLLOWING STATEMENT IS IN MY
6 WORDS. I MET DIANE TISDALE, NICKI, AND VALENCIA SULLIVAN ON
7 6/7/07 AT ABOUT NOON AT DRIVE. WE ALL GOT INTO A
8 BLUE BUICK CENTURY. I DON'T KNOW WHOSE CAR THIS IS BUT NICKI
9 ALWAYS DRIVES IT. WE WENT TO RED'S PAWN SHOP ON PENDLETON STREET
10 TO PAWN A JACK FOR SOME GAS MONEY. SOME WHITE GIRL CAME UP TO ME
11 AND TALKED ABOUT SOME JEWELRY, JUST SHOOTING THE SHIT REALLY.
12 SHE SAID -- SHE WAS THERE WITH TWO OTHER WHITE GUYS. SHE ASKED
13 ME IF I HAD ANY CRACK. I TOLD HER YEAH. I WAS GOING TO FLEX HER
14 BECAUSE I DID NOT HAVE ANY CRACK. I TOLD HER TO FOLLOW ME. I
15 WAS DRIVING. WE WENT OVER TO THE AREA OF PENDLETON ROAD AND
16 WOODLAWN. I STOPPED IN THE MIDDLE OF THE ROAD. MY GIRLFRIEND,
17 VALENCIA, WAS IN THE FRONT SEAT. SHE GOT OUT BECAUSE THE
18 DRIVER'S DOOR WAS BROKEN. I CLIMBED OVER HER AND GOT OUT THE
19 PASSENGER'S DOOR. THE OTHER CAR PULLED UP ON THE DRIVER'S SIDE.
20 I WALKED BEHIND THE CAR -- EXCUSE ME. I WALKED BETWEEN MY CAR --
21 EXCUSE ME -- I WALKED BEHIND MY CAR IN BETWEEN THE TWO CARS. I
22 STOOD BETWEEN THE FRONT SEAT AND THE BACK SEAT. I REACHED INTO
23 MY POCKET TO GET THE FLEX AND I REALIZED I DIDN'T HAVE ANY.
24 ~~THERE WAS A GUY IN THE DRIVER'S SEAT, A FEMALE IN THE FRONT SEAT,~~
25 FRONT PASSENGER SEAT, AND ANOTHER GUY IN THE BACK PASSENGER SEAT.

TIM CONROY - DIRECT BY MR. MOYER

1 THE GUY IN THE BACK SEAT HAD MONEY IN HIS RIGHT HAND AND HIS LEFT
2 HAND IN HIS POCKET. I REACHED IN MY LEFT POCKET TO GET THE FLEX
3 AND IN MY RIGHT HAND WAS IN MY RIGHT POCKET ON THE GUN. WHEN THE
4 GUY IN THE BACK SEAT PULLED HIS LEFT HAND OUT OF HIS POCKET I
5 DIDN'T KNOW WHAT HE WAS DOING. I FREAKED OUT. I PULLED OUT MY
6 GUN AND SHOT IN THE DIRECTION OF ALL THREE PEOPLE. I SHOT ONE --
7 I SHOT ONE AT ONE -- I SHOT ONE TIME AT EACH PERSON. I THINK I
8 HIT THE DRIVER. I SAW BLOOD ALL OVER HIS RIGHT SIDE IN THE CHEST
9 AND STOMACH AREA. AFTER I SHOT THE FEMALE I COULD HEAR -- I
10 COULD SEE HER RIGHT HAND PROPPED UP IN THE DOOR WITH MONEY IN IT.
11 I GRABBED THE MONEY OUT OF HER HAND. THERE WERE TWO \$20 BILLS.
12 ONE OF THEM TORE. I THEN RAN BACK TO MY CAR AND JUMPED IN.
13 VALENCIA WAS IN THE DRIVER'S SEAT. I GOT IN THE FRONT SEAT.
14 VALENCIA DROVE OFF SLOWLY. I CROSSED OVER HER AND BEGAN TO
15 DRIVE. I DROVE TO DRIVE AND SAT DOWN AND CHILLED
16 OUT. I SMOKED A CIGARETTE AND THEN WE WENT TO EAT. WE CHILLED
17 OUT FOR ABOUT AN HOUR AND A HALF AT PETE'S ON WHITE HORSE ROAD.
18 THAT IS WHERE I SPENT THE MONEY I STOLE FROM THE GIRL. WE WENT
19 BACK TO THE HOUSE AND SHORTLY AFTER THE POLICE SHOWED UP. I
20 SHOWED THE DETECTIVE THE GUN I USED TO KILL THAT LADY. I DID
21 THIS OUT OF SELF-DEFENSE. I THOUGHT THEY WERE GOING TO ROB ME."
22 Q OKAY. NOW, THE TERM "FLEX" WAS USED IN THAT STATEMENT. DO
23 YOU KNOW WHAT FLEX IS?
24 A I DO. IT'S COMMONLY REFERRED TO AS AN IMITATION NARCOTIC,
25 IMITATION CRACK COCAINE.

TIM CONROY - CROSS BY MR. CREECH

1 Q OKAY. NOW, HOW DID HE -- HOW DID HE REACT WHEN HE TOLD YOU
2 ABOUT TAKING THE MONEY OF SUSAN GALLOWAY AND WHAT DID HE SAY?

3 A HE -- IF I COULD REFER---

4 MR. CREECH: I OBJECT, YOUR HONOR, UNDER RULE 403.

5 THE COURT: OVERRULED.

6 A HE -- AS HE WAS TELLING THIS HE WAS LAUGHING, SAYING THAT HE
7 SHOULD NOT LAUGH, BUT THAT BITCH PISSED HIM OFF, AND SHE WOULDN'T
8 LET GO OF THE MONEY AND TORE IT.

9 Q I'M SORRY. WHAT WAS THE WORD HE USED? THE WHAT?

10 A HE SAID THAT BITCH PISSED HIM OFF. SHE WOULDN'T LET GO OF
11 THE MONEY AND SHE TORE IT. HE WAS LAUGHING AS HE WAS SAYING
12 THIS.

13 MR. MOYER: OKAY. PLEASE ANSWER ANY QUESTIONS DEFENSE MAY
14 HAVE.

15 CROSS EXAMINATION BY MR. CREECH:

16 Q INVESTIGATOR CONROY, THAT LAST COMMENT, THAT'S NOT IN HIS
17 STATEMENT?

18 A THAT'S CORRECT.

19 Q YOU DIDN'T WRITE THAT IN THIS STATEMENT?

20 A NO, SIR.

21 Q THAT'S SOMETHING THAT YOU SAY HE SAID?

22 A HE DID SAY THAT.

23 Q HE DIDN'T SAY THAT. WHY DIDN'T YOU PUT IT IN THE STATEMENT?

24 A I---

25 Q I THOUGHT YOU PUT EVERYTHING HE TOLD YOU IN HIS STATEMENT.

TIM CONROY - CROSS BY MR. CREECH

1 DID YOU DO THAT?

2 A I DID PUT IN THERE THAT HE TORE THE MONEY.

3 Q THAT LAST INFLAMMATORY COMMENT, YOU DIDN'T PUT THAT IN HIS
4 STATEMENT?

5 A NO, SIR.

6 Q ALL RIGHT. SO YOU DON'T PUT EVERYTHING THAT HE TOLD YOU IN
7 THIS STATEMENT; IS THAT RIGHT?

8 A THAT COMMENT I DID NOT PUT IN THE STATEMENT. THAT'S
9 CORRECT.

10 Q WHEN HE TOLD YOU THAT HE DID THIS OUT OF SELF-DEFENSE DID
11 YOU THEN BEGIN AN INVESTIGATION INTO THE BACKGROUND OF THE PEOPLE
12 IN THAT CAR?

13 A NO, SIR.

14 Q DID YOU DO ANY INVESTIGATION ON SUSAN GALLOWAY TO DETERMINE
15 IF SHE HAD ANY BACKGROUND THAT WOULD SUGGEST HER ACTIONS?

16 A WHAT -- I'M NOT FOLLOWING THE QUESTION.

17 Q DID YOU DO ANY INVESTIGATION ON SUSAN GALLOWAY'S BACKGROUND?

18 A NO, SIR.

19 Q DID YOU EVER TALK IN PERSON WITH GARY MICHAEL POWELL?

20 A VERY BRIEFLY.

21 Q DID YOU EVER ASK HIM, "HEY, WERE YOU REACHING IN YOUR
22 POCKET?" DID YOU EVER ASK HIM THAT QUESTION?

23 A NO, SIR.

24 Q DID YOU EVER ASK HIM, "WERE YOU ARMED?"

25 A NO, SIR.

TIM CONROY - CROSS BY MR. CREECH

1 Q DID YOU EVER ASK HIM WHY THEY EVEN CAME TO GREENVILLE?

2 A NO, SIR. I HAD VERY LIMITED DEALINGS WITH HIM.

3 Q YOU'RE THE CHIEF INVESTIGATING OFFICER IN THIS CASE; IS THAT
4 RIGHT?

5 A OTHER INVESTIGATORS INTERVIEWED THE OTHER OCCUPANTS OF THE
6 VEHICLE.

7 Q DID YOU EVER ASK GARY MICHAEL POWELL WHY HE WAS DRIVING THAT
8 CAR THAT WAS NOT REGISTERED TO ANYBODY?

9 A NO, SIR, THAT'S NOT THAT UNCOMMON.

10 Q DID YOU EVER LOOK INTO THAT?

11 A NO, SIR.

12 Q DID YOU EVER DETERMINE WHO WAS THE OWNER OF THE CAR THAT
13 THEY WERE IN?

14 A I BELIEVE HIS MOTHER WAS THE OWNER OF THE VEHICLE.

15 Q AND DID YOU CONFIRM THAT THROUGH ANY RECORDS, LIKE AT THE
16 DMV, THAT WOULD HAVE BEEN ACCESSIBLE THROUGH THE COMPUTER?

17 A NO, I DID NOT.

18 Q OKAY. DID YOU DO ANY INVESTIGATION ABOUT MR. FOWLER TELLING
19 YOU THAT HE ACTED IN SELF-DEFENSE?

20 A NO, SIR. THERE WAS NOTHING THAT LED -- THERE WAS NO
21 EVIDENCE TO SUBSTANTIATE THAT CLAIM.

22 Q HE TOLD YOU THAT HE THOUGHT THE PERSON HAD A GUN. WHAT DID
23 YOU DO TO DETERMINE WHETHER THE PERSON HAD A GUN?

24 A WE SPOKE WITH PEOPLE IN THE NEIGHBORHOODS -- IN THE AREA,
25 AND THERE WAS NEVER ANY COMMENTS TO SUBSTANTIATE THAT THERE WAS

TIM CONROY - CROSS BY MR. CREECH

1 ANOTHER GUN IN THE VEHICLE.

2 Q AND DID YOU DO ANY INVESTIGATION AS TO WHETHER THIS VEHICLE
3 HAD BEEN INVOLVED IN ANY OTHER ROBBERIES OVER IN PICKENS COUNTY?

4 A NO, SIR.

5 Q WHEN YOU TALKED TO GARY MICHAEL POWELL YOU SAID IT WAS JUST
6 BRIEFLY; IS THAT CORRECT?

7 A THAT IS CORRECT.

8 Q IN MR. FOWLER'S STATEMENT HE TOLD YOU THAT HE THOUGHT THE
9 MAN HAD A GUN. DID YOU PUT THAT IN HIS STATEMENT?

10 A HE DID NOT TELL ME HE THOUGHT HE HAD A GUN.

11 Q OKAY. THIS IS THE THIRD PAGE OF YOUR REPORT; IS THAT
12 CORRECT?

13 A YES, SIR.

14 Q AND IN THAT SECOND PARAGRAPH DID YOU NOT WRITE "AND HE
15 THOUGHT HE HAD A GUN"?

16 A I DID WRITE THAT IN THERE. BUT THIS WAS SEVERAL DAYS AFTER
17 -- A WEEK AFTER THE INTERVIEW, AND I GUESS I IMPLIED -- I THOUGHT
18 HE WAS IMPLYING THAT HE HAD A GUN, BUT HE NEVER TOLD ME HE HAD A
19 GUN.

20 Q BUT YOU WROTE IN YOUR REPORT, YOU SAID, "WHEN FOWLER SAW HIM
21 MAKE THAT MOTION, HE FREAKED OUT." YOU ASKED HIM -- THIS IS WHAT
22 YOU DESCRIBED IN HIS STATEMENT. FOWLER SAID THAT HE THOUGHT --
23 WHEN HE SAW HIM MAKE THAT MOTION HE FREAKED OUT AND SHOT ONE
24 DIRECTION AT EACH PERSON IN THE CAR FOR A TOTAL OF THREE TIMES.
25 HE SAID HE HAD HIS RIGHT HAND IN HIS POCKET HOLDING HIS PISTOL.

TIM CONROY - CROSS BY MR. CREECH

1 HARRIS PULLED HIS HAND OUT OF HIS POCKET AND HE THOUGHT HE HAD A
2 GUN. BUT YOU DIDN'T INCLUDE THAT IN HIS STATEMENT; IS THAT
3 RIGHT?

4 A THAT IS NOT WHAT HE SAID IN HIS STATEMENT. I GUESS WHILE I
5 WAS TYPING MY REPORT I GUESS I WAS JUST GOING OFF MEMORY, AND I
6 WAS WRONG WHEN I TYPED THAT.

7 Q DIDN'T ZACHARY TELL YOU THAT HE HAD A RED BAG?

8 A NO, SIR. I'M NOT AWARE OF THAT.

9 Q YOU DIDN'T GET THAT PART WRONG ABOUT THE POCKETS?

10 A NO, SIR.

11 Q GARY MICHAEL POWELL SAID HE HAD A RED BAG?

12 A I WAS NOT AWARE OF A RED BAG.

13 Q AND ZACHARY NEVER TOLD YOU THAT, ARE YOU SURE?

14 A YES, SIR.

15 Q COULD YOU HAVE GOTTEN THAT WRONG?

16 A NO, SIR.

17 Q WOULD YOU HAVE WRITTEN THAT DOWN IN YOUR NOTES?

18 A I WOULD HAVE.

19 Q DID YOU KEEP YOUR NOTES?

20 A NO, SIR.

21 Q YOU SHREDDED THOSE NOTES; IS THAT RIGHT?

22 A AFTER I PUT MY NOTES ON THE STATEMENT, I SHREDDED THEM.

23 YES, SIR.

24 Q YOU DIDN'T KEEP A COPY OF YOUR NOTES IN THE CASE FILE?

25 A THAT'S CORRECT.

TIM CONROY - CROSS BY MR. CREECH

1 Q AND IF YOU WANTED TO GO BACK AND LOOK AT THE DETAILS OF THE
2 CONVERSATION, IT WOULD BE IN THOSE NOTES; IS THAT CORRECT?

3 A I THINK IT WOULD BE IN HIS STATEMENT.

4 Q AND IT WOULD BE IN YOUR NOTES AS WELL; ISN'T THAT RIGHT?

5 A NO, SIR.

6 Q IS THAT RIGHT?

7 A NO, SIR. MY NOTES WERE ALL TYPED UP ON THIS -- IN THIS
8 STATEMENT.

9 Q BUT YOU HAVE HANDWRITTEN NOTES TOO, AND YOU DIDN'T KEEP
10 THOSE. YOU THREW THEM AWAY. YOU WERE TAKING NOTES OF WHAT HE
11 WAS SAYING IN YOUR HANDWRITING, RIGHT?

12 A THAT IS CORRECT.

13 Q AND YOU THREW THAT AWAY; IS THAT RIGHT?

14 A AFTER I TYPED THE STATEMENT UP. YES, SIR.

15 Q NOW, THE OTHER THING IS DID YOU HAVE ANY KIND OF AUDIO
16 RECORDING DEVICE THAT YOU COULD HAVE RECORDED THIS CONVERSATION
17 THAT YOU HAD WITH MR. FOWLER?

18 A IT'S NOT COMMON FOR US TO RECORD CONVERSATIONS.

19 Q DID YOU HAVE AN AUDIO RECORDING DEVICE THAT YOU COULD HAVE
20 DONE THAT?

21 A I GUESS I COULD HAVE LOOKED FOR ONE. I DON'T KNOW WHERE
22 THERE IS ONE IN OUR OFFICE THOUGH.

23 Q THE FLEX THAT YOU WERE TALKING ABOUT. YOU'VE WORKED AS A
24 POLICE OFFICER FOR 11 AND A HALF YEARS, CORRECT?

25 A THAT'S CORRECT.

TIM CONROY - CROSS BY MR. CREECH

1 Q AND YOU'VE SEEN THIS FAKE IMITATION CONTROLLED SUBSTANCE OUT
2 THERE; IS THAT RIGHT?

3 A YES, SIR.

4 Q AND YOU'VE SEEN PEOPLE SELL IT OR TRY TO GIVE IT TO PEOPLE;
5 IS THAT RIGHT?

6 A THAT IS CORRECT.

7 Q OKAY. AND AGAIN IT'S THE SAME THING. YOU'VE HEARD ABOUT
8 PEOPLE MAYBE GIVING OREGANO AND PASSING IT OFF AS MARIJUANA; IS
9 THAT RIGHT?

10 A THAT'S CORRECT.

11 Q AND WHEN YOU FOUND OUT THAT THIS WAS FAKE OR FLEX CRACK DID
12 YOU EVER GO AND TELL THE VICTIMS THIS? DID YOU EVER TELL GARY
13 MICHAEL POWELL ABOUT THAT?

14 A I DIDN'T SEE THAT POINT OF TELLING THEM.

15 Q INVESTIGATOR CONROY, WHEN YOU HAVE BEEN OUT ON THE ROAD AS A
16 CITY POLICE OFFICER HAVE YOU EVER BEEN IN A SITUATION WHERE YOU
17 THOUGHT SOMEONE HAD A GUN?

18 A YES, SIR.

19 Q AND HAVE YOU EVER THOUGHT -- OR HAVE YOU EVER HAD TO PULL
20 YOUR WEAPON IN ADVANCE OF SOMEONE PULLING A GUN ON YOU?

21 A YES, SIR.

22 Q HAVE YOU EVER PULLED A WEAPON ON SOMEONE OR EVEN SHOT AT
23 SOMEONE AND IT TURNED OUT THEY DIDN'T HAVE A GUN EVEN THOUGH YOU
24 THOUGHT THEY MAY HAVE?

25 A I HAVE PULLED A WEAPON OUT TO DEFEND MY -- TO PROTECT

TIM CONROY - CROSS BY MR. CREECH

1 MYSELF. BUT I HAVE NOT SHOT---

2 Q TO PROTECT YOURSELF?

3 A BUT I HAVE NOT SHOT AT ANYBODY.

4 Q YOU'VE NEVER SHOT AT ANYBODY AND YOU THOUGHT THAT PERSON HAD
5 A GUN; IS THAT RIGHT?

6 A THAT IS CORRECT.

7 Q OKAY. AND YOU THOUGHT IT WAS REASONABLE AT THE TIME TO DO
8 IT; IS THAT CORRECT?

9 A THAT'S CORRECT.

10 Q AND THAT'S WHY YOU DID IT, TO PROTECT YOURSELF?

11 A YES, SIR.

12 Q OKAY. DID YOU EVER SPEAK WITH ANY OF THE WITNESSES, MARY
13 SHAW, FOR INSTANCE, ABOUT HOW LONG IT WAS BETWEEN THE TIME MR.
14 FOWLER GOT OUT OF THE CAR AND THE TIME THAT SHE HEARD SHOTS? DID
15 YOU EVER TALK WITH HER ABOUT THAT?

16 A NO, SIR.

17 Q AND DID YOU HEAR HER TESTIFY FIVE MINUTES OR LESS?

18 A YES, SIR.

19 Q AND WOULD THAT INDICATE TO YOU THAT THERE WAS A CONVERSATION
20 TAKING PLACE BETWEEN MR. FOWLER AND THE PEOPLE IN THE CAR?

21 MR. MOYER: YOUR HONOR, I WOULD OBJECT. SPECULATION. IT
22 CALLS FOR SPECULATION. I MEAN, HOW CAN HE KNOW WHAT WAS GOING ON
23 IN THE CAR?

24 THE COURT: SUSTAINED.

25 Q THE -- BUT ASIDE FROM TAKING MR. FOWLER'S STATEMENT, YOU DID

TIM CONROY - CROSS BY MR. CREECH

1 NOT INVESTIGATION TO DETERMINE -- TO DETERMINE IF ANYONE IN THE
2 CAR WAS HARMED, CORRECT?

3 A THAT IS CORRECT.

4 Q DID YOU EVER LEARN THE RESULTS OF THE GUNSHOT RESIDUE TEST
5 ON MR. POWELL?

6 A YES. I DO NOT RECALL IT AT THIS TIME. I'D HAVE TO LOOK.

7 Q DID YOU EVER SEARCH THE ENTIRE CAR?

8 A I DID.

9 Q DID YOU EVER MAKE A LISTING OF EVERYTHING INSIDE THE CAR?

10 A NO, SIR.

11 Q OBVIOUSLY YOU DID NOT INCLUDE THAT AS PART OF THE CASE
12 INVESTIGATION; IS THAT CORRECT?

13 A THERE WAS NOTHING OF EVIDENTIARY VALUE IN THE VEHICLE THAT I
14 SAW.

15 Q THERE WAS NOTHING OF EVIDENTIARY VALUE IN THE CAR?

16 A NOT THAT I SAW.

17 Q NOW, DO YOU REMEMBER TALKING TO ZACHARY'S AUNT JANICE? DID
18 YOU EVER TALK TO HER?

19 A NOT THAT I RECALL.

20 Q DO YOU REMEMBER EVER TELLING ZACHARY THAT UNLESS HE GAVE A
21 STATEMENT -- OR IF HE GAVE A STATEMENT OR COOPERATED THEN YOU
22 WOULD HELP HIM OUT AS MUCH AS POSSIBLE? DO YOU EVER REMEMBER
23 TELLING HIM THAT?

24 A NO, SIR.

25 Q DID YOU DO ANYTHING -- WHEN ZACHARY TOLD YOU THAT THE WOMAN

TIM CONROY - CROSS BY MR. CREECH

1 IN THE STORE APPROACHED HIM DID YOU DO ANY KIND OF INVESTIGATION
2 TO DETERMINE WHETHER WOMAN APPROACHED HIM?

3 A NO, SIR.

4 Q AND SO YOU BELIEVED HIM WHEN HE TOLD YOU THAT SHE CAME UP TO
5 HIM; IS THAT RIGHT?

6 A YES, SIR. I HAD NO REASON NOT TO BELIEVE THAT.

7 Q AND YOU STILL DON'T HAVE A REASON TO BELIEVE THAT; IS THAT
8 CORRECT?

9 A I DON'T HAVE A REASON NOT TO BELIEVE THAT SHE DID NOT COME
10 UP TO HIM. I'M NOT DISPUTING THAT.

11 Q HOW OLD WAS MS. GALLOWAY, DO YOU KNOW?

12 A I BELIEVE SHE WAS BORN IN '58.

13 Q SO THAT WOULD MAKE HER HOW OLD, 48?

14 A I BELIEVE SO, YES.

15 Q DID YOU DO -- AND DID YOU KNOW HOW OLD MR. FOWLER WAS AT THE
16 TIME?

17 A I DID.

18 Q NOW, DETECTIVE CONROY, HAVE YOU EVER ATTEMPTED TO ARREST
19 SOMEONE UNDER THE INFLUENCE OF COCAINE?

20 A I DON'T KNOW. I'VE ARRESTED SOMEBODY UNDER THE INFLUENCE OF
21 DRUGS, BUT I DON'T KNOW WHAT DRUG IT WAS.

22 Q HAVE YOU EVER THOUGHT SOMEONE THAT YOU ARRESTED WAS ON CRACK
23 COCAINE?

24 A YES.

25 Q AND IS SOMEONE IN THAT CONDITION MORE PRONE TO RECKLESSNESS

TIM CONROY - CROSS BY MR. CREECH

1 IN YOUR OPINION?

2 A I'VE ARRESTED SOMEBODY UNDER THE INFLUENCE OF NARCOTICS THAT
3 HAVE BEEN VERY MELLOW, SO -- AND I'VE ARRESTED SOMEBODY---

4 Q WHAT---

5 A I DON'T KNOW WHAT NARCOTIC THEY WERE ON. I'VE ARRESTED
6 SOMEBODY THAT'S BEEN VERY IRATE AND VERY MELLOW THAT HAVE BEEN ON
7 DRUGS. SO...

8 Q SO SOMEONE UNDER THE INFLUENCE OF CRACK COCAINE CAN BE
9 IRATE, CAN ACT RECKLESS AND DO THINGS THAT AREN'T EXACTLY SMART;
10 IS THAT CORRECT?

11 A I WOULD SAY YES. AND SOMEONE THAT ISN'T UNDER THE INFLUENCE
12 OF CRACK COCAINE COULD BE IRATE AND NOT ACT SMART.

13 Q NOW, IF -- MR. POWELL AND MS. GALLOWAY AND MR. HARRIS FROM
14 THE TIME THAT THEY GOT INTO THE CAR TO THE TIME THAT THEY WENT
15 OVER TO THE SCENE, DID YOU DO ANY INVESTIGATION TO CONFIRM OR
16 INVESTIGATE WHAT THEY DISCUSSED IN THE CAR AT THE TIME?

17 A NO, SIR.

18 Q AND IF THEY FORMULATED A PLAN TO ROB MR. FOWLER, THAT WOULD
19 BE A CRIME AS WELL, WOULDN'T IT? THAT WOULD BE CONSPIRACY?

20 A I DIDN'T HAVE ANY EVIDENCE OF THAT. BUT YEAH.

21 Q WELL, DO YOU THINK THAT THEY WOULD COME FORWARD AND JUST
22 ADMIT THE CRIMINAL ACT TO YOU?

23 A I DIDN'T FIND ANY EVIDENCE OF ANY WEAPON INVOLVED IN THE
24 CAR. BUT, NO, I DO NOT BELIEVE THEY WOULD COME FORWARD.

25 Q OKAY. ALL RIGHT. DO YOU THINK THEY'RE JUST GOING TO COME

TIM CONROY - REDIRECT BY MR. MOYER

1 FORWARD AND SAY, "HEY, I SMOKED CRACK LAST NIGHT"?

2 A NO.

3 Q OKAY.

4 MR. CREECH: (PAUSE) NO FURTHER QUESTIONS, YOUR HONOR.

5 MR. MOYER: JUST A COUPLE FOLLOW-UP QUESTIONS.

6 REDIRECT EXAMINATION BY MR. MOYER:

7 Q DURING THE TIME YOU MET WITH THE DEFENDANT DID HE EVER
8 MENTION THAT HE SAW A GUN IN THAT CAR?

9 A NO, SIR.

10 Q DID HE EVER MENTION THAT HE THOUGHT ANYBODY IN THAT CAR HAD
11 A GUN?

12 A NO, SIR.

13 Q WHEN YOU READ YOUR -- THE NOTES THAT YOU MADE FROM WHAT HE
14 TOLD YOU, ARE THEY THE SAME THING AS WHAT YOU PUT DOWN ON PAPER?

15 A YES, SIR. THEY ARE.

16 Q THAT IS PART OF WHAT YOU TYPED OUT?

17 A YES, SIR.

18 Q AND WHEN YOU READ THOSE NOTES TO HIM DID HE WANT TO ADD
19 ANYTHING ABOUT SAYING THAT HE SAW A GUN?

20 A NO.

21 Q DID HE WANT TO ADD ANYTHING ABOUT SAYING HE THOUGHT THEY HAD
22 A GUN?

23 A NO.

24 Q AND WHEN YOU READ THE TYPED FORM TO HIM DID HE WANT TO ADD
25 OR WHEN YOU LET HIM READ IT HIMSELF AND READ IT TO HIM DID HE

TIM CONROY - REDIRECT BY MR. MOYER.

1 WANT TO ADD ANYTHING ABOUT SEEING A GUN?

2 A NO, SIR.

3 Q OR ABOUT THINKING SOMEBODY IN THE CAR HAD A GUN?

4 A NO, SIR.

5 MR. MOYER: NOTHING FURTHER.

6 MR. CREECH: NO FURTHER QUESTIONS, YOUR HONOR.

7 THE COURT: THANK YOU, MR. CONROY.

8 (WITNESS STEPS DOWN AT 5:05 P.M.)

9 THE COURT: LET ME SEE THE LAWYERS UP HERE REAL QUICK, IF I
10 COULD.

11 (BENCH CONFERENCE OFF RECORD FROM 5:05 TO 5:06 P.M.)

12 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, WE ARE GOING
13 TO GO AHEAD AND BREAK FOR THE EVENING. PLEASE DON'T DISCUSS THE
14 CASE WITH ANYONE. CONTINUE TO KEEP AN OPEN MIND. YOU HAVEN'T
15 HEARD ALL THE EVIDENCE YET. AND YOU HAVEN'T HEARD THE CLOSING
16 ARGUMENTS OF THE LAWYERS AND YOU HAVEN'T HEARD THE INSTRUCTIONS
17 ON THE LAW. AND DON'T DO ANY OUTSIDE INVESTIGATION. AS YOU
18 PROBABLY COULD SURMISE THERE WAS A REPORTER IN HERE TODAY, AND
19 PLEASE DON'T READ THE NEWSPAPER IN THE MORNING EITHER IN CASE
20 THERE IS ANY STORY ABOUT THE CASE. THAT WOULD NOT BE PROPER
21 BECAUSE AS I'VE TOLD YOU, YOU HAVE TO CONFINE YOUR DECISION AS TO
22 THE FACTS OF THIS CASE ON THE EVIDENCE YOU'VE HEARD WHILE COURT
23 IS IN SESSION. SO PLEASE REFRAIN FROM READING THE NEWSPAPER IN
24 THE MORNING AND THERE WILL NOT BE ANY AVAILABLE HERE. WE'LL SEE
25 YOU BACK -- WE'RE GOING TO START TOMORROW MORNING AT 9:30. SO

TIM CONROY - REDIRECT BY MR. MOYER

1 JUST BE BACK IN YOUR JURY ROOM AT 9:30. ALL RIGHT? THANK YOU
2 VERY MUCH.

3 (JURY EXITS COURT FOR THE DAY AT 5:07 P.M.)

4 THE COURT: OKAY. ANYBODY NEED TO PUT ANYTHING ON THE
5 RECORD AT THIS TIME?

6 MR. MOYER: NOTHING FROM THE STATE.

7 THE COURT: OKAY. WE'LL SEE YOU AT 9:30.

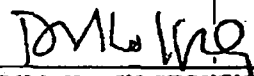
8 (COURT RECESSED FOR THE DAY AT 5:08 P.M.)
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CERTIFICATE

I, THE UNDERSIGNED, DAWN V. KOFFSKEY, OFFICIAL COURT REPORTER FOR THE 13TH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR GREENVILLE COUNTY, SOUTH CAROLINA, ON THE 14TH DAY OF AUGUST 2007.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST TO ANY PARTY HERETO.

APRIL 2, 2008



DAWN V. KOFFSKEY
COURT REPORTER

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF GENERAL SESSIONS

THE STATE,

VERSUS

ZACHARY M. FOWLER,

DEFENDANT.

07-GS-23-245 THROUGH 249
TRANSCRIPT OF RECORD

VOLUME 3 - AUGUST 15, 2007

AUGUST 13-15, 2007
GREENVILLE, SOUTH CAROLINA

B E F O R E:

THE HONORABLE D. GARRISON HILL

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

L. MARK MOYER, Esquire
Assistant Solicitor

THOMAS CREECH, Esquire
Attorney for the Defendant

DAWN V. KOFFSKEY
COURT REPORTER

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* FOR PURPOSES OF JACKSON v. DENNO ONLY

MATTERS AND MOTIONS

(TRIAL RESUMED AT 9:47 A.M. ON 8-14-07)

MR. MOYER: BEFORE WE BRING THE JURY IN, THE STATE IS GOING TO REST.

THE COURT: OKAY.

MR. MOYER: SO IF WE WANT TO DO ANY OTHER MATTERS...

MR. CRBECH: YES, YOUR HONOR. AT THIS TIME WE WOULD MOVE FOR A DIRECTED VERDICT ON ALL OF THE INDICTMENTS. WE'D ASK THAT THE COURT DISMISS ALL OF THESE INDICTMENTS BASED ON THE LACK OF EVIDENCE IN THE CASE. AND SPECIFICALLY AS TO THE ARMED ROBBERY, THERE WAS TESTIMONY THAT THE VICTIM, THE OWNER OF THE PROPERTY, WANTED MR. FOWLER TO HAVE THE PROPERTY. THERE HASN'T BEEN SUBSTANTIAL EVIDENCE THAT HE EVER TOOK ANY MONEY. WE ALSO JUST REINCORPORATE OUR PREVIOUS MOTIONS THAT WE MADE THROUGHOUT THE TRIAL. THAT WOULD BE OUR MOTION, YOUR HONOR.

THE COURT: OKAY. WHAT ABOUT THE ARMED ROBBERY, MR. MOYER?

MR. MOYER: THE TESTIMONY WAS NOT THAT SHE WANTED TO GIVE HIM MONEY BUT THAT SHE WANTED TO BUY SOMETHING FROM HIM. SHE DIDN'T BUY ANYTHING, AND HE TOOK THE MONEY FROM HER HAND AND EVEN SAID SO IN HIS STATEMENT.

THE COURT: OKAY. I AGREE WITH THE STATE. THE EVIDENCE IS SUFFICIENT TO SEND THE CASE TO THE JURY UNDER RULE 19. AND FURTHERMORE, AS TO THE PRIOR MOTIONS IN THE CASE, JUST SO THERE IS NO MISUNDERSTANDING OF MY EARLIER RULINGS, EVER SINCE I BELIEVE IT'S *DAVIS VERSUS MISSISSIPPI* ALMOST 40 YEARS AGO, THE SUPREME COURT HAS SAID THERE IS REALLY NO REAL DISTINCTION

ZACHARY FOWLER - BY THE COURT

1 BETWEEN INVESTIGATIVE DETENTION AND CUSTODY. BUT HERE THERE WAS
2 SUFFICIENT REASONABLE SUSPICION ON THE PART OF AGENT CONROY TO
3 PLACE MR. FOWLER IN THE HANDCUFFS, AND CERTAINLY AT THAT POINT HE
4 MAY HAVE EVEN HAD PROBABLE CAUSE THAT SOME CRIME, EVEN IF IT WAS
5 MISPRISION OF A FELONY, HAD OCCURRED. AND SO AS I SAID, AGAIN,
6 HIS ACTIONS WERE REASONABLE AND THERE WAS NO FOURTH OR FIFTH
7 AMENDMENT VIOLATION.

8 ALL RIGHT. MR. CREECH, DOES YOUR CLIENT PLAN TO TESTIMONY?

9 MR. CREECH: HE DOES, YOUR HONOR.

10 THE COURT: OKAY. MR. FOWLER, I'M GOING TO ASK YOU STAND
11 UP. I'M GOING TO SWEAR YOU IN.

12 ZACHARY FOWLER, HAVING BEEN DULY SWORN,
13 TESTIFIED AS FOLLOWS:

14 BY THE COURT:

15 Q ALL RIGHT. MR. FOWLER, YOU HAVE THE RIGHT TO TESTIFY AND
16 YOU ALSO HAVE THE RIGHT TO REMAIN SILENT. THE RIGHT TO REMAIN
17 SILENT IS GUARANTEED TO YOU BY BOTH THE STATE AND THE FEDERAL
18 CONSTITUTION. AND IF YOU CHOSE TO REMAIN SILENT, I WOULD TELL
19 THE JURY, AS I'VE ALREADY TOLD THEM, THAT YOU NOT ONLY DON'T HAVE
20 ANY OBLIGATION TO PRESENT EVIDENCE IN THIS CASE OR EXPLAIN
21 YOURSELF OR PROVE ANYTHING, BUT RATHER THE BURDEN OF PROOF IS
22 SOLELY ON THE STATE. AND IF YOU CHOSE TO REMAIN SILENT, SIR, I
23 WOULD TELL THE JURY THAT THEY COULD NOT HOLD THAT AGAINST YOU IN
24 ANY WAY AND THEY COULD NOT TAKE THAT AND EVEN DISCUSS IT IN THE
25 JURY ROOM. THE FACT THAT YOU HAD NOT TESTIFIED OR PRODUCED ANY

ZACHARY FOWLER - BY THE COURT

1 EVIDENCE WOULD NOT BE SOMETHING THAT THEY COULD DISCUSS OR TAKE
2 INTO ACCOUNT IN DETERMINING WHETHER YOU WERE GUILTY OR NOT
3 GUILTY. NOW, YOU CERTAINLY HAVE THE RIGHT TO TESTIFY. BUT IF
4 YOU DO TESTIFY AND TAKE THE STAND, YOU'LL BE SUBJECT TO CROSS
5 EXAMINATION, JUST LIKE EVERY OTHER WITNESS WHO HAS TESTIFIED SO
6 FAR IN THIS CASE. AND DO YOU UNDERSTAND THAT, SIR?

7 A YES, SIR.

8 Q AND I WILL TELL YOU FURTHER, I DON'T KNOW ANYTHING ABOUT
9 YOUR PAST.

10 THE COURT: DOES HE HAVE ANY KIND OF RECORD?

11 MR. MOYER: NOTHING THAT WE WOULD...

12 Q ALL RIGHT. SO THAT WOULDN'T BE AN ISSUE. BUT AS I SAID, IF
13 YOU DO TESTIFY, YOU WOULD BE SUBJECT TO CROSS EXAMINATION BY MR.
14 MOYER ABOUT ANYTHING THAT COULD DEAL WITH YOUR CREDIBILITY OR
15 ANYTHING CONNECTED TO THE CASE THAT COULD BE RELEVANT OR SHOW ANY
16 KIND OF BIAS OR REASON FOR YOU TO TESTIFY AS YOU DID. SO IF YOU
17 DON'T TESTIFY, OBVIOUSLY YOU WON'T BE SUBJECT TO THAT CROSS
18 EXAMINATION. AND SOME THINGS MAY COME OUT IN THE COURSE OF THE
19 CROSS EXAMINATION THAT OTHERWISE WOULDN'T HAVE COME OUT IF YOU
20 CHOSE TO REMAIN SILENT. WHETHER YOU CHOOSE TO TESTIFY IS A
21 PERSONAL RIGHT OF YOURS, AND IT'S A RIGHT THAT ONLY YOU CAN
22 EXERCISE, AND THE DECISION AS TO WHETHER YOU WANT TO TESTIFY OR
23 NOT IS YOURS ALONE AND YOU NEED TO MAKE THAT DECISION WITH THE
24 GOOD ADVICE AND COUNSEL OF YOUR LAWYER, MR. CREECH, AND AFTER
25 CONSIDERING IT AND THINKING THROUGH IT FULLY. I WILL TELL YOU

ZACHARY FOWLER - BY THE COURT

1 FURTHER THAT IF YOU DON'T PRODUCE EVIDENCE IN THE CASE OR ADMIT
2 EVIDENCE IN THIS CASE, MR. CREECH WILL BE ALLOWED TO HAVE THE
3 FINAL CLOSING ARGUMENT IN FRONT OF THE JURY. ON THE OTHER HAND,
4 IF YOU DO TESTIFY OR PRESENT EVIDENCE, THE STATE WILL GET THE
5 LAST CLOSING ARGUMENT, OR THE FINAL WORD, SO TO SPEAK, IN FRONT
6 OF THE JURY.

7 NOW, DO YOU UNDERSTAND EVERYTHING I HAVE GONE OVER WITH YOU,
8 SIR?

9 A YES, SIR.

10 Q DO YOU HAVE ANY QUESTIONS ABOUT YOUR RIGHT TO TESTIFY OR NOT
11 TESTIFY OR YOUR RIGHT TO REMAIN SILENT?

12 A NO, SIR. I UNDERSTAND.

13 Q AND HAVE YOU HAD ENOUGH TIME TO TALK TO MR. CREECH ABOUT
14 THOSE RIGHTS AND ABOUT THE CHOICE AS TO WHETHER YOU WISH TO
15 TESTIFY OR NOT TESTIFY?

16 A YES, SIR. I FEEL AS IF WE'VE TALKED ABOUT IT ENOUGH. I
17 UNDERSTAND WHAT I'M DOING, YES, SIR.

18 Q OKAY. DO YOU WISH TO TESTIFY OR NOT TESTIFY?

19 A YES, SIR. I PLAN ON TESTIFYING.

20 Q OKAY.

21 THE COURT: ANYTHING ELSE, MR. CREECH?

22 MR. CREECH: NOTHING.

23 THE COURT: OKAY. ALL RIGHT. THANK Y'ALL.
24 ANYTHING ELSE BEFORE WE BRING THE JURY IN?

25 MR. MOYER: ACTUALLY, ONE OTHER THING, YOUR HONOR. I WAS

ZACHARY FOWLER - BY THE COURT

1 -- I'VE BEEN TOLD THAT ONE OF THE WITNESSES THAT THE DEFENSE
2 INTENDS TO CALL IS SOMEBODY WHO IS GOING TO TALK ABOUT SOME PRIOR
3 DIFFICULTY THAT THIS PERSON MAY HAVE HAD WITH THE VICTIM, SUSAN
4 GALLOWAY IN A PERIOD OF TIME LONG PRECEDING THIS INCIDENT.

5 THE COURT: THAT MR. FOWLER HAD DIFFICULTY WITH HIM -- WITH
6 HER?

7 MR. MOYER: NO. DID I SAY MR. FOWLER? I MEANT THE VICTIM,
8 SUSAN GALLOWAY.

9 THE COURT: WHO HAD DIFFICULTY WITH HER?

10 MR. MOYER: A WITNESS THAT HE'S GOING TO CALL. IT'S WHAT
11 I'VE BEEN TOLD.

12 THE COURT: OH. OKAY. ALL RIGHT.

13 MR. MOYER: A WITNESS THAT MR. CREECH IS GOING TO CALL WILL
14 TESTIFY ABOUT A PRIOR DIFFICULTY THAT HE HAD WITH THE VICTIM. I
15 DON'T KNOW EXACTLY WHAT HE'S GOING TO TESTIFY TO BUT MAYBE THERE
16 ARE SOME VIOLENT TENDENCIES OR THAT THEY HAD SOME ALTERCATION OR
17 SOMETHING. I DON'T KNOW THE SPECIFICS. I CAN'T IMAGINE THE FACT
18 THAT THIS DEFENDANT AND SUSAN GALLOWAY DIDN'T KNOW EACH OTHER
19 BEFORE THIS DAY, I CAN'T IMAGINE HOW THAT WOULD PASS THE TEST IN
20 BROWN AS FAR HIM KNOWING ABOUT THE PREVIOUS VIOLENT ENCOUNTER AND
21 IT BEING IN CLOSE PROXIMITY IN TIME. SO, YOU KNOW, I WOULD JUST
22 ASK THE COURT THAT IF THE DEFENSE IS PLANNING TO CALL SUCH A
23 WITNESS THAT THEY BE REQUIRED TO PROFFER THE TESTIMONY OR AT
24 LEAST TELL THE COURT WHAT THE PERSON IS GOING TO SAY SO THE COURT
25 CAN MAKE A DETERMINATION BEFORE IT'S OUT IN FRONT OF THE JURY

ZACHARY FOWLER - BY THE COURT

1 BECAUSE I THINK IT WOULD BE HIGHLY PREJUDICIAL.

2 THE COURT: YES, SIR, MR. CREECH.

3 MR. CREECH: YOUR HONOR, WE DON'T -- WE CAN CERTAINLY
4 PROFFER THE TESTIMONY AT THE APPROPRIATE TIME IF THAT'S WHAT YOU
5 WOULD LIKE FOR US TO DO.

6 THE COURT: WHAT IS THE NATURE OF THE TESTIMONY GOING TO
7 BE?

8 MR. CREECH: WELL, ESSENTIALLY MS. GALLOWAY WAS CHARGED
9 WITH ASSAULT AND BATTERY, I THINK, BACK AROUND 1999, 2000. AND
10 IT WAS ESSENTIALLY AN UNPROVOKED ATTACK AGAINST SOMEONE, AND THIS
11 PERSON IS JUST GOING TO COME IN AND TELL US THAT SHE CAME IN AND
12 ATTACKED HIM AND ABOUT HIS KNOWLEDGE OF HER. SO WE THINK THAT IT
13 WOULD BE ADMISSIBLE AS TO THE CHARACTER OF THE VICTIM AND UNDER
14 404(a) AND ALSO UNDER 405 WE THINK IT RELATES TO THE DEFENSE OF
15 SELF-DEFENSE.

16 THE COURT: CHARACTER OR REPUTATION?

17 MR. CREECH: WE THINK THAT WE SHOULD -- WE THINK THAT IT'S
18 -- IT GOES TO THE VICTIM'S CHARACTER.

19 THE COURT: OKAY.

20 MR. CREECH: AND WE WOULD LIKE TO ALSO RELAY THE SPECIFIC
21 FACTS OF THIS CASE TO -- UNDER 405 BECAUSE IT RELATES TO THE
22 CHARACTER OF THE VICTIM. IT RELATES TO OUR DEFENSE.

23 THE COURT: OKAY. WELL, WE'LL PROFFER IT. I'LL LET YOU
24 HAVE THE OPPORTUNITY TO DO THAT AND THEN TALK ABOUT IT. YOU'RE
25 NOT PLANNING TO CALL THAT WITNESS FIRST, ARE YOU?

ZACHARY FOWLER - DIRECT BY MR. CREECH

1 MR. CREECH: NO, I'M NOT.

2 THE COURT: OKAY. ALL RIGHT. OKAY.

3 YES, MA'AM, BRING THE JURY ON IN.

4 (JURY ENTERS COURTROOM AT 9:15 A.M.)

5 THE COURT: YES, SIR, MR. MOYER.

6 MR. MOYER: YOUR HONOR, AT THIS TIME THE STATE RESTS.

7 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, THE STATE HAS
8 COMPLETED THEIR PRESENTATION OF EVIDENCE IN THE CASE AND
9 THEREFORE, AS I MENTIONED EARLIER, THE DEFENSE, MR. FOWLER, HAS
10 THE OPPORTUNITY BUT CERTAINLY NOT THE OBLIGATION TO PRESENT ANY
11 EVIDENCE HE WISHES TO. SO, YES, SIR, MR. CREECH.

12 MR. CREECH: THANK YOU, YOUR HONOR. I CALL ZACHARY FOWLER.

13 ZACHARY FOWLER, HAVING BEEN DULY
14 SWORN, TESTIFIED AS FOLLOWS:

15 MADAME CLERK: PLEASE STATE YOUR FULL NAME FOR THE RECORD.

16 WITNESS: ZACHARY MARQUIS FOWLER.

17 DIRECT EXAMINATION BY MR. CREECH:

18 Q ZACHARY, IF YOU COULD JUST PULL THE MICROPHONE DOWN JUST A
19 LITTLE BIT SO WE CAN ALL HEAR YOU.

20 A IS THAT BETTER?

21 Q THANK YOU. ZACHARY, ARE YOU NERVOUS HERE TODAY?

22 A YES, SIR.

23 Q LET ME ASK YOU A QUESTION. LET'S JUST START WITH MAYBE SOME

24 -- WHERE WERE YOU BORN?

25 A GREENVILLE, SOUTH CAROLINA.

ZACHARY FOWLER - DIRECT BY MR. CREECH

1 Q OKAY. WHERE DID YOU GROW UP?

2 A I GREW UP WITH MY AUNT JANICE IN PELZER, SOUTH CAROLINA.

3 Q SO THAT WAS DOWN IN LOWER GREENVILLE COUNTY; IS THAT

4 CORRECT?

5 A YES, SIR.

6 Q AND WHO RAISED YOU?

7 A JANICE BROWN.

8 Q SHE'S YOUR AUNT; IS THE RIGHT?

9 A YES, SIR.

10 Q OKAY. HOW FAR DID YOU GO IN SCHOOL?

11 A I GRADUATED FROM WOODMONT HIGH SCHOOL.

12 Q OKAY. WHAT YEAR DID YOU GRADUATE?

13 A 2004.

14 Q 2004?

15 A YES, SIR.

16 Q AND HOW OLD ARE YOU NOW?

17 A I'M 21 YEARS OF AGE.

18 Q ZACHARY, LET'S GO BACK TO JUNE THE 7TH OF 2006, ABOUT 14

19 MONTHS AGO. DO YOU REMEMBER THAT DAY?

20 A YES, SIR.

21 Q NOW, ON THAT DATE AROUND THAT TIME PERIOD WHERE WERE YOU

22 STAYING?

23 A I DIDN'T HAVE A PERMANENT RESIDENCE. I WAS JUST REALLY FROM

24 HOUSE TO HOUSE. I WAS STAYING WITH MY CO-DEFENDANT, NICKI

25 TISDALE, AT THE TIME.

ZACHARY FOWLER - DIRECT BY MR. CREECH

1 Q ALL RIGHT. AND WHAT WAS THE -- HOW LONG HAD YOU BEEN
2 STAYING WITH NICKI TISDALE?

3 A NOT LONG AT ALL. MAYBE TWO WEEKS.

4 Q ALL RIGHT. AND WHAT ADDRESS WERE Y'ALL LIVING AT?

5 A DRIVE.

6 Q DID YOU HAVE A KEY TO THAT TRAILER?

7 A NO, SIR.

8 Q OKAY. WHO ELSE WAS STAYING THERE?

9 A MY GIRLFRIEND, VALENCIA SULLIVAN, AT THE TIME.

10 Q OKAY. NOW, ON THAT DAY ABOUT WHAT TIME DID YOU WAKE UP?

11 A NINE O'CLOCK, AROUND.

12 Q AND WHO ELSE WAS THERE WITH YOU WHEN YOU WOKE UP?

13 A DIANA TISDALE AND VALENCIA SULLIVAN.

14 Q AND WHAT DID Y'ALL -- WHAT WERE Y'ALL GOING TO DO THAT DAY
15 WHEN YOU WOKE UP?

16 A WHEN WE ESSENTIALLY WOKE UP NICKI SAID THAT SHE HAD TO GO TO
17 WORK AND SHE WAS GOING TO LEAVE ME THE CAR TO RUN SOME ERRANDS,
18 BUT SHE NEEDED SOME GAS MONEY TO GIVE TO SOMEONE AT HER JOB THAT
19 WOULD BRING HER HOME. SO SHE NEEDED SOME MONEY AND SHE ASKED HOW
20 COULD WE, YOU KNOW, GET SOME MONEY. I TOLD HER I HAD A JACK THAT
21 SHE COULD PAWN.

22 Q AND SO YOU WERE GOING TO PAWN THAT JACK AND GIVE HER THE
23 MONEY FOR IT; IS THAT CORRECT?

24 A WELL, I WASN'T GOING TO PAWN THE JACK, NO, SIR. I WAS GOING
25 TO GIVE HER THE JACK TO PAWN.

ZACHARY FOWLER - DIRECT BY MR. CREECH

1 Q I SEE. OKAY. AND DID YOU GO TO A PAWN SHOP TO PAWN THAT
2 JACK?

3 A YES, SIR.

4 Q ALL RIGHT. WHICH PAWN SHOP DID YOU GO TO?

5 A WHEN WE FIRST LEFT WE WENT CLOSE TO CHERRYDALE. I DON'T
6 KNOW THE NAME OF THE PAWN SHOP, BUT WE WENT TO ONE NEAR
7 CHERRYDALE FIRST, AND WE LEFT -- NO, NO. NO, SIR. I LEFT -- WE
8 WENT TO RED'S PAWN SHOP FIRST. I'M SORRY. THEN WE WENT TO THE
9 ONE AT CHERRYDALE BECAUSE THE ONE AT RED'S THEY SAID THAT THEY
10 DIDN'T WANT TO GIVE US THE AMOUNT OF MONEY THAT SHE WAS LOOKING
11 FOR. SO WE WENT TO THE ONE NEAR CHERRYDALE, AND THE ONE AT
12 CHERRYDALE SAID THEY DIDN'T WANT IT. SO WE WENT BACK TO RED'S
13 BECAUSE WE KNEW RED'S WAS THE ONE THAT WOULD TAKE IT.

14 Q OKAY. NOW, DID YOU GO ANYWHERE ELSE THAT DAY, THAT MORNING?

15 A YES, SIR. I WENT TO MY MOTHER'S HOUSE. IT WAS HER
16 BIRTHDAY.

17 Q OKAY. AND HOW LONG DID YOU SPEND WITH YOUR MOTHER ON HER
18 BIRTHDAY?

19 A NOT LONG AT ALL. I JUST WENT TO TELL HER HAPPY BIRTHDAY.

20 Q ALL RIGHT. AND WAS THE -- WHO ALL -- WHO WENT WITH YOU?

21 A VALENCIA AND DIANA WAS WITH ME.

22 Q OKAY. NOW, WHAT CAR WERE Y'ALL DRIVING?

23 A THE BLUE BUICK CENTURY.

24 Q ALL RIGHT. AND WHO USED THAT CAR? WHO OWNED THAT CAR, DO
25 YOU KNOW?

ZACHARY FOWLER - DIRECT BY MR. CREECH

1 A I DON'T KNOW WHO OWNED THE CAR. I JUST KNOW THAT IT WAS IN
2 NICKI'S POSSESSION. BUT IT WASN'T HERS.

3 Q OKAY. AND SO NICKI DROVE THAT CAR PRIMARILY?

4 A YES, SIR.

5 Q AND WERE YOU DRIVING THAT DAY?

6 A YES, SIR, I WAS.

7 Q OKAY. NOW, WHEN YOU WENT BACK TO RED'S THE SECOND TIME,
8 ABOUT WHAT TIME DID YOU GO TO RED'S, DO YOU REMEMBER?

9 A THE SECOND TIME IT WAS IN THE AFTERNOON. I DON'T KNOW
10 EXACTLY WHAT TIME IT WAS, BUT IT WAS MAYBE 12:30. SOMEWHERE
11 AROUND THAT AREA ANYWAY.

12 Q OKAY. AND YOU WENT IN THE PAWN SHOP; IS THAT CORRECT?

13 A YES, SIR, I DID.

14 Q OKAY. AND WHO ELSE WENT IN WITH YOU?

15 A DIANA TISDALE.

16 Q AND WHAT DID YOU TAKE OUT OF THE CAR WHEN YOU WENT INTO THE
17 PAWN SHOP?

18 A I CARRIED THE JACK IN FOR HER. HYDRAULIC JACK.

19 Q ALL RIGHT. NOW, WERE YOU -- WHEN YOU WERE IN THE PAWN SHOP
20 DID YOU SEE A WOMAN IN THE PAWN SHOP?

21 A YES. WHILE I WAS PLACING THE JACK ON THE TABLE FOR THE GUY
22 THAT CAME IN THE OTHER DAY I SEEN THIS LADY. SHE WAS LOOKING AT
23 SOME NECKLACES. AND SHE LOOKED AT ME AND SHE ASKED ME DID I LIKE
24 THE NECKLACE. I SAID IT WAS NICE. SHE SAID, WELL, DO YOU HAVE
25 ANY CRACK? THE LADY THAT I MET.

ZACHARY FOWLER - DIRECT BY MR. CREECH

1 Q AND YOU WERE STANDING THERE AND DID SHE COME WALKING UP TO
2 YOU?

3 A YES, SIR.

4 Q AND SHE ASKED YOU IF YOU HAD ANY CRACK?

5 A YEAH. SHE ASKED ME SLANG TERMINOLOGY. SHE SAID, DO YOU
6 HAVE ANY HARD?

7 Q HARD, H-A-R-D?

8 A YES, SIR.

9 Q OKAY. AND WHAT WAS YOUR REACTION AND WHAT WERE YOU THINKING
10 WHEN SHE CAME UP TO YOU AND ASKED YOU THAT?

11 A I THOUGHT IT WAS STRANGE FOR HER TO ASK ME OUT OF THE BLUE
12 WHEN SHE DIDN'T KNOW ME AT ALL. AND THEN FOR HER TO ASK ME IN
13 FRONT OF SOMEONE ELSE AND IT'S ILLEGAL, I THOUGHT IT WAS VERY
14 STRANGE.

15 Q OKAY. WHAT DID YOU DO AFTER SHE SAID THAT? WHAT DID YOU
16 SAY BACK TO HER?

17 A WELL, I TOLD HER TO JUST CALM DOWN AND WAIT TILL WE LEAVE
18 OUT OF HERE. HE MAY BE LISTENING TO US.

19 Q OKAY. WHERE DID YOU GO AT THAT POINT?

20 A WE STEPPED RIGHT OUTSIDE OF THE DOOR AT RED'S PAWN SHOP.

21 Q ALL RIGHT. NOW, DID SHE LEAVE OUT OF THE PAWN SHOP BEFORE
22 YOU OR AFTER YOU, DO YOU REMEMBER?

23 A SHE WALKED OUT IN FRONT OF ME.

24 Q OKAY. AND DID YOU TWO THEN HAVE ANOTHER CONVERSATION OUT IN
25 THE PARKING LOT?

ZACHARY FOWLER - DIRECT BY MR. CREECH

- 1 A YES, SIR.
- 2 Q WHAT DID SHE TELL YOU OUT IN THE PARKING LOT?
- 3 A WHEN WE GOT OUTSIDE THE SHOP SHE ASKED ME WHAT IT IS THAT,
- 4 YOU KNOW, WHAT DID WE WANT TO DO, WHAT IS IT THAT I WANTED TO DO.
- 5 AND I TOLD HER, WELL, JUST FOLLOW ME DOWN THE ROAD.
- 6 Q OKAY. AND WHAT WERE YOU GOING TO DO?
- 7 A I WAS GOING TO SELL HER SOME CRACK.
- 8 Q OKAY. NOW, DID YOU HAVE ANY CRACK ON YOU THAT DAY?
- 9 A NO, SIR, I HAD FLEX.
- 10 Q AND WHAT'S FLEX?
- 11 A FLEX IS A TYPE OF CRACK. IT'S ARTIFICIAL CRACK. IT'S NOT
- 12 100 PERCENT CRACK.
- 13 Q OKAY. NOW, DID YOU SEE THE CAR OR DID YOU SEE HER GET INTO
- 14 A CAR AND GET OUT OF A CAR THAT DAY?
- 15 A YES, SIR, I DID.
- 16 Q AND DO YOU REMEMBER WHAT THAT CAR LOOKED LIKE?
- 17 A YES. IT WAS A SILVERISH, WHITISH COLORED STATION WAGON.
- 18 Q OKAY. WERE YOU ABLE TO SEE WHO ELSE WAS IN THAT CAR?
- 19 A YES, IT WAS TWO OTHER GENTLEMEN.
- 20 Q AND WHEN YOU WERE STANDING OUT THERE IN THE PARKING LOT
- 21 TALKING TO HER COULD YOU SEE INSIDE THE CAR?
- 22 A YES, SIR, I COULD.
- 23 Q AND DID YOU SEE A MAN LOOKING BACK AT YOU AND SUSAN
- 24 GALLOWAY?
- 25 A YES, SIR, THE DRIVER WAS LOOKING AT ME.

ZACHARY FOWLER - DIRECT BY MR. CREECH

1 Q AND HOW WAS HE LOOKING AT YOU?

2 A HE LOOKED AT ME AS IF HE WAS MAD OR UPSET. I TOOK IT AS IF,
3 YOU KNOW, IT WAS HIS WIFE OR SOMETHING AND I WAS TALKING TO HER
4 AND HE WAS JUST, YOU KNOW, WONDERING WHY I WAS TALKING TO HER.

5 Q AND HE APPEARED TO BE MAD OR UPSET?

6 A YEAH, JEALOUSY TYPE LOOK. ENVIOUS TYPE LOOK.

7 Q OKAY. AND HAVE YOU SEEN THAT MAN IN THIS COURTROOM DURING
8 THE WEEK THAT WE'VE BEEN IN THIS CASE?

9 A YES, SIR, I HAVE.

10 Q OKAY. AND DID YOU LEARN SUBSEQUENTLY WHO HE WAS?

11 A YES, SIR, AFTER THE CASE.

12 Q AND WAS THAT MAN MR. MIKE POWELL?

13 A YES, SIR, THAT'S WHO IT IS.

14 Q OKAY. NOW, YOU LEFT THE PAWN SHOP; IS THAT CORRECT?

15 A YES, SIR.

16 Q WERE YOU DRIVING?

17 A YES, I WAS.

18 Q ALL RIGHT. AND WHO WAS SEATED IN THE FRONT PASSENGER SEAT
19 BESIDE YOU?

20 A MY GIRLFRIEND AT THE TIME, VALENCIA SULLIVAN.

21 Q AND WHO WAS IN THE BACK SEAT?

22 A DIANA TISDALE.

23 Q OKAY. AND WHERE DID YOU GO?

24 A WE LEFT AND WENT DOWN LIKE WE'VE ALL HEARD A FEW BLOCKS,
25 RIGHT BY TUCKER'S SODA SHOP, RIGHT OFF PENDLETON STREET.

ZACHARY FOWLER - DIRECT BY MR. CREECH

1 Q OKAY. AND THEY FOLLOWED YOU; IS THAT CORRECT?

2 A YES, SIR.

3 Q OKAY. NOW WHEN YOU PULLED THE CAR UP TO THIS AREA ON
4 WOODLAWN YOU STOPPED THE CAR; IS THAT RIGHT?

5 A YES, SIR, I DID.

6 Q OKAY. WHERE DID THE OTHER CAR PARK?

7 A IT PULLED UP NOT ABSOLUTELY BESIDE ME BUT SLIGHTLY BEHIND ME
8 TO MY LEFT SIDE.

9 Q NOW, WHEN IT CAME UP AND PULLED UP BESIDE YOU WHAT DID YOU
10 DO AT THAT POINT?

11 A I ESSENTIALLY REACHED IN THE BACK SEAT AND GOT MY RED BAG
12 THAT HAD MY FLEX AND MY PISTOL IN IT, AND I WALKED BEHIND THE CAR
13 AND WENT TO THEIR PASSENGER SIDE OF THE CAR RIGHT IN THE MIDDLE.

14 Q OKAY. AND WERE THE WINDOWS UP OR DOWN IN THAT ESCORT; DO
15 YOU REMEMBER?

16 A YES, SIR. ALL OF THE WINDOWS WERE DOWN.

17 Q DID YOU START A CONVERSATION WITH THE WOMAN IN THE CAR?

18 A YES, SIR. WHEN I WALKED UP TO THE CAR I WAS STANDING, YOU
19 KNOW, PRETTY MUCH WHERE I COULD SEE ALL THE PEOPLE AND TALK TO
20 ALL OF THE PEOPLE, AND I ASKED HER, I SAID, "WHAT IS IT THAT YOU
21 WANT?" AND SHE SAID, "LET ME GET \$40 WORTH OF HARD." AND AS
22 SOON AS I -- SHE SAID SHE WANTED \$40 WORTH OF HARD TO THE GUY IN
23 THE BACK SEAT, RONALD HARRIS -- I DIDN'T KNOW HIM AT THE TIME
24 THOUGH -- HE SAID, "YEAH, LET ME GET \$400 WORTH OF CRACK."

25 Q ALL RIGHT. AND HOW DID YOU TAKE IT WHEN YOU HEARD \$40 FROM

ZACHARY FOWLER - DIRECT BY MR. CREECH

1 HER AND \$400 FROM HIM?

2 A I REALLY DIDN'T UNDERSTAND WHY OR HOW BECAUSE I DIDN'T KNOW
3 THESE PEOPLE FOR THEM TO WANT TO BUY DRUGS FROM ME IN SUCH A
4 LARGE QUANTITY BY THEM BEING STRANGERS. SO I REALLY GOT KIND OF
5 NERVOUS, KIND OF EDGY, BECAUSE I DIDN'T KNOW IF IT WAS THE POLICE
6 OR ANYTHING.

7 Q OKAY. AND WHAT DID SUSAN GALLOWAY DO AT THAT POINT, IF YOU
8 REMEMBER?

9 A WELL, AT THAT POINT IN TIME SHE STARTED REACHING IN HER
10 POCKETBOOK, HER PURSE. IT WAS ON THE FLOOR. SO SHE REACHED IN
11 HER PURSE AND CAME OUT AND STARTED TO HAND ME THE MONEY WHILE I
12 WAS REACHING IN MY BAG TO GET OUT THE CRACK.

13 Q OKAY. SO SHE REACHED UP AND GAVE YOU THE MONEY. COULD YOU
14 SEE THAT SHE HAD MONEY IN HER HAND?

15 A YES, SIR. WHEN SHE LEFT HER PURSE AND WAS COMING TOWARDS
16 ME, YES, SIR, I COULD SEE THE MONEY.

17 Q OKAY. AND THEN WERE YOU ABLE TO THEN PUT YOUR HAND ON THE
18 MONEY?

19 A YES, SIR. WHILE I WAS REACHING IN THE BAG TO GET THE CRACKS
20 FOR HER, I WAS ESSENTIALLY GRABBING THE MONEY WITH MY LEFT HAND.

21 Q OKAY. AND THEN YOU WERE GOING TO GIVE HER THE CRACK AND
22 COMPLETE THE TRANSACTION; IS THAT RIGHT?

23 A YES, SIR.

24 Q OKAY. NOW, AS YOU MADE PHYSICAL CONTACT WITH THAT MONEY
25 WHAT DID SUSAN GALLOWAY DO AT THAT POINT?

ZACHARY FOWLER - DIRECT BY MR. CREECH

1 A WELL, AT THAT POINT SHE SNATCHED HER HAND AWAY FROM ME AND
2 PULLED IT AWAY DOWN TOWARDS HER SIDE.

3 Q AND DID SHE PULL IT DOWN TOWARDS HER POCKETBOOK; IS THAT
4 CORRECT?

5 A YES, SIR.

6 Q HOW CLOSE WAS HER POCKETBOOK FROM WHERE SHE PULLED HER HAND
7 DOWN?

8 A IT WASN'T FAR AT ALL BECAUSE IT WAS A VERY SMALL CAR. A
9 VERY SMALL CAR.

10 Q AND WHEN SHE PULLED HER HAND DOWN IN THE DIRECTION OF THE
11 POCKETBOOK WHAT DID YOU THINK SHE WAS GOING TO DO?

12 A I THOUGHT THAT SHE WAS GOING TO REACH AND GET A GUN OR GET A
13 WEAPON OR SOMETHING.

14 Q OUT OF HER POCKETBOOK?

15 A YES, SIR.

16 Q AND DID YOU TAKE -- THAT ACT OF PULLING IT AWAY, DID YOU
17 PERCEIVE THAT AS A THREAT COMING FROM HER?

18 A YES, SIR.

19 Q AND DID THIS HAPPEN SUDDENLY?

20 A YES, ALL OF IT HAPPENED SUDDENLY.

21 Q AND SHE REACHED AND JERKED THE MONEY AWAY TOWARDS THE
22 POCKETBOOK; IS THAT CORRECT?

23 A YES, SIR.

24 Q NOW, YOU'RE STANDING THERE. AT THAT POINT YOU BELIEVED SHE
25 WAS GOING TO PULL A GUN OUT THE POCKETBOOK; IS THAT CORRECT?

ZACHARY FOWLER - DIRECT BY MR. CREECH

1 A YES, SIR, I WAS IN -- I FELT LIKE MY LIFE WAS IN DANGER
2 BECAUSE, LIKE I SAID, I DIDN'T UNDERSTAND WHY THESE PEOPLE WERE
3 ASKING ME FOR THAT AMOUNT OF CRACK COCAINE WHEN I DIDN'T KNOW
4 THEM.

5 Q OKAY. AND SHE ALSO REACHED TOWARDS HER POCKETBOOK; IS THAT
6 CORRECT?

7 A YES, SIR.

8 Q WHEN YOU WERE STANDING OUTSIDE THE CAR COULD YOU SEE INTO
9 THE BACK SEAT AS WELL?

10 A YES, SIR, FROM WHERE I WAS STANDING.

11 Q OKAY. WHAT WAS GOING ON IN THE BACK SEAT WITH THE PASSENGER
12 BACK THERE, MR. RONALD HARRIS?

13 A WHILE I WAS GETTING THE MONEY FROM HER RONALD HARRIS HE HAD
14 HIS MONEY OUT ON HIS LAP. BUT AS SOON AS SHE WAS PULLING AWAY
15 WITH THE MONEY HE STARTED REACHING HIS HAND IN HIS POCKET VERY
16 SUDDENLY.

17 Q WHICH HAND DID HE PUT IN HIS POCKET?

18 A HIS LEFT HAND.

19 Q OKAY. AND HE DID THAT SUDDENLY AS WELL; IS THAT CORRECT?

20 A YES, SIR.

21 Q YOU SAW HIS MONEY ON HIS LAP; IS THAT RIGHT?

22 A YES, SIR, HIS MONEY WAS OUT.

23 Q WHAT DID YOU NOTICE ABOUT HIS LEFT POCKET?

24 A ON HIS LEFT POCKET WAS AN IMPRINT, A BULGE ON HIS LEFT
25 POCKET.

ZACHARY FOWLER - DIRECT BY MR. CREECH

1 Q AND WHAT DID YOU THINK HE WAS REACHING FOR WHEN HE PUT HIS
2 HAND IN HIS POCKET?

3 A I THOUGHT HE WAS GETTING A GUN.

4 Q NOW, DID HE ATTEMPT TO DRAW HIS HAND OUT OF THE POCKET?

5 A YES, SIR. WHEN HE STUCK HIS HAND IN HIS POCKET HE WAS
6 ATTEMPTING TO PULL HIS HAND BACK OUT.

7 Q OKAY. NOW, DO YOU REMEMBER WHAT THE DRIVER WAS DOING OVER
8 IN THE DRIVER'S SEAT?

9 A THE DRIVER WAS LOOKING DOWN.

10 Q DID THE DRIVER MAKE EYE CONTACT WITH YOU AT THAT POINT?

11 A NO, SIR.

12 Q DO YOU KNOW WHERE HIS HANDS WERE?

13 A ON THE SIDE. DOWN BESIDE ON HIS SIDE.

14 Q WERE YOU ABLE TO SEE HIS LEFT HAND?

15 A NO, SIR.

16 Q WHEN YOU SAW ALL OF THIS WHAT DID YOU THEN DO?

17 A ONCE HE STARTED REACHING IN HIS POCKET WITH HIS LEFT HAND
18 AND AT THE SAME TIME SHE IS PULLING THE MONEY AWAY FROM ME, I
19 GRABBED MY PISTOL OUT OF MY RED BAG THAT WAS ON MY SHOULDER, AND
20 I PULLED OUT MY PISTOL AND I REACTED. LIKE I SAID, I FREAKED OUT
21 AND I SHOT AT ALL THREE OF THE PEOPLE.

22 Q AND DID YOU PERCEIVE A THREAT WAS COMING FROM INSIDE THAT
23 CAR?

24 A YES, SIR.

25 Q AND HOW MANY TIMES DID YOU SHOOT?

ZACHARY FOWLER - DIRECT BY MR. CREECH

- 1 A I SHOT ONE BULLET AT EACH PERSON.
- 2 Q AND DID YOU SHOOT INTO THE CAR WHEN IT HAPPENED?
- 3 A YES, SIR.
- 4 Q AND WHY DID YOU SHOOT?
- 5 A I FELT THAT MY LIFE WAS IN DANGER. I FELT THAT THEY WERE
- 6 GOING TO HARM ME, THAT THEY WERE GOING TO ROB ME.
- 7 Q NOW, YOU WERE STANDING OUT IN AN OPEN STREET; IS THAT RIGHT?
- 8 A YES, SIR.
- 9 Q AND YOU WERE BETWEEN TWO CARS; IS THAT CORRECT?
- 10 A YES, SIR.
- 11 Q WAS YOUR DRIVER'S SIDE DOOR, HAD YOU OPENED THAT?
- 12 A NO, SIR.
- 13 Q WHAT DO YOU THINK WOULD HAVE HAPPENED IF YOU HAD TURNED
- 14 AROUND AND TRIED TO RUN?
- 15 A I FELT LIKE I WOULD HAVE BEEN SHOT IN THE BACK.
- 16 Q WHAT WOULD HAVE HAPPENED IF YOU HAD KNELT DOWN, DO YOU KNOW?
- 17 A I STILL WOULD HAVE BEEN SHOT. THERE WAS NO WAY FOR ME TO
- 18 GET AWAY FROM THE CAR.
- 19 Q DID YOU FEEL THAT YOU WERE IN IMMINENT DANGER OF FEAR OF
- 20 BODILY HARM?
- 21 A YES, SIR.
- 22 Q IS THAT WHY YOU SHOT?
- 23 A YES, SIR.
- 24 Q NOW, AFTER YOU SHOT WHAT DID YOU DO?
- 25 A WELL, AS SOON AS I SHOT, I RAN AND JUMPED IN THE CAR AND

ZACHARY FOWLER - DIRECT BY MR. CREECH

1 VALENCIA WAS IN THE DRIVER'S SEAT, SO SHE STARTED DRIVING OFF.

2 AND ONCE WE DROVE OFF A LITTLE BIT AND TURNED ONTO IOLA STREET I

3 SLID OVER -- WELL SHE SLID OVER THE TOP OF ME AND I CONTINUED TO

4 DRIVE ON.

5 Q OKAY. AND WHERE DID YOU GO AT THAT POINT?

6 A I WENT TO THE HOUSE.

7 Q ALL RIGHT. AND WHAT DID YOU DO ONCE YOU GOT BACK TO THE

8 TRAILER AT APPALOOSA?

9 A AT FIRST I WAS REAL SHAKY, REAL NERVOUS. I HAD NEVER
10 EXPERIENCED ANYTHING LIKE THAT, SO I SMOKED A CIGARETTE, JUST SAT
11 BACK FOR A SECOND, AND THEN I LEFT THE HOUSE AGAIN.

12 Q OKAY. WHAT DID Y'ALL GO DO?

13 A WE WENT TO PETE'S AND GOT A BITE TO EAT.

14 Q OKAY. THEN AFTER YOU ATE AT PETE'S, WHAT DID YOU DO AFTER
15 THAT?

16 A WELL, NICKI WAS SCHEDULED TO BE AT WORK, SO WE TOOK HER BACK
17 TO THE GAS STATION ON PENDLETON AND ACADEMY, I BELIEVE IT IS, AND
18 SHE WENT TO WORK.

19 Q OKAY. NOW, LATER DID THE POLICE ARRIVE AT THE HOUSE?

20 A YES, SIR.

21 Q OKAY. DID YOU TALK WITH THE POLICE?

22 A YES, SIR.

23 Q OKAY. DID YOU SHOW THEM WHERE THE GUN WAS?

24 A YES, SIR, I DID.

25 Q NOW, DID YOU BELIEVE THAT THE PEOPLE IN THE CAR WERE ACTING

ZACHARY FOWLER - DIRECT BY MR. CREECH

1 TOGETHER TO PLAN TO ROB YOU; WAS THAT YOUR PERCEPTION?

2 A YES, SIR.

3 Q AND THAT WAS BASED ON EVERYTHING THAT YOU SAW IN THE CAR; IS
4 THAT CORRECT?

5 A YES, SIR.

6 Q WHEN SHE PULLED THAT MONEY BACK DID YOU -- WAS IT SUDDEN?

7 A YES, SIR. A SPLIT SECOND.

8 Q AND WHAT DID YOU THINK SHE WAS TRYING TO DO?

9 A I THOUGHT SHE WAS TRYING TO BE THE DIVERSION FOR THE GUY IN
10 THE BACK SEAT OR EITHER THE GUY IN THE FRONT SEAT THAT WAS
11 LOOKING DOWN.

12 Q DID YOU BELIEVE SHE WAS GOING TO REACH IN HER PURSE AS WELL?

13 A YES, SIR, WHEN SHE TOOK THE MONEY AWAY.

14 Q LOOKING AT THE SITUATION HOW LONG WOULD IT HAVE TAKEN HER TO
15 REACH DOWN IN HER PURSE AND PULL OUT A WEAPON?

16 A NOT LONG AT ALL.

17 Q A SECOND?

18 A IT ONLY TAKES A SECOND. TWO.

19 Q AND YOU FELT THREATENED AT THAT POINT; IS THAT CORRECT?

20 A VERY THREATENED. YES, SIR.

21 Q WHEN YOU WERE OUT THERE ON THE STREET DID YOU CONSIDER THIS
22 A DANGEROUS SITUATION?

23 A YES, SIR.

24 Q YOU DIDN'T KNOW THESE PEOPLE, CORRECT?

25 A NO, SIR, I DIDN'T.

ZACHARY FOWLER - DIRECT BY MR. CREECH

1 Q YOU RECEIVED CONFLICTING RESPONSES FROM THE PEOPLE IN THE
2 CAR; IS THAT RIGHT?

3 MR. MOYER: I HAVE TO OBJECT TO LEADING.

4 THE COURT: ALL RIGHT. DON'T LEAD, MR. CREECH.

5 MR. CREECH: OKAY.

6 Q WHO DID THAT RED BAG BELONG TO?

7 A THE RED BAG BELONGED TO ME.

8 Q OKAY. DO YOU REMEMBER TELLING DETECTIVE CONROY ABOUT THE
9 RED BAG?

10 A YES, SIR.

11 Q DID YOU TELL DETECTIVE CONROY ABOUT THE BULGE THAT YOU SAW
12 IN THE MAN'S POCKET?

13 A YES, SIR.

14 Q ARE YOU SURE YOU TOLD HIM THAT?

15 A YES, SIR, I DID.

16 Q WHEN YOU WERE BEING INTERROGATED BY THE POLICE OFFICERS WERE
17 YOU NERVOUS?

18 A VERY NERVOUS.

19 Q DID YOU SEE DETECTIVE CONROY KEEPING NOTES?

20 A NO, SIR, NOT WHEN WE WERE SPEAKING.

21 Q OKAY. WHEN YOU WENT DOWN TO THE POLICE STATION?

22 A WHEN WE WENT TO THE POLICE STATION HE JUST WROTE MY
23 STATEMENT.

24 Q OKAY. AND WHAT DID HE TELL YOU WHY YOU NEEDED TO SIGN THAT
25 STATEMENT?

ZACHARY FOWLER - DIRECT BY MR. CREECH

1 A THAT WAS THE ONLY WAY THAT I COULD GET HELP OR HELP MYSELF
2 TO KEEP MYSELF OUT OF PRISON FOR LIFE OR VALENCIA OR NICKI.

3 Q AND HE TOLD YOU TO SIGN THAT STATEMENT; IS THAT CORRECT?

4 A YES, SIR.

5 Q AND IS THAT WHAT YOU DID?

6 A YES, SIR, I DID.

7 Q AND WAS THAT -- DID YOU SIGN THAT STATEMENT BECAUSE OF WHAT
8 DETECTIVE CONROY TOLD YOU?

9 A YES, SIR. AS WELL AS FROM WHAT DETECTIVE -- SERGEANT MILLER
10 WHEN WE WERE IN THE CAR.

11 Q WHAT DID SERGEANT MILLER TELL YOU WHEN YOU WERE IN THE CAR?

12 A SERGEANT MILLER TOLD ME THE ONLY WAY I COULD HELP MYSELF AND
13 HELP VALENCIA OR HELP DIANA FROM GETTING A LIFE SENTENCE WAS TO
14 WRITE A STATEMENT AND SHOW THE GUN, GIVE THEM WHAT THEY NEED. HE
15 SAID THAT HE KNEW MY FAMILY, THAT I LOOKED LIKE SOMEONE FAMILIAR
16 TO HIM AND HE WANTED TO HELP ME.

17 Q OKAY. HOW LONG HAD YOU BEEN IN THE CAR AT THAT POINT WHEN
18 SERGEANT MILLER COMES UP AND TALKS TO YOU?

19 A MAYBE 10 MINUTES, 15 MINUTES.

20 Q WERE YOU IN HANDCUFFS?

21 A YES, SIR.

22 Q AND THEY HAD TAKEN YOU FROM THE INSIDE OF THE RESIDENCE AND
23 PUT YOU IN THE CAR; IS THAT CORRECT?

24 A WELL, THEY TOOK ME FROM RIGHT IN FRONT OF THE PORCH TO THE
25 CAR. I WAS OUTSIDE OF THE HOUSE FOR A TIME. MAYBE FIVE MINUTES

ZACHARY FOWLER - BY MR. MOYER

1. BEFORE THAT.

2 Q ON THAT DAY AT THAT TIME IN THAT HOUR WHEN YOU PULLED THE
3 TRIGGER, IMMEDIATELY PRIOR TO DOING THAT DID YOU BELIEVE THAT YOU
4 WERE ABOUT TO BE SERIOUSLY INJURED OR HARMED?

5 A YES, SIR, I DID.

6 Q DID YOU BELIEVE YOU WERE ABOUT TO BE KILLED?

7 A YES, SIR, I DID.

8 Q DID YOU BELIEVE YOU'D BE SHOT IF YOU TRIED TO RUN?

9 A YES, SIR---

10 MR. MOYER: YOUR HONOR, I HAVE TO---

11 A ---I DID.

12 MR. MOYER: ---LEADING, ALL OF THESE QUESTIONS.

13 MR. CREECH: WELL, I'M JUST ASKING DID.

14 THE COURT: OKAY. I OVERRULE IT. GO AHEAD.

15 Q DID YOU FEEL THREATENED BY HER MOVEMENT TOWARDS THE PURSE?

16 A YES.

17 Q ZACHARY, LET ME ASK YOU, DID YOU INTEND TO KILL THE WOMAN IN
18 THIS CASE?

19 A NO. NO, SIR, I DID NOT.

20 MR. CREECH: THANK YOU. I HAVE NO FURTHER QUESTIONS.

21 THE COURT: CROSS EXAMINATION, MR. MOYER.

22 CROSS EXAMINATION BY MR. MOYER:

23 Q WHAT WERE YOU INTENDING TO DO WHEN YOU SHOT AT HER IF YOU
24 WEREN'T INTENDING TO KILL HER?

25 A I WAS INTENDING TO PROTECT MYSELF, SIR.

ZACHARY FOWLER - BY MR. MOYER

1 Q PROTECT YOURSELF HOW?

2 A HOW WAS I GOING TO PROTECT MYSELF?

3 Q YEAH.

4 A WELL, IF THEY WERE TO PULL A GUN OUT ON ME, SIR.

5 Q ALL RIGHT. YOU SAID YOU WEREN'T INTENDING TO KILL HER.

6 WHAT WERE YOU INTENDING TO DO WHEN YOU WERE WITHIN ABOUT --

7 WITHIN AT LEAST A FOOT OF HER BODY AND YOU SHOT INTO HER BODY?

8 IF YOU WEREN'T INTENDING TO KILL HER, WHAT WERE YOU INTENDING TO
9 DO?

10 A I WAS INTENDING TO DEFEND MYSELF, SIR.

11 Q I HEARD THAT PART OF IT BUT HOW IS THAT DEFENDING HER -- I
12 MEAN, HOW WAS THAT DEFENDING YOU?

13 A BECAUSE I FELT THAT I WAS IN DANGER OF MY LIFE. I FELT AS
14 IF THEY WERE COMING TO HURT ME.

15 Q OKAY. AND SO YOU WANTED TO KILL HER SO THAT SHE WOULDN'T
16 HURT YOU?

17 A NO, SIR.

18 Q DID YOU WANT TO WOUND HER SO SHE WOULDN'T HURT YOU?

19 A YES, SIR, I WAS JUST TRYING TO DEFEND MYSELF.

20 Q WERE YOU TRYING TO SCARE HER?

21 A NO, SIR, I WAS NOT TRYING TO SCARE ANYONE.

22 Q WELL, WHY DID YOU SHOOT AT HER THEN?

23 A I WAS TRYING TO DEFEND MYSELF AT THE TIME.

24 Q WELL, WHAT DID YOU THINK WOULD HAPPEN WHEN YOU POINTED THE
25 GUN AT HER BODY AND PULLED THE TRIGGER? WHAT DID YOU THINK WAS

ZACHARY FOWLER - BY MR. MOYER

1 GOING TO HAPPEN TO HER OTHER THAN KILL HER?

2 A AT THE TIME, SIR, I JUST THOUGHT THAT I WOULD BE DEFENDING
3 MYSELF.

4 Q ALL RIGHT. LET ME BACK UP A LITTLE BIT AND ASK YOU -- YOU
5 TOLD US NOW AT THIS TIME YOU WERE LIVING AT DRIVE;
6 IS THAT RIGHT?

7 A YES, SIR, I WAS STAYING THERE.

8 Q AND THAT'S THE RESIDENCE THAT'S IN THESE PHOTOGRAPHS? YOU
9 SAW THESE PHOTOGRAPHS OF THE TRAILER THAT WERE SHOWN UP THERE?

10 A YES, SIR, THAT'S RIGHT.

11 Q THAT'S WHERE YOU WERE LIVING?

12 A YES, SIR.

13 Q AND YOU LIVED THERE FOR, WHAT, ABOUT A WEEK OR SO?

14 A YES, SIR.

15 Q AND YOU LIVED THERE WITH NICKI TISDALE? SHE WAS THE OWNER
16 OF THE TRAILER, RIGHT?

17 A TO MY KNOWLEDGE, YES, SIR.

18 Q AND YOU DIDN'T HAVE -- AND YOU KNEW HER ACTUALLY FROM
19 SCHOOL, RIGHT?

20 A NO, SIR.

21 Q HOW LONG DID YOU KNOW HER?

22 A I PROBABLY KNOWN HER MAYBE THREE MONTHS, MAYBE.

23 Q AND VALENCIA KNEW HER FROM SCHOOL; IS THAT RIGHT?

24 A YES. THEY SOMEHOW KNOW EACH OTHER. YES, SIR.

25 Q OKAY. SO THAT'S HOW YOU WERE ABLE TO GO STAY WITH THEM.

ZACHARY FOWLER - BY MR. MOYER

1 AND YOU HAD -- YOU DIDN'T HAVE ANYWHERE TO STAY AT THE TIME?

2 A NO, SIR. NICKI, LIKE I SAID, I KNEW FOR ABOUT THREE MONTHS.

3 I MET HER THROUGH SOME OTHER FRIENDS AND SHE SAID THAT I COULD

4 COME AND STAY WITH HER. AND AT THE TIME, VALENCIA WAS STAYING

5 WITH ME.

6 Q OKAY. AND YOU WERE KIND OF HAVING A ROUGH TIME OF IT

7 FINANCIALLY AT THE TIME, WEREN'T YOU?

8 A I CAN'T SAY THAT I WAS.

9 Q YOU LOST HER JOB?

10 A YES, SIR, I DID LOSE MY JOB.

11 Q SO YOU DIDN'T HAVE -- SO---

12 A I DID NOT HAVE STABLE INCOME, NO, SIR.

13 Q OKAY. AND WAS IT JUST THROUGH WHAT YOU WERE GOING TO DO

14 WITH SUSAN GALLOWAY; IS THAT YOUR ONLY INCOME?

15 A NO, SIR. I WAS DOING SOME---

16 MR. CREECH: OBJECTION, YOUR HONOR.

17 THE COURT: OVERRULED. GO AHEAD.

18 A I WAS DOING SIDE JOBS, CUTTING GRASS, CUTTING HEDGES. IT

19 WAS THE SUMMERTIME.

20 Q AND VALENCIA DIDN'T HAVE A JOB?

21 A NO, SIR, SHE DID NOT.

22 Q AND SO Y'ALL WEREN'T PAYING RENT AT THE TIME TO NICKI?

23 A WELL, IF NICKI NEEDED ANYTHING, I WOULD TRY MY BEST TO HELP

24 HER. IF SHE SAID SHE NEEDED TO HELP HER CHILD GET ANYTHING AT

25 THAT PARTICULAR POINT IN TIME, WHATEVER I HAD, I WOULD GIVE.

ZACHARY FOWLER - BY MR. MOYER

1 Q OKAY. YOU DIDN'T REALLY HAVE MUCH MONEY, AND SHE ACTUALLY
2 HAD A JOB, RIGHT? SHE WAS WORKING AT SPINX?

3 A YES, SIR, SHE DID HAVE A JOB. AT SPINX.

4 Q AND WHEN YOU LEFT OUT THAT DAY YOU WERE DRIVING THE BLUE
5 BUICK?

6 A YES, SIR.

7 Q DID YOU HAVE A LICENSE AT THE TIME?

8 A YES, I DID.

9 Q AND WHY DIDN'T YOU PAWN THE JACK?

10 A BECAUSE I DIDN'T NEED THE MONEY. NICKI---

11 Q DID YOU HAVE THE JACK WITH YOU?

12 A AT THE PARTICULAR POINT IN TIME?

13 Q YEAH.

14 A NO, SIR, WE HAD TO GET IT.

15 Q IS IT BECAUSE YOU DIDN'T WANT TO LEAVE YOUR NAME BEHIND
16 THERE?

17 A OH, NO, SIR. I DIDN'T NEED THE MONEY.

18 Q WELL, YOU DIDN'T NEED -- YOU DIDN'T HAVE ANY MONEY THOUGH,
19 DID YOU?

20 A YES, SIR. I HAD MONEY.

21 Q OH, YOU DID HAVE MONEY?

22 A YES, SIR.

23 Q THEN WHY DIDN'T YOU JUST GIVE HER MONEY INSTEAD OF GIVING
24 HER A JACK TO PAWN?

25 A SHE NEVER WANTED TO ASK ME FOR ANY MONEY.

ZACHARY FOWLER - BY MR. MOYER

1 Q BUT SHE ASKED YOU FOR A JACK?

2 A NO, SIR. MY GIRLFRIEND AT THE TIME WAS WITH HER AND THEY
3 SAID, YOU KNOW, "WE NEED SOME MONEY." I SAID, "I'VE GOT A JACK."
4 IF SHE HAD ASKED ME FOR SOME MONEY, LIKE I SAID, I WOULD HAVE
5 GIVEN HER SOME MONEY.

6 Q OKAY.

7 A I HELPED HER A TIME BEFORE.

8 Q SO YOU'RE SAYING SHE NEEDED MONEY AND SO INSTEAD OF GIVING
9 HER SOME OF THE MONEY YOU HAD, YOU SAID, "I'LL GIVE YOU A JACK
10 FOR FIVE DOLLARS"?

11 A SHE SAID SHE NEEDED SOME MONEY. SHE DIDN'T ASK ME FOR ANY
12 MONEY. SHE SAID SHE NEEDED SOME.

13 Q SO YOU WERE DRIVING THEN. YOU DIDN'T HAVE A LICENSE. NOW,
14 WHEN YOU LEFT THE DRIVE THAT DAY YOU LEFT WITH THIS
15 PISTOL, DIDN'T YOU?

16 A YES, SIR, I DID.

17 Q A NINE MILLIMETER KEL TEC?

18 A YES, SIR, THAT'S RIGHT.

19 Q AND IT WAS LOADED, FULLY LOADED, RIGHT?

20 A YES, WHEN I LEFT.

21 Q PLUS ONE IN THE CHAMBER?

22 A YES. THAT'S FULLY LOADED.

23 Q YOU COULDN'T PUT ANOTHER BULLET IN THERE---

24 A NO, SIR, I COULD NOT.

25 Q AND IN ADDITION TO THAT YOU HAD ANOTHER CLIP OF BULLETS IN

ZACHARY FOWLER - BY MR. MOYER

1 IT, DIDN'T YOU?

2 A I DIDN'T HAVE IT IN THE PISTOL, NO, SIR, BUT I HAD ONE WITH
3 ME.

4 Q YEAH. AND YOU HAD VALENCIA HOLDING THAT FOR YOU, RIGHT?

5 A YES, SIR.

6 Q AND THAT WAS IN HER PURSE?

7 A YES, SIR.

8 Q SO -- AND THAT CLIP WAS FULLY LOADED?

9 A YES, SIR, IT WAS.

10 Q SO THAT HAD TEN BULLETS IN IT?

11 A YES, SIR.

12 Q AND SO YOU WENT OUT THAT DAY WITH A TOTAL OF 21 BULLETS?

13 A YES, SIR, I DID.

14 Q NOW, WHY DID YOU NEED SO MANY BULLETS AND WHY DID YOU HAVE
15 TO LEAVE THAT DAY WITH A GUN THAT CAN SHOOT 20 -- AND HAVE TWO
16 CLIPS WORTH OF BULLETS?

17 A WELL, SIR, I TOOK THE EXTRA CLIP BECAUSE I ALWAYS CARRIED IT
18 WITH ME. THE REASON I TOOK THE PISTOL WAS FOR PROTECTION.

19 Q PROTECTION FROM WHAT?

20 A WELL, SIR, WHEN YOU LIVE IN THE SIDE OF TOWN THAT I LIVE IN,
21 WEST GREENVILLE, THINGS LIKE WHAT HAPPENED IN THIS EXPERIENCE
22 THAT WE'RE GOING THROUGH RIGHT NOW HAPPENS TIME AND TIME AGAIN.

23 Q WHEN YOU WALK AROUND -- BECAUSE IS THE DRUG BUSINESS, A
24 DANGER BUSINESS?

25 A NO---

ZACHARY FOWLER - BY MR. MOYER

1 MR. CREZCH: OBJECTION, YOUR HONOR. 403 AND 404.

2 THE COURT: OVERRULED. GO AHEAD.

3 A COULD YOU REPEAT IT, SIR?

4 Q IS THE DRUG BUSINESS A DANGEROUS BUSINESS?

5 A WELL, SIR, LIKE I SAID, THINGS LIKE THAT DOES HAPPEN. IT'S
6 NOT SO MUCH THAT IT'S DANGEROUS, BUT ANYTHING CAN HAPPEN.

7 Q AND SO YOU NEEDED NOT ONLY THE 11 BULLETS IN THAT GUN BUT
8 YOU NEEDED AN EXTRA CLIP IN CASE YOU RAN OUT OF BULLETS IN THAT
9 GUN?

10 A NO, SIR. LIKE I SAID, I JUST CARRIED IT. I ALWAYS DID.

11 Q OKAY. AND SO WHEN YOU LEFT THAT DAY YOU WENT INITIALLY TO
12 THE PAWN SHOP AND YOU WENT IN AND HOW MUCH DID THEY OFFER YOU FOR
13 THE PAWN -- FOR THE JACK AT THAT TIME?

14 A THE FIRST TIME, SIR?

15 Q YEAH.

16 A IF I'M NOT MISTAKEN, I BELIEVE IT WAS FIVE DOLLARS.

17 Q FIVE DOLLARS. AND THAT WASN'T ENOUGH?

18 A WELL, SIR, IT WASN'T UP TO ME.

19 Q OKAY. WELL, Y'ALL DECIDED THAT WASN'T ENOUGH MONEY?

20 A IT WASN'T A Y'ALL SITUATION, SIR.

21 Q OH, IT WAS ALL HER?

22 A YES, SIR. SHE ASKED ME FOR SOMETHING TO GET SOME MONEY.

23 Q OKAY.

24 A SO I SAID, YEAH, YOU CAN GET THIS HYDRA JACK. THE HYDRA
25 JACK WASN'T EVEN -- THE HYDRAULIC JACK, EXCUSE ME, IT WASN'T EVEN

ZACHARY FOWLER - BY MR. MOYER

1 SUPPOSED TO HAVE BEEN SOLD. AT THE TIME IT WAS SUPPOSED TO BE
2 PAWNED---

3 Q OKAY.

4 A ---BECAUSE SHE WAS SUPPOSED TO GET PAID THAT DAY. SO SHE
5 WAS GOING TO GO BACK AND GET IT.

6 Q ALL RIGHT. AND SO -- BUT WHEN Y'ALL WENT TO RED'S PAWN SHOP
7 THE FIRST TIME FIVE DOLLARS WASN'T ENOUGH FOR THE JACK, SO YOU
8 LEFT TO GO TRY AND GO SOMEWHERE ELSE AND PAWN IT; IS THAT RIGHT?

9 A YES, SIR. THAT'S WHAT SHE WANTED TO DO.

10 Q AND AT THAT POINT YOU DIDN'T SAY, "WELL, GOOD GRIEF. WE'RE
11 GOING TO GO DRIVING ALL OVER TOWN JUST TO SEE THIS PAWN SO YOU
12 CAN -- OR THIS JACK SO YOU CAN HAVE GAS MONEY. HERE, LET ME GIVE
13 YOU FIVE BUCKS"?

14 A IF SHE HAD ASKED, SHE COULD HAVE GOT IT, SIR.

15 Q YOU DIDN'T HAVE MONEY ON YOU, DID YOU?

16 A YES, SIR, I DID.

17 Q AND SO YOU WENT TO ANOTHER PAWN SHOP?

18 A YES, SIR.

19 Q AND HOW MUCH WERE YOU EXPECTING TO GET? I MEAN, WERE YOU
20 EXPECTING TO GET A LOT MORE THAN FIVE BUCKS?

21 A TO ME, I REALLY CAN'T ANSWER THAT QUESTION.

22 Q ALL RIGHT. WELL, YOUR FINGERPRINT WAS ON THE JACK.

23 A YES, SIR, I CARRIED IT. IT WAS HEAVY.

24 Q AND SO YOU THEN WENT BACK TO RED'S PAWN SHOP?

25 A YES, SIR.

ZACHARY FOWLER - BY MR. MOYER

1 Q AND WHEN YOU WENT IN THIS TIME YOU DECIDED TO SELL IT OR
2 PAWN IT?

3 A SHE DID, YES, SIR.

4 Q AND YOU GOT FIVE BUCKS?

5 A YES, SHE DID.

6 Q WELL, ISN'T IT TRUE YOU HAD TO GO BACK OUT TO THE CAR TO GET
7 HER TO COME IN BECAUSE THEY NEEDED A DRIVER'S LICENSE?

8 A NO, SIR. SHE WAS WITH ME THE ENTIRE TIME.

9 Q AND SO YOU GOT FIVE BUCKS AND THEN THIS IS WHEN YOU HAD THIS
10 CONVERSATION WITH SUSAN GALLOWAY?

11 A YES, SIR, INSIDE THE PAWN SHOP.

12 Q AND YOU HAD NEVER MET HER BEFORE?

13 A NEVER BEFORE.

14 Q AND SHE WALKED UP TO YOU AND Y'ALL HAD A LITTLE CONVERSATION
15 ABOUT NECKLACES FIRST?

16 A YES. SHE ASKED ME WAS IT PRETTY.

17 Q AND SHE SAID SOMETHING, SHE USED A SLANG TERM CALLED "HARD"?

18 A YES, SIR.

19 Q AND YOU KNEW WHAT SHE WAS TALKING ABOUT?

20 A YES, SIR, I DID.

21 Q AND YOU TOLD HER AT THAT POINT, "LET'S WAIT A LITTLE BIT"?

22 A YEAH, I DIDN'T WANT TO TALK ABOUT IT INSIDE THE PAWN SHOP.

23 Q BECAUSE THERE WERE PEOPLE AROUND?

24 A YES, SIR.

25 Q NOW, SO YOU WALKED OUTSIDE THE PAWN SHOP AND YOU HAD ANOTHER

ZACHARY FOWLER - BY MR. MOYER

1 CONVERSATION WITH HER? AND AT THAT POINT---

2 A YES, SIR, I DID.

3 Q WHAT?

4 A YES, SIR, I DID.

5 Q AND YOU TOLD HER TO FOLLOW YOU?

6 A YES, SIR, I DID.

7 Q ALL RIGHT. AND THE DIRECTION YOU WERE DRIVING WASN'T THE
8 DIRECTION TOWARDS APPALOOSA DRIVE, WAS IT?

9 A YES, SIR, YOU CAN GO TO APPALOOSA DRIVE THE WAY THAT WE
10 WENT.

11 Q YOU WERE ON SOME REALLY SMALL BACK ROADS, THOUGH, WEREN'T
12 YOU?

13 A YEAH, IT WAS OFF OF THE MAIN ROAD. YES, SIR.

14 Q OFF THE MAIN ROAD. NOW, PENDLETON STREET'S A FAIRLY --
15 WOULD YOU SAY A FAIRLY BUSY STREET?

16 A NO, SIR, IT'S NOT. IT'S A STREET WITH JUST HOUSES.

17 Q OKAY. NOW, WOODLAWN IS REAL SMALL?

18 A YES, IT'S A SMALLER ROAD. YES, SIR.

19 Q AND YOU HAVE A BROTHER THAT LIVES UP RIGHT AROUND THERE?

20 A YES, SIR, I DO.

21 Q OKAY. AND YOU DECIDED NOT TO SELL HER THE CRACK THERE JUST
22 IN THE PARKING LOT OF RED'S PAWN SHOP?

23 A NO, SIR.

24 Q AND WHY DIDN'T YOU DO THAT?

25 A BECAUSE WEST GREENVILLE PLAZA HAS A LOT OF POLICE OFFICERS

ZACHARY FOWLER - BY MR. MOYER

1 IN IT.

2 Q THERE WEREN'T ANY POLICE OFFICERS THERE THEN?

3 A NOT THAT DAY.

4 Q SO---

5 A BECAUSE---

6 Q ---HOW LONG DOES IT TAKE TO SELL A LITTLE CRACK?

7 A IT COULD TAKE TIME. WHAT IF SHE WANTED MORE AFTER SHE TRIED
8 IT? SHE COULD HAVE TRIED IT RIGHT THERE.

9 Q AND SO YOU WERE AFRAID YOU'D HAVE TO GO BACK AND GET MORE?
10 WELL, SHE JUST SAID SHE HAD \$40 AND WANTED TO BUY \$40 WORTH OF
11 CRACK THOUGH, RIGHT?

12 A I DIDN'T KNOW HOW MUCH MONEY SHE HAD. THAT WAS NEVER KNOWN
13 TO ME.

14 Q WELL, YOU SAW HER---

15 A SHE SAID, "I WANT \$40 WORTH OF CRACK."

16 Q YOU SAW HER IN THERE PAWNING THE NECKLACE?

17 A YES, SIR, I DID.

18 Q AND SO YOU KNOW SHE GOT 40 BUCKS?

19 A THAT'S ALL THAT I KNEW THAT SHE HAD. I DIDN'T KNOW DID SHE
20 HAVE MORE NOR LESS.

21 Q ALL RIGHT. AND SO -- BUT, I MEAN, YOU ONLY -- HOW MUCH FLEX
22 DID YOU HAVE ON YOU?

23 A I HAD UP TO MAYBE \$100 WORTH.

24 Q A HUNDRED DOLLARS. AND WHAT EVER HAPPENED TO IT?

25 A IT WAS IN MY RED BAG.