

VOLUME ONE OF TWO

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Appeal From Richland County
The Honorable Perry M. Buckner, Circuit Court Judge

JUN 13 2011

S.C. Supreme Court

THE STATE OF SOUTH CAROLINA,

Petitioner,

vs.

THOMAS T. BRYANT, JR.,

Respondent.

APPENDIX

ROBERT M. DUDEK
Chief Appellate Defender

South Carolina Commission
on Indigent Defense
Division of Appellate Defense
1330 Lady St., Suite #401
Columbia, SC 29201

ATTORNEY FOR RESPONDENT

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Assistant Deputy Attorney General

ALPHONSO SIMON, JR.
Assistant Attorney General
P. O. Box 11549
Columbia, SC 29211
(803) 734-6305

DANIEL E. JOHNSON
Solicitor, Fifth Judicial Circuit
P.O. Box 192
Columbia, SC 29202-0192
(803) 576-1800
ATTORNEYS FOR PETITIONER

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VOLUME ONE OF TWO

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM RICHLAND COUNTY

Perry M. Buckner, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

THOMAS T. BRYANT, JR.,

APPELLANT

RECORD ON APPEAL

ROBERT M. DUDEK
Deputy Chief Appellate Defender
for Capital Appeals

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

Attorney for Appellant

HENRY DARGAN MCMASTER
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Assistant Deputy Attorney General

ALPHONSO SIMON, JR.
Assistant Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211
(803) 734-3727

WARREN B. GIESE
Solicitor, Fifth Judicial Circuit
Post Office Box 192
Columbia, SC 29202-0192
(803) 576-1800

Attorneys for Respondent

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STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS

COUNTY OF RICHLAND

2000-GS-40-43702

THE STATE OF SOUTH CAROLINA

:

:

-VS-

:

TRANSCRIPT OF RECORD

:

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THOMAS T. BRYANT, JR.

:

JUNE 9 - 12, 2008

COLUMBIA, SOUTH CAROLINA

B E F O R E:

THE HONORABLE PERRY M. BUCKNER, JUDGE, AND

JURY.

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

RICHARD CATHCART, ESQUIRE

JOANNA MCDUFFIE, ESQUIRE

DAVID ROSS, ESQUIRE

ATTORNEYS FOR THE STATE

GREGORY COLLINS, ESQUIRE

MICAH LEDDY, ESQUIRE

ATTORNEYS FOR THE DEFENDANT

DAPHNE D. HELMS

CIRCUIT COURT REPORTER

1 TAPE THAT YOU MADE REFERENCE TO ME IN CHAMBERS, I TOLD YOU
2 THAT WAS NOT A PRETRIAL MATTER AND I WANT TO MOVE ALONG AND
3 GET THIS JURY SELECTED PRIOR TO LUNCH. ANYTHING FURTHER THAT
4 IS PRETRIAL FROM THE DEFENDANT?

5 **MR. COLLINS:** YOUR HONOR, I MAY -- I MAY HAVE MISSTATED
6 EXACTLY WHAT WE WERE ASKING FOR WITH THIS ISSUE.

7 **THE COURT:** YES, SIR, BUT IT'S STILL NOT PRETRIAL AND
8 WE'RE NOT GOING TO HAVE ANY REFERENCE IN OPENING STATEMENTS,
9 SO WE CAN DO IT LATER. ANYTHING FURTHER FROM A PRETRIAL
10 STANDPOINT? I'VE GOT A JURY WAITING, MR. COLLINS.

11 **MR. COLLINS:** YOUR HONOR, I JUST BELIEVE AT THIS TIME
12 WE'D BE ASKING EITHER FOR A POSSIBLE CONTINUANCE BECAUSE THE
13 TAPE ITSELF COULD LEAD TO INFORMATION THAT WE NEED TO
14 INVESTIGATE FOR HIS DEFENSE.

15 **THE COURT:** WELL, I DON'T KNOW ANYTHING ABOUT THAT AND
16 I'D HAVE TO TAKE TESTIMONY. SO YOU DON'T KNOW. ALL YOU TELL
17 ME IS YOU CAN'T DISCERN WHAT'S ON THE TAPE COMPLETELY. YOU
18 THINK IT MIGHT LEAD TO EXCULPATORY EVIDENCE, AND I WOULD NEED
19 TO HAVE A HEARING ON THAT. I CAN SELECT THE JURY AND NOT
20 SWEAR THEM, AND IF YOU THINK YOU NEED TO HAVE A HEARING THIS
21 AFTERNOON, WE'LL DO THAT. ANYTHING FURTHER? OTHERWISE, TAKE
22 A SEAT.

23 **MR. COLLINS:** THANK YOU, YOUR HONOR.

24 **THE COURT:** BRING ME THE JURY.

25 (WHEREUPON, THE JURY PANEL WAS BROUGHT INTO THE

1 **THE COURT:** COURT'S EXHIBIT NUMBER 1. MR. BILLY, COME
2 OVER HERE AND HAND THAT TO MY COURT REPORTER, PLEASE, MA'AM
3 (SIC).

4 (COURT'S EXHIBIT 1 WAS MARKED FOR IDENTIFICATION ONLY.)

5 **THE COURT:** NUMBER 1 WITHOUT OBJECTION. ALL RIGHT. MR.
6 COLLINS, YOU HAVE A MOTION UNDER RULE 5 AND BRADY THAT YOU
7 WISH THE COURT TO HEAR PRIOR TO THE SWEARING OF THE JURY.
8 HAPPY TO HEAR FROM YOU AT THIS TIME.

9 **MR. COLLINS:** THANK YOU, YOUR HONOR. IF IT PLEASE THE
10 COURT?

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

12 **MR. COLLINS:** LET ME JUST START OFF BY GIVING A LITTLE
13 BIT OF A BACKGROUND AND THE REASON WHY I WOULD LIKE TO
14 ADDRESS IT BEFORE THE JURY IS SWORN IN. THIS CASE, AS YOU
15 KNOW, WAS HEARD ORIGINALLY BACK IN 2001. IT WAS REVERSED IN
16 I BELIEVE THE END OF 2005 OR THE BEGINNING OF 2006. I'M NOW
17 THE THIRD ATTORNEY WITHIN OUR OFFICE TO HAVE THIS CASE FILE.
18 RECENTLY I FOUND---

19 **THE COURT:** COME UP TO THE MICROPHONE BECAUSE WHEN YOU
20 HOLD YOUR HEAD DOWN -- YOU CAN BRING YOUR PAD, BUT JUST USE
21 THE MICROPHONE. IF YOU HOLD YOUR HEAD DOWN, IT'S HARDER TO
22 HEAR. THIS IS THE OLD REVERBERATION IN THE RICHLAND COUNTY
23 COURTHOUSE. GO AHEAD.

24 **MR. COLLINS:** AND, YOUR HONOR, WHEN I RECEIVED THE CASE
25 FILE, I DIDN'T NOTICE RIGHT AWAY, BUT THERE IS A COPY OF THE

1 9-1-1 PHONE CALLS AS WELL AS DISPATCH THE NIGHT OF THIS
2 INCIDENT.

3 THE COURT: A COPY MEANING A TRANSCRIPTION?

4 MR. COLLINS: NO, A POORLY RECORDED AUDIO COPY AND
5 FROM---

6 THE COURT: WHEN YOU RECEIVED THE CASE FILE, WHEN DID
7 YOU RECEIVE IT?

8 MR. COLLINS: I RECEIVED THE CASE FILE PROBABLY -- A
9 GOOD NINE, TEN MONTHS AGO, YOUR HONOR.

10 THE COURT: SO YOU'VE HAD IT FOR NINE OR TEN MONTHS.

11 MR. COLLINS: THAT IS CORRECT, YOUR HONOR.

12 THE COURT: ALL RIGHT. NO MOTION HAVING BEEN MADE PRIOR
13 TO THE JURY SELECTION TODAY.

14 MR. COLLINS: THAT IS CORRECT, YOUR HONOR.

15 THE COURT: VERY WELL.

16 MR. COLLINS: UPON PREPARING FOR TRIAL, I NOTICED THAT
17 THERE WERE ALSO NO ACCOMPANYING REPORTS THAT -- TO GO ALONG
18 WITH THE 9-1-1 CALL. SO IT'S STANDARD IN MOST CASES IF THERE
19 ARE 9-1-1 PHONE CALLS THERE'S WHAT'S CALLED A CLOSED INCIDENT
20 REPORT. THIS HAS WHERE THE CALL ORIGINATED FROM, WHO
21 RECEIVED THE CALL OR DISPATCH RECORDS AS FAR AS WHO WAS
22 DISPATCHED TO THE SCENE AND UNDER WHAT CODES. WE DO NOT HAVE
23 ANY OF THOSE.

24 THE COURT: WERE THEY REQUESTED?

25 MR. COLLINS: WE DID FILE A STANDARD RULE 5---

1 **THE COURT:** DID YOU SPECIFICALLY REQUEST REPORTS?
2 BECAUSE THEY DON'T STANDARDLY COME WITH A TAPE IN MY
3 EXPERIENCE. DID YOU MAKE THAT REQUEST TO THE STATE?

4 **MR. COLLINS:** I WOULD HAVE TO REVIEW THE ORIGINAL RULE 5
5 FILED BACK WHEN IT WAS TRANSFERRED AND IT WAS REVERSED AGAIN,
6 BUT I KNOW FROM EXPERIENCE IN EVERY RULE 5 I'VE FILED IT DOES
7 SPECIFICALLY ASK FOR ANY TAPES OF 9-1-1 PHONE CALLS.

8 **THE COURT:** WELL, YOU HAVE A TAPE. I'M ASKING YOU: DID
9 YOU SPECIFICALLY ADDRESS THE FACT THAT YOU WANTED THE
10 TRANSCRIPT FROM THE 9-1-1 OPERATOR? I'M ASSUMING 9-1-1 IN
11 RICHLAND COUNTY IS OPERATED BY THE RICHLAND COUNTY SHERIFF'S
12 DEPARTMENT. IS THAT CORRECT? OR IS IT A SEPARATE AGENCY---

13 **MR. COLLINS:** I BELIEVE---

14 **THE COURT:** ---UNDER E.M.S.?

15 **MR. COLLINS:** I BELIEVE NOW 9-1-1 HAS A SEPARATE OFFICE,
16 BUT BACK THEN -- I'VE BEEN INFORMED BY THE SOLICITOR DURING
17 THE LAST WEEK THAT AT THE TIME RICHLAND COUNTY SHERIFF'S
18 DEPARTMENT WAS KEEPING THE RECORDS FOR THE 9-1-1 PHONE CALLS
19 BACK IN 1999.

20 **THE COURT:** ALL RIGHT. SO YOU BELIEVE AT THE TIME OF
21 THIS INCIDENT 9-1-1 WAS OPERATED BY THE RICHLAND COUNTY
22 SHERIFF'S DEPARTMENT.

23 **MR. COLLINS:** THAT'S WHAT I'VE BEEN INFORMED BY THE
24 SOLICITOR OVER THE PAST WEEK.

25 **THE COURT:** WELL, YOU BASED YOUR ARGUMENT ON WHAT THE

1 SOLICITOR TOLD YOU. IS THAT BASICALLY WHAT YOU'RE TELLING
2 ME? YOU'RE RELYING ON WHAT THE SOLICITOR TOLD YOU AS THE
3 SOURCE OF 9-1-1.

4 MR. COLLINS: YES, YOUR HONOR.

5 THE COURT: ALL RIGHT.

6 MR. COLLINS: THAT IS BECAUSE WE DO NOT HAVE SUBPOENA
7 POWER OVER THE 9-1-1 DEPARTMENT HEAD AT THIS TIME AND
8 JUNCTURE. THEY DO NOT RESPOND TO SUBPOENAS FROM THE PUBLIC
9 DEFENDER'S OFFICE. WE HAVE TO GO THROUGH THE SOLICITOR TO
10 GET THOSE RECORDS.

11 BUT THE REASON I WANT TO BRING IT UP BEFORE WE SWEAR THE
12 JURY IS I BELIEVE, UPON LISTENING TO THE TAPE -- AND IT'S NOT
13 THE GREATEST QUALITY. I CAN MAKE OUT AS PORTIONS OF THE
14 DISPATCH TALKING ABOUT A MAN IN A WHEELCHAIR GETTING PUSHED
15 OUT OF HIS WHEELCHAIR THREE TO FOUR TIMES. THERE'S ALSO
16 ANOTHER PORTION WHERE AN UNIDENTIFIED MAN CALLS 9-1-1 AND
17 SAYS THAT SOMEBODY GOT PUSHED OUT OF A WHEELCHAIR; YOU GUYS
18 SHOULD SEND SOMEBODY OUT HERE.

19 THE COURT: AND WHEN YOUR CLIENT TESTIFIED BEFORE, YOU
20 WERE NOT THE ATTORNEY. IS THAT RIGHT, MR. COLLINS?

21 MR. COLLINS: NO, YOUR HONOR. MR. DOUG STRICKLER.

22 THE COURT: WHEN YOUR CLIENT TESTIFIED IN THE TRIAL OF
23 THIS CASE BEFORE, YOUR CLIENT WAS ABLE TO BRING TO THE JURY'S
24 ATTENTION WHETHER OR NOT HE WAS PUSHED OUT OF THE WHEELCHAIR
25 THROUGH HIS OWN TESTIMONY, WAS HE NOT, MR. COLLINS?

1 **MR. COLLINS:** YES, YOUR HONOR. HE DID TESTIFY THAT HE
2 WAS PUSHED OUT OF HIS WHEELCHAIR.

3 **THE COURT:** AND WHAT IS THE SIGNIFICANCE OF YOU
4 BELIEVING YOU CAN HEAR ON A COPY OF THE TAPE THAT HE WAS
5 PUSHED OUT OF THE WHEELCHAIR INSOFAR AS WHAT YOU BELIEVE TO
6 BE LEGAL PREJUDICE TO YOUR CLIENT IN THE TRIAL OF THIS CASE?

7 **MR. COLLINS:** WELL, YOUR HONOR, THE ONLY OTHER FACT
8 WITNESS THAT TESTIFIED ABOUT THE SEQUENCE OF EVENTS LEADING
9 UP TO WITHIN THE FIVE OR TEN MINUTES OF THE ACTUAL INCIDENT
10 WAS THE CLERK AT DAYS INN. SHE'S THE FIRST PERSON THAT YOU
11 COULD HEAR ON THE 9-1-1 TAPE.

12 **THE COURT:** DID SHE TESTIFY IN THE PREVIOUS TRIAL?

13 **MR. COLLINS:** SHE TESTIFIED THAT THEY WERE ACTING -- IN
14 HER TESTIMONY SHE TESTIFIED THEY WERE ACTING BUDDY-BUDDY AND
15 SHE DIDN'T SEE THEM HAVING A PROBLEM.

16 **THE COURT:** AND YOU HAVE THE TRANSCRIPT OF THAT
17 TESTIMONY.

18 **MR. COLLINS:** WE DO HAVE THE TRANSCRIPT OF THAT
19 TESTIMONY.

20 **THE COURT:** WAS THE 9-1-1 TAPE INTRODUCED INTO EVIDENCE
21 OR USED IN THE PRIOR TRIAL, TO YOUR KNOWLEDGE, MR. COLLINS?

22 **MR. COLLINS:** TO MY KNOWLEDGE, IT WAS NEVER INTRODUCED
23 IN THE TRIAL.

24 **THE COURT:** ALL RIGHT.

25 **MR. COLLINS:** THE REASON IT CONCERNS ME AT THIS POINT IS

1 THAT POSSIBLY BASED ON THE PREVIOUS TESTIMONY OF THE CLERK AT
2 THE MOTEL AND HER TESTIMONY THAT SHE CALLED 9-1-1 TWICE AND
3 WHAT SHE SAID SHE TOLD THE 9-1-1 OPERATOR, IT COULD BE USED
4 TO IMPEACH HER TESTIMONY AS FAR AS WHETHER OR NOT THROUGH
5 DISPATCH RECORDS---

6 THE COURT: WHAT DID THE CLERK TESTIFY TO IN THE PRIOR
7 TRIAL THAT YOU BELIEVE WOULD BE SUBJECT TO IMPEACHMENT FROM
8 YOUR COPY OF THE 9-1-1 TAPE THAT YOU HAVE IN YOUR POSSESSION
9 AT THIS TRIAL?

10 MR. COLLINS: IF IT DOESN'T COINCIDE WITH WHAT SHE
11 ORIGINALLY TESTIFIED TO AT THAT---

12 THE COURT: AND WE WON'T KNOW THAT 'TIL I HEAR THE
13 TESTIMONY, WILL WE?

14 MR. COLLINS: THAT'S EXACTLY RIGHT.

15 THE COURT: WHICH IS WHY I TOLD YOU I DIDN'T THINK IT
16 WAS A PRETRIAL MOTION. ON THE OTHER HAND -- THAT'S WHY I
17 INSTRUCTED THE SOLICITOR HE WASN'T ABLE TO GO INTO IT IN
18 OPENING STATEMENT 'TIL I HAD A CHANCE TO BE THE GATEKEEPER.
19 BUT WHAT YOU BELIEVE, FOR PURPOSES OF BRADY AND RULE 5, AND
20 WHAT YOU'RE ARGUING TO ME AT THIS TIME IS: YOU'VE LISTENED
21 AND IN YOUR HUMBLE OPINION YOU BELIEVE YOU HEAR SOMETHING ON
22 THE COPY THAT MAY BE IMPEACHABLE OR MAY BE EXCULPATORY. IS
23 THAT BASICALLY THE ESSENCE OF YOUR RULE 5 AND BRADY MOTION?

24 MR. COLLINS: YOUR HONOR, I DO NOT BELIEVE THAT'S THE
25 ESSENCE. THERE'S MORE TO IT.

1 THE COURT: ALL RIGHT. WHAT ELSE?

2 MR. COLLINS: YOU CANNOT MAKE OUT EXACTLY WHAT SHE SAYS
3 ON THE TAPE. IF THERE WAS AN ORIGINAL, WE WOULD LIKE TO HAVE
4 IT. FURTHERMORE, THE UNIDENTIFIED MALE WHO CALLED THE POLICE
5 AND STATED THAT HE SAW SOMEBODY PUSH SOMEBODY OUT OF A
6 WHEELCHAIR CONCERNS ME, YOU KNOW---

7 THE COURT: IS THAT ON THE 9-1-1 TAPE? WHEN YOU SAY AN
8 UNIDENTIFIED MALE, IS THAT A CALL TO THE RICHLAND COUNTY
9 SHERIFF'S DEPARTMENT OR YOU DON'T KNOW?

10 MR. COLLINS: I DON'T HAVE THE REPORT TO COINCIDE---

11 THE COURT: WHERE DID YOU GET THIS STATEMENT OF AN
12 UNIDENTIFIED MALE?

13 MR. COLLINS: THERE IS A MALE ON THE TAPE THAT I BELIEVE
14 IS CALLING 9-1-1---

15 THE COURT: YOU BELIEVE IT TO BE A MALE IS WHAT---

16 MR. COLLINS: I BELIEVE IT TO BE A MALE.

17 THE COURT: SO YOU'VE LISTENED TO A COPY OF THIS TAPE,
18 AND YOU BELIEVE A MALE VOICE IS ON THE TAPE.

19 MR. COLLINS: YES, YOUR HONOR.

20 THE COURT: ALL RIGHT.

21 MR. COLLINS: AND---

22 THE COURT: YOU BELIEVE THAT VOICE SAYS WHAT NOW?

23 MR. COLLINS: SOMEBODY PUSHED SOMEBODY OUT OF A
24 WHEELCHAIR.

25 THE COURT: SO, AGAIN, WE'RE BACK TO PUSHED OUT OF A

1 WHEELCHAIR. WHAT ELSE IN REGARDS TO BRADY OR RULE 5 IS MY
2 QUESTION, MR. COLLINS.

3 MR. COLLINS: WELL, YOUR HONOR, THE REASON THAT IT
4 CONCERNED ME THAT THERE IS A MALE AND IF THERE'S A REPORT
5 THAT EXISTED AT ONE POINT IN TIME THAT COULD GIVE US THE NAME
6 OR THE ORIGINATING NUMBER, THAT COULD POSSIBLY BE A FACT
7 WITNESS FOR MY CLIENT. IT'S IMPERATIVE THAT THESE FACTS
8 ABOUT WHETHER OR NOT HE WAS PUSHED OUT OF A WHEELCHAIR OR
9 FELL OUT OF A WHEELCHAIR I THINK IS CATAMOUNT TO THIS CASE.

10 THERE WAS ONLY -- ONE WITNESS, THE CLERK AT THE MOTEL,
11 SAYS THAT HE WAS FALLING OUT AND THE VICTIM IN THE CASE WAS
12 HELPING HIM BACK INTO THE CHAIR. IF THERE'S ANOTHER WITNESS
13 OUT THERE THAT WE COULD POSSIBLY IDENTIFY, I WANT TO DO
14 EVERYTHING IN MY POWER TO TRY TO LOCATE WHO THAT PERSON IS SO
15 THAT WE CAN MAYBE IMPEACH THE WITNESS OF THE CLERK OR OFFER A
16 WHOLE NEW WITNESS THAT TESTIFIES THAT HE SAW HIM GETTING
17 PUSHED OUT OF THE WHEELCHAIR, AND I THINK THAT'S EXTREMELY
18 IMPORTANT IN THIS CASE. AND I DON'T WANT TO SEE IT COME BACK
19 ANY OTHER TIME, WHETHER IT'S ME DOING MY JOB OR -- I BELIEVE
20 WE'RE IN THE PROCESS OF TRYING TO LOCATE THESE RECORDS.

21 I'VE BEEN IN CONTACT WITH MS. DELANEY OVER THE PAST WEEK
22 TRYING TO FIND OUT IF THEY STILL DO EXIST, BUT UNDER BRADY
23 VIOLATIONS IF WE RULE THIS IS POSSIBLY MATERIAL OR IT IS
24 MATERIAL, GOOD FAITH, BAD FAITH, NEGLIGENCE, OR PURPOSELY
25 EXPRESSING OR DESTROYING EVIDENCE DOESN'T MATTER. IT'S THE

1 QUESTION OF DUE PROCESS AND WHETHER OR NOT MR. BRYANT HAS
2 EFFECTIVELY HAD AN OPPORTUNITY TO SEARCH OUT THIS INFORMATION
3 OR SEARCH OUT THESE WITNESSES THAT COULD POSSIBLY BE MATERIAL
4 IN THIS CASE AND COULD...

5 **THE COURT:** WELL, YOU'VE CERTAINLY HAD THE TAPE FOR TEN
6 MONTHS, AND I UNDERSTAND THAT YOU HAVE NOT REQUESTED A
7 HEARING ON THIS MATTER PRIOR TO THE JURY SELECTION TODAY.
8 YOU TELL ME NOW TODAY, AFTER POSSESSING THE TAPE FOR TEN
9 MONTHS ON BEHALF OF MR. BRYANT, THAT YOU BELIEVE THAT MR.
10 BRYANT AS A MATTER OF DUE PROCESS OUGHT TO HAVE THE
11 OPPORTUNITY TO EXPLORE WHETHER OR NOT THERE ARE ADDITIONAL
12 WITNESSES FROM YOUR LISTENING TO THE TAPE. IS THAT ALL THE
13 MATTERS NOW THAT YOU RAISE IN REGARDS TO BOTH RULE 5 AND
14 BRADY FOR PURPOSES OF THIS MOTION, MR. COLLINS?

15 **MR. COLLINS:** YOUR HONOR, I WOULD JUST QUICKLY TO
16 FURTHER -- YES, I DID NOT NOTICE IT AND THAT'S MY FAULT.
17 IT'S MY FAULT. HOWEVER, ACCORDING TO KYLES V. WHITLEY, THE
18 SOLICITOR INVOLVED WITH THE CASE, IN PROSECUTING THE CASE,
19 HAS AN AFFIRMATIVE DUTY TO SEEK OUT---

20 **THE COURT:** I'M AWARE OF THE REQUIREMENTS OF BRADY AND
21 I'M AWARE OF THE REQUIREMENTS OF RULE 5, COUNSEL. ANYTHING
22 ELSE?

23 **MR. COLLINS:** NOTHING FURTHER, YOUR HONOR.

24 **THE COURT:** HAVE A SEAT. MR. CATHCART, I'LL BE HAPPY TO
25 HEAR FROM YOU - COME TO THE MICROPHONE - ON BEHALF OF THE

1 STATE OF SOUTH CAROLINA IN RESPONSE TO THE DEFENSE MOTION.

2 MR. CATHCART: YOUR HONOR, THIS CASE WAS TRIED BACK IN
3 2001. DISCOVERY WAS PROVIDED TO DEFENSE COUNSEL WHICH WAS
4 THE PUBLIC DEFENDER'S OFFICE AT THAT TIME.

5 THE COURT: SO THE PUBLIC DEFENDER REPRESENTED MR.
6 BRYANT IN THE EARLIER TRIAL BUT NOT MR. COLLINS AND MR.
7 LEDDY.

8 MR. CATHCART: THAT IS CORRECT, YOUR HONOR. THEIR
9 SUPERVISOR, DOUG STRICKLER, WAS HIS ATTORNEY AT THE 2001---

10 THE COURT: I'M VERY KNOWLEDGEABLE OF MR. STRICKLER.
11 I'VE KNOWN HIM FOR A LONG TIME.

12 MR. CATHCART: THIS CASE WAS PROSECUTED BY DAVID PASCOE
13 AND DON SORENSON OF THE RICHLAND COUNTY SOLICITOR'S OFFICE.
14 YOUR HONOR, SUBSEQUENTLY THE CASE WAS REVERSED, AND WHEN IT
15 WAS---

16 THE COURT: IT ACTUALLY WAS REVERSED IN AN OPINION DATED
17 AUGUST THE 11TH, 2006.

18 MR. CATHCART: WHEN IT---

19 THE COURT: BUT IT WAS HEARD IN 2005 AND DECIDED IN JULY
20 AND THEN REHEARING WAS DENIED AUGUST THE 11TH, 2006.

21 MR. CATHCART: THAT'S CORRECT, YOUR HONOR. AND FINDING
22 OUT THAT THIS CASE WAS REVERSED, THE STATE HAD THEN WENT -
23 AND THAT WOULD BE MYSELF - WENT TO OUR -- SENT OUR PARALEGALS
24 TO THE STATE DEPARTMENT OF ARCHIVES WHERE WE KEEP ALL OUR OLD
25 FILES BECAUSE AFTER HE WAS CONVICTED, WE WERE DONE WITH THAT

1 CASE. PACKED IT UP AND SENT IT TO ARCHIVES. WE COULD NOT
2 LOCATE THAT CASE. I THEN WENT TO---

3 THE COURT: YOU COULD NOT LOCATE WHAT?

4 MR. CATHCART: OUR ARCHIVE FILES, EVERYTHING THAT WE HAD
5 THAT WE GAVE COPIES OF. AND SO I WENT TO HIS PREDECESSOR IN
6 HIS OFFICE WHO HAD THE CASE BEFORE HE DID WHICH WAS STACEY
7 OWINGS WITH THE PUBLIC DEFENDER'S OFFICE, AND I ASKED HER FOR
8 REVERSE DISCOVERY. I ASKED HER FOR EVERYTHING THAT THEY HAD
9 THAT WE GAVE THEM, AND SHE PROVIDED A FILE TO ME. THAT'S
10 WHAT I'VE BEEN PURSUING TO PROSECUTE THIS CASE.

11 THIS IS THE FIRST TIME I'VE HEARD ABOUT THIS TAPE
12 BECAUSE THEY DID NOT PROVIDE ME WITH THAT TAPE. WHEN HE
13 CALLED JOANNA MCDUFFIE WHILE I WAS DOWN AT PAWLEY'S ISLAND---

14 THE COURT: WHEN WAS THIS IN RELATION TO TODAY?

15 MR. CATHCART: IT WAS LAST WEDNESDAY.

16 THE COURT: ALL RIGHT.

17 MR. CATHCART: HE MENTIONED THE TAPE TO HER AND ASKED
18 HER IF SHE COULD FIND THE TRANSCRIPT OR THE -- A CLOSED
19 INCIDENT REPORT.

20 THE COURT: HAVE YOU LISTENED TO THE COPY OF THE TAPE?

21 MR. CATHCART: NO, SIR, I HAVE NEVER HEARD THE TAPE, DID
22 NOT KNOW THE TAPE EXISTED UNTIL---

23 THE COURT: ALL RIGHT. THE FIRST THING WE'RE GOING TO
24 DO FOR PURPOSES OF THIS MOTION IS THAT Y'ALL ARE GOING TO
25 GIVE THIS COPY THAT THE PUBLIC DEFENDER'S OFFICE HAS THAT THE

1 SOLICITOR DOES NOT HAVE TO MY COURT REPORTER WHO'S GOT A --
2 DON'T YOU HAVE, DAPHNE, A...

3 COURT REPORTER: (NODDED HEAD UP AND DOWN.)

4 THE COURT: LET ME SEE WHAT I CAN HEAR ON THIS TAPE
5 BEFORE I GO ANY FURTHER, SINCE EVERYBODY SEEMS TO HAVE AN
6 OPINION ABOUT WHAT'S ON IT. GIVE IT TO THE COURT REPORTER.

7 MR. COLLINS: THANK YOU, YOUR HONOR.

8 THE COURT: LET'S ALL LISTEN TO IT TOGETHER IN THE
9 COURTROOM.

10 (WHEREUPON, THE TAPE WAS PLAYED FOR THE COURT AND THE
11 ATTORNEYS.)

12 THE COURT: THAT'S IT?

13 MR. COLLINS: THE REST OF THE -- IT'S BASICALLY THAT
14 JUST SHOTS WERE FIRED AND OFFICERS RESPONDING OUT TO THE
15 SCENE...

16 THE COURT: ALL RIGHT, SIR. COME ON BACK UP TO THE
17 MICROPHONE, MR. CATHCART. LET THE RECORD REFLECT THAT IN THE
18 PRESENCE OF THE ATTORNEYS, THE DEFENDANT, AND MYSELF AS CLOSE
19 TO THE COURT REPORTER'S EQUIPMENT AS WE COULD ALL GET, WE
20 LISTENED TO A COPY OF WHAT MR. COLLINS IS REPORTING TO THIS
21 COURT TO BE A -- WHAT HE UNDERSTANDS TO BE A COPY OF A 9-1-1
22 TAPE. THERE ARE PARTS THAT THIS COURT COULD UNDERSTAND AND
23 THERE ARE FAR GREATER PARTS THAT I COULD NOT UNDERSTAND WHAT
24 WAS BEING SAID. I ASK YOU NOW, SOLICITOR: WERE YOU EVER IN
25 POSSESSION OR WAS THE PROSECUTION, TO YOUR KNOWLEDGE, EVER IN

1 POSSESSION OF THE ORIGINAL OF THIS TAPE?

2 MR. CATHCART: THE ONLY INDICATION THAT I HAVE THAT THE
3 PROSECUTION WAS IN -- HAD THE ORIGINAL OF THIS TAPE IS FROM
4 HIM SAYING THAT THEY HAD IT. I WOULD ASSUME THAT WE GAVE IT
5 TO THEM. I DON'T KNOW. I HAVE NEVER SEEN THIS TAPE. THIS
6 IS THE FIRST I'VE EVER HEARD OF THIS TAPE. THE FIRST
7 INDICATION OF ITS EXISTENCE WAS ON WEDNESDAY.

8 THE COURT: HAVE YOU TRIED TO TALK TO EITHER MR. PASCOE
9 OR MR. SORENSON WHO PROSECUTED THE CASE TO DETERMINE WHETHER
10 THEY HAVE A MEMORY OF WHETHER OR NOT THEY EVER HAD IT?

11 MR. CATHCART: NO, SIR.

12 THE COURT: IN 1999 WAS THE 9-1-1 OPERATOR UNDER THE
13 AUSPICES OF THE RICHLAND COUNTY SHERIFF'S DEPARTMENT?

14 MR. CATHCART: FROM MY QUESTIONING OF MS. MCDUFFIE,
15 SHE'S INDICATED THAT WHAT SHE BELIEVES IS TRUE. I DO NOT
16 KNOW OFF THE TOP OF MY HEAD.

17 THE COURT: AND THIS IS A SHERIFF'S DEPARTMENT
18 INVESTIGATION. IS THAT CORRECT?

19 MR. CATHCART: THAT IS CORRECT, YOUR HONOR.

20 THE COURT: ALL RIGHT. AND, NOW, YOU TELL ME THE
21 STATE'S POSITION. RULE 5, OF COURSE, IS OUR DISCLOSURE RULE,
22 AND I UNDERSTAND CLEARLY MR. COLLINS' OPINION OF WHAT'S ON
23 THE TAPE AND I BELIEVE I HEAR STATEMENTS CONCERNING
24 WHEELCHAIR ON THE TAPE. WHETHER OR NOT IT ACTUALLY SAYS
25 PUSHED OUT OF A WHEELCHAIR IS A MATTER I THINK OF DEBATE FROM

1 MY LISTENING TO THE COPY OF THE TAPE, BUT I HEARD AT LEAST
2 TWO DIFFERENT REFERENCES TO WHEELCHAIR.

3 A BRADY CLAIM IS DIFFERENT FROM A RULE 5 CLAIM. A BRADY
4 CLAIM IS COMPLETE IF IT CAN BE DEMONSTRATED TO ME THAT THE
5 EVIDENCE WAS FAVORABLE TO THE ACCUSED, AND AT THIS POINT I
6 CAN'T EVEN DETERMINE THAT BECAUSE I DON'T KNOW WHAT A WITNESS
7 IS GOING TO SAY. NUMBER TWO, THAT IT WAS IN THE POSSESSION
8 OF THE PROSECUTION. IT WAS SUPPRESSED BY THE PROSECUTION.
9 THERE'S NO EVIDENCE OF SUPPRESSION AT THIS POINT OTHER THAN
10 IT'S NOT AVAILABLE. IT WAS MATERIAL TO GUILT OR TO
11 PUNISHMENT. FAVORABLE EVIDENCE, WHICH IS MR. COLLINS'
12 ARGUMENT, IS EVIDENCE IF THERE'S A REASONABLE PROBABILITY
13 THAT HAD THE EVIDENCE BEEN DISCLOSED TO THE DEFENSE THE
14 RESULT OF THE PROCEEDING WOULD HAVE BEEN DIFFERENT, AND A
15 REASONABLE PROBABILITY IS PROBABILITY SUFFICIENT TO UNDERMINE
16 CONFIDENCE IN THE OUTCOME.

17 NOW, THE RULE DOES APPLY -- THE BRADY RULE APPLIES TO
18 IMPEACHMENT EVIDENCE AS WELL AS EXCULPATORY EVIDENCE. SO HE
19 THINKS IT'S POSSIBLY IMPEACHABLE MATERIAL. NOW, I WANT TO
20 KNOW THE STATE'S POSITION UNDER BOTH -- RULE 5 REQUIRES THE
21 DISCLOSURE OF -- ACTUALLY, THERE'S NOT -- DEPENDING ON WHAT'S
22 INVOLVED HERE, IF HE USES THE RULE, IT'S NOT YOUR INTENTION
23 IN ANY WAY TO USE ANY PORTION OR HAVE ANY WITNESS DESCRIBE
24 ANYTHING IN THIS TRIAL ABOUT THE 9-1-1 RECORDING?

25 MR. CATHCART: NO, SIR, OTHER THAN NELLIE CONNELL, THE

1 CLERK AT THE DAYS INN, WILL TESTIFY THAT SHE CALLED 9-1-1.
2 SHE CALLED IT TWICE. THAT WAS SUBJECT TO CROSS-EXAMINATION
3 BY MR. STRICKLER WHO HAD THIS TAPE WHEN HE CROSSED HER. SO
4 THAT -- SHE'LL -- SHE WILL NOT TESTIFY THAT I CALLED 9-1-1---

5 THE COURT: WELL, YOU DON'T KNOW THAT HE HAD THE TAPE
6 WHEN HE CROSSED HER, BUT YOU BELIEVE THAT SOMEHOW THAT TAPE
7 WAS PRODUCED.

8 MR. CATHCART: (NODDED HEAD UP AND DOWN.)

9 THE COURT: BUT YOU DON'T EVEN KNOW FOR SURE THE
10 SOLICITOR'S OFFICE GAVE IT TO DEFENSE COUNSEL FOR THE FIRST
11 TRIAL.

12 MR. CATHCART: NO, SIR, BECAUSE I HAVE NOT BEEN AWARE OF
13 THE TAPE, BUT THAT'S WHAT MR. COLLINS INDICATES THAT IT WAS
14 FROM IS THE SOLICITOR'S OFFICE, IF I'M NOT MISTAKEN. I DON'T
15 WANT TO MISSTATE IT.

16 THE COURT: WHAT'S YOUR POSITION ON RULE 5? I'M
17 ASSUMING -- HE ASKED FOR -- YOUR REMEDY, MR. COLLINS, IS THAT
18 YOU ASKED FOR A CONTINUANCE OF THIS TRIAL, BUT THERE IS
19 ABSOLUTELY NOTHING BEFORE THIS COURT FOR ME TO FIND THAT IF I
20 DELAY THE TRIAL THAT YOU'D HAVE THE OPPORTUNITY TO DISCOVER
21 THE VERY EVIDENCE THAT YOU COMPLAIN ABOUT WHICH I'M NOT SURE
22 AT THIS POINT IF THAT EVIDENCE REALLY AND TRULY IS FAVORABLE
23 OR NOT TO YOUR CLIENT. ISN'T THAT TRUE?

24 MR. COLLINS: YOUR HONOR, THE EVIDENCE I'M SEEKING ARE
25 THE REPORTS THAT WOULD BE ON FILE WITH THE RICHLAND COUNTY

1 SHERIFF'S DEPARTMENT---

2 THE COURT: WELL, YOU SAY THAT THERE'S ALWAYS AN
3 ACCOMPANYING TAPE. NOW, I HAVE -- I'LL HAVE TO TELL YOU,
4 ALTHOUGH THE REPORT MAY OR MAY NOT HAVE BEEN GENERATED IN
5 1999, I DON'T FIND -- I DEAL WITH A LOT OF 9-1-1 TAPES. I
6 DON'T FIND NECESSARILY THERE'S ALWAYS A REPORT THAT
7 ACCOMPANIES IT.

8 NOW, HAD THERE BEEN A REQUEST -- AND THERE'S NOTHING
9 BEFORE ME THAT THAT REPORT WAS EVER GIVEN TO MR. STRICKLER OR
10 TO ANYBODY IN THEIR OFFICE OR WAS EVER IN THE POSSESSION OF
11 THE PROSECUTION, BUT I UNDERSTAND THAT YOU ARE HOPEFUL THAT
12 YOU COULD LOCATE THAT. YOU DON'T HAVE SUCH A REPORT NOR DOES
13 THE SOLICITOR AT THIS POINT NOR DO YOU KNOW IF ONE HAS EVER
14 BEEN REQUESTED. ISN'T THAT BASICALLY WHERE WE ARE?

15 MR. COLLINS: YES, YOUR HONOR, WITH THE EXCEPTION OF I
16 BELIEVE THAT OUR RULE 5 REQUEST INCLUDED ACCOMPANYING
17 REPORTS.

18 THE COURT: UNDER WHAT SECTION OF RULE 5 DO YOU BELIEVE
19 IT INCLUDES THE REPORT?

20 MR. COLLINS: WELL, WHEN WE REQUEST ANY 9-1-1 TAPES OR
21 ANY TANGIBLE OBJECTS THAT RELATE---

22 THE COURT: PARDON?

23 MR. COLLINS: WHEN WE REQUEST ANY TANGIBLE OBJECTS OR
24 THE -- ACCOMPANYING WITH THE 9-1-1---

25 THE COURT: IF IT WERE IN THE POSSESSION OF THE STATE

1 FOR RULE 5.

2 MR. COLLINS: OR ANY---

3 THE COURT: AND FOR BRADY IT HAS TO HAVE BEEN IN THE
4 POSSESSION OR KNOWN. I'LL AGREE THAT IT MIGHT HAVE BEEN
5 KNOWN TO THE PROSECUTION, ALTHOUGH MR. CATHCART CAN'T EVEN
6 TELL ME THAT HE'S CERTAIN HE GAVE IT TO YOU OR THAT HIS
7 OFFICE DID. I REALIZE NEITHER ONE OF YOU WERE THE ATTORNEYS
8 IN THE EARLIER TRIAL. YOU HAD THE ABILITY AND STILL HAVE TO
9 ASK THE PUBLIC DEFENDER. MR. PASCOE NO LONGER IS WITH THE
10 SOLICITOR'S OFFICE NOR IS MR. SORENSON, AND I'M ASSUMING
11 YOU'VE HAD A DISCUSSION WITH HIM ABOUT THAT, HAVE YOU NOT,
12 MR. COLLINS?

13 MR. COLLINS: YOUR HONOR, HE DOESN'T HAVE THE MEMORY OF
14 WHERE THE TAPE CAME FROM.

15 THE COURT: ALL RIGHT. I APPRECIATE YOU BEING HONEST
16 WITH THE COURT. NOBODY SEEMS TO HAVE THE MEMORY OF WHERE IT
17 CAME FROM OR HOW IT GOT THERE, BUT YOU ASKED ME -- YOUR
18 REMEDY THAT YOU ASKED FOR IS A CONTINUANCE.

19 MR. COLLINS: YOUR HONOR, THAT'S BASED ON MY
20 CONVERSATIONS WITH MS. MCDUFFIE ABOUT HER SEARCHING AT THE
21 RICHLAND COUNTY SHERIFF'S DEPARTMENT. THE LAST E-MAIL I GOT
22 WAS SHE WAS WAITING TO HEAR FROM THEM TO SEE IF THEY COULD
23 FIND THESE REPORTS BECAUSE THEY KEPT THEM ON FILE OR EITHER
24 THEY DIDN'T, AND THE REMEDY WOULD BE ONE OR TWO DAYS JUST
25 UNTIL WE HEAR BACK FROM THEM.

1 **THE COURT:** VERY WELL. MR. CATHCART, TELL ME ABOUT YOUR
2 SEARCH AT THE RICHLAND COUNTY SHERIFF'S DEPARTMENT.

3 **MR. CATHCART:** YOUR HONOR, AS PER MS. MCDUFFIE,
4 WEDNESDAY MR. COLLINS HAD ASKED MS. MCDUFFIE FOR A 9-1-1
5 CLOSED INCIDENT REPORT. 9-1-1, WHICH SHE JUST SAID, DOES NOT
6 KEEP REPORTS FROM 1999 AT THE SHERIFF'S DEPARTMENT. IF
7 ANYBODY DID, THEY DID.

8 **THE COURT:** DO WHAT NOW?

9 **MR. CATHCART:** 9-1-1 WHICH IS NOW A---

10 **THE COURT:** IT'S NOW A SEPARATE ENTITY.

11 **MR. CATHCART:** YES, SIR.

12 **THE COURT:** ALL RIGHT.

13 **MR. CATHCART:** IF ANYBODY DID, IT WOULD BE THE SHERIFF'S
14 DEPARTMENT. ACCORDING TO HER, THE RICHLAND COUNTY SHERIFF'S
15 DEPARTMENT DOES NOT HAVE A CLOSED INCIDENT REPORT ON THIS --
16 ON THESE CASES. IS THAT CORRECT?

17 **MS. MCDUFFIE:** THAT'S CORRECT, YOUR HONOR. WHAT THEY
18 EXPRESSED TO ME IS THAT THEY MAY HAVE A DISPATCH LOG THAT
19 WOULD SHOW THE TIME THE OFFICER WAS DISPATCHED AND WHO WAS
20 DISPATCHED TO THE SCENE, BUT IF THEY HAD ANYTHING, THAT WOULD
21 BE THE EXTENT OF IT AND THEY ARE SEEKING THAT FROM ARCHIVES.

22 **MR. CATHCART:** SO NOTHING AS TO WHO CALLED---

23 **THE COURT:** BUT YOU HAVEN'T BEEN ABLE TO PROVIDE THAT TO
24 COUNSEL FOR THE DEFENDANT AT THIS STAGE.

25 **MS. MCDUFFIE:** NO, SIR, YOUR HONOR, WE HAVEN'T.

1 **THE COURT:** BECAUSE YOU DON'T HAVE IT.

2 **MS. MCDUFFIE:** CORRECT, YOUR HONOR.

3 **THE COURT:** ALL RIGHT. WHAT'S THE STATE'S RESPONSE TO
4 THE MOTION FOR A CONTINUANCE IN LIGHT OF THIS SITUATION?

5 **MR. CATHCART:** YOUR HONOR, THE TESTIMONY THAT HE IS
6 ASKING TO CROSS IS OF NELLIE CONNELL, IF I'M NOT MISTAKEN,
7 WHO TESTIFIED THAT SHE DID NOT SEE THE DEFENDANT BEING
8 ATTACKED IN ANY WAY WHATSOEVER. WHAT SHE SAW---

9 **THE COURT:** AND SHE IS WHO?

10 **MR. CATHCART:** SHE IS THE DESK CLERK AT THE DAYS INN.

11 **THE COURT:** WHO YOU PLAN TO CALL LIVE IN THIS TRIAL.

12 **MR. CATHCART:** YES, SIR, I DO. SHE'S THE NUMBER THREE
13 WITNESS. SHE TESTIFIED THAT ANOTHER GENTLEMAN CAME INTO HER
14 OFFICE BY THE NAME OF KEVIN HAWKINS AND TOLD HER THAT THAT
15 MAN TOLD HIM HE HAD BEEN PUSHED OUT AND ATTEMPTED TO BE
16 ROBBED.

17 **THE COURT:** THAT SOUNDS LIKE SOMEWHAT OF A HEARSAY
18 PROBLEM.

19 **MR. CATHCART:** IT'S ABOUT HEARSAY UPON HEARSAY UPON
20 HEARSAY. THAT'S WHAT THEY INTEND TO ELICIT OUT OF -- OR
21 CROSS-EXAMINE HER ON SOMETHING THAT SHE DIDN'T EVEN SEE.
22 THAT'S THE TESTIMONY. SHE'LL TESTIFY SHE DIDN'T SEE HIM PUSH
23 HIM OUT.

24 **THE COURT:** MR. COLLINS, SO THAT I UNDERSTAND THIS NOW,
25 YOU BELIEVE THAT THIS WITNESS OF THE STATE IS THE PERSON --

1 DO YOU HAVE ANY WAY OF PROVING THAT WHAT WE JUST LISTENED TO
2 IS THE PERSON THE STATE IS CALLING AS A WITNESS?

3 MR. COLLINS: YOUR HONOR, I WOULD AGREE WITH THE
4 SOLICITOR.

5 THE COURT: MY ANSWER IS YES OR NO TO THAT QUESTION, MR.
6 COLLINS. DO YOU HAVE ANY WAY OF PROVING THAT THE VOICE WE
7 HEARD ON THE TAPE IN YOUR POSSESSION IS THE WITNESS FOR THE
8 STATE OF SOUTH CAROLINA THAT YOU INTEND TO TRY TO IMPEACH
9 WITH THE TAPE?

10 MR. COLLINS: IF SHE WOULD AUTHENTICATE IT, I COULD HAVE
11 IT.

12 THE COURT: HAVE YOU TRIED TO LET HER LISTEN TO THE TAPE
13 PRIOR TO TODAY TO ASK HER WHETHER OR NOT SHE'S THE VOICE ON
14 THAT TAPE?

15 MR. COLLINS: NO, SIR, YOUR HONOR. I'M CONCERNED WITH
16 THE FOLLOWING VOICES AND THE OTHER PEOPLE ON THE TAPE AND WHO
17 -- THEIR IDENTIFICATIONS.

18 THE COURT: I WANT TO SEE COUNSEL IN CHAMBERS NOW.

19 (PAUSE IN PROCEEDINGS.)

20 THE COURT: THANK YOU. PLEASE BE SEATED. LET THE
21 RECORD REFLECT THAT I'VE HAD A CONFERENCE IN CHAMBERS WITH
22 COUNSEL, AND MR. COLLINS NOW TELLS ME, INCONSISTENT WITH HIS
23 PRIOR ARGUMENT, THAT HE DOES NOT SEEK TO IMPEACH THIS
24 WITNESS, THIS -- DO YOU KNOW HER NAME, MR. COLLINS? YOU
25 COULD PUT IT ON THE RECORD.

1 **MR. COLLINS:** NELLIE CONNELL.

2 **THE COURT:** BUT HE SEEKS TO OBTAIN BY HIS MOTION WHAT HE
3 BELIEVES TO BE POSSIBLE RECORDS, THAT BEING THE DISPATCH
4 RECORDS THAT MS. MCDUFFIE PREVIOUSLY TOLD ME MAY OR MAY NOT
5 EXIST, BUT THEY HAVEN'T BEEN ABLE TO LOCATE IN THE RICHLAND
6 COUNTY SHERIFF'S DEPARTMENT AS OF NOW.

7 I THEN ASKED COUNSEL FOR THE STATE IF THEY WOULD BE SO
8 KIND AS TO CALL THE RICHLAND COUNTY SHERIFF'S DEPARTMENT - I
9 REALIZE WE'RE DEALING WITH THEIR ARCHIVES - AND FIND OUT
10 WHETHER OR NOT SUCH A DOCUMENT DOES OR DOES NOT EXIST. CAN
11 COUNSEL ENLIGHTEN THE COURT NOW ON THAT?

12 **MR. CATHCART:** YOUR HONOR, WE'VE GOTTEN INVESTIGATOR
13 METZ WHO JUST CAME BACK IN THE COURTROOM TO TRY TO DO WHAT HE
14 CAN TO SEE WHAT HE CAN DO TO PUSH THAT ALONG.

15 **THE COURT:** MR. METZ, DO YOU WANT TO TALK TO YOUR LAWYER
16 HERE FIRST AND TELL HIM? BECAUSE I'M AT THE POINT NOW WHERE
17 I'M READY TO MOVE.

18 (AN OFF-THE-RECORD DISCUSSION TAKES PLACE BETWEEN
19 INVESTIGATOR METZ AND MR. CATHCART.)

20 **MR. CATHCART:** YOUR HONOR, THE TWO PEOPLE WHO ARE IN
21 CHARGE OF THAT SYSTEM ARE NOT IN THE OFFICE AT THE TIME.
22 THERE'S AN OLD SYSTEM THAT THE ORIGINAL WAS ON OF 2006. THEY
23 WILL HAVE TO BRING THAT UP AND THEN MAYBE BE ABLE TO FIND
24 SOMETHING AT THAT POINT.

25 **THE COURT:** WHEN CAN THAT BE ACCOMPLISHED, MR. CATHCART?

1 MR. METZ: THEY'RE GOING TO CALL ME BACK AS SOON AS THEY
2 WALK BACK IN THE OFFICE AND I'LL---

3 THE COURT: THEY'RE GOING TO BE BACK TODAY?

4 MR. METZ: YES, SIR. THEY'RE JUST OUT OF THE OFFICE
5 TEMPORARILY.

6 THE COURT: COUNSEL, APPROACH.

7 (WHEREUPON, A BENCH CONFERENCE WAS HELD. A SHORT BREAK
8 WAS TAKEN.)

9 THE COURT: THANK YOU. PLEASE BE SEATED. LET THE
10 RECORD REFLECT THAT IT'S NOW 4:15 P.M. IN THE AFTERNOON, AND
11 I HAVE DELAYED THE START OF THIS TRIAL SINCE 2:30 BECAUSE OF
12 THE MOTION WHICH COUNSEL FOR THE DEFENDANT, MR. COLLINS,
13 WANTED TO MAKE. MR. COLLINS HAS REFINED HIS MOTION TO ME IN
14 MY CHAMBERS BECAUSE WE'VE HAD SEVERAL MEETINGS OFF THE RECORD
15 WHICH HAVE NECESSITATED THAT I MAKE THE SOLICITOR'S OFFICE
16 SEARCH THE ENTIRE ARCHIVES OF THE RICHLAND COUNTY SHERIFF'S
17 DEPARTMENT IN ORDER TO ASCERTAIN WHETHER OR NOT THERE WERE IN
18 1999 ANY RECORDS THAT WERE EVER IN THE POSSESSION OF THE
19 RICHLAND COUNTY SHERIFF'S DEPARTMENT OR THE SOLICITOR'S
20 OFFICE IN ORDER TO DECIDE BOTH THIS BRADY AND RULE 5 REQUEST.

21 MR. COLLINS REFINED HIS REQUEST DOWN THAT HE NO LONGER
22 WANTED TO USE INFORMATION FOR IMPEACHMENT OF THE -- I'LL CALL
23 IT THE CLERK WITNESS. WOULD THAT BE FAIR, MR. COLLINS? BUT
24 THAT HE WANTED TO SEE ANY DOCUMENTATION THAT MAY HAVE BEEN
25 GENERATED AS A RESULT OF THE 9-1-1 CALL SUCH AS A

1 DISPATCHER'S LOG.

2 MR. CATHCART HAS COME INTO MY OFFICE. HE HAS PROVIDED
3 MR. COLLINS WITH A COPY OF THE ONLY PIECE OF PAPER THAT STILL
4 EXISTS FROM THE RICHLAND COUNTY SHERIFF'S DEPARTMENT
5 REFLECTING ANY DOCUMENTATION OF A 9-1-1 CALL IN 1999 INVOLVED
6 WITH THIS MATTER. MR. COLLINS HAS THAT PIECE OF PAPER IN HIS
7 HANDS. AND, MR. CATHCART, HAVE I ACCURATELY STATED WHAT
8 OCCURRED IN CHAMBERS?

9 MR. CATHCART: THAT IS CORRECT, YOUR HONOR.

10 THE COURT: AND YOU HAVE MADE A SEARCH AS AN OFFICER OF
11 THIS COURT AND CAN TELL THIS COURT THAT NO FURTHER
12 DOCUMENTATION EXISTS IN CONNECTION WITH THIS MATTER OTHER
13 THAN WHAT YOU PROVIDED TO COUNSEL FOR THE DEFENDANT.

14 MR. CATHCART: THAT IS CORRECT, YOUR HONOR. WE'VE BEEN
15 IN CONTACT WITH SHARON MOODY OF THE RICHLAND COUNTY SHERIFF'S
16 DEPARTMENT DISPATCH LOG. SHE INDICATED THERE IS NO COPY
17 AVAILABLE WITH THEM. THE ONLY COPY THAT WAS AVAILABLE WAS IN
18 THE COMPUTER ARCHIVES ON AN OLD SYSTEM. WE HAVE THE ONLY
19 COPY THAT IS AVAILABLE FROM THAT INCIDENT LOCATION THAT
20 NIGHT.

21 THE COURT: ALL RIGHT.. ANY OBJECTION TO MAKING A COPY
22 OF THIS RECORD THAT'S BEEN PROVIDED DEFENSE COUNSEL AND THE
23 COURT BY THE SOLICITOR A COURT'S EXHIBIT? MR. COLLINS?

24 MR. COLLINS: NO OBJECTION, YOUR HONOR.

25 THE COURT: BE COURT'S EXHIBIT NUMBER 2 WITHOUT

1 OBJECTION, PLEASE. PROVIDE IT TO THE COURT REPORTER.

2 (COURT'S EXHIBIT 2 WAS MARKED FOR IDENTIFICATION ONLY.)

3 THE COURT: MR. COLLINS, IN LIGHT OF THE FACT NOW THAT
4 WE HAVE DELAYED THE START OF THE TRIAL FOR SEVERAL HOURS AND
5 MADE THIS SEARCH AND YOU HAVE HEARD WHAT I'VE BEEN TOLD BY
6 THE SOLICITOR, ARE YOU SATISFIED NOW THAT WE CAN MOVE FORWARD
7 WITH THE SWEARING OF THE JURY IN LIGHT OF YOUR MOTION AND IN
8 LIGHT OF THE FACT THAT YOU'VE BEEN GIVEN EVERYTHING THAT IS
9 IN THE SOLICITOR'S POSSESSION?

10 MR. COLLINS: YES, YOUR HONOR.

11 THE COURT: ALL RIGHT. THEN I ASSUME THAT MOTION IS NOW
12 MOOT IN LIGHT OF YOUR BEING PROVIDED A COPY OF THAT DOCUMENT.

13 MR. COLLINS: YES, YOUR HONOR.

14 THE COURT: VERY WELL. MR. BILLY?

15 BAILIFF: YES, SIR.

16 THE COURT: BRING US THE JURY.

17 (WHEREUPON, THE JURY WAS BROUGHT INTO OPEN COURT AT 4:17
18 P.M.)

19 THE COURT: THERE'S MY FOREMAN. CONGRATULATIONS ON YOUR
20 ELECTION, MR. FOREMAN.

21 FOREMAN: THANK YOU.

22 THE COURT: FIRST OF ALL, LET ME THANK YOU FOR YOUR
23 PATIENCE. WE'VE BEEN WORKING THE ENTIRE TIME, AND THE DELAY,
24 WHICH WAS A MATTER OF LAW, REQUIRED THAT I HAD TO ELICIT HELP
25 FROM OTHER OUTSIDE SOURCES OUTSIDE OF THE COURTHOUSE WHO WERE

1 A. I DON'T HAVE MY EARPLUGS.

2 Q. SO I'LL TRY TO SPEAK UP. OKAY?

3 A. OKAY.

4 Q. WHERE ARE YOU FROM? WHERE ARE YOU FROM?

5 A. FROM -- NOW I'M FROM TEXAS.

6 Q. YES, MA'AM, BUT WHERE WERE YOU FROM BACK IN 1999?

7 A. ORANGEBURG---

8 Q. ORANGEBURG?

9 A. ---SOUTH CAROLINA.

10 Q. OKAY. HOW LONG HAD YOU BEEN LIVING IN ORANGEBURG?

11 A. THIRTEEN YEARS. APPROXIMATELY 13 YEARS, 14 YEARS.

12 MR. CATHCART: YOUR HONOR, IS IT OKAY IF I COME UP A
13 LITTLE BIT CLOSER TO HER?

14 THE COURT: JUST DON'T BLOCK THE JURY'S VIEW OF THE
15 WITNESS. YOU MAY STEP UP. MOVE YOUR ROSTRUM ON UP.
16 COUNSEL, IF YOUR VIEW IS BLOCKED, YOU LET ME KNOW IN LIGHT OF
17 WHERE MR. CATHCART -- AND I'LL ALLOW YOU TO MOVE. PROCEED.

18 MR. CATHCART: THANK YOU, YOUR HONOR.

19 BY MR. CATHCART:

20 Q. HAD YOU HAD THE OPPORTUNITY TO KNOW THE DEFENDANT,
21 THOMAS BRYANT?

22 A. I KNOW THOMAS BRYANT, YES.

23 Q. HOW DO YOU KNOW MR. BRYANT?

24 A. HE LIVED WITH ME FOR A MONTH AND A HALF.

25 Q. OKAY. AND WHEN WAS THAT? DO YOU RECALL?

1 A. IT WAS IN 1999. I BELIEVE HE MOVED IN THE BEGINNING OF
2 JUNE.

3 Q. OKAY. AND HOW CLOSE TO JULY 23RD OF 1999 DID HE MOVE
4 OUT?

5 A. HE MOVED OUT APPROXIMATELY TWO WEEKS PRIOR.

6 Q. OKAY. DID YOU KNOW HIS MOTHER?

7 A. YES, I DID.

8 Q. OKAY. WHO DID HE LIVE WITH? JUST YOU?

9 A. ME AND MY HUSBAND.

10 Q. AND HOW DID YOU GET TO KNOW MR. BRYANT?

11 MR. COLLINS: OBJECTION, YOUR HONOR. MAY WE APPROACH
12 THE BENCH BRIEFLY?

13 THE COURT: GROUNDS?

14 MR. COLLINS: I DON'T SEE HOW THIS WITNESS HAS ANY
15 PERSONAL KNOWLEDGE OF ANYTHING RELEVANT IN THIS CASE OR HOW
16 IT MIGHT---

17 THE COURT: OVERRULED. I'LL ALLOW HER TO ANSWER THAT
18 LAST QUESTION. YOU MAY OBJECT AS YOU SEE FIT. COUNSEL,
19 PROCEED.

20 BY MR. CATHCART:

21 Q. HOW DID YOU GET TO KNOW MR. BRYANT? HOW DID YOU GET TO
22 MEET HIM?

23 A. MY HUSBAND BROUGHT HIM HOME.

24 Q. TO STAY WITH Y'ALL?

25 A. YES.

1 Q. OKAY. DID HE AND YOUR HUSBAND HANDLE ANY OF YOUR --
2 Y'ALL'S WEAPONS?

3 A. YES.

4 MR. COLLINS: OBJECTION, YOUR HONOR.

5 THE COURT: COUNSEL, APPROACH.

6 (WHEREUPON, A BENCH CONFERENCE WAS HELD.)

7 THE COURT: OBJECTION OVERRULED.

8 MR. CATHCART: THANK YOU, YOUR HONOR.

9 BY MR. CATHCART:

10 Q. AT SOME POINT DID HE SHOW AN INTEREST IN BUYING YOUR
11 WEAPONS?

12 A. MY HUSBAND AND HIM USED TO GO IN THE BACKYARD---

13 MR. COLLINS: OBJECTION, YOUR HONOR.

14 THE COURT: SUSTAINED. REPHRASE YOUR QUESTION AND ALLOW
15 HER -- PLEASE RESPOND, MA'AM, TO THE QUESTION THAT'S BEING
16 ASKED. REPHRASE YOUR QUESTION, SOLICITOR.

17 MR. CATHCART: DID HE ASK TO PURCHASE YOUR WEAPONS?

18 MR. COLLINS: OBJECTION, YOUR HONOR. CALLS FOR HEARSAY.

19 THE COURT: WHAT WAS YOUR QUESTION, SOLICITOR?

20 MR. CATHCART: I ASKED DID THE DEFENDANT ASK TO PURCHASE
21 HER WEAPONS FROM HER.

22 THE COURT: I'LL ALLOW HER TO ANSWER THAT QUESTION.
23 OBJECTION OVERRULED.

24 BY MR. CATHCART:

25 Q. DID HE ASK YOU TO PURCHASE YOUR WEAPONS?

1 A. HE WANTED TO, YES.

2 Q. OKAY. AND WHICH WEAPONS WERE THOSE?

3 A. IT WAS MY MOSSBERG SHOTGUN AND MY .32 ROSSI REVOLVER.

4 Q. AND DID YOU WISH TO SELL YOUR GUNS TO HIM?

5 A. NO.

6 Q. OKAY. WHO ASKED YOU ALSO TO BUY YOUR WEAPONS?

7 A. HIS MOTHER, JOAN.

8 Q. OKAY. AND DID YOU FEEL MORE COMFORTABLE SELLING THEM TO
9 HER?

10 A. I SOLD THEM TO JOAN.

11 Q. LET ME SHOW YOU WHAT'S BEEN MARKED STATE'S EXHIBIT
12 NUMBER 106. I'M SORRY, YOUR HONOR.

13 THE COURT: STEP BACK. DO NOT APPROACH THE WITNESS---

14 MR. CATHCART: I APOLOGIZE, SIR.

15 THE COURT: ---WITHOUT PERMISSION. ASK A QUESTION,
16 COUNSEL.

17 BY MR. CATHCART:

18 Q. DO YOU RECOGNIZE WHAT THAT IS?

19 A. YES. IT'S A RECEIPT FROM WHEN I SOLD THE GUNS.

20 Q. OKAY.

21 A. TO BETTY DAVIS---

22 Q. COULD YOU---

23 A. ---WHICH IS JOAN.

24 MR. CATHCART: MAY I APPROACH, YOUR HONOR?

25 THE COURT: YOU MAY.

1 MR. CATHCART: THANK YOU, YOUR HONOR.

2 THE COURT: SHOW IT TO COUNSEL. ANY OBJECTION?

3 MR. COLLINS: YOUR HONOR, I DON'T SEE HOW THIS IS
4 RELEVANT TO THE CASE.

5 THE COURT: LET ME SEE THE DOCUMENT, COUNSEL.

6 (MR. CATHCART HANDS THE DOCUMENT TO THE COURT.)

7 THE COURT: AND THE OBJECTION IS ON THE GROUNDS OF
8 RELEVANCE?

9 MR. COLLINS: YES, YOUR HONOR.

10 THE COURT: IS THAT RIGHT? OVERRULED. STATE'S EXHIBIT
11 106 WILL BE ADMITTED INTO EVIDENCE OVER OBJECTION.

12 (STATE'S EXHIBIT 106 WAS RECEIVED IN EVIDENCE.)

13 THE COURT: LADIES AND GENTLEMEN OF THE JURY, STATE'S
14 106 NOW IN EVIDENCE. YOU MAY NOW PUBLISH TO THE JURY,
15 COUNSEL.

16 MR. CATHCART: MAY I APPROACH THE WITNESS AGAIN?

17 THE COURT: YOU MAY.

18 BY MR. CATHCART:

19 Q. WOULD YOU PLEASE TELL THE JURY BASICALLY WHAT WAS SOLD
20 AND THE SERIAL NUMBERS TO BUY THAT DOCUMENT?

21 A. SHOULD I READ THE WHOLE THING?

22 Q. THAT WOULD BE GREAT. THANK YOU.

23 A. PARDON?

24 Q. YES, MA'AM.

25 A. ALL RIGHT. I, MARY ONELLO, HAVE THIS DAY SOLD TO BETTY

1 JOAN DAVIS, 2715 AUGUSTA HIGHWAY, LEXINGTON, SOUTH CAROLINA,
2 DATE OF BIRTH, 10/17/38 - AND I HAVE HER DRIVER'S LICENSE -
3 THE FOLLOWING: ONE ROSSI .32 LONG REVOLVER, SERIAL NUMBER
4 Y000722 AND ONE .20 GAUGE SHOTGUN BY MOSSBERG 500 C. MODEL,
5 SERIAL NUMBER PO14850, AND I SIGNED IT. AND THEN BETTY JOAN
6 DAVIS ACKNOWLEDGED THAT SHE PURCHASED THE ABOVE GUNS FROM ME
7 ON JULY 2ND AND TOOK POSSESSIONS OF THE GUNS ON THAT DATE.

8 MR. CATHCART: MAY I APPROACH AGAIN, YOUR HONOR?

9 THE COURT: YOU MAY.

10 MR. CATHCART: YOUR HONOR, FOR THE COURT'S -- FOR THE
11 RECORD, EACH OF THESE WEAPONS HAVE BEEN---

12 THE COURT: SECURED.

13 MR. CATHCART: ---SECURED AND ANALYZED BY A DEPUTY HERE
14 TODAY TO MAKE SURE THAT THEY'RE SAFE AND SECURED TO BE SHOWN
15 BEFORE THE JURY.

16 THE COURT: YOU'RE ALSO SATISFIED, COUNSEL?

17 MR. COLLINS: YES, YOUR HONOR.

18 THE COURT: VERY WELL.

19 MR. CATHCART: MAY I APPROACH THE WITNESS?

20 THE COURT: YOU MAY APPROACH.

21 BY MR. CATHCART:

22 Q. I SHOW YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT NUMBER
23 76. DO YOU RECOGNIZE WHAT THIS IS?

24 A. THAT'S THE ROSSI .32 REVOLVER I HAD THAT I SOLD.

25 Q. IS THAT THE SAME SERIAL NUMBER ON THAT THAT'S ON YOUR...

1 A. I CAN'T...

2 Q. OKAY. BUT YOU'RE SURE THAT'S THE ONE THAT'S YOURS --
3 USED TO BE YOURS?

4 A. YES, IT USED TO BE MINE.

5 MR. CATHCART: OKAY. YOUR HONOR, AT THIS TIME THE STATE
6 SEEKS TO INTRODUCE STATE'S EXHIBIT NUMBER 76.

7 THE COURT: ANY OBJECTION?

8 MR. COLLINS: NO OBJECTION, YOUR HONOR.

9 THE COURT: LADIES AND GENTLEMEN OF THE JURY, STATE'S
10 EXHIBIT NUMBER 76 WILL BE ADMITTED INTO EVIDENCE WITHOUT
11 OBJECTION. STATE'S 76 IN EVIDENCE.

12 (STATE'S EXHIBIT 76 WAS RECEIVED IN EVIDENCE.)

13 THE COURT: I CAUTION YOU, MR. FOREMAN AND LADIES AND
14 GENTLEMEN OF THE JURY, THIS WEAPON HAS BEEN SECURED. THAT IS
15 THE REASON FOR YOU SEEING THE DEVICE THROUGH THE WEAPON SO
16 THAT IT IS NOT CAPABLE OF BEING FIRED. PROCEED, COUNSEL.

17 MR. CATHCART: THANK YOU, YOUR HONOR. MAY I APPROACH
18 THE WITNESS AGAIN, YOUR HONOR?

19 THE COURT: YOU MAY.

20 MR. CATHCART: AGAIN, YOUR HONOR, FOR THE RECORD, THIS
21 WEAPON HAS ALSO BEEN SECURED WITH A LOCK.

22 THE COURT: ARE YOU SATISFIED, COUNSEL?

23 MR. COLLINS: YES, YOUR HONOR.

24 THE COURT: VERY WELL. YOU MAY APPROACH THE WITNESS.

25 MR. CATHCART: THANK YOU, YOUR HONOR.

1 BY MR. CATHCART:

2 Q. LET ME SHOW YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT
3 NUMBER 95. DO YOU RECOGNIZE WHAT THIS IS?

4 A. IT WAS THE GUN THAT I HAD SOLD BUT NOT IN THAT
5 CONDITION.

6 Q. WHAT CONDITION WAS IT IN WHEN YOU HAD IT THE FIRST TIME?

7 A. IT WAS A STANDARD MOSSBERG .20 GAUGE SHOTGUN, FULL
8 STOCK, WOOD STOCK.

9 Q. YES, MA'AM.

10 A. AND IT WAS REGULATION LENGTH. THIS IS SAWED OFF.

11 Q. SO IT HAS BEEN SAWED OFF SUBSEQUENT TO YOU SELLING IT?

12 A. YES.

13 Q. AND THIS PISTOL STOCK IS NEW TO YOU ALSO.

14 A. YES.

15 MR. CATHCART: YOUR HONOR, AT THIS TIME THE STATE SEEKS
16 TO INTRODUCE STATE'S EXHIBIT NUMBER 95.

17 THE COURT: ANY OBJECTION AS TO STATE'S - SHOW IT TO
18 COUNSEL - 95?

19 MR. COLLINS: NO OBJECTION, YOUR HONOR.

20 THE COURT: LADIES AND GENTLEMEN OF THE JURY, STATE'S
21 EXHIBIT NUMBER 95 WILL BE ADMITTED INTO EVIDENCE WITHOUT
22 OBJECTION. STATE'S 95 IN EVIDENCE. I REMIND YOU THIS WEAPON
23 HAS ALSO BEEN SECURED AND IS INCAPABLE OF BEING FIRED.

24 (STATE'S EXHIBIT 95 WAS RECEIVED IN EVIDENCE.)

25 THE COURT: ASK A QUESTION, SOLICITOR.

1 MR. CATHCART: BEG THE COURT'S INDULGENCE. THANK YOU,
2 MS. ONELLO. PLEASE ANSWER ANY QUESTIONS FROM THIS DEFENSE
3 COUNSEL. OKAY?

4 THE COURT: CROSS-EXAMINATION?

5 MR. COLLINS: THANK YOU, YOUR HONOR.

6 CROSS-EXAMINATION

7 BY MR. COLLINS:

8 Q. GOOD AFTERNOON, MS. ONELLO.

9 A. HEY.

10 Q. YOU WEREN'T AT THE DAYS INN ON BUSH RIVER ROAD
11 JULY 22ND, 1999, WERE YOU?

12 A. NO.

13 Q. YOU WEREN'T THERE JULY 23RD, 1999, WERE YOU?

14 A. NO.

15 Q. HAVE YOU EVER BEEN THERE?

16 A. NO.

17 MR. COLLINS: THANK YOU. NO FURTHER QUESTIONS.

18 THE COURT: REDIRECT?

19 MR. CATHCART: NO FURTHER QUESTIONS FROM THIS WITNESS,
20 YOUR HONOR.

21 THE COURT: AS TO THIS WITNESS, MR. CATHCART, MAY SHE BE
22 EXCUSED?

23 MR. CATHCART: YES, YOUR HONOR.

24 THE COURT: ANY OBJECTION, COUNSEL?

25 MR. COLLINS: NO OBJECTION, YOUR HONOR.

1 **THE COURT:** VERY WELL. ALL RIGHT. SINCE THE JURY HAS
2 NOW BEEN WAITING FOR SOME 35 MINUTES, LET'S SEE IF WE CAN
3 BEGIN. BRING US THE JURY, PLEASE.

4 (WHEREUPON, THE JURY WAS BROUGHT INTO OPEN COURT AT 9:50
5 A.M.)

6 **THE COURT:** GOOD MORNING, LADIES AND GENTLEMEN OF THE
7 JURY PANEL. HAPPY THAT EVERYBODY GOT HERE TIMELY. I WAS
8 HERE AN HOUR BEFORE YOU THIS MORNING. I REALIZE IT'S 10 'TIL
9 10 AND WE WERE TO START AT 9:30. ALWAYS THERE'S SOME PROBLEM
10 THAT ARISES, LADIES AND GENTLEMEN, THAT I HAVE TO TAKE CARE
11 OF BEFORE I CAN BEGIN, EVEN THOUGH WE COULDN'T HAVE
12 ANTICIPATED IT. THIS MORNING IT WAS A TRANSPORTATION
13 PROBLEM. WE HAVE THOSE THINGS COME UP FROM TIME TO TIME. IT
14 WAS NOBODY'S FAULT, BUT THANK YOU FOR YOUR PATIENCE.

15 I WILL CONTINUE TO ENDEAVOR TO RUN THE TRAIN DOWN THE
16 TRACK IN A TIMELY FASHION DURING THE TRIAL, AND I THANK YOU
17 FOR YOU COOPERATION AND YOUR PATIENCE. SOLICITOR, CALL YOUR
18 NEXT WITNESS.

19 **MR. ROSS:** MAY IT PLEASE THE COURT? THE STATE CALLS
20 JOHN CAMPBELL.

21 JOHN MARK CAMPBELL, AFTER BEING DULY SWORN,
22 TESTIFIED AS FOLLOWS:

23 **THE CLERK:** PLEASE HAVE A SEAT AND STATE YOUR FULL NAME
24 FOR THE RECORD.

25 **THE COURT:** SPEAK INTO THE MICROPHONE. STATE YOUR FULL

1 NAME. SPELL YOUR LAST NAME FOR THE COURT REPORTER, PLEASE,
2 SIR.

3 THE WITNESS: MY NAME IS JOHN MARK CAMPBELL, JUST LIKE
4 THE SOUP, C-A-M-P-B-E-L-L. JOHN MARK, TWO WORDS. J-O-H-N
5 M-A-R-K.

6 THE COURT: YOUR WITNESS, COUNSEL.

7 MR. ROSS: THANK YOU, YOUR HONOR.

8 DIRECT EXAMINATION

9 BY MR. ROSS:

10 Q. MR. CAMPBELL, WHERE DO YOU LIVE?

11 A. I CURRENTLY LIVE ON JAMES ISLAND, SOUTH CAROLINA, RIGHT
12 NOW.

13 Q. AND ARE YOU EMPLOYED?

14 A. YES, SIR.

15 Q. AND WHERE ARE YOU EMPLOYED? WHAT KIND OF WORK DO YOU
16 DO?

17 A. I'M CURRENTLY WITH TARGET. I WORK IN OVERNIGHT
18 LOGISTICS.

19 Q. AND ABOUT HOW LONG HAVE YOU BEEN DOWN IN CHARLESTON?

20 A. I WENT BACK TO CHARLESTON ABOUT THREE YEARS AGO.

21 Q. TAKING YOU BACK TO JULY 1999, SPECIFICALLY THAT WEEK OF
22 JULY -- IT WOULD HAVE BEEN THE 20TH THROUGH THE 23RD, WHERE
23 WERE YOU LIVING AT THAT TIME?

24 A. AT THAT TIME I WAS LIVING IN DOWNTOWN COLUMBIA.

25 Q. AND WERE YOU IN SCHOOL AT THAT TIME?

1 A. YES, SIR.

2 Q. WHERE WERE YOU IN SCHOOL AT?

3 A. THE UNIVERSITY OF SOUTH CAROLINA.

4 Q. AND WERE YOU WORKING THEN, TOO?

5 A. YES, I WAS.

6 Q. AND WHERE WERE YOU WORKING?

7 A. AT THAT TIME I WAS WORKING WITH THE BOTTOMS UP.

8 Q. AND WHAT IS THAT?

9 A. BOTTOMS UP IS AN ADULT ENTERTAINMENT CLUB, COMMONLY A
10 STRIP CLUB AS MOST PEOPLE CALL IT.

11 Q. AND WHAT WAS YOUR JOB THERE? WHAT DID YOU DO FOR THEM?

12 A. AT THAT TIME I WAS WORKING SECURITY FOR THEM.

13 Q. WHERE WAS THE BOTTOMS UP CLUB LOCATED?

14 A. 800 BUSH RIVER ROAD.

15 Q. AND APPROXIMATELY WHERE WAS THAT ON BUSH RIVER ROAD?

16 A. BUSH RIVER -- IF IT'S -- I WANT TO SAY MAYBE -- MAYBE A
17 TENTH OF A MILE AFTER THE 26 JUNCTION.

18 Q. AND WERE YOU FAMILIAR WHERE THE DAYS INN WAS ON BUSH
19 RIVER ROAD?

20 A. YES, SIR.

21 Q. AND HOW CLOSE WAS THE BOTTOMS UP CLUB TO THE DAYS INN?

22 A. 120, 150 YARDS.

23 Q. OKAY. WALKING DISTANCE.

24 A. UH-HUH.

25 THE COURT: YOU HAVE TO SAY YES OR NO.

1 THE WITNESS: YES, SIR.

2 BY MR. ROSS:

3 Q. DID THEY SERVE ALCOHOL AT THIS CLUB?

4 A. YES, SIR.

5 Q. AND WHAT TIME HAD YOU GOTTEN TO WORK ON JULY 22ND?

6 A. THAT WOULD HAVE BEEN RIGHT ABOUT 7:00.

7 Q. THAT WAS A THURSDAY.

8 A. YES, SIR.

9 Q. ARE YOU FAMILIAR WITH WHO THOMAS BRYANT IS?

10 A. YES, SIR, NOW. YES.

11 Q. HAD YOU SEEN HIM IN THE CLUB?

12 A. PRIOR TO THAT THURSDAY, YES. I SAW HIM EARLIER THAT
13 WEEK.

14 Q. AND WHAT DAY WAS THAT?

15 A. IT SHOULD HAVE BEEN TUESDAY OF THAT WEEK.

16 Q. ALL RIGHT. WAS ANYBODY WITH HIM ON THAT EVENING?

17 A. NO, SIR.

18 Q. ALL RIGHT. AND WERE YOU FAMILIAR WITH THE VICTIM IN
19 THIS CASE, DANIEL AUSTIN?

20 A. NO, SIR, I WAS NOT AT THAT TIME UNTIL THAT THURSDAY.

21 Q. OKAY. DID YOU SEE DANIEL AUSTIN ON THAT TUESDAY WHEN
22 YOU SAW THE DEFENDANT PRIOR TO THE THURSDAY?

23 A. NO, SIR, NOT ON THAT TUESDAY.

24 Q. ON THAT THURSDAY. SO YOU GOT TO WORK ABOUT 7:00.

25 A. UH-HUH.

1 Q. 7 P.M. AND APPROXIMATELY -- DID YOU SEE THE DEFENDANT
2 COME IN?

3 A. YES, I DID.

4 Q. APPROXIMATELY WHAT TIME WAS THAT?

5 A. HE SHOULD HAVE BEEN IN ABOUT 8:15, 8:30.

6 Q. OKAY. AND THIS IS P.M.?

7 A. YES, SIR.

8 Q. AND WHAT WAS HE DOING OR WERE YOU PAYING ATTENTION TO
9 HIM AT THAT TIME?

10 A. WHEN HE FIRST CAME IN, JUST A REGULAR CUSTOMER COMING IN
11 TO ENJOY HIMSELF, HAVE A GOOD TIME.

12 Q. ALL RIGHT. WAS HE WITH ANYBODY AT THAT TIME?

13 A. NO, SIR, HE WAS NOT.

14 Q. ALL RIGHT. DID YOU NOTICE ANYTHING ABOUT HIM, ABOUT HOW
15 HE GOT AROUND WHEN HE WAS IN THE CLUB? WAS HE IN A
16 WHEELCHAIR AT THAT TIME?

17 A. YES, HE WAS. YES.

18 Q. OKAY. AND THE TYPE OF WHEELCHAIR THAT YOU PUSH?

19 A. YES.

20 Q. OKAY. AND THE VICTIM IN THE CASE, DANNY AUSTIN, DID YOU
21 SEE HIM COME INTO THE CLUB?

22 A. LATER THAT NIGHT, YES.

23 Q. AND ABOUT WHAT TIME WAS THAT?

24 A. THAT'S ABOUT 11:45 OR SO.

25 Q. BEFORE THAT HAPPENED, DID YOU SEE THE DEFENDANT DRINKING

1 ANY ALCOHOL AT THE CLUB?

2 A. YES, SIR.

3 Q. OKAY. DO YOU HAVE ANY IDEA HOW MUCH ALCOHOL HE WAS
4 DRINKING?

5 A. NOTHING I COULD PINPOINT, NOTHING EXACT.

6 Q. OKAY. DO YOU KNOW WHAT HIS CONDITION WAS WHILE HE WAS
7 AT THE CLUB BEFORE THE VICTIM GOT THERE?

8 A. BEFORE THE VICTIM GOT THERE, HE HAD BEEN DRINKING, BUT I
9 WOULDN'T SAY HE WAS DRUNK AT THE TIME. HE JUST, YOU KNOW,
10 HAD BEEN DRINKING.

11 Q. ALL RIGHT. AND HAD HE HAD ANY PROBLEMS STAYING IN HIS
12 WHEELCHAIR DURING THIS PERIOD OF TIME BETWEEN 8, 8:30, AND
13 11:30 OR SO?

14 A. PRIOR TO 11:30, PRIOR TO AUSTIN, NO, NOT REALLY. NO.

15 Q. OKAY. AND WHEN THE VICTIM CAME -- DANNY AUSTIN CAME,
16 WHAT HAPPENED? WHAT DID YOU OBSERVE?

17 A. DANNY AND THE DEFENDANT WITHIN MAYBE HALF AN HOUR OF
18 MEETING EACH OTHER BECAME VERY CHUMMY TO ONE ANOTHER, BECAME
19 VERY FRIENDLY.

20 Q. LET ME STOP YOU RIGHT THERE. LET ME BACK UP. WAS DANNY
21 AUSTIN WITH ANYBODY?

22 A. DANNY AUSTIN WAS WITH MAYBE A TABLE OF THREE TO FOUR,
23 INCLUDING HIMSELF, ALL FROM NORTH CAROLINA.

24 Q. OKAY. DID YOU GET A SENSE OF WHO THOSE PEOPLE WERE?

25 A. I JUST ASSUMED THEY WERE FRIENDS FROM BACK IN THE DAY.

1 Q. OKAY. DID YOU TALK TO THE VICTIM THIS EVENING?

2 A. THE VICTIM? NOT 'TIL AFTER ABOUT 11:50, MIDNIGHT,
3 SOMEWHERE IN THERE.

4 Q. OKAY. HAD YOU TALKED TO THE DEFENDANT AT ALL PRIOR TO
5 THE VICTIM GETTING THERE?

6 A. THE DEFENDANT? ON THAT DAY?

7 Q. ON THAT -- ON THAT NIGHT, YES, SIR.

8 A. ON THAT NIGHT? NO, NOT ON THAT NIGHT.

9 THE COURT: YES, SIR?

10 MR. LEDDY: YOUR HONOR, I OBJECT TO ANYTHING ABOUT THE
11 PRIOR CONVERSATION WITH---

12 THE COURT: THERE'S BEEN NO TESTIMONY SO FAR. I
13 UNDERSTAND THAT'S ANTICIPATORY.

14 MR. LEDDY: YES, SIR.

15 THE COURT: LET ME HEAR IT---

16 MR. LEDDY: YES, SIR.

17 MR. ROSS: I'M NOT ASKING HIM THAT---

18 THE COURT: DON'T SOLICIT IT UNTIL I HAVE AN OPPORTUNITY
19 TO RULE ON THE OBJECTION. PROCEED.

20 MR. ROSS: YES, SIR.

21 BY MR. ROSS:

22 Q. DID YOU TALK TO EITHER ONE OF THEM AFTER THE VICTIM
23 ARRIVED? DID YOU HAVE ANY CONVERSATION WITH THEM?

24 A. AFTER THAT TIME, YES.

25 Q. OKAY. HOW WERE THEY ACTING? YOU SAID ABOUT 30 MINUTES

1 WENT BY AND THEY STARTED HANGING AROUND EACH OTHER. WHAT
2 WERE THEY DOING?

3 A. JUST HANGING OUT, ENJOYING THE TIME, BUYING DRINKS FOR
4 ONE ANOTHER AND JUST LAUGHING, CARRYING ON.

5 Q. OKAY. WHO WAS -- WHO WAS BUYING THE DRINKS?

6 A. PRIMARILY THAT WOULD BE MR. AUSTIN.

7 Q. OKAY. AND ABOUT HOW MANY DRINKS DO YOU THINK THEY HAD
8 AFTER 11:30 OR SO?

9 A. AFTER 11:30, A MINIMAL OF FIVE. MINIMAL.

10 Q. APIECE---

11 A. YES, SIR.

12 Q. ---IS WHAT YOU'RE TALKING ABOUT? OKAY. WHAT KIND OF
13 CONDITION DID THEY GET IN, BOTH OF THEM? DESCRIBE THE
14 DEFENDANT'S CONDITION OVER THE COURSE OF THE NIGHT. HOW DID
15 HE END UP BECOMING AND THEN ALSO THE VICTIM?

16 A. AS THE NIGHT WENT ON, OF COURSE, YOU KNOW, THEY BOTH
17 BECAME INTOXICATED. THE DEFENDANT HIMSELF WAS VERY
18 INTOXICATED. MR. AUSTIN, THOUGH HE HAD BEEN DRINKING,
19 PROBABLY WAS STILL IN GOOD REASON AND CONTROL OF HIMSELF, BUT
20 HE WAS NOT SOBER.

21 Q. OKAY. DID YOU OBSERVE ANY -- ANY ARGUMENTS BETWEEN THE
22 TWO?

23 A. NO, SIR.

24 Q. ANY KIND OF FIGHTING BETWEEN THE TWO?

25 A. NO, SIR.

1 Q. ANY KIND OF VIOLENCE BETWEEN THE TWO?

2 A. NOT AT ALL.

3 Q. OKAY. AND WHAT WAS THEIR DEMEANOR DURING THIS TIME?

4 A. THEY WERE -- THEY WERE MAKING GOOD BUDDIES AT THE TIME.
5 THEY WERE VERY FRIENDLY TO ONE ANOTHER.

6 Q. OKAY. AND DID YOU OBSERVE ANYTHING WITH THE DEFENDANT
7 AS FAR AS WHAT WAS GOING ON STAYING IN HIS WHEELCHAIR AFTER
8 DANNY GOT THERE?

9 A. AS THE NIGHT WENT ON, THERE WERE TWO SEPARATE OCCASIONS
10 IN WHICH MR. AUSTIN AND MYSELF HAD TO HELP HIM BACK INTO HIS
11 CHAIR.

12 Q. AND DO YOU KNOW WHY HE FELL OUT OF HIS CHAIR?

13 A. TO MY BEST UNDERSTANDING, JUST SIMPLY NOT SOBER ENOUGH
14 TO STAY IN HIS CHAIR.

15 Q. YOU DIDN'T SEE ANYBODY PUSH HIM OUT OF HIS CHAIR.

16 A. NO, SIR.

17 Q. AND YOU AND YOURSELF -- YOU AND THE VICTIM HELPED HIM
18 BACK INTO THE CHAIR. IS THAT -- THAT'S WHAT YOU TESTIFIED
19 TO?

20 A. THAT IS CORRECT.

21 Q. OKAY. ANYBODY ELSE HELP HIM?

22 A. ON THE TIMES IN WHICH I HELPED MR. AUSTIN GET HIM BACK
23 IN THE CHAIR? NO, SIR. BUT THERE WAS ANOTHER TIME WHERE
24 SOMEONE ELSE AND MR. AUSTIN PUT HIM BACK IN THE CHAIR.

25 Q. AND WHO WAS THE OTHER PERSON?

1 A. THAT WAS JAMES WOODARD.

2 Q. AND DID HE WORK IN THE CLUB?

3 A. YES, HE DID.

4 Q. OKAY. AND ABOUT WHAT TIME DID THEY LEAVE? OR DESCRIBE
5 ABOUT WHAT TIME THEY LEFT AND WHAT TRANSPIRED.

6 A. THEY LEFT PRIOR TO CLOSING. IT WOULD HAVE BEEN IN THE
7 3:15, 3:30 RANGE. RIGHT BEFORE THEY LEFT---

8 Q. SO THIS IS FRIDAY MORNING?

9 A. YES, SIR.

10 Q. AT 3:15 A.M.?

11 A. YES, SIR.

12 Q. OKAY.

13 A. RIGHT BEFORE THEY LEFT, MR. BRYANT UNFORTUNATELY FELL
14 OUT OF HIS CHAIR AGAIN. THAT'S THE SECOND TIME THAT MR.
15 AUSTIN AND MYSELF HELPED HIM BACK INTO HIS CHAIR.

16 Q. AND WHERE DID THAT OCCUR AT?

17 A. THAT WAS AT THE THRESHOLD RIGHT BEFORE YOU LEAVE ONE OF
18 THE EXITS OF BOTTOMS UP.

19 Q. OKAY. AND WHAT HAPPENED WHEN HE FELL OUT OF THE CHAIR?

20 A. HE JUST, OF COURSE, SIMPLY, YOU KNOW, FELL OUT OF THE
21 CHAIR AND LAID LIMP FOR A MOMENT. MR. AUSTIN AND I WERE ABLE
22 TO PUT HIM BACK IN THE CHAIR AND HELP HIM OUT THE REST OF THE
23 WAY TO THE DOOR.

24 Q. OKAY. BUT NOBODY PUSHED HIM OUT OF THE CHAIR.

25 A. NO, SIR.

1 Q. AND WERE YOU RIGHT THERE WHEN THAT HAPPENED?

2 A. YES, I WAS.

3 Q. OKAY. AND THEN WHAT DID YOU SEE AFTER THAT OCCURRED,
4 AFTER THEY GOT HIM BACK IN HIS CHAIR?

5 A. MR. AUSTIN HELPED HIM DOWN THE ROAD A LITTLE BIT TO, OF
6 COURSE, GET TO WHAT I GUESS IS THE FRONT OF THE PARKING LOT
7 TO HEAD TOWARD THE DAYS INN AND GET HIM THE REST OF THE WAY
8 HOME.

9 Q. ALL RIGHT. AND WHEN YOU SAY HE WAS HELPING HIM, WHAT DO
10 YOU MEAN BY THAT?

11 A. HE WAS PUSHING HIM ALONG, STILL TALKING, STILL CARRYING
12 ON, HAVING A GOOD TIME.

13 Q. ANY KIND OF ARGUMENT?

14 A. NO, SIR, NOT THAT I COULD TELL.

15 Q. CROSS WORDS?

16 A. NOT THAT I COULD TELL, NOT AT ALL.

17 Q. DID THE DEFENDANT EVER ASK YOU FOR HELP?

18 A. NOT -- NOT PARTICULARLY, NO. THE DEFENDANT NEVER ASKED
19 FOR HELP, NO.

20 Q. NEVER SAID THAT SOMEBODY WAS BOTHERING HIM AND HE NEEDED
21 HELP BECAUSE HE WAS...

22 A. NO.

23 Q. SO THEY LEFT ABOUT 3:30. YOU SAW THE VICTIM PUSHING THE
24 DEFENDANT BACK TOWARDS THE DAYS INN, AND WHAT TIME DID THE
25 CLUB CLOSE?

1 A. ON A THURSDAY WE WOULD HAVE BEEN OFFICIALLY CLOSED BY NO
2 LATER THAN 4:00. SO WE WERE CLOSING AT THE TIME THAT HE
3 LEFT.

4 Q. OKAY... AND DID YOU OBSERVE ANYTHING AFTER THEY LEFT
5 GOING ON OVER AT THE DAYS INN?

6 A. MAYBE A HALF AN HOUR OR SO AFTER THEY HAD LEFT AND WE
7 HAD CLOSED UP AND EVERYTHING LIKE THAT THERE WERE SEVERAL
8 SIRENS AND BLUE LIGHTS AND THE WHOLE NINE YARDS.

9 Q. OKAY. AND DID YOU SEE THAT FROM THE CLUB? DID YOU EVER
10 GO TO THE DAYS INN IS WHAT I'M ASKING.

11 A. NO, I NEVER WENT TO THE DAYS INN. ACTUALLY WE HAD -- I
12 THINK IT WAS JASON WHO WAS WORKING OUTSIDE AT THE TIME. HE
13 CAME IN AND TOLD US ALL, "HEY, SOMETHING BIG IS GOING ON."
14 WE WALKED OUTSIDE AND JUST KIND OF LOOKED AS BEST WE COULD.

15 Q. DID YOU EVER HEAR ANY GUNSHOTS COMING FROM THE DAYS INN?

16 A. NO, SIR.

17 Q. OKAY. BEG THE COURT'S INDULGENCE. WHEN THEY LEFT THE
18 BOTTOMS UP CLUB, THEY BEING THE DEFENDANT AND THE VICTIM, WAS
19 ANYBODY ELSE WITH THEM?

20 A. AT THAT TIME, NO.

21 Q. DID YOU SEE ANYBODY JOIN THEM WHILE THEY WERE HEADED
22 TOWARDS THE DAYS INN?

23 A. NO, SIR, NOT WHILE THEY WERE LEAVING. NO.

24 Q. OKAY. THE PERSON THAT YOU KNEW THAT WAS IN THE
25 WHEELCHAIR, THE PERSON THAT YOU KNEW AS THOMAS BRYANT AT THE

1 CLUB, DO YOU SEE THAT PERSON IN THE COURTROOM?

2 A. YES, SIR.

3 Q. CAN YOU POINT HIM OUT?

4 A. THAT'S THE GENTLEMAN IN THE MIDDLE, WHITE SHIRT, POLKA
5 DOT TIE.

6 MR. ROSS: THANK YOU. THAT'S ALL THE QUESTIONS FROM THE
7 STATE.

8 THE COURT: CROSS-EXAMINATION?

9 MR. LEDDY: THANK YOU, YOUR HONOR.

10 CROSS-EXAMINATION

11 BY MR. LEDDY:

12 Q. GOOD MORNING, MR. CAMPBELL.

13 A. HOW ARE YOU TODAY?

14 Q. I'M DOING FINE, SIR. THANK YOU. NOW, ON THE NIGHT OF
15 THE INCIDENT YOU DID NOT GIVE A WRITTEN STATEMENT IN THIS
16 CASE. IS THAT CORRECT?

17 A. NO, SIR. THEY DID NOT TAKE A WRITTEN STATEMENT FROM ME.

18 Q. BUT THE POLICE DID COME DOWN TO THE BOTTOMS UP THAT
19 NIGHT?

20 A. YES, THEY DID.

21 Q. OKAY. AND THEY DID NOT ASK YOU FOR THE DETAILS OF WHAT
22 HAD HAPPENED; RIGHT? THEY JUST ASKED YOU FOR YOUR NAME AND
23 NUMBER; IS THAT CORRECT?

24 A. AT THAT TIME, YES, THEY ONLY ASKED FOR MY NAME AND
25 NUMBER.

1 Q. AND THEY SAID, "WE MIGHT NEED TO GET IN TOUCH WITH YOU
2 LATER."

3 A. IN ESSENCE, YES.

4 Q. OKAY. NOW, SOME 20 MONTHS LATER YOU DID GIVE MORE
5 INFORMATION TO LAW ENFORCEMENT OFFICIALS. ISN'T THAT RIGHT?

6 A. THEY DID CONTACT ME 18 TO 20 MONTHS LATER, YES.

7 Q. OKAY. NOW, THE NIGHT THAT THIS OCCURRED, DID YOU EVER
8 OBSERVE ANY CUTS OR BRUISES ON THE DEFENDANT?

9 A. DURING THAT NIGHT, I DO NOT RECALL ANY PHYSICAL DAMAGE
10 WHATSOEVER TO HIM, NO.

11 Q. OKAY. NOW, THE BOTTOMS UP CLUB -- YOU HAD A VIDEO
12 SURVEILLANCE SYSTEM; ISN'T THAT CORRECT?

13 A. YES, WE DID.

14 Q. THE POLICE NEVER ASKED YOU FOR ANYTHING FROM THAT, DID
15 THEY?

16 A. AS FAR AS I KNOW, NO ONE HAS EVER REQUESTED THE TAPES.

17 Q. OKAY. NOW, YOU SAID IN YOUR TESTIMONY TODAY THAT THE --
18 MR. AUSTIN HAD ABOUT FIVE OR SIX DRINKS; IS THAT CORRECT?

19 A. MINIMAL, YES.

20 Q. OKAY. NOW, DO YOU RECALL A PRIOR OCCASION WHEN YOU SAID
21 THAT HE HAD ABOUT FIVE OR SIX BEERS AND ABOUT FIVE OR SIX
22 SHOTS?

23 A. THAT IS -- THAT IS POSSIBLE. I CAN'T RECALL EXACTLY HOW
24 MANY DRINKS AND SHOTS HE HAD THAT NIGHT, NO.

25 Q. OKAY. SO THAT WOULD BE 10 OR 12 DRINKS. WOULDN'T THAT

1 BE CORRECT?

2 A. YES.

3 Q. AND THAT WOULD BE IN ABOUT A THREE-OR-FOUR-HOUR PERIOD?

4 A. YEAH, IT WOULD HAVE BEEN THREE TO FOUR HOURS. YES.

5 Q. OKAY. SO HE HAD HAD A LOT TO DRINK THAT NIGHT.

6 A. THEY BOTH HAD A LOT TO DRINK, YES.

7 Q. OKAY. NOW, JUST TO GIVE THE JURY A SENSE OF THIS CLUB
8 IN GENERAL, IT'S VERY LOUD; RIGHT?

9 A. IT CAN GET LOUD, YEAH.

10 Q. OKAY. AND LOUD MUSIC.

11 A. UH-HUH.

12 Q. ALL RIGHT. AND IT'S DARK?

13 A. LOWLY LIT, YEAH. I MEAN, YOU CAN SEE ACROSS THE ROOM.
14 IT'S NOT THAT DARK.

15 Q. RIGHT. BUT IT IS SUBDUED LIGHTING, IS IT NOT?

16 A. YES.

17 Q. OKAY. AND IT WAS -- IT HAD LIKE NIGHT LIGHT SHOWS AND
18 BLACK LIGHTS AND THINGS OF THAT NATURE.

19 A. YES, SIR, WE DID HAVE A LIGHTING SHOW. YES.

20 Q. AND IT WOULD HAVE BEEN PRETTY SMOKY IN THERE ON MOST
21 OCCASIONS, WOULDN'T IT?

22 A. ACTUALLY, NO, IT DIDN'T REALLY GET VERY SMOKY IN THERE
23 AT ALL ACTUALLY, NOT NORMALLY.

24 Q. OKAY. NOW, YOU SAID YOU WERE WORKING WITH A MR.
25 WOODARD.

1 A. YES.

2 Q. WERE YOU THE ONLY TWO SECURITY OFFICERS OR PERSONNEL?

3 A. ON THAT NIGHT? NO, SIR.

4 Q. OKAY. HOW MANY PEOPLE WERE WORKING SECURITY?

5 A. IT WOULD HAVE BEEN MYSELF; JAMES WAS THERE. CLAY JONES.
6 BOB WISEMAN. AND I CAN'T RECALL CHRIS'S LAST NAME. SO THERE
7 WOULD HAVE BEEN FIVE OF US THAT NIGHT.

8 Q. FIVE OF YOU.

9 A. UH-HUH.

10 Q. ALL RIGHT. AND AT ONE POINT IN THE NIGHT I BELIEVE THAT
11 YOU HAVE PREVIOUSLY STATED THAT THERE WOULD HAVE BEEN ABOUT A
12 HUNDRED PEOPLE IN THE CLUB AT SOME POINT.

13 A. THROUGHOUT THE COURSE OF THE NIGHT THE MAXIMUM CROWD
14 WOULD BE MAYBE 100, 110 PEOPLE, YES.

15 Q. OKAY. SO THAT'S QUITE A LOT OF PEOPLE---

16 A. UH-HUH.

17 Q. ---FOR FIVE PEOPLE TO KEEP THEIR EYE ON; RIGHT? I'M NOT
18 SAYING IT'S SOMETHING YOU CAN'T DO. I'M JUST SAYING YOU GOT
19 YOUR HANDS FULL.

20 A. IT'S WITHIN REASON. FIVE PEOPLE OVER 110, IT'S WITHIN
21 REASON, YEAH.

22 Q. OKAY. NOW, YOU STATED THAT WHEN THE BLUE LIGHTS AND
23 SIRENS AND EVERYTHING OCCURRED THAT MR. WOODARD WAS WORKING
24 OUTSIDE. IS THAT RIGHT?

25 A. NO. WHO WAS WORKING OUTSIDE AT THE TIME THEY GOT US WAS

1 JASON, JASON ANDERSON.

2 Q. OKAY.

3 A. HE ACTUALLY HELPED US OUT IN THE D.J. BOOTH.

4 Q. ALL RIGHT. AND DID HE COME IN AND SAY SOMETHING BIG IS
5 GOING ON? IS THAT RIGHT?

6 A. IN ESSENCE, YES.

7 Q. OKAY. AND AT THAT POINT DID YOU GO OUTSIDE TO SEE WHAT
8 WAS GOING ON?

9 A. YEAH.

10 Q. AND---

11 A. WE PRETTY MUCH ALL DID.

12 Q. AND YOU DIDN'T HEAR ANY GUNSHOTS; IS THAT RIGHT?

13 A. I NEVER HEARD ANY GUNSHOTS; NO, I DID NOT.

14 MR. LEDDY: OKAY. BEG THE COURT'S INDULGENCE ONE
15 MOMENT, YOUR HONOR. NOTHING FURTHER, YOUR HONOR.

16 THE COURT: REDIRECT?

17 REDIRECT EXAMINATION

18 BY MR. ROSS:

19 Q. WITHOUT GOING INTO WHY, ON THAT PARTICULAR NIGHT, THAT
20 THURSDAY NIGHT GOING INTO FRIDAY MORNING, WERE YOU KEEPING
21 YOUR EYE ON MR. BRYANT?

22 A. YES. THERE WAS REASONS TO KEEP AN EYE ON HIM.

23 MR. LEDDY: OBJECTION, YOUR HONOR.

24 THE COURT: COUNSEL, APPROACH.

25 (WHEREUPON, A BENCH CONFERENCE WAS HELD.)

1 THE COURT: OBJECTION SUSTAINED.

2 MR. ROSS: THAT'S ALL THE QUESTIONS I HAVE, YOUR HONOR.

3 THE COURT: RECROSS LIMITED TO REDIRECT?

4 MR. LEDDY: NO QUESTIONS, YOUR HONOR.

5 THE COURT: AS TO THIS WITNESS, SOLICITOR?

6 MR. ROSS: HE CAN BE EXCUSED, YOUR HONOR.

7 THE COURT: ANY OBJECTION TO THIS WITNESS BEING EXCUSED,
8 COUNSEL?

9 MR. LEDDY: NO, YOUR HONOR.

10 THE COURT: YOU MAY STEP DOWN, MR. CAMPBELL, AND YOU ARE
11 EXCUSED FROM THE TRIAL OF THIS CASE. CALL YOUR NEXT WITNESS.

12 MR. ROSS: THE STATE CALLS MS. NELLIE CONNELL.

13 NELLIE CONNELL, AFTER BEING DULY SWORN, TESTIFIED
14 AS FOLLOWS:

15 THE CLERK: PLEASE HAVE A SEAT. STATE YOUR FULL NAME
16 FOR THE RECORD.

17 THE COURT: MA'AM, IF YOU WOULD FOR ME, PLEASE, IF YOU
18 WOULD BEGIN BY STATING YOUR FULL NAME AND SPELLING YOUR LAST
19 NAME FOR THE COURT REPORTER FOR THE RECORD.

20 THE WITNESS: MY NAME IS NELLIE CONNELL, C-O-N-N-E-L-L.

21 THE COURT: MS. CONNELL, I'M GOING TO ASK YOU IF YOU
22 WOULD IF YOU'D SPEAK UP. THAT MICROPHONE IN FRONT OF YOU,
23 THE SMALL ONE, IS GOING TO AMPLIFY YOUR VOICE. I WANT EACH
24 MEMBER OF MY JURY, INCLUDING THE BACK ROW AT THE END, TO BE
25 ABLE TO HEAR YOU. YOUR WITNESS, COUNSEL.

1 MR. ROSS: THANK YOU, YOUR HONOR.

2 DIRECT EXAMINATION

3 BY MR. ROSS:

4 Q. MS. CONNELL, WHERE DO YOU LIVE?

5 A. RICHLAND COUNTY.

6 Q. AND ABOUT HOW LONG HAVE YOU LIVED HERE?

7 A. I'VE BEEN HERE FOR FIVE YEARS.

8 Q. AND LET ME TAKE YOU BACK TO 1999 ON JULY 22ND AND 23RD.

9 WHERE WERE YOU LIVING THEN?

10 A. I WAS LIVING IN RICHLAND COUNTY.

11 Q. OKAY. AT SOME POINT DID YOU MOVE AWAY FROM COLUMBIA AND
12 THEN MOVE BACK?

13 A. YES, SIR.

14 Q. OKAY. SO JULY 22ND AND 23RD, 1999, WHERE WERE YOU
15 EMPLOYED?

16 A. DAYS INN, 1144 BUSH RIVER ROAD.

17 Q. AND HOW LONG HAD YOU BEEN WORKING THERE, MS. CONNELL?

18 A. THREE YEARS.

19 Q. AND WHAT WAS YOUR POSITION THERE? WHAT DID YOU DO FOR
20 THEM?

21 A. I WAS A NIGHT AUDITOR AND A DESK CLERK.

22 Q. AND WHAT DID THE NIGHT AUDITOR AND THE DESK CLERK DO AT
23 THE DAYS INN?

24 A. THE NIGHT AUDITOR DID THE AUDIT FOR THE DAY, AND THE
25 DESK CLERK CHECKED CUSTOMERS IN AND OUT.

1 Q. AND ON THAT THURSDAY EVENING, WHAT HOURS WERE YOU
2 WORKING?

3 A. WORKING FROM 11 AT NIGHT 'TIL 7 IN THE MORNING.

4 Q. OKAY. SO BASICALLY THE MIDNIGHT SHIFT, 11 A.M. -- 11
5 P.M. TO 7 A.M.

6 A. YES, SIR.

7 Q. ALL RIGHT. WERE YOU THE ONLY PERSON WORKING AT THE DAYS
8 INN THAT EVENING?

9 A. YES, SIR.

10 Q. AND LET ME ASK YOU A LITTLE BIT ABOUT THE DAYS INN
11 ITSELF. WHAT WAS THE LIGHTING LIKE AROUND THE DAYS INN? WAS
12 THE -- WAS IT LIT UP?

13 A. YES, SIR.

14 Q. AND HOW WELL WAS THE LIGHTING?

15 A. WELL, YOU COULD SEE PRETTY GOOD, SO I GUESS IT WAS WELL
16 LITTED (SIC).

17 Q. OKAY. AND ON THAT -- GOING INTO FRIDAY MORNING, DID YOU
18 EVER HAVE OCCASION TO SEE THE DEFENDANT, THOMAS BRYANT?

19 A. YES, SIR, I SAW HIM.

20 Q. AND WHAT -- WHAT HAPPENED? WHAT DREW YOUR ATTENTION TO
21 HIM?

22 A. HIM AND A GUY---

23 Q. DESCRIBE---

24 A. HIM AND A GUY WAS COMING AROUND THE CURVE, COMING INTO
25 THE MOTEL, AND THEY WAS LAUGHING. AND I WONDERED, "MY, THESE

1 PEOPLE ARE HAPPY." SO I GOT UP TO SEE WHAT WAS GOING ON.

2 Q. AND WHERE WERE YOU -- WHERE WERE YOU AT THE DAYS INN?

3 DESCRIBE FOR THE JURY WHERE YOU WERE.

4 A. ALL RIGHT. WHEN YOU GO IN THE DAYS INN, WE HAD THE

5 LOUNGE ON ONE SIDE AND A COUNTER DIVIDED IT, AND BACK BEHIND

6 THE COUNTER WAS THE OFFICE WHERE I MOSTLY DID ALL THE WORK.

7 THE COMPUTER WAS BACK THERE AND EVERYTHING. SO I WAS

8 STANDING, I MEAN, IN THE BACK AND I WAS SITTING DOWN, AND I

9 GOT UP TO SEE. I LOOKED OVER THE COUNTER AND SAW THEM COMING

10 AROUND THE CURVE.

11 Q. ALL RIGHT. WHEN YOU SAY THEY WERE COMING AROUND THE

12 CURVE, HOW WERE THEY COMING AROUND?

13 A. THEY WAS -- THE ONE GENTLEMAN WAS PUSHING MR. BRYANT IN

14 HIS WHEELCHAIR.

15 Q. DID YOU KNOW WHO THE OTHER GENTLEMAN WAS?

16 A. NO, SIR, I DID NOT.

17 Q. DID YOU KNOW WHO MR. BRYANT WAS?

18 A. YES, SIR, I KNEW MR. BRYANT BECAUSE HE HAD REGISTERED

19 INTO THE MOTEL.

20 Q. ALL RIGHT. AND HE WAS STAYING THERE?

21 A. YES, SIR.

22 Q. AND HOW LONG DID YOU OBSERVE HIM COMING DOWN THE CURVE?

23 HOW LONG DID IT TAKE THEM TO GET TO THE MOTEL?

24 A. I DON'T REALLY KNOW. I CAN'T ANSWER THAT QUESTION

25 BECAUSE I DIDN'T LOOK AT THE CLOCK.

1 Q. OKAY. THAT'S FAIR ENOUGH.

2 A. BUT IT WASN'T VERY LONG BEFORE THEY COME ON BY THE
3 FRONT.

4 Q. WERE YOU LOOKING OUT A WINDOW?

5 A. I WAS LOOKING OUT TWO WINDOWS.

6 Q. OKAY.

7 A. WE HAD A WINDOW THIS WAY AND A WINDOW THIS WAY.

8 Q. AND DID THE PROPERTY HAVE A VIDEO CAMERA SYSTEM?

9 A. YES, SIR, IT DID.

10 Q. ALL RIGHT. AND HOW DID YOU OBSERVE WHAT WAS ON THE --
11 WHAT THE CAMERA WAS SHOWING?

12 A. WE HAD A MONITOR UP IN THE CORNER OF THE ROOM.

13 Q. OKAY. AND DO YOU KNOW HOW MANY CAMERAS THERE WERE ON
14 THE PROPERTY?

15 A. I THINK IT WAS -- THERE HAD TO BE TWO ON EACH BUILDING.
16 IT COULD HAVE BEEN MORE; I'M NOT SURE.

17 Q. OKAY. AND DID YOU WATCH THE DEFENDANT AND THE VICTIM ON
18 THE MONITOR?

19 A. YES, SIR, SURE DID.

20 Q. ALL RIGHT. DESCRIBE FOR THE JURY WHAT YOU SAW. WHAT
21 HAPPENED?

22 A. WELL, THEY COME ON BY THE OFFICE.

23 Q. LET ME STOP YOU RIGHT THERE. DO YOU KNOW ABOUT WHAT
24 TIME THIS WAS?

25 A. NO, SIR, I DON'T.

1 Q. OKAY.

2 A. I WASN'T LOOKING---

3 Q. GO AHEAD.

4 A. ---AT THE CLOCK. THEY CAME ON BY MY OFFICE. THIS
5 GENTLEMAN WAS PUSHING MR. BRYANT, AND THEY GOT ON DOWN SO FAR
6 AND I LOST CONTACT WITH THEM. I COULDN'T SEE THEM. SO I GOT
7 BUSY, AND THEN THE NEXT THING I KNEW THEY WAS IN THE BACK AT
8 THE SWIMMING POOL. THEY COULDN'T GET INTO THE POOL BECAUSE
9 THE GATE WAS LOCKED, BUT THEY WAS AT THE FENCE.

10 Q. OKAY. AND DID YOU SEE ANYTHING AFTER THAT?

11 A. WELL, THEY STAYED OUT THERE AND TALKED AND TALKED LIKE
12 JUST TWO BUDDIES WOULD DO AND THEY THEN -- I MISSED THEM AND
13 THEN THE NEXT THING I KNEW THEY WAS COMING BACK AROUND, AND
14 JUST AS THEY GOT EVEN WITH MY NIGHT WINDOW, THERE WAS LIKE
15 A -- LIKE A BUMP. I GUESS THEY'D CALL IT A SPEED BUMP.

16 Q. YES, MA'AM.

17 A. HE -- MR. BRYANT FELL OUT OF THE WHEELCHAIR.

18 Q. OKAY.

19 A. AND THE OTHER GENTLEMAN PICKED HIM UP, PUT HIM BACK IN
20 THE WHEELCHAIR, WENT BEHIND THE WHEELCHAIR AND CAUGHT HIM AND
21 PULLED HIM BACK.

22 Q. OKAY.

23 A. WELL, AFTER THAT THEY WENT ON AROUND, AND I LOST THEM
24 AGAIN. SO I DON'T KNOW WHERE THEY WENT FROM THERE.

25 Q. OKAY. WHEN THE DEFENDANT FELL, WAS THAT ON PAVEMENT

1 WHERE THE SPEED BUMP WAS?

2 A. YES, SIR.

3 Q. WAS THAT IN THE PARKING LOT?

4 A. RIGHT.

5 MR. ROSS: OKAY. MAY I APPROACH, YOUR HONOR?

6 THE COURT: YOU ALREADY HAVE, COUNSEL.

7 MR. ROSS: I APOLOGIZE. MAY I APPROACH?

8 THE COURT: DON'T BLOCK THE JURY. YOU MAY APPROACH.

9 MR. ROSS: YES, SIR.

10 THE COURT: HAND IT TO THE WITNESS AND STEP BACK.

11 BY MR. ROSS:

12 Q. WITHOUT SHOWING THOSE TO THE JURY, IF YOU COULD LOOK AT
13 THOSE.

14 A. (THE WITNESS LOOKS AT PHOTOGRAPHS.)

15 Q. DO YOU RECOGNIZE WHAT'S SHOWN IN THOSE PHOTOS?

16 A. YES, SIR.

17 Q. IS THAT AN ACCURATE DEPICTION OF THE WAY THE DAYS INN
18 LOOKED ON JULY THE 23RD, 1999?

19 A. YES, SIR.

20 Q. MA'AM?

21 A. YES, SIR.

22 Q. AND ALSO THERE'S A LITTLE NOTE -- MAY I APPROACH, YOUR
23 HONOR? I CAN'T REMEMBER THE EXHIBIT NUMBER.

24 THE COURT: YES, SIR.

25

1 BY MR. ROSS:

2 Q. STATE'S EXHIBIT 107, DO YOU RECOGNIZE THAT NOTE?

3 A. YES, SIR, I SURE DO.

4 Q. OKAY. AND IS THAT A NOTE THAT YOU WROTE IN YOUR OWN
5 HANDWRITING?

6 A. YES, SIR.

7 MR. ROSS: YOUR HONOR, I'D OFFER STATE'S EXHIBIT 39, 40,
8 41, AND 107 INTO EVIDENCE. THE DEFENSE HAS SEEN THOSE
9 EXHIBITS, YOUR HONOR.

10 THE COURT: MR. COLLINS, HAVE YOU SEEN THESE EXHIBITS?

11 MR. COLLINS: YES, YOUR HONOR, WE HAVE SEEN THE
12 EXHIBITS.

13 THE COURT: ANY OBJECTION?

14 MR. LEDDY: WE OBJECT TO THE FOUNDATION ON THE BASIS OF
15 FOUNDATION OF THE NOTE AT THIS POINT, YOUR HONOR.

16 THE COURT: YOU OBJECT ON THE BASIS OF THE FOUNDATION OF
17 WHAT, COUNSEL?

18 MR. LEDDY: FOR THE NOTE AT THIS POINT, YOUR HONOR.

19 THE COURT: MY UNDERSTANDING IS, COUNSEL, THAT SHE SAYS
20 SHE WROTE THE NOTE. IT'S HER HANDWRITING. WHAT'S THE BASIS
21 OF THE FOUNDATION?

22 MR. LEDDY: YOUR HONOR, WE WITHDRAW IT. I'M SORRY.

23 THE COURT: ALL RIGHT. WHAT NUMBERS, COUNSEL?

24 MR. ROSS: YOUR HONOR, IT'S 39, 40, 41, AND 107.

25 THE COURT: 39, 40, 41, AND 107?

1 MR. ROSS: YES, YOUR HONOR.

2 THE COURT: LADIES AND GENTLEMEN OF THE JURY, STATE'S
3 EXHIBITS 39, 40, 41, AND 107 WILL BE ADMITTED INTO EVIDENCE
4 WITHOUT OBJECTION.

5 (STATE'S EXHIBITS 39, 40, 41, AND 107 WERE RECEIVED IN
6 EVIDENCE.)

7 THE COURT: YOU MAY NOW PUBLISH TO THE JURY.

8 MR. ROSS: YOUR HONOR, MAY I APPROACH, YOUR HONOR?

9 THE COURT: YOU MAY.

10 BY MR. ROSS:

11 Q. MS. CONNELL, SHOWING YOU STATE'S EXHIBIT NUMBER 39, WHAT
12 -- I'M GOING TO HOLD THIS UP FOR THE JURY. WHAT IS THAT
13 SHOWING?

14 A. THAT SHOWS THE DAYS INN AS YOU COME IN. THE FIRST THING
15 IS THE DRIVE-THROUGH WINDOW.

16 Q. OKAY. AND WHERE WOULD THE DRIVE-THROUGH WINDOW BE ON
17 THIS?

18 A. RIGHT HERE ALONG IN HERE.

19 Q. WHERE I'VE GOT MY PEN RIGHT HERE? IS THAT WHERE YOU
20 WERE -- THE WINDOWS THAT YOU WERE LOOKING OUT, IS THAT WHERE
21 THAT WOULD BE LOCATED?

22 A. WELL, WE HAD ONE RIGHT UP THERE.

23 Q. POINT---

24 A. THAT'S ABOUT RIGHT.

25 Q. POINT FOR ME ON THE PICTURE SO THEY CAN SEE WHERE THAT

1 IS. I'M TRYING NOT TO HAVE YOU STEP DOWN.

2 A. THAT WINDOW -- THIS WINDOW WOULD BE HERE.

3 Q. RIGHT HERE WHERE I'VE GOT MY FINGER?

4 A. YEAH.

5 Q. AND YOU'D BE LOOKING OUT INTO THE PARKING LOT FROM
6 THERE?

7 A. YES, SIR.

8 Q. SHOWING YOU STATE'S EXHIBIT NUMBER 40, WHAT DOES THAT
9 SHOW?

10 A. THAT SHOWS THE MOTEL AND THAT'S THE DRIVE-IN WHERE YOU
11 COME UNDER AND HAVE A LITTLE WINDOW HERE. WE CALL IT THE
12 NIGHT WINDOW THAT YOU CHECK IN GUESTS.

13 Q. OKAY. SHOWING YOU STATE'S EXHIBIT NUMBER 41, WHAT DOES
14 THAT PICTURE SHOW?

15 A. THAT SHOWS THE ROOMS OF THE MOTEL. THIS IS THE
16 BREEZEWAY OF THE MOTEL.

17 Q. OKAY. WOULD THAT BE ROOM 129 RIGHT THERE ON THE CORNER?

18 A. 129 IS ON THE CORNER.

19 Q. OKAY. DO YOU RECALL IF THAT'S A HANDICAP ROOM?

20 A. NO, SIR, I DON'T RECALL.

21 Q. OKAY. BUT 129 WOULD BE THIS ROOM ON THE BOTTOM LEVEL?

22 A. YES, SIR.

23 MR. ROSS: MAY I APPROACH, YOUR HONOR?

24 THE COURT: YOU MAY.

25

1 BY MR. ROSS:

2 Q. LOOKING AT STATE'S EXHIBIT NUMBER 108---

3 A. YES, SIR.

4 Q. ---THAT'S A DRAWING. DOES THAT ACCURATELY -- NOT TO
5 SCALE BUT DOES THAT ACCURATELY DEPICT BASICALLY THE LAYOUT OF
6 THE DAYS INN?

7 A. YES, SIR.

8 Q. I NEED YOU TO SPEAK UP JUST A LITTLE BIT.

9 A. YES, SIR. YES, SIR.

10 MR. ROSS: OKAY. YOUR HONOR, I OFFER STATE'S EXHIBIT
11 108 INTO EVIDENCE.

12 THE COURT: ANY OBJECTION AS TO 108?

13 MR. LEDDY: NO, YOUR HONOR.

14 THE COURT: LADIES AND GENTLEMEN OF THE JURY, STATE'S
15 EXHIBIT 108 WILL BE ADMITTED INTO EVIDENCE WITHOUT OBJECTION.

16 (STATE'S EXHIBIT 108 WAS RECEIVED IN EVIDENCE.)

17 MR. ROSS: LET ME HAVE YOU---

18 THE COURT: COUNSEL, YOU MAY COME AROUND IF YOU WISH TO
19 DO SO.

20 MR. ROSS: CAN I HAVE HER STEP DOWN, YOUR HONOR?

21 THE COURT: YOU MAY. MA'AM, WHEN YOU STEP DOWN, YOU'RE
22 AWAY FROM THE MICROPHONE. THE COURT REPORTER CAN'T HEAR YOU
23 UNLESS YOU SPEAK UP.

24 THE WITNESS: YES, SIR.

25 THE COURT: BE CAREFUL. THEY'LL ASSIST YOU, MA'AM, IF

1 YOU WOULD. PUT IT ON THE EASEL. COUNSEL MAY COME AROUND AND
2 VIEW WHAT'S BEING SHOWN TO THE JURY IF THEY SO DESIRE.

3 THE WITNESS: DO YOU WANT ME TO COME DOWN?

4 MR. ROSS: YES, MA'AM.

5 THE COURT: HAVE HER FACE THE COURT REPORTER. GET ON
6 THE OTHER SIDE OF THE EASEL AND, COUNSEL, DON'T YOU BLOCK THE
7 COURT REPORTER'S VIEW.

8 MR. ROSS: YES, SIR.

9 THE COURT: CAN EVERYONE ON THE JURY SEE? LET ME KNOW
10 IF YOU CAN'T SEE OR HEAR. PROCEED.

11 MR. ROSS: THANK YOU, YOUR HONOR.

12 BY MR. ROSS:

13 Q. MS. CONNELL, WHEN YOU TESTIFIED BEFORE ABOUT SEEING THE
14 DEFENDANT AND THE OTHER INDIVIDUAL LAUGHING WHEN THEY FIRST
15 GOT -- WHEN THAT FIRST GOT YOUR ATTENTION, APPROXIMATELY
16 WHERE WERE THEY ON THE -- POINT OUT ON THE DIAGRAM ABOUT
17 WHERE THEY WERE.

18 A. THEY WAS COMING AROUND THE CURVE COMING IN.

19 Q. OKAY. AND IS THIS WHERE YOUR OFFICE WAS LOCATED, THE
20 WINDOW THAT YOU WERE TALKING ABOUT?

21 A. YES, SIR.

22 THE COURT: JUST A MOMENT. YES, SIR?

23 MR. CATHCART: THERE'S A MICROPHONE RIGHT THERE, YOUR
24 HONOR. DO YOU WANT ME TO HOLD THAT TO HER MOUTH SO SHE CAN
25 BE A LITTLE LOUDER?

1 THE COURT: IT WOULD HELP. BRING IT OVER TO HER. THANK
2 YOU, MR. CATHCART. THE COURT APPRECIATES YOUR ASSISTANCE.
3 PROCEED.

4 BY MR. ROSS:

5 Q. THIS IS WHERE YOUR OFFICE WAS LOCATED?

6 A. YES, SIR.

7 Q. THANK YOU. AND THE---

8 THE COURT: EXCELLENT, MS. CONNELL.

9 BY MR. ROSS:

10 Q. THE BREEZEWAY THAT'S SHOWN IN STATE'S EXHIBIT 41, IS
11 THAT -- IS THAT THE BREEZEWAY RIGHT THERE ON THE DIAGRAM?

12 A. YES, SIR.

13 Q. ALL RIGHT. AND ROOM 129 IS ON THIS CORNER? IS THAT
14 RIGHT?

15 A. YES, SIR.

16 Q. ALL RIGHT. AND THE DAYS INN HAD A -- HAD A POOL AREA.
17 YOU TALKED ABOUT THEM GOING AROUND THE POOL. IS THAT THE
18 LOCATION OF THE POOL?

19 A. I'M NOT SURE OF THAT. IS THAT THE BACK OF THE BUILDING?

20 Q. YES, MA'AM.

21 A. ALL RIGHT. THAT'S THE AREA OF THE POOL.

22 Q. ALL RIGHT. AND YOU COULD NOT SEE FROM YOUR OFFICE TO
23 THE -- I'M ASK -- I DON'T KNOW IF YOU COULD SEE OR NOT.

24 COULD YOU SEE FROM YOUR OFFICE TO THE POOL?

25 A. NO, SIR.

1 Q. OKAY. AND HOW WERE YOU ABLE TO OBSERVE THEM IN THE POOL
2 AREA?

3 A. I WENT OUT OF THE OFFICE INTO THE LOBBY, WALKED TO THE
4 BACK DOOR AND STOOD THERE AND WATCHED THEM.

5 Q. ALL RIGHT. AND THEN WHEN THEY LEFT THE POOL AREA, WHAT
6 DIRECTION---

7 A. THEY WENT BACK TOWARDS THE ROOM WHICH IS 129.

8 Q. ALL RIGHT. SO DOWN THIS MIDDLE PARKING LOT AREA?

9 A. RIGHT, IN THE PARKING LOT.

10 Q. OKAY.

11 A. AND THEN I LOST THEM.

12 Q. OKAY. WELL, DID YOU SEE THEM TOGETHER AFTER THAT?

13 A. NO, SIR.

14 Q. ALL RIGHT. IF YOU COULD RETAKE YOUR SEAT.

15 THE COURT: TAKE THE MICROPHONE AND PUT IT BACK UP FOR
16 HER. TAKE DOWN THE EXHIBIT, COUNSEL, SO IT DOESN'T BLOCK
17 DEFENSE COUNSEL'S VIEW OF THE JURY.

18 MR. ROSS: YES, SIR.

19 THE COURT: ASSIST THE WITNESS BACK TO THE WITNESS
20 STAND.

21 MR. ROSS: YES, MA'AM.

22 THE COURT: PROCEED.

23 BY MR. ROSS:

24 Q. SO WHEN YOU LOST VIEW AND THEY WENT BACK TOWARDS THE
25 ROOM, WHAT HAPPENED AFTER THAT?

1 A. WELL, I JUST FIGURED THEY WERE SETTLED DOWN FOR THE
2 NIGHT, BUT IN A FEW MINUTES A GENTLEMAN CAME TO THE WINDOW
3 AND TOLD ME THAT MR. BRYANT WANTED ME TO COME AROUND TO HIS
4 ROOM. AND I SAID, "I'M SORRY, SIR. I DO NOT GO OUT AT NIGHT
5 TO NOBODY'S ROOM," SO HE LEFT.

6 Q. WAS THAT INDIVIDUAL BY HIMSELF?

7 A. YES, SIR.

8 Q. ALL RIGHT. AND THEN WHAT HAPPENED AFTER THAT?

9 A. HE LEFT. IN JUST A FEW MINUTES HE WAS BACK.

10 Q. OKAY.

11 A. AND HE WANTED A KEY TO MR. BRYANT'S ROOM WHERE THEY
12 COULD GET IN, AND I SAID, "SIR, I DON'T MAKE KEYS FOR ANYONE
13 UNLESS I HAVE PERMISSION FROM THE GENTLEMAN THAT RENTED THE
14 ROOM." AND SO HE -- HE LEFT AND THEN HE COME BACK. HE
15 DIDN'T GO BACK TO THE ROOM. HE WENT JUST A LITTLE DOWN THIS
16 THING AND HE WALKED BACK, AND HE SAYS, "WELL, HOW ARE WE
17 GOING TO GET IN?" AND I SAID, "I HAVE NO IDEA."

18 BUT -- SO I THOUGHT A MINUTE BECAUSE I KNEW MR. BRYANT
19 WAS IN A WHEELCHAIR. SO I SAID, "LET ME SEE SOME I.D.,"
20 BECAUSE I DIDN'T EVEN KNOW WHO THE GENTLEMAN WAS UNTIL I
21 ASKED HIM FOR HIS I.D. SO HE REACHED IN HIS POCKET, SHOWED
22 ME HIS I.D., AND STICKED (SIC) IT IN THROUGH THE LITTLE
23 WINDOW.

24 Q. WHEN HE SHOWED YOU HIS I.D., WAS THAT DANIEL AUSTIN?

25 A. YES, SIR.

1 Q. OKAY. AND THEN WHAT DID YOU DO?

2 A. THEN I WROTE THIS LITTLE NOTE AND I SAID, "YOU'LL HAVE
3 TO SIGN THIS LITTLE NOTE FOR ME." HE SAID, "OKAY." SO I
4 MADE THE KEY, HANDED HIM THE KEY. WELL, WHILE I WAS MAKING
5 THE KEY, ANOTHER GENTLEMAN WALKED UP BEHIND HIM, SO HE LEFT
6 REAL QUICK. I THOUGHT HE HAD SIGNED THE NOTE---

7 Q. YES, MA'AM.

8 A. ---UNTIL ALL THIS HAPPENED OR... SO I LOOKED AT THE
9 NOTE AND HE HADN'T SIGNED IT. BUT HE SAID -- I GAVE HIM THE
10 KEY, AND HE STARTED BACK TO THE ROOM. WELL, THIS GENTLEMAN
11 THAT CAME BY, HE SAID, "MA'AM, THE GENTLEMAN IN THE
12 WHEELCHAIR SAID TWO MEN WAS TRYING TO BEAT HIM UP."

13 Q. LET ME ASK YOU THIS: DID YOU TRY TO CONTACT MR. BRYANT
14 BEFORE YOU MADE A KEY?

15 A. I CALLED HIS ROOM; YES, SIR. THAT WAS THE WAY WE ALWAYS
16 DID, CALL THE ROOM TO MAKE SURE, BUT NO ONE ANSWERED THE
17 PHONE.

18 Q. OKAY.

19 A. AND THAT WAS ONE REASON I WENT AHEAD AND MADE THE KEY
20 BECAUSE I KNEW HE WAS IN THE WHEELCHAIR, AND I DIDN'T WANT
21 HIM TO SIT OUTSIDE.

22 Q. OKAY.

23 A. OKAY. SO THE GENTLEMAN THAT CAME TO THE WINDOW TO TELL
24 ME THAT SOMEBODY WAS TRYING -- HE SAID MR. BRYANT ASKED HIM
25 TO TELL ME THAT SOMEBODY -- TWO MEN WAS TRYING TO BEAT HIM

1 UP. I SAID, "WELL, I'LL TAKE CARE OF IT." SO I CALLED THE
2 LAW ENFORCEMENT.

3 Q. OKAY. LET ME STOP YOU RIGHT THERE. DID YOU SEE ANYBODY
4 OUT IN THE PARKING LOT ON YOUR MONITOR?

5 A. NO, SIR.

6 Q. DID YOU EVER SEE TWO MEN?

7 A. NO, SIR.

8 Q. ALL RIGHT. ARE THE ONLY PEOPLE THAT YOU SAW WAS MR.
9 AUSTIN AND MR. BRYANT?

10 A. RIGHT.

11 MR. ROSS: MAY I APPROACH, YOUR HONOR?

12 THE COURT: YOU MAY.

13 BY MR. ROSS:

14 Q. THIS HAS GOT SOME DUST ON IT, SO I'M GOING TO TRY TO
15 KEEP YOU FROM GETTING IT ON YOUR HANDS. STATE'S EXHIBIT 44
16 AND STATE'S EXHIBIT NUMBER 93 AND STATE'S EXHIBIT NUMBER 92,
17 DO YOU RECOGNIZE THOSE ITEMS?

18 A. YES, SIR. THEY'RE KEYS.

19 THE COURT: COUNSEL?

20 MR. LEDDY: NO OBJECTION, YOUR HONOR.

21 MR. ROSS: I'M SORRY. I THINK I MISSPOKE. THIS IS
22 STATE'S EXHIBIT NUMBER 94 INSTEAD OF 44.

23 THE COURT: 94, 93, AND 92, COUNSEL?

24 MR. ROSS: YES, YOUR HONOR.

25 THE COURT: LADIES AND GENTLEMEN OF THE JURY -- STEP

1 BACK, COUNSEL. STATE'S EXHIBIT 94, 93, AND 92 WILL BE
2 ADMITTED INTO EVIDENCE WITHOUT OBJECTION.

3 (STATE'S EXHIBITS 92 THROUGH 94 WERE RECEIVED IN
4 EVIDENCE.)

5 THE COURT: YOU MAY NOW PUBLISH TO THE JURY.

6 MR. ROSS: THANK YOU, YOUR HONOR.

7 BY MR. ROSS:

8 Q. MS. CONNELL, WHAT ARE THESE ITEMS - 92, 93, AND 94?

9 A. THEY'RE DOOR KEYS.

10 Q. OKAY.

11 A. THEY'RE DOOR CARDS, BUT THEY'RE KEYS.

12 Q. IS THAT WHAT YOU USED TO ACCESS A ROOM AT THE DAYS INN?

13 A. YES, SIR.

14 Q. ALL RIGHT. AND LOOKING AT STATE'S EXHIBIT NUMBER 107,
15 IS THAT THE NOTE THAT YOU TESTIFIED TO EARLIER?

16 A. YES, SIR.

17 Q. THAT YOU WROTE OUT ABOUT DANIEL AUSTIN GETTING A KEY?

18 A. YES, SIR.

19 Q. OKAY. AND SO WHEN YOU MADE A KEY, YOU -- THIS IS WHAT
20 YOU MADE FOR HIM?

21 THE COURT: REFER TO THE EXHIBIT NUMBER FOR THE RECORD,
22 COUNSEL.

23 MR. ROSS: YES, SIR, YOUR HONOR.

24 BY MR. ROSS:

25 Q. EITHER 93, 94, OR 92 WOULD HAVE BEEN THE KEY CARD FOR

1 ROOM 129, SO...

2 A. YES, SIR.

3 Q. RIGHT?

4 A. YES, SIR.

5 Q. OKAY. SO AFTER THIS OTHER INDIVIDUAL CAME UP THERE AND
6 TOLD YOU WHAT MR. BRYANT HAD SAID, WHAT DID YOU DO AS A
7 RESULT OF THAT INFORMATION?

8 A. I CALLED THE SHERIFF'S DEPARTMENT.

9 Q. ALL RIGHT. AND DID YOU GET THEM ON THE PHONE?

10 A. I GOT THE DISPATCHER ON THE PHONE.

11 Q. OKAY. AND WHAT DID YOU TELL THEM?

12 A. I TOLD -- IT WAS A LADY, SIR.

13 Q. OKAY.

14 A. BUT I TOLD HER TO SEND ME SOMEONE OUT THERE. I NEED A
15 DEPUTY AT DAYS INN AT 1144 BUSH RIVER ROAD.

16 Q. AND WHAT HAPPENED WHILE YOU WERE ON THE PHONE WITH THEM?

17 A. WELL, BANG, BANG, BANG, BANG.

18 Q. OKAY. AND WHAT WAS THAT?

19 A. IT WAS SOMEBODY SHOOTING A GUN OR A PISTOL. I DON'T --
20 I DON'T KNOW WHICH ONE.

21 Q. OKAY.

22 A. BUT IT WAS ONE OF THEM.

23 Q. DID YOU HEAR ONE SHOT OR MORE THAN ONE SHOT?

24 A. MORE THAN ONE SHOT, SIR.

25 Q. COULD YOU SEE WHERE THE GUNFIRE WAS COMING FROM?

1 A. NO, SIR.

2 Q. ALL RIGHT. AND WHAT HAPPENED WHEN YOU HEARD THE
3 GUNSHOTS? WHAT DID YOU DO?

4 A. I TOLD THE DISPATCHER THAT THERE WAS -- TO CALL THE
5 POLICEMAN -- I MEAN THE DEPUTIES AND TELL THEM THAT GUNSHOTS
6 WAS BEING FIRED OUT THERE, AND ABOUT THE TIME I TOLD HER TO
7 DO THAT, I SAW THE DEPUTY'S CAR COMING AROUND THE CURVE. SO
8 I SAID, "MA'AM, I SEE A DEPUTY COMING AROUND THE CURVE." SHE
9 SAID, "DON'T HANG UP." I SAID, "I'M GOING TO STOP HIM." SO
10 I RUN, BECAUSE WE HAD A LITTLE HALL TO RUN DOWN, AND THEN YOU
11 HAD THE DOOR TO GO OUT INTO THE LOBBY. SO I WENT RUNNING
12 AROUND THERE, AND I WAS WAVING MY ARMS BECAUSE THEY COULD SEE
13 ME BECAUSE OF THE WINDOWS IN THE GLASS DOOR. SO HE PULLED UP
14 AND PARKED AND I SAID, "THERE'S GUNFIRE. SOMEONE IS
15 SHOOTING."

16 Q. OKAY.

17 A. AND HE THANKED ME.

18 Q. LET ME BACK UP JUST A SECOND. WHEN MR. DANNY AUSTIN
19 LEFT THE WINDOW AND THE OTHER INDIVIDUAL CAME UP TO THE
20 WINDOW AND YOU MADE THE CALL, ABOUT HOW MUCH TIME HAD PASSED
21 SINCE DANNY AUSTIN HAD LEFT THAT WINDOW?

22 A. WELL, SIR, I HAD TO TAKE TWO STEPS TO THE PHONE.

23 Q. OKAY. SO IT WAS FAIRLY QUICK.

24 A. YES, SIR.

25 Q. ALL RIGHT. AND WHEN THE POLICE GOT THERE, DID YOU HEAR

1 ANY MORE GUNSHOTS?

2 A. I THINK I -- THERE WAS ABOUT THREE AFTER THEY GOT THERE.

3 Q. OKAY.

4 A. NOW, IT'S BEEN A LONG WHILE, BUT I THINK IT WAS THREE,
5 BUT THERE WAS SOME SHOTS.

6 Q. AND HOW MANY POLICE ARRIVED THERE AT THE DAYS INN? WAS
7 IT...

8 A. SIR, I COULDN'T ANSWER THAT.

9 Q. MORE THAN ONE?

10 A. BECAUSE THEY -- YES, SIR. THEY FLEW IN THERE.

11 Q. OKAY. WAS IT OBVIOUS THE POLICE WERE THERE?

12 A. VERY OBVIOUS.

13 Q. OKAY.

14 THE COURT: ANYTHING FURTHER, COUNSEL?

15 MR. ROSS: NO, YOUR HONOR.

16 THE COURT: CROSS-EXAMINATION?

17 MR. LEDDY: THANK YOU, YOUR HONOR.

18 CROSS-EXAMINATION

19 BY MR. LEDDY:

20 Q. HELLO, MA'AM. I'M GOING TO BE AS BRIEF AS POSSIBLE.

21 NOW, MOST OF THE INTERACTION BETWEEN THE DEFENDANT AND MR.

22 AUSTIN YOU SAW ON THE SCREEN FROM THE VIDEO CAMERAS. IS THAT
23 CORRECT?

24 A. EXCEPT WHEN THEY WAS AT THE POOL. I WAS AT THE BACK
25 DOOR WATCHING THEM.

1 Q. OKAY.

2 A. AND THE GLASS DOOR AND RIGHT ON ACROSS THERE WAS A POOL.

3 MR. LEDDY: OKAY. NOW -- YOUR HONOR, MAY I APPROACH THE
4 WITNESS?

5 THE COURT: YOU MAY.

6 MR. LEDDY: THANK YOU.

7 BY MR. LEDDY:

8 Q. DO WE HAVE THAT NOTE? ALL RIGHT. SO THIS IS THE NOTE
9 EXACTLY AS YOU WROTE IT THAT NIGHT. IS THAT CORRECT?

10 A. YES, SIR.

11 THE COURT: REFER TO THE EXHIBIT NUMBER FOR THE RECORD.

12 MR. LEDDY: EXHIBIT NUMBER 107, YOUR HONOR. STATE'S
13 EXHIBIT 107.

14 BY MR. LEDDY:

15 Q. ON THE NIGHT IN QUESTION, WAS THERE ANY MORE SPACE AT
16 THE BOTTOM?

17 A. NO, SIR.

18 Q. OKAY. NOW, WHEN THE POLICE ARRIVED, THEY WERE THERE FOR
19 ABOUT 25 MINUTES PRIOR TO APPREHENDING MR. BRYANT. IS THAT
20 CORRECT?

21 A. I HAVE NO IDEA, SIR.

22 Q. OKAY. WERE YOU THERE---

23 A. AFTER THEY ARRIVED?

24 Q. YES, MA'AM.

25 A. I DIDN'T WATCH NO MORE IN THE MONITOR, AND I DIDN'T KNOW

1 ANYTHING ELSE THAT WAS GOING ON.

2 Q. OKAY. NOW, YOU STATED THAT A MAN CAME TO THE COUNTER
3 AND SAID---

4 A. THEY CAME---

5 Q. ---BASICALLY---

6 A. ---TO THE NIGHT WINDOW---

7 THE COURT: JUST A MOMENT. ONE AT A TIME. LET HER
8 FINISH HER ANSWER. THEN ASK A QUESTION. ASK A QUESTION,
9 COUNSEL.

10 BY MR. LEDDY:

11 Q. YOU TESTIFIED THAT MR. HAWKINS CAME TO THE DESK AND SAID
12 THE MAN IN THE WHEELCHAIR SAID HE'S BEEN ASSAULTED. IS THAT
13 RIGHT?

14 A. NO, SIR.

15 Q. OKAY. CAN YOU TELL ME WHAT HE SAID?

16 A. WHEN HE CAME TO THE WINDOW -- WHICH TIME, SIR? THE
17 FIRST TIME OR THE SECOND?

18 Q. NOT MR. AUSTIN BUT MR. HAWKINS, THE MAN THAT PROMPTED
19 YOU TO CALL THE POLICE.

20 A. MR. HAWKINS CAME ONE TIME AND HE SAID THAT THE GUY IN
21 THE WHEELCHAIR -- HE DIDN'T SAY MR. BRYANT. HE SAID THE GUY
22 IN THE WHEELCHAIR SAID THAT TWO MEN WAS ASSAULTING HIM OR
23 BEATING HIM UP IS WHAT HE SAID.

24 Q. OKAY.

25 A. AND I SAID, "I'LL TAKE CARE OF IT." I TURNED RIGHT

1 AROUND AND WALKED TO THE PHONE AND CALLED THE SHERIFF'S
2 DEPARTMENT.

3 Q. NOW, REGARDING THESE VIDEO CAMERAS, THEY DON'T HAVE A
4 SOUND FEED; CORRECT?

5 A. NO, SIR.

6 Q. OKAY. SO YOU DIDN'T HEAR ANY OF THE CONVERSATIONS THAT
7 TOOK PLACE BETWEEN MR. AUSTIN---

8 A. NO, SIR, I SURE DIDN'T.

9 Q. OKAY. NOW, THIS IS JUST MY LAST QUESTION; I JUST WANT
10 TO BE CLEAR. ARE YOU SURE THAT YOU NEVER TOLD ANYBODY IN
11 9-1-1 THAT SOMEBODY HAD BEEN PUSHED OUT OF A WHEELCHAIR?

12 A. I AM POSITIVE.

13 MR. LEDDY: THANK YOU, MA'AM. NO FURTHER QUESTIONS,
14 YOUR HONOR.

15 MR. ROSS: I JUST HAVE ONE FOLLOW-UP QUESTION.

16 THE COURT: REDIRECT.

17 REDIRECT EXAMINATION

18 BY MR. ROSS:

19 Q. WAS THERE A VIDEOTAPE OF WHAT YOU WERE WATCHING ON THE
20 MONITORS?

21 A. NO, SIR, THERE WASN'T A VIDEOTAPE.

22 Q. OKAY. NO VIDEOTAPE MADE?

23 A. NO, SIR.

24 MR. ROSS: OKAY. THANK YOU.

25 THE COURT: RECROSS LIMITED TO REDIRECT? RECROSS

1 LIMITED TO REDIRECT?

2 MR. LEDDY: SORRY, YOUR HONOR. NOTHING AT THIS TIME,
3 YOUR HONOR.

4 THE COURT: AS TO THIS WITNESS, SOLICITOR?

5 MR. ROSS: ASK THAT SHE BE EXCUSED, YOUR HONOR.

6 THE COURT: ANY OBJECTION?

7 MR. LEDDY: NO, YOUR HONOR.

8 THE COURT: MA'AM, YOU MAY STEP DOWN FROM THE WITNESS
9 STAND, AND YOU ARE EXCUSED FROM THE COURTROOM. COUNSEL,
10 APPROACH.

11 (WHEREUPON, A BENCH CONFERENCE WAS HELD.)

12 THE COURT: CALL YOUR NEXT WITNESS.

13 MR. CATHCART: YOUR HONOR, AT THIS TIME THE STATE CALLS
14 THE TESTIMONY OF MICHAEL FOSTER.

15 THE COURT: RECALLING MY EARLIER INSTRUCTIONS... DO YOU
16 UNDERSTAND, MR. COLLINS? COUNSEL, APPROACH. JUST A MOMENT.

17 (WHEREUPON, A BENCH CONFERENCE WAS HELD.)

18 THE COURT: LADIES AND GENTLEMEN OF THE JURY, YOU WILL
19 NOW HAVE THIS YOUNG LADY READ A PRIOR SWORN STATEMENT OF THE
20 WITNESS, MICHAEL FOSTER, WHICH BOTH SIDES IN THIS CASE
21 STIPULATE THAT MR. FOSTER IS NOW DECEASED. THIS IS HIS PRIOR
22 SWORN STATEMENT TO BE PUBLISHED TO YOU BY THIS INDIVIDUAL,
23 THE WORDS OF MICHAEL FOSTER. PROCEED, COUNSEL.

24 (MS. SHARON SHUTTERS, AN EMPLOYEE OF THE SOLICITOR'S
25 OFFICE, TOOK THE WITNESS STAND IN ORDER TO READ FROM THE

1 DEPOSITION AND/OR PRIOR TESTIMONY OF MICHAEL FOSTER.)

2 MR. CATHCART: IF YOU WOULD, PLEASE GIVE THE TESTIMONY
3 OF MR. FOSTER.

4 MS. SHUTTERS: YES, SIR. QUESTIONS BY THE STATE.

5 (THE FOLLOWING TESTIMONY WAS READ INTO THE RECORD.

6 THERE WAS NO INDICATION AS TO WHO EXAMINED THE WITNESS AT THE
7 TIME OF THE DEPOSITION AND/OR PRIOR SWORN TESTIMONY.)

8 EXAMINATION OF MICHAEL FOSTER VIA DEPOSITION

9 Q. GOOD AFTERNOON, MICHAEL.

10 A. GOOD AFTERNOON.

11 Q. WHERE DO YOU CURRENTLY LIVE?

12 A. IN PENNSYLVANIA.

13 Q. AND WHAT DO YOU DO UP IN PENNSYLVANIA?

14 A. I WORK AT A SKI LODGE.

15 Q. SPEAK UP AS LOUDLY AS YOU CAN. OKAY?

16 A. I WORK AT A SKI LODGE.

17 Q. AND BACK IN LATE JULY OF 1999 WHERE WERE YOU LIVING?

18 A. AT THE DAYS INN.

19 Q. AND WHERE WAS THE DAYS INN AT?

20 A. ON BUSH RIVER ROAD.

21 Q. AND WHILE YOU WERE LIVING AT THE DAYS INN ON BUSH RIVER
22 ROAD, DID YOU EVER MEET THOMAS BRYANT?

23 A. YEAH.

24 Q. AND APPROXIMATELY WHEN WAS IT THAT YOU MET MR. THOMAS
25 BRYANT?

1 A. ON THAT WEDNESDAY.

2 Q. AND YOU SAY THAT WEDNESDAY. WEDNESDAY OF WHAT WEEK?

3 A. I DON'T KNOW THE EXACT DATE.

4 Q. DO YOU KNOW WHAT DAY OF THE WEEK THE SHOOTING TOOK
5 PLACE?

6 A. YEAH, ON FRIDAY MORNING.

7 Q. AND IN RELATION TO WHEN THAT SHOOTING TOOK PLACE, WHEN
8 DID YOU MEET MR. BRYANT?

9 A. THE DAY BEFORE. KIND OF -- IT WAS KIND OF THURSDAY
10 NIGHT, SO WEDNESDAY.

11 Q. SO YOU MET HIM ON WEDNESDAY?

12 A. YEAH.

13 Q. NOW, TELL THE JURY HOW YOU CAME ABOUT MEETING THE
14 DEFENDANT, MR. BRYANT, ON THAT WEDNESDAY.

15 A. HE KNOCKED ON MY DOOR AND ASKED IF I COULD HELP HIM
16 MOVE.

17 Q. AND APPROXIMATELY WHAT TIME WAS IT ON WEDNESDAY THAT HE
18 ASKED YOU?

19 A. EARLY AFTERNOON.

20 Q. OKAY. AND DID YOU GO ANYWHERE WITH THE DEFENDANT?

21 A. I JUST WALKED OVER TO HIS ROOM.

22 Q. AND WHERE WAS HIS ROOM IN RELATION TO YOURS?

23 A. KIND OF DIAGONALLY ACROSS.

24 Q. AND WHEN DID YOU GET -- WHEN YOU GOT TO HIS ROOM, DID
25 YOU HELP HIM MOVE AT ALL?

1 A. NO. IT APPEARED THAT HE HAD ALREADY MOVED.

2 Q. DID MR. BRYANT SHOW YOU ANYTHING WHEN YOU GOT TO HIS
3 ROOM?

4 A. HE SHOWED ME A SHOTGUN AND A HANDGUN.

5 Q. AND WITH REGARDS TO THE HANDGUN, DID HE SAY ANYTHING
6 ABOUT THAT GUN?

7 A. YEAH.

8 Q. WHAT DID HE SAY ABOUT IT?

9 A. HE SAID HE WAS WAITING FOR SOME BULLETS. HE ORDERED
10 SOME BULLETS.

11 Q. WHAT, IF ANYTHING, DID HE SAY ABOUT IT?

12 A. ABOUT THE GUN?

13 Q. YES.

14 A. HE SAID THAT HE WAS WAITING TO GET SOME BULLETS THE NEXT
15 DAY FROM TARGET.

16 Q. AND THE NEXT DAY WOULD BE?

17 A. THURSDAY.

18 Q. AND HOW MANY WEAPONS IN ALL DID HE SHOW YOU?

19 A. TWO.

20 Q. LET ME SHOW YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT

21 95. DO YOU RECOGNIZE THAT?

22 A. IT APPEARS TO BE THE SAME GUN.

23 Q. AND WHICH WEAPON IS THIS?

24 A. THAT'S THE SHOTGUN.

25 Q. AND WHO SHOWED YOU THIS ON WEDNESDAY -- ON THAT

1 WEDNESDAY AFTERNOON?

2 A. MR. BRYANT.

3 Q. LET ME SHOW YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT

4 76. DO YOU RECOGNIZE THAT?

5 A. YEAH. THAT'S THE REVOLVER.

6 Q. AND WHO SHOWED YOU THAT GUN?

7 A. MR. BRYANT.

8 Q. DID YOU STAY IN MR. BRYANT'S ROOM LONG?

9 A. NOT VERY LONG AT ALL.

10 Q. AND WAS THERE A REASON FOR THAT? JUST YES OR NO.

11 A. YEAH.

12 Q. NOW, WHAT, IF ANYTHING, HAPPENED DURING THE -- WELL, LET

13 ME ASK YOU THIS: ON THAT THURSDAY NIGHT, THE NEXT NIGHT,

14 WHAT TIME DID YOU GO TO SLEEP THAT NIGHT ON JULY 22ND?

15 A. PROBABLY AROUND 10 OR 11 I WOULD SAY.

16 Q. AND DID ANYTHING WAKE YOU UP THAT EARLY MORNING?

17 A. YEAH, GUNSHOTS.

18 Q. AND WHAT DID YOU DO AFTER YOU HEARD THE GUNSHOTS?

19 A. I LOOKED OUT THE WINDOW.

20 Q. WHAT, IF ANYTHING, DID YOU SEE WHEN YOU LOOKED OUT THE

21 WINDOW?

22 A. I SAW MR. BRYANT ROLLING AROUND THE CORNER OF HIS ROOM.

23 HE WAS ALREADY OUT OF -- OUT OF THE ROOM, AND HE WAS KIND OF

24 AIMING TOWARDS THE BREEZEWAY AND FIRING HIS GUN AND CUSSING.

25 Q. WHICH WEAPON WAS HE FIRING WHEN YOU SAW HIM?

1 A. THE SHOTGUN.

2 Q. WHAT WAS THE LIGHTING LIKE OUTSIDE THAT MORNING?

3 A. IT WAS PRETTY GOOD.

4 Q. DID YOU HAVE ANY DIFFICULTY SEEING---

5 A. NO.

6 Q. ---MR. BRYANT AT THAT TIME? DID YOU SEE ANYONE ELSE IN
7 FRONT OF MR. BRYANT?

8 A. NO.

9 Q. AND WHAT, IF ANYTHING, DID YOU SEE MR. BRYANT DOING?

10 A. I SEEN HIM SHOOTING THE GUN AND CUSSING.

11 Q. WHICH GUN?

12 A. THE SHOTGUN.

13 Q. AND JUST TO MAKE IT PERFECTLY CLEAR, I'M GOING TO SHOW
14 YOU WHAT'S BEEN MARKED STATE'S EXHIBIT 17. CAN YOU SEE YOUR
15 ROOM FROM THIS PHOTOGRAPH RIGHT HERE?

16 A. THIS MAY BE THE WINDOW OF IT RIGHT HERE, YES.

17 Q. AND, IN FACT, WHO IS STANDING IN FRONT OF THAT WINDOW?

18 A. THAT'S ME.

19 Q. CAN YOU POINT TO WHERE YOUR WINDOW IS?

20 A. IT'S RIGHT HERE.

21 Q. AND WHOSE ROOM IS IT ACROSS FROM?

22 A. MR. BRYANT'S.

23 Q. IS THAT THE WINDOW YOU WERE LOOKING OUT OF?

24 A. YES.

25 Q. THAT EARLY MORNING HOW MANY TIMES APPROXIMATELY DID YOU

1 HEAR MR. BRYANT FIRE THE SHOTGUN AND SEE MR. BRYANT FIRE THE
2 SHOTGUN AT THAT TIME?

3 A. AT LEAST THREE OR FOUR TIMES.

4 Q. AND LET ME SHOW YOU WHAT'S BEEN MARKED AS STATE'S
5 EXHIBIT 42. DO YOU RECOGNIZE THAT AREA?

6 A. YEAH, THAT'S THE BREEZEWAY.

7 Q. AND IF YOU COULD, POINT WHERE YOU SAW MR. BRYANT WHERE
8 HE WAS WHEN HE WAS SHOOTING.

9 A. LIKE IF MY HAND WAS THERE, IT WOULD BE RIGHT HERE.

10 Q. RIGHT AROUND IN THIS AREA?

11 A. YEAH.

12 Q. AND WHICH DIRECTION WAS HE FIRING THE SHOTGUN?

13 A. DOWN THE HALL.

14 Q. AND AFTER MR. BRYANT FIRED THE GUN, THE SHOTGUN -- HOW
15 MANY TIMES?

16 A. AT LEAST THREE OR FOUR.

17 Q. WHAT DID HE DO AFTER HE FIRED THE SHOTGUN THREE OR FOUR
18 TIMES?

19 A. HE JUST CONTINUED CUSSING AND ROLLED BACK INTO HIS ROOM.

20 Q. AND WHEN HE WAS ROLLING BACK TO HIS ROOM, WERE YOU ABLE
21 TO OBSERVE MR. BRYANT?

22 A. YEAH.

23 Q. PHYSICALLY?

24 A. YEAH.

25 Q. WHAT PART WOULD YOU SEE OF MR. BRYANT AT THAT TIME?

1 A. THE FRONT OF HIM PRETTY MUCH.

2 Q. DID YOU SEE ANY INJURIES TO HIS STOMACH AT THAT TIME?

3 A. NO.

4 Q. DID HE APPEAR TO YOU TO HAVE BEEN SHOT AT THAT TIME?

5 A. HE DIDN'T APPEAR TO BE, NO.

6 Q. WHAT, IF ANYTHING, WAS MR. BRYANT SAYING WHEN HE WAS
7 ROLLING BACK TO HIS ROOM?

8 A. HE WAS JUST SHOUTING OBSCENITIES, CUSSING.

9 Q. DID YOU EVER HEAR HIM YELL FOR HELP?

10 A. NO.

11 Q. DID YOU EVER HEAR HIM YELL THAT HE HAD BEEN SHOT?

12 A. NEVER.

13 Q. OR ROBBED?

14 A. NO.

15 Q. NOW, WHAT DID YOU OBSERVE MR. BRYANT DOING AFTER HE GOT
16 BACK INTO HIS ROOM?

17 A. WELL, HE WAS SHOOTING THROUGH THE DOOR LIKE ABOUT -- IT
18 LOOKED LIKE YOU COULD SEE THE FLASHLIGHTS OF THE COPS AND HE
19 WAS SHOOTING TOWARDS THEM.

20 Q. WELL, JUST GO AHEAD IN DETAIL. TELL THE JURY WHAT
21 HAPPENED AFTER MR. BRYANT GOT INTO HIS ROOM. WHAT HAPPENED?

22 A. WELL, HE WAS SHOOTING THROUGH THE DOOR WITH A SHOTGUN
23 AND THEN SOME PISTOL SHOTS STARTED FLARING UP AGAIN
24 SPORADICALLY AND THEN THERE WAS A PAUSE. RIGHT AROUND WHEN
25 THE COPS -- BEFORE THEY WENT IN, THERE WAS ONE MORE SHOT. A

1 PISTOL SHOT, TOO.

2 Q. LET ME ASK YOU THIS: HOW LONG DID IT TAKE FROM THE TIME
3 MR. BRYANT STARTED FIRING IN THE BREEZEWAY UNTIL THE TIME THE
4 POLICE WENT INTO HIS ROOM?

5 A. PROBABLY ABOUT 20 OR 30 MINUTES.

6 Q. SO YOU JUST JUMPED AHEAD 20 OR 30 MINUTES. ARE YOU A
7 LITTLE NERVOUS TODAY?

8 A. YEAH.

9 Q. NOW, LET ME ASK YOU THIS: HOW DID MR. BRYANT GET BACK
10 INTO HIS ROOM AFTER SHOOTING IN THE BREEZEWAY?

11 A. HE ROLLED BACK IN.

12 Q. AND IMMEDIATELY AFTER HE GOT IN HIS ROOM, WHAT DID HE
13 DO? DID HE SHUT HIS DOOR? KEEP IT OPEN?

14 A. IT WAS STILL OPEN PROBABLY A FOOT OR TWO.

15 Q. DID YOU OBSERVE ANYONE ELSE COMING TO THE SCENE?

16 A. YEAH, THE POLICE. THEY WERE -- THEY GOT THERE PRETTY
17 QUICK, PRETTY MUCH RIGHT AFTER HE WENT INTO THE ROOM IT SEEMS
18 LIKE.

19 Q. AND WHAT DID YOU SEE THE POLICE OFFICER DO, THE INITIAL
20 POLICE OFFICERS THAT YOU SAW? WHAT HAPPENED?

21 A. THEY PRETTY MUCH SURROUNDED THE ROOM. IT WAS PRETTY
22 HEAVY -- A LOT OF THEM THERE.

23 Q. WHAT ABOUT IMMEDIATELY AFTER THE SHOOTING? DID YOU SEE
24 ANYTHING HAPPEN?

25 A. I SEEN THEM SURROUNDING THE ROOM.

1 Q. WAS THERE ANY DOUBT IN YOUR MIND IN THAT 20 MINUTES THAT
2 THE POLICE WERE THERE?

3 A. NO.

4 Q. WHAT WAS THE AREA LIKE? DESCRIBE IT FOR THE JURY.

5 A. IT WAS PRETTY COVERED WITH A LOT OF COPS.

6 Q. DO YOU KNOW HOW MANY TIMES YOU HEARD SHOTS GO OFF AFTER
7 THE DEFENDANT WENT INTO HIS ROOM?

8 A. A FEW SHOTS.

9 Q. DID YOU EVER HEAR A LAST SHOT GO OFF?

10 A. YEAH, ONE LAST ONE.

11 Q. COULD YOU TELL THE DIFFERENCE BETWEEN THE LAST SHOT AND
12 THE SHOTGUN BLASTS THAT YOU HEARD IN THE BREEZEWAY AREA?

13 A. YEAH.

14 Q. AND WHAT, IF ANYTHING, WAS THE DIFFERENCE IN THOSE
15 SOUNDS?

16 A. WELL, THE SHOTGUN WAS A BIGGER SOUND THAN THE LAST---

17 Q. THAN THE LAST SHOT YOU HEARD?

18 A. YEAH, IT WAS DEFINITELY A PISTOL SOUND.

19 Q. AND WHAT, IF ANYTHING, HAPPENED RIGHT AFTER THE LAST
20 SHOT THAT YOU OBSERVED LOOKING OUT THE WINDOW?

21 A. THE COPS WENT INTO THE ROOM BASICALLY.

22 Q. AND WHOSE ROOM DID THEY GO INTO?

23 A. TO MR. BRYANT'S.

24 Q. AT THE TIME THAT THE POLICE WERE THERE, YOU TESTIFIED
25 SURROUNDING THE AREA, WERE ANY SHOTS FIRED OUT OF THAT ROOM,

1 MR. BRYANT'S ROOM, BEFORE THE LAST SHOT?

2 A. YEAH.

3 Q. DID YOU EVER COME OUT OF YOUR ROOM EVEN WHEN THE POLICE
4 WERE THERE BEFORE THEY WENT INTO THE ROOM?

5 A. NO.

6 Q. AND WHY IS THAT?

7 A. BECAUSE I DIDN'T WANT TO GET SHOT.

8 Q. AND DID YOU EVER SEE WHETHER THE DEFENDANT, MR. BRYANT,
9 WAS TAKEN OUT OF THE ROOM?

10 A. YEAH.

11 Q. DID YOU CONTINUE -- WHERE DID YOU OBSERVE ALL THIS?

12 A. FROM INSIDE THE ROOM.

13 Q. WHEN WAS IT THAT YOU FINALLY CAME OUT OF THE ROOM?

14 A. AFTER HE LEFT IN THE AMBULANCE.

15 Q. AND DID YOU TALK TO ANY OF THE POLICE OFFICERS THAT
16 EARLY MORNING?

17 A. YES, I DID.

18 Q. AND DID YOU PROVIDE THEM A STATEMENT?

19 A. YEAH.

20 Q. AND DO YOU RECOGNIZE THIS DOCUMENT, MICHAEL?

21 A. YEAH, THAT'S THE ONE.

22 Q. IS THAT THE STATEMENT YOU GAVE TO THE POLICE?

23 A. YES, THAT'S MY SIGNATURE.

24 Q. DOES IT SAY YOU TALKED TO THE POLICE AT 5:05 THAT
25 MORNING?

1 A. YEAH.

2 Q. RIGHT AFTER THE INCIDENT?

3 A. YES.

4 Q. SO YOU STAYED AND COOPERATED WITH THE POLICE.

5 A. YEAH.

6 Q. AND YOU TESTIFIED THAT YOU KNEW THE DIFFERENCE BETWEEN
7 THE SOUND OF A SHOTGUN AND A PISTOL.

8 A. YEAH.

9 Q. THE SHOTS THAT WOKE YOU UP, WHAT DID THEY SOUND LIKE?

10 A. THEY SOUNDED LIKE A PISTOL.

11 MR. COLLINS: YOUR HONOR, MAY WE APPROACH VERY BRIEFLY?

12 THE COURT: PARDON?

13 MR. COLLINS: MAY WE APPROACH VERY BRIEFLY?

14 THE COURT: CERTAINLY.

15 (WHEREUPON, A BENCH CONFERENCE WAS HELD.)

16 MR. CATHCART: I'M GOING TO ASK YOU AT THIS TIME TO
17 START AGAIN AT PAGE 157, START WITH THE CROSS-EXAMINATION BY
18 DEFENSE COUNSEL.

19 MS. SHUTTERS: OKAY.

20 Q. GOOD AFTERNOON, MR. FOSTER.

21 A. GOOD AFTERNOON.

22 Q. I JUST HAVE A FEW QUESTIONS FOR YOU, IF YOU COULD,
23 PLEASE. I KNOW YOU WENT THROUGH THOSE PICTURES JUST NOW---

24 A. YEAH.

25 Q. ---WITH THE PROSECUTOR. I WAS JUST TRYING TO GET MYSELF

1 ORIENTED. SO LET'S TAKE A LOOK AT WHAT'S MARKED AS STATE'S
2 EXHIBIT 108. NOW, RIGHT DOWN HERE IS WHAT IS MARKED AS ROOM
3 129.

4 A. UH-HUH.

5 Q. THAT WAS THOMAS'S ROOM. SO WHERE WAS YOUR ROOM IN
6 RELATION TO THAT? ON THE OTHER SIDE OF THIS BREEZEWAY OR...

7 A. STRAIGHT ACROSS, RIGHT IN THERE.

8 Q. RIGHT IN HERE?

9 A. YEAH, RIGHT IN THERE.

10 Q. SO YOU WERE IN A SEPARATE BUILDING FROM HIM.

11 A. YEAH, I WAS IN A SEPARATE BUILDING.

12 Q. OKAY. AND LET'S SEE. THIS IS ACROSS THE WIDTH OF THE
13 PARKING LOT. THERE'S ROOM FOR CARS TO PARK ON THIS SIDE OF
14 THE BUILDING HERE AND THEN ON THIS SIDE OF THE BUILDING HERE;
15 RIGHT?

16 A. YEAH.

17 Q. AND THEN I GUESS THERE'S ENOUGH ROOM FOR CARS TO MOVE
18 SIDE BY SIDE IN THAT AREA RIGHT THERE.

19 A. YEAH.

20 Q. SO ROUGHLY SPEAKING, I MEAN, YOU DON'T HAVE A TAPE
21 MEASURE OR ANYTHING LIKE THAT, BUT HOW ABOUT FROM THE DOOR OF
22 YOUR ROOM TO THE DOOR OF HIS ROOM? I'M JUST GOING TO BACK UP
23 FROM YOU. OKAY? TELL ME TO STOP ROUGHLY...

24 A. THE DOOR FROM MY ROOM TO HIS ROOM WOULD BE FROM ME TO
25 MAYBE THE WALL BACK THERE AT THE BACK OF THE COURTROOM.

1 Q. THIS WALL BACK HERE?

2 A. YEAH.

3 Q. SO ROUGHLY THE DISTANCE FROM THE DOOR TO YOUR ROOM TO
4 THE DOOR TO HIS ROOM STRAIGHT ACROSS THAT PARKING AREA IS
5 FROM WHERE YOU ARE TO THIS WALL IN THE BACK OF THE COURTROOM.

6 A. YEAH.

7 Q. AND THAT MORNING WHEN YOU SAW WHAT YOU'VE TESTIFIED TO,
8 YOU TESTIFIED YOU DIDN'T GET OUT OF YOUR ROOM, DIDN'T LEAVE
9 YOUR ROOM.

10 A. DIDN'T LEAVE THE ROOM.

11 Q. AND I TAKE IT YOU DIDN'T OPEN THE DOOR EITHER.

12 A. NO.

13 Q. YOU WERE LOOKING OUT THROUGH A WINDOW.

14 A. YEAH.

15 Q. DRAPES ON THE WINDOW? PULLED THE DRAPES ASIDE AND
16 LOOKED OUT?

17 A. CORRECT.

18 Q. NOW, THE FIRST CONTACT OR THE FIRST YOU SAW OF THOMAS
19 THAT MORNING WAS WHEN YOU WERE AWAKENED BY THE SOUND OF
20 SHOTS; RIGHT?

21 A. THE FIRST TIME I SAW HIM?

22 Q. THAT MORNING; RIGHT?

23 A. YEAH.

24 Q. YOU HADN'T SEEN HIM SHORTLY EARLIER THAN THAT WHEN HE'D
25 GOTTEN BACK TO THE MOTEL. YOU WERE ASLEEP THEN; RIGHT?

1 A. YEAH.

2 Q. YOU DIDN'T SEE WHAT, IF ANYTHING, WAS GOING ON BETWEEN
3 HIM AND MR. AUSTIN, THE FELLOW THAT GOT SHOT, PRIOR TO ANY
4 SHOTS BEING FIRED.

5 A. NO.

6 Q. YOU CAN'T HELP US WITH THAT. YOU WERE SLEEPING;
7 CORRECT?

8 A. YEAH.

9 Q. YOU CAN'T TELL US -- IT'S BEEN TESTIFIED THAT THEY WERE
10 SEEN TOGETHER AT THIS CLUB UP HERE CALLED THE BOTTOMS UP
11 CLUB, SEEN LEAVING THE CLUB. YOU CAN'T TELL US WHAT MAY HAVE
12 TRANSPIRED BETWEEN THE TWO OF THEM ON THIS ROAD FROM THE CLUB
13 DOWN TO THE PARKING LOT OF THE DAYS INN BECAUSE YOU WERE
14 ASLEEP THEN; RIGHT?

15 A. CORRECT.

16 Q. YOU CAN'T TELL US WHETHER THERE WERE ANY PROBLEMS
17 BETWEEN THE TWO OF THEM AFTER THEY GOT IN THIS AREA OF THE
18 DAYS INN BEFORE ANY SHOTS WERE FIRED BECAUSE YOU WERE ASLEEP
19 IN THE PARKING LOT OR YOU WERE ASLEEP AT THIS POINT IN TIME;
20 RIGHT?

21 A. ASLEEP.

22 Q. JUST A COUPLE MORE THINGS, SIR. AFTER YOU SAW THE
23 SHOTGUN FIRE, WHEN DID THE POLICE ARRIVE IN RELATION TO THE
24 LAST TIME -- FIRE SHOTGUN -- GO BACK IN THE ROOM? WHEN DID
25 THE POLICE ARRIVE IN RELATION TO THAT? PRETTY SOON?

1 A. YEAH, PRETTY SOON.

2 Q. AND THEN I BELIEVE THAT IT'S YOUR TESTIMONY THAT IT WAS
3 PROBABLY 20 OR 30 MINUTES AFTER THAT BEFORE THEY WENT IN THE
4 ROOM.

5 A. YEAH.

6 Q. IS THAT CORRECT?

7 A. YEAH.

8 Q. THAT IS AN ESTIMATE ON YOUR PART.

9 A. (WITNESS NODDED.)

10 Q. YOU WEREN'T TIMING IT?

11 A. I WASN'T TIMING IT, NO. I JUST WOKE UP.

12 Q. SO YOUR ESTIMATE WOULD BE 20 TO 30 MINUTES, BASICALLY
13 FROM THE TIME THE POLICE ARRIVED UNTIL THE TIME THEY WENT IN
14 THE ROOM; CORRECT?

15 A. FROM THE WHOLE THING I GUESS, YES. IT WAS PRETTY QUICK,
16 THE WHOLE INCIDENT.

17 MR. CATHCART: THANK YOU. YOUR HONOR, THAT'S ALL THE
18 STATE HAS AS TO THE TESTIMONY OF MR. FOSTER.

19 THE COURT: CALL YOUR NEXT WITNESS.

20 MR. CATHCART: YOUR HONOR, AT THIS TIME THE STATE CALLS
21 JOHN BAIRD.

22 JOHN BAIRD, AFTER BEING DULY SWORN, TESTIFIED AS
23 FOLLOWS:

24 THE CLERK: PLEASE HAVE A SEAT AND STATE YOUR FULL NAME.

25 THE WITNESS: RIGHT HERE?

1 BAILIFF: RIGHT THERE.

2 THE COURT: MAKE YOURSELF COMFORTABLE. I WANT YOU TO
3 SPEAK INTO THE SMALLER MICROPHONE. ONE IS RECORDING YOU.
4 ONE IS AMPLIFYING YOUR VOICE. SPEAK UP SO MY JURY CAN HEAR,
5 AND BEGIN BY STATING YOUR FULL NAME AND SPELLING YOUR LAST
6 NAME FOR THE COURT REPORTER.

7 THE WITNESS: YES, SIR. JOHN BAIRD, B-A-I-R-D.

8 THE COURT: YOUR WITNESS, COUNSEL.

9 MR. CATHCART: THANK YOU, YOUR HONOR.

10 DIRECT EXAMINATION

11 BY MR. CATHCART:

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

13 A. I CURRENTLY WORK FOR THE DEPARTMENT OF NATURAL RESOURCES
14 AS A GAME WARDEN.

15 Q. WHERE WERE YOU EMPLOYED BACK IN 1999?

16 A. I WAS WITH THE RICHLAND COUNTY SHERIFF'S DEPARTMENT.

17 Q. AND HOW LONG WERE YOU WITH THE RICHLAND COUNTY SHERIFF'S
18 DEPARTMENT?

19 A. RIGHT ABOUT THREE YEARS.

20 Q. OKAY. AND WHAT WAS YOUR DUTIES BACK THERE, BACK THEN
21 WITH THE RICHLAND COUNTY SHERIFF'S DEPARTMENT?

22 A. I WAS A ROAD DEPUTY, JUST A REGULAR OLD GUY THAT GOES
23 OUT AND ANSWERS CALLS.

24 Q. OKAY. AND BACK IN JULY OF 1999 DID YOU RESPOND TO A
25 CALL OUT ON BUSH RIVER ROAD AT THE DAYS INN?

1 A. I DID.

2 Q. OKAY. DO YOU RECALL WHAT KIND OF CALL THAT WAS?

3 A. IT WAS A CIVIL DISTURBANCE.

4 Q. AND WHERE WERE YOU WHEN YOU GOT THAT CALL?

5 A. ACTUALLY THE CALL WAS GIVEN TO ANOTHER OFFICER, BUT I
6 WAS AT THE BRIDGE AT BUSH RIVER AND 26, AND BEING SO CLOSE I
7 TOLD THE OTHER OFFICER I'D TAKE THE CALL.

8 Q. OKAY. AND WHEN YOU CAME IN FOR THAT CALL, WHERE DID YOU
9 GO EXACTLY?

10 A. I CAME OFF OF BUSH RIVER ROAD, TURNED IN TO THE HOTEL
11 PARKING LOT, AND AS I PULLED IN I SAW THE NIGHT CLERK WAVING
12 ME DOWN. SO I STOPPED AND GOT OUT AND WALKED UP TO HER, AND
13 SHE STARTED TELLING ME THERE WAS SHOOTING BACK BEHIND THE
14 HOTEL OR SOMEWHERE ON THE HOTEL GROUNDS.

15 Q. OKAY. WHAT DID YOU DO AT THAT POINT?

16 A. I WALKED DOWN TO THE BREEZEWAY WHERE I HEARD A SHOT
17 FIRED, AND I PEEPED DOWN THE BREEZEWAY AND I SAW A FELLOW
18 LAYING ON HIS BELLY. THAT HAD TO BE MR. AUSTIN, HIS HANDS
19 UNDERNEATH HIS BODY, AND I TOLD HIM LET ME SEE HIS HANDS, LET
20 ME SEE HIS HANDS. AND I COULDN'T SEE HIS HANDS, SO I DREW MY
21 REVOLVER OR MY WEAPON AT THE TIME AND KEPT TELLING HIM LET ME
22 SEE HIS HANDS. I COULD SMELL THE BURNT GUN POWDER IN THE
23 BREEZEWAY, AND I DIDN'T KNOW IF HE WAS ARMED OR NOT ARMED. I
24 DIDN'T KNOW WHAT WAS GOING ON. I COULD JUST SMELL THE GUN
25 POWDER, AND I KNEW THERE WAS SHOOTING GOING ON. SO THEN I

1 CALLED FOR BACK-UP.

2 Q. AND DID BACK-UP ARRIVE?

3 A. YEAH. DEPUTY KATHY JARVIS ARRIVED ON THE SCENE.

4 Q. OKAY. AND WHAT HAPPENED AFTER KATHY JARVIS ARRIVED?

5 A. WE WALKED DOWN THE BREEZEWAY, CHECKED ON MR. BRYANT
6 (SIC), COULD TELL HE WAS WOUNDED PRETTY BADLY, SAW SOME
7 BLOOD, HEARD SOME GURGLING. SO KATHY STAYED WITH HIM, AND I
8 MOVED FORWARD TO SEE IF WE COULD FIND THE SHOOTER. AND AS I
9 CAME UP ON THE EDGE OF THE---

10 Q. OKAY. LET ME STOP YOU RIGHT HERE. YOUR HONOR, IF I
11 MAY, CAN I ASK THAT THE WITNESS BE ALLOWED TO COME DOWN AND
12 SHOW THE JURY ON THIS STATE'S EXHIBIT NUMBER 108 WHERE HE'S
13 TALKING ABOUT IN RELATIONSHIP TO THE DIAGRAM?

14 THE COURT: YOU MAY HAND HIM THE MICROPHONE. COUNSEL,
15 COME AROUND SO YOU CAN SEE WHAT THE STATE INTENDS TO SHOW THE
16 JURY. SIR, WHEN YOU STEP DOWN, THEY'RE GOING TO GIVE YOU A
17 MICROPHONE SO MY COURT REPORTER -- BECAUSE YOU'RE GOING TO
18 HAVE YOUR BACK TO HER. I WANT MY JURY TO BE ABLE TO HEAR
19 YOU. YOU MAY COME AROUND, MR. COLLINS.

20 THE WITNESS: YES, SIR.

21 MR. CATHCART: NOW, I MAY HAVE MISHEARD YOU---

22 THE COURT: HOLD ON A SECOND. LET HIM FACE MY COURT
23 REPORTER. HAND HIM THE MICROPHONE. YOU GET ON THE OTHER
24 SIDE, MR. CATHCART.

25

1 BY MR. CATHCART:

2 Q. A LITTLE DIAGRAM POINTER FOR YOU.

3 A. ALL RIGHT. THANK YOU.

4 THE COURT: CAN YOU SEE, MR. COLLINS?

5 MR. COLLINS: YES, SIR, YOUR HONOR.

6 THE COURT: CAN EVERYONE ON THE JURY SEE? ALL RIGHT.

7 NOW, I'VE GOT ONE GENTLEMAN THAT'S STRAINING. ALL RIGHT.

8 MR. CATHCART: I'M SORRY.

9 THE COURT: PROCEED, MR. CATHCART.

10 BY MR. CATHCART:

11 Q. YOU INDICATED YOU WERE WHERE WHEN YOU RECEIVED THE CALL?

12 A. I WAS HERE ON THE BRIDGE. I CAME DOWN HERE AND TURNED
13 IN, AND I PARKED RIGHT HERE.

14 Q. OKAY. SO DID IT TAKE ANY LENGTH OF TIME TO MAKE THAT
15 CALL TO GET THERE?

16 A. THIRTY SECONDS OR SO. IT WASN'T LONG. THE LIGHT WAS
17 EVEN GREEN, WHICH IS SURPRISING FOR ME, BUT I STILL REMEMBER
18 THAT. I PARKED HERE AND I WAS WAVED DOWN BY THE NIGHT CLERK.
19 I DON'T REMEMBER HER NAME. I CAME DOWN HERE TO THE
20 BREEZEWAY. THE VICTIM WAS LAYING RIGHT HERE BY THE STAIRWELL
21 FACEDOWN. HIS HEAD WAS POINTED OUT THIS WAY.

22 THAT'S WHEN I CALLED FOR DEPUTY JARVIS, AND SHE STAYED
23 THERE. AND I CAME IN THERE WHERE THIS ROOM IS. AND WHEN I
24 WENT TO PEEK DOWN THIS WAY, A SHOTGUN BLAST WENT OFF AND I
25 ALMOST GOT HIT IN THE HEAD RIGHT HERE.

1 Q. OKAY. LET ME SHOW YOU WHAT'S BEEN MARKED STATE'S
2 EXHIBIT NUMBER 12. DO YOU RECOGNIZE WHAT THAT IS?

3 A. THAT'S WHERE WE -- THAT'S WHERE WE FOUND THE VICTIM.

4 MR. COLLINS: NO OBJECTION, YOUR HONOR.

5 THE COURT: YOU'RE OFFERING IT, MR. CATHCART?

6 MR. CATHCART: YES, YOUR HONOR. AT THIS TIME THE STATE
7 OFFERS STATE'S EXHIBIT NUMBER 12.

8 THE COURT: LADIES AND GENTLEMEN OF THE JURY, STATE'S
9 EXHIBIT NUMBER 12 WILL BE ADMITTED INTO EVIDENCE WITHOUT
10 OBJECTION. STATE'S 12 IN EVIDENCE.

11 (STATE'S EXHIBIT 12 WAS RECEIVED IN EVIDENCE.)

12 THE COURT: YOU MAY NOW PUBLISH, MR. CATHCART.

13 MR. CATHCART: THANK YOU, YOUR HONOR.

14 BY MR. CATHCART:

15 Q. STATE'S EXHIBIT NUMBER 12 IS A -- IS WHERE YOU FOUND --
16 I BELIEVE YOU SAID FOUND THE VICTIM?

17 A. YES, SIR.

18 Q. WOULD YOU POINT OUT TO THE JURY WHERE YOU FOUND THE
19 VICTIM?

20 A. APPROXIMATELY RIGHT HERE WHERE THIS -- RIGHT IN THE
21 CENTER RIGHT HERE.

22 Q. SO WAS HE STANDING UP OR LAYING DOWN?

23 A. HE WAS LAYING DOWN WITH HIS HEAD THAT WAY. HIS FEET
24 WERE THIS WAY, AND HE HAD HIS HANDS UNDER HIS BODY.

25 Q. WAS HE MOVING?

1 A. NO. HE WAS GURGLING AND I SAW SOME BLOOD UNDER THE
2 BODY, BUT I DIDN'T SEE MUCH MOVEMENT, NO.

3 Q. OKAY. WHERE DID KATHY JARVIS GO?

4 A. WHEN I CAME DOWN HERE TO QUICK PEEK, THE SIDEWALK IS
5 LOCATED -- SHE STAYED HERE WITH THE VICTIM.

6 Q. OKAY. AND WHEN YOU WENT ACROSS TO QUICK PEEK, YOU WENT
7 TO WHAT LOCATION? QUICK PEEK, WHAT DOES THAT MEAN?

8 A. THAT'S JUST LIKE YOU DO A QUICK PEEK AROUND A CORNER
9 JUST REAL QUICK TO SEE IF YOU CAN LOCATE WHERE THERE MIGHT BE
10 A PROBLEM.

11 Q. OKAY.

12 A. SO I WAS TRYING TO FIND OUT WHERE THE SHOOTER WAS
13 BECAUSE WE KEPT HEARING SHOTS GOING OFF.

14 Q. OKAY. AND WERE THESE -- LET ME SHOW YOU WHAT'S BEEN --
15 WELL, ACTUALLY LET ME ASK YOU: WHEN YOU DID A QUICK PEEK,
16 WHAT, IF ANYTHING, OCCURRED?

17 A. WHEN I DID A QUICK PEEK, A SHOTGUN BLAST WENT OFF RIGHT
18 BY MY HEAD AND ACTUALLY HIT THAT COLUMN RIGHT THERE, AND
19 THAT'S WHEN I BACKED OFF. I WENT BY KATHY. I SAID, "I'M
20 GOING TO GET A BIGGER GUN." I CAME BACK HERE AND GOT MY
21 AR-15 OUT OF THE TRUNK OF MY VEHICLE.

22 Q. HOW CLOSE WAS THE SHOTGUN BLAST TO YOUR HEAD?

23 A. PROBABLY AN INCH OR TWO.

24 Q. LET ME SHOW YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT
25 NUMBER 26. DO YOU RECOGNIZE WHAT THAT IS?

1 A. YES, SIR, I DO.

2 Q. COULD YOU DESCRIBE WHAT IT IS?

3 A. THAT'S WHERE THE SHOTGUN BLAST HIT THE COLUMN WHICH IS
4 THIS COLUMN RIGHT HERE WHICH BASICALLY IS RIGHT BESIDE WHERE
5 I WAS STANDING.

6 MR. COLLINS: WITHOUT OBJECTION.

7 MR. CATHCART: YOUR HONOR, THE STATE SEEKS TO INTRODUCE
8 STATE'S EXHIBIT NUMBER 26 INTO EVIDENCE.

9 THE COURT: LADIES AND GENTLEMEN OF THE JURY, STATE'S
10 EXHIBIT NUMBER 26 WILL BE ADMITTED INTO EVIDENCE WITHOUT
11 OBJECTION.

12 (STATE'S EXHIBIT 26 WAS RECEIVED IN EVIDENCE.)

13 THE COURT: YOU MAY PUBLISH STATE'S 26, IN EVIDENCE.
14 BY MR. CATHCART:

15 Q. WOULD YOU PLEASE SHOW THE JURY WHERE IT WAS THAT SHOT --
16 WHERE YOU'RE TALKING ABOUT WHERE THE SHOTGUN BLAST HIT THE
17 COLUMN?

18 A. YOU KNOW, I DON'T KNOW WHICH ONE IT WAS. IT WAS ONE OF
19 THESE TWO HERE, AND I DIDN'T STAY AROUND TO FIND OUT WHERE IT
20 WAS. ONE OF THESE SHOTS WAS THE ONE THAT WAS AIMED TOWARDS
21 MY HEAD THAT HIT THIS COLUMN, AND THAT COLUMN IS LOCATED
22 RIGHT THERE.

23 Q. LET ME SHOW YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT
24 NUMBER 17 THAT'S ALREADY IN EVIDENCE. IS THAT THE SAME
25 COLUMN?

1 A. YES, SIR, IT IS. ACTUALLY MY HEAD WAS LIKE RIGHT HERE.

2 Q. THAT BEING THE DOOR TO A ROOM?

3 A. YES, SIR. I DID A QUICK PEEK RIGHT HERE. WHEN I DID
4 THAT QUICK PEEK, THE SHOTGUN BLAST WENT RIGHT BY MY HEAD.

5 Q. AT THAT POINT -- WELL, ACTUALLY, AFTER THE SHOTGUN
6 BLAST, AT SOME POINT DID Y'ALL ANNOUNCE, HEY, WHO YOU ARE?

7 A. YES, SIR.

8 Q. WHEN DID YOU DO THAT?

9 A. WELL, AFTER THE SHOTGUN BLAST WENT OFF, WE BACKED UP IN
10 THIS AREA WHERE THE VICTIM WAS AND STARTED HOLLERING,
11 "RICHLAND COUNTY SHERIFF'S DEPARTMENT. RICHLAND COUNTY
12 SHERIFF'S DEPARTMENT. POLICE OFFICERS. QUIT YOUR FIRING.
13 RICHLAND COUNTY. RICHLAND COUNTY." IT DIDN'T SEEM TO ABATE,
14 AND THAT'S WHEN I CAME BACK TO MY VEHICLE AND GOT THE RIFLE.

15 Q. WAS ANYTHING COMING OUT OF THE ROOM OTHER THAN GUNFIRE?

16 A. NO, SIR.

17 Q. WAS HE SAYING ANYTHING TO YOU?

18 A. NO, SIR, NEVER HEARD A WORD.

19 Q. AND DID THE FIRING STOP WHEN YOU SAID THIS IS RICHLAND
20 COUNTY DEPUTIES OUT HERE?

21 A. NO.

22 Q. WHEN YOU WENT BACK TO YOUR CAR AND GOT YOUR RIFLE, WHERE
23 DID YOU GO AFTER THAT?

24 A. IN THE MEANTIME KATHY CALLED FOR BACK-UP. AND SO I CAME
25 BACK HERE, AND BRYAN DOWNY CAME AND MET ME HERE. I TOOK MY

1 RIFLE OUT OF THE CAR. HE TOOK THE SHOTGUN, AND WE CAME
2 AROUND HERE, CAME BY THE POOL, AND THERE WAS SOME CARS PARKED
3 RIGHT IN THIS AREA. WE CAME IN HERE AND GOT BEHIND THESE
4 VEHICLES AND THEN GOT A SIGHT PICTURE INTO THE ROOM SO MAYBE
5 WE COULD STOP THE THREAT.

6 THE INTERESTING THING IS EACH TIME A CAR WOULD COME DOWN
7 THE INTERSTATE WITH A SIREN ON, HE WOULD FIRE A ROUND. AND
8 WE KEPT CALLING DISPATCH TELLING THEM TO QUIT RUNNING THE
9 SIRENS ON THE WAY TO THE SCENE BECAUSE EVERY TIME HE WOULD
10 HEAR -- WE'D HEAR A SIREN, WE'D HEAR A SHOT. WE KEPT
11 REQUESTING THAT EVERYBODY TURN THEIR SIRENS OFF, BUT IT
12 DIDN'T SEEM TO HELP.

13 Q. WERE YOU ABLE TO SEE HIM IN THE ROOM AT THAT TIME?

14 A. NO, SIR.

15 Q. OKAY. WHAT, IF ANYTHING, OCCURRED AS Y'ALL WERE
16 WATCHING THE ROOM?

17 A. WE NEVER COULD SEE HIM. I HAD TOLD BRIAN THAT IF WE
18 NEED TO -- YOU KNOW, IF WE NEED TO TAKE HIM OUT, WE SHOULD
19 TAKE HIM OUT TO GET A SHOT. WE KEPT REQUESTING BACK-UP, AND
20 JUST HUNDREDS OF POLICE CARS WERE COMING. WE HAD LEXINGTON
21 COUNTY. THE CITY OF COLUMBIA POLICE DEPARTMENT SHOWED UP.
22 LEXINGTON COUNTY SHOWED UP. HIGHWAY PATROL SHOWED UP, AND I
23 KNOW OUR S.W.A.T. TEAM ARRIVED ON THE SCENE.

24 Q. OKAY. AND WHAT, IF ANYTHING, OCCURRED AS ALL THESE
25 PEOPLE WERE COMING IN?

1 A. I GUESS IT HAD BEEN 20, 25 MINUTES UNTIL FINALLY THREE
2 C.P.D. OFFICERS - COLUMBIA POLICE DEPARTMENT OFFICERS - GOT
3 RIGHT HERE AND STORMED THE ROOM AND GRABBED THE SUSPECT, PUT
4 HIM ON THE GROUND AND HANDCUFFED HIM.

5 Q. OKAY. WHAT, IF ANYTHING, OCCURRED RIGHT BEFORE THE
6 C.P.D. OFFICERS STORMED THE ROOM? DO YOU RECALL HEARING ANY
7 SHOTS AT THAT POINT?

8 A. THERE WAS A SHOT FIRED. IT SOUNDED LIKE A MUFFLED
9 PISTOL SHOT. SURE DID.

10 Q. WAS IT DIFFERENT THAN ALL THE OTHER SHOTS YOU HAD BEEN
11 HEARING?

12 A. MUCH DIFFERENT. THE ORIGINAL SHOTS HAD ALL BEEN SHOTGUN
13 FIRE. THIS ONE SOUNDED LIKE A MUFFLED PISTOL SHOT.

14 Q. OKAY. AND HOW LONG AFTER THAT PISTOL SHOT DID THE
15 C.P.D. OFFICERS STORM THE ROOM?

16 A. ALMOST IMMEDIATELY. ALMOST IMMEDIATELY.

17 Q. AND DID YOU GO INTO THE ROOM ALSO?

18 A. I DID. AS SOON AS I SAW THE C.P.D. GUYS COME IN, I CAME
19 ACROSS. I SAW THE SHOTGUN LAYING ON THE BED. I TOOK THE
20 SHOTGUN AND CLEARED IT, AND I HANDED IT BACK I THINK TO KATHY
21 JARVIS AND THEN PICKED UP THE PISTOL. NO, I DIDN'T. I THINK
22 SOMEBODY ELSE DID THE PISTOL, HANDED IT TO ME, AND I TOOK IT
23 OUT AND CLEARED THE ROUNDS AND HANDED IT BACK TO SOMEBODY
24 ELSE.

25 Q. AND THE PISTOL WAS LOADED?

1 A. YES, SIR.

2 Q. PLEASE GO AHEAD AND SIT BACK DOWN.

3 A. OKAY.

4 MR. CATHCART: MAY I APPROACH THE WITNESS, YOUR HONOR?

5 THE COURT: PUT THE MICROPHONE BACK IN THE HOLDER.

6 MR. CATHCART: YES, SIR.

7 THE COURT: YOU MAY.

8 MR. CATHCART: THANK YOU, YOUR HONOR.

9 BY MR. CATHCART:

10 Q. I SHOW YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT NUMBER
11 - I'LL TRY TO KEEP THIS FROM POINTING AT ANYBODY - NUMBER 95.
12 DO YOU RECOGNIZE WHAT THIS IS?

13 A. YES, SIR. THAT LOOKS LIKE THE SHOTGUN I TOOK OFF THE
14 BED THAT NIGHT AT THE DAYS INN.

15 Q. LET ME SHOW YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT
16 NUMBER 76. DO YOU RECOGNIZE WHAT THIS IS?

17 A. YES, SIR. THAT LOOKS TO BE THE PISTOL WE TOOK FROM THE
18 SUSPECT AT THE HOTEL AND CLEARED AND HANDED BACK.

19 Q. WAS ANYBODY IN THE ROOM BESIDES THE DEFENDANT?

20 A. NO, SIR.

21 Q. AND THE OFFICERS, I ASSUME.

22 A. RIGHT. THERE WAS POLICE OFFICERS AND THEN -- AND THEN
23 THE DEFENDANT.

24 Q. DID YOU SEE ANYONE ELSE OTHER THAN THE HOTEL CLERK, THE
25 VICTIM, AND THE DEFENDANT OTHER THAN POLICE OFFICERS OUT

1 THERE THAT NIGHT---

2 A. NO, SIR.

3 Q. ---THAT YOU CAME ACROSS?

4 A. I SURE DID NOT. NO.

5 Q. BEG THE COURT'S INDULGENCE. HOW LONG AFTER THE C.P.D.

6 OFFICERS WENT IN DID YOU GO IN?

7 A. RIGHT AFTER.

8 Q. OKAY.

9 A. I MEAN, THEY WENT IN. IT WAS PROBABLY 10 OR 15 SECONDS
10 I WAS RIGHT BEHIND THEM, JUST LONG ENOUGH TO CROSS THE
11 PARKING LOT.

12 Q. AND DID YOU HAVE AN OPPORTUNITY TO VIEW THE ROOM?

13 A. I DID.

14 Q. WAS THERE ANY BLOOD IN THE ROOM?

15 A. THERE WAS A SMALL AMOUNT OF BLOOD ON A TOWEL. I DON'T
16 REMEMBER; IT'S BEEN SO LONG. I WANT TO SAY IT WAS RIGHT
17 THERE BESIDE HIM. HE WAS SITTING ON THE FLOOR, AND THERE WAS
18 A TOWEL AND THERE WAS SOME BLOOD ON IT BUT...

19 Q. DID YOU SEE ANY BLOOD ON THE DEFENDANT AT THAT TIME?

20 A. THAT WAS A SMALL HOLE IN HIS ABDOMEN.

21 Q. WAS IT BLEEDING PROFUSELY OR HOW -- HOW LONG HAD IT BEEN
22 BLEEDING? COULD YOU TELL?

23 A. IT WAS A FRESH WOUND, BUT I COULDN'T -- THERE WASN'T
24 MUCH BLOOD.

25 MR. CATHCART: OKAY. PLEASE ANSWER ANY QUESTIONS FROM

1 DEFENSE COUNSEL.

2 THE COURT: CROSS-EXAMINATION?

3 MR. COLLINS: THANK YOU, YOUR HONOR.

4 CROSS-EXAMINATION

5 BY MR. COLLINS:

6 Q. GOOD AFTERNOON.

7 A. HOW ARE YOU DOING?

8 Q. SO YOU TESTIFIED YOU WERE A ROAD DEPUTY---

9 A. YES, SIR.

10 Q. ---AT THE TIME?

11 A. YES, SIR.

12 Q. AND THAT INCLUDES JUST RESPONDING OUT TO CALLS FROM
13 DISPATCH; CORRECT?

14 A. THAT'S CORRECT.

15 Q. ARE YOU AWARE OF ANY RECORDS THAT ARE KEPT AS FAR AS
16 RECORDING THESE DISPATCHES?

17 A. I UNDERSTAND 9-1-1 RECORDS THE CALLS WHEN THEY COME IN,
18 BUT I'M NOT SURE ABOUT ANY OTHER PROCESS THEY HAVE.

19 Q. ARE YOU AWARE OF THESE RECORDS BEING TAPED ON
20 AUDIOTAPES?

21 A. ARE YOU TALKING ABOUT THE CALLS TO 9-1-1?

22 Q. CALLS TO 9-1-1 AS WELL AS TO DISPATCH TO YOUR PATROL
23 CAR.

24 A. I THINK THEY ARE; YES, SIR.

25 Q. AND ARE YOU AWARE OF ANY WRITTEN RECORDS OF THESE

1 DIRECTIONS?

2 A. NO, SIR. NO, I'M NOT.

3 Q. OKAY. BUT YOU DID TESTIFY YOU WERE CALLED OUT THERE FOR
4 A CIVIL DISTURBANCE; CORRECT?

5 A. RIGHT.

6 Q. YOU WEREN'T CALLED OUT THERE FOR A SHOOTING.

7 A. NO.

8 Q. AND MR. CATHCART JUST ASKED YOU ABOUT -- YOU SAID YOU
9 SAW A LITTLE BIT OF BLOOD ON MR. BRYANT WHEN YOU WENT IN
10 THERE?

11 A. YES, SIR.

12 Q. BUT YOU DIDN'T SEE ANY BLOOD ON THE CARPET ANYWHERE IN
13 THE ROOM?

14 A. NO, SIR.

15 Q. YOU DIDN'T SEE ANY BLOOD ON THE CARPET UNDERNEATH MR.
16 BRYANT?

17 A. NO, SIR.

18 Q. BUT YOU'RE NOT A FORENSICS EXPERT, ARE YOU?

19 A. OH, NO.

20 Q. AND YOU TESTIFIED THAT THERE WERE HUNDREDS OF COP CARS
21 THAT CAME THERE; CORRECT?

22 A. THERE WAS A LOT OF THEM.

23 Q. ALL OF THEM -- EVERYBODY WAS COMING TO HELP.

24 A. THAT'S EXACTLY RIGHT. S.O.S.

25 Q. ALL RIGHT. THE S.W.A.T. TEAM WAS EVEN THERE.

1 A. YES, SIR.

2 Q. BUT THE C.P.D. GUYS DIDN'T WAIT ON THE S.W.A.T. TEAM.
3 THEY WENT AHEAD IN WHEN THEY SAW AN OPPORTUNITY.

4 A. THAT'S CORRECT.

5 Q. AND DID YOU SIGN A CRIME SCENE LOG WHEN YOU ENTERED --
6 AFTER YOU ENTERED THE ROOM?

7 A. I DON'T KNOW IF I DID OR NOT. I COULDN'T TELL YOU. I
8 DON'T KNOW.

9 Q. WOULD THAT BE STANDARD PROCEDURE FOR SERIOUS CRIMES WHEN
10 YOU ENTER A CRIME SCENE?

11 A. AFTER THE CRIME SCENE HAS BEEN SECURED BY
12 INVESTIGATIONS, YES, BUT BEING THAT WE WERE IN THERE TAKING
13 THE GUY DOWN, I DON'T KNOW. I WOULDN'T KNOW.

14 Q. WERE YOU WEARING GLOVES THAT NIGHT?

15 A. NO.

16 Q. AND YOU TESTIFIED YOU GRABBED THE SHOTGUN AND YOU
17 CLEARED THE SHELLS; CORRECT?

18 A. I DID.

19 Q. WAS ANYBODY ELSE WEARING GLOVES THAT YOU COULD SEE?

20 A. SOME OF OUR GUYS WORE GLOVES, SOME DIDN'T, BUT I
21 COULDN'T TELL YOU WHO HAD THEM ON AND WHO DIDN'T HAVE THEM
22 ON. I NEVER WORE GLOVES. I DON'T LIKE WEARING GLOVES, SO,
23 NO.

24 Q. APPROXIMATELY HOW MANY OFFICERS WERE IN THAT MOTEL ROOM
25 WHEN THEY WENT IN TO GET MR. BRYANT?

1 A. PROBABLY FIVE OR SIX.

2 Q. JUST FIVE OR SIX?

3 A. YES, SIR.

4 Q. AND WHERE WERE THE REST OF THE OFFICERS THAT WERE ON THE
5 SCENE?

6 A. THERE WAS QUITE A FEW OUTSIDE. WE HAD A PERIMETER SET
7 UP. WE HAD THE S.W.A.T. TEAM STANDING BY, SO THEY WERE ALL
8 OVER. THE EXACT LOCATIONS I COULDN'T TELL YOU.

9 Q. OKAY. AND YOU SAID SOMEBODY HANDED YOU THE REVOLVER AS
10 WELL; CORRECT?

11 A. THAT'S CORRECT. THAT'S WHEN I CLEARED IT.

12 Q. AND NO GLOVES ON THAT TIME EITHER.

13 A. NO, SIR.

14 Q. AND YOU'RE NOT INVOLVED WITH ANY KIND OF FOLLOW-UP
15 INVESTIGATION WITH THIS INCIDENT, ARE YOU?

16 A. NO, SIR, I'M NOT.

17 Q. YOU SIMPLY RESPONDED, SECURED THE SITUATION, AND YOUR
18 JOB IS DONE. CORRECT?

19 A. WELL, I DID AN INITIAL REPORT, AN INCIDENT REPORT, AND
20 THEN THE INVESTIGATORS TAKE IT FROM THERE.

21 Q. SO YOU DIDN'T INTERVIEW ANY WITNESSES AT THE SCENE OR
22 ANY OTHER RESIDENTS AT THE MOTEL?

23 A. NO, SIR, I DID NOT.

24 Q. ALL RIGHT. NOW, YOU TESTIFIED THAT THE FIRST SHOT CAME
25 FROM ROOM 129?

1 A. YES, SIR.

2 Q. SO IT WOULD BE A SURPRISE TO YOU IF IT WAS A MISTAKE
3 THAT OFFICERS THOUGHT THE SHOTS WERE COMING FROM AN UPSTAIRS
4 ROOM?

5 A. COULDN'T TELL BY AN ECHO BECAUSE OF THE WAY THE
6 COURTYARD WAS SET UP IN THE MIDDLE AREA. WE COULDN'T TELL
7 WHERE THE SHOTS WERE COMING FROM. WE WERE ACTUALLY TALKING
8 AND WE DIDN'T KNOW IF THERE WAS MORE THAN ONE OR TWO
9 SHOOTERS.

10 Q. SO THE TESTIMONY THAT THE SHOT CAME FROM ROOM 129, THE
11 FIRST SHOT -- YOU DIDN'T KNOW WHERE THAT FIRST SHOT CAME
12 FROM, DID YOU?

13 A. WHEN WE ORIGINALLY ARRIVED, NO, SIR.

14 Q. NOW, YOU TESTIFIED A LITTLE BIT ABOUT EVERY TIME YOU
15 HEARD SIRENS THERE WOULD BE ANOTHER GUNSHOT; CORRECT?

16 A. RIGHT.

17 Q. I'M A LITTLE CONFUSED. HOW MANY DIFFERENT GUNSHOTS DID
18 YOU ACTUALLY HEAR THAT YOU SPECIFICALLY REMEMBER HEARING?

19 A. I COULDN'T TELL YOU. THERE WAS AT LEAST FOUR, OR FIVE
20 THAT I KNOW OF, BUT TO TELL YOU EXACT NUMBERS, IT'S BEEN TOO
21 -- IT'S BEEN TOO LONG. WE'RE TALKING ABOUT 1999. I'M NOT
22 SURE.

23 Q. WOULD IT BE MORE THAN TEN?

24 A. I'D SAY BETWEEN FIVE AND TEN.

25 Q. BETWEEN FIVE AND TEN.

1 A. THAT WOULD BE A GOOD GUESS; YES, SIR. A GOOD GUESS.

2 Q. YOU SAID YOU WROTE A REPORT ABOUT THIS; CORRECT?

3 A. YES, SIR.

4 Q. AND THAT REPORT, YOU MAKE IT AS ACCURATE AS YOU POSSIBLY
5 CAN; CORRECT?

6 A. YES, SIR.

7 Q. AND YOU PROBABLY READ THAT REPORT TO REFRESH YOUR MEMORY
8 FOR TODAY.

9 A. NO, SIR, I DID NOT.

10 Q. WHEN IS THE LAST TIME YOU READ THAT REPORT?

11 A. THE NIGHT I DID IT.

12 Q. THE NIGHT YOU DID IT WAS THE LAST TIME YOU READ THAT
13 REPORT.

14 A. YES, SIR.

15 Q. OKAY. AND YOU SAID YOU ARRIVED AT THE SCENE PRETTY MUCH
16 WITHIN A MINUTE OF THE DISPATCH GOING OUT.

17 A. IT WAS QUICK, YES, SIR, BECAUSE I WAS RIGHT THERE ON THE
18 BRIDGE COMING IN THAT DIRECTION.

19 Q. SO THEN I BELIEVE YOU GOT THERE ABOUT 10 'TIL 4 OR DO
20 YOU REMEMBER THE TIME YOU GOT THERE?

21 A. IT WAS RIGHT AROUND 3:45; YES, SIR.

22 Q. RIGHT AROUND 3:45?

23 A. IN THE MORNING, YES, SIR.

24 Q. YOU DIDN'T WITNESS MR. AUSTIN GET SHOT, DID YOU?

25 A. NO.

1 Q. SO YOU HAVE NO IDEA OR YOU DON'T KNOW THE CIRCUMSTANCES
2 LEADING UP TO THAT SHOT.

3 A. NO, SIR, I DO NOT.

4 MR. COLLINS: THANK YOU. NO FURTHER QUESTIONS.

5 THE COURT: REDIRECT?

6 REDIRECT EXAMINATION

7 BY MR. CATHCART:

8 Q. DID YOU SEE ANY WEAPONS BESIDE MR. AUSTIN'S BODY? THE
9 PERSON LAYING IN THE WALKWAY, DID YOU SEE ANY WEAPONS BY HIM?

10 A. NO, SIR, I DID NOT.

11 MR. CATHCART: NO FURTHER QUESTIONS.

12 THE COURT: RECROSS LIMITED TO REDIRECT?

13 MR. COLLINS: NOTHING FURTHER, YOUR HONOR.

14 THE COURT: AS TO THIS WITNESS, SOLICITOR?

15 MR. CATHCART: YOUR HONOR, I ASK THAT HE BE FREE TO GO.

16 THE COURT: ANY OBJECTION?

17 MR. COLLINS: NO OBJECTION.

18 THE COURT: MR. BAIRD, YOU MAY STEP DOWN, AND YOU ARE
19 EXCUSED FROM THE COURTROOM---

20 THE WITNESS: THANK YOU, YOUR HONOR.

21 THE COURT: ---AND THE TRIAL OF THIS CASE. MR. FOREMAN
22 AND LADIES AND GENTLEMEN OF THE JURY, I'M GOING TO TAKE MY
23 MID- MORNING BREAK FOR YOU AT THIS TIME. YOU HAVE NOT HEARD
24 ALL THE EVIDENCE IN THIS CASE, SO IT WOULD BE IMPROPER FOR
25 YOU TO DISCUSS THE CASE. I'LL BE BACK WITH YOU IN JUST A

1 TRIAL OF THIS CASE.

2 MR. COLLINS: YES, YOUR HONOR.

3 THE COURT: THEN YOU'RE GOING TO HAVE TO HAVE -- YOU
4 HAVEN'T OFFERED THOSE YET IN THE PRESENCE OF JURY, HAVE YOU
5 NOT?

6 MR. CATHCART: I DID WHILE THEY WERE BEING TESTIFIED BY
7 MR. FOSTER. IT WAS MY UNDERSTANDING THAT THEY WERE...

8 (WHEREUPON, A BENCH CONFERENCE WAS HELD. THE JURY WAS
9 BROUGHT INTO OPEN COURT. DEFENDANT'S EXHIBIT 11 WAS MARKED
10 FOR IDENTIFICATION ONLY.)

11 THE COURT: CALL YOUR NEXT WITNESS, SOLICITOR.

12 MR. CATHCART: MAY IT PLEASE THE COURT, YOUR HONOR?

13 THE COURT: YES, SIR.

14 MR. CATHCART: THE STATE CALLS KATHY JARVIS.

15 KATHY JARVIS FLYNN, AFTER BEING DULY SWORN,
16 TESTIFIED AS FOLLOWS:

17 THE CLERK: PLEASE HAVE A SEAT. STATE YOUR FULL NAME
18 FOR THE RECORD.

19 THE WITNESS: MY NAME IS KATHY FLYNN.

20 THE COURT: IF YOU'D SPELL YOUR LAST NAME---

21 THE WITNESS: F-L-Y-N-N.

22 THE COURT: ---FOR THE COURT REPORTER.

23 DIRECT EXAMINATION

24 BY MR. CATHCART:

25 Q. MS. FLYNN, YOU'RE RECENTLY MARRIED?

1 A. YES.

2 Q. AND YOU RECENTLY ACTUALLY EVEN HAD A BABY JUST A FEW
3 WEEKS AGO; CORRECT?

4 A. YEAH, ABOUT FOUR WEEKS.

5 Q. BEFORE YOU GOT MARRIED, WHAT WAS YOUR NAME?

6 A. JARVIS. J-A-R-V-I-S.

7 Q. BACK IN 1999 WHAT WAS YOUR NAME?

8 A. JARVIS.

9 Q. WHERE WERE YOU -- WHERE ARE YOU EMPLOYED?

10 A. RIGHT NOW I WORK PART-TIME WITH ATTORNEY JOHN O'LEARY.

11 Q. DOING WHAT?

12 A. I'M AN INVESTIGATOR FOR HIM.

13 Q. AND BACK IN 1999 WHERE DID YOU WORK?

14 A. WITH THE RICHLAND COUNTY SHERIFF'S DEPARTMENT.

15 Q. DOING WHAT AT THAT TIME?

16 A. AT THAT TIME I WAS A CANINE OFFICER. I WAS WITH THE
17 S.W.A.T. TEAM AND UNDERWATER RECOVERY.

18 Q. AND WHAT IS UNDERWATER RECOVERY EXACTLY?

19 A. IT'S THE DIVE TEAM UNDER -- YOU BASICALLY---

20 Q. IF SOMETHING IS LOST UNDER WATER AND---

21 A. ANYTHING LOST UNDER WATER. RECOVERING BODIES IN THE
22 WATER.

23 Q. WERE YOU ON DUTY BACK IN JULY 23RD, 1999?

24 A. YES.

25 Q. OKAY. DO YOU RECALL WHERE YOU WERE IN RELATION TO A

1 CALL FROM THE DAYS INN?

2 A. I WAS IN THE -- WHAT WE CALL THE REGION FOUR AREA, THE
3 BROAD RIVER/BUSH RIVER ROAD AREA, WHEN THE CALL CAME OUT.

4 Q. OKAY. AND DO YOU RECALL WHAT THE CALL WAS?

5 A. I JUST REMEMBER IT WAS SOME TYPE OF SHOTS FIRED CALL.

6 Q. AND WHAT DID YOU -- WHEN DID YOU -- EXCUSE ME. WHAT DID
7 YOU FIND WHEN YOU ARRIVED THERE?

8 A. WHEN I ARRIVED, I GOT OUT OF THE VEHICLE AND STARTED
9 WALKING TOWARDS THE BREEZEWAY WHERE MY PARTNER WHO HAD
10 ARRIVED WITH ME... AS I WALKED TOWARDS THE BREEZEWAY, HE WAS
11 RUNNING OUT AND SAID THAT THERE WERE GUNSHOTS, TO BE CAREFUL.

12 Q. OKAY. WHO IS THIS THAT SAID THAT TO YOU?

13 A. DEPUTY BAIRD.

14 MR. CATHCART: YOUR HONOR, MAY I APPROACH THE WITNESS?

15 THE COURT: YOU MAY.

16 MR. CATHCART: IF YOU COULD, PLEASE USE THIS POINTER AND
17 SHOW THE JURY WHERE YOU CAME IN AND WHERE YOU MET DEPUTY
18 BAIRD.

19 THE COURT: IDENTIFY THE EXHIBIT THAT'S BEING USED, FOR
20 THE RECORD, COUNSEL.

21 MR. CATHCART: YES, SIR. I APOLOGIZE, YOUR HONOR. THIS
22 WOULD BE STATE'S EXHIBIT NUMBER 108.

23 THE COURT: STEP BACK.

24 THE WITNESS: OKAY. LET ME SEE. WHERE IS THE ENTRANCE
25 TO THE...

1 MR. CATHCART: JUST -- MAY SHE STEP DOWN, YOUR HONOR?

2 THE COURT: SHE CERTAINLY MAY. COUNSEL, DO YOU WANT TO
3 COME AROUND OR CAN YOU SEE?

4 MR. LEDDY: I CAN SEE, YOUR HONOR.

5 THE COURT: VERY WELL.

6 THE WITNESS: I WAS JUST TRYING TO FIGURE OUT WHERE I
7 CAME IN AT IN RELATION TO THE BUILDING. THIS IS THE ENTRANCE
8 TO THE HOTEL.

9 BY MR. CATHCART:

10 Q. IF YOU LOOK UP AT THE TOP OF THE THING, THE ROAD IS?

11 A. OKAY. I GOT YOU.

12 Q. OKAY.

13 A. ALL RIGHT. WHEN I CAME IN, I CAME IN THROUGH HERE AND I
14 PARKED APPROXIMATELY IN THIS AREA AND RAN TOWARDS THIS
15 BREEZEWAY RIGHT HERE. AS I APPROACHED THE BREEZEWAY, THAT'S
16 WHEN DEPUTY BAIRD HAD COME RUNNING OUT AND SAID THAT THERE
17 WAS A GUNSHOT AND TO BE CAREFUL. AS I WENT INTO THE
18 BREEZEWAY, YOU COULD ACTUALLY STILL SMELL THE GUNFIRE, AND
19 WHEN I WENT INTO THE BREEZEWAY, I SAW -- THAT'S WHERE I SAW
20 THE VICTIM LAYING DOWN IN THE BREEZEWAY.

21 Q. OKAY. AND WHERE -- WHERE APPROXIMATELY IN THE BREEZEWAY
22 WAS THE VICTIM?

23 A. HE WAS RIGHT BY THE STAIRWELL, APPROXIMATELY RIGHT ABOUT
24 HERE, AND HE WAS JUST -- HE WAS LAYING DOWN ON THE GROUND AND
25 HE WAS STILL ALIVE. I HAD SPOKEN TO HIM. HE DIDN'T SPEAK

1 BACK, BUT HE WAS STILL ALIVE AT THAT TIME.

2 Q. OKAY. AND WHAT, IF ANYTHING, OCCURRED AS YOU APPROACHED
3 THE VICTIM? WHO WAS WITH YOU WHEN YOU APPROACHED THE VICTIM?

4 A. DEPUTY BAIRD WAS STILL WITH ME.

5 Q. HE WAS STILL WITH YOU AT THAT TIME?

6 A. YES.

7 Q. OKAY. WHAT---

8 THE COURT: LET HER SIT BACK DOWN, COUNSEL.

9 MR. CATHCART: THANK YOU, YOUR HONOR.

10 THE COURT: IF YOU'LL USE THAT MICROPHONE FOR ME, MS.
11 FLYNN, IT WILL AMPLIFY YOUR VOICE AND YOU DON'T HAVE YOUR
12 BACK TO THE COURT REPORTER.

13 THE WITNESS: OKAY.

14 THE COURT: PROCEED, COUNSEL. ASK A QUESTION.

15 BY MR. CATHCART:

16 Q. WHAT OCCURRED AFTER YOU AND DEPUTY BAIRD APPROACHED THE
17 VICTIM?

18 A. AS WE WERE TRYING TO TALK WITH THE VICTIM, WE HEARD SOME
19 MORE GUNSHOTS COMING. IT WAS VERY CLOSE IN THE BREEZEWAY.
20 IT ECHOED A LOT, SO I REMEMBER IT WAS VERY LOUD. WE HEARD
21 SEVERAL GUNSHOTS. I TOOK COVER BEHIND THE STAIRWELL, AND
22 DEPUTY BAIRD RAN OUT OF THE BREEZEWAY.

23 Q. AND WHERE WAS DEPUTY BAIRD WHEN THESE SHOTS WENT? DO
24 YOU RECALL?

25 A. HE WAS RIGHT NEXT TO ME. WE WERE DOWN BY THE VICTIM

1 TRYING TO TALK TO THE VICTIM.

2 Q. DID HE AT ANY POINT APPROACH TOWARDS THE EDGE OF THE
3 BREEZEWAY?

4 A. YEAH. I REMEMBER THAT HE TOLD ME JUST TO HOLD ON, AND I
5 THINK HE WALKED TOWARDS THE END OF THE BREEZEWAY, AND THAT'S
6 WHEN THE GUNFIRE STARTED AND THAT'S WHEN HE RAN OUT OF THE
7 BREEZEWAY AND I JUST -- I DOVE BEHIND THE STAIRWELL.

8 Q. OKAY. DID HE INDICATE WHERE HE WAS GOING?

9 A. HE SAID HE WAS GOING TO GO GET A BIGGER GUN.

10 Q. OKAY. WHAT, IF ANYTHING, DID YOU DO WHILE DEPUTY BAIRD
11 WENT FOR A BIGGER GUN AND YOU WERE BEHIND THE STAIRWELL?

12 A. I DREW MY WEAPON AND GOT ON THE RADIO, CALLED FOR
13 BACK-UP, STATED WE NEEDED AN AMBULANCE. WE HAD A VICTIM DOWN
14 THAT HAD BEEN SHOT AND JUST REQUESTED MORE HELP.

15 Q. OKAY. WERE YOU CALM DURING THIS TIME?

16 A. NOT VERY CALM, NO.

17 Q. HOW LONG DID IT TAKE THE BACK-UP TO ARRIVE?

18 A. PROBABLY APPROXIMATELY FOUR TO FIVE MINUTES BEFORE
19 ANY -- BEFORE THE FIRST OFFICER ARRIVED, I BELIEVE.

20 MR. CATHCART: OKAY. YOUR HONOR, MAY I APPROACH THE
21 WITNESS?

22 THE COURT: YOU MAY.

23 BY MR. CATHCART:

24 Q. LET ME SHOW YOU WHAT'S BEEN MARKED STATE'S EXHIBIT
25 NUMBER 42. DO YOU RECOGNIZE WHAT THIS IS?

1 A. YES.

2 Q. COULD YOU DESCRIBE WHAT IT IS?

3 A. YES. IT'S THE STAIRWELL AND THE BREEZEWAY THAT I WAS
4 IN. THAT'S THE STAIRWELL THAT I DOVE BEHIND.

5 Q. OKAY.

6 MR. LEDDY: NO OBJECTION, YOUR HONOR.

7 MR. CATHCART: YOUR HONOR, AT THIS TIME THE STATE SEEKS
8 TO REINTRODUCE STATE'S EXHIBIT NUMBER 42.

9 THE COURT: LADIES AND GENTLEMEN OF THE JURY, STATE'S
10 EXHIBIT NUMBER 42 WILL BE ADMITTED INTO EVIDENCE WITHOUT
11 OBJECTION. STATE'S 42 IN EVIDENCE.

12 (STATE'S EXHIBIT 42 WAS RECEIVED IN EVIDENCE.)

13 THE COURT: YOU MAY PUBLISH.

14 BY MR. CATHCART:

15 Q. WOULD YOU POINT OUT TO THE JURY EXACTLY WHERE YOU WERE?

16 A. HERE'S THE STAIRWELL. I WAS DIRECTLY BEHIND THE
17 STAIRWELL.

18 Q. AND WHERE WAS THE VICTIM?

19 A. THE VICTIM WAS JUST RIGHT ACROSS FROM ME IN THE
20 BREEZEWAY.

21 Q. OKAY. HOW LONG DID IT TAKE FOR BACK-UP TO GET THERE?

22 A. I WOULD SAY PROBABLY ABOUT FOUR TO FIVE MINUTES.

23 Q. AND WHILE YOU WERE WAITING ON BACK-UP AND EVEN AFTER
24 BACK-UP CAME, DID YOU HEAR ANY MORE SHOTS BEING FIRED?

25 A. THE SHOTS WERE JUST SPORADICALLY -- I KNOW THAT THERE --

1 BETWEEN THAT FOUR OR FIVE MINUTES I HEARD MAYBE A TOTAL OF
2 FIVE TO SIX SHOTS. THEY JUST DIDN'T HAPPEN ONE RIGHT AFTER
3 THE OTHER. SO, YEAH, I DID HEAR MORE GUNFIRE AT THAT TIME.

4 Q. OKAY. AND WHAT, IF ANYTHING, HAPPENED WITH THE VICTIM
5 ONCE BACK-UP ARRIVED?

6 A. WELL, THE VICTIM QUIT MOVING. I NEVER COULD GET BACK
7 OVER TO HIM. WE WERE TRYING TO GET BACK-UP THERE TO GET THE
8 E.M.S. IN TO GET THE VICTIM, BUT WE COULDN'T DO ANYTHING
9 UNTIL BACK-UP ARRIVED. SO I JUST STAYED BEHIND THE STAIRWELL
10 WITH MY GUN DRAWN WAITING ON HELP.

11 Q. AND WHEN BACK-UP ARRIVED, WERE Y'ALL ABLE TO MOVE THE
12 VICTIM?

13 A. WE WERE. I BELIEVE THERE WAS SOME OFFICERS THAT WAS
14 ABLE TO DRAG THE VICTIM OUT TO A SAFE AREA WHERE E.M.S. COULD
15 TAKE CARE OF HIM AT THAT TIME.

16 MR. CATHCART: YOUR HONOR, MAY I APPROACH THE WITNESS
17 AGAIN?

18 THE COURT: YOU MAY.
19 BY MR. CATHCART:

20 Q. I SHOW YOU WHAT'S BEEN MARKED STATE'S EXHIBIT NUMBER
21 109. DO YOU RECOGNIZE WHAT THIS IS A DIAGRAM OF?

22 A. YES.

23 Q. AND WHAT WOULD THAT BE?

24 A. THAT'S THE DIAGRAM OF THE BREEZEWAY WITH THE STAIRWELL
25 AND WHERE THE VICTIM WAS AT THE HOTEL.

1 MR. LEDDY: NO OBJECTION, YOUR HONOR.

2 THE COURT: ARE YOU OFFERING IT?

3 MR. CATHCART: YES, YOUR HONOR. AT THIS TIME THE STATE
4 SEEKS TO INTRODUCE STATE'S EXHIBIT NUMBER 109 INTO EVIDENCE.

5 THE COURT: LADIES AND GENTLEMEN OF THE JURY, STATE'S
6 EXHIBIT 109 WILL BE ADMITTED INTO EVIDENCE WITHOUT OBJECTION.
7 STATE'S 109 IN EVIDENCE.

8 (STATE'S EXHIBIT 109 WAS RECEIVED IN EVIDENCE.)

9 THE COURT: YOU MAY PUBLISH.

10 MR. CATHCART: THANK YOU, YOUR HONOR. MAY I APPROACH
11 THE WITNESS AGAIN?

12 THE COURT: YOU MAY.

13 MR. CATHCART: THANK YOU.

14 THE COURT: COUNSEL, IF YOU WANT TO COME AROUND, YOU MAY
15 DO SO.

16 BY MR. CATHCART:

17 Q. I'LL DO IT SO THE COURT REPORTER CAN STILL HEAR YOU.
18 HAVE YOU GOT YOUR LITTLE POINTER?

19 A. UH-HUH.

20 Q. WOULD YOU POINT TO THE JURY WHERE YOU WERE LOCATED,
21 PLEASE?

22 A. I WAS LOCATED BEHIND THIS STAIRWELL RIGHT HERE.

23 Q. AND THE VICTIM WAS LOCATED ABOUT WHERE?

24 A. RIGHT ABOUT IN THIS AREA.

25 Q. OKAY. AND THEY WERE ABLE TO PULL HIM BACK OUT TO WHERE?

1 A. THEY PULLED HIM BACK OUT TO RIGHT HERE - E.M.S. WAS
2 ALREADY WAITING - SO E.M.S. COULD TAKE THE VICTIM.

3 Q. OKAY. AFTER E.M.S. MOVED THE VICTIM, WHAT, IF ANYTHING,
4 DID YOU DO AT THAT POINT?

5 A. AT THAT TIME I BACKED -- I BACKED OUT OF THE STAIRWAY
6 BACK TOWARDS THAT -- THE MAIN ROAD WHERE I HAD PARKED. I
7 WENT AROUND THE BUILDING TO TRY TO GET COVERAGE, TO TRY TO
8 FIND OUT WHERE THE SUSPECT WAS LOCATED. AT THAT TIME I DID
9 NOT KNOW WHICH ROOM HE WAS IN OR WHERE HE WAS AT. I NEVER
10 SAW HIM UNTIL I COULD -- SO I TRIED TO COME AROUND THE
11 BUILDING AND TAKE COVER TO WHERE I COULD SEE WHERE THE SHOTS
12 WERE COMING FROM.

13 Q. DO YOU RECALL WHERE YOU TOOK COVER?

14 A. YEAH. I WALKED -- I RAN AROUND THE BUILDING AND TOOK
15 COVER BEHIND A CAR.

16 Q. OKAY. IF YOU COULD, PLEASE LOOK AT STATE'S EXHIBIT
17 NUMBER 108 WHICH IS ON THE WALL AND SHOW THE JURY BASICALLY
18 WHERE YOU TOOK COVER.

19 A. WHEN I -- I RAN -- I KNOW I RAN AROUND THE BUILDING AND
20 TOOK COVER. THERE WAS CARS PARKED ALL ALONG HERE. I RAN
21 AROUND THIS WAY AND TOOK COVER PROBABLY APPROXIMATELY RIGHT
22 HERE.

23 Q. AND AS YOU TOOK COVER, WHAT, IF ANYTHING, OCCURRED IN
24 RELATION TO THE ROOM OR IN RELATION TO THE OTHER OFFICERS
25 THAT WERE THERE?

1 A. I KNOW WE HAD REQUESTED THE S.W.A.T. TEAM, SO WE WERE
2 WAITING ON THE S.W.A.T. TEAM TO RESPOND. I REMEMBERED
3 SEVERAL OFFICERS HAD ARRIVED. IF I'M NOT MISTAKEN, I BELIEVE
4 THERE WERE A COUPLE MORE GUNSHOTS THAT CAME OUT OF THE ROOM
5 AS I WAS IN THIS AREA. I DO REMEMBER SEVERAL OFFICERS THAT
6 WERE ON THE TOP FLOOR, THE SECOND FLOOR, RUNNING ALONG THIS
7 WAY TRYING TO FIND OUT WHERE THE GUNSHOTS WERE COMING FROM.
8 I KIND OF REMEMBERED THEM COMING BACK DOWN THE STAIRWELL AS
9 THEY WERE RUNNING -- THIS IS THE SECOND FLOOR. THEY WERE
10 RUNNING ALONG THIS WAY, MADE A TURN, CAME BACK DOWN THE
11 STAIRWELL, AND I THINK THAT'S WHEN THEY APPROACHED THE ROOM
12 DOWNSTAIRS.

13 Q. OKAY. AND AT THAT POINT WERE YOU ABLE TO DETERMINE
14 WHERE THE SHOTS WERE COMING FROM?

15 A. AT THAT -- AT THAT POINT FROM MY LOCATION RIGHT THERE I
16 COULD TELL WHERE THE SHOTS WERE COMING FROM, YES.

17 Q. AND THEY WERE COMING FROM THE ROOM THAT YOU INDICATED?

18 A. YES, THE DOOR WAS OPEN.

19 Q. WHAT, IF ANYTHING, OCCURRED AS THE OFFICERS WERE
20 STANDING THERE BY THE DOOR?

21 A. ONE -- I RECALL ONE SHOT COMING OUT OF THE ROOM. THE
22 OFFICERS WERE KIND OF IN THIS BREEZEWAY ALONG HERE JUST KIND
23 OF PEEKING RIGHT WHERE THE ROOM WAS. I THINK I HEARD ONE
24 MORE SHOT, AND THE OFFICERS WENT INTO THE ROOM. I DON'T
25 RECALL HOW MANY, BUT THEY DID RUN INTO THE ROOM AT THAT TIME.

1 Q. AND WHEN THE OFFICERS WENT INTO THE ROOM, WHAT, IF
2 ANYTHING, DID YOU DO?

3 A. AS THEY WENT INTO THE ROOM, I CAME OUT FROM BEHIND COVER
4 AND RAN IN BEHIND THEM INTO THE ROOM.

5 Q. OKAY. WHAT, IF ANYTHING, DID YOU FIND WHEN YOU WENT
6 INTO THE ROOM?

7 A. ONCE I APPROACHED THE ROOM, THE OFFICERS HAD THE SUSPECT
8 DOWN ON THE GROUND. HE WAS KIND OF BEHIND THE BED. I
9 REMEMBER SEEING THE SUSPECT LAYING FACEDOWN. THEY WERE
10 HANDCUFFING HIM, AND DEPUTY BAIRD HAD -- HAD TWO WEAPONS THAT
11 HE HANDED TO ME AT THAT TIME.

12 MR. CATHCART: OKAY. MAY I APPROACH THE WITNESS AGAIN,
13 YOUR HONOR?

14 THE COURT: YOU MAY.

15 BY MR. CATHCART:

16 Q. I SHOW YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT NUMBER
17 95. DO YOU RECOGNIZE WHAT THIS IS?

18 A. YES.

19 Q. WHAT IS THIS?

20 A. THAT'S THE SHOTGUN THAT WAS HANDED TO ME FROM THE ROOM.

21 Q. I SHOW YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT NUMBER
22 76. DO YOU RECOGNIZE WHAT THIS IS?

23 A. YES.

24 Q. AND WHAT IS THAT?

25 A. THAT WAS THE PISTOL THAT WAS HANDED TO ME ALONG WITH THE

1 SHOTGUN.

2 Q. AND DO YOU RECALL WHAT YOU DID WITH THESE WEAPONS AFTER
3 YOU RECEIVED THEM?

4 A. THERE WAS AN INVESTIGATOR BEHIND ME. I HANDED THEM TO
5 AN INVESTIGATOR.

6 Q. OKAY. WHEN YOU WERE IN THE STAIRWELL, WHEN YOU FIRST
7 GOT THERE, DID YOU HEAR ANYONE SAY ANYTHING OUT OF THAT ROOM?

8 A. I NEVER HEARD ANYBODY SPEAK OUT OF THAT ROOM.

9 Q. NOT FROM THE STAIRWELL?

10 A. NO.

11 Q. HOW ABOUT WHEN YOU WERE ACROSS THE CAUSEWAY FROM THAT
12 ROOM?

13 A. I NEVER HEARD ANYTHING COMING FROM THAT ROOM.

14 Q. DID Y'ALL IDENTIFY YOURSELVES AS POLICE OFFICERS?

15 A. I DON'T RECALL IDENTIFYING, YOU KNOW, WHEN WE GOT THERE.
16 AS SOON AS THE GUNSHOTS STARTED, WE JUST TOOK COVER AND GOT
17 ON THE RADIO. I DON'T RECALL EVER---

18 Q. YOU SAYING ANYTHING TO HIM?

19 A. NO.

20 MR. CATHCART: BEG THE COURT'S INDULGENCE.

21 THE COURT: YES, SIR.

22 BY MR. CATHCART:

23 Q. ARE YOU FAMILIAR WITH THIS DAYS INN OTHER THAN THIS
24 NIGHT?

25 A. I AM.

1 Q. DO YOU KNOW WHAT COUNTY THIS DAYS INN IS IN?

2 A. IT'S IN RICHLAND COUNTY.

3 Q. THE ROOM THAT THIS -- AND THE BREEZEWAY WHERE THE
4 SHOOTING OCCURRED, IS THAT ALSO IN RICHLAND COUNTY?

5 A. IT'S IN RICHLAND COUNTY.

6 MR. CATHCART: PLEASE ANSWER ANY QUESTIONS FROM DEFENSE
7 COUNSEL.

8 THE COURT: CROSS-EXAMINATION?

9 MR. LEDDY: THANK YOU, YOUR HONOR.

10 CROSS-EXAMINATION

11 BY MR. LEDDY:

12 Q. MA'AM, YOU SAID YOU RESPONDED TO A CIVIL DISTURBANCE
13 CALL; IS THAT CORRECT?

14 A. IT WAS A SHOTS-FIRED CALL, IF I REMEMBER CORRECTLY.

15 Q. SO THE FIRST TIME YOU HEARD ANYTHING ON THE RADIO WAS
16 FOR SHOTS FIRED?

17 A. YES, SIR.

18 Q. OKAY. DO YOU RECALL PRIOR SWORN TESTIMONY THAT YOU'VE
19 GIVEN RELATED TO THIS CASE?

20 A. NOT -- NOT REALLY.

21 Q. OKAY. BEG THE COURT'S INDULGENCE. NOW, MA'AM, IF YOU
22 WERE TO SEE A TRANSCRIPT OF PRIOR TESTIMONY THAT YOU GAVE IN
23 THIS CASE, WOULD IT HELP TO REFRESH YOUR MEMORY?

24 A. IT COULD, YES.

25 THE COURT: GIVE HER PAGE AND LINE NUMBER, COUNSEL. YOU

1 MAY APPROACH THE WITNESS.

2 MR. LEDDY: YOUR HONOR, REFERRING TO PAGE 195, LINE
3 13---

4 THE COURT: SHOW IT TO THE WITNESS, COUNSEL.

5 MR. CATHCART: YOUR HONOR, IF I MAY, I HAVE AN EXTRA
6 COPY FOR HER THAT I CAN HAND UP TO HER.

7 THE COURT: PLEASE DO SO. YOU CAN KEEP YOUR COPY.

8 MR. LEDDY: THANK YOU.

9 MR. CATHCART: UH-HUH.

10 THE COURT: MA'AM, TELL US WHEN YOU'RE ON 195, LINE 13.
11 HAND IT TO THE WITNESS AND STEP BACK, COUNSEL.

12 MR. LEDDY: THANK YOU, YOUR HONOR.

13 THE WITNESS: OKAY. I DON'T REMEMBER, BUT I SEE HERE
14 THAT THAT'S EVIDENTLY WHAT IT IS, SO---
15 BY MR. LEDDY:

16 Q. SO -- I'M SORRY. I DIDN'T MEAN TO CUT YOU OFF.

17 A. OH, NO. I WAS SAYING I DON'T REMEMBER, YOU KNOW, THAT
18 CALL COMING OUT, BUT EVIDENTLY THAT'S WHAT IT WAS WAS A CIVIL
19 DISTURBANCE.

20 Q. OKAY. SO THAT'S NOT FOR GUNSHOTS; RIGHT?

21 A. NO.

22 Q. OKAY. NOW, IT WAS IN 1999, SO, YOU KNOW, I UNDERSTAND.

23 NOW, YOU SAID YOU WERE ON THE SCENE PRIOR TO THE SUSPECT

24 BEING TAKEN INTO CUSTODY FOR ABOUT 20 OR 25 MINUTES. IS THAT
25 CORRECT?

1 A. YES.

2 Q. AND DURING THAT TIME PERIOD YOU HEARD A TOTAL OF FIVE OR
3 SIX SHOTS?

4 A. ABOUT FIVE OR SIX SHOTS.

5 Q. OKAY. NOW, DO YOU RECALL WHEN E.M.S. ARRIVED AT THE
6 SCENE?

7 A. I DON'T KNOW EXACTLY WHEN E.M.S. ARRIVED WHERE I WAS
8 LOCATED. I COULD NOT SEE THEM PULL IN. I DO KNOW THAT BY
9 THE TIME THE VICTIM WAS TAKEN OUT OF THE BREEZEWAY E.M.S. WAS
10 ALREADY STANDING BY. THEY HAD THE ROAD BLOCKED TO WHERE THEY
11 WOULDN'T LET E.M.S. IN UNTIL WE COULD GET THEM TO A SAFE AREA
12 OR THE VICTIM TO A SAFE AREA BECAUSE OF THE GUNSHOTS.

13 Q. AND THEY HAD SET UP A PERIMETER AROUND THE WHOLE AREA.

14 A. THEY DIDN'T REALLY HAVE A PERIMETER SET UP. WE WERE
15 STILL WAITING ON BACK-UP. ALL I KNOW IS THEY WERE NOT
16 LETTING ANYBODY INTO THE HOTEL.

17 Q. OKAY. NOW, LET ME ASK YOU THIS: DID YOU HEAR ANYTHING
18 ON THE RADIO ABOUT ANYBODY BEING PUSHED OUT OF A WHEELCHAIR?

19 A. NO.

20 Q. OKAY. LET ME ASK YOU THIS: DID YOU SEE ANY BLOOD IN
21 THE BREEZEWAY WHERE THE VICTIM LAY?

22 A. I COULDN'T -- THE VICTIM WAS LAYING FACEDOWN. I DON'T
23 RECALL SEEING THE BLOOD UNTIL THE VICTIM -- WHEN I FIRST
24 APPROACHED HIM TO SPEAK TO HIM, HE KIND OF LIFTED UP AND I
25 COULD SEE A LITTLE BIT OF BLOOD AT THAT TIME.

1 Q. OKAY. AND IT WAS A SMALL AMOUNT OR...

2 A. IT WAS -- IT LOOKED LIKE A LARGE AMOUNT.

3 Q. OKAY. DID YOU SEE ANY BLOOD OUTSIDE THE DOOR OF THE
4 SUSPECT?

5 A. I DON'T RECALL SEEING ANY BLOOD -- OUTSIDE OF THE HOTEL
6 DOOR? NO, I DON'T RECALL SEEING ANY BLOOD THERE.

7 Q. AND DO YOU RECALL SEEING ANY BLOOD INSIDE THE ROOM?

8 A. I DON'T RECALL THAT, NO.

9 MR. LEDDY: OKAY. NOTHING FURTHER, YOUR HONOR.

10 THE COURT: REDIRECT?

11 MR. CATHCART: NOTHING FURTHER FROM THE STATE, YOUR
12 HONOR. I WOULD ASK THAT THIS WITNESS BE ALLOWED TO BE
13 EXCUSED.

14 THE COURT: ANY OBJECTION?

15 MR. LEDDY: NO, YOUR HONOR.

16 THE COURT: MS. FLYNN, YOU MAY STEP DOWN FROM THE
17 WITNESS STAND. YOU'RE EXCUSED FROM THE TRIAL OF THIS CASE.
18 MR. FOREMAN AND LADIES AND GENTLEMEN OF THE JURY, I APOLOGIZE
19 FOR THE LENGTHY BREAK WE TOOK, BUT IT WAS NECESSARY IN ORDER
20 FOR DAPHNE TO COMPLETE HER TESTIMONY UPSTAIRS. WE'RE GOING
21 TO STOP AT THIS POINT FOR OUR LUNCH BREAK. AS I INSTRUCTED
22 YOU YESTERDAY, PLEASE DO NOT DISCUSS THE CASE WITH ANYONE
23 OVER THE LUNCH BREAK. I ASK THAT YOU BE BACK IN YOUR JURY
24 ROOM BY 2:30 THIS AFTERNOON SO THAT WE CAN RESUME THE
25 TESTIMONY IN THE TRIAL OF THIS CASE.

1 THE COURT: DEFENDANT READY TO PROCEED?

2 MR. COLLINS: THE DEFENSE IS READY, YOUR HONOR.

3 THE COURT: BRING US THE JURY, PLEASE.

4 MR. CATHCART: YOUR HONOR, ACTUALLY IF I'M NOT MISTAKEN,
5 YOU WISHED TO HOLD ME IN CONTEMPT OR SOMETHING BEFORE WE HAD
6 THE JURY?

7 THE COURT: COUNSEL, APPROACH.

8 (WHEREUPON, A BENCH CONFERENCE WAS HELD.)

9 THE COURT: BRING THEM ON. BRING THEM ON. THE TRAIN
10 NEEDS TO GO DOWN THE TRACK.

11 (WHEREUPON, THE JURY WAS BROUGHT INTO OPEN COURT AT 2:35
12 P.M.)

13 THE COURT: THANK YOU, SIR. CALL YOUR NEXT WITNESS,
14 SOLICITOR.

15 MS. MCDUFFIE: THE STATE CALLS ANDRE WILLIAMS.

16 THE COURT: COME AROUND AND BE SWORN, PLEASE.

17 ANDRE JIMMY L. WILLIAMS, AFTER BEING DULY SWORN,
18 TESTIFIED AS FOLLOWS:

19 THE CLERK: PLEASE HAVE A SEAT AND STATE YOUR FULL NAME
20 FOR THE RECORD.

21 THE WITNESS: ANDRE JIMMY L. WILLIAMS.

22 DIRECT EXAMINATION

23 BY MS. MCDUFFIE:

24 Q. GOOD AFTERNOON, OFFICER WILLIAMS.

25 A. GOOD AFTERNOON.

1 Q. OFFICER WILLIAMS, WHERE ARE YOU CURRENTLY EMPLOYED?

2 A. WITH THE CITY OF COLUMBIA POLICE DEPARTMENT.

3 Q. AND WHAT ARE YOUR DUTIES WITH THE CITY OF COLUMBIA
4 POLICE DEPARTMENT?

5 A. CURRENTLY I AM THE SUPERVISOR OVER THE CANINE UNIT WHICH
6 ENTAILS TRAINING THE CANINES AS WELL AS THE OFFICERS.

7 Q. AND WERE YOU EMPLOYED WITH THE CITY OF COLUMBIA POLICE
8 DEPARTMENT IN JULY OF 1999?

9 A. YES, MA'AM.

10 Q. AND WHAT WERE YOUR DUTIES THEN?

11 A. AT THAT POINT I WAS ASSIGNED TO THE PATROL DIVISION IN
12 REGION TWO OR DISTRICT TWO WHICH WAS THE DOWNTOWN DISTRICT
13 AND PRETTY MUCH PATROLLING DOWNTOWN, HAD S.W.A.T. DUTIES,
14 CANINE DUTIES, AND REGULAR PATROL DUTIES.

15 Q. AND ON THE NIGHT OR THE MORNING OF JULY 23RD, 1999, DID
16 YOU HAVE AN OCCASION TO BE CALLED OUT TO THE DAYS INN ON BUSH
17 RIVER ROAD?

18 A. YES, MA'AM.

19 Q. AND WHAT WAS THAT IN REFERENCE TO?

20 A. SHOTS FIRED CALLED, DEPUTIES NEEDING ASSISTANCE.

21 Q. AND IS THE DAYS INN IN THE CITY OF COLUMBIA
22 JURISDICTION?

23 A. NO, IT'S NOT.

24 Q. WHOSE JURISDICTION IS THAT?

25 A. IT IS RICHLAND COUNTY'S JURISDICTION.

1 Q. AND SO WHY DID YOU RESPOND TO A RICHLAND COUNTY CRIME
2 SCENE?

3 A. WELL, THEY WERE CALLING FOR ASSISTANCE. THEY HAD SHOTS
4 FIRED, AND AT THAT TIME THEY DIDN'T -- THEY COULDN'T PINPOINT
5 OR DID NOT KNOW EXACTLY WHERE SHOTS WERE COMING FROM AND
6 NEEDED MORE MANPOWER, MORE ASSISTANCE OUT THERE.

7 Q. DO YOU RECALL WHAT TIME YOU GOT TO THE DAYS INN?

8 A. AROUND 4 -- BETWEEN 4:00 IN THE MORNING, SOMETIME AROUND
9 THAT TIME.

10 Q. AND WERE THERE OTHER OFFICERS ON THE SCENE WHEN YOU
11 ARRIVED?

12 A. YES, MA'AM.

13 Q. DO YOU REMEMBER WHAT AGENCY THEY WERE FROM?

14 A. I REMEMBER WHEN I GOT THERE IT WAS MAINLY RICHLAND
15 COUNTY AND THE CITY OF COLUMBIA.

16 Q. OFFICER WILLIAMS, IF YOU COULD USE THE POINTER THAT'S
17 RIGHT BESIDE YOU AND STATE'S EXHIBIT NUMBER 108 WHICH IS ON
18 THE BOARD AND THE POINTER IS RIGHT THERE -- YOUR HONOR, MAY I
19 APPROACH?

20 THE COURT: HAND IT TO HIM, COUNSEL.

21 THE WITNESS: OH, ALL RIGHT. ALL RIGHT.

22 BY MS. MCDUFFIE:

23 Q. OFFICER WILLIAMS, IF YOU COULD SHOW THE JURY: WHEN YOU
24 ARRIVED AT THE DAYS INN, WHERE DID YOU GO?

25 A. WHEN I GOT THERE TO THE DAYS INN, I ENTERED IN AND I

1 PARKED ALONG IN THE -- IN THIS AREA RIGHT IN HERE SOMEWHERE,
2 AND I REMEMBER ONCE I GOT THERE I APPROACHED THIS -- THIS --
3 THE FRONT OF THE HOTEL, THIS GENERAL AREA, SOMEWHERE UP IN
4 HERE WHERE THE -- WHERE THERE WAS A COUPLE OF OTHER OFFICERS
5 THERE.

6 Q. AND WHAT DID YOU DO WHEN YOU MET WITH THOSE OTHER
7 OFFICERS?

8 A. IF I REMEMBER CORRECTLY, WHEN I FIRST GOT THERE I RAN
9 INTO ONE OF THE OTHER CITY OFFICERS AND ASKED HIM WHAT WAS
10 GOING ON, WHAT WERE THE CIRCUMSTANCES. HE KIND OF GAVE ME A
11 BRIEF OVERVIEW AND INSTRUCTING OR ADVISING THAT WE HAD ONE
12 PERSON THAT WAS SHOT AND THAT WE WERE TRYING TO FIGURE OUT A
13 PLAN TO GET THAT PERSON OUT AND STILL HAD THE SHOOTER ON THE
14 -- IN THE AREA SOMEWHERE.

15 Q. AND AT THAT TIME DID YOU KNOW WHERE THE SHOOTER WAS OR
16 WHERE THE SHOTS WERE COMING FROM?

17 A. NO.

18 Q. AND DID YOU HAVE THE OPPORTUNITY TO ASSIST IN HELPING
19 REMOVE THE VICTIM?

20 A. I DID. I -- I ALONG WITH OFFICER BLUNT WHO ALSO AT THAT
21 TIME WORKED FOR THE CITY PUT UP A -- WERE PUT IN A POSITION
22 OF SECURITY WHERE THE VICTIM WAS IN THIS BREEZEWAY RIGHT HERE
23 AND WE PUT -- HELD SECURITY FOR THE RICHLAND COUNTY OFFICERS
24 THAT WERE PULLING THE VICTIM OUT OF THAT BREEZEWAY BACK --
25 BACK TO A SAFE HAVEN WHERE E.M.S. COULD RENDER SOME AID TO

1 THEM.

2 MS. MCDUFFIE: YOUR HONOR, MAY I APPROACH THE WITNESS,
3 PLEASE?

4 THE COURT: YOU MAY.

5 BY MS. MCDUFFIE:

6 Q. OFFICER WILLIAMS, I'M GOING TO SHOW YOU WHAT'S BEEN
7 ADMITTED INTO EVIDENCE AS STATE'S 109. CAN YOU SHOW THE JURY
8 EXACTLY WHERE YOU WERE IN THE BREEZEWAY?

9 A. I WOULD HAVE -- THE VICTIM INITIALLY WAS BACK IN THE
10 BREEZEWAY AND THEN WHEN -- WHEN THE RICHLAND COUNTY DEPUTIES
11 WERE GOING TO PULL THE VICTIM OUT, I WOULD HAVE BEEN
12 STATIONED SOMEWHERE ON THIS HALLWAY RIGHT HERE.

13 Q. AND DID YOU---

14 A. BASICALLY---

15 Q. EXCUSE ME.

16 A. BASICALLY TO PROVIDE SUPPORT OR COVER FOR THE OFFICERS
17 PULLING THE VICTIM OUT.

18 Q. DID YOU HEAR SHOTS GOING OFF AT THIS TIME?

19 A. I CAN'T REMEMBER IF IT WAS -- IF IT WAS BEFORE WE PULLED
20 HIM OUT OR IF IT WAS RIGHT AFTER WE PULLED HIM OUT BUT
21 SOMEWHERE IN THAT TIME FRAME.

22 Q. THERE WERE SHOTS GOING OFF SOMEWHERE---

23 A. YEAH.

24 Q. ---IN THAT TIME VICINITY?

25 A. YEAH.

1 Q. WHAT DID YOU DO AFTER YOU HELPED REMOVE THE VICTIM FROM
2 THE BREEZEWAY?

3 A. ONCE WE -- ONCE WE GOT HIM OUT OF THE BREEZEWAY AND
4 E.M.S. PROVIDED HIM AID, MYSELF AND OFFICER BLUNT -- WE
5 DECIDED THAT WE'D TRY TO FIND A BETTER POSITION TO KIND OF I
6 GUESS EVALUATE OR ASSESS WHAT WE'VE GOT GOING ON TO ASSIST
7 RICHLAND COUNTY, AND WE WENT UP TO THE SECOND FLOOR PLATFORM.
8 AND ONCE WE GOT UP, IF THIS IS A ROOM HERE, WE WERE UP ON THE
9 SECOND FLOOR. WE WOULD BE ON THIS STATE SIDE OF THE HOTEL
10 ROOMS. AND BASICALLY ONCE WE GOT UP HERE, I TOOK A POSITION
11 ON ONE WALL AND OFFICER BLUNT -- I WAS ON THIS WALL AND
12 OFFICER BLUNT WAS ON THE OTHER WALL, AND WHILE WE WERE THERE,
13 WE COULD SEE ALL THE RICHLAND COUNTY CARS ON THIS SIDE HERE
14 IN THIS -- BASICALLY ON THE OTHER SIDE OF THIS PARKING AREA.

15 AND I GUESS WHILE WE WERE UP THERE, WE WERE TALKING AND
16 WE WERE TRYING TO FIGURE OUT WHAT WAS GOING TO HAPPEN. BUT
17 WHILE WE WERE THERE, WE WERE ALSO IN A -- NOT A SAFE POSITION
18 FOR WHAT WAS GOING ON BECAUSE THE DEPUTIES -- WE WERE ALMOST
19 IN THEIR DIRECT LINE OF FIRE, SO TO SPEAK, BECAUSE OF NOT
20 KNOWING WHERE IT WAS COMING FROM.

21 Q. AND DID YOU HEAR ANY SHOTS GO OFF WHILE YOU WERE
22 UPSTAIRS?

23 A. WHILE WE WERE UPSTAIRS, WE DID HEAR ONE GO OFF, AND
24 THAT'S WHEN I WAS ABLE TO DETERMINE THAT IT WAS COMING FROM
25 THE ROOM DIRECTLY BELOW ME AND AT WHICH TIME I SIGNALLED TO

1 OFFICER BLUNT THAT IT'S THE ROOM BELOW WHERE I WAS STANDING.
2 AND WE THEN PROCEEDED DOWN THE STAIR CASING AND I TOOK A
3 POSITION ON THIS WALL RIGHT HERE, AND OFFICER BLUNT WAS
4 DIRECTLY BEHIND ME ON THAT WALL.

5 Q. AND, OFFICER WILLIAMS, HAVE YOU HAD ANY SPECIAL TRAINING
6 IN TERMS OF SITUATIONS LIKE THIS?

7 A. YES, THROUGH S.W.A.T.

8 Q. SO YOU WERE A MEMBER OF THE S.W.A.T. TEAM?

9 A. YES.

10 Q. AT THAT TIME?

11 A. YES.

12 Q. AND WHAT DID THAT TRAINING ALLOW YOU TO DO OR ENABLE YOU
13 TO DO?

14 A. IT GAVE ME SOME, I GUESS, SENSE OF CONFIDENCE IN A -- I
15 GUESS IN AN EASY WAY TO PUT IT -- TO MAKE A DETERMINATION ON
16 DOING CHECKS IN THE ROOM AND DETERMINING WHICH WOULD BE A
17 SAFE APPROACH OR HOW COULD WE ENTER INTO THIS ROOM OR MAKE AN
18 APPREHENSION OR ARREST IN THIS ROOM WITHOUT ANY INCIDENT.

19 Q. AND AT THIS TIME DID YOU KNOW HOW MANY SHOOTERS THERE
20 WERE?

21 A. NO.

22 Q. WERE YOU IDENTIFYING YOURSELF AS POLICE AT THIS POINT?

23 A. WE WERE.

24 Q. AND HOW WERE YOU DOING THAT?

25 A. JUST YELLING OUT, "POLICE. POLICE. COME OUT WITH YOUR

1 HANDS UP," AND THAT KIND OF THING LIKE THAT.

2 Q. AND WAS THERE ANY RESPONSE FROM THE ROOM WHATSOEVER?

3 A. NOT THAT I CAN RECALL.

4 Q. AND AFTER THAT, DID YOU HEAR ANOTHER SHOT GO OFF?

5 A. I THINK WE HEARD ONE. IF I'M NOT MISTAKEN, WHILE WE
6 WERE DOWN HERE WE HEARD ONE MORE SHOT GO OFF, AND SHORTLY
7 AFTER THAT SHOT WENT OFF IS WHEN WE MADE -- I BASICALLY MADE
8 A DETERMINATION WE NEEDED TO ENTER AND PUT AN END TO THIS
9 SITUATION.

10 Q. AND WHAT DID YOU MAKE THAT DETERMINATION ON TO ENTER THE
11 ROOM?

12 A. I CAN'T TELL YOU. I MEAN, I'M SITTING HERE THINKING
13 ABOUT THIS THING, AND I DON'T KNOW WHY I JUST DECIDED TO DO
14 IT. AFTER THAT SHOT RUNG OUT, WE JUST SAID, HEY, WE NEED TO
15 PUT AN END TO IT. WE'RE NOT GETTING A RESPONSE FROM THE
16 ROOM. RATHER THAN SOMEBODY ELSE GETTING HURT, LET'S GO MAKE
17 ENTRY, A QUICK ENTRY, APPREHEND AND THEN MOVE OUT.

18 Q. WAS THE DOOR TO THE ROOM OPEN OR CLOSED WHEN YOU WERE
19 STANDING BESIDE IT?

20 A. IT WAS -- IT WAS LIKE IT IS IN THE PICTURE, OPEN RIGHT
21 THERE.

22 Q. COULD YOU SEE INTO THE ROOM AT ALL?

23 A. I COULD. WHEN I WAS DOING THE PEEK AND I WAS PEEKING
24 INTO THE ROOM, I PRETTY MUCH HAD A VIEW OF THIS AREA HERE IF
25 YOU'RE DIAGONALLY DOING -- SIMILAR TO THAT RIGHT THERE. I

1 COULDN'T SEE ANYTHING BEYOND THIS AND YOU COULDN'T SEE INTO
2 THE BATHROOM AREA, BUT YOU COULD SEE THE DEFENDANT'S LEGS
3 LAYING OUT, THE WHEELCHAIR TIPPED OVER, AND I BELIEVE THE --
4 THERE WAS SOMETHING ON THE BED. I BELIEVE THERE MAY HAVE
5 BEEN BOTH OF THE WEAPONS ON THE BED OR SOMETHING ON THE BED.

6 Q. BOTH OF THE WEAPONS -- TELL ME WHAT YOU MEAN BY THAT.

7 A. I THINK THERE WAS A SHOTGUN AND A PISTOL.

8 Q. AND YOU SAID YOU SAW SOMEONE LAYING ON THE FLOOR?

9 A. YEAH, YOU COULD SEE THE LEGS OF A PERSON ON THE FLOOR
10 PROTRUDING FROM THE BED SPACE.

11 Q. AND WHAT DID YOU DO AFTER YOU SAW THAT?

12 A. SIGNED BACK TO MY PARTNER AND AT THAT POINT WE WERE
13 GETTING -- I GUESS BASICALLY NOT INTEL BUT, YOU KNOW, GUYS
14 FROM RICHLAND COUNTY WERE TELLING US, "HEY, YOU KNOW, HEY, BE
15 CAREFUL," THIS KIND OF THING LIKE THAT BECAUSE, YOU KNOW, THE
16 SHOT HAD BEEN FIRED AND THAT WAS THE ROOM. WE DIDN'T KNOW
17 WHERE HE WAS IN THERE AND, YOU KNOW, WE CERTAINLY DIDN'T WANT
18 ANY ONE OF US TO GET HURT OR ANYTHING. SO THERE WAS SOME --
19 SOME TYPE OF CONVERSATION GOING BACK BETWEEN US AND THEM; I
20 CAN'T RECALL EVERYTHING THAT WAS SAID. AND AT THAT POINT IS
21 WHEN I LOOKED BACK AT STANLEY AND WAS LIKE, "LET'S GO GET
22 HIM," AND WE WENT BACK AND GOT HIM.

23 Q. SO YOU THEN ENTERED THE ROOM?

24 A. WE THEN ENTERED INTO THE ROOM. WE MADE QUICK ENTRY AND
25 WENT DIRECTLY TO THIS POINT HERE WHERE THE LEGS WERE AND THEN

1 HANDCUFFED THE SUSPECT AND PATTED HIM DOWN TO MAKE SURE HE
2 DIDN'T HAVE ANY WEAPONS, AND OFFICER BLUNT PROVIDED ME COVER,
3 OF COURSE, AND THEN WE -- I EXITED OUT OF THE ROOM.

4 Q. AND WHERE WERE THE GUNS AT THAT TIME?

5 A. IF I'M NOT MISTAKEN, THEY WERE ON THE BED.

6 Q. AND DID YOU SEE ANY INJURY TO THE DEFENDANT, ANY BLOOD
7 OR ANYTHING OF THAT NATURE?

8 A. NO.

9 Q. AND AFTER YOU WENT IN THE ROOM AND THE DEFENDANT WAS
10 HANDCUFFED, DID YOU HAVE ANY FURTHER INVOLVEMENT IN THIS
11 CASE?

12 A. NO.

13 Q. DID YOU TURN THE SCENE OVER TO RICHLAND COUNTY?

14 A. YEAH. YES, MA'AM.

15 Q. OFFICER WILLIAMS, WAS THERE ANYONE ELSE IN THE ROOM
16 BESIDES THE DEFENDANT WHEN YOU WENT IN THERE?

17 A. NO, MA'AM.

18 Q. AND DO YOU SEE THE DEFENDANT THAT WAS HANDCUFFED IN THE
19 ROOM THAT DAY IN THE COURTROOM?

20 A. YES, MA'AM. HE'S SITTING IN BETWEEN THE TWO GENTLEMEN
21 WITH THE YELLOW AND PAISLEY TIE, I GUESS---

22 Q. YOUR HONOR, LET THE---

23 A. ---AND WHITE SHIRT.

24 MS. MCDUFFIE: PLEASE LET THE RECORD REFLECT THAT THE
25 WITNESS HAS IDENTIFIED THE DEFENDANT.

1 THE COURT: PROCEED.

2 MS. MCDUFFIE: NO FURTHER QUESTIONS.

3 THE COURT: CROSS-EXAMINATION?

4 MR. LEDDY: THANK YOU, YOUR HONOR.

5 CROSS-EXAMINATION

6 BY MR. LEDDY:

7 Q. NOW, OFFICER WILLIAMS, YOU WERE NOT ONE OF THE FIRST
8 RESPONDERS TO THE INITIAL CALL IN THIS CASE; RIGHT?

9 A. NO, SIR.

10 Q. OKAY. SO WHEN THE CALL -- WHEN THE ALL-COUNTY CALL -- I
11 FORGET WHAT THEY CALL THAT EXACTLY, BUT EVERYBODY IN THE
12 WHOLE COUNTY, WE NEED ASSISTANCE, THAT'S WHEN YOU CAME.

13 A. YES, SIR.

14 Q. OKAY. DO YOU RECALL KNOWING WHETHER OR NOT THE
15 DEFENDANT HAD BEEN SHOT AT THAT POINT?

16 A. NO, SIR.

17 Q. OKAY. AND DID YOU GET ANY PHYSICAL RESISTANCE FROM THE
18 DEFENDANT?

19 A. NO, SIR.

20 Q. AND, OF COURSE, BEING THAT YOU HAD NO OCCASION TO BE AT
21 THE HOTEL AN HOUR EARLIER, YOU DID NOT WITNESS ANYTHING
22 BETWEEN THE DEFENDANT AND THE VICTIM; RIGHT?

23 A. NO, SIR.

24 Q. NOW, THE EXHIBIT THAT'S CURRENTLY BEING DISPLAYED WHICH
25 IS -- MAY I APPROACH THE WITNESS, YOUR HONOR?

1 THE COURT: YOU MAY.

2 MR. LEDDY: STATE'S EXHIBIT 109. DO YOU RECALL IN TERMS
3 OF THE SCALE OF THAT DRAWING -- WOULD YOU SAY THAT THIS
4 DISTANCE AS IT'S DEPICTED---

5 THE COURT: STEP BACK, COUNSEL, SO THEY CAN SEE IF
6 YOU'RE GOING TO TURN IT TO THE SIDE, IF YOU'RE GOING TO USE
7 IT, SO THE JURORS CAN SEE.

8 BY MR. LEDDY:

9 Q. THE BREEZEWAY, WOULD YOU SAY THAT THE SCALE FOR THE
10 BREEZEWAY ACCURATELY REFLECTS HOW FAR IT IS OR WOULD YOU SAY
11 IT'S ACTUALLY NOT QUITE AS FAR AS IT'S DRAWN THERE?

12 A. YOU MEAN WIDTH-WISE?

13 Q. THE LENGTH FROM---

14 A. FROM ROOM TO ROOM?

15 Q. YES.

16 A. ONE PART TO THE OTHER?

17 Q. YES.

18 A. I GUESS IF IT WAS -- I DON'T THINK IT'S DRAWN TO SCALE,
19 IF THAT'S WHAT YOU'RE INQUIRING.

20 Q. YES, SIR.

21 A. I DON'T KNOW, BUT I WOULD -- I WOULD DEFINITELY VENTURE
22 TO SAY OR TELL YOU THAT THERE WAS ROOMS ON ONE SIDE OF THAT
23 BREEZEWAY, AND THEN ON THIS SIDE HERE THERE WOULD ALSO BE
24 ROOMS ON THIS SIDE THAT WOULD, YOU KNOW, BUTT UP TO EACH
25 OTHER.

1 Q. RIGHT. NOW, DO YOU RECALL ABOUT HOW FAR MR. AUSTIN WAS
2 MOVED AFTER YOU ARRIVED?

3 A. FROM THE -- YOU MEAN FROM WHEN -- THE INITIAL POINT TO
4 THIS POINT HERE?

5 Q. YES, SIR.

6 A. YOU KNOW, I WOULD -- I WOULD TELL YOU PROBABLY THE
7 HALFWAY POINT. SO WHATEVER THE WIDTH OF THAT ROOM IS, THE
8 DIMENSIONS OF THAT ROOM. LET'S SAY, IF I MAY...

9 Q. YES, SIR.

10 A. IF THIS IS -- WHATEVER THE DIMENSIONS OF THIS ROOM WOULD
11 BE, I WOULD SAY HE WAS PROBABLY RIGHT THERE IN THE MIDDLE OF
12 THAT, IF I CAN REMEMBER CORRECTLY, AND THEN SO WHATEVER THE
13 DIMENSIONS OF THIS ROOM WOULD BE IS WHAT HE WAS DRUG.

14 MR. LEDDY: VERY GOOD. NOTHING FURTHER, YOUR HONOR.

15 THE COURT: REDIRECT?

16 MS. MCDUFFIE: NONE, YOUR HONOR.

17 THE COURT: AS TO THIS WITNESS, SOLICITOR?

18 MS. MCDUFFIE: WE WOULD ASK THAT HE BE EXCUSED, PLEASE.

19 THE COURT: ANY OBJECTION?

20 MR. LEDDY: NO, YOUR HONOR.

21 THE COURT: OFFICER, YOU ARE EXCUSED FROM THE TRIAL OF
22 THIS CASE. YOU MAY STEP DOWN. CALL YOUR NEXT WITNESS,
23 SOLICITOR.

24 MR. ROSS: THE STATE CALLS JODIE DAVIS.

25 JODIE DAVIS, AFTER BEING DULY SWORN, TESTIFIED AS

1 FOLLOWS:

2 THE CLERK: PLEASE HAVE A SEAT AND STATE YOUR FULL NAME
3 FOR THE RECORD.

4 THE WITNESS: JODIE DAVIS.

5 THE COURT: SPELL YOUR LAST NAME FOR THE RECORD, PLEASE,
6 SIR.

7 THE WITNESS: D-A-V-I-S.

8 THE COURT: YOUR WITNESS, COUNSEL.

9 MR. ROSS: THANK YOU, YOUR HONOR.

10 DIRECT EXAMINATION

11 BY MR. ROSS:

12 Q. GOOD AFTERNOON.

13 A. GOOD AFTERNOON.

14 Q. MR. DAVIS, COULD YOU TELL US WHERE YOU LIVE NOW?

15 A. I LIVE IN MECHANICSVILLE, VIRGINIA.

16 Q. AND WHERE ARE YOU EMPLOYED?

17 A. I'M EMPLOYED CURRENTLY WITH THE UNITED STATES DEPARTMENT
18 OF DEFENSE.

19 Q. AND WHAT KIND OF POSITION DO YOU HOLD THERE?

20 A. I'M THE DEPUTY CHIEF OF THE OPERATIONS UNIT IN THE
21 TRAININGS POSITION.

22 Q. AND DID YOU LIVE IN COLUMBIA OR IN THE MIDLANDS AREA
23 BACK IN 1999?

24 A. YES, I DID.

25 Q. AND ON JULY 22ND, GOING INTO THE 23RD, 1999, DID YOU

1 WORK FOR THE RICHLAND COUNTY SHERIFF'S DEPARTMENT?

2 A. YES, I DID.

3 Q. AND WHAT WAS YOUR POSITION WITH THE SHERIFF'S
4 DEPARTMENT?

5 A. AT THAT TIME I WAS ASSIGNED TO THE UNIFORM DIVISION AS A
6 CANINE OFFICER.

7 Q. AND HOW LONG HAD YOU BEEN AT THE SHERIFF'S DEPARTMENT
8 PRIOR TO THAT TIME?

9 A. I STARTED AT THE SHERIFF'S DEPARTMENT IN 1995.

10 Q. OKAY. DID YOU GET A CALL OR RESPOND TO THE DAYS INN ON
11 BUSH RIVER ROAD?

12 A. YES. I RESPONDED TO AN EMERGENCY CALL BY AN OFFICER
13 REQUESTING ASSISTANCE.

14 Q. ALL RIGHT. AND WHEN YOU GOT THERE WHAT WAS -- WHAT WAS
15 HAPPENING?

16 A. THE CALL WAS FOR SHOTS FIRED, IF I RECALL. WHEN I
17 ARRIVED, THERE WAS OFFICERS ON THE SCENE TRYING TO RECOVER
18 WITH A MAN DOWN INSIDE OF A HALLWAY, PULLING HIM BACK, AND
19 THERE WAS AN ACTIVE SHOOTER IN ONE OF THE ROOMS.

20 Q. ALL RIGHT. AND ABOUT HOW LONG WERE YOU ON THE SCENE
21 THERE?

22 A. I DON'T RECALL. POSSIBLY 45 MINUTES TO AN HOUR.

23 Q. DID YOU PARTICIPATE IN TRYING TO APPREHEND THE
24 DEFENDANT?

25 A. WHEN I WENT TO THE SCENE WHERE WE WERE TRYING TO

1 DETERMINE EXACTLY WHERE HE WAS AT BECAUSE THERE WAS A LOT OF
2 CHAOS -- BUT WE WENT AROUND THE BACK SIDE OF THE BUILDING
3 BECAUSE THAT SEEMED WHERE THE SHOOTER WAS LOCATED AT. WHEN
4 WE -- THE FRONT OF THE HOTEL -- WE WENT AROUND THE BACK SIDE
5 OF IT BECAUSE THAT'S WHERE THE SHOOTER WAS COMING FROM IS
6 WHAT THEY WERE TELLING US.

7 Q. DID YOU HEAR SHOTS FIRED WHILE YOU WERE THERE?

8 A. I HEARD ONE SHOT. WHENEVER I WAS ROUNDING THE BUILDING,
9 WE HEARD A SHOT COME FROM THAT GENERAL AREA WHERE THE SUBJECT
10 WAS DOWN, AND WE RAN TOWARD THAT AREA. AND AT THAT TIME THEY
11 ALREADY HAD HIM APPREHENDED BY THE TIME WE GOT CLOSE.

12 Q. OKAY. SO YOU HEARD THAT LAST SHOT, AND DID YOU SEE
13 OFFICERS GO INTO THE DEFENDANT'S ROOM?

14 A. I DID NOT. I HEARD THE SHOT AND THEN I JUST -- WE WERE
15 LOOKING FOR SOME COVER.

16 Q. I'M SORRY. I CAN'T HEAR YOU.

17 A. WE -- I WAS LOOKING FOR -- I HEARD THE SHOT, AND AT THE
18 TIME WE WERE FAR ENOUGH BACK WE COULD NOT SEE THE ROOM. WE
19 WERE LOOKING FOR SOME COVER.

20 Q. SO THE POSITION THAT YOU WERE IN AT THE MOTEL WAS NOT
21 LIKE DIRECTLY ACROSS FROM THE DEFENDANT'S ROOM.

22 A. NO.

23 MR. ROSS: OKAY. MAY I APPROACH, YOUR HONOR?

24 THE COURT: YOU MAY.

25 MR. ROSS: LOOKING THERE AT STATE'S EXHIBIT 108, ABOUT

1 WHERE WERE YOU AT -- CAN I ORIENT HIM TO THE DIAGRAM, YOUR
2 HONOR?

3 THE COURT: WITHOUT TESTIFYING, COUNSEL.

4 MR. ROSS: YES, SIR.

5 THE COURT: ASK A QUESTION.

6 MR. ROSS: THAT'S BEEN TESTIFIED TO AS ROOM 129 WHERE
7 THE---

8 MR. COLLINS: OBJECTION, YOUR HONOR.

9 THE COURT: SUSTAINED.

10 BY MR. ROSS:

11 Q. IF YOU COULD JUST EXPLAIN TO THE JURY WITH THAT DIAGRAM
12 WHERE YOU WERE.

13 A. I RESPONDED TO THE SCENE. I PARKED MY CAR SOMEWHERE IN
14 THIS GENERAL VICINITY. AT THAT TIME OFFICERS WERE AROUND
15 THIS AREA, AROUND ROOM 129. AT THAT TIME THEY BELIEVED THE
16 SHOOTER WAS COMING FROM THIS DIRECTION AT SOME POINT. I
17 DON'T THINK THEY HAD AN EXACT PINPOINT OF EXACTLY WHERE IT
18 WAS COMING FROM, BUT THERE WAS A BODY IN THE HALLWAY.

19 WHEN I ARRIVED, THE OFFICERS WERE ATTEMPTING TO PULL THE
20 BODY BACK TO TRY TO, YOU KNOW, ASSIST HIM. THEY WERE UNAWARE
21 OF HIS CONDITION. THEY WERE TRYING TO PULL HIM BACK TO
22 ASSESS ANY MEDICAL ATTENTION. AT THAT TIME ONCE THAT
23 OCCURRED, I WALKED AROUND HERE WITH ANOTHER OFFICER TO THIS
24 SIDE OF THE PARKING LOT WHICH IS NOT INDICATED ON THIS MAP
25 KIND OF IN THIS AREA, AND AT THAT TIME I HEARD THE SHOTS

1 FIRED KIND OF WHEN I WAS IN THIS AREA HERE.

2 WE KIND OF WENT BEHIND THE PILLAR BECAUSE WE WERE
3 UNAWARE IT WAS COMING FROM THE TOP, SIDE -- WE DIDN'T KNOW
4 WHERE IT WAS COMING FROM. IT WAS JUST A SHOT. WHEN I GOT
5 CLOSER, THEY HAD ALREADY -- THEY HAD GONE INSIDE THE ROOM.
6 SO I DIDN'T SEE ANYTHING HAPPEN IN THE ROOM OR I DIDN'T SEE
7 ANY OFFICERS GO IN THE ROOM, BUT AFTER THE FACT WHEN I WALKED
8 UP THERE YOU COULD SEE WHAT WAS IN THE ROOM.

9 Q. YES, SIR. AFTER THAT WHAT DID YOU DO?

10 A. AFTER THAT, I REALLY DON'T RECALL. I MEAN, I WAS IN THE
11 AREA. I WASN'T COLLECTING ANYTHING. I WAS JUST IN THE SCENE
12 PROVIDING ASSISTANCE, YOU KNOW, WITH THE INCIDENT. AT ONE
13 POINT I SPOKE TO INVESTIGATOR METZ, BUT THAT WAS NEAR THE END
14 OF IT.

15 Q. AND AT SOME POINT WAS THE DEFENDANT TRANSPORTED FROM THE
16 SCENE?

17 A. YES, HE WAS.

18 Q. AND HOW WAS THAT DONE?

19 A. THAT WAS DONE VIA AN AMBULANCE OR RICHLAND COUNTY E.M.S.

20 Q. ALL RIGHT. AND WHAT DID YOU DO?

21 A. AT THAT POINT INVESTIGATOR METZ HAD ASKED ME TO FOLLOW
22 HIM TO THE HOSPITAL, AS HE WAS BEING TRANSPORTED, TO GO WITH
23 HIM TO THE E.R. BECAUSE WE WERE UNAWARE OF HIS CONDITION, YOU
24 KNOW, IF IT WAS LIFE-THREATENING OR NOT. SO I FOLLOWED THE
25 AMBULANCE TO THE RICHLAND MEMORIAL HOSPITAL.

1 Q. ALL RIGHT. AND WHEN YOU ARRIVED AT THE HOSPITAL, WHAT
2 DID YOU DO?

3 A. I FOLLOWED THE -- I FOLLOWED HIM INSIDE FROM E.M.S. INTO
4 THEIR TRAUMA ROOM WHICH IS A -- IT'S A LARGE EMERGENCY ROOM.
5 THEY DO EMERGENCY SURGERY IF THERE'S ANY KIND OF TRAUMA. I
6 STAYED IN THAT ROOM AND LET THE MEDICAL PROFESSIONALS WORK ON
7 HIM, AND I JUST STAYED INSIDE THE ROOM.

8 Q. OKAY. WERE YOU PRESENT WHILE THEY WORKED ON THE
9 DEFENDANT?

10 A. YES, I WAS.

11 Q. ALL RIGHT. AND WHAT DID THEY DO WHILE YOU WERE THERE?

12 A. THEY -- PERTAINING TO HIM, THEY WERE WORKING ON A
13 GUNSHOT WOUND. THEY WERE TRYING TO RECOVER THE ACTUAL ROUND
14 FROM HIS CHEST, AND AT ONE POINT NEAR THE END THEY WERE
15 RECOVERING THE BULLET FROM HIS CHEST. I WAS THERE WHEN THEY
16 RECOVERED IT AND THEY PULLED IT OUT OF HIS CHEST, AND THEN I
17 COLLECTED THAT EVIDENCE.

18 Q. OKAY. AND YOU TOOK POSSESSION OF THE PROJECTILE ITSELF?

19 A. YES, I DID.

20 MR. ROSS: YOUR HONOR, MAY I APPROACH?

21 THE COURT: YOU MAY.

22 BY MR. ROSS:

23 Q. I BELIEVE THIS IS STATE'S EXHIBIT NUMBER 54 IF I'M
24 READING THE HANDWRITING CORRECTLY. DO YOU -- AND ALSO
25 STATE'S EXHIBIT NUMBER 96. CAN YOU IDENTIFY THOSE TWO ITEMS?

1 A. THE PICTURE APPEARS TO BE WHAT I RECALL FROM THE
2 INCIDENT WHERE THERE WAS A GUNSHOT WHEN THEY -- THAT'S WHEN
3 THEY -- LOOKS LIKE THEY WENT IN WITH THE -- TO PULL THE
4 BULLET OUT, THE EXIT WOUND, AND THE VIAL. - THIS IS MY
5 HANDWRITING AND MY INITIALS THAT STATES THAT I AT 5:11 IN THE
6 MORNING ON 7/23/99 IS WHEN I SIGNED THIS WHEN THEY COLLECTED
7 THE BULLET THAT'S INSIDE OF HERE.

8 MR. ROSS: AND DEFENSE COUNSEL HAS SEEN BOTH OF THOSE
9 ITEMS, YOUR HONOR. WE WOULD ASK THAT THEY BE ADMITTED INTO
10 EVIDENCE AT THIS TIME.

11 THE COURT: ANY OBJECTION?

12 MR. COLLINS: NO OBJECTION, YOUR HONOR.

13 THE COURT: WHAT NUMBERS?

14 MR. ROSS: 96 AND 54.

15 THE COURT: LADIES AND GENTLEMEN OF THE JURY, STATE'S
16 EXHIBITS 96 AND 54 WILL BE ADMITTED INTO EVIDENCE WITHOUT
17 OBJECTION.

18 (STATE'S EXHIBITS 54 AND 96 WERE RECEIVED IN EVIDENCE.)

19 THE COURT: YOU MAY PUBLISH TO THE JURY, COUNSEL.

20 MR. ROSS: THANK YOU, YOUR HONOR. CAN I APPROACH?

21 THE COURT: YOU MAY.

22 BY MR. ROSS:

23 Q. THEN WHAT DID YOU DO WITH THAT PROJECTILE ONCE YOU TOOK
24 CUSTODY OF IT?

25 A.. I TOOK CUSTODY OF IT AND ACTUALLY PUT IT INSIDE THAT

1 JAR. I TOOK CUSTODY OF IT. I HELD IT THERE UNTIL
2 INVESTIGATOR METZ ARRIVED, AND THEN I TRANSFERRED IT TO HIS
3 CUSTODY AND HE SIGNED OFF ON TAKING THE EVIDENCE FROM ME.

4 MR. ROSS: BEG THE COURT'S INDULGENCE. THAT'S ALL THE
5 QUESTIONS I HAVE, YOUR HONOR.

6 THE COURT: CROSS-EXAMINATION?

7 MR. COLLINS: THANK YOU, YOUR HONOR.

8 CROSS-EXAMINATION

9 BY MR. COLLINS:

10 Q. GOOD AFTERNOON.

11 A. GOOD AFTERNOON.

12 Q. YOU SAY YOU WORK FOR THE DEPARTMENT OF DEFENSE NOW?

13 A. YES, I DO.

14 Q. THAT'S IN PENNSYLVANIA OR...

15 A. MARYLAND.

16 Q. MARYLAND. I'M SORRY. I MISUNDERSTOOD. DID THE STATE
17 FLY YOU ALL THE WAY DOWN HERE OR DID YOU DRIVE DOWN HERE?

18 A. NO, I FLEW DOWN HERE.

19 Q. THEY FLEW YOU DOWN HERE FOR THIS TRIAL?

20 A. YES.

21 Q. LET'S GO BACK TO 1999. YOU WERE A CANINE OFFICER?

22 A. YES, SIR.

23 Q. AND THAT'S KIND OF -- YOU WERE A RESPONDING OFFICER
24 BASICALLY?

25 A. YES, I RESPONDED TO THAT SCENE. I WAS---

1 Q. YOU WEREN'T AN INVESTIGATOR AT THAT TIME; CORRECT?

2 A. NO, I WAS NOT.

3 Q. AND YOUR JOB AS AN OFFICER OF THE LAW WHEN YOU RESPOND
4 TO A SCENE IS TO ASSESS THE SITUATION WHEN YOU GET THERE;
5 CORRECT?

6 A. THAT'S CORRECT.

7 Q. AND NORMALLY YOU WRITE REPORTS ABOUT EVERYTHING THAT YOU
8 ASSESS AND WHAT YOU DO AT AN INCIDENT; CORRECT?

9 A. NOT ALWAYS.

10 Q. AS A STANDARD PROCEDURE NORMALLY YOU WOULD WRITE A
11 REPORT LIKE THAT; CORRECT?

12 A. NOT ALWAYS.

13 Q. IS IT THE PROCEDURE OF THE RICHLAND COUNTY SHERIFF'S
14 DEPARTMENT WHEN YOU WERE WORKING THERE TO WRITE A REPORT WHEN
15 YOU RESPONDED TO A CRIME SCENE?

16 A. IF I WAS THE -- IF I WAS THE ORIGINATING OFFICER OR HAD
17 SOME REPORT TO WRITE THAT -- I MEAN, I'VE BEEN ON SEVERAL
18 INCIDENTS WHERE I DIDN'T WRITE A REPORT BUT I WAS PRESENT ON
19 THE SCENE AS A RESPONDING OFFICER, AS A BACK-UP OFFICER, THAT
20 I DID NOT WRITE A REPORT FOR BECAUSE IT WASN'T REQUIRED FOR
21 ME TO WRITE A REPORT. I DON'T RECALL IF I WROTE A REPORT FOR
22 THIS OR NOT. I REALLY DON'T RECALL.

23 Q. I DIDN'T ASK YOU THAT QUESTION.

24 A. OKAY.

25 Q. I SAID, "IS IT NORMAL PRACTICE TO WRITE A REPORT IF YOU

1 RESPOND TO A CRIME SCENE?"

2 A. NOT ALWAYS. THAT'S MY ANSWER.

3 Q. NOT ALWAYS?

4 A. YES.

5 Q. SO IT WOULD SURPRISE YOU IF SOMEBODY TESTIFIED THAT
6 THAT'S NORMAL PROCEDURE AT THE RICHLAND COUNTY SHERIFF'S
7 DEPARTMENT?

8 A. NO, IT WOULDN'T SURPRISE ME. I DON'T RECALL -- I'VE
9 BEEN OUT OF THE SHERIFF'S DEPARTMENT SINCE 2004. I'M NOT
10 FAMILIAR WITH THE POLICY. IT'S IN MY---

11 Q. BECAUSE NORMALLY---

12 THE COURT: HOLD ON. FINISH YOUR ANSWER. THEN ASK A
13 QUESTION. ARE YOU FINISHED WITH YOUR ANSWER?

14 THE WITNESS: YES, SIR.

15 THE COURT: PROCEED.

16 BY MR. COLLINS:

17 Q. BECAUSE NORMALLY IT TAKES AWHILE FOR THINGS TO GET TO
18 TRIAL; CORRECT?

19 A. THAT'S TRUE.

20 Q. AND IT'S HELPFUL TO HAVE A REPORT WHEN YOU WRITE
21 SPECIFICS CLOSE TO THE TIME THAT THE SPECIFICS HAPPENED;
22 CORRECT?

23 A. YES, THAT IS TRUE.

24 Q. BUT YOU DIDN'T WRITE A REPORT FOR THIS CASE, DID YOU?

25 A. I REALLY DON'T RECALL IF I DID OR NOT.

1 Q. IF YOU HAD, IT WOULD HAVE BEEN PROVIDED TO THE
2 SOLICITOR'S OFFICE; CORRECT?

3 A. YES.

4 Q. AND THEN PROVIDED TO THE DEFENSE; CORRECT?

5 A. YES.

6 Q. NOW, YOU TESTIFIED A SECOND AGO THAT YOU WERE ON THE
7 SCENE FOR ABOUT 45 MINUTES?

8 A. YEAH, AROUND THAT TIME. I DON'T -- I REALLY DON'T
9 RECALL---

10 Q. COULDN'T IT HAVE BEEN POSSIBLY 20 MINUTES?

11 A. IT COULD HAVE BEEN 20 MINUTES. IT COULD HAVE BEEN TWO
12 HOURS. I REALLY DON'T RECALL.

13 Q. AND I HEARD YOU TESTIFY ABOUT A COUPLE OF DIFFERENT
14 SHOTS THAT YOU HEARD. HOW MANY SHOTS DID YOU HEAR?

15 A. I HEARD ONE SINGLE SHOT.

16 Q. ONE SINGLE SHOT FROM THE TIME YOU ARRIVED?

17 A. YES, SIR.

18 Q. DID YOU EVER ENTER THE ROOM, ROOM 129?

19 A. I DON'T BELIEVE I ENTERED THE ACTUAL ROOM ITSELF.

20 Q. WERE YOU AROUND THE SCENE?

21 A. YES, I WAS WITHIN THE CRIME SCENE.

22 Q. WHERE THE SHELL CASINGS AND OTHER THINGS WERE ON THE
23 GROUND?

24 A. I DON'T RECALL WHERE SHELL CASINGS WERE.

25 Q. OKAY. NOW, TO MOVE AHEAD TO -- INVESTIGATOR METZ TOLD

1 YOU TO ACCOMPANY MR. BRYANT TO THE HOSPITAL?

2 A. YES.

3 Q. BECAUSE YOU WERE KEEPING AN EYE ON HIM; CORRECT?

4 A. YES.

5 Q. WAS IT AT THIS TIME YOU HAD CONSIDERED THIS CASE A
6 MURDER CASE?

7 A. I DIDN'T KNOW WHAT THE -- I DIDN'T KNOW WHAT ALL HAD
8 TRANSPIRED.

9 Q. BUT YOU TESTIFIED AS A WITNESS THAT THE DOCTOR PULLED A
10 BULLET OUT OF MR. BRYANT'S CHEST.

11 A. YES, I'M AWARE OF THAT.

12 Q. OUT OF HIS CHEST?

13 A. YES.

14 Q. AND I BELIEVE YOU TESTIFIED ON DIRECT THAT THERE WAS THE
15 -- THE PICTURE THAT WAS INTRODUCED BY THE STATE WAS A PICTURE
16 OF AN EXIT WOUND?

17 A. I BELIEVE SO. YEAH, I BELIEVE I RECALL THE WOUND
18 BECAUSE THEY WERE WORKING ON THE WOUND WITH FORCEPS, AND I
19 REMEMBER AS I WATCHED THEM AS THEY EXTRACTED THE BULLET OUT
20 WHERE THEY WERE ACTUALLY DIGGING AROUND WITH FORCEPS AND I
21 REMEMBER THAT IN MY MEMORY WHERE THEY WERE MOVING IT AROUND,
22 TRYING TO PULL THE BULLET OUT.

23 Q. I JUST WANT TO CLARIFY THIS BECAUSE EXIT WOUND COULD BE
24 MISINTERPRETED.

25 A. OKAY.

1 Q. THE BULLET FRAGMENT WAS INSIDE OF MR. BRYANT.

2 A. THAT'S CORRECT.

3 Q. SO THE BULLET CAME IN AND IT NEVER EXITED OUT OF HIS
4 BODY---

5 A. THAT'S CORRECT.

6 Q. ---EXCEPT BY THE DOCTORS. OKAY. AND YOU WITNESSED THE
7 DOCTORS PULL THE BULLET OUT. DID YOU ALSO GET A CHANCE TO
8 SEE MR. BRYANT AND SEE HIS FACE?

9 A. YEAH. I WAS IN THE ROOM WITH HIM, BUT I DON'T RECALL
10 SPECIFICALLY, I MEAN, LOOKING AT HIS -- I LOOKED AT HIM THE
11 WHOLE TIME HE WAS IN THERE.

12 Q. DID YOU NOTICE ANY INJURIES ON HIS FACE?

13 A. NOT THAT -- NOT -- TO THIS DATE, AT THAT TIME I DON'T
14 RECALL IF I RECOGNIZED ANY INJURIES. IT WAS IN '99.

15 Q. SO YOU DON'T KNOW -- YOU HAVE NO MEMORY OF NOTING ANY
16 INJURIES ON HIS FACE OR HIS BODY?

17 A. OTHER THAN JUST READING THE TRANSCRIPTS FROM WHAT I
18 TESTIFIED TO LAST TIME, I DON'T RECALL. I MEAN, I THINK THE
19 LAST -- IN THE NOTES LAST TIME THEY SAID HE HAD SOME
20 ABRASIONS ON HIS FACE WHICH AT THE TIME I REMEMBERED. I
21 DON'T REMEMBER THAT.

22 Q. IF YOU SAW A PICTURE OF THAT, WOULD IT REFRESH YOUR
23 MEMORY?

24 A. I DON'T SPECIFICALLY REMEMBER IT. I MEAN, HE MAY HAVE
25 HAD -- HE MAY HAVE HAD SEVERAL ABRASIONS FROM THE INCIDENT,

1 BUT I DON'T RECALL WHAT THEY ALL WERE.

2 Q. IF YOU SAW A PICTURE, WOULD IT REFRESH YOUR MEMORY?

3 A. I'M SURE I COULD -- IT MAY. IT MAY NOT. I DON'T...

4 MR. COLLINS: MAY I APPROACH THE WITNESS, YOUR HONOR?

5 THE COURT: YOU MAY.

6 BY MR. COLLINS:

7 Q. I'M SHOWING YOU WHAT'S BEEN LABELED AS DEFENDANT'S

8 EXHIBIT NUMBER 2.

9 A. OKAY.

10 Q. DOES THAT REFRESH YOUR MEMORY AS FAR AS ANY INJURIES ON

11 MR. BRYANT'S FACE OR DO YOU RECOGNIZE THAT PICTURE IN ANY

12 WAY, SHAPE, OR FORM?

13 A. I DON'T RECALL. I MEAN, I CAN'T SAY EITHER WAY. HE

14 COULD HAVE HAD IT, COULD NOT. I DON'T RECALL. MY MEMORY

15 DOESN'T SERVE ME FROM SEEING IT.

16 MR. COLLINS: MAY I APPROACH THE WITNESS AGAIN?

17 THE COURT: YES, SIR. MOVE ALONG.

18 MR. COLLINS: THANK YOU, YOUR HONOR.

19 BY MR. COLLINS:

20 Q. JUST THE LAST COUPLE OF QUESTIONS. YOU WEREN'T AT THE

21 DAYS INN MIDNIGHT JULY 22ND, WERE YOU?

22 A. I DON'T BELIEVE SO.

23 Q. AND YOU DIDN'T GET THERE UNTIL AFTER 4 A.M.; CORRECT?

24 A. I DON'T RECALL WHAT MY RESPONSE TIME WAS.

25 Q. YOU DIDN'T WITNESS MR. AUSTIN GET SHOT IN THIS CASE, DID

1 YOU?

2 A. NO, I DID NOT.

3 MR. COLLINS: NO FURTHER QUESTIONS, YOUR HONOR.

4 THE COURT: REDIRECT?

5 MR. ROSS: NO QUESTIONS, YOUR HONOR.

6 THE COURT: AS TO THIS WITNESS?

7 MR. ROSS: PLEASE BE EXCUSED, YOUR HONOR.

8 THE COURT: ANY OBJECTION, MR. COLLINS?

9 MR. COLLINS: NO OBJECTION, YOUR HONOR.

10 THE COURT: YOU MAY STEP DOWN FROM THE WITNESS STAND.

11 YOU'RE EXCUSED FROM THE TRIAL OF THIS CASE. CALL YOUR NEXT
12 WITNESS.

13 MS. MCDUFFIE: THE STATE CALLS ZANE PADGETT.

14 ZANE PADGETT, AFTER BEING DULY SWORN, TESTIFIED AS
15 FOLLOWS:

16 THE CLERK: PLEASE HAVE A SEAT AND STATE YOUR FULL NAME
17 FOR THE RECORD.

18 THE WITNESS: ZANE PADGETT.

19 THE COURT: SPELL YOUR LAST NAME FOR THE RECORD FOR ME,
20 PLEASE, SIR.

21 THE WITNESS: YES, SIR. P-A-D-G-E-T-T.

22 THE COURT: PULL THAT MICROPHONE OVER, MR. PADGETT. THE
23 SMALL ONE THERE IS -- THE OTHER ONE, THE SMALLER END. THERE
24 WE GO. THAT'S GOING TO AMPLIFY YOUR VOICE. THE OTHER ONE IS
25 RECORDING YOU. IF YOU'LL SPEAK INTO THAT FOR ME, PLEASE,

1 SIR. YOUR WITNESS, COUNSEL.

2 MS. MCDUFFIE: THANK YOU, YOUR HONOR.

3 DIRECT EXAMINATION

4 BY MS. MCDUFFIE:

5 Q. GOOD AFTERNOON, LIEUTENANT PADGETT.

6 A. HOW ARE YOU?

7 Q. LIEUTENANT PADGETT, WHERE ARE YOU CURRENTLY EMPLOYED?

8 A. RICHLAND COUNTY SHERIFF'S DEPARTMENT.

9 Q. AND WHAT ARE YOUR DUTIES AT THE RICHLAND COUNTY
10 SHERIFF'S DEPARTMENT?

11 A. PRESENTLY I DO ALL INTERNAL AFFAIRS INVESTIGATIONS.

12 Q. AND WHAT DOES THAT ENTAIL?

13 A. INTERNAL AFFAIRS INVESTIGATIONS? BASICALLY WHERE THE
14 CITIZENS OR THE PEOPLE HAVE COMPLAINTS OR ISSUES WITHIN THE
15 DEPARTMENT. I ACTUALLY INVESTIGATE THOSE ISSUES AND
16 DETERMINE, YOU KNOW, WHAT NEEDS TO BE DONE ABOUT IT.

17 Q. AND WERE THOSE YOUR DUTIES IN JULY OF 1999?

18 A. NO, MA'AM.

19 Q. WHAT WERE YOUR DUTIES IN JULY OF 1999?

20 A. IN 1999 I WAS IN CHARGE OF THE FORENSIC SCIENCE DIVISION
21 FOR THE SHERIFF'S DEPARTMENT.

22 Q. WHAT DOES A FORENSIC SCIENCE DIVISION DO?

23 A. THE FORENSIC SCIENCE DIVISION AT THE SHERIFF'S
24 DEPARTMENT PROCESSES CRIME SCENES BASICALLY, PRETTY MUCH LIKE
25 YOU'D SEE ON T.V. BUT NOT THAT EASY. WE -- YOU KNOW, WE'LL

1 GO OUT TO A CRIME SCENE. WE'LL DO FINGERPRINTS, PHOTOGRAPHS,
2 COLLECTION OF EVIDENCE, BLOOD PATTERN ANALYSIS, TRAJECTORY
3 ANALYSIS, AND MANY OTHER THINGS THAT NEEDS TO BE DONE AT THE
4 CRIME SCENES AND COLLECT ALL THE EVIDENCE, PACKAGE THEM, AND
5 THEN FILTER THEM TO DIFFERENT AREAS THAT WE'RE -- WHERE THEY
6 NEED TO HAVE ADDITIONAL ANALYSIS DONE TO THEM.

7 Q. AND ON THE MORNING OF JULY 23RD, 1999, DID YOU HAVE THE
8 OCCASION TO RESPOND TO THE DAYS INN ON BUSH RIVER ROAD?

9 A. YES, MA'AM. I WAS ON CALL THAT EVENING AS THE
10 SUPERVISOR WHICH I WAS, AND I WAS CALLED OUT ABOUT 4:45 IN
11 THE MORNING AND I UNDERSTAND THAT THERE WAS A HOMICIDE AT THE
12 HOTEL.

13 Q. AND WERE THERE ANY OTHER FORENSIC INVESTIGATORS THERE
14 WHEN YOU ARRIVED?

15 A. YES, MA'AM. INVESTIGATOR LONNIE GRAVES WHO WORKED FOR
16 ME -- HE WAS ALREADY ON THE SCENE.

17 Q. AND DO YOU REMEMBER ABOUT WHAT TIME YOU ARRIVED THERE?

18 A. ACCORDING TO MY NOTES, I ARRIVED THERE ABOUT 5:20 IN THE
19 MORNING ON THE 23RD.

20 Q. AND WHAT'S THE FIRST THING YOU DID ONCE YOU ARRIVED ON
21 THE SCENE?

22 A. THE FIRST THING I DID AT THIS SCENE WHICH I WOULD DO AT
23 ANY SCENE IS BASICALLY DO A WALK-THROUGH. I WANT TO LOOK
24 AROUND, JUST GET A GENERAL IDEA OF WHAT'S AT THE SCENE, WHAT
25 EVIDENCE MAY BE EXPOSED, WHAT EVIDENCE WE MAY NEED TO MARK OR

1 PROTECT, AND TRY TO GET A GENERAL IDEA OF NOT ONLY WHAT
2 OCCURRED AND WHAT NEEDS TO BE DONE BUT THEN, YOU KNOW, KIND
3 OF MAKE A PLAN LIKE WHERE DO WE WANT TO START AND HOW DO WE
4 WANT TO CONTINUE TO PROCESS THIS SCENE BECAUSE YOU HAVE TO
5 KIND OF HAVE A SCHEDULE TO DO IT. YOU JUST CAN'T HAPHAZARDLY
6 START DOING STUFF AT A CRIME SCENE.

7 Q. AND DID YOU FORMULATE A PLAN FOR HOW YOU WERE GOING TO
8 PROCESS THE SCENE ON THAT EVENING?

9 A. YES, MA'AM.

10 Q. AND WHEN YOU ARRIVED, WAS THE SCENE SECURED?

11 A. IT WAS SECURED BY SEVERAL DEPUTIES.

12 Q. EXPLAIN TO THE JURY WHAT THAT MEANS.

13 A. OUR DEPUTIES ARE INSTRUCTED AND THEY DO FOLLOW THE
14 INSTRUCTIONS THAT WHEN THEY COME TO A CRIME SCENE THEIR
15 PRIMARY PURPOSE OBVIOUSLY IS TO HELP ANYBODY THAT'S INJURED,
16 BUT THEY NEED TO SECURE THE SCENE. IN OTHER WORDS, THEY NEED
17 TO PROTECT THE EVIDENCE THAT'S THERE, TO INSURE THAT PEOPLE
18 DON'T WALK THROUGH IT; PEOPLE DON'T STEP IN EVIDENCE;
19 EVIDENCE DOESN'T FLY AWAY; IT DOESN'T BLOW AWAY; IT IS NOT
20 PICKED UP. AND THEY GENERALLY WILL PLACE YELLOW CRIME SCENE
21 TAPE TO TRY TO KEEP THE PUBLIC OUT OF THERE UNTIL WE GET
22 THERE AND WE CAN ACTUALLY TAKE OVER.

23 Q. WAS THE DEFENDANT, MR. BRYANT, AT THE SCENE WHEN YOU
24 ARRIVED THERE THAT MORNING?

25 A. NO, HE WAS NOT.

1 Q. DO YOU KNOW WHERE HE HAD---

2 A. I HAD NO IDEA WHEN I ARRIVED THERE.

3 Q. AND WAS THE VICTIM, MR. AUSTIN, AT THE SCENE WHEN YOU
4 ARRIVED?

5 A. HIS BODY WAS; YES, MA'AM.

6 Q. SO WHAT WAS THE FIRST THING YOU DID WHEN -- TO PROCESS
7 THIS CRIME SCENE?

8 A. AS ANY SCENE -- THIS ONE IS NO DIFFERENT THAN ANY OTHER
9 ONE. AFTER WE KIND OF GET AN IDEA OF WHAT WE WANT TO DO, THE
10 FIRST THING WE DO IS WE TAKE PHOTOGRAPHS. WE WANT TO TAKE
11 GENERAL PHOTOGRAPHS SO WE CAN COME TO COURT OR ANY OTHER TIME
12 AND ACTUALLY LOOK AT THE PHOTOGRAPHS AND SAY, "THIS IS HOW IT
13 WAS WHEN I GOT THERE." AND YOU WANT TO DO THAT BEFORE YOU
14 MARK ANYTHING, BEFORE YOU MOVE ANYTHING. BEFORE YOU DO
15 ANYTHING ELSE AT THE SCENE, YOU WANT TO DOCUMENT IT FIRST.

16 Q. AND WHAT AREA DID YOU HAVE IN THE PLAN THAT YOU
17 FORMULATED AS YOUR CRIME SCENE OR THE AREA THAT YOU WANTED TO
18 DEVELOP FOR EVIDENCE?

19 A. ACTUALLY IT WAS A PRETTY LARGE CRIME SCENE. WE HAD THE
20 HALLWAY THAT THE INCIDENT OCCURRED IN, IT WAS OBVIOUS FROM
21 SOME OF THE EVIDENCE, AND THEN IT KIND OF FELL INTO A ROOM,
22 NUMBER 129, WHICH WAS ALSO PART OF THE SAME SCENE.

23 Q. SO YOU HAD THE EXTERIOR PART AND THEN THE INTERIOR PART
24 WHICH WAS IN THE ROOM?

25 A. THAT IS CORRECT.

1 Q. AND TYPICALLY WHICH WOULD YOU PROCESS FIRST?

2 A. I LIKE TO DO THE OUTSIDE FIRST. THE REASON IS: WIND,
3 RAIN. THINGS HAVE A TENDENCY TO BLOW AWAY OR JUST GET AWAY
4 FROM YOU. AS LONG AS I CAN SECURE A ROOM, CLOSE A DOOR AND
5 NOTHING IS GOING TO HAPPEN IN THE ROOM TO ANY OF THE
6 EVIDENCE, I'D RATHER START OUTSIDE. NOT ALWAYS BUT IN THIS
7 PARTICULAR CASE THAT WAS THE OBVIOUS THING TO DO.

8 Q. AND THE FIRST THING YOU DID WHEN YOU GOT THERE WAS
9 PHOTOGRAPH THE EVIDENCE?

10 A. WE DO THAT AT ALL CRIME SCENES; THAT IS CORRECT.

11 MS. MCDUFFIE: YOUR HONOR, MAY I APPROACH THE WITNESS?

12 THE COURT: YOU MAY.

13 BY MS. MCDUFFIE:

14 Q. LIEUTENANT PADGETT, I'M GOING TO SHOW YOU WHAT'S BEEN
15 MARKED AS STATE'S EXHIBITS 1 THROUGH 10 AND 13 THROUGH 16.
16 DO YOU RECOGNIZE THESE AND WOULD THEY AID IN YOUR TESTIMONY?

17 A. YES, MA'AM. I BELIEVE ALL THESE ARE PHOTOGRAPHS THAT I
18 ACTUALLY TOOK AT THE SCENE. I BELIEVE SO.

19 MS. MCDUFFIE: MAY I APPROACH?

20 THE COURT: YOU MAY.

21 MR. COLLINS: YOUR HONOR, I HAVE NO OBJECTION FOR ALL OF
22 THE EXHIBITS.

23 THE COURT: 1 THROUGH 10, 13 THROUGH 16 NO OBJECTION?

24 MR. COLLINS: NO, YOUR HONOR. I HAVE AN OBJECTION TO
25 EXHIBIT NUMBER 8 AND EXHIBIT NUMBER 10.

1 THE COURT: COUNSEL, APPROACH, AND BRING THE EXHIBITS.
2 (WHEREUPON, A BENCH CONFERENCE WAS HELD.)

3 THE COURT: OBJECTION OVERRULED. THEY'RE ALL RECEIVED
4 IN EVIDENCE.

5 MS. MCDUFFIE: MAY I APPROACH AGAIN, YOUR HONOR?

6 THE COURT: LADIES AND GENTLEMEN OF THE JURY, STATE'S
7 EXHIBITS 1 THROUGH 10 AND 13 THROUGH 16 WILL BE ADMITTED INTO
8 EVIDENCE. THERE'S AN OBJECTION AS TO 10 AND 8 AND 6? WAIT A
9 MINUTE.

10 MS. MCDUFFIE: 10 AND 8.

11 THE COURT: 8 AND 6?

12 MS. MCDUFFIE: 8 AND 10, YOUR HONOR.

13 THE COURT: 8 AND 10. OVERRULED AS TO 8 AND 10. IN
14 EVIDENCE. GO AHEAD. THE OTHERS WITHOUT OBJECTION.

15 (STATE'S EXHIBITS 1 THROUGH 10 AND 13 THROUGH 16 WERE
16 RECEIVED IN EVIDENCE.)

17 MS. MCDUFFIE: MAY I APPROACH YOUR HONOR?

18 THE COURT: YOU MAY.

19 BY MS. MCDUFFIE:

20 Q. INVESTIGATOR PADGETT, I'M GOING TO SHOW YOU WHAT'S BEEN
21 MARKED AS STATE'S EXHIBITS 55 THROUGH 75. DO YOU RECOGNIZE
22 THOSE AND WOULD THEY AID IN YOUR TESTIMONY?

23 A. YES, MA'AM. THESE ARE PIECES OF EVIDENCE THAT WERE
24 COLLECTED FROM THE SCENE ON THAT MORNING.

25 MS. MCDUFFIE: MAY I APPROACH, YOUR HONOR?

1 THE COURT: YOU MAY.

2 MR. COLLINS: YOUR HONOR, THE ONLY THING I'D OBJECT TO
3 IS THE LABEL ON THE PACKAGING, LABELING---

4 THE COURT: I'LL HAVE TO SEE IT.

5 MR. COLLINS: LABELING THE CASE A HOMICIDE.

6 THE COURT: OVERRULED.

7 MS. MCDUFFIE: YOUR HONOR, THE STATE WOULD OFFER 55 TO
8 75 INTO EVIDENCE.

9 THE COURT: LADIES AND GENTLEMEN OF THE JURY, STATE'S
10 EXHIBITS 55 THROUGH WHAT?

11 MS. MCDUFFIE: 75, YOUR HONOR.

12 THE COURT: 75 ARE ADMITTED INTO EVIDENCE OVER
13 OBJECTION.

14 (STATE'S EXHIBITS 55 THROUGH 75 WERE RECEIVED IN
15 EVIDENCE.)

16 THE COURT: YOU MAY NOW PUBLISH.

17 MS. MCDUFFIE: YOUR HONOR, MAY I APPROACH?

18 THE COURT: YOU MAY.

19 BY MS. MCDUFFIE:

20 Q. INVESTIGATOR PADGETT, IF YOU COULD START WITH STATE'S
21 EXHIBIT NUMBER 1 AND EXPLAIN TO THE JURY WHAT'S IN THAT AND
22 THE EVIDENCE THAT YOU COLLECTED DEPICTED IN THAT PICTURE?

23 A. STATE'S EXHIBIT 55 IS A PIECE OF WADDING FROM A SHOTGUN
24 THAT HAS BEEN FIRED.

25 Q. AND, INVESTIGATOR PADGETT, IF YOU COULD LOOK THROUGH THE

1 PICTURES AND SHOW US WHERE THAT PIECE OF WADDING WAS FOUND.

2 A. STATE'S EXHIBIT 55 WHICH IS A PIECE OF A WADDING FROM A
3 FIRED SHOTGUN SHELL IS MARKED AS MARKER NUMBER 1 WHICH IS IN
4 THE HALLWAY AREA OF THE HOTEL.

5 Q. AND CAN YOU EXPLAIN TO THE JURY WHAT WADDING IS?

6 A. A SHOTGUN SHELL CONSISTS OF SEVERAL INTERNAL COMPONENTS.
7 INSIDE THE SHELL YOU HAVE OBVIOUSLY THE GUN POWDER AND THEN
8 THE PRIMER THAT FIRES AND ACTUALLY IGNITES THE GUN POWDER.

9 MR. COLLINS: OBJECTION, YOUR HONOR. THIS WITNESS
10 HASN'T BEEN QUALIFIED AS AN EXPERT IN FIREARMS.

11 THE COURT: SUSTAINED.

12 BY MS. MCDUFFIE:

13 Q. IF YOU'LL PROCEED TO THE NEXT MARKER---

14 A. OKAY.

15 Q. ---IN THE PHOTO, LIEUTENANT PADGETT.

16 A. STATE'S EXHIBIT 56 -- MAY I TAKE IT OUT?

17 Q. YES, PLEASE.

18 A. IS A FIRED SHOTGUN SHELL THAT HAS BEEN FIRED AND IT'S
19 SHOWN AS MARKER NUMBER 2 IN THIS PHOTOGRAPH NEXT TO MARKER
20 NUMBER 1 ALSO IN THE HALLWAY.

21 THE COURT: DO YOU WANT TO COME AROUND?

22 MR. COLLINS: YES, SIR.

23 THE COURT: YOU MAY DO SO. JUST A MOMENT. LET COUNSEL
24 COME AROUND SO HE CAN SEE WHAT'S BEING SHOWN TO THE JURY.

25 THE WITNESS: STATE'S EXHIBIT 56 IS A FIRED SHOTGUN

1 SHELL WHICH IS SHOWN HERE AS MARKER NUMBER 2 IN THIS
2 PHOTOGRAPH WHICH IS ALSO IN THE HALLWAY OF THE HOTEL, THE
3 EXTERIOR HALLWAY. STATE'S EXHIBIT 57 IS A LIVE SHOTGUN SHELL
4 THAT HAS NOT BEEN FIRED. IT IS SHOWN HERE AS MARKER NUMBER 3
5 IN THE HALLWAY.

6 STATE'S EXHIBIT 58 IS ALSO A LIVE SHOTGUN SHELL THAT HAS
7 NOT BEEN FIRED, MARKER NUMBER 4 IN THE PHOTOGRAPH. STATE'S
8 EXHIBIT 59 IS A FIRED SPENT SHOTGUN SHELL CASING, AND IT IS
9 MARKER NUMBER 5 RIGHT HERE AGAIN IN THE STAIRWELL OR THE
10 HALLWAY OF THE HOTEL. STATE'S EXHIBIT 60 IS WADDING. IT'S
11 THE INTERIOR OF A SHOTGUN SHELL AFTER IT'S BEEN FIRED, MARKER
12 NUMBER 6 IN THE PHOTOGRAPH.

13 STATE'S EXHIBIT 61, AGAIN A SPENT SHOTGUN SHELL. THESE
14 SHELLS ARE ALL OF THE SAME CALIBER, MARKER NUMBER 7 IN THE
15 PHOTOGRAPH. STATE'S EXHIBIT 62, ANOTHER SPENT SHOTGUN SHELL,
16 SAME CALIBER, MARKER NUMBER 8. STATE'S EXHIBIT 63, WADDING
17 FROM A FIRED SHELL, MARKER NUMBER 10 AT THE BOTTOM OF THE
18 STAIRS.

19 BY MS. MCDUFFIE:

20 Q. AND, INVESTIGATOR PADGETT, WHERE WERE THOSE STAIRS
21 LOCATED? YOU CAN USE STATE'S EXHIBIT 108 AND SHOW THE JURY,
22 AND THERE'S A POINTER RIGHT...

23 A. RIGHT HERE?

24 Q. YES, SIR.

25 A. I'M TRYING TO ORIENTATE. EXCUSE ME A SECOND. CAN I USE

1 THIS ONE?

2 Q. OF COURSE, USING STATE'S EXHIBIT 109.

3 A. 109, THE STAIRWELL THAT WE'RE TALKING ABOUT IS RIGHT
4 HERE. THIS IS ROOM 129, AND THE STAIRWELL IS RIGHT HERE.
5 THAT LAST EXHIBIT I SHOWED YOU WAS RIGHT AT THE BOTTOM OF THE
6 STAIRS. STATE'S EXHIBIT 64 IS ALSO A SPENT SHOTGUN SHELL,
7 AND I BELIEVE THAT IS NUMBER 15 IN THE PHOTOGRAPH.

8 THE COURT: REFER TO THE EXHIBIT NUMBER OF THE
9 PHOTOGRAPH THAT YOU'RE REFERRING TO, THE MARKER NUMBER ON IT,
10 PLEASE.

11 THE WITNESS: YES, SIR. STATE'S EXHIBIT 8 ON THE
12 PHOTOGRAPH IS 15 I BELIEVE RIGHT HERE.

13 BY MS. MCDUFFIE:

14 Q. AND, INVESTIGATOR PADGETT, WHAT IS MARKER NUMBER 13
15 REFERRING TO IN THAT PHOTOGRAPH ON STATE'S EXHIBIT 8?

16 A. THAT IS A CORK -- A PIECE OF A CORK THAT WAS IN THE
17 BLOOD AND A PIECE OF A CORK IS ALSO THE INTERNAL PARTS OF A
18 SHOTGUN SHELL THAT PACKS THE BB'S OR THE ACTUAL ROUNDS IN
19 THERE. STATE'S EXHIBIT 65 -- IT'S HARD TO SEE. IT'S A
20 FRAGMENT OF A PROJECTILE. COULD POSSIBLY BE COMING FROM THE
21 INTERIOR OF THE SHOTGUN SHELL, THE BB'S, BUT IT LOOKS MORE
22 LIKE A PROJECTILE FROM A PISTOL.

23 65 IS SHOWN IN STATE'S EXHIBIT 6, THE PHOTOGRAPH, AS
24 MARKER NUMBER 11 AT THE BOTTOM. STATE'S EXHIBIT 66 IS A PART
25 OF A PROJECTILE GENERALLY FIRED FROM A PISTOL, AND ON

1 PHOTOGRAPH STATE'S EXHIBIT NUMBER 6 IT IS MARKER NUMBER 12.

2 STATE'S EXHIBIT 75 IS ALSO A PIECE OF A FRAGMENT OF A
3 PROJECTILE, AND I BELIEVE THAT'S MARKER NUMBER 14 ALSO IN THE
4 HALLWAY. STATE'S EXHIBIT 67 -- I'M NOT GOING TO TAKE IT OUT
5 BECAUSE IT'S GOT SOME STUFF ON IT. IT'S A PIECE OF A CORK
6 ALSO FROM THE INTERIOR OF A SHOTGUN SHELL, IT APPEARS.

7 Q. INVESTIGATOR PADGETT, HOW MANY DIFFERENT TYPES OF
8 AMMUNITION DID YOU FIND ON THE SCENE THAT DAY?

9 A. TWO TYPES.

10 Q. AND WHAT WERE THEY?

11 A. SHOTGUN SHELLS AND ALSO SHELL CASINGS FIRED FROM A
12 PISTOL.

13 Q. AND STATE'S EXHIBIT 74, WHAT WAS THAT? I BELIEVE IT WAS
14 THE BASEBALL CAP.

15 A. OH, I'M SORRY.

16 Q. CAN YOU TELL THE JURY WHERE THAT WAS FOUND?

17 A. STATE'S EXHIBIT 74, THE BASEBALL CAP, WAS ALSO FOUND IN
18 THE HALLWAY WHERE SOME OF THE SHELL CASINGS WERE LOCATED.
19 YOU CAN SEE IT RIGHT THERE IN PHOTOGRAPH STATE'S EXHIBIT 6.

20 Q. IS THAT THE BREEZEWAY RIGHT NEXT TO ROOM 129? IF YOU
21 CAN USE STATE'S EXHIBIT 109...

22 A. YEAH. STATE'S EXHIBIT 109 IS RIGHT HERE. IN FACT,
23 THERE'S THE BASEBALL CAP. THE ITEMS THAT I WAS SHOWING YOU
24 IN STATE'S EXHIBIT 6 IS THIS AREA RIGHT HERE.

25 Q. AND AFTER YOU PROCESSED AND -- AFTER YOU PHOTOGRAPHED

1 THE EVIDENCE AND THEN COLLECTED IT ON THE EXTERIOR, WHAT DID
2 YOU THEN DO?

3 A. WE THEN WENT INSIDE THE ROOM. AFTER WE PHOTOGRAPHED,
4 COLLECTED, DID WHAT WE NEEDED TO DO OUTSIDE THE ROOM, WE WENT
5 INSIDE ROOM 129 AND STARTED PHOTOGRAPHING AND PROCESSING THAT
6 AREA.

7 Q. AND WAS THAT SCENE SECURED UNTIL YOU ENTERED?

8 A. YES, IT WAS.

9 Q. AND WHO -- IT WAS SECURED BY OTHER DEPUTIES OF THE
10 RICHLAND COUNTY SHERIFF'S DEPARTMENT?

11 A. THAT IS CORRECT.

12 Q. I SHOW YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT 27
13 THROUGH 38 AND 77 THROUGH 90. SORRY. MAY I APPROACH, YOUR
14 HONOR?

15 THE COURT: YOU ALREADY HAVE, COUNSEL.

16 BY MS. MCDUFFIE:

17 Q. LIEUTENANT PADGETT, DO YOU RECOGNIZE THOSE AND WILL THEY
18 AID IN YOUR TESTIMONY? MAY I APPROACH AGAIN, YOUR HONOR?

19 A. I'M GOING TO HAVE TO PUT THESE SOMEWHERE. THEY'RE --
20 THANK YOU. YES, THESE ARE ITEMS THAT WERE COLLECTED INSIDE
21 THE ROOM. THAT IS CORRECT.

22 Q. AND WHAT -- AND WOULD THOSE PHOTOGRAPHS AND EXHIBITS AID
23 YOU IN YOUR TESTIMONY?

24 A. YES, MA'AM. THESE ARE PHOTOGRAPHS THAT WERE TAKEN OF
25 THE INTERIOR OF ROOM 129.

1 MS. MCDUFFIE: MAY I APPROACH, YOUR HONOR?

2 THE COURT: YOU MAY.

3 MR. COLLINS: NO OBJECTION TO THE PICTURES, YOUR HONOR.
4 WE WOULD AGAIN OBJECT TO THE LABEL ON THE PACKAGING FOR THE
5 REST OF THE EVIDENCE.

6 THE COURT: SUBJECT TO MY EARLIER RULING, THAT OBJECTION
7 IS OVERRULED FOR THE SAME REASON.

8 MS. MCDUFFIE: YOUR HONOR, AT THIS TIME WE WOULD OFFER
9 STATE'S 28 TO 37 AND STATE'S 77 TO 90.

10 THE COURT: YOU TOLD ME BEFORE 27 TO 38.

11 MS. MCDUFFIE: I APOLOGIZE, YOUR HONOR. THAT'S CORRECT.
12 27 TO 38 AND 77 TO 90.

13 THE COURT: LADIES AND GENTLEMEN OF THE JURY, STATE'S
14 EXHIBITS 27 THROUGH 38 AND 77 THROUGH 90 WILL BE ADMITTED
15 INTO EVIDENCE SUBJECT TO DEFENSE COUNSEL'S OBJECTION WHICH IS
16 OVERRULED.

17 (STATE'S EXHIBITS 27 THROUGH 38 AND 77 THROUGH 90 WERE
18 RECEIVED IN EVIDENCE.)

19 MS. MCDUFFIE: MAY I APPROACH, YOUR HONOR?

20 THE COURT: YOU MAY.

21 BY MS. MCDUFFIE:

22 Q. LIEUTENANT PADGETT, IF YOU COULD, SHOW THE JURY --
23 PUBLISH THESE PICTURES TO THE JURY AND EXPLAIN TO THEM WHAT
24 IS IN EACH OF THOSE PICTURES AND THE EVIDENCE THAT WAS
25 COLLECTED. IF YOU WOULD CALL OUT THE EXHIBIT NUMBER, PLEASE.

1 A. STATE'S EXHIBIT 77 IS A BOX OF AMMUNITION, WINCHESTER
2 .32 CALIBER, SMITH AND WESSON LONG. THESE ARE PRIMARILY USED
3 IN HANDGUNS, .32 CALIBER HANDGUNS. THIS WOULD BE ON THE BED
4 IN ROOM 29 (SIC), MARKER NUMBER 2 IN THE PHOTOGRAPH.

5 THE COURT: REFER TO THE EXHIBIT NUMBER.

6 THE WITNESS: THE EXHIBIT NUMBER IS 34, A PHOTOGRAPH.
7 STATE'S EXHIBIT 86 IS A SPENT SHOTGUN SHELL, SAME CALIBER AND
8 MAKE. IT IS DEPICTED IN THE PHOTOGRAPH STATE'S EXHIBIT 37 AS
9 MARKER NUMBER 11. STATE'S EXHIBIT 87 WHICH IS ANOTHER SPENT
10 SHOTGUN SHELL AND STATE'S EXHIBIT 87 IS DEPICTED AS MARKER 12
11 ON STATE'S EXHIBIT PHOTOGRAPH 37. STATE'S EXHIBIT 78 IS AN
12 EMPTY SHOTGUN SHELL BOX.

13 BY MS. MCDUFFIE:

14 Q. AND HOW MANY SHOTGUN SHELLS WOULD THAT BOX HOLD?

15 A. IT SAYS ON HERE FIVE. AND STATE'S EXHIBIT 78, THE EMPTY
16 BOX, IS MARKER NUMBER 3 SHOWN IN THE PHOTOGRAPH STATE'S
17 EXHIBIT 34. STATE'S EXHIBIT 79 IS ANOTHER SPENT SHOTGUN
18 SHELL SHOWN AS MARKER NUMBER 4 ON STATE'S EXHIBIT 34, A
19 PHOTOGRAPH. STATE'S EXHIBIT 80 IS ANOTHER SPENT SHOTGUN
20 SHELL DEPICTED AS MARKER NUMBER 5 UP HERE IN THE BED, ROOM
21 129, ON STATE'S EXHIBIT 34, PHOTOGRAPH.

22 STATE'S EXHIBIT 81, ANOTHER SPENT SHELL CASING, SHOTGUN,
23 MARKER NUMBER 6 ON THE BED, STATE'S EXHIBIT 34, PHOTOGRAPH.
24 STATE'S EXHIBIT 82 IS A FIRED SHELL CASING FROM A PISTOL, .32
25 CALIBER, AND I BELIEVE THAT IS MARKED AS MARKER NUMBER 7 ON

1 THE FLOOR NEXT TO THE BED IN PHOTOGRAPH STATE'S EXHIBIT 35.

2 STATE'S EXHIBIT 83, ANOTHER .32 CALIBER SPENT SHELL
3 CASING. 83 IS MARKER NUMBER 8 ON THE FLOOR OF THE HOTEL
4 ROOM, STATE'S EXHIBIT 36, PHOTOGRAPH.

5 STATE'S EXHIBIT 84, ANOTHER .32 CALIBER SPENT SHELL
6 CASING, MARKER NUMBER 9 ON STATE'S EXHIBIT 36, PHOTOGRAPH.
7 STATE'S EXHIBIT 85, ANOTHER SPENT .32 CALIBER SHELL CASING.
8 I BELIEVE THAT'S ALSO HERE, NUMBER 10, ON THE FLOOR OF THE
9 HOTEL ROOM, STATE'S EXHIBIT 36.

10 STATE'S EXHIBIT 88, IT'S A PIECE OF A PROJECTILE FROM A
11 BULLET. THIS IS SHOWN IN THE PHOTOGRAPH STATE'S EXHIBIT 38
12 AS MARKER NUMBER 13. IT WAS ACTUALLY IN THE SEAT OF THE
13 WHEELCHAIR THAT WAS LOCATED INSIDE THE ROOM. STATE'S
14 EXHIBIT -- I'M SORRY. DID I JUST DO 88?

15 Q. THAT'S CORRECT.

16 A. OKAY. THANK YOU. STATE'S EXHIBIT 89, IT'S ANOTHER
17 PIECE OF FRAGMENT FROM A PROJECTILE FIRED BULLET. THIS --
18 THIS PARTICULAR FRAGMENT WAS WEDGED IN THE DOORJAMB, AND I'M
19 NOT SURE IF WE ACTUALLY HAVE A PHOTOGRAPH OF IT BECAUSE TO MY
20 RECOLLECTION -- AND I CAN'T BE POSITIVE AT THIS POINT, BUT I
21 BELIEVE IT WAS -- JUST WASN'T ABLE TO BE PHOTOGRAPHED AS TO
22 WHERE IT WAS FOUND, BUT I DO HAVE IN MY NOTES THAT IT WAS
23 ACTUALLY WEDGED IN THE DOORJAMB FOR THAT PARTICULAR ONE. AND
24 STATE'S EXHIBIT 90 IS A WALLET. I'M NOT GOING TO TAKE IT
25 OUT.

1 Q. AND DO YOU KNOW WHOSE WALLET THAT BELONGS TO, LIEUTENANT
2 PADGETT?

3 A. IT WOULD BE THE DEFENDANT'S WALLET. THAT WAS LOCATED --
4 STATE'S EXHIBIT 35, A PHOTOGRAPH, IT'S RIGHT HERE IN THE
5 FLOOR NEXT TO THE BED, ROOM 129.

6 MS. MCDUFFIE: YOUR HONOR, MAY I APPROACH?

7 THE COURT: YOU MAY.

8 BY MS. MCDUFFIE:

9 Q. I SHOW YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT 91. DO
10 YOU RECOGNIZE THAT, LIEUTENANT PADGETT?

11 A. YES. THIS IS A WHITE TOWEL THAT WAS FOUND INSIDE ROOM
12 129. ACTUALLY, I BELIEVE IT WAS NEXT TO THE REFRIGERATOR IN
13 THE ROOM.

14 MR. COLLINS: YOUR HONOR, AT THIS POINT I DON'T SEE HOW
15 THIS IS RELEVANT.

16 THE COURT: COUNSEL, APPROACH.

17 (WHEREUPON, A BENCH CONFERENCE WAS HELD.)

18 THE COURT: OBJECTION OVERRULED. STEP BACK.

19 MS. MCDUFFIE: YOUR HONOR, THE STATE WOULD OFFER EXHIBIT
20 NUMBER 91 INTO EVIDENCE.

21 THE COURT: SUBJECT TO THE OBJECTION, OVERRULED. LADIES
22 AND GENTLEMEN OF THE JURY, EXHIBIT 91 IS ADMITTED INTO
23 EVIDENCE OVER OBJECTION AS TO RELEVANCE.

24 (STATE'S EXHIBIT 91 WAS RECEIVED IN EVIDENCE.)

25

1 BY MS. MCDUFFIE:

2 Q. TO FINISH UP, INVESTIGATOR PADGETT, YOU DID HAVE THE
3 OPPORTUNITY TO OBSERVE THE VICTIM'S BODY AT THE SCENE?

4 A. I DID.

5 Q. AND DID YOU PARTICIPATE IN THE REMOVAL OF ANY ITEMS FROM
6 THE VICTIM'S BODY?

7 A. I DID.

8 Q. I SHOW YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT 104,
9 105, AND 111. DO YOU RECOGNIZE THESE AND WOULD THEY AID IN
10 YOUR TESTIMONY?

11 A. YES, MA'AM. THESE ARE PHOTOCOPIES OF SOME ITEMS THAT
12 WERE TAKEN FROM MR. AUSTIN. THAT IS CORRECT.

13 MS. MCDUFFIE: MAY I APPROACH, YOUR HONOR?

14 THE COURT: YOU MAY.

15 MR. COLLINS: NO OBJECTION, YOUR HONOR.

16 THE COURT: WHAT NUMBERS, COUNSEL?

17 MS. MCDUFFIE: 104, 105, AND 111, YOUR HONOR.

18 THE COURT: LADIES AND GENTLEMEN OF THE JURY, STATE'S
19 EXHIBITS 104, 105, AND 111 WILL BE ADMITTED INTO EVIDENCE
20 WITHOUT OBJECTION.

21 (STATE'S EXHIBITS 104, 105, AND 111 WERE RECEIVED IN
22 EVIDENCE.)

23 THE COURT: YOU MAY PUBLISH.

24 MS. MCDUFFIE: MAY I APPROACH, YOUR HONOR?

25 THE COURT: YOU MAY.

1 BY MS. MCDUFFIE:

2 Q. INVESTIGATOR PADGETT, WILL YOU PLEASE TELL THE JURY
3 WHERE YOU FOUND THOSE AND WHAT THEY ARE?

4 A. STATE'S EXHIBIT 105 IS A PHOTOCOPY OF TWO A.T.M.
5 RECEIPTS THAT WERE TAKEN OUT OF THE DECEASED'S LEFT REAR
6 POCKET OF HIS PANTS.

7 Q. AND WHAT ARE THE TIMES ON THOSE RECEIPTS?

8 A. THESE ARE A.T.M. RECEIPTS FROM BUSH RIVER ROAD. THE
9 DATE ON BOTH OF THEM IS 7/23/99, AND THE TIME ON ONE OF THEM
10 IS 2:19 A.M. AND THE OTHER ONE IS 2:34 A.M.

11 Q. AND WHAT DO THOSE RECEIPTS SHOW AS THE DECEDENT'S ENDING
12 ACCOUNT BALANCE?

13 A. AFTER THE SECOND WITHDRAWAL, THE ACCOUNT BALANCE WOULD
14 BE \$4,323.03.

15 Q. AND THE NEXT EXHIBIT, LIEUTENANT PADGETT?

16 A. THE NEXT EXHIBIT IS EXHIBIT 104. THEY'RE PHOTOCOPIES OF
17 AN A.T.M. CARD, FRONT RIGHT HERE AND BACK, AND THEN ALSO I
18 BELIEVE THAT'S A ROOM CARD, FRONT AND BACK. 104 WAS ALSO
19 REMOVED -- LEFT REAR POCKET OF THE VICTIM. I NEED TO CORRECT
20 MYSELF. 105 WAS ACTUALLY TAKEN FROM THE LEFT FRONT POCKET OF
21 THE VICTIM. THESE WERE FROM THE LEFT REAR POCKET.

22 Q. WHAT IS THE NAME ON THAT A.T.M. CARD?

23 A. DANIEL FLETCHER AUSTIN.

24 Q. AND STATE'S 111, LIEUTENANT PADGETT?

25 A. STATE'S EXHIBIT 111 IS AN ACTUAL PHOTOCOPY OF A CHECK

1 RECEIPT. 111 WAS REMOVED FROM MR. AUSTIN'S WALLET.

2 Q. AND WHAT IS THE AMOUNT OF THE CHECK?

3 A. THE BALANCE ON THE CHECK IS \$175.

4 Q. AND WERE THERE ANY WEAPONS RECOVERED NEAR MR. AUSTIN'S
5 BODY OR ON MR. AUSTIN'S BODY?

6 A. NO, MA'AM, NONE AT ALL.

7 MS. MCDUFFIE: NO FURTHER -- NO FURTHER QUESTIONS, YOUR
8 HONOR.

9 THE COURT: CROSS-EXAMINATION?

10 MR. COLLINS: THANK YOU, YOUR HONOR.

11 CROSS-EXAMINATION

12 BY MR. COLLINS:

13 Q. GOOD AFTERNOON, INVESTIGATOR PADGETT.

14 A. HOW ARE YOU?

15 Q. DOING GOOD. SO WE'VE GONE THROUGH A LOT OF EVIDENCE.

16 LET ME JUST GO BACK TO THE BEGINNING OF YOUR TESTIMONY.

17 YOU'RE IN CHARGE OF THE FORENSICS DEPARTMENT OF RICHLAND
18 COUNTY---

19 A. I WAS AT THAT TIME; YES, SIR.

20 Q. YOU WERE.

21 A. THAT'S CORRECT.

22 Q. YOU WERE THE HEAD MAN IN CHARGE OF THE---

23 A. THAT'S CORRECT.

24 Q. ---CRIME SCENE INVESTIGATION?

25 COURT REPORTER: I'M SORRY. Y'ALL ARE TALKING ON TOP OF

1 EACH OTHER.

2 BY MR. COLLINS:

3 Q. YOU WERE THE HEAD MAN IN CHARGE OF CRIME SCENE
4 INVESTIGATION?

5 A. THAT IS CORRECT.

6 Q. AND ONE OF THE MOST IMPORTANT PARTS ABOUT CRIME SCENE
7 INVESTIGATION IS TO SECURE THAT SCENE; CORRECT?

8 A. THAT'S VERY IMPORTANT; I AGREE.

9 Q. SOMEBODY WALKING THROUGH A SCENE COULD DISTURB EVIDENCE;
10 CORRECT?

11 A. THEY COULD DO A LOT OF THINGS. THAT IS CORRECT.

12 Q. SOMEBODY HANDLING A GUN WITHOUT GLOVES ON COULD DISTURB
13 THE EVIDENCE.

14 A. POSSIBLY. THAT IS CORRECT.

15 Q. BUT YOU CAN'T ALWAYS SECURE THE SCENE RIGHT AWAY;
16 CORRECT?

17 A. I CAN'T.

18 Q. AND, IN FACT, IN THIS CASE THERE WERE 30 TO 40 OFFICERS
19 ON THE SCENE BEFORE THE SCENE COULD BE SECURED; CORRECT?

20 A. I DO NOT KNOW HOW MANY OFFICERS WERE ON THE SCENE BEFORE
21 I GOT THERE; THAT IS CORRECT. SO I DO NOT KNOW.

22 Q. APPROXIMATELY HOW MANY POLICE CARS WERE THERE WHEN YOU
23 GOT THERE?

24 A. I RECALL SEEING AT LEAST THREE, COULD BE MORE.

25 Q. OKAY. AND ONCE THE CRIME SCENE IS SECURED, YOU

1 DIRECT -- YOU USED TO DIRECT YOUR EMPLOYEES TO PHOTOGRAPH
2 EVERYTHING; CORRECT?

3 A. THAT IS CORRECT.

4 Q. AS IT LIES.

5 A. THAT IS CORRECT.

6 Q. BUT THIS WAS AFTER THE OFFICERS HAD ALREADY RESPONDED TO
7 THE ROOM AND REMOVED MR. BRYANT; CORRECT?

8 A. MR. BRYANT WAS NOT THERE WHEN I GOT THERE, SO I WOULD
9 HAVE TO ASSUME IF HE WAS NOT THERE HE WAS REMOVED IN SOME
10 FASHION BEFORE I GOT THERE. THAT'S A TOTAL ASSUMPTION.

11 Q. AND BOTH GUNS WERE CLEARED OF ANY AMMUNITION; CORRECT?

12 A. I DON'T BELIEVE EITHER GUN HAD AMMUNITION IN THEM WHEN I
13 RECEIVED THEM.

14 Q. AND PEOPLE ON YOUR C.S.I. TEAM ARE INSTRUCTED TO KEEP
15 DETAILED REPORTS; CORRECT?

16 A. AS DETAILED AS POSSIBLE. THAT IS CORRECT.

17 Q. AND THEN YOU DECIDE WHAT NEEDS TO BE SENT OFF FOR WHAT
18 DIFFERENT TESTS; CORRECT?

19 A. RIGHT. WE MAY WANT TO DO BALLISTICS TESTS,
20 FINGERPRINTS, BLOOD PATTERN ANALYSIS, MANY DIFFERENT TESTS,
21 AND WE WOULD HAVE TO FARM THAT OUT TO THE DIFFERENT PEOPLE.

22 Q. AND YOU ATTEMPTED TO LIFT FINGERPRINTS FROM EVERYWHERE
23 INSIDE THIS ROOM; CORRECT?

24 A. WE DID A LOT OF FINGERPRINT PROCESSING INSIDE THE ROOM;
25 THAT IS CORRECT.

1 Q. DID YOU TRY TO PROCESS ANY PRINTS FROM THE DOORKNOB?

2 A. I DON'T KNOW IN PARTICULAR THE DOORKNOB. I DO KNOW
3 AFTER 27 YEARS IN THE FORENSIC BUSINESS THAT I PERSONALLY
4 HAVE NEVER GOTTEN A FINGERPRINT OFF A DOORKNOB, NEVER.

5 Q. IN FACT, IN THIS CASE YOU ONLY GOT TWO LATENT PRINTS OUT
6 OF THE ENTIRE PLACE; CORRECT?

7 A. TWO USABLE LATENT PRINTS THAT WE COULD DO ANYTHING WITH,
8 AND THAT IS NOT UNUSUAL.

9 Q. AND THAT WASN'T MR. BRYANT OR MR. AUSTIN, WAS IT?

10 A. I DON'T REALLY RECALL WHOSE FINGERPRINTS THEY CAME BACK
11 TO, SIR, AT THIS POINT. I DON'T -- I DON'T RECALL WHOSE THEY
12 CAME BACK TO, IF THEY CAME BACK TO ANYBODY'S.

13 Q. OKAY. AND THAT INCLUDES FINGERPRINTS OFF ANY SHELL-
14 CASINGS, MIRRORS?

15 A. WE PROCESSED THE ENTIRE ROOM - THAT IS CORRECT, SIR -
16 AND EVERYTHING IN THE ROOM THAT WE COLLECTED THAT I RECALL.

17 Q. AND YOU SHOWED A FEW OF THE PICTURES FROM INSIDE OF THE
18 ROOM DETAILING WHERE YOU FOUND EACH SHELL CASING?

19 A. THAT IS CORRECT.

20 Q. IN THOSE PICTURES YOU CAN SEE ALSO THE CARPET IN THE
21 ROOM; CORRECT?

22 A. THE CARPET?

23 Q. YES, SIR.

24 A. YES, SIR.

25 Q. IN PARTICULAR, THE AREA BESIDE THE BED NEXT TO THE

1 NIGHTSTAND WHERE MR. BRYANT'S WALLET WAS FOUND; CORRECT?

2 A. YES, SIR.

3 Q. DID YOU RECOVER ANY BLOOD FROM THAT CARPET?

4 A. I DON'T BELIEVE SO.

5 Q. DIDN'T RECOVER ANY BLOOD FROM ANYWHERE IN THAT ROOM, DID
6 YOU?

7 A. I DON'T BELIEVE SO; NO, SIR.

8 Q. BUT YOU'VE LEARNED THROUGH THE INVESTIGATION THAT MR.
9 BRYANT DID RECEIVE A GUNSHOT WOUND INSIDE THAT ROOM; CORRECT?

10 A. I FOUND OUT AT SOME LATER DATE AND TIME AND I DON'T KNOW
11 EXACTLY WHEN THAT HE DID HAVE A -- I WAS TOLD A SELF-
12 INFLICTED GUNSHOT WOUND, BUT I DO NOT KNOW WHERE HE SHOT
13 HIMSELF.

14 Q. SOMETIMES YOU CAN GET SHOT AND IT MAY NOT GET ON THE
15 FLOOR; CORRECT?

16 A. THAT'S A POSSIBILITY, DEPENDING ON CLOTHING, DEPENDING
17 ON POSITION, DEPENDING ON WHERE YOU ARE.

18 Q. DIDN'T RECOVER ANY PRINTS FROM EITHER ONE OF THE GUNS
19 EITHER; CORRECT?

20 A. NO, SIR, WE DID NOT.

21 Q. I IMAGINE THERE WERE PRINTS ON THERE, JUST NOT USABLE
22 PRINTS.

23 A. THERE'S PROBABLY A LOT OF SMUDGES. ALSO, AGAIN, IT IS
24 NOT UNUSUAL TO NOT RECOVER PRINTS ON A WEAPON, A HANDGUN, OR
25 A RIFLE. IT'S ACTUALLY CONSIDERED AN ACCIDENT IF YOU DO GET

1 A PRINT, UNLIKE T.V. GUNS ARE JUST NOT GOOD SURFACES FOR
2 FINGERPRINTS.

3 Q. SHINY METAL SURFACES AREN'T GOOD SURFACES---

4 A. NOT ON THE METAL THAT'S USED ON GUNS.

5 Q. YOU ALSO FOUND A SEAT CUSHION OUTSIDE OF THE ROOM;
6 CORRECT?

7 A. I DON'T KNOW IF I COLLECTED A SEAT CUSHION. I BELIEVE
8 THERE WAS A SEAT CUSHION. I BELIEVE THERE WAS ONE INSIDE THE
9 ROOM AND THEN THERE WAS A SEAT CUSHION IN THE CHAIR. I
10 PERSONALLY DO NOT RECALL A SEAT CUSHION OUTSIDE THE ROOM.

11 Q. DO YOU REMEMBER GIVING TESTIMONY IN THIS CASE BEFORE?

12 A. NOT EXACTLY, NO, SIR.

13 Q. DO YOU RECALL---

14 A. I REMEMBER -- I REMEMBER TESTIFYING IN THIS CASE BEFORE.
15 I DON'T REMEMBER EXACTLY WHAT I SAID BEFORE; NO, SIR.

16 Q. SO YOU DON'T REMEMBER TESTIFYING TO THAT BEFORE?

17 A. I COULD HAVE.

18 Q. COULD HAVE?

19 A. THAT'S A POSSIBILITY, SURE.

20 Q. BUT THERE'S NO SEAT CUSHION IN EVIDENCE OVER HERE, IS
21 THERE?

22 A. THEY HAVEN'T SHOWN ME ONE; NO, SIR.

23 Q. YOU WERE IN CHARGE OF THE CRIME SCENE---

24 A. THAT IS CORRECT.

25 Q. ---INVESTIGATION IN THIS CASE---

1 A. THAT IS CORRECT.

2 Q. SO IF THERE WAS A SEAT CUSHION COLLECTED AS EVIDENCE,
3 YOU WOULD KNOW, WOULDN'T YOU?

4 A. I SHOULD. ABSOLUTELY.

5 Q. NOW, AT THE END OF YOUR DIRECT TESTIMONY YOU TESTIFIED
6 BRIEFLY ABOUT A COUPLE -- A FEW THINGS YOU PULLED OUT OF MR.
7 AUSTIN'S POCKETS?

8 A. THAT IS CORRECT.

9 Q. AND I BELIEVE A COUPLE OF THEM WERE A.T.M. WITHDRAWAL
10 SLIPS?

11 A. A.T.M. WITHDRAWAL SLIPS, THAT IS CORRECT.

12 Q. AND THE TIMES ON THOSE WITHDRAWAL ARE AROUND 2:15, 2:30
13 IN THE MORNING? IF YOU COULD REFERENCE THE EXHIBIT NUMBERS
14 AND---

15 A. EXHIBIT NUMBER 105, THE FIRST ONE, WAS AT 2:19 A.M. AND
16 THE SECOND ONE WAS AT 2:34 A.M.

17 Q. WHAT WERE THE LAST DIGITS ON THE ACCOUNT FOR THOSE
18 A.T.M. SLIPS?

19 A. ON STATE'S EXHIBIT 105 THE LAST FOUR DIGITS OF THE
20 ACCOUNT NUMBER IS 9097 ON BOTH RECEIPTS.

21 Q. AND BOTH RECEIPTS LIST BUSH RIVER ROAD, COLUMBIA, SOUTH
22 CAROLINA, AT THE TOP?

23 A. BOTH RECEIPTS LIST BUSH RIVER ROAD; THAT IS CORRECT.

24 Q. AND IT SEEMS TO BE BOTH THOSE RECEIPTS CAME FROM THE
25 SAME LOCATION?

1 A. ACTUALLY, THERE WAS A TERMINAL NUMBER ON THE RECEIPTS,
2 AND THE TERMINAL NUMBER IS THE SAME NUMBER ON EACH RECEIPT.
3 I'M NOT SURE EXACTLY ABOUT BANKING, BUT I WOULD ASSUME THAT'S
4 THE SAME MACHINE.

5 MR. COLLINS: IF I MAY APPROACH THE WITNESS, YOUR HONOR?

6 THE COURT: YOU MAY.

7 BY MR. COLLINS:

8 Q. I'M SHOWING YOU WHAT'S LABELED AS DEFENDANT'S EXHIBIT
9 NUMBER 10. DO YOU RECOGNIZE THAT?

10 A. I RECOGNIZE WHAT IT IS. I'M NOT SURE IF I'VE EVER SEEN
11 IT BEFORE.

12 Q. YOU RECOGNIZE WHAT IT IS?

13 A. YES, SIR.

14 Q. CAN YOU EXPLAIN TO THE JURY---

15 A. IT APPEARS TO BE---

16 Q. ---WHAT IT IS?

17 A. ---AN A.T.M. RECEIPT AS THE OTHER TWO THAT I JUST
18 EXPLAINED. IT APPEARS TO BE AN A.T.M. RECEIPT; THAT IS
19 CORRECT.

20 MR. COLLINS: IF I MAY APPROACH THE WITNESS, YOUR HONOR?

21 THE COURT: YOU MAY.

22 MS. MCDUFFIE: NO OBJECTION FROM THE STATE, YOUR HONOR.

23 MR. COLLINS: YOUR HONOR, AT THIS TIME THE DEFENSE WOULD
24 INTRODUCE DEFENDANT'S EXHIBIT NUMBER 10 INTO EVIDENCE.

25 THE COURT: LADIES AND GENTLEMEN OF THE JURY,

1 DEFENDANT'S EXHIBIT NUMBER 10 WILL BE ADMITTED INTO EVIDENCE
2 WITHOUT OBJECTION. DEFENDANT'S 10 IN EVIDENCE.

3 (DEFENDANT'S EXHIBIT 10 WAS RECEIVED IN EVIDENCE.)

4 THE COURT: YOU MAY PUBLISH.

5 MR. COLLINS: MAY I APPROACH THE WITNESS, YOUR HONOR?

6 THE COURT: YOU MAY.

7 BY MR. COLLINS:

8 Q. THERE YOU GO.

9 A. UH-HUH.

10 Q. INVESTIGATOR PADGETT, CAN YOU READ THE TIME ON THAT
11 SLIP?

12 A. THE TIME ON THIS SLIP IS 7 -- WELL, THE DATE IS 7/22/99
13 WHICH IS THE NIGHT BEFORE THE DAY BEFORE THIS INCIDENT, AND
14 IT'S 11:52 P.M.

15 Q. P.M.?

16 A. P.M. THAT IS CORRECT.

17 Q. THE OTHER TWO SLIPS ARE AT 2:15, 2:30 A.M.?

18 A. YES, SIR, ABOUT THREE, THREE AND A HALF HOURS AFTER
19 THIS.

20 Q. FROM THE SAME LOCATION?

21 A. THE TOP OF IT ALSO READS BUSH RIVER ROAD, COLUMBIA,
22 SOUTH CAROLINA, AND THE TERMINAL NUMBERS ARE THE SAME.

23 Q. HOW MUCH MONEY DID MR. AUSTIN TAKE OUT?

24 A. ON DEFENDANT'S EXHIBIT NUMBER 10?

25 Q. FOR ALL THREE OF THEM COMBINED.

1 A. IT APPEARS TO BE \$100 TOTAL.

2 Q. THROUGH YOUR INVESTIGATION YOU LEARNED THAT HE WITHDREW
3 CLOSE TO 400 TOTAL THAT NIGHT; CORRECT?

4 A. I HAVE NO IDEA HOW MUCH HE WITHDREW THAT NIGHT, SIR.

5 Q. WOULD YOU BE ABLE TO OBTAIN BANK RECORDS FOR THAT
6 POSSIBLY?

7 A. I WOULD THINK IT WOULD BE POSSIBLE.

8 Q. OKAY. WELL, MOVING ALONG NOW, YOU OBTAINED FINGERNAIL
9 SCRAPINGS FROM MR. AUSTIN IN THIS CASE; CORRECT?

10 A. I DID NOT PERSONALLY THAT I RECALL, BUT I BELIEVE THAT
11 WAS DONE.

12 Q. DO YOU RECALL PUTTING THAT IN YOUR NOTES?

13 A. (PAUSE.)

14 Q. INVESTIGATOR PADGETT, WE CAN JUST MOVE ALONG.

15 A. SURE.

16 Q. WHY WOULD YOU COLLECT FINGERNAIL SCRAPINGS---

17 A. OKAY. I DON'T BELIEVE I COLLECTED THEM PERSONALLY, BUT
18 I'M SURE THEY WERE COLLECTED IF THEY WERE. FINGERNAIL
19 SCRAPINGS -- IF YOU'RE IN A CLOSE ENCOUNTER POSSIBLY WITH
20 SOME PERSON AND YOU GET IN A FIGHT WITH THEM OR AN
21 ALTERCATION, YOU MAY HAVE A TENDENCY TO SCRATCH THE OTHER
22 PERSON. THEREFORE, YOU KNOW, YOU COULD ACCIDENTALLY DEPOSIT
23 SOME TYPE OF MATERIAL UNDERNEATH THE FINGERNAILS, WHETHER IT
24 BE FIBERS OR HAIRS OR SKIN CELLS OR ANYTHING ELSE, AND THAT'S
25 WHY AT AUTOPSIES WE COLLECT FINGERNAIL SCRAPINGS, SO THEY CAN

1 BE EXAMINED FURTHER.

2 Q. AND TO YOUR KNOWLEDGE, THOSE FINGERNAILS SCRAPINGS WERE
3 NEVER TESTED.

4 A. I DON'T KNOW, SIR. THAT WOULD HAVE BEEN OUTSIDE OF MY
5 REALM OF WHERE THEY WENT TO BE TESTED.

6 Q. DID YOU MEASURE ANY DISTANCES AT THE LOCATION WHILE YOU
7 WERE EVALUATING THE CRIME SCENE?

8 A. SOME WERE; THAT IS CORRECT.

9 Q. ABOUT HOW FAR FROM THE ORIGINAL POOL OF BLOOD TO THE
10 DOOR ARE WE TALKING?

11 A. MAY I USE THAT, SIR?

12 Q. (NODDED HEAD UP AND DOWN.) IF YOU CAN JUST READ THE
13 EXHIBIT NUMBER. I CAN'T READ IT FROM HERE.

14 A. STATE'S EXHIBIT 109, FROM THE POOL OF BLOOD WHICH IS
15 LOCATED IN THE HALLWAY HERE TO THE THRESHOLD AT THE END OF
16 THE HALLWAY, ACCORDING TO THE CHART, IS ABOUT TWENTY FEET
17 FIVE INCHES.

18 Q. TWENTY FEET FIVE INCHES.

19 A. YES, SIR.

20 Q. OKAY. THANK YOU. NOW, YOU SAID AT THE VERY BEGINNING
21 OF YOUR TESTIMONY THAT A C.S.I. TEAM COMES IN AND BLOOD
22 SPATTER... THE ONE TERM I DID HEAR YOU SAY WAS TRAJECTORY
23 ANALYSIS. YOU DIDN'T PERFORM ANY TRAJECTORY ANALYSIS.

24 A. THERE WAS NOTHING TO PERFORM TRAJECTORY ANALYSIS ON IN
25 THIS CASE.

1 Q. PROJECTILES WENT THROUGH THE DOOR; CORRECT?

2 A. THAT IS CORRECT.

3 Q. SO THAT WOULD HAVE AN ENTRY POINT AND AN EXIT POINT---

4 A. THAT IS CORRECT.

5 Q. CORRECT? AND YOU'RE TELLING ME YOU CAN'T USE A

6 TRAJECTORY---

7 A. AS I RECALL IN THIS PARTICULAR SCENE, THEY WERE IN A
8 POSITION, THE HOLES IN THE DOOR, WHERE WE COULDN'T REALLY GET
9 A TRAJECTORY ANALYSIS FROM THIS. AND, OF COURSE, OBVIOUSLY
10 WITH SHOTGUN SHELLS, WITH PELLETS, YOU CAN'T DO TRAJECTORY
11 ANALYSIS.

12 Q. DID YOU ATTEMPT TO DO A TRAJECTORY ANALYSIS?

13 A. I DON'T RECALL. I KNOW WE LOOKED AT THE DOOR, BUT I
14 DON'T RECALL IF WE ACTUALLY DID SOMETHING OR... TO MY
15 KNOWLEDGE, THERE WAS NOTHING THERE THAT WE COULD DO AT ALL
16 WHICH HAPPENS IN SOME CASES.

17 Q. THERE'S ALSO STILL A BULLET FRAGMENT SOMEWHERE IN THE
18 SHEETROCK AT DAYS INN; CORRECT?

19 A. I HAVE NO IDEA. I DON'T---

20 Q. DO YOU HAVE THE SAME NUMBER OF SHELL CASINGS AS YOU DO
21 PROJECTILES?

22 A. WELL, YOU HAVE TO REMEMBER THE PROJECTILES WE HAVE ARE
23 -- ACTUALLY, THERE'S A LOT OF PIECES OF PROJECTILE WHICH
24 MEANS WHEN A BULLET OF THIS TYPE HITS AN OBJECT, IT'S GOING
25 TO FRAGMENT IF IT HITS A FAIRLY HARD OBJECT, AND WHEN I SAY

1 FRAGMENT, YOU KNOW, A PROJECTILE COULD TURN INTO 20 PIECES.

2 Q. THERE IS A BULLET HOLE IN THE WALL OF THE MOTEL ROOM 129
3 AT THE DAYS INN; CORRECT?

4 A. I DON'T KNOW, SIR. I DON'T RECALL.

5 Q. YOU'RE IN CHARGE OF THE CRIME SCENE INVESTIGATION TEAM;
6 CORRECT?

7 A. I WAS, YES, SIR.

8 Q. AND NONE OF THIS EVIDENCE THAT YOU'VE TESTIFIED TO AS
9 FAR AS THE SHELL CASINGS AND PROJECTILES CAN TELL YOU WHY
10 SOMEBODY WAS SHOT, CAN IT?

11 A. OF COURSE NOT.

12 Q. THANK YOU. NO FURTHER QUESTIONS.

13 A. OKAY.

14 THE COURT: REDIRECT?

15 MS. MCDUFFIE: NO, YOUR HONOR.

16 THE COURT: AS TO THIS WITNESS?

17 MS. MCDUFFIE: WE ASK THAT HE BE EXCUSED, PLEASE.

18 THE COURT: ANY OBJECTION, COUNSEL?

19 MR. COLLINS: NO OBJECTION, YOUR HONOR.

20 THE COURT: MR. PADGETT, YOU MAY STEP DOWN AND YOU'RE
21 EXCUSED FROM THE TRIAL OF THIS CASE.

22 THE WITNESS: THANK YOU, SIR.

23 THE COURT: LEAVE MY EXHIBITS WITH ME IF YOU DON'T MIND,
24 PLEASE, SIR.

25 THE WITNESS: I DID, YOUR HONOR.

1 SOLICITOR.

2 MR. ROSS: THANK YOU, YOUR HONOR. THE STATE CALLS
3 LONNIE GROSS.

4 LONNIE B. GROSS, II, AFTER BEING DULY SWORN,
5 TESTIFIED AS FOLLOWS:

6 THE COURT: PLEASE HAVE A SEAT AND STATE YOUR FULL NAME
7 FOR THE RECORD.

8 THE WITNESS: MY NAME IS LONNIE BERT GROSS, II.

9 THE COURT: WOULD YOU SPELL YOUR LAST NAME FOR THE
10 RECORD, PLEASE, SIR?

11 THE WITNESS: YES, SIR. IT'S G-R-O-S-S.

12 THE COURT: YOUR WITNESS, COUNSEL.

13 MR. ROSS: THANK YOU, YOUR HONOR.

14 DIRECT EXAMINATION

15 BY MR. ROSS:

16 Q. WHERE ARE YOU EMPLOYED?

17 A. I'M EMPLOYED CURRENTLY PART-TIME WITH THE RICHLAND
18 COUNTY SHERIFF'S DEPARTMENT HERE IN RICHLAND COUNTY.

19 Q. AND WHAT ARE YOU DOING FOR THEM CURRENTLY?

20 A. CURRENTLY I'M INVOLVED WITH ASSISTING WITH THE
21 FORFEITURE AND SEIZURES OF DRUG MONIES AND SUCH, PUTTING
22 FILES TOGETHER AND SUCH FOR THE ATTORNEYS AND SUCH.

23 Q. HOW LONG HAVE YOU BEEN WITH THE RICHLAND COUNTY
24 SHERIFF'S DEPARTMENT?

25 A. THIS TIME?

1 Q. TOTAL.

2 A. TOTAL?

3 Q. IN OTHER WORDS, WHEN DID YOU START OUT THERE?

4 A. I STARTED WITH THE RICHLAND COUNTY SHERIFF'S DEPARTMENT
5 IN APRIL OF 1990, AND I ALSO -- ABOUT 12 YEARS AND THEN I
6 RETIRED OCTOBER 1ST, 2001, AND I HAD 29 YEARS IN LAW
7 ENFORCEMENT.

8 Q. AND WERE YOU WORKING FOR THE RICHLAND COUNTY SHERIFF'S
9 DEPARTMENT JULY 23RD, 1999?

10 A. YES, SIR, I WAS.

11 Q. DID YOU HAVE AN OPPORTUNITY TO RESPOND TO THE SCENE, THE
12 CRIME SCENE, AT THE DAYS INN?

13 A. YES, I DID.

14 Q. AND WAS ZANE PADGETT THE CRIME SCENE INVESTIGATOR WHO
15 WAS IN CHARGE OF THAT CRIME SCENE?

16 A. YES, SIR, HE WAS.

17 Q. ALL RIGHT. AND WERE YOU ONE OF THE CRIME SCENE
18 INVESTIGATORS THAT PARTICIPATED IN THE COLLECTION AND
19 PROCESSING OF EVIDENCE---

20 A. YES.

21 Q. ---ON THE SCENE? I'M GOING TO GO THROUGH SOME PHOTOS
22 WITH YOU, AND I WANT YOU TO FIRST LOOK AT THESE AND THEN JUST
23 ANSWER WHETHER YOU RECOGNIZE THESE. YOUR HONOR, THIS IS
24 STATE'S EXHIBITS NUMBER 18 THROUGH 25.

25 THE COURT: WOULD YOU LIKE TO APPROACH THE WITNESS,

1 COUNSEL?

2 MR. ROSS: OH, I'M SORRY, YOUR HONOR. I APOLOGIZE. 17
3 THROUGH 25.

4 THE COURT: LET THE WITNESS HAVE THEM. ASK HIM IF HE
5 CAN IDENTIFY THEM AND STEP BACK.

6 THE WITNESS: DO YOU WANT ME TO EXPLAIN EACH ONE OF
7 THESE?

8 BY MR. ROSS:

9 Q. NO, JUST IF YOU---

10 A. OKAY.

11 Q. ---IF YOU RECOGNIZE THAT AND DOES THAT ACCURATELY DEPICT
12 THE WAY THOSE AREAS IN THE PHOTOS LOOKED---

13 A. YES.

14 Q. ---ON JULY 23RD, 1999.

15 A. YES, SIR. THESE ARE, FROM WHAT I RECALL, AN ACCURATE
16 REPRESENTATION OF THE SCENE AS TO WHAT I REMEMBER.

17 MR. ROSS: OKAY. COULD I APPROACH, YOUR HONOR?

18 THE COURT: YOU MAY. DAPHNE, WHAT NUMBERS DO YOU HAVE?

19 COURT REPORTER: 17 THROUGH 25.

20 THE COURT: 17 THROUGH 25?

21 COURT REPORTER: I BELIEVE.

22 THE COURT: I'M NOT SURE. IS THAT RIGHT?

23 MR. ROSS: YES, SIR. I'LL GO BACK THROUGH AND MAKE
24 SURE; YES, SIR.

25 MR. COLLINS: WITHOUT OBJECTION.

1 THE COURT: WHAT NUMBERS, COUNSEL?

2 MR. ROSS: YOUR HONOR, THIS IS -- I TRIED TO GET THEM IN
3 ORDER, YOUR HONOR. 17, 18, 19, 20, 21, 22, 23, 24, AND 25.

4 THE COURT: YOU WERE CORRECT. 17 THROUGH 25, LADIES AND
5 GENTLEMEN OF THE JURY, WILL BE ADMITTED INTO EVIDENCE WITHOUT
6 OBJECTION.

7 (STATE'S EXHIBITS 17 THROUGH 25 WERE RECEIVED IN
8 EVIDENCE.)

9 THE COURT: YOU MAY PUBLISH. YOU MAY APPROACH.

10 MR. ROSS: THANK YOU, YOUR HONOR.

11 BY MR. ROSS:

12 Q. I'M GOING TO STAND BACK BEHIND YOU, AND IF YOU COULD,
13 THIS IS STATE'S EXHIBIT NUMBER 22 OF -- TELL THE JURY WHAT IS
14 SHOWN IN THIS PHOTOGRAPH.

15 A. UMM...

16 Q. COULD I HAVE THE WITNESS STEP DOWN? IT MIGHT BE A
17 LITTLE EASIER.

18 THE COURT: IF YOU'LL GIVE HIM THAT MICROPHONE.

19 MR. ROSS: YES, SIR. YES, SIR.

20 THE COURT: YOU MAY STEP DOWN, MR. GROSS. IF YOU'LL USE
21 THE MICROPHONE, IT'S GOING TO AMPLIFY YOUR VOICE.

22 THE WITNESS: ALL RIGHT, SIR.

23 THE COURT: YOU'VE GOT -- THE CORD WILL ONLY GO SO FAR,
24 SO YOU...

25 MR. COLLINS: YOUR HONOR?

1 THE COURT: YOU CAN COME AROUND.

2 MR. ROSS: STATE'S EXHIBIT NUMBER---

3 THE COURT: JUST A MOMENT.

4 MR. ROSS: OH, I'M SORRY, YOUR HONOR.

5 THE COURT: PROCEED.

6 THE WITNESS: THIS IS STATE'S EXHIBIT 22.

7 BY MR. ROSS:

8 Q. YES, SIR.

9 A. THIS IS A PHOTOGRAPHIC REPRODUCTION OF A MOTEL ROOM
10 WHERE A SHOOTING OCCURRED, AND THIS DEPICTS SEVERAL MARKINGS
11 WITH THE NUMBERS AND THESE WERE USED AS EVIDENCE MARKING
12 NUMBERS.

13 Q. OKAY. AND LOOKING SPECIFICALLY AT NUMBER 8, WHAT
14 OCCURRED THERE ON THE DOOR?

15 A. OKAY. ON NUMBER 8 IT DEPICTS A TRAIL OF SOME SHOTGUN
16 PELLETS WHICH CAME -- WHICH ACTUALLY TRAVELED FROM LEFT TO
17 RIGHT WHICH, WITH AN ORIENTATION OF THIS AT THE CRIME SCENE,
18 WOULD BE FROM THE INSIDE -- IT'S INDICATING THE INSIDE OF THE
19 MOTEL ROOM GOING OUTBOUND, OUT THROUGH THE DOOR.

20 Q. SO THE DOOR WOULD HAVE BEEN OPEN WHEN THE SHOTGUN BLAST
21 WENT ACROSS THE DOOR?

22 A. YES, SIR.

23 Q. ALL RIGHT. LOOKING AT MARKER NUMBER 9, WHAT IS THAT
24 DEPICTING?

25 A. NUMBER 9 IS AN EXIT -- IT APPEARS TO BE AN EXIT WOUND OR

1 AN EXIT FROM POSSIBLY A LARGER CALIBER LIKE A BULLET.

2 Q. OKAY. AND MARKER NUMBER 10 DOWN BELOW, WHAT IS THAT
3 DEPICTING?

4 A. SAME THING. NUMBER 10 IS ALSO -- APPEARS TO BE AN EXIT
5 HOLE FROM A POSSIBLE BULLET.

6 Q. OKAY. WOULD THAT BE CONSISTENT WITH A .32 CALIBER
7 ROUND?

8 A. YES, SIR, WITH A .32 TO A .38, SOMEWHERE IN THERE.

9 Q. OKAY. LOOKING AT STATE'S EXHIBIT NUMBER 23, IS THAT
10 SIMPLY A CLOSE-UP OF WHAT WE JUST LOOKED AT?

11 A. YES, SIR, IT IS.

12 Q. AND, AGAIN, STATE'S EXHIBIT NUMBER 24, IS THAT A CLOSE-
13 UP OF THE MARKER NUMBER 9 YOU WERE JUST MENTIONING?

14 A. YES, SIR, THAT'S A CLOSE-UP SHOT OF THAT.

15 Q. AND STATE'S EXHIBIT 25, IS THAT A CLOSE-UP OF MARKER
16 NUMBER 10 YOU JUST TESTIFIED PREVIOUSLY?

17 A. AGAIN, YES, SIR, IT IS.

18 Q. STATE'S EXHIBIT NUMBER 18, IS THAT ALSO A CLOSE-UP OF
19 THE SHOTGUN BLAST YOU JUST TESTIFIED?

20 A. YES, SIR.

21 Q. STATE'S EXHIBIT NUMBER 17, IS THAT ANOTHER ANGLE OF THE
22 SHOTGUN BLAST YOU PREVIOUSLY TESTIFIED TO?

23 A. YES, SIR. THIS IS -- THIS WAS A PHOTOGRAPH -- THE ANGLE
24 -- THE PHOTOGRAPH IS ACTUALLY TAKEN FROM STANDING OUTSIDE THE
25 MOTEL ROOM AND IT'S SHOWING THE CONTACT... IT WAS WHERE THE

1 PELLETS FROM THE SHOTGUN HAD TRAVELED ACROSS THE DOORWAY AND
2 APPARENTLY EMBEDDED INTO A CEMENT SUPPORT BEAM WHICH IS
3 OUTSIDE, RIGHT OUTSIDE THE MOTEL ROOM.

4 Q. LOOKING AT STATE'S EXHIBIT NUMBER 19, WHAT IS DEPICTED
5 IN THAT PHOTOGRAPH WITH THE MARKERS THAT YOU HAVE ON HERE,
6 NUMBERS 1 AND 2?

7 A. THESE MARKERS ARE INDICATING SOME BULLET HOLES. THESE
8 ARE ACTUALLY ENTRY WOUNDS OR ENTRY HOLES MADE BY A .32 FROM
9 THE INSIDE OF THE DOOR.

10 Q. SO THESE---

11 A. MOTEL ROOM.

12 Q. ---HOLES ARE WITH THE BULLET PASSING -- WITH THE DOOR
13 SHUT, PASSING THROUGH THE DOOR GOING TO THE OUTSIDE OF THE
14 ROOM.

15 A. THAT'S CORRECT.

16 Q. ALL RIGHT. AND DOES THAT LINE UP WITH WHAT YOU HAVE
17 WITH MARKERS 9 AND 10? IN OTHER WORDS, NUMBER 1 LINES UP
18 WITH NUMBER 9?

19 A. YES, SIR, THEY DO.

20 Q. AND NUMBER -- MARKER NUMBER 2 LINES UP WITH NUMBER 10?

21 A. YES, SIR.

22 Q. ALL RIGHT. AND THEN YOU ALSO HAVE A NUMBER OF -- MARKER
23 NUMBER 3 THAT'S SHOWN IN STATE'S EXHIBIT 19 AND THEN THERE'S
24 A CLOSE-UP OF THAT. STATE'S EXHIBIT NUMBER 20. AND WHAT IS
25 THAT SHOWING?

1 A. EXIT -- NUMBER 20 IS -- NUMBER 3 IS ALSO A -- THE DAMAGE
2 DONE TO THE DOOR BY A BULLET. THERE WAS NO ACTUAL ENTRANCE.
3 APPARENTLY IT STRUCK SOMETHING SOLID OR POSSIBLY A STUD OR
4 SOMETHING.

5 Q. IS THAT ALONG RIGHT OUTSIDE THE MOLDING OF THE DOOR?

6 A. WELL, THAT'S ACTUALLY ON THE INSIDE, I BELIEVE.

7 Q. IF THE DOOR IS RIGHT HERE...

8 A. OH, WELL---

9 Q. LOOKING AT THE -- LOOK AT STATE'S EXHIBIT NUMBER 19.

10 YOU CAN SEE IT BETTER.

11 A. YES, SIR. IT'S ON THE DOORWAY, BUT IT'S TAKEN FROM THE
12 INSIDE.

13 Q. OKAY. AND ALSO STATE'S EXHIBIT 21 IS TAKEN FROM INSIDE
14 ROOM 129. WHAT IS THAT SHOWING?

15 A. THESE ARE ALSO AGAIN BULLET HOLES.

16 Q. DO YOU KNOW---

17 A. AS OPPOSED TO -- AS OPPOSED TO A SHOTGUN PELLETS,
18 THEY'RE BULLET HOLES.

19 Q. YOU CAN RETAKE YOUR SEAT. THANK YOU. MAY I APPROACH,
20 YOUR HONOR?

21 THE COURT: YOU MAY.

22 BY MR. ROSS:

23 Q. LOOKING AT WHAT'S BEEN LABELED STATE'S EXHIBIT 76-A, DO
24 YOU RECOGNIZE THAT ENVELOPE AND DOES IT HAVE YOUR SIGNATURE?
25 AND THEN LOOK INSIDE AND SEE IF YOU RECOGNIZE WHAT'S

1 CONTAINED IN THE ENVELOPE.

2 A. YES, SIR. THIS ENVELOPE IS A STANDARD EVIDENCE ENVELOPE
3 THAT WE WOULD NORMALLY CARRY. WE HAD VARIOUS -- VARIOUS
4 SIZES.

5 Q. LET ME STOP YOU RIGHT THERE. DO YOU RECOGNIZE THAT --
6 THOSE ITEMS -- THOSE ITEMS YOU COLLECTED?

7 A. YES, SIR. THERE'S APPROXIMATELY SIX .32 CALIBER SPENT
8 SHELL CASINGS IN HERE.

9 MR. ROSS: OKAY. MAY I APPROACH, YOUR HONOR?

10 THE COURT: YOU MAY.

11 MR. COLLINS: WITHOUT OBJECTION.

12 MR. ROSS: THIS IS 76-A, YOUR HONOR.

13 THE COURT: NO OBJECTION?

14 MR. COLLINS: NO OBJECTION, YOUR HONOR.

15 THE COURT: LADIES AND GENTLEMEN OF THE JURY, STATE'S
16 EXHIBIT 76-A WILL BE ADMITTED INTO EVIDENCE WITHOUT
17 OBJECTION.

18 (STATE'S EXHIBIT 76-A WAS RECEIVED IN EVIDENCE.)

19 THE COURT: YOU MAY PROCEED AND PUBLISH.

20 MR. ROSS: THANK YOU, YOUR HONOR. MAY I APPROACH?

21 THE COURT: YOU MAY.

22 BY MR. ROSS:

23 Q. HANDING YOU BACK 76-A WHICH IS THE SIX SHELL CASINGS AND
24 THEN ALSO EXHIBIT NUMBER 34 WHICH IS ALREADY IN EVIDENCE
25 WHICH IS A PHOTO OF THE BED INSIDE ROOM 129, ARE THE SHELL

1 CASINGS THAT ARE IN THIS ENVELOPE DEPICTED IN THE PICTURE,
2 STATE'S EXHIBIT NUMBER 34?

3 A. YES, SIR, THEY ARE.

4 Q. AND COULD YOU POINT THAT OUT TO THE JURY? JUST HOLD IT
5 UP AND POINT WHERE THOSE SHELL CASINGS ARE.

6 A. THE SHELL CASINGS ARE LAYING ACTUALLY RIGHT NEXT TO THE
7 REVOLVER, .32 REVOLVER, WHICH IS LAYING ON THE BED RIGHT
8 HERE. THERE'S SIX OF THEM.

9 MR. ROSS: OKAY. MAY I APPROACH, YOUR HONOR?

10 THE COURT: YOU MAY.

11 BY MR. ROSS:

12 Q. STATE'S EXHIBIT NUMBER 28, DID YOU -- THERE'S A MIRROR
13 DEPICTED IN THAT PHOTOGRAPH. DID YOU PROCESS THAT MIRROR FOR
14 FINGERPRINTS?

15 A. YES, SIR, I DID.

16 Q. AND WERE YOU ABLE TO LIFT ANY LATENT PRINTS OFF OF THAT
17 MIRROR?

18 A. YES, SIR. IF I RECALL, WE -- I WAS ABLE TO -- I
19 PROCESSED AND LIFTED APPROXIMATELY TWO WHAT WE TERM PARTIAL
20 LATENT FINGERPRINT IMPRESSIONS WHICH WERE FOUND, I BELIEVE IT
21 WAS, ON THE MOUNT OR THE WOODEN PORTION OR THE FRAMED PORTION
22 OF THE MIRROR WHICH WAS IN THE ROOM.

23 Q. AND WERE YOU ABLE TO COMPARE THOSE TWO LATENT PRINTS
24 WITH PRINTS OF THE DEFENDANT AND ALSO THE VICTIM IN THE CASE,
25 DANNY AUSTIN?

1 A. YES, SIR, I WAS.

2 Q. AND DID THOSE PRINTS MATCH EITHER OF THOSE INDIVIDUALS?

3 A. NO, SIR, THEY DID NOT.

4 Q. AND WERE YOU ABLE TO MATCH THOSE PRINTS WITH ANY OTHER
5 INDIVIDUAL?

6 A. NO, SIR.

7 Q. AS TO THE SIX SHELL CASINGS, DID YOU PROCESS THOSE ITEMS
8 FOR FINGERPRINTS?

9 A. YES, SIR. THOSE WERE PROCESSED AT A LATER DATE. THEY
10 WERE TRANSFERRED FROM THE CRIME SCENE WHICH IS STANDARD
11 PROCEDURE A FEW DAYS -- I DON'T RECALL EXACTLY WHEN IT WAS,
12 BUT THEY WERE PROCESSED IN THE LAB IN A MORE CONTROLLED
13 ENVIRONMENT, AND THEY WERE PROCESSED FOR LATENTS, AND I DON'T
14 BELIEVE WE WERE ABLE TO RECOVER ANY IDENTIFIABLE LATENTS ON
15 THOSE SHELL CASINGS.

16 Q. SO NO -- NO PRINTS OFF THE SHELL CASINGS.

17 A. NO, SIR.

18 MR. ROSS: MAY I APPROACH, YOUR HONOR?

19 THE COURT: YOU MAY.

20 BY MR. ROSS:

21 Q. STATE'S EXHIBIT NUMBER 91 WHICH IS A WHITE TOWEL, DID
22 YOU COLLECT THAT ITEM?

23 A. YES, SIR, I DID.

24 Q. OKAY. AND DO YOU RECALL WHERE IN THE ROOM IT WAS
25 COLLECTED OR DO YOU JUST KNOW IT WAS IN THE ROOM?

1 A. I BELIEVE IT WAS CLOSE TO -- IF I MAY, IT WAS ACTUALLY
2 LAYING RIGHT NEXT TO THE -- THERE'S LIKE A REFRIGERATOR, A
3 SMALL REFRIGERATOR, THAT'S IN THIS MOTEL ROOM. IT'S LAYING
4 RIGHT HERE WHICH WAS OUT IN FRONT OF A WHEELCHAIR.

5 THE COURT: REFER TO THE EXHIBIT NUMBER FOR THE RECORD.

6 THE WITNESS: THAT WAS ON EXHIBIT PHOTOGRAPH 28.

7 BY MR. ROSS:

8 Q. AND WHERE YOU'RE POINTING TO ON EXHIBIT 28, THAT IS THE
9 TOWEL?

10 A. YES, SIR.

11 Q. ALL RIGHT. AND AFTER YOU COLLECTED THAT TOWEL, DID YOU
12 KEEP IT IN YOUR CARE, CUSTODY, AND CONTROL?

13 A. YES, SIR, I DID.

14 Q. AND DID YOU TURN IT OVER TO TENA GOFF WITH THE SHERIFF'S
15 DEPARTMENT?

16 A. YES, SIR. I BELIEVE THAT SHE WAS THE EVIDENCE CUSTODIAN
17 AT THE TIME.

18 Q. AND WHEN YOU COLLECT EVIDENCE, YOU TURN IT OVER TO THE
19 EVIDENCE CUSTODIANS AT THE SHERIFF'S DEPARTMENT, AND FOR WHAT
20 PURPOSE DO YOU DO THAT?

21 A. FOR HER -- I TURN IT IN TO EVIDENCE FOR SAFEKEEPING
22 UNTIL SUCH TIME WE CAN DECIDE WHAT WE WERE GOING TO DO WITH
23 THAT SPECIFIC ITEM. IN THIS CASE THIS ITEM APPEARED TO HAVE
24 WHAT LOOKED LIKE GUN POWDER RESIDUE ON IT.

25 MR. COLLINS: OBJECTION, YOUR HONOR.

1 THE COURT: SUSTAINED. NO FOUNDATION, COUNSEL. ASK A
2 QUESTION.

3 MR. ROSS: YOUR HONOR, OKAY. YES, SIR.

4 BY MR. ROSS:

5 Q. THROUGH BEING WITH THE SHERIFF'S DEPARTMENT AND BEING IN
6 CRIME SCENE INVESTIGATION, ARE YOU FAMILIAR WITH GUNSHOT
7 RESIDUE AND POWDER BURNS ON OBJECTS?

8 A. YES, SIR, I AM.

9 Q. HAVE YOU BEEN TRAINED IN THAT AREA?

10 A. YES, I HAVE.

11 Q. AND HAVE YOU OBSERVED MANY CRIME SCENES WHERE THAT'S
12 BEEN PRESENT?

13 A. YES, SIR, I HAVE.

14 Q. DID YOU OBSERVE GUNSHOT POWDER RESIDUE---

15 MR. COLLINS: OBJECTION, YOUR HONOR.

16 MR. ROSS: WHAT APPEARED TO BE GUNSHOT---

17 THE COURT: JUST LET HIM ASK THE QUESTION. GO AHEAD.

18 MR. ROSS: DID YOU OBSERVE WHAT APPEARED TO BE GUNSHOT
19 POWDER RESIDUE ON THAT TOWEL?

20 THE COURT: JUST A MOMENT. IT'S DIRECT EXAMINATION NOW,
21 COUNSEL. DON'T LEAD HIM. YES, SIR?

22 MR. COLLINS: OBJECTION, YOUR HONOR.

23 THE COURT: ON THE SAME GROUNDS?

24 MR. COLLINS: YES, SIR.

25 THE COURT: ON THE FOUNDATION OR OTHER?

1 MR. COLLINS: ON THE SAME GROUNDS, THE FOUNDATION. THIS
2 OBJECT WAS ADMITTED INTO EVIDENCE BEFORE THE FOUNDATION WAS
3 LAID.

4 THE COURT: COUNSEL, IF YOU'LL REPHRASE YOUR QUESTION.
5 LET ME HEAR IT IN LIGHT OF WHAT YOU'VE ASKED THE WITNESS.
6 I'LL RULE ON THE OBJECTION, BUT REPHRASE IT.

7 MR. ROSS: I'LL JUST ASK IT THIS WAY. WHAT DID YOU
8 OBSERVE ON THAT TOWEL THAT WAS---

9 THE COURT: OBJECTION OVERRULED. I'LL ALLOW HIM TO
10 ANSWER THAT.

11 BY MR. ROSS:

12 Q. ---THAT WAS SIGNIFICANT TO YOU?

13 A. THAT WAS SIGNIFICANT ON THE TOWEL WAS A -- A DARK BURN-
14 LOOKING AREA WHICH I FELT THAT BECAUSE OF THE FACT THAT A
15 FIREARM OR SEVERAL FIRE -- OR FIREARMS WERE USED IN THIS
16 EVENT AND BASED ON SOME INFORMATION FROM THE SCENE THAT I HAD
17 RECEIVED THAT THE SHOOTER MAY HAVE POSSIBLY USED THIS ALONG
18 WITH A WEAPON, I DECIDED TO OR WE DECIDED TO SEND IT TO
19 S.L.E.D. TO HAVE IT TESTED FOR POSSIBLE NITRATES FOR GUN
20 POWDER TO FIND OUT WHAT THAT STAIN WAS.

21 Q. ALL RIGHT. SO YOU COLLECTED IT FROM THE SCENE. YOU
22 TOOK IT TO THE SHERIFF'S DEPARTMENT. YOU TURNED IT IN AT THE
23 SHERIFF'S DEPARTMENT TO THE EVIDENCE.

24 A. YES, SIR.

25 MR. ROSS: ALL RIGHT. THAT'S ALL THE QUESTIONS I HAVE,

1 YOUR HONOR.

2 THE COURT: CROSS-EXAMINATION?

3 MR. COLLINS: THANK YOU, YOUR HONOR.

4 CROSS-EXAMINATION

5 BY MR. COLLINS:

6 Q. I ONLY HAVE ABOUT TWO OR THREE QUESTIONS FOR YOU. I'LL
7 TRY TO KEEP THIS PRETTY SHORT. DID YOU EVER HEAR ABOUT ANY
8 FINGERNAIL SCRAPINGS FROM MR. AUSTIN EVER BEING TESTED BY
9 S.L.E.D. FOR D.N.A.?

10 A. NO, SIR. I HAD NO CONNECTION WITH THE BODIES OR THE
11 VICTIMS OR ANYTHING OF THAT NATURE.

12 Q. AND NO TRAJECTORY ANALYSIS WAS EVER DONE ON ANY OF THE
13 BULLET HOLES IN THE DOOR?

14 A. TO MY KNOWLEDGE, NO, SIR.

15 Q. BECAUSE OF THAT, ALL YOU CAN SAY WITH CERTAINTY IS THAT
16 THE BULLET HOLES IN THE DOOR WERE CAUSED BY SOMEBODY FIRING A
17 BULLET FROM INSIDE THE ROOM TO OUTSIDE OF THE ROOM; CORRECT?

18 A. YES, SIR. THAT'S CORRECT.

19 Q. AND YOU CAN'T TELL US THE SEQUENCE OF ANY OF THESE
20 BULLET HOLES.

21 A. NO, SIR.

22 Q. AND ANYBODY THAT TOLD YOU -- THAT TRIED TO SAY THE
23 SEQUENCE OF THESE BULLET HOLES WOULD BE AN INFERENCE;
24 CORRECT?

25 A. WELL, THEY MAY HAVE MORE KNOWLEDGE THAN ME, BUT I'M NOT

1 SURE.

2 Q. THEY'D PROBABLY HAVE TO BE THERE; RIGHT?

3 A. YES, SIR, THEY'D HAD TO HAVE BEEN THERE.

4 Q. AND NONE OF THE EVIDENCE THAT YOU'VE TESTIFIED HERE
5 TODAY CAN TELL YOU WHY MR. AUSTIN WAS SHOT.

6 A. NO, SIR.

7 MR. COLLINS: THANK YOU. NO FURTHER QUESTIONS.

8 THE COURT: REDIRECT?

9 MR. ROSS: NONE, YOUR HONOR. I ASK THE WITNESS BE
10 EXCUSED.

11 THE COURT: ANY OBJECTION?

12 MR. COLLINS: NO OBJECTION.

13 THE COURT: MR. GROSS, YOU MAY STEP DOWN FROM THE
14 WITNESS STAND AND YOU ARE -- LEAVE MY EXHIBITS WITH ME,
15 PLEASE. YOU'RE EXCUSED FROM THE TRIAL OF THIS CASE.

16 THE WITNESS: THANK YOU, SIR.

17 THE COURT: CALL YOUR NEXT WITNESS, SOLICITOR.

18 MS. MCDUFFIE: THE STATE CALLS ANNA ELSEY.

19 ANNA ELSEY, AFTER BEING DULY SWORN, TESTIFIED AS
20 FOLLOWS:

21 THE CLERK: PLEASE HAVE A SEAT. STATE YOUR FULL NAME
22 FOR THE RECORD.

23 THE WITNESS: ANNA ELSEY. E-L-S-E-Y.
24
25

DIRECT EXAMINATION

1
2 BY MS. MCDUFFIE:

3 Q. GOOD AFTERNOON, MS. ELSEY.

4 A. GOOD AFTERNOON.

5 Q. WHERE ARE YOU CURRENTLY EMPLOYED?

6 A. THE RICHLAND COUNTY SHERIFF'S DEPARTMENT.

7 Q. AND WHAT ARE YOUR DUTIES WITH THE RICHLAND COUNTY
8 SHERIFF'S DEPARTMENT?

9 A. I AM CURRENTLY THE LIEUTENANT OVER THE CRIME SCENE
10 LATENT PRINT SECTIONS.

11 Q. WHAT WERE YOUR DUTIES IN JULY OF 1999?

12 A. I HAD JUST RECENTLY BEEN PROMOTED TO THE CRIME SCENE
13 UNIT AND WAS A CRIME SCENE INVESTIGATOR WORKING CALLS.

14 Q. AND DID YOU HAVE THE OPPORTUNITY TO RESPOND ON
15 JULY 23RD, 1999, TO THE DAYS INN AT BUSH RIVER ROAD?

16 A. I DID. I WAS NOTIFIED AROUND 5:00 IN THE MORNING, AND I
17 ARRIVED AROUND 5:30.

18 Q. AND WERE THERE OTHER FORENSIC INVESTIGATORS ALREADY
19 THERE WHEN YOU ARRIVED?

20 A. YES, MA'AM. LIEUTENANT PADGETT AND INVESTIGATOR GROSS
21 WERE ALREADY ON THE SCENE.

22 Q. AND DID YOU ASSIST IN THE PHOTOGRAPHING AND COLLECTING
23 OF EVIDENCE AT THE SCENE?

24 A. YES, MA'AM, I DID.

25 Q. DID YOU HAVE A CHANCE TO THEN RESPOND TO PALMETTO

1 RICHLAND MEMORIAL HOSPITAL LATER THAT MORNING?

2 A. YES, MA'AM.

3 Q. AND WHY DID YOU GO TO THE HOSPITAL THAT MORNING?

4 A. WE ATTEND -- THE FIRST REASON I WENT WAS TO ATTEND THE
5 AUTOPSY, AND WE'RE PRIMARILY THERE TO ASSIST IN
6 DOCUMENTATION, PHOTOGRAPHS, AND COLLECTING ANY EVIDENCE ON OR
7 FROM THE BODY. THAT PARTICULAR MORNING I PHOTOGRAPHED USING
8 A 35 MILLIMETER, AND I COLLECTED OUR STANDARD HAIR SAMPLE. I
9 DID NAIL SCRAPINGS, COLLECTED HIS FINGERPRINTS, AND ALSO DID
10 A G.S.R. KIT.

11 Q. AND THAT WOULD BE ON WHOM?

12 A. THE VICTIM, MR. AUSTIN.

13 Q. SO YOU ATTENDED MR. AUSTIN'S AUTOPSY AND COLLECTED HAIR
14 SCRAPINGS -- HAIR SAMPLES, NAIL SCRAPINGS, AND ALSO DID A
15 G.S.R. KIT?

16 A. AND GOT FINGERPRINTS AND COLLECTED SOME OF HIS CLOTHING,
17 YES, MA'AM.

18 Q. AND WHAT WERE -- CAN YOU PLEASE EXPLAIN TO THE JURY WHAT
19 A G.S.R. KIT IS AND HOW YOU PERFORM THAT?

20 A. A G.S.R. KIT IS A GUN POWDER RESIDUE KIT. IT'S FAIRLY
21 STRAIGHTFORWARD. IT'S GOT TWO SETS OF SAMPLES THAT WE
22 COLLECT. THE FIRST IS A STICKY TAB, AND IT'S A LITTLE VIAL
23 THAT HAS AN ADHESIVE SIDE TO IT, AND WE JUST TAB THE BACKS OF
24 BOTH HANDS SEPARATELY AND THE PALMS OF BOTH HANDS SEPARATELY.
25 AND THEN WE ALSO COLLECT AND USE A SWAB THAT'S MOISTENED A

1 LITTLE BIT WITH ABOUT FIVE PERCENT NITRIC ACID SOLUTION, AND
2 THEN WE ALSO RUB THOSE SAME SPOTS SEPARATELY ON THE PALMS AND
3 ON THE BACKS OF BOTH HANDS.

4 Q. I WANT TO SHOW YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT
5 102. MAY I APPROACH, YOUR HONOR?

6 THE COURT: YOU MAY.

7 BY MS. MCDUFFIE:

8 Q. DO YOU RECOGNIZE THIS?

9 A. YES. THAT'S THE STICKY TABS FROM THE G.S.R. KIT.

10 MR. LEDDY: NO OBJECTION, YOUR HONOR.

11 MS. MCDUFFIE: YOUR HONOR, WE'D OFFER STATE'S 102.

12 THE COURT: LADIES AND GENTLEMEN OF THE JURY, STATE'S
13 EXHIBIT 102 WILL BE ADMITTED INTO EVIDENCE WITHOUT OBJECTION.
14 STATE'S 102 IN EVIDENCE.

15 (STATE'S EXHIBIT 102 WAS RECEIVED IN EVIDENCE.)

16 THE COURT: YOU MAY PUBLISH.

17 BY MS. MCDUFFIE:

18 Q. AND, MS. ELSEY, WHAT DID YOU DO ONCE YOU PERFORMED THE
19 G.S.R. KIT? WHAT DID YOU THEN DO WITH IT?

20 A. I PACKAGE IT. I BRING IT BACK TO THE LAB. I PACKAGE
21 IT, AND THEN I SUBMIT IT TO OUR EVIDENCE PERSONNEL WHICH THEN
22 TOOK IT TO S.L.E.D. FOR ANALYSIS.

23 Q. AND YOU ALSO ASSISTED THE PATHOLOGIST IN COLLECTING
24 EVIDENCE FROM THE SCENE -- FROM THE AUTOPSY?

25 A. WELL, HE COLLECTED ITEMS FROM THE ACTUAL -- DURING THE

1 AUTOPSY AND TURNED THEM OVER TO ME, AND I TOOK THEM BACK TO
2 OUR LAB.

3 MS. MCDUFFIE: MAY I APPROACH, YOUR HONOR.

4 THE COURT: YOU MAY.

5 BY MS. MCDUFFIE:

6 Q. I'M GOING TO SHOW YOU WHAT'S BEEN MARKED AS STATE'S
7 EXHIBIT 99, 101, 97, 98, AND 100. THAT'S STATE'S 97 TO 101.
8 DO YOU RECOGNIZE THOSE?

9 A. YES. THESE ARE THE PROJECTILES AND PELLETS THAT WERE
10 TURNED OVER TO ME FROM THE PATHOLOGIST AND ALSO COLLECTED
11 FROM ONE OF THE VICTIM'S SHIRTS.

12 MR. LEDDY: YOUR HONOR, WE JUST RENEW OUR PREVIOUS
13 OBJECTION TO THE LABELING OF THE WORD HOMICIDE ON THE LABEL.
14 THAT'S IT.

15 MS. MCDUFFIE: YOUR HONOR, WE'D OFFER---

16 THE COURT: WHICH HAS BEEN THE SUBJECT OF AN EARLIER
17 OBJECTION OVERRULED BY THE COURT.

18 MR. LEDDY: YES, SIR.

19 MS. MCDUFFIE: WE'D OFFER STATE'S 97 THROUGH 101 INTO
20 EVIDENCE.

21 THE COURT: 97 THROUGH 101 ARE ADMITTED INTO EVIDENCE
22 OVER OBJECTION. YOU MAY PUBLISH TO THE JURY. 97 THROUGH 101
23 INCLUSIVE IN EVIDENCE.

24 (STATE'S EXHIBITS 97 THROUGH 101 WERE RECEIVED IN
25 EVIDENCE.)

1 MS. MCDUFFIE: MAY I APPROACH, YOUR HONOR?

2 THE COURT: YOU MAY.

3 BY MS. MCDUFFIE:

4 Q. WILL YOU PLEASE TELL THE JURY WHERE THESE OBJECTS WERE
5 REMOVED FROM? AND TELL THEM THE EXHIBIT NUMBER WHEN YOU SHOW
6 THEM.

7 A. STARTING WITH EXHIBIT NUMBER 97 WHICH I MARKED 1-AE,
8 IT'S TWO PELLETS THAT WERE COLLECTED FROM THE VICTIM'S SHIRT.
9 EXHIBIT 98 THAT I HAVE MARKED 3-AE IS THE PROJECTILE
10 RECOVERED FROM THE LEFT CHEST CAVITY. EXHIBIT 99 THAT I HAVE
11 MARKED 2-AE IS THE PELLET FROM THE TOP LEFT SHOULDER.
12 EXHIBIT 100 MARKED 4-AE IS RECOVERED FROM THE ABDOMINAL AREA,
13 AND 101 MARKED 5-AE WAS FROM A PELLET FROM THE LEFT LUNG.

14 Q. DID YOU ALSO HAVE THE OPPORTUNITY TO COLLECT THE
15 VICTIM'S CLOTHING FROM THE AUTOPSY?

16 A. YES, MA'AM.

17 Q. I SHOW YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT 103.
18 DO YOU RECOGNIZE THIS? MAY I APPROACH, YOUR HONOR?

19 THE COURT: YOU MAY.

20 THE WITNESS: THAT APPEARS TO BE THE BLUE JEAN SHORTS
21 THAT I COLLECTED.

22 MR. LEDDY: NO OBJECTION, YOUR HONOR.

23 MS. MCDUFFIE: YOUR HONOR, WE'D OFFER STATE'S 103 INTO
24 EVIDENCE.

25 THE COURT: LADIES AND GENTLEMEN OF THE JURY, STATE'S

1 EXHIBIT 103 WILL BE ADMITTED INTO EVIDENCE WITHOUT OBJECTION.
2 103 IN EVIDENCE.

3 (STATE'S EXHIBIT 103 WAS RECEIVED IN EVIDENCE.)

4 THE COURT: YOU MAY PUBLISH.

5 BY MS. MCDUFFIE:

6 Q. DID YOU HAVE THE OPPORTUNITY TO NOTICE ANYTHING ABOUT
7 THOSE BLUE JEAN SHORTS?

8 A. FROM WHAT I RECALL, THERE WAS A PATTERN ON THE BACK SIDE
9 POSSIBLY FROM A GUNSHOT AND ALSO ANOTHER HOLE IN THE HIP AREA
10 WHICH WAS CONSISTENT WITH ANOTHER WOUND.

11 Q. AND AFTER YOU FINISHED WITH THE AUTOPSY AND COLLECTED
12 THE EVIDENCE, WHAT DID YOU THEN DO?

13 A. I THEN WENT TO ANOTHER ROOM IN THE HOSPITAL AND MADE
14 CONTACT WITH MR. BRYANT WHO HAD ALREADY BEEN IN SURGERY AND
15 TOOK A COUPLE OF PHOTOGRAPHS OF HIS INJURIES.

16 Q. AND DID YOU NOTICE ANY INJURIES ON THE DEFENDANT?

17 A. THERE WAS AN INJURY THAT WAS STITCHED ON HIS SIDE, AND
18 HE HAD SOME ABRASIONS ON HIS NOSE AND FOREHEAD.

19 Q. AND DID YOU PERFORM A G.S.R. KIT OR GUNSHOT RESIDUE KIT
20 ON THE DEFENDANT?

21 A. NO, I DIDN'T. IT'S REQUIRED TO TAKE THAT SAMPLE, THE
22 G.S.R. KIT, WITHIN SIX HOURS OF THE ACTUAL SHOOTING INCIDENT,
23 AND IT HAD BEEN PAST THAT TIME FRAME.

24 Q. AND HE HAD ALREADY BEEN TO SURGERY?

25 A. CORRECT.

1 Q. ARE YOU AWARE OF WHETHER OR NOT HIS BODY WAS CLEANED IN
2 PREPARATION FOR SURGERY?

3 A. IT APPEARED TO BE.

4 Q. AND WOULD THAT DESTROY GUNSHOT RESIDUE OR WOULD THAT...

5 A. IT COULD. THAT, IN ADDITION WITH THE TIME FRAME, YES,
6 MA'AM.

7 MS. MCDUFFIE: NOTHING FURTHER, YOUR HONOR.

8 THE COURT: BRING MY EXHIBITS BACK UP TO THE COURT
9 REPORTER, PLEASE. ANYTHING FURTHER ON DIRECT?

10 MS. MCDUFFIE: NO, YOUR HONOR.

11 THE COURT: CROSS-EXAMINATION?

12 MR. LEDDY: THANK YOU, YOUR HONOR. MAY IT PLEASE THE
13 COURT?

14 THE COURT: YES, SIR.

15 CROSS-EXAMINATION

16 BY MR. LEDDY:

17 Q. MS. ELSEY, I JUST HAVE A FEW QUESTIONS.

18 A. OKAY.

19 Q. NOW, FIRST OF ALL, YOU SAID THAT YOU DID TAKE SOME
20 PHOTOGRAPHS OF THE DEFENDANT? IS THAT RIGHT?

21 A. I DID.

22 MR. LEDDY: OKAY. AND MAY I APPROACH THE WITNESS, YOUR
23 HONOR?

24 THE COURT: YOU MAY.

25

1 BY MR. LEDDY:

2 Q. WHAT'S BEEN MARKED AS DEFENSE EXHIBIT 2, YOU MAY TAKE A
3 LOOK AT THAT FOR ME, PLEASE. DO YOU RECOGNIZE THAT
4 PHOTOGRAPH?

5 A. YES, SIR. IT APPEARS TO BE A PHOTOGRAPH OF THE ABRASION
6 THAT WAS ON THE FOREHEAD AND THE NOSE.

7 Q. AND WOULD YOU SAY THAT THAT FAIRLY AND ACCURATELY
8 DEPICTS WHAT YOU REMEMBER SEEING THAT DAY?

9 A. YES, SIR.

10 MR. LEDDY: YOUR HONOR, AT THIS TIME I'D LIKE TO
11 INTRODUCE THAT INTO EVIDENCE.

12 THE COURT: SHOW IT TO COUNSEL.

13 MR. LEDDY: THANK YOU.

14 MS. MCDUFFIE: NO OBJECTION, YOUR HONOR.

15 THE COURT: DEFENDANT'S EXHIBIT NUMBER 2, MR. LEDDY?

16 MR. LEDDY: YES, SIR.

17 THE COURT: LADIES AND GENTLEMEN OF THE JURY,
18 DEFENDANT'S EXHIBIT NUMBER 2 WILL BE ADMITTED INTO EVIDENCE
19 WITHOUT OBJECTION. DEFENDANT'S 2 IN EVIDENCE.

20 (DEFENDANT'S EXHIBIT 2 WAS RECEIVED IN EVIDENCE.)

21 THE COURT: YOU MAY PUBLISH.

22 MR. LEDDY: THANK YOU, YOUR HONOR.

23 BY MR. LEDDY:

24 Q. NOW, YOU SAID IN YOUR REPORT THAT YOU ALSO DID COLLECT
25 SOME SCRAPINGS FROM THE DECEDENT IN THIS CASE, MR. AUSTIN.

1 IS THAT CORRECT?

2 A. THAT'S CORRECT.

3 Q. AND THOSE ARE LEFT AND RIGHT FINGERNAIL SCRAPINGS.

4 A. THAT'S CORRECT.

5 Q. AND DO YOU RECALL IF THOSE SCRAPINGS WERE NOT SENT OFF
6 FOR ANALYSIS?

7 A. I BELIEVE THAT THEY WERE SENT TO S.L.E.D., IF I CAN
8 REFER TO MY REPORT. YEAH, IT APPEARS THAT INVESTIGATOR GROSS
9 SENT THOSE KITS. I DON'T HAVE THE DATE ON THIS PARTICULAR
10 PAPERWORK WHEN HE SENT THE ITEMS TO THE FIREARMS...

11 Q. THE FINGERNAIL SCRAPINGS?

12 A. UH-HUH. ALONG WITH THE G.S.R. KIT AND THE WHITE TOWEL.

13 Q. ALL RIGHT. DO YOU RECALL RECEIVING A RESULT ON THOSE
14 TESTS?

15 A. NO, SIR, I DO NOT.

16 Q. NOW, MY LAST QUESTION PERTAINS TO THE PROJECTILES THAT
17 WERE RECOVERED FROM MR. AUSTIN'S BODY.

18 A. YES, SIR.

19 Q. I SEE NO INDICATION WHERE ANY SPLINTERS OR WOOD
20 FRAGMENTS WERE COLLECTED ALONG WITH THOSE. IS THAT CORRECT?

21 A. NO, SIR.

22 Q. DO YOU RECALL ANY DISCUSSION ABOUT ANY WOOD IN THE BODY
23 OF THE DECEDENT AT THE TIME OF THE AUTOPSY?

24 A. NOT THAT I RECALL.

25 MR. LEDDY: THANK YOU. NOTHING FURTHER, YOUR HONOR.

1 THE COURT: REDIRECT?

2 REDIRECT EXAMINATION

3 BY MS. MCDUFFIE:

4 Q. ON DEFENDANT'S EXHIBIT NUMBER 2 THAT THEY SHOWED YOU,
5 THE INJURIES TO THE DEFENDANT'S FACE, WERE THOSE THE ONLY
6 INJURIES THAT YOU OBSERVED ON THE DEFENDANT BESIDES THE
7 STITCHES FROM THE SURGERY THAT DAY?

8 A. THAT'S ALL I HAVE DOCUMENTED IN MY NOTES.

9 Q. AND IF YOU HAD SEEN OTHER INJURIES, WOULD YOU HAVE
10 DOCUMENTED THOSE?

11 A. YES, MA'AM.

12 Q. AND IF A GUN IS FIRED -- IF A BULLET GOES THROUGH A
13 DOOR, WOULD YOU EXPECT TO FIND---

14 MR. LEDDY: OBJECTION, YOUR HONOR. SHE'S NOT BEEN
15 QUALIFIED.

16 THE COURT: SUSTAINED.

17 MS. MCDUFFIE: NOTHING FURTHER, YOUR HONOR.

18 THE COURT: RECROSS LIMITED TO REDIRECT?

19 MR. LEDDY: NOTHING, YOUR HONOR.

20 THE COURT: AS TO THIS WITNESS, SOLICITOR?

21 MS. MCDUFFIE: WE ASK THAT SHE BE EXCUSED, PLEASE.

22 MR. LEDDY: NO OBJECTION, YOUR HONOR.

23 THE COURT: LIEUTENANT ELSEY, YOU MAY STEP DOWN. YOU
24 ARE EXCUSED FROM THE TRIAL OF THIS CASE.

25 THE WITNESS: THANK YOU, SIR.

1 THE COURT: THANK YOU. CALL YOUR NEXT WITNESS,
2 SOLICITOR.

3 MR. CATHCART: YOUR HONOR, AT THIS TIME THE STATE CALLS
4 DAN DEFREESE.

5 F. DAN DEFREESE, AFTER BEING DULY SWORN, TESTIFIED
6 AS FOLLOWS:

7 THE CLERK: PLEASE HAVE A SEAT. STATE YOUR FULL NAME
8 FOR THE RECORD.

9 THE WITNESS: MY NAME IS FRANK DAN DEFREESE. IT'S
10 D-E-F-R-E-E-S-E.

11 THE COURT: YOUR WITNESS, COUNSEL.

12 MR. CATHCART: THANK YOU, YOUR HONOR.

13 DIRECT EXAMINATION

14 BY MR. CATHCART:

15 Q. WHERE ARE YOU EMPLOYED?

16 A. I WORK FOR THE SOUTH CAROLINA LAW ENFORCEMENT DIVISION
17 IN THE FORENSIC LABORATORY IN COLUMBIA.

18 Q. AND WHAT DO YOU DO THERE?

19 A. I'M ASSIGNED TO THE UNIT WITHIN THE LABORATORY WHERE WE
20 DO THE ANALYSIS OF FIREARM AND TOOL MARK EVIDENCE.

21 Q. AND WOULD YOU EXPLAIN TO THE JURY WHAT YOU DO IN YOUR
22 ASSIGNMENT TO THAT AREA?

23 A. PRINCIPALLY THE KIND OF TESTING I DO IS IN THE FIELD OF
24 FIREARMS. WE ALSO DO SOME IN THE FIELD OF PHYSICAL SECURITY
25 DEVICES AND LOCKS AND SAFES AND THAT SORT OF THING, BUT MOST

1 OF MY DAILY ASSIGNMENT HAS TO DO WITH THE ANALYSIS OF
2 FIREARMS RELATED TO EVIDENCE SUCH AS BULLETS OR CARTRIDGE
3 CASINGS, AND I'M USUALLY ASKED TO IDENTIFY, WHERE POSSIBLE, A
4 PARTICULAR BULLET BACK WITH THE GUN BARREL THAT FIRED IT IN
5 THE CASE OF RIFLE FIREARMS OR TO IDENTIFY FIRED CARTRIDGE
6 CASES BACK TO THE GUNS IN WHICH THEY WERE FIRED WHICH CAN
7 OCCUR IN VIRTUALLY ANY KIND OF FIREARM.

8 Q. AND HOW LONG HAVE YOU BEEN DOING THIS FOR S.L.E.D.?

9 A. FOR 41 YEARS.

10 Q. HAVE YOU EVER BEEN QUALIFIED AS AN EXPERT IN FIREARM
11 BALLISTICS AND IDENTIFICATION BEFORE?

12 A. YES, SIR.

13 Q. HOW MANY TIMES HAVE YOU BEEN SO IDENTIFIED AS AN EXPERT?

14 A. I DON'T ACTUALLY KNOW. I ESTIMATE IT TO BE BETWEEN 600
15 AND 700 TIMES.

16 Q. AND THAT'S WHEN YOU HAVE TESTIFIED IN COURTS OF LAW.

17 A. YES, MOSTLY IN COURTS OF GENERAL SESSIONS IN THIS STATE.

18 MR. CATHCART: YOUR HONOR, AT THIS TIME I'D SUBMIT---

19 THE COURT: ANY OBJECTION AS TO QUALIFICATIONS?

20 MR. LEDDY: NO, YOUR HONOR.

21 THE COURT: LADIES AND GENTLEMEN, NORMALLY THE LAW DOES
22 NOT PERMIT WITNESSES TO GET ON THE WITNESS STAND AND GIVE
23 OPINION TESTIMONY. AN EXCEPTION TO THIS RULE IS FOR THOSE
24 WITNESSES WHOM WE CALL EXPERT WITNESSES, WITNESSES WHO BY
25 SPECIAL KNOWLEDGE, SKILL, TRAINING OR EXPERIENCE OR

1 EDUCATION, IF QUALIFIED BY THE COURT, MAY GIVE AN OPINION AS
2 AN EXPERT IN THE MATTERS IN WHICH THE EXPERT CLAIMS TO BE SO
3 SKILLED. IN DETERMINING THE WEIGHT TO BE GIVEN SUCH EXPERT
4 OPINION, YOU SHOULD CONSIDER THE QUALIFICATIONS AND THE
5 CREDIBILITY OR BELIEVABILITY OF THE EXPERT, THE REASONS GIVEN
6 FOR HIS OPINION. YOU GIVE IT THE WEIGHT, IF ANY, TO WHICH
7 YOU DEEM IT ENTITLED. THE WITNESS IS QUALIFIED WITHOUT
8 OBJECTION.

9 MR. LEDDY: AS A FIREARMS EXPERT, YOUR HONOR.

10 THE COURT: FIREARMS EXPERT. THAT'S WHAT YOU'RE
11 OFFERING HIM AS.

12 MR. CATHCART: AND BALLISTICS ALSO, YOUR HONOR.

13 THE COURT: PARDON?

14 MR. CATHCART: BALLISTICS.

15 THE COURT: AND BALLISTICS.

16 MR. LEDDY: YES, YOUR HONOR.

17 THE COURT: FIREARMS AND BALLISTICS WITHOUT OBJECTION.
18 YOU MAY PROCEED, COUNSEL.

19 BY MR. CATHCART:

20 Q. WOULD YOU PLEASE DESCRIBE TO THE JURY BASICALLY WHAT IS
21 THE SCIENCE OF FIREARMS AND/OR BALLISTICS?

22 A. AS IT PERTAINS TO THE IDENTIFICATION OF BULLETS AND
23 CARTRIDGE CASES BACK TO THE GUNS IN WHICH THEY WERE FIRED,
24 THE TEST THAT WE'LL DO WITH THAT WILL BE TO TAKE A PARTICULAR
25 FIREARM WHEN A FIREARM IS SUBMITTED. WE'LL TEST-FIRE THAT

1 FIREARM, AND WE'LL OBTAIN KNOWN BULLETS AND KNOWN CARTRIDGE
2 CASES. WE WILL THEN MICROSCOPICALLY COMPARE THE MARKINGS ON
3 THE KNOWN BULLETS, THE KNOWN TEST BULLETS, WITH EACH OTHER
4 AND THE KNOWN TEST CARTRIDGE CASES WITH EACH OTHER. ONCE WE
5 KNOW THAT THE GUN IS CONSISTENT AND UNIQUE IN ITS MARKINGS,
6 WE CAN THEN PROCEED TO COMPARE ONE OF OUR TEST SPECIMENS WITH
7 ONE EVIDENCE SPECIMEN TO SEE IF THE SAME IDENTIFYING MARKINGS
8 ARE PRESENT ON BOTH.

9 THE MARKINGS I'D BE LOOKING FOR IN A CASE OF A BULLET
10 WOULD BE THE UNIQUE STRIATED MARKINGS THAT ARE PLACED ON THE
11 BULLET WHEN THE BULLET IS FORCED DOWN THE BARREL AND OUT OF
12 THE GUN. THAT'S BECAUSE AS THE GUN IS MANUFACTURED AND AS
13 IT'S USED, THERE ARE MARKINGS THAT ARE UNIQUE TO ONE AND ONLY
14 ONE BARREL. WHEN THOSE -- WHEN THE SIGNATURE OF THAT BARREL
15 IS PLACED ON A BULLET AND WHEN THE BULLET IS RECOVERED IN
16 SUFFICIENTLY UNDAMAGED CONDITION, WE CAN IDENTIFY ONE BULLET
17 BACK TO THE GUN BARREL IN WHICH IT WAS FIRED.

18 SIMILARLY, WITH CARTRIDGE CASES AT THE TIME THAT THE
19 CARTRIDGE CASE IS IGNITED, AT THE TIME THE POWDER IS BURNING
20 WITHIN THE CARTRIDGE CASE AS A RESULT OF THE CARTRIDGE BEING
21 FIRED, THERE'S A VERY HIGH PRESSURE BUILT UP INSIDE THE
22 CARTRIDGE CASE WHICH MAKES THE CARTRIDGE CASE CLING TO
23 CERTAIN SURFACES WITHIN THE FIREARM ITSELF. THE SURFACES
24 THAT THE CARTRIDGE CASE WILL TOUCH WILL BE, OF COURSE, THE
25 FIRING PIN THAT INITIATED THE FIRING AND THEN THE BREECH FACE

1 WILL EXPAND OR THE CARTRIDGE WILL EXPAND TO TOUCH THE BREECH
2 FACE SO THAT ANY UNIQUE MARKINGS THAT MIGHT BE PRESENT THERE
3 ARE TRANSFERRED TO THE CARTRIDGE CASE. THERE ARE ALSO MARKS
4 THAT CAN BE FOUND LEFT BY THE EXTRACTOR, THE EJECTOR, OR SOME
5 OTHER MARKS IN THE CASE OF REPEATING FIREARMS.

6 WHERE WE FIND THOSE MARKS, WE ALSO DO A SIDE-BY-SIDE
7 COMPARISON UNDER THE MICROSCOPE WITH A TEST CARTRIDGE CASE
8 AND AN EVIDENCE CARTRIDGE CASE TO SEE IF THE SAME MARKINGS
9 ARE PRESENT, AND WHERE THEY'RE PRESENT AND SUFFICIENT WE CAN
10 CONCLUDE THAT A PARTICULAR CARTRIDGE CASE WAS FIRED BY ONE
11 PARTICULAR FIREARM.

12 Q. NOW, IS THERE ANY DIFFERENCE IF IT'S -- IF WE'RE TALKING
13 ABOUT SHOTGUN SHELLS AS OPPOSED TO CARTRIDGES OF BULLETS?

14 A. NOT WITH REGARD TO CARTRIDGES. THE MARKINGS THAT ARE
15 PLACED ON FIRED SHOT SHELLS ARE PLACED THERE IN THE SAME
16 MANNER AS THOSE OF RIFLES OR REVOLVERS OR PISTOLS. IN THE
17 CASE OF SHOTGUNS, NORMALLY WHERE THEY'RE SHOOTING MULTIPLE
18 SHOT, WHERE THEY'RE SHOOTING BUCKSHOT OR BIRDSHOT, IT'S
19 NORMALLY DIFFICULT TO IMPOSSIBLE TO IDENTIFY A PARTICULAR
20 SHOT BACK TO THE SHOTGUN IN WHICH IT WAS FIRED. IT IS
21 POSSIBLE UNDER CERTAIN CIRCUMSTANCES TO IDENTIFY CERTAIN
22 KINDS OF WADS BACK TO A PARTICULAR SHOTGUN, AND IT'S POSSIBLE
23 IN LIMITED INSTANCES TO IDENTIFY SOME SLUGS BACK TO A
24 PARTICULAR SHOTGUN. BUT AS A GENERAL RULE, THE PROJECTILES
25 FROM SHOTGUNS ARE DIFFICULT TO IMPOSSIBLE TO IDENTIFY WHEREAS

1 THEY'RE MUCH MORE READILY IDENTIFIED IN THE CASE OF A RIFLED
2 FIREARM SUCH AS A RIFLE OR A PISTOL OR A REVOLVER.

3 Q. AND DOES THAT HAVE TO DO WITH THE RIFLING OR THE LACK OF
4 RIFLING IN A SHOTGUN AS COMPARED TO A RIFLE OR PISTOL?

5 A. IT HAS TO DO WITH THE FACT THAT MOST SHOTGUNS ARE NOT
6 RIFLED. MOST SHOTGUNS DO NOT GRIP THE INDIVIDUAL PROJECTILES
7 IN THE WAY THAT A BULLET IS GRIPPED BY THE BORE OF A RIFLED
8 FIREARM. SO THERE JUST ISN'T THAT TRANSFER OF MARKINGS THAT
9 OCCURS AS CONSISTENTLY IN THE CASE OF SHOTGUNS AS IT IS IN
10 THE CASE OF PISTOLS, REVOLVERS, AND RIFLES.

11 Q. AT SOME POINT WERE YOU ASKED TO MAKE AN ANALYSIS? YOUR
12 HONOR, MAY I APPROACH---

13 THE COURT: YOU MAY.

14 MR. CATHCART: ---PLEASE? THANK YOU.

15 BY MR. CATHCART:

16 Q. WERE YOU ASKED TO MAKE AN ANALYSIS AS TO EVIDENCE
17 CONCERNING LAB NUMBER L-9912038?

18 A. YES, SIR, I WAS.

19 Q. AND THIS IS IN REFERENCE TO -- WHAT DATE DID YOU MAKE
20 THIS ANALYSIS? EXCUSE ME.

21 A. ACTUALLY I BEGAN MY TESTING -- I CONCLUDED IT ON
22 FEBRUARY THE 7TH OF 2001, AND I OPENED THE EVIDENCE ON
23 JANUARY THE 23RD, 2001. SO IT WAS SOMETIME BETWEEN
24 JANUARY 23RD AND FEBRUARY THE 1ST.

25 MR. CATHCART: YOUR HONOR, AGAIN MAY I APPROACH AND

1 GATHER THE EVIDENCE THAT HE WILL EXAMINE?

2 THE COURT: YOU MAY.

3 MR. CATHCART: BEG THE COURT'S INDULGENCE. THIS MAY
4 TAKE A LITTLE BIT.

5 THE COURT: ALL RIGHT.

6 MR. CATHCART: I'LL HAND THIS TO YOU. IN FACT, IF YOU
7 COULD---

8 THE COURT: REFER TO THE EXHIBIT NUMBERS.

9 MR. CATHCART: I WILL, YOUR HONOR.

10 BY MR. CATHCART:

11 Q. WHAT I HANDED TO YOU IS STATE'S EXHIBIT NUMBER 56
12 THROUGH 59, 61 THROUGH 62, 76 THROUGH 77, 79 THROUGH 87, 95,
13 96, 100. DID YOU HAVE AN OPPORTUNITY TO OBSERVE -- TO
14 ANALYZE THOSE ITEMS PURSUANT TO THIS CASE?

15 A. YES, SIR. I HAVE EXAMINED ALL OF THESE ITEMS EXCEPT
16 ITEM 07 OR IS IT 97?

17 Q. I APOLOGIZE. THE REST OF THESE---

18 A. I HAVEN'T EXAMINED 99.

19 Q. MAY I APPROACH THE WITNESS, YOUR HONOR?

20 A. 89 OR 88.

21 THE COURT: YOU MAY.

22 BY MR. CATHCART:

23 Q. LET ME SHOW YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT
24 NUMBER 76 AND 76-A ALONG WITH ITEMS -- ITEM 95.

25 A. ALL RIGHT, SIR. (THE WITNESS LOOKS AT THE EXHIBITS.)

1 YES, I HAVE EXAMINED THESE BEFORE.

2 Q. LET ME SHOW YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT
3 NUMBER 114. MAY I APPROACH THE WITNESS AGAIN, YOUR HONOR?

4 THE COURT: YOU MAY.

5 BY MR. CATHCART:

6 Q. HAVE YOU HAD AN OPPORTUNITY TO REVIEW THIS? I'M SORRY.
7 I'LL SIT IT DOWN WHERE YOU CAN GET IT ALL.

8 A. YES, SIR.

9 Q. DOES THIS ACCURATELY REFLECT THE ANALYSIS THEN MADE BY
10 YOUR REPORT AND ANALYSIS THAT YOU MADE AS TO THE RELATIONSHIP
11 OF THESE ITEMS OF EVIDENCE TO EACH OTHER?

12 A. YES, SIR.

13 MR. CATHCART: OKAY.

14 MR. LEDDY: YOUR HONOR, I'M OBJECTING. MAY WE APPROACH?

15 THE COURT: YOU MAY.

16 (WHEREUPON, A BENCH CONFERENCE WAS HELD.)

17 THE COURT: MR. DEFREESE, YOU MAY STEP DOWN. COUNSEL IS
18 GOING TO PUT THE EXHIBIT -- I'M SUSTAINING THE OBJECTION, BUT
19 HE'S GOING TO PUT THE EXHIBIT ON THE EASEL AND HAND YOU A
20 MICROPHONE, ALTHOUGH I'M NOT SURE YOU NEED IT, WHICH WILL
21 AMPLIFY YOUR VOICE, AND YOU CAN USE THE EXHIBIT FOR
22 DEMONSTRATIVE PURPOSES IN FRONT OF THE JURY. IT IS NOT
23 ADMITTED INTO EVIDENCE PER YOUR OBJECTION. PUT IT ON THE
24 EASEL. MR. DEFREESE, IF YOU'LL STEP DOWN, PLEASE, SIR. HAND
25 HIM THE MICROPHONE, PLEASE, MR. CATHCART.

1 MR. LEDDY: YOUR HONOR, IF I MAY?

2 THE COURT: YOU CAN COME AROUND SO YOU CAN VIEW WHAT'S
3 BEING SHOWN BY COUNSEL TO THE JURY. DEMONSTRATIVE PURPOSES
4 ONLY MARKED AS WHAT NUMBER?

5 MR. CATHCART: IT'S MARKED AS STATE'S EXHIBIT NUMBER
6 114, YOUR HONOR.

7 THE COURT: FOR DEMONSTRATIVE PURPOSES ONLY AND WILL BE
8 MADE A COURT'S EXHIBIT FOR THE RECORD IN THIS CASE.

9 MR. CATHCART: IF YOU COULD TELL -- I'M SORRY.

10 THE COURT: HAND HIM THE MICROPHONE. YOU GET ON THIS
11 SIDE.

12 MR. CATHCART: THIS ONLY GOES THIS FAR.

13 THE COURT: IF YOU COME -- CAN YOU COME TO THE OTHER
14 SIDE SO THE COURT REPORTER CAN SEE YOU WHEN YOU TALK? AND IF
15 YOU'LL GET ON THIS SIDE, RICHARD, SO YOU CAN PUT YOUR BACK TO
16 HER.

17 MR. CATHCART: YES, SIR.

18 BY MR. CATHCART:

19 Q. YOU JUST TELL ME WHAT YOU NEED, AND I'LL PICK IT UP FOR
20 YOU.

21 A. I'VE GOT IT KIND OF IN GROUPS.

22 Q. OKAY.

23 A. ALL RIGHT. LET'S SEE. WE'VE GOT...

24 Q. I'LL GET YOU THE POINTER.

25 A. THANK YOU.

1 Q. YES, SIR.

2 A. ALL RIGHT. THERE ARE TWO FIREARMS INVOLVED IN THIS
3 CASE. THE MOSSBERG PUMP SHOTGUN, STATE'S EXHIBIT 95, THIS IS
4 A .20 GAUGE THREE-INCH MAGNUM SHOTGUN WITH A PISTOL GRIP.

5 Q. IS THERE ANYTHING UNUSUAL ABOUT THE BARREL? IS IT AS IT
6 COMES FROM THE FACTORY?

7 A. NO, SIR. THE BARREL ON THIS GUN WAS MARKED AS
8 ORIGINALLY BEING A 28-INCH ACCUCHOKE GUN, THAT IS, THE BARREL
9 WOULD HAVE BEEN SOMEWHAT LONGER AND WOULD HAVE BEEN EQUIPPED
10 WITH A SCREW-IN SHOULDER. THE BARREL HAS BEEN SAWED-OFF AT
11 LESS THAN THE LENGTH THAT IT WAS AT THE TIME IT WAS MADE.

12 Q. YES, SIR. THANK YOU.

13 A. THERE'S ALSO A .32 SMITH AND WESSON CALIBER ROSSI
14 REVOLVER WHICH IS STATE'S EXHIBIT 76, YEAH. YES, SIR,
15 STATE'S EXHIBIT 76. AS PART OF MY TEST, I TOOK THESE TWO
16 FIREARMS AND I TEST-FIRED AMMUNITION IN THEM TO USE TO
17 COMPARE WITH THE VARIOUS OTHER SPECIMENS THAT WERE SUBMITTED.
18 THAT IS, I HAD BULLETS AND CARTRIDGE CASES FIRED BY THIS
19 REVOLVER, AND I HAD CARTRIDGE CASES FIRED BY THE SHOTGUN.

20 Q. ARE THOSE THE STANDARD THAT YOU WOULD TEST THE OTHER
21 CARTRIDGES THAT YOU WERE FINDING OR THAT HAD BEEN PUT IN
22 EVIDENCE?

23 A. YES. THAT'S THE STANDARD WAY IN WHICH IT'S DONE. NOW,
24 AMONG THE OTHER THINGS THAT WERE RECEIVED, THERE WAS A BOX OF
25 UNFIRED .32 SMITH AND WESSON, A LONG CALIBER AMMUNITION.

1 THIS IS THE CORRECT AMMUNITION FOR USE IN THE .32 CALIBER
2 REVOLVER IN STATE'S EXHIBIT 76. THERE WERE 41 CARTRIDGES IN
3 THIS BOX. THE BOX NORMALLY WOULD HOLD 50 WHEN FULL. I ALSO
4 SHOT FOUR OF THE CARTRIDGES FROM THIS BOX DURING MY TEST, AND
5 THE FOUR TEST FIRES ARE IN THE BAG ALONG WITH THIS. THIS IS
6 ITEM 77.

7 SO THERE'S REALLY NOTHING TO SAY ABOUT ITEM 77 EXCEPT
8 IT'S THE SAME CALIBER, BRAND, AND TYPE AMMUNITION AS MOST OF
9 THE .32 S&W CALIBER SPECIMENS IN THIS CASE. THERE WERE TWO
10 C.V.C. MAKE .32 S&W LONG CARTRIDGE CASES. THE REST WERE
11 WINCHESTERS.

12 Q. AND WHAT IS -- C.V.C. IS WHAT?

13 A. IT'S A DIFFERENT MANUFACTURE. IT'S JUST A DIFFERENT
14 MAKE OF THE CARTRIDGE.

15 Q. BUT THEY DID NOT COME FROM THIS BOX.

16 A. THEY WOULD NOT HAVE BEEN ORIGINALLY IN THAT BOX. THEY
17 WOULD HAVE BEEN -- THEY WERE PRODUCED SOMEWHERE ELSE. WE
18 HAVE FIRED SHOT SHELLS. WELL, WE HAVE TWO OTHER -- IF I CAN
19 DIGRESS JUST A SECOND. ITEMS 58 AND 57 ARE UNFIRED .20 GAUGE
20 SHOTGUN SHELLS. THESE ARE THE CORRECT AMMUNITION TO USE IN
21 THE SHOTGUN, BUT BEYOND NOTING THAT THEY WERE THE CORRECT
22 AMMUNITION, I DIDN'T DO ANY MICROSCOPIC ANALYSIS OF THESE.
23 THESE ARE NOT THE RIGHT CALIBER, OF COURSE, TO GO WITH THE
24 REVOLVER, BUT THEY WOULD FIRE IN THE SHOTGUN.

25 STATE'S EXHIBITS 56, 59, 61, 62, 79, 80, 81, 86, AND 87

1 WERE ALL FIRED .20 GAUGE SHOT SHELLS. I CONDUCTED A
2 MICROSCOPIC ANALYSIS BETWEEN EACH OF THE SHOTGUN SHELLS IN
3 EACH EXHIBIT. THERE'S ONE SHOTGUN SHELL PER EXHIBIT, AND I
4 FOUND EITHER MATCHING FIRING PIN IMPRESSIONS OR MATCHING
5 BREECH FACE IMPRESSIONS OR BOTH ON THESE EXHIBITS AND ON TEST
6 SHOT SHELLS THAT I FIRED IN STATE'S EXHIBIT 90 IN THE
7 SHOTGUN.

8 Q. I BELIEVE THAT'S STATE'S EXHIBIT NUMBER---

9 A. EXCUSE ME. 95.

10 Q. YES, SIR.

11 A. FROM THIS I CONCLUDED THAT ALL OF THESE SHOT SHELLS WERE
12 FIRED BY THAT SHOTGUN.

13 Q. YES, SIR.

14 A. WITH THE REVOLVER WHICH IS STATE'S EXHIBIT 76, IT
15 CONSISTED OF THE REVOLVER AND SIX FIRED CARTRIDGE CASES. IN
16 ADDITION TO THE SIX FIRED CARTRIDGE CASES THAT WERE RECEIVED
17 WITH THE REVOLVER, THERE WERE OTHER FIRED .32 SMITH AND
18 WESSON LONG CALIBER CARTRIDGE CASES CONSISTING OF ITEMS -- OF
19 EXHIBITS 82, 83, 84, AND 85. SO EACH EXHIBIT, EXCEPT EXHIBIT
20 76, CONTAINS ONE FIRED CARTRIDGE CASE. STATE'S 76-A CONTAINS
21 SIX. I COMPARED EACH OF THESE CARTRIDGE CASES WITH CARTRIDGE
22 CASES FIRED BY THE REVOLVER, BY STATE'S EXHIBIT 76, AND I
23 FOUND MATCHING BREECH FACE AND FIRING PIN IMPRESSIONS FROM
24 WHICH I CONCLUDED THAT ALL OF THESE CARTRIDGE CASES WERE
25 FIRED BY THAT REVOLVER.

1 IF I OMITTED IT, STATE'S EXHIBIT 80 IS ALSO A FIRED .20
2 GAUGE SHOT SHELL. I DID A MICROSCOPIC ANALYSIS OF THIS AND
3 CONCLUDED THAT THIS SHOT SHELL WAS INDEED FIRED BY THE -- BY
4 THE MOSSBERG SHOTGUN, BY STATE'S EXHIBIT 95. EACH OF THESE
5 CONTAINS ONE -- THIS IS STATE'S EXHIBIT 98 AND 100. EACH OF
6 THESE CONTAINS A FIRED .32 CALIBER PLAIN LEAD BULLET. I
7 COMPARED BOTH OF THESE BULLETS WITH TEST BULLETS FIRED BY THE
8 REVOLVER, STATE'S EXHIBIT 76. I FOUND MATCHING INDIVIDUAL
9 MARKS ON BOTH, AND I CONCLUDED THAT BOTH OF THESE BULLETS
10 WERE FIRED BY THAT REVOLVER.

11 THERE IS ANOTHER BULLET CONTAINED IN STATE'S EXHIBIT 96
12 THAT WAS ALSO A .32 CALIBER REVOLVER THAT HAD SIMILARITIES TO
13 TEST BULLETS FIRED BY THAT REVOLVER, BUT THIS BULLET WAS TOO
14 BADLY DAMAGED FOR ME TO CONCLUDE THAT THIS BULLET---

15 Q. THIS IS 96?

16 A. NO, EXCUSE ME. I TOLD YOU WRONG. 96 -- EXHIBIT 98 WAS
17 THE BULLET THAT WAS TOO BADLY DAMAGED TO CONCLUDE IT WAS
18 FIRED BY THAT REVOLVER.

19 Q. WHEN YOU SAY TOO BADLY DAMAGED, WHAT DO YOU MEAN?

20 A. IT MEANS THAT THE SURFACE OF THE BULLET WAS DEFORMED,
21 ABRADED OR IN SOME OTHER WAY DAMAGED SO THAT THE MARKS THAT
22 THE GUN LEFT ON THE SURFACE, THE MARKS THAT I USED TO
23 ESTABLISH MY IDENTIFICATIONS, WERE JUST NOT SUFFICIENTLY
24 THERE. THERE WERE SOME SIMILARITIES BETWEEN THE TEST BULLETS
25 AND THE BULLET IN STATE'S EXHIBIT 98, BUT THEY JUST WERE NOT

1 ENOUGH TO CONCLUDE THAT THIS BULLET WAS FIRED BY THAT GUN AND
2 NO OTHER GUN.

3 Q. BUT IS IT A BULLET THAT IS CONSISTENT WITH COMING FROM
4 THAT GUN?

5 A. OH, YES. IT'S A .32 CALIBER PLAIN LEAD BULLET. IT'S
6 THE SAME CALIBER, THE SAME TYPE OF AMMUNITION, AND IT HAS THE
7 SAME CLASS CHARACTERISTICS, BUT IT'S JUST TOO BADLY DAMAGED
8 ON ITS INDIVIDUAL MARKINGS TO BE CERTAIN THAT IT WAS FIRED BY
9 THAT GUN.

10 Q. OKAY.

11 A. IT COULD HAVE BEEN FIRED BY THAT GUN. BUT THE OTHER
12 TWO, THE BULLETS IN STATE'S EXHIBIT 100 AND STATE'S EXHIBIT
13 96, HAD SUFFICIENT UNDAMAGED MARKINGS FOR ME TO CONCLUDE THAT
14 THESE TWO WERE FIRED BY THAT REVOLVER.

15 Q. WHICH IS STATE'S EXHIBIT NUMBER 76.

16 A. YES, SIR.

17 Q. THANK YOU, SIR. IF YOU WOULD PLEASE GO AHEAD AND TAKE A
18 SEAT BACK.

19 A. (THE WITNESS COMPLIES.)

20 THE COURT: RICHARD?

21 MR. CATHCART: YES, SIR, I'M COMING UP.

22 THE COURT: GIVE THAT EXHIBIT TO THE COURT REPORTER.
23 THAT WILL BE A COURT'S EXHIBIT IN LIGHT OF THE FACT THAT IT
24 WAS USED DEMONSTRATIVELY, AND PUT THE EASEL UP FOR ME IF YOU
25 WOULD.

1 MR. CATHCART: YES, SIR.

2 (COURT'S EXHIBIT 5 WAS MARKED FOR IDENTIFICATION ONLY.)

3 MR. CATHCART: YOUR HONOR, IT IS NOW LISTED AS COURT'S
4 EXHIBIT NUMBER 5.

5 THE COURT: VERY WELL. PROCEED.

6 BY MR. CATHCART:

7 Q. DID YOU FIND BOTH STATE'S EXHIBIT NUMBER 95 AND STATE'S
8 EXHIBIT NUMBER 96 (SIC) TO BE IN PROPER WORKING ORDER.

9 A. STATE'S EXHIBIT 76---

10 Q. 76.

11 A. ---AND 95. YES, THEY WERE BOTH IN GOOD WORKING ORDER.

12 Q. WOULD YOU DESCRIBE TO THE JURY BASICALLY WHAT TYPE OF
13 SHOTGUN IS THE MOSSBERG 500 SERIES, I BELIEVE YOU SAID?

14 A. YES, IT'S A MOSSBERG MODEL 500 C. IT'S A PUMP-ACTION
15 SHOTGUN. THAT IS, IT'S A MANUALLY-OPERATED FIREARM WHICH, IF
16 IT WERE NOT LOCKED---

17 MR. CATHCART: YOUR HONOR, IF I MAY, MAY HE UNDO THE
18 LOCK?

19 THE COURT: HE MAY, TO DEMONSTRATE TO THE JURY.
20 COUNSEL, YOU MAY COME AROUND.

21 MR. CATHCART: MAY I APPROACH, YOUR HONOR?

22 THE COURT: YOU MAY.

23 BY MR. CATHCART:

24 Q. IS THE GUN CLEAR?

25 A. IT IS. STATE'S EXHIBIT 95 IS A MANUALLY-OPERATED

1 FIREARM. IT'S A PUMP SHOTGUN IN WHICH THE FORE-END IS
2 ACTUALLY USED TO MANIPULATE THE POSITION OF THE BOLT. IN
3 ORDER TO FIRE THE GUN, EITHER A CARTRIDGE CAN BE MANUALLY
4 PLACED IN THE CHAMBER OR MORE COMMONLY CARTRIDGES ARE LOADED
5 INTO A TUBULAR MAGAZINE THAT LIES UNDER THE BARREL. UP TO
6 FIVE UNFIRED CARTRIDGES CAN BE PLACED IN THE MAGAZINE WITH AN
7 ADDITIONAL CARTRIDGE IN THE CHAMBER GIVING IT A MAXIMUM
8 CAPACITY OF SIX ROUNDS WITHOUT RELOADING.

9 ONCE A CARTRIDGE IS IN THE CHAMBER AND CARTRIDGES ARE IN
10 THE MAGAZINE, WHERE MY THUMB IS NOW IS THE MANUAL SAFETY
11 CATCH WHICH IS A SLIDING SAFETY ON THE TANG. IF IT'S PUSHED
12 FORWARD AND THE TRIGGER PULLED, THE FIRST SHOT WOULD BE
13 FIRED. IN ORDER TO FIRE ANOTHER SHOT, IT'S NECESSARY FOR THE
14 SHOOTER TO MANUALLY PULL THE FORE-END TO THE REAR WHICH WILL
15 EXTRACT AND EJECT THE CARTRIDGE THAT WAS JUST FIRED. A
16 CARTRIDGE FROM THE MAGAZINE WILL BE POSITIONED SO THAT THE
17 FORWARD STROKE OF THE FOREARM WILL PICK THE CARTRIDGE UP,
18 CHAMBER IT, CLOSE THE BOLT, LOCK THE BOLT, AND PREPARE IT FOR
19 THE NEXT FIRING. THE ACT OF THE BOLT GOING TO THE REAR
20 COCKED THE HAMMER OF THE GUN WHICH IS INSIDE. SO WHEN
21 ANOTHER SHOT IS FIRED, EACH TIME IT'S NECESSARY FOR THE PUMP
22 HANDLE TO RECIPROCATE TO BRING THE NEXT CARTRIDGE INTO PLAY.

23 Q. IS IT POSSIBLE TO FIRE MORE THAN ONE SHOT WITHOUT
24 RACKING THAT PUMP BACK?

25 A. NO, SIR.

1 Q. AND IF THERE WAS FOUND -- LET'S SEE. I BELIEVE YOU
2 TESTIFIED YOU ANALYZED ONE, TWO, THREE, FOUR, FIVE, SIX,
3 SEVEN - EXCUSE ME - SIX, SEVEN, EIGHT SPENT SHOTGUN SHELLS.
4 HE WOULD HAVE HAD TO RACK THAT BACK---

5 A. EIGHT TIMES.

6 Q. ---EIGHT TIMES. AND WOULD HE HAVE HAD TO RELOAD THE GUN
7 TO SHOOT THAT SEVEN AND EIGHT?

8 A. YES, BECAUSE IT CAN ONLY HOLD AS MANY AS SIX WITHOUT
9 RELOADING. SO IT WOULD HAVE HAD TO HAVE BEEN RELOADED AT
10 LEAST ONCE.

11 MR. CATHCART: OKAY. YOUR HONOR, AT THIS TIME FOR THE
12 RECORD I'M SECURING THE SHOTGUN ONCE AGAIN.

13 THE COURT: MR. DEFREESE, IS THE GUN SECURE?

14 THE WITNESS: IT IS, SIR.

15 THE COURT: VERY WELL.

16 MR. CATHCART: YOUR HONOR, AT THIS TIME I'D LIKE TO HAVE
17 HIM DEMONSTRATE THE OPERATION OF A DOUBLE-ACTION REVOLVER.

18 THE COURT: VERY WELL. COME BACK AROUND, MR. LEDDY, SO
19 YOU CAN VIEW IT.

20 MR. CATHCART: MAY I FREE---

21 THE COURT: YOU MAY.

22 THE WITNESS: STATE'S EXHIBIT 76 IS A ROSSI DOUBLE-
23 ACTION REVOLVER. IT'S IN .32 SMITH AND WESSON LONG CALIBER,
24 BUT IT HAS A CYLINDER THAT'S CAPABLE OF HOLDING AS MANY AS
25 SIX CARTRIDGES SO IT CAN FIRE -- BE FIRED AS MANY AS SIX

1 TIMES BETWEEN LOADINGS. IT'S MANUALLY LOADED. THE SHOULDER
2 IS CLOSED WHICH PREPARES IT FOR FIRING. THEREAFTER, IT CAN
3 BE FIRED EITHER IN THE SINGLE-ACTION MODE BY MANUALLY COCKING
4 THE HAMMER AND THEN PULLING THE TRIGGER TO FIRE THE GUN OR IT
5 CAN BE FIRED IN A DOUBLE-ACTION MODE BY A SINGLE LONG PULL OF
6 THE TRIGGER WHICH BOTH COCKS THE HAMMER AND THEN AT SOME
7 POINT RELEASES THE HAMMER TO PERMIT FIRING.

8 BY MR. CATHCART:

9 Q. IS THERE A DIFFERENCE IN TRIGGER WEIGHT AS OPPOSED TO
10 SINGLE-ACTION AND DOUBLE-ACTION?

11 A. THERE IS.

12 Q. WHAT'S THE DIFFERENCE?

13 A. IT TAKES MORE EFFORT WHEN YOU'RE FIRING A DOUBLE-ACTION
14 BECAUSE YOU'RE DOING TWO THINGS. YOU'RE BOTH COCKING THE
15 HAMMER AND FIRING IT. IN THE CASE OF STATE'S EXHIBIT 76, IT
16 HAD A DOUBLE-ACTION TRIGGER PULL OF TEN AND ONE-QUARTER
17 POUNDS AND A SINGLE-ACTION TRIGGER PULL OF THREE AND A HALF
18 POUNDS. SO IT TAKES CONSIDERABLY LESS EFFORT TO PULL THE
19 TRIGGER IN THIS MODE THAN IT DOES WHEN YOU'RE IN THE DOUBLE-
20 ACTION MODE, GIVING IT THE LONG, SINGLE PULL OF THE TRIGGER.

21 AFTER IT FIRES, AFTER YOU FIRE IT AS MANY AS SIX ROUNDS,
22 IT'S NECESSARY TO OPEN THE CYLINDER BY DEPRESSING THIS LATCH,
23 AND THEN ALL SIX CARTRIDGES WOULD BE EXTRACTED AND REMOVED
24 FROM THE GUN AT ONE TIME. THIS IS NOT THE KIND OF GUN WHERE
25 EACH TIME YOU FIRE IT A CARTRIDGE CASE IS EJECTED FROM THE

1 GUN. THE CARTRIDGE CASES ARE PUT IN MANUALLY AND REMOVED
2 MANUALLY AT ANY TIME AFTER FIRING CEASES.

3 Q. SO AFTER YOU REMOVE THE SHELLS, YOU WOULD HAVE TO PLACE
4 THEM INDIVIDUALLY INTO THE GUN AGAIN.

5 A. YES. AFTER YOU'VE FIRED AS MANY AS SIX ROUNDS, YOU HAVE
6 TO MANUALLY EXTRACT AND EJECT THE SIX, THEN PUT MORE IN.

7 Q. TO SHOOT SOME MORE.

8 A. CORRECT.

9 Q. AND IN THIS CASE YOU ANALYZED A TOTAL OF SIX, SEVEN,
10 EIGHT, NINE, AND TEN SHELL CASINGS?

11 A. THAT'S CORRECT.

12 Q. SO HE RELOADED AT LEAST ONCE THAT YOU KNOW OF.

13 A. YES. TO FIRE TEN ROUNDS, HE HAD TO RELOAD AT LEAST
14 ONCE.

15 MR. CATHCART: YOUR HONOR, AT THIS TIME I'M GOING TO ASK
16 TO RE-SECURE THE WEAPON.

17 THE COURT: PLEASE DO.

18 BY MR. CATHCART:

19 Q. IS THIS GUN SECURE?

20 A. IT IS.

21 MR. CATHCART: YOUR HONOR, THE GUN IS SECURE.

22 THE COURT: VERY WELL.

23 MR. CATHCART: BEG THE COURT'S INDULGENCE.

24 THE COURT: YES, SIR.

25 MR. CATHCART: PLEASE ANSWER ANY QUESTIONS FROM DEFENSE

1 COUNSEL.

2 THE COURT: MR. LEDDY, CROSS-EXAMINATION.

3 MR. LEDDY: THANK YOU, YOUR HONOR.

4 THE COURT: HOLD ON A SECOND.

5 MR. LEDDY: YES, SIR.

6 THE COURT: PROCEED.

7 MR. LEDDY: THANK YOU.

8 CROSS-EXAMINATION

9 BY MR. LEDDY:

10 Q. NOW, PRELIMINARILY I JUST WANT TO ASK YOU ONE QUESTION.

11 IF YOU SHOOT A GUN THIS MANY TIMES IN A HOTEL ROOM, THAT'S
12 GOING TO MAKE QUITE A RACKET; RIGHT?

13 A. IT WOULD MAKE QUITE A RACKET ANYWHERE.

14 Q. OKAY. AND YOU CAN ATTEST THAT IT WOULD MAKE YOUR EARS
15 RING; RIGHT?

16 A. IT CERTAINLY COULD.

17 Q. AND IT WOULD AFFECT YOUR HEARING FOR SOMETIME
18 THEREAFTER?

19 A. IT COULD; YES, SIR.

20 Q. OKAY. AND THAT COULD LAST FOR HOURS, CAN'T IT?

21 A. YES, IT COULD.

22 Q. OKAY. NOW, IN THE DOUBLE-ACTION MODE OF THE PISTOL,
23 THAT GUN WILL SHOOT AS FAST AS YOU CAN PULL THAT TRIGGER,
24 WON'T IT?

25 A. CORRECT.

1 Q. OKAY. NOW, I WANT TO MOVE ON TO THE EVIDENCE ABOUT THE
2 BULLET FRAGMENTS IN THIS CASE, THE .32 FRAGMENTS, THE .32
3 CALIBER FRAGMENTS. IT'S CORRECT THAT YOU FOUND EIGHT OF
4 THOSE. IS THAT CORRECT?

5 A. I DIDN'T EXAMINE ANY BULLET FRAGMENTS IN THIS CASE.

6 Q. OKAY. SO YOU DIDN'T -- ANY OF THE FRAGMENTS THAT WERE
7 FOUND, YOU DIDN'T EXAMINE THEM TO SEE IF THEY MATCHED THE GUN
8 IN TERMS OF THE RIFLING.

9 A. NO, SIR. THE ONLY TWO FRAGMENTS ARE THE ONES THAT I
10 JUST SAW GOING THROUGH THE EVIDENCE. I SAW TWO -- I SAW A
11 BIRDSHOT PELLET, WHAT LOOKED LIKE A BUCKSHOT PELLET, AND THEN
12 TWO FRAGMENTS, TWO LEAD FRAGMENTS, WHICH I HAD NEVER SEEN
13 BEFORE.

14 Q. OKAY. NOW, LET ME ASK YOU THIS: THERE WERE TWO
15 PROJECTILES FROM THE .32 CALIBER THAT WERE RECOVERED FROM MR.
16 AUSTIN'S BODY. THEY'RE STATE'S EXHIBIT 100 AND STATE'S
17 EXHIBIT 98.

18 A. YES, SIR.

19 Q. OKAY. NOW, THE WAY THAT THE RIFLING WORKS, FOR THOSE OF
20 US WHO AREN'T THAT FAMILIAR WITH GUNS AND -- IF YOU LOOK
21 THROUGH THE BARREL OF GUNS, IT'S JUST LIKE THE BEGINNING OF A
22 JAMES BOND MOVIE; RIGHT?

23 A. WELL, IT---

24 Q. WHEN THAT TELESCOPE COMES THROUGH AND YOU CAN SEE THE
25 BARREL AND DOWN THE BARREL GOES THE SPIRAL; RIGHT?

1 A. RIGHT. WHAT YOU'RE SEEING ARE THE SPIRALING GROOVES
2 THAT ARE INSIDE THE BARREL THAT GRIP THE BULLET AND MAKE THE
3 BULLET SPIN.

4 Q. OKAY. AND WHEN THE BULLET TOUCHES THOSE, THAT PUTS THE
5 IDENTIFIABLE MARK ON THE BULLET THAT YOU USE TO IDENTIFY
6 THESE PROJECTILES. IS THAT CORRECT?

7 A. CORRECT. THE RIFLING ITSELF IS WHAT IMPARTS THE UNIQUE
8 MARKINGS.

9 Q. NOW, THE BULLETS BEING MADE OF LEAD -- AND LEAD IS A
10 MALLEABLE SUBSTANCE, ISN'T IT?

11 A. IT IS.

12 Q. AND IT WILL CHANGE FORM PRETTY EASILY; RIGHT?

13 A. WELL, GIVEN SUFFICIENT PRESSURE IT WILL.

14 Q. AND IT DEPENDS ON WHAT IT HITS; RIGHT?

15 A. CORRECT.

16 Q. OKAY. NOW, THE TWO THAT YOU DID IDENTIFY AS BEING
17 DEFINITELY OUT OF THIS GUN, THEY WERE BOTH RECOVERED FROM AN
18 ABDOMEN, ONE FROM MR. AUSTIN AND ONE FROM MR. BRYANT; RIGHT?

19 A. THE STATE'S EXHIBIT 96, I DON'T HAVE WHERE ON HIS BODY
20 IT WAS RECOVERED. STATE'S EXHIBIT 100 WAS RECEIVED IN A
21 CONTAINER MARKED A-B-D-O-M WHICH I ASSUME IS SHORT FOR
22 ABDOMEN.

23 Q. OKAY. VERY GOOD. AND THEN THE ONE THAT WAS EXHIBIT 98,
24 IT WAS NOT INCONSISTENT YOU SAID, BUT IT WAS TOO DAMAGED TO
25 DO THIS TYPE OF ANALYSIS; RIGHT?

1 A. CORRECT. ITS SURFACE WAS TOO DAMAGED FOR ME TO CONCLUDE
2 FOR CERTAIN THAT IT WAS FIRED BY THAT GUN BARREL. IT COULD
3 HAVE BEEN FIRED BY THAT GUN BARREL.

4 Q. NOW -- AND YOU WOULD SAY THAT'S BECAUSE OF WHAT IT HIT
5 THAT IT WAS TOO DAMAGED?

6 A. LIKELY, YES.

7 Q. AND IT WAS RECOVERED FROM HIS CHEST; RIGHT?

8 A. IT WAS MARKED FROM L. CHEST AREA.

9 Q. AND WE ALL HAVE A RIB CAGE; RIGHT?

10 A. I HOPE.

11 MR. LEDDY: YES, SIR. NOW, I DON'T THINK I HAVE ANY
12 FURTHER QUESTIONS. LET ME MAKE SURE. NOTHING FURTHER, YOUR
13 HONOR.

14 THE COURT: REDIRECT?

15 MR. CATHCART: A FEW QUESTIONS, YOUR HONOR.

16 REDIRECT EXAMINATION

17 BY MR. CATHCART:

18 Q. IF A PROJECTILE GOES THROUGH A SOLID OBJECT, THAT WOULD
19 DEFORM THE BULLET; CORRECT?

20 A. IT CAN, YES.

21 Q. AND JUST LIKE A RIB CAGE, IF IT WENT THROUGH A DOOR,
22 COULD THAT DEFORM THAT SOLID OBJECT, THAT CARTRIDGE?

23 A. IT---

24 THE COURT: JUST A MOMENT. JUST A MOMENT.

25 MR. LEDDY: OBJECT. HE'S LEADING. HE'S LEADING THE

1 WITNESS, YOUR HONOR.

2 THE COURT: SUSTAINED. DIRECT EXAMINATION, MR.
3 CATHCART. ASK DIRECT QUESTIONS.

4 MR. CATHCART: YES, SIR. I APOLOGIZE.

5 BY MR. CATHCART:

6 Q. ARE YOU FAMILIAR WITH FIREARMS THAT HAVE FIRED THROUGH
7 WOODEN OBJECTS?

8 A. I'M FAMILIAR WITH BULLETS THAT HAVE FIRED THROUGH...

9 Q. EXCUSE ME. BULLETS THAT HAVE GONE---

10 A. THROUGH AN OBJECT.

11 Q. ---THROUGH WOODEN OBJECTS.

12 A. YES, SIR.

13 Q. BASED UPON THAT, HAVE YOU HAD ANY -- HAVE YOU HAD AN
14 OPPORTUNITY TO OBSERVE WHETHER OR NOT THEY COME OUT PERFECTLY
15 OR SOMETIMES HOW?

16 A. IT DEPENDS ON HOW THE BULLET IS CONSTRUCTED. IT DEPENDS
17 ON MANY THINGS. IT DEPENDS ON THE VELOCITY THE BULLET WAS
18 TRAVELING. IT DEPENDS ON WHAT THE BULLET IS MADE OUT OF, THE
19 SHAPE OF THE BULLET, A LOT OF FACTORS. GOING THROUGH WOOD
20 DOES NOT HELP THE CONDITION OF A BULLET. I DON'T CARE WHAT
21 IT'S MADE OUT OF. A LEAD BULLET IS MORE SUSCEPTIBLE TO
22 HAVING ITS SURFACE MARKINGS DAMAGED THAN, FOR INSTANCE, A
23 JACKETED BULLET IS BECAUSE THE LEAD ITSELF IS SOMEWHAT SOFTER
24 THAN A JACKETED BULLET. BUT, YEAH, GOING THROUGH ANY OBJECT
25 IS NOT GOING TO DO IT ANY GOOD.

1 Q. AND IN THE CASE OF PROJECTILE NUMBER 98, THAT WAS A LEAD
2 NON-JACKETED BULLET?

3 A. IT WAS.

4 MR. CATHCART: NO FURTHER QUESTIONS. THANK YOU.

5 THE COURT: RECROSS LIMITED TO REDIRECT?

6 MR. LEDDY: NO, YOUR HONOR. NOTHING.

7 THE COURT: AS TO THIS WITNESS, SOLICITOR?

8 MR. CATHCART: YOUR HONOR, I WOULD ASK THAT HE BE
9 EXCUSED.

10 THE COURT: ANY OBJECTION?

11 MR. LEDDY: NO, YOUR HONOR.

12 THE COURT: MR. DEFREESE, YOU MAY STEP DOWN AND YOU ARE
13 EXCUSED FROM THE TRIAL OF THIS CASE.

14 THE WITNESS: THANKS. I APPRECIATE THAT.

15 THE COURT: MR. FOREMAN AND LADIES AND GENTLEMEN OF THE
16 JURY, I'M GOING TO STOP AT THIS POINT FOR THE EVENING. WE
17 WILL START BACK AND RESUME THE TESTIMONY TOMORROW AT 9:30
18 A.M. PLEASE BE IN YOUR JURY ROOM BY 9:30. I ASKED YOU TO DO
19 THAT AND EACH OF YOU DID THAT THIS MORNING. I DIDN'T START
20 UNTIL 9:50, BUT THERE WERE MATTERS, I CAN ASSURE YOU, THAT
21 WERE BEYOND MY CONTROL THIS MORNING. I INTEND TO TRY TO PUT
22 THE TRAIN BACK ON THE TRACK IN THE MORNING, LADIES AND
23 GENTLEMEN. SO PLEASE BE HERE BY 9:30.

24 OVER THE OVERNIGHT RECESS, AS I'VE INSTRUCTED YOU
25 THROUGHOUT THIS TRIAL, PLEASE DO NOT DISCUSS THIS CASE WITH

1 ASK THAT SHE BE ALLOWED TO LEAVE.

2 THE COURT: ANY OBJECTION, MR. COLLINS?

3 MR. COLLINS: NO OBJECTION.

4 THE COURT: MS. BUTLER, YOU MAY STEP DOWN FROM THE
5 WITNESS STAND, AND YOU ARE EXCUSED FROM THE TRIAL OF THIS
6 CASE. THANK YOU. LEAVE MY EXHIBITS WITH ME. SOLICITOR,
7 CALL YOUR NEXT WITNESS.

8 MR. ROSS: THE STATE CALLS DOROTHY FILIATREULT.

9 DOROTHY L. FILIATREULT, AFTER BEING DULY SWORN,
10 TESTIFIED AS FOLLOWS:

11 THE CLERK: PLEASE HAVE A SEAT. STATE YOUR FULL NAME
12 FOR THE RECORD.

13 THE WITNESS: DOROTHY L. FILIATREULT,
14 F-I-L-I-A-T-R-E-A-U-L-T.

15 THE COURT: YOUR WITNESS, COUNSEL.

16 MR. ROSS: THANK YOU, YOUR HONOR.

17 DIRECT EXAMINATION

18 BY MR. ROSS:

19 Q. GOOD MORNING, MS. FILIATREULT.

20 A. GOOD MORNING.

21 Q. WHERE ARE YOU -- AT ONE TIME -- LET'S BACK UP. AT ONE
22 TIME YOU WORKED FOR S.L.E.D.; IS THAT RIGHT?

23 A. YES, SIR.

24 Q. AND ARE YOU STILL WORKING WITH THEM NOW?

25 A. NO, SIR. I'M UNDER WHAT'S CONSIDERED TEMPORARY.

1 EMPLOYMENT, SIMPLY TESTIFYING ON THE CASES THAT I WORKED
2 DURING MY TENURE.

3 Q. AND WHEN DID YOU LEAVE S.L.E.D.?

4 A. I LEFT S.L.E.D. IN 2003.

5 Q. ALL RIGHT. AND WHAT ARE YOU DOING NOW?

6 A. I AM A RECRUITER WITH MARY KAY COSMETICS OUT OF DALLAS,
7 TEXAS, AS WELL AS A PERSONAL TRAINER HERE IN LEXINGTON, SOUTH
8 CAROLINA, FOR NEW LIFE FITNESS. BUT I WOULD DEFINITELY SAY
9 MY PRIMARY CAREER IS STAYING HOME WITH MY TWO CHILDREN.

10 Q. OKAY. AND WERE YOU WORKING AT S.L.E.D. IN SEPTEMBER AND
11 OCTOBER OF 1999?

12 A. YES, SIR, I WAS.

13 Q. AND HOW LONG HAD YOU BEEN WORKING AT S.L.E.D. AT THAT
14 TIME?

15 A. A LITTLE OVER THREE YEARS.

16 Q. AND WHAT WAS YOUR POSITION AT S.L.E.D.?

17 A. MY POSITION AT S.L.E.D. WAS AS A SENIOR AGENT IN THE
18 FIELD OF TRACE EVIDENCE EXAMINATION WHICH I STARTED IN '96.

19 Q. OKAY. SO FROM THE TIME YOU STARTED AT S.L.E.D. 'TIL THE
20 TIME YOU LEFT S.L.E.D. WERE YOU ALWAYS IN TRACE EVIDENCE?

21 A. YES, SIR.

22 Q. OKAY. IF YOU COULD, TELL THE JURY AND THE COURT WHAT
23 YOUR EDUCATIONAL BACKGROUND IS AND YOUR TRAINING AND AS IT
24 RELATES TO THE TRACE EVIDENCE.

25 A. CERTAINLY. WELL, I GRADUATED FROM WOFFORD COLLEGE IN

1 SPARTANBURG, SOUTH CAROLINA, WITH A DEGREE IN CHEMISTRY, AND
2 ACTUALLY DURING MY TIME AT WOFFORD I INTERNEED IN THE TRACE
3 EVIDENCE DEPARTMENT OF S.L.E.D. ON TWO SEPARATE OCCASIONS,
4 LEARNING ABOUT FORENSICS AND THE DIFFERENT EXAMINATIONS THAT
5 THEY PERFORM AS WELL AS HELPING WITH DIFFERENT RESEARCH
6 PROJECTS THAT WERE BEING PERFORMED IN THE LABORATORY AT THE
7 TIME.

8 UPON GRADUATION, I IMMEDIATELY STARTED WORKING IN THE
9 TRACE EVIDENCE DEPARTMENT OF S.L.E.D. AND WENT -- UNDERWENT
10 AN EXTENSIVE IN-HOUSE TRAINING PROGRAM IN THE FIELD OF TRACE
11 EVIDENCE COVERING ALL THE DIFFERENT TYPES OF ANALYSES THAT WE
12 PERFORM. I HAVE ATTENDED SEVERAL DIFFERENT AND COMPLETED
13 SEVERAL DIFFERENT GRADUATION -- GRADUATE COURSES AT THE
14 MCCRONE RESEARCH INSTITUTE IN CHICAGO, ILLINOIS, WHICH IS A
15 LEADING FORENSIC MICROSCOPIC SCHOOL AS WELL AS I HAVE TRAINED
16 AT THE F.B.I. ACADEMY AT QUANTICO, VIRGINIA, IN THE PHYSICAL
17 AND INSTRUMENTAL ANALYSIS OF EXPLOSIVES. I HAVE TAKEN
18 SEVERAL DIFFERENT COURSES ACROSS THE COUNTRY.

19 Q. AND HAVE YOU TESTIFIED IN COURT AS AN EXPERT IN TRACE
20 EVIDENCE BEFORE?

21 A. YES, SIR.

22 Q. AND APPROXIMATELY HOW MANY TIMES?

23 A. TO BE HONEST, I DO NOT REMEMBER, BUT IT WOULD DEFINITELY
24 BE OVER 50.

25 MR. ROSS: YOUR HONOR, WE'D OFFER HER AS AN EXPERT IN

1 THE AREA OF TRACE EVIDENCE.

2 THE COURT: ANY OBJECTION AS TO QUALIFICATIONS?

3 MR. COLLINS: YOUR HONOR, IF SHE'S A WOFFORD GRADUATE, I
4 HAVE NO OBJECTION.

5 THE COURT: THAT'S AN EXCELLENT DECISION, COUNSEL.

6 LADIES AND GENTLEMEN, RECALLING MY PRIOR INSTRUCTION TO YOU
7 CONCERNING EXPERT TESTIMONY, THE WITNESS IS QUALIFIED AS A
8 MATTER OF LAW IN THE FIELD OF TRACE EVIDENCE. YOU'RE NOT
9 BOUND BY EXPERT OPINION. YOU GIVE IT, LADIES AND GENTLEMEN
10 OF THE JURY, THE WEIGHT, IF ANY, YOU DEEM TO WHICH IT SHOULD
11 BE ENTITLED. QUALIFIED WITHOUT OBJECTION, COUNSEL. YOU MAY
12 PROCEED.

13 MR. ROSS: THANK YOU, YOUR HONOR. MAY I APPROACH THE
14 WITNESS?

15 THE COURT: YOU MAY.

16 BY MR. ROSS:

17 Q. I'M HANDING YOU STATE'S EXHIBITS NUMBER 102 AND 91, BUT
18 LET'S START WITH STATE'S EXHIBIT 102. DID YOU HAVE AN
19 OCCASION TO RECEIVE STATE'S EXHIBIT NUMBER 102 IN ORDER TO DO
20 TESTING ON THAT ITEM?

21 A. YES, SIR, I DID. STATE'S EXHIBIT 102 DOES BEAR MY
22 INITIALS AND THE DATE IN WHICH I SEALED THIS EVIDENCE AFTER
23 ANALYSIS AS WELL AS MY MAIDEN NAME ON THE CASE LAB NUMBER,
24 AND I CAN ACTUALLY SEE THROUGH THE EVIDENCE BAG TO SEE THE
25 ORIGINAL SMALL EVIDENCE BAG WITH MY INITIALS AS WELL.

1 Q. ALL RIGHT. AND WHERE WOULD YOU HAVE RECEIVED THAT ITEM
2 FROM? AND WHAT IS -- WHAT IS THAT ITEM?

3 A. THIS ITEM IS MY LAB NUMBER ITEM -- ITEM 22 WHICH IS ONE
4 GUNSHOT RESIDUE KIT FROM THE VICTIM, AND I RECEIVED THIS FROM
5 OUR EVIDENCE HOLDING AREA CALLED -- IT'S A BIN FOR ME, AND
6 THE OTHER ANALYSTS IN THE TRACE EVIDENCE DEPARTMENT CALL IT
7 ROOM 338 WHERE OUR EVIDENCE IS KEPT IN A SECURE PLACE UNTIL
8 IT'S TIME FOR US TO ANALYZE IT.

9 Q. ALL RIGHT. AND WHEN YOU GOT THAT OUT OF BIN 338, WAS IT
10 IN A SEALED -- HEAT-SEALED POUCH?

11 A. YES, SIR.

12 Q. AND IS THAT -- Y'ALL CALL IT A S.L.E.D. BEST KIT?

13 A. TO BE HONEST, I'M NOT SURE WHAT THEY CALL IT NOW.

14 Q. OKAY. WAS IT -- IS IT A TAMPER-PROOF TYPE PACKAGING
15 THAT IT COMES IN WHEN YOU INITIALLY RECEIVE IT?

16 A. YES, SIR, IT IS. THIS PARTICULAR TYPE OF BAG, THERE'S
17 ONLY ONE WAY IN AND ONE WAY OUT AND THAT'S TO CUT IT, AND
18 THEN TO SEAL IT, IT HAS TO BE PUT UNDER EITHER EVIDENCE TAPE
19 OR ACTUALLY HEAT APPLIED TO AN AREA IN WHICH CASE HEAT WAS
20 APPLIED AND I THEN INITIALED THAT AREA.

21 Q. SO WHEN YOU INITIALLY RECEIVED IT, WAS IT STILL IN A
22 SEALED CONDITION?

23 A. YES, SIR.

24 Q. ALL RIGHT. AND YOU SAID THE VICTIM. WHICH VICTIM WAS
25 THAT THAT YOU WERE TESTING ON?

1 A. THIS KIT WAS LABELED AUSTIN, DANIEL FLETCHER.

2 Q. ALL RIGHT. DID YOU PERFORM AN ANALYSIS ON THAT KIT?

3 A. YES, SIR, I DID.

4 Q. ALL RIGHT. AND WHAT WAS CONTAINED IN THE KIT?

5 A. THE GUNSHOT RESIDUE KIT OR WHAT'S LEFT OF IT AS YOU SEE
6 HERE ACTUALLY IS TWO DIFFERENT TYPES OF EVIDENCE, ONE OF
7 WHICH IS A NITRIC SWAB. IT'S BASICALLY A Q-TIP SWAB THAT IS
8 PUT ON EACH AREA OF THE HAND - THE RIGHT PALM, THE RIGHT
9 BACK, THE LEFT PALM, AND THE LEFT BACK - AS WELL AS ONE
10 INDIVIDUAL Q-TIP THAT'S TAKEN FROM AN AREA OF THE BODY THAT
11 WOULD NOT HAVE BEEN IN CONTACT WITH ANY TYPE OF GUNSHOT
12 RESIDUE OR THE DISCHARGE OF A WEAPON SO THAT WE CAN SEE WHAT
13 TYPE OF ELEMENTS THIS PERSON HAS ON THEIR BODY NATURALLY AND
14 IN THEIR EVERYDAY LIFE. THAT IS -- SO THAT'S FIVE SAMPLES OF
15 Q-TIPS EACH INDIVIDUALLY COMPARTMENTALIZED SO THAT WE CAN
16 ANALYZE EACH OF THEM INDIVIDUALLY, AND THEN THE SECOND PART
17 OF THE KIT ARE THE PLANCHETS THAT ARE LEFT HERE IN THE BAG,
18 AND THAT IS JUST A SMALL -- A PLANCHET WITH A SMALL AMOUNT OF
19 ADHESIVE THAT WE SIMPLY -- YOU SIMPLY STICK OVER THAT AREA OF
20 THE HAND AND, AGAIN, THEY'RE COMPARTMENTALIZED SO THAT WE CAN
21 DETERMINE IF GUNSHOT RESIDUE IS PRESENT AND ON WHAT PART OF
22 THE HAND.

23 Q. AND WHAT WERE YOUR FINDINGS ON THIS PARTICULAR CASE?

24 A. I'LL READ FROM MY REPORT. IN THE SAMPLE SUBMITTED FROM
25 THE KIT LABELED AUSTIN, DANIEL FLETCHER, THE QUANTITIES OF

1 METALS DETECTED ON THE LEFT BACK REGION OF THE HANDS MAY BE
2 ASSOCIATED WITH GUNSHOT RESIDUE.

3 Q. OKAY. TELL ME WHAT PART OF THE HAND AGAIN NOW.

4 A. THE LEFT BACK.

5 Q. ALL RIGHT. AND THAT'S THE ONLY LOCATION THAT YOU FOUND
6 MATERIAL ASSOCIATED WITH GUNSHOT RESIDUE.

7 A. CORRECT.

8 Q. ALL RIGHT. EXPLAIN TO THE JURY HOW YOU MAY RECEIVE
9 GUNSHOT RESIDUE OR MATERIAL ASSOCIATED WITH GUNSHOT RESIDUE
10 ON YOUR HANDS.

11 A. YES, SIR. WELL, IT'S BASICALLY AS SIMPLE AS IT SOUNDS.
12 THE WAY THAT YOU RECEIVE MATERIALS ON YOUR HANDS FROM GUNSHOT
13 RESIDUE OR FROM A GUNSHOT IS SPECIFICALLY YOU CAN EITHER BE
14 HANDLING A DIRTY WEAPON IN WHICH CASE WE WOULD MOST LIKELY
15 FIND IT SOLELY ON THE PALMS OF YOUR HANDS. YOU COULD ALSO BE
16 HOLDING A WEAPON WHEN IT IS DISCHARGED, AND YOU ALSO CAN BE
17 IN CLOSE PROXIMITY TO THAT WEAPON WHEN IT IS DISCHARGED
18 MEANING YOU ARE NOT NECESSARILY THE ONE HOLDING THE WEAPON,
19 BUT YOU ARE CLOSE ENOUGH TO THAT WEAPON EITHER IN FRONT OF IT
20 OR TO THE SIDE OF IT SO THAT SOME OF THE MATERIAL ACTUALLY
21 LANDS ON YOUR HANDS AND REMAINS.

22 Q. AND, MS. FILIATREAU, IN THIS CASE THE VICTIM WAS SHOT
23 ON THE LEFT SIDE OF HIS BODY WITH A SHOTGUN. WOULD FINDING
24 GUNSHOT RESIDUE OR MATERIAL ASSOCIATED WITH A GUNSHOT
25 RESIDUE, WOULD THAT BE CONSISTENT WITH BEING SHOT WITH A

1 SHOTGUN ON THE LEFT SIDE OF YOUR BODY?

2 A. WELL, IT CERTAINLY DOES NOT SURPRISE ME THAT WE FOUND
3 GUNSHOT RESIDUE ON HIS LEFT BACK; NO, SIR.

4 Q. LET ME ASK YOU JUST ONE OTHER -- ONE OTHER QUESTION
5 ABOUT -- ABOUT THE G.S.R. IS THERE A DIFFERENCE BETWEEN
6 COLLECTION OF G.S.R. FROM A PERSON WHO IS DECEASED VERSUS
7 COLLECTION FROM SOMEONE WHO IS STILL ALIVE AS FAR AS THE TIME
8 FRAME OF COLLECTION?

9 A. YES, SIR, THERE IS. WHEN A PERSON IS DECEASED, THERE NO
10 LONGER IS A TIME CONSTRAINT AS TO COLLECTING THE EVIDENCE
11 BECAUSE THAT PERSON'S HANDS -- EVERYTHING THAT THEY WERE
12 DOING WITH IT OBVIOUSLY IS NULL AND VOID. SO PROVIDED THAT
13 THERE'S NO ENVIRONMENTAL FACTORS TAKING PLACE, THE RESIDUE
14 WILL REMAIN ON THE HANDS UNTIL THE TIME THAT WE COLLECT IT.
15 HOWEVER, IF THE PERSON IS ALIVE, S.L.E.D. HAS ADOPTED A
16 POLICY OF A SIX-HOUR WINDOW IN WHICH TIME WE CAN COLLECT THE
17 GUNSHOT RESIDUE SIMPLY BECAUSE AFTER THE DISCHARGE OF A
18 WEAPON OR AFTER YOU GET THIS MATERIAL ON YOUR HANDS, EVERY
19 LITTLE THING THAT YOU DO DIMINISHES THE AMOUNT OF GUNSHOT
20 RESIDUE THAT WE COULD POTENTIALLY FIND. PUTTING YOUR HANDS
21 IN YOUR POCKET, HOLDING YOUR HANDS TOGETHER, PUTTING YOUR
22 HANDS THROUGH YOUR HAIR, EVEN JUST SITTING HERE, THE NATURAL
23 ABSORPTION OF MATERIALS INTO MY SKIN WOULD VIRTUALLY DIMINISH
24 ALL SORTS OF OR ALL AMOUNTS OF GUNSHOT RESIDUE.

25 Q. OKAY. LET'S MOVE ON TO THE NEXT ITEM THAT YOU TESTED,

1 STATE'S EXHIBIT NUMBER 91. DID YOU RECEIVE THAT ITEM TO
2 TEST?

3 A. YES, SIR. STATE'S EXHIBIT 91 ALSO BEARS THE LAB NUMBER
4 AND MY INITIALS AND DATE OF ANALYSIS.

5 Q. AND, AGAIN, THE SAME QUESTIONS: WHERE WOULD YOU RECEIVE
6 THAT ITEM FROM?

7 A. THIS ITEM WAS KEPT IN A REFRIGERATOR, AN EVIDENCE
8 REFRIGERATOR, CALLED D-16 FOUND IN THE FORENSIC BUILDING.

9 Q. ALL RIGHT. AND WAS IT IN A SEALED CONDITION WHEN YOU
10 RECEIVED IT?

11 A. YES, SIR, IT WAS.

12 Q. AND SIMILAR TO THE SAME TYPE PACKAGING AS TO STATE'S
13 EXHIBIT NUMBER 102.

14 A. YES, SIR.

15 Q. ALL RIGHT. AND WHAT TYPE OF EXAM DID YOU DO ON STATE'S
16 EXHIBIT NUMBER 91?

17 A. STATE'S EXHIBIT 91 IS A TOWEL, A WHITE TOWEL, AND I
18 PERFORMED EXAMINATIONS LOOKING FOR THE PRESENCE OF MATERIALS
19 ASSOCIATED WITH A GUNSHOT, SPECIFICALLY LEAD, AS WELL AS
20 PARTIALLY-BURNED GUN POWDER PARTICLES AND A PATTERN OF THOSE
21 PARTICLES IF THEY ARE PRESENT.

22 Q. OKAY. WHAT WERE YOUR FINDINGS?

23 MR. COLLINS: OBJECTION, YOUR HONOR. - MAY WE APPROACH
24 THE BENCH?

25 THE COURT: COUNSEL, APPROACH.

1 (WHEREUPON, A BENCH CONFERENCE WAS HELD.)

2 THE COURT: MR. FOREMAN, LADIES AND GENTLEMEN OF THE
3 JURY, I NEED TO TAKE UP A QUICK MATTER OF LAW. I'M GOING TO
4 ASK YOU IF YOU WOULD PLEASE RETIRE TO YOUR JURY ROOM. DON'T
5 DISCUSS THE CASE. I'LL BE RIGHT BACK WITH YOU.

6 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT AT
7 10:21 A.M.)

8 THE COURT: ALL RIGHT. MR. COLLINS, LET THE RECORD
9 REFLECT THAT -- I ASSUME THAT THERE'S NO ONE HERE -- YOU
10 HAVEN'T BROUGHT IN ANOTHER WITNESS, HAVE YOU, MA'AM?

11 MS. SHUTTERS: NO, SIR.

12 THE COURT: ALL RIGHT. THE JURY IS NOT PRESENT, MR.
13 COLLINS. STATE YOUR OBJECTION FOR THE RECORD.

14 MR. COLLINS: YOUR HONOR, THE OBJECTION IS BASED ON THE
15 FACT THAT IN THE PREVIOUS TRIAL OF THIS CASE THE WITNESS
16 TESTIFIED ABOUT CERTAIN PHOTOCOPIES THAT SHE USED IN THE
17 PROCESS OF TESTING FOR GUNSHOT RESIDUE ON THE TOWEL.

18 THE COURT: PHOTOCOPIES OF WHAT?

19 MR. COLLINS: I DON'T KNOW, YOUR HONOR. I'M NOT---

20 THE COURT: YOU READ THE TRANSCRIPT AND SAW REFERENCE BY
21 THIS WITNESS TO THE FACT THAT SHE WAS LOOKING AT PHOTOCOPIES
22 WHICH WERE NOT ADMITTED INTO EVIDENCE IN THE TRIAL OF THE
23 CASE PREVIOUSLY. IS THAT RIGHT?

24 MR. COLLINS: AND, YOUR HONOR, MY POSITION IS THAT UNDER
25 THE CONFRONTATION I HAVE A RIGHT TO IMPEACH HER ON THE

1 PROCESS THAT SHE TESTED THE TOWEL AS WELL AS THE RESULTS. IF
2 I DON'T HAVE COMPLETE KNOWLEDGE OF THE PROCESS WITHOUT
3 LETTING IN AN EXPERT TO REVIEW THE PROCESS, I DON'T KNOW
4 HOW---

5 THE COURT: SOLICITOR, WERE THE PHOTOCOPIES THAT THIS
6 WITNESS RELIED UPON PROVIDED TO THE DEFENSE IN THE TRIAL OF
7 THIS CASE PURSUANT TO THEIR RULE 5 REQUEST?

8 MR. ROSS: LET ME -- LET ME BACK UP, YOUR HONOR.

9 THE COURT: WELL, THE ANSWER TO THAT, MR. ROSS, IS
10 EITHER YES OR NO.

11 MR. ROSS: YES, BECAUSE IT WAS BROUGHT OUT IN THE
12 ORIGINAL TRIAL AND MR. STRICKLER -- THEY HAD A PROFFER IN MR.
13 STRICKLER'S PRESENCE.

14 THE COURT: BUT YOU COULDN'T FIND IT AGAIN BY PHOTOCOPY
15 FOR THIS TRIAL BECAUSE YOU DIDN'T HAVE IT? IS THAT WHAT
16 YOU'RE TELLING ME?

17 MR. ROSS: THE AGENT HAS IT.

18 THE COURT: BUT...

19 MR. ROSS: WHAT IT IS IS -- LET ME BACK UP. INSTEAD OF
20 PHOTOCOPY, IT'S PHOTOGRAPHIC PAPER IS WHAT IT IS. I PROBABLY
21 NEED TO GET HER TO EXPLAIN IT RATHER THAN ME AS TO WHAT IT
22 IS. I DON'T THINK IT'S SOMETHING THAT SHE COULD TURN OVER TO
23 THEM.

24 THE COURT: I'LL ALLOW YOU TO INQUIRE OF THE WITNESS SO
25 THAT I CAN UNDERSTAND EXACTLY WHAT SHE RELIED ON AND WHETHER

1 OR NOT IT WAS NECESSARY FOR HER TO RELY ON THIS IN ORDER TO
2 FORM AN OPINION AS TO GUNSHOT RESIDUE ON THE TOWEL. PROCEED.
3 BY MR. ROSS:

4 Q. MS. FILIATREULT, THERE'S AN ISSUE ABOUT THE -- I GUESS
5 IT'S THE DESENSITIZED PHOTO PAPER THAT I -- DO YOU HAVE THAT
6 STILL? DO YOU HAVE THAT PHOTO PAPER OR DO YOU HAVE SOME
7 DOCUMENTATION---

8 THE COURT: ONE QUESTION AT A TIME, SOLICITOR.

9 THE WITNESS: THE -- THE ISSUE IS THE DESENSITIZED PHOTO
10 PAPER WHICH IS THE ACTUAL CHEMICAL RESULT OF THE EXAMINA --
11 ONE OF THE EXAMINATIONS THAT I PERFORMED IN THE LABORATORY.
12 IT'S SIMPLY ONE OF THE RESULTS THAT I RELY UPON TO MAKE MY
13 CONCLUSIONS, AND IT STAYS IN THE CASE JACKET IN THE CUSTODY
14 OF S.L.E.D. AND IT'S PART OF THE NOTES OF THE EXAMINER.

15 BY MR. ROSS:

16 Q. AND DO YOU HAVE THAT WITH YOU OR IS IT AT S.L.E.D.?

17 A. THOSE ARE STILL AT S.L.E.D. I HAVE MY NOTES, AND I
18 ASSURE YOU I WILL NOT SHOW ANYTHING TO THE JURY.

19 Q. OKAY. YOU DO HAVE SOME TYPE OF XEROXED COPY OR MAYBE
20 YOU DON'T; I'M NOT SURE. I THOUGHT MAYBE YOU DID, BUT I
21 MIGHT BE WRONG.

22 A. I DO, BUT IT'S SIMPLY FOR ME. I WAS USING IT TO
23 REACQUAINT MYSELF WITH THE CASE.

24 Q. WHAT'S THAT A COPY OF?

25 A. IT'S A COPY OF THE RESULTS FOUND ON THE DESENSITIZED

1 PHOTO PAPER.

2 Q. OKAY. ALL RIGHT. BUT IT'S JUST -- THE ACTUAL TEST YOU
3 DID YOURSELF.

4 A. YES, SIR.

5 MR. ROSS: OKAY.

6 THE COURT: ANYTHING ELSE, SOLICITOR, FROM YOU?

7 MR. ROSS: NOT ON THAT ISSUE, NO, SIR.

8 THE COURT: I'M GOING TO GIVE YOU THE OPPORTUNITY TO
9 CROSS-EXAMINE HER OBVIOUSLY ON THIS ISSUE ONLY BECAUSE I
10 MIGHT HAVE SOME QUESTIONS FOR HER BEFORE I BRING THE JURY
11 BACK. DO YOU WANT TO -- NOW, I'M NOT GOING TO GO OUT AND
12 LEAVE HER OPEN. YOU'LL HAVE THAT CHANCE IN THE PRESENCE OF
13 THE JURY. ONLY ON THIS ISSUE DO YOU WANT TO CROSS-EXAMINE
14 HER NOW?

15 MR. COLLINS: YOUR HONOR, I ONLY HAVE ONE QUESTION FOR
16 HER.

17 THE COURT: ALL RIGHT, SIR.

18 CROSS-EXAMINATION

19 BY MR. COLLINS:

20 Q. DO YOU USE THE DESENSITIZED PHOTO PAPER IN ORDER TO GET
21 YOUR RESULTS?

22 A. YES, SIR, I DO.

23 MR. COLLINS: THANK YOU.

24 EXAMINATION BY THE COURT

25 Q. DO YOU HAVE A COPY OF THE PAPER WITH YOU TODAY?

1 A. I HAVE A COPY; YES, SIR.

2 Q. AND THE ORIGINAL OF THIS PAPER IS LOCATED AT S.L.E.D.
3 WHERE YOU LEFT IN 2003.

4 A. YES, SIR. IT'S LOCATED IN THE ORIGINAL CASE JACKET.

5 Q. ABSENT THIS TYPE OF TEST WITH THE PHOTO PAPER, COULD YOU
6 STILL HAVE REACHED A CONCLUSION IN THIS CASE CONCERNING THE
7 PRESENCE OR ABSENCE OF GUNSHOT RESIDUE?

8 A. NOT TO THE SAME CONCLUSION. IT IS ONE OF THE
9 EXAMINATIONS THAT WE PERFORM TO CONFIRM---

10 Q. IS IT A CONFIRMATORY EXAMINATION? DOES IT GIVE YOU
11 ADDITIONAL CONFIRMING INFORMATION OR IS IT NECESSARY TO
12 CONDUCT THIS EXAMINATION IN ORDER TO REACH A CONCLUSION?

13 A. IT IS NECESSARY; YES, SIR.

14 THE COURT: ALL RIGHT. COUNSEL, I WILL CERTAINLY ALLOW
15 YOU AT THIS POINT IN LIGHT OF YOUR OBJECTION TO HAVE THE
16 WITNESS PROVIDE YOU WITH HER XEROXED COPY OF THIS INFORMATION
17 PRIOR TO YOUR CROSS-EXAMINATION, LET YOU EXAMINE IT, AND THEN
18 HEAR FROM YOU. YOU'VE GOT YOUR COPY WITH YOU; RIGHT?

19 THE WITNESS: YES, SIR.

20 THE COURT: ALL RIGHT.

21 MR. COLLINS: YOUR HONOR, THAT PIECE OF PAPER MEANS
22 NOTHING TO ME. I HAVE TO HAVE AN EXPERT REVIEW IT.

23 THE COURT: YES, SIR, BUT THAT'S WHY YOU CROSS-EXAMINE
24 EXPERTS BECAUSE I'M SURE SHE WOULD BE ABLE TO EXPLAIN TO YOU.
25 YOU'VE CERTAINLY HAD THE RESULTS OF HER TEST. YOU KNOW WHAT

1 SHE'S DONE. AND I'LL BE -- AND OBVIOUSLY THIS WAS NOT AN
2 ITEM THAT WAS IN THE SOLICITOR'S FILE. THIS WAS AT S.L.E.D.
3 SHE HAS A XEROXED COPY BECAUSE SHE'S RETIRED. SHE
4 UNDERSTANDS THE ORIGINAL WOULD STILL BE AT S.L.E.D., BUT I'LL
5 BE GLAD FOR YOU PRIOR TO EXAMINATION -- CROSS-EXAMINATION TO
6 HAVE A COPY, AND YOU'LL BE GIVEN A FULL OPPORTUNITY TO CROSS-
7 EXAMINE THE WITNESS ON HER OPINIONS CONCERNING THAT PIECE OF
8 PAPER. BUT AT THIS POINT, SOLICITOR, YOU HAVE NOT SHOWN THIS
9 COURT THAT YOUR CLIENT IS PREJUDICED BY THE LACK THEREOF IN
10 ANY WAY NOR HAS THERE BEEN ANY SHOWING THAT THIS WAS
11 EXCULPATORY FOR PURPOSES OF BRADY, AND I DO NOT AT THIS POINT
12 SEE ANY PREJUDICE TO YOUR CLIENT BECAUSE YOU'RE GOING TO BE
13 GIVEN A FULL OPPORTUNITY TO CROSS-EXAMINE THIS WITNESS.
14 ANYTHING FURTHER ON THIS MATTER ON YOUR OBJECTION?

15 MR. COLLINS: YOUR HONOR, IT'S OUR POSITION THAT WE HAVE
16 A RIGHT TO HAVE AN INDEPENDENT EXPERT REVIEW ANY INFORMATION
17 THAT IS USED TO GET TO A RESULT---

18 THE COURT: BUT YOU DID NOT HIRE AN INDEPENDENT EXPERT
19 FOR GUNSHOT RESIDUE EVEN THOUGH YOU HAD THE FINAL RESULTS OF
20 THIS TEST IN YOUR FILE AND KNEW HER OPINION. THIS IS A
21 PROCESS OF REACHING THE ULTIMATE OPINION WHICH I'M WILLING TO
22 PROVIDE HER COPY TO YOU NOW PRIOR TO CROSS-EXAMINATION. I
23 UNDERSTAND YOUR POSITION. THAT OBJECTION IS RESPECTFULLY
24 OVERRULED. ANYTHING FURTHER?

25 MR. COLLINS: THANK YOU, YOUR HONOR. I DO NOT NEED A

1 COPY BECAUSE IT MEANS NOTHING TO ME.

2 THE COURT: YOU DON'T WANT A COPY NOW.

3 MR. COLLINS: IT MEANS NOTHING TO ME NOW.

4 THE COURT: I UNDERSTAND THAT, COUNSEL, BUT YOU HAD THE
5 OPPORTUNITY TO HIRE YOUR OWN EXPERT TO CONTEST THE VALIDITY
6 OF HER OPINIONS WHICH YOU CHOSE NOT TO DO PRIOR TO THE TRIAL
7 OF THIS CASE. THE OBJECTION IS OVERRULED. BRING ME THE
8 JURY.

9 (WHEREUPON, THE JURY WAS BROUGHT INTO OPEN COURT AT
10 10:29 A.M.)

11 THE COURT: YOUR WITNESS, COUNSEL. DIRECT EXAMINATION.

12 MR. ROSS: THANK YOU, YOUR HONOR.

13 DIRECT EXAMINATION (RESUMED)

14 BY MR. ROSS:

15 Q. MS. FILIATREAU, LET ME POSE THAT QUESTION AGAIN. WHAT
16 WERE THE RESULTS? WHAT DID YOU FIND AS A RESULT OF YOUR
17 EXAMINATION?

18 A. I'LL READ FROM MY REPORT. "THE AREAS AROUND THE SIX
19 HOLES FOUND IN THE TOWEL WERE EXAMINED FOR THE PRESENCE OF
20 LEAD AND A PATTERN OF GUN POWDER RESIDUE. RESIDUES AND
21 PHYSICAL CHARACTERISTICS FOUND AROUND THESE HOLES ARE
22 CONSISTENT WITH ONE CONTACT SHOT."

23 MR. ROSS: YOUR HONOR, WE'D AT THIS TIME MOVE TO ADMIT
24 STATE'S EXHIBIT NUMBER 91 AND EXHIBIT 102 OR -- HANG ON. LET
25 ME MAKE SURE I GOT THAT EXHIBIT NUMBER RIGHT. YEAH, IT'S 102

1 AND 91.

2 THE COURT: VERY WELL. MR. COLLINS?

3 MR. COLLINS: YOUR HONOR, 91 HAS ALREADY BEEN INTRODUCED
4 INTO EVIDENCE.

5 THE COURT: I THINK 91 IS IN. IS IT, DAPHNE? TELL ME.

6 COURT REPORTER: JUST A MINUTE, JUDGE.

7 THE COURT: I THINK -- WELL, JUST A MINUTE, MR. COLLINS.
8 NO, I'M NOT SO SURE NOW. NO, SIR.

9 COURT REPORTER: YES, SIR.

10 THE COURT: IT IS?

11 COURT REPORTER: 91 AND 102 ARE IN.

12 MR. COLLINS: I HAVE NO OBJECTION, YOUR HONOR.

13 MR. ROSS: I JUST WANTED TO MAKE SURE, YOUR HONOR.

14 THE COURT: VERY THOROUGH, MR. ROSS, BUT THEY'RE ALREADY
15 IN EVIDENCE.

16 MR. ROSS: THANK YOU, YOUR HONOR. MAY I HAVE THE
17 WITNESS STAND DOWN?

18 THE COURT: YOU MAY. MR. COLLINS, YOU MAY COME AROUND
19 SO YOU CAN VIEW, AND YOU'RE GOING TO HAVE HER SHOW SOMETHING
20 TO THE JURY?

21 MR. ROSS: YES, SIR.

22 THE COURT: GET HER THE MICROPHONE. MA'AM, I'M GOING TO
23 ASK YOU TO USE THE MICROPHONE. HE'S GOING TO GET IT FOR YOU.
24 WE'VE GOT A CORD ON IT. MR. COLLINS, YOU CAN COME AROUND
25 WHERE MY OFFICER IS SO YOU CAN SEE. IF YOU'RE GOING TO TURN

1 YOUR BACK TO MY COURT REPORTER, USE THE MICROPHONE SO SHE CAN
2 HEAR YOU. YOU CAN HAVE THE BAILIFF HOLD THE MICROPHONE FOR
3 HER IF YOU'RE GOING TO MAKE HER HOLD AN EXHIBIT, TOO.

4 MR. ROSS: I'LL HOLD IT, YOUR HONOR.

5 THE COURT: VERY WELL. CAN YOU SEE, MR. COLLINS?

6 MR. COLLINS: YES, SIR.

7 THE COURT: ALL RIGHT, SIR. REFER TO THE EXHIBIT NUMBER
8 FOR THE RECORD.

9 MR. ROSS: YOUR HONOR, THIS IS STATE'S EXHIBIT NUMBER
10 91.

11 BY MR. ROSS:

12 Q. THIS IS THE TOWEL THAT YOU EXAMINED, MS. FILIATREAU?

13 A. YES, SIR. IF YOU'LL LOOK DOWN HERE IN THE FAR BOTTOM
14 CORNER, IT BEARS MY INITIALS AS WELL AS MY LAB NUMBER AND MY
15 ITEM NUMBER FOR THIS PARTICULAR CASE.

16 Q. ALL RIGHT. AND I WANT TO ASK YOU: THE RESULT THAT YOU
17 JUST GAVE THE JURY, CAN YOU GO THROUGH HOW YOU CAME TO THAT
18 CONCLUSION?

19 A. YES, SIR. ONE OF THE FIRST EXAMINATIONS THAT I PERFORM
20 IS OBVIOUSLY A VISUAL EXAMINATION, AIDED IT WITH A
21 STEREOSCOPE WHICH IS BASICALLY LIKE A MICROSCOPE, JUST NOT
22 QUITE AS HIGH POWERED. IT GOES TO ABOUT 66 TIMES WHAT OUR
23 VISUAL EYE CAN SEE. UPON LOOKING, I IDENTIFIED THERE ARE SIX
24 HOLES FOUND IN THE TOWEL, THREE UP TO THE CORNER AND THEN
25 THREE JUST TO THE CENTER. LOOKING AT EACH HOLE INDIVIDUALLY,

1 I NOTED THERE WAS HEAVY SOOT AND SMOKE AROUND EACH HOLE.
2 HOWEVER, ONE OF THE CHARACTERISTICS THAT I DID NOTICE WAS
3 THAT EACH ALTERNATING HOLE THE SMOKE AND SOOT WAS HEAVIER,
4 VISIBLY HEAVIER, ON THE OPPOSITE SIDE OF THE TOWEL MEANING
5 HOLE NUMBER ONE, IT WAS VISIBLE HEAVIEST ON WHAT I NOTATED AS
6 THE FRONT OF THE TOWEL. HOLE NUMBER TWO, IT WAS HEAVIEST ON
7 THE BACK. HOLE NUMBER THREE ON THE FRONT, HOLE NUMBER FOUR
8 ON THE BACK, AND ALL THE WAY THROUGH TO HOLE NUMBER SIX.

9 THE VERY NEXT EXAMINATION THAT I PERFORMED WAS LOOKING
10 AT EACH OF THESE HOLES INDIVIDUALLY UNDER THE STEREOSCOPE.
11 UPON DOING THAT, WHAT I NOTICED WAS THAT THERE WERE ACTUALLY
12 INTACT PARTIALLY-BURNED AND FULL GUN POWDER PARTICLES AROUND
13 HOLE NUMBER ONE. HOWEVER, I COULD NOT FIND ANY AROUND THE
14 FOLLOWING HOLES. ADDITIONALLY, THE FIBERS ON THE RIM OF THE
15 HOLE OF HOLE NUMBER ONE, THERE WERE -- THERE WAS THE PRESENCE
16 OF SINGEING WHICH IS THE BURNING OR MELTING OF THE FIBERS IN
17 THAT PARTICULAR HOLE, AND THERE WERE NONE ON THE OTHER FIVE
18 HOLES. THAT WAS THE FIRST EXAMINATION THAT I PERFORMED.

19 THE SECOND EXAMINATION WAS THE MODIFIED GRICE TEST
20 LOOKING FOR PARTIALLY-BURNED GUN POWDER PARTICLES, AND A
21 PATTERN OF THOSE GUN POWDER PARTICLES IS PRESENT. I DID FIND
22 PARTICLES IN A PATTERN, SMALL PATTERN, AROUND EACH OF THE
23 HOLES CONCENTRATED PRIMARILY AROUND EACH OF THE INDIVIDUAL
24 HOLES, AROUND ALL SIX HOLES.

25 IN ADDITION, THE LAST PERFORMANCE TEST THAT I PERFORMED

1 WAS THE SODIUM RHODIZONATE TEST LOOKING FOR PRESENCE OF LEAD,
2 AND I DID FIND NOT ONLY LEAD AROUND EACH BULLET HOLE BUT A
3 PARTICULAR PATTERN AROUND HOLE NUMBER ONE WHICH YOU WILL SEE
4 MY MARKINGS AS TO WHERE I FOUND IT. THE REASON THAT WE
5 HAVE -- THE REASON THAT WE MARK WHAT WE FIND IS BECAUSE WHAT
6 WE HAVE LEARNED IS THIS REACTION DOES NOT STOP AND MAINTAIN
7 ITSELF UPON ANALYSIS. IT IS A DEGRADING ANALYSIS.

8 THEREFORE, AFTER WE HAVE RUN IT, WE SEE THE COLOR. IT
9 GIVES IT JUST A FEW SECONDS TO -- TO SHOW ITSELF. I MARK IT,
10 AND THEN OVER A PERIOD OF TIME IT WILL ACTUALLY CONTINUE THE
11 REACTION AND DIMINISH ITSELF TO WHERE YOU CAN'T SEE IT
12 ANYMORE. SO FOR THAT REASON WE HAVE TAKEN TO MARKING WHAT WE
13 SEE, AND YOU WILL SEE THAT HOLE NUMBER ONE HAS A SLIGHT STAR
14 PATTERN TO IT WHICH IS CONSISTENT WITH THE MUZZLE OF A
15 WEAPON.

16 Q. ALL RIGHT. AND BASED ON YOUR CONCLUSIONS, WHAT DOES
17 THAT TELL YOU ABOUT HOW THE TOWEL WAS? WAS IT HELD OUT LIKE
18 THIS WHEN IT WAS FIRED THROUGH OR WHAT POSITION WOULD THE
19 TOWEL HAVE BEEN IN, NOT EXACTLY, BUT BASICALLY HOW WOULD THE
20 TOWEL HAVE TO HAVE BEEN TO HAVE ONE SHOT MAKE SIX HOLES?

21 A. WELL, IT CERTAINLY COULD HAVE BEEN SIX INDIVIDUAL SHOTS
22 WHERE IT WAS THREE ON ONE SIDE AND THREE ON THE OTHER.
23 HOWEVER, TAKING ALL OF THE CIRCUMSTANCES OF THE ANALYSIS
24 INTO -- INTO PLAY, IT IS MY OPINION THAT IT WAS CONSISTENT
25 WITH THE TOWEL HAVING BEEN BUNCHED UP AND THE MUZZLE OF THE

1 GUN PLACED AGAINST ONE PART OF THE TOWEL AND BEING SHOT
2 THROUGH ONE TIME.

3 Q. OKAY. YOU CAN RETAKE YOUR SEAT. LET ME MAKE -- I'M
4 PRETTY SURE WE'RE CLEAR ON THIS, BUT LET ME JUST MAKE SURE.
5 SO THE TOWEL IS BUNCHED UP IN SOME TYPE OF FASHION, AND THE
6 BARREL OF THE GUN WAS UP AGAINST THE TOWEL WHEN IT WAS FIRED
7 BASED ON ALL THE TESTS THAT YOU PERFORMED.

8 A. YES, SIR.

9 Q. ALL RIGHT. AND IF A SHOTGUN HAD BEEN USED TO FIRE
10 THROUGH THAT TOWEL, WOULD YOU HAVE OBSERVED THOSE SAME TYPE
11 HOLES?

12 A. NO, SIR. IT'S MY OPINION I WOULD NOT HAVE.

13 Q. OKAY. WOULD IT BE CONSISTENT WITH A PISTOL BEING FIRED
14 INTO THE TOWEL?

15 A. I DO BELIEVE THAT THIS IS CONSISTENT WITH A PISTOL; YES,
16 SIR.

17 MR. ROSS: THAT'S ALL THE QUESTIONS I'D HAVE.

18 MR. COLLINS: THANK YOU, YOUR HONOR.

19 THE COURT: CROSS-EXAMINATION?

20 MR. COLLINS: THANK YOU, YOUR HONOR.

21 CROSS-EXAMINATION

22 BY MR. COLLINS:

23 Q. GOOD MORNING.

24 A. GOOD MORNING.

25 Q. HOPEFULLY THIS WILL BE THE LAST CASE YOU HAVE TO TESTIFY

1 IN.

2 A. I HOPE.

3 Q. OKAY. NOW, I WAS LOOKING AT THE TOWEL WHEN YOU WERE
4 DISPLAYING IT. THERE'S SOME COLORS ON IT. IS THAT FROM SOME
5 OF THE TESTS THAT YOU RAN ON THE TOWEL, THE STAINS ON THE
6 TOWEL?

7 A. YES, SIR. THE STAINS AROUND THE HOLES SPECIFICALLY,
8 YES, SIR, THAT'S FROM MY EXAMINATION.

9 Q. OKAY. AND WHEN YOU WRITE THE REPORTS, DO YOU USE
10 DIFFERENT TERMINOLOGY FOR DIFFERENT LEVELS OF HOW SURE YOU
11 ARE OF WHAT -- CAN YOU KIND OF EXPLAIN TO THE JURY THE
12 DIFFERENT TERMINOLOGY THAT YOU USE LIKE CONSISTENT WITH OR ET
13 CETERA?

14 A. I'LL DO MY BEST.

15 Q. OKAY.

16 A. SPECIFICALLY WITH GUNSHOT RESIDUE KITS SUCH AS ITEM
17 NUMBER 22 OR STATE'S EXHIBIT 102, WE HAVE PROTOCOLS TO
18 DETERMINE WHAT LEVEL OF -- WHAT LEVEL OF RESULT WE - I CAN'T
19 EVEN THINK OF THE WORD; I'M SORRY - THAT WE REPORT MEANING
20 THAT IF I WERE TO RUN THE PLANCHETS THAT ARE AVAILABLE, I
21 WOULD HAVE DIFFERENT RESULTS OR DIFFERENT WORDING THAN I
22 WOULD JUST RUNNING THE NITRIC ACID Q-TIP SWABS THAT I RAN.
23 AND, OF COURSE, BECAUSE WE ARE LOOKING FOR MORE THAN ONE
24 METAL WHEN WE DO THESE EXAMINATIONS, DEPENDING ON WHAT WE
25 FIND AND THE RELATIONSHIP OF WHAT WE FIND TO EACH OTHER, IT

1 GIVES US DIFFERENT LEVELS OR DIFFERENT DEGREES OF CERTAINTY
2 FOR OUR RESULTS.

3 Q. AND FOR THE TOWEL YOU SAID IT WAS CONSISTENT WITH
4 GUNSHOT RESIDUE?

5 A. FOR THE TOWEL, RESIDUES AND PHYSICAL CHARACTERISTICS
6 FOUND AROUND THESE HOLES ARE CONSISTENT WITH ONE CONTACT
7 SHOT.

8 Q. CONSISTENT WITH.

9 A. YES, SIR. BARRING THE FACT THAT SOMEONE IS ACTUALLY AT
10 THE SCENE AND CAN VISIBLY SEE IT OCCUR, YOU WILL ONLY GET A
11 CONSISTENT WITH.

12 Q. OKAY. AND THEN WHERE I'M GOING WITH THIS IS: FOR THE
13 GUNSHOT RESIDUE KIT FROM MR. AUSTIN, YOU HAVE "MAY BE
14 ASSOCIATED WITH GUNSHOT RESIDUE." IS THAT A HIGHER STANDARD
15 OR A LOWER STANDARD THAN CONSISTENT WITH?

16 A. WELL, THESE ARE TWO TOTALLY DIFFERENT EXAMINATIONS THAT
17 ARE BEING PERFORMED, SO UNFORTUNATELY I CANNOT COMPARE THE
18 TWO. HOWEVER, THE "MAY BE ASSOCIATED WITH" IS CERTAINLY NOT
19 OUR HIGHEST LEVEL OF RESULTS. "GUNSHOT RESIDUE FOUND" WOULD
20 BE THE HIGHEST LEVEL OF RESULT FOR A GUNSHOT RESIDUE KIT
21 TAKEN FROM THE HANDS. SO THIS ONE IS -- THE LEVELS OF METALS
22 PRESENT WERE CERTAINLY PRESENT, HOWEVER, NOT NECESSARILY
23 ENOUGH OR I DID NOT ACTUALLY FIND -- DID NOT LOOK FOR
24 SPECIFIC GUNSHOT RESIDUE PARTICLES. THEREFORE, IT'S JUST
25 SIMPLY REPORTED AS MAY BE ASSOCIATED WITH GUNSHOT RESIDUE.

1 Q. AND WOULD IT CONCERN YOU AS A PERSON TESTING THAT KIT IF
2 YOU KNEW THAT THE KIT WAS UNACCOUNTED FOR FOR OVER A MONTH
3 BEFORE IT CAME INTO YOUR POSSESSION?

4 A. PROVIDED THAT THE EVIDENCE WAS SEALED, I SEE NO CAUSE
5 FOR CONCERN.

6 Q. BUT IF IT WASN'T SEALED?

7 A. IF IT WASN'T SEALED, I WOULD NOT HAVE ANALYZED IT.

8 Q. AND DID YOU -- OTHER THAN THE TOWEL, DID YOU DO ANY
9 GUNSHOT RESIDUE TESTING ON ANY OF THE CLOTHING OF MR. AUSTIN?

10 A. NO, SIR, I DID NOT.

11 Q. THAT WASN'T SUBMITTED TO YOU?

12 A. NO, SIR.

13 Q. OKAY. AND WOULD ANY OF YOUR TESTS TELL YOU WHY THIS
14 PERSON WAS SHOT?

15 A. NO, SIR.

16 MR. COLLINS: THANK YOU.

17 THE COURT: REDIRECT?

18 MR. ROSS: NO, YOUR HONOR. I ASK THAT THE WITNESS BE
19 EXCUSED.

20 THE COURT: ANY OBJECTION, MR. COLLINS?

21 MR. COLLINS: NO OBJECTION.

22 THE COURT: YOU MAY STEP DOWN, MA'AM, AND YOU ARE
23 EXCUSED FROM THE TRIAL OF THIS CASE. PLEASE LEAVE MY
24 EXHIBITS WITH ME. SOLICITOR, CALL YOUR NEXT WITNESS.

25 MR. ROSS: DR. RONALD BURNS.

1 THE COURT: DR. RONALD BURNS.

2 DR. RONALD G. BURNS, AFTER BEING DULY SWORN,
3 TESTIFIED AS FOLLOWS:

4 THE CLERK: PLEASE HAVE A SEAT. STATE YOUR FULL NAME
5 FOR THE RECORD.

6 THE WITNESS: MY NAME IS RONALD GIBSON BURNS, LAST NAME
7 SPELLED B-U-R-N-S.

8 THE COURT: YOUR WITNESS, COUNSEL.

9 MR. ROSS: THANK YOU, YOUR HONOR.

10 DIRECT EXAMINATION

11 BY MR. ROSS:

12 Q. GOOD MORNING, DR. BURNS.

13 A. GOOD MORNING.

14 Q. DR. BURNS, WHERE ARE YOU EMPLOYED?

15 A. AT RICHLAND MEMORIAL HOSPITAL IN THE DEPARTMENT OF
16 PATHOLOGY.

17 Q. AND WHAT DO YOU DO FOR THEM?

18 A. I'M ONE OF THEIR PATHOLOGISTS.

19 Q. AND WHAT DOES A PATHOLOGIST DO?

20 A. WELL, A PATHOLOGIST IS A MEDICAL DOCTOR WHOSE SPECIALTY
21 IS EXAMINATION OF TISSUES OF THE BODY AND FLUIDS OF THE BODY
22 FOR EVIDENCE OF DISEASE OR INJURY.

23 Q. AND COULD YOU GIVE THE COURT AND THE JURY A LITTLE BIT
24 ABOUT YOUR EDUCATIONAL BACKGROUND AND YOUR TRAINING AS IT
25 RELATES TO PATHOLOGY AND FORENSIC PATHOLOGY?

1 A. YES. MY MEDICAL DEGREE WAS FINISHED IN 1975 AT THE
2 MEDICAL UNIVERSITY OF SOUTH CAROLINA IN CHARLESTON, AND FROM
3 THERE I COMPLETED FOUR YEARS OF PATHOLOGY RESIDENCY WITH THE
4 ARMY AT WILLIAM BEAUMONT ARMY MEDICAL CENTER. AND FROM THERE
5 I WAS TRANSFERRED AND SPENT THREE YEARS ON THE TEACHING
6 FACULTY AT EISENHOWER ARMY MEDICAL CENTER TEACHING PATHOLOGY.
7 I STARTED HERE IN 1983 AND HAVE BEEN HERE SINCE THAT TIME AT
8 RICHLAND.

9 Q. AND HAVE YOU PERFORMED AUTOPSIES AS PART OF YOUR WORK AT
10 RICHLAND MEMORIAL HOSPITAL?

11 A. YES, QUITE A FEW.

12 Q. AND APPROXIMATELY HOW MANY?

13 A. PROBABLY IN THE RANGE OF SEVEN TO EIGHT HUNDRED SINCE
14 I'VE BEEN IN TOWN.

15 Q. AND HAVE YOU TESTIFIED IN COURT AS AN EXPERT IN FORENSIC
16 PATHOLOGY IN THE PAST?

17 A. YES, DOZENS OF TIMES.

18 MR. ROSS: YOUR HONOR, WE'D OFFER DR. BURNS AS AN EXPERT
19 IN THE AREA OF FORENSIC PATHOLOGY.

20 THE COURT: ANY OBJECTION AS TO QUALIFICATIONS?

21 MR. COLLINS: NO OBJECTION.

22 THE COURT: VERY WELL. LADIES AND GENTLEMEN, RECALLING
23 MY EARLIER INSTRUCTIONS TO YOU CONCERNING EXPERT TESTIMONY,
24 THE WITNESS IS QUALIFIED IN THE FIELD OF FORENSIC PATHOLOGY
25 WITHOUT OBJECTION. YOU MAY PROCEED, COUNSEL.

1 MR. ROSS: THANK YOU, YOUR HONOR.

2 BY MR. ROSS:

3 Q. DR. BURNS, DID YOU PERFORM AN AUTOPSY ON A DANIEL
4 AUSTIN?

5 A. YES, I DID.

6 Q. AND WHAT WAS THE DATE OF THAT AUTOPSY?

7 A. ACCORDING TO MY NOTES, IT WAS THE 23RD OF JULY, 1999.

8 Q. AND APPROXIMATELY WHAT TIME WAS THAT AUTOPSY DONE?

9 A. ACCORDING TO MY NOTES, IT WOULD BEGIN AT ROUGHLY 9:30
10 A.M.

11 Q. A.M.?

12 A. YES.

13 Q. ALL RIGHT. AND WHEN YOU PERFORM AN AUTOPSY, WHAT DOES
14 AN AUTOPSY CONSIST OF?

15 A. WELL, IT BEGINS WITH AN EXTERNAL EXAMINATION OF THE
16 ENTIRE BODY AS RECEIVED, CLOTHED OR UNCLOTHED, NOTATION OF
17 ANY MARKS AND INJURIES AND THEN PROCEEDS TO INTERNAL
18 EXAMINATION, WEIGHING AND EXAMINING ORGANS, TAKING SMALLER
19 PORTIONS THAT ARE ULTIMATELY EXAMINED UNDER THE MICROSCOPE
20 FOR FURTHER EVIDENCE OF DISEASE AND ACCUMULATION OF THAT
21 INFORMATION INTO A REPORT.

22 Q. ALL RIGHT. AND WHEN DANIEL AUSTIN WAS BROUGHT FOR THE
23 AUTOPSY, WAS HE CLOTHED OR UNCLOTHED?

24 A. HE HAD ON A BLACK TEE SHIRT AND BLUE BLUE-JEAN-TYPE
25 SHORTS AND I BELIEVE SOME BROWN HIKING SHOES.

1 Q. AND WERE THOSE CLOTHES REMOVED FROM HIM AT THE TIME OF
2 AUTOPSY?

3 A. YEAH. WE REMOVED THOSE AT AUTOPSY AND THEN TURNED THEM
4 OVER TO THE SHERIFF'S INVESTIGATOR.

5 Q. AND WAS ANYTHING OF EVIDENTIARY VALUE FOUND IN THE
6 CLOTHING?

7 A. IN THE PROCESS OF REMOVING IT, WE FOUND ONE I GUESS
8 SHOTGUN PELLET, A ROUNDED PELLET, AND WHAT YOU'D CALL
9 BUCKSHOT PRESENT AND WE ALSO FOUND A MUCH SMALLER ONE, I
10 GUESS WHAT YOU CALL BIRDSHOT, ABOUT TWO MILLIMETERS IN
11 DIAMETER INSIDE THE CLOTHES LOOSE.

12 Q. ALL RIGHT. AND AFTER THE CLOTHING WAS REMOVED, WHAT DID
13 YOU DO NEXT?

14 A. WELL, THEN WE CLEAN UP THE BODY AND SYSTEMATICALLY
15 EXAMINE ALL THE SURFACES LOOKING FOR WOUNDS OR OTHER
16 INJURIES.

17 Q. AND IS THAT WHAT YOU CALL AN EXTERNAL EXAM?

18 A. YES.

19 MR. ROSS: OKAY. YOUR HONOR, MAY I APPROACH? I'VE GOT
20 TO GET THE EASEL AND SHOW HIM A DIAGRAM, BUT CAN I APPROACH
21 HIM AND THEN GO THROUGH THE PHOTOS WITH HIM?

22 THE COURT: ARE YOU GOING TO LEAVE HIM ON THE STAND FOR
23 NOW?

24 MR. ROSS: JUST INITIALLY BUT I'LL NEED TO APPROACH HIM.

25 THE COURT: YOU MAY APPROACH.

1 MR. ROSS: ALL RIGHT.

2 BY MR. ROSS:

3 Q. FIRST LET ME SHOW YOU WHAT'S BEEN MARKED STATE'S EXHIBIT
4 NUMBER 115. IS THAT A DIAGRAM OF A HUMAN BODY?

5 A. YES, IT IS.

6 Q. AND ARE THESE MARKINGS THAT YOU HAVE PUT ON THE BODY
7 THAT SHOW WHERE THE WOUNDS WERE ON DANIEL AUSTIN?

8 A. THAT'S CORRECT.

9 Q. ALL RIGHT. AND THAT WAS AS YOU FOUND HIM ON JULY 23RD,
10 1999?

11 A. YES.

12 MR. ROSS: YOUR HONOR, WE'D OFFER STATE'S EXHIBIT NUMBER
13 115 INTO EVIDENCE. THEY HAVE SEEN THE EXHIBIT, YOUR HONOR.

14 THE COURT: ANY OBJECTION, MR. COLLINS?

15 MR. COLLINS: NO OBJECTION, YOUR HONOR. WE'LL
16 STIPULATE---

17 THE COURT: LADIES AND GENTLEMEN OF THE JURY, STATE'S
18 EXHIBIT 115 WILL BE ADMITTED INTO EVIDENCE WITHOUT OBJECTION.

19 (STATE'S EXHIBIT 115 WAS RECEIVED IN EVIDENCE.)

20 THE COURT: YOU MAY PUBLISH THAT EXHIBIT TO THE JURY.

21 MR. ROSS: THANK YOU, YOUR HONOR.

22 BY MR. ROSS:

23 Q. AND, DR. BURNS, LET ME ASK YOU ABOUT THESE PHOTOS. I'M
24 HANDING YOU STATE'S EXHIBIT NUMBER 44, 47, 51, 46, 49, 48,
25 AND 45. IF YOU COULD, JUST LOOK THROUGH THOSE AND NOT

1 DESCRIBE WHAT'S IN THEM, BUT DO YOU RECOGNIZE WHAT'S SHOWN AS
2 AND IS IT AN ACCURATE DEPICTION OF THE WOUNDS THAT YOU FOUND
3 ON DANIEL AUSTIN ON JULY 23RD, 1999?

4 A. YES, IT IS.

5 Q. WOULD THOSE BE HELPFUL IN YOUR TESTIMONY IN EXPLAINING
6 THE WOUNDS TO THE JURY?

7 A. THEY COULD POSSIBLY.

8 Q. AND LET ME ALSO SHOW YOU STATE'S EXHIBIT NUMBER 50. DO
9 YOU ALSO RECOGNIZE THAT AS A WOUND TO DANIEL AUSTIN FROM THE
10 AUTOPSY?

11 A. YES.

12 Q. AND WOULD THAT BE HELPFUL IN YOUR TESTIMONY?

13 A. IT MIGHT.

14 Q. LOOKING AT STATE'S EXHIBIT NUMBER 46 AND STATE'S EXHIBIT
15 NUMBER 50, DO THOSE PHOTOS SHOW THE SAME AREA OF BULLET HOLES
16 OR ARE THEY DIFFERENT?

17 A. IN ESSENCE, WITHOUT DESCRIBING THEM, YES, THEY DO.
18 DIFFERENT ANGLES OF THE SAME WOUND.

19 Q. ALL RIGHT. WOULD STATE'S EXHIBIT NUMBER 50 BE HELPFUL
20 IN YOU EXPLAINING THE PATTERN OF THE GUNSHOT WOUND IN
21 ADDITION TO STATE'S EXHIBIT NUMBER 46?

22 A. IT COULD BE. I THINK THEY SHOW THE SAME EVENT.

23 MR. ROSS: OKAY. COULD I HAVE THE DOCTOR STEP DOWN,
24 YOUR HONOR?

25 THE COURT: LET ME ASK YOU THIS: ARE YOU OFFERING THESE

1 PHOTOGRAPHS INTO EVIDENCE AT THIS TIME SUBJECT TO MY EARLIER
2 RULING, COUNSEL, AS A MATTER OF LAW? BUT LET'S MAKE SURE THE
3 COURT REPORTER HAS THE NUMBERS AGAIN. IF YOU'LL REPEAT THEM
4 SINCE THEY WERE NOT IN CONSECUTIVE ORDER, COUNSEL.

5 MR. ROSS: THANK YOU, YOUR HONOR. THIS IS STATE'S
6 EXHIBIT 44, 47, 51, 49, 48, 45, AND 46.

7 THE COURT: 44, 47, 51, 49, 48, 45, AND 46, SUBJECT TO
8 MY EARLIER RULING, ARE ADMITTED INTO EVIDENCE NOW OVER
9 OBJECTION. NOW YOU MAY HAVE THE DOCTOR STEP DOWN. GET THE
10 MICROPHONE FOR HIM, PLEASE, AND PUT THE EXHIBIT 115, IF
11 YOU'RE GOING TO USE IT, ON THE EASEL. COUNSEL, YOU MAY COME
12 AROUND SO YOU CAN VIEW WHAT'S BEING SHOWN TO THE JURY.

13 BY MR. ROSS:

14 Q. I'M GOING TO HAND YOU THIS POINTER, DOCTOR. LET'S START
15 WITH STATE'S EXHIBIT NUMBER 46.

16 A. YES.

17 Q. CAN YOU DESCRIBE FOR THE JURY -- I'M GOING TO HAVE TO
18 MOVE UP CLOSER SO THEY CAN SEE, BUT CAN YOU DESCRIBE FOR THE
19 JURY WHAT IS SHOWN IN THIS PHOTO?

20 A. YES. IT'S A PHOTOGRAPH OF THE BACK OF THE DECEDENT AND
21 PREDOMINANTLY TAKEN TO SHOW THE WOUNDS TO THE POSTERIOR BACK
22 LEFT SHOULDER AREA.

23 MR. ROSS: YOUR HONOR, CAN I PASS---

24 THE COURT: YOU MAY.

25 MR. ROSS: ---THESE -- PASS THESE AROUND?

1 **THE COURT:** THEY'RE IN EVIDENCE. YOU MAY PUBLISH.

2 **MR. ROSS:** YOUR HONOR, COULD I WAIT 'TIL THEY SEE IT
3 BEFORE I MOVE ON?

4 **THE COURT:** YOU MAY.

5 **MR. COLLINS:** YOUR HONOR, THE DEFENSE WILL STIPULATE TO
6 THE CAUSE OF DEATH. THE DEFENSE WILL STIPULATE AS TO THE
7 CAUSE OF DEATH IN THIS CASE.

8 **THE COURT:** VERY WELL. MR. ROSS?

9 **MR. ROSS:** THAT'S FINE, YOUR HONOR, BUT I STILL WOULD
10 LIKE TO EXPLAIN HOW THE DEATH OCCURRED.

11 **THE COURT:** THANK YOU, MR. COLLINS. I'LL ALLOW HIM TO
12 PROCEED.

13 BY MR. ROSS:

14 Q. AND EXPLAIN ONE MORE TIME, DR. BURNS, WHAT THE JURY IS
15 LOOKING AT THERE IN THAT PHOTOGRAPH.

16 A. YES. IT'S A PHOTOGRAPH OF THE -- MOSTLY THE LEFT SIDE
17 OF THE BACK OF THE BODY SO THE ANGLE IS TURNED A LITTLE
18 FUNNY, BUT THAT'S WHAT IT IS.

19 Q. AND DID YOU HAVE AN OPINION AS TO WHAT CAUSED THAT --
20 THOSE WOUNDS?

21 A. WELL, YES. THESE WOUNDS HAD A ROUNDED PROFILE AND
22 APPEAR TO HAVE BEEN MADE BY BUCKSHOT, LARGE CALIBER SHOTGUN
23 PROJECTILES.

24 Q. AND LOOKING AT STATE'S EXHIBIT NUMBER 115 WHICH IS THE
25 DIAGRAM, WHERE ARE THESE INJURIES SHOWN ON THE DRAWING?

1 A. THIS WOULD BE THE LEFT SHOULDER AREA, AND IT HIGHLIGHTS
2 THAT AREA THERE.

3 Q. STATE'S EXHIBIT NUMBER 47, I'M SHOWING IT TO YOU. WHAT
4 IS SHOWN IN THAT PHOTO?

5 A. YES. THAT WOULD BE THE INNER SURFACE OF THE LEFT UPPER
6 ARM.

7 Q. IF YOU COULD, POINT OUT TO THE JURY WHERE THESE WOUNDS
8 ARE LOCATED---

9 THE COURT: REFER TO THE EXHIBIT NUMBER.

10 BY MR. ROSS:

11 Q. STATE'S EXHIBIT 115.

12 A. ON THIS EXHIBIT, THAT WOULD BE THIS SMALL OVAL AREA ON
13 THE INNER SURFACE OF THE LEFT UPPER ARM.

14 Q. AND WHAT WAS YOUR OPINION AS TO WHAT CAUSED THESE
15 WOUNDS?

16 A. THESE ALSO APPEARED TO BE DUE TO BUCKSHOT.

17 Q. WERE THESE ENTRY WOUNDS OR EXIT WOUNDS?

18 A. THESE WERE EXIT WOUNDS.

19 Q. AND BACKING UP TO THE SHOULDER AREA THAT WE JUST LOOKED
20 AT, WERE THOSE ENTRY WOUNDS OR EXIT WOUNDS?

21 A. THOSE WERE ENTRY WOUNDS.

22 Q. STATE'S EXHIBIT NUMBER 49, CAN YOU SAY WHAT IS DEPICTED
23 IN THAT PHOTO?

24 A. YES. THAT IS THE LEFT ELBOW AREA, THE OUTSIDE PORTION.

25 Q. IS THAT THE LOWER PORTION OF THE ARM THAT WAS JUST SHOWN

1 TO THE JURY IN 47?

2 A. IT'S ON THE OTHER SIDE OF THE LOWER PORTION, YES.

3 Q. AND WHERE ON STATE'S EXHIBIT 115 IS PHOTO 49 SHOWN?

4 A. THAT WOULD BE THIS AREA RIGHT HERE, AGAIN THE OUTSIDE
5 SURFACE AROUND THE LEFT ELBOW.

6 Q. AND WAS -- ENTRY WOUND OR EXIT WOUND?

7 A. THOSE ARE ENTRY WOUNDS.

8 Q. STATE'S EXHIBIT NUMBER 48, WHAT IS SHOWN IN THAT
9 PHOTOGRAPH?

10 A. OKAY. THAT IS THE LEFT CHEST WALL, THE LATERAL OUTER
11 ASPECT OF IT.

12 Q. ALL RIGHT. AND ARE THOSE ENTRY WOUNDS OR EXIT WOUNDS?

13 A. THOSE ARE ENTRY WOUNDS.

14 Q. AND STATE'S EXHIBIT NUMBER 45, WHAT DOES THAT SHOW?

15 A. THAT IS THE CHIN TAKEN FROM THE LEFT SIDE.

16 Q. IS THAT AN ENTRY WOUND OR AN EXIT WOUND?

17 A. AN ENTRY WOUND.

18 Q. STATE'S EXHIBIT 51, WHAT IS SHOWN IN THAT PHOTOGRAPH?

19 A. THOSE WOULD BE BOTH OF THE BUTTOCKS AREAS.

20 Q. AND ARE THOSE ENTRY WOUNDS OR EXIT WOUNDS?

21 A. THOSE ARE ENTRY WOUNDS.

22 Q. AND WHAT CAUSED THESE WOUNDS THAT ARE SHOWN IN 48, 45,
23 AND 51?

24 A. AGAIN, THOSE APPEAR TO BE BUCKSHOT, ALSO BUCKSHOT, AND
25 THIS WOULD BE THE SMALLER CALIBER BIRDSHOT.

1 Q. I'LL HAND THESE TO THE JURY. LOOKING AT STATE'S EXHIBIT
2 NUMBER 45, WHERE IS THAT SHOWN ON EXHIBIT 115?

3 A. THAT WOULD BE REPRESENTED IN THIS POINT RIGHT HERE ON
4 THE LEFT CHIN.

5 Q. STATE'S EXHIBIT NUMBER 48, WHERE IS THAT SHOWN ON THE
6 EXHIBIT 115?

7 A. THAT'S REPRESENTED BY THIS OVAL SHAPE HERE ON THE LEFT
8 CHEST.

9 Q. STATE'S EXHIBIT 51, WHERE IS THAT SHOWN ON EXHIBIT 115?

10 A. THAT'S REPRESENTED IN THIS CIRCLE AROUND THE BUTTOCKS
11 AREA.

12 Q. AND GOING THROUGH THESE AREAS THAT -- WHERE THE SHOTGUN
13 BLAST, DO YOU HAVE AN OPINION AS TO THE DIRECTION OF TRAVEL
14 FOR EACH OF THESE AREAS AS TO HOW THEY WERE COMING TOWARDS
15 THE BODY?

16 A. YES, I DO. IN NO PARTICULAR ORDER, THE AREA FROM THE
17 BUTTOCKS APPEARS TO HAVE COME FROM ESSENTIALLY STRAIGHT ON IN
18 THAT DIRECTION. THE AREA HERE ON THE SHOULDER APPEARS TO
19 HAVE COME FROM THE REAR PERHAPS SLIGHTLY, YOU KNOW, OUT FROM
20 CENTER, SO NOT QUITE CENTERED BACK BUT A LITTLE OFF TO THE
21 SIDE. THE WOUNDS WHICH ARE PERHAPS BETTER ILLUSTRATED ON
22 THIS TO THE UPPER LEFT ARM APPEAR TO HAVE COME FROM THE
23 OUTSIDE MORE OR LESS STRAIGHT AND PASSED THROUGH, AND IT
24 WOULD APPEAR THAT IT WOULD BE LIKELY THEY REPRESENT THE SAME
25 SHOT THAT ENDED UP ENTERING THE CHEST IN THIS ZONE.

1 Q. SO IF YOU COULD DEMONSTRATE ON ME... WHERE---

2 A. YES. THEY WOULD HAVE ENTERED THE OUTER AREA HERE,
3 APPEARED TO PASS THROUGH THE INNER SURFACE OF THE ARM AND
4 THEN ENTER INTO THE CHEST.

5 Q. OKAY.

6 A. AND THEN THE LAST GROUP HERE ARE THE GROUP THAT ENTERED
7 HERE IN THE OUTER SURFACE OF THE ELBOW AND THEN EXITED ALONG
8 THE INNER SURFACE. DEPENDING UPON HOW YOU DO THE ARM, IT
9 MIGHT BE POSSIBLE THEY AND THE OUTER WOUNDS WERE PART OF THE
10 SAME PATTERN. I WOULDN'T...

11 Q. SO WHATEVER POSITION THE ARM WAS IN COMING THROUGH.

12 A. COULD POSSIBLY HAVE BEEN, RIGHT.

13 Q. AND THEN THE CHIN AREA?

14 A. THE CHIN, MORE DIFFICULT TO SAY WHERE IT CAME FROM
15 REALLY, BUT IT WAS MORE OR LESS A DIRECT-ON, NOT A GLANCING
16 SHOT.

17 Q. ALL RIGHT. AND THOSE ARE THE SHOTGUN-TYPE BLASTS.

18 A. YES.

19 Q. DID YOU FIND ANOTHER TYPE OF CALIBER WEAPON THAT WAS
20 USED ON THIS INDIVIDUAL?

21 A. YES. AS SHOWN ON THIS DIAGRAM 115, WE SAW THREE GUNSHOT
22 MORE STANDARD BULLET ENTRY WOUNDS HERE ON THE RIGHT SIDE OF
23 THE BODY, ONE UP HIGH JUST A LITTLE BELOW THE FOLD OF THE
24 ARM, ONE NEAR THE MID BACK, AND ONE JUST ABOVE THE RIGHT HIP
25 CREST.

1 Q. AND DID YOU RECOVER ANY PROJECTILES ASSOCIATED WITH
2 THESE THREE SHOTS FROM THE BODY?

3 A. FOR TWO OF THESE WE DID RECOVER THE PROJECTILES, THE ONE
4 FROM THE UPPER PORTION OF THE RIGHT SIDE AND THE ONE FROM
5 JUST ABOVE THE HIP ON THE RIGHT SIDE.

6 Q. ALL RIGHT. AND WHY WAS THIS PROJECTILE NOT RECOVERED?

7 A. WELL, WE DIDN'T RECOVER IT BECAUSE THIS ONE PASSED ONLY
8 THROUGH SOFT TISSUES ON THE OUTER PORTION OF THE BODY AND,
9 THEREFORE, IT WAS NEVER GOING TO BE A FATAL SHOT. WE ALREADY
10 HAD TWO PROJECTILES THAT WE KNEW WE HAD GOTTEN.

11 Q. AND WERE THESE THREE WOUNDS CONSISTENT IN APPEARANCE
12 WITH EACH OTHER?

13 A. YES.

14 Q. AND WOULD THIS BE CONSISTENT WITH THE TWO PROJECTILES
15 RECOVERED, A .32 CALIBER -- WOULD THIS X. MARK ALSO BE
16 CONSISTENT WITH A .32 CALIBER PROJECTILE?

17 A. YES, IT WAS VERY SIMILAR.

18 Q. SHOW THE JURY THE DIRECTION OF TRAVEL THAT THESE THREE
19 SHOTS CAME INTO THE BODY FROM.

20 A. EACH OF THESE APPEARS TO HAVE COME FROM PRETTY MUCH
21 DIRECTLY FROM THE RIGHT SIDE, SORT OF IN THE SAME PLANE AS
22 THE PAPER COMING IN.

23 Q. SO IF MY BACK IS TO THE JURY, THE SHOTS WERE COMING THIS
24 WAY?

25 A. YES.

1 Q. FROM THE SIDE.

2 A. YES.

3 Q. I'M SHOWING YOU STATE'S EXHIBIT NUMBER 44.

4 A. YES.

5 Q. WHAT DOES THAT SHOW?

6 A. THIS IS A PHOTOGRAPH OF A COUPLE OF THE X-RAYS THAT WERE
7 TAKEN AT THE TIME OF THE AUTOPSY.

8 Q. AND DOES THAT SHOW SOME OF THE PROJECTILES THAT ARE
9 STILL IN THE LUNGS?

10 A. YES. ACTUALLY THIS WOULD HAVE BEEN TAKEN PRIOR TO ANY
11 EXAMINATION.

12 Q. ALL RIGHT. BUT EVERY -- WAS EVERY SINGLE PELLET REMOVED
13 FROM THE BODY?

14 A. NO. NO. THAT WOULD HAVE BEEN TOO ARDUOUS A TASK. WE
15 FOCUSED OUR EFFORTS ON ANY PELLETS THAT MADE IT INTO THE BODY
16 CAVITY WHERE A DANGEROUS OR LIFE-THREATENING WOUND WOULD HAVE
17 BEEN DELIVERED. SO WE REMOVED THOSE.

18 Q. AND THAT WOULD BE THE CASE ALSO WITH THE PROJECTILE, THE
19 STANDARD BULLET, THAT WAS LEFT IN THE BODY.

20 A. YES. YES.

21 Q. YOU CAN RETAKE YOUR SEAT, DOCTOR. I'LL WAIT 'TIL THE
22 JURY IS FINISHED WITH THAT LAST PHOTOGRAPH. AFTER YOU DID
23 THE EXTERNAL EXAMINATION AND DOCUMENTED THE INJURIES, SOME OF
24 THAT ARE SHOWN IN THOSE PHOTOGRAPHS -- I SHOULD HAVE ASKED
25 YOU THIS WHILE YOU WERE UP. THE THREE STANDARD GUNSHOT

1 WOUNDS, WE'LL CALL THEM, THAT ARE DEPICTED HERE ON STATE'S
2 EXHIBIT 115, IS THERE A PHOTOGRAPH SHOWING THOSE WOUNDS?

3 A. AMONG THESE?

4 Q. YES, SIR.

5 A. I DON'T RECALL IF THERE WERE. NOT IN THIS GROUP.

6 Q. OKAY. SO WE HAVE THE PHOTOS OF THE SHOTGUN BLASTS, BUT
7 AS FAR AS THE STANDARD WOUNDS, JUST ON THE DIAGRAM.

8 A. CORRECT.

9 Q. ALL RIGHT. DID YOU DO AN INTERNAL EXAMINATION---

10 A. YES.

11 Q. ---ON MR. AUSTIN?

12 A. YES, WE DID.

13 Q. OKAY. AND WHAT WERE YOUR FINDINGS AS FAR AS THE -- AS
14 FAR AS THE INTERNAL EXAMINATION?

15 A. OKAY. WE, OF COURSE, HAVE A STANDARD WAY OF OPENING THE
16 BODY AND THEN EXAMINING THE ORGANS IN PLACE AND THEN REMOVING
17 THEM INDIVIDUALLY. WHEN WE OPENED THE AREA OF THE CHEST, WE
18 FOUND A LARGE VOLUME OF BLOOD BOTH WITHIN THE RIGHT AND THE
19 LEFT CHEST CAVITIES. WE MEASURED ABOUT A LITER, THAT IS A
20 THOUSAND CC'S, OF BLOOD IN THE RIGHT CHEST CAVITY, SO ROUGHLY
21 A QUART, AND 1500 CC'S IN THE LEFT CHEST.

22 Q. OKAY. AND DID YOU DETERMINE WHICH SHOT WAS FATAL OR
23 WHICH SHOTS WERE FATAL?

24 A. WELL, THE MOST DEADLY OR DANGEROUS SHOT WAS THE ONE THAT
25 WAS DELIVERED TO THE UPPER PORTION OF THE RIGHT SIDE OF THE

1 BODY, THE HIGHEST ONE ON DIAGRAM 115. IT ENTERED THE BODY
2 AND FRACTURED THE EIGHTH RIB AND PASSED ALL THE WAY THROUGH
3 THE SUBSTANCE OF THE RIGHT LUNG AND ENTERED THE AORTA IN THE
4 CHEST AND THEN EXITED THROUGH THE AORTA, OF COURSE, RUPTURING
5 IT AND THEN PASSED INTO THE LEFT LUNG. IT EXITED ALL THE WAY
6 THROUGH THE LEFT LUNG AND WAS FOUND WITHIN THE SOFT TISSUE OF
7 THE CHEST WALL ON THE RIGHT -- ON THE LEFT SIDE.

8 MR. ROSS: MAY I APPROACH, YOUR HONOR?

9 THE COURT: YOU MAY.

10 BY MR. ROSS:

11 Q. AND WHICH GUNSHOT WOUND ARE WE TALKING ABOUT ON STATE'S
12 EXHIBIT 115?

13 A. THAT ONE. THE TOP ONE ON THE RIGHT.

14 Q. AND AFTER MR. AUSTIN RECEIVED THAT WOUND, WHAT WOULD
15 HAVE HAPPENED TO HIS BODY?

16 A. WELL, THE RUPTURE OF THE AORTA WOULD HAVE BEEN THE MAJOR
17 FACTOR, AND IT'S VERY MUCH AS THOUGH YOU HAVE A LARGE HOLE IN
18 A GARDEN HOSE OR SOMETHING. THE SPRINKLER JUST KIND OF STOPS
19 WORKING. THE BLOOD WAS IMMEDIATELY POURING OUT. THIS WOULD
20 REPRESENT SOMETHING CLOSE TO HALF OF HIS BLOOD VOLUME THAT
21 HAD GONE INTO HIS CHEST. IT WOULD HAVE HAPPENED VERY RAPIDLY
22 BECAUSE IT'S A VERY LARGE SIZE BLOOD VESSEL.

23 Q. AND CAN YOU SAY HOW FAST SOMEONE, AFTER RECEIVING THAT
24 TYPE OF WOUND, HOW FAST THEY WOULD START FEELING FAINT?

25 A. I WOULD EXPECT IT TO BE VERY EARLY. OBVIOUSLY THIS IS

1 SPECULATION, BUT HE WOULD HAVE LOST HIS BLOOD VOLUME VERY
2 QUICKLY AND, THEREFORE, HIS BLOOD PRESSURE WOULD DROP OFF,
3 YOU KNOW, VERY, VERY QUICKLY WITHIN SECONDS. AT THAT POINT
4 HE WOULD START TO LOSE CONSCIOUSNESS, AND SO IT WOULDN'T HAVE
5 BEEN MANY SECONDS BEFORE HE WOULD HAVE BEEN ON THE GROUND, I
6 SUSPECT.

7 Q. ALL RIGHT. WERE ANY OF THESE OTHER WOUNDS FATAL IN AN
8 IMMEDIATE MANNER BESIDES THAT WOUND?

9 A. NOT IN THE SAME SENSE. TWO OTHER WOUNDS PUNCTURED VITAL
10 ORGANS STAYING ON THE RIGHT SIDE THAT THE -- THE BULLET THAT
11 ENTERED JUST ABOVE THE HIP PASSED INTO THE ABDOMINAL CAVITY
12 WHERE IT TRAVELED THROUGH SEVERAL LOOPS OF THE SMALL BOWEL
13 AND, OF COURSE, TORE SOME SMALL BLOOD VESSELS THERE. IN THE
14 ABDOMINAL AREA WE ONLY FOUND ABOUT A HUNDRED CC'S OF BLOOD,
15 SO NOTHING CLOSE TO WHAT WAS IN THE CHEST.

16 ON THE LEFT SIDE ONE OF THE SHOTGUN PELLETS, THE LARGE
17 ONES, HAD ENTERED INTO THE LEFT LUNG AND WAS ACTUALLY FOUND
18 WITHIN THE LEFT LUNG AT AUTOPSY. AGAIN, THAT WOULD HAVE BEEN
19 A DANGEROUS WOUND BUT NOT ONE THAT WOULD HAVE INCAPACITATED
20 HIM INSTANTLY. THE SAME WITH THE LOWER ABDOMINAL WOUND.

21 Q. ALL RIGHT. SO I KNOW THAT YOU CAN'T -- CANNOT SAY WHAT
22 THE ORDER OF THE WOUNDS WERE, BUT IF THAT -- IF THE ONE
23 YOU'RE CALLING THE FATAL WOUND, IF THAT OCCURRED FIRST AND
24 THE OTHER STANDARD - WE'LL CALL THEM .32 CALIBER PROJECTILE
25 SHOTS - HAPPENED IN SEQUENCE, ONE, TWO, THREE, ALL TOGETHER,

1 MR. AUSTIN WOULD HAVE STARTED LOSING CONSCIOUSNESS WITHIN
2 SECONDS---

3 THE COURT: JUST A MOMENT. YES, SIR.

4 MR. COLLINS: YOUR HONOR, I HAVE TO OBJECT. THIS CALLS
5 FOR HEARSAY---

6 THE COURT: SUSTAINED.

7 MR. COLLINS: ---AND SPECULATION.

8 BY MR. ROSS:

9 Q. WOULD HE HAVE BEEN ABLE TO -- AFTER RECEIVING THAT FIRST
10 GUNSHOT WOUND, WOULD MR. AUSTIN STILL HAVE BEEN ABLE TO WALK?

11 A. I THINK FOR A SHORT PERIOD OF TIME HE MAY HAVE BEEN ABLE
12 TO.

13 Q. OKAY. DO YOU HAVE -- DID YOU HAVE A REPORT AS FAR AS
14 THE TOXICOLOGY? DID YOU GET A REPORT BACK ON THE TOXICOLOGY
15 OF MR. AUSTIN?

16 A. AS IS USUAL, WE ALWAYS DRAW BLOOD AND URINE AND
17 SOMETIMES SOME OTHER BODY FLUIDS AT THE TIME OF AUTOPSY AND
18 SUBMIT THOSE TO D.H.E.C. WHERE THEY DO AN ANALYSIS. I DON'T
19 HAVE A COPY OF THAT WITH ME.

20 Q. OKAY. OR STATE LAW ENFORCEMENT DIVISION? DO THEY DO
21 YOUR ANALYSIS? IF I SHOW YOU THIS, WOULD YOU RECOGNIZE THIS?
22 I NEED TO MARK IT, YOUR HONOR. YOUR HONOR, STATE'S EXHIBIT
23 NUMBER 118.

24 THE COURT: HAND IT TO THE WITNESS. ARE YOU OFFERING IT
25 AT THIS TIME?

1 MR. ROSS: WELL, I WAS GOING TO GET HIM---

2 THE COURT: YOU'RE GOING TO ASK HIM FIRST.

3 MR. ROSS: YES, SIR.

4 THE COURT: ALL RIGHT.

5 THE WITNESS: YES, THIS LOOKS LIKE IT'S THE REPORT ON
6 THE SAME EXAMINATION.

7 MR. ROSS: YES, SIR. I'D OFFER -- I JUST WANT TO OFFER
8 THE RESULTS. I DON'T NEED THE DOCUMENT NECESSARILY IN
9 EVIDENCE, BUT I WANTED TO SHOW HIM BECAUSE IT'S GOT THE
10 RESULTS ON IT.

11 THE COURT: YOU'VE HANDED WHAT IS PROPOSED AS 118 TO THE
12 WITNESS, BUT YOU'RE NOT OFFERING THE PAPER INTO EVIDENCE BUT
13 YOU WANT TO ASK HIM ABOUT IT?

14 MR. ROSS: I'M FINE TO OFFER IT. I OFFER STATE'S
15 EXHIBIT NUMBER 118.

16 THE COURT: ANY OBJECTION?

17 MR. COLLINS: NO OBJECTION, YOUR HONOR.

18 THE COURT: STATE'S EXHIBIT 118 WILL BE ADMITTED INTO
19 EVIDENCE WITHOUT OBJECTION. 118 IN EVIDENCE WITHOUT
20 OBJECTION.

21 (STATE'S EXHIBIT 118 WAS RECEIVED IN EVIDENCE.)

22 THE COURT: YOU MAY PROCEED.

23 BY MR. ROSS:

24 Q. WHAT WAS THE BLOOD ALCOHOL RESULT AS SHOWN ON THE
25 REPORT?

1 A. IT'S REPORTED AS .270 PERCENT.

2 Q. ALL RIGHT.

3 A. BLOOD ALCOHOL.

4 Q. WAS THERE A URINE SCREEN DONE ALSO?

5 A. YES, THERE WAS.

6 Q. AND WHAT IS THAT?

7 A. IT REPORTS THE ETHANOL OR BLOOD ALCOHOL -- NOT BLOOD BUT
8 THE ALCOHOL LEVEL AS .331 PERCENT.

9 Q. ALL RIGHT. AND THOSE NUMBERS ARE DIFFERENT, BUT ARE
10 THEY -- WHY ARE THEY DIFFERENT?

11 A. WELL, PHYSIOLOGICALLY ANY -- ANY BLOOD -- I'M SORRY.
12 ANY ALCOHOL THAT ENTERS THE BLOOD IS SLOWLY FILTERED IN
13 THROUGH THE URINE, AND SO THE LEVEL MEASURED IN THE BLOOD CAN
14 BE DIFFERENT FROM THAT OF THE URINE, EITHER HIGHER OR LOWER.

15 Q. ALL RIGHT. AND WAS THERE A DRUG SCREEN ALSO DONE?

16 A. YEAH, THEY SCREEN FOR A NUMBER OF DRUGS.

17 Q. AND WERE ANY OF THE DRUGS THEY SCREENED FOR -- WERE ANY
18 FOUND?

19 A. ALL THE SCREENS REPORTED AS NEGATIVE.

20 Q. OKAY. DOCTOR, DO YOU HAVE AN OPINION AS TO A REASONABLE
21 DEGREE OF MEDICAL CERTAINTY AS TO THE CAUSE OF DEATH OF
22 DANIEL AUSTIN?

23 A. YES. IT WOULD BE THE GUNSHOT WOUND TO THE UPPER RIGHT
24 CHEST THAT PASSED THROUGH THE LUNGS.

25 MR. ROSS: THAT'S ALL THE QUESTIONS I HAVE.

1 THE COURT: CROSS-EXAMINATION.

2 MR. COLLINS: THANK YOU, YOUR HONOR.

3 CROSS-EXAMINATION

4 BY MR. COLLINS:

5 Q. STILL GOOD MORNING. NOW, WHEN YOU WERE DOING -- BEFORE
6 YOU STARTED THE AUTOPSY, YOU SAID HE WAS WEARING BOOTS;
7 CORRECT?

8 A. HIKING SHOES IS THE WAY I DESCRIBED THEM, YES.

9 Q. WITH THICK RUBBER SOLES ON THEM?

10 A. I DON'T KNOW IF THEY HAD RUBBER SOLES. I DIDN'T NOTE
11 THAT.

12 Q. AND YOU ALSO OBSERVED IN THE REPORT THAT THERE WAS AN
13 ABRASION ON HIS FINGER?

14 A. YES, THE LEFT INDEX FINGER.

15 Q. THAT WOULD BE CONSISTENT POSSIBLY WITH BEING IN A
16 STRUGGLE AND STRIKING SOMEBODY POSSIBLY?

17 A. CERTAINLY COULD BE ANY SOURCE OF AN ABRASION.

18 Q. THERE WAS ALSO A SCRAPE OR ABRASION TO HIS RIGHT EYE;
19 CORRECT?

20 A. YES, THE RIGHT SIDE OF HIS FACE.

21 Q. WHICH COULD BE CONSISTENT WITH RECEIVING A STRIKE.

22 A. ALSO COULD BE, YES.

23 Q. ALL RIGHT. AND YOU TESTIFIED THAT THE BULLET -- WE'LL
24 CALL IT THE FATAL BULLET.

25 A. YES.

1 Q. WENT INTO HIS RIGHT SIDE?

2 A. YES.

3 Q. AND IT FRACTURED HIS RIB; CORRECT?

4 A. BROKE THE EIGHTH RIB, YES, SIR.

5 Q. SO THE BULLET HIT THE RIB.

6 A. RIGHT.

7 Q. AND THEN IT CREATED A LOT OF BLOOD INSIDE OF THE CHEST
8 CAVITY.

9 A. RIGHT. YES.

10 Q. OVER HALF THE AMOUNT OF BLOOD THAT WAS IN HIS BODY;
11 CORRECT?

12 A. YES.

13 Q. AND THE BULLET THAT HIT HIM IN THE HIP WAS STILL IN THE
14 ABDOMEN.

15 A. YES.

16 Q. THAT BULLET WAS INTACT?

17 A. I CAN'T RECALL WHETHER IT WAS, YOU KNOW, BENT OR -- I
18 DON'T KNOW, BUT WE DID RECOVER IT.

19 Q. AND JUST REGARDING THE TESTIMONY YOU SAID ABOUT THE
20 TRAJECTORY OF SHOTS, THERE'S A LOT OF DIFFERENT VARIABLES
21 THAT COME INTO PLAY AS FAR AS TRYING TO PREDICT THE
22 TRAJECTORY; CORRECT?

23 A. WELL, ABOUT THE ONLY THING THAT I CAN TESTIFY TO IS
24 SIMPLY THE RELATIVE ANGLE OF THE TRAVEL OF THE BULLET AND
25 THAT SURFACE OF THE BODY. OTHER THAN THAT, I DON'T REALLY

1 KNOW.

2 Q. YOU DON'T KNOW IF THE PERSON WAS STANDING UP, LAYING
3 DOWN, CROUCHING OVER?

4 A. NO CLUE AS TO THIS.

5 Q. THANK YOU. AND YOU'RE NOT AN EXPERT IN FIREARM
6 TRAJECTORY.

7 A. I AM NOT.

8 Q. AND I BELIEVE -- I'M A LITTLE CONFUSED. YOU TESTIFIED
9 AT ONE POINT YOU SAID HE WOULD HAVE DROPPED INSTANTLY FROM
10 THE FATAL SHOT?

11 A. THAT MAY HAVE BEEN A LITTLE TOO EASY LANGUAGE, BUT
12 FAIRLY RAPIDLY WOULD BE TRUE.

13 Q. BUT HE VERY WELL COULD HAVE RUN POSSIBLY 20 FEET?

14 A. OH, I WOULDN'T PUT THAT OUTSIDE THE REALM OF
15 POSSIBILITY. I THINK THE PROCESS WOULD BE VERY MUCH LIKE A
16 FAINT. YOU KNOW, AS YOU'RE GOING DOWN, YOU KNOW THAT YOU
17 MIGHT BE ABLE TO DO SOMETHING, BUT YOU'RE GOING DOWN.

18 Q. EACH INDIVIDUAL PERSON COULD REACT DIFFERENTLY; CORRECT?

19 A. VERY DIFFERENTLY, YES.

20 Q. AND YOU JUST TALKED ABOUT HIS BLOOD ALCOHOL CONTENT. I
21 BELIEVE IT WAS .27 PERCENT?

22 A. THAT'S CORRECT.

23 Q. AND THEN HIS URINE WAS .331 PERCENT?

24 A. THAT'S RIGHT.

25 Q. THAT'S PRETTY HIGH, ISN'T IT?

1 A. YES. THOSE ARE HIGH LEVELS.

2 Q. AT WHAT POINT APPROXIMATELY WOULD SOMEBODY BECOME
3 COMATOSE DUE TO ALCOHOL?

4 A. USUALLY THAT LEVEL IS QUOTED AS SOMEWHERE AROUND .350
5 PERCENT IN THE BLOOD.

6 Q. SO YOU WOULD IMAGINE HE WOULD BE PRETTY IMPAIRED BASED
7 ON HIS---

8 A. I WOULD EXPECT THAT, YES.

9 Q. ---BLOOD ALCOHOL LEVEL. AND A .32 CALIBER BULLET CAN
10 CAUSE SERIOUS INJURY; CORRECT?

11 A. VERY MUCH, YES, SIR.

12 Q. AND IF SOMEBODY WAS TO TAKE A .32 CALIBER BULLET, SAY,
13 IN THE BOTTOM OF THE LEFT RIB CAGE, WOULD THAT BE A PRETTY
14 DANGEROUS PLACE TO RECEIVE A WOUND FROM A .32 CALIBER BULLET?

15 A. WELL, CERTAINLY IF IT EITHER STRUCK A MAJOR ARTERY OR
16 ENTERED AND INVOLVED MAJOR ORGANS, PRETTY DANGEROUS.

17 Q. IF THE .32 CALIBER PROJECTILE WAS RECOVERED FROM INSIDE
18 THE PERSON'S CHEST, THAT WOULD BE A PRETTY DANGEROUS
19 SITUATION, WOULDN'T IT?

20 A. I WOULD EXPECT IT TO BE, YES.

21 Q. COULD POSSIBLY BE A FATAL WOUND?

22 A. COULD POSSIBLY BE.

23 Q. AND THERE'S NOTHING IN ANY OF THE PICTURES THAT WERE
24 JUST SHOWN TO THE JURY AND THERE'S NOTHING IN THAT DIAGRAM
25 THAT COULD TELL THIS JURY WHY THIS MAN WAS SHOT, IS THERE?

1 A. NOT THAT I KNOW OF, NO.

2 MR. COLLINS: THANK YOU. NO FURTHER QUESTIONS.

3 THE COURT: REDIRECT?

4 REDIRECT EXAMINATION

5 BY MR. ROSS:

6 Q. AND, DOCTOR, THE LEFT ABRASION ON THE FINGER AND THE
7 ABRASION ON THE RIGHT SIDE OF THE FACE, THAT COULD ALSO HAVE
8 BEEN CAUSED BY FALLING.

9 A. YES, REALLY ANY SOURCE OF MINOR TRAUMA TO THE SURFACE,
10 YES.

11 Q. AND IT IS POSSIBLE TO BE SHOT WITH A .32 AND ONLY END UP
12 WITH A FLESH WOUND.

13 A. WELL, AN EXAMPLE WOULD BE THE WOUND TO THE CENTER OF THE
14 BACK ON THE DECEDENT.

15 Q. THE VICTIM HIMSELF HAD A FLESH WOUND FROM A .32.

16 A. RIGHT, IN THE SENSE THAT IT DID NOT ENTER VITAL ORGANS.
17 RIGHT.

18 MR. ROSS: THANK YOU, DOCTOR.

19 THE COURT: RECROSS LIMITED TO REDIRECT?

20 MR. COLLINS: NOTHING FURTHER, YOUR HONOR.

21 THE COURT: AS TO THIS WITNESS, MR. ROSS?

22 MR. ROSS: ASK THAT HE BE EXCUSED.

23 THE COURT: ANY OBJECTION?

24 MR. COLLINS: NO OBJECTION.

25 THE COURT: DR. BURNS, YOU MAY STEP DOWN, AND YOU ARE

1 COURSE, I'LL BE LISTENING TO ANY MATTERS THAT WE NEED TO TAKE
2 UP. PLEASE REMEMBER MY QUESTION. I HAVE PREPARED A VERDICT
3 FORM WHICH MY LAW CLERK WILL BE SHOWING TO YOU IN CONNECTION
4 WITH THIS MATTER SO THAT BOTH OF YOU CAN REVIEW IT TO SEE IF
5 YOU HAVE ANY PROBLEMS WITH IT, BUT I'D LIKE TO WAIT UNTIL
6 I'VE HEARD ALL THE EVIDENCE IN CASE I NEED TO CHANGE THAT. I
7 WANT TO GIVE Y'ALL AN OPPORTUNITY TO HAVE A BREAK AT THIS
8 TIME, SO WE'LL TAKE ABOUT 10 MINUTES. THANK YOU VERY MUCH.

9 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

10 THE COURT: THANK YOU. PLEASE BE SEATED. STATE READY
11 TO PROCEED?

12 MR. CATHCART: THE STATE OF SOUTH CAROLINA IS READY TO
13 PROCEED, YOUR HONOR.

14 THE COURT: DEFENDANT READY TO PROCEED?

15 MR. COLLINS: THE DEFENSE IS READY, YOUR HONOR.

16 THE COURT: VERY WELL. BRING US THE JURY, PLEASE.

17 (WHEREUPON, THE JURY WAS BROUGHT INTO OPEN COURT AT
18 12:02 P.M.)

19 THE COURT: SOLICITOR, YOU MAY CALL YOUR NEXT WITNESS.

20 MR. CATHCART: AT THIS TIME, YOUR HONOR, THE STATE CALLS
21 BRIAN METZ.

22 BRIAN METZ, AFTER BEING DULY SWORN, TESTIFIED AS
23 FOLLOWS:

24 THE CLERK: PLEASE HAVE A SEAT. STATE YOUR FULL NAME
25 FOR THE RECORD.

1 THE WITNESS: IT'S BRIAN METZ, M-E-T-Z.

2 THE COURT: YOUR WITNESS, COUNSEL.

3 MR. CATHCART: THANK YOU, YOUR HONOR.

4 DIRECT EXAMINATION

5 BY MR. CATHCART:

6 Q. INVESTIGATOR METZ, WHERE ARE YOU EMPLOYED?

7 A. AT THE RICHLAND COUNTY SHERIFF'S DEPARTMENT.

8 Q. HOW LONG HAVE YOU BEEN THERE?

9 A. IT'S 26 YEARS. I ACTUALLY MADE MY 25 YEARS LAST JUNE,
10 RETIRED AND CAME BACK TWO WEEKS LATER, BUT IT'S BEEN A TOTAL
11 OF 26 YEARS.

12 Q. IN WHAT CAPACITY ARE YOU EMPLOYED AT THE RICHLAND COUNTY
13 SHERIFF'S DEPARTMENT?

14 A. I'M AN INVESTIGATOR IN THE CRIMINAL INVESTIGATIONS
15 DIVISION.

16 Q. IN WHAT CAPACITY WERE YOU EMPLOYED WITH RICHLAND COUNTY
17 SHERIFF'S DEPARTMENT BACK IN 1999?

18 A. I WAS AN INVESTIGATOR IN THE CRIMINAL INVESTIGATIVE
19 DIVISION.

20 Q. DO YOU RECALL THE NIGHT OF JULY THE 23RD OF 1999?

21 A. I DO.

22 Q. WHAT, IF ANYTHING, UNUSUAL OCCURRED THAT DREW YOUR
23 ATTENTION TO THE DAYS INN HOTEL?

24 A. I WAS ACTUALLY IN THE OFFICE AT THE SHERIFF'S DEPARTMENT
25 ON TWO NOTCH ROAD. I WAS ASSIGNED AS THE MIDNIGHT

1 INVESTIGATOR WHICH IS A ROTATED POSITION. SHORTLY BEFORE
2 4:00 THAT MORNING, I WAS ASSISTING A UNIFORMED OFFICER WITH A
3 CASE THAT HE HAD MADE. WE WERE MONITORING HIS WALKIE-TALKIE
4 RADIO, AND SHORTLY BEFORE 4:00 I HEARD DEPUTY JARVIS CALL ME
5 FOR ASSISTANCE. SHE WAS PRETTY EXCITED, AND YOU COULD TELL
6 THAT THERE WAS SOMETHING GOING ON.

7 Q. OKAY. WHAT DID YOU DO UPON HEARING HER CALL FOR
8 ASSISTANCE?

9 A. I LEFT THE OFFICER WITH THE PERSON THAT WAS IN THERE AND
10 TOLD HIM HE'D HAVE TO HANDLE IT ON HIS OWN, AND I WENT TO THE
11 DAYS INN ON BUSH RIVER.

12 Q. BASICALLY YOU WENT OUT THERE BECAUSE YOU WERE THE NIGHT
13 INVESTIGATOR?

14 A. I WAS THE NIGHT INVESTIGATOR, AND AS SOON AS I KNEW THAT
15 THERE WAS GOING TO BE A CALL WITH SHOTS FIRED, I KNEW THAT I
16 WOULD BE CALLED THERE.

17 Q. AND SO HOW LONG DID IT TAKE YOU TO GET OUT THERE?

18 A. IT HAD BEEN PUT OUT AS AN EMERGENCY CALL REQUESTING ALL
19 CALLS. I RAN BLUE LIGHTS AND SIREN FROM TWO NOTCH ROAD TO
20 BUSH RIVER ROAD, LESS THAN TEN MINUTES.

21 Q. AND WHEN YOU GOT THERE, WHAT DID YOU FIND?

22 A. UPON ARRIVAL, THERE WERE A GOOD NUMBER OF PATROL CARS,
23 BOTH HIGHWAY PATROL, LEXINGTON COUNTY, CITY OF COLUMBIA AND,
24 YOU KNOW, PRETTY MUCH EVERYBODY FROM RICHLAND COUNTY WAS
25 THERE. I ENDED UP PARKING BACK TOWARDS BUSH RIVER ROAD, NOT

1 QUITE ON BUSH RIVER ROAD BUT BACK TOWARDS BUSH RIVER ROAD
2 BECAUSE OF THE NUMBER OF CARS AND THERE WAS ALSO AT LEAST ONE
3 AMBULANCE THERE.

4 Q. LET ME GET YOU TO TAKE A LOOK AT -- IF I MAY APPROACH,
5 YOUR HONOR?

6 THE COURT: YOU MAY.

7 BY MR. CATHCART:

8 Q. LOOK AT WHAT'S BEEN MARKED STATE'S EXHIBIT NUMBER 108.
9 COULD YOU PLEASE POINT OUT TO THE JURY WHERE YOU PARKED?

10 A. ACTUALLY ON THIS IT'S CHANGED NOW. THERE'S A ROAD THAT
11 COMES IN THAT GOES TO AN APARTMENT COMPLEX THAT SITS BACK IN
12 HERE. IT'S -- AT THAT TIME IT WAS CALLED LEXINGTON GREEN
13 CONDOMINIUMS. RIGHT UP WHERE THAT ROAD FORKS OFF, THERE WAS
14 A GRASSY AREA, AND I PULLED IN THERE TO PARK. THERE WERE
15 PATROL CARS, EVEN SOME ON BUSH RIVER ROAD AND SOME ALL THE
16 WAY DOWN HERE, AND THE ROADWAY GOING IN HAD BEEN BLOCKED OFF.

17 Q. THANK YOU. AFTER YOU GOT OUT OF YOUR CAR, WHERE DID YOU
18 GO?

19 A. I THEN WALKED DOWN TOWARDS THE RIGHT SIDE OF THE
20 BUILDINGS. I COULD SEE OFFICERS IN THAT AREA. THE FIRST
21 THING YOU DO AS AN INVESTIGATOR IS YOU GET BRIEFED BY
22 SOMEBODY THERE. SO I WALKED DOWN TO THAT AREA AND WAS
23 BRIEFED BY SEVERAL OFFICERS THERE.

24 Q. OKAY. AND AFTER LEARNING WHAT HAD OCCURRED, WHAT DID
25 YOU FIND? WHAT DID YOU SEE?

1 A. AS I GOT CLOSE TO WHERE THE OFFICERS WERE, I COULD SEE A
2 BODY LAYING ON THE SIDEWALK JUST OUTSIDE THE BREEZEWAY. THAT
3 WAS LATER DETERMINED TO BE THE VICTIM, DANIEL AUSTIN. THEY
4 EXPLAINED TO ME THAT HE HAD BEEN LAYING INSIDE THE BREEZEWAY
5 WHEN THEY GOT THERE. I WAS ABLE TO THEN LOOK DOWN THE
6 BREEZEWAY AND COULD SEE WHERE HE HAD BEEN LAYING AND KEPT
7 CONFERRING WITH THE OFFICERS THERE.

8 Q. AT THIS TIME HAD THE DEFENDANT BEEN APPREHENDED?

9 A. HE HAD NOT.

10 Q. AT THIS TIME HAD -- WAS ANYBODY WORKING ON THE VICTIM AT
11 THAT POINT?

12 A. NOT AT THAT POINT. WHEN -- WHEN I FIRST SAW THE VICTIM,
13 I COULD TELL BY SOME OF THE DEBRIS THAT IS USUALLY LEFT
14 BEHIND BY E.M.S. THAT THEY HAD ALREADY TREATED HIM AND THAT
15 DEBRIS WAS LEFT THERE. I INQUIRED WITH THE OFFICERS HAD HE
16 BEEN TREATED, AND THEY STATED THAT HE HAD AND THAT HE WAS
17 DECEASED.

18 Q. OKAY. AND THAT PLACE WHERE HE WAS FOUND AND PRONOUNCED
19 DECEASED, IS THAT HERE IN RICHLAND COUNTY?

20 A. THAT IS.

21 Q. WHAT DID YOU DO AFTER YOU DETERMINED THAT THE VICTIM HAD
22 BEEN DECEASED?

23 A. BEGAN INQUIRING THEN AS TO EXACTLY, YOU KNOW, WHAT
24 SUSPECTS WE HAD AND WHERE THEY WERE. I BECAME AWARE THEN
25 THAT THERE WERE OFFICERS ON THE OTHER SIDE OF THE BUILDING.

1 I COULD HEAR THEM YELLING TO SOMEONE TO COME OUT, YELLING
2 THAT THEY WERE -- BOTH POLICE AND SHERIFF'S DEPARTMENT WAS
3 BEING YELLED AND TO COME OUT AND SHOW US YOUR HANDS. I
4 REALIZED THEN THAT WHATEVER WAS GOING ON WAS GOING ON AT THE
5 OTHER SIDE OF THE BUILDING AND THAT I NEEDED TO GO THAT WAY.
6 I DID NOT WANT TO GO DOWN THAT BREEZEWAY. I UNDERSTOOD THAT
7 ONE OFFICER WAS ALMOST STRUCK, SO I SOUGHT AN ALTERNATE
8 ROUTE.

9 Q. OKAY. NOW, YOU WERE STANDING ON -- IF YOU WOULD, POINT
10 OUT AGAIN ON STATE'S EXHIBIT NUMBER 108 -- YOU WERE STANDING
11 WHERE TALKING WITH THE OFFICERS?

12 A. I HAD COME DOWN PAST THIS STAIRWAY AND WAS BETWEEN THE
13 STAIRWAY AND THE BREEZEWAY.

14 Q. AND DID YOU AT THAT POINT HAVE ANY PROBLEM DISCERNING
15 PEOPLE CALLING OUT THAT THEY WERE SHERIFF'S DEPARTMENT OR
16 CITY POLICE?

17 A. I HAD HEARD THEM. I WAS AT ONE POINT HERE AT THE
18 BREEZEWAY, AND EVEN WHEN I WAS NOT AT THE BREEZEWAY BUT WAS
19 STANDING IN THIS GENERAL AREA YOU COULD HEAR THE OFFICERS ON
20 THE OTHER SIDE OF THE BUILDING AND COULD HEAR THEM YELLING
21 THAT THEY WERE POLICE OFFICERS AND TO COME OUT.

22 Q. WAS IT HARD TO HEAR THEM OR WAS IT EASY TO HEAR THEM?

23 A. I COULD HEAR THEM FAIRLY WELL.

24 Q. WHAT DID YOU DO AS TO FIND AN ALTERNATE ROUTE TO GET TO
25 THE OTHER OFFICERS?

1 A. MYSELF AND AT LEAST ONE OTHER OFFICER WENT UP THIS
2 STAIRWAY AND CAME THROUGH AND DOWN THIS STAIRWAY. IT WAS AS
3 I WAS COMING DOWN THIS STAIRWAY THAT I HEARD ONE SHOT WHICH
4 WAS THE ONLY SHOT THAT I HEARD. I WAS IN THIS GENERAL AREA
5 NEAR THE TOP OF THE STAIRWAY.

6 Q. WERE YOU ABLE TO DETERMINE WHAT KIND OF SHOT DID IT
7 SOUND LIKE TO YOU?

8 A. IT SOUNDED TO ME THAT IT WAS NOT A SHOTGUN OR A LARGE
9 BORE RIFLE OR ANYTHING, THAT IT HAD BEEN A HANDGUN.

10 Q. WHAT DID YOU DO AFTER YOU HEARD THAT SHOT?

11 A. I CONTINUED DOWN THE STAIRWAY. I THEN SAW SEVERAL
12 OFFICERS IN THIS AREA. I RECOGNIZED BY UNIFORM THAT AT LEAST
13 TWO OF THEM WERE CITY OFFICERS. I RECOGNIZED THEM BOTH BY
14 FACE. I KNEW ONE OF THEM, OFFICER BLUNT, BY SIGHT, HAD
15 WORKED WITH HIM IN THE PAST. THEY WERE IN THIS AREA AND WERE
16 FIXING TO GO INTO THE ROOM THAT WAS ON THE CORNER.

17 Q. OKAY. AND WHAT, IF ANYTHING, HAPPENED AFTER YOU
18 OBSERVED THEM STANDING BY THE DOOR GETTING READY TO GO INTO
19 THE ROOM?

20 A. BEFORE I COULD TRAVEL THE DISTANCE DOWN, THEY ENTERED
21 THE ROOM WITH ONE OR TWO SHERIFF'S DEPARTMENT OFFICERS BEHIND
22 THEM, AND THEN I ENTERED THE ROOM BEHIND THEM.

23 Q. WHAT, IF ANYTHING, DID YOU OBSERVE ONCE YOU WENT INTO
24 THE ROOM?

25 A. AS I WENT INTO THE ROOM, IT WAS A TYPICAL MOTEL ROOM

1 WITH A BED. I COULD SEE WHAT TURNED OUT TO BE THE DEFENDANT
2 ON THE OTHER SIDE OF THE ROOM. ONE OF THE UNIFORMED OFFICERS
3 WERE TAKING HIM INTO CUSTODY AT THAT POINT. ONE OF THE
4 OFFICERS HANDED A SHOTGUN BACK TO DEPUTY JARVIS, AND THEN
5 DEPUTY BAIRD HAD THE HANDGUN AND I SAW HIM OPEN THE CYLINDER
6 AND EMPTY THE SHELLS FROM THAT GUN.

7 Q. OKAY. IS IT NORMAL PROCEDURE TO CLEAR WEAPONS FOUND
8 NEAR DEFENDANTS?

9 A. IT IS WHEN IT'S AN ACTIVE SITUATION SUCH AS THAT; YES,
10 SIR.

11 Q. AND THAT'S DONE FOR WHAT REASON?

12 A. FOR SAFETY.

13 Q. WERE YOU ABLE TO OBSERVE THE DEFENDANT AT THAT TIME?

14 A. I WAS.

15 Q. AND WERE YOU ABLE TO OBSERVE THE ROOM AT THAT TIME?

16 A. YES, SIR.

17 Q. DID YOU OBSERVE ANY BLOOD IN THE ROOM?

18 A. I DID NOT.

19 Q. DID YOU OBSERVE ANY BLOOD OR WHAT APPEARS TO BE BLOOD ON
20 THE DEFENDANT?

21 A. NOT SHORTLY AFTER THAT IT BECAME APPARENT THAT HE HAD A
22 WOUND TO HIM. I DID NOT CHECK THE WOUND THAT CLOSELY MYSELF,
23 SO I CAN'T SAY WHETHER THERE WAS ANY BLOOD. I DID NOT SEE ON
24 HIS CLOTHING A LARGE PERIOD OF BLOOD OR ANYTHING SUCH AS
25 THAT.

1 Q. WHEN YOU SAW HIM THE FIRST TIME, DID YOU OBSERVE BLOOD
2 ON HIM?

3 A. NO, SIR.

4 Q. IT WASN'T 'TIL IT WAS BROUGHT TO YOUR ATTENTION?

5 A. I DIDN'T EVEN LOOK THAT CLOSELY. THEY TOLD ME THAT HE
6 -- THE OFFICERS THAT WERE ACTUALLY DEALING WITH HIM ADVISED
7 ME THAT HE HAD BEEN SHOT.

8 Q. OKAY. AND WHAT DID Y'ALL DO WITH THE DEFENDANT AFTER
9 YOU DETERMINED HE HAD BEEN SHOT?

10 A. E.M.S., THE AMBULANCE, WAS STANDING BY. IT WAS AT THAT
11 POINT THAT I CONTACTED THE SENIOR OFFICER ON -- REQUESTED
12 THAT HE GO AHEAD AND GET OFFICERS OUT OF THE ROOM, TO START
13 SECURING THE ROOM, TO HAVE AN OFFICER PLACED ON THE BODY OF
14 MR. AUSTIN TO SECURE THAT AND ALSO TO START SECURING THE
15 CRIME SCENE AND TO LET THE AMBULANCE COME IN TO TRANSPORT MR.
16 BRYANT.

17 Q. AND DID AN AMBULANCE COME TO TRANSPORT MR. BRYANT?

18 A. THEY DID.

19 Q. OKAY. AND YOU SAW MR. BRYANT TO THE AMBULANCE DOOR?

20 A. I DID.

21 Q. WHAT, IF ANYTHING, DID YOU DO AS MR. BRYANT WAS TAKEN BY
22 THE AMBULANCE TO THE HOSPITAL?

23 A. AT THAT POINT WE WERE STILL TRYING TO FIND OUT EXACTLY
24 WHAT HAPPENED AND WHAT WENT ON. AS HE WAS BEING PUT INTO THE
25 AMBULANCE I ASKED HIM WHAT HAD HAPPENED.

1 MR. COLLINS: OBJECTION, YOUR HONOR.

2 THE COURT: COUNSEL, APPROACH.

3 (WHEREUPON, A BENCH CONFERENCE WAS HELD.)

4 THE COURT: LADIES AND GENTLEMEN OF THE JURY, PLEASE
5 DISREGARD THE WITNESS'S LAST STATEMENT CONCERNING INQUIRING
6 ABOUT A STATEMENT FROM ANYONE. YOU'RE TO DISREGARD THAT
7 TESTIMONY AND EVIDENCE AND NOT CONSIDER IT IN THE TRIAL OF
8 THIS CASE. OBJECTION IS SUSTAINED. MOVE ALONG, SOLICITOR.

9 MR. CATHCART: THANK YOU, YOUR HONOR.

10 BY MR. CATHCART:

11 Q. DID YOU SEND ANYONE WITH THE DEFENDANT TO THE HOSPITAL?

12 A. I DID. I ASSIGNED DEPUTY JOE DAVIS TO FOLLOW THE
13 AMBULANCE TO THE HOSPITAL AND TO STAY WITH MR. BRYANT AT THE
14 HOSPITAL.

15 Q. AND WHAT DID YOU DO AFTER MR. BRYANT WENT OFF TO THE
16 HOSPITAL?

17 A. AT THAT POINT I'M MAKING SURE THAT THE PROPER PEOPLE ARE
18 RESPONDING, LIEUTENANT PADGETT FROM THE LAB AND THEN HIS
19 PERSONNEL FROM THE FORENSIC LAB WOULD RESPOND, ALSO NOTIFYING
20 THE CHAIN OF COMMAND AS TO THE INCIDENT WE HAD. THERE WERE
21 SEVERAL OTHER INVESTIGATORS THAT WERE ARRIVING ON THE SCENE
22 AND WAS MAKING SURE THAT THEY WERE STARTING TO TAKE
23 STATEMENTS FROM PEOPLE THAT WERE AT THE MOTEL.

24 Q. AS PART OF YOUR DUTIES AS INVESTIGATOR, WERE YOU LOOKING
25 FOR WITNESSES TO THE CRIME?

1 A. WE WERE.

2 Q. AT SOME POINT WHERE DID YOU GO AFTER YOU HAD THE SCENE
3 SECURED?

4 A. ONCE I SAW THAT EVERYTHING WAS IN MOTION, I THEN WENT TO
5 THE HOSPITAL TO CHECK ON MR. BRYANT AND DEPUTY DAVIS.

6 Q. DID YOU HAVE THE OPPORTUNITY TO SEE MR. BRYANT?

7 A. I DID. HE WAS IN THE TRAUMA ROOM AT THE EMERGENCY ROOM
8 OF RICHLAND MEMORIAL HOSPITAL.

9 Q. AND WHAT WERE THEY DOING WITH HIM AT THE TRAUMA ROOM AT
10 THE EMERGENCY ROOM?

11 A. THEY WERE BEGINNING TO TREAT HIM AT THAT POINT.

12 MR. CATHCART: MAY I APPROACH THE WITNESS, YOUR HONOR?

13 THE COURT: YOU MAY.

14 BY MR. CATHCART:

15 Q. I SHOW YOU WHAT'S BEEN MARKED STATE'S EXHIBIT NUMBER 54.
16 DO YOU RECOGNIZE WHAT THAT IS?

17 A. I DO, SIR.

18 Q. AND WHAT IS THAT?

19 A. THAT IS A PHOTOGRAPH TAKEN OF THE DEFENDANT WHILE AT THE
20 HOSPITAL.

21 Q. AND IS THAT BEFORE OR AFTER HE HAS BEEN TREATED FOR THE
22 GUNSHOT WOUND?

23 A. HE HAD BEEN TREATED SOME AT THAT POINT. I'M NOT SURE TO
24 WHAT EXTENT IT WAS. IT WOULD -- SINCE IT'S OUR PHOTO, IT
25 WOULD HAVE BEEN AFTERWARDS.

1 Q. AND HAS THE WOUND BEEN STITCHED UP IN THIS PHOTO?

2 A. IT HAS BEEN.

3 Q. OKAY. AND SO WHEN YOU FIRST ARRIVED THERE AND SAW HIM,
4 HAD THE WOUND BEEN STITCHED UP AT THAT TIME?

5 A. IT HAD NOT.

6 Q. IT JUST -- THEY JUST STARTED WORKING ON IT?

7 A. CORRECT.

8 Q. WHAT, IF ANYTHING, DID YOU OBSERVE AS YOU SAW THE
9 DEFENDANT AND HIS WOUND? CAN YOU TELL ME FIRST WHERE THAT
10 WOUND WAS LOCATED?

11 A. THE WOUND WAS OVER TO THE LEFT SIDE OF HIS CHEST. I
12 COULD TELL THAT IT HAD ENTERED TOWARDS THE LEFT FRONT AND
13 APPEARED TO BE GOING TOWARDS THE BACK---

14 MR. COLLINS: OBJECTION, YOUR HONOR. THIS WITNESS IS
15 NOT AN EXPERT IN ANY KIND OF PATHOLOGY OR MEDICAL TERMS.

16 THE COURT: I'LL SUSTAIN THE OBJECTION AS TO ANY MEDICAL
17 OPINION, BUT I BELIEVE A LAY WITNESS CAN DESCRIBE WHERE HE
18 SAW THE LOCATION ON THE BODY OF A WOUND. I'LL ALLOW THAT,
19 COUNSEL. PROCEED, SOLICITOR.

20 MR. CATHCART: THANK YOU.

21 BY MR. CATHCART:

22 Q. AND YOU HAVE SAID THAT -- IF YOU WOULD, STAND UP SO
23 EVERYBODY CAN SEE WHERE YOU'RE TALKING ABOUT.

24 A. IT WAS TO THIS SIDE.

25 Q. OKAY. AND IT APPEARED TO BE GOING IN LIKE THIS?

1 MR. COLLINS: OBJECTION, YOUR HONOR.

2 THE COURT: SUSTAINED.

3 MR. CATHCART: COULD YOU SHOW HOW IT WAS GOING, PLEASE?

4 MR. COLLINS: OBJECTION, YOUR HONOR.

5 THE COURT: SUSTAINED. ASK A QUESTION, SOLICITOR.

6 MR. CATHCART: WHAT, IF ANYTHING, DID YOU OBSERVE ABOUT
7 THE WOUND OTHER THAN WHERE IT WAS LOCATED?

8 MR. COLLINS: OBJECTION, YOUR HONOR. SAME BASIS.

9 THE COURT: I'LL ALLOW HIM TO TESTIFY TO WHAT HE
10 OBSERVED OF HIS OWN KNOWLEDGE. PLEASE UNDERSTAND, MR. METZ,
11 AND UNDERSTAND THAT I'M SUSTAINING THE OBJECTION THAT
12 PROVIDES ANY OPINION WHAT YOU PERSONALLY OBSERVED, NOT ANY
13 MEDICAL OPINION. ASK A QUESTION, SOLICITOR.

14 BY MR. CATHCART:

15 Q. WHAT DID YOU OBSERVE AS TO THE WOUND OF -- WHAT DID YOU
16 OBSERVE OF WHAT APPEARED TO YOU TO BE ON THE WOUND?

17 A. I COULD SEE DARKENING AROUND THE WOUND, A GRAY AND
18 BLACKISH AREA, THAT APPEARED TO ME TO BE FROM GUN POWDER
19 RESIDUE.

20 Q. AND WHAT, IF ANYTHING, DID YOU -- DID YOU SEE MR. JODIE
21 DAVIS OUT THERE ALSO?

22 A. HE WAS THERE; YES, SIR.

23 Q. WHAT, IF ANYTHING, DID YOU RECEIVE FROM HIM?

24 A. AT THAT TIME NOTHING. IT WAS LATE.

25 Q. OKAY. SUBSEQUENT -- WHEN DID YOU RECEIVE ANYTHING FROM

1 HIM?

2 A. I HAD RETURNED TO THE HOSPITAL LATER THAT MORNING.

3 Q. OKAY.

4 A. AND AT THAT POINT HAD RECEIVED A PROJECTILE FROM MR.
5 DAVIS.

6 Q. AFTER YOU SAW MR. BRYANT AT THE HOSPITAL, YOU WENT
7 WHERE?

8 A. I WENT BACK TO THE SCENE ON BUSH RIVER ROAD.

9 Q. AND WHAT OCCURRED AT THE SCENE ON BUSH RIVER ROAD?

10 A. WHEN I WENT BACK TO THE SCENE, LIEUTENANT PADGETT AND
11 HIS PEOPLE WERE ON THE SCENE AND WERE PROCESSING THE SCENE.
12 I CONFERRED WITH LIEUTENANT PADGETT THEN AS TO WHAT ALL WAS
13 BEING DONE AND WHAT NEEDED TO BE DONE AND ALSO CONFERRED WITH
14 SEVERAL OTHER INVESTIGATORS AND LOOKED AT THE STATEMENTS THAT
15 THEY HAD BEEN TAKING AND TALKED TO SOME OF THOSE PEOPLE.

16 MR. CATHCART: MAY I APPROACH THE WITNESS AGAIN?

17 THE COURT: YOU MAY.

18 BY MR. CATHCART:

19 Q. LET ME GET YOU TO TAKE A LOOK AT WHAT'S BEEN MARKED AS
20 DEFENSE EXHIBIT NUMBER 2. DO YOU RECOGNIZE WHAT THIS IS?

21 A. I DO.

22 Q. AND WHAT IS THAT?

23 A. THAT IS A CLOSE-UP PICTURE OF THE FACE OF MR. BRYANT
24 THAT SHOWS AN ABRASION TO THE TOP OF HIS NOSE AND HIS
25 FOREHEAD.

1 Q. OKAY. AND, AGAIN, LOOKING AT STATE'S EXHIBIT NUMBER 54,
2 IS MR. BRYANT'S SHIRT OFF AT THIS TIME?

3 A. IT IS.

4 Q. OKAY. WERE YOU ABLE TO OBSERVE HIS ENTIRE BODY WHILE
5 YOU WERE THERE WITH HIM?

6 A. IF I RECALL CORRECTLY, HE MAY HAVE HAD ON HIS UNDERWEAR,
7 BUT THAT WOULD HAVE BEEN IT THAT I RECALL AND SAW EVERYTHING
8 OTHERWISE.

9 Q. OTHER THAN THE GUNSHOT WOUND TO HIS ABDOMEN AND THE
10 SCRAPE ON HIS FOREHEAD AND ON THE TIP OF HIS NOSE, WAS THERE
11 ANY OTHER INJURIES TO THE DEFENDANT THAT YOU OBSERVED?

12 A. NONE THAT I OBSERVED.

13 Q. WERE THERE ANY SCRATCHES ON THE DEFENDANT THAT YOU
14 OBSERVED?

15 A. NONE THAT I OBSERVED.

16 Q. OKAY. AFTER YOU GOT THE BULLET FROM INVESTIGATOR DAVIS,
17 WHAT ELSE DID YOU DO?

18 A. AT THAT POINT WHEN I GOT THE BULLET FROM HIM, THAT WAS
19 LATER IN THE MORNING. I SPOKE TO LIEUTENANT PADGETT SEVERAL
20 MORE TIMES AND TO SEVERAL OF THE OFFICERS OUT THERE.

21 Q. LET ME GO BACK. WHEN YOU SAID YOU SPOKE WITH
22 INVESTIGATOR PADGETT AT THAT TIME, DID Y'ALL GO AND LOOK AT
23 THE EVIDENCE THAT WAS AT THE CASE, WHERE IT WAS AND WHERE IT
24 WAS PLACED?

25 A. I LOOKED AT THE MAJORITY OF IT. IT'S LIEUTENANT

1 PADGETT'S DECISION. AND CONFERRING WITH ME AT THAT POINT, IF
2 IT'S SOMETHING THAT HE THINKS PERSONNEL SHOULD NOT BE WALKING
3 THROUGH, THEN HE WILL COLLECT EVERYTHING BEFORE HE ALLOWS A
4 WALK-THROUGH ON THE SCENE. IN THIS CASE HE SHOWED ME SEVERAL
5 OF THE ITEMS THAT WERE THERE AND TOLD ME ABOUT SEVERAL OF THE
6 ITEMS.

7 Q. OKAY. AND WERE YOU ABLE TO OBSERVE THE CONTENTS OF THE
8 VICTIM'S PANTS?

9 A. I WAS.

10 Q. OKAY. AND WHAT DID YOU FIND -- WHAT WAS -- WELL, LET ME
11 ASK YOU THIS. MAY I APPROACH AGAIN, YOUR HONOR?

12 THE COURT: YOU MAY.

13 BY MR. CATHCART:

14 Q. LET ME SHOW YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT
15 NUMBER 92 -- 92, 93, AND 94. DO YOU RECOGNIZE WHAT THESE
16 ARE?

17 A. YES, SIR. THOSE ARE KEY CARDS FOR MOTEL ROOMS.

18 Q. OKAY. AND AS TO THESE MOTEL ROOMS AND AS TO -- MOTEL
19 ROOM KEYS OF 94, 93, AND 92 AND AS TO THE CONTENTS THAT YOU
20 FOUND ON MR. AUSTIN'S BODY, WERE ANY OF THESE FOUND ON HIS
21 PERSON?

22 A. THAT'S CORRECT. LIEUTENANT PADGETT RECOVERED TWO OF
23 THEM FROM MR. AUSTIN.

24 Q. AND WHICH ROOMS DID THOSE TWO KEYS GO TO?

25 A. ONE KEY THAT WAS IN MR. AUSTIN'S WALLET WENT TO HIS ROOM

1 WHICH I BELIEVE WAS ROOM 103. THE OTHER KEY THAT WAS IN HIS
2 LEFT REAR POCKET WENT TO ROOM 129.

3 Q. DID Y'ALL INTERVIEW ANYONE AT THE BOTTOMS UP?

4 A. THAT NIGHT SOME OFFICERS HAD GONE THERE. BY THE TIME I
5 WENT BACK LATER, AFTER RETURNING FROM THE HOSPITAL AND
6 WORKING AT THE SCENE, THERE WAS NO ONE THERE. I WENT BACK TO
7 BOTTOMS UP THE FOLLOWING NIGHT WHILE I WAS ON MIDNIGHT TO
8 TALK TO PEOPLE.

9 Q. OKAY. AND DID YOU SPEAK WITH PEOPLE THERE?

10 A. I SPOKE TO SEVERAL OF THE EMPLOYEES THERE.

11 Q. AND DID YOU ALSO SPEAK WITH MS. CONNELL?

12 A. I DID. I SPOKE TO HER ON THE SCENE THAT NIGHT AND THEN
13 LATER BY PHONE CALLS.

14 Q. DID YOU VERIFY THAT THEY VIDEOTAPED -- OR THAT THERE WAS
15 A VIDEO SURVEILLANCE OF THE AREA?

16 A. THEY HAVE A VIDEO SYSTEM AT THE DAYS INN. SHE HAD TOLD
17 US THAT SHE HAD OBSERVED PART OF THE MOVEMENTS OF MR. AUSTIN
18 AND MR. BRYANT ON THE VIDEO SYSTEM. WE HAD TAKEN THE
19 VIDEOTAPE. I VIEWED THE ENTIRE VIDEOTAPE FROM BEGINNING TO
20 END AND LEARNED THAT NONE OF THE GOINGS-ON EITHER WITH MR.
21 BRYANT, MR. AUSTIN, OR ANY OF THE OFFICERS HAD BEEN SHOWN ON
22 THE VIDEOTAPE. I THEN SPOKE WITH MS. CONNELL BY PHONE, AND
23 SHE ADVISED ME THAT SHE DID NOT KNOW WHETHER THE TAPE WAS
24 ACTUALLY RECORDING OR NOT. OBVIOUSLY IT WAS NOT BECAUSE NONE
25 OF IT WAS CAPTURED ON TAPE.

1 Q. AND THEN AT SOME POINT DID YOU HAVE AN OPPORTUNITY TO
2 SPEAK WITH MARY ONELLO?

3 A. I DID.

4 Q. HOW DID THAT COME ABOUT?

5 A. ANOTHER INVESTIGATOR AT THE SHERIFF'S DEPARTMENT HAD
6 COME TO ME. I BELIEVE IT WAS LATER THAT MORNING. CORRECT.
7 IT WAS LATER THAT MORNING AROUND 9:45 IN THE MORNING. HE HAD
8 COME TO ME AND ADVISED ME THAT A PERSON THAT HE KNEW NAMED
9 THE ONELLOS HAD CONTACTED HIM TO SAY THAT THEY---

10 MR. COLLINS: OBJECTION, YOUR HONOR. THIS IS HEARSAY
11 UPON HEARSAY AT THIS POINT.

12 THE COURT: SUSTAINED.

13 BY MR. CATHCART:

14 Q. DID YOU SPEAK WITH MS. ONELLO?

15 A. I DID.

16 Q. AND DID YOU HAVE MS. ONELLO SEND YOU ANYTHING BY FAX?

17 A. I DID.

18 MR. CATHCART: YOUR HONOR, MAY I APPROACH THE WITNESS?

19 THE COURT: YOU MAY.

20 BY MR. CATHCART:

21 Q. LET ME SHOW YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT
22 106. DO YOU RECOGNIZE WHAT THAT IS?

23 A. I DO.

24 Q. AND WHAT IS THAT?

25 A. IT IS A COPY OF THE RECEIPT THAT WAS FAXED TO ME BY MS.

1 ONELLO IN WHICH SHE SOLD A ROSSI .32 LONG REVOLVER AND A
2 MOSSBERG .20 GAUGE SHOTGUN.

3 MR. CATHCART: BEG THE COURT'S INDULGENCE. YOUR HONOR,
4 MAY I APPROACH ONE MORE TIME?

5 THE COURT: YOU MAY.

6 BY MR. CATHCART:

7 Q. AS WE WERE JUST MADE AWARE AS TO STATE'S EXHIBIT NUMBER
8 94, 93, AND 92, YOU INDICATED THAT TWO WERE FOUND ON THE
9 DEFENDANT?

10 A. THAT'S CORRECT.

11 Q. DO YOU KNOW WHERE THE THIRD ONE WAS FOUND?

12 A. EXCUSE ME. TWO WERE FOUND ON THE VICTIM.

13 Q. EXCUSE ME, ON THE VICTIM. THANK YOU. DO YOU KNOW WHERE
14 THE THIRD ONE WAS FOUND?

15 A. IT'S MY RECOLLECTION IT WAS FOUND ON THE SIDEWALK RIGHT
16 AT THE DOORWAY IN FRONT OF ROOM 129.

17 MR. CATHCART: OKAY. THAT'S ALL FROM THE STATE. PLEASE
18 ANSWER ANY QUESTIONS FROM DEFENSE COUNSEL.

19 THE COURT: CROSS-EXAMINATION?

20 MR. COLLINS: THANK YOU, YOUR HONOR.

21 CROSS-EXAMINATION

22 BY MR. COLLINS:

23 Q. GOOD AFTERNOON, INVESTIGATOR METZ.

24 A. GOOD AFTERNOON.

25 Q. YOU'VE BEEN IN HERE THROUGHOUT THE WHOLE TRIAL; RIGHT?

1 A. THAT'S CORRECT.

2 Q. DO YOU STILL WORK AT THE RICHLAND COUNTY SHERIFF'S
3 DEPARTMENT?

4 A. I DO.

5 Q. AND ARE YOU AWARE OF WHEN SOMEBODY CALLS 9-1-1 OR -- LET
6 ME BACK UP. I'M SORRY. IN 1999 WHEN SOMEBODY CALLED 9-1-1
7 AND THEY WERE DISPATCHED TO DIFFERENT PATROL OFFICERS, WAS
8 THERE A STANDARD RECORD KEPT IN THE RICHLAND COUNTY SHERIFF'S
9 DEPARTMENT IN REGARDS TO THOSE CALLS?

10 A. THERE WAS A COMPUTER-AIDED DISPATCH SYSTEM AT THAT TIME
11 THAT WAS LOGGED IN.

12 Q. AND THE INFORMATION FROM THOSE CALLS WAS RECORDED AS A
13 REGULAR PART OF THE BUSINESS WITH THE SHERIFF'S DEPARTMENT;
14 CORRECT?

15 A. IT WAS.

16 Q. AND IN THIS CASE THERE'S ACTUALLY A DOCUMENT THAT
17 DOCUMENTED THE CALLS IN THIS CASE; CORRECT?

18 MR. CATHCART: YOUR HONOR, I'M GOING TO OBJECT.

19 THE COURT: COUNSEL, APPROACH.

20 (WHEREUPON, A BENCH CONFERENCE WAS HELD.)

21 THE COURT: OBJECTION IS SUSTAINED. I'LL MAKE A RECORD
22 AT THE APPROPRIATE TIME. PLEASE PROCEED WITH CROSS-
23 EXAMINATION, COUNSEL.

24 BY MR. COLLINS:

25 Q. SO YOU WERE THE LEAD INVESTIGATOR IN THIS CASE; CORRECT?

1 A. THAT'S CORRECT.

2 Q. KIND OF OVERSEE EVERYTHING THAT GOES ON?

3 A. THAT'S CORRECT.

4 Q. COORDINATE WHO TAKES STATEMENTS OR WHERE PEOPLE GO TO
5 TAKE STATEMENTS FROM POSSIBLE WITNESSES?

6 A. THAT'S CORRECT.

7 Q. KIND OF COORDINATING, PUTTING THE CASE TOGETHER TO GET
8 READY FOR PROSECUTION; CORRECT?

9 A. WITH THE PROSECUTOR, YES.

10 Q. WITH THE PROSECUTION IN THIS CASE?

11 A. YES, SIR.

12 Q. YOU TAKE THAT RESPONSIBILITY VERY SERIOUSLY, DON'T YOU?

13 A. YES, SIR.

14 Q. I'M JUST GOING TO KIND OF RUN THROUGH A LITTLE BIT. YOU
15 TESTIFIED ABOUT IN THE HOSPITAL THAT YOU SAW BLACK STUFF
16 AROUND MR. BRYANT'S WOUND BEFORE IT WAS OPERATED ON?

17 A. THAT'S CORRECT.

18 Q. YOU DIDN'T TAKE A PICTURE OF THAT THOUGH, DID YOU?

19 A. I DID NOT.

20 Q. YOU TOOK A PICTURE AFTER HE WAS ALREADY SEWED UP?

21 A. BY THE TIME MS. ELSEY GOT TO THE HOSPITAL IT HAD ALREADY
22 BEEN SEWED UP.

23 Q. AND THERE WAS NO PRESENCE OF ANY BLACK POWDER OR
24 ANYTHING AT THAT TIME?

25 A. NOT AT THAT TIME.

1 Q. LET ME TAKE YOU BACK TO EARLY MORNING JULY 23RD, 1999.
2 THIS WAS AN ALL CALL. CAN YOU EXPLAIN TO THE JURY WHAT THAT
3 IS?

4 A. THE DISPATCH -- DEPENDS ON THE DISPATCHER AS TO HOW THEY
5 ACTUALLY PUT IT OUT, BUT THE DISPATCHERS WILL PUT OUT TO ALL
6 CALLS TO RESPOND USING SOME TYPE OF CODE FOR ALL CALLS TO
7 RE -- ALL CARS TO RESPOND TO "OFFICER NEEDS ASSISTANCE." AT
8 THE SAME TIME, USUALLY BY TELEPHONE, THEY'LL CONTACT
9 ADJOINING AGENCIES AND HAVE THEM RESPOND ALSO.

10 Q. AND WHEN YOU ARRIVED THERE AT THE SCENE, YOU STATED YOU
11 ONLY HEARD THE LAST SHOT?

12 A. THAT'S CORRECT. I ONLY HEARD ONE SHOT.

13 Q. AND MR. AUSTIN HAD ALREADY BEEN MOVED DOWN TO THE END OF
14 THE BREEZEWAY?

15 A. THAT'S CORRECT.

16 Q. THEN YOU LEFT THE CRIME SCENE AND WENT TO THE HOSPITAL.

17 A. AT SOME POINT, YES, SIR.

18 Q. AND WHEN YOU WENT TO THE HOSPITAL, YOU LEFT A FEW OF THE
19 DEPUTIES BEHIND AT THE MOTEL TO INTERVIEW ALL THE WITNESSES;
20 CORRECT?

21 A. THAT'S CORRECT.

22 Q. AND BY WITNESSES I MEAN ANYBODY THAT WAS STAYING AT THAT
23 MOTEL AT THE TIME; CORRECT?

24 A. ANYBODY THAT SAID THEY HAD SAW ANYTHING OR HEARD
25 ANYTHING.

1 Q. BUT I'M SURE YOU TOLD THEM TO GO KNOCK ON THE DOORS AND
2 ASK IF ANYBODY HAS HEARD OR SEEN ANYTHING.

3 A. THEY WERE KNOCKING ON DOORS; YES, SIR.

4 Q. BECAUSE NOT EVERYBODY THAT LIVES OR IS A RESIDENT OF A
5 MOTEL IS VERY EAGER TO GO TALK TO THE POLICE, ARE THEY?

6 A. THEY ARE NOT.

7 Q. ESPECIALLY NOT IF THEY'VE HAD SOMETHING TO DO WITH THIS;
8 RIGHT?

9 MR. CATHCART: OBJECTION, YOUR HONOR.

10 THE WITNESS: YES, SIR.

11 THE COURT: SUSTAINED.

12 BY MR. COLLINS:

13 Q. NOW, YOU TESTIFIED THAT THE TAPE DIDN'T WORK AT THE DAYS
14 INN?

15 A. I DON'T KNOW IF IT WORKED OR NOT. IT WAS NOT WORKING
16 THAT NIGHT.

17 Q. THE TAPE THAT YOU VIEWED.

18 A. THAT'S CORRECT.

19 Q. AND THAT WOULD BE THE TAPE THAT WAS GIVEN TO YOU BY MS.
20 CONNELL?

21 A. IT WAS ACTUALLY SECURED BY ANOTHER DEPUTY AND BROUGHT TO
22 THE SHERIFF'S DEPARTMENT.

23 Q. THE FOLLOWING DAY?

24 A. THAT MORNING.

25 Q. ABOUT 9 A.M.; CORRECT?

1 A. IS WHEN I GOT IT, YES, SIR.

2 Q. AND AS FAR AS WHEN YOUR DEPUTIES ARE TAKING STATEMENTS,
3 DID YOU INSTRUCT THEM TO TAKE WRITTEN STATEMENTS FROM
4 WITNESSES AT ANY TIME?

5 A. THE DECISION ON THAT COULD BE BASED ON SEVERAL THINGS.
6 IF THEY CAME TO ME AND SAID THAT PERSON HAD NOT SEEN ANYTHING
7 OR DIDN'T KNOW ANYTHING, THEN THERE WOULD BE NO REASON TO
8 TAKE A WRITTEN STATEMENT. SO THEY SHOULD TAKE WRITTEN
9 STATEMENTS IF THEY WERE NEEDED TO.

10 Q. IF THEY WERE NEEDED? IF IT WAS IMPORTANT, YOU WOULD
11 WANT TO TAKE A WRITTEN STATEMENT; RIGHT?

12 A. CORRECT.

13 Q. AND YOU GUYS AT RICHLAND COUNTY, YOU DON'T RECORD
14 ANYTHING -- AUDIO RECORDING OR VIDEO RECORDING WITH ANY
15 WITNESS STATEMENTS, DO YOU?

16 A. WITH ANY STATEMENTS, NO, SIR.

17 Q. YOU GUYS JUST DON'T DO THAT?

18 A. WE DO NOT.

19 Q. YOU SAID YOU SPOKE WITH NELLIE CONNELL A NUMBER OF
20 TIMES; CORRECT?

21 A. AT LEAST TWICE THAT I REMEMBER OFFHAND.

22 Q. AND SHE -- SHE'S ELDERLY. SHE WAS ABOUT 69 YEARS OLD;
23 CORRECT?

24 A. I'M NOT SURE HER AGE, BUT SHE'S, YES, SIR, ELDERLY.

25 Q. AT NO POINT IN TIME DID YOU TAKE A WRITTEN STATEMENT

1 FROM HER, DID YOU?

2 A. I DID NOT.

3 Q. TO YOUR KNOWLEDGE AS THE LEAD INVESTIGATOR OF THIS CASE,
4 NOBODY TOOK A WRITTEN STATEMENT FROM HER, DID THEY?

5 A. I BELIEVE SOMEONE DID; YES, SIR.

6 Q. IF THERE WAS ONE, YOU'D KNOW ABOUT IT; CORRECT?

7 A. I COULD CHECK THE FILE.

8 Q. BUT YOU DON'T RECALL EVER SEEING ONE.

9 A. I SEEM TO RECALL SEEING ONE, BUT I -- IT'S BEEN AWHILE
10 SO...

11 Q. DO YOU RECALL TURNING THAT OVER TO THE SOLICITOR'S
12 OFFICE?

13 A. I BELIEVE THEY WOULD HAVE.

14 Q. IF YOU HAD A CHANCE TO CHECK YOUR FILE FOR THAT, DO YOU
15 THINK YOU WOULD FIND IT?

16 A. I WOULD NOT KNOW UNTIL I CHECKED MY FILE.

17 Q. DO YOU HAVE YOUR FILE WITH YOU HERE TODAY?

18 A. I DO.

19 Q. BUT YOU HAVEN'T SEEN OR HEARD ANYBODY MENTION A WRITTEN
20 STATEMENT ABOUT MS. CONNELL THIS ENTIRE WEEK, HAVE YOU?

21 A. I DON'T BELIEVE I DID.

22 Q. OKAY. WE WON'T WASTE THE COURT'S TIME WITH THAT. YOU
23 ALSO HAD YOUR DEPUTIES INTERVIEW A JOHNNY STAPLETON AT THE
24 MOTEL?

25 A. I BELIEVE HE WAS INTERVIEWED; YES, SIR.

1 Q. AND A DAVID ZERRICK (PHONETIC)?

2 A. SOME NAME SUCH AS THAT, YES, SIR.

3 Q. I'M NOT REAL SURE HOW TO PRONOUNCE IT. AND THOSE WERE
4 THE TWO GUYS THAT WERE WITH MR. AUSTIN THE NIGHT THIS
5 HAPPENED; CORRECT?

6 A. THEY WERE EMPLOYEES WITH HIM AT THE SAME COMPANY; YES,
7 SIR.

8 Q. WE HAVEN'T SEEN THEM THIS WEEK EITHER, HAVE WE?

9 A. NO, SIR.

10 Q. AND THEY WERE WITH MR. AUSTIN AT BOTTOMS UP. THROUGH
11 YOUR INVESTIGATION YOU LEARNED THAT; CORRECT?

12 A. THEY HAD BEEN THERE EARLIER IN THE EVENING IS MY
13 RECOLLECTION.

14 Q. WITH MR. AUSTIN; CORRECT?

15 A. CORRECT.

16 Q. AND WITH MR. BRYANT; CORRECT?

17 A. I DON'T RECALL IF THEY WERE WITH MR. BRYANT. I KNOW
18 THAT THEY WERE -- THEY HAD GONE WITH MR. AUSTIN. I DON'T
19 KNOW IF THEY HAD ANY INTERACTION WITH MR. BRYANT OR NOT. I
20 DON'T RECALL.

21 Q. AND WE HAVEN'T SEEN THEM. NOW, YOU SAID YOU WENT TO THE
22 BOTTOMS UP THE FOLLOWING NIGHT?

23 A. YES, SIR.

24 Q. AND YOU INTERVIEWED A NUMBER OF EMPLOYEES; CORRECT?

25 A. THREE OR FOUR, YES, SIR.

1 Q. THERE'S DANCERS THERE; RIGHT?

2 A. AT LEAST ONE WAS A DANCER AND THEN SOME OF THEM DOORMEN
3 AND BOUNCERS.

4 Q. THEY HAVE MORE THAN ONE DANCER; CORRECT?

5 A. THEY DO.

6 Q. MORE THAN ONE BARTENDER; CORRECT?

7 A. CORRECT.

8 Q. MORE THAN ONE SECURITY GUARD; CORRECT?

9 A. THAT'S CORRECT.

10 Q. AND YOU DIDN'T TAKE ANY WRITTEN STATEMENTS FROM ANY OF
11 THEM, DID YOU?

12 A. I DID NOT.

13 Q. TO YOUR KNOWLEDGE, NOBODY TOOK ANY WRITTEN STATEMENTS
14 FROM ANY OF THEM, DID THEY?

15 A. NOT TO MY KNOWLEDGE.

16 Q. IN FACT, NOBODY ASKED ANY DETAILS UNTIL 18 OR 20 MONTHS
17 LATER; CORRECT?

18 A. I HAVE DETAILED SOME CONVERSATIONS AND STATEMENTS THAT
19 THEY HAD GIVEN ME ORALLY, BUT I DID NOT TAKE ANY WRITTEN
20 STATEMENTS.

21 Q. NOTHING WRITTEN. AND WHEN I SAY WRITTEN, THAT'S WHEN
22 THE WITNESS GETS TO READ OVER WHAT THE OFFICER WRITES AND
23 SIGNS SAYING THIS IS WHAT I'M SAYING; CORRECT?

24 A. THAT WOULD BE THE PROCESS; YES, SIR.

25 Q. BECAUSE, OTHERWISE, IT'S JUST SOMETHING THAT'S IN THE

1 NOTES OF THE OFFICER'S NOTES?

2 A. THAT'S CORRECT.

3 Q. AND YOU NEVER REQUESTED A VIDEO FROM BOTTOMS UP, DID
4 YOU?

5 A. I WAS NOT AWARE OF ONE.

6 Q. NOT AWARE OF ONE?

7 A. NO, SIR.

8 Q. DID YOU BOTHER TO ASK FOR ONE?

9 A. I SPOKE TO THE MANAGEMENT AT THE CLUB WHEN I ARRIVED AND
10 TOLD THEM THAT I WAS THERE FOR THAT AND NEEDED TO SPEAK TO
11 ANYBODY THAT HAD WITNESSED MR. BRYANT AND MR. AUSTIN THERE.

12 Q. BUT YOU'RE THE ONE THAT WAS EMPLOYED BY THE RICHLAND
13 COUNTY SHERIFF'S DEPARTMENT; CORRECT?

14 A. THAT'S CORRECT.

15 Q. OKAY. AND YOU DIDN'T RECOVER -- DID YOU RECOVER ANY
16 MONEY FROM MR. BRYANT?

17 A. I DID NOT. I'M NOT SURE IF LIEUTENANT PADGETT RECOVERED
18 ANY FROM HIM.

19 Q. BUT AS LEAD INVESTIGATOR YOU WOULD KNOW IF THEY
20 RECOVERED ANY MONEY FROM MR. BRYANT; CORRECT?

21 A. I WOULD BE ABLE TO SEE THE FILES, AND I JUST DON'T
22 RECALL IF ANY WAS COLLECTED.

23 Q. DID YOU DO ANYTHING TO PREPARE FOR THIS TRIAL TRYING TO
24 REFRESH YOUR MEMORY?

25 A. YES, SIR.

1 Q. AND DO YOU REMEMBER SEEING ANYTHING IN THE FILE THAT
2 SOMEBODY RECOVERED MONEY FROM MR. BRYANT?

3 A. I DON'T RECALL. I REMEMBER THAT SOME MONEY WAS
4 RECOVERED FROM MR. AUSTIN, BUT I DON'T RECALL ANY BEING
5 RECOVERED FROM MR. BRYANT.

6 Q. AND IF THERE HAD BEEN A SUBSTANTIAL AMOUNT OF MONEY
7 RECOVERED FROM MR. BRYANT, YOU'D KNOW ABOUT IT, WOULDN'T YOU?

8 A. IF THERE HAD BEEN A SUBSTANTIAL AMOUNT, YES, SIR.

9 Q. AND DID YOU RECOVER ANY MARIJUANA FROM ROOM 129 OF THE
10 DAYS INN?

11 A. NONE THAT I KNOW OF.

12 Q. IF THERE HAD BEEN MARIJUANA IN THE ROOM, YOU WOULD
13 HAVE---

14 MR. CATHCART: OBJECTION AS TO RELEVANCE, YOUR HONOR.

15 THE COURT: OVERRULED. I'LL ALLOW HIM TO ANSWER THAT
16 QUESTION. HAVE YOU FINISHED YOUR ANSWER, MR. METZ?

17 THE WITNESS: NO, SIR. I WOULD ASSUME THAT I WOULD HAVE
18 BEEN TOLD.

19 THE COURT: PROCEED. CROSS-EXAMINATION.

20 MR. COLLINS: THANK YOU, YOUR HONOR.

21 BY MR. COLLINS:

22 Q. NOW, THROUGH YOUR INVESTIGATION YOU LEARNED THAT MR.
23 AUSTIN HAD WITHDRAWN CLOSE TO AROUND \$400 THE NIGHT OF THIS
24 INCIDENT; CORRECT?

25 A. I DO NOT REMEMBER THE EXACT AMOUNT, BUT IT WAS SEVERAL

1 HUNDRED, THREE OR FOUR HUNDRED DOLLARS. YES, SIR.

2 Q. BECAUSE YOU PULLED HIS BANK RECORDS; CORRECT?

3 A. WE DID PULL HIS BANK RECORDS AT SOME POINT AND ALSO HIS
4 A.T.M. RECEIPTS.

5 Q. AND DO YOU RECALL HOW MUCH MONEY YOU RECOVERED OFF OF
6 MR. AUSTIN?

7 A. THERE WAS A SMALL AMOUNT. I DON'T RECALL.

8 Q. UNDER FIVE DOLLARS?

9 A. I THINK SO.

10 MR. COLLINS: BEG THE COURT'S INDULGENCE.

11 THE COURT: YES, SIR.

12 BY MR. COLLINS:

13 Q. JUST ONE MORE QUESTION. YOU DIDN'T SEE MR. AUSTIN GET
14 SHOT, DID YOU?

15 A. NO, SIR.

16 MR. COLLINS: THANK YOU.

17 THE COURT: REDIRECT?

18 MR. CATHCART: THANK YOU, YOUR HONOR.

19 REDIRECT EXAMINATION

20 BY MR. CATHCART:

21 Q. YOU FOUND OUT -- AS LEAD INVESTIGATOR IS IT YOUR JOB TO
22 FIND WITNESSES IN THE CASE?

23 A. IT WAS.

24 Q. DID YOU FIND NELLIE CONNELL?

25 A. WE DID.

1 Q. DID NELLIE CONNELL COME HERE AND TESTIFY BEFORE THESE
2 PEOPLE TODAY? WELL, NOT TODAY. THIS WEEK?

3 A. YES, SIR. I BELIEVE IT WAS YESTERDAY.

4 Q. THANK YOU. WAS SHE SUBJECT TO CROSS-EXAMINATION BY THIS
5 MAN?

6 A. SHE WAS.

7 Q. DID MARY ONELLO COME FORWARD AND TESTIFY BEFORE THESE
8 PEOPLE THIS WEEK?

9 A. SHE DID.

10 Q. CROSS-EXAMINATION BY THAT MAN?

11 A. THAT'S CORRECT.

12 Q. DID YOU FIND MICHAEL FOSTER, AN EYEWITNESS TO THE
13 SHOOTING?

14 A. AT A LATER DATE, YES, SIR, I DID.

15 Q. AND THE TESTIMONY WAS BEFORE THIS JURY.

16 A. IT WAS READ IN; YES, SIR.

17 Q. YOU FOUND MIKE - EXCUSE ME - JOHN MARK CAMPBELL FROM THE
18 BOTTOMS UP CLUB.

19 A. HE WAS ONE THAT I HAD SPOKEN TO AND TAKEN ORAL
20 STATEMENTS FROM.

21 Q. AND HE CAME FORWARD TO TESTIFY BEFORE THIS JURY?

22 A. THAT'S CORRECT.

23 Q. SUBJECT TO CROSS-EXAMINATION BY THAT MAN.

24 A. HE WAS.

25 Q. DID YOU AND INVESTIGATOR PADGETT LOOK AT THE EVIDENCE IN

1 THIS CASE?

2 A. WE DID.

3 Q. DID YOU AND INVESTIGATOR PADGETT -- OR DID YOU HAVE THE
4 OPPORTUNITY TO SEE THE DEFENDANT AND THE VICTIM?

5 A. I DID.

6 Q. DID -- AT ANY POINT DID YOU ASK FOR A FINGERNAIL
7 ANALYSIS?

8 A. IT WAS DISCUSSED WITH LIEUTENANT PADGETT THAT MORNING AS
9 ONE OF THE FIRST THINGS THAT HE WAS GOING TO DO, AND IT WAS
10 MY INFORMATION THAT HE HAD DONE SO..

11 Q. OKAY. AND DID YOU SEE ANY INJURIES ON THE DEFENDANT OR
12 ON THE VICTIM THAT WOULD -- THAT WOULD MAKE YOU THINK OR DOES
13 ANY OF THE EVIDENCE THAT YOU WERE ABLE TO FIND IN THIS CASE
14 MAKE YOU FEEL THAT THERE WAS A NEED TO DETERMINE WHAT WAS
15 UNDERNEATH THE VICTIM'S FINGERNAILS?

16 MR. COLLINS: OBJECTION, YOUR HONOR. HE'S NOT QUALIFIED
17 TO HAVE ANY---

18 THE COURT: I'M NOT GOING TO LET HIM GIVE AN OPINION,
19 BUT I'LL ALLOW HIM TO ANSWER THAT QUESTION. OVERRULED. YOU
20 MAY ANSWER THAT QUESTION.

21 BY MR. CATHCART:

22 Q. I MEAN, YOU HAVE TO ASK FOR THEM; RIGHT?

23 A. THAT'S CORRECT.

24 Q. WAS THERE ANYTHING FROM THE EVIDENCE THAT YOU FOUND IN
25 THIS CASE OF YOUR INVESTIGATION THAT MADE YOU SAY, "S.L.E.D.,

1 GIVE ME THE ANALYSIS FOR THESE FINGERNAILS"?

2 A. THERE WAS NOT.

3 MR. CATHCART: OKAY. THANK YOU.

4 THE COURT: RECROSS LIMITED TO REDIRECT?

5 MR. COLLINS: MAY IT PLEASE THE COURT?

6 THE COURT: YES, SIR.

7 RECROSS EXAMINATION

8 BY MR. COLLINS:

9 Q. HYPOTHETICALLY, IF YOU HAD LEARNED THAT THERE HAD BEEN A
10 STRUGGLE BETWEEN THESE TWO MEN, YOU'RE SAYING YOU WOULDN'T
11 WANT TO KNOW THE RESULTS FROM THE FINGERNAIL SCRAPINGS?

12 A. I WOULD, BUT THE RESULTS FROM THE FINGERNAIL SCRAPINGS
13 WOULD NOT BE ANALYZED AT S.L.E.D. UNTIL I HAD SENT SOMETHING
14 OUT THERE FOR THEM TO BE ANALYZED AGAINST.

15 Q. AND YOU NEVER DID THAT, DID YOU?

16 A. I HAD NO INDICATION FROM MR. BRYANT THAT THAT HAD
17 OCCURRED.

18 Q. SO THEY WERE NEVER TESTED.

19 A. THAT'S CORRECT.

20 MR. COLLINS: THANK YOU.

21 THE COURT: MR. METZ, YOU MAY STEP DOWN FROM THE WITNESS
22 STAND. CALL YOUR NEXT WITNESS.

23 MR. CATHCART: YOUR HONOR, AT THIS TIME THE STATE RESTS.

24 THE COURT: VERY WELL. MR. FOREMAN AND LADIES AND
25 GENTLEMEN OF THE JURY, I'M GOING TO STOP AT THIS POINT AND

1 GIVE YOU YOUR LUNCH BREAK A LITTLE BIT EARLIER THAN WE STOP.
2 I'M GOING TO ASK YOU TO BE BACK IN YOUR JURY ROOM AT 2:30.
3 THAT GIVES YOU A FEW EXTRA MINUTES FOR YOUR LUNCH.

4 DURING THE LUNCH BREAK, AS I'VE INSTRUCTED YOU
5 THROUGHOUT THE CASE, PLEASE DO NOT DISCUSS THE CASE AMONGST
6 YOURSELVES OR WITH ANYBODY ELSE. PLEASE DO NOT WATCH,
7 LISTEN, OR READ ANY NEWSPAPER, RADIO, OR TELEVISION IF THERE
8 BE SUCH ACCOUNT. YOU MUST DECIDE THIS CASE SOLELY UPON
9 EVIDENCE INTRODUCED DURING THE TRIAL OF THIS CASE WHEN BOTH
10 SIDES ARE PRESENT WITH THE RIGHT OF CROSS-EXAMINATION.

11 YOU HAVE NOT HEARD ALL THE EVIDENCE IN THE CASE. YOU
12 HAVE NOT HAD THE FINAL ARGUMENTS OF THE ATTORNEYS OR RECEIVED
13 MY CHARGE ON THE LAW, SO IT WOULD BE IMPROPER FOR YOU TO
14 DISCUSS IT PREMATURELY. THANK YOU FOR YOUR COOPERATION. I
15 HOPE EVERYBODY HAS A PLEASANT LUNCH. YOU'RE EXCUSED FROM THE
16 COURTROOM. BE BACK IN THE JURY ROOM BY 2:30.

17 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT TO GO
18 TO LUNCH AT 12:47 P.M.)

19 **THE COURT:** ALL RIGHT. I'D LIKE TO MAKE A RECORD NOW
20 OUTSIDE THE PRESENCE OF THE JURY OF WHAT OCCURRED DURING THE
21 CROSS-EXAMINATION OF MR. METZ. WHEN MR. METZ GOT ON THE
22 WITNESS STAND, THERE WAS AN OBJECTION WHEN MR. COLLINS ON
23 CROSS-EXAMINATION ATTEMPTED TO ELICIT THE CONTENTS AND
24 PARTICULARLY MESSAGE CONTENTS OF WHAT HAS PREVIOUSLY BEEN
25 MARKED IN THIS TRIAL AS COURT'S EXHIBIT NUMBER 2. I HAVE A

1 COPY ON THE BENCH.

2 THE MESSAGE CONTENT SAYS, "MAN BEING PUSHED AROUND AND
3 PUSHED OUT OF WHEELCHAIR." IT WAS MR. COLLINS' INTENTION AT
4 THE BENCH IN A BENCH CONFERENCE THAT HE WANTED TO INTRODUCE
5 THE DOCUMENT. THE OBJECTION BY THE STATE WAS ON HEARSAY. I
6 SUSTAINED THE OBJECTION.

7 THERE WAS A DISCUSSION AT THE BENCH AS TO WHETHER OR NOT
8 THE EXCEPTION TO THE HEARSAY RULE FOUND IN 803(8) WHICH IS
9 THE PUBLIC RECORDS AND REPORTS EXCEPTION WOULD APPLY TO THIS
10 DOCUMENT. HOWEVER, I RULED THAT EVEN IF THE EXCEPTION
11 APPLIED, THE PROVIDED HOWEVER PORTION, THE INVESTIGATIVE
12 NOTES INVOLVING OPINIONS, JUDGMENTS, OR CONCLUSIONS ARE NOT
13 ADMISSIBLE. MR. COLLINS WANTED TO PUT THE PIECE OF PAPER IN
14 EVIDENCE. I SUSTAINED THE STATE'S OBJECTION, AND I WANTED
15 THERE TO BE A RECORD OF IT.

16 I POINTED OUT TO MR. COLLINS THAT ON COURT'S EXHIBIT
17 NUMBER 2 THE CALLER'S NAME THAT ALLEGEDLY PROVIDED THE
18 INFORMATION IS NELLIE CONNELL WHO WAS A WITNESS DURING THE
19 TRIAL OF THIS CASE AND SUBJECT TO CROSS-EXAMINATION. MR.
20 COLLINS OPINED TO THE COURT AT THE BENCH CONFERENCE THAT MS.
21 CONNELL DID NOT TESTIFY CONSISTENTLY WITH THE DOCUMENT, BUT
22 SHE WAS SUBJECT TO CROSS-EXAMINATION AND ASKED WHETHER SHE
23 MADE A CALL AND WHAT SHE TOLD THE DISPATCHER.

24 WE DO NOT KNOW WHO PREPARED COURT'S EXHIBIT NUMBER 2.
25 IT'S THE ONLY RECORD THAT WE HAVE STILL IN EXISTENCE SINCE

1 1999, AND I, THEREFORE, SUSTAINED THE STATE'S OBJECTION ON
2 HEARSAY AND WANTED THERE TO BE A RECORD OF IT ON THAT BASIS.

3 NOW, AT THIS STAGE NORMALLY I WOULD INQUIRE OF YOUR
4 CLIENT, MR. COLLINS, BUT BECAUSE WE'RE BREAKING FOR LUNCH, I
5 WANT TO MAKE SURE YOU'VE HAD TIME TO TALK TO HIM AND ADVISE
6 HIM PRIOR TO DOING THAT. HOWEVER, SINCE THE STATE HAS
7 ADVISED ME THEY HAVE RESTED - AND I'LL DO THAT RIGHT AFTER
8 LUNCH - I WILL BE HAPPY TO HEAR FROM YOU OR MR. LEDDY AT THIS
9 TIME ON ANY MATTERS OF LAW AT THE CONCLUSION OF THE STATE'S
10 CASE. DO ONE OF YOU HAVE ANY SUCH MATTERS YOU WISH TO RAISE
11 TO THE COURT?

12 MR. COLLINS: YOUR HONOR, AT THIS TIME OBVIOUSLY WE
13 RENEW ALL PREVIOUS OBJECTIONS AND MOTIONS IN THIS CASE.
14 SPECIFICALLY I WOULD LIKE TO ADDRESS THE OBJECTION THAT YOU
15 JUST PUT ON THE RECORD. IT'S OUR ARGUMENT THAT IT WAS A
16 BUSINESS RECORD. IT WAS NOT AN OPINION, JUDGMENT, OR A
17 CONCLUSION. IT WAS SIMPLY AN OBSERVATION. GIVEN THE NATURE
18 THAT WE RECEIVED THIS DOCUMENT THIS WEEK AND WE DID NOT HAVE
19 TIME TO LOCATE A RECORDS CUSTODIAN OR EVEN KNOW WHO THAT
20 PERSON IS, WE WERE SEEKING TO INTRODUCE IT WITH THE PERSON
21 WHO BROUGHT THE DOCUMENT FROM THE RICHLAND COUNTY SHERIFF'S
22 DEPARTMENT TO THE COURTROOM EARLIER THIS WEEK.

23 THE COURT: WE MADE A LENGTHY RECORD AT THE OUTSET OF
24 THIS TRIAL WHEN I MADE IT A COURT'S EXHIBIT NOR DOES THE
25 STATE OF SOUTH CAROLINA... IN FACT, THE STATE CANDIDLY

1 ADMITTED, MR. COLLINS, AS YOU KNOW, THEY HAD NO FILE. THEY
2 HAD TO GET A COPY OF THEIR FILE FROM THE FIRST TRIAL FROM THE
3 PUBLIC DEFENDER'S OFFICE, AND THIS WAS THE ONLY RECORD LEFT
4 NOR DOES ANYONE KNOW WHO MADE COURT'S EXHIBIT NUMBER 2. AND
5 YOU DID ARGUE THAT YOU DID NOT THINK IT WAS AN OPINION,
6 JUDGMENT, OR CONCLUSION, AND I RESPECTFULLY DISAGREE WITH
7 THAT AND IT'S THE REASON I SUSTAINED THE OBJECTION. AND I
8 THINK THE RECORD WILL SPEAK FOR ITSELF THAT YOU PROTECTED
9 YOUR CLIENT WITH THOSE GROUNDS.

10 ARE THERE ANY OTHER MATTERS OF LAW, NOT ON THAT RULING,
11 AT THE CONCLUSION OF THE STATE'S CASE? BECAUSE I THINK WE'VE
12 MADE A RECORD ON THAT.

13 MR. COLLINS: YOUR HONOR, I APOLOGIZE IF THIS IS GOING A
14 BIT TOO FAR, BUT ANOTHER POSITION: HEARSAY WITHIN HEARSAY
15 PRESENT-SENSE EXPRESSION AS FAR AS IT NOT BEING HEARSAY.

16 THE COURT: YOU DID NOT RAISE THAT AT THE BENCH, AND
17 OBVIOUSLY THERE'S NOT SUFFICIENT EVIDENCE IN FRONT OF THIS
18 COURT FOR ME TO MAKE A RULING AS TO WHETHER ONE OF THE OTHER
19 HEARSAY EXCEPTIONS APPLIES BECAUSE WE DON'T KNOW AT WHAT
20 POINT IN TIME THAT THIS DOCUMENT WAS GENERATED, WHETHER IT BE
21 PRESENT-SENSE IMPRESSION OR EXCITED UTTERANCE OR THEN-
22 EXISTING MENTAL, EMOTIONAL, OR PHYSICAL CONDITION. AND FOR
23 THAT REASON, IN THE ABSENCE OF EVIDENCE, I, OF COURSE, COULD
24 NOT CONSIDER THAT BECAUSE WE DON'T KNOW EXACTLY WHEN IT WAS
25 GENERATED. AND THAT WASN'T RAISED BEFORE, BUT IF YOU WANT TO

1 MAKE IT AS AN ADDITIONAL GROUND ON PRESENT-SENSE IMPRESSION,
2 THAT IS MY RULING. ANYTHING ELSE?

3 MR. COLLINS: YOUR HONOR, I APOLOGIZE FOR NOT BRINGING
4 IT UP BEFORE. IT WAS THE STATE'S OBJECTION.

5 THE COURT: I UNDERSTAND. THE STATE MADE AN OBJECTION
6 ON HEARSAY, AND WE DISCUSSED AT THE BENCH BUSINESS RECORDS
7 BECAUSE THAT WOULD BE A POSSIBILITY OF ITS ADMISSION. AND I
8 UNDERSTAND THAT, AND I WANT TO MAKE SURE THAT THE RECORD IS
9 CLEAR THAT WE HAVE NO IDEA WHEN THIS DOCUMENT WAS ACTUALLY --
10 OR WHEN THE STATEMENT WAS MADE, WHETHER IT WAS AN EXCITED
11 UTTERANCE, A STARTLING EVENT OR CONDITION. I UNDERSTAND
12 THERE'S AN INFERENCE THAT IT COULD HAVE BEEN, BUT THERE'S NO
13 EVIDENCE BEFORE US. NO ONE KNOWS, WHICH IS ANOTHER REASON I
14 SUSTAINED THE STATE'S OBJECTION.

15 MR. COLLINS: THANK YOU, YOUR HONOR.

16 THE COURT: ANYTHING FURTHER AT THE CLOSE OF THE STATE'S
17 CASE FROM THE DEFENDANT?

18 MR. COLLINS: YOUR HONOR, WE'D ALSO, AFTER RENEWING ALL
19 PREVIOUS MOTIONS AND OBJECTIONS, MOVE FOR A DIRECTED VERDICT
20 IN THE LIGHT MOST FAVORABLE TO THE STATE. IN A REVIEW OF THE
21 FACTS, NO REASONABLE JURY COULD COME BACK WITH A GUILTY
22 VERDICT AT THIS POINT IN TIME FOR MURDER, SPECIFICALLY WITH
23 THE REQUIREMENT OF MALICE IN THIS CASE.

24 THE COURT: YES, SIR. MR. CATHCART, DOES THE STATE WISH
25 TO BE HEARD ON THAT MOTION?

1 **THE COURT:** FRAUDULENT CHECKS IN '94 AND SHOPLIFTING IN
2 '92. DO YOU AGREE, MR. COLLINS?

3 **MR. COLLINS:** YES, SIR, YOUR HONOR.

4 **THE COURT:** ALL RIGHT. THAT'S EVERYTHING.

5 **MR. CATHCART:** YES, SIR, AS FOR IMPEACHMENT, YOUR HONOR.
6 AND, AGAIN, IF HE OPENS UP THE DOOR, HE HAS OTHER RECORD THAT
7 MAY COME IN.

8 **THE COURT:** AND DO WHAT NOW?

9 **MR. CATHCART:** IF HE OPENS UP THE DOOR---

10 **THE COURT:** OH, OBVIOUSLY IF THE DOOR GETS OPENED, BUT
11 THAT'S -- I MEAN, IF HAPPY LITTLE BLUE BIRDS FLY BEYOND THE
12 RAINBOW, OH, WHY, OH, WHY CAN'T I ALSO, MR. CATHCART?

13 **MR. CATHCART:** YES, SIR.

14 **THE COURT:** I'M NOT DEALING IN WHAT IF'S RIGHT NOW, JUST
15 WHAT WE KNOW. ALL RIGHT. NOW, MR. COLLINS, I NEED -- IS
16 THERE SOMETHING ELSE ON THE RECORD CONCERNING YOUR CLIENT'S
17 RECORD BEFORE I HAVE YOUR CLIENT SWORN? I'D LIKE TO FINISH
18 ONE ISSUE AT A TIME BEFORE WE MOVE TO ANOTHER ONE.

19 **MR. COLLINS:** I'M STILL A LITTLE CONCERNED IF HIS
20 POSITION IS THAT IF THE SELF-DEFENSE CHARGE IS CREATED
21 THROUGH HIS TESTIMONY---

22 **THE COURT:** I'M NOT DEALING WITH SELF-DEFENSE AT THIS
23 POINT. I WANT YOU TO UNDERSTAND THAT BECAUSE I DON'T EVEN
24 KNOW WHETHER I'M GOING TO CHARGE IT AT THIS POINT, SO I WANT
25 TO WAIT AND LISTEN TO WHAT OCCURS. I CAN'T GIVE YOU AN

1 ADVISORY RULING BECAUSE IT HAS TO BE BASED ON EVIDENCE AND
2 YOU HAVE NOT RESTED. SO WE'VE GOT TO TAKE IT AT THIS STAGE.
3 BRING YOUR CLIENT AROUND. JACKIE, ARE YOU WITH ME DOWN
4 THERE?

5 THE CLERK: I AM.

6 THE COURT: SWEAR THE DEFENDANT.

7 THOMAS T. BRYANT, JR., AFTER BEING DULY SWORN,
8 TESTIFIED AS FOLLOWS IN CAMERA:

9 EXAMINATION BY THE COURT

10 Q. JACKIE, LET ME HOLD THE INDICTMENT. ALL RIGHT, SIR.
11 FIRST OF ALL, YOU'VE BEEN SWORN NOW. WOULD YOU STATE YOUR
12 FULL NAME FOR THE RECORD FOR ME, PLEASE?

13 A. THOMAS T. BRYANT, JR.

14 Q. MR. BRYANT, AT THIS TIME I'M GOING TO EXPLAIN TO YOU
15 CERTAIN OF YOUR RIGHTS. IF YOU DO NOT UNDERSTAND ANYTHING
16 THAT I SAY, PLEASE LET ME KNOW. IF YOU WANT ME TO EXPLAIN
17 ANYTHING IN FURTHER DETAIL, PLEASE LET ME KNOW. DO YOU
18 UNDERSTAND?

19 A. YES, SIR.

20 Q. ALL RIGHT. WE'VE NOW REACHED THE STAGE OF THE TRIAL
21 WHERE YOU MAY PRESENT YOUR DEFENSE. YOU HAVE THE RIGHT TO
22 TESTIFY IN YOUR OWN BEHALF. HOWEVER, NO ONE, NO ONE, CAN
23 MAKE YOU TESTIFY. IN THE EVENT YOU HAVE A RECORD FOR ANY
24 CRIMINAL CONVICTION INVOLVING DISHONESTY OR FALSE STATEMENT -
25 AND I'VE BEEN TOLD BY YOUR LAWYER AND THE SOLICITOR THAT YOU

1 HAVE A PRIOR CONVICTION IN '92 FOR SHOPLIFTING AND A PRIOR
2 CONVICTION, TWO COUNTS, IN '94 FOR BAD CHECKS - OR FOR ANY
3 CONVICTION PUNISHABLE BY IMPRISONMENT FOR MORE THAN ONE YEAR
4 AND THIS COURT DETERMINES AS A MATTER OF LAW THAT THE
5 PROBATIVE VALUE OF ADMITTING THIS EVIDENCE WOULD OUTWEIGH ITS
6 PREJUDICIAL EFFECT TO YOU, THE SOLICITOR WILL BE ABLE TO
7 INTRODUCE YOUR PRIOR RECORD FOR IMPEACHMENT PURPOSES TO
8 ATTACK YOUR CREDIBILITY OR YOUR BELIEVABILITY ON THE WITNESS
9 STAND IN THE PRESENCE OF THE JURY. IF YOU ELECT NOT TO TAKE
10 THE WITNESS STAND, I WILL CHARGE THE JURY THAT THEY ARE NOT
11 TO GIVE THE FACT THAT YOU DID NOT TESTIFY ANY CONSIDERATION
12 WHATSOEVER, AND THERE IS TO BE ABSOLUTELY NO PREJUDICE TO YOU
13 BECAUSE YOU DID NOT TESTIFY.

14 THIS MATTER OF WHETHER OR NOT YOU TESTIFY IN THE TRIAL
15 OF THIS CASE WILL BE LEFT ENTIRELY UP TO YOU. YOU CAN TALK
16 WITH YOUR ATTORNEYS, CONSULT WITH THEM, BUT THE ULTIMATE
17 DECISION OF WHETHER OR NOT YOU ELECT TO TESTIFY IN THE TRIAL
18 OF THIS CASE WILL BE LEFT ENTIRELY UP TO YOU. HAVE YOU
19 UNDERSTOOD WHAT I'VE JUST TOLD YOU?

20 A. YES, SIR, I UNDERSTOOD EVERYTHING BUT THAT ONE PART YOU
21 SAID ABOUT ANY PRIOR BAD ACT.

22 Q. YES, SIR. LET ME REPEAT THAT, PLEASE.

23 A. AFTER A YEAR.

24 Q. IT'S A TWOFOLD STATEMENT. IN THE EVENT THAT YOU HAVE A
25 CRIMINAL RECORD FOR ANY CONVICTION, NOT A CHARGE BUT A

1 CONVICTION, INVOLVING DISHONESTY OR FALSE STATEMENT OR FOR A
2 CRIME PUNISHABLE BY IMPRISONMENT FOR MORE THAN ONE YEAR AND
3 THE COURT DETERMINES AS A MATTER OF LAW, MEANING THE TRIAL
4 JUDGE, MYSELF, THAT THE PROBATIVE VALUE OF ADMITTING THIS
5 EVIDENCE OUTWEIGHS ITS PREJUDICIAL EFFECT TO YOU, IF YOU
6 TESTIFY THE SOLICITOR WOULD BE ABLE TO INTRODUCE THIS RECORD,
7 IF I ALLOW IT, FOR IMPEACHMENT PURPOSES TO ATTACK YOUR
8 CREDIBILITY OR BELIEVABILITY. AND THE REASON I CITE IT TO
9 YOU THAT WAY IS THAT IS THE WAY IT IS ACTUALLY WRITTEN IN THE
10 RULE, AND IT'S FROM RULE 609 OF OUR RULES OF EVIDENCE. AND
11 THAT'S THE REASON THAT I'M USING THE TERMS THAT I USE, AND I
12 WANT TO MAKE SURE THAT YOU UNDERSTAND THAT. DO YOU
13 UNDERSTAND IT NOW?

14 A. YEAH, I'VE GOT A -- I HAVE A BETTER UNDERSTANDING OF IT.

15 Q. ANY QUESTIONS YOU WANT TO ASK?

16 A. YES, SIR.

17 Q. I'LL GIVE YOU A MOMENT TO TALK TO YOUR LAWYERS, AND THEN
18 YOU TELL ME YOUR DECISION. BUT WHEN I ASK YOU UNDER OATH
19 YOUR DECISION, I WANT YOU TO UNDERSTAND THAT THIS IS YOUR
20 DECISION, NOT YOUR LAWYERS'. YOU CAN DISCUSS IT WITH THEM.
21 THEY CAN MAKE A RECOMMENDATION TO YOU, BUT THE ULTIMATE
22 DECISION OF WHETHER OR NOT YOU TESTIFY IN THE TRIAL OF THIS
23 CASE IS YOURS AND YOURS ALONE AFTER YOU'VE HAD ADEQUATE TIME
24 TO CONSULT WITH YOUR ATTORNEYS. DO YOU UNDERSTAND THAT?

25 A. YES, SIR.

1 Q. ALL RIGHT, SIR. I'LL GIVE YOU A MOMENT.

2 A. ALL RIGHT. I APPRECIATE IT.

3 (AN OFF-THE-RECORD DISCUSSION TAKES PLACE BETWEEN MR.
4 BRYANT, MR. LEDDY, AND MR. COLLINS.)

5 MR. LEDDY: YOUR HONOR?

6 THE COURT: I WANT TO INQUIRE OF YOUR CLIENT.

7 BY THE COURT:

8 Q. ALL RIGHT. NOW, MR. BRYANT, HAVE YOU HAD SUFFICIENT
9 TIME NOW TO TALK WITH BOTH OF YOUR ATTORNEYS, MR. COLLINS AND
10 MR. LEDDY?

11 A. YES, SIR.

12 Q. ALL RIGHT. AND HAVE YOU MADE A DECISION CONCERNING
13 WHETHER OR NOT YOU WISH TO TESTIFY IN THE TRIAL OF THIS CASE?

14 A. YES, SIR, I HAVE.

15 Q. AND IS IT YOUR DECISION AND NOT ANYBODY ELSE'S?

16 A. IT'S MY DECISION AND MY DECISION ONLY.

17 Q. VERY WELL. AND WHAT IS YOUR DECISION?

18 A. I'LL TESTIFY.

19 Q. YOU'RE GOING TO TESTIFY.

20 A. YES, SIR.

21 THE COURT: THANK YOU, SIR. YOU CAN PUT THE MICROPHONE
22 BACK UP. YOU MAY RETURN TO COUNSEL TABLE. ALL RIGHT. ARE
23 THERE ANY OTHER MATTERS FROM THE DEFENDANT OUTSIDE THE
24 PRESENCE OF THE JURY THAT NEED TO BE BROUGHT UP AT THIS TIME
25 BEFORE WE BRING THE JURY BACK TO RESUME THE TRIAL?

1 MR. COLLINS: NO, YOUR HONOR.

2 THE COURT: ANYTHING FURTHER FROM THE STATE BEFORE I
3 BRING THE JURY BACK?

4 MR. CATHCART: YOUR HONOR, JUST AS TO LOGISTICS OF HOW
5 HE'LL BE TESTIFYING AND WHERE HE'LL BE PLACED.

6 THE COURT: THAT'S A GOOD QUESTION, MR. CATHCART. I
7 WANT THE JURY TO BE ABLE TO SEE MR. BRYANT WHEN HE TESTIFIES,
8 SO I'M ASSUMING AND I'LL ALLOW YOU -- I'VE GOT CHAIRS OVER
9 HERE. IF HE -- IF WE MOVE THE MICROPHONE OVER HERE SO THE
10 JURY CAN ALL SEE HIM WHILE HE'S THERE, I'LL ALLOW THE LAWYER
11 THAT'S QUESTIONING TO USE THE ROSTRUM WHERE THEY DON'T BLOCK
12 THE JURY. DO NOT WALK IN FRONT OF THE JURY SO THEY CAN SEE
13 HIS FACE, AND I'LL ALLOW THE OPPOSING COUNSEL THAT'S GOING TO
14 DO THE CROSS-EXAMINATION TO SIT IN THE CHAIR BEHIND THE
15 BAILIFF.

16 MR. COLLINS: JUDGE, I BELIEVE I'VE SPOKE WITH HER
17 BEFORE WE STARTED. SHE WOULD LIKE TO BE ABLE TO MAYBE SEE
18 HIS FACE WHILE... WE WOULD -- I THINK ABOUT RIGHT HERE MAY
19 BE A LITTLE BIT EASIER FOR EVERYBODY.

20 THE COURT: YOU WANT TO SEE HIS FACE, DAPHNE?

21 COURT REPORTER: YES, SIR, JUDGE.

22 THE COURT: OKAY. ALL RIGHT. THEN WE'RE GOING TO HAVE
23 TO ANGLE IT BECAUSE I WANT THE JURY TO SEE HIS FACE, AND THAT
24 TO ME IS EXTREMELY IMPORTANT EVEN IF I'VE GOT TO MOVE YOU SO
25 YOU CAN SEE HIS FACE. I'LL SEE THAT YOU CAN, BUT I CAN BRING

1 YOU DOWN FROM THERE AND I DON'T WANT TO TURN HIM WHERE THE
2 JURY CAN'T SEE HIS FACE. PUT ME A CHAIR DOWN THERE AND LET
3 ME SEE. MR. BRYANT, I'LL LET -- ROLL HIM AROUND AND LET ME
4 SEE HOW WE CAN DO IT, AND THEN I'M TO HAVE -- MY BAILIFF, IF
5 YOU'LL SIT UP THERE IN THE TOP OF THE WITNESS (SIC) STAND FOR
6 ME.

7 MR. COLLINS: WE'LL LET HIM HOLD THE MICROPHONE.

8 THE COURT: YEAH, YOU CAN LET HIM HOLD THE MICROPHONE.
9 I'M NOT WORRIED ABOUT THE LAWYERS. ONE OF THEM IN THE CHAIR
10 AND ONE AT THE ROSTRUM -- CAN YOU SEE HIS FACE?

11 COURT REPORTER: YES, SIR.

12 THE COURT: NOW, CAN YOU SEE HIM SUFFICIENTLY NOW?

13 COURT REPORTER: YES, SIR.

14 THE COURT: THEN THAT SUITS ME FINE. ANY OBJECTION TO
15 THAT FROM THE STATE?

16 MR. CATHCART: ONLY ONE CLARIFICATION, YOUR HONOR. AS
17 HE TESTIFIES UNDER DIRECT, I'LL BE SITTING HERE?

18 THE COURT: YOU'LL BE SITTING IN THE NEXT CHAIR. THE
19 BAILIFF SITS THERE.

20 MR. CATHCART: AND WHILE I AM ALLOWED TO CROSS-EXAM HIM,
21 I'LL HAVE THE PODIUM?

22 THE COURT: DO WHAT?

23 MR. CATHCART: WHEN I CROSS-EXAMINE, I'LL BE ABLE TO---

24 THE COURT: YOU'LL BE ABLE TO TAKE THE ROSTRUM.

25 MR. CATHCART: THANK YOU, SIR.

1 **THE COURT:** BOTH OF YOU WILL HAVE THE ROSTRUM DURING
2 DIRECT AND CROSS. ANY OBJECTION FROM THE STATE TO THAT
3 PROCEDURE?

4 **MR. CATHCART:** THERE IS NO OBJECTION FROM THE STATE.

5 **THE COURT:** FROM THE DEFENDANT?

6 **MR. COLLINS:** NONE FROM THE DEFENDANT.

7 **THE COURT:** VERY WELL. BRING US THE JURY.

8 **MR. COLLINS:** JUST HAVE HIM STAY HERE?

9 **THE COURT:** PARDON?

10 **MR. COLLINS:** JUST LEAVE HIM HERE?

11 **THE COURT:** I THINK IT WOULD BE BEST JUST TO LEAVE HIM
12 THERE. THAT WAY YOU DON'T HAVE TO GO BACK AND FORTH.

13 **MR. COLLINS:** THANK YOU, JUDGE.

14 **THE COURT:** JACKIE, MAKE SURE THAT MY LAW CLERK GETS
15 THIS.

16 **THE CLERK:** YES, SIR.

17 (WHEREUPON, THE JURY WAS BROUGHT INTO OPEN COURT AT 2:46
18 P.M.)

19 **THE COURT:** MR. FOREMAN, LADIES AND GENTLEMEN OF THE
20 JURY, YOU'VE HEARD THE EVIDENCE FROM THE STATE OF SOUTH
21 CAROLINA. WE WILL NOW HEAR FROM THE DEFENDANT. MR. COLLINS,
22 YOU MAY CALL YOUR FIRST WITNESS.

23 **MR. COLLINS:** YOUR HONOR, THE DEFENSE CALLS THOMAS T.
24 BRYANT, JR.

25 **THE COURT:** MR. BAILIFF, IF YOU WOULD COME AROUND AND

1 HOLD THE BIBLE. MADAM CLERK, PLEASE SWEAR THE WITNESS.

2 THOMAS T. BRYANT, JR., AFTER BEING DULY SWORN,

3 TESTIFIED AS FOLLOWS:

4 THE CLERK: PLEASE STATE YOUR FULL NAME FOR THE RECORD.

5 THE WITNESS: THOMAS T. BRYANT, JR.

6 THE COURT: HAND HIM THE MICROPHONE. SPELL YOUR LAST
7 NAME FOR THE RECORD FOR ME, PLEASE.

8 THE WITNESS: B-R-Y-A-N-T.

9 THE COURT: VERY WELL. YOUR WITNESS, COUNSEL. DIRECT
10 EXAMINATION.

11 MR. COLLINS: THANK YOU, YOUR HONOR.

12 DIRECT EXAMINATION

13 BY MR. COLLINS:

14 Q. GOOD AFTERNOON. MAY I CALL YOU THOMAS?

15 A. YES, SIR.

16 Q. THOMAS, WHERE ARE YOU FROM?

17 A. COLUMBIA, SOUTH CAROLINA.

18 Q. HOW OLD ARE YOU?

19 A. I'M 48.

20 Q. FORTY-EIGHT YEARS OLD?

21 A. (WITNESS NODDED HEAD UP AND DOWN.)

22 Q. AND BEFORE WE GET STARTED, YOU GOT CONVICTED OF WRITING
23 A COUPLE OF BAD CHECKS BACK IN THE EARLY NINETIES?

24 A. YES, SIR.

25 Q. AS WELL AS A SHOPLIFTING; CORRECT?

- 1 A. YES, SIR.
- 2 Q. I BELIEVE THAT WAS 1992, '94?
- 3 A. SOMEWHERE AROUND THERE, I BELIEVE.
- 4 Q. ALL RIGHT. NOW, OF COURSE, EVERYBODY KNOWS THAT YOU'RE
- 5 IN A WHEELCHAIR NOW; CORRECT?
- 6 A. YES, SIR.
- 7 Q. WHEN -- WHEN DID -- WHEN DID YOU GET INJURED?
- 8 A. I GOT INJURED FEBRUARY THE 2ND, 1982.
- 9 Q. ARE YOU ON ANY KIND OF MEDICATION TODAY?
- 10 A. YES, SIR, I'M ON SOME MEDICATION.
- 11 Q. DOES IT AFFECT YOUR ABILITY TO THINK?
- 12 A. NO, SIR.
- 13 Q. WERE YOU ON ANY KIND OF MEDICATION BACK IN 1999 AS WELL?
- 14 A. YES, SIR.
- 15 Q. WHAT WERE YOU ON BACK THEN?
- 16 A. I WAS ON PERCOCET, VALIUM.
- 17 Q. AND GOING BACK TO 1999, WERE YOU WORKING AT THAT TIME?
- 18 A. NO, SIR, I WASN'T WORKING.
- 19 Q. DID YOU HAVE ANY INCOME?
- 20 A. YES, SIR.
- 21 Q. WHAT TYPE OF INCOME DID YOU HAVE?
- 22 A. I HAD A SOCIAL SECURITY CHECK COMING IN.
- 23 Q. IS THAT EVERY MONTH?
- 24 A. YES, SIR, EVERY MONTH.
- 25 Q. AND LET'S GO BACK -- YOU KNOW WHY WE'RE ALL HERE TODAY.

1 A. YES, SIR, I SURE DO.

2 Q. LET'S GO BACK TO JULY OF 1999. WHERE WERE YOU LIVING
3 BACK THEN?

4 A. I WAS STAYING AT THE DAYS INN BACK THEN. I WAS LIVING
5 THERE.

6 Q. DO YOU REMEMBER ABOUT WHEN YOU MOVED INTO THE DAYS INN?

7 A. NO. I THINK I -- I PROBABLY -- I THINK I'D BEEN THERE
8 ABOUT A WEEK AND A HALF, NOT QUITE TWO WEEKS.

9 Q. BEFORE THIS INCIDENT HAPPENED?

10 A. BEFORE THIS INCIDENT HAPPENED.

11 Q. AND LET'S JUST GET RIGHT TO IT. JUST KIND OF BRIEFLY
12 TELL ME -- LET'S START FROM EARLY IN THE DAY ON JULY 22ND.
13 DO YOU REMEMBER WHAT YOU WERE DOING THAT DAY?

14 A. YEAH. IT WAS NICE OUTSIDE. IT WAS -- THE SUN WAS
15 SHINING, AND I HAD JUST HAD A FRIEND COME BY AND SEE ME. AND
16 BOB -- HE HAD JUST COME BY TO SEE ME. HE HAD PAID ME SOME
17 MONEY HE OWED ME. AND SO I WAS ON -- MY INTENTIONS WAS I WAS
18 GOING TO TAKE MY MOTHER OUT AND MY STEPFATHER. WE WAS GOING
19 TO GO OUT, BUT SHE WAS SICK AT THE TIME, SO WE DIDN'T DO
20 THAT. SO I DIDN'T HAVE NO WAY TO TRAVEL, SO I -- YOU KNOW,
21 IT WAS NICE OUT, SO I SAID, WELL, I'M GOING TO GO AHEAD AND
22 DO ME ABOUT TWO MILES IN MY CHAIR, EXERCISE.

23 Q. ABOUT WHAT TIME WAS THAT?

24 A. THAT WAS PROBABLY ABOUT 6:30, ABOUT 6, 6:30, SOMEWHERE
25 AROUND THERE. I WAS ROLLED OUT AND I WAS GOING TO GET

1 SOMETHING TO EAT. I THOUGHT ABOUT CATCHING A CAB. I SAID,
2 "NO," I SAID, "IT'S SO NICE OUT." IT WAS A LITTLE WARM, BUT
3 THE BREEZE WAS BLOWING. I SAID, "NO, I'M NOT GOING TO CATCH
4 A CAB. I'M GOING TO GO AHEAD AND GET ME A LITTLE REC, A
5 LITTLE EXERCISE IN," BECAUSE I ENJOY, YOU KNOW, DOING THAT
6 TYPE OF STUFF.

7 Q. IS THAT NORMALLY HOW YOU WOULD GET YOUR EXERCISE?

8 A. YES, SIR, THAT AND WORKING OUT. BUT, SEE, I HAD NO WAY
9 TO HAVE NOTHING LIKE THAT SET UP, SO ALL THAT WAS IN STORAGE.

10 Q. AND WHERE DID YOU GO TO?

11 A. I WAS -- STARTED OUT, I WENT TO KEY WEST RAW BAR, AND I
12 WENT THERE TO GET ME SOMETHING TO EAT AND I DID. I ORDERED
13 ME LIKE A SALMON -- SALMON DINNER, AND I HAD A SALMON DINNER.

14 Q. DID YOU HAVE ANYTHING TO DRINK THERE?

15 A. YES, SIR, I DID. I HAD A -- I HAD A -- I THINK IT WAS A
16 JIM BEAM, ONE OR TWO JIM BEAMS, SOMETHING LIKE THAT. A COKE.

17 Q. IT WAS A LONG TIME AGO; IT'S OKAY. AND THEN WHERE DID
18 YOU GO AFTER YOU LEFT THE KEY WEST BAR AND GRILL?

19 A. WELL, I DIDN'T GO BACK TO THE MOTEL. I DECIDED TO GO ON
20 DOWN THE ROAD A LITTLE BIT BECAUSE THAT WASN'T REALLY -- THAT
21 WASN'T EVEN A QUARTER MILE THERE. IT WAS PROBABLY ABOUT AN
22 EIGHTH OF A MILE FROM THE KEY WEST TO THE DAYS INN. SO I
23 DECIDED TO GO ON DOWN -- EVEN THOUGH IT WAS BUSY, I DECIDED
24 TO GO ON DOWN -- ROLL DOWN A WAYS AND GET SOME -- GET SOME
25 EXERCISE IN, AND THAT'S WHAT I DID. I STARTED OUT DOING

1. THAT.

2. Q. I'M SORRY. SO WHERE DID YOU GO AFTER?

3. A. I WENT STRAIGHT ON DOWN. INSTEAD OF COMING BACK, I MADE
4. A LEFT WHEN YOU COME OUT OF THE KEY WEST. I DIDN'T MAKE A
5. RIGHT GOING TOWARD THE -- OVER BACK TO THE MOTEL. I MADE A
6. LEFT GOING DOWN -- I WENT DOWN TO THE SHELL STATION AT THE
7. END WHICH IS PROBABLY -- PROBABLY WOULD BE ABOUT A GOOD -- A
8. GOOD MILE, MAYBE JUST A TOUCH OVER A MILE.

9. Q. HOW LONG DID YOU STAY AT THE SHELL STATION?

10. A. I PROBABLY STAYED THERE --- I STAYED THERE AWHILE
11. BECAUSE I HAD MET TWO GIRLS THAT WAS WORKING THERE, AND WE
12. GOT TO TALKING ABOUT CERTAIN THINGS AND I HUNG OUT THERE FOR
13. A FEW HOURS. I SURE DID. IT WAS A FEW HOURS, PROBABLY
14. THREE, MIGHT HAVE BEEN -- MIGHT HAVE BEEN A LITTLE BIT LONGER
15. THERE.

16. Q. WHERE DID YOU GO AFTER THAT?

17. A. WELL, I ROLLED ON BACK. I DECIDED TO GO ON BACK DOWN TO
18. THE MOTEL.

19. Q. DID YOU STOP AT BOTTOMS UP?

20. A. YES, SIR, I SURE DID. I STOPPED AT BOTTOMS UP.

21. Q. AND WERE YOU WEARING A WATCH THAT DAY?

22. A. YES, SIR, I WAS WEARING -- I ALWAYS TRY TO HAVE ME A
23. WATCH SO I KNOW WHAT TIME IT IS BECAUSE YOU'VE GOT
24. APPOINTMENTS WITH DOCTORS AND CERTAIN THINGS YOU WANT TO
25. KEEP.

1 Q. ARE YOU AWARE WHAT TIME YOU GOT TO BOTTOMS UP?

2 A. YES, SIR. I BELIEVE BECAUSE IT WAS -- IT WAS DARK OUT
3 AND THE NEON SIGN, I WAS REALLY TRYING TO CATCH IT, YOU KNOW,
4 IN MY VISION AND GET AN IDEA HOW MUCH FURTHER I HAD TO GO
5 BECAUSE I WAS A LITTLE TIRED AND HOT. AND I BELIEVE IT WAS
6 ABOUT 10 -- I GOT THERE ABOUT 10:30.

7 Q. 10:30 P.M.?

8 A. YES, SIR, 10:30 P.M.

9 Q. HAD YOU EVER BEEN TO THE BOTTOMS UP?

10 A. YES, SIR, I HAD BEEN THERE TWICE -- TWICE BEFORE.

11 Q. AND WHY DID YOU LIKE THE BOTTOMS UP?

12 A. WELL, I HAD MET A COUPLE OF GIRLS THERE, AND WE GOT TO
13 TALKING AND I GOT TO KNOW THEM A LITTLE BIT. AND THEY SEEMED
14 LIKE, YOU KNOW, PRETTY GOOD PEOPLE, AND SO THAT'S WHY I --
15 THAT'S WHY I STOPPED THERE BECAUSE I WAS WANTING TO CHECK TO
16 SEE IF ONE OF THEM WAS WORKING THAT NIGHT.

17 Q. AND WERE YOU DRINKING AT BOTTOMS UP?

18 A. YES, SIR, I SURE DID. YEAH.

19 Q. DO YOU KNOW ABOUT HOW MANY DRINKS YOU HAD THROUGHOUT THE
20 NIGHT?

21 A. NO, SIR. WE -- I DRANK -- I DRANK PROBABLY -- I DON'T
22 KNOW. IT WAS A GOOD BIT. I HAD DRANK A GOOD BIT. I'M NOT
23 GOING TO DENY THAT.

24 Q. WOULD IT BE FAIR TO SAY YOU WERE INTOXICATED?

25 A. YES, SIR, I WAS INTOXICATED.

1 Q. AND DO YOU REMEMBER FALLING OUT OF YOUR WHEELCHAIR AT
2 BOTTOMS UP?

3 A. I FELL ONE TIME OUT OF MY CHAIR. I SURE DID; YES, SIR.

4 Q. LET ME BACK UP JUST BRIEFLY. YOU SAID YOU TOOK YOUR
5 WHEELCHAIR OUT FOR EXERCISE?

6 A. YES, SIR.

7 Q. IS THERE ANYTHING IN PARTICULAR THAT YOU DO WITH YOUR
8 CHAIR WHEN YOU TAKE IT OUT AND GO ON THE STREET?

9 A. YES, SIR. I HAVE SOME WHEELIE BARS THAT GO ON THE BACK
10 OF MY CHAIR, AND THEY KEEP ME FROM TIPPING BACKWARDS. BUT
11 WHEN I TAKE MY CHAIR OUT ON A RUN LIKE THAT, I TAKE THEM OFF
12 BECAUSE IF I'M COMING OFF A CURB OR JUMPING A CURB OR TRYING
13 TO JUMP OVER A CURB, YOU CAN'T -- YOU CAN'T GO BACK BECAUSE
14 IT KEEPS YOU FROM FLIPPING OVER, BUT THEN COMING OFF A CURB
15 IT CAN ALSO -- WHEN YOU COME, THEY'LL HIT THE CURB AND IT CAN
16 PITCH YOUR CHAIR FORWARD AND THROW YOU OUT ON THE GROUND. SO
17 IT'S KIND OF DANGEROUS WHEN YOU PLAN ON GOING ON ROUGH
18 TERRAIN AND TO HAVE THE WHEELIE BARS ON.

19 Q. SO WHEN YOU WERE AT BOTTOMS UP THE NIGHT OF JULY 22ND,
20 YOU DIDN'T HAVE THE WHEELIE -- WHEELIE BARS ON?

21 A. NO, SIR, I DIDN'T HAVE THEM ON.

22 Q. WOULD THAT MAKE YOUR CHAIR MORE UNSTABLE?

23 A. YEAH, IT WOULD MAKE IT MORE UNSTABLE AS FAR AS, YOU
24 KNOW, IF YOU -- IF YOU HAD FORGOT OR SOMETHING AND YOU TIP
25 BACK OR SOMETHING, YEAH, YOU WOULD JUST GO ON BACK BECAUSE

1 USUALLY IF YOU TIP BACK, YOU'VE PROBABLY GOT A GOOD SIX --
2 I'D SAY MAYBE SIX INCHES -- FOUR TO SIX INCHES WHERE THEY'LL
3 COME IN AND THEY'LL RIDE ON TWO WHEELS AND STOP YOU FROM
4 TIPPING OVER -- TIPPING OVER.

5 Q. SO IF YOU SAY YOU FELL OUT OF YOUR WHEELCHAIR AT THE
6 CLUB, IS THAT WHAT YOU'RE TALKING ABOUT?

7 A. YES, SIR.

8 Q. AND HOW MANY TIMES DID YOU FALL OUT OF YOUR WHEELCHAIR?

9 A. I FELL ONCE.

10 Q. ONE TIME?

11 A. YES, SIR.

12 Q. AND WHO DID YOU MEET? KIND OF EXPLAIN WHAT HAPPENED
13 AFTER YOU GOT TO THE CLUB.

14 A. WELL, WHEN I GOT IN THERE, I WAS SITTING BY MYSELF AND I
15 PROBABLY SAT THERE A GOOD LITTLE WHILE, AND I TALKED WITH A
16 COUPLE OF THE GIRLS AND STUFF, AND I WASN'T REALLY SITTING
17 RIGHT UP ON THE STAGE. I WAS KIND OF LIKE SITTING OVER TO
18 THE RIGHT -- TO THE RIGHT OF THE PLACE AND BY MYSELF, JUST
19 DRINKING, COOLING OFF, YOU KNOW, AND LISTENING TO THE MUSIC
20 BECAUSE IT'S REALLY LOUD IN THERE AND IT'S REALLY DARK. AND
21 SO I WAS JUST SITTING THERE JUST COOLING OFF AND ENJOYING
22 MYSELF.

23 Q. WOULD YOU SAY THE BOTTOMS UP STRIP CLUB IS SMALLER OR
24 BIGGER THAN THIS COURTROOM?

25 A. I WOULD SAY IT'S PROBABLY ABOUT THIS SIZE INCLUDING THE

1 V.I.P. ROOM WHICH I DON'T KNOW HOW BIG THAT IS, BUT WITH THAT
2 -- IN THE BACK WITH THAT LITTLE BIT OF ROOM THERE, I WOULD
3 SAY, YEAH, IT'S PROBABLY ABOUT THIS SIZE.

4 Q. NOW, WHO DID YOU END UP MEETING AT THE CLUB?

5 A. I ENDED UP MEETING A DUDE NAMED DAVID AND JOHNNY AND
6 DANIEL. I MET -- I MET THEM THREE THERE AT BOTTOMS UP.

7 Q. AND DID THEY ASK YOU FOR ANYTHING?

8 A. YES, SIR, THEY WAS LOOKING FOR SOME WEED. THEY ASKED ME
9 ABOUT IT, AND I TOLD THEM THAT I DON'T SMOKE WEED. YOU KNOW,
10 I DON'T EVEN SMOKE CIGARETTES. I DON'T HAVE NOTHING TO DO
11 WITH THAT.

12 Q. AND AFTER THAT CONVERSATION, DID YOU CONTINUE TO HANG
13 OUT WITH ANY ONE OF THE THREE OF THEM OR ALL THREE OF THEM?

14 A. NO, SIR, I DIDN'T HANG OUT WITH NONE OF THE THREE OF
15 THEM. I WAS AT THAT TABLE WHERE I WAS SITTING. THAT'S WHERE
16 I ORIGINALLY COME IN AND SIT. THEY COME OVER TO ME. THE
17 THREE OF THEM COME OVER -- TWO -- WELL, YEAH, THE THREE OF
18 THEM COME OVER TO ME.

19 Q. WELL, AFTER THEY CAME OVER TO YOU, THEN WHAT HAPPENED
20 AFTER THAT?

21 A. WELL, THEY SAT DOWN AND WE GOT TO -- WE GOT TO DRINKING
22 AND BUYING AND... WELL, WHAT HAPPENED AT FIRST IS WHEN I
23 TOLD THEM NO AND I DON'T -- I DON'T -- I DON'T -- I'M TRYING
24 TO REMEMBER WHICH ONE IT WAS THAT INITIATED THE WEED
25 CONVERSATION, AND I WANT TO SAY IT WAS MAYBE DAVID. I

1 DON'T -- I DON'T -- I DON'T THINK IT WAS DANIEL AUSTIN OR THE
2 OTHER DUDE. I THINK IT WAS DAVID. AND WHEN I TOLD HIM NO,
3 HE KIND OF LIKE -- YOU KNOW, HE DIDN'T SAY MUCH. HE JUST
4 LOOKED -- YOU KNOW, HE LOOKED AT ME. BUT ONE OF THE OTHER
5 DUDES WHICH I BELIEVE WAS DANIEL, HE SAID, "NO," AND -- YOU
6 KNOW, HE PRESSED THE ISSUE ABOUT ME GETTING THE WEED, AND I
7 SAID, "NOPE." I SAID, "I DON'T KNOW WHERE, YOU KNOW -- I
8 DON'T KNOW -- YOU KNOW, I DON'T DO THAT," AND I DON'T KNOW
9 THESE GENTLEMEN. SO, YOU KNOW, I JUST -- THERE'S NOTHING I
10 CAN REALLY HELP YOU WITH ON THAT, SO I TOLD THEM NO. I SAID,
11 "I DON'T KNOW WHERE I CAN GET NO WEED."

12 Q. AND AFTER THAT, ABOUT HOW MUCH LONGER DID YOU STAY AT
13 BOTTOMS UP?

14 A. I STAYED -- I PROBABLY STAYED THERE TWO, THREE, THREE
15 HOURS. I PROBABLY STAYED A GOOD -- A GOOD THREE HOURS,
16 THREE, MAYBE A LITTLE -- MAYBE JUST A LITTLE BIT LONGER, BUT
17 I STAYED THERE A LITTLE WHILE. I STAYED THERE -- I STAYED
18 THERE A LITTLE WHILE.

19 Q. DO YOU KNOW ABOUT WHAT TIME YOU LEFT?

20 A. IT WAS IN THE -- IT WAS IN THE EARLY MORNING. I'D SAY
21 PROBABLY ABOUT 3, 3:45, SOMEWHERE CLOSE TO 4.

22 Q. IF YOU CAN JUST KIND OF EXPLAIN TO THE JURY WHAT
23 HAPPENED AS YOU WERE LEAVING BOTTOMS UP AND AFTER YOU LEFT.

24 A. WELL, IT WASN'T LONG AFTER I FELL OUT THAT I GOT -- I
25 HAD GOTTEN THE FELLOWS TO HELP ME BACK UP, AND MY PANTS -- MY

1 PANTS HAD COME DOWN AND IT WAS KIND OF, YOU KNOW, AN
2 EMBARRASSING SITUATION. AND I GOT THEM SITUATED, GOT THEM
3 BACK UP AND STUFF, AND I KIND OF REALLY -- I REALLY FELT BAD,
4 YOU KNOW. IT WAS -- LIKE I SAID, IT WAS VERY EMBARRASSING
5 THAT THEY HAD FALLEN OFF, AND SO I DECIDED TO LEAVE. I WAS
6 READY TO GO. I KNEW IT WAS TIME FOR ME TO LEAVE AND I---

7 Q. WHAT HAPPENED AS YOU WERE LEAVING?

8 A. I WAS GOING OUT THE DOOR AND I THOUGHT -- YOU KNOW, I
9 REMEMBER -- I WAS BY MYSELF GOING OUT -- SEEMS LIKE I WAS BY
10 MYSELF GOING OUT THE DOOR, AND YOU KNOW HOW YOU FEEL THE
11 PRESENCE OF SOMEBODY LIKE, YOU KNOW, SOMEBODY IS BEHIND ME?
12 SEE, I DON'T LIKE NOBODY -- TO THIS DATE I DON'T LET NOBODY
13 REALLY PUSH ME. SO I LIKE -- I'M A PRETTY INDEPENDENT
14 FELLOW, AND I LIKE TO DO THINGS FOR MYSELF IF I CAN. BUT
15 THERE WAS SOMEBODY BEHIND ME, AND AS I TURNED AROUND AND I --
16 AND I -- AND IT WAS DANIEL, DANIEL AUSTIN. AND AS I WAS
17 GOING DOWN, I TURNED AROUND AGAIN. I SAID -- YOU KNOW, I
18 SAID, "I'VE GOT IT." YOU KNOW, "I DON'T NEED NO HELP." AND
19 HE SAID, "NO," HE SAID, "LET ME HELP YOU." I SAID, "NO," I
20 SAID, "I DON'T NEED NO HELP." WE WAS STEADY ROLLING AS THIS
21 WAS GOING ON.

22 Q. WHAT DO YOU MEAN? WERE YOU IN THE PARKING LOT AT THIS
23 TIME?

24 A. YES, SIR, WE WAS IN THE PARKING LOT, AND I WAS STEADY
25 ROLLING BECAUSE I REALLY DIDN'T -- THE DUDE THAT -- HE HAD --

1 HE HAD HASSLED ME A LITTLE BIT ABOUT THAT WEED. HE KEPT
2 PRESSING ME FOR THAT WEED, AND I REALLY WAS GETTING SOME BAD
3 VIBES FROM HIM BECAUSE I COULD TELL HE WAS PRETTY MUCH -- HE
4 WAS THE LEADER OF THE THREE OF THEM. EVERYBODY KIND OF HUNG
5 ON WHAT HE WAS SAYING AND DOING STUFF AND I GUESS BECAUSE HE
6 WAS -- HE WAS SPENDING A GOOD BIT OF MONEY AND STUFF, BUT I
7 WAS TRYING TO GET AWAY FROM HIM. I DIDN'T WANT HIM -- I
8 DIDN'T WANT HIM PUSHING ME. I DIDN'T WANT HIM HELPING ME
9 BECAUSE, LIKE I SAID, I HAD BAD VIBES WITH THE DUDE AND I
10 DIDN'T -- I DIDN'T -- I DIDN'T FEEL COMFORTABLE WITH HIM. SO
11 I WAS TRYING TO GET AWAY FROM HIM.

12 Q. WERE YOU ABLE TO GET AWAY FROM HIM?

13 A. NO, SIR. I COULDN'T GET HIM -- I COULDN'T GET HIM OFF
14 THE BACK OF MY WHEELCHAIR.

15 Q. DID YOU GUYS FIGHT AT ALL?

16 A. YES, SIR. WE WENT A LITTLE FURTHER, AND I STOPPED THE
17 CHAIR AND I HAD HAD ENOUGH. I TURNED AROUND. YOU KNOW, I
18 ROLLED AROUND. I SAID, "LISTEN, MAN. I DON'T NEED YOUR
19 HELP. LEAVE ME ALONE. I DON'T WANT YOUR HELP." I SAID, YOU
20 KNOW, "LET ME GO." AND SO I WENT -- HE -- I WENT TO ROLL OFF
21 AND HE GRABBED MY CHAIR, AND I PULLED MY CHAIR -- I PUT IT --
22 I SAID, "LISTEN. GET AWAY FROM ME." AND WHEN I DONE -- WHEN
23 I TURNED AROUND AND DONE THAT, HE PUSHED ME, AND WHEN HE
24 PUSHED ME, I ALMOST FELL. AND HE COME UP THERE AND HE WENT
25 TO GRAB ME, AND I SWUNG -- AND I SWUNG AT HIM AND HE SWUNG AT

1 ME, AND IT DON'T TAKE MUCH TO KNOCK ME OUT OF THE CHAIR
2 BECAUSE I'M PARALYZED FROM THE MID CHEST DOWN AND MY BALANCE
3 IS NOT REAL GOOD. AND SO IT KNOCKED ME OUT OF THE CHAIR.
4 AND WHEN IT KNOCKED ME OUT OF THE CHAIR, I, YOU KNOW -- THERE
5 WASN'T A WHOLE BUNCH I COULD DO THEN.

6 HE -- BUT HE PICKED ME UP. HE PICKED ME UP, PUT ME BACK
7 IN THE WHEELCHAIR, AND I GOT MYSELF SITUATED AND I SAID -- I
8 DIDN'T EVEN SAY NOTHING TO HIM THEN. I SAID, "LET ME GO."
9 AND I WENT TO ROLL OFF AND HE GRABBED THE BACK OF MY
10 WHEELCHAIR AGAIN AND WE ARGUED AGAIN AND, OF COURSE, IT
11 WASN'T LIKE -- THE INCIDENT THAT HAPPENED WITH US RIGHT THEN
12 WAS LONG ENOUGH TO HAVE ME KIND OF WINDED, YOU KNOW.

13 SO I DIDN'T REALLY HAVE NO CHOICE. I COULDN'T GET
14 THIS -- I SEEN -- I SEEN WHAT WAS GOING ON AND I, YOU KNOW --
15 AND I FELT -- I FELT BAD, MAN. YOU KNOW, IT'S VERY
16 AGGRAVATING WHEN YOU'VE GOT SOMEBODY THAT'S JUST CONSTANTLY
17 GOING TO PRESS YOU AND THERE'S NOT A WHOLE BUNCH YOU CAN DO
18 ABOUT THE SITUATION. AND I DIDN'T NEED -- I SAID I DIDN'T
19 NEED HIS HELP. I WAS WANTING TO GET AWAY FROM HIM, BUT I
20 COULDN'T GET HIM OFF THE BACK OF MY CHAIR.

21 SO WE ROLLED ON DOWN TO THAT LITTLE STREET, THAT LITTLE
22 BYPASS DOWN THROUGH THERE, AND ABOUT HALFWAY I STOPPED MY
23 CHAIR AGAIN. AND I TELL THE DUDE -- I SAID, "LISTEN HERE. I
24 DON'T NEED YOUR HELP. LEAVE ME ALONE. I DON'T WANT YOUR
25 HELP." AND HE'S TALKING AND HE'S CUSSING ME, AND I'M CUSSING

1 HIM BACK. AND HE SAID, "MAN, I KNOW YOU CAN GET SOME WEED.
2 I KNOW YOU'VE GOT SOME DRUGS DOWN THERE." AND I TOLD THE
3 DUDE -- I SAID, "LISTEN, I DON'T HAVE NO DRUGS." I SAID, "I
4 DON'T -- I DON'T DO THAT." I SAID, "ALL I DO IS MY
5 PRESCRIPTION MEDICINE AND I DRINK." YOU KNOW, OF COURSE, HE
6 KNOWED THAT, BUT I SAID, "LEAVE ME ALONE, MAN. I DON'T NEED
7 YOUR HELP." AND I COULDN'T -- THERE WAS NOTHING I COULD DO.

8 I COULDN'T GET HIM -- IF YOU GRAB THE BACK OF MY RIDE, I
9 CAN'T MAKE YOU STOP, YOU KNOW. I'M JUST PRETTY MUCH AT
10 WHOEVER HAS GOT ME, THEIR MERCY. I'M JUST VERY UNCOMFORTABLE
11 WITH PEOPLE PUSHING ME. IF I NEED YOUR HELP, I'LL ASK YOU
12 FOR YOUR HELP AND THAT'S NOT VERY OFTEN.

13 Q. DID YOU HAVE ANOTHER PHYSICAL ALTERCATION?

14 A. YES, SIR. WE HAD ANOTHER PHYSICAL ALT -- RIGHT THERE
15 WHEN I STOPPED THE CHAIR, WE HAD ANOTHER PHYSICAL ALTERCATION
16 AND I GOT KNOCKED OUT OF THE WHEELCHAIR AGAIN.

17 Q. BUT BEFORE -- WHERE EXACTLY WERE YOU WHEN THIS HAPPENED?

18 A. WE WAS ABOUT HALFWAY OR A LITTLE OVER HALFWAY DOWN THAT
19 BYPASS.

20 Q. WOULD THAT HELP YOU TO DESCRIBE -- ONE OF THOSE EXHIBITS
21 HELP YOU TO DESCRIBE WHERE YOU WERE?

22 A. YES, SIR, I'LL -- YEAH, IT WOULD.

23 MR. COLLINS: YOUR HONOR, IF I MAY APPROACH?

24 THE COURT: YOU MAY.

25 MR. COLLINS: THIS IS STATE'S EXHIBIT 108. YOU CAN JUST

1 USE THE POINTER, MR. BRYANT.

2 MR. CATHCART: YOUR HONOR, IF I MAY? SO I CAN SEE?

3 THE COURT: COME AROUND.

4 MR. CATHCART: THANK YOU.

5 THE COURT: JUST A MINUTE. PROCEED.

6 BY MR. COLLINS:

7 Q. OKAY. THOMAS, IF YOU CAN JUST USE THE POINTER AND SHOW
8 THE JURY WHERE YOU WERE DURING THIS SECOND ALTERCATION.

9 A. WE WAS PROBABLY ABOUT RIGHT -- ABOUT RIGHT HERE, A
10 LITTLE OVER HALFWAY.

11 Q. WELL, WHERE WOULD THE BOTTOMS UP BAR BE IN THAT DIAGRAM?

12 A. WELL, IT'S RIGHT -- IT'S RIGHT THERE IN THAT DIAGRAM,
13 AND THAT'S -- THAT'S PRETTY CLOSE TO BEING RIGHT. THAT'S
14 PRETTY -- THAT'S PRETTY CLOSE TO BEING RIGHT.

15 MR. COLLINS: OKAY. IF I MAY APPROACH, YOUR HONOR?

16 THE COURT: (NODDED HEAD UP AND DOWN.)

17 BY MR. COLLINS:

18 Q. SO, THOMAS, IN THE SECOND ALTERCATION, EXPLAIN WHAT
19 HAPPENED IN THE SECOND ALTERCATION.

20 A. WELL, WHEN I GOT KNOCKED OUT OF MY WHEELCHAIR THAT TIME,
21 HE KICKED ME A COUPLE OF TIMES.

22 Q. WHERE DID HE KICK YOU?

23 A. IN THE FACE. HE KICKED ME -- HE KICKED ME TWICE, AND
24 THE FIRST TIME, YOU KNOW, THERE WASN'T MUCH I COULD DO, BUT
25 THE SECOND TIME I PULLED MY HANDS UP TO TRY TO BLOCK THE NEXT

1 KICK. AND HE KICKED -- WHEN HE KICKED ME A COUPLE OF TIMES,
2 HE BACKED UP. WE WAS CUSSING. I WAS CUSSING HIM BACK. YOU
3 KNOW, WE WERE GOING ON. AND HE STOPPED AND PICKED ME UP AND
4 THREW ME BACK IN THE -- PICKED ME UP AND THREW ME BACK IN
5 THE WHEELCHAIR.

6 Q. IS THAT HOW YOU GOT THE ABRASIONS ON YOUR FOREHEAD?

7 A. YES, SIR, WHEN HE KICKED ME BECAUSE HE GOT -- I DON'T
8 REMEMBER WHAT THEY -- BUT I KNOW THEY WASN'T TENNIS SHOES.
9 IT WAS SOME KIND OF -- IT WAS LIKE A BOOT THAT HIT ME IN THE
10 FACE.

11 Q. HOW DID THAT MAKE YOU FEEL?

12 A. THAT MADE ME -- THAT MADE ME FEEL TERRIBLE. I DIDN'T --
13 THAT WAS VERY -- THAT WAS UNFAIR AND I FELT, HEY, THAT IS --
14 THAT IS -- THAT'S ABOUT AS LOW AS YOU CAN GO. WHEN YOU'RE IN
15 -- WHEN YOU'RE IN A CONDITION LIKE THIS AND SOMEBODY DOES
16 SOMETHING LIKE THAT TO YOU, THAT'S PRETTY LOW. I MEAN, YOU
17 KNOW, YOU DON'T -- YOU DON'T HAVE TO -- I'M DOWN. YOU KNOW,
18 YOU DON'T HAVE TO KICK ME.

19 Q. DID YOU FEEL LIKE YOU WERE ABLE TO GET AWAY FROM HIM?

20 A. NO, SIR, I COULDN'T GET AWAY FROM HIM. I'VE DONE
21 EVERYTHING I CAN AND, YOU KNOW, THERE WASN'T NOTHING ELSE I
22 COULD DO.

23 Q. DID YOU -- AFTER HE PUT YOU BACK IN THE CHAIR, DID YOU
24 KIND OF GO WITH THE FLOW AFTER THAT?

25 A. I HAD NO CHOICE---

1 MR. CATHCART: OBJECTION, YOUR HONOR, AS TO LEADING TO
2 THIS WITNESS.

3 THE COURT: SUSTAINED. DIRECT EXAMINATION, COUNSEL.
4 ASK DIRECT QUESTIONS.

5 BY MR. COLLINS:

6 Q. WHAT HAPPENED AFTER HE KICKED YOU?

7 A. WELL, AFTER HE KICKED ME HE THREW ME BACK IN THE
8 WHEELCHAIR, AND WE WAS CUSSING AND GOING ON. AND I -- AND I
9 COULDN'T -- HE GRABBED THE BACK OF MY CHAIR AGAIN AND STARTED
10 PUSHING ME, MAN, AND I WAS JUST LIKE -- THERE WASN'T NOTHING
11 I COULD DO. SO I JUST WENT ON -- I WENT ALONG WITH IT. I
12 COULDN'T -- I COULDN'T GET HIM OFF ME.

13 Q. DID YOU END UP BACK AT THE DOOR TO YOUR ROOM?

14 A. YES, SIR. WE GOT A -- WHEN WE ROLLED DOWN -- WHEN WE
15 ROLLED AROUND, HE STOPPED. IT SEEMED LIKE I WANT TO -- WE
16 STOPPED. I STOPPED AGAIN. WE HAD A FEW MORE WORDS AND --
17 AND WE WENT ON. WE WENT ON AROUND BY THE -- BY THE -- I'D
18 SAY BY -- WENT ON AROUND BY THE BUILDING BY THE BACK CLOSE TO
19 THE POOL AND WE WENT ON TO MY DOOR, 129.

20 Q. ROOM 129?

21 A. YES, SIR.

22 Q. WAS THERE ANY SIGNIFICANCE TO THAT ROOM? WAS IT A
23 HANDICAP ROOM?

24 A. YES, SIR, IT WAS A HANDICAP ROOM.

25 Q. TELL THE JURY WHAT HAPPENED OUTSIDE OF YOUR ROOM.

1 A. WELL, OUTSIDE OF MY ROOM WHEN I GOT TO THE DOOR, I HAD A
2 KEY. I HAD ME A LITTLE POUCH AND I HAD IT DOWN HERE TIED TO
3 MY WHEELCHAIR, AND IT'S GOT THE TYPE YOU WEAR AROUND YOUR
4 WAIST. AND I HAD MY WALLET AND STUFF AND PAPERS IN IT, A
5 BUNCH OF PAPERS IN IT. I HAD BEEN TO THE DOCTOR THAT DAY. I
6 WENT DOWN TO ORANGEBURG TO SEE A DOCTOR -- A DR. WESTON OR --
7 AND A GIRL, A LADY'S NAME. AND I HAD MY KEY IN MY WALLET, MY
8 CAR KEY. THERE WAS A CAR KEY IN MY WALLET AND I WAS -- WELL,
9 I DIDN'T -- I WANTED TO GET IT OUT, BUT THIS DUDE IS BEHIND
10 ME AND HE'S BEEN PRESSING ME FOR WEED ALL THE WAY DOWN, AND
11 THAT'S WHAT WE'VE BEEN FIGHTING ABOUT AND I WAS SCARED. I
12 WAS SCARED TO OPEN MY DOOR WITH HIM RIGHT THERE.

13 SO WE HAD -- I GOT MY -- I OPENED MY LITTLE POUCH, AND I
14 WENT TO DIGGING THROUGH IT. I GOT MY WALLET OUT, AND I WAS
15 TAKING MY TIME. I WAS BEING REAL HEAVY TRYING, YOU KNOW, TO
16 SEE MAYBE IF HE WOULD GO ON. AND HE REACHED OVER AND
17 SNATCHED MY BAG OUT OF MY HAND, AND WHEN HE SNATCHED IT, I
18 DIDN'T LET IT GO ALL THE WAY. I SNATCHED IT BACK, AND THAT'S
19 WHEN ALL MY PAPERS AND STUFF FELL ON THE GROUND AND I BELIEVE
20 MY WALLET -- MY WALLET FELL OUT THERE WITH THEM, TOO.

21 Q. DID HE LEAVE AFTER THAT?

22 MR. CATHCART: OBJECTION, YOUR HONOR, AS TO HIM LEADING
23 THIS WITNESS.

24 THE COURT: SUSTAINED. DIRECT EXAMINATION, COUNSEL.
25

1 BY MR. COLLINS:

2 Q. WHAT HAPPENED AFTER THAT?

3 A. WELL, WE TALKED A COUPLE OF MINUTES AND WE WAS -- LIKE I
4 SAID, WE WAS CUSSING EACH OTHER AND HE LEFT. HE -- AND I
5 WANT TO SAY HE TOLD ME WHERE HE WAS GOING AND I THINK -- I'M
6 NOT SURE ABOUT THAT, BUT I KNOW HE LEFT RIGHT THEN AND HE
7 WENT -- I THINK HE WENT TO THE FRONT DESK AND -- BECAUSE I
8 REALLY DON'T HAVE A -- I CAN'T RECALL ALL THAT WITH ALL THAT
9 I'VE BEEN THROUGH, SO I'M KIND OF -- BUT I BELIEVE HE WENT TO
10 THE FRONT DESK AND, LIKE I SAID, TO GET A KEY OR SOMETHING,
11 AND I'M NOT SURE HOW THAT TOOK PLACE, BUT HE DID LEAVE FOR A
12 MINUTE.

13 Q. DID YOU SEE ANYBODY ELSE?

14 A. YES, SIR. I BELIEVE I WAS BACK UP IN THE HALLWAY AGAIN,
15 AND A FELLOW CAME THROUGH AND I ASKED HIM WOULD HE HELP ME.
16 I SAID, "WOULD YOU PLEASE GO UP THERE AND GET SOMEBODY TO
17 CALL?" I SAID, "THEY DONE BEAT ME UP AND I FEEL LIKE THEY'RE
18 GOING TO ROB ME."

19 Q. WHY DID YOU SAY THAT?

20 A. WELL, AS I -- WHEN I COME OUT -- WHEN I FIRST COME OUT
21 THE DOOR, THE FIRST ALTERCATION WE HAD IN THE PARKING LOT, IN
22 MY MIND -- YOU KNOW HOW YOU SEE A SHADOW AND YOU THINK YOU
23 SEE A SHADOW OF SOMEBODY IN THE BACK -- IN THE BACKGROUND OR
24 SOMETHING THAT'S OBSERVING OR WATCHING OR MAYBE SOMEBODY IS
25 WITH THIS FELLOW? THAT'S WHY I SAID THEY BECAUSE -- I DIDN'T

1 SAY HIM. I SAID "THEY" BECAUSE THERE WAS MORE THAN ONE
2 PERSON WHEN WE STARTED THAT NIGHT. THERE WAS THREE OF THEM,
3 AND I KNOW THEY WAS ALL FRIENDS AND I THOUGHT MAYBE ONE OF
4 THEM -- ONE OR TWO OF THEM MIGHT HAVE BEEN JUST HANGING BACK
5 WAITING.

6 Q. AND SO AFTER YOU SPOKE WITH THIS MAN THAT CAME BY, TELL
7 THE JURY WHAT HAPPENED IN THE NEXT SEQUENCE OF EVENTS.

8 A. WELL, AFTER I SPOKE WITH HIM HE WENT -- HE SAID, "OKAY,"
9 AND THAT HE WOULD GO UP THERE AND GET THE DESK -- GET THE
10 LADY TO CALL THE POLICE FOR ME, AND HE LEFT AND HE WENT UP
11 THAT WAY.

12 Q. AND THEN WHAT HAPPENED?

13 A. WELL, I ROLLED AROUND TO THE -- I ROLLED AROUND. I WAS
14 SITTING ON THE SIDE. I ROLLED AROUND TO THE FRONT DOOR AND I
15 WENT TO -- I WENT TO PICK IT -- I WENT TO PICKING UP SOME OF
16 MY STUFF AND I WAS TRYING -- I WAS WANTING TO FIND MY KEY,
17 AND I FINALLY DID. I DID FIND MY KEY AND -- BECAUSE I FOUND
18 MY WALLET. IT WAS IN MY WALLET. AND I DONE GOT MYSELF
19 COLLECTED AND I -- AS I OPENED -- I GOT MY KEY OUT AND I PUT
20 IT IN THE DOOR, AND AS I PUT IT IN THE DOOR, I WENT TO GO --
21 THE DOOR OPENED AND I WENT IN, AND I THINK I DROPPED MY KEY.
22 I'M NOT SURE, BUT I THINK I DROPPED THE KEY AND I WENT ON IN
23 THE ROOM. AND ABOUT THAT TIME, BEFORE I SHUT THE DOOR, THIS
24 DANIEL AUSTIN, HE COMES IN THE ROOM BEHIND ME AND SHUTS THE
25 DOOR.

1 Q. DID YOU INVITE HIM IN THAT ROOM?

2 A. NO, SIR, I DIDN'T WANT HIM IN MY ROOM. I DIDN'T WANT
3 HIM HELPING ME, PERIOD. I DIDN'T NEED HIS HELP. I WAS
4 DRUNK, INTOXICATED, ON TWO PILLS, BUT I WAS ABLE ENOUGH TO GO
5 IN THE ROOM AND TAKE CARE OF MYSELF, PUT MY BAG AND
6 EVERYTHING -- EVERYTHING AND GET IN BED AND GO TO BED BY
7 MYSELF. I DIDN'T NEED NOBODY HELPING ME WITH THAT.

8 Q. HOW DID YOU FEEL AFTER HE ENTERED THE ROOM?

9 A. I FELT VERY, VERY -- I WAS SCARED. I WAS REALLY SCARED
10 AND -- BECAUSE AFTER I ENTERED THE ROOM AND I WAS ROLLED IN
11 AND I WAS -- WHEN I ROLLED IN TO THE FOOT OF THE BED,
12 THERE'S -- I MAKE A LEFT AND -- AND I MADE A LEFT THERE AND
13 HE SAID, "I'M GOING TO KILL YOU." AND, YOU KNOW, IF HE'D
14 JUST RUN -- I HAD DONE HAD ENOUGH. YOU KNOW, I WASN'T -- I
15 WASN'T TAKING IT, AND HE HAD SHUT -- HE HAD SHUT THE DOOR.

16 SO I HAD A PISTOL OVER HERE IN THE NIGHTSTAND BY THE
17 BED, THE HEAD OF THE BED. I WENT AND OPENED THE DRAWER AND I
18 GRABBED MY PISTOL, AND I TURNED AROUND AND HE WAS COMING
19 TOWARD ME. HE WAS IN THE ROOM AND I SHOT HIM. I SHOT HIM
20 ONCE. I THINK I SHOT HIM TWICE, MAYBE A FEW MORE TIMES. I
21 DON'T REMEMBER HOW MANY TIMES I SHOT HIM, BUT HE FELL. AND
22 HE FELL -- WHEN HE FELL, HE GOT RIGHT BACK UP AND HE OPENED
23 THE DOOR AND WENT OUT THE DOOR.

24 Q. AND THEN WHAT HAPPENED?

25 A. AND THEN WHEN I SEEN THAT, I THINK I DROPPED -- I

1 DROPPED THE PISTOL. THE DOOR IS OPENED AND I ROLLED OVER TO
2 THE DRESSER, AND THE LEFT -- LEFT SIDE OF THE DRESSER I KEPT
3 A SHOTGUN THERE AND I GRABBED THE SHOTGUN, AND I ROLLED OUT
4 TOWARD THE DOOR. AND WHEN I GOT TO THE DOOR, I ROLLED OUT A
5 LITTLE BIT AND HE WAS -- I THINK HE WAS OUT -- HE WAS OVER IN
6 THE BREEZEWAY STANDING UP, AND AT THIS TIME I HAD DONE -- YOU
7 KNOW, I HAD DONE HAD -- I'M SEEING RED. I'M VERY ANGRY, MAD.
8 I'VE BEEN DONE LIKE THIS -- I WAS DONE LIKE THIS FOR NO
9 REASON. AND WHEN I SEEN HIM, I STARTED SHOOTING HIM, AND I
10 JUST -- I SHOT. I SHOT MY SHOTGUN 'TIL IT WAS -- I BELIEVE
11 IT WAS EMPTY. I BELIEVE THAT I SHOT -- I SHOT IT 'TIL IT WAS
12 EMPTY, I GUESS.

13 Q. DO YOU KNOW IF HE HAD A WEAPON?

14 A. I DON'T KNOW IF HE HAD A WEAPON OR NOT, AND I WASN'T
15 REALLY TRYING TO FIND OUT BECAUSE I KNOW I HAD A COUPLE OF
16 WEAPONS. AND IF HE DIDN'T HAVE A WEAPON, IF HE HAD GOTTEN
17 MINE AND WHATEVER -- I JUST -- I WAS SCARED TO DEATH. I
18 WAS -- I DIDN'T -- THAT'S A BAD FEELING TO BE IN WHEN YOU
19 HAVE SOMEBODY THAT'S DONE YOU LIKE THAT AND YOU'RE NOT --
20 YOU'RE NOT THINKING. YOU'RE JUST -- I WAS JUST SEEING RED
21 BECAUSE I'D DONE HAD ENOUGH. I'D DONE BEEN BEAT, KICKED AND
22 EVERYTHING OVER SOMETHING THAT I DIDN'T EVEN DO.

23 MR. CATHCART: YOUR HONOR, I'D ASK THAT HE RESPOND TO
24 THE QUESTIONS. I ASK THAT HE RESPOND TO THE QUESTIONS
25 INSTEAD OF GOING ON WITH A DIALOGUE.

1 **THE COURT:** I'LL ALLOW HIM TO EXPLAIN HIS ANSWER, BUT
2 PLEASE BE RESPONSIVE TO THE QUESTION. ASK A QUESTION,
3 COUNSEL. DIRECT EXAMINATION.

4 BY MR. COLLINS:

5 Q. DID YOU PLAN ON KILLING MR. AUSTIN THAT NIGHT?

6 A. NO, SIR, I DIDN'T PLAN ON KILLING NOBODY. I DIDN'T PLAN
7 ON KILLING MR. AUSTIN. I DIDN'T PLAN ON NO TROUBLE AT ALL.
8 IF I WAS LOOKING FOR TROUBLE THAT NIGHT, I WOULD HAVE HAD A
9 GUN ON ME. THE GUNS WERE IN THE ROOM.

10 Q. WHEN YOU INITIALLY FIRED AT MR. AUSTIN INSIDE OF YOUR
11 ROOM, WHERE WERE YOU LOCATED AND IN WHAT DIRECTION WERE YOU
12 FIRING?

13 A. I WAS LOCATED OVER BY THE BED. I WAS LOCATED OVER BY
14 THE BED AND FACING THE DOOR WHERE HE'S AT. THE DOOR -- THE
15 DOOR WAS SHUT AND HE WAS -- HE DONE COME IN. HE WAS PROBABLY
16 A GOOD SIX FEET IN THE DOOR COMING TOWARDS ME BECAUSE THE
17 DRESSER WAS ON THE RIGHT, AND THAT'S WHERE I WAS FACING HIM
18 AT THE SIDE OF THE BED.

19 Q. DO YOU FREELY ADMIT THAT YOU KILLED MR. AUSTIN?

20 A. YES, SIR, I FREELY ADMIT THAT I KILLED MR. AUSTIN.

21 Q. WHY DID YOU KILL MR. AUSTIN?

22 A. I WAS SCARED FOR MY LIFE.

23 Q. DID YOU FEEL YOU HAD ANY OTHER OPTIONS AT THAT TIME?

24 A. NO, SIR. THE WAY HE DONE ME, I DIDN'T FEEL I HAD --
25 THERE WASN'T NOTHING -- NOTHING TO EVEN THINK ABOUT. I

1 DIDN'T FEEL I HAD NO OTHER OPTION. I JUST FELT HE WAS GOING
2 TO HURT ME REALLY BAD OR KILL ME, AND I WAS SCARED TO DEATH
3 AND I WASN'T TAKING THAT AS, YOU KNOW... I JUST -- I
4 COULDN'T TAKE THAT CHANCE. I'M A PRETTY SOLID FELLOW AND I
5 EXERCISE AND TAKE GOOD CARE OF MYSELF, BUT I DIDN'T HAVE --
6 YOU KNOW, I CAN'T -- THERE'S NOTHING -- I'M NOT A REAL THREAT
7 TO YOU, YOU KNOW. I'M NOT A THREAT TO YOU.

8 Q. WHEN YOU SAY SOLID, YOU MEAN PHYSICALLY SOLID?

9 A. YEAH, PHYSICALLY, I MEAN, SOLID. I TRY TO TAKE -- I TRY
10 TO TAKE CARE OF MYSELF AND WORK OUT.

11 Q. PLEASE ANSWER ANY QUESTIONS THAT THE SOLICITOR HAS.

12 A. YES.

13 MR. COLLINS: THANK YOU, THOMAS.

14 THE COURT: CROSS-EXAMINATION?

15 MR. CATHCART: MAY IT PLEASE THE COURT?

16 THE COURT: YES, SIR.

17 MR. CATHCART: YOUR HONOR, MAY I APPROACH THE EVIDENCE?

18 THE COURT: YOU MAY.

19 CROSS-EXAMINATION

20 BY MR. CATHCART:

21 Q. MR. BRYANT?

22 A. YES, SIR.

23 Q. DO YOU RECOGNIZE WHAT'S BEEN MARKED AS STATE'S EXHIBIT
24 NUMBER 95?

25 A. YES, SIR.

1 Q. WHAT IS THIS?

2 A. THAT'S A PUMP SHOTGUN.

3 Q. WHERE DID YOU OBTAIN THIS PUMP SHOTGUN?

4 A. I DIDN'T -- I DIDN'T OBTAIN THAT PUMP SHOTGUN; MY MOTHER
5 DID.

6 Q. OKAY. WHERE DID SHE OBTAIN IT FROM?

7 A. SHE OBTAINED IT FROM MS. ONELLO.

8 Q. HOW DO YOU KNOW MS. ONELLO?

9 A. I LIVED WITH HER AND HER HUSBAND FOR PROBABLY CLOSE TO A
10 MONTH.

11 Q. OKAY. AND WHILE YOU WERE LIVING WITH HER, YOU HAD AN
12 OPPORTUNITY TO SHOOT THIS SHOTGUN; RIGHT?

13 A. YES, SIR.

14 Q. AND YOU SHOWED -- EXPRESSED AN INTEREST TO MS. ONELLO
15 THAT YOU WANTED THIS SHOTGUN, DIDN'T YOU?

16 A. WELL, IT WASN'T SO MUCH THAT I WANTED THE SHOTGUN.
17 THERE WAS A FEW OTHER GUNS -- WE HAD BEEN TARGET PRACTICING,
18 GOING RABBIT HUNTING IN THE BACK, AND I'VE ALWAYS -- WELL, I
19 DIDN'T REALLY CARE ABOUT GUNS 'TIL I GOT IN THIS WHEELCHAIR
20 BECAUSE I'VE HAD OTHER ALTERCATIONS BUT, YEAH, I -- I...

21 Q. IS THAT THAT HOUSE THAT YOU GOT -- THAT YOU EXPRESSED
22 INTEREST IN THIS GUN AND OTHER GUNS I GUESS?

23 A. YEAH, THERE WAS A FEW OTHER GUNS. THERE WAS -- THERE
24 WAS SOME OTHER GUNS.

25 Q. YOU ASKED TO PURCHASE THOSE WEAPONS FROM MS. ONELLO?

1 A. NO, SIR. YOU KNOW, I COULDN'T -- I BUY -- I COULDN'T
2 PURCHASE THEM. I REALLY DIDN'T -- I REALLY DIDN'T -- I
3 DIDN'T WANT -- I DIDN'T WANT TO PURCHASE NO GUNS AT THE TIME.
4 I MEAN, I HAD -- I WAS LIVING WITH THEM AND I HAD NO PLACE TO
5 REALLY KEEP NO GUNS, YOU KNOW, SO I DIDN'T REALLY WANT TO
6 PURCHASE NO GUNS.

7 Q. SO YOU DIDN'T WANT THIS GUN.

8 A. NO, SIR.

9 Q. LET ME SHOW YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT
10 NUMBER 76. DO YOU RECOGNIZE WHAT THIS IS?

11 A. YES, SIR.

12 Q. AND HOW DO YOU RECOGNIZE IT?

13 A. THAT'S ONE OF THE GUNS THAT THEY OWNED.

14 Q. THEY OWNED?

15 A. YES, SIR.

16 Q. AND DID YOU EXPRESS AN INTEREST IN BUYING THIS GUN FROM
17 THEM?

18 A. NO, SIR. LIKE I SAID, I DIDN'T -- I REALLY DIDN'T HAVE
19 NO PARTICULAR GUN I WAS INTERESTED IN BUYING. I WAS JUST --
20 WE WOULD GO TARGET SHOOTING AND RABBIT HUNTING AND I LIKE --
21 YOU KNOW, I LIKE SHOOTING GUNS. I LIKE TO GO OUT AND DO
22 LITTLE STUFF LIKE THAT.

23 Q. OKAY. SO YOU DIDN'T WISH TO BUY THIS GUN FROM HER
24 EITHER. IS THAT CORRECT?

25 A. NO, SIR.

1 Q. YOU DIDN'T WANT THIS GUN AND YOU DIDN'T WANT THIS GUN.

2 A. NO, SIR, I...

3 Q. OKAY. AND WHEN YOU GOT THIS GUN, WHEN MS. ONELLO HAD
4 THIS GUN, DID IT LOOK LIKE THIS?

5 A. EVERYTHING'S THE SAME. THE ONLY THING THAT'S DIFFERENT
6 IS THE STOCK. THE STOCK -- I HAD THE STOCK -- THE STOCK WAS
7 PUT ON IT AND THE PISTOL GRIP WAS TAKEN OFF.

8 Q. YOU PUT -- YOU TOOK OFF THE REGULAR STOCK THAT YOU HAVE
9 TO SHOULDER A WEAPON, A HUNTING GUN; RIGHT?

10 A. RIGHT.

11 Q. AND PUT IT ON A PISTOL STOCK?

12 A. NO, SIR. I TOOK IT TO A PLACE AND THEY DONE IT. THEY
13 DONE IT.

14 Q. YOU GOT IT DONE FOR YOU; RIGHT?

15 A. YES, SIR, I GOT IT DONE.

16 Q. AND THIS GUN CAME ORIGINALLY WITH A 28-INCH BARREL
17 THAT'S NOW DOWN TO 19 INCHES. YOU'RE SAYING NOW THAT YOU
18 DIDN'T DO THIS, THAT MS. ONELLO SAWED OFF THIS SHOTGUN?

19 A. SIR? NO, I DIDN'T DO IT. IF YOU LOOK AT THE END OF
20 THAT BARREL, YOU'LL SEE THAT HAD TO BE DONE BY A
21 PROFESSIONAL. THERE'S JUST NO -- JUST NO SAWING -- SAWING
22 THAT OFF. THAT HAS TO BE DONE BY SOMEBODY THAT KNOWS WHAT
23 THEY'RE DOING.

24 Q. THESE SAWED-OFF MARKS RIGHT HERE, THAT'S FROM A
25 PROFESSIONAL GUNSMITH?

1 A. LET ME SEE IT. THAT DON'T -- THAT DON'T LOOK LIKE
2 SOMETHING THAT I COULD DO OR YOU COULD DO THAT. THAT'S --
3 THAT'S SAWED EVEN THERE.

4 Q. AND IT'S BLUE OR NOT BLUE?

5 A. IT'S BLUE; YES, SIR.

6 Q. WHEN MS. ONELLO HAD IT, DIDN'T IT HAVE A POLY-CHOKE?

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

8 Q. SO YOU TOOK THIS HUNTING GUN THAT -- YOU WANTED TO
9 RABBIT HUNT; RIGHT?

10 A. YEAH, RABBIT HUNTING AND TARGET -- JUST TARGET
11 PRACTICING, YOU KNOW. THAT'S WHAT I SHOT IT -- WHEN I SHOT
12 IT, THAT'S WHAT WE WAS DOING IN THE BACKYARD.

13 Q. AND WHEN YOU SHOT IT WITH THE STOCK ON IT, YOU AIMED
14 DOWN THE BARREL; RIGHT?

15 A. YES, SIR.

16 Q. DID YOU AIM IT OUT OF THE BARREL BY PUTTING IT UP TO
17 YOUR SHOULDER - EXCUSE ME, I'M SORRY - PUTTING IT ON YOUR
18 SHOULDER AND AIMING DOWN THE BARREL; CORRECT?

19 A. YES, SIR.

20 Q. ON THAT BEAD AND THEN ON THE FRONT BEAD THAT'S UP HERE;
21 RIGHT?

22 A. I -- LIKE I SAID, I DON'T BELIEVE -- I DON'T BELIEVE
23 THAT GUN WAS THAT -- I BELIEVE IT WAS SAWED OFF LIKE THAT
24 WHEN I GOT IT. I DON'T KNOW IF IT'S LEGAL OR WHAT, BUT I
25 MEAN, THE ONLY THING I CHANGED ON IT WAS THE STOCK. I GOT IT

1 CHANGED.

2 Q. YOU WOULD AGREE WITH ME THAT IN ORDER TO AIM A SHOTGUN
3 IT'S NICE TO HAVE BOTH SIGHTS ON IT IF YOU'RE HUNTING?

4 A. I MEAN---

5 MR. COLLINS: OBJECTION, YOUR HONOR.

6 THE COURT: JUST A MOMENT. YES, SIR.

7 MR. COLLINS: THERE'S NO RELEVANCE TO THESE QUESTIONS.

8 THE COURT: OVERRULED. CROSS-EXAMINATION. YOU MAY
9 ANSWER THE QUESTION.

10 BY MR. CATHCART:

11 Q. DO YOU AGREE WITH ME THE PURPOSE OF THE SIGHT IS SO YOU
12 CAN SEE THAT LITTLE RABBIT AND YOU CAN AIM AT IT AND SHOOT
13 IT; CORRECT?

14 A. YES, SIR. THAT'S THE PURPOSE OF IT, YEAH.

15 Q. AND THE PURPOSE OF A SAWED-OFF SHOTGUN IS WHAT?

16 A. WELL, A SHOTGUN, WHETHER IT'S SAWED OFF OR NOT, IT'S GOT
17 A PATTERN TO IT. SO WHEN YOU -- IF YOU AIM IT IN THAT
18 GENERAL DIRECTION, YOU'RE USUALLY GOING TO HIT. IF YOU'RE
19 AIMING PRETTY CLOSE, YOU'RE GOING TO HIT WHATEVER YOU'RE
20 SHOOTING AT.

21 Q. TO AIM A SHOTGUN SUCH AS A REGULAR HUNTING SHOTGUN, YOU
22 STOCK ON IT AND THEN YOU PUT IT UP TO YOUR EYE AND GO DOWN TO
23 THE SIGHTS; CORRECT?

24 A. YES, SIR. THAT'S HOW YOU WOULD AIM IT.

25 Q. AND THEN THE WAY YOU CONFIGURED THIS GUN, YOU DON'T DO

1 THAT ANYMORE, DO YOU? YOU JUST POINT AND SHOOT.

2 A. NO. HUH-UH. YOU STILL AIM IT. YOU STILL -- YOU STILL
3 AIM THE GUN. YOU AIN'T GOT TO JUST PULL IT---

4 Q. SO LIKE THAT DOWN ONE SIDE?

5 A. YES, SIR. WITH THE STOCK ON IT OR WITH THE PISTOL GRIP,
6 YES, SIR.

7 Q. I SHOW YOU WHAT'S BEEN MARKED STATE'S EXHIBIT NUMBER
8 106. MAY I APPROACH THE WITNESS AGAIN?

9 THE COURT: YOU MAY.

10 MR. CATHCART: YOUR HONOR, SO I JUST DON'T KEEP ASKING
11 YOU AGAIN AND AGAIN, MAY I CONTINUE TO SHOW THE WITNESS---

12 THE COURT: IN LIGHT OF THE SITUATION, YOU MAY APPROACH
13 THE WITNESS WITHOUT ASKING AGAIN.

14 MR. CATHCART: THANK YOU, SIR.

15 THE COURT: COUNSEL, MAKE SURE YOU CAN SEE. IF YOU'D
16 LIKE TO COME AROUND, YOU MAY DO SO.

17 MR. COLLINS: THANK YOU, YOUR HONOR.

18 THE COURT: ALL RIGHT.

19 BY MR. CATHCART:

20 Q. I SHOW YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT NUMBER
21 106. DO YOU RECOGNIZE WHAT THAT IS?

22 A. YES, SIR, I SURE DO. YEAH. YES, SIR, I RECOGNIZE THAT.

23 Q. AND WHAT IS THAT?

24 A. THAT'S -- THAT'S A RECEIPT FOR PURCHASING A .32 REVOLVER
25 AND A .20 GAUGE SHOTGUN.

1 Q. BOUGHT BY WHOM?

2 A. BY BETTY DAVIS.

3 Q. AND WHO IS THAT?

4 A. THAT'S MY MOTHER.

5 Q. AND SHE BOUGHT THAT WHILE YOU WERE STILL LIVING WITH THE
6 ONELLOS; CORRECT?

7 A. I -- I BELIEVE SHE -- I BELIEVE SHE BOUGHT THAT WHILE --
8 YES, I BELIEVE THAT'S POSSIBLE.

9 Q. OKAY. YOU MOVED INTO THE DAYS INN THE WEEK BEFORE THIS
10 SHOOTING OCCURRED; CORRECT?

11 MR. COLLINS: YOUR HONOR---

12 THE WITNESS: IF THAT'S---

13 MR. COLLINS: ---THE SOLICITOR---

14 MR. CATHCART: OH, I'M SORRY.

15 THE COURT: STEP BACK.

16 BY MR. CATHCART:

17 Q. YOU MOVED INTO THE DAYS INN ABOUT A WEEK BEFORE YOU SHOT
18 DANIEL AUSTIN DOWN; RIGHT?

19 A. I MOVED IN -- IT'S PROBABLY ABOUT A WEEK, WEEK AND A
20 HALF, SOMEWHERE ALONG IN THERE. THAT'S FAIR.

21 Q. SO IT WAS THE 23RD WHEN HE DIED; CORRECT?

22 A. YES, SIR.

23 Q. AND THIS WAS THE 2ND, SO THIS WOULD BE MORE THAN A WEEK
24 AGO.

25 A. YES, SIR.

1 Q. YOU WERE LIVING WITH THE ONELLOS BEFORE YOU MOVED INTO
2 THE DAYS INN, WEREN'T YOU?

3 A. YES, SIR.

4 Q. WHERE DID YOUR PARENTS LIVE?

5 A. GASTON.

6 Q. GASTON? IN FACT, WHEN YOU MOVED INTO THE DAYS INN, DID
7 YOU TAKE BOTH THE -- WHAT WEAPONS DID YOU TAKE WITH YOU TO
8 THE DAYS INN?

9 A. WELL, I TOOK A -- I TOOK A SHOTGUN. I HAD TOOK THE
10 SHOTGUN WITH ME WHEN I MOVED INTO THE DAYS INN. I HAD THE
11 SHOTGUN IN A -- IN A PILLOWCASE. I HAD TAKEN THAT WITH ME.

12 Q. OKAY. YOU HAD IT IN A PILLOWCASE?

13 A. YES, SIR.

14 Q. AND WHEN YOU TOOK IT TO THE DAYS INN, IT WAS IN THE
15 CONFIGURATION THAT IT IS RIGHT NOW TODAY; CORRECT?

16 A. YES, SIR.

17 Q. AND WHEN DID YOU GET YOUR PISTOL?

18 A. WELL---

19 Q. ISN'T IT TRUE---

20 A. IT WASN'T MY PISTOL. IT WASN'T MY PISTOL. IT WAS -- MY
21 MOTHER HAD PURCHASED THE PISTOL AND I -- AND I DID -- I DID
22 GET THAT -- I GOT THAT FROM HER, YES.

23 Q. SHE BROUGHT IT TO YOU AT THE DAYS INN, DIDN'T SHE?

24 A. YES, SIR.

25 Q. OKAY. JUST A FEW DAYS BEFORE DANIEL AUSTIN WAS KILLED;

1 ISN'T THAT CORRECT?

2 A. YEAH, JUST A FEW DAYS BECAUSE I DIDN'T GO THERE WITH IT.
3 I DIDN'T -- COULDN'T GET IT AT THE TIME, BUT IT WAS A FEW
4 DAYS; YES, SIR.

5 Q. AND YOU DIDN'T HAVE AMMO FOR THAT IN THAT TIME; CORRECT,
6 SIR? IN FACT, YOU TOLD MR. FOSTER THAT YOU CAN'T WAIT TO GET
7 YOUR AMMO.

8 A. NO, SIR, I HAD SOME AMMO. I JUST DIDN'T HAVE MUCH.

9 Q. OKAY.

10 A. I HAD A -- I HAD A COUPLE OF BULLETS.

11 Q. JUST A COUPLE OF BULLETS?

12 A. THAT WAS ALL I HAD.

13 Q. BUT YOU -- AND IT WAS A DIFFERENT BRAND THAN WHAT YOU
14 HAD THAT YOU BOUGHT; RIGHT?

15 A. WHAT? THE BULLETS?

16 Q. YES, SIR.

17 A. YEAH. I BELIEVE IT WAS MY STEPFATHER WENT AND BOUGHT
18 SOME BULLETS -- BOUGHT A BOX OF BULLETS.

19 Q. AND YOU INDICATED TO MR. FOSTER THAT YOU WERE GETTING
20 THOSE BULLETS ON THURSDAY. ISN'T THAT RIGHT?

21 A. NO, SIR. I DON'T REALLY REMEMBER THAT CONVERSATION WITH
22 MR. FOSTER. I DON'T -- IF YOU'RE TALKING ABOUT THE GENTLEMAN
23 -- ARE YOU TALKING ABOUT THE GENTLEMAN -- WHICH GENTLEMAN ARE
24 YOU TALKING ABOUT?

25 Q. THE GENTLEMAN WHO WAS GOING TO HELP YOU MOVE. YOU

1 INDICATED THAT YOU -- HE INDICATED THAT HE TOLD -- THAT YOU
2 TOLD HIM AFTER YOU SHOWED HIM THE SHOTGUN, AFTER YOU SHOWED
3 HIM THE PISTOL, THAT YOU WERE WAITING FOR SOME AMMUNITION
4 THAT'S GOING TO BE COMING IN THAT THURSDAY. CORRECT?

5 A. YEAH, BUT I DON'T THINK I -- I DIDN'T SEE HIM THAT --
6 THE TIME -- THE TIME THAT I SAW HIM WAS -- I THINK IT WAS
7 ABOUT A TUESDAY. IT WASN'T -- IT WASN'T THEN BECAUSE I DON'T
8 BELIEVE I HAD THE PISTOL TO ACCOMPANY IT. I HADN'T HAD THE
9 PISTOL YET. WHEN I SEEN HIM -- WHEN -- YOU'RE TALKING ABOUT
10 THE FELLOW THAT LIVED ACROSS THE STREET FROM ME---

11 Q. YES, SIR.

12 A. ---AT THE MOTEL.

13 Q. YES, SIR.

14 A. WHEN HE -- ALL I HAD WAS THE SHOTGUN AT THE TIME.

15 Q. OKAY. SO HE HAD NO IDEA THAT YOU HAD A PISTOL AND HAD
16 NO KNOWLEDGE WHATSOEVER ABOUT THE PISTOL IN YOUR POSSESSION.

17 A. NO, SIR. NO, NOT THAT I REMEMBER. HE SURE DON'T; NO,
18 SIR.

19 Q. NO WAY HE COULD HAVE KNOWN?

20 A. NOT ABOUT THE PISTOL.

21 Q. DO YOU KNOW MR. FOSTER OTHER THAN THE FACT THAT HE WAS
22 OUT THERE?

23 A. NO, SIR, I DON'T KNOW -- I THINK I HAD ASKED HIM TO HELP
24 ME MOVE OR SOMETHING, BUT SOMEBODY ELSE HAD HELPED ME MOVE.

25 Q. OTHER THAN JUST AN ACQUAINTANCE AT THE DAYS INN WITH

1 YOU?

2 A. I REALLY DIDN'T -- HE JUST LOOKED LIKE -- HE LOOKED LIKE
3 A PRETTY COOL DUDE. YOU KNOW, I DIDN'T -- I DIDN'T REALLY
4 KNOW HIM MUCH, YOU KNOW. I JUST MET HIM.

5 Q. OKAY. WHEN DID YOU GET THE AMMO FOR YOUR PISTOL? I
6 BELIEVE IT WAS -- IT WAS THURSDAY THEN, WASN'T IT?

7 A. I BELIEVE -- I BELIEVE IT WAS -- I BELIEVE IT WAS
8 THURSDAY. I BELIEVE IT WAS THURSDAY; YES, SIR.

9 Q. AND THAT THURSDAY BECAME FRIDAY NIGHT; CORRECT? THAT
10 FRIDAY MORNING.

11 A. FRIDAY MORNING, YES.

12 Q. SO THE MORNING THAT DANIEL AUSTIN DIED FROM THE BULLETS
13 THAT YOU SHOT INTO HIM, YOU'D JUST GOT THEM; RIGHT? THAT
14 DAY?

15 A. YEAH. WELL, LIKE I SAID, I HAD A COUPLE. I ALREADY HAD
16 A FEW BULLETS, BUT I DIDN'T HAVE -- I DIDN'T HAVE BUT A
17 COUPLE AND, YOU KNOW, YEAH, I HAD GOT SOME MORE. I HAD
18 GOTTEN A BOX OF SHELLS THAT DAY, I BELIEVE.

19 Q. YOU SHOT AT LEAST TEN TIMES THAT NIGHT, DIDN'T YOU?
20 THAT MORNING?

21 A. I CAN'T -- I DON'T REMEMBER HOW MANY TIMES I SHOT.

22 Q. BUT THE TWO BULLETS WEREN'T ENOUGH THOUGH; RIGHT? YOU
23 HAD TO GET MORE AMMO.

24 A. YES, SIR. YEAH.

25 Q. YOU WENT TO THE KEY WEST BAR AND GRILL; CORRECT?

- 1 A. YES, SIR, I WENT TO THE KEY WEST BAR AND GRILL.
- 2 Q. ISN'T IT TRUE YOU ACTUALLY HAD TWO TO THREE JIM BEAMS I
- 3 BELIEVE YOU STATED?
- 4 A. I MIGHT HAVE HAD TWO TO -- I MIGHT HAVE HAD TWO TO
- 5 THREE. I THINK I DID SAY TWO, BUT I DON'T REMEMBER. IT'S
- 6 BEEN A LITTLE WHILE BUT, YEAH, I HAD A FEW DRINKS.
- 7 Q. AND YOU ALSO HAD A GLASS OF WINE WITH DINNER, TOO.
- 8 A. I BELIEVE I HAD A GLASS OF WINE WITH THE DINNER, AND
- 9 THEN I HAD THE DRINKS AFTER I HAD FINISHED THE DINNER.
- 10 Q. YES, SIR. AND THEN YOU WENT DOWN TO THE SHELL STATION;
- 11 RIGHT?
- 12 A. YES, SIR. THEN I WENT DOWN TO THE SHELL STATION.
- 13 Q. THEN YOU TOOK A PERCOCET AND A VALIUM; CORRECT?
- 14 A. I TOOK -- I TOOK SOME MEDICATION; YES, SIR, I DID.
- 15 Q. AND THEN IT'S AT THAT POINT YOU DECIDE TO HEAD UP TO --
- 16 BACK TOWARDS THE BOTTOMS UP; CORRECT?
- 17 A. I STAYED DOWN AT THE SHELL STATION FOR AWHILE, QUITE A
- 18 FEW HOURS.
- 19 Q. OKAY.
- 20 A. IT WASN'T A SHORT STAY. IT WAS A LONG STAY BECAUSE I
- 21 MET THEM TWO GIRLS DOWN THERE AND WE TALKED FOR A GOOD WHILE.
- 22 Q. AND THEN AFTER YOU TALKED WITH THEM, YOU HEADED UP
- 23 TOWARD THE BOTTOMS UP; RIGHT?
- 24 A. YES, SIR. I HEADED UP TOWARDS -- WELL, I HEADED BACK
- 25 TOWARDS THE MOTEL.

1 Q. AND YOU ENTERED THE BOTTOMS UP. WHO DID YOU SEE AT THE
2 BOTTOMS UP? WELL, LET ME ASK YOU: DID YOU SEE MR. CAMPBELL
3 AT THE BOTTOMS UP?

4 A. I BELIEVE I SAW MR. CAMPBELL. I BELIEVE -- I BELIEVE HE
5 WAS THERE.

6 Q. DO YOU KNOW -- I'M SORRY. GO AHEAD.

7 A. NO.

8 Q. DO YOU KNOW MR. CAMPBELL JUST FROM BEING AT THE BOTTOMS
9 UP?

10 A. NO, I CAN'T -- I'M TRYING TO PICTURE HIM BECAUSE -- OH,
11 THE DUDE JOHN MARK CAMPBELL?

12 Q. JOHN MARK CAMPBELL, YES, SIR.

13 A. YES, SIR. I KNOW HIM, YES.

14 Q. IN FACT, HE HELPED YOU OUT AT THE CLUB.

15 A. YES, SIR. HE -- THERE WAS -- YEAH, HE WOULD HELP ME.
16 HE WOULD LET ME OUT. THERE'S A SIDE DOOR AND HE WOULD LET ME
17 -- HE WOULD LET ME OUT LIKE THAT AND I THINK -- BECAUSE IT
18 HAD A RAMP OR SOMETHING, AN ACCESS RAMP.

19 Q. HE TOOK CARE OF YOU WHILE YOU WERE AT THE CLUB?

20 A. YES, SIR. YEAH, HE GOT -- HE WAS VERY COURTEOUS AND...

21 Q. AND THEN YOU ALSO MET, AS YOU INDICATED, THREE GUYS.

22 A. YES, SIR.

23 Q. WHAT WERE THEIR NAMES AGAIN?

24 A. I BELIEVE IT WAS DANIEL AUSTIN.

25 Q. UH-HUH.

1 A. JOHNNY STAPLETON. JOHNNY -- JOHNNY STAPLETON. JOHNNY
2 AND DAVID ZIZISKI -- ZIZOSKI?

3 Q. AND BASICALLY WHEN YOU MET THEM, THEY INTRODUCED
4 THEMSELVES, DIDN'T THEY?

5 A. YES, SIR. WE INTRODUCED OURSELVES.

6 Q. THEY GAVE YOU THEIR NAMES, DIDN'T THEY?

7 A. YES, SIR. YEAH, WE GAVE EACH OTHERS NAMES.

8 Q. SO YOU KNEW DANIEL NOT ONLY BY DAN OR DANNY BUT ALSO --
9 BUT YOU KNEW HIM AS DANIEL AUSTIN THAT NIGHT; RIGHT?

10 A. YES, SIR, DANIEL AUSTIN.

11 Q. YOU KNEW JOHN STAPLETON BY HIS FULL NAME; CORRECT?

12 A. YES, SIR. WELL, NOT HIS FULL NAME AT THE TIME. I
13 DIDN'T KNOW THE NAMES AT THE TIME. WE JUST -- WE JUST, I
14 BELIEVE, WENT ON A FIRST-NAME BASIS.

15 Q. THEY GAVE YOU THEIR NAMES AND THEY TOLD YOU WHO THEY
16 WERE.

17 A. YEAH, WE INTRODUCED OURSELVES. YES, SIR.

18 Q. AND AT THAT POINT YOU INDICATED THAT THEY HAD ASKED YOU
19 FOR SOME WEED.

20 A. YES, SIR.

21 Q. OKAY. AND THEY KNOW YOU BECAUSE -- I BELIEVE ACTUALLY
22 YOU JUST TESTIFIED YOU'D ALREADY MET THEM, DIDN'T YOU?

23 A. NO, SIR, I DIDN'T KNOW THEM PRIOR -- I DIDN'T KNOW THEM
24 PRIOR TO THAT. I HAD JUST MET THEM, AND I DIDN'T KNOW THEM
25 PRIOR TO THAT NIGHT.

1 Q. SO AT THAT POINT THEY HAD ABSOLUTELY NO REASON TO
2 BELIEVE YOU HAD ANY WEED, DID THEY?

3 A. WELL---

4 Q. DID YOU HAVE A POCKET ON YOUR SHIRT SAYING, "I'VE GOT
5 WEED"?

6 A. NO, I DIDN'T HAVE A POCKET ON MY SHIRT, BUT BACK THEN I
7 WAS -- I HAD -- MY HAIR WAS KIND OF LONG AND I DRESSED -- AND
8 I -- I DON'T THINK I LOOKED LIKE THE TYPE OF PERSON THAT'S
9 GOT WEED, BUT WHEN YOU MEET SOMEBODY I GUESS -- IF I MEET
10 SOMEBODY AND I FEEL COMFORTABLE WITH THEM AND I THINK THEY
11 MIGHT BE KIND OF COOL, I MIGHT APPROACH THEM AND SAY, HEY,
12 HAVE YOU GOT SOMETHING LIKE THAT? BUT I GUESS THAT'S HOW
13 THAT ARRIVED, I MEAN, AND I AIN'T---

14 Q. IF YOU---

15 A. IF THEY THOUGHT I HAD WEED---

16 Q. I'M SORRY.

17 THE COURT: LET HIM FINISH THE ANSWER.

18 BY MR. CATHCART:

19 Q. YOU -- IF YOU FOUND SOMEBODY THAT LOOKED KIND OF COOL,
20 YOU WOULD SAY, "HEY, MAN. YOU GOT SOME WEED?"

21 A. NO, NOT JUST LOOKS. AFTER A LITTLE BIT OF CONVERSATION
22 AND YOU'RE THINKING THEY MIGHT BE COOL, YEAH, THAT'S -- I
23 DON'T THINK I WOULD DO THAT, BUT THAT'S WHAT THEY DONE.

24 Q. SO YOU WOULDN'T GO UP TO SOMEBODY SAYING, "HEY, MAN.
25 YOU LOOK COOL. I TRUST YOU. COULD I HAVE SOME WEED?"

1 A. NO, SIR, I WOULDN'T.

2 Q. AND Y'ALL HUNG OUT AT THIS TABLE; CORRECT?

3 A. YES, SIR, WE WAS AT THE TABLE.

4 Q. AND Y'ALL DRANK A GOOD BIT; CORRECT?

5 A. YES, SIR, WE DRANK A GOOD BIT.

6 Q. AND Y'ALL ARE ALL TOGETHER FOR A NUMBER OF HOURS;

7 CORRECT?

8 A. NO, SIR, NOT -- NOT ALL OF US, NO, SIR.

9 Q. WELL, WHEN DID -- WHO LEFT WHEN?

10 A. TWO OF THE FELLOWS LEFT.

11 Q. SO IT WAS JUST---

12 A. THAT---

13 Q. I'M SORRY.

14 A. YEAH, TWO OF -- TWO OF THE FELLOWS HAD LEFT.

15 Q. SO IT JUST LEFT YOU AND DANNY HANGING OUT; RIGHT?

16 A. RIGHT.

17 Q. Y'ALL WERE KEEPING ON DRINKING?

18 A. YEAH, WE DRANK -- WE DRANK A LITTLE BIT MORE..

19 Q. YOU AND DANNY HANGING OUT.

20 A. WELL, NOT REALLY HANGING OUT. YEAH, I THINK HE LEFT ONE

21 TIME, TOO, AND WENT -- AND WENT TO THE BACK. I WAS JUST

22 SITTING THERE DRINKING, YOU KNOW, IN THE -- AND, YEAH,

23 ENJOYING MYSELF.

24 Q. AND WAS HE HANGING OUT ENJOYING THE TIME WITH YOU AT

25 SOME POINT DURING THAT NIGHT?

1 A. YEAH. WE -- I WANT TO SAY HE -- HE COME BACK TO THE
2 TABLE AND I THINK -- I DON'T THINK THE OTHER DUDES -- I THINK
3 THEY HAD LEFT BECAUSE IT HAD GOTTEN LATE AND I BELIEVE THEY
4 HAD GONE, BUT YOU KNOW WHAT? SEEMS LIKE THEY -- SEEMS LIKE
5 THEY WERE STILL THERE. SEEMS LIKE IN MY MIND I WANT TO SAY I
6 WAS STILL TALKING TO THREE PEOPLE.

7 Q. OKAY. AND YOU BOUGHT THEM SOME DRINKS?

8 A. YES, SIR. WE BOUGHT EACH OTHER DRINKS; WE SURE DID.

9 Q. BACK AND FORTH. YOU BOUGHT DANNY SOME DRINKS?

10 A. YES, SIR.

11 Q. DANIEL BOUGHT YOU SOME DRINKS?

12 A. YES, SIR.

13 Q. DANIEL SPENT A GOOD BIT OF MONEY THAT NIGHT, DIDN'T HE?

14 A. I DON'T KNOW HOW MUCH MONEY. I DIDN'T KNOW HOW MUCH
15 MONEY HE SPENT AT THE TIME, BUT LIKE I SAID, HE SEEMED LIKE
16 THE LEADER, THE DUDE THAT WAS PRETTY MUCH IN CONTROL OF
17 THINGS, SO HE WAS THE ONE -- HE WAS SPENDING -- I DON'T THINK
18 THE OTHER TWO DUDES -- I THINK IT WAS JUST KIND OF ME AND
19 DANIEL THAT WAS SPENDING THE MONEY. I DON'T THINK THEY -- I
20 DON'T THINK THEY WERE SPENDING MUCH MONEY.

21 Q. Y'ALL TWO WERE SPENDING MONEY ON EACH OTHER AND HIS
22 FRIENDS?

23 A. AND HIS -- HIS FRIENDS.

24 Q. OKAY. AND AT SOME POINT YOU FELL OUT OF YOUR
25 WHEELCHAIR; CORRECT?

1 A. YES, SIR, AT SOME POINT I DID LATER ON. I HAD REARED MY
2 CHAIR BACK AND I HAD FORGOT I DIDN'T HAVE MY WHEELIE BARS ON,
3 AND I HAD FELL -- FELL OUT OF MY CHAIR. MY CHAIR TURNED ALL
4 THE WAY OVER.

5 Q. BUT YOU DIDN'T INJURE YOURSELF IN ANY WAY AT THAT TIME,
6 DID YOU?

7 A. NO, SIR. I FELL -- I FELL BACKWARDS. USUALLY WHEN I --
8 IF I FALL BACKWARDS OR SOMETHING LIKE THAT, I ALWAYS PULL MY
9 HEAD -- I'LL PULL MY HEAD UP TO KEEP FROM HITTING MY HEAD.

10 Q. YOU DID THAT IN THIS CASE.

11 A. YES, SIR.

12 Q. DID YOU FALL OUT OF YOUR CHAIR?

13 A. WELL, YES, SIR, I FELL OUT. THAT'S WHEN MY PANTS -- MY
14 PANTS HAD COME OFF WHEN THAT...

15 Q. YOU ROLLED OUT.

16 A. YES, SIR.

17 Q. AND DANIEL AUSTIN HAD HELPED YOU BACK UP, DIDN'T HE?

18 A. DANIEL AUSTIN AND THE TWO OTHER DUDES - I THINK THERE
19 MIGHT HAVE BEEN ONE IN THE BACK - THEY ALL HELPED ME BACK UP.

20 Q. MR. CAMPBELL HELPED YOU OUT, TOO; RIGHT?

21 A. I BELIEVE IT WAS -- I BELIEVE IT WAS MR. CAMPBELL.

22 Q. AND THEY WERE TAKING CARE OF YOU.

23 A. THEY HELPED ME BACK IN THE CHAIR, AND I GOT MYSELF
24 SITUATED AND I APPRECIATED THAT HELP.

25 Q. AND THEN YOU STAYED AND YOU DRANK SOME MORE?

1 A. NO, SIR. HUH-UH.

2 Q. I'M SORRY?

3 A. THAT WAS TIME -- I HAD ENOUGH. I DIDN'T STAY -- YOU
4 KNOW, I MIGHT HAVE -- IT MIGHT HAVE BEEN A FEW MORE MINUTES
5 THERE. LIKE I SAID, I WAS IN -- IT WAS AN EMBARRASSING
6 SITUATION. I HAD FELL OVER, AND IN NO WAY WAS I -- I DIDN'T
7 FEEL LIKE I WAS HIGH, I GUESS, BECAUSE MY PANTS HAD COME DOWN
8 AND -- AND, LIKE I SAID, IT WAS AN EMBARRASSING SITUATION,
9 AND I DIDN'T REALLY WANT TO HANG OUT NO MORE AND I -- I WAS
10 READY TO GO.

11 Q. BUT WHEN YOU -- FROM THE TIME THAT YOU LEFT AND THE TIME
12 THAT YOU SHOT MR. AUSTIN DOWN, IT WAS NO MORE THAN ABOUT 15
13 MINUTES, WAS IT?

14 A. IT SEEMS LIKE -- IT SEEMS LIKE IT WOULD HAVE BEEN A
15 LITTLE BIT -- A LITTLE BIT LONGER THAN THAT BEFORE THAT
16 INCIDENT HAPPENED.

17 Q. TWENTY MINUTES?

18 A. I DON'T -- I DON'T -- I DON'T RECALL.

19 Q. BUT YOU LEFT BASICALLY -- WHEN THE POLICE ARRIVED AT
20 3:45 THAT NIGHT, YOU LEFT THE CLUB PROBABLY AROUND 3 A.M. IS
21 WHAT YOU'RE SAYING; CORRECT?

22 A. YES, SIR. THAT'S PROBABLY RIGHT.

23 Q. OKAY. AND YOU INDICATED THAT YOU CAME OUT WHICH DOOR?

24 A. SEE, I HAD BEEN THERE A COUPLE OF TIMES BEFORE. I WANT
25 TO SAY IT'S THE SIDE DOOR. I COME OUT THE SIDE DOOR, NOT THE

1 FRONT DOOR, BUT I'M NOT REALLY SURE. IT MIGHT HAVE -- IT
2 MIGHT HAVE BEEN THE FRONT DOOR AND -- BECAUSE THE TWO DOORS
3 -- THEY'RE SIDE -- THE DOORS ARE NOT IN THE BACK. THEY'RE
4 JUST RIGHT THERE BY EACH OTHER LIKE A LITTLE PORCH.

5 Q. MR. CAMPBELL DOESN'T HAVE TO HELP YOU GET OUT THE FRONT
6 DOOR, DOES HE?

7 A. NO, SIR.

8 Q. AND I BELIEVE YOU INDICATED BEFORE THAT HE DID HELP YOU
9 GET OUT THAT NIGHT. SO THAT WOULD HAVE BEEN THE SIDE DOOR;
10 RIGHT?

11 A. YES, SIR. THAT'S WHERE THE -- THAT'S WHERE THE RAMP --
12 THE RAMP IS.

13 Q. AND HE'D HAVE TO OPEN UP THE DOOR TO HELP YOU GET OUT;
14 CORRECT?

15 A. NO, SIR, HE DIDN'T -- HE WOULDN'T HAVE TO.

16 Q. BUT HE DID THAT NIGHT.

17 A. YOU KNOW WHAT? I DON'T THINK HE DID THAT NIGHT. I
18 DON'T -- I DON'T THINK HE DID THAT NIGHT. I DON'T -- NO,
19 SIR. HE HAD PRIOR TO THAT, BUT THAT NIGHT I DON'T THINK HE
20 DID. HE HELPED ME TO THE DOOR -- THEY HELPED ME TO THE DOOR,
21 BUT I DON'T THINK HE OPENED THE DOOR OR NOTHING LIKE THAT. I
22 DON'T -- I'M NOT REALLY SURE ABOUT THAT.

23 Q. DO YOU RECALL BEFORE STATING THAT MR. CAMPBELL LET ME
24 OUT THE BACK DOOR?

25 A. YEAH, HE'D LET ME OUT THE BACK DOOR PRIOR TO THAT. I

1 THINK IT WAS A TUESDAY. A TUESDAY I WAS THERE HE WAS -- LIKE
2 I SAID, I HAD BEEN THERE A COUPLE OF TIMES, AND I BELIEVE IT
3 WAS MR. CAMPBELL OR THE OTHER -- THE OTHER FELLOW. WHAT'S
4 HIS NAME? I BELIEVE IT WAS---

5 Q. MR. AUSTIN?

6 A. NO.

7 Q. OR THE OTHER BOUNCER?

8 A. THE OTHER BOUNCER.

9 Q. DO YOU RECALL -- IN TALKING ABOUT THIS NIGHT WHEN YOU
10 WERE ASKED, "TELL US WHAT HAPPENED WHEN YOU LEFT THE CLUB,"
11 YOU SAID, "WELL, I THINK I DRANK A DRINK OR TWO AND I WENT
12 OUT THE DOOR. I WAS TELLING MR. CAMPBELL TO LET ME OUT THE
13 BACK DOOR."

14 A. HE WAS AT THE -- HE WAS AT -- HE MIGHT HAVE -- HE MIGHT
15 HAVE OPENED THE DOOR. HE MIGHT HAVE OPENED THE DOOR, YEAH.
16 YEAH, I'M NOT -- I DON'T REALLY REMEMBER. I'M NOT SURE ABOUT
17 THAT.

18 Q. AND AS YOU LEFT THERE AND YOU WERE GOING DOWN THE RAMP,
19 SOMEBODY STARTED PUSHING YOU AGAINST YOUR WILL; CORRECT?

20 A. I FELT -- YEAH, I FELT SOMEBODY BEHIND ME. YES.

21 Q. AND YOU REALIZED IT WAS DANIEL.

22 A. YES, SIR.

23 Q. THE MAN YOU KNEW BY NAME.

24 A. YES, SIR, THE MAN WE KNEW. YES.

25 Q. AND AT THAT POINT YOU SAID "HELP" TO THE BOUNCER; RIGHT?

1 "THIS GUY IS PUSHING ME. I DON'T WANT HIM TOUCHING ME."

2 A. NO, SIR. I'M -- YOU KNOW, I'M NOT THE TYPE OF PERSON
3 THAT'S JUST GOING TO SCREAM OUT AND ALL. I TRY -- I TRY TO
4 HANDLE THINGS MYSELF. I'M NOT THE TYPE OF PERSON JUST -- A
5 SCARED PERSON THAT WILL JUST HOLLER OUT "HELP" LIKE THAT.
6 NO, SIR, I WAS TRYING -- I TOLD -- I TURNED AROUND AND I
7 SAID, "I'VE GOT IT. YOU KNOW, LEAVE ME ALONE."

8 Q. AND WHEN HE DID NOT LEAVE YOU ALONE, DID YOU ASK FOR
9 ASSISTANCE? YOU DIDN'T ASK FOR ASSISTANCE FROM ANY OF THE
10 BOUNCERS, DID YOU?

11 A. NO, SIR. THE BOUNCERS WASN'T OUTSIDE THEN. WE WAS --
12 WE WAS OUTSIDE IN THE PARKING LOT. WE WAS GOING -- WE WAS --
13 I WAS STEADY ROLLING WHEN I -- AND HE WAS BEHIND ME AND I
14 STOPPED. WE WAS IN THE PARKING LOT. THIS DIDN'T HAPPEN LIKE
15 RIGHT AT THE FRONT DOOR.

16 Q. OKAY. AND I BELIEVE YOU INDICATED THAT -- I'M GOING TO
17 SHOW YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT NUMBER 108
18 AGAIN. COULD YOU SHOW THE JURY WHERE YOU ARE---

19 **THE COURT:** COME AROUND, COUNSEL.

20 **MR. CATHCART:** I'M SORRY.

21 **BY MR. CATHCART:**

22 Q. WILL THIS HELP YOU WITH THE POINTER?

23 A. YES, SIR.

24 Q. PLEASE SHOW THE JURY WHERE YOU WERE AT -- Y'ALL TWO WERE
25 AT WHEN THE FIRST FIGHT OCCURRED.

1 A. RIGHT HERE IN THE PARKING LOT RIGHT ALONG IN THERE.

2 Q. YOU AGREE THAT THIS IS CLOSING TIME AT THE BOTTOMS UP;
3 RIGHT?

4 A. YEAH. WELL, YES, SIR, BUT THERE'S STILL A -- YEAH, IT'S
5 CLOSING TIME.

6 Q. AND PEOPLE WERE LEAVING.

7 A. NO, SIR, THERE WASN'T NOBODY LEAVING. WE WAS THE ONLY
8 ONES OUT THERE. THERE WAS A FEW CARS IN THE PARKING LOT. I
9 REMEMBER SEEING A FEW CARS.

10 Q. AND YOU TESTIFIED THAT YOU AND HE GOT INTO A FISTFIGHT;
11 CORRECT?

12 A. YES, SIR. WE GOT INTO AN ALTERCATION. IT WASN'T -- I
13 DON'T THINK IT WAS A WHOLE BUNCH OF A FISTFIGHT, BUT WE
14 DID -- IT WAS -- THERE WAS A COUPLE OF BONES THROWN OUT
15 THERE; YES, SIR.

16 Q. OKAY. AND WHEN YOU SAID FISTFIGHT, DID YOU STRIKE HIM?

17 A. I SWUNG -- I SWUNG AT HIM, AND WHEN HE HAD -- WHEN HE
18 HAD PUSHED ME -- WHEN HE HAD PUSHED ME -- AND I TURNED AROUND
19 WHEN I TRIED TO GET HIM OFF OF ME, AND I HAD PUSHED HIM AND
20 HE PUSHED ME BACK. YES, I HAD SWUNG AT HIM, YES, SIR, AND HE
21 SWUNG BACK AT ME, AND THAT'S WHEN I GOT KNOCKED OUT OF THE
22 WHEELCHAIR THE FIRST TIME.

23 Q. THAT'S THE FIRST TIME YOU GOT KNOCKED OUT OF THE
24 WHEELCHAIR.

25 A. BY DANIEL, YES, SIR.

1 Q. DO YOU RECALL EARLIER STATING THAT YOU WERE NOT KNOCKED
2 OUT OF THE WHEELCHAIR IN THE PARKING LOT? THE FIRST TIME YOU
3 GOT KNOCKED OUT OF THE WHEELCHAIR WAS DOWN HERE ON THE ROAD?

4 A. NO, SIR. THE FIRST -- THE FIRST TIME WAS IN THE PARKING
5 LOT. NOW, THAT'S THE SECOND TIME, AND THEN THERE WAS A THIRD
6 TIME AT THE DOOR.

7 Q. DO YOU RECALL -- YOU INDICATED I BELIEVE THE SECOND
8 FIGHT, THE ONE DOWN ON THE ROAD, IS WHERE YOU GOT THE
9 ABRASION ON YOUR FACE; RIGHT?

10 A. YES, SIR. THAT'S WHERE I GOT KICKED.

11 Q. DO YOU RECALL IN TESTIMONY WHERE WHEN YOU TALKED TO THE
12 STATE BEFORE YOU SAID THAT -- YOU LET THE JURY SEE A PICTURE
13 OF YOUR FACE WHICH SHOWS AN ABRASION ON YOUR NOSE AND REDNESS
14 ON YOUR FOREHEAD. THAT WAS IN REFERENCE TO THE FIRST FIGHT,
15 WASN'T IT?

16 A. NO, THAT WAS TO THE SECOND FIGHT.

17 Q. WELL, THE FIRST -- YOU ORIGINALLY STATED IT HAPPENED IN
18 THE FIRST FIGHT; CORRECT?

19 A. NO, SIR, I DON'T BELIEVE THAT HAPPENED -- THAT HAPPENED
20 IN THE -- THE SECOND ONE DOWN THERE ON THE ROAD. THAT WAS
21 THE SECOND ALTERCATION WE HAD.

22 Q. DO YOU RECALL STATING, "AGAIN, OUT AT THE PARKING LOT I
23 TURNED AROUND AND, YOU KNOW -- BECAUSE HE WAS PUSHING ME AND
24 WE WERE TALKING. I TOLD HIM -- I SAID, 'MAN, I DON'T KNOW
25 WHERE I CAN GET NO WEED.' I SAID, 'I DON'T EVEN SMOKE NO

1 CIGARETTES. I CAN'T GET YOU NO WEED.' THAT WAS IT. HE
2 PERSISTED. THE NEXT THING WE KNOW, WE STARTED HAVING A
3 FISTFIGHT. HE PUSHED ME AND WE STARTED A FISTFIGHT. I DON'T
4 REALLY REMEMBER. I JUST CAME BACK IN MY CHAIR FIGHTING WITH
5 HIM. I DID -- HE HIT ME BACK IN. I DON'T QUITE -- MY HEAD
6 WAS STARTING TO GET THAT COOL AIR AT NIGHT. YOU GET A LITTLE
7 BUZZ. YOU GET A GOOD BUZZ AND EVERYTHING---"

8 MR. COLLINS: OBJECTION, YOUR HONOR.

9 THE COURT: SOLICITOR, FIRST OF ALL, YOU'RE GOING TO
10 HAVE TO SLOW DOWN SO THAT THE JURY AND I AS WELL AS OTHER
11 COUNSEL CAN HEAR YOU.

12 MR. CATHCART: YES, SIR.

13 THE COURT: NUMBER TWO, IT'S CROSS-EXAMINATION AND NOT
14 PUBLICATION. ASK A QUESTION. PROCEED.

15 BY MR. CATHCART:

16 Q. BUT AS YOU STATED THIS TALKING ABOUT THAT FIRST NIGHT,
17 HE THEN ASKED YOU ABOUT THE ABRASION TO YOUR NOSE, THE
18 REDNESS TO YOUR FOREHEAD, AND YOU INDICATED THAT'S WHEN IT
19 OCCURRED. CORRECT?

20 A. WHEN? THE SECOND FIGHT?

21 Q. NO, SIR. THAT'S THE FIRST FIGHT IN THE PARKING LOT AT
22 THE BOTTOMS UP.

23 A. NO, SIR. HE KICKED ME -- HE KICKED ME IN THE SECOND --
24 THE SECOND ALTERCATION WE HAD IS WHEN HE KICKED ME TWICE.

25 Q. I BELIEVE YOU INDICATED TO THE JURY THE SECOND FIGHT

1 TOOK PLACE WHERE?

2 A. OKAY. RIGHT DOWN HERE ABOUT THREE-QUARTERS OF THE WAY
3 DOWN.

4 Q. AGAIN, THAT'S ON STATE'S EXHIBIT NUMBER 108. YOU
5 INDICATED TO THE JURY AT THAT TIME Y'ALL GOT INTO ANOTHER
6 FISTFIGHT; CORRECT?

7 A. AFTER THE SECOND ONE?

8 Q. NO. THIS WAS THE SECOND ONE RIGHT THERE. GOT INTO
9 ANOTHER FISTFIGHT; CORRECT?

10 A. YEAH, THE SECOND ONE.

11 Q. AND HE KNOCKED YOU OUT OF THE CHAIR THIS TIME; CORRECT?

12 A. YES, SIR.

13 Q. AND THEN HE KICKED YOU HOW MANY TIMES?

14 A. TWICE. HE KICKED ME TWICE.

15 Q. TWICE IN THE FACE ONLY?

16 A. IN THE FACE, YES, SIR.

17 Q. DO YOU RECALL STATING AT THAT POINT THAT Y'ALL WERE
18 CUSSING EACH OTHER AND WERE PRETTY LOUD? CORRECT?

19 A. YES, SIR.

20 Q. AND DO YOU RECALL AT THAT POINT SAYING YOU GET INTO A
21 SECOND FISTFIGHT?

22 A. YEAH, THE SECOND ONE.

23 Q. AND DO YOU RECALL AT THAT POINT THE QUESTION BEING IS
24 DURING THAT FIRST -- THIS FISTFIGHT THAT HE KNOCKS YOU --
25 EXCUSE ME. IS THAT DURING THIS FISTFIGHT THAT HE KNOCKS YOU

1 OUT OF THE CHAIR? CORRECT?

2 A. YES, SIR. THAT WAS -- THAT WAS WHEN THAT -- I DON'T
3 REMEMBER IF IT WAS -- I THINK I HAD GOTTEN PUSHED. I THINK I
4 HAD GOTTEN PUSHED OUT OF THE CHAIR.

5 Q. AND YOU INDICATED AT THAT POINT YOU GOT KNOCKED OUT OF
6 THE CHAIR THIS TIME, AND THEN YOU INDICATED HE KICKED YOU --
7 KICKED ME THREE OR FOUR TIMES -- KICKED ME THREE OR FOUR
8 TIMES WHEN I WAS DOWN ON THE GROUND. THEN -- I'M SORRY.

9 A. YES, AND TWO -- THAT'S WHEN I GOT KICKED IN THE FACE
10 TWICE AND THEN I COVERED UP.

11 Q. THEN YOU COVERED UP.

12 A. THAT WAS THE FIRST---

13 Q. ACCORDING TO PRIOR TESTIMONY, YOU INDICATED THAT YOU PUT
14 YOUR HANDS TO YOUR FACE AND HE KICKED YOU A COUPLE MORE TIMES
15 IN THE SIDE; CORRECT?

16 A. I BELIEVE HE MIGHT HAVE; YES, SIR.

17 Q. DID HE OR DID HE NOT?

18 A. I GOT KICKED TWO -- TWO OR MORE TIMES. I KNOW IT -- IT
19 MIGHT HAVE BEEN THREE OR FOUR.

20 Q. AND IN YOUR SIDE ALSO, NOT JUST YOUR FACE.

21 A. IN MY SIDE, TOO, YES, SIR.

22 Q. WHICH ONE WAS IT? DID HE HIT YOU IN THE FACE, IN THE
23 SIDE OR JUST WHERE?

24 A. HE KICKED ME IN THE -- HE KICKED ME IN THE FACE TWICE
25 AND HE MIGHT HAVE KICKED ME IN THE SIDE, TOO; YES, SIR.

1 Q. AND DID YOU -- WHAT WAS HE WEARING WHEN HE KICKED YOU IN
2 THE FACE?

3 A. I THINK HE -- YOU KNOW, I BELIEVE HE WAS WEARING SOME
4 TYPE OF BOOT. IT WASN'T A TENNIS SHOE. IT WAS SOME TYPE OF
5 -- SOME TYPE OF BOOT.

6 Q. AND HE KICKED YOU TWO OR THREE TIMES. EXCUSE ME. THREE
7 OR FOUR TIMES IN THE FACE.

8 MR. COLLINS: OBJECTION, YOUR HONOR. ASKED AND
9 ANSWERED.

10 THE WITNESS: LET'S SEE.

11 THE COURT: JUST A MOMENT.

12 MR. COLLINS: ASKED AND ANSWERED.

13 THE COURT: SUSTAINED. LET'S MOVE ALONG, COUNSEL.

14 BY MR. CATHCART:

15 Q. I SHOW YOU WHAT'S BEEN MARKED AS DEFENSE EXHIBIT NUMBER
16 2. ARE THOSE THE ONLY INJURIES THAT YOU SUSTAINED FROM THE
17 KICK TO YOUR FACE AND TO YOUR ABDOMEN?

18 A. THAT WAS -- THAT WAS THE ONLY -- YES, SIR, I BELIEVE
19 THAT WAS THE ONLY VISIBLE INJURIES I SUSTAINED FROM THAT.

20 Q. OKAY. AND THEN Y'ALL PROCEED TO GO PAST -- AGAIN, I'M
21 LOOKING AT 108. ARE YOU OKAY?

22 A. YEAH. YES.

23 Q. DO YOU WANT TO COME OUT? I SUBMIT TO YOU---

24 THE COURT: CAN EVERYONE ON THE JURY SEE?

25 MR. COLLINS: I CAN.

1 BY MR. CATHCART:

2 Q. THE SECOND FIGHT IS -- ACCORDING TO YOU, IT HAPPENS
3 HERE.

4 A. YES, SIR.

5 Q. HE AT THIS POINT THROWS YOU BACK IN THE CHAIR.

6 A. YES, SIR.

7 Q. AND HE ROLLS YOU THIS WAY.

8 A. YES, SIR.

9 Q. CORRECT? PAST THE MAIN DESK; CORRECT?

10 A. YEAH, WE WAS -- YEAH, WE COME -- I BELIEVE WE COME -- WE
11 COME DOWN THIS WAY, THIS WAY PAST RIGHT HERE.

12 Q. IN YOUR PRIOR TESTIMONY YOU WENT BY THE POOL?

13 A. WHERE IS THE POOL AT?

14 Q. RIGHT HERE.

15 A. OKAY.

16 Q. ACROSS FROM YOUR ROOM UP THERE.

17 A. I WANT TO SAY IT SEEMS -- WE MIGHT HAVE COME DOWN THIS
18 WAY. I WAS THINKING IT WAS THIS WAY. WE MIGHT HAVE -- IT
19 MIGHT HAVE BEEN THIS WAY; YES, SIR.

20 Q. YOU PASSED BY THIS DESK; CORRECT?

21 A. YES, SIR.

22 Q. WHERE THE NIGHT CLERK STAYS; RIGHT?

23 A. YES, SIR, BY THE DESK.

24 Q. OVER---

25 A. BY THE WINDOW.

1 Q. I'M SORRY.

2 A. BY THE WINDOW.

3 Q. YOU WENT RIGHT BY THAT WINDOW?

4 A. NOT RIGHT BY IT BUT IT WAS -- IT WAS OUT THERE. YOU
5 COULD -- YOU COULD SEE WHERE THE WINDOW WAS, THE NIGHT
6 WINDOW.

7 Q. AND YOU KNOW THE NIGHT CLERK IS THERE; CORRECT?

8 A. I ASSUME SHE'S THERE. I DIDN'T SEE HER.

9 Q. ACCORDING TO YOUR TESTIMONY, YOU SENT MR. HAWKINS TO GO
10 GET HER, DIDN'T YOU?

11 A. IN THE MOTEL THEY ALWAYS KEEP SOMEBODY UP FRONT. I JUST
12 ASSUMED -- I DIDN'T KNOW SHE WAS THERE. I WOULD ASSUME SHE
13 WAS IN THERE SOMEWHERE, BUT I DIDN'T SEE HER AT THE TIME. IF
14 I HAD SEEN HER, I'M SURE I WOULD HAVE ASKED FOR HELP.

15 THE COURT: STEP BACK. PROCEED.

16 BY MR. CATHCART:

17 Q. AND YOU DID NOT YELL FOR HELP IN THAT PARKING LOT;
18 CORRECT?

19 A. NO, SIR. I WAS -- I WAS -- I WAS WINDED. I WAS -- I
20 WAS TIRED. I WAS WORE OUT. I DON'T THINK...

21 Q. AT THAT POINT DID YOU ASK ANYONE TO ASSIST BECAUSE THIS
22 MAN HAD BEAT YOU DOWN IN THE PARKING LOT BEFORE, KICKED YOU
23 DOWN IN A DRIVEWAY WITH HIS BOOTS ON?

24 A. THERE WASN'T NOBODY TO ASK FOR HELP.

25 Q. YOU JUST---

1 A. THAT'S THE ONLY PERSON I SEEN WAS MR. HAWKINS.

2 Q. YOU JUST SAID YOU WENT BY THE NIGHT CLERK; RIGHT?

3 A. THERE WASN'T NOBODY THERE. YOU CAN'T SEE -- I CAN'T SEE
4 THROUGH THE BUILDING.

5 Q. YOU THEN WENT TO YOUR ROOM; CORRECT?

6 A. YES, SIR, WE WENT -- WE WENT IN MY ROOM; YES, SIR.

7 Q. AND AT THAT POINT YOU SENT MR. AUSTIN TO GO GET A KEY;
8 RIGHT?

9 A. THAT'S -- YOU KNOW, I DON'T -- I DON'T THINK I SENT HIM
10 TO GO GET A KEY. I HAD A KEY AND I WAS STALLING FOR TIME. I
11 DIDN'T WANT TO GET MY KEY OUT AND OPEN THAT DOOR WITH HIM
12 RIGHT THERE BECAUSE I DONE BEEN BEAT ON, KNOCKED OUT OF MY
13 CHAIR, KICKED, AND I WAS SCARED. I DIDN'T WANT THAT DUDE
14 COMING IN MY ROOM.

15 Q. SO YOU WERE DOING THE BEST THAT YOU CAN TO MAKE SURE
16 THAT YOU CAN GET IN THAT ROOM WITHOUT HIM BEING IN THERE,
17 TOO; CORRECT?

18 A. AT THE TIME I WAS SITTING TO THE SIDE AND WE -- HE JUST
19 SNATCHED -- WHEN I WAS GOING THROUGH MY BAGS WHEN HE SNATCHED
20 IT, LIKE I SAID, MY PAPERS FELL OUT AND EVERYTHING FELL OUT,
21 AND I DIDN'T LET GO OF IT. I SNATCHED IT BACK. AND WE HAD
22 TUSSLED -- YOU KNOW, I WANT TO SAY THAT I GOT -- I GOT
23 KNOCKED OUT OF MY CHAIR AGAIN THEN, AND MY CUSHION -- MY
24 CUSHION FELL OUT ON THE GROUND AND HE HELPED ME BACK UP, AND
25 I WAS AT THE -- IN THE HALLWAY AND THAT'S WHEN I SEEN THIS

1 DUDE COME BY THAT WAS MR. HAWKINS AND I ASKED HIM TO PLEASE
2 GET ME SOME HELP THAT -- GO UP THERE AND ASK THE LADY TO CALL
3 BECAUSE THEY'D DONE JUMPED ON ME AND BEAT ME UP AND I FEEL
4 THEY'RE GOING TO ROB ME.

5 Q. THE LADY THAT YOU PASSED ON THE WAY IN.

6 A. I DIDN'T PASS NO LADY ON THE WAY IN.

7 Q. WAS MR. AUSTIN STANDING THERE WHEN YOU TALKED TO MR.
8 HAWKINS?

9 A. NO, HE WASN'T STANDING THERE.

10 Q. HE WAS GONE; RIGHT?

11 A. YES, SIR, HE WAS GONE.

12 Q. SO AT THAT POINT YOU SAID, "MR. HAWKINS, PLEASE HELP ME
13 GET IN MY ROOM AND GET AWAY FROM THIS MAN WHO IS TRYING TO
14 KILL ME." RIGHT?

15 A. I DIDN'T SAY MR. HAWKINS.

16 Q. I'M SORRY. YOU SAID---

17 A. I ASKED -- I SAID PLEASE -- I SAID, "WOULD YOU PLEASE
18 LET THE LADY UP FRONT KNOW THAT I'VE BEEN BEAT UP AND I FEEL
19 THEY'RE GOING TO ROB ME?"

20 Q. AND AT THAT POINT YOU SAT AND WAITED FOR DANIEL AUSTIN
21 WHO HAD JUST LEFT YOU TO GO ALL THE WAY TO THE -- AGAIN,
22 LOOKING AT 108, COMING FROM YOUR ROOM EITHER GOING ALL THE
23 WAY AROUND THIS WAY TO THE MAIN DESK OR ALL THE WAY THROUGH
24 THE BREEZEWAY AND UP THIS WAY TO THE MAIN DESK TO GO ASK MS.
25 CONNELL FOR A ROOM KEY FOR YOU, TO GET A LITTLE NOTE FROM---

1 MR. COLLINS: OBJECTION, YOUR HONOR. IS THIS A QUESTION
2 OR IS THIS A STORY?

3 THE COURT: ASK A QUESTION, COUNSEL. PROCEED. IT'S
4 CROSS-EXAMINATION. LET'S PROCEED.

5 BY MR. CATHCART:

6 Q. HOW LONG DO YOU THINK -- IT WOULD TAKE A GOOD LONG TIME
7 TO GO ALL THE WAY BACK TO THAT AND GET A ROOM KEY; CORRECT?

8 A. NO, SIR, I WOULDN'T SAY A GOOD LONG TIME. NO.

9 Q. THEN IT'S LONG ENOUGH OR IT'S SHORT ENOUGH THAT YOU
10 COULDN'T GET INTO YOUR ROOM?

11 A. AT THE TIME, LIKE I SAID, I DONE -- I DONE BEEN BEAT AND
12 I'M DISORIENTED AND MY PAPERS ARE OUT THERE. I DON'T REALLY
13 HAVE ACCESS TO MY KEY AT THE TIME BECAUSE IF I HAD HAD IT,
14 I'M SURE I WOULD HAVE WENT ON IN THE ROOM. BUT WHEN I
15 SEEN -- SEEMED LIKE WHEN I SEEN THIS FELLOW IT WASN'T LONG
16 AFTER WE DONE HAD THIS ALTERCATION AND I ASKED HIM, AND BY
17 THE TIME I ASKED HIM TO PLEASE GO CALL SOME -- GET THE LADY
18 TO CALL SOMEBODY AND HE COME BACK, I HAD -- I HAD COLLECTED
19 MYSELF AND WAS GETTING MY KEY OUT -- WELL, I WAS PROBABLY
20 TRYING TO FIND MY KEY BECAUSE IT WAS A MESS. EVERYTHING WAS
21 ON THE GROUND, AND MY KEY -- I KNOW MY KEY HAD TO BE IN MY
22 WALLET.

23 Q. HAVE YOU EVER BEEN IN HOTELS THAT USE KEY CARDS BEFORE?

24 A. YES, SIR.

25 Q. HAVE YOU EVER LOST YOUR KEY IN A HOTEL ROOM AND YOU HAD

1 TO GO GET A NEW ONE?

2 A. YES, SIR, I HAVE.

3 Q. AND YOU WOULD AGREE WITH ME THAT WHEN YOU GO GET A NEW
4 KEY, THAT OLD KEY IS NO GOOD; RIGHT? BECAUSE THEY GAVE YOU
5 -- PROGRAMMED YOU A NEW KEY.

6 A. YES, SIR. THAT'S CORRECT.

7 Q. OKAY. SO WHEN MR. AUSTIN IS COMING BACK FROM THE LOBBY
8 WITH THE KEY TO YOUR ROOM IN HIS POCKET, YOU'RE AT THAT TIME
9 SAYING YOU USED A KEY THAT DOES NOT WORK TO GET IN YOUR ROOM?

10 A. A KEY THAT DOES NOT WORK? MY KEY WOULDN'T WORK.

11 Q. YOU'VE GOT A BRAND-NEW KEY TO YOUR ROOM. IT WAS IN HIS
12 BACK POCKET.

13 A. THAT CHANGES -- THAT WOULDN'T MAKE MY KEY OPEN IT?

14 Q. NO, SIR, IT WOULDN'T.

15 A. NO, I DIDN'T KNOW THAT. I WASN'T -- I WASN'T---

16 Q. BECAUSE THAT'S NOT THE WAY IT HAPPENED, IS IT?

17 A. I WASN'T THINKING LIKE THAT. SEEMS LIKE MY KEY WOULD
18 HAVE STILL BEEN GOOD. MY KEY WOULD HAVE BEEN GOOD. I USED
19 MY CAR KEY TO GET IN.

20 Q. MR. AUSTIN WASN'T WITH YOU WHEN YOU WERE IN THERE, WAS
21 HE? HE WAS STILL UP AT THE LOBBY; RIGHT?

22 A. NO, SIR. HE HAD DONE COME BACK. WHEN I WAS GOING
23 THROUGH THE DOOR -- OF COURSE, I WASN'T LOOKING -- I WASN'T
24 LOOKING BEHIND ME, BUT WHEN I WENT THROUGH THE DOOR -- WHEN I
25 WENT THROUGH THE DOOR, I THOUGHT -- I WENT ON THROUGH THE

1 DOOR AND THAT'S -- HE COME IN AS I -- I DIDN'T EVEN GET A
2 CHANCE TO SHUT THE DOOR. HE COME IN BEHIND ME.

3 Q. YOU WEREN'T LOOKING BEHIND YOU.

4 A. NO, SIR. I WAS -- I HAD TROUBLE GETTING IN THE DOOR. I
5 HAD -- YOU KNOW, I WAS PRETTY INTOXICATED AND OUT OF BREATH
6 AND BEEN BEAT ON AND KICKED, AND I HAD TROUBLE GETTING MY KEY
7 IN THE DOOR AND I THINK I -- I WANT TO SAY I DROPPED MY KEY.

8 Q. YOU WEREN'T LOOKING AROUND, DESPITE THE FACT YOU DIDN'T
9 KNOW WHERE MR. AUSTIN WAS, BASED ON YOUR TESTIMONY NOW;
10 RIGHT?

11 A. NOT AT THE TIME. I WAS TRYING -- BECAUSE I WAS HAVING
12 TROUBLE GETTING IN THE DOOR. I WASN'T TRYING TO LOOK AROUND.
13 I WAS TRYING TO GET MY KEY IN THE DOOR AND GET THE DOOR OPEN
14 BEFORE HE GOT BACK.

15 Q. YOU WEREN'T WORRIED ABOUT THIS OTHER PERSON THAT NOBODY
16 HAS TALKED ABOUT YET UNTIL YOU TALKED ABOUT IT TODAY.

17 A. YES, SIR, I WAS WORRIED---

18 Q. STRANGERS.

19 A. THERE WAS THREE PEOPLE I WAS WORRIED ABOUT; YES, SIR. I
20 WAS WORRIED ABOUT -- YEAH, I FELT THERE WAS SOMEBODY ELSE.

21 Q. SO YOU WEREN'T LOOKING AROUND TO MAKE SURE THAT YOU WERE
22 SAFE AT THAT POINT; CORRECT?

23 A. NO, I WAS TRYING TO GET IN THE DOOR. NO, SIR, I WASN'T.
24 I WAS TRYING TO GET IN THAT DOOR.

25 Q. WHEN YOU WENT IN THE DOOR, ACCORDING TO YOUR STATEMENT,

1 ACCORDING TO YOUR TESTIMONY, MR. AUSTIN WAS THERE; CORRECT?

2 A. HE COME IN -- HE COME IN BEHIND ME. WHEN I WAS TRYING
3 TO GET IN THE DOOR, HE WASN'T IN THE PICTURE THEN, BUT AS I
4 GOT THE DOOR OPEN AND WENT ON IN, HE COME ON IN BEHIND ME.
5 THAT'S WHEN HE COME IN THE PICTURE AGAIN.

6 Q. SO YOU WERE IN THE ROOM AND HE WAS -- GOT IN THE DOOR BY
7 HIMSELF.

8 A. YES, SIR. HE COME IN BY HIMSELF. I DIDN'T INVITE HIM
9 IN.

10 Q. SO YOU GOT IN THE ROOM. THE ROOM HAS A LOCK ON IT, A
11 BOLT LOCK ON IT, A PEEPHOLE THAT'S DOWN -- A HANDICAP ROOM
12 DOWN TO YOUR SIZE AND SOMEHOW MR. AUSTIN WAS IN THERE, TOO?

13 A. YES, SIR. HE COME IN -- HE COME IN BEHIND ME. HE SURE
14 DID.

15 Q. BECAUSE YOU DIDN'T SHUT THE DOOR. IS THAT WHAT YOU'RE
16 SAYING?

17 A. I DIDN'T -- I DIDN'T EVEN HAVE TIME TO SHUT THE DOOR.

18 Q. AND AT THAT POINT -- YOU AGREE WITH ME AT THAT POINT OR
19 AT ANY POINT DURING THIS NIGHT HE WASN'T ARMED WITH ANY
20 WEAPONS WHATSOEVER, WAS HE?

21 A. I DON'T KNOW WHAT HE WAS -- I DON'T KNOW IF HE HAD A
22 WEAPON ON HIM OR NOT. I HONESTLY DON'T KNOW.

23 Q. DO YOU RECALL THAT YOU TESTIFIED THAT THE ONLY PERSON
24 WITH A WEAPON OUT THERE THAT NIGHT WAS YOU? YOU SAID, "YEAH,
25 I KNEW IT WAS ME. YES, SIR. THAT'S RIGHT." THE ONLY PERSON

1 WITH A WEAPON.

2 A. HOW WOULD I KNOW IF THIS DUDE HAD A WEAPON OR NOT? I
3 MEAN, I DIDN'T -- I DIDN'T PAT HIM DOWN OR NOTHING. YOU
4 KNOW, HOW WOULD I KNOW IF HE HAD A PISTOL OR SOMETHING OR A
5 GUN IN HIS BACK POCKET OR SOMEWHERE? I DON'T KNOW THAT, SO
6 HOW COULD I KNOW THAT?

7 Q. YOU HAD A WEAPON; RIGHT?

8 A. I DIDN'T HAVE A WEAPON ON ME, NO. THE WEAPONS WERE IN
9 THE ROOM.

10 Q. THE ONLY WAY TO GET MR. AUSTIN AND THE PISTOL TOGETHER
11 AND THE SHOTGUN TOGETHER WAS TO BRING HIM TO YOUR ROOM;
12 RIGHT?

13 A. I DIDN'T BRING MR. AUSTIN TO MY ROOM. I DIDN'T WANT HIM
14 FOLLOWING ME. HE WAS PRESSING ME ABOUT THE DRUGS. I DON'T
15 SMOKE WEED.

16 Q. MR. AUSTIN, ACCORDING TO YOUR STATEMENT, WAS IN THE
17 ROOM. HE WAS SIX FEET AWAY FROM THE DOOR COMING IN AT YOU;
18 RIGHT?

19 A. YES, SIR.

20 Q. I'M SHOWING YOU WHAT'S BEEN MARKED STATE'S EXHIBIT
21 NUMBER 109.

22 THE COURT: LET HIM COME AROUND.

23 MR. CATHCART: YES, SIR.

24 THE COURT: DON'T BLOCK THE JURY'S VIEW OF THE WITNESS.
25 PROCEED.

1 BY MR. CATHCART:

2 Q. YOU'D JUST GOT IN THE ROOM; CORRECT?

3 A. YES, SIR, I'D JUST GOT IN THE ROOM.

4 Q. SO THAT PLACES YOU ABOUT RIGHT HERE?

5 A. YEAH, THAT PLACES ME PROBABLY ABOUT RIGHT ALONG IN
6 THERE. YES.

7 Q. SO MR. AUSTIN WAS LIKE RIGHT THERE?

8 A. YEAH, HE COME IN -- WHEN I COME IN THROUGH THE DOOR, I
9 DIDN'T EVEN SEE HIM COME UP BEHIND ME. LIKE I SAID, I HAD
10 TROUBLE PUTTING -- GETTING THE KEY IN THE DOOR TO OPEN THE
11 DOOR. WHEN I COME -- WHEN I COME IN THE DOOR, HE COME IN
12 KIND OF RIGHT -- WASN'T RIGHT BY BUT HE CAME -- LIKE I SAID,
13 I DIDN'T EVEN HAVE A CHANCE TO TURN AROUND AND SHUT THE DOOR,
14 AND HE COME IN RIGHT BEHIND ME.

15 Q. AND YOU GRABBED YOUR PISTOL FROM WHERE?

16 A. I ROLLED -- WHEN I ROLLED AROUND HERE, ROLLED DOWN
17 THROUGH HERE AND HE HAD COME IN THE DOOR, HE SAID, "I'M GOING
18 TO KILL YOU," AND I ROLLED -- AND I ROLLED UP THROUGH HERE,
19 AND THAT'S WHEN I GRABBED MY PISTOL OUT OF THIS NIGHTSTAND
20 RIGHT HERE.

21 Q. SO YOU WERE HERE. HE WAS RIGHT THERE BESIDE YOU. YOU
22 WERE ABLE TO -- AFTER HE SAID, "I'M GOING TO KILL YOU," YOU
23 WERE ABLE TO ROLL UP HERE---

24 A. NO, HE WASN'T -- HE -- I WAS OVER HERE. I DONE GOT PAST
25 THIS -- THE BED RIGHT HERE.

1 Q. AND YOU SAID---

2 A. HE HAD COME IN---

3 Q. YOU SAID HE WAS SIX FEET IN THE ROOM, SO HE WOULD HAVE
4 BEEN RIGHT HERE; RIGHT?

5 A. THAT'S PROBABLY ABOUT RIGHT.

6 Q. SO YOU WERE ABLE TO GET ALL THE WAY TO THE NIGHTSTAND
7 AND BACK; CORRECT?

8 A. THERE WASN'T NO BACK. I JUST GOT TO THE NIGHTSTAND AND
9 TURNED AROUND.

10 Q. AND YOU INDICATED WHEN YOU -- YOU STATED BEFORE -- YOU
11 NEVER, EVER SAID ANYTHING ABOUT HIM SAYING, "I'M GOING TO
12 KILL YOU." CORRECT? THIS IS---

13 A. I DID---

14 Q. ---THE FIRST TIME THIS HAS EVER BEEN SAID; CORRECT?

15 A. I DON'T -- I DON'T REMEMBER.

16 Q. THAT'S SOMETHING TO REMEMBER WHEN A MAN TELLS YOU, "I'M
17 GOING TO KILL YOU."

18 A. I DON'T REMEMBER IF I STATED IT BEFORE. SEEMS LIKE I
19 WOULD HAVE STATED IT BEFORE IN THE TESTIMONY.

20 Q. IT'S IMPORTANT, ISN'T IT?

21 A. IT'S VERY IMPORTANT.

22 Q. YOU GRABBED YOUR PISTOL. IT WAS LOADED; CORRECT?

23 A. YES, SIR, IT WAS LOADED.

24 Q. YOU TURNED IT ON MR. AUSTIN AT THAT POINT WHO IS
25 STEADILY COMING AFTER YOU; CORRECT?

1 A. YES, SIR.

2 Q. SO HE'S COMING IN ABOUT LIKE THIS FAST?

3 A. YEAH, HE'S COMING IN THE DOOR AND I TURN AROUND AND HE'S
4 -- LIKE I SAID, HE WAS PROBABLY SIX FEET -- I WAS OVER HERE
5 BESIDE THE BED, AND I DONE TURNED AROUND. HE WAS -- YEAH, HE
6 WAS COMING.

7 Q. SO HAD HE ROUNDED THE BED AT THAT POINT?

8 A. NO, HE DIDN'T GET ALL THE WAY PAST THE BED. HE DIDN'T
9 GET THAT FAR.

10 Q. SO HE WAS AT THE FOOT OF THE BED.

11 A. HE WAS AT THE FOOT OF THE BED.

12 Q. HOW FAR AWAY FROM YOU WAS HE WHEN YOU SHOT HIM? JUST
13 TELL ME---

14 A. IF YOU'LL BACK ON UP A LITTLE BIT MORE. A LITTLE BIT
15 MORE. HE WAS PROBABLY -- SEE, THE DESK -- THE NIGHTSTAND WAS
16 OVER THERE. THAT'S PROBABLY ABOUT THE DISTANCE.

17 Q. DID YOU BACK INTO THE NIGHTSTAND?

18 A. NO, SIR. I BELIEVE I WENT IN FORWARD.

19 Q. OKAY.

20 A. I WENT IN FORWARD TO THE NIGHTSTAND AND TURNED AND
21 TURNED RIGHT THERE AT THE---

22 Q. YOU GOT YOURSELF TURNED AROUND.

23 A. TURNED AROUND.

24 Q. PULLED UP THE PISTOL. ALL THE WHILE HE'S COMING AT YOU;
25 CORRECT?

1 A. YES, SIR, HE COME -- YEAH, HE COME -- AND I BELIEVE WHEN
2 HE WAS COME -- I BELIEVE HE HAD STOPPED BECAUSE WHEN HE MADE
3 THAT STATEMENT I TURNED AROUND.

4 Q. SO HE WASN'T ATTACKING YOU AT THAT POINT; CORRECT?

5 A. SIR?

6 Q. HE WASN'T ATTACKING YOU AT THAT POINT; CORRECT?

7 A. HE WAS COMING TO ME. NO, HE DIDN'T -- HE HADN'T
8 ATTACKED ME IN THE ROOM. HE WAS COMING---

9 Q. YOU PUT A PISTOL UP TO HIS FACE AND HE KEPT COMING?

10 A. HE STOPPED. HE STOPPED THEN.

11 Q. HE STOPPED.

12 A. YES, SIR.

13 Q. YOU HAD HIM AT YOUR POWER; RIGHT?

14 A. YES, SIR.

15 Q. AND YET YOU PULLED THE TRIGGER.

16 A. I PULLED -- YES, SIR, I PULLED THE TRIGGER A COUPLE OF
17 TIMES---

18 Q. YOU PULLED THE TRIGGER AGAIN---

19 A. YES, SIR.

20 Q. ---AND AGAIN. NOT A COUPLE OF TIMES. YOU EMPTIED THIS
21 GUN INTO HIM; RIGHT?

22 A. I DON'T KNOW IF IT WAS TWO TO THREE OR -- I BELIEVE I
23 DID SHOOT -- I BELIEVE I DID EMPTY THE GUN; YES, SIR.

24 Q. YOU HAD TO COME BACK IN THE ROOM AFTER YOU SHOT HIM DOWN
25 IN THE ALLEYWAY TO RELOAD IT; RIGHT?

1 A. NO, SIR. WHEN I -- AFTER I SHOT HIM WITH THE PISTOL AND
2 I -- I BELIEVE I DROPPED THE PISTOL ON THE BED, AND WHEN HE
3 FELL DOWN, HE GOT UP AND RUN OUT THE DOOR AND THAT'S WHEN I
4 ROLLED OVER TO THE DRESSER AND GOT THE SHOTGUN OUT OF THE
5 DRESSER.

6 Q. SO WHAT YOU'RE SAYING IS HE RUNS OUT THE DOOR INSTEAD OF
7 GOING TO YOUR DOOR -- AND, REMEMBER, IT HAS A BOLT LOCK ON
8 IT; RIGHT?

9 A. YES, SIR.

10 Q. IT HAD ANOTHER LOCK ON IT RIGHT THERE AT THE DOOR;
11 RIGHT?

12 A. YES, SIR.

13 Q. ACCORDING TO YOU, YOU HAD THE ONLY KEY TO THIS ROOM;
14 RIGHT?

15 A. I BELIEVE SO; YES, SIR.

16 Q. AND THERE'S A TELEPHONE IN THAT ROOM THAT WORKS;
17 CORRECT?

18 A. YES, SIR.

19 Q. INSTEAD OF MAKING YOURSELF SAFE, YOUR TESTIMONY IS YOU
20 WENT HUNTING; RIGHT?

21 A. I WENT -- THE SHOTGUN -- YEAH, I WENT AND GOT THE
22 SHOTGUN OUT OF THE DRESSER. YES, SIR.

23 Q. AND INSTEAD OF STAYING WHERE YOU WERE SAFE -- YOU'RE
24 ARMED, THE ONLY MAN ARMED IN THIS FIGHT. YOU'VE JUST SHOT
25 THE MAN DOWN 'TIL HE HIT THE GROUND AND RAN OUT OF THE ROOM.

1 INSTEAD OF STAYING THERE WHERE YOU'RE SAFE, ARMED WITH A
2 DEADLY WEAPON, YOU GO HUNTING HIM DOWN; RIGHT?

3 A. IT HAPPENED -- IT HAPPENED SO QUICK, SO FAST THAT I
4 WAS -- LIKE I SAID, I WAS VERY, VERY ANGRY ABOUT HOW THE
5 SITUATION HAPPENED AND, YEAH, I DID GRAB THE SHOTGUN. AND
6 WHEN HE FELL AND JUMPED UP AND RUN, I DIDN'T KNOW IF I HIT
7 HIM OR NOT AND I -- YOU KNOW, I WAS SCARED. LIKE I SAID, I
8 WAS SCARED TO DEATH BECAUSE I KNOW THERE WAS -- IN MY MIND
9 THERE WAS SOMEBODY ELSE OUT THERE.

10 Q. YOU'D BEEN OUT TO TARGET PRACTICE WITH THIS PISTOL FOR
11 THE PAST MONTH, RIGHT, OR AT MARY ONELLO'S HOUSE?

12 A. PISTOLS, MACHINE GUNS, ALL KIND OF WEAPONS.

13 Q. YOU'RE PRETTY GOOD WITH A GUN, AREN'T YOU?

14 A. I WOULD SAY I -- SEEMS LIKE I'D BE A GOOD SHOT, YEAH, IF
15 I'M SOBER.

16 Q. CAN YOU NOT HIT A TARGET FROM A DISTANCE OF ME TO YOU
17 WITH JUST ONE SHOT?

18 A. SEEMS LIKE I WOULD BE ABLE TO.

19 Q. YOU PUT SIX OF THEM INTO HIM, DIDN'T YOU?

20 A. YES, SIR. I WAS -- I WAS REALLY MAD.

21 Q. AND HE FELL TO THE GROUND; RIGHT?

22 A. HE FELL AND GOT UP; YES, SIR.

23 Q. AND RAN FROM THE ROOM, RAN AWAY FROM THE DANGER, DIDN'T
24 HE?

25 A. HE RAN FROM THE ROOM.

1 Q. AND YOU WENT HUNTING.

2 A. I GOT MY SHOTGUN, YES. I WENT TO THE DOOR; YES, SIR, I
3 DID.

4 Q. YOU DIDN'T JUST GO TO THE DOOR, DID YOU? YOU WENT ALL
5 THE WAY OUTSIDE.

6 A. I WENT---

7 Q. YOU WENT LOOKING FOR HIM; RIGHT?

8 A. YES, SIR, I WENT OUT -- I WENT OUTSIDE. YES, SIR, I
9 SURE DID.

10 Q. I SHOW YOU STATE'S EXHIBIT NUMBER 12. THIS IS THE
11 BREEZEWAY; CORRECT?

12 A. YES, SIR. THAT'S THE BREEZEWAY.

13 Q. AND THAT'S WHERE YOU FOUND HIM; RIGHT?

14 A. YES, SIR. THAT'S WHERE HE WAS -- HE WAS UP -- THAT'S
15 WHERE I FOUND HIM.

16 Q. LEANING UP AGAINST THAT WALL.

17 A. HE WAS STANDING UP. I DON'T KNOW. HE MIGHT HAVE BEEN
18 LEANING AGAINST THE WALL; YES, SIR.

19 Q. HE WAS FACING YOU, WASN'T HE?

20 A. I BELIEVE SO. I MEAN, I'M NOT SURE. LIKE I SAID, I WAS
21 JUST -- I WAS CONCERNED ABOUT MY SAFETY. I WAS WORRIED ABOUT
22 THAT. I WASN'T...

23 Q. YOU LOOKED HIM IN THE EYE.

24 A. NO, SIR, I DIDN'T LOOK HIM IN THE EYE.

25 MR. COLLINS: YOUR HONOR, MAY WE APPROACH VERY BRIEFLY?

1 **THE COURT:** COUNSEL, APPROACH.

2 (WHEREUPON, A BENCH CONFERENCE WAS HELD.)

3 **THE COURT:** STEP BACK.

4 BY MR. CATHCART:

5 Q. YOU ARE FAMILIAR WITH THIS TYPE OF SHOTGUN, ARE YOU NOT?

6 A. YES, SIR.

7 Q. THIS IS A PUMP SHOTGUN; CORRECT?

8 A. YES, SIR.

9 Q. AND TO FIRE A PUMP SHOTGUN YOU HAVE TO HAVE ONE IN THE
10 CHAMBER; CORRECT?

11 A. YES, SIR.

12 Q. AND AFTER YOU FIRE THAT ONE, YOU HAVE TO CYCLE IT AND
13 PUT IN A NEW ONE; CORRECT?

14 A. YES, SIR.

15 Q. INSIDE THIS SHOTGUN YOU HAD MULTIPLE SHELLS, DID YOU
16 NOT?

17 A. YES, SIR.

18 Q. SOME OF IT WAS BIRDSHOT FOR SHOOTING SMALL GAME;
19 CORRECT?

20 A. YES, SIR.

21 Q. SOME OF IT WAS BUCKSHOT; CORRECT?

22 A. YES, SIR. THERE WAS A MIXTURE.

23 Q. BUCKSHOT IS CALLED BUCKSHOT BECAUSE IT'S USED TO KILL
24 DEER AND LARGE ANIMALS; CORRECT?

25 A. YES, SIR, USED FOR HUNTING. YEAH.

1 Q. AND YOU CYCLED THIS GUN UNTIL IT WAS EMPTY; CORRECT?

2 A. YES, SIR.

3 Q. INTO MR. AUSTIN; CORRECT?

4 A. AIMING TOWARD HIM, YES, SIR.

5 Q. YOU HIT HIM, DIDN'T YOU?

6 A. I BELIEVE AT THE TIME -- I'M NOT SURE. I'M NOT SURE IF
7 I HIT HIM OR NOT. IT WASN'T LIKE HE WAS RIGHT UP REALLY
8 CLOSE TO ME. HE WAS A LITTLE BIT FURTHER. HE WAS FURTHER
9 AWAY.

10 Q. HOW FAR AWAY? POINT ME IN---

11 A. IT'S DARK. IT SEEMS LIKE IT'S DARK OUT THERE IN THE
12 BREEZEWAY, AND I'D PROBABLY SAY HE WAS NO FURTHER THAN FROM
13 WHERE I AM TO THAT -- THAT SECOND -- YEAH, THAT CHAIR RIGHT
14 THERE.

15 Q. THIS CHAIR RIGHT HERE.

16 A. YES, SIR. THAT'S -- THAT WAS -- THAT'S CLOSE.

17 Q. YOU CYCLED SIX SHOTS OF BUCKSHOT AND BIRDSHOT INTO---

18 **THE COURT:** MR. CATHCART, MOVE OUT OF THE JUROR'S WAY.

19 **MR. CATHCART:** OH, I APOLOGIZE, YOUR HONOR. I WAS JUST
20 GOING FOR THE DISTANCE.

21 BY MR. CATHCART:

22 Q. SIX SHOTS, CYCLED, AIMED, FIRED SIX TIMES WHEN HE'S---

23 A. I DIDN'T CYCLE AND AIM AND FIRE. I AIMED ONE TIME AND
24 JUST SHOT THE SHOTGUN. I JUST KEPT SHOOTING IT.

25 Q. THEN YOU WENT INTO YOUR ROOM; CORRECT?

1 A. THEN I ROLLED BACK TO THE ROOM; YES, SIR.

2 Q. IT'S AT THAT POINT YOU DIDN'T CLOSE THE DOOR YET AGAIN,
3 DID YOU?

4 A. SIR, I'M GOING TO TELL YOU: I WAS STILL SCARED. I --
5 NO, I DON'T THINK I CLOSED THE DOOR. I ROLLED OVER THERE.
6 NO, SIR, I DIDN'T CLOSE THE DOOR.

7 Q. YOU HAD PUT SIX BULLETS INTO THE MAN OR SIX SHOTS AT THE
8 MAN AND YOU HAVE SHOT A SHOTGUN INTO THAT MAN, AND YOU WERE
9 TOO SCARED TO CLOSE YOUR DOOR.

10 A. YES, SIR. YOU KNOW, IN MY MIND THERE WAS SOMEBODY ELSE
11 OUT THERE. I MEAN, YOU KNOW, IT WASN'T JUST DANIEL AUSTIN.
12 THERE WAS A COUPLE -- IN MY MIND THERE WAS ANOTHER PERSON OUT
13 THERE.

14 Q. YOU'D TAKEN CARE OF DANIEL AUSTIN; RIGHT?

15 A. I DON'T -- I DON'T KNOW FOR SURE. I WOULD ASSUME.

16 Q. AND YET DESPITE THE FACT THAT YOU THINK THERE MIGHT BE
17 SOMEBODY ELSE OUT THERE, YOU DO NOT CLOSE YOUR DOOR. YOU DO
18 NOT LOCK YOUR DOOR. YOU DO NOT GET ON THE PHONE AND SAY,
19 "POLICE, COME HELP ME." CORRECT?

20 A. NO, SIR.

21 Q. IN FACT, WHEN THE POLICE DO COME, BECAUSE YOU HAD THE
22 FIREWORKS SHOW OUT THERE, THE FIRST THING YOU DO IS TAKE A
23 SHOT AT THEM, DON'T YOU?

24 A. NO, SIR. I DIDN'T KNOW IT WAS THE POLICE AT THE TIME.
25 I GOT OVER BEHIND -- WHEN I ROLLED IN THE ROOM, I HAD GOT

1 OVER BEHIND THE BED AND I GOT -- THAT'S WHEN I GOT OUT OF MY
2 CHAIR BECAUSE I WAS SITTING UP IN THE CHAIR. I WAS SITTING
3 HIGH. THAT'S WHEN I GOT -- I GOT BEHIND THE BED, TRANSFERRED
4 AND GOT DOWN -- FELL DOWN THERE ON THE FLOOR AND GOT BEHIND
5 IT WITH THE GUNS, AND I DIDN'T KNOW IT WAS THE POLICE AT THE
6 TIME.

7 Q. THE FACT THAT THEY SAID HELP -- "POLICE. PUT YOUR HANDS
8 UP. RICHLAND COUNTY SHERIFF'S DEPARTMENT. PUT YOUR GUN
9 DOWN," THAT WASN'T A CLUE?

10 A. NO, SIR. I COULDN'T HEAR NOTHING. I DONE -- I'M DEAF.
11 I'M NOT HEARING. WHEN YOU SHOOT LIKE THAT, YOU CAN'T HEAR
12 NOTHING. I CAN'T HEAR NOTHING LIKE THAT; NO, SIR.

13 Q. YOU CAN HEAR ME TODAY, CAN'T YOU?

14 A. TODAY? YEAH, TODAY IS A DIFFERENT STORY.

15 Q. AND YOU CAN SEE, CAN'T YOU?

16 A. YEAH, I COULD SEE. YES, SIR.

17 Q. AND YOU COULD SEE BLUE LIGHTS; RIGHT?

18 A. AND WHEN I FINALLY SEEN THE BLUE LIGHTS, THAT'S WHEN I
19 STOPPED SHOOTING. THAT'S WHEN I KNEW IT WAS THE POLICE.

20 Q. IT WASN'T THAT YOU SHOT EVERY TIME YOU HEARD A SIREN
21 COMING IN?

22 A. NO, SIR, I DIDN'T SHOOT EVERY TIME I HEARD THAT. I HAD
23 NOTHING AGAINST THE POLICE. THE POLICE HADN'T DONE NOTHING
24 TO ME. THEY HADN'T BEAT ME UP.

25 Q. SO YOU SHOT DANIEL AUSTIN BECAUSE HE BEAT YOU UP.

1 A. YEAH, BECAUSE HE BEAT ME UP AND THREATENED TO KILL ME.
2 YES, SIR.

3 Q. BEFORE YOUR ENCOUNTER WITH MR. AUSTIN, YOU INDICATED
4 THAT YOU WENT DOWN TO KEY WEST. YOU WERE HAVING -- THAT IT
5 WAS A PRETTY DAY?

6 A. YES, SIR. IT WAS A BEAUTIFUL DAY.

7 Q. AND YOU WENT AND HAD A NICE MEAL.

8 A. YES, SIR.

9 Q. LIFE WAS GOING GOOD; RIGHT?

10 A. LIFE WAS GOING ALL RIGHT. IT WAS GOING; YES, SIR.

11 Q. AND THEN YOU JUST GET RID OF THE THREAT OF A MAN WHO WAS
12 GOING TO KILL YOU. YOU SAVED YOUR OWN LIFE; RIGHT?

13 A. I SAVED MY OWN LIFE?

14 Q. ISN'T THAT WHAT YOU'RE SAYING -- TELLING THE JURY?

15 A. YES, SIR.

16 Q. AND IT'S AT THAT POINT YOU STATE THAT YOU TAKE THIS
17 PISTOL THAT YOU HAVE RELOADED -- YOU SAY YOU WERE GOING TO GO
18 FOR A HEAD SHOT AND END YOUR LIFE.

19 A. YES, SIR. WHEN I FOUND OUT IT WAS THE POLICE AND
20 EVERYTHING, YES, SIR.

21 Q. NOT TELLING THEM THAT TO HELP ME SAVE THIS MAN WHO TRIED
22 TO KILL ME. YOU THOUGHT THE BETTER CHOICE WOULD BE TO FIRST
23 PUT IT TO YOUR HEAD, AND THEN YOU GO, "NO, I'M GOING TO GO
24 FOR A HEART SHOT." A HEART SHOT RIGHT HERE; RIGHT?

25 A. YES, SIR.

1 Q. AND THEN SOMEHOW MISS UNTIL IT GOES ACROSS YOUR SIDE;
2 CORRECT?

3 A. THE WOUND IS RIGHT HERE.

4 Q. THAT'S WHERE MY BELLY IS THERE, TOO.

5 A. NO. YOU DON'T -- WELL, THE WOUND IS RIGHT HERE. YOU'VE
6 GOT A PICTURE OF IT, DON'T YOU?

7 Q. YES, SIR. I'M GOING TO SHOW YOU WHAT'S BEEN MARKED
8 STATE'S EXHIBIT NUMBER 54. THAT'S THE WOUND GOING ACROSS
9 RIGHT THERE; CORRECT?

10 A. YEAH, TO THE CHEST. YES, SIR.

11 Q. THAT'S YOUR CHEST RIGHT HERE.

12 A. RIGHT THERE, SIR. THERE'S THE SCAR.

13 Q. IS THAT WHERE YOUR HEART IS?

14 A. THAT'S WHERE I -- IT'S CLOSE TO WHERE IT IS; YES, SIR.

15 Q. AND TO DO THAT, YOU WRAPPED THAT GUN AND FIRED THROUGH
16 IT TO MUZZLE THE SOUND; CORRECT?

17 A. I BELIEVE I DID, YES, SIR, NOT TO MUZZLE THE SOUND
18 THOUGH. I DON'T THINK I DONE IT TO MUZZLE THE SOUND.

19 Q. YOU DIDN'T WANT TO HEAR THE COPS -- TO HAVE THE POLICE
20 HEAR YOU DO THAT FINAL SHOT BECAUSE AT THIS POINT YOU DECIDE
21 TO TELL THEM THAT HE TRIED TO SHOOT ME. HE DID SHOOT ME. HE
22 TRIED TO ROB ME. I'M TALKING ABOUT MR. AUSTIN. CORRECT?
23 ISN'T THAT WHAT YOU TOLD THE COPS THAT NIGHT?

24 A. NO, SIR, I DON'T BELIEVE SO.

25 Q. YOU NEVER TOLD THEM THAT.

1 A. THAT HE SHOT ME?

2 Q. THAT HE SHOT YOU AND THAT HE TRIED TO ROB YOU.

3 A. HE TRIED -- HE BEAT ME UP, AND I FELT THAT HE WAS GOING
4 TO ROB ME; YES, SIR.

5 Q. BEG THE COURT'S INDULGENCE. MR. BRYANT?

6 A. YES, SIR.

7 Q. ISN'T IT TRUE THAT YOU HAD JUST GOT SOME AMMO FOR YOUR
8 GUNS THAT MORNING, THAT DAY, TUESDAY -- THURSDAY, EXCUSE ME,
9 THAT DAY; CORRECT?

10 A. YES, SIR, I BELIEVE SO.

11 Q. YOU GOT YOUR NEW -- YOU GOT YOUR GUNS AND YOU NOW HAVE
12 THE AMMO FOR THEM.

13 A. I HAD AMMO FOR THE GUNS ALREADY. I JUST DIDN'T HAVE
14 THAT MUCH AMMO FOR THE PISTOL. I ALREADY HAD---

15 Q. NOT FOR WHAT YOU NEEDED; RIGHT?

16 A. SIR?

17 Q. NOT FOR WHAT YOU WANTED TO DO WITH THEM; RIGHT?

18 A. I MEAN, YOU KNOW, IF YOU'RE GOING TO HAVE A GUN LOADED,
19 IT'S BEST TO HAVE IT LOADED ALL THE WAY OR YOU MIGHT -- SINCE
20 IT DON'T HAVE A SAFETY. YOU MIGHT LEAVE ONE CHAMBER EMPTY,
21 BUT, NO, I DIDN'T HAVE ENOUGH BULLETS FOR IT TO BE FULL.

22 Q. YOU WENT DOWN TO THE BOTTOMS UP CLUB AND YOU GOT DRUNK.
23 YOU WERE DRUNK ON ALCOHOL DOWN AT THE KEY WEST. YOU WERE
24 DRUNK FROM ALCOHOL FROM BOTTOMS UP AND TWO PILLS OF PERCOCET
25 AND VALIUM; CORRECT?

1 A. YES, SIR. I WAS FEELING -- I'M NOT DENYING IT. I WAS
2 PRETTY INTOXICATED; YES, SIR.

3 Q. AND AT THAT TIME YOU TOOK MR. AUSTIN TO GO LOOK AT YOUR
4 NEW GUNS, DIDN'T YOU?

5 A. NO, SIR, I DIDN'T TAKE HIM -- WHAT DID I WANT HIM --
6 WHAT DID I WANT HIM TO SEE MY GUNS FOR? I'M TRYING TO GET
7 AWAY FROM THE DUDE. I DON'T WANT NOTHING TO DO WITH THE
8 DUDE.

9 Q. YOU TOOK HIM TO SEE YOUR GUNS. YOU TOLD HIM TO GO GET A
10 KEY; I DON'T HAVE A KEY TO MY ROOM. CORRECT?

11 A. NO, SIR.

12 Q. WHEN HE WAS GONE, YOU WENT IN YOUR ROOM.

13 MR. COLLINS: OBJECTION, YOUR HONOR.

14 THE COURT: STEP BACK, COUNSEL.

15 MR. CATHCART: I'M SORRY. I'M SORRY.

16 BY MR. CATHCART:

17 Q. WHEN YOU -- WHEN HE LEFT TO GO GET THE KEY YOU ASKED HIM
18 TO GET, YOU USED YOUR KEY. YOU WENT IN THE ROOM; CORRECT?

19 A. AFTER MR. HAWKINS COME BY -- LIKE I SAID, I WAS IN THE
20 BREEZEWAY AND STUFF. I DONE MOVED -- I DONE MOVED FROM THE
21 DOOR. I WAS TRYING TO COLLECT MYSELF, AND AFTER HE COME BY,
22 YES, SIR, I...

23 Q. AFTER YOU TOLD MR. HAWKINS, HEY, HERE IS WHAT I WANT YOU
24 TO TELL MS. ONELLO (SIC), THE LADY THAT YOU KNEW THAT WAS
25 THERE - MS. CONNELL, EXCUSE ME - YOU WENT IN YOUR ROOM AND

1 YOU WAITED FOR DANIEL AUSTIN TO SHOW UP, DIDN'T YOU?

2 A. NO, SIR. I DIDN'T GO IN MY ROOM TO WAIT FOR DANIEL. I
3 WENT TO FIND MY KEY. I WAS TRYING TO FIND MY KEY AFTER I
4 COLLECTED MYSELF TOGETHER AND THEN GO IN THE ROOM, AND I
5 FINALLY DID FIND IT.

6 Q. AND IT WAS AT THAT TIME WHEN MR. AUSTIN CAME TO YOUR
7 DOOR, YOU SHOT THROUGH THE DOOR AND SHOT HIM, DIDN'T YOU?

8 A. NO, SIR. THAT'S NOT CORRECT.

9 Q. BULLETS FROM YOUR .32 CALIBER WENT THROUGH THE DOOR, DID
10 THEY NOT?

11 A. SIR, I HAD -- WHEN I WAS SHOOTING, I NEVER SHOT THROUGH
12 THE DOOR UNTIL I FELL BEHIND THE BED AND HAD TO SHOOT OUT
13 WHEN I HEARD SOME PEOPLE OUT THERE. THAT'S WHEN I SHOT THE
14 DOOR. I DIDN'T SHOOT -- HOW AM I GOING TO SEE HIM THROUGH
15 THE DOOR?

16 THE COURT: JUST A MOMENT. DO YOU WANT TO COME AROUND?

17 MR. COLLINS: NO, YOUR HONOR.

18 THE COURT: ALL RIGHT. GIVE THE EXHIBIT NUMBER FOR THE
19 RECORD.

20 MR. CATHCART: YES, SIR. I APOLOGIZE.

21 BY MR. CATHCART:

22 Q. THIS IS STATE'S EXHIBIT NUMBER 22. THIS IS SHOWING A
23 SPRAY OF SHOTGUN GOING ACROSS THE DOOR; CORRECT?

24 A. YES, SIR.

25 Q. BECAUSE THAT'S BACK WHEN IT WAS OPEN WHEN YOU WERE IN

1 THAT ROOM SHOOTING OUT; CORRECT?

2 A. PROBABLY.

3 Q. AND THESE ARE TWO BULLETS COMING STRAIGHT OUT; CORRECT?

4 A. YES, SIR, THAT LOOKS LIKE IT.

5 Q. BUT THE DOOR WAS SHUT; RIGHT?

6 A. WHEN THE DOOR WAS SHUT.

7 Q. AFTER YOU SHOT HIM THROUGH THE DOOR, YOU WENT OUT
8 THERE---

9 A. I DIDN'T SHOOT HIM THROUGH THE DOOR.

10 Q. ---AND FOUND HIM AND SHOT HIM---

11 MR. COLLINS: OBJECTION, YOUR HONOR.

12 THE WITNESS: I DIDN'T SHOOT HIM---

13 THE COURT: JUST A MOMENT.

14 THE WITNESS: ---THROUGH THE DOOR.

15 THE COURT: JUST A MOMENT.

16 MR. COLLINS: THE SOLICITOR IS BEING VERY ARGUMENTATIVE
17 AT THIS POINT.

18 THE COURT: CROSS-EXAMINATION. STEP BEHIND THE ROSTRUM.
19 ASK A QUESTION.

20 BY MR. CATHCART:

21 Q. IT WAS AT THAT POINT AFTER YOU SHOT HIM THROUGH THE DOOR
22 YOU WENT OUT LOOKING FOR HIM; CORRECT?

23 A. NO, SIR, I DIDN'T SHOOT HIM -- I COULDN'T -- I DIDN'T
24 KNOW HE WAS ON THE OTHER SIDE OF THE DOOR. HE WAS IN THE
25 ROOM WHEN I SHOT HIM. HE WASN'T -- IF HE WAS OUTSIDE THE

1 DOOR, WHAT WOULD I NEED TO SHOOT HIM -- IF HE WAS LOCKED
2 OUTSIDE THE DOOR, WHY WOULD I SHOOT HIM?

3 Q. SHOWING OFF YOUR NEW GUNS; RIGHT?

4 A. I DON'T -- WHAT DO I WANT TO SHOW OFF GUNS FOR? I'M A
5 GROWN MAN. I KNOW -- WHAT DO I NEED TO SHOW -- THEY AIN'T NO
6 GUNS REALLY TO SHOW OFF. HEY, WHAT'S SO SPECIAL ABOUT THEM?
7 THEY AIN'T NOTHING TO SHOW OFF TO NOBODY.

8 Q. THOSE ARE THE GUNS THAT KILLED DANIEL AUSTIN, AREN'T
9 THEY?

10 A. YES, SIR, THOSE ARE THE GUNS THAT KILLED DANIEL AUSTIN.

11 Q. YOU BOUGHT THEM FOR TARGET PRACTICE; RIGHT?

12 A. TARGET PRACTICE AND PROTECTION.

13 Q. YOU GOT YOUR AMMO THAT DAY; CORRECT?

14 A. I BELIEVE IT WAS THAT DAY; YES, SIR.

15 Q. AND AT THAT POINT YOU BROUGHT YOUR TARGET TO YOUR ROOM;
16 RIGHT?

17 A. NO, SIR, I DIDN'T BRING MY TARGET TO THE ROOM. I WAS
18 TRYING TO GET AWAY FROM DANIEL AUSTIN. I DIDN'T WANT NOTHING
19 TO DO WITH HIM. I DIDN'T DO DRUGS LIKE THAT. THE ONLY THING
20 I DONE WAS MY PRESCRIPTION MEDICINE, AND I WAS TRYING TO GET
21 AWAY FROM DANIEL AUSTIN.

22 MR. CATHCART: NO FURTHER QUESTIONS, YOUR HONOR.

23 THE COURT: REDIRECT?

24 MR. COLLINS: THANK YOU, YOUR HONOR.

25

REDIRECT EXAMINATION

BY MR. COLLINS:

Q. WAS THIS A TRAUMATIC EXPERIENCE FOR YOU, MR. BRYANT?

A. YES.

Q. IT WAS VERY EMOTIONAL?

A. YES.

Q. WAS IT SO EMOTIONAL YOU TRIED TO KILL YOURSELF?

A. YES, SIR.

Q. AND WAS THE DOOR SHUT WHEN YOU SHOT AT DANIEL INSIDE OF YOUR ROOM?

A. WHEN I SHOT -- WHEN I SHOT DANIEL, THE DOOR WAS SHUT. DANIEL WAS IN THE ROOM, AND I SHOT WITH THE PISTOL. YES, SIR.

Q. WAS DANIEL IN BETWEEN YOU AND THE DOOR WHEN YOU SHOT AT DANIEL?

A. EXCUSE ME?

Q. WAS DANIEL IN BETWEEN YOU AND THE DOOR?

A. YEAH, HE WAS IN BETWEEN ME AND THE DOOR. YES, SIR. I HAD NO WAY OUT.

MR. COLLINS: THANK YOU.

THE COURT: RE CROSS LIMITED TO REDIRECT?

MR. CATHCART: THANK YOU, YOUR HONOR.

THE COURT: COME AROUND.

RECROSS EXAMINATION

1
2 BY MR. CATHCART:

3 Q. THIS IS STATE'S EXHIBIT NUMBER 109. YOU TESTIFIED THAT
4 WHEN YOU SHOT MR. AUSTIN YOU HAD JUST GOT THE GUN OUT OF THE
5 NIGHTSTAND; CORRECT?

6 A. YES, SIR. WITH THE PISTOL, YES, SIR.

7 Q. AND HE WAS COMING AT YOU STEADY; CORRECT?

8 A. YES, SIR.

9 Q. AND BY THE TIME YOU TURNED AROUND AND WAS AIMING THAT
10 GUN AT HIM, HE WAS AT THE EDGE OF YOUR BED; CORRECT?

11 A. HE WAS AT THE FOOT OF THE BED; YES, SIR.

12 Q. YOU WERE SITTING HERE?

13 A. YES, SIR.

14 Q. HE'S STANDING HERE?

15 A. A LITTLE FURTHER BACK.

16 Q. HERE?

17 A. A LITTLE FURTHER BACK. HE WAS STANDING RIGHT ALONG IN
18 HERE.

19 Q. OVER HERE NOW.

20 A. WELL, RIGHT ALONG IN HERE.

21 Q. BUT THE DOOR IS OVER HERE; CORRECT?

22 A. YES, SIR.

23 Q. NOT IN THE LINE OF FIRE AS YOU PUT SIX SHOTS INTO HIM;
24 CORRECT?

25 A. THE DOOR IS OVER THERE. THE DOOR IS SHUT; YES, SIR.

1 Q. BUT IT'S NOT IN THE LINE OF FIRE, IS IT, WHEN YOU'RE
2 PUTTING THOSE BULLETS IN HIM, IS IT?

3 A. DID THE BULLETS HIT THE DOOR THEN? NO, SIR. WHEN I
4 SHOT AT HIM, THE DOOR -- I SHOT AT HIM. I WASN'T SHOOTING AT
5 THE DOOR.

6 Q. THAT'S RIGHT. YOU EMPTIED THAT GUN; RIGHT?

7 A. YES, SIR.

8 MR. CATHCART: NO FURTHER QUESTIONS.

9 THE COURT: TAKE THE MICROPHONE. YOU MAY RETURN TO
10 COUNSEL TABLE. MR. COLLINS, CALL YOUR NEXT WITNESS.

11 MR. COLLINS: BEG THE COURT'S INDULGENCE, YOUR HONOR.

12 (WHEREUPON, AN OFF-THE-RECORD DISCUSSION TAKES PLACE
13 BETWEEN MR. COLLINS AND MR. BRYANT.)

14 MR. COLLINS: YOUR HONOR, MAY WE APPROACH VERY BRIEFLY?

15 THE COURT: COUNSEL, APPROACH.

16 (WHEREUPON, A BENCH CONFERENCE WAS HELD.)

17 THE COURT: CALL YOUR NEXT WITNESS, MR. COLLINS.

18 MR. COLLINS: AT THIS TIME THE DEFENSE RESTS, YOUR
19 HONOR.

20 THE COURT: VERY WELL. IS THERE ANY REPLY TESTIMONY
21 FROM THE STATE OF SOUTH CAROLINA?

22 MR. CATHCART: NONE FROM THE STATE, YOUR HONOR.

23 THE COURT: VERY WELL. MR. FOREMAN AND LADIES AND
24 GENTLEMEN OF THE JURY, YOU'VE HEARD THE EVIDENCE IN THE CASE,
25 BUT YOU HAVE NOT HEARD THE CLOSING ARGUMENTS OF THE ATTORNEYS

1 YOU IN THE MORNING. - THANK YOU VERY MUCH.

2 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT FOR THE
3 DAY AT 4:28 P.M.)

4 THE COURT: ARE THERE ANY MATTERS OF LAW AT THE
5 CONCLUSION OF ALL THE EVIDENCE FROM THE DEFENDANT?

6 MR. COLLINS: YOUR HONOR, AGAIN WE WOULD RENEW ALL
7 PREVIOUS MOTIONS AND OBJECTIONS.

8 THE COURT: ON THE SAME GROUNDS THAT YOU PROVIDED TO THE
9 COURT AT THE CLOSE OF THE STATE'S CASE. IS THAT CORRECT, MR.
10 COLLINS?

11 MR. COLLINS: YES, YOUR HONOR.

12 THE COURT: AND FOR THE REASONS THAT I ENUNCIATED AFTER
13 HEARING ARGUMENT FROM THE STATE AT THE CLOSE OF THE STATE'S
14 CASE, YOUR MOTION FOR A DIRECTED VERDICT AT THE CLOSE OF ALL
15 THE EVIDENCE ON THE SAME GROUNDS MADE AT THE CLOSE OF THE
16 STATE'S CASE IS RESPECTFULLY DENIED.

17 MR. COLLINS: THANK YOU, YOUR HONOR.

18 THE COURT: COUNSEL, I'D LIKE TO HAVE A CHARGE
19 CONFERENCE WITH YOU IN MY CHAMBERS. I THINK IT IS IMPORTANT
20 THAT BOTH OF YOU, BEFORE YOU GO HOME TONIGHT, HAVE AN IDEA OF
21 WHAT I'M THINKING ABOUT THE CHARGE IN ORDER THAT YOU CAN
22 ADEQUATELY PREPARE YOUR CLOSING ARGUMENTS ON BEHALF OF EACH
23 SIDE IN THIS CASE IN THE MORNING. SO I'M GOING TO NEED TO
24 SEE YOU IN CHAMBERS. I HAVE ALL OF YOUR REQUESTS TO CHARGE
25 NOW. IS THAT CORRECT FROM THE STATE?

1 MR. CATHCART: THAT IS CORRECT FROM THE STATE, YOUR
2 HONOR.

3 THE COURT: I HAVE ALL OF THE DEFENDANT'S REQUEST TO
4 CHARGE NOW. IS THAT CORRECT FROM THE DEFENDANT, MR. LEDDY?

5 MR. LEDDY: YES, YOUR HONOR.

6 THE COURT: AND YOU'VE EXCHANGED YOUR REQUESTS TO CHARGE
7 WITH EACH OTHER. IS THAT CORRECT FROM THE STATE?

8 MR. CATHCART: YES, YOUR HONOR.

9 THE COURT: IS THAT CORRECT FROM THE DEFENDANT?

10 MR. LEDDY: YES, YOUR HONOR.

11 THE COURT: ALL RIGHT. THEN I'M GOING TO NEED TO SEE
12 YOU. SO THAT WE CAN PLAN FOR TOMORROW, MY CHARGE I ESTIMATE
13 WILL BE BETWEEN 20 AND 30 MINUTES. BECAUSE THE DEFENDANT HAS
14 INTRODUCED EVIDENCE DURING THE TRIAL OF THIS CASE, THE STATE
15 WILL HAVE CLOSING ARGUMENT. MR. CATHCART, I'M ASSUMING THAT
16 YOU'RE GOING TO MAKE THE CLOSING. IS THAT CORRECT?

17 MR. CATHCART: THAT IS CORRECT, YOUR HONOR.

18 THE COURT: ALL RIGHT. I'M ASSUMING YOU CAN DO IT IN 30
19 MINUTES. IS THAT CORRECT?

20 MR. CATHCART: I DON'T THINK I'VE EVER BEEN THAT LONG.

21 THE COURT: WELL, MR. CATHCART, I'LL HELP YOU THERE
22 BECAUSE I HAVE A LITTLE REMINDER SYSTEM THAT I'VE USED ONCE
23 YOU TELL ME THAT'S SUFFICIENT. WHEN YOU GET WITHIN FIVE
24 MINUTES, YOU WILL HEAR THE FAMILIAR (THE JUDGES MAKES A
25 TAPPING SOUND) TO LET YOU KNOW THAT YOU'VE GOT FIVE MORE

1 MINUTES. I DON'T STOP ANY LAWYER RIGHT ON THE MONEY, BUT YOU
2 NEED TO THINK ABOUT THE FACT THAT YOU'RE BEING REMINDED OF
3 THE TIME SO THAT YOU CAN CONCLUDE IT. WHO IS GOING TO ARGUE
4 FOR THE DEFENDANT?

5 MR. COLLINS: I AM, YOUR HONOR.

6 THE COURT: MR. COLLINS, I ASSUME THAT YOU ALSO CAN DO
7 IT IN 30 MINUTES.

8 MR. COLLINS: I'VE NEVER GOTTEN CLOSE TO 30 BEFORE SO...

9 THE COURT: ALL RIGHT. GOOD. YOU WILL ALSO GET THE
10 SAME REMINDER AS MR. CATHCART. NOW, THERE WAS SOME
11 DISCUSSION IN MY CHAMBERS EARLIER TODAY THAT YOU MAY WANT TO
12 BIFURCATE THE ARGUMENT. WE DISCUSSED IT WITHOUT CONSENSUS.
13 HAVE THERE BEEN ANY AGREEMENT OF COUNSEL ON THAT OR IS THERE
14 GOING TO BE JUST ONE PERSON ARGUING FOR EACH SIDE?

15 MR. CATHCART: I BELIEVE AFTER DISCUSSION, YOUR HONOR,
16 WE'LL JUST DO ONE PERSON FOR EACH SIDE.

17 THE COURT: VERY WELL.

18 MR. LEDDY: YOUR HONOR, IF THEY CHANGE THEIR MINDS, IT'S
19 OKAY WITH ME.

20 THE COURT: MR. LEDDY, I WANT TO THANK YOU FOR YOUR
21 COMPLETE COOPERATION.

22 MR. LEDDY: YES, SIR.

23 THE COURT: ALL RIGHT. COUNSEL, I'LL TAKE YOUR REQUESTS
24 TO CHARGE AND I'LL SEE YOU IN CHAMBERS. AND IF MY INTENTION
25 -- AND I'LL GIVE YOU -- IF YOU NEED A MOMENT WITH YOUR

1 CLIENT, I'LL GIVE YOU THAT, BUT I WANT TO SEE YOU IN
2 CHAMBERS. WE'RE GOING TO RESUME AND COMPLETE THE TRIAL OF
3 THIS CASE STARTING PROMPTLY AT 9:30 A.M. IN THE MORNING.
4 COURT STANDS ADJOURNED 'TIL 9:30.

5 (WHEREUPON, THE TRIAL CONCLUDED FOR THE DAY AT 4:32 P.M.
6 AND RESUMED THE FOLLOWING DAY, JUNE 12, 2008, AS FOLLOWS.)

7 THE COURT: GOOD MORNING. THANK YOU. PLEASE BE SEATED.
8 GOOD MORNING, COUNSEL. STATE READY TO PROCEED?

9 MR. CATHCART: THE STATE IS READY TO PROCEED, YOUR
10 HONOR.

11 THE COURT: THE DEFENDANT READY TO PROCEED?

12 MR. COLLINS: THE DEFENSE IS READY.

13 THE COURT: GOOD MORNING, SOLICITOR CODFISH. PLEASURE
14 TO HAVE YOU IN MY COURT. ALL RIGHT. LET ME PUT ON THE
15 RECORD NOW THAT LAST EVENING I SPENT SOME TIME WITH ATTORNEYS
16 FOR BOTH SIDES IN THIS CASE, AND THEY HAVE BOTH REVIEWED THE
17 VERDICT FORM IN THIS CASE AND BOTH AGREED TO THE VERDICT
18 FORM. I HAVE BEEN OVER MY ENTIRE CHARGE WITH BOTH SIDES.
19 THEY ARE AWARE NOW OF EVERYTHING THAT I'M GOING TO CHARGE.

20 MR. CATHCART WILL ARGUE FOR THE STATE, AND MR. COLLINS
21 WILL ARGUE FOR THE DEFENDANT. MR. COLLINS WILL ARGUE FIRST.
22 BOTH SIDES WILL HAVE 30 MINUTES. AFTER THEY HAVE USED -- IF
23 THEY USE UP 25, THEY WILL HEAR THE FAMILIAR (THE JUDGE MAKES
24 A TAPPING SOUND) LETTING THEM KNOW THAT THEY HAVE FIVE MORE
25 MINUTES TO WRAP IT UP SO THAT WE CAN TRY TO HOLD IT TO

1 APPROXIMATELY 30 MINUTES. I HAVE TOLD THEM I WOULD BE
2 FLEXIBLE ON THE TIME.

3 I AM GOING TO CHARGE SELF-DEFENSE. WE DISCUSSED IT AT
4 LENGTH LAST NIGHT. I'LL PUT ON THE RECORD THAT THERE WAS A
5 LENGTHY DISCUSSION IN CHAMBERS BY ALL COUNSEL. THE CASE
6 DECIDED IN THE PAST YEAR WHICH I PROVIDED TO THEM IS STATE
7 VERSUS SLATER. WE ALSO HAD A LENGTHY DISCUSSION OF THE
8 ELEMENTS OF SELF-DEFENSE AND WHETHER OR NOT THE EVIDENCE IN
9 THIS CASE SUPPORTS A CHARGE OF SELF-DEFENSE. I MADE THE
10 DECISION TO CHARGE IT IN THIS CASE, AND BOTH SIDES ARE NOW
11 AWARE OF -- I READ THEM MY ENTIRE CHARGE IN CHAMBERS
12 YESTERDAY EVENING SO THAT THEY COULD PREPARE THEIR ARGUMENTS
13 FOR TODAY. HAVE I ACCURATELY STATED WHAT OCCURRED IN
14 CHAMBERS INSOFAR AS COUNSEL FOR THE STATE IS CONCERNED?

15 MR. CATHCART: YOU HAVE, YOUR HONOR.

16 THE COURT: INSOFAR AS COUNSEL FOR THE DEFENDANT IS
17 CONCERNED?

18 MR. LEDDY: YES, YOUR HONOR. I'D JUST LIKE TO ADD TO
19 THE RECORD THAT WE DID REQUEST IN OUR CHARGES HABITATION
20 WHICH YOUR HONOR IS NOT GOING TO CHARGE, AND I'D JUST LIKE TO
21 PUT THAT ON THE RECORD. AND ALSO, YOUR HONOR, IF IT HASN'T
22 BEEN MADE A COURT'S EXHIBIT YET, WE'D LIKE TO MAKE OUR JURY
23 CHARGE INSTRUCTION REQUEST A COURT'S EXHIBIT.

24 THE COURT: HOLD ON A SECOND BECAUSE I LEFT THEM IN
25 CHAMBERS. BE HAPPY TO MAKE THEM -- YOU'VE GOT A COPY, DON'T

1 YOU, MR. CATHCART? I ASKED YOU IN---

2 MR. CATHCART: WE HAVE HAD A COPY, YOUR HONOR. WE DON'T
3 HAVE IT WITH US AT THIS TIME.

4 THE COURT: HOLD ON A SECOND AND I'LL GET ONE, AND WE'LL
5 MAKE IT A COURT'S EXHIBIT AT YOUR REQUEST.

6 MR. LEDDY: THANK YOU, YOUR HONOR.

7 MR. CATHCART: BUT I RECALL WHAT HE'S TALKING ABOUT, AND
8 I'VE BEEN INFORMED WE DO HAVE A COPY.

9 THE COURT: MS. MCDUFFIE, THANK YOU FOR BEING ABLE TO
10 LOCATE THINGS FOR MR. CATHCART.

11 MS. MCDUFFIE: ANY TIME, YOUR HONOR.

12 THE COURT: IS THIS THE ONE WE CHECKED ON? THE
13 DEFENDANT'S REQUESTS TO CHARGE SUBMITTED TO ME UNDER THE
14 SIGNATURE OF MR. COLLINS DATED JUNE THE 11TH DO NOT HAVE
15 NUMBERS ON THEM. I AM HANDING THESE TO THE COURT REPORTER.
16 THEY DON'T EVEN HAVE PAGE NUMBERS ON THEM. OH, EXCUSE ME.
17 YOU DO HAVE NUMBERS ON THEM. YOU TYPED IT -- THE WORD OUT
18 RATHER THAN PUTTING THE NUMBER. 1 THROUGH 16. EXCUSE ME. 1
19 THROUGH 22. AND YOU'RE REFERRING TO WHAT YOU NUMBERED AS
20 NUMBER -- BECAUSE I'M CHARGING -- MOST OF THIS IS COVERED IN
21 MY GENERAL CHARGE THAT I WENT OVER WITH YOU. I JUST HAD IT.

22 LET ME MAKE SURE -- SO THAT THE RECORD IS COMPLETE ON
23 THIS, THE DEFENDANT REQUESTED THAT I CHARGE WHAT IS
24 DEFENDANT'S REQUEST NUMBER 17 WHICH MR. LEDDY CALLS HIS
25 DEFENSE OF HABITATION. I POINTED OUT TO MR. LEDDY THAT I AM

1 CHARGING AS PART OF MY SELF-DEFENSE CASE AND I POINTED THIS
2 OUT IN CHAMBERS THAT IF THE DEFENDANT IS ON HIS OWN PREMISES
3 THE DEFENDANT HAS NO DUTY TO RETREAT BEFORE ACTING IN
4 SELF-DEFENSE WHICH WILL BE PART OF MY CHARGE. I AM ALSO, AS
5 PART OF MY SELF-DEFENSE CHARGE, CHARGING THE FOLLOWING THINGS
6 IN ADDITION TO THE ELEMENTS AND AN EXPLANATION. I'M CHARGING
7 WORDS ACCOMPANIED BY HOSTILE ACTS, PRIOR DIFFICULTIES, AGE,
8 PRIOR VIOLENCE BY THE VICTIM, THREATS BY THE VICTIM, NO OTHER
9 WAY TO AVOID THE DANGER, AND THEN NO DUTY TO RETREAT IF ON
10 YOUR OWN PREMISES, DEGREE OF FORCE CONTINUING UNTIL THE
11 THREAT OF HARM IS ENDED. I THINK I'VE COVERED EVERYTHING.

12 I DECLINE TO CHARGE YOUR DEFENSE OF HABITATION WHICH IS
13 DEFENDANT'S REQUEST NUMBER 17 WHICH I'M GOING TO NOW HAND TO
14 THE COURT REPORTER AND MAKE A COURT'S EXHIBIT IN THE FORM IN
15 WHICH IT IS WRITTEN BY THE DEFENDANT, BUT I THINK IT'S
16 COVERED BY MY CHARGE. MADAM COURT REPORTER, I HAND YOU
17 DEFENSE REQUEST TO CHARGE AND ASK THAT YOU MAKE IT A COURT'S
18 EXHIBIT.

19 (COURT'S EXHIBIT 6 WAS MARKED FOR IDENTIFICATION ONLY.)

20 **THE COURT:** ANYTHING FURTHER FROM THE DEFENDANT BEFORE
21 WE BRING THE JURY?

22 **MR. LEDDY:** NO, YOUR HONOR.

23 **THE COURT:** ANYTHING FURTHER FROM THE STATE BEFORE WE
24 BRING THE JURY?

25 **MR. CATHCART:** NOTHING FROM THE STATE, YOUR HONOR.

1 **THE COURT:** VERY WELL. WOULD YOU BRING US THE JURY,
2 PLEASE, MR. BILLY?

3 **BAILIFF:** BE GLAD TO, YOUR HONOR.

4 (WHEREUPON, THE JURY WAS BROUGHT INTO OPEN COURT AT 9:42
5 A.M.)

6 **THE COURT:** MR. FOREMAN, LADIES AND GENTLEMEN OF THE
7 JURY, GOOD MORNING TO YOU. THANK YOU FOR BEING ON TIME.
8 WE'LL NOW HEAR THE FINAL ARGUMENTS OF THE ATTORNEYS, FOLLOWED
9 BY MY CHARGE TO YOU ON THE LAW. I ASK THAT YOU GIVE THE
10 ATTORNEYS YOUR CAREFUL CONSIDERATION. MR. COLLINS.

11 **MR. COLLINS:** THANK YOU, YOUR HONOR. GOOD MORNING. MR.
12 LEDDY TOLD YOU AT THE BEGINNING OF THIS CASE THAT THIS CASE
13 IS ABOUT FEAR. IT'S NOT ABOUT MALICE. WE ALSO TOLD YOU YOU
14 WERE GOING TO HEAR FROM THE ONE MAN THAT COULD TELL YOU WHY
15 MR. AUSTIN WAS SHOT. IT TOOK US A LITTLE WHILE TO GET THERE.
16 WE HAD TO GET THROUGH A FEW WITNESSES, BUT YOU HEARD FROM MR.
17 BRYANT.

18 WHAT YOU HAVE TO DO AS A JURY: YOU HAVE TO TAKE IN WHAT
19 YOU HEAR AND EVALUATE ALL THE EVIDENCE AND THE TESTIMONY AND
20 DECIDE DOES THAT OTHER EVIDENCE AND TESTIMONY CORROBORATE
21 WHAT HE SAYS OR DOES IT CONTRADICT. LET'S START BY JUST
22 GOING THROUGH SOME OF THE WITNESSES THAT WE HEARD FROM.
23 WE'LL START WITH MR. CAMPBELL, THE BOUNCER FROM BOTTOMS UP.
24 HE DIDN'T TALK TO ANYBODY ABOUT THE DETAILS OF WHAT HE SAW
25 THAT NIGHT UNTIL 18 TO 20 MONTHS AFTER THIS INCIDENT. THAT'S

1 ALMOST TWO YEARS. MEMORIES CAN CHANGE. NOBODY BOTHERED TO
2 TAKE A WRITTEN STATEMENT FROM HIM THAT NIGHT OR THE NEXT
3 NIGHT.

4 HE TESTIFIED HE WORKED AT THE BOTTOMS UP. LADIES AND
5 GENTLEMEN, IT WASN'T REALLY THE CLASSIEST PLACE IN THE WORLD.
6 IT'S A LOUD, DARK STRIP CLUB, BLACK LIGHTS, LIGHTS GOING
7 EVERYWHERE, DANCERS ON STAGE. THERE'S A BAR. THERE'S A
8 V.I.P. ROOM, AND HIS JOB WAS SECURITY TO WATCH OVER ALL THIS.
9 THERE'S A LOT GOING ON. HE WASN'T SITTING WITH MR. AUSTIN
10 AND MR. BRYANT THAT NIGHT. HE DOESN'T KNOW WHAT THEY WERE
11 TALKING ABOUT. HE WAS JUST THERE.

12 HE ALSO TESTIFIED THAT THEY HAD VIDEO SURVEILLANCE, BUT
13 FOR SOME REASON THE RICHLAND COUNTY SHERIFF'S DEPARTMENT
14 DIDN'T BOTHER TO EVEN ASK THE PEOPLE AT BOTTOMS UP TO GET
15 THAT VIDEO. VIDEOS DON'T CHANGE OVER NINE YEARS. MEMORIES
16 AND TESTIMONY CAN CHANGE, BUT A VIDEO WOULDN'T CHANGE.
17 UNFORTUNATELY WE DON'T HAVE THAT.

18 HE ALSO TESTIFIED THERE WERE OVER A HUNDRED PEOPLE THERE
19 AT A CERTAIN TIME AT THE BOTTOMS UP: OTHER WORKERS,
20 BARTENDERS, DANCERS, OTHER SECURITY PERSONNEL. HE DIDN'T GET
21 ANY WRITTEN STATEMENTS FROM ANY OF THEM. WE DIDN'T HEAR ANY
22 TESTIMONY FROM ANY OF THEM. WE JUST HAVE MR. CAMPBELL AND
23 HIS MEMORIES, ALMOST TWO YEARS AFTER THE FACT IS WHAT HE'S
24 TESTIFIED TO.

25 NEXT UP: NELLIE CONNELL. SHE'S THE NIGHT CLERK AT THE

1 DAYS INN. SHE TOLD YOU JUST RIGHT UP SHE COULDN'T HEAR WHAT
2 THEY WERE SAYING. SHE WAS WATCHING MOST OF THE STUFF ON A
3 VIDEO MONITOR, SIX TO EIGHT CAMERAS AT THE DAYS INN. SHE WAS
4 WATCHING THE DIFFERENT MONITORS. SHE SEEMED REALLY FOCUSED
5 ON THOSE TWO GUYS, TOO, EXTREMELY FOCUSED FOR SAYING THEY
6 WERE JUST ACTING BUDDY-BUDDY.

7 SHE WAS WALKING BACK TO THE BACK DOOR TRYING TO LOOK
8 AROUND THE CORNER, SEEING WHAT THEY WERE UP TO. KIND OF
9 SEEMS STRANGE THAT TWO GUYS ARE WALKING BACK TO THE MOTEL
10 BUDDY-BUDDY. SHE ALSO STATED SHE DIDN'T SEE ANYBODY ELSE IN
11 THE PARKING LOT AT THE DAYS INN. SHE WAS PRETTY FOCUSED ON
12 THESE TWO GUYS, WATCHING THE MONITOR, GOING BACK TO THE BACK
13 DOOR. IS IT POSSIBLE THAT MAYBE SHE MISSED SOMEBODY ELSE
14 ALONG THE OTHER SIX -- SIX TO EIGHT MONITORS WITH THE
15 DIFFERENT CAMERAS? IT'S POSSIBLE. THE VIDEO AT THE DAYS
16 INN. THE TAPE WASN'T RUNNING, SO WE DON'T HAVE THAT EITHER.

17 NOW WE GET TO THE PART WHERE MS. CONNELL -- SHE GAVE A
18 KEY, KEY CARD, TO MR. AUSTIN FOR MR. BRYANT'S ROOM WITHOUT
19 MR. BRYANT'S PERMISSION. SHE KNOWS SHE'S NOT SUPPOSED TO DO
20 THAT. SHE HAS THIS LITTLE SLIP OF PAPER THAT SHE SAID SHE
21 HAD MR. AUSTIN -- SHE WAS GOING TO GET HIM TO SIGN IT.
22 THERE'S NOWHERE FOR ANYBODY TO SIGN ON THIS PIECE OF PAPER.
23 WE DON'T KNOW EXACTLY WHEN SHE WROTE THIS PIECE OF PAPER.
24 JUST THINK ABOUT IT.

25 SHE GIVES THIS KEY CARD TO THIS MAN. AS SOON AS HE

1 WALKS AWAY, ANOTHER MAN COMES UP AND SAYS THE MAN IN THE
2 WHEELCHAIR HAS JUST BEEN ASSAULTED; LET'S GET SOME HELP.
3 WOOPS. MAYBE I SHOULDN'T HAVE GIVEN THAT KEY CARD TO THE GUY
4 IN THE WHEELCHAIR -- TO THAT OTHER MAN. MAYBE I MADE A
5 MISTAKE. AS SHE'S CALLING THE POLICE, SUDDENLY SHE STARTS
6 HEARING GUNSHOTS. UH-OH. NOW SHE KNOWS SHE MADE A MISTAKE.

7 LADIES AND GENTLEMEN, THE DAYS INN IS A VERY BIG
8 CORPORATION. THEY'VE GOT DEEP POCKETS. PEOPLE HAVE
9 SUCCESSFULLY SUED MCDONALD'S FOR SPILLING A CUP OF COFFEE IN
10 THEIR LAP. YOU DON'T THINK SOMEBODY WOULD SUE DAYS INN FOR
11 THIS? SHE HAS A REASON TO HAVE A DIFFERENT VERSION OF EVENTS
12 IN HER HEAD AS FAR AS WHAT HAPPENED. TAKE THAT INTO
13 CONSIDERATION WHEN YOU EVALUATE HER TESTIMONY.

14 NEXT UP IS MR. HAWKINS, THE MAN THAT CAME AND TOLD HER
15 THE MAN IN THE WHEELCHAIR HAS BEEN ASSAULTED. NOW, THE
16 STATE'S THEORY OF THE CASE -- MR. ROSS GAVE A VERY ELABORATE
17 DETAILED ACCOUNT OF WHAT HAPPENED ABOUT LURING THE MAN BACK
18 FROM A BAR AND WAITING -- LYING IN WAIT AND LOOKING THROUGH A
19 PEEPHOLE AND SHOOTING OUT THE DOOR. WHY IN THE WORLD WOULD
20 MR. BRYANT TELL SOMEBODY TO GO CALL HELP FOR POLICE IF HE'S
21 PLANNING ON KILLING SOMEBODY? DOES THAT MAKE ANY SENSE AT
22 ALL? NONE.

23 THEN THEY CALL A BUNCH OF RESPONDING OFFICERS THAT ALL
24 CAME TO THE SCENE. I'M SURE YOU NOTICED WE ASKED EVERY
25 SINGLE ONE OF THEM: WHERE DID YOU GO WHEN YOU GOT THERE

1 AFTER THE FACT? DID YOU SEE MR. AUSTIN GET SHOT? NO. THEY
2 MADE A BIG DEAL ABOUT A BIG SCENE, ALL CARS, POLICE
3 EVERYWHERE. THAT ALL HAPPENED AFTER THE FACT. THERE WAS ONE
4 OFFICER, EX-OFFICER, MS. FLYNN. SHE WAS DEPUTY JARVIS. SHE
5 WAS UP THERE. SHE JUST TESTIFIED TO WHAT SHE REMEMBERED,
6 TOO. SHE WAS BEING HONEST; THAT'S ALL SHE COULD TESTIFY TO.
7 SAID SHE GOT THERE. SHE COULD STILL SMELL THE GUN POWDER.
8 SHE GOT THERE RIGHT AFTER THE SHOOTING HAPPENED.

9 SHE SAID SHE WAS SCARED. IT WAS A SCARY SITUATION. HER
10 PARTNER, DEPUTY BAIRD, WENT UP THERE AND PEEKED AROUND, HEARD
11 GUNSHOTS. HEARD SOME GUNSHOTS RIGHT AFTER THE SHOOTING. SHE
12 ALSO TESTIFIED ON THAT STAND, "I DON'T RECALL IDENTIFYING
13 OURSELVES AS POLICE OFFICERS." THAT'S IMPORTANT. THAT'S
14 WHEN THE ORIGINAL FIRST GUNSHOT WAS FIRED. AFTER THAT IT'S A
15 CRAZY SITUATION, AND WHO KNOWS WHAT'S GOING THROUGH THE MINDS
16 OF EVERYBODY INVOLVED AT THAT POINT?

17 YOU HAVE TO REMEMBER THAT WHEN THE POLICE FINALLY DID
18 ENTER THE ROOM, ANDRE WILLIAMS, COLUMBIA POLICE DEPARTMENT,
19 THE MAN THAT WAS BRAVE ENOUGH TO GO INTO THAT ROOM -- MR.
20 BRYANT DIDN'T RESIST THEM. ONCE THEY CAME IN, HE DIDN'T
21 RESIST.

22 YOU HEARD FROM MR. BRYANT. HE WAS SCARED FOR HIS LIFE.
23 HE'S IN A WHEELCHAIR. HE CAN ONLY DEFEND HIMSELF SO WELL.
24 HE'S ONLY GOT HALF A BODY TO DEFEND HIMSELF. HE HAD JUST
25 BEEN ASSAULTED, JUST BEEN STOMPED IN THE FACE. THIS MAN

1 COMES INTO HIS ROOM UNINVITED, THREATENS TO KILL HIM. AND
2 YOU'RE GOING TO HEAR THE JUDGE INSTRUCT YOU ON THE LAW, AND
3 YOU'RE GOING TO HEAR HE HAS A RIGHT TO CONTINUE FIRING UNTIL
4 THAT THREAT IS GONE. HE HAS A RIGHT TO PROTECT HIS HOME.
5 THIS WAS A MOTEL ROOM, BUT THIS WAS HIS HOME. HE HAD NOWHERE
6 TO GO. THE ONLY WAY OUT OF THAT ROOM IS TO GO THROUGH MR.
7 AUSTIN.

8 NOW, LET'S MOVE OVER TO THE PHYSICAL EVIDENCE BECAUSE IT
9 DOESN'T CHANGE. IT CAN'T LIE. IT DOESN'T CHANGE OVER TIME.
10 IT'S STILL THE SAME. LET'S TALK ABOUT THE BULLET HOLES. I'M
11 NOT GOING TO SHOW YOU THE PICTURES NOW. YOU'LL HAVE TIME TO
12 LOOK AT THEM BACK IN DELIBERATIONS, BUT LOOK CLOSELY AT THE
13 PICTURE OF THE BULLET HOLES AT THE DOOR AND ON THE WALL RIGHT
14 NEXT TO THE DOOR.

15 NOW, LET'S THINK ABOUT IT. IS THAT MORE CONSISTENT WITH
16 -- AS THE STATE WOULD HAVE YOU BELIEVE, IS THAT MORE
17 CONSISTENT WITH SOMEBODY LOOKING THROUGH A PEEPHOLE AND
18 FIRING THROUGH THE DOOR OR IS IT MORE CONSISTENT WITH A MAN
19 BY A BED SHOOTING AT THE MAN AT THE FOOT OF THE BED WHO'S
20 JUST THREATENED TO KILL HIM AND JUST PULLING THE TRIGGER AS
21 QUICKLY AS HE CAN, AS HE'S SCARED FOR HIS LIFE? YOU CAN LOOK
22 AT WHERE THE BULLET HOLES ARE LOCATED AT THE CLOSED DOOR
23 BEHIND HIM. WHICH ONE IS MORE CONSISTENT?

24 IF YOU'RE GOING TO FOLLOW WHAT THE STATE TOLD YOU IN
25 OPENING, HE'S LOOKING THROUGH THE PEEPHOLE AND HE'S GOING TO

1 FIRE HERE, HERE, HERE, AND HERE? THE PICTURES DON'T ADD UP
2 WITH THAT THEORY. FURTHERMORE, THEIR OWN WITNESS WITH ALMOST
3 NINE YEARS TO PREPARE THIS CASE -- THEIR OWN EXPERT WITNESS
4 ON FIREARMS AND BALLISTICS TESTIFIED IF A HOT, MALLEABLE LEAD
5 PROJECTILE GOES THROUGH A WOODEN DOOR, AIN'T NOTHING GOOD CAN
6 HAPPEN TO THAT BULLET IF IT GOES THROUGH THAT DOOR. IT'S
7 GOING TO BE DAMAGED. OKAY?

8 THEY PULLED OUT OF MR. AUSTIN TWO PROJECTILES, ONE FROM
9 THE CHEST. IT HIT A RIB AND BROKE A RIB. IT WAS DAMAGED.
10 THEY COULDN'T I.D. THAT BULLET TO -- SPECIFICALLY TO THIS
11 REVOLVER. HOWEVER, THEY DID PULL A PROJECTILE OUT OF HIS
12 ABDOMEN, AND IT WAS IN SUCH GOOD SHAPE THAT THEY COULD MATCH
13 IT UP EXACTLY TO THAT GUN AND THE RIFLING CHARACTERISTICS ON
14 THAT PROJECTILE.

15 THAT PROJECTILE DIDN'T GO THROUGH A DOOR. MR. AUSTIN
16 WAS NOT SHOT THROUGH A DOOR. THEIR OWN WITNESS CONTRADICTS
17 THAT STORY. AND IF THEY'RE GOING TO GET UP HERE IN CLOSING
18 AND CHANGE THAT THEORY AFTER THEY'VE HAD NINE YEARS TO
19 EVALUATE THIS CASE, THERE'S YOUR REASONABLE DOUBT. IF THEY
20 CAN'T SETTLE ON A THEORY AND THEY'RE GOING TO CHANGE IN A
21 MATTER OF THREE DAYS, THAT'S YOUR REASONABLE DOUBT AND YOUR
22 JOB IS EASY. YOU KNOW THERE'S A REASONABLE DOUBT BECAUSE
23 THEY'VE GOT IT. THE VERDICT IS NOT GUILTY THEN. SO WE KNOW
24 NOW HE WASN'T SHOT THROUGH A DOOR.

25 HE MAY GET UP HERE AND ARGUE AS WELL THAT THERE'S NO

1 BLOOD IN ROOM 129 ON THE FLOOR, SO, THEREFORE, MR. AUSTIN
2 WASN'T SHOT IN THE ROOM. IF HE WAS SHOT IN THE ROOM, THERE
3 WOULD BE BLOOD ON THE CARPET.

4 WE ALSO HEARD ALL THE TESTIMONY FROM SEVERAL DIFFERENT
5 PEOPLE THAT MR. BRYANT SHOT HIMSELF IN THE RIB CAGE, NOT AT
6 THE LOVE HANDLE. YOU CAN LOOK AT THE PICTURE. THE SOLICITOR
7 WOULD HAVE YOU BELIEVE THAT HE WAS SHOT IN THE LOVE HANDLE,
8 BUT IT'S IN THE RIB CAGE. THEY PULLED THE PROJECTILE OUT OF
9 HIS CHEST. SOME OF THE OFFICERS THAT CAME IN DIDN'T EVEN
10 NOTICE THAT HE WAS SHOT, AND THEN YOU LOOK AT THE PICTURES IN
11 THE ROOM? THERE'S NO BLOOD ON THE CARPET FROM WHERE HE WAS.
12 AND HE WAS DOWN A LOT LONGER THAN MR. AUSTIN WAS, SAME GUN,
13 ALMOST THE SAME LOCATION WHERE HE WAS SHOT. AND THEN IN THE
14 AUTOPSY WHEN THEY EVALUATED MR. AUSTIN, ONE-HALF TO TWO-
15 THIRDS OF HIS BLOOD WAS IN HIS CHEST CAVITY. HE BLED IN. HE
16 DIDN'T BLEED OUT.

17 WHAT THE SOLICITOR I'M SURE IS GOING TO MAKE A BIG DEAL
18 ABOUT -- HE'S BEEN COCKING THAT SHOTGUN ALL WEEK LONG,
19 FLASHING IT AROUND. HE'S GOING TO SAY: WHY DID HE HAVE TO
20 GO AFTER HIM WITH THE SHOTGUN? MR. AUSTIN WAS WITH TWO
21 FRIENDS EARLIER THAT NIGHT; MR. BRYANT KNEW THAT. HE SAID HE
22 FELT LIKE THERE WAS SOMEBODY ELSE AROUND WHEN HE WENT BACK TO
23 THE MOTEL. HE DOESN'T KNOW IF MR. AUSTIN HAS A GUN, DOESN'T
24 KNOW IF MR. AUSTIN HAS A KNIFE. HE DOESN'T KNOW IF MR.
25 AUSTIN IS COMING BACK IN THE ROOM. HE WENT DOWN, GOT UP AND

1 WENT OUT. HE MADE THE DECISION TO GO OUT THERE AND END THE
2 THREATS TO HIS LIFE. HE WAS SCARED. EMOTIONS WERE RUNNING
3 HIGH. THE ADRENALINE WAS HIGH. IT WAS A VERY STRESSFUL
4 SITUATION.

5 NOW, THE STATE -- THEY HAVE THE BURDEN IN THIS CASE.
6 SITTING AT THAT TABLE IS MORE THAN JUST THREE PEOPLE. IT'S
7 THE ENTIRE STATE OF SOUTH CAROLINA AND ALL ITS RESOURCE AND
8 ALL ITS POWER, AND IT'S A HEAVY BURDEN TO MEET. BUT THAT'S
9 WHAT MAKES OUR JUSTICE SYSTEM BECAUSE THEY HAVE TO PROVE
10 BEYOND A REASONABLE DOUBT EVERY ELEMENT OF THIS CRIME. THAT
11 WHICH MAKES A REASONABLE PERSON HESITATE TO ACT, THE JUDGE IS
12 GOING TO INSTRUCT YOU THAT'S WHAT REASONABLE DOUBT IS. THEY
13 HAVE TO PROVE EVERY ELEMENT OF THIS CRIME.

14 NOW, SOME OF THE ELEMENTS ARE EASY. WE TOLD YOU FROM
15 THE BEGINNING HE DIED OF A GUNSHOT WOUND. WE TOLD YOU FROM
16 THE BEGINNING MR. BRYANT FIRED THAT GUN. WHAT THEY HAVE TO
17 PROVE TO YOU IS: WAS THERE MALICE?

18 WHAT IN THIS CASE PROVES MALICE? THE ONLY PERSON THERE
19 WAS MR. BRYANT AND MR. AUSTIN. EVERYBODY ELSE CAME
20 AFTERWARDS. LOOK AT THE PHYSICAL EVIDENCE. IT DOESN'T MATCH
21 UP WITH THEIR THEORY. THAT'S THE REASON MR. ROSS GOT UP HERE
22 AND GAVE HIS WHOLE COCK AND BULL STORY ABOUT WHERE DIFFERENT
23 SHOTS WERE FIRED AND FROM WHERE THEY WERE FIRED AND WHEN HE
24 SHOT THEM. THEY DIDN'T PUT UP ANY WITNESSES TO TESTIFY TO
25 THAT. THAT'S JUST SOMETHING HE CAME UP WITH IN OPENING. IN

1 FACT, THEIR ONLY EXPERT WITNESS CONTRADICTED WHAT HE SAID.
2 HE PUT THAT STORY IN ABOUT LYING IN WAIT AND SHOOTING THROUGH
3 THE PEEPHOLE BECAUSE THAT'S HOW THEY'RE TRYING TO SAY --
4 THAT'S WHAT THEY'RE SAYING THE MALICE IS BECAUSE THEY KNOW
5 THEY DON'T HAVE ANYTHING THAT PROVES MALICE.

6 THEY ALSO HAVE TO DISPROVE BEYOND A REASONABLE DOUBT
7 SELF-DEFENSE. THAT'S THEIR BURDEN BEYOND A REASONABLE DOUBT.
8 THE REASON THEY CAN'T PROVE MALICE AND THE REASON THEY'RE NOT
9 GOING TO BE ABLE TO DISPROVE SELF-DEFENSE IS BECAUSE THIS
10 CASE IS ABOUT FEAR. THIS KILLING WAS IN SELF-DEFENSE. IT'S
11 NOT A MURDER.

12 MR. CATHCART IS GETTING READY TO GET UP HERE. I'M SURE
13 HE'S GOING TO PICK THOSE GUNS UP AND HE'S GOING TO TRY TO
14 PLAY ON YOUR EMOTIONS. HE'S GOING TO PLAY ON YOUR EMOTIONS,
15 AND THAT'S HOW HE'S GOING TO CREATE MALICE. THIS CASE IS
16 ABOUT THE EVIDENCE. IT'S ABOUT YOUR EVALUATION OF THE
17 EVIDENCE. THAT'S WHY WE'RE ASKING FOR A VERDICT OF NOT
18 GUILTY.

19 THE COURT: MR. CATHCART?

20 MR. CATHCART: MAY IT PLEASE THE COURT?

21 THE COURT: YES, SIR.

22 MR. CATHCART: GOOD MORNING. I WANT TO FIRST THANK
23 Y'ALL FOR THE ATTENTION Y'ALL HAVE SHOWN IN THIS CASE NOT
24 JUST TO ME BUT MS. MCDUFFIE AND MR. ROSS AND MOST IMPORTANTLY
25 TO THE WITNESSES IN THIS CASE. THE WITNESSES ARE NOT PEOPLE

1 WHO CHOOSE TO COME IN HERE BUT PEOPLE WHO ARE CHOSEN.
2 THEY'RE NOT CHOSEN BY THE STATE. THEY'RE CHOSEN BY THAT MAN,
3 THOMAS BRYANT. HE PUT THEM IN THE SITUATION TO OBSERVE HIS
4 ACTIONS AND TO OBSERVE WHAT HE DID AND TO ANALYZE THE
5 CONSEQUENCES OF HIS ACTIONS. I WANT TO THANK Y'ALL FOR
6 WATCHING AND LOOKING AT THESE PEOPLE CAREFULLY BECAUSE THEY
7 ARE THE EVIDENCE IN THIS CASE.

8 YOU PEOPLE ARE THE JUDGES OF THE FACTS. THE JUDGE IS
9 THE JUDGE OF THE LAW AND HE'S GOING TO TELL YOU WHAT THE LAW
10 IS, BUT YOU ARE THE ONLY PEOPLE WHO WILL BE ABLE TO SAY WHAT
11 OCCURRED ON JULY 23RD AT 3:00. YOU DO THAT FROM THE EVIDENCE
12 THAT COMES OFF THIS STAND.

13 THE STATE HAS THE BURDEN IN THIS CASE, AND THAT'S THE
14 WAY IT SHOULD BE. WE'RE ACCUSING A MAN OF GUNNING ANOTHER
15 MAN DOWN MALICIOUSLY, SENSELESSLY. IT IS OUR BURDEN TO SAY
16 -- TO PROVE TO YOU THAT HE ACTUALLY DID IT, AND WE DO THAT BY
17 PUTTING FORWARD THESE WITNESSES.

18 NOW, THE STATE HAS CHARGED THE DEFENDANT WITH THE CRIME
19 OF MURDER. MURDER IS DEFINED AS THE UNLAWFUL KILLING OF
20 ANOTHER WITH MALICE AFORETHOUGHT, EITHER EXPRESS OR IMPLIED.
21 MALICE IS DEFINED BASICALLY, LADIES AND GENTLEMEN, AS AN
22 INTENTIONAL -- INTENTIONAL ACT OF VIOLENCE. RECKLESS
23 DISREGARD FOR THE WELFARE OF ANOTHER PERSON. MALICE MAKES A
24 KILLING NOT AN ACCIDENT; IT MAKES IT A PURPOSEFUL ACT. IT
25 CONDUCTS -- CONDUCT THAT SIGNIFIES A CONSCIOUS EFFORT OF

1 CREATING A HIGH RISK OF SERIOUS BODILY INJURY TO ANOTHER SUCH
2 AS THE USE OF A DEADLY WEAPON, AND THERE'S NO TIME LIMIT TO
3 MALICE. MALICE CAN BE -- HE DOESN'T HAVE TO THINK ABOUT IT,
4 DOESN'T HAVE TO BE PUT OUT HOURS BEFORE. IT CAN ATTACH AS
5 SOON AS HE PULLS THAT TRIGGER.

6 MR. COLLINS SAID I'M GOING TO BE PICKING UP THIS SHOTGUN
7 AND I WILL BECAUSE MALICE ATTACHED WHEN HE PICKED THIS
8 SHOTGUN UP AND MALICE ATTACHED WHEN HE PICKED THIS WEAPON UP.
9 MALICE ATTACHED WHEN HE AIMED THE WEAPON AT THE VICTIM AND
10 WHEN THE VICTIM STOPPED AND WAS AT HIS MERCY BY HIS OWN
11 STORY. MALICE ATTACHED WHEN HE FIRED THE FIRST SHOT, THE
12 SECOND SHOT, AND WHEN HE EMPTIED THIS GUN.

13 BY HIS OWN STORY WHEN THE VICTIM RAN AWAY AT THAT POINT
14 MALICE ATTACHED WHEN HE GOES AND GETS HIS SHOTGUN. HE
15 DOESN'T CLOSE THE DOOR. HE DOESN'T GET ON THE PHONE AND SAY,
16 "HELP ME. SOMEBODY HELP ME." HE GOES HUNTING, AND MALICE IS
17 ATTACHED. WHEN HE FIRES THE FIRST SHOT, WHEN HE RACKED THAT
18 GUN AND CONTINUES TO EMPTY IT INTO THE VICTIM, THAT IS
19 MALICE.

20 I'M NOT ASKING YOU -- I'M NOT SHOWING YOU THIS GUN TO
21 PORTRAY -- TO LOOK ON YOUR EMOTIONS. I'M SHOWING YOU BECAUSE
22 EACH AND EVERY TIME HE FIRED INTO AN UNARMED MAN WHO THE ONLY
23 THING HE DID WAS TRY TO GET AWAY FROM HIM BY HIS OWN STORY,
24 MALICE ATTACHES.

25 THE JUDGE IS GOING TO TALK -- CHARGE YOU ON VOLUNTARY

1 INTOXICATION. THERE'S TESTIMONY IN THIS CASE THAT THE
2 DEFENDANT HAD THREE JIM BEAMS WITH COKE. HE ALSO DRANK A
3 GLASS OF WINE. HE THEN TOPPED THOSE OFF WITH A PERCOCET AND
4 A VALIUM. THEN HE DECIDED TO GO TO THE BOTTOMS UP CLUB WHERE
5 HE DRANK HEAVILY.

6 HE GOT SO DRUNK, ACCORDING TO JOHN CAMPBELL -- REMEMBER
7 JOHN CAMPBELL SAT THERE -- THEY WERE TALKING ABOUT HOW HE
8 COULDN'T REMEMBER ANYTHING. JOHN CAMPBELL ALWAYS TOOK CARE
9 OF MR. BRYANT BY HIS OWN STATEMENT, ALWAYS HELPED HIM, ALWAYS
10 TOOK CARE OF HIM, BUT JOHN CAMPBELL SAID HE WAS SO DRUNK HE
11 WAS FALLING OUT OF HIS CHAIR. JOHN CAMPBELL SAID THAT WHILE
12 THEY WERE THERE THEY WERE DRINKING. THEY WERE BUYING EACH
13 OTHER DRINKS. THEY WERE FRIENDLY TO EACH OTHER. AS THEY
14 LEFT THE CLUB, THEY WERE FRIENDLY AND MR. AUSTIN WAS HELPING
15 THAT MAN GET HOME. BUT VOLUNTARY INTOXICATION IS NEVER AN
16 EXCUSE FOR A DEFENSE TO A CRIME. THE FACT THAT HE GOT
17 HIMSELF INTOXICATED, THE FACT THAT HE GOT HIMSELF DRUNK DOES
18 NOT EXCUSE HIS CONDUCT, IS NOT A DEFENSE TO HIS ACTIONS.

19 AS JUDGES OF THE FACTS, YOU HAVE TO DETERMINE THE
20 CREDIBILITY OF THE WITNESSES, AND THAT'S WHAT WE'RE HERE FOR.
21 Y'ALL DETERMINE THE CREDIBILITY OF WHAT THESE PEOPLE WERE
22 SAYING. YOU HEARD FROM THE WITNESSES IN THIS CASE. YOU
23 HEARD FROM MARY ONELLO, THE LADY WHO ALLOWED THIS MAN TO LIVE
24 IN HER HOUSE WHO WOULDN'T SELL THE GUNS TO HIM BUT SOLD THE
25 GUNS TO HIS MOTHER WHO TESTIFIED THAT THIS SHOTGUN WHEN SHE

1 SOLD IT TO HIS MOTHER WAS A MOSSBERG 500 SERIES. IT HAD A
2 PULL-STOCK ON IT BECAUSE IT WAS A RABBIT HUNTING GUN, AND IT
3 HAD 28-INCH BARREL BECAUSE IT WAS USED FOR HUNTING RABBITS
4 AND USED FOR HUNTING BIRDS.

5 I SUBMIT TO YOU, LADIES AND GENTLEMEN, WHEN THE
6 DEFENDANT GOT THIS THING HE CHANGED IT. HE TOOK IT TO
7 ANOTHER KIND OF HUNTING WEAPON. HE WAS HUNTING SOMETHING HE
8 DIDN'T LIKE, THINGS OTHER THAN RABBITS AND BIRDS. HE USED IT
9 FOR TARGET PRACTICE, LIKE HE SAID. IT WAS TARGET PRACTICE AT
10 THE DAYS INN.

11 YOU LOOKED AT THE Demeanor OF THE WITNESSES ON THE
12 STAND. WAS THE WITNESS FORTHRIGHT OR HESITANT? WAS THE
13 TESTIMONY OF THE WITNESS CONSISTENT? WAS THE TESTIMONY OF
14 THE WITNESS CORROBORATED BY THE OTHER WITNESSES AND BY THE
15 FACTS THAT YOU SAW? AND ALSO DID THE WITNESS HAVE A REASON
16 TO BE BIASED OR PREJUDICED? MS. ONELLO HAD NO REASON TO LIE.
17 SHE LET THIS MAN INTO HER OWN HOME. SHE SOLD THESE GUNS TO
18 HER MOTHER -- HIS MOTHER. NO REASON TO LIE FOR HIM OR
19 AGAINST HIM.

20 YOU HEARD FROM JOHN CAMPBELL, AND AS I STATED BEFORE,
21 JOHN CAMPBELL, ACCORDING TO THE DEFENDANT'S OWN TESTIMONY,
22 LOOKED OUT AFTER HIM, WAS GOOD TO HIM. HE STATED THAT MR.
23 BRYANT AND THE VICTIM WERE ON GOOD TERMS WHEN THEY WERE AT
24 THE CLUB, WERE ON GOOD TERMS WHEN THEY LEFT THE CLUB, THAT
25 MR. BRYANT WAS GROSSLY INTOXICATED AND FELL OUT OF THE CHAIR.

1 YOU HEARD FROM MS. CONNELL, THE DESK CLERK. MS. CONNELL
2 DOESN'T KNOW THAT MAN OTHER THAN THAT HE WAS A TENANT IN HER
3 BUILDING. MR. AUSTIN DOESN'T KNOW HIM OTHER THAN HE'S A
4 TENANT IN THE BUILDING ALSO. SHE TESTIFIES THAT SHE SEES
5 THEM COME ACROSS THE PARKING LOT. IT'S 3 IN THE MORNING.
6 THE ONLY PEOPLE HANGING OUT THERE AT THAT PARKING LOT AT THAT
7 TIME ARE THAT MAN AND MR. AUSTIN. SHE SAID THEY WERE
8 TALKING; THEY WERE COMING UP THE THING. AND SHE SAW HIM FALL
9 OUT OF THE CHAIR, FALL OUT CONSISTENT -- FORWARD OUT OF THE
10 CHAIR, HITTING HIS FACE, CONSISTENT WITH THE INJURIES HE
11 RECEIVED.

12 SHE STATED THAT SHE SAW THEM COMING UP AND SAW THEM WALK
13 ACROSS, GO OVER TO THE POOL AREA. SHE EVEN WENT OUT, SAW
14 THEM OUT THERE WITH -- SAW THEM SUCH THAT WHEN MR. AUSTIN
15 CAME UP AND ASKED FOR A KEY, SHE FELT COMFORTABLE MAKING HIM
16 A NEW KEY BECAUSE HE KNEW -- SHE KNEW THAT HE WAS HELPING
17 THAT MAN, BUT TO COVER HERSELF SHE ASKED TO SEE HIS
18 IDENTIFICATION. SHE WROTE HIS NAME DOWN AND WHAT ROOM KEY
19 SHE GAVE HIM.

20 I WOULD SUBMIT TO YOU, LADIES AND GENTLEMEN, DON'T
21 FORGET MR. AUSTIN CAME BECAUSE HE SAID HE NEEDED A KEY. LOST
22 KEY. IT WAS A LOST KEY. SO SHE HAD TO MAKE HIM A NEW KEY.
23 WHEN A HOTEL -- I WOULD SUBMIT TO YOU WHEN A HOTEL IS
24 REPLACING A LOST KEY---

25 MR. COLLINS: OBJECTION, YOUR HONOR. THERE'S BEEN NO

1 TESTIMONY AS REGARDING -- THERE'S NOBODY AT THE DAYS INN OR
2 NOBODY FROM THE HOTEL TO TESTIFY---

3 THE COURT: COUNSEL, APPROACH.

4 (WHEREUPON, A BENCH CONFERENCE WAS HELD.)

5 MR. CATHCART: LADIES AND GENTLEMEN, IF ANYTHING I SAY
6 IN THIS ARGUMENT DOES NOT RECONCILE WITH YOUR MEMORIES AS TO
7 THE FACTS IN THIS CASE, I SAY REMEMBER WHAT YOU HEARD FROM
8 THE EVIDENCE. THE JUDGE WILL CHARGE YOU ON THAT ALSO. BUT I
9 WOULD SUBMIT TO YOU THAT WHEN YOU CHANGE -- WHEN YOU GO TO A
10 HOTEL AND YOUR KEY IS LOST, THEY DON'T MAKE THE SAME KEY
11 BECAUSE THAT KEY COULD HAVE BEEN STOLEN. THAT KEY COULD HAVE
12 BEEN LOST. SOMEBODY COULD SUDDENLY GO INTO YOUR ROOM WITH
13 IT. WHEN THERE IS A LOST KEY, I WOULD SUBMIT TO YOU, IT
14 CHANGES THE KEY LOCK. AND SO WHEN DANIEL AUSTIN CAME IN
15 THERE, THERE WAS ABSOLUTELY NO WAY THAT MAN USED HIS KEY TO
16 GO IN AT THAT TIME. HE WAS ALREADY IN HIS ROOM.

17 YOU HEARD THE TESTIMONY OF MR. FOSTER. MR. COLLINS
18 NEGLECTED TO TALK ABOUT MR. FOSTER. MR. FOSTER WAS THE GUY
19 WHO WAS THERE AT THE HOTEL. THE ONLY REASON HE KNEW WHO THIS
20 MAN WAS WAS HE SAW HIM EARLIER THAT WEEK WHEN MR. BRYANT
21 ASKED HIM... MR. FOSTER TESTIFIED THAT HE MET THE DEFENDANT
22 AND THE DEFENDANT SHOWED HIM HIS NEW GUNS: HIS PISTOL AND
23 HIS SHOTGUN.

24 THE MAIN THING HE ALSO TOLD -- THAT MR. BRYANT TOLD MR.
25 FOSTER IS THAT I'M GOING TO GET SOME NEW BULLETS. I'VE ONLY

1 GOT TWO, AND THAT AIN'T ENOUGH. THAT WAS HIS TESTIMONY;
2 RIGHT? TWO AIN'T ENOUGH. I'M GOING TO GET ME SOME NEW
3 BULLETS THURSDAY. THE DAY BEFORE HE SHOT DANIEL AUSTIN HE
4 GOT LOADED UP. HE GOT HIS TARGET GUNS TO TARGET SHOOT. HE
5 GOT THE AMMO FOR TARGET SHOOTING. ALL HE NEEDS NOW IS A
6 TARGET.

7 MR. FOSTER SAYS THAT HE WAS AWOKENED (SIC) THAT NIGHT,
8 NOT BY FIGHTING, NOT BY SCUFFLING, NOT BY PEOPLE YELLING AND
9 CURSING AT EACH OTHER. HE WAS AWOKENED BY GUNFIRE. AND WHEN
10 HE LOOKS OUT HIS WINDOW, HE SEES THAT MAN WHEELING HIMSELF
11 OUT -- YOU HAVE TO USE TWO HANDS TO WHEEL A WHEELCHAIR. IT'S
12 IN HIS LAP. HE'S WHEELING HIMSELF OUT TO THE BREEZEWAY,
13 TAKING A LEFT, GOING DOWN TOWARD THE BREEZEWAY AND CURSING
14 AND SHOOTING INTO THE BREEZEWAY. HE ALSO SEES HIM GO BACK
15 INTO HIS ROOM. SO WHEN THE POLICE ARRIVE, THE DEFENDANT
16 CONTINUES TO SHOOT, DESPITE THE FACT THAT COPS ARE ALL
17 AROUND. HE CONTINUES TO SHOOT. AGAIN, I ASK YOU TO LOOK AT
18 THE CREDIBILITY OF THE WITNESSES. DOES HE HAVE ANYTHING TO
19 GAIN FROM HIS TESTIMONY? ANY REASON TO LIE?

20 YOU HEARD FROM THE OFFICERS IN THIS CASE. YOU HEARD
21 FROM DEPUTY BAIRD, KATHY JARVIS, AND THE OFFICER WHO CAME IN
22 WITH MR. WILLIAMS WHO CAME INTO THE ROOM. ALL OF THESE
23 PEOPLE WERE BROUGHT THERE TO THE SCENE BECAUSE OF HIS
24 ACTIONS. I ASK YOU TO LOOK AT THEIR CREDIBILITY. WERE THEY
25 -- DID THEY HAVE ANY REASON TO LIE, ANY REASON TO HELP ANYONE

1 OR HURT ANYONE? BUT ALSO LOOK TO THE FACT THAT THEIR
2 TESTIMONY IS CORROBORATED WITH THE TESTIMONY OF MS. CONNELL,
3 WITH THE TESTIMONY OF MR. FOSTER, AND TO THE TESTIMONY OF THE
4 EVIDENCE ITSELF, TO THE GUNSHOTS THROUGH THE DOOR, TO THE
5 GUNSHOTS ON THAT PILLAR.

6 I POINT OUT TO YOU, LADIES AND GENTLEMEN, LOOKING AT
7 STATE'S EXHIBIT NUMBER 17, IF YOU NOTICE WHEN THE DOOR IS
8 OPEN, SHOTS GO THIS WAY ACROSS THE DOOR LIKE THAT SHOT, BUT
9 WHEN THE DOOR IS CLOSED, AS YOU'LL SEE IN STATE'S EXHIBIT 22,
10 THE BULLETS COME STRAIGHT OUT. 32. 32.

11 DEFENSE COUNSEL WANTS YOU TO BELIEVE THAT THEY DID NOT
12 IDENTIFY THEMSELVES AS POLICE. I JUST ASK YOU TO USE YOUR
13 COMMON SENSE. AN OFFICER ALMOST GOT HIS HEAD BLOWN OFF.
14 ANOTHER OFFICER IS DOWN, PINNED DOWN BENEATH THE STAIRWELL.
15 THERE ARE POLICE OFFICERS ALL AROUND. THAT MAN KNEW EXACTLY
16 WHO WAS OUT THERE AND CONTINUED TO SHOOT IN HIS DRUNKEN RAGE.

17 AND I THINK HE INDICATED SOMETHING ABOUT THE BALLISTICS
18 EXPERT, DAN DEFREESE. DAN DEFREESE DID NOT SAY THAT IT WAS
19 IMPOSSIBLE FOR THAT BULLET TO GO THROUGH UNSCATHED. THAT'S
20 NOT WHAT HE SAID AT ALL. HE SAID IT'S POSSIBLE FOR IT TO BE
21 DEFORMED IF IT GOES THROUGH A DOOR, BUT IT DOES NOT MEAN IT'S
22 GOING TO BE DEFORMED IF IT GOES THROUGH A DOOR. OKAY.

23 LADIES AND GENTLEMEN, WHEN I TALK ABOUT MY WITNESSES AND
24 THEIR CREDIBILITY, I ALSO ASK THAT YOU LOOK TO THE
25 CREDIBILITY OF THE OTHER WITNESS, MR. BRYANT. IS THERE ANY

1 REASON HE'D TELL YOU THE TRUTH? ANY REASON HE'D TELL YOU A
2 LIE? ANY REASON HE WOULD TRY TO MAKE THE EVIDENCE LOOK
3 BETTER FOR HIM OR WORSE?

4 THE REASON I SAY THAT, LADIES AND GENTLEMEN, IS BECAUSE
5 THE ONLY OPTION HE HAD -- BECAUSE HE'S CAUGHT THERE WITH A
6 GUN AND THE MAN IS DEAD 20 FEET FROM HIS DOOR, HE HAS TO SAY
7 IT WAS SELF-DEFENSE. IT'S THE BURDEN ON THE STATE TO PROVE
8 IT WASN'T, AND WE AGAIN ACCEPT THAT BURDEN.

9 THERE ARE FOUR PRONGS TO SELF-DEFENSE. IT'S JUST LIKE A
10 CHAIR. IF ONE OF THOSE PRONGS IS NOT THERE, SELF-DEFENSE
11 DOESN'T STAND. THE DEFENDANT GAVE A STATEMENT. IN HIS
12 STATEMENT HE SAYS HE CAME INTO HIS ROOM -- WELL, FIRST OFF HE
13 WAS BEATEN DOWN NUMEROUS TIMES, JUST DWELLED ON BY THE
14 VICTIM. HE GOT BEATEN. HE GOT KICKED. HIS RIBS WERE
15 DESTROYED. THE ONLY EVIDENCE THAT HE HAD OF ANY INJURY FROM
16 THE VICTIM OTHER THAN THE FACT - EXCUSE ME - THE DEFENDANT,
17 OTHER THAN THE FACT THAT HE SHOT HIMSELF, WAS THIS LITTLE
18 BRUISE RIGHT HERE AND THIS LITTLE SCRAPE RIGHT HERE, BUT HE
19 TOLD YOU HE WAS KICKED IN THE FACE NUMEROUS TIMES WITH COMBAT
20 BOOTS. HE WAS THRUST FROM HIS CHAIR THREE TIMES, ACCORDING
21 TO HIS TESTIMONY.

22 THE DEFENDANT WANTS YOU TO BELIEVE THAT HE CAME TO HIS
23 ROOM WITH MR. AUSTIN BEHIND HIM. THEN MR. AUSTIN JUST LEFT.
24 NO REASON WHY. HE JUST DISAPPEARED FOR AWHILE I GUESS TO GO
25 GET THE KEYS DESPITE THE FACT THAT HE SAYS HE HAS A KEY. HE

1 GOES INTO THE -- HE WAITS FOR AWHILE BECAUSE MR. AUSTIN HAS
2 TO GO ALL THE WAY FROM HIS ROOM EITHER AROUND THIS WAY TO THE
3 FRONT DESK OR THROUGH THE BREEZEWAY AND AROUND THAT WAY TO
4 THE FRONT DESK TO TALK WITH MS. CONNELL, CONVINCE HER TO
5 ALLOW HIM TO GET A KEY, SAY -- TELL HER HIS IDENTIFICATION --
6 SHOW HER HIS IDENTIFICATION. I'M DANIEL AUSTIN. HERE IS MY
7 NAME. OH, BY THE WAY, I'VE BEEN BEATING THE HELL OUT OF THIS
8 GUY FOR AWHILE AND I'M GOING TO GO KILL HIM IN A SECOND. I
9 JUST THOUGHT Y'ALL MIGHT WANT TO KNOW WHO I AM FOR SURE
10 BEFORE I DO THIS. DOES THAT MAKE ANY SENSE? I ASK YOU TO
11 USE YOUR COMMON SENSE.

12 MR. BRYANT SAYS HE DID ALL THAT, GOT THE KEY, AND
13 SUDDENLY BEFORE I COULD GET INTO THE DOOR -- I'M STANDING
14 RIGHT HERE BY THE DOOR. I'M AFRAID FOR MY LIFE BECAUSE THREE
15 PEOPLE MAY BE OUT THERE. IT TAKES ME THAT LONG TO GET IN MY
16 DOOR. SUDDENLY MR. AUSTIN IS THERE AND HE GETS THERE BEHIND
17 HIM. HE'S COMING AT ME AT THIS POINT. HE'S COMING TO KILL
18 ME. YET, I'M ABLE TO WHEEL MY WHEELCHAIR ALL THE WAY OVER
19 HERE, GO AROUND THE BED, GET TO THE NIGHTSTAND, PICK UP A
20 PISTOL, TURN MY WHEELCHAIR AROUND, AIM IT. MR. AUSTIN IS
21 HERE. AND THEN HE SAYS THE VICTIM STOPPED WHEN I PULLED THE
22 GUN.

23 HE STOPPED WHEN I PULLED THE GUN. I HAD HIM AT MY
24 MERCY. THE ONLY PERSON IN THAT ROOM WITH A WEAPON IN THEIR
25 HAND, ACCORDING TO HIS OWN STORY, WAS MR. BRYANT, A FULLY

1 LOADED .32 CALIBER PISTOL. HE STOPPED WHEN I POINTED THE GUN
2 AT HIM.

3 DID YOU STOP AND TELL HIM TO GO OUT OF THE ROOM AND
4 CLOSE THE DOOR? HE'S AT YOUR MERCY; RIGHT? YEAH. WHAT DID
5 I DO? I SHOT HIM AGAIN AND AGAIN AND AGAIN. I UNLOADED THIS
6 GUN AT HIM. ACCORDING TO THE DEFENDANT, THE VICTIM THEN POPS
7 DOWN AND FALLS DOWN TO THE GROUND. HE THEN POPS UP AND RUNS
8 OUT OF THE ROOM. BY HIS OWN STORY, DOES HE CLOSE THE DOOR?
9 DOES HE LOCK IT? TAKE HIMSELF OUT OF THIS SITUATION? DO
10 SOMETHING THAT -- TO KEEP HIMSELF FREE, SOMETHING THAT DOES
11 NOT INVOLVE HAVING TO KILL A MAN? NO. NO. NO. NO. HE
12 DOESN'T DO THAT. HE DOESN'T GET ON THE PHONE AND CALL FOR
13 HELP. HE GETS HIS HUNTING FIREARM, AND HE GOES HUNTING.

14 HE GOES OUT OF THE ROOM, DESPITE THE FACT HE'S SAYING
15 THERE'S TWO OTHER PEOPLE OUT THERE. HE DOESN'T LOCK THE
16 DOOR. DESPITE THE FACT HE'S NOW ARMED WITH ANOTHER LOADED
17 WEAPON THAT HE IS GOING TO DEFEND HIMSELF IN HIS ROOM WITH A
18 LOCKED DOOR, HE GOES HUNTING. HE TURNS A LEFT. HE FINDS THE
19 VICTIM IN THE BREEZEWAY, AND HE'S GOT HIM AT HIS MERCY AGAIN.
20 HE'S ALREADY SAID THE ONLY PERSON IN THERE WITH A WEAPON IN
21 HIS HANDS IS HIM.

22 DOES HE TELL HIM, "FREEZE. DO NOT ATTACK ME ANYMORE"?
23 NO. HE SAID HE WAS MAD. HE SAID HE SAW RED. HE WAS ANGRY.
24 HE CYCLES, SHOOTS, CYCLES, SHOOTS. HE EMPTIES THIS GUN, SIX
25 SHOTS: BIRDSHOT AND BUCKSHOT INTO A MAN ONLY 20 FEET AWAY.

1 THE THREAT'S GONE; RIGHT? NO. NO. NO. NO. NO. HE
2 GOES BACK AND HE RELOADS. HE RELOADS. THERE'S STILL PEOPLE
3 OUT THERE; RIGHT? BUT THERE'S A DOOR RIGHT THERE. A DOOR
4 WITH A LOCK AND A PHONE THAT WORKS. HE'S GOT IN HIS ROOM TWO
5 LOADED WEAPONS. DOES THAT MAKE SENSE?

6 SELF-DEFENSE, AS I STATED, HAS FOUR PRONGS. THE JUDGE
7 WILL CHARGE YOU ON THIS. IF I'M IN ANY WAY INCONSISTENT WITH
8 WHAT HE SAYS, PLEASE TAKE HIS WORD FOR IT. HE IS THE JUDGE
9 OF THE LAW. BUT SELF-DEFENSE WE HAVE -- THE STATE HAS TO
10 PROVE THAT THE DEFENDANT WAS WITHOUT FAULT IN BRINGING ON THE
11 DIFFICULTY. IN THIS CASE, YOUR HONOR -- LADIES AND
12 GENTLEMEN, THE DEFENDANT WAS DRUNK. HE BROUGHT THIS VICTIM
13 THERE TO SHOW OFF HIS NEW GUNS FOR TARGET PRACTICE. HE HAD
14 HIS GUNS. HE GOT HIS AMMO. HE HAS HIS TARGET.

15 HE ACTUALLY BELIEVED HE WAS IN IMMINENT DANGER OF LOSING
16 HIS LIFE OR SUSTAINING SERIOUS BODILY INJURY OR IS ACTUALLY
17 IN IMMINENT -- OR HE ACTUALLY WAS IN IMMINENT DANGER OF
18 LOSING HIS LIFE OR SUSTAINING SERIOUS BODILY INJURY. THE
19 ONLY EVIDENCE THAT SAYS ANYTHING TO THAT FACT IS THE
20 DEFENDANT'S TESTIMONY, AND I ASK YOU: HOW CREDIBLE IS THAT
21 BASED UPON THE EVIDENCE AND BASED UPON HIS CROSS-EXAMINATION?

22 IF HIS DEFENSE IS BASED ON THE ACTUAL BELIEF OF IMMINENT
23 DANGER THAT A REASONABLE PRUDENT MAN OF ORDINARY FIRMNESS AND
24 COURAGE WOULD HAVE ENTERTAINED THE SAME BELIEF... AND,
25 LADIES AND GENTLEMEN, THE FOURTH PRONG: THAT HE HAD NO OTHER

1 PROBABLE MEANS OF AVOIDING THE DANGER. HE HAD NO OTHER WAY
2 OF GETTING AWAY FROM THE DANGER OTHER THAN EMPTYING A .32
3 CALIBER PISTOL INTO THE VICTIM, OTHER THAN AFTER THE VICTIM
4 LEAVES THE ROOM CONTINUING TO CHASE AFTER HIM AND EMPTYING A
5 .20 GAUGE SHOTGUN INTO THE VICTIM, THAT THERE WAS NO OTHER
6 PROBABLE WAY TO GET OUT OF THAT SITUATION SUCH AS ASK FOR
7 HELP FROM ANYONE ON THE WAY TO THE PLACE, THE NIGHTCLUB.
8 WHAT HE KNEW WAS THERE BECAUSE -- HE SAID KEVIN HAWKINS WAS
9 THERE. THE DOOR WITH THE LOCKS. THE PHONE. THE FACT HE GOT
10 THE DROP ON HIM BY HIS OWN STORY. THE FACT AS THE VICTIM IS
11 DYING IN THE BREEZEWAY, BLOOD DRAINED OUT OF HIM AND HE
12 CONTINUES TO UNLOAD HIS SHOTGUN.

13 NO OTHER PROBABLE -- NO OTHER WAY OF PROBABLE MEANS OF
14 AVOIDING THE DANGER OF LOSING HIS LIFE. I SUBMIT TO YOU,
15 LADIES AND GENTLEMEN, I DON'T BELIEVE ANY OF THESE PRONGS
16 HOLD, BUT IF YOU BELIEVE AT THIS POINT THAT THERE WAS NO
17 OTHER WAY HE COULD HAVE GOT OUT OF THIS OTHER THAN KILLING
18 DANIEL AUSTIN, YOU CANNOT BELIEVE SELF-DEFENSE. YOU MAY NOT
19 BELIEVE SELF-DEFENSE.

20 LADIES AND GENTLEMEN OF THE JURY, THE STATE'S CASE IS AS
21 THUS AND THE EVIDENCE SHOWS BACK IN JULY THE DEFENDANT BOUGHT
22 TWO GUNS FROM THIS PERSON THAT WAS HIS FRIEND, MARY ONELLO,
23 THROUGH HIS MOTHER. THE EVIDENCE SHOWS THAT HE THEN GOT THIS
24 WEAPON, AND FROM THE TIME MS. ONELLO SAW IT TO THE TIME HE
25 GOT IT, HE TURNED IT INTO NOT A HUNTING WEAPON BUT A KILLING

1 WEAPON. HE TURNED IT INTO A SAWED-OFF SHOTGUN WITH A PISTOL
2 GRIP. THE EVIDENCE SHOWS THAT THE DEFENDANT GOT HIS PISTOL
3 JUST A FEW DAYS BEFORE THE INCIDENT. THE EVIDENCE SHOWS THAT
4 THE DEFENDANT GOT BULLETS BECAUSE TWO WERE NOT ENOUGH THE DAY
5 OF THE MURDER.

6 THE EVIDENCE SHOWS THAT THE DEFENDANT WENT TO THE
7 RESTAURANT AND DRANK THREE JIM BEAMS AND COKE, DRANK A GLASS
8 OF WINE, WATERED THAT DOWN WITH A LITTLE BIT OF PERCOCET AND
9 A LITTLE BIT OF VALIUM. THEN HE WENT TO THE BOTTOMS UP AND
10 CONTINUED TO DRINK. HE WAS MET BY DANIEL AUSTIN THERE.
11 ACCORDING TO THE WITNESSES WHO WERE THERE, THEY WERE
12 FRIENDLY. DANIEL AUSTIN TOOK CARE OF HIM, PICKED HIM UP INTO
13 HIS CHAIR AND HELPED HIM -- HELPED HIM UP.

14 ACCORDING TO THE WITNESSES, HE WAS SEEN COMING ACROSS
15 THE PARKING LOT FRIENDLY SUCH THAT SHE ALLOWED HIM TO HAVE A
16 KEY, SUCH THAT HE GAVE HIS NAME AND SHOWED HIS IDENTIFICATION
17 TO GET THE KEY. THE EVIDENCE SHOWS THAT THE DEFENDANT AT
18 THAT POINT WAS ALREADY IN THE ROOM, NO OTHER WAY TO DO IT.
19 ONCE THAT KEY WAS MADE, HIS KEY WOULDN'T WORK, I WOULD SUBMIT
20 TO YOU.

21 THE EVIDENCE SHOWS THAT THE ROUNDS THAT WERE FIRED WENT
22 THROUGH THE FRONT DOOR. THE DEFENDANT, IF YOU RECALL IN HIS
23 TESTIMONY, STATED THAT HE WAS HERE; THE VICTIM WAS HERE. BUT
24 THE BULLETS GO THROUGH HERE. SO UNLESS HE SHOT HIM WITH
25 BULLETS THAT COULD TAKE A RIGHT RIGHT AFTER THEY LEAVE THE

1 BODY, HIS TESTIMONY IS NOT CONSISTENT WITH THE EVIDENCE.

2 THERE ARE NO BULLET HOLES ON THIS WALL. THE BULLET HOLES ARE
3 ONLY THROUGH THAT DOOR.

4 THE EVIDENCE SHOWS AFTER HE SHOT HIM HE CONTINUED --
5 THAT HE GOT HIS SHOTGUN OUT, TRACKED HIM DOWN, HUNTED HIM
6 DOWN, AND BLEW HIM AWAY. THAT'S THE EVIDENCE IN THIS CASE.
7 THE EVIDENCE SHOWS THAT THEN WHEN THE POLICE ARRIVED HE
8 CONTINUED TO SHOOT. EVERY TIME A SIREN COMES OUT, BAM. HIS
9 RAGE WAS UNENDING. WHEN IT FINALLY DOES END, THEN IT SHOWS
10 THE DEFENDANT SHOT HIMSELF. DESPITE THE FACT THAT HE HAD
11 JUST HAD A GREAT DAY -- HE WENT OUT EXERCISING, WENT TO KEY
12 WEST, HAD SALMON THERE AND HAD A COUPLE OF DRINKS, HAD A
13 WONDERFUL DAY -- LIFE WAS GOING GOOD. HE GOES TO BOTTOMS UP,
14 AND THEN HE'S ATTACKED BY THIS MAN. HE DEFENDS HIMSELF. HE
15 SAVES HIS OWN LIFE.

16 HOW IS HE GOING TO CELEBRATE? HE'S GOING TO TAKE HIS
17 OWN LIFE. THAT'S HIS STATEMENT. THAT'S HIS TESTIMONY. HE'S
18 GOING TO DO IT TO HIS HEAD, BUT, NO, HE DECIDES HE'S GOING TO
19 GO FOR A HEART SHOT. SOMEHOW HE MISSES AND HE JUST GRAZES
20 HIMSELF RIGHT HERE. NOW, WHAT'S INTERESTING ABOUT THAT:
21 WHEN HE DECIDES TO KILL HIMSELF, HE DECIDES TO KILL HIMSELF
22 -- ALL YOU HAVE TO DO IS WRAP THIS WEAPON IN A TOWEL,
23 MUZZLING THE WEAPON, KEEPING THE NOISE DOWN SO THE POLICE
24 OUTSIDE WON'T HEAR THAT THE FINAL SHOT WAS ONE THAT HE
25 INFLECTED. WHY DOES HE DO THAT? BECAUSE HE'S GOT TO SAY IT

1 WAS SELF-DEFENSE.

2 IN THE DRUNKEN RAGE THAT HE WAS IN, HE DOESN'T THINK SO
3 MUCH ABOUT THAT. HE DOESN'T THINK, WELL, MAYBE THE
4 BALLISTICS WILL SHOW IT BACK TO MY GUN. WHEN HE COMES TO
5 TRIAL, HE KNOWS THESE THINGS AND THIS IS HIS NEW STORY.

6 YOUR HONOR, IF I MAY? YOUR HONOR, THIS WEAPON IS CLEAR.

7 THE COURT: VERY WELL. PROCEED.

8 MR. CATHCART: LADIES AND GENTLEMEN, MICAH LEDDY AND MR.
9 COLLINS WHEN THEY DID THEIR OPENING AND WHEN THEY DID THEIR
10 CLOSING THEY INDICATED THIS IS NOT A CASE ABOUT MALICE. THIS
11 IS A CASE ABOUT FEAR. IT'S NOT A CASE ABOUT HOW THE
12 DEFENDANT MALICIOUSLY AND SENSELESSLY KILLED THE VICTIM, BUT
13 IT'S A CASE ABOUT FEAR. AND WHEN I THOUGHT ABOUT THAT, I
14 THOUGHT THAT, YOU KNOW, THEY'RE RIGHT. IT'S A CASE ABOUT
15 BOTH:

16 IT IS A CASE ABOUT FEAR, FOR WHEN DANIEL AUSTIN COMES TO
17 THE ROOM AND HE COMES TO THIS DOOR WONDERING WHERE MR. BRYANT
18 WENT OFF TO, KNOCKING ON THE DOOR, THE BULLETS ENTER HIS
19 BODY. IT'S A CASE ABOUT FEAR. AS HE RUNS AWAY, AS HIS BLOOD
20 IS DRAINED FROM HIS HEART INTO HIS LUNGS, AS HE MAKES IT ALL
21 OF 20 FEET AWAY, BEFORE HE STARTS TO WEAKEN, IT IS A CASE
22 ABOUT FEAR. AND AS HE HEARS THE DEFENDANT START WHEELING UP
23 BEHIND HIM, HE LEARNS AND TURNS AND LOOKS HIM IN THE EYE AND
24 HE SEES THE DEFENDANT PICK THIS UP. YOU'RE DURN RIGHT IT'S A
25 CASE ABOUT FEAR. AND WHEN THE DEFENDANT SHOOTS HIM AND THE

1 DEFENDANT RACKS IN ANOTHER ROUND AND SHOOTS HIM AGAIN, RACKS
2 ANOTHER ROUND, IT'S A CASE ABOUT FEAR.

3 THE DEFENDANT EMPTIES THIS GUN INTO HIM. HE GOES BACK
4 INTO HIS ROOM. THE POLICE ARRIVE SHORTLY THEREAFTER. THE
5 VICTIM IS LAYING RIGHT THERE, AND THE GUNSHOTS CONTINUE TO
6 HAPPEN. THE POLICE CAN'T HELP HIM. THE VICTIM IS CONSCIOUS.
7 HE'S ALIVE, BUT HE'S DYING. THIS IS A CASE ABOUT FEAR.

8 LADIES AND GENTLEMEN, I'M ASKING YOU NOW TO DO JUSTICE
9 IN THIS CASE. THE DEFENDANT KILLED THIS MAN. HE DID IT WITH
10 MALICE AFORETHOUGHT. IT IS NOT SELF-DEFENSE. THE VICTIM
11 STOPPED WHEN HE PULLED A GUN ON HIM. HE THEN WENT HUNTING.
12 I ASK THAT YOU FIND HIM GUILTY.

13 THE COURT: MR. FOREMAN AND LADIES AND GENTLEMEN OF THE
14 JURY, BEFORE I CHARGE YOU I'M GOING TO -- THE CHARGE WILL
15 TAKE APPROXIMATELY 20 TO 25 MINUTES. I'M GOING TO GIVE YOU A
16 BREAK, LET YOU USE THE REST ROOM, AND STRETCH YOUR LEGS. DO
17 NOT DISCUSS THE CASE. I'LL BE RIGHT BACK WITH YOU, AND I'LL
18 LET YOU RESUME IN JUST A MOMENT. PLEASE RETIRE TO YOUR JURY
19 ROOM AT THIS TIME. EVERYONE ELSE REMAIN SEATED WHILE THE
20 JURY IS LEAVING.

21 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT AT
22 10:30 A.M.)

23 THE COURT: LET THE RECORD REFLECT THAT THE JURY IS
24 OUTSIDE THE COURTROOM NOW. DURING THE COURSE OF THE
25 SOLICITOR'S CLOSING ARGUMENT, COUNSEL FOR THE DEFENDANT MADE

1 AN OBJECTION ON THE BASIS THAT THE SOLICITOR WAS ARGUING
2 MATTERS THAT WERE NOT IN EVIDENCE. I WANT THERE TO BE A
3 RECORD. THIS REFERRED SPECIFICALLY TO AN OBJECTION OF THE
4 SOLICITOR REFERRING TO THE KEY CARDS AND WHETHER THEY WOULD
5 WORK IF A NEW CARD WAS MADE AT THE MOTEL.

6 THERE WAS A DISCUSSION AT THE BENCH WHETHER SUCH
7 TESTIMONY WAS ACTUALLY ADDUCED ON THE CROSS-EXAMINATION OF
8 THE DEFENDANT. THE DEFENSE COUNSEL SAID HE COULD NOT RECALL
9 IT; THE SOLICITOR FELT THAT IT WAS. THERE'S CERTAINLY AN
10 ARGUMENT FOR AN INFERENCE. I SUSTAINED THE OBJECTION BUT
11 REQUIRED THE SOLICITOR TO GO BACK TO THE JURY AND TELL THE
12 JURY THAT IF HE SAID ANYTHING IN HIS ARGUMENT THAT'S NOT IN
13 EVIDENCE THEY SHOULD, OF COURSE, ADHERE TO WHAT THEY HEARD
14 AND NOT WHAT THE SOLICITOR TOLD THEM, WHICH HE DID IN
15 ACCORDANCE WITH MY INSTRUCTIONS. AND I WANTED THERE -- AND
16 IT WAS NOT -- I'VE ALREADY TOLD THE JURY IN MY OPENING
17 STATEMENT THAT WHAT THE LAWYERS TELL THEM IS NOT EVIDENCE AND
18 THEY'RE ADVOCATES FOR THEIR RESPECTIVE CLIENTS, BUT I WANTED
19 THERE TO BE A RECORD OF WHAT ACTUALLY OCCURRED AT THE BENCH.

20 MR. CATHCART, HAVE YOU SECURED THE WEAPON NOW THAT YOU
21 USED IN YOUR CLOSING ARGUMENT? IF NOT, PLEASE DO SO.

22 MR. CATHCART: YOUR HONOR, I HAVE. I BELIEVE SO. I WAS
23 GOING TO MAKE SURE. I WAS TRYING TO DO IT REAL QUICK BECAUSE
24 YOU WERE TALKING TO THE JURY. IT IS SECURE.

25 THE COURT: VERY WELL. ALL RIGHT, COUNSEL. WE'LL TAKE

1 ABOUT FIVE MINUTES, LET YOU HAVE A BREAK, AND THEN I'LL
2 CHARGE THE JURY.

3 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

4 THE COURT: THANK YOU. PLEASE BE SEATED. ALL RIGHT.
5 I'VE INSTRUCTED MY BAILIFFS THAT DURING THE CHARGE NO ONE IN
6 OR OUT OF THE COURTROOM. IF YOU NEED TO LEAVE, I'LL BE HAPPY
7 TO LET YOU DO SO NOW AND LET YOU BACK IN AFTER THE CHARGE,
8 BUT WE'RE NOT GOING TO PERMIT ANYONE IN OR OUT OF THE
9 COURTROOM DURING THE CHARGE. IF YOU NEED TO, PLEASE LEAVE AT
10 THIS TIME.

11 ALL RIGHT. MR. BILLY, IT APPEARS EVERYONE IS IN THAT'S
12 GOING TO BE IN. BRING US THE JURY, PLEASE, SIR.

13 (WHEREUPON, THE JURY WAS BROUGHT INTO OPEN COURT AT
14 10:41 A.M.)

15 THE COURT: MR. FOREMAN, LADIES AND GENTLEMEN OF THE
16 JURY, IT'S NOW MY DUTY TO CHARGE YOU THE LAW OF THIS CASE.
17 THE STATE OF SOUTH CAROLINA HAS CHARGED THE DEFENDANT, THOMAS
18 BRYANT, THOMAS TYRONE BRYANT, JR., WITH THE OFFENSE OF MURDER
19 IN INDICTMENT NUMBER 2000-GS-40-43702. I REMIND YOU, FIRST
20 OF ALL, LADIES AND GENTLEMEN, THAT THE FACT THAT THE
21 DEFENDANT WAS ARRESTED, CHARGED, AND INDICTED IN THIS CASE IS
22 NOT EVIDENCE IN THIS CASE NOR DOES IT CREATE ANY PRESUMPTION
23 OR INFERENCE OF GUILT. THIS DOCUMENT, THIS INDICTMENT, IS
24 SIMPLY THE FORMAL WRITTEN INSTRUMENT BY WHICH A CASE IS
25 BROUGHT INTO THIS COURT. IT CONTAINS A CHARGE MADE AGAINST

1 THE DEFENDANT.

2 THE DEFENDANT HAS PLED NOT GUILTY TO THE INDICTMENT, AND
3 THAT PLEA BY THE DEFENDANT OF NOT GUILTY PUTS THE BURDEN ON
4 THE STATE OF SOUTH CAROLINA TO PROVE THE DEFENDANT GUILTY
5 BEYOND A REASONABLE DOUBT. A PERSON CHARGED WITH COMMITTING
6 A CRIMINAL OFFENSE IN SOUTH CAROLINA IS NEVER REQUIRED TO
7 PROVE HIMSELF INNOCENT.

8 I CHARGE YOU, LADIES AND GENTLEMEN OF THE JURY, THAT IT
9 IS AN IMPORTANT RULE OF THE LAW THAT A DEFENDANT IN A
10 CRIMINAL TRIAL, NO MATTER WHAT THE SERIOUSNESS OF THE OFFENSE
11 OR CHARGE MAY BE, WILL ALWAYS BE PRESUMED TO BE INNOCENT OF
12 THE CRIME FOR WHICH THE INDICTMENT WAS ISSUED UNLESS GUILT
13 HAS BEEN PROVEN BY EVIDENCE SATISFYING YOU OF THAT GUILT
14 BEYOND A REASONABLE DOUBT.

15 THE PRESUMPTION OF INNOCENCE IS -- DOES NOT END WHEN YOU
16 BEGIN YOUR DELIBERATIONS, BUT IT ACCOMPANIES THE DEFENDANT
17 THROUGHOUT THE TRIAL UNTIL YOU, THE JURY, REACH A VERDICT OF
18 GUILT BASED ON EVIDENCE SATISFYING YOU OF THAT GUILT BEYOND A
19 REASONABLE DOUBT. THE PRESUMPTION OF INNOCENCE IS NOT A MERE
20 LEGAL THEORY. IT IS NOT JUST A LEGAL PHRASE. IT IS A
21 SUBSTANTIAL RIGHT TO WHICH EVERY DEFENDANT IS ENTITLED UNLESS
22 YOU, THE JURY, ARE SATISFIED FROM THE EVIDENCE OF THE
23 DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT.

24 WHAT IS A REASONABLE DOUBT IN THE LAW? A REASONABLE
25 DOUBT IS THE KIND OF DOUBT THAT WOULD CAUSE A REASONABLE

1 PERSON TO HESITATE TO ACT. THE STATE HAS THE BURDEN OF
2 PROVING THE DEFENDANT GUILTY BEYOND A REASONABLE DOUBT. SOME
3 OF YOU MAY HAVE SERVED AS JURORS IN CIVIL COURT WHERE YOU
4 WERE TOLD THAT IT IS ONLY NECESSARY TO PROVE THAT A FACT IS
5 MORE LIKELY TRUE THAN NOT TRUE. WE CALL THAT BY THE GREATER
6 WEIGHT OR THE PREPONDERANCE OF THE EVIDENCE IN CIVIL COURT.

7 IN A CRIMINAL CASE, SUCH AS THE CASE HERE, THE STATE'S
8 PROOF MUST BE MORE THAN THAT. IT MUST BE BEYOND A REASONABLE
9 DOUBT. PROOF BEYOND A REASONABLE DOUBT IS PROOF THAT LEAVES
10 YOU FIRMLY CONVINCED OF THE DEFENDANT'S GUILT. THERE ARE
11 VERY FEW THINGS IN THIS WORLD THAT WE KNOW WITH ABSOLUTE
12 CERTAINTY, AND IN CRIMINAL CASES THE LAW DOES NOT REQUIRE
13 PROOF THAT OVERCOMES EVERY POSSIBLE DOUBT. IF BASED ON YOUR
14 CONSIDERATION OF THE EVIDENCE YOU ARE FIRMLY CONVINCED THAT
15 THE DEFENDANT IS GUILTY OF THE CRIME CHARGED FOR WHICH THE
16 INDICTMENT WAS ISSUED, YOU MUST FIND THE DEFENDANT GUILTY.
17 IF, ON THE OTHER HAND, YOU THINK THERE'S A REAL POSSIBILITY
18 THAT THE DEFENDANT IS NOT GUILTY OF THE CRIME CHARGED FOR
19 WHICH THE INDICTMENT WAS ENTERED, YOU MUST FIND THE DEFENDANT
20 NOT GUILTY.

21 I REMIND YOU, LADIES AND GENTLEMEN, THAT DURING THIS
22 TRIAL YOU AND I HAVE HAD CERTAIN DUTIES THAT WE HAVE TO
23 PERFORM. AS THE TRIAL JUDGE, IT HAS BEEN MY RESPONSIBILITY
24 TO PRESIDE OVER THE TRIAL, AND I ALSO HAVE THE DUTY TO RULE
25 ON THE ADMISSIBILITY OF THE EVIDENCE OFFERED DURING THE

1 TRIAL. YOU ARE, LADIES AND GENTLEMEN, TO CONSIDER AS A JURY
2 ONLY THE EVIDENCE BEFORE YOU. IF THERE WAS ANY TESTIMONY
3 ORDERED STRICKEN FROM THE RECORD IN THIS CASE DURING THIS
4 TRIAL, YOU AS A JURY MUST DISREGARD THAT TESTIMONY OR
5 EVIDENCE. YOU ARE TO CONSIDER ONLY THE TESTIMONY WHICH HAS
6 BEEN PRESENTED FROM THIS WITNESS STAND, ANY EXHIBITS WHICH
7 HAVE BEEN INTRODUCED INTO EVIDENCE AND MADE A PART OF THE
8 RECORD IN THIS CASE, AND ANY STIPULATIONS, IF ANY OF COUNSEL,
9 OF FACT WHICH MAY HAVE OCCURRED DURING THE TRIAL OF THE CASE.

10 AS THE PRESIDING JUDGE, I ALSO HAVE THE ADDITIONAL DUTY
11 TO CHARGE YOU THE LAW THAT APPLIES TO THIS CASE. AS THE
12 PRESIDING JUDGE, I'M THE SOLE JUDGE OF THE LAW IN THIS CASE,
13 AND IT IS YOUR DUTY AS JURORS TO ACCEPT THE LAW AND APPLY THE
14 LAW EXACTLY AS I NOW STATE IT TO YOU. IF ANY OF YOU ALREADY
15 HAVE ANY PRECONCEIVED IDEAS ABOUT WHAT YOU THINK THE LAW IS
16 OR WHAT YOU FEEL THE LAW OUGHT TO BE, YOU MUST PUT THESE
17 PRECONCEIVED IDEAS ASIDE. YOU MUST ABANDON THOSE IDEAS
18 BECAUSE EACH OF YOU TOOK AN OATH AS JURORS TO ACCEPT AND TO
19 APPLY THE LAW EXACTLY AS I NOW STATE IT TO YOU.

20 IN EVERY CASE TRIED IN THIS COURT BEFORE A JURY, THE
21 JURY BECOMES THE SOLE AND THE EXCLUSIVE JUDGE OF THE FACTS IN
22 THE CASE. A TRIAL JUDGE SUCH AS MYSELF CANNOT STATE, COMMENT
23 ON, OR MAKE ANY STATEMENT TO A TRIAL JURY ABOUT THE FACTS IN
24 A CASE. SINCE YOU, LADIES AND GENTLEMEN OF THE JURY, ARE THE
25 SOLE JUDGES OF THE FACTS IN THIS CASE, YOU ARE NOT TO INFER

1 FROM WHAT I HAVE SAID DURING THE PROGRESS OF THIS TRIAL OR
2 ANYTHING THAT I MIGHT SAY NOW DURING THE COURSE OF THIS
3 CHARGE TO YOU ON THE LAW THAT I HAVE ANY OPINION WHATSOEVER
4 ABOUT THE FACTS IN THIS CASE. THE LAW DOES NOT ALLOW ME TO
5 HAVE AN OPINION ABOUT THE FACTS IN THIS CASE. THIS IS A
6 MATTER, LADIES AND GENTLEMEN OF THE JURY, SOLELY FOR YOU. IT
7 IS THE PROVINCE EXCLUSIVELY OF THE JURY TO DETERMINE THE
8 FACTS, AND AS JURORS, LADIES AND GENTLEMEN, IT IS YOUR DUTY
9 TO DETERMINE THE EFFECT, THE TRUTH, THE WEIGHT OF ANY
10 EVIDENCE THAT'S BEEN PRESENTED DURING THE COURSE OF THE TRIAL
11 OF THIS CASE.

12 NOW, THERE ARE TWO TYPES OF EVIDENCE THAT ARE GENERALLY
13 PRESENTED DURING A TRIAL, AND LIKE MANY THINGS IN THE LAW, WE
14 HAVE NAMES FOR THOSE TYPES OF EVIDENCE. WE CALL THESE TWO
15 GENERAL TYPES OF EVIDENCE DIRECT EVIDENCE AND CIRCUMSTANTIAL
16 EVIDENCE. DIRECT EVIDENCE, LADIES AND GENTLEMEN OF THE JURY,
17 IS TESTIMONY OF A PERSON WHO CLAIMS TO HAVE ACTUAL KNOWLEDGE
18 OF A FACT SUCH AS AN EYEWITNESS TO AN EVENT. DIRECT EVIDENCE
19 IS EVIDENCE WHICH IMMEDIATELY ESTABLISHES THE MAIN FACT TO BE
20 PROVED.

21 CIRCUMSTANTIAL EVIDENCE, AS CONTRASTED WITH DIRECT
22 EVIDENCE, IS PROOF OF A CHAIN OF FACTS AND CIRCUMSTANCES
23 INDICATING THE EXISTENCE OF A FACT. CIRCUMSTANTIAL EVIDENCE
24 IS EVIDENCE WHICH IMMEDIATELY ESTABLISHES COLLATERAL FACTS
25 FROM WHICH THE MAIN FACT MAY OR MAY NOT BE INFERRED.

1 CIRCUMSTANTIAL EVIDENCE IS BASED ON INFERENCE AND NOT ON
2 PERSONAL KNOWLEDGE OR PERSONAL OBSERVATION.

3 FOR INSTANCE, IF I GO OUTSIDE, LADIES AND GENTLEMEN, AND
4 IT'S RAINING AND I SEE IT RAINING AND IT HITS MY CLOTHES AND
5 MY HEAD, IT'S DIRECT EVIDENCE. I SAW IT. I OBSERVED IT. ON
6 THE OTHER HAND, IF THE DOORS ARE SHUT AND THE WINDOWS ARE
7 SHUT AND THE SHADES ARE DRAWN AND I'M INSIDE AND A PERSON
8 WALKS INTO THE ROOM I'M IN AND THEY HAVE A WET UMBRELLA AND
9 THEY'RE WEARING GALOSHES AND THEIR CLOTHES ARE WET, I INFER
10 THAT IT MUST BE RAINING OUTSIDE. CIRCUMSTANTIAL EVIDENCE.

11 THE LAW MAKES ABSOLUTELY NO DISTINCTION BETWEEN THE WEIGHT OR
12 THE VALUE TO BE GIVEN TO EITHER DIRECT EVIDENCE OR
13 CIRCUMSTANTIAL EVIDENCE NOR IS A GREATER DEGREE OF CERTAINTY
14 REQUIRED OF CIRCUMSTANTIAL EVIDENCE THAN OF DIRECT EVIDENCE.

15 YOU, LADIES AND GENTLEMEN OF THE JURY, SHOULD WEIGH ALL
16 OF THE EVIDENCE IN THIS CASE. AFTER WEIGHING ALL OF THE
17 EVIDENCE IN THIS CASE, BOTH DIRECT AND CIRCUMSTANTIAL, IF YOU
18 ARE NOT CONVINCED OF THE GUILT OF THE DEFENDANT BEYOND A
19 REASONABLE DOUBT, YOU MUST FIND THE DEFENDANT NOT GUILTY. ON
20 THE OTHER HAND, AFTER WEIGHING ALL THE EVIDENCE IN THIS CASE,
21 BOTH DIRECT AND CIRCUMSTANTIAL, IF YOU'RE CONVINCED OF THE
22 GUILT OF THE DEFENDANT BEYOND A REASONABLE DOUBT, YOU MUST
23 FIND THE DEFENDANT GUILTY.

24 NECESSARILY, YOU AS A JURY MUST DETERMINE CREDIBILITY OF
25 THE WITNESSES WHO HAVE TESTIFIED DURING THE TRIAL OF THIS

1 CASE. CREDIBILITY SIMPLY MEANS BELIEVABILITY. IT BECOMES
2 YOUR DUTY AS JURORS TO ANALYZE AND TO EVALUATE THE EVIDENCE
3 AND DETERMINE WHICH EVIDENCE CONVINCES YOU OF ITS TRUTH. IN
4 DETERMINING THE BELIEVABILITY OF THE WITNESSES WHO HAVE
5 TESTIFIED DURING THE TRIAL OF THIS CASE, YOU MAY BELIEVE ONE
6 WITNESS OVER SEVERAL WITNESSES OR SEVERAL WITNESSES OVER ONE
7 WITNESS. YOU MAY BELIEVE A PART OF THE TESTIMONY OF A
8 WITNESS AND REJECT THE REMAINING PART OF THE TESTIMONY OF
9 THAT SAME WITNESS.

10 YOU MAY BELIEVE THE TESTIMONY OF A WITNESS IN ITS
11 ENTIRETY OR YOU MAY REJECT THE TESTIMONY OF A WITNESS IN ITS
12 ENTIRETY. YOU MAY CONSIDER WHETHER ANY WITNESS HAS EXHIBITED
13 OR DEMONSTRATED TO YOU ANY INTEREST, ANY BIAS, ANY PREJUDICE,
14 OR OTHER MOTIVE IN THIS CASE. YOU MAY ALSO CONSIDER THE
15 APPEARANCE OR MANNER OF THE WITNESS WHILE THE WITNESS WAS ON
16 THE WITNESS STAND IN JUDGING THE CREDIBILITY OR THE
17 BELIEVABILITY OF THE WITNESSES WHO HAVE TESTIFIED DURING THE
18 TRIAL OF THIS CASE. ANYTHING THAT IS IN EVIDENCE, LADIES AND
19 GENTLEMEN OF THE JURY, YOU AS A JURY HAVE THE RIGHT TO
20 CONSIDER IN PASSING UPON THE CREDIBILITY OR BELIEVABILITY OF
21 THE WITNESSES WHO HAVE TESTIFIED DURING THE TRIAL OF THIS
22 CASE.

23 I CHARGE YOU, LADIES AND GENTLEMEN, THAT THE RULES OF
24 EVIDENCE ORDINARILY DO NOT PERMIT A WITNESS TO GET ON THAT
25 WITNESS STAND AND TAKE AN OATH AND TESTIFY TO AN OPINION OR A

1 CONCLUSION. THERE IS AN EXCEPTION TO THIS RULE, AND IT
2 EXISTS FOR THOSE WITNESSES THAT WE CALL EXPERT WITNESSES. A
3 WITNESS WHO BY EDUCATION, TRAINING, EXPERIENCE HAS BECOME AN
4 EXPERT OR CLAIMS TO HAVE BECOME AN EXPERT IN SOME ART,
5 SCIENCE, PROFESSION, OR CALLING MAY STATE AN OPINION AS TO
6 RELEVANT AND MATERIAL MATTERS IF QUALIFIED BY THE COURT AS A
7 MATTER OF LAW IN WHICH THE EXPERT WITNESS CLAIMS TO BE AN
8 EXPERT IN THAT FIELD AND MAY ALSO STATE THE REASONS FOR HIS
9 OR HER EXPERT OPINION.

10 YOU, LADIES AND GENTLEMEN OF THE JURY, SHOULD CONSIDER
11 ANY EXPERT OPINION RECEIVED IN EVIDENCE IN THIS CASE, AND
12 LIKE ANY OTHER EVIDENCE, YOU GIVE IT THE WEIGHT YOU THINK IT
13 DESERVES. IF YOU DECIDE THAT THE OPINION OF AN EXPERT
14 WITNESS IS NOT BASED ON SUFFICIENT EDUCATION AND EXPERIENCE
15 OR IF YOU CONCLUDE THAT THE REASONS GIVEN IN SUPPORT OF THE
16 EXPERT OPINION ARE NOT SOUND OR THAT THE OPINION IS
17 OUTWEIGHED BY OTHER EVIDENCE IN THE CASE, YOU MAY DISREGARD
18 THE EXPERT OPINION ENTIRELY. AN EXPERT WITNESS'S TESTIMONY
19 IS TO BE GIVEN NO GREATER WEIGHT THAN THAT OF OTHER WITNESSES
20 SIMPLY BECAUSE THE WITNESS IS AN EXPERT. YOU ARE NOT
21 REQUIRED TO ACCEPT AN EXPERT WITNESS'S OPINION EVEN THOUGH IT
22 IS UNCONTRADICTED OR NOT CONTRADICTED.

23 I CHARGE YOU, LADIES AND GENTLEMEN, YOU HAVE HEARD
24 EVIDENCE IN THIS CASE THAT THE DEFENDANT WAS CONVICTED OF A
25 CRIME OTHER THAN THE ONE FOR WHICH THE DEFENDANT IS NOW ON

1 TRIAL. THIS EVIDENCE OF OTHER CONVICTIONS OF CRIMES MAY BE
2 CONSIDERED BY YOU. IF YOU CONCLUDE THAT IT IS TRUE, YOU MAY
3 CONSIDER IT ONLY IN DECIDING WHETHER THE DEFENDANT'S
4 TESTIMONY IS BELIEVABLE AND FOR NO OTHER PURPOSE. YOU MUST
5 NOT CONSIDER THE DEFENDANT'S PRIOR RECORD AS ANY EVIDENCE OF
6 THE DEFENDANT'S GUILT OF THE CHARGE WE ARE TRYING TODAY.

7 I CHARGE YOU, LADIES AND GENTLEMEN, THAT A STIPULATION -
8 YOU'VE HEARD ME USE THAT TERM - IS AN AGREEMENT. IT'S AN
9 ADMISSION OR A CONCESSION MADE IN A JUDICIAL PROCEEDING BY
10 THE PARTIES OR THE ATTORNEYS. STIPULATIONS, OF COURSE, ARE
11 BINDING UPON THOSE WHO MAKE THEM. A STIPULATION IS AN
12 AGREEMENT, AN UNDERSTANDING. THE COURT AND THE JURY MUST
13 ACCEPT STIPULATIONS BINDING UPON THE PARTIES. IF COUNSEL FOR
14 THE PARTIES HAVE STIPULATED TO ANY FACT OR ANY FACT HAS BEEN
15 ADMITTED BY COUNSEL DURING THE TRIAL OF THIS CASE, YOU WILL
16 REGARD THAT FACT AS BEING CONCLUSIVELY PROVED AS TO THE PARTY
17 OR PARTIES MAKING THE STIPULATION OR ADMISSION.

18 I CHARGE YOU, LADIES AND GENTLEMEN, THAT IN ORDER TO
19 ESTABLISH CRIMINAL LIABILITY, CRIMINAL INTENT IS REQUIRED.
20 THIS IS BY WAY OF GENERAL EXAMPLE. FOR EXAMPLE, THE MENTAL
21 STATE REQUIRED TO BE PROVEN BY THE STATE FOR ANY PARTICULAR
22 CRIME MIGHT BE PURPOSE, INTENT, KNOWLEDGE, RECKLESSNESS OR
23 EVEN IN SOME CASES, LADIES AND GENTLEMEN, BY WAY OF EXAMPLE,
24 CRIMINAL NEGLIGENCE. THOSE ARE EXAMPLES OF CRIMINAL INTENT.

25 CRIMINAL INTENT MUST BE PROVEN BY THE STATE BEYOND A

1 REASONABLE DOUBT. CRIMINAL INTENT IS ALWAYS A MATTER THAT
2 MUST BE DETERMINED BY THE JURY FROM THE CIRCUMSTANCES
3 SURROUNDING THE SITUATION BASED ON EVIDENCE INTRODUCED DURING
4 THE TRIAL OF THE CASE.

5 THERE IS NO WAY, LADIES AND GENTLEMEN, TO PROVE INTENT
6 TO A MATHEMATICAL CERTAINTY. THERE IS NO WAY MEDICAL SCIENCE
7 CAN DISSECT A PERSON'S BRAIN AND DETERMINE WHAT THE PERSON
8 HAD IN MIND. SO THE LAW SAYS THAT CRIMINAL INTENT MAY BE
9 INFERRED FROM THE CIRCUMSTANCES SHOWN TO HAVE EXISTED BASED
10 ON EVIDENCE INTRODUCED DURING THE TRIAL OF THE CASE. THIS IS
11 HOW YOU AS A JURY MAKE A DETERMINATION OF WHETHER OR NOT ANY
12 ELEMENT IN ANY CRIME REQUIRING INTENT WAS PRESENT. IT IS NOT
13 NECESSARY TO ESTABLISH CRIMINAL INTENT BY DIRECT EVIDENCE,
14 BUT INTENT MAY BE ESTABLISHED BY INFERENCE IN THE SAME WAY AS
15 ANY OTHER FACT, BY TAKING INTO CONSIDERATION THE ACTS OF THE
16 PARTIES AND ALL THE FACTS AND CIRCUMSTANCES OF THE CASE BASED
17 ON EVIDENCE INTRODUCED DURING THE TRIAL OF THE CASE.

18 CRIMINAL INTENT IS A MENTAL STATE, A CONSCIOUS
19 WRONGDOING. IT IS UP TO YOU, THE JURY, TO DETERMINE FROM
20 EVIDENCE INTRODUCED DURING THE TRIAL OF THE CASE WHAT THE
21 DEFENDANT INTENDED TO DO BASED ON THE CIRCUMSTANCES SHOWN TO
22 HAVE EXISTED FROM EVIDENCE INTRODUCED DURING THE TRIAL OF THE
23 CASE. CRIMINAL INTENT CAN ARISE FROM ACTION OR A FAILURE TO
24 ACT. IT MAY ARISE FROM NEGLIGENCE, RECKLESSNESS OR AN
25 INDIFFERENCE TO DUTY OR CONSEQUENCES CONSIDERED BY THE LAW TO

1 BE THE EQUIVALENT OF CRIMINAL INTENT.

2 I CHARGE YOU, LADIES AND GENTLEMEN, THAT VOLUNTARY
3 INTOXICATION IS NOT AN EXCUSE FOR OR A DEFENSE TO A CRIME,
4 REGARDLESS OF WHETHER THE CRIME IS ONE INVOLVING GENERAL OR
5 SPECIFIC CRIMINAL INTENT. THIS RULE EXTENDS TO THE VOLUNTARY
6 INGESTION OF DRUGS. A PERSON WHO VOLUNTARILY INGESTS ALCOHOL
7 OR DRUGS AND THEREBY BECOMES INTOXICATED IS NO LESS
8 RESPONSIBLE FOR HIS OR HER ACTS WHILE IN SUCH CONDITION. IF
9 ONE VOLUNTARILY DRINKS INTOXICATING LIQUORS, WINES, OR BEER
10 OR INGESTS DRUGS AND BECOMES INTOXICATED TO WHATEVER DEGREE
11 AND IF WHILE IN THAT CONDITION COMMITS AN ACT WHICH WOULD BE
12 A CRIME IF IT HAD BEEN COMMITTED BY A SOBER PERSON, THE FACT
13 OF INTOXICATION WOULD NOT RELIEVE THE INTOXICATED PERSON FROM
14 CRIMINAL RESPONSIBILITY.

15 I CHARGE YOU IN THIS CASE, LADIES AND GENTLEMEN, THAT
16 THE DEFENDANT IS CHARGED WITH THE CRIMINAL OFFENSE IN THE
17 INDICTMENT OF MURDER. FOR THIS OFFENSE THE STATE MUST PROVE
18 BEYOND A REASONABLE DOUBT THAT THE DEFENDANT KILLED ANOTHER
19 PERSON WITH MALICE AFORETHOUGHT. MALICE IS HATRED. MALICE
20 IS ILL WILL OR HOSTILITY TOWARDS ANOTHER PERSON. IT IS THE
21 INTENTIONAL DOING OF A WRONGFUL ACT WITHOUT JUST CAUSE OR
22 EXCUSE AND WITH AN INTENT TO INFLICT AN INJURY OR UNDER
23 CIRCUMSTANCES THE LAW WILL INFER AN EVIL OR A HOSTILE INTENT.

24 MALICE AFORETHOUGHT DOES NOT REQUIRE THAT MALICE EXIST
25 FOR ANY PARTICULAR TIME BEFORE THE ACT IS COMMITTED, BUT

1 MALICE MUST EXIST IN THE MIND OF THE DEFENDANT JUST BEFORE
2 AND AT THE TIME OF THE ACT BEING COMMITTED. THEREFORE, THERE
3 MUST BE A COMBINATION OF THE PREVIOUS EVIL, HOSTILE INTENT
4 AND THE ACT.

5 MALICE AFORETHOUGHT MAY BE EXPRESS OR INFERRED. THESE
6 TERMS EXPRESS AND INFERRED DO NOT MEAN DIFFERENT KINDS OF
7 MALICE BUT MERELY THE MANNER IN WHICH MALICE MAY BE SHOWN TO
8 EXIST, THAT IS, EITHER BY DIRECT EVIDENCE OR BY INFERENCE
9 FROM THE FACTS AND CIRCUMSTANCES WHICH ARE PROVED FROM
10 EVIDENCE INTRODUCED DURING THE TRIAL OF A CASE.

11 EXPRESS MALICE IS SHOWN WHEN A PERSON SPEAKS WORDS WHICH
12 EXPRESS HATRED OR ILL WILL OR HOSTILITY FOR ANOTHER OR WHEN A
13 PERSON PREPARED BEFOREHAND TO DO THE ACT WHICH WAS LATER
14 ACCOMPLISHED. FOR EXAMPLE, LYING IN WAIT FOR ANOTHER PERSON
15 OR ANY OTHER ACT OF PREPARATION GOING TO SHOW THAT THE DEED
16 WAS WITHIN THE DEFENDANT'S MIND WOULD BE EXAMPLES OF EXPRESS
17 MALICE. MALICE MAY ALSO BE INFERRED FROM CONDUCT SHOWING A
18 TOTAL DISREGARD FOR HUMAN LIFE.

19 INFERRED MALICE MAY ALSO ARISE WHEN THE DEED IS DONE OR
20 ACCOMPLISHED WITH A DEADLY WEAPON. A DEADLY WEAPON IS ANY
21 ARTICLE, INSTRUMENT, OR SUBSTANCE WHICH IS LIKELY TO CAUSE
22 DEATH OR GREAT BODILY HARM. WHETHER AN INSTRUMENT HAS BEEN
23 USED AS A DEADLY WEAPON DEPENDS ON THE FACTS AND
24 CIRCUMSTANCES OF EACH CASE.

25 THERE ARE EXAMPLES, WHICH I WILL GIVE YOU, OF

1 INSTRUMENTS WHICH MAY BE DEADLY WEAPONS: A PISTOL, A
2 SHOTGUN, A RIFLE, A DIRK, A DAGGER, A KNIFE, A SLINGSHOT,
3 METAL KNUCKLES, A RAZOR, GASOLINE, A FIREBOMB, OR A MOLOTOV
4 COCKTAIL OR LIGHTER FLUID. A GUN MAY BE A DEADLY WEAPON EVEN
5 IF IT IS NOT OPERATING.

6 I CHARGE YOU, LADIES AND GENTLEMEN, THAT IN THIS CASE
7 THE DEFENDANT HAS RAISED THE DEFENSE OF SELF-DEFENSE. SELF-
8 DEFENSE IS A COMPLETE DEFENSE AND, IF IT IS ESTABLISHED, YOU
9 MUST FIND THE DEFENDANT NOT GUILTY. THE STATE HAS THE BURDEN
10 OF DISPROVING SELF-DEFENSE BY PROOF BEYOND A REASONABLE
11 DOUBT. IF YOU HAVE A REASONABLE DOUBT OF THE DEFENDANT'S
12 GUILT AFTER CONSIDERING ALL THE EVIDENCE IN THIS CASE,
13 INCLUDING THE EVIDENCE OF SELF-DEFENSE, THEN YOU MUST FIND
14 THE DEFENDANT NOT GUILTY. ON THE OTHER HAND, IF YOU HAVE NO
15 REASONABLE DOUBT OF THE DEFENDANT'S GUILT AFTER CONSIDERING
16 ALL THE EVIDENCE, INCLUDING THE EVIDENCE OF SELF-DEFENSE,
17 THEN YOU MUST FIND THE DEFENDANT GUILTY.

18 THE FOLLOWING FOUR ELEMENTS ARE REQUIRED BY THE LAW TO
19 ESTABLISH SELF-DEFENSE. FIRST, THE DEFENDANT MUST BE WITHOUT
20 FAULT IN BRINGING ON THE DIFFICULTY. SECOND, THE DEFENDANT
21 MUST HAVE ACTUALLY BELIEVED HE WAS IN IMMINENT DANGER OF
22 LOSING HIS LIFE OR SUSTAINING SERIOUS BODILY INJURY OR HE
23 ACTUALLY WAS IN SUCH IMMINENT DANGER.

24 THIRDLY, IF HIS DEFENSE IS BASED UPON HIS BELIEF OF
25 IMMINENT DANGER, A REASONABLY PRUDENT MAN OR WOMAN OF

1 ORDINARY FIRMNESS AND COURAGE WOULD HAVE ENTERTAINED THE SAME
2 BELIEF. IF THE DEFENDANT ACTUALLY WAS IN IMMINENT DANGER,
3 THE CIRCUMSTANCES WERE SUCH THAT WOULD WARRANT A REASONABLY
4 PRUDENT PERSON OF ORDINARY FIRMNESS, PRUDENCE, AND COURAGE TO
5 STRIKE THE FATAL BLOW IN ORDER TO SAVE HIMSELF OR HERSELF
6 FROM SERIOUS BODILY HARM OR LOSING HIS OR HER OWN LIFE.

7 FOURTH, THE DEFENDANT HAD NO OTHER PROBABLE MEANS OF
8 AVOIDING THE DANGER OR LOSING HIS OWN LIFE OR SUSTAINING
9 BODILY INJURY THAN TO ACT AS HE DID IN THIS PARTICULAR
10 INSTANCE. THOSE ARE THE ELEMENTS OF SELF-DEFENSE. ONE,
11 FIRST, THE DEFENDANT MUST BE WITHOUT FAULT IN BRINGING ON THE
12 DIFFICULTY. IF THE DEFENDANT'S CONDUCT WAS THE TYPE WHICH
13 WAS REASONABLY CALCULATED TO AND DID PROVOKE A DEADLY
14 ASSAULT, THE DEFENDANT WOULD BE AT FAULT IN BRINGING ON THE
15 DIFFICULTY AND WOULD NOT BE ENTITLED TO AN ACQUITTAL BASED ON
16 SELF-DEFENSE.

17 THE SECOND ELEMENT OF SELF-DEFENSE IS THAT THE DEFENDANT
18 WAS ACTUALLY IN IMMINENT DANGER OF DEATH OR SERIOUS BODILY
19 INJURY OR THAT THE DEFENDANT ACTUALLY BELIEVED HE WAS IN
20 IMMINENT DANGER OF DEATH OR SERIOUS BODILY INJURY. IF THE
21 DEFENDANT WAS ACTUALLY IN IMMINENT DANGER, IT MUST BE SHOWN
22 THAT THE CIRCUMSTANCES WOULD HAVE WARRANTED A PERSON OF
23 ORDINARY FIRMNESS AND COURAGE TO STRIKE THE FATAL BLOW TO
24 PREVENT DEATH OR SERIOUS BODILY INJURY. IF THE DEFENDANT
25 BELIEVED HE WAS IN IMMINENT DANGER OF DEATH OR SERIOUS BODILY

1 INJURY, IT MUST BE SHOWN FROM EVIDENCE INTRODUCED DURING THE
2 TRIAL OF THE CASE THAT A REASONABLY PRUDENT PERSON OF
3 ORDINARY FIRMNESS AND COURAGE WOULD HAVE HAD THE SAME BELIEF.
4 IN DECIDING WHETHER THE DEFENDANT ACTUALLY WAS OR BELIEVED HE
5 WAS IN IMMINENT DANGER OF DEATH OR SERIOUS BODILY INJURY,
6 YOU, LADIES AND GENTLEMEN OF THE JURY, SHOULD CONSIDER ALL
7 THE FACTS AND CIRCUMSTANCES SURROUNDING THE CRIME, INCLUDING
8 THE PHYSICAL CONDITION AND CHARACTERISTICS OF THE DEFENDANT
9 AND THE VICTIM.

10 THE DEFENDANT DOES NOT HAVE TO SHOW THAT HE WAS ACTUALLY
11 IN DANGER. IT IS ENOUGH THAT THE DEFENDANT BELIEVED HE WAS
12 IN IMMINENT DANGER AND A REASONABLY PRUDENT PERSON OF
13 ORDINARY FIRMNESS AND COURAGE WOULD HAVE HAD THE SAME BELIEF.
14 THE DEFENDANT HAS THE RIGHT TO ACT ON APPEARANCES, EVEN
15 THOUGH THE DEFENDANT BELIEVES HE MAY HAVE BEEN MISTAKEN. IT
16 IS FOR YOU, LADIES AND GENTLEMEN, TO DECIDE WHETHER THE
17 DEFENDANT'S FEAR OF IMMEDIATE DANGER OF DEATH OR SERIOUS
18 BODILY INJURY WAS REASONABLE AND WOULD HAVE BEEN FELT BY AN
19 ORDINARY PERSON IF FACED WITH THE SAME OR SIMILAR SITUATION.

20 I CHARGE YOU THAT WORDS ACCOMPANIED BY A HOSTILE ACT
21 MAY, DEPENDING ON THE CIRCUMSTANCES, ESTABLISH SELF-DEFENSE.
22 EVIDENCE OF PRIOR DIFFICULTIES BETWEEN THE DEFENDANT AND THE
23 VICTIM MAY BE CONSIDERED BY YOU IN DECIDING WHETHER A THREAT
24 EXISTED, WHETHER THE DEFENDANT HAD A REASON TO BELIEVE A
25 THREAT EXISTED, AND HOW SERIOUS THAT THREAT WAS. THE

1 RELATIVE AGE OF THE DEFENDANT AND THE VICTIM MAY BE
2 CONSIDERED IN DECIDING THE APPARENT OR ACTUAL NEED FOR FORCE
3 IN SELF-DEFENSE AND THE AMOUNT OF FORCE NEEDED.

4 PRIOR INSTANCES OF VIOLENCE, IF ANY, BY THE VICTIM MAY
5 BE CONSIDERED IN DECIDING WHETHER THE DEFENDANT ACTUALLY
6 BELIEVED HE WAS IN IMMINENT DANGER OF DEATH OR SERIOUS BODILY
7 INJURY OR WAS ACTUALLY IN IMMINENT DANGER. THREATS MADE BY
8 THE VICTIM MAY BE CONSIDERED IN DETERMINING WHETHER THE
9 DEFENDANT ACTUALLY WAS OR BELIEVED HE WAS IN IMMINENT DANGER.

10 THE FINAL ELEMENT OF SELF-DEFENSE IS THAT THE DEFENDANT
11 HAD NO OTHER PROBABLE WAY TO AVOID THE DANGER OF DEATH OR
12 SERIOUS BODILY INJURY THAN TO ACT AS THE DEFENDANT DID IN
13 THIS PARTICULAR INCIDENT BASED ON EVIDENCE INTRODUCED DURING
14 THE TRIAL OF THE CASE. IF THE DEFENDANT WAS ON HIS OWN
15 PREMISES, I CHARGE YOU THE DEFENDANT HAD NO DUTY TO RETREAT
16 BEFORE ACTING IN SELF-DEFENSE. A PERSON CANNOT BE REQUIRED
17 TO MAKE AN EXACT CALCULATION AS TO THE DEGREE OR AMOUNT OF
18 FORCE WHICH MAY BE NEEDED TO AVOID DEATH OR SERIOUS BODILY
19 HARM. THEREFORE, IN SELF-DEFENSE THE DEFENDANT HAS THE RIGHT
20 TO USE THE FORCE NEEDED TO AVOID DEATH OR SERIOUS BODILY
21 HARM. FORCE USED IN SELF-DEFENSE DOES NOT HAVE TO BE LIMITED
22 TO THE DEGREE OR AMOUNT OF FORCE USED BY THE VICTIM. THE
23 DEFENDANT HAS THE RIGHT TO USE SUCH FORCE OR SO MUCH FORCE AS
24 APPEARED TO BE NECESSARY FOR COMPLETE SELF-PROTECTION IN
25 WHICH A PERSON OF ORDINARY REASON AND FIRMNESS WOULD HAVE

1 BELIEVED TO BE NEEDED TO PREVENT DEATH OR SERIOUS BODILY
2 HARM. IF THE DEFENDANT IS JUSTIFIED IN DEFENDING HIMSELF AND
3 IN FIRING A SHOT, THE FIRST SHOT, THEN THE DEFENDANT IS
4 JUSTIFIED IN CONTINUING TO SHOOT UNTIL IT IS APPARENT THAT
5 THE DANGER OF DEATH OR SERIOUS BODILY INJURY HAS COMPLETELY
6 ENDED.

7 LADIES AND GENTLEMEN OF THE JURY, I'VE NOW CHARGED YOU
8 ON THE LAW IN ORDER TO HELP GUIDE YOU TO A FAIR AND A JUST
9 RESULT IN THIS CASE. YOU'RE THE JUDGES OF THE FACTS IN THIS
10 CASE, AND BASED ON YOUR DETERMINATION OF THE FACTS FROM
11 EVIDENCE INTRODUCED DURING THE TRIAL OF THIS CASE AND THE LAW
12 AS I HAVE EXPLAINED IT TO YOU, YOU WILL GO TO YOUR JURY ROOM
13 IN JUST A MOMENT AND SOON, WHEN I INSTRUCT YOU, YOU'RE GOING
14 TO BEGIN YOUR DELIBERATIONS.

15 EACH OF YOU, LADIES AND GENTLEMEN, HAVE BEEN SELECTED IN
16 THIS TRIAL AS FAIR AND IMPARTIAL JURORS. YOU TOOK AN OATH.
17 YOU'RE SWORN TO FAIRLY AND IMPARTIALLY TRY AND DETERMINE THE
18 FACTS OF THIS CASE, AND WHEN YOU COMPLY WITH YOUR OATH IN
19 DOING THAT, NO ONE CAN CRITICIZE YOUR VERDICT. YOU'RE TO
20 DECIDE THIS CASE BASED SOLELY ON THE TESTIMONY YOU'VE HEARD
21 FROM THE WITNESS STAND, FROM THE SWORN WITNESSES WHO HAVE
22 TESTIFIED, ALONG WITH THE EXHIBITS AND ANY STIPULATIONS.
23 NOTHING ELSE.

24 YOU MUST DECIDE THE ISSUE IN THIS PROCEEDING WITHOUT ANY
25 BIAS OR PREJUDICE TOWARDS EITHER PARTY. YOU CANNOT ALLOW

1 YOURSELF TO BE GOVERNED BY PREJUDICE FOR OR AGAINST ANY
2 PERSON. YOU CAN'T ALLOW YOURSELF TO BE GOVERNED BY PUBLIC
3 OPINION OR BY ANY OTHER ARBITRARY FACTOR THAT IS NOT IN
4 EVIDENCE DURING THE TRIAL OF THIS CASE OR ANY EMOTION NOT IN
5 EVIDENCE DURING THE TRIAL OF THIS CASE. BOTH THE DEFENDANT
6 AND THE STATE OF SOUTH CAROLINA HAVE THE RIGHT TO EXPECT THAT
7 EACH OF YOU ON THE JURY WILL CAREFULLY AND IMPARTIALLY
8 CONSIDER ALL OF THE EVIDENCE IN THIS CASE AND THAT YOU WILL
9 FOLLOW THE LAW AS I HAVE INSTRUCTED IT TO YOU TO BE IN
10 REACHING YOUR VERDICT IN THIS CASE.

11 NOW, MR. FOREMAN, I TOLD YOU I'D PREPARE A VERDICT FORM
12 FOR YOU. I'VE DONE SO. PAY ABSOLUTELY NO ATTENTION TO THE
13 ORDER IN WHICH I WROTE THE FORMS OF VERDICT. WE OBVIOUSLY
14 HAD TO WRITE ONE BEFORE THE OTHER, SO THE ORDER HAS NO
15 SIGNIFICANCE WHATSOEVER. I PUT A CAPTION AT THE TOP OF THE
16 VERDICT FORM, MR. FOREMAN. STATE OF SOUTH CAROLINA, COUNTY
17 OF RICHLAND, COURT OF GENERAL SESSIONS WHICH MEANS CRIMINAL
18 COURT, INDICTMENT 2000-GS-40-43702, THE INDICTMENT NUMBER.
19 IT HAS STATE OF SOUTH CAROLINA VERSUS THOMAS BRYANT,
20 DEFENDANT. IT HAS THE WORD VERDICT IN THE CAPTION. UNDER
21 THAT THE ONLY QUESTION FOR THE JURY IS NUMBER ONE, AND THE
22 WORDS ARE: WE, THE JURY, BY UNANIMOUS CONSENT FIND THE
23 DEFENDANT, THOMAS BRYANT -- AND THE FIRST FORM OF VERDICT
24 UNDER NUMBER ONE IS GUILTY OF MURDER. IF THAT BE YOUR FORM
25 OF VERDICT, MR. FOREMAN, YOU WOULD CHECK ON THE LINE BESIDE

1 THAT FORM OF VERDICT AND THEN SIGN YOUR NAME ON THE LINE
2 WHERE IT SAYS FOREPERSON AND FILL IN TODAY'S DATE IN THE
3 BLANK WHERE I HAVE JUNE BLANK, 2008. UNDER THE WORDS WE, THE
4 JURY, NUMBER ONE, BY UNANIMOUS CONSENT, FIND THE DEFENDANT,
5 THOMAS BRYANT -- THE SECOND FORM OF VERDICT IN THIS CASE IS
6 NOT GUILTY OF MURDER. IF THAT BE YOUR FORM OF VERDICT, MR.
7 FOREMAN, YOU WOULD CHECK ON THE LINE AS THE FOREMAN OF THE
8 JURY FOR THE ENTIRE JURY. ON THAT FORM OF VERDICT SIGN YOUR
9 NAME ON THE LINE WHERE IT SAYS FOREPERSON AND FILL IN TODAY'S
10 DATE. YOU CANNOT FIND BOTH FORMS OF VERDICT. YOU MUST FIND
11 ONE FORM OF VERDICT OR THE OTHER, THAT IS, EITHER GUILTY OF
12 MURDER OR NOT GUILTY OF MURDER.

13 NOW, YOUR VERDICT, MR. FOREMAN, MUST BE UNANIMOUS. THAT
14 IS, LADIES AND GENTLEMEN, IT MUST BE THE VERDICT OF EACH AND
15 EVERY ONE OF YOU. ALL 12 OF YOU MUST AGREE ON A VERDICT.

16 WHEN YOU HAVE REACHED A VERDICT, MR. FOREMAN, AND YOU
17 HAVE CHECKED THE APPROPRIATE LINE, SIGN YOUR NAME. FILL IN
18 THE DATE. I PLACED INSTRUCTIONS AT THE BOTTOM OF THE VERDICT
19 FORM. PLEASE INDICATE YOUR FINDINGS BY CHECKING THE
20 APPROPRIATE LINE AND CERTIFYING YOUR FINDING BY THE
21 FOREPERSON'S SIGNATURE. YOU WOULD THEN KNOCK ON YOUR JURY
22 ROOM DOOR, INFORM THE BAILIFF THAT YOU'VE REACHED A VERDICT.
23 WE WOULD THEN RECEIVE YOU BACK INTO THE COURTROOM IN ORDER TO
24 PUBLISH THE VERDICT.

25 NOW, MR. FOREMAN AND LADIES AND GENTLEMEN OF THE JURY,

1 AT THIS TIME I'M GOING TO ASK YOU TO RETIRE TO YOUR JURY
2 ROOM. DO NOT BEGIN YOUR DELIBERATIONS QUITE YET. IT MIGHT
3 BE NECESSARY FOR ME TO BRING YOU BACK INTO THE COURTROOM FOR
4 SOME BRIEF ADDITIONAL INSTRUCTIONS. WHEN IT IS TIME FOR YOU
5 TO BEGIN YOUR DELIBERATIONS, I WILL HAVE THE BAILIFF BRING
6 YOUR VERDICT FORM IN TO YOU ALONG WITH ALL THE EXHIBITS WHICH
7 HAVE BEEN INTRODUCED INTO EVIDENCE DURING THE TRIAL OF THE
8 CASE AND HAVE THE BAILIFF INSTRUCT YOU WHEN YOU MAY BEGIN
9 YOUR DELIBERATIONS. SO PLEASE DO NOT BEGIN YOUR
10 DELIBERATIONS UNTIL I INSTRUCT YOU TO DO SO. YOU MAY RETIRE
11 TO YOUR JURY ROOM AT THIS TIME. MY ALTERNATE JURORS, REMAIN
12 IN THE COURTROOM WITH ME.

13 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT AT
14 11:21 A.M.)

15 **THE COURT:** SIR AND MA'AM, ALL A JUDGE CAN ASK OF A
16 JUROR IS THAT YOU LISTEN AND LISTEN CAREFULLY. AND I WATCHED
17 BOTH OF YOU DURING THE TRIAL OF THIS CASE AND THAT'S EXACTLY
18 WHAT YOU DID, AND ON BEHALF OF RICHLAND COUNTY AND THIS COURT
19 I WANT TO THANK YOU FOR THAT SERVICE, THAT PATIENCE, THAT
20 WILLINGNESS TO LISTEN, TO GIVE UP TIME FROM YOUR HOME, YOUR
21 JOB, YOUR FAMILY TO COME AND SERVE ON THE JURY.

22 I TOLD YOU AT THE OUTSET OF THIS CASE THAT WITHOUT YOU
23 JUSTICE CAN NEVER BE ACCOMPLISHED IN A COURTROOM, AND I
24 REALLY FEEL THAT'S TRUE. I WANT TO THANK YOU FOR THAT
25 SERVICE. NO ONE BECAME ILL OR FOR SOME VALID REASON COULD

1 NOT CONTINUE, ALTHOUGH WE CAME PRETTY CLOSE ONE MORNING, TO
2 SERVE ON THE JURY, AND SO IT WAS NOT NECESSARY FOR ME TO USE
3 EITHER ONE OF MY ALTERNATE JURORS. SO AT THIS TIME I'M GOING
4 TO TELL YOU THIS COMPLETES YOUR SERVICE IN THE TRIAL OF THIS
5 CASE.

6 (WHEREUPON, THE ALTERNATE JURORS WERE EXCUSED FROM THE
7 TRIAL.)

8 THE COURT: ANY EXCEPTIONS OR ADDITIONS TO THE CHARGE
9 FROM THE STATE OF SOUTH CAROLINA?

10 MR. CATHCART: NOTHING FROM THE STATE OF SOUTH CAROLINA,
11 YOUR HONOR.

12 THE COURT: ANY EXCEPTIONS OR ADDITIONS TO THE CHARGE
13 FROM THE DEFENDANT?

14 MR. COLLINS: NOTHING FROM THE DEFENSE, YOUR HONOR.

15 THE COURT: I'D ASK THAT COUNSEL COME FORWARD. EXAMINE
16 THE EXHIBITS. CERTIFY ON THE RECORD YOU'RE SATISFIED THE
17 COURT REPORTER HAS ALL THE EXHIBITS AND THAT YOU HAVE NO
18 OBJECTION TO MY BAILIFFS - IT'S GOING TO TAKE MORE THAN ONE,
19 SO I'M GOING TO NEED AT LEAST TWO - TAKING ALL THE EXHIBITS
20 AND THE JURY VERDICT FORM IN TO THE JURY AND THE BAILIFF
21 INFORMING THE JURY THEY MAY NOW COMMENCE THEIR DELIBERATIONS.

22 MR. CATHCART: YOUR HONOR, WE HAVE EXAMINED THE ITEMS.
23 AT LEAST I'M PERFECTLY SATISFIED THAT THE ITEMS THAT ARE
24 GOING BACK TO THE JURY ROOM -- THAT IT'S PROPER TO GO BACK TO
25 THE JURY ROOM.

1 **THE COURT:** SO YOU'RE SATISFIED WE HAVE ALL THE
2 EXHIBITS.

3 **MR. CATHCART:** THAT'S CORRECT, YOUR HONOR.

4 **THE COURT:** AND YOU HAVE NO OBJECTION, MR. CATHCART, TO
5 THE BAILIFFS TAKING THIS VERDICT FORM AND THE EXHIBITS AND
6 THE BAILIFF TELLING THE JURY THEY MAY NOW COMMENCE THEIR
7 DELIBERATIONS.

8 **MR. CATHCART:** I DO NOT HAVE ANY OBJECTION TO THAT AT
9 ALL, YOUR HONOR.

10 **THE COURT:** ALL RIGHT.

11 **MR. COLLINS:** I DO NOT HAVE ANY AT ALL, YOUR HONOR.

12 **THE COURT:** THANK YOU. MR. COLLINS, YOU TELL ME -- HERE
13 IS THE VERDICT FORM, MR. BILLY. HE'S STILL ON THE RECORD, SO
14 HOLD ON ONE SECOND. LET ME GET THROUGH THIS AND THEN Y'ALL
15 CAN TALK. MR. COLLINS, IS THE DEFENSE SATISFIED THAT THE
16 COURT REPORTER HAS ALL THE EXHIBITS?

17 **MR. COLLINS:** YES, YOUR HONOR.

18 **THE COURT:** AND DO YOU HAVE ANY OBJECTION ON BEHALF OF
19 THE DEFENDANT OF THE BAILIFF TAKING THE VERDICT FORM AND ALL
20 EXHIBITS BACK TO THE JURY ROOM AND THE BAILIFF INFORMING THE
21 JURY THAT THEY MAY NOW COMMENCE THEIR DELIBERATIONS?

22 **MR. COLLINS:** NO OBJECTION, YOUR HONOR.

23 **THE COURT:** ALL RIGHT, SIR. MY BAILIFFS, IF YOU'LL TAKE
24 THE VERDICT FORM AND ALL THE EXHIBITS TO THE JURY AND TELL
25 THE JURY THEY MAY NOW COMMENCE THEIR DELIBERATIONS. WE'LL BE

1 AT EASE FOR A COUPLE OF MOMENTS.

2 (WHEREUPON, THE JURY BEGAN DELIBERATING AT 11:28 A.M.)

3 THE COURT: THANK YOU. GOOD AFTERNOON. PLEASE BE
4 SEATED. A FEW MINUTES AGO IN THE CASE THAT WE'VE BEEN TRYING
5 ALL WEEK I RECEIVED A NOTE FROM THE JURY. I CALLED COUNSEL
6 FOR BOTH SIDES INTO MY CHAMBERS, AND WE DISCUSSED HOW TO
7 HANDLE THE MATTER. I FIRST ASKED -- AND I'VE READ THE NOTE
8 WHICH STATES: MAY WE PLEASE HAVE THE DEFINITIONS OF, COLON,
9 IN PARENTHESES, IN PRINT: SELF-DEFENSE, MALICE, MURDER,
10 REASONABLE DOUBT, WHICH CONSTITUTES A SIGNIFICANT AMOUNT OF
11 THE ENTIRE CHARGE SINCE THE ONLY OFFENSE SUBMITTED WAS THE
12 OFFENSE OF MURDER, SIGNED BY THE FOREMAN OF THE JURY.

13 I'VE READ THIS TO COUNSEL. WE'VE HAD A DISCUSSION ABOUT
14 HOW TO HANDLE IT. IN LIGHT OF THE QUESTION, BOTH SIDES
15 AGREED THAT WITH THE DELETION IN MY WRITTEN CHARGE OF CASE
16 CITES WHICH I DID NOT READ TO THE JURY DURING MY CHARGE TO
17 THEM AND DELETION OF WORDS ON PAGES 15 AND 16 OF MY CHARGE
18 WHERE I HAD SCRATCHED OUT CERTAIN THINGS WHEN WE HAD OUR
19 CHARGE CONFERENCE THAT WE ALL AGREED THERE WAS NO EVIDENCE TO
20 SUPPORT, BOTH SIDES AGREE - WHICH MY LAW CLERK IS DOING RIGHT
21 NOW - THAT 12 COPIES OF MY CHARGE WILL BE MADE AND EACH
22 JUROR, WITHOUT NECESSITY OF BRINGING THEM BACK IN THE
23 COURTROOM, WILL BE GIVEN BY THE BAILIFF A COPY OF MY ENTIRE
24 CHARGE WITH THOSE OMISSIONS. HAVE I ACCURATELY STATED WHAT
25 OCCURRED INSOFAR AS THE STATE OF SOUTH CAROLINA IS CONCERNED?

1 MR. CATHCART: YOU HAVE ACCURATELY SAID THAT, YOUR
2 HONOR.

3 THE COURT: AND YOU HAVE NO OBJECTION TO THAT PROCEDURE.

4 MR. CATHCART: NO, SIR, I DO NOT.

5 THE COURT: HAVE I ACCURATELY STATED WHAT OCCURRED
6 INSOFAR AS COUNSEL FOR THE DEFENDANT IS CONCERNED?

7 MR. COLLINS: YES, YOUR HONOR.

8 THE COURT: AND YOU HAVE NO OBJECTION TO THAT PROCEDURE.

9 MR. COLLINS: NO OBJECTION.

10 THE COURT: ANY OBJECTION TO MAKING THE JURY'S NOTE TO
11 US A COURT'S EXHIBIT? FROM THE STATE?

12 MR. CATHCART: NONE FROM THE STATE, YOUR HONOR.

13 THE COURT: FROM THE DEFENDANT?

14 MR. COLLINS: NONE FROM THE DEFENSE.

15 THE COURT: COURT'S EXHIBIT NUMBER 7 WITHOUT OBJECTION.

16 (COURT'S EXHIBIT 7 WAS MARKED FOR IDENTIFICATION ONLY.)

17 THE COURT: ALL RIGHT. I'M ASSUMING, IN LIGHT OF THE
18 FACT THAT WE'RE STILL WAITING ON MY LAW CLERK TO COMPLETE
19 COPIES, THAT WHEN THEY'RE MADE THAT BOTH OF YOU HAVE NO
20 OBJECTION TO THE BAILIFF JUST TAKING THE COPIES IN FOR EACH
21 MEMBER OF THE JURY. YOU DON'T WANT ME TO BRING THEM BACK OUT
22 HERE AND HAND THE COPIES TO EACH MEMBER OF THE JURY IN THE
23 COURTROOM. IS THAT CORRECT, SOLICITOR?

24 MR. CATHCART: THAT IS CORRECT, YOUR HONOR.

25 THE COURT: IS THAT CORRECT, MR. COLLINS?

1 MR. COLLINS: YES, YOUR HONOR.

2 THE COURT: ALL RIGHT. NOW, MR. BILLY, WHAT'S GOING TO
3 HAPPEN IN JUST A MOMENT -- HE'S BACK THERE. HE'S CLEANED UP
4 MY CHARGE, TAKEN OUT THE PORTIONS I'VE PUT ON THE RECORD. HE
5 IS RUNNING 12 COPIES BECAUSE THE CHARGE IS ABOUT 20 PAGES,
6 AND AS SOON AS HE COMPLETES THAT, THEN I WANT YOU TO TAKE IN
7 TO THE JURY ROOM A COPY FOR EACH JUROR.

8 BAILIFF: I'LL BE GLAD TO, YOUR HONOR.

9 THE COURT: AND IF THEY HAVE ANY OTHER QUESTIONS, PLEASE
10 TELL THEM TO EXPRESS IT IN WRITING FOR US. ALL RIGHT?

11 BAILIFF: ALL RIGHT, SIR.

12 THE COURT: VERY WELL. ANY OBJECTION FROM THE STATE TO
13 THAT PROCEDURE?

14 MR. CATHCART: NOTHING FROM THE STATE, YOUR HONOR.

15 THE COURT: FROM THE DEFENDANT?

16 MR. COLLINS: NONE FROM DEFENSE.

17 THE COURT: ALL RIGHT. THEN WE'LL BE AT EASE AND
18 CONTINUE TO WAIT BECAUSE I UNDERSTAND THAT I HAVE A WORKING
19 SOLICITOR IN THE COURTROOM NOW WHO WISHES TO MOVE FORWARD
20 WITH MOTIONS.

21 (PAUSE IN PROCEEDINGS WHILE THE JURY DELIBERATES.)

22 THE COURT: I UNDERSTAND NOW, COUNSEL, THAT MY JURY --
23 WHEN WE'VE BEEN TRYING THIS CASE ALL WEEK HAS REACHED A
24 VERDICT. SO I'M GOING TO ASK YOU TO STAND DOWN SO I CAN
25 RECEIVE AND PUBLISH THE VERDICT. IF YOU NEED TO LEAVE THE

1 COURTROOM, PLEASE DO SO AT THIS TIME. I'M GETTING READY TO
2 PUBLISH A VERDICT. TAKE A SEAT OR LEAVE.

3 ALL RIGHT. LADIES AND GENTLEMEN, I RECOGNIZE THAT THIS
4 HAS BEEN A LONG TRIAL AND I REALIZE THAT THERE ARE PEOPLE
5 HERE WHO HAVE AN INTEREST IN THE OUTCOME. I WILL NOT
6 TOLERATE ANY OUTBURST OF EMOTION WHEN THE VERDICT IS
7 PUBLISHED. IF YOU FEEL YOU CAN'T CONTROL YOUR EMOTIONS,
8 PLEASE LEAVE THE COURTROOM AT THIS TIME BECAUSE I INTEND TO
9 ENFORCE THAT WITH THE CONTEMPT POWERS OF THIS COURT. VERY
10 WELL.

11 COUNSEL, I UNDERSTAND FROM MY BAILIFF THAT THE JURY HAS
12 REACHED A VERDICT. ANYTHING FROM THE STATE BEFORE WE PUBLISH
13 THE VERDICT?

14 MR. CATHCART: THE ONLY THING FROM THE STATE, YOUR
15 HONOR, IS THAT THE VICTIM'S FAMILY HAS BEEN PRESENT FOR THIS
16 ENTIRE TRIAL. THEY ARE SITTING OUTSIDE THE COURTROOM FOR THE
17 VERDICT. THEY JUST DID NOT FEEL THAT THEY COULD BE HERE FOR
18 THE VERDICT, BUT THEY ARE PRESENT AND THEY KNOW THAT THIS
19 HAPPENED.

20 THE COURT: VERY WELL. ANYTHING FROM THE DEFENDANT
21 BEFORE WE PUBLISH THE VERDICT?

22 MR. COLLINS: NOTHING, YOUR HONOR.

23 THE COURT: WOULD YOU BRING US THE JURY, PLEASE, MR.
24 BILLY?

25 (WHEREUPON, THE JURY RETURNED TO OPEN COURT WITH A

1 VERDICT AT 3:21 P.M.)

2 THE COURT: COUNSEL, APPROACH.

3 (WHEREUPON, A BENCH CONFERENCE WAS HELD.)

4 THE COURT: JACKIE?

5 THE CLERK: MR. FOREMAN, HAVE YOU REACHED A VERDICT?

6 FOREMAN: YES, WE HAVE.

7 THE CLERK: HAND IT TO ME.

8 THE COURT: MADAM CLERK, YOU MAY PUBLISH THE VERDICT.

9 THE CLERK: INDICTMENT NUMBER 2000-GS-40-43702, THE
10 STATE OF SOUTH CAROLINA, COUNTY OF RICHLAND, VERSUS THOMAS
11 BRYANT. IT'S AN INDICTMENT FOR MURDER. WE, THE JURY, BY
12 UNANIMOUS CONSENT FIND THE DEFENDANT, THOMAS BRYANT, GUILTY
13 OF MURDER. THIS IS SIGNED FOREPERSON KHUSHRU TATA,
14 JUNE 12TH, 2008. MR. FOREMAN, IS THIS YOUR VERDICT AND THE
15 VERDICT OF THE ENTIRE JURY?

16 FOREMAN: YES, IT IS.

17 THE COURT: LADIES AND GENTLEMEN OF MY JURY, IF THIS BE
18 YOUR VERDICT WOULD YOU EACH SIGNIFY BY RAISING YOUR RIGHT
19 HAND FOR ME AT THIS TIME? LET THE RECORD REFLECT 12 HANDS
20 ARE RAISED. ANYTHING FROM THE DEFENDANT BEFORE I EXCUSE THE
21 JURY?

22 MR. COLLINS: NOTHING, YOUR HONOR.

23 THE COURT: MR. FOREMAN AND LADIES AND GENTLEMEN OF THE
24 JURY, ALL I -- I TOLD MY ALTERNATE JURORS THIS AND NOW I WANT
25 TO EXPRESS MY FEELINGS TO EACH OF YOU. ALL A JUDGE OR THE

1 BEFORE YOU LEAVE, THEY'LL SEE THAT YOU GET ALL OF YOUR THINGS
2 OUT OF THE JURY ROOM.

3 I INVITE YOU TO STAY IF YOU'D LIKE TO, BUT IF YOU NEED
4 TO LEAVE, I WANT YOU TO KNOW THAT THIS COMPLETES YOUR SERVICE
5 ON THE JURY FOR THIS WEEK.

6 (WHEREUPON, THE JURY WAS EXCUSED FROM THE TRIAL.)

7 THE COURT: SOLICITOR, IF YOU AND THE DEFENSE WILL COME
8 AROUND FOR SENTENCING. LOWER THE MICROPHONE FOR -- AFTER
9 Y'ALL HAVE HAD THE CHANCE TO USE IT, LOWER IT FOR HIM SO IN
10 CASE HE WANTS TO ADDRESS THE COURT BEFORE SENTENCING HE HAS A
11 CHANCE TO USE THE MICROPHONE.

12 HAVE I GOT EVERYBODY IN NOW FROM OUTSIDE? ALL RIGHT.
13 FIRST OF ALL, ON BEHALF OF THE DEFENDANT BEFORE SENTENCING,
14 ARE THERE ANY POST-VERDICT MOTIONS FROM THE DEFENDANT?

15 MR. COLLINS: YOUR HONOR, YES. WE WOULD LIKE TO RENEW
16 ALL PREVIOUS MOTIONS AND OBJECTIONS THAT WE MADE EACH STAGE
17 OF THE TRIAL.

18 THE COURT: YOU'RE REFERRING TO MOTIONS AT THE CLOSE OF
19 THE STATE'S CASE AND ALL THE EVIDENCE.

20 MR. COLLINS: YES, YOUR HONOR, AND ALL THE---

21 THE COURT: AND FOR THE REASONS ENUNCIATED ON THE RECORD
22 AT THAT TIME, I RESPECTFULLY DENY THOSE MOTIONS. ANYTHING
23 FURTHER POST VERDICT?

24 MR. COLLINS: YOUR HONOR, WE WOULD MOVE FOR A NEW TRIAL
25 SPECIFICALLY IN REGARDS TO THE MOTION OR THE COURT'S RULING

1 ON THE 9-1-1 DISPATCH RECORD AS NOT BEING A BUSINESS RECORD.
2 WE WOULD MOVE FOR A NEW TRIAL ON THAT BASIS.

3 THE COURT: AND AS I ENUNCIATED ON THE RECORD AT THE
4 TIME, I DID NOT THINK THAT THE CONCLUSION ON THAT RECORD WAS
5 ADMISSIBLE AS AN EXCEPTION TO THE HEARSAY RULE AND I DECLINE
6 TO CHANGE MY RULING AND GRANT A NEW TRIAL ON THAT BASIS. SO
7 YOUR MOTION FOR A NEW TRIAL IS RESPECTFULLY DENIED.

8 I WOULD LIKE THE RECORD TO REFLECT THAT IN LIGHT OF WHAT
9 WE PLACED ON THE RECORD DURING THE TRIAL OF THIS CASE, I SENT
10 IN A WRITTEN COPY OF MY ENTIRE CHARGE TO THE JURY, AND AT THE
11 REQUEST OF BOTH SIDES I MADE 12 COPIES SO THAT EACH JUROR
12 WOULD HAVE A WRITTEN COPY OF MY CHARGE. THE ONLY THING
13 OMITTED FROM THAT CHARGE WERE CASE CITES AND A COUPLE OF
14 WORDS THAT I SCRATCHED OUT THAT I TOOK OUT BY AGREEMENT OF
15 COUNSEL. BOTH OF YOU REVIEWED THAT AND CONSENTED TO IT.

16 I'M GOING TO MAKE ALL 12 COPIES WHICH I ASSUME WERE
17 BROUGHT BACK IN BY THE JURY -- I'M GOING TO MAKE THAT A
18 COURT'S EXHIBIT. I THINK IT WILL BE NUMBER 8?

19 COURT REPORTER: 8, YES.

20 THE COURT: ALL 12 COPIES THAT WERE PROVIDED TO THE JURY
21 WILL BE COURT'S EXHIBIT NUMBER 8. I'VE CONFERRED WITH
22 COUNSEL AT THE BENCH ABOUT THAT, AND I UNDERSTAND THERE'S NO
23 OBJECTION TO MAKING THE COPIES OF THE CHARGE, THE 12 COPIES
24 OF THE CHARGE THAT THE JURY REVIEWED, A COURT'S EXHIBIT. IS
25 THAT CORRECT, FROM THE SOLICITOR?

1 **MR. CATHCART:** THAT IS, YOUR HONOR.

2 **THE COURT:** IS THAT CORRECT FROM DEFENSE COUNSEL?

3 **MR. COLLINS:** YES, YOUR HONOR.

4 (COURT'S EXHIBIT 8 WAS MARKED FOR IDENTIFICATION ONLY.)

5 **THE COURT:** VERY WELL. ALL RIGHT. NOW, I HAVE THE
6 SENTENCE SHEET FROM THE SOLICITOR. I SEE THE VICTIMS ARE
7 PRESENT IN THE COURTROOM OR THE FAMILY OF THE VICTIM IS
8 PRESENT IN THE COURTROOM.

9 **MR. CATHCART:** THAT'S CORRECT, YOUR HONOR. THE PARENTS
10 OF THE VICTIM ARE HERE.

11 **THE COURT:** VERY WELL. I'LL BE HAPPY TO HEAR FROM YOU
12 NOW, MR. COLLINS, IN MITIGATION.

13 **MR. COLLINS:** YOUR HONOR, WE UNDERSTAND THAT DUE TO MR.
14 BRYANT'S RECORD THE COURT HAS NO DISCRETION IN THE SENTENCING
15 HERE. SO WE WOULD JUST LIKE TO SAY THAT THIS HAS BEEN A
16 TRAGIC INCIDENT FOR EVERYONE INVOLVED IN IT.

17 **THE COURT:** YOU UNDERSTAND THAT IN LIGHT OF THE
18 SITUATION HERE THAT THE CONVICTION OF THIS REQUIRES A
19 SENTENCE OF LIFE IMPRISONMENT WITHOUT ANY POSSIBILITY OF
20 PAROLE.

21 **MR. COLLINS:** YES, YOUR HONOR. I THINK AT THE
22 APPROPRIATE TIME MR. BRYANT WOULD LIKE TO ADDRESS THE COURT.

23 **THE COURT:** I'LL BE HAPPY TO HEAR FROM HIM IF HE'D LIKE
24 TO ADDRESS THE COURT. YES, SIR.

25 **MR. BRYANT:** YES, SIR, I'D LIKE TO ADDRESS THE COURT.

1 THIS BEING THE 21ST CENTURY AND ALL, THREE OF MY WITNESSES
2 THAT WOULD HAVE TESTIFIED SORT OF ON MY BEHALF, THEY COULDN'T
3 BE LOCATED AT ALL: JOHNNY STAPLETON, DAVID ZAZOWSKI
4 (PHONETIC), AND KEVIN HAWKINS. AND THEY'VE HAD -- THEY HAD
5 PLENTY OF TIME TO LOCATE THESE PEOPLE. I KNOW THEY HAD TO BE
6 WORKING SOMEWHERE, SOCIAL SECURITY NUMBER AND SOMETHING, BUT
7 THEY SAID THEY COULDN'T FIND THEM NOWHERE AND I THINK -- OUT
8 OF THEM THREE I REALLY NEEDED -- THERE WAS FOUR, BUT ONE IS
9 DECEASED. AND I REALLY NEEDED -- NEEDED SOMEBODY, YOU KNOW,
10 TO COME FORWARD WITH THAT, AND I THINK THAT REALLY -- THAT
11 WOULD HAVE HELPED ME OUT.

12 THE COURT: MR. COLLINS, DO YOU WISH TO ADDRESS THAT
13 ISSUE SINCE YOUR CLIENT WANTS TO PUT IT ON THE RECORD AS TO
14 THE EFFORTS THAT COUNSEL MADE TO ATTEMPT TO LOCATE THE
15 WITNESSES THAT HE REFERS TO?

16 MR. COLLINS: YES, YOUR HONOR. WE HAVE A PRIVATE
17 INVESTIGATOR THAT'S BEEN ON THIS CASE. WE HAVE DOCUMENTATION
18 OF MANY EFFORTS TO LOCATE THESE WITNESSES IN COLLABORATION
19 WITH THE STATE TO TRY TO LOCATE THESE WITNESSES. WE HAVE NOT
20 BEEN ABLE TO LOCATE THEM. THEY WORK FOR TRAVELING
21 CONSTRUCTION COMPANIES, AND WE'VE GONE TO NORTH CAROLINA,
22 LOUISIANA, AND FLORIDA AND HAVE NOT BEEN ABLE TO LOCATE THEM.
23 ON ANOTHER NOTE, AS A STRATEGIC DECISION, WE DID NOT INTEND
24 ON CALLING THE MAJORITY OF THE WITNESSES.

25 THE COURT: SO IT WAS A TRIAL STRATEGY DECISION, EVEN IF

1 THE WITNESSES HAD BEEN LOCATED, BASED ON WHAT YOU UNDERSTOOD
2 THE WITNESSES WOULD TESTIFY TO.

3 MR. COLLINS: YES, YOUR HONOR.

4 THE COURT: SOLICITOR, I'LL BE HAPPY NOW TO HEAR FROM
5 YOU OR ANY MEMBER OF THE VICTIM'S FAMILY THAT WOULD LIKE TO
6 ADDRESS THE COURT.

7 MR. CATHCART: YES, SIR, YOUR HONOR. VERY BRIEFLY, AS
8 TO THE DEFENDANT'S RECORD, THE REASON THIS IS A LIFE-WITHOUT-
9 PAROLE CASE IS BECAUSE OF HIS PRIOR CONVICTION IN 1983 FOR
10 VOLUNTARY MANSLAUGHTER. DANIEL AUSTIN IS THE SECOND MAN HE'S
11 KILLED. HE'S ALSO BEEN CONVICTED OF CARRYING A PISTOL
12 UNLAWFULLY TWO TIMES BY A PERSON CONVICTED OF A CRIME OF
13 VIOLENCE. HE'S ALSO BEEN CONVICTED OF POINTING AND
14 PRESENTING A FIREARM. YOUR HONOR, THE DEFENDANT RECEIVED
15 NOTICE OF INTENT TO SEEK LIFE WITHOUT PAROLE BACK ON
16 DECEMBER THE 15TH, 2000.

17 THE COURT: SO YOU COMPLIED WITH THE NOTICE REQUIREMENT
18 IN THIS CASE WHICH COUNSEL FOR THE DEFENDANT CONCEDES. IS
19 THAT RIGHT, MR. COLLINS?

20 MR. COLLINS: YES, YOUR HONOR.

21 MR. CATHCART: THAT IS CORRECT, YOUR HONOR, AND THE
22 VICTIM'S PARENTS ARE HERE. I BELIEVE THEY DID WISH TO
23 ADDRESS THE COURT. IF YOU WOULD, GIVE YOUR NAME FIRST.

24 MR. AUSTIN: I'M TOMMY LEE AUSTIN, A-U-S-T-I-N.

25 THE COURT: MR. AUSTIN, BE HAPPY TO HEAR FROM YOU.

1 MR. AUSTIN: FIRST OF ALL, I'D LIKE TO THANK GOD AND I'D
2 LIKE TO THANK GOD FOR GIVING THE JURY THE WISDOM TO SEE
3 THROUGH THIS TERRIBLE THING, AND MAYBE THIS TIME HE'LL GET
4 HIS JUSTICE AND AS FAR AS -- AS LONG AS HE IS BEHIND THOSE
5 JAIL BARS, I HAVE GOT COMPLETE CLOSURE ON THIS.

6 MY SON WAS A CHRISTIAN. MY SON WAS A CHRISTIAN, AND I
7 KNOW WHERE DANNY IS AT RIGHT NOW. HE'S IN HEAVEN. WHEN
8 DANNY WAS IN FIRST AND SECOND GRADE, HIS TEACHER WAS A
9 PARAPLEGIC IN A WHEELCHAIR. DANNY ALWAYS PUSHED HER AROUND,
10 HELPED HER. EVEN AFTER HE GOT OUT OF HIGH SCHOOL AND
11 GRADUATED FROM COLLEGE, HE ALWAYS KEPT -- TOUCHED BASE AND
12 KEPT -- STAYED WITH HER, AND HIS HEART ALWAYS WENT OUT FOR
13 PEOPLE IN A WHEELCHAIR OR PEOPLE IN NEED. AND I TOLD HIM ONE
14 DAY -- I SAID, "DANNY, YOU'RE GOING TO GET YOURSELF IN
15 TROUBLE ONE DAY TRYING TO HELP SOMEBODY."

16 WELL, THAT'S ALL DANNY WAS TRYING TO DO WAS TO HELP THIS
17 PERK OR WHATEVER IT IS OVER HERE. AND I'M COMPLETELY
18 SATISFIED. I'M GOING BACK HOME AND LIVE MY LIFE THE BEST I
19 CAN DO. AND I CERTAINLY APPRECIATE THE WORK THAT THE STATE
20 OF SOUTH CAROLINA HAS DONE TO PREPARE FOR THIS. I TOLD
21 RICHARD BEFOREHAND -- I SAID, REGARDLESS, HOW EVER IT COMES
22 OUT, I DON'T THINK ANYBODY COULD HAVE TRIED ANY HARDER TO DO
23 WHAT HE DID. AND I'VE TRIED TO PUT WORDS IN MY MIND AND
24 STUFF SO -- I CAN'T SAY EXACTLY WHAT I WANTED TO. I'LL THINK
25 OF A MILLION THINGS I WANTED TO SAY, BUT THE MAIN THING IS I

1 THANK GOD FOR THIS. I THANK YOU, JUDGE.

2 THE COURT: THANK YOU, MR. AUSTIN.

3 MR. AUSTIN: YES, SIR.

4 THE COURT: THANK YOU FOR BEING HERE. SOLICITOR,
5 ANYTHING FURTHER FROM THE STATE?

6 MR. CATHCART: NOTHING FURTHER FROM THE STATE, YOUR
7 HONOR.

8 THE COURT: I'D LIKE TO SAY THAT I ALSO LISTENED
9 CAREFULLY, AND I TOLD THE JURY THAT THE DETERMINATION OF
10 FACTS IS ENTIRELY WITHIN THEIR PURVIEW AND IT IS. THERE WAS
11 AMPLE EVIDENCE IN THIS CASE TO SUPPORT THE JURY'S DECISION,
12 IN MY OPINION, AND I DON'T EVER QUARREL OR -- WITH A JURY'S
13 VERDICT BECAUSE I STRONGLY BELIEVE IN OUR SYSTEM OF JUSTICE
14 AND THE RIGHT TO TRIAL BY A JURY. BUT I BELIEVE THERE WAS
15 MORE THAN SUFFICIENT EVIDENCE IN THIS CASE TO SUPPORT IT.

16 I'M AWARE, SOLICITOR, FROM THE FACT THAT THE DEFENDANT
17 TESTIFIED IN THIS CASE OF THE DEFENDANT'S PRIOR RECORD AND
18 BECAUSE OF THE LEGAL REQUIREMENTS WHICH THE JURY PROBABLY
19 DOESN'T UNDERSTAND WHY WE WERE NOT ABLE TO TELL THE JURY ALL
20 OF THE DEFENDANT'S PRIOR RECORD -- THIS CASE HAD BEEN TRIED
21 ONCE BEFORE, AND IT WAS REVERSED BY THE SOUTH CAROLINA
22 SUPREME COURT AND SENT BACK FOR ANOTHER TRIAL WHICH IS WHY
23 YOU'RE PROBABLY WONDERING THAT THIS CASE TOOK NINE YEARS FROM
24 THE TIME OF THE ALLEGED INCIDENT TO COMPLETE. SO THIS CASE
25 HAS BEEN TRIED ONCE BEFORE IN THIS COURTROOM AND AGAIN THIS

1 WEEK.

2 BECAUSE OF CERTAIN LEGAL REQUIREMENTS AND THE DANGER OF
3 UNFAIR PREJUDICE TO MR. BRYANT IS THE REASON THAT YOU'RE NOT
4 TOLD ABOUT CERTAIN THINGS CONCERNING A PRIOR RECORD.

5 HOWEVER, I BELIEVE VERY MUCH IN THE FACT THAT THE EVIDENCE
6 THAT WAS PRESENTED BY THE STATE OF SOUTH CAROLINA -- AND I
7 HAVE TOLD COUNSEL IN THIS CASE THAT I APPLAUD BOTH SIDES FOR
8 VIGOROUSLY REPRESENTING THE INTERESTS OF THE RESPECTIVE
9 PARTIES, BUT I WANT THE JURY TO KNOW BEFORE THEY LEAVE ME
10 THIS WEEK THAT I THOUGHT THERE WAS AMPLE EVIDENCE IN THIS
11 CASE TO SUPPORT THE DECISION AND CONCLUSION THAT THE JURY
12 REACHED.

13 ON INDICTMENT 2000-GS-40-43702, THE STATE VERSUS THOMAS
14 TYRONE BRYANT, JR., THE SENTENCE OF THIS COURT IS THE
15 DEFENDANT IS COMMITTED TO THE STATE DEPARTMENT OF CORRECTIONS
16 FOR THE REMAINDER OF YOUR LIFE WITHOUT THE POSSIBILITY OF
17 PAROLE.

18 MR. CATHCART: THANK YOU, YOUR HONOR.

19 THE COURT: THANK YOU VERY MUCH.

20 (WHEREUPON, THE TRIAL WAS CONCLUDED.)
21
22
23
24
25

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on April 12, 2000 the Grand Jurors of Richland County present upon their oath:

That Thomas Tyrone Bryant, Jr. did in Richland County on or about July 23, 1999, feloniously, wilfully and with malice aforethought, kill one Daniel Fletcher Austin by means of gunshot wound and that the said victim died as a proximate result thereof.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


Warren B. Giese, SOLICITOR

WITNESSES

(S) INV. BRIAN METZ - RCSD

Brian Metz

ARREST WARRANT NUMBER

F547758

ACTION OF GRAND JURY

TRUE BILL*Jimmy R. Sellers*
Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2000-GS-40-43702

The State of South Carolina
County of Richland

COURT OF GENERAL SESSIONS

APRIL TERM 2000

82

THE STATE
vs.

THOMAS TYRONE BRYANT, JR.

Indictment for

MURDER

SC Code: 18-3-10,20
CDR Code:0116
Class FEL/EXM(V)After being fully advised as to my
legal rights, I hereby waive prese
to the Grand Jury.

Defendant

I
hereby appear in my own proper
guilty to the within indictment or

Defendant

Witness:

C.C.C. PLS. AND G.S.

Defendant's Requested Instruction Number Seventeen**DEFENSE OF HABITATION**

A person may use deadly force to protect his home. Thus, he may use deadly force to eject a trespasser who is in his house or in the area immediately surrounding his house. For the defense of habitation to apply, a defendant need only establish that a trespass has occurred and that his chosen means of ejection were reasonable under the circumstances. Stated differently, unlike the defense of self-defense, the defense of habitation does not require that a defendant reasonably believe that he (or his property) was in imminent danger sustaining serious injury or damage. Instead, the defense of habitation provides that where one attempts to force himself into another's dwelling, the law permits an owner to use reasonable force to expel the trespasser.

See State v. Rye, 375 S.C. 119 (2007); State v. Bradley, 126 S.C. 528, 120 S.E. 240 (1923).

State of South Carolina)
 County of Richland County)

In The Court of General Sessions
 Indictment Number: 00-GS40-43702

The State of South Carolina,)
)
)

Vs.)
)
)

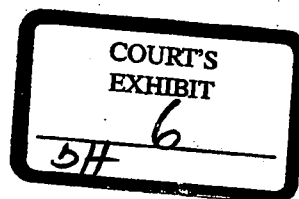
Defendant's Requested Jury Charges

Thomas Bryant,)
Defendant.)

The above-named Defendant, through his counsel, pursuant to Rule 20 of the South Carolina Rules of Criminal Procedure, hereby tenders to this Court the attached Defendant's Requested Jury Instructions, numbered one through twenty-two inclusive, and requests that the court charge the jury with each of them. Defendant also requests that leave be granted to submit other requests, if necessary, prior to the charging of the jury.

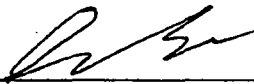
Defendant further requests that parts of each instruction be viewed as severable from the other parts of that instruction so that, if the Court rejects one part, only that part will be rejected and the remainder of the requested instruction be given. If this request is denied, Defendant requests that this Court provide notice of such denial and a reasonable opportunity to submit these proposed instructions in an alternative form.

Defendant further requests that this Court indicate prior to commencement of argument: (1) those instructions that the court will give as requested; (2) those instructions that the Court will give as modified, including the modifications; and (3) those instructions that the court will refuse to give. Defendant also requests that, if necessary, leave be granted to submit alternative or revised proposed instructions at this point.



Defendant further requests that any instruction or instructions that are refused or modified be made an Exhibit of the Court for purposes of any possible record on appeal.

Defendant further requests that this Court indicate prior to the commencement of argument: (1) all instructions that the Court will give on its own motion; and (2) all instructions that the Court will give at the request of the State.



Greg Collins
Attorney for Defendant

Richland County Public Defender's Office
P.O. Box 192
Columbia, South Carolina 29202
(803) 765-2592

This 11th day of June, 2008
Columbia, SC

Defendant's Requested Instruction Number One

SELF DEFENSE – SUMMARY OF REQUIREMENTS

Self Defense is a complete justification for homicide and negates the existence of malice. Thus, you must find that the Defendant is not guilty of murder unless the State proves beyond a reasonable doubt that each of the following four elements of self-defense did not exist in this case. These four elements are:

First, the Defendant must be without fault in bringing on the difficulty.

Second, the Defendant must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger.

Third, if his defense is based upon his belief of imminent danger, a reasonably prudent man of ordinary firmness and courage would have entertained the same belief. If the defendant actually was in imminent danger, the circumstances were such as would warrant a man of ordinary prudence, firmness and courage to strike the fatal blow in order to save himself from serious bodily harm or losing his own life.

Fourth, the Defendant had no other probable means of avoiding the danger.

See State v. Bryant, 336 S.C. 340, 344-45, 520 S.E.2d 319, 321-22 (1999); State v. Rothell, 301 S.C. 168, 391 S.E.2d 228 (1990) (clarity of instruction); State v. Bellamy, 293 S.C. 103, 105, 359 S.E.2d 63, 64-65 (1987) (elements; burden of proof), overruled on other ground, State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991) (abolition of in favorem vitae); State v. Davis, 282 S.C. 45, 317 S.E.2d 452 (1984) (elements); State v. Addison, 343 S.C. 290, 540 S.E.2d 449 (2000) (burden of proof is on the State to disprove self-defense).

Defendant's Requested Instruction Number Two**BURDEN OF PROOF – SELF DEFENSE**

A Defendant is presumed to be innocent until proven guilty beyond a reasonable doubt. The State has the burden of disproving self-defense beyond a reasonable doubt. If you have any reasonable doubt as to whether the state has shown that Defendant did not act properly in self-defense, then you must find the Defendant no guilty.

See State v. Burkhardt, 350 S.C. 252, 565 S.E.2d 298 (2002); State v. Addison, 343 S.C. 290, 293, 540 S.E.2d 449, 451 (2000); State v. Wiggins, 330 S.C. 538, 500 S.E.2d 489 (1998).

Defendant's Requested Instruction Number Three

RETREAT - SAFETY

If the other requirements for the right to use deadly force in self-defense are satisfied, a Defendant need not retreat in order to avoid the need for deadly force if it is not possible, or did not reasonably appear possible, to retreat without danger of being killed or suffering serious bodily injury.

Battle v. State, 305 S.C. 460, 409 S.E.2d 400 (1991); State v. Fuller, 297 S.C. 440, 377 S.E. 2d 328 (1989).

Defendant's Requested Instruction Number Four**NO DUTY TO RETREAT – OWN PREMISES**

If the other requirements for the right to use deadly force in self-defense are satisfied, a defendant need not retreat in order to avoid the need for deadly force if he is in his own house, or his own yard, or elsewhere on property owned or lawfully occupied by him.

Where a person is in his own home, yard, or property, he is not required to retreat even if the aggressor is also an owner or occupant of the home, yard, or property or some other person who has a right to be there.

State v. Robinson, 308 S.C. 74, 417 S.E. 2d 88 (1992); State v. Davis, 282 S.C. 45, 317 S.E.2d 452 (1984).

Defendant's Requested Instruction Number Five

**IMMINENT DANGER**

If Defendant is in imminent danger or if Defendant's belief that he is in imminent danger of death or receiving bodily harm is reasonable, Defendant need not wait until actual attack or injury or until force is used by the aggressor before exercising the right to use deadly force in self-defense. In other words, Defendant need not wait until the assailant "gets the drop on him" in order to be entitled to use force in self defense.

State v. Rash, 182 S.C. 42, 50, 188 S.E. 435 (1936) (defendant need not "wait until assailant gets the drop on him" in order to exercise right of self-defense by use of deadly force); 6A C.J.S. Assault and Battery §88.

Defendant's Requested Instruction Number Six ✓**AMOUNT OF FORCE**

One has a right to use force in repelling force, or in protecting oneself, and one cannot be required to make a nice calculation as to the degree or quantity or amount of force which may be necessary for one's complete protection from loss of life or serious bodily harm to oneself.

Defendant's Requested Instruction Number Seven

APPEARANCES

In determining whether Defendant acted properly in self-defense, it is sufficient that he believed he was in imminent danger. A Defendant need not actually be in such danger because people are entitled to act on appearances. The Defendant acts properly in using force for self defense if, under the circumstances as they appeared to him, he believed he was in such danger and a reasonably prudent person of ordinary firmness and courage in the situation and with Defendant's characteristics would have entertained the same belief.

Battle v. State, 305 S.C. 460, 490 S.E.2d 400 (1991); State v. Fuller, 297 S.C. 440, 377 S.E.2d 328, 331 (1989); State v. Rash, 182 S.C. 42, 188 S.E. 435 (1936).

Defendant's Requested Instruction Number Eight**APPEARANCES – PERSPECTIVE OF DEFENDANT**

In the consideration of whether self defense is applicable herein, you should try as near as you can to put yourself in defendant's situation at the time he fired the fatal shot. You should consider the circumstances by which he was surrounded, and take into consideration the person with whom he was dealing, and all of the facts which surrounded him, as you obtained the same from the testimony, and as near as you can, view the situation from Defendant's standpoint. Unless the state shows that person of ordinary reason, coolness and prudence would not have acted as Defendant did under the circumstances that surrounded him at the time the shot was fired.

Defendant's Requested Instruction Number Nine

WORDS ACCOMPANIED BY HOSTILE ACT

In determining whether defendant had a right to use force in self-defense, words accompanied by hostile acts may be sufficient to constitute a threat of physical attack or, in some cases, to constitute a threat of serious bodily harm.

State v. Fuller, 297 S.C. 440, 377 S.E.2d 328 (1989); State v. Day 341 S.C. 410, 535 S.E.2d 431 S.C. (2000); State v. Wigington, 375 S.C. 25 (Ct.App. 2007)