

VOLUME TWO OF THREE

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Charleston County

Stephanie P. McDonald, Circuit Court Judge

RECEIVED

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S.C. Supreme Court

SHAWN PHILLIPS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014- 000304

APPENDIX

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INDEX

INDEX	i
TRIAL TRANSCRIPT	1
FINAL ANDERS BRIEF OF APPELLANT	845
OPINION OF THE COURT OF APPEALS DISMISSING APPEAL	855
APPLICATION FOR POST-CONVICTION RELIEF	856
RETURN	876
POST-CONVICTION RELIEF HEARING TRANSCRIPT	883
PETITIONER'S EXHIBIT #1 (Dora Perkins Statement)	982
PETITIONER'S EXHIBIT #2 (DMV Photograph)	987
PETITIONER'S EXHIBIT #3 (Photograph)	988
PETITIONER'S EXHIBIT #4 (Domonique Blue Mugshot)	989
STATE'S EXHIBIT #1 (Discovery Summary Dated February 22, 2008)	990
STATE'S EXHIBIT #2 (Discovery Summary Dated March 12, 2007)	991
ORDER OF DISMISSAL	993
CLERK OF COURT RECORDS	1005

CROSS - TAMARA DICENZO DRIGGERS BY MR. PEPER

501

1 Q. OKAY. AND AS YOU LEFT AND THE INTERROGATION
2 STARTED, IS IT MY UNDERSTANDING THAT THE ONLY
3 INDIVIDUALS IN THAT ROOM WERE SHAWN, INVESTIGATOR
4 SIMMONS, DETECTIVE HILL AND DETECTIVE GOMES?

5 A. WHEN DETECTIVE HILL BEGAN TO INTERVIEW THE
6 DEFENDANT DETECTIVE GOMES HADN'T COME IN THE ROOM
7 YET, I WAS WALKING OUT AND I HAD LEFT THE DOOR
8 OPEN FOR HIM TO WALK IN, SO - - -

9 Q. SO, THERE WERE ACTUALLY ONLY THREE PEOPLE IN THERE
10 WHEN THE INTERVIEW STARTED?

11 A. DETECTIVE GOMES WAS WALKING IN AS I WAS WALKING
12 OUT. I DON'T KNOW EXACTLY WHAT PART OF THE
13 INTERVIEW THAT - - -

14 Q. IT MAY HAVE STARTED WITHOUT HIM, IT MAY HAVE - - -

15 A. CORRECT.

16 Q. --- HE MIGHT HAVE GOTTEN THERE BY THE TIME IT
17 STARTED?

18 A. CORRECT.

19 Q. EITHER WAY, THERE WERE, AT THE MOST THERE COULD
20 HAVE BEEN JUST THOSE FOUR INDIVIDUALS?

21 A. YES, SIR.

22 MR. PEPER: THAT'S ALL I HAVE, YOUR
23 HONOR.

24 THE COURT: REDIRECT?

25 SOLICITOR RUTLEDGE DURANT: NO

1 QUESTIONS, JUDGE.

2 THE COURT: THANK YOU, MA'AM, YOU
3 MAY STEP DOWN.

4 NEXT WITNESS.

5 SOLICITOR RUTLEDGE DURANT: THE
6 STATE CALLS DONALD SIMMONS.

7 THE COURT: MR. SIMMONS, PLEASE,
8 HE'S PROBABLY OUTSIDE OF THE DOOR.

9 SOLICITOR RUTLEDGE DURANT: EXCUSE
10 ME, COULD DETECTIVE DRIGGERS LEAVE, JUDGE?

11 THE COURT: SURE. DID SOMEBODY GO
12 GET MR. SIMMONS?

13 BAILIFF: YES, SIR, YOUR HONOR.
14 (Whereupon, Donald Simmons
15 enters the courtroom.)

16 CLERK: SIR, PLEASE COME FORWARD.
17 SIR, IF YOU WOULD, PLEASE PLACE YOUR LEFT HAND ON THE
18 BIBLE AND RAISE YOUR RIGHT HAND.
19 (Whereupon, Donald Jeffrey Simmons
20 is duly sworn.)

21 CLERK: PLEASE BE SEATED. SIR, IF
22 YOU WOULD, PLEASE STATE YOUR FULL NAME TO THE COURT AND
23 SPELL YOUR LAST.

24 WITNESS: DONALD JEFFREY SIMMONS,
25 S-I-M-M-O-N-S.

DIRECT - DONALD JEFFREY SIMMONS BY
SOLICITOR RUTLEDGE DURANT

503

DIRECT EXAMINATION OF DONALD JEFFREY SIMMONS

BY SOLICITOR RUTLEDGE DURANT:

Q. GOOD AFTERNOON, MR. SIMMONS?

A. GOOD AFTERNOON.

Q. YOU'RE AN INVESTIGATOR, IS THAT CORRECT?

A. YES.

Q. IN THAT CAPACITY YOU HAD A RELATIONSHIP WITH SHAWN
PHILLIPS?

A. YES.

Q. AND YOU HAD THAT RELATIONSHIP FOR APPROXIMATELY
TWO YEARS - - -

A. YES, THAT'S CORRECT.

Q. --- BEFORE HE WAS ARRESTED, SINCE TWO THOUSAND AND
FIVE?

A. TWO THOUSAND AND FIVE, THE LAST OF SEPTEMBER.

Q. DID YOU HAVE THE OCCASION TO BRING SHAWN PHILLIPS
INTO THE NORTH CHARLESTON POLICE DEPARTMENT ON
DECEMBER THE FOURTEENTH, TWO THOUSAND AND SIX?

A. I DID.

Q. HOW DID THIS OCCUR?

A. I RECEIVED A PHONE CALL FROM DETECTIVE HILL WITH
THE NORTH CHARLESTON POLICE DEPARTMENT. HE ASKED
ME IF I COULD GET IN CONTACT WITH MR. PHILLIPS AND
BRING HIM IN. I DID SO BY CALLING MR. PHILLIPS BY
WAY OF CELLULAR PHONE.

DIRECT - DONALD JEFFREY SIMMONS BY
SOLICITOR RUTLEDGE DURANT

504

1 Q. WHAT WAS SHAWN PHILLIPS'S CELLULAR PHONE NUMBER?

2 A. AREA CODE EIGHT FOUR THREE, FIVE O NINE, TWENTY-
3 THREE SEVENTY-SEVEN.

4 Q. AND APPROXIMATELY HOW LONG AT THAT TIME DID YOU
5 HAVE THAT NUMBER?

6 A. SINCE ABOUT SEPTEMBER, TWO THOUSAND AND FIVE.

7 Q. WAS THIS YOUR PRIMARY MEANS OF GETTING IN TOUCH
8 WITH THE DEFENDANT?

9 A. YES.

10 Q. APPROXIMATELY WHAT TIME DID YOU ARRIVE AT THE
11 NORTH CHARLESTON POLICE DEPARTMENT?

12 A. AROUND SIX P.M., OR A LITTLE AFTER SIX.

13 Q. DID SHAWN PHILLIPS APPEAR TO BE UNDER THE
14 INFLUENCE OF ALCOHOL OR DRUGS?

15 A. HE DID NOT.

16 Q. DID HE TELL YOU HE WAS?

17 A. HE DID NOT.

18 Q. WAS HE COHERENT?

19 A. YES, HE WAS.

20 Q. DID HE SLUR HIS SPEECH?

21 A. HE DID NOT.

22 Q. WAS HE RESPONSIVE TO YOUR QUESTIONS?

23 A. YES.

24 Q. WOULD YOU PLEASE DESCRIBE THE ROOM AT THE NORTH
25 CHARLESTON POLICE DEPARTMENT WHERE MR. PHILLIPS

DIRECT - DONALD JEFFREY SIMMONS BY
SOLICITOR RUTLEDGE DURANT

505

1 WAS TAKEN?

2 A. IT WAS A, IT WAS ON THE THIRD FLOOR OF THE NORTH
3 CHARLESTON POLICE DEPARTMENT, AN OVERSIZED OFFICE
4 WITH WINDOWS, A COUPLE OF WINDOWS, LARGE WINDOWS.

5 Q. WHO WAS PRESENT THERE?

6 A. DETECTIVE HILL AND A COUPLE OF OTHER OFFICERS FROM
7 THE NORTH CHARLESTON POLICE DEPARTMENT.

8 Q. YOU DIDN'T KNOW WHO THEY WERE?

9 A. NO.

10 Q. WAS SHAWN PHILLIPS THERE?

11 A. HE WAS THERE, YES.

12 Q. TO YOUR KNOWLEDGE WAS MR. PHILLIPS ADVISED OF HIS
13 RIGHTS AT THIS TIME?

14 A. YES, HE WAS.

15 Q. DID YOU WITNESS THE ADVICE OF RIGHTS?

16 A. I DID.

17 Q. DID IT APPEARS TO YOU THAT MR. PHILLIPS UNDERSTOOD
18 HIS RIGHTS?

19 A. IT DID.

20 Q. DID HE APPEAR CONFUSED IN ANY WAY?

21 A. HE DID NOT.

22 Q. DID HE RESPOND APPROPRIATELY TO QUESTIONS?

23 A. YES, HE DID.

24 Q. DID YOU WITNESS THE DEFENDANT SIGN HIS NAME ON HIS
25 ADVICE OF RIGHTS?

DIRECT - DONALD JEFFREY SIMMONS BY
SOLICITOR RUTLEDGE DURANT

506

1 A. YES, I DID.

2 Q. DID THE OFFICERS EXPLAIN TO MR. PHILLIPS WHAT THEY
3 WANTED TO TALK WITH HIM ABOUT?

4 A. YES, THEY DID.

5 Q. AND WHAT WAS THAT?

6 A. THEY WANTED TO TALK WITH HIM ABOUT HIS, A ROBBER,
7 SLASH, MURDER, THAT HIS GIRLFRIEND, ANGELA AGAGAS,
8 WAS INVOLVED WITH.

9 Q. DID MR. PHILLIPS AGREE TO WAIVE HIS RIGHTS AND
10 TALK ABOUT THE MURDER?

11 A. YES, HE DID.

12 Q. DID YOU OR ANY OF THE OTHER OFFICERS PRESENT
13 THREATEN OR COERCE MR. PHILLIPS INTO TALKING ABOUT
14 THE MURDER.

15 A. NO, SIR.

16 Q. DID YOU OR ANY OF THE OTHER OFFICERS PROMISE HIM
17 LENIENCY TO TALK?

18 A. NO.

19 Q. DID YOU HIM A REWARD TO TALK?

20 A. NO, WE DID NOT.

21 Q. AND THE OFFICERS BEGAN TO QUESTION HIM?

22 A. YES, THEY DID.

23 Q. AT ANYTIME DID MR. PHILLIPS ASK FOR AN ATTORNEY?

24 A. YES, HE DID.

25 Q. AND HOW DID HE DO THIS?

DIRECT - DONALD JEFFREY SIMMONS BY
SOLICITOR RUTLEDGE DURANT

507

1 A. HE SAID THAT, I WANT A -- I DON'T KNOW THE EXACT
2 VERBIAGE BUT HE SAID, I WOULD LIKE AN ATTORNEY OR
3 A LAWYER AT THIS POINT, AT SOME POINT DURING THE
4 INTERVIEW.

5 Q. HE MENTIONED THE WORD, ATTORNEY?

6 A. HE DID.

7 Q. AND WHAT HAPPENED AT THIS POINT?

8 A. AT THAT POINT THE DETECTIVES STOPPED THE INTERVIEW
9 WITH HIM AND PROCEEDED TO GET UP AND LEAVE THE
10 ROOM.

11 Q. WHAT DID YOU DO?

12 A. I STAYED IN THE ROOM WITH MR. PHILLIPS.

13 Q. DID THE DEFENDANT SAY ANYTHING TO YOU AT THIS
14 POINT?

15 A. YES, HE DID.

16 Q. WHAT DID HE SAY?

17 A. HE SAID, WHAT DOES THAT MEAN, WHAT DOES THAT MEAN?
18 AND I, WHEN THEY WERE GETTING UP TO LEAVE, HE
19 SAID, WHAT'S GOING ON, WHAT DOES THAT MEAN? I
20 SAID, I EXPLAINED TO HIM, ONCE YOU ASK FOR AN
21 ATTORNEY THE OFFICERS CANNOT SPEAK WITH YOU
22 ANYMORE. AND AT THAT POINT MR. PHILLIPS SAID TO
23 ME, NO, I WANT TO TALK WITH THEM. HE PRACTICALLY
24 BEGGED ME TO GET THE OFFICERS BACK IN THERE TO
25 SPEAK WITH HIM AGAIN.

DIRECT - DONALD JEFFREY SIMMONS BY
SOLICITOR RUTLEDGE DURANT

508

1 Q. BASED ON THAT WHAT DID YOU DO?

2 A. I GOT UP AND LEFT THE ROOM TO LOOK FOR THE
3 OFFICERS AND TELL THEM THAT MR. PHILLIPS WOULD
4 LIKE TO SPEAK WITH THEM AGAIN.

5 Q. WHAT HAPPENED THEN?

6 A. AT THAT POINT ONE OFFICER, I BELIEVE IT WAS
7 OFFICER HILL TOLD ME THAT THEY PROBABLY WERE GOING
8 TO CHARGE HIM AT THIS POINT, AND THEY WOULD GO
9 BACK AND TALK WITH HIM. AND AT THAT POINT I LEFT
10 THE NORTH CHARLESTON POLICE DEPARTMENT.

11 Q. YOU DIDN'T GO BACK IN THE ROOM WITH SHAWN?

12 A. I DID NOT.

13 SOLICITOR RUTLEDGE DURANT: THANK
14 YOU, SIR, PLEASE ANSWER ANY QUESTIONS MR. PEPER MAY
15 HAVE.

16 A. I WILL.

17 THE COURT: CROSS-EXAM.

18 MR. PEPER: THANK YOU, YOUR HONOR,
19 MAY IT PLEASE THE COURT.

20 (NOTE: Blank lines on this page do not indicate any
21 part of record has been omitted. Headers on testimony
22 pages and hard page breaks between testimony are now
23 required by the Court. See next ensuing page for
24 sequential continuation of record.)

CROSS - DONALD JEFFREY SIMMONS BY MR. PEPER

509

CROSS-EXAMINATION OF DONALD JEFFREY SIMMONS

BY MR. PEPER:

Q. INVESTIGATOR SIMMONS, MARK PEPER FOR SHAWN
PHILLIPS, HOW ARE YOU?

A. GOOD, HOW ARE YOU?

Q. I HAVE SOME QUESTIONS FOR YOU THAT I HAVE SOME
CONCERNS OVER. YOU WERE CONTACTED BY DETECTIVE
HILL IN AN EFFORT TO CORRESPOND WITH SHAWN AND
BRING HIM IN FOR SOME QUESTIONING, CORRECT?

A. YES.

Q. AND IT WAS YOUR SOLE RESPONSIBILITY TO BRING HIM
IN?

A. RESPONSIBILITY? WELL, HE ASKED ME TO BRING HIM
IN, YES.

Q. OKAY. AND DID HE INDICATE WHY HE WANTED TO SPEAK
TO HIM?

A. YES.

Q. WHAT DID HE SAY?

A. HE WANTED TO SPEAK TO HIM ABOUT A ROBBERY, SLASH,
MURDER THAT HIS GIRLFRIEND, ANGELA AGAGAS, WAS
INVOLVED IN.

Q. OKAY. SO, YOU CALLED SHAWN?

A. YES, I DID.

Q. AND YOU TELL SHAWN, I NEED TO MEET WITH YOU, WE
NEED TO IN BECAUSE HILL WANTS TO TALK TO YOU ABOUT

CROSS - DONALD JEFFREY SIMMONS BY MR. PEPPER

510

1 A MURDER THAT ANGELA AGAGAS WAS INVOLVED IN?

2 A. I SAID, I NEED TO MEET WITH YOU BECAUSE DETECTIVE
3 HILL WOULD LIKE TO SPEAK WITH YOU. I WANT TO MEET
4 WITH YOU SO I CAN TAKE YOU TO THE NORTH CHARLESTON
5 POLICE DEPARTMENT.

6 Q. HE DIDN'T ASK WHY?

7 A. I BELIEVE HE DID.

8 Q. SO, THEN, YOU TOLD HIM WHY?

9 A. YES.

10 Q. YOUR ANSWER IS YES, YOU TOLD HIM WHY - - -

11 A. YES.

12 Q. --- HILL WANTED TO SPEAK TO HIM?

13 A. THAT'S CORRECT.

14 Q. OKAY. SO, HE VOLUNTARILY CAME AND MET WITH YOU,
15 AND YOU DROVE HIM DOWN THERE TO TALK WITH HILL
16 ABOUT A MURDER THAT ANGELA AGAGAS ALLEGEDLY WAS
17 INVOLVED IN?

18 A. THAT'S CORRECT.

19 Q. ALRIGHT. BUT HE DIDN'T DRIVE THERE TO COME MEET
20 YOU, OR HE DIDN'T DRIVE THERE AND MEET YOU AT THE
21 POLICE STATION, DID HE?

22 A. NO, HE DID NOT.

23 Q. HIS MOTHER DROVE HIM TO MEET YOU, SO THAT YOU
24 COULD TAKE HIM DOWN TO THE POLICE STATION,
25 CORRECT?

CROSS - DONALD JEFFREY SIMMONS BY MR. PEPER

511

1 A. THAT'S CORRECT.

2 Q. AND HIS MOTHER DROVE HIM TO A BOWLING ALLEY ON
3 ASHLEY PHOSPHATE WHERE YOU AGREED TO MEET HIM, GET
4 HIM, TAKE HIM DOWN THERE, AND I BELIEVE YOU
5 SPECIFICALLY TOLD HIS MOTHER, I'LL BRING HIM ON
6 BACK AS SOON AS IT'S OVER?

7 A. THAT'S CORRECT.

8 Q. YOU'VE KNOWN HIM SINCE SEPTEMBER OF O-FIVE,
9 CORRECT?

10 A. YES, SIR.

11 Q. THIS WAS IN DECEMBER OF O-SIX, CORRECT?

12 A. YES.

13 Q. SO, IN THAT FIFTEEN MONTH TIME PERIOD, JUST OFF
14 THE TOP OF YOUR HEAD, I DON'T EXPECT YOU TO KNOW
15 THIS EXACTLY, HOW MANY TIMES WOULD YOU SAY YOU MET
16 WITH SHAWN?

17 A. MORE THAN TWENTY TIMES.

18 Q. OKAY. AT ANY POINT IN THOSE TWENTY TIMES DID
19 ANYBODY ELSE DRIVE HIM TO COME MEET YOU?

20 A. TO MY KNOWLEDGE, NO.

21 Q. THIS WAS THE FIRST TIME YOU HAD EVER CALLED HIM
22 AND ASKED HIM TO COME MEET YOU SOMEWHERE AND
23 SOMEBODY ELSE HAD DRIVEN HIM THERE?

24 A. YES.

25 Q. DIDN'T HE TELL YOU THE REASON HIS MOTHER BROUGHT

1 HIM THERE WAS BECAUSE HE HAD BEEN DRINKING AND
2 SMOKING CRACK ALL DAY LONG?

3 A. NO, SIR.

4 Q. HE NEVER TOLD YOU THAT?

5 A. HE DID NOT.

6 Q. DIDN'T HE TELL YOU THAT HE HAD TAKEN HIS
7 MEDICATION AS WELL?

8 A. HE DID NOT.

9 Q. BUT YOU KNOW HE'S ON MEDICATION, RIGHT?

10 A. I DO KNOW THAT.

11 Q. YOU KNOW HE'S ON MEDICATION FOR DEPRESSION, WHICH
12 IS SEROQUIL, CORRECT?

13 A. THAT'S CORRECT, YES.

14 Q. A HUNDRED MILLIGRAMS A DAY?

15 A. I THINK THAT'S CORRECT.

16 Q. AND YOU KNOW HE'S ON MEDICATION, ZOLOFT, FOR ANTI-
17 PSYCHOTIC BEHAVIOR?

18 A. THAT'S CORRECT.

19 Q. YOU STILL THOUGHT IT WOULD BE A GOOD IDEA TO TAKE
20 HIM TO HILL TO GIVE A VOLUNTARY STATEMENT ABOUT A
21 MURDER, KNOWING ALL THAT?

22 A. YES.

23 Q. BECAUSE AFTER ALL, YOU WERE ORDERED TO DO IT BY
24 HILL?

25 A. I WAS NOT ORDERED, BUT HE ASKED ME TO.

CROSS - DONALD JEFFREY SIMMONS BY MR. PEPER

513

1 Q. WHAT TIME DO YOU THINK YOU GOT THERE THAT NIGHT?

2 A. AFTER SIX P.M.

3 Q. YOU WERE THERE WHEN MR. PHILLIPS WAS ALLEGEDLY
4 READ HIS MIRANDA RIGHTS?

5 A. YES, I WAS.

6 Q. AND WOULD IT SURPRISE YOU IF I TOLD YOU THAT THE
7 TIME HE WAS READ THESE RIGHTS WAS SIX:TEN P.M.?

8 A. NO.

9 Q. THAT SOUNDS ABOUT RIGHT?

10 A. IT'S POSSIBLE.

11 Q. THE OTHER TWO PEOPLE IN THE ROOM AT THAT TIME WERE
12 DETECTIVE HILL AND DETECTIVE DRIGGERS DICENZO?

13 A. I KNOW DETECTIVE HILL FOR SURE. THE OTHER
14 DETECTIVE I'M NOT CERTAIN.

15 Q. DO YOU HAVE NO IDEA WHO WAS IN THE ROOM WHEN HE
16 READ THE MOST IMPORTANT RIGHTS IN THE HISTORY OF
17 THE WORLD TO A DEFENDANT?

18 SOL.RUTLEDE DURANT: OBJECTION,
19 YOUR HONOR.

20 THE COURT: YES, SIR, PLEASE STOP
21 THE EDITORIALIZING, JUST ASKS HIM A QUESTION.

22 Q. YOU DON'T KNOW WHO WAS IN THE ROOM BESIDES YOU AND
23 THE DEFENDANT WHEN HE WAS READ HIS MIRANDA RIGHTS?

24 A. I KNOW THAT THE DEFENDANT, MYSELF AND DETECTIVE
25 HILL WAS IN THE ROOM.

1 Q. I BELIEVE, LET ME SHOW YOU WHAT'S BEEN MARKED AS
2 STATE'S EXHIBIT ONE. ARE YOU FAMILIAR WITH THAT
3 DOCUMENT?

4 A. YES.

5 Q. DOES THAT APPEAR TO BE A COPY OF HIS ADVICE OF
6 CONSTITUTIONAL RIGHTS?

7 A. THAT'S WHAT IT SAYS HERE.

8 Q. IS THAT TO YOUR RECOLLECTION WHAT DETECTIVE HILL
9 READ TO SHAWN IN YOUR PRESENCE?

10 A. I DON'T KNOW IF IT WAS THE EXACT ONE, BUT SIMILAR.

11 Q. AND DID DETECTIVE HILL WITNESS THAT DOCUMENT?

12 A. HIS SIGNATURE IS ON IT.

13 Q. IS DETECTIVE DRIGGERS DICENZO'S SIGNATURE ON IT AS
14 A WITNESS?

15 A. YES.

16 Q. AND THAT'S THE PERSON THAT YOU CAN'T EVEN REMEMBER
17 WAS EVEN THERE?

18 A. I TOLD YOU ANOTHER PERSON WAS IN THE ROOM BUT I
19 COULDN'T TELL YOU WHO THAT PERSON WAS, YES.

20 Q. AND THIS WOULD BE THE SAME DOCUMENT WHEREBY
21 DETECTIVE HILL CROSSED OFF THE WORDS, CHARGE OF,
22 CORRECT?

23 A. LIKE I SAID, I'M NOT SURE IF THIS IS THE EXACT
24 SAME ONE, THIS ONE HAS MURDER ON IT, I'M NOT
25 EXACTLY SURE.

CROSS - DONALD JEFFREY SIMMONS BY MR. PEPER

515

1 Q. WELL, DON'T YOU, DON'T YOU REMEMBER DETECTIVE HILL
2 TELLING SHAWN THAT AT THIS POINT IN TIME HE WAS
3 NOT BEING CHARGED WITH MURDER?

4 A. I DO NOT -- I BEG YOUR PARDON?

5 Q. DON'T YOU REMEMBER, IF YOU WERE IN THE ROOM DON'T
6 YOU REMEMBER THAT DETECTIVE HILL SAID, SHAWN IS
7 NOT UNDER, WE'RE NOT CHARGING HIM WITH MURDER AT
8 THIS POINT?

9 A. I'M TRYING TO THINK. I DIDN'T KNOW HE WAS
10 CHARGING HIM WITH MURDER UNTIL I LEFT THE ROOM.

11 Q. RIGHT. I'M TALKING ABOUT SIX:TEN P.M.

12 A. RIGHT.

13 Q. YOU STATED DETECTIVE HILL ADVISED HIM OF HIS
14 MIRANDA RIGHTS WHILE YOU WERE PRESENT?

15 A. CORRECT.

16 Q. DID HE MAKE IT CLEAR TO THE DEFENDANT, OR YOU FOR
17 THAT MATTER, THAT AT THAT POINT IN TIME THE
18 DEFENDANT WAS NOT BEING CHARGED WITH MURDER?

19 A. HE TOLD HIM HIS RIGHTS, HIS RIGHT TO REMAIN
20 SILENT, HE TOLD HIM THOSE RIGHTS.

21 Q. SO, YOU DON'T REMEMBER WHETHER OR NOT HE TOLD
22 SHAWN, AT THIS POINT IN TIME YOU'RE NOT BEING
23 CHARGED WITH MURDER, OR AT THIS POINT IN TIME YOU
24 ARE BEING CHARGED WITH MURDER?

25 A. I DID NOT HEAR HIM SAY HE WAS BEING CHARGED WITH

1 MURDER DURING THAT FIRST INTERVIEW.

2 Q. OKAY. SO, IT'S POSSIBLE HE SAID, HE TOLD HIM,
3 YOU'RE BEING CHARGED WITH MURDER, THESE ARE YOUR
4 RIGHTS?

5 A. I DON'T THINK THAT'S WHAT OCCURRED, THOUGH.

6 Q. WELL, YOU JUST SAID YOU DON'T KNOW, SO IT'S
7 POSSIBLE, RIGHT?

8 A. I GUESS IT IS POSSIBLE.

9 Q. AT THAT POINT IN TIME SHAWN AGREED TO SPEAK WITH
10 DETECTIVE HILL, IS THAT CORRECT?

11 A. YES.

12 Q. AND YOU WERE PRESENT?

13 A. YES.

14 Q. AND THERE WAS POSSIBLY SOMEBODY ELSE PRESENT, BUT
15 YOU DON'T KNOW WHO THAT WAS?

16 A. THERE WAS OTHER PEOPLE PRESENT, I DON'T KNOW WHO
17 THEY WERE, YES.

18 Q. OTHER PERSON OR PERSONS?

19 A. THERE WAS ANOTHER PERSON PRESENT, PEOPLE WERE
20 COMING IN AND OUT OF THE ROOM.

21 Q. OH, SO, THERE WAS AT LEAST FOUR, POSSIBLY MORE
22 PEOPLE COMING IN AND OUT OF THE ROOM WHILE HE WAS
23 BEING READ HIS RIGHTS AND GIVING A STATEMENT?

24 A. I DON'T KNOW WHY YOU WOULD SAY FOUR, BUT I DON'T
25 KNOW THE EXACT NUMBER.

CROSS - DONALD JEFFREY SIMMONS BY MR. PEPER

517

1 Q. WELL, WE KNOW THERE WAS THREE, RIGHT, YOU - - -

2 A. BUT SHAWN WASN'T GOING IN AND OUT OF THE ROOM,
3 SHAWN WAS STATIONARY, HE STAYED.

4 Q. I UNDERSTAND, BUT IT WAS YOU, SHAWN AND DETECTIVE
5 HILL AT ALL TIMES?

6 A. CORRECT.

7 Q. YOU TESTIFIED THERE WERE OTHER PEOPLE COMING IN
8 AND OUT OF THE ROOM?

9 A. YES.

10 Q. HOW LONG WOULD YOU SAY TRANSPIRED BETWEEN THE TIME
11 HE AGREED TO WAIVE HIS MIRANDA RIGHTS AND START
12 TALKING, AND WHEN HE ADAMANTLY ASKED FOR AN
13 ATTORNEY?

14 A. REPEAT THAT, NOW?

15 Q. HOW LONG OF A TIME PERIOD OR SHORT OF A TIME
16 PERIOD REALLY I GUESS IS A BETTER QUESTION, DID HE
17 VOLUNTARILY START TO TALK AND THEN CHANGE HIS MIND
18 AND ASK FOR AN ATTORNEY?

19 A. NOT THAT LONG.

20 Q. ONE MINUTE, TWO MINUTES, THREE MINUTES, IS THAT
21 FAIR TO SAY?

22 A. YES.

23 Q. AND HE DIDN'T JUST MUMBLE, I WANT AN ATTORNEY, DID
24 HE?

25 A. HE SAID, I'D LIKE AN ATTORNEY, OR A LAWYER, OR

1 SOMEHOW, I DON'T KNOW QUITE THE VERBIAGE, BUT HE
2 DIDN'T SCREAM IT.

3 Q. HE DIDN'T SCREAM IT, BUT HE DIDN'T MUMBLE, EITHER,
4 DID, HE?

5 A. CORRECT.

6 Q. AND YOU KNEW, DETECTIVE HILL KNEW, AND EVERYBODY
7 COMING IN AND OUT OF THAT ROOM KNEW THAT HE HAD
8 ASKED FOR AN ATTORNEY?

9 A. THAT'S CORRECT.

10 Q. SO MUCH SO THAT IMMEDIATELY, JUST LIKE THEY'RE
11 SUPPOSED TO DO, THEY STOPPED THEIR QUESTIONING AND
12 LEFT THE ROOM?

13 A. THAT'S CORRECT.

14 Q. AT THAT POINT IN TIME YOU AND SHAWN WERE THE ONLY
15 TWO PEOPLE IN THE ROOM, CORRECT?

16 A. THAT IS RIGHT, YES, SIR.

17 Q. AND A CONVERSATION TOOK PLACE BETWEEN THE TWO OF
18 YOU, CORRECT?

19 A. YES.

20 Q. YOU WERE NOT ACTING AS HIS ATTORNEY, WERE YOU?

21 A. I WAS NOT.

22 Q. DID YOU THINK THAT DETECTIVE HILL LEFT THE ROOM TO
23 GET HIM AN ATTORNEY?

24 A. NO.

25 Q. I WAS JUST TRYING -- YOU TOLD HIS MOM YOU WERE

CROSS - DONALD JEFFREY SIMMONS BY MR. PEPER

519

1 GOING TO BRING HIM BACK, RIGHT?

2 A. THAT'S CORRECT.

3 Q. WHY DIDN'T Y'ALL GET UP AND, WHY DIDN'T YOU HONOR
4 YOUR WORD AND TAKE HIM BACK? THE INTERVIEW WAS
5 OVER. YOU DON'T HAVE AN ANSWER TO THAT?

6 A. NO, I DO NOT HAVE AN ANSWER.

7 Q. YOU DIDN'T HAVE AN ANSWER FOR HIM, EITHER, WHEN HE
8 SAID, WHAT DOES THAT MEAN?

9 A. I DID HAVE AN ANSWER FOR HIM THEN. I HAD AN
10 ANSWER FOR HIM FOR THAT QUESTION.

11 Q. AND YOUR ANSWER WAS, I DON'T KNOW, I GUESS THEY
12 CAN'T TALK TO YOU ANYMORE?

13 A. I TOLD HIM, THEY CAN'T TALK TO YOU ANYMORE, WHEN
14 YOU ASK FOR A LAWYER THEY CANNOT SPEAK TO YOU
15 ANYMORE.

16 Q. AND IF HE WASN'T GOING TO TALK HE SURE AS HECK
17 WASN'T GOING ANYWHERE, WAS HE, AND YOU WEREN'T
18 GOING ANYWHERE, YOU WEREN'T TAKING HIM BACK TO
19 HIM'S HOUSE, YOU WEREN'T GOING HOME TO DINNER, YOU
20 WEREN'T GOING TO RUN ERRANDS?

21 A. I WALKED OUT OF THE ROOM TO TELL THEM THAT HE
22 WANTED TO SPEAK TO THEM AGAIN, LIKE HE ASKED ME
23 TO.

24 Q. THAT WAS ABOUT A MINUTE AFTER HE HAD JUST ASKED
25 FOR AN ATTORNEY?

1 A. YES.

2 Q. SO, YOU WANT THIS JURY TO BELIEVE THAT ONLY YOU
3 AND SHAWN IN THE ROOM, HE ADAMANTLY ASKED FOR AN
4 ATTORNEY, IT STOPPED THE ENTIRE PROCEEDING, AND IN
5 LESS THAN A MINUTE, JUST ALL OF A SUDDEN,
6 ADAMANTLY BEGGED YOU TO GO GET THEM BACK, HE
7 WANTED TO KEEP TALKING?

8 A. THAT'S WHAT HAPPENED.

9 Q. THAT'S YOUR TESTIMONY?

10 A. THAT'S WHAT HAPPENED.

11 Q. YOU DIDN'T CHECK TO MAKE SURE THAT THEY CAME BACK
12 IN AND RE-MIRANDIZED HIM, DID YOU?

13 A. OH, NO.

14 Q. NO, YOU TOOK OFF.

15 A. THAT'S CORRECT.

16 Q. YOUR JOB WAS DONE, CORRECT?

17 A. HE TOLD HE THEY WERE GOING TO TALK TO HIM, SO I
18 LEFT.

19 Q. SO, WHEN YOU WALKED OUT AND SAID, HE WANTS TO TALK
20 TO YOU NOW, THEY SAID, WE'RE GOING TO GO AHEAD AND
21 CHARGE HIM WITH MURDER?

22 A. THAT'S CORRECT.

23 Q. YOUR JOB WAS DONE, AND YOU WENT HOME?

24 A. I LEFT.

25 Q. WHEN YOU WERE LEAVING WHO WAS WALKING BACK INTO

CROSS - DONALD JEFFREY SIMMONS BY MR. PEPER

521

1 THE ROOM?

2 A. I WALKED OUT OF THE BUILDING.

3 Q. YOU HAVE NO IDEA, DO YOU?

4 A. I DO NOT.

5 Q. WHEN YOU LEFT THE ROOM, THOUGH, SHAWN WAS THE ONLY
6 PERSON IN THERE, RIGHT?

7 A. THAT'S CORRECT, YES.

8 Q. YOU HAVE NO IDEA WHO, IF ANYBODY, RE-MIRANDIZED
9 HIM AFTER HE ENDED THE FIRST INTERVIEW?

10 A. I DO NOT.

11 Q. YOU HAVE NO IDEA THAT HE EVEN GAVE A STATEMENT
12 AFTER YOU LEFT?

13 A. THAT'S CORRECT.

14 Q. YOU HAVE NO IDEA WHO ADMINISTERED ANY MIRANDA
15 RIGHTS IF THEY WERE READ, OR ANY STATEMENT IF
16 THERE WAS ONE MADE?

17 A. AFTER I LEFT, THAT'S CORRECT.

18 Q. YOU DIDN'T CALL HIS MOM AND TELL HER HE WASN'T
19 COMING HOME, DID YOU?

20 A. THAT I DON'T REMEMBER.

21 MR. PEPER: THE COURT'S INDULGENCE.

22 A. I BEG YOUR PARDON?

23 Q. JUST ONE SECOND.

24 MR. PEPER: THANK YOU.

25 THE COURT: REDIRECT?

REDIRECT - DONALD JEFFREY SIMMONS
BY SOLICITOR RUTLEDGE DURANT

522

REDIRECT EXAMINATION OF DONALD JEFFREY SIMMONS

BY SOLICITOR RUTLEDGE:

Q. DID YOU ADVISE SHAWN PHILLIPS OF HIS RIGHTS?

A. I DID NOT.

Q. DID YOU ADMINISTER THE ADVICE OF RIGHTS FORM?

A. I DID NOT.

Q. DID YOU SIGN THE ADVICE OF RIGHTS FORM?

A. I DID NOT.

Q. WERE YOU MERELY THERE TO WITNESS?

A. I DON'T KNOW IF YOU EVEN WANT TO CALL IT THAT.

Q. WERE YOU IN THE ROOM?

A. I WAS.

Q. WERE YOU AWARE THAT HE WAS BEING ADVISED OF HIS RIGHTS?

A. I WAS.

Q. WAS IT YOUR JOB TO ADVISE HIM OF HIS RIGHTS?

A. NO, IT WAS NOT.

Q. DO YOU KNOW WHY HIS MOTHER DROVE HIM TO MEET UP WITH YOU?

A. I DO.

Q. WHY IS THAT?

A. BECAUSE HIS CAR WAS IN ILL REPAIR, HIS CAR WAS BROKEN. THAT'S WHY I ASSUMED, I ASSUMED THAT'S WHY SHE BROUGHT HIM.

Q. HAVE YOU EVER KNOWN WHO DROVE SHAWN TO SEE YOU

REDIRECT - DONALD JEFFREY SIMMONS
BY SOLICITOR RUTLEDGE DURANT

523

1 BEFORE THEN?

2 A. NO.

3 Q. HAVE YOU EVER BEEN AWARE - - -

4 A. I'VE KNOWN THAT HE DROVE HIMSELF SOMETIMES, MOST
5 OF THE TIMES.

6 Q. DO YOU KNOW THAT HE DRIVES?

7 A. YES.

8 Q. DID YOU ALWAYS KNOW IT WAS HE WHO HAD DRIVEN
9 HIMSELF TO SEE?

10 A. NO.

11 Q. IN FACT, WHERE DID MOST OF YOUR MEETINGS WITH
12 SHAWN OCCUR?

13 MR. PEPPER: OBJECTION, YOUR HONOR.

14 MAY WE APPROACH?

15 (Whereupon, a bench conference
16 is had out of the hearing of
17 the jury and court reporter.)

18 Q. IN FACT, WHERE DID MOST OF YOUR MEETINGS WITH
19 SHAWN PHILLIPS OCCUR?

20 A. AT HIS HOME, JOB SITE.

21 Q. AND WHEN YOU MET UP WITH HIM WOULD YOU HAVE KNOWN
22 IF HE WAS DRUNK OR HIGH ON CRACK COCAINE?

23 A. I BELIEVE I WOULD.

24 Q. AND IT WAS BROUGHT UP THAT YOU WERE AWARE THAT HE
25 WAS ON PRESCRIPTION MEDICATION?

REDIRECT - DONALD JEFFREY SIMMONS
BY SOLICITOR RUTLEDGE DURANT

524

1 A. YES.

2 Q. I BELIEVE SEROQUIL AND ZOLOFT?

3 A. YES.

4 Q. AND WHAT IS IT YOUR UNDERSTANDING THAT THESE
5 MEDICATIONS HELP HIM DO?

6 A. GET ALONG, COPE.

7 Q. FUNCTION BETTER?

8 A. YES. MAINTAIN EMPLOYMENT, THINGS LIKE THAT.

9 Q. IT HELPED HIM MAKE HIS WAY. AND YOU SAID THAT YOU
10 WERE IN THIS ROOM WITH, I BELIEVE YOU IDENTIFIED
11 DETECTIVE HILL?

12 A. YES.

13 Q. AND THE OTHER DETECTIVES YOU DIDN'T KNOW THEIR
14 NAMES?

15 A. THAT'S CORRECT.

16 Q. YOU DON'T WORK OR THE CITY OF NORTH CHARLESTON
17 POLICE DEPARTMENT, DO YOU?

18 A. I DO NOT.

19 SOLICITOR RUTLEDGE DURANT: THANK
20 YOU, SIR.

21 THE COURT: RECROSS?

22 (NOTE: Blank lines on this page do not indicate any
23 part of record has been omitted. Headers on testimony
24 pages and hard page breaks between testimony are now
25 required by the Court.)

RECROSS - DONALD JEFFREY SIMMONS BY MR. PEPER

525

RECROSS-EXAMINATION OF DONALD JEFFREY SIMMONS

BY MR. PEPER:

Q. THEY MAKE PILLS TO HELP YOU KEEP EMPLOYMENT?

A. NOT, NO.

Q. I DIDN'T THINK SO, I WAS WONDERING. THEY DO MAKE
PILLS TO KEEP YOU FROM GOING PSYCHO, RIGHT?

A. TO HELP YOU COPE, YES.

Q. LIKE SEROQUIL. AND THEY DO MAKE PILLS TO MAKE
SURE YOU'RE NOT DEPRESSED ALL THE TIME, LIKE
ZOLOFT, RIGHT?

A. YES.

Q. AND COMMON SENSE TELLS YOU, YOU PROBABLY SHOULDN'T
MIX THOSE TWO DRUGS WITH GIN AND COCAINE, CORRECT?

A. THAT'S CORRECT.

SOLICITOR BRUCE DURANT: JUDGE,
OBJECTION, JUDGE, THIS IS SPECULATION.

THE COURT: TOO LATE. OVERRULED.
THANK YOU, SIR.

Q. YOU TESTIFIED JUST NOW WHEN HE SAID, WHY DIDN'T
HIS MOM DRIVE HIM THERE, YOUR TESTIMONY WAS, I
ASSUMED HIS CAR WAS BROKEN DOWN, CORRECT?

A. NO, I KNEW HIS CAR WAS BROKEN DOWN.

Q. NO. WHAT YOU TESTIFIED WAS, I ASSUMED HIS CAR WAS
BROKEN. ARE YOU CHANGING YOUR TESTIMONY NOW?

SOLICITOR RUTLEDGE DURANT: JUDGE,

RECROSS - DONALD JEFFREY SIMMONS BY MR. PEPER

526

1 I BELIEVE HE DID TESTIFY - - -

2 MR. PEPER: I'D LOVE TO SEE THE - -

3 -

4 THE COURT: THE JURY HEARD HIS
5 TESTIMONY, WHATEVER HE SAID. OVERRULED. IF THAT WAS AN
6 OBJECTION IT'S OVERRULED.

7 Q. YOU ASSUMED HIS CAR WAS BROKEN DOWN BUT YOU HAVE
8 NO IDEA, DO YOU?

9 THE COURT: CAN YOU ANSWER THE
10 QUESTION?

11 A. YES, SIR. HIS CAR WAS BROKEN DOWN.

12 Q. YOU KNOW THAT FOR A FACT?

13 A. YES.

14 Q. YOU ARE ONE HUNDRED PER CENT SURE?

15 A. YES.

16 Q. AND WHY DID YOU TELL MR. DURANT ON REDIRECT THAT
17 YOU ASSUMED, AND THAT YOU DIDN'T KNOW, YOU ASSUMED
18 HIS CAR WAS BROKEN DOWN, WHICH IS WHY HIS MAMA
19 BROUGHT HIM?

20 A. BAD CHOICE OF WORDS.

21 MR. PEPER: THANK YOU, YOUR HONOR,
22 I HAVE NOTHING FURTHER.

23 THE COURT: THANK YOU, SIR, YOU MAY
24 STEP DOWN.

25 NEXT WITNESS.

1 SOLICITOR RUTLEDGE DURANT: COULD I
2 CALL THE NEXT WITNESS, JUDGE?

3 THE COURT: YES, SIR.

4 SOLICITOR RUTLEDGE DURANT: THE
5 STATE CALLS GREG GOMES.

6 (Whereupon, George Gregory Gomes
7 enters the courtroom.)

8 CLERK: IF YOU WOULD, PLEASE PLACE
9 YOUR LEFT HAND ON THE BIBLE AND RAISE YOUR RIGHT HAND.
10 (Whereupon, George Gregory Gomes
11 is duly sworn.)

12 CLERK: PLEASE BE SEATED. IF YOU
13 WOULD, PLEASE STATE YOUR FULL NAME TO THE COURT AND
14 SPELL YOUR LAST.

15 WITNESS: IT'S GEORGE GREGORY GOMES,
16 G-O-M-E-S.

17 (NOTE: Blank lines on this page do not indicate any
18 part of record has been omitted. Headers on testimony
19 pages and hard page breaks between testimony are now
20 required by the Court. See next ensuing page for
21 sequential continuation of record.)

DIRECT - GEORGE GREGORY GOMES BY
SOLICITOR RUTLEDGE DURANT

528

DIRECT EXAMINATION OF GEORGE GREGORY GOMES

BY SOLICITOR RUTLEDGE DURANT:

Q. GOOD AFTERNOON, DETECTIVE GOMES.

A. GOOD AFTERNOON, SIR.

Q. WHERE ARE YOU EMPLOYED?

A. THE CITY OF NORTH CHARLESTON POLICE DEPARTMENT.

Q. HOW LONG HAVE YOU BEEN EMPLOYED THERE?

A. ALMOST ELEVEN YEARS.

Q. AND WHAT IS YOUR CURRENT POSITION?

A. I'M CURRENTLY ASSIGNED TO THE SPECIAL OPERATIONS
BUREAU, AND I SUPERVISE THE NARCOTICS UNIT.

Q. WAS THIS YOUR POSITION IN DECEMBER OF TWO THOUSAND
AND SIX?

A. NO, SIR, IT WASN'T.

Q. WHAT WAS YOUR POSITION IN DECEMBER OF TWO THOUSAND
AND SIX?

A. I WAS ASSIGNED TO THE DETECTIVE DIVISION AS A
DETECTIVE.

Q. IN YOUR CAPACITY AS A DETECTIVE WITH THE NORTH
CHARLESTON POLICE DEPARTMENT DID YOU HAVE THE
OCCASION TO SPEAK WITH THE DEFENDANT, SHAWN
PHILLIPS?

A. YES, SIR, I DID.

Q. ON DECEMBER FOURTEENTH, TWO THOUSAND AND SIX?

A. YES, SIR, I DID.

DIRECT - GEORGE GREGORY GOMES BY
SOLICITOR RUTLEDGE DURANT

529

1 Q. WHERE DID THIS TAKE PLACE?

2 A. AT THE POLICE DEPARTMENT, ON THE THIRD FLOOR, I
3 THE SERGEANT'S OFFICE.

4 Q. WOULD YOU PLEASE DESCRIBE THE SERGEANT'S OFFICE?

5 A. IT'S A LARGE ROOM. AT THE TIME IT HAD THREE
6 DESKS, A COUCH AND SOME CHAIRS, PROBABLY TWENTY BY
7 TEN WOULD BE THE MEASUREMENTS, MAYBE SOMETHING
8 LIKE THAT.

9 Q. WHO ALL WAS PRESENT IN THIS ROOM?

10 A. THE, WHEN I FIRST ENTERED THE ROOM IT WAS
11 DETECTIVE HILL AND MR. SIMMONS AND THE DEFENDANT,
12 MR. PHILLIPS.

13 Q. HOW DID YOU BECOME INVOLVED?

14 A. DETECTIVE HILL ASKED ME TO ASSIST WITH THE
15 INVESTIGATION OF THE HOMICIDE.

16 Q. WHAT WAS SHAWN PHILLIPS BEING QUESTIONED IN REGARD
17 TO?

18 A. IT WAS IN REGARDS TO A MURDER THAT HAD TAKEN PLACE
19 AT THE BUDGET INN ON FAIN DRIVE.

20 Q. TO YOUR KNOWLEDGE AT THIS POINT WHEN YOU ENTERED
21 THE ROOM AND DETECTIVE HILL WAS QUESTIONING MR.
22 PHILLIPS WERE YOU AWARE WHETHER HE HAD BEEN
23 MIRANDIZED?

24 A. IT WAS MY UNDERSTANDING HE HAD BEEN, BUT I WASN'T
25 PRESENT WHEN IT TOOK PLACE.

DIRECT - GEORGE GREGORY GOMES BY
SOLICITOR RUTLEDGE DURANT

530

1 Q. AT THIS TIME TO YOUR KNOWLEDGE DID MR. PHILLIPS
2 EVER REQUEST A LAWYER?

3 A. SHORTLY AFTER I ENTERED THE ROOM DETECTIVE HILL
4 WAS SPEAKING WITH THE DEFENDANT, AT WHICH TIME HE
5 STATED SOMETHING TO THE EFFECT THAT HE THOUGHT
6 THAT HE NEEDED TO SPEAK WITH AN ATTORNEY, AT WHICH
7 TIME DETECTIVE HILL AND I DISCONTINUED OUR
8 CONVERSATION AND EXITED THE ROOM, LEAVING THE
9 DEFENDANT AND MR. SIMMONS IN THE ROOM.

10 Q. SO, YOU AND DETECTIVE HILL LEFT THE ROOM?

11 A. YES, SIR, THAT'S CORRECT.

12 Q. AND MR. SIMMONS STAYED BEHIND IN THE ROOM WITH THE
13 DEFENDANT?

14 A. YES, SIR, THAT'S CORRECT.

15 Q. WAS DONALD SIMMONS INVESTIGATING THIS MURDER WITH
16 THE NORTH CHARLESTON POLICE DEPARTMENT?

17 A. NO, SIR.

18 Q. DID DONALD SIMMONS TAKE PART IN QUESTIONING SHAWN
19 PHILLIPS ABOUT THE MURDER OF ROBERT VARGO?

20 A. NO, SIR, HE DIDN'T.

21 Q. WHAT HAPPENED AFTER YOU AND DETECTIVE HILL STOPPED
22 QUESTIONING MR. PHILLIPS AND WALKED OUT OF THE
23 ROOM?

24 A. I ACTUALLY RETURNED TO MY, ON THE THIRD FLOOR
25 THERE IN THE POLICE DEPARTMENT IN THE DETECTIVE

DIRECT - GEORGE GREGORY GOMES BY
SOLICITOR RUTLEDGE DURANT

531

1 BAY WHERE WE HAVE A BUNCH OF CUBICLES, AND I
2 RETURNED TO MY AREA AND ACTUALLY WAS WORKING ON
3 SOMETHING ELSE. I WOULD SAY APPROXIMATELY TEN
4 MINUTES DETECTIVE HILL APPROACHED ME AND STATED
5 THAT THE DEFENDANT WANTED TO SPEAK WITH US AGAIN.

6 Q. AND AT THIS POINT WHEN DETECTIVE HILL APPROACHED
7 YOU AND SAID THAT THE DEFENDANT WANTED TO TALK TO
8 YOU, WHAT WAS DONE?

9 A. WE SAT OUT THERE AND WE DISCUSSED SOME ISSUES,
10 SOME THINGS ABOUT THE CASE PRIOR TO US GOING INTO
11 THE ROOM.

12 Q. ABOUT HOW LONG DID THAT DISCUSSION TAKE PLACE?

13 A. I WOULD SAY PROBABLY ANOTHER TEN MINUTES OR SO,
14 GIVE OR TAKE A FEW MINUTES.

15 Q. SO, TO CLARIFY AGAIN, YOU SAID TEN MINUTES AFTER
16 YOU WALKED OUT DETECTIVE HILL APPROACHED YOU, AND
17 THEN ANOTHER TEN MINUTES BEFORE YOU DID WHAT?

18 A. BEFORE WE ACTUALLY RETURNED TO INSIDE THE ROOM
19 WITH MR. PHILLIPS. SO, IT WAS APPROXIMATELY, FROM
20 THE POINT WE LEFT THE ROOM INITIALLY AFTER HE
21 STATED THAT HE WANTED TO SPEAK WITH AN ATTORNEY
22 UNTIL WE RETURNED, I WOULD SAY FIFTEEN TO TWENTY
23 MINUTES.

24 Q. WAS IT YOUR UNDERSTANDING THAT MR. PHILLIPS HAD
25 RE-INITIATED CONTACT?

DIRECT - GEORGE GREGORY GOMES BY
SOLICITOR RUTLEDGE DURANT

532

1 A. YES, SIR, THAT WAS MY UNDERSTANDING.

2 Q. SO, WHAT DID YOU AND DETECTIVE HILL DO?

3 A. WE RETURNED TO THE ROOM. AT THIS POINT IT WAS
4 JUST ME, DETECTIVE HILL AND THE DEFENDANT PRESENT
5 IN THE ROOM. DETECTIVE HILL ASKED HIM, HE SAID,
6 WE UNDERSTAND YOU WANT TO TALK WITH US, OR
7 SOMETHING TO THAT EFFECT, AT WHICH TIME HE STATED
8 THAT HE DID. DETECTIVE HILL EXPLAINED THAT WE
9 WERE GOING TO HAVE TO MIRANDIZE HIM AGAIN, GIVE
10 HIM HIS CONSTITUTIONAL RIGHTS, AT WHICH TIME
11 DETECTIVE HILL WENT THROUGH EACH OF THE RIGHTS
12 EXPLAINING THEM TO HIM.

13 Q. HOW DID, HOW WERE THE RIGHTS ADMINISTERED?

14 A. I DON'T KNOW IF YOU HAVE THE FORM, BUT IT'S, I
15 THINK IT'S FIVE DIFFERENT BLOCKS THAT ARE
16 NUMBERED. AT THE TOP YOU HAVE THE PERSON'S NAME,
17 DATE OF BIRTH, THEIR EDUCATIONAL LEVEL, AND FROM
18 THERE YOU READ EACH OF THE INDIVIDUAL RIGHTS TO
19 THEM. ONCE YOU READ THEM, MAKE SURE THEY FULLY
20 UNDERSTAND IT, AND THEN AT THE BOTTOM THERE'S A
21 SECOND SECTION WHERE THEY HAVE A CHOICE TO WAIVE
22 THEIR RIGHTS AND DISCUSS WHATEVER YOU'RE
23 INVESTIGATING.

24 Q. I'M SHOWING YOU WHAT'S MARKED STATE'S TWO FOR
25 IDENTIFICATION, AND ASK YOU TO TAKE A LOOK AT IT.

DIRECT - GEORGE GREGORY GOMES BY
SOLICITOR RUTLEDGE DURANT

533

1 DO YOU RECOGNIZE THAT?

2 A. YES, SIR, THIS IS THE ADVICE OF RIGHTS THAT WAS
3 READ TO MR. PHILLIPS WHICH HE SIGNED, DETECTIVE
4 HILL AND I ALSO SIGNED. THIS WAS WHAT WOULD HAVE
5 BEEN THE SECOND CONSTITUTIONAL RIGHTS. THIS IS
6 THE ONE I WAS PRESENT FOR.

7 Q. AND WHO ADVISED HIM OF HIS RIGHTS AT THIS TIME?

8 A. DETECTIVE HILL.

9 Q. AND DID YOU WITNESS THE RIGHTS?

10 A. YES, SIR, I WAS PRESENT.

11 Q. DID SHAWN PHILLIPS INDICATE THAT HE UNDERSTOOD HIS
12 RIGHTS?

13 A. YES, SIR, HE DID.

14 Q. HOW DID HE INDICATE THIS?

15 A. HE SIGNED STATING THAT HE FULLY UNDERSTANDS EACH
16 OF THESE RIGHTS EXPLAINED TO HIM.

17 Q. AND EACH ONE OF THESE RIGHTS WAS READ TO HIM?

18 A. YES, SIR.

19 Q. AND THEN AT THE BOTTOM OF THE FORM DID HE ALSO
20 WAIVE HIS RIGHTS?

21 A. YES, SIR, IT SAYS, "HAVING THESE RIGHTS IN MIND, I
22 WISH TO WAIVE THESE RIGHTS AND ANSWER QUESTIONS
23 CONCERNING THE CHARGE OF MURDER. NO THREATS OR
24 PROMISES -- NO THREATS, FORCE OR PROMISES OF ANY
25 KIND HAVE BEEN MADE TO ME BY ANYONE TO CAUSE ME TO

DIRECT - GEORGE GREGORY GOMES BY
SOLICITOR RUTLEDGE DURANT

534

1 WAIVE THESE RIGHTS AND ANSWER QUESTIONS." AND HE
2 SIGNED IT.

3 Q. DID YOU SEE HIM SIGN IT?

4 A. YES, SIR, I DID.

5 Q. DID YOU SEE HIM SIGN HIS ADVICE OF RIGHTS?

6 A. YES, SIR, I DID.

7 Q. DID YOU SIGN AS A WITNESS?

8 A. YES, SIR, I DID.

9 Q. WHO ELSE SIGNED AS A WITNESS?

10 A. DETECTIVE HILL.

11 Q. DID HE APPEAR TO UNDERSTAND HIS RIGHTS?

12 A. YES, SIR, HE DID.

13 Q. DID HE APPEAR CONFUSED IN ANY WAY?

14 A. NO, SIR.

15 Q. DID YOU ASK HIM IF HE WAS CONFUSED?

16 A. NO, I DIDN'T SPECIFICALLY ASK HIM THOSE QUESTIONS,
17 BUT HE APPEARED TO UNDERSTAND EXACTLY WHAT WAS
18 GOING ON.

19 Q. DID HE SAY HE WAS CONFUSED?

20 A. NO, SIR, HE DIDN'T.

21 Q. DID HE APPEAR UNDER THE INFLUENCE OF DRUGS OF
22 ALCOHOL?

23 A. NO, SIR.

24 Q. DID HE SAY HE WAS UNDER THE INFLUENCE OF DRUGS OR
25 ALCOHOL?

DIRECT - GEORGE GREGORY GOMES BY
SOLICITOR RUTLEDGE DURANT

535

- 1 A. NO, SIR, HE DIDN'T.
- 2 Q. DID YOU THREATEN HIM IN ANY WAY?
- 3 A. NO, SIR, I DIDN'T.
- 4 Q. DID YOU OFFER HIM ANY REWARD OR PROMISE OF
- 5 LENIENCY IF HE WOULD SPEAK TO YOU?
- 6 A. NO, SIR, I DIDN'T.
- 7 Q. DID HE APPEAR TIRED OR EXHAUSTED?
- 8 A. NO, SIR.
- 9 Q. DID HE SAY HE WAS?
- 10 A. NO, SIR.
- 11 Q. DID HE RESPOND APPROPRIATELY TO YOUR QUESTIONS?
- 12 A. YES, SIR.

13 SOLICITOR RUTLEDGE DURANT: YOUR
14 HONOR, AT THIS TIME THE STATE MOVES FOR THE ADMISSION OF
15 STATE'S TWO.

16 MR. PEPER: NO OBJECTION, YOUR
17 HONOR.

18 THE COURT: ADMITTED WITHOUT
19 OBJECTION.

20 (State's Exhibit Two
21 marked and filed.)

22 Q. WHAT TIME WAS HE ADVISED OF HIS RIGHTS ON THIS
23 FORM?

24 A. SIX:FORTY, SIX:FORTY-TWO OR SOMETHING. SIX:FORTY-
25 TWO P.M.

DIRECT - GEORGE GREGORY GOMES BY
SOLICITOR RUTLEDGE DURANT

536

1 Q. AND WHAT TIME DOES IT INDICATE THAT HE WAIVED HIS
2 RIGHTS?

3 A. SIX:FORTY-TWO P.M.

4 Q. AND CAN YOU EXPLAIN WHY THE TIMES ARE THE SAME FOR
5 THE ADVICE OF RIGHTS AND THE WAIVER OF RIGHTS?

6 A. WELL, I MEAN, IT ALL HAPPENS, I MEAN, ONCE YOU'VE
7 READ IT TO HIM, YOU ASK HIM IF HE FULLY
8 UNDERSTANDS THESE RIGHTS, AND THEN THE NEXT
9 PARAGRAPH IS, ALL THIS TAKES PLACE WITHIN A MINUTE
10 OR TWO UNLESS HE HAS SOME ISSUES OR QUESTIONS THAT
11 WOULD DELAY IT, BUT THIS ALL HAPPENS RIGHT IN
12 ORDER.

13 Q. SO, HE WAS ADVISED AND WAIVED AT SIX:FORTY-TWO?

14 A. YES, SIR.

15 Q. DID HE PROVIDE YOU WITH A STATEMENT?

16 A. YES, SIR, HE DID.

17 Q. WAS HE THREATENED OR COERCED IN ANY WAY TO PROVIDE
18 A STATEMENT?

19 A. NO, SIR, HE WASN'T.

20 Q. TO THE BEST OF YOUR KNOWLEDGE WAS THIS STATEMENT
21 FREELY AND VOLUNTARILY GIVEN?

22 A. YES, SIR, IT WAS.

23 Q. AND WAS THIS STATEMENT REDUCED TO WRITING?

24 A. YES, SIR.

25 Q. WHO WROTE THE STATEMENT?

DIRECT - GEORGE GREGORY GOMES BY
SOLICITOR RUTLEDGE DURANT

537

1 A. I DID.

2 Q. HOW DID YOU WRITE IT?

3 A. I WROTE IT AS HE TOLD IT TO ME.

4 Q. DID HE HAVE A CHANCE TO REVIEW IT FOR ACCURACY?

5 A. YES, SIR, I READ IT BACK TO HIM.

6 Q. DID HE MAKE ANY CHANGES?

7 A. THERE WERE JUST A FEW ERRORS WHERE I HAD TO
8 SCRATCH OUT AND CHANGE A WORD OR SOMETHING, AND
9 WHERE THOSE ERRORS WERE I HAD HIM INITIAL THOSE
10 CHANGES.

11 Q. DID YOU MAKE THE ERRORS AS YOU WERE WRITING THE
12 STATEMENT OR AFTER IT WAS COMPLETELY WRITTEN?

13 A. AS I WAS WRITING IT.

14 Q. AND DID HE INITIAL AS YOU WERE WRITING?

15 A. AFTER I CONCLUDED, AFTER I FINISHED I WENT BACK
16 AND READ IT. I EXPLAINED WHERE I HAD MADE SOME
17 MISTAKES AND I HAD TO SCRATCH IT OUT, AND I HAD
18 HIM INITIAL THOSE SPOTS INDICATING THAT THOSE WERE
19 OBVIOUSLY DONE WHILE I WAS WRITING THE STATEMENT
20 AND NOT AFTERWARDS.

21 Q. DID MR. PHILLIPS SIGN THE STATEMENT?

22 A. YES, SIR, HE DID.

23 Q. DID YOU WITNESS HIM SIGNING THE STATEMENT?

24 A. YES, SIR, I DID.

25 Q. DID YOU SIGN THE STATEMENT AS A WITNESS?

DIRECT - GEORGE GREGORY GOMES BY
SOLICITOR RUTLEDGE DURANT

538

1 A. YES, SIR.

2 Q. WAS HE PROVIDED A COPY OF HIS STATEMENT?

3 A. YES, SIR, HE WAS.

4 Q. I SHOW YOU WHAT'S BEEN MARKED AS STATE'S THREE FOR
5 IDENTIFICATION AND ASK YOU TO TAKE A LOOK AT THAT.

6 A. THIS IS THE ORIGINAL STATEMENT I TOOK FROM MR.
7 PHILLIPS.

8 Q. HOW DO YOU KNOW?

9 A. IT'S OBVIOUSLY WRITTEN IN BLUE INK WHICH IS WHAT I
10 TRY TO DO WHEN I TAKE STATEMENTS, AND IT HAS MY
11 SIGNATURE ALONG WITH DETECTIVE HILL AND MR.
12 PHILLIP'S STATEMENT, OR I MEAN, SIGNATURE, I'M
13 SORRY.

14 Q. HOW MANY PAGES IS THIS STATEMENT?

15 A. TWO ENTIRE PAGES AND APPROXIMATELY HALF OF THE
16 THIRD PAGE.

17 Q. HOW MANY TIMES DID MR. PHILLIPS SIGN THE
18 STATEMENT?

19 A. A TOTAL OF FIVE, ONCE ON THE FIRST PAGE, AND TWICE
20 ON THE SECOND AND THIRD PAGES.

21 Q. AND YOU MENTIONED THAT THERE WERE SOME CORRECTIONS
22 MADE IN THE BODY OF THE STATEMENT, HOW MANY
23 CORRECTIONS DID THE DEFENDANT INITIAL?

24 A. THREE.

25 Q. AND IS THIS THE STATEMENT THAT THE DEFENDANT GAVE

DIRECT - GEORGE GREGORY GOMES BY
SOLICITOR RUTLEDGE DURANT

539

1 YOU?

2 A. YES, SIR, IT IS.

3 Q. HAS IT BEEN CHANGED IN ANY WAY SINCE IT WAS GIVEN
4 TO YOU BY SHAWN PHILLIPS?

5 A. NO, SIR.

6 SOLICITOR RUTLEDGE DURANT: YOUR
7 HONOR, AT THIS TIME THE STATE WOULD MOVE FOR THE
8 ADMISSION OF STATE'S THREE INTO EVIDENCE.

9 MR. PEPPER: YOUR HONOR, I WOULD
10 OBJECT ON GROUNDS OF LACK OF VOLUNTARINESS, UNDUE
11 COERCION, AND THEN A SEPARATE ISSUE WITH REGARDS TO LACK
12 OF PROPER MIRANDIZATION OF MY CLIENT.

13 THE COURT: ALRIGHT, I OVERRULE YOUR
14 OBJECTION.

15 MR. PEPPER: THANK YOU, YOUR HONOR.
16 (State's Exhibit Three
17 marked and filed.)

18 THE COURT: LADIES AND GENTLEMEN,
19 THE COURT DECIDES WHETHER OR NOT THE STATEMENT WOULD BE
20 ADMISSIBLE INTO EVIDENCE. YOU HAVE TO DECIDE, AND I'LL
21 TELL YOU MORE ABOUT THIS LATER, WHETHER THIS DEFENDANT
22 ACTUALLY MADE THE STATEMENT AND IF HE MADE THE STATEMENT
23 YOU HAVE TO DECIDE WHETHER HE MADE IT FREELY,
24 VOLUNTARILY, KNOWINGLY AND INTELLIGENTLY WITHOUT ANY
25 COMPULSION, WITHOUT ANY FEAR OR THREATS OR PROMISES OR

DIRECT - GEORGE GREGORY GOMES BY
SOLICITOR RUTLEDGE DURANT

540

1 ANYTHING OF THAT NATURE. AND SO, I'LL EXPLAIN MORE
2 ABOUT THAT TO YOU LATER ON WHEN I CHARGE THE JURY. THE
3 COURT SIMPLY DECIDES WHETHER IT IS ADMISSIBLE OR NOT,
4 AND YOU DECIDE WHETHER HE MADE IT, WHETHER IT WAS
5 VOLUNTARY, AND THEN WHAT WEIGHT YOU WOULD GIVE IT.

6 ALRIGHT, SIR.

7 Q. SIR, WOULD YOU PLEASE READ THIS STATEMENT?

8 A. THIS IS THE STATEMENT OF SHAWN PHILLIPS. "THIS
9 STATEMENT IS WRITTEN BY ME, DETECTIVE GOMES"
10 EXCUSE ME, LET ME START OVER. "THIS STATEMENT IS
11 WRITTEN BY DETECTIVE GOMES AT MY REQUEST AS I TELL
12 IT TO HIM. ME, ANGELA, B.G., CHINA GIRL, L, WERE
13 IN A ROOM AT THE TRAVELERS INN. I DON'T REMEMBER
14 WHICH ROOM NUMBER. L SAID THAT HE NEEDED SOME
15 MONEY. B.G. TOLD HIM THAT SHE KNEW WHERE HE COULD
16 GET SOME MONEY. B.G. SAID THAT SHE KNEW A GUY WHO
17 WORKED AT THE FAIR WHO HAD A LOT OF MONEY. CHINA
18 GIRL SAID THAT HE WAS HER FRIEND AND THEY THEY
19 COULDN'T DO THAT, MEANING ROB HIM. L SAID, FUCK
20 THAT, EITHER I'M GOING TO START POPPING MOTHER
21 FUCKERS IN HERE OR WE'RE GOING TO HAVE TO GET THAT
22 MONEY. L LOOKED AT ME WHILE HE WAS HOLDING A GUN
23 IN HIS HAND. IT LOOKED LIKE A THIRTY-EIGHT SPECIAL
24 REVOLVER. L TOLD ME TO COME WITH HIM. I THOUGHT,
25 I KNOW THAT IF I DIDN'T GO WITH HIM HE WAS GOING

DIRECT - GEORGE GREGORY GOMES BY
SOLICITOR RUTLEDGE DURANT

541

1 TO SHOOT ME. ME, L AND B.G. LEFT THE ROOM. L WAS
2 TELLING B.G. TO SHOW US WHERE THE MONEY WAS. WE
3 WALKED TO THE TRACKER" AND IN PARENTHESIS I HAVE
4 "VEHICLE" "GOT IN AND DROVE OVER TO THE BUDGET
5 INN. WHEN WE GOT INTO THE PARKING LOT AT THE
6 BUDGET INN L TOLD ME TO PARK NEAR THE STAIRWAY
7 NEAR THE OFFICE. ONCE I PARKED L AND B.G. GOT
8 OUT. L TOLD ME TO STAY IN THE CAR AND THAT I'D
9 BETTER NOT LEAVE HIM. AS L AND B.G. WERE GETTING
10 OUT OF THE CAR D WALKED UP. L THREW D A BLACK CAP
11 AND SAID, YOU KNOW WHAT TIME IT IS. L WALKED BACK
12 TO THE TRUCK AND TOLD ME THAT I LOOKED NERVOUS AND
13 THAT I'D BETTER NOT LEAVE HIM. L, D, B.G. WALKED
14 THROUGH THE BREEZE-WAY OUT OF MY SIGHT. ABOUT
15 THREE MINUTES LATER I HEARD A POP LIKE A GUN SHOT.
16 I STARTED TO LEAVE AND I SAW L AND D RUN UP TO THE
17 TRUCK AND GET IN. L WAS MADE BECAUSE I STARTED TO
18 LEAVE. I LEFT THE PARKING LOT AND L WAS TELLING ME
19 TO HURRY UP AND GET BACK TO THE ROOM. L GAVE D
20 FIVE AND SAID, MY TOY WORKED REAL WELL. D SAID,
21 MAN YOU SHOULDN'T HAVE SHOT THE DUDE. D WANTED TO
22 GET OUT OF THE TRUCK AND L PUT THE GUN ON HIM AND
23 TOLD HIM HE WASN'T GOING A FUCKING PLACE. WHEN WE
24 ARRIVED BACK AT THE TRAVELERS INN L SEARCHED D AND
25 MADE SURE HE DIDN'T HAVE ANYTHING VALUABLE ON HIM

DIRECT - GEORGE GREGORY GOMES BY
SOLICITOR RUTLEDGE DURANT

542

1 FROM THE ROBBERY. D WENT TO ANOTHER ROOM, I'M NOT
2 SURE WHICH ONE. ME AND L WENT BACK TO MY ROOM.
3 WHEN WE GOT THERE B.G., ANGELA AND CHINA WERE IN
4 THE ROOM. WE PACKED UP EVERYTHING. ME AND ANGELA
5 LEFT AND WENT TO MY MOTHER'S HOUSE ON LINDLER
6 STREET. L, B.G. AND CHINA LEFT IN CHINA'S CAR.
7 RIGHT BEFORE WE LEFT L TOLD ME THAT HE WANTED TO
8 KILL CHINA AND B.G. BECAUSE THEY KNEW TOO MUCH. I
9 BEGGED HIM NOT TO DO IT AND HE SAID, NIGGER,
10 YOU'RE GETTING SOFT ON ME. THAT'S WHEN ME AND
11 ANGELA LEFT." AND THEN I SCRATCHED OUT, OR DREW A
12 LINE THROUGH THE REMAINING LINES ON THE LAST PAGE
13 AND WROTE, "END OF STATEMENT."

14 Q. THANK YOU, SIR. AT THIS TIME WAS SHAWN PHILLIPS
15 ALSO GIVEN THE OPPORTUNITY OF PICKING ANYBODY OUT
16 OF THE PHOTOGRAPHIC LINEUP?

17 A. I'M NOT SURE, I DON'T RECALL.

18 (State's Exhibit Twenty-nine
19 photo lineup,
20 marked for identification.)

21 Q. THERE ARE TWO PAGES THERE THAT SAYS, STATE'S
22 TWENTY-NINE FOR IDENTIFICATION PURPOSES. YOU CAN
23 PULL THOSE OUT.

24 A. YES, SIR.

25 Q. AND I ASK YOU IF YOU RECOGNIZE THOSE?

DIRECT - GEORGE GREGORY GOMES BY
SOLICITOR RUTLEDGE DURANT

543

1 A. YES, SIR, THIS IS A PHOTOGRAPHIC LINEUP FORM THAT
2 WAS WITNESSED BY ME THAT WAS SHOWN TO MR.
3 PHILLIPS.

4 Q. DO YOU RECALL WHEN THAT WAS DONE?

5 A. IT WAS DONE DECEMBER THE FOURTEENTH, AT
6 SEVEN:THIRTY-FIVE P.M.

7 Q. DO YOU RECALL SHOWING THAT TO SHAWN PHILLIPS?

8 A. YEAH, I VAGUELY REMEMBER SHOWING IT TO HIM.

9 Q. IS THAT YOUR SIGNATURE ON THERE?

10 A. YES, SIR, IT IS MY WRITING, MY SAME BLUE PEN.

11 Q. AND IS THAT THE DEFENDANT'S SIGNATURE ON THERE AS
12 WELL?

13 A. YES, SIR.

14 Q. AND WHO HAS HE IDENTIFIED?

15 A. HE IDENTIFIED PHOTO NUMBER TWO AS L, SLASH,
16 BROOKLYN, WHO WAS INVOLVED IN THE MURDER, SLASH,
17 ROBBERY.

18 Q. AND IS THERE ANYTHING WRITTEN ON THERE IN
19 ADDITION?

20 A. YEAH, IT SAYS THAT, ACTUALLY, THAT'S MY WRITING.
21 "PHILLIPS IDENTIFIED PHOTO NUMBER TWO AS L OR
22 BROOKLYN. THIS IS WHO WAS INVOLVED IN THE ROBBERY
23 AND MURDER." AND THAT'S MY SIGNATURE.

24 Q. AND DID SHAWN PICK OUT LENNIE MICKEY?

25 A. YES, SIR.

DIRECT - GEORGE GREGORY GOMES BY
SOLICITOR RUTLEDGE DURANT

544

1 Q. DID YOU WITNESS HIM DO THAT?

2 A. YES, SIR.

3 SOLICITOR RUTLEDGE DURANT: YOUR
4 HONOR, AT THIS TIME THE STATE MOVES FOR THE ADMISSION OF
5 STATE'S TWENTY-NINE.

6 MR. PEPER: NO OBJECTION.

7 THE COURT: ADMITTED WITHOUT
8 OBJECTION.

9 (State's Exhibit Twenty-nine
10 marked and filed.)

11 SOLICITOR RUTLEDGE DURANT: PLEASE
12 ANSWER ANY QUESTIONS MR. PEPER MAY HAVE FOR YOU.

13 A. YES, SIR, THANK YOU.

14 (NOTE: Blank lines on this page do not indicate any
15 part of record has been omitted. Headers on testimony
16 pages and hard page breaks between testimony are now
17 required by the Court. See next ensuing page for
18 sequential continuation of record.)

CROSS - GEORGE GREGORY GOMES BY MR. PEPER

545

1 CROSS-EXAMINATION OF GEORGE GREGORY GOMES

2 BY MR. PEPER:

3 Q. DETECTIVE GOMES, MARK PEPER FOR SHAWN PHILLIPS,
4 HOW ARE YOU?

5 A. GOOD, SIR, HOW ARE YOU?

6 Q. GOOD. SO, AFTER HE GAVE THE STATEMENT YOU NOW
7 KNEW THAT THREE INDIVIDUALS HAD COMMITTED AN ARMED
8 ROBBERY, THAT BEING, ACCORDING TO SHAWN'S
9 STATEMENT, L, B.G. AND D?

10 A. YES, ACCORDING TO THE STATEMENT THAT'S CORRECT.

11 Q. ALRIGHT. BEFORE WE GET BACK TO THE STATEMENT
12 LET'S GO BACK TO THE MIRANDA ISSUES. YOU
13 MIRANDIZED HIM, NO, I'M SORRY, YOU MIRANDIZED HIM
14 NEITHER TIME, CORRECT?

15 A. I WAS PRESENT FOR THE SECOND ONE.

16 Q. YOU WERE PRESENT FOR THE SECOND ONE, BUT HILL IS
17 THE ONE THAT MIRANDIZED HIM BOTH TIMES?

18 A. IT'S MY UNDERSTANDING HE WAS THERE FOR THE FIRST
19 ONE, I WASN'T PRESENT FOR THE FIRST ONE.

20 Q. WERE YOU AWARE THAT DURING THE FIRST MIRANDA
21 SCENARIO THERE THAT HILL HAD SCRATCHED OFF, CHARGE
22 OF, NEXT TO MURDER?

23 A. I KNOW NOW, I DIDN'T KNOW INITIALLY.

24 Q. OKAY. BUT YOU'VE SINCE LEARNED THAT WHEN HE
25 MIRANDIZED HIM THE FIRST TIME HE SCRATCHED OFF,

1 CHARGE OF, AND JUST SAID, I WANT TO TALK TO YOU
2 ABOUT A MURDER, NOT YOUR CHARGE OF MURDER?

3 A. I DON'T REMEMBER SPECIFICALLY WHAT IT SAID, I KNOW
4 THERE WAS SOMETHING SCRATCHED.

5 Q. OKAY. BUT WHEN YOU WITNESSED THE SECOND MIRANDA
6 NOBODY SCRATCHED OFF, CHARGE OF, DID THEY?

7 A. NO, SIR, IT'S CHARGE OF MURDER, THERE WAS NOTHING
8 SCRATCHED OFF.

9 Q. SO, WHEN HE WAS MIRANDIZING SHAWN THE SECOND TIME,
10 AFTER HE HAD ALREADY ASKED FOR AN ATTORNEY, AND
11 SIMMONS CAME AND TOLD Y'ALL HE WANTED TO TALK, AND
12 LEFT, YOU NOR HILL MADE A SPECIFIC POINT TO TELL
13 HIM, WE'RE RE-MIRANDIZING YOU, BUT KEEP IN MIND,
14 NOW, WE DIDN'T SCRATCH OFF, CHARGE OF, THIS TIME,
15 YOU'RE BEING CHARGED WITH MURDER?

16 A. YEAH, HE KNEW THE SECOND TIME. THE FIRST TIME I
17 WASN'T PRESENT, THE SECOND TIME HE KNEW HE WAS
18 GOING TO BE CHARGED WITH MURDER.

19 Q. SO, ONCE HE KNEW HE WAS GOING TO BE CHARGED WITH
20 MURDER HE SAID, ALRIGHT, THEN, YEAH, I'LL TELL YOU
21 EXACTLY WHAT HAPPENED?

22 A. I DON'T KNOW WHAT HE THOUGHT.

23 Q. WELL, YOU WERE THERE?

24 A. YEAH.

25 Q. AND HE AGREED TO TALK?

CROSS - GEORGE GREGORY GOMES BY MR. PEPER

547

1 A. YES, SIR.

2 Q. HE WAS READ HIS MIRANDA RIGHTS BY DETECTIVE HILL
3 IN YOUR PRESENCE AT SIX:FORTY-TWO P.M., CORRECT?

4 A. THAT'S, YEAH, HE'S READ THEM, HE STARTED READING
5 THEM OBVIOUSLY BEFORE SIX:FORTY-TWO. SIX:FORTY-
6 TWO IS WHEN YOU GET TO THE BOTTOM PART WHERE IT
7 SAYS, "I FULLY UNDERSTAND THESE RIGHTS." SO, THEY
8 WERE PROBABLY STARTED SIX:THIRTY-FIVE WHEN HE
9 INITIALLY STARTED READING THEM, APPROXIMATELY.
10 THE TIME ON THE BOTTOM - - -

11 Q. I UNDERSTAND, IT'S SIX:FORTY-TWO WHERE, THE LAST
12 SENTENCE IS, "I FULLY UNDERSTAND EACH OF THESE
13 RIGHTS EXPLAINED TO ME," CORRECT?

14 A. YES, SIR.

15 Q. AND THEN IT'S WITNESSED BY DETECTIVE HILL, AND WE
16 HAVE A PRINT, SHAWN PHILLIPS, CORRECT?

17 A. YES, SIR.

18 Q. AND THEN WE HAVE, WITNESS, IS THAT YOU, G. GOMES?

19 A. YES, SIR.

20 Q. TWELVE/FOURTEEN/O-SIX, SIX:FORTY-TWO P.M.,
21 CORRECT?

22 A. YES, SIR.

23 Q. OKAY. AND THEN IT SAYS, "HAVING THESE RIGHTS IN
24 MIND I WISH TO WAIVE THESE RIGHTS AND ANSWER
25 QUESTIONS CONCERNING CHARGE OF MURDER. NO

1 THREATS, FORCE," ETCETERA, ETCETERA, AND THEN HE
2 DOES IT AGAIN, AND YOU DO SIX:FORTY-TWO. OKAY, SO
3 THIS WAS PRETTY MUCH, ALL THIS STUFF WAS DONE IN
4 LESS THAN A MINUTE?

5 A. THE BOTTOM, WHERE HE FULLY UNDERSTANDS THEM AND HE
6 DECIDES TO WAIVE THEM ALL TOOK PLACE WITHIN A
7 MINUTE OR SO.

8 Q. OKAY.

9 A. IT TAKES SOME TIME, OBVIOUSLY, TO GO THROUGH THE
10 TOP PART, READING EACH OF HIS RIGHTS TO HIM.

11 Q. ALRIGHT, SO YOU, THERE'S NO, WE HAVE NO IDEA WHEN
12 THE ACTUAL MIRANDA STARTED, WE JUST KNOW IT ENDED
13 AT SIX:FORTY-TWO?

14 A. AT WHICH, SIX:FORTY-TWO IS WHEN HE WAIVED HIS
15 RIGHTS AND HE STATED HE FULLY UNDERSTOOD HIS
16 RIGHTS.

17 Q. I UNDERSTAND. OKAY. AND ONCE AGAIN, YOU NEVER
18 TOLD HIM, YOU NEVER SPECIFICALLY POINTED OUT THE
19 FACT THAT, YOU KNOW, HE'S BEING CHARGED WITH, BUT
20 HE UNDERSTOOD HE WAS BEING CHARGED WITH?

21 A. YOU MEAN, I NEVER SPECIFICALLY - - -

22 Q. YOU NEVER TOLD HIM, YOU KNOW, THE DIFFERENCE
23 BETWEEN THIS MIRANDA AND THE FORMER MIRANDA
24 THIRTY-SEVEN MINUTES AGO WAS THAT, CHARGE OF IS
25 STILL HERE, YOU NEVER SPECIFICALLY MADE THAT POINT

CROSS - GEORGE GREGORY GOMES BY MR. PEPER

549

1 BECAUSE YOU DIDN'T KNOW THAT THE FIRST ONE HAD
2 CHARGE OF SCRATCHED OFF?

3 A. NO, SIR, I DIDN'T KNOW ABOUT THE FIRST ONE.

4 Q. OKAY. BUT YOU'RE PRETTY SURE, YOU RECALL
5 CORRECTLY THAT HE WAS UNDER THE IMPRESSION THAT
6 YOU AND HILL WERE IN THERE TO TALK ABOUT HIM BEING
7 CHARGED WITH MURDER AND THAT HE WANTED TO GIVE A
8 STATEMENT?

9 A. YEAH. IT SAYS RIGHT HERE, CHARGED WITH MURDER.

10 Q. WELL, I UNDERSTAND THAT, HE CAN'T READ OR WRITE,
11 AND SEE, THAT'S THE PROBLEM, I MEAN, YOU KNOW, YOU
12 HAD TO READ TO ALL OF THIS TO HIM, RIGHT?

13 A. RIGHT.

14 Q. BUT YOU NEVER HANDED IT TO HIM AND HE READ IT AND
15 THEN SAID, YEAH, I UNDERSTAND IT, AND GAVE IT BACK
16 TO YOU, DID HE?

17 A. NO, WE READ IT TO HIM.

18 Q. YOU READ IT TO HIM?

19 A. UH HUH.

20 Q. OKAY. AND, YOU KNOW, DO YOU RECALL HOW LONG IT
21 TOOK HIM TO WRITE HIS SIGNATURE HERE, I MEAN - - -

22 A. I MEAN, YEAH, FIFTEEN SECONDS TO SIGN IT.

23 Q. YOU DON'T KNOW. SURE, THAT'S FINE.

24 A. IT WASN'T AN EXTENDED PERIOD OF TIME.

25 Q. I'VE GOT YOU. OKAY. ALRIGHT. AND HOW DID YOU

CROSS - GEORGE GREGORY GOMES BY MR. PEPER

550

1 KNOW THAT HE MIRACULOUSLY WANTED TO TALK TO Y'ALL?

2 A. I WAS, ARE YOU TALKING ABOUT THE SECOND TIME?

3 Q. YES, BECAUSE THE FIRST TIME HE SAID, I NEED AN
4 ATTORNEY, I'M DONE.

5 A. I WAS AT MY DESK IN MY CUBICLE WHEN DETECTIVE HILL
6 CAME OVER TO ME.

7 Q. SO, DETECTIVE HILL CAME AND TOLD YOU THAT - - -

8 A. YES.

9 Q. --- SHAWN HAS INITIATED CONTACT WITH US?

10 A. I DON'T REMEMBER EXACT VERBIAGE THAT HE TOLD ME,
11 BUT BASICALLY THAT PHILLIPS WANTED TO TALK WITH
12 US.

13 Q. DO YOU REMEMBER TESTIFYING IN A PRIOR HEARING THAT
14 HILL TOLD YOU THAT SIMMONS HAD TOLD HIM - - -

15 A. THAT'S MY UNDERSTANDING, SIMMONS CAME OUT AND TOLD
16 HIM THAT HE -- BUT BASICALLY, SHAWN PHILLIPS
17 WANTED TO TALK.

18 Q. THAT'S THE WORD YOU GOT?

19 A. YES.

20 Q. AND YOU REMEMBER, OR YOU TESTIFIED AT A PRIOR
21 HEARING THAT YOU GOT THAT WORD THROUGH HILL, WHO
22 GOT IT THROUGH SIMMONS?

23 A. I DIDN'T ACTUALLY, I DIDN'T HEAR HILL, OR SIMMONS
24 TALK TO HILL.

25 Q. NO, I UNDERSTAND, I UNDERSTAND. YOU DIDN'T HEAR

CROSS - GEORGE GREGORY GOMES BY MR. PEPER

551

1 SIMMONS TELL HILL, RIGHT?

2 A. RIGHT.

3 Q. I'VE GOT YOU. OKAY. ALRIGHT, SO YOU AND HILL GO
4 BACK DOWNSTAIRS AND WALK IN AND RE-MIRANDIZE HIM,
5 AND AT THAT POINT HE JUST GIVES YOU A STATEMENT,
6 RIGHT?

7 A. WELL, WE DIDN'T, IT'S ALL ON THE SAME FLOOR, WE
8 DIDN'T GO DOWNSTAIRS OR ANYTHING.

9 Q. OH, OKAY.

10 A. YES, IT'S ALL ON THE SAME FLOOR THERE.

11 Q. THAT'S CURIOUS TO ME, BECAUSE AT SIX:TEN THAT'S
12 WHEN HE GAVE HIS FIRST, HE WAIVED HIS RIGHTS THE
13 FIRST TIME?

14 A. YES, SIR.

15 Q. AND DETECTIVE SIMMONS TESTIFIED THAT LESS THAN A
16 MINUTE LATER HE STOPPED EVERYTHING AND ASKED FOR
17 AN ATTORNEY. SO, WHAT WAS SHAWN DOING FROM
18 SIX:ELEVEN P.M., WHEN SIMMONS WENT BACK OUT OF THE
19 ROOM AND TOLD HILL HE WANTED TO TALK, AND THEN
20 LEFT, AND SIX:FORTY-TWO, WHEN HE WAS MIRANDIZED
21 THE SECOND TIME?

22 A. WHAT DO YOU MEAN, SIX:ELEVEN?

23 Q. WELL, HE WAS MIRANDIZED THE FIRST TIME AT SIX:TEN,
24 WE AGREE ON THAT, CORRECT?

25 A. YES, SIR.

CROSS - GEORGE GREGORY GOMES BY MR. PEPER

552

1 Q. AND DETECTIVE SIMMONS HAS TESTIFIED IN COURT THAT
2 LESS THAN A MINUTE LATER HE ASKED FOR AN ATTORNEY,
3 YOU HEARD HIM ASK FOR AN ATTORNEY.

4 A. YES, SIR.

5 Q. OKAY. AND THEN, THAT'S WHEN EVERYBODY LEFT THE
6 ROOM. OKAY?

7 A. YES, SIR.

8 Q. SO, IF SIMMONS SAYS IT WAS LESS THAN A MINUTE
9 AFTER HE WAS MIRANDIZED, I'M JUST SAYING THAT'S
10 SIX:ELEVEN.

11 A. OKAY.

12 Q. OKAY? SO, THE NEXT TIME HE WAS MIRANDIZED BY
13 ANYBODY WAS SIX:FORTY-TWO P.M.

14 A. YES, SIR.

15 Q. WAS HE THE ONLY PERSON IN THAT ROOM FROM
16 SIX:ELEVEN TO SIX:FORTY-TWO P.M.?

17 A. NOW, THERE WAS A PERIOD OF TIME WHEN MR. SIMMONS
18 WAS IN THE ROOM WITH HIM.

19 Q. NO, REMEMBER WHEN HE ASKED FOR AN ATTORNEY?

20 A. NO.

21 Q. AND Y'ALL WALKED OUT, RIGHT?

22 A. DETECTIVE HILL AND I WALKED OUT OF THE ROOM.

23 Q. RIGHT.

24 A. MR. SIMMONS REMAINED IN THE ROOM.

25 Q. FOR LESS THAN A MINUTE, AND HE WALKED OUT AND THEN

CROSS - GEORGE GREGORY GOMES BY MR. PEPER

553

1 TOLD HILL, PHILLIPS WANTS TO TALK TO Y'ALL, AND
2 LEFT?

3 A. I DON'T KNOW HOW LONG HE WAS IN THE ROOM, BUT IT
4 WAS APPROXIMATELY TEN MINUTES AFTER WE LEFT BEFORE
5 I WAS - - -

6 Q. YOU GOT WORD?

7 A. YES.

8 Q. OKAY. ALRIGHT. SO, SIMMONS LEAVES, GOES AND
9 TELLS HILL, AND IT TAKES HILL AND EXTRA EIGHT OR
10 NINE MINUTES TO COME TELL YOU. AT APPROXIMATELY
11 SIX:TWENTY P.M. YOU LEARN THAT PHILLIPS WANTED TO
12 TALK BECAUSE THAT'S WHAT SIMMONS TOLD HILL, AND
13 THAT'S WHAT HILL TOLD YOU, RIGHT?

14 A. I'D SAY PROBABLY SIX:TEN HE WAS MIRANDIZED, IT WAS
15 A FEW MINUTES, WE LEFT THE ROOM AFTER HE SAID
16 SOMETHING ABOUT HE WANTED TO SPEAK WITH AN
17 ATTORNEY. I THINK IT WAS, I DON'T KNOW WHEN MR.
18 SIMMONS CAME OUT OF THE ROOM, BUT IT WAS PROBABLY
19 TEN MINUTES AFTER WE LEFT WHEN DETECTIVE HILL CAME
20 AND TOLD ME. FROM THERE IT WAS PROBABLY ANOTHER
21 TEN MINUTES OR SO BEFORE WE WENT BACK INTO THE
22 ROOM.

23 Q. OKAY. SO, THAT PUTS YOU BACK IN THE ROOM AT
24 SIX:THIRTY?

25 A. APPROXIMATELY, GIVE OR TAKE SOME TIME.

1 Q. OKAY. WELL, WHY WASN'T HE MIRANDIZED RIGHT AT
2 SIX:THIRTY?

3 A. WELL, I'M JUST GIVING YOU THE GENERAL IDEA OF HOW
4 LONG IT TOOK, I MEAN, IT COULD HAVE BEEN FIFTEEN
5 MINUTES EACH WAY, I'M JUST GIVING YOU, GENERALLY
6 SPEAKING, I MEAN, I DIDN'T HAVE A WATCH WRITING
7 DOWN THAT I WALKED OUT AT SIX:ELEVEN. AND THEN
8 ONCE YOU RETURN TO THE ROOM YOU'VE GOT A PERIOD,
9 PROBABLY FIVE OR SEVEN MINUTES WHERE YOU'RE
10 READING EACH OF HIS RIGHTS TO HIM.

11 Q. WELL, YOU TESTIFIED TO RUTLEDGE THAT SIX:FORTY-TWO
12 WAS WHEN HE WAS READ HIS RIGHTS AND SIGNED THAT HE
13 HAD BEEN READ HIS RIGHTS?

14 A. COULD I HOLD IT REAL QUICK?

15 Q. YEAH. I MEAN, I UNDERSTAND WHAT YOU'RE TELLING
16 ME, I JUST DON'T UNDERSTAND WHY YOU TOLD RUTLEDGE
17 THAT AT SIX:FORTY HE WAS READ IT AND RELEASED HIS
18 RIGHTS?

19 A. WHEN YOU COME INTO THE ROOM YOU'VE GOT THE ADVICE
20 OF RIGHTS, SO IT TAKES A MINUTE TO WRITE THE,
21 OBVIOUSLY, THE CASE NUMBER, YOU HAVE TO FILL OUT
22 HIS NAME, MR. PHILLIPS, HIS DATE OF BIRTH, HIS
23 AGE, THE GRADE HE COMPLETED. THEN, "I, SHAWN
24 PHILLIPS, HAVE BEEN ADVISED BY DETECTIVE HILL,"
25 AND THEN YOU HAVE TO READ IT. "I HAVE THE

CROSS - GEORGE GREGORY GOMES BY MR. PEPER

555

1 ABSOLUTE RIGHT TO REMAIN SILENT AND DO NOT HAVE TO
2 ANSWER ANY QUESTIONS OR GIVE A STATEMENT AND THIS
3 FACT CANNOT BE HELD AGAINST ME." DO YOU
4 UNDERSTAND THAT RIGHT?

5 Q. YEAH, RIGHT. I JUST - - -

6 A. AND HE INITIALS IT. OKAY? AND YOU GO THROUGH ALL
7 THESE, SO THAT TAKES A PERIOD OF TIME. AND THEN
8 YOU GET TO THE BOTTOM AND THEN, "I FULLY
9 UNDERSTAND EACH OF THESE RIGHTS." HE UNDERSTANDS
10 HIS RIGHTS, HE SIGNS IT, YOU WITNESS IT, DATE IT.
11 SO, WHEN IT SAYS, SIX:FORTY-TWO, THAT'S WHEN ALL
12 THIS HAD TAKEN PLACE. SO, I MEAN, THIS IS -- I
13 DON'T KNOW HOW LONG IT TAKES BUT I WOULD SAY
14 PROBABLY FIVE MINUTES TO GO THROUGH THE TOP PART
15 OF IT.

16 Q. OKAY. YOU WROTE HIS STATEMENT FOR HIM?

17 A. YES, SIR, I DID.

18 Q. BUT YOU KNEW HE COULDN'T READ OR WRITE, CORRECT?
19 SO, I'M ASSUMING YOU WOULD READ BACK TO HIM WHAT
20 YOU HAD WRITTEN SO THAT HE COULD VERIFY IT?

21 A. I DON'T HAVE INDEPENDENT VERIFICATION THAT HE
22 COULDN'T READ OR WRITE, I MEAN, SOME OF IT WAS
23 BASED ON THE FACT THAT HE SAID HE HAD A FIFTH
24 GRADE EDUCATION. SO, I MEAN, THAT WAS PROBABLY AN
25 INDICATION THAT HE WAS PROBABLY LIMITED IN HIS

1 WRITING ABILITY AND READING ABILITY.

2 Q. DO YOU REMEMBER TESTIFYING IN A PREVIOUS HEARING
3 THAT YOU KNEW HE COULDN'T READ OR WRITE?

4 A. I KNEW THERE WERE SOME ISSUES WITH IT, I DON'T,
5 I'VE NEVER, I DON'T KNOW, I'M NOT ABSOLUTELY SURE
6 THAT HE CAN'T READ OR THAT HE CAN'T WRITE. I
7 DIDN'T HAVE HIM WRITE ANYTHING OR READ IT

8 Q. THAT'S FINE. I JUST WANT TO KNOW IF YOU REMEMBER
9 TESTIFYING IN A HEARING THAT YOU KNEW FOR A FACT
10 THAT HE COULDN'T READ OR WRITE?

11 A. I DON'T KNOW THAT I USED THE WORDS, FOR A FACT,
12 THAT HE COULDN'T READ OR WRITE.

13 Q. OKAY. HOW WOULD THIS GO DOWN, YOU WOULD SAY WHAT
14 HAPPENED, AND HE WOULD TELL YOU, AND THEN YOU
15 WOULD STOP AND READ IT BACK, OR HOW DOES THAT
16 WORK?

17 A. OBVIOUSLY, I WOULD TELL HIM, I'LL WRITE IT AS YOU
18 TELL IT TO ME. AND THEN I WOULD LISTEN TO HIM
19 TELL ME THE STORY OF WHAT HAPPENED. YOU KNOW, "ME,
20 ANGELA, B.G., CHINA GIRL, L WERE IN THE ROOM AT
21 THE TRAVELERS INN." AND AS HE'S TELLING ME I'M
22 WRITING.

23 Q. OKAY. AND I NOTICE THAT SOMETIMES YOU WOULD CROSS
24 SOMETHING OUT AND PUT YOUR INITIALS BY IT. IS THAT
25 BECAUSE YOU WOULD MAYBE READ IT BACK TO HIM AND HE

CROSS - GEORGE GREGORY GOMES BY MR. PEPER

557

1 WOULD SAY, NO, NO, NO, YOU'VE GOT THIS WRONG, OR
2 THAT WRONG, OR THAT KIND OF THING?

3 A. WELL, ACTUALLY, IT'S NOT, THOSE ARE NOT MY
4 INITIALS, THOSE ARE HIS INITIALS.

5 Q. SO YOU ASKED HIM TO INITIAL WHERE YOU HAD TO
6 CORRECT SOMETHING?

7 A. THAT, I DO THAT AFTER I'M FINISHED, LIKE, FOR
8 INSTANCE, WHERE THE, YOU KNOW, THERE'S A MISTAKE
9 HERE, IT'S, I, AND I STARTED TO WRITE THE WORD,
10 LEAVE, AND HE ACTUALLY SAID, LEFT, SO I SCRATCHED
11 OUT LEAVE AND WROTE LEFT.

12 Q. AND THEN YOU MAKE SURE THAT'S OKAY WITH HIM?

13 A. AND I, I CONTINUE ON, AND AT THE END I WENT BACK
14 AND READ IT, AND I EXPLAINED TO HIM, HEY, I MADE
15 THIS ERROR AND IT'S SCRATCHED OUT, AND I HAD HIM
16 INITIAL ALL OF THE PLACES WHERE THERE ARE
17 MISTAKES.

18 Q. OKAY. AND YOU WOULD JUST POINT RIGHT HERE AND HE
19 WOULD INITIAL IT? I MEAN, YOU WOULD TELL HIM
20 WHERE TO INITIAL?

21 A. YEAH, I WOULD TELL HIM, I MEAN, OBVIOUSLY, YOU CAN
22 SEE WHERE THE WORDS ARE SCRATCHED OUT, - - -

23 Q. RIGHT.

24 A. --- AND I WOULD TELL HIM THAT, YOU KNOW, THIS
25 MISTAKE WAS MADE, I WROTE THIS WORD INSTEAD OF

SOLICITOR BRUCE DURANT: JUDGE,

CROSS - GEORGE GREGORY GOMES BY MR. PEPER

559

1 COULD WE APPROACH?

2 THE COURT: WE NEED TO TAKE A BREAK.

3 LADIES AND GENTLEMEN, WE'LL TAKE A
4 BREAK. PLEASE RETIRE TO THE JURY ROOM, PLEASE DO NOT
5 TALK ABOUT THE CASE.

6 (Whereupon, the jury retires
7 to the jury room and the following
8 takes place out of the presence
9 of the jury.)

10 THE COURT: YES, SIR?

11 SOLICITOR BRUCE DURANT: THE
12 OBJECTION IS, THE STATEMENT IS IN EVIDENCE, YOUR HONOR.

13 THE COURT: WELL, WHEN YOU WANT TO
14 MAKE AN OBJECTION YOU STAND UP FIRST, AND YOU SAY, I
15 OBJECT. THAT'S THE WAY WE DO IT IN SOUTH CAROLINA.
16 THAT'S THE WAY WE'VE DONE IT EVER SINCE I'VE BEEN
17 LAWYER, NINETEEN SEVENTY-NINE. YOU DON'T SIT OVER IN
18 THAT CHAIR AND SAY, JUDGE, I THINK HE SO AND SO AND SO.
19 I DON'T HEAR THAT. I'M NOT GOING TO RECOGNIZE YOU WHEN
20 YOU DO THAT, I'M GOING TO EMBARRASS YOU IN FRONT OF THE
21 JURY. SO, IF YOU HAVE AN OBJECTION TO MAKE, ANYBODY,
22 YOU STAND UP AND YOU SAY, I OBJECT, AND THEN YOU STATE
23 VERY SUCCINCTLY THE REASON FOR YOUR OBJECTION, AND YOU
24 SAY NO MORE UNTIL I ASK FOR MORE. SO, LET'S DO IT THAT
25 WAY. NOW, IS THERE AN OBJECTION?

CROSS - GEORGE GREGORY GOMES BY MR. PEPER

560

1 SOLICITOR BRUCE DURANT: THERE IS,
2 YOUR HONOR.

3 THE COURT: ALRIGHT, WHAT IS IT?

4 SOLICITOR BRUCE DURANT: WELL, WE
5 DON'T BELIEVE THAT HE CAN CROSS-EXAMINE HIM ABOUT THE
6 STATEMENT OF THE DEFENDANT. THERE AREN'T ANY
7 INCONSISTENCIES THAT HE'S TRYING TO POINT OUT.

8 MR. PEPER: YOUR HONOR, HE WROTE THE
9 STATEMENT. AND I'M CROSS-EXAMINING HIM TO MAKE SURE
10 THAT HE WROTE WHAT SHAWN TOLD HIM TO WRITE.

11 THE COURT: WELL, HE, THE RULES ALSO
12 SAY YOU DON'T ARGUE A MOTION UNLESS YOU ASK TO ARGUE.
13 THAT'S VERY CLEAR IN THE RULES, AND IF I NEED YOU TO
14 ARGUE IT, I'LL ASK YOU TO ARGUE IT. OKAY?

15 MR. PEPER: I APOLOGIZE. I
16 APOLOGIZE, YOUR HONOR.

17 THE COURT: THIS MAN WROTE THOSE
18 WORDS DOWN. NOW, I THINK THE DEFENSE HAS A RIGHT TO
19 QUESTION HIM ABOUT WHAT HE WROTE AND WHETHER, IN FACT,
20 THAT IS WHAT THE DEFENDANT SAID. IF THE DEFENDANT HAD
21 WRITTEN THOSE WORDS HIMSELF THERE MAY BE SOME MERIT TO
22 YOUR OBJECTION, BUT UNDER THESE CIRCUMSTANCES I DON'T
23 THINK THERE IS. SO, I OVERRULE YOUR OBJECTION.

24 SOLICITOR BRUCE DURANT: YES, YOUR
25 HONOR.

CROSS - GEORGE GREGORY GOMES BY MR. PEPER

561

1 THE COURT: ALRIGHT, WE'LL BE AT
2 EASE.

3 (Recess)

4 SOLICITOR BRUCE DURANT: YOUR HONOR,
5 JUST A MATTER OF HOUSEKEEPING?

6 THE COURT: YES, SIR?

7 SOLICITOR BRUCE DURANT: WE'VE GOT
8 SOME, WE EXPECT TO CALL A MEDICAL EXAMINER, DR.
9 PRESNELL, NEXT, AND PURSUANT TO HER TESTIMONY WE'D LIKE
10 TO OFFER THESE PHOTOGRAPHS THAT SHE TOOK AT THE AUTOPSY,
11 AND MR. PEPER IS GOING TO OBJECT. I'D JUST LIKE YOUR
12 RULING ON THAT AND MAYBE MARK THEM IF WE CAN. THE
13 STATE'S CONTENTION IS THAT IT'S PROBATIVE ON THE ISSUE
14 OF MALICE. IT'S - - -

15 THE COURT: MALICE?

16 SOLICITOR BRUCE DURANT: THAT'S
17 CORRECT, JUDGE. IT'S ALSO CORROBORATE OF WHAT THE
18 MEDICAL EXAMINER WILL TESTIFY TO.

19 THE COURT: WE NEED TO BE ON THE
20 RECORD.

21 COURT REPORTER: MY MACHINE IS
22 RUNNING.

23 SOLICITOR BRUCE DURANT: THEY WERE
24 COLORED PHOTOGRAPHS, WE'VE PUT BLACK AND WHITE ON THEM.

25 THE COURT: AND YOUR OBJECTION, MR.

CROSS - GEORGE GREGORY GOMES BY MR. PEPER

562

1 PEPER?

2 MR. PEPER: IT'S PREJUDICIAL.

3 COURT REPORTER: I'M SORRY, I CAN'T
4 HEAR YOU, MR. PEPER.

5 MR. PEPER: MY OBJECTION WOULD BE
6 THAT THEY'RE EXTREMELY PREJUDICIAL, PURSUANT TO RULE
7 FOUR O THREE, CONSIDERING MY CLIENT IS THE ONLY CLIENT
8 IN THE TRIAL RIGHT NOW. THERE IS NO PROBATIVE VALUE
9 WHATSOEVER. WE KNOW WHO DIED, WE KNOW HOW HE DIED, WE
10 KNOW WHERE HE DIED, WE KNOW WHEN IT DIED. THE ONLY
11 QUESTION IS WHO DID IT. AND THEREFORE, ANY PICTURES OF
12 GAPING NECK WOUNDS OF A DEAD GUY HAS GOT TO BE
13 PREJUDICIAL AGAINST THE ONLY DEFENDANT BEING TRIED
14 TODAY, YOUR HONOR.

15 SOLICITOR BRUCE DURANT: AND
16 OBVIOUSLY, JUDGE, THESE ARE JUST SOME LIMITED
17 PHOTOGRAPHS. WE'VE TAKEN AWAY THE MORE SEVERE ONES.
18 THAT WAS AN EXECUTION, IT WAS A MALICIOUS KILLING, AND
19 THESE PHOTOGRAPHS ARE PROBATIVE ON THE ISSUE OF MALICE.

20 THE COURT: ALRIGHT, HAVE HER MARK
21 ALL FOUR OF THEM.

22 COURT REPORTER: FOR ID?

23 THE COURT: I'M GOING TO -- WELL,
24 JUST LET ME HOLD THEM. THIS PHOTOGRAPH I WILL NOT ADMIT
25 BECAUSE I DON'T THINK IT SHOWS ANYTHING BUT A RATHER

CROSS - GEORGE GREGORY GOMES BY MR. PEPER

563

1 ROUGH LOOKING CORPSE.

2 SOLICITOR BRUCE DURANT: THERE WERE
3 SCRATCHES ON THE VICTIM'S NOSE AND WE CAN POINT TO THAT.

4 THE COURT: SCRATCHES ON HIS NOSE?

5 SOLICITOR BRUCE DURANT: THERE WERE
6 SCRATCHES ON HIS NOSE WHICH SHE SAYS COULD HAVE BEEN
7 CAUSED FROM THE PILLOW OVER HIS FACE. AND IT MAY HAVE,
8 MAY HAVE SOMEWHAT POLLUTED THE PHOTOGRAPH TAKEN FROM
9 COLOR TO BLACK AND WHITE.

10 MR. PEPER: MAY I RESPOND, YOUR
11 HONOR?

12 THE COURT: SIR?

13 MR. PEPER: MAY I RESPOND?

14 THE COURT: YES, SIR.

15 MR. PEPER: THERE'S BEEN NO
16 TESTIMONY WHATSOEVER THAT THIS WAS ANYTHING BUT AN ARMED
17 ROBBERY AND MURDER. IN OTHER WORDS, THERE WAS NO
18 TESTIMONY THAT THERE WAS EVER AN ASSAULT AND BATTERY,
19 THAT THERE WAS A STRUGGLE, THAT THERE WAS A FIGHT, SO I
20 DON'T UNDERSTAND WHAT THE -- WHY IT WOULD BE RELEVANT TO
21 SHOW THAT HE HAD SCRATCHES ON HIS NOSE.

22 SOLICITOR BRUCE DURANT: IT'S THE
23 STATE'S - - -

24 COURT REPORTER: I'M SORRY.

25 THE COURT: YOU NEED TO SPEAK LOUD

CROSS - GEORGE GREGORY GOMES BY MR. PEPER

564

1 ENOUGH SO SHE CAN HEAR YOU.

2 SOLICITOR BRUCE DURANT: THAT WAS
3 THE STATE'S BURDEN TO PROVE MALICE BEYOND A REASONABLE
4 DOUBT AS AN ELEMENT OF MURDER.

5 THE COURT: ALRIGHT, THIS BLACK AND
6 WHITE PHOTOGRAPH DOESN'T SHOW ANYTHING. THE COLOR
7 PHOTOGRAPH DEFINITELY SHOWS SCRATCHES AND RED MARKS AND
8 BRUISES ON HIS FACE, AND IT'S NOT A BLOODY PHOTOGRAPH,
9 IT'S NOT A GORY PHOTOGRAPH. TO ME IT DOESN'T LOOK AS
10 BAD AS THE BLACK AND WHITE ONE. THE OTHER THREE
11 PHOTOGRAPHS SHOW VERY DEFINITELY THE POINT OF ENTRANCE
12 AND THE POINT OF EXIT OF THE WOUND WHICH I THINK IS
13 PROBATIVE. SO, HAVE THE COURT REPORTER MARK THESE TWO,
14 AND THEY'RE ALL FOR ID RIGHT NOW. AND THOSE TWO I WILL
15 NOT ALLOW, ONE BECAUSE -- I WILL ALLOW THAT COLOR ONE.
16 SO, HAVE HER MARK THAT ONE, AND I WILL ALLOW THESE TWO,
17 ONE OF WHICH SHOWS THE ENTRANCE WOUND, AND ONE OF WHICH
18 SHOWS THE EXIT WOUND, NEITHER OF WHICH IS GORY OR
19 INFLAMMATORY IN THAT SENSE OF THE WORD. IN FACT, --
20 I'LL ALLOW IT, I THINK THE PROBATIVE VALUE OF THE THREE
21 OUTWEIGHS ANY POSSIBLE PREJUDICE FOR THE THREE OF THEM.
22 THE OTHER TWO, NO, I WILL NOT ALLOW THEM IN. AND I ONLY
23 ALLOW THESE THREE AFTER THERE IS EVIDENCE TO SUPPORT
24 THEM, AFTER TESTIMONY TO SUPPORT ESPECIALLY THE ONE
25 ABOUT THE FACE. ALRIGHT, SIR.

CROSS - GEORGE GREGORY GOMES BY MR. PEPER

565

1 SOLICITOR BRUCE DURANT: ABSOLUTELY,
2 JUDGE.

3 COURT REPORTER: DO YOU WANT ME TO
4 MARK THESE NOW?

5 THE COURT: YES, MA'AM, MARK ALL
6 FIVE OF THEM FOR ID.

7 MR. PEPER: AND YOUR HONOR, I WOULD
8 SUBMIT MY OBJECTION.

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

10 COURT REPORTER: WELL, I'VE ONLY
11 BEEN HANDED THREE.

12 THE COURT: YOU DON'T WANT THE OTHER
13 ONES MARKED?

14 SOLICITOR BRUCE DURANT: I BELIEVE
15 YOU TOLD ME THAT ONLY THREE WERE ALLOWED.

16 THE COURT: THAT'S TRUE, BUT IF YOU
17 WANT THEM MARKED TO PRESERVE THE RECORD, I MEAN, THAT'S
18 ENTIRELY UP TO YOU WHETHER YOU WANT THEM MARKED FOR ID
19 FOR EXHIBITS SO THEY'LL BE PART OF THE RECORD. THAT'S
20 UP TO YOU. I MEAN, I'M NOT GOING TO ALLOW - - -

21 SOLICITOR BRUCE DURANT: THESE ARE
22 THE ONLY THREE THAT WE'RE THINKING WE'RE GOING TO
23 POSSIBLY - - -

24 THE COURT: OKAY, THAT'S FINE, THEN
25 THERE ARE THREE OF THEM.

CROSS - GEORGE GREGORY GOMES BY MR. PEPER

566

1 SOLICITOR BRUCE DURANT: JUST MARK
2 THOSE THREE.

3 COURT REPORTER: IN ANY SPECIAL
4 ORDER?

5 THE COURT: NO, NO ORDER.

6 COURT REPORTER: OKAY.

7 THE COURT: JUST TELL ME WHAT
8 NUMBERS WHEN YOU GET THEM MARKED.

9 SOLICITOR BRUCE DURANT: AFTER
10 THEY'RE MARKED, YOUR HONOR, I'LL SHOW THEM TO THE
11 MEDICAL EXAMINER SO SHE'LL KNOW WHICH THREE WE'RE USING.

12 THE COURT: WHERE IS SHE?

13 SOLICITOR BRUCE DURANT: SHE JUST
14 STEPPED OUTSIDE.

15 THE COURT: WELL, IF SHE'S THE NEXT
16 WITNESS SHE OUGHT TO BE IN HERE.

17 SOLICITOR BRUCE DURANT: YEAH, SHE'S
18 THE NEXT WITNESS.

19 (State's Exhibits Thirty,
20 Color photograph,
21 Thirty-one and Thirty-two,
22 Black and white photographs,
23 marked for identification only.)

24 THE COURT: ALRIGHT, WHAT NUMBER IS
25 THE COLOR PHOTOGRAPH?

CROSS - GEORGE GREGORY GOMES BY MR. PEPER

567

1 SOLICITOR BRUCE DURANT: IT IS
2 THIRTY, YOUR HONOR.

3 THE COURT: ALRIGHT. AND THE BLACK
4 AND WHITES?

5 SOLICITOR BRUCE DURANT: THIRTY-ONE
6 AND THIRTY-TWO.

7 THE COURT: ALRIGHT. I WILL ONLY
8 ALLOW THIRTY IF THERE IS EVIDENCE IN THE RECORD FROM THE
9 MEDICAL EXAMINER TO SUPPORT THAT. I WILL ALLOW THIRTY-
10 ONE AND THIRTY-TWO BASED ON THE EVIDENCE WE'VE ALREADY
11 HEARD, AND I'M SURE SHE -- UNLESS THERE'S SOME CONFLICT
12 IN HER TESTIMONY. WHEN THEY'RE OFFERED, MR. PEPER, YOU
13 JUST NEED TO OBJECT FOR THE REASONS PREVIOUSLY STATED.

14 MR. PEPER: THANK YOU, YOUR HONOR.

15 THE COURT: ALRIGHT. BRING THE JURY
16 IN, PLEASE.

17 (Whereupon, the jury enters
18 the courtroom and the following
19 takes place in the presence
20 of the jury.)

21 THE COURT: ALRIGHT, SIR, YOU MAY
22 CONTINUE YOUR EXAMINATION.

23 MR. PEPER: THANK YOU, YOUR HONOR,
24 MAY IT PLEASE THE COURT.

25 THE COURT: YES, SIR.

1 Q. DETECTIVE GOMES, CONTINUING OUR CROSS-EXAMINATION,
2 I JUST WANT TO MAKE SURE THAT THIS IS WHAT YOU
3 WROTE DOWN?

4 A. YES, SIR.

5 Q. IT'S EXACTLY WHAT THE DEFENDANT TOLD YOU?

6 A. YES, SIR.

7 Q. YOU WROTE DOWN THAT, "L TOLD ME TO COME WITH HIM.
8 I THOUGHT, I KNOW THAT IF I DIDN'T GO WITH HIM HE
9 WAS GOING TO SHOOT ME." IS THAT WHAT SHAWN TOLD
10 YOU?

11 A. YES, SIR.

12 Q. AND HE ALSO WENT ON TO TELL YOU, "ME, L AND B.G.
13 LEFT THE ROOM. L WAS TELLING B.G. TO SHOW US
14 WHERE THE MONEY WAS. WE WALKED TO THE TRACKER,
15 GOT IN, AND DROVE OVER TO THE BUDGET INN." IS
16 THAT CORRECT?

17 A. YES, SIR.

18 Q. AND YOU WROTE DOWN VERBATIM WHAT HE TOLD YOU?

19 A. YES, SIR.

20 Q. HE ALSO TOLD YOU, "WHEN WE GOT INTO THE PARKING
21 LOT OF THE BUDGET INN, L TOLD ME TO PARK NEAR A
22 STAIRWAY NEAR THE OFFICE. ONCE I PARKED L AND
23 B.G. GOT OUT." IS THAT CORRECT?

24 A. YES, SIR.

25 Q. "L TOLD ME TO STAY IN THE CAR AND THAT I'D BETTER

CROSS - GEORGE GREGORY GOMES BY MR. PEPER

569

1 NOT LEAVE HIM."

2 A. YES, SIR.

3 Q. "AS L AND B.G. WERE GETTING OUT OF THE CAR D
4 WALKED UP." IS THAT CORRECT?

5 A. YES, SIR.

6 Q. AND HE TOLD YOU THAT "L THREW D A BLACK CAP AND
7 SAID, YOU KNOW WHAT TIME IT IS." CORRECT?

8 A. YES, SIR.

9 Q. "L WALKED BACK TO THE TRUCK AND TOLD ME THAT I
10 LOOKED NERVOUS AND THAT I'D BETTER NOT LEAVE HIM."

11 A. YES, SIR, THAT'S WHAT HE TOLD ME.

12 Q. "L, D AND B.G. WALKED THROUGH THE BREEZE-WAY OUT
13 OF MY SIGHT." CORRECT?

14 A. YES, SIR.

15 Q. "ABOUT THREE MINUTES LATER I HEAR A POP LIKE A GUN
16 SHOT. I STARTED TO LEAVE AND I SAW L AND D RUN UP
17 TO THE TRUCK AND GET IN." IS THAT WHAT HE TOLD
18 YOU?

19 A. YES, SIR.

20 Q. AND HE TOLD YOU THAT, "L WAS MAD BECAUSE I STARTED
21 TO LEAVE."

22 A. YES, SIR.

23 Q. "I LEFT THE PARKING LOT AND L IS TELLING ME TO
24 HURRY UP AND GET BACK TO THE ROOM." THEN HE TELLS
25 YOU, "L GAVE D FIVE AND SAID, MY TOY WORKED REAL

1 WELL." IS THAT CORRECT?

2 A. YES, SIR.

3 Q. HE THEN WENT ON TO SAY THAT "D WANTED TO GET OUT
4 OF THE TRUCK AND L PULLED THE GUN ON HIM AND TOLD
5 HIM HE WASN'T GOING A FUCKING PLACE." IS THT
6 CORRECT?

7 A. YES, SIR.

8 Q. HE WENT ON TO TELL YOU THAT "WHEN WE ARRIVED BACK
9 AT TRAVELERS INN L SEARCHED D TO MAKE SURE HE
10 DIDN'T HAVE ANYTHING VALUABLE ON HIM FROM THE
11 ROBBERY. D WENT TO ANOTHER ROOM, I'M NOT SURE
12 WHICH ONE. ME AND L WENT BACK TO MY ROOM. WHEN
13 WE GOT THERE, B.G., ANGELA AND CHINA WERE IN THE
14 ROOM." CORRECT?

15 A. YES, SIR.

16 Q. "WE PACKED EVERYTHING UP. ME AND ANGELA LEFT AND
17 WENT TO MY MOM'S HOUSE ON LINDLER STREET. L, B.G.
18 AND CHINA LEFT IN CHINA'S CAR." AND FINALLY, HE
19 TELLS YOU THAT "RIGHT BEFORE WE LEFT L TOLD ME HE
20 WANTED TO KILL CHINA AND B.G. BECAUSE THEY KNEW
21 TOO MUCH." CORRECT?

22 A. YES, SIR.

23 Q. HE THEN TELLS YOU, "I BEGGED HIM NOT TO DO IT, AND
24 HE SAID, NIGGER, YOU'RE GETTING SOFT ON ME."

25 A. YES, SIR, THAT'S WHAT HE SAID.

CROSS - GEORGE GREGORY GOMES BY MR. PEPER

571

1 Q. THAT WAS THE ENTIRETY OF THE STATEMENT?

2 A. AND THEN THE LAST PART, THAT'S WHEN HIM AND ANGELA
3 LEFT.

4 Q. THAT'S EXACTLY WHAT HE TOLD YOU?

5 A. YES, SIR.

6 Q. WHAT HE TOLD YOU WAS EXACTLY WHAT YOU WROTE DOWN?

7 A. YES, SIR.

8 Q. YOU READ IT BACK TO HIM?

9 A. YES, SIR.

10 Q. HE SIGNED THE FOLLOWING STATEMENT, "I HAVE READ
11 THE FOREGOING STATEMENT OR," AND IN SHAWN'S CASE,
12 "HAVE HAD IT READ TO ME, AND IT IS TRUE AND
13 CORRECT TO THE BEST OF MY KNOWLEDGE. I HAVE GIVEN
14 THE STATEMENT FREELY AND VOLUNTARILY AND HAVE BEEN
15 PROVIDED A COPY OF THE STATEMENT." CORRECT?

16 A. YES, SIR.

17 Q. YOU THEN GAVE HIM AN OPPORTUNITY TO PICK OUT THE
18 INDIVIDUALS THAT HE TALKED ABOUT IN HIS STATEMENT,
19 CORRECT?

20 A. INDIVIDUAL, YES, SIR.

21 Q. INDIVIDUAL. YOU GAVE HIM AN OPPORTUNITY TO PICK
22 OUT L AND HE CORRECTLY PICKED OUT LENNIE MICKEY,
23 CORRECT?

24 A. YES, SIR, HE DID.

25 Q. YOU DIDN'T GIVE HIM AN OPPORTUNITY TO PICK OUT

CROSS - GEORGE GREGORY GOMES BY MR. PEPER

572

1 B.G.?

2 A. NO, SIR, NOT THAT I RECALL.

3 Q. YOU DIDN'T GIVE HIM AN OPPORTUNITY TO PICK OUT D?

4 A. NO, SIR.

5 MR. PEPER: OKAY, THANK YOU.

6 THANK YOU, YOUR HONOR.

7 THE COURT: REDIRECT?

8 (NOTE: Blank lines on this page do not indicate any
9 part of record has been omitted. Headers on testimony
10 pages and hard page breaks between testimony are now
11 required by the Court. See next ensuing page for
12 sequential continuation of record.)

REDIRECT - GEORGE GREGORY GOMES BY
SOLICITOR RUTLEDGE DURANT

573

REDIRECT EXAMINATION OF GEORGE GREGORY GOMES
BY SOLICITOR RUTLEDGE DURANT:

Q. WE WERE TALKING ABOUT A TIME FRAME BETWEEN THE
ADVICE OF RIGHTS, THE FIRST ONE WHICH WAS GIVEN AT
SIX:TEN P.M., AND THE SECOND ONE WHICH WAS GIVEN
AT SIX:FORTY-TWO P.M., AND I BELIEVE YOUR
TESTIMONY WAS THAT AFTER DETECTIVE HILL HAD BEGUN
TO SPEAK WITH THE DEFENDANT YOU ENTERED THE ROOM,
IS THAT CORRECT?

A. YES, SIR.

Q. AND THEN IT'S AT THIS POINT THAT SHAWN PHILLIPS
SAYS SOMETHING ABOUT WANTING A LAWYER PRESENT?

A. THAT'S CORRECT, YES, SIR.

Q. AND I WANT TO GET THIS TIME FRAME JUST A LITTLE
BIT BETTER TO CLARIFY WHAT HAPPENS IN THIS THIRTY
MINUTES. ABOUT HOW LONG WOULD YOU SAY IT WAS FROM
WHEN YOU LEFT THE ROOM THAT DONALD SIMMONS CAME
OUT OF THE ROOM?

A. I DON'T KNOW EXACTLY WHAT TIME HE CAME OUT, BUT
ONCE I LEFT THE ROOM, OR DETECTIVE HILL AND I LEFT
IT WAS APPROXIMATELY TEN MINUTES OR SO BEFORE
DETECTIVE HILL CAME BACK TO ME AND TOLD ME THAT
THE DEFENDANT WANTED TO SPEAK WITH US AGAIN.

Q. SO, THAT'S ABOUT TEN MINUTES. AND AFTER DETECTIVE
HILL APPROACHED YOU AND SAID, THE DEFENDANT WANTS

REDIRECT - GEORGE GREGORY GOMES BY
SOLICITOR RUTLEDGE DURANT

574

1 TO TALK TO US, WHAT WERE Y'ALL TALKING ABOUT?

2 A. THAT THERE WERE SOME ISSUES, WE HAD SOME CONCERNS
3 THAT AFTER HE MADE A STATEMENT THAT HE WOULD LIKE
4 TO TALK WITH AN ATTORNEY, WE HAD SOME CONCERNS
5 ABOUT GOING BACK IN THERE. WE WANTED TO BE CLEAR
6 THAT HE WAS INITIATING THE CONTACT WITH US, AND
7 THAT WE DID IT PROPERLY. THOSE ARE SOME OF THE
8 THINGS WE WERE DISCUSSING, WE HAD SOME CONCERNS
9 ABOUT GOING BACK AND TALKING TO HIM A SECOND TIME.

10 Q. AND WHO WERE YOU HAVING THIS DISCUSSION WITH?

11 A. THERE WAS A GROUP OF US OUT THERE TALKING ABOUT,
12 TALKING ABOUT IT AND EVERYBODY KIND OF BOUNCING IT
13 OFF EACH OTHER TO SEE WHAT - - -

14 Q. FELLOW OFFICERS?

15 A. YEAH, OTHER DETECTIVES WHO WERE OUT THERE.

16 Q. AND YOU WERE DISCUSSING WHETHER YOU COULD GO TALK
17 WITH HIM AGAIN BECAUSE HE HAD ASKED FOR A LAWYER?

18 A. YES, SIR.

19 Q. AND WHAT DID YOU ULTIMATELY DETERMINE?

20 A. WE ULTIMATELY DECIDED THAT WE FELT THAT HE WAS
21 INITIATING THE CONTACT, AND IF WE WENT BACK IN AND
22 MIRANDIZED HIM AGAIN THAT WE WOULD BE OKAY.

23 Q. AND DID THAT CONVERSATION AMONGST THE OFFICERS,
24 ABOUT HOW MUCH TIME DID THAT TAKE UP?

25 A. APPROXIMATELY TEN MINUTES OR SO.

REDIRECT - GEORGE GREGORY GOMES BY
SOLICITOR RUTLEDGE DURANT

575

1 Q. APPROXIMATELY TEN MINUTES. AND THEN, HOW LONG
2 AGAIN WAS IT TO ADVISE MR. PHILLIPS OF HIS RIGHTS?

3 A. FIVE MINUTES OR SO.

4 Q. THAT MIGHT BE TWENTY-FIVE MINUTES, TEN MINUTES
5 WHEN MR. SIMMONS CAME OUT, APPROXIMATELY TEN
6 MINUTES TO DISCUSS WHETHER YOU COULD GO BACK IN,
7 AND ANOTHER FIVE MINUTES MAYBE TO MIRANDIZE HIM
8 AGAIN?

9 A. YEAH, ALL OF THIS IS APPROXIMATE, IT MAY BE A
10 LITTLE BIT MORE THAN TEN MINUTES, A LITTLE BIT
11 LESS, A LITTLE MORE THAN FIVE, BUT IN THAT GENERAL
12 VICINITY.

13 Q. SO, DOES IT APPEAR TO YOU THAT WE'VE ACCOUNTED FOR
14 THE TIME FROM SIX:TEN TO SIX:FORTY-TWO?

15 A. YES, SIR.

16 SOLICITOR RUTLEDGE DURANT: THANK
17 YOU. NO FURTHER QUESTIONS.

18 THE COURT: RECROSS?

19 (NOTE: Blank lines on this page do not indicate any
20 part of record has been omitted. Headers on testimony
21 pages and hard page breaks between testimony are now
22 required by the Court. See next ensuing page for
23 sequential continuation of record.)

RECROSS - GEORGE GREGORY GOMES BY MR. PEPER

576

RECROSS-EXAMINATION OF GEORGE GREGORY GOMES

BY MR. PEPER:

Q. YOU WERE CONCERNED ABOUT THE ISSUE OF WHETHER YOU
COULD GO BACK AND TALK TO HIM, RIGHT?

A. YES, SIR.

Q. SO, Y'ALL TALKED ABOUT IT AND YOU KIND OF
STRATEGIZED TO MAKE SURE THAT Y'ALL WERE GOING TO
BE OKAY TO GO BACK AND TALK TO HIM?

A. YES, SIR.

Q. AND WHEN YOU WENT BACK IN THERE AND TOLD HIM HE
HAD NOW BEEN CHARGED WITH MURDER, HERE IS HIS
OPPORTUNITY TO SPEAK, HE TOLD YOU, ALRIGHT, I'M
GOING TO TELL YOU WHAT HAPPENED?

A. NO. WE WENT BACK IN AND DETECTIVE HILL SAID
SOMETHING TO THE EFFECT, WE UNDERSTAND THAT YOU
WANT TO TALK WITH US ABOUT THIS, AT WHICH TIME HE
SAID, YEAH, THAT HE WANTED TO TALK WITH US.

Q. SO, YOU REDID THE MIRANDA RIGHTS, YOU'RE UNDER
ARREST, YOU'RE BEING CHARGED WITH MURDER, THESE
ARE YOUR RIGHTS?

A. YES, SIR, WE READ THE RIGHTS AND THEN THE WAIVER
FOR THE CHARGE OF MURDER AT THE BOTTOM, YES, SIR,
THAT'S CORRECT.

Q. SO, WHEN HE WASN'T UNDER ARREST AT SIX:TEN HE
DIDN'T REALLY WANT TO SAY ANYTHING, HE DIDN'T SAY

RECROSS - GEORGE GREGORY GOMES BY MR. PEPER

577

1 ANYTHING, CORRECT?

2 A. HE JUST ASKED FOR AN ATTORNEY THE FIRST TIME, AND
3 THEN HE SAID -- WELL, I WALKED IN WHILE IT WAS
4 GOING ON, I DON'T KNOW EXACTLY WHAT HE SAID THE
5 FEW MINUTES BEFORE I WALKED IN.

6 Q. BUT YOU KNEW HE HADN'T BEEN CHARGED WITH MURDER,
7 CORRECT?

8 A. I REALLY WASN'T, I DIDN'T, IF YOU'RE ASKING ME
9 ABOUT THE SCRATCHING OUT THING, I WASN'T AWARE OF
10 THAT IN THE FIRST PART OF IT.

11 Q. BUT THEN WHEN HE WAS CHARGED WITH MURDER AND GIVEN
12 AN OPPORTUNITY TO TALK HE TOLD YOU, YES, I AM
13 WILLING AND READY TO TALK AND HE PROVIDED A
14 STATEMENT?

15 A. HE PROVIDED A STATEMENT, YES, SIR.

16 MR. PEPER: THANK YOU. NO FURTHER
17 QUESTIONS FOR THIS WITNESS.

18 THE COURT: THANK YOU, SIR, YOU MAY
19 STEP DOWN.

20 CALL YOUR NEXT WITNESS.

21 SOLICITOR BRUCE DURANT: THE STATE
22 WOULD CALL ARON PRESNELL.

23 THE COURT: COME AROUND, PLEASE,
24 MA'AM.

25 CLERK: MA'AM, IF YOU WOULD, PLEASE

1 PLACE YOUR LEFT HAND ON THE BIBLE AND RAISE YOUR RIGHT
2 HAND.

3 (Whereupon, Dr. Susan Aron Presnell
4 is duly sworn.)

5 CLERK: PLEASE BE SEATED.

6 COURT REPORTER: STATE YOUR LAST
7 NAME?

8 CLERK: PLEASE STATE YOUR FULL NAME
9 TO THE COURT AND SPELL YOUR LAST NAME.

10 WITNESS: MY NAME IS SUSAN ARON
11 PRESNELL, P-R-E-S-N-E-L-L.

12 THE COURT: YES, SIR.

13 SOLICITOR BRUCE DURANT: THANK YOU,
14 YOUR HONOR.

15 (NOTE: Blank lines on this page do not indicate any
16 part of record has been omitted. Headers on testimony
17 pages and hard page breaks between testimony are now
18 required by the Court. See next ensuing page for
19 sequential continuation of record.)

DIRECT - DR. SUSAN ARON PRESNELL BY
SOLICITOR BRUCE DURANT

579

DIRECT EXAMINATION OF DR. SUSAN ARON PRESNELL
BY SOLICITOR BRUCE DURANT:

Q. COULD YOU STATE TO THE JURY YOUR OCCUPATION?

A. I'M A FORENSIC PATHOLOGIST, I WORK DOWN AT THE
MEDICAL UNIVERSITY DOWN THE STREET.

Q. AND HOW LONG HAVE YOU BEEN A FORENSIC PATHOLOGIST
AT THE MEDICAL UNIVERSITY?

A. I'VE BEEN DOING FORENSIC AUTOPSIES SINCE NINETEEN
NINETY-FIVE, I DID FINISH MY TRAINING AND BECAME
BOARD CERTIFIED IN NINETEEN NINETY-NINE.

Q. YOU ARE A LICENSED PHYSICIAN IN THIS STATE?

A. YES.

Q. AND YOU'VE BEEN IN, YOU'VE BEEN A LICENSED
PHYSICIAN FOR HOW LONG?

A. I GOT MY M.D. DEGREE IN NINETEEN NINETY-THREE, AND
THEN THE PERMANENT LICENSE A COUPLE OF YEARS AFTER
THAT.

Q. WHERE DID YOU RECEIVE YOUR MEDICAL TRAINING?

A. MUSC.

Q. AND WHAT IS YOUR AREA OF EXPERTISE?

A. PATHOLOGY AND A SUB-SPECIALTY, FORENSIC PATHOLOGY.

Q. AND WHAT EXACTLY IS FORENSIC PATHOLOGY?

A. WELL, YOU KNOW, EVERYONE IS KIND OF GETTING MORE
FAMILIAR WITH WHAT FORENSIC PATHOLOGY IS, BUT IT'S
JUST A KIND OF, THE WHOLE BIG PICTURE, FORENSIC

DIRECT - DR. SUSAN ARON PRESNELL BY
SOLICITOR BRUCE DURANT

580

1 PATHOLOGY IS A SUB-SPECIALTY OF PATHOLOGY. AND
2 PATHOLOGY IS THE GENERAL FIELD, BASICALLY THE
3 STUDY OF DISEASE. ACTUALLY, MOST PATHOLOGISTS,
4 YOU GO TO YOUR DOCTOR AND THEY DO A BIOPSY OR DO
5 SOME TYPE OF, SAY, A PAP SMEAR, THAT TISSUE WILL
6 GO TO THE PATHOLOGIST AND THEY LOOK AT IT AND LOOK
7 UNDER THE MICROSCOPE AND DIAGNOSE. SO, IS IT
8 CANCER, IS IT INFECTION, WHAT IS IT? FORENSIC
9 PATHOLOGY IS A SUB-SPECIALTY TRAINING WHERE WE'RE
10 NOT JUST LOOKING AT A PIECE OF TISSUE BUT WE'RE
11 LOOKING AT THE WHOLE BODY OF SOMEONE THAT'S PASSED
12 ON. AND ALTHOUGH WE'RE LOOKING FOR DISEASE WE'RE
13 ALSO LOOKING AT ANY TRAUMA AND EVALUATING THAT
14 TYPE OF TRAUMA. AND, OF COURSE, THE PROCEDURE
15 THAT WE DO THAT WITH IS CALLED THE AUTOPSY, AND
16 ULTIMATELY WE, YOU KNOW, THROUGH THE EXAMINATION
17 WE PUT TOGETHER A CAUSE AND MANNER OF DEATH.

18 Q. OKAY. AND OBVIOUSLY, AS A FORENSIC PATHOLOGIST
19 YOU HAVE THE OPPORTUNITY TO PERFORM AUTOPSIES, IS
20 THAT CORRECT?

21 A. YES, SIR.

22 Q. AND HOW MANY AUTOPSIES HAVE YOU PERFORMED DURING
23 YOUR CAREER?

24 A. I WOULD ESTIMATE OVER TWO THOUSAND.

25 Q. ARE YOU BOARD CERTIFIED IN THE AREA OF FORENSIC

DIRECT - DR. SUSAN ARON PRESNELL BY
SOLICITOR BRUCE DURANT

581

1 PATHOLOGY?

2 A. YES.

3 Q. AND IN THE OTHER SPECIALTIES OF PATHOLOGY AS WELL,
4 ANATOMICAL AND CLINICAL?

5 A. WELL, ANATOMICAL AND CLINICAL PATHOLOGY ARE
6 GENERAL PATHOLOGY, SO I'M BOARDED IN BOTH OF THOSE
7 AREAS. AND THEN TO GET A SUB-SPECIALTY BOARDED,
8 OR TO BE ABLE TO BE BOARDED IN A SUB-SPECIALTY YOU
9 HAVE TO HAVE THAT GENERAL BOARD. SO, YES, GENERAL
10 PATHOLOGY AND FORENSIC PATHOLOGY.

11 Q. AND THOSE ARE NATIONAL CERTIFICATIONS, CORRECT?

12 A. YES.

13 Q. DO YOU HOLD ANY TEACHING POSITIONS AT THE MEDICAL
14 UNIVERSITY?

15 A. I'M CONSIDERED AN ASSOCIATE PROFESSOR AT MUSC AND
16 I ALSO HELP DIRECT THE COURSE, THE PATHOLOGY
17 COURSE FOR THE MED STUDENTS.

18 Q. AND ARE YOU A MEMBER OF ANY ASSOCIATIONS WITH
19 RESPECT TO FORENSIC PATHOLOGY?

20 A. YES, SEVERAL.

21 Q. OKAY. AND FINALLY, HAVE YOU BEEN QUALIFIED AS AN
22 EXPERT IN THE FIELD OF FORENSIC PATHOLOGY IN THE
23 PAST?

24 A. YES, I HAVE.

25 Q. ON HOW MANY OCCASIONS HAVE YOU BEEN QUALIFIED?

DIRECT - DR. SUSAN ARON PRESNELL BY
SOLICITOR BRUCE DURANT

582

1 A. I WOULD ESTIMATE A GUESS, MAYBE SIXTY, SIXTY-FIVE,
2 SEVENTY. AND THEN, PRETTY MUCH ALL COUNTIES OF
3 THE LOW COUNTRY, WILLIAMSBURG, BEAUFORT, COLLETON,
4 ANYBODY THAT REFERS CASES TO MUSC TO EXAMINE.

5 SOLICITOR BRUCE DURANT: YOUR HONOR,
6 AT THIS TIME WE WOULD OFFER DR. PRESNELL AS AN EXPERT IN
7 THE FIELD OF FORENSIC PATHOLOGY.

8 MR. PEPER: NO OBJECTION, YOUR
9 HONOR.

10 THE COURT: I FIND THAT SHE'S
11 QUALIFIED AS AN EXPERT IN THE FIELD OF FORENSIC
12 PATHOLOGY.

13 Q. DR. PRESNELL, AS PART OF YOUR AFFILIATION WITH THE
14 MEDICAL UNIVERSITY DID YOU HAVE AN OPPORTUNITY TO
15 PERFORM AN AUTOPSY ON ROBERT VARGO ON NOVEMBER THE
16 NINTH OF TWO THOUSAND AND SIX?

17 A. YES, WE DID.

18 Q. AND WHAT WAS MR. VARGO'S AGE?

19 A. MR. VARGO WAS FORTY-EIGHT YEARS OLD.

20 Q. AND HIS HEIGHT?

21 A. SEVENTY-TWO POINT FIVE INCHES, WHICH IS SIX FEET
22 AND ONE HALF INCH.

23 Q. AND HIS WEIGHT?

24 A. APPROXIMATELY ONE HUNDRED FIFTY-FIVE POUNDS.

25 Q. SO, A KIND OF TALL THIN GUY, IS THAT CORRECT?

DIRECT - DR. SUSAN ARON PRESNELL BY
SOLICITOR BRUCE DURANT

583

1 A. YES, HE WAS.

2 Q. NOW, AS FAR AS YOUR AUTOPSY, DID YOU PERFORM AN
3 EXTERNAL EXAMINATION OF THE BODY?

4 A. YES, ALL OF OUR FORENSIC AUTOPSIES ARE COMPLETE
5 AUTOPSIES, WE DO THE EXTERNAL EXAM, WE DO
6 PHOTOGRAPHS, WE DO DIAGRAMS, WE DO X-RAYS, AND
7 THEN WE DO THE WHOLE INTERNAL EXAM AS WELL, AND
8 YOU KNOW, COLLECT SAMPLES TO LOOK UNDER THE
9 MICROSCOPE AT A LATER DATE, ETCETERA, AND ALL THIS
10 WAS DONE FOR MR. VARGO.

11 Q. AND FROM YOUR EXTERNAL EXAMINATION DID YOU OBSERVE
12 ANY EVIDENCE OF RECENT INJURIES TO MR. VARGO APART
13 FROM THE OBVIOUS GUN SHOT WOUNDS?

14 A. WELL, HE HAD SEVERAL ABRASIONS, ABRASIONS AND
15 SCRATCHES OR SCRAPES IF YOU CAN THINK OF IT AS, IF
16 YOU KIND OF FELL DOWN AND SKINNED YOUR KNEE ON
17 CONCRETE THAT WOULD BE AN ABRASION. HE HAD SOME
18 ABRASIONS OR SCRAPING OF THE SKIN, A COUPLE OF
19 SMALL ABRASIONS ON HIS RIGHT CHEEK AND THEN ONE
20 OVER THE LEFT SIDE OF THE LIP. HE ALSO HAD A
21 LINEAR, OR KIND OF A LINE ABRASION ON THE LEFT
22 FOREARM AND A SMALL ABRASION ON THE LEFT KNEE
23 AREA.

24 Q. THE ABRASIONS YOU NOTICED ON THE NOSE AND FACIAL
25 AREA WERE THEY CONSISTENT WITH SOMEONE HAVING A

DIRECT - DR. SUSAN ARON PRESNELL BY
SOLICITOR BRUCE DURANT

584

1 PILLOW HELD OVER THEIR FACE?

2 A. WELL, REALLY, THEY'RE NON-SPECIFIC, A PATTERN, YOU
3 KNOW, COULD IT BE FROM, YOU KNOW, ROUGH RUBBING OF
4 A PILLOW? YES, THEY POSSIBLY COULD.

5 Q. AND WHERE WERE THESE ABRASIONS LOCATED?

6 A. THE ONES THAT I HAVE DOCUMENTED ARE KIND OF ON THE
7 RIGHT FACIAL CHEEK AND THEN UNDER THE NOSE OVER
8 THE LEFT SIDE OF THE LIP.

9 Q. DOCTOR, I WANT TO HAND YOU WHAT'S PREVIOUSLY BEEN
10 MARKED AS STATE'S EXHIBIT NUMBER THIRTY AND ASK
11 YOU IF THAT PHOTOGRAPH FAIRLY AND ACCURATELY
12 DEPICTS THE ABRASIONS OF WHICH YOU JUST SPOKE?

13 A. YES, IT DOES.

14 Q. AND WOULD REFERENCE TO THAT PHOTOGRAPH ASSIST YOU
15 IN EXPLAINING YOUR FINDINGS TO THE JURY WITH
16 REGARD TO THOSE PARTICULAR ABRASIONS?

17 A. IT WOULD CERTAINLY ILLUSTRATE THE ABRASIONS ON THE
18 NOSE, ALTHOUGH IT DOESN'T REALLY SHOW THE PART ON
19 THE SIDE OF THE FACE.

20 Q. OKAY.

21 SOLICITOR BRUCE DURANT: YOUR HONOR,
22 AT THIS TIME WE WOULD LIKE TO MOVE STATE'S THIRTY INTO
23 EVIDENCE IF THERE'S NO OBJECTION.

24 THE COURT: STATE'S THIRTY?

25 SOLICITOR BRUCE DURANT: I BELIEVE

DIRECT - DR. SUSAN ARON PRESNELL BY
SOLICITOR BRUCE DURANT

585

1 IT'S STATE'S THIRTY, YES, SIR, LET ME CHECK THAT. YES,
2 SIR.

3 MR. PEPER: OBJECTION AS PREVIOUSLY
4 STATED, YOUR HONOR.

5 THE COURT: ALRIGHT, I OVERRULE THAT
6 OBJECTION.

7 MR. PEPER: THANK YOU.

8 COURT REPORTER: YOU WANT ME TO TAKE
9 THE ID OFF? STATE'S THIRTY.

10 (State's Exhibit Thirty
11 marked and filed.)

12 Q. OKAY. AND IF YOU CAN FROM RIGHT THERE, IF YOU
13 COULD JUST, WITH STATE'S THIRTY, SHOW THE JURY THE
14 ABRASIONS OF WHICH YOU JUST SPOKE?

15 A. FROM OVER HERE?

16 Q. YOU CAN STAND, IF YOU WANT TO STAND UP, OR YOU CAN
17 COME OUT IN FRONT OF THE JURY THAT'S OKAY.

18 A. IS THAT OKAY?

19 Q. IT'S UP TO YOU.

20 THE COURT: YES, MA'AM, IT'S UP TO
21 YOU.

22 A. THIS IS JUST, I'LL SHOW IT HERE AND THEN I'LL WALK
23 OVER THERE. THIS IS A LEFT SHOT OF MR. VARGO.
24 IT'S KIND OF SMALL PICTURE BUT HE HAS A REDDENING
25 RIGHT HERE ON THIS AREA, AND THEN OVER THE LEFT,

DIRECT - DR. SUSAN ARON PRESNELL BY
SOLICITOR BRUCE DURANT

586

1 UNDER THE NOSE, AND A LITTLE BIT OF REDDENING ON
2 THE NOSE. YOU MAY NOT CAN SEE, BUT A FEW
3 ABRASIONS ON THE SIDE OF THE CHEEK. THEY'RE KIND
4 OF A DIFFUSED NON-SPECIFIC PATTERN TYPE OF SCRAPE.
5 AGAIN, I'LL SHOW YOU. RIGHT HERE UNDER THE NOSE
6 AND KIND OF A LITTLE BIT OF REDDENING, AGAIN, A
7 NON-SPECIFIC PATTERN.

8 Q. WERE YOU AWARE OF HOW THE VICTIM WAS FOUND IN THIS
9 CASE?

10 A. YES. WE KNEW THAT HE WAS FOUND IN A MOTEL ROOM
11 LAYING ON THE BED WITH A PILLOW OVER HIM.

12 Q. AND THAT HE HAD BEEN SHOT THROUGH THE PILLOW?

13 A. YES.

14 Q. AND WERE -- ARE THOSE ABRASIONS YOU FOUND ON HIS
15 FACE CONSISTENT WITH THE WAY THE BODY WAS FOUND?

16 A. I DON'T KNOW.

17 Q. AND TURNED HIS HEAD, THE ABRASIONS?

18 A. YOU KNOW, USUALLY IF YOU'RE GOING TO GET ABRASIONS
19 THERE IS, YOU KNOW, SOME TYPE OF MOVEMENT. SO, IF
20 THERE IS A STRUGGLE THEN CERTAINLY THAT COULD
21 ACCOUNT FOR THAT, BUT THAT DOESN'T NECESSARILY
22 MEAN THAT'S HOW THE BODY'S GOING TO END UP.

23 Q. I UNDERSTAND THAT, BUT ARE THOSE ABRASIONS
24 CONSISTENT WITH HIM HAVING A PILLOW HELD OVER HIS
25 FACE?

DIRECT - DR. SUSAN ARON PRESNELL BY
SOLICITOR BRUCE DURANT

587

1 A. THEY'RE NOT SPECIFIC AND THEY ARE CERTAINLY
2 CONSISTENT WITH THAT ALTHOUGH I CANNOT SAY FOR
3 CERTAIN.

4 Q. AND OBVIOUSLY YOU CAN'T SAY FOR SURE BECAUSE YOU
5 WEREN'T THERE, CORRECT?

6 A. RIGHT.

7 Q. OKAY. NOW, LET'S MOVE ON TO THE GUN SHOT WOUND.
8 WHERE WAS THE POINT OF ENTRY?

9 A. THE GUN SHOT WOUND ENTERED ABOVE, OR IN THE LEFT
10 TEMPLE AREA, TRAVELED THROUGH THE BRAIN AND EXITED
11 THROUGH THE RIGHT TEMPLE AREA.

12 Q. AND HOW DID YOU DETERMINE THE ENTRY TO THE LEFT
13 TEMPLE WAS THE ENTRANCE WOUND?

14 A. THERE'S A NUMBER OF WAYS TO DO THAT BUT IN
15 PARTICULAR THERE'S A MUZZLE IMPRINT, MEANING THE
16 END OF THE BARREL WAS PRESSED THROUGH THE PILLOW
17 UP TIGHT AGAINST HIS SKIN MAKING IT A CONTACT GUN
18 SHOT WOUND, MEANING THAT THE GUN WAS PRESSED UP
19 AGAINST THE SKIN, AND THE MUZZLE IMPRINT
20 DEFINITELY POINTS OUT THE ENTRANCE WOUND. AND
21 THE OPPOSITE SIDE WAS THE EXIT WOUND.

22 Q. OKAY. AND YOU DESCRIBED THIS AS CONTACT WOUND.
23 WHAT DO YOU MEAN BY THAT AGAIN?

24 A. A CONTACT GUN SHOT WOUND IS WHERE THE BARREL OF
25 THE GUN IS HELD UP AGAINST THE TARGET, IN ESSENCE,

DIRECT - DR. SUSAN ARON PRESNELL BY
SOLICITOR BRUCE DURANT

588

1 CONTACTING THE SKIN.

2 Q. MAY I SHOW YOU, DR. PRESNELL, WHAT'S BEEN
3 PREVIOUSLY MARKED AS STATE'S EXHIBITS THIRTY-ONE
4 AND THIRTY-TWO, AND ASK IF YOU RECOGNIZE THOSE
5 PHOTOGRAPHS, AND IF SO, WHAT DID THEY DEPICT?

6 A. THESE ARE PHOTOGRAPHS I TOOK DURING MY AUTOPSY OF
7 MR. VARGO.

8 Q. AND WHAT DOES THIRTY-ONE DEPICT?

9 A. THIRTY-ONE IS THE PHOTOGRAPH OF THE ENTRANCE
10 GUNSHOT WOUND. THIRTY-TWO IS THE PHOTOGRAPH OF
11 THE EXIT GUNSHOT WOUND.

12 Q. AND DO THOSE PHOTOGRAPHS FAIRLY AND ACCURATELY
13 DEPICT THE WOUNDS AS YOU OBSERVED THEM ON THE DATE
14 OF THE AUTOPSY?

15 A. YES, SIR.

16 SOLICITOR BRUCE DURANT: YOUR HONOR,
17 WE OFFER STATE'S THIRTY-ONE AND STATE'S THIRTY-TWO INTO
18 EVIDENCE AT THIS TIME.

19 MR. PEPER: SAME OBJECTION THAT I
20 PREVIOUSLY MADE, AND I ALSO OBJECT TO THESE PHOTOS BEING
21 BLOWN UP AND PLACED ON THE WALL MONITOR AS WELL.

22 THE COURT: WELL, I OVERRULE YOUR
23 OBJECTION. WE'RE GOING TO SHOW THEM ON THE SCREEN.

24 (State's Exhibits Thirty-one and Thirty-two
25 marked and filed.)

DIRECT - DR. SUSAN ARON PRESNELL BY
SOLICITOR BRUCE DURANT

589

1 Q. OKAY. COULD YOU SHOW THE JURY WHAT THESE PHOTOS
2 DEPICT?

3 A. CAN I WALK UP TO THE JURY AND DEMONSTRATE?

4 Q. I CAN PUT THEM ON THE OVERHEAD AND I'LL GIVE YOU A
5 LASER POINTER IF YOU LIKE. YOU CAN STAY THERE, OR
6 YOU CAN COME DOWN HERE, WHATEVER YOU PREFER.

7 A. I'LL STAY HERE. ALRIGHT, THIS PHOTOGRAPH RIGHT
8 HERE DEMONSTRATES A GUNSHOT WOUND WHICH WAS WHAT
9 MR. VARGO DIED FROM. THIS AREA, THIS DARKENED
10 CIRCULAR AREA RIGHT HERE IS THE ENTRANCE GUNSHOT
11 WOUND. THE GUNSHOT WOUND WENT IN THROUGH THE
12 SKULL, THROUGH THE BRAIN, CAUSED SKULL FRACTURES,
13 DISRUPTION OF THE BRAIN, AS WELL AS BLEEDING
14 WITHIN THE BRAIN, AND IT EXITED RIGHT HERE ABOVE
15 THE RIGHT EAR. THIS PHOTOGRAPH SHOWS THE EXIT
16 WOUND ABOVE THE RIGHT EAR. SO, IN THROUGH THE
17 LEFT TEMPLE AREA AND OUT THROUGH THE RIGHT TEMPLE
18 AREA.

19 Q. THROUGH THE BRAIN IN THE INTERIM, IS THAT CORRECT?

20 A. CORRECT.

21 Q. SO THIS IS ESSENTIALLY WHAT'S KNOWN AS A THROUGH
22 AND THROUGH?

23 A. A PERFORATING OR THROUGH AND THROUGH GUNSHOT
24 WOUND, YES.

25 Q. WHAT INTERNAL INJURIES WERE CAUSED BY THE GUNSHOT

DIRECT - DR. SUSAN ARON PRESNELL BY
SOLICITOR BRUCE DURANT

590

1 WOUND?

2 A. I KIND OF REFERENCED THEM BEFORE. IT WAS THE
3 DISRUPTION OF THE BRAIN, A LOT OF SKULL FRACTURES
4 INSIDE AS WELL AS A LOT OF BLEEDING AROUND THE
5 BRAIN STRUCTURE.

6 Q. OKAY. AS PART OF YOUR AUTOPSY DID YOU COLLECT
7 BLOOD SAMPLES AND FINGERNAIL SCRAPINGS FROM THE
8 VICTIM?

9 A. YES, WE DID.

10 Q. DID YOU TURN THOSE OVER TO OFFICER WYANT, IS THAT
11 CORRECT?

12 A. YES.

13 Q. AS PART OF THE AUTOPSY IS THERE ALSO TOXICOLOGY
14 DONE ON THE VICTIM?

15 A. YES, WE COLLECT BLOOD, AND IF THERE IS URINE WE
16 COLLECT THAT FOR TOXICOLOGY ANALYSIS. IN HIS
17 PARTICULAR CASE HIS BLOOD WAS POSITIVE FOR
18 COCAINE, AND COCAINE METABOLITES, OR A BREAKDOWN
19 PRODUCT OF COCAINE, AS WELL AS HYPERTENSIVE
20 MEDICATION.

21 Q. NEGATIVE FOR ETHANOL ALCOHOL, IS THAT CORRECT?

22 A. HE HAD NO ALCOHOL IN HIS SYSTEM.

23 Q. AND DOCTOR, DO YOU HAVE AN OPINION BASED UPON YOUR
24 AUTOPSY, BASED UPON THE HISTORY YOU OBTAINED, DO
25 YOU HAVE AN OPINION BASED UPON A REASONABLE DEGREE

1 OF MEDICAL CERTAINTY AS TO THE CAUSE OF DEATH IN
2 THIS CASE?

3 A. YES. HIS CAUSE OF DEATH WAS THE GUNSHOT WOUND TO
4 HIS HEAD.

5 Q. AND IN LAYMAN TERMS THE GUNSHOT WOUND PRETTY MUCH
6 RATTLED HIS BRAINS, IS THAT CORRECT?

7 A. IT DISRUPTED HIS BRAINS, YES.

8 SOLICITOR BRUCE DURANT: THANK YOU.

9 THE COURT: CROSS-EXAMINATION.

10 MR. PEPER: NO QUESTIONS, YOUR
11 HONOR.

12 THE COURT: YOU CAN STEP DOWN. THANK
13 YOU FOR COMING.

14 CALL YOUR NEXT WITNESS.

15 SOLICITOR RUTLEDGE DURANT: THE
16 STATE CALLS DETECTIVE JAMES HILL.

17 CLERK: PLEASE PLACE YOUR LEFT HAND
18 ON THE BIBLE AND RAISE YOUR RIGHT.

19 (Whereupon, James Michael Hill, Jr.,
20 is duly sworn.)

21 CLERK: PLEASE HAVE A SEAT AND STATE
22 YOUR FULL NAME.

23 WITNESS: JAMES MICHAEL HILL, JR.

24 (NOTE: Blank lines on this page do not indicate any
25 part of record has been omitted.)

DIRECT-JAMES M. HILL, JR., BY SOL. RUTLEDGE DURANT

592

DIRECT EXAMINATION OF JAMES M. HILL, JR.,

BY SOLICITOR RUTLEDGE DURANT:

Q. DETECTIVE HILL, PLEASE TELL THE COURT WHERE YOU
ARE EMPLOYED.

A. I'M EMPLOYED WITH THE CITY OF NORTH CHARLESTON
POLICE DEPARTMENT.

Q. AND WHAT IS YOUR CURRENT POSITION?

A. I'M A DETECTIVE.

Q. AND HOW LONG HAVE YOU BEEN A DETECTIVE?

A. SIX YEARS.

Q. WHAT ARE THE RESPONSIBILITIES AND DUTIES OF A CASE
AGENT?

A. WE MAINTAIN THE CASE FILE, GATHER ALL THE
STATEMENTS, EVIDENCE, SIT DOWN AND READ WHAT NEEDS
TO BE DONE AND JUST GENERAL OVERSEEING OF THE
CASE. I WAS THE LEAD DETECTIVE IN THIS CASE.

Q. IN THAT CAPACITY DID YOU HAVE THE OCCASION TO
INVESTIGATE A MURDER AT THE BUDGET INN ON NOVEMBER
THE SEVENTH, TWO THOUSAND AND SIX?

A. YES.

Q. WAS THE VICTIM'S NAME ROBERT VARGO?

A. YES.

Q. DID YOU ACTUALLY RESPOND TO THE SCENE?

A. YES, SIR, I DID.

Q. WHEN DID YOU DO THIS?

DIRECT-JAMES M.HILL, JR., BY SOL. RUTLEDGE DURANT

593

1 A. VIRTUALLY RIGHT AFTER IT WAS DISPATCHED.

2 Q. DO YOU KNOW WHAT DAY THAT WAS?

3 A. NOVEMBER THE EIGHTH.

4 Q. WERE YOU ABLE TO ASCERTAIN THE IDENTITY OF THE
5 VICTIM?

6 A. ROBERT VARGO. HE WORKED FOR A CARNIVAL COMPANY
7 THAT WAS IN TOWN.

8 Q. WHICH ROOM WAS HE IN?

9 A. TWO THIRTY-FOUR.

10 Q. HOW DO YOU KNOW WHEN HE HAD CHECKED IN TO THAT
11 MOTEL?

12 A. IT WAS OBTAINED, I BELIEVE, BY ANOTHER DETECTIVE.
13 WE GOT IT FROM THE CASE FILE.

14 Q. ARE YOU AWARE OF WHETHER THE BUDGET INN HAD VIDEO
15 SURVEILLANCE?

16 A. YES, SIR.

17 Q. WERE YOU ABLE TO OBTAIN ANY VIDEO SURVEILLANCE OF
18 THE BUDGET INN?

19 A. ANOTHER DETECTIVE OBTAINED IT, BUT I REVIEWED IT
20 ALSO.

21 Q. WHAT DID THE BUDGET INN VIDEO SHOW?

22 A. IT SHOWED JUST THE DESK CLERK, THE LOBBY AREA,
23 JUST THAT AREA.

24 Q. WERE -- WAS THE VIDEO OF ANY USE IN THE
25 INVESTIGATION OF THIS CASE?

DIRECT-JAMES M. HILL, JR., BY SOL. RUTLEDGE DURANT

594

1 A. NO.

2 Q. MOVING ON TO DECEMBER FOURTEENTH, TWO THOUSAND AND
3 EIGHT, - - -

4 A. I WAS INTERVIEWING ANGELA AGAGAS ON ANOTHER
5 MATTER. BASED ON THE CELL PHONE THAT WAS
6 RECOVERED FROM ROOM TWO THIRTY-FOUR FROM THE
7 VICTIM, I TALKED, LOOKED FOR CONTACTS. SOME LOCAL
8 HAD THE NAME, CHINA DOLL. I ASKED ANGELA IF SHE
9 KNEW OF A LADY BY THE NAME OF CHINA DOLL BECAUSE
10 WE KNEW THAT MR. VARGO PRIOR TO GOING TO THE
11 BUDGET INN KNEW CHINA. BASED ON MY INTERVIEW WITH
12 ANGELA AGAGAS - - -

13 Q. WHEN YOU WERE ABLE TO BRING UP THE NAME, CHINA
14 DOLL, DID SHE TAKE YOU SOMEWHERE?

15 A. YES, SHE DID. SHE TOOK US AND SHOWED US WHERE SHE
16 KNEW CHINA LIVED. SHE STATED THAT SHE KNEW CHINA
17 HAD TWO VEHICLES, ONE OF WHICH WAS A SILVER PICKUP
18 TRUCK, THE OTHER WAS A DODGE DURANGO.

19 Q. WHAT HAPPENED AFTER ANGELA - - -

20 A. SHE SHOWED US WHERE SHE LIVED. THERE WERE NO
21 VEHICLES THERE. I HAD THE APPROPRIATE BODY STYLE
22 SO WE WENT TO THE MOTEL SIX PARKING LOT. SHE
23 OBSERVED A PICKUP TRUCK AND A RED DURANGO AND SHE
24 STATED THAT THOSE WERE THE VEHICLES. SHE STATED
25 THAT CHINA WAS OF ASIAN DESCENT, AND THERE WAS AN

DIRECT-JAMES M.HILL, JR., BY SOL. RUTLEDGE DURANT

595

1 ASIAN DRIVER OF THE VEHICLE.

2 Q. DID YOU HAVE THE TRUCK STOPPED?

3 A. ONCE WE WERE LEAVING THE COMMUNITY THE SECOND TIME
4 WE SEEN, WE PULLED BACK ON ASHLEY PHOSPHATE ROAD,
5 WE EXITED THE NEIGHBORHOOD A DIFFERENT ROUTE, AND
6 AS WE PULLED BACK OUT ON ASHLEY PHOSPHATE ROAD WE
7 OBSERVED THE F-ONE FIFTY PICK UP TRUCK ON ASHLEY
8 PHOSPHATE ROAD.

9 Q. AND WAS ANGELA AGAGAS WITH YOU AT THIS TIME?

10 A. YES, SHE WAS.

11 Q. AND WHAT DID SHE TELL YOU ABOUT THAT TRUCK?

12 A. SHE SAID, THAT'S THE PICKUP TRUCK THAT CHINA
13 FREQUENTLY DRIVES. AND THAT WAS THE PICKUP TRUCK
14 THAT WE HAD JUST SEEN GO TO THE RESIDENCE ALONG
15 WITH THE RED DURANGO.

16 Q. AND WHAT DID YOU DO ABOUT THAT?

17 A. WE HAD A UNIFORM PATROL, I DISPATCHED A UNIFORM
18 PATROL OFFICER TO STOP THE VEHICLE.

19 Q. AND WHAT ENDED UP HAPPENING?

20 A. THEY FOLLOWED THE VEHICLE, GOT A TRAFFIC
21 INFRACTION, AND STOPPED THE VEHICLE, AND ENDED UP
22 ULTIMATELY ARRESTING THE DRIVER OF THAT VEHICLE
23 WHICH WAS ALANA NIESEN.

24 Q. WHAT IS MS. NIESEN'S NICKNAME?

25 A. SHE GOES BY CHINA OR CHINA DOLL.

DIRECT-JAMES M. HILL, JR., BY SOL. RUTLEDGE DURANT

596

1 Q. AND YOU WERE LOOKING FOR SOMEBODY NAMED CHINA
2 BECAUSE THAT'S THE NAME THAT WAS IN THE VICTIM'S
3 PHONE?

4 A. CORRECT.

5 Q. WHERE WAS ALANA NIESEN TAKEN?

6 A. SHE WAS TAKEN TO THE NORTH CHARLESTON POLICE
7 DEPARTMENT, TO THE THIRD FLOOR.

8 Q. DID YOU INTERVIEW HER?

9 A. YES, I DID.

10 Q. DID SHE PROVIDE YOU WITH A STATEMENT?

11 A. YES, SHE DID.

12 Q. BASED ON YOUR INTERVIEW WITH MS. NIESEN WERE YOU
13 ABLE TO DEVELOP INFORMATION CONCERNING THE
14 IDENTITY OF OTHER SUSPECTS INVOLVED IN THIS CASE?

15 A. YES.

16 Q. WHAT WERE THOSE SUSPECTS?

17 A. B.G., ANGELA, PIT AND BROOKLYN.

18 Q. WERE YOU ABLE TO ASCERTAIN THE REAL NAME OF
19 ANGELA?

20 A. YES, I WAS.

21 Q. HOW?

22 A. THROUGH A PHOTO LINEUP.

23 Q. WHAT WAS HER REAL NAME?

24 A. ANGELA AGAGAS.

25 Q. THE SAME PERSON THAT HAD LED YOU TO WHERE CHINA

DIRECT-JAMES M. HILL, JR., BY SOL. RUTLEDGE DURANT

597

1 LIVED?

2 A. CORRECT.

3 Q. WERE YOU ABLE TO ASCERTAIN THE IDENTIFY OF B.G.?

4 A. YES.

5 Q. HOW?

6 A. AS THE ONCOMING DETECTIVES WERE COMING ON I ASKED
7 SOME OF THE DETECTIVES IF THEY KNEW OF ANY
8 INDIVIDUALS WHO WENT BY THE NAME OF B.G., AND
9 DETECTIVE SPEARS KNEW OF ONE, AND THAT WAS SANDRA
10 BARNES.

11 Q. WAS SHE LOCATED?

12 A. YES, SIR.

13 Q. WHEN?

14 A. THE FOLLOWING DAY AFTER WE, THE FOLLOWING MORNING
15 AFTER WE HAD INTERVIEWED MS. NIESEN.

16 Q. WAS THIS DECEMBER FOURTEENTH?

17 A. CORRECT.

18 Q. WAS SHE QUESTIONED?

19 A. YES, BY DETECTIVE SPEARS.

20 Q. DID SHE PROVIDE A STATEMENT?

21 A. YES, SHE DID.

22 Q. MOVING ON TO THE SUSPECT KNOWN AS PIT, WERE YOU
23 ABLE TO IDENTIFY HIS REAL NAME?

24 A. YES.

25 Q. WHAT WAS PIT'S REAL NAME?

DIRECT-JAMES M.HILL, JR., BY SOL. RUTLEDGE DURANT

598

1 A. SHAWN PHILLIPS.

2 Q. HOW DID YOU GO ABOUT IDENTIFYING HIM?

3 A. BASED ON INTERVIEWS THAT WE HAD ALREADY CONDUCTED,
4 EVERYBODY WAS SAYING THAT ANGELA'S BOYFRIEND WAS
5 PIT, AND WE KNEW ANGELA'S BOYFRIEND WAS SHAWN
6 PHILLIPS.

7 Q. WAS SHAWN PHILLIPS BROUGHT IN FOR QUESTIONING?

8 A. YES.

9 Q. HOW DID YOU GET IN TOUCH WITH HIM?

10 A. WE CONTACTED MR. SIMMONS AND ASKED MR. SIMMONS TO
11 BRING HIM IN SO WE COULD TALK TO HIM.

12 Q. WAS HE BROUGHT IN?

13 A. YES, HE WAS.

14 Q. WAS HE QUESTIONED?

15 A. YES, HE WAS.

16 Q. WHERE WAS HE BROUGHT?

17 A. HE WAS TAKEN TO THE THIRD FLOOR SERGEANT'S OFFICE
18 AT THE NORTH CHARLESTON POLICE DEPARTMENT.

19 Q. ABOUT WHAT TIME WAS THIS?

20 A. SIX, SIX P.M., HE ARRIVED THERE A LITTLE BIT
21 BEFORE.

22 Q. WHO WAS PRESENT AT THE TIME?

23 A. IN THE SERGEANT'S OFFICE?

24 Q. IN THE SERGEANT'S OFFICE, YES.

25 A. MYSELF, MR. SIMMONS, AND TAMMY DICENZO IN THE

DIRECT-JAMES M. HILL, JR., BY SOL. RUTLEDGE DURANT

599

1 BEGINNING, AND MR. PHILLIPS, OF COURSE.

2 Q. WHAT WAS SHAWN PHILLIPS' PHYSICAL DEMEANOR AT THAT
3 TIME?

4 A. HE APPEARED TO BE FINE TO ME.

5 Q. DID HE APPEAR TO BE UNDER THE INFLUENCE OF
6 ALCOHOL?

7 A. NO, SIR.

8 Q. DID HE SAY HE WAS?

9 A. NO, SIR.

10 Q. DID HE APPEAR TO BE UNDER THE INFLUENCE OF DRUGS?

11 A. NO, SIR.

12 Q. DID HE SAY HE WAS?

13 A. NO, SIR.

14 Q. DID HE APPEAR TO BE TIRED OR EXHAUSTED?

15 A. NO, SIR.

16 Q. WAS HIS SPEECH COHERENT?

17 A. YES, IT WAS.

18 Q. DID HE APPEAR TO UNDERSTAND WHAT Y'ALL WERE SAYING
19 TO HIM?

20 A. YES.

21 Q. DID HE RESPOND APPROPRIATELY TO YOUR QUESTIONS?

22 A. YES, HE DID.

23 Q. DID HE EXHIBIT ANY CONFUSION?

24 A. NO.

25 Q. WAS HE ADVISED OF HIS MIRANDA RIGHTS?

DIRECT-JAMES M. HILL, JR., BY SOL. RUTLEDGE DURANT

600

1 A. YES, HE WAS.

2 Q. WHO READ HIM HIS RIGHTS?

3 A. I DID.

4 Q. WAS A DOCUMENT USED WHEN THE DEFENDANT WAS ADVISED
5 OF HIS RIGHTS?

6 A. YES.

7 Q. DO YOU RECOGNIZE THAT DOCUMENT?

8 A. YES, I DO.

9 Q. HOW DO YOU RECOGNIZE IT, THAT'S STATE'S ONE, I
10 BELIEVE?

11 A. YES.

12 Q. HOW DO YOU RECOGNIZE THAT?

13 A. THIS IS THE ADVICE OF RIGHTS THAT I ADVISED MR.
14 PHILLIPS OF.

15 Q. HOW DID YOU ADVISE HIM OF HIS RIGHTS?

16 A. I FILLED OUT THE TOP SECTION, WHICH IS HIS NAME,
17 HIS DATE OF BIRTH, HIS AGE, THE GRADE HE
18 COMPLETED. I INCORRECTLY WROTE, I WROTE, "I,
19 DETECTIVE J. HILL, HAVE BEEN ADVISED BY SHAWN
20 PHILLIPS" WHICH IS FLIP FLOPPED, I FLIP FLOPPED
21 IT, THAT WAS MY MISTAKE. AND THEN, BASED ON HIS
22 EDUCATIONAL LEVEL I WENT THROUGH EACH OF HIS
23 RIGHTS WITH HIM CAREFULLY TO INSURE THAT HE
24 UNDERSTOOD THEM.

25 Q. WHAT WAS YOUR UNDERSTANDING THAT HIS EDUCATIONAL

DIRECT-JAMES M.HILL, JR., BY SOL. RUTLEDGE DURANT

601

1 LEVEL WAS?

2 A. FIFTH GRADE, BASED ON WHAT HE HAD TOLD ME.

3 Q. SO, BECAUSE OF THIS HOW DID YOU ADVISE HIM OF HIS
4 RIGHTS?

5 A. I READ EACH RIGHT, I READ THE FORM VERBATIM BUT I
6 WENT THROUGH EACH RIGHT CAREFULLY TO INSURE THAT
7 HE UNDERSTOOD WHAT I WAS ASKING HIM, AND THAT HE,
8 IN FACT, DID UNDERSTAND HIS RIGHTS.

9 Q. AND DID HE ACKNOWLEDGE THAT HE UNDERSTOOD HIS
10 RIGHTS?

11 A. YES, HE DID.

12 Q. HOW DID HE EXPRESS THIS?

13 A. BY YES, BY AN ANSWER OF YES.

14 Q. DID HE SIGN ACKNOWLEDGING HIS RIGHTS?

15 A. ONCE WE COMPLETED IT AND I GOT TO THE END OF THE
16 FORM HE DID, HE SIGNED AND HE INITIALED, THEN
17 SIGNED.

18 Q. AND IS THERE A PLACE ON THAT FORM WHERE HE HAS AN
19 OPPORTUNITY TO WAIVE HIS RIGHTS AND TALK?

20 A. YES, SIR, IT'S AT THE BOTTOM.

21 Q. DID YOU TELL HIM WHAT HE WAS BEING QUESTIONED
22 ABOUT?

23 A. ON THE FIRST ADVISEMENT I SCRATCHED OUT, "CHARGE
24 OF", BECAUSE I JUST WANTED TO TALK TO HIM ABOUT
25 THE MURDER.

DIRECT-JAMES M.HILL, JR., BY SOL. RUTLEDGE DURANT

602

1 Q. WAS HE UNDER ARREST AT THIS TIME?

2 A. AT THAT TIME HE WAS NOT, NO.

3 Q. AND SO, HE WASN'T CHARGED WITH MURDER, IS THAT WHY
4 YOU SCRATCHED THAT OUT?

5 A. CORRECT.

6 Q. AND DID HE DECIDE THAT HE WAS GOING TO WAIVE HIS
7 RIGHTS AND TALK TO YOU?

8 A. YES, HE DID.

9 Q. AND DID HE START TO TALK TO YOU?

10 A. YES, HE DID.

11 Q. AND WHAT HAPPENED AT THIS POINT?

12 A. I EXPLAINED TO HIM THAT I WANTED TO TALK TO HIM
13 ABOUT THE MURDER THAT HAD OCCURRED AT THE BUDGET
14 INN. HE EXPLAINED TO ME THAT HE WAS NOWHERE
15 AROUND DURING THE TIME OF THE MURDER OR AT THE
16 BUDGET INN. I EXPLAINED TO HIM THAT I HAD
17 STATEMENTS CONFLICTING WITH WHAT HE HAD JUST TOLD
18 ME, AND THEN HE ADVISED ME THAT HE WANTED TO TALK
19 TO LEGAL COUNSEL.

20 Q. WHO WAS IN THE ROOM AT THIS TIME?

21 A. AT THAT TIME IT WAS MR. SIMMONS, DETECTIVE GOMES,
22 MR. PHILLIPS, AND ME.

23 Q. DID MR. SIMMONS PARTICIPATE IN ANY WAY IN ADVISING
24 HIM OF HIS RIGHTS?

25 A. NO.

DIRECT-JAMES M. HILL, JR., BY SOL. RUTLEDGE DURANT

603

1 Q. DID ANYONE ELSE IN THE ROOM AT THAT TIME
2 PARTICIPATE IN ADVISING HIM OF HIS RIGHTS?

3 A. WHEN I ADVISED HIM OF HIS RIGHTS DETECTIVE
4 DRIGGERS WAS IN THERE. ONCE I COMPLETED HIS
5 ADVICE AND HIS WAIVER, SHE LEFT AND DETECTIVE
6 GOMES ENTERED, AND THAT'S WHEN WE STARTED TALKING
7 ABOUT, YOU KNOW, THE BUDGET INN MURDER, AND HE
8 SAID HE DIDN'T, HE WASN'T NOWHERE IN THE AREA.

9 Q. DID YOU SEE THE DEFENDANT SIGN HIS NAME ON HIS
10 ADVICE OF RIGHTS?

11 A. YES.

12 Q. DID YOU SEE HIM SIGN HIS NAME ON THE WAIVER OF
13 RIGHTS?

14 A. YES.

15 Q. AND YOU, YOURSELF SIGNED, YOU VERIFIED THAT YOU
16 ADVISED MR. PHILLIPS OF HIS RIGHTS?

17 A. YES, SIR, I DID.

18 Q. AND WHO ELSE SIGNED AS A WITNESS?

19 A. DETECTIVE DRIGGERS.

20 Q. DID SHE AT SOME POINT LEAVE THE ROOM?

21 A. SHE LEFT RIGHT AFTER THE WAIVER.

22 Q. AND WHO WAS IN THE ROOM AT THE POINT THAT YOU
23 STARTED QUESTIONING THE DEFENDANT?

24 A. WHEN I, WHEN I TOLD HIM THAT I, THAT WE WERE GOING
25 TO, THAT I WANTED TO DISCUSS THE BUDGET INN MURDER

DIRECT-JAMES M.HILL, JR., BY SOL. RUTLEDGE DURANT

604

1 DETECTIVE GOMES WAS WALKING IN AND DETECTIVE
2 DRIGGERS WAS WALKING OUT, AND MR. SIMMONS WAS
3 SITTING ACROSS THE ROOM.

4 Q. SO AGAIN, WHO WAS IN THE ROOM WHEN HE SAID HE
5 WANTED A LAWYER?

6 A. MR. SIMMONS, ME, DETECTIVE GOMES, AND MR.
7 PHILLIPS.

8 Q. AND WHAT DID Y'ALL DO WHEN HE SAID HE WANTED A
9 LAWYER?

10 A. I TOLD HIM I COULDN'T TALK TO HIM ANYMORE AND
11 MYSELF AND DETECTIVE GOMES EXITED THE ROOM, AND
12 MR. SIMMONS AND MR. PHILLIPS WERE LEFT IN THE
13 ROOM.

14 Q. WHERE DID YOU GO?

15 A. I WENT OUT INTO THE DETECTIVE BAY AREA WHERE ALL
16 OUR CUBICLES ARE.

17 Q. WHAT'S THE NEXT THING YOU REMEMBER HAPPENING?

18 A. WE WERE DISCUSSING GETTING PAPERWORK STARTED
19 BECAUSE WE WERE GOING TO GO AHEAD AND CHARGE MR.
20 PHILLIPS WITH MURDER BECAUSE WE HAD ENOUGH
21 PROBABLE CAUSE TO GO FORTH WITH THE CHARGES, AND
22 AT SOME POINT MR. SIMMONS CAME OUT AND SAID THAT
23 MR. PHILLIPS WANTED TO TALK TO US AGAIN. SO, I
24 WENT OVER AND ADVISED CORPORAL GOMES, AT THE TIME
25 HE WAS A CORPORAL, OF WHAT MR. SIMMONS HAD SAID,

DIRECT-JAMES M.HILL, JR., BY SOL. RUTLEDGE DURANT

605

1 AND WE STARTED DISCUSSING, YOU KNOW, HOW WE WERE
2 GOING TO APPROACH GOING BACK IN THERE AND MAKING
3 SURE THAT HE WAS THE PERSON INITIATING CONTACT
4 WITH US.

5 Q. DID YOU EVENTUALLY GO BACK INTO THE ROOM?

6 A. YES, WE DID.

7 Q. WHO WENT WITH YOU?

8 A. DETECTIVE GOMES.

9 Q. WHERE DID MR. SIMMONS GO?

10 A. I TOLD HIM THAT WE WERE GOING TO, YOU KNOW, BE
11 ARRESTING MR. PHILLIPS, SO HE LEFT.

12 Q. WHAT DID YOU SAY TO MR. PHILLIPS WHEN YOU WALKED
13 IN THE ROOM?

14 A. I SAT DOWN WITH HIM AND ASKED HIM, DID YOU WANT TO
15 TALK TO US? HE SAID, YES. I TOLD HIM THAT I
16 NEEDED TO RE-ADVISE HIM OF HIS RIGHTS. HE SAID,
17 OKAY. I FILLED THE TOP PORTION OUT OF A MIRANDA
18 FORM, A SECOND MIRANDA FORM. I WENT THROUGH THE
19 MIRANDA FORM AGAIN. WHEN I GOT TO THE WAIVER OF
20 RIGHTS I ADVISED HIM THAT HE WAS NOW CHARGED WITH
21 MURDER, THAT IT WAS NO LONGER A QUESTION OF, HE
22 WAS BEING CHARGED WITH MURDER.

23 Q. WHY DID YOU FEEL IT WAS NECESSARY TO ADVISE HIM OF
24 HIS RIGHTS AGAIN AND DOCUMENT ALL OF THAT?

25 A. BECAUSE I WANTED TO MAKE SURE I WAS FOLLOWING THE

DIRECT-JAMES M.HILL,JR., BY SOL. RUTLEDGE DURANT

606

1 LETTER OF THE LAW.

2 Q. I SHOW YOU WHAT'S ALREADY IN EVIDENCE AS STATE'S
3 TWO, I ASK YOU TO LOOK AT THAT.

4 A. YES, SIR.

5 Q. DO YOU RECOGNIZE THAT?

6 A. YES, SIR, I DO.

7 Q. AND WHAT IS THAT?

8 A. THAT'S THE SECOND ADVICE OF RIGHTS.

9 Q. AND IS THIS THE FORM THAT YOU USED TO ADVISE SHAWN
10 PHILLIPS OF HIS RIGHTS AGAIN?

11 A. YES, IT IS.

12 Q. DID HE APPEAR TO UNDERSTAND HIS RIGHTS THIS TIME?

13 A. YES, HE DID.

14 Q. HAD ANYTHING CHANGED IN HIS PHYSICAL DEMEANOR
15 BETWEEN THE FIRST TIME HE WAS ADVISED AND THIS
16 TIME?

17 A. NO.

18 Q. WAS HE CONFUSED IN ANY WAY?

19 A. HE DIDN'T APPEAR TO BE.

20 Q. DID HE TELL YOU HE WAS?

21 A. NO.

22 Q. WAS HE UNDER THE INFLUENCE OF ALCOHOL OR DRUGS?

23 A. HE DIDN'T APPEAR TO BE.

24 Q. DID HE TELL YOU HE WAS?

25 A. NO.

DIRECT-JAMES M. HILL, JR., BY SOL. RUTLEDGE DURANT

607

1 Q. AND DID HE AGAIN SIGN THAT HE UNDERSTOOD HIS
2 RIGHTS?

3 A. YES.

4 Q. AND THIS TIME, WHEN YOU WERE ADVISING HIM OF HIS
5 RIGHTS, - - -

6 A. YES, SIR.

7 Q. --- IS HE CHARGED WITH MURDER?

8 A. YES, HE IS.

9 Q. DOES HE KNOW HE IS?

10 A. YES, HE DOES.

11 Q. DOES HE KNOW THAT YOU'RE GOING TO TALK TO HIM
12 ABOUT MURDER?

13 A. YES, HE DOES.

14 Q. AND DOES HE WAIVE HIS RIGHTS?

15 A. YES, HE DOES.

16 Q. AND DID HE SIGN THAT SIGNATURE SAYING THAT HE
17 UNDERSTOOD HIS RIGHTS?

18 A. YES, HE DID.

19 Q. DID HE SIGN THAT SIGNATURE SAYING THAT HE WISHED,
20 HAVING HIS RIGHTS IN MIND, THAT HE WISHED TO WAIVE
21 HIS RIGHTS?

22 A. YES, HE DID.

23 Q. AND TALK TO YOU ABOUT MURDER?

24 A. YES, HE DID.

25 Q. AND WHO WAS IN THE ROOM WITH YOU AT THAT TIME?

DIRECT-JAMES M. HILL, JR., BY SOL. RUTLEDGE DURANT

608

1 A. MR. PHILLIPS, ME AND DETECTIVE GOMES.

2 Q. DID DETECTIVE GOMES WITNESS THIS AS WELL?

3 A. YES, HE DID.

4 Q. AND SO, WHAT HAPPENED AT THIS POINT?

5 A. AT THAT POINT, BEFORE WE WENT IN THERE WE HAD
6 ALREADY DISCUSSED THAT DETECTIVE GOMES WOULD TAKE
7 THE STATEMENT. I TOLD MR. PHILLIPS THAT, COULD HE
8 PLEASE DICTATE TO MR. GOMES WHAT HE, WHAT HE
9 WANTED THE STATEMENT TO SAY, AND MR. GOMES BEGAN
10 TO WRITE HIS STATEMENT.

11 Q. DID YOU COERCE HIM IN ANY WAY TO WRITE THE
12 STATEMENT?

13 A. NO, SIR.

14 Q. DID YOU THREATEN HIM IN ANY WAY?

15 A. NO, SIR.

16 Q. DID YOU OFFER HIM ANY PROMISE OR HOPE OF REWARD?

17 A. NO, SIR.

18 Q. WHO WROTE THE STATEMENT?

19 A. DETECTIVE GOMES WROTE IT AS MR. PHILLIPS TOLD IT
20 TO HIM.

21 Q. AT ANY TIME DURING THIS PROCESS AT THIS POINT DID
22 MR. PHILLIPS INDICATE THAT HE WISHED TO STOP
23 TALKING?

24 A. NO, SIR, HE DID NOT.

25 Q. AT ANY TIME TO THIS POINT DID HE AGAIN ASK FOR A

DIRECT-JAMES M. HILL, JR., BY SOL. RUTLEDGE DURANT

609

1 LAWYER?

2 A. NO, HE DID NOT.

3 Q. AFTER HE GAVE HIS STATEMENT WAS IT READ BACK TO
4 HIM?

5 A. YES, IT WAS.

6 Q. WHO WAS PRESENT WHEN THE STATEMENT WAS READ BACK
7 TO HIM?

8 A. MYSELF AND CORPORAL GOMES.

9 Q. AND HOW DID THE DEFENDANT ACKNOWLEDGE THAT THIS
10 WAS HIS STATEMENT?

11 A. CORPORAL GOMES READ HIM HIS STATEMENT, ASKED HIM
12 IF HE WANTED TO MAKE ANY CHANGES OR CORRECTIONS,
13 HE STATED, NO, AND CORPORAL GOMES HAD HIM SIGN IT,
14 AND THEN CORPORAL GOMES SIGNED AND I SIGNED.

15 Q. THIS IS STATE'S THREE?

16 A. RIGHT.

17 Q. DO YOU RECOGNIZE THAT?

18 A. I DO.

19 Q. AND HOW DO YOU RECOGNIZE THAT?

20 A. THIS IS THE STATEMENT THAT DETECTIVE GOMES WROTE
21 AS MR. PHILLIPS TOLD HIM.

22 Q. AND DID YOU WITNESS DETECTIVE GOMES WRITE THIS AS
23 SHAWN PHILLIPS TOLD HIM WHAT HAPPENED?

24 A. I DON'T KNOW IF I, I MAY HAVE SAT ACROSS THE ROOM
25 OR WALKED IN AND OUT A COUPLE OF TIMES, BUT WHEN

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610

1 IT WAS ALL FINISHED I WAS -- WHEN I WITNESSED IT I
2 WITNESSED DETECTIVE GOMES READ HIS STATEMENT TO
3 HIM AND ASKED IF HE WANTED TO MAKE ANY CORRECTIONS
4 OR CHANGES.

5 Q. AND WHAT DID HE SAY?

6 A. NO.

7 Q. AND DID HE THEN SIGN, STATING THAT THIS WAS HIS
8 STATEMENT?

9 A. YES, HE DID.

10 Q. DID YOU WITNESS HIM SIGN THIS STATEMENT?

11 A. YES, I DID.

12 Q. HOW MANY TIMES DID HE SIGN IT?

13 A. FIVE.

14 Q. DID YOU WITNESS HIM SIGN IT ALL FIVE TIMES?

15 A. YES.

16 Q. AND AS A WITNESS TO THE DEFENDANT'S SIGNATURE, DID
17 YOU ALSO SIGN?

18 A. I DID.

19 Q. AND DID DETECTIVE GOMES SIGN AS WELL?

20 A. HE DID.

21 Q. AND THAT IS, IN FACT, THE STATEMENT THE DEFENDANT
22 GAVE YOU?

23 A. CORRECT.

24 Q. AS PART OF YOUR INVESTIGATION DID YOU OBTAIN GUEST
25 RECORDS FROM THE TRAVEL LODGE, AT SIXTY FIFTY-NINE

DIRECT-JAMES M. HILL, JR., BY SOL. RUTLEDGE DURANT

611

1 FAIN STREET, FOR NOVEMBER THE SIXTH THROUGH
2 NOVEMBER THE EIGHTH, TWO THOUSAND AND SIX?

3 A. ANOTHER INVESTIGATOR OBTAINED THEM AND I REVIEWED
4 THEM.

5 Q. WHERE IS THAT HOTEL LOCATED IN REFERENCE TO BUDGET
6 INN?

7 A. IT'S ONE HOTEL OVER.

8 Q. BASED ON YOUR EXAMINATION OF THE GUEST RECORDS FOR
9 THE TRAVEL LODGE WERE YOU ABLE TO DETERMINE WHO
10 HAD RENTED ROOM THREE O NINE FOR THE NIGHTS OF
11 NOVEMBER THE SIXTH AND NOVEMBER THE SEVENTH, TWO
12 THOUSAND AND SIX?

13 A. YES, I WAS.

14 Q. AND WHO WAS THAT?

15 A. LENNIE MICKEY.

16 SOLICITOR RUTLEDGE DURANT: I
17 BELIEVE THIS IS GOING TO BE ENTERED WITHOUT OBJECTION?

18 MR. PEPPER: NO OBJECTION, RIGHT.

19 COURT REPORTER: STATE'S THIRTY-
20 THREE.

21 (State's Exhibit Thirty-three
22 marked and filed.)

23 Q. I'M SHOWING YOU WHAT'S MARKED AS STATE'S THIRTY-
24 THREE, IT'S ALREADY IN EVIDENCE, DO YOU RECOGNIZE
25 THAT?

DIRECT-JAMES M.HILL, JR., BY SOL. RUTLEDGE DURANT

612

1 A. YES, I DO.

2 Q. IS THAT THE RECORD FROM TRAVEL LODGE FOR NOVEMBER
3 THE SIXTH THROUGH THE EIGHTH, OF TWO THOUSAND AND
4 SIX?

5 A. YES, IT IS.

6 Q. AND WHO DOES IT SHOW AS RENTING THAT ROOM?

7 A. LENNIE MICKEY.

8 Q. AND WHAT ROOM WAS RENTED TO LENNIE MICKEY?

9 A. THREE O NINE.

10 Q. ARE YOU AWARE OF WHAT FLOOR ROOM THREE O NINE IS
11 ON?

12 A. YES, SIR.

13 Q. WHAT FLOOR?

14 A. IT'S ON THE FIRST FLOOR.

15 SOLICITOR RUTLEDGE DURANT: THAT'S
16 THIRTY-THREE, I BELIEVE?

17 COURT REPORTER: YES, SIR.

18 SOLICITOR RUTLEDGE DURANT: THANK
19 YOU, MA'AM.

20 Q. ALSO AS PART OF YOUR INVESTIGATION WAS A CELL
21 PHONE RECOVERED WHICH BELONGED TO THE VICTIM,
22 ROBERT VARGO?

23 A. YES, IT WAS.

24 Q. WHEN WAS IT RECOVERED?

25 A. AT THE CRIME SCENE.

DIRECT-JAMES M. HILL, JR., BY SOL. RUTLEDGE DURANT

613

1 Q. DID YOU EXAMINE THE PHONE?

2 A. I DID.

3 Q. WHAT WAS THE NUMBER TO THE VICTIM'S CELL PHONE?

4 A. SIX O NINE, IF I COULD GRAB THAT SHEET RIGHT OFF
5 THE TABLE THERE, YOUR HONOR, IT HAS THE NUMBER. I
6 CAN'T REMEMBER THE NUMBER OFF THE TOP OF MY HEAD.

7 Q. TAKE A LOOK AT THAT.

8 A. YES, IT WAS SIX O NINE THREE THREE EIGHT FIVE SIX
9 FIVE FIVE.

10 Q. THAT WAS THE VICTIM'S CELL PHONE NUMBER?

11 A. CORRECT.

12 Q. LATER WHEN YOU QUESTIONED ALANA NIESEN IN
13 REFERENCE TO THIS CASE WERE YOU ABLE TO DETERMINE
14 WHETHER SHE WAS USING A CELL PHONE THAT NIGHT?

15 A. YES, I WAS.

16 Q. WERE YOU ABLE TO GET A COPY OF HER CELL PHONE
17 RECORDS?

18 A. YES, I DID.

19 Q. HOW?

20 A. I GOT THEM FROM HER BROTHER.

21 Q. THIS IS STATE'S TWELVE AND IT'S ALREADY IN
22 EVIDENCE AS WELL, DO YOU RECOGNIZE THAT DOCUMENT?

23 A. YES.

24 Q. AND WHAT IS THAT?

25 A. THE ORIGINAL RECORDS THAT WE HAD GOTTEN FROM

DIRECT-JAMES M. HILL, JR., BY SOL. RUTLEDGE DURANT

614

1 ALANA'S BROTHER. THEY WERE NOT TOO CLEAR SO WE
2 RE-SUBPOENAED AND THESE ARE THE RECORDS THAT WE
3 GOT FOR HER PHONE NUMBER.

4 Q. WHAT IS THE NUMBER TO THE CELL PHONE MS. NIESEN
5 WAS USING?

6 A. EIGHT FOUR THREE, EIGHT ONE NINE, ZERO THREE NINE
7 NINE.

8 Q. WHOSE NAME IS THE PHONE IN?

9 A. HER MOTHER'S, CASANTHRA JACKSON.

10 Q. WHO, CASANTHRA JACKSON IS HER MOTHER?

11 A. YES, SIR.

12 Q. DID YOU HAVE THE OCCASION TO CHECK THE PHONE
13 NUMBERS FROM THE BUDGET INN?

14 A. I DID.

15 Q. HOW MANY LINES DID THEY HAVE?

16 A. I BELIEVE IT WAS TEN, TEN OR ELEVEN.

17 Q. AS PART OF YOUR INVESTIGATION WERE YOU ABLE TO
18 DETERMINE WHETHER SHAWN PHILLIPS HAD A CELL PHONE?

19 A. YES.

20 Q. WHAT NUMBER WAS HIS?

21 A. I BELIEVE IT WAS EIGHT FOUR THREE, IT'S ALSO ON
22 THAT SHEET, FIVE O NINE, TWO THREE SEVEN SEVEN I
23 BELIEVE.

24 Q. AT MY REQUEST HAVE YOU PREPARED A SYNOPSIS OR
25 SUMMARY BASED ON CALLS TO AND FROM ALANA NIESEN'S

DIRECT-JAMES M. HILL, JR., BY SOL. RUTLEDGE DURANT

615

1 CELL PHONE AND ROBERT VARGO'S CELL PHONE, FROM
2 ALANA NIESEN'S CELL PHONE TO THE BUDGET INN, AND
3 ALANA NIESEN'S CELL PHONE AND SHAWN PHILLIPS' CELL
4 PHONE NUMBER?

5 A. YES.

6 Q. I'M SHOWING YOU WHAT THE STATE HAS MARKED AS
7 STATE'S THIRTY-FOUR, I BELIEVE FOR ENTRY INTO
8 EVIDENCE WITHOUT OBJECTION?

9 MR. PEPPER: NO OBJECTION.

10 THE COURT: IT'S ADMITTED WITHOUT
11 OBJECTION.

12 (State's Exhibit Thirty-four
13 marked and filed.)

14 Q. WHAT IS THAT, DETECTIVE?

15 A. IT'S THE SUMMARY THAT YOU HAD ASKED ME TO PREPARE
16 OF PHONE TRAFFIC BETWEEN THE VICTIM AND MS.
17 NIESEN, BETWEEN MS. NIESEN AND MR. PHILLIPS, AND
18 MS. NIESEN AND THE BUDGET INN.

19 SOLICITOR RUTLEDGE DURANT: YOUR
20 HONOR, PERMISSION FOR THE WITNESS TO STEP DOWN?

21 THE COURT: ALRIGHT, SIR.

22 Q. IF YOU WOULD, WHAT DO THE YELLOW COLORED
23 HIGHLIGHTED NUMBERS REPRESENT?

24 A. THOSE ARE CALLS BETWEEN MS. NIESEN AND THE VICTIM.

25 THE COURT: TALK A LITTLE LOUDER,

DIRECT-JAMES M.HILL,JR., BY SOL. RUTLEDGE DURANT

616

1 PLEASE.

2 A. THOSE ARE CALLS BETWEEN THE VICTIM AND MS. NIESEN
3 EITHER INCOMING OR OUTGOING.

4 Q. AND THESE ARE, THIS IS A SUMMARY THAT YOU PREPARED
5 FOR THIS PHONE NUMBER RIGHT HERE, EIGHT FOUR
6 THREE, EIGHT ONE NINE, ZERO THREE NINE NINE?

7 A. YES, SIR.

8 Q. AND THAT NUMBER BELONGS TO?

9 A. ALANA NIESEN.

10 Q. HER MOTHER, CASANTHRA JACKSON?

11 A. CORRECT.

12 Q. AND THIS SUMMARY IS IN REFERENCE TO THAT NUMBER?

13 A. YES.

14 Q. AND YOU TESTIFIED THAT THE YELLOW HIGHLIGHTED IS
15 BETWEEN WHO?

16 A. ROBERT VARGO AND MS. NIESEN.

17 Q. NOW, WE HAVE DIFFERENT NUMBERS LISTED HERE IN
18 YELLOW?

19 A. YES.

20 Q. THERE'S A NUMBER SIX O NINE, THREE THREE EIGHT,
21 FIVE SIX FIVE FIVE?

22 A. YES.

23 Q. AND WHOSE NUMBER IS THAT?

24 A. THAT WAS THE VICTIM'S PHONE NUMBER RECOVERED FROM
25 ROOM TWO FORTY-FOUR AT THE BUDGET INN.

DIRECT-JAMES M. HILL, JR., BY SOL. RUTLEDGE DURANT

617

1 Q. AND IT SHOWS AT NINE:SIXTEEN THERE WAS AN INCOMING
2 CALL. HOW WOULD YOU EXPLAIN THIS CALL, THIS FIRST
3 CALL HERE?

4 A. THAT - - -

5 Q. WHAT WE'RE LOOKING AT.

6 A. THAT'S A CALL FROM THE SIX O NINE, MR. VARGO, TO
7 THE EIGHT ONE NINE, ZERO THREE NINE NINE, MS.
8 NIESEN.

9 Q. AND THIS TELEPHONE CONVERSATION BETWEEN EIGHT ONE
10 NINE, ZERO THREE NINE NINE AND THE OTHER NUMBER,
11 SIX O NINE, THREE THREE EIGHT, FIVE SIX FIVE FIVE,
12 OCCURS UP UNTIL ABOUT WHAT TIME?

13 A. THE LAST ONE LOOKS LIKE IT WAS AT ONE:TWELVE P.M.
14 ON THE SEVENTH OF NOVEMBER.

15 MR. PEPPER: YOUR HONOR, I OBJECT,
16 NOW, I JUST DON'T SEE WHAT THE RELEVANCE BETWEEN CALLS
17 FROM THE VICTIM AND A THIRD PARTY COULD HAVE BEEN WHO'S
18 NOT ON TRIAL HERE. WHAT'S THE RELEVANCE?

19 THE COURT: ALRIGHT. LADIES AND
20 GENTLEMEN, LET'S STOP HERE FOR TODAY AND WE'LL START
21 BACK AT NINE:THIRTY IN THE MORNING. PLEASE DO NOT TALK
22 ABOUT THE CASE, AND WE'LL SEE YOU AT NINE:THIRTY IN THE
23 MORNING.

24 (Whereupon, the jury leaves
25 the courtroom for the day,

DIRECT-JAMES M. HILL, JR., BY SOL. RUTLEDGE DURANT

618

1 and the following takes place
2 out of the presence of the
3 jury.)

4 THE COURT: YES, SIR?

5 SOLICITOR RUTLEDGE DURANT: JUDGE,
6 THIS IS RELEVANT EVIDENCE. ALANA, FROM ALANA NIESEN'S
7 CELL PHONE YOU CAN PRETTY MUCH TRACK VERBATIM THE CHAIN
8 OF EVENTS THAT HAPPENED THIS NIGHT, USING CELL PHONE
9 RECORDS TO SHAWN PHILLIPS' CELL PHONE, TO THE VICTIM'S
10 CELL PHONE. WE'VE GOT, WE CAN NARROW IT DOWN TO WHEN
11 ALANA NIESEN MADE THE CALL TO THE VICTIM, THE EXACT
12 TIMES, AND THE TIMES IN BETWEEN WHEN SHE MADE THE LAST
13 FINAL CALL, AND WHEN HE WAS MURDERED EVEN.

14 THE COURT: ANYTHING ELSE?

15 MR. PEPPER: IT'S NOT RELEVANT. WE'VE
16 HEARD TESTIMONY AND EVERYBODY KNOWS IN THIS COURTROOM
17 THAT THIS WAS AN ARMED ROBBERY GETTING READY TO TAKE
18 PLACE, AND IT WAS BEING SET UP BY ALANA NIESEN. IT JUST
19 HAS NOTHING TO DO WITH MY CLIENT, AND IT'S NOT RELEVANT.
20 IT MIGHT BE RELEVANT TO HER CASE, AT HER TRIAL, BUT I
21 DON'T KNOW WHY IT'S RELEVANT TO MY CLIENT.

22 THE COURT: I THINK IT CORROBORATES
23 THE TESTIMONY OF THE WITNESSES WHICH IS AGAINST YOUR
24 CLIENT, SO I FIND IT'S RELEVANT. I OVERRULE YOUR
25 OBJECTION.

DIRECT-JAMES M.HILL, JR., BY SOL. RUTLEDGE DURANT

619

1 MR. PEPPER: THANK YOU, YOUR HONOR.

2 SOLICITOR RUTLEDGE DURANT: THANK

3 YOU, JUDGE.

4 THE COURT: ALRIGHT, HOW MANY

5 WITNESSES DO YOU HAVE AFTER THIS ONE?

6 SOLICITOR RUTLEDGE DURANT: I

7 BELIEVE THAT THIS WILL BE OUR LAST WITNESS, JUDGE.

8 THE COURT: ALRIGHT. MR. PHILLIPS,

9 WILL YOU STAND UP PLEASE?

10 MR. PHILLIPS, THE STATE IS NOT QUITE
11 THROUGH WITH THEIR CASE BUT HOPEFULLY THEY WILL FINISH
12 RELATIVELY EARLY IN THE MORNING. ONCE THE STATE
13 FINISHES THEIR CASE YOU HAVE AN OPPORTUNITY TO TESTIFY
14 IF YOU WANT TO TESTIFY.

15 DOES HE HAVE ANY CONVICTIONS THAT
16 THE STATE ALLEGES WOULD BE ADMISSIBLE IF HE TESTIFIES?

17 SOLICITOR RUTLEDGE DURANT: HE DOES,
18 JUDGE.

19 THE COURT: WHAT?

20 SOLICITOR RUTLEDGE DURANT: IF
21 YOU'LL BEAR WITH ME A MINUTE I WILL PULL THEM OUT.
22 JUDGE, HE HAS A BURGLARY, THIRD DEGREE, FROM AN INCIDENT
23 ON OCTOBER THE FIFTH, NINETEEN NINETY-EIGHT, I'M SORRY,
24 MAY TWENTY-SEVENTH, NINETEEN NINETY-EIGHT.

25 THE COURT: WHAT WAS THE DISPOSITION

DIRECT-JAMES M. HILL, JR., BY SOL. RUTLEDGE DURANT

620

1 OF THAT?

2 SOLICITOR RUTLEDGE DURANT: HE
3 RECEIVED, HE PLED DOWN TO A BURGLARY, THIRD DEGREE FROM
4 A BURGLARY, SECOND, AND HE RECEIVED A YOUTHFUL OFFENDER
5 ACT SENTENCE OF FIVE YEARS.

6 THE COURT: ALRIGHT.

7 SOLICITOR RUTLEDGE DURANT: HE HAS
8 ANOTHER BURGLARY, THIRD DEGREE, FOR AN INCIDENT ON MARCH
9 THE TWENTY-THIRD, NINETEEN NINETY-EIGHT. AGAIN, THE
10 SENTENCE UNDER THE YOUTHFUL OFFENDER ACT OF FIVE YEARS.
11 HE HAS A BURGLARY, SECOND DEGREE, VIOLENT, FROM JUNE THE
12 TWENTIETH, NINETEEN NINETY-EIGHT, FOR WHICH HE RECEIVED
13 TEN YEARS.

14 MR. PEPER: YOUR HONOR, MY CLIENT'S

15 - - -

16 COURT REPORTER: I CAN'T HEAR YOU,
17 SIR.

18 THE COURT: SIR?

19 MR. PEPER: MY CLIENT'S TOLD HE
20 DOESN'T WANT TO TESTIFY.

21 THE COURT: WELL, I THINK YOU, --
22 NO, I THINK WE NEED THIS ON THE RECORD, I MEAN, I THINK
23 WE NEED TO KNOW SO HE CAN MAKE AN INTELLIGENT DECISION.

24 MR. PEPER: VERY GOOD.

25 THE COURT: HE DOESN'T HAVE TO

DIRECT-JAMES M. HILL, JR., BY SOL. RUTLEDGE DURANT

621

1 CHANGE HIS MIND, HE CAN DO WHATEVER HE WANTS TO, BUT I
2 THINK WE NEED THIS, I THINK WE NEED TO RULE ON THESE
3 MATTERS.

4 YOU CAN SIT DOWN, MR. PHILLIPS,
5 UNTIL WE GET THIS STRAIGHT.

6 YES, SIR?

7 SOLICITOR RUTLEDGE DURANT: JUDGE, TO
8 CLARIFY THE SENTENCE ON THE BURGLARY, SECOND, VIOLENT
9 FROM NINETY-EIGHT, IT WAS A TEN YEAR SENTENCE SUSPENDED
10 ON FIVE YEARS PROBATION.

11 THE COURT: ALRIGHT.

12 SOLICITOR RUTLEDGE DURANT: HE HAS
13 A POSSESSION OF CRACK COCAINE WITH INTENT TO DISTRIBUTE,
14 ON SEPTEMBER TWENTY-EIGHT, NINETEEN NINETY-EIGHT, WHICH
15 HE RECEIVED THE SAME SENTENCE OF TEN YEARS SUSPENDED ON
16 FIVE YEARS PROBATION. HE ALSO HAS A FEDERAL CONVICTION
17 FOR CONSPIRACY TO DISTRIBUTE CRACK COCAINE, COCAINE
18 BASE, FOR WHICH HE RECEIVED A SIXTY MONTH SENTENCE. I
19 BELIEVE THAT'S ALL WE HAVE, JUDGE.

20 THE COURT: ALRIGHT. I BELIEVE, MR.
21 PEPPER, THAT THE BURGLARY HAS BEEN FOUND TO BE A CRIME OF
22 DISHONESTY, SO THAT IT IS ADMISSIBLE WITHOUT WEIGHING
23 THE PROBATIVE VALUE VERSUS THE PREJUDICE. DO YOU AGREE?

24 MR. PEPPER: I TEND TO HAVE RECALLED
25 THAT, YES, SIR.

DIRECT-JAMES M. HILL, JR., BY SOL. RUTLEDGE DURANT

622

1 THE COURT: WELL, YOU MIGHT VERIFY
2 THAT TONIGHT. I THINK JUDGE ANDERSON WROTE THE OPINION
3 IN ONE OF MY CASES, I'M NOT SURE ABOUT THAT.

4 MR. PEPER: OKAY.

5 THE COURT: ORDINARILY I DO NOT
6 ALLOW DRUG CONVICTIONS IN BECAUSE THE COURT HAS SAID
7 THERE'S VERY LITTLE PROBATIVE VALUE AS TO A DRUG
8 CONVICTION, AND I AGREE WITH THAT. I'LL BE GLAD TO HEAR
9 FROM THE STATE IF THEY FEEL OTHERWISE.

10 SOLICITOR RUTLEDGE DURANT: I DON'T
11 DISAGREE, JUDGE.

12 THE COURT: ALRIGHT. MR. PHILLIPS,
13 UNLESS I CHANGE MY MIND BASED ON WHAT YOUR ATTORNEY
14 MIGHT TELL ME TOMORROW, THEN THE JURY WOULD BE ALLOWED
15 TO FIND OUT THAT YOU DO HAVE THESE BURGLARY CONVICTIONS.
16 I WOULD TELL THEM THAT THEY CAN'T CONSIDER THAT EXCEPT
17 AS TO WHAT WEIGHT THEY THINK THOSE CONVICTIONS HAVE ON
18 YOUR CREDIBILITY OR BELIEVABILITY, JUST AS I TOLD THE
19 JURY EARLIER ABOUT OTHER CRIMES. BUT IF YOU TESTIFY YOU
20 COULD BE CROSS-EXAMINED ABOUT THOSE MATTERS AND OTHER
21 MATTERS JUST AS EVERY OTHER WITNESS IS CROSS-EXAMINED.

22 YOU ALSO HAVE A RIGHT NOT TO
23 TESTIFY. THAT IS YOUR CONSTITUTIONAL RIGHT TO REMAIN
24 SILENT, NOT TO INCRIMINATE YOURSELF. IF YOU CHOOSE NOT
25 TO TESTIFY I WILL TELL THE JURY THAT THAT IS THE

DIRECT-JAMES M.HILL, JR., BY SOL. RUTLEDGE DURANT

623

1 EXERCISE OF A CONSTITUTIONAL RIGHT AND THAT THEY CANNOT
2 CONSIDER THAT AGAINST YOU IN ANY WAY WHATSOEVER. I WILL
3 ASK THAT THEY NOT EVEN DISCUSS THAT MATTER WHEN THEY
4 BEGIN THEIR DELIBERATIONS.

5 DO YOU UNDERSTAND THAT YOU DO HAVE
6 THE RIGHT TO TESTIFY?

7 DEFENDANT PHILLIPS: YES, SIR.

8 THE COURT: DO YOU UNDERSTAND THAT
9 YOU HAVE A RIGHT NOT TO TESTIFY?

10 DEFENDANT PHILLIPS: YES, SIR.

11 THE COURT: ALRIGHT, YOUR ATTORNEY
12 SAYS YOU MADE A PRELIMINARY DECISION NOT TO TESTIFY.
13 YOU TALK WITH YOUR ATTORNEY ABOUT THAT. YOU SHOULD SEEK
14 AND LISTEN TO HIS ADVICE, BUT YOU DON'T HAVE TO FOLLOW
15 HIS ADVICE, THAT'S UP TO YOU. THE DECISION OF WHETHER
16 YOU SHOULD TESTIFY OR NOT TESTIFY SHOULD BE YOUR
17 DECISION, AND AS I SAID, YOU SHOULD MAKE IT AFTER
18 CONFERRING WITH YOUR ATTORNEY BUT YOU SHOULD NOT BE
19 PRESSURE INTO MAKING THAT DECISION ONE WAY OR THE OTHER.
20 DO YOU UNDERSTAND THAT?

21 DEFENDANT PHILLIPS: YES, SIR.

22 THE COURT: ALRIGHT, SIR, YOU TALK
23 WITH HIM ABOUT IT TONIGHT OR IN THE MORNING AND YOU CAN
24 ADVISE ME TOMORROW ONCE THE STATE FINISHES THEIR CASE
25 WHETHER OR NOT YOU WANT TO TESTIFY.

DIRECT-JAMES M. HILL, JR., BY SOL. RUTLEDGE DURANT

624

1 THANK YOU, SIR.

2 MR. PEPER, DO YOU ANTICIPATE -- WELL
3 YOU ANTICIPATE AT LEAST TWO WITNESSES?

4 MR. PEPER: YES, SIR.

5 THE COURT: ALRIGHT, THAT'S FINE.

6 MR. PEPER: TWO, POSSIBLY THREE, BUT
7 THAT'S ALL I CAN - - -

8 THE COURT: WELL, YOU CAN DECIDE
9 TESTIFY EVEN AFTER THOSE WITNESSES HAVE TESTIFIED. YOU
10 DON'T HAVE TO TELL ME FIRST THING IN THE MORNING, BUT
11 ONCE ALL THOSE OTHER WITNESSES HAVE FINISHED TESTIFYING
12 THEN YOU'LL HAVE TO MAKE THAT DECISION. ALRIGHT, SIR?

13 DEFENDANT PHILLIPS: YES, SIR.

14 THE COURT: THANK YOU, SIR.

15 ANYTHING BEFORE WE RECESS?

16 SOLICITOR RUTLEDGE DURANT: NOTHING
17 FROM THE STATE, JUDGE.

18 THE COURT: ALRIGHT.

19 COURT REPORTER: I NEED THE LAWYERS
20 TO HELP ME COUNT THESE EXHIBITS.

21 THE COURT: ALRIGHT. HELP HER
22 GATHER UP ALL OF THOSE EXHIBITS BECAUSE SOMETIMES
23 LAWYERS WILL WALK OUT WITH THEM.

24 COURT REPORTER: THANK YOU.

25 THE COURT: ALRIGHT, COURT WILL BE

DIRECT-JAMES M. HILL, JR., BY SOL. RUTLEDGE DURANT

625

IN RECESS, THEN, UNTIL NINE:THIRTY IN THE MORNING.

(Recess for the day.)

DATE:

AUGUST 7, 2008

THE COURT: IS THERE ANYTHING WE
NEED TO TALK ABOUT BEFORE WE - - -

MR. PEPER: YES, YOUR HONOR. I
WANTED TO MEET WITH GLEN FERGUSON BUT I GOT THERE SECOND
AND THEIR INVESTIGATOR HAD ALREADY MET WITH HIM. I
WASN'T CERTAINLY TRYING TO LISTEN IN, BUT IT'S A ROOM
ABOUT THIS SIZE, AND YOU'RE KIND OF STANDING OUT THERE,
AND TEN MINUTES GOES BY, AND BY THE TIME I GET TO MEET
WITH HIM THE INVESTIGATORS MADE HIM WELL AWARE THAT HE
DOESN'T REMEMBER ANYTHING, HE DOESN'T KNOW ANYTHING
ABOUT THE CASE, AND THEY'LL NOTIFY THE COURT, AND I
DON'T KNOW WHY THIS GUY, PEPER, HAS DRAGGED ME DOWN
HERE. AND SO, WHEN I GO TO MEET WITH HIM I WALK IN AND
HE GOES, NO, I AIN'T SAYING NOTHING, I DON'T KNOW
NOTHING ABOUT THE MURDER, I'VE GOT MY OWN TIME. AND I
SAID, ALL I NEED YOU TO DO IS, DID YOU WRITE THIS
LETTER? HE SAID, YEAH, I WROTE THAT LETTER BUT I AIN'T
TESTIFYING. I TOLD SHAWN WHEN I WROTE THIS LETTER ON
HIS BEHALF THAT I'M NOT TESTIFYING. SO, YOU KNOW,
THEY'VE ALREADY GOTTEN TO HIM AND THEY'VE ALREADY PRETTY
GOTTEN HIM SO SCARED TO DEATH THAT HE'S NOW NOT WANTING

DIRECT-JAMES M. HILL, JR., BY SOL. RUTLEDGE DURANT

626

1 TO TESTIFY. I WANT TO CALL HIM, HE WROTE THIS LETTER,
2 ADMITTED TO ME HE WROTE THIS LETTER, AND THE LETTER SAYS
3 EXACTLY WHAT OUR CASE, THAT HE WAS ROOMING WITH THE CO-
4 DEFENDANT AND THE CO-DEFENDANT STARTED RUNNING HIS MOUTH
5 ABOUT MURDERING SOMEBODY AND HE WANTED TO PIN IT ON
6 SHAWN PHILLIPS. HE THEN GOT TRANSFERRED, MET SHAWN,
7 AND SHAWN INTRODUCED HIMSELF, AND HE SAYS, OH, THERE'S
8 A GUY NEXT DOOR THAT ADMITTED TO THE MURDER AND IS
9 TALKING A LOT OF STUFF ABOUT YOU, MAN. SHAWN SAYS, DO
10 YOU MIND WRITING IT DOWN SO I CAN GIVE IT TO MY
11 ATTORNEY? GLEN FERGUSON SAYS, NO PROBLEM, HE WRITES IT
12 DOWN, SIGNS IT, GIVES IT TO SHAWN, SHAWN SENDS IT TO ME,
13 AND NOW HE'S SCARED TO DEATH TO TESTIFY.

14 THE COURT: WELL, ASSUME FOR A
15 MINUTE THAT HE WAS NOT SCARED TO TESTIFY. DO YOU WANT
16 HIM TO COME IN AND TESTIFY TO WHAT THE CO-DEFENDANT TOLD
17 HIM?

18 MR. PEPPER: I WANT HIM TO TESTIFY TO
19 WHAT HE WROTE ON THIS PAGE. HE ADMITTED TO ME THAT THIS
20 IS HIS SIGNATURE, THAT THIS IS HIS HANDWRITING.

21 THE COURT: WHAT IS THAT PAGE?

22 MR. PEPPER: THIS IS A LETTER FROM
23 GLEN FERGUSON TO ME.

24 THE COURT: SO, YOU WANT HIM TO COME
25 IN AND TESTIFY TO WHAT THE CO-DEFENDANT TOLD HIM - - -

DIRECT-JAMES M. HILL, JR., BY SOL. RUTLEDGE DURANT

627

1 MR. PEPER: THAT'S CORRECT.

2 THE COURT: --- TO PROVE THE TRUTH
3 OF WHAT THE CO-DEFENDANT TOLD HIM?

4 MR. PEPER: NOT, NOT FOR THE TRUTH,
5 I JUST WANT TO KNOW DID HE HAVE A CONVERSATION WITH THE
6 CO-DEFENDANT, DID THE CO-DEFENDANT ADMIT TO YOU THAT HE
7 WAS INVOLVED IN A MURDER AND THAT HE WAS GOING TO PIN IT
8 ON MY CLIENT? AND HE PUT IT IN WRITING, HE ADMITTED TO
9 ME HE'S GOING TO ADMIT IT ON THE STAND THAT THIS IS HIS
10 SIGNATURE, THAT HE WROTE THIS AFTER SPEAKING TO SHAWN
11 TELLING SHAWN WHAT MICKEY TOLD HIM, AND THEN SHAWN ASKED
12 HIM, DO YOU MIND WRITING IT DOWN SO I CAN GIVE IT TO MY
13 ATTORNEY?

14 THE COURT: ALRIGHT. MR. BAILIFF,
15 WOULD YOU ASK MY CLERK TO SEND ME MY RULES BOOK?

16 MR. DURANT, I'LL BE GLAD TO HEAR
17 FROM YOU.

18 SOLICITOR BRUCE DURANT: MAY I
19 RESPOND, YOUR HONOR? NUMBER ONE, IT'S CLEARLY HEARSAY.

20 THE COURT: WHAT ABOUT THE STATEMENT
21 OF A CO-DEFENDANT? THAT'S WHY I NEED MY RULE BOOK.

22 SOLICITOR BRUCE DURANT: IT'S EIGHT
23 0 -- THE RULE - - -

24 THE COURT: WELL, I DON'T HAVE MY
25 RULE BOOK. HE'S BRINGING IT RIGHT NOW. I JUST GOT IT TO

DIRECT-JAMES M. HILL, JR., BY SOL. RUTLEDGE DURANT

628

1 LOOK UP SOMETHING ELSE.

2 SOLICITOR BRUCE DURANT: EIGHT O
3 FOUR, B, THREE, I ASSUME THAT IF HE'S GOING TO ADMIT IT
4 FOR ANY PURPOSE I DON'T KNOW HOW HE CAN SAY HE'S NOT
5 ADMITTING IT FOR THE TRUTH OF THE MATTER ASSERTED, BUT
6 THAT'S EXACTLY WHY HE'S ADMITTING IT. AND NUMBER TWO,
7 THERE'S BEEN NO SHOWING THAT THE DECLARANT IS
8 UNAVAILABLE, OR THAT THE STATEMENT WAS RELIABLE AS THE
9 RULE REQUIRES, SUFFICIENTLY CORROBORATED.

10 SOLICITOR RUTLEDGE DURANT: AND YOUR
11 HONOR, OUR ARGUMENT AGAINST THE EXCEPTION WOULD BE UNDER
12 EIGHT O FOUR, B, THREE, A STATEMENT AGAINST INTEREST.

13 SOLICITOR BRUCE DURANT: WHICH IS
14 THE SAME RULE THAT REQUIRES UNAVAILABILITY OF THE
15 DECLARANT AND CORROBORATION, YOUR HONOR.

16 MR. PEPER: WELL, HE'S GOING TO TAKE
17 THE FIFTH, SO I'M PRETTY SURE HE'S UNAVAILABLE.

18 SOLICITOR BRUCE DURANT: WELL,
19 THAT'S - - -

20 MR. PEPER: WELL, LET'S -- I'LL CALL
21 HIM, THEN.

22 THE COURT: EIGHT O FOUR WHAT?

23 MR. PEPER: B, THREE, YOUR HONOR.

24 THE COURT: WHY IS HE UNAVAILABLE?

25 MR. PEPER: YOUR HONOR, IF I WERE TO

DIRECT-JAMES M.HILL, JR., BY SOL. RUTLEDGE DURANT

629

1 CALL HIM TO TESTIFY, THE CO-DEFENDANT, HE WOULD TAKE THE
2 FIFTH AMENDMENT.

3 THE COURT: WELL, I MEAN, WE DON'T
4 KNOW THAT.

5 MR. PEPER: HIS ATTORNEYS TOLD ME
6 THAT, AND - - -

7 THE COURT: HIS ATTORNEY DOESN'T
8 KNOW THAT EITHER. I DON'T THINK I CAN BASE - - -

9 MR. PEPER: OKAY.

10 THE COURT: I DON'T THINK I CAN BASE
11 THAT POSITION ON WHAT YOU THINK HE MIGHT DO IF HE TAKES
12 THE STAND.

13 MR. PEPER: YOUR HONOR, AND I JUST
14 RESPECTFULLY ASK THAT YOU NOT ALLOW MR. FERGUSON TO BE
15 TRANSPORTED BACK UNTIL I HAVE THE OPPORTUNITY TO CALL
16 MR. MICKEY TO THE STAND, AND IF HE TAKES THE FIFTH WE
17 WILL THEN HAVE AN ISSUE WITH REGARDS TO HIS
18 UNAVAILABILITY.

19 THE COURT: THE LAST PART OF
20 SUBSECTION THREE, I MEAN, IT'S ONE THING TO ADMIT
21 STATEMENTS THAT WOULD EXPOSE THE DECLARANT TO
22 CULPABILITY TO CRIMINAL RESPONSIBILITY, BUT IT'S
23 SOMETHING ELSE TO EXCULPATE THE ACCUSED. "A STATEMENT
24 TENDING TO EXPOSE A DECLARANT TO CRIMINAL LIABILITY AND
25 OFFER TO EXCULPATE THE ACCUSED IS NOT ADMISSIBLE UNLESS

DIRECT-JAMES M. HILL, JR., BY SOL. RUTLEDGE DURANT

630

1 CORROBORATED CIRCUMSTANCES CLEARLY INDICATE THE
2 TRUSTWORTHINESS OF THE STATEMENT." SO, I GUESS THE ONLY
3 WAY WE CAN DETERMINE THAT IS TO DO AN IN CAMERA
4 EXAMINATION OF THE WITNESS.

5 MR. PEPPER: YOU KNOW, JUDGE, I THINK
6 THE EVIDENCE ALREADY PRESENTED, MUCH LESS EVIDENCE THAT
7 THE DEFENSE IS GOING TO PRESENT CORROBORATES EXACTLY
8 WHAT MR. FERGUSON SAID. ALL OF THE STATE'S WITNESSES
9 HAVE SAID LENNIE MICKEY WAS IN CHARGE OF THIS CRIME. HE
10 PARTOOK IN THIS CRIME. THIS IS NOT JUST A COMPLETELY
11 NEUTRAL PARTY FROM RIGHT FIELD THAT WE'RE NOW TRYING TO
12 BRING IN TO PIN THIS ON HIM. THIS IS THE NUMBER ONE GUY
13 AND THE COURT HAS HEARD FROM EVERY SINGLE WITNESS THAT
14 NOT ONLY WAS HE INVOLVED, HE WAS THE MASTERMIND BEHIND
15 THE PLAN, AND HE'S NOW ADMITTED IT TO HIS ROOMMATE IN
16 JAIL. SO, THERE'S CORROBORATING CIRCUMSTANCES THAT GO
17 TO THE TRUTH OF WHAT MR. MICKEY TOLD MR. FERGUSON.

18 THE COURT: YES, SIR?

19 SOLICITOR BRUCE DURANT: THE
20 CORROBORATION REQUIREMENT DOES NOT GO TO THE TRUTH OF
21 THE MATTER ASSERTED, ALTHOUGH THAT'S PART OF IT, IT GOES
22 TO WHETHER THE STATEMENT WAS, IN FACT, EVEN MADE. I'D
23 LIKE TO HAND UP TO THE COURT A COUPLE OF THE LAST COUPLE
24 OF CASES I FOUND ON THE ISSUE WHICH WOULD BE STATE V.
25 KENLOCK, AT 338 SOUTH CAROLINA 385, STATE V. McDONALD

DIRECT-JAMES M.HILL, JR., BY SOL. RUTLEDGE DURANT

631

WHICH IS AT 343 SOUTH CAROLINA 319.

THE COURT: ALRIGHT, SIR. WE DON'T HAVE TO DECIDE THIS RIGHT NOW. WE NEED TO GET A JURY IN HERE AND GET OUR TESTIMONY, BUT I WILL, I MEAN, I WANT MR. FERGUSON -- THAT'S HIS NAME?

MR. PEPER: YES, SIR.

THE COURT: KEEP HIM HERE, DON'T SEND HIM BACK TO COLUMBIA.

SOLICITOR BRUCE DURANT: I'M ASSUMING THAT WE'LL PROBABLY -- BECAUSE THE CO-DEFENDANT IS NOT HERE, HE'S GOING TO HAVE TO BE TRANSPORTED DOWN FROM THE JAIL, SO WE'RE GOING TO NEED TO GET THE JAIL TO TRANSPORT HIM, YOUR HONOR.

THE COURT: YOU'RE GOING TO NEED HIM?

MR. PEPER: YES, SIR.

THE COURT: ALRIGHT.

MR. PEPER: I'D LOVE HIM TO TESTIFY BUT, I MEAN, HIS ATTORNEY TELLS ME HE'S GOING TO TAKE THE FIFTH. HE'S GETTING READY TO BE RETRIED.

SOLICITOR BRUCE DURANT: HIS ATTORNEY WOULD ALSO NEED TO BE NOTIFIED, TOO, MR. NIXON. I CAN - - -

THE COURT: ALRIGHT. HOW ABOUT TRANSPORT MR. MICKEY, BUT HE DOESN'T NEED TO BE MIXED WITH ANY OF THESE WITNESSES THAT WE'VE GOT. I DON'T KNOW

DIRECT-JAMES M.HILL, JR., BY SOL. RUTLEDGE DURANT

632

1 WHO ALL YOU'VE GOT BACK THERE BUT HE DOESN'T NEED TO
2 COME IN CONTACT WITH THIS DEFENDANT, AND HE DOESN'T NEED
3 TO COME IN CONTACT WITH MR. FERGUSON OR ANYBODY ELSE
4 THAT HAS ANYTHING TO DO WITH THIS CASE. AND I DON'T
5 WANT ANYBODY ELSE TALKING TO HIM FROM THE STATE'S
6 OFFICE OR ANYBODY ELSE'S OFFICE.

7 ALRIGHT. ARE WE READY FOR THE JURY,
8 THEN?

9 MR. HILL, YOU CAN TAKE THE STAND.
10 (Whereupon, the witness,
11 James. M. Hill, Jr.,
12 resumes the stand.)

13 THE COURT: ALRIGHT, BRING IN THE
14 JURY, PLEASE.

15 (Whereupon, the jury enters
16 the courtroom and the following
17 takes place in the presence
18 of the jury.)

19 THE COURT: GOOD MORNING, LADIES AND
20 GENTLEMEN, I HOPE YOU HAD A GOOD NIGHT.

21 ALRIGHT, WE'RE READY TO GET STARTED.
22 AND WE HAVE THE WITNESS ON THE STAND. HE'S ALREADY BEEN
23 SWORN, HE'S ALREADY BEEN ASKED A LOT OF QUESTIONS, AND
24 HE'S GOT A FEW MORE FOR HIM.

25 ALRIGHT, COUNSELOR, YOU MAY PROCEED.

DIRECT-JAMES M. HILL, JR., BY SOL. RUTLEDGE DURANT

633

SOLICITOR RUTLEDGE DURANT: THANK

YOU, JUDGE, MAY IT PLEASE THE COURT.

Q. I BELIEVE YESTERDAY WHEN WE LEFT OFF WE WERE TALKING ABOUT YOUR SUMMARY THAT YOU PREPARED OF ALANA NIESEN'S PHONE RECORDS.

A. YES, SIR.

Q. AND I BELIEVE YOU WERE USING STATE'S THIRTY-FOUR UP ON THE OVERHEAD TO DEMONSTRATE WHAT THAT DOCUMENT WAS.

A. YES, SIR.

Q. I'M NOT GOING TO PUT THAT UP ON THE OVERHEAD RIGHT NOW, BUT IF YOU WOULD, WOULD YOU DESCRIBE TO THE JURY, HOLD IT UP TO THE JURY AND DESCRIBE WHAT THE YELLOW HIGHLIGHTED PORTION REPRESENTS?

A. THE YELLOW ARE PHONE CALLS BETWEEN THE VICTIM AND MS. NIESEN, AND THE BLUE ARE PHONE CALLS BETWEEN THE VICTIM AND MR. PHILLIPS' CELL PHONE, OR CORRECTION, BETWEEN MS. NIESEN'S CELL PHONE AND MR. PHILLIPS' CELL PHONE.

Q. AND WHAT DATE DO THESE TELEPHONE CALLS TAKE PLACE?

A. NOVEMBER SEVENTH AND NOVEMBER EIGHTH.

Q. YOU CAN PUT THAT DOWN. MOVING ON TO SEPTEMBER THE SEVENTH, TWO THOUSAND AND SEVEN, WERE YOU ABLE TO OBTAIN A SAMPLE OF MR. PHILLIPS' BLOOD?

A. YES, I WAS.

DIRECT-JAMES M. HILL, JR., BY SOL. RUTLEDGE DURANT

634

1 Q. AND HOW DID YOU DO THAT?

2 A. WE GOT A SEARCH WARRANT.

3 Q. DO YOU RECALL WHEN THE SAMPLE WAS OBTAINED?

4 A. NOT THE EXACT DATE BUT IT WAS TAKEN AT THE
5 DETENTION FACILITY.

6 Q. WHAT WAS DONE WITH THE SAMPLE?

7 A. IT WAS SENT TO SLED, SOUTH CAROLINA LAW
8 ENFORCEMENT DIVISION.

9 Q. WAS IT SENT WITH ANYBODY ELSE'S BLOOD AS WELL?

10 A. IT WAS SENT WITH THE ITEMS THAT WERE RECOVERED
11 FROM THE CRIME SCENE AND ALSO I BELIEVE EVIDENCE
12 RECOVERED AT THE AUTOPSY FROM THE VICTIM.

13 Q. DO YOU RECALL WHAT ITEMS WERE SENT TO SLED?

14 A. I MIGHT HAVE TO SEE THE REPORT, I BELIEVE IT WAS
15 LIPSTICK, IF I COULD GET THE REPORT.

16 (State's Exhibit Thirty-five,
17 Report from SLED,
18 marked for identification.)

19 Q. I'M SHOWING YOU WHAT'S MARKED STATE'S THIRTY-FIVE
20 FOR IDENTIFICATION. I ASK YOU TO TAKE A LOOK AT
21 IT AND SEE IF THAT REFRESHES YOUR RECOLLECTION?

22 A. YES, SIR, IT DOES.

23 Q. AND, WOULD YOU HAND ME THE DOCUMENT. HAND IT BACK
24 TO ME. DO YOU RECALL WHAT WAS SENT TO SLED FOR
25 DNA EXAMINATION?

DIRECT-JAMES M.HILL, JR., BY SOL. RUTLEDGE DURANT

635

1 A. A LIPSTICK TUBE, A CRACK PIPE, AND ARTICLES
2 RECOVERED FROM THE PILLOW CASE.

3 Q. ARE YOU AWARE OF THE RESULTS OF THE DNA ANALYSIS?

4 A. YES, SIR.

5 Q. AND WHAT WERE THE RESULTS?

6 A. THE ONLY MATCHABLE DNA THAT WAS RECOVERED WAS THE
7 VICTIM'S, MR. VARGO'S.

8 Q. ARE THE OTHER RESULTS INCONCLUSIVE?

9 A. YES, SIR.

10 Q. WERE THERE ANY EFFORTS MADE TO LOCATE THE WEAPON?

11 A. YES.

12 Q. AND WHAT WERE THE RESULTS?

13 A. WE WERE UNABLE TO LOCATE THE WEAPON.

14 SOLICITOR RUTLEDGE DURANT: THANK
15 YOU, SIR, PLEASE ANSWER ANY QUESTIONS MR. PEPER MAY
16 HAVE.

17 THE COURT: MR. PEPER.

18 MR. PEPER: THANK YOU, YOUR HONOR,
19 IF IT PLEASE THE COURT.

20 (NOTE: Blank lines on this page do not indicate any
21 part of record has been omitted. Headers on testimony
22 pages and hard page breaks between testimony are now
23 required by the Court. See next ensuing page for
24 sequential continuation of record.)

CROSS - JAMES M. HILL, JR., BY MR. PEPER

636

CROSS-EXAMINATION OF JAMES M. HILL, JR.,

BY MR. PEPER:

Q. YOU WERE UNABLE TO LOCATE THE WEAPON, IS THAT
CORRECT?

A. YES, SIR, THAT'S CORRECT.

Q. BUT YOU HAD INFORMATION AS TO ITS WHEREABOUTS,
CORRECT?

A. YES, I DID.

Q. AND YOU LEARNED THAT FROM AN INMATE NAMED MARCO
GARCIA?

A. CORRECT.

Q. AND DID YOU TAKE A STATEMENT FROM MARCO GARCIA?

A. YES, I DID.

Q. LET ME SHOW IT TO YOU AND SEE IF YOU RECOGNIZE IT.

SOLICITOR RUTLEDGE DURANT: YOUR
HONOR, THIS IS HEARSAY.

MR. PEPER: I JUST ASKED HIM IF HE
TOOK A STATEMENT FROM HIM.

THE COURT: I'M SORRY, I WAS
DISTRACTED A MINUTE. WHAT WAS THE QUESTION, WHAT WERE
YOU FIXING TO ASK HIM?

MR. PEPER: HOW HE LEARNED OF WHERE
THE POSSIBLE LOCATION OF THE GUN WAS THAT HE TESTIFIED
TO ON DIRECT. HIS ANSWER WAS, THROUGH MARCO GARCIA. I
ASKED HIM IF HE INTERVIEWED MARCO GARCIA, AT WHICH TIME

CROSS - JAMES M. HILL, JR., BY MR. PEPER

637

1 I WAS OBJECTED TO.

2 THE COURT: AND DO YOU WANT HIM TO
3 TESTIFY TO WHAT MARCO GARCIA TOLD HIM IN ORDER TO PROVE
4 THE TRUTH OF WHAT MARCO GARCIA TOLD HIM?

5 MR. PEPER: NO, YOUR HONOR, I WANT
6 HIM TO TESTIFY TO WHAT HE LEARNED ABOUT THE CRIME AFTER
7 HE TALKED TO MARCO GARCIA, HOW TO FIND EVIDENCE.

8 THE COURT: I THINK IT'S THE SAME
9 THING, SO I'LL SUSTAIN THE OBJECTION.

10 MR. PEPER: THANK YOU, JUDGE.

11 Q. DID YOU TALK TO MARCO GARCIA?

12 A. YES, I DID.

13 Q. DID HE TELL YOU WHERE TO LOCATE THE GUN?

14 SOLICITOR RUTLEDGE DURANT:
15 OBJECTION, YOUR HONOR, THIS IS HEARSAY.

16 THE COURT: WHAT MR. GARCIA TOLD
17 HIM, IF OFFERED TO PROVE THE TRUTH OF IT, LIKE WHERE THE
18 GUN WAS, WOULD BE HEARSAY. AND SO I SUSTAINED THAT
19 OBJECTION. NOW, DO YOU WANT TO BE HEARD IN CAMERA?

20 MR. PEPER: YES, YOUR HONOR.

21 THE COURT: BECAUSE I DON'T KNOW THE
22 ANSWERS WE ANTICIPATE HERE.

23 LADIES AND GENTLEMEN, HOW ABOUT STEP
24 TO THE JURY ROOM JUST A FEW MINUTES, PLEASE, AND LET ME
25 TAKE UP A MATTER OF LAW.

CROSS - JAMES M. HILL, JR., BY MR. PEPER

638

1 (Whereupon, the jury retires
2 to the jury room, and the
3 following takes place
4 in camera.)

5 THE COURT: NOW, PROCEED.

6 (NOTE: Blank lines on this page do not indicate any
7 part of record has been omitted. Headers on testimony
8 pages and hard page breaks between testimony are now
9 required by the Court. See next ensuing page for
10 sequential continuation of record.)

CROSS, IN CAMERA-JAMES M. HILL, JR. BY MR. PEPER

639

CROSS-EXAMINATION, IN CAMERA, OF JAMES M. HILL, JR.,

BY MR. PEPER:

Q. YOU TESTIFIED ON DIRECT EXAMINATION THAT YOU WERE
UNABLE TO LOCATE A WEAPON, CORRECT?

A. YES, SIR, THAT'S CORRECT.

Q. HOW DID YOU FIND OUT WHERE THE WEAPON COULD
POSSIBLY BE LOCATED?

A. FROM AN INTERVIEW I CONDUCTED OF MR. GARCIA.

Q. DID YOU LEARN ADDITIONAL THINGS ABOUT THE CASE
FROM MR. GARCIA?

A. COULD YOU BE MORE SPECIFIC?

Q. I'D BE HAPPY TO. DID MARCO GARCIA TELL YOU THAT
L. ADMITTED TO HIM THAT HE COMMITTED THIS CRIME
AND WANTED TO PIN IT ON MY CLIENT?

A. NO. I BELIEVE HE SAID THAT MR. MICKEY DID ADMIT
TO COMMITTING THE CRIME, YES.

Q. OKAY.

A. BUT I CAN'T, WITHOUT THE WITNESS STATEMENT I
HONESTLY DON'T REMEMBER WHETHER HE SAID - - -

Q. CAN I REFRESH YOUR MEMORY WITH MARCO GARCIA'S
STATEMENT THAT YOU ADMINISTERED ON - - -

A. SURE.

Q. --- TWELVE/TWENTY/O-SIX? AFTER REVIEWING, -- AND
THIS IS YOUR SIGNATURE, CORRECT?

A. YES, SIR, IT IS.

CROSS, IN CAMERA-JAMES M. HILL, JR. BY MR. PEPER

640

1 Q. AFTER REVIEWING THE STATEMENT THAT YOU
2 ADMINISTERED WITH MARCO GARCIA DO YOU REMEMBER HIM
3 ASSERTING THAT MICKEY WAS GOING TO PIN IT ON OTHER
4 PEOPLE?

5 A. I WOULD LIKE TO NOT ONLY REFER TO WHAT MARCO
6 GARCIA SAID, I'D LIKE TO TELL YOUR HONOR EXACTLY
7 WHAT HE SAID.

8 Q. SURE.

9 A. "LENNIE WENT ON TO TELL THE GUY THAT DETECTIVE
10 HILL WILL NEVER FIND THE GUN BECAUSE IT IS HIDDEN
11 IN MY T-GREEN MERCEDES, AND I'M GOING TO MAKE THEM
12 OTHER BITCHES TAKE THE RIDE FOR THE SHIT." DO YOU
13 WANT ME TO CONTINUE?

14 Q. NO, THAT'S EXACTLY RIGHT. SO, BASED ON THAT
15 INFORMATION YOU NOT ONLY WENT AND LOOKED FOR THE
16 GUN WHERE HE TOLD YOU IT WOULD BE, CORRECT?

17 A. I DID.

18 Q. YOU ACTUALLY FOUND THE T-GREEN MERCEDES THAT MARCO
19 GARCIA WAS REFERRING TO?

20 A. I DID.

21 Q. IT MATCHED THE DESCRIPTION EXACTLY, CORRECT?

22 A. IT DID.

23 Q. IT HAD A WHEEL CHAIR HOLSTER IN THE BACK WHERE HE
24 TOLD YOU THE GUN WOULD BE?

25 A. IT DID.

CROSS, IN CAMERA-JAMES M. HILL, JR. BY MR. PEPER

641

1 Q. IT JUST DIDN'T HAVE A GUN?

2 A. CORRECT.

3 Q. OKAY.

4 MR. PEPER: YOUR HONOR, IT'S VERY
5 CLEAR THAT, AND AGAIN, IT IS THE TRUTH, BUT MY POINT IS
6 THAT ALL I WANT HIM TO TESTIFY TO IS WHAT HE LEARNED
7 THROUGH HIS INVESTIGATION, AND THAT IS, HE INTERVIEWED
8 MARCO GARCIA, WHO WAS A ROOMMATE WITH THE CO-DEFENDANT,
9 AND MARCO GAVE HIM INFORMATION AS TO NOT ONLY WHERE TO
10 FIND THE WEAPON, BUT ALERTED HIM THAT THERE WERE OTHER
11 PEOPLE INVOLVED THAT MICKEY WAS ATTEMPTING TO PIN IT ON
12 BY SAYING, I'M GOING TO MAKE THOSE BITCHES TAKE A RIDE
13 FOR THIS SHIT, THOSE OTHER BITCHES TAKE A RIDE FOR THIS
14 SHIT. I CERTAINLY THINK THAT'S PROBATIVE TO OUR CASE,
15 ESPECIALLY SINCE WE'RE SAYING THAT MR. MICKEY WAS THE
16 MASTERMIND BEHIND THIS AND WAS ESSENTIALLY MANIPULATING
17 EVERYONE. AND THERE'S ALSO BEEN OTHER TESTIMONY THAT
18 LETTERS HAVE GONE BACK AND FORTH WHERE MICKEY HAD BEEN
19 TRYING TO CONVINCE WITNESSES TO ROLL ON SHAWN.

20 THE COURT: YES, SIR.

21 SOLICITOR RUTLEDGE DURANT: JUDGE,
22 THE STATE'S CONTENTION IS, THIS IS CLEARLY HEARSAY, AND
23 NOT ONLY IS IT HEARSAY, IT'S DOUBLE HEARSAY. IF -- THE
24 STATEMENT OF LENNIE MICKEY MAY BE CONSIDERED A STATEMENT
25 AGAINST HIS PENAL INTEREST, BUT IT IS CERTAINLY NOT A

1 STATEMENT AGAINST MARCO GARCIA'S PENAL INTEREST. IF MR.
2 PEPER WANTS TO TALK TO MARCO GARCIA LET HIM CALL HIM,
3 BUT THIS IS NOT THE APPROPRIATE WITNESS TO TALK TO ABOUT
4 WHAT MARCO GARCIA SAID THAT LENNIE MICKEY SAID.

5 THE COURT: IT MAY EVEN BE TRUTHFUL
6 HEARSAY, I'M NOT SURE, BUT IT WOULDN'T BE ADMISSIBLE
7 ANYHOW.

8 MR. PEPER: WELL, - - -

9 THE COURT: I MEAN, IF YOU WANT TO
10 PUT MR. MICKEY ON THE STAND TO TRY TO EXCULPATE YOUR
11 CLIENT, THEN HAVE AT IT, BUT NOT UNDER THE SCENARIO
12 YOU'VE OUTLINED. I MEAN, - - -

13 MR. PEPER: YOUR HONOR, IF I HAD
14 MARCO GARCIA HERE HE COULD TESTIFY TO WHAT MR. MICKEY
15 TOLD HIM, CORRECT, AS A STATEMENT AGAINST INTEREST FROM
16 A CO-DEFENDANT?

17 BRUCE, THE REASON HE'S NOT HERE IS
18 BECAUSE YOUR INVESTIGATOR - - -

19 THE COURT: WELL, I CAN'T, I CAN'T
20 ASSURE YOU THAT I WOULD ALLOW HIM TO TESTIFY. I MEAN,
21 WE WOULD HAVE TO WEIGH THAT UNDER THE SAME EIGHT O FOUR,
22 B, THREE, THE TRUSTWORTHINESS OF THE STATEMENT. AND YOU
23 SEE, IT DOESN'T NECESSARILY EXCULPATE YOUR CLIENT.

24 MR. PEPER: YOU'RE RIGHT. BUT HE
25 TESTIFIED - - -

1 THE COURT: AND SO, IT'S NOT, YOU'RE
2 NOT EVEN TRYING TO PROVE, IT'S NOT COMPETENT TO PROVE
3 WHAT YOU'RE TRYING TO PROVE, THAT YOUR CLIENT IS
4 INNOCENT.

5 MR. PEPPER: YOUR HONOR, I DON'T WANT
6 TO PROVE THAT MY CLIENT'S INNOCENT. HE TESTIFIED ON
7 DIRECT, AFTER BEING ASKED, WERE YOU ABLE TO LOCATE A
8 WEAPON? HE SAID, NO. HE'S NOW OPENED THE DOOR FOR ME
9 TO ASK HIM HOW HE EVEN LEARNED WHERE TO GO LOOK FOR THAT
10 WEAPON.

11 THE COURT: NO, I DON'T THINK SO,
12 NOT IF YOU'RE GOING TO -- HE HASN'T OPENED THE DOOR TO
13 ANY INADMISSIBLE EVIDENCE CONCERNING THAT WEAPON.
14 THAT'S INADMISSIBLE EVIDENCE.

15 MR. PEPPER: THAT'S FINE, YOUR HONOR.

16 THE COURT: THE JURY KNOWS HE TALKED
17 WITH THIS OTHER GUY AND GOT SOME INFORMATION ABOUT THE
18 WEAPON. THAT'S ALL THEY'RE GOING TO KNOW ABOUT THAT.
19 NOTHING ELSE IS RELEVANT ABOUT THAT, IT DOESN'T MATTER,
20 IT DOESN'T HAVE ANYTHING TO DO WITH ANY ISSUE THAT THE
21 STATE HAS TO PROVE, AS TO WHAT HE DID TRYING TO FIND THE
22 WEAPON. I MEAN, IT JUST DOESN'T MATTER. WHAT'S IT
23 RELEVANT TO?

24 MR. PEPPER: WELL, JUDGE, HE COULD
25 HAVE LEARNED ADDITIONAL INFORMATION JUST LIKE HE LEARNED

1 ABOUT WHERE THE GUN WAS LOCATED.

2 THE COURT: HE PROBABLY HAS A WHOLE
3 LOT OF INFORMATION ABOUT THIS CASE THAT HE IS NOT ABLE
4 TO TESTIFY TO IN COURT, AND THIS IS PART OF IT. THERE'S
5 JUST NO WAY IT CAN BE ADMISSIBLE. THERE'S JUST, I MEAN,
6 AND I CAN'T ASSURE YOU THAT IF YOU BROUGHT THIS OTHER
7 PERSON IN I WOULD ALLOW HIM TO TESTIFY. YOU'D HAVE TO
8 GET HIM IN HERE AND TAKE HIS TESTIMONY IN CAMERA AND SEE
9 WHAT HE SAYS, AND I WOULD HAVE TO WEIGH THE
10 TRUSTWORTHINESS OF IT AND MAKE THAT DETERMINATION AT
11 THAT TIME. SO, I MEAN, I MIGHT AND I MIGHT NOT, I CAN'T
12 TELL YOU, BUT I WILL NOT ALLOW THIS WITNESS TO TESTIFY
13 TO WHAT SOME OTHER WITNESS TOLD HIM THAT THE CO-
14 DEFENDANT TOLD THAT OTHER WITNESS. NO, SIR, I WON'T
15 ALLOW THAT.

16 MR. PEPPER: YOUR HONOR, BRIEFLY, IF
17 I COULD, JUST IN RESPONSE, THE WITNESS, MARCO GARCIA, IS
18 MAYBE DEAD FOR ALL WE KNOW, I MEAN, WE'VE SEARCHED HIGH
19 AND LOW, THE STATE HAS SEARCHED HIGH AND LOW, THEY
20 WANTED TO CALL HIM IN MICKEY'S CASE AND IN OUR CASE, AND
21 CLEARLY, I THINK WE COULD ESTABLISH UNAVAILABLE, SO, I
22 DON'T KNOW IF YOU WANT TO THEN GET INTO - - -

23 THE COURT: NO, SIR.

24 MR. PEPPER: OKAY. ALRIGHT, I'LL
25 MOVE ON, JUDGE.

1 THE COURT: ALRIGHT, SIR, I THINK
2 YOU'VE MADE YOUR PROFFER TO PROTECT YOU.

3 MR. PEPER: THANK YOU.

4 THE COURT: BRING THE JURY IN,
5 PLEASE, SIR.

6 (Whereupon, the jury enters
7 the courtroom and the following
8 takes place in the presence
9 of the jury.)

10 THE COURT: ALRIGHT, YOU MAY
11 PROCEED, MR. PEPER.

12 MR. PEPER: THANK YOU, YOUR HONOR,
13 MAY IT PLEASE THE COURT.

14 (NOTE: Blank lines on this page do not indicate any
15 part of record has been omitted. Headers on testimony
16 pages and hard page breaks between testimony are now
17 required by the Court. See next ensuing page for
18 sequential continuation of record.)

CROSS - JAMES M. HILL, JR., BY MR. PEPER

646

CROSS-EXAMINATION OF JAMES M. HILL, JR.,

BY MR. PEPER CONTINUES:

Q. YOU TESTIFIED ON DIRECT THAT YOU WENT AND SEARCHED
FOR A GUN, CORRECT?

A. YES, SIR.

Q. AND YOU NEVER FOUND A GUN?

A. NO, SIR, I DID NOT.

Q. SO, WE HAVE NO WEAPON IN THIS ENTIRE CASE,
CORRECT?

A. NO, SIR, WE DO NOT.

Q. NOR DO WE HAVE DNA EVIDENCE, CORRECT?

A. NO, SIR, WE DO NOT.

Q. NOR DO WE HAVE FINGERPRINTS, CORRECT?

A. NO, SIR, WE DO NOT.

Q. WITH REGARDS TO THE PHONE STATEMENTS THAT YOU
TESTIFIED TO, YOU'VE HEARD TESTIMONY THAT THAT
PHONE BELONGED TO ANGELA, CORRECT?

A. THE FIVE O NINE NUMBER, IS THAT WHAT YOU'RE
REFERRING TO?

Q. YES.

A. NO, I WAS TOLD THAT THAT BELONGED TO SHAWN.

Q. YOU'VE BEEN HERE THE LAST THREE DAYS, RIGHT?

A. YES, SIR.

Q. AND YOU'VE HEARD TWO DIFFERENT WITNESSES SAY THAT
ANGELA HAD THAT PHONE ON HER THE ENTIRE NIGHT,

CROSS - JAMES M. HILL, JR., BY MR. PEPER

647

1 CORRECT?

2 A. MR. SIMMONS IS WHERE I GOT MY INFORMATION FROM,
3 AND - - -

4 Q. OKAY.

5 A. --- AND THAT PHONE NUMBER BELONGED TO MR.
6 PHILLIPS.

7 Q. ALRIGHT.

8 COURT REPORTER: BELONGED TO WHO?

9 A. MR. PHILLIPS.

10 Q. EVEN IF, LET'S JUST, I'LL GIVE YOU THAT MAYBE
11 SHAWN HAD THE PHONE, I MEAN, DOES IT MATTER WHAT,
12 WHAT, DOES HAVING A PHONE AND MAKING CALLS MEAN
13 YOU'VE COMMITTED A MURDER?

14 A. NO, SIR.

15 Q. IS THERE ANY PROOF THAT SHAWN WAS ON THE OTHER END
16 OF ANY OF THOSE PHONE CALLS?

17 A. I WASN'T PRESENT, SIR.

18 Q. SHAWN COULD HAVE, IF HE WAS ON THE OTHER END HE
19 COULD HAVE BEEN CALLING TO SAY, I'M NOT DOING
20 THIS, I'M OUT, RIGHT?

21 A. HE COULD HAVE SAID ANYTHING, SIR.

22 Q. YOU CAN'T PROVE THAT THESE PHONE CALLS ARE IN THE
23 FURTHERANCE OF ANY CRIME, CAN YOU?

24 A. NO, SIR.

25 Q. NO, SIR. YOU HAD AN OPPORTUNITY TO TALK TO SHAWN

CROSS - JAMES M. HILL, JR., BY MR. PEPER

648

1 PHILLIPS THE NIGHT OF DECEMBER FOURTEENTH,
2 CORRECT?

3 A. YES, I DID.

4 Q. AND I DON'T WANT TO REHASH ALL OF THE TESTIMONY
5 YESTERDAY, BUT IT'S MY UNDERSTANDING THAT YOU
6 ORIGINALLY BROUGHT HIM IN TO SPEAK TO HIM ABOUT A
7 MURDER?

8 A. CORRECT.

9 Q. BUT THAT HE WAS NOT CHARGED WITH MURDER AT THAT
10 TIME?

11 A. CORRECT.

12 Q. AND SO MUCH SO THAT ON HIS MIRANDA SHEET YOU
13 CROSSED OFF, "CHARGE OF", CORRECT?

14 A. CORRECT.

15 Q. DID YOU EXPLAIN THAT TO HIM?

16 A. WHY I WAS CROSSING IT OUT?

17 Q. YES, SIR.

18 A. I DID.

19 Q. OKAY. SO, THE FIRST TIME YOU MIRANDIZED HIM AND
20 HE STARTED GIVING YOU A STATEMENT HE WAS CLEARLY
21 AWARE THAT HE WAS NOT UNDER ARREST AND WAS NOT
22 BEING CHARGED WITH MURDER?

23 A. YES, HE WAS.

24 Q. SO, HE REALLY DIDN'T HAVE ANY REASON TO TALK TO
25 YOU, RIGHT?

CROSS - JAMES M. HILL, JR., BY MR. PEPPER

649

1 A. HE CAN CHOOSE TO OR NOT TO.

2 Q. I MEAN, HE WASN'T IN ANY TROUBLE AT THAT POINT, HE
3 HADN'T BEEN CHARGED WITH ANYTHING, THERE WAS NO
4 REASON TO TELL YOU WHAT HE KNEW ABOUT THE CRIME,
5 WAS THERE?

6 A. I BELIEVE HE HAD INFORMATION RELATING TO THE
7 CRIME.

8 Q. RIGHT, BUT THERE WOULD BE NO BENEFIT TO HIM FOR
9 TELLING YOU WHAT HE KNEW ABOUT THE CRIME BECAUSE
10 HE WAS VERY CLEAR, BECAUSE YOU MADE IT CLEAR THAT
11 HE WASN'T UNDER ARREST, HE WASN'T BEING CHARGED
12 WITH MURDER, YOU JUST, YOU KNOW, WANTED TO TALK TO
13 HIM, RIGHT?

14 A. I JUST WANTED TO TALK TO HIM ABOUT WHAT OCCURRED,
15 CORRECT.

16 Q. WHEN YOU PRESSED HIM A LITTLE BIT, THEN HE SAID, I
17 NEED AN ATTORNEY, AND IT WAS VERY CLEAR THAT HE
18 SAID, I NEED AN ATTORNEY, CORRECT?

19 A. WHEN HE TOLD ME THAT HE WAS NOT PRESENT DURING THE
20 TIME THAT THE CRIME WAS COMMITTED, WAS NOWHERE
21 AROUND THERE, I INFORMED HIM THAT I HAD STATEMENTS
22 STATING DIFFERENT.

23 Q. NOW, HE ACTUALLY TOLD YOU THAT AND POSSIBLY OTHER
24 THINGS AFTER YOU MIRANDIZED HIM THE FIRST TIME, HE
25 TALKED TO YOU?

CROSS - JAMES M. HILL, JR., BY MR. PEPPER

650

1 A. YEAH, WE TALKED, YES, SIR.

2 Q. WHY DIDN'T YOU REDUCE IT TO WRITING?

3 A. BECAUSE WE WERE TALKING, I WANTED TO HEAR WHAT HE
4 HAD TO SAY. WHEN I INTERVIEW SOMEONE, SIR, I SIT
5 DOWN WITH THEM AND I TRY TO PERSONALIZE MYSELF
6 WITH THEM, I LEARN A LITTLE BIT ABOUT THEIR
7 BACKGROUND, AND THEN I ASK THEM ABOUT THE CRIME
8 THAT I'M INVESTIGATING, AND I LET THEM TELL ME
9 WHAT THEY WANT TO TELL ME. I LISTEN TO THEIR
10 STORY, AND IF I CAN, IF I HAVE SOMETHING TO PROVE
11 OR SAY DIFFERENT AS TO WHAT THEY'RE SAYING, THEN I
12 START QUESTIONING THEM ABOUT IT. AND THAT'S WHEN
13 HE ASKED FOR AN ATTORNEY.

14 Q. OKAY. SO, YOU TOLD HIM HE WAS NOT BEING CHARGED
15 WITH MURDER, AND THAT IF YOU HAVE ANYTHING TO TELL
16 ME ABOUT ANYTHING YOU KNOW NOW IS THE TIME TO DO
17 IT?

18 A. CORRECT.

19 Q. AND HE JUST SAID, I'M NOT CHARGED WITH MURDER, I
20 DON'T KNOW WHAT YOU'RE TALKING ABOUT, I WASN'T
21 THERE, AND OTHER THINGS, I MEAN, IS THAT YOUR
22 TESTIMONY?

23 A. YES, HE TOLD ME HE WASN'T PRESENT AT THE BUDGET
24 INN OR THE TRAVELERS LODGE, AND HAD NO KNOWLEDGE
25 OF THE CRIME.

CROSS - JAMES M. HILL, JR., BY MR. PEPPER

651

1 Q. ALRIGHT. BUT THEN YOU TOLD HIM, WELL, THAT'S
2 FUNNY, BECAUSE I HAVE TWO STATEMENTS FROM TWO CO-
3 DEFENDANTS SAYING THAT YOU COMMITTED THE MURDER.

4 A. I TOLD HIM THAT I HAD INFORMATION THAT HE WAS
5 PRESENT DURING THE TIME OF THE CRIME, I DON'T KNOW
6 IF I EXACTLY SAID THAT, YOU COMMITTED THE MURDER.

7 Q. DID YOU SHOW HIM THE STATEMENTS?

8 A. NO, I DID NOT.

9 Q. DID YOU REALLY HAVE THE STATEMENTS THERE?

10 A. YES, I DID.

11 Q. DID YOU TELL HIM WHAT THEY, DID YOU TELL HIM WHAT
12 THEY TOLD YOU IN THEIR STATEMENTS?

13 A. I DID NOT READ THEIR STATEMENTS TO HIM, NO, SIR.

14 Q. DID YOU TELL HIM WHO MADE THE STATEMENTS TO YOU?

15 A. NO, SIR, I DID NOT.

16 Q. YOU LEFT WHEN HE ASKED FOR AN ATTORNEY, CORRECT?

17 A. I DID.

18 Q. AND THAT'S STANDARD PROTOCOL, THAT'S THE LAW,
19 CORRECT?

20 A. CORRECT.

21 Q. ABOUT A MINUTE OR SO LATER MR. SIMMONS CAME BACK
22 OUT, THE GENTLEMAN THAT BROUGHT SHAWN THERE, AND
23 TOLD YOU THAT HE WANTED TO SPEAK TO YOU AGAIN,
24 CORRECT?

25 A. I BELIEVE IT WAS LONGER THAN A MINUTE BUT I'M NOT

CROSS - JAMES M. HILL, JR., BY MR. PEPER

652

1 SURE EXACTLY HOW LONG IT WAS.

2 Q. OKAY. AND AT THAT POINT, OR PRIOR TO, YOU
3 NOTIFIED SIMMONS THAT YOU HAD ENOUGH ON HIM TO GO
4 AHEAD AND CHARGE HIM WITH MURDER, CORRECT?

5 A. WHEN MR. SIMMONS CAME OUT OF THE ROOM AND
6 EXPRESSED TO ME THAT MR. PHILLIPS WOULD LIKE TO
7 TALK TO US MR. SIMMONS ASKED ME WHAT I WAS GOING
8 TO DO NEXT AND I TOLD HIM THAT I WAS GOING TO BE
9 CHARGING MR. PHILLIPS.

10 Q. ISN'T IT POSSIBLE THAT WHEN YOU LEFT THE ROOM
11 SIMMONS TOLD SHAWN, IF YOU DON'T TALK - - -

12 SOLICITOR RUTLEDGE DURANT:
13 OBJECTION, YOUR HONOR, THIS IS SPECULATION.

14 THE COURT: WHAT -- REPHRASE YOUR
15 QUESTION.

16 Q. WHEN YOU LEFT THE ROOM SIMMONS AND SHAWN WERE THE
17 ONLY TWO PEOPLE LEFT IN THERE, CORRECT?

18 A. YES, SIR.

19 Q. YOU KNEW THAT SIMMONS HAD BROUGHT SHAWN TO THE
20 POLICE STATION, CORRECT?

21 A. YES, I DID.

22 Q. YOU KNEW THAT HE HAD PROMISED HIS MOM HE WOULD
23 BRING HIM BACK, CORRECT?

24 A. I DID NOT KNOW THAT.

25 Q. OKAY. YOU KNEW THAT IF SHAWN WAS TO LEAVE ON HIS

CROSS - JAMES M. HILL, JR., BY MR. PEPER

653

1 OWN FREE WILL IT WOULD HAVE TO BE THROUGH SIMMONS,
2 CORRECT, THAT'S HOW HE GOT THERE?

3 A. I DID NOT KNOW HOW HE WAS GOING TO LEAVE, SIR.

4 Q. OKAY. IT'S POSSIBLE THAT WHEN -- OR LET ME ASK
5 YOU THIS, WHEN YOU WALKED OUT DID YOU INDICATE TO
6 SIMMONS OR PHILLIPS THAT YOU WOULD BE BACK AT ANY
7 POINT IN TIME?

8 A. I TOLD MR. SIMMONS AND MR. PHILLIPS I WOULD
9 RETURN, YES.

10 Q. YOU DID?

11 A. YES. I COULDN'T JUST LEAVE HIM IN THAT ROOM
12 SITTING THERE, SIR, WITHOUT TELLING HIM ANYTHING.

13 Q. WELL, I WOULD HOPE YOU WOULD. IF MY CLIENT ASKED
14 FOR AN ATTORNEY THE INTERVIEW IS OVER, - - -

15 A. CORRECT.

16 Q. --- HE'S FREE TO GO.

17 A. CORRECT. THE INTERVIEW WAS OVER.

18 Q. AND HE WAS FREE TO GO?

19 A. NO, WE WERE GOING TO EVALUATE WHAT WE HAD AND
20 DETERMINE WHETHER WE HAD ENOUGH PROBABLE CAUSE TO
21 ARREST MR. PHILLIPS. I HAD TO DISCUSS THAT WITH
22 OTHER DETECTIVES THAT WERE INVOLVED.

23 Q. DETECTIVE HILL, YOU TESTIFIED EARLIER THAT HE
24 WASN'T UNDER ARREST. IF SOMEBODY IS NOT UNDER
25 ARREST THEY'RE FREE TO LEAVE, CORRECT?

CROSS - JAMES M. HILL, JR., BY MR. PEPER

654

1 A. CORRECT.

2 Q. WHY DIDN'T YOU TELL HIM AFTER HE ASKED FOR AN
3 ATTORNEY, KNOWING HE WASN'T UNDER ARREST, THAT HE
4 WAS FREE TO LEAVE?

5 A. I DIDN'T TELL HIM.

6 Q. WHY NOT?

7 A. I DON'T KNOW. HE DIDN'T ASK TO LEAVE AND I DIDN'T
8 TELL HIM HE COULD LEAVE.

9 Q. BECAUSE YOU WERE REALLY UPSET THAT HE WOULDN'T
10 TELL YOU WHAT HE KNEW ABOUT THE CRIME, RIGHT?

11 A. NO, SIR.

12 Q. AND JUST TO CLARIFY, MR. SIMMONS CAME OUT A MINUTE
13 OR SO LATER AND SAID, COME ON, SHAWN, HE'S GOING
14 TO TALK, SHAWN WANTS TO TALK. IT WASN'T SHAWN
15 THAT CAME OUT, CORRECT?

16 A. IT WAS MR. SIMMONS THAT CAME OUT, YES, SIR.

17 Q. ALRIGHT. AND THEN, AS SOON AS HE SAID, SHAWN IS
18 READY TO TALK AGAIN, SIMMONS WAS OUT OF THERE?

19 A. YOU SAY, AS SOON AS. I MEAN, AFTER I TOLD MR.
20 SIMMONS WHAT MY INTENTIONS WERE, YES, HE LEFT.

21 Q. OKAY. SO, YOU DON'T KNOW FOR A FACT IF AS SOON AS
22 YOU TOLD SIMMONS, WE HAVE ENOUGH PROBABLE CAUSE TO
23 CHARGE HIM WITH MURDER, IF SIMMONS WENT BACK INTO
24 THE ROOM, OR HE LEFT, OR HE WENT AND GOT A GLASS
25 OF WATER AND THEN -- YOU DON'T KNOW?

CROSS - JAMES M. HILL, JR., BY MR. PEPER

655

1 A. MR. SIMMONS LEFT, HE DID NOT GO BACK INTO THE
2 ROOM, NO, I KNOW THAT FOR A FACT.

3 Q. WELL, YOU JUST TOLD ME THAT YOU DIDN'T KNOW WHAT
4 HE DID AFTER YOU TOLD HIM YOU WERE CHARGING HIM
5 WITH MURDER.

6 A. SIR, YOU'RE TRYING TO PUT A TIME FRAME ON ALL OF
7 THIS OCCURRENCE, AND I DON'T HAVE A TIME FRAME,
8 SIR.

9 Q. I'M NOT TRYING -- NO, HERE'S THE PROBLEM,
10 DETECTIVE HILL, I'M NOT TRYING TO PUT A TIME FRAME
11 ON IT, I'M TRYING TO MAKE THE JURY UNDERSTAND THAT
12 AS SOON AS YOU TOLD SIMMONS HE WAS GOING TO BE
13 CHARGED WITH MURDER SIMMONS WENT AND TOLD SHAWN,
14 YOU'RE GOING TO BE CHARGED WITH MURDER, YOU'D
15 BETTER START TALKING NOW. THAT COULD HAVE
16 HAPPENED, RIGHT?

17 A. NO.

18 SOLICITOR RUTLEDGE DURANT:

19 OBJECTION, YOUR HONOR, THIS IS SPECULATIVE.

20 THE COURT: OVERRULED.

21 Q. YOU GO BACK IN THERE WITH DETECTIVE GOMES,
22 CORRECT?

23 A. YES, I DID.

24 Q. AND YOU TELL SHAWN HE'S BEING CHARGED WITH MURDER,
25 CORRECT?

CROSS - JAMES M. HILL, JR., BY MR. PEPPER

656

1 A. DURING THE MIRANDA, WHEN WE GOT THROUGH THE WAIVER
2 PART, YES, I DID.

3 Q. OKAY. SO, YOU TELL HIM, THE FIRST TIME YOU WEREN'T
4 CHARGED WITH MURDER BUT NOW YOU'RE CHARGED WITH
5 MURDER, AND I'M GOING TO REREAD YOUR RIGHTS TO
6 YOU, AND YOU DID?

7 A. CORRECT.

8 Q. AND HE WAIVED THEM COMPLETELY VOLUNTARILY,
9 CORRECT?

10 A. WHEN I WENT INTO THE ROOM I MADE CONTACT WITH MR.
11 PHILLIPS. I WANTED TO INSURE THAT MR. PHILLIPS
12 WANTED TO TALK TO US. ONCE MR. PHILLIPS EXPRESSED
13 THAT HE DID, IN FACT, WANT TO TALK TO US, THAT'S
14 WHEN I STARTED RE-MIRANDIZING HIM, I WANTED TO
15 MAKE SURE THAT HE WAS INITIATING CONTACT WITH US
16 BEFORE I RE-MIRANDIZED HIM AND SPOKE TO HIM.

17 Q. YOU'RE MAKING THAT SOUND AWFULLY FORMAL. YOU
18 HEARD DETECTIVE GOMES TESTIFY, DIDN'T YOU?

19 A. YES, I DID.

20 Q. DETECTIVE GOMES JUST TESTIFIED THAT Y'ALL WALKED
21 IN AND SAID, DO YOU WANT TO TALK, HE SAID, YEAH,
22 AND Y'ALL SAT DOWN AND STARTED READING HIS RIGHTS
23 AND TOLD HIM HE WAS CHARGED WITH MURDER. YOU'RE
24 SAYING IT WAS A MUCH MORE FORMAL PROCESS?

25 A. I SAT DOWN WITH MR. PHILLIPS AND ASKED HIM, WOULD

CROSS - JAMES M. HILL, JR., BY MR. PEPER

657

1 YOU LIKE TO TALK TO US? MR. SIMMONS SAID YOU
2 WANTED TO TALK TO US. IS THAT, IN FACT, CORRECT?
3 HE SAID, YES, AND I SAID, WELL, I'M GOING TO HAVE
4 TO RE-MIRANDIZE YOU.

5 Q. OKAY. KNOWING HE'S BEEN CHARGED WITH MURDER,
6 KNOWING HIS RIGHTS, HE WAIVED THEM AND GAVE A
7 STATEMENT, CORRECT?

8 A. YES, HE DID.

9 Q. AND I'M ASSUMING, YOU BEING A GOOD DETECTIVE, YOU
10 WERE PRESENT DURING THE ENTIRE QUESTIONING BY
11 DETECTIVE GOMES OF MR. PHILLIPS?

12 A. WHILE MR. GOMES WAS TAKING MR. PHILLIPS'S
13 STATEMENT I PROBABLY WALKED IN AND OUT OF THE
14 ROOM, BUT I WAS THERE WHEN THE STATEMENT WAS
15 REREAD TO MR. PHILLIPS AND ASKED IF HE WANTED TO
16 ADD OR DELETE, AND I WITNESSED IT.

17 Q. OKAY. AND THAT'S THE MOST IMPORTANT PART, BECAUSE
18 MY CLIENT CAN'T READ OR WRITE. SO, HE WAS
19 BASICALLY HAVING TO TRUST GOMES TO REREAD BACK TO
20 HIM WHAT HIS STATEMENT WAS AND TRUST THAT WHAT WAS
21 ON THAT PAPER WAS REALLY WHAT PHILLIPS TOLD GOMES,
22 CORRECT? AND YOU WERE THERE FOR THAT?

23 A. YES.

24 Q. SO, YOU HEARD GOMES REREAD THE ENTIRE STATEMENT TO
25 SHAWN AND YOU HEARD SHAWN SAY, YES, THAT'S EXACTLY

1 WHAT HAPPENED?

2 A. I DID.

3 Q. AND THAT IS TRUE, AND THERE IS NO, IT HAS NOT BEEN
4 ALTERED BY YOU, DETECTIVE GOMES, THAT'S EXACTLY
5 WHAT I TOLD YOU TO WRITE DOWN, THAT'S EXACTLY WHAT
6 HAPPENED?

7 A. DETECTIVE GOMES WROTE IT EXACTLY HOW MR. PHILLIPS
8 WANTED IT TO BE WRITTEN, CORRECT.

9 Q. AND HE THEN SIGNED THE LINE THAT SAYS, "THE
10 FOREGOING STATEMENT IS TRUE. I HAD SOMEBODY READ
11 IT TO ME, IT HAS NOT BEEN ALTERED, IT IS TRUE TO
12 THE BEST OF MY KNOWLEDGE," SIGNATURE.

13 A. CORRECT, ALL THREE OF US SIGNED IT.

14 Q. AND HE PRINTED HIS SIGNATURE, SHAWN DID, CORRECT?

15 A. I BELIEVE HE WROTE HIS SIGNATURE IN CURSIVE ON THE
16 STATEMENT AND PRINTED IT ON THE MIRANDA RIGHTS.

17 Q. AND YOU SIGNED IT AS WELL?

18 A. I DID, YES, SIR.

19 Q. SO, IT WAS VERY CLEAR TO ALL THREE PARTIES THAT
20 WERE IN THERE THAT THIS IS EXACTLY WHAT PHILLIPS
21 HAD TOLD GOMES AND WHAT GOMES HAD WRITTEN DOWN,
22 CORRECT?

23 A. YES, SIR.

24 Q. OKAY. WERE YOU ABLE TO VERIFY ANY OF THE CO-
25 DEFENDANTS OR PERSONS OF INTEREST IN MR. PHILLIPS'

CROSS - JAMES M. HILL, JR., BY MR. PEPER

659

1 STATEMENT?

2 A. COULD YOU BE A LITTLE MORE SPECIFIC?

3 Q. DID YOU ASK SHAWN TO PICK OUT PEOPLE THAT HE
4 REFERRED TO IN HIS STATEMENT?

5 A. I DIDN'T, NO, SIR.

6 Q. WERE YOU PRESENT WHEN DETECTIVE GOMES DID?

7 A. I DON'T REMEMBER.

8 Q. LET ME SHOW YOU WHAT'S BEEN MARKED AS STATE'S --
9 BEAR WITH ME ONE SECOND.

10 A. YES, SIR.

11 MR. PEPER: I'M GOING TO NEED THIS
12 MARKED, IT'S NOT IN. RUTLEDGE, I'M GOING TO NEED THAT
13 MARKED AS A DEFENDANT'S EXHIBIT.

14 SOLICITOR RUTLEDGE DURANT: IT
15 SHOULD BE STATE'S TWENTY-NINE.

16 MR. PEPER: I HAVE THE STATEMENT BUT
17 I DON'T HAVE THE PHOTO LINEUP.

18 SOLICITOR RUTLEDGE DURANT: EXHIBIT
19 TWENTY-NINE.

20 MR. PEPER: I'M SORRY, YOU'RE
21 CORRECT. I'M SORRY ABOUT THAT.

22 Q. I'M GOING TO SHOW YOU WHAT'S BEEN MARKED AS
23 STATE'S EXHIBIT TWENTY-NINE.

24 A. YES, SIR.

25 Q. AND ASK YOU IF YOU RECOGNIZE THAT?

CROSS - JAMES M. HILL, JR., BY MR. PEPER

660

1 A. IT LOOKS LIKE A PHOTO LINEUP THAT DETECTIVE GOMES
2 SHOWED MR. PHILLIPS.

3 Q. ALRIGHT. AND THE PHOTO LINEUP, WHO IS THAT
4 REQUESTED BY?

5 A. MYSELF.

6 Q. OKAY. SO, SHAWN PHILLIPS IDENTIFIED PHOTO NUMBER
7 TWO AS L OR BROOKLYN, THAT IS WHO WAS INVOLVED IN
8 THE ROBBERY, SLASH, MURDER, CORRECT?

9 A. YES, SIR, HE DID.

10 Q. AND DID YOU HAVE HIM PICK OUT ANYBODY ELSE IN HIS
11 STATEMENT?

12 A. I SHOWED MR. PHILLIPS NO LINEUPS, SIR.

13 Q. DID YOU REQUEST ANY OTHER PHOTO LINEUPS BESIDES
14 THAT OF LENNIE MICKEY?

15 A. REQUEST, AS FAR AS, CAN YOU BE MORE SPECIFIC?

16 Q. WELL, YOU KNOW, THIS IS A PHOTO LINEUP OF SIX
17 GUYS, ONE OF WHICH IS LENNIE MICKEY, AND IT SAYS,
18 "REQUESTED BY HILL." SO, DID YOU REQUEST SANDRA
19 BARNES, B.G., CHINA DOLL, D, OR ANYBODY ELSE
20 LISTED IN SHAWN'S STATEMENT?

21 A. I DON'T REMEMBER WHETHER I SPECIFICALLY REQUESTED
22 IT OR ANOTHER DETECTIVE DID. I MEAN, IT'S JUST A
23 MATTER OF CALLING THE PERSON THAT PREPARES THEM
24 AND ASK THEM TO PREPARE IT.

25 Q. YOU WOULD WANT TO KNOW, OBVIOUSLY, IF THE PERSON

CROSS - JAMES M. HILL, JR., BY MR. PEPER

661

1 GIVING YOU HIS STATEMENT COULD PICK OUT WHO
2 THEY'RE REFERRING TO, CORRECT?

3 A. I KNEW WHO B.G. WAS AT THE TIME, I KNEW WHO ANGELA
4 WAS AT THE TIME, AND I KNEW WHO CHINA WAS AT THE
5 TIME.

6 Q. SO, YOU KNEW ALL THE PARTIES IN HIS STATEMENT WITH
7 THE EXCEPTION OF D, AND YOU DIDN'T THINK IT WOULD
8 BE PRUDENT TO ASK HIM TO PICK OUT D IN A LINEUP?

9 A. I DON'T EVEN THINK I HAD A PHOTO LINEUP OF D AT
10 THE TIME.

11 Q. WELL, YOU DID WHEN YOU GAVE SANDRA BARNES HER
12 STATEMENT, DIDN'T YOU?

13 A. DETECTIVE SPEARS AND DETECTIVE JOURDAN CONDUCTED
14 THE INTERVIEW OF SANDRA BARNES.

15 Q. LET ME REFRESH YOUR MEMORY HERE. SO, IS IT YOUR
16 TESTIMONY THAT YOU WEREN'T PRESENT WHEN SANDRA
17 BARNES GAVE HER STATEMENT?

18 A. I WAS NOT, I WENT IN THERE AFTER HER STATEMENT WAS
19 TAKEN, WHILE DETECTIVE SPEARS READ HER STATEMENT
20 TO HER, AND WITNESSED IT, I BELIEVE.

21 Q. OKAY.. THAT IS YOUR SIGNATURE ON THE BOTTOM OF HER
22 STATEMENT, CORRECT?

23 A. CORRECT.

24 Q. OKAY. AND DETECTIVE SPEARS YOU SAY, OR IS THAT
25 WHO ASKED SANDRA TO PICK OUT D?

CROSS - JAMES M. HILL, JR., BY MR. PEPER

662

- 1 A. SIR, I WASN'T IN SANDRA BARNES' INTERVIEW THE
2 ENTIRE TIME, I DON'T KNOW WHAT WAS SAID BETWEEN
3 DETECTIVE SPEARS AND SANDRA BARNES. I ONLY WENT
4 IN THERE AFTER HER NINE PAGE STATEMENT WAS TAKEN.
5 IT WAS READ BACK TO HER, AND I ASKED HER, IS THIS
6 YOUR STATEMENT, DO YOU WANT TO CHANGE, ADD OR
7 DELETE? AND I WITNESSED IT ALONG WITH DETECTIVE
8 SPEARS. I DON'T KNOW WHAT ALL WENT ON IN THE
9 INTERVIEW ROOM, I HAD OTHER TASKS THAT I WAS
10 DEALING WITH RELATING TO THIS CASE.
- 11 Q. DETECTIVE HILL, I KNOW YOU'RE FRUSTRATED, I KNOW
12 IT'S BEEN A LONG WEEK, BUT YOU ARE THE LEAD
13 DETECTIVE ON THIS CASE, CORRECT?
- 14 A. I AM THE LEAD DETECTIVE, YES, SIR.
- 15 Q. YOU'VE SAT RIGHT NEXT TO THE CHIEF PROSECUTORS THE
16 ENTIRE TRIAL, AND NOBODY KNOWS THIS CASE BETTER
17 THAN YOU, CORRECT?
- 18 A. I HOPE NOT.
- 19 Q. YOU KNOW SPEARS SHOWED SANDRA A PHOTO LINEUP,
20 DON'T YOU?
- 21 A. I KNOW PHOTO LINEUPS WERE SHOWN TO SANDRA, YES,
22 BUT YOU WERE ASKING WAS I PRESENT WHEN IT WAS
23 DONE, AND NO, SIR, I WAS NOT.
- 24 Q. THEN LISTEN MORE CAREFULLY TO MY QUESTION.
- 25 A. YES, SIR.

CROSS - JAMES M. HILL, JR., BY MR. PEPER

663

1 Q. YOU KNOW FOR A FACT THAT SPEARS OFFERED A PHOTO
2 LINEUP TO SANDRA BARNES, CORRECT?

3 A. I DID, YES, SIR.

4 Q. AND YOU KNOW THAT SHE PICKED OUT DOMINICK LAMAR
5 BALLOU AS D?

6 A. VERY AWARE, YES, SIR.

7 Q. AND IN SHAWN'S STATEMENT THAT YOU ADMINISTERED HE
8 TELLS YOU, D, MICKEY AND SANDRA WENT UP TO THE
9 HOTEL ROOM, ISN'T THAT WHAT HE SAYS IN HIS
10 STATEMENT?

11 A. I BELIEVE SO, YES, SIR.

12 MR. PEPER: THANK YOU, SIR.

13 THE COURT: REDIRECT?

14 (NOTE: Blank lines on this page do not indicate any
15 part of record has been omitted. Headers on testimony
16 pages and hard page breaks between testimony are now
17 required by the Court. See next ensuing page for
18 sequential continuation of record.)

REDIRECT-JAMES M. HILL, JR., BY SOL. RUTLEDGE DURANT

664

REDIRECT EXAMINATION OF JAMES M. HILL, JR.,

BY SOLICITOR RUTLEDGE DURANT:

Q. WHAT DAYS WERE SANDRA BARNES AND ALANA NIESEN
QUESTIONED?

A. I BELIEVE DECEMBER FOURTEENTH.

Q. DO YOU RECALL WHAT TIME OF THE DAY?

A. I'D HAVE TO LOOK AT THEIR STATEMENT.

Q. DO YOU RECALL IN RELATION TO THE DEFENDANT?

A. THEY WERE BEFORE THE DEFENDANT, YES.

Q. SO, YOU HAD SPOKEN TO THEM, OR THEY HAD BEEN
SPOKEN TO BEFORE THE DEFENDANT WAS SPOKEN TO?

A. YES, SIR.

Q. AND THEY GAVE YOU A STATEMENT?

A. YES, SIR.

Q. AND SO, YOU KNEW THEIR VERSIONS OF THE STORY?

A. YES, SIR.

Q. OF WHAT HAPPENED?

A. YES, SIR.

Q. AND WHEN YOU GOT SHAWN PHILLIPS'S STATEMENT WAS IT
THE SAME THING THAT SANDRA BARNES AND ALANA NIESEN
HAD TOLD YOU?

A. NO.

Q. HOW WAS IT DIFFERENT?

A. THERE WAS A MENTION OF THIS PERSON THAT
MYSTERIOUSLY WAS AT THE HOTEL THAT NOBODY ELSE HAD

REDIRECT-JAMES M.HILL, JR., BY SOL.RUTLEDGE DURANT

665

1 MENTIONED.

2 Q. WHO MENTIONED THE MYSTERIOUS PERSON?

3 A. MR. PHILLIPS.

4 Q. DID ALANA NIESEN MENTIONED THIS MYSTERIOUS PERSON?

5 A. NO, SIR.

6 Q. DID SANDRA BARNES MENTIONED THIS MYSTERIOUS
7 PERSON?

8 A. NO, SIR.

9 Q. WHAT DID SHAWN PHILLIPS SAY THIS MYSTERIOUS
10 PERSON'S NAME WAS?

11 A. D.

12 Q. DID ALANA NIESEN OR SANDRA BARNES SAY THAT HE WAS
13 FORCED AT GUN POINT BY LENNIE MICKEY TO GO DO THIS
14 STUFF?

15 A. NO.

16 Q. DID HE SAY THAT?

17 A. I'D HAVE TO LOOK AT HIS STATEMENT. I DON'T THINK
18 HE SAID HE WAS FORCED AT GUN POINT.

19 Q. WHAT DID HE SAY?

20 A. I'D HAVE TO READ HIS STATEMENT EXACTLY TO BE
21 HONEST. DO YOU WANT ME TO READ THE WHOLE
22 STATEMENT?

23 Q. NO, YOU DON'T NEED TO READ THE WHOLE STATEMENT.

24 A. HE JUST MENTIONS THAT L WAS HOLDING A GUN AND TOLD
25 HIM TO COME ON.

REDIRECT-JAMES M. HILL, JR., BY SOL. RUTLEDGE DURANT

666

1 Q. DID HE SAY THAT HE WENT VOLUNTARILY OR DID HE SAY
2 THAT HE WAS FORCED?

3 A. HE DIDN'T SAY EITHER WAY.

4 Q. DID HE SAY HE WAS UNDER DURESS?

5 A. NO, SIR.

6 Q. SANDRA BARNES, DID SHE IDENTIFY DOMINICK BALLOU AS
7 THE PERSON, AS D?

8 A. SHE DID.

9 Q. ARE YOU AWARE OF WHAT HAPPENED AFTER THAT?

10 A. AFTER SHE - - -

11 Q. AFTER SHE IDENTIFIED THIS PERSON AS THE PERSON SHE
12 KNOWS AS D?

13 A. YES.

14 Q. WHAT DID SHE DO AFTER THAT?

15 A. AFTER SHE DID THAT MR. PHILLIPS WAS PLACED INTO AN
16 INTERVIEW ROOM THAT HAS A TWO WAY MIRROR, AND I
17 ASKED DETECTIVE JOURDAN COULD HE PLEASE WALK MS.
18 BARNES INTO THE ROOM AND SEE IF SHE RECOGNIZES THE
19 INDIVIDUAL IN THE ROOM.

20 Q. DO YOU KNOW WHO SHE RECOGNIZED?

21 A. SHE WAS LOOKING AT SHAWN PHILLIPS. AND I BELIEVE
22 SHE TOLD DETECTIVE JOURDAN THAT THAT WAS D.

23 Q. TELL ABOUT THE INTERVIEW TACTICS, DO YOU INTERVIEW
24 A LOT OF SUSPECTS?

25 A. YES, SIR.

REDIRECT-JAMES M. HILL, JR., BY SOL. RUTLEDGE DURANT

667

1 Q. AS A DETECTIVE, AND THERE ARE WAYS TO INTERVIEW
2 THEM, THERE ARE TECHNIQUES, RIGHT?

3 A. YES, SIR.

4 Q. AND WOULD YOU TELL THE JURY SOME OF THESE
5 TECHNIQUES, BECAUSE DEFENDANTS OR SUSPECTS ARE NOT
6 ALWAYS WILLING TO JUST COME RIGHT OUT AND JUST
7 TELL YOU EVERYTHING, ARE THEY?

8 A. NO, THEY'RE NOT.

9 Q. SO, DO YOU HAVE TACTICS?

10 A. YEAH, I GENERALLY START MY INTERVIEW OUT BY ASKING
11 THEM, YOU KNOW, - - -

12 Q. BUT FIRST OF ALL, DO YOU THREATEN THEM IN ANY WAY?

13 A. NO, SIR.

14 Q. DO YOU PROMISE ANYTHING, OFFER THEM ANY LENIENCY
15 OR REWARD?

16 A. NO, SIR.

17 Q. TELL THE JURY ABOUT SOME OF YOUR TACTICS, WHAT ARE
18 COMMON TACTICS WHEN SUSPECTS COME AND TALK TO YOU?

19 A. I GENERALLY SIT DOWN WITH AN INDIVIDUAL, ASK THEM
20 A LITTLE BIT ABOUT THEIR PERSONAL BACKGROUND,
21 FAMILY, CHILDREN, WHERE THEY'RE FROM, TRY TO GET
22 TO KNOW THEM A LITTLE BETTER SO WHEN I START MY
23 QUESTIONING ABOUT THE PARTICULAR INCIDENT I'M
24 INTERVIEWING THEM ABOUT I'LL KNOW A LITTLE BIT
25 ABOUT THEIR HISTORY. AND THEN, I GENERALLY TELL

1 THEM WHAT I'M INVESTIGATING AND LET THEM TELL ME
2 WHAT THEY WANT TO TELL ME, AND IF I HAVE
3 STATEMENTS OR EVIDENCE OR WHATEVER I MAY HAVE THAT
4 EITHER CORROBORATES OR DOES NOT CORROBORATE WHAT
5 THEY'S SAYING THEN I START BRINGING THAT OUT IN MY
6 QUESTIONING TO SEE IF IT CHANGES THEIR STORY.

7 Q. IS A SUSPECT MORE -- IN YOUR EXPERIENCE IS A
8 SUSPECT MORE WILLING TO TALK TO YOU IF THEY'RE
9 FORMALLY CHARGED WITH A CRIME, DOES THAT MAKE A
10 DIFFERENCE?

11 A. I DON'T THINK IT DOES, SOMETIMES IT DOES, BUT IN
12 GENERAL SPEAKING EITHER THEY'RE GOING TO TALK TO
13 YOU OR THEY'RE NOT.

14 Q. WELL, THE TESTIMONY IN THIS CASE IS THAT SHAWN
15 PHILLIPS WASN'T UNDER ARREST WHEN YOU FIRST
16 STARTED TALKING TO HIM?

17 A. CORRECT.

18 Q. WAS THAT A TACTIC OR WAS IT BECAUSE YOU JUST
19 DIDN'T KNOW IF YOU HAD ENOUGH INFORMATION TO
20 ARREST HIM AT THAT POINT?

21 A. I WANTED TO SEE IF MR. PHILLIPS WAS GOING TO BE
22 TRUTHFUL AND FORTHCOMING ABOUT HIS KNOWLEDGE,
23 BASED ON THE STATEMENTS I HAD, AND HE WASN'T.

24 Q. AND AT THAT POINT WHAT DID YOU DO, WHEN HE ASKED
25 FOR AN ATTORNEY YOU WALKED OUT OF THE ROOM?

REDIRECT-JAMES M. HILL, JR., BY SOL. RUTLEDGE DURANT

669

1 A. CORRECT.

2 Q. AND IS THAT WHEN YOU STARTED TO THINK ABOUT, DO WE
3 HAVE ENOUGH - - -

4 A. CORRECT.

5 Q. --- TO ARREST HIM FOR MURDER?

6 A. WE SAT DOWN AS A GROUP AND DISCUSSED WHETHER WE
7 HAD ENOUGH PROBABLE CAUSE TO DO THE APPROPRIATE
8 ARREST FORMS.

9 Q. AND WHEN DID THIS EVIDENCE COME INTO YOUR HANDS
10 ABOUT SHAWN PHILLIPS, WAS IT THE STATEMENTS FROM
11 EARLIER THAT DAY?

12 A. YES, SIR.

13 Q. SO, YOU GOT MOST OF YOUR EVIDENCE THAT DAY?

14 A. CORRECT.

15 Q. SO, YOU WENT OUT IN THE HALL AND YOU THOUGHT ABOUT
16 ALL THIS STUFF, AND YOU SAID, WE'VE GOT ENOUGH?

17 A. YES, SIR.

18 Q. SO, YOU WENT BACK IN AND YOU SAID, YOU'RE UNDER
19 ARREST FOR MURDER?

20 A. YES, I DID.

21 Q. AND IS IT AT THAT POINT THAT HE SAID, I DO WANT TO
22 TALK TO YOU, IS THAT RIGHT?

23 A. YES.

24 Q. AND HE TELLS YOU HIS SIDE OF THE STORY?

25 A. CORRECT.

REDIRECT-JAMES M.HILL, JR., BY SOL.RUTLEDGE DURANT

670

1 Q. BUT IT DIDN'T MATCH UP EXACTLY LIKE ALANA AND
2 SANDRA TOLD YOU, RIGHT?

3 A. CORRECT.

4 Q. IT WAS A LITTLE DIFFERENT?

5 A. CORRECT.

6 Q. YOU WROTE IT DOWN, NONETHELESS, OR IT WAS WRITTEN
7 DOWN, RIGHT?

8 A. SERGEANT GOMES WROTE IT DOWN, YES, SIR.

9 SOLICITOR RUTLEDGE DURANT: THANK
10 YOU, SIR.

11 THE COURT: RECROSS.

12 (NOTE: Blank lines on this page do not indicate any
13 part of record has been omitted. Headers on testimony
14 pages and hard page breaks between testimony are now
15 required by the Court. See next ensuing page for
16 sequential continuation of record.)

RECROSS - JAMES M. HILL, JR., BY MR. PEPER

671

RECROSS-EXAMINATION OF JAMES M. HILL, JR.,

BY MR. PEPER:

Q. IT MATCHES EVERYBODY ELSE'S STATEMENT WITH THE EXCEPTION THAT SHAWN TELLS YOU L FORCED HIM TO STAY IN THE CAR, FORCED HIM TO GO THERE, AND NONE OF THAT COULD HAVE BEEN IN ANYBODY ELSE'S STATEMENT, COULD IT HAVE BEEN?

A. HE SAYS THAT L TOLD HIM TO STAY IN THE CAR, HE DOESN'T USE THE WORD, FORCED, I DON'T THINK. HE SAYS, "ONCE I PARKED, L AND B.G. GOT OUT, L TOLD ME TO STAY IN THE CAR, AND I'D BETTER NOT LEAVE."

Q. "AND I'D BETTER NOT LEAVE." AND ON PAGE FOUR, HE SAYS THAT, "L LOOKED AT ME WHILE HE WAS HOLDING A GUN IN HIS HAND AND TOLD ME TO COME WITH HIM. I THOUGHT, I KNOW THAT IF I DIDN'T GO WITH HIM HE WAS GOING TO SHOOT ME." CORRECT?

A. YES, HE DID SAY THAT.

Q. OKAY. NOW, NOBODY ELSE COULD HAVE HAD THAT IN THEIR STATEMENT BECAUSE NOBODY ELSE WAS THERE BESIDES LENNIE MICKEY, WHO WE DON'T HAVE, D, WHO WE DON'T HAVE, AND SANDRA BARNES, WHO SAID, D WAS THERE. HER STATEMENT DOES MATCH SHAWN'S, DOESN'T IT?

A. SHE SAYS, D, SHE USES D.

Q. YEAH. THE ONLY OTHER PERSON THAT KNOWS ANYTHING

1 ABOUT WHAT HAPPENED IN THAT CAR AND AT THE BUDGET
2 INN PUTS D AT THE CRIME SCENE?

3 A. SHE DOESN'T PUT D BEING WALKED UP TO AT THE BUDGET
4 INN.

5 Q. OKAY. SHE ALSO SAID SHE TOLD DETECTIVE SPEARS A
6 LOT OF THINGS THAT SPEARS DIDN'T WRITE DOWN,
7 DIDN'T SHE?

8 A. SHE DID SAY THAT.

9 Q. SHE DID SAY THAT. A COUPLE MORE THINGS. HOW COME
10 NOBODY ELSE WAS GIVEN MORE THAN ONE CHANCE TO PICK
11 OUT CO-DEFENDANTS IN THE LINEUP?

12 A. CAN YOU BE MORE SPECIFIC?

13 Q. I'D BE HAPPY TO.

14 A. THANK YOU.

15 Q. WHEN YOU INTERVIEWED CHINA SHE WAS ABLE TO PICK
16 OUT LENNIE MICKEY, CORRECT?

17 A. I BELIEVE SO.

18 Q. SHE WAS ABLE TO PICK OUT ANGELA AGAGAS, CORRECT?

19 A. UH-HUH.

20 Q. AND SHE WAS ABLE TO PICK OUT SANDRA BARNES,
21 CORRECT?

22 A. I CAN LOOK, I CAN'T REMEMBER WHETHER SHE DID OR
23 SHE DIDN'T ON THAT ONE.

24 Q. AT ANY POINT IN TIME DID YOU OFFER OR GIVE HER A
25 CHANCE TO GO DO ANOTHER ONE AND PICK OUT MAYBE

RECROSS - JAMES M. HILL, JR., BY MR. PEPPER

673

1 SOMEBODY ELSE?

2 A. NO.

3 Q. YOU JUST TOOK HER WORD THAT WHEN SHE PICKED THAT
4 PERSON OUT THAT'S WHO SHE SAW, AND AFTER ALL, THE
5 NAME MATCHED UP, YOU KNEW EXACTLY WHO SHE WAS
6 TRYING TO PICK OUT, AND SHE WAS, SHE GOT IT RIGHT,
7 RIGHT?

8 A. CORRECT.

9 Q. WHEN YOU INTERVIEWED ANGELA SHE WAS THREE FOR
10 THREE AGAIN, SHE PICKED THEM RIGHT OUT, YOU WERE
11 SATISFIED, YOU MOVED ON?

12 A. SHE PICKED OUT WITNESSES, OR SUSPECTS, YES.

13 Q. SHE PICKED OUT THE CORRECT SUSPECTS, RIGHT? SHE
14 PICKED OUT THE ONES YOU WANTED HER TO PICK OUT?

15 A. SHE DID, BUT SHE WAS ALSO PROTECTING MR. PHILLIPS.

16 Q. THEN THERE WAS B.G., THE ONLY OTHER PERSON AT, OR
17 INSIDE THE VEHICLE, AND SHE WAS O FOR ONE, WASN'T
18 SHE?

19 A. SHE PICKED OUT DOMINICK BALLOU WHEN SHE WAS SHOWN
20 THAT PICTURE AS D, YES.

21 Q. AND YOU WERE NOT GOING TO STAND FOR THAT BECAUSE
22 YOU KNEW THAT DOMINICK LAMAR BALLOU WASN'T WHO YOU
23 WANTED HIM TO BE, WAS HE?

24 A. I DIDN'T BELIEVE DOMINICK BALLOU HAD ANYTHING TO
25 DO WITH IT, I KNEW THAT BASED ON THE INVESTIGATION

1 THAT WAS GOING ON THAT SHAWN PHILLIPS WAS AGAGAS'S
2 BOYFRIEND, AND SANDRA WAS SAYING THAT SHE BELIEVED
3 THAT THEY WERE A COUPLE.

4 Q. SANDRA PICKED OUT THE PERSON THAT SHE REFERS TO AS
5 D IN HER STATEMENT AS DOMINICK LAMAR BALLOU,
6 CORRECT?

7 A. SHE DID.

8 Q. SO, I'M ASSUMING THERE WAS SOME TIME IN BETWEEN
9 WHEN SHE PICKED OUT DOMINICK LAMAR BALLOU AS D AND
10 WHEN YOU MADE HER GO INTO A ROOM WITH A TWO WAY
11 MIRROR AND PICK OUT, AND TRY TO PICK OUT D AGAIN,
12 EVEN THOUGH SHE HAD ALREADY PICKED OUT D, SOME
13 TIME PERIOD BETWEEN THERE?

14 A. I DON'T KNOW WHAT YOU'RE SAYING.

15 Q. WELL, GOMES TESTIFIED THAT HE WENT AND TOLD YOU,
16 SHE'S PICKED OUT DOMINICK LAMAR BALLOU AS D, AND
17 YOU SAID, WELL, BRING HER IN HERE, I'VE GOT
18 PHILLIPS IN HERE, SEE IF SHE KNOWS, SEE IF --
19 LET'S GIVE HER ANOTHER CHANCE.

20 A. IT WAS ACTUALLY DETECTIVE JOURDAN THAT CAME TO ME
21 AND SHOWED ME THE PICTURE OF DOMINICK AND I ASKED
22 DETECTIVE JOURDAN IF HE'D TAKE MS. BARNES IN THE
23 OBSERVATION AREA AND SEE IF SHE KNEW WHO WAS
24 SITTING IN THAT ROOM. I DIDN'T TELL HER ANYTHING.
25 I DIDN'T SPEAK WITH HER, I ASKED DETECTIVE JOURDAN

RECROSS - JAMES M. HILL, JR., BY MR. PEPER

675

1 TO DO THAT FOR ME.

2 Q. OKAY. BUT YOU KNEW SHE HAD PICKED OUT DOMINICK
3 LAMAR BALLOU AS D?

4 A. I DID.

5 Q. WAS ANYBODY ELSE ON THE OTHER SIDE OF THAT MIRROR
6 BESIDES SHAWN PHILLIPS?

7 A. THERE WAS NOT.

8 Q. HOW DO YOU EXPLAIN THAT TO THE JURY?

9 A. I SIMPLY WANTED TO KNOW IF SHE KNEW HIM.

10 Q. IN YOUR REPORT, YOUR SUPPLEMENTAL REPORT, YOU
11 VERIFIED THAT BY PUTTING IN THERE THAT SANDRA
12 BARNES WAS INTERVIEWED, SHE ADMITTED HER
13 INVOLVEMENT, AND FURTHER IDENTIFIED DEFENDANTS
14 INVOLVED IN THE ROBBERY AND MURDER OF THE VICTIM,
15 CORRECT?

16 A. IF I COULD SEE MY SUPPLEMENT. THANK YOU. YES.

17 Q. YOU DON'T PUT IN THERE ANYTHING ABOUT, SHE
18 IDENTIFIED D AS DOMINICK LAMAR BALLOU AND THEN I
19 MADE HER GO TRY AGAIN AND SHE PICKED OUT SHAWN
20 PHILLIPS, DID YOU?

21 A. NO, I DID NOT.

22 MR. PEPER: THANK YOU.

23 THANK YOU, JUDGE.

24 THE COURT: THANK YOU, SIR, YOU MAY

25 STEP DOWN.

1 YOU MAY CALL YOUR NEXT WITNESS.

2 SOLICITOR RUTLEDGE DURANT: YOUR
3 HONOR, AT THIS TIME THE STATE RESTS ITS CASE.

4 THE COURT: ALRIGHT, LADIES AND
5 GENTLEMEN, THE STATE HAS OFFERED ALL OF THE TESTIMONY
6 AND EVIDENCE THEY'RE GOING TO OFFER AT THIS TIME IN THIS
7 CASE. WE NEED TO TAKE UP A COUPLE OF MATTERS OF LAW, SO
8 I'M GOING TO ASK YOU TO STEP INTO YOUR JURY ROOM.
9 PLEASE, WE'LL BE A FEW MINUTES, BUT WE'LL TRY NOT TO
10 KEEP YOU BACK THERE ANY LONGER THAN ABSOLUTELY
11 NECESSARY. PLEASE DO NOT TALK ABOUT THE CASE.

12 (Whereupon, the jury retires
13 to the jury room and the following
14 takes place out of the presence
15 of the jury.)

16 THE COURT: ANY MOTIONS?

17 MR. PEPER: YOUR HONOR, MY CLIENT
18 HAS BEEN CHARGED WITH MURDER, ARMED ROBBERY, AND
19 CONSPIRACY. WITH REGARDS TO THE CONSPIRACY, I DON'T
20 BELIEVE I'VE HEARD ANY EVIDENCE WITH REGARDS TO AN
21 AGREEMENT, AN AGREEMENT MADE BETWEEN MY CLIENT AND
22 SANDRA BARNES AND LENNIE MICKEY, AND POSSIBLY D WHO WERE
23 IN THIS VEHICLE TOGETHER. THERE'S BEEN TESTIMONY FROM
24 WITNESSES THAT THEY LEFT THE ROOM AND GOT INTO A CAR.
25 THERE'S TESTIMONY FROM SANDRA BARNES THAT SHE KNEW SHE

1 WAS GOING TO DO A ROBBERY, THAT LENNIE MICKEY KNEW THAT
2 SHE WAS GOING TO DO A ROBBERY, BUT SHE NEVER SAYS THAT
3 SHAWN KNEW, SPOKE OF OR AGREED TO COMMITTING ANY SORT OF
4 CRIME. THE STATUTE IS VERY CLEAR, THE ELEMENT HAS TO BE
5 THAT THERE WAS AN AGREEMENT BY TWO OR MORE PEOPLE.
6 CHINA SAYS, SHAWN DIDN'T TALK THE ENTIRE NIGHT, NEVER
7 SAID A WORD. ANGELA TESTIFIES THAT SHE WAS BY HERSELF
8 GETTING HIGH. SHE DOESN'T KNOW WHERE THEY WENT. SHE
9 CERTAINLY NEVER HEARD SHAWN AGREE TO COMMIT ANY CRIME.
10 BASED ON THAT, YOUR HONOR, I DON'T THINK THE STATE'S MET
11 THEIR BURDEN OF PROOF WITH REGARDS TO A CONSPIRACY.

12 WITH REGARDS TO THE ARMED ROBBERY,
13 YOUR HONOR, THE ONLY EVIDENCE OR TESTIMONY, WE DON'T
14 HAVE THE EVIDENCE, THE TESTIMONY THAT HAS COME IN WITH
15 REGARDS TO THERE BEING AN ARMED ROBBERY IS FROM SANDRA
16 BARNES. SANDRA BARNES, WHO WAS IN THE VEHICLE WITH THE
17 OTHER PEOPLE THAT COMMITTED THE ARMED ROBBERY,
18 IDENTIFIES THE INDIVIDUAL THAT PARTOOK IN THAT ARMED
19 ROBBERY AS LENNIE MICKEY AND D. WHEN ASKED TO PICK OUT
20 WHO D WAS SHE PICKED OUT DOMINICK LAMAR BALLOU, WHO
21 CLEARLY IS NOT MY CLIENT. YOUR HONOR, THERE'S ALSO BEEN
22 TESTIMONY THAT THE ONLY PERSON THAT HAD A GUN AT ANY
23 POINT DURING THE NIGHT OR DAY WAS LENNIE MICKEY. NO
24 TESTIMONY HAS SHOWN, NO EVIDENCE HAS SHOWN THAT MY
25 CLIENT TOOK ANYTHING FROM THE VICTIM OR EVEN FOR THAT

1 MATTER PARTICIPATED IN THE CRIME. THE ELEMENTS SIMPLY
2 HAVE NOT BEEN MET, YOUR HONOR. THE BURDEN OF PROOF IS,
3 THEY HAVE TO PROVE BEYOND A REASONABLE DOUBT THAT THIS
4 EVEN OCCURRED. THEY HAVEN'T PROVED ANY KNOWLEDGE THAT
5 AN ARMED ROBBERY WAS GOING TO TAKE PLACE; THEREFORE, THE
6 MENS REA IS NOT THERE. CHINA TESTIFIES THAT BROOKLYN
7 WAS ACTING ALL CRAZY WAVING A GUN IN THE AIR. SHAWN IN
8 HIS STATEMENT SAYS, WE'RE EITHER GOING TO GO GET SOME
9 MONEY OR I'M GOING TO START SHOOTING PEOPLE AROUND HERE.
10 THAT'S NOT AN AGREEMENT BETWEEN THE CO-DEFENDANTS AND MY
11 CLIENT. THAT DOESN'T GIVE MY CLIENT THE MINIMAL MENS
12 REA TO AGREE, PARTAKE OR FURTHER ANY SORT OF CRIMINAL
13 ACTIVITIES.

14 WITH REGARDS TO A MURDER, YOUR
15 HONOR, WE ONLY HAVE TWO REQUIREMENTS. WE KNOW SOMEBODY
16 DIED, BUT WE DON'T KNOW WHO KILLED HIM. THE STATE IN
17 ITS OPENING STATEMENT SAID, WE DON'T KNOW WHO THE
18 TRIGGER MAN WAS. WE CERTAINLY HAVE ANY EVIDENCE OR
19 TESTIMONY THAT THERE WAS MALICE. WE HAVE HEARD FROM NOT
20 A SINGLE PERSON THAT CAN PUT A GUN IN MY CLIENT'S HAND,
21 THAT CAN PUT SHAWN PHILLIPS IN THE CAR, THAT COULD PUT
22 SHAWN PHILLIPS IN THE HOTEL ROOM. WE DON'T HAVE A
23 SINGLE WITNESS'S TESTIMONY OR EVIDENCE OTHERWISE THAT A
24 MURDER WAS EVEN COMMITTED BY EITHER MY CLIENT, LENNIE
25 MICKEY, SANDRA BARNES, ANYBODY INVOLVED IN THIS CASE,

1 NO EYE WITNESSES, NO TESTIMONY, NO EVIDENCE, NO DNA, NO
2 FINGERPRINTS. WE JUST HAVE A THEORY BY THE STATE THAT
3 THEY INTENDED TO COMMIT A FELONY AND THROUGH THAT FELONY
4 MURDERED SOMEONE. A THEORY IS ALL GOOD AND WELL BUT
5 THAT'S NOT THE BURDEN OF PROOF, YOUR HONOR. THERE
6 CLEARLY IS NO MALICE AFORETHOUGHT HERE PRESENT. CHINA,
7 ALANA NIESEN TESTIFIES THAT BROOKLYN'S VIOLENT,
8 THREATENING, DOMINATING DEMEANOR SUPPORTS OUR ARGUMENT
9 THAT THERE WAS NO MENS REA ON MY CLIENT'S BEHALF. HE
10 DIDN'T HAVE A CHOICE. THERE'S MENS REA FOR LENNIE, BUT
11 LENNIE'S NOT ON TRIAL. AGAIN, EVERYONE PUTS THE GUN IN
12 BROOKLYN'S HANDS, EVERYONE PUTS IT IN LENNIE'S HAND
13 WAVING IT AROUND THE NIGHT OF THE INCIDENT, AND IT
14 CLEARLY CREATES A SITUATION WHERE THEY FAILED TO PROVE
15 THAT MENS REA EXISTED WITH REGARDS TO SHAWN PHILLIPS.
16 ANYONE ON EARTH COULD HAVE ENTERED THAT ROOM AND SHOT
17 HIM AFTER LENNIE MICKEY, D, AND SANDRA BARNES LEFT.
18 SHAWN ADMITS IN HIS STATEMENT HE WAS IN THE CAR THE
19 WHOLE TIME. HE NEVER WENT TO HIS ROOM, THE ONLY
20 TESTIMONY THAT PUTS HIM THERE IS FROM SANDRA BARNES, AND
21 SHE DOESN'T EVEN PUT MY CLIENT THERE, SHE PUTS D THERE.

22 WITH REGARDS TO THE OTHER WITNESSES,
23 THEY WEREN'T EVEN THERE, THEY HAVE NO IDEA WHETHER THEY
24 WERE GOING TO COMMIT AN ARMED ROBBERY, A MURDER, GO TO
25 THE STORE, GO TO DINNER. THERE WAS TALK THAT PEOPLE

1 WANTED TO COMMIT A ROBBERY. THERE WAS TALK THAT, I'LL
2 SET SOMETHING UP FOR YOU, BUT I AIN'T DOING IT. BUT THE
3 TWO PEOPLE THAT STAYED BEHIND, ONCE THAT DOOR CLOSED
4 THEY HAVE NO IDEA WHERE THOSE THREE OR FOUR INDIVIDUALS
5 WENT.

6 YOUR HONOR, BASED ON THE TESTIMONY
7 YOU'VE HEARD OVER THE LAST THREE DAYS, ALONG WITH THE
8 EVIDENCE THAT'S BEEN SUBMITTED, WE WOULD ASK THE COURT
9 TO BRING A DIRECTED VERDICT AGAINST NOT ONLY THE
10 CONSPIRACY CHARGE, BUT PARTICULARLY THE ARMED ROBBERY
11 AND THE FELONY MURDER.

12 THANK YOU, JUDGE.

13 THE COURT: WELL, I FIND, BASED ON
14 THE EVIDENCE VIEWED IN THE LIGHT MOST FAVORABLE TO THE
15 STATE THERE IS SUFFICIENT EVIDENCE INDIRECTLY TO SUPPORT
16 A CONVICTION OF ALL THREE OF THE CHARGES, ON EACH
17 ELEMENT OF ALL THREE OF THE CHARGES. IT JUST SIMPLY
18 DEPENDS UPON WHAT THE JURY BELIEVES WHEN THEY BEGIN
19 THEIR DELIBERATIONS.

20 MR. PEPER: THANK YOU, YOUR HONOR.

21 THE COURT: ANY OTHER MOTIONS?

22 MR. PEPER: JUDGE, I THINK WE'RE
23 GOING TO HAVE TO -- I INTEND TO CALL MR. FERGUSON SO I
24 THINK WE'RE GOING TO HAVE SOME ISSUES THERE IF YOU
25 WANTED TO DO AN IN CAMERA HEARING WITH THEM. I ALSO

1 ANTICIPATE CALLING THE DEFENDANT'S SISTER WHO NOTIFIED
2 ME ABOUT TEN O'CLOCK LAST NIGHT THAT SHE HAS SOME
3 EXTREME BENEFICIAL INFORMATION WITH REGARDS TO LENNIE
4 MICKEY'S DOMINEERING ATTITUDE OVER SHAWN THAT DIRECTLY
5 INVOLVES HER THAT SHE HAS DIRECT PERSONAL KNOWLEDGE OF.
6 I POSSIBLY WOULD LIKE TO CALL LEWIS ANDERSON WHO HIS
7 ATTORNEY'S HERE. I DON'T KNOW IF HE'S GOING TO PLEAD
8 THE FIFTH, HE WAS AGAIN ROOMING WITH THE CO-DEFENDANT,
9 LENNIE MICKEY, WHEN LENNIE MICKEY ADMITTED TO HIM THAT
10 HE COMMITTED THIS CRIME AND WANTED TO PIN IT ON SHAWN.

11 ATTORNEY MICHELLE SUGGS: LEWIS
12 ANDERSON DOES NOT WISH TO TESTIFY.

13 THE COURT: MA'AM?

14 ATTORNEY MICHELLE SUGGS: LEWIS
15 ANDERSON DOES NOT WISH TO TESTIFY, HE WOULD TAKE THE
16 FIFTH.

17 THE COURT: WELL, HE'LL HAVE TO TAKE
18 THE STAND TO TAKE THE FIFTH.

19 ATTORNEY MICHELLE SUGGS: HE'LL TAKE
20 THE STAND BUT HE WILL TAKE THE FIFTH.

21 THE COURT: MA'AM?

22 ATTORNEY MICHELLE SUGGS: AS HIS
23 QUALIFIED DEFENSE ATTORNEY, HE WILL TAKE THE FIFTH.

24 THE COURT: WELL, I THINK HE HAS TO
25 DO THAT, I MEAN, I DON'T THINK I CAN JUST HIS WORD FROM

1 YOU. AND YOU'RE HIS ATTORNEY, YOUR NAME, PLEASE?

2 ATTORNEY MICHELLE SUGGS: MICHELLE
3 SUGGS. JUDGE, I WOULD HAVE BEEN -- I DIDN'T GET NOTICE
4 UNTIL NINE:THIRTY THIS MORNING THAT HE HAD EVEN BEEN
5 SUBPOENAED. I HAD NO IDEA HE WAS DRIVING FROM THE JAIL.
6 I DON'T BELIEVE, MY UNDERSTANDING OF THE CASE LAW IS
7 THAT MR. PEPER CAN CALL HIM SOLELY FOR HIM TO EXERCISE
8 HIS FIFTH AMENDMENT RIGHTS.

9 THE COURT: WELL, ULTIMATELY WHETHER
10 HE'S ENTITLED TO EXERCISE HIS FIFTH AMENDMENT RIGHTS IS
11 A DECISION FOR THE COURT, NOT HIS DECISION. AND I THINK
12 THERE'S A RECENT CASE THAT SPEAKS TO THAT VERY CLEARLY
13 CALLED, CRAMER VERSUS WHO, SOMEBODY, THE STATE, WELL,
14 IT'S A CIVIL CASE OUT OF BEAUFORT, BUT IT DEALT WITH THE
15 ABILITY TO TAKE THE FIFTH. NUMBER ONE, IT HAS TO BE
16 THAT THE TESTIMONY THAT'S TRYING TO BE ELICITED WOULD BE
17 INCRIMINATING; AND NUMBER TWO, THAT THERE'S A REASONABLE
18 POSSIBILITY THAT HE WOULD BE PROSECUTED FOR THAT
19 TESTIMONY, AND THAT'S A DECISION TO BE MADE BY THE
20 COURT. SO, I THINK HE'S GOT TO TAKE THE STAND AND SEE
21 WHAT QUESTIONS THE COUNSEL ASKS HIM BEFORE -- I MEAN, I
22 JUST, THAT'S THE WAY WE WILL HAVE TO PROCEED.

23 AND SO, WE'RE GOING TO TAKE A SHORT
24 BREAK AND THEN YOU CAN CALL WHATEVER WITNESSES YOU WANT
25 TO. BUT IF WE HAVE, I MEAN, THE WITNESSES I THINK THAT

1 YOU'VE TOLD ME ARE GOING TO TAKE THE FIFTH, WE CAN DO
2 THOSE IN CAMERA. I DON'T THINK WE NEED TO BRING THE
3 JURY OUT TO DO THAT.

4 MR. PEPER: YES, SIR.

5 THE COURT: AND THEN WE'LL SEE.

6 I WAS IN ERROR YESTERDAY WHEN I SAID
7 THAT THE COURT HAD FOUND THAT AS A MATTER OF LAW THAT
8 BURGLARY WAS A CRIME OF DISHONESTY. THE CASE I WAS
9 THINKING ABOUT WAS ALAMEAN, WHICH IS AN ARMED ROBBERY
10 CASE. AND IT APPEARS TO ME, YOU MIGHT DISAGREE AND I
11 MIGHT VERY WELL BE WRONG, BECAUSE, BUT IT APPEARS TO ME
12 THAT WHETHER OR NOT BURGLARY IS A CRIME OF DISHONESTY
13 WHICH WOULD BE AUTOMATICALLY ADMISSIBLE WITHOUT THE
14 WEIGHING OF PREJUDICE VERSUS PROBATIVE VALUE DEPENDS
15 UPON THE SPECIFIC ELEMENTS OF THE PARTICULAR BURGLARY,
16 AS SHOWN BY THE NATURE OF THE CRIME AND THE INDICTMENT
17 ITSELF. SO, I THINK YOUR CLIENT IS ENTITLED TO HAVE A
18 FURTHER HEARING ON WHETHER OR NOT I WOULD ADMIT THE
19 PRIOR BURGLARY CHARGES WHEN THAT COMES.

20 MR. PEPER: THANK YOU, YOUR HONOR.

21 THE COURT: ALRIGHT?

22 MR. PEPER: THANK YOU, YOUR HONOR.

23 THE COURT: ALRIGHT, WE'LL TAKE
24 ABOUT TEN MINUTES.

25 (Recess)

1 THE COURT: BRING THE DEFENDANT IN
2 HERE BEFORE WE DO THAT.

3 YES, MA'AM?

4 MICHELLE SUGGS: THANK YOU, JUDGE.

5 THE COURT: AND YOU REPRESENT WHO?

6 MICHELLE SUGGS: I REPRESENT LEWIS
7 ANDERSON, YOUR HONOR.

8 THE COURT: YES, MA'AM.

9 MICHELLE SUGGS: MY UNDERSTANDING IS
10 THAT THE DEFENDANT HAS SUBPOENAED HIM TO BE A WITNESS IN
11 THIS CASE TODAY.

12 THE COURT: YES, MA'AM.

13 MICHELLE SUGGS: UPON SPEAKING WITH
14 MR. ANDERSON, SPEAKING WITH DEFENSE COUNSEL, AND
15 SPEAKING WITH THE STATE, I BELIEVE THAT HIM GETTING ON
16 THE WITNESS STAND WILL RESULT IN INCRIMINATING HIMSELF,
17 BUT WHAT I WOULD REQUEST IS THAT, THAT DETERMINATION
18 WHICH HAS TO BE MADE BY YOU BE MADE IN CAMERA, BECAUSE
19 SOME OF WHAT I BELIEVE IS GOING TO BE INCRIMINATING
20 DEALS WITH ATTORNEY-CLIENT INFORMATION THAT I, MYSELF,
21 CAN'T GIVE TO YOU. SO, I ASK THAT THE IN CAMERA HEARING
22 BETWEEN MYSELF, YOUR HONOR, MY CLIENT AND THE COURT
23 REPORTER.

24 THE COURT: WITHOUT DEFENSE OR THE
25 STATE?

1 MICHELLE SUGGS: WITHOUT THE DEFENSE
2 OR THE STATE.

3 THE COURT: ALRIGHT. IS HE -- LET
4 ME ASK THE STATE, IS HE ALLEGED TO BE INVOLVED IN ANY
5 WAY IN THIS CASE THAT WE'RE TRYING NOW?

6 SOLICITOR BRUCE DURANT: NO, SIR,
7 BUT HE DOES HAVE PENDING CHARGES FOR, I BELIEVE,
8 ATTEMPTED ARMED ROBBERY, ABWIK, UNLAWFUL WEAPON, AND I
9 BELIEVE INDECENT EXPOSURE.

10 MICHELLE SUGGS: YES. AND HE HAS
11 FEDERAL CHARGES PENDING.

12 THE COURT: MR. PEPER, WHAT IS IT
13 THAT YOU INTEND TO ASK HIM?

14 MR. PEPER: THIS WAS THE CO-
15 DEFENDANT'S - - -

16 THE COURT: TO ASK MR. ANDERSON?

17 MR. PEPER: THIS WAS THE CO-
18 DEFENDANT'S ROOMMATE, YOUR HONOR, AND THE CO-DEFENDANT,
19 WHO IS ARGUABLY UNAVAILABLE, TOLD MICHELLE'S CLIENT THAT
20 HE COMMITTED THE MURDER, SHAWN WAS NOT PRESENT, BUT HE
21 WAS GOING TO TRY TO PIN IT ON SHAWN.

22 MICHELLE SUGGS: AND ONE THING THAT
23 BURIES ALL THE ISSUES WITHOUT EVEN HAVING A HEARING IS
24 THAT BOTH PARTIES HAVE ALREADY SPOKEN TO MY CLIENT WITH
25 ME PRESENT. THE DEFENSE WENT TO HIM ON TUESDAY AND MY

1 UNDERSTANDING FROM THEM, THIS IS JUST WHAT THEY TOLD ME,
2 IS THAT HE GAVE THEM ONE STORY. THE STATE WENT TO HIM
3 THIS MORNING AND MY UNDERSTANDING FROM THEM IS THAT HE
4 GAVE THEM A DIFFERENT STORY THIS MORNING. SO, MY
5 CONCERN OBVIOUSLY IS THAT A PERJURY CHARGE MIGHT RESULT
6 FROM WHATEVER HE SAYS ON THE STAND.

7 THE COURT: SO, SO YOU THINK HE MAY
8 INCRIMINATE HIMSELF AS A PERJURER?

9 MICHELLE SUGGS: EXACTLY.

10 THE COURT: WELL, - - -

11 MICHELLE SUGGS: AND THAT'S WITHOUT
12 DIVULGING ME IN ATTORNEY-CLIENT COMMUNICATION.

13 THE COURT: I'M NOT SURE THAT YOU
14 COULD USE WHAT HE TOLD THE DEFENSE LAWYER AND WEIGH THAT
15 AGAINST WHAT HE TOLD THE STATE AND COME UP WITH A CHARGE
16 OF PERJURY. I'M NOT SURE THAT WOULD SUPPORT A CHARGE OF
17 PERJURY. I'M SURE HE WASN'T PLACED UNDER OATH IN EITHER
18 CASE. AND WE CAN RESOLVE THAT QUESTION VERY SIMPLY BY
19 THE STATE GIVING HIM IMMUNITY ON ANY POSSIBLE PERJURY
20 CHARGE AND THAT WILL END THAT PROBLEM.

21 MICHELLE SUGGS: AND I QUESTIONED
22 THE STATE AS TO THAT, WHAT THEIR INTENT WOULD BE IF HE
23 GETS ON THE WITNESS STAND AND SAYS SOMETHING DIFFERENT
24 THAN WHAT HE'S ALREADY ADVISED THEM THIS MORNING.

25 SOLICITOR BRUCE DURANT: IT'S NOT

1 THE POSITION OF THIS CIRCUIT SOLICITOR'S OFFICE TO GRANT
2 ANYONE IMMUNITY FOR PERJURY, YOUR HONOR.

3 THE COURT: GOLLY, SO YOU THINK IF
4 HE GETS ON THE STAND AND TESTIFIES TO WHAT HE TOLD THE
5 DEFENSE LAWYER THE STATE'S GOING TO CHARGE HIM WITH
6 PERJURY BECAUSE THAT'S DIFFERENT FROM WHAT HE TOLD THE
7 STATE IN AN INTERVIEW THAT THEY HAD WITH HIM?

8 MICHELLE SUGGS: YES, YOUR HONOR,
9 THAT'S MY FEELING.

10 THE COURT: AND IF HE GETS ON THE
11 STAND AND TESTIFIES TO WHAT HE TOLD THE STATE - - -

12 MICHELLE SUGGS: WHAT THEN, HE'S
13 FINE.

14 THE COURT: MA'AM?

15 MICHELLE SUGGS: WELL, THEN I THINK
16 HE'S FINE.

17 THE COURT: WELL, THEN, MR. PEPER
18 MIGHT SWEAR OUT A WARRANT FOR HIM FOR PERJURY. I'M NOT
19 SURE ANY OF THIS IS POSSIBLE. I NEED SOME ADVICE.

20 MR. PEPER, WHAT DO YOU THINK ABOUT
21 IT?

22 MR. PEPER: JUDGE, I JUST DON'T
23 THINK THERE'S ANY PERJURY HERE. I MEAN, I UNDERSTAND
24 THAT IF THERE'S FACTS THAT COULD JUSTIFY A PERJURY
25 CHARGE THE STATE'S NOT WILLING TO GIVE IMMUNITY, BUT

1 THERE'S NO FACTS HERE. NOBODY WAS UNDER OATH. I SENT MY
2 LAW CLERK TO GO TALK TO HIM AFTER SHAWN CALLED US AND
3 SAID, LEWIS WANTS YOU TO COME DOWN AND SEE HIM. HE WENT
4 DOWN THERE AND TALKED TO HIM, TEN MINUTES LATER HE COMES
5 BACK AND SAYS, LEWIS IS GOING TO SAY MICKEY WAS ROOMING
6 WITH HIM, TOLD HIM HE DID IT, AND THAT'S IT. SO, I
7 DON'T KNOW WHAT HE TOLD THE STATE THIS MORNING BUT HE
8 WASN'T UNDER OATH WHEN HE TOLD MR. BOYD WHAT HE WAS
9 GOING TO TESTIFY TO. I MEAN, PEOPLE CHANGE THEIR MIND
10 ALL THE TIME. FOR ALL I KNOW HE GETS UP THERE AND HE
11 CHANGES HIS MIND. I JUST, YOU KNOW, I APPRECIATE THE
12 FACT THAT WE LIVE IN A COUNTY WHERE THE SOLICITOR'S NOT
13 WILLING TO DISMISS PERJURY CHARGES, BUT THERE'S NO FACTS
14 HERE THAT WOULD EVEN BE ABLE TO SWEAR OUT A WARRANT FOR
15 PERJURY.

16 THE COURT: HOW COULD THE STATE
17 POSSIBLY MAKE OUT A PERJURY CHARGE AGAINST HIM - - -

18 MICHELLE SUGGS: I THINK - - -

19 THE COURT: --- IF HE DOES TESTIFY
20 TO WHAT HE TOLD THE -- TO SOMETHING CONTRARY TO WHAT HE
21 TOLD YOUR INVESTIGATOR? WHO WAS IT THAT TALKED WITH HIM
22 FROM THE SOLICITOR'S OFFICE?

23 SOLICITOR BRUCE DURANT:
24 INVESTIGATOR CASEY.

25 THE COURT: WELL, I MEAN, HOW COULD

1 YOU MAKE OUT A PERJURY CHARGE IF HE TESTIFIED TO
2 SOMETHING CONTRARY TO WHAT HE TOLD HIM? I MEAN, IT SURE
3 WOULDN'T BE THE FIRST TIME A WITNESS HAD TOLD MORE THAN
4 ONE STORY. IN FACT, I'VE SEEN THE STATE PRESENT MORE
5 THAN ONE STORY IN THIS VERY COURTROOM THAT WAS GIVEN BY
6 THE SAME DEFENDANT. I'VE NEVER HEARD OF ANYBODY BEING
7 CHARGED WITH PERJURY OR ONE WITNESS GIVING DIFFERENT
8 STORIES.

9 MR. DURANT, DO YOU WANT TO COMMENT
10 ON THAT? HOW COULD IT POSSIBLY - - -

11 SOLICITOR BRUCE DURANT: NO, SIR,
12 YOUR HONOR. BELIEVE ME, I'M NOT DISAGREEING WITH YOUR
13 ANALYSIS ON THE PERJURY CHARGE, I'M JUST SAYING IT'S NOT
14 THE POLICY OF THIS CIRCUIT TO GRANT ANYBODY IMMUNITY
15 FROM PERJURY. NOW, WHETHER OR NOT A PERJURY CHARGE
16 COULD BE MADE OUT ON THOSE FACTS IS A COMPLETELY
17 DIFFERENT QUESTION.

18 THE COURT: WELL, WE'RE GOING TO
19 HAVE TO TAKE ANOTHER SHORT BREAK WHILE I GET ME A GOOD
20 DEFINITION OF WHAT PERJURY IS, BECAUSE THAT'S THE FIRST
21 ANALYSIS, IS WHETHER HE COULD POSSIBLY BE CHARGED.

22 MR. PEPPER: ISN'T IT MY UNDERSTAND
23 HE'S GOING TO TAKE THE FIFTH?

24 THE COURT: SIR?

25 MR. PEPPER: ISN'T IT MY

1 UNDERSTANDING HE'S GOING TO TAKE THE FIFTH ANYWAY?

2 MICHELLE SUGGS: WELL, TAKING THE,
3 HIM TAKING THE FIFTH WOULD BE IN PART BECAUSE, AS I
4 SAID, IN PART. IF WE GET PAST THIS QUESTION WE FIND OUT
5 THAT THIS ISN'T GOING TO BE INCRIMINATING TO HIM BECAUSE
6 THEY CAN'T POSSIBLY BRING A PERJURY CHARGE, THEN I WOULD
7 ASK FOR AN IN CAMERA HEARING BASED ON ATTORNEY-CLIENT
8 COMMUNICATIONS THAT I THINK YOU SHOULD BE AWARE OF.

9 THE COURT: ALRIGHT, WE'LL BE AT
10 EASE JUST A FEW MINUTES.

11 MICHELLE SUGGS: THANK YOU, JUDGE.

12 (Recess)

13 THE COURT: ALRIGHT, THERE ARE FOUR
14 ELEMENTS -- WHERE IS MS. SUGGS? ALRIGHT, MS. SUGGS,
15 THERE ARE FOUR ELEMENTS TO THE CRIME OF PERJURY,
16 WILLFULLY GIVING FALSE INFORMATION IN SWORN TESTIMONY,
17 IN A COURT OF RECORD, OR JUDICIAL ADMINISTRATIVE, OR
18 REGULATORY PROCEEDING. SO, I FIND AS A MATTER OF LAW
19 THERE'S NO POSSIBLE BASIS FOR A CHARGE OF PERJURY BASED
20 ON WHAT HE'S TOLD SOME INVESTIGATOR OR PARALEGAL PRIOR
21 TO COMING INTO COURT TODAY. NOW, IF HE GETS ON THE
22 STAND AND TESTIFIES, AND THE STATE COULD PROVE SOMEHOW
23 OR OTHER THAT HE PERJURED HIMSELF ON THE STAND IN THIS
24 COURT, THEN WHAT HE SAYS IN THIS COURTROOM COULD BE THE
25 BASIS OF A CHARGE FOR PERJURY.

1 MICHELLE SUGGS: RIGHT.

2 THE COURT: BUT THE CASE OF THE
3 STATE VERSUS BURNS SAYS THAT A CONVICTION FOR PERJURY
4 CANNOT BE SUSTAINED MERELY ON THE CONTRADICTORY SWORN
5 STATEMENTS OF THE DEFENDANT. THE STATE HAS TO PROVE
6 WHICH ONE IS FALSE BY EVIDENCE OTHER THAN JUST HIS
7 CONTRADICTORY STATEMENTS. SO, I DON'T SEE THAT THERE'S
8 ANY REALISTIC POSSIBILITY WHATSOEVER THAT HIS TESTIMONY
9 IN THIS CASE COULD LEAD TO A CHARGE OF PERJURY. AND SO,
10 I WOULD NOT ALLOW HIM TO ASSERT THE FIFTH AMENDMENT ON
11 THAT GROUND.

12 NOW, YOUR REQUEST TO SHARE SOMETHING
13 CONFIDENT WITH ME, DOES THAT NEED TO BE DONE WITH YOUR
14 CLIENT PRESENT?

15 MICHELLE SUGGS: I BELIEVE YOU WOULD
16 PROBABLY WANT TO ASK HIM WHAT HE'S GOING TO SAY ON THE
17 WITNESS STAND IN ORDER TO DETERMINE THAT ISSUE.

18 THE COURT: WELL, I DON'T KNOW.
19 DOES THE DEFENSE HAVE ANY - - -

20 MICHELLE SUGGS: I CAN APPROACH AND
21 EXPLAIN THE ISSUE TO YOU, IF YOU'D LIKE FOR ME TO.

22 THE COURT: ALRIGHT.

23 COURT REPORTER: IS THIS ON OR OFF
24 THE RECORD?

25 THE COURT: OFF.

1 (Whereupon, a bench conference is
2 had between the Court and
3 Michelle Suggs out of the hearing
4 of the court reporter.)

5 THE COURT: WE'LL CALL THE WITNESS
6 OUTSIDE THE PRESENCE OF THE JURY.

7 MR. PEPER: THANK YOU, YOUR HONOR.

8 THE COURT: NOW, IT SEEMS TO ME LIKE
9 THE FIRST THING YOU NEED TO DO IS TO PROVE THAT THE CO-
10 DEFENDANT'S UNAVAILABLE.

11 MR. PEPER: WE HAVE HIS ATTORNEY
12 HERE, YOUR HONOR.

13 THE COURT: WELL, I'M NOT GOING TO
14 LET HIM DO IT EITHER. I MEAN - - -

15 MR. PEPER: WELL, THEN, I'D LIKE TO
16 CALL LENNIE MICKEY TO THE STAND, YOUR HONOR.

17 THE COURT: ALRIGHT, THEN, I THINK
18 WE NEED MR. MICKEY FIRST. NOW, WAIT A MINUTE, WAIT A
19 MINUTE BEFORE YOU -- NO, WAIT A MINUTE. ARE Y'ALL ALL
20 FAMILIAR WITH THE CRAMER CASE, WHICH IS I THINK THE MOST
21 RECENT PRONOUNCEMENT OF FIFTH AMENDMENT BY THE STATE
22 SUPREME COURT? AND JUST A COUPLE OF THINGS TO BE SURE
23 WE'RE ALL ON THE SAME PAGE, THIS IS A SUPREME COURT
24 CASE, NOT A COURT OF APPEALS, AND IT WAS HANDED DOWN
25 THIS SPRING. I DON'T HAVE THE DATE, BUT IT'S SIX FIFTY-

1 NINE, SOUTHEASTERN, SECOND, ONE TWELVE: "THE SETTLED
2 LAW PROVIDES THAT THE PRIVILEGE EXTENDS NOT ONLY TO
3 ANSWERS THAT WOULD THEMSELVES SUPPORT A CRIMINAL
4 CONVICTION, BUT ALSO TO ANSWERS FURNISHING A LINK IN THE
5 CHAIN OF EVIDENCE NEEDED TO PROSECUTE AN INDIVIDUAL.
6 THAT A PARTY HAS INVOKED A PRIVILEGE AGAINST SELF-
7 INCRIMINATION, HOWEVER, DOES NOT END THE MATTER. THE
8 DEED IS WELL SETTLED BY THE INVOCATION THAT THE
9 PRIVILEGES ARE CONFINED TO INSTANCES WHERE A PERSON HAS
10 REASONABLE CAUSE TO APPREHEND DANGER FROM HIS ANSWER.
11 THE FOURTH CIRCUIT HAS INSTRUCTED THAT A COURT JUDGING
12 THE INVOCATION OF THE PRIVILEGE AGAINST SELF-
13 INCRIMINATION ASKS FIRST WHETHER THE INFORMATION IS
14 INCRIMINATING IN NATURE, AND SECOND, WHETHER THERE IS A
15 SUFFICIENT POSSIBILITY OF CRIMINAL PROSECUTION TO
16 TRIGGER THE PRIVILEGE." AND SO, I TAKE THAT TO BE THE
17 BURDEN OF THE COURT IN A SITUATION LIKE THIS, AND THAT
18 CAN ONLY BE MET BY HAVING THE GUY, THE POTENTIAL WITNESS
19 TAKE THE STAND AND BE ASKED THE QUESTION.

20 AND MR. DIXON, YOU REPRESENT THE
21 PROPOSED WITNESS, MICKEY, DO YOU WANT TO BE HEARD BEFORE
22 WE BRING HIM OUT?

23 BILL DIXON: YES, YOUR HONOR, MAY IT
24 PLEASE THE COURT. BILL DIXON, I DO REPRESENT LENNIE
25 MICKEY. AS THE COURT KNOWS, HE'S ACTUALLY ALREADY BEEN

1 TRIED IN THIS CASE WHICH RESULTED IN A HUNG JURY, AND
2 IT'S MY UNDERSTANDING HE IS GOING TO BE CALLED AGAIN FOR
3 TRIAL IN THE FUTURE. I WAS -- ALSO, THE LAST
4 INFORMATION I HAD WAS THAT HE WAS NOT GOING TO BE CALLED
5 AS A WITNESS LAST NIGHT, SO I HAVE NOT MET WITH HIM TO
6 DISCUSS THAT ISSUE, AND I FOUND OUT LATER THIS MORNING
7 THAT HE MAYBE WAS. AND I JUST CAME FROM A FAMILY COURT
8 HEARING DOWNSTAIRS THAT I GOT OUT OF AT ABOUT
9 ELEVEN:FIFTEEN, SO I WOULD RESPECTFULLY REQUEST THAT THE
10 COURT ALLOW ME AT LEAST TEN OR FIFTEEN MINUTES TO CONFER
11 WITH MY CLIENT BEFORE HE'S CALLED UP BY WHOEVER IS
12 CALLING HIM FOR WHATEVER PURPOSE THEY'RE CALLING HIM,
13 AND I CAN CERTAINLY TELL THE COURT, MY UNDERSTANDING IS
14 THAT HE IS NOT GOING TO ANSWER ANY QUESTIONS AND INVOKE
15 HIS FIFTH AMENDMENT NOT TO TESTIFY.

16 THE COURT: ALRIGHT, I'LL GIVE YOU
17 TEN MINUTES TO TALK WITH HIM.

18 MR. DIXON: THANK YOU, YOUR HONOR.
19 IS HE UPSTAIRS OR DOWNSTAIRS?

20 SOLICITOR BRUCE DURANT: HE'S
21 DOWNSTAIRS.

22 THE COURT: ALRIGHT, WE'LL BE IN
23 RECESS.

24 BILL DIXON: THANK YOU, YOUR HONOR.

25 THE COURT: MR. DURANT, THE CASES

1 THAT YOU HAD ON THE CORROBORATION, WAS ONE OF THOSE
2 McDONALD?

3 SOLICITOR BRUCE DURANT: I BELIEVE
4 I PASSED THEM UP TO YOU, I THOUGHT ONE WAS McDONALD AND
5 - - -

6 THE COURT: YOU GAVE THEM TO ME?

7 SOLICITOR BRUCE DURANT: I BELIEVE
8 SO, SIR.

9 THE COURT: AND WHAT WAS THE OTHER
10 ONE?

11 SOLICITOR BRUCE DURANT: I THINK IT
12 WAS KENLOCK AND McDONALD.

13 THE COURT: KENLOCK. OKAY.
14 ALRIGHT, WELL, WE'LL TAKE ABOUT TEN MINUTES.

15 (Recess)

16 THE COURT: WE'VE GOT A COUPLE OF
17 ISSUES BEFORE THE COURT THAT I THINK WE NEED TO DEAL
18 WITH, AND THE DEFENSE HAS PROPOSED TO CALL TWO
19 WITNESSES, MR. FERGUSON AND MR. ANDERSON, WHO ARE
20 ALLEGED TO HAVE HEARD STATEMENTS MADE BY THE CO-
21 DEFENDANT IN THIS CASE, MR. MICKEY, WHICH THE DEFENSE
22 ALLEGES THAT THOSE STATEMENTS WOULD BE EXCULPATORY
23 TOWARD YOUR CLIENT, MR. PHILLIPS, IS THAT RIGHT?

24 MR. PEPPER: THAT'S CORRECT, YOUR
25 HONOR.

1 THE COURT: ALRIGHT. THE LAW IS
2 CLEAR THAT FOR THAT TYPE OF STATEMENT TO COME IN THERE
3 HAS TO BE CLEARLY CORROBORATING CIRCUMSTANCES THAT THE
4 STATEMENT ITSELF WAS MADE. AND I'VE REVIEWED THE CASES,
5 KENLOCK, McDONALD, AND A COUPLE OF OTHERS IN THAT
6 REGARD. SO, ASSUMING FOR A MINUTE THAT I FIND THAT MR.
7 MICKEY IS UNAVAILABLE, IF I FIND THAT HE IS UNAVAILABLE
8 WHAT CLEARLY CORROBORATING CIRCUMSTANCES DO YOU HAVE
9 THAT MR. ANDERSON, WITH REGARD TO MR. ANDERSON'S
10 TESTIMONY?

11 MR. PEPER: IN REGARDS TO MR.
12 FERGUSON'S TESTIMONY, YOUR HONOR?

13 THE COURT: I THOUGHT THERE WERE TWO
14 WITNESSES, MR. ANDERSON AND MR. FERGUSON?

15 MR. PEPER: WELL, OKAY, DO YOU WANT
16 ME TO -- WITH REGARDS TO BOTH, BECAUSE THEY'RE BOTH
17 GOING TO SAY THE SAME THING.

18 THE COURT: EITHER.

19 MR. PEPER: SO, IF IT PLEASE THE
20 COURT I'LL JUST ADDRESS THE CORROBORATING CIRCUMSTANCES
21 WITH REGARDS TO EITHER OR BOTH.

22 THE COURT: WELL, I THINK YOU WOULD
23 HAVE TO SHOW CORROBORATING -- CLEARLY CORROBORATING
24 CIRCUMSTANCES AS TO EACH ONE.

25 MR. PEPER: YOUR HONOR, WITH REGARDS

1 TO MR. FERGUSON FIRST, - - -

2 THE COURT: YES, SIR.

3 MR. PEPPER: THE STATE, I'M SORRY,
4 THE DEFENSE WOULD LIKE TO CALL HIM BECAUSE HE
5 ESSENTIALLY WRITES A LETTER THAT STATES THAT WHILE HE
6 WAS IN SOUTH D HE WAS, THIS WOULD BE MICKEY, LENNIE
7 MICKEY WAS LOOKING FOR CO-DEFENDANTS TO WRITE HIS FEMALE
8 CO-DEFENDANTS, I'M SORRY. LOOKING FOR FRIENDS TO WRITE
9 HIS CO-DEFENDANTS ON HIS BEHALF TO CONVINCE THEM THAT
10 THEY SHOULD PIN IT ALL ON SHAWN, OR IN THE ALTERNATIVE,
11 LET THEM KNOW THAT, REMEMBER NOW, I HAD NOTHING TO DO
12 WITH THIS. THAT'S WITH REGARDS TO MR. FERGUSON'S
13 STATEMENT. THE CORROBORATING CIRCUMSTANCES REGARDING
14 THAT, YOUR HONOR, IS THAT WHILE WE CAN'T VERIFY THE
15 TRUSTWORTHINESS THROUGH A THIRD PARTY THAT ALSO HEARD
16 THIS OR WITNESSED THIS CONVERSATION TAKE PLACE, WE DO
17 HAVE CORROBORATING CIRCUMSTANCES WITH REGARDS TO WHAT
18 MR. MICKEY WAS TRYING TO ACCOMPLISH IN THAT WE'VE HEARD
19 TESTIMONY FROM ANGELA AGAGAS WHERE SHE SAYS THAT THERE
20 WERE LETTERS GOING BACK AND FORTH THROUGH CO-DEFENDANTS
21 INCLUDING MICHAEL GREEN, WHO SAID, LENNIE IS TALKING BAD
22 ABOUT YOU, IS TELLING OTHER PEOPLE THAT SHAWN SHOULD BE
23 PINNED ON THIS. CHINA TESTIFIED THAT SHE HAD HEARD
24 THROUGH THE GRAPEVINE THAT LENNIE MICKEY WAS TELLING
25 OTHER PEOPLE IN JAIL THAT, I DID THIS MURDER, THAT I

1 SHOT THAT PERSON, THAT HILL WILL NEVER FIND OUT ABOUT
2 THE GUN IS, AND I'M GOING TO PIN IT ON SHAWN. SO, WE
3 HAVE VARIOUS OTHER TESTIMONY OVER THE LAST TWO OR THREE
4 DAYS WITH REGARDS TO LENNIE MICKEY'S WHICH GOES TO HIS
5 TRUSTWORTHINESS THAT IT'S VERY EASY TO ASSUME THAT HE
6 WAS WRITING LETTERS TO OTHER INDIVIDUALS, SPEAKING TO
7 OTHER INDIVIDUALS IN THE ATTEMPT TO CONVINCE THEM THAT
8 HE WAS NOT INVOLVED AND/OR SHAWN WAS INVOLVED. AND THAT
9 WOULD BE OUR ARGUMENT WITH REGARDS TO MR. FERGUSON.

10 AND YOUR HONOR, WE WOULD HAVE SIMPLY
11 THE SAME EXACT ARGUMENT WITH REGARDS TO MR. ANDERSON,
12 WHO WOULD TESTIFY THAT ABSENT A LETTER THAT HE HEARD
13 MICKEY TELLING HIM, THAT THEY HAD A CONVERSATION, THAT
14 MICKEY TOLD HIM, SHAWN DID THIS, I HAD NOTHING TO DO
15 WITH IT, IT WAS ALL SHAWN. SO, WE WOULD JUST SIMPLY TRY
16 TO ASSERT THAT THERE ARE CORROBORATING CIRCUMSTANCES
17 THAT THE COURT HAS ALREADY HEARD THAT WOULD LEAN TO A
18 TRUSTWORTHINESS RULING.

19 YOUR HONOR, I KNOW IT'S AN UPHILL
20 BATTLE, I FEEL COMPELLED TO MAKE IT, AND WE'RE WILLING
21 TO ACCEPT ANY RULING THE COURT HAS.

22 THE COURT: WELL, I DON'T RECALL ANY
23 TESTIMONY FROM ANY WITNESSES, AND YOU'LL HAVE TO POINT
24 THIS OUT TO ME, THAT MR. MICKEY MADE ANY STATEMENTS TO
25 ANYBODY TRYING TO BLAME IT ON SHAWN. I DO RECALL

1 TESTIMONY WHERE HE SAID HE HAD SHOT THE GUY, OR
2 SOMETHING TO THAT EFFECT. I JUST DON'T RECALL ANY
3 SPECIFIC TESTIMONY WHERE HE TOLD ANYBODY HE WAS DEALING
4 WITH SHAWN AT ALL.

5 MR. PEPER: WELL, YOUR HONOR, WE
6 WOULD BE WILLING TO LIMIT THE TESTIMONY OF THE
7 RESPECTIVE WITNESSES TO JUST THE FACT THAT HE'S ADMITTED
8 TO DOING IT.

9 THE COURT: WELL, I UNDERSTAND, AND
10 THAT WOULDN'T HELP YOU BECAUSE THAT WOULDN'T EXCULPATE
11 YOUR CLIENT AT ALL. THE FACT THAT MR. MICKEY WAS THE
12 TRIGGER MAN IS REALLY, UNDER THE LAW WOULD NOT BE
13 SIGNIFICANT. HE'S CHARGED UNDER THE HAND OF ONE IS THE
14 HAND OF ALL, THE STATE HAS ADMITTED THAT THEY DON'T KNOW
15 WHO WAS THE TRIGGER MAN, AND SO, I DON'T THAT WOULD,
16 THAT WOULDN'T HELP YOU GET BY THE CLEARLY CORROBORATING
17 REQUIREMENT.

18 LET ME HEAR FROM YOU, MR. DURANT?

19 SOLICITOR BRUCE DURANT: WELL,
20 THERE'S ANOTHER ISSUE THAT'S BROUGHT UP WITH PROFFER,
21 YOUR HONOR, IS THAT IF I UNDERSTAND WHAT THEY'RE GOING
22 TO TESTIFY TO IT'S NOT AGAINST THEIR PENAL INTERESTS,
23 BECAUSE IT'S NOT LIKE THE STATEMENTS ARE, I KILLED THE
24 DUDE.

25 THE COURT: IT DOESN'T HAVE TO BE

1 AGAINST A WITNESS'S PENAL INTEREST, IT - - -

2 SOLICITOR BRUCE DURANT: WELL, IT
3 ACTUALLY DOES FOR THAT PARTICULAR -- IT DOES HAVE TO BE
4 AGAINST THE DECLARANT'S PENAL INTEREST FOR IT TO BE
5 ADMISSIBLE AS NON-HEARSAY.

6 THE COURT: WELL, THE DECLARANT IN
7 THE CASE IS MR. MICKEY.

8 SOLICITOR BRUCE DURANT: MR. MICKEY,
9 BUT FROM WHAT HE'S TELLING US, MR. MICKEY IS NOT SAYING,
10 I KILLED THE DUDE, AND MY CO-DEFENDANT DIDN'T HAVE
11 ANYTHING TO DO WITH IT, AND I NEED TO PIN IT ALL ON HIM,
12 HE'S JUST SAYING, I BELIEVE HE SAID AS TO ONE, HE WAS
13 WRITING - - -

14 THE COURT: WELL, WHAT DID HE SAY?

15 SOLICITOR BRUCE DURANT: --- HE WAS
16 WRITING HIS CO-DEFENDANT, OR ASKING CELL MATES TO WRITE
17 CO-DEFENDANTS TO TRY TO GET THEM TO PIN EVERYTHING ON
18 SHAWN.

19 MR. PEPPER: THAT'S TRUE WITH REGARDS
20 TO MR. FERGUSON.

21 SOLICITOR BRUCE DURANT: HE ASKED
22 MR. FERGUSON, WHICH I DON'T THINK, NUMBER ONE, THAT
23 THAT'S A STATEMENT AGAINST HIS PENAL INTEREST.

24 NUMBER TWO, I BELIEVE WITH REGARD TO
25 MR. ANDERSON, THAT THE STATEMENT WAS THAT SHAWN DID

1 THIS, AND I HAD NOTHING TO DO WITH IT. AM I MISTAKEN ON
2 THAT?

3 MR. PEPPER: I'M TOLD THAT LEWIS
4 ANDERSON WOULD TESTIFY THAT LENNIE MICKEY ADMITTED TO
5 COMMITTING THE MURDER, BUT WANTED TO PIN IT ON SHAWN.
6 WITH REGARDS TO MR. FERGUSON, HOWEVER, THOUGH, BRUCE IS
7 RIGHT TO THE EXTENT THAT HE DOESN'T TECHNICALLY ADMIT TO
8 IT BUT HE DOES SAY THAT HE WAS TRYING TO GET PEOPLE TO
9 WRITE STATEMENTS AGAINST INMATE SHAWN PHILLIPS TO GET
10 THE WEIGHT OFF OF HIMSELF. SO, I CLEARLY THINK THAT'S
11 IN HIS, I MEAN, AGAINST HIS BEST INTEREST. I DON'T THINK
12 LENNIE MICKEY WOULD WANT THE JURY TO HEAR THAT IF HE WAS
13 ON TRIAL.

14 THE COURT: GO AHEAD.

15 SOLICITOR BRUCE DURANT: SO, IN ANY
16 EVENT, AS TO THE FIRST ONE ANYWAY, I THINK, NUMBER ONE,
17 IT'S MORE OR LESS HEARSAY AS TO FERGUSON BECAUSE IT
18 DOESN'T FALL WITHIN THE EXCEPTION OF BEING AGAINST HIS
19 PENAL INTEREST. EVEN IF IT DOES, I WOULD ARGUE THAT
20 THERE IS NO CORROBORATION CLEARLY INDICATING HIS
21 TRUSTWORTHINESS FOR WHICH THE COURT WOULD BASE ITS
22 DECISION ON.

23 WITH REGARDS TO MR. ANDERSON, I
24 WOULD BASE MY ARGUMENT SOLELY ON THE CORROBORATION, OR
25 LACK THEREOF.

1 THE COURT: ANYTHING YOU WANT TO
2 ADD, MR. PEPER?

3 MR. PEPER: NO, YOUR HONOR, THANK
4 YOU.

5 THE COURT: WELL, I FIND, AFTER
6 REVIEWING THESE CASES, AND I SPENT A GOOD BIT OF TIME,
7 THE LAST HOUR OF SO, REVIEWING THESE CASES, THAT THEY
8 ARE NOT CLEARLY CORROBORATING CIRCUMSTANCES AS TO EITHER
9 MR. FERGUSON OR MR. ANDERSON'S STATEMENTS. SO, EVEN IF
10 I WERE TO FIND THAT MR. MICKEY IS UNAVAILABLE WHICH
11 WOULD BRING INTO PLAY EIGHT O FOUR, B, THREE, THE
12 DEFENSE HAS NOT MET THE REQUIREMENTS OF SHOWING THAT
13 THEY ARE, THE FACT THAT THE STATEMENT WAS MADE HAS BEEN
14 CLEARLY CORROBORATED. SO, I THINK THAT ENDS THAT
15 MATTER.

16 MR. PEPER: THANK YOU, YOUR HONOR.

17 SOLICITOR RUTLEDGE DURANT: THANK
18 YOU, JUDGE.

19 THE COURT: SO, MR. DIXON, YOU CAN
20 TELL YOUR CLIENT -- AND WHERE IS MS. SUGGS? OKAY, THEY
21 WILL NOT BE CALLED TO TESTIFY.

22 BILL DIXON: THANK YOU, YOUR HONOR.

23 MICHELLE SUGGS: THANK YOU, JUDGE.

24 SOLICITOR BRUCE DURANT: THANK YOU,
25 MICHELLE.

1 MR. PEPER: JUDGE, AS A MATTER OF
2 LAW I NEED TO PRESERVE MY CLIENT'S RIGHTS, APPELLATE
3 RIGHTS WITH REGARDS TO SOME RULINGS THAT WERE MADE IN
4 THIS CASE. YOUR HONOR, WE WOULD JUST SIMPLY RENEW OUR
5 JACKSON V. DENNO OBJECTION. WE WOULD RENEW OUR LYLE
6 OBJECTION. AND WE WOULD CERTAINLY RENEW OUR MOTION TO
7 SUPPRESS THE STATEMENT BASED ON THE MIRANDA.

8 THE COURT: ALRIGHT, AND I WOULD
9 DENY THOSE MOTIONS OR THE GROUNDS, REASONS PREVIOUSLY
10 STATED.

11 MR. PEPER: THANK YOU, YOUR HONOR.
12 AND WITH REGARDS TO OUR DIRECTED VERDICT MOTION AS WELL.

13 THE COURT: WELL, NOW, THAT WAS YOUR
14 MOTION MADE AT THE END OF THE STATE'S CASE?

15 MR. PEPER: OH, I'M SORRY, YES, SIR.

16 THE COURT: ARE YOU RESTING?

17 MR. PEPER: YES, SIR -- OH, NO, ARE
18 WE RESTING?

19 THE COURT: YES, SIR.

20 MR. PEPER: HAVE YOU RESTED? NO,
21 YOUR HONOR, I'M GOING TO OPEN. I RESERVED MY OPENING,
22 AND THEN, WE WOULD PROBABLY -- SHOULD WE DO THE IN
23 CAMERA NOW BEFORE I OPEN, OR -- AS TO THE OTHER
24 WITNESSES?

25 SOLICITOR RUTLEDGE DURANT: YEAH,

1 THAT'S FINE WITH ME.

2 MR. PEPER: I WOULD THINK IT WOULD
3 BE BETTER, JUDGE, INSTEAD OF OPENING, BECAUSE IF I OPEN,
4 THE ONLY -- AFTER I OPEN I MAY REST UNLESS I, THE COURT
5 ALLOWS ME TO CALL THE TWO WITNESSES WE DISCUSSED IN
6 CHAMBERS.

7 THE COURT: ALRIGHT, WELL, LET ME
8 HEAR FROM YOU ON THOSE TWO WITNESSES.

9 MR. PEPER: YOUR HONOR, WITH REGARDS
10 TO THE FIRST WITNESS, IT WILL BE THE DEFENDANT'S SISTER,
11 MS. OCTAVIA ANCRUM. YOUR HONOR, SHE WOULD TESTIFY TO
12 THE FACT THAT SHE KNEW LENNIE MICKEY AND SHAWN TO BE
13 ACQUAINTANCES AND THAT THEY WOULD VISIT HER AT HER PLACE
14 OF ABODE. EACH TIME SHE WOULD, THEY WOULD VISIT LENNIE
15 MICKEY WOULD TAKE A VERY DEMEANING APPROACH TO SHAWN IN
16 SOMEWHAT OF AN ATTEMPT TO BELITTLE HIM, AND THAT SHAWN
17 WOULD BEGRUDGINGLY FOLLOW HIS ORDERS. I BELIEVE SHE
18 TOLD ME YESTERDAY, AND I BELIEVE HER STATEMENT WOULD BE
19 TODAY THAT IF LENNIE WAS READY TO GO HE'D SNAP HIS
20 FINGERS AND IF SHAWN DIDN'T GET UP AND FOLLOW HIM RIGHT
21 AWAY HE WOULD CHASTIZE HIM, HE WOULD ESSENTIALLY SAY,
22 YOU NEED TO GET YOUR ACT TOGETHER.

23 THE OTHER ISSUE, YOUR HONOR, THAT
24 SHE WOULD TESTIFY TO, AND AGAIN, ALL THIS GOES TOWARDS
25 OUR DURESS DEFENSE, COERCION DEFENSE, WHICH I BELIEVE

1 THE STATE IS GOING TO NOT OBJECT TO US ASKING THE COURT
2 TO CHARGE. THERE WAS AN INSTANCE A COUPLE OF MONTHS
3 BEFORE THIS ROBBERY OCCURRED WHERE MR. PHILLIPS CAME TO
4 HIS SISTER, MR. ANCRUM, TO BORROW SOME MONEY OUT OF
5 NECESSITY. SHE DECLINED BECAUSE SHE HAD HER UPCOMING
6 THREE YEAR OLD'S BIRTHDAY PARTY, BUT MR. PHILLIPS WAS
7 VERY ADAMANT ABOUT NEEDING THE MONEY. WHEN SHE FINALLY
8 SAID, WHAT'S THE PROBLEM, HE TOLD HER, LENNIE CAME TO ME
9 TODAY AND SAID IF I DON'T HAVE HIM X AMOUNT OF MONEY BY
10 THE END OF THE DAY HE'S GOING TO KILL ME AND HE'S GOING
11 TO KEEP COMING AFTER MY FAMILY. SHE GAVE HIM THE MONEY.
12 SHAWN THEN GAVE IT TO LENNIE. SHE'S NEVER BEEN REPAID
13 BY EITHER PARTY.

14 JUDGE, OUR DEFENSE IN THIS CASE
15 ESSENTIALLY RESTS SOLELY ON THE FACT THAT EVEN IF THE
16 JURY AGREES THAT THERE'S EVIDENCE THAT PUTS HIM IN THE
17 CAR, THAT HE WAS IN THE CAR UNDER DURESS AND COERCION BY
18 LENNIE MICKEY. HIS STATEMENT STATES THAT FACT VERY
19 OBVIOUSLY, OR ALLEGES THAT FACT VERY OBVIOUSLY. SO,
20 JUDGE, I THINK IT'S VERY, VERY RELEVANT TO SHOW THAT
21 THIS TYPE OF BEHAVIOR BY SHAWN AND BY MR. MICKEY HAS
22 BEEN EXHIBITED BEFORE. SHE HAS FIRST HAND KNOWLEDGE OF
23 THE SITUATION, AND I THINK IT'S CERTAINLY PROBATIVE TO
24 OUR CASE, AND RELEVANT, AND I THINK WOULD, IN THE LIGHT
25 MOST FAVORABLE TO MY CLIENT, HAVE AN IMPACT ON THE JURY

1 AND SOMETHING THE JURY WOULD WANT TO KNOW ABOUT.

2 WITH REGARDS TO MS. ROBINSON, MARY
3 ROBINSON, - - -

4 THE COURT: ALRIGHT, LET'S DO ONE AT
5 THE TIME.

6 MR. PEPER: ALRIGHT.

7 THE COURT: DO HAVE AN OBJECTION TO
8 THAT TESTIMONY?

9 SOLICITOR RUTLEDGE DURANT: THE
10 STATE DOES HAVE AN OBJECTION, YOUR HONOR. WE HAVE TWO
11 BIG FIRST OF ALL'S. FIRST OF ALL, THIS IS IMPERMISSIBLE
12 CHARACTER EVIDENCE TO SHOW ACTUALLY CONFORMITY
13 THEREWITH, THAT LENNIE MICKEY IS THE PERSON RESPONSIBLE
14 FOR THE CRIME BECAUSE HE DID THIS WITH SHAWN PHILLIPS
15 AND HIS SISTER.

16 SECOND OF ALL, MARY -- OCTAVIA
17 ANCRUM'S TESTIMONY IS ESSENTIALLY A PROPOSAL TO HAVE HER
18 AS A CONDUIT FOR WHAT THE DEFENDANT'S TESTIMONY WOULD
19 BE. SHE'S ESSENTIALLY GOING TO SAY THAT SHAWN CAME TO
20 HER, SHAWN TOLD HER THAT LENNIE MICKEY WAS GOING TO KILL
21 HIM IF HE DIDN'T GET HIM THIS MONEY. IT IS CLEARLY
22 HEARSAY, JUDGE.

23 THE COURT: WELL, I AGREE WITH YOU
24 AS TO THE STATEMENTS THAT THE DEFENDANT MADE TO HIS
25 SISTER ABOUT WHY HE NEEDED THE MONEY, BUT I'M NOT SURE

1 I AGREE WITH YOU ON THE OTHER. IT SEEMS TO ME SHE SHOULD
2 BE ALLOWED TO TESTIFY TO WHAT SHE OBSERVED GOING ON
3 BETWEEN THE TWO OF THEM AND THE RELATIONSHIP THAT SHE
4 OBSERVED BETWEEN THE TWO OF THEM. AND THAT WOULD HAVE
5 A VERY DEFINITE PROBATIVE VALUE AS TO - - -

6 SOLICITOR BRUCE DURANT: MAY I HAVE
7 A MOMENT WITH CO-COUNSEL, YOUR HONOR?

8 THE COURT: OF COURSE, WE'VE GOT
9 ANOTHER DIFFICULTY, IN THAT DURESS MUST ALSO BE
10 REASONABLE. THERE'S A SUBJECTIVE AND AN OBJECTIVE
11 STANDARD TO DURESS. GO AHEAD, Y'ALL TALK ABOUT IT.

12 SOLICITOR RUTLEDGE DURANT: ANOTHER
13 PART OF OUR OBJECTION IS THAT, WELL, RELEVANCE
14 ESSENTIALLY. SHE'S GOING TO BE TESTIFYING THAT LENNIE
15 WAS THE LEADER, SHAWN PHILLIPS WAS THE FOLLOWER. AND
16 THIS IS ESSENTIALLY THE SAME THING THAT WE HAVE GOING ON
17 IN THIS CASE, IT DOESN'T TEND TO PROVE OR DISPROVE IN
18 ANY WAY THAT SHAWN PHILLIPS WAS IN ON THIS ROBBERY OR
19 NOT IN ON THIS ROBBERY.

20 MR. PEPER: I'M ASSUMING THE STATE -

21 - -

22 THE COURT: YES, SIR, MR. PEPER.

23 MR. PEPER: YES, SIR, THANK YOU,
24 YOUR HONOR, MAY IT PLEASE THE COURT. I'M ASSUMING THE
25 STATE IS ADMITTING THAT IT IS RELEVANT, THAT IF THEY'RE

1 SAYING THE HAND OF ONE, THE HAND OF ALL, THAT WE CAN,
2 THAT YOU KNOW, THAT OUR DEFENSE IS TO REST AND WE PUT
3 OURSELVES THERE, THEN I DON'T SEE WHAT PREJUDICIAL
4 EFFECT THAT HAS TO THE STATE FOR ANY ARGUMENT OTHER THAN
5 ITS RELEVANCE.

6 YOUR HONOR, I WOULD ALSO SAY THAT
7 WITH REGARDS TO THE HEARSAY TESTIMONY, I THINK IT GOES
8 TO SHOW A PATTERN OF BEHAVIOR, A ROUTINE AND HABIT OF MR.
9 MICKEY, AND WE'VE ALLEGED IN OUR DEFENSE AND WILL ALLEGE
10 FURTHER IN OUR CASE IN CHIEF THAT BUT FOR MR. MICKEY AND
11 HIS ACTIONS MY CLIENT WOULD NOT HAVE PUT HIMSELF IN THIS
12 POSITION.

13 THE COURT: YES, SIR.

14 SOLICITOR RUTLEDGE DURANT: JUDGE,
15 AT THIS POINT WE'RE NOT EXACTLY SURE WHAT SHE'S GOING TO
16 SAY, AND WE'D ASK FOR AN IN CAMERA HEARING ON THE
17 MATTER.

18 THE COURT: NO, WELL, I THINK IT'S
19 RELEVANT. I MEAN, IF HE'S CLAIMING DURESS I THINK THE
20 RELATIONSHIP HE HAD WITH THIS PERSON WHO'S ALLEGED TO
21 HAVE PLACED HIM UNDER DURESS IS RELEVANT, AND I DON'T
22 KNOW THE NEED FOR ANY IN CAMERA HEARING. WHY WOULD WE
23 WANT AN IN CAMERA ABOUT THAT? I'M NOT GOING TO ALLOW
24 HER TO TESTIFY TO WHAT THE DEFENDANT TOLD HER ABOUT THE
25 MONEY, THAT KIND OF THING, ONLY WHAT SHE OBSERVED FROM

1 HER OWN OBSERVATION ABOUT THE RELATIONSHIP.

2 SOLICITOR RUTLEDGE DURANT: JUDGE,
3 MAYBE I MISUNDERSTOOD, BUT I DIDN'T UNDERSTAND THAT THE
4 TESTIMONY FROM MS. ROBINSON, OR MS. ANCRUM WOULD BE THAT
5 SHE OBSERVED THAT SHAWN PHILLIPS WAS EVER UNDER ANY
6 DURESS FROM LENNIE MICKEY OTHER THAN WHAT SHAWN TOLD
7 HER.

8 THE COURT: WELL, MAYBE I'M WRONG.

9 MR. PEPPER: NO, I MEAN, YOU HEARD
10 ME, THAT'S THE FIRST THING I SAID WITH REGARDS TO MS.
11 ROBINSON'S, OR MS. ANCRUM'S TESTIMONY IS THAT SHE
12 WITNESSED ON NUMEROUS OCCASION LENNIE MICKEY BELITTLING,
13 COERCING, MAKING FUN OF, DEMANDING, ETCETERA, MR.
14 PHILLIPS.

15 THE COURT: THAT'S WHAT I THOUGHT HE
16 SAID, AND I THINK THAT WOULD BE ADMISSIBLE. SO, I
17 OVERRULE YOUR OBJECTION TO THAT.

18 NOW, WHAT ABOUT THE OTHER WITNESS?

19 MR. PEPPER: WITH REGARDS TO THE
20 OTHER WITNESS, YOUR HONOR, WITH REGARDS TO MS. ROBINSON,
21 SHE WAS PICKED UP LAST WEEK AFTER SHE FAILED A DRUG
22 TEST. SHE HAD AN ADDICTION AND FAILED A DRUG TEST FOR
23 MARIJUANA, WHICH WE WOULD BE, YOU KNOW, WILLING TO
24 STIPULATE TO. SHE WAS SENTENCED TO FORTY-EIGHT HOURS IN
25 THE DETENTION CENTER. SHE KNOWS ANGELA, SHE KNOWS

1 SHAWN. SHE USED TO BRAID SHAWN'S HAIR, SHE KNEW THAT
2 ANGELA WERE DATING, ETCETERA, ETCETERA. THUS, ANGELA
3 KNEW HER AS WELL. ANGELA, UPON SEEING MS. ROBINSON AT
4 THE JAIL, CALLS HER OVER TO HER CELL TO INFORM HER THAT
5 THE TRIAL OF MR. PHILLIPS IS STARTING NEXT WEEK AND
6 SHE'S EXCITED TO HAVE THE CHANCE TO TESTIFY. MS.
7 ROBINSON, OF COURSE, SAID, I HAD NO IDEA THAT THE TRIAL
8 WAS STARTING, WHAT'S GOING TO BE THE OUTCOME, ARE YOU
9 GOING TO TESTIFY? AND SHE CLEARLY TOLD MS. ROBINSON,
10 I'M ABSOLUTELY GOING TO TESTIFY, AND IT AIN'T GOING TO
11 BE IN HIS BENEFIT. I'M HAVING HIS BABY HERE IN JAIL, MY
12 PARENTS, MY HUSBAND DIVORCED ME BECAUSE OF SHAWN, MY
13 LIFE IS IN SHAMBLES BECAUSE OF SHAWN, MY FAMILY WILL NOT
14 CARE FOR MY BABY BECAUSE THE BABY IS HALF BLACK SO I HAD
15 TO SEND THE BABY TO A COUSIN BECAUSE I DID NOT WANT
16 SHAWN'S MOM TO HAVE CUSTODY. AND ALL THIS WAS NEWS TO
17 MS. ROBINSON WHO SIMPLY, YOU KNOW, WOULD BE ABLE TO
18 TESTIFY THAT BASED ON WHAT MS. ROBINSON, I'M SORRY, ON
19 WHAT MS. AGAGAS TOLD HER, THAT'S IT'S VERY CLEAR THAT
20 SHE IS A BIASED WITNESS AND HAS ESSENTIALLY IT OUT FOR
21 SHAWN AND IS WILLING TO SAY WHATEVER SHE NEEDS TO SAY IN
22 COURT AGAINST HIM TO MAKE SURE HE DOES GET TIME. AND
23 THAT WOULD BE HER TESTIMONY, YOUR HONOR.

24 AND, YOU KNOW, WITH REGARDS TO --
25 YOU KNOW, SHE'S BEEN CHARGED WITH CRIMES, AS WELL, YOUR

1 HONOR. SHE'S PENDING, SHE HAS PENDING CRIMINAL CHARGES
2 RIGHT NOW. AND WITH REGARDS TO THE STATEMENT AGAINST
3 INTEREST, I MEAN, CLEARLY, SHE WOULDN'T SAY THOSE KIND
4 OF THINGS UNLESS SHE KNEW THEM TO BE TRUE. IT'S CLEARLY
5 A STATEMENT AGAINST HER OWN INTEREST TO MAKE THAT
6 STATEMENT TO THIRD PARTY NEUTRAL PEOPLE. THAT WOULD BE
7 HER TESTIMONY, YOUR HONOR.

8 THE COURT: AND WHAT ARE YOU ASKING
9 ME?

10 MR. PEPER: WELL, I'M ASKING YOU TO
11 ALLOW HER TO TESTIFY AS TO THE CONVERSATION SHE HAD WITH
12 MS. AGAGAS LAST WEEK. NOW, I UNDERSTAND PURSUANT TO THE
13 RULES WE HAVE TO GIVE MS. AGAGAS A CHANCE TO CLARIFY
14 WHAT SHE TOLD MS. ROBINSON, AND I'LL BE HAPPY TO DO
15 THAT, BUT - - -

16 THE COURT: SO, YOU PROPOSE TO CALL
17 MS. AGAGAS?

18 MR. PEPER: FOR THE LIMITED PURPOSE
19 OF GETTING HER - - -

20 THE COURT: YOU CAN CALL HER FOR
21 ANYTHING YOU WANT TO, I DON'T THINK YOU'RE LIMITED TO
22 WHAT YOU'RE GOING TO CALL HER FOR. I'M NOT SURE WHY
23 YOU'RE RUNNING THIS BY ME. I APPRECIATE IT BUT I'M NOT
24 - - -

25 MR. PEPER: NO, BECAUSE, YOUR HONOR,

1 THE WAY I READ THE CASE LAW, AND OBVIOUSLY, I COULD BE
2 WRONG, THE WAY I READ THE CASE LAW IS THAT YOU CAN'T
3 MAKE A DETERMINATION ON WHETHER OR NOT TO ALLOW MS.
4 ROBINSON TO TESTIFY UNTIL THE COURT HAS HEARD FROM MS.
5 AGAGAS WITH REGARDS TO HER EXPLANATION OF -- BECAUSE IF
6 SHE EXPLAINS THEN, THEN YOU WOULD RULE, ASSUMEDLY YOU
7 WOULD RULE MS. ROBINSON'S TESTIMONY DO ANY GOOD. YOU'D
8 JUST ADDRESS THAT THROUGH MS. AGAGAS IN FRONT OF THE
9 JURY. BUT IN THE ALTERNATIVE, IF SHE DENIES MAKING IT
10 OR STATES THAT THAT'S NOT WHAT SHE SAYS, THEN THE COURT
11 COULD RULE, OKAY, NOW LET'S HEAR WHAT MS. ROBINSON HAS
12 TO SAY, AND IF IT DIFFERS FROM WHAT MS. AGAGAS SAID WHEN
13 WE GAVE HER A CHANCE TO CLARIFY HER STATEMENT, THEN YOU
14 WOULD RULE THAT I WOULD LET YOU PUT THAT IN FRONT OF THE
15 JURY. SO, I THINK IT HAS TO BE IN CAMERA, AND THAT'S
16 WHY I WAS JUST SAYING, I WOULD JUST CALL MS. AGAGAS FOR
17 THE LIMITED TESTIMONY TO HELP YOU MAKE YOUR DECISION ON
18 WHETHER OR NOT TO LET MS. ROBINSON TESTIFY.

19 THE COURT: I DON'T KNOW OF ANY
20 REQUIREMENT THAT IT HAS TO BE IN CAMERA. DOES THE
21 STATE?

22 SOLICITOR BRUCE DURANT: I GUESS MY
23 -- NO, IT DOESN'T HAVE TO BE IN CAMERA. BUT I'M KIND OF
24 THINKING BEYOND THAT RIGHT NOW IN THAT THIS IS NOT SO
25 MUCH AN INCONSISTENT STATEMENT, BUT FROM WHAT I

713

1 UNDERSTAND THIS WITNESS WILL TESTIFY TO, SHE'S BASICALLY
2 GOING TO SAY THAT SHE TALKED TO MS. AGAGAS AND MS.
3 AGAGAS WAS MAD AT SHAWN, WHICH SHE HAD ALREADY TESTIFIED
4 TO ON THE STAND, THAT SHE ALSO TESTIFIED THAT SHAWN GOT
5 HER IN THE MESS THAT SHE'S IN NOW. SHE TESTIFIED TO
6 THAT ON THE STAND. I THINK IT'S PRETTY CLEAR FROM MR.
7 PEPPER'S CROSS-EXAMINATION OF MS. AGAGAS THAT, YOU KNOW,
8 SHE HAS TERMINATED HER RELATIONSHIP WITH MR. PHILLIPS
9 AND IS NOT HIS GIRLFRIEND ANYMORE. BUT NOWHERE DID SHE
10 SAY TO MS. ROBINSON, I'M GOING TO TAKE THE STAND AND LIE
11 ABOUT HIM. SO, I GUESS MY MAIN THING IS, IT'S
12 IMMATERIAL, BECAUSE MS. AGAGAS HAS ALREADY ADMITTED TO
13 ALL THE THINGS THAT HE'S SAYING THAT MS. ROBINSON WOULD
14 TESTIFY TO.

15 THE COURT: WELL, I MEAN, IT SEEMS
16 TO ME THAT WHAT HE'S TRYING TO DO IS TO OFFER EVIDENCE
17 OF THE WITNESS'S BIAS, PREJUDICE, THE MOTIVE TO
18 MISREPRESENT, WHICH MAY BE SHOWN TO IMPEACH THE WITNESS
19 EITHER BY EXAMINATION OF THE WITNESS OR BY EVIDENCE
20 OTHERWISE ADDUCED.

21 SOLICITOR BRUCE DURANT: AND THAT'S
22 WHY - - -

23 THE COURT: AND THAT IS SIX O EIGHT,
24 C. AND SO, I DON'T KNOW THAT HE NEEDS TO CALL MS.
25 AGAGAS AT ALL, I THINK HE CAN CALL THE WITNESS TO

1 TESTIFY TO WHATEVER SHE SAID.

2 SOLICITOR BRUCE DURANT: AND THAT IS
3 MY POINT, IS THAT MS. AGAGAS HAS PRETTY MUCH ALREADY
4 ADMITTED TO THAT, YOU KNOW.

5 THE COURT: WELL, THAT'S NOT A
6 GROUNDS TO OBJECT TO HIM CALLING THE WITNESS.

7 SOLICITOR BRUCE DURANT: NO, SIR.

8 THE COURT: SO, IF YOU'RE ASKING FOR
9 MY PERMISSION TO CALL THE WITNESS YOU HAVE IT. I DON'T
10 KNOW THAT YOU NEED TO PRECEDE THAT BY CALLING MS.
11 AGAGAS, BECAUSE I THINK IT'S PLAINLY EVIDENCE THAT YOU
12 THINK IS GOING TO SHOW BIAS OR PREJUDICE OF THE WITNESS,
13 IT'S NOT REALLY A PRIOR INCONSISTENT STATEMENT.

14 SOLICITOR BRUCE DURANT: OKAY. AS
15 LONG AS, AS I UNDERSTAND IT, SHE'S NOT GOING TO SAY THAT
16 ANGELA SAID SHE WAS GOING TO GET UP THERE AND LIE, JUST
17 THAT ANGELA WAS MAD AT HIM. IS THAT RIGHT?

18 MR. PEPER: NO, NO. I MEAN, - - -

19 THE COURT: WAIT A MINUTE, WAIT A
20 MINUTE, IT'S REALLY NO BUSINESS OF YOURS WHAT A WITNESS
21 IS GOING TO SAY, MR. DURANT, I DON'T UNDERSTAND WHAT, I
22 REALLY DON'T UNDERSTAND WHY WE'RE HAVING THIS
23 DISCUSSION. HE CAN CALL THE WITNESS, AND THEN IF YOU
24 HAVE SOME OBJECTION TO WHAT, THE QUESTION, I'LL BE GLAD
25 TO DEAL WITH IT AT THAT TIME.

715

1 SOLICITOR BRUCE DURANT: YES, SIR.

2 THE COURT: ALRIGHT, SIR, ARE YOU
3 PREPARED TO CALL THE WITNESS?

4 MR. PEPER: WELL, YOUR HONOR, I
5 RESERVED MY OPENING, AND I'D LIKE TO OPEN AT THIS POINT,
6 AND THEN I WILL BE PREPARED TO CALL MY TWO WITNESSES.

7 THE COURT: ALRIGHT, BRING THE JURY
8 IN. BOTH OF THEM ARE HERE IN THE COURTROOM, RIGHT?

9 MR. PEPER: YES, SIR.

10 THE COURT: OKAY. I MEAN, IN HOUSE
11 AT LEAST, ANYHOW. ALRIGHT.

12 (Whereupon, the jury enters
13 the courtroom and the following
14 takes place in the presence
15 of the jury.)

16 THE COURT: ALRIGHT, THANK YOU FOR
17 YOUR PATIENCE, LADIES AND GENTLEMEN. THE STATE HAS
18 RESTED. WE HAD A NUMBER OF MATTERS WE HAD TO TAKE UP.
19 THE DEFENSE NOW HAS AN OPPORTUNITY TO PUT UP A DEFENSE,
20 AND HE RESERVED HIS OPENING UNTIL THIS POINT IN TIME SO
21 HE HAS A RIGHT TO MAKE AN OPENING WHICH I HOPE WILL BE
22 RELATIVE BRIEF.

23 ALRIGHT, MR. PEPER.

24 MR. PEPER: THANK YOU, MAY IT PLEASE
25 THE COURT, YOUR HONOR.

1 THE COURT: AND I SAY THAT IN JEST.
2 HE'S REPRESENTING HIS CLIENT, HE'S GOT TO DO WHAT -- HE
3 MUST DO WHAT'S IN THE BEST INTEREST OF HIS CLIENT, AND
4 I'M SURE YOU UNDERSTAND THAT, AND I UNDERSTAND THAT,
5 TOO.

6 OPENING STATEMENT BY MR. PEPER

7 WE'RE EITHER GOING TO GET THIS MONEY
8 OR WE'RE GOING TO START SHOOTING EVERYBODY IN HERE.
9 LET'S GO. SET YOUR ASS IN THE CORNER. DO NOT MOVE, DO
10 NOT MOVE. IF YOU LEAVE I WILL KILL YOU, I WILL KILL
11 EVERYBODY IN HERE. YOU DON'T WANT ME TO KILL THEM GIRLS?
12 YOU'RE GETTING SOFT ON ME? THERE'S YOUR CASE RIGHT
13 THERE, THAT'S YOUR CASE. YOU CAN'T COMMIT A CRIME IF
14 SOMEBODY IS HOLDING A GUN TO YOUR HEAD AND MAKING YOU DO
15 IT. IS MY CLIENT AN ANGEL? ABSOLUTELY NOT. OKAY? HE
16 DROPPED OUT OF SCHOOL IN THE FIFTH GRADE. IT'S BEEN
17 PROVEN THE MORE EDUCATION YOU HAVE THE MORE SUCCESSFUL
18 YOU'RE GOING TO BE, THE BETTER FRIENDS YOU'RE GOING TO
19 HAVE, AND THAT'S CLEARLY THE CASE RIGHT HERE. HE'S
20 TWENTY-EIGHT YEARS OLD, HIS NAME IS SHAWN PHILLIPS, AND
21 HE'S MADE A WHOLE HECK OF A BUNCH OF BAD DECISIONS IN
22 HIS LIFE. THE ONE HE REGRETS THE MOST IS BEFRIENDING
23 LENNIE MICKEY, THE SAME LENNIE MICKEY THAT YOU WILL HEAR
24 TESTIMONY THAT HELD A GUN TO CHINA'S HEAD AND THREATENED
25 TO KILL HER. THE SAME LENNIE MICKEY THAT SHAWN HAD TO

1 CONVINCED NOT TO KILL HER. THE SAME LENNIE MICKEY THAT
2 SHAWN HAD TO CONVINCED NOT TO KILL THE THREE OTHER GIRLS
3 WHO KNEW ABOUT THE ALLEGED ROBBERY. YOU'RE GOING TO
4 HEAR A WHOLE LOT OF TESTIMONY, MOST OF WHICH YOU'VE
5 ALREADY HEARD. THE ONLY THING I CAN ASK FROM YOU IS FOR
6 YOU TO KEEP IN MIND THE CREDIBILITY OF THE PEOPLE WHO
7 WILL BE TESTIFYING BEFORE YOU. WE ARE NOT GOING TO BE
8 CALLING, NOR IS THE STATE, A LOT OF EXPERT WITNESSES, A
9 LOT OF EDUCATED PERSONS, A LOT OF HONEST PEOPLE. THE
10 STATE'S GOING TO BE CALLING PEOPLE THAT HAVE SERIOUS,
11 SERIOUS DRUG PROBLEMS, THAT HAVE SERIOUS, SERIOUS SOCIAL
12 ISSUES, THAT HAVE SERIOUS PROBLEMS DIFFERENTIATING
13 BETWEEN RIGHT AND WRONG, TRUE AND UNTRUE.

14 YOU AS THE JURY ARE THE JURY ARE THE
15 SOLE FACT MAKERS, FACT FINDERS IN THIS CASE, I SHOULD
16 SAY. NOTHING YOU HEAR DO YOU HAVE TO BELIEVE, IT'S UP
17 TO YOU. YOU GET TO WEIGH WHAT EACH WITNESS TELLS YOU
18 WITH HOW TRUTHFUL YOU THINK THEY'RE BEING. YOU GET TO
19 CONSIDER, ARE THEY POSSIBLY SAYING THIS TO BENEFIT
20 THEMSELVES? ARE THEY POSSIBLY SAYING THIS TO SCREW OVER
21 SHAWN? ARE THEY POSSIBLY SAYING THIS BECAUSE THAT'S
22 WHAT SOMEBODY ELSE TOLD THEM TO SAY? YOU GET TO MAKE
23 THAT DECISION.

24 CREDIBILITY IS THE NUMBER ONE ISSUE
25 IN THIS CASE. IT'S FAR MORE CREDIBLE TO BELIEVE THAT

1 AFTER MY CLIENT WAS TOLD, YOU'RE BEING CHARGED WITH
2 MURDER, THAT HE WAS WILLING TO TELL THE TRUTH THAN IT IS
3 TO BELIEVE ALL THESE OTHER WITNESSES WHO HAVE ALL THESE
4 CREDIBILITY PROBLEMS.

5 YOU'RE GOING TO HEAR TESTIMONY THAT
6 WILL BE LEAD YOU ESSENTIALLY TO NO OTHER CONCLUSION,
7 MOST OF WHICH, AGAIN, YOU'VE ALREADY HEARD, THAT THE
8 STATE CANNOT PROVE THEIR CASE BEYOND A REASONABLE DOUBT.
9 AND YOU'RE GOING TO HEAR AT THE END OF THE TRIAL WHAT
10 REASONABLE DOUBT MEANS IN THE STATE OF SOUTH CAROLINA.
11 I LIKEN IT TO ANYTHING THAT WOULD CAUSE YOU, AND Y'ALL
12 ARE REASONABLE PEOPLE TO TELL THAT, AND THAT'S WHY WE
13 PICKED YOU AS JURORS, TO HESITATE. ANYTHING THAT WOULD
14 CAUSE A REASONABLE PERSON TO HESITATE. YOU WILL HEAR,
15 AND YOU'VE ALREADY HEARD A WHOLE LOT OF TESTIMONY THAT
16 WILL MAKE YOU HESITATE WITH REGARDS TO THE VERACITY AND
17 TRUTH, CREDIBILITY AND OTHER ISSUES THAT THESE WITNESSES
18 HAVE TOLD YOU.

19 YOU'RE NOT GOING TO SEE A GUN.
20 YOU'RE NOT GOING TO SEE A WHOLE CSI DEAL, NO
21 FINGERPRINTS, NO DNA, NOT BECAUSE THEY DIDN'T DO THEIR
22 JOB. THEY GOT THE FINGERPRINTS, THEY GOT THE HAIR, THE
23 PILLOW, THE CLOTHES HE WAS WEARING, THE TOWEL ON THE
24 FLOOR, THE BUDWEISER BEER BOTTLE, THE TOILET SEAT LID.
25 THEY DID EVERYTHING THEY WERE SUPPOSED TO DO, THEY JUST

1 CAN'T PROVE THAT ANYONE WAS EVEN IN THAT ROOM, MUCH LESS
2 MY CLIENT. AS A MATTER OF FACT, AND I HESITATE TO EVEN
3 GO INTO THIS BECAUSE I THINK THOSE ISSUES ALONE WOULD
4 CONSTITUTE A REASONABLE DOUBT. BUT YOU'RE GOING TO HEAR
5 TESTIMONY FROM THREE FEMALE, AND I'M TRYING TO BE COUTH
6 HERE, I WOULD SAY THREE FEMALES WITH ISSUES REGARDING
7 WHAT THEY'RE EMPLOYMENT WAS AND WHAT THEY LIKED TO DO ON
8 THE SIDE WITH EXTRA CURRICULAR ACTIVITIES. OKAY? OF
9 THOSE THREE PEOPLE TWO OF THEM HAVE ABSOLUTELY NO IDEA
10 WHAT HAPPENED ONCE SHAWN, LENNIE MICKEY, AND B.G. LEFT
11 THE HOTEL ROOM. TWO OF THEM ARE GOING TO TESTIFY,
12 YOU'VE ALREADY HEARD, THAT THEY SHUT THE DOOR BEHIND
13 THEM, THE WINDOWS WERE CLOSED, THEY DIDN'T GO PEEK OUT,
14 THEY DON'T KNOW IF THEY GOT IN THE CAR, THEY DON'T KNOW
15 IF THEY WALKED DOWN THE STREET. AND I'M NOT SAYING THAT
16 DIDN'T HAPPEN, I'M JUST SAYING THAT THAT'S A PRETTY GOOD
17 REASON FOR FINDING NOT GUILTY ON REASONABLE DOUBT. TWO
18 OF THESE THREE GIRLS THAT TESTIFIED HAVE NO IDEA WHAT
19 HAPPENED ONCE THEY LEFT THE HOTEL ROOM. THE ONLY PERSON
20 THAT SAYS SHE KNOWS WHAT HAPPENED IS B.G., AND GUESS
21 WHAT B.G. DOES? NOT ONLY IN HER STATEMENT DOES SHE SAY,
22 IT WAS ME, LENNIE MICKEY, AND A GUY NAMED D, WHO NOBODY
23 ELSE TESTIFIES ABOUT, BUT SHE PICKS OUT D OUT OF A
24 LINEUP RIGHT AFTER SHE GIVES HER STATEMENT. WHO DOES
25 SHE PICK OUT? SHE PICKS OUT DOMINICK LAMAR BALLOU.

1 DOMINICK LAMAR BALLOU, WHERE IS HE, WHO IS HE? THAT
2 WASN'T REALLY THE ANSWER THAT THE OFFICERS WANTED, AND
3 SO YOU'LL HEAR THAT THEY GAVE HER ANOTHER CHANCE.
4 DETECTIVE JOURDAN GOES AN GETS HILL, HEY, SHE PICKED OUT
5 SOME GUY NAMED BALLOU AS D. WELL, BRING HER ON OVER
6 HERE AND MAYBE THIS WILL HELP HER REMEMBER WHO D IS.

7 THE COURT: MR. PEPER.

8 MR. PEPER: YES, SIR.

9 THE COURT: THIS IS IN MORE OF THE
10 LINE OF ARGUMENT THAN AN OPENING.

11 SOLICITOR RUTLEDGE DURANT: YOUR
12 HONOR, WE WANT AN OBJECTION.

13 THE COURT: WELL, YOU'VE GOT IT.

14 MR. PEPER: THANK YOU.

15 THE COURT: OKAY.

16 MR. PEPER: YOU'LL HEAR TESTIMONY
17 THAT THEY TOOK HER TO A ROOM WITH A TWO WAY MIRROR AND
18 ON THE OTHER SIDE THE ONLY PERSON THAT WAS THERE WAS
19 SHAWN PHILLIPS. IF THAT DOESN'T CAUSE YOU TO HESITATE A
20 LITTLE BIT.

21 YOU'RE ALSO GOING TO HEAR THE JUDGE
22 TELL YOU AT THE END OF THE TRIAL WHAT THE ELEMENTS OF
23 THESE CRIMES ARE THAT HE'S BEING CHARGED WITH. I'M NOT
24 GOING TO GO OVER THEM RIGHT NOW, BUT I WANT TO ASK YOU
25 THAT THROUGHOUT THE TRIAL, YOU LISTEN VERY CLOSELY TO

1 SEE IF THESE ELEMENTS ARE MET, BECAUSE YOU'RE THE ONLY
2 PERSON THAT CAN DECIDE, PEOPLE THAT CAN DECIDE WHETHER
3 THESE ELEMENTS HAVE BEEN MET.

4 WITH REGARDS TO CONSPIRACY THERE HAS
5 TO BE AN AGREEMENT. YOU'RE NOT GOING TO HEAR ANY
6 TESTIMONY, NOTHING THAT YOU'VE HEARD ALREADY OR NOTHING
7 THAT YOU'RE GOING TO HEAR THAT'S GOING TO SHOW THERE WAS
8 AN AGREEMENT BETWEEN MY CLIENT, SHAWN, AND ANYBODY ELSE
9 TO GO AND COMMIT MURDER. IT JUST DIDN'T HAPPEN, AND
10 YOU'LL SEE THAT OVER THE COURSE OF THE TRIAL.

11 WITH REGARDS TO ARMED ROBBERY, THE
12 JUDGE IS GOING TO TELL YOU THAT THERE'S GOT TO BE AN
13 INTENT, INTENT, INTENT, INTENT TO DEPRIVE SOMEONE OF
14 PROPERTY, AN INTENT TO DEPRIVE SOMEBODY OF PROPERTY
15 WHILE ARMED WITH A DEADLY WEAPON. IT'S AWFULLY TOUGH
16 TO DO WHEN THE ONLY GUY THAT'S GOT A WEAPON IS HOLDING
17 IT TO YOUR HEAD SAYING, COME WITH ME, STAY IN THE CAR,
18 OR I'LL KILL YOU.

19 IF THERE'S NO ARMED ROBBERY THERE
20 CAN'T BE FELONY MURDER, AND YOU'RE NOT GOING TO HEAR ANY
21 TESTIMONY, NONE WHATSOEVER, THAT ALLEGES THAT MY CLIENT,
22 NOT ALLEGES, BUT PROVES TO YOU, BECAUSE THAT'S WHAT THE
23 BURDEN IS, THEY HAVE PROVE TO YOU BEYOND A REASONABLE
24 DOUBT THAT MY CLIENT COMMITTED MURDER, THE FELONIOUS
25 TAKING OF ANOTHER PERSON'S LIFE WITH MALICE. YOU'RE

1 JUST NOT GOING TO HEAR IT. NOTHING YOU HAVE HEARD THUS
2 FAR OR WILL HEAR IS GOING TO ALLOW YOU TO MAKE AN
3 INFORMED DECISION AS A REASONABLE PERSON TO CONVICT MY
4 CLIENT ON ANY OF THESE CHARGES. THROUGHOUT THE COURSE
5 OF THE TESTIMONY ALMOST EVERY SINGLE WITNESS THAT YOU
6 WILL HEAR FROM, OR HAVE HEARD FROM WILL GIVE YOU A
7 REASON TO HESITATE, AND THAT'S REASONABLE DOUBT. IF YOU
8 HEAR SOMETHING THAT GIVES YOU A REASON TO HESITATE
9 THERE'S REASONABLE DOUBT. IF THEY DON'T PROVE IT BEYOND
10 MAKING YOU HESITATE YOU MUST FIND NOT GUILTY, AND THAT
11 WILL BE OUR INTENT OVER THE LAST TWO OR THREE DAYS AND
12 THE REST OF THE DAY TO REMIND YOU TO REMEMBER WHEN YOU
13 HESITATE.

14 THANK YOU.

15 THE COURT: THANK YOU, SIR, YOU MAY
16 CALL YOUR WITNESS.

17 MR. PEPPER: YOUR HONOR, WE'D LIKE TO
18 CALL MARY ROBINSON TO THE STAND.

19 THE COURT: COME AROUND, PLEASE,
20 MA'AM.

21 CLERK: COME AROUND TO BE SWORN.
22 MA'AM, PLEASE PLACE YOUR LEFT HAND ON THE BIBLE AND
23 RAISE YOUR RIGHT HAND.

24 (Whereupon, Mary Annie Robinson
25 is duly sworn.)

1 CLERK: PLEASE BE SEATED. FOR THE
2 RECORD PLEASE STATE YOUR FULL NAME AND SPELL IT AS WELL.

3 WITNESS: MARY ANNIE ROBINSON. IT'S
4 M-A-R-Y A-N-N-I-E R-O-B-I-N-S-O-N.

5 (NOTE: Blank lines on this page do not indicate any
6 part of record has been omitted. Headers on testimony
7 pages and hard page breaks between testimony are now
8 required by the Court. See next ensuing page for
9 sequential continuation of record.)

DIRECT - MARY A. ROBINSON BY MR. PEPER

724

DIRECT EXAMINATION OF MARY A. ROBINSON

BY MR. PEPER:

Q. OKAY, MS. ROBINSON, HOW ARE YOU?

A. I'M FINE.

Q. GOOD. MARK PEPER, WE MET FOR THE FIRST TIME THIS MORNING.

A. RIGHT.

Q. I APPRECIATE YOU COMING DOWN. OKAY, JUST A FEW QUESTIONS, I'M NOT GOING TO KEEP YOU LONG.

A. OKAY.

Q. WERE YOU IN JAIL LAST WEEK?

A. YES, SIR.

Q. WHY WERE YOU IN JAIL?

A. FOR CONTEMPT OF COURT.

Q. WHEN YOU SAY, CONTEMPT OF COURT, YOU COMMITTED SOMETHING AGAINST THE COURT THAT THEY TOLD YOU NOT TO DO, IS THAT - - -

A. WELL, I'M IN A PROGRAM HERE CALLED RECOVERY COURT. THIS STARTED IN TWO THOUSAND AND SIX FOR ME WHEN I WAS INCARCERATED FOR DRIVING UNDER SUSPENSION. AT THAT TIME DSS GOT INVOLVED IN MY CASE AND THE STATE HAS MY CHILDREN, SO I'M ATTENDING RECOVERY COURT TO OBTAIN THE CUSTODY OF MY CHILDREN BACK.

Q. AND WHAT ARE THE REQUIREMENTS IN THAT RECOVERY COURT?

DIRECT - MARY A. ROBINSON BY MR. PEPER

725

1 A. WE'RE TO ATTEND PARENTING CLASSES, RANDOM DRUG
2 SCREENING, MENTAL HEALTH COUNSELING, PREVENTION,
3 RELAPSE CLASSES, SO THERE'S A LOT OF REQUIREMENTS
4 FOR THAT PROGRAM.

5 Q. AND HAVE YOU BEEN DOING ALL OF THOSE?

6 A. YES, I'VE COMPLETED ALL OF THOSE EXCEPT FOR THE
7 PREVENTION CLASS.

8 Q. SO, WHY WERE YOU FOUND IN CONTEMPT OF RECOVERY
9 COURT?

10 A. ALLEGEDLY ABOUT A MONTH MY SIX YEAR OLD WAS
11 MOLESTED WHILE IN FOSTER CARE. THAT HAD A VERY
12 DAMPENING ON MY SPIRIT AND MY RECOVERY, AND I
13 RELAPSED TO SMOKE MARIJUANA. SO, I ADMITTED TO
14 THE COURT THAT I HAD RELAPSED AND I WAS FOUND IN
15 CONTEMPT BECAUSE I WAS TESTED AND IT CAME BACK
16 POSITIVE.

17 Q. SO, NOBODY SMOKING, AND YOU VOLUNTARILY TOLD THE
18 COURT THAT YOU - - -

19 A. YES.

20 Q. --- HAD A RELAPSE AND SMOKED MARIJUANA?

21 A. YES.

22 Q. AND WHAT WAS YOUR SENTENCE?

23 A. FORTY-EIGHT HOURS IN THE DETENTION CENTER.

24 Q. OH, OKAY. SO CHARLESTON COUNTY DETENTION CENTER?

25 A. YES.

DIRECT - MARY A. ROBINSON BY MR. PEPPER

726

1 Q. AND YOU HAD TO DO DAYS, FORTY-EIGHT HOURS?

2 A. YES.

3 Q. OKAY. ALRIGHT. WHEN WAS THIS, WAS THIS RECENT?

4 A. THIS WAS THIS LAST WEEK, TUESDAY, I WAS
5 REPRIMANDED TO JAIL AND I WAS RELEASED ON
6 THURSDAY.

7 Q. OKAY. SO, TODAY IS WEDNESDAY, SO A WEEK AGO TODAY
8 YOU WERE RIGHT IN THE MIDDLE OF SERVING YOUR
9 FORTY-EIGHT HOUR TIME PERIOD?

10 A. YES, SIR.

11 Q. OKAY. DID YOU RUN INTO ANGELA AGAGAS AT THE JAIL?

12 A. YES, I DID.

13 Q. HOW DO YOU KNOW ANGELA AGAGAS?

14 A. I'VE BEEN KNOWING HER, SHAWN PHILLIPS, AND CHINA,
15 B.G., AND L, I KNOW THE WHOLE CREW, SINCE TWO
16 THOUSAND AND SIX.

17 Q. DO YOU APPROVE OF THE WAY THEY LIVE THEIR LIFE
18 STYLES?

19 A. I'M NOT THE JUDGE AND THE JURY, SIR, SO I'D RATHER
20 NOT COMMENT ON THAT.

21 Q. I UNDERSTAND THAT SHAWN AND ANGELA STAYED WITH YOU
22 FOR A WHILE?

23 A. YES, SIR.

24 Q. AND SO, YOU KNOW THAT THEY WERE DATING, CORRECT?

25 A. YES, SIR.

DIRECT - MARY A. ROBINSON BY MR. PEPER

727

1 Q. WHAT DID, WHAT OCCURRED WITH YOU AND ANGELA, HOW
2 DID YOU KNOW THAT WAS ANGELA?

3 A. BECAUSE SHE LIVED IN MY HOME, FOR ONE, AND HER AND
4 I ARE VERY CLOSE FRIENDS, AND I WAS FRIENDS WITH
5 SHAWN, AND I WAS FRIENDS WITH ANGELA AND CHINA. I
6 DIDN'T AFFILIATE WITH THEM IN ANY ACTIVITIES THAT
7 WERE GOING ON, BUT I KNEW THEM. I USED TO BRAID
8 SHAWN'S HAIR, AND HE WAS ALSO A NEIGHBOR OF MINE.

9 Q. HOW DID YOU, DID YOU JUST RANDOMLY SEE ANGELA OR
10 WHAT HAPPENED?

11 A. ACTUALLY, SHE SEEN ME, AND SHE CALLED ME OVER AND
12 SHE SAID TO ME THAT THE TRIAL WITH SHAWN STARTS
13 THIS MONDAY BECAUSE I HAD CONTACT WITH SHAWN'S
14 MOTHER BUT I LOST MY PHONE SO I HAD NO CONTACT
15 WITH THE FAMILY OR SHAWN IN OVER A YEAR.

16 Q. SO, YOU HAD NO IDEA THAT HIS TRIAL WAS STARTING
17 THIS WEEK?

18 A. NO, SIR.

19 Q. BUT ANGELA TOLD YOU THAT IT WAS STARTING THIS
20 WEEK?

21 A. YES, SIR.

22 Q. AND WHY WAS THAT EVEN A PART OF THE CONVERSATION?

23 A. BECAUSE SHE SHOWED ME PICTURES OF HER AND SHAWN'S
24 BABY, LITTLE MADISON. SHE ALSO INFORMED ME THAT
25 SHE HAD BEEN TOLD THAT SHE WOULD BE CHARGED WITH

DIRECT - MARY A. ROBINSON BY MR. PEPPER

728

1 ACCESSORY AND COULD FACE UP TO THIRTY YEARS IF SHE
2 DIDN'T TESTIFY AGAINST SHAWN.

3 Q. SO, SHE'S FACING UP TO THIRTY YEARS UNLESS SHE
4 TESTIFIES AGAINST SHAWN?

5 A. THAT'S WHAT SHE TOLD ME, YES, SIR.

6 Q. AND WAS THERE ANY OTHER REASON THAT SHE WANTED TO
7 TESTIFY? I MEAN, THAT'S PRETTY GOOD REASON, BUT
8 WERE THERE ANY OTHER REASONS?

9 A. IN THE BEGINNING I WAS INCARCERATED IN TWO
10 THOUSAND AND SIX FOR DRIVING UNDER SUSPENSION. AT
11 THAT TIME SHE DID NOT SEEM THAT SHE WANTED TO
12 TESTIFY AGAINST SHAWN BECAUSE THEY WERE STILL
13 INVOLVED. HER STORY WAS TOTALLY DIFFERENT THIS
14 TIME AROUND. SHE SEEMED VERY BITTER AND VERY
15 ANGRY. I CAN'T SAY FOR WHAT REASONS BECAUSE I WAS
16 NOT THERE, BUT JUST HER DEMEANOR AND WHAT I
17 RECEIVED FROM THE CONVERSATION THAT I HAD WITH
18 HER.

19 Q. WHERE IS HER BABY, WHERE IS SHAWN'S BABY RIGHT
20 NOW?

21 A. SHE INFORMED ME THAT IT WAS A FAMILY MEMBER, A
22 COUSIN, THAT HER PARENTS WERE VERY UPSET THAT SHE
23 HAD A BI-RACIAL CHILD, THAT HER HUSBAND WAS ALSO
24 VERY UPSET THAT SHE HAD A BI-RACIAL CHILD, AND
25 THAT SHE WANTED NO AFFILIATION WITH SHAWN OR HIS

DIRECT - MARY A. ROBINSON BY MR. PEPER

729

1 FAMILY AT ALL, SO SHE DIDN'T WANT SHAWN'S MOTHER
2 TO HAVE CUSTODY OF THE CHILD.

3 Q. AND I'M ASSUMING, OR WERE YOU, DID YOU PRETTY MUCH
4 WALK AWAY FROM THAT CONVERSATION?

5 A. I WAS TOLD AT THAT POINT TO GET AWAY FROM HER
6 DOOR, BECAUSE I WAS ON ONE SIDE OF THE DOOR AND
7 SHE WAS ON THE OTHER SIDE OF THE DOOR, SO WE'RE
8 NOT SUPPOSED TO REALLY INTERACT LIKE THAT, SO I
9 WAS TOLD TO LEAVE THE DOOR AT THAT TIME.

10 Q. SO, THAT'S THE ONLY CONTACT YOU HAD WITH HER?

11 A. NO, I SPOKE TO HER A TIME BEFORE THEN, AND SHE WAS
12 TELLING ME ABOUT L'S TRIAL THAT WAS A HUNG JURY,
13 AND I SPOKE TO ALANA ALSO WHILE I WAS THERE AND
14 SHE WAS STATING THAT SHE WAS TIRED OF BEING THERE,
15 AND THEY PRETTY MUCH BOTH TOLD ME THAT THEY WOULD
16 DO WHATEVER THEY HAD TO DO NOT TO BE SENT TO
17 PRISON BECAUSE IT HAD BEEN A LONG HARD TIME FOR
18 THEM BEING INCARCERATED SUCH A LONG TIME.

19 Q. INCLUDING TESTIFYING AGAINST SHAWN?

20 A. YES, SIR.

21 MR. PEPER: THANK YOU VERY MUCH.

22 PLEASE ANSWER ANY QUESTIONS MR. DURANT HAS, OKAY?

23 THE COURT: CROSS-EXAMINATION.

24 SOLICITOR RUTLEDGE DURANT: THANK
25 YOU, JUDGE.

CROSS - MARY A. ROBINSON BY SOL. RUTLEDGE DURANT

730

CROSS-EXAMINATION OF MARY A. ROBINSON

BY SOLICITOR RUTLEDGE DURANT:

Q. YOU SAID YOU KNEW SHAWN PHILLIPS FROM TWO THOUSAND SIX?

A. ACTUALLY I KNEW HIM FOR A LITTLE LONGER THAN THAT, YES, SIR.

Q. A VERY LONG TIME?

A. FROM ABOUT TWO THOUSAND AND FIVE.

Q. WHEN DID YOU MEET L?

A. I MET L IN TWO THOUSAND AND SIX.

Q. HOW DID YOU MEET HIM?

A. I MET HIM THROUGH SHAWN AND ANGELA.

Q. SO, YOU SAID YOU KNEW THE WHOLE CREW?

A. YES, SIR.

Q. WHO DID YOU KNOW FIRST?

A. I KNEW SHAWN FIRST.

Q. SHAWN IS A GOOD FRIEND?

A. NO, I USED TO BRAID HIS HAIR.

Q. YOU USED TO BRAID HIS HAIR.

A. YES.

Q. AND YOU GAVE A STATEMENT TO MR. PEPER - - -

A. YES, SIR.

Q. --- ABOUT THIS CASE AS WELL, RIGHT?

A. YES, I DID.

SOLICITOR RUTLEDGE DURANT: PLEASE

CROSS - MARY A. ROBINSON BY SOL. RUTLEDGE DURANT

731

1 MARK THIS.

2 COURT REPORTER: ID?

3 SOLICITOR RUTLEDGE DURANT: FOR ID,

4 YES, MA'AM.

5 MR. PEPER: YOUR HONOR, COULD WE

6 APPROACH?

7 (Whereupon, a bench conference
8 is had out of the hearing of
9 the court reporter.)

10 COURT REPORTER: STATE'S THIRTY-SIX,

11 FOR ID.

12 (State's Exhibit Thirty-six,
13 Letter from Mary Robinson to
14 Mark Peper marked for id.)

15 Q. SHAWN PHILLIPS AND LENNIE MICKEY ARE GOOD FRIENDS?

16 A. TO MY KNOWLEDGE.

17 Q. AND YOU WROTE A LETTER TO MR. PEPER?

18 A. I BELIEVE THAT'S MY HANDWRITING, YES.

19 Q. IS THAT THE LETTER YOU WROTE?

20 A. MAY I READ IT?

21 Q. SURE.

22 THE COURT: MA'AM, YOU NEED TO SPEAK

23 A LITTLE LOUDER.

24 A. OH, I'M SORRY. HOLD ON. YES, I DO RECALL WRITING
25 THIS STATEMENT.

1 Q. AND THAT'S YOUR LETTER?

2 A. YES.

3 Q. AND YOU SAY AT THE TOP OF THIS LETTER, "I, MARY
4 ROBINSON, WOULD LIKE TO SUBMIT THIS STATEMENT ON
5 BEHALF OF SHAWN PHILLIPS" - - -

6 A. YES.

7 Q. --- "ABOUT THE NIGHT IN QUESTION."

8 A. YES.

9 Q. AND THAT'S THE NIGHT OF MURDER?

10 A. YES.

11 Q. AND YOU SAY YOU WERE INVITED TO THE ROOM TO BRAID
12 SHAWN'S HAIR THAT NIGHT?

13 A. YES.

14 Q. AND YOU ESSENTIALLY SAY THAT YOU STAYED IN THAT
15 ROOM WITH SHAWN PHILLIPS ALL NIGHT AND HE NEVER
16 LEFT THE ROOM, DON'T YOU?

17 A. NO, I DID NOT SAY THAT.

18 Q. PLEASE READ YOUR STATEMENT TO THE JURY.

19 A. OKAY. IT SAYS, "I, MARY ROBINSON, WOULD LIKE TO
20 SUBMIT THIS STATEMENT ON BEHALF OF SHAWN PHILLIPS
21 ABOUT THE NIGHT IN QUESTION. I WAS INVITED TO THE
22 ROOM TO BRAID SHAWN'S HAIR THAT NIGHT. WE SAT
23 THERE AND WE DRANK BEER AND WE LAUGHED AND WE
24 PARTIED. I ARRIVED ABOUT TEN P.M, AND DID NOT
25 DEPART UNTIL SEVEN:THIRTY THE NEXT MORNING. I WAS

CROSS - MARY A. ROBINSON BY SOL. RUTLEDGE DURANT

733

1 ALSO THERE ALL NIGHT OUTSIDE OF GOING TO THE GAS
2 STATION TO GET CIGS AND NEXT DOOR TO SEE A FRIEND.
3 THERE WAS SOMEONE ELSE THERE BY THE NAME OF L, HE
4 WAS A VERY ANGRY AND RUDE PERSON. HE GAVE ME A
5 VERY HARD TIME. HE ALSO PLAYED WITH A GUN A LOT
6 AND TALKED ABOUT HOW HE WAS A GOV, A TRUE GOV.
7 WHEN I LEFT THAT MORNING SHAWN WAS SLEEPING AND I
8 TRIED AND TRIED TO WAKE HIM UP FOR GAS FARE, AND
9 HE KEPT SAYING, LEAVING ME ALONE. I FINALLY
10 DECIDED TO LEAVE AND GO HOME. I WENT AND GOT MY
11 DAUGHTER OFF TO SCHOOL AND THEN I RETURNED TO THE
12 ROOM WHERE SHAWN STILL REMAINED SLEEPING. I THEN
13 WRESTLED WITH HIM SOME MORE UNTIL HE FINALLY GOT
14 UP, AND HE SAID TO ME, YOU'RE GETTING ON MY
15 NERVES, LEAVE ME THE HELL ALONE. AND I SAID, NO.
16 YOU HAD ME UP MOST OF THE NIGHT PARTYING WITH YOU,
17 NOW YOU WANT TO SLEEP. HELL, NO, GET YOUR A-S-S
18 UP NOW. HE FINALLY ROLLED OVER AND STARTED TO
19 WAKE UP, AND SHORTLY AFTER, I LEFT. THAT WAS
20 CLOSE TO CHECK OUT TIME." AND ON THIS LINE IT
21 SAYS, "ALSO, THERE WAS A YOUNG LADY THERE BY THE
22 NAME OF ANGIE."

23 Q. AND YOU WROTE THIS STATEMENT OVER A YEAR AGO?

24 A. YES, SIR. TWO THOUSAND AND SIX.

25 Q. SO, ESSENTIALLY, YOU'RE JUST TRYING TO GIVE HIM

CROSS - MARY A. ROBINSON BY SOL. RUTLEDGE DURANT

734

1 COVER, WEREN'T YOU?

2 A. NO, WAS NOT.

3 Q. YOU WERE IN THE ROOM WITH HIM ALL NIGHT?

4 A. NO, I WAS NOT IN THE ROOM THE WHOLE NIGHT.
5 ACTUALLY, I LEFT PERIODICALLY, IT SAYS IN MY
6 STATEMENT I WENT TO THE GAS STATION, I WENT AND
7 GOT CIGARETTES, I WAS NOT THERE FROM TOTALLY TEN
8 P.M. TO SEVEN;THIRTY A.M., BUT I WAS THERE BACK
9 AND FORTH THROUGHOUT THAT NIGHT, YES, SIR.

10 Q. AND YOU WERE THERE THE NEXT MORNING, AS WELL?

11 A. I LEFT THERE ABOUT SEVEN;THIRTY, I WENT AND TOOK
12 MY DAUGHTER TO SCHOOL, AND THEN I WENT BACK.

13 Q. AND SHAWN WAS SLEEPING THERE?

14 A. YES.

15 SOLICITOR RUTLEDGE DURANT: THANK
16 YOU, NO FURTHER QUESTIONS.

17 THE COURT: REDIRECT?

18 MR. PEPER: NO, YOUR HONOR.

19 THE COURT: THANK YOU, MA'AM, YOU
20 MAY STEP DOWN. THANK YOU FOR COMING, YOU MAY BE
21 EXCUSED.

22 CALL YOUR NEXT WITNESS, PLEASE.

23 MR. PEPER: THANK YOU, YOUR HONOR,
24 THE STATE CALLS MS. OCTAVIA ANCRUM.

25 CLERK: COME ON AROUND AND BE SWORN.

1 PLEASE PLACE YOUR LEFT HAND ON THE BIBLE AND RAISE YOUR
2 RIGHT HAND.

3 (Whereupon, Octavia Olivia Ancrum
4 is duly sworn.)

5 CLERK: PLEASE BE SEATED. PLEASE
6 STATE YOUR FULL NAME TO THE COURT AND SPELL IT.

7 WITNESS: OCTAVIA OLIVIA ANCRUM, A-
8 N-C-R-U-M.

9 (NOTE: Blank lines on this page do not indicate any
10 part of record has been omitted. Headers on testimony
11 pages and hard page breaks between testimony are now
12 required by the Court. See next ensuing page for
13 sequential continuation of record.)

DIRECT - OCTAVIA O. ANCRUM BY MR. PEPER

736

DIRECT EXAMINATION OF OCTAVIA O. ANCRUM

BY MR. PEPER:

Q. MS. ANCRUM, MARK PEPER, I REPRESENT SHAWN. I
UNDERSTAND THAT'S YOUR BROTHER, CORRECT?

A. YES.

Q. HOW OLD ARE YOU?

A. THIRTY-ONE.

Q. OKAY. WHERE DO YOU LIVE?

A. I LIVE ON DORCHESTER ROAD IN WEST PLANTATION.

Q. AND WHO DO YOU LIVE WITH?

A. MYSELF AND FOUR CHILDREN.

Q. HAS SHAWN EVER LIVED WITH YOU?

A. OFF AND ON.

Q. OKAY. HAS SHAWN EVER BROUGHT INDIVIDUALS OVER TO
YOUR HOUSE?

A. YES, HE DID.

Q. HAS HE EVER BROUGHT LENNIE MICKEY OVER TO YOUR
HOUSE?

A. YES, SIR.

Q. SO, YOU KNOW LENNIE MICKEY?

A. YES.

Q. HOW DO YOU KNOW HIM?

A. I'VE KNOWN HIM FROM HIM COMING TO MY HOME AND, YOU
KNOW, IN NOVEMBER OF O-SIX, AND HE WAS WITH SHAWN,
HE WAS VERY AGGRESSIVE, HE WAS ALSO AGGRESSIVE

DIRECT - OCTAVIA O. ANCRUM BY MR. PEPER

737

1 WITH ME TO THE POINT WHERE I WAS UNCOMFORTABLE AND
2 ASKED HIM TO LEAVE MY HOME. AND BEFORE HE LEFT
3 HE ASKED ME IF I HAD A GUN.

4 SOLICITOR RUTLEDGE DURANT:
5 OBJECTION, HEARSAY.

6 THE COURT: SHE SAID, HE -- I WILL
7 NOT ALLOW HER TO TESTIFY TO WHAT THE DEFENDANT TOLD HER.

8 MR. PEPER: THAT WAS WHAT THE
9 DEFENDANT ASKED HER.

10 SOLICITOR RUTLEDGE DURANT: SHE'S
11 TALKING, AS I UNDERSTAND IT SHE WAS ABOUT TO TESTIFY TO
12 WHAT LENNIE MICKEY, A CO-DEFENDANT, TOLD HER.

13 THE COURT: Y'ALL APPROACH THE
14 BENCH.

15 (Whereupon, a bench conference
16 is had out of the hearing of
17 the jury and court reporter.)

18 Q. OCTAVIA, YOU WERE TELLING THE JURY HOW YOU KNEW
19 MR. MICKEY. PLEASE CONTINUE.

20 A. I KNOW HIM BY MEETING HIM WHEN HE AND SHAWN - - -

21 THE COURT: YOU NEED TO SPEAK A
22 LITTLE LOUDER.

23 A. I KNEW HIM WHEN HIM AND SHAWN CAME TO MY HOME ON
24 ONE OCCASION, AND WHEN HE CAME INTO MY HOME HE WAS
25 VERY AGGRESSIVE, SPEAKING, AND I WAS UNCOMFORTABLE

DIRECT - OCTAVIA O. ANCRUM BY MR. PEPER

738

1 WITH HIM BEING THERE AND I ASKED HIM TO LEAVE.
2 BEFORE LENNIE LEFT HE ASKED ME OUT OF HIS OWN
3 MOUTH DID I HAVE A GUN, AND I TOLD HIM, NO, I DID
4 NOT. I ASKED HIM AGAIN TO LEAVE, AND SHAWN WAS
5 JUST KIND OF LIKE LOOKING AT ME IN A DAZE LIKE HE
6 WAS FRIGHTENED, AND HE TOLD SHAWN, YOU KNOW,
7 BASICALLY, LET'S GO. AND IT'S LIKE HE, YOU KNOW,
8 WAS VERY JITTERY, AND LIKE HE WAS AFRAID OF THIS
9 PERSON. AT THAT PARTICULAR TIME I REALLY DIDN'T
10 KNOW WHAT WAS GOING ON BECAUSE I DIDN'T SEE SHAWN
11 LIKE THAT. AND THEN, YOU KNOW, TO GO ON TO SAY,
12 IT'S JUST HE WAS VERY AGGRESSIVE WITH SHAWN AND
13 WITH MYSELF AS WELL, AND I WAS JUST UNCOMFORTABLE
14 WITH THE WHOLE SITUATION. THEN THERE WAS A TIME
15 THAT SHAWN HAD CALLED ME MAYBE A DAY OR TWO LATER

16 - - -

17 SOLICITOR RUTLEDGE DURANT: YOUR
18 HONOR, OBJECTION.

19 THE COURT: YOU CANNOT TESTIFY TO
20 WHAT SHAWN TOLD YOU OR WHAT ANYBODY ELSE TELLS YOU.
21 OKAY? ALRIGHT.

22 Q. BACK TO MR. MICKEY AND THE ALTERCATION OR THE
23 CONVERSATION YOU HAD THAT YOU JUST TESTIFIED TO,
24 THAT WAS AROUND NOVEMBER OF O-SIX, IS THAT
25 CORRECT?

DIRECT - OCTAVIA O. ANCRUM BY MR. PEPER

739

1 A. YES, YES, SIR.

2 Q. AND DO YOU KNOW WHEN THE ALLEGED ARMED ROBBERY AND
3 MURDER OCCURRED AT THE BUDGET INN?

4 A. I ONLY KNOW BECAUSE OF LOOKING AT THE NEWS. I
5 BELIEVE AROUND NOVEMBER EIGHTH, NINTH, I'M NOT
6 SURE.

7 Q. AROUND THE SAME TIME THAT LENNIE MICKEY CAME OVER
8 TO YOUR HOUSE AND YOU ASKED HIM TO LEAVE?

9 A. YES, SIR.

10 Q. WHEN YOU SAY THAT SHAWN SEEMED FRIGHTENED OR
11 SCARED, WHAT LED YOU TO THAT CONCLUSION?

12 A. JUST BY LOOKING AT HIM, INTO HIS EYES AND HIS
13 WHOLE DEMEANOR, HIS BODY, YOU KNOW, JUST THE WAY
14 HE WAS ACTING.

15 Q. WHO WAS HE SCARED OF?

16 A. I BELIEVE LENNIE.

17 Q. HAVE YOU EVER LOANED YOUR BROTHER ANY MONEY?

18 A. YES, SIR.

19 Q. WHY DID YOU LOAN HIM MONEY?

20 THE COURT: ALRIGHT. Y'ALL APPROACH
21 THE BENCH.

22 (Whereupon, a bench conference
23 is had out of the hearing of
24 the jury and court reporter.)

25 Q. DO YOU STILL LIVE AT THAT SAME ADDRESS?

DIRECT - OCTAVIA O. ANCRUM BY MR. PEPER

740

1 A. YES.

2 Q. WITH YOUR THREE CHILDREN AS WELL?

3 A. FOUR CHILDREN, YES.

4 Q. FOUR CHILDREN. HAVE YOU SEEN LENNIE MICKEY SINCE
5 THEN?

6 A. NO, I HAVEN'T.

7 Q. DO YOU EVER WANT HIM BACK IN YOUR HOUSE AGAIN?

8 A. NO, I DON'T.

9 Q. DO YOU WANT HIM HANGING AROUND WITH ANYBODY YOU
10 KNOW?

11 A. NO, I DON'T.

12 MR. PEPER: THANK YOU VERY MUCH,
13 PLEASE ANSWER ANY QUESTIONS MR. DURANT MAY HAVE.

14 THE COURT: IS THERE ANY CROSS-
15 EXAMINATION?

16 SOLICITOR RUTLEDGE DURANT: NO, SIR.

17 THE COURT: THANK YOU, MA'AM, YOU
18 MAY STEP DOWN. THANK YOU FOR COMING.

19 YOU MAY CALL YOUR NEXT WITNESS.

20 MR. PEPER: THE COURT'S INDULGENCE,
21 YOUR HONOR.

22 THE COURT: YES, SIR.
23 ANYTHING ELSE?

24 MR. PEPER: NOT AT THIS TIME.

25 THE COURT: LADIES AND GENTLEMEN,

1 THE DEFENSE HAS NO MORE TESTIMONY TO OFFER AT THIS TIME.
2 THERE MAY BE SOME ADDITIONAL TESTIMONY AFTER LUNCH,
3 THERE MAY NOT BE, I DON'T KNOW YET. BUT WE'RE GOING TO
4 TAKE A BREAK AT THIS TIME. IT'S ONE O'CLOCK, I'M GOING
5 TO ASK YOU TO TRY TO BE BACK BY TWO O'CLOCK. LIKE I
6 SAY, WE MAY HAVE SOME ADDITIONAL TESTIMONY, WE MAY NOT,
7 BUT IT WILL BE RELATIVELY BRIEF IF WE DO HAVE SOME
8 TESTIMONY. THEN THE ATTORNEYS WILL MAKE THEIR CLOSING
9 ARGUMENTS TO YOU, THEN I'LL CHARGE YOU ON THE LAW, AND
10 THEN YOU'LL BEGIN YOUR DELIBERATIONS.

11 NOW, IT'S GOING TO PROBABLY -- I'M
12 JUST GUESSING, IT'S GOING TO PROBABLY TAKE A COUPLE OF
13 HOURS TO DO THAT, WHICH MEANS WE WOULD BE ASKING YOU TO
14 START YOUR DELIBERATIONS AROUND FOUR O'CLOCK THIS
15 AFTERNOON. I DON'T WANT YOU TO BE HURRIED OR PRESSURED
16 IN MAKING YOUR DELIBERATIONS. WE WOULD HAVE A -- WE
17 DON'T REALLY LIKE TO TAKE A BREAK BETWEEN THE CLOSING
18 AND THE CHARGE AND THE DELIBERATIONS, WE LIKE TO
19 CONTINUE THAT, SO I WOULD LIKE FOR YOU TO BE PREPARED TO
20 STAY A LITTLE BIT LATE THIS AFTERNOON IF YOU CAN. NOW,
21 IF IT GETS TO THE POINT WHERE YOU'RE READY TO GO HOME
22 WE'LL START AND COME BACK IN THE MORNING. WE'RE NOT
23 GOING TO PUT ANY PRESSURE ON YOU OR ANYBODY ELSE IN THAT
24 REGARD BUT A LOT OF TIMES PEOPLE SAY, WELL, IF I HAD
25 KNOWN EARLIER I COULD HAVE MADE ARRANGEMENTS FOR

1 SOMEBODY TO PICK UP MY CHILD. SO, I'M TELLING YOU THAT
2 YOU MAY BE ASKED TO STAY PAST FIVE OR EVEN SIX O'CLOCK
3 THIS AFTERNOON, BUT I ASSURE YOU I WILL NOT KEEP YOU
4 HERE WITHOUT YOUR CONSENT. IF SOMETHING COMES UP WE'LL
5 JUST RECESS AND COME BACK IN THE MORNING AND FINISH IT
6 UP IN THE MORNING. SO, PLEASE UNDERSTAND THAT, PLEASE
7 DO NOT TALK ABOUT THE CASE. I KNOW IT'S A LITTLE
8 RUSHING TO TRY TO GET BACK BY ONE. IF YOU DON'T WE'RE
9 NOT GOING TO FUSS ABOUT THAT. JUST GET YOU A BITE TO
10 EAT AND GET BACK AS SOON AS YOU CAN AND I'LL DO THE SAME
11 THING.

12 THANK YOU VERY MUCH, YOU ARE EXCUSED
13 AT THIS TIME. PLEASE DO NOT TALK ABOUT THE CASE.

14 (Whereupon, the jury leaves
15 the courtroom and the following
16 takes place out of the presence
17 of the jury.)

18 THE COURT: Y'ALL CAN BE SEATED. WE
19 NEED TO REVISIT THE QUESTION OF WHETHER OR NOT THE
20 DEFENDANT WANTS TO TESTIFY. NOW, I INDICATED TO HIM
21 YESTERDAY THAT IF HE TESTIFIED THE STATE COULD BRING OUT
22 THE FACT THAT HE HAD THE THREE BURGLARIES, AND I DID
23 THAT UNDER THE MISTAKEN IMPRESSION THAT THEY WERE, HAD
24 BEEN DETERMINED TO BE CRIMES OF DISHONESTY. THAT IS NOT
25 RIGHT. SO, I'LL BE GLAD TO HEAR YOU, MR. PEPPER, AND

1 WHETHER YOU THINK THOSE THREE BURGLARIES SHOULD BE
2 ADMISSIBLE IF YOUR CLIENT DECIDES TO TESTIFY.

3 MR. PEPPER: YOUR HONOR, I DON'T
4 THINK THEY WOULD BE ADMISSIBLE BECAUSE THEY DON'T HAVE
5 ANY SIMILAR CHARACTERISTICS TO THE CRIMES THAT HAVE BEEN
6 CHARGED HERE. THAT IS REALLY MY SOLE ARGUMENT AT THIS
7 POINT.

8 THE COURT: ALRIGHT. WHAT'S THE
9 STATE'S POSITION?

10 SOLICITOR BRUCE DURANT: YOUR HONOR,
11 OBVIOUSLY, IT'S OUR POSITION THAT BURGLARY IS A CRIME OF
12 DISHONESTY. WE CAN PROVE SPECIFICALLY THAT AT LEAST TWO
13 OF THESE CASES INVOLVED LARCENY THROUGH A COMBINATION OF
14 THE INDICTMENT AND THE WARRANT UPON WHICH THEY WERE
15 BASED.

16 THE COURT: SO, YOU HAVE THE
17 INDICTMENTS?

18 SOLICITOR BRUCE DURANT: I HAVE THE
19 INDICTMENTS, AND I HAVE THE WARRANTS UPON WHICH THE
20 INDICTMENTS WERE BASED.

21 THE COURT: AND TWO OF THEM INVOLVE
22 STEALING?

23 SOLICITOR BRUCE DURANT: TWO OF THEM
24 INVOLVE LARCENY FOR SURE. I BELIEVE THE THIRD ONE DOES,
25 TOO, BUT IT DOESN'T REALLY STATE SPECIFICALLY IN THE

1 WARRANT, THE ARREST WARRANT, BUT TWO OF THEM DEFINITELY
2 INVOLVE LARCENY.

3 THE COURT: WELL, IT APPEARS TO ME,
4 AND THIS IS NEW LAW TO ME THIS MORNING, BUT MY
5 DETERMINATION HAS TO BE BASED ON THE INHERENT
6 CHARACTERISTICS OF THE CRIME AND THE INDICTMENT. AND
7 THE CASES SAY IF YOU GO ANY FURTHER THAN THAT YOU'RE
8 GOING TO HAVE A MINI-TRIAL, SO WE'RE NOT GOING ANY
9 FURTHER THAN THAT, I WOULD INCLUDE THAT TO BE THE
10 WARRANT. SO, IF THE THIRD ONE DOES NOT LEAD ME TO
11 CONCLUDE THERE WAS LARCENY OR SOME OTHER CRIME OF
12 DISHONESTY INVOLVED IN THE BURGLARY I WOULD NOT ALLOW
13 THE THIRD ONE IN. I WOULD ALLOW THE TWO IN IF THEY HAVE
14 EVIDENCE OF LARCENY.

15 SOLICITOR BRUCE DURANT: THEY DO,
16 AND TWO OF THEM SPECIFICALLY RELATE THAT, YOUR HONOR.

17 THE COURT: ALRIGHT. OKAY.

18 SOLICITOR BRUCE DURANT: THE THIRD
19 ONE JUST STATES, WITH AN INTENT TO COMMIT A CRIME
20 THEREIN, AND IT DOESN'T STATE WHAT THE CRIME WAS.

21 THE COURT: THAT'S ANOTHER REASON WE
22 SHOULD MAKE OUR INDICTMENTS MORE SPECIFIC, ISN'T IT?
23 OKAY.

24 ALRIGHT, NOW, MR. PHILLIPS, DO YOU
25 UNDERSTAND WHAT I JUST SAID? TWO OF THE BURGLARIES

1 WOULD COME IN BUT ONE WOULDN'T. AND SO, HAVE YOU
2 DISCUSSED WITH YOUR ATTORNEY WHETHER YOU WANT TO TESTIFY
3 OR NOT?

4 DEFENDANT PHILLIPS: YES, SIR.

5 THE COURT: DO YOU NEED TO TALK WITH
6 HIM SOME MORE ABOUT THAT BASED ON WHAT WE'VE JUST SAID
7 ABOUT THE BURGLARIES?

8 DEFENDANT PHILLIPS: NO, SIR, I
9 ALREADY DECIDED NOT TO TESTIFY.

10 THE COURT: YOU DON'T WANT TO
11 TESTIFY?

12 DEFENDANT PHILLIPS: NO, SIR.

13 THE COURT: NOW, IS THAT YOUR
14 DECISION?

15 DEFENDANT PHILLIPS: YES, SIR.

16 THE COURT: HAS ANYBODY PRESSURED YOU
17 INTO MAKING THAT DECISION?

18 DEFENDANT PHILLIPS: NO, SIR.

19 THE COURT: YOU ARE COMFORTABLE WITH
20 THAT DECISION?

21 DEFENDANT PHILLIPS: YES, SIR.

22 THE COURT: YOU DON'T WANT TO
23 TESTIFY?

24 DEFENDANT PHILLIPS: NO, SIR.

25 THE COURT: ALRIGHT. IF YOU CHANGE

1 YOUR MIND OVER THE LUNCH HOUR YOU CAN TESTIFY WHEN WE
2 GET BACK. ALRIGHT, SIR?

3 DEFENDANT PHILLIPS: YES, SIR.

4 THE COURT: ALRIGHT, I FIND HE'S
5 FREELY, VOLUNTARILY, KNOWINGLY AND INTELLIGENTLY WAIVED
6 HIS RIGHT TO TESTIFY AND I WILL INSTRUCT THE JURY
7 APPROPRIATELY.

8 THANK YOU, SIR, YOU MAY BE SEATED.

9 MR. PEPER: THANK YOU, YOUR HONOR.

10 THE COURT: ALRIGHT, WE'LL BE AT
11 EASE UNTIL TWO, AND IF Y'ALL CAN COME BACK THERE NOW AND
12 WE'LL HAVE A LITTLE TALK ABOUT THE CHARGE A FEW MINUTES
13 BEFORE WE GET A BITE TO EAT.

14 MR. PEPER: BEFORE HAND?

15 THE COURT: YEAH, BEFORE, LET'S DO
16 IT RIGHT NOW, IF THAT SUITS YOU.

17 MR. PEPER: OKAY, SURE, THAT'S FINE.

18 (Recess)

19 THE COURT: ALRIGHT.

20 SOLICITOR RUTLEDGE DURANT: JUDGE, -

21 - -

22 THE COURT: YES, SIR?

23 SOLICITOR RUTLEDGE DURANT: CAN WE
24 JUST TEST TO MAKE SURE THAT THIS IS WORKING TODAY?

25 THE COURT: SURE. DO WE HAVE ANY

1 MOTIONS BEFORE WE BRING IN THE JURY?

2 MR. PEPPER: I DO, YOUR HONOR.

3 THE COURT: ALRIGHT. COULD I HEAR
4 ANY MOTIONS AT THIS TIME SO I WON'T HAVE TO SEND THE
5 JURY RIGHT BACK OUT?

6 MR. PEPPER: YOUR HONOR, THE ONLY
7 MOTION I HAVE AT THIS TIME WOULD BE TO, AND I DON'T
8 THINK I NEED TO RENEW ANY OBJECTIONS THAT I MADE IN MY
9 CHIEF CASE. THE ONLY THING I WOULD ASK THE JUDGE IS, I
10 TRIED TO FIND THAT RULE AND, OF COURSE, WHEN I WAS
11 READING IT AT TWO O'CLOCK THIS MORNING, I FORGOT TO
12 BRING IT IN HERE, BUT I DO BELIEVE THAT IF THE DEFENSE
13 REQUESTS THAT THE STATE ARGUE THE LAW, THAT THEY ARE
14 REQUIRED TO, SO THEN, I WOULD ARGUE IN CLOSING AND THEN
15 THEY WOULD HAVE THE OPTION TO CLOSE AS WELL. BUT AGAIN,
16 YOUR HONOR, I ATTEMPTED TO FIND THAT RULE AND I JUST
17 CANT DO IT, BUT I CERTAINLY READ IT LAST NIGHT. I THINK
18 THAT THE PROSECUTION IS AWARE OF IT, BUT I DON'T THINK
19 THEY'RE GOING TO CONSENT TO IT, SO WE MAY NEED TO HEAR
20 THAT MATTER.

21 THE COURT: DO YOU OBJECT TO
22 OPENING?

23 SOLICITOR RUTLEDGE DURANT: JUDGE,
24 THAT'S FINE, I CAN OPEN BRIEFLY ON THE LAW.

25 THE COURT: ALRIGHT.

1 SOLICITOR RUTLEDGE DURANT: I DON'T
2 KNOW IF I HAVE ALL OF THE ELEMENTS JUST DOWN, BUT I CAN
3 TELL THEM WHAT THE LAW IS.

4 THE COURT: ALRIGHT. OKAY.
5 ALRIGHT.

6 MR. PEPER: THANK YOU, YOUR HONOR.

7 THE COURT: AND YOUR CLIENT IS
8 STILL, YOU DO NOT WANT TO TESTIFY, IS THAT RIGHT?

9 DEFENDANT PHILLIPS: NO, SIR.

10 MR. PEPER: YOUR HONOR, WE JUST
11 BRIEFLY SPOKE ABOUT IT AGAIN AND HE HAS REASSURED ME HE
12 DOES NOT WISH TO TESTIFY.

13 THE COURT: ALRIGHT. NOW, ON THING
14 ABOUT THE CHARGE, WE DID, MY CLERK, HE'S JUST THREE DAYS
15 OLD AND HE'S PRETTY GOOD, HE FOUND A CASE, STATE VERSUS
16 BENJAMIN, IN WHICH THE DEFENDANT WAS CHARGED WITH ARMED
17 ROBBERY AND MURDER, AND THE COURT ALLOWED THE CHARGE ON
18 DURESS WITH THE ADDITION THAT IT DID NOT APPLY TO
19 MURDER.

20 MR. PEPER: VERY GOOD.

21 THE COURT: AND IT WAS A VERY, AND
22 IT'S JUST THE FIRST PARAGRAPH ABOUT IMMINENT, PRESENT,
23 IMMINENT, AND OF SUCH A NATURE, AND THAT'S ALL I'M GOING
24 TO CHARGE.

25 MR. PEPER: VERY GOOD, YOUR HONOR.

1 THE COURT: JUST WHAT THE CASE SAYS.
2 IF YOU WANT TO KNOW EXACTLY IS WE'LL HAVE IT PRINTED
3 HERE IN JUST A SECOND.

4 MR. PEPER: YEAH, I THINK IT WAS IN
5 MY - - -

6 THE COURT: BUT YOU KNOW WHAT IT IS,
7 I'M - - -

8 MR. PEPER: YES, SIR, IT WAS IN MY
9 MEMORANDUM OF THE LAW TO REQUEST DURESS OR SOMETHING.

10 THE COURT: OKAY.

11 MR. PEPER: YES, SIR.

12 THE COURT: ALRIGHT.

13 MR. PEPER: THANK YOU.

14 THE COURT: ALRIGHT, BRING IN THE
15 JURY, PLEASE.

16 MR. PEPER: ESSENTIALLY, TO
17 ESTABLISH DURESS, THREE SENTENCES, CORRECT?

18 THE COURT: I THINK THAT'S RIGHT.
19 AND I WILL ASK YOU IF YOU HAVE ANY OTHER WITNESSES, AND
20 YOU WILL REST ON THE RECORD. OKAY?

21 MR. PEPER: THAT'S CORRECT, YOUR
22 HONOR. THANK YOU.

23 (Whereupon, the jury enters
24 the courtroom and the following
25 takes place in the presence

1 of the jury.)

2
3 BAILIFF: ALL OF THE JURORS ARE
4 SEATED IN THE JURY BOX.

5 THE COURT: ALRIGHT, THANK YOU.
6 ALRIGHT, LADIES AND GENTLEMEN, THANK
7 YOU FOR BEING BACK, AND WE'RE READY TO GET STARTED.
8 ANY FURTHER WITNESSES FROM THE
9 DEFENSE?

10 MR. PEPER: NO, YOUR HONOR, THE
11 DEFENSE RESTS AT THIS TIME. THANK YOU.

12 THE COURT: ALRIGHT. LADIES AND
13 GENTLEMEN, THE DEFENSE HAS RESTED. THAT MEANS YOU HAVE
14 HEARD ALL OF THE -- ANYTHING IN REPLY FROM THE STATE?

15 SOLICITOR RUTLEDGE DURANT: NOTHING
16 IN REPLY, JUDGE, THANK YOU.

17 THE COURT: OKAY. YOU'VE HEARD ALL
18 OF THE TESTIMONY AND EVIDENCE THAT YOU'RE GOING TO HEAR.
19 IT REMAINS NOW FOR THE ATTORNEYS TO GIVE YOU THEIR
20 CLOSING ARGUMENTS, AND THEN I'LL CHARGE YOU ON THE LAW,
21 AND THEN YOU CAN BEGIN YOUR DELIBERATIONS.

22 NOW, WHAT THE ATTORNEYS TELL YOU IN
23 THEIR ARGUMENTS IS NOT EVIDENCE. THE EVIDENCE WHICH YOU
24 WILL USE IN YOUR CONSIDERATION OF THIS CASE IS THE
25 TESTIMONY THAT CAME FROM WITNESSES WHO WERE SWORN AND

1 TESTIFIED FROM THAT STAND AS WELL AS THE EXHIBITS WHICH
2 YOU WILL HAVE WITH YOU IN THE JURY ROOM WHEN YOU BEGIN
3 YOUR DELIBERATIONS. SO, WHILE WHAT THEY TELL YOU IS NOT
4 EVIDENCE, IT IS IMPORTANT. THEY HAVE A GOOD GRASP OF
5 THE FACTS OF THIS CASE, THEY'VE BEEN WORKING WITH IT FOR
6 A LONG TIME. THEY KNOW THE LAW THAT WOULD APPLY TO THIS
7 CASE. AND SO, PLEASE GIVE THEM YOUR ATTENTION AS THEY
8 ADDRESS YOU. THE ATTORNEY FOR THE STATE WILL GO FIRST,
9 FOLLOWED BY THE ATTORNEY FOR THE DEFENSE, AND THEN THE
10 STATE WILL FINISH UP THEIR ARGUMENT AFTER THE DEFENSE
11 FINISHES. SO, PLEASE GIVE THEM YOUR ATTENTION.

12 MR. DURANT.

13 SOLICITOR RUTLEDGE DURANT: THANK
14 YOU, JUDGE, MAY IT PLEASE THE COURT.

15 THE COURT: YES, SIR.

16 SOLICITOR RUTLEDGE DURANT: MR.
17 PEPPER.

18 MR. PEPPER: YES, SIR.

19 CLOSING ARGUMENT BY SOL. RUTLEDGE DURANT

20 LADIES AND GENTLEMEN, THIS IS MY
21 OPPORTUNITY TO TELL YOU WHAT THE LAW IS ABOUT. THIS
22 ISN'T MY CLOSING ARGUMENT, BUT I DO HAVE THE OPPORTUNITY
23 TO ADDRESS YOU BRIEFLY AND LET YOU KNOW WHAT THE LAW IN
24 THIS CASE IS. AND WHEN I'M DONE WITH THAT MR. PEPPER
25 WILL JUST, YOU KNOW, RETURN TO TALK TO YOU AGAIN.

1 THE FIRST LAW OF THIS CASE THAT YOU
2 NEED TO BE AWARE OF IS THE HAND OF ONE IS THE HAND OF
3 ALL. THIS IS THE LEGAL DOCTRINE WHICH THE JUDGE WILL
4 CHARGE YOU AFTER CLOSING ARGUMENTS, AND IT CONTROLS THIS
5 CASE. AND IT SAYS, IF A CRIME IS COMMITTED BY TWO OR
6 MORE PEOPLE WHO ARE ACTING TOGETHER IN COMMITTING A
7 CRIME, THE ACT OF ONE IS THE ACT OF ALL. A PERSON WHO
8 JOINS WITH ANOTHER TO ACCOMPLISH AN ILLEGAL PURPOSE IS
9 CRIMINALLY RESPONSIBLE FOR EVERYTHING DONE BY THE OTHER
10 PERSON WHICH OCCURS AS A NATURAL CONSEQUENCE OF THE ACTS
11 DONE IN CARRYING OUT THE COMMON PLAN AND PURPOSE. THAT
12 IS THE LAW OF THIS CASE. YOU DO NOT HAVE TO THINK ABOUT
13 WHETHER THIS IS A GOOD LAW OR A BAD LAW, THAT IS FOR
14 ANOTHER DAY, THAT DOESN'T BELONG HERE. THIS IS THE LAW
15 IN THE CASE AND YOU ALL TOOK AN OATH TO FOLLOW THE LAW
16 WHEN YOU RAISED YOUR HANDS AND YOU SAID, I WILL FOLLOW
17 THE LAW AND I WILL FIND THE TRUTH.

18 NOW, THE DEFENDANT, MR. PHILLIPS, IS
19 CHARGED WITH THREE CRIMES. HE'S CHARGED WITH MURDER,
20 HE'S CHARGED WITH ARMED ROBBERY, AND HE'S CHARGED WITH
21 CRIMINAL CONSPIRACY. AND THE CRIMINAL CONSPIRACY IS
22 ESSENTIALLY AN AGREEMENT BETWEEN TWO OR MORE PEOPLE TO
23 ACCOMPLISH AN UNLAWFUL OBJECT, OR A LAWFUL OBJECT BY
24 UNLAWFUL MEANS. YOU DON'T HAVE TO HAVE IT WRITTEN DOWN,
25 YOU DON'T HAVE TO MAKE A CONTRACT. IT CAN BE A TACIT

1 UNDERSTANDING. TWO PEOPLE THAT ARE ACTING TOGETHER THAT
2 KNOWS TACITLY WHAT THEY ARE DOING TOGETHER.

3 ARMED ROBBERY IS JUST WHAT THE NAME
4 APPLIES. IT'S PRETTY OBVIOUS. THIS IS STEALING OF
5 ANOTHER PERSON'S PROPERTY WITH THE USE OF A DEADLY
6 WEAPON.

7 MURDER, THE UNLAWFUL KILLING OF
8 ANOTHER WITH MALICE AFORETHOUGHT.

9 MALICE. MALICE IS HATRED OR ILL
10 WILL OR HOSTILITY TOWARD ANOTHER PERSON. IT IS THE
11 INTENTIONAL DOING OF A WRONGFUL ACT WITHOUT JUST CAUSE
12 AND WITH AN INTENT TO INFLICT AN INJURY WHERE UNDER
13 CIRCUMSTANCES OF UNLAWFUL AND EVIL INTENT. YOU ARE
14 PERMITTED TO INFER MALICE FROM THE USE OF A DEADLY
15 WEAPON OR FROM THE ACT OF AN INHERENTLY DANGEROUS FELON
16 WHO COMMITTED AN ARMED ROBBERY, HE'S AN INHERENTLY
17 DANGEROUS FELON.

18 THE HAND OF ONE IS THE HAND OF ALL
19 OUTBREAKS LIKE THIS. BRUCE AND I GO TO A SEVEN-ELEVEN.
20 WE HAVE A PLAN TO ROB THE CASHIER. BRUCE HAS A GUN. I
21 TELL BRUCE, OKAY, WE'LL GO AND WE'LL COMMIT AN ARMED
22 ROBBERY AT THE SEVEN-ELEVEN, BUT DO NOT USE THAT GUN.
23 I KNOW HE HAS IT ON HIM. I SAY, DO NOT SHOOT. I'M
24 BEHIND THE CASH REGISTER, I'M TAKING THE MONEY. THE GUN
25 ACCIDENTALLY GOES OFF. UNDER THIS DOCTRINE THE HAND OF

1 ONE IS THE HAND OF ALL. I AM JUST AS GUILTY OF MURDER
2 AS BRUCE BECAUSE WHAT WE HAVE DONE IS SO FORESEEABLE
3 THAT DEATH CAN RESULT THAT THE LAW SAYS THAT I AM JUST
4 AS GUILTY AS IF I HAD PULLED THE TRIGGER MYSELF. AND
5 THIS IS THE LAW IN THIS CASE.

6 MR. PEPER WILL ADDRESS YOU NOW AND
7 I WILL RETURN AND ADDRESS YOU SHORTLY.

8 THE COURT: MR. PEPER.

9 MR. PEPER: THANK YOU, YOUR HONOR,
10 MAY IT PLEASE THE COURT.

11 THE COURT: YES, SIR.

12 MR. PEPER: COUNSELOR.

13 CLOSING ARGUMENT BY MR. PEPER

14 I'M GOING TO LEAVE THIS UP HERE FOR
15 A SECOND BECAUSE I'VE GOT A GREAT CONCERN. I'M WELL
16 AWARE THAT THIS IS THE LAW, BUT LET'S READ IT TOGETHER,
17 "IF A CRIME IS COMMITTED BY TWO OR MORE PEOPLE WHO ARE
18 ACTING TOGETHER," CORRECT? "WHO ARE ACTING TOGETHER IN
19 COMMITTING A CRIME, THE ACT OF ONE IS THE ACT OF ALL."
20 "WHO ARE ACTING TOGETHER." SHAWN TOLD Y'ALL EXACTLY
21 WHAT HAPPENED THAT NIGHT. HE TOLD DETECTIVE HILL
22 EXACTLY WHAT HAPPENED THAT NIGHT WHEN DETECTIVE HILL
23 SAID, YOU'RE BEING CHARGED WITH MURDER. IF YOU WANT TO
24 TALK NOW IS YOUR CHANCE. I DON'T KNOW ABOUT Y'ALL BUT
25 IF SOMEBODY IS ACCUSING ME OF SOMETHING I DIDN'T DO I

1 WOULD TELL THEM EXACTLY WHAT I KNOW ABOUT IT RIGHT AWAY.
2 AND THAT'S EXACTLY WHAT SHAWN DID. HE DIDN'T ACT
3 TOGETHER WITH ANYBODY. HE ACTED BECAUSE OF SOMEBODY.

4 I TOLD Y'ALL A LITTLE BIT ABOUT
5 REASONABLE DOUBT, BUT THE JUDGE IS GOING TO CHARGE YOU
6 ON WHAT REASONABLE DOUBT IT. BUT IT DOES HAVE SOMETHING
7 TO DO WITH ANYTHING THAT CAUSES A REASONABLE PERSON TO
8 HESITATE, TO HESITATE, OKAY? AND KEEP IN MIND, NOW,
9 THAT HE'S GOING TO CHARGE YOU THAT THE STATE HAS TO
10 PROVE EACH ELEMENT OF EACH CRIME THAT SHAWN'S BEEN
11 CHARGED WITH BEYOND A REASONABLE DOUBT. NOT LESS THAN
12 A REASONABLE DOUBT, NOT MAYBE HE DID, MAYBE HE DIDN'T,
13 NOT TO THE TWENTY YARD LINE BUT COULDN'T PUNCH IT IN FOR
14 A TOUCH DOWN, NOT, YEAH, YOU MIGHT HESITATE BUT YOU CAN
15 STILL FIND HIM GUILTY. THEY HAVE TO PROVE BEYOND A
16 REASONABLE DOUBT, BEYOND ANYTHING THAT CAUSES YOU AS A
17 REASONABLE PERSON TO HESITATE.

18 MY WIFE'S IN THE COURTROOM AND SHE
19 MAY GET MAD AT ME ABOUT THIS, BUT I WANT TO TELL YOU A
20 STORY BECAUSE THIS IS THE WAY I'VE ALWAYS COME UP WITH
21 MY VERSION OF IT. AND SHE'S A GOOD COOK, DON'T GET ME
22 WRONG, BUT THERE ARE TIMES WHERE I BITE INTO SOMETHING,
23 PASTA SAUCE OR TARTAR OR SOMETHING, AND YOU KNOW WHAT
24 I'M TALKING ABOUT, YOU BITE INTO IT AND YOU DO THE WHOLE
25 -- JUST HESITATE, AND YOU GO, SOMETHING'S MISSING. IT'S

1 GOOD, IT'S GOOD, IT IS GOOD, I'M GOING TO EAT ALL OF IT,
2 BUT JUST SOMETHING AIN'T RIGHT, SOMETHING AIN'T RIGHT IN
3 THE SAUCE. YOU HESITATE. THAT'S REASONABLE DOUBT, NOT
4 GUILTY. THAT'S THE DEFINITION. IT CAUSES A REASONABLE
5 PERSON TO HESITATE. THEY HAVE TO PROVE THEIR CASE.

6 THEY HAVE PUT UP NUMEROUS WITNESSES.
7 SOME THEY HAD TO BECAUSE THEY HAD TO PROVE THAT SOMEBODY
8 GOT MURDERED. THEY HAD TO SHOW THAT THERE WAS AN
9 INVESTIGATION DONE. A LOT OF THOSE PEOPLE DON'T REALLY
10 DO MUCH TO THE STATE'S CASE TO PROVE THAT SHAWN ACTED
11 TOGETHER IN COMMITTING A CRIME.

12 IT STARTED WITH CANDY JOHNSON, THE
13 RESPONDING OFFICER. SHE BASICALLY SAYS, I SHOWED UP,
14 TOOK SOME, GOT SOME NOTES, BROUGHT IN A COUPLE OF OTHER
15 COPS, MOVED ON.

16 THE NEXT PERSON THEY CALL IS HE
17 PATEL FAMILY. THE PATEL FAMILY SAYS, WE OWN THE BUDGET
18 INN, NEVER SEEN SHAWN PHILLIPS IN OUR LIFE BEFORE. WE
19 DID SEE ROBERT VARGO, TEN, EIGHT, AND A SMALL HISPANIC
20 GIRL WHICH WE CAN INFER, AND I'M SURE Y'ALL AS
21 REASONABLE PEOPLE CAN INFER THAT THAT'S PROBABLY CHINA.
22 SO, THEY CAN PUT CHINA AND ROBERT VARGA AT THE BUDGET
23 INN. WE KNOW HE WAS THERE WHERE HE GOT HURT.

24 THE NEXT PERSON THEY CALLED WAS
25 OFFICER HALLMAN. NOW, THIS DIDN'T, THIS WAS TUESDAY,

1 AND I KNOW IT'S BEEN A LONG DAY SO I DON'T WANT TO
2 REHASH WHAT HE SAID, BUT IT'S VERY IMPORTANT. NOT ONLY
3 DID HE SAY THAT, WE FOUND FINGERPRINTS, OKAY, BUT HE
4 SAID, THEY WERE NOT YOUR CLIENT'S, THEY WERE THE
5 VICTIM'S, ON A BEER BOTTLE. AND SOMEBODY BY THE NAME
6 OF ADASHA MAPP ON THE TOILET SEAT. HOW THOSE GOT THERE
7 I HAVE NO IDEA. THE POINT IS, THERE WERE FINGERPRINTS
8 IN THE ROOM, HE FOUND THEM, NONE OF THEM MATCHED MY
9 CLIENT. ON DIRECT HE SAID, THERE'S TWO TIMES WHERE YOU
10 CAN'T FIND PRINTS BECAUSE THE STATE, YOU KNOW, THEY
11 WOULD LOVE TO HAVE SHAWN'S PRINTS IN THERE BUT THEY
12 COULDN'T DO IT, THEY JUST WEREN'T THERE. AND HIS
13 EXPLANATION WAS, WELL, THEN THAT MEANS WHOEVER WAS IN
14 THERE THAT DIDN'T LEAVE PRINTS EITHER DIDN'T TOUCH
15 ANYTHING, WALKED AROUND AND, YOU KNOW, COMMITTED AN
16 ARMED ROBBERY AND A MURDER AND NEVER TOUCHED ANYTHING,
17 OR THEY WERE WEARING GLOVES. YOU HAVEN'T HEARD ANYBODY
18 SAY ANYTHING ABOUT ANYBODY WEARING GLOVES. NOBODY SAID,
19 I SAW GLOVES IN THE HOTEL ROOM, I SAW GLOVES IN THE CAR,
20 I KNOW THESE PEOPLE CARRY GLOVES, YOU NEVER HEARD ANY OF
21 THAT. SO, I DID ASK HIM, THERE'S REALLY A THIRD REASON,
22 ISN'T THERE, DETECTIVE HALLMAN, AND THAT WOULD BE IF A
23 PERSON JUST WAS NEVER THERE? AND HE SAID, WELL, YES,
24 THAT'S A REASON, TOO. THAT'S GOT TO MAKE YOU HESITATE
25 AS TO WHETHER HE WAS EVEN THERE OR NOT.

1 THE NEXT PERSON THEY CALLED WAS A
2 VICTIM OF A WEST ASHLEY ARMED ROBBERY BY THE NAME OF
3 ALEC BROWN. AND AGAIN, AS A LIFELONG CHARLESTONIAN I
4 HATE THE FACT THAT PEOPLE ARE GETTING ROBBED WHEN THEY
5 COME TO VISIT US. BUT THE FACT IS, CRIME EXISTS. I
6 HATE THAT IT HAPPENED TO HIM. BUT ALL HE DID WAS SAY
7 THAT A GUN WAS STOLEN THAT THE BEST THAT HE COULD
8 REMEMBER HAD A SPECIFIC TYPE OF BULLET IN IT. THEY
9 BRING UP SUZANNE CROMER FROM SLED THAT SAYS, THE TYPE OF
10 BULLET THAT HE THINKS WAS IN HIS GUN IS PROBABLY THE
11 TYPE OF BULLET THAT WAS USED TWO DAYS LATER WAY OVER IN
12 NORTH CHARLESTON IN THIS INSTANT CASE. OKAY. SHE ALSO
13 SAYS, I CAN NARROW IT DOWN TO SOME SORT OF CALIBER GUN
14 OF WHICH THERE ARE EIGHT DIFFERENT KINDS. OKAY. THAT
15 STILL DOESN'T PUT SHAWN THERE. IT DOESN'T PUT SHAWN AT
16 THE TRAVEL LODGE AT THAT TIME, AND ID DOESN'T PUT HIM AT
17 THE BUDGET, CERTAINLY.

18 THEN WE GET INTO THE TESTIMONY OF
19 THE CO-DEFENDANTS. AND LIKE IN MY OPENING, THE ONE
20 THING I'M ASKING THAT Y'ALL CONTINUE TO REMEMBER IS THAT
21 YOU DON'T HAVE TO BELIEVE WHAT THEY TELL YOU. IT'S YOUR
22 JOB TO DETERMINE IF THEY'RE BELIEVABLE OR NOT. IT GOES
23 TO THEIR CREDIBILITY. THE FIRST QUESTION I ASKED HER
24 WAS, ISN'T IT CORRECT THAT YOU SMOKE A LOT OF CRACK?
25 AND SHE SAID, YEAH, BUT I WASN'T SMOKING THAT NIGHT.

1 AND I SAID, WELL, LET ME SHOW YOU YOUR STATEMENT WHERE
2 YOU SAID YOU WERE HIGH. AND SHE SAID, WELL, WHAT I
3 MEANT WAS, I SMOKED CRACK THAT NIGHT, I JUST DID IT BY
4 MYSELF, I DON'T DO IT AROUND OTHER PEOPLE. OKAY? WE
5 THEN FIND OUT THAT SHE HAD A SEXUAL RELATIONSHIP, HER
6 TESTIMONY WAS, IT WAS A SEXUAL RELATIONSHIP WHERE WE HAD
7 SEX AND I GOT PREGNANT WITH SHAWN'S BABY. I QUESTIONED
8 HER A LITTLE BIT, AND SHE SAID, YEAH, I HAD THAT BABY IN
9 JAIL. COULD YOU IMAGINE HOW UPSET YOU WOULD BE IF YOU
10 MADE A MISTAKE AND GOT PREGNANT AND THEN GOT ARRESTED
11 AND HAD TO HAVE THAT BABY IN JAIL? YOU'D BE MAD AT
12 SOMEBODY, REAL MAD THAT YOU HAD CAUSED A PREGNANCY.
13 FAST FORWARD REAL QUICK AND YOU HEAR OUR FRIEND TODAY,
14 MS. MARY ROBINSON, WHO SAYS, I'VE KNOWN HIM A LONG TIME,
15 I USED TO BRAID HIS HAIR. AS A MATTER OF FACT, I WENT
16 OVER THERE THAT NIGHT TO BRAID HIS HAIR. I GOT PICKED
17 UP FOR FAILING A MARIJUANA TEST, FORTY-EIGHT HOURS IN
18 JAIL AND I RAN INTO ANGELA AND SHE TOLD ME THAT SHE
19 WOULD SAY WHATEVER SHE HAD TO SAY TO MAKE SURE THAT HE
20 WENT TO JAIL.

21 ANGELA PICKS OUT L OUT OF A LINEUP,
22 THAT'S LENNIE MICKEY. SHE PICKS OUT B.G. OUT OF A
23 LINEUP. SHE NEVER PICKS OUT SHAWN, BECAUSE SHAWN IS
24 NEVER IN HER STATEMENTS. SHE GIVES TWO STATEMENTS AND
25 NEVER MENTIONS SHAWN WHATSOEVER. NOBODY KNEW SHAWN

1 BETTER THAN ANGELA DID, THEY WERE HAVING A SEXUAL
2 RELATIONSHIP. WE'RE JUST SUPPOSED TO THINK SHE LEFT
3 THAT OUT OF HER STATEMENT, AND THEN SIX MONTHS LATER
4 WHEN SHE'S GIVING BIRTH TO HER ONLY CHILD IN JAIL, AND
5 HAS GONE THROUGH A CUSTODY BATTLE WITH SHAWN'S MOM, AND
6 HAS BEEN THROWN UNDER THE BUS BY HER OWN FAMILY BECAUSE
7 SHE'S HAD A HALF BLACK AND HALF WHITE BABY, I CAN'T
8 IMAGINE THE ANGER SHE MUST HAVE HAD. THE STATE MUST
9 HAVE FIGURED OUT SHE WAS PRETTY ANGRY BECAUSE THEY WENT
10 AND OFFERED HER A DEAL, YOU COME AND TELL US EVERYTHING
11 YOU KNOW, AND WE'LL CONSIDER IT, SINCE YOU'VE BEEN
12 CHARGED WITH OTHER CRIMES. I'M NOT MAD AT ANGELA, IT
13 MAKES SENSE. I DON'T KNOW WHAT I WOULD DO IN THAT
14 POSITION. THE OLD ADAGE IS, LOOK OUT FOR NUMBER ONE, AND
15 MAKE SURE YOU DON'T STEP IN NUMBER TWO. AND I'M PRETTY
16 THAT SHE WAS LOOKING OUT FOR NUMBER ONE WHEN SHE CHANGED
17 HER STORY AND PUT SHAWN THERE THAT NIGHT. SHE NEVER SAW
18 SHAWN WITH A GUN, AND EVEN IN HER TESTIMONY, AFTER SHE
19 CHANGED HER STORY, SHE STILL SAID THAT SHAWN NEVER HAD
20 A GUN, THOUGH. THE ONLY TIME SHE SAW A GUN, AS A MATTER
21 OF FACT, WAS ONE WITH LENNIE MICKEY WHEN HE WAS WAVING
22 IT AROUND AND GOING CRAZY. SHE ALSO SAYS THAT WHEN
23 SHAWN CAME BACK TO THE ROOM HE SAID, I THINK I SHOT THAT
24 GUY. THAT'S IMPORTANT, THAT'S EXTREMELY IMPORTANT. IF
25 HE'S WILLING TO GO TELL HIS GIRLFRIEND I GUESS, FOR LACK

1 OF A BETTER WORD, THE TRUTH, IF THE TRUTH WAS THAT HE
2 PARTICIPATED IN IT AND SAW IT, AND HE KNEW, HE WOULD
3 HAVE JUST SAID, WE'VE GOT TO GET OUT OF HERE, I JUST
4 WITNESSED A MURDER, HE WOULDN'T SAY, I THINK I JUST SHOT
5 THAT GUY. THE REASON HE HAD TO SAY, I THINK, IS BECAUSE
6 HE DOESN'T KNOW, HE WASN'T THERE, HE WAS TOLD TO WAIT IN
7 THE CAR. THINK ABOUT HER CREDIBILITY, THINK ABOUT ALL
8 OF THE REASONS THAT SHE WOULD HAVE CHANGED HER STORY
9 OVER THE LAST SIX OR EIGHT MONTHS. THINK ABOUT WHAT SHE
10 DID FOR A LIVING. WE'RE NOT ALLOWED TO PASS JUDGEMENT,
11 BUT THE BOTTOM LINE IS, WE'RE NOT DEALING WITH A VERY
12 MORAL, HONEST PERSON HERE.

13 THE NEXT WITNESS THEY CALLED WAS
14 DENISE BROWN WHO ESSENTIALLY JUST SAID, I CHECKED IN
15 SHAWN THAT NIGHT AND HE GAVE ME A BUNCH OF NO'S, AND HE
16 LOOKED FINE, AND IT WAS PRETTY MUCH STANDARD, I GUESS,
17 STANDARD WAS THE WORD, JUST STANDARD.

18 THEN THEY CALLED CHINA, ALANA
19 NIESEN, CHINA DOLL. YOU'RE PROBABLY STARTING TO FIGURE
20 OUT ALL THE NICK NAMES NOW. CHINA DOLL SAYS, YEAH, I'M
21 A PROSTITUTE, YEAH, I SMOKE CRACK AND I LOVE CRACK.
22 I'VE GOT AN ADDICTION TO CRACK. I WAS SMOKING CRACK
23 BEFORE I GOT THERE, I WAS SMOKING CRACK WHEN I GOT
24 THERE, I WAS SMOKING CRACK AFTERWARDS WHEN ME, AND
25 LENNIE MICKEY AND B.G., ME AND LENNIE MICKEY AND B.G.

1 GOT IN THE CAR TO GO HOME, WE SMOKED CRACK AGAIN. THE
2 REASON I WANT YOU TO REMEMBER, IT WAS CHINA DOLL, LENNIE
3 MICKEY AND B.G. IN THE CAR WHEN THEY LEFT IS BECAUSE SHE
4 ALSO TESTIFIED THAT IT WAS LENNIE MICKEY, B.G. AND CHINA
5 DOLL, HERSELF, IN THE CAR WHEN THEY WENT TO GO SHOW EACH
6 OTHER WHERE ROBERT VARGO WAS STAYING. SHAWN HAS NO IDEA
7 WHERE ROBERT VARGO WAS STAYING. THE ONLY THREE PEOPLE
8 THAT KNEW WERE CHINA DOLL, B.G., AND LENNIE MICKEY. SHE
9 THEN OBVIOUSLY TESTIFIES THAT LENNIE MICKEY IS JUST
10 CRAZY, HE WAS ACTING CRAZY ALL NIGHT, I'VE SEEN HIM ACT
11 CRAZY BEFORE. HE WAS WAVING A GUN IN THE AIR, HE HELD ME
12 AT GUN POINT, EXCUSE ME, HE HELD ME AT GUN POINT.
13 BESIDES THE OBVIOUS QUESTION OF, WHAT IS SHE DOING
14 HANGING OUT WITH THIS GUY, THAT SHE'S ALREADY BEEN HELD
15 AT GUN POINT, IT GOES TO SHOW YOU THAT THIS GUY AIN'T
16 SCARED OF NOBODY. HE'S GOING TO GET HIS WAY IF IT
17 MEANS, YOU FOLLOW MY INSTRUCTIONS, OR IF IT MEANS, --
18 YOU NOW FOLLOW MY INSTRUCTIONS. WOULD THAT CAUSE YOU TO
19 HESITATE? SHE NEVER HEARD SHAWN, HE DIDN'T TALK THAT
20 WAY. IF SHE WAS WITH HIM THE ENTIRE TIME AND SHE NEVER
21 HEARD HIM TALK, HOW ARE WE TO BELIEVE THAT THERE WERE
22 SHAWN AND SOMEBODY ELSE ACTING TOGETHER? SHAWN NEVER
23 SAID A WORD THE ENTIRE NIGHT, YOU HEARD IT FROM CHINA.
24 WHEN I PRESSED HER ON WHAT HAPPENED WHEN YOU ALLEGEDLY
25 NOW SAY THAT PIT, WHO SHE IDENTIFIED AS SHAWN, NOBODY

1 ELSE CALLS HIM PIT, BUT SHE SAYS HIS NAME IS PIT AND
2 THAT'S HOW SHE KNOWS HIM. AND WHEN PIT, B.G. AND LENNIE
3 LEFT THE TRAVEL LODGE BRIEFLY SHE HAS NO IDEA WHERE THEY
4 WENT. THE DOOR WAS SHOT BEHIND THEM, THE WINDOWS WERE
5 CLOSED. SHE DIDN'T LOOK OUT OF THE WINDOW, SHE DOESN'T
6 KNOW IF THEY GOT IN A CAR, SHE DOESN'T KNOW WHAT THEY
7 DID. WHAT SHE DOES KNOW IS THAT B.G. CAME BACK, THEN
8 SHAWN, PIT SHE SAYS, REFERRING TO SHAWN, AND THEN
9 BROOKLYN, WHO WAS JUST ACTING CRAZY. I WAS SCARED TO
10 DEATH IS WHAT SHE SAID. SHE TESTIFIED THAT BROOKLYN
11 RUSHED EVERYBODY OUT OF THE ROOM AND SHE GETS INTO A CAR
12 WITH BROOKLYN AND B.G. BROOKLYN AND B.G., NOW, THE SAME
13 PEOPLE THAT JUST HAD GONE SOMEWHERE AND THEY SMOKED SOME
14 MORE CRACK. THEY DRIVE AROUND WHEREVER LENNIE TELLS
15 THEM TO DRIVE TO, SOME DEAD END BEHIND HOME DEPOT SHE
16 TESTIFIES, HE GETS OUT OF THE CAR ACTING ALL CRAZY
17 AGAIN. SHE TESTIFIES THAT SHE TELLS B.G., WE'VE GOT TO
18 GET HIM OUT OF OUR CAR, I AM SCARED TO DEATH OF THIS
19 GUY. AND RIGHTLY SO, HE'D PUT A GUN TO HER HEAD
20 PREVIOUSLY.

21 AND THEN WE HAVE THE INFAMOUS B.G.
22 I SMOKED CRACK AFTER, DURING, BEFORE, THAT MORNING, THE
23 NIGHT BEFORE, THE DAY BEFORE, THE NIGHT BEFORE THAT. I
24 ASKED HER TO EXPLAIN, FOR THOSE OF US WHO DON'T KNOW
25 MUCH ABOUT CRACK, WHAT, YOU KNOW, AND SHE SAID, IT JUST

1 WASN'T VERY GOOD. I'LL TAKE HER WORD ON IT. IT MUST
2 HAVE BEEN GOOD IF SHE KEPT GOING BACK TO IT.

3 NOW, THE ONLY PERSON THAT ALLEGES
4 ANYBODY BESIDES LENNIE MICKEY AND HERSELF ACTED TOGETHER
5 WAS A GUY NAMED D, AND SHE PICKS OUT AS A GUY NAMED
6 DIANGELO RODRIGUEZ BALLOU. HER TESTIMONY IS THAT
7 DIANGELO RODRIGUEZ BALLOU, LENNIE MICKEY AND HERSELF
8 ACTED TOGETHER. I KNOW WE'VE BEEN THROUGH THIS BUT I'M
9 COMPELLED TO SAY IT. THE STATE WASN'T REAL HAPPY ABOUT
10 THAT SO THEY MADE HER GO AND SEE IF SHE COULD PICK OUT
11 ANOTHER GUY NAMED D. JUST COME ON IN HERE, MAYBE YOU'RE
12 MISTAKEN, IS THIS THE D THAT YOU'RE REFERRING TO? OH,
13 YOU MEAN THE BLACK GUY ON THE OTHER SIDE OF THE TWO WAY
14 MIRROR, WHO IS THE ONLY PERSON IN THE ROOM? YEAH, YEAH,
15 THAT'S D. TAKE A BITE IN THAT HAMMER OR THAT PASTA
16 SAUCE. IT MAKES YOU HESITATE, IT JUST MAKES YOU
17 HESITATE. AND THEY'VE GOT TO PROVE BEYOND MAKING YOU
18 HESITATE IN ORDER FOR YOU TO FIND SHAWN GUILTY.

19 DETECTIVE JOURDAN TAKES THE STAND
20 AND SAYS, B.G. PICKED OUT LENNIE MICKEY, B.G. PICKED OUT
21 ANGELA, B.G. PICKED OUT CHINA. AND I RESPONDED TO THAT,
22 I DIDN'T GIVE THEM, I DIDN'T, YOU KNOW, ASK HER TO COME
23 ON IN HERE AND MAYBE, MAYBE THAT'S NOT WHO YOU REFERRED
24 TO AS CHINA. WHY DON'T YOU COME ON IN HERE? DOESN'T DO
25 ANYTHING, I'LL TAKE YOUR WORD ON IT. YEAH. BECAUSE HE

1 KNEW, HE KNEW, YOU KNOW, THAT THOSE WERE THE THREE
2 PEOPLE THAT WE WANTED TO ARREST FOR THIS. AND YOU DID
3 A GOOD JOB. BUT WITH SHAWN SHE DOESN'T PICK OUT SHAWN.
4 HE DOESN'T LIKE THAT ANSWER, AND HE'S GOT TO GO AND GET
5 A BETTER ANSWER.

6 SCOTT WYANT, DR. PRESNELL, WE KNOW
7 SOMEBODY GOT HURT, I MEAN, WE ALL KNEW SOMEBODY GOT
8 MURDERED WHEN WE OPENED OUR CASE. I UNDERSTAND THEY GOT
9 THE CALL BUT IT HAS ABSOLUTELY NOTHING TO DO WITH SHAWN.

10 INVESTIGATOR SIMMONS, HE TELLS YOU
11 ALL THAT DETECTIVE HILL CALLED HIM AND SAID, I NEED A
12 FAVOR, BRING OVER SHAWN AND LET ME TALK TO HIM ABOUT A
13 MURDER THAT HIS GIRLFRIEND WE THINK WAS INVOLVED IN, OR
14 AT LEAST, SHE KNOWS SOME THINGS. WE JUST WANT TO ASK
15 HIM SOME QUESTIONS. SO, THAT'S WHAT HE TELLS SHAWN.
16 WOULD YOU MEET ME SOMEWHERE, I NEED TO RUN YOU OVER,
17 DETECTIVE HILL WANTS TO TALK TO YOU ABOUT A MURDER THAT
18 ANGELA MAY OR MAY NOT KNOW SOMETHING ABOUT. SHAWN IS SO
19 PASSED OUT THAT HIS MAMA HAS TO DRIVE HIM OVER THERE.
20 THE FIRST TIME EVER IN, I THINK HE SAID FIFTEEN OR
21 TWENTY MEETINGS THAT THEY HAD WHERE ANYBODY HAD DRIVEN
22 SHAWN TO A MEETING. HE HAD ALWAYS BEEN BY HIMSELF. HIS
23 REASON? WELL, I JUST, I ASSUMED HIS CAR WAS BROKEN
24 DOWN. AND I PRESSED HIM ON THAT, HE SAID, NO HE NEVER
25 TOLD ME HIS CAR HAD BROKE DOWN, I JUST ASSUMED THAT IT

1 WAS BROKE DOWN. HE TELLS HIS MAMA, I'LL BRING HIM BACK
2 WHEN I'M DONE. IT'S SIX O'CLOCK AT NIGHT, NOW, FOLKS,
3 DECEMBER FOURTEENTH. GOT SOME CHRISTMAS SHOPPING LEFT
4 TO DO, YOU'VE GOT FAMILY COMING INTO TOWN, SIMMONS DON'T
5 HAVE TIME TO HANG AROUND A POLICE STATION WITH SHAWN SO
6 THAT SHAWN CAN TALK ABOUT WHAT HIS GIRLFRIEND MAY OR MAY
7 NOT KNOW ABOUT A MURDER. SO, WHEN THEY COME IN TO
8 INTERVIEW HIM THEY TELL HIM, YOU'RE NOT BEING CHARGED
9 WITH ANYTHING. AS A MATTER OF FACT, THEY CROSSED OUT,
10 CHARGE OF. WE JUST WANT TO TALK TO YOU ABOUT A MURDER.
11 DETECTIVE HILL AND SIMMONS CORROBORATE THAT SHAWN SAID,
12 I REALLY DON'T KNOW WHAT YOU'RE TALKING ABOUT. IF
13 YOU'RE NOT BEING CHARGED WITH ANYTHING RIGHT NOW WHY
14 WOULD YOU VOLUNTEER INFORMATION THAT YOU MAY OR MAY NOT
15 KNOW ABOUT THAT COULD POSSIBLY GET YOUR GIRLFRIEND IN
16 TROUBLE WHO'S CARRYING YOUR BABY? SO, HE SAYS, YOU
17 KNOW, I'LL JUST TAKE MY ATTORNEY, I REALLY DON'T HAVE
18 ANYTHING TO SAY. AND THE INTERVIEW STOPS. THEY WALK
19 OUTSIDE. LESS THAN A MINUTE, A MINUTE OR SO I BELIEVE
20 HIS TESTIMONY WAS, A MINUTE OR SO LATER THIS SAME PERSON
21 THAT HAS JUST SAID, I DON'T REALLY WANT TO TALK, I THINK
22 I SHOULD HAVE MY ATTORNEY HERE, HAS COMPLETELY CHANGED
23 HIS MIND. AND SIMMONS WANTS YOU TO BELIEVE THAT HE
24 SAID, GO GET THEM I'LL TALK TO THEM. COME ON. A MINUTE
25 LATER? WHAT HAPPENED? WELL, YOU HEARD WHAT HAPPENED.

1 SIMMONS DIDN'T WANT TO BE THERE ANY LONGER THAN HE HAD
2 TO. HE KNEW HE WAS SHAWN'S RIDE, IT WAS SIX:THIRTY OR
3 SO AT THIS POINT IN TIME. HE WANTS TO GET HOME. SO, HE
4 GOES AND TELLS HILL, COME ON BACK IN, COME ON BACK IN.
5 BUT BEFORE HE TELLS HIM TO COME ON BACK IN, HILL SAYS,
6 WE DON'T NEED YOU ANYMORE, BUDDY, YOUR JOB'S DONE.
7 WE'RE GOING TO GO AHEAD AND CHARGE HIM WITH MURDER. SO,
8 SIMMONS IS GONE, GONE. HE DOESN'T CALL HIS MOM TO LET
9 HER KNOW, I'M NOT BRINGING HIM, HE'S BEEN CHARGED WITH
10 MURDER. HE DOESN'T GO BACK IN AND ASK SHAWN, YOU'RE
11 BEING CHARGED WITH MURDER NOW, DO YOU WANT TO TALK, HE
12 JUST LEAVES, HE JUST GETS UP AND LEAVES.

13 AT THAT POINT DETECTIVE HILL AND
14 DETECTIVE GOMES WHO YOU HEARD TESTIFY, COME BACK IN AND
15 SAY, ALRIGHT, WE UNDERSTAND YOU WANT TO TALK TO US. AND
16 SHAWN SAYS, WELL, ALLEGEDLY IT'S ONLY BEEN ONE MINUTE,
17 RIGHT, ONE MINUTE. YEAH, I GUESS SO. BECAUSE YOU'RE
18 BEING CHARGED WITH MURDER NOW. I'LL TELL YOU ANYTHING
19 YOU WANT TO KNOW, I'M BEING CHARGED WITH MURDER.
20 TWENTY-TWO MINUTES AGO Y'ALL BROUGHT ME IN HERE JUST TO
21 TALK ABOUT A MURDER AND NOW YOU'RE CHARGING ME WITH
22 MURDER. HOLD ON, LET ME TELL YOU WHAT HAPPENED. IT
23 AIN'T LIKE HE COULD HAVE MADE THIS THING UP. THERE'S A
24 SPACE OF ONE MINUTE WHERE HE DECIDES, I'M NOT BEING
25 CHARGED WITH ANYTHING, I DON'T REALLY WANT TO TELL YOU

1 WHAT HAPPENED, TO, WHOA, WHOA, I'M BEING CHARGED WITH
2 MURDER. WELL, HOLD ON, THEN LET ME, YEAH COME ON AND
3 I'LL TELL YOU EXACTLY WHAT HAPPENED. AND THEN DETECTIVE
4 HILL TESTIFIES THAT AS SOON AS HE SIGNS HIS MIRANDA
5 RIGHTS AT SIX:FORTY-TWO P.M. THE STATEMENT STARTS.
6 THERE AIN'T NO, WELL, WHAT HAD HAPPENED WAS, WE WERE
7 GOING TO LUNCH THAT DAY AND THEN -- HE AIN'T BUYING NO
8 TIME, HE GOES RIGHT INTO, HE GOES RIGHT INTO IT. HIS
9 FIRST, THE FIRST THING THAT HE WRITES DOWN, "ME, ANGELA,
10 B.G., CHINA GIRL AND L, WERE IN THE ROOM AT TRAVELER'S
11 INN, I DON'T REMEMBER WHICH ROOM. L SAID HE NEEDED SOME
12 MONEY. B.G. TOLD HIM THAT SHE KNEW WHERE HE COULD GET
13 SOME MONEY. B.G. SAID THAT SHE KNEW A GUY WHO WORKED
14 FOR A LOT OF MONEY. CHINA GIRL SAID THAT HE WAS HER
15 FRIEND, THAT THEY COULDN'T DO THAT, MEANING ROB HIM. L
16 SAID, FUCK THAT, EITHER I'M GOING TO START POPPING
17 MOTHER FUCKERS IN HERE OR WE'RE GOING TO GET THAT
18 MONEY." THE FIRST EIGHT LINES OF THE STATEMENT. WE
19 DON'T HAVE A TWENTY PAGE STATEMENT WHERE THE FIRST
20 EIGHTEEN PAGES ARE TRYING TO COME UP WITH A STORY HERE.
21 HE'S TELLING THE TRUTH. HE STARTS RIGHT FROM THE START.
22 "THIS STATEMENT IS WRITTEN BY DETECTIVE GOMES AT MY
23 REQUEST AS I TELL IT TO HIM." BOOM, GOES RIGHT INTO IT.
24 THIS IS SIX:FORTY-TWO P.M., RIGHT AFTER SIMMONS HAS GONE
25 AND SAID, YEAH, GO ON BACK IN, I'M GOING TO TAKE OFF, GO

1 ON BACK IN, HE'LL TALK TO YOU. DO YOU WANT TO TALK TO
2 US, MR. PHILLIPS? YOU'RE CHARGING ME WITH MURDER?
3 YEAH, I'LL TALK TO YOU. BOOM, HE STARTS RIGHT INTO IT.
4 "L LOOKED AT ME WHILE HE WAS HOLDING A GUN IN HIS HAND.
5 IT LOOKED LIKE A THIRTY-EIGHT SPECIAL REVOLVER. L TOLD
6 ME TO COME WITH HIM. I THOUGHT, I KNOW THAT IF I DIDN'T
7 GO WITH HIM HE WAS GOING TO SHOOT ME, KIND OF LIKE HE
8 ALMOST DID CHINA." HAD SHAWN NOT STEPPED IN AND
9 CONVINCED L NOT TO SHOOT CHINA, CHINA MIGHT NOT BE HERE
10 TODAY. SO, WHEN L TELLS YOU TO DO SOMETHING AND YOU
11 KNOW HE'S GOT A GUN, I'M PRETTY SURE YOU'RE GOING TO DO
12 IT. YOU HEARD IT FROM HIS SISTER. HIS SISTER, I DON'T
13 WANT THAT GUY IN MY HOUSE NO MORE. HE WAS TALKING TO ME
14 RUDE, I DON'T WANT HIM AROUND MY KIDS. HE WAS TELLING
15 SHAWN EXACTLY WHAT TO DO. HE WOULD SNAP HIS FINGERS,
16 SHAWN WOULD DO IT. SHAWN KNOWS NOT TO MESS AROUND WITH
17 L. "I KNOW THAT IF I DIDN'T GO WITH HIM HE WAS GOING TO
18 SHOOT ME. SO, ME, L AND B.G. LEFT THE ROOM. L WAS
19 TELLING B.G. TO SHOW US WHERE THE MONEY WAS. WE WALKED
20 TO THE TRACKER, GOT IN AND DROVE OVER TO THE BUDGET
21 INN. WHEN WE GOT INTO THE PARKING LOT OF THE BUDGET
22 INN, L TOLD ME, PARK NEAR A STAIRWAY NEAR THE OFFICE.
23 ONCE I PARKED L AND B.G. GOT OUT." AND KEEP IN MIND
24 HERE, AGAIN, WE'RE NOT IN, LIKE FIFTEEN PAGES IN, WE'RE,
25 YOU KNOW, THIS IS TWENTY, TWENTY LINES IN. I MEAN, HE

1 AIN'T HAD A WHOLE LOT OF TIME TO MAKE ALL THIS STUFF UP.
2 OKAY? HE JUST FIGURED, I'M CHARGE WITH MURDER, I'M
3 TELLING YOU THE TRUTH. "I PARKED, B.G. GOT OUT, L TOLD
4 ME TO STAY IN THE CAR AND SAID THAT I BETTER NOT LEAVE
5 HIM, THAT I BETTER NOT LEAVE HIM. AS L AND B.G. ARE
6 GETTING OUT THE CAR D WALKED UP." WELL, WE'VE HEARD
7 ABOUT D, HAVEN'T WE? WE KNOW WHO D IS. B.G. PICKED HIM
8 OUT OF THE LINEUP, MR. BALLOU. "L THREW D A BLACK CAP
9 AND SAID, YOU KNOW WHAT TIME IT IS. L WALKED BACK TO
10 THE TRUCK AND TOLD ME THAT I LOOKED NERVOUS AND THAT I'D
11 BETTER NOT LEAVE HIM. L, D, AND B.G. WALKED THROUGH THE
12 BREEZE WAY OUT OF MY SIGHT. ABOUT THREE MINUTES LATER
13 I HEARD A POP LIKE A GUN SHOT. I STARTED TO LEAVE, I
14 STARTED TO LEAVE, AND I SAW L AND D RUN UP TO THE TRUCK
15 AND GET IN. L WAS MADE BECAUSE I STARTED TO LEAVE. I
16 LEFT THE PARKING LOT AND L WAS TELLING ME TO HURRY UP
17 AND ET BACK TO THE ROOM. L GAVE D FIVE AND SAID, MY TOY
18 WORKED REAL WELL. D SAID, MAN, YOU SHOULDN'T HAVE SHOT
19 THAT DUDE. D WANTED TO GET OUT OF THE TRUCK AND L
20 TURNED THE GUN ON HIM AND TOLD HIM HE WASN'T GOING A
21 FUCKING PLACE. WHEN WE ARRIVED BACK AT THE TRACKER INN,
22 TRAVELER'S LODGE, I'M SORRY, L SEARCHED D TO MAKE SURE
23 HE DIDN'T HAVE ANYTHING VALUABLE ON HIM FROM THE
24 ROBBERY. D WENT TO ANOTHER ROOM, I'M NOT SURE WHICH
25 ONE, ME AND L WENT BACK TO MY ROOM. WHEN WE GOT THERE

1 B.G., ANGELA AND CHINA WERE IN THE ROOM. WE PACKED UP
2 EVERYTHING, ME AND ANGELA LEFT AND WENT TO MY MOTHER'S
3 HOUSE ON LINDLER STREET. L, B.G. AND CHINA WENT BACK TO
4 WHERE THEY WENT AND SHOWED EACH OTHER WHERE ROBERT VARGO
5 LIVED. L, B.G. AND CHINA LEFT IN CHINA'S CAR. RIGHT
6 BEFORE WE LEFT L TOLD ME THAT HE WANTED TO KILL CHINA
7 AND B.G., WHO HE WAS GETTING THE CAR WITH BECAUSE THEY
8 KNEW TOO MUCH. I BEGGED HIM NOT TO DO IT, AND HE SAID,
9 NIGGER, YOU'RE GETTING SOFT ON ME." IT'S AWFULLY TOUGH
10 TO PROVE BEYOND A REASONABLE DOUBT THAT SHAWN ACTED
11 TOGETHER WITH ANYBODY WHEN HE HAD A GUN TO HIS HEAD AND
12 WAS TOLD, IF YOU LEAVE I'LL KILL YOU. IT'S TOUGH TO
13 PROVE BEYOND A REASONABLE DOUBT THAT HE HAD A CHANCE TO
14 ESCAPE WHEN A MERE THREE MINUTES GOES BY BETWEEN THE
15 TIME HE'S TOLD, IF YOU LEAVE ME I WILL KILL YOU, AND
16 WHEN HE'S TOLD, WHERE WERE YOU GOING, WHERE DO YOU THINK
17 YOU'RE GOING, YOU AIN'T GOING NOWHERE, AND NEITHER ARE
18 YOU, D.

19 DETECTIVE HILL AGAIN TOLD US, NO
20 DNA, NO PRINTS OF SHAWN ANYWHERE IN THE ROOM. AND AS A
21 MATTER OF FACT, HILL TELLS US NOT ONE PERSON PUT IN ANY
22 STATEMENT, WRITTEN OR ORAL, THAT THEY SAW SHAWN IN THAT
23 ROOM. IT ONLY HAS TO BE ONE HESITATION. FORTUNATELY,
24 WE'VE GOT A WHOLE LOT OF THINGS THAT CAUSE US TO
25 HESITATE.

1 TO COMMIT ARMED ROBBERY YOU'VE GOT
2 TO HAVE A WEAPON, AND YOU HAVE TO ACT WITH THAT WEAPON
3 AND REMOVE PERSONAL POSSESSIONS FROM THE VICTIM,
4 STEALING. YOU HAVE TO STEAL FROM THEM BY EITHER
5 THREATENING THEM WITH A WEAPON, MAKING THEM THINK YOU
6 HAVE A WEAPON, STEAL FROM THEM WITH THE INTENT NEVER TO
7 RETURN THEIR PROPERTY TO THEM. WE HAVEN'T HEARD ONE
8 SINGLE BIT OF EVIDENCE THAT PROVES BEYOND A REASONABLE
9 DOUBT THAT SHAWN HAD A WEAPON, ENTERED THE ROOM, USED
10 ANY WEAPON TO THREATEN OR COERCE THE VICTIM. NO
11 EVIDENCE HAVE WE HEARD THAT SAYS HE REMOVED ANYTHING
12 FROM THE ROOM AND TOOK HIS POSSESSION WITH THE INTENT
13 NOT TO GIVE IT BACK. IT'S JUST NOT THERE. IT'S JUST NOT
14 THERE. IF HE DIDN'T COMMIT THE ARMED ROBBERY AND THEY
15 HAVEN'T PROVEN BEYOND A REASONABLE DOUBT THAT HE
16 COMMITTED THE ARMED ROBBERY, HOW COULD HE HAVE COMMITTED
17 A MURDER? HOW CAN YOU COMMIT A MURDER IF YOU DIDN'T
18 COMMIT THE ARMED ROBBERY?

19 LET'S PLAY THE DEVIL'S ADVOCATE FOR
20 A SECOND. THE STATE'S GOING TO TELL YOU HE PROVED ALL
21 OF THIS, HE PROVED ALL OF THIS BEYOND A REASONABLE
22 DOUBT. EVEN IF SOMEHOW YOU AGREE WITH HIM, IF SOMEHOW
23 YOU DO THINK THAT AT NO POINT DURING THIS TRIAL DID
24 ANYBODY SAY ANYTHING, DO ANYTHING TO MAKE YOU HESITATE,
25 YOU HAVE A SECOND CHOICE. YOU CAN HIM NOT GUILTY BECAUSE

1 HE WAS UNDER DURESS AND WAS FORCED TO BE THERE, AND WAS
2 FORCED TO DRIVE THE CAR OVER THERE, FORCED TO ACT
3 TOGETHER.

4 CAUSE YOU TO HESITATE, IF THERE'S
5 REASONABLE DOUBT THERE, NOT GUILTY. IF IT MAKES YOU
6 FEEL BETTER AND YOU WANT TO TELL THE STATE THAT THEY DID
7 PROVE YOUR BURDEN YOU CAN STILL FIND HIM NOT GUILTY ON
8 DURESS.

9 THE SAME CAN BE SAID FOR THE
10 CONSPIRACY CHARGE, YOU'VE GOT TO HAVE AN AGREEMENT
11 BETWEEN OR MORE PEOPLE. THE AGREEMENT DOESN'T HAVE TO
12 BE ORAL, IT DOESN'T HAVE TO BE, YOU AND I AGREE TO GO
13 ROB SOMEBODY, IT HAS TO BE, YOU KNOW, WE DON'T HAVE
14 THAT. WHAT WE HAVE IS, WE'RE EITHER GOING TO GET THAT
15 MONEY OR I'M GOING TO FUCKING START SHOOTING PEOPLE
16 AROUND HERE. THAT AIN'T NO AGREEMENT, THAT AIN'T NO
17 AGREEMENT OF MINDS. THAT'S NOT AN UNDERSTANDING THAT
18 WE'RE GOING TO COMMIT A CRIME. THAT IS, I'VE GOT NO SAY
19 IN THIS, IT'S ME FOLLOWING MICKEY.

20 I'M GOING TO SAY IT ONE MORE TIME
21 AND SIT DOWN, BECAUSE THIS IS VERY, VERY IMPORTANT. IF
22 ANYTHING YOU'VE HEARD OVER THE LAST THREE DAYS, IF
23 ANYTHING YOU READ THAT'S IN EVIDENCE IN THAT JURY ROOM
24 GIVES YOU A REASON TO HESITATE YOU MUST FIND SHAWN NOT
25 GUILTY ON THESE CHARGES. I'VE BEEN HERE THE ENTIRE TIME

1 Y'ALL HAVE, AND THE COURT AS WELL. IF YOU HESITATE AS
2 TO WHETHER HE COMMITTED EACH ELEMENT OF THESE CRIMES, BY
3 LAW YOU HAVE TO FIND HIM NOT GUILTY.

4 THANK YOU.

5 THE COURT: THANK YOU, SIR.

6 MR. DURANT.

7 SOLICITOR RUTLEDGE DURANT: THANK
8 YOU, YOUR HONOR, MAY IT PLEASE THE COURT.

9 THE COURT: YES, SIR.

10 SOLICITOR RUTLEDGE DURANT: MR.
11 PEPPER.

12 FINAL CLOSING ARGUMENT BY SOL. RUTLEDGE DURANT

13 LADIES AND GENTLEMEN, THIS CASE IS
14 ABOUT A GROUP OF PEOPLE WHO GOT TOGETHER AND THEY HASHED
15 THIS PLAN, IT WAS A VIOLENT PLAN, FOR ARMED ROBBERY.
16 THEY ALL HAD DIFFERENT ROLES, THEY ALL PLAYED DIFFERENT
17 FUNCTIONS, AND THEY ALL PARTICIPATED TO A DEGREE, AND
18 THEY'RE NO LESS CULPABLE. AND IN THE COURSE OF THAT
19 ARMED ROBBERY, THEY MAY NOT HAVE KNOWN WHAT WAS GOING TO
20 HAPPEN, BUT EVENTUALLY WHAT DID HAPPEN IS ROBERT VARGO'S
21 DEATH, WHICH WAS AN EXECUTION. HE WAS PUT DOWN ON THE
22 BED, A PILLOW WAS PUT OVER HIS HEAD, AND SOMEBODY PUT A
23 BULLET THROUGH HIS BRAIN. ALL OF THEM ARE IN IT UP TO
24 HERE. IT'S ESSENTIAL TO YOUR UNDERSTANDING OF THIS
25 CASE, THE STATE DOESN'T NOT HAVE TO PROVE WHO PULLED THE

1 TRIGGER, THE STATE DOES NOT HAVE TO PROVE WHO SHOT. AS
2 MUCH AS WE DID WANT TO KNOW THAT, THAT'S NOT WHAT WE
3 HAVE TO DO. ALANA NIESEN AND SANDRA BARNES HAVE ALSO
4 BEEN CHARGED HERE WITH ARMED ROBBERY AND MURDER, BUT
5 BASED ON THE EVIDENCE THAT'S BEEN PRESENTED TO YOU WE
6 HAVE PRETTY ELIMINATED THEM AS BEING THE SHOOTER.
7 NONETHELESS, THEY ARE JUST AS GUILTY OF MURDER AS THE
8 PERSON WHO PULLED THE TRIGGER. IF YOU ASK FOR ONE
9 REASON? THAT'S BECAUSE THE LAW SAYS THEY ARE. THE LAW
10 SAYS IF THEY ARE IN ON THE PLAN, IF THEY PARTICIPATED IN
11 THE ARMED ROBBERY, THEN THEY'RE JUST AS GUILTY OF MURDER
12 AS THE PERSON WHO PULLED THE TRIGGER. AND YOU MAY BE
13 THINKING ABOUT THIS IN TERMS OF VARYING DEGREES OF
14 CULPABILITY, VARYING ROLES, AND THAT'S NATURAL AND
15 THAT'S HUMAN, AND CERTAINLY, THEY WERE, THEY HAD
16 DIFFERENT ROLES, THEY ALL HAD DIFFERENT PARTS TO PLAY
17 HERE, THERE'S NO DOUBT ABOUT THAT. BUT VARYING DEGREES
18 OF INVOLVEMENT IS NOT THE SAME AS VARYING DEGREES OF
19 RESPONSIBILITY. YOU MAY WANT THE SHOOTER CONVICTED OF
20 MURDER? I ASSURE YOU, THE STATE DOES AS WELL. BUT
21 ALANA NIESEN AND SANDRA BARNES ARE NO LESS RESPONSIBLE
22 UNDER THE LAW FOR ROBERT VARGO'S MURDER THAN ARE SHAWN
23 PHILLIPS AND LENNIE MICKEY. AND SHAWN PHILLIPS IS NO
24 LESS RESPONSIBLE THAN LENNIE MICKEY. NONE OF THEM IS
25 ANY LESS RESPONSIBLE. UNDER THE LAW WE SIMPLY DO NOT

1 HAVE TO PROVE THAT LENNIE MICKEY OR SHAWN PHILLIPS
2 PULLED THE TRIGGER, THE FACT OF THE MATTER IS THAT SHAWN
3 PHILLIPS, LENNIE MICKEY, ALANA NIESEN AND SANDRA BARNES
4 WERE ALL IN ON THE ARMED ROBBERY THAT LED TO THE DEATH
5 OF ROBERT VARGO, AND THEY ARE ALL CHARGED WITH MURDER,
6 AND THEY'RE ALL CHARGED WITH ARMED ROBBERY. NONE OF
7 THEM HAD TO KNOW THAT ONE OF THEIR FELLOW CO-
8 CONSPIRATORS WOULD SHOOT. NONE OF THEM HAD TO KNOW THAT
9 THE PLAN WAS TO SHOOT. ALL THAT WAS REQUIRED WAS TWO
10 THINGS, KNOWLEDGE OF THEIR INVOLVEMENT IN AN ARMED
11 ROBBERY, AND KNOW IT. THEY HAD TO ACTUALLY PARTICIPATE,
12 THEY HAD TO KNOW THEY WERE IN ON AN ARMED ROBBERY,
13 TACITLY OR OTHERWISE, THEY HAD TO PARTICIPATE.

14 AND THAT BRINGS US TO THE LAW, WHICH
15 IS TO FRAME AND IT GOVERNS THIS COURTROOM RIGHT HERE.
16 AND THE JUDGE WILL CHARGE YOU ON THE LAW AT THE END OF
17 THIS CASE, JUST AS I SAID WHEN I OPENED ON THE LAW,
18 CONSPIRACY AND AGREEMENT BETWEEN TWO OR MORE PEOPLE TO
19 ACCOMPLISH AN UNLAWFUL OBJECT OR A LAWFUL OBJECT BY
20 UNLAWFUL MEANS. WHEN THESE FIVE PEOPLE GOT TOGETHER AT
21 THE TRAVEL LODGE AND THEY CAME UP WITH THIS WHOLE THING
22 ABOUT GOING OVER TO ROBERT VARGO'S ROOM AND ROBBING HIM,
23 THAT WAS A CRIMINAL CONSPIRACY.

24 AND THE ARMED ROBBERY, TAKING
25 SOMETHING AWAY FROM SOMEBODY WITH A DEADLY WEAPON, THEY

1 WENT OVER TO ROBERT VARGO'S ROOM AND STOLE FIFTY DOLLARS
2 FROM HIM, UP TO A HUNDRED DOLLARS, AT THE POINT OF A
3 THIRTY-EIGHT CALIBER REVOLVER, THEY COMMITTED ARMED
4 ROBBERY, ALL OF THEM, ANYBODY THAT PLANNED IT AND
5 PARTICIPATED IN IT, THEY'RE ALL INVOLVED.

6 THIS BRINGS US TO MURDER, THE
7 UNLAWFUL KILLING OF ANOTHER WITH MALICE AFORETHOUGHT.
8 WHEN THE BULLET WAS PUT THROUGH ROBERT VARGO'S HEAD,
9 THERE IS NO QUESTION, THIS WAS A MURDER.

10 THAT BRINGS US TO THE IMPORTANT LAW
11 IN THIS CASE WHEN IS THE HAND OF ONE IS THE HAND OF ALL.
12 YOU'RE WELL FAMILIAR WITH IT RIGHT NOW, AND I'LL TELL IT
13 TO YOU AGAIN, IF A CRIME IS COMMITTED BY TWO OR MORE
14 PEOPLE WHO ARE ACTING TOGETHER IN COMMITTING A CRIME,
15 THE ACT OF ONE IS THE ACT OF ALL. A PERSON WHO JOINS
16 WITH ANOTHER TO ACCOMPLISH AN ILLEGAL PURPOSE IS
17 CRIMINALLY RESPONSIBLE FOR EVERYTHING DONE BY THE OTHER
18 PERSON WHICH OCCURS AS A NATURAL CONSEQUENCE, THE ACTS
19 DONE IN CARRYING OUT THE COMMON PLAN AND PURPOSE. THE
20 NATURAL, PROBABLE AND ACTUAL CONSEQUENCE OF GOING TO
21 HARM AND ROB SOMEBODY WITH A GUN, A LOADED GUN IS THAT
22 THAT GUN WILL GO OFF AND SOMEBODY WILL DIE, REGARDLESS
23 OF WHETHER YOU INTENDED THAT OR NOT. SO, IS THE LAW A
24 GOOD LAW? IS IT A BAD LAW? IS IT A HARSH LAW? IS IT AN
25 UNFAIR LAW? YOU MAY BE THINKING TO YOURSELVES, DO I

1 AGREE WITH THIS LAW, AND THAT'S NATURAL, I SUBMIT TO YOU
2 THAT THAT IS THE PERFECTLY HUMAN THING TO THINK. THAT'S
3 WHAT A LOT OF PEOPLE THINK ABOUT A LOT OF DIFFERENT
4 LAWS, DEMOCRATS AND REPUBLICANS SQUABBLE ABOUT THIS ALL
5 THE TIME. BUT YOU DON'T HAVE TO DECIDE WHETHER THIS IS
6 A GOOD LAW, YOU DON'T HAVE TO DECIDE WHETHER IT IS A BAD
7 LAW. THAT IS NOT FOR YOU TO DECIDE, BECAUSE ALL OF YOU
8 AS JURORS RAISED YOUR HANDS AT THE BEGINNING OF THE CASE
9 AND YOU TOOK AN OATH TO FOLLOW THE LAW, AN OATH TO
10 FOLLOW THE LAW AND TO FIND THE TRUTH UNDER THIS LAW.
11 AND THE LAW OF THIS CASE IS KNOWN AS THE HAND OF ONE IS
12 THE HAND OF ALL. AND IT IS A GOOD LAW. IT EXISTS SIMPLY
13 BECAUSE THAT'S HOW CRIME IS COMMITTED. THAT IS HOW
14 CRIME IS COMMITTED. AND WHEN I SAY THAT I MEAN,
15 SECURITY IN NUMBERS. IT IS EASIER TO COMMIT A CRIME IF
16 YOU HAVE MORE PEOPLE IN ON IT WITH YOU. USUALLY, THE
17 MORE PEOPLE YOU HAVE HELPING YOU THE EASIER IT IS TO
18 COMMIT. THE GET AWAY DRIVER MAKES IT EASIER FOR THE
19 BANK ROBBER TO GET AWAY. THE LOOKOUT MAN OUTSIDE OF THE
20 HOUSE MAKES IT EASIER FOR THE BURGLAR TO GO UNDETECTED.
21 TWO MEN WHO OVERPOWER AND BEAT UP ANOTHER PERSON ARE
22 MORE LIKELY TO ACCOMPLISH THEIR TASK THAN IF IT WAS JUST
23 ONE PERSON. AND UNDER ALL OF THESE SCENARIOS EVERY
24 SINGLE PERSON INVOLVED IS INVOLVED TO THE FULLEST
25 BECAUSE IT TAKES MORE THAN ONE TO GET THE JOB DONE, AND

1 THAT'S WHAT WE HAVE IN THIS CASE.

2 LADIES AND GENTLEMEN, YOU HAVE SEEN
3 AND HEARD ALL OF THE EVIDENCE IN THIS CASE, AND THERE'S
4 BEEN QUITE A BIT. I'M NOT GOING TO GO OVER ALL OF IT,
5 BUT WHAT I AM GOING TO DO IS, I'M GOING TO ADDRESS THE
6 EVIDENCE THAT YOU NEED TO CONVICT THIS DEFENDANT OF
7 ARMED ROBBERY, CRIMINAL CONSPIRACY AND MURDER. AND
8 QUITE SIMPLY, IT BOILS DOWN TO FOUR THINGS. IT BOILS
9 DOWN TO THE TESTIMONY OF THE CO-DEFENDANT WOMEN, SANDRA
10 BARNES, ALANA NIESEN, AND ANGELA AGAGAS. IT BOILS DOWN
11 TO THE GUN, THE AMMUNITION RECOVERED IN THE ROOM, WHERE
12 THAT CAME FROM, WHO KNOWS ABOUT IT, AND WHY IT'S
13 IMPORTANT. THE PHONE CALLS OF ALANA NIESEN, ALANA
14 NIESEN'S PHONE CALLS, HER RECORDS. HER RECORDS
15 CORROBORATE EVERYTHING SHE SAID FROM THE VERY BEGINNING,
16 AND I'LL SHOW YOU ABOUT THAT WHEN WE GET TO IT. AND
17 LAST, BUT NOT LEAST, IS THE DEFENDANT'S OWN, HIS OWN
18 STATEMENTS, BOTH OF THEM, THE ONE THAT HE GAVE TO THE
19 POLICE AND THE OTHER ONE THAT HE SENT TO ANGELA AGAGAS
20 IN JAIL.

21 THE GIRLS FIRST, SANDRA BARNES,
22 ALANA NIESEN AND ANGELA AGAGAS, WHAT DO WE KNOW ABOUT
23 THESE THREE WOMEN? WHAT DO WE KNOW FROM THEM? FIRST OF
24 ALL, THESE WOMEN ARE THE ONLY WITNESSES TO THIS CRIME.
25 THAT'S A FACT. I DIDN'T CHOOSE THEM. IF I COULD HAVE

1 CHOSEN MY OWN WITNESSES I WOULD HAVE CHOSEN PEOPLE LIKE
2 JUDGE WILLIAMS, OR A PRIEST, A NUM, PEOPLE LIKE YOU. BUT
3 THEY ARE WHO THEY ARE, THEY ARE THE WITNESSES IN THIS
4 CASE. THEY ARE NO ANGELS, AS YOU'VE SEEN IN THEIR
5 TESTIMONY. BUT AS THE OLD SAYING GOES, WHEN THINGS GO
6 BAD IN HELL THERE WILL BE NO ANGELS TO TESTIFY. THEY
7 ARE WHO THEY ARE. THEY ARE THE WITNESSES OF THIS CASE.
8 AND ALL OF THESE LADIES TOLD YOU WHAT HAPPENED. FOR THE
9 MOST PART THEY SAID THE EXACT SAME THING. THERE WERE
10 SOME INCONSISTENCIES, AND THE ONLY THING THAT WOULD BE
11 ODD OR UNUSUAL ABOUT THAT IS IF THERE WEREN'T ANY. IF
12 THEY ALL HAD COME IN HERE AND TESTIFIED EXACTLY THE SAME
13 ABOUT EVERYTHING THAT WOULD BE ODD. IT HAS BEEN
14 PRACTICALLY TWO YEARS NOW SINCE THIS MURDER, AND
15 SOMETHING WOULD BE A LITTLE SUSPICIOUS IF EVERYTHING WAS
16 THE EXACT SAME WAY. IT'S THE NATURE OF HUMAN MEMORY,
17 THE NATURE OF RECOLLECTION THAT YOU WOULD HAVE
18 INCONSISTENCIES TO A DEGREE. FOR THE MOST PART THEY
19 SAID THE SAME THING. ALL THE LADIES TESTIFIED THEY MET
20 EACH OTHER FOR THE FIRST TIME THAT DAY. IT WAS NOVEMBER
21 THE SIXTH -- THE SEVENTH, EXCUSE ME, TWO THOUSAND AND
22 SIX. THEY WERE ALL IN ROOM THREE O SEVEN AT THE TRAVEL
23 LODGE, AND THEY ALL TESTIFIED THAT IT WAS LENNIE MICKEY,
24 SHAWN PHILLIPS, ANGELA AGAGAS, ALANA NIESEN, AND SANDRA
25 BARNES. THERE WAS NOBODY ELSE THERE. THEY ALL TOLD

1 YOU, ALANA TOLD YOU, SANDRA BARNES TOLD YOU, AND ANGELA
2 TOLD YOU THAT ALANA KNEW A GUY, AND SHE PROVIDED THE
3 GUY'S NAME TO SHAWN PHILLIPS AND TO LENNIE MICKEY
4 BECAUSE THEY WANTED SOMEBODY TO ROB. AND MOST OF THE
5 CONVERSATION, THE WHOLE TESTIMONY WAS THAT LENNIE MICKEY
6 WAS PREDOMINANTLY DOING MOST OF THE TALKING. SHAWN WAS
7 IN ON IT, THAT WAS THE TESTIMONY, HE WAS INTERESTED, HE
8 WANTED TO PLAY BALL. AND ALANA NIESEN GOT A PHONE CALL
9 FROM THE VICTIM, AND AFTER SHE DID SHE TOLD THEM
10 EVERYTHING SHE KNEW. AND ALL OF THE TESTIMONY WAS THE
11 EXACT SAME ABOUT THAT. SHE TOLD THEM EVERYTHING. SHE
12 TOLD THEM THAT THERE WAS CRACK IN HIS ROOM, THAT HE HAD
13 MONEY, KEPT IT IN HIS SHOE. SHE TOLD THEM HE WAS RIGHT
14 DOWN THE STREET. THEY ALL TESTIFIED THAT THEY LEFT AND
15 WENT DOWN THERE, AND ALANA POINTED OUT THE ROOM, AND
16 THEN THEY CAME BACK TO THE TRAVEL LODGE. AND THEY ALL
17 TESTIFIED THAT ALANA SET THE WHOLE THING UP, AND SHE
18 SENT, THE PLAN WAS TO BE THAT SANDRA BARNES WAS GOING TO
19 BE THE SET UP GIRL, THE GIRL WHO KNOCKS ON THE DOOR, THE
20 GIRL WHO GETS THEM INTO THE ROOM, AND THAT SHAWN AND
21 LENNIE WERE IN ON THIS. THAT WAS THE PLAN, IT WAS THE
22 PLAN, AND THEY WERE ALL IN ON IT. THERE WAS NOBODY
23 ELSE, THERE WAS NOBODY NAMED D OTHER THAN SHAWN
24 PHILLIPS. SANDRA KNOWS SHAWN AS D. THERE'S ONLY THESE
25 FIVE IN THAT HOTEL ROOM, NOBODY ELSE. THAT'S WHAT ALL

1 THE TESTIMONY WAS ABOUT. NOW, ANGELA AND ALANA KNOWS
2 SHAWN AS PIT. THEY SAID SO IN THEIR STATEMENTS.
3 SANDRA, A BIG DEAL ABOUT HER IDENTIFICATION OF DOMINICK
4 BALLOU AS D, BUT SANDRA SAYS THAT THE PERSON SHE KNOWS
5 AS D IN HER STATEMENT WAS THE PERSON WHO WAS AT THE
6 TRAVEL LODGE WHO WAS WITH ANGELA AGAGAS, WHO WAS ANGELA
7 AGAGAS'S BOYFRIEND. AND SANDRA SAID, I COULD TELL THAT
8 THEY WERE TOGETHER. THERE WAS NOBODY ELSE. SANDRA KNEW
9 THIS MAN AS D. SHE DIDN'T SEE ANYBODY ELSE. SHE
10 TESTIFIED SHE WENT ALL THE WAY UP TO THE ROOM, KNOCKED
11 ON THE DOOR, AND THESE TWO GUYS GO IN THERE. NOW, SHE
12 DID SAY SHE SUBSEQUENTLY IDENTIFIED SHAWN THROUGH THE
13 TWO WAY MIRROR. AND WE KNOW ABOUT THAT. EVERYTHING
14 THAT WAS DONE WAS BROUGHT TO THE PROSECUTOR'S OFFICE'S
15 ATTENTION, SUCH AS SANDRA'S IDENTIFICATION OF DOMINICK
16 BALLOU AS D, AND THEN SUBSEQUENT IDENTIFICATION OF
17 SHAWN. EVERYTHING THAT WAS DONE IS KNOWN, IT'S BEEN
18 BROUGHT TO YOU.

19 THE WHOLE STATEMENT THING WITH
20 SHAWN, DID HE GIVE A STATEMENT? WOULDN'T IT HAVE BEEN
21 EASIER TO JUST ADVISE HIM OF HIS RIGHTS ONE TIME, TO NOT
22 HONOR HIS REQUEST FOR AN ATTORNEY? IT COULD HAVE BEEN
23 EASY, BUT THAT'S NOT WHAT THE LAW SAYS YOU'VE GOT TO DO.
24 THE LAW SAYS YOU'VE GOT TO HONOR A REQUEST FOR AN
25 ATTORNEY, AND IT WAS SCRUPULOUSLY HONORED. THE OFFICERS

1 WALKED OUT OF THE ROOM. AND THE ONLY REASON WE KNOW
2 THAT HE WAS RE-MIRANDIZED WHEN HE REINITIATED
3 CONVERSATION WAS BECAUSE THEY MIRANDIZED HIM TWICE,
4 FILLED OUT THE FORM TWICE, AND SO IT'S PRESENTED TO YOU.
5 AND I KNOW THAT CREATES A LOT OF FODDER FOR A CRIMINAL
6 DEFENSE ATTORNEY, BUT THAT'S JUST THE FACT OF THE
7 MATTER, THAT'S THE LAW. THAT'S WHAT THESE OFFICERS HAD
8 TO DO. AND THEY DID EVERYTHING TO THE LETTER OF THE
9 LAW. HE GAVE HIS STATEMENT, A RIDICULOUS STATEMENT, HE
10 SAID HE WANTED TO TALK. AND NOBODY ELSE SEES THIS
11 MYSTERIOUS PERSON NAMED D WHO MIRACULOUSLY SHOWS UP AT
12 THE TRAVEL LODGE, OR AT THE BUDGET INN TO COMMIT THIS
13 ARMED ROBBERY, AND DIDN'T COME BACK TO THE CAR, AND
14 DOESN'T GO BACK TO THE TRAVEL LODGE HOTEL? WHAT? THAT
15 MAKES NO SENSE. IT JUST MAKES NO SENSE. NOBODY ELSE
16 SAYS IT WAS A THIRD PERSON INVOLVED, NOBODY ELSE SAW A
17 THIRD PERSON INVOLVED. AND HE WANTS YOU TO BELIEVE THAT
18 HE WAS THERE UNDER DURESS, UNDER LENNIE MICKEY'S DURESS.
19 AND THE TESTIMONY FROM THESE THREE WOMEN IS NOT THAT HE
20 WAS THERE UNDER DURESS, THERE WAS NO TESTIMONY THAT
21 LENNIE MICKEY MADE SHAWN PHILLIPS GO DOWN THERE, THAT'S
22 IN HIS STATEMENT. ANYTHING ABOUT THAT IS IN SHAWN
23 PHILLIPS'S STATEMENT. SANDRA BARNES DOESN'T SAY THAT
24 SHAWN WAS AN UNWILLING PARTICIPANT, ALANA NIESEN DOESN'T
25 SAY THAT, ANGELA AGAGAS DOESN'T SAY THAT. NONE OF THESE

1 GIRLS SAY THAT. FOR HIM TO BE THERE UNDER DURESS IN THE
2 CAR OUTSIDE WAITING ON LENNIE WHO GOES TO COMMIT THE
3 ARMED ROBBERY AND EVENTUAL MURDER, AND HE'S THERE BY
4 HIMSELF? WHY DIDN'T HE GET THE HECK OUT OF THERE AND GO
5 CALL THE POLICE? NO, HE WAS THERE IN THAT HOTEL ROOM
6 JUST AS HE WAS IN THE HOTEL ROOM AT THE IN TOWN SUITES
7 TWO DAYS BEFORE ROBBING ALEC BROWN FOR HIS THIRTY-EIGHT
8 COLT SNUB NOSE REVOLVER, WHICH WAS THE SAME PISTOL USED
9 TO KILL ROBERT VARGO. AND THE WAY WE KNOW THAT IS
10 BECAUSE THE PROJECTILE, THIS PROJECTILE RIGHT HERE, THIS
11 WAS RECOVERED FROM UNDER THE VICTIM'S HEAD, THIS LITTLE
12 BULLET RIGHT HERE. THE OFFICERS PICKED THAT UP RIGHT
13 FROM UNDER ROBERT VARGO'S HEAD. IT WAS CONFISCATED BY
14 THE POLICE, SENT TO SLED, SLED TESTIFIED THAT SLED
15 ANALYZED IT AND SAID, THIS IS CONSISTENT WITH EIGHT
16 DIFFERENT KINDS OF GUNS NARROWED DOWN FROM OVER A
17 THOUSAND. FROM EIGHT DIFFERENT KINDS OF GUNS, ONE OF
18 THOSE GUNS BEING A THIRTY-EIGHT COLT REVOLVER. SIX OF
19 THOSE GUNS ARE VERY RARE GUNS. ONE OF THE OTHER GUNS
20 COULD POSSIBLY HAVE FIRED IT AS WELL. WELL, THE THING
21 ABOUT IT IS, ALEC BROWN COMES IN HERE AND HE TELLS YOU,
22 YES, I WAS ROBBED AT THE IN TOWN SUITES BY TWO BLACK
23 MALES. THEY CAME IN, I BELIEVE THEY'RE FIVE, NINE AND
24 FIVE, ELEVEN, ONE WAS TALLER THAN THE OTHER. I'M SIX,
25 FOUR, MY VANTAGE POINT WASN'T THAT HIGH, BUT I'M JUST

1 TELLING YOU WHAT I KNOW. AND GUESS WHAT THEY TOOK FROM
2 HIM? THEY TOOK A THIRTY-EIGHT COLT REVOLVER. AND I
3 KNOW WHAT KIND OF AMMUNITION I HAD IN THERE, I HAD THREE
4 STANDARD LOG CUTTERS AND I HAD THREE STAR FIRE ROUNDS.
5 AND A STAR FIRE ROUND IS A HOLLOW POINT METAL JACKET.
6 AND SUZANNE CROMER TELLS YOU THAT THAT IS -- THIS BULLET
7 RIGHT HERE, -- SUZANNE CROMER, BY THE WAY, WAS THE
8 FIREARM ANALYSIS FROM SLED. SHE TELLS YOU THAT THIS
9 PROJECTILE RIGHT HERE IS CONSISTENT WITH A STAR FIRE
10 ROUND, AND THAT IT ALSO IS A RARE ROUND. IT'S NOT JUST
11 A COINCIDENCE, SHAWN PHILLIPS AND LENNIE MICKEY WERE IN
12 ON THE IN TOWN SUITES ROBBERY, THEY GOT THE GUN THERE,
13 THEY USED IT TO KILL ROBERT VARGO. HE WAS JUST AS IN ON
14 THE IN TOWN SUITES AS HE WAS AT THE BUDGET INN, YOU
15 BETCHA.

16 AND ANGELA AGAGAS, WELL, LET'S TALK
17 ABOUT HER. WE KNOW THAT HER RELATIONSHIP WITH SHAWN IS
18 THAT SHE'S THE MOTHER OF HIS CHILD. SHE HAD A CLOSE
19 RELATIONSHIP WITH HIM. SHE LOVED HIM, MAY STILL LOVE
20 HIM, I DON'T KNOW. SHE'S GOT A BABY BY HIM. AND SHE'S
21 BEEN IN JAIL BECAUSE OF SHAWN PHILLIPS. HE GOT HER INTO
22 THIS WHOLE MESS. AND DID SHE WANT TO SAY ANYTHING IN
23 THE VERY BEGINNING ABOUT SHAWN? HECK, NO. SHE WANTED TO
24 PROTECT HIM IN EVERY WAY POSSIBLE, AND SHE NEVER SAID
25 ANYTHING. AND THAT'S BECAUSE SHE LOVED HIM, THAT'S

1 BECAUSE HE WAS THE, HER BABY'S DADDY. BUT WHEN IT COMES
2 DOWN TO IT, SHE'S BEEN IN JAIL FOR TWO YEARS NOW. SHE
3 HAS PENDING CHARGES, AND SHE'S TELLING YOU WHAT
4 HAPPENED, BECAUSE SANDRA AND ALANA HAD ALREADY SAID THAT
5 ANGELA'S BOYFRIEND WAS IN THE ROOM AT THE TRAVEL LODGE,
6 AND HE WAS THE ONE WHO WENT OVER THERE WITH LENNIE
7 MICKEY TO GO COMMIT THIS CRIME. WELL, ANGELA, WAS HE OR
8 NOT? YEAH, HE WAS, OF COURSE, HE WAS. SHE TELLS THE
9 TRUTH. AND THAT IS THE TRUTH.

10 THIS BRINGS US TO ALANA NIESEN.
11 NOW, LET'S TAKE A LOOK AT HER PHONE CALLS NOW. FIRST OF
12 ALL, LET'S START WITH SHAWN PHILLIPS'S CELL PHONE
13 NUMBER, BECAUSE THIS IS IMPORTANT. ALANA NIESEN SAYS
14 THAT SHE GOT SHAWN PHILLIPS'S CELL PHONE NUMBER WHEN SHE
15 PULLED IN WHEN SHE WAS ON HER WAY TO SEE TANK WHO WAS IN
16 THE MIDDLE HOTEL ROOM, AND THESE GUYS ARE PULLING OUT IN
17 THE TRACKER. LENNIE MICKEY AND SHAWN PHILLIPS ARE
18 PULLING OUT IN THE TRACKER, AND THEY MEET UP AND THEY
19 SAY, OKAY, LET'S PARTY, AND ALANA GOES TO SEE TANK, HE
20 ENDS UP NOT NEEDING A RIDE, AND SO SHE MEETS UP WITH
21 THESE GUYS. WELL, LET'S SEE IF THESE PHONE RECORDS,
22 WHICH IS A SUMMARY, DON'T CORROBORATE ALANA TO THE TEE?
23 AT THE VERY TOP, THE YELLOW CALLS UP HERE, WHICH BEGIN
24 ON NOVEMBER THE SEVENTH SHORTLY BEFORE TEN A.M., THIS IS
25 ALANA NIESEN'S TELEPHONE NUMBER AND SIX O NINE THREE

1 THREE EIGHT FIVE SIX FIVE FIVE IS THE NUMBER PULLED OUT
2 OF THE VICTIM'S TELEPHONE. ALANA WAS WITH ROBERT VARGO
3 THE NIGHT BEFORE. ROBERT VARGO CALLS HER, ASKS HER FOR
4 A RIDE TO ANOTHER HOTEL ROOM, AND SHE TAKES HIM. THESE
5 ARE HER CALLS TO ROBERT VARGO'S CELL PHONE, AND THE END
6 AT ONE:TWELVE P.M. ROBERT VARGO CHECKS INTO HIS HOTEL
7 ROOM AT THE BUDGET INN AROUND ONE P.M. THESE NUMBERS,
8 AND YOU MAY HAVE BEEN WONDERING TO YOURSELF, WHAT'S UP
9 WITH ALL THESE NUMBERS? WHY DO THEY KEEP GOING THROUGH
10 ALL THESE NUMBERS ALL THROUGH THIS TRIAL? THIS IS THE
11 REASON, THIS NUMBER RIGHT HERE, THESE THREE TWO NINE
12 NUMBERS, EIGHT FOUR THREE THREE TWO NINE SEVEN SIX NINE
13 FOUR, SEVEN SIX NINE TWO, SEEN SIX NINE ZERO, THERE'S A
14 COUPLE OF DIFFERENT ONES. WE HAD THE GUY, MR. PATEL
15 FROM THE BUDGET INN, COME AND TESTIFY THAT THESE ARE THE
16 VARIOUS NUMBERS AT THE BUDGET INN, THEY'RE ALL
17 REGISTERED TO THE BUDGET INN. HE TOLD YOU HOW A CALL
18 COMES IN, HOW A CALL GOES OUT. YOU CAN SEE HERE,
19 INCOMING CALLS AND OUTGOING CALLS. THERE'S A COUPLE
20 MORE CALLS INCOMING TO ALANA'S PHONE FROM THE BUDGET
21 INN, FOUR:TWENTY, SIX:THIRTY-FIVE, SEVEN:THIRTY-FIVE,
22 NINE:O FIVE. NINE:FIFTY-FIVE WE GET AN OUTGOING CALL
23 FROM ALANA'S PHONE TO A FIVE O NINE TWO THREE SEVEN
24 SEVEN, AND WHO'S NUMBER IS THAT? WE HAVE TESTIMONY FROM
25 ANGELA AGAGAS THAT HER BOYFRIEND, THE MOTHER, OR THE

1 FATHER OF HER BABY, HIS NUMBER IS FIVE O NINE TWO THREE
2 SEVEN SEVEN, WHO CORROBORATES THAT? DONALD SIMMONS.
3 DONALD SIMMONS, THE INVESTIGATOR WHO WAS WITH SHAWN
4 PHILLIPS FOR OVER TWO YEARS, KNOWING THAT THIS NUMBER IS
5 THE PRIMARY MEANS FOR WHICH HE HAS ALWAYS GOTTEN IN
6 TOUCH WITH SHAWN PHILLIPS. LADIES AND GENTLEMEN, THIS
7 IS SHAWN PHILLIPS'S NUMBER, FIVE ZERO NINE TWO THREE
8 SEVEN SEVEN. AND THERE'S A COUPLE OF QUICK CALLS, NINE
9 FIFTY-FIVE, NINE FIFTY-SEVEN, NINE FIFTY-NINE, TEN,
10 THERE'S ONE OUTGOING WHERE ALANA GIVES SHAWN HER PHONE
11 NUMBER SO HE CAN HAVE IT, AND THEN HE CALLS HER ONCE,
12 TWICE, THREE TIMES. SHE GOES TO SEE TANK BETWEEN TEN
13 AND TEN:ELEVEN. TANK ENDS UP NOT NEEDING A RIDE. SHE
14 CALLS THEM BACK, TEN:ELEVEN, MEETS UP WITH THEM,
15 TEN:ELEVEN. EVERYTHING SHE SAID YOU CAN SEE ON THESE
16 PHONE RECORDS. AND SHE IS THEIR HOTEL ROOM. THIS, THIS
17 YELLOW CALL RIGHT HERE, SHE IS IN THEIR HOTEL ROOM AT
18 THIS POINT, THE FATEFUL CALL, INCOMING CALL TO ALANA'S
19 CELL PHONE FROM EIGHT FOUR THREE THREE TWO NINE, SEVEN
20 SIX NINE TWO, THE BUDGET INN. THAT WAS ROBERT VARGO
21 CALLING. AND AS SOON AS SHE GOT THAT CALL, SHE TOLD
22 THESE GUYS, SHAWN PHILLIPS AND LENNIE MICKEY EVERYTHING,
23 HOW HE HAD CRACK COCAINE, HOW HE HAD KEPT HIS MONEY IN
24 HIS SHOE, HOW HE LIKED PROSTITUTES, AND HOW HE'S RIGHT
25 DOWN THE STREET. THAT WAS A FATAL CALL. SO, THE

1 TESTIMONY THEN FROM ALL THREE OF THE WITNESSES IS THAT
2 THEY DRIVE AROUND, ALANA POINTS OUT THE ROOM, THEY GO TO
3 ANOTHER HOTEL ROOM BEFORE EVENTUALLY ENDING UP BACK AT
4 THE TRAVEL LODGE, WHERE NOW THEY'VE GOT THE PLAN, NOW
5 THEY KNOW EXACTLY WHAT THEY'RE GOING TO DO. ALANA'S NOT
6 GOING TO BE THE GIRL TO GO GET THEM IN THERE, RATHER
7 THAT'S GOING TO BE SANDRA BARNES. IT'S ALL SET UP, IT'S
8 UP TO ALANA AT THIS POINT TO GET THIS THING GOING, CALL
9 THE VICTIM, MAKE SURE IT'S COOL WITH HIM, MAKE SURE HE
10 KNOWS WHO'S COMING OVER THERE. WE'RE SENDING HIM A
11 GIRL, TWO OUTGOING CALLS FROM ALANA'S CELL PHONE, AT
12 ELEVEN:THIRTY-SEVEN P.M., ELEVEN:FORTY-FIVE P.M., ONE
13 FOR FOUR MINUTES, ONE FOR FIVE MINUTES. IT IS BETWEEN
14 ELEVEN:FORTY-FIVE AND THIS NEXT INCOMING CALL ON ALANA'S
15 PHONE FROM SHAWN PHILLIPS'S PHONE, ELEVEN:FORTY-FIVE TO
16 TWELVE:O-FOUR, IT IS ALL THE TIME THAT IS NEEDED TO GO
17 DOWN TO THE BUDGET INN AND GET THE JOB DONE, MURDER.
18 THE REST OF THESE CALLS ARE INCOMING AND OUTGOING CALLS
19 FROM SHAWN PHILLIPS, ON FIVE O NINE TWO THREE SEVEN
20 SEVEN NUMBER, WHO IS IN A DIFFERENT CAR, WHO IS IN TH
21 TRACKER, BECAUSE THEY ARE NOW GOING BACK TO THE TRAVEL
22 LODGE, THAT THEY'VE GOT TO GET THE HECK OUT OF DODGE.
23 THEY'RE IN DIFFERENT CARS. SHAWN AND ANGELA ARE IN THE
24 TRACKER, LENNIE, B.G. AND ALANA ARE IN THE DURANGO.
25 SHAWN AND LENNIE ARE TALKING, THESE ARE SHAWN'S

1 TELEPHONE NUMBERS. THE TESTIMONY FROM ALANA WAS THAT
2 LENNIE WAS USING HER PHONE, SHAWN WAS TALKING TO LENNIE
3 AT THAT POINT. AND EVERYTHING, THE FACT OF THE MATTER
4 IS, EVERYTHING ALANA TOLD YOU IS CORROBORATED TO THE TEE
5 BY HER PHONE RECORDS. SHAWN PHILLIPS WAS IN ON IT UP TO
6 HERE, THEY ALL HAD DIFFERENT ROLES, THEY ALL PLANNED AND
7 PARTICIPATED. THEY WERE ALL INVOLVED. AND IT MAKES NO
8 DIFFERENCE HOW INVOLVED THEY WERE, THEY PLANNED AN ARMED
9 ROBBERY, THEY PLANNED AN ARMED ROBBERY AND SOMEBODY WAS
10 KILLED. THE LAW SAYS YOU'RE GUILTY OF MURDER IF YOU'RE
11 IN ON THAT ARMED ROBBERY, THAT'S WHAT THE LAW SAYS.

12 NOW, YOU'VE HEARD A LOT ABOUT
13 REASONABLE DOUBT. AND I'LL MENTION REASONABLE DOUBT,
14 TOO. THAT'S MY BURDEN. I ACCEPT THAT BURDEN.
15 REASONABLE DOUBT DOES NOT MEAN ALL DOUBT. YOU CAN HAVE
16 DOUBTS, BUT THEY HAVE TO BE REASONABLE. THE STATE DOES
17 NOT HAVE TO PROVE ITS CASE BEYOND ALL DOUBT. THERE ARE
18 FEW THINGS IN THIS WORLD WE KNOW FOR ABSOLUTE CERTAINTY,
19 AND THAT IS NOT WHAT THE STATE IS REQUIRED TO PROVE,
20 ABSOLUTE CERTAINTY. THE ONLY PEOPLE WHO KNOW WHAT
21 HAPPENED HERE WITH ABSOLUTE CERTAINTY IS SHAWN PHILLIPS
22 AND THE OTHER WITNESSES IN THIS CASE. AND I SUBMIT TO
23 YOU THAT IF YOU KNEW WHAT HAPPENED HERE FOR ABSOLUTE
24 CERTAINTY YOU WOULD NOT BE IN THE JURY BOX, YOU WOULD
25 HAVE BEEN UP ON THIS STAND TESTIFYING. ALL THE EVIDENCE

1 POINTS TO SHAWN PHILLIPS BEING IN THAT ROOM AT THE
2 TRAVEL LODGE, BEING AN ACTIVE PARTICIPANT WITH LENNIE
3 MICKEY, AND NOBODY SAID HE WAS UNDER DURESS, AND IF HE
4 WAS UNDER DURESS, THAT'S JUST LUDICROUS. IF HE'S OUT IN
5 THE CAR WHY DIDN'T HE JUST HIGH TAIL IT? THAT WAS A
6 STORY HE FED TO THE POLICE BECAUSE HE WANTED TO TELL
7 THEM SOMETHING. HE WANTED TO TELL THEM SOMETHING TO GET
8 HIM OUT OF THERE.

9 THIS BRINGS US TO THE LETTER THAT HE
10 WROTE ANGELA AGAGAS. WHEN EVERYBODY IS TRYING TO GET OUT
11 OF THIS THING, WHEN THEY'RE TRYING TO COMMUNICATE, AND
12 SHAWN TELLS HER, I NEED YOU TO REALLY TALK TO B.G.,
13 BECAUSE IF THIS ATTORNEY COMES TO SEE ME HE MIGHT NEED
14 TO TALK TO YOU AND B.G. JUST TO CONFIRM THAT I WAS
15 ASLEEP, BECAUSE OF ALL THE LIQUOR I HAD DRUNK.

16 THEY BROUGHT MARY ROBINSON IN HERE
17 TO SAY WHATEVER SHE WANTED TO SAY, BUT EVENTUALLY, WHAT
18 SHE DID SAY IS, SHAWN AND LENNIE WERE FRIENDS, SHE KNEW
19 THAT. AND MARY ROBINSON IS JUST NOT A CREDIBLE PERSON
20 IN THE LEAST, REGARDLESS OF WHETHER SHE HAD ANYTHING
21 PERTINENT TO SAY OR NOT. SHE GAVE A STATEMENT WAY BACK
22 WEDNESDAY THAT SHE WAS WITH THESE GUYS AT THE HOTEL ROOM
23 ALL NIGHT LONG AND THAT SHAWN NEVER LEFT THE ROOM. WAS
24 SHE IN ON SOME KIND OF STORY TO TRY TO ALIBI HIM BACK
25 THEN? PROBABLY SO.

1 THE FACT OF THE MATTER IS, ALL OF
2 THESE PEOPLE WERE IN ON THIS THING, AND THE PEOPLE WHO
3 TESTIFIED UP HERE WERE IN ON THIS THING, ANGELA, SANDRA,
4 ALANA, THEY'RE ALL GUILTY. AND THEY TOLD YOU WHAT
5 HAPPENED, AND THEY TOLD YOU EXACTLY WHAT THEY TOLD THE
6 POLICE WAY BACK WHEN, BACK IN DECEMBER OF TWO THOUSAND
7 AND SIX WHEN THEY INITIALLY TALKED TO THE POLICE. THEIR
8 TESTIMONIES ARE THE SAME. I ASK YOU TO FULFIL YOUR
9 OATH, FOLLOW THE LAW, FIND THE TRUTH, AND FIND SHAWN
10 PHILLIPS GUILTY OF CRIMINAL CONSPIRACY, ARMED ROBBERY
11 AND MURDER.

12 THANK YOU.

13 THE COURT: THANK YOU, SIR.

14 LADIES AND GENTLEMEN, IT WILL
15 PROBABLY TAKE ME THIRTY MINUTES TO CHARGE YOU. DO YOU
16 WANT A SHORT BREAK OR DO YOU WANT TO KEEP ROLLING? DO
17 A COUPLE OF YOU NEED A BREAK? OH, YOU WANT TO KEEP
18 GOING. ALRIGHT.

19 CHARGE BY THE COURT

20 LADIES AND GENTLEMEN, AS YOU KNOW
21 NOW, THE STATE HAS CHARGED MR. PHILLIPS IN THESE THREE
22 INDICTMENTS WITH THREE SEPARATE CRIMES, THE CRIMES OF
23 ARMED ROBBERY, MURDER AND CONSPIRACY. YOU'LL HAVE THESE
24 INDICTMENTS WITH YOU IN THE JURY ROOM. THESE
25 INDICTMENTS ARE NOT EVIDENCE, AS I TOLD YOU EARLIER,

1 THESE INDICTMENTS ARE SIMPLY DOCUMENTS DRAWN UP BY THE
2 STATE TO ADVISE MR. PHILLIPS AND HIS ATTORNEY OF THE
3 CHARGES HE IS FACING SO THEY CAN PREPARE A PROPER
4 DEFENSE. THE IMPORTANT THING ABOUT THESE INDICTMENTS IS
5 THAT TO THE CHARGES CONTAINED IN THOSE INDICTMENTS MR.
6 PHILLIPS HAS PLED NOT GUILTY. THAT PLACES THE BURDEN ON
7 THE STATE TO PROVE HIM GUILTY BEYOND A REASONABLE DOUBT.

8 A PERSON CHARGED WITH COMMITTING A
9 CRIMINAL OFFENSE IS NEVER REQUIRED TO PROVE HIMSELF
10 INNOCENT. IT IS A VITAL, IMPORTANT RULE OF LAW THAT A
11 DEFENDANT IN A CRIMINAL TRIAL, NO MATTER HOW GREAT OR
12 HOW SERIOUS THE CHARGES HE FACES, MUST ALWAYS BE
13 PRESUMED INNOCENT UNTIL HIS GUILT HAS BEEN PROVEN BEYOND
14 A REASONABLE DOUBT. THIS PRESUMPTION OF INNOCENCE AS WE
15 CALL IT REMAINS WITH THE DEFENDANT AT ALL TIMES FROM THE
16 MINUTE HE COMES INTO THIS COURTROOM AND UNTIL YOU, THE
17 JURY, HAVE UPON THE EVIDENCE PRESENTED IN THIS COURTROOM
18 DETERMINED THAT HE IS GUILTY BEYOND A REASONABLE DOUBT,
19 FOR IT'S YOUR JURY, LADIES AND GENTLEMEN, IF YOU ARE NOT
20 SO CONVINCED TO FIND HIM NOT GUILTY. BY THE SAME TOKEN
21 IT IS YOUR DUTY IF YOU ARE SO CONVINCED TO FIND HIM
22 GUILTY.

23 SO, IF THE BURDEN ON THE STATE IS TO
24 PROVE HIM GUILTY BEYOND A REASONABLE DOUBT, WHAT DO WE
25 MEAN BY BEYOND A REASONABLE DOUBT? WELL, SOME HAVE

1 DEFINED IT AS A DOUBT WHICH WOULD CAUSE A REASONABLE
2 PERSON TO HESITATE TO ACT IN THE MOST IMPORTANT OF HIS
3 OWN AFFAIRS. SOME OF YOU MIGHT HAVE SERVED AS A JUROR
4 IN A CIVIL CASE AND YOU WOULD HAVE BEEN TOLD THAT IT'S
5 ONLY NECESSARY TO PROVE THAT A FACT IS MORE LIKELY THAN
6 NOT TRUE. WE CALL THAT THE PREPONDERANCE OF THE
7 EVIDENCE, JUST TIPPING THE SCALES. BUT IN A CRIMINAL
8 CASE THE STATE'S BURDEN IS GREATER THAN THAT. PROOF
9 BEYOND A REASONABLE DOUBT IS PROOF THAT LEAVES YOU
10 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
13 REQUIRE PROOF THAT OVERCOMES VERY POSSIBLE DOUBT. IF
14 BASED ON YOUR CONSIDERATION OF THE EVIDENCE YOU ARE
15 FIRMLY CONVINCED THAT THE DEFENDANT IS GUILTY OF THE
16 CRIME CHARGED THEN YOU MUST FIND HIM GUILTY. IF ON THE
17 OTHER HAND YOU THINK THERE IS A REAL POSSIBILITY THAT HE
18 IS NOT GUILTY YOU MUST GIVE HIM THE BENEFIT OF THAT
19 REASONABLE DOUBT AND FIND HIM NOT GUILTY.

20 LADIES AND GENTLEMEN, AS I TOLD YOU,
21 YOU ARE THE JUDGES OF THE FACTS IN THE CASE, AND YOU ARE
22 THE ONLY JUDGES OF THE FACTS IN THE CASE. YOU HAVE TO
23 DETERMINE WHAT THE TRUTH IS IN THIS MATTER. AND TO DO
24 THAT YOU HAVE TO DETERMINE THE CREDIBILITY OR THE
25 BELIEVABILITY OF THE WITNESSES WHO'S TESTIFIED IN THIS

1 CASE AND YOU ARE THE ONLY ONES WHO CAN DETERMINE THAT
2 CREDIBILITY. IN DOING THAT YOU SHOULD CONSIDER A NUMBER
3 OF THINGS: THE DEMEANOR OR THE MANNER OF TESTIFYING;
4 WAS THE WITNESS FORTHRIGHT OR WAS THE WITNESS HESITANT
5 IN THEIR TESTIMONY; DID A WITNESS HAVE REASON TO BE
6 BIASED OR PREJUDICED IN THEIR TESTIMONY; WHETHER A
7 WITNESS'S TESTIMONY WAS CONTRADICTED ON ONE HAND OR
8 WHETHER IT WAS SUPPORTED AND CORROBORATED ON THE OTHER
9 HAND; WHAT WAS THE WITNESS'S OPPORTUNITY FOR OBSERVATION
10 AND KNOWLEDGE ABOUT WHICH THEY'VE TESTIFIED; HOW
11 REASONABLE WAS THE WITNESS'S TESTIMONY, ESPECIALLY
12 CONSIDERED IN THE LIGHT OF OTHER EVIDENCE WHICH YOU DO
13 BELIEVE? YOU CERTAINLY DON'T DETERMINE THE
14 BELIEVABILITY OR CREDIBILITY BY COUNTING THE NUMBER OF
15 WITNESSES FOR EITHER SIDE. YOU CAN BELIEVE ONE WITNESS
16 AGAINST MANY OR MANY AGAINST ONE. YOU CAN BELIEVE ALL OF
17 A WITNESS'S TESTIMONY, PART OF A WITNESS'S TESTIMONY, OR
18 NONE OF A WITNESS'S TESTIMONY, BEARING IN MIND THAT YOU
19 SHOULD GIVE THE BENEFIT OF ANY REASONABLE DOUBT TO THE
20 DEFENDANT IN THE CASE.

21 LADIES AND GENTLEMEN, THERE ARE TWO
22 TYPES OF EVIDENCE FROM WHICH YOU CAN DETERMINE THE TRUTH
23 IN THE CASE. ONE IS WHAT WE CALL DIRECT EVIDENCE AND
24 THE OTHER IS INDIRECT OR CIRCUMSTANTIAL EVIDENCE.
25 DIRECT EVIDENCE IS EVIDENCE WHICH COMES FROM THE MEANS

1 OF OUR SENSES, ONE OF THE FIVE SENSES, SIGHT, SMELL,
2 TASTE, SOUND OR FEELING, WITHOUT THE AID OF ANY
3 INFERENCES, WHERE A PERSON SEES SOMETHING OR HEARS
4 SOMETHING AND COMES INTO COURT AND TESTIFIES TO WHAT
5 THEY SAW OR HEARD. CIRCUMSTANTIAL EVIDENCE INVOLVES
6 TESTIMONY OR EVIDENCE OF SURROUNDING FACTS FROM WHICH
7 YOU MAY OR MAY NOT INFER THAT A FACT HAS BEEN
8 ESTABLISHED. CIRCUMSTANTIAL EVIDENCE CAN EXIST WHERE
9 CERTAIN FACTS ARE KNOWN THROUGH ONE OR MORE OF THE FIVE
10 SENSES AND THESE FACTS GIVE RISE TO THE LOGICAL
11 INFERENCE THAT OTHER FACTS EXIST WITHOUT DIRECTLY
12 PROVING THOSE FACTS. WHEN I LEFT THE COURTHOUSE
13 YESTERDAY THERE WAS WATER IN THE STREET. I DIDN'T SEE IT
14 RAIN, HEAR IT, FEEL IT, TASTE IT, SMELL IT RAIN, BUT I
15 CONCLUDED BASED ON MY SEEING THE WATER IN THE STREETS
16 THAT IT MUST HAVE RAINED. THAT WAS CIRCUMSTANTIAL
17 EVIDENCE THAT IT HAD RAINED. THAT'S EXACTLY WHAT WE
18 MEAN BY CIRCUMSTANTIAL EVIDENCE. YOU PROBABLY HAD THE
19 SAME EXPERIENCE YESTERDAY. BUT WITH REGARD TO BOTH
20 DIRECT AND CIRCUMSTANTIAL EVIDENCE IT MUST BE SUCH AS TO
21 PROVE THE GUILT OF THE DEFENDANT BEYOND A REASONABLE
22 DOUBT. THE LAW DOESN'T MAKE ANY DISTINCTION BETWEEN THE
23 TWO TYPES OF EVIDENCE, NOR IS A GREATER DEGREE OF
24 CERTAINTY REQUIRED OF CIRCUMSTANTIAL THAN OF DIRECT
25 EVIDENCE. YOU SHOULD CONSIDER ALL OF THE EVIDENCE IN THE

1 CASE, AND IF AFTER WEIGHING ALL OF THE EVIDENCE YOU ARE
2 FIRMLY CONVINCED THAT THE DEFENDANT IS GUILTY THEN YOU
3 MUST FIND HIM GUILTY.

4 LADIES AND GENTLEMEN, THERE WAS SOME
5 TESTIMONY ADMITTED INTO THIS TRIAL ABOUT POSSIBLE
6 INVOLVEMENT OF THIS DEFENDANT IN OTHER CRIMES. IN REGARD
7 TO THAT EVIDENCE OF OTHER CRIMES ALLEGED TO HAVE BEEN
8 COMMITTED BY THE DEFENDANT, AS I TOLD YOU AT THE TIME,
9 THIS EVIDENCE IS LIMITED TO CONSIDERATION BY YOU AS IT
10 RELATES ONLY TO THE IDENTITY OF THE PERSONS CHARGED WITH
11 THE COMMISSION OF THIS CRIME ON TRIAL HERE TODAY. THE
12 EVIDENCE IS LIMITED TO THAT PURPOSE AND USE, IT CANNOT
13 BE USED FOR ANY OTHER PURPOSE. IT MUST NOT BE CONSIDERED
14 IN ANY OTHER FASHION.

15 LADIES AND GENTLEMEN, THE SAME
16 CONSTITUTION AND LAW WHICH MAKE YOU THE JUDGES OF THE
17 FACTS IN THE CASE MAKE ME THE JUDGE OF THE LAW IN THE
18 CASE. AND IF YOU FIND THAT WHAT I TELL YOU THE LAW IS
19 DOESN'T AGREE WITH WHAT YOU THOUGHT THE LAW WAS OR EVEN
20 IF IT DOESN'T AGREE WITH WHAT YOU THINK THE LAW OUGHT TO
21 BE, YOU MUST PUT ASIDE YOUR OPINION OF THE LAW, ACCEPT
22 THE LAW AS I GIVE IT TO YOU, AND APPLY THAT TO THE FACTS
23 AS YOU FIND THEM TO BE IN ORDER TO REACH YOUR VERDICT IN
24 THIS CASE.

25 LADIES AND GENTLEMEN, I CHARGE YOU

1 THAT IN ORDER TO BE CONVICTED THE STATE MUST PROVE
2 CRIMINAL INTENT. CRIMINAL INTENT IS A STATE OF MIND
3 WHICH OPERATES JOINTLY WITH AN ACT OR OMISSION IN THE
4 COMMISSION OF A CRIME. CRIMINAL INTENT IS A MIDDLE
5 STATE OF CONSCIOUS WRONGDOING. IT INCLUDES THOSE
6 CONSEQUENCES WHICH REPRESENT THE VERY PURPOSE FOR WHICH
7 THE ACT IS DONE OR ARE KNOWN TO BE SUBSTANTIALLY CERTAIN
8 TO RESULT REGARDLESS OF ONE'S DESIRE. INTENT MAY BE
9 SHOWN BY ACTS AND CONDUCT OF THE DEFENDANT IN OTHER
10 CIRCUMSTANCES FROM WHICH YOU MAY NATURALLY AND
11 REASONABLY INFER INTENT. CRIMINAL INTENT MUST BE PROVEN
12 BY THE STATE BEYOND A REASONABLE DOUBT.

13 LADIES AND GENTLEMEN, WHILE THE
14 COURT GENERALLY DETERMINES THE ADMISSIBILITY OF EVIDENCE
15 IN A CASE I INSTRUCT YOU THAT AS REGARDING THE ALLEGED
16 STATEMENT OF THE DEFENDANT, THAT YOU LADIES AND
17 GENTLEMEN MAKE THE ULTIMATE DECISION WHETHER OR NOT THE
18 DEFENDANT MADE THAT STATEMENT; AND IF HE DID MAKE IT
19 WHETHER HE WAS WARNED OF HIS CONSTITUTIONAL RIGHTS, AND
20 WHETHER HE KNOWINGLY AND INTELLIGENTLY WAIVED HIS
21 CONSTITUTIONAL RIGHTS, AND WHETHER IT WAS MADE BY HIM
22 VOLUNTARILY, OF HIS OWN FREELY WILL. AND FINALLY, IT IS
23 UP TO YOU TO DETERMINE JUST WHAT WEIGHT, IF ANY, YOU
24 SHOULD GIVE TO THAT STATEMENT. YOU MUST DETERMINE IF
25 THE STATEMENT WAS A PRODUCT OF AN ESSENTIALLY FREE AND

1 UNCONSTRAINED CHOICE BY THE DEFENDANT. IF YOU DETERMINE
2 IT WAS, AND THE BURDEN IS ON THE STATE TO PROVE THAT
3 BEYOND A REASONABLE DOUBT, THEN YOU MAY GIVE IT SUCH
4 FURTHER CONSIDERATION AS YOU DEEM PROPER. IF YOU
5 DETERMINE THE STATEMENT WAS NOT THE FREE AND VOLUNTARILY
6 WILLED EXPRESSION OF THE DEFENDANT THEN YOU SHOULD NOT
7 CONSIDER IT AT ALL. IN DETERMINING WHETHER A DEFENDANT'S
8 WILL WAS OVERCOME IN OBTAINING THE STATEMENT YOU SHOULD
9 CONSIDER BOTH THE CHARACTERISTICS OF THE DEFENDANT AND
10 THE DETAILS OF THE INTERROGATION, OR THE TOTALITY OF THE
11 CIRCUMSTANCES. YOU MAY CONSIDER THE AGE OR THE YOUTH OF
12 THE ACCUSED, HIS EDUCATION, HIS MENTAL CAPACITY OR
13 ABILITY, HIS IQ, HIS BACKGROUND AND ENVIRONMENT, THE
14 ADVICE OR THE LACK THEREOF OF HIS CONSTITUTIONAL RIGHTS,
15 INCLUDING BUT NOT LIMITED TO THE PROCEDURAL SAFEGUARDS
16 KNOWN AS THE MIRANDA WARNINGS: THE RIGHT TO REMAIN
17 SILENT; THAT A STATEMENT COULD BE USED AGAINST HIM IN A
18 COURT OF LAW; THE RIGHT TO HAVE A LAWYER PRESENT; IF HE
19 COULD NOT AFFORD ONE, THE RIGHT TO HAVE ONE APPOINTED;
20 THAT IF HE STARTED MAKING A STATEMENT HE COULD STOP AT
21 ANYTIME. YOU SHOULD CONSIDER ALSO THE PLACE AND THE
22 LENGTH OF THE DETENTION AND THE NATURE OF THE
23 QUESTIONING. YOU SHOULD SCRUTINIZE ALL OF THE
24 SURROUNDING CIRCUMSTANCES AND BEFORE YOU GIVE ANY WEIGHT
25 TO THE STATEMENT YOU MUST BE SATISFIED BEYOND A

1 REASONABLE DOUBT THAT IT WAS MADE BY THE ACCUSED, THAT
2 IT WAS UNINFLUENCED BY PROMISE OR REWARD, THREAT OF
3 INJURY, OR ANY DIMINUTION OF HIS RIGHTS.

4 LADIES AND GENTLEMEN, THERE ARE
5 THREE CHARGES, AND YOU MUST MAKE YOUR DECISION
6 INDEPENDENTLY ON EACH OF THOSE THREE CHARGES. YOU CAN'T
7 SAY, WELL, HE'S GUILTY OF ONE SO HE'S GOT TO BE GUILTY
8 OF THE OTHER, OR VICE VERSA, HE'S NOT GUILTY OF THIS ONE
9 SO HE'S GOT TO BE NOT GUILTY OF THAT ONE. YOU BASE YOUR
10 DECISION ON EACH INDICTMENT BASED ON THE ELEMENTS OF
11 THAT INDICTMENT THAT I HAVE EXPLAINED TO YOU AND THE
12 EVIDENCE WHICH WOULD PERTAIN TO THAT INDICTMENT.

13 THE FIRST HE'S CHARGED WITH IS
14 CONSPIRACY. THE COMMON LAW KNOWN AS CONSPIRACY IS
15 DEFINED AS A COMBINATION BETWEEN TWO OR MORE PERSONS FOR
16 THE PURPOSE OF ACCOMPLISHING AN UNLAWFUL OBJECT OR A
17 LAWFUL OBJECT BY UNLAWFUL MEANS. THE GRAVAMEN OF THE
18 OFFENSE OF CONSPIRACY IS AN AGREEMENT OR COMBINATION.
19 THERE CAN BE NO CONSPIRACY WHEN ONE INDIVIDUAL ACTS BY
20 AND FOR HIMSELF ONLY. IN ORDER TO BECOME A PARTY TO
21 CONSPIRACY A PERSON MUST COMBINE WITH SOMEONE ELSE TO
22 EFFECT THE OBJECT OF THE CONSPIRACY BY THE MEANS AGREED
23 UPON. A MERE MENTAL PURPOSE CANNOT JUSTIFY CONVICTION
24 FOR CONSPIRACY. A COMMON DESIGN IS THE ESSENCE OF THE
25 CHARGE OF CONSPIRACY. DESPITE THE MERE FACT THAT THE

1 DEFENDANT MAY BE ENGAGED IN THE PERFORMANCE OF ANY OF
2 THE ACTS IN THE INDICTMENT SUCH AS OVERT ACTS, YOU ARE
3 NOT AUTHORIZED TO CONVICT BY REASON OF THAT FACT ALONE.
4 IT IS NECESSARY TO SHOW THAT THE DEFENDANT WAS A PARTY
5 TO THE CONSPIRACY AND UNLAWFUL AGREEMENT BEFORE HE IS
6 GUILTY OF THE OFFENSE OF CONSPIRACY. EACH PARTY TO A
7 CONSPIRACY MUST BE ACTUATED BY AN INTENT TO PROMOTE THE
8 COMMON DESIGN. THERE MUST BE INTENTIONAL PARTICIPATION
9 IN THE TRANSACTION WITH A VIEW AND PURPOSE TO FURTHER
10 THE COMMON DESIGN. AND IF A PERSON UNDERSTANDING THE
11 UNLAWFUL CHARACTER OF THE TRANSACTION ENCOURAGES,
12 ADVISES OR IN ANY MANNER WITH A PURPOSE TO FORWARD THE
13 ENTERPRISE OF THE SCHEME, ASSIST IN ITS PROSECUTION, HE
14 BECOMES A CONSPIRATOR. JOINT ASSENT AND JOINT
15 PARTICIPATION IN THE CONSPIRACY MAY BE FOUND LIKE ANY
16 OTHER FACT AS AN INFERENCE BASED ON THE FACTS WHICH HAVE
17 BEEN PROVEN. CONSPIRACY IS AN OFFENSE REQUIRING
18 SPECIFIC INTENT OR PURPOSE WHICH MUST BE SHOWN TO EXIST
19 BEYOND A REASONABLE DOUBT. IN DETERMINING THE QUESTION
20 OF THE DEFENDANT'S GUILT YOU ARE TO CONSIDER ALL OF THE
21 FACTS AND CIRCUMSTANCES IN THE CASE WHICH TOUCH TOWARD
22 THE CONDUCT OF THE DEFENDANT. IT IS NOT NECESSARY,
23 LADIES AND GENTLEMEN, THAT TWO OR MORE PERSONS SHOULD
24 MEET AND ENTER INTO AN EXPRESS OR FORMAL AGREEMENT FOR
25 THE DOING OF THE UNLAWFUL ACT, OR THAT THEY SHOULD

1 DIRECTLY BY WORDS OR IN WRITING STATE BETWEEN THEMSELVES
2 OR OTHERWISE WHAT THE UNLAWFUL OBJECT IS TO BE, OR THE
3 DETAILS THEREOF, OR THE MEANS BY WHICH THE UNLAWFUL
4 COMBINATION IS TO BE MADE EFFECTIVE. IT IS SUFFICIENT
5 IF TWO OR MORE PERSONS IN ANY MANNER OR THROUGH ANY
6 CONTRIVANCE, POSITIVELY OR TACITLY COME TO A MUTUAL
7 UNDERSTANDING TO ACCOMPLISH A COMMON AND UNLAWFUL
8 DESIGN. IN OTHER WORDS, WHEN AN UNLAWFUL END IS SOUGHT
9 TO BE EFFECTED AND TWO OR MORE PERSONS ACTUATED BY THE
10 COMMON PURPOSE OF ACCOMPLISHING THAT END WORK TOGETHER
11 IN ANY WAY IN FURTHERANCE OF THE UNLAWFUL SCHEME, EACH
12 OF SUCH PERSONS BECOMES A MEMBER OF THE CONSPIRACY. THE
13 SUCCESS OR FAILURE OF THE CONSPIRACY IS IMMATERIAL, BUT
14 BEFORE ANY PERSON MAY BE FOUND GUILTY OF THE CHARGE IT
15 MUST APPEAR BEYOND A REASONABLE DOUBT THAT A CONSPIRACY
16 WAS FORMED AS ALLEGED IN THE INDICTMENT AND THAT THE
17 PARTICULAR PERSON WAS AN ACTIVE PARTY TO IT.

18 ALRIGHT, LADIES AND GENTLEMEN, THE
19 SECOND INDICTMENT CHARGES MR. PHILLIPS WITH THE CRIME OF
20 MURDER, AND SO, LET ME DEFINE TO YOU WHAT WE MEAN BY
21 MURDER. MURDER MAY BE DEFINED AS THE WILLFUL, FELONIOUS
22 KILLING OF A HUMAN BEING BY A HUMAN BEING WITH MALICE
23 AFORETHOUGHT, THAT MALICE BEING EITHER EXPRESS MALICE OR
24 IMPLIED MALICE. THE WILLFUL -- LADIES AND GENTLEMEN,
25 WILLFUL MEANS INTENTIONAL OR VOLUNTARY, OR CONSCIOUS OR

1 KNOWING. UNLAWFUL MEANS WITH WITHOUT JUSTIFICATION, I
2 MEAN, FELONIOUS MEANS UNLAWFUL, OR WITHOUT JUSTIFICATION
3 OR EXCUSE.

4 MALICE, LADIES AND GENTLEMEN, IS AN
5 ESSENTIAL ELEMENT OF THE CRIME OF MURDER. MALICE IS A
6 TERM OF ART, A TECHNICAL TERM, IMPORTING WICKEDNESS AND
7 EXCLUDING JUST CAUSE OR LEGAL EXCUSE. MALICE IN ANY
8 FORM, WHETHER IT ARISES FROM HATRED, ILL WILL, OR
9 OTHERWISE, IS STILL MALICE. MALICE SPRINGS FROM
10 DEPRAVITY, FROM A HEART DEVOID OF SOCIAL DUTY AND
11 FATALLY BENT ON MISCHIEF. MALICE MUST BE AFORETHOUGHT.
12 THE LAW DOES NOT REQUIRE THAT MALICE SHOULD EXIST FOR
13 ANY PARTICULAR TIME BEFORE THE COMMISSION OF THE ACT,
14 BUT MALICE MUST EXIST IN THE MIND OF THE ACCUSED JUST
15 BEFORE AND AT THE TIME OF THE COMMISSION OF THE ACT.
16 THERE MUST BE A COMBINATION OF THE PREVIOUS EVIL INTENT
17 AND THE ACT PRODUCING THE RESULT. MALICE AFORETHOUGHT
18 MAY BE EXPRESSED OR IMPLIED. THESE WORDS DO NOT MEAN
19 DIFFERENT KINDS OF MALICE, BUT MERELY THE MANNER IN
20 WHICH THE ONLY KIND OF MALICE KNOWN TO THE LAW MAY BE
21 SHOWN TO EXIST, THAT IS, EITHER BY DIRECT EVIDENCE OR BY
22 NECESSARY INFERENCE FROM THE FACTS AND CIRCUMSTANCES
23 WHICH ARE PROVED. EXPRESS MALICE IS SHOWN WHEN ONE, BY
24 WORD OF MOUTH, EXPRESSES HIS HATRED OR ILL WILL FOR
25 ANOTHER, OR WHERE THE STATE SHOWS THAT HE MADE

1 PREPARATION BEFOREHAND TO DO THE DEED WHICH WAS LATER
2 ACCOMPLISHED. LYING IN WAIT FOR A PERSON OR ANY ACTS OF
3 PREPARATION GOING TO SHOW THAT THE DEED WAS WITHIN HIS
4 MIND WOULD BE EXPRESS MALICE. EVEN THOUGH NO EXPRESSED
5 INTENT TO KILL OR MALICE IS PROVEN BY DIRECT EVIDENCE IT
6 MAY BE INFERRED FROM THE FACTS AND CIRCUMSTANCES WHICH
7 ARE PROVEN. MALICE MAY BE INFERRED FROM THE WILLFUL,
8 DELIBERATE AND INTENTIONAL DOING OF AN UNLAWFUL ACT
9 WITHOUT JUST CAUSE OR LEGAL EXCUSE. IN OTHER WORDS, IN
10 ITS GENERAL MEANING MALICE MEANS THE DOING OF A WRONGFUL
11 ACT INTENTIONALLY, WITHOUT JUSTIFICATION OR LEGAL
12 EXCUSE. MALICE MAY BE INFERRED FROM CONDUCT SHOWING A
13 TOTAL DISREGARD FOR HUMAN LIFE. THE INFERENCE OF MALICE
14 MAY ARISE WHEN THE DEED IS DONE WITH A DEADLY WEAPON,
15 SUCH AS A KNIFE OR A PISTOL OR A DAGGER OR SOME WEAPON
16 OF THAT NATURE WHICH WHEN USED WITH THE INTENT TO INJURE
17 ANOTHER IS CALCULATED TO PRODUCE DEATH OR SERIOUS BODILY
18 HARM. MALICE DOES NOT NECESSARILY IMPART ILL WILL
19 TOWARD THE INDIVIDUAL INJURED BUT SIGNIFIES RATHER A
20 GENERAL MALIGNANT RECKLESSNESS OF THE LIVES AND SAFETY
21 OF OTHERS, OR A CONDITION OF MIND WHICH SHOWS A HEART
22 DEVOID OF SOCIAL DUTY AND FATALLY BENT ON MISCHIEF. IT
23 IS A WRONGFUL INTENT TO INJURE ANOTHER AND INDICATES A
24 WICKED OR DEPRAVED SPIRIT INTENT ON WRONGDOING. THE
25 INTENTIONAL KILLING OF ANOTHER DURING THE COMMISSION OF

1 A FELONY ALLOWS AN INFERENCE OF MALICE TO ARISE BUT THE
2 STATE MUST STILL PROVE MALICE BEYOND A REASONABLE DOUBT.
3 IF FACTS ARE PROVEN BEYOND A REASONABLE DOUBT TO RAISE
4 AN INFERENCE OF MALICE TO YOUR SATISFACTION ITS
5 INFERENCE WOULD BE AN EVIDENTIARY FACT TO BE TAKEN INTO
6 CONSIDERATION BY YOU, THE JURY, ALONG WITH THE OTHER
7 EVIDENCE IN THE CASE, AND YOU MAY GIVE IT SUCH WEIGHT AS
8 YOU FEEL OR DETERMINE IT SHOULD RECEIVE. SO, MURDER IS
9 THE WILLFUL, FELONIOUS KILLING OF A HUMAN BEING BY A
10 HUMAN BEING WITH MALICE AFORETHOUGHT, THAT MALICE BEING
11 EITHER EXPRESS MALICE OR IMPLIED MALICE.

12 ARMED ROBBERY. LADIES AND
13 GENTLEMEN, SECTION SIXTEEN, DASH, ELEVEN, DASH, THREE
14 THIRTY OF THE CODE OF THE LAWS OF THE STATE OF SOUTH
15 CAROLINA, WHICH ARE LAWS PASSED BY OUR LEGISLATURE,
16 PROVIDES IN PERTINENT PART AS FOLLOWS: "A PERSON WHO
17 COMMITS THE CRIME OF ROBBERY WHILE ARMED WITH A PISTOL,
18 DIRK, SLING SHOT, METAL KNUCKLES, RAZOR, OR OTHER DEADLY
19 WEAPON, COMMITS ARMED ROBBERY." SO, WHAT DO WE MEAN BY
20 ARMED ROBBERY? WELL, IT INCLUDES THE ELEMENTS OF
21 LARCENY, OR STEALING, AND ROBBERY. LARCENY, LADIES AND
22 GENTLEMEN, OR STEALING, THERE ARE FOUR ELEMENTS WHICH
23 MUST BE PROVEN. FIRST, THAT THERE WAS A TAKING.
24 SECONDLY, THAT IT WAS OF PERSONAL PROPERTY. THERE ARE
25 ONLY TWO KINDS OF PROPERTY KNOWN TO THE LAW, LADIES AND

1 GENTLEMEN, PERSONAL PROPERTY AND REAL PROPERTY. REAL
2 PROPERTY IS LAND, HOUSES, BUILDINGS. EVERYTHING ELSE IS
3 PERSONAL PROPERTY. SO, THERE MUST BE A TAKING, IT MUST
4 BE PERSONAL PROPERTY. IT MUST BE CARRIED AWAY. IT
5 DOESN'T MATTER HOW FAR, ANY DISTANCE IS SUFFICIENT, BUT
6 THE PERSONAL PROPERTY MUST BE CARRIED AWAY. AND IT MUST
7 BE DONE WITH THE INTENTION OF PERMANENTLY DEPRIVING THE
8 OWNER OF THAT PROPERTY. THOSE FOUR ELEMENTS, THE
9 TAKING, THE CARRYING AWAY, OF PERSONAL PROPERTY, WITH
10 THE INTENT TO PERMANENTLY DEPRIVE THE OWNER OF THAT
11 PROPERTY COMPRISE THE CRIME OF LARCENY OR STEALING.

12 ROBBERY, LADIES AND GENTLEMEN,
13 INCLUDES TWO ADDITIONAL ELEMENTS, AND THOSE ARE THAT THE
14 PROPERTY MUST BE TAKEN FROM THE PERSON OR HIS PRESENCE.
15 IN OTHER WORDS, IF SOMEBODY GOES IN YOUR SHED AND STEALS
16 YOUR LAWN MOWER, THAT'S NOT ROBBERY BECAUSE IT WASN'T
17 FROM YOUR PERSON OR FROM YOUR PRESENCE. THE SECOND
18 ADDITIONAL ELEMENT IS THAT IT MUST HAVE BEEN
19 ACCOMPLISHED BY PLACING THE OTHER PERSON IN FEAR BY
20 VIOLENCE OR THREATS OF VIOLENCE SO AS TO MAKE THAT
21 PERSON SURRENDER THE PROPERTY WITHOUT THEIR CONSENT AND
22 AGAINST THEIR WILL. SO, IF SOMEBODY RUNS BY AND
23 SNATCHES A LADY'S PURSE, HE'S TAKEN PERSONAL PROPERTY
24 FROM THE PERSON OR PRESENCE OF ANOTHER WITH INTENT TO
25 PERMANENTLY DEPRIVE THAT PERSON BUT HE HASN'T DONE IT BY

1 PLACING THAT PERSON IN FEAR OF VIOLENCE OR INTIMIDATION,
2 SO IT WOULD NOT BE ROBBERY, IT WOULD BE PURSE SNATCHING.

3 ADDITIONALLY, LADIES AND GENTLEMEN,
4 ARMED ROBBERY HAS ONE ADDITIONAL ELEMENT. WE'VE GOT
5 LARCENY AND THEN ROBBERY AND THEN ARMED ROBBERY. AND
6 THAT IS, IN ORDER TO MAKE OUT THE CRIME OF ARMED ROBBERY
7 THE ADDITIONAL ELEMENT IS, IT MUST HAVE BEEN COMMITTED
8 WHILE ARMED WITH A DEADLY WEAPON. THE PERSON COMMITTING
9 THE ROBBERY MUST HAVE HAD AND USED A DEADLY WEAPON WITH
10 WHICH HE OBTAINED POSSESSION OF THE PROPERTY OR PLACED
11 THE ONE POSSESSING THE PROPERTY IN FEAR IN ORDER TO
12 OBTAIN THE PROPERTY.

13 AND SO, ARMED ROBBERY, LADIES AND
14 GENTLEMEN, IS THE TAKING OF PERSONAL PROPERTY, CARRYING
15 AWAY THAT PROPERTY, WITH THE INTENT TO PERMANENTLY
16 DEPRIVE THE OWNER OF THAT PROPERTY, IT'S TAKEN FROM THE
17 PERSON OR PRESENCE OF THE VICTIM, IT'S TAKEN BY PLACING
18 THAT PERSON IN FEAR, BY VIOLENCE OR FORCE OR
19 INTIMIDATION, WHILE ARMED WITH A DEADLY WEAPON. THE
20 STATE MUST PROVE EACH OF THOSE ELEMENTS BEYOND A
21 REASONABLE DOUBT.

22 LADIES AND GENTLEMEN, I CHARGE YOU
23 THAT IF A CRIME IS COMMITTED BY TWO OR MORE PEOPLE WHO
24 ARE ACTING TOGETHER IN COMMITTING A CRIME, THE ACT OF
25 ONE IS THE ACT OF ALL. A PERSON WHO JOINS WITH ANOTHER

1 TO ACCOMPLISH AN ILLEGAL PURPOSE IS CRIMINALLY
2 RESPONSIBLE FOR EVERYTHING DONE BY THE OTHER PERSON
3 WHICH OCCURS AS A NATURAL CONSEQUENCE OF THE ACTS DONE
4 IN CARRYING OUT THE COMMON PLAN AND PURPOSE. IF TWO OR
5 MORE PEOPLE ARE ACTING TOGETHER, ASSISTING EACH OTHER IN
6 COMMITTING THE OFFENSE, THE ACT OF ONE IS THE ACT OF
7 ALL, OR THE HAND OF ONE IS THE HAND OF ALL. IF SEVERAL
8 PERSONS IN PURSUANCE OF A COMMON DESIGN TO COMMIT AN
9 UNLAWFUL ACT SET OUT TOGETHER, AND EACH TAKES THE PART
10 AGREED UPON OR ASSIGNED TO HIM, SOME TO ASSIST IN
11 PREPARATION, SOME TO COMMIT THE ACT, OTHERS TO WATCH AT
12 PROPER DISTANCES AND STATIONS TO PREVENT INTERFERENCE OR
13 SURPRISE, OR TO ENCOURAGE THE COMMISSION OF THE UNLAWFUL
14 ACT, OR TO FAVOR IF NECESSARY THE ESCAPE OF THOSE
15 IMMEDIATELY ENGAGED IN THE COMMISSION OF THE UNLAWFUL
16 ACT OR DO WHATEVER PART THE PLAN REQUIRED, UNDER THESE
17 CIRCUMSTANCES IF THE UNLAWFUL ACT IS COMMITTED, THE ACT
18 OF ONE IS THE ACT OF ALL, AND ALL ARE GUILTY. WHERE TWO
19 PERSON COMBINE TO COMMIT AN UNLAWFUL ACT AND IN ITS
20 EXECUTION A HOMICIDE IS COMMITTED AS A PROBABLY OR
21 NATURAL CONSEQUENCE THEREOF, ALL PRESENT PARTICIPATING
22 IN THE UNLAWFUL ACT ARE AS GUILTY AS THE ONE WHO
23 COMMITTED THE FATAL ACT. A PERSON COMMITTING AN
24 UNLAWFUL ACT IS LEGALLY RESPONSIBLE FOR ALL NATURAL OR
25 NECESSARY CONSEQUENCES THEREOF. ONE COMBINING AND

1 CONFEDERATING WITH OTHERS TO ACCOMPLISH AN ILLEGAL
2 PURPOSE IS CRIMINALLY LIABLE FOR EVERYTHING DONE BY
3 EITHER HIM OR HIS CONFEDERATES WHICH FOLLOWS
4 INCIDENTALLY IN THE EXECUTION OF A COMMON DESIGN AS ONE
5 OF THE PROBABLE AND NATURAL CONSEQUENCES, EVEN THOUGH
6 NOT INTENDED AS A PART OF THE ORIGINAL DESIGN OR COMMON
7 PLAN.

8 LADIES AND GENTLEMEN, THE DEFENDANT
9 HAS RAISED THE DEFENSE OF DURESS. DURESS IS AN
10 AFFIRMATIVE DEFENSE WHICH MEANS IT MUST BE PROVEN BY THE
11 DEFENDANT BY THE PREPONDERANCE OF THE EVIDENCE. THE
12 STATE MUST PROVE THE GUILT OF THE DEFENDANT BY BEYOND A
13 REASONABLE DOUBT. TO MAKE OUT THE DEFENSE OF DURESS
14 WHICH WOULD RELIEVE THE DEFENDANT OF RESPONSIBILITY, THE
15 DEFENDANT MUST PROVE THE DEFENSE OF DURESS BY THE
16 PREPONDERANCE OF THE EVIDENCE, WHICH AS I TOLD YOU, IS
17 MORE PROBABLE THAN NOT. TO ESTABLISH DURESS WHICH WILL
18 EXCUSE CRIMINAL ACT THE DEGREE OF COERCION MUST BE
19 PRESENT, IMMINENT, AND OF SUCH A NATURE AS TO INDUCE A
20 WELL-GROUNDED APPREHENSION OF DEATH OR SERIOUS BODILY
21 HARM IF THE ACT IS NOT DONE. COERCION IS NO DEFENSE IF
22 THERE IS ANY REASONABLE WAY, OTHER THAN COMMITTING THE
23 CRIME, TO ESCAPE THE THREAT OF HARM. THE FEAR OF INJURY
24 MUST BE REASONABLE. FURTHER, LADIES AND GENTLEMEN, I
25 CHARGE YOU THAT DURESS IS NOT A DEFENSE TO THE CHARGE OR

1 THE CRIME OF MURDER.

2 LADIES AND GENTLEMEN, BECAUSE A
3 DEFENDANT IN A CRIMINAL TRIAL IS PRESUMED TO BE
4 INNOCENT, AS I'VE TOLD YOU, THE LAW NEVER IMPOSES UPON
5 THE DEFENDANT THE BURDEN OR THE DUTY OF TESTIFYING. THE
6 DEFENDANT IN A CRIMINAL TRIAL HAS THE ABSOLUTE RIGHT
7 UNDER THE CONSTITUTION OF THIS STATE AND THE UNITED
8 STATES NOT TO TAKE THE WITNESS STAND AND TESTIFY. THE
9 EXERCISE BY THE DEFENDANT OF THIS RIGHT NOT TO TESTIFY
10 MUST NOT BE CONSIDERED BY YOU IN ANY WAY AGAINST THE
11 DEFENDANT, AND SHOULD PLAY NO ROLE WHATSOEVER IN YOUR
12 DISCUSSIONS OR DELIBERATIONS. NO INFERENCE OF ANY KIND
13 MAY BE DRAWN FROM THE DEFENDANT'S EXERCISE OF HIS
14 CONSTITUTIONAL RIGHT NOT TO TESTIFY.

15 LADIES AND GENTLEMEN, NOTHING THAT
16 I HAVE SAID DURING THE COURSE OF THIS TRIAL HAS BEEN IN
17 ANY WAY INTENDED TO SUGGEST TO YOU THAT I HAVE AN
18 OPINION ABOUT THE FACTS OF THE CASE OR THE WEIGHT OF THE
19 EVIDENCE OR WHAT YOUR VERDICT SHOULD BE IN THIS CASE.
20 AND IF ANYTHING I'VE SAID OR DONE DURING THIS TRIAL FOR
21 THE LAST SEVERAL DAYS HAS INDICATED TO YOU AN OPINION ON
22 MY PART TO ANY OF THOSE MATTERS, PLEASE DISREGARD THAT,
23 PUT THAT OUT OF YOUR MIND, THAT IS SIMPLY NOT THE CASE.
24 THESE ARE ENTIRELY MATTERS WITHIN YOUR PREROGATIVE. I
25 AM REQUIRED TO CHARGE YOU THE LAW AS I HAVE. THE FACT

1 THAT I HAVE CHARGED YOU ON THIS LAW, IF YOU THINK I'VE
2 REPEATED SOMETHING OR OVEREMPHASIZED SOMETHING IT'S NOT
3 BECAUSE I THINK IT'S MORE IMPORTANT, BUT SOME OF THESE
4 ARE DIFFICULT CONCEPTS TO UNDERSTAND AND THAT WOULD BE
5 THE REASON FOR MY REPETITION AND NOT THAT I AM STRESSING
6 THOSE MORE THAN ANY OTHER PART OF MY CHARGE. ALL OF MY
7 CHARGE IS EQUALLY IMPORTANT. WHETHER IT APPLIES OR NOT
8 DEPENDS UPON WHAT YOU FIND TO BE THE FACTS IN THIS CASE.

9 LADIES AND GENTLEMEN, YOU'VE BEEN
10 SELECTED AS FAIR AND IMPARTIAL JURORS. YOU HAVE SWORN TO
11 IMPARTIALLY TRY AND DETERMINE THE FACTS OF THIS CASE,
12 AND WHEN YOU COMPLY WITH YOUR OATH TO DO SO, THEN NO ONE
13 WILL HAVE A RIGHT TO CRITICIZE YOUR VERDICT, AND YOU
14 WILL HAVE FULLY DISCHARGED YOUR DUTY AS JURORS. YOU ARE
15 TO DECIDE THIS CASE ACCORDING TO THE TESTIMONY THAT YOU
16 HAVE HEARD FROM THE LIPS OF THE WITNESSES, ALONG WITH
17 THE OTHER EVIDENCE INTRODUCED. YOU MUST DECIDE THE
18 ISSUES IN THIS PROCEEDING WITHOUT BIAS AND WITHOUT
19 PREJUDICE. YOU CANNOT ALLOW YOURSELF TO BE GOVERNED BY
20 PASSION OR UNFAIR SYMPATHY OR PREJUDICE FOR OR AGAINST
21 ANY PARTY, BY PUBLIC OPINION OR ANY OTHER ARBITRARY
22 FACTORY. BOTH THE STATE AND THE DEFENDANT HAVE A RIGHT
23 TO EXPECT THAT EACH OF YOU WILL CAREFULLY AND
24 IMPARTIALLY CONSIDER ALL OF THE EVIDENCE THAT YOU'VE
25 HEARD IN THIS CASE, AND THAT YOU WILL FOLLOW THE LAW AS

1 I HAVE EXPLAINED IT TO YOU IN REACHING YOUR VERDICT IN
2 THIS CASE.

3 MR. WILSON, I'M GOING TO APPOINT YOU
4 AS FOREPERSON OF THE JURY. THAT SIMPLY MEANS THAT YOU
5 WILL PRESIDE AS THE JURY BEGINS ITS DELIBERATIONS. WHEN
6 THE JURY REACHES ITS VERDICT, WHICH MUST BE UNANIMOUS,
7 IT WILL BE YOUR DUTY TO REPORT THAT VERDICT ON BEHALF OF
8 THE ENTIRE JURY.

9 NOW, LADIES AND GENTLEMEN, AS I'VE
10 SAID, YOU MUST REACH VERDICTS AS TO EACH INDICTMENT. YOU
11 WILL HAVE THE INDICTMENT WITH YOU. ON ONE SIDE IS THE
12 TEXT, AND IT SETS OUT THE CRIME ITSELF. THIS ONE
13 HAPPENS TO BE THE ARMED ROBBERY, AND IT DESCRIBES THE
14 ARMED ROBBERY. ON THE OTHER SIDE, IN THE BOTTOM LEFT
15 HAND CORNER THERE'S A LITTLE BLOCK THAT SAYS, VERDICT.
16 ONCE THE JURY DELIBERATES AND HAS REACHED A UNANIMOUS
17 VERDICT, AND THERE CAN ONLY BE TWO POSSIBLE VERDICTS AS
18 TO EACH OF THESE THREE INDICTMENTS, AND THERE'S NO ORDER
19 IN WHICH I STATE THOSE TWO VERDICTS TO YOU. IF THERE
20 ARE TWO THINGS I HAVE TO STATE ONE IN FRONT OF THE
21 OTHER. IF YOU FIND THE STATE HAS PROVEN THE ELEMENTS OF
22 THE CRIME OF ARMED ROBBERY BEYOND A REASONABLE DOUBT
23 THEN YOU WOULD WRITE THE VERDICT, GUILTY, AND SIGN YOUR
24 NAME AS FOREPERSON, PUT TODAY'S DATE, AUGUST THE
25 SEVENTH, INDICATING THAT IS THE VERDICT OF THE ENTIRE

1 JURY. THE SAME THING WITH THE OTHER TWO INDICTMENTS IN
2 EXACTLY THE SAME FASHION. IF YOU FIND THAT THE STATE
3 HAS NOT PROVEN EACH AND EVERY OF THOSE ELEMENTS OF THAT
4 PARTICULAR CRIME BEYOND A REASONABLE DOUBT, THEN YOUR
5 VERDICT WOULD BE NOT GUILTY AS TO THAT CHARGE, AND YOU
6 WOULD SIMPLY WRITE, NOT GUILTY, SIGNIFYING THAT IS THE
7 UNANIMOUS DECISION OF THE JURY, SIGN YOUR NAME AND PUT
8 THE DATE, INDICATING THAT'S THE VERDICT OF THE ENTIRE
9 JURY.

10 NOW, IN JUST A SECOND I'M GOING TO
11 ASK YOU TO RETIRE TO YOUR JURY ROOM, BUT I'M ASKING YOU,
12 I THINK FOR THE LAST TIME, NOT TO TALK ABOUT THE CASE.
13 I MUST DISCUSS MY CHARGE TO YOU WITH THE ATTORNEYS.
14 SOMETIME I MAKE A MISTAKE AND DON'T TELL YOU EVERYTHING
15 I NEED TO TELL YOU, OR I MAY MAKE A MIS-STATEMENT AND
16 SAY SOMETHING COMPLETELY WRONG. IF I NEED TO BRING YOU
17 BACK OUT TO CORRECT SOME ERROR THAT I'VE MADE IN MY
18 INSTRUCTIONS I'LL DO THAT VERY QUICKLY. IF I DO NOT
19 NEED TO DO THAT I WILL SEND IN TO YOU THE INDICTMENTS
20 AND ALL OF THESE EXHIBITS. ONCE YOU GET THE INDICTMENTS
21 AND THE EXHIBITS THEN YOU CAN BEGIN YOUR DELIBERATIONS,
22 BUT NOT UNTIL THAT TIME.

23 IF WE HAVE ANY SMOKERS AND THE
24 SMOKERS NEED TO BE EXCUSED, KNOCK ON THE DOOR, TELL THE
25 BAILIFF THE SMOKERS NEED A BREAK. THEY WILL TAKE YOU

1 WHEREVER IT IS THAT THEY TAKE SMOKERS TO SMOKE, AND IF
2 THE SMOKERS LEAVE THE REST OF YOU HAVE TO STOP YOUR
3 DELIBERATION. ALL TWELVE OF YOU NEED TO BE THERE BEFORE
4 YOU CAN DELIBERATE ON THE CASE.

5 IF YOU HAVE ANY QUESTIONS PLEASE
6 WRITE THOSE DOWN ON A SHEET OF PAPER. I'LL ASK THE
7 BAILIFF TO SEE THAT YOU HAVE A PAD AND PENCIL. THE
8 BAILIFF WILL GIVE THEM TO ME, JUST KNOCK ON THE DOOR AND
9 SAY, WE HAVE A QUESTION FOR THE JUDGE. HE'LL GIVE THEM
10 TO ME AND I'LL TAKE WHATEVER ACTION IS NECESSARY UNDER
11 THE CIRCUMSTANCES.

12 WHEN YOU'VE REACHED A VERDICT,
13 SIMPLY KNOCK ON THE DOOR, TELL THE BAILIFF YOU'VE
14 REACHED A VERDICT. YOU DON'T TELL HIM WHAT THE VERDICT
15 IS. WE'LL BRING YOU BACK IN THE COURTROOM AND YOU CAN
16 PASS THE VERDICT FORMS, THE INDICTMENTS BACK UP ONCE
17 YOU'VE COME TO THE COURTROOM, YOU BRING THEM BACK IN THE
18 COURTROOM.

19 SO, WITH THAT INSTRUCTION I'M GOING
20 TO ASK YOU TO RETIRE TO THE JURY ROOM. NOW, LADIES AND
21 GENTLEMEN, I KNOW IT'S FOUR O'CLOCK. IF Y'ALL DECIDE
22 YOU WANT TO GO HOME, OR YOU WANT US TO ORDER YOU SUPPER
23 YOU LET ME KNOW. YOU NEED TO TAKE WHATEVER TIME IS
24 SUFFICIENT FOR YOU TO REACH A DECISION IN THIS CASE, AND
25 I'LL LEAVE THAT ENTIRELY UP TO YOU. I'LL JUST BE

1 WAITING TO HEAR FROM YOU, MR. FOREMAN. SO, IF YOU
2 WOULD, RETIRE TO THE JURY ROOM AT THIS TIME, BUT DO NOT
3 BEGIN YOUR DELIBERATIONS UNTIL YOU GET THE INDICTMENTS
4 AND THE EXHIBITS.

5 THE ALTERNATES PLEASE CAN STAY RIGHT
6 IN THE COURTROOM, THE TWO ALTERNATES.

7 (Whereupon, the jury retires
8 to the jury room and the following
9 takes place out of the presence
10 of the jury.)

11 THE COURT: MR. BAILIFF, DO YOU HAVE
12 A SEPARATE ROOM YOU CAN PUT THE ALTERNATES IN?

13 BAILIFF: YES, SIR.

14 THE COURT: ALRIGHT, LADIES AND
15 GENTLEMEN, I CANNOT ALLOW YOU TO DELIBERATE BUT I DON'T
16 WANT TO LET YOU GO QUITE YET, I WANT TO GET THIS JURY
17 STARTED AND BE SURE THAT EVERYTHING'S ALRIGHT WITH THEM.
18 AS SOON AS I THINK IT'S SAFE TO DO SO I WILL RELEASE
19 YOU. WE'VE GOT TO HAVE TWELVE PEOPLE DELIBERATING, AND
20 QUITE OFTEN WE HAVE TO SUBSTITUTE ONE OF OUR ALTERNATES
21 FOR A JUROR BEFORE THE TRIAL IS OVER. I HAD TO USE FOUR
22 ALTERNATES ONE TIME IN A TRIAL. SO, YOUR DUTY IS VERY
23 IMPORTANT, AND I WANT TO KEEP YOU HERE. SO, YOU'RE GOING
24 TO BE PUT IN A SEPARATE JURY ROOM, THE BAILIFF WILL
25 MAYBE GIVE YOU A SNACK OR A SODA OR SOMETHING, BUT YOU

1 CANNOT TALK ABOUT THE CASE. PLEASE DO NOT TALK ABOUT
2 THE CASE NO MATTER HOW BAD YOU WANT TO DO THAT.
3 ALRIGHT? THANK YOU VERY MUCH.

4 (Whereupon, the alternate jurors
5 retire to another jury room.)

6 THE COURT: ANY EXCEPTIONS FROM THE
7 STATE?

8 SOLICITOR RUTLEDGE DURANT: NOTHING,
9 JUDGE.

10 THE COURT: FROM THE DEFENSE?

11 MR. PEPPER: NOTHING FROM THE
12 DEFENSE, YOUR HONOR.

13 THE COURT: ALRIGHT. WE'VE GOT A
14 PILE OF EXHIBITS, AND SO YOU LAWYERS COME UP AND HELP
15 MS. WALKER GET ALL OF THOSE EXHIBITS. WHEN YOU GET THE
16 EXHIBITS, MR. BAILIFF, HERE ARE THE INDICTMENTS. AS
17 SOON AS YOU GET THE EXHIBITS YOU CAN DELIVER THEM TO THE
18 JURY AND TELL THEM TO BEGIN THEIR DELIBERATIONS. THE
19 COURT WILL BE IN RECESS UNTIL WE HEAR FROM THE JURY.

20 (Whereupon, the jury begins
21 their deliberations at 4:20 p.m.)

22 (Recess)

23 (Whereupon, the jury sends in
24 a note with two questions at 5:10 p.m.)

25 THE COURT: ALRIGHT, WE HAVE A NOTE

1 FROM THE JURY WHICH WILL BE MARKED IN A FEW MINUTES
2 COURT'S EXHIBIT NUMBER ONE. THERE ARE TWO QUESTIONS.

3 QUESTION NUMBER ONE, "THE JURY
4 REQUESTS ACCESS TO THE LETTER, SLASH, STATEMENT,
5 PARENTHESIS, WRITTEN BY MS. ROBINSON TO MR. PEPER
6 REGARDING THE NIGHT OF THE MURDER.

7 NUMBER TWO, THE JURY REQUESTS THE
8 MUG SHOT OF DOMINICK BALLOU.

9 I MEAN, UNLESS THERE'S SOME
10 AGREEMENT TO SUBMIT THESE I'LL JUST TELL THEM THAT
11 THEY'VE NOT BEEN INTRODUCED INTO EVIDENCE AND CANNOT BE
12 INTRODUCED AT THIS TIME. IS THAT THE STATE'S POSITION?

13 SOLICITOR RUTLEDGE DURANT: THERE
14 WERE DEFENSE REASONS FOR NOT INTRODUCING BOTH OF THOSE.

15 THE COURT: SIR?

16 SOLICITOR RUTLEDGE DURANT: THERE
17 WERE DEFENSE REASONS FOR NOT INTRODUCING BOTH OF THOSE,
18 YES, SO I WOULD, OUR POSITION IS THEY'RE NOT IN EVIDENCE
19 AND THEY CAN'T SEE THEM.

20 MR. PEPER: I THINK IF IT ISN'T IN
21 EVIDENCE, IT ISN'T IN EVIDENCE, JUDGE.

22 THE COURT: ALRIGHT. I'LL JUST TELL
23 THEM THEY'RE NOT IN EVIDENCE SO WE CANNOT ADD NEW
24 EVIDENCE AT THIS TIME. "THEY WERE NOT INTRODUCED INTO
25 EVIDENCE AND CANNOT BE ADDED TO THE RECORD AT THIS

1 TIME." ANY PROBLEM FROM THE STATE?

2 SOLICITOR RUTLEDGE DURANT: JUDGE,

3 IF WE COULD JUST - - -

4 THE COURT: ALRIGHT, PLEASE MARK IT
5 AS COURT'S EXHIBIT NUMBER ONE.

6 (Court's Exhibit One
7 marked and filed.)

8 THE COURT: MR. BAILIFF, YOU CAN
9 GIVE THAT BACK TO THE JURY.

10 ALRIGHT, WE'LL BE IN RECESS.

11 SOLICITOR RUTLEDGE DURANT: THANK
12 YOU, YOUR HONOR.

13 (Recess)

14 (Whereupon, the jury sends in
15 another note to the Court.)

16 (Court's Exhibit Two
17 marked and filed.)

18 THE COURT: THE TWO ALTERNATES HAVE
19 BEEN IN A SEPARATE JURY ROOM, AND ONCE WE FOUND OUT WE
20 HAD A VERDICT, I'VE BROUGHT THEM OUT AND EXCUSED THEM,
21 AND I THINK THEY'RE GOING TO BRING THEM AROUND, THEY
22 SAID THEY WANTED TO COME IN THE COURTROOM. BUT THEY
23 HAVE NOT BEEN IN THE JURY ROOM DELIBERATING WITH THE
24 REST OF THE JURY.

25 IN ADDITION, I WANT TO PUT ON THE

1 RECORD THAT I GOT A NOTE A LITTLE WHILE AGO THAT THE
2 JURY REQUESTED A SMOKER'S BREAK, AND THAT SOME THAT
3 WEREN'T SMOKERS WANTED A BREAK, THEY WANTED TO GO OUT
4 AND CLEAR THEIR HEADS. AND SO, I TOLD THE BAILIFF TO
5 TAKE ANYBODY OUT THAT WANTED TO GO OUT, AND THAT WAS
6 DONE. ANY PROBLEM WITH THAT FROM THE STATE?

7 SOLICITOR RUTLEDGE DURANT: NOTHING,
8 JUDGE.

9 THE COURT: FROM THE DEFENSE?

10 MR. PEPER: NO, YOUR HONOR.

11 THE COURT: ALRIGHT, NOW, LADIES AND
12 GENTLEMEN, I HAVE NO IDEA WHAT THE VERDICT IN THIS CASE
13 IS. WE DO NOT TOLERATE ANY TYPE OF EMOTIONAL OUTBURSTS
14 WHEN THE VERDICT IS READ. IF YOU THINK YOU MIGHT HAVE A
15 PROBLEM CONTROLLING YOUR EMOTIONS I WOULD ASK YOU TO
16 STEP OUTSIDE THE COURTROOM AND YOU WILL BE ABLE TO BE
17 ADVISED PRETTY PROMPTLY WHAT THE VERDICT IS. DOES
18 EVERYBODY UNDERSTAND THAT?

19 ALRIGHT, BRING THE JURY IN, PLEASE.

20 (Whereupon, the jury returns
21 with verdicts at 6:23 p.m.)

22 BAILIFF: YOUR HONOR, ALL THE JURORS
23 ARE PRESENT IN THE JURY BOX.

24 THE COURT: ALRIGHT, THANK YOU, SIR.

25 MR. FOREMAN, I UNDERSTAND THE JURY

1 HAS REACHED A VERDICT?

2 JURY FOREMAN: YES, YOUR HONOR.

3 THE COURT: AND IS IT UNANIMOUS?

4 JUROR FOREMAN: IT IS, YOUR HONOR.

5 THE COURT: WOULD YOU PASS THAT TO
6 THE BAILIFF, PLEASE, ALONG WITH THE EXHIBITS.

7 (Whereupon, the Court
8 examines the verdicts.)

9 THE COURT: ALRIGHT, THE VERDICTS
10 ARE IN THE PROPER FORM. MR. CLERK, YOU MAY PUBLISH THE
11 VERDICTS.

12 CLERK: YES, SIR, YOUR HONOR.

13 VERDICTS OF THE JURY

14 CLERK: CASE NUMBER 2008-GS-10-3459,
15 STATE OF SOUTH CAROLINA VERSUS SHAWN DEMETRIUS PHILLIPS,
16 INDICTMENT FOR CRIMINAL CONSPIRACY, WE, THE JURY, FIND
17 THE DEFENDANT GUILTY. SIGNED BY KEITH WILSON, DATED
18 AUGUST SEVEN, TWO THOUSAND EIGHT.

19 LADIES AND GENTLEMEN, IF THIS IS
20 YOUR VERDICT, PLEASE REPLY BY RAISING YOUR RIGHT HAND.

21 LET THE RECORD REFLECT ALL TWELVE
22 JURORS HAVE RAISED THEIR RIGHT HAND.

23 THANK YOU, YOU MAY PUT IT DOWN.

24 AS TO CASE 2007-GS-10-5567, THE
25 STATE OF SOUTH CAROLINA VERSUS SHAWN PHILLIPS, INDICTED

1 FOR ARMED ROBBERY, WE, THE JURY, FIND THE DEFENDANT
2 GUILTY. SIGNED BY KEITH WILSON, FOREPERSON, DATED
3 AUGUST SEVEN, TWO THOUSAND EIGHT.

4 ONCE AGAIN, LADIES AND GENTLEMEN OF
5 THE JURY, IF THIS IS YOUR VERDICT PLEASE REPLY BY
6 RAISING YOUR RIGHT HAND.

7 LET THE RECORD REFLECT THAT ALL
8 TWELVE JURORS HAVE RAISED THEIR RIGHT HAND.

9 THANK YOU, YOU MAY PUT IT DOWN.

10 AS TO CASE NUMBER 2007-GS-10-5565,
11 THE STATE OF SOUTH CAROLINA VERSUS SHAWN PHILLIPS,
12 INDICTMENT FOR MURDER, WE, THE JURY, FIND THE DEFENDANT
13 GUILTY. SIGNED BY KEITH WILSON, DATED AUGUST SEVEN, TWO
14 THOUSAND AND EIGHT.

15 ONCE AGAIN, LADIES AND GENTLEMEN OF
16 THE JURY, IF THIS IS YOUR VERDICT PLEASE REPLY BY
17 RAISING YOUR RIGHT HAND.

18 LET THE RECORD REFLECT THAT ALL
19 TWELVE JURORS HAVE RAISED THEIR RIGHT HAND.

20 THE COURT: ANY REQUEST TO FURTHER
21 POLL THE JURY?

22 MR. PEPPER: YES, YOUR HONOR.

23 THE COURT: ALRIGHT, LADIES AND
24 GENTLEMEN, I'M GOING TO ASK YOU TWO QUESTIONS. THE
25 FIRST QUESTION IS, WERE THESE YOUR VERDICTS? YOU JUST

1 ANSWER APPROPRIATELY. THE SECOND QUESTION IS, ARE THESE
2 STILL YOUR VERDICTS? AND YOU JUST ANSWER APPROPRIATELY.

3 MR. FOREMAN, WERE THESE YOUR
4 VERDICTS?

5 JURY FOREMAN: YES, YOUR HONOR.

6 THE COURT: ARE THEY STILL YOUR
7 VERDICTS?

8 JURY FOREMAN: YES, YOUR HONOR.

9 THE COURT: MA'AM, WERE THESE YOUR
10 VERDICTS?

11 JUROR: YES.

12 THE COURT: ARE THEY STILL YOUR
13 VERDICTS?

14 JUROR: YES.

15 THE COURT: MA'AM , WERE THESE YOUR
16 VERDICTS?

17 JUROR: YES, YOUR HONOR.

18 THE COURT: ARE THEY STILL YOUR
19 VERDICTS?

20 JUROR: YES, SIR.

21 THE COURT: SIR , WERE THESE YOUR
22 VERDICTS?

23 JUROR: YES, SIR.

24 THE COURT: ARE THEY STILL YOUR
25 VERDICTS?

1 JUROR: YES, SIR.

2 THE COURT: MA'AM, WERE THESE YOUR

3 VERDICTS?

4 JUROR: YES, SIR.

5 THE COURT: ARE THEY STILL YOUR

6 VERDICTS?

7 JUROR: YES, SIR.

8 THE COURT: MA'AM, WERE THESE YOUR

9 VERDICTS?

10 JUROR: YES, SIR.

11 THE COURT: ARE THEY STILL YOUR

12 VERDICTS?

13 JUROR: YES, SIR.

14 THE COURT: SIR, WERE THESE YOUR

15 VERDICTS?

16 JUROR: YES, SIR.

17 THE COURT: ARE THEY STILL YOUR

18 VERDICTS?

19 JUROR: YES, SIR.

20 THE COURT: MA'AM, WERE THESE YOUR

21 VERDICTS?

22 JUROR: YES, SIR.

23 THE COURT: ARE THEY STILL YOUR

24 VERDICTS?

25 JUROR: YES, SIR.

1 THE COURT: MA'AM, WERE THESE YOUR

2 VERDICTS?

3 JUROR: YES, SIR.

4 THE COURT: ARE THEY STILL YOUR

5 VERDICTS?

6 JUROR: YES, SIR.

7 THE COURT: SIR, WERE THESE YOUR

8 VERDICTS?

9 JUROR: YES, SIR.

10 THE COURT: ARE THEY STILL YOUR

11 VERDICTS?

12 JUROR: YES, SIR.

13 THE COURT: SIR, WERE THESE YOUR

14 VERDICTS?

15 JUROR: YES, YOUR HONOR.

16 THE COURT: ARE THEY STILL YOUR

17 VERDICTS?

18 JUROR: YES, SIR.

19 THE COURT: MA'AM, WERE THESE YOUR

20 VERDICTS?

21 JUROR: YES, YOUR HONOR.

22 THE COURT: ARE THEY STILL YOUR

23 VERDICTS?

24 JUROR: YES.

25 THE COURT: THANK YOU VERY MUCH.

1 THE JURY HAS BEEN POLLED, ALL TWELVE ARE AFFIRMATIVE,
2 THE VERDICT STANDS.

3 NOW, LADIES AND GENTLEMEN, THIS
4 CONCLUDES YOUR SERVICES IN THIS CASE. IF YOU WANT TO
5 TALK ABOUT IT NOW YOU'RE WELCOME TO DO THAT. IF SOMEBODY
6 TRIES TO GET YOU TO TALK ABOUT IT AND YOU DON'T WANT TO
7 TALK ABOUT IT YOU DON'T HAVE TO, THAT'S ENTIRELY UP TO
8 YOU. IF SOMEONE PERSISTS IN TRYING TO GET YOU TO SPEAK
9 WITH THEM ABOUT THIS VERDICT AFTER YOU MAKE IT CLEAR TO
10 THEM THAT YOU DON'T WANT TO DISCUSS IT, PLEASE REPORT
11 THAT BACK TO THE CLERK'S OFFICE AND WE'LL DEAL WITH THAT
12 APPROPRIATELY, WE DON'T ALLOW ANY HARASSMENT OF OUR
13 JURORS.

14 I TOLD YOU EARLIER THIS WEEK --
15 Y'ALL BE SEATED JUST A MINUTE -- WHEN I KEPT YOU OUT
16 ABOUT AN HOUR AND A HALF BACK THERE WAITING THAT I WOULD
17 TELL YOU AT THE END OF THE CASE WHAT I WAS DOING OUT
18 HERE, AND I'M GOING TO DO THAT. THE EVIDENCE THAT YOU
19 HEARD CONCERNING THE ROBBERY IN THE MOTEL WHERE THE
20 PISTOL WAS STOLEN IS EVIDENCE OF PRIOR BAD ACTS, AND
21 THERE ARE VERY STRICT AND RIGOROUS RULES UNDER WHICH
22 SUCH EVIDENCE CAN BE ALLOWED TO BE PRESENTED TO THE
23 JURY. AND THE RULES REQUIRE THAT I MUST HEAR THAT
24 EVIDENCE MYSELF, ALL OF IT, BEFORE I CAN MAKE A DECISION
25 WHETHER THE REQUIREMENTS OF THE LAW TO ALLOW YOU TO HEAR

1 THAT EVIDENCE HAVE BEEN MET. THERE'S NO WAY I CAN DO IT
2 EXCEPT THAT I HAVE TO HEAR THAT EVIDENCE. AND SO, THOSE
3 WITNESSES THAT TESTIFIED TO THAT EPISODE WERE CALLED TO
4 THE STAND AND I HAD TO, I MEAN, I LISTENED TO EACH OF
5 THOSE WITNESSES TESTIFY AND I MADE THE DECISION AS A
6 MATTER OF LAW. I TOLD YOU, I'M THE JUDGE OF THE LAW,
7 YOU'RE THE JUDGE OF THE FACTS, I MADE THE DECISION AS A
8 MATTER OF LAW THAT THAT TESTIMONY MET THE REQUIREMENTS
9 OF THE LAW TO BE ADMITTED INTO EVIDENCE WHERE YOU, THE
10 JURY, COULD CONSIDER THAT TESTIMONY AND GIVE IT WHATEVER
11 WEIGHT YOU WANTED TO GIVE IT. AND IT TOOK A WHILE TO DO
12 THAT, AS YOU CAN UNDERSTAND. SO, I TOLD YOU I WOULD
13 EXPLAIN THAT TO YOU AND NOW I HAVE.

14 YOU ARE FREE TO LEAVE IF YOU WOULD
15 LIKE TO. I'M GOING TO HEAR SOME MOTIONS WHICH ARE GOING
16 TO TAKE JUST A FEW MINUTES, NOT ANY LONG LENGTH OF TIME,
17 AND THEN I'M GOING TO SENTENCE THE DEFENDANT. AND WE'LL
18 BE GLAD TO HAVE YOU STAY RIGHT WHERE YOU ARE IF YOU WANT
19 TO DO THAT, OR IF YOU WANT TO LEAVE YOU ARE FREE TO
20 LEAVE. YOU CAN GO RIGHT OUT THAT WAY AND THE BAILIFF
21 WILL HELP YOU GET OUT OF THE COURTHOUSE. SO, I'LL LEAVE
22 THAT UP TO Y'ALL. WE'LL BE GLAD TO HAVE YOU STAY, BUT IF
23 ANYBODY WANTS TO LEAVE YOU'RE WELCOME TO LEAVE.

24 ALRIGHT, ANY MOTIONS?

25 MR. PEPPER: YES, SIR. DO YOU WANT

1 TO TAKE THEM UP IN FRONT OF THE JURY?

2 THE COURT: YES, SIR. THE JURY'S
3 BEEN DISCHARGED, THEY'RE JUST SITTING THERE AS
4 SPECTATORS AND THEY HAVE A RIGHT TO DO THAT. IF YOU
5 HAVE ANY MOTIONS YOU NEED TO MAKE THEM NOW.

6 MR. PEPER: WE WOULD JUST LIKE TO
7 RENEW OUR MOTIONS FOR APPELLATE PURPOSES IN REGARDS TO
8 THE SUPPRESSION OF THE STATEMENT, THE MIRANDA MOTION,
9 WITH REGARDS TO THE JACKSON-DENNO HEARING, WITH REGARDS
10 TO OUR LYLE MOTION YOU'VE REFERRED TO, AND OUR MOTIONS
11 FOR A DIRECTED VERDICT.

12 THE COURT: ALRIGHT, SIR, I WOULD
13 DENY THOSE MOTIONS ON THE GROUNDS THAT I PREVIOUSLY
14 DENIED THE MOTIONS. I THINK WITHOUT ANY QUESTION THERE
15 WAS SUFFICIENT EVIDENCE IN THE RECORD TO JUSTIFY A
16 CONVICTION ON ALL THREE OF THE CHARGES. I DON'T HAVE ANY
17 QUARREL WHATSOEVER WITH THE JURY'S VERDICT, I THINK IT'S
18 A GOOD VERDICT, AND I WOULD NOT DISTURB THAT VERDICT.
19 SO, BRING YOUR CLIENT AROUND, PLEASE.

20 SOLICITOR BRUCE DURANT: YOUR HONOR,
21 MAY WE APPROACH WITH REGARDS TO THAT?

22 THE COURT: YES, SIR.

23 (Whereupon, a bench conference is
24 had out of the hearing of
25 the court reporter.)

1 THE COURT: LADIES AND GENTLEMEN,
2 THE STATE AND THE DEFENSE HAVE ASKED THAT I DEFER
3 SENTENCING IN THIS CASE. THAT'S NOT, DOESN'T HAPPEN
4 REAL OFTEN BUT IT'S NOT ANYTHING RARE, IT'S NOT ANYTHING
5 IMPROPER ABOUT THAT. BUT THEY HAVE SOME MATTERS THEY
6 WANT TO TAKE UP AND SOME THINGS THEY WANT TO ADVISE ME
7 OF BEFORE I DO THE SENTENCING. IN THE FEDERAL COURT IF
8 SOMEBODY IS FOUND GUILTY OR PLEADS GUILTY THEY WAIT
9 ABOUT THREE OR FOUR MONTHS BEFORE THEY SENTENCE THEM,
10 AND THEY DO ALL KINDS OF PRE-SENTENCE INVESTIGATION
11 REPORTS. WE DON'T GENERALLY DO THAT IN STATE COURT,
12 ALTHOUGH I HAVE ON MY OWN INITIATIVE SOMETIMES DELAYED
13 THE SENTENCING BECAUSE I WANTED SOME MORE INFORMATION
14 ABOUT THE CASE OR THE DEFENDANT BEFORE I COULD MAKE WHAT
15 I THOUGHT WAS AN INTELLIGENT DECISION. AND SO, THEY'VE
16 ASKED THAT I DEFER SENTENCING IN THIS CASE, AND I'M
17 GOING TO DO THAT, SO YOU WILL NOT GET TO SEE THE
18 SENTENCING IN THE CASE. YOU CAN KEEP UP WITH THE CASE
19 IF YOU'D LIKE, IT WILL PROBABLY BE IN THE NEWSPAPER WHEN
20 HE'S SENTENCED, BUT IF YOU WILL GIVE THE BAILIFF YOUR
21 NAME AND ADDRESS I'LL SEE THAT SOMEBODY CALLS YOU WHEN
22 THE SENTENCE IS FINALLY GIVEN IN THIS CASE. IT MIGHT BE
23 A WEEK, IT MIGHT BE A MONTH, IT MIGHT BE TWO MONTHS, I
24 CAN'T TELL YOU THAT. OF COURSE, HE WILL NOT BE
25 RELEASED DURING THAT PERIOD OF TIME, HE WILL BE

1 INCARCERATED. AS YOU KNOW, THESE ARE VERY SERIOUS
2 CHARGES AND HE CAN RECEIVE A VERY SERIOUS SENTENCE, UP
3 TO LIFE IN PRISON. AND I DON'T HAVE ANY IDEA WHAT THE
4 SENTENCE IS GOING TO BE AT THIS POINT IN TIME. I WILL
5 HEAR FROM THE DEFENDANT AND ANYBODY WHO WANTS TO SPEAK
6 ON HIS BEHALF. I WILL HEAR FROM THE STATE AND ANYBODY
7 WHO WANTS TO SPEAK ON MR. VARGO'S BEHALF, I'LL HEAR FROM
8 THEM AND I'LL MAKE MY DECISION. THAT'S ENTIRELY MY
9 DECISION, YOU ARE NOT RESPONSIBLE FOR THE DECISION,
10 THAT'S A LEGAL DECISION AND THAT'S MY DECISION AND I'LL
11 MAKE THAT WHEN THE TIME COMES. SO, I HOPE YOU
12 UNDERSTAND YOU WILL NOT GET TO SEE QUITE THE FINAL
13 RESOLUTION TONIGHT, BUT IF YOU'LL GIVE THE BAILIFF YOUR
14 NAME AND ADDRESS -- WE HAVE THAT, THOUGH, DON'T WE?

15 CLERK: YES, SIR, WE HAVE THAT, AND
16 WE SHOULD HAVE ALL OF THAT.

17 THE COURT: WELL, DO YOU HAVE PHONE
18 NUMBERS FOR THEM?

19 CLERK: I HAVE ALL THEIR NUMBERS,
20 YES, SIR.

21 THE COURT: OKAY. SO, IF YOU'D LIKE
22 I'LL HAVE SOMEONE CALL YOU WHEN THE TIME COMES AND THEY
23 WILL TELL YOU WHAT THE VERDICT IS, OR CALL YOUR
24 ATTENTION TO IT SO YOU CAN -- WHAT THE SENTENCE IS.

25 THANK YOU VERY MUCH FOR YOUR

1 SERVICE, I'VE ENJOYED WORKING WITH YOU. YOU WILL NOT
2 HAVE TO COME BACK TOMORROW. I REALLY APPRECIATE YOUR
3 PATIENCE IN THE CASE. I'M SURE YOU HAVE MUCH GREATER
4 UNDERSTANDING NOW OF THE LEGAL SYSTEM AS WELL AS
5 PROBABLY THE SEEMLIER SIDE OF LIFE IN CHARLESTON COUNTY
6 THAT SOME OF YOU PROBABLY HAD ONLY HEARD ABOUT AND
7 DIDN'T REALIZE EXISTED AND IT'S A REAL EYE OPENER.
8 THANK YOU VERY MUCH. GOOD NIGHT.

9 I DON'T KNOW IF IT'S DARK OR NOT.
10 THEY SAID IT WAS GOING TO RAIN. IF YOU NEED SOMEBODY TO
11 WALK YOU TO YOUR CAR, YOU LADIES OR YOU GENTLEMEN, JUST
12 LET THE BAILIFFS KNOW, AND IF THERE ARE NOT ENOUGH
13 BAILIFFS WE'LL GET SOME SECURITY PERSONNEL TO DO THAT.

14 THANK YOU VERY MUCH.

15 IT WAS A CONFERENCE AT THE BENCH,
16 BUT THE STATE AND THE DEFENSE HAVE REQUESTED THAT I
17 DEFER SENTENCING IN THIS CASE. IS THAT RIGHT FROM THE
18 STATE?

19 SOLICITOR BRUCE DURANT: THAT'S
20 CORRECT, YOUR HONOR.

21 THE COURT: AND FROM THE DEFENSE?

22 MR. PEPER: YES, YOUR HONOR.

23 THE COURT: ALRIGHT. HE WILL BE
24 HELD IN CHARLESTON COUNTY, I DON'T WANT HIM TRANSPORTED
25 BECAUSE HE DOESN'T HAVE A SENTENCE TO TRANSPORT HIM. HE

1 WILL BE HELD IN CHARLESTON COUNTY, AND AT WHATEVER TIME
2 Y'ALL DECIDE HE NEEDS TO BE SENTENCED, AND I WOULD URGE
3 YOU TO TRY TO GET IT DONE REASONABLY SOON, JUST CONTACT
4 ME AND WHEREVER I AM I'LL BE GLAD TO DO THAT.

5 (Recess for the day.)

6 DATE:

7 SEPTEMBER 24, 2008

8 (The following takes place in the
9 Dorchester County Courthouse.)

10 THE COURT: THIS IS A SENTENCING
11 PROCEEDING CARRIED OVER FROM CHARLESTON COUNTY,
12 INDICTMENTS 2007-GS-10-5565 AND 5567, THOSE ARE
13 INDICTMENTS FOR MURDER AND ARMED ROBBERY, AND
14 INDICTMENT 2008-GS-10-3459, WHICH IS AN INDICTMENT FOR
15 CRIMINAL CONSPIRACY.

16 ALRIGHT, SOLICITOR.

17 AND I -- I'LL JUST TO PUT IT ON THE
18 RECORD, THIS WAS A TRIAL, A JURY TRIAL IN CHARLESTON
19 WHERE THE DEFENDANT WAS FOUND GUILTY ON ALL THREE
20 INDICTMENTS AND THE STATE AND THE DEFENSE REQUESTED A
21 DEFERRED SENTENCING, AND I DEFERRED SENTENCE ON AUGUST
22 THE SEVENTH, TWO THOUSAND AND EIGHT.

23 SOLICITOR.

24 SOLICITOR BRUCE DURANT: THANK YOU,
25 YOUR HONOR. AS YOU KNOW, YOU DID TRY THIS CASE IN

1 CHARLESTON IN AUGUST, AND WE DID ASK THAT YOU DEFER
2 SENTENCE FOR THE PURPOSE OF US APPROACHING THE DEFENDANT
3 TO SEE IF HE WOULD BE WILLING TO ASSIST IN THE
4 PROSECUTION OF THE CO-DEFENDANT, LENNIE MICKEY. I WON'T
5 GO A WHOLE LOT INTO THE FACTS, YOUR HONOR, I KNOW YOU
6 SAT THROUGH THIS WHOLE CASE, BUT THIS IS THE CASE WHERE
7 THE VICTIM, MR. VARGO, WHO WAS A TRAVELING CARNIVAL
8 WORKER, WAS KILLED IN A HOTEL IN NORTH CHARLESTON AS A
9 RESULT OF A ROBBERY THAT WAS PLANNED BY THIS DEFENDANT,
10 HIS CO-DEFENDANT, LENNIE MICKEY, AND THREE FEMALES IN A
11 HOTEL ADJACENT TO THE BUDGET INN. THE EVIDENCE SHOWED
12 THAT THEY MET AT THAT HOTEL ROOM AT THE TRAVEL LODGE
13 EARLIER IN THE EVENING, PLANNED THIS ROBBERY. AFTER
14 PLANNING IT AND THE VICTIM HAD BEEN CONTACTED, MR.
15 PHILLIPS, MR. MICKEY AND A COOPERATING CO-DEFENDANT,
16 SANDRA BARNES, LEFT THE ROOM AND WENT TO THE BUDGET INN.
17 DURING THE ROBBERY OF MR. VARGO HE WAS ESSENTIALLY
18 EXECUTED, YOUR HONOR, SHOT ONCE THROUGH THE HEAD WITH A
19 THIRTY-EIGHT CALIBER REVOLVER, WHICH AS YOU WILL RECALL
20 WAS STOLEN FROM ANOTHER ARMED ROBBERY AT ANOTHER HOTEL
21 ABOUT TWO DAYS PRIOR.

22 BY WAY OF PRIOR RECORD, YOUR HONOR,
23 MR. PHILLIPS HAS ESSENTIALLY BEEN A FELON SINCE TWO
24 THOUSAND. HE HAS CONVICTIONS FOR BURGLARY, THIRD
25 DEGREE, TWICE IN TWO THOUSAND, BURGLARY, SECOND DEGREE,

1 VIOLENT, IN TWO THOUSAND, POSSESSION OF COCAINE WITH
2 INTENT TO DISTRIBUTE IN TWO THOUSAND. HE WAS
3 SUBSEQUENTLY CONVICTED IN FEDERAL COURT OF DRUG CHARGES
4 AS WELL IN TWO THOUSAND AND TWO AND RECEIVED A FIVE YEAR
5 SENTENCE. I BELIEVE HE WAS ACTUALLY ON PAROLE AT THE
6 TIME THAT THIS INCIDENT OCCURRED.

7 AS I SAID, THE VICTIM COULD NOT MAKE
8 IT. I DO HAVE A LETTER THAT I WILL PASS UP TO YOUR
9 HONOR THAT SHE WANTED YOU TO CONSIDER. HER NAME IS
10 TAMMY, SHE LIVES OUT OF STATE, SHE HAS BEEN IN TOUCH
11 WITH THE OFFICE BUT COULD NOT MAKE IT DOWN FOR THE
12 SENTENCING TODAY, AND WANTED YOU TO CONSIDER THAT.

13 COURT REPORTER: MR. DURANT, WHICH
14 ONE ARE YOU? THERE WERE TWO.

15 SOLICITOR BRUCE DURANT: MY NAME IS
16 BRUCE.

17 COURT REPORTER: BRUCE?

18 SOLICITOR BRUCE DURANT: YES, MA'AM.

19 COURT REPORTER: OKAY.

20 THE COURT: ALRIGHT, I'VE REVIEWED
21 THE LETTER. HAVE YOU SEEN IT, COUNSELOR?

22 MR. PEPER: NO, YOUR HONOR.

23 THE COURT: YOU CAN GIVE IT TO MR.
24 PHILLIPS IF HE WANTS TO SEE IT.

25 SOLICITOR BRUCE DURANT: YOUR HONOR,

1 I WOULD POINT OUT THAT THIS DEFENDANT HAS HAD NUMEROUS
2 OPPORTUNITIES -- I WILL GIVE HIM AN OPPORTUNITY TO LOOK
3 AT THAT.

4 THE COURT: IS THAT SOME OF YOUR
5 CLIENT'S FAMILY?

6 MR. PEPER: IT IS, YOUR HONOR,
7 THAT'S HIS MOTHER AND A FRIEND, YES, YOUR HONOR.

8 THE COURT: ALRIGHT. YES, SIR, MR.
9 DURANT.

10 SOLICITOR BRUCE DURANT: YOUR HONOR,
11 I WOULD POINT OUT THAT MR. PHILLIPS HAS HAD NUMEROUS
12 OPPORTUNITIES TO ACCEPT THE RESPONSIBILITY FOR WHAT HE
13 DID IN THIS CASE AND TO PROVIDE ASSISTANCE TO THE
14 PROSECUTION IN THE PROSECUTION OF HIS CO-DEFENDANT, MR.
15 MICKEY. HE FAILED TO DO SO ON NUMEROUS OCCASIONS BEFORE
16 TRIAL. THAT WAS THE WHOLE REASON OF US DEFERRING
17 SENTENCE AFTER HIS CONVICTION IN THIS CASE TO GIVE HIM
18 ONE MORE OPPORTUNITY TO SEE IF HE WOULD BE WILLING TO
19 ACCEPT RESPONSIBILITY FOR WHAT HE DID AND PLAY BALL, AND
20 HE ONCE AGAIN REFUSED TO DO SO.

21 IN LIGHT OF HIS PRIOR RECORD, IN
22 LIGHT OF HIS LACK OF COOPERATION, IN LIGHT OF HIS LACK
23 OF REMORSE, IN LIGHT OF HIS LACK OF ANY INDICIA OF
24 ACCEPTING RESPONSIBILITY FOR WHAT HE DID, WE WOULD ASK
25 THAT YOU SHOW HIM THE SAME MERCY THAT HE AND HIS CO-

1 DEFENDANT SHOWED MR. VARGO IN THIS CASE, WHICH IS
2 BASICALLY NONE AT ALL. THERE WAS NO INDICATION THAT MR.
3 VARGO EVER FOUGHT THEM IN THIS CASE, EVER RESISTED IN
4 ANY WAY. THERE'S NO INDICATION OF A FIGHT IN THERE.
5 BASICALLY, THEY WENT IN THERE TO ROB HIM, HE DIDN'T HAVE
6 ENOUGH MONEY, THEY GOT MAD BECAUSE OF THAT, PUT A PILLOW
7 OVER HIS HEAD AND EXECUTED HIM. I THINK THERE'S ONLY
8 ONE SENTENCE DICTATED BY THOSE STATE OF FACTS IN THIS
9 RECORD, YOUR HONOR, AND THAT IS LIFE IMPRISONMENT.

10 THE COURT: ALRIGHT, THANK YOU, SIR.

11 MR. PEPER.

12 MR. PEPER: THANK YOU, YOUR HONOR,
13 MAY IT PLEASE THE COURT. MARK PEPER ON BEHALF OF SHAWN.
14 JUDGE, WE ALL SAT THROUGH THE TRIAL, WE HEARD THE FACTS.
15 WE KNOW WHAT THE DECISION OF THE JURY OF HIS PEERS WAS.
16 A FEW THINGS I'D LIKE TO POINT OUT WITH REGARDS TO THOSE
17 FACTS WITHOUT REHASHING MANY OF THEM, YOUR HONOR, IS
18 THAT I JUST WANT TO REMIND THE COURT, AND I WANT TO
19 REMIND HIS FAMILY AS WELL THAT WE'RE NOT PROUD OF
20 ANYTHING THAT WENT DOWN THAT DAY. SHAWN PUT HIMSELF IN
21 A BAD POSITION. WE STILL STEADFASTLY TAKE THE POSITION
22 THAT WE WERE FORCED AND COERCED BY THE CO-DEFENDANT TO
23 ENTER THE VEHICLE, DRIVE THE VEHICLE OVER TO THE MURDER
24 SITE, AND ESSENTIALLY PARTAKE IN WHAT AMOUNTED TO BE THE
25 HAND OF ONE, THE HAND OF ALL, MURDER. I WOULD REMIND

1 THE COURT THAT THERE WAS NO EVIDENCE THAT PUT MY CLIENT
2 IN THE ACTUAL HOTEL ROOM, NO DNA, NO FINGERPRINTS. THE
3 ONLY TESTIMONY THAT WAS OFFERED BY THE STATE TO ACTUALLY
4 ALLEGEDLY PUT HIM IN THE ROOM WAS THROUGH A THIRD PARTY
5 CO-DEFENDANT WHO STATED THAT SIMPLY, THAT SHE KNOCKED ON
6 THE DOOR AND THEN TURN AND RAN, AND THAT'S WHEN SHE
7 ASSUMED THAT SHAWN AND LENNIE ENTERED THE BUILDING, OR
8 ENTERED THE HOTEL ROOM, BUT AGAIN, SHE DID NOT SEE WHAT
9 HAPPENED INSIDE THE HOTEL ROOM, AND THERE WAS NO
10 TESTIMONY FROM LENNIE MICKEY, THE CO-DEFENDANT.

11 JUDGE, HE'S TWENTY-EIGHT YEARS OLD.
12 AGAIN, WE'RE NOT PROUD OF HIS CRIMES IN THE PAST. HE'S
13 SPENT A MAJORITY OF HIS LAST EIGHT YEARS SINCE HE
14 DECIDED TO START COMMITTING CRIMES IN EITHER THE STATE
15 OR THE FEDERAL PENITENTIARY, AND THE SOLICITOR IS
16 CORRECT, HE WAS ON PAROLE AT THE TIME THAT HE MADE THIS
17 HORRIFIC DECISION TO FOLLOW THE LEADER SO TO SPEAK. I
18 WOULD POINT OUT THAT MR. MICKEY IS A CO-DEFENDANT. THE
19 COURT AS WELL AS THE JURY HEARD NUMEROUS WITNESSES
20 TESTIFY THAT HE WAS ESSENTIALLY THE RING LEADER, HE
21 BEING LENNIE MICKEY. I THINK FROM A CULPABILITY
22 STANDPOINT IT WOULD BE MUCH TOUGHER FOR ME TO MAKE ANY
23 SORT OF ARGUMENT ON BEHALF OF LENNIE MICKEY THAN IT
24 WOULD BE MR. PHILLIPS TODAY, AND I WOULD ASK THAT THE
25 COURT KEEP THAT IN MIND.

1 WITH HIM IN THE COURTROOM TODAY,
2 YOUR HONOR, IS HIS MOTHER, SHARON PHILLIPS, AS WELL AS
3 A FRIEND, AND I WOULD ASK THAT MS. PHILLIPS -- WOULD YOU
4 LIKE TO SAY ANYTHING TO THE COURT, MS. PHILLIPS?

5 IF IT PLEASES THE COURT I COULD CALL
6 HER DOWN.

7 THE COURT: YES, MA'AM, COME ON
8 DOWN, PLEASE, MA'AM.

9 YOUR NAME, PLEASE?

10 SHARON PHILLIPS: SHARON D.
11 PHILLIPS.

12 THE COURT: ALRIGHT, THANK YOU,
13 MA'AM.

14 SHARON PHILLIPS: YOU KNOW, I BEEN
15 WANTING TO SAY SOMETHING, BUT THEY WON'T BELIEVE ME. THE
16 NIGHT OF ALL THIS THAT HAPPENED SHAWN AND JENNIE, THEY
17 WAS AT MY HOUSE, AND WHEN ME AND MY HUSBAND WAS SITTING
18 AT THE TABLE, AND HE SAID, LOOK SHAWN. AND THAT'S --
19 HONEST TO GOD, THAT'S THE FIRST TIME HE EVER SEEN THE
20 NEWS WITH THE YOUNG MAN ON IT. AND JUST I SAY, I'M A
21 MOTHER AND I KNOW HE IS SOMEBODY'S SON, SOMEBODY'S
22 DADDY, YOU KNOW. AND WE DIDN'T RAISE OUR CHILDREN, YOU
23 KNOW, TO KILL, YOU KNOW, WE DON'T TOLERATE THAT. I HAD
24 THEM IN CHURCH FROM BIRTH UP TO NOW, YOU KNOW, BUT
25 EXCEPT FOR THE LAST EIGHT YEARS. BUT YOU KNOW, I JUST

1 ASK THAT ANYBODY JUST BE MERCIFUL ON MY SON, AND
2 WHATEVER SHOULD GO THAT WAY, YOU KNOW, HE WASN'T EVEN
3 GETTING HIS MEDICATION IN JAIL. AND HIS MEDICATION IS
4 SEROQUIL, BECAUSE I'M ON IT, I'M A BI-POLAR, AND IF I
5 DON'T TAKE MY MEDICINE, YOU KNOW, THINGS START TO
6 HAPPEN. BUT YOU KNOW, I JUST PRAY THAT Y'ALL WILL DO
7 THE RIGHT THING, THAT'S ALL.

8 THE COURT: ALRIGHT, THANK YOU,
9 MA'AM.

10 MR. PEPER: VERY BRIEFLY, YOUR
11 HONOR, I THINK MS. PHILLIPS BRINGS UP A GOOD POINT.
12 THERE IS TESTIMONY THROUGHOUT THE TRIAL THAT THERE WAS
13 COCAINE INGESTED BY MY CLIENT AS WELL AS ALCOHOL, AND
14 WHEN YOU MIX THAT WITH A LACK OF MEDICINE, THEN
15 CERTAINLY HE WAS NOT IN HIS RIGHT MIND. I DON'T THINK
16 ANYBODY IN THEIR RIGHT MIND WOULD HAVE MADE A DECISION
17 TO GO ALONG WITH THESE, THESE CRIMES THAT HE'S BEEN
18 FOUND GUILTY OF. JUDGE, AGAIN, HE'S TWENTY-EIGHT YEARS
19 OLD. WHEN WE ORIGINALLY WENT BACK TO THE DRAWING TABLE,
20 EVEN AFTERWARDS, TO TRY TO PLAY BALL AS THE STATE
21 PRESENTS, MY CLIENT REALLY CAN'T OFFER MUCH WITH REGARDS
22 TO ANY OF THE OTHER CO-DEFENDANTS. HE, HE COULD TESTIFY
23 ESSENTIALLY TO WHAT HE PUT IN HIS STATEMENT, THAT HE WAS
24 IN THE CAR, THAT HE FELT LIKE HE WAS UNDER DURESS AFTER
25 BEING HELD BY GUNPOINT, AND THAT REALLY WOULD BE THE

1 CRUX OF HIS TESTIMONY. AND WHEN YOU CONSIDER THE FACT
2 THAT HE'S LOOKING AT A MINIMUM OF THIRTY, HIS RESPONSE
3 TO ME WAS, THAT IS MY LIFE. AND EVEN ON GOOD BEHAVIOR,
4 JUDGE, WE'RE TALKING TWENTY-FIVE AND A HALF OR YEARS,
5 WHICH PUTS HIM, YOU KNOW, ROUGHLY AT FIFTY-THREE, FIFTY-
6 FOUR YEARS OLD BEFORE -- I'M SORRY, SIXTY-THREE YEARS
7 OLD BEFORE HE SEES THE LIGHT OF DAY. CAN HE BE A
8 PRODUCTIVE CITIZEN? I DON'T KNOW. I TEND TO THINK BASED
9 ON MY PERSONAL RELATIONSHIP I'VE ESTABLISHED WITH HIM
10 THAT HE COULD. BUT I CERTAINLY DO THINK THAT THE CRIME
11 THAT HE'S BEEN CHARGED WITH MERITS A SIGNIFICANT AMOUNT
12 OF JAIL TIME, BUT I WOULD SIMPLY ASK THAT THE COURT
13 CONSIDER A THIRTY YEAR, ROUGHLY THIRTY, THIRTY-FIVE YEAR
14 RANGE IN EXCHANGE FOR LIFE IN PRISON TO GIVE HIM THE
15 ABILITY TO LEARN FROM HIS MISTAKES, TO BECOME A
16 PRODUCTIVE MEMBER OF SOCIETY, EVEN IF IT'S IN HIS
17 SIXTIES, WHERE HE CAN HAVE THE NEXT THIRTY YEARS OR SO
18 TO REALLY REFLECT ON THE LAST EIGHT YEARS OF HIS LIFE
19 AND HOW HE'S BEEN TREATING PEOPLE, INCLUDING HIS FAMILY
20 AND FRIENDS, AND CERTAINLY, STRANGERS THAT HE'S MET
21 ALONG THE WAY. WE WOULD SIMPLY ASK, YOUR HONOR, THAT
22 YOU SHOW WHAT MERCY THAT YOU CAN. GIVEN THE FACTS AND
23 CIRCUMSTANCES I CERTAINLY UNDERSTAND THAT YOUR HANDS ARE
24 TIED BY STATUTORY GUIDELINES, AND WE WOULD ASK THAT YOU
25 CONSIDER THE MINIMUM OF THIRTY YEARS, YOUR HONOR.

1 THANK YOU.

2 THE COURT: THANK YOU, SIR.

3 COURT REPORTER: JUDGE, DO YOU WANT
4 ME TO MARK THAT LETTER AS A COURT'S EXHIBIT NOW?

5 THE COURT: PLEASE DO.

6 (Court's Exhibit One in sentencing phase,
7 dated September 24, 2008,
8 marked and filed.)

9 THE COURT: MR. PHILLIPS, I KNOW THE
10 STATE WAS HOPING YOU WOULD GIVE THEM SOME MORE
11 INFORMATION, BUT YOU DON'T HAVE ANY OBLIGATION TO HELP
12 THE STATE DO ANYTHING, AND I'M NOT PUNISHING YOU AT ALL
13 FOR YOUR FAILURE TO COOPERATE. THAT'S YOUR DECISION YOU
14 HAVE TO MAKE. YOU MIGHT HAVE COULD HAVE BOUGHT YOU A
15 BETTER RECOMMENDATION FROM THE STATE ON THE POSITIVE
16 SIDE, BUT I WANT YOU TO KNOW THAT I'M GIVING YOU THE
17 SAME SENTENCE I WOULD HAVE GIVEN YOU HAD I SENTENCED YOU
18 THE DAY OF THE TRIAL.

19 IT'S A BAD CASE, IT'S A BAD
20 SITUATION, I MEAN, OBVIOUSLY, Y'ALL SAT AROUND IN THAT
21 MOTEL ROOM AND PLANNED THIS ROBBERY, TO DO IT WITH
22 WEAPONS WHICH IN SO MANY CASES LEADS TO A KILLING,
23 CERTAINLY SOMETHING THAT WAS EXPECTED OR ANTICIPATED
24 COULD HAVE VERY EASILY HAPPENED UNDER THAT SITUATION,
25 AND I THINK IT'S A CASE THAT CALLS FOR A STIFF

1 PUNISHMENT IN THE CASE.

2 SENTENCE BY THE COURT

3 SO, THE SENTENCE BY THE COURT ON THE
4 CRIMINAL CONSPIRACY, THE SENTENCE IS FIVE YEARS.

5 ON THE ARMED ROBBERY, THE SENTENCE
6 IS THIRTY YEARS.

7 ON THE MURDER CHARGE, THE SENTENCE
8 IS FORTY YEARS.

9 THEY ARE ALL CONCURRENT, AND YOU GET
10 CREDIT FOR TIME SERVED.

11 GOOD LUCK TO YOU, SIR.

12 MR. PEPPER: THANK YOU, YOUR HONOR.

13 SOLICITOR BRUCE DURANT: THANK YOU,

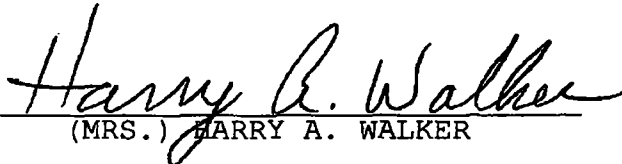
14 YOUR HONOR.

CERTIFICATE

I, THE UNDERSIGNED, MRS. HARRY A. WALKER, OF ROWESVILLE, SOUTH CAROLINA, OFFICIAL COURT REPORTER FOR THE FIRST JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE COURT OF GENERAL SESSIONS FOR CHARLESTON COUNTY, SOUTH CAROLINA, ON AUGUST 5, 6 AND 7, 2008, WITH SENTENCING IN THE DORCHESTER COUNTY COURTHOUSE ON SEPTEMBER 24, 2008.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST TO ANY PARTY HERETO.

DATE: DECEMBER 18, 2008


(MRS.) HARRY A. WALKER

COUNTY: CHARLESTON DATE: AUGUST 5, 2008
 Case No.: 07-GS-10-05565, 05567, 08-GS-10-03459
VOIR DIRE (1 OF 2)

Judge: JAMES C. WILLIAMS, JR.

Pl./State: STATE OF SOUTH CAROLINA State/Pl's.Atty: RUTLEDGE DURANT
BRUCE DURANT

Defendant: SHAWN DEMITRIUS PHILLIPS Defense Atty: MARK A. PEPPER

Court Reporter: (Mrs.) Harry A. Walker

Juror No.	Name	Strikes		Pl.	Def.	Accept
		Sex	Race			
315	WINFORD GASPERSON	M	U		X	
154	DOROTHY MAJOR	F	B			X
94	MICHAEL HANSHAW	M	W			X
340	LINDSEY WELCH	F	W			X
207	BRETT RAHALEWICZ	M	W			X
67	VANESSA FORTE	F	W		X	
88	DEBORAH GREGORIE	F	W		X	
194	ROVENA OWENS	F	B		X	
128	DAVID JOHNSON	M	W			X
339	MICHAEL WALL	M	U		X	
100	DONNA HARVEY	F	W		X	
278	WANDA WELCH	F	W			X
44	PEGGY COLLINS	F	W		X	
18	LAVERNE BENNETT	F	B	X		
288	CORICE WILLIAMS	F	B	X		
206	JOHN RAFFAELLE	M	W		X	
200	SHERRY PHILLIPS	F	W			X
4	NEELIE ALLEN	F	W		X	

COUNTY: CHARLESTON DATE: AUGUST 5, 2008
 Case No.: 07-GS-10-05565, 05567, 08-GS-10-03459
VOIR DIRE (2 OF 2)

Judge: JAMES C. WILLIAMS, JR.

Pl./State: STATE OF SOUTH CAROLINA State/Pl's.Atty:
RUTLEDGE DURANT
BRUCE DURANT

Defendant: SHAWN DEMITRIUS PHILLIPS Defense Atty:
MARK A. PEPER

Court Reporter: (Mrs.) Harry A. Walker

Juror No.	Name	Sex	Race	Pl.	Strikes	
					Def.	Accept
292	KEITH WILSON	M	B			X
41	BILLIE CHARLES	F	W			X
225	VIRGINIA SANDEL	F	W	X		
232	ABBY SHERRER	F	W			X
73	ROY FULLER	M	W			X
337	AMBER SWEIGART	F	W			X
ALTERNATE NO. 1						
233	KRISTI SHYMANSKY	F	W			X
ALTERNATE NO. 2						
253	GLORIA SUTTON	F	B			X

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

James C. Williams, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

SHAWN PHILLIPS,

APPELLANT

FINAL ANDERS BRIEF OF APPELLANT

JOSEPH L. SAVITZ, III
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS	1
TABLE OF AUTHORITIES.....	2
STATEMENT OF ISSUE ON APPEAL.....	3
STATEMENT OF THE CASE	4
ARGUMENT.....	5
PETITION TO BE RELIEVED AS COUNSEL.....	7

TABLE OF AUTHORITIES**Cases**

Brunson v. State, 324 S.C 117, 477 S.E.2d 711 (1996)	5
State v. Rocheville, 310 S.C 20, 425 S.E.2d 32 (1993)	5
State v. Staten, 364 S.C. 7, 610 S.E.2d 823 (Ct. App. 2005)	5
State v. Thompson, 374 S.C. 257, 647 S.E.2d 702 (Ct. App. 2007)	5

STATEMENT OF ISSUE ON APPEAL

The trial judge committed reversible error by failing to instruct the jury on mere presence.

STATEMENT OF THE CASE

On August 5 through August 7, 2008, Shawn Demetrius Phillips stood trial in Charleston County, before Judge James C. Williams, Jr., and a jury, on indictments charging him with murder, armed robbery and criminal conspiracy. The State alleged that Phillips and Lennie Mickey, who all agreed was the dominant male, robbed and shot to death a carnival worker, Robert Vargo, after a prostitute associated with the two men lured Vargo into opening the door of his hotel room. Although Phillips did not testify, he told the police upon his arrest that Mickey had brandished a revolver and threatened "if I didn't go with him he was going to shoot me." ROA p. 540 lines 7- ROA p. 542 line 13. Based on this evidence, the judge charged the jury on duress. The jury found Phillips guilty as charged, and the judge imposed concurrent sentences of forty years for murder, thirty years for armed robbery and five years for criminal conspiracy.

ARGUMENT

The trial judge committed reversible error by failing to instruct the jury on mere presence.

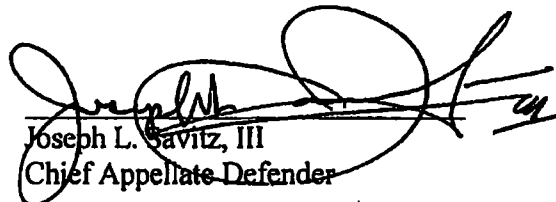
Phillips told the police that he was forced to accompany Mickey at gunpoint. He further stated that he had remained in the getaway car while Mickey and another man robbed and killed Vargo. This evidence, which the State introduced, gave rise to the defense of duress, which the judge instructed. Compare *State v. Rocheville*, 310 S.C 20, 425 S.E.2d 32 (1993).

Defense counsel did not request nor did the trial judge charge the jury on the law pertaining to mere presence. "Mere presence and prior knowledge that a crime [is] going to be committed, without more, is insufficient to constitute guilt." *State v. Thompson*, 374 S.C. 257, 647 S.E.2d 702, 705 (Ct. App. 2007). Where warranted, a trial judge's failure to give a sufficient charge on the law of mere presence constitutes reversible error. *State v. Staten*, 364 S.C. 7, 610 S.E.2d 823 (Ct. App. 2005).

A charge on mere presence was fully consistent with Phillips' defense of duress and was, in fact, necessary to fully explain that defense. However, since defense counsel did not request an instruction on mere presence or object to its omission, the Court may require Phillips to raise the issue on post-conviction relief as an allegation of ineffective assistance. See, for example, *Brunson v. State*, 324 S.C 117, 477 S.E.2d 711 (1996).

If not, the court should reverse Phillips' convictions and remand for a new trial.

Respectfully submitted,



Joseph L. Savitz, III
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 13th day of August, 2009.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County

James C. Williams, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

SHAWN PHILLIPS,

APPELLANT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Shawn Phillips states:

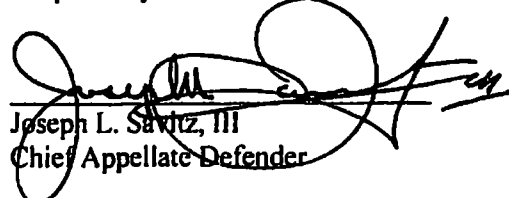
1. He is Chief Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.

2. He has reviewed the record of appellant's trial before Judge James C. Williams, Jr., which was held on August 7, 2008, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.

3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, he asks the Court to relieve him as counsel for Shawn Phillips.

Respectfully submitted,



Joseph L. Savitz, III
Chief Appellate Defender

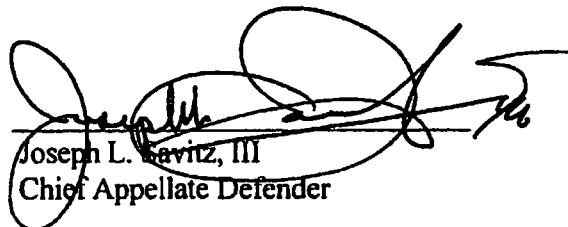
ATTORNEY FOR APPELLANT

This 13th day of August, 2009.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

August 13, 2009



Joseph L. Savitz, III
Chief Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

James C. Williams, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

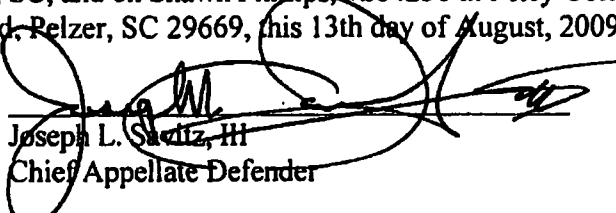
V.

SHAWN PHILLIPS,

APPELLANT

CERTIFICATE OF SERVICE

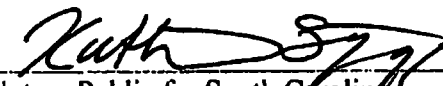
The undersigned attorney hereby certifies that a true copy of the Final Anders Brief of Appellant in the above referenced case has been served upon Donald J. Zelenka, Esquire, at P.O. Box 50666, Columbia, SC; and on Shawn Phillips, #264250 at Perry Correctional Institution, 430 Oaklawn Road, Pelzer, SC 29669, this 13th day of August, 2009.



Joseph L. Savitz, III
Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 13th day of August, 2009.



(L.S.)
Notary Public for South Carolina

My Commission Expires: July 1, 2019.

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Shawn Phillips, Appellant.

Appeal From Charleston County
James C. Williams, Jr., Circuit Court Judge

Unpublished Opinion No. 2011-UP-271
Submitted May 1, 2011 – Filed June 8, 2011

APPEAL DISMISSED

Senior Appellate Defender Joseph L. Savitz, III, of
Columbia, for Appellant.

Attorney General Alan Wilson, Chief Deputy Attorney
General John W. McIntosh, and Assistant Deputy Attorney
General Donald J. Zelenka, all of Columbia; and Solicitor
Scarlett Anne Wilson, of Charleston, for Respondent.

PER CURIAM: Shawn Phillips appeals his convictions for murder, armed robbery, and criminal conspiracy. On appeal, his counsel argues the trial court erred in declining to instruct the jury on mere presence. Additionally, Phillips filed a pro se brief. After a thorough review of the record and all briefs pursuant to Anders v. California, 386 U.S. 738 (1967), and State v. Williams, 305 S.C. 116, 406 S.E.2d 357 (1991), we dismiss the appeal and grant counsel's motion to be relieved.[1]

APPEAL DISMISSED.

FEW, C.J., KONDUROS, J., and CURETON, A.J., concur.

[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

mt 9

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF CharlestonFull name and prison number (if any) of Applicant.
Shawn Demetris Phillips #264250

v.

State of South Carolina

2011-CP-10-7028
IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

FILED
SEP 28 PM 4:59
CLERK OF COURT**INSTRUCTIONS - READ CAREFULLY**

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention SCDC at Perry Correctional Institution
2. Name and location of Court which imposed sentence General Sessions Court for Charleston County
3. Name(s) of co-defendant(s) (if any) Linnie Mickey
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2007-GS-10-5565
 - (b) 2007-GS-10-5567
 - (c) 2008-GS-10-3459
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) August 7, 2008 (40 yrs for murder)
 - (b) August 7, 2008 (30 yrs for Armed Robbery)

Revised 3/2003

- (c) August 7, 2008 (Exits for Criminal Conspiracy)
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. Sic. Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Appeal was denied
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. June 8, 2011
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Unpublished opinion No. 2011-UP-271
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) N/A
- (c) N/A
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Prosecutorial misconduct
- (b) Ineffective assistance of trial counsel
- (c) Ineffective assistance of trial counsel
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Prosecution knowingly use perjured testimony
- (b) See attached Memorandum of Law
- (c) See attached Memorandum of Law
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A
- (c) the disposition thereof:
- i. N/A
- ii. N/A
- iii. N/A

- iv. N/A
- (d) the date of each such disposition:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
- NO
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. N/A
- ii. N/A
- iii. N/A
- (b) the proceedings in which each ground was raised:
- i. N/A
- ii. N/A
- iii. N/A
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) EXCLUSIVE PCR issues
- (b) LI
- (c) LI
17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? _____
- (b) your trial, if any? YES
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

- i. Mark Peper, Esq.,
- ii. Joseph L. Savitz, III,
- iii. _____

(b) the proceedings at which each such attorney represented you:

- i. Trial
- ii. Direct Appeal
- iii. _____

19. State clearly the relief you seek in filing this application:

That my Convictions and sentences be reversed for new trial.

20. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA)

County of Charleston)

VERIFICATION

Sharon Demetris Phillips # 264250

I, Sharon Demetris Phillips, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Sharon Demetris Phillips

SWORN to and subscribed before me this 22nd
day of September, 2011.

Steven T. McLaughlin (L.S.)
Notary Public

My Commission Expires: November 2, 2016

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

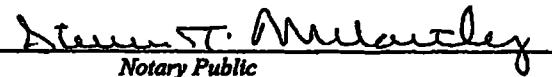
~~Shawn Demetris Phillips #264250~~
I, Shawn Demetris Phillips, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.


Applicant

SWORN or affirmed to and subscribed before me this

23rd day of September, 2011.


Notary Public

My Commission Expires: November 7, 2016

2011-CP-10-7028

STATE OF SOUTH CAROLINA
County of Charleston

Shawn Demetris Phillips,
SCDC NO. 264250,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

MEMORANDUM OF LAW
IN SUPPORT OF APPLICATION
FOR POST-CONVICTION
RELIEF

JULIE J. ARMSTRONGS
CLERK, C.P. & G.S.

SEP 28 2011

FILED

COME Now, the applicant, above-named, presents the Memorandum of Law in Support of the Application for Post-Conviction Relief (PCR) and Would Show the following unto the Honorable Court.

STATEMENT OF THE CASE

The applicant was indicted by the Charleston County Grand Jury for murder, armed robbery, and Criminal Conspiracy. He stood trial on these charges on August 5-7, 2008, before the Honorable Judge James C. Williams, Jr., and a Jury. He was represented by Mark Peper, Esq., of the Charleston Bar, and the State was represented by Rutledge Durant, and Bruce Durant, Assistant Solicitors. The Jury found the applicant guilty on all charges, and Judge Williams sentenced him to forty (40) years for murder, thirty (30) years for armed robbery, and five (5) years for Criminal Conspiracy, all sentences to run concurrently. A timely notice of appeal was filed on applicant's behalf.

On appeal the applicant was represented by Joseph L. Savitz, III, of the Division of Appellate Defense. The South Carolina Court of Appeals denied the appeal in Unpublished Opinion No. 2011-UP-271. Submitted May 10, 2011 - Filed June 8, 2011. The Remittitur was sent to the lower Court on June 24, 2011.

ARGUMENT

The applicant was denied the right to a fair trial by the prosecution's knowing use of perjured testimony to obtain his conviction. Alternatively, applicant raises this claim under ineffective assistance of trial counsel's failure to object to this testimony.

The applicant submits that after his trial his codefendant, Lennie Mickey, sent him transcript pages from his trial with excerpts of testimony from Alec Browne who was robbed at the "In-Town Suites Hotel". Browne testified, in relevant part, that two black men, who he could not identify, robbed him and took his "38-caliber, Colt Detective Special Pistol". He further testified that the Colt Detective Special Pistol was "black, blue steel, dark" in color. See Codefendant Mickey's Tr. p. 194-195 attached hereto as Exhibits A-1 thru A-2.

The applicant further submits that his codefendant Mickey also sent him transcript pages from his (Mickey's) trial with excerpts of testimony by another codefendant, Angela Angagas, who testified that she was with Mickey and applicant when they robbed Alec Browne at the "In-Town Suites Hotel" and took his pistol. She testified that Mickey and applicant came back from the robbery with a "short silver gun". Codefendant Mickey's transcript page 809 attached hereto as Exhibit B.

In ruling on the admission of Angagas's testimony regarding the description of Alec Browne's "38-Caliber Colt Detective Special" to establish Mickey and applicant's identity as the robbers, the Judge found that Angagas's description of the "38-Caliber Colt Detective Special Pistol" conflicted with Browne's description of his gun. As a result, the Court found there was no "clear and convincing evidence to admit the prior bad act evidence of the robbery to establish Mickey's identity as the robber at "In-Town Suites Hotel". The Judge also found that Angagas was not a credible witness. See Codefendant Mickey's Transcript pages 292-293 attached hereto as Exhibit C-1 thru C-2.

Hence, it should be particularly noted that Rutledge Durant who prosecuted applicant's codefendant, Lennie Mickey, is the same solicitor who prosecuted the applicant. With that fact duly noted, the applicant submit that during his trial solicitor Rutledge proffered testimony by the same witnesses, Alec Browne and Angela Angagas, to establish applicant's identity as one of the persons who robbed Alec Browne at the "In-Town Suites Hotel" and took his "38-Caliber Colt Detective Special Pistol," which solicitor Rutledge was trying to prove was the murder weapon used to commit the murder for which applicant was charged.

To establish applicant's identity as one of the persons who committed the "In-Town Suites Hotel" robbery and took the suspected murder weapon, the Solicitor proffered testimony by the "In-Town Suites" robbery victim, Alec Browne, who testified that the robbers were two black men who took his "38-Caliber, Colt Detective Special Pistol". However, Solicitor Rutledge did not proffer any testimony by Browne regarding the description of his "38-Caliber, Colt Detective Special" as he had done in applicant's codefendant Mickey's trial. Nevertheless, Solicitor Rutledge did once again proffer the same testimony by Angela Angagas "that she was with applicant and Mickey when they returned from robbing Alec Browne and had his "38-Caliber Colt Detective Special Pistol". Solicitor Rutledge also once again proffered testimony by Angagas that Alec Brown's pistol was a "short silver gun."

Thus, by comparing and contrasting Browne and Angagas's testimony from applicant's codefendant Mickey's trial regarding the description of Brown's pistol, it is obvious that Solicitor Rutledge during knowingly introduced "perjured testimony" by Angagas regarding the description of Brown's gun to prove applicant's identity as one of the persons who took the alleged weapon used in the murder for which applicant was charged. To obtain relief on the basis of subornation and perjury, an applicant must demonstrate (1) that the witness made a false statement, (2) that the false statement was material to the case, (3) that the false statement was knowingly and intentionally employed by the state. See Beasley v. Holland, 649 F.Supp. 561 (S.D.W.Va. 1985).

Here, the Judge in applicant's codefendant Mickey's trial found that Angagas's description of Brown's gun was not credible; Angagas's description of the alleged murder weapon was material to the state's case in proving applicant's identity as the person who had possession of the alleged murder weapon; (3) the Solicitor knew from applicant's codefendant Mickey's trial that Angagas's description of the alleged murder weapon at applicant's trial was untrue and not credible. A conviction must be set aside if there is a reasonable probability that false testimony (or evidence) could have affected the outcome of the trial. See e.g., United States v. Bagley, 105 S.Ct. 3375 (1985); Giglio v. United States, 92 S.Ct. 763 (1972); Miller v. Pate, 87 S.Ct. 785 (1967).

Finally, Counsel's failure to object to improper evidence is ineffective assistance of Counsel. See McFadden v. State, 539 S.E.2d 391 (Ga. 2000);

The applicant was denied the right to a fair trial by the prosecution's failure to disclose Brady¹ material in its possession. Alternatively, applicant raise this claim under ineffective assistance of trial counsel.

The applicant contends that after his trial his codefendant, Lennie Mickey, sent him a statement by a witness, Dora Irma Perkins, SSN 489 43-8651, D.O.B 4-03-12, who gave a statement to police that she saw a black and white male at the murder scene at the "Budget Inn Hotel" on the date it happened. She also told police in her statement that she heard people arguing in the victim's room before she heard a gunshot. She also told police in her statement that she saw the black and white man leaving the "Budget Inn" after the murder. She picked the two men out of a photo line-up. See witness statement and suspects' photos that witness picked out attached hereto as Exhibits D-1 thru D-7. The applicant was not provided this statement by either the prosecution or his counsel prior to his trial.

The failure to disclose Brady material is reversible error when its omission deprives the defendant of the right to a fair trial. State v. Hughes, 521 S.E.2d 500 (S.C. 1999). Brady requires the prosecution to disclose evidence which is favorable to a defendant and material to to guilt or punishment; this applies to impeachment evidence as well as exculpatory evidence. State v. Proctor, 556 S.E.2d 418 (S.C. App. 2001).

Alternatively, Counsel's failure to conduct an investigation in order to uncover the Brady evidence was ineffective assistance of counsel. See Strickland v. Washington, 104 S.Ct. 2052 (1984)

The applicant was denied the right to effective assistance of trial counsel by Counsel's failure to object to the state's introduction of prior bad act evidence to establish applicant's identity.

In this case, the applicant was on trial for murder, armed robbery, and Criminal Conspiracy that took place at the "Budget-Inn Hotel". To prove applicant's identity as the person who took the murder weapon from a previous robbery at the "In-Town Suites Hotel", the Solicitor, without any objection from trial counsel, introduced testimony by the previous robbery victim, Alec Browne, and applicant's codefendant Angela Agagas, to prove applicant took the murder weapon in the prior robbery. To prove that

¹ Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963)

the gun taken from the "In-Town Suites" was the murder weapon; the Solicitor proffered testimony by Suzanne Cromer, a SLED Firearm and Tool Examiner.

Alec Browne testified in-camera that while staying at the "In-Town Suites" he was robbed by two black men with masks on their faces. He testified that the robbers took his "38-Caliber, Colt Detective Special Pistol" and 3 rounds of "Star Fire" bullets and 3 rounds of "Semi-wad Cutter bullets". Tr. p. 209-211. He testified on cross examination that he could not identify the robbers who had on ski-masks. Tr. p. 218.

Next, Angela Agagas testified in-camera, that she was with applicant and another codefendant, Linnie Mickey, when they went to the "In-Town Suites" to rob Alec Browne and took from him a "small, short, silver gun with a round thing on the side". Agagas's description of the gun was not corroborated by any description by Alec Browne.

Finally, Suzanne Cromer, a SLED Firearm and Tool Mark Examiner, testified, in-camera, that the bullet recovered from the murder victim's body could have come from eight different firearms. Tr. p. 237. She finally testified on cross examination that she could not conclusively say that the fatal round was fired by the revolver taken from the robbery of Alec Browne. Tr. p. 241.

At the conclusion of the in-camera testimony, applicant's Counsel made a motion in limine to suppress the prior bad act evidence on the grounds that the evidence of applicant's alleged prior bad act was not clear and convincing and that the prejudicial effect outweighed the probative value. Tr. p. 245. The Court denied the motion and found the State's evidence clear and convincing to prove applicant's identity as the person who robbed Alec Browne and took his gun. Tr. p. 247-248.

Other crimes that are not the subject of conviction must be proved by clear and convincing evidence. State v. Wilson, 545 S.E.2d 827 (S.C. 2001). Here, as Alec Browne could not identify the robber, as Agagas's description of the gun was not corroborated by any description by Browne, and as the State's Firearm and Tool Mark Examiner could not positively identify the weapon taken from the prior robbery, there was no "clear and convincing evidence" of applicant's identity for admission to the jury. See, e.g., State v. Douglas, 397 S.E.2d 98 (S.C. 1990).

The applicant submits that while his Counsel did make a motion in limine to suppress the prior bad act evidence, he failed to object to the admission of the evidence to the jury. Tr. p. 257; 264-265.

As a result the applicant was denied the right to effective assistance of trial counsel. See, e.g., State v. Simpson, 479 S.E.2d 57 (S.C. 1996) (holding that in murder case, defendant's counsel was ineffective for failing to preserve issue of evidence's admissibility for appellate review, though he argued issue in motion in limine, but did not object at trial).

The applicant was denied the right to effective assistance of trial counsel by counsel's failure to move to suppress and/or object to solicitor's in-court identification of applicant.

During trial, the solicitor asked applicants alleged codefendant Sandra Barnes to make an in-court identification of applicant. Tr. p. 408, L. 21-p. 409, L. 7. Trial counsel did not object to the in-court identification procedure. Moreover, on cross-examination, applicant's counsel asked Barnes why had she previously identified a man named Dominick Lamar Ballou out of a photo line-up as her codefendant instead of the applicant. Barnes confusingly testified that "She had told police that the photo line-up was not good enough". Tr. p. 430, L. 8-13. On re-direct, the solicitor asked Barnes if she had picked out applicant through a "two-way mirror". She said she did. Tr. p. 443, L. 13-23.

In conjunction, Detective Eric M. Jourdon testified on direct that Sandra Barnes had identified Dominick Ballou instead of applicant from a photo line-up. Tr. p. 450, L. 20-21. He further testified that applicant was placed in an observation room with a two-way mirror to see if Sandra Barnes could identify him since he was the only person in the room. Tr. p. 462, L. 21-25.

The applicant was unaware of this identification procedure conducted by the police, and he was not provided any assistance of counsel during this identification procedure. Where police already had probable cause to hold defendant and conduct an immediate ID confrontation, defendant was entitled to benefit of counsel at identification procedures. See, e.g., Thomas v. Leake, 393 F.Supp. 282 (1975). Standard for determining admissibility of both out-of-court and in-court identification is whether the identification procedure was so impermissibly suggestive as to give rise to a very substantial likelihood of irreparable misidentification. State v. Rice, 652 S.E.2d 409 (S.C. 2007). Reliability is the linchpin in determining the admissibility of identification testimony. State v. Moore, 513 S.E.2d 626 (S.C. 1997).

The applicant accordingly contends that but for counsel's failure to move to suppress and/or object to the solicitor's improper in-court identification procedure there was a reasonable probability the result of the trial would have been different; a reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. State v. Prioleau, 417 S.E.2d 92 (S.C. 1992).

The applicant was denied the right to effective assistance of appellate Counsel by Counsel's failure to raise on appeal the State's introduction of photographs of the victim to the Jury.

A defendant is Constitutionally entitled to the effective assistance of appellate Counsel. Anderson v. State, 581 S.E.2d 234 (2003). Ineffective assistance of appellate Counsel may be shown if defendant can prove that Counsel omitted obvious and strong issue while pursuing significantly weaker issues. Moutrie v. U.S., 147 F.Supp.2d 445 (D.S.C., 2001).

In applicant's case, the Judge, over defense objection, permitted the State to introduce photographs of the dead victim's body and wounds to show that they were probative of malice. Tr. p. 566, L. 7 - p. 567, L. 15. However, there was no probative value whatsoever in admitting the photographs. There was no question who died, how the victim died, where he died, or when he died. The only question was who killed the victim. Therefore, the photographs were irrelevant and unnecessary to substantiate any fact of malice, and only served to inflame and arouse the passion and prejudice of the Jury. See, e.g., State v. Todd, 349 S.E.2d 339 (S.C., 1996); State v. Waitus, 77 S.E.2d 256 (S.C., 1953).

The appellate Counsel failed to raise and argue the issue of the erroneous admission of the photographs, and instead argued that "the trial Judge erred by failing to charge the Jury on 'mere presence'". The mere presence issue was never raised or requested by the defense at trial. Therefore, appellate Counsel's omission of the issue of the "victim photographs", while raising and arguing an unpreserved ground, was ineffective assistance of appellate Counsel that prejudiced applicant case on appeal. Moutrie infra; Strickland v. Washington, 104 S.Ct. 2052 (1984).

The applicant was denied the right to effective assistance of appellate Counsel by Counsel's failure to raise and argue applicant's involuntary statement.

In this case, applicant objected to the admission of his involuntary statement to the police. After applicant agreed to talk to police, the police read him his Miranda² rights and began questioning him about a murder and armed robbery. During the questioning, the applicant ceased answering questions and requested an attorney. Tr. p. 54, L. 5-11. The police stopped questioning applicant and left the room. However, applicant's federal parole officer, Donald J. Simmons, remained in the room with applicant, and testified in camera that applicant re-initiated contact with the police through him. He further testified that applicant couldn't write. Tr. p. 55, L. 4-20.

2. Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1601, 16 L.Ed.2d 694 (1966)

Simmons also testified that applicant was prescribed psychotropic medication of Seroquil and Zoloft for severe depression. Tr. p. 60, L. 5-10. The Court evaluate the voluntariness of a Confession or incriminating Statement by examining the "totality of Circumstances" under which the Confession or incriminating Statement was obtained to include the background, experience, and Conduct of the accused. State v. Hooks, 559 S.E.2d 856 (S.C. App. 2001).

A heavy burden rest upon the State to prove that person in Custody knowingly and intelligently waived his privileges against self-incrimination and his right to Counsel and mere fact that defendant signed Waiver form does not Conclude the issue; the State still has burden of showing the Waiver was voluntary. State v. Pendergrass, 239 S.E.2d 150 (S.C. 1977). When the Police are aware that defendant is a mental patient on drugs and is illiterate, and manipulate these conditions to obtain an incriminating statement, such Statement should be suppressed. See e.g., Rhode Island v. Innis, 100 S.Ct. 1082 (1980). The incriminating Statement should be suppressed if Counsel can show (1) defendant made a request for Counsel, (2) defendant's incriminating response was the result of Comments made to the police, and (3) the police have knowledge that their action was "reasonably likely" to result in defendant making the Statement. See Brewer v. Williams, 97 S.Ct. 1222 (1977). A Counsel can establish the third criteria outlined in Williams, infra, by showing that police had knowledge of special characteristics of accused such as accused being a mental patient, as well as being illiterate and on medication. See e.g., Arizona v. Mauro, 101 S.Ct. 1931 (1981).

Eventhough applicant's proved all the criteria outlined in the above line of cases, the trial Judge denied Counsel's objection to the admission of applicant's statements. Nevertheless, appellate Counsel omitted this issue and instead raised a "mere present" issue that was unpreserved. The applicant thus contends that he was denied the right to effective assistance of appellate Counsel that deprived him of an appellate review. Anderson, Supra; Moultrie, Supra.

The applicant was denied the right to effective assistance of of trial Counsel by Counsel's failure to object to the Judge's burden shifting Jury charge on his "duress defense".

The applicant was charged in this case with murder, armed robbery, and criminal conspiracy. He put up evidence for a "duress defense" to his charges. As a result, the Judge charged the Jury on the defense of duress, in relevant part, as follows:

Court: Duress is an affirmative defense which

must be proven by the defendant by the preponderance of the evidence. The state must prove the guilt of the defendant beyond a reasonable doubt... Tr. p. 809, L. 8-13.

Contrary to the Judge's Charge, the defense of duress is an affirmative defense that "the state must disprove beyond a reasonable doubt". See, e.g., State v. Burkhardt, 565 S.E.2d 298 (S.C. 2002); State v. Wiggins, 500 S.E.2d 489 (S.C. 1998). Thus, in the absence of a specific charge on the state's burden of proof regarding the duress defense, the Judge's Charge, as given, undertook to intimate to, and instruct, the Jury that the state had no specific burden to "disprove the duress defense beyond a reasonable doubt". Thereby, the Judge's Charge relieved the state of its burden of disproving applicant's duress defense and shifted the entire burden of proof to the applicant. See State v. Fuller, 377 S.E.2d 328 (S.C. 1989) (holding that an erroneous charge on affirmative defense is reversible error).

To prove counsel was ineffective, the defendant must show counsel's performance was deficient and the deficient performance caused prejudice to defendant's case. Patrick v. State, 562 S.E.2d 609 (S.C. 2002). The applicant contends that counsel's failure to object to the Judge's Charge in this instance was ineffective assistance of counsel, and he was prejudiced as there was a reasonable probability of a different result had counsel made an objection to the erroneous Jury Charge. Fuller, supra.

The applicant was denied the right to effective assistance of trial counsel by counsel's failure to request a Jury Charge on the defense of duress by accomplice liability.

During the trial, evidence of applicant's defense of duress was introduced. Tr. p. 540-541. At the conclusion of evidence, the Judge charged the Jury, in relevant part, on "felony murder" and definition of "duress" as follows:

Court: The intentional killing of another during the commission of a felony allows an inference of malice to arise. Tr. p. 804, L. 24-p. 805, L. 1.

Next, the Judge charged the Jury on the felony of armed robbery. Tr. p. 805-807. Following this charge, the Judge charged the Jury on the law of "accomplice liability", in relevant part, as follows:

Court: Where two persons combine to commit an

an unlawful act and in its execution a homicide is committed as a probable or natural consequence thereof, all present participating in the unlawful act are as guilty as the one who committed the fatal act. Tr. p. 808, L. 18-23.

In Conjunction, the Judge charged the Jury on applicant's duress defense, in relevant part, as follows:

Court: Further, ladies and gentlemen, I charge you that duress is not a defense to the charge of the crime of murder. . . . Tr. p. 809, L. 24-p. 810, L. 1.

The applicant thus contends that while a duress defense cannot be alleged as a defense to murder it could be a defense to armed robbery (and Criminal Conspiracy) for which applicant was charged. See, e.g., State v. Benjamin, 549 S.E.2d 258 (S.C. 2001). He further contends that Counsel's failure to request a complete charge, "that the defense of duress could be a defense to armed robbery (and Criminal Conspiracy) to excuse, or mitigate applicant's involvement in the murder under an accomplice liability theory to negate an inference of malice," was ineffective assistance of Counsel that prejudiced his right to a fair trial. See Green v. State, 527 S.E.2d 98 (S.C. 2000); Strickland, *supra*.

The applicant was denied the right to effective assistance of trial Counsel by Counsel's failure to put into evidence another suspect's photo and applicant's alibi witness statement.

During trial, the state introduced testimony by one of applicant's Codefendants, Sandra Barnes, to place him at the scene of the crimes. Barnes testified that she accompanied the applicant and another Codefendant, Lennie Mickey, to the scene of the crimes. However, during an out-of-court identification procedure, Barnes had picked out a man named Dominick Lamar Ballou, instead of applicant, as her other Codefendant who was with her and Mickey at the crime scene. Applicant's Counsel did not put the photo line-up with Ballou in evidence, but rather made it a "Defense Exhibit". Moreover, the applicant put up an alibi witness to support his alibi defense. His alibi witness also gave a written statement to support applicant's alibi defense. Consequently, Counsel did not put this statement into evidence.

When the Jury began deliberation, they requested to see the photo line from which Sandra Barnes picked Dominick Lamar Ballou as her Codefendant at the murder scene. The Jury also requested to see applicant's alibi witness's statement. The Judge denied the

Jury's requests on the grounds that applicant's Counsel had not put the photo line-up and alibi witness statement into evidence during trial.

Accordingly, the applicant submits that it is reasonable to assume that the Jury had, at the point of its request, focused critical attention on the photo line-up and applicant's alibi defense and was in the process of deciding upon its verdict based upon one or the other, but wanted to view both the line-up and alibi witness's statement. The additional evidence which the Jury would view would be given special consideration by the Jury in deciding the case since they were in response to its own inquiry. Under this circumstance, Counsel's failure to move the photo line-up and alibi witness's statement into evidence for submission to the Jury was ineffective assistance of Counsel. *see e.g., State v. Blassingame*, 244 S.E.2d 528 (S.C. 1978).

Finally, the applicant contends that in view of the Jury's request Counsel's failure to put into evidence the photo line-up and alibi witness's statement was ineffective assistance of Counsel that resulted in an unreliable and/or fundamentally unfair outcome of his trial. *see, Lockhart v. Fretwell*, 113 S.Ct. 835, 842 (1993); *Strickland, supra*

CONCLUSION

WHEREFORE, for the foregoing reason, the applicant pray the Honorable Court reverse his convictions and grant a new trial.

Respectfully Submitted

Shawn Demetris Phillips
Shawn Demetris Phillips #264250
Perry Correctional Institution
430 Oaklawn Road - A2A/219
Pelzer, S.C. 29669

This 7 day of 23, 2011

Date: 7-23, 2011

Julie J. Armstrong
Clerk of Court, CP & GS.
Charleston County
100 Broad Street, Suite 106
Charleston, SC 29401-2258

Re: Post-Conviction Relief (PCR) Application

Dear Hon. Armstrong:

Enclosed please find my original Post-Conviction Relief (PCR) Application and Memorandum of Law in support of same for filing with your office. I have also enclosed a self-addressed envelope for your return to me clocked-stamped copies of these documents for my records.

Sincerely Yours,

/s/ Shawn D. Phillips

Shawn D. Phillips #264250
Perry Correctional Institution
430 Oaklawn Road - 82A/219
Pelzer, S.C. 29669

cc: file

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
	)	2011-CP-10-7028
	)	
Shawn D. Phillips, #264250,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

The Respondent, making its Return to the Application for post-conviction relief filed September 28, 2011, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Charleston County. The Applicant was indicted at the April 2007 and April 2008 terms of the Charleston County Grand Jury for murder (2007-GS-10-5565), armed robbery (2007-GS-10-5567), and criminal conspiracy (2008-GS-10-3459). Mark Peper, Esquire, represented the Applicant. The Applicant proceeded to trial on August 5-7, 2008, after which a jury found him guilty as indicted. The Honorable James C. Williams, Jr. sentenced him to confinement for forty (40) years for murder, thirty (30) years for armed robbery, and five (5) years for criminal conspiracy. The sentences were to run concurrently.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. Joseph L. Savitz, III, Esquire, of the South Carolina Commission on Defense, represented Applicant on appeal. Following an Anders brief, the South Carolina Court of Appeals dismissed

the appeal. State v. Phillips, Op. No. 2011-UP-271 (S.C. Ct. App. filed June 8, 2011). The Remittitur was issued on June 24, 2011.

Attached herewith and incorporated herein by reference are the records of the Charleston County Clerk of Court regarding the subject convictions, the Applicant's records from the Department of Corrections, the Record on Appeal, the Supplemental Record on Appeal, the Final Anders Brief of Appellant, the Court of Appeals' opinion dismissing the appeal, and the Remittitur dated June 24, 2011.

II.

In his application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel in that counsel
 - a. Failed to object to the State's introduction of prior bad act evidence to establish Applicant's identity.
 - b. Failed to move to suppress and/or object to Solicitor's in-court identification of Applicant.
 - c. Failed to object to the judge's burden shifting jury charge on his "duress defense."
 - d. Failed to request a jury charge on the defense of duress by accomplice liability.
 - e. Failed to put into evidence another suspect's photo and Applicant's alibi witness statement.
2. Ineffective assistance of appellate counsel in that appellate counsel
 - a. Failed to raise and argue Applicant's involuntary statement.
 - b. Failed to raise on appeal the State's introduction of photographs of the victim to the jury.
3. Prosecutorial misconduct in that prosecution knowingly used perjured testimony and failed to disclose Brady material.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in the application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must

prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

A defendant is constitutionally entitled to effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985). "However, appellate counsel is not required to raise every non-frivolous issue that is presented by the record." Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523 (1990). Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

The Applicant must show that appellate counsel's performance was deficient and that he was prejudiced by the deficiency. Thrift, 302 S.C. at 537; Gilchrist v. State, 364 S.C. 173, 612 S.E.2d 702 (2005); Anderson v. State, 354 S.C. 431, 581 S.E.2d 834 (2003). When a claim of ineffective assistance of counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

In this case, appellate counsel filed an Anders brief. In Anders v. California, the United States Supreme Court announced the procedure an appointed attorney should follow if the attorney believes the client's appeal is frivolous and without merit. Anders v. California, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967). The U.S. Supreme Court held the attorney could petition for permission to withdraw from the case, but that the petition for withdrawal must be accompanied by a brief "referring to anything in the record that might arguably support the

appeal.” Id. at 744. Under Anders, the defendant must be given time to respond and to raise any additional points after his attorney submits the Anders brief. Id. The Court then is obligated to conduct a “full examination” of the record to determine whether the appeal is “wholly frivolous.” Id. According to Anders, if the reviewing court finds the appeal is frivolous, “it may grant counsel’s request to withdraw and dismiss the appeal insofar as federal requirements are concerned, or proceed to a decision on the merits, if state law so requires.” Id. at 744; State v. McKennedy, 348 S.C. 270, 278, 559 S.E.2d 850, 854 (2002).

Here, appellate counsel filed an Anders brief with the Court of Appeals and Applicant filed a *pro se* brief. “Upon the receipt of the *pro se* brief or the expiration of the period to file a *pro se* brief, this Court will then proceed to review the record as required by Anders. If no issue of arguable merit is discovered, the appeal will be dismissed and counsel’s petition to be relieved will be granted.” State v. Williams, 305 S.C. 116, 406 S.E.2d 357 (1991).

Respondent contends that the Applicant’s appellate attorney rendered effective assistance of counsel. However, this ground for relief may raise factual issues that are not conclusively refuted by the record. The Respondent requests an evidentiary hearing on this allegation.

V.

The Applicant alleges prosecutorial misconduct in that the prosecution knowingly used perjured testimony and failed to disclose Brady material in violation of Rule 5, SCRCrimP and Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed. 2d 215 (1963). In evaluating post-trial Brady claims, the Applicant must show that (1) the prosecution suppressed evidence, (2) the evidence would have been favorable to the accused, and (3) the suppressed evidence is material. United States v. Wolf, 839 F.2d 1387 (10th Cir. 1988). A Brady violation does not warrant reversal if the evidence is merely cumulative or impeaching. Clark v. State, 315 S.C. 385, 434

S.E.2d 266 (1993). "Impeachment or exculpatory evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." Id.

Respondent submits that this ground for relief is without merit. However, the allegation concerning a Brady violation probably raises questions of fact that are not conclusively refuted by the record. The Respondent requests an evidentiary hearing on this ground for relief.

VI.

Respondent denies each allegation that is not expressly admitted, qualified, or explained.

VII.

WHEREFORE, having made its Return, the Respondent requests that an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

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Dec. 19, 2011.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

SHAWN D. PHILLIPS

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

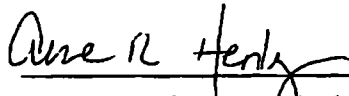
2011-CP-10-7028

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Elizabeth F. Bailey, Esquire
 134 Meeting St., 3rd Floor
 PO Box 340
 Charleston, SC 29402

DATED this 19th day of December 2011


 Anne R. Henley, Legal Assistant
 For Respondent

Anne Bouley Meyer, RPR
Circuit Court Reporter

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I N D E X

WITNESSES

All witnesses:	Page
BRUCE DURANT	
Direct Examination by MS. HUNTER	6:4
Cross-Examination by MR. SPENCER	19:3
Redirect Examination by MS. HUNTER	26:2
MARK ANDREW PEPER	
Direct Examination by MS. HUNTER	27:7
Cross-Examination by MR. SPENCER	54:6
SHAWN PHILLIPS	
Direct Examination by MS. HUNTER	68:5
Cross-Examination by MR. SPENCER	82:11
MARK ANDREW PEPER	
Direct Examination by MR. SPENCER	85:25
Closing Argument by MR. SPENCER	89:18
Closing Argument by MS. HUNTER	94:5
Closing Argument by MR. SPENCER	97:15

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EXHIBITS

For Petitioner:

1	Dora Perkins statement	
In Evidence		16:3
2	DMV picture	
In Evidence		17:22
3	Picture	
In Evidence		17:22
4	mug shot	
In Evidence		50:1

For Respondent:

1	discovery summary 2/22/08	
In Evidence		57:3
2	discovery summary 3/12/07	
In Evidence		57:11

1 THE COURT: All right. Whenever y'all are
2 ready, I'm happy to hear from you.

3 MR. SPENCER: Thank you, Your Honor. For the
4 record, my name is David Spencer with the Attorney
5 General's Office. The first case is Shawn Phillips
6 versus State, 2011-CP-10-7028.

7 Mr. Phillips has filed this application in
8 September of 2011. He was indicted for murder, armed
9 robbery, criminal conspiracy. He was represented by
10 Mr. Mark Peper, who's here today. He proceeded to
11 trial on August 5th through 7th, 2008. He was
12 convicted as charged.

13 He was sentenced to -- his sentence was
14 deferred, but he was sentenced on September 24th, 2008
15 to 40 years for murder, 30 years for armed robbery, and
16 5 years for conspiracy. He did appeal the conviction,
17 and appellate defense submitted an Anders brief, and
18 the court of appeals dismissed the application --
19 excuse me, dismissed the appeal. A remittitur was
20 issued in June of 2011.

21 Your Honor, he is represented here today by
22 Ms. Leigh Hunter. Ms. Hunter has given me a -- of
23 course there is an application. Ms. Hunter gave me an
24 amendment to -- with a couple of additional
25 allegations.

1 I'm ready to proceed, but I just want to verify
2 that there are no other allegations being raised today
3 other than the ones in the application and the
4 supplemental -- or amended application.

5 MS. HUNTER: That's correct, Your Honor.

6 THE COURT: Do I have the amended application?
7 I'm not sure that made it to the file.

8 MS. HUNTER: I have a copy for you. May I
9 approach?

10 THE COURT: Yes, ma'am. Thank you.

11 MR. SPENCER: And, Your Honor, just one more
12 thing with the amendments. As I understand it is -- I
13 mean, while it was drafted by the applicant, it is my
14 understanding Ms. Hunter is adopting those allegations.
15 If that's the case, I will waive the hybrid
16 representation objection.

17 THE COURT: Thank you very much.

18 Okay, happy to hear from y'all.

19 MS. HUNTER: Thank you, Your Honor.

20 THE COURT: Yes, ma'am.

21 MS. HUNTER: I would first like to call
22 Solicitor Bruce Durant.

23 THE COURT: Good morning. Come on up.

24 BRUCE DURANT,
25 after having first been sworn to tell the truth,

1 the whole truth and nothing but the truth testified on
2 his oath as follows:

3 DIRECT EXAMINATION

4 BY MS. HUNTER:

5 Q Solicitor, were you one of the two solicitors
6 that tried Mr. Phillips for murder and armed robbery
7 and criminal conspiracy?

8 A I was.

9 Q Okay. And who was the other solicitor?

10 A Rutledge Durant.

11 Q So both of you are named Durant?

12 A We're both Durants, but not related to the best
13 of our knowledge.

14 Q Okay. I called you because this was a trial; is
15 that correct?

16 A Yes, ma'am.

17 Q It was about a two-week trial?

18 A I'm not sure it lasted that long, but it has
19 been a while.

20 Q Okay. And I wanted to see if you could give the
21 Judge an overview of what the facts were, the theory of
22 the State's case was.

23 A As to your client?

24 Q No. As to what the State's theory was.

25 Q Basically our theory of the case was that

Direct examination of Bruce Durant

1 Mr. Phillips and Mr. Mickey, in conjunction with some
2 prostitutes, had set up this fellow that was in town
3 for a short period of time -- he worked for the fair --
4 set him up to rob him. And during the robbery he was
5 killed.

6 Q And in order to set him up for the robbery, they
7 used one of the --

8 A The prostitutes

9 Q -- one of the prostitutes?

10 A Yes, ma'am.

11 Q And did she actually go over to the murder
12 scene?

13 A I think -- and I'm really not that clear on the
14 facts -- but I think it was mostly by phone.

15 THE COURT: I think the transcript reflects that
16 she went to the door and either knocked or did not
17 knock, but he saw or heard her coming and opened the
18 door.

19 THE WITNESS: She is right. I remember that
20 now.

21 THE COURT: I just read it, so.

22 Q (By Ms. Hunter) Okay. And was Lennie Mickey,
23 he was one of the codefendants, he was with them at the
24 time?

25 A Certainly according to our theory of the case.

1 I think three of them went over. The girl went over to
2 the door and knocked for them to gain entry. And the
3 guy opened the door, and the other two rushed in.

4 Q And we don't know -- or none of them were tried
5 together; is that correct?

6 A That is correct.

7 Q They were all severed. And Lennie Mickey was
8 tried separately and convicted?

9 A There were three trials all together. Lennie
10 Mickey was tried first, and resulting in a hung jury.
11 Then your client was tried second, and he was
12 convicted. And then Lennie Mickey was tried again and
13 convicted of the armed robbery.

14 Q Okay. Were there any -- other than witnesses'
15 testimony and a bullet that was found, was there any
16 other forensic evidence in this case?

17 A Not that I recall. And let me preface this by
18 saying I have not read the entire transcript in this
19 case, and I am not as clear on the facts as I probably
20 could be.

21 I was kind of concentrating on the areas that --
22 where it was alleged that we had done something wrong.

23 Q Okay, thank you. I wanted to also go back to an
24 armed robbery that got brought up in the trial and ask
25 you about that.

1 Allegedly it happened InTown Suites off Savannah
2 Highway?

3 A Yes, I'm familiar with that.

4 Q Is that a different part of town than this?

5 A Yes. That was -- the InTown Suites was West
6 Ashley, as I recall, out on Savannah Highway, perhaps.
7 And the connection was that one of the prostitutes that
8 testified for us, I believe Angela Agagas, indicated
9 that the murder weapon in this case had come from that
10 InTown Suites armed robbery where your client and
11 Lennie Mickey had robbed a guest at the hotel, and
12 during the robbery had stolen the .38-caliber revolver.

13 And she indicated that that same .38-caliber
14 revolver was used in the murder of the victim in the
15 other case.

16 Q Okay. And this Angela Agagas, she was actually
17 his girlfriend at the time?

18 A I believe she was a girlfriend of Mr. Phillips.

19 Q This is Mr. Phillips.

20 A Yes.

21 Q And did she give you several different
22 statements about what happened the night of the murder,
23 and the night of the armed robbery?

24 A Absolutely.

25 Q She gave you many different statements?

1 A Well, I mean, she gave the police different
2 statements. And I believe the statement she gave us
3 was different from the police. I mean -- for which she
4 was very thoroughly impeached when she took the stand.

5 Q By Mr. Peper?

6 A Yes.

7 Q Okay. When -- do you recall how many times you
8 had interviewed her prior to this trial?

9 A I have no idea, two or three I would guess. I
10 mean, I know it was more than once.

11 Q And one of the issues, I think the first issue
12 in his application, is that there were discrepancies in
13 the description of the gun that was taken from the
14 armed robbery on Savannah Highway by Angela --

15 A I read that in your client's petition, yes.

16 Q And do you recall that she had different
17 testimony in different trials?

18 A That discrepancy never came to light until the
19 third trial in this sequence. Okay. The first trial,
20 there was no evidence whatsoever of the InTown Suites.
21 I believe at that time we either could not locate
22 Mr. Brown, who was the InTown Suites victim.

23 He was out of state, I remember, I think in
24 North Carolina. We either could not locate him or
25 could not get an out of state subpoena to him in time

1 to get him here for the trial. So we made no effort to
2 go into the InTown Suites robbery.

3 Your client was tried next in line, and we were
4 able to get him here. And the judge ruled that the
5 evidence was relevant and admissible.

6 But during the trial, nobody asked Mr. Brown to
7 describe the gun. They asked him what kind of gun it
8 was, he said it was a Colt .38 Detective, or something
9 like that, but not what it looked like. I believe
10 Ms. Agagas was asked what it looked like, and she
11 described the gun.

12 In any event, after that trial we had -- several
13 months later we had Lennie Mickey's second trial. And
14 it's during that trial that there appeared to be a
15 discrepancy in the description of the gun.

16 So bottom line is we didn't suppress anything.
17 We didn't find out about it until the third trial. And
18 we found out about it the same time everybody else did.
19 As a matter of fact, that information was elicited by
20 us.

21 Q Well, what seems peculiar is that you testified
22 that you had sent it to ballistics, I think, and they
23 had found that eight -- it was a possible match of
24 eight bullets could have come from -- or, no, eight
25 different guns. The bullet could have come from eight

1 different guns; isn't that correct?

2 A If you say so. I really don't know. If I'm not
3 mistaken, as a general rule when you don't have the
4 murder weapon, which I don't think we had the murder
5 weapon in this case, recovered after the fact that is,
6 the best SLED can do is give you a number of
7 manufacturers that could have fired a particular
8 bullet.

9 I think that Colt weapon was one of the ones
10 that could have fired that particular round.

11 Q Okay. So I'm trying to narrow down, when did
12 you actually know that Angela Agagas' testimony about
13 the description of the gun was different from the
14 victim Alec Brown's testimony?

15 A During Lennie Mickey's second trial.

16 Q So after Mr. Phillips' trial?

17 A After your client's trial, I think. And the
18 trial frame was, if I may refer to my notes, it was 12
19 weeks after.

20 Q But you admit that there was a discrepancy in
21 the description of the guns?

22 A Sure, I admit that. It appeared from the
23 transcript, and as I said, we were the ones that
24 brought out the discrepancy.

25 Q And the judge in the third trial -- well, Lennie

1 Mickey's second trial -- did not allow the evidence of
2 the murder that was on Savannah Highway?

3 A Did not allow the evidence of the armed robbery
4 on Savannah Highway, that's correct.

5 Q And you wanted to get that into evidence to show
6 identity; is that correct?

7 A Identity and the identity of the weapon, yes.
8 And thought it was relevant then, and think it's
9 relevant now. With all due respect to Judge
10 Harrington, she thought otherwise.

11 Q Do you recall whether or not she had stated in
12 her trial that Angela Agagas' testimony was not
13 credible, and that was one of the reasons that she was
14 not allowing it?

15 A Yes, I remember her stating that. And I think
16 primarily the reason she stated that is because Angela
17 Agagas had admittedly falsely accused Lennie Mickey as
18 being involved, I think, in a another armed robbery,
19 completely unrelated armed robbery.

20 And like I said, Ms. Agagas was a prostitute,
21 had given various stories and everyone knew that. And
22 she was impeachable.

23 Q And those issues came up in Shawn Phillips'
24 trial as well?

25 A I believe so, yeah, I don't think there was a

1 secret.

2 Q Did you provide to Mr. Peper -- well, let me ask
3 you this. You received a Rule 5 motion and a Brady
4 motion?

5 A I am assuming that we did, yes.

6 Q And did you comply with that motion?

7 A Yes, we did.

8 Q And did you -- or do you recall, and from the
9 application that's in there, a statement from a Dora N.
10 Perkins?

11 A Yes, ma'am, I do.

12 Q Okay. And do you have personal knowledge that
13 you either gave Mr. Peper that information or not?

14 A I checked with our records, of which I have
15 provided to the Attorney General there, indicating that
16 that statement was provided to Mr. Peper I believe on
17 July something of 2008.

18 Q And Ms. Perkins' statement, do you need to
19 review it? Because I wanted to ask you a question
20 about it.

21 A If you are going to ask me questions about the
22 contents, I would have to read it, yes.

23 MS. HUNTER: May I?

24 THE COURT: You may.

25 MR. SPENCER: Is that Ms. Perkins' statement?

Direct examination of Bruce Durant

1 MS. HUNTER: Yes.

2 May I approach the witness, Your Honor?

3 THE COURT: You may.

4 Q (By Ms. Hunter) See if you can identify that.

5 A Yes. This appears to be the statement that we
6 have for Ms. Perkins.

7 Q Does Ms. Perkins indicate in her statement that
8 she saw two males at the scene of the crime at the time
9 of the shooting; is that correct?

10 A If you are going to ask me about the contents of
11 the statement, I'm going to have to take the time to
12 read it. And I think the statement speaks for itself.

13 Q Okay. That's fine.

14 MS. HUNTER: I offer it into evidence then, Your
15 Honor.

16 MR. SPENCER: Your Honor, I would -- I think
17 it's fine to offer it into evidence as something that
18 was provided to trial counsel, but not for the truth of
19 the matter asserted. It would be hearsay.

20 THE COURT: Okay. Is it offered for that
21 limited purpose?

22 MS. HUNTER: Yes, Your Honor.

23 THE COURT: Okay. It's admitted for that
24 limited purpose. Is it in the packet yet? I don't
25 know that I have seen that statement.

1 MS. HUNTER: I don't know.

2 MR. SPENCER: It was in my packet, Your Honor.

3 (Whereupon, Applicant's Exhibit No. 1 is
4 admitted into evidence.)

5 MS. HUNTER: Your Honor, I'd like to approach
6 again.

7 THE COURT: Yes, please.

8 Q (By Ms. Hunter) Do you recognize these,
9 Solicitor?

10 A I recognize those because you showed them to me
11 this morning.

12 Q And does it have in there that you have provided
13 those to Mr. Peper?

14 A I also provided the Attorney General with our
15 documentation showing that Mr. Peper signed for these
16 as well.

17 Q And are those the two --

18 A Or that his office signed for them, I should
19 say.

20 Q I'm sorry, what?

21 A Or that his office signed for them, I should
22 say.

23 Q Okay. And does it indicate to you that those
24 are the two individuals that Ms. Perkins saw that
25 night?

1 A Once again, I think the document speaks for
2 themselves, but that's what it appears to be, yes.

3 MS. HUNTER: Once again I'd like to offer these
4 into evidence for that purpose, Your Honor.

5 MR. SPENCER: Your Honor, my understanding for
6 the limited purpose wouldn't be to prove that she
7 actually identified those individuals, it would be for
8 the purpose of just showing that counsel received those
9 items.

10 THE COURT: And they're admitted for that
11 purpose. As I understand what Mr. Durant said is they
12 were provided in July of 2008; is that correct?

13 THE WITNESS: That's correct, Your Honor.

14 THE COURT: Trial was August 5th?

15 THE WITNESS: Yeah. And I also think it had
16 been -- there was a previous attorney in this, if I'm
17 not mistaken. I think it may have been Jim Smiley,
18 perhaps, and I think it was provided to him as well.

19 And I think when Mr. Peper became involved in
20 the case, we gave it all to him as well.

21 THE COURT: Thank you.

22 (Whereupon, Exhibit Nos. 2 and 3 are admitted
23 into evidence.)

24 Q (By Ms. Hunter) And one further question is
25 that do you have any personal knowledge on whether or

1 not there was any investigation done either by the
2 police department or your office after they received a
3 statement from Dora Perkins?

4 A We tried to find Dora Perkins in preparation for
5 trial, but were unable to do so. And if you notice
6 from the statement, she actually gave no address in her
7 statement.

8 We were never able to locate her. We tried to
9 locate her. We tried to get North Charleston Police
10 Department to locate her, but from what the detective
11 was telling us she was just kind of a transient and
12 apparently was just living in the hotel briefly at the
13 time. I'm suspecting she was probably a prostitute too,
14 and we never could put our hands on her.

15 Q Was there any follow-up that you know of of
16 these two individuals that she identified?

17 A I'm not sure what the detectives did. I don't
18 know if they picked them up and talked to them or what
19 they did. I just don't remember.

20 MS. HUNTER: Beg the Court's indulgence for just
21 a second.

22 THE COURT: Yes, ma'am.

23 MS. HUNTER: I have no further questions for
24 Mr. Durant.

25 THE COURT: Okay. Cross-examination.

Cross-examination of Bruce Durant

1 MR. SPENCER: Thank you, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. SPENCER:

4 Q Mr. Durant, as you mentioned there were three --
5 I don't know if you said the number -- but there were
6 three different prostitutes that testified at trial
7 against Mr. Phillips?

8 A That's correct.

9 Q And is it fair to say that all three of them
10 spent a fair amount of time with Mr. Phillips?

11 A Yes.

12 Q And --

13 A Two of them more so than the third. I think --
14 I am trying to remember the names. Angela Agagas.
15 Angela Agagas, I think, was Mr. Phillips' girlfriend.
16 And there was another one named Alana Niesen, I think,
17 that was kind of in the core group.

18 Q Nicknamed China?

19 A Yes. Then I think Sandra Barnes, once again if
20 I'm recalling correctly, kind of got involved toward
21 the end because she was the one that had had some
22 experience, I believe, with this victim, and was going
23 to help them set the victim up.

24 Q Now, would it be your recollection China is the
25 one who actually had experience with the victim, was --

1 the victim was her client, if you will?

2 A I know he was a client of one of the three.
3 Quite frankly, I just don't remember which of the
4 three.

5 Q And the third one would be the one that actually
6 went over to the hotel?

7 A Yes.

8 Q And she would be the one who spent the least
9 time with Mr. Phillips?

10 A That is my recollection. As I said, it's a bit
11 fuzzy over time, unfortunately.

12 Q And I don't know how much opportunity you had to
13 look through Dora Perkins' statement, but she didn't
14 have -- she wasn't around any of these individuals for
15 any length of time. She is someone who maybe saw
16 somebody walk past her door?

17 A Well, I think they were basically trying to talk
18 to anybody that might know something about this
19 killing. And I think they were interviewing occupants
20 of this hotel and surrounding hotels and I think came
21 up with her statement during that canvassing process.

22 As I said, later when we were trying to locate
23 her to talk to her, we couldn't find her. And I was
24 talking to the detective about her, and he had
25 indicated to me that he thought that she was not

1 mentally all there.

2 Q Now, I wanted to ask you about the gun, the
3 testimony concerning the gun that was stolen --

4 A Yes, sir.

5 Q -- prior to this murder. And what came up -- as
6 I understand your testimony, what came up at Mickey's
7 second trial is that the gun description that Angela
8 gave didn't match the gun description that the
9 contractor gave.

10 A That's correct.

11 Q The victim of that robbery?

12 A As I recall, the principle difference was, I
13 think, she was saying it was silver and he was saying
14 it was blue, dark blue.

15 Q Is it fair to say that in descriptions of, say,
16 automobiles or clothing that they -- that a witness
17 will give --

18 A I would tell you this.

19 Q -- differing testimony as to the actual color of
20 the items?

21 A I will tell you this, that in 30 years of doing
22 this, descriptions you get are the least probative
23 evidence you will ever receive in any kind of case.

24 Q Do you recall, though, that the victim of the
25 armed robbery, I think his name was --

1 A Of the InTown Suites?

2 Q Alec Brown?

3 A Yes, sir.

4 Q That Mr. Brown said that he had several live
5 rounds -- and that it was a snub-nose and he had
6 several live rounds in it?

7 A That's correct. And as I recall, they were
8 unusual rounds.

9 Q Starfire?

10 A Yes.

11 Q And when the SLED expert that you called
12 testified, she testified that there was only eight
13 possible weapons or guns that could have fired that
14 ammunition?

15 A Yes. I think that Ms. Hunter pointed that out.

16 Q And two of them were Dillingers?

17 A Correct. I remember that.

18 Q And in her opinion it was a revolver, so it
19 narrowed it down to six possible revolvers?

20 A That's correct.

21 Q And none of them were terribly common weapons?

22 A I'm not sure. As I recall this was a Colt. And
23 a Colt, I think, is not considered a rare revolver, no.

24 MR. SPENCER: Beg the Court's indulgence.

25 THE COURT: Certainly.

1 Q (By Mr. Spencer) A .38 snub-nose Colt type of
2 special, would that be consistent with what your
3 recollection of the description of the gun was?

4 A I believe that's how Mr. Brown described it,
5 yes.

6 MR. SPENCER: Beg the Court's indulgence.

7 THE COURT: Sure.

8 Q (By Mr. Spencer) And just getting back to that
9 issue, too. Part of the probative value -- in your
10 mind was part of the probative value of having the
11 testimony about that prior robbery, the gun stolen from
12 that prior robbery, the fact that the ammunition was
13 somewhat rare and consistent --

14 A That was my recollection. That because of the
15 rareness of the -- obviously, from what Ms. Agagas told
16 us that the gun stolen from this InTown Suites robbery
17 was the one used to murder the victim in our murder
18 case, the forensic evidence that we had confirmed that
19 that type of weapon was one of the ones that could have
20 shot it.

21 And it was our theory of the case that that was
22 probative of the identity of both of these people
23 because they were both involved in that same robbery,
24 and it was a fairly short period of time, as I recall,
25 between that robbery and this murder.

1 Q And it would be fair to characterize your
2 position on that that notwithstanding Judge
3 Harrington's ruling on it, even with the difference in
4 descriptions of the actual weapon, that that would be
5 something that would go to the weight rather than
6 admissibility?

7 A It certainly was our position on it. I didn't
8 view the discrepancy in the description of the weapons
9 as being a major point at all, quite frankly. I think
10 it would have been more unusual if they described it
11 exactly same way.

12 As I said, I have been doing this 30 years and
13 descriptions just are all over the place, whether you
14 are talking about a car or a person or another object.

15 Q And is it fair to say you had plenty of other
16 evidence to prove identity, Mr. Phillips' identity,
17 even if the gun had been excluded?

18 A Absolutely, we did. If I'm not mistake, he put
19 himself there at the scene. I think he tried to put
20 himself in the car outside, but he put himself at the
21 scene.

22 And so everybody else, all three of the other
23 witnesses that were a part of this conspiracy,
24 testified against him.

25 Q And in getting back to Mickey's second trial,

1 Judge Harrington also found Angela not credible based
2 on the fact that she had already framed, and admitted
3 framing, Mickey for one armed robbery?

4 A Right.

5 Q And is it fair to say the reason that she did
6 that was to protect Mr. Phillips?

7 A That's exactly the reason she told us she did
8 it. Because it was the two of them involved -- I
9 believe the two of them involved in that robbery. And
10 she -- or, no, it was I think Phillips and somebody
11 else was involved in that robbery, and she just
12 substituted Lennie Mickey in for Phillips, I think, to
13 protect her boyfriend.

14 Q And that's a separate one from the --

15 A I think it was the La Hacienda or something like
16 that.

17 Q The La Hacienda?

18 A Armed robbery.

19 Q Armed robbery.

20 A It was an armed robbery, yes. I believe the
21 other Mr. Durant handled that case.

22 MR. SPENCER: Your Honor, I don't have any
23 further questions. I would reserve the right to recall
24 Mr. Durant should I need to.

25 THE COURT: Certainly. Any redirect?

1 REDIRECT EXAMINATION

2 BY MS. HUNTER:

3 Q Mr. Phillips was never charged with these other
4 armed robberies, correct?5 A I don't think anybody was ever charged in the
6 InTown Suite armed robbery. We actually -- as a matter
7 of fact, that was an unsolved armed robbery. We didn't
8 realize -- we linked that up ourselves in trial prep.9 When we interviewed Ms. Agagas the first time
10 and we were asking her about where the weapon came from
11 and she told us about this robbery, and we went and
12 looked it up and in fact there had been an armed
13 robbery at this hotel at the time that she said it was
14 involving someone that had been robbed of a .38-caliber
15 revolver.16 Q Well, after she told you that Mr. Phillips and
17 Mr. Mickey were involved, why weren't they charged?18 A Because we were trying them for murder at that
19 time. Had we not convicted them of something, we may
20 have gone back and charged them.21 MS. HUNTER: I don't have anything further, Your
22 Honor.

23 THE COURT: Okay. Thank you.

24 Sir, you may step down.

25 THE WITNESS: Thank you, Your Honor.

Direct examination of Mark Peper

1 MS. HUNTER: Plaintiff calls Mark Peper.

2 MARK ANDREW PEPER,

3 after having first been sworn to tell the truth, the
4 whole truth and nothing but the truth testified on her
5 oath as follows:

6 DIRECT EXAMINATION

7 BY MS. HUNTER:

8 Q Good morning, Mr. Peper.

9 A Good morning.

10 Q So you were the trial attorney for Shawn
11 Demetrius Phillips in this murder and armed robbery and
12 conspiracy case?

13 A Yes, ma'am.

14 Q Okay. And I know it was a long time ago, but we
15 will try to -- I think you've got his application?

16 A Uh-hum.

17 Q Okay. You filed a Rule 5 motion, a Brady
18 motion; is that correct?

19 A Yes, ma'am.

20 Q And to the best of your knowledge, did you
21 receive all of the information from the solicitor?

22 A Yes, ma'am.

23 Q Do you recall receiving information regarding a
24 statement from Dora Perkins?

25 A No, I do not.

1 Q You do not?

2 A I mean, not off the top of my head. I would
3 assume that if -- based on the testimony I have heard
4 today, that I received a copy.

5 Q Okay. So you don't recall receiving a copy. Do
6 you recall receiving a copy of mug shots or any kind of
7 photo lineup that was associated with Dora Perkins'
8 statement?

9 A Again not -- we are talking a thousand pages of
10 discovery here over the course of my representation.
11 So, no, I don't -- I'm not trying to be, you know --
12 I'm not trying to throw you a curve ball here but the
13 answer is no.

14 No one ever specif -- I don't remember ever
15 being specifically handed specific pieces of discovery.
16 I remember receiving discovery and continuously
17 reviewing discovery and making copies of discovery and
18 going over discovery with your client. But to answer
19 your question, no, I don't know what specific pieces of
20 paper I was handed on what specific dates and by who
21 and all that.

22 Q If Dora Perkins' statement said that she was at
23 the scene of the crime when the gunshots went off and
24 that she identified two people in a mug shot, do you
25 think that you would remember that?

1 A Yeah. I mean, yeah, I would remember.

2 Q Do you believe that in your capacity in
3 representing Mr. Phillips that you would have
4 investigated or hired an investigator or found out if
5 the police department had followed up on those two
6 individuals?

7 MR. SPENCER: Your Honor, I object on
8 speculation. He has already answered he doesn't recall
9 receiving the items specifically.

10 THE COURT: Objection is overruled.

11 A Yeah. Ms. Hunter, I don't know, because our
12 trial strategy was that he was the driver of the car.
13 I mean, Shawn gave a statement. That statement was
14 coming into evidence, and we were going to go with that
15 story.

16 So to switch gears -- and nobody ever put Shawn
17 as a defendant coming out of the hotel room. Everybody
18 always put Shawn in the car. So I really don't think I
19 -- maybe the reason I don't specifically remember that
20 piece of discovery is because it wasn't really relevant
21 to my position at trial, or anybody's position at
22 trial.

23 Q So it wasn't relevant to your theory?

24 A No.

25 Q Was there any -- as follow-up to that statement

1 -- was there any testimony or evidence that put Shawn
2 Phillips in that hotel room where the victim was
3 murdered?

4 A No.

5 Q What about Sandra Barnes?

6 A Which one was she?

7 Q Um.

8 A Let me answer it like this. To the best of my
9 recollection, in reviewing discovery and discussing the
10 case with the prosecutors and my client, the only
11 theory that anyone ever discussed was the fact that a
12 prostitute, a female prostitute knocked on the door;
13 when the victim opened it, she and another gentleman
14 rushed into the room, maybe two gentlemen rushed into
15 the room.

16 Again, the reason I'm not familiar is it wasn't
17 Shawn, and that's all I care about. And one of them
18 put a bullet in the victim's head. They ran out,
19 jumped in the car, which Shawn was driving, put a gun
20 to Shawn's head and told him, drive or you're next.

21 So I didn't focus on -- I don't remember --
22 first of all, it was four years ago. But second of
23 all, I would not have spent a whole lot of trial prep
24 focusing on who went into the room and who was seen
25 leaving the room and whose prints were in the room.

1 It didn't matter to me. I didn't represent any
2 of those people. I represented the alleged driver who,
3 under the hand of one hand of all theory, was going to
4 go down for this like everybody else.

5 And that's what my focus was is, you know, did
6 he have a chance to get out of there or was he under
7 duress, and how did I get the judge to charge duress,
8 and those kinds of things.

9 Q Okay, thank you. So if there was a female that
10 was in there that let the perpetrators into the --

11 A Yeah.

12 Q That is kind of who I want to get into, but if
13 you don't have any recollection of her. What I wanted
14 to get into was she was at the -- and this is in the
15 application -- she was at the police station and she
16 identified somebody named Dominic Blue in a photo and
17 said, that is the guy that was with him and his name is
18 D.

19 And then the police took her down the hall and
20 pointed to Shawn in a two-way mirror and said, is that
21 the guy? And then she changed her mind and said he was
22 the guy. Do you recall anything about that?

23 A I do.

24 Q Okay.

25 A But just to be clear, that individual that made

1 those statements, I called her China Doll. Are we not
2 talking about the same person?

3 Q China Doll is not Sandra Barnes over there.

4 A Okay. So who --

5 Q I don't mean to be off color, but --

6 A Just tell me --

7 Q -- the victim wanted anal sex, and China Doll
8 wasn't going to give it to him so she sent this other
9 girl.

10 A That's right. Okay. So Sandra, is that who you
11 are referring to picked out D?

12 Q Yes.

13 A Yeah, okay. I'm with you. I'm with you. All
14 right. Yeah, we made a huge stink about that at trial
15 because Sandra's statement was, me and this guy D, and
16 I believe she said Lennie. I think it was Sandra and D
17 and Lennie Mickey were the ones that went into the
18 room.

19 So her testimony or her statement originally,
20 and I'm kind of flying by the seat of my pants here,
21 but -- just bear with me, or feel free to correct me --
22 Sandra was essentially saying, I know Lennie, I have
23 known him a long time, I have done licks with him and
24 whatnot. But the guy D, I don't really know him, but I
25 will try to pick him out of a lineup for you.

1 And so our concern was that when she was handed
2 a mug shot of a gentleman by the name of Blue, not
3 Phillips, Blue, she identified that person as D. I
4 don't know if it's the same day or not, but further
5 investigation revealed that she then was asked to go
6 see if she could make an out-of-court positive
7 identification of D, and Shawn Phillips happened to be
8 the only one in the room.

9 It wasn't even 50/50. It was like, we are going
10 to put Shawn in this room and let's go make sure that
11 that's D, even though -- or Blue -- even though she had
12 just said, this is D. And, you know, we hammered that
13 at trial. We hammered it.

14 And there was no doubt in my mind that this,
15 whatever she is, had no credibility whatsoever. And I
16 didn't believe -- I don't think anybody believed
17 anything she was saying at that point.

18 Q You actually had an in-camera hearing or a
19 motion in limine about that?

20 A Yes.

21 Q And do you recall whether or not you objected
22 after it was testified to during the trial?

23 A Objected to?

24 Q Her in-court identification as being
25 impermissibly suggestive?

1 A All right. So your question is?

2 Q My question is, first you have a hearing.

3 A After the in-camera hearing. Well, I would be
4 willing -- the answer is, I don't know. I am assuming
5 you are going to tell me that I did not make a
6 contemporaneous objection at trial?

7 A That's correct.

8 Q All right. If that's true, I don't know. I
9 mean, it would be easy to find the record. If there is
10 no objection from me, then I made a mistake.

11 You know, the problem with this case is that you
12 have this in-camera hearing, and this was Judge
13 williams, who is very cordial, but very strenuous on
14 his rulings. If he made a ruling, that was his ruling.

15 And at the end of his in-camera hearing while I
16 didn't like the ruling, the ruling was that it's coming
17 in. And I am all about preserving the record for my
18 client and making sure. So I would find it hard to
19 believe that I did not simultaneously object just to
20 protect him.

21 However, having said that, like with all other
22 in-camera hearings, once Judge williams makes a ruling,
23 and all judges for that matter, you respect that ruling
24 when it comes time to try to get that evidence out, you
25 do it in a way where you are protecting your client,

1 but you ain't upsetting the Court who's already made
2 his ruling clear.

3 If you are telling me that you can show me in
4 the record that I did not simultaneously object --

5 MR. SPENCER: Objection --

6 THE COURT: Do you have an objection?

7 MR. SPENCER: If I may interject, yeah.

8 I'm getting confused as to what in-camera
9 hearing we are talking about. I show we had --
10 basically, I want to first understand what hearing we
11 are referring to. Because I thought we were starting
12 about a Neil versus Biggers hearing, and I'm not sure
13 what we are talking about anymore.

14 THE COURT: My understanding is that we were
15 talking about the in-camera hearing on the photographic
16 lineup, but now we are moving to the in-court
17 identification. Are those two separate things?

18 MR. SPENCER: And I am pretty sure there wasn't
19 even a hearing on the in-court identification, or there
20 wasn't a Neil versus Biggers hearing, which is kind of
21 where I feel we are derailing from what actually
22 happened.

23 MS. HUNTER: Beg the Court's indulgence for just
24 a minute.

25 THE COURT: Sure. That's fine.

1 MS. HUNTER: The transcript is huge, as you well
2 know.

3 Q (By Ms. Hunter) All right. I'm going to back
4 up just a little bit to clarify the record. I have
5 conferred with the attorney general, and we are in
6 agreement that there may not have been an in-camera
7 hearing for an in-court identification for Sandra
8 Barnes.

9 And so and I know your answer is you don't
10 recall --

11 A Yeah, I don't.

12 Q -- Whether or not there was or not. But -- and
13 then -- and I want to stay in the lines of
14 identification. I know there was a Lyle hearing, you
15 know, for prior bad acts for that armed robbery that
16 occurred.

17 Tell the Court about that, if you can remember.

18 A I remember prior to trial discussing with Shawn
19 that there was a possibility that some random guy was
20 going to get up here and say he had a gun stolen and
21 they were going to somehow try to connect that gun that
22 was stolen with the murder weapon.

23 And I, to be honest with you, I kind of blew it
24 off. I didn't really see the point of any of that --

25 Q And you actually didn't know of any of this

1 until the day of trial; is that correct?

2 A I have no idea. No clue. I don't remember
3 receiving any, like, discovery or anything on this
4 gentleman. I mean, he would have been -- I am assuming
5 they turned their witness list over to me before the
6 day of trial, so I would have seen that.

7 But, no, I didn't -- I wasn't worried about it,
8 to be honest with you. It didn't matter to me whether
9 this guy testified or not. To me it didn't have
10 anything to do with whether or not my guy was under
11 duress, or whether he was a material part of this
12 robbery, this murder.

13 Q But did it worry you that they were trying to
14 say that he has done it before and this is the gun that
15 he stole and he used it?

16 A Well, that's not what they were trying to say.
17 That may have been -- and that was my objection to
18 Judge Williams allowing it in is that that may have
19 been what the jury inferred, which is what I was trying
20 to prevent. But the actual Court's ruling was I'm
21 going to allow this testimony in as identification that
22 it was the same gun used.

23 And, I mean, I objected to it. But hindsight
24 being what it is, I mean, who cares. Nobody ever said
25 my guy was pulled the gun or my guy possessed the gun

1 or went upstairs with the gun.

2 I personally didn't know why the jury would care
3 what gun it was that was used to murder this guy. I
4 wanted them to understand that when this guy was being
5 murdered, my client was way downstairs in his car, told
6 him not to leave or he'd get his head blown off.

7 So, I mean, I didn't really care about the Lyle
8 stuff. I don't think the Judge -- I don't think he
9 should have let it in, but what are you going to do? I
10 mean, the guy says it's coming in. You just roll with
11 it and say, okay. I mean, you just roll with it.

12 Q Do you recall whether or not -- and this was in
13 his PCR application -- states, the applicant submits
14 that while his counsel did make a motion in limine to
15 suppress the prior bad act evidence, he failed to
16 object to the admission of the evidence to the jury.

17 A What evidence?

18 Q Of the murder -- not murder, excuse me -- armed
19 robbery on Savannah Highway.

20 A There was no evidence of the murder -- I mean,
21 armed robbery.

22 Q Not murder, an armed robbery. The one with Alec
23 Brown.

24 A There was never any evidence. There was
25 testimony, that's not evidence.

1 Q I know, but you didn't make any motion to
2 suppress --

3 A Suppress what?

4 Q Any evidence of an armed robbery that had
5 nothing to do with --

6 A There was no evid -- Ms. Hunter, what I'm trying
7 to tell you is unless you want to come show me
8 otherwise, there was no evidence to object to. There
9 was testimony, which I had a field day on cross. But I
10 don't know what evidence you are referring to that came
11 -- that I would have objected to coming in with regards
12 to that West Ashley armed robbery.

13 Q Because they -- what they were saying is that
14 the armed robbery in West Ashley, the gun that was
15 stolen was the gun that was used in the murder that he
16 was on trial for, and that was not objected to. Any of
17 that armed robbery was not objected to in front of the
18 jury.

19 I know that your position is, I don't care where
20 the gun came from, but --

21 A I just don't understand the question, because I
22 -- if you could tell me what evidence came in?

23 Q The gun came in. They said that eight different
24 guns could have shot that victim.

25 A Right. Right.

1 Q And they were claiming -- they were claiming --
2 their theory, according to solicitor Durant, was that
3 it was from that armed robbery which he was implicated
4 in.

5 A Yeah. I don't think the jury gave any care in
6 the world where the gun came from. The ruling from the
7 in-camera hearing was, Peper, the gun is coming in. I
8 would feel certain that I made the cart blanche, Your
9 Honor, we object, I know you're ruling, okay, thanks,
10 it's coming in.

11 If you tell me I didn't, I didn't. And I don't
12 know why, other than I had a whole lot more things to
13 worry about at the time than a gun that was never in my
14 client's hands.

15 Q Okay. All right, now we are going to go to a
16 different subject. Shawn Phillips was -- in the
17 transcript over and over again -- he was on Seroquel
18 and Zoloft, which you described as an anti-psychotic
19 and an anti-depressant.

20 A Uh-hum.

21 Q And therefore his statement should not be
22 allowed, I guess.

23 A Uh-hum.

24 Q Or they shouldn't have been allowed to question
25 him.

1 A Uh-hum.

2 Q Did you do anything to have him evaluated to
3 find out if he was competent to stand trial, or if he
4 understood what was going on?

5 A No.

6 Q Did he have a 5th grade education, or do you
7 remember?

8 MR. SPENCER: Your Honor, I object. I don't
9 think there has been any -- I don't think there was an
10 allegation in the application concerning competency.

11 MS. HUNTER: There was an allegation -- well,
12 you know, in the application that his statement was
13 involuntary. And on page 8 it says, counsel can
14 establish third criteria outlined in Williams testified
15 by showing that police had knowledge of special
16 characteristics of accused such as being a mental
17 patient, as well as being illiterate and on medication.

18 MR. SPENCER: That would be at the time of the
19 statement, not the time of trial.

20 THE COURT: I think that was part of the
21 argument that counsel attempted to raise, that the
22 statement wasn't proper, and the statement wasn't
23 voluntary. I'm going to overrule the objection.

24 THE WITNESS: I'm sorry, can you repeat the
25 question?

1 THE COURT: It is in the application on page 8.

2 Q (By Ms. Hunter) 5th grade education, Seroquel,
3 Zolofit. You argued that --

4 A I guess -- I think your question was, did you
5 have him evaluated. My answer is no.

6 Q No?

7 A I guess your next question, even though -- my
8 answer still is, no. Shawn and I were doing just fine.
9 There was no doubt in my mind that he was competent to
10 assist me in my defense and help me, and he was very
11 helpful.

12 THE COURT: And, Ms. Hunter, I do agree with the
13 attorney general as to whether he was evaluated at the
14 time of trial. I did not see that raised in the
15 application. It's only raised as to the voluntariness
16 and the propriety and the knowing -- allegedly knowing
17 the nature of the statement that they tried to
18 suppress.

19 MS. HUNTER: Okay. Thank you, I understand.

20 Q (By Ms. Hunter) why did you raise the defense
21 of duress?

22 A Once the Jackson v Denno hearing had taken place
23 and it was very clear that his statement -- some would
24 call a confession -- was going to be presented to the
25 jury, with many decisions that you make in a murder

1 trial, they are as -- they are the best decision you
2 can make at the time with the evidence that has been
3 presented, and what you know has already transpired in
4 the case, your feel for the jury, what the witnesses
5 are going to say, et cetera, et cetera.

6 Having said that, I presented Shawn with
7 essentially a change in trial strategy prior to the
8 trial starting but after pretrial hearings, whereby we
9 would go with our statement and our theory would be
10 that we were in fact present; that we did not take part
11 in the conspiracy, but that we were told ahead of time
12 what was going to go down.

13 And that I felt as though, and Shawn agreed,
14 that our best chance to receive a not guilty verdict
15 was to essentially shift the blame of the mastermind
16 and the vindictiveness of this crime over and on to the
17 other members who we knew were going to testify that,
18 yes, I was the one that busted in the door, I was the
19 one that took part in the murder, I was the one that
20 ran downstairs.

21 And we felt like that would be a better option
22 than trying to convince the jury that his confession
23 was involuntary or coerced. That's a long-winded
24 answer to your question. But the reason I did not
25 focus so much on having him evaluated and those kind of

1 issues to see if he had the ability to write that
2 statement/confession is because it became very clear to
3 me, and maybe I made a mistake, I have made them before
4 and I'm sure I'll make them again in trial, there are a
5 lot of things going on in your mind.

6 But I felt that it would be in my client's best
7 interest to switch gears and go with the duress theory
8 in an attempt to get an acquittal. I will say that
9 Shawn and I were a very good team. But our team was
10 pretty much limited to me and Shawn.

11 I had two law clerks at the trial counsel table
12 with me. But his family wasn't -- I think I met his
13 mom once. I heard from his sister two days after the
14 conviction. The team that we were going back and forth
15 making these split-second decisions was essentially me
16 and Shawn.

17 And that's why I never had competency issues
18 with him because I could say, hey, you want to switch
19 gears here? And he'd say, well, why do you want to do
20 that? And I'd talk to him about it. And he'd say,
21 well, what about this? And I'd say, no, I think I got
22 that covered. And, boom, we were off and running.

23 Q well, in the application he states that defense
24 -- the defense of duress is an affirmative defense for
25 armed robbery and conspiracy and not murder.

1 The judge's charge to the jury did not state
2 exactly that. It just stated that it was a defense,
3 but it did not apply to murder.

4 A That's good. You mean -- I'm sorry, maybe I
5 misunderstood you. You are saying the judge said --

6 Q The judge said, it's a defense and he is
7 asserting a defense of duress.

8 A Right.

9 Q And described the defense. But he said, this
10 does not apply to murder.

11 A That you can't use it as a defense to murder?

12 Q But he didn't say it can be a defense to armed
13 robbery or conspiracy.

14 A Okay.

15 Q And so one of his PCR application petitions is
16 that there was no objection to that.

17 A An objection to the jury charge?

18 Q Yeah.

19 A That is the right charge. That is right. And
20 you can -- duress is a defense to conspiracy and armed
21 robbery, but it's not a defense to murder. And that's
22 exactly what the judge said. There is nothing to
23 object to.

24 Q This is not in order, I just thought about this.
25 The Blue, do you remember the Dominic Blue that we were

1 all talking about earlier that Sandra Barnes had
2 identified?

3 A Uh-hum.

4 Q You got a picture of him in your discovery. Did
5 you offer that picture into evidence?

6 A I did not.

7 Q Okay. Is there any reason?

8 A There is.

9 Q Okay.

10 A If Shawn Phillips has a twin brother, that's
11 him. He looks exactly like Shawn. And again, a
12 split-second decision as I am cross-examining this
13 prostitute, drug dealer. She is lying. I am trying to
14 catch her in lies. I already know the judge has told
15 me, you know, be careful on this question, be careful
16 on that question.

17 I'm trying to get her to say, I picked out the
18 wrong guy. I go to submit it into evidence. I look
19 down and I think, huh, this looks exactly like Shawn.
20 No wonder she picked out the wrong guy. I ain't
21 putting this into evidence. I don't want them to see
22 it. I just want them to hear from me that she picked
23 out the wrong guy.

24 I don't want to give them the chance to say,
25 well, no wonder she picked out the wrong guy. So the

1 answer is I decided not to put it into evidence. It
2 was not -- the State on redirect never thought about
3 putting it into evidence.

4 And it was a good thing we didn't because one of
5 the first questions from the jury was, can we see a
6 lineup or can we see the picture of this guy Blue that
7 Sandra picked out.

8 And again, on my feet I immediately jumped up
9 and said, judge, it ain't into evidence. It doesn't go
10 back there. And he said, well, we can stipulate to
11 making it part of the evidence. And I said, no, I
12 think we are good. So we didn't put it back.

13 Q So he gave you the opportunity to go kind of
14 backwards and let it in?

15 A If I recall, and I haven't looked at the
16 transcript, as I recall Judge Williams essentially
17 said, what do you all want to do? And I said, well, I
18 don't think it's part of the evidence, Judge.

19 And he said, well, it's a court exhibit, or
20 there was some talk where Rutledge and I kind of
21 stepped out and said, do you care if it goes in? well,
22 no, yada, yada. And I said, you know, judge, my
23 position is it wasn't tendered, it wasn't submitted
24 into evidence, and I don't think it goes back there
25 with them.

1 And he said, well, you're right. I just wanted
2 to check with you all to make sure I didn't miss
3 anything. And Rutledge and I both agreed, no, I didn't
4 put it in, you didn't put it in, doesn't go back there.

5 MS. HUNTER: Beg the Court's indulgence just so
6 I can see if I can get that picture.

7 May I approach the witness?

8 THE COURT: You may.

9 Q (By Ms. Hunter) I know it has been four years,
10 you may not recognize that photograph.

11 MR. SPENCER: If I may see that first, Your
12 Honor?

13 MS. HUNTER: Oh, Sorry.

14 MR. SPENCER: It's okay. That's Don Perkins.

15 MS. HUNTER: But he is saying it's the same one
16 as Blue.

17 MR. SPENCER: There is no foundation in that.

18 MS. HUNTER: Unless he identifies --

19 Q (By Ms. Hunter) You don't know this picture?

20 A That's not what you are looking for, I don't
21 think.

22 THE COURT: I think it was a side view in the
23 photographic lineup that she looked at. Let's take a
24 break for five minutes. We will be at ease while you
25 take a look at that, and give my court reporter a

1 break.

2 (Whereupon, a recess was taken.)

3 MS. HUNTER: Judge, may I approach the witness?

4 THE COURT: You may.

5 Q (By Ms. Hunter) Can you identify this for me,
6 please?

7 A Yes, ma'am. This was page 290 of my discovery
8 that I received. It's a mug shot of Dominique Lamar
9 Blue from the Charleston County Detention Center. It
10 is dated 12/14/06 at 2:50 p.m. SB, which I assume are
11 the initials of Sandra Barnes.

12 And she has written on the bottom, this is -- I
13 think, this is who I know -- I'm sorry -- I know this
14 person as D.

15 Q Thank you. And he's known as D as well, is that
16 correct, Shawn?

17 A I think that one of his street names was D,
18 yeah.

19 MS. HUNTER: I'd like to offer this into
20 evidence, Your Honor.

21 MR. SPENCER: Your Honor, may I look at it? I
22 don't anticipate an objection, but I just want to
23 double-check something.

24 Your Honor, I have no objection.

25 THE COURT: Without objection.

1 (Whereupon, Applicant's Exhibit No. 4 is
2 admitted into evidence.)

3 Q (By Ms. Hunter) There was one other thing that
4 the jury came back and asked for. They asked for this
5 picture, but they also asked for a statement. And I
6 don't know if you recall, or if I can jog your memory,
7 but I believe it was Mary Robinson who testified that
8 Shawn Phillips was afraid of Lennie Mickey.

9 A Uh-hum.

10 Q Tell the Court what happened with that?

11 A Well, actually I don't think she was allowed to
12 testify because I think we did an in-camera on her as
13 well, maybe. But I don't think she was allowed -- I
14 think her testimony was limited to her firsthand
15 knowledge of her relationship with Lennie Mickey in the
16 past.

17 I don't think the judge allowed -- I tried to
18 solicit testimony from her to the point that she knew
19 that Shawn and other people were scared to death of
20 Lennie Mickey, and that there had been a prior
21 statement made out of court by Shawn to the -- who was
22 testifying, I can't remember.

23 Q Mary Robinson.

24 A Thank you -- Ms. Robinson where he basically
25 said, I'm scared to death of this guy. I don't think

1 the jury ever heard that.

2 what the jury did hear, that I know the jury
3 heard, was that she had physically seen Lennie Mickey
4 at her house outraged about something. And that she
5 saw his eyes were glassed over and that he was a
6 maniac. And I solicited all that to try to get the
7 jury to understand that this would go along with our
8 theory that he physically placed Mr. Phillips under
9 duress and did not give him an option but to comply.

10 so, yeah, we solicited that rather successfully,
11 I thought. I would have liked to have heard hearsay
12 stuff that he ruled was hearsay about, yeah, I have
13 heard Shawn actually say, I'm scared of him. But I
14 don't think we got that in.

15 Q Okay. And do you recall if there was a
16 statement made by Mary Robinson corroborating what she
17 had told you, that the jury had asked for?

18 A In writing? I don't remember if there was a
19 written statement by Mary Robinson or not.

20 Q Okay. I'm going to go back again, I'm sorry to
21 flip around a little bit. But in the beginning when we
22 went over Dora Perkins' statement, and the two
23 photographs. If you had had those in your possession,
24 would you have gone over those, over that statement and
25 those pictures with Shawn Phillips in defending him?

1 A Yes. And let me elaborate on that a little bit.
2 At the time that I was trying this case, and still am a
3 solo practitioner, I had two law clerks working for me
4 over the summer from the Charleston School of Law, and
5 a paralegal specifically assigned to Shawn's case.

6 I know that I sent them out to the detention
7 center to meet with Shawn at lease three or four times
8 with the specific instruction of, we have received
9 additional supplemental discovery, go take a copy to
10 Shawn, go over it with him, explain to him why this may
11 impact us.

12 So I feel 100 percent confident in saying that
13 every single piece of discovery I received, I went over
14 -- either I, personally, or an agent of my office went
15 over every single piece of discovery with Shawn.

16 I believe -- I know that's a long-winded answer
17 to your question, which I believe was, did you review
18 that specific piece of material with Shawn. I cannot
19 testify with certainty as to remembering specifically
20 talking about that with him. All I can say is that if
21 it was in my file, it got reviewed with Shawn.

22 Q Well, it's important. It was exculpatory if --

23 A Right.

24 Q -- there was somebody there at the scene that
25 saw somebody else leaving gunshots?

1 A well, I think the only -- you know, hindsight is
2 easy to sit here and analyze this. But I still am a
3 little confused as to the weight that the jury may have
4 given it. I don't know that -- I don't know really why
5 it would have been so important to make sure that I got
6 that into evidence.

7 So not only do I not recall whether or not I
8 reviewed it with him, assuming I did -- assuming it was
9 in my file, it got reviewed with him. Assuming it got
10 reviewed with him, it may have been a decision that
11 Shawn and I made, well, this doesn't necessarily help
12 us.

13 To be honest with you, I just can't recall. I
14 mean, I will tell you this. I have known Bruce and
15 Rutledge -- I have been doing this over seven years
16 now, which is not a whole lot of time, but that's
17 enough to know these guys are legit. They're not going
18 to withhold evidence from me. They're not going to
19 throw me under the bus. I mean, they are stand-up
20 prosecutors. They do everything by the law.

21 If their position is that they gave this to me
22 in discovery, then I take them at their word for it and
23 therefore I feel 100 percent confident that I had it,
24 and it was reviewed with Shawn. Why we decided not to
25 pursue it at trial, I can't remember.

Cross-examination of Mark Peper

1 Q Okay.

2 MS. HUNTER: Just one moment, Your Honor.

3 That's all I have for Mr. Peper.

4 THE COURT: Thank you.

5 CROSS-EXAMINATION

6 BY MR. SPENCER:

7 Q Mr. Peper, I wanted to first bring up this page
8 here. It's labeled, additional discovery. And is that
9 your signature at the bottom?

10 A Yes, sir.

11 Q And that is dated April -- looks like 24th of
12 2008?

13 A Yes. Which was about two, three months prior to
14 trial.

15 Q And would that appear to you to be discovery
16 received -- an itemization of discovery that would have
17 been provided to you by the solicitor's office?

18 A Yes. Yes.

19 Q And it isn't actually what I wanted to show you
20 was -- does it have an incident report referring to
21 Alec Brown listed?

22 A Yes.

23 MR. SPENCER: Beg the Court's indulgence.

24 THE COURT: Certainly.

25 Q (By Mr. Spencer) I have another -- I am going

1 to show you another item. And this is listed as
2 summary sheet discovery items as of March 12, 2007.
3 There are two pages to this. And, now, is that your
4 signature here?

5 A Yes, sir.

6 THE COURT: Could you repeat the date on that
7 for me, please?

8 MR. SPENCER: It is -- it says, as of March
9 12th, 2007.

10 THE COURT: Okay. Thank you.

11 Q (By Mr. Spencer) And does that list the witness
12 statement from Dora Perkins?

13 A Yes, sir.

14 Q Okay. And is that fair to say that based on
15 those, it appears that the solicitor's office did
16 provide you those items?

17 A I will say that it appears that they listed
18 those items as items that would have been included in
19 the packet that I signed for.

20 Q And they are not items that you determined later
21 were missing from the discovery?

22 A No.

23 Q And you mentioned you didn't think the gun was
24 -- testimony concerning the gun, just to clarify,
25 testimony concerning the gun was actually terribly

1 important?

2 A It didn't bother me at all. I didn't care what
3 gun was used, because my guy didn't use the gun.

4 Q To your knowledge, did anyone find Dora Perkins?

5 A I never -- I couldn't pick her out of a lineup.
6 I don't know who she is. I never interviewed her.

7 Q As far as you know, she wasn't available to
8 testify at trial?

9 A No. She wasn't on their witness list. Nobody
10 ever tried to call her. No.

11 I don't even -- as an addition to that,
12 counselor, in all of our pretrial conferences and phone
13 calls, mainly with Rutledge, I don't remember
14 discussing that document or her potential of being
15 called as a witness, or me trying to call her. I don't
16 really remember that being an issue of the case.

17 MR. SPENCER: Your Honor, beg my pardon while I
18 shuffle a little bit. I was going to go ahead and put
19 both of those summaries into evidence.

20 THE COURT: That's fine.

21 MR. SPENCER: Your Honor, I would like to make
22 State's Exhibit No. 1 the additional discovery, which
23 is a single page.

24 MS. HUNTER: No objection.

25 THE COURT: State's 1 is admitted without

1 objection.

2 MR. SPENCER: Respondent's. I said State's.

3 (Whereupon, Respondent's Exhibit No. 1 is
4 admitted into evidence.)

5 MR. SPENCER: Then I would move as State's
6 Exhibit No. 2 the summary sheet of discovery items as
7 of March 12, 2007.

8 MS. HUNTER: No objection.

9 THE COURT: State's 2 is admitted without
10 objection.

11 (Whereupon, Respondent's Exhibit No. 2 is
12 admitted into evidence.)

13 Q (By Mr. Spencer) I just wanted to clarify a
14 couple of things, Mr. Peper. Concerning the Lyle
15 issue, the gun testimony, is it your recollection that
16 you objected to that?

17 A Strenuously. But my testimony is that without
18 looking at the full transcript, I can't recall if I
19 made a contemporaneous objection to it when it was
20 admitted.

21 But I know we sent the jury out and I was
22 floored that the State felt the need to call a witness
23 to say that he had a gun stolen two months prior to
24 this. So, yeah, I objected to it coming in. But
25 again, when Judge Williams makes a ruling, he makes a

1 ruling pretty clear and I'm just not going to try to
2 sneak one past him in front of the jury.

3 Q Do you recall clarifying with Judge Williams
4 that that was preserved for the record, and that --

5 A I don't recall. I'm sure you can show it to me.
6 I do recall learning in law school and always teaching
7 other people and making sure that I absolutely preserve
8 every possible matter of law for my client.

9 And I feel confident in saying that I have,
10 knock on wood, never missed an opportunity to preserve
11 the record.

12 Q If you could read -- I'm page 324 of the
13 transcript. If you could read to yourself lines 9
14 through 24.

15 A Uh-hum.

16 Yeah, there you go. I believe my -- according
17 to the transcript, specifically line 12 through 16:
18 Your Honor, what I'm trying to do, and I don't want to
19 step on your toes, but I have to object to certain
20 evidence as it's coming in. But I know you've already
21 ruled on it. I just want to make sure I'm preserving
22 his rights and -- and then the Court says: You're not
23 going to step on my toes, I've got steel-toe boots.

24 And I say: well, I just wanted to throw that
25 out there.

1 And he says: But I think they have been
2 preserved. I mean, I certainly note your objection to
3 my ruling on the Jackson/Denno, and I note your
4 objection to my ruling on the Lyle evidence.

5 Q And so you actually took steps to make sure it
6 was preserved potentially for review?

7 A That's correct.

8 Q And concerning -- maybe I misunderstood your
9 Jackson v Denno testimony as well -- excuse me, your
10 testimony concerning that -- but you did object to
11 Mr. Phillips' statement coming into evidence, did you
12 not?

13 A We spent the better part of two hours on a
14 Jackson v Denno in-camera hearing, yes. And then I
15 objected to it -- I'm positive I objected to it
16 contemporaneously in front of the jury as well. And
17 renewed it on page 324.

18 MR. SPENCER: Beg the Court's indulgence.

19 THE COURT: Sure.

20 Q (By Mr. Spencer) And you -- as part of your
21 argument you argued that he was on medication, and that
22 would defeat the voluntariness of the statement; or it
23 should be a factor in denying -- in suppressing the
24 statement?

25 A That's right.

1 If I could clarify that, Counselor. Your Honor,
2 if I could expand on that answer.

3 THE COURT: Please do.

4 A You know, a lot of things we do at trial are
5 strategy-based. And I remembered thinking that in my
6 trial prep I always assume the defendant's statement is
7 going to come into evidence, because the standard is
8 extremely high.

9 And having known those officers, I knew exactly
10 what they were going to testify. They had been trained
11 on how to testify. I fully expected his statement to
12 come in.

13 That being said, I owed it to client to ask for
14 a Jackson v Denno hearing. And as I think you will see
15 in the transcript, I was -- I made a hell of an
16 argument. Judge Williams almost kicked it out. As a
17 matter of fact, I remember him saying, it's really
18 close, but I'm going to let it in.

19 And I was amazed that I had convinced him that
20 it was even close. But once that ruling was made, we
21 went back to your original trial strategy which was, we
22 are boxed in, we have got to go with this statement
23 that you told the truth, that you were not coerced, you
24 were not under the influence, you knew exactly what was
25 going on and what you put in writing was the truth;

1 that a guy held a gun to your head and made you do
2 this.

3 Q (By Mr. Spencer) And in terms of -- and so the
4 statement was actually -- the main focus of the
5 statement was the main item in your duress offense; is
6 that fair to say?

7 A It's the only -- yeah. I mean, I called one
8 witness to kind of corroborate my duress defense to try
9 to get an independent party to say that Lennie Mickey
10 is the type of guy that would put a gun to somebody's
11 head, and I got that out.

12 But, yeah, I mean, if that statement hadn't come
13 in, we couldn't have asserted a duress defense. I
14 would assume we would have had to completely switch
15 trial strategies and gone with, you know, some sort of
16 mere presence argument or something.

17 But, I mean, once the statement was in, we were
18 boxed into it. And we had to try to convince the jury
19 that what he put in that statement was the darn truth,
20 and that's what we are going with.

21 Q And concerning the Sandra Barnes identification
22 of Mr. Blue as D --

23 A Yeah.

24 Q -- that actually supported your theory, didn't
25 it?

1 A well, actually I feel confident in saying that
2 the reason I didn't put that specific identification
3 into evidence is because at the time of trial, or
4 definitely at the time of the murder, Mr. Phillips had
5 shoulder-length dreadlocks.

6 And when I was looking in pretrial, when I was
7 going over what I believe the evidence -- what evidence
8 would be allowed, I remember losing sleep over whether
9 or not I wanted to put that into evidence because the
10 picture of Mr. Blue was almost identical to
11 Mr. Phillips at the time that the crime was committed.

12 And so my concern was, well, if I put this into
13 evidence -- and I was surprised the State didn't move
14 it into evidence, but I think we both just kind of -- I
15 don't know. But I was scared if I put it into evidence
16 that they would go back there and say, well, no wonder
17 she accidentally said that this is D. It looks exactly
18 like Shawn.

19 And that's why I queried her on it, and tried to
20 attack her credibility and the fact that she's just a
21 compulsive liar, and she knows a lot of guys with the
22 name D, and she doesn't know what she's talking about.
23 And I think that I got that across. And somehow I was
24 able to get that across to the jury without having to
25 show them the actual picture, which I think was a great

1 trial decision.

2 I understand Mr. Phillips' concern now. And I'm
3 all about laying down on that one. If I made a mistake
4 and didn't put it into evidence, then I made a mistake.

5 Q Well, you made a strategic decision.

6 A But I made a trial strategy that we do not want
7 the jury to see the picture of this guy Blue, because
8 it looks exactly like him.

9 Q And all the jury knew was that she --

10 A That's right.

11 Q -- identified somebody else as D?

12 A That's right. And that's all I wanted them to
13 know.

14 Q And in terms of -- and didn't Mr. Phillips in
15 his statement basically say that he was -- he tried to
16 say he was under duress, that he was under duress and
17 made to go over to the hotel, but he stayed in the car,
18 but some other guy name D showed up. And that other
19 guy named D and Mickey committed the armed robbery?

20 A That's right.

21 Q And so --

22 A And China Doll, or whoever set it up, yeah.

23 Q And so Sandra Barnes is at least talking about
24 some third person, has identified some third person
25 that --

1 A Yeah, it helped us. In my opinion, it was yet
2 another reason that the jury should believe our written
3 statement as to what happened because it verified that
4 there was another guy named D, and Sandra had picked
5 out a guy named D that was different than my client.

6 Q Otherwise you are just left with a self-serving
7 statement?

8 A That's right.

9 Q So that is your whole defense?

10 A That's right. We make mistakes at trial. I
11 mean, gosh, we are trying to listen to objection, we
12 are trying to feel the jury, I'm trying to listen to
13 Shawn, I'm trying to object.

14 You know, if I made a bad decision on trial
15 strategy -- it probably ain't the first and won't be
16 the last -- but I feel confident in saying that that is
17 all I had to work with. I did not want to muddy the
18 waters with the jury. I wanted them to believe that --
19 once the statement was coming in, I wanted them to
20 understand that this is what happened. What he put in
21 writing is what happened. As verified by the fact that
22 you've heard testimony that there was another guy named
23 D there.

24 And she wrote on here, this is the guy I know as
25 D. And that's what I wanted the jury to know.

1 Q Right. And once you let the jury know that, or
2 once the jury was made aware of that, is it fair to say
3 it opened the door to the fact that she did actually
4 pick Mr. Phillips out in a subsequent showing?

5 A That's right.

6 MR. SPENCER: Beg the Court's indulgence.

7 THE COURT: Certainly.

8 Q (By Mr. Spencer) Just concerning the duress
9 charge itself, your understanding is that it was a
10 correct statement of the law?

11 A Yeah. I mean, I think -- as I think what the
12 petitioner has asserted is that the judge charged the
13 jury that duress was not a defense to murder, but it is
14 a defense to armed robbery and conspiracy. And if
15 that's in fact what he charged, that's exactly right.
16 So I wouldn't have objected to that charge.

17 Q And the implication of -- he charges duress, he
18 says it's not a defense to murder, the implication by
19 that is it's a defense to the other two charges?

20 A Yeah. I didn't see how -- Shawn and I were
21 talking about it, and, you know, the State and I kind
22 of agreed too. We didn't really think that the jury
23 was going to come back guilty on murder.

24 My issue was -- and, of course, you start
25 throwing out hand of one, hand of all, you are like,

1 oh. I really felt like if we could get a not guilty
2 verdict on conspiracy and armed robbery, then they
3 would have to give a not guilty verdict murder, just
4 out of common sense, or hang it up at least.

5 So I wasn't really worried about putting all my
6 eggs in the duress basket, even knowing that the judge
7 was going to tell the jury that duress is not a defense
8 to murder because I thought, well, if they go back
9 there and they say, well, clearly he was under duress,
10 he could not have committed the conspiracy and the
11 armed robbery. Well, if you don't have the conspiracy
12 and the armed robbery, you don't have the murder.
13 Unfortunately it came back guilty all three.

14 Q And just in terms of some of the things that
15 might count against your duress defense was that all
16 three of the female conspirators testified at trial
17 that he -- that Mr. Phillips was willingly going along
18 with all this?

19 A Yeah. I mean, they had no credibility
20 whatsoever and I don't think the jury found them to be
21 credible. But they did hear from those witnesses that
22 -- you know, they were well prepped and all. I mean,
23 this wasn't their first trial on this. They had
24 already been called to testify once. So they knew what
25 kind of cross-examination questions they were going to

1 get.

2 And every time I would try to go down that path
3 they would say, well, you can call me whatever name you
4 want to. And, yeah, I smoke a lot of crack, and, yeah,
5 I'm a prostitute and all, but Shawn could have left if
6 he wanted to. And that was constantly their testimony.

7 and I just hammered them on cross the best I
8 could. I felt like the advantages of hamming the
9 duress defense far outweighed any disadvantage of the
10 jury actually understanding the charge that they
11 couldn't use it as a defense to murder. Most juries
12 don't understand that anyway.

13 MR. SPENCER: Your Honor, I have no further
14 questions.

15 THE COURT: Thank you, sir.

16 MS. HUNTER: None from me, Your Honor.

17 THE COURT: Okay. Sir, you may step down.

18 THE WITNESS: Thanks.

19 MR. SPENCER: Your Honor, I would reserve the
20 right to recall Mr. Peper if necessary.

21 THE COURT: Okay.

22 MS. HUNTER: I would call Mr. Phillips to the
23 stand.

24 THE COURT: Okay.

25 SHAWN PHILLIPS,

1 after having first been sworn to tell the truth, the
2 whole truth and nothing but the truth testified on her
3 oath as follows:

4 DIRECT EXAMINATION

5 BY MS. HUNTER:

6 Q Shawn, are you a little nervous?

7 A Just a little bit.

8 Q Okay. I want you to speak into the microphone
9 so that this lady can hear everything that you say.

10 A All right.

11 Q How old are you?

12 A 32.

13 Q 32?

14 A Yes, ma'am.

15 Q How far did you go in school?

16 A 5th grade.

17 Q 5th grade?

18 A Yes, ma'am.

19 Q And have you been in and out of mental
20 hospitals?

21 A Yes, ma'am.

22 Q And what was it for, the hospitalizations for?

23 A It was for depression and other mental
24 illnesses.

25 Q Okay. And have you ever been on anti-psychotic

1 medication?

2 A Yes, ma'am.

3 Q Is Seroquel one of them?

4 A Yes.

5 Q And antidepressant medication such as Zoloft,
6 have you been on that?

7 A Yes, ma'am.

8 Q Were you on those medications during the time
9 you were arrested for this murder, armed robbery and
10 conspiracy?

11 A Yes, ma'am.

12 Q Okay. Now, you were convicted during a trial
13 and received 40 years; is that correct?

14 A Yes, ma'am.

15 Q You filed a post-conviction relief. And I know
16 we have kind of gone through a script to help you
17 because I know that this is complicated. But if you
18 don't understand what I'm talking about, just ask me to
19 slow down or rephrase the question or, you know,
20 whatever you need. Okay?

21 A All right. Yes, ma'am.

22 Q Okay. You put in your petition that the
23 prosecution, Mr. and Mr. Durant, had used perjured
24 testimony to obtain your conviction. And you referred
25 to the gun that Alec Brown, the victim of the first

1 armed robbery, had described it in one way, and then
2 that Angela Agagas had described it in another way.

3 A Yes, ma'am.

4 Q Okay. Tell the Court why you think that you
5 were denied the right to a fair trial by this?

6 A I feel I was denied the right to a fair trial
7 because -- we talking about the Brady violation? About
8 me not getting the --

9 Q We are not getting to the Brady violation. We
10 are going to get into --

11 A The gun description?

12 Q The gun description.

13 A Okay. Because I'm going to read this, if that's
14 all right.

15 THE COURT: Certainly.

16 A I got absolute --

17 THE COURT: Wait one second, sir. Is what you
18 are reading to me already from your application?

19 THE APPLICANT: Yes, ma'am.

20 THE COURT: I have read that in full, and it's
21 part of the record. If you want to tell me anything
22 else or answer your counsel's question, I don't need
23 you to read that.

24 THE APPLICANT: I don't think -- I don't think
25 -- it might be part of the application. If I read the

1 first one and you think it's --

2 THE COURT: Did you write your application
3 yourself?

4 THE APPLICANT: Yes, ma'am. I had help, but I
5 did it.

6 THE COURT: You did it?

7 THE APPLICANT: Yes, ma'am.

8 THE COURT: Okay. And you're going to read part
9 of it to me?

10 THE APPLICANT: This part here.

11 THE COURT: Okay. Briefly.

12 THE APPLICANT: Briefly?

13 THE COURT: Uh-hum.

14 THE APPLICANT: Okay. I got, counsel
15 ineffective for not objecting to evidence of Alec
16 Brown's robbery, to show my identity as one of the
17 robbers who took Brown's weapon that was supposedly
18 used in my murder case when there was no clear and
19 convincing evidence of my identity of Brown.

20 And Brown could not describe the -- Brown could
21 not describe the people who robbed him. And the SLED
22 experts could not say that the murder weapon that was
23 taken [sic] from Mr. Brown was the actual murder
24 weapon.

25 THE COURT: Okay. Thank you, sir. I'll note

1 for the record that he did read from his application.

2 Q (By Ms. Hunter) Did you read it directly from
3 your post-conviction relief application?

4 A This is a separate part of it.

5 THE COURT: A separate document?

6 THE APPLICANT: Yeah.

7 THE COURT: That you just read to the Court?

8 THE APPLICANT: It was -- I mean, it was just
9 like a brief from my application.

10 THE COURT: Did you write the outline for
11 yourself from the application?

12 THE APPLICANT: I took parts of it out that I
13 thought I had to say.

14 THE COURT: Okay. You took parts of it and put
15 that in that document?

16 THE APPLICANT: Yes, ma'am.

17 THE COURT: And then you just read that to me?

18 THE APPLICANT: Yes, ma'am.

19 THE COURT: Thank you, sir.

20 Q (By Ms. Hunter) All right. So did anybody ever
21 go over with you before your trial that the victim,
22 Alec Brown, in the first armed robbery, and Angela
23 Agagas' testimony were going to be different about the
24 gun?

25 A I got -- I had got a letter from my codefendant,

1 Lennie Mickey, stating that --

2 MR. SPENCER: Your Honor, I object on hearsay.

3 Q You can't talk about what Lennie Mickey said.

4 A Okay.

5 THE COURT: Objection sustained.

6 A Just talk about the letter?

7 Q (By Ms. Hunter) No. I don't want you to talk
8 about a letter because it's not admissible. But with
9 your trial counsel in preparing for your trial, did you
10 have any idea that the gun that was seized in the first
11 armed robbery, that there was going to be differences
12 in descriptions?

13 MR. SPENCER: I think that question actually
14 calls for hearsay also.

15 MS. HUNTER: I'm asking him if he had personal
16 knowledge of it.

17 THE COURT: Objection is overruled.

18 A No, ma'am.

19 Q (By Ms. Hunter) Okay. Did you ever go over the
20 statement made by someone named Dora Perkins?

21 A No, ma'am.

22 Q Since your trial, have you had an opportunity to
23 review that statement?

24 A Are you talking about not since my trial but
25 after my trial I had time to review it.

1 Q And since your trial, after your trial, have you
2 had an opportunity to review the two mug shots that
3 were associated with Dora Perkins' statement?

4 A Yes, ma'am.

5 Q At any time prior to your trial, did you ever
6 talk about Dora Perkins or those other two suspects?

7 A No, ma'am.

8 Q As far as the armed robbery goes, the one that
9 was on Savannah Highway, was there any objection in
10 court to the admission of that armed robbery?

11 A Yes, ma'am. I believe --

12 MR. SPENCER: Your Honor, I think the record
13 would speak for itself on that.

14 THE COURT: The record does so reflect.
15 Objection sustained.

16 MS. HUNTER: Okay. That's fine. No problem.
17 Moving on.

18 Q (By Ms. Hunter) You have in your application,
19 and I have gone over this with you, on page 7, the
20 photographs of the victim that you wanted to object to
21 those going to the jury; is that correct?

22 A Yes, ma'am.

23 Q And you object to that because of what?

24 A Because it was only really appealing to the
25 passion and prejudice of the jury. And I was objecting

1 to it because it was gruesome pictures. And I tried to
2 -- Mr. Peper objected to it as well.

3 Q Okay. The next thing that you are alleging is
4 your involuntary statement that you gave to the police.

5 A Yes, ma'am.

6 Q You are stating that they knew that you were a
7 mental patient, illiterate, and on medication; is that
8 correct?

9 A Yes, ma'am. And what? When the statement was
10 written -- because I didn't write the statement -- he
11 was asking me while he was writing the statement, would
12 I think this right here would fit here while we was
13 going along with the statement.

14 And all I told him was is whatever, man, so that
15 I could hurry up and get out of here.

16 MR. SPENCER: Is this a conversation between him
17 and the attorney or him and the officer?

18 A The officer. I had asked for an attorney at the
19 beginning of the questioning and they said --

20 THE COURT: Hold on a second.

21 If you have an objection, you --

22 MR. SPENCER: This is hearsay.

23 THE COURT: Why are you even objecting to this?

24 MR. SPENCER: It's hearsay. That's all.

25 THE COURT: Okay. Objection sustained.

1 Q (By Ms. Hunter) You also put in your
2 application that you were denied the effective
3 assistance of trial counsel by counsel's failure to
4 object to the burden-shifting jury charge on your
5 duress defense.

6 A Yes, ma'am.

7 Q Do you need to refer to your notes or anything
8 about telling the Judge what you --

9 A I mean, she said -- I don't want to aggravate
10 her. She said she already had it down, but I got it
11 down right here too, of the burden shifting.

12 Q Is it your argument that the judge said duress
13 is not a defense to murder, but he did not say it is
14 not a defense to armed robbery and conspiracy?

15 A Criminal conspiracy, yes, ma'am. That was my
16 argument, that he didn't give the jurors the complete
17 charge of duress.

18 Q So it was an incomplete charge?

19 A Yes, ma'am.

20 Q What about duress by accomplice liability,
21 that's your 9th -- it's on page 9, excuse me.

22 MS. HUNTER: I guess that pretty much speaks for
23 itself, Your Honor. Since it's already in the record,
24 I won't go through that.

25 THE COURT: Okay.

1 Q (By Ms. Hunter) Okay. You have asked me to ask
2 you some questions while you are on the stand. Counsel
3 was ineffective for not objecting to my codefendant's
4 in-court identity when she couldn't identify me out of
5 court, meaning Sandra Barnes?

6 A Yes, ma'am.

7 Q Would you explain to the Judge what you mean by
8 that?

9 A What I mean by that is Sandra -- my codefendant,
10 Sandra Barnes, had a couple of times tried to ID me,
11 and she failed to ID me. The only way she ID'd me when
12 they put me in the little room in the courtroom and I
13 guess pointed at me and that was it.

14 But prior to me coming in -- she never -- let me
15 slow down a little bit.

16 Q You're saying that she shouldn't have identified
17 you in court --

18 A I mean, I've got it written down, but I don't
19 want to say the same thing that she already done read.

20 THE APPLICANT: Do you want me to just go ahead
21 and read it off the thing?

22 THE COURT: Is it written on the actual
23 application or another document that you prepared for
24 court?

25 THE APPLICANT: This is one that I recorded for

1 me just to say -- it's not on the actual --

2 THE COURT: That you wrote down for you?

3 THE APPLICANT: Yes, ma'am.

4 THE COURT: Okay. You can read it.

5 THE APPLICANT: Counsel was ineffective for not
6 objecting to my codefendant's in-court identification
7 when she, Sandra Barnes, did not ID me out of court.
8 When she failed to ID -- when she finally -- when she
9 failed to ID me from -- she failed to ID me from before
10 lineup, she only ID'd me when I was illegally put in
11 the room by myself without a lawyer, in violation of my
12 constitutional rights.

13 THE COURT: Okay, thank you.

14 Q (By Ms. Hunter) Okay. Your next question is,
15 your appellate counsel was ineffective for raising mere
16 presence as an issue that was not properly raised
17 during the trial.

18 A Yes, ma'am.

19 Q Do you want to expand?

20 A I got, my appellate counsel was ineffective for
21 not -- for raising a mere presence issue that was not
22 raised at my trial, but did not raise the issue of the
23 solicitor introduction of the photos of the victim.
24 They only appeal to the passion and the prejudice of
25 the jury.

1 Q Okay. All right. You had sent to me an amended
2 application this week -- well, I got it the very
3 beginning of this week -- and it's dealing with the
4 solicitor Rutledge, who is right here, when he was
5 doing his closing argument that you are alleging he
6 vouched for Angela Agagas' testimony and bolstered her
7 testimony.

8 A Yes, ma'am.

9 Q And that that was unconstitutional. Can you
10 explain that to the Court?

11 MR. SPENCER: Is this being raised as a direct
12 appeal issue, or ineffective assistance claim?

13 THE COURT: Well, the document I'm looking at is
14 the amended application for post-conviction relief.

15 Is that correct, Ms. Hunter?

16 MS. HUNTER: That's correct.

17 THE COURT: Did you prepare this, or did --

18 MS. HUNTER: No. He and his friend prepared it.

19 THE COURT: Is there an objection?

20 MR. SPENCER: Your Honor, I move to strike it as
21 being raised as a direct appeal issue. If it's being
22 raised as ineffective assistance of counsel, that would
23 be proper.

24 THE COURT: Okay. Have you read it?

25 MR. SPENCER: Yes, I have read the amendment.

1 THE COURT: Well, what it says is --

2 MR. SPENCER: And I --

3 THE COURT: Maybe I'm not understanding your
4 objection. Issue A, was counsel ineffective for
5 failing to object to the solicitor's closing argument
6 that impermissibly vouched for the credibility of a
7 State's witness in an attempt to bolster the State's
8 case in chief.

9 What's your objection?

10 MR. SPENCER: I guess my -- the testimony was
11 just that he thought the solicitor's argument was
12 unconstitutional. So I was listening to the testimony
13 rather than looking at the amendment.

14 THE COURT: Okay.

15 MR. SPENCER: But, yeah, the amendment is fine.
16 I apologize.

17 THE COURT: No problem. Objection is overruled.

18 MS. HUNTER: I don't even need to go into it if
19 we can make it part of the record, because it does
20 state clearly in there that he is objecting to the fact
21 that Solicitor Durant had stated that Angela Agagas'
22 testimony was the truth.

23 THE COURT: Okay.

24 MS. HUNTER: And that was all that argument.
25 And then the final one was malice.

1 THE COURT: Okay. And that would be point
2 heading B in the amended application?

3 MS. HUNTER: Yes, ma'am.

4 THE COURT: Okay.

5 All right. I'm happy to hear any additional
6 information that the applicant needs to provide on
7 that.

8 MS. HUNTER: I don't -- if this can be just part
9 of the record, then I believe that's fine, Your Honor.

10 THE COURT: Okay. Thank you.

11 Q (By Ms. Hunter) Anything else that you would
12 like to share with the Court regarding your
13 post-conviction relief that I may have left out?

14 A I just would pray that you review everything and
15 see if I really needed a new trial.

16 THE COURT: Well, I am reviewing everything. I
17 have reviewed it in detail. I have reviewed it in
18 detail, particularly the argument that you couldn't
19 read or write. I find that very interesting in light
20 of what we have seen on the stand today.

21 So, any further questions?

22 Q (By Ms. Hunter) Did you write any of this?

23 A Yeah. I mean, I can write, that's not the --
24 I'm not that good at, like, spelling and stuff like
25 that. But if you give me something to write, the dude

1 -- the man who was helping me do it, he'd tell me,
2 okay, well, we need to put this down. He told me he
3 wasn't going to enable me, but he says, but we're going
4 to write it out like this right here.

5 THE COURT: Okay. I got it.

6 MS. HUNTER: Okay. Thank you.

7 THE COURT: Thank you, ma'am.

8 Cross-examination

9 MR. SPENCER: Thank you, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. SPENCER:

12 Q I think one of your allegations was concerning
13 the photographs?

14 A Yes.

15 Q which photographs are you talking about, the
16 photographs that were --

17 A Of the victim.

18 Q of the victim were put into evidence?

19 Now, Mr. Peper objected to those, right?

20 A Yes.

21 Q And Judge Williams put in three of them and kept
22 out two of them; is that correct?

23 A I believe so. I'm not sure.

24 Q And Judge Williams found them to not be
25 particularly gruesome?

1 A That's what he found. But I raised it again on
2 -- I know Mr. Peper objected to it, but I raised it
3 again on my direct appeal. And Mr. Joseph Savage, III,
4 he didn't even acknowledge it. He just raised the
5 issue that it was nonexistent.

6 Q Okay. And you raised it in your pro se brief?

7 A Yes.

8 Q How much legal training have you had?

9 A I mean, other than this studying at the law
10 library, that's about it.

11 Q Are you aware of what the standard of review is
12 for the admission of photographs of a victim on appeal?

13 A No. You can explain it to me, though.

14 Q Do you understand what the standard of review is
15 that the court of appeals would apply to an alleged
16 error by the trial court?

17 A Just seeing if they're going to allow it to come
18 in, stuff like that.

19 Q Do you understand what the term abuse of
20 discretion means?

21 A Yes.

22 Q Do you understand that the court of appeals
23 would have been reviewing Judge Williams' determination
24 under the standard of an abuse of discretion?

25 A I don't think the court of appeal, with all due

1 respect, really reviewed my case at all. Because he
2 raised the issue that it was nonexistent, that it
3 didn't even pertain to my case.

4 Q Do you understand what the Anders versus
5 California procedure is?

6 A I mean, if you had the law book here in front of
7 me, I probably could.

8 Q Do you understand that under the Anders
9 procedure the court of appeals is required to read the
10 whole record to determine if there is a meritorious
11 issue that needs to be raised?

12 A No. But what I do understand is that if he had
13 raised at least one of the issues that I had presented
14 to him, Mr. Joseph Savage, III, that it would have been
15 a change in my outcome.

16 Q And that's based on your legal experience?

17 A That's based on -- with the legal experience I
18 got studying.

19 Q And you don't have a law degree?

20 A No.

21 MR. SPENCER: No further questions.

22 THE COURT: Thank you, sir.

23 Any redirect?

24 MS. HUNTER: No, Your Honor.

25 THE COURT: Thank you.

Direct examination of Mark Peper

1 Sir, you may step down.

2 MS. HUNTER: I have no further questions -- I
3 mean, witnesses or questions.

4 THE COURT: Okay. Does the applicant rest?

5 MS. HUNTER: Yes. I may have questions.

6 THE COURT: That's fine. Y'all have done a
7 great job.

8 MS. HUNTER: It's been a long morning.

9 THE COURT: Okay. Anybody need a break, or are
10 we good to go?

11 MS. HUNTER: I do.

12 THE COURT: Okay. Let's take about a
13 five-minute break and then we will get started back.

14 (Whereupon, a recess was taken.)

15 MR. SPENCER: Your Honor, I was recalling
16 Mr. Peper to the stand real quickly.

17 THE COURT: Wonderful, thank you.

18 You are still under oath, Mr. Peper.

19 THE WITNESS: Yes, ma'am.

20 MARK ANDREW PEPER,
21 after having previously been sworn to tell the truth,
22 the whole truth and nothing but the truth testified on
23 her oath as follows:

24 DIRECT EXAMINATION

25 BY MR. SPENCER:

1 Q Mr. Peper, I wanted to ask you about first the
2 claim that the solicitor's argument was bolstering.
3 Have you reviewed that portion of the closing argument?

4 A I have, five minutes ago.

5 Q Did you find any portion of that to be
6 objectionable?

7 A No.

8 Q Did you consider it to be bolstering?

9 A No.

10 Q What is your usual practice in terms of deciding
11 whether or not to object to a closing argument?

12 A I make a very, very strong effort, as a personal
13 rule, to never object in the middle of a State's
14 closing argument, unless I feel it is just way over the
15 top and a violation of ethics or the law.

16 And I know, before I even get done making my
17 objection, that the Court is going to hammer the
18 prosecutor. So I give them a ton of leeway because the
19 way I read the rule, it's just an argument. It's
20 simply just an argument.

21 And I don't ever remember even thinking about
22 standing up to object to anything Mr. Durant said in
23 closing. And after reading over the break what
24 Mr. Phillips was alluding to in his application, I know
25 the reason I didn't even think about standing up is

1 because it wasn't bolstering. It wasn't illegal. I
2 mean, he was making an argument.

3 Q In terms of the mere presence charge, did you
4 think there was any evidence to support a mere presence
5 charge?

6 A No. I mean, I -- well, let me answer it like
7 this. I think had I pushed for a mere presence charge,
8 after Judge Williams would have given me the stink eye
9 and called me back into chambers and make me thoroughly
10 explain why I would want that when it goes against what
11 we were trying to convince the jury of, which was that
12 he was under duress, I think he probably would have
13 charged it, but it would have been one of those where,
14 you know, I will charge it for you if you want, but I
15 don't really understand, it kind of goes against your
16 theory.

17 On the one hand -- I mean, our entire case was
18 we were there. We were definitely there, and we
19 definitely were a part of the crime but we were forced
20 to do it and held at gunpoint.

21 So, had the statement not come in, or had we
22 never focused on duress, and only focused on the fact
23 that there was no DNA or fingerprints or nobody could
24 put him in the actual hotel room, or nobody could put
25 him anywhere but the parking lot, then I would have

1 switched my focus to convincing the jury that just
2 because he was there doesn't mean he committed the
3 crime; and, therefore, I would have asked for a mere
4 presence charge and focused pretty much solely on that.

5 But that wasn't our trial strategy. That wasn't
6 an option for us. You know, in hindsight, I am willing
7 to say -- because I feel strongly that the judge would
8 have charged mere presence had I asked for it -- then,
9 yeah, maybe I was ineffective on that.

10 But again, it was a trial decision by me to not
11 ask for a mere presence because I thought, if anything,
12 that would just confuse the jury. Well, you can't have
13 it both ways, Mr. Peper, what are you asking for here.

14 Q And all the evidence pointed to him knowing when
15 he drove over there with the other codefendants that
16 they were going over there to do an armed robbery?

17 A By his own admission, yeah.

18 I mean everybody, including Shawn, said that, we
19 had -- we have a hooker, and she did a job for this guy
20 last night, the guy had a bunch of money and drugs on
21 him, let's see if he wants to pay me again. And this
22 time, when he opens the door, let's get him.

23 So, I mean, that's by his own -- that's by
24 Shawn's own admission. So I can't think of why I would
25 switched gears and gone with the mere presence. I

1 don't think that it was applicable to this case.

2 MR. SPENCER: Thank you.

3 I have no further questions.

4 THE COURT: Thank you, sir. Any redirect?

5 MS. HUNTER: No, Your Honor.

6 THE COURT: Thank you, ma'am.

7 Sir, you may step down.

8 THE WITNESS: Thank you.

9 MR. SPENCER: Your Honor, that would be the
10 State's case. And I do have brief argument if you wish
11 to hear it.

12 THE COURT: Certainly.

13 Anything further from the applicant, other than
14 argument?

15 MS. HUNTER: No. Nothing other than argument,
16 Your Honor.

17 THE COURT: Okay. Happy to hear from y'all.

18 MR. SPENCER: Thank you, Your Honor.

19 Concerning -- and I won't go into a number of
20 these things -- concerning the testimony about the gun,
21 obviously no one was aware at the time of the
22 discrepancy. I think actually that discrepancy, a
23 trial judge could have very well ruled it went to the
24 weight rather than admissibility.

25 You know, abuse of discretion means there is an

1 area where it's okay to admit or not admit. And Judge
2 williams chose to admit it, and Judge Harrington chose
3 to suppress the evidence. But I think at the end of
4 the day trial counsel was effective, and was not
5 ineffective, in his objections to that evidence. And,
6 of course, it wasn't nearly as pertinent to the case as
7 the testimony of the three girls that were conspirators
8 in this.

9 Dora Perkins, Dora Perkins has not testified
10 today. I don't think Dora Perkins is here. It's, you
11 know -- Dora Perkins is of no use to anybody if she
12 doesn't show up and she isn't found and there is no
13 evidence that she could be found.

14 The only evidence we heard is from Mr. Durant
15 who noted that she seemed to be a transient person and
16 of questionable mental stability.

17 Concerning the in-court identification. That
18 in-court identification by Sandra Barnes is admissible
19 because the door is open for the misidentification.
20 And misidentification is the only thing that gives any
21 help to the duress defense, which was the best defense
22 in a situation where there is no good defenses.

23 So in terms of trial strategy, that is not
24 something that really would be objectionable in the
25 end. Certainly you want that misidentification

1 evidence in. And of course the way Mr. Peper arranged
2 it, all the jury knows is she picked out the wrong
3 person, doesn't know that there is somebody who has
4 enough of a likeness that explains the
5 misidentification. I think that's an example of
6 excellent trial strategy and excellent representation.

7 Concerning -- there was an allegation, there
8 wasn't a lot of testimony about it, about ineffective
9 assistance of appellate counsel concerning the photos.
10 That has such a wide level of discretion. Judge
11 Williams admitted three out five, if I recall
12 correctly, pictures, made a very specific finding.

13 Basically that photos corroborated malice,
14 corroborated the position of the body. Showed --
15 excuse me, I don't think they did. They corroborated
16 malice in this situation; that there was no struggle,
17 perhaps, too.

18 But it's probative. And the prejudicial effect,
19 the judge obviously made efforts to minimize that.
20 That is not anything that would have any likelihood of
21 succeeding on appeal.

22 The duress charge, I have a case, Your Honor.

23 THE COURT: Thank you.

24 MR. SPENCER: Your Honor, it's State versus New,
25 N-E-W. That basically proves the very charge. It's

1 still considered an affirmative defense. The supreme
2 court found that it's still proper to say that the
3 defendant must establish the affirmative defense by a
4 preponderance of the evidence.

5 And so counsel would have had to argue against
6 precedent to argue against that charge. It's a proper
7 charge in the law.

8 THE COURT: Thank you.

9 MR. SPENCER: And in terms of the photograph, I
10 think I have touched on that before. That's trial
11 strategy, good trial strategy.

12 The vouching argument, that's not vouching.
13 Vouching is when the solicitor puts their own personal
14 relationship with the witness up and into play; where I
15 wouldn't put this witness on the stand if I didn't
16 believe them. Saying -- discussing the evidence and
17 saying, she's telling the truth when she says that, is
18 not vouching.

19 I don't know what the problem is with the malice
20 charge. I've read the allegation. I think the malice
21 charge is -- certainly this is a pre-Belcher case. The
22 malice charge is not even objectionable.

23 There was some discussion of mere presence. I
24 don't know that that's brought up directly. But again,
25 the evidence doesn't support mere presence. He knew

1 what was going on. He was part of it. The question is
2 whether he was coerced -- which wasn't a terribly
3 believable defense -- the question is whether he was
4 coerced or not into committing the armed robbery. So
5 there also is nothing there.

6 quite frankly -- and certainly I would welcome
7 any questioning, I certainly want to answer any
8 questions you may have -- but aside from that, I was --
9 I would say that the applicant just failed to meet his
10 burden.

11 Mr. Peper provided vigorous representation, and
12 didn't make any errors that rise to deficient
13 performance. And this is overwhelming evidence. You
14 probably got a taste of, we have got three different
15 witnesses who corroborated each other, he corroborates
16 in his voluntarily-given statement that they were
17 planning this armed robbery at the hotel.

18 They go over -- Mickey, Sandra and him go over
19 there. And Sandra's testimony is they bum-rushed into
20 the room, those two, and Sandra ran away. And they
21 actually had some cell phone records to tie all this
22 together too.

23 Clearly an overwhelming evidence case. And my
24 point being is there no prejudice on any possible
25 deficiencies that could be found.

1 Thank you, Your Honor.

2 THE COURT: Thank you, sir. I think you've
3 about covered it.

4 I'm happy to hear from Ms. Hunter.

5 MS. HUNTER: Thank you. What doesn't make any
6 sense, and what bothers me the most about all of what
7 is in his application, is the identification issue. He
8 -- his statement was that he was with the girls and
9 Lennie Mickey and he drove them over to the motel and
10 stayed in the car, and was under duress and had to stay
11 in the car because he was told that Lennie Mickey would
12 kill him or he would die or whatever.

13 This D person, this D, Dominique Blue person, is
14 identified by Sandra Barnes, who is the only person in
15 the entire case who states that -- who states that she
16 was there at the scene in the hotel room. She is the
17 only one. Lennie Mickey didn't testify.

18 And Sandra Barnes says this Dominique Blue was
19 with her. And then when they walk her down the hall
20 and they say, oh, well, what about him, was he with
21 you? Then she goes, oh, yeah, well, he was with you.

22 And then trial counsel in trial did not object
23 to the in-court identification when it was
24 impermissibly suggestive. He was pointed out as being
25 the one that was with them. He was in the car.

1 Dominique Blue is -- there was another person named D
2 that was there.

3 And another way that they are trying to get him
4 as identification is this armed robbery that's two
5 weeks before that has nothing to do with this case.
6 And the only person that puts him there is his
7 girlfriend, Angela Agagas, who Kristi Harrington, Judge
8 Kristi Harrington said was incredible, can't be
9 believable, too many stories have charged, the gun was
10 seized, there was too many descriptions of too many
11 guns.

12 They had some ballistics expert that said that
13 it could have come from eight different guns. Nobody
14 put a gun in his hand. Nobody put a bullet in his
15 hand. Nobody puts him at the scene. There is no
16 identification.

17 And when they were going through this murder
18 trial, of course 12 people are sitting here hearing
19 about a murder case that has nothing to do with -- I
20 mean, an armed robbery case which has nothing to do
21 with the murder case.

22 Of course they're going to -- it's going to be
23 prejudicial to him. They are already thinking, oh,
24 you're already involved in this armed robbery case that
25 happened a couple of weeks ago or a couple of months

1 ago, so why wouldn't you be involved in this one?

2 And that's why Lennie Mickey didn't get
3 convicted of murder. He didn't get murder. He was
4 supposed to be, theoretically, the trigger puller. He
5 didn't get it, he did.

6 So not objecting in trial to his identification
7 in so many different areas is -- it grants him a new
8 trial. I mean, they have got to prove that he was
9 actually there. They have got to prove that he was
10 there. I mean, it just is overwhelming.

11 He did not get any testimony on -- or, I mean,
12 he didn't get any information on Dora Perkins; these
13 other two people that were involved, who could have
14 been involved; and nobody did any investigation on them
15 as well.

16 And if you've got a solicitor as seasoned as
17 Bruce Durant is, he knew -- he has met with those
18 witnesses beforehand. He knew what that gun looked
19 like beforehand. He knew what the victim of the armed
20 robbery was going to say. He knew what Angela Agagas
21 was going to say. He knew about Dora Perkins.

22 But -- so we don't have anything other than
23 crackheads, prostitutes, three of those, and this
24 Lennie Mickey guy who is the alleged gun person, and
25 Shawn. And that's it. We don't have any other

1 evidence. That's it. And it is everything that went
2 -- that was ruled was prejudicial to him.

3 These other arguments are valid, but I think
4 that the identification issue is the main thing that
5 really needs to be set apart.

6 And that's all I will say, Your Honor.

7 THE COURT: Okay. Thank you, ma'am.

8 MS. HUNTER: Sorry it's so passionate.

9 THE COURT: No. I appreciate your zealous
10 advocacy on behalf of your client.

11 I hope you do, sir, appreciate how hard she's
12 worked for you.

13 THE APPLICANT: Yes, ma'am.

14 THE COURT: Yes, sir.

15 MR. SPENCER: Just a very quick response in
16 terms of the identity argument. The crime doesn't
17 start actually at the Budget Inn Hotel, it starts back
18 at the Travel Lodge Hotel where they're planning this
19 thing. And you have China, and you have Angela, and
20 you have Sandra, all giving testimony about those
21 plans, they all corroborate each other.

22 I think -- and my recollection maybe incorrect
23 -- is that Sandra even identifies, you know, in
24 addition to Mickey, identifies the other male as being
25 Angela's boyfriend, which is Shawn Phillips.

1 So -- and they all testified as to this plan
2 that Sandra and Mickey and Phillips all leave together
3 to go to that hotel. And they all come back. And I
4 believe at least one or two of those witnesses, two of
5 those witnesses say that they were told that they put
6 -- that they had robbed the victim and left him in the
7 bathtub, which wasn't true, but the point is that they
8 were told that he was robbed.

9 So identification really is not an issue. The
10 question is whether you believe the story of the sixth
11 guy -- this third guy coming on the scene at the Budget
12 Inn Hotel. Identity is not an issue because
13 Mr. Phillips was part of this plan, willingly,
14 unwillingly, if you were to believe the duress defense,
15 but identity is not an issue in this case.

16 THE COURT: Okay, thank you.

17 I have several issues of law that I need to take
18 a look at in conjunction with what y'all have presented
19 and what I have already read from the transcript and
20 the file. And I will take this one under advisement.

21 MS. HUNTER: Thank you, Your Honor.

22 THE COURT: Thank you.

23 (Whereupon, the proceedings in this matter
24 before the Court were adjourned.)

25 * * * * *

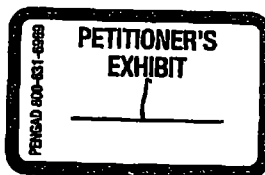
C E R T I F I C A T E

I, the undersigned, ANNE BOULEY MEYER,
Official Court Reporter for the Ninth Judicial
Circuit of the State of South Carolina, do hereby
certify that the foregoing is a true, accurate, and
complete transcript of record, and of all the
proceedings had and evidence introduced in the above
captioned case, relative to appeal, in the Circuit
Court for South Carolina, on the indicated date.

I do further certify that I am neither
of kin, counsel, nor interest to any party hereto.

-----*Anne Bouley Meyer*-----

Anne Bouley Meyer, RPR
Circuit Court Reporter



NCPD 017

PAGE

1-5COMPLAINT # 200604267

NORTH CHARLESTON POLICE DEPARTMENT WITNESS STATEMENT

STATEMENT OF Arria Terrell Perkins DATE OF BIRTH _____ AGE _____

HOME ADDRESS _____ HOME PHONE _____ BUS. PH. _____

EMPLOYER _____ BUS. ADDRESS _____

THIS STATEMENT IS IN REFERENCE TO Homicide InvestigationWHICH OCCURS AT 6155 Fair St. Budget Inn, ON OR ABOUT 11-8-06

AT APPROXIMATELY _____ HOURS, IN NORTH CHARLESTON, SOUTH CAROLINA.

THIS STATEMENT IS GIVEN 11-8-06 (DATE) AT 1500 (TIME), AT NCPDquarters

(LOCATION)

This statement is written by Det. F. Jourdan

On Tuesday night I left work around 9:00 P.M. with one of my customers, his name is Steve. We went out to get something to eat with a friend of his, whose name I don't remember. I don't remember the name of the restaurant but after that we went to the Market Street Saloon. We were there for about one or two hours. We left Market Street Saloon and went to the Hampton Inn Hotel on West Montague Ave. where Steve and his friend had a room. We were there for a little while and Steve drove me back to my hotel. When I arrived at my

I HAVE READ THE FOREGOING STATEMENT OR HAVE HAD IT READ TO ME AND IT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE. I HAVE GIVEN THIS STATEMENT FREELY AND VOLUNTARILY AND HAVE BEEN PROVIDED A COPY OF MY STATEMENT.

Det. F. Jourdan

0129



2-5

COMPLAINT #20060474

Hotel Steve walked me to my room. My room key would not work so we walked down to the office so I could get my key fixed. I told Steve good night and he left. After I got the key fixed I went back to my room. As I was going up the stairs I could hear three different voices arguing, the sound was coming from the second floor to the left of my room. I saw a black man on the stairs that I have seen several times at the hotel. He has come to my door a few times but I never open the door or talk to him. I tried to get into my room but my key still would not work. I went back to the office to get the key fixed. I walked back to my room and as I came up the stairs I could still hear arguing and then what sounded like a gunshot. I got to my room and from my left I saw a black man and white man walked past me. They didn't say anything to me, they just looked at me. I went in my room and went to sleep. I didn't come back out until the Police came to my room asking questions.

End of statement

3-5

COMPLAINT #200604267

Q- How long have you been staying at the Budget Inn motel?

A- About a month and a half, maybe two.

Q- How many times have you seen the black male who tried to talk with you?

A- I have seen him at least twice a week since I've been staying there.

Q- Is this the same black male you saw on the stairs when you were going to your room?

A- Yes

Q- Is this the same black male who walked past you with the white male after you heard the gun shot?

A- Yes

Q- Can you describe the black male you saw on the stairs and who walked past you?

A- Maybe 5-9 he is taller than me, he was wearing a ball cap with some type of design

I HAVE READ THE FOREGOING STATEMENT OR HAVE HAD IT READ TO ME AND IT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE. I HAVE GIVEN THIS STATEMENT FREELY AND VOLUNTARILY AND HAVE BEEN PROVIDED A COPY OF MY STATEMENT.

A. A. A. D

1171

P. 4-5COMPLAINT # 207604267

on the front and I remember white shoes on his feet.

Q- Can you describe the white male who walked past you?

A- No much taller than me, stocky build and his hair was dark, it came down on his face.

Q- Were you taken into a room with a 2-way mirror at Police headquarters and asked if you recognized the black male being questioned by another Detective?

A- Yes

Q- Did you recognize the black male being questioned?

A- Yes, I recognized his face and the hat he was wearing. This is the same black male I saw on the stairs, he is the black male that walked by me with the white male, he is the same one who try's to talk me at the motel.

5-5

COMPLAINT #200-04...

Q- Is ^{there} ~~any~~ any part of your statement
you wish to change?

A- Yes, before I went to the Market
Street Inn with Steve and his friend
we went to Henry's on Market St.

Q- Do you know what time you returned
to your motel?

A- No

Q- Were you shown a black & white
photograph of a white male and
asked if you recognized him?

A- Yes, he could be the white guy I
saw with the black guy.

Driver Photograph

Page 1 of 1

2006.04.26.71



South Carolina Department of Motor Vehicles

SC

DMV Home > Member Services Menu > Driver Photograph

3139: Account number not authorized for data requested.

Step 2: Transaction Complete



ADAM DALE ROGERS

HANAHAN, SC 29406-8528

DL: 1

SSN:

DOB:

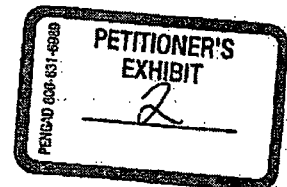
South Carolina Department of Motor Vehicles

11/8/2006 5:42:41 PM

This could be the white male
that saw w/ the black guy.
The face his eyes are very
close to what I remember.

11-9-06 1750 hrs

Det. [Signature]



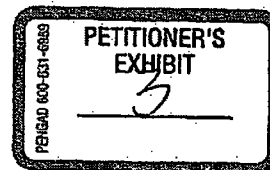
0313



This is a picture the man I saw at
the stairwell.

Dora Perkins

11/10/06



0296

989

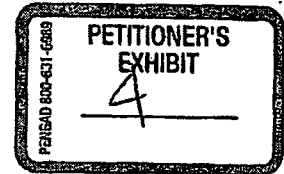
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Charleston County Sheriff's Office

Detention Center

0001246386

Name: BLUE, DOMONIQUE LAMAR



Date of Birth:

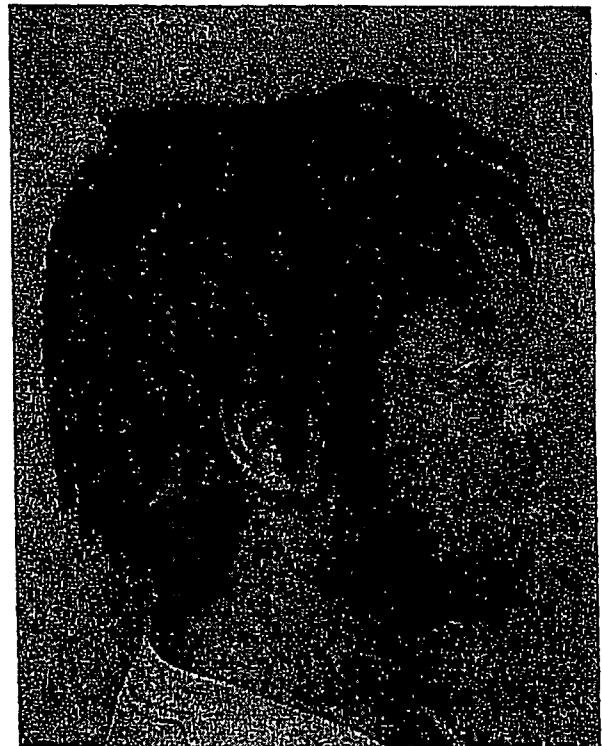
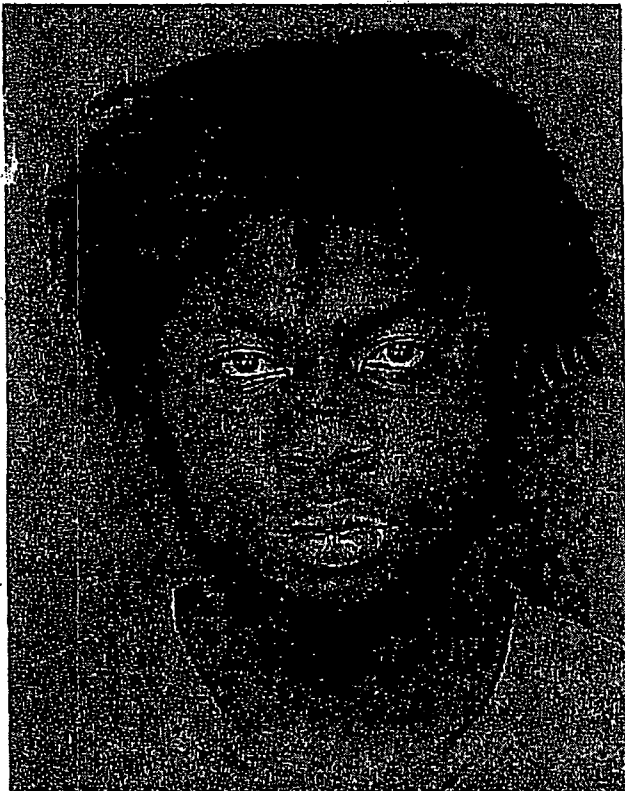


Booking Date: 05/16/06

Race: B

Sex: M

Height: 5'11"



SB
12-14-06

2:54

D ... I know this person as D

ADDITIONAL DISCOVERY

State v. Barnes, Mickey, Niesen, Phillips

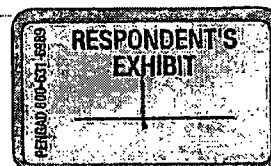
(Murder — Robert Vargo)

List 02222008brnnp

RECEIVED FEBRUARY 22, 2008:

Supplemental Report from Det. James Hill.....	00550-00552
Chain of Custody (9/7/07).....	00553
SLED Report (Trace Evidence), dated February 23, 2007.....	00554-00555
SLED Lab/Forensic Services Request.....	00556-00557
SLED Report (Trace Evidence), dated February 23, 2007 (duplicate).....	00558
Chain of Custody (11/8/06).....	00559
Consent to Search (William Cody).....	00560-00561
Advice of Constitutional Rights re: <i>William Cody</i>	00562
Witness Statement: <i>Frank T. Riley</i>	00563-00564
Search Warrant dated 12-15-06 (Dorchester County).....	00565-00569
Daily Report — <i>Travelodge</i>	00570-00575
SLED Report — Drug Analysis dated December 1, 2006 (<i>Lennie Mickey</i>).....	00576
Search Warrants dated September 7, 2007 (Charleston County).....	00577-00592
Proffer Letter of <i>Angela Agagas</i>	00593-00596
SLED Reports (DNA and Firearms).....	00597-00601
Incident Report (Armed Robbery of <i>Alec Brown</i> , OCA 0622554).....	00602-00606
SLED Report dated 2/23/07 (Trace Evidence).....	00606A-00607
Letters: <i>From Alana Niesen to Sandra Barnes</i>	00608-00611
Letters: <i>From Shawn Phillips and Alana Niesen to Angela Agagas</i>	00612-00639
Autopsy: <i>Robert Vargo</i>	00640-00648
Toxicology Report: <i>Robert Vargo (victim)</i>	00649-00653
Coroner's Report on death of <i>Robert Vargo</i>	00654-00656

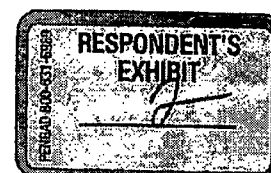
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RECEIVED BY: *[Signature]*DATE: *4/24/08*

SUMMARY SHEET - Discovery Items
As of March 12, 2007
State v. Barnes, Mickey, Niesen, Phillips
(Murder - Robert Vargo)

Incident Report.....	0001-0006
Warrants (<i>Barnes, Mickey, Niesen, Phillips</i>).....	0007-0022
Booking Reports.....	0023-0026
Rap Sheets (victim & defendants).....	0027-0115
Witness Statements.....	0116-0160
<i>Angela Lynn Agagas</i>	
<i>Andrea Jenkins</i>	
<i>Dan Jenkins</i>	
<i>Michael L. Stone</i>	
<i>Dameon Scott</i>	
<i>Natasha Gortsema</i>	
<i>Dora Perkins</i>	
<i>Christine Linex</i>	
<i>Lina Dandridge</i>	
<i>Nitesh Patel</i>	
<i>Claudell Baskins</i>	
<i>John Decker</i>	
<i>William Albert Cody</i>	
<i>Albert Dandridge III</i>	
<i>Melissa Heary</i>	
<i>Omar Anderson</i>	
<i>Stephanie Strickland</i>	
<i>Rebecca Roberts</i>	
<i>Marco Antonio Garcia</i>	
Advice of Constitutional Rights re: <i>Defendants and Suspects</i>	0161-167
Defendant's Statement (<i>Lennie Franklin Mickey</i>).....	0168-0172
Defendant's Statement (<i>Shawn Phillips</i>).....	0173-0175
Defendant's Statement (<i>Alana Ponce Niesen</i>).....	0176-0180
Defendant's Statement (<i>Sandra Campbell Barnes</i>).....	0181-0189
Witness Statements.....	0190-0196
<i>Dora Perkins</i>	
<i>Tamika Grandy</i>	
Chain of Custody.....	0197-0198
Driver's License of <i>Joan White Spencer</i>	0199
Chain of Custody from Dorchester County Sheriff's Office.....	0200
Chain of Custody - North Charleston Police Department.....	0201-0209
Crime Scene Report (dated 11/20/06).....	0210-0213
DNA Analysis dated 1/8/07 (SLED# L06-17465).....	0214
Crime Scene Report (dated 11/9/06).....	0215-0216
Search Warrant on Telephones.....	0217-0265
Photo Line-ups.....	0266-0313
Crime Scene Log.....	0314
Oakbrook Middle School Student Information (<i>Louis Pinckney</i>).....	0315
Econo Lodge Guest Payment Information re: <i>Natasha Gortsena</i>	0316
Telephone Record (<i>Dameon Scott 270-978-2043</i>).....	0317-0319
Commitment Form (<i>Lennie Franklin Mickey</i>).....	0320
<i>Dameon Scott</i> - Miscellaneous Documents.....	0321-0330
Detention Center Photo and Information (<i>Addasha Mapp</i>).....	0331-0334
Rap Sheet (<i>Addasha Mapp</i>).....	0335-0336
Guest Registration/Information (<i>Lawrence Young, George Goetz, Robert Vargo</i>).....	0337-0356

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Page 2

2/26/07

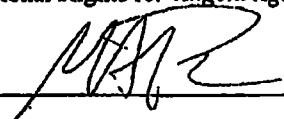
State v. Barnes, Mickey, Niesen, Phillips

CAD Operations Report	0357-0364
Miscellaneous Note	0365
Incident Report (re: Theft of video games)	0366-0374
Miscellaneous Note	0375
Trespass Notices	0376-0392
Criminal Information re: Regina Gordon, Addasha Mapp, & others	0393-0405
Miscellaneous Notes & AutoTrack	0406-0413
Florence County Sheriff's Office Incident Report	0414
CAD Operations Report (North Charleston)	0415-0420
Name Query	0421-0428
Photos of Robert Vargo	0429
Miscellaneous Notes	0430-0432
Guest Records (Budget Inn, Travelodge)	0433-0473
Daily Report (11/06 - 11/08/2006)	0474-0479
SLED Report [possibly a duplicate of 0214] (DNA Analysis dated 1/8/07)	0480
Crime Scene/Forensic Report	0481-0487
Photo CDs (2)	0488-0489

RECEIVED MARCH 12, 2007:

Driver's License Copy (Alana Ponce Niesen)	0490
Daily Sheets (Budget Inn of Charleston)	0491-0497
Note from Richard Weaver, Attention Det. Hill	0498
Phone Records (Cingular)	0499-0548
Advice of Constitutional Rights re: Angela Agagus	0549

RECEIVED BY



DATE

9/13/07

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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Shawn D. Phillips, #264250,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

2011-CP-10-7028

ORDER OF DISMISSAL

FILED
2011 JUN 21 AM 11:48
JULIE J. HESTRONG
CLERK OF COURT

THIS MATTER CAME BEFORE THE COURT by way of an application for post-conviction relief (PCR) filed September 28, 2011. The State filed its return on December 19, 2011. A hearing into the matter was convened at the Charleston County Courthouse on July 26, 2012. Applicant was present and represented by Leigh Hunter, Esquire.¹ The State was represented by David Spencer of the South Carolina Office of the Attorney General.

This Court has had the opportunity to hear and observe the testimony presented. This Court has also reviewed the trial transcript, the Clerk of Court records regarding the subject convictions, and the pleadings for both parties.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Charleston County. Applicant was indicted at the April 2007 and April 2008 terms of the Charleston County Grand Jury for murder (2007-GS-10-5565), armed robbery (2007-GS-10-5567), and criminal conspiracy (2008-GS-10-3459). Mark Peper, Esquire, represented Applicant. Applicant proceeded to trial on August 5 – 7, 2008,

¹ Ms. Hunter is now deceased. Mark Archer, Esquire, has now been appointed to represent Applicant.

SPM

after which a jury found him guilty as indicted. The Honorable James C. Williams, Jr., sentenced Applicant to concurrent sentences of forty years' imprisonment for murder, thirty years' imprisonment for armed robbery, and five years' imprisonment for criminal conspiracy.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. Joseph L. Savitz, III, Esquire, of the South Carolina Commission on Defense, represented Applicant on appeal. Following an Anders brief, the South Carolina Court of Appeals dismissed the appeal. State v. Phillips, Op. No. 2011-UP-271 (S.C. Ct. App. filed June 8, 2011). The Remittitur was issued on June 24, 2011.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony presented at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. § 17-27-80 (2003).

INEFFECTIVE ASSISTANCE OF COUNSEL

Applicant makes various allegations of ineffective assistance of counsel. The burden of proof is on the applicant in a PCR proceeding to prove the allegations in his application. Bell v. State, 321 S.C. 238, 467 S.E.2d 926 (1996); Rule 71.1(e), SCRCP.

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); Judge v. State, 321 S.C. 554, 471 S.E.2d 146 (1996). In order to prove prejudice, an applicant

must show that but for counsel's errors, there is a reasonable probability the result at trial would have been different. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Id. Where trial counsel articulates a valid reason for employing a certain trial strategy, such conduct should not be deemed ineffective assistance of counsel. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1995); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992).

ALLEGATIONS

The Applicant alleged the following claims: (1) that the prosecution knowingly used perjured testimony; (2) trial counsel was ineffective for not subpoenaing Dora Perkins; (3) trial counsel was ineffective in allowing evidence of a prior bad act; (4) trial counsel was ineffective for failing to object to in-court identification of Applicant; (5) appellate counsel was ineffective for failing to raise the issue of whether the trial court erred in admitting photographs of the victim; (6) trial counsel was ineffective for failing to object to the charge on duress; (7) the trial court's malice instruction was unconstitutional; (8) ineffective assistance of counsel regarding voluntariness of the Applicant's statement on the part of both trial counsel and appellate counsel; and (9) a portion of the prosecution's argument constitutes bolstering.

(1) Knowing Use of Perjured Testimony

Applicant alleges that the prosecution knowingly used perjured testimony from Angela Agagas, Applicant's girlfriend at the time of the robbery, who testified against Applicant. Agagas testified that she was with Applicant and co-defendant Lennie Mickey when they robbed Alec Browne at Towne Suites Hotel. Agagas testified that they took a gun from Browne and later the same gun was used when the victim in his case was robbed. Browne also testified at

trial and confirmed a gun was stolen. Testimony about the Towne Suites Hotel robbery was admitted over counsel's objection at trial.

The order of trials is relevant to this issue. Mickey was tried first, and the trial court ordered a mistrial after the jury could not reach a verdict. Applicant was tried afterwards and was convicted. Subsequently, Mickey was tried again. At Mickey's second trial, the trial court did not allow evidence of the Townes Suites Hotel robbery to be admitted which the prosecution argued went to the issue of identity. At this trial, Browne testified that the stolen gun was steel blue while Agagas testified that the stolen weapon was silver. This discrepancy became part of the basis for excluding the testimony. The trial court found that Agagas's testimony was not clear and convincing and therefore, insufficient to be admitted under Rule 404(b), SCRE.

Assistant Solicitor Bruce Durant testified at the PCR hearing and explained the chain of events. Durant explained the discrepancy in the description of the gun only came to light during Mickey's second trial. Durant noted that he could not locate Browne for Mickey's first trial. Durant testified that he did not find out about this discrepancy himself until Agagas's testimony at Mickey's second trial. Durant testified that the prosecution complied with Rule 5, SCRCrimP and that he did not know of the discrepancy until Mickey's second trial, which was last.

This Court finds Durant's testimony credible and therefore finds that the prosecution did not knowingly use perjured testimony. Further, this Court notes that while there may have been discrepancies between Browne and Agagas's description of the gun, that does not necessarily mean that Agagas, or Browne, were committing perjury. Discrepancies, such as the color of objects like guns or automobiles, are common in trial settings and may be an issue of the quality of a witness' recollection rather than their veracity. Therefore, this Court denies Applicant's claim for post-conviction relief as to this allegation.

(2) Statement of Dora Perkins

Applicant alleges trial counsel was ineffective for not subpoenaing Dora Perkins who gave an exculpatory statement to the police. Counsel testified that while Perkins's statement would have been exculpatory, counsel did not think it would likely be given much weight at trial. Counsel confirmed he received Perkins's statement in discovery. Durant testified that he did not think Perkins was a credible witness. Perkins did not testify at the PCR hearing.

This Court finds trial counsel's testimony credible and finds that his assessment is reasonable trial strategy. Further, Applicant did not provide testimony from Perkins, so it is speculative at best that Perkins' testimony would have been beneficial. Accordingly, this Court finds Applicant has not met his burden of proving either prong of Strickland.

(3) Prior Bad Act

Applicant alleges trial counsel was ineffective in allowing evidence of the Towne Suites robbery. As mentioned before, the prosecution sought to admit this testimony to prove the identity of Mickey and Applicant as robbers in the instant case. An in camera hearing was held to determine the admissibility of evidence of this prior robbery. Tr. pp. 208-256. Counsel argued against inclusion of the evidence. However the trial court found the evidence admissible to establish identity. Tr. pp. 243-249. Counsel requested a limiting instruction on the evidence. Tr. p. 252. The trial court gave the jury the limiting instruction. Tr. p. 256.

Applicant argues trial counsel was ineffective because he failed to renew the objection before the jury. However, Agagas testified immediately following the trial court's ruling, so no further objection was necessary. When a court admits evidence on the record immediately prior to the introduction of the evidence in question, the aggrieved party does not need to renew the

objection as the issue has been preserved. State v. Forrester, 343 S.C. 637, 642, 541 S.E.2d 837, 840 (2001).

This Court finds trial counsel's performance was not deficient as he adequately objected to preserve the issue for an appeal. Further, this Court finds that Applicant was not prejudiced by the alleged deficiency. Even assuming that the issue was not preserved for appeal, this Court does not believe that the trial court abused its discretion in admitting the evidence and therefore, appeal of this issue would not have been successful. Therefore, this Court denies Applicant's claim for post-conviction relief as to this allegation.

(4) Failure to Object to In-Court Identification

Applicant alleges trial counsel was ineffective for failing to object to Sandra Barnes' in-court identification of Applicant. Counsel testified that his trial strategy was to pursue the defenses of duress and mere presence rather than challenge identity. Counsel noted that Applicant gave a statement admitting his presence at the murder scene, but Applicant claimed in his statement that he stayed in the car while Mickey and "D" went into the hotel room. Applicant contended he was under duress from Mickey to go with him in the car.

Barnes testified at trial that she first met Applicant two weeks before the murder and then met him again the evening of the murder. In Applicant's presence, Mickey questioned a prostitute named Alana Niesen ("China") about whether she had any clients that Mickey and Applicant could rob. Niesen provided Victim's name and they made plans to rob him. Niessen called Victim to arrange for Barnes to go over to Victim's hotel room. The plan was for Barnes to knock on Victim's door and then Mickey and Applicant would follow behind and rob Victim. When Barnes went to Victim's door, it was partially opened. Mickey and Applicant rushed into the room, while Barnes went back to the hotel room where the robbery was planned. Mickey

DPN
-6-

and Applicant returned to the hotel room. Mickey was upset, but Applicant seemed cool. Mickey claimed they only tied up Victim and put him in the bathtub. Tr. pp. 411-24.

Barnes, who was later arrested, admitted on cross-examination to picking someone else out of a lineup, but she later identified Applicant as Mickey's accomplice when she saw him in a police interview room. Tr. pp. 425-30. In trial counsel's view, Barnes's admission to the prior identification killed her credibility.

This Court does not find trial counsel's failure to object to the in-court identification as deficient performance. The record reflects that Barnes had ample time to observe Applicant. Further, Detective Jourdan testified that shortly after she had picked up another individual out of the lineup, Jourdan was brought into an observation room with a two-way mirror at Detective Spears's request. Applicant was present on the other side of the mirror. Jourdan testified that she was not asked to identify Applicant as "D," the nickname she knew Applicant by, but only asked if she could identify the person on the other side of the mirror. She identified him as "D," the participant in the robbery. Tr. pp. 452-455.

This Court finds that had trial counsel objected to the identification, it likely would have been overruled. Further, Applicant was not prejudiced as Barnes was forced to admit to the prior identification. Finally, Applicant was not prejudiced as her identification was merely cumulative to the Niessen and Agagas' testimony establishing Applicant's involvement in the robbery, in addition to the statement that Applicant gave law enforcement. This Court finds that Applicant did not meet either prong of Strickland and denies relief as to this claim.

(5) Photographs Of Murder Victim

Applicant alleges appellate counsel should have raised the issue on appeal of whether the trial court erred in admitting photographs of the victim. The prosecution contended at trial that

the photographs were probative to show malice and corroborate the pathologist's testimony that the gunshot wound was a contact injury. The prosecution indicated that they had withheld the more gruesome pictures and were using the black and white photographs instead of the color photographs. The prosecution argued: "That was an execution, it was a malicious killing, and these photographs are probative on the issue of malice." Tr. p. 562, lines 15-19. A color photograph that the trial court did not consider gory was admitted because it showed scratches on Victim's nose. The prosecution was alleging the scratches were caused by a pillow being put over Victim's face when he was shot in bed. Tr. pp. 563-564. The trial court found that the three black and white photographs showed the entry and exit wounds and found they were probative and admissible. The trial court excluded two other photographs. Tr. p. 564, lines 5-25.

This Court finds that the issue, if raised on appeal, would likely not have been successful as nothing in the record indicates the trial court abused its discretion when it admitted the photographs. Accordingly, Applicant was not prejudiced because the issue would not have been successful on appeal. Therefore, this Court finds Applicant has not met his burden of proving appellate counsel's performance was ineffective and denies post-conviction relief as to this allegation.

(6) Duress Charge

Applicant alleges trial counsel was ineffective for failing to object to the charge on duress because it was burden-shifting. The trial court gave the following charge:

Ladies and gentlemen, the Defendant has raised the defense of duress. Duress is an affirmative defense which means it must be proven by the defendant by the preponderance of the evidence. The State must prove the guilt of the defendant by beyond a reasonable doubt. To make out the defense of duress which would relieve the Defendant of responsibility, the Defendant must prove the defense of duress by the preponderance of the evidence, which as I told you, is more probable than not. To establish duress which