

**VOLUME ONE OF THREE**

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

---

**RECEIVED**

Appeal from Charleston County

NOV 19 2014

Stephanie P. McDonald, Circuit Court Judge S.C. Supreme Court

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SHAWN PHILLIPS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014- 000304

---

**APPENDIX**

---

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STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

COURT OF GENERAL SESSIONS  
NINTH JUDICIAL CIRCUIT

CASE NO. 07-GS-10-05565  
07-GS-10-05567  
08-GS-10-03459

STATE OF SOUTH CAROLINA

versus

SHAWN DEMETRIUS PHILLIPS,  
\_\_\_\_\_  
DEFENDANT

)  
)  
) VOLUME 1 OF 2  
) TRANSCRIPT OF RECORD

) DATE:  
)  
) AUGUST 5-7, 2008  
)

BEFORE:

HONORABLE JAMES C. WILLIAMS, JR., PRESIDING JUDGE  
AND A JURY.

APPEARANCES:

RUTLEDGE DURANT, ESQUIRE  
BRUCE DURANT, ESQUIRE  
ASSISTANT SOLICITORS  
FOR THE STATE

MARK PEPPER, ESQUIRE  
ATTORNEY AT LAW  
FOR THE DEFENDANT

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1 DATE:

2 AUGUST 5, 2008

3 SOLICITOR RUTLEDGE DURANT: THE  
4 STATE CALLS STATE VERSUS SHAWN PHILLIPS ON CHARGES OF  
5 ARMED ROBBERY FOR INDICTMENT NUMBER 2007-GS-10-05567,  
6 CHARGE OF MURDER, INDICTMENT NUMBER 2007-GS-10-05565,  
7 AND THE CHARGE OF CRIMINAL CONSPIRACY FOR INDICTMENT  
8 NUMBER 2008-GS-10-03459, ALL TRUE BILLED.

9 THE COURT: ALRIGHT. MR. PEPER, DO  
10 YOU REPRESENT THE DEFENDANT?

11 MR. PEPER: THAT'S CORRECT, YOUR  
12 HONOR.

13 THE COURT: AND YOU ARE READY FOR  
14 TRIAL?

15 MR. PEPER: WE ARE, YOUR HONOR.

16 THE COURT: DO YOU HAVE ANY VOIR  
17 DIRE FOR THE STATE OR THE DEFENSE?

18 MR. PEPER: NONE FROM THE DEFENSE.

19 SOLICITOR RUTLEDGE DURANT: YES, WE  
20 DO, YOUR HONOR.

21 THE COURT: ARE THERE ANY MATTERS WE  
22 NEED TO TAKE UP BEFORE WE BRING THE JURY PANEL UP?

23 MR. PEPER: NOT THAT I'M AWARE OF.

24 SOLICITOR RUTLEDGE DURANT: NOT THAT  
25 I'M AWARE OF, YOUR HONOR.

1                   THE COURT: ALRIGHT. YOU CAN HAVE  
2 THEM COME UP. HE'LL BE BRING THOSE UP, THEN. LET ME  
3 LOOK AT YOUR VOIR DIRE, AND HAVE YOU SHOWN IT TO THE  
4 DEFENSE?

5                   SOLICITOR RUTLEDGE DURANT: JUDGE,  
6 I'M GOING TO PASS UP A WITNESS LIST AS WELL AS A VOIR  
7 DIRE, A PROPOSED VOIR DIRE.

8                   THE COURT: DO YOU HAVE A WITNESS  
9 LIST?

10                  MR. PEPER: YOUR HONOR, AT THIS  
11 POINT IN TIME WE DON'T PLAN ON CALLING ANY WITNESSES.  
12 I SENT MR. DURANT NOTICE OF ALIBI BUT I'VE HAD TROUBLE  
13 WITH MEETING WITH THEM.

14                  SOLICITOR BRUCE DURANT: DO YOU WANT  
15 US TO HAVE HIM TO LIST THOSE JUST IN CASE?

16                  MR. PEPER: YEAH, WE MIGHT AS WELL.

17                  SOLICITOR BRUCE DURANT: YOU'D  
18 BETTER GIVE THEM TO THE JUDGE JUST IN CASE YOU THINK YOU  
19 MIGHT AT SOME POINT IN TIME.

20                  MR. PEPER: OKAY. I'M SORRY. THE  
21 DEFENSE MAY CALL MARY ROBINSON.

22                  THE COURT: I HAVEN'T GOTTEN THE  
23 OKAY FROM THE BAILIFF YET. WE MIGHT HAVE LOST SOMEBODY  
24 BETWEEN THE GROUND FLOOR AND UP HERE.

25 (Whereupon, the entire jury



1 panel enters the courtroom.)

2 THE COURT: ALRIGHT, GOOD. GOOD  
3 MORNING, LADIES AND GENTLEMEN, MY NAME IS JIMMY  
4 WILLIAMS, I'M A CIRCUIT COURT JUDGE FOR THE STATE OF  
5 SOUTH CAROLINA, I'M ONE OF FORTY-SIX JUDGES THAT TRAVELS  
6 AROUND THE STATE HOLDING COURT. IN FACT, YESTERDAY I  
7 WAS HOLDING COURT IN AIKEN, I TRIED A CIVIL CASE DOWN  
8 THERE AND FINISHED UP AND THEY SENT ME TO CHARLESTON TO  
9 WORK THE REST OF THE WEEK DOWN HERE. BUT WE TRAVEL ALL  
10 OVER THE STATE. I LIVE IN THE LITTLE TOWN OF NORWAY IN  
11 ORANGEBURG COUNTY, AND SO I GET DOWN THIS WAY RATHER  
12 FREQUENTLY.

13 WE'RE ABOUT TO BEGIN THE CASE  
14 AGAINST MR. SHAWN DEMETRIUS PHILLIPS. MR. PHILLIPS IS  
15 CHARGED WITH THREE INDICTMENTS BY THE STATE. THE FIRST  
16 CHARGE IS CRIMINAL CONSPIRACY, HE'S CHARGED WITH ARMED  
17 ROBBERY, HE'S CHARGED WITH MURDER, AND YOU'VE BEEN  
18 BROUGHT UP TO BE QUALIFIED TO SERVE AS JURORS IN THIS  
19 CASE.

20 WERE YOU PLACED UNDER OATH  
21 DOWNSTAIRS? YOU HAVEN'T? ALRIGHT, I NEED YOU --  
22 ALRIGHT, WELL, I NEED TO ASK YOU SOME QUESTIONS AND YOU  
23 NEED TO FURNISH THIS INFORMATION TO THE COURT UNDER  
24 OATH, SO WOULD YOU PLEASE STAND AT THIS TIME.

25 (Whereupon, the jury panel

1 is duly sworn.)

2 THE COURT: THANK YOU VERY MUCH, YOU  
3 MAY BE SEATED.

4 NOW, LADIES AND GENTLEMEN, THE  
5 DEFENDANT HAS PLED NOT GUILTY TO THESE CHARGES. THAT  
6 PLACES THE BURDEN ON THE STATE TO PROVE HIM GUILTY  
7 BEYOND A REASONABLE DOUBT. A PERSON CHARGED WITH  
8 COMMITTING A CRIMINAL OFFENSE IN SOUTH CAROLINA IS NEVER  
9 REQUIRED TO PROVE HIMSELF INNOCENT, THE BURDEN IS ALWAYS  
10 ON THE STATE. THE DEFENDANT DOES NOT HAVE TO PROVE  
11 ANYTHING, HE DOES NOT HAVE TO TESTIFY OR CALL ANY  
12 WITNESSES, THE BURDEN IS ON THE STATE. BUT BOTH THE  
13 STATE AND THE DEFENDANT ARE ENTITLED TO WHAT WE CALL A  
14 FAIR AND IMPARTIAL JURY, AND BY THAT WE MEAN A JURY  
15 WHICH CAN BASE ITS DECISION IN THIS CASE BASED SOLELY ON  
16 THE TESTIMONY AND THE EVIDENCE THAT YOU HEAR IN THIS  
17 COURTROOM ON THIS CASE, A JURY WHICH COULD FOLLOW MY  
18 INSTRUCTIONS ON THE LAW, AND A JURY WHICH WOULD NOT BE  
19 AFFECTED BY ANY EXPERIENCE THAT YOU MAY HAVE HAD OUTSIDE  
20 OF THIS COURTROOM OR ANY INFORMATION THAT YOU'VE GAINED  
21 OUTSIDE OF THIS COURTROOM. THAT IS THE PURPOSE FOR THE  
22 QUESTIONS THAT I'M GOING TO ASK YOU. IF THE QUESTION  
23 APPLIES TO YOU, YOU MUST RESPOND AND PROVIDE THAT  
24 ANSWER. IF IT IS OF A PERSONAL OR PRIVATE NATURE AND YOU  
25 WOULD PREFER NOT TO SHARE IT WITH EVERYONE YOU CAN COME

1 FORWARD AND SPEAK WITH ME PRIVATELY ABOUT IT, BUT PLEASE  
2 DO NOT WITHHOLD ANY INFORMATION THAT MIGHT BE REQUIRED  
3 BY ANY OF THE QUESTIONS THAT I ASK.

4 LADIES AND GENTLEMEN, I WANT TO  
5 FIRST READ YOU THESE INDICTMENTS SO THAT YOU WILL KNOW  
6 WHAT THE CHARGES ARE, UNDERSTANDING THAT THESE  
7 INDICTMENTS ARE NOT EVIDENCE, THESE INDICTMENTS ARE  
8 SIMPLY DOCUMENTS PREPARED BY THE STATE OF SOUTH CAROLINA  
9 TO ADVISE THE DEFENDANT AND HIS ATTORNEY OF THE CHARGES  
10 HE IS FACING SO THEY CAN PREPARE A PROPER DEFENSE. AND  
11 AS I SAID, HE HAS PLED NOT GUILTY TO EACH OF THESE  
12 INDICTMENTS.

13 LADIES AND GENTLEMEN, INDICTMENT  
14 NUMBER THIRTY-FOUR FIFTY-NINE IS AN INDICTMENT FOR  
15 CONSPIRACY, AND IT SAYS THAT IN CHARLESTON COUNTY, SOUTH  
16 CAROLINA, ON OR ABOUT NOVEMBER THE SEVENTH, TWO THOUSAND  
17 AND SIX, THE DEFENDANT, SHAWN DEMETRIUS PHILLIPS, DID  
18 COMBINE, CONSPIRE, CONFEDERATE, AGREE OR HAVE A TACIT  
19 UNDERSTANDING WITH OTHERS FOR THE PURPOSE OF COMMITTING  
20 A CRIME, ARMED ROBBERY, IN VIOLATION OF THE LAW.

21 INDICTMENT NUMBER FIFTY-FIVE SIXTY-  
22 SEVEN IS AN INDICTMENT FOR ARMED ROBBERY, AND IT SAYS  
23 THAT ON OR ABOUT NOVEMBER THE EIGHTH, TWO THOUSAND AND  
24 SIX, IN CHARLESTON COUNTY, SOUTH CAROLINA, AT THE BUDGET  
25 INN MOTEL ON FAIN STREET IN NORTH CHARLESTON, BY USE OF

1           FORCE, THREATS OR INTIMIDATION, WHILE ARMED WITH A  
2           DEADLY WEAPON, AND IN CONCERT WITH OTHERS, THE  
3           DEFENDANT, SHAWN PHILLIPS, DID TAKE AND CARRY AWAY GOODS  
4           AND/OR MONIES FROM THE PERSON OR IMMEDIATE PRESENCE OF  
5           ROBERT VARGO WITH THE INTENT OF PERMANENTLY DEPRIVE THE  
6           VICTIM OF POSSESSION THEREOF, IN VIOLATION OF THE LAW.

7                               FINALLY, INDICTMENT, LADIES AND  
8           GENTLEMEN, NUMBER FIFTY-FIVE SIXTY-FIVE IS AN INDICTMENT  
9           FOR MURDER. THE ALLEGATIONS ARE THAT IN CHARLESTON  
10          COUNTY, ON OR ABOUT NOVEMBER THE EIGHTH, TWO THOUSAND  
11          AND SIX, WITH MALICE AFORETHOUGHT, AND IN CONCERT WITH  
12          OTHERS, THE DEFENDANT, SHAWN PHILLIPS, DID KILL AND  
13          MURDER VARGO BY MEANS OF SHOOTING HIM, AND THAT ROBERT  
14          VARGO DID DIE IN CHARLESTON COUNTY AS A PROXIMATE RESULT  
15          THEREOF ON NOVEMBER THE EIGHTH, TWO THOUSAND AND SIX, IN  
16          VIOLATION OF THE LAW.

17                              AS I SAID, TO THESE CHARGES HE HAS  
18          PLED NOT GUILTY.

19                              MR. PHILLIPS, WOULD YOU STAND,  
20          PLEASE, AND FACE THE JURY SO THEY CAN IDENTIFY YOU?

21          (Whereupon, Defendant stands.)

22                              THE COURT:       THIS IS MR. SHAWN  
23          PHILLIPS ON MY LEFT, LADIES AND GENTLEMEN, YOUR RIGHT.

24                              THANK YOU, MR. PHILLIPS, YOU MAY BE  
25          SEATED.

1 IS ANY MEMBER OF THE JURY PANEL  
2 RELATED BY BLOOD, CONNECTED BY MARRIAGE, CLOSE PERSONAL  
3 FRIEND, HAVE ANY KNOWLEDGE OR ACQUAINTANCE WHATEVER WITH  
4 MR. PHILLIPS? IF YOU KNOW MR. PHILLIPS IN ANY CAPACITY  
5 FROM ANY SOURCE WHATSOEVER, WOULD YOU PLEASE STAND.

6 (Negative response from jury panel.)

7 THE COURT: MR. PHILLIPS IS  
8 REPRESENTED BY MR. MARK PEPER, OF THE CHARLESTON COUNTY  
9 BAR. MR. PEPER JUST STOOD BEFORE YOU A MINUTE AGO.

10 MR. PEPER, DO YOU PRACTICE SOLELY OR  
11 DO YOU, WHO ARE YOU WITH?

12 MR. PEPER: I'M WITH THE PEPER LAW  
13 FIRM, YES, SIR.

14 THE COURT: ALRIGHT, SIR, HE'S A  
15 SOLE PRACTITIONER HERE IN CHARLESTON, THE PEPER LAW  
16 FIRM. IS THERE ANY MEMBER OF THE JURY PANEL RELATED BY  
17 BLOOD, CONNECTED BY MARRIAGE, CLOSE PERSONAL FRIEND,  
18 HAVE ANY KNOWLEDGE OR ACQUAINTANCE WITH MR. PEPER, OR IF  
19 YOU ARE NOW OR HAVE EVER BEEN REPRESENTED BY HIM, WOULD  
20 YOU PLEASE STAND?

21 (Affirmative response from jury panel.)

22 THE COURT: YES, MA'AM, YOUR NAME,  
23 PLEASE, AND NUMBER?

24 JUROR WILSON: KATHERYN WILSON, TWO  
25 NINE ONE.

1                   THE COURT:   YES, MA'AM?

2                   JUROR WILSON:  MR. PEPER PLAYED HIGH  
3                   SCHOOL SPORTS WITH MY BOYS.

4                   THE COURT:   ALRIGHT.   WAS HE ANY  
5                   GOOD?  NEVER MIND.  WOULD THAT FACT HAVE ANY EFFECT ON  
6                   YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR IN THIS  
7                   CASE?

8                   JUROR WILSON:  NO.

9                   THE COURT:  THANK YOU, MA'AM, YOU  
10                  ARE QUALIFIED TO SERVE.

11                  YES, MA'AM, YOUR NAME AND NUMBER?

12                  JUROR WELCH:  MY NAME IS LINDSEY  
13                  WELCH, NUMBER THREE FORTY, MY HUSBAND AND MR. PEPER ARE  
14                  FRIENDS.

15                  THE COURT:   MA'AM?

16                  JUROR WELCH:  MY HUSBAND IS FRIENDS  
17                  WITH MR. PEPER.

18                  THE COURT:  ALRIGHT.  AND WOULD THAT  
19                  FACT AFFECT YOUR ABILITY TO BE A FAIR AND IMPARTIAL  
20                  JUROR IN THIS CASE?

21                  JUROR WELCH:  NO, SIR.

22                  THE COURT:  THANK YOU, MA'AM, YOU  
23                  ARE QUALIFIED TO SERVE.

24                  LADIES AND GENTLEMEN, THE CASE IS  
25                  BEING PROSECUTED BY MR. RUTLEDGE DURANT, OF THE

1 SOLICITOR'S OFFICE, WHO IS STANDING BEFORE YOU AT THIS  
2 TIME, AND MR. BRUCE DURANT, ALSO OF THE SOLICITOR'S  
3 OFFICE, WHO IS STANDING BEFORE YOU AT THIS TIME.

4 YOU GENTLEMEN MAY BE SEATED. THANK  
5 YOU.

6 IS THERE ANY MEMBER OF THE JURY  
7 PANEL RELATED BY BLOOD, CONNECTED BY MARRIAGE, CLOSE  
8 PERSONAL FRIEND, HAVE ANY KNOWLEDGE OR ACQUAINTANCE WITH  
9 EITHER MR. RUTLEDGE DURANT OR MR. BRUCE DURANT, OR ANY  
10 OTHER MEMBERS OF THE STAFF OF THE SOLICITOR'S OFFICE FOR  
11 CHARLESTON COUNTY. IF YOU KNOW WELL ANY OF THESE PEOPLE  
12 THAT WORK IN THAT SOLICITOR'S OFFICE WOULD YOU PLEASE  
13 STAND AT THIS TIME?

14 (Affirmative response from jury panel.)

15 THE COURT: YES, MA'AM, YOUR NAME,  
16 PLEASE?

17 JUROR OWENS: ROVENA OWENS, ONE  
18 NINETY-FOUR, I BELIEVE MY COUSIN, JASON, JASON MICHAELS  
19 WORKS IN THAT OFFICE.

20 THE COURT: ALRIGHT.

21 SOLICITOR RUTLEDGE DURANT: HE WORKS  
22 FOR THE PUBLIC DEFENDER, JUDGE.

23 THE COURT: OH, HE WORKS WITH THE  
24 PUBLIC DEFENDER'S OFFICE. WELL, THAT'S A DIFFERENT  
25 OFFICE BUT IT STILL DEALS WITH CRIMINAL MATTERS. WOULD

1 THAT FACT AFFECT YOUR ABILITY TO BE A FAIR AND IMPARTIAL  
2 JUROR?

3 JUROR OWENS: NO, IT WON'T.

4 THE COURT: THANK YOU, MA'AM, YOU  
5 ARE QUALIFIED TO SERVE.

6 ANYONE ELSE?

7 (Negative response from jury panel.)

8 THE COURT: LADIES AND GENTLEMEN, IS  
9 THERE ANY MEMBER OF THE JURY PANEL WHO HAS HEARD  
10 ANYTHING ABOUT THIS CASE? I IMAGINE IT WAS IN THE  
11 NEWSPAPERS OR ON THE T.V. STATION WHEN IT OCCURRED IN  
12 NOVEMBER, TWO THOUSAND AND SIX, I DON'T KNOW THAT FOR A  
13 FACT, OR YOU MIGHT HAVE SEEN SOMETHING ABOUT IT THEN,  
14 YOU MIGHT HAVE HEARD SOMEBODY TALKING IN THE BEAUTY  
15 PARLOR OR THE BARBER SHOP OR THE FILLING STATION. IF  
16 YOU HAVE ANY KNOWLEDGE ABOUT THIS CASE FROM ANY SOURCE  
17 WHATSOEVER, AND AS I SAID, THIS IS ALLEGED TO HAVE  
18 HAPPENED ON NOVEMBER THE EIGHTH, TWO THOUSAND AND SIX,  
19 AT THE BUDGET INN MOTEL ON FAIN STREET IN NORTH  
20 CHARLESTON. IF YOU HAVE HEARD ANYTHING ABOUT THIS CASE  
21 WHATSOEVER WOULD YOU PLEASE STAND AT THIS TIME.

22 (Negative response from jury panel.)

23 THE COURT: ALRIGHT, LADIES AND  
24 GENTLEMEN, I'M GOING TO READ YOU THE NAMES OF SOME  
25 WITNESSES WHO MAY TESTIFY IN THIS CASE. THEY MAY NOT



1 TESTIFY BUT THEY OBVIOUSLY HAVE SOME KNOWLEDGE ABOUT  
2 THIS CASE OR THEY WOULD NOT BE POTENTIAL WITNESSES. IF  
3 YOU KNOW ANY OF THESE INDIVIDUALS, WHEN I CALL THEIR  
4 NAMES WOULD YOU PLEASE STAND. NOW, THERE ARE FORTY  
5 NAMES ON THIS LIST SO PLEASE DON'T WAIT UNTIL I'VE  
6 FINISHED BECAUSE WE WON'T REMEMBER THE FIRST OF THEM,  
7 BUT WHEN I CALL THEIR NAME IF YOU THINK YOU KNOW THAT  
8 PERSON WOULD YOU PLEASE STAND AT THAT TIME. THE FIRST  
9 GROUP, LADIES AND GENTLEMEN, ARE MEMBERS OF THE NORTH  
10 CHARLESTON POLICE DEPARTMENT, AND IF THEY ARE PRESENT IN  
11 THE COURTROOM, AND THEY MAY OR MAY NOT BE, I WOULD ASK  
12 THAT THEY STAND WHEN I CALL THEIR NAME. FIRST, CANDY  
13 JOHNSON, JAMES HILL, MR. HILL IS STANDING BEFORE YOU,  
14 LADIES AND GENTLEMEN. THANK YOU, SIR. GREG GOMES, OR  
15 GOMEZ, IS IT GOMES?

16 SOLICITOR RUTLEDGE DURANT: GOMES,  
17 SIR.

18 THE COURT: GOMES. TAMMY DRIGGERS  
19 DICENZO.

20 (Affirmative response from jury panel.)

21 THE COURT: YES, MA'AM, YOUR NAME  
22 AND NUMBER?

23 JUROR WELCH: WANDA WELCH, TWO  
24 SEVENTY-EIGHT. SHE IS A PATIENT IN THE PRACTICE WHERE  
25 I WORK FOR A DOCTOR.

1                   THE COURT: ALRIGHT. AND WOULD THAT  
2 FACT AFFECT YOUR ABILITY TO BE A FAIR AND IMPARTIAL  
3 JUROR?

4                   JUROR WELCH: NO, SIR.

5                   THE COURT: DO YOU KNOW HER VERY  
6 WELL?

7                   JUROR WELCH: NO, SIR.

8                   THE COURT: ALRIGHT, THANK YOU,  
9 MA'AM.

10                   SCOTT PERRY, SCOTT WYANT, W-Y-A-N-T,  
11 AL HOLMAN, KELLY SPEARS, SHAWN PATRICK. AND FROM THE  
12 CHARLESTON POLICE DEPARTMENT, LADIES AND GENTLEMEN,  
13 DOUGLAS GALUCIO AND JENNY ANTONIO. FROM SLED, LADIES  
14 AND GENTLEMEN, WHICH IS STATE LAW ENFORCEMENT DIVISION,  
15 MATTHEW FITTS, ILA SIMMONS, SUZANNE CROMER. OTHER  
16 WITNESSES, LADIES AND GENTLEMEN, DR. SUSAN ARON  
17 PRESNELL, DENISH PATEL, NETISH OR NICK PATEL, LOU SABER,  
18 MICHELLE SMITH, ANGELA AGAGAS, ALANA P. NIESEN, SANDRA  
19 C. BARNES, LENNIE MICKEY, MARCO GARCIA, KENNETH  
20 SPONNICK, DONNIE EASON, DENISE BROWN, SHE'S WITH THE --  
21 IS THAT THE CHARLESTON COUNTY DETENTION CENTER, I  
22 BELIEVE, DENISE BROWN. ALSO AT THE DETENTION CENTER,  
23 MARVIN HANCOCK. ALISON STONEY, WHO WORKS WITH AT&T,  
24 ALEC BROWN. ALSO FROM THE NORTH CHARLESTON POLICE  
25 DEPARTMENT, ERIC JOURDAN, ALEX TECHIE, AMIE STEVENS,

1 PAULA DAVIS, AND FROM THE FBI, DONALD SIMMONS.  
2 ADDITIONAL WITNESSES, DERRICK SIMMONS, JENNIFER JOHNSON,  
3 SHAWN PHILLIPS, AND MARY ROBINSON.

4 (Negative response from jury panel.)

5 THE COURT: LADIES AND GENTLEMEN,  
6 DOES ANY MEMBER OF THE JURY PANEL HAVE A FAMILY MEMBER  
7 OR CLOSE FRIEND WHO WAS OR IS INCARCERATED AT ANY STATE  
8 PENITENTIARY? IF SO, WOULD YOU PLEASE STAND.

9 (Affirmative response from jury panel.)

10 THE COURT: YES, MA'AM, YOUR NAME  
11 AND NUMBER?

12 JUROR WILLIAMS: L. CORICE WILLIAMS,  
13 TWO EIGHTY-EIGHT.

14 THE COURT: AND IS THAT A FAMILY  
15 MEMBER OR A FRIEND?

16 JUROR WILLIAMS: FAMILY MEMBER.

17 THE COURT: IS HE STILL  
18 INCARCERATED?

19 JUROR WILLIAMS: YES.

20 THE COURT: AND WOULD THAT AFFECT --  
21 DID HE GO TO JAIL FROM CHARLESTON COUNTY?

22 JUROR WILLIAMS: YES.

23 THE COURT: AND WOULD THAT AFFECT  
24 YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR IN THIS  
25 CASE?

1 JUROR WILLIAMS: NO.

2 THE COURT: COULD YOU TELL US HOW  
3 LONG HE'S BEEN INCARCERATED?

4 JUROR WILLIAMS: HE'S BEEN  
5 INCARCERATED FOR ABOUT - - -

6 THE COURT: APPROXIMATELY.

7 JUROR WILLIAMS: TWO YEARS.

8 THE COURT: ALRIGHT. BUT IT  
9 WOULDN'T AFFECT YOUR ABILITY TO SERVE AS A FAIR JUROR IN  
10 THIS CASE?

11 JUROR WILLIAMS: NO, SIR.

12 THE COURT: THANK YOU, MA'AM.

13 ANYONE ELSE? YES, MA'AM?

14 JUROR SANDEL: I DID HAVE A FAMILY  
15 AT ONE TIME THAT WAS LIKE A WEEKEND SERVICE, IT WASN'T  
16 LONGER.

17 THE COURT: ALRIGHT. AND YOUR NAME  
18 AND NUMBER?

19 JUROR SANDEL: VIRGINIA SANDEL, TWO  
20 TWENTY-FIVE.

21 THE COURT: AND WOULD THAT FACT  
22 AFFECT YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR IN  
23 THIS CASE?

24 JUROR SANDEL: NO, YOUR HONOR.

25 THE COURT: THANK YOU, MA'AM, YOU'RE

1 QUALIFIED TO SERVE.

2 ANYONE ELSE?

3 (Negative response from jury panel.)

4 THE COURT: LADIES AND GENTLEMEN, IS  
5 THERE ANY MEMBER OF THE JURY PANEL HAVE A FAMILY MEMBER  
6 OR A CLOSE FRIEND WHO WAS OR IS BEING PROSECUTED BY THE  
7 NINTH CIRCUIT SOLICITOR'S OFFICE IN CHARLESTON OR  
8 BERKELEY COUNTY? IF SO, WOULD YOU PLEASE STAND, A  
9 FAMILY MEMBER OR FRIEND WHO WAS OR IS BEING PROSECUTED  
10 BY THIS OFFICE?

11 (Affirmative response from jury panel.)

12 THE COURT: THAT WOULD APPLY TO THE  
13 SAME INDIVIDUAL, MA'AM?

14 JUROR WILLIAMS: NO.

15 THE COURT: OH, A DIFFERENT  
16 INDIVIDUAL?

17 JUROR WILLIAMS: YES.

18 THE COURT: ALRIGHT. AND I NEED  
19 YOUR NAME AND NUMBER AGAIN.

20 JUROR WILLIAMS: L. CORICE WILLIAMS,  
21 TWO EIGHTY-EIGHT.

22 THE COURT: ALRIGHT. AND THAT  
23 PROSECUTION IS ONGOING AT THE PRESENT TIME?

24 JUROR WILLIAMS: YES.

25 THE COURT: AND WOULD THAT AFFECT

1 YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR?

2 JUROR WILLIAMS: NO.

3 THE COURT: THANK YOU, MA'AM, YOU  
4 ARE QUALIFIED TO SERVE.

5 DOES ANY MEMBER OF THE JURY PANEL  
6 HAVE ANY RELIGIOUS OR PERSONAL BELIEFS THAT WOULD  
7 INTERFERE WITH YOU SITTING IN JUDGEMENT IN A CRIMINAL  
8 CASE? IF SO, WOULD YOU PLEASE STAND.

9 (Negative response from jury panel.)

10 THE COURT: HAS ANY MEMBER OF THE  
11 JURY PANEL OR A MEMBER OF YOUR IMMEDIATE FAMILY OR CLOSE  
12 FRIEND HAD A BAD EXPERIENCE WITH A POLICE OFFICER OR  
13 OTHER TYPE OF LAW ENFORCEMENT OFFICER WHICH WOULD AFFECT  
14 YOUR ABILITY TO ACTS A FAIR AND IMPARTIAL JUROR? IF SO,  
15 WOULD YOU PLEASE STAND.

16 (Negative response from jury panel.)

17 THE COURT: DOES ANY MEMBER OF THE  
18 JURY PANEL NEED TO COME FORWARD AND SPEAK WITH ME  
19 PRIVATELY ABOUT ANY OF THE MATTERS WHICH I HAVE  
20 DISCUSSED ALREADY?

21 (Negative response from jury panel.)

22 THE COURT: DOES ANY MEMBER OF THE  
23 JURY PANEL KNOW OF ANY REASON WHATSOEVER THAT YOU CAN'T  
24 GIVE BOTH THE STATE AND THE DEFENDANT IN THIS CASE, MR.  
25 PHILLIPS, A FAIR AND IMPARTIAL TRIAL? IF YOU KNOW OF ANY

1 REASON WHATSOEVER WOULD YOU PLEASE COME FORWARD AND  
2 SHARE THAT WITH ME.

3 (Negative response from jury panel.)

4 THE COURT: ANYTHING ELSE FROM THE  
5 STATE?

6 SOLICITOR RUTLEDGE DURANT: NOTHING  
7 FROM THE STATE, JUDGE.

8 THE COURT: FROM THE DEFENSE?

9 MR. PEPPER: NO, YOUR HONOR, THANK  
10 YOU.

11 THE COURT: ALRIGHT. LADIES AND  
12 GENTLEMEN, UNDER OUR SYSTEM BOTH THE STATE AND THE  
13 DEFENSE HAS A RIGHT TO EXCUSE A CERTAIN NUMBER OF PEOPLE  
14 FROM SERVING ON THE JURY. AND THEY CAN DO THAT FOR ANY  
15 REASON WHATSOEVER, THEY DO NOT HAVE TO GIVE ANY REASON  
16 FOR DOING THAT. AND SO, IN JUST A MINUTE THE CLERK IS  
17 GOING TO DRAW THE NAMES OUT OF A COMPUTER, I THINK.

18 CLERK: BARREL. WE'VE GOT A BARREL  
19 THAT WE'RE STILL USING.

20 THE COURT: OH, YOU'VE STILL GOT THE  
21 BARREL. OKAY. WE STILL USE THE BARREL, WHICH IS THE  
22 BEST WAY. ANYHOW, YOUR NAME WILL BE DRAWN OUT AND IF HE  
23 CALLS YOUR NAME I WOULD ASK THAT YOU PLEASE COME  
24 FORWARD, COME ALL THE WAY UP TO THE BACK SIDE OF THIS  
25 PODIUM, KIND OF STOP AND FACE THAT WAY SO THE LAWYERS

1 CAN GET ONE LAST LOOK AT YOU. I'M SURE YOU'LL FEEL VERY  
2 SELF-CONSCIOUS WHILE THAT'S HAPPENING, BUT I HAVE NEVER  
3 LOST A JUROR AND I'M NOT GOING TO START NOW. SO,  
4 NOTHING BAD IS GOING TO HAPPEN TO YOU BUT THEY NEED TO  
5 GET ONE LAST LOOK. AND YOU MAY BE SEATED IN THE JURY  
6 BOX, YOU MAY BE RETURNING TO YOUR SEAT, SO IF YOU HAVE  
7 A HAT OR A COAT OR UMBRELLA OR BOOK OR SOMETHING PLEASE  
8 BRING THAT WITH YOU WHEN YOU COME.

9 THE STRIKES, OF COURSE, WILL BE FIVE  
10 AND FIVE -- FIVE AND TEN. OKAY.

11 IS THE STATE READY?

12 SOLICITOR RUTLEDGE DURANT: STATE'S  
13 READY, JUDGE.

14 THE COURT: IS DEFENSE READY?

15 MR. PEPPER: YES, YOUR HONOR.

16 THE COURT: ALRIGHT, MR. CLERK, YOU  
17 MAY PROCEED.

18 CLERK: JUROR THREE FIFTEEN, WINFORD  
19 GASPERSOON. WHAT SAY YOU FOR THE STATE?

20 SOLICITOR RUTLEDGE DURANT: PLEASE  
21 SEAT THE JUROR.

22 CLERK: WHAT SAY YOU FOR THE  
23 DEFENDANT?

24 MR. PEPPER: PLEASE EXCUSE THIS  
25 JUROR, YOUR HONOR.



1                    CLERK:        MR. GASPERSO, YOU'RE  
2                    EXCUSED FROM THE TRIAL OF THIS CASE, PLEASE HAVE A SEAT  
3                    IN THE AUDIENCE.

4                    JUROR NUMBER ONE FIFTY-FOUR, DOROTHY  
5                    MAJOR.    WHAT SAY YOU FOR THE STATE?

6                    SOLICITOR RUTLEDGE DURANT:    PLEASE  
7                    SEAT THIS JUROR.

8                    CLERK:        WHAT SAY YOU FOR THE  
9                    DEFENDANT?

10                   MR. PEPPER:    PLEASE SEAT THIS JUROR,  
11                   YOUR HONOR.

12                   CLERK:        MS. MAJOR, PLEASE HAVE A  
13                   SEAT IN THE JURY BOX, YOU'VE BEEN SELECTED FOR THE TRIAL  
14                   OF THIS CASE.

15                   JUROR NINETY-FOUR, MICHAEL HANSHAW.  
16                   WHAT SAY YOU FOR THE STATE?

17                   SOLICITOR RUTLEDGE DURANT:    PLEASE  
18                   SEAT THIS JUROR.

19                   CLERK:        WHAT SAY YOU FOR THE  
20                   DEFENDANT?

21                   MR. PEPPER:    PLEASE SEAT THIS JUROR,  
22                   YOUR HONOR.

23                   CLERK:        MR. HANSHAW, PLEASE HAVE A  
24                   SEAT IN THE JURY BOX, YOU'VE BEEN SELECTED FOR THE TRIAL  
25                   OF THIS CASE.

1 JUROR THREE FORTY, LINDSEY WELCH.

2 WHAT SAY YOU FOR THE STATE?

3 SOLICITOR RUTLEDGE DURANT: PLEASE

4 SEAT THE JUROR.

5 CLERK: WHAT SAY YOU FOR THE

6 DEFENDANT?

7 MR. PEPER: PLEASE SEAT THIS JUROR.

8 CLERK: MS. WELCH, PLEASE HAVE A

9 SEAT IN THE JURY BOX, YOU'VE BEEN SELECTED FOR THE TRIAL  
10 OF THIS CASE.

11 JUROR TWO O SEVEN, BRETT RAHALEWICZ.

12 WHAT SAY YOU FOR THE STATE?

13 SOLICITOR RUTLEDGE DURANT: PLEASE

14 SEAT THIS JUROR.

15 CLERK: WHAT SAY YOU FOR THE

16 DEFENDANT?

17 MR. PEPER: PLEASE SEAT THIS JUROR.

18 CLERK: MR. RAHALEWICZ, PLEASE HAVE

19 A SEAT IN THE JURY BOX, YOU'VE BEEN SELECTED FOR THE  
20 TRIAL OF THIS CASE.

21 JUROR SIXTY-SEVEN, VANESSA FORTE.

22 WHAT SAY YOU FOR THE STATE?

23 SOLICITOR RUTLEDGE DURANT: PLEASE

24 SEAT THIS JUROR.

25 CLERK: WHAT SAY YOU FOR THE

1 DEFENDANT?

2 MR. PEPER: PLEASE EXCUSE THIS  
3 JUROR.

4 CLERK: MS. FORTE, YOU'VE BEEN  
5 EXCUSED FROM THE TRIAL OF THIS CASE, HAVE A SEAT BACK IN  
6 THE AUDIENCE. THANK YOU, MA'AM.

7 JUROR EIGHTY-EIGHT, DEBORAH  
8 GREGORIE. WHAT SAY YOU FOR THE STATE?

9 SOLICITOR RUTLEDGE DURANT: PLEASE  
10 SEAT THIS JUROR?

11 CLERK: WHAT SAY YOU FOR THE  
12 DEFENDANT?

13 MR. PEPER: PLEASE EXCUSE THIS  
14 JUROR.

15 CLERK: MS. GREGORIE, YOU'VE BEEN  
16 EXCUSED FROM THE TRIAL OF THIS CASE. THANK YOU.

17 JUROR ONE NINETY-FOUR, ROVENA OWENS.  
18 WHAT SAY YOU FOR THE STATE?

19 SOLICITOR RUTLEDGE DURANT: PLEASE  
20 SEAT THE JUROR.

21 CLERK: WHAT SAY YOU FOR THE  
22 DEFENDANT?

23 MR. PEPER: PLEASE EXCUSE THIS  
24 JUROR, YOUR HONOR.

25 CLERK: MS. OWENS, YOU'VE BEEN

1 EXCUSED FROM THE TRIAL OF THIS CASE. PLEASE HAVE A SEAT  
2 BACK IN THE AUDIENCE.

3 JUROR NUMBER ONE TWENTY-EIGHT, DAVID  
4 JOHNSON. WHAT SAY YOU FOR THE STATE?

5 SOLICITOR RUTLEDGE DURANT: PLEASE  
6 SEAT THIS JUROR.

7 CLERK: WHAT SAY YOU FOR THE  
8 DEFENDANT?

9 MR. PEPER: PLEASE SEAT THIS JUROR,  
10 YOUR HONOR.

11 CLERK: MR. JOHNSON, PLEASE HAVE A  
12 SEAT IN THE JURY BOX, YOU'VE BEEN SELECTED FOR THE TRIAL  
13 OF THIS CASE.

14 JUROR THREE THIRTY-NINE, MICHAEL  
15 WALL. WHAT SAY YOU FOR THE STATE?

16 SOLICITOR RUTLEDGE DURANT: PLEASE  
17 SEAT THIS JUROR.

18 CLERK: WHAT SAY YOU FOR THE  
19 DEFENDANT?

20 MR. PEPER: PLEASE EXCUSE THIS  
21 JUROR.

22 CLERK: MR. WALL, YOU'VE BEEN  
23 EXCUSED FROM THE TRIAL OF THIS CASE. THANK YOU, SIR.

24 JUROR ONE HUNDRED, DONNA HARVEY.  
25 WHAT SAY YOU FOR THE STATE?

1 SOLICITOR RUTLEDGE DURANT: PLEASE  
2 SEAT THIS JUROR.

3 CLERK: WHAT SAY YOU FOR THE  
4 DEFENDANT?

5 MR. PEPER: PLEASE EXCUSE THIS  
6 JUROR.

7 CLERK: MS. HARVEY, YOU'VE BEEN  
8 EXCUSED FROM THE TRIAL OF THIS CASE. THANK YOU, MA'AM.

9 JUROR NUMBER TWO SEVENTY-EIGHT,  
10 WANDA WELCH. WHAT SAY YOU FOR THE STATE?

11 SOLICITOR RUTLEDGE DURANT: PLEASE  
12 SEAT THIS JUROR.

13 CLERK: WHAT SAY YOU FOR THE  
14 DEFENDANT?

15 MR. PEPER: PLEASE SEAT THE JUROR.

16 CLERK: MS. WELCH, PLEASE HAVE A  
17 SEAT IN THE JURY BOX, YOU'VE BEEN SELECTED FOR THE TRIAL  
18 OF THIS CASE.

19 JUROR NUMBER FORTY-FOUR, PEGGY  
20 COLLINS. WHAT SAY YOU FOR THE STATE?

21 SOLICITOR RUTLEDGE DURANT: PLEASE  
22 SEAT THE JUROR.

23 CLERK: WHAT SAY YOU FOR THE  
24 DEFENDANT?

25 MR. PEPER: PLEASE EXCUSE THIS

1 JUROR.

2 CLERK: MS. COLLINS, YOU'VE BEEN  
3 EXCUSED FROM THE TRIAL OF THIS CASE. THANK YOU, MA'AM.  
4 THE DEFENDANT HAS EXHAUSTED SEVEN  
5 STRIKES.

6 JUROR NUMBER EIGHTEEN, LAVERNE  
7 BENNETT. WHAT SAY YOU FOR THE STATE?

8 SOLICITOR RUTLEDGE DURANT: PLEASE  
9 EXCUSE THIS JUROR.

10 CLERK: MS. BENNETT, YOU'VE BEEN  
11 EXCUSED FROM THE TRIAL OF THIS CASE. THANK YOU, MA'AM.

12 JUROR NUMBER TWO EIGHTY-EIGHT,  
13 CORICE WILLIAMS. WHAT SAY YOU FOR THE STATE?

14 SOLICITOR RUTLEDGE DURANT: PLEASE  
15 EXCUSE THIS JUROR.

16 CLERK: MS. WILLIAMS, YOU'VE BEEN  
17 EXCUSED FROM THE TRIAL OF THIS CASE. THANK YOU, MA'AM.

18 JUROR NUMBER TWO O SIX, JOHN  
19 RAFFAELLE, NUMBER TWO O SIX. WHAT SAY YOU FOR THE  
20 STATE?

21 SOLICITOR RUTLEDGE DURANT: PLEASE  
22 SEAT THIS JUROR.

23 CLERK: WHAT SAY YOU FOR THE  
24 DEFENDANT?

25 MR. PEPPER: PLEASE EXCUSE THIS

1 JUROR.

2 CLERK: MR. RAFFAELLE, PLEASE HAVE  
3 A SEAT IN THE AUDIENCE, THANK YOU, SIR.

4 JUROR NUMBER TWO HUNDRED, SHERRY  
5 PHILLIPS. WHAT SAY YOU FOR THE STATE?

6 SOLICITOR RUTLEDGE DURANT: PLEASE  
7 SEAT THIS JUROR.

8 CLERK: WHAT SAY YOU FOR THE  
9 DEFENDANT?

10 MR. PEPPER: PLEASE SEAT THIS JUROR.

11 CLERK: MS. PHILLIPS, PLEASE HAVE A  
12 SEAT IN THE JURY BOX, YOU'VE BEEN SELECTED FOR THE TRIAL  
13 OF THIS CASE.

14 JUROR NUMBER FOUR, NEELIE ALLEN.  
15 WHAT SAY YOU FOR THE STATE?

16 SOLICITOR RUTLEDGE DURANT: PLEASE  
17 SEAT THIS JUROR.

18 CLERK: WHAT SAY YOU FOR THE  
19 DEFENDANT?

20 MR. PEPPER: PLEASE EXCUSE THIS  
21 JUROR.

22 CLERK: MS. ALLEN, YOU'VE BEEN  
23 EXCUSED FROM THE TRIAL OF THIS CASE. THANK YOU, MA'AM.

24 JUROR NUMBER TWO NINETY-TWO, KEITH  
25 WILSON. WHAT SAY YOU FOR THE STATE?

1                    SOLICITOR RUTLEDGE DURANT: PLEASE  
2 SEAT THIS JUROR.

3                    CLERK: WHAT SAY YOU FOR THE  
4 DEFENDANT?

5                    MR. PEPER: PLEASE SEAT THIS JUROR.

6                    CLERK: MR. WILSON, PLEASE HAVE A  
7 SEAT IN THE JURY BOX, YOU'VE BEEN SELECTED FOR THE TRIAL  
8 OF THIS CASE.

9                    JUROR NUMBER FORTY-ONE, BILLIE  
10 CHARLES. WHAT SAY YOU FOR THE STATE?

11                   SOLICITOR RUTLEDGE DURANT: PLEASE  
12 SEAT THIS JUROR.

13                   CLERK: WHAT SAY YOU FOR THE  
14 DEFENDANT?

15                   MR. PEPER: PLEASE SEAT THIS JUROR.

16                   CLERK: MS. CHARLES, PLEASE HAVE A  
17 SEAT IN THE JURY BOX, YOU'VE BEEN SELECTED FOR THE TRIAL  
18 OF THIS CASE.

19                   JUROR NUMBER TWO TWENTY-FIVE,  
20 VIRGINIA SANDEL. WHAT SAY YOU FOR THE STATE?

21                   SOLICITOR RUTLEDGE DURANT: PLEASE  
22 EXCUSE THIS JUROR.

23                   CLERK: MS. SANDEL, PLEASE HAVE A  
24 SEAT BACK IN THE AUDIENCE, YOU'VE BEEN EXCUSED FROM THE  
25 TRIAL OF THIS CASE. THANK YOU, MA'AM.



1 JUROR NUMBER TWO THIRTY-TWO, ABBY  
2 SHERRER. NUMBER TWO THIRTY-TWO. WHAT SAY YOU FOR THE  
3 STATE?

4 SOLICITOR RUTLEDGE DURANT: PLEASE  
5 SEAT THE JUROR.

6 CLERK: WHAT SAY YO FOR THE  
7 DEFENDANT?

8 MR. PEPPER: PLEASE SEAT THIS JUROR.

9 CLERK: MS. SHERRER, PLEASE HAVE A  
10 SEAT IN THE JURY BOX, YOU'VE BEEN SELECTED FOR THE TRIAL  
11 OF THIS CASE.

12 JUROR SEVENTY-THREE, ROY FULLER.  
13 WHAT SAY YOU FOR THE STATE?

14 SOLICITOR RUTLEDGE DURANT: PLEASE  
15 SEAT THIS JUROR.

16 CLERK: WHAT SAY YOU FOR THE  
17 DEFENDANT?

18 MR. PEPPER: PLEASE SEAT THIS JUROR.

19 CLERK: MR. FULLER, PLEASE HAVE A  
20 SEAT IN THE JURY BOX, YOU'VE BEEN SELECTED FOR THE TRIAL  
21 OF THIS CASE.

22 JUROR NUMBER THREE THIRTY-SEVEN,  
23 AMBER SWEIGART. WHAT SAY YOU FOR THE STATE?

24 SOLICITOR RUTLEDGE DURANT: PLEASE  
25 SEAT THIS JUROR.

1                    CLERK:     WHAT SAY YOU FOR THE  
2       DEFENDANT?

3                    MR. PEPPER: PLEASE SEAT THIS JUROR.

4                    CLERK:   MS. SWEIGART, PLEASE HAVE A  
5       SEAT IN THE JURY BOX, YOU'VE BEEN SELECTED FOR THE TRIAL  
6       OF THIS CASE.

7                    ONE OR TWO ALTERNATES, YOUR HONOR?

8                    THE COURT:   TWO ALTERNATES, PLEASE,  
9       AND THE STRIKES WILL BE ONE AND TWO FOR EACH.

10                   CLERK:    WE'RE STRIKING THE FIRST  
11       ALTERNATE.   JUROR TWO THIRTY-THREE, KRISTI SHYMANSKY.  
12       WHAT SAY YOU FOR THE STATE?

13                   SOLICITOR RUTLEDGE DURANT:   PLEASE  
14       SEAT THIS JUROR.

15                   CLERK:     WHAT SAY YOU FOR THE  
16       DEFENDANT?

17                   MR. PEPPER: PLEASE SEAT THIS JUROR.

18                   CLERK:    MS. SHYMANSKY, PLEASE HAVE  
19       A SEAT IN THE JURY BOX, YOU'VE BEEN SELECTED FOR THE  
20       TRIAL OF THIS CASE.

21                   STRIKING THE SECOND ALTERNATE, JUROR  
22       TWO FIFTY-THREE, GLORIA SUTTON.   WHAT SAY YOU FOR THE  
23       STATE?

24                   SOLICITOR RUTLEDGE DURANT:   PLEASE  
25       SEAT THIS JUROR.

1                    CLERK:     WHAT SAY YOU FOR THE  
2                    DEFENDANT?

3                    MR. PEPER:   PLEASE SEAT THIS JUROR.

4                    CLERK:     MS. SUTTON, PLEASE HAVE A  
5                    SEAT IN THE JURY BOX, YOU'VE BEEN SELECTED FOR THE TRIAL  
6                    OF THIS CASE.

7                    YOUR HONOR, THE JURY IS SELECTED.

8                    THE COURT:   THANK YOU, SIR.

9                    ANY MATTERS REGARDING JURY SELECTION  
10                   FROM THE STATE?

11                   SOLICITOR RUTLEDGE DURANT:   NOTHING  
12                   FROM THE STATE, JUDGE.

13                   THE COURT:   FROM THE DEFENDANT?

14                   MR. PEPER:     NOTHING FROM THE  
15                   DEFENSE, YOUR HONOR.

16                   THE COURT:     ALRIGHT.   LADIES AND  
17                   GENTLEMEN WHO WERE NOT SELECTED ON THIS JURY, CALL BACK  
18                   TONIGHT AFTER SIX O'CLOCK.   YOU'RE WELCOME TO HANG  
19                   AROUND AND SEE WHAT GOES ON IN COURT FOR THE REST OF THE  
20                   DAY, BUT YOU ARE EXCUSED AT THIS TIME.   PLEASE CALL BACK  
21                   AFTER SIX O'CLOCK AND FOLLOW WHATEVER INSTRUCTIONS THAT  
22                   YOU FIND THERE.

23                   LADIES AND GENTLEMEN, WHAT I'M  
24                   TRYING TO -- WE HAVE SOME MATTERS THAT WE NEED TO TAKE  
25                   CARE OF BEFORE WE CAN START THIS TRIAL, AND I'M TRYING

1 TO DECIDE WHETHER I WANT TO SEND YOU TO THE JURY ROOM  
2 AND WAIT UNTIL WE TAKE CARE OF THOSE MATTERS OR WHETHER  
3 I WANT TO SEND YOU FOR LUNCH. AND SO, I'VE DECIDED TO  
4 SEND YOU FOR LUNCH, AND I THINK WE'LL BE READY TO START  
5 BACK AT ONE:THIRTY. IT MAY BE THAT WE'RE NOT GOING TO  
6 BE ABLE TO START AT ONE:THIRTY, BUT I'M DOING THE BEST  
7 I CAN TO BE CONSIDERATE OF YOUR TIME. SO, I'M GOING TO  
8 EXCUSE YOU AT THIS TIME AND ASK YOU TO BE BACK AT  
9 ONE:THIRTY.

10 NOW, IT IS VERY IMPORTANT THAT YOU  
11 NOT TALK ABOUT THIS CASE. AS I TOLD YOU, YOU MUST MAKE  
12 YOUR DECISION IN THIS CASE BASED SOLELY ON THE TESTIMONY  
13 AND THE EVIDENCE THAT YOU HEAR IN THIS COURTROOM. THE  
14 LAW ALSO REQUIRES THAT YOU MUST CONSIDER EVERYTHING THAT  
15 YOU HEAR IN THIS COURTROOM, THAT'S THE FIRST WITNESS AND  
16 THE LAST WITNESS AND THE LAWYERS' CLOSING AND THEN MY  
17 INSTRUCTIONS TO YOU ON THE LAW WHICH IS THE LAST THING  
18 THAT YOU WILL HEAR. UNTIL YOU HAVE HEARD ALL OF THOSE  
19 WITNESSES AND MY INSTRUCTIONS ON THE LAW YOU DO NOT HAVE  
20 ALL THE INFORMATION THAT YOU NEED TO MAKE UP YOUR MIND  
21 IN THIS CASE. IF YOU START TALKING ABOUT THE CASE AMONG  
22 YOURSELVES OR WITH SOMEONE ELSE YOU'LL START FORMING AN  
23 OPINION ABOUT THE CASE AND YOU MIGHT BUMP INTO SOMEBODY  
24 AND YOU START TALKING ABOUT THE CASE AND THEY'LL TELL  
25 YOU SOMETHING ABOUT THE CASE, THEY MAY KNOW SOMETHING

1 ABOUT THE CASE. SO, WE JUST ELIMINATE ALL THOSE RISKS  
2 BY NOT TALKING ABOUT THE CASE. DON'T TALK ABOUT IT  
3 AMONG YOURSELVES, IF YOU GO TO LUNCH WITH SOME TOTAL  
4 STRANGER YOU CAN SAY, I'M SERVING ON THE JURY BUT THE  
5 JUDGE SAID I CAN'T TALK ABOUT IT UNTIL THE CASE IS OVER.  
6 THAT'S VERY IMPORTANT. SO, PLEASE BE BACK -- ALSO,  
7 DON'T GO OUT AND GET ON THE INTERNET, NOW, AND TRY TO  
8 FIND ALL THE NEWS STORIES ABOUT THIS CASE BECAUSE YOU  
9 TOLD ME YOU KNOW NOTHING ABOUT THE CASE, AND THAT WOULD  
10 BE EVIDENCE THAT YOU RECEIVED OUTSIDE OF THIS COURTROOM  
11 AND THAT WOULD DISQUALIFY YOU FROM SERVING ON THE JURY.  
12 SO, PLEASE, JUST FORGET ABOUT THAT CASE, THESE LAWYERS  
13 WILL TELL YOU EVERYTHING THAT YOU NEED TO KNOW, THE  
14 LAWYERS AND THE WITNESSES, EVERYTHING THAT YOU NEED TO  
15 KNOW TO MAKE UP YOUR DECISION IN THE CASE WHEN THAT TIME  
16 COMES.

17 SO, PLEASE FOLLOW THE BAILIFF OUT,  
18 HE WILL TELL YOU, HE WILL SHOW YOU THE JURY ROOM, AND  
19 WHEN YOU COME BACK YOU WILL COME STRAIGHT TO THAT JURY  
20 ROOM AND NOT IN THE COURTROOM, AND WE WILL TRY OUR BEST  
21 TO BE READY FOR YOU AT ONE:THIRTY.

22 THANK YOU VERY MUCH, YOU ARE  
23 EXCUSED.

24 (Whereupon, the jury leaves  
25 the courtroom and the following

1 takes place out of the presence  
2 of the jury.)

3 THE COURT: ARE YOU READY TO PROCEED  
4 WITH THE JACKSON-DENNO, OR DO WE NEED A SHORT BREAK?

5 SOLICITOR RUTLEDGE DURANT: JUDGE,  
6 I COULD USE A SHORT BREAK PERSONALLY, I DON'T KNOW.

7 MR. PEPER: THAT'S FINE.

8 YOUR HONOR, I REALLY HAVE TWO  
9 OFFICERS WITH ME TODAY, I WOULD REALLY NEED THEM BOTH AT  
10 THE COUNSEL TABLE. DO YOU HAVE A PROBLEM WITH THAT, I  
11 DON'T WANT TO GET IN THE WAY OF - - -

12 THE COURT: I DON'T HAVE A PROBLEM.  
13 THAT DOESN'T BOTHER Y'ALL, DOES IT?

14 MR. PEPER: NO PROBLEM.

15 (Recess)

16 THE COURT: ARE YOU READY FOR THE  
17 JACKSON-DENNO AT THIS TIME?

18 SOLICITOR RUTLEDGE DURANT: THAT'S  
19 GREAT, JUDGE.

20 THE COURT: ALRIGHT, YOU CAN CALL  
21 YOUR WITNESSES.

22 SOLICITOR RUTLEDGE DURANT: THE  
23 STATE CALLS TAMARA DICENZO DRIGGERS.

24 CLERK: MS. DRIGGERS, WOULD YOU  
25 PLACE YOUR LEFT HAND ON THE BIBLE AND RAISE YOUR RIGHT

1 HAND.

2 (Whereupon, Tamara Dicenzo Driggers  
3 is duly sworn.)

4 CLERK: PLEASE HAVE A SEAT, AND  
5 WATCH YOUR STEP. PLEASE GIVE US YOUR FULL NAME FOR THE  
6 RECORD.

7 WITNESS: TAMARA, T-A-M-A-R-A,  
8 DICENZO, D-I-C-E-N-Z-O, DRIGGERS, D-R-I-G-G-E-R-S.

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13 sequential continuation of record.)

DIRECT, IN CAMERA - TAMARA DICENZO DRIGGERS BY  
SOLICITOR RUTLEDGE DURANT

42

DIRECT EXAMINATION, IN CAMERA, OF TAMARA

DICENZO DRIGGERS BY SOLICITOR RUTLEDGE DURANT:

Q. GOOD MORNING.

A. GOOD MORNING.

Q. WHERE ARE YOU EMPLOYED?

A. NORTH CHARLESTON POLICE DEPARTMENT.

Q. HOW LONG HAVE YOU BEEN WITH NORTH CHARLESTON  
POLICE DEPARTMENT?

A. APPROXIMATELY TEN YEARS.

Q. YOUR CURRENT POSITION?

A. DETECTIVE.

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

A. A DETECTIVE.

Q. AND IN YOUR CAPACITY AS A DETECTIVE DID YOU HAVE  
THE OPPORTUNITY TO SPEAK WITH THE DEFENDANT, SHAWN  
PHILLIPS, ON DECEMBER FOURTEENTH, TWO THOUSAND AND  
SIX?

A. YES, SIR.

Q. WHAT WAS THIS IN REGARDS TO?

A. IN REGARDS TO AN ADVISEMENT OF RIGHTS WITH THE  
MURDER AT THE BUDGET INN.

Q. AND WHERE DID THIS TAKE PLACE?

A. ON THE THIRD FLOOR OF NORTH CHARLESTON POLICE  
DEPARTMENT, IN THE SERGEANT'S OFFICE.



DIRECT, IN CAMERA - TAMARA DICENZO DRIGGERS BY  
SOLICITOR RUTLEDGE DURANT

43

1 Q. DETECTIVE, CAN YOU DESCRIBE THE SERGEANT'S OFFICE?

2 A. IT'S IN THE BACK RIGHT HAND CORNER OF THE  
3 DETECTIVE DIVISION, IT'S A LARGE ROOM WITH THREE  
4 DESKS, A COUCH AND THREE CHAIRS.

5 Q. AND WHO WAS WITH YOU IN THE SERGEANT'S OFFICE?

6 A. THE DEFENDANT, SHAWN PHILLIPS, HIS PROBATION  
7 OFFICER, MR. SIMMONS, DETECTIVE HILL, AND MYSELF.

8 Q. WAS MR. PHILLIPS ADVISED OF HIS RIGHTS?

9 A. YES, SIR.

10 Q. WHO ADVISED HIM?

11 A. DETECTIVE HILL.

12 Q. HOW WAS HE ADVISED?

13 A. HE WAS VERBALLY ADVISED OF HIS RIGHTS THAT WAS  
14 READ OFF OF THE ADVISEMENT SHEET THAT WE HAVE, AND  
15 HE WAS READ EACH AND EVERY RIGHT AND ASKED IF HE  
16 UNDERSTOOD THEM.

17 Q. I SHOW YOU WHAT'S BEEN MARKED FOR IDENTIFICATION  
18 AS STATE'S ONE. I ASK YOU TO TAKE A LOOK AT IT.  
19 DO YOU RECOGNIZE IT?

20 A. YES, SIR.

21 Q. HOW DO YOU RECOGNIZE IT?

22 A. IT'S OUR ADVICE OF CONSTITUTIONAL RIGHTS, AND IT'S  
23 ALSO THE ADVICE THAT WAS GIVEN TO THE DEFENDANT ON  
24 THE DAY IN QUESTION.

25 Q. IN USING THIS FORM WOULD YOU DEMONSTRATE HOW MR.

DIRECT, IN CAMERA - TAMARA DICENZO DRIGGERS BY  
SOLICITOR RUTLEDGE DURANT

44

1 PHILLIPS WAS ADVISED OF HIS RIGHTS?

2 A. DETECTIVE HILL WOULD READ HIM HIS RIGHTS, STARTING  
3 AT THE VERY BEGINNING, THAT HE HAS THE ABSOLUTE  
4 RIGHT -- DO YOU WANT ME TO GO THROUGH ALL OF IT?

5 Q. SURE.

6 A. OKAY. "YOU HAVE THE ABSOLUTE RIGHT TO REMAIN  
7 SILENT AND DO NOT HAVE TO ANSWER ANY QUESTIONS OR  
8 GIVE A STATEMENT AND THIS FACT CANNOT BE USED  
9 AGAINST ME." HE WOULD THEN STOP AND ASK THE  
10 DEFENDANT, DO YOU UNDERSTAND THIS? THE DEFENDANT  
11 REPLIED, YES. HE THEN ASKED MR. PHILLIPS TO, HE  
12 WENT IN AND EXPLAINED IT FURTHER WITH MR.  
13 PHILLIPS. HE THEN WENT ON TO THE SECOND ONE, "IF  
14 I DO ANSWER QUESTIONS OR GIVE A STATEMENT ANYTHING  
15 I SAY CAN AND WILL BE USED AGAINST ME IN A COURT  
16 OF LAW." HE THEN PROCEEDED TO EXPLAIN THAT INTO  
17 FURTHER DETAIL AND ASKED MR. PHILLIPS IF HE  
18 UNDERSTOOD, AND MR. PHILLIPS STATED, YES. THEN HE  
19 WENT TO NUMBER THREE, "I HAVE THE RIGHT TO CONSULT  
20 WITH A LAWYER OF MY CHOICE BEFORE I ANSWER  
21 QUESTIONS OR GIVE A STATEMENT AND ALSO HAVE HIM  
22 PRESENT WHILE I AM BEING QUESTIONED." HE THEN  
23 WENT AND EXPLAINED THAT FURTHER. MR. PHILLIPS  
24 ADVISED HE UNDERSTOOD THAT. HE WENT TO NUMBER  
25 FOUR, "IF I WISH TO TALK TO A LAWYER OR HAVE HIM

DIRECT, IN CAMERA - TAMARA DICENZO DRIGGERS BY  
SOLICITOR RUTLEDGE DURANT

45

1 PRESENT BUT AM UNABLE TO AFFORD TO HIRE A LAWYER  
2 ONE WILL BE APPOINTED TO REPRESENT ME FREE OF  
3 CHARGE." HE THEN EXPLAINED THAT FURTHER. MR.  
4 PHILLIPS STATED HE UNDERSTOOD. HE WENT TO THE  
5 LAST, NUMBER FIVE, "IF I DECIDE TO ANSWER  
6 QUESTIONS OR GIVE A STATEMENT WITHOUT HAVING A  
7 LAWYER PRESENT REPRESENTING ME I HAVE THE ABSOLUTE  
8 RIGHT DURING THIS INTERVIEW TO STOP ANSWERING  
9 QUESTIONS AND REMAIN SILENT." HE THEN ASKED MR.  
10 PHILLIPS IF HE UNDERSTOOD THAT AND MADE SURE HE  
11 DESCRIBED IT COMPLETELY. MR. PHILLIPS THEN SIGNED  
12 THE SIGNATURE AT THE BOTTOM WHICH STATED HE FULLY  
13 UNDERSTANDS EACH OF THE RIGHTS, AND THEN I  
14 WITNESSED IT AND DETECTIVE HILL WITNESSED IT. AND  
15 THEN HE, AT THE BOTTOM, DETECTIVE HILL STATED,  
16 "HAVING THESE RIGHTS IN MIND, I WISH TO WAIVE  
17 THESE RIGHTS AND ANSWER QUESTIONS CONCERNING BEING  
18 SPOKEN TO ABOUT MURDER." DETECTIVE HILL HAD  
19 CROSSED OUT, "CHARGE OF" AT THAT TIME BECAUSE HE  
20 TOLD HIM HE WAS NOT BEING CHARGED AT THAT MOMENT.  
21 "AND NO THREATS, FORCE OR PROMISES OF ANY KIND  
22 HAVE BEEN MADE TO ME BY ANYONE TO CAUSE ME TO  
23 WAIVE THESE RIGHTS AND/OR ANSWER QUESTIONS." AND  
24 HE AGAIN SIGNED IT AND DETECTIVE HILL AND MYSELF  
25 BOTH SIGNED IT.

DIRECT, IN CAMERA - TAMARA DICENZO DRIGGERS BY  
SOLICITOR RUTLEDGE DURANT

46

1 Q. NOW, WHEN YOU ADVISED HIM OF HIS RIGHTS DID HE,  
2 DID HE EXHIBIT ANY CONFUSION?

3 A. NO.

4 Q. DID HE ASK, DID HE HAVE ANY TROUBLE UNDERSTANDING  
5 ANY OF HIS RIGHTS?

6 A. NO.

7 Q. DID HE APPEAR TO BE UNDER THE INFLUENCE OF ALCOHOL  
8 OR DRUGS?

9 A. NO.

10 Q. DID HIS ANSWERS TO QUESTIONS APPEAR RATIONAL?

11 A. ABSOLUTELY.

12 Q. DID HE RESPOND APPROPRIATELY?

13 A. YES, SIR.

14 Q. DID YOU OR ANYONE IN YOUR PRESENCE THREATEN HIM IN  
15 ANY WAY?

16 A. NO, SIR.

17 Q. COERCE HIM IN ANY WAY?

18 A. NO, SIR.

19 Q. AND YOU SAID YOU WITNESSED MR. PHILLIPS SIGN HIS  
20 ADVISEMENT OF RIGHTS?

21 A. YES, SIR.

22 Q. AND HE ALSO SIGNED THAT HE WISHED TO WAIVE THESE  
23 RIGHTS?

24 A. YES, SIR.

25 Q. AND YOU SIGNED - - -

DIRECT, IN CAMERA - TAMARA DICENZO DRIGGERS BY  
SOLICITOR RUTLEDGE DURANT

47

1 A. YES, SIR.

2 Q. --- AS A WITNESS?

3 A. YES, SIR.

4 Q. AND DETECTIVE HILL SIGNED AS A WITNESS?

5 A. YES, SIR.

6 SOLICITOR RUTLEDGE DURANT: PLEASE  
7 ANSWER ANY QUESTIONS MR. PEPER MAY HAVE FOR YOU.

8 THE COURT: MR. PEPER.

9 MR. PEPER: THANK YOU, YOUR HONOR,  
10 MAY IT PLEASE THE COURT.

11 (NOTE: Blank lines on this page do not indicate any  
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CROSS, IN CAMERA - TAMARA DICENZO DRIGGERS  
BY MR. PEPER

48

CROSS-EXAMINATION, IN CAMERA, OF TAMARA DICENZO  
DRIGGERS BY MR. PEPER:

Q. DETECTIVE DRIGGERS, MARK PEPER, FOR THE DEFENDANT.  
JUST A FEW QUESTIONS. YOU WERE PRESENT DURING THE  
MIRANDA ADVICE OF CONSTITUTIONAL RIGHTS, CORRECT?

A. YES, SIR.

Q. YOU WERE NOT PRESENT DURING THE STATEMENT?

A. NO, SIR.

MR. PEPER: THAT'S ALL THE QUESTIONS  
I HAVE.

THE COURT: REDIRECT?

SOLICITOR RUTLEDGE DURANT: JUDGE,  
WOULD YOU CARE TO SEE STATE'S ONE?

NO FURTHER QUESTIONS FOR THIS  
WITNESS.

THE COURT: ALRIGHT, YOU CAN STEP  
DOWN.

SOLICITOR RUTLEDGE DURANT: THE  
STATE CALLS DONALD SIMMONS.

CLERK: GOOD MORNING, SIR. PLEASE  
PLACE YOUR RIGHT HAND ON THE BIBLE AND RAISE YOUR RIGHT  
HAND.

(Whereupon, Donald Jeffrey Simmons  
is duly sworn.)

CLERK: THANK YOU, PLEASE HAVE A

CROSS, IN CAMERA - TAMARA DICENZO DRIGGERS  
BY MR. PEPPER

49

1 SEAT. PLEASE STATE YOUR FULL NAME FOR THE RECORD,  
2 SPELLING YOUR LAST NAME.

3 WITNESS: DONALD JEFFREY SIMMONS, S-  
4 I-M-M-O-N-S.

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DIRECT, IN CAMERA - DONALD J. SIMMONS  
BY SOLICITOR RUTLEDGE DURANT

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DIRECT, IN CAMERA - DONALD J. SIMMONS

BY SOLICITOR RUTLEDGE DURANT:

Q. MR. SIMMONS, WHERE ARE YOU EMPLOYED?

A. WITH UNITED STATES DISTRICT COURT.

Q. AND IN WHAT CAPACITY DO YOU SERVE THE UNITED STATES DISTRICT COURT?

A. AS A UNITED STATES PROBATION OFFICER.

Q. HOW LONG HAVE YOU BEEN DOING THAT?

A. ELEVEN YEARS.

Q. IN THAT CAPACITY DID YOU HAVE THE OPPORTUNITY TO SUPERVISE THE DEFENDANT, SHAWN PHILLIPS?

A. YES, SIR.

Q. APPROXIMATELY HOW LONG HAVE YOU SUPERVISED HIM?

A. SINCE TWO THOUSAND AND FIVE.

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

A. YES, SIR.

Q. HOW DID HIS OCCUR?

A. I RECEIVED A PHONE CALL FROM A DETECTIVE HILL WITH THE NORTH CHARLESTON POLICE DEPARTMENT ASKING ME TO, TO BRING MR. SHAWN TO HIM FOR QUESTIONING.

Q. AND WHERE DID YOU FIND SHAWN PHILLIPS ON DECEMBER FOURTEENTH, BEFORE YOU BROUGHT HIM TO THE NORTH CHARLESTON POLICE DEPARTMENT?



DIRECT, IN CAMERA - DONALD J. SIMMONS  
BY SOLICITOR RUTLEDGE DURANT

51

1 A. AT THE BOWLING ALLEY ON ASHLEY PHOSPHATE ROAD IN  
2 NORTH CHARLESTON.

3 Q. HOW DID YOU GET IN CONTACT WITH HIM?

4 A. I CALLED HIM ON HIS CELL PHONE.

5 Q. AND WHAT NUMBER WAS THAT?

6 A. AREA CODE EIGHT FOUR THREE, FIVE O NINE, TWENTY-  
7 THREE SEVENTY-SEVEN.

8 Q. AND THAT'S THE NUMBER THAT YOU USED TO GET IN  
9 TOUCH WITH SHAWN PHILLIPS?

10 A. YES, SIR.

11 Q. AT THAT TIME, DECEMBER FOURTEENTH, TWO THOUSAND  
12 AND SIX, HOW LONG HAD THAT NUMBER BEEN THE MEANS  
13 BY WHICH YOU WERE ABLE TO MAKE CONTACT WITH SHAWN  
14 PHILLIPS?

15 A. SINCE APPROXIMATELY SEPTEMBER OF TWO THOUSAND  
16 FIVE.

17 Q. APPROXIMATELY, TWO YEARS?

18 A. YES, SIR.

19 Q. AND WHEN YOU ARRIVED AT THE NORTH CHARLESTON  
20 POLICE DEPARTMENT WITH SHAWN PHILLIPS,  
21 APPROXIMATELY WHAT TIME WAS THAT?

22 A. IT WAS AFTER SIX P.M.

23 Q. WHEN YOU SAW HIM DID HE APPEAR TO BE UNDER THE  
24 INFLUENCE OF ALCOHOL OR DRUGS?

25 A. NOT AT ALL, NO.

DIRECT, IN CAMERA - DONALD J. SIMMONS  
BY SOLICITOR RUTLEDGE DURANT

52

1 Q. WAS HE COHERENT?

2 A. YES.

3 Q. DID HE SLUR HIS SPEECH?

4 A. NOT AT ALL.

5 Q. WAS HE RESPONSIVE TO YOUR QUESTIONS?

6 A. YES, HE WAS.

7 Q. WOULD YOU DESCRIBE THE ROOM AT THE NORTH  
8 CHARLESTON POLICE DEPARTMENT WHERE YOU AND SHAWN  
9 PHILLIPS WENT?

10 A. IT WAS AN OVERSIZED OFFICE WITH A COUPLE OF DESKS  
11 ON THE THIRD FLOOR I BELIEVE OF THE CITY HALL, OR  
12 NORTH CHARLESTON POLICE DEPARTMENT.

13 Q. AND TO YOUR KNOWLEDGE WHO WAS PRESENT?

14 A. I KNOW FOR SURE DETECTIVE HILL AND A COUPLE OF  
15 OTHER OFFICERS.

16 Q. AS WELL AS THE DEFENDANT?

17 A. AS WELL AS SHAWN PHILLIPS, YES, SIR.

18 Q. AND TO YOUR KNOWLEDGE WAS MR. PHILLIPS ADVISED OF  
19 HIS MIRANDA RIGHTS AT THIS TIME?

20 A. YES, SIR.

21 Q. DID YOU WITNESS THE ADVICE OF RIGHTS?

22 A. I DID.

23 Q. DID IT APPEAR TO YOU THAT MR. PHILLIPS UNDERSTOOD  
24 HIS RIGHTS?

25 A. YES, SIR.

DIRECT, IN CAMERA - DONALD J. SIMMONS  
BY SOLICITOR RUTLEDGE DURANT

53

1 Q. DID HE APPEAR CONFUSED IN ANY WAY?

2 A. HE DID NOT.

3 Q. DID HE RESPOND APPROPRIATELY TO THE QUESTIONS?

4 A. YES, SIR.

5 Q. DID YOU WITNESS HIM SIGN HIS NAME ON HIS ADVICE OF  
6 RIGHTS?

7 A. YES, SIR.

8 Q. DID MR. PHILLIPS AGREE TO WAIVE HIS RIGHTS AND  
9 TALK TO THE POLICE?

10 A. HE SPOKE WITH THEM SO I ASSUME HE DID, SIR.

11 Q. OKAY. DID YOU OR ANY OF THE OTHER OFFICERS  
12 PRESENT THREATEN MR. PHILLIPS?

13 A. NO, SIR.

14 Q. DID YOU OR ANY OF THE OTHER OFFICERS COERCE HIM IN  
15 ANY WAY?

16 A. NO, SIR.

17 Q. DID YOU PROMISE HIM LENIENCY?

18 A. NO, SIR.

19 Q. DID YOU OFFER HIM ANY KIND OF REWARD?

20 A. NO, SIR.

21 Q. TO THE BEST OF YOUR KNOWLEDGE DID MR. PHILLIPS  
22 FREELY AND VOLUNTARILY WAIVE HIS RIGHTS?

23 A. YES.

24 Q. KNOWINGLY AND INTELLIGENTLY WAVE HIS RIGHTS?

25 A. YES.

DIRECT, IN CAMERA - DONALD J. SIMMONS  
BY SOLICITOR RUTLEDGE DURANT

54

1 Q. DID ANY OFFICERS BEGIN QUESTIONING HIM?

2 A. I BEG YOUR PARDON?

3 Q. DID ANY OFFICERS BEGIN TO QUESTION HIM?

4 A. YES, THEY DID.

5 Q. AT ANY TIME DID THE DEFENDANT ASK FOR AN ATTORNEY?

6 A. YES.

7 Q. AND HOW DID HE DO THIS?

8 A. I DON'T I KNOW THE COMPLETE VERBIAGE, IT'S BEEN A  
9 COUPLE OF YEARS, BUT HE SAID, I BELIEVE HE SAID,  
10 I'D LIKE AN ATTORNEY, I WOULD LIKE AN ATTORNEY, A  
11 LAWYER.

12 Q. AND WHAT HAPPENED - - -

13 A. I BEG YOUR PARDON?

14 Q. WHAT HAPPENED AT THIS POINT WHEN HE SAID, I  
15 BELIEVE I'D LIKE AN ATTORNEY, OR SOMETHING TO THAT  
16 EFFECT?

17 A. AT THAT POINT THE QUESTIONING BY THE OFFICERS  
18 CEASED, THEY STOPPED, AND THEY PROCEEDED TO GET  
19 OUT AND LEAVE THE ROOM.

20 Q. AND WHAT DID YOU DO?

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

22 Q. AND DID THE DEFENDANT SAY ANYTHING TO YOU AT THIS  
23 POINT?

24 A. YES, HE DID.

25 Q. WHAT DID HE SAY?

DIRECT, IN CAMERA - DONALD J. SIMMONS  
BY SOLICITOR RUTLEDGE DURANT

55

1 A. HE ASKED ME WHAT THAT MEANT, WHAT ARE THEY DOING?  
2 AND I MENTIONED, I SAID TO HIM THAT SINCE YOU  
3 ASKED FOR AN ATTORNEY THEY CANNOT TALK TO YOU  
4 ANYMORE. AND AT THAT POINT HE ASKED, HE SAID, NO,  
5 I WANT TO CONTINUE TO TALK. HE BASICALLY BEGGED  
6 ME TO HAVE THEM COME BACK IN THE ROOM TO TALK WITH  
7 HIM.

8 Q. HE BEGGED YOU TO TELL THE OFFICERS TO COME BACK  
9 BECAUSE HE WANTED TO TALK TO THEM?

10 A. YES, SIR.

11 Q. SO, WHAT DID YOU DO?

12 A. I WENT OUT OF THE ROOM AND TOLD THE OFFICERS THAT  
13 HE WOULD LIKE TO SPEAK WITH THEM AGAIN.

14 Q. AND WHAT HAPPENED NEXT?

15 A. AND AT THAT POINT ONE OF THE OFFICERS, I DON'T  
16 REMEMBER EXACTLY, IT MAY HAVE BEEN DETECTIVE HILL,  
17 SAID THAT, OKAY, WE'LL GO BACK AND TALK TO HIM,  
18 AND WE MAY BE CHARGING HIM. AND AT THAT POINT I  
19 SAID, OH, I'M GOING TO LEAVE, AND I LEFT AT THAT  
20 POINT.

21 Q. AND YOU DIDN'T GO BACK IN THE ROOM?

22 A. I DID NOT GO BACK IN THE ROOM.

23 SOLICITOR RUTLEDGE DURANT: PLEASE  
24 ANSWER ANY QUESTIONS MR. PEPPER MAY HAVE FOR YOU.

25 A. I WILL.

DIRECT, IN CAMERA - DONALD J. SIMMONS  
BY SOLICITOR RUTLEDGE DURANT

56

1 THE COURT: CROSS-EXAM.

2 MR. PEPPER: THANK YOU, YOUR HONOR,  
3 THE COURT'S INDULGENCE.

4 THANK YOU, YOUR HONOR, MAY IT PLEASE  
5 THE COURT.

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CROSS, IN CAMERA - DONALD J. SIMMONS BY  
MR. PEPER

57

CROSS-EXAMINATION, IN CAMERA, OF DONALD J.  
SIMMONS BY MR. PEPER:

Q. MR. SIMMONS, MARK PEPER, HOW ARE YOU?

A. I'M GREAT, HOW ARE YOU, SIR?

Q. I HAVE JUST A FEW QUESTIONS FOR YOU HERE. THE  
NIGHT OF THE INCIDENT -- OF THE STATEMENT, I'M  
SORRY, DECEMBER TENTH, IS THAT CORRECT?

A. DECEMBER TENTH?

Q. IS THAT WHAT YOU TESTIFIED TO THAT - - -

A. I BELIEVE IT WAS DECEMBER - - -

Q. DECEMBER SIXTH, I'M SORRY?

A. I BELIEVE IT WAS DECEMBER FOURTEENTH, I BELIEVE  
THAT IS CORRECT.

Q. FOURTEENTH. OKAY. YOU GOT IN TOUCH WITH THE  
DEFENDANT THROUGH HIS CELL PHONE?

A. YES.

Q. AND INSTRUCTED HIM TO MEET YOU SOMEWHERE?

A. YES, SIR.

Q. OKAY. BECAUSE YOU TESTIFIED EARLIER THAT YOU  
FOUND HIM AT THE BOWLING ALLEY, BUT YOU, IN FACT,  
TOLD HIM TO MEET YOU AT THE BOWLING ALLEY?

A. THAT'S EXACTLY RIGHT.

Q. ALRIGHT. AND HE, IN FACT, TOLD YOU OVER THE PHONE  
THAT HE COULDN'T DRIVE THAT NIGHT, CORRECT?

A. HE TOLD ME THAT HIS MOTHER WOULD BRING HIM.

CROSS, IN CAMERA - DONALD J. SIMMONS BY  
MR. PEPER

58

1 Q. OKAY. BUT HE DID SAY WHY, HE COULDN'T DRIVE?

2 A. NO.

3 Q. ALRIGHT. IN THE FIFTEEN, TWENTY, TWENTY-FIVE  
4 TIMES YOU'VE MET WITH HIM PRIOR TO, HAS ANYBODY  
5 EVER BROUGHT HIM THERE BESIDES HIMSELF, AND  
6 HIMSELF ALONE, TO MEET YOU?

7 A. BROUGHT FROM WHERE?

8 Q. TO MEET YOU ANYWHERE, BOWLING ALLEY, YOUR OFFICE,  
9 IT MATTERS NOT?

10 A. NO.

11 Q. AND HE WAS ALWAYS THE ONLY PERSON THAT DROVE TO  
12 COME AND SEE YOU WHEN YOU REQUESTED A MEETING?

13 A. MOST OF THE TIME WHEN I MET HIM I DROVE TO MEET  
14 HIM AT HIS RESIDENCE, SO HE DIDN'T HAVE TO DRIVE.

15 Q. OKAY. BUT THERE WERE OTHER INSTANCES WHERE YOU  
16 MET AT A NEUTRAL LOCATION, CORRECT?

17 A. YES, SIR.

18 Q. AND IN THOSE INSTANCES HE DROVE HIMSELF TO MEET  
19 YOU, CORRECT?

20 A. TO MY KNOWLEDGE, YES.

21 Q. OKAY. BUT ON THIS NIGHT AND INSTANCE HIS MOTHER  
22 DROVE HIM, IS THAT CORRECT?

23 A. THAT IS CORRECT.

24 Q. ALRIGHT. AND DID YOU NOT FIND THIS TO BE STRANGE  
25 AT ALL?



CROSS, IN CAMERA - DONALD J. SIMMONS BY  
MR. PEPPER

59

1 A. NO, I DID NOT.

2 Q. ALRIGHT. IT WAS SIX O'CLOCK IN THE EVENING,  
3 CORRECT?

4 A. CORRECT.

5 Q. OKAY. AND ALWAYS HE HAD BEEN BY HIMSELF, ALONE,  
6 IN HIS OWN CAR, YET TONIGHT NOT ONLY DID HE HAVE  
7 HIS MAMA WITH HIM, HIS MOTHER WAS ACTUALLY DRIVING  
8 THE VEHICLE, CORRECT?

9 A. YES. AND I DO KNOW THAT HIS CAR WAS NOT WORKING.

10 Q. OKAY. ALRIGHT.

11 A. SO, IT WASN'T UNREASONABLE FOR HIS MOTHER TO DRIVE  
12 HIM BECAUSE HE DIDN'T HAVE A CAR THAT WAS  
13 OPERATIONAL.

14 Q. IN YOUR OPINION?

15 A. IN MY OPINION.

16 Q. CORRECT, IN YOUR OPINION, CORRECT.

17 A. YES, SIR.

18 Q. OKAY. AND YOU TESTIFIED EARLIER THAT YOU DIDN'T  
19 FEEL LIKE HE WAS UNDER ANY DRUGS OR ALCOHOL,  
20 MEDICATION, ANYTHING ALONG THOSE LINES, CORRECT?

21 A. YES, SIR.

22 Q. BUT YOU ARE AWARE THAT HE IS UNDER MEDICATION?

23 A. NOT THAT I CAN REMEMBER.

24 Q. YOU'RE AWARE THAT MR. PHILLIPS TAKES MEDICATION  
25 FOR CERTAIN SYMPTOMS, ISN'T THAT CORRECT?

CROSS, IN CAMERA - DONALD J. SIMMONS BY  
MR. PEPER

60

1 A. YES.

2 Q. SO, YOUR TESTIMONY IS, YES, YOU KNOW THAT HE IS  
3 PRESCRIBED MEDICINES?

4 A. YES.

5 Q. SPECIFICALLY, PRESCRIBED MEDICINES FOR SEVERE  
6 DEPRESSION, IS THAT CORRECT?

7 A. PSYCHO TROPIC MEDICATION.

8 Q. PSYCHO TROPIC MEDICATION. SO, THEN YOU'RE ALSO  
9 AWARE THAT HE WAS PRESCRIBED SEROQUIL, CORRECT,  
10 AND YOU KNEW HE WAS TAKING SEROQUIL?

11 A. I KNOW HE WAS PRESCRIBED SEROQUIL AT ONE POINT,  
12 YES, SIR.

13 Q. YOU ALSO KNOW HE WAS PRESCRIBED ZOLOFT?

14 A. I WOULD HAVE TO, I CAN'T SAY THAT WITHOUT LOOKING  
15 AT MY NOTES, BUT I BELIEVE HE WAS AT ONE POINT,  
16 YES, SIR.

17 Q. OKAY. ALRIGHT. YOU ARE FAMILIAR WITH THE FACT  
18 THAT HE HAD ACTUALLY BEEN A PATIENT AT NOT ONLY  
19 CHARTER HOSPITAL BUT THE I.O.P. AS WELL, CORRECT?

20 A. YES.

21 Q. AND NONE OF THIS BOTHERED YOU, KNOWING THIS  
22 INFORMATION, THAT HIS MOTHER WAS THE ONE THAT HAD  
23 TO DRIVE HIM THERE THAT NIGHT, YOU DIDN'T THINK  
24 THAT WAS STRANGE AT ALL?

25 A. I DID NOT.

CROSS, IN CAMERA - DONALD J. SIMMONS BY  
MR. PEPER

61

1 Q. ON THE WAY OVER TO THE NORTH CHARLESTON POLICE  
2 DEPARTMENT DID YOU DISCUSS THE INTENT OR THE  
3 REASON THAT YOU WERE ASKED TO BRING HIM OVER?

4 A. YES. YES, SIR.

5 Q. AND WHAT DID YOU TELL HIM THE REASON WAS?

6 A. THAT THEY WANTED TO SPEAK WITH YOU IN REFERENCE TO  
7 A GIRLFRIEND, ANGELA AGAGAS.

8 Q. AND IS THAT WHAT DETECTIVE HILL TOLD YOU EARLIER  
9 THAT EVENING, OR DID YOU JUST MAKE THAT UP?

10 A. I DIDN'T MAKE THAT UP, NO.

11 Q. WELL, HOW DID YOU LEARN THAT THAT WAS WHAT  
12 DETECTIVE HILL WANTED TO SEE SHAWN ABOUT?

13 A. BECAUSE HE TOLD ME THIS.

14 Q. OKAY. THAT'S WHAT I ASKED YOU. SO, HILL TOLD YOU  
15 THAT, WE NEED TO SEE SHAWN TO TALK ABOUT HIS  
16 GIRLFRIEND, ANGELA?

17 A. YES, SIR.

18 Q. SO, YOU HAD ABSOLUTELY NO IDEA THAT YOU WERE  
19 TAKING SHAWN OVER THERE TO TALK ABOUT, OR POSSIBLY  
20 GIVE A STATEMENT WITH REGARDS TO A MURDER?

21 A. HE WANTED TO SPEAK TO SHAWN IN REFERENCE TO ANGELA  
22 AGAGAS AND HER AS BEING, AND HER RELATIONSHIP TO A  
23 ROBBERY AND POSSIBLY MURDER, YES.

24 Q. OKAY. SO, YOU TOLD SHAWN THAT ON THE WAY OVER  
25 THERE?

CROSS, IN CAMERA - DONALD J. SIMMONS BY  
MR. PEPER

62

1 A. I DID.

2 Q. YET, YOU JUST TESTIFIED EARLIER YOU JUST TOLD HIM  
3 YOU WERE GOING OVER THERE TO TALK ABOUT HIS  
4 GIRLFRIEND, SO WHICH ONE WAS IT, DID YOU TELL HIM

5 - - -

6 A. IT WAS A COMPLETE SENTENCE, YES.

7 Q. OKAY. AND DID HE SEEM UPSET ABOUT THAT?

8 A. NO.

9 Q. SO, HE JUST SAID, SURE, I'LL FOLLOW YOU, BECAUSE  
10 HE TRUSTED YOU?

11 A. RIGHT, YES.

12 Q. AND Y'ALL HAD BUILT A REPORT TOGETHER?

13 A. WE DID.

14 Q. A RELATIONSHIP TOGETHER?

15 A. YES.

16 Q. SIMILAR TO KIND OF A FATHER FIGURE, IF YOU WILL?

17 A. I WOULDN'T SAY THAT, BUT - - -

18 Q. WELL, I WOULD SAY, SOME FIGURE, BUT IT'S POSSIBLE  
19 THAT HE THINKS OF YOU AS A FATHER FIGURE, RIGHT?

20 A. I CAN'T, I COULDN'T SAY WHAT HE THINKS.

21 Q. OKAY. YOU WERE PRESENT WITH HIM AT ALL TIMES  
22 WHILE YOU WERE PRESENT AT NORTH CHARLESTON POLICE  
23 DEPARTMENT, CORRECT?

24 A. YES.

25 Q. HE NEVER LEFT YOUR SIDE?

CROSS, IN CAMERA - DONALD J. SIMMONS BY  
MR. PEPPER

63

1 A. YES, THAT'S CORRECT.

2 Q. YOU SAID, THAT'S CORRECT?

3 A. THAT'S CORRECT.

4 Q. OKAY. SO, AT SIX P.M. OR SO, WHEN HE SIGNED HIS  
5 MIRANDA STATEMENT AT APPROXIMATELY SIX:TEN P.M.,  
6 YOU WERE PRESENT AS WELL?

7 A. YES.

8 Q. AND YOU HEARD DETECTIVE DRIGGERS READ HIM HIS  
9 MIRANDA RIGHTS?

10 A. I DID.

11 Q. KNOWING THAT HE WAS ON ZOLOFT, SEROQUIL, HIS  
12 MOTHER HAD DRIVEN HIM, DID YOU VOLUNTEER THAT  
13 INFORMATION TO ANYBODY?

14 A. I DID NOT.

15 Q. I'M ASSUMING DETECTIVE HILL WAS ALSO IN THE ROOM  
16 AS WELL?

17 A. I BELIEVE HE WAS.

18 Q. AND DETECTIVE GOMES?

19 A. I COULDN'T TELL YOU, THERE WAS OTHER DETECTIVES  
20 THERE BUT I COULDN'T TELL YOU WHICH ONES. I KNOW  
21 DETECTIVE HILL WAS THERE.

22 Q. OKAY. ALRIGHT, SO, HILL COMES IN AND SHAWN STARTS  
23 TO WRITE A STATEMENT, CORRECT?

24 A. CORRECT.

25 Q. BUT ACTUALLY, SHAWN CAN'T WRITE?

CROSS, IN CAMERA - DONALD J. SIMMONS BY  
MR. PEPER

64

- 1 A. COULDN'T WRITE HIS STATEMENT?
- 2 Q. CORRECT. SHAWN CAN'T WRITE, CAN HE?
- 3 A. THE DETECTIVE READS HIM HIS RIGHTS.
- 4 Q. SHAWN CANNOT WRITE, CAN HE?
- 5 A. HE CANNOT, HE'S, RIGHT, THAT'S CORRECT.
- 6 Q. W-R-I-T-E, CAN'T WRITE?
- 7 A. WRITE, CORRECT.
- 8 Q. SO, HE ACTUALLY DIDN'T WRITE A STATEMENT, DID HE?
- 9 A. THE STATEMENT WAS READ TO HIM.
- 10 Q. EXACTLY. WHAT DO YOU SAY, FIVE MINUTES, TEN
- 11 MINUTES GOES BY BEFORE HE ASKS FOR A LAWYER? TWO,
- 12 FIVE, TEN, FIFTEEN?
- 13 A. A FEW MINUTES.
- 14 Q. A FEW MINUTES. OKAY. SO, PRETTY CLOSE TO WHEN
- 15 THE INVESTIGATION, OR THE INTERROGATION STARTED HE
- 16 IMMEDIATELY ASKED FOR A LAWYER, IS THAT A FAIR
- 17 STATEMENT?
- 18 A. A FEW MINUTES.
- 19 Q. OKAY. AND THIS WASN'T JUST A MUMBLE, OOH, MAYBE
- 20 I NEED A LAWYER, THIS WAS, I WANT -- I THINK YOUR
- 21 TESTIMONY EARLIER WAS, I WANT MY LAWYER?
- 22 A. A LAWYER.
- 23 Q. OKAY. HE SAID, I WANT - - -
- 24 A. SOMETHING, SOMETHING TO THAT EFFECT.
- 25 Q. I WANT A LAWYER. WELL, THAT'S VERY IMPORTANT, DID

CROSS, IN CAMERA - DONALD J. SIMMONS BY  
MR. PEPER

65

1 HE SAY, AS YOU TESTIFIED EARLIER, I WANT A LAWYER?

2 A. YES.

3 Q. OKAY. AND AT THAT POINT - - -

4 A. AND LIKE I SAID, SOMETHING TO THAT EFFECT, BECAUSE  
5 IT'S BEEN TWO YEARS, IT WAS SOMETHING TO THAT  
6 EFFECT, I WANT A LAWYER OR AN ATTORNEY, HE USED  
7 ONE OF THOSE WORDS.

8 Q. BUT IT WAS VERY CLEAR TO DETECTIVE HILL AND  
9 WHOEVER OTHER DETECTIVES WERE IN THIS ROOM AT THE  
10 TIME, TO EVERYBODY IN THE ROOM THAT HE WANTED A  
11 LAWYER?

12 A. OBVIOUSLY, BECAUSE THEY STOPPED QUESTIONING HIM,  
13 YES.

14 Q. AND I JUST WANT TO CLARIFY AGAIN.

15 A. OKAY.

16 Q. THIS WASN'T MUMBLED, THIS WAS SUGGESTED, THIS  
17 WASN'T HINTED AT, THIS WAS, I WANT A LAWYER,  
18 CORRECT, HE WAS VERY ADAMANT ABOUT IT?

19 A. HE, YES.

20 Q. OKAY. AND SO THE DETECTIVES REMOVED THEMSELVES?

21 A. YES.

22 Q. LEAVING ONLY YOU AND SHAWN IN THE ROOM, CORRECT?

23 A. THAT'S CORRECT.

24 Q. OKAY. AND A CONVERSATION TOOK PLACE BETWEEN THE  
25 TWO OF YOU, CORRECT?

CROSS, IN CAMERA - DONALD J. SIMMONS BY  
MR. PEPER

66

1 A. YES.

2 Q. AND HE WAS, I BELIEVE YOU SAID, CONFUSED AS TO  
3 WHAT WAS NOW GOING ON, WHY DID THEY JUST LEAVE?

4 A. YES.

5 Q. AND YOU INSTRUCTED HIM, THEY LEFT BECAUSE YOU  
6 ASKED FOR AN ATTORNEY?

7 A. YES.

8 Q. RIGHT. AND I'M ASSUMING HE SAID SOMETHING TO THE  
9 EFFECT OF, WHEN ARE YOU GOING TO TAKE ME HOME?

10 A. NO.

11 Q. WHEN ARE WE GOING TO LEAVE?

12 A. NO, HE DIDN'T SAY THAT TO ME.

13 Q. HE NEVER ASKED YOU WHEN YOU WOULD TAKE HIM HOME?

14 A. NOT THAT I CAN REMEMBER, NO.

15 Q. ALRIGHT. HE NEVER ASKED YOU ANYTHING ALONG THE  
16 LINE OF, ARE YOU GOING TO TAKE ME BACK TO THE  
17 BOWLING ALLEY, ARE YOU GOING TO TAKE ME HOME, ARE  
18 YOU GOING TO TAKE ME TO MY GIRLFRIEND'S HOUSE?

19 A. NOT THAT I CAN REMEMBER, NO.

20 Q. WELL, IT'S POSSIBLE THAT CONVERSATION DID HAPPEN?

21 A. A LOT OF THINGS, WELL, A LOT OF THINGS COULD HAVE  
22 HAPPENED, BUT NO.

23 Q. OKAY. IT'S POSSIBLE THAT YOUR ANSWER WAS, YOU MAY  
24 HAVE TOLD HIM, AS SOON AS YOU GIVE A STATEMENT YOU  
25 CAN GO HOME?



CROSS, IN CAMERA - DONALD J. SIMMONS BY  
MR. PEPER

67

1 A. I KNOW WHAT I DID TELL HIM -- WELL, I KNOW WHAT I  
2 TOLD HIS MOTHER, I TOLD HIS MOTHER, I'LL BRING HIM  
3 BACK, I DID TELL HER THAT - - -

4 Q. YOU DID TELL HIS MOTHER - - -

5 A. --- BEFORE WE LEFT THE BOWLING ALLEY, YES, SIR.

6 Q. CORRECT. OKAY. BECAUSE YOU KNEW THAT DETECTIVE  
7 HILL WANTED TO GET A STATEMENT?

8 A. YES.

9 Q. AND SO, YOU DEDUCED, AFTER HE GIVES A STATEMENT -  
10 - -

11 A. I'M SORRY?

12 Q. YOU DEDUCED THAT AFTER HE GIVES A STATEMENT  
13 THEY'LL OFFER HIM BACK TO YOU?

14 A. YES.

15 Q. OKAY. SO, I'M ASSUMING YOU ENCOURAGED HIM, JUST  
16 GIVE A STATEMENT AND I'LL TAKE YOU BACK TO MOM,  
17 BECAUSE THAT'S WHAT YOU THOUGHT?

18 A. I DIDN'T, WHEN WE WERE SPEAKING I DIDN'T ENCOURAGE  
19 HIM OR DISCOURAGE HIM, I JUST BROUGHT HIM TO THE  
20 OFFICERS.

21 Q. BUT YOU WERE TOLD BY DETECTIVE HILL EARLIER IN THE  
22 NIGHT, BRING ME SHAWN, I NEED TO GET A STATEMENT  
23 FROM HIM, CORRECT?

24 A. CORRECT.

25 Q. YOU THEN TOLD HIS MOTHER, I NEED TO TAKE SHAWN TO

CROSS, IN CAMERA - DONALD J. SIMMONS BY  
MR. PEPER

68

1 DETECTIVE HILL, HE'S GOING TO GIVE A STATEMENT,  
2 I'LL BRING HIM RIGHT BACK?

3 A. YES.

4 Q. OKAY. AT THIS POINT HE THEN SAYS, WELL, THEN I'LL  
5 GIVE A STATEMENT, I WANT TO GET OUT OF HERE, I  
6 WANT TO GET HOME, CORRECT?

7 A. NO, HE DIDN'T SAY THAT TO ME.

8 Q. HOW DID -- AND YOU TESTIFIED EARLIER THAT HE  
9 BEGGED YOU TO LET THE COPS BACK IN THE ROOM - - -

10 A. YES.

11 Q. --- SO HE COULD GIVE A STATEMENT?

12 A. HE SAID HE WANTS TO TALK TO THEM, HE WANTS TO  
13 SPEAK WITH THEM.

14 Q. CORRECT. OKAY. AND HOW LONG WAS THE PERIOD  
15 BETWEEN WHEN HE ADAMANTLY TOLD YOU, I WANT A  
16 LAWYER -- TOLD EVERYBODY, I WANT A LAWYER, AND  
17 THEN TURNED AROUND AND BEGGED YOU TO BRING THE  
18 COPS BACK IN SO HE COULD GIVE A STATEMENT, HOW  
19 LONG?

20 A. A MINUTE.

21 Q. A MINUTE. SO, IN A MINUTE HE CHANGED HIS MIND  
22 FROM, I WANT A LAWYER, I HAVE NOTHING TO SAY, TO,  
23 I'LL SAY ANYTHING YOU WANT, BRING THEM BACK IN  
24 HERE?

25 A. YES.

CROSS, IN CAMERA - DONALD J. SIMMONS BY  
MR. PEPER

69

1 Q. BECAUSE I GET TO GO HOME

2 A. HE DIDN'T SAY THOSE WORDS, BUT THAT'S - - -

3 Q. BECAUSE YOU TOLD MY MAMA IF I GIVE A STATEMENT I  
4 GET TO GO HOME? DID YOU KNOCK ON THE DOOR AND GET  
5 THE COPS, OR DID SHOWN GO GET THE COPS?

6 A. I WALKED OUT OF THE ROOM.

7 Q. SO, YOU GO AND GET THE COPS. WERE YOU ACTING AS  
8 HIS ATTORNEY, WAS HE UNDER THE IMPRESSION YOU WERE  
9 ACTING AS HIS ATTORNEY OR SOMETHING?

10 A. I WASN'T, NO, NO.

11 Q. BUT HE DIDN'T HAVE HIS ATTORNEY WITH HIM?

12 A. HE DID NOT.

13 Q. HE HAD ALREADY ASKED FOR ONE, BUT NO ONE WAS  
14 THERE?

15 A. THAT'S CORRECT.

16 Q. YOU WERE THE ONLY PERSON IN THE ROOM WITH HIM  
17 DURING THAT ONE MINUTE?

18 A. YES.

19 Q. OKAY. SO, YOU WENT AND GOT DETECTIVE HILL AND  
20 DETECTIVE GOMES, WHOEVER?

21 A. AND I DID NOT GO BACK IN THE ROOM AFTER THAT  
22 POINT.

23 Q. BECAUSE YOUR JOB WAS DONE?

24 A. WHAT DOES THAT MEAN?

25 Q. SIR, - - -

CROSS, IN CAMERA - DONALD J. SIMMONS BY  
MR. PEPER

70

1 SOLICITOR BRUCE DURANT: WAS THERE  
2 A QUESTION THERE, YOUR HONOR?

3 Q. YEAH, THAT'S A QUESTION, SO YOUR JOB WAS DONE?

4 THE COURT: WHAT WAS HIS QUESTION?

5 Q. DID YOU THINK YOUR JOB WAS DONE?

6 THE COURT: ALL OF Y'ALL ARE TALKING  
7 AT ONE TIME, NOW. WHAT DID MR. DURANT SAY?

8 SOLICITOR BRUCE DURANT: MY OBJECTION  
9 WAS THAT HE'S NOT ASKING QUESTIONS HE'S MAKING  
10 EDITORIALS.

11 MR. PEPER: AND I'M NOT SURE, THIS  
12 ISN'T HIS WITNESS.

13 THE COURT: ALRIGHT, OVERRULED.  
14 OKAY.

15 MR. PEPER: THANK YOU, YOUR HONOR.

16 Q. SO, YOU THOUGHT YOUR JOB WAS DONE?

17 A. CAN YOU EXPLAIN WHAT THAT MEANS?

18 Q. WELL, YOU JUST EXPLAINED TO ME THAT YOU WENT AND  
19 GOT THE DETECTIVES, CORRECT?

20 A. YES.

21 Q. THEY CAME INTO THE ROOM TO ADMINISTER THE  
22 STATEMENT, AND YOU IMMEDIATELY LEFT?

23 A. YES.

24 Q. WELL, DIDN'T YOU TELL HIS MOTHER YOU WOULD BRING  
25 HIM HOME?

CROSS, IN CAMERA - DONALD J. SIMMONS BY  
MR. PEPPER

71

1 A. AND WHEN I WENT OUTSIDE TO TELL THEM THEY SAID  
2 THAT HE WILL BE CHARGED, AND AT THAT POINT I LEFT.

3 Q. OH, THEY TOLD YOU BEFORE HE EVEN GAVE THE  
4 STATEMENT THAT HE WAS GOING TO BE CHARGED, AND SO  
5 THEN YOU KNEW, WELL, HE'S NOT GOING ANYWHERE, I'M  
6 JUST GOING TO GO ON OUT. OKAY.

7 MR. PEPPER: THAT'S ALL I HAVE, YOUR  
8 HONOR.

9 SOLICITOR RUTLEDGE DURANT: BRIEFLY,  
10 JUDGE.

11 THE COURT: YES, SIR.

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.)

REDIRECT, IN CAMERA - DONALD J. SIMMONS  
BY SOLICITOR RUTLEDGE DURANT

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REDIRECT EXAMINATION, IN CAMERA, OF DONALD J.

SIMMONS BY SOLICITOR RUTLEDGE DURANT:

Q. TO YOUR KNOWLEDGE, WHY WERE YOU BRINGING SHAWN  
PHILLIPS DOWN TO THE POLICE DEPARTMENT TO TALK TO  
THEM?

A. THEY WANTED -- DETECTIVE HILL WANTED TO QUESTION  
HIM ABOUT HIS GIRLFRIEND'S INVOLVEMENT WITH A  
MURDER, ROBBERY AND MURDER AT A HOTEL.

Q. AND THAT WAS ANGELA AGAGAS?

A. ANGELA AGAGAS, YES.

Q. SO, DID YOU OR DIDN'T YOU KNOW THAT THEY WANTED TO  
ARREST HIM FOR MURDER AT THAT TIME?

A. I DID NOT KNOW.

Q. YOU DID NOT KNOW THEY WANTED TO ARREST HIM FOR  
MURDER?

A. THAT'S CORRECT.

Q. DID THEY EVER SAY IN FRONT OF SHAWN THAT THEY  
WANTED TO ARREST HIM FOR MURDER WHEN HE WAS IN THE  
ROOM WHEN THEY WERE GOING OVER HIS ADVICE OF  
RIGHTS?

A. THAT THEY WERE GOING TO ARREST HIM FOR MURDER?

Q. RIGHT, DID THEY EVER TELL HIM, YOU'RE UNDER ARREST  
FOR MURDER?

A. NO, NO.

Q. WHEN THEY ADVISED HIM OF HIS RIGHTS, THEY NEVER

REDIRECT, IN CAMERA - DONALD J. SIMMONS  
BY SOLICITOR RUTLEDGE DURANT

73

1 SAID, YOU'RE UNDER ARREST FOR MURDER, THEY SAID,  
2 WE WANT TO TALK TO YOU ABOUT A MURDER, - - -

3 A. YES, SIR.

4 Q. --- IS THAT RIGHT? AND YOU SAID YOU SUPERVISED  
5 SHAWN FOR ABOUT TWO YEARS, IS THAT RIGHT?

6 A. YES.

7 Q. AND IN THOSE TWO YEARS HAD YOU EVER SEEN HIM WRITE  
8 HIS NAME?

9 MR. PEPPER: YOUR HONOR, I'LL GIVE  
10 HIM SOME LATITUDE, HE'S LEADING THE WITNESS.

11 THE COURT: WELL, TRY TO ASK DIRECT  
12 QUESTIONS.

13 SOLICITOR RUTLEDGE DURANT: THANK  
14 YOU, JUDGE.

15 Q. HAD YOU EVER SEEN HIM WRITE HIS NAME?

16 A. YES.

17 Q. APPROXIMATELY HOW MANY TIMES?

18 A. WELL, HE SUBMITS A MONTHLY REPORT FORM ON A  
19 MONTHLY BASIS, AND I'VE HAD HIM FOR A COUPLE OF  
20 YEARS, SO - - -

21 Q. DID YOU SEE HIM WRITE HIS NAME ON THE ADVICE OF  
22 RIGHTS FORM?

23 A. YES.

24 Q. HE WROTE IT RIGHT IN FRONT OF YOU?

25 A. HE PRINTED IT.

REDIRECT, IN CAMERA - DONALD J. SIMMONS  
BY SOLICITOR RUTLEDGE DURANT

74

1 Q. I BELIEVE YOU SAID ON CROSS-EXAMINATION THAT, THAT  
2 HIS WRITTEN STATEMENT WAS READ TO HIM?

3 A. IT WAS READ TO HIM, YES.

4 Q. JUST AS A FOUNDATION. NOW, WERE YOU ACTUALLY  
5 THERE WHEN IT WAS READ TO HIM?

6 A. HIS RIGHTS? YES, SIR.

7 Q. HIS RIGHTS?

8 A. YES, SIR.

9 Q. I'M TALKING ABOUT HIS WRITTEN STATEMENT, DID YOU  
10 EVER SEE A WRITTEN STATEMENT?

11 A. A WRITTEN STATEMENT AS TO WHAT - - -

12 Q. A WRITTEN STATEMENT.

13 A. NO, SIR.

14 Q. DID YOU EVER SEE THE ADVICE OF RIGHTS FORM?

15 A. YOU HAVE THE RIGHT TO REMAIN SILENT FORM?

16 Q. THAT'S RIGHT.

17 A. YES.

18 Q. OKAY. AND WHEN THE OTHER OFFICERS LEFT THE ROOM,  
19 - - -

20 A. YES.

21 Q. --- WHEN HE SAID HE WANTED AND ATTORNEY, - - -

22 A. YES.

23 Q. --- WHO INITIATED THAT CONTACT, DID HE TALK TO YOU  
24 FIRST?

25 A. YES, SIR.



REDIRECT, IN CAMERA - DONALD J. SIMMONS  
BY SOLICITOR RUTLEDGE DURANT

75

1 SOLICITOR RUTLEDGE DURANT: NO

2 FURTHER QUESTIONS.

3 THE COURT: RECROSS.

4 MR. PEPPER: BRIEFLY, YOUR HONOR, MAY  
5 IT PLEASE THE COURT.

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RE CROSS, IN CAMERA - DONALD J. SIMMONS BY  
MR. PEPER

76

RE CROSS-EXAMINATION, IN CAMERA, OF DONALD J.

SIMMONS BY MR. PEPER:

Q. YOU LEFT IMMEDIATELY AFTER THE COPS CAME IN TO GET  
A STATEMENT, CORRECT?

A. YES.

Q. AND SO, YOU NEVER SAW OR HEARD FOR THAT MATTER  
ANYTHING THAT SHAWN TOLD OR AGREED IN WRITING TO  
ON HIS STATEMENT?

A. AFTER I LEFT THE ROOM, NO, I COULD NOT.

Q. AND YOU HAVEN'T SEEN THIS STATEMENT TO THIS DATE?

A. I HAVE NOT.

Q. AND YOU HAVE NO IDEA IF WHAT'S IN THAT STATEMENT  
IS ACTUALLY WHAT SHAWN SAID?

A. THAT'S CORRECT.

MR. PEPER: THANK YOU.

THE COURT: ALRIGHT, SIR, YOU CAN  
STEP DOWN.

SOLICITOR RUTLEDGE DURANT: THE  
STATE CALLS JAMES HILL.

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

CLERK: STATE YOUR FULL NAME,  
SPELLING YOUR LAST.

WITNESS: JAMES MICHAEL HILL, JR.,  
H-I-L-L.

DIRECT, IN CAMERA-JAMES M. HILL, JR.,  
BY SOLICITOR RUTLEDGE DURANT

77

DIRECT EXAMINATION, IN CAMERA, OF JAMES M. HILL, JR.  
BY SOLICITOR RUTLEDGE DURANT:

Q. DETECTIVE HILL, GOOD MORNING.

A. GOOD MORNING.

Q. WOULD YOU PLEASE TELL THE COURT WHERE YOU'RE  
EMPLOYED.

A. THE CITY OF NORTH CHARLESTON POLICE DEPARTMENT.

Q. AND WHAT IS YOUR CURRENT POSITION?

A. I'M A DETECTIVE.

Q. HOW LONG HAVE YOU BEEN A DETECTIVE?

A. ABOUT SIX YEARS.

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. WHERE THE VICTIM WAS ROBERT VARGO?

A. YES.

Q. WAS SHAWN PHILLIPS IDENTIFIED AS A SUSPECT IN THAT  
MURDER?

A. YES.

Q. WAS HE BROUGHT IN FOR QUESTIONING ON DECEMBER  
FOURTEENTH, TWO THOUSAND AND SIX?

A. YES.

Q. AND HOW WAS HE BROUGHT IN FOR QUESTIONING?

A. I CONTACTED HIS SUPERVISOR, HIS PROBATION OFFICER,

DIRECT, IN CAMERA-JAMES M. HILL, JR.,  
BY SOLICITOR RUTLEDGE DURANT

78

1 MR. SIMMONS AND ASKED HIM COULD HE PLEASE BRING  
2 MR. PHILLIPS TO THE POLICE STATION SO WE COULD  
3 TALK TO HIM.

4 Q. AND DID MR. SIMMONS BRING HIM DOWN THERE?

5 A. YES, HE DID.

6 Q. AND WHERE WAS HE TAKEN?

7 A. TO THE THIRD FLOOR, TO THE SERGEANT'S OFFICE.

8 Q. COULD YOU DESCRIBE THE SERGEANT'S OFFICE?

9 A. YES, IT'S, HAS THREE DESKS, SOME CHAIRS, A COUCH,  
10 AND I BELIEVE THREE WINDOWS.

11 Q. AND ABOUT WHAT TIME WAS THIS?

12 A. SOMETIME AFTER SIX IN THE AFTERNOON.

13 Q. AND WHO WAS PRESENT?

14 A. IN THE, WHEN HE INITIALLY CAME IN IT WAS MYSELF,  
15 MR. SIMMONS, I BELIEVE CORPORAL GOMES WAS IN THERE  
16 AT SOME TIME, IN AND OUT, AND DETECTIVE DRIGGERS  
17 CAME IN THERE DURING THE ADVISEMENT.

18 Q. SO, THERE WERE ABOUT FOUR OR FIVE PEOPLE IN THIS  
19 ROOM?

20 A. CORRECT.

21 Q. WITH THE DEFENDANT?

22 A. CORRECT.

23 Q. WOULD YOU DESCRIBE THE DEFENDANT'S PHYSICAL  
24 CONDITION AT THAT TIME?

25 A. HE APPEARED TO BE FINE.

DIRECT, IN CAMERA-JAMES M. HILL, JR.,  
BY SOLICITOR RUTLEDGE DURANT

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1 Q. DID HE APPEAR TO BE UNDER THE INFLUENCE OF  
2 ALCOHOL?

3 A. NO, SIR.

4 Q. WHAT ABOUT DRUGS?

5 A. NO, SIR.

6 Q. DID HE APPEAR TIRED OR EXHAUSTED?

7 A. NO, SIR.

8 Q. WAS HIS SPEECH COHERENT?

9 A. YES, IT WAS.

10 Q. DID HE APPEAR TO UNDERSTAND WHAT Y'ALL WERE SAYING  
11 TO HIM?

12 A. YES, HE DID.

13 Q. DID HE RESPOND APPROPRIATELY TO EACH QUESTION?

14 A. YES.

15 Q. DID HE EXHIBIT ANY CONFUSION?

16 A. NO.

17 Q. AND WAS HE ADVISED OF HIS MIRANDA RIGHTS?

18 A. YES, HE WAS.

19 Q. WHO READ HIS RIGHTS TO HIM?

20 A. I DID.

21 Q. WAS ANY DOCUMENT USED TO ADVISE HIM OF HIS RIGHTS?

22 A. OUR STANDARD MIRANDA FORM, YES, SIR.

23 Q. I SHOW YOU WHAT'S IDENTIFIED AS STATE'S ONE AND  
24 ASK YOU TO TAKE A LOOK AT IT?

25 A. YES.

DIRECT, IN CAMERA-JAMES M. HILL, JR.,  
BY SOLICITOR RUTLEDGE DURANT

80

1 Q. DO YOU RECOGNIZE IT?

2 A. YES, I DO.

3 Q. HOW DO YOU RECOGNIZE IT?

4 A. IT'S THE ADVICE OF CONSTITUTIONAL RIGHTS FORM FROM  
5 OUR POLICE DEPARTMENT, AND THE ONE THAT I READ TO  
6 MR. PHILLIPS.

7 Q. COULD YOU DEMONSTRATE FOR THE JUDGE HOW YOU USED  
8 THIS DOCUMENT TO ADVISE SHAWN PHILLIPS OF HIS  
9 RIGHTS?

10 A. I FILL OUT THE TOP PORTION OF IT, WITH HIS NAME,  
11 DATE OF BIRTH AND HIS EDUCATIONAL LEVEL, AND THEN  
12 I JUST READ THE FORM VERBATIM, ONE THROUGH FIVE,  
13 ASK HIM IF HE FULLY UNDERSTANDS HIS RIGHTS, AND  
14 THEN HAVE HIM SIGN IT AND HAVE A WITNESS TO  
15 WITNESS IT.

16 Q. NOW, DOWN HERE AT THE BOTTOM I SEE YOU'VE GOT  
17 SOMETHING SCRATCHED OUT.

18 A. YES, I SCRATCHED OUT -- ON THE BOTTOM WHEN WE WERE  
19 DOING THE WAIVER OF RIGHTS, OUR FORM SAYS, "HAVING  
20 THESE RIGHTS IN MIND I WISH TO WAIVE THE RIGHTS  
21 AND ANSWER QUESTIONS CONCERNING THE CHARGE OF,"  
22 AND THEN YOU WRITE THE CHARGE. AT THE TIME WE  
23 WEREN'T CHARGING HIM, WE WANTED TO JUST DISCUSS  
24 THE INCIDENT ITSELF, WHICH WAS MURDER.

25 Q. AND ON THAT FORM DOES IT TELL YOU WHAT TIME THIS,

DIRECT, IN CAMERA-JAMES M. HILL, JR.,  
BY SOLICITOR RUTLEDGE DURANT

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1           THESE RIGHTS WERE ADMINISTERED?

2           A.    YES, SIR, IT WAS ON - - -

3           Q.    WHAT TIME WAS THAT?

4           A.    --- DECEMBER FOURTEENTH AT SIX P.M., TWO THOUSAND  
5           SIX, SIX:TEN P.M.

6           Q.    I THINK IT'S SIX:TEN.  AND DID MR. PHILLIPS APPEAR  
7           TO UNDERSTAND HIS RIGHTS?

8           A.    YES, SIR, HE DID.

9           Q.    DID HE SIGN THE ACKNOWLEDGMENT INDICATING HE  
10          UNDERSTOOD HIS RIGHTS?

11          A.    YES, HE DID.

12          Q.    AND IS THAT THE DEFENDANT'S SIGNATURE ON THAT  
13          FORM?

14          A.    CORRECT.  IT'S JUST A PRINTED SIGNATURE.

15          Q.    AND YOU SIGNED AS A WITNESS?

16          A.    I DID.

17          Q.    HOW ABOUT ANYBODY ELSE, DID ANYBODY ELSE SIGN AS A  
18          WITNESS?

19          A.    DETECTIVE DRIGGERS.

20          Q.    AFTER BEING ADVISED OF HIS RIGHTS DID MR. PHILLIPS  
21          INDICATE HE WAS WILLING TO TALK TO YOU?

22          A.    YES.

23          Q.    DID HE SIGN A WRITTEN WAIVER OF HIS RIGHTS?

24          A.    YES, HE DID.

25          Q.    AND AGAIN, IS THAT HIS SIGNATURE AT THE BOTTOM OF

DIRECT, IN CAMERA-JAMES M. HILL, JR.,  
BY SOLICITOR RUTLEDGE DURANT

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1            THAT FORM?

2            A.    HIS PRINTED SIGNATURE, YES, SIR.

3            Q.    AND YOU WITNESSED HIM SIGNING THIS?

4            A.    YES, I DID.

5            Q.    HOW DID THE INTERVIEW PROCEED AT THIS POINT?

6            A.    AT THAT POINT I TOLD HIM WE WERE TALKING ABOUT THE  
7                BUDGET INN HOMICIDE AND ASKED HIM WHAT HE KNEW  
8                ABOUT IT, AND HE GAVE US THE STORY THAT HE WASN'T  
9                PRESENT AND DIDN'T KNOW ANYTHING ABOUT IT. AND  
10              THEN AT THAT POINT WE STARTED TO CONFRONT HIM WITH  
11              OTHER STATEMENTS FROM CO-DEFENDANTS OF HIS  
12              INVOLVEMENT. AND I DON'T REMEMBER HIS EXACT  
13              VERBIAGE BUT HE EXPRESSED THAT HE THOUGHT HE  
14              NEEDED TO CONSULT WITH AN ATTORNEY. SO, WE ENDED  
15              OUR INTERVIEW.

16           Q.    HE MENTIONED AN ATTORNEY?

17           A.    CORRECT. I TOLD HIM WHEN HE MENTIONED AN ATTORNEY  
18                THAT WE COULD NO LONGER SPEAK, AND MYSELF AND  
19                DETECTIVE GOMES EXITED THE ROOM.

20           Q.    WERE THERE ANY OTHER NORTH CHARLESTON POLICE  
21                OFFICERS IN THAT ROOM AFTER HE SAID SOMETHING  
22                ABOUT AN ATTORNEY?

23           A.    AT THE TIME THAT HE ASKED FOR THE ATTORNEY IT WAS  
24                MYSELF, DETECTIVE GOMES, MR. PHILLIPS, AND MR.  
25                SIMMONS. WHEN HE EXPRESSED HIS DESIRE TO HAVE A



DIRECT, IN CAMERA-JAMES M. HILL, JR.,  
BY SOLICITOR RUTLEDGE DURANT

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1           LAWYER, WE, ME AND -- MYSELF AND DETECTIVE GOMES  
2           EXITED THE ROOM, AND MR. SIMMONS WAS LEFT IN THE  
3           ROOM.

4           Q.   AND WHEN HE MENTIONED AN ATTORNEY DID YOU SAY  
5           ANYTHING AT THAT POINT TO MR. SIMMONS?

6           A.   NO, SIR.

7           Q.   SO, WHERE DID YOU GO -- YOU LEFT THAT ROOM AND  
8           WHERE DID YOU GO?

9           A.   WE WENT OUT INTO THE DETECTIVE BAY TO DISCUSS WHAT  
10          WE WERE GOING TO DO NEXT.

11          Q.   AND WHAT HAPPENED WHEN YOU WERE OUT IN THE HALL?

12          A.   WHILE MYSELF AND OTHER DETECTIVES WERE TALKING MR.  
13          SIMMONS CAME OUT AND EXPRESSED THAT MR. PHILLIPS  
14          WOULD LIKE TO TALK TO US AGAIN.

15          Q.   AND BASED ON THIS WHAT DID YOU DO?

16          A.   MYSELF AND DETECTIVE GOMES WENT BACK INTO THE  
17          ROOM, ASKED HIM IF HE, IN FACT, DID WANT TO TALK  
18          TO US. HE STATED HE DID, AND I TOLD HIM, WELL,  
19          THAT WAS FINE, THAT HE COULD, BUT I WOULD HAVE TO  
20          RE-ADVISE HIM OF HIS CONSTITUTIONAL RIGHTS. SO,  
21          WE DID A SECOND MIRANDA FORM.

22          Q.   WAS IT YOUR UNDERSTANDING THAT HE HAD INITIATED  
23          CONTACT WITH YOU?

24          A.   YES.

25          Q.   I'M SHOWING YOU WHAT THE STATE HAS LABELED STATE'S

DIRECT, IN CAMERA-JAMES M. HILL, JR.,  
BY SOLICITOR RUTLEDGE DURANT

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1 TWO FOR IDENTIFICATION AND ASK YOU IF YOU  
2 RECOGNIZE THAT?

3 A. YES, I DO.

4 Q. AND HOW DO YOU RECOGNIZE IT?

5 A. IT'S THE SECOND ADVICE OF CONSTITUTIONAL RIGHTS WE  
6 READ TO MR. PHILLIPS.

7 Q. AND HOW DO YOU KNOW THAT?

8 A. BECAUSE I FILLED IT OUT AND I WITNESSED IT, AND  
9 IT'S TIMED, SIX:FORTY-TWO P.M.

10 Q. SO, THIS WAS ABOUT THIRTY MINUTES AFTER HE HAD  
11 FIRST BEEN ADVISED OF HIS RIGHTS?

12 A. CORRECT.

13 Q. WHO ADVISED HIM THIS TIME?

14 A. I DID.

15 Q. WAS ANYONE ELSE PRESENT?

16 A. DETECTIVE GOMES.

17 Q. AND HOW WAS HE ADVISED THIS TIME?

18 A. THE SAME FASHION, I FILLED OUT THE TOP FORM WITH  
19 HIS NAME, DATE OF BIRTH, EDUCATIONAL BACKGROUND  
20 AND WENT THROUGH THE FORM COMPLETELY VERBATIM WITH  
21 HIM AGAIN, EXCEPT THIS TIME WHEN WE, WHERE THE  
22 WAIVER IS, WE KNEW WE WERE GOING TO CHARGE HIM  
23 WITH MURDER, SO I ADVISED HIM THAT HE WAS NOW  
24 CHARGED WITH MURDER.

25 Q. AND WHY DID YOU DECIDE TO CHARGE HIM WITH MURDER

DIRECT, IN CAMERA-JAMES M. HILL, JR.,  
BY SOLICITOR RUTLEDGE DURANT

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1 THIS TIME?

2 A. BECAUSE WE HAD ENOUGH PROBABLE CAUSE TO ARREST HIM  
3 FOR MURDER, SO WE WERE GOING TO GO AHEAD AND  
4 ARREST HIM FOR MURDER.

5 Q. DID HE SIGN THIS ADVICE OF RIGHTS?

6 A. YES, HE DID.

7 Q. THIS TIME DID HE ALSO SIGN THAT HE WISHED TO WAIVE  
8 HIS RIGHTS AND TALK TO YOU ABOUT THE MURDER?

9 A. YES, HE DID.

10 Q. AND DID HE KNOW AT THIS TIME THAT HE WAS NOW UNDER  
11 ARREST FOR MURDER?

12 A. OH, YEAH, NO DOUBT, I TOLD HIM.

13 Q. AND DID YOU WITNESS MR. PHILLIPS SIGN THE ADVICE  
14 OF RIGHTS AND THE WAIVER?

15 A. YES, I DID.

16 Q. AND HAD HIS PHYSICAL CONDITION CHANGED AT ALL AT  
17 THIS TIME?

18 A. NO, IT DID NOT.

19 Q. AND WHAT WAS IT, WHAT WAS HIS CONDITION?

20 A. HE WAS FINE, HE DIDN'T HAVE, I DIDN'T NOTICE  
21 ANYTHING ABNORMAL ABOUT HIM, HE WAS ANSWERING AND  
22 RESPONDING TO EVERYTHING WE ASKED HIM. I DIDN'T  
23 NOTE ANYTHING.

24 Q. AND AGAIN, THIS SECOND ADVICE OF RIGHTS, DID HE  
25 EXHIBIT ANY CONFUSION?

DIRECT, IN CAMERA-JAMES M. HILL, JR.,  
BY SOLICITOR RUTLEDGE DURANT

86

1 A. NO.

2 Q. DID HE SAY HE WAS CONFUSED?

3 A. NO.

4 Q. DID HE APPEAR TO BE DRUNK OR INTOXICATED?

5 A. NO.

6 Q. DID HE SAY HE WAS?

7 A. NO.

8 Q. DID HE APPEAR TIRED OR EXHAUSTED?

9 A. NO.

10 Q. DID HE SAY HE WAS?

11 A. NO.

12 Q. AFTER WAIVING HIS RIGHTS DID MR. PHILLIPS PROVIDE  
13 YOU AND DETECTIVE GOMES WITH A STATEMENT?

14 A. AS SOON AS I ADVISED HIM OF HIS RIGHTS HE SIGNED  
15 HIS WAIVER OF RIGHTS. WE EXPRESSED TO HIM THAT  
16 DETECTIVE GOMES WOULD WRITE HIS STATEMENT AS HE  
17 TOLD IT, AND WE WENT RIGHT INTO THE STATEMENT.

18 Q. SO, DID YOU WRITE IT OR DID SOMEONE ELSE WRITE IT?

19 A. DETECTIVE GOMES WROTE IT.

20 Q. AND WHY IS THAT?

21 A. WE WERE TOLD THAT HE COULDN'T WRITE.

22 Q. AND WAS IT WRITTEN DOWN AS HE TOLD IT?

23 A. EXACTLY, YES, SIR.

24 Q. WAS HE GIVEN THE OPPORTUNITY TO MAKE CORRECTIONS?

25 A. YES, HE WAS.

DIRECT, IN CAMERA-JAMES M. HILL, JR.,  
BY SOLICITOR RUTLEDGE DURANT

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1 Q. AND WOULD YOU KIND OF EXPLAIN HOW THEY DO THAT?

2 A. I BELIEVE DETECTIVE GOMES WOULD WRITE A SENTENCE  
3 OR TWO AS IT WAS TOLD TO HIM, BUT I KNOW,  
4 ULTIMATELY WHEN THE STATEMENT WAS COMPLETED  
5 DETECTIVE GOMES WENT THROUGH THE STATEMENT WITH  
6 HIM AGAIN MAKING ANY CORRECTIONS OR CHANGES THAT  
7 MR. PHILLIPS WANTED TO MAKE TO HIS STATEMENT, AND  
8 EITHER DRAWING A LINE THROUGH IT AND INITIALING  
9 IT, OR YOU KNOW, MAKING THE CHANGES THAT HE  
10 WANTED. I CAN'T REMEMBER EXACTLY WHETHER  
11 DETECTIVE GOMES DID IT SENTENCE BY SENTENCE OR  
12 WHETHER HE WROTE THE WHOLE STATEMENT AND THEN MADE  
13 THE CORRECTIONS AFTERWARDS, BUT I KNOW THE  
14 STATEMENT WAS READ BACK TO HIM, OFFERING HIM THE  
15 OPPORTUNITY TO MAKE CORRECTIONS.

16 Q. AND AT ANYTIME DURING THIS PROCESS DID MR.  
17 PHILLIPS INDICATE HE WANTED TO STOP TALKING?

18 A. NO, SIR.

19 Q. DID HE, DID HE EVER ASK FOR A LAWYER AGAIN?

20 A. NO.

21 Q. YOU SAID THE STATEMENT WAS READ BACK TO HIM?

22 A. CORRECT.

23 Q. AND WHO WAS PRESENT WHEN IT WAS READ BACK TO HIM?

24 A. ME AND DETECTIVE GOMES AND SHAWN PHILLIPS.

25 Q. I SHOW YOU WHAT'S BEEN MARKED AS STATE'S THREE AND

DIRECT, IN CAMERA-JAMES M. HILL, JR.,  
BY SOLICITOR RUTLEDGE DURANT

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1 ASK YOU IF YOU RECOGNIZE THAT?

2 A. YES, THIS IS MR. PHILLIPS'S STATEMENT THAT  
3 DETECTIVE GOMES HAD WRITTEN AND THAT I WITNESSED  
4 ON THREE PAGES.

5 Q. AND HOW DO YOU KNOW THAT THAT'S THE DEFENDANT'S  
6 STATEMENT?

7 A. IT HAS MY SIGNATURE AT THE END, IT HAS HIS NAME AT  
8 THE TOP, AND I WAS PRESENT WHEN IT WAS DONE.

9 Q. DID HE SIGN THIS STATEMENT AS WELL?

10 A. YES, HE DID.

11 Q. HOW MANY PAGES IS THE STATEMENT?

12 A. IT'S TWO AND THE TOP SECTION OF A THIRD.

13 Q. AND HOW MANY TIMES DID THE DEFENDANT SIGN THE  
14 STATEMENT?

15 A. 'ONCE ON THE FIRST PAGE, TWICE ON THE SECOND, AND  
16 TWICE ON THE THIRD.

17 Q. AND DID YOU WITNESS HIM SIGN ALL OF THESE TIMES?

18 A. YES, I DID.

19 Q. WAS MR. PHILLIPS PROVIDED WITH A COPY OF THIS  
20 STATEMENT?

21 A. YES, HE WAS.

22 Q. WAS HE THREATENED IN ANY WAY TO GET HIM TO MAKE  
23 THIS STATEMENT?

24 A. NO, HE WAS NOT.

25 Q. DID YOU MAKE HIM ANY PROMISES OF LENIENCY?

DIRECT, IN CAMERA-JAMES M. HILL, JR.,  
BY SOLICITOR RUTLEDGE DURANT

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1 A. NO, SIR, I DID NOT.

2 Q. DID YOU THREATEN HIM?

3 A. NO, SIR.

4 Q. THREATEN HIS FAMILY?

5 A. NO, SIR.

6 Q. DID YOU OFFER HIM ANY REWARD?

7 A. NO, SIR.

8 SOLICITOR RUTLEDGE DURANT: PLEASE  
9 ANSWER ANY QUESTIONS MR. PEPER MAY HAVE.

10 WITNESS: YES, SIR.

11 THE COURT: CROSS.

12 MR. PEPER: THANK YOU, YOUR HONOR,  
13 IF IT PLEASE THE COURT.

14 THE COURT: YES, SIR.

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.)

CROSS, IN CAMERA-JAMES M. HILL, JR., BY MR. PEPER

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CROSS-EXAMINATION, IN CAMERA, OF JAMES M. HILL, JR.,

BY MR. PEPER:

Q. YOU WERE IN THE ROOM WHEN HE GAVE HIS STATEMENT TO  
DETECTIVE GOMES?

A. YES, I WAS.

Q. WERE YOU IN THE ROOM THE ENTIRE TIME?

A. THAT THE STATEMENT WAS GIVEN, CORRECT, YES, SIR.

Q. AND WERE, DID YOU AT ANY POINT WRITE ON SHAWN'S  
BEHALF ON THE STATEMENT?

A. NO, SIR.

Q. SO, IT WAS ONLY DETECTIVE GOMES THAT WROTE IT?

A. CORRECT.

Q. AND YOU TESTIFIED THAT YOU CAN'T REMEMBER WHETHER  
GOMES WOULD WRITE ONE OR TWO SENTENCES AND THEN  
READ IT BACK TO SHAWN, OR WHETHER HE WROTE THE  
WHOLE STATEMENT AND THEN READ IT BACK TO SHAWN?

A. I DON'T RECALL, I DON'T REMEMBER GREG'S STYLE  
WHETHER HE DID IT A COUPLE OF SENTENCES AND REREAD  
THAT COUPLE OF SENTENCES TO HIM, I JUST DON'T  
REMEMBER.

Q. SO, GOMES WROTE THE STATEMENT?

A. YES, SIR.

Q. AND THEN EITHER WOULD WRITE A COUPLE OF SENTENCES  
AND READ IT BACK TO HIM, OR HE MIGHT HAVE JUST  
WRITTEN THE WHOLE STATEMENT AND THEN JUST READ IT



CROSS, IN CAMERA-JAMES M. HILL, JR., BY MR. PEPER

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1 OUT LOUD TO SHAWN?

2 A. COULD HAVE, EITHER WAY.

3 Q. HE SIGNED THE FIRST MIRANDA WARNINGS AT SIX:TEN  
4 P.M., CORRECT?

5 A. YES, SIR.

6 Q. HE SIGNED THE SECOND MIRANDA WARNINGS AT  
7 SIX:FORTY-TWO P.M., CORRECT?

8 A. YES, SIR.

9 Q. THAT'S THIRTY-TWO MINUTES, CORRECT?

10 A. YES, SIR.

11 Q. DID, I'M ASSUMING IT DIDN'T TAKE YOU THIRTY-TWO  
12 MINUTES TO GET TWO ANSWERS TO TWO QUESTIONS IN THE  
13 FIRST INTERROGATION, RIGHT?

14 A. WHICH TWO QUESTIONS ARE YOU REFERRING TO, SIR?

15 Q. WELL, YOU TESTIFIED ON DIRECT THAT YOU SIMPLY  
16 ASKED HIM, WHERE WERE YOU THE NIGHT OF THE MURDER,  
17 AND HE SAID, I WAS AT THE BUDGET INN, AND THEN HE  
18 STARTED GIVING YOU THE RUNAROUND AND THEN SAID, I  
19 WANT AN ATTORNEY.

20 A. NO, SIR, THAT'S NOT WHAT I SAID.

21 Q. AFTER YOU READ HIM HIS FIRST MIRANDA RIGHTS YOU  
22 WENT DIRECTLY INTO HIS STATEMENT?

23 A. NO, AFTER I READ HIS FIRST MIRANDA AT SIX:TEN P.M.  
24 I TOLD HIM WE WOULD LIKE TO TALK ABOUT THE MURDER  
25 THAT OCCURRED AT THE BUDGET INN.

1 Q. AND WHAT DID HE SAY TO THAT?

2 A. HE SAID HE WASN'T INVOLVED, THAT HE WASN'T THERE.

3 Q. AND WHAT DID YOU SAY?

4 A. I CONFRONTED HIM WITH THE CO-DEFENDANTS'  
5 STATEMENTS THAT WE HAD STATING THAT HE WAS PRESENT  
6 AND THAT HE DID HAVE KNOWLEDGE.

7 Q. AND HOW MANY CO-DEFENDANTS' STATEMENTS WERE THERE?

8 A. I BELIEVE TWO OR THREE.

9 Q. HOW MANY PAGES WERE EACH OF THEM?

10 A. I DON'T REMEMBER.

11 Q. IS IT FAIR TO SAY THERE WERE LESS THAN FIVE EACH?

12 A. I DON'T REMEMBER.

13 Q. OKAY. DID YOU READ THEM OUT LOUD TO HIM, OR DID  
14 YOU LET HIM READ THEM?

15 A. I DIDN'T READ THEM TO HIM.

16 Q. WHO READ THEM TO HIM?

17 A. NOBODY.

18 Q. HE READ THEM?

19 A. NO.

20 Q. SO YOU JUST HELD UP SOME PAPERS ALLEGING TO BE CO-  
21 DEFENDANTS' STATEMENTS AND TOLD HIM EITHER TALK OR  
22 HE WAS GOING TO JAIL?

23 A. I TOLD HIM I HAD STATEMENTS, I DON'T EVEN THINK I  
24 HELD THEM UP.

25 Q. BUT YOU REALLY HAD STATEMENTS THEN, DIDN'T YOU?

CROSS, IN CAMERA-JAMES M. HILL, JR., BY MR. PEPER

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1 A. YES.

2 Q. OKAY. ALRIGHT, SO, WHAT, THEN WHAT DID HE SAY?

3 A. THAT'S WHEN HE MADE THE COMMENT ABOUT HE THOUGHT  
4 HE NEEDED LEGAL COUNSEL.

5 Q. WELL, HOW LONG DID THAT TAKE?

6 A. I DON'T KNOW, TEN OR FIFTEEN MINUTES.

7 Q. NO, HOW LONG DID THAT CONVERSATION THAT YOU AND I  
8 JUST HAD, WHEREBY YOU JUST TESTIFIED EXACTLY WHAT  
9 HAPPENED AFTER YOU MIRANDIZED HIM AT SIX:TEN P.M.,  
10 HOW LONG DID THAT JUST TAKE?

11 A. I HAVE NO IDEA, SIR.

12 Q. WOULD IT BE FAIR TO SAY IT TOOK THIRTY SECONDS?

13 A. I HAVE NO IDEA.

14 Q. OKAY. YOU HEARD MR. SIMMONS TESTIFY, DIDN'T YOU?

15 A. YES, SIR.

16 Q. HE TESTIFIED THAT AFTER HE ASKED FOR AN ATTORNEY  
17 Y'ALL LEFT THE ROOM. ONE MINUTE LATER HE CAME  
18 BACK AND TOLD Y'ALL HE WANTED TO TALK, RIGHT?

19 A. I BELIEVE THAT'S WHAT HE SAID.

20 Q. SO, GIVE OR TAKE A COUPLE OF MINUTES, WE'RE AT  
21 ABOUT A MINUTE AND A HALF NOW BETWEEN THE FIRST  
22 TIME YOU MIRANDIZED HIM AND THE SECOND TIME YOU  
23 MIRANDIZED HIM, RIGHT?

24 A. REPEAT THAT QUESTION.

25 Q. YOU MIRANDIZED HIM AT SIX:TEN P.M., YOU TESTIFIED

1 TO THAT, CORRECT?

2 A. CORRECT.

3 Q. YOU INTERROGATED THE WITNESS, CORRECT?

4 A. AT WHAT TIME, SIR?

5 Q. RIGHT AFTER, I'M ASSUMING YOU DIDN'T JUST  
6 MIRANDIZE HIM AND THEN GO TO LUNCH BREAK AND COME  
7 BACK AND INTERROGATE HIM.

8 A. AT SIX:TEN I INTERVIEWED HIM.

9 Q. OKAY. FIRST, AT SIX:TEN YOU INTERVIEW HIM, AND HE  
10 TELLS YOU EXACTLY WHAT YOU TOLD ME JUST NOW, THAT  
11 HE DOESN'T KNOW ANYTHING ABOUT IT. AND YOU  
12 CONFRONTED HIM WITH POSSIBLY TWO CO-DEFENDANTS'  
13 STATEMENTS THAT MAY BE LESS THAN FIVE PAGES EACH,  
14 BUT YOU DIDN'T READ THEM TO HIM, RIGHT?

15 A. CORRECT.

16 Q. THAT'S WHAT YOU TESTIFIED TO?

17 A. CORRECT.

18 Q. OKAY. AND THEN, THAT'S WHEN HE ASKED FOR AN  
19 ATTORNEY?

20 A. CORRECT.

21 Q. AND THEN YOU LEFT THE ROOM?

22 A. CORRECT.

23 Q. AND DONALD SIMMONS CAME AND GOT YOU A MINUTE  
24 LATER?

25 A. I DON'T BELIEVE IT WAS A MINUTE, I BELIEVE IT WAS

CROSS, IN CAMERA-JAMES M. HILL, JR., BY MR. PEPER

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1 LONGER.

2 Q. WELL, YOU HEARD HIM TESTIFY, DIDN'T YOU?

3 A. I HEARD HIM TESTIFY, YES, SIR.

4 Q. HE'S NOT A LIAR, IS HE?

5 A. I DON'T BELIEVE HE'S A LIAR, NO, SIR.

6 Q. BUT YOU JUST DON'T BELIEVE HIM RIGHT NOW?

7 A. I DON'T BELIEVE THAT HIS TIME FRAME IS CORRECT.

8 Q. WELL, WHAT WAS IT TWO MINUTES, THREE MINUTES?

9 A. I DON'T KNOW, SIR, IT'S BEEN TWO YEARS.

10 Q. FIVE MINUTES?

11 A. IT'S BEEN TWO YEARS, SIR, I DON'T REMEMBER.

12 Q. BECAUSE THERE'S THIRTY MINUTES BETWEEN THE FIRST  
13 TIME YOU MIRANDIZED MY CLIENT AND THE SECOND TIME,  
14 RIGHT?

15 A. CORRECT.

16 Q. SO, WHAT IN THE WORLD IS GOING ON FOR THOSE THIRTY  
17 MINUTES?

18 A. I DON'T KNOW, SIR, WE WERE IN THE HALL TALKING.

19 Q. SHAWN WASN'T IN THE HALL TALKING, WAS HE? HE WAS  
20 IN THE ROOM.

21 A. CORRECT.

22 Q. BY HIMSELF?

23 A. NO, HE WAS IN THERE WITH MR. SIMMONS.

24 Q. MR. SIMMONS TESTIFIED THAT A MINUTE LATER, AFTER  
25 HE GOT DONE ASKING FOR AN ATTORNEY HE CAME OUT AND

1 GOT YOU AND HE LEFT.

2 A. HE DID LEAVE AFTER HE CAME OUT.

3 Q. WHEN Y'ALL WRITE THIS, THIS NUMBER DOWN HERE,  
4 WHERE IT SAYS, DATE AND TIME, WHERE DO YOU GET THE  
5 TIME FROM?

6 A. ON THE MIRANDA, SIR?

7 Q. YES, ON THE MIRANDA.

8 A. FROM ONE OF OUR WATCHES.

9 Q. CAN YOU BE MORE SPECIFIC?

10 A. I PROBABLY USED MY CELL PHONE OR MY PAGER, I DON'T  
11 REMEMBER WHICH ONE, I EITHER USED ONE OR THE TWO.

12 Q. ALRIGHT. WHAT'S YOUR CELL PHONE OR PAGER GOT  
13 RIGHT NOW, WHAT TIME HAVE YOU GOT RIGHT NOW?

14 A. SIR, I'M IN COURT, I DON'T HAVE MY CELL PHONE OR  
15 MY PAGER.

16 Q. ALRIGHT. HAVE YOU GOT A WATCH ON YOU?

17 A. NO, SIR.

18 Q. YOU DON'T HAVE A WATCH ON?

19 A. NO, SIR.

20 Q. OKAY. SO, YOU ALWAYS USE YOUR CELL PHONE OR YOUR  
21 PAGER TO TELL THE TIME?

22 A. YES, SIR.

23 Q. OKAY. CAN YOU SEE THAT CLOCK RIGHT THERE?

24 A. YES, SIR.

25 Q. WHAT TIME DO YOU THINK IT IS?

CROSS, IN CAMERA-JAMES M. HILL, JR., BY MR. PEPER

97

1 A. TWELVE:EIGHTEEN, TWELVE:SEVENTEEN, NOON.

2 Q. WELL, EITHER IT'S NOON, OR DO YOU THINK IT'S  
3 TWELVE:EIGHTEEN P.M.?

4 A. P.M.

5 Q. YOU THINK IT'S TWELVE:EIGHTEEN P.M. RIGHT NOW?

6 A. YES.

7 Q. IF YOU WERE MIRANDIZING ME AND ADVISING ME OF MY  
8 CONSTITUTIONAL RIGHTS, WOULD YOU WRITE THAT YOU  
9 ADVISED ME AT TWELVE:EIGHTEEN P.M., OR WOULD YOU  
10 WRITE NOON?

11 A. P.M., OR A.M.

12 Q. YOU WOULD JUST WRITE P.M. OR A.M.?

13 A. CORRECT.

14 Q. BUT YOU WOULD PUT A TIME NEXT TO IT?

15 A. I WOULD WRITE THE TIME AND THEN P.M. OR A.M.

16 Q. IF YOU WERE MIRANDIZING ME RIGHT NOW AND ADVISING  
17 ME OF MY CONSTITUTIONAL RIGHTS WHAT TIME WOULD YOU  
18 PUT ON THE ADVISEMENT OF RIGHTS THAT YOU ADVISED  
19 ME OF THOSE RIGHTS, WHAT TIME WOULD YOU PUT ON  
20 PAPER?

21 A. TWELVE, WHATEVER, I CAN'T SEE THE, I DON'T HAVE MY  
22 GLASSES, I CAN'T SEE, I CAN SEE IT'S BETWEEN  
23 FIFTEEN AND TWENTY, SO I WOULD WRITE TWELVE,  
24 WHATEVER MY DIGITAL CLOCK SAYS, WHATEVER THE  
25 MINUTE IS, EXACT. I DON'T USE A HAND CLOCK.

CROSS, IN CAMERA-JAMES M. HILL, JR., BY MR. PEPER

98

1 Q. I KNOW, YOU USE YOUR PAGER OR CELL PHONE, CORRECT?

2 A. CORRECT.

3 MR. PEPER: COULD I SEE THE SECOND  
4 STATEMENT -- SECOND ADVISEMENT OF CONSTITUTIONAL RIGHTS?

5 THE COURT: I THINK HE'S GOT THEM  
6 BOTH.

7 Q. SECOND ADVISEMENT OF CONSTITUTIONAL RIGHTS -- I'M  
8 SORRY, LET'S GO BACK TO THE FIRST ONE, BECAUSE  
9 CLEARLY, IT SEEMS THAT YOU ARE CONFUSED ON WHAT  
10 TIME YOU GAVE HIS FIRST CONSTITUTIONAL RIGHTS  
11 ADVISEMENT, RIGHT?

12 A. I GAVE HIS FIRST CONSTITUTIONAL RIGHTS AT SIX:TEN  
13 P.M. I BELIEVE IS WHAT THAT SAYS.

14 Q. OKAY.

15 MR. PEPER: COULD I APPROACH, YOUR  
16 HONOR?

17 Q. I'M GOING TO SHOW YOU WHAT'S BEEN MARKED AS  
18 STATE'S EXHIBIT ONE, AND ASK YOU, IS THIS YOUR  
19 HANDWRITING?

20 A. YES.

21 Q. CAN YOU READ THE HEADER TO US?

22 A. SURE. "FULL NAME: SHAWN PHILLIPS. DATE OF  
23 BIRTH: [REDACTED] AGE: TWENTY-SIX. GRADE  
24 COMPLETED: FIFTH." I MISPRINTED AND I WROTE MY  
25 NAME WHERE I SHOULD HAVE WROTE HIS NAME. "I,



CROSS, IN CAMERA-JAMES M. HILL, JR., BY MR. PEPER

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1 DETECTIVE, DET.," I ABBREVIATED DETECTIVE, " J." I  
2 ABBREVIATED MY FIRST NAME, "HILL. I'VE BEEN  
3 ADVISED BY SHAWN PHILLIPS OF THE NORTH CHARLESTON  
4 POLICE DEPARTMENT."

5 Q. SO, THE WAY IT READS IS - - -

6 A. IT'S INCORRECT.

7 Q. IT'S INCORRECT?

8 A. CORRECT.

9 Q. WERE YOU HAVING A BAD DAY?

10 A. IT WAS A LONG NIGHT, YES, SIR.

11 Q. WELL, IT WAS ONLY SIX:TEN P.M.

12 A. YEAH, BUT I HAD BEEN UP TWO DAYS BEFORE THAT, SIR.

13 Q. YOU WORKED FORTY-EIGHT HOURS STRAIGHT?

14 A. WITH LITTLE SLEEP, YES, SIR.

15 Q. SO, YOU WERE EXTREMELY TIRED?

16 A. I WAS TIRED, YES, SIR.

17 Q. AGITATED, ANGRY?

18 A. NOT AGITATED.

19 Q. YOU DON'T GET UPSET WHEN YOU, LACK OF SLEEP?

20 A. NO, I DON'T.

21 Q. JUST TO MAKE SURE, THIS IS YOUR HANDWRITING ON  
22 STATE'S EXHIBIT TWO?

23 A. YES, IT IS.

24 Q. NOW, DID YOU CORRECTLY IDENTIFY YOURSELF AND THE  
25 DEFENDANT IN THE SECOND CONSTITUTIONAL ADVISEMENT?

- 1 A. YES, I DID.
- 2 Q. ALRIGHT. AND WHO WITNESSED THE SECOND ONE?
- 3 A. DETECTIVE GOMES.
- 4 Q. WHO WITNESSED THE FIRST ONE?
- 5 A. DETECTIVE DRIGGERS.
- 6 Q. WAS DRIGGERS THERE FOR THE SECOND ADVISEMENT?
- 7 A. SHE COULD HAVE BEEN IN THE DETECTIVE BASE
- 8 SOMEWHERE.
- 9 Q. WAS GOMES THERE FOR THE FIRST ADVISEMENT?
- 10 A. IN THE ROOM ITSELF?
- 11 Q. YEAH, WHEN HE WAS ADVISED OF HIS CONSTITUTIONAL
- 12 RIGHTS?
- 13 A. I BELIEVE HE WAS WALKING IN AND OUT. I DON'T THINK
- 14 HE WAS IN THERE FOR THE FULL TIME.
- 15 Q. ALRIGHT. BUT YOU AND GOMES AT SIX:FORTY-TWO P.M.,
- 16 INTERROGATED MY CLIENT AND TOOK A STATEMENT FROM
- 17 HIM, CORRECT?
- 18 A. WE INTERVIEWED HIM, YES, SIR.
- 19 Q. OKAY. AND I THINK YOU TESTIFIED ON DIRECT THAT HE
- 20 INITIATED CONTACT WITH ME, HE BEING DONALD
- 21 SIMMONS?
- 22 A. MR. PHILLIPS INITIATED CONTACT THROUGH MR.
- 23 SIMMONS, CORRECT.
- 24 Q. THE DEFENDANT INITIATED CONTACT THROUGH MR.
- 25 SIMMONS?

CROSS, IN CAMERA-JAMES M. HILL, JR., BY MR. PEPPER

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1 A. CORRECT.

2 Q. MR. SIMMONS WASN'T HIS ATTORNEY, WAS HE?

3 A. NO, SIR.

4 Q. AND A MINUTE EARLIER HE HAD JUST ASKED FOR AN  
5 ATTORNEY AND Y'ALL WALKED OUT, CORRECT?

6 A. CORRECT.

7 Q. YOU TESTIFIED ALSO ON DIRECT THAT DURING THE  
8 ADMINISTRATION OF THE STATEMENT OR DURING YOUR  
9 INTERROGATION THAT SHAWN RESPONDED TO EVERYTHING  
10 WE ASKED HIM, CORRECT?

11 A. ARE YOU TALKING ABOUT AFTER MR. SIMMONS LEFT OR -  
12 - -

13 Q. I'M JUST MAKING SURE OF WHAT YOU, THAT I HEARD  
14 WHAT YOU SAID ON DIRECT. YOU SAID, SHAWN  
15 RESPONDED TO EVERYTHING WE ASKED HIM.

16 A. YES.

17 Q. OKAY. AND A RESPONSE COULD BE, YES, A RESPONSE  
18 COULD BE, NO, RIGHT?

19 A. YES.

20 Q. OKAY. AND I JUST WANT TO MAKE SURE WE'RE CLEAR  
21 NOW, BECAUSE HE WAS RESPONDING, YOU TESTIFIED HE  
22 WAS RESPONDING TO QUESTIONS THAT GOMES ASKED HIM,  
23 BECAUSE GOMES WROTE THE STATEMENT, CORRECT?

24 A. CORRECT.

25 Q. AND YOU DON'T REMEMBER WHETHER GOMES WROTE THE

CROSS, IN CAMERA-JAMES M. HILL, JR., BY MR. PEPER

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1 STATEMENT AND THEN READ A COUPLE OF SENTENCES BACK  
2 OR WHETHER GOMES WROTE THE STATEMENT AND THEN READ  
3 THE WHOLE THING BACK?

4 A. CORRECT.

5 MR. PEPER: THAT'S ALL I HAVE, YOUR  
6 HONOR.

7 THE COURT: REDIRECT?

8 SOLICITOR RUTLEDGE DURANT: NO  
9 FURTHER QUESTIONS, JUDGE.

10 THE COURT: THANK YOU, SIR, YOU CAN  
11 STEP DOWN.

12 WITNESS: YES, SIR.

13 SOLICITOR RUTLEDGE DURANT: THE  
14 STATE CALLS GREG GOMES.

15 (Whereupon, George Gregory Gomes  
16 is duly sworn.)

17 CLERK: ALRIGHT. HAVE A SEAT,  
18 PLEASE, AND JUST STATE YOUR FULL NAME AND SPELL YOUR  
19 LAST, PLEASE.

20 WITNESS: GEORGE GREGORY GOMES, G-O-  
21 M-E-S.

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.)

DIRECT, IN CAMERA, G. GREGORY GOMES BY  
SOLICITOR RUTLEDGE DURANT

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DIRECT EXAMINATION, IN CAMERA, OF G. GREGORY  
GOMES BY SOLICITOR RUTLEDGE DURANT:

Q. DETECTIVE GOMES, WHERE ARE YOU EMPLOYED?

A. NORTH CHARLESTON POLICE DEPARTMENT.

Q. AND IN WHAT CAPACITY DO YOU SERVE THE NORTH  
CHARLESTON POLICE DEPARTMENT?

A. I'M CURRENTLY A SERGEANT, A SUPERVISOR OVER THE  
NARCOTICS UNIT.

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

A. NO, SIR, I WAS IN INVESTIGATIONS.

Q. ON DECEMBER FOURTEENTH, TWO THOUSAND AND SIX, DID  
YOU HAVE THE OPPORTUNITY TO TAKE A STATEMENT FROM  
THE DEFENDANT, SHAWN PHILLIPS?

A. YES, SIR, I DID.

Q. HOW, HOW WAS HE BROUGHT DOWN TO THE NORTH  
CHARLESTON POLICE DEPARTMENT?

A. DETECTIVE HILL CONTACTED HIS SUPERVISOR, MR.  
PHILLIPS' PROBATION OFFICER, AND HE BROUGHT HIM  
IN.

Q. AND WERE YOU, WAS HE ADVISED OF HIS RIGHTS AT THAT  
TIME?

A. YES, SIR.

Q. WHERE WAS HE TAKEN?

A. TO THE SERGEANT'S OFFICE.

DIRECT, IN CAMERA, G. GREGORY GOMES BY  
SOLICITOR RUTLEDGE DURANT

104

- 1 Q. WHERE IS THAT LOCATED?
- 2 A. ON THE THIRD FLOOR OF THE POLICE DEPARTMENT, IT'S
- 3 IN THE BACK OF THE BUILDING.
- 4 Q. AND DID, ARE YOU AWARE THAT HE WAS ADVISED OF HIS
- 5 RIGHTS TWICE?
- 6 A. YES, SIR.
- 7 Q. WERE YOU, DID YOU TAKE PART IN ANY ADVICE OF HIS
- 8 RIGHTS?
- 9 A. THE SECOND ADVISEMENT OF RIGHTS, I WAS PRESENT.
- 10 Q. THE SECOND. WERE YOU PRESENT FOR THE FIRST ONE?
- 11 A. NO, SIR.
- 12 Q. WHEN DID YOU COME INTO THE ROOM?
- 13 A. IT WAS, DRIGGERS HAD COME OUT AND I WALKED IN
- 14 AFTER THE FIRST ADVICE OF RIGHTS, JUST, JUST PRIOR
- 15 TO HIM ASKING FOR, I WANT TO TALK TO A LAWYER.
- 16 Q. DID YOU HEAR HIM SAY HE WANTED AN ATTORNEY?
- 17 A. YES, SIR.
- 18 Q. AND WHO WAS IN THE ROOM AT THAT POINT?
- 19 A. MYSELF, DETECTIVE HILL AND MR. SIMMONS.
- 20 Q. AND WHAT HAPPENED WHEN HE ASKED FOR AN ATTORNEY?
- 21 A. DETECTIVE HILL AND I LEFT THE ROOM.
- 22 Q. DID Y'ALL SAY ANYTHING TO MR. SIMMONS?
- 23 A. NO, SIR.
- 24 Q. WAS HE STILL IN THE ROOM?
- 25 A. YES, SIR.

DIRECT, IN CAMERA, G. GREGORY GOMES BY  
SOLICITOR RUTLEDGE DURANT

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1 Q. WITH THE DEFENDANT?

2 A. YES, SIR.

3 Q. AND TO YOUR KNOWLEDGE WHAT HAPPENED, WHAT'S THE  
4 NEXT THING THAT HAPPENED?

5 A. IT WAS PROBABLY, I'D SAY PROBABLY TEN MINUTES OR  
6 SO, DETECTIVE HILL CAME OVER AND TOLD ME THAT THE  
7 DEFENDANT WANTED TO TALK WITH US AGAIN.

8 Q. AND WAS IT YOUR UNDERSTANDING THAT THE DEFENDANT  
9 HAD INITIATED CONTACT WITH Y'ALL?

10 A. YES, SIR, DETECTIVE HILL TOLD ME THAT THE  
11 PROBATION OFFICER CAME OUT AND TOLD HIM THAT HE  
12 WANTED TO TALK WITH US.

13 Q. AND SO WHAT HAPPENED?

14 A. DETECTIVE HILL AND I WENT IN THERE, AT WHICH TIME  
15 DETECTIVE HILL RE-MIRANDIZED THE DEFENDANT AGAIN.

16 Q. AND I'M GOING TO SHOW YOU WHAT'S IDENTIFIED AS  
17 STATE'S TWO. DO YOU RECOGNIZE THAT DOCUMENT?

18 A. YES, SIR, THIS IS THE SECOND ADVICE OF RIGHTS THAT  
19 WAS FILLED OUT FOR MR. PHILLIPS.

20 Q. AND AT THIS POINT WHEN Y'ALL WENT BACK IN THE ROOM  
21 DID YOU HAVE THE OPPORTUNITY TO OBSERVE HIS  
22 PHYSICAL DEMEANOR?

23 A. YES, SIR, I DID.

24 Q. AND HOW DID HE APPEAR TO YOU?

25 A. HE APPEARED NORMAL, COHERENT, UNDERSTOOD WHAT WAS

DIRECT, IN CAMERA, G. GREGORY GOMES BY  
SOLICITOR RUTLEDGE DURANT

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1 GOING ON.

2 Q. DID Y'ALL ASK HIM IF HE WANTED TO TALK TO YOU?

3 A. YES, SIR.

4 Q. TO CLARIFY IT WAS Y'ALL'S UNDERSTANDING THAT HE  
5 WAS REINITIATING CONTACT?

6 A. YES, SIR, DETECTIVE HILL WAS ASKING THIS QUESTION,  
7 SIR.

8 Q. DID HE APPEAR TO BE INTOXICATED?

9 A. NO, SIR.

10 Q. UNDER THE INFLUENCE OF ALCOHOL?

11 A. NO, SIR.

12 Q. DRUGS?

13 A. NO, SIR.

14 Q. DID HE APPEAR CONFUSED?

15 A. NO, SIR.

16 Q. DID HE SAY HE WAS?

17 A. NO, SIR.

18 Q. AND DID YOU ADVISE HIM OF HIS RIGHTS?

19 A. DETECTIVE HILL DID WHILE I WAS PRESENT, YES, SIR.

20 Q. AND DID HE SIGN HIS RIGHTS?

21 A. YES, SIR, HE DID.

22 Q. AND DID YOU WITNESS HIM SIGNING HIS RIGHTS?

23 A. YES, SIR, I SAW HIM SIGN IT.

24 Q. AND IS THIS IS SIGNATURE - - -

25 A. YES, SIR, THAT'S RIGHT.



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SOLICITOR RUTLEDGE DURANT

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1 Q. --- ON THIS FORM?

2 A. YES, SIR.

3 Q. AND YOU SIGNED AS A WITNESS?

4 A. YES, SIR, I DID.

5 Q. DETECTIVE HILL SIGNED AS A WITNESS?

6 A. THAT'S CORRECT.

7 Q. AND AT THIS POINT WAS HE UNDER ARREST?

8 A. YES, SIR.

9 Q. AND WHAT WAS HE CHARGED WITH?

10 A. MURDER.

11 Q. AND HE UNDERSTOOD THAT?

12 A. YES, SIR.

13 Q. AND DID HE WAIVE HIS RIGHTS?

14 A. YES, SIR, HE DID.

15 Q. AND HOW DID HE INDICATE THAT?

16 A. ON THE BOTTOM OF THE WAIVER FORM, IT CLEARLY  
17 STATES THAT HE'S BEING CHARGED WITH MURDER, NO  
18 THREATS, FORCE, OR PROMISES OF ANY KIND HAVE BEEN  
19 MADE TO ME BY ANYONE, TO WAIVE THESE RIGHTS AND  
20 ANSWER QUESTIONS, AND HE SIGNED IT, AND I  
21 WITNESSED IT ALONG WITH DETECTIVE HILL.

22 Q. AND YOU AND DETECTIVE HILL SIGNED AS WELL?

23 A. YES, SIR.

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

25 A. I BEGAN GETTING A STATEMENT FROM HIM ABOUT THE

DIRECT, IN CAMERA, G. GREGORY GOMES BY  
SOLICITOR RUTLEDGE DURANT

108

1 INCIDENT.

2 Q. AND DID HE GIVE YOU A STATEMENT?

3 A. YES, SIR, HE DID.

4 Q. WAS HE THREATENED OR COERCED IN ANY WAY?

5 A. NO, SIR.

6 Q. TO THE BEST OF YOUR KNOWLEDGE WAS HIS STATEMENT  
7 FREELY AND VOLUNTARILY GIVEN?

8 A. YES, SIR.

9 Q. AND WAS THE STATEMENT REDUCED TO WRITING?

10 A. YES, SIR, IT WAS.

11 Q. WHO WROTE THE STATEMENT?

12 A. I DID.

13 Q. WHY DID YOU DO THAT?

14 A. BECAUSE I KNEW THAT HE DIDN'T HAVE MUCH OF AN  
15 EDUCATION, AND THAT HE COULDN'T WRITE WELL, I'D  
16 BEEN TOLD THAT, AND WE WERE AWARE OF THAT FROM OFF  
17 THE FORM, IT HAS HIS EDUCATION LEVEL, AND  
18 THEREFORE, I WROTE THE STATEMENT AS HE TOLD IT TO  
19 ME.

20 Q. DID YOU THREATEN HIM IN ANY WAY?

21 A. NO, SIR, I DIDN'T.

22 Q. THREATEN HIS FAMILY?

23 A. NO, SIR.

24 Q. OFFER HIM ANY PROMISES OF LENIENCY?

25 A. NO, SIR.

DIRECT, IN CAMERA, G. GREGORY GOMES BY  
SOLICITOR RUTLEDGE DURANT

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1 Q. AND DID HE SIGN THE STATEMENT?

2 A. YES, SIR, HE DID.

3 Q. I BELIEVE IT'S ALREADY UP THERE.

4 A. YES, SIR, IT IS.

5 Q. STATE'S THREE, AND WHAT IS THAT?

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

8 Q. AND HOW DO YOU KNOW THAT?

9 A. I WROTE IT, AND HE WITNESSED IT, IT'S THE ORIGINAL  
10 COPY.

11 Q. AND AFTER IT WAS REDUCED TO WRITING HE SIGNED IT?

12 A. YES, SIR, HE DID.

13 Q. HOW MANY TIMES DID HE SIGN IT?

14 A. A TOTAL OF FIVE, ONCE ON THE FIRST PAGE AND TWICE  
15 ON THE SECOND AND THIRD PAGE.

16 Q. AND THE STATEMENT IS THREE PAGES LONG, TWO AND A  
17 HALF?

18 A. YES, SIR.

19 Q. AND WAS THIS WRITTEN -- WAS IT READ BACK TO HIM?

20 A. YES, SIR, I READ IT BACK TO HIM, AND HAD HIM MAKE  
21 ANY CORRECTIONS, OR ANY PLACE WHERE I MADE AN  
22 ERROR I HAD HIM INITIAL IT, AND WHERE I SCRATCHED  
23 OUT I HAD HIM INITIAL THERE.

24 Q. SO, DID HE HAVE A CHANCE TO REVIEW IT FOR  
25 ACCURACY?

DIRECT, IN CAMERA, G. GREGORY GOMES BY  
SOLICITOR RUTLEDGE DURANT

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1 A. YES, SIR.

2 Q. AND DID HE TELL YOU IT WAS ACCURATE?

3 A. YES, SIR.

4 Q. DID HE MAKE SOME CHANGES?

5 A. NO, SIR, OTHER THAN WHAT HE INITIALED WHERE I MADE  
6 MISTAKES.

7 Q. AND HE DID MAKE, THERE WERE SOME MISTAKES IN HERE?

8 A. YES, SIR, A COUPLE OF PLACES WHERE I - - -

9 Q. AND HOW DID HE, HOW DID HE TELL YOU THAT THERE  
10 WERE MISTAKES, WHAT DID HE DO?

11 A. WELL, WHEN I READ THEM BACK, OR WHEN HE -- I'D  
12 WRITE AS HE WAS TALKING, AND OBVIOUSLY, SOMETIMES  
13 IT'S HARD TO WRITE VERBATIM WHEN PEOPLE TALK  
14 FASTER THAN I CAN WRITE.

15 Q. RIGHT.

16 A. SOMETIMES I WOULD WRITE A WORD AND THEN I'D HAVE  
17 TO GO BACK AND CLARIFY WHAT HE SAID SO THAT IT WAS  
18 ACCURATE TO WHAT HE WAS TELLING ME. SO, WHEN THAT  
19 HAPPENED I WOULD SCRATCH IT OUT AND AFTER I  
20 FINISHED THE ENTIRE STATEMENT WE REVIEWED IT AND I  
21 HAD HIM INITIAL OVER EACH OF THE SPOTS WHERE THERE  
22 WERE MISTAKES.

23 Q. SO, THERE WERE SEVERAL TIMES IN THE BODY OF THE  
24 STATEMENT THAT HE ACTUALLY INITIALED THE BODY OF  
25 THE STATEMENT?

DIRECT, IN CAMERA, G. GREGORY GOMES BY  
SOLICITOR RUTLEDGE DURANT

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1 A. YES, SIR. RIGHT THERE, S. P., - - -

2 Q. MIDDLE?

3 A. S.P., S.P. THERE.

4 Q. HOW MANY TIMES DID HE INITIAL CORRECTIONS?

5 A. I SEE THREE TIMES.

6 Q. HAS THIS STATEMENT BEEN ALTERED OR CHANGED IN ANY  
7 WAY SINCE YOU TOOK IT ON DECEMBER THE FOURTEENTH?

8 A. NO, SIR.

9 Q. LET ME ASK YOU THIS, AFTER THE, AFTER THE  
10 DEFENDANT HAD REQUESTED AN ATTORNEY AND YOU AND,  
11 THIS IS WHEN YOU AND DETECTIVE HILL LEFT THE ROOM?

12 A. YES, SIR.

13 Q. AND THEN YOUR TESTIMONY IS THAT DONALD SIMMONS HAD  
14 COME OUT AND SAID THE DEFENDANT WANTED TO, WANTED  
15 TO REINITIATE CONTACT?

16 A. YES, SIR.

17 Q. CAN YOU EXPLAIN THE TIME FRAME, WHAT HAPPENED FROM  
18 WHEN DONALD SIMMONS TOLD YOU THE DEFENDANT WANTED  
19 TO REINITIATE CONTACT UNTIL WHEN YOU ACTUALLY WENT  
20 IN THE ROOM, IS THERE, IS THERE A LITTLE BIT OF  
21 PERIOD OF TIME THERE?

22 MR. PEPPER: OBJECTION TO LEADING.

23 A. YES, SIR, THERE - - -

24 THE COURT: JUST ASK HIM HOW LONG?

25 A. YES, SIR, THERE WAS A PERIOD OF TIME WHEN WE WERE

DIRECT, IN CAMERA, G. GREGORY GOMES BY  
SOLICITOR RUTLEDGE DURANT

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1 ALL SITTING OUTSIDE DISCUSSING SOME STRATEGY, THAT  
2 SORT OF THING.

3 Q. APPROXIMATELY HOW LONG WAS THAT?

4 A. IT WAS PROBABLY AT LEAST TEN, CLOSER TO FIFTEEN  
5 MINUTES.

6 Q. AND AGAIN, WHAT WERE YOU DOING?

7 A. WE WERE OUTSIDE DISCUSSING SOME STRATEGY ON  
8 DIFFERENT THINGS WE NEEDED TO DO WITH THE CASE.

9 Q. AND WHAT, WHAT DID YOU DO AFTER YOU DISCUSSED  
10 STRATEGY?

11 A. WE WENT IN THERE AND RE-MIRANDIZED MR. PHILLIPS  
12 AND BEGAN TAKING THE STATEMENT.

13 Q. AND AGAIN, IT'S YOUR TESTIMONY THAT FOR ABOUT TEN  
14 OR FIFTEEN MINUTES, GIVE OR TAKE, YOU DISCUSSED  
15 STRATEGY BEFORE GOING BACK IN THE ROOM?

16 A. YES, SIR.

17 Q. OKAY. NOW, THIS STATEMENT THAT'S IN FRONT OF YOU  
18 RIGHT NOW, THIS IS SHAWN PHILLIPS' STATEMENT?

19 A. YES, SIR.

20 SOLICITOR RUTLEDGE DURANT: PASS IT  
21 UP TO THE JUDGE, AND PLEASE ANSWER ANY QUESTIONS THAT  
22 MR. PEPER MAY HAVE FOR YOU.

23 A. YES, SIR, THANK YOU.

24 MR. PEPER: MAY IT PLEASE THE COURT,  
25 YOUR HONOR.

1  
2  
3  
4  
5  
6

THE COURT: YES, SIR.

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

CROSS, IN CAMERA - G. GREGORY GOMES  
BY MR. PEPER

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CROSS-EXAMINATION, IN CAMERA, OF G. GREGORY  
GOMES BY MR. PEPER:

Q. SHAWN CAN'T READ OR WRITE, CAN HE?

A. THAT IS MY UNDERSTANDING THAT HE CAN'T.

Q. WHEN YOU ASKED HIM TO SIGN HIS NAME DID HE TELL  
YOU HE COULDN'T READ OR WRITE?

A. NO, I JUST, I KNEW, BASED ON HIS FIFTH GRADE  
EDUCATION THAT THERE WERE GOING TO BE SOME ISSUES  
WITH HIM BEING ABLE TO WRITE A STATEMENT.

Q. ALRIGHT. AND SO, DID HE ASK YOU TO WRITE IT OR  
DID YOU VOLUNTEER TO WRITE IT FOR HIM?

A. I DON'T THINK, I DON'T REMEMBER EVER SPECIFICALLY  
ASKING HIM IF HE WANTED TO WRITE IT HIMSELF, IT  
WAS PROBABLY MORE OF AN ASSUMPTION ON MY PART. I  
TOLD HIM THAT I WOULD WRITE IT FOR HIM AS HE TOLD  
IT TO ME, WHICH IS PRETTY COMMON.

Q. CUSTOMARY?

A. THAT'S PRETTY CUSTOMARY, THAT'S WHAT WE DO A LOT  
OF TIMES.

Q. OKAY. I GUESS THE REASON, I JUST WANTED TO  
CONFIRM THE FACT THAT YOU KNEW HE COULDN'T READ OR  
WRITE IS BECAUSE YOU HAD HIM GO BACK AND INITIAL  
SOME MISTAKES THAT YOU HAD MADE?

A. YES, SIR.

Q. AND IT'S CUSTOMARY TO MAKE MISTAKES, I UNDERSTAND,



CROSS, IN CAMERA - G. GREGORY GOMES  
BY MR. PEPPER

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1 BUT I GUESS MY QUESTION IS, IF HE CAN'T READ OR  
2 WRITE, HE WAS DEPENDING ON YOU TO TELL HIM WHAT  
3 MISTAKE YOU MADE AND HOW YOU WANTED TO CORRECT IT,  
4 CORRECT?

5 A. IT'S, IT'S, I GUESS THE BEST WAY I CAN DESCRIBE IT  
6 IS, IF YOU'RE TELLING ME A SENTENCE LIKE THE  
7 SENTENCE YOU JUST SPOKE AND I'M WRITING THAT, AS I  
8 WRITE I MAY MAKE A MISTAKE IN THE WORD, LIKE, I  
9 KNOW ONE OF THEM IS LEAVE AND LEFT.

10 Q. RIGHT.

11 A. I WENT BACK AND SCRATCHED IT OUT. I KNEW IT WAS  
12 NOT WHAT HE SAID SO I SCRATCHED IT OUT MYSELF, I  
13 KNEW THAT THAT WAS A MISTAKE, THAT ISN'T WHAT HE  
14 SAID, SO THAT'S WHY I HAD HIM GO BACK AND INITIAL,  
15 BECAUSE OBVIOUSLY, IT WAS CHANGED FROM WHAT I  
16 INITIALLY HAD WRITTEN.

17 Q. OKAY. AND I APPRECIATE THAT. BUT MY QUESTION IS,  
18 WHEN YOU APPROACHED HIM AND SAID, I MADE A MISTAKE  
19 RIGHT HERE, I KNOW THIS ISN'T WHAT YOU SAID, I --  
20 THIS IS -- DID YOU SAY, THIS IS A MISTAKE I MADE,  
21 OR HOW DID YOU EXPLAIN TO HIM THAT YOU HAD MADE A  
22 MISTAKE IN WRITING HIS STATEMENT?

23 A. WELL, OBVIOUSLY - - -

24 Q. HE CAN'T READ OR WRITE.

25 A. YEAH, I READ THE STATEMENT BACK TO HIM.

CROSS, IN CAMERA - G. GREGORY GOMES  
BY MR. PEPPER

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1 Q. OKAY. THAT'S WHAT I'M SAYING.

2 A. YEAH.

3 Q. BUT HE WAS RELYING ON YOU, AND I'M SURE - - -

4 A. RIGHT, I UNDERSTAND WHAT YOU'RE SAYING. HE NEVER  
5 PHYSICALLY READ THE STATEMENT IF THAT'S WHAT  
6 YOU'RE ASKING.

7 Q. EXACTLY.

8 A. HE NEVER DID THAT.

9 Q. AND SO, AND I'M TRYING TO BE FRIENDLY ABOUT THIS,  
10 BUT I MEAN, YOU KNOW, HE WAS DEPENDING ON YOU - -  
11 -

12 A. THAT'S TRUE, CORRECT.

13 Q. --- TO BE TRUTHFUL ABOUT WHAT YOU WERE READING HIM  
14 WHAT WAS REALLY ON THIS PAGE?

15 A. CORRECT.

16 Q. OKAY. BECAUSE HE DIDN'T WRITE IT, YOU WROTE IT  
17 FOR HIM?

18 A. I WROTE THE STATEMENT.

19 Q. OKAY. AND SO, LET'S USE AN EXAMPLE, ON PAGE TWO  
20 OF THREE, OKAY, ABOUT IN THE MIDDLE OF THE PAGE  
21 YOU HAVE AN ARROW AND YOU PUT, SAID. OKAY. HE  
22 DIDN'T INITIAL IT THIS TIME SO DID YOU JUST FORGET  
23 TO GO BACK AND TELL HIM YOU MADE A MISTAKE?

24 A. DID I SCRATCH IT OUT OR IS IT SOMETHING I JUST  
25 LIKE - - -

CROSS, IN CAMERA - G. GREGORY GOMES  
BY MR. PEPER

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1 Q. NO.

2 A. --- ADDED?

3 Q. SOMETHING YOU ADDED.

4 A. THAT'S SOMETHING I WOULD -- WHEN I WROTE THIS,  
5 LET'S SEE, "L GAVE D FIVE AND SAID," OBVIOUSLY,  
6 WHEN HE SAID THAT I DIDN'T WRITE THAT, SO I WENT  
7 BACK AND ADDED THAT IN.

8 Q. OKAY.

9 A. I MEAN, BUT THAT'S PRIOR TO ME READING IT BACK TO  
10 HIM, THE FINAL DRAFT.

11 Q. SO - - -

12 A. AS WE'RE GOING, IF I NOTICED, IF I NOTICED  
13 SOMETHING WHERE I MADE A MISTAKE OR LEFT OUT A  
14 WORD, BUT THAT PARTICULAR, WHERE YOU'RE TALKING  
15 ABOUT, I DIDN'T SCRATCH ANYTHING OUT.

16 Q. I UNDERSTAND.

17 A. SO, IT'S NOT LIKE ANYTHING WAS - - -

18 Q. I UNDERSTAND. I'M JUST TRYING TO FIGURE OUT HOW IN  
19 THE WORLD YOU COULD BE WRITING WHAT HE'S ALLEGEDLY  
20 TELLING YOU AND AT THE SAME TIME PROOF READING A  
21 LINE OR TWO AHEAD, MAKING ADDITIONS, AND STILL  
22 HEARING WHAT HE'S TELLING YOU?

23 A. I WOULD STOP HIM. LIKE, IF HE'S TELLING ME A  
24 SENTENCE AND I'M WRITING IT - - -

25 Q. OKAY. ALRIGHT. DETECTIVE HILL WAS IN THERE WITH

CROSS, IN CAMERA - G. GREGORY GOMES  
BY MR. PEPER

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1                   YOU, WASN'T HE?

2           A.    YES, SIR.

3           Q.    HE SAID HE CAN'T REMEMBER WHETHER YOU WOULD WRITE  
4                   A COUPLE OF STATEMENTS OR - - -

5                               SOLICITOR       RUTLEDGE       DURANT:

6           OBJECTION, PITTING WITNESSES.

7                               THE COURT:  I'LL ALLOW IT, GO AHEAD.

8           Q.    --- OR WHETHER HE JUST WROTE THE WHOLE AND --  
9                   WHETHER YOU WROTE THE WHOLE THING AND READ IT BACK  
10                  TO HIM.

11          A.    RIGHT.

12          Q.    HE WAS THERE WITH YOU, RIGHT?

13          A.    YES, SIR.

14          Q.    WAS THERE ANYBODY ELSE IN THE ROOM BESIDES YOU,  
15                  SHAWN AND HILL?

16          A.    NO, SIR.

17          Q.    AS A MATTER OF FACT, HILL WASN'T IN THE ROOM WHEN  
18                  YOU REREAD HIS STATEMENT TO HIM, WAS HE?

19          A.    WHEN I REREAD IT?

20          Q.    WHEN YOU READ THE STATEMENT THAT YOU WROTE TO  
21                  SHAWN.

22          A.    YEAH, HE, I BELIEVE HE WAS PRESENT IN THAT ROOM.

23          Q.    ARE YOU SURE ABOUT THAT?

24          A.    WELL, I'M NOT ONE HUNDRED PER CENT SURE, BUT I'M  
25                  PRETTY SURE HE WAS IN THERE.

CROSS, IN CAMERA - G. GREGORY GOMES  
BY MR. PEPER

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1 Q. PRETTY SURE?

2 A. YEAH.

3 Q. BUT YOU DON'T RECALL?

4 A. I'M NOT ONE HUNDRED PER CENT SURE, NO, SIR.

5 Q. OKAY. BUT YOU DID WITNESS SHAWN'S SIGNATURE AT  
6 THE BOTTOM, RIGHT?

7 A. HE WAS IN THERE WHEN I TOOK THE STATEMENT.

8 Q. WELL, I UNDERSTAND THAT, BUT THIS SAYS, "I HAVE  
9 READ THE FOREGOING STATEMENT OR HAVE HAD IT READ  
10 TO ME, AND IT IS TRUE AND CORRECT TO THE BEST OF  
11 MY KNOWLEDGE. I HAVE GIVEN THIS STATEMENT FREELY  
12 AND VOLUNTARILY, AND HAVE BEEN PROVIDED A COPY OF  
13 MY STATEMENT." SO, I'M ASSUMING HE DIDN'T SIGN  
14 THIS, SHAWN DIDN'T SIGN THIS UNTIL AFTER YOU READ  
15 BACK THE STATEMENT TO HIM?

16 A. THAT'S CORRECT.

17 Q. OKAY. SO, OBVIOUSLY, YOU WITNESSED SHAWN'S  
18 SIGNATURE AND HILL WITNESSED SHAWN'S SIGNATURE  
19 AFTER YOU READ HIS STATEMENT BACK TO HIM?

20 A. CORRECT.

21 Q. BUT YOU JUST SAID YOU'RE NOT A HUNDRED PER CENT  
22 SURE HILL WAS EVEN IN THE ROOM WHEN YOU READ THE  
23 STATEMENT BACK.

24 A. THE ENTIRE TIME?

25 Q. I ASKED YOU, ARE YOU POSITIVE THAT HILL WAS IN THE

CROSS, IN CAMERA - G. GREGORY GOMES  
BY MR. PEPER

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1 ROOM WHEN YOU READ THE STATEMENT BACK TO HIM, AND  
2 YOU SAID, I'M NOT A HUNDRED PER CENT POSITIVE.

3 A. IF YOU'RE ASKING ME THE ENTIRE TIME, BECAUSE WHEN  
4 I READ THE STATEMENT OVER I TAKE MY TIME. IF  
5 YOU'RE ASKING DID HE STEP OUT AT ANYTIME DURING  
6 THAT, I CAN'T BE ONE HUNDRED PER CENT SURE. BUT  
7 WHEN SHAWN SIGNED THE STATEMENT DETECTIVE HILL WAS  
8 PRESENT.

9 Q. HE WASN'T PRESENT WHEN YOU READ THE STATEMENT BACK  
10 TO HIM?

11 A. I'M NOT SURE IF HE WAS IN THERE THE ENTIRE TIME, I  
12 THINK HE STEPPED OUT ONCE OR TWICE DURING THE  
13 WHOLE PROCESS.

14 MR. PEPER: COULD I APPROACH, YOUR  
15 HONOR?

16 Q. CAN YOU READ THE FIRST PART OF THIS WHERE SHAWN  
17 WOULD THEN SIGN?

18 A. "I HAVE READ THE FOREGOING STATEMENT OR HAVE HAD  
19 IT READ TO ME AND IT IS TRUE AND CORRECT TO THE  
20 BEST OF MY KNOWLEDGE. I HAVE GIVEN THIS STATEMENT  
21 FREELY AND VOLUNTARILY, AND HAVE BEEN PROVIDED A  
22 COPY OF MY STATEMENT."

23 Q. AND HE SIGNED IT?

24 A. YES, SIR, HE DID.

25 Q. SAYING THAT HE HAD IT WRITTEN BACK TO HIM?

CROSS, IN CAMERA - G. GREGORY GOMES  
BY MR. PEPER

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1 A. RIGHT.

2 Q. AND THAT IT WAS TRUE?

3 A. YES, SIR.

4 Q. AND YOU WITNESSED HIS SIGNATURE?

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

6 Q. AND YOU WITNESSED OBVIOUSLY READING HIS STATEMENT  
7 BACK TO HIM? IN OTHER WORDS, YOU READ HIS  
8 STATEMENT BACK TO HIM, RIGHT?

9 A. YEAH, I READ IT BACK, CORRECT.

10 Q. BECAUSE WHAT I'M GETTING AT IS THAT HILL IS ONLY  
11 WITNESSING THE FACT -- I'M SORRY, THAT HILL IS  
12 WITNESSING THE FACT THAT YOU READ HIS STATEMENT TO  
13 HIM AND IT'S TRUE AND CORRECT. IN OTHER WORDS,  
14 HE'S NOT JUST WITNESSING SHAWN'S SIGNATURE, HE'S  
15 WITNESSING SHAWN'S SIGNATURE IN SAYING, "I HAVE  
16 BEEN READ THIS STATEMENT AND IT IS TRUE."

17 A. ARE YOU ASKING ME A QUESTION?

18 Q. I'M ASKING YOU.

19 A. ASK IT AGAIN.

20 Q. ALRIGHT. IS IT YOUR UNDERSTANDING WHEN YOU SIGN  
21 AS A WITNESS THAT YOU ARE SIMPLY WITNESSING THE  
22 DEFENDANT'S SIGNATURE OR THAT YOU'RE WITNESSING  
23 THE DEFENDANT'S VERIFICATION THAT HE HAS HAD THE  
24 STATEMENT READ TO HIM?

25 A. IT'S THE VERIFICATION THAT THE STATEMENT, THAT HE

CROSS, IN CAMERA - G. GREGORY GOMES  
BY MR. PEPPER

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1 VOLUNTARILY OR FREELY GAVE IT, I MEAN, IT'S  
2 WHATEVER THE LINE SAYS HERE.

3 Q. EXACTLY, WHATEVER THE LINE SAYS.

4 A. YES.

5 Q. BUT THE LINE SAYS, "I HAD THE STATEMENT READ TO ME  
6 AND IT IS TRUE." BUT YOU JUST SAID HILL MAY OR  
7 MAY NOT HAVE BEEN IN THE ROOM WHEN YOU READ THE  
8 STATEMENT TO HIM.

9 A. NO, HE WAS IN THERE, WHAT I SAID IS, HE MAY HAVE  
10 STEPPED OUT AT SOME POINT DURING THE INTERVIEW.

11 Q. YOU TOLD ME EARLIER YOU WEREN'T A HUNDRED PER CENT  
12 POSITIVE.

13 A. I'M NOT ONE HUNDRED PER CENT SURE IF HE WAS IN  
14 THERE THE ENTIRE TIME, BUT HE WAS IN - - -

15 Q. YOU TOLD ME -- THE QUESTION WAS, ARE YOU A HUNDRED  
16 PER CENT POSITIVE - - -

17 A. NO, SIR, NO, SIR, NO, SIR.

18 SOLICITOR RUTLEDGE DURANT:  
19 OBJECTION, IT'S ARGUMENTATIVE.

20 THE COURT: WELL, JUST LET HIM  
21 ANSWER THE QUESTION.

22 A. NO, SIR, I'M NOT ONE HUNDRED PER CENT SURE.

23 Q. THANK YOU, DETECTIVE GOMES. YOU'RE POSITIVE HE  
24 WAS IN THERE WHEN SHAWN SIGNED IT BUT NOT POSITIVE  
25 HE WAS IN THERE WHEN YOU READ IT BACK TO HIM?



CROSS, IN CAMERA - G. GREGORY GOMES  
BY MR. PEPER

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1 A. IN ITS ENTIRETY, THAT'S CORRECT.

2 Q. THUS, LEAVING JUST YOU AND JUST SHAWN IN THE ROOM  
3 AT SOME POINT - - -

4 A. YES, SIR.

5 Q. --- WHEN YOU READING THE STATEMENT BACK TO HIM?

6 A. I'M NOT EVEN SURE IF IT WAS WHEN I WAS READING IT  
7 BACK. DURING THE WHOLE ENTIRE PROCESS.

8 Q. A COUPLE MORE QUESTIONS, DETECTIVE GOMES. YOU DID  
9 NOT MIRANDIZE HIM INITIALLY AT SIX:TEN P.M.,  
10 CORRECT?

11 A. NO, SIR.

12 Q. YOU DID MIRANDIZE HIM AT SIX:FORTY-TWO P.M.,  
13 CORRECT?

14 A. I WAS PRESENT WHILE DETECTIVE HILL DID IT,  
15 CORRECT.

16 Q. AND YOU WITNESSED IT?

17 A. YES, SIR.

18 Q. OKAY. WE'VE BEEN OVER THIS, BUT I WANT TO MAKE  
19 SURE THAT I UNDERSTAND THAT THAT LEAVES A THIRTY-  
20 TWO MINUTE WINDOW BETWEEN THE TWO TIMES OF THE  
21 MIRANDAS. OKAY. YOU TESTIFIED EARLIER THAT AT  
22 SOME POINT IN THAT WINDOW HILL CAME AND GOT YOU --  
23 STRIKE THAT, YOUR HONOR. YOU WERE PRESENT WHEN  
24 THE DEFENDANT ASKED FOR AN ATTORNEY - - -

25 A. YES, SIR.

CROSS, IN CAMERA - G. GREGORY GOMES  
BY MR. PEPER

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1 Q. --- AND THE INTERVIEW STOPPED?

2 A. YES, SIR.

3 Q. OKAY. FAST FORWARD THIRTY-TWO MINUTES, YOU  
4 TESTIFIED EARLIER THAT HILL CAME AND GOT YOU AND  
5 TOLD YOU THAT SIMMONS HAD TOLD HIM THAT THE  
6 DEFENDANT WANTED TO TALK?

7 A. SOMETHING TO THAT EFFECT, I DON'T REMEMBER THE  
8 EXACT WORDS THAT HE USED, BUT YES.

9 Q. BUT YOU DIDN'T HEAR SIMMONS TELL HILL THAT SHAWN  
10 WANTED TO TALK?

11 A. THAT'S CORRECT.

12 Q. SIMMONS DIDN'T TELL YOU THAT SHAWN WANTED TO TALK?

13 A. NO, SIR.

14 Q. YOU NEVER HEARD SHAWN ASK TO TALK TO Y'ALL?

15 A. OTHER THAN WHEN WE WENT BACK IN THE ROOM AND HE  
16 SAID HE WANTED TO TALK WITH US.

17 MR. PEPER: THANK YOU, DETECTIVE.

18 A. YES, SIR.

19 SOLICITOR RUTLEDGE DURANT: THAT'S  
20 ALL, YOUR HONOR.

21 THE COURT: ALRIGHT, SIR, YOU CAN  
22 STEP DOWN.

23 WITNESS: THANK YOU.

24 SOLICITOR RUTLEDGE DURANT: THE  
25 STATE CALLS DENISE BROWN.

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

3                    (Whereupon, Denise Brown  
4 is duly sworn.)

5                    CLERK: PLEASE STEP UP HERE, HAVE A  
6 SEAT, STATE YOUR FULL NAME FOR THE RECORD AND SPELL YOUR  
7 LAST, PLEASE.

8                    WITNESS: DENISE BROWN, B-R-O-W-N.  
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, IN CAMERA - DENISE BROWN  
BY SOLICITOR RUTLEDGE DURANT

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DIRECT EXAMINATION, IN CAMERA, OF DENISE BROWN

BY SOLICITOR RUTLEDGE DURANT:

Q. MS. BROWN, WHERE ARE YOU EMPLOYED?

A. CHARLESTON COUNTY DETENTION CENTER.

SOLICITOR RUTLEDGE DURANT: CAN YOU  
HEAR, JUDGE?

THE COURT: YES, SIR, BARELY.

SOLICITOR RUTLEDGE DURANT: MA'AM,  
SPEAK UP JUST A LITTLE BIT, OR PULL YOUR SEAT UP TO THE  
MICROPHONE.

A. AT THE CHARLESTON COUNTY DETENTION CENTER.

Q. AND HOW LONG HAVE YOU BEEN EMPLOYED WITH THE  
CHARLESTON COUNTY DETENTION CENTER?

A. EIGHT YEARS.

Q. AND WHAT'S YOUR POSITION WITH THE CHARLESTON  
COUNTY DETENTION?

A. CURRENTLY I'M A RELEASING OFFICER.

Q. A RELEASING OFFICER?

A. YES.

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

A. NO, AT THE TIME I WAS A BOOKING OFFICER.

Q. AND WHAT ARE YOUR RESPONSIBILITIES AND DUTIES AS A  
BOOKING OFFICER?

A. TO PROCESS INCOMING INMATES, QUESTION THEM TO SEE

DIRECT, IN CAMERA - DENISE BROWN  
BY SOLICITOR RUTLEDGE DURANT

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1 IF THEY HAVE ANY MEDICAL PROBLEMS, GET THEIR  
2 PERSONAL INFORMATION.

3 Q. AND DID YOU HAVE THE OPPORTUNITY TO BOOK THE  
4 DEFENDANT, SHAWN PHILLIPS, INTO THE DETENTION  
5 CENTER ON DECEMBER FOURTEENTH, TWO THOUSAND AND  
6 SIX?

7 A. I DID.

8 SOLICITOR RUTLEDGE DURANT: GO AHEAD  
9 AND MARK THIS ONE AS STATE'S NUMBER FOUR.

10 COURT REPORTER: ID?

11 SOLICITOR RUTLEDGE DURANT: WE CAN  
12 STAPLE THAT. ID, YES, MA'AM.

13 COURT REPORTER: STATE'S FOUR FOR  
14 ID.

15 (State's Exhibit Four,  
16 Booking Report,  
17 marked for identification only.)

18 SOLICITOR RUTLEDGE DURANT: THANK  
19 YOU, MA'AM.

20 Q. I SHOW YOU WHAT'S BEEN MARKED AS STATE'S FOUR FOR  
21 IDENTIFICATION, AND GIVE YOU A CHANCE TO LOOK AT  
22 IT. DO YOU RECOGNIZE THAT FORM?

23 A. YES, I DO.

24 Q. AND HOW DO YOU RECOGNIZE IT?

25 A. IT'S A STANDARD FOR EVERYBODY THAT COMES THROUGH

DIRECT, IN CAMERA - DENISE BROWN  
BY SOLICITOR RUTLEDGE DURANT

128

1 THIS FACILITY.

2 Q. THIS IS A STANDARD FORM YOU SAID AT THE FACILITY?

3 A. YES, SIR.

4 Q. FOR BOOKING INMATES INTO THE JAIL?

5 A. YES.

6 Q. AND WHAT IS, WHAT'S THE UTILITY FOR THIS FORM, WHY  
7 IS IT USED?

8 A. PRETTY MUCH TO FIND OUT THE INMATE'S STATE WHEN  
9 THEY COME THROUGH, FIND OUT IF THEY HAVE ANY  
10 PERSONAL MEDICAL ISSUES THAT WE NEED TO KNOW ABOUT  
11 THAT WE CAN POSSIBLY HELP THEM WITH.

12 Q. IT'S A QUESTION AND ANSWER FORM?

13 A. YES.

14 Q. DID YOU USE THIS FORM TO BOOK IN SHAWN PHILLIPS  
15 INTO THE DETENTION CENTER?

16 A. YES, I DID.

17 Q. AND HAS THIS FORM BEEN CHANGED OR ALTERED IN ANY  
18 WAY?

19 A. NOT TO MY KNOWLEDGE, NO.

20 Q. AND WHOSE NAME APPEARS AT THE TOP, THE DEFENDANT'S  
21 NAME?

22 A. SHAWN PHILLIPS.

23 Q. AND DOES IT LIST HIS DATE OF BIRTH?

24 A. YES, [REDACTED].

25 Q. AND DID YOU, YOURSELF, ASK HIM THE QUESTIONS ON

DIRECT, IN CAMERA - DENISE BROWN  
BY SOLICITOR RUTLEDGE DURANT

129

1 THIS FORM?

2 A. YES, I DID.

3 Q. AND DID YOU ASK HIM IF HE WAS IN OBVIOUS PAIN,  
4 BLEEDING, OR IF HE HAD OTHER SYMPTOMS SUGGESTING  
5 NEED FOR EMERGENCY TREATMENT, MEDICAL SERVICES?

6 A. I DIDN'T ASK HIM IF HE WAS IN OBVIOUS PAIN BUT I  
7 DO ASK THEM IF THEY HAVE THE NEED FOR IMMEDIATE  
8 MEDICAL CARE.

9 Q. AND WHAT WAS HIS - - -

10 THE COURT: ASK HIM WHAT? YOU'LL  
11 HAVE TO TALK A LITTLE LOUDER, PLEASE, MA'AM.

12 A. I DID NOT ASK HIM IF HE WAS IN OBVIOUS PAIN OR IN  
13 NEED OF EMERGENCY CARE BUT I DID ASK HIM IF HE HAD  
14 ANY ILLNESSES OR NEEDS FOR ANY MEDICAL TREATMENT.

15 Q. AND WHAT WAS HIS ANSWER?

16 A. NO.

17 Q. AND I BELIEVE YOU ASKED HIM, DOES HIS BEHAVIOR  
18 SUGGEST NEED FOR IMMEDIATE PSYCHIATRIC TREATMENT?

19 A. I DID.

20 Q. AND WHAT WAS THE ANSWER?

21 A. NO.

22 Q. DID HE HAVE ANY -- LET'S SEE -- DID YOU ASK HIM IF  
23 HE IS PRESENTLY TAKING ANY MEDICATIONS?

24 A. I DID.

25 Q. AND WHAT WAS HIS ANSWER?

DIRECT, IN CAMERA - DENISE BROWN  
BY SOLICITOR RUTLEDGE DURANT

130

1 A. NO.

2 Q. YOU ASKED HIM IF HE APPEARS, OR DID YOU OBSERVE  
3 WHETHER HE APPEARED TO BE UNDER THE INFLUENCE OF  
4 ALCOHOL OR EXHIBIT SIGNS?

5 A. I DID.

6 Q. AND WHAT'S THE ANSWER THERE?

7 A. NO.

8 Q. YOU ASKED HIM IF HE APPEARED TO BE UNDER THE  
9 INFLUENCE OF BARBITURATES, HEROIN OR OTHER DRUGS?

10 A. THAT QUESTION WAS NOT A QUESTION THAT WE ASK, IT'S  
11 AN OBSERVATION.

12 Q. AND WHAT WAS YOUR OBSERVATION?

13 A. NO.

14 Q. AND I BELIEVE HERE YOU HAVE A PART ON THIS FORM  
15 WHERE YOU RECORD OBSERVATIONS?

16 A. YES.

17 Q. AND FOR YOUR OBSERVATION OF WHETHER HE UNDERSTOOD  
18 QUESTIONS WHAT DID YOU WRITE?

19 A. YES.

20 Q. AND YOU WENT THROUGH THIS WHOLE FORM AND ASKED ALL  
21 OF THESE QUESTIONS?

22 A. YES.

23 Q. AND I'VE ONLY ASKED YOU A COUPLE OF THEM, THERE  
24 ARE SEVERAL OTHERS ON THIS FORM?

25 A. YES.



1                    SOLICITOR RUTLEDGE DURANT: PLEASE  
2 ANSWER ANY QUESTIONS THAT MR. PEPER MAY HAVE FOR YOU.  
3 THANK YOU.

4                    THE COURT: MR. PEPER.

5                    MR. PEPER: MAY IT PLEASE THE COURT.

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 - DENISE BROWN BY MR. PEPER

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CROSS-EXAMINATION, IN CAMERA, OF DENISE BROWN

BY MR. PEPER:

Q. HE DIDN'T TELL YOU ABOUT SEROQUIL, ANTI-PSYCHOTIC,  
ZOLOFT, ANYTHING LIKE THAT, DID HE?

A. NO.

Q. AS A MATTER OF FACT, HE JUST SAID NO TO  
EVERYTHING, RIGHT?

A. YES.

Q. PRETTY STANDARD?

A. YES.

Q. NO, ALL THE WAY AROUND, YOU PUT, INMATE SAYS NO TO  
ALL THE QUESTIONS AND YOU MOVE ON?

A. YES.

Q. OTHER THAN SEEING SHAWN'S NAME AT THE TOP YOU  
DON'T REMEMBER HIM OR ANYTHING, DO YOU?

A. NO, I DON'T.

Q. HOW MANY PEOPLE DO YOU PROCESS A DAY, DO YOU  
THINK?

A. BETWEEN TEN AND FIFTEEN.

Q. WHAT TIME DID YOU START YOUR SHIFT THAT NIGHT?

A. FIVE:FORTY-FIVE.

Q. WHAT TIME IS THE BOOKING TIME?

A. AT TWENTY-TWO:TWENTY-FIVE.

Q. WHICH IS TEN:TWENTY-FIVE, IS THAT CORRECT?

A. YES.

CROSS, IN CAMERA - DENISE BROWN BY MR. PEPPER

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- 1 Q. YOU'D BEEN ON THE SHIFT ABOUT FIVE AND A HALF  
2 HOURS?
- 3 A. YES.
- 4 Q. GET A LUNCH BREAK OR ANYTHING?
- 5 A. I'M NOT SURE, I DON'T REMEMBER.
- 6 Q. JUST TO CLARIFY, MR. DURANT ASKED YOU IF YOU ASKED  
7 HIM ABOUT ANY BARBITURATES OR DRUGS OR ANYTHING  
8 AND YOUR TESTIMONY WAS, NO, YOU DID NOT?
- 9 A. NO, I DIDN'T.
- 10 Q. YOU DIDN'T ASK HIM IF HE WAS IN ANY PAIN, EITHER,  
11 DID YOU?
- 12 A. NO, I DIDN'T.
- 13 Q. YOU JUST ASKED THE STANDARD QUESTIONS THAT ARE ON  
14 THIS STANDARD FORM, CORRECT?
- 15 A. YES, THE FIRST PART OF THAT IS OFFICER'S  
16 OBSERVATIONS, NOT QUESTIONS THAT WE ASK THE  
17 INMATES.
- 18 Q. WERE YOU -- THIS WAS DECEMBER FOURTEENTH, CORRECT?
- 19 A. YES.
- 20 Q. DID YOU WORK DECEMBER FIFTEENTH AS WELL?
- 21 A. I'M NOT SURE.
- 22 Q. DO YOU REMEMBER WHAT DAY OF THE WEEK THAT WAS?
- 23 A. NOT AT ALL.
- 24 Q. YOU DON'T REMEMBER MUCH ABOUT THIS THING OTHER  
25 THAN WHAT YOU JUST - - -

CROSS, IN CAMERA - DENISE BROWN BY MR. PEPER

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1 A. CORRECT.

2 Q. --- WHAT YOU JUST WROTE ON PAPER, RIGHT?

3 A. CORRECT.

4 Q. AND WHAT IS ON THE PAPER IS JUST A BUNCH OF NO'S,  
5 RIGHT?

6 A. YES.

7 Q. AS MATTER OF FACT, THERE AREN'T ANY YESES ON  
8 THERE, ARE THERE?

9 A. THERE IS ONE.

10 Q. AND WHAT WAS THAT?

11 A. THAT HE UNDERSTOOD THE QUESTIONS THAT WAS BEING  
12 ASKED.

13 Q. FAIR ENOUGH.

14 MR. PEPER: THAT'S ALL I HAVE, YOUR  
15 HONOR.

16 THE COURT: ANY REDIRECT?

17 SOLICITOR RUTLEDGE DURANT: JUST ONE  
18 QUESTION, YOUR HONOR.

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.)

REDIRECT, IN CAMERA - DENISE BROWN  
BY SOLICITOR RUTLEDGE DURANT

135

REDIRECT EXAMINATION, IN CAMERA, OF DENISE BROWN

BY SOLICITOR RUTLEDGE DURANT:

Q. DID HE APPEAR SOBER TO YOU?

A. HE DID.

SOLICITOR RUTLEDGE DURANT: THANK  
YOU.

MR. PEPPER: I HAVE ONE QUESTION.

(NOTE: Blank lines on this page do not indicate any  
part of record has been omitted. Headers on testimony  
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required by the Court. See next ensuing page for  
sequential continuation of record.)

RE CROSS, IN CAMERA - DENISE BROWN BY MR. PEPER

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RE CROSS-EXAMINATION, IN CAMERA, OF DENISE

BROWN BY MR. PEPER:

Q. YOU DON'T HAVE ANY MEDICAL BACKGROUND, DO YOU?

A. NO, I DON'T.

Q. YOU DON'T HAVE ANY SUBSTANCE ABUSE TRAINING?

A. NO, I DON'T.

MR. PEPER: THANK YOU, YOUR HONOR.

THE COURT: YOU CAN STEP DOWN, THANK  
YOU, MA'AM.

SOLICITOR RUTLEDGE DURANT: JUDGE,  
I'D LIKE TO HAND THAT EXHIBIT UP TO YOU. AND HERE IS THE  
FIRST AS WELL AS THE SECOND ADVICE OF RIGHTS.

THE COURT: ALRIGHT. ANY FURTHER  
WITNESSES?

SOLICITOR RUTLEDGE DURANT: THE  
STATE'S NOT CALLING ANY FURTHER WITNESSES FOR THIS  
HEARING.

THE COURT: DO YOU HAVE A WITNESS?

MR. PEPER: THE COURT'S INDULGENCE,  
YOUR HONOR. I NEED TO HEAR YOUR RULING AS A MATTER OF  
LAW, AND THEN DEPENDING UPON YOUR RULING WOULD DEPEND  
WHETHER I CALL A WITNESS. THE EXHIBIT THAT WAS JUST  
HANDLED UP TO YOU WAS NOT THE ENTIRE BOOKING REPORT AND  
ADMISSION DATA FOR MY CLIENT. IF THE SOLICITOR WILL  
JUST STIPULATE THAT THE REST OF THESE DOCUMENTS TO

1 COMPLETE IT COME IN, THEN WE DON'T HAVE TO CALL ANY  
2 WITNESSES, YOUR HONOR.

3 THE COURT: SHOW THEM TO HIM.

4 SOLICITOR RUTLEDGE DURANT: WE HAVE  
5 NO PROBLEM FOR THE PURPOSES OF THIS HEARING.

6 THE COURT: WELL, THAT'S WHAT YOU'RE  
7 TALKING ABOUT, FOR THIS HEARING?

8 MR. PEPER: YES, SIR.

9 THE COURT: ALRIGHT. HAVE THOSE  
10 MARKED, THEN.

11 MR. PEPER: SHOULD WE JUST ATTACHED  
12 IT TO - - -

13 THE COURT: SIR?

14 MR. PEPER: SHOULD WE JUST ATTACH IT  
15 TO THEIR - - -

16 SOLICITOR RUTLEDGE DURANT: BUT JUST  
17 TO MAKE SURE, BECAUSE I'M NOT SURE - - -

18 THE COURT: NO, I'D RATHER YOU MARK  
19 IT DEFENSE ONE FOR PURPOSES OF THIS HEARING.

20 MR. PEPER: WELL, AFTER IT'S MARKED  
21 IF WE COULD SEE IT. IT'S JUST THE SAME STUFF AS WHAT  
22 WE'VE GOT RIGHT HERE?

23 SOLICITOR RUTLEDGE DURANT: IT'S THE  
24 SAME.

25 MR. PEPER: OKAY.

1 COURT REPORTER: IS THIS JUST FOR ID

2 OR - - -

3 MR. PEPER: YES, MA'AM, JUST FOR ID.

4 THE COURT: IT'S ADMITTED.

5 MR. PEPER: OH, I'M SORRY, ADMITTED  
6 FOR THIS HEARING.

7 COURT REPORTER: I CAN PUT IT ON THE  
8 BACK. OKAY?

9 MR. PEPER: THAT'S FINE.

10 COURT REPORTER: DEFENDANT'S ONE.

11 MR. PEPER: TWO, BECAUSE I'M ONLY  
12 GOING TO PUT IN TWO PAGES. JUST ONE IS FINE, MA'AM,  
13 I'LL STAPLE IT TOGETHER AS ONE EXHIBIT, YES, MA'AM,  
14 THANK YOU.

15 (Defendant's Exhibit One  
16 marked and filed for  
17 Jackson-Denno hearing.)

18 THE COURT: ALRIGHT. SO, YOU HAVE  
19 NO TESTIMONY?

20 MR. PEPER: NO, YOUR HONOR.

21 THE COURT: ALRIGHT, I'LL BE GLAD TO  
22 HEAR YOUR ARGUMENT.

23 MR. PEPER: I BELIEVE THE STATE HAS  
24 THE BURDEN TO - - -

25 THE COURT: YES, SIR.



1                    MR. PEPER: DO YOU WANT ME TO ARGUE  
2 FIRST, YOUR HONOR?

3                    THE COURT: IT DOESN'T MATTER TO ME.

4                    MR. PEPER: OKAY. I'LL TRY TO SUM  
5 THIS UP AS BEST I CAN.

6                    JUDGE, WE'VE HEARD TESTIMONY AND  
7 SPECIFICALLY WITH REGARDS TO DEFENSE EXHIBIT ONE THAT  
8 I'VE HANDED UP. ON THE FIFTEENTH, WHICH WAS THE DAY  
9 AFTER HE GAVE THE STATEMENT, HE WAS SEEN BY THE DOCTORS  
10 AND NURSES AND MEDICAL STAFF AT THE JAIL. ON THE FIRST  
11 PAGE YOUR HONOR WILL NOTE THAT HE LIED ABOUT THE  
12 MEDICATIONS HE WAS TAKING AT THE INTAKE THE NIGHT BEFORE  
13 BECAUSE HE WAS EXTREMELY UPSET. THE NURSE NOTES THAT.  
14 ON THE SECOND PAGE SHE IDENTIFIES HIM AS TAKING SEROQUIL  
15 AT A HUNDRED GRAMS A DAY AND ZOLOFT AT FIFTY GRAMS A  
16 DAY. ONE IS FOR PSYCHOTIC AND ONE IS AN ANTI-  
17 DEPRESSANT. TO CORROBORATE THAT MR. SIMMONS, THE  
18 PROBATION AGENT, ALSO SAID HE HAD FIRST HAND KNOWLEDGE  
19 THAT THE CLIENT WAS PRESCRIBED THOSE MEDICATIONS AND  
20 KNEW THAT HE USED THOSE MEDICATIONS ON A DAILY BASIS.  
21 IT'S FAIR TO SAY HE WAS USING THOSE MEDICATIONS THE  
22 EVENING HE GAVE HIS STATEMENT. YOUR HONOR, I DON'T  
23 PRETEND TO BE A DOCTOR BUT I'VE DONE A LITTLE BIT OF  
24 RESEARCH AND I'M TOLD THAT IF YOU MIX SEROQUIL AND  
25 ZOLOFT IT ESSENTIALLY BALANCES IT OUT SO THAT PEOPLE

1 DON'T REALLY - - -

2 THE COURT: NOW, WAIT A MINUTE, I  
3 CAN'T TAKE YOUR WORD FOR THAT.

4 MR. PEPPER: YOU'RE RIGHT, BUT - - -

5 THE COURT: OKAY, SO FORGET IT.

6 MR. PEPPER: YOUR HONOR, WITH REGARDS  
7 TO THE ACTUAL NIGHT OF THE STATEMENT WHEN IT WAS GIVEN  
8 THE DEFENDANT ADMITS HE WAS MIRANDIZED. WE HEARD  
9 TESTIMONY STATING HE WAS MIRANDIZED AT SIX:TEN P.M. WE  
10 THEN HEARD TESTIMONY FROM DONALD SIMMONS WHO STATES THAT  
11 SHAWN SPECIFICALLY ASKED FOR AN ATTORNEY, AT WHICH TIME  
12 THE INTERROGATION ENDED. APPROXIMATELY A MINUTE LATER  
13 MR. SIMMONS TESTIFIES THAT THIS SAME GENTLEMAN WHO HAD  
14 JUST ASKED FOR AN ATTORNEY THEN INSTRUCTED MR. SIMMONS  
15 TO GO GET THE OFFICERS. MR. SIMMONS SAID, I WENT AND  
16 INITIATED THE TALK BETWEEN SHAWN AND OFFICER HILL. NO  
17 OTHER PARTY EVER STATES THAT SHAWN ACTUALLY INITIATED  
18 THE CONTINUATION OF ANY SORT OF STATEMENT. TO THEIR  
19 CREDIT THEY RE-MIRANDIZED HIM. THE PROBLEM, YOUR HONOR,  
20 IS THAT WHEN THEY RE-MIRANDIZED HIM IT WAS ALLEGEDLY  
21 THIRTY-TWO MINUTES LATER, WAS WITNESSED BY A THIRD PARTY  
22 WHO WASN'T PRIVY TO THE INITIAL MIRANDA STATEMENT AND IT  
23 HAPPENED TO BE THE SAME PARTY THAT HEARD HIM SAY, I WANT  
24 AN ATTORNEY. YOUR HONOR, WE HAVE NO IDEA WHAT WENT ON  
25 BETWEEN THE FIRST TIME HE WAS MIRANDIZED AND THEN ASKED

1 FOR AN ATTORNEY AND THE SECOND TIME. WE HAVE ONE PARTY  
2 SAYING, THERE WAS APPROXIMATELY A MINUTE THAT WENT BY.  
3 WE HAVE ANOTHER PARTY SAYING, HE HAS NO IDEA. WE HAVE  
4 ANOTHER PARTY SAYING, IT POSSIBLY COULD HAVE BEEN TEN  
5 MINUTES. EVEN IF WE AGREED THAT IT WAS THE MAXIMUM OF  
6 TEN MINUTES, THERE'S NO EXPLANATION AS TO WHAT COULD  
7 HAVE POSSIBLY OCCURRED BETWEEN THE TIME HE ASKED FOR AN  
8 ATTORNEY APPROXIMATELY SIX:ELEVEN P.M., AND THE TIME HE  
9 WAS RE-MIRANDIZED AT SIX:FORTY-TWO P.M., AND THEN  
10 FINALLY, WHEN HE GAVE THE STATEMENT AT SEVEN P.M. IT'S  
11 OUR CONTENTION, YOUR HONOR, THAT HE WAS SITTING IN A  
12 ROOM BY HIMSELF, HIS RIDE HAD JUST LEFT HIM, HIS  
13 MEDICATIONS WERE TAKING OVER, AND HE CLEARLY WAS COERCED  
14 INTO GIVING THE STATEMENT. YOUR HONOR, I'M NOT EVEN  
15 GOING TO ADMIT THAT HE TOLD DETECTIVE GOMES WHAT TO SAY.  
16 DETECTIVE GOMES NEVER SAID THAT. DETECTIVE HILL SAID  
17 NUMEROUS TIMES THAT WHILE HE WASN'T SURE WHETHER GOMES  
18 WOULD WRITE A COUPLE OF SENTENCES AND THEN READ IT BACK  
19 OR WRITE A WHOLE THING AND READ IT BACK, HE SAID AT  
20 LEAST THREE TIMES IF I REMEMBER CORRECTLY THAT GOMES  
21 WROTE THE STATEMENT AND THEN READ IT BACK. HE NEVER  
22 SAID, GOMES WROTE THE STATEMENT AS PHILLIPS TOLD HIM TO  
23 WRITE IT, HE JUST SIMPLY SAID, GOMES WROTE THE  
24 STATEMENT. THIS IS COMING FROM THE SAME GUY WHO WAS IN  
25 AND OUT OF THE ROOM APPARENTLY. GOMES IS TELLING US

1 HE'S NOT A HUNDRED PER CENT SURE HE WAS THERE WHEN HE  
2 READ THE STATEMENT BACK, BUT HE KNOWS FOR A FACT HILL  
3 WASN'T THERE ALL THE TIME. JUDGE, THE PROBLEM WE HAVE  
4 HERE IS THAT MY CLIENT CAN'T READ OR WRITE. SO, IF  
5 WE'VE GOT A CLIENT THAT'S ASKED FOR AN ATTORNEY, NOT  
6 BEEN PROVIDED ONE, THEN ALLEGEDLY REINITIATES CONTACT,  
7 THEN A THIRD PARTY WHO HE'S NEVER EVEN SEEN BEFORE COMES  
8 IN AND MIRANDIZES HIM ALONG WITH DETECTIVE HILL, HIS  
9 FATHER FIGURE WHO HAS BROUGHT HIM HERE AND PROMISED HIS  
10 MOTHER HE WOULD BRING HIM BACK HAS NOW LEFT. HE'S UNDER  
11 PSYCHOTIC AND ANTI-DEPRESSANT MEDICINES, CAN'T READ OR  
12 WRITE, IS ESSENTIALLY LEFT TO THE MERCY OF WHATEVER  
13 PERSONS ARE ADMINISTERING THIS INTERROGATION. IN THIS  
14 CASE IT HAPPENED TO BE, ESSENTIALLY, GOMES, BECAUSE HILL  
15 WAS KIND OF HIT OR MISS, HE WAS THERE, HE WASN'T THERE,  
16 HE WASN'T THERE, HE WAS THERE, WE DON'T KNOW. THE  
17 PROBLEM, JUDGE, IS THAT YOU'VE GOT A GUY THAT CAN'T READ  
18 OR WRITE ON ALL OF THOSE KINDS OF DEPRESSANTS AND YOU'VE  
19 ONLY GOT ONE PERSON IN THERE A HUNDRED PER CENT OF THE  
20 TIME. THAT TO ME JUST SCREAMS INVOLUNTARINESS. IT  
21 SCREAMS COERCION. HE HAS NO IDEA WHAT GOMES PUT ON THE  
22 STATEMENT, HE CAN'T READ IT, HE CAN'T CORRECT IT, HE IS  
23 SIMPLY LEANING ON DETECTIVE GOMES, AND DETECTIVE GOMES  
24 SOLELY, AS TO THE TRUTHFULNESS AND THE CHARACTER THAT I  
25 KNOW BUT SHAWN DOESN'T KNOW OF GREG GOMES IN TELLING

1 HIM, THIS IS WHAT I'VE WRITTEN, ISN'T THIS WHAT YOU  
2 SAID? I MADE A MISTAKE, HERE IS WHAT I WROTE, HERE IS  
3 WHAT I CROSSED OUT AND REWROTE, I NEED YOU TO PUT YOUR  
4 INITIALS DOWN. NO IDEA, NO CLUE. AT NO POINT OTHER THAN  
5 THE BOTTOM, IN OTHER WORDS, NOWHERE IN THE BODY OF THE  
6 STATEMENT DOES GOMES THINK TO ASK HIM, AM I THE ONLY  
7 PERSON IN THE ROOM? ISN'T THIS EXACTLY WHAT YOU TOLD  
8 ME, YES OR NO? DID I WRITE SPECIFICALLY WHAT YOU TOLD  
9 ME TO WRITE, YES OR NO? HE DOESN'T ASK HIM ANY OF THAT.  
10 SHAWN HAS NO IDEA WHAT DETECTIVE GOMES HAS WRITTEN DOWN.  
11 THE ONLY THING THAT THE COURT CAN GO ON TO ASSUME WHAT  
12 PHILLIPS STATED TO GOMES WAS REALLY WHAT WAS WRITTEN  
13 DOWN ON HERE, WAS THE BOTTOM PART THAT SAYS, "I'VE READ  
14 THE FOREGOING STATEMENT OR HAVE HAD IT READ TO ME AND IT  
15 IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE." AND  
16 WE'VE GOT A WITNESS THAT HAS TESTIFIED THAT THE SECOND  
17 WITNESS ON HERE ACTUALLY DIDN'T WITNESS THE REREADING OF  
18 THE STATEMENT.

19 JUDGE, WITHOUT GETTING INTO  
20 OBVIOUSLY FOUR O THREE, BECAUSE I KNOW THAT'S NOT THE  
21 TIME OR PLACE FOR THIS, IF THIS STATEMENT COMES IN IT'S  
22 A HUGE, HUGE BATTLE FOR US. THE REASON IT'S WRITTEN THE  
23 WAY IT IS IS BECAUSE THAT'S THE WAY THAT THE DETECTIVES  
24 NEEDED IT TO BE WRITTEN. YOU'VE HEARD HILL TESTIFY HE  
25 HAD TWO CO-DEFENDANTS' STATEMENTS. HE NEVER SHOWED MY

1 CLIENT THOSE STATEMENTS, HE NEVER READ MY CLIENT THOSE  
2 STATEMENTS. YET, HIS STATEMENT MATCHES EXACTLY THE CO-  
3 DEFENDANTS' STATEMENTS. THAT'S WHAT GOMES AND HILL  
4 NEEDED SHAWN TO SAY. THEY WROTE IT FOR HIM, THE  
5 ALLEGEDLY READ IT BACK TO HIM, MAYBE A COUPLE OF  
6 SENTENCES AT A TIME, MAYBE JUST THE WHOLE THING. ONLY  
7 ONE PERSON WAS EVEN IN THERE TO WITNESS THE REREADING OF  
8 THE STATEMENT AND THAT WAS THE PERSON THAT WROTE IT.

9 YOUR HONOR, IT'S CLEAR TO THE  
10 DEFENSE THAT HE WAS COERCED INTO GIVING THIS STATEMENT  
11 AND WE WOULD ASK THAT UNDER JACKSON-DENNO, YOU SUPPRESS  
12 IT FROM BEING INTRODUCED EITHER IN THE STATE'S TRIAL IN  
13 CHIEF OR THE DEFENSE'S.

14 THANK YOU, YOUR HONOR.

15 THE COURT: MR. DURANT.

16 SOLICITOR RUTLEDGE DURANT: THANK  
17 YOU, JUDGE. I BELIEVE THERE'S NO QUESTION HERE THAT  
18 THIS STATEMENT WAS ACTUALLY FREELY, VOLUNTARILY,  
19 KNOWINGLY AND INTELLIGENTLY GIVEN. THE STATE PRESENTED  
20 FOUR PERSONS WHO OBSERVED THE DEFENDANT AT DIFFERENT  
21 TIMES. THE FIRST MIRANDA THERE WAS, IT IS UNCONTESTED  
22 THAT HE SIGNED HIS NAME, WAS ADVISED OF HIS RIGHTS, KNEW  
23 WHAT HE WAS DOING. EVERYBODY WHO WITNESSED THAT ADVICE  
24 OF RIGHTS SAID HE WAS SOBER AS A JUDGE, HE KNEW WHAT HE  
25 WAS DOING, SIGNED HIS RIGHTS. THE OFFICERS WALKED OUT

1 OF THE ROOM WHEN HE SAID HE WANTED A LAWYER. IT WAS  
2 ONLY UPON HIS INITIATION THAT OFFICERS CAME BACK INTO  
3 THE ROOM. THE TESTIMONY WAS THAT THEY, THEY CONFIRMED  
4 THIS, IT'S OUR UNDERSTANDING THAT YOU ARE INITIATING  
5 CONTACT WITH US, AND BECAUSE YOU'RE DOING THIS WE'RE  
6 GOING TO RE-MIRANDIZE YOU.

7 NOW, THERE IS NO EVIDENCE THAT HE  
8 WAS INTOXICATED. ACCORDING TO ALL THE OFFICERS WHO  
9 TESTIFIED ON ALL OF HIS ADVICE OF RIGHTS AND DURING HIS  
10 STATEMENT HE KNEW WHAT HE WAS DOING, HE SIGNED, HE SAID  
11 HE KNEW WHAT HE WAS DOING. HE WAS CLEAN SOBER AND  
12 NOBODY FORCED OR THREATENED HIM IN ANY WAY, AND HE GAVE  
13 THE STATEMENT. THE STATEMENT WAS READ BACK TO HIM. HE  
14 MADE CORRECTIONS, AND IT'S NOT THE STATEMENT THAT  
15 OFFICERS WOULD HAVE ASKED FOR, OBVIOUSLY, IF THEY WERE  
16 WANTING THEIR OWN KIND OF STATEMENT. IF THE OFFICERS  
17 WANTED THE BEST KIND OF STATEMENT IT WOULD HAVE BEEN  
18 SHAWN PHILLIPS DID EVERYTHING, HE WENT INTO THIS ROOM  
19 AND KILLED THIS MAN. HE DIDN'T SAY THAT. HE SAID HE  
20 WENT OVER THERE UNDER DURESS, UNDER LENNIE MICKEY'S GUN,  
21 AND WENT INTO THIS ROOM. AND HE SAYS, THAT'S HIS ROLE.  
22 HE KNEW EXACTLY WHAT HE WAS DOING. THIS WAS FREELY AND  
23 INTELLIGENTLY, KNOWINGLY AND VOLUNTARILY GIVEN.

24 THE COURT: ANYTHING ELSE IN REPLY?

25 MR. PEPPER: NO, YOUR HONOR, THANK

1 YOU.

2 THE COURT: ALRIGHT. WELL, I HAVE  
3 TO MAKE MY DECISION BASED ON THE TESTIMONY IN THE RECORD  
4 AND ANY REASONABLE INFERENCES FROM THAT TESTIMONY THAT  
5 WE'VE HEARD IN REGARD TO THIS MOTION, AND I, A LOT OF  
6 THE DISCREPANCIES OR INCONSISTENCIES ABOUT THE STATE'S  
7 WITNESSES THAT YOU POINTED OUT CONCERN ME A GREAT DEAL.  
8 IT'S VERY CONCERNING TO ME, BUT NONE OF THOSE  
9 INCONSISTENCIES WOULD LEAD ME TO CONCLUDE THAT THERE WAS  
10 ANY COERCION OR PRESSURE PUT ON YOUR CLIENT. THEY ALL  
11 TESTIFIED THAT HE APPEARED TO KNOW WHAT HE WAS DOING,  
12 DID NOT APPEAR TO BE UNDER THE INFLUENCE AT ALL, AND  
13 THAT HE WAS, APPEARED TO THEM TO BE SPEAKING FREELY AND  
14 VOLUNTARILY. ALL THE WITNESSES SAID THAT, THEY SAID  
15 THEY COULD SEE NO INFLUENCE OF ANY ALCOHOL, DRUGS OR  
16 ANYTHING OF THAT NATURE. MR. GOMES FINALLY TESTIFIED,  
17 AND I WROTE IT DOWN IMMEDIATELY SO I WOULD HAVE IT  
18 BECAUSE I WAS WAITING ON IT TO COME, BECAUSE I WAS  
19 CONCERNED AS YOU WERE, IT HADN'T COME UNTIL THAT POINT,  
20 HE SAID, I WROTE THE STATEMENT AS HE TOLD IT TO ME. AND  
21 THERE'S JUST NO EVIDENCE IN THE RECORD THAT HE WAS  
22 PRESSURED. I DON'T KNOW WHAT HAPPENED DURING THAT  
23 THIRTY MINUTES, BUT THERE'S NO EVIDENCE THAT THERE WAS  
24 ANY PRESSURE PUT ON HIM. THERE'S NO TESTIMONY IN THE  
25 RECORD TO THAT EFFECT.



1 AND SO, I THINK THE STATE HAS MET  
2 ITS BURDEN, BARELY, TO SHOW THAT THE STATEMENT WAS GIVEN  
3 FREELY AND VOLUNTARILY WITHOUT ANY PROMISE OR DURESS OR  
4 COERCION OR THREAT OR UNDUE INFLUENCE, THAT HE WAS GIVEN  
5 THE MIRANDA RIGHTS, THAT HE DID KNOWINGLY AND  
6 INTELLIGENTLY WAIVE HIS RIGHTS UNDER THE FIFTH AND SIXTH  
7 AMENDMENTS AFTER HAVING BEEN GIVEN HIS MIRANDA RIGHTS  
8 NOT ONCE BUT TWICE. AND SO, I WOULD DENY THE MOTION TO  
9 SUPPRESS FOR THOSE REASONS.

10 MR. PEPPER: THANK YOU, YOUR HONOR.

11 THE COURT: WHAT ELSE DO WE NEED TO  
12 DO BEFORE WE CAN START THE TRIAL?

13 SOLICITOR RUTLEDGE DURANT: JUDGE,  
14 WE JUST HAVE A MATTER OF THAT LYLE EVIDENCE THAT WE NEED  
15 TO HAVE A HEARING ON, BUT THAT CAN BE BROUGHT UP LATER.

16 THE COURT: WELL, WHAT I WOULD LIKE  
17 TO DO IS, LET'S TRY TO BE BACK, WE TOLD THE JURY  
18 ONE:THIRTY, OF COURSE, BUT I TOLD THEM TO START WITH  
19 THAT WE MIGHT NOT BE READY, AND WE AREN'T GOING TO BE  
20 READY. LET'S TRY TO BE BACK BY TWO:FIFTEEN, THAT'S AN  
21 HOUR, I THINK, AND A FEW MINUTES, AND LET'S GO ON AND DO  
22 THE OPENINGS AND START THE TESTIMONY, AND THEN WE'LL  
23 QUIT TO TAKE THE LYLE TESTIMONY, WE'LL JUST SEND THE  
24 JURY HOME FOR TODAY AND KEEP THEM FROM, PREVENT THEM  
25 FROM HAVING TO SIT BACK THERE AND WAIT WHILE WE DO THAT.

1                   SOLICITOR RUTLEDGE DURANT:   THANK  
2           YOU, JUDGE.

3                   THE COURT:   BECAUSE IT WILL PROBABLY  
4           TAKE -- AND WE'LL SEE HOW THE TIME IS RUNNING, WE MIGHT,  
5           BUT LET'S TENTATIVELY PLAN ON DOING IT THAT WAY.   SO,  
6           WE'LL BE IN RECESS UNTIL TWO:FIFTEEN.

7                               (Recess)

8                   THE COURT:   OKAY.   ANYTHING WE NEED  
9           TO TAKE UP BEFORE WE BRING IN THE JURY FROM THE STATE?

10                   MR. PEPER:   YES, YOUR HONOR.

11                   THE COURT:   YES, SIR?

12                   MR. PEPER:   JUDGE, I HAVE NO DESIRE  
13           TO REHASH WHAT WE JUST WENT OVER THE LAST THREE HOURS,  
14           BUT I WOULD LIKE TO MAKE A MOTION TO SUPPRESS THE  
15           STATEMENT BASED ON MIRANDA ISSUES USING JUST SIMPLY WHAT  
16           YOU ALREADY HEARD. I JUST FEEL THE NEED TO MAKE THE  
17           MOTION. IF IT'S OVERRULED, IT WOULD JUST PRESERVE IT  
18           FOR MY CLIENT.

19                   THE COURT:   ALRIGHT.

20                   MR. PEPER:   THAT'S SIMPLY TO SAY,  
21           EVERYTHING YOU'VE HEARD ALREADY I'D JUST LIKE TO MAKE A  
22           BRIEF ORAL ARGUMENT FOR MY MOTION.

23                   THE COURT:   YES, SIR, I'LL BE GLAD  
24           TO HEAR YOU.

25                   MR. PEPER:   JUDGE, EARLIER OBVIOUSLY

1 YOU HEARD FROM DETECTIVE HILL AND DETECTIVE GOMES AND  
2 DETECTIVE - - -

3 SOLICITOR RUTLEDGE DURANT: DICENZO.

4 MR. PEPPER: DICENZO. THANK YOU.

5 WITH REGARDS TO THE CLIENT BEING MIRANDIZED. THEY ADMIT  
6 THAT HE WAS MIRANDIZED. HERE'S THE PROBLEM, JUDGE, THEY  
7 ADMIT THAT IN THE FIRST MIRANDA ADVICE OF CONSTITUTIONAL  
8 RIGHTS THEY SCRATCHED OUT, CHARGE OF. OKAY? SO,  
9 ORIGINALLY WHEN HE AGREED TO GIVE A STATEMENT HE WAS  
10 UNDER THE IMPRESSION HE WAS JUST GOING TO GIVE A  
11 STATEMENT ABOUT A MURDER, NOT THE CHARGE, BEING CHARGED  
12 WITH MURDER. OKAY? HE AGREES TO GIVE THE STATEMENT  
13 AUTOMATICALLY AFTER, I THINK WE DECIDED, EVEN IF WE SAID  
14 TEN MINUTES OF GOING BACK AND FORTH, THAT HE WANTED A  
15 LAWYER. AND NOT ONLY DID HE JUST SAY, I WANT A LAWYER,  
16 BUT THE TESTIMONY WAS, HE DIDN'T MUMBLE IT, HE DIDN'T  
17 KIND OF BLURT OUT, HE SAID, I WANT A LAWYER. AND  
18 PURSUANT TO THE CASE LAW AS THE COURT KNOWS THE  
19 INTERROGATION HAS TO CEASE, PERIOD, PERIOD. OKAY?  
20 WHICH THE STATE I'M SURE WILL ARGUE THAT IT DID, AND  
21 THEN RESUMED AFTER THE DEFENDANT INITIATED CONTACT. SO,  
22 TO THAT ARGUMENT I WOULD MAKE THAT I THINK THERE IS A  
23 CERTAIN, CERTAINLY AN ISSUE WITH REGARDS TO WHO HAS TO  
24 MAKE THE CONTACT TO INITIATE THE STATEMENT EITHER MOVING  
25 FORWARD OR VOLUNTEERING TO GIVE A STATEMENT, A

1 SUBSEQUENT STATE, IF YOU WILL. IN MY CROSS-EXAMINATION  
2 OF SIMMONS HE CLEARLY STATED, I WENT AND GOT THE  
3 OFFICERS. IN HILL'S TESTIMONY HE STATED THAT, SIMMONS  
4 CAME AND GOT ME. IN GOMES' TESTIMONY HE STATED THAT  
5 HILL CAME AND TOLD HIM THAT SIMMONS CAME AND GOT HIM,  
6 BECAUSE THAT'S WHAT HILL TOLD HIM HE DID. YOU KNOW, I  
7 THINK THERE'S SOME SERIOUS CONSEQUENCES THERE WITH  
8 REGARDS TO PHILLIPS HAVING NEVER REALLY ASSERTED TO  
9 ANYBODY BUT ALLEGEDLY SIMMONS, WHO BROUGHT HIM THERE,  
10 PROMISED HIS MOTHER HE WOULD BRING HIM BACK, HAD NO IDEA  
11 HE WAS BEING CHARGED WITH MURDER, WAS JUST GOING TO GIVE  
12 A STATEMENT ABOUT A MURDER, THAT HE WAS VOLUNTEERING  
13 HIMSELF TO GIVE ANOTHER STATEMENT.

14 IN ADDITION TO, OR POSSIBLY IN THE  
15 ALTERNATIVE, IF THE STATE ARGUES THAT, WE CONCEDE THAT  
16 HE WAS PROPERLY MIRANDIZED THE FIRST TIME, ASKED FOR AN  
17 ATTORNEY, AND THEREFORE, NOTHING AT THAT POINT FORWARD  
18 COMES IN, AND TRIES TO ASSERT THAT HE WAS THEN RE-  
19 MIRANDIZED, MY ARGUMENT TO THAT, YOUR HONOR, IS THAT HE  
20 WASN'T RE-MIRANDIZED OR, FOR THAT MATTER, MIRANDIZED  
21 AGAIN, HE WAS TOLD, I'M GOING TO READ YOU EXACTLY WHAT  
22 I READ YOU BEFORE, AND GIVE YOU A MIRANDA STATEMENT,  
23 SIGN IT BELOW, DO YOU UNDERSTAND? AT WHICH TIME HE  
24 SAID, YES, I DO UNDERSTAND. BUT YOUR ARGUMENT COULD BE  
25 MADE, AND I THINK THROUGH THE WITNESSES IT HAS BEEN

1       MADE, THAT HE WAS STILL UNDER THE IMPRESSION THAT HE WAS  
2       JUST GOING TO TALK ABOUT A MURDER THAT HAPPENED. AS A  
3       MATTER OF FACT, SIMMONS TESTIFIED THAT HE JUST WENT  
4       AHEAD AND LEFT BECAUSE HILL TOLD HIM, WE'VE ALREADY GOT  
5       HIM, WE'RE GOING TO CHARGE HIM WITH MURDER. THERE WAS  
6       NO TESTIMONY FROM EITHER HILL, GOMES, DICENZO, WHO ARE  
7       THE ONLY THREE ARGUABLY IN THE ROOM, REALLY JUST GOMES  
8       AND HILL, THAT THEY SPECIFICALLY POINTED OUT TO HIM  
9       THAT, NOW, YOU UNDERSTAND, WE DIDN'T SCRATCH OFF, CHARGE  
10      OF MURDER, THIS IS, YOU'RE BEING CHARGED WITH MURDER.  
11      THERE WAS NEVER A, YOU'RE BEING CHARGED WITH MURDER,  
12      THESE ARE YOUR RIGHTS, IT WAS, HERE ARE YOUR RIGHTS  
13      AGAIN. AND THAT'S WHAT WAS TESTIFIED TO. YOU, WE  
14      UNDERSTAND THAT YOU WANT TO TALK TO US AGAIN. THEY  
15      ALLEGED THAT HE SAID, YES. WE ALLEGED THAT ACTUALLY  
16      SIMMONS WAS THE ONE THAT WANTED MY CLIENT TO TALK TO  
17      THEM AGAIN. AND FROM THAT POINT FORWARD THEY JUST  
18      SIMPLY REREAD THE MIRANDA, OR PUT IT IN FRONT OF HIM AND  
19      SAID, THESE ARE THE SAME RIGHTS, WE DON'T KNOW. THE  
20      POINT BEING THAT WHILE HE WAS MIRANDIZED PROPERLY UNDER  
21      THE IMPRESSION THAT HE WAS GOING TO GIVE A STATEMENT  
22      ABOUT A MURDER, HE WAS NEVER MIRANDIZED PROPERLY AFTER  
23      HE WAS ACTUALLY CHARGED WITH MURDER. AND THAT'S WHAT WE  
24      GET INTO, WHEN WAS HE CHARGED WITH MURDER? THROUGH  
25      SIMMONS IT'S VERY CLEAR THAT THE FIRST TIME HE GAVE A

1 STATEMENT, ALL WE AGREE, HE HAD NOT BEEN CHARGED WITH  
2 MURDER. THE SECOND TIME, HOWEVER, SIMMONS LEFT BECAUSE  
3 HILL TOLD HIM, I'M GOING TO CHARGE HIM WITH MURDER.  
4 THAT WAS NEVER TESTIFIED TO IN THE LAST THREE HOURS BY  
5 ANY OF THE WITNESSES.

6 YOUR HONOR, FINALLY, THE POINT,  
7 THOSE FACTS ARE FACT THAT A CLIENT HAS AN ULTIMATE  
8 CONSTITUTIONAL RIGHT TO AN ATTORNEY WHEN HE ASKS FOR  
9 ONE. HE ASKED FOR ONE, PERIOD. IT'S ARGUABLE AT BEST  
10 WHETHER THE DEFENDANT INITIATED CONTACT. AS A MATTER OF  
11 FACT, THE ONLY PERSON THAT SAYS HE INITIATED CONTACT WAS  
12 SIMMONS, BUT WHY DIDN'T SIMMONS JUST SEND SHAWN OUT  
13 THERE? WHY DID SIMMONS GO OUT, TELL HILL THAT SHAWN  
14 WANTS TO TALK TO HIM? WHY DIDN'T GOMES CONFIRM WITH  
15 HILL THROUGH SIMMONS THAT PHILLIPS WAS THE ONE WHO  
16 INITIATED CONTACT? THERE IS A PLETHORA OF TESTIMONY  
17 STATING THAT THEY ASKED SHAWN, DID YOU WANT TO SEE US  
18 AGAIN? AND HE SAID, YEAH. THEY DIDN'T PUT IT IN  
19 WRITING, IT GOES DIRECTLY INTO, TELL ME WHAT YOU KNOW.  
20 THE SECOND MIRANDA OCCURRED AT SIX:FORTY-TWO P.M., THE  
21 STATEMENT STARTS AT SEVEN P.M. WE HAVE NO IDEA WHAT  
22 TRANSPIRED THROUGH THOSE TIMES. ALL WE DO KNOW IS THAT  
23 FORTY MINUTES EARLIER -- STRIKE THAT, YOUR HONOR, TWENTY  
24 MINUTES EARLIER, AT SIX:TEN P.M., OR SHORTLY THEREAFTER,  
25 HE ADAMANTLY REQUESTED HIS RIGHT TO COUNSEL AND WAS

1 DENIED THAT REQUEST.

2 YOUR HONOR, BASED ON THE TESTIMONY  
3 YOU HEARD IN THE JACKSON V. DENNO HEARING WE WOULD ASK  
4 YOU TO SUPPRESS HIS STATEMENT BASED ON A VIOLATION OF  
5 MIRANDA. THANK YOU, YOUR HONOR.

6 THE COURT: WELL, I THINK THE LAW IS  
7 CLEAR THAT ONCE HE INVOKES HIS RIGHT TO AN ATTORNEY  
8 THERE CAN BE NO QUESTIONING UNLESS HE INITIATES IT. THE  
9 ONLY TESTIMONY IN THE RECORD IS THAT HE INITIATED IT,  
10 AND SO, I MEAN, FOR THE REASONS I'VE STATED EARLIER I  
11 WOULD DENY YOUR MOTION TO SUPPRESS. ALRIGHT, SIR?

12 MR. PEPPER: THANK YOU, YOUR HONOR.

13 THE COURT: ALRIGHT, ANYTHING ELSE?

14 SOLICITOR RUTLEDGE DURANT: NOTHING  
15 FROM THE STATE, JUDGE.

16 THE COURT: ALRIGHT. HERE ARE THOSE  
17 EXHIBITS IF YOU NEED THEM.

18 WE CAN BRING IN THE JURY, PLEASE.

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

23 THE COURT: SWEAR THE JURY, PLEASE,  
24 SIR.

25 BAILIFF: ALL ARE PRESENT, YOUR

1 HONOR.

2 THE COURT: THANK YOU, SIR.

3 CLERK: LADIES AND GENTLEMEN, IF YOU  
4 WOULD PLEASE RAISE YOUR RIGHT HAND AND RECEIVE YOUR OATH  
5 AND AT THE END OF THE OATH JUST ANSWER BY SAYING, I DO.  
6 (Whereupon, the jury  
7 is duly sworn and impaneled.)

8 CLERK: ALRIGHT, THANK YOU, YOU MAY  
9 BE SEATED.

10 THE COURT: LADIES AND GENTLEMEN, I  
11 APPRECIATE YOUR PATIENCE. I'VE BEEN DOING THIS TEN  
12 YEARS AND I'M NO BETTER AT GUESSING AND ESTIMATING HOW  
13 LONG SOMETHING IS GOING TO TAKE THAN I WAS TEN YEARS  
14 AGO, SO I APPRECIATE YOUR PATIENCE IN WAITING. BUT WE  
15 HAVE NOT BEEN GOOFING OFF, I ASSURE YOU OF THAT.

16 I DON'T KNOW HOW MANY OF Y'ALL HAVE  
17 EVER SERVED ON A JURY. AS I TOLD YOU, THIS IS THE REAL  
18 THING, THIS IS NOT COURT T.V. MOST OF THESE COURT T.V.  
19 PROGRAMS DON'T HAVE ANY BASIS IN REALITY, I CAN ASSURE  
20 YOU OF THAT ALSO.

21 THE STATE BROUGHT THESE CHARGES, THE  
22 STATE HAS THE BURDEN OF PROVING THESE CHARGES. AS I  
23 TOLD YOU, THE DEFENDANT DOES NOT HAVE TO PROVE ANYTHING,  
24 HE DOES NOT HAVE TO TESTIFY, HE DOES NOT HAVE TO OFFER  
25 ANY WITNESSES OR TESTIMONY OR EVIDENCE AT ALL. THE



1 STATE GETS TO GO FIRST BECAUSE THEY HAVE THAT BURDEN.  
2 THEY WILL PUT UP WITNESSES, I'M SURE THEY HAVE SOME  
3 EXHIBITS THEY WILL INTRODUCE, THAT IS, AFTER WE HAVE THE  
4 OPENING STATEMENTS. THE OPENING STATEMENTS WILL BE  
5 RELATIVELY BRIEF, THEY WILL TRY TO GIVE YOU A BRIEF  
6 OUTLINE OF WHAT THEY THINK THE EVIDENCE IS GOING TO SHOW  
7 IN THIS CASE. THE STATE GOES FIRST, FOLLOWED BY THE  
8 DEFENSE, THEN THE TESTIMONY OF THE STATE. ONCE THE  
9 STATE FINISHES PUTTING UP THEIR CASE IF THE DEFENSE  
10 CHOOSES TO PUT UP ANY EVIDENCE OR TESTIMONY THEY WOULD  
11 DO THAT AT THAT TIME. ONCE YOU'VE HEARD ALL THE  
12 TESTIMONY THE ATTORNEYS WILL COME BACK TO YOU AND THEY  
13 WILL MAKE THEIR CLOSING ARGUMENTS IN THE CASE. THEY  
14 WILL TRY TO PERSUADE YOU TO SEE THE FACTS IN THE CASE IN  
15 FAVOR OF THEIR RESPECTIVE POSITIONS.

16 YOUR ARE THE JUDGES OF THE FACTS,  
17 THAT MEANS YOU DETERMINE THE TRUTH, YOU DETERMINE WHAT  
18 ACTUALLY HAPPENED UNDER THE FACTS THAT YOU'RE GOING TO  
19 HEAR FROM THE TESTIMONY THAT COMES FROM THAT WITNESS  
20 STAND.

21 I'M THE JUDGE OF THE LAW, I PRESIDE,  
22 I RULE ON EVIDENTIARY MATTERS. I MIGHT TO OCCASIONALLY  
23 ASK YOU TO STEP OUT TO THE JURY ROOM WHILE I TAKE UP A  
24 LEGAL MATTER. PLEASE DON'T BE OFFENDED IF I DO THAT,  
25 THAT'S JUST WHAT OUR RULES REQUIRE. BUT ONCE YOU'VE

1 HEARD THE CLOSING ARGUMENTS OF THE ATTORNEYS, THEN I'LL  
2 CHARGE YOU ON THE LAW. I'LL TELL YOU WHAT THE LAW IS IN  
3 SOUTH CAROLINA THAT MIGHT APPLY TO THIS CASE. AND WHEN  
4 I SAY, MIGHT APPLY TO THIS CASE, BECAUSE IT DEPENDS UPON  
5 WHAT THE FACTS TO BE IN THIS CASE. THEN WHEN YOU HAVE  
6 THAT INFORMATION YOU CAN BEGIN YOUR DELIBERATIONS. AND  
7 AS I SAID EARLIER, UNTIL YOU HAVE ALL OF THAT  
8 INFORMATION YOU'RE NOT REALLY IN A POSITION TO START  
9 MAKING UP YOUR MIND, AND THAT'S THE REASON WE ASK YOU  
10 NOT TO TALK ABOUT IT UNTIL YOU BEGIN YOUR DELIBERATIONS.

11 SO, PLEASE GIVE THE ATTORNEYS YOUR  
12 ATTENTION AT THIS TIME. THE ATTORNEY FOR THE STATE WILL  
13 GO FIRST, FOLLOWED BY THE DEFENDANT, AND THEN WE'LL  
14 BEGIN THE TESTIMONY.

15 ALRIGHT, COUNSELOR.

16 SOLICITOR RUTLEDGE DURANT: THANK  
17 YOU, JUDGE, MAY IT PLEASE THE COURT.

18 THE COURT: YES, SIR.

19 SOLICITOR RUTLEDGE DURANT: MR.  
20 PEPPER.

21 OPENING STATEMENT BY SOL. RUTLEDGE DURANT

22 LADIES AND GENTLEMEN OF THE JURY,  
23 THIS CASE IS ABOUT RUTHLESSNESS, THIS CASE IS ABOUT  
24 VIOLENCE. THIS CASE IS ABOUT A MAN WHO WAS PUT DOWN ON  
25 A BED, A PILLOW WAS PLACED OVER HIS HEAD, AND HE WAS

1 EXECUTED. THAT MAN'S NAME WAS ROBERT VARGO. HE WAS  
2 FORTY-EIGHT YEARS OLD, HE WORKED FOR A CARNIVAL AND HE  
3 WAS IN TOWN BECAUSE OF THE FAIR. AND THE EVIDENCE WILL  
4 SHOW THAT HE WAS NO ANGEL, HE LIKED CRACK COCAINE, HE  
5 LIKED PROSTITUTES, AND ULTIMATELY IT WAS THESE LIKES  
6 THAT LED TO HIS DEATH IN HIS HOTEL ROOM AT THE BUDGET  
7 INN IN NORTH CHARLESTON ON NOVEMBER THE SEVENTH OF TWO  
8 THOUSAND AND SIX. BUT THE STORY OF HOW ROBERT VARGO WAS  
9 MURDERED REALLY BEGINS THE NIGHT BEFORE THE MURDER,  
10 THAT'S ON NOVEMBER THE SIXTH. AND THAT'S WHEN OUR  
11 VICTIM, ROBERT VARGO, MET A LADY, ALANA NIESEN,  
12 OTHERWISE KNOWN AS CHINA. THIS WAS A CHANCE AND FATEFUL  
13 ENCOUNTER THAT BEGAN A CHAIN OF EVENTS THAT ULTIMATELY  
14 LED TO HIS MURDER ON NOVEMBER THE SEVENTH. NOVEMBER THE  
15 SIXTH WAS A GREAT DAY FOR OUR VICTIM, ROBERT VARGO WAS  
16 DOING WHAT HE LIKED TO DO. HE WAS AT HIS HOTEL ROOM  
17 WHICH WAS A DIFFERENT ONE THAN THE ONE HE WAS MURDERED  
18 IN, AND HE WAS WITH ALANA NIESEN, ALANA NIESEN'S  
19 BROTHER, AND THEIR FRIEND, TANK, AND THEY WERE SMOKING  
20 CRACK AND DRINKING, HAVING A GOOD TIME AND PARTYING, AND  
21 THEY DID THAT ALL NIGHT LONG, AND IN THE MORNING ALANA  
22 LEFT.

23 NOW, WE'RE ONTO THE MORNING OF  
24 NOVEMBER SEVENTH. ROBERT VARGO, OUR VICTIM, GIVES ALANA  
25 NIESEN A CALL, AND HE NEEDS A RIDE TO ANOTHER HOTEL, AND

1 SO, ALANA AGREES TO GO PICK HIM UP FROM HIS HOTEL AND  
2 TAKE HIM TO ANOTHER HOTEL, AND HE CHECKS INTO THE BUDGET  
3 INN AROUND ONE P.M., NOVEMBER THE SEVENTH. THIS IS THE  
4 SAME ROOM, ROOM TWO FORTY-FOUR, THAT HE WILL BE MURDERED  
5 IN APPROXIMATELY TEN HOURS LATER. FROM ONE P.M. WE FAST  
6 FORWARD BOUT TEN HOURS, NINE HOURS, RATHER. IT'S NOW  
7 TEN O'CLOCK. ALANA FIRST OF ALL HELPS ROBERT VARGO  
8 CHECK INTO HIS HOTEL ROOM AND SHE BELIEVES NOW IT'S  
9 AROUND TEN O'CLOCK. THERE ARE THREE HOTELS IN THIS  
10 AREA, THERE'S THE BUDGET INN WHERE ROBERT VARGO, THE  
11 VICTIM, IS, AND THERE ARE TWO OTHERS RIGHT HERE. AND  
12 ALANA NIESEN IS AGAIN IN THE AREA, SHE'S DRIVING HER  
13 MOTHER'S RED DURANGO, AND SHE'S GOING TO SEE A GUY NAMED  
14 TANK, BECAUSE TANK NEEDS A RIDE SOMEWHERE. AS SHE'S  
15 PULLING IN, IN HER RED DURANGO THERE'S A RED TRACKER  
16 THAT'S PULLING OUT FROM A DIFFERENT HOTEL. AND THE RED  
17 TRACKER IS OCCUPIED BY THIS MAN RIGHT HERE. HIS NAME IS  
18 SHAWN PHILLIPS, HE'S THE DEFENDANT. AND SHAWN PHILLIPS  
19 IS WITH IS BUDDY, LENNIE MICKEY. AND THEY STRIKE UP A  
20 CONVERSATION WITH ALANA NIESEN. THIS IS A FIRST TIME  
21 MEETING. THIS WAS ANOTHER CHANCE AND FATEFUL ENCOUNTER  
22 IN THE CHAIN OF EVENTS THAT LED TO THE MURDER OF ROBERT  
23 VARGO. THEY ASKED ALANA, WOULD YOU LIKE TO PARTY? AND  
24 SHE SAYS, YES, AND THEY EXCHANGE NUMBERS AT THIS TIME.  
25 AND ALANA GOES ON TO SEE TANK WHO ENDS UP NOT NEEDING A

1 RIDE. SO, SHE GIVES THESE GUYS A CALL AND SHE MEETS UP  
2 WITH THEM AT THEIR HOTEL ROOM, WHICH IS THE TRAVEL  
3 LODGE, ROOM THREE O NINE. THE TRAVEL LODGE IS HERE,  
4 THERE'S A MIDDLE HOTEL HERE, AND YOU'VE GOT THE VICTIM,  
5 ROBERT VARGO'S HOTEL HERE. ROOM THREE O NINE OF THE  
6 TRAVEL LODGE IS OCCUPIED BY FIVE PEOPLE. YOU'VE GOT THE  
7 DEFENDANT, SHAWN PHILLIPS, WHO GOES BY THE NICKNAMES, D  
8 OR PIT. YOU'VE GOT LENNIE MICKEY, WHO GOES BY THE  
9 NICKNAMES, BROOKLYN, OR NEW YORK, OR L. ALANA NIESEN  
10 GOES BY CHINA. AND TWO OTHER GIRLS, ANGELA AGAGAS AND,  
11 I FORGET -- SANDRA BARNES. SANDRA BARNES GOES BY B.G.,  
12 OR BABY GIRL. A LOT OF NAMES, I JUST SLIPPED UP RIGHT  
13 THERE, BUT ESSENTIALLY WHAT IT COMES DOWN TO ARE TWO  
14 GUYS, INCLUDING THIS DEFENDANT, AND THREE GIRLS. AND IN  
15 THIS HOTEL ROOM CONVERSATION COMING FROM THIS DEFENDANT  
16 AND HIS BUDDY, LENNIE, IS ALL ABOUT, WHO CAN WE ROB?  
17 WHO DO YOU KNOW THAT WE CAN ROB, ANYBODY, WE WANT TO ROB  
18 SOMEBODY, DO YOU KNOW OF ANY CLIENTS THAT WE CAN ROB,  
19 ANY DRUG DEALERS, ANYBODY WITH MONEY, ANYBODY, WE WANT  
20 TO ROB. AND IT'S COMING ALL FROM THIS GUY AND HIS  
21 BUDDY, LENNIE. AND DURING THIS CONVERSATION ALANA  
22 NIESEN GETS A CALL FROM ROBERT VARGO, THE VICTIM. SHE  
23 ANSWERS THE PHONE, SHE TALKS TO HIM, SHE GETS OFF THE  
24 PHONE, SHE TELLS THESE GUYS EVERYTHING SHE KNOWS. SHE  
25 TELLS HIM HOW HE HAD HIS CRACK COCAINE, HOW HE KEEPS HIS

1 MONEY IN HIS SHOE, HOW HE LIKES PROSTITUTES, AND HOW  
2 HE'S RIGHT DOWN THE STREET. HE WAS THE PERFECT VICTIM.  
3 THE PLAN WAS ON, THE TARGET WAS SET. ROBERT VARGO WILL  
4 BE ROBBED THAT NIGHT. SO, ALANA ENDS UP TAKING THESE  
5 GUYS DOWN TO THE BUDGET INN, SHE POINTS OUT THE EXACT  
6 ROOM, AND THEN THEY GO BACK TO THE TRAVEL LODGE AND  
7 ALANA SETS THIS WHOLE THING UP. SHE MAKES TWO CALLS TO  
8 THE VICTIM AND TELLS HIM THAT SHE'S GOT A GIRL THAT  
9 SHE'S SENDING OVER, THAT'S SANDRA BARNES. SHE'S THE SET  
10 UP GIRL, SHE'S THE ONE WHO'S GOING TO GET THEM INTO THE  
11 ROOM. HER JOB IS TO GO TO THE DOOR AND KNOCK ON IT.  
12 THE VICTIM'S EXPECTING THE GIRL, AND THEY DO THAT.  
13 SANDRA BARNES LEADS SHAWN PHILLIPS AND HIS BUDDY,  
14 LENNIE. SANDRA KNOCKS ON THE DOOR, THE VICTIM OPENS,  
15 THESE GUYS RUN IN THERE, RANSACKING IT FOR EVERYTHING  
16 IT'S WORTH. THE VICTIM IS PLACED DOWN ON THE BED, THE  
17 PILLOW IS PUT OVER HIS HEAD, AND HE'S EXECUTED. AND WE  
18 HAVE NO IDEA WHO PULLED THE TRIGGER, WE DON'T KNOW. AND  
19 IT MAKES ABSOLUTELY NO DIFFERENCE, BECAUSE IN SOUTH  
20 CAROLINA THE HAND OF ONE IS THE HAND OF ALL IN A  
21 SITUATION LIKE THAT, ARMED ROBBERY. WE'LL NEVER BE ABLE  
22 TO PROVE WHO PULLED THAT TRIGGER. THE GUYS WHO WENT IN  
23 TO COMMIT ARMED ROBBERY BOTH ARE JUST AS GUILTY AS IF  
24 THEY'D PULLED THE TRIGGER THEMSELVES. THAT'S THE LAW OF  
25 THIS CASE, AS THE JUDGE WILL TELL YOU.

1 AFTER THE KILLING THEY RETURN  
2 BRIEFLY TO THE TRAVEL LODGE, AND PACK UP EVERYTHING AND  
3 LEAVE, AND IT'S DISCOVERED AT THIS TIME THAT ALL THEY  
4 GOT OUT OF THIS WAS ABOUT FIFTY DOLLARS. THEY KILLED  
5 ROBERT VARGO FOR ABOUT FIFTY DOLLARS.

6 THERE'S AN INVESTIGATION BY THE  
7 NORTH CHARLESTON POLICE DEPARTMENT. ALANA NIESEN COMES  
8 IN AND GIVES A STATEMENT. SANDRA BARNES COMES IN AND  
9 GIVES A STATEMENT. THIS ULTIMATELY LEADS TO THE ARREST  
10 OF THIS DEFENDANT ON DECEMBER THE FOURTEENTH, TWO  
11 THOUSAND AND SIX. HE IS CHARGED HERE TODAY WITH MURDER,  
12 ARMED ROBBERY AND CRIMINAL CONSPIRACY. THE REST OF  
13 THESE FOLKS ARE ALSO CHARGED WITH MURDER, ARMED ROBBERY  
14 AND CRIMINAL CONSPIRACY, EXCEPT FOR ANGELA AGAGAS, SHE'S  
15 ONLY CHARGED WITH CRIMINAL CONSPIRACY.

16 TODAY YOU NEED ONLY CONCERN YOURSELF  
17 WITH THE TRIAL OF SHAWN PHILLIPS. THE TRIAL OF THESE  
18 OTHER FOLKS ARE FOR OTHER JURIES ON OTHER DAYS. THIS IS  
19 HIS DAY IN COURT. I ASK YOU TO PAY CAREFUL ATTENTION TO  
20 THE EVIDENCE IN THIS CASE AS IT'S PRESENTED TO YOU AND  
21 TO THE LAW AS THE JUDGE INSTRUCTS YOU. HE WILL INSTRUCT  
22 YOU ABOUT THE HAND OF ONE IS THE HAND OF ALL.

23 THANK YOU VERY MUCH.

24 THE COURT: THANK YOU, SIR.

25 MR. PEPER.

1                   MR. PEPER: THE COURT'S INDULGENCE,  
2                   YOUR HONOR.

3                   THE COURT: YES, SIR.

4                   MR. PEPER: JUDGE, WE'D LIKE TO  
5                   RESERVE OUR OPENING STATEMENT AT THIS POINT IN TIME FOR  
6                   OUR CASE IN CHIEF.

7                   THE COURT: YOU WANT TO MAKE IT, YOU  
8                   WANT TO MAKE IT LATER?

9                   MR. PEPER: THAT'S CORRECT.

10                  THE COURT: ANY OBJECTION?

11                  SOLICITOR RUTLEDGE DURANT: NO  
12                  OBJECTION, YOUR HONOR.

13                  THE COURT: ALRIGHT, THAT'S FINE.  
14                  CALL YOUR WITNESS.

15                  SOLICITOR RUTLEDGE DURANT: THE  
16                  STATE CALLS CANDY JOHNSON.

17                  CLERK: PLACE YOUR LEFT HAND ON THE  
18                  BIBLE AND RAISE YOUR RIGHT HAND.  
19                  (Whereupon, Candy Johnson  
20                  is duly sworn.)



1                    CLERK:    PLEASE HAVE A SEAT, AND  
2                    WATCH YOUR STEP.   IF YOU WILL, MA'AM, JUST GIVE US YOUR  
3                    FULL NAME AND SPELL YOUR LAST.

4                    THE WITNESS:   CANDY JOHNSON, J-O-H-  
5                    N-S-O-N.

6                    THE COURT:    ALRIGHT, COUNSELOR.

7                    SOLICITOR RUTLEDGE DURANT:    THANK  
8                    YOU, JUDGE.

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 - CANDY JOHNSON BY SOL. RUTLEDGE DURANT

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DIRECT EXAMINATION OF CANDY JOHNSON

BY SOLICITOR RUTLEDGE DURANT:

Q. MS. JOHNSON, GOOD AFTERNOON.

A. GOOD AFTERNOON.

Q. COULD YOU PLEASE TELL THE JURY WHERE YOU'RE  
EMPLOYED?

A. NORTH CHARLESTON POLICE DEPARTMENT.

Q. AND HOW LONG HAVE YOU BEEN EMPLOYED THERE?

A. TWELVE YEARS.

Q. AND WHAT IS, WHAT'S YOUR CURRENT DUTIES?

A. CURRENTLY, I'M A DETECTIVE.

Q. AND WHAT WERE YOUR DUTIES IN NOVEMBER OF TWO  
THOUSAND AND SIX?

A. ROUTINE PATROL.

Q. IN THAT CAPACITY DID YOU HAVE THE OCCASION TO BE  
DISPATCHED TO THE BUDGET INN ON NOVEMBER THE  
EIGHTH, TWO THOUSAND AND SIX?

A. I DID.

Q. AND WHAT ADDRESS DID YOU RESPOND TO?

A. SIXTY-ONE FIFTY-FIVE FAIN STREET, ROOM TWO FORTY-  
FOUR.

Q. AND IS THAT HOTEL LOCATED IN CHARLESTON COUNTY?

A. IT IS.

Q. WHAT TIME WERE YOU DISPATCHED?

A. AT ELEVEN:THIRTY-SEVEN, I BELIEVE I ARRIVED AT

DIRECT - CANDY JOHNSON BY SOL. RUTLEDGE DURANT

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1 ELEVEN:THIRTY-NINE.

2 COURT REPORTER: STATE'S FIVE AND  
3 SIX, ID.  
4 (State's Exhibits Five and Six  
5 Photos,  
6 marked for identification.)

7 SOLICITOR RUTLEDGE DURANT: THANK  
8 YOU. JUST LET ME KNOW WHEN YOU'RE READY.

9 COURT REPORTER: I'M READY.

10 Q. OFFICER JOHNSON, I'M SHOWING YOU WHAT THE STATE  
11 HAS LABELED STATE'S FIVE AND SIX, AND I'D ASK YOU  
12 TO TAKE A LOOK AT IT. DO YOU RECOGNIZE THOSE  
13 PHOTOS?

14 A. I DO.

15 Q. AND HOW DO YOU RECOGNIZE THEM?

16 A. THEY'RE OF THE BUDGET INN AND OTHER HOTELS.

17 Q. DO THEY FAIRLY AND ACCURATELY DEPICT THE AREA  
18 AROUND THE BUDGET INN AND THE SURROUNDING HOTELS?

19 A. IT DOES.

20 Q. BOTH OF THEM?

21 A. YES.

22 SOLICITOR RUTLEDGE DURANT: YOUR  
23 HONOR, AT THIS TIME THE STATE MOVES STATE'S FIVE AND SIX  
24 INTO EVIDENCE.

25 MR. PEPPER: NO OBJECTION, YOUR

DIRECT - CANDY JOHNSON BY SOL. RUTLEDGE DURANT

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1 HONOR.

2 THE COURT: ADMITTED WITHOUT  
3 OBJECTION.

4 (State's Exhibits Five and Six  
5 marked and filed.)

6 THE COURT: IS THERE A PROBLEM?

7 SOLICITOR RUTLEDGE DURANT: WE'RE  
8 TRYING TO PUT IT UP ON THE SCREEN.

9 THE COURT: OH.

10 Q. SO, THESE PHOTOS ACTUALLY DEPICT THE AREA?

11 A. THEY DO.

12 Q. OKAY. AND YOU SAY YOU WERE DISPATCHED AT  
13 ELEVEN:THIRTY-SEVEN?

14 A. I WAS.

15 Q. AND WHAT WERE YOU DISPATCHED IN REFERENCE TO?

16 A. UNRESPONSIVE MALE IN ROOM TWO FORTY-FOUR.

17 Q. WHO DID YOU TALK TO UPON ARRIVING?

18 A. MR. PATEL. HE WOULD BE THE BUDGET INN OWNER.

19 Q. AND WHO LET YOU INTO ROOM TWO FORTY-FOUR?

20 A. MR. PATEL.

21 Q. WHAT DID YOU OBSERVE?

22 A. I OBSERVED MR. VARGO LAYING ON HIS BACK. HIS - -

23 -

24 COURT REPORTER: I'M SORRY, I CAN'T  
25 HEAR YOU.

DIRECT - CANDY JOHNSON BY SOL. RUTLEDGE DURANT

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1 A. OKAY. I OBSERVED MR. VARGO LAYING ON HIS BACK ON  
2 THE BED, HIS LEGS WERE DROOPED OVER THE END OF THE  
3 BED, HIS ARMS WERE ACROSS HIS CHEST AND A PILLOW  
4 WAS OVER HIS FACE. AT THAT POINT I WENT INTO THE  
5 ROOM AND VERIFIED HIS MEDICAL STATUS, THEREBY  
6 MEANING I GRABBED HIS WRIST, FELT THERE WAS NO  
7 PULSE. HE WAS COLD TO THE TOUCH AND RIGOR MORTIS  
8 HAD ALREADY SET IN. I LIFTED THE PILLOW AND THE  
9 PILLOW, AND THE HOLE ON TOP OF THE PILLOW - - -

10 COURT REPORTER: I'M SORRY?

11 THE COURT: THE COURT REPORTER CAN'T  
12 HEAR YOU. YOU'RE TALKING KIND OF SOFT AND YOU'RE  
13 TALKING AWAY FROM THE MICROPHONE.

14 A. I APOLOGIZE.

15 THE COURT: SO, YOU'LL HAVE TO - - -

16 A. WHERE SHALL I START OVER FOR YOU?

17 COURT REPORTER: JUST THE LAST  
18 SENTENCE.

19 A. OKAY.

20 THE COURT: YOU GRABBED HIS WRIST.  
21 OKAY.

22 A. ALRIGHT, I GRABBED HIS WRIST -- I WENT IN TO  
23 VERIFY HIS MEDICAL STATUS. I GRABBED HIS WRIST TO  
24 SEE IF HE HAD A PULSE, AND HE WAS COLD TO THE  
25 TOUCH, RIGOR MORTIS HAD ALREADY SET IN, AND I

DIRECT - CANDY JOHNSON BY SOL. RUTLEDGE DURANT

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1           LIFTED THE PILLOW AND THE PILLOW HAD A HOLE OVER  
2           THE TOP OF THE FACE AREA, AND I LOOKED AT THE  
3           PILLOW AND THERE WAS A COPIOUS AMOUNT OF BLOOD ON  
4           HIS FACE AND ON THE BED THAT I SAW.

5           Q.   DID YOU CLEAR THE ROOM?

6           A.   MY PARTNER WAS ALSO THERE WITH ME, DAVID NEWMAN,  
7           WHO WAS CLEARING THE ROOM AS I WAS VERIFYING THE  
8           MEDICAL STATUS.

9           Q.   DID YOU SECURE THE ROOM?

10          A.   WE DID.

11          Q.   WHO DID YOU NOTIFY?

12          A.   I NOTIFIED MY SUPERVISOR, THE CORONER, EMS,  
13          BECAUSE THEY HAVE TO RESPOND TO VALIDATE THAT, IN  
14          FACT, HE WAS DECEASED.

15          Q.   WAS HE DECEASED?

16          A.   HE WAS.

17          Q.   WERE YOU PRESENT WHEN EMS ARRIVED?

18          A.   I WAS.

19          Q.   WHAT WAS THE VICTIM'S NAME?

20          A.   ROBERT VARGO.

21          Q.   HOW LONG DID YOU REMAIN AT THE SCENE?

22          A.   ROUGHLY, MAYBE ABOUT AN HOUR.

23          Q.   AND WHAT WERE YOU DOING THERE?

24          A.   INTERVIEWING ANY POTENTIAL WITNESSES.

25          Q.   TRYING TO LOCATE WITNESSES?

DIRECT - CANDY JOHNSON BY SOL. RUTLEDGE DURANT

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1 A. RIGHT.

2 SOLICITOR RUTLEDGE DURANT: YOUR  
3 HONOR, PERMISSION FOR THE WITNESS TO STEP DOWN?

4 THE COURT: YES, SIR.

5 Q. CAN YOU EXPLAIN TO THE JURY WHAT THIS PICTURE IS?

6 A. THIS PICTURE IS THE HOTELS THAT WE - - -

7 THE COURT: YOU'RE GOING TO HAVE TO  
8 KEEP YOUR VOICE UP, PLEASE, MA'AM.

9 A. SORRY. THAT'S A PICTURE OF THE BUDGET INN.

10 Q. AND THE SURROUNDING HOTELS?

11 A. YES. THE SURROUNDING HOTELS AS WELL.

12 Q. AND COULD YOU EXPLAIN TO THE JURY WHAT THIS  
13 PICTURE IS?

14 A. THIS IS A BLOWN UP PICTURE OF THE BUDGET INN,  
15 ITSELF.

16 Q. THANK YOU.

17 SOLICITOR RUTLEDGE DURANT: PLEASE  
18 ANSWER ANY QUESTIONS MR. PEPER MAY HAVE FOR YOU.

19 THE COURT: MR. PEPER.

20 MR. PEPER: THANK YOU, YOUR HONOR,  
21 MAY IT PLEASE THE COURT.

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.)

CROSS - CANDY JOHNSON BY MR. PEPER

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CROSS-EXAMINATION OF CANDY JOHNSON

BY MR. PEPER:

Q. DID YOU FIND ANY WITNESSES?

A. I SPOKE TO A FEW PEOPLE THAT WERE THERE, YES.

Q. WERE THEY ANY HELP TO YOU?

A. DEPENDS ON WHAT YOU MEAN BY HELP. THEY WERE THERE AT THE HOTEL, I SPOKE WITH MR. PATEL'S SON THAT WAS AT THE DESK.

Q. DID ANY OF THEM TELL YOU THAT SHAWN WAS THERE THAT NIGHT?

A. SORRY, I DIDN'T KNOW WHO SHAWN WAS THAT NIGHT, I JUST KNEW WHO MY VICTIM WAS, MR. VARGO.

Q. DID YOU FIND A GUN?

A. I DID NOT.

Q. FINGERPRINTS?

A. I'M NOT A CRIME SCENE TECH.

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

THE COURT: REDIRECT?

SOLICITOR RUTLEDGE DURANT: NO REDIRECT, JUDGE.

THE COURT: THANK YOU, MA'AM, YOU CAN STEP DOWN. THANK YOU FOR COMING. ANY OBJECTION TO EXCUSING THIS WITNESS?

MR. PEPER: NONE FROM THE DEFENSE,



1 YOUR HONOR.

2 THE COURT: YOU MAY BE EXCUSED,  
3 THANK YOU VERY MUCH.

4 SOLICITOR RUTLEDGE DURANT: THANK  
5 YOU, JUDGE. THE STATE CALLS DINESH PATEL.

6 CLERK: PLACE YOUR LEFT HAND ON THE  
7 BIBLE AND RAISE YOUR RIGHT HAND.  
8 (Whereupon, Dinesh Patel  
9 is duly sworn.)

10 CLERK: THANK YOU, SIR. PLEASE HAVE  
11 A SEAT. AND I'M GOING TO ASK YOU TO STATE YOUR FULL  
12 NAME FOR THE RECORD, SPELLING BOTH YOUR FIRST AND YOUR  
13 LAST, PLEASE.

14 THE WITNESS: MY NAME IS DINESH  
15 PATEL, D-I-N-E-S-H, PATEL, P-A-T-E-L.

16 THE COURT: THANK YOU, SIR.  
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 - DINESH PATEL BY SOL. RUTLEDGE DURANT

172

DIRECT EXAMINATION OF DINESH PATEL

BY SOLICITOR RUTLEDGE DURANT:

Q. MR. PATEL, GOOD AFTERNOON.

A. GOOD AFTERNOON.

Q. COULD YOU PLEASE TELL THE JURY HOW OLD YOU ARE?

A. FIFTY-EIGHT, SIR.

Q. AND YOUR OCCUPATION?

A. I'M THE OWNER OF THE BUDGET INN.

Q. HOW LONG HAVE YOU OWNED THE BUDGET INN?

A. EIGHT AND A HALF YEARS.

Q. WHAT IS THE ADDRESS OF THE HOTEL?

A. SIXTY-ONE FIFTY-FIVE FAIN STREET, NORTH  
CHARLESTON.

Q. DO YOU RECALL THE DATE OF NOVEMBER EIGHTH, TWO  
THOUSAND AND SIX?

A. YES, SIR.

Q. DID YOU HAVE THE OCCASION TO CHECK ON A GUEST AT  
ROOM TWO FORTY-FOUR THAT DAY?

A. YES, SIR.

Q. WHAT WAS THE CIRCUMSTANCES THAT PROMPTED YOUR  
GOING TO ROOM TWO FORTY-FIVE TO CHECK ON THAT  
GUEST?

A. WELL, OUR CHECK OUT TIME IS ELEVEN O'CLOCK, AND  
APPROXIMATELY FIVE MINUTES AFTER ELEVEN MY  
HOUSEKEEPER CAME TO THE OFFICE AND SAID TWO FORTY-

DIRECT - DINESH PATEL BY SOL. RUTLEDGE DURANT

173

1           FOUR WAS NOT ANSWERING THE DOOR. AND SO, I USED MY  
2           OFFICE PHONE TO CALL THAT ROOM TO SEE IF SOMEBODY  
3           HAD CHECKED OUT OR NOT. HE WOULDN'T ANSWER THE  
4           PHONE SO I WENT THERE AND KNOCKED ON THE DOOR. HE  
5           STILL WOULD NOT OPEN THE DOOR AND SO I OPENED THE  
6           DOOR WITH MY MASTER KEY. AND I JUST PUT ONE STEP  
7           INSIDE AND SAW HIM LAYING ON THE BED.

8           Q.   DESCRIBE WHAT YOU SAW WHEN YOU WALKED IN?

9           A.   RIGHT.   WELL, WHEN I SAW HIM LAYING ON THE BED  
10          WITH TWO PILLOWS, ONE ON THE LEFT HAND SIDE AND  
11          ONE ON THE RIGHT HAND SIDE. AND SO, I DIDN'T GO  
12          ANY FARTHER THAN ONE STEP THROUGH THAT DOOR. I  
13          CLOSED THE DOOR AND I CALLED THE POLICE.   I  
14          THOUGHT SOMETHING WAS WRONG SO I CALLED NINE ONE  
15          ONE.

16          Q.   DID THE POLICE ARRIVE?

17          A.   THEY DID.

18          Q.   DID YOU LET THEM INTO THE ROOM?

19          A.   YES, SIR.

20          Q.   NOW, I WANT TO ASK YOU ABOUT THE TELEPHONE SYSTEM  
21          AT THE BUDGET INN?

22          A.   YES.

23          Q.   WHAT'S THE MAIN   NUMBER TO THE BUDGET INN?

24          A.   EIGHT FOUR THREE, THREE TWO NINE, SEVEN SIX NINE  
25          ONE.

DIRECT - DINESH PATEL BY SOL. RUTLEDGE DURANT

174

1 Q. IS THIS THE ONLY NUMBER REGISTERED TO THE BUDGET  
2 INN?

3 A. THAT IS THE MAIN NUMBER. THEN WE HAVE  
4 APPROXIMATELY EIGHT TO TEN DIFFERENT LINES THAT IS  
5 TO THE MAIN NUMBER.

6 Q. I'M SHOWING YOU WHAT THE STATE HAS LABELED STATE'S  
7 EXHIBIT SEVEN, AND I'D ASK YOU TO TAKE A LOOK AT  
8 THAT.

9 A. YEAH, THIS IS OUR PHONE BILL.

10 Q. DO YOU RECOGNIZE IT?

11 A. YES, SIR.

12 Q. DOES THIS DOCUMENT DEPICT ALL THE NUMBERS THAT  
13 WERE REGISTERED TO THE BUDGET INN AS OF ELEVEN,  
14 NOVEMBER SEVENTH, TWO THOUSAND SIX?

15 A. YES, I ALL THESE DIFFERENT TRUNK LINES AND NUMBERS  
16 HERE, ALL DIFFERENT NUMBERS ON TOP OF THAT MAIN  
17 LINE, MAIN NUMBER.

18 SOLICITOR RUTLEDGE DURANT: YOUR  
19 HONOR, AT THIS TIME THE STATE MOVES FOR THE ADMISSION OF  
20 STATE'S SEVEN.

21 MR. PEPER: NO OBJECTION.

22 THE COURT: ADMITTED WITHOUT  
23 OBJECTION.

24 (State's Exhibit Seven  
25 marked and filed.)

DIRECT - DINESH PATEL BY SOL. RUTLEDGE DURANT

175

1 Q. NOW, GETTING A LITTLE MORE SPECIFIC, DOES EACH  
2 ROOM AT THE BUDGET INN HAVE ITS OWN DISTINCT  
3 NUMBER?

4 A. A SEPARATE NUMBER FOR EACH ROOM?

5 Q. THAT'S CORRECT.

6 A. NO, SIR, WE DO NOT. THAT'S WHY WE HAVE ABOUT  
7 EIGHT TO TEN DIFFERENT LINES SO THAT TWO OR THREE  
8 PEOPLE CAN GET THEIR CALLS OUT AT THE SAME TIME  
9 BUT ONLY ONE INCOMING CALL CAN COME TO THE FRONT  
10 DESK TO THE MAIN NUMBER, AND THEN WE JUST FORWARD  
11 IT TO A DIFFERENT EXTENSION WHICH OUR EXTENSIONS  
12 ARE ACQUIRED BY THE CUSTOMER.

13 Q. AND THAT'S HOW THE PHONE SYSTEM WORKS?

14 A. THAT'S RIGHT.

15 SOLICITOR RUTLEDGE DURANT: THANK  
16 YOU, PLEASE ANSWER ANY QUESTIONS THAT MR. PEPER MAY  
17 HAVE.

18 THE COURT: MR. PEPER.

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

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

CROSS - DINESH PATEL BY MR. PEPER

176

CROSS-EXAMINATION OF DINESH PATEL

BY MR. PEPER:

Q. MR. PATEL, MY NAME IS MARK PEPER, I REPRESENT SHAWN, WHO'S BEEN CHARGED WITH VARIOUS CRIMES TODAY. I KNOW THIS WAS A GRUESOME SIGHT WHEN YOU FIRST WALKED IN, AND I APPRECIATE YOU BEING HERE. IN YOUR RECORDS, I ASSUME YOU KEEP RECORDS OF WHO ALL STAYS AT YOUR HOTEL ON A DAILY BASIS, CORRECT?

A. YES.

Q. THERE WAS NEVER A ROOM RENTED BY SHAWN PHILLIPS THE NIGHT OF THIS ALTERCATION, CORRECT?

A. SHAWN PHILLIPS, NO, I'M NOT SO SURE ABOUT THE NAME OF THE PERSON BECAUSE - - -

COURT REPORTER: I'M NOT SO SURE ABOUT WHAT?

A. ABOUT THE NAME ON THE REGISTRATION. THAT WILL BE EXPLORED BY ANOTHER WITNESS.

Q. OKAY. YOU DID SEE MR. VARGO, RIGHT?

A. YES, LAYING IN THE BED, YES.

Q. AND I BELIEVE YOU INDICATE DIN YOUR STATEMENT THAT YOU SAW HIM PULL UP WITH A SMALL HISPANIC FEMALE?

A. NO, BECAUSE I DID NOT CHECK HIM IN. I ONLY SAW HIM AT THE CHECK OUT TIME.

Q. OKAY. SO, YOU DID NOT - - -

A. I DID NOT SEE HIM PRIOR TO THAT.

CROSS - DINESH PATEL BY MR. PEPER

177

1 Q. I APOLOGIZE.

2 A. BECAUSE HE CHECKED IN, WHEN I FOUND OUT THAT HE  
3 HAD CHECKED IN EARLIER ON THE PREVIOUS AFTERNOON.

4 Q. SO, THE ONLY TIME YOU SAW HIM - - -

5 A. EXACTLY.

6 Q. --- WAS AFTER HE HAD BEEN MURDERED?

7 A. THAT'S RIGHT.

8 Q. ALRIGHT. YOU DIDN'T WITNESS THE MURDER, DID YOU?

9 A. NO, I DID NOT.

10 Q. ALRIGHT. WERE YOU EVEN THERE THAT NIGHT?

11 A. NO, I LIVE IN MOUNT PLEASANT, I LEAVE ABOUT THREE  
12 O'CLOCK AND DON'T COME IN UNTIL IN THE MORNING AT  
13 NINE O'CLOCK.

14 MR. PEPER: OKAY. THANK YOU VERY  
15 MUCH.

16 THE COURT: REDIRECT?

17 SOLICITOR RUTLEDGE DURANT: NOTHING  
18 FURTHER FROM THIS WITNESS, JUDGE.

19 THE COURT: THANK YOU, SIR. THANK  
20 YOU FOR COMING, YOU MAY BE EXCUSED.

21 SOLICITOR RUTLEDGE DURANT: THE  
22 STATE CALLS NITESH PATEL.

23 CLERK: PLEASES PLACE YOUR LEFT HAND  
24 ON THE BIBLE AND RAISE YOUR RIGHT HAND.

25 (Whereupon, Nitesh Patel

CROSS - DINESH PATEL BY MR. PEPER

178

1 is duly sworn.)

2 CLERK: PLEASE BE SEATED. AND IF  
3 YOU WILL, STATE YOUR FULL NAME AND SPELL YOUR FIRST AND  
4 LAST.

5 THE WITNESS: NITESH PATEL, N-I-T-E-  
6 S-H, PATEL, P-A-T-E-L.

7 (NOTE: Blank lines on this page do not indicate any  
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10 required by the Court. See next ensuing page for  
11 sequential continuation of record.)



DIRECT - NITESH PATEL BY SOL. RUTLEDGE DURANT

179

DIRECT EXAMINATION OF NITESH PATEL

BY SOLICITOR RUTLEDGE DURANT:

Q. GOOD AFTERNOON.

A. HOW ARE YOU DOING?

Q. GOOD. HOW OLD ARE YOU, MR. PATEL?

A. THIRTY-ONE.

Q. AND WHO IS YOUR FATHER?

A. DINESH PATEL.

Q. THE MAN WHO JUST TESTIFIED?

A. UH HUH.

Q. AND HE OWNS THE BUDGET INN?

A. CORRECT.

Q. AND THAT'S LOCATED AT SIXTY-ONE FIFTY-FIVE FAIN  
STREET?

A. YES.

Q. AND WHERE ARE YOU EMPLOYED?

A. AT THE BUDGET INN.

Q. WHAT POSITION DO YOU HOLD?

A. ASSISTANT MANAGER.

Q. WERE YOU WORKING AT THE BUDGET INN ON NOVEMBER THE  
SEVENTH, TWO THOUSAND AND SIX?

A. I WAS.

Q. DID YOU HAVE THE OCCASION TO RENT ROOM TWO FORTY-  
FOUR TO SOMEONE ON THAT DATE, NOVEMBER THE  
SEVENTH?

DIRECT - NITESH PATEL BY SOL. RUTLEDGE DURANT

180

1 A. I DID.

2 Q. WHO WAS THAT PERSON?

3 A. ROBERT VARGO.

4 Q. DOES THE BUDGET INN KEEP RECORDS OF THE GUESTS WHO  
5 STAY AT THE HOTEL?

6 A. WE DO.

7 Q. AS ASSISTANT MANAGER OF THE BUDGET INN ARE YOU THE  
8 CUSTODIAN OF THE RECORD OF THE HOTEL?

9 A. YES.

10 Q. HOW ARE THE RECORDS KEPT?

11 A. THEY ARE FOLIOS, THEY KEEP THEM DAILY AND THEN WE  
12 JUST THROW THEM AWAY.

13 Q. WHO ENTERS THE DATA?

14 A. THE CUSTOMER ENTERS IT, WE CHECK IT WITH THE  
15 DRIVER'S LICENSE OR ANY KIND OF, FORM OF  
16 IDENTIFICATION.

17 Q. AND WHEN IS THIS DATA ENTERED INTO THE SYSTEM?

18 A. IT'S RIGHT THEN.

19 Q. WHEN THE GUESTS CHECK IN?

20 A. CORRECT, RIGHT THEN.

21 Q. IS THE DATA ENTERED IN THE NORMAL COURSE OF  
22 BUSINESS?

23 A. UH HUH, YES.

24 Q. AND IS THE DATA KEPT FOR EVERY GUEST?

25 A. EVERY GUEST.

DIRECT - NITESH PATEL BY SOL. RUTLEDGE DURANT

181

1 Q. SO, YOU WOULD HAVE THE RECORDS FROM NOVEMBER THE  
2 SEVENTH, TWO THOUSAND AND SIX?

3 A. YES.

4 Q. I'M SHOWING YOU WHAT THE STATE HAS LABELED STATE'S  
5 EXHIBIT EIGHT FOR IDENTIFICATION, - - -

6 A. UH HUH.

7 Q. --- AND ASK YOU IF YOU RECOGNIZE IT?

8 A. I DO.

9 Q. HOW DO YOU RECOGNIZE IT?

10 A. IT'S HIS FOLIO.

11 Q. AND WHO'S IS THAT?

12 A. ROBERT VARGO'S REGISTRATION.

13 Q. AND DOES IT INDICATE THE DATE ON THAT FORM?

14 A. IT DOES.

15 Q. AND WHAT IS IT?

16 A. ELEVEN/SEVEN, NOVEMBER SEVENTH.

17 Q. AND DOES MR. VARGO'S NAME APPEAR ON IT?

18 A. UH HUH, YES.

19 Q. DID YOU PERSONALLY CHECK MR. VARGO INTO THE HOTEL?

20 A. I DID.

21 Q. AROUND WHAT TIME DID HE CHECK IN?

22 A. I WOULD SAY RIGHT AROUND LUNCH TIME, TWELVE,  
23 BETWEEN TWELVE AND ONE.

24 Q. DO YOU RECALL WHETHER OR NOT HE ARRIVED WITH  
25 SOMEONE ELSE?

DIRECT - NITESH PATEL BY SOL. RUTLEDGE DURANT

182

- 1 A. HE CAME IN WITH A FEMALE IN A RED SMALL SUV.
- 2 Q. AND WHERE WAS THIS FEMALE IN RELATION TO WHERE MR.
- 3 VARGO WAS?
- 4 A. SHE WAS IN THE CAR BEHIND THE OFFICE.
- 5 Q. DID SHE EVER COME INTO THE OFFICE?
- 6 A. NO.
- 7 Q. HOW DID MR. VARGO PAY FOR ROOM TWO FORTY-FOUR?
- 8 A. CASH.
- 9 Q. DID YOU SEE WHERE MR. VARGO WENT AFTER HE CHECKED
- 10 IN?
- 11 A. HE WENT DIRECTLY TO THE ROOM, BUT I CAN'T SEE THE
- 12 ROOM FROM WHERE I'M SITUATED.
- 13 SOLICITOR RUTLEDGE DURANT: YOUR
- 14 HONOR, PERMISSION FOR THE WITNESS TO STEP DOWN?
- 15 THE COURT: YES, SIR.
- 16 Q. MR. PATEL, THIS IS STATE'S EXHIBIT SIX, DO YOU
- 17 RECOGNIZE THIS?
- 18 A. I DO.
- 19 Q. AND IF YOU WOULD, -- WHAT IS IT, FIRST OF ALL?
- 20 A. THE BUDGET INN.
- 21 Q. AND IF YOU WOULD, WOULD YOU PLEASE SHOW THE JURY
- 22 WHERE THE MAIN OFFICE IS AT THE BUDGET INN?
- 23 A. IT'S RIGHT HERE.
- 24 Q. AND WOULD YOU SHOW THE JURY WHERE THE VEHICLE WAS
- 25 DRIVEN, THAT MR. VARGO WAS DRIVEN TO THE BUDGET

DIRECT - NITESH PATEL BY SOL. RUTLEDGE DURANT

183

1 INN?

2 A. THEY WERE PARKED RIGHT HERE, ABOUT HALF WAY DOWN.

3 Q. AND WHERE IS THE FRONT OF THE BUDGET INN?

4 A. IT'S ON THIS SIDE.

5 Q. AND WHERE IS FAIN STREET?

6 A. FAIN STREET IS RIGHT HERE.

7 Q. AND WOULD YOU SHOW THE JURY HOW MR. VARGO CAME  
8 INTO THE OFFICE?

9 A. I BELIEVE HE CAME IN HERE, SHE WAS PARKED HERE AND  
10 HE CAME IN OVER HERE, APPROXIMATELY.

11 Q. AND COULD YOU SHOW THE JURY WHERE ROOM TWO FORTY-  
12 FOUR IS?

13 A. TWO FORTY-FOUR IS RIGHT ON THE SIDE RIGHT THERE.

14 Q. AND WOULD YOU ALSO TELL THE JURY HOW MR. VARGO  
15 TRAVELED TO ROOM TWO FORTY-FOUR AFTER HE LEFT YOUR  
16 OFFICE?

17 A. HE - - -

18 COURT REPORTER: I'M SORRY.

19 THE COURT: SHE CAN'T HEAR YOU.

20 A. THERE'S A BREEZE-WAY BETWEEN THE BUILDINGS, I  
21 BELIEVE HE CUT THROUGH THERE.

22 Q. NOW, DOES THE BUDGET INN HAVE SURVEILLANCE  
23 CAMERAS?

24 A. WE DO NOT.

25 Q. DO YOU HAVE ANY CAMERAS IN THE FRONT OFFICE?

DIRECT - NITESH PATEL BY SOL. RUTLEDGE DURANT

184

1 A. WE DO, BUT I'M NOT SURE IF THEY WERE AVAILABLE  
2 THEN OR NOT.

3 Q. WHAT DOES THE VIDEO NOW SHOW?

4 A. OH, JUST THE FRONT DESK.

5 Q. JUST THE FRONT DESK?

6 A. JUST THE FRONT DESK.

7 Q. TO YOUR KNOWLEDGE IS THERE ANY OTHER SURVEILLANCE?

8 A. NO, SIR.

9 Q. OKAY. YOU CAN TAKE A SEAT.

10 SOLICITOR RUTLEDGE DURANT: THE  
11 STATE MOVES FOR THE ADMISSION OF STATE'S EIGHT AT THIS  
12 TIME.

13 MR. PEPER: NO OBJECTION, YOUR  
14 HONOR.

15 THE COURT: ADMITTED WITHOUT  
16 OBJECTION.

17 (State's Exhibit Eight  
18 marked and filed.)

19 SOLICITOR RUTLEDGE DURANT: PLEASE  
20 ANSWER ANY QUESTIONS THAT MR. PEPER MAY HAVE FOR YOU.

21 A. YES, SIR.

22 SOLICITOR RUTLEDGE DURANT: THANK  
23 YOU.

24 THE COURT: MR. PEPER.

25 MR. PEPER: THANK YOU, YOUR HONOR,

DIRECT - NITESH PATEL BY SOL. RUTLEDGE DURANT

185

1 MAY IT PLEASE THE COURT.

2 (NOTE: Blank lines on this page do not indicate any  
3 part of record has been omitted. Headers on testimony  
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5 required by the Court. See next ensuing page for  
6 sequential continuation of record.)

CROSS - NITESH PATEL BY MR. PEPER

186

CROSS-EXAMINATION OF NITESH PATEL

BY MR. PEPER:

Q. MR. PATEL, I'M MARK PEPER, I REPRESENT SHAWN, AND  
I'VE GOT JUST A FEW QUESTIONS FOR YOU. YOU  
TESTIFIED EARLIER THAT YOU WERE THE CLERK ON DUTY  
ON TUESDAY, THAT BEING NOVEMBER SEVENTH OF O-SIX,  
IS THAT CORRECT?

A. CORRECT.

MR. PEPER: WHILE SHE'S MARKING THIS  
FOR IDENTIFICATION PURPOSES ONLY, PLEASE, MA'AM - - -

COURT REPORTER: LET ME - - -

MR. PEPER: THAT WOULD BE  
DEFENDANT'S TWO, MA'AM.

COURT REPORTER: YES, SIR, BUT I  
NEED TO MARK IT FOR ID.

MR. PEPER: THAT'S FINE.

Q. MR. PATEL, - - -

COURT REPORTER: SIR, JUST A MINUTE.

(Defendant's Exhibit Two,  
Budget Inn Daily Sheet,  
Defendant's Exhibit Three,  
Budget Inn Daily Sheet,  
marked for identification only.

COURT REPORTER: OKAY.

MR. PEPER: THANK YOU.



CROSS - NITESH PATEL BY MR. PEPER

187

1 Q. WERE YOU ALSO THE CLERK THE FOLLOWING DAY,  
2 WEDNESDAY, NOVEMBER THE EIGHTH?

3 A. I WAS, I WAS THERE, I PROBABLY WASN'T THE EXACT  
4 CLERK BUT I WAS THERE.

5 Q. OKAY. I GUESS WHAT I'M REALLY TRYING TO GET AT,  
6 IS THERE ANYBODY ELSE THAT COULD HAVE CHECKED  
7 PEOPLE INTO THE HOTEL ON TUESDAY OR WEDNESDAY?

8 A. OH, YES.

9 Q. WHO ELSE WOULD THOSE PEOPLE HAVE BEEN?

10 A. THERE IS AN AFTERNOON SHIFT, A NIGHT SHIFT, MY  
11 FATHER.

12 Q. OKAY. ALRIGHT, MY FOLLOW UP THEN, IS THERE ONLY  
13 ONE BOOKING PAGE?

14 A. CORRECT.

15 Q. OKAY. SO, YOU COULD HAVE TWO OR THREE PEOPLE  
16 CHECKING PEOPLE IN BUT IF SOMEBODY GETS CHECKED  
17 INTO THE BUDGET INN IT'S ON HERE?

18 A. IT'S ON THE LOG, YEAH.

19 Q. LET ME SHOW YOU WHAT'S BEEN MARKED - - -

20 COURT REPORTER: SIR?

21 MR. PEPER: YES, MA'AM?

22 COURT REPORTER: I HAVE TO MARK THEM  
23 AS YOU HAND THEM TO ME.

24 MR. PEPER: YES, MA'AM. OH, AND THEN  
25 -- I'M SORRY, I APOLOGIZE.

CROSS - NITESH PATEL BY MR. PEPER

188

1 COURT REPORTER: YES, SIR. WAS IT,  
2 LET ME SEE THAT ONE?

3 MR. PEPER: THIS IS TWO.

4 COURT REPORTER: OKAY. BUT THIS WAS  
5 FOR ID, RIGHT?

6 MR. PEPER: YES, MA'AM, THEY'RE BOTH  
7 FOR ID.

8 COURT REPORTER: OKAY. ALRIGHT, AND  
9 THIS IS TWO?

10 MR. PEPER: YES, MA'AM.

11 COURT REPORTER: OKAY.

12 MR. PEPER: THANK YOU.

13 Q. LET ME SHOW YOU WHAT'S BEEN MARKED AS DEFENDANT'S  
14 EXHIBIT TWO. DO YOU RECOGNIZE THAT DOCUMENT?

15 A. I DO.

16 Q. AND WHAT IS IT?

17 A. THE DAILY SHEET.

18 Q. AND THAT WOULD BE TUESDAY, NOVEMBER SEVENTH?

19 A. THAT'S RIGHT.

20 Q. DO YOU SHOW ANYBODY CHECKING INTO THE BUDGET INN  
21 BY THE NAME OF ANGELA AGAGAS? MY QUESTION IS, I'M  
22 SORRY, ACCORDING TO YOUR DOCUMENT, DEFENDANT'S  
23 EXHIBIT TWO FOR IDENTIFICATION PURPOSES, IS ONE  
24 THIRTY-THREE OCCUPIED BY BARNES?

25 A. IT IS.

CROSS - NITESH PATEL BY MR. PEPPER

189

1 Q. I SHOW YOU WHAT'S BEEN MARKED AS EXHIBIT -- AND  
2 FOR THE RECORD, THIS WOULD BE THE SAME DAY THAT  
3 VARGO WAS IN TWO FORTY-FOUR, CORRECT?

4 A. NO.

5 Q. CAN YOU CLARIFY?

6 A. THIS IS ELEVEN/ONE/O-SIX.

7 Q. AND WHAT'S THE DAY OF THE WEEK NEXT TO IT?

8 A. TODAY IS TUESDAY.

9 Q. OKAY. SO, WHAT'S, TUESDAY WAS NOVEMBER SEVENTH OF  
10 O-SIX, CORRECT?

11 A. UH HUH.

12 Q. SO, THAT COULDN'T HAVE BEEN NOVEMBER FIRST, O-SIX,  
13 A TUESDAY, SO ISN'T IT LIKELY THAT IT WAS SUPPOSED  
14 TO BE NOVEMBER SEVENTH, NOT NOVEMBER ONE, AND  
15 MAYBE JUST GOT CUT OFF BY THE COPIER?

16 A. MR. VARGO'S NAME WOULD BE IN TWO FORTY-FOUR.

17 Q. OKAY. MY QUESTION IS, THERE'S NO SUCH THING AS  
18 NOVEMBER FIRST, TUESDAY, IS THERE?

19 A. I BELIEVE NOT.

20 Q. OKAY. SO, IT HAS TO BE NOVEMBER SEVENTH, CORRECT?

21 A. OKAY.

22 Q. AND MS. BARNES IS IN ROOM - - -

23 A. ONE THIRTY-THREE.

24 Q. CORRECT. ALRIGHT. DEFENDANT'S EXHIBIT TWO FOR ID  
25 PURPOSES, WHAT DAY OF THE WEEK AND DATE IS THAT?

CROSS - NITESH PATEL BY MR. PEPPER

190

1 A. IT'S THE EIGHTH.

2 Q. WHICH WAS THE FOLLOWING DAY?

3 A. UH HUH.

4 Q. WHO'S IN ROOM TWO FORTY-FOUR WHERE VARGO WAS IN  
5 THE DAY BEFORE?

6 A. NOBODY.

7 Q. AND WHAT DO YOU HAVE WRITTEN IN THERE?

8 A. DIRTY.

9 Q. DIRTY. OKAY. YOU TESTIFIED ON DIRECT, MR. PATEL,  
10 THAT THE DEFENDANT MOTIONED TO WHAT YOU THOUGHT  
11 WAS A SMALL BLACK HISPANIC FEMALE?

12 A. I WAS, I MEAN, NOT BLACK, BUT SHE LOOKED MORE  
13 WHITE THAN ANYTHING, I MEAN, IT WAS A LIGHT  
14 SKINNED FEMALE.

15 Q. OKAY. DID YOU GIVE A STATEMENT TO DETECTIVE --  
16 DID YOU GIVE A STATEMENT TO A DETECTIVE ON OR  
17 ABOUT NOVEMBER EIGHTH, A DAY LATER?

18 A. I DID.

19 Q. DO YOU REMEMBER GIVING ONE?

20 A. UH HUH.

21 Q. ALRIGHT. DO YOU REMEMBER PUTTING IN YOUR  
22 STATEMENT THAT HE MOTIONED TO WHAT LOOKED TO BE A  
23 SMALL HISPANIC FEMALE DRIVING A RED SMALL SIZED  
24 SUV?

25 A. CORRECT.

CROSS - NITESH PATEL BY MR. PEPER

191

1 Q. OKAY. YOU DON'T KNOW HER NAME, THOUGH, BY ANY  
2 CHANCE, DO YOU?

3 A. I DO NOT.

4 Q. DID SHE EVER COME INSIDE OR ANYTHING?

5 A. NOT AT ALL.

6 Q. OKAY. BUT SHE WAS CLEARLY WITH MR. VARGO?

7 A. YES.

8 Q. OKAY. ONE MORE QUESTION, YOU'VE NEVER SEEN THIS  
9 DEFENDANT IN YOUR LIFE, HAVE YOU?

10 A. I DON'T THINK SO.

11 MR. PEPER: ALRIGHT. NO FURTHER  
12 QUESTIONS, YOUR HONOR.

13 THE COURT: REDIRECT?

14 SOLICITOR RUTLEDGE DURANT: NO  
15 FURTHER QUESTIONS, JUDGE.

16 THE COURT: THANK YOU, SIR, YOU MAY  
17 STEP DOWN, YOU MAY BE EXCUSED.

18 NEXT WITNESS, PLEASE.

19 SOLICITOR RUTLEDGE DURANT: THE  
20 STATE CALLS AL HALLMAN.

21 CLERK: MR. HALLMAN, PLACE YOUR LEFT  
22 HAND ON THE BIBLE AND RAISE YOUR RIGHT HAND, PLEASE,  
23 SIR.

24 (Whereupon, Al Hallman  
25 is duly sworn.)

CROSS - NITESH PATEL BY MR. PEPER

192

1 CLERK: PLEASE HAVE A SEAT AND STATE  
2 YOUR FULL NAME FOR THE RECORD AND SPELL YOUR LAST NAME,  
3 SIR.

4 THE WITNESS: AL HALLMAN, H-A-L-L-M-  
5 A-N.

6 THE COURT: ALRIGHT, COUNSELOR.

7 (NOTE: Blank lines on this page do not indicate any  
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DIRECT - AL HALLMAN BY SOL. RUTLEDGE DURANT

193

DIRECT EXAMINATION OF AL HALLMAN

BY SOLICITOR RUTLEDGE DURANT:

Q. GOOD AFTERNOON.

A. HI.

Q. MR. HALLMAN, WHERE ARE YOU EMPLOYED?

A. THE CITY OF NORTH CHARLESTON POLICE DEPARTMENT.

Q. AND HOW LONG HAVE YOU BEEN WITH NORTH CHARLESTON  
POLICE DEPARTMENT?

A. ALMOST TWENTY-ONE YEARS.

Q. WHAT ARE YOU CURRENT DUTIES?

A. I AM THE FORENSIC INVESTIGATION SUPERVISOR.

Q. HOW LONG HAVE YOU BEEN THE FORENSIC INVESTIGATION  
SUPERVISOR?

A. I'VE BEEN THE SUPERVISOR FOR ABOUT FOUR AND A HALF  
TO FIVE YEARS, I'VE BEEN IN FORENSIC  
INVESTIGATIONS UNIT FOR ALMOST FIFTEEN YEARS.

Q. DID YOU HAVE AN OCCASION TO BE DISPATCHED TO ROOM  
TWO FORTY-FOUR AT THE BUDGET INN, SIX ONE FIVE  
FIVE FAIN STREET, ON NOVEMBER THE EIGHTH, TWO  
THOUSAND SIX?

A. YES, I DID.

Q. IN REFERENCE TO WHAT?

A. IN REFERENCE TO A POSSIBLE HOMICIDE.

Q. WHAT TIME DID YOU ARRIVE?

A. I WAS DISPATCHED THERE AT APPROXIMATELY

DIRECT - AL HALLMAN BY SOL. RUTLEDGE DURANT

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1           ELEVEN:FORTY-FIVE THAT AFTERNOON, AND I BELIEVE I  
2           ARRIVED A SHORT TIME LATER, APPROXIMATELY TEN OR  
3           FIFTEEN MINUTES LATER.

4           Q.    AND WHAT DID YOU OBSERVE UPON YOUR ARRIVAL?

5           A.    THE SCENE ITSELF WAS ON THE SECOND FLOOR OF THE  
6           HOTEL ROOMS, IN ROOM TWO FORTY-FOUR.  WHEN I GOT  
7           THERE THE SCENE HAD BEEN SECURED AND THERE WERE  
8           INVESTIGATORS AND OTHER OFFICERS ON THE SCENE.  I  
9           WAS GUIDED TO THAT ROOM, TO ROOM TWO FORTY-FOUR  
10          AND WHEN I GOT IN THERE I STEPPED INSIDE THE  
11          DOORWAY AND I SAW A WHITE MALE LAYING ON THE BED  
12          ON HIS BACK, FACE UP, WITH ONE OR TWO PILLOWS OVER  
13          HIS FACE.  ON CLOSER EXAMINATION OF THE PILLOWS  
14          THERE APPEARED TO BE A SINGLE GUN SHOT IN THROUGH  
15          THE PILLOW ITSELF, A CONTACT GUN SHOT.

16          Q.    WERE YOU THE FIRST CRIME SCENE TECHNICIAN TO  
17          ARRIVE?

18          A.    YES, I WAS.  INVESTIGATOR WYANT, CORPORAL WYANT  
19          WHO WORKS FOR ME RESPONDED AS WELL, HE ARRIVED A  
20          SHORT TIME AFTER I DID.

21          Q.    WHAT DID YOU DO AT THE SCENE?

22          A.    I WAITED BASICALLY FOR CORPORAL WYANT TO GET THERE  
23          BECAUSE CORPORAL WYANT WAS GOING TO BE THE LEAD ON  
24          THIS CASE, AND UPON HIS ARRIVAL I BEGAN  
25          PHOTOGRAPHING THE INTERIOR OF THE MOTEL ROOM, AND



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1 CORPORAL WYANT BEGAN DOCUMENTING CERTAIN ITEMS OF  
2 EVIDENCE WITHIN THE ROOM. HE THEN TOOK OVER THE  
3 PHOTOGRAPHING OF THE SCENE AND OF THE VICTIM AND I  
4 BEGAN PROCESSING SEVERAL ITEMS IN THE ROOM FOR  
5 LATENT FINGERPRINTS.

6 Q. WHAT AREAS DID YOU PROCESS FOR PRINTS?

7 A. I PROCESSED SEVERAL BEER BOTTLES, AN ASH TRAY I  
8 THINK IT WAS, THE INSIDE AND THE OUTSIDE OF THE  
9 FRONT DOOR TO THE ROOM ITSELF, AND THE, SEVERAL  
10 AREAS INSIDE THE BATHROOM, THE TOILET, THE TOILET  
11 LID, THE SINK AROUND THE VANITY, SEVERAL AREAS ON  
12 THAT AREA.

13 Q. ARE YOU LATENT PRINT EXAMINER?

14 A. YES, I AM.

15 Q. WHAT'S YOUR TRAINING IN LATENT PRINT EXAMINATION?

16 A. I HAVE ATTENDED NUMEROUS SEMINARS AND ADVANCED  
17 TRAINING CLASSES AROUND THE COUNTRY DEALING WITH  
18 LATENT PRINT COMPARISONS, LATENT PRINT  
19 DEVELOPMENT, EVIDENCE PROCESSING, FRICTION RIDGE  
20 COMPARISON, AND I HAVE A DIPLOMA THROUGH THE  
21 AMERICAN INSTITUTE OF APPLIED SCIENCE IN THE AREA  
22 OF FORENSIC SCIENCES.

23 Q. AND WHAT IS YOUR EXPERIENCE IN LATENT PRINTING  
24 TECHNICIAN?

25 A. I'VE BEEN LOOKING AT FINGERPRINTS FOR ABOUT

DIRECT - AL HALLMAN BY SOL. RUTLEDGE DURANT

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1 SIXTEEN, SIXTEEN AND A HALF YEARS NOW.

2 Q. ARE YOU A MEMBER OF ANY ORGANIZATIONS OR  
3 ASSOCIATIONS OF LATENT PRINT TECHNICIANS?

4 A. YES, I AM, I AM A MEMBER OF THE INTERNAL,  
5 INTERNATIONAL ASSOCIATION FOR IDENTIFICATION,  
6 WHICH IS AN ASSOCIATION THAT PRETTY MUCH PRIMARILY  
7 CENTERS AROUND LATENT PRINT EXAMINERS.

8 Q. HAVE YOU PREVIOUSLY QUALIFIED IN COURT AS AN  
9 EXPERT?

10 A. YES, SIR, I HAVE.

11 Q. APPROXIMATELY HOW MANY TIMES?

12 A. I COULDN'T TELL YOU, UPWARDS OF FIFTY OR BETTER.

13 SOLICITOR RUTLEDGE DURANT: YOUR  
14 HONOR, AT THIS TIME THE STATE MOVES TO HAVE OFFICER  
15 HALLMAN QUALIFIED AS AN EXPERT IN THE AREA OF FINGER  
16 PRINT EXAMINATION.

17 MR. PEPPER: BY ALL MEANS, YOUR  
18 HONOR.

19 THE COURT: I FIND HIM QUALIFIED AS  
20 AN EXPERT IN THE FIELD OF FINGER PRINT IDENTIFICATION.

21 LADIES AND GENTLEMEN, LET ME EXPLAIN  
22 TO YOU WHAT THAT MEANS. ORDINARILY A WITNESS CANNOT  
23 GIVE YOU AN OPINION. ORDINARILY A WITNESS CAN ONLY TELL  
24 YOU WHAT THEY KNOW OF THEIR OWN FIRST HAND KNOWLEDGE AND  
25 EXPERIENCE. BUT CERTAIN PEOPLE, BECAUSE OF THEIR

DIRECT - AL HALLMAN BY SOL. RUTLEDGE DURANT

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1 BACKGROUND AND KNOWLEDGE AND EXPERIENCE THEY CAN BE  
2 QUALIFIED TO GIVE YOU AN OPINION IN THAT AREA OF  
3 EXPERTISE, AND WE JUST CALL THOSE PEOPLE EXPERT  
4 WITNESSES. YOU JUDGE THE CREDIBILITY OF AN EXPERT  
5 WITNESS THE SAME WAY YOU DO THE CREDIBILITY OF ANY OTHER  
6 WITNESS.

7 ALRIGHT, SIR.

8 Q. DID YOU EXAMINE LATENT LIFTS OBTAINED BY  
9 INVESTIGATOR WYANT AND YOURSELF?

10 A. YES, SIR, I SURE DID.

11 Q. WERE YOU ABLE TO IDENTIFY ANY OF THE LATENTS?

12 A. YES, I IDENTIFIED -- INITIALLY, MY FIRST  
13 EXAMINATIONS CONSISTED OF COMPARISONS OF THE  
14 FINGERPRINTS FOR THE VICTIM, MR. VARGO, AND ONE  
15 CECIL GREEN AND A MR. JOHN DECKER, THOSE PRINTS  
16 THAT I OBTAINED THROUGH MY FILES. I ALSO ENTERED  
17 SEVERAL PRINTS INTO MY FINGERPRINT COMPUTER AND  
18 IDENTIFIED ONE ADDITIONAL PERSON AS THAT BEING AN  
19 ADASHA TERNACE MAPP. ONCE THAT WAS, ONCE MS. MAPP  
20 WAS IDENTIFIED I DID SIDE BY SIDE COMPARISONS TO  
21 EACH OF THE LATENT PRINTS THAT I HAD IN THIS CASE  
22 TO HER AND TO MR. GREEN AND TO MR. DECKER AND TO  
23 MR. VARGO, AND AT THAT TIME I IDENTIFIED THREE  
24 PRINTS TO THE VICTIM, MR. VARGO, AND TWO PRINTS TO  
25 ADASHA MAPP. ON JANUARY -- LET ME SEE IF I'VE GOT

DIRECT - AL HALLMAN BY SOL. RUTLEDGE DURANT

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1           THESE IN THE RIGHT ORDER. YES, ON JANUARY FIRST  
2           OF TWO THOUSAND AND EIGHT I CONDUCTED ADDITIONAL  
3           COMPARISONS AFTER RECEIVING INFORMATION OF OTHER  
4           POSSIBLE PEOPLE INVOLVED IN THIS CASE, ONE BEING  
5           SANDRA BARNES, ONE BEING A SHAWN PHILLIPS, AND ONE  
6           BEING ALANA NIESEN. COMPARISONS WERE THEN  
7           CONDUCTED TO THOSE THREE INDIVIDUALS, AND NO  
8           FURTHER IDENTIFICATIONS WERE MADE TO THOSE THREE.  
9           HOWEVER, I DID IDENTIFY ONE ADDITIONAL PRINT TO  
10          THE VICTIM, MR. VARGO. THAT PRINT WAS ON A BOTTLE  
11          OF BABY OIL THAT WAS FOUND IN THE ROOM ON THE  
12          NIGHT STAND. AND ON FEBRUARY TWENTY-EIGHTH OF TWO  
13          THOUSAND AND EIGHT, AGAIN I CONDUCTED ADDITIONAL  
14          COMPARISONS TO ANOTHER PERSON BY THE NAME OF  
15          LENNIE MICKEY, AND AGAIN, NO ADDITIONAL  
16          IDENTIFICATIONS WERE EFFECTED AT THAT TIME.

17          Q. SO, YOU MADE NO IDENTIFICATIONS TO ANY OF THE  
18          PERSONS OR DEFENDANTS INVOLVED IN THIS CASE, IS  
19          THAT CORRECT?

20          A. NO, THE ONLY IDENTIFICATION WERE TO THE VICTIM AND  
21          TO ADASHA MAPP.

22          Q. AS A LATENT PRINT EXAMINER CAN YOU TELL HOW LONG  
23          AGO A PRINT WAS LEFT?

24          A. IT'S IMPOSSIBLE TO PUT A TIME STAMP ON A LATENT  
25          PRINT. THERE ARE, THERE ARE NUMEROUS THEORIES

DIRECT - AL HALLMAN BY SOL. RUTLEDGE DURANT

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1            THAT CIRCULATE THROUGHOUT THIS PARTICULAR AREA OF  
2            SCIENCE, AND SOME BELIEVE THAT A LATENT PRINT  
3            WOULD APPEAR VERY, VERY DARK AND VERY, VERY CRISP  
4            AND CLEAR, AND THAT'S AN INDICATION THAT THAT  
5            PRINT WAS JUST PUT THERE OR VERY, VERY RECENTLY  
6            PUT THERE, WHEREAS, A PRINT THAT WAS LEFT WEEKS  
7            AGO OR MONTHS AGO, OR WHATEVER, WOULD APPEAR, ONCE  
8            IT'S PROCESSED WOULD APPEAR VERY, VERY LIGHT AND  
9            VERY, VERY DISTORTED. THAT AGAIN IS A THEORY, IT  
10           HAS NOT BEEN PROVEN, BUT IT HAS BEEN NOTICED IN MY  
11           FIELD OF WORK ON NUMEROUS OCCASIONS.

12           Q.    ARE SOME SURFACES MORE CONDUCTIVE TO LEAVING LATENT  
13           FINGERPRINTS THAN OTHERS?

14           A.    ABSOLUTELY.    THE SURFACES, AS A FINGERPRINT  
15           EXAMINER AND A CRIME SCENE INVESTIGATOR, WHEN WE  
16           GO INTO A CRIME SCENE WE LOOK FIRST OF ALL FOR THE  
17           AREAS THAT WE BELIEVE WERE TOUCHED OR ITEMS THAT  
18           WERE HANDLED BY OUR SUSPECTS. THEN WE DETERMINE  
19           THE SURFACE OF THAT PARTICULAR LOCATION OR THAT  
20           PARTICULAR ITEM, WHICH WILL THEN, IN TURN,  
21           DETERMINE HOW WE PROCESS IT FOR A LATENT  
22           FINGERPRINT. GLASS, MIRRORS, SMOOTH TOP DESKS,  
23           THINGS OF THAT NATURE ARE LIKE OUR CANDY, I MEAN,  
24           IT'S VERY, VERY EASY TO GET GOOD, READABLE, CRISP  
25           LATENT PRINTS OFF OF THOSE SURFACES. AREAS THAT

DIRECT - AL HALLMAN BY SOL. RUTLEDGE DURANT

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1 ARE CORRUGATED LIKE THE SURFACE OF THIS DESK IN  
2 FRONT OF ME, WOOD, GRAINY WOOD, THOSE TYPES OF  
3 SURFACES ARE VERY, VERY HARD TO DEVELOP  
4 IDENTIFIABLE LATENT PRINTS ON.

5 Q. IS IT POSSIBLE FOR SOMEBODY TO A SURFACE AND FOR  
6 THEM NOT TO LEAVE A FINGERPRINT?

7 A. ABSOLUTELY. JUST BECAUSE SOMEONE, OR JUST BECAUSE  
8 THE FINGERPRINTS OF SOMEONE ARE NOT FOUND AT A  
9 SCENE DEFINITELY DOES NOT MEAN THAT THEY WERE OR  
10 WERE NOT THERE. AND AN EXAMPLE OF THAT WOULD BE  
11 THAT IF YOU WERE TO BRING A CRIME SCENE  
12 INVESTIGATOR IN HERE RIGHT NOW AND HAD THEM  
13 PROCESS THIS WITNESS STAND THEY WOULD NOT FIND MY  
14 FINGERPRINTS ANYWHERE BECAUSE I HAVEN'T TOUCHED  
15 ANYTHING. HOWEVER, THAT DOESN'T MEAN THAT I'M NOT  
16 SITTING HERE. IT'S SIMPLY, THE TWO MAIN REASONS  
17 WHY SOMEONE'S PRINTS WOULD NOT BE FOUND AT A SCENE  
18 WOULD BE, A, THEY DIDN'T TOUCH ANYTHING; OR B,  
19 THEY MAY HAVE TOUCHED A SURFACE AND A MATERIAL HAD  
20 BEEN IN BETWEEN THEIR HANDS OR THEIR FEET AND THE  
21 SURFACE THAT WAS TOUCHED, SUCH AS A GLOVE OR A  
22 PIECE OF CLOTH, AND THAT WOULD INDICATE NOTHING, I  
23 MEAN, IT WOULD NOT LEAVE ANY LATENT IMPRESSION  
24 WHATSOEVER.

25 Q. HOW ABOUT SWEAT OR DIRT, COULD IMPACT THE ABILITY

DIRECT - AL HALLMAN BY SOL. RUTLEDGE DURANT

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1 TO LEAVE A PRINT?

2 A. SWEAT WE WANT. SWEAT REALLY ENHANCES THE ABILITY  
3 TO OBTAIN AND DEVELOP LATENT PRINTS. DIRT TENDS  
4 TO DISTORT ANY LATENT PRINT THAT MIGHT BE LEFT ON  
5 A SURFACE.

6 Q. WHAT ABOUT, WHAT ARE SOME OTHER FACTORS, OTHER  
7 REASONS WHY A PRINT MAY NOT BE LEFT BEHIND?

8 A. WEATHER IS THE BIGGEST FACTOR THAT WE COME IN  
9 CONTACT WITH. HEAT WILL ACTUALLY DIMINISH A PRINT  
10 MORE RAPIDLY THAN ANYTHING ELSE WITH THE  
11 EXCEPTION, OF COURSE, OF WIPING IT DOWN. SURFACES  
12 CAN BE WIPED, LATENT PRINTS ARE REMOVED. WATER,  
13 EXCESSIVE WATER HITTING A SURFACE THAT MAY HAVE  
14 LATENT PRINTS ON IT WILL DISTORT THOSE PRINTS TO  
15 THE EXTENT THAT THEY ARE UNIDENTIFIABLE AND  
16 UNRECOVERABLE.

17 Q. AND THE PRINTS THAT YOU IDENTIFIED YOU SAID  
18 MATCHED UP TO THE VICTIM, ROBERT VARGO, WHERE DID  
19 THEY COME FROM?

20 A. THE THREE THAT I INITIALLY IDENTIFIED CAME FROM A  
21 BUDWEISER BEER BOTTLE INSIDE THE ROOM, AND THE ONE  
22 THAT I LATER IDENTIFIED CAME FROM THE BOTTLE OF  
23 BABY OIL THAT WAS FOUND ON THE NIGHT STAND NEAR  
24 THE BED.

25 Q. AND WHAT ABOUT THE PRINTS FROM ADASHA MAPP?

DIRECT - AL HALLMAN BY SOL. RUTLEDGE DURANT

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1 A. THAT, THOSE TWO PRINTS, I IDENTIFIED TWO PRINTS  
2 FROM HER, HER RIGHT THUMB AND HER LEFT THUMB.  
3 THEY WERE BOTH FOUND ON THE TOILET TANK LID, ON  
4 THE VERY TOP OF THE LID OF THE TOILET TANK.

5 Q. AND YOU HAVE NO IDEA WHEN THESE PRINTS MAY HAVE  
6 BEEN LEFT?

7 A. OH, NO. THE PRINTS THAT CAME OFF THE TOILET TANK  
8 LID WERE DARK TO A CERTAIN DEGREE, BUT THAT BEING  
9 A MOTEL ROOM AND THE NUMBER OF PEOPLE THAT TRANSIT  
10 IN AND OUT OF THOSE ROOMS, THERE'S NO WAY I COULD  
11 TELL YOU HOW LONG THAT PRINT HAD BEEN THERE OR HOW  
12 RECENT THAT PRINT HAD BEEN PUT THERE.

13 SOLICITOR RUTLEDGE DURANT: PLEASE  
14 ANSWER ANY QUESTIONS MR. PEPER MAY HAVE FOR YOU.

15 A. CERTAINLY.

16 THE COURT: MR. PEPER.

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

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.)



CROSS - AL HALLMAN BY MR. PEPER

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CROSS-EXAMINATION OF AL HALLMAN

BY MR. PEPER:

Q. IS IT DETECTIVE OR - - -

A. IT DOESN'T MATTER, DETECTIVE, SERGEANT, IT DOESN'T MATTER.

Q. I DON'T WANT TO OFFEND YOU.

A. NONE, NO OFFENSE AT ALL, IT DOESN'T MATTER.

Q. MARK PEPER, I REPRESENT SHAWN AND I'VE JUST GOT A FEW QUESTIONS QUICK QUESTIONS FOR YOU.

A. CERTAINLY.

Q. THREE TIMES YOU WENT AND ATTEMPTED TO GET PRINTS, CORRECT?

A. NO, I, WE GOT PRINTS THE FIRST DAY. THREE TIMES, I DID THREE INDEPENDENT COMPARISONS TO THE LATENT PRINTS.

Q. YES, SIR. AND THROUGH THOSE INDEPENDENT COMPARISONS YOU ONLY CAME UP WITH, AND I'M JUST USING, HITS, I DON'T KNOW IF THAT'S THE RIGHT THING TO USE?

A. IDENTIFICATIONS.

Q. OKAY. IDENTIFICATIONS, THAT BEING ADASHA MAPP, WHOSE TWO PRINTS FOR HER FOUND ON THE TOILET LID?

A. CORRECT.

Q. AND YOU IDENTIFIED HER AS A BLACK FEMALE, DATE OF BIRTH, [REDACTED], WHO IS KNOWN,

1 CORRECT?

2 A. WELL, THE WORD, KNOWN, NEXT TO HER INDICATES THAT  
3 THE PRINTS THAT ARE LISTED AS ITEM K-TWO ARE KNOWN  
4 PRINTS BECAUSE THEY WERE OBTAINED FROM HER.

5 Q. I'VE GOT YOU.

6 A. THAT'S THE INDICATION FOR THE WORD, KNOWN.

7 Q. SO, THEY MATCHED HER KNOWN PRINTS?

8 A. NO, THEY WERE HER PRINTS. THEY WERE TAKEN FROM  
9 HER.

10 Q. NO DOUBT ABOUT IT?

11 A. NO DOUBT ABOUT IT.

12 Q. JUST LIKE THERE'S NO DOUBT ABOUT ROBERT VARGO, THE  
13 VICTIM'S PRINTS WERE ON THAT BEER BOTTLE AND ON  
14 THAT BABY OIL?

15 A. ABSOLUTELY.

16 Q. THERE IS NO DOUBT ABOUT IT THAT YOU DIDN'T FIND  
17 ANY PRINTS BELONGING TO SHAWN PHILLIPS?

18 A. NO, SIR, I DID NOT.

19 Q. YOU TESTIFIED EARLIER THAT THERE'S TWO DIFFERENT  
20 TIMES WHERE YOU MAY NOT FIND PRINTS. ONE IS, LIKE  
21 YOU SAID, WHERE YOU'RE SITTING DOWN, IT DOESN'T  
22 MEAN YOU WEREN'T NECESSARILY IN THE ROOM, BUT YOU  
23 JUST DIDN'T TOUCH ANYTHING?

24 A. CORRECT.

25 Q. THE SECOND WOULD BE IF YOU TOUCHED SOMETHING BUT

CROSS - AL HALLMAN BY MR. PEPER

205

1 YOU WERE WEARING GLOVES?

2 A. GLOVES, SOCKS, ANY MATERIAL THAT WOULD COME  
3 BETWEEN THE CONTACT OF YOUR HAND AND THE SURFACE  
4 BEING TOUCHED.

5 Q. I'M ASSUMING THERE'S A THIRD IN THAT IF YOU JUST  
6 FLAT OUT WERE NEVER THERE YOUR PRINTS WOULDN'T BE  
7 THERE, RIGHT?

8 A. WELL, THAT WOULD BE A KNOWN, YES, SIR.

9 MR. PEPER: THANK YOU.

10 THE COURT: REDIRECT?

11 SOLICITOR RUTLEDGE DURANT: NO  
12 FURTHER QUESTIONS, JUDGE.

13 THE COURT: THANK YOU, SIR. THANK  
14 YOU FOR COMING, AND YOU MAY BE EXCUSED.

15 THE WITNESS: THANK YOU, YOUR HONOR.

16 THE COURT: CALL YOUR NEXT WITNESS.

17 SOLICITOR RUTLEDGE DURANT: JUDGE,  
18 MAY WE APPROACH?

19 THE COURT: YES, SIR.

20 (Whereupon, a bench conference  
21 is had out of the hearing of the  
22 jury and the court reporter.)

23 THE COURT: ALRIGHT, LADIES AND  
24 GENTLEMEN, WE HAVE TO TAKE UP A MATTER OF LAW THAT MIGHT  
25 TAKE US A LITTLE WHILE, AND I'M JUST GOING TO HAVE TO

CROSS - AL HALLMAN BY MR. PEPER

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1 ASK YOU TO WAIT IN THE JURY ROOM. IT MIGHT BE AN HOUR,  
2 BUT IT'S A MATTER THAT WE'VE GOT TO DO, AND IT'S A  
3 MATTER THAT WE NEED TO DO NOW, I CAN'T PUT IT OFF UNTIL  
4 WE RECESS. I DON'T WANT TO SEND YOU HOME AND THEN WE  
5 WOULD HAVE TO SIT HERE FOR ANOTHER HOUR WITH NOTHING TO  
6 DO. SO, I'LL JUST HAVE TO ASK YOU TO EXCUSE YOURSELF TO  
7 THE JURY ROOM. PLEASE, WE WILL MOVE AS QUICKLY AS WE  
8 CAN, BUT IT COULD WELL BE AN HOUR BEFORE WE WILL NEED  
9 YOU BACK, SO JUST PLEASE BE PATIENT WITH US. THANK YOU  
10 VERY MUCH. PLEASE DO NOT TALK ABOUT THE CASE.

11 (Whereupon, the jury retires  
12 to the jury room and the following  
13 takes place out of the presence  
14 of the jury.)

15 THE COURT: ALRIGHT, CALL YOUR  
16 WITNESS.

17 SOLICITOR RUTLEDGE DURANT: THE  
18 STATE CALLS ALEC BROWNE.

19 CLERK: PLEASE PLACE YOUR LEFT HAND  
20 ON THE BIBLE AND RAISE YOUR RIGHT HAND.

21 (Whereupon, Alec Browne  
22 is duly sworn.)

23 CLERK: PLEASE HAVE A SEAT AND STATE  
24 YOUR FULL NAME FOR THE RECORD, PLEASE, AND SPELL YOUR  
25 LAST NAME.

1                   THE WITNESS: MY NAME IS ALEC BROWN,  
2                   LAST NAME, B-R-O-W-N-E.

3                   (NOTE: Blank lines on this page do not indicate any  
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7                   sequential continuation of record.)

DIRECT, IN CAMERA - ALEC BROWNE BY  
SOL. RUTLEDGE DURANT

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DIRECT EXAMINATION, IN CAMERA, OF ALEC BROWNE  
BY SOLICITOR RUTLEDGE DURANT:

Q. GOOD AFTERNOON, MR. BROWNE.

A. GOOD AFTERNOON.

Q. THANKS FOR COMING DOWN HERE. HOW OLD ARE YOU, MR.  
BROWNE?

A. SIXTY-ONE.

Q. AND WHAT DO YOU DO FOR A LIVING?

A. I'M A CONSTRUCTION MANAGER.

Q. AND DO YOU LIVE OUT OF THE STATE?

A. YES, I DO.

Q. DID YOU HAVE OCCASION TO BE IN CHARLESTON DURING  
THE FIRST WEEK OF NOVEMBER OF TWO THOUSAND AND  
SIX?

A. YES, I WAS STAYING AT THE IN TOWN SUITES ON THE  
SAVANNAH HIGHWAY.

Q. AND WHY WERE YOU IN CHARLESTON?

A. EXCUSE ME?

Q. WHY WERE YOU HERE?

A. I WAS JUST LOOKING AT SOME CONSTRUCTION PROJECTS  
THAT I WAS CONSIDERING DOING.

Q. COULD YOU TELL THE COURT WHAT HAPPENED THE EVENING  
OF NOVEMBER FIFTH, TWO THOUSAND AND SIX, AROUND  
EIGHT:FORTY-FIVE P.M., AT THE IN TOWN SUITES?

A. YES. I WAS LAYING IN MY BED WATCHING TELEVISION,

DIRECT, IN CAMERA - ALEC BROWNE BY  
SOL. RUTLEDGE DURANT

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1 HAD THE DOOR PROPPED OPEN, BAD IDEA. TWO BLACK  
2 MALES CAME INSIDE THE ROOM. ONE OF THEM HAD A  
3 HAND GUN. THE OLDER AND LARGER OF THE TWO, IT WAS  
4 A REVOLVER EITHER CHROME OR SATIN, NOT A SNUB  
5 NOSE, NOT AN AUTOMATIC. THEY INSTRUCTED ME TO LAY  
6 DOWN ON THE FLOOR AND I SAID I WOULDN'T DO THAT, I  
7 WOULD SIT ON THE FLOOR. AND THEY WENT THROUGH MY  
8 CLOSET FIRST AND LOOKING, PICKING CLOTHES OUT AND  
9 GOING THROUGH THE REST OF THE STUFF I HAD IN MY  
10 ROOM, SOME BOXES OF PAPERWORK, ETCETERA. AND THEY  
11 ASKED ME WHERE MY WALLET WAS, WHICH WAS INSIDE OF  
12 ONE OF THE JACKET POCKETS, AND THEY REMOVED THAT.  
13 AND I HAD A THIRTY-EIGHT SNUB NOSE COLT DETECTIVE  
14 SPECIAL IN THE TOP DRESSER DRAWER, WHICH ALSO WAS  
15 TAKEN. THEY THEN TOLD ME TO GET INSIDE THE  
16 BATHROOM, AND PILED SOME BOXES THAT I HAD THERE UP  
17 AGAINST THE DOOR. AT THAT TIME I COULDN'T HEAR  
18 VERY WELL WHAT THEY WERE SAYING, BUT ONE OF THEM  
19 WAS DISCUSSING WITH THE OTHER, I COULDN'T TELL  
20 WHETHER OR NOT THEY WERE ARGUING OR TALKING OR  
21 DISCUSSING, SHOULD WE SHOOT THIS GUY? IT WAS,  
22 SHOOT HIM, WAS WHAT I HEARD. I DON'T KNOW IF THEY  
23 SAID, SHOULD WE SHOOT HIM, OR WE SHOULD, OR  
24 EXACTLY WHAT THE DETAIL WAS. BUT THE PHRASE WAS,  
25 SHOOT HIM. THEY LEFT. I DIDN'T HEAR ANYTHING FOR

DIRECT, IN CAMERA - ALEC BROWNE BY  
SOL. RUTLEDGE DURANT

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1 TWO MINUTES SO I PUSHED THE DOOR OPEN TO SEE WHAT  
2 WAS GOING TO HAPPEN, AND THEY WERE GONE, AND THAT  
3 WAS ROUGH, I CALLED THE POLICE OBVIOUSLY, AND THAT  
4 WAS ROUGHLY THE DEAL.

5 Q. DID YOU HAVE AN OPPORTUNITY TO OBSERVE THEIR  
6 HEIGHT?

7 A. ROUGHLY, I DIDN'T HAVE A VERY GOOD VANTAGE POINT,  
8 ONE WAS ROUGHLY FIVE FOOT NINE I WOULD SAY, AND  
9 THE OTHER ABOUT FIVE FOOT ELEVEN, THE LARGER OF  
10 THE TWO.

11 Q. AND WHAT WAS YOUR VANTAGE POINT?

12 A. EXCUSE ME?

13 Q. WHAT WAS YOUR VANTAGE POINT?

14 A. WELL, THE ORIGINAL VANTAGE POINT WAS LAYING ON MY  
15 BACK WATCHING TELEVISION ON THE BED, LOOKING, OF  
16 COURSE, AT THE T.V. THE SECOND VANTAGE POINT WAS  
17 WHEN I WAS ON THE FLOOR, KIND OF IN A SEMI-  
18 KNEELING POSITION, SLIDING DOWN ON THE FLOOR NEXT  
19 TO, ON THE OTHER SIDE OF THE BED.

20 Q. BUT YOU RECOGNIZED THAT ONE OF THESE PERSONS WAS  
21 SLIGHTLY TALLER THAN THE OTHER?

22 A. YES.

23 Q. AND AGAIN, WHAT WAS STOLEN DURING THE ROBBERY?

24 A. TWO LEATHER JACKETS, A SUIT JACKET, THE SNUB NOSE  
25 COLT DETECTIVE SPECIAL, APPROXIMATELY SEVEN



DIRECT, IN CAMERA - ALEC BROWNE BY  
SOL. RUTLEDGE DURANT

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1 HUNDRED BUCKS IN CASH, AND THAT WAS ABOUT IT.

2 Q. WAS THE GUN LOADED THAT THEY STOLE?

3 A. YES, IT WAS.

4 Q. AND DO YOU RECALL WHAT AMMUNITION YOU HAD IN THAT  
5 GUN?

6 A. TO THE BEST OF MY RECOLLECTION, IT HAD BEEN QUITE  
7 SOME TIME SINCE I HAD LOADED IT, IT HAD, I BELIEVE  
8 IT HAD THREE ROUNDS OF A ROUND CALLED STAR FIRE,  
9 AND THREE ROUNDS OF SEMI-WAD CUTTER.

10 Q. AND HOW WOULD YOU DESCRIBE THE STAR FIRE ROUNDS?

11 A. IT'S A HOLLOW POINT ROUND, I BELIEVE IT'S OUT OF  
12 CIRCULATION THESE DAYS.

13 Q. DID THE GUYS THAT CAME IN, DID THEY HAVE MASKS ON?

14 A. YES.

15 Q. SO, YOU COULDN'T IDENTIFY THEIR FACES?

16 A. I COULD NOT.

17 SOLICITOR RUTLEDGE DURANT: PLEASE  
18 ANSWER ANY QUESTIONS MR. PEPER MAY HAVE FOR YOU, THANK  
19 YOU, SIR.

20 A. SURE.

21 THE COURT: MR. PEPER.

22 MR. PEPER: THANK YOU, YOUR HONOR,  
23 MAY IT PLEASE THE COURT. I BEG THE COURT'S INDULGENCE.

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

CROSS, IN CAMERA - ALEC BROWNE BY MR. PEPER

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CROSS-EXAMINATION, IN CAMERA, OF ALEC BROWNE

BY MR. PEPER:

Q. MR. BROWNE, I'M MARK PEPER, I REPRESENT SHAWN, I APPRECIATE YOU BEING HERE TODAY. I'M SORRY FOR WHAT HAPPENED TO YOU ON ELEVEN/FIVE/O-SIX. THE TWO GENTLEMEN THAT CAME INTO YOUR ROOM WERE WEARING MASKS, CORRECT, DIDN'T YOU SAY THAT?

A. CORRECT.

Q. OKAY. AND YOU DID TELL DETECTIVE TURNER AND DETECTIVE BALUCHIO WHEN THEY CAME TO MEET WITH YOU THAT ONE WAS APPROXIMATELY SIX FOOT FOUR AND ONE WAS ABOUT FIVE FOOT TEN, RIGHT?

A. I DON'T BELIEVE SO, IS THAT ON THE POLICE REPORT?

MR. PEPER: THE COURT'S INDULGENCE.

THE COURT: YES, SIR.

MR. PEPER: MARK THIS AS A DEFENDANT'S EXHIBIT.

COURT REPORTER: ID?

MR. PEPER: YES, MA'AM, ID.

COURT REPORTER: DO YOU WANT THIS STAPLED?

MR. PEPER: THAT'S FINE.

COURT REPORTER: DEFENDANT'S THREE, ID.

CROSS, IN CAMERA - ALEC BROWNE BY MR. PEPPER

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1 (Defendant's Exhibit Four,  
2 Charleston Police Report on  
3 Alec Browne Robbery,  
4 marked for identification.

5 Q. JUST TO CLARIFY AND HELP YOU OUT HERE A SECOND,  
6 YOU JUST TESTIFIED THAT ONE WAS ROUGHLY FIVE FOOT  
7 NINE AND ONE WAS ROUGHLY FIVE FOOT ELEVEN?

8 A. THAT'S CORRECT.

9 Q. THAT'S WHAT YOU TOLD MR. DURANT, CORRECT?

10 A. YES.

11 Q. OKAY. AND YOU ALSO TOLD MR. DURANT THAT ONE WAS  
12 SLIGHTLY TALLER THAN THE OTHER ONE, CORRECT?

13 A. CORRECT.

14 Q. OKAY. NOW, MY QUESTION IS, DO YOU REMEMBER  
15 TELLING THE INVESTIGATOR THAT ONE WAS A STOCKY  
16 BUILT MAN STANDING APPROXIMATELY SIX FOOT FOUR,  
17 AND WAS SLENDER BUILT ABOUT FIVE FOOT TEN?

18 A. I DON'T BELIEVE THE SIX FOOT FOUR PERSON WAS, I  
19 WOULD NOT HAVE SAID THAT, I COULDN'T MISS A GUY  
20 THAT'S SIX FOOT FOUR, I'M SIX FOOT FOUR MYSELF.

21 Q. THAT'S NOT A LOT BIGGER, BUT THAT'S WHY I WAS  
22 CONCERNED BECAUSE THAT'S WHAT YOU TOLD THEM?

23 A. NO.

24 Q. OKAY.

25 A. THAT'S NOT ACCURATE.

CROSS, IN CAMERA - ALEC BROWNE BY MR. PEPER

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1 Q. ALRIGHT. LET ME SHOW YOU WHAT'S BEEN MARKED AS  
2 DEFENDANT'S EXHIBIT FOUR FOR IDENTIFICATION  
3 PURPOSES.

4 A. UH HUH.

5 Q. DO YOU WANT TO JUST READ THROUGH THERE AND SEE IF  
6 THAT REFRESHES YOUR MEMORY?

7 A. IT'S ACCURATE WITH THE EXCEPTION OF THE HEIGHTS.

8 Q. SO, THE INCIDENT REPORT YOU FEEL LIKE IS ACCURATE  
9 WITH THE EXCEPTION OF THE HEIGHTS?

10 A. YES. I HAVE A COPY OF THE POLICE REPORT THAT I  
11 SIGNED.

12 Q. OKAY. SO, YOU DON'T DENY - - -

13 A. IT'S NOT, IT SAYS NOTHING ABOUT ANYBODY BEING SIX  
14 FOOT FOUR.

15 Q. WELL, I'M NOT TALKING ABOUT YOU, NOW, MAYBE I'M  
16 NOT MAKING MYSELF CLEAR.

17 A. I DID NOT SAY THAT EITHER OF THE ATTACKERS WAS SIX  
18 FOOT FOUR. IT'S NOT ON THE ORIGINAL POLICE  
19 REPORT.

20 Q. WELL, HOW DID THAT GET IN THIS REPORT?

21 A. I HAVE NO IDEA.

22 Q. SO, YOU NEVER TOLD ANY DETECTIVE, EITHER TURNER OR  
23 BALUCHIO, ON NOVEMBER FIFTH THAT YOU WERE  
24 APPROACHED BY TWO BLACK MALES WEARING SKI MASKS,  
25 ONE WAS OF A STOCKY MALE STANDING APPROXIMATELY

CROSS, IN CAMERA - ALEC BROWNE BY MR. PEPER

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1 SIX FOOT FOUR, AND ONE WAS OF A SLENDER BUILT  
2 STANDING APPROXIMATELY FIVE FOOT TEN?

3 A. THE SIX FOOT FOUR IS INCORRECT.

4 Q. OKAY. THAT'S JUST, YOU NEVER SAID THAT?

5 A. NO.

6 Q. OKAY.

7 MR. PEPER: THE COURT'S INDULGENCE,  
8 YOUR HONOR.

9 Q. MR. BROWNE, I KNOW IT'S BEEN A LONG TIME, BUT DO  
10 YOU REMEMBER HOW MANY OFFICERS CAME OUT TO YOUR  
11 HOTEL ROOM THAT NIGHT, APPROXIMATELY?

12 A. I REMEMBER THREE BEING OUTSIDE AND ONE I BELIEVE  
13 INSIDE TAKING PRINTS.

14 Q. OKAY. IS IT FAIR TO SAY THAT YOU TALKED TO A  
15 PRIVATE FIRST CLASS J. ANTONIO?

16 A. I COULDN'T DETERMINE THAT ONE WAY OR THE OTHER.

17 Q. SO, I'M ASSUMING YOU DON'T REMEMBER TELLING ONE OF  
18 THE OFFICERS IN YOUR STATEMENT ELEVEN/FIVE/O-SIX,  
19 AT APPROXIMATELY TWENTY-ONE HUNDRED, TEN MINUTES  
20 LATER THAN THE FIRST POLICE REPORT, THAT YOU WERE  
21 UNABLE TO PROVIDE ANY DETAIL ON THE PHYSICAL  
22 DESCRIPTION OF THE SUBJECTS BUT WERE ABLE TO SAY  
23 THEY WERE BOTH BLACK MALES APPROXIMATELY FIVE FOOT  
24 NINE AND FIVE FOOT ELEVEN?

25 A. EXACTLY.

CROSS, IN CAMERA - ALEC BROWNE BY MR. PEPER

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1 Q. OKAY. SO, NOW WE'RE BACK TO FIVE, NINE, FIVE,  
2 ELEVEN?

3 A. UH HUH.

4 Q. SO, IN THE PREVIOUS REPORT OF TURNER AND BALUCHIO,  
5 YOU HAVE NO IDEA WHERE A SIX FOOT FOUR SLENDER AND  
6 FIVE FOOT TEN CAME FROM?

7 A. I SURE DON'T.

8 Q. OKAY. YOU ALSO TOLD ANTONIO THAT THEY WERE BOTH  
9 MEDIUM BUILD, CORRECT?

10 A. YES. THERE WAS NOTHING TO DELINEATE ONE FROM THE  
11 OTHER.

12 Q. EXACTLY.

13 A. THEY WERE, ONE WAS NOT EXTREMELY BIGGER FOR FAT,  
14 AND THE OTHER ONE LITTLE AND SKINNY.

15 Q. RIGHT.

16 A. THEY WERE JUST MEDIUM SIZED PEOPLE.

17 Q. JUST TWO MEDIUM, REGULAR OLD BLACK PEOPLE WITH  
18 MASKS ON THAT WERE ROBBING YOU?

19 A. PRETTY CLOSE.

20 Q. AND GLOVES ON?

21 A. NO.

22 Q. THEY DIDN'T HAVE GLOVES ON?

23 A. NO.

24 Q. SO. OKAY, I'M SORRY, SO, THE ONLY WAY YOU KNEW  
25 THEY WERE BLACK IS BECAUSE THEY DIDN'T HAVE GLOVES

CROSS, IN CAMERA - ALEC BROWNE BY MR. PEPER

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1 ON AND YOU WERE ABLE TO SEE THEIR HANDS?

2 A. I COULD SEE THEIR EYES, YEAH.

3 Q. HANDS AND EYES?

4 A. EXACTLY.

5 Q. OTHER THAN HANDS AND EYES, THERE IS NO OTHER WAY  
6 YOU COULD HAVE FIGURED OUT THEY WERE BLACK?

7 A. NO.

8 Q. OKAY. YOU WERE ORIGINALLY, AND CORRECT ME IF I'M  
9 WRONG, BUT I THINK I HEARD WHAT YOU TOLD MR.  
10 DURANT, YOU WERE ORIGINALLY LYING ON YOUR BACK  
11 WATCHING T.V., DOOR OPEN?

12 A. THE DOOR WAS OPEN, IT WAS PROPPED OPEN.

13 Q. LAYING ON YOUR BACK WATCHING T.V., AT LEAST?

14 A. YES.

15 Q. OKAY. AS SOON AS THEY CAME IN THEY ORDERED YOU ON  
16 THE FLOOR?

17 A. YES.

18 Q. SO, YOU IMMEDIATELY WENT FROM A LAYING DOWN  
19 POSITION TO A KNEELING POSITION ON THE FLOOR?

20 A. UH HUH.

21 Q. HEAD DOWN?

22 A. NO.

23 Q. HEAD UP?

24 A. EXACTLY.

25 Q. LOOKING AT - - -

CROSS, IN CAMERA - ALEC BROWNE BY MR. PEPER

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1 A. LOOKING AT THEM.

2 Q. OKAY. SO, YOU WERE LOOKING AND YOU'RE POSITIVE  
3 THEY WERE WEARING A MASK?

4 A. ABSOLUTELY. THE ATTEMPT WAS TO DETERMINE FOR  
5 LATER ON IF THERE WAS ANY WAY TO DO IT, TWO PEOPLE  
6 TO IDENTIFY THEM, SO OBVIOUSLY, I COULDN'T  
7 IDENTIFY THEM WITH SKI MASKS ON, BUT I COULD  
8 HOPEFULLY IDENTIFY THE GUN, WHICH IS WHAT I WAS  
9 LOOKING AT, AND TRYING TO GET A CLUE AS TO THE  
10 APPROXIMATE AGES AND BUILDS OF THESE GUYS IN CASE  
11 AT SOME FUTURE TIME I WOULD BE ABLE TO IDENTIFY  
12 THEM.

13 Q. AND I'M SURE YOU WERE SCARED, AND I KNOW IT WAS A  
14 CRAZY ATMOSPHERE, BUT IT SOUNDS TO ME THAT YOU  
15 KNEW RIGHT AWAY, THERE'S NO WAY THAT I'M GOING TO  
16 BE ABLE TO IDENTIFY THESE TWO GUYS?

17 A. IT WAS PRETTY OBVIOUS, YES.

18 Q. YEAH. AND, IN FACT, YOU WEREN'T?

19 A. PARDON ME?

20 Q. YOU WEREN'T ABLE, WERE YOU?

21 A. NO.

22 MR. PEPER: THANK YOU.

23 THE COURT: REDIRECT?

24 SOLICITOR RUTLEDGE DURANT: THANK  
25 YOU, JUDGE, BRIEFLY.



REDIRECT, IN CAMERA - ALEC BROWNE  
BY SOL. RUTLEDGE DURANT

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REDIRECT EXAMINATION, IN CAMERA, OF ALEC BROWNE  
BY SOLICITOR RUTLEDGE DURANT:

Q. MR. BROWNE, DO YOU RECALL GIVING A WRITTEN  
STATEMENT IN REGARDS TO THAT INCIDENT?

A. YES.

Q. AND I SHOW YOU - - -

SOLICITOR RUTLEDGE DURANT: LET'S  
MARK THIS ONE.

COURT REPORTER: ID?

SOLICITOR RUTLEDGE DURANT: YES,  
MA'AM.

COURT REPORTER: STATE'S NINE, ID.  
(State's Exhibit Nine,  
Statement of Alec Browne,  
marked for identification.)

SOLICITOR RUTLEDGE DURANT: THANK  
YOU, MA'AM.

Q. I SHOW YOU WHAT'S BEEN MARKED AS STATE'S NINE FOR  
IDENTIFICATION PURPOSES AND ASK YOU TO TAKE A LOOK  
AT THAT. DO YOU RECOGNIZE THAT DOCUMENT?

A. YES, I DO.

Q. AND HOW DO YOU RECOGNIZE THAT?

A. IT'S THE STATEMENT THAT I GAVE THE CHARLESTON  
POLICE DEPARTMENT.

Q. AND IN THIS STATEMENT IT SAYS YOU GAVE THIS, THIS

REDIRECT, IN CAMERA - ALEC BROWNE  
BY SOL. RUTLEDGE DURANT

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1 WAS A STATEMENT THAT YOU GAVE ON NOVEMBER THE  
2 FIFTH OF TWO THOUSAND AND SIX?

3 A. YES, SIR.

4 Q. AND IT WAS IN REGARD TO THE IN TOWN SUITES  
5 ROBBERY?

6 A. YES.

7 Q. AND I'D LIKE FOR YOU TO READ THIS PART RIGHT HERE,  
8 WHEN THE OFFICER ASKED YOU TO DESCRIBE THE  
9 SUBJECTS, WHAT DID YOU WRITE THEIR DESCRIPTION TO  
10 BE?

11 A. IT SAYS, "DESCRIBE THE SUBJECTS." QUESTION. THE  
12 ANSWER IS, "BLACK MALE, FIVE FOOT NINE, SLASH,  
13 MEDIUM BUILD, YOUNGER, NOTHING STOOD OUT ABOUT HIS  
14 CLOTHES, DIRT MASK, TWO SEPARATE ITEMS, NO  
15 GLOVES." BELOW THAT I HAVE, "BLACK MALE, FIVE  
16 FOOT ELEVEN, SLASH, MEDIUM BUILD, OLDER, DID MOST  
17 OF THE TALKING. REVOLVER NOT A SNUB NOSE, EITHER  
18 SATIN OR CHROME FINISH."

19 Q. AND AGAIN, SIR, HOW TALL ARE YOU?

20 A. I'M SIX FOOT FOUR.

21 SOLICITOR RUTLEDGE DURANT: THANK  
22 YOU.

23 MR. PEPPER: MAY IT PLEASE THE COURT,  
24 YOUR HONOR.

25 THE COURT: YES, SIR.

RECROSS, IN CAMERA - ALEC BROWNE BY MR. PEPER

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RECROSS-EXAMINATION, IN CAMERA, OF ALEC BROWNE

BY MR. PEPER:

Q. ALRIGHT, SO THIS IS THE SECOND TIME NOW. THE FIRST WAS WHEN YOU GAVE A VERBAL STATEMENT TO THE OFFICERS ON SITE, AND THE SECOND TIME THAT YOU SAID, THERE IS NO WAY I CAN IDENTIFY THESE PEOPLE, WAS IN YOUR OWN STATEMENT?

A. EXCUSE ME?

Q. IS THAT CONFUSING? LET ME REPHRASE IT. YOU TOLD THE ARRESTING OFFICERS, OR THE OFFICERS THAT RESPONDED TO THE SCENE THAT YOU DID NOT GET A GOOD LOOK AT THE GENTLEMEN, CERTAINLY NOT ENOUGH TO BE ABLE TO PICK THEM OUT OF A LINEUP?

A. THAT'S CORRECT.

Q. SO, THE SECOND TIME YOU STATED THAT SAME EXACT FACT SCENARIO WAS IN YOUR OWN WRITTEN STATEMENT?

A. UH HUH.

Q. SO, IT'S VERY OBVIOUS, AND I DON'T BLAME YOU, THEY WERE WEARING MASKS AND YOU KNOW, THERE'S JUST NO WAY YOU WERE ABLE TO GET A GOOD ENOUGH LOOK AT THESE TWO BLACK MALES, MEDIUM BUILD, FIVE ELEVEN-ISH, TO BE ABLE TO PICK THEM OUT OF A LINEUP?

A. NO.

MR. PEPER: THANK YOU.

1                    THE COURT: ALRIGHT, THANK YOU, SIR,  
2                    YOU CAN STEP DOWN. I DON'T THINK YOU CAN BE EXCUSE YET,  
3                    THOUGH.

4                    YOU NEED HIM TO STAY, DON'T YOU?

5                    SOLICITOR RUTLEDGE DURANT: WE NEED  
6                    HIM TO STAY, JUDGE.

7                    THE COURT: YES, I THOUGHT SO.

8                    ALRIGHT, CALL YOUR NEXT WITNESS.

9                    SOLICITOR RUTLEDGE DURANT: THE  
10                    STATE CALLS ANGELA AGAGAS.

11                    CLERK: MA'AM, IF YOU WOULD COME  
12                    FORWARD, PLEASE. PLACE YOUR LEFT HAND ON THE BIBLE AND  
13                    RAISE YOUR RIGHT HAND.

14                    (Whereupon, Angela Agagas  
15                    is duly sworn.)

16                    CLERK: PLEASE HAVE A SEAT, WATCH  
17                    YOUR STEP, AND PLEASE GIVE US YOUR FULL NAME AND SPELL  
18                    YOUR LAST NAME.

19                    THE WITNESS: ANGELA AGAGAS. A-G-A-G-  
20                    A-S.

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

DIRECT, IN CAMERA - ANGELA AGAGAS  
BY SOL. RUTLEDGE DURANT

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DIRECT EXAMINATION, IN CAMERA, OF ANGELA AGAGAS

BY SOLICITOR RUTLEDGE DURANT:

Q. GOOD AFTERNOON, MS. AGAGAS.

A. HELLO.

Q. HOW ARE YOU?

A. I'M GOOD.

Q. GOOD. DO YOU KNOW SHAWN PHILLIPS?

A. I DO.

Q. HOW DO YOU KNOW HIM?

A. HE WAS MY BOYFRIEND AT ONE TIME.

Q. WAS HE YOUR BOYFRIEND IN NOVEMBER OF TWO THOUSAND  
AND SIX?

A. HE WAS.

Q. IS HE IN THE COURTROOM TODAY?

A. YES.

Q. DO YOU SEE HIM?

A. YES.

Q. COULD YOU POINT HIM OUT?

A. RIGHT THERE.

Q. WERE YOU STAYING AT THE TRAVEL LODGE ON NOVEMBER  
THE SEVENTH, TWO THOUSAND AND SIX?

A. YES, SIR.

Q. WHO WAS WITH YOU IN THAT HOTEL ROOM?

A. SHAWN PHILLIPS AND LENNIE MICKEY.

Q. AND WHAT WAS GOING ON IN THIS HOTEL ROOM?

DIRECT, IN CAMERA - ANGELA AGAGAS  
BY SOL. RUTLEDGE DURANT

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1 A. WE WERE BASICALLY JUST STAYING THERE AND SOME  
2 DRINKING WAS GOING ON, AND I WAS GETTING HIGH.

3 Q. WAS THERE ANY DISCUSSION ABOUT ROBBING SOMEBODY  
4 THAT NIGHT?

5 A. THERE WAS.

6 Q. AND WHO WAS TALKING ABOUT ROBBING PEOPLE?

7 A. BASICALLY SHAWN AND LENNIE WAS TALKING ABOUT  
8 WANTING TO FIND SOMEBODY TO ROB.

9 Q. DO YOU KNOW WHETHER ANY OF THESE GUYS HAD A GUN  
10 THAT NIGHT?

11 A. YES.

12 Q. AND HOW WOULD YOU DESCRIBE THAT GUN?

13 A. IT WAS SMALL, IT WAS SHORT AND SILVER, WITH A  
14 ROUND THING ON IT.

15 Q. WITH A ROUND THING ON IT?

16 A. YES.

17 Q. AND THEY HAD IT THAT NIGHT, NOVEMBER THE SEVENTH?

18 A. THEY DID.

19 Q. DO YOU KNOW WHERE THEY GOT THAT GUN?

20 A. I DO.

21 Q. HOW DO YOU KNOW WHERE THEY GOT THAT GUN?

22 A. BECAUSE I WAS WITH THEM WHENEVER THEY GOT IT, I  
23 WAS IN THE CAR.

24 Q. WHERE WAS THAT?

25 A. WE WERE AT, WE WERE RIDING AROUND IN WEST ASHLEY,

DIRECT, IN CAMERA - ANGELA AGAGAS  
BY SOL. RUTLEDGE DURANT

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1           AND WE WENT TO THE IN TOWN SUITES ON SAVANNAH  
2           HIGHWAY, AND IT WAS ME AND SHAWN AND LENNIE AND  
3           ANOTHER GIRL. AND THEY NOTICED THAT A DOOR WAS  
4           OPEN, ONE OF THE HOTEL ROOM DOORS WAS OPEN.  
5           LENNIE AND SHAWN WENT IN AND ROBBED THE MAN AND  
6           CAME BACK.

7                           THE COURT: MA'AM, I CAN'T HEAR YOU,  
8           I'M SORRY. COULD YOU PULL THAT MICROPHONE SO THAT  
9           YOU'RE SPEAKING STRAIGHT INTO IT?

10          A.    OKAY.

11          Q.    SPEAK A LITTLE LOUDER SO THE JUDGE CAN HEAR YOU.

12          A.    I JUST, I SAID BASICALLY THAT WE WERE RIDING  
13                AROUND THAT NIGHT AND WE RODE AROUND AT THE IN  
14                TOWN SUITES ON SAVANNAH HIGHWAY, AND THEY NOTICED  
15                THAT A DOOR WAS PROPPED OPEN AT THE HOTEL, AND  
16                LENNIE AND SHAWN WENT IN TO ROB THE GUY AND THEY  
17                CAME BACK WITH SOME LEATHER JACKETS AND SOME SWEAT  
18                SHIRTS, AND THEN, THE MAN'S GUN AND HIS BOX OF  
19                BULLETS.

20          Q.    OKAY. DID YOU HEAR HIM TALKING ABOUT ROBBING THE  
21                GUY BEFORE THEY WENT IN THERE?

22          A.    YEAH. I MEAN, THEY WERE JUST LOOKING FOR SOMEBODY  
23                TO ROB THAT NIGHT, SO THEY HAPPENED TO NOTICE THAT  
24                THE DOOR WAS OPEN, SO THAT WAS AN EASY TARGET.

25          Q.    AND WHERE WERE YOU WHEN THEY WENT TO GO ROB THE

DIRECT, IN CAMERA - ANGELA AGAGAS  
BY SOL. RUTLEDGE DURANT

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1 GUY?

2 A. I WAS IN THE CAR.

3 Q. DID YOU WAIT ON THEM?

4 A. I DID.

5 Q. AND THEY CAME BACK TO THE CAR?

6 A. THEY DID.

7 Q. AND WHAT DID THEY HAVE WITH THEM WHEN THEY GOT  
8 BACK?

9 A. THEY HAD A COUPLE OF LEATHER JACKETS, A COUPLE OF  
10 SWEAT SHIRTS, AND THE GUN AND A BOX OF BULLETS.

11 Q. HAD YOU EVER SEEN THIS GUN BEFORE?

12 A. NO.

13 SOLICITOR RUTLEDGE DURANT: I BEG  
14 THE COURT'S INDULGENCE.

15 Q. WHO HAD THIS GUN WHEN THEY GOT BACK FROM IN TOWN  
16 SUITES?

17 A. LENNIE MICKEY.

18 Q. AND WHO HAD THIS GUN ON NOVEMBER THE SEVENTH AT  
19 THE TRAVEL LODGE?

20 A. LENNIE MICKEY.

21 Q. AND WHO HAD THIS GUN WHEN THEY LEFT TO GO DO THE  
22 ARMED ROBBERY AT THE BUDGET INN?

23 A. LENNIE MICKEY.

24 COURT REPORTER: ARE YOU SAYING LYN  
25 AND MICKEY?



DIRECT, IN CAMERA - ANGELA AGAGAS  
BY SOL. RUTLEDGE DURANT

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1 A. LENNIE MICKEY.

2 Q. AND WHO LEFT WITH LENNIE MICKEY TO GO TO THE  
3 BUDGET INN?

4 A. SHAWN.

5 Q. AND WHO WAS WITH LENNIE MICKEY WHEN THEY WENT TO  
6 ROB THE IN TOWN SUITES?

7 A. SHAWN.

8 Q. DO YOU KNOW WHAT KIND OF GUN THEY USED TO DO THE  
9 IN TOWN SUITES ROBBERY?

10 A. NO, SIR.

11 Q. DID THEY HAVE A GUN TO DO THE IN TOWN SUITES  
12 ROBBERY?

13 A. THEY HAD A GUN. THEY HAD A GUN, BUT I DON'T KNOW  
14 WHERE IT CAME FROM OR WHOSE IT WAS.

15 Q. DID YOU EVER SEE THAT GUN AGAIN?

16 A. NO. I NEVER SEEN THAT GUN AGAIN.

17 Q. WHEN THEY WENT TO THE IN TOWN SUITES, WHEN SHAWN  
18 AND LENNIE WENT TO THE IN TOWN SUITES WHO HAD THE  
19 GUN THAT THEY HAD BEFORE THEY GOT THE GUN OUT OF  
20 THE ROOM?

21 A. LENNIE MICKEY.

22 SOLICITOR RUTLEDGE DURANT: PLEASE  
23 ANSWER ANY QUESTIONS MR. PEPPER MAY HAVE.

24 A. OKAY.

25 SOLICITOR RUTLEDGE DURANT: THANK

DIRECT, IN CAMERA - ANGELA AGAGAS  
BY SOL. RUTLEDGE DURANT

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1 YOU.

2 THE COURT: MR. PEPER.

3 MR. PEPER: THANK YOU, YOUR HONOR,

4 MAY IT PLEASE THE COURT.

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.)

CROSS, IN CAMERA - ANGELA AGAGAS BY MR. PEPER

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CROSS-EXAMINATION, IN CAMERA, OF ANGELA AGAGAS

BY MR. PEPER:

Q. MARK PEPER, ANGELA, I THINK, YOU KNOW, I REPRESENT SHAWN. IT SOUNDS LIKE THIS LENNIE MICKEY GUY ALWAYS HAS A GUN ON HIM?

A. YES.

Q. ALRIGHT. AND SO, HE HAD THE GUN ON HIM BEFORE HE RAN INTO THE IN TOWN SUITES TO DO THE ROBBERY?

A. YES, SIR.

Q. HE HAD AT LEAST ONE GUN ON HIM, POSSIBLY TWO, WHEN HE CAME AND GOT BACK IN THE CAR, CORRECT?

A. YES, SIR.

Q. ONE OF WHICH WAS POSSIBLY USED IN A CRIME HE COMMITTED TWO DAYS LATER?

A. THAT'S CORRECT.

Q. YOU HAVE NO IDEA WHAT GUN LENNIE MICKEY USED TO MURDER ROBERT VARGO, DO YOU?

A. WELL, IF IT WAS THE GUN HE HAD AT THE TRAVEL LODGE IT WAS THE SILVER GUN THAT HE HAD THAT HE GOT FROM THE IN TOWN SUITES WITH A BOX OF BULLETS.

Q. RIGHT.

A. IF THAT WAS THE SAME ONE.

Q. IF THAT WAS THE SAME ONE?

A. YES, SIR.

Q. BUT IT COULD HAVE BEEN, I MEAN, AT LEAST ONE OTHER

1 GUN, MAYBE EVER MORE, IT CERTAINLY SOUNDS LIKE  
2 HE'S ALWAYS GOT SOME GUNS ON HIM, RIGHT?

3 A. COULD BE.

4 Q. COULD BE. YOU DON'T KNOW FOR SURE WHAT GUN WAS  
5 USED TO MURDER MR. VARGO, DO YOU?

6 A. I KNOW FOR SURE WHAT GUN LENNIE MICKEY HAD WHEN HE  
7 LEFT THE NIGHT THAT HE LEFT THE TRAVEL LODGE WHICH  
8 WAS THE SILVER GUN THAT HE HAD GOT FROM THE  
9 ROBBERY AT THE IN TOWN SUITES WITH THE LITTLE RED  
10 BOX OF BULLETS.

11 Q. I'VE GOT YOU. DID YOU EVER SEE SHAWN PHILLIPS  
12 WITH A GUN?

13 A. NO, HE DOESN'T CARRY A GUN.

14 Q. WHEN HE WAS IN THE CAR ON THE WAY TO ALLEGEDLY ROB  
15 MR., I GUESS, BROWNE OVER AT THE IN TOWN SUITES  
16 THAT MONDAY NIGHT THAT YOU'RE TALKING ABOUT, - - -

17 A. UH HUH.

18 Q. --- DID YOU EVER SEE HIM HAVE A GUN THERE?

19 A. LENNIE ALWAYS WAS THE ONE WHO LIKED TO CARRY A  
20 GUN.

21 Q. ALRIGHT. WHEN SHAWN GOT BACK IN THE CAR HE DIDN'T  
22 HAVE A GUN?

23 A. NO.

24 Q. AND YOU DON'T, YOU TESTIFIED EARLIER THAT YOU HAVE  
25 NO IDEA IF LENNIE CAME BACK IN THE CAR WITH TWO OR

CROSS, IN CAMERA - ANGELA AGAGAS BY MR. PEPER

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1 THREE OR FOUR OR YOU DON'T KNOW HOW MANY GUNS  
2 LENNIE HAD ON HIM, DO YOU?

3 A. NO, SIR.

4 Q. BUT YOU KNOW FOR A FACT HE HAD ONE ON HIM WHEN HE  
5 WENT IN?

6 A. HE HAD ONE ON HIM WHEN HE WENT IN AND WHEN HE CAME  
7 OUT HE HAD THE NEW SILVER ONE THAT HE HAD GOT FROM  
8 THERE.

9 Q. OKAY. BUT YOU DON'T KNOW IF, LIKE, HE ROBBED THE  
10 SILVER ONE AND LEFT THE OTHER ONE, DO YOU?

11 A. NO, SIR, I DON'T KNOW.

12 Q. IT'S SAFE TO ASSUME HE BROUGHT WHATEVER HE TOOK  
13 INTO THE ROBBERY BACK WITH HIM PLUS SOME MORE  
14 STUFF, RIGHT?

15 A. RIGHT.

16 MR. PEPER: THAT'S ALL I HAVE.

17 THE COURT: REDIRECT?

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

REDIRECT, IN CAMERA - ANGELA AGAGAS  
BY SOL. RUTLEDGE DURANT

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REDIRECT EXAMINATION, IN CAMERA, OF ANGELA AGAGAS

BY SOLICITOR RUTLEDGE DURANT:

Q. DID YOU EVER SEE ANY OTHER GUN AT THE TRAVEL LODGE  
THAT NIGHT?

A. NO, SIR.

Q. JUST THE ONE THEY GOT FROM THE IN TOWN SUITES?

A. JUST THE ONE THEY GOT FROM THE IN TOWN SUITES.

SOLICITOR. RUTLEDGE DURANT: THANK  
YOU.

THE COURT: RECROSS?

MR. PEPPER: NO, YOUR HONOR.

THE COURT: THANK YOU, MA'AM, YOU  
CAN STEP DOWN.

NEXT WITNESS.

SOLICITOR RUTLEDGE DURANT: THE  
STATE CALLS SUZANNE CROMER.

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

(Whereupon, Suzanne Cromer  
is duly sworn.)

CLERK: PLEASE HAVE A SEAT.

COURT REPORTER: SPELL YOUR LAST  
NAME, PLEASE?

CLERK: STATE YOUR FULL NAME AND  
SPELL YOUR LAST.

REDIRECT, IN CAMERA - ANGELA AGAGAS  
BY SOL. RUTLEDGE DURANT

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1                                    THE WITNESS:   MY NAME IS SUZANNE  
2   CROMER, C-R-O-M-E-R.

3                                    THE COURT:   THANK YOU, MA'AM.

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

DIRECT, IN CAMERA - SUZANNE CROMER  
BY SOL. RUTLEDGE DURANT

234

DIRECT EXAMINATION, IN CAMERA, OF SUZANNE CROMER  
BY SOLICITOR RUTLEDGE DURANT:

Q. GOOD AFTERNOON.

A. GOOD AFTERNOON.

Q. MS. CROMER, WHAT'S YOUR OCCUPATION?

A. I'M EMPLOYED BY THE SOUTH CAROLINA LAW ENFORCEMENT  
DIVISION AS A FIREARM AND TOOL MARK EXAMINER.

Q. AND HOW LONG HAVE YOU BEEN WITH SLED?

A. I'VE BEEN WITH SLED JUST UNDER TEN YEARS, I'VE  
BEEN IN MY CURRENT POSITION ABOUT EIGHT AND A  
HALF.

MR. PEPER: YOUR HONOR, I WOULD  
STIPULATE THAT THIS WITNESS BE QUALIFIED AS AN EXPERT  
WITNESS SIMPLY FOR PURPOSES OF THIS LYLE HEARING.

THE COURT: FINE. I FIND SHE'S SO  
QUALIFIED.

SOLICITOR RUTLEDGE DURANT: THANK  
YOU, JUDGE.

THE COURT: SHE TRAINED UNDER  
BELLOW, RIGHT?

A. YES, SIR.

THE COURT: OKAY. THAT'S GOOD  
ENOUGH.

Q. WITH REGARD TO THIS CASE, YOUR LAB NUMBER L ZERO  
SIX ONE SEVEN FOUR SIX FIVE, DID YOU HAVE THE



DIRECT, IN CAMERA - SUZANNE CROMER  
BY SOL. RUTLEDGE DURANT

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1 OCCASION TO EXAMINE SOME EVIDENCE SUBMITTED BY THE  
2 NORTH CHARLESTON POLICE DEPARTMENT?

3 A. YES, SIR, I DID.

4 Q. AND WHAT WAS SUBMITTED?

5 A. ONE FIRED BULLET.

6 SOLICITOR RUTLEDGE DURANT: LET'S  
7 MARK THIS AS A STATE'S EXHIBIT.

8 COURT REPORTER: ID?

9 SOLICITOR RUTLEDGE DURANT: ID.

10 COURT REPORTER: STATE'S TEN OR ID.

11 (State's Exhibit Ten,  
12 Evidence bag containing fired bullet,  
13 marked for identification.)

14 SOLICITOR RUTLEDGE DURANT: THANK  
15 YOU.

16 Q. I'M SHOWING YOU WHAT THE STATE HAS LABELED STATE'S  
17 EXHIBIT TEN AND ASK YOU TO LOOK AT IT, AND LET ME  
18 KNOW IF YOU RECOGNIZE IT?

19 A. YES, SIR, FIRST IT'S IN SEVERAL SEALED CONTAINERS  
20 WITH MY INITIALS AND DATE.

21 Q. AND WHAT IS IT?

22 A. IT IS A FIRED BULLET.

23 Q. AND WAS THIS WHAT WAS SUBMITTED TO YOU BY THE  
24 NORTH CHARLESTON POLICE DEPARTMENT?

25 A. YES, SIR, IT WAS.

DIRECT, IN CAMERA - SUZANNE CROMER  
BY SOL. RUTLEDGE DURANT

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1 Q. AND DID YOU EXAMINE THIS BULLET?

2 A. YES, SIR, I DID. UPON RECEIVING SOMETHING LIKE  
3 THIS I OPEN IT UP, I WEIGH IT, MEASURE IT, LOOK AT  
4 IT UNDER THE MICROSCOPE.

5 Q. AND BASED ON YOUR EXAMINATION OF THIS PROJECTILE  
6 WERE YOU ABLE TO DETERMINE THE CALIBER?

7 A. YES, SIR, I FOUND IT MOST CONSISTENT WITH THIRTY-  
8 EIGHT SPECIAL OR THREE FIFTY-SEVEN MAGNUM.

9 Q. AND WILL YOU DESCRIBE THE PHYSICAL CHARACTERISTICS  
10 OF THIS PROJECTILE?

11 A. IT'S A JACKETED HOLLOW POINT APPROXIMATELY A  
12 HUNDRED AND TWENTY-FIVE GRAINS.

13 Q. YOU'VE HEARD EARLIER TESTIMONY IN THIS CASE FROM  
14 ALEC BROWNE, WHO STATED THAT THE GUN WHICH HE SAID  
15 WAS STOLEN FROM HIM WAS LOADED WITH A STAR FIRE  
16 TYPE BULLETS. WAS THE PROJECTILE RECOVERED  
17 CONSISTENT WITH THE STAR FIRE TYPE ROUND?

18 A. THE STAR FIRE ROUND WAS MADE BY PMC AND IT WAS  
19 ONLY AVAILABLE IN THIRTY-EIGHT SPECIAL JACKETED  
20 HOLLOW POINT A HUNDRED AND TWENTY-FIVE GRAINS, SO  
21 YES, IT'S CONSISTENT WITH THAT.

22 Q. DO YOU KNOW WHETHER THEY STILL MAKE THAT ROUND?

23 A. CURRENTLY I DON'T BELIEVE THEY DO. IT'S A WHILE  
24 THEY STOPPED PRODUCTION AND THEN THEY STARTED BACK  
25 BUT I DO NOT THAT IT'S BEING PRODUCED NOW.

DIRECT, IN CAMERA - SUZANNE CROMER  
BY SOL. RUTLEDGE DURANT

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1 Q. AND IF SO, IS IT A RARE TYPE OF ROUND?

2 A. I, I'VE NEVER PERSONALLY SEEN IT IN THIRTY-EIGHT  
3 SPECIAL, I'VE ONLY SEEN IT IN, LIKE, NINE  
4 MILLIMETER AND FORTY.

5 THE COURT: ONLY SEEN IT IN WHAT?

6 A. NINE MILLIMETER AND FORTY S AND W.

7 Q. AND BASED ON THE RIFLING CHARACTERISTICS WERE YOU  
8 ABLE TO ASCERTAIN THE TYPE OF WEAPONS WHICH HAVE  
9 POTENTIALLY FIRED THAT ROUND?

10 A. YES, SIR, I MADE A LIST OF POSSIBLY EIGHT FIREARMS  
11 THAT FIRED THIS ROUND, AND THAT IS WHAT WE CALL  
12 OUR GRC LIST, IT'S COMPRISED OF THE GENERAL  
13 RIFLING CHARACTERISTICS THAT ARE LEFT ON THE  
14 BULLET BY THE FIREARM.

15 Q. AND ARE ALL THOSE BRANDS REVOLVERS?

16 A. NO, SIR, TWO OF THEM ARE DERRINGERS, BUT I LISTED  
17 EVERYTHING THAT WAS IN THAT PARTICULAR DIMENSIONS  
18 FOR THE RIFLING. I FELT THOUGH, AND IT WAS MY  
19 OPINION THAT IT WAS MOST CONSISTENTLY FIRED WITH A  
20 REVOLVER BECAUSE, BECAUSE OF THE CYLINDER NOT  
21 BEING PART OF THE BARREL. YOU HAVE A LITTLE BIT  
22 OF SLIPPAGE ONCE THAT BULLET COMES FROM THE  
23 CYLINDER INTO THE BARREL, IT'S VERY CHARACTERISTIC  
24 OF REVOLVERS, AND THAT WAS CONSISTENT ON THIS  
25 BULLET.

DIRECT, IN CAMERA - SUZANNE CROMER  
BY SOL. RUTLEDGE DURANT

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1 Q. IN YOUR OPINION IS A COLT THIRTY-EIGHT CALIBER  
2 SPECIAL ONE OF THE GUNS THAT COULD HAVE FIRED THIS  
3 BULLET?

4 A. YES, SIR, IT IS.

5 Q. AND YOU DIDN'T HAVE A WEAPON TO COMPARE THE BULLET  
6 TO?

7 A. NO, SIR, I DID NOT.

8 Q. DID YOU LOCATE ANY DEBRIS ON THE PROJECTILE?

9 A. YES, SIR, EMBEDDED IN THE NOSE OF THE BULLET WAS  
10 CLOTH, COTTON AND HAIR, WHICH I COLLECTED BUT DID  
11 NOT SEND FOR ANALYSIS BECAUSE IT SAID THAT THE  
12 BULLET WAS FOUND IN A PILLOW.

13 Q. DID YOU PUT THE PROJECTILE INTO IBIS SYSTEM?

14 A. YES, SIR, I DID.

15 Q. WHAT ARE THE OTHER MAKES THAT COULD HAVE FIRED  
16 THAT ROUND?

17 A. WE HAVE AN EIG, OR E-I-G, A GARATAY, AN ARMS  
18 CORP, A MAROKU, A DAVIS INDUSTRIES, AND A SQUIRES  
19 BINGHAM, AMERICAN DERRINGER CORP. THE AMERICAN  
20 DERRINGER CORP AND THE DAVIS INDUSTRIES ARE THE  
21 DERRINGERS. THE REST ARE REVOLVERS.

22 Q. HOW COMMON ARE THOSE OTHER MAKES?

23 A. BESIDES THE EIG, THE REST OF THEM ARE NOT VERY  
24 COMMON.

25 SOLICITOR RUTLEDGE DURANT: THANK

DIRECT, IN CAMERA - SUZANNE CROMER  
BY SOL. RUTLEDGE DURANT

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1 YOU, PLEASE ANSWER ANY QUESTIONS MR. PEPER MAY HAVE.

2 THE COURT: MR. PEPER.

3 MR. PEPER: THANK YOU, YOUR HONOR,  
4 MAY IT PLEASE THE COURT.

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.)

CROSS, IN CAMERA - SUZANNE CROMER BY MR. PEPER

240

CROSS-EXAMINATION, IN CAMERA OF SUZANNE CROMER

BY MR. PEPER:

Q. WHAT'S THE DEFINITION OF MOST COMMON OR NOT VERY COMMON OR COMMON, I NEED TO KNOW WHAT THAT MEANS TO YOU?

A. WELL, I'VE BEEN DOING THIS, LIKE I SAY, I'VE BEEN IN THE FIREARMS DEPARTMENT TEN YEARS, AND SOME OF THESE FIREARMS THAT ARE LISTED HERE I'VE NEVER RECEIVED IN A CASE ONLY TO DESTROY. SO, IF - - -

Q. BUT YOU'VE SEEN THEM, RIGHT?

A. I HAVE SEEN THEM BUT ONLY ON VERY RARE OCCASIONS.

Q. IT DEFINITELY CAME FROM A THIRTY-EIGHT CALIBER CARTRIDGE, THOUGH?

A. IT WAS MOST CONSISTENT AS COMING FROM A THIRTY-EIGHT SPECIAL OR A THREE FIFTY-SEVEN MAGNUM, A NOMINAL THIRTY-EIGHT CALIBER.

Q. OKAY. SO, WE DON'T KNOW WITH ONE HUNDRED PERCENT CERTAINTY THAT IT CAME FROM ONE OF THOSE GUNS?

A. CORRECT, BUT IN MY OPINION IT CAME FROM ONE OF THOSE TWO CALIBERS.

Q. OKAY. AND YOUR OPINION, AGAIN, IS BASED ON YOUR EXPERIENCE, CORRECT?

A. CORRECT.

Q. BUT WE DON'T KNOW TO A FACT THAT IT CAME FROM THOSE?

CROSS, IN CAMERA - SUZANNE CROMER BY MR. PEPER

241

1 A. NO, SIR, I MEAN, IT'S A NOMINAL THIRTY-EIGHT,  
2 THAT'S - - -

3 Q. CORRECT.

4 A. --- A FACT.

5 Q. OKAY. AND COLT, EIG, IS IT GORATAY?

6 A. YES, SIR.

7 Q. MOROKU, DAVIS INDUSTRIES, SQUIRES BINGHAM ARE ALL  
8 REVOLVERS?

9 A. YES, SIR.

10 Q. AND BECAUSE IT'S YOUR OPINION THAT IT DEFINITELY  
11 FIRED BY A REVOLVER?

12 A. IT'S MY OPINION THAT IT WAS A REVOLVER, YES.

13 Q. SO, AGAIN, WE DON'T DEFINITELY KNOW THAT IT WAS  
14 FIRED BY A REVOLVER?

15 A. NO, SIR.

16 Q. IT COULD HAVE BEEN FIRED BY ONE OF THESE DERRINGER  
17 GUNS, AMERICAN DERRINGER OR DAVIS INDUSTRIES?

18 A. YES, SIR.

19 Q. WE'VE GOT EIGHT POSSIBILITIES, CORRECT?

20 A. CORRECT, BUT AS FAR AS LISTS, THIS IS PROBABLY ONE  
21 OF THE SMALLEST LISTS I'VE SENT OUT ON A GRC,  
22 GENERAL RIFLING CHARACTERISTICS.

23 Q. EIGHT POSSIBLE GUNS - - -

24 A. YES.

25 Q. --- IS THE SMALLEST LIST YOU'VE EVER SEEN?

CROSS, IN CAMERA - SUZANNE CROMER BY MR. PEPER

242

1 A. I'VE SEEN LISTS UP TO TWELVE HUNDRED.

2 Q. WOW. YOU'VE NEVER SEEN A LIST WITH JUST ONE ON  
3 IT?

4 A. JUST ONE, AND THAT'S A NINE MILLIMETER HIGH POINT  
5 WHICH USUALLY THEY HAVE VERY RARE RIFLING, SO  
6 THEY'RE THE ONLY KNOWN MANUFACTURER TO USE THAT.

7 MR. PEPER: ALRIGHT, THANK YOU.  
8 NOTHING FURTHER, YOUR HONOR.

9 THE COURT: REDIRECT?

10 SOLICITOR RUTLEDGE DURANT: NOTHING  
11 FURTHER FROM THE STATE, JUDGE.

12 THE COURT: THANK YOU, MA'AM, YOU  
13 MAY STEP DOWN.

14 CALL YOUR NEXT WITNESS.

15 SOLICITOR RUTLEDGE DURANT: JUDGE,  
16 I THINK THAT THAT'S ALL THE WITNESSES WE'RE GOING TO  
17 CALL FOR THIS LYLE HEARING.

18 THE COURT: SO, I GUESS WE'VE GOT A  
19 MOTION TO SUPPRESS, IS THAT WHERE WE ARE?

20 MR. PEPER: CLEARLY, YOUR HONOR.

21 THE COURT: ALRIGHT, I'LL HEAR YOU.

22 MR. PEPER: YOUR HONOR, I'LL GO ON  
23 AS LONG UNTIL YOU STOP ME, BUT - - -

24 THE COURT: WELL, - - -

25 MR. PEPER: --- BUT THIS IS



1 ABSOLUTELY MORE PREJUDICIAL THAN PROBATIVE. WE'RE  
2 TRYING -- THE STATE'S TRYING TO GET IN INFORMATION  
3 WHICH IS ESSENTIALLY FOUR O FOUR, A, CHARACTER  
4 EVIDENCE, THEY'RE JUST TRYING TO DO IT THROUGH A CASE  
5 OUT OF RICHLAND THAT YOUR HONOR HAS BEEN PROVIDED THIS  
6 MORNING, AND THAT DEFENSE COUNSEL WAS ACTUALLY JUST  
7 PROVIDED THIS MORNING, WHICH ALSO BRINGS UP A FOUR O  
8 FOUR, B, NOTICE REQUIREMENT. I HAD NO IDEA UNTIL I  
9 WALKED IN THIS MORNING THEY EVEN WANTED TO INTRODUCE  
10 ANYTHING REGARDING AN ALLEGED ARMED ROBBERY THAT  
11 OCCURRED TWO DAYS LATER -- TWO EARLIER, I'M SORRY, YOUR  
12 HONOR. HAVING SAID THAT, FORTUNATELY, I'M ABLE TO  
13 DISTINGUISH THE CASE THAT HAS BEEN PRESENTED TO YOU  
14 FROM THE INSTANT CASE.

15 THE COURT: ALRIGHT.

16 MR. PEPPER: THE CASE UP IN RICHLAND,  
17 YOUR HONOR, REALLY DIDN'T PREJUDICE THE DEFENDANT, EVEN  
18 IF THE COURT MADE AN ERROR. THE COURT HELD THAT THE  
19 ADMISSION OF THE EVIDENCE WAS HARMLESS, GIVEN THAT  
20 PETITIONER'S GUILT HAS BEEN PROVEN BY COMPETENT  
21 EVIDENCE SUCH THAT NO OTHER RATIONAL CONCLUSION COULD  
22 HAVE BEEN REACHED. JUDGE, ALL WE HAVE HERE IS A GIRL  
23 THAT SAYS, I SAW SHAWN AND LENNIE MICKEY GO INTO A  
24 ROOM. LENNIE MICKEY WAS ALREADY CARRYING AT LEAST ONE  
25 GUN. WHEN THEY CAME OUT LENNIE MICKEY WAS THEN

1 CARRYING AT LEAST ONE IF NOT TWO OR MORE GUNS. WE'VE  
2 GOT THE VICTIM WHO AT BEST CAN SAY THEY WERE BLACK  
3 MALES AROUND FIVE, ELEVEN, MEDIUM BUILD, BUT ADMITS NOT  
4 ONLY IN ORAL REPORTS TO THE RESPONDING OFFICERS BUT IN  
5 HIS OWN STATEMENT THAT THERE IS NO POSSIBLE WAY HE  
6 COULD PICK THESE TWO GENTLEMEN OUT OF A LINEUP. WE  
7 HAVE NO EVIDENCE BESIDES ANGELA'S TESTIMONY THAT EVEN  
8 PUTS MY CLIENT IN THE ROOM THAT NIGHT. WE CERTAINLY  
9 HAVE NO EVIDENCE THAT MY CLIENT IS THE ONE THAT LEFT  
10 THE ROBBERY MONDAY EVENING POSSESSING THIS SPECIAL GUN.  
11 AS A MATTER OF FACT, SHE SAYS, I SAW LENNIE MICKEY  
12 BRING IT BACK OUT, AND HE HAD IT.

13 FINALLY, YOUR HONOR, EVEN IF THE  
14 COURT WERE TO FIND THAT LYLE IS MET, WE THINK IT COULD  
15 BE DISPROVED AND THAT, WE JUST HEARD TESTIMONY FROM AN  
16 EXPERT WITNESS, THEY CAN ONLY NARROW IT DOWN TO EIGHT  
17 POSSIBLE GUNS IT COULD HAVE COME FROM. I JUST THINK  
18 THAT TO ALLOW THE JURY TO HEAR SUCH PREJUDICIAL  
19 ALLEGATIONS SUCH AS, THE DEFENDANT IS CHARGED WITH  
20 ARMED ROBBERY, AND OH, BY THE WAY, TWO DAYS EARLIER HE  
21 ALSO COMMITTED ONE AND STOLE THE GUN THAT WAS USED IN  
22 THIS ONE, WITH JUST THE TESTIMONY OF A FORMER PERSON HE  
23 DATED, THE TESTIMONY OF A VICTIM WHO CANNOT IDENTIFY MY  
24 CLIENT, AND THE TESTIMONY OF AN EXPERT WITNESS THAT  
25 SAYS, IT COULD HAVE COME FROM THAT GUN, IT COULD HAVE

1 COME FROM SEVEN OTHERS, CERTAINLY PREVENTS THE STATE  
2 FROM INCLUDING THIS EVIDENCE, AND WE WOULD ASK THAT  
3 BASED ON THAT ARGUMENT, YOUR HONOR, YOU GRANT OUR  
4 MOTION TO SUPPRESS.

5 THANK YOU.

6 THE COURT: YES, SIR.

7 SOLICITOR RUTLEDGE DURANT: THANK  
8 YOU, JUDGE, MAY IT PLEASE THE COURT.

9 REFERRING TO THE RICHLAND CASE, THIS  
10 EVIDENCE IS CLEARLY, MEETS THE STANDARD OF CLEAR  
11 EVIDENCE. WE'VE GOT EVIDENCE PRESENTED FROM THE VICTIM  
12 OF THE IN TOWN SUITES THAT SAYS, THIS IS THE KIND OF  
13 GUN I HAD, THIS IS THE KIND OF GUN -- THIS IS THE KIND  
14 OF PROJECTILES I HAD LOADED IN MY GUN, AND IT'S SO  
15 RARE, IT'S A STAR FIRE ROUND IN A COLT THIRTY-EIGHT  
16 CALIBER SPECIAL. THIS IS CORROBORATED BY SUZANNE  
17 CROMER FROM SLED, WHO SAYS, WHO NARROWED IT DOWN EVEN,  
18 WHO SAYS, THIS IS ONE OF THE SMALLEST FIELDS OF GUNS  
19 SHE'S EVER NARROWED DOWN TO, EIGHT GUNS, SIX OF WHICH  
20 ARE VERY RARE, AND THE COLT THIRTY-EIGHT SPECIAL BEING  
21 ONE OF THOSE GUNS. AND ON TOP OF THAT, THE PROJECTILE,  
22 WHICH IS ANOTHER RARE PROJECTILE, WHO THE VICTIM SAYS  
23 WAS A STAR FIRE ROUND. ALSO, THEY MAY NOT EVEN MAKE  
24 THIS STAR FIRE ROUND ANYMORE. SUZANNE CROMER SAYS,  
25 THAT'S CONSISTENT WITH THIS KIND OF BULLET HERE.

1 NOW, ON TOP OF THAT YOU'VE GOT TWO  
2 PEOPLE WHO ARE ABLE TO SAY, YES, AN ARMED ROBBERY DID  
3 OCCUR HERE. ALEC BROWNE WAS ABLE TO TELL YOU WHAT WAS  
4 STOLEN, ANGELA AGAGAS WAS ABLE TO TELL YOU WHAT STOLEN  
5 BECAUSE SHE WAS THERE, AND SHE SAW THE GUN COME OUT OF  
6 THAT, OF THE IN TOWN SUITES. UNDER FORTY-FOUR, B, I  
7 THINK IT'S FULLY ADMISSIBLE, IT MEETS THE CLEAR AND  
8 CONVINCING STANDARD.

9 AND MOVING ON THE FOUR O FOUR, B, OR  
10 TO THE FOUR O THREE, BOUNTY STANDARD, THE STATE'S  
11 OFFERING THIS TO SHOW THE IDENTITY OF THE DEFENDANT BY  
12 PLACING THE MURDER WEAPON IN HIS HANDS OR HIS PARTNER'S  
13 HANDS AT THE TIME OF THE MURDER, WHICH MAKES SENSE  
14 BECAUSE THE BULLET THAT WAS PULLED OUT OF THE VICTIM'S  
15 HEAD WAS FIRED FROM A THIRTY-EIGHT CALIBER COLT,  
16 APPROXIMATE. THE STATE WOULD LIKE TO INTRODUCE THIS TO  
17 SHOW THAT HE AND HIS BUDDY HAD THIS TYPE OF GUN, WHICH  
18 WAS A RARE GUN WITH RARE BULLETS, AND COMMITTED THIS  
19 ACT.

20 THE COURT: YES, SIR, BRIEFLY.

21 MR. PEPPER: YOUR HONOR, BRIEFLY,  
22 FOUR O FOUR, A, DOES NOT ALLOW CHARACTER EVIDENCE IN.  
23 THIS IS WHAT THEY'RE TRYING TO GET INTO, THIS HAS  
24 NOTHING TO DO WITH LYLE. WHAT THEY'RE TRYING TO DO IS  
25 STRETCH TO FIND A CASE THAT SAYS, AH, IT CAN COME IN TO

1 IDENTIFY THE DEFENDANT, BUT ONLY IF THE EVIDENCE -- THE  
2 DEFENDANT'S GUILT HAS BEEN PROVEN BY COMPETENT  
3 EVIDENCE, THAT NO OTHER RATIONAL CONCLUSION CAN BE  
4 REACHED, AND WE JUST DON'T HAVE THAT HERE, YOUR HONOR,  
5 AND WE'D ASK TO SUPPRESS IT.

6 THE COURT: ALRIGHT, WELL, I THINK  
7 THE CASE FROM RICHLAND COUNTY IS VERY INSTRUCTIVE ON  
8 THIS POINT, AND BASED ON THAT CASE I FIND THERE IS  
9 CLEAR AND CONVINCING EVIDENCE THAT THIS DEFENDANT WAS  
10 INVOLVED IN THE ARMED ROBBERY OF MR. BROWNE. AND OF  
11 COURSE, THE ONLY DIFFERENT IN THIS CASE AND THE  
12 RICHLAND CASE WAS, THERE WERE SEVERAL WITNESSES THAT  
13 TESTIFIED THAT HE WAS INVOLVED INSTEAD OF ONE. WELL,  
14 I FIND THE WITNESS WHO TESTIFIED VERY CREDIBLE, VERY  
15 BELIEVABLE, AND I DON'T THINK ADDITIONAL WITNESSES  
16 WOULD BE THE DECIDING FACTOR ONE WAY OR THE OTHER. SO,  
17 I FIND THERE IS CLEAR AND CONVINCING EVIDENCE THAT HE  
18 WAS INVOLVED IN THAT ROBBERY.

19 AS FAR AS IDENTITY OF THE GUN, SHE  
20 TESTIFIED IT WAS, NARROWED IT DOWN TO EIGHT OUT OF  
21 TWELVE HUNDRED I THINK IS WHAT HER TESTIMONY WAS.  
22 THAT'S PRETTY GOOD NARROWING DOWN, ESPECIALLY WHEN SHE  
23 SAID THAT MOST OF THOSE EIGHT WERE VERY RARE, AND WHEN  
24 SHE SAID THAT A BULLET LIKE THIS SHE HAD ONLY SEEN ONCE  
25 IN THIS CALIBER. I THINK THAT MAKES IT HIGHLY

1           PROBATIVE THAT THAT PISTOL WAS ONE AND THE SAME, OR THE  
2           ONE THAT WAS TAKEN FROM MR. BROWNE AND THE AMMUNITION  
3           THAT WAS TAKEN FROM MR. BROWNE.

4                       ALSO IN THE LEXINGTON CASE, AND  
5           WE'RE TALKING ABOUT STATE VERSUS GUILLIAN, STEVEN  
6           GUILLIAN, OPINION TWENTY-SIX, THREE FORTY-TWO, A  
7           RICHLAND CASE, NOT LEXINGTON, THE COURT, IN THAT CASE  
8           IT WAS IDENTITY, THE STATE WAS ALLOWED TO USE THE  
9           EVIDENCE TO PROVE IDENTITY. AND IT SAID, "TO ALLOW THE  
10          STATE TO PRESENT EVIDENCE OF THE BURGLARY IN AN EFFORT  
11          TO SHOW THE ALLEGED MURDER WEAPON WAS IN PETITIONER'S  
12          HANDS IMMEDIATELY PRIOR TO THE MURDER WAS HIGHLY  
13          PROBATIVE." AND SO, BASED ON THAT I FIND THAT THE  
14          PROBATIVE VALUE OUTWEIGHS THE PREJUDICE IN THIS CASE.  
15          AND SO, I WOULD DENY YOUR MOTION TO SUPPRESS THIS LYLE  
16          EVIDENCE, OR EVIDENCE OF PRIOR BAD ACTS FOR THE REASONS  
17          THAT I'VE STATED. I WOULD SAY THAT ALL THAT SPEAKS  
18          ABOUT THE HAND OF THE -- IN THE PETITIONER'S HANDS IN  
19          THE RICHLAND CASE, UNDER THE HAND OF ONE, THE HAND OF  
20          ALL, THE HAND OF ONE IS THE HAND OF ALL, AND I THINK  
21          PROVING IT WAS IN THE HANDS OF A CO-DEFENDANT OR ONE OF  
22          THE OTHER PARTIES IS EXACTLY THE SAME AS PROVING IT WAS  
23          IN MR., IN THE DEFENDANT IN THIS CASE, MR. PHILLIPS'S.

24                       ANYTHING ELSE?

25                       MR. PEPER: YOUR HONOR, I DIDN'T

1 WANT TO INTERRUPT YOU, I WOULD JUST SAY THAT THAT'S,  
2 THAT CHARGE JUST GOES TO MURDER, NOT TO ARMED ROBBERY,  
3 AND THAT THEY'RE TRYING TO BRING IT IN TO SHOW THAT THE  
4 ARMED ROBBERY ON MONDAY NIGHT AND WEDNESDAY NIGHT WERE  
5 CONNECTED.

6 THE COURT: THEY'RE TRYING TO BRING  
7 IN THE ARMED ROBBERY OF MR. BROWNE, RIGHT?

8 MR. PEPER: YES, SIR, THAT'S  
9 CORRECT.

10 THE COURT: TO USE IN THIS MURDER  
11 CASE?

12 MR. PEPER: WELL, IT WAS STATED THAT  
13 THEY WANTED TO USE IT IN THE ARMED ROBBERY CASE, BUT  
14 NONETHELESS - - -

15 THE COURT: BUT ONE OF THE -- ARE  
16 YOU SAYING THEY'VE ONLY SAID ONE OF THE THREE  
17 INDICTMENTS WE'RE DEALING WITH, IS THAT THE DISTINCTION  
18 YOU'RE MAKING?

19 MR. PEPER: YOUR HONOR, I HEARD THIS  
20 THE FIRST TIME WHEN YOU DID THIS MORNING, THAT WAS MY  
21 UNDERSTANDING, BUT YES.

22 THE COURT: WELL, I DON'T KNOW HOW  
23 YOU CAN - - -

24 MR. PEPER: I DON'T EITHER.

25 THE COURT: I DON'T KNOW WHAT THAT

1 DISTINCTION IS, I DON'T KNOW WHAT DISTINCTION YOU'RE  
2 TRYING TO MAKE, YOU'RE OVER MY HEAD.

3 MR. PEPER: AND I'M PROBABLY OVER  
4 MINE AS WELL.

5 THE COURT: WELL, - - -

6 MR. PEPER: I'LL WITHDRAW THAT.  
7 THANK YOU.

8 THE COURT: ALRIGHT. OKAY, SO IT'S  
9 YOUR INTENTION TO CALL THESE SAME WITNESSES TO TESTIFY  
10 IN FRONT OF THE JURY?

11 SOLICITOR RUTLEDGE DURANT: THAT'S  
12 CORRECT, JUDGE.

13 THE COURT: ALRIGHT, WE'LL TAKE FIVE  
14 MINUTES, AND THEN WE'LL BRING THE JURY OUT AND MOVE ON.

15 (Recess)

16 THE COURT: NOW, ONE WORD OF  
17 CAUTION, NO TESTIMONY ABOUT THE JACKETS, NO TESTIMONY  
18 ABOUT THE SWEAT SHIRTS, NO TESTIMONY ABOUT YOU HEARD  
19 THEM SAY THEY MIGHT KILL YOU OR SHOOT YOU. YOU CAN  
20 EXPLAIN TO HIM WHY, NOTHING EXCEPT THEY CAME IN, THEY  
21 ROBBED HIM, ONE OF THE THINGS THEY GOT WAS A PISTOL,  
22 DESCRIBE THE PISTOL, THE BULLETS. EVERYTHING ELSE IS  
23 OFF LIMITS.

24 SOLICITOR RUTLEDGE DURANT: DO YOU  
25 UNDERSTAND THAT? OKAY. WE ALSO NEED TO MAKE SURE THE



1 WITNESS THAT'S LOCKED UP IS INSTRUCTED AS TO THAT  
2 BEFORE WE ACTUALLY PUT HER ON THE STAND.

3 THE COURT: WELL, YOU'D BETTER GO  
4 AND INSTRUCT HER.

5 SOLICITOR RUTLEDGE DURANT: I DON'T  
6 THINK SHE SAID ANYTHING MORE THAN THAT.

7 SOLICITOR BRUCE DURANT: YES, SHE  
8 SAID THEY BROUGHT BACK LEATHER JACKETS AND SWEAT  
9 SHIRTS.

10 SOLICITOR RUTLEDGE DURANT: LEATHER  
11 JACKETS AND SWEAT SHIRTS AND ALL THAT.

12 THE COURT: MR. PEPER, IF YOU WOULD  
13 RATHER BRING HER OUT HERE AND DO THAT ON THE RECORD WE  
14 CAN DO THAT.

15 MR. PEPER: YES, YOUR HONOR.

16 THE COURT: BRING HER OUT HERE,  
17 PLEASE, BECAUSE WE DON'T WANT THAT MESSING UP ANYTHING.  
18 (Whereupon, Angela Agagas  
19 enters the courtroom.)

20 THE COURT: DO YOU WANT ME TO  
21 INSTRUCT HER AS TO FRUITS OF THE ROBBERY?

22 MR. PEPER: YOUR HONOR, I WOULD  
23 REQUEST THAT YOU LIMIT, OR CHARGE THE JURY, WELL, THAT  
24 THEY CAN ONLY OPINE IDENTITY AS OPPOSED TO CHARACTER.

25 THE COURT: YES, SIR.

1                   MR. PEPPER: AND I WOULD REQUEST THAT  
2                   YOU INSTRUCT THEM OF THAT PRIOR TO EACH WITNESS WHO'S  
3                   TESTIFYING WITH REGARDS TO THIS MATTER.

4                   THE COURT: WELL, I DON'T WANT TO  
5                   INSTRUCT THEM TO THAT PRIOR TO THE NEED, BUT I WILL  
6                   INSTRUCT THEM THAT AT THE TIME IT COMES OUT, DURING THE  
7                   WITNESS'S TESTIMONY.

8                   MR. PEPPER: WELL, I GUESS IT, I  
9                   GUESS - - -

10                  THE COURT: DO YOU WANT ME TO TELL  
11                  THEM IN GENERAL, YOU'RE GOING TO HEAR TESTIMONY ABOUT  
12                  THE DEFENDANT'S INVOLVEMENT IN A POSSIBLE OTHER CRIME,  
13                  THAT TESTIMONY IS BEING ADMITTED ONLY FOR PURPOSES AS  
14                  THE WEIGHT YOU MIGHT GIVE IT TO ESTABLISH THE IDENTITY  
15                  OF THE DEFENDANT, BEFORE ANY OF THE WITNESSES TESTIFY?

16                  MR. PEPPER: EXACTLY.

17                  THE COURT: I DON'T MIND DOING IT  
18                  THAT WAY. ANY OBJECTION FROM THE STATE?

19                  SOLICITOR BRUCE DURANT: THAT WOULD  
20                  PROBABLY MAKE MORE SENSE AFTER THE TESTIMONY, TO TELL  
21                  YOU THE TRUTH, YOUR HONOR, BUT IT'S UP TO YOU.

22                  MR. PEPPER: WELL, I MEAN, I JUST,  
23                  YOU KNOW - - -

24                  SOLICITOR BRUCE DURANT: IF IT'S  
25                  BEFOREHAND IT'S NOT GOING TO MAKE ANY SENSE TO THEM.

1                   THE COURT:   WELL, ALL OF THESE --  
2                   WHO'S THE NEXT WITNESS YOU'RE GOING TO CALL?

3                   SOLICITOR BRUCE DURANT: WE'RE GOING  
4                   TO CALL MS. AGAGAS, YOUR HONOR.

5                   THE COURT: I DON'T MIND DOING IT  
6                   AHEAD OF TIME, I DON'T MIND DOING THAT, AND SHE CAN  
7                   JUST STAY IN THE COURTROOM.

8                   MA'AM, WHEN YOU TESTIFY ABOUT MR.  
9                   PHILLIP'S INVOLVEMENT IN THE PRIOR ROBBERY, WHERE THEY  
10                  ALLEGEDLY ROBBED MR. BROWNE, - - -

11                  WITNESS AGAGAS:   YES, SIR.

12                  THE COURT:   DO NOT MENTION ANYTHING  
13                  ABOUT THE JACKETS.   HE'S NOT GOING TO ASK YOU THAT  
14                  QUESTION.   WHEN HE ASKS YOU WHAT DID THEY COME OUT  
15                  WITH, YOU ONLY REFER TO THE PISTOL.

16                  WITNESS AGAGAS:   YES, SIR.

17                  THE COURT:   JUST LEAVE OUT ANYTHING  
18                  ABOUT THE JACKETS OR THE SWEAT SHIRTS, I DON'T REMEMBER  
19                  ANYTHING ELSE.

20                  MR. PEPER:     I THINK SHE SAID,  
21                  AMMUNITION, TOO.

22                  THE COURT:   WELL, WHAT ABOUT THE  
23                  AMMUNITION?

24                  MR. PEPER:     WHEN SHE, I'M JUST  
25                  SAYING, HER TESTIMONY WAS THAT THEY CAME OUT WITH THE

1 GUN AND THEY HAD A BOX OF AMMUNITION, TOO.

2 SOLICITOR RUTLEDGE DURANT: NO, I  
3 BELIEVE THAT CAME FROM THE VICTIM WHO SAID WHAT WAS  
4 STOLEN WAS A BOX OF AMMUNITION.

5 MR. PEPER: NO, I THINK -- WELL,  
6 WE'LL ASK HER WHAT SHE SAID, BECAUSE, I MEAN, - - -

7 THE COURT: DID YOU MENTION  
8 AMMUNITION?

9 WITNESS AGAGAS: YES, SIR, IT WAS A  
10 BOX OF BULLETS.

11 THE COURT: WELL, THE BULLETS  
12 HAVEN'T BEEN IDENTIFIED AS ANY PARTICULAR BULLETS, SO  
13 I DON'T KNOW THAT THAT HELPS THE STATE'S CASE ON THE  
14 QUESTION OF IDENTITY.

15 SOLICITOR RUTLEDGE DURANT: OKAY,  
16 THAT'S FINE, WE DON'T MIND LEAVING OUT, LEAVING JUST  
17 THE GUN, BECAUSE HIS TESTIMONY THAT LOADED IN THE GUN  
18 WERE - - -

19 THE COURT: JUST LIMIT IT TO  
20 TESTIMONY ABOUT THE PISTOL.

21 WITNESS AGAGAS: YES, SIR.

22 THE COURT: AND IF YOU HAVE ANY  
23 QUESTIONS ABOUT AN ANSWER, IF ANY OF THE ATTORNEYS ASK  
24 YOU A QUESTION THAT YOU THINK WOULD REQUIRE YOU TO TALK  
25 ABOUT ANYTHING OTHER THAN THE PISTOL AS BEING ONE OF

1 THE THINGS THAT WERE STOLEN, YOU STOP AND LOOK AT ME,  
2 DON'T JUST BLURT IT OUT. OKAY?

3 WITNESS AGAGAS: YES, SIR.

4 THE COURT: AND WE'LL GET IT  
5 STRAIGHT PRETTY QUICK. BECAUSE ONCE YOU SAY IT, IT'S  
6 KIND OF HARD TO ERASE IT. DO YOU UNDERSTAND?

7 WITNESS AGAGAS: YES, SIR.

8 THE COURT: SO, IF THERE'S ANY  
9 QUESTION IN YOUR MIND ABOUT WHAT YOU'VE BEEN ASKED TO  
10 TALK ABOUT YOU LOOK AT ME AND WE'LL GET IT STRAIGHT,  
11 AND GIVE YOU SOME GUIDANCE ON THAT. YOU CAN TALK ABOUT  
12 THE PISTOL BUT NOTHING ELSE THAT WAS STOLEN FROM THAT  
13 ROOM.

14 WITNESS AGAGAS: OKAY.

15 THE COURT: ALRIGHT.

16 SOLICITOR RUTLEDGE DURANT: DO YOU  
17 UNDERSTAND THAT?

18 WITNESS AGAGAS: YES, SIR.

19 SOLICITOR RUTLEDGE DURANT: YOU'RE  
20 CLEAR ON THAT?

21 WITNESS AGAGAS: YES, SIR.

22 THE COURT: SHE'S GOING TO BE THE  
23 NEXT WITNESS, SHE CAN JUST STAY OUT.

24 ALRIGHT, BRING IN THE JURY, PLEASE.

25 (Whereupon, the jury enters

1 the courtroom and the following  
2 takes place in the presence  
3 of the jury.)

4 BAILIFF: ALL OF THE JURORS ARE  
5 PRESENT.

6 THE COURT: THANK YOU, SIR.

7 ALRIGHT, LADIES AND GENTLEMEN, THANK  
8 YOU VERY MUCH FOR YOUR PATIENCE. WHEN THIS TRIAL IS  
9 OVER I'LL TELL YOU WHAT WE'VE BEEN DOING FOR THE LAST  
10 HOUR. I WANT TO TELL YOU THIS, THAT, AND SOME OF THE  
11 WITNESSES WHO YOU ARE ABOUT TO HEAR, IN THEIR TESTIMONY  
12 YOU MAY HEAR SOME EVIDENCE THAT POSSIBLY THE DEFENDANT  
13 IN THIS CASE WAS INVOLVED IN ANOTHER CRIME OTHER THAN  
14 THE ONE FOR WHICH HE IS ON TRIAL. NOW, HE IS NOT ON  
15 TRIAL FOR ANY OTHER CRIME, HE'S NOT BEEN CONVICTED OF  
16 ANY OTHER CRIME, AND THAT EVIDENCE IS BEING ALLOWED BY  
17 THE COURT FOR ONE PURPOSE ONLY AND THAT IS FOR WHATEVER  
18 WEIGHT YOU MIGHT GIVE THAT EVIDENCE OF HIS  
19 PARTICIPATION IN ANOTHER CRIME AS TO THE IDENTITY OF  
20 THE PERSON WHO COMMITTED THIS CRIME FOR WHICH THE  
21 DEFENDANT IS ON TRIAL, NOT FOR THE PURPOSE OF PROVING  
22 HE'S A BAD MAN OR THAT HE MUST HAVE COMMITTED THIS  
23 OTHER ONE SO HE MUST HAVE COMMITTED THIS ONE. THAT  
24 WOULD BE IMPROPER FOR YOU TO MAKE SUCH A  
25 CHARACTERIZATION AS THAT. WE WOULD CALL THAT CHARACTER

1 EVIDENCE OR BAD CHARACTER. IT'S NOT OFFERED FOR THAT  
2 PURPOSE, YOU CANNOT CONSIDER IT FOR THAT PURPOSE. IF  
3 YOU HEAR THAT TESTIMONY IT'S ONLY FOR WHATEVER WEIGHT  
4 YOU MIGHT GIVE IT AS TO THE IDENTITY OF THE PERSON WHO  
5 COMMITTED THIS CRIME FOR WHICH THE DEFENDANT IS ON  
6 TRIAL.

7 ALRIGHT, NOW, YOU MAY CALL YOUR  
8 WITNESS.

9 SOLICITOR RUTLEDGE DURANT: THANK  
10 YOU, JUDGE. THE STATE CALLS ANGELA AGAGAS.  
11 (Whereupon, Angela Agagas  
12 is duly sworn.)

13 CLERK: PLEASE HAVE A SEAT AND STATE  
14 YOUR FULL NAME FOR THE RECORD, PLEASE.

15 THE COURT: NOW, MA'AM, I KNOW YOU  
16 WANT TO LOOK AT THE JURY WHEN YOU'RE TALKING, SO CAN  
17 YOU PULL THAT CHAIR WAY OVER THIS WAY SO THAT WHEN YOU  
18 LOOK AT THE JURY YOU'LL BE TALKING RIGHT INTO THAT  
19 MICROPHONE.

20 WITNESS: YES, SIR.

21 THE COURT: ALRIGHT. BECAUSE THE  
22 COURT REPORTER HAS TO HEAR EVERYTHING THAT YOU SAY AND  
23 I KIND OF NEED TO HEAR IT, TOO, AND BOTH OF US ARE  
24 GETTING OLD AND, AT LEAST BOTH OF US ARE KIND OF  
25 GETTING DEAF, AND I'M GETTING OLD, I'M SORRY.

1 ALRIGHT, GO AHEAD. THAT'S KIND OF  
2 A JOKE BETWEEN ME AND MS. WALKER, Y'ALL JUST IGNORE  
3 THAT. SHE'S MY COURT REPORTER, SHE TRAVELS AROUND WITH  
4 ME A GOOD LITTLE BIT, HARASSES ME A GOOD LITTLE BIT,  
5 TOO.

6 ALRIGHT, COUNSELOR, GO AHEAD.

7 SOLICITOR RUTLEDGE DURANT: THANK  
8 YOU, JUDGE.

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 - ANGELA AGAGAS BY SOL. RUTLEDGE DURANT

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DIRECT EXAMINATION OF ANGELA AGAGAS

BY SOLICITOR RUTLEDGE DURANT:

Q. GOOD AFTERNOON, MS. AGAGAS.

A. HELLO.

Q. WOULD YOU PLEASE TELL THE JURY HOW OLD YOU ARE?

A. I'M THIRTY-TWO.

Q. AND HOW FAR DID YOU GO IN SCHOOL?

A. I WENT TO THE NINTH GRADE, AND I GOT MY G.E.D.

Q. AND YOU'VE HAD SOME PROBLEMS WITH THE LAW, IS THAT  
CORRECT?

A. YES, SIR.

Q. IN NINETEEN NINETY-EIGHT YOU WERE CONVICTED OF  
COUNTERFEITING AND FRAUD?

A. YES, SIR.

Q. AND IN TWO THOUSAND AND ONE YOU WERE CONVICTED OF  
STRONG ARM ROBBERY, FORGERY, BREAKING AND ENTERING  
A MOTOR VEHICLE TWICE, AND ASSAULT AND BATTERY OF  
A HIGH AND AGGRAVATED NATURE?

A. YES, SIR.

Q. AND YOU HAVE PENDING CHARGES?

A. YES, SIR.

Q. YOU HAVE AN ARMED ROBBERY PENDING?

A. YES, SIR.

Q. GRAND LARCENY OF A MOTOR VEHICLE?

A. YES, SIR.

DIRECT - ANGELA AGAGAS BY SOL. RUTLEDGE DURANT

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1 Q. AND YOU'RE CHARGED IN THIS CASE WITH CONSPIRACY?

2 A. YES, SIR.

3 Q. AND WHAT HAVE YOU BEEN PROMISED FOR YOUR TESTIMONY  
4 IN THIS CASE?

5 A. NOTHING.

6 Q. ARE YOU HOPING THE JUDGE WILL TAKE INTO  
7 CONSIDERATION YOUR COOPERATION?

8 A. YES, SIR.

9 Q. YOU WENT TO PRISON FOR YOUR TWO THOUSAND AND ONE  
10 CONVICTION, IS THAT RIGHT?

11 A. I DID.

12 Q. WHAT DID YOU DO WHEN YOU GOT OUT?

13 A. WHEN I GOT OUT OF PRISON I MOVED IN WITH MY MOM  
14 AND I BASICALLY GOT MY LIFE BACK TOGETHER. I  
15 STAYED OFF OF DRUGS, I WAS CLEAN FOR ABOUT FIVE  
16 AND A HALF YEARS. I GOT A JOB AND BECAME MANAGER  
17 OF HOLLYWOOD VIDEO, GOT MY KIDS BACK, GOT  
18 MARRIED.

19 Q. WHERE DID YOU GET A JOB?

20 A. AT HOLLYWOOD VIDEO IN LADSON.

21 Q. AND YOU HAD A BAD DRUG PROBLEM?

22 A. I DID.

23 Q. YOU WERE ABLE TO GET THAT STRAIGHTENED OUT FOR A  
24 WHILE?

25 A. YES, SIR, I WAS.

DIRECT - ANGELA AGAGAS BY SOL. RUTLEDGE DURANT

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1 Q. AND DID YOU GET MARRIED?

2 A. I DID.

3 Q. TO WHO?

4 A. MICHAEL STONE, HE IS A SENIOR CHIEF IN THE NAVY.

5 Q. HOW LONG WERE YOU ABLE TO STAY STRAIGHT?

6 A. ABOUT FIVE AND A HALF YEARS.

7 Q. WHAT HAPPENED AT THAT TIME?

8 A. I GOT DIAGNOSED WITH ENDOMETRIOSIS, AND I STARTED  
9 TAKING PAIN KILLERS, AND THAT LED BACK TO STREET  
10 DRUGS, AND I KIND OF STRAYED AWAY FROM HOME AND  
11 STARTED DOING DRUGS AGAIN. AND MY HUSBAND  
12 WOULDN'T TOLERATE IT SO HE BASICALLY, YOU KNOW,  
13 PUT ME OUT AND WANTED ME TO GET SOME HELP, BUT I  
14 TURNED TO THE STREETS INSTEAD.

15 Q. AND THE DRUGS IMPACTED YOUR MARRIAGE?

16 A. YES, SIR.

17 Q. WHAT HAPPENED WITH YOUR MARRIAGE?

18 A. I'M DIVORCED NOW.

19 Q. WHEN DID YOU FIRST SEPARATE FROM HIM?

20 A. WE SEPARATED OCTOBER TWENTY-SIXTH OF TWO THOUSAND  
21 AND SIX.

22 Q. DID YOU START SEEING SOMEONE ELSE?

23 A. I DID.

24 Q. WHO DID YOU START SEEING?

25 A. SHAWN PHILLIPS.

DIRECT - ANGELA AGAGAS BY SOL. RUTLEDGE DURANT

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1 Q. DO YOU SEE SHAWN PHILLIPS IN THIS COURTROOM TODAY?

2 A. I DO.

3 Q. WILL YOU POINT HIM OUT TO THE JURY?

4 A. HE'S RIGHT THERE.

5 Q. WHAT'S HE WEARING?

6 A. A BROWN SUIT AND TIE.

7 Q. COULD YOU TELL THE JURY HOW YOU BECAME INVOLVED  
8 WITH MR. PHILLIPS?

9 A. BASICALLY WHENEVER MY HUSBAND PUT ME OUT HE  
10 WOULDN'T TOLERATE MY DRUG ABUSE, I WENT AND STAYED  
11 AT A HOTEL, THE MASTERS INN ON RIVERS AVENUE, AND  
12 THAT'S WHERE I MET SHAWN AT, AT THE MASTERS.

13 Q. AND WHAT WAS THE NATURE OF YOUR RELATIONSHIP?

14 A. IT WAS A SEXUAL RELATIONSHIP.

15 Q. WHERE WERE YOU STAYING?

16 A. I WAS STAYING WITH SHAWN IN THE HOTELS, DIFFERENT  
17 HOTELS, THE MASTERS INN, AND WE BASICALLY STAYED  
18 FROM HOTEL TO HOTEL.

19 Q. IN FACT, YOU ENDED UP BECOMING PREGNANT BY HIM,  
20 DIDN'T YOU?

21 A. I DID.

22 Q. SO, WHEN DID YOU FIND OUT YOU WERE PREGNANT?

23 A. NOT UNTIL I WENT TO JAIL.

24 Q. WHEN DID YOU HAVE YOUR CHILD?

25 A. AUGUST THIRTIETH, TWO THOUSAND SEVEN, IN JAIL.

DIRECT - ANGELA AGAGAS BY SOL. RUTLEDGE DURANT

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- 1 Q. DID SHAWN HAVE A NICKNAME?
- 2 A. HE DID. HE WENT BY PIT OR T-DOG.
- 3 Q. DO YOU KNOW WHAT HIS PHONE NUMBER WAS?
- 4 A. HIS CELL PHONE NUMBER WAS [REDACTED] [REDACTED] [REDACTED]  
[REDACTED].
- 6 Q. DO YOU KNOW A MAN NAMED LENNIE MICKEY?
- 7 A. I DO.
- 8 Q. HOW DID YOU MEET LENNIE MICKEY?
- 9 A. I MET LENNIE THROUGH SHAWN.
- 10 Q. AND WHERE DID THIS TAKE PLACE?
- 11 A. OLD TRAINER ROAD.
- 12 Q. IS THAT IN CHARLESTON?
- 13 A. NORTH CHARLESTON, YES, SIR.
- 14 Q. WAS SHAWN AND LENNIE FRIENDS?
- 15 A. THEY WERE FRIENDS.
- 16 Q. WAS LENNIE MICKEY HANGING OUT WITH YOU AND SHAWN
- 17 AT THIS TIME?
- 18 A. YES, SIR.
- 19 Q. WHAT WERE LENNIE MICKEY'S NICKNAMES?
- 20 A. NEW YORK OR BROOKLYN, OR L.
- 21 Q. MOVING ON TO NOVEMBER THE SIXTH OF TWO THOUSAND
- 22 AND SIX, DO YOU REMEMBER CHECKING INTO THE TRAVEL
- 23 LODGE ON FAIN STREET?
- 24 A. I DO.
- 25 Q. DID Y'ALL HAVE A VEHICLE AT THAT TIME?

DIRECT - ANGELA AGAGAS BY SOL. RUTLEDGE DURANT

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1 A. WE DID, WE WERE RIDING IN A RED TRACKER.

2 Q. WHAT COLOR, RED?

3 A. RED.

4 Q. WHO ALL CHECKED INTO THE HOTEL ROOM?

5 A. ME AND SHAWN AND LENNIE MICKEY. LENNIE WAS  
6 ORIGINALLY THE ONE WHO CHECKED IN WITH HIS ID.

7 Q. HOW MANY ROOMS DID YOU HAVE?

8 A. JUST ONE.

9 Q. WHO'S ID WAS USED TO CHECK INTO THE ROOM?

10 A. LENNIE'S, LENNIE MICKEY.

11 Q. DO YOU KNOW WHETHER SHAWN OR LENNIE HAD A GUN?

12 A. THEY DID. LENNIE HAD A GUN.

13 Q. DID YOU SEE THE GUN?

14 A. I DID.

15 Q. WHAT DID IT LOOK LIKE?

16 A. IT WAS SHORT AND SILVER, AND IT HAD THE ROUNDS ON  
17 THE SIDE.

18 Q. DID HE HAVE IT WHEN Y'ALL CHECKED INTO THE TRAVEL  
19 LODGE?

20 A. YES, SIR.

21 Q. DO YOU KNOW WHERE THIS GUN CAME FROM?

22 A. I DO. IT CAME FROM A PREVIOUS ROBBERY THAT THEY  
23 WERE INVOLVED IN A COUPLE OF DAYS BEFORE THAT.

24 Q. WHERE DID THIS TAKE PLACE?

25 A. AT THE IN-TOWN SUITES ON SAVANNAH HIGHWAY.

DIRECT - ANGELA AGAGAS BY SOL. RUTLEDGE DURANT

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1 Q. AND HOW DO YOU KNOW THAT?

2 A. BECAUSE I WAS WITH THEM. I WAS WITH THEM IN THE  
3 CAR.

4 Q. AND WHAT WERE Y'ALL DOING IN THE CAR?

5 A. WE WERE BASICALLY JUST RIDING AROUND, AND THEY  
6 WERE LOOKING FOR SOMEBODY THAT THEY COULD ROB. WE  
7 WERE RIDING AROUND, WE RODE THROUGH THE HOTEL  
8 PARKING LOT AND THEY NOTICED THAT A DOOR WAS AJAR,  
9 AND THEY GOT OUT TO GO IN AND ROB WHOEVER WAS IN  
10 THERE. AND WHENEVER THEY CAME BACK OUT THEY CAME  
11 BACK OUT WITH A GUN.

12 Q. HAD YOU EVER SEEN THAT GUN BEFORE THEY CAME BACK  
13 WITH IT?

14 A. NO, SIR.

15 Q. WAS THIS THE GUN THEY HAD AT THE TRAVEL LODGE?

16 A. YES, SIR.

17 Q. WHO HAD THE GUN WHEN THEY CAME OUT OF THE IN-TOWN  
18 SUITES?

19 A. LENNIE MICKEY.

20 Q. WHO HAD THE GUN AT THE TRAVEL LODGE?

21 A. LENNIE MICKEY.

22 Q. WHERE WERE YOU WHEN THEY WENT TO DO THIS ROBBERY?

23 A. I WAS IN THE CAR.

24 Q. DID SHAWN AND LENNIE BOTH GO IN TO ROB THIS GUY?

25 A. THEY DID.

DIRECT - ANGELA AGAGAS BY SOL. RUTLEDGE DURANT

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1 Q. DID THEY BOTH COME BACK TO THE CAR AT THE SAME  
2 TIME?

3 A. YES, SIR.

4 SOLICITOR RUTLEDGE DURANT: THE  
5 COURT'S INDULGENCE.

6 THE COURT: YES, SIR.

7 Q. WHERE IS THE IN-TOWN SUITES?

8 A. ON SAVANNAH HIGHWAY IN WEST ASHLEY.

9 Q. AND WHO HAD THIS GUN?

10 A. LENNIE MICKEY.

11 Q. DID THEY HAVE A GUN -- MOVING ON TO THE NEXT DAY,  
12 NOVEMBER THE SEVENTH, TWO THOUSAND AND SIX, THE  
13 DAY ROBERT VARGO WAS KILLED, COULD YOU TELL THE  
14 JURY HOW YOU BECAME ACQUAINTED WITH ALANA NIESEN?

15 A. WELL, WE WERE AT THE HOTEL, SHAWN AND LENNIE LEFT  
16 TO GO TO THE STORE OR SOMEWHERE. WHEN THEY CAME  
17 BACK THEY CAME BACK WITH A GIRL, AND THAT WAS  
18 ALANA NIESEN. SHE WENT BY CHINA, YOU KNOW, I  
19 DIDN'T KNOW HER NAME AT THAT TIME, BUT THEY CAME  
20 BACK WITH HER.

21 Q. WAS THAT THE FIRST TIME YOU HAD MET HER?

22 A. YES, SIR.

23 Q. HER NICKNAME WAS CHINA?

24 A. HER NICKNAME WAS CHINA.

25 Q. WHAT HAPPENED AFTER ALANA CAME BACK TO THE ROOM?



DIRECT - ANGELA AGAGAS BY SOL. RUTLEDGE DURANT

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1 A. WHEN ALANA CAME TO THE ROOM SHE WAS WANTING TO GET  
2 HIGH AND SHE DID, AND SHE KIND OF SAT AROUND WITH  
3 US AND THEY STARTED ASKING HER IF SHE KNEW ANYBODY  
4 THAT THEY COULD ROB OR DO A QUICK LICK WITH REAL  
5 QUICK, AND ALANA BASICALLY WAS, YOU KNOW, SHE  
6 DIDN'T WANT TO, YOU KNOW, SHE DIDN'T KNOW ANYBODY,  
7 AND THEN SHE SAID THAT SHE DID, SHE HAD JUST LEFT  
8 SOMEBODY NEXT DOOR AT THE HOTEL NEXT TO US.

9 Q. WHO WERE, WHO WAS ASKING THE QUESTIONS ABOUT, DO  
10 YOU KNOW ANYBODY WE CAN ROB?

11 A. THEY BOTH WERE.

12 Q. BOTH SHAWN AND LENNIE?

13 A. YES, SIR.

14 Q. THEY BOTH WANTED TO KNOW WHO THEY COULD ROB?

15 A. RIGHT.

16 Q. AND WHO WERE THEY ASKING THIS TO?

17 A. THEY WAS ASKING ALANA.

18 Q. WHAT DID ALANA SAY TO THEM?

19 A. IN THE BEGINNING ALANA WAS, YOU KNOW, A LITTLE  
20 SKEPTICAL ABOUT IT, SHE WAS, LIKE, NO, YOU KNOW,  
21 SHE DIDN'T KNOW ANYBODY, BUT THEN, YOU KNOW, AS  
22 SHE SAT THERE AND GOT A LITTLE HIGHER AND HIGHER,  
23 AND SHE FINALLY WAS, LIKE, YOU KNOW, YEAH, YOU  
24 KNOW, I KNOW THAT I JUST LEFT A GUY NEXT DOOR AT  
25 THE HOTEL, AND Y'ALL COULD PROBABLY GO THERE AND

1 ROB HIM.

2 Q. WHAT DID SHAWN AND LENNIE WANT ALANA TO DO?

3 A. THEY WANTED HER TO GET THEM IN THE HOTEL ROOM, YOU  
4 KNOW, HELP THEM GET INTO THE GUY'S ROOM OR  
5 WHATEVER, BUT SHE DIDN'T WANT TO HAVE NO PART IN  
6 THAT, SHE DIDN'T WANT HIM TO KNOW THAT, YOU KNOW,  
7 SHE SET HIM UP.

8 Q. WHAT DID THEY DO THEN?

9 A. SHAWN CALLED SOMEBODY ON HIS PHONE, HE SAID HE  
10 KNEW SOMEBODY THAT HE COULD, YOU KNOW, GET TO HELP  
11 HIM OUT, SO HE CALLED UP A GIRL AND ASKED HER IF  
12 SHE WOULD HELP HIM OUT.

13 Q. WHAT DID SHAWN SAY ON THE PHONE?

14 A. HE JUST BASICALLY SAID, HEY, YOU KNOW, I'VE GOT  
15 THIS LICK AND WILL YOU HELP ME OUT.

16 Q. AFTER SHAWN MADE THAT CALL WHERE DID THEY GO?

17 A. SHAWN AND LENNIE AND ALANA LEFT AND THEY WENT AND  
18 PICKED UP A GIRL AND THEY BROUGHT HER BACK TO THE  
19 HOTEL ROOM, AND SHE WENT BY B.G. OR SANDRA BARNES.

20 Q. ABOUT HOW LONG WERE THEY GONE?

21 A. THEY WERE PROBABLY GONE MAYBE ABOUT TWENTY  
22 MINUTES, FIFTEEN OR TWENTY MINUTES.

23 Q. AND WHO WAS WITH THEM WHEN THEY RETURNED?

24 A. THE GIRL WAS.

25 Q. AND WHO, HAD YOU EVER MET THAT GIRL BEFORE?

DIRECT - ANGELA AGAGAS BY SOL. RUTLEDGE DURANT

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1 A. NO, I'D NEVER SEEN HER BEFORE.

2 Q. WHO WAS IT?

3 A. SHE WENT BY B.G., BUT IT WAS SANDRA BARNES WAS HER  
4 REAL NAME.

5 Q. WHAT HAPPENED AFTER SANDRA BARNES GOT THERE?

6 A. WHEN SANDRA GOT THERE WE WERE ALL JUST SITTING  
7 AROUND, AND ALANA GOT ON THE PHONE AND CALLED THE  
8 GUY AND TOLD HIM THAT SHE HAD A GIRL FOR HIM, THAT  
9 SHE WAS GOING TO SEND SOMEBODY OVER, THAT SHE  
10 WOULD BE OVER LATER, AND SO, YOU KNOW, I GUESS  
11 THAT WAS THAT, AND THEY HUNG UP.

12 Q. SO, ALANA CALLED THE GUY AND PLUGGED IT IN?

13 A. YES, SIR.

14 Q. AND WHAT DID SHE USE TO CALL HIM?

15 A. I DON'T REMEMBER IF SHE USED HER CELL PHONE OR IF  
16 SHE USED THE HOTEL PHONE. I BELIEVE SHE USED HER  
17 CELL PHONE.

18 Q. WHAT DID SHE TELL HIM?

19 A. SHE JUST TOLD HIM BASICALLY THAT SHE WAS GOING TO  
20 COME OVER A LITTLE BIT LATER, THAT SHE HAD A GIRL  
21 THAT SHE WAS GOING TO SEND OVER, YOU KNOW, BEFORE  
22 SHE CAME OVER, SO, YOU KNOW, IT WOULD BE ALRIGHT  
23 TO LET HER IN.

24 Q. DID YOU SEE THE GUN FROM THE IN-TOWN SUITES IN THE  
25 ROOM THAT NIGHT?

DIRECT - ANGELA AGAGAS BY SOL. RUTLEDGE DURANT

270

1 A. I DID. IT WAS THE SAME GUN.

2 Q. IT WAS THE SAME GUN FROM THE IN-TOWN SUITES?

3 A. YES, SIR.

4 Q. DID YOU SEE ANY OTHER GUN IN THAT ROOM THAT NIGHT?

5 A. NO, SIR.

6 Q. WHO HAD THE GUN THAT NIGHT?

7 A. LENNIE MICKEY.

8 Q. HOW DID THEY KNOW WHAT ROOM ROBERT VARGO WAS  
9 STAYING IN?

10 A. ALANA TOOK THEM OVER THERE. AFTER SHE GOT OFF THE  
11 PHONE FROM CALLING HIM SHE SAID, I'LL SHOW YOU  
12 WHERE IT IS. SO, THE FOUR OF THEM LEFT, ALANA AND  
13 SHAWN AND B.G. AND LENNIE. AND THEN THEY CAME  
14 RIGHT BACK AFTER SHE POINTED OUT WHICH ROOM IT  
15 WAS.

16 Q. HOW LONG WERE THEY GONE?

17 A. JUST A FEW MINUTES, MAYBE FIVE MINUTES.

18 Q. WHAT HAPPENED WHEN THEY RETURNED?

19 A. WHENEVER THEY CAME BACK THEY WERE ALL READY TO GO.  
20 ALANA STAYED BACK AT THE HOTEL WITH ME, AND SANDRA  
21 AND SHAWN AND LENNIE ALL LEFT.

22 Q. WHO WENT OVER TO THE BUDGET INN TO DO THE ROBBERY?

23 A. SHAWN AND LENNIE AND SANDRA, THEY ALL LEFT  
24 TOGETHER.

25 Q. WHO STAYED IN THE ROOM AT THE TRAVEL LODGE?

DIRECT - ANGELA AGAGAS BY SOL. RUTLEDGE DURANT

271

1 A. ME AND ALANA. MYSELF AND ALANA.

2 Q. WHAT WAS THE PLAN?

3 A. THE PLAN WAS THAT THEY WERE GOING TO GO OVER  
4 THERE, B.G., OR SANDRA WAS GOING TO KNOCK ON THE  
5 DOOR, AND ONCE HE OPENED IT THEY WERE GOING TO GO  
6 IN.

7 Q. AND DO WHAT?

8 A. THEY WERE GOING TO ROB HIM.

9 Q. WHO HAD THE GUN WHEN THEY LEFT?

10 A. LENNIE MICKEY.

11 Q. HOW DO YOU KNOW?

12 A. I SEEN IT, HE HAD IT.

13 Q. DO YOU KNOW WHAT TIME IT WAS WHEN THEY LEFT TO GO  
14 DO THAT?

15 A. IT WAS LATE AT NIGHT, IT WAS PROBABLY BETWEEN, YOU  
16 KNOW, TEN: FORTY-FIVE AND ELEVEN: FIFTEEN, SOMEWHERE  
17 AROUND THERE.

18 Q. HOW LONG WERE THEY GONE?

19 A. WELL, WHENEVER THEY, WHENEVER THEY ALL LEFT  
20 TOGETHER SANDRA CAME BACK FIRST. SHE WAS ONLY  
21 GONE JUST A QUICK FEW MINUTES. SHE CAME BACK AND  
22 SHE KNOCKED ON THE DOOR AND I LET HER IN, AND SHE  
23 CAME IN, SHE SAID THAT THEY WERE IN, THAT THEY  
24 WERE IN THE HOTEL ROOM. SO AFTER THAT A FEW  
25 MINUTES LATER, MAYBE ABOUT FIVE OR TEN MINUTES

1           LATER THERE WAS ANOTHER KNOCK ON OUR DOOR AND IT  
2           WAS SHAWN, AND - - -

3           Q.   HOW DID HE APPEAR?

4           A.   HE LOOKED LIKE HE WAS WHITE AS A GHOST, AND HE WAS  
5           PRETTY UPSET, AND HE SAID THAT LENNIE HAD SHOT  
6           HIM.

7           Q.   WHAT DID SHAWN SAY?

8           A.   HE SAID THAT LENNIE SHOT THE MAN.

9           Q.   DO YOU KNOW IF THE OTHER GIRLS HEARD HIM?

10          A.   I DON'T KNOW IF THEY HEARD HIM OR NOT.

11          Q.   WHAT HAPPENED AFTER MICKEY GOT BACK TO THE ROOM?

12          A.   WHEN MICKEY GOT BACK HE WAS PRETTY PUMPED UP, AND  
13          HE WAS READY TO GET OUT OF THERE, SO HE WAS, LIKE,  
14          WE ALL NEED TO GO, WE'VE GOT TO GET OUT.

15          Q.   AND SO, WHAT HAPPENED?

16          A.   SO WE PACKED UP ALL OF OUR STUFF AND WE ALL LEFT.  
17          ME AND SHAWN LEFT IN ONE VEHICLE AND LENNIE AND  
18          SANDRA AND ALANA LEFT IN THE OTHER VEHICLE.

19          Q.   WHAT KIND OF VEHICLE DID YOU AND SHAWN LEAVE IN?

20          A.   WE WERE IN A RED TRACKER.

21          Q.   AND WHO WAS IN THE OTHER VEHICLE?

22          A.   SANDRA AND LENNIE AND ALANA.

23          Q.   AND DO YOU KNOW WHAT TYPE OF VEHICLE THAT SANDRA,  
24          LENNIE AND ALANA WERE IN?

25          A.   A RED DURANGO.

DIRECT - ANGELA AGAGAS BY SOL. RUTLEDGE DURANT

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1 Q. AND WHAT DID YOU DO?

2 A. WHEN WE LEFT?

3 Q. UH-HUH.

4 A. WHEN WE LEFT WE WENT TO TAKE THE TRACKER BACK TO  
5 WHERE IT BELONGS, TO ITS OWNER.

6 Q. AND WHERE IS THAT?

7 A. IN COLONY NORTH.

8 Q. WHERE DID YOU AND SHAWN END UP STAYING THAT NIGHT?

9 A. WE ENDED UP STAYING WITH HIS MOM AND DAD.

10 Q. DID YOU AND SHAWN CONTINUE TO STAY WITH EACH OTHER  
11 AFTER THAT NIGHT?

12 A. WE DID.

13 Q. DID YOU SEE LENNIE MICKEY ANYMORE AFTER THAT  
14 NIGHT?

15 A. I DID.

16 Q. HOW LONG?

17 A. IN THE BEGINNING AFTER THAT NIGHT I DIDN'T SEE HIM  
18 VERY MUCH FOR A FEW DAYS, AND AFTER THAT, YOU  
19 KNOW, I STARTED SEEING HIM AGAIN, HE STARTED  
20 COMING AROUND.

21 Q. IN MID-DECEMBER, TWO THOUSAND AND SIX, YOU WERE  
22 ARRESTED FOR STEALING A CAR AND FOR PARTICIPATING  
23 IN AN ARMED ROBBERY AT THE LA HACIENDA RESTAURANT,  
24 IS THAT CORRECT?

25 A. YES, SIR.

DIRECT - ANGELA AGAGAS BY SOL. RUTLEDGE DURANT

274

1 Q. THOSE CHARGES ARE STILL PENDING AGAINST YOU?

2 A. YES, SIR.

3 Q. DO YOU REMEMBER TALKING WITH DETECTIVE HILL ON  
4 DECEMBER THE FOURTEENTH, TWO THOUSAND AND SIX?

5 A. YES, SIR.

6 Q. YOU PROVIDED HIM WITH A WRITTEN STATEMENT?

7 A. YES, SIR.

8 Q. DO YOU REMEMBER TAKING DETECTIVE HILL ANYWHERE  
9 THAT DAY?

10 A. I DID.

11 Q. WHERE DID YOU TAKE HIM?

12 A. I TOOK HIM AND SHOWED HIM WHERE LENNIE MICKEY  
13 LIVED AND I SHOWED HIM WHERE ALANA LIVED, AND I  
14 SHOWED HIM WHERE DARRELL LYN HIGH LIVED.

15 Q. WHERE HAVE YOU LIVED SINCE DECEMBER THE  
16 FOURTEENTH, TWO THOUSAND AND SIX?

17 A. I'VE BEEN IN CHARLESTON COUNTY JAIL.

18 Q. HAVE YOU HAD CONTACT WITH SHAWN PHILLIPS SINCE  
19 BEING IN JAIL?

20 A. I HAVE.

21 Q. HOW HAVE YOU COMMUNICATED?

22 A. THROUGH LETTERS. IN THE BEGINNING I WOULD CALL  
23 HIS PARENTS, HIS MOM AND, YOU KNOW, RELAYED  
24 MESSAGES TO HIM THROUGH THAT.

25 Q. ARE YOU AWARE OF WHETHER SHAWN PHILLIPS CAN READ



DIRECT - ANGELA AGAGAS BY SOL. RUTLEDGE DURANT

275

1 OR WRITE?

2 A. I AM.

3 Q. HOW DO YOU KNOW?

4 A. I'VE SEEN HIM WRITE BEFORE. I KNOW HE CAN READ AND  
5 WRITE.

6 (State's Exhibit Eleven,  
7 Letter from Shawn Phillips to Angela Agagas,  
8 marked for identification.)

9 Q. I'M SHOWING YOU WHAT'S BEEN MARKED FOR  
10 IDENTIFICATION AS STATE'S EXHIBIT ELEVEN.

11 A. YES, SIR.

12 Q. AND ASK YOU TO TAKE A LOOK AT IT.

13 A. OKAY.

14 Q. DO YOU RECOGNIZE THAT?

15 A. I DO.

16 Q. AND HOW DO YOU RECOGNIZE THAT?

17 A. BECAUSE THIS IS WHAT SHAWN WROTE TO ME.

18 Q. WOULD YOU TELL THE JURY WHAT THAT IS?

19 A. IT'S A LETTER THAT HE HAD SENT TO ME IN THE JAIL.

20 Q. AND DO YOU RECOGNIZE THAT AS SHAWN'S HANDWRITING?

21 A. I DO.

22 Q. AND ON THE ENVELOPE WHICH IS ATTACHED TO IT, WHO  
23 DOES IT SAY IT'S FROM?

24 A. SHAWN PHILLIPS.

25 Q. AND WHO IS IT TO?

DIRECT - ANGELA AGAGAS BY SOL. RUTLEDGE DURANT

276

1 A. ANGELA AGAGAS.

2 SOLICITOR RUTLEDGE DURANT: YOUR  
3 HONOR, AT THIS TIME THE STATE MOVES TO ADMIT STATE'S  
4 ELEVEN.

5 MR. PEPER: NO OBJECTION, YOUR  
6 HONOR.

7 THE COURT: IT'S ADMITTED WITHOUT  
8 OBJECTION.

9 COURT REPORTER: HAND IT TO ME,  
10 PLEASE. STATE'S ELEVEN.  
11 (State's Exhibit Eleven  
12 marked and filed.)

13 Q. NOW, LOOKING AT STATE'S ELEVEN, YOU DON'T HAVE TO  
14 READ ALL OF IT, BUT IF YOU WOULD, READ FROM WHERE  
15 MY FINGER IS - - -

16 A. OKAY.

17 Q. --- A COUPLE OF SENTENCES DOWN, AND I'LL ASK YOU  
18 TO STOP. WHAT DID SHAWN WRITE TO YOU?

19 A. "I NEED YOU TO REALLY TALK TO B.G. BECAUSE IF THIS  
20 ATTORNEY COMES AND SEES ME HE MIGHT NEED TO TALK  
21 TO YOU AND B.G. JUST TO CONFIRM THAT I WAS ASLEEP,  
22 PASSED OUT BECAUSE OF ALL THE LIQUOR I HAD DRUNK,  
23 GIN THAT IS. OH YEAH, MAKE SURE SHE TELLS THE  
24 LAWYER IT WAS D. AND L. THAT LEFT AND WENT TO THE  
25 BUDGET. JUST TELL HER TO TELL THEM THAT SHE WAS

DIRECT - ANGELA AGAGAS BY SOL. RUTLEDGE DURANT

277

1 SCARED AND HIGH, AND THAT MY NAME WAS THE ONLY ONE  
2 THAT CAME UP AND SHE MADE A MISTAKE. I WOULDN'T  
3 HINDER YOU IN NO WAY BECAUSE THEY ALREADY KNOW  
4 THAT Y'ALL ARE DRUG ADDICTS."

5 Q. I THINK YOU CAN STOP RIGHT THERE. THANK YOU.

6 A. OKAY.

7 Q. DID SHAWN COMMUNICATE TO YOU TO TRY TO GET HIS  
8 STORY STRAIGHT?

9 A. HE DID.

10 Q. AND PART OF THAT STORY HE ASKED YOU TO SAY THAT HE  
11 WASN'T THERE, HE NEVER LEFT THE ROOM?

12 A. THAT'S CORRECT.

13 Q. AND HE ALSO ASKED YOU TO GET IT STRAIGHT WITH THE  
14 OTHER GIRLS?

15 A. YES, SIR.

16 Q. AND DID YOU DO THAT?

17 A. NO, SIR. I TOLD THE TRUTH. I DIDN'T GET WITH THEM  
18 AND TRY TO CHANGE THE STORY.

19 Q. AND I WANT TO CONFIRM, WHAT HOTEL WERE YOU IN WHEN  
20 THE PLANNING OF ROBERT VARGO'S ROBBERY TOOK PLACE?

21 A. IN THE TRAVEL LODGE.

22 MR. PEPPER: YOUR HONOR, THAT'S BEEN  
23 ASKED AND ANSWERED.

24 THE COURT: IT WAS, BUT I OVERRULE  
25 YOUR OBJECTION.

DIRECT - ANGELA AGAGAS BY SOL. RUTLEDGE DURANT

278

1 Q. AND WHAT HOTEL WAS THE VICTIM IN?

2 A. AT THE BUDGET NEXT DOOR.

3 SOLICITOR RUTLEDGE DURANT: PLEASE  
4 ANSWER ANY QUESTIONS THAT MR. PEPER MAY HAVE FOR YOU.

5 WITNESS: YES, SIR.

6 THE COURT: MR. PEPER.

7 MR. PEPER: THANK YOU, YOUR HONOR,  
8 MAY IT PLEASE THE COURT.

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.)

CROSS - ANGELA AGAGAS BY MR. PEPER

279

CROSS-EXAMINATION OF ANGELA AGAGAS

BY MR. PEPER:

Q. ANGELA, MY NAME IS MARK PEPER, I REPRESENT SHAWN,  
AND I HAVE SOME QUESTIONS FOR YOU, AND AS MUCH AS  
I WANT TO FEEL SORRY FOR YOU IN THE PREDICAMENT  
YOU'RE IN, YOU DO HAVE A QUITE LENGTHY RAP SHEET,  
DON'T YOU?

A. YES, SIR, I'VE BEEN IN SOME TROUBLE BEFORE.

Q. YOU'RE IN TROUBLE NOW, AREN'T YOU?

A. I'M TROUBLE NOW, TOO.

Q. DO YOU THINK ANYTHING YOU SAY TODAY MIGHT HELP YOU  
OUT DOWN THE ROAD?

A. IT VERY WELL COULD, BUT I'M TELLING THE TRUTH  
TODAY, SO I KNOW IT'S NOT GOING TO GET ME INTO ANY  
TROUBLE FOR LYING.

Q. OKAY. YOU HAVEN'T ALWAYS TOLD THE TRUTH, THOUGH,  
HAVE YOU?

A. NOT NECESSARILY.

Q. WELL, WHEN YOU SAY, NOT NECESSARILY, THIS IS THE  
FIRST TIME YOU'VE EVER TOLD WHAT YOU SAY IS TRUE,  
ISN'T IT?

A. IF YOU SAY SO. THAT WOULD BE YOUR OPINION.

Q. OKAY. LET'S SEE IF I CAN PROVE MY OPINION, OKAY?

A. OKAY.

Q. I'M GOING TO SHOW YOU A COUPLE OF EXHIBITS HERE.

CROSS - ANGELA AGAGAS BY MR. PEPER

280

1 NOW, DO YOU REMEMBER GIVING A STATEMENT ON  
2 ELEVEN/TWENTY-ONE OF O-SIX TO DETECTIVE HILL?

3 A. I DO.

4 Q. DO YOU REMEMBER GIVING A STATEMENT ON DECEMBER  
5 FOURTEENTH TO DETECTIVE GOSS?

6 A. I DO.

7 Q. GOMES, I'M SORRY. DO YOU REMEMBER LOOKING AT A  
8 PHOTO LINEUP TO PICK OUT LENNIE MICKEY ON - - -

9 A. YES, SIR, I DO.

10 Q. --- DO YOU REMEMBER THAT?

11 A. YES, SIR.

12 Q. SO YOU REMEMBER GIVING A COUPLE OF STATEMENTS?

13 A. I DO.

14 Q. AND YOU REMEMBER PICKING OUT LENNIE MICKEY?

15 A. YES, SIR.

16 Q. ON DECEMBER FOURTH OF THIS PAST YEAR -- LET ME  
17 STRIKE THAT AND LET ME REPHRASE, IN THOSE TWO  
18 STATEMENTS I'M REFERRING TO YOU WERE TELLING A  
19 WHOLE DIFFERENT STORY THAN YOU ARE TODAY?

20 A. THAT IS CORRECT.

21 Q. OKAY.

22 A. I LIED TO PROTECT SHAWN IN MY STATEMENTS. I  
23 BLAMED IT ON LENNIE MICKEY WHEN REALLY IT WAS  
24 SHAWN PHILLIPS THAT WAS IN THE ROBBERY, THAT'S IN  
25 MY STATEMENTS. SO, - - -

CROSS - ANGELA AGAGAS BY MR. PEPER

281

1 Q. YOU WANT THE JURY TO BELIEVE IT WAS ALL SHAWN?

2 A. IT WAS SHAWN.

3 Q. THAT'S WHAT YOU WANT THEM TO BELIEVE?

4 A. IN THAT PARTICULAR CASE IN THE ROBBERY THAT I'M  
5 CHARGED WITH, WHICH IS A SEPARATE ARMED ROBBERY  
6 THAN WHAT'S BEING HELD TODAY, HE WAS, HE  
7 PARTICIPATED IN, AND I BLAMED IT ON LENNIE MICKEY  
8 BECAUSE I WAS TRYING TO PROTECT HIM.

9 Q. OKAY. ARE YOU TRYING TO PROTECT YOURSELF TODAY?

10 A. NO, I'M TELLING THE TRUTH.

11 Q. YOU SIGNED A PROFFER AGREEMENT WITH THE STATE?

12 A. YES, DEFINITELY.

13 Q. SO YOU UNDERSTAND THAT YOU'VE GOT A DEAL COMING TO  
14 YOU - - -

15 A. NO, NOT NECESSARILY, NOTHING THAT'S PROMISED TO  
16 ME. THERE'S NO DEAL PROMISED TO ME AND NOTHING  
17 WAS EVER PROMISED TO ME, YOU KNOW. I SIGNED THE  
18 PROFFER AGREEMENT SO THAT NO MORE CHARGES  
19 HOPEFULLY WOULD BE FILED ON ME, AND IT ENDED UP  
20 THAT THEY WERE ANYWAY, SO - - -

21 Q. AND THEY COULD STILL BE FILED AGAINST YOU IN THIS  
22 CASE, TOO, RIGHT?

23 A. SURE, THEY SURE COULD. THEY SURE COULD, BUT I'M  
24 GOING TO TELL THE TRUTH, AND I'M NOT GOING TO LIE  
25 ANYMORE TO PROTECT SHAWN BECAUSE, YOU KNOW, I HAD

1 A BABY IN JAIL, YOU KNOW.

2 Q. IT WAS SHAWN'S BABY, WASN'T IT?

3 A. YES. SHAWN'S BABY, I SURE DID.

4 Q. ARE YOU UPSET ABOUT THAT, BEING IN JAIL?

5 A. VERY UPSET ABOUT BEING IN JAIL.

6 Q. AND SHAWN, YOU FEEL THAT SHAWN GOT YOU IN JAIL,  
7 DON'T YOU?

8 A. AND I DON'T, AND THIS IS VERY HARD FOR ME TO COME  
9 IN HERE AND SAY WHAT I'M SAYING TODAY, THE TRUTH  
10 ABOUT SHAWN WHEN I WANTED TO PROTECT HIM ALL  
11 ALONG, YOU KNOW. I DIDN'T WANT TO SEE MY BABY'S  
12 FATHER GO TO JAIL FOR THE REST OF HIS LIFE OR  
13 SOMETHING, BUT I'M NOT GOING TO LIE FOR HIM  
14 EITHER, YOU KNOW. I THINK HE GOT ME IN ENOUGH  
15 TROUBLE ALREADY.

16 Q. YOU LIED TO THEM ON DECEMBER FOURTEENTH WHEN YOU  
17 SPOKE TO DETECTIVE GOMES. YOU LIED FOR HIM  
18 ALLEGEDLY ON NOVEMBER TWENTY-FIRST WHEN YOU TALKED  
19 TO HILL. IS THAT YOUR STORY?

20 A. YEAH, I DID LIE FOR HIM THEN, I DID.

21 Q. OKAY. SO WHEN YOU TOLD THEM THAT FRANKLIN WAS THE  
22 ONE WITH THE GUN, THE ONE THAT SET UP THE ROBBERY,  
23 THAT WAS A LIE?

24 A. WHO IS FRANKLIN?

25 Q. WHEN YOU JUST TESTIFIED EARLIER THAT LENNIE MICKEY



CROSS - ANGELA AGAGAS BY MR. PEPER

283

1 GOES BY L., FRANKLIN, BROOKLYN AND NEW YORK.

2 A. NO, L., BROOKLYN AND NEW YORK. I NEVER SAID  
3 ANYTHING ABOUT NO FRANKLIN.

4 Q. WOULD IT SURPRISE YOU IF I TOLD YOU HIS FULL NAME  
5 WAS - - -

6 A. NO.

7 Q. --- LENNIE FRANKLIN MICKEY?

8 A. WELL, I DIDN'T KNOW THAT, SO - - -

9 Q. YOU DIDN'T?

10 A. NO.

11 Q. WELL, WHO WAS THE FRANKLIN YOU WERE REFERRING TO  
12 IN HERE?

13 A. WHO? I DON'T THINK I WROTE FRANKLIN IN THERE.

14 Q. OKAY. LET ME SHOW YOU, MAYBE I CAN REFRESH YOUR  
15 MEMORY.

16 A. OKAY.

17 Q. IS THIS YOUR NAME AT THE TOP THERE?

18 A. IT IS.

19 Q. AND IS THAT YOUR SIGNATURE?

20 A. IT IS.

21 Q. AND CAN YOU READ RIGHT HERE FOR ME?

22 A. WHERE?

23 Q. RIGHT HERE. YOU CAN READ IT OUT LOUD.

24 A. OH. "TO ADD MORE INFORMATION TO MY LAST WRITTEN  
25 STATEMENT, L., WHICH IS L. FRANKLIN" - - -

1 Q. HANG ON JUST A SECOND.

2 A. OH. OKAY. WELL, I DID -- OH, OKAY. I SAID, "TO  
3 ADD MORE INFORMATION TO MY LAST WRITTEN  
4 STATEMENT, L., WHICH IS L. FRANKLIN, WAS THE ONE  
5 WITH THE GUN AND THE ONE WHO SET UP THE ROBBERY."  
6 WELL, THAT'S BEEN ALMOST TWO YEARS AGO SO I DIDN'T  
7 REMEMBER HIS NAME WAS FRANKLIN.

8 Q. I KNOW. IT'S TOUGH TO REMEMBER THINGS THAT  
9 HAPPENED TWO YEARS AGO.

10 A. SMALL THINGS LIKE THAT IT IS.

11 Q. DO YOU ALSO REMEMBER TELLING HIM IN THE STATEMENT  
12 THAT ON VARIOUS OCCASIONS YOU'D SEE LENNIE WITH A  
13 GUN, AND HE WOULD ALWAYS BE COMMENTING ABOUT  
14 ROBBING PEOPLE AND HOW A BULLET CAN'T STOP HIM?

15 A. YES.

16 Q. SO, THAT'S TRUE?

17 A. YEAH, THAT PART'S TRUE. BUT THE PART ABOUT HIM  
18 BEING THE ONE IN THE ROBBERY WAS NOT TRUE. IT WAS  
19 REALLY SHAWN, BUT I WAS BLAMING IT ON LENNIE.

20 Q. SO, THERE'S THINGS IN HERE THAT AREN'T TRUE - - -

21 A. THE WHOLE THING IN - - -

22 Q. --- AND THERE'S THINGS THAT AREN'T TRUE?

23 A. YEAH.

24 Q. OKAY. WELL, I'M JUST GOING TO HAVE TO GO OVER IT  
25 ALL, THEN, SO WE CAN FIGURE IT OUT.

CROSS - ANGELA AGAGAS BY MR. PEPER

285

1 A. WELL, OKAY. ALRIGHT.

2 Q. HE MENTIONED, HE BEING LENNIE, THAT YOU LAST  
3 TALKED ABOUT, "MENTIONED THINGS ABOUT A BOY  
4 GETTING POPPED OFF AT THE BUDGET, AND THAT'S ALL  
5 HE SAID. THE OTHER GUY THAT WAS INVOLVED IS NAMED  
6 L, TOO. I DO NOT KNOW HIS FULL NAME, HE ONLY GOES  
7 BY L. HE LIVES IN HANNAHAN AND DRIVES A FOUR DOOR  
8 GRAY SILVER CHEVY WITH TINTED WINDOWS."

9 A. YES.

10 Q. "THERE'S A GUY NAMED D. THAT ALSO HANGS OUT WITH  
11 BOTH L'S, AND THEY ALWAYS TALK ABOUT ROBBERIES,  
12 BUT I DON'T KNOW WHICH ONES THEY OR HE COMMITTED.  
13 D. LIVES OFF OF DORCHESTER ROAD IN SOME TOWN. I  
14 ALSO SHOWED THEM WHERE CHINA AND L. FRANKLIN,"  
15 WHERE YOU REFERRED TO L AS FRANKLIN AGAIN, "SHOWED  
16 THEM WHERE THEY LIVED. CHINA STAYS IN PEPERHILL.  
17 I MET CHINA BY D. AT THE MASTERS INN. D. SELLS  
18 DRUGS, CHINA SMOKES CRACK, THEY WERE AT THE RIVERS  
19 END HOTEL. L. FRANKLIN, AGAIN, L. HANNAHAN,"  
20 WHOEVER THAT IS, "D AND CHINA ALL HANG OUT  
21 TOGETHER." DO YOU REMEMBER SAYING THAT?

22 A. I DO.

23 Q. OKAY. DO YOU REMEMBER PICKING OUT LENNIE MICKEY  
24 OUT OF A PHOTO LINEUP?

25 A. I DO.

1 Q. AND DID YOU WRITE ON THE BOTTOM THAT, "THIS IS THE  
2 GUY, L, THAT WAS WITH THE ARMED ROBBERY AT THE LA  
3 HACIENDA"?

4 A. I DID, BECAUSE I BLAMED IT ON L IN THE BEGINNING.

5 Q. I KNOW. I'M JUST TRYING TO KEEP EVERYTHING  
6 STRAIGHT HERE.

7 A. OKAY.

8 Q. WHEN YOU WERE ASKED, WHOSE PLAN WAS IT TO COMMIT  
9 THE ARMED ROBBERY AT THE BUDGET INN, DID YOU  
10 ANSWER, THE L FROM NEW YORK WHO LIVES ON OLD  
11 TRAINER ROAD?

12 A. I DID.

13 Q. HOW LONG HAD YOU AND SHAWN BEEN SLEEPING TOGETHER  
14 BEFORE YOU GOT ARRESTED?

15 A. BEFORE I GOT ARRESTED, SINCE I MET HIM.

16 Q. AND YOU MET HIM WHEN?

17 A. AT THE END OF OCTOBER.

18 Q. AT THE END OF OCTOBER?

19 A. UH-HUH.

20 Q. WHEN DID YOUR DIVORCE GO FINAL WITH YOUR HUSBAND?

21 A. MAY FIFTEENTH, TWO THOUSAND SEVEN.

22 Q. SO, YOU WERE SLEEPING WITH SHAWN WHILE YOU WERE  
23 STILL MARRIED FROM OCTOBER TO MAY?

24 A. I WAS IN JAIL. I MET SHAWN OCTOBER TWENTY-SIXTH,  
25 AND BY DECEMBER FOURTEENTH I WAS IN THE CHARLESTON

CROSS - ANGELA AGAGAS BY MR. PEPER

287

1 COUNTY JAIL.

2 Q. I'VE GOT YOU.

3 A. THANKS TO SHAWN.

4 Q. I'VE GOT YOU.

5 A. OKAY.

6 Q. YOU MAY OR MAY NOT KNOW THIS, BUT IF YOU DON'T  
7 JUST SAY, I DON'T KNOW. WHEN DO YOU LEARN HOW TO  
8 READ AND WRITE IN SCHOOL?

9 A. I WOULD HOPE IN THE FIRST OR SECOND GRADE.

10 Q. IF YOU DROPPED OUT IN THE FOURTH GRADE AND HAD  
11 NEVER KNOWN HOW TO WRITE OR READ YOUR ENTIRE LIFE,  
12 IS THERE ANY POSSIBLE WAY TO WAKE UP ONE MORNING  
13 AND BE ABLE TO WRITE A TWO PAGE STATEMENT WITH  
14 GREAT GRAMMAR IN ENGLISH?

15 A. THAT'S A GREAT STORY BUT - - -

16 SOLICITOR RUTLEDGE DURANT:  
17 OBJECTION, YOUR HONOR, THIS IS SPECULATION.

18 THE COURT: WAIT.

19 A. WELL, I DON'T KNOW ABOUT ALL THAT, THAT'S A GREAT  
20 STORY, BUT FROM MY UNDERSTANDING, TALKING WITH  
21 SHAWN'S MOTHER HE WAS HOME SCHOOLED. SO, HE KNOWS  
22 HOW TO READ AND WRITE.

23 Q. HOME SCHOOLED BY HIS MOM?

24 A. WHATEVER, WHOEVER, SOMEBODY HOME SCHOOLED HIM.

25 MR. PEPER: THE COURT'S INDULGENCE.

1 Q. THIS WASN'T THE ONLY LETTER YOU ALLEGEDLY GOT FROM  
2 SHAWN, WAS IT?

3 A. NO, THERE'S MORE.

4 Q. I'M ASSUMING THEY WERE ALL IN HIS HANDWRITING?

5 A. NO, THEY WEREN'T ALL IN HIS HANDWRITING. HE'D  
6 WRITE THEM IN DIFFERENT HANDWRITINGS. HE'D HAVE  
7 OTHER PEOPLE WRITE THEM FOR HIM.

8 Q. NOW, WAIT A MINUTE, NOW, WHICH ONE IS IT?  
9 BECAUSE, ARE YOU TRYING TO TELL ME THAT A GUY WITH  
10 A FOURTH GRADE EDUCATION CAN WRITE -- NOT ONLY  
11 READ AND WRITE, BUT CAN WRITE IN FOUR OR FIVE  
12 DIFFERENT TYPES OF HANDWRITING?

13 A. NO, I'M SAYING THAT HE GOT OTHER PEOPLE TO WRITE  
14 HIS LETTERS FOR HIM. HE'S VERY SMART.

15 Q. I'VE GOT YOU.

16 A. UH-HUH.

17 Q. AND IT'S POSSIBLE THAT LETTER THAT WE'VE ALREADY  
18 LOOKED AT WAS WRITTEN BY SOMEBODY ELSE, TOO,  
19 CORRECT?

20 A. NO, THAT LETTER IS HIS HANDWRITING.

21 Q. OKAY.

22 MR. PEPER: THE COURT'S INDULGENCE,  
23 YOUR HONOR.

24 Q. THE MANY LETTERS THAT YOU RECEIVED FROM VARIOUS  
25 PEOPLE FROM SHAWN ONLY TALK ABOUT WHAT HAPPENED?

CROSS - ANGELA AGAGAS BY MR. PEPER

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1 A. NO.

2 Q. AS A MATTER OF FACT, MOST OF THEM WERE LOVE  
3 LETTERS, CORRECT?

4 A. SOME OF THEM, YES, SIR.

5 Q. THERE'S ONE PARTICULAR LOVE LETTER THAT COMES FROM  
6 A GUY NAMED MICHAEL GREEN, ISN'T THAT RIGHT?

7 A. RIGHT.

8 Q. AND MICHAEL GREEN WAS SHAWN'S ROOMMATE, WASN'T HE?

9 A. I DON'T KNOW WHO HE WAS OVER THERE, HE WAS  
10 SOMEBODY OVER THERE IN THE UNIT WITH HIM.

11 Q. AND MICHAEL GREEN IS QUICK TO SAY - - -

12 SOLICITOR BRUCE DURANT: YOUR HONOR,  
13 THIS, I BELIEVE THIS IS GOING TO CALL FOR SOME HEARSAY  
14 HERE.

15 THE COURT: SIR? IS THERE AN  
16 OBJECTION?

17 MR. PEPER: NO, IT ISN'T.

18 SOLICITOR BRUCE DURANT: I BELIEVE  
19 THIS IS GOING TO CALL FOR HEARSAY.

20 THE COURT: I CAN'T HEAR BOTH OF YOU  
21 AT THE SAME TIME, NOW.

22 SOLICITOR BRUCE DURANT: I BELIEVE  
23 THIS WILL CALL FOR HEARSAY, SOMEBODY ELSE'S LETTERS TO  
24 - - -

25 THE COURT: AND WHAT WAS THE

CROSS - ANGELA AGAGAS BY MR. PEPER

290

1 QUESTION YOU'RE OBJECTING TO?

2 MR. PEPER: I ASKED HER IF SHE  
3 RECEIVED LETTERS FROM A GENTLEMAN NAMED MICHAEL GREEN.

4 THE COURT: AND SHE SAID, YEAH, AND  
5 SHE SAID SHE DIDN'T KNOW WHETHER THAT WAS HIS ROOMMATE  
6 OR NOT.

7 MR. PEPER: RIGHT. AND THEN I ASKED  
8 HER, DID HE TELL YOU IN ONE OF HIS LETTERS -- AND I WAS  
9 OBJECTED TO.

10 THE COURT: DID HE -- HE WHO,  
11 MICHAEL GREEN?

12 MR. PEPER: RIGHT.

13 THE COURT: WHAT - - -

14 MR. PEPER: SHE SAID SHE GOT A  
15 LETTER FROM MICHAEL GREEN.

16 THE COURT: WELL, I DON'T KNOW WHAT  
17 IT WAS HE TOLD HER. IT MIGHT BE HEARSAY AND IT MIGHT  
18 NOT. DO YOU WANT TO SHARE IT WITH ME? NOT EVERYTHING  
19 SOMEBODY ELSE SAYS OUT OF COURT IS HEARSAY.

20 MR. PEPER: AND I'LL TELL YOU WHAT  
21 I'LL DO, JUDGE, I DON'T REALLY NEED THE TRUTH ASSERTED  
22 IN HERE, JUST THE FACT THAT SHE WAS RECEIVING LETTERS  
23 FROM VARIOUS OTHER PEOPLE.

24 THE COURT: WELL, SHE SAID SHE GOT  
25 ONE FROM MICHAEL GREEN.



CROSS - ANGELA AGAGAS BY MR. PEPER

291

MR. PEPER: OKAY.

Q. YOU GOT LETTERS FROM OTHER PEOPLE AS WELL?

A. RIGHT.

Q. CORRECT? ALRIGHT, AND MICHAEL GREEN KNEW SHAWN?

A. RIGHT.

Q. AS A MATTER OF FACT, MICHAEL WAS SHAWN'S ROOMMATE?

A. AND MICHAEL SAID THAT HE WAS WRITING LETTERS FOR SHAWN, UH-HUH.

Q. OKAY. BUT NOT IN, NOT IN THIS LETTER DATED, IT DOESN'T HAVE A DATE ON IT, BUT NOT IN ONE OF THE LETTERS HE SENT TO YOU, CORRECT?

A. I DON'T UNDERSTAND YOUR QUESTION.

Q. ALRIGHT. LET ME SHOW YOU -- WELL, YOU TESTIFIED THAT MICHAEL ALWAYS SAID HE WAS WRITING THE LETTERS FOR SHAWN?

A. RIGHT. OH, NO, HE WROTE LETTERS PERSONALLY TO ME, TOO. IF THAT'S WHAT YOU'RE ASKING, YES, HE WROTE LETTERS PERSONALLY TO ME ALSO.

Q. THE LETTERS THAT MICHAEL WROTE TO YOU PERSONALLY AND THE LETTERS THAT MICHAEL WROTE TO YOU ON SHAWN'S BEHALF WERE ALWAYS IN MICHAEL'S HANDWRITING, RIGHT?

A. THEY WERE ALWAYS IN MICHAEL'S HANDWRITING, UH-HUH.

Q. OKAY. LET'S GET BACK TO THE NIGHT IN QUESTION BECAUSE I HAVE SOME CONCERNS WITH REGARDS TO YOUR

CROSS - ANGELA AGAGAS BY MR. PEPER

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1 DRUG ABUSE. YOU WERE OBVIOUSLY USING DRUGS  
2 THROUGHOUT THE DAY, CORRECT?

3 A. THAT'S CORRECT.

4 Q. AND YOU TESTIFIED EARLIER THAT YOU REMEMBER SHAWN,  
5 AND I THINK YOU SAID L, WHICH WAS FRANKLIN OR NEW  
6 YORK OR BROOKLYN - - -

7 A. LENNIE.

8 Q. RIGHT. AND B.G. AND CHINA AND ALANA AND SANDRA,  
9 IS THERE ANYBODY ELSE THAT WAS IN THE ROOM WITH  
10 YOU?

11 A. THERE WAS THE FIVE OF US.

12 Q. OH, THERE WAS ONLY FIVE OF Y'ALL?

13 A. THAT'S FIVE. SANDRA WENT BY B.G., ALANA WENT BY  
14 CHINA, L, WHICH IS LENNIE - - -

15 Q. WHAT DO THEY DO FOR A LIVING?

16 A. WHO?

17 Q. DO YOU WANT TO USE NICKNAMES OR - - -

18 A. I MEAN, WHICHEVER NAMES YOU WANT TO USE, I KNOW  
19 BOTH OF THEM.

20 Q. LET'S GO WITH SANDRA AND ALANA.

21 A. OKAY. ALRIGHT.

22 Q. OKAY.

23 A. I HAVE NO IDEA WHAT THEY DO FOR A LIVING, I DON'T  
24 KNOW THEM THAT WELL.

25 Q. DON'T YOU KNOW THEY WERE HOOKERS?

CROSS - ANGELA AGAGAS BY MR. PEPER

293

1 A. WELL, I DIDN'T KNOW THEY WERE HOOKERS. HOW WAS I  
2 SUPPOSED - - -

3 Q. YEAH.

4 A. I HAD JUST MET THOSE GIRLS, HOW WAS I SUPPOSE TO  
5 KNOW THEY WERE HOOKERS?

6 Q. YOU WERE A HOOKER, TOO?

7 A. I WASN'T A HOOKER. WHERE WAS I A HOOKER AT?

8 Q. YOU'VE BEEN ARRESTED ON PROSTITUTION CHARGES,  
9 HAVEN'T YOU?

10 A. NO, I DON'T THINK SO. I HAVEN'T BEEN ARRESTED FOR  
11 A PROSTITUTION CHARGE.

12 Q. HAVE YOU BEEN ARRESTED ON DRUG CHARGES?

13 A. NO, NO DRUG CHARGES EITHER.

14 Q. HAVE YOU EVER DONE DRUG REHAB?

15 A. I HAVE BEEN TO REHAB.

16 Q. YOU DON'T STILL DO DRUGS, DO YOU?

17 A. I DON'T DO DRUGS NOW, I'M IN JAIL NOW.

18 Q. YOUR HUSBAND KICKED YOU OUT OF THE HOUSE FOR DOING  
19 DRUGS, DIDN'T HE?

20 A. THAT'S CORRECT.

21 Q. THAT'S HOW YOU MET SHAWN?

22 A. THAT'S HOW I MET SHAWN, BECAUSE HE SOLD THEM.

23 Q. WHAT TIME DID Y'ALL START DOING DRUGS ON  
24 WEDNESDAY, THE SEVENTH?

25 A. WHAT TIME? PRETTY MUCH ALL DAY LONG.

CROSS - ANGELA AGAGAS BY MR. PEPER

294

- 1 Q. WHAT KIND OF DRUGS?
- 2 A. CRACK.
- 3 Q. WERE YOU DRINKING?
- 4 A. NO. I WASN'T DRINKING.
- 5 Q. SHAWN WAS DRINKING?
- 6 A. THAT'S RIGHT.
- 7 Q. HE HAD ABOUT A GALLON OF GIN?
- 8 A. I DON'T KNOW HOW MUCH HE HAD BUT HE HAD SOME.
- 9 Q. AND IT WAS GIN?
- 10 A. SOME GIN.
- 11 Q. IT WOULDN'T SURPRISE YOU IF HE KNOCKED OUT A
- 12 GALLON A DAY, THOUGH, WOULD IT?
- 13 A. I DON'T KNOW ABOUT THAT.
- 14 Q. WELL, YOU'VE SEEN HIM DRINK A GALLON OF GIN A DAY,
- 15 HAVEN'T YOU?
- 16 A. NOT THE WHOLE GALLON.
- 17 Q. LET'S SEE, I DON'T WANT TO CALL HER CHINA, LET'S
- 18 GO WITH ALANA.
- 19 A. OKAY.
- 20 Q. SHE WAS SMOKING CRACK, TOO?
- 21 A. SHE WAS SMOKING CRACK, TOO.
- 22 Q. HOW ABOUT SANDRA?
- 23 A. YES, SHE WAS DOING CRACK, TOO.
- 24 Q. HOW ABOUT LENNIE?
- 25 A. NO.

CROSS - ANGELA AGAGAS BY MR. PEPER

295

- 1 Q. LENNIE WASN'T DOING ANY CRACK?
- 2 A. NO.
- 3 Q. LENNIE WAS SOBER?
- 4 A. HE WAS DRINKING.
- 5 Q. OH. SO, HE WASN'T DOING ANY DRUGS AT ALL?
- 6 A. NO, HE WASN'T DOING ANY DRUGS, NOT THAT I KNOW OF.
- 7 I DIDN'T SEE HIM DOING ANY DRUGS, I JUST SEEN HIM
- 8 DRINKING.
- 9 Q. BECAUSE YOU TESTIFIED EARLIER THAT WHEN LENNIE GOT
- 10 BACK FROM BUDGET INN, BOY, HE WAS CRAZY.
- 11 A. HE WAS CRAZY, HE WAS PRETTY PUMPED UP WITH
- 12 ADRENALIN, BECAUSE HE HAD JUST SHOT SOMEBODY, NOT
- 13 BECAUSE HE WAS OFF GETTING HIGH.
- 14 Q. Y'ALL STAYED IN THE ROOM AND KEPT GETTING HIGH?
- 15 A. AFTERWARDS?
- 16 Q. YEAH.
- 17 A. NO, WE ALL LEFT.
- 18 Q. WHEN LENNIE WENT OVER TO THE BUDGET INN YOU STAYED
- 19 IN THE ROOM AND KEPT GETTING HIGH?
- 20 A. NO, I WASN'T GETTING HIGH, BECAUSE I DIDN'T GET
- 21 HIGH IN FRONT OF ANYBODY. SHAWN DIDN'T LIKE ME TO
- 22 GET HIGH IN FRONT OF ANYBODY, BUT I GOT HIGH BY
- 23 MYSELF. I DIDN'T GET HIGH IN FRONT OF ANYBODY, SO
- 24 WHILE THEY WERE GONE SANDRA AND ALANA GOT HIGH, I
- 25 DIDN'T.

CROSS - ANGELA AGAGAS BY MR. PEPER

296

1 Q. MAYBE IT WAS BECAUSE YOU WERE SO HIGH YOU THOUGHT  
2 THEY WERE GONE AND THEY WERE STILL IN THE ROOM.  
3 YOU TESTIFIED EARLIER YOU HAD BEEN DOING CRACK ALL  
4 DAY.

5 A. I HAD, BUT I DIDN'T DO IT IN FRONT OF THEM.

6 MR. PEPER: A FEW MORE QUESTIONS,  
7 AND THE COURT'S INDULGENCE, YOUR HONOR, I APOLOGIZE.

8 Q. I'M TRYING TO KEEP EVERYTHING STRAIGHT, I KNOW YOU  
9 MUST BE UPSET THAT YOU HAD TO BIRTH YOUR CHILD  
10 WHILE YOU WERE IN JAIL, CORRECT?

11 A. THAT WAS PRETTY UPSETTING.

12 Q. AND IT MUST HAVE REALLY MADE YOU MAD AT SHAWN  
13 BECAUSE YOU FEEL LIKE HE'S THE ONE THAT GOT YOU IN  
14 THERE?

15 A. I DO.

16 Q. THEN, WHEN YOU GOT NOTICE THAT SHAWN'S MOM WAS  
17 GOING TO FILE FOR CUSTODY OF THE CHILD THAT REALLY  
18 MUST HAVE MADE YOU MAD?

19 A. YEAH, THAT MADE ME MAD, BUT NOT MAD ENOUGH - - -

20 Q. AND IT'S YOUR TESTIMONY TODAY THAT HE - - -

21 A. I'M NOT SAYING THAT SHAWN MEANT - - -

22 Q. GO AHEAD.

23 A. NO, I'M NOT SAYING IT'S ALL HIM, I'M SAYING IT'S  
24 HIM AND LENNIE, THEY BOTH PARTICIPATED IN IT, AND  
25 I'M NOT SAYING THAT SHAWN WAS THE ONE WHO SHOT THE

CROSS - ANGELA AGAGAS BY MR. PEPPER

297

1 MAN. HE CAME BACK AND TOLD ME THAT LENNIE DID IT,  
2 YOU KNOW. I'M NOT MAD AT HIM AND WANTING HIM TO  
3 SERVE A LOT OF TIME BECAUSE I HAD TO HAVE MY BABY  
4 IN JAIL OR BECAUSE I'M IN THIS TROUBLE, YOU KNOW.  
5 I PARTICIPATED IN MY OWN PART OF MY OWN CRIME, YOU  
6 KNOW. I'M NOT PUTTING THE BLAME ON HIM OR, YOU  
7 KNOW, TRYING TO HAVE ANIMOSITY TOWARDS HIM TO GET  
8 HIM IN MORE TROUBLE, I'M JUST SIMPLY TELLING THE  
9 TRUTH, YOU KNOW. I'M NOT HERE LYING.

10 Q. BECAUSE THAT'S WHAT YOU DO, YOU TELL THE TRUTH?

11 A. WELL, I'M TELLING THE TRUTH RIGHT NOW, THAT'S WHAT  
12 I'M DOING, YOU KNOW. I HAVE A BABY TO THINK  
13 ABOUT, TO GET HOME TO. IF I COME IN THIS  
14 COURTROOM AND I LIE LIKE HE WANTED ME TO, YOU  
15 KNOW, IF I COME IN HERE AND SAY, OH, NO, HE WAS  
16 PASSED OUT IN THE ROOM DRUNK, SLEEPING, YOU KNOW,  
17 WHAT, THAT'S A BIG LIE, SO I'M NOT GOING TO SAY  
18 THAT, OR NO, SOME OTHER GUY, YOU KNOW, HE TRIED TO  
19 SAY SOME OTHER GUY WAS WITH HIM, OR WHATEVER,  
20 THAT'S NOT THE TRUTH, SO I'M NOT GOING TO LIE FOR  
21 HIM.

22 Q. OKAY. LET ME ASK YOU THIS, AND I DON'T WANT YOU  
23 TO LIE NOW, - - -

24 A. OKAY.

25 Q. --- WHEN L, SHAWN AND SANDRA, ACCORDING TO YOU,

CROSS - ANGELA AGAGAS BY MR. PEPER

298

1 LEFT THE ROOM, DID THEY SHUT THE DOOR BEHIND THEM?

2 A. YES, THE DOOR WAS SHUT.

3 Q. WERE THE WINDOW DRAPES CLOSED?

4 A. YES.

5 Q. YOU DIDN'T GO LOOK OUT TO SEE WHERE THEY WENT, DID  
6 YOU?

7 A. NO.

8 Q. SO ONCE THAT DOOR IS CLOSED THE NEXT TIME YOU SAW  
9 SANDRA - - -

10 A. RIGHT.

11 Q. --- IS WHEN SHE CAME BACK IN THE ROOM?

12 A. RIGHT.

13 Q. THE NEXT TIME YOU SAW SHAWN WAS WHEN HE CAME BACK  
14 IN THE ROOM?

15 A. THAT'S CORRECT.

16 Q. THE NEXT TIME YOU SAW MICKEY WAS WHEN, OR  
17 FRANKLIN, OR L - - -

18 A. HE CAME BACK IN THE ROOM.

19 Q. --- WHEN HE CAME BACK IN THE ROOM?

20 A. THAT'S CORRECT.

21 Q. AND YOU HAVE NO IDEA WHAT TRANSPIRED BETWEEN - - -

22 A. ALL I KNOW IS WHAT THEY TOLD ME.

23 MR. PEPER: NO FURTHER QUESTIONS,  
24 YOUR HONOR.

25 THE COURT: REDIRECT.



1                                    SOLICITOR RUTLEDGE DURANT:    THANK  
2                    YOU, JUDGE, BRIEFLY.  
3                    (NOTE: Blank lines on this page do not indicate any  
4                    part of record has been omitted. Headers on testimony  
5                    pages and hard page breaks between testimony are now  
6                    required by the Court. See next ensuing page for  
7                    sequential continuation of record.)

REDIRECT - ANGELA AGAGAS BY SOL. RUTLEDGE DURANT

300

REDIRECT EXAMINATION OF ANGELA AGAGAS

BY SOLICITOR RUTLEDGE DURANT:

Q. WHEN YOU GAVE YOUR STATEMENT ON NOVEMBER THE  
TWENTY-FIRST, TWO THOUSAND AND SIX, YOU WERE  
QUESTIONED ABOUT WHAT ROBBERY?

A. THE ROBBERY THAT WAS, STEMMED FROM THE GUY AT THE  
LA HACIENDA ON RIVERS AVENUE.

Q. AND WHEN DID THAT ROBBERY OCCUR IN RELATION TO THE  
MURDER?

A. AFTER THE MURDER.

Q. AND AGAIN, YOU TOLD THE POLICE THAT, WHO WAS  
INVOLVED?

A. I TOLD THE POLICE THAT L AND ANOTHER GUY NAMED L  
WAS INVOLVED.

Q. TWO GUYS NAMED L?

A. THAT'S RIGHT.

Q. AND WHY DID YOU TELL THEM TWO GUYS NAMED L, AND  
NOT SHAWN?

A. I TOLD THEM THAT TWO GUYS NAMED L BECAUSE I WAS  
TRYING TO PROTECT SHAWN. I MEAN, SHAWN WAS GOOD  
TO ME WHILE I WAS OUT THERE WHEN MY HUSBAND KICKED  
ME OUT, YOU KNOW. HE ALWAYS LET ME STAY WITH HIM.  
WHEN I WENT TO THE JAIL FOR STEALING THE TRUCK HE  
BONDED ME OUT OF JAIL, YOU KNOW. I MEAN, HE  
SEEMED LIKE HE CARED ABOUT ME A LITTLE BIT, SO I

REDIRECT - ANGELA AGAGAS BY SOL. RUTLEDGE DURANT

301

1 DIDN'T WANT TO GET HIM IN ANYMORE TROUBLE. YOU  
2 KNOW, I KNEW THAT, YOU KNOW, HIS PAST, OR  
3 WHATEVER, I JUST DIDN'T WANT TO GET HIM IN ANYMORE  
4 TROUBLE SO I LIED FOR HIM, AND I BLAMED IT ON L  
5 AND ANOTHER GUY NAMED L THAT I MADE UP.

6 Q. YOU LIED TO PROTECT HIM?

7 A. I DID, I DID.

8 Q. IT WASN'T A VERY GOOD LIE, WAS IT?

9 A. NO, IT WASN'T VERY GOOD.

10 Q. TO BLAME IT ON TWO GUYS NAMED L?

11 A. NAMED THE SAME L, YEAH.

12 Q. DO YOU KNOW WHY SHAWN HAD OTHER PEOPLE WRITE  
13 LETTERS TO YOU FROM HIM?

14 A. I THINK, I DON'T KNOW WHY, BUT I BELIEVE THAT HE  
15 JUST DID IT TO COVER HIMSELF.

16 Q. YOU SAID HE WAS SMART?

17 A. YEAH.

18 Q. THE LETTER THAT'S IN EVIDENCE, WHO WROTE THAT?

19 A. HE WROTE THAT.

20 Q. AND THAT'S HIS HANDWRITING?

21 A. THAT'S HIS HANDWRITING.

22 SOL. RUTLEDGE DURANT: THANK YOU.

23 THE COURT: RECROSS?

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

RECROSS - ANGELA AGAGAS BY MR. PEPER

302

RECROSS-EXAMINATION OF ANGELA AGAGAS

BY MR. PEPER:

Q. I JUST WANT TO MAKE SURE I UNDERSTAND, OKAY, YOU DID NOT WITNESS THE ALLEGED ARMED ROBBERY, THE MURDER, ANYTHING THAT HAPPENED OUTSIDE THE TRAVEL LODGE INN?

A. NO, SIR. I WAS INSIDE THE HOTEL ROOM THE WHOLE TIME.

Q. EXACTLY. THE ONLY THING THAT YOU COULD PROVIDE THIS JURY TO HELP FIGURE OUT WHO COMMITTED THESE CRIMES IS WHAT OTHER PEOPLE TOLD YOU?

A. WHAT SHAWN TOLD ME WHEN HE CAME BACK, THAT L SHOT HIM, YES.

Q. AND YOU WANT THEM TO BELIEVE, NOT BECAUSE YOU SAW IT BUT BECAUSE OTHER PEOPLE TOLD YOU, THAT IT MUST BE TRUE?

A. THAT'S WHAT HAPPENED.

Q. IT HAS TO BE TRUE?

A. THAT'S WHAT HAPPENED, THAT'S THE TRUTH.

Q. BECAUSE YOUR CREDIBILITY ISN'T AN ISSUE, CORRECT?

A. WELL, IF YOU DON'T TAKE MY CREDIBILITY AT ISSUE, THEN LISTEN TO WHAT THE OTHER TWO GIRLS HAVE TO SAY. SO, - - -

MR. PEPER: THANK YOU, YOUR HONOR.

THE COURT: ALRIGHT, THANK YOU,

1 MA'AM, YOU CAN STEP DOWN.

2 THE COURT: LADIES AND GENTLEMEN, WE  
3 HAVE TWO OUT OF TOWN WITNESSES THAT WE THINK ARE GOING  
4 TO TAKE ABOUT TWENTY OR THIRTY MINUTES TOTAL. ONE OF  
5 THEM IS FROM NORTH CAROLINA. WE WOULD LIKE TO GET  
6 THOSE TWO DONE THIS AFTERNOON IF YOU CAN STAY ANOTHER  
7 TWENTY OR THIRTY MINUTES. DOES ANYBODY HAVE A BIG  
8 PROBLEM WITH THAT? DO YOU NEED TO MAKE A QUICK PHONE  
9 CALL OR SOMETHING?

10 (Negative response from jury.)

11 THE COURT: OKAY, THAT'S FINE.  
12 THANK YOU VERY MUCH.

13 ALRIGHT, CALL YOUR WITNESS.

14 SOLICITOR RUTLEDGE DURANT: THANK  
15 YOU, JUDGE, THE STATE CALLS ALEC BROWNE.

16 THE COURT: COME AROUND, MR. BROWNE,  
17 PLEASE, SIR.

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

20 (Whereupon, Alec Browne  
21 is duly sworn.)

22 CLERK: THANK YOU, PLEASE HAVE A SEAT  
23 AND STATE YOUR FULL NAME FOR THE RECORD, PLEASE.

24 WITNESS: MY NAME IS ALEC BROWNE, B-  
25 R-O-W-N-E.

DIRECT - ALEC BROWNE BY SOL. RUTLEDGE DURANT

304

DIRECT EXAMINATION OF ALEC BROWNE

BY SOLICITOR RUTLEDGE DURANT:

Q. GOOD AFTERNOON, MR. BROWNE.

A. HELLO.

Q. HOW OLD ARE YOU?

A. SIXTY-ONE.

Q. AND WHAT DO YOU DO FOR A LIVING?

A. I'M A CONSTRUCTION MANAGER.

Q. DO YOU LIVE OUT OF STATE?

A. YES, I DO.

Q. DID YOU HAVE OCCASION TO BE CHARLESTON DURING THE  
FIRST WEEK OF NOVEMBER IN TWO THOUSAND AND SIX?

A. YES, I WAS LOOKING AT A COUPLE OF CONSTRUCTION  
PROJECTS.

Q. WHERE WERE YOU STAYING?

A. AT THE IN-TOWN SUITES ON SAVANNAH HIGHWAY.

Q. CAN YOU TELL THE JURY WHAT HAPPENED ON THE EVENING  
OF NOVEMBER FIFTH, TWO THOUSAND SIX, AROUND  
EIGHT:FORTY-FIVE P.M., AT YOUR HOTEL ROOM AT THE  
IN-TOWN SUITES?

A. I WAS LAYING IN BED WATCHING TELEVISION AT THAT  
TIME. THE DOOR WAS PROPPED OPEN, IT WAS SOMEWHAT  
MUSKY INSIDE, AND TWO BLACK MALES ENTERED THE ROOM  
AND ROBBED ME.

Q. AND WERE YOU ABLE TO OBSERVE THEIR PHYSICAL

DIRECT - ALEC BROWNE BY SOL. RUTLEDGE DURANT

305

1 APPEARANCE?

2 A. YES. THEY WERE WEARING SKI MASKS SO I COULD NOT  
3 GET AN IDENTIFICATION ON THE FACES. THEY WERE  
4 BLACK MALES ROUGHLY FIVE FOOT NINE, ONE OF THEM,  
5 ROUGHLY FIVE FOOT ELEVEN, THE OTHER.

6 Q. AND HOW TALL ARE YOU?

7 A. I'M SIX FOOT FOUR.

8 Q. AND WHAT WAS YOUR VANTAGE POINT?

9 A. THE FIRST TIME I SAW THEM WAS WHEN I WAS LAYING ON  
10 MY BACK IN THE BED WHEN THEY CAME IN THE DOOR.  
11 THEY ORDERED ME TO GET OFF THE BED AND ONTO THE  
12 FLOOR, AND SO, I WAS IN A KIND OF A SEMI-KNEELING  
13 POSITION ON THE FLOOR LOOKING ACROSS THE BED AT  
14 THEM GOING THROUGH THE ROOM.

15 Q. AND SO, YOU WERE ABLE TO APPROXIMATE THEIR HEIGHT  
16 FROM THAT VANTAGE POINT?

17 A. YES.

18 Q. WHAT WAS STOLEN DURING THE ROBBERY?

19 A. A COLT DETECTIVE SPECIAL, THIRTY-EIGHT SPECIAL.

20 Q. WAS THE GUN LOADED WHEN IT WAS STOLEN?

21 A. YES, IT WAS.

22 Q. DO YOU KNOW WHAT KIND OF AMMUNITION WAS INSIDE?

23 A. YES, THERE WERE THREE ROUNDS OF STAR FIRE HOLLOW  
24 POINT AMMUNITION AND THREE ROUNDS OF SEMI-WAD  
25 CUTTER.

DIRECT - ALEC BROWNE BY SOL. RUTLEDGE DURANT

306

1 Q. AND DO YOU KNOW WHAT THE CHARACTERISTICS OF A STAR  
2 FIRE ROUND ARE?

3 A. IT'S A HOLLOW, IT'S A JACKETED HOLLOW POINT.

4 Q. AND HOW WERE YOU ABLE TO TELL THAT THE MEN WERE  
5 BLACK MALES?

6 A. THE EYE HOLES IN THE SKI MASKS, AND THEY WEREN'T  
7 WEARING GLOVES, I COULD LOOK AT THEIR HANDS.

8 SOLICITOR RUTLEDGE DURANT: THANK  
9 YOU, SIR, PLEASE ANSWER ANY QUESTIONS MR. PEPER MAY  
10 HAVE FOR YOU.

11 THE COURT: 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  
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17 required by the Court. See next ensuing page for  
18 sequential continuation of record.)



CROSS - ALEC BROWN BY MR. PEPER

307

CROSS-EXAMINATION OF ALEC BROWNE

BY MR. PEPER:

Q. MR. BROWNE, MARK PEPER, HOW ARE YOU?

A. JUST FINE.

Q. I REPRESENT SHAWN. I LIVE RIGHT IN THAT AREA AND I'M SORRY YOU HAD TO GO THROUGH THIS. JUST TO CLARIFY, YOU WEREN'T ABLE TO GIVE ANY OTHER DESCRIPTION OF THESE TWO BLACK MALES THAT BARGED INTO YOUR ROOM WITH THE EXCEPTION OF THEIR HEIGHT?

A. THAT'S CORRECT.

Q. AND YOU TOLD THE OFFICERS IN YOUR ORAL STATEMENT AS WELL AS YOUR WRITTEN STATEMENT THAT THERE WAS NO POSSIBLE WAY YOU COULD PICK THEM OUT OF A LINEUP?

A. NO, THEY ASKED ME THAT, I TOLD THEM THAT IT WOULDN'T BE POSSIBLE.

Q. I HOPE YOUR VISIT TO CHARLESTON WILL BE BETTER NEXT TIME.

MR. PEPER: THANK YOU. THAT'S ALL, YOUR HONOR.

THE COURT: ANYTHING ELSE?

SOLICITOR RUTLEDGE DURANT: NOTHING ELSE, YOUR HONOR.

THE COURT: THANK YOU, SIR, YOU CAN STEP DOWN, AND YOU MAY BE EXCUSED. THANK YOU FOR

1 COMING DOWN HERE.

2 SOLICITOR RUTLEDGE DURANT: AT THIS  
3 TIME THE STATE CALLS SUZANNE CROMER.

4 THE COURT: COME AROUND, MS. CROMER.  
5 (Whereupon, Suzanne Cromer  
6 is duly sworn.)

7 CLERK: THANK YOU, HAVE A SEAT AND  
8 STATE YOUR FULL NAME FOR THE RECORD, PLEASE.

9 WITNESS: MY NAME IS SUZANNE CROMER,  
10 C-R-O-M-E-R.

11 (NOTE: Blank lines on this page do not indicate any  
12 part of record has been omitted. Headers on testimony  
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15 sequential continuation of record.)

DIRECT - SUZANNE CROMER BY SOL. RUTLEDGE DURANT

309

DIRECT EXAMINATION OF SUZANNE CROMER

BY SOLICITOR RUTLEDGE DURANT:

Q. GOOD AFTERNOON, MS. CROMER.

A. GOOD AFTERNOON.

Q. WOULD YOU PLEASE TELL THE JURY WHERE YOU'RE  
EMPLOYED?

A. I'M EMPLOYED BY THE SOUTH CAROLINA LAW ENFORCEMENT  
DIVISION COMMONLY REFERRED TO AS SLED.

Q. AND WHAT DO YOU DO AT SLED?

A. I AM A FIREARMS AND TOOL MARK EXAMINER.

Q. HOW LONG HAVE YOU BEEN IN FIREARMS IDENTIFICATION?

A. I HAVE BEEN WITH SLED IN THE FIREARMS DEPARTMENT  
FOR ALMOST TEN YEARS, I'VE BEEN IN MY CURRENT  
POSITION FOR EIGHT AND A HALF.

Q. WHAT DOES THE FIELD OF FIREARMS IDENTIFICATION  
CONSIST OF?

A. FIREARMS IDENTIFICATION IS A DISCIPLINED FORENSIC  
SCIENCE WHERE WE LOOK AT AMMUNITION COMPONENTS  
SUCH AS BULLETS, CARTRIDGE CASINGS, SHOT GUN  
SHELLS, TO DETERMINE WHETHER OR NOT THEY WERE  
FIRED BY OR LOADED INTO A SPECIFIC FIREARM.

Q. AND WHAT IS YOUR EDUCATIONAL BACKGROUND?

A. I RECEIVED A BACHELOR'S DEGREE FROM CLEMSON  
UNIVERSITY, I DID SOME GRADUATE WORK IN CRIMINAL  
JUSTICE AT THE UNIVERSITY OF SOUTH CAROLINA. I'VE

DIRECT - SUZANNE CROMER BY SOL.RUTLEDGE DURANT

310

1 COMPLETED SLED'S IN HOUSE TRAINING PROGRAM WHICH  
2 IS THREE TO FIVE YEARS WHERE I STUDIED UNDER FIVE  
3 COURT QUALIFIED FIREARMS EXAMINERS, AND IT'S MORE  
4 LIKE AN APPRENTICESHIP, ORAL TESTS, WRITTEN TESTS,  
5 PROFICIENCY EXAMS, PRACTICAL EXERCISES. I'VE ALSO  
6 ATTENDED SEMINARS THROUGH THE SOUTH CAROLINA  
7 INTERNATIONAL ASSOCIATION OF IDENTIFICATION ON  
8 PATHOLOGY OF GUN SHOT WOUNDS, SHOOTING SCENERY  
9 CONSTRUCTION, I'VE ALSO ATTENDED THE ASSOCIATION  
10 OF FIREARM AND TOOL MARK EXAMINER ANNUAL  
11 CONFERENCE WHERE, IT'S AN INTERNATIONAL  
12 ORGANIZATION WHERE WE GET TOGETHER TO DISCUSS OUR  
13 FIELD. I'VE ATTENDED AN ARMOR'S COURSE, I'VE  
14 TAKEN SEVERAL CLASSES FROM THE BUREAU OF ALCOHOL,  
15 TOBACCO AND FIREARMS, AND SERIAL NUMBER  
16 RESTORATION, AND THE INTEGRATED BALLISTICS  
17 IDENTIFICATION SYSTEM.

18 Q. ARE YOU AUTHORIZED BY SLED TO CONDUCT FIREARMS  
19 IDENTIFICATION?

20 A. YES, SIR, I AM.

21 Q. HAVE YOU EVER BEEN QUALIFIED AS AN EXPERT IN YOUR  
22 FIREARMS IDENTIFICATION?

23 A. YES, SIR, I HAVE.

24 Q. ABOUT HOW MANY TIMES?

25 A. FIFTEEN TIMES.

DIRECT - SUZANNE CROMER BY SOL. RUTLEDGE DURANT

311

1 SOLICITOR RUTLEDGE DURANT: YOUR  
2 HONOR, AT THIS TIME THE STATE MOVES TO HAVE MS. CROMER  
3 QUALIFIED AS AN EXPERT IN THE AREA OF FIREARMS  
4 IDENTIFICATION.

5 MR. PEPER: BY ALL MEANS, YOUR  
6 HONOR.

7 THE COURT: I FIND THAT SHE'S SO  
8 QUALIFIED, LADIES AND GENTLEMEN, WITH THE SAME RESULTS  
9 AS I EXPLAINED TO YOU EARLIER.

10 ALRIGHT, YOU MAY CONTINUE.

11 SOLICITOR RUTLEDGE DURANT: THANK  
12 YOU, JUDGE.

13 Q. WITH REGARD TO THIS CASE YOUR LAB NUMBER L ZERO  
14 SIX, DASH, ONE SEVEN FOUR SIX FIVE, DID YOU HAVE  
15 THE OCCASION TO EXAMINE SOME EVIDENCE SUBMITTED TO  
16 YOU BY THE NORTH CHARLESTON POLICE DEPARTMENT?

17 A. YES, SIR, I DID.

18 Q. WHAT WAS SUBMITTED?

19 A. I RECEIVED ONE FIRED BULLET.

20 Q. THIS IS STATE'S EXHIBIT TEN, AND I'D ASK YOU TO  
21 LOOK AT THAT?

22 A. YES, SIR, FIRST IT'S IN SEVERAL SEALED CONTAINERS  
23 WITH MY INITIALS AND THE DATE.

24 Q. AND WHAT IS THAT?

25 A. THIS IS ONE FIRED BULLET.

DIRECT - SUZANNE CROMER BY SOL. RUTLEDGE DURANT

312

1 Q. AND IS THAT WHAT WAS SUBMITTED TO YOU BY THE NORTH  
2 CHARLESTON POLICE DEPARTMENT?

3 A. YES, SIR, IT WAS.

4 SOLICITOR RUTLEDGE DURANT: YOUR  
5 HONOR, AT THIS TIME THE STATE MOVES FOR ADMISSION OF  
6 STATE'S TEN.

7 MR. PEPER: NO OBJECTION.

8 THE COURT: ADMITTED WITHOUT  
9 OBJECTION.

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

12 Q. BASED ON YOUR EXAMINATION OF THIS PROJECTILE WERE  
13 YOU ABLE TO DETERMINE THE CALIBER?

14 A. YES, SIR, FOUND THAT IT WAS MOST CONSISTENT WITH  
15 THIRTY-EIGHT SPECIAL OR THREE FIFTY-SEVEN MAGNUM.

16 Q. AND HOW DID YOU MAKE THIS DETERMINATION?

17 A. ONCE I RECEIVE A FIRED BULLET I OPEN IT UP, LOOK  
18 AT IT, I WEIGH IT, I MEASURE IT, I MEASURE IT'S  
19 DIAMETER, AND THEN I LOOK AT THE ACTUAL RIFLING  
20 UNDER MY COMPARISON MICROSCOPE. AND THEN WHAT I  
21 DO IS, I ACTUALLY MEASURE THE DIAMETER OF THE  
22 GROOVES OF THE RIFLING. THEN WHEN I GET ALL OF  
23 THOSE FIGURES I PUNCH IT INTO A COMPUTER CALLED  
24 OUR GRC PROGRAM, WHICH IS GENERAL RIFLING  
25 CHARACTERISTIC PROGRAM, AND IT GIVES ME A LIST OF

DIRECT - SUZANNE CROMER BY SOL.RUTLEDGE DURANT

313

1 POSSIBLE FIREARMS THAT COULD HAVE FIRED THIS  
2 BULLET.

3 Q. AND WOULD YOU DESCRIBE THE PHYSICAL  
4 CHARACTERISTICS OF THIS PROJECTILE?

5 A. YES. THIS IS A JACKETED HOLLOW POINT AND CLOSED  
6 BASE, SERRATED CANDLE, APPROXIMATELY A HUNDRED AND  
7 TWENTY-FIVE GRAINS.

8 Q. I REFER TO EARLIER TESTIMONY IN THIS CASE FROM  
9 ALEC BROWNE WHO STATED THAT THE GUN WHICH HE SAYS  
10 WAS STOLEN FROM HIM AT THE IN-TOWN SUITES WAS  
11 LOADED WITH A, QUOTE, STAR FIRE TYPE BULLETS. WAS  
12 THIS PROJECTILE RECOVERED CONSISTENT WITH THE STAR  
13 FIRE ROUND?

14 A. YES, SIR. THE PMC, WHICH IS THE MANUFACTURER OF  
15 STAR FIRE AMMUNITION, IS A JACKET HOLLOW POINT AND  
16 IT'S ONLY GIVEN IN A HUNDRED AND TWENTY-FIVE  
17 GRAINS IN A THIRTY-EIGHT SPECIAL.

18 Q. BASED UPON THE RIFLING CHARACTERISTICS WERE YOU  
19 ABLE TO ASCERTAIN THE TYPE OF WEAPONS WHICH COULD  
20 HAVE POTENTIALLY FIRED THAT ROUND?

21 A. YES, SIR. I SUBMITTED A LIST OF EIGHT FIREARMS.

22 Q. AND HOW DID YOU NARROW IT DOWN TO EIGHT?

23 A. THE GENERAL RIFLING CHARACTERISTIC PROGRAM THAT IS  
24 SPONSORED BY THE FBI, IT HAD EIGHT FIREARMS LISTED  
25 UNDER A THIRTY-EIGHT SPECIAL AND THREE FIFTY-SEVEN

DIRECT - SUZANNE CROMER BY SOL.RUTLEDGE DURANT

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1 MAGNUM, WITH THIS SIX LEFT IN THE DIMENSIONS OF  
2 THE LANDS AND GROOVES IMPRESSIONS ON THE FIREARM,  
3 ON THE BULLET, I'M SORRY.

4 Q. ARE THOSE BRANDS ALL REVOLVERS?

5 A. NO, SIR, THERE IS TWO DERRINGERS, BUT I, IN MY  
6 PROFESSIONAL OPINION I FEEL THAT THIS IS MOST  
7 CONSISTENT WITH BEING FIRED FROM A REVOLVER. A  
8 REVOLVER HAS A CYLINDER WHICH IS A ROUND THING  
9 THAT HOLDS THE CARTRIDGES WHILE THEY'RE BEING  
10 FIRED. THEN THE BULLET HAS TO ENTER INTO THE  
11 BARREL. SO, THE CYLINDER AND THE BARREL ARE  
12 SEPARATE. AND DURING THAT THERE CAN BE SOME PLAY  
13 OR MISALIGNMENT IN THE RIFLING MARKINGS ON THE  
14 BULLET, AND THAT WAS CONSISTENT HERE.

15 Q. NOW, DOES A REVOLVER EJECT ITS SHELL CASING?

16 A. NO, IT DOES NOT.

17 Q. WHAT ABOUT A SEMI-AUTOMATIC?

18 A. YES, IT DOES.

19 Q. WERE ANY OF THESE GUNS SEMI-AUTOMATICS, ANY OF  
20 THESE EIGHT?

21 A. NO, SIR.

22 Q. IN YOUR OPINION IS A COLT THIRTY-EIGHT CALIBER  
23 SPECIAL ONE OF THE GUNS THAT COULD HAVE FIRED THIS  
24 BULLET?

25 A. YES, IT IS.



DIRECT - SUZANNE CROMER BY SOL. RUTLEDGE DURANT

315

1 Q. YOU DIDN'T HAVE A WEAPON TO COMPARE THIS  
2 PROJECTILE, THOUGH, DID YOU?

3 A. NO, SIR, I DID NOT.

4 Q. DID YOU LOCATE ANY DEBRIS ON THE BULLET?

5 A. YES, SIR, DURING MY EXAMINATION I REMOVED MATERIAL  
6 CONSISTENT WITH CLOTH, COTTON AND HAIR FROM THE  
7 NOSE OF THE BULLET, BUT THE BULLET WAS LISTED AS  
8 BEING REMOVED FROM A PILLOW SO I DIDN'T -- I  
9 REMOVED IT BUT I DID NOT SEND TO ANALYSIS.

10 Q. DID YOU DO ANYTHING ELSE WITH REGARD TO THIS  
11 PARTICULAR ITEM?

12 A. I HAD THIS BULLET PUT INTO THE INTEGRATED  
13 BALLISTICS IDENTIFICATION SYSTEM WHICH IS A  
14 DIGITAL DATA BASE FOR IMAGES OF BULLETS AND  
15 CARTRIDGE CASINGS.

16 Q. NOW, IS THE STAR FIRE ROUND, IS THAT A COMMON  
17 ROUND?

18 A. NO, SIR, IT, I'VE ONLY SEEN IT ONE OTHER TIME IN  
19 NINE MILLIMETER N FORTY, AND THAT WAS IN OUR  
20 REFERENCE COLLECTION. I'VE NEVER RECEIVED IT IN A  
21 CASE. AND IT'S MY KNOWLEDGE THAT I'M NOT VERY  
22 SURE THAT THEY ARE MAKING IT ANYMORE. I KNOW THAT  
23 PMC MADE IT FOR A WHILE AND THEN THEY STOPPED  
24 PRODUCTION. THEN I HEARD THAT THEY STARTED BACK  
25 AND THEN STOPPED AGAIN. SO, I'M NOT EVEN SURE

DIRECT - SUZANNE CROMER BY SOL. RUTLEDGE DURANT

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1            THAT THEY MAKE IT ANYMORE.

2            Q.    WHAT ABOUT THE OTHER GUNS, YOU NARROWED IT DOWN TO  
3                   EIGHT, ARE THEY COMMON?

4            A.    THE ONLY OTHER ONE THAT I'VE SEEN IS THE EIG, THE  
5                   MOST COMMON GUN ON THIS LIST IS THE COLT.

6            Q.    SO, YOUR TESTIMONY IS THAT THIS STAR FIRE ROUND IS  
7                   A RATHER RARE ROUND?

8            A.    YES, SIR.

9            Q.    ESPECIALLY IN A THIRTY-EIGHT?

10          A.    YES, SIR.

11          Q.    AND THAT THESE OTHER GUNS BESIDES THE COLT SPECIAL  
12                ARE PRETTY RARE GUNS AS WELL?

13          A.    YES, SIR.

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

17                                THE COURT:    MR. PEPER.

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 - SUZANNE CROMER BY MR. PEPER

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CROSS-EXAMINATION OF SUZANNE CROMER

BY MR. PEPER:

Q. AGENT, I'M MARK PEPER FOR SHAWN PHILLIPS, HOW ARE YOU TODAY?

A. I'M FINE.

Q. I DON'T OWN GUNS, NEVER HAVE, PROBABLY NEVER WILL SO YOU'LL HAVE TO BEAR WITH ME BECAUSE I WANT TO CLARIFY SOME OF THIS, THIS IS OVER MY HEAD.

A. OKAY.

Q. WHAT I'M GATHERING FROM YOUR REPORT IN YOUR TESTIMONY IS THAT YOU PULLED ONE BULLET FROM THE HEAD OF THE VICTIM, CORRECT?

A. IT WAS LISTED AS FROM A PILLOW, SO - - -

Q. OH, IT WAS FROM A PILLOW?

A. YES, SIR.

Q. OKAY. ALRIGHT, AND THE BULLET HAD, I GUESS BULLETS HAVE CERTAIN CHARACTERISTICS ON THEM, I'VE SEEN T.V. SHOWS THAT SAY EACH BULLET IS LIKE A PIECE OF SAND, ALL ARE DIFFERENT. IS THAT CORRECT?

A. I'M NOT QUITE UNDERSTANDING WHAT YOU'RE GETTING AT. THERE ARE SEVERAL DIFFERENT TYPES OF BULLETS, I MEAN, YOU HAVE LEAD BULLETS, YOU HAVE WAD CUTTERS, YOU HAVE SEMI-WAD CUTTERS. YOU HAVE FULL METAL JACKET, YOU HAVE TOTAL METAL JACKET, YOU

1 HAVE HOLLOW POINT.

2 Q. THERE'S A LOT?

3 A. YES, SIR.

4 Q. OKAY. AND THIS SPECIFIC ONE THAT YOU PULLED FROM  
5 THE PILLOW WAS A STAR FIRE?

6 A. IT WAS CONSISTENT WITH STAR FIRE.

7 Q. SO, IT WASN'T DEFINITELY STAR FIRE?

8 A. NO, SIR.

9 Q. IT WAS CONSISTENT?

10 A. YES, SIR. I CAN'T SAY THAT IT'S DEFINITELY THIS  
11 BRAND BUT I CAN SAY THAT IT'S CONSISTENT WITH THIS  
12 BRAND.

13 Q. AND THAT'S THE PROBLEM, BECAUSE THEY'RE TRYING TO,  
14 AS YOU KNOW, YOU'VE HEARD THE TESTIMONY THAT  
15 THEY'RE TRYING TO ASSERT THAT TWO BLACK MEN WHO  
16 ROBBED THIS GENTLEMAN HERE TWO DAYS EARLIER AND  
17 STOLE A GUN FROM HIM ALSO HAD STAR FIRE BULLETS IN  
18 THE GUN, CORRECT?

19 A. CORRECT, THAT'S WHAT I'VE HEARD.

20 Q. ALRIGHT. AND, BUT YOU CAN'T DEFINITELY SAY THAT  
21 THE BULLET YOU PULLED FROM THE PILLOW WAS A STAR  
22 FIRE BULLET, RIGHT?

23 A. NO, SIR, I CAN JUST SAY IT'S CONSISTENT WITH THAT  
24 MAKEUP.

25 Q. I'VE GOT YOU. IN YOUR REPORT YOU CAN'T SAY IT'S

CROSS - SUZANNE CROMER BY MR. PEPER

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1 DEFINITELY FROM A SPECIFIC FIREARM EITHER?

2 A. NO, SIR, I CAN'T. WITHOUT HAVING A FIREARM I  
3 CAN'T SAY THAT IT'S FROM A SPECIFIC FIREARM.

4 Q. YOU CAN SAY IT MAY BE SUITABLE?

5 A. YES, IT MAY BE SUITABLE FOR IDENTIFICATION WITH A  
6 SPECIFIC FIREARM.

7 Q. AND YOU LIST OUT EIGHT DIFFERENT TYPES OF GUNS  
8 THAT MAY HAVE FIRED THE BULLET, INCLUDING, AND  
9 THEN YOU HAVE IN COMMAS, "BUT MAY NOT BE LIMITED  
10 TO" CORRECT?

11 A. THAT'S CORRECT.

12 Q. SO, THE EIGHT YOU LIST THERE, THERE COULD POSSIBLY  
13 BE MORE?

14 A. THERE COULD.

15 Q. ALL EIGHT OF THESE, NONE OF THEM ARE SEMI-  
16 AUTOMATIC, IS THAT YOUR TESTIMONY?

17 A. THAT'S CORRECT.

18 Q. AND IT IS, AGAIN, AND BEAR WITH ME, BUT MY  
19 UNDERSTANDING IS, SOMETHING THAT'S KIND OF  
20 AUTOMATIC POPS SOME SORT OF SHELL OUT OR SOMETHING  
21 AFTER IT SHOOTS?

22 A. A SEMI-AUTOMATIC IS DESIGNED TO EJECT THE  
23 CARTRIDGE CASE AFTER FIRING AND THEN RELOAD  
24 ANOTHER CARTRIDGE CASE INTO THE CHAMBER, A  
25 CARTRIDGE INTO THE CHAMBER.

CROSS - SUZANNE CROMER BY MR. PEPER

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1 Q. KIND OF LIKE DEER HUNTING OR SHOT GUN OR  
2 SOMETHING, IT SHOOTS OUT, LIKE THE SHELL WOULD  
3 SHOOT OUT, THAT WOULD BE - - -

4 A. IT DEPENDS ON WHAT TYPE OF SHELL.

5 Q. --- WELL, I GUESS YOU'RE NOT USING AUTOMATIC  
6 WEAPONS FOR DEER HUNTING?

7 A. YES.

8 Q. THAT SHOWS YOU HOW, AND I APOLOGIZE -- I GUESS MY  
9 POINT IS, THERE WAS NO CASING FOUND AT THE CRIME  
10 SCENE, CORRECT?

11 A. THAT'S CORRECT.

12 Q. OKAY. SO IT HAD TO HAVE COME FROM SOME SORT OF  
13 NON-AUTOMATIC WEAPON, IS THAT THE RIGHT  
14 TERMINOLOGY OR -- OR IT HAD TO HAVE COME FROM A  
15 GUN THAT DOESN'T EJECT A CASING?

16 A. WELL, THE REASON WHY I THINK IT'S A REVOLVER IS  
17 BECAUSE IT'S MOST CONSISTENT WITH THIRTY-EIGHT  
18 SPECIAL AND THREE FIFTY-SEVEN MAGNUM, WHICH IS  
19 REVOLVER CALIBERS. IT ALSO HAS THE SERRATED  
20 CANDLE, WHICH IS CONSISTENT WITH BEING A REVOLVER.

21 Q. OKAY. AND I THINK YOU SAID SIX OF THE EIGHT THAT  
22 YOU LISTED HERE, THEY'RE ALL REVOLVERS?

23 A. THAT'S CORRECT.

24 Q. AND ITEM, THE BULLET MAY HAVE BEEN FIRED BY ONE OF  
25 THESE EIGHT -- AND YOU TRY TO GET MORE SPECIFIC

CROSS - SUZANNE CROMER BY MR. PEPER

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1 BECAUSE YOU ARE AN EXPERT, AND THEN SPECIFICALLY,  
2 SIX OF THE EIGHT WHICH WERE REVOLVERS, BUT THEN  
3 YOU SAY, BUT NOT BE LIMITED TO THESE?

4 A. THAT'S CORRECT.

5 Q. OKAY.

6 A. OUR GRC LISTS ARE PRIMARILY USED FOR AN  
7 INVESTIGATIVE TOOL.

8 Q. I'VE GOT YOU. I'VE GOT YOU. ARE YOU FAMILIAR  
9 WITH THE LOW COUNTRY AT ALL, HAVE YOU EVER LIVED  
10 HERE?

11 A. NO, I HAVEN'T.

12 Q. OKAY. JUST SO I UNDERSTAND, THOUGH, THE GUN THAT  
13 THE STATE IS ALLEGING WAS STOLEN ON MONDAY NIGHT  
14 TOOK PLACE IN WEST ASHLEY, IS THAT YOUR  
15 UNDERSTANDING, THAT ROBBERY?

16 A. I, I DON'T KNOW WHERE IT TOOK PLACE.

17 Q. OKAY. THE BULLET THAT YOU WERE WORKING ON, YOU'RE  
18 AWARE CAME FROM A CRIME SCENE IN NORTH CHARLESTON,  
19 IS THAT CORRECT?

20 A. THAT'S CORRECT. I RECEIVED IT FROM THE NORTH  
21 CHARLESTON POLICE DEPARTMENT.

22 Q. YOU DON'T HAVE ANY IDEA WHO THE SUSPECTS WERE IN  
23 THAT CRIME, THE PEOPLE THAT HAVE BEEN ARRESTED, OR  
24 ANY, ANYTHING OTHER THAN JUST THE BULLET, WITH  
25 OBVIOUSLY THE EXCEPTION THAT YOU CAN SEE SHAWN,

1 RIGHT?

2 A. RIGHT. THE ONLY THING I EVER SEE IS THE FIREARMS  
3 RELATED EVIDENCE.

4 Q. I'VE GOT YOU. THE ONLY OTHER THING I CAN THINK OF  
5 IS, WAS IT JUST A, YOU JUST DECIDED NOT TO SEND  
6 THE BULLET WITH THE HAIR ON IT TO LAB?

7 A. CORRECT. IT'S OUR POLICY THAT WE CAN REMOVE IT AND  
8 WE SEND IT BACK TO THE SUBMITTER, AND IF THE  
9 SUBMITTER WOULD LIKE TO HAVE IT ANALYZED THEY CAN  
10 RETURN IT.

11 Q. AND IT WAS NEVER RETURNED TO YOU?

12 A. IT WAS NEVER RETURNED. AND MY, WHAT I DO IS, WHEN  
13 IT COMES FROM AN AUTOPSY OR LISTED LIKE FROM A  
14 PILLOW I WOULD EXPECT TO FIND SOME OF THE FIBERS  
15 FROM THE PILLOW IN THERE. SO, THAT'S WHY I DIDN'T  
16 SEND IT.

17 Q. SO, WHEN YOU SAY A HAIR, YOU'RE TALKING ABOUT THAT  
18 COULD BE LIKE A FIBER FROM A PILLOW?

19 A. NO, THE HAIR WAS, WELL, - - -

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

21 A. --- IT LOOKS CONSISTENT WITH HUMAN HAIR.

22 Q. OKAY. BUT YOU DIDN'T DECIDE TO SEND IT OFF TO THE  
23 LAB TO SEE IF IT COULD HAVE ANYBODY'S DNA OR  
24 ANYTHING LIKE THAT?

25 A. NO, I ASSUMED IT, YOU KNOW, MOST LIKELY WHEN YOU



CROSS - SUZANNE CROMER BY MR. PEPER

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1 GET A BULLET THAT WAS MY UNDERSTANDING PASSED  
2 THROUGH SOMEONE'S HEAD YOU WOULD EXPECT TO FIND  
3 BLOOD AND HAIR FROM THE VICTIM ON IT.

4 Q. AND IN YOUR LAW ENFORCEMENT CAREER YOU UNDERSTAND  
5 THAT HAIR CONTAINS DNA, RIGHT?

6 A. YES, SIR, I DO.

7 MR. PEPER: ALRIGHT, THANK YOU.

8 THE COURT: REDIRECT?

9 SOLICITOR RUTLEDGE DURANT: NO  
10 FURTHER QUESTIONS, JUDGE.

11 THE COURT: ALRIGHT, THANK YOU,  
12 MA'AM, YOU MAY BE EXCUSED.

13 WITNESS: THANK YOU.

14 THE COURT: ALRIGHT, LADIES AND  
15 GENTLEMEN, THANK YOU FOR YOUR PATIENCE TODAY, AND WE'LL  
16 SEE YOU IN THE MORNING. WE'D LIKE TO GET STARTED AT  
17 NINE:THIRTY. PLEASE BE BACK IN THE JURY ROOM AT  
18 NINE:THIRTY, AND PLEASE DO NOT TALK ABOUT THE CASE.

19 THANK YOU VERY MUCH, YOU'RE EXCUSED  
20 AT THIS TIME. IF THERE'S SOMETHING ON T.V. OR IN THE  
21 NEWSPAPER ABOUT IT, PLEASE DO NOT READ THAT ARTICLE, OR  
22 TURN THE T.V. OFF OR WALK OUT OF THE ROOM.

23 THANK YOU VERY MUCH.

24 (Whereupon, the jury leaves  
25 the courtroom for the day

1 and the following takes  
2 place out of the presence  
3 of the jury.)

4 THE COURT: ANYTHING ELSE FROM THE  
5 STATE BEFORE WE RECESS?

6 SOLICITOR RUTLEDGE DURANT: NOTHING  
7 FROM THE STATE, JUDGE.

8 THE COURT: FROM THE DEFENSE?

9 MR. PEPPER: YOUR HONOR, I JUST WANT  
10 TO CLARIFY THAT THE RULES THAT HAVE BEEN MADE THUS FAR  
11 HAVE NOT BEEN PRESERVED OBVIOUSLY FOR APPELLATE  
12 PURPOSE. WHAT I'M TRYING TO DO, AND I DON'T WANT TO  
13 STEP ON YOUR TOES, BUT I HAVE TO OBJECT TO CERTAIN  
14 EVIDENCE AS IS COMING IN, BUT I KNOW YOU'VE ALREADY  
15 RULED ON IT, I JUST WANT TO MAKE SURE I'M PRESERVING  
16 HIS RIGHTS. AND - - -

17 THE COURT: YOU'RE NOT GOING TO STEP  
18 ON MY TOES, I'VE GOT STEEL TOE BOOTS.

19 MR. PEPPER: I JUST WANTED TO THROW  
20 THAT OUT THERE.

21 THE COURT: BUT I THINK THEY HAVE  
22 BEEN PRESERVED. I MEAN, I CERTAINLY NOTE YOUR  
23 OBJECTION TO MY RULING ON THE JACKSON-DENNO AND I NOTE  
24 YOUR OBJECTION TO MY RULING ON THE LYLE EVIDENCE.

25 MR. PEPPER: VERY GOOD, THAT'S MY - -

1 -  
2 THE COURT: I MEAN, I DON'T DO  
3 APPELLATE WORK, OF COURSE, BUT, EXCEPT ON THE OTHER END  
4 OF IT.

5 MR. PEPER: I JUST WANTED TO VERIFY  
6 THAT IT WAS NOTED.

7 THE COURT: I THINK YOUR OBJECTIONS  
8 HAVE BEEN PRESERVED ON THOSE TWO ISSUES.

9 MR. PEPER: THAT'S ALL I CAN THINK  
10 OF, YOUR HONOR.

11 BASED ON THE TESTIMONY TODAY IT 'IS  
12 POSSIBLE THAT WE MAY ASSERT A DEFENSE, AND IF SO WE MAY  
13 CALL TWO ADDITIONAL WITNESSES, BUT I WILL PROVIDE THOSE  
14 TO YOU AND THE SOLICITOR THIS AFTERNOON.

15 THE COURT: ALRIGHT. WELL, LET'S BE  
16 IN RECESS AND WE PROBABLY NEED TO TALK IN CHAMBERS, SO  
17 Y'ALL COME BACK THERE JUST A MINUTE. WE WON'T BE THERE  
18 LONG.

19 MR. PEPER: YES, SIR.

20 THE COURT: AND IF YOU'D LIKE TO  
21 COME BACK YOU'RE WELCOME TO DO SO. NO, NOT YOU, THE  
22 GUY IN THE BACK BACK THERE. YOUR ATTORNEY WILL  
23 REPRESENT YOU, MR. PHILLIPS.

24 ALRIGHT, COURT'S IN RECESS UNTIL  
25 NINE:THIRTY. PLEASE BE SURE THAT ALL THE EXHIBITS,

1 THAT THE COURT REPORTER HAS ALL OF THE EXHIBITS.

2 (Recess for the day.)

3 DATE:

4 AUGUST 6, 2008

5 THE COURT: IS THE STATE READY TO  
6 BEGIN?

7 SOLICITOR RUTLEDGE DURANT: THE  
8 STATE'S READY, JUDGE.

9 THE COURT: IS DEFENSE READY?

10 MR. PEPPER: YES, YOUR HONOR.

11 SOLICITOR BRUCE DURANT: THERE IS  
12 ONE THING WE'D LIKE TO DISCUSS WITH YOU, YOUR HONOR.

13 THE COURT: ALRIGHT.

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

17 THE COURT: ALRIGHT, BRING THE JURY  
18 IN.

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

23 THE COURT: GOOD MORNING, LADIES AND  
24 GENTLEMEN. I HOPE Y'ALL HAD A GOOD EVENING AND WERE  
25 ABLE TO STAY COOL, WHICH IS NOT EASY THESE DAYS.

1 ALRIGHT, WE'RE READY TO GET STARTED.  
2 YOU MAY CALL YOUR NEXT WITNESS.

3 SOLICITOR RUTLEDGE DURANT: THANK  
4 YOU, JUDGE. THE STATE CALLS ALANA NIESEN.

5 CLERK: PLEASE PLACE YOUR LEFT HAND  
6 ON THE BIBLE AND RAISE YOUR RIGHT.

7 (Whereupon, Alana Niesen  
8 is duly sworn.)

9 CLERK: PLEASE BE SEATED, AND IF YOU  
10 WOULD, PLEASE STATE YOUR FULL NAME TO THE COURT AND  
11 SPELL YOUR LAST.

12 WITNESS: ALANA NIESEN, N-I-E-S-E-N.

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

DIRECT - ALANA NIESEN BY SOL. RUTLEDGE DURANT

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DIRECT EXAMINATION OF ALANA NIESEN

BY SOLICITOR RUTLEDGE DURANT:

Q. GOOD MORNING, MS. NIESEN.

A. HI, HOW ARE YOU?

Q. WOULD YOU PLEASE TELL THE JURY WHAT YOUR NICKNAME  
IS?

A. CHINA. CHINA GIRL, CHINA DOLL.

Q. AND HOW OLD ARE YOU?

A. I'M FORTY-ONE.

Q. HOW FAR DID YOU GO IN SCHOOL?

A. I WENT TO TWO YEARS OF COLLEGE.

Q. WHERE WERE YOU BORN?

A. IN THE PHILIPPINES.

Q. AND WHERE WERE YOU RAISED?

A. HERE IN CHARLESTON.

Q. ARE YOU MARRIED?

A. I'M DIVORCED.

Q. DO YOU HAVE ANY CHILDREN?

A. I HAVE TWO, A TEN YEAR OLD AND A TWELVE YEAR OLD.

Q. WHAT WAS YOUR LAST JOB?

A. I WORKED AS ASSISTANT MANAGER AT THE SANDPIPER  
LANES ON ASHLEY PHOSPHATE ROAD.

Q. THAT'S A BOWLING ALLEY?

A. YES, SIR.

Q. AND YOU WERE THE ASSISTANT MANAGER THERE?

DIRECT - ALANA NIESEN BY SOL. RUTLEDGE DURANT

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1 A. YES, SIR, FOR ALMOST TEN YEARS.

2 Q. WHAT YEARS WOULD THAT BE?

3 A. FROM NINETY-SIX TO TWO THOUSAND AND SIX.

4 Q. AND WHAT HAPPENED WITH YOUR JOB AT THE BOWLING  
5 ALLEY?

6 A. I GOT INVOLVED IN DRUGS, SO I ENDED UP QUITTING.

7 Q. DID YOU SPLIT FROM YOUR HUSBAND?

8 A. I SPLIT FROM MY HUSBAND.

9 Q. WHEN WAS THAT?

10 A. IN TWO THOUSAND AND FIVE. ME AND HIM DIVORCED IN  
11 TWO THOUSAND AND SIX.

12 Q. AND YOU GOT HOOKED ON CRACK COCAINE?

13 A. CRACK COCAINE, YES, SIR.

14 Q. AND HOW DID THAT HAPPEN?

15 A. MY BROTHER INTRODUCED ME TO IT.

16 Q. AND YOU ENDED UP QUITTING YOUR JOB AT THE BOWLING  
17 ALLEY?

18 A. CORRECT.

19 Q. AND YOU CURRENTLY HAVE PENDING CHARGES AGAINST  
20 YOU, IS THAT CORRECT?

21 A. YES, SIR.

22 Q. POSSESSION OF CRACK, ACTUALLY YOU - - -

23 A. YES, SIR.

24 Q. POSSESSION OF CRACK. AND YOU'RE CHARGED HERE IN  
25 THIS CASE WITH ARMED ROBBERY?

DIRECT - ALANA NIESEN BY SOL. RUTLEDGE DURANT

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- 1 A. AND MURDER.
- 2 Q. AND CONSPIRACY?
- 3 A. YES.
- 4 Q. AND WHAT HAVE YOU BEEN PROMISED FOR YOUR TESTIMONY
- 5 HERE TODAY?
- 6 A. NOTHING.
- 7 Q. DID YOU KNOW THE VICTIM IN THIS CASE, ROBERT
- 8 VARGO?
- 9 A. YES, I DID.
- 10 Q. WHEN DID YOU FIRST MEET HIM?
- 11 A. IT WAS NOVEMBER SEVENTH, NOVEMBER SIXTH OR
- 12 NOVEMBER SEVENTH OF TWO THOUSAND SIX.
- 13 Q. HOW DID YOU FIRST MEET HIM?
- 14 A. MY DOPE MAN INTRODUCED ME TO HIM.
- 15 Q. WHO IS YOUR DOPE MAN?
- 16 A. TANK.
- 17 Q. AND WHO IS TANK?
- 18 A. TANK WAS A FRIEND OF MY BROTHER'S.
- 19 Q. WHERE DID YOU MEET THE VICTIM, ROBERT VARGO, ON
- 20 NOVEMBER SIXTH?
- 21 A. AT MOTEL SIX ON ASHLEY PHOSPHATE ROAD.
- 22 Q. WHO ALL WAS AT MOTEL SIX?
- 23 A. IT WAS MY BROTHER, TANK, ROBERT VARGO AND MYSELF.
- 24 Q. WHAT WERE Y'ALL DOING?
- 25 A. WE WERE SMOKING AND GETTING HIGH.



DIRECT - ALANA NIESEN BY SOL. RUTLEDGE DURANT

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1 Q. DID YOU STAY THE NIGHT?

2 A. YES, WE ALL STAYED UNTIL ABOUT SIX O'CLOCK IN THE  
3 MORNING.

4 Q. WHERE DID YOU GO AFTER THAT?

5 A. I WENT HOME.

6 Q. WHERE WERE YOU LIVING?

7 A. I WAS LIVING WITH MY MOTHER OFF OF ASHLEY  
8 PHOSPHATE ROAD.

9 Q. WHAT IS YOUR MOTHER'S NAME?

10 A. CRYSANTHA JACKSON.

11 Q. SO, WE'RE ON TO NOVEMBER SEVENTH NOW, RIGHT?

12 A. YES, SIR.

13 Q. AND LATER ON THAT DAY DID YOU RECEIVE A CALL FROM  
14 ROBERT VARGO, THE VICTIM?

15 A. YES, I DID.

16 Q. AROUND WHAT TIME WAS THAT?

17 A. PROBABLY AROUND NOON TIME, AFTERNOON, BECAUSE HE  
18 NEEDED A RIDE TO GO TO A DIFFERENT HOTEL ROOM. IT  
19 WAS CHECKING, CHECKOUT TIME.

20 Q. DID YOU AGREE TO GIVE HIM A RIDE?

21 A. YES, I DID.

22 Q. WHAT WERE YOU USING FOR TRANSPORTATION?

23 A. MY MOTHER'S VEHICLE, A RED DODGE DURANGO.

24 Q. WHERE DID YOU TAKE ROBERT VARGO?

25 A. I TOOK HIM TO SEVERAL DIFFERENT OTHER MOTELS, SO

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1           FINALLY, HE ENDED UP AT BUDGET. HE DIDN'T HAVE  
2           IDENTIFICATION ON HIM SO NO OTHER HOTELS WOULD  
3           TAKE HIM EXCEPT FOR BUDGET.

4           Q.   DID YOU GO INTO THE OFFICE WHEN HE CHECKED IN?

5           A.   NO, SIR.

6           Q.   WHERE WERE YOU?

7           A.   I WAS IN MY CAR.

8           Q.   WHAT DID HE DO AFTER HE CAME OUT OF THE OFFICE?

9           A.   HE SIGNED ME TO FOLLOW HIM TO WHERE HIS ROOM  
10          WAS.

11          Q.   AND YOU DROVE AROUND TO HIS ROOM?

12          A.   AND I DROVE AROUND TO HIS ROOM.

13          Q.   WHAT DID YOU DO WHEN YOU GOT TO WHERE HIS ROOM  
14          WAS?

15          A.   I HELPED HIM GATHER HIS STUFF OUT OF MY CAR TO  
16          BRING UP TO THE ROOM.

17          Q.   THIS IS ALREADY IN EVIDENCE AS STATE'S SIX, DO YOU  
18          RECOGNIZE THAT?

19          A.   YES, SIR.

20          Q.   WHAT IS THAT?

21          A.   THAT IS THE HOTEL.

22          Q.   WHAT HOTEL?

23          A.   THE BUDGET.

24          Q.   THE HOTEL WHERE YOU TOOK ROBERT VARGO?

25          A.   NO, THIS IS, I THINK THAT HOTEL IS THE TRAVEL

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333

1 LODGE HOTEL.

2 Q. ARE YOU SURE THAT'S NOT THE BUDGET INN?

3 A. NO, THE BUDGET INN WOULDN'T HAVE THE OFFICES IN  
4 FRONT OR I THINK I HAVE IT UPSIDE DOWN, I'M SORRY.  
5 YEAH, THIS IS THE BUDGET INN.

6 Q. AND ON THE SCREEN BEHIND YOU, IS THAT THE SAME  
7 PICTURE?

8 A. YES, SIR.

9 Q. LET ME GIVE YOU THIS, THIS IS A LASER POINTER.

10 A. OKAY.

11 Q. YOU JUST PRESS THE TOP OF THAT. WOULD YOU  
12 DEMONSTRATE TO THE JURY WHERE YOU WERE RIGHT AFTER  
13 YOU CAME INTO THE BUDGET INN?

14 A. WELL, WE CAME IN THROUGH HERE. I TURNED AROUND AND  
15 PARKED RIGHT HERE. THAT'S THE OFFICE RIGHT THERE.  
16 ROBERT VARGO WENT INTO THE OFFICE AND PURCHASED  
17 THE ROOM, AND THEN HE CAME OUT AND HE WALKED, AND  
18 I FOLLOWED HIM ALL THE WAY AROUND UNTIL THE ROOM  
19 WAS ABOUT RIGHT HERE IS WHERE I PARKED. AND  
20 THAT'S WHEN I GOT OUT AND GOT HIS STUFF AND  
21 FOLLOWED HIM UP TO HIS ROOM, BECAUSE HE WAS  
22 ALREADY UP TO HIS ROOM, I JUST WENT UP TO THE  
23 ROOM.

24 Q. WAS HIS ROOM UPSTAIRS OR DOWNSTAIRS?

25 A. IT WAS UPSTAIRS.

DIRECT - ALANA NIESEN BY SOL. RUTLEDGE DURANT

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1 Q. DID ANYBODY ELSE COME TO THE ROOM?

2 A. THERE WAS TWO OTHER GUYS THAT WAS UP IN THE ROOM  
3 WITH HIM ALREADY BEFORE I EVEN GOT UP THERE.

4 Q. WHAT WERE THEY DOING?

5 A. HE WAS BUYING DRUGS.

6 Q. AND THAT WAS WHEN YOU HELPED HIM CHECK IN?

7 A. RIGHT, HE MET THEM DOWN ON THE WAY GOING TO THE  
8 ROOM.

9 Q. AFTER HELPING HIM WITH HIS STUFF DID YOU STAY OR  
10 LEAVE?

11 A. I LEFT.

12 Q. WERE YOU ASKED BY MR. VARGO TO CALL SOMEONE FOR  
13 HIM?

14 A. YES, I CALLED HIS GIRLFRIEND. HE HAD NO MORE  
15 MINUTES ON HIS CELL PHONE SO HE ASKED ME TO CALL  
16 HIS GIRLFRIEND TO RELAY THE MESSAGE WHAT HOTEL HE  
17 WAS STAYING AT AND WHAT ROOM HE WAS AT.

18 Q. MOVING ON TO THAT NIGHT, NOVEMBER THE SEVENTH, DID  
19 YOU HAVE THE OCCASION TO MEET BACK IN THE AREA OF  
20 BUDGET INN?

21 A. YES, I WAS.

22 Q. WHO WERE YOU GOING TO SEE?

23 A. TANK.

24 Q. WHAT DID TANK WANT YOU TO DO?

25 A. HE WANTED ME TO GIVE HIM A RIDE.

DIRECT - ALANA NIESEN BY SOL. RUTLEDGE DURANT

335

1 Q. AND WHAT WERE YOU DRIVING AT THIS POINT?

2 A. THE RED DODGE DURANGO.

3 Q. THE SAME VEHICLE YOU USED FOR ROBERT VARGO?

4 A. TO DROP HIM OFF, YES, SIR.

5 Q. AND WHERE WAS TANK STAYING?

6 A. TANK WAS STAYING AT THE HOTEL BESIDE THE BUDGET,  
7 THE AMERICAN LODGE.

8 Q. AND WHERE IS THAT HOTEL IN RELATIONSHIP TO BUDGET  
9 INN?

10 A. YES, IT'S RIGHT NEXT DOOR TO IT.

11 Q. AND DO YOU RECALL WHAT HOTEL IS NEXT TO THE  
12 AMERICAN?

13 A. THE TRAVEL LODGE.

14 Q. AS YOU WERE PULLING IN TO THE AMERICAN HOTEL WHO  
15 DID YOU MEET?

16 A. I MET LENNIE MICKEY, SHAWN PHILLIPS, AND TWO OTHER  
17 PEOPLE IN THE BACK SEAT OF THE CAR.

18 Q. DO YOU SEE SHAWN PHILLIPS IN THIS COURTROOM TODAY?

19 A. YES, SIR.

20 Q. WHERE IS HE?

21 A. SITTING RIGHT THERE.

22 Q. WHAT'S HE WEARING?

23 A. A TAN SUIT.

24 Q. DO YOU RECALL WHAT KIND OF CAR IT WAS?

25 A. IT WAS A RED TRACKER.

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1 Q. AGAIN, I'M NOT SURE IF IT WAS CLEAR, BUT WHO WAS  
2 IN THE FRONT SEAT?

3 A. SHAWN PHILLIPS AND LENNIE MICKEY.

4 Q. DO YOU RECALL WHO WAS DRIVING?

5 A. I BELIEVE IT WAS LENNIE MICKEY DRIVING.

6 Q. DID YOU KNOW LENNIE MICKEY OR SHAWN PHILLIPS  
7 BEFORE THIS TIME?

8 A. NO, THE FIRST TIME.

9 Q. THIS IS YOUR FIRST TIME MEETING THEM?

10 A. YES, SIR.

11 Q. WHAT DID THEY SAY TO YOU?

12 A. THEY WANTED TO KNOW IF I WANTED TO MAKE SOME  
13 MONEY, AND WANTED TO GO PARTYING?

14 Q. DID YOU THINK THEY WERE POTENTIAL CUSTOMERS?

15 A. YES.

16 Q. HOW WERE Y'ALL GOING TO GET IN TOUCH?

17 A. WE GAVE EACH OTHER OUR CELL PHONE NUMBERS.

18 Q. WHOSE CELL PHONE NUMBER DID YOU OBTAIN?

19 A. I OBTAINED SHAWN PHILLIPS' CELL PHONE NUMBER.

20 Q. DO YOU KNOW WHERE THEY WERE STAYING?

21 A. THEY TOLD ME THE TRAVEL LODGE, THE HOTEL NEXT TO  
22 THE HOTEL I WAS GOING TO.

23 Q. THIS IS ANOTHER PHOTOGRAPH THAT'S ALREADY IN  
24 EVIDENCE, CAN YOU IDENTIFY THIS PHOTOGRAPH?

25 A. THAT'S THE BUDGET, THAT'S THE AMERICAN LODGE, AND

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- 1           THAT'S THE TRAVEL LODGE.
- 2           Q.    OKAY.  AND THE AMERICAN IS THE ONE IN THE MIDDLE?
- 3           A.    YES, THIS IS THE ONE, THIS IS WHERE I MET THEM
- 4                RIGHT HERE IN THIS ENTRANCE.
- 5           Q.    THAT'S WHERE YOU MET SHAWN PHILLIPS AND LENNIE
- 6                MICKEY?
- 7           A.    YES, SIR.
- 8           Q.    AND WHERE IS THEIR HOTEL?
- 9           A.    IT WAS RIGHT AROUND HERE, ON THE BOTTOM FLOOR.
- 10          Q.    WHERE DID YOU GO AFTER EXCHANGING NUMBERS?
- 11          A.    I WENT TO THE HOTEL, I WENT TO THE AMERICAN LODGE
- 12                HOTEL TO MEET TANK.
- 13          Q.    DID YOU STAY OVER AT TANK'S ROOM?
- 14          A.    I DID FOR A FEW MINUTES.
- 15          Q.    AND THEN WHAT HAPPENED?
- 16          A.    AND THEN I CALLED SHAWN PHILLIPS' PHONE, AND THEY
- 17                TOLD ME WHAT ROOM THEY WERE STAYING AT, SO I WENT
- 18                TO MEET THEM.
- 19          Q.    YOU CALLED SHAWN'S PHONE?
- 20          A.    I CALLED SHAWN.
- 21          Q.    THAT'S HOW YOU MET UP WITH THEM?
- 22          A.    YES, SIR.
- 23          Q.    HOW DID YOU GO TO THE TRAVEL LODGE, DID YOU DRIVE?
- 24          A.    I DROVE.
- 25          Q.    HOW DID YOU EVENTUALLY GET INTO THEIR ROOM?

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1 A. I CALLED THEM AND THEY WAITED FOR ME OUTSIDE.

2 Q. WHO ALL WAS IN THE ROOM?

3 A. SHAWN PHILLIPS, LENNIE MICKEY, ANGELA AGAGAS AND  
4 SANDRA BARNES.

5 Q. DO YOU KNOW WHAT LENNIE MICKEY'S NICKNAME IS?

6 A. BROOKLYN.

7 Q. WHAT DID YOU KNOW SHAWN AS?

8 A. AS PIT.

9 Q. WHAT ABOUT SANDRA BARNES?

10 A. B.G.

11 Q. WHAT ABOUT ANGELA AGAGAS?

12 A. JUST ANGELA.

13 Q. DID YOU KNOW ANY OF THESE PEOPLE BEFORE THAT  
14 NIGHT?

15 A. NO, NONE OF THEM.

16 Q. DID YOU KNOW WHAT THE RELATIONSHIPS WERE BETWEEN  
17 THESE PEOPLE?

18 A. I THOUGHT THEY WERE COUPLES.

19 Q. WHO DO YOU THINK WERE COUPLES?

20 A. WELL, I KNEW THAT PIT, SHAWN PHILLIPS AND ANGELA  
21 AGAGAS WAS A COUPLE, AND I THOUGHT THE OTHER TWO  
22 WAS A COUPLE.

23 Q. SO, WHAT DID YOU THINK WHEN YOU GOT IN THERE?

24 A. I THOUGHT SOMETHING WILD WAS GOING TO HAPPEN.

25 Q. SOMETHING WILD?



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1 A. SOMETHING WILD.

2 Q. WHAT DID YOU DO AFTER GETTING INTO THE ROOM?

3 A. WE, THEY MADE THE GIRLS TAKE ME TO THE BATH ROOM  
4 TO GET HIGH TO MAKE SURE I WASN'T A POLICE OFFICER  
5 AND TO PARTY WITH THEM. SO WE STAYED IN THE BATH  
6 ROOM GETTING HIGH.

7 Q. WHO STAYED, WHO GOT HIGH?

8 A. ME AND SANDRA BARNES AND ANGELA.

9 Q. DID YOU SEE ANGELA GETTING HIGH?

10 A. NO. BUT SHE STAYED IN THE BATH ROOM WITH US.

11 Q. WHAT HAPPENED WHEN YOU CAME OUT OF THE BATH ROOM?

12 A. THEY WERE TALKING ABOUT MAKING MONEY AND WANTED ME  
13 TO GO TO THE DOOR, TO THE HOTEL DOORS AND KNOCK ON  
14 THE DOORS TO LET THEM IN SO THEY CAN ROB PEOPLE.

15 Q. WHO WAS HAVING THIS CONVERSATION?

16 A. LENNIE MICKEY AND ME. LENNIE MICKEY WAS HAVING  
17 THE CONVERSATION, HE WAS TELLING ME.

18 Q. WHAT ABOUT SHAWN?

19 A. I DIDN'T, SHAWN DIDN'T REALLY TALK THAT MUCH THAT  
20 NIGHT, I MEAN, HIM AND ANGELA WAS DOING THEIR OWN  
21 LITTLE THING.

22 Q. WHO DID LENNIE WANT YOU TO ROB?

23 A. ANYBODY. THERE WAS A LOT OF MEXICANS STANDING  
24 OUTSIDE THE HOTEL ROOMS. THEY JUST WANTED ME TO  
25 GO TO THEIR HOTEL ROOMS, GET THEM TO TAKE ME IN

DIRECT - ALANA NIESEN BY SOL. RUTLEDGE DURANT

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1 THE ROOM, AND THEN THEY WOULD ROB THEM.

2 Q. DID YOU SEE A GUN IN THE ROOM?

3 A. YES, I DID.

4 Q. WHERE?

5 A. IT WAS ON THE BED BY LENNIE MICKEY.

6 Q. WHO PICKED IT UP?

7 A. LENNIE DID.

8 Q. WHAT WAS HE DOING WITH IT?

9 A. HE WAS WAVING IT AROUND, LIKE HE'S NOT SCARED OF  
10 ANYBODY.

11 Q. WAS IT FLAT ON THE SIDES, OR DID IT HAVE KIND OF A  
12 ROUND CYLINDER TYPE?

13 A. IT HAD A ROUND CYLINDER.

14 Q. DID YOU RECEIVE A CALL AROUND THIS TIME THAT  
15 THEY'RE TALKING ABOUT ROBBING SOMEBODY?

16 A. RIGHT.

17 Q. WHO DID YOU RECEIVE THE CALL FROM?

18 A. VARGO. DO YOU MEAN DID I RECEIVE A CALL?

19 Q. WHO CALLED YOU? DID ROBERT VARGO CALL YOU?

20 A. ROBERT VARGO CALLED ME, YES, SIR. HE WANTED A  
21 DATE.

22 Q. WHAT DO YOU KNOW ABOUT ROBERT VARGO, HAVING SPENT  
23 THE NIGHT BEFORE WITH HIM?

24 A. I EXPLAINED TO THEM THAT HOW HE WAS VERY PARANOID,  
25 THAT HE HID HIS DOPE, AND THAT HE OFFERED ME MONEY

DIRECT - ALANA NIESEN BY SOL. RUTLEDGE DURANT

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1 TO HAVE SEX WITH HIM.

2 Q. HE HAD CRACK?

3 A. YEAH, HE HAD A LOT OF CRACK.

4 Q. HE HAD MONEY?

5 A. AND HE HAD MONEY.

6 Q. DID YOU KNOW WHERE HE KEPT HIS MONEY?

7 A. HE DID TELL ME THAT HE WALKED STACKED, SO I'D SEEN  
8 IT IN HIS SHOE.

9 Q. HE LIKED PROSTITUTES?

10 A. RIGHT.

11 Q. YOU KNEW WHERE HE WAS STAYING?

12 A. RIGHT.

13 Q. WHERE WAS HE STAYING?

14 A. AT THE BUDGET.

15 Q. AND WHO DID YOU TELL THIS INFORMATION TO?

16 A. I TOLD IT TO LENNIE MICKEY AND SHAWN PHILLIPS.

17 Q. WERE THEY BOTH INTERESTED IN THIS INFORMATION?

18 A. YES.

19 Q. WHAT DID ROBERT VARGO WANT?

20 A. HE WANTED ME TO, HE WANTED ME TO COME OVER, BUT I  
21 TOLD HIM I WASN'T COMING OVER. HE WANTED ANOTHER  
22 GIRL TO COME OVER BECAUSE HE WANTED TO HAVE ANAL  
23 SEX, SO I GOT SANDRA BARNES TO GO OVER THERE.

24 Q. WHAT DID LENNIE MICKEY AND SHAWN PHILLIPS WANT YOU  
25 TO DO?

DIRECT - ALANA NIESEN BY SOL. RUTLEDGE DURANT

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1 A. THEY WANTED ME TO GO OVER THERE AND LET THEM IN,  
2 AND I'M, LIKE, NO.

3 Q. YOU TOLD THEM THAT?

4 A. YES.

5 Q. AND WHY DIDN'T YOU WANT TO GET THEM IN THE ROOM?

6 A. WELL, I KNEW HIM, I DIDN'T WANT TO GO OVER THERE.

7 Q. YOU KNEW ROBERT VARGO?

8 A. CORRECT.

9 Q. SO, WHAT WAS DECIDED THEN?

10 A. THAT SANDRA BARNES WAS GOING OVER THERE, AND THEN  
11 THE TWO GUYS WOULD GO OVER THERE AND FOLLOW HER,  
12 AND THEY WOULD GET SANDRA TO LET THEM IN THE ROOM  
13 AND THEN THEY WOULD ROB HIM.

14 Q. HOW DID THEY KNOW WHAT ROOM ROBERT VARGO WAS  
15 STAYING IN?

16 A. I SHOWED THEM.

17 Q. HOW DID YOU SHOW THEM?

18 A. WE WENT TO LOOK FOR SOME DOPE, AND ON OUR WAY TO  
19 LEAVE I SHOWED THEM WHAT MOTEL HE WAS STAYING AT,  
20 WE DROVE BY THERE.

21 Q. HOW DID YOU GET OVER THERE?

22 A. IN MY VEHICLE. WE HAD TWO SEPARATE VEHICLES. I  
23 DROVE WITH LENNIE MICKEY AND SANDRA BARNES, AND  
24 SHAWN PHILLIPS AND ANGELA AGAGAS WAS IN THE OTHER  
25 VEHICLE.

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- 1 Q. WHAT VEHICLE WERE YOU IN?
- 2 A. THE RED DURANGO.
- 3 Q. AND WHAT VEHICLE WERE THEY IN?
- 4 A. IN THE RED TRACKER.
- 5 Q. ANGELA AND SHAWN WERE IN THE RED TRACKER?
- 6 A. YES, SIR.
- 7 Q. THEY FOLLOWED YOU?
- 8 A. YES.
- 9 Q. DID YOU POINT OUT THE ROOM?
- 10 A. YES, I DID.
- 11 Q. AFTER YOU POINTED OUT THE ROOM WHERE DID YOU GO?
- 12 A. WE WENT TO DORCHESTER ROAD AND AFTER WE LEFT
- 13 DORCHESTER ROAD WE WENT BACK TO THE TRAVEL LODGE.
- 14 Q. WERE THERE ANY PHONE CONVERSATIONS?
- 15 A. YES, THERE WAS.
- 16 Q. DID THEY TAKE PLACE WHEN Y'ALL WERE IN THE
- 17 SEPARATE CARS?
- 18 A. YES.
- 19 Q. WHO WAS CALLING WHO?
- 20 A. LENNIE HAD MY PHONE AND HE WAS CALLING SHAWN.
- 21 Q. DID Y'ALL RETURN TO THE TRAVEL LODGE?
- 22 A. YES.
- 23 Q. WHAT HAPPENED WHEN YOU GOT BACK TO THE TRAVEL
- 24 LODGE?
- 25 A. WE GOT HIGH SOME MORE, AND THEN ROBERT CALLED ME

DIRECT - ALANA NIESEN BY SOL. RUTLEDGE DURANT

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1           AND I CALLED HIM BACK AND I TOLD HIM THAT I HAD A  
2           GIRL FOR HIM.

3           Q.   DID LENNIE MICKEY AND SHAWN PHILLIPS SAY ANYTHING  
4           AT THIS POINT?

5           A.   THAT THEY WANTED TO GO OVER THERE TO ROB HIM.

6           Q.   WERE YOU SETTING THIS UP?

7           A.   I WAS SETTING A DATE UP, BUT THEY WERE GOING TO  
8           ROB HIM.

9           Q.   YOU WERE SETTING SANDRA UP TO GO - - -

10          A.   RIGHT.

11          Q.   --- GET THEM IN TO COMMIT A ROBBERY?

12          A.   RIGHT.

13          Q.   AND YOU CALLED ROBERT VARGO?

14          A.   YES, I DID.

15          Q.   AND WHAT DID YOU TELL HIM?

16          A.   I TOLD HIM I HAD A GIRL AND SHE WAS ON HER WAY.

17          Q.   AFTER YOU MADE THAT CALL WHO LEFT THE ROOM?

18          A.   SANDRA BARNES, MICKEY LENNIE AND SHAWN PHILLIPS.

19          Q.   MICKEY LENNIE, SHAWN PHILLIPS AND SANDRA BARNES,  
20          THEY LEFT THE ROOM?

21          A.   CORRECT.

22          Q.   WHO STAYED IN THE ROOM WITH YOU?

23          A.   ME AND ANGELA AGAGAS.

24          Q.   WHO RETURNED TO THE ROOM FIRST?

25          A.   SANDRA BARNES.

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1 Q. ABOUT HOW LONG HAD SHE BEEN GONE?

2 A. ABOUT FIVE MINUTES.

3 Q. DID SHE SAY ANYTHING WHEN SHE GOT BACK?

4 A. SHE SAID THAT SHE GOT THEM IN, AND SHE RAN, THEY  
5 PUSHED HER OUT OF THE WAY AND SHE RAN BACK.

6 Q. SHE TOLD YOU THEY GOT INTO THE ROOM?

7 A. YES.

8 MR. PEPER: OBJECTION TO HEARSAY,  
9 YOUR HONOR, WHAT SHE'S TRYING TO - - -

10 THE COURT: WHAT WAS THE QUESTION?

11 SOLICITOR RUTLEDGE DURANT: I  
12 BELIEVE IT WAS, SHE TOLD YOU SHE GOT INTO THE ROOM?

13 MR. PEPER: SHE'S ASKING - - -

14 THE COURT: DOES SHE KNOW THAT OF  
15 HER OWN KNOWLEDGE?

16 SOLICITOR RUTLEDGE DURANT: ONLY  
17 THROUGH, ONLY THROUGH SANDRA, BUT THIS IS PERTAINING TO  
18 A STATEMENT AND IT GOES TO THE CONSPIRACY.

19 MR. PEPER: YOUR HONOR, SANDRA'S NOT  
20 ON TRIAL HERE, THAT'S HEARSAY WITH REGARDS TO MY  
21 CLIENT.

22 SOLICITOR RUTLEDGE DURANT: SHE'S A  
23 CO-CONSPIRATOR.

24 MR. PEPER: BUT SHE'S NOT ON TRIAL  
25 TODAY.

DIRECT - ALANA NIESEN BY SOL. RUTLEDGE DURANT

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1                    THE COURT: IT WOULD BE A STATEMENT  
2 OF CO-CONSPIRACY, I OVERRULE YOUR OBJECTION.

3                    SOLICITOR RUTLEDGE DURANT: THANK  
4 YOU, YOUR HONOR.

5                    MR. PEPER: THANK YOU, JUDGE.

6 Q. WHEN DID LENNIE AND SHAWN GET BACK?

7 A. PROBABLY ABOUT TEN MINUTES LATER.

8 Q. HOW WERE THEY ACTING?

9 A. THEY WERE ALL NERVOUS.

10 Q. DID THEY GET BACK AT THE SAME TIME?

11 A. YES.

12 Q. WHAT DID THEY WANT TO DO?

13 A. THEY WANTED TO LEAVE.

14 Q. WHAT DID YOU SAY?

15 A. I ASKED THEM WHAT DID THEY DO TO THE MAN, AND THEY  
16 SAID THAT THEY TAPED HIM AND LEFT HIM IN THE BATH  
17 ROOM.

18 Q. HOW MUCH MONEY DID THEY GET FROM ROBERT?

19 A. I'M NOT, I THINK A HUNDRED DOLLARS.

20 Q. HOW DID Y'ALL LEAVE THE HOTEL?

21 A. ME, LENNIE MICKEY AND SANDRA BARNES LEFT IN MY  
22 CAR, AND SHAWN PHILLIPS AND ANGELA LEFT IN THE  
23 TRACKER. WE LEFT FIRST AND THEN THEY FOLLOWED US,  
24 WELL, THEY WERE STILL UP IN THE ROOM, AND THEN  
25 THEY FOLLOWED US AND MET US ON ASHLEY PHOSPHATE



DIRECT - ALANA NIESEN BY SOL. RUTLEDGE DURANT

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1 BEHIND HOME DEPOT.

2 Q. WERE THERE ANY PHONE CONVERSATIONS IN YOUR CAR?

3 A. YES.

4 Q. WHO WAS ON THE PHONE?

5 A. LENNIE MICKEY WAS ON THE PHONE WITH SHAWN  
6 PHILLIPS.

7 Q. WHOSE PHONE WAS LENNIE USING?

8 A. MY PHONE.

9 Q. HE WAS TALKING TO SHAWN?

10 A. YES, SIR.

11 Q. WHERE DID Y'ALL GO?

12 A. WE WENT TO HOME DEPOT, WELL, BEHIND HOME DEPOT  
13 THERE'S A TRAILER PARK, I BELIEVE IT'S A TRAILER  
14 PARK, AND WE WENT THERE FIRST, AND THEN WE ENDED  
15 UP TAKING THEM AND DROPPING THEM OFF AT COLONY  
16 NORTH AND LEAVING THEM.

17 Q. WHO DID YOU DROP AT COLONY NORTH?

18 A. WE FOLLOWED SHAWN AND ANGELA TO COLONY NORTH, AND  
19 AS SOON AS THEY GOT OUT OF MY CAR, LENNIE GOT OUT  
20 OF MY CAR, ME AND SANDRA TOOK OFF AND LEFT.

21 Q. WHAT DID THEY DO WITH THE TRACKER?

22 A. WHAT DID THEY DO WITH THE TRACKER?

23 Q. YES.

24 A. I LEFT THEM AT COLONY NORTH WITH THE TRACKER, SO I  
25 DON'T KNOW WHAT THEY DID. ME AND SANDRA LEFT

DIRECT - ALANA NIESEN BY SOL. RUTLEDGE DURANT

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1           THEM.

2           Q.   WHERE DID YOU LEAVE SANDRA?

3           A.   AT COUNTRY HILLS HOTEL ON ASHLEY PHOSPHATE.

4           Q.   WHEN DID YOU FIND OUT ABOUT THE MURDER?

5           A.   I READ IT IN THE NEWSPAPER THE NEXT DAY, AND I  
6               DIDN'T KNOW IT WAS ROBERT VARGO UNTIL HIS  
7               GIRLFRIEND CALLED ME AND ASKED ME IF I KNEW  
8               ANYTHING ABOUT IT.

9           Q.   DID YOU CONTINUE TO SEE SHAWN PHILLIPS AFTER THIS  
10           NIGHT?

11          A.   YES.

12          Q.   WHAT KIND OF RELATIONSHIP DID YOU HAVE WITH HIM?

13          A.   HE WAS NOW MY DOPE MAN, AND I WOULD GIVE HIM RIDES  
14               IN EXCHANGE FOR DRUGS.

15          Q.   DID YOU EVER HAVE A SEXUAL RELATIONSHIP WITH HIM?

16          A.   YES.

17          Q.   MOVE ON TO DECEMBER FOURTEENTH, THIS WAS THE DAY  
18               YOU WERE ARRESTED, TWO THOUSAND SIX, WHERE WERE  
19               YOU TAKEN?

20          A.   I WAS TAKEN TO MALL DRIVE, TO THE POLICE  
21               DEPARTMENT OFF MALL DRIVE.

22          Q.   DO YOU REMEMBER DETECTIVE HILL - - -

23          A.   YES.

24          Q.   --- SHOWING YOU A GROUP OF PHOTOGRAPHS?

25          A.   YES, SIR.

DIRECT - ALANA NIESEN BY SOL. RUTLEDGE DURANT

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1 Q. I THINK YOU WERE ABLE TO IDENTIFY LENNIE MICKEY?

2 A. YES, SIR.

3 Q. AND ANGELA AGAGAS?

4 A. YES, SIR.

5 Q. AND YOU SAID YOU HAD A CELL PHONE THE NIGHT OF THE  
6 MURDER - - -

7 COURT REPORTER: STATE'S TWELVE FOR  
8 ID.

9 (State's Exhibit Twelve,  
10 AT&T bill for cell phone  
11 of Chrysantha Jackson,  
12 marked for identification.)

13 SOLICITOR RUTLEDGE DURANT: THANK  
14 YOU, MA'AM.

15 Q. I'M SHOWING YOU WHAT'S BEEN MARKED FOR  
16 IDENTIFICATION AS STATE'S EXHIBIT TWELVE, AND ASK  
17 YOU TO TAKE A LOOK AT IT, GO THROUGH IT. DO YOU  
18 RECOGNIZE THAT?

19 A. I DON'T KNOW -- OKAY, YEAH, IT'S MY MOTHER'S.

20 Q. WHAT IS IT?

21 A. IT'S AN AT&T BILL.

22 Q. FOR WHOSE PHONE?

23 A. FRANKLIN MICKEY.

24 Q. STATE'S TWELVE, SEE IF YOU RECOGNIZE THAT?

25 A. YES, THAT'S MY MOTHER'S.

DIRECT - ALANA NIESEN BY SOL. RUTLEDGE DURANT

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1 Q. AND WHAT IS YOUR MOTHER'S NAME?

2 A. CHRYSANTHA JACKSON.

3 Q. IS HER NAME HERE ON THOSE RECORDS?

4 A. YES, IT DOES.

5 Q. AND WHAT PHONE NUMBER IS LISTED FOR THOSE RECORDS?

6 A. EIGHT ONE NINE O THREE NINE NINE.

7 Q. IS THIS THE PHONE THAT YOU HAD - - -

8 A. YES.

9 Q. --- THE NIGHT OF THE MURDER?

10 A. YES.

11 Q. IS THIS THE PHONE THAT LENNIE MICKEY WAS USING - -

12 -

13 A. YES.

14 Q. --- THAT YOU LET HIM BORROW?

15 A. YES.

16 Q. ARE THESE THE TRUE AND ACCURATE RECORDS OF THE  
17 PHONE CALLS FOR PHONE NUMBER EIGHT FOUR THREE  
18 EIGHT ONE NINE O THREE NINE NINE?

19 A. EIGHT FOUR THREE EIGHT ONE NINE O THREE NINE NINE,  
20 YES, THAT'S MY PHONE, MY PHONE RECORDS.

21 Q. HOW DID THE POLICE GET YOUR PHONE RECORDS?

22 A. MY BROTHER FAXED THEM TO DETECTIVE HILL.

23 SOLICITOR RUTLEDGE DURANT: YOUR  
24 HONOR, AT THIS TIME I BELIEVE WITHOUT OBJECTION, THE  
25 STATE MOVES FOR THE ADMISSION OF STATE'S TWELVE.

DIRECT - ALANA NIESEN BY SOL. RUTLEDGE DURANT

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1 MR. PEPER: NO OBJECTION.

2 THE COURT: NO OBJECTION, ADMITTED,  
3 STATE'S TWELVE ADMITTED WITHOUT OBJECTION.  
4 (State's Exhibit Twelve  
5 marked and filed.)

6 SOLICITOR RUTLEDGE DURANT: THANK  
7 YOU, MA'AM, PLEASE ANSWER ANY QUESTIONS MR. PEPER MAY  
8 HAVE FOR YOU.

9 WITNESS: OKAY. THANK YOU.

10 THE COURT: CROSS-EXAMINATION.

11 MR. PEPER: THANK YOU, YOUR HONOR,  
12 IF IT PLEASE THE COURT. I BEG THE COURT'S INDULGENCE  
13 FOR A MOMENT, YOUR HONOR.

14 THE COURT: YES, SIR.

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.)

CROSS - ALANA NIESEN BY MR. PEPER

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CROSS-EXAMINATION OF ALANA NIESEN

BY MR. PEPER:

Q. GOOD MORNING.

A. GOOD MORNING.

Q. I'M MARK PEPER AND I REPRESENT SHAWN AND I HAVE  
SOME QUESTIONS FOR YOU. I HOPE YOU'LL BE AS  
CORDIAL WITH ME AS YOU WERE WITH MR. DURANT.  
OKAY?

A. YES, SIR.

Q. BECAUSE I KNOW OBVIOUSLY YOU'RE IN THE SAME  
POSITION, YOU'VE BEEN CHARGED WITH CONSPIRACY TO  
COMMIT ARMED ROBBERY, ARMED ROBBERY AND MURDER,  
CORRECT?

A. CORRECT.

Q. AND I KNOW YOU'VE TESTIFIED EARLIER THAT YOU  
HAVEN'T BEEN PROMISED ANYTHING BUT I'M ASSUMING  
YOU AND YOUR ATTORNEY HAVE HOPED THAT YOUR  
TESTIMONY TODAY WOULD BENEFIT YOU AT SOME POINT  
DOWN THE ROAD, CORRECT?

A. I HOPE SO.

Q. RIGHT. I WANT TO TALK ABOUT SOME CONCERNS I HAVE  
WITH YOUR PREVIOUS TESTIMONY. DO YOU REMEMBER  
GIVING A STATEMENT TO DETECTIVE HILL ON DECEMBER  
FOURTEENTH, TWO THOUSAND AND SIX?

A. YES, SIR.

CROSS - ALANA NIESEN BY MR. PEPER

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1 Q. IF I SHOWED YOU YOUR STATEMENT WOULD YOU RECOGNIZE  
2 IT?

3 A. YES, SIR.

4 MR. PEPER: I'D ASK THAT THIS BE  
5 MARKED AS DEFENDANT'S EXHIBIT, AND I BELIEVE IT'S FIVE  
6 FOR IDENTIFICATION PURPOSES, PLEASE.  
7 (Defendant's Exhibit Five,  
8 Statement of Alana Niesen,  
9 marked for identification.)

10 MR. PEPER: THANK YOU, MA'AM.

11 Q. I'M SHOWING YOU WHAT'S BEEN MARKED AS DEFENDANT'S  
12 EXHIBIT FIVE. IS THAT THE STATEMENT THAT YOU GAVE  
13 TO DETECTIVE HILL?

14 A. YES, IT IS.

15 Q. AND IS THAT YOUR HANDWRITING?

16 A. IT'S MY SIGNATURE.

17 Q. AND WHO WROTE THE STATEMENT?

18 A. DETECTIVE HILL DID.

19 Q. OKAY. BUT HE WROTE IT FOR YOU IN YOUR OWN WORDS?

20 A. CORRECT.

21 Q. IT'S TRUE, IS IT NOT, THAT WITH REGARDS TO MR.  
22 VARGO, YOU WERE WITH HIM THE NIGHT OF THE SIXTH,  
23 WHICH WOULD BE TUESDAY, IS THAT CORRECT?

24 A. I BELIEVE SO.

25 Q. AND AT THE TIME YOU WERE WORKING AS A PROSTITUTE?

CROSS - ALANA NIESEN BY MR. PEPER

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1 A. CORRECT.

2 Q. AND DID HE MAKE CONTACT WITH YOU OR DID YOU SEEK  
3 HIM OUT?

4 A. HE MADE CONTACT WITH ME.

5 Q. OKAY. AND YOU AGREED TO PERFORM SEXUAL RELATIONS  
6 WITH HIM, I'M TRYING TO BE - - -

7 A. CORRECT.

8 Q. RIGHT. DID YOU ALSO RECEIVE DRUGS FROM HIM?

9 A. YES.

10 Q. AND IS IT FAIR TO SAY THAT EITHER PRIOR TO, DURING  
11 OR AFTERWARDS YOU BOTH PARTOOK IN THE ILLEGAL  
12 ACTIVITIES?

13 A. CORRECT.

14 Q. HE HAD A GOOD BIT OF MONEY ON HIM?

15 A. I DON'T KNOW, HE JUST SAID THAT HE WALKED  
16 STACKED, HE DIDN'T TELL ME, HE DIDN'T SHOW ME NO  
17 MONEY.

18 Q. AND, BECAUSE IN YOUR STATEMENT THAT YOU HAVE IN  
19 FRONT OF YOU ON DECEMBER FOURTEENTH DON'T YOU TELL  
20 DETECTIVE HILL HE DID FLASH A ROLL OF MONEY AT ME  
21 THAT HE HAD IN HIS SHOE?

22 A. RIGHT. IT WAS IN HIS SHOE, HE WALKED STACKED, HE  
23 SHOWED ME MONEY THAT WAS IN HIS SHOE, THAT'S WHAT  
24 I SAID.

25 Q. OKAY. I'M SORRY. WHEN YOU SAY HE WALKED STACKED,



CROSS - ALANA NIESEN BY MR. PEPPER

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1 IS THAT WHAT YOU SAID?

2 A. YEAH, I MEANT, THE MONEY WAS IN HIS SHOE, THAT HE  
3 WAS WALKING STACKED.

4 Q. HE WAS WALKING STACKED?

5 A. YES.

6 Q. AS IN?

7 A. HAVING MONEY, HAVING HIS MONEY IN HIS CLOTHES.  
8 I'M SORRY.

9 Q. I'VE GOT YOU, WITH HIS SHOES ON?

10 A. SHOES, YES.

11 Q. SO, HE NEVER SHOWED IT TO YOU, HE JUST SAID THAT?

12 A. RIGHT. HE JUST TOLD ME.

13 Q. ALRIGHT. AND I BELIEVE YOU TESTIFIED EARLIER THAT  
14 THERE WAS A GENTLEMAN NAMED TANK THAT WAS AROUND?

15 A. YES.

16 Q. WHERE WAS HE STAYING?

17 A. HE WAS STAYING AT THE AMERICAN LODGE, THE HOTEL  
18 BETWEEN THE BUDGET AND THE TRAVEL LODGE.

19 Q. AND HE'S A BLACK MALE?

20 A. HE'S A BLACK MALE.

21 Q. YOU MET HIM BEFORE, AND IT LOOKS LIKE IN YOUR  
22 STATEMENT, AFTER YOU HAD SEX AND GOT HIGH WITH MR.  
23 VARGO?

24 A. CORRECT.

25 Q. OKAY. AND AT THAT POINT YOU RAN INTO ANGELA,

CROSS - ALANA NIESEN BY MR. PEPPER

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1 B.G., PIT AND BROOKLYN, ACCORDING, IS THAT  
2 CORRECT?

3 A. CORRECT.

4 Q. NOW, YOU TESTIFIED EARLIER THAT WAS THE FIRST TIME  
5 YOU MET THEM?

6 A. CORRECT.

7 Q. OKAY. SO, DID YOU HAVE ANY IDEA WHO THEY WERE - -  
8 -

9 A. NO.

10 Q. --- WHEN YOU ORIGINALLY MET THEM?

11 A. NO.

12 Q. ALRIGHT. AND IT LOOKS LIKE ACCORDING TO YOUR  
13 STATEMENT YOU WENT BACK TO TANK'S ROOM AFTER YOU  
14 MET THESE FOUR INDIVIDUALS?

15 A. CORRECT.

16 Q. AND WENT TO THEIR ROOM, AND I'M ASSUMING THAT YOU  
17 WERE UNDER THE IMPRESSION THAT IT WAS ANGELA'S  
18 ROOM?

19 A. I, NO, I DIDN'T SEE THE GIRLS UNTIL AFTER I GOT TO  
20 THE ROOM.

21 Q. WELL, YOU SAW THEM IN THE CAR, RIGHT?

22 A. RIGHT, I SAW TWO MEN IN THE FRONT SEAT AND TWO  
23 PEOPLE IN THE BACK SEAT, I DIDN'T KNOW IF THEY  
24 WERE GIRLS OR GUYS IN THE BACK SEAT.

25 Q. OKAY. WHEN YOU GOT TO THE ROOM YOU REALIZED THEY

CROSS - ALANA NIESEN BY MR. PEPER

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1 WERE TWO GIRLS - - -

2 A. GIRLS.

3 Q. --- AND TWO GUYS?

4 A. CORRECT.

5 Q. OKAY. NOW, HERE'S WHERE I'VE GOT SOME CONCERNS,  
6 BECAUSE YOUR TESTIMONY EARLIER CLEARLY CONTRADICTS  
7 YOUR STATEMENT THAT I'VE PROVIDED FOR YOU, AND I  
8 WOULD LIKE YOU TO READ, AND I'LL HAVE TO POINT IT  
9 OUT TO YOU BECAUSE THERE'S NO NUMBERS ON IT, YOU  
10 TESTIFIED EARLIER THAT A LOT OF THE TALK WITH  
11 REGARDS TO MAKING SOME MONEY WAS BETWEEN YOU AND  
12 LENNIE AND SHAWN?

13 A. CORRECT.

14 Q. OKAY. THE PROBLEM IS THAT IN YOUR STATEMENT YOU  
15 ONLY SAY THAT BROOKLYN WAS ASKING YOU, WHERE CAN I  
16 MAKE SOME MONEY?

17 A. CORRECT.

18 Q. YOU ALSO TESTIFIED EARLIER THAT SHAWN REALLY  
19 DIDN'T SAY MUCH THAT NIGHT?

20 A. CORRECT.

21 Q. OKAY. AND BROOKLYN, JUST TO CLARIFY IS LENNIE  
22 MICKEY?

23 A. CORRECT.

24 Q. OKAY. ON THAT SAME PAGE DID YOU OR DID YOU NOT  
25 TELL DETECTIVE HILL THAT, BROOKLYN WAS ASKING ME

1 IF I WANTED TO MAKE SOME CASH?

2 A. CORRECT.

3 Q. BROOKLYN ASKED WHAT I WAS DOING OVER AT THE MOTEL,  
4 AND I TOLD HIM I WAS VISITING A FRIEND, AND I  
5 DROPPED ANOTHER GUY OFF AT THE BUDGET INN,  
6 CORRECT?

7 A. CORRECT.

8 Q. BROOKLYN ASKED ME DID HE HAVE ANY MONEY?

9 A. CORRECT.

10 Q. I TOLD BROOKLYN, THE GUY SHOWED ME A ROLL OF MONEY  
11 THE NIGHT BEFORE?

12 A. CORRECT.

13 Q. AND NOW WE KNOW YOU WERE SAYING, IN HIS SHOE?

14 A. IT WAS IN HIS SHOE.

15 Q. OKAY. THEN YOU GO ON AND SAY, BROOKLYN TOLD ME TO  
16 CALL THE GUY AND GET IN THE ROOM SO I COULD ROB  
17 THE GUY?

18 A. CORRECT.

19 Q. AND YOU TOLD HIM YOU DIDN'T WANT TO?

20 A. RIGHT.

21 Q. SO, BROOKLYN SAID, CAN YOU GET ANOTHER GIRL?

22 A. CORRECT.

23 Q. OKAY. YOU NEVER MENTIONED ANYWHERE IN YOUR  
24 STATEMENT, WHICH WAS GIVEN JUST ABOUT A MONTH  
25 AFTER THIS INCIDENT OCCURRED AS OPPOSED TO NOW,

CROSS - ALANA NIESEN BY MR. PEPER

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1 TWO YEARS LATER, - - -

2 A. RIGHT.

3 Q. --- THAT SHAWN HAD ANY CONVERSATION WITH YOU ABOUT  
4 DOING ANY SORT OF ARMED ROBBERY?

5 A. NO.

6 Q. AND THAT'S STILL YOUR TESTIMONY TODAY?

7 A. CORRECT.

8 Q. SHAWN NEVER ASKED YOU ABOUT ANYBODY THAT HAD  
9 MONEY, SHAWN NEVER ASKED YOU, COULD WE ROB  
10 SOMEBODY, IS THAT YOUR ANSWER NOW?

11 A. (Witness nods head in the affirmative.)

12 Q. YOU HAVE TO ANSWER THE QUESTION.

13 A. OH, I'M SORRY. CORRECT.

14 Q. THAT'S OKAY. SHAWN NEVER ASKED YOU, DO YOU KNOW  
15 ANYBODY WE CAN ROB?

16 A. NO.

17 Q. SHAWN NEVER ASKED YOU, DO YOU KNOW ANYWHERE WE CAN  
18 GO MAKE SOME MONEY?

19 A. NO.

20 Q. SHAWN NEVER ASKED YOU, DO YOU HAVE A CLIENT - - -

21 A. NO.

22 Q. --- THAT WE COULD GO ROB?

23 A. HUH-UH.

24 Q. IN FACT, THE ONLY CONVERSATION WITH REGARDS TO  
25 COMMITTING ANY TYPE OF CRIME WAS FROM BROOKLYN?

1 A. CORRECT.

2 Q. AT THAT POINT YOU TESTIFIED EARLIER THAT YOU AND  
3 BROOKLYN AND B.G., WHO WAS SANDRA BARNES, CORRECT?

4 A. CORRECT.

5 Q. GOT IN A VEHICLE AND DROVE OVER TO THE BUDGET INN?

6 A. CORRECT.

7 Q. AND I WANT TO MAKE SURE THE JURY UNDERSTANDS THIS,  
8 AS DO I, SHAWN, MY CLIENT, WAS NOT IN YOUR CAR,  
9 WAS HE?

10 A. NO, HE WAS NOT.

11 Q. AND IT WAS, WHAT, MID-NOVEMBER, I'M ASSUMING IT  
12 WAS RELATIVELY COLD OUTSIDE IF YOU RECALL?

13 A. YES.

14 Q. AND THIS WAS AT NIGHT?

15 A. CORRECT.

16 Q. IS IT FAIR TO SAY YOU'VE PROBABLY GOT THE WINDOWS  
17 UP, IT'S NOT LIKE Y'ALL WERE RIDING AROUND WITH  
18 THE WINDOWS DOWN, WERE YOU?

19 A. NO.

20 Q. OKAY. DOING CRACK IN THE CAR?

21 A. NO, WE WERE DOING IT IN THE MOTEL ROOM.

22 Q. YOU HAD DONE IT EARLIER IN THE MOTEL ROOM?

23 A. RIGHT.

24 Q. OKAY. WERE YOU HIGH?

25 A. YES.

CROSS - ALANA NIESEN BY MR. PEPER

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- 1 Q. VERY HIGH?
- 2 A. YES.
- 3 Q. VERY, VERY HIGH?
- 4 A. HIGH, YES.
- 5 Q. OKAY. AND YOU WERE DRIVING?
- 6 A. YES, I WAS.
- 7 Q. LENNIE MICKEY, BROOKLYN, WAS IN THE FRONT SEAT?
- 8 A. CORRECT.
- 9 Q. B.G. WAS IN THE BACK SEAT?
- 10 A. YES, SHE WAS.
- 11 Q. AND YOU TOLD BROOKLYN WHERE MR. VARGO WAS STAYING?
- 12 A. CORRECT.
- 13 Q. AS A MATTER OF FACT, YOU POINTED IT OUT TO MR.
- 14 MICKEY?
- 15 A. YES, I DID.
- 16 Q. OKAY. AGAIN, SHAWN WASN'T IN THE CAR, WAS HE?
- 17 A. NO.
- 18 Q. THE ONLY TWO PEOPLE THAT KNEW WHERE MR. VARGO WAS
- 19 STAYING BESIDES YOU WOULD HAVE BEEN B.G. IN THE
- 20 BACK SEAT AND BROOKLYN IN THE FRONT SEAT?
- 21 A. CORRECT.
- 22 Q. YOU THEN CAME BACK TO THE ROOM, CORRECT?
- 23 A. YES, SIR.
- 24 Q. SMOKED SOME MORE CRACK?
- 25 A. YES, SIR.

CROSS - ALANA NIESEN BY MR. PEPER

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- 1 Q. GOT EVEN HIGHER?
- 2 A. YES, SIR.
- 3 Q. DID YOU SEE A GUN?
- 4 A. YES, I DID.
- 5 Q. WHERE WAS THE GUN?
- 6 A. ON THE BED.
- 7 Q. NEXT TO WHOM?
- 8 A. MICKEY, LENNIE MICKEY.
- 9 Q. WHO DID THE GUN BELONG TO?
- 10 A. I DON'T KNOW.
- 11 Q. IS IT FAIR TO SAY THERE WERE NO OTHER WEAPONS IN
- 12 THE ROOM?
- 13 A. NO OTHER WEAPONS.
- 14 Q. THE ONLY WEAPON WAS NEXT TO BROOKLYN, CORRECT?
- 15 A. CORRECT.
- 16 Q. AND THEN I THINK YOU TESTIFIED EARLIER ALSO THAT
- 17 THE ONLY PERSON YOU SAW HOLDING THE GUN WAS
- 18 BROOKLYN?
- 19 A. CORRECT.
- 20 Q. NOT ONLY WAS HE HOLDING THE GUN, HE WAS WAVING IT
- 21 IN THE AIR, - - -
- 22 A. CORRECT.
- 23 Q. --- ACTING ALL CRAZY?
- 24 A. YES.
- 25 Q. DID YOU CONSIDER THIS GUY, BROOKLYN, TO BE



CROSS - ALANA NIESEN BY MR. PEPER

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1 DANGEROUS?

2 A. YES.

3 Q. EXTREMELY DANGEROUS?

4 A. YES.

5 Q. YOU WERE SCARED TO EVEN BE AROUND HIM, WEREN'T  
6 YOU?

7 A. YES.

8 Q. I BELIEVE YOU TESTIFIED EARLIER WITH REGARDS TO  
9 YOUR PHONE, AND I REALLY DON'T CARE TOO MUCH ABOUT  
10 IT, I JUST WANT TO CLARIFY THAT LENNIE MICKEY WAS  
11 USING YOUR PHONE?

12 A. CORRECT.

13 Q. AND ANGELA AGAGAS WAS USING SHAWN'S PHONE?

14 A. I DON'T KNOW.

15 Q. OKAY. WELL, I WANT TO SHOW YOU A LETTER THAT YOU  
16 WROTE TO SHAWN WHILE YOU WERE INCARCERATED, AND I  
17 THINK IT WILL CLARIFY YOUR ANSWER.

18 MR. PEPER: I WANT TO ASK MADAM  
19 COURT REPORTER TO MARK THIS DEFENDANT'S EXHIBIT SIX FOR  
20 IDENTIFICATION PURPOSES.

21 (Defendant's Exhibit Six,  
22 Letter from Alana Niesen to Shawn Phillips,  
23 marked for identification.)

24 Q. I'M GOING TO SHOW YOU WHAT'S BEEN MARKED AS  
25 DEFENDANT'S EXHIBIT SIX AND ASK YOU TO IDENTIFY

CROSS - ALANA NIESEN BY MR. PEPER

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1            THAT. IS THAT YOUR HANDWRITING?

2            A. YES, IT IS.

3            Q. AND AT THE TOP LEFT HAND CORNER, IT'S SIMPLY  
4            ADDRESSED TO HEY BOY?

5            A. HEY BOY.

6            Q. IS THAT A LETTER TO SHAWN?

7            A. YES, IT IS.

8            Q. DO YOU SEE ABOUT, LET'S SEE HERE, LET ME FIND IT,  
9            ABOUT MIDWAY DOWN PAGE TWO, IT SAYS, I CALLED YOU  
10           SINCE THAT'S THE NUMBER Y'ALL GAVE ME, YOUR CELL  
11           NUMBER?

12           A. YOUR CELL NUMBER, RIGHT.

13           Q. SO, IS IT FAIR TO SAY THAT THE ONLY WAY TO GET IN  
14           CONTACT WITH ANY OF THE PARTIES REALLY WAS THROUGH  
15           ANGELA'S PHONE?

16           A. IF THAT WAS HER NUMBER, THEN THAT WAS HER PHONE.  
17           THAT'S THE ONLY NUMBER I KNEW.

18           Q. OKAY. AND AGAIN, HOW DID YOU GET THAT NUMBER?

19           A. THEY GAVE IT TO ME.

20           Q. OKAY. ALRIGHT.

21                        MR. PEPER: YOUR HONOR, IF THERE'S  
22           NO OBJECTION I'D LIKE TO ADMIT DEFENDANT'S EXHIBIT SIX  
23           FOR IDENTIFICATION PURPOSES INTO EVIDENCE AT THIS TIME.

24                        SOLICITOR RUTLEDGE DURANT: NO  
25           OBJECTION, YOUR HONOR.

CROSS - ALANA NIESEN BY MR. PEPER

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1                    THE COURT: DEFENDANT'S SIX ADMITTED  
2 WITHOUT OBJECTION.

3                    COURT REPORTER: HAND IT TO ME,  
4 PLEASE.

5                    MR. PEPER: YES, MA'AM.  
6 (Defendant's Exhibit Six  
7 marked and filed.)

8                    MR. PEPER: THANK YOU, MA'AM.

9 Q. ALRIGHT. THIS IS THE LETTER THAT YOU IDENTIFIED  
10 THAT CAME FROM YOU TO SHAWN. IT'S DATED JANUARY  
11 TWENTY-SECOND, O-SEVEN. I'M ASSUMING THAT THIS WAS  
12 JAIL TIME?

13 A. CORRECT.

14 Q. YOU WERE IN JAIL WRITING TO SHAWN?

15 A. RIGHT.

16 Q. DO YOU REMEMBER TELLING HIM THAT MICKEY IS THE ONE  
17 THAT PUNCHED YOU IN YOUR FACE AND PUT THE GUN UP  
18 TO THE BACK OF YOUR HEAD AND ALMOST SHOT YOU?

19 A. IN THE FRONT OF MY HEAD, YES.

20 Q. IN THE FRONT OF YOUR HEAD?

21 A. YES.

22 Q. AND I'M ASSUMING WHEN YOU SAY YOU, OR YOUR, YOU'RE  
23 REFERRING TO SHAWN SINCE THIS IS A LETTER TO  
24 SHAWN?

25 A. THAT SHAWN WAS WITH ME.

CROSS - ALANA NIESEN BY MR. PEPER

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- 1 Q. SO, IT SAYS, BECAUSE YOU WERE TRYING TO GET THE  
2 GUN FROM HIM?
- 3 A. I WAS TRYING TO GET THE GUN FROM HIM?
- 4 Q. NO, THIS IS YOU WRITING TO SHAWN?
- 5 A. RIGHT.
- 6 Q. BECAUSE - - -
- 7 A. SHAWN WAS TRYING TO GET THE GUN AWAY FROM HIM.
- 8 Q. AND HE COULDN'T DO IT, COULD HE?
- 9 A. HE DID, THAT'S WHY I'M STILL ALIVE.
- 10 Q. IF SHAWN HADN'T GOT THE GUN FROM HIM DO YOU THINK  
11 YOU'D BE DEAD?
- 12 A. YES.
- 13 Q. NO DOUBT ABOUT IT?
- 14 A. NO DOUBT ABOUT IT.
- 15 Q. BECAUSE AS YOU WRITE HERE, "MICKEY'S CRAZY."?
- 16 A. YES.
- 17 Q. "HE SCARED ME, HE'S LIKE A LOOSE CANNON."?
- 18 A. CORRECT.
- 19 Q. "I TOLD POLICE HE THREATENED ME, MY FAMILY, AND  
20 ESPECIALLY MY DAUGHTER."?
- 21 A. RIGHT.
- 22 Q. ONCE AGAIN, YOU WRITE TO SHAWN VERIFYING YOUR  
23 STATEMENT YOU MADE TO THE OFFICER, THAT "MICKEY  
24 ASKED ME IF I WANTED TO MAKE SOME MONEY."?
- 25 A. RIGHT.

CROSS - ALANA NIESEN BY MR. PEPER

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1 Q. "I TOLD HIM I WAS PICKING UP SOMEONE TO GIVE THEM  
2 A RIDE, A DOPE DEALER FROM AMERICAN HOTEL."?

3 A. RIGHT.

4 Q. "AFTER I FINISHED I CALLED YOU BECAUSE THAT'S THE  
5 NUMBER ANGELA GAVE ME. MICKEY MET ME OUTSIDE THE  
6 TRAVEL LODGE HOTEL, ROOM NUMBER THREE O NINE."?

7 A. CORRECT.

8 Q. "WHEN I WENT INTO THE ROOM I MET YOU AND ANGELA  
9 AND B.G."?

10 A. CORRECT.

11 Q. SO, SHAWN AND ANGELA AND B.G. WERE IN THE ROOM  
12 WHEN YOU MET MICKEY - - -

13 A. OUTSIDE THE ROOM.

14 Q. WAS MICKEY CARRYING THE GUN AT THAT POINT?

15 A. I DON'T, I DON'T THINK SO, I DON'T KNOW.

16 Q. THIS IS THE SAME MICKEY, THOUGH, THAT HAD PUT A  
17 GUN TO YOUR HEAD, PUNCHED YOU IN THE FACE, AND WAS  
18 GOING TO KILL YOU IF SHAWN HADN'T GOT THE GUN?

19 A. RIGHT.

20 Q. SO, THE SAME MICKEY, AND THIS IS ALSO MICKEY THAT  
21 IS KNOWN AS BROOKLYN?

22 A. CORRECT.

23 Q. DID YOU TELL SHAWN THAT MICKEY GAVE YOU AND B.G.  
24 SOME CRACK TO SMOKE?

25 A. YES.

1 Q. AND YOU ALL WENT DRIVING AROUND?

2 A. CORRECT.

3 Q. AND AGAIN, THAT'S YOU, MICKEY AND SANDRA IN YOUR  
4 CAR?

5 A. CORRECT.

6 Q. AND THIS, WAS THIS YOUR MOM'S CAR YOU WERE  
7 DRIVING?

8 A. YES, IT WAS.

9 Q. OKAY. THE VICTIM HAPPENED TO CALL YOU, AND THAT'S  
10 VARGO, RIGHT?

11 A. CORRECT.

12 Q. "AND THAT'S WHEN I SUGGESTED B.G. TO DO THIS  
13 JOB."?

14 A. CORRECT.

15 Q. "SHE AGREED BECAUSE SHE WANTED TO MAKE SOME  
16 MONEY."?

17 A. CORRECT.

18 Q. "WHICH I TOLD HER HE HAD MONEY BECAUSE HE SHOWED  
19 ME A BIG WAD THE NIGHT BEFORE."?

20 A. RIGHT. IT WAS IN HIS SHOE.

21 Q. HE WAS TRYING TO GET YOU TO STAY WITH HIM BUT YOU  
22 DIDN'T WANT TO BECAUSE YOU DIDN'T DO ANAL?

23 A. RIGHT.

24 Q. B.G. DID?

25 A. YES, AND SHE WAS WILLING TO GO OVER THERE.

CROSS - ALANA NIESEN BY MR. PEPER

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1 Q. WELL, WAS SHE GOING OVER THERE TO DO ANAL OR WAS  
2 SHE GOING OVER THERE TO ROB SOMEBODY?

3 A. TO ROB, TO ROB SOMEBODY.

4 Q. DID YOU TELL SHAWN THAT YOU TOLD THE POLICE THAT  
5 "HE WENT BY BROOKLYN, D, OR L, I GAVE THREE  
6 NAMES."?

7 A. FOR WHICH ONE, BROOKLYN?

8 Q. WELL, - - -

9 A. I ONLY KNEW BROOKLYN BY BROOKLYN.

10 Q. WELL, THEN, I'M CONFUSED BECAUSE IN YOUR LETTER  
11 YOU SAY, NOW, "I COULD OR DON'T REMEMBER MICKEY'S,  
12 I DON'T REMEMBER MICKEY'S NAME. I TOLD POLICE HE  
13 WENT BY BROOKLYN, D OR L" - - -

14 A. RIGHT.

15 Q. --- "I GAVE THREE NAMES."?

16 A. OKAY.

17 Q. "WHEN MICKEY GOT BACK I SAW SOMETHING IN HIS FACE.  
18 I ASKED HIM WHAT DID HE DO."?

19 A. CORRECT.

20 Q. YOU DON'T SAY, I ASKED HIM WHAT DID Y'ALL DO, YOU  
21 SAID, "I ASKED HIM WHAT DID HE DO."?

22 A. WHAT DID HE DO.

23 Q. "HE TOLD ME, NOTHING, NOT TO WORRY."?

24 A. RIGHT.

25 Q. SO, AT THIS POINT IN TIME HE'S BEING ERRATIC?

CROSS - ALANA NIESEN BY MR. PEPER

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- 1 A. HE'S JUST BEING ANXIOUS TO LEAVE THE AREA.
- 2 Q. HE'S BEING TYPICAL MICKEY?
- 3 A. RIGHT.
- 4 Q. CRAZY?
- 5 A. CRAZY.
- 6 Q. "I ASKED HIM IF HE HURT HIM," ROBERT, "HE ASSURED
- 7 ME HE WAS FINE, BUT THAT HE ROBBED HIM."?
- 8 A. CORRECT.
- 9 Q. "ALL HE HAD WAS A HUNDRED DOLLARS ON HIM."?
- 10 A. CORRECT.
- 11 Q. "AND ALL HE DID WAS DUCT TAPE HIM UP AND LEFT HIM
- 12 IN BATH ROOM."?
- 13 A. CORRECT.
- 14 Q. YOU WANTED TO GET OUT OF THERE STAT, I'M ASSUMING?
- 15 A. CORRECT.
- 16 Q. SO, YOU TELL SHAWN IN YOUR LETTER, AGAIN, JANUARY
- 17 TWENTY-SECOND, O-SEVEN, A COUPLE MONTHS
- 18 AFTERWARDS, THAT YOU WANTED TO LEAVE, SO AGAIN,
- 19 YOU, MICKEY - - -
- 20 A. AND SANDRA.
- 21 Q. --- AND B.G. - - -
- 22 A. YES.
- 23 Q. --- GOT IN YOUR CAR?
- 24 A. CORRECT.
- 25 Q. WAS SHAWN EVER IN YOUR CAR THAT NIGHT?



CROSS - ALANA NIESEN BY MR. PEPER

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1 A. NO.

2 Q. AND MICKEY WANTED TO ROB, OR GO GET ANOTHER CAR,  
3 SO I'M CONFUSED, WHAT WAS MICKEY SAYING IN THE CAR  
4 TO YOU?

5 A. WELL, MICKEY WANTED SHAWN, TO GET SHAWN, AND  
6 ANGELA DIDN'T FOLLOW, OR DIDN'T LEAVE THE HOTEL  
7 YET, AND HE WAS GOING CRAZY, HE WANTED US TO TURN  
8 BACK AROUND AND GO GET THEM. AND I'M, LIKE, NO,  
9 ALL I WANTED TO DO WAS DROP HIM OFF AND - - -

10 Q. GET HIM OUT OF THE CAR?

11 A. GET HIM OUT OF MY CAR.

12 Q. YOU WEREN'T CONCERNED THAT SHAWN AND ANGELA WERE  
13 STILL BACK IN THE ROOM?

14 A. NO.

15 Q. YOU KNEW THEY WERE A COUPLE, RIGHT?

16 A. RIGHT.

17 Q. AND IT WAS ANGELA'S ROOM?

18 A. I GUESS, I DON'T KNOW.

19 Q. RIGHT. OKAY. YOU JUST FIGURED THEY WERE GOING TO  
20 SPEND THE NIGHT THERE?

21 A. YEAH, THEY GOT A HOTEL ROOM.

22 Q. YOU DIDN'T REALLY CARE?

23 A. I DIDN'T CARE.

24 Q. OKAY. MICKEY MADE YOU DRIVE TO A DEAD END ALLEY  
25 BEHIND THE HOME DEPOT?

1 A. RIGHT. I FIGURED IT WAS A TRAILER PARK OR A DEAD  
2 END ALLEY, BUT THAT'S WHERE WE DROVE TO, THAT'S  
3 WHERE WE MET SHAWN AND ANGELA.

4 Q. ALRIGHT. WELL, DID HE MAKE YOU DRIVE TO THAT DEAD  
5 END?

6 A. NO, HE JUST TOLD ME THIS - - -

7 Q. HE TOLD YOU?

8 A. YEAH.

9 Q. SO, HE WAS PRETTY MUCH RUNNING THE SHOW?

10 A. YES.

11 Q. NOW, LET ME REWIND JUST A BIT BECAUSE I GOT A  
12 LITTLE AHEAD OF MYSELF HERE. DO YOU REMEMBER, AND  
13 I CAN SHOW YOU BUT DO YOU REMEMBER TELLING SHAWN  
14 IN YOUR LETTER THAT BEFORE B.G. LEFT TO GO TO  
15 ROBERT'S ROOM TO DO ANAL OR ARMED ROBBERY, OR  
16 WHATEVER SHE WAS GOING TO DO, THAT SHE WANTED SOME  
17 MORE CRACK TO GET HIGH?

18 A. I DON'T REMEMBER.

19 Q. OKAY. JUST GO AHEAD AND READ, I GUESS IT'S THE  
20 FIRST THREE - - -

21 A. "WHEN B.G. AND I RETURNED TO THE ROOM FROM THE  
22 BATH ROOM THAT'S WHEN SHE WENT TO BUDGET, AND YOU  
23 AND MICKEY LEFT."

24 Q. THAT'S OKAY.

25 A. "SO, BEFORE SHE LEFT SHE WANTED SOME MORE CRACK TO

CROSS - ALANA NIESEN BY MR. PEPER

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1 GET HIGH, SO B.G. AND I WENT TO THE BATH ROOM."

2 Q. OKAY. AND SO, Y'ALL WENT TO THE BATH ROOM TO GET  
3 HIGH AGAIN?

4 A. AGAIN.

5 Q. OKAY. AND THIS IS RIGHT BEFORE B.G., YOU SEE B.G.  
6 GO, LEAVE?

7 A. RIGHT.

8 Q. OKAY. NOW, I WANT YOU TO READ THIS SLOWLY SO THAT  
9 NOT ONLY THE COURT REPORTER CAN GET IT, BUT THAT  
10 THE JURY CAN UNDERSTAND. AND AGAIN, THIS IS A  
11 LETTER FROM YOU TO SHAWN?

12 A. CORRECT.

13 Q. TWO MONTHS, A LITTLE LESS THAN TWO MONTHS  
14 AFTERWARDS?

15 A. OKAY.

16 Q. THIS PARAGRAPH RIGHT HERE.

17 A. "I GUESS THAT'S WHEN MICKEY WENT CRAZY ON YOU,  
18 ABOUT THREATENING YOU."

19 Q. "I GUESS THAT'S WHEN MICKEY WENT CRAZY ON YOU,"  
20 ARE YOU REFERRING TO SHAWN?

21 A. CORRECT.

22 Q. BECAUSE YOU'RE SAYING, YOU, YOU'RE WRITING TO  
23 SHAWN?

24 A. RIGHT, I'M WRITING THIS TO SHAWN.

25 Q. "ABOUT THREATENING YOU."

1 A. RIGHT. "TO GO OVER THERE."

2 Q. SO, YOU KNEW THAT MICKEY OR BROOKLYN OR L WAS  
3 THREATENING SHAWN TO COME WITH HIM?

4 A. WELL, TRYING TO HURRY UP AND GO, THAT KIND OF WAY.

5 Q. AGAIN, THIS MICKEY GUY IS THE SAME GUY THAT PUT  
6 THE GUN TO YOUR FACE - - -

7 A. CORRECT.

8 Q. --- AND WAS GOING TO KILL YOU?

9 A. RIGHT.

10 Q. DO YOU REMEMBER TELLING THE POLICE YOU NEVER SAW A  
11 GUN?

12 A. YES, I DID.

13 Q. WHY DID YOU TELL THEM THAT?

14 A. BECAUSE I WAS SCARED.

15 Q. THEY WERE REALLY CONCERNED ABOUT THE GUN, WEREN'T  
16 THEY?

17 A. YES, THEY WERE.

18 Q. AND YOU TOLD THEM YOU NEVER SAW A GUN?

19 A. YES, I DID.

20 Q. THAT'S NOT REALLY TRUE, THOUGH, IS IT?

21 A. NO.

22 Q. YOU SAW A GUN NEXT TO LENNIE?

23 A. YES.

24 Q. YOU TESTIFIED EARLIER WITH REGARDS TO THE TIME  
25 PERIOD THAT YOU ADMIT THAT YOU SAW B.G. LEAVE THE

CROSS - ALANA NIESEN BY MR. PEPER

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1 ROOM, BROOKLYN, LENNIE MICKEY LEAVE THE ROOM, AND  
2 SHAWN LEAVE THE ROOM, CORRECT?

3 A. CORRECT.

4 Q. DID THEY SHUT THE DOOR BEHIND THEM?

5 A. YES.

6 Q. WERE THE DRAPES CLOSED ON THE WINDOWS?

7 A. I DON'T KNOW, YEAH, I THINK SO.

8 Q. DID, SO ONCE THEY LEFT THAT ROOM DID YOU HAVE ANY  
9 IDEA WHERE THEY WENT, I MEAN, FROM YOUR PERSONAL,  
10 FIRST HAND KNOWLEDGE, YOU DIDN'T SEE THEM GETTING  
11 INTO A CAR, YOU NEVER SAW THEM - - -

12 A. NO, I DIDN'T SEE THAT, NO.

13 Q. SO, THE NEXT TIME YOU SAW ANYONE OF THOSE THREE  
14 WAS ABOUT TWO MINUTES LATER, I'M SORRY, ABOUT TEN  
15 MINUTES LATER WHEN B.G. CAME RUNNING BACK?

16 A. CORRECT.

17 Q. AND ABOUT TWO MINUTES AFTER B.G. CAME BACK SHAWN  
18 CAME BACK?

19 A. YES. SHAWN, AND THEN MICKEY, THEY WERE RIGHT  
20 BEHIND EACH OTHER.

21 Q. WELL, NOT ACCORDING TO YOUR LETTER. ACCORDING TO  
22 YOUR LETTER, ABOUT TEN MINUTES LATER B.G. CAME  
23 BACK, ABOUT TWO MINUTES AFTER THAT, YOU CAME BACK,  
24 MEANING SHAWN, THEN MICKEY A FEW MINUTES AFTER  
25 YOU?

1 A. WELL, THEY WERE COMING RIGHT AFTER EACH OTHER.

2 Q. OKAY. BUT IS IT FAIR TO SAY THAT - - -

3 A. I MUST HAVE MESSED UP ON THAT PART, BECAUSE THEY  
4 WERE TOGETHER.

5 Q. ALRIGHT. BUT YOU HAVE TESTIFIED EARLIER THAT  
6 SHAWN NEVER SPOKE A WORD PRETTY MUCH THE ENTIRE  
7 NIGHT?

8 A. CORRECT.

9 Q. IT DOESN'T REALLY SOUND LIKE HE GOT A CHANCE, WITH  
10 WHAT MICKEY WAS DOING, RIGHT?

11 A. NO.

12 Q. AT THIS POINT NOW I GUESS THIS IS, BECAUSE YOU  
13 TESTIFIED EARLIER, THIS IS WHEN MICKEY BASICALLY  
14 IS HURRYING EVERYBODY UP AND GETTING OUT OF THE  
15 ROOM, AND YOU ASKED THEM IF HE DID ANYTHING BAD,  
16 AND HE ADMITTED THAT HE DUCT TAPED HIM AND PUT HIM  
17 IN THE BATH ROOM?

18 A. CORRECT.

19 Q. AND GOT A HUNDRED BUCKS?

20 A. CORRECT.

21 Q. BUT NOT TO WORRY?

22 A. NOT TO WORRY.

23 Q. SO, YOU GET IN THE CAR, YOU, B. G. AND MICKEY GET  
24 IN THE CAR, DRIVE TO HOME DEPOT, THEN WENT TO  
25 COLONY NORTH, AND THAT'S WHERE YOU LEFT MICKEY?

CROSS - ALANA NIESEN BY MR. PEPPER

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1 A. CORRECT.

2 Q. YOU WANTED MICKEY OUT OF YOUR CAR?

3 A. I WANTED HIM OUT OF MY CAR.

4 Q. YOU WERE SCARED TO DEATH ABOUT MICKEY BEING IN  
5 YOUR CAR?

6 A. YES.

7 Q. YOU ASSUMED HE STILL HAD THE GUN ON HIM?

8 A. YES.

9 Q. OKAY. "YOU TOOK B.G. TO COUNTRY HEARTH WHERE SHE  
10 MET SOMEBODY, YOU MET A FRIEND, AND YOUR FRIEND  
11 AND I -- MY FRIEND AND I GOT ARRESTED THAT NIGHT?"

12 A. CORRECT.

13 Q. IT WAS DRUG CHARGES?

14 A. YES.

15 Q. NOW, AT THE CONCLUSION, OR CLOSE TO THE CONCLUSION  
16 OF YOUR LETTER YOU ESSENTIALLY TELL SHAWN THAT, IF  
17 YOU'RE MAD AT ME, I'M SORRY, BUT THAT'S THE TRUTH,

18 - - -

19 A. CORRECT.

20 Q. AND THAT'S WHAT I'M GOING TO TELL THE COPS?

21 A. RIGHT.

22 Q. CAN YOU READ THAT TO THE JURY?

23 A. "SO, I'M SORRY IF YOU'RE MAD AT ME, BUT THAT'S MY  
24 STATEMENT, THE TRUTH, RIGHT."

25 Q. WERE YOU UPSET AT ANY POINT WITH ANGELA AGAGAS?

CROSS - ALANA NIESEN BY MR. PEPPER

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1 A. YES.

2 Q. WHY WAS THAT?

3 A. WELL, SHE WANTED US TO -- I REALLY WASN'T UPSET  
4 WITH HER, SHE JUST WANTED ME AND B.G. TO SAY THAT  
5 SHAWN WAS WITH ME AND ANGELA THAT WHOLE TIME.

6 Q. SO, IT SOUNDS TO ME LIKE KIND OF EVERYBODY IS  
7 TRYING TO GET THEIR STORY STRAIGHT THROUGH LETTERS  
8 AND ALL?

9 A. CORRECT.

10 Q. AND THIS IS YOUR STORY BECAUSE THIS IS THE TRUTH?

11 A. CORRECT.

12 Q. YOU AIN'T DEVIATING FROM THIS STORY?

13 A. NO.

14 Q. WERE YOU TOLD BY POLICE THAT ANGELA RATTED YOU  
15 OUT?

16 A. NO, THE POLICE DIDN'T TELL ME.

17 Q. DID YOU TELL SHAWN THEY DID?

18 A. NO, I DON'T REMEMBER THAT. "SO, NOW, LET'S TALK  
19 ABOUT WHY - - -

20 Q. GO AHEAD.

21 A. "LET'S TALK ABOUT WHY I'M A LITTLE PISSED OFF. I  
22 WAS TOLD BY POLICE ANGELA RATTED ME OUT."

23 Q. AND ANGELA HASN'T BEEN CHARGED WITH CONSPIRACY,  
24 ARMED ROBBERY OR MURDER, HAS SHE?

25 A. NO.



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1 Q. DID SHE GET A DEAL?

2 A. I DON'T KNOW.

3 Q. WERE POLICE ASSUMING THAT YOU WERE KIND OF THE  
4 MASTER MIND BEHIND THIS WHOLE THING?

5 A. YES.

6 Q. AND THAT'S NOT TRUE, IS IT?

7 A. NO.

8 Q. AS A MATTER OF FACT, MICKEY WAS KIND OF THE  
9 ORCHESTRATOR?

10 A. YES.

11 Q. YOU TOLD - - -

12 A. I WASN'T OUT TO ROB NOBODY, THAT WAS NOT MY  
13 INTENTION, ROB OR MURDER ANYBODY.

14 Q. RIGHT. IN OTHER WORDS, JUST LIKE YOU SAY IN THIS  
15 LETTER, "THE POLICE ARE SAYING I SET ALL THIS UP.  
16 I'M, LIKE, NO, ALL I DID WAS SET UP A DATE. THE  
17 REST IS ON MICKEY."

18 A. CORRECT.

19 Q. WHEN DID YOU FIRST LEARN, I GUESS, I THINK I HEARD  
20 YOU TESTIFY THAT YOU FIRST LEARNED THAT THERE HAD  
21 BEEN A MURDER AT THE BUDGET INN THE NEXT DAY, YOU  
22 READ IT IN THE PAPER?

23 A. RIGHT, IT WAS IN THE PAPER.

24 Q. OKAY. AND DO YOU REMEMBER TALKING TO YOUR BROTHER  
25 ON THE PHONE?

CROSS - ALANA NIESEN BY MR. PEPPER

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1 A. WHEN I WAS DOWN TO, WHEN I WAS ARRESTED, ARE YOU  
2 TALKING ABOUT THAT?

3 Q. YES, EXACTLY.

4 A. I DON'T UNDERSTAND THE QUESTION.

5 Q. THAT'S OKAY. LET ME REPHRASE, AND I APOLOGIZE FOR  
6 CONFUSING YOU HERE. LET ME PHRASE IT THIS WAY, DO  
7 YOU REMEMBER PUTTING IN YOUR LETTER THAT "THE NEXT  
8 DAY, WHEN I GOT RELEASED AND WENT HOME MY BROTHER  
9 TOLD ME ABOUT A MAN THAT GOT SHOT IN THE HEAD,  
10 COLD BLOODED, WITH A PILLOW OVER HIS HEAD AT THE  
11 BUDGET HOTEL."?

12 A. RIGHT. I WAS ARRESTED THAT NIGHT IN HANNAHAN. WHEN  
13 I GOT RELEASED MY BROTHER TOLD ME THAT SOMEONE GOT  
14 MURDERED.

15 Q. YOU WERE ARRESTED ON DRUG CHARGES, RELEASED THE  
16 NEXT MORNING, YOUR BROTHER TELLS YOU SOMEBODY GOT  
17 MURDERED AT THE BUDGET INN?

18 A. RIGHT.

19 Q. YOU FREAKED?

20 A. I FREAKED.

21 Q. THEN YOU CALL SHAWN?

22 A. CORRECT.

23 Q. AND - - -

24 A. I DIALED THE NUMBER THAT WAS GIVEN TO ME.

25 Q. OKAY. WHAT DID HE TELL YOU?

CROSS - ALANA NIESEN BY MR. PEPER

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1 A. AT THE BUDGET HOTEL, I FREAKED, AND THAT'S WHEN I

2 - - -

3 SOLICITOR RUTLEDGE DURANT: JUDGE,  
4 OBJECTION.

5 THE COURT: SIR?

6 SOLICITOR RUTLEDGE DURANT: HEARSAY,  
7 JUDGE.

8 THE COURT: THIS IS WHAT SHAWN TOLD  
9 HER, IS IT OFFERED TO PROVE THE TRUTH OF IT?

10 MR. PEPER: WE'LL WITHDRAW IT, YOUR  
11 HONOR.

12 THE COURT: SIR?

13 MR. PEPER: WE'LL WITHDRAW IT.

14 THE COURT: ALRIGHT. YOU CAN READ  
15 IT.

16 A. IT SAYS, "I FREAKED. AT THAT POINT I CALLED YOU  
17 SINCE I HAD YOUR NUMBER. YOU WERE AS SHOCKED AS I  
18 WAS. YOU SAID OR TOLD ME IT WASN'T Y'ALL SO I - -

19 -

20 Q. "YOU WERE AS SHOCKED AS I WAS."?

21 A. RIGHT.

22 Q. YOU, BEING SHAWN?

23 A. WELL, THAT'S HOW HE ACTED ON THE PHONE, HE WAS AS  
24 SHOCKED AS I WAS.

25 MR. PEPER: THE COURT'S INDULGENCE.

CROSS - ALANA NIESEN BY MR. PEPER

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1 Q. IN THIS LETTER YOU TESTIFIED THAT THIS WAS NOT  
2 ONLY WHAT YOU TOLD THE COPS, BUT IT WAS THE TRUTH?

3 A. WELL, IT'S EVERYTHING I TOLD THE POLICE EXCEPT  
4 ABOUT THE GUN.

5 Q. BECAUSE ACTUALLY IN THIS LETTER YOU SAY YOU NEVER  
6 SAW A GUN?

7 A. CORRECT.

8 Q. BUT YOU DID?

9 A. I DID.

10 Q. AND IN YOUR POSTSCRIPT DO YOU REMEMBER TELLING  
11 SHAWN THAT, "I'M NOT CHANGING MY STATEMENT, IT  
12 WILL MAKE ME LOOK LIKE A LIAR, IF I'M PREGNANT I  
13 DON'T WANT TO HAVE A BABY IN PRISON."?

14 A. CORRECT.

15 Q. WITHOUT GOING OVER IN DETAIL YOUR STATEMENT, I  
16 JUST WANT TO MAKE SURE THAT IT MATCHES THE LETTER  
17 THAT WAS SENT, BECAUSE AFTER ALL, YOU SAID THAT'S  
18 WHAT HAPPENED, AND THAT'S THE TRUTH?

19 A. RIGHT.

20 Q. SO, SIMILAR TO YOUR LETTER, YOU TALK ABOUT THE GUY  
21 NAMED TANK, AND YOU REMEMBER MEETING HIM, RIGHT?

22 A. CORRECT.

23 Q. YOU RAN INTO ANGELA, B.G., SHAWN AND BROOKLYN,  
24 RIGHT?

25 A. CORRECT.

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1 Q. YOU WENT TO THEIR ROOM?

2 A. CORRECT.

3 Q. "WHILE AT THEIR ROOM BROOKLYN WAS ASKING ME IF I  
4 WANTED TO MAKE SOME CASH," RIGHT?

5 A. CORRECT.

6 Q. "BROOKLYN ASKED WHAT I WAS DOING OVER AT THE  
7 MOTEL, MOTELS," RIGHT?

8 A. CORRECT.

9 Q. "BROOKLYN ASKED ME IF HE HAD ANY MONEY AND I TOLD  
10 HIM THE GUY SHOWED ME A ROLL OF MONEY," CORRECT?

11 A. CORRECT.

12 Q. "BROOKLYN TOLD ME TO CALL THE GUY," CORRECT?

13 A. CORRECT.

14 Q. SO HE COULD ROB THE GUY?

15 A. CORRECT.

16 Q. BUT YOU DIDN'T WANT TO DO IT?

17 A. CORRECT.

18 THE COURT: HAVEN'T YOU BEEN OVER  
19 ALL OF THIS, COUNSELOR?

20 MR. PEPER: WELL, KIND OF, BECAUSE  
21 IT'S IN BOTH THE LETTER AND THE STATEMENT.

22 THE COURT: WELL, THE LETTER IS IN  
23 EVIDENCE, ISN'T IT?

24 MR. PEPER: THE STATEMENT'S NOT, BUT  
25 I'LL BE HAPPY TO PUT IT IN. I'LL JUST PUT IT IN.

CROSS - ALANA NIESEN BY MR. PEPER

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1 Q. I JUST WANT TO MAKE SURE THAT ESSENTIALLY WHAT YOU  
2 TOLD THE COPS ON DECEMBER FOURTEENTH, O-SIX, IS  
3 EXACTLY WHAT YOU TOLD SHAWN IN YOUR LETTER ON  
4 JANUARY TWENTY-SECOND?

5 A. CORRECT.

6 Q. BECAUSE IT'S THE TRUTH?

7 A. CORRECT.

8 MR. PEPER: AND I'D SUBMIT DEFENSE'S  
9 EXHIBIT NUMBER FIVE INTO EVIDENCE, YOUR HONOR.

10 THE COURT: ANY OBJECTION TO THE  
11 STATEMENT?

12 SOLICITOR RUTLEDGE DURANT: NO  
13 OBJECTION.

14 THE COURT: ADMITTED WITHOUT  
15 OBJECTION, DEFENDANT'S FIVE.

16 (Defendant's Exhibit Five  
17 marked and filed.)

18 MR. PEPER: THANK YOU.

19 BEAR WITH ME JUST ONE SECOND.

20 Q. WERE YOU ABLE TO PICK LENNIE MICKEY OUT OF A  
21 LINEUP?

22 A. YES, I WAS.

23 Q. WERE YOU ABLE TO PICK ANGELA AGAGAS OUT OF A  
24 LINEUP?

25 A. YES.

CROSS - ALANA NIESEN BY MR. PEPER

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1 Q. IF I SHOWED YOU THE LINEUP YOU WERE SHOWN WOULD  
2 YOU RECOGNIZE IT?

3 A. YES.

4 MR. PEPER: YOU CAN STAPLE THESE  
5 TOGETHER IF YOU'D LIKE. THAT WILL BE SEVEN FOR  
6 IDENTIFICATION.

7 COURT REPORTER: ID, YOU SAID?

8 MR. PEPER: YES, MA'AM.

9 (Defendant's Exhibit Seven,  
10 Photo lineup,  
11 marked for identification.)

12 COURT REPORTER: EIGHT, ID?

13 MR. PEPER: YES, MA'AM.

14 (Defendant's Exhibit Eight,  
15 Photo Lineup,  
16 marked for identification.)

17 COURT REPORTER: THIS IS ANOTHER  
18 ONE, ID?

19 (Defendant's Exhibit Nine,  
20 Photo Lineup,  
21 marked for identification.)

22 MR. PEPER: THANK YOU, MA'AM.

23 Q. OKAY, MS. NIESEN. LET ME SHOW YOU WHAT'S BEEN  
24 MARKED AS DEFENDANT'S EXHIBITS SEVEN, EIGHT AND  
25 NINE AND ASK YOU IF YOU RECOGNIZE THEM?

CROSS - ALANA NIESEN BY MR. PEPPER

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1 A. YES.

2 Q. DO YOU RECOGNIZE THESE?

3 A. YES.

4 Q. OKAY. ARE THESE PHOTO LINEUPS THAT DETECTIVE HILL  
5 SHOWED YOU THE NIGHT YOU WERE ARRESTED ON DECEMBER  
6 FOURTEENTH?

7 A. YES.

8 Q. ALRIGHT. AND WERE YOU ABLE TO PICK OUT LENNIE  
9 MICKEY?

10 A. YES.

11 Q. AND YOU PICKED LENNIE MICKEY OUT BY WAY OF A SIX  
12 PERSON LINEUP?

13 A. CORRECT.

14 Q. AND YOU CIRCLED NUMBER TWO?

15 A. CORRECT.

16 Q. AND YOU LISTED HIM AS BROOKLYN?

17 A. CORRECT.

18 Q. AND THAT, IN TURN, ENDED UP BEING LENNIE MICKEY?

19 A. YES.

20 Q. ON THE SAME DAY YOU WERE ASKED TO PICK OUT ANGELA  
21 AGAGAS, - - -

22 A. UH HUH.

23 Q. --- USING A SIX PERSON LINEUP?

24 A. CORRECT.

25 Q. AND YOU CIRCLED NUMBER ONE?



CROSS - ALANA NIESEN BY MR. PEPPER

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1 A. CORRECT.

2 Q. AND YOU PUT, THAT'S WHO I KNOW AS ALANA NIESEN?

3 A. CORRECT.

4 Q. AND IT TURNED OUT TO BE ANGELA AGAGAS?

5 A. ALANA NIESEN'S ME.

6 Q. I'M SORRY. THIS IS YOU, YOU'RE ALANA NIESEN AND  
7 YOU PICKED OUT ANGELA?

8 A. RIGHT.

9 Q. I APOLOGIZE, THANK YOU. KEEP EVERYBODY STRAIGHT  
10 HERE. AND YOU WERE ASKED TO PICK OUT SHAWN  
11 PHILLIPS?

12 A. CORRECT.

13 Q. AND YOU WERE SHOWN TWO PICTURES SIDE BY SIDE OF  
14 THE SAME GUY?

15 A. CORRECT. I REMEMBER, YES. I MEAN, I DIDN'T SIGN  
16 NOTHING.

17 Q. NO, I'M WELL AWARE. I'M JUST - - -

18 A. SO, IT'S NOT LIKE THE SIX - - -

19 Q. --- CURIOUS AS TO WHY YOU WERE SHOWN A LINEUP UP  
20 WITH SIX DIFFERENT PEOPLE TO PICK OUT ANGELA WHEN  
21 YOU PICKED HER OUT, A LINEUP WITH SIX DIFFERENT  
22 PEOPLE TO PICK OUT BROOKLYN AND YOU PICKED HIM  
23 OUT, AND ONLY TWO PEOPLE THAT HAPPEN TO BE MY  
24 CLIENT WITH THE SAME PICTURE. DO YOU RECALL WHY  
25 THAT WAS DONE?

CROSS - ALANA NIESEN BY MR. PEPER

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1 A. NO.

2 MR. PEPER: I MOVE THESE INTO  
3 EVIDENCE, YOUR HONOR.

4 THE COURT: ANY OBJECTION?

5 SOLICITOR RUTLEDGE DURANT: NO  
6 OBJECTION, YOUR HONOR.

7 THE COURT: ADMITTED WITHOUT  
8 OBJECTION.

9 MR. PEPER: THANK YOU, YOUR HONOR.  
10 (Defendant's Exhibits Seven, Eight  
11 and Nine marked and filed.)

12 MR. PEPER: THANK YOU, MA'AM.

13 Q. DID YOU ALSO WRITE LETTERS TO OTHER PEOPLE BESIDES  
14 SHAWN?

15 A. YES, SANDRA BARNES AND ANGELA AGAGAS.

16 Q. TWO OTHER CO-DEFENDANTS?

17 A. YES.

18 Q. I DON'T HAVE A DATE ON THIS ONE BUT I'LL SHOW IT  
19 TO YOU TO SEE IF YOU RECOGNIZE YOUR HANDWRITING.  
20 I DON'T HAVE A SIGNATURE OR ANYTHING SO I'M JUST  
21 GOING TO SHOW IT TO YOU TO SEE IF IT EVEN IS FROM  
22 YOU.

23 A. OKAY.

24 Q. YOU OUGHT TO BE ABLE TO RECOGNIZE YOUR  
25 HANDWRITING. IS THAT YOUR HANDWRITING?

CROSS - ALANA NIESEN BY MR. PEPER

389

1 A. YES.

2 Q. OKAY. AND AGAIN, I DEDUCE THAT THAT WAS A LETTER  
3 FROM YOU TO ANGELA, I'M SORRY, TO SANDRA BARNES,  
4 B.G.?

5 A. OKAY.

6 Q. OKAY. NOW, DO YOU REMEMBER WRITING THIS LETTER?

7 A. YES. WE WROTE TO EACH OTHER WHEN WE WERE IN THE  
8 UNIT.

9 Q. ALRIGHT. COULD YOU READ OUT LOUD TO THE JURY THE  
10 HIGHLIGHTED PORTION?

11 A. "I ALREADY TOLD HER I WASN'T GOING TO CHANGE MY  
12 STORY. I CAN DEAL WITH THE ARMED ROBBERY BECAUSE  
13 WE ALL WERE A PART OF IT."

14 Q. AND HOW ABOUT THE LAST SENTENCE?

15 A. "SUPPOSEDLY, MICKEY ADMITS SHOOTING THE VICTIM."

16 Q. I'M SORRY?

17 A. "SUPPOSEDLY, MICKEY ADMITS SHOOTING THE VICTIM."

18 Q. ADMITS SHOOTING THE VICTIM?

19 A. YES.

20 Q. AND THIS IS WHAT YOU WROTE IN YOUR LETTER TO B.G.,  
21 CORRECT?

22 A. CORRECT.

23 MR. PEPER: YOUR HONOR, I DID NOT ID  
24 IT, BUT I'D LIKE TO ADMIT THIS LETTER INTO EVIDENCE.

25 SOLICITOR RUTLEDGE DURANT: NO

1 OBJECTION.

2 COURT REPORTER: DEFENDANT'S TEN.

3 (Defendant's Exhibit Ten  
4 marked and filed.)

5 MR. PEPER: DEFENDANT'S TEN, THANK  
6 YOU, MA'AM.

7 Q. THAT WASN'T THE ONLY LETTER YOU WROTE TO B.G., WAS  
8 IT?

9 A. NO.

10 Q. DO YOU REMEMBER WRITING IN YOUR LETTER THAT YOU  
11 CALLED PIT THE NEXT DAY AND HE SAID THEY DIDN'T DO  
12 IT?

13 A. RIGHT.

14 Q. WHICH IS WHAT YOU TESTIFIED TO EARLIER, RIGHT?

15 A. YES.

16 Q. DO YOU REMEMBER WRITING TO ANGELA AGAGAS?

17 A. YES.

18 Q. AT ANY POINT IN TIME WERE YOU UNDER THE IMPRESSION  
19 YOUR CHARGES WERE GOING TO BE DROPPED?

20 A. NO. I WAS JUST SAYING THAT. I WAS HOPING.

21 Q. YOU WERE JUST SAYING THAT TO ANGELA?

22 A. YES. I WAS HOPING THAT OUR CHARGES WOULD GET  
23 DROPPED.

24 Q. YOU WERE HOPING?

25 A. YES.

CROSS - ALANA NIESEN BY MR. PEPER

391

1 Q. BUT NOBODY TOLD YOU THAT?

2 A. NO.

3 Q. OKAY. IF YOUR CHARGES DID GET DROPPED WERE YOU  
4 GOING TO HELP ANGELA GET HERS DROPPED?

5 A. NO. I DON'T UNDERSTAND THAT QUESTION.

6 Q. WELL, I DON'T REALLY UNDERSTAND HOW YOU COULD HELP  
7 GET HER CHARGES DROPPED EITHER, BUT LET ME SHOW  
8 YOU A LETTER, JUST TO MAKE SURE THAT YOU DID WRITE  
9 IT?

10 THE COURT: WHAT IS ALL THIS  
11 RELEVANT TO, COUNSELOR?

12 MR. PEPER: YOUR HONOR, MOTIVE, I  
13 WANT TO SHOW THAT - - -

14 THE COURT: MOTIVE?

15 MR. PEPER: YES, SIR.

16 THE COURT: WHOSE MOTIVE TO DO  
17 WHAT?

18 MR. PEPER: TO TRY AND HELP OTHER  
19 PEOPLE BESIDES MY CLIENT. IN OTHER WORDS, TO -- MAY WE  
20 APPROACH?

21 THE COURT: YES, SIR.

22 (Whereupon, a bench conference is  
23 had out of the hearing of the jury  
24 and court reporter.)

25 THE COURT: LADIES AND GENTLEMEN,

CROSS - ALANA NIESEN BY MR. PEPER

392

1 WE'LL TAKE A SHORT BREAK AT THIS TIME. PLEASE GO TO  
2 YOUR JURY ROOM.

3 (Whereupon, the jury retires  
4 to the jury room and the  
5 following takes place out of  
6 the presence of the jury.)

7 THE COURT: MA'AM YOU CAN STEP DOWN  
8 IF YOU WANT TO, JUST DON'T TALK WITH ANY OF THE  
9 LAWYERS.

10 WITNESS: OKAY.

11 THE COURT: OKAY. WE'LL BE AT EASE  
12 ABOUT TEN MINUTES.

13 (Recess)

14 THE COURT: ALRIGHT, BRING IN THE  
15 JURY, PLEASE. WAIT A MINUTE, LET'S GET THE DEFENDANT.

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

21 THE COURT: ALRIGHT, WE NOW HAVE THE  
22 JURY, YOU CAN CONTINUE YOUR EXAMINATION.

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

25 Q. THERE'S NO WAY SHAWN COULD HAVE KNOWN WHERE VARGO

CROSS - ALANA NIESEN BY MR. PEPER

393

1 WAS STAYING UNLESS MICKEY SHOWED HIM?

2 A. CORRECT.

3 Q. BECAUSE THE ONLY REASON MICKEY KNEW IS BECAUSE HE  
4 WAS IN YOUR CAR WHEN YOU SHOWED MICKEY WHERE HE  
5 WAS STAYING?

6 A. RIGHT.

7 Q. AND IT'S THE SAME MICKEY THAT YOU SAID HAD THE GUN  
8 THAT NIGHT?

9 A. CORRECT.

10 Q. IT'S THE SAME MICKEY THAT WAS GOING TO KILL YOU -  
11 - -

12 A. CORRECT.

13 Q. --- IF SHAWN HADN'T INTERVENED?

14 A. RIGHT.

15 Q. AND YOU DON'T REMEMBER SHAWN TALKING TOO MUCH THAT  
16 NIGHT?

17 A. NO.

18 Q. AND YOU LET MICKEY OUT OF YOUR CAR LATER ON  
19 BECAUSE HE WAS ACTING SO CRAZY?

20 A. CORRECT.

21 Q. AND YOU KNEW HE WAS CRAZY?

22 A. YES.

23 Q. AND YOU WERE ALWAYS SCARED WHEN YOU WERE AROUND  
24 HIM?

25 A. I DIDN'T LIKE HIM.

CROSS - ALANA NIESEN BY MR. PEPER

394

1 MR. PEPER: THAT'S ALL I HAVE.

2 THE COURT: REDIRECT?

3 SOLICITOR RUTLEDGE DURANT: YES,

4 SIR, YOUR HONOR.

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.)



REDIRECT - ALANA NIESEN BY SOL. RUTLEDGE DURANT

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REDIRECT EXAMINATION OF ALANA NIESEN

BY SOLICITOR RUTLEDGE DURANT:

Q. MS. NIESEN, ARE YOU TELLING THIS JURY THAT SHAWN  
PHILLIPS HAD NOTHING TO DO WITH THIS WHOLE THING?

A. NO, I'M NOT SAYING THAT. HE WAS, HE WAS FINE  
GOING OVER THERE.

Q. GOING OVER THERE, WHAT ABOUT BEFORE THAT, DID HE  
KNOW WHAT WAS GOING ON?

A. YES, HE KNEW ABOUT IT.

Q. DID HE KNOW THAT Y'ALL WERE DOING AN ARMED  
ROBBERY?

A. YES.

Q. DID HE KNOW WHY SANDRA BARNES WAS GOING OVER  
THERE?

A. YES.

Q. WHY WAS SANDRA GOING OVER THERE?

A. FOR ARMED ROBBERY.

Q. TO GET THESE GUYS INTO THE ROOM?

A. CORRECT.

Q. WAS SHAWN A WILLING PARTICIPANT?

A. YES.

Q. DID LENNIE HOLD A GUN TO SHAWN'S HEAD - - -

A. NO.

Q. --- TELLING HIM TO GO OVER THERE?

A. NO.

REDIRECT - ALANA NIESEN BY SOL. RUTLEDGE DURANT

396

1 Q. DID HE GO ON HIS OWN FREE WILL?

2 A. YES.

3 Q. AND THESE LETTERS THAT Y'ALL ARE WRITING TO EACH  
4 OTHER, WHY DO Y'ALL NEED TO WRITE THESE LETTERS,  
5 WHEN EVERYBODY IS THERE AND EVERYBODY KNOWS WHAT  
6 WAS GOING ON?

7 A. I KNOW.

8 Q. WHY?

9 A. I DON'T KNOW.

10 Q. IS IT BECAUSE YOU'RE COVERING UP?

11 MR. PEPPER: OBJECTION TO LEADING.

12 THE COURT: SUSTAINED.

13 Q. LET'S TALK ABOUT YOUR STATEMENT. HERE'S YOUR  
14 STATEMENT, I THINK IT'S ALREADY IN EVIDENCE. I'D  
15 LIKE YOU TO READ IT ALL BUT I'M NOT GOING TO  
16 BOTHER THE JURY WITH THAT. READ HERE, READ THAT  
17 SENTENCE, STARTING WITH, "SO".

18 A. "SO, I THEN TOOK HIM TO THE BUDGET INN AND HUNG  
19 OUT FOR A LITTLE WHILE AND THEN I LEFT. LATER IN  
20 THE EVENING TANK CALLED ME AND ASKED ME TO PICK  
21 HIM UP AT THE MOTEL BESIDE THE BUDGET INN. WHEN I  
22 GOT THERE I RAN INTO ANGELA, B.G., PIT AND  
23 BROOKLYN WHO WERE DRIVING A RED TRACKER. WE HAD  
24 SOME SMALL TALK AND THEN I WENT TO TANK'S ROOM.  
25 HE DIDN'T NEED A RIDE SO I LEFT AND WENT TO

REDIRECT - ALANA NIESEN BY SOL. RUTLEDGE DURANT

397

1 ANGELA, B.G., PIT AND BROOKLYN'S ROOM AT THE  
2 TRAVELER'S INN ON FAIR STREET JUST DOWN FROM THE  
3 BUDGET. WHILE AT THEIR ROOM BROOKLYN WAS ASKING  
4 ME IF I WANTED TO MAKE SOME CASH, STATING THAT  
5 THEY ALL WOULD GET THE GIRLS, B.G., ANGELA, TO GET  
6 GUYS INTO THE MOTEL ROOMS, THEN THEY WOULD COME IN  
7 AND ROB THEM. BROOKLYN ASKED WHAT WAS I DOING  
8 OVER AT THE MOTEL. I TOLD HIM I WAS VISITING A  
9 FRIEND, ANOTHER GUY OVER AT THE BUDGET INN.  
10 BROOKLYN ASKED ME IF HE HAD ANY MONEY. I TOLD HIM  
11 THAT THE GUY SHOWED ME A ROLL OF MONEY THE NIGHT  
12 BEFORE. BROOKLYN TOLD ME TO CALL THE GUY AND GET  
13 IN THE ROOM SO THEY COULD ROB THE GUY. I TOLD HIM  
14 I DIDN'T WANT TO DO SO. BROOKLYN SAID, CAN YOU  
15 GET ANOTHER GIRL IN THE ROOM? I SAID, YEAH, AND I  
16 CALLED THE GUY AT THE BUDGET AND TOLD HIM THAT I  
17 COULDN'T COME OVER BUT I'D JUST SEND ANOTHER GIRL.  
18 HE SAID, OKAY, SHE CAN COME OVER. SO, BROOKLYN,  
19 B.G. AND PIT ALL LEFT AND WENT TO THE BUDGET INN.  
20 ME AND ANGELA STAYED IN THE ROOM. THE NEXT THING  
21 I REMEMBER IS THAT B.G. CAME RUNNING IN THE ROOM  
22 AND SAID SHE WENT TO THE DOOR AND KNOCKED AND WHEN  
23 THE GUY ANSWERED PIT AND BROOKLYN PUSHED HER OUT  
24 OF THE WAY AND SHE LEFT AND CAME BACK TO THE  
25 TRAVELERS INN. AND A SHORT TIME AFTER THAT

REDIRECT - ALANA NIESEN BY SOL. RUTLEDGE DURANT

398

1           BROOKLYN AND PIT CAME BACK AND WERE RUSHING TO GET  
2           OUT OF THE ROOM. I ASKED THEM WHAT HAD HAPPENED.  
3           THEY SAID THEY TAPED THE GUY."

4           Q. STOP RIGHT THERE. YOU SAID, THEY SAID THEY TAPED  
5           THE GUY, IS THAT WHAT YOUR STATEMENT SAYS?

6           A. YES. IT SAYS, THEY TAPED THE GUY.

7           Q. DID THEY TELL YOU THAT?

8           A. WELL, MICKEY LENNIE TOLD ME THAT. HE'S THE ONE  
9           THAT TALKED.

10          Q. WHAT ABOUT SHAWN?

11          A. SHAWN WAS WITH HIM.

12          Q. AT THIS POINT HAD SHAWN BEEN THREATENED IN ANY  
13          WAY?

14          A. NO.

15          Q. HAD YOU EVER SEEN LENNIE THREATEN SHAWN?

16          A. NO.

17          Q. HAD YOU EVER SEEN LENNIE HOLD A GUN TO SHAWN?

18          A. NO.

19          Q. KEEP GOING.

20          A. "AND LEFT HIM IN THE BATH ROOM. SO WHAT HE SAID  
21          HAPPENED, THEY SAID THEY TAPED THE GUY AND LEFT  
22          HIM IN HIS BATH ROOM. AND THEN THEY ASKED IF I  
23          WAS SURE HE HAD MONEY. I SAID, YEAH. THEY SAID  
24          THAT ALL HE GOT WAS A HUNDRED DOLLARS. BROOKLYN  
25          RUSHED ME AND B.G. OUT OF THE ROOM. WE LEFT IN THE

REDIRECT - ALANA NIESEN BY SOL. RUTLEDGE DURANT

399

1 RED DURANGO. WE STARTED DOWN AIRPORT ROAD AND  
2 BROOKLYN KEPT CALLING PIT WANTING TO KNOW IF PIT  
3 AND ANGELA WERE FOLLOWING. PIT SAID, NOT YET.  
4 BROOKLYN - - -

5 Q. STOP RIGHT THERE. WHO'S PIT?

6 A. SHAWN PHILLIPS.

7 Q. THAT'S WHAT YOU KNEW HIM BY?

8 A. UH-HUH.

9 Q. GO ON.

10 A. "WE STARTED DOWN AIRPORT ROAD AND BROOKLYN KEPT  
11 CALLING AND WANTING TO KNOW IF PIT AND ANGELA WERE  
12 FOLLOWING. PIT SAID, NOT YET. BROOKLYN WANTED TO  
13 GO BACK AND GET PIT AND ANGELA AND I SAID, NO.  
14 BROOKLYN WAS ACTING ALL CRAZY LIKE SOMETHING WAS  
15 WRONG. I TRIED TO ASK HIM IF HE DID SOMETHING TO  
16 THAT MAN, AND HE WOULDN'T ANSWER ME. BROOKLYN  
17 JUST SAT, ACTING ALL CRAZY. BROOKLYN GOT ME TO  
18 DRIVE TO THE DEAD END STREET BEHIND HOME DEPOT AND  
19 MEET PIT AND ANGELA."

20 Q. STOP RIGHT THERE. SO, DID Y'ALL MEET UP WITH  
21 SHAWN AGAIN?

22 A. YES.

23 Q. YOU WERE WITH LENNIE MICKEY?

24 A. YES.

25 Q. AND Y'ALL MET UP WITH SHAWN?

REDIRECT - ALANA NIESEN BY SOL. RUTLEDGE DURANT

400

1 A. CORRECT. "PIT AND ANGELA GOT THERE IN THE RED  
2 TRACKER, AND THEN PIT AND BROOKLYN GOT OUT AND  
3 TALKED. THEY BOTH GOT OUT AND WALKED INTO THE  
4 DARK FOR A LITTLE WHILE. ONCE PIT AND BROOKLYN  
5 GOT FINISHED TALKING I FOLLOWED PIT TO COLONY  
6 NORTH. ONCE AT COLONY NORTH BROOKLYN GOT OUT OF  
7 MY CAR AND THEN I TOLD B.G. I WANTED TO LEAVE  
8 BECAUSE BROOKLYN WAS ACTING ALL CRAZY. PIT AND  
9 ANGELA WANTED TO DROP OFF THEIR CAR, THE RED  
10 TRACKER."

11 Q. YOU CAN STOP RIGHT THERE. THAT'S FINE. WAS SHAWN  
12 THREATENED IN ANY WAY AFTER THIS THAT NIGHT?

13 A. NO.

14 Q. HAD YOU EVER SEEN SHAWN BEING THREATENED BY  
15 LENNIE?

16 A. NO.

17 Q. AND THIS IN THIS LETTER, WHEN YOU'RE APPARENTLY  
18 WRITING TO SHAWN ON JANUARY TWENTY-SECOND, WHEN  
19 DID THAT TAKE PLACE, THIS POINTING THE GUN AT YOU?

20 A. THAT WAS AFTERWARD, THAT WAS - - -

21 Q. HOW LONG AFTERWARDS?

22 A. I'D ONLY KNOWN THEM FOR A MONTH. SO, IT PROBABLY  
23 WOULD HAVE BEEN TWO WEEKS AFTER.

24 Q. SO TWO WEEKS AFTER THIS MURDER?

25 A. CORRECT.

REDIRECT - ALANA NIESEN BY SOL. RUTLEDGE DURANT

401

1 Q. WHAT THIS JURY WANTS TO KNOW IS, WAS SHAWN IN ON  
2 THIS ARMED ROBBERY?

3 A. YES.

4 Q. HE WAS A WILLING PARTICIPANT?

5 A. YES.

6 Q. ONE LAST QUESTION, WAS ANYBODY ELSE INVOLVED IN  
7 THIS THING BUT THE FIVE OF YOU?

8 A. NO.

9 Q. WHO WAS INVOLVED?

10 A. ME, SANDRA BARNES, LENNIE MICKEY, SHAWN PHILLIPS  
11 AND ANGELA AGAGAS.

12 Q. THOSE FIVE?

13 A. THOSE FIVE.

14 SOLICITOR RUTLEDGE DURANT: THANK  
15 YOU, MA'AM.

16 THE COURT: RECROSS.

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.)

RECROSS - ALANA NIESEN BY MR. PEPER

402

RECROSS-EXAMINATION OF ALANA NIESEN

BY MR. PEPER:

Q. HERE'S MY PROBLEM, YOU WOULDN'T KNOW IF ALLEGEDLY SHAWN WAS THREATENED OR HELD BY GUN POINT OR BEATEN OR COERCED OR ANYTHING ALONG THOSE LINES AFTER SANDRA, MICKEY AND SHAWN LEFT YOUR HOTEL ROOM?

A. CORRECT.

Q. IT WOULDN'T SURPRISE YOU IF MICKEY PULLED A GUN ON SHAWN AND PUT IT IN THE FRONT OF HIS HEAD, WOULD IT?

A. NO, IT WOULDN'T SURPRISE ME.

MR. PEPER: THAT'S ALL I HAVE.

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



REDIRECT - ALANA NIESEN BY SOL. RUTLEDGE DURANT

403

REDIRECT EXAMINATION OF ALANA NIESEN

BY SOLICITOR RUTLEDGE DURANT:

Q. DID SHAWN EVER TELL YOU THAT?

A. NO.

THE COURT: THANK YOU, MA'AM, YOU  
CAN STEP DOWN.

CALL YOUR NEXT WITNESS, PLEASE.

SOLICITOR RUTLEDGE DURANT: THANK  
YOU, JUDGE, THE STATE CALLS SANDRA BARNES.

(See Volume 2 for continuation of this transcript.)

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

COURT OF GENERAL SESSIONS  
NINTH JUDICIAL CIRCUIT

CASE NO. 07-GS-10-05565  
07-GS-10-05567  
08-GS-10-03459

STATE OF SOUTH CAROLINA )

)

)

versus )

)

SHAWN DEMETRIUS PHILLIPS, )

)

DEFENDANT )

VOLUME 2 OF 2  
TRANSCRIPT OF RECORD

DATE:

AUGUST 5-7, 2008

BEFORE:

HONORABLE JAMES C. WILLIAMS, JR., PRESIDING JUDGE  
AND A JURY.

APPEARANCES:

RUTLEDGE DURANT, ESQUIRE

BRUCE DURANT, ESQUIRE

ASSISTANT SOLICITORS

FOR THE STATE

MARK PEPPER, ESQUIRE

ATTORNEY AT LAW

FOR THE DEFENDANT

HARRY A. WALKER (MRS.)  
COURT REPORTER, FIRST JUDICIAL CIRCUIT  
POST OFFICE BOX 127  
ROWESVILLE, SOUTH CAROLINA 29133

I N D E X

(SEE VOLUME ONE FOR COMPLETE INDEX.)

1 DATE:

2 AUGUST 6, 2008

3 (Continued from Volume One.)

4 THE COURT: MS. BARNES, PLEASE.

5 (Whereupon, Sandra Barnes

6 enters the courtroom.)

7 CLERK: PLEASE PLACE YOUR LEFT HAND  
8 ON THE BIBLE AND RAISE YOUR RIGHT HAND.

9 (Whereupon, Sandra Barnes

10 is duly sworn.)

11 CLERK: PLEASE BE SEATED. PLEASE  
12 STATE YOUR FULL NAME TO THE COURT AND SPELL YOUR LAST.

13 WITNESS: SANDRA BARNES.

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.)

DIRECT - SANDRA BARNES BY SOL. RUTLEDGE DURANT

407

DIRECT EXAMINATION OF SANDRA BARNES

BY SOLICITOR RUTLEDGE DURANT:

Q. MS. BARNES, GOOD MORNING.

A. GOOD MORNING.

Q. WOULD YOU PLEASE TELL THE JURY WHAT YOUR NICKNAME  
IS?

A. MY NICKNAME IS B.G.

Q. AND WHAT DOES B.G. STAND FOR?

A. BABY GIRL.

Q. HOW OLD ARE YOU?

A. THIRTY-NINE.

Q. HOW FAR DID YOU GO IN SCHOOL?

A. I GRADUATED.

Q. YOU GRADUATED HIGH SCHOOL?

A. HIGH SCHOOL.

Q. ARE YOU MARRIED?

A. DIVORCED.

Q. DO YOU HAVE ANY CHILDREN?

A. YES, I'VE GOT TWO.

Q. WHAT'S YOUR EMPLOYMENT HISTORY?

A. I USED TO WORK AS A CNA, AND ASSISTANT MANAGER.

Q. ASSISTANT MANAGER OF BOJANGLES?

A. OF BOJANGLES RESTAURANT, THAT'S GOOD.

Q. AND YOU WERE A NURSING ASSISTANT?

A. YES.

DIRECT - SANDRA BARNES BY SOL. RUTLEDGE DURANT

408

1 Q. AND YOU HAVE A CRACK PROBLEM?

2 A. YES, I HAVE A COCAINE PROBLEM, CRACK PROBLEM.

3 Q. HOW LONG HAVE YOU HAD THAT PROBLEM?

4 A. SIX YEARS.

5 Q. WHAT HAVE YOU BEEN DOING TO SUPPORT YOURSELF?

6 A. FOR THE LAST EIGHT MONTHS I WAS PROSTITUTING.

7 Q. AND YOU CURRENTLY HAVE CHARGES PENDING FOR  
8 FORGERY?

9 A. YES, SIR.

10 Q. ARMED ROBBERY?

11 A. YES, SIR.

12 Q. IN CONNECTION WITH THIS CASE?

13 A. YES, SIR.

14 Q. AND MURDER IN CONNECTION WITH THIS CASE?

15 A. YES, SIR.

16 Q. AND CRIMINAL CONSPIRACY?

17 A. YES, SIR.

18 Q. WHAT HAVE YOU BEEN PROMISED IN EXCHANGE FOR YOUR  
19 TESTIMONY HERE TODAY?

20 A. NOTHING.

21 Q. DO YOU KNOW A MAN NAMED SHAWN PHILLIPS?

22 A. YES, I DO.

23 Q. DO YOU SEE HIM IN THIS COURTROOM TODAY?

24 A. YES, I DO.

25 Q. WOULD YOU PLEASE POINT TO HIM AND DESCRIBE WHAT

DIRECT - SANDRA BARNES BY SOL. RUTLEDGE DURANT

409

1 HE'S WEARING?

2 A. HE'S WEARING, I THINK IT'S A BEIGE SUIT AND A  
3 WHITE SHIRT WITH A BEIGE AND BROWNISH COLOR TIE.

4 Q. THAT WILL SUFFICE.

5 SOLICITOR RUTLEDGE DURANT: LET THE  
6 RECORD REFLECT THAT MS. BARNES HAS IDENTIFIED THE  
7 DEFENDANT.

8 Q. COULD YOU TELL THE JURY HOW YOU CAME TO KNOW SHAWN  
9 PHILLIPS?

10 A. I MET SHAWN PHILLIPS ON ASHLEY PHOSPHATE ROAD TWO  
11 WEEKS PRIOR BEFORE THIS INCIDENT. HE PICKED ME UP  
12 AND TOOK ME TO A GAS STATION.

13 Q. AND?

14 A. WE PROCEEDED TO TALK AND HE ASKED ME, HE KNEW WHAT  
15 I DID, HE KNEW I PROSTITUTED, AND HE SAID, I HEAR  
16 YOU MAKE MONEY? AND I SAID, YES. AND AT THAT  
17 TIME I COULDN'T REALLY TALK SO WE EXCHANGED PHONE  
18 NUMBERS. I GAVE HIM MY PHONE NUMBER AND TOLD HIM  
19 TO JUST CALL ME IF HE HAD ANY BUSINESS.

20 Q. WHAT NAME DID YOU KNOW SHAWN BY?

21 A. AT THAT TIME I KNEW HIM AS D.

22 Q. DID YOU KNOW AT THAT TIME THAT HE WENT BY PIT AS  
23 WELL?

24 A. NO, I DID NOT.

25 Q. WHEN DID YOU FIND THAT OUT?

DIRECT - SANDRA BARNES BY SOL. RUTLEDGE DURANT

410

1 A. WHEN I CAME TO JAIL.

2 Q. WHEN WAS THE NEXT TIME YOU HEARD FROM SHAWN  
3 PHILLIPS?

4 A. THE NIGHT OF THE MURDER, WHICH WAS NOVEMBER  
5 SEVENTH.

6 Q. AND WHERE WERE YOU WHEN HE CALLED?

7 A. I WAS AT MY HOTEL ON ASHLEY PHOSPHATE, COUNTRY  
8 HEARTH, HANDLING BUSINESS.

9 Q. WHAT DID HE WANT?

10 A. HE WANTED TO COME PICK ME UP TO, JUST SOME DATES,  
11 MAKE SOME MONEY, MAKE MONEY, I'M SORRY.

12 Q. AND WHAT TIME OF THE DAY WAS THIS?

13 A. THIS WAS IN THE EVENING, THIS WAS, LIKE, AFTER,  
14 I'LL SAY, AFTER DARK, MAYBE - - -

15 Q. AND WHEN YOU SAY, MAKE SOME MONEY, WHAT KIND OF  
16 BUSINESS WAS Y'ALL REFERRING TO?

17 A. TRICKING, CALLING PROSTITUTES.

18 Q. HOW DID YOU HOOK UP WITH HIM?

19 A. HE COME AND PICKED ME UP, MET ME AT MY MOTEL, HE  
20 PICKED ME UP AND I MET TWO OTHER PEOPLE.

21 Q. YOU MET TWO OTHER PEOPLE WITH HIM?

22 A. WITH HIM, ALONG WITH HIM.

23 Q. WHO WAS WITH HIM?

24 A. HIS GIRLFRIEND AT THE TIME, ANGELA AGAGAS, AND  
25 LENNIE MICKEY.



DIRECT - SANDRA BARNES BY SOL. RUTLEDGE DURANT

411

1 Q. WHAT NAME DID YOU KNOW LENNIE MICKEY BY?

2 A. THAT NIGHT HE CALLED HIMSELF BROOKLYN.

3 Q. IS THAT THE FIRST TIME YOU'D EVER MET HIM?

4 A. THAT'S THE FIRST TIME I EVER MET HIM.

5 Q. HOW ABOUT ANGELA AGAGAS?

6 A. THE FIRST TIME I EVER MET HER.

7 Q. WHAT KIND OF CAR WERE THEY DRIVING?

8 A. IT WAS A GEO TRACKER, RED AND BLACK.

9 Q. WHAT HAPPENED AFTER YOU GOT IN THE CAR WITH THEM?

10 A. LIKE I SAID, HE INTRODUCED US ALL, ONCE I GOT IN  
11 THE CAR WE GOT INTRODUCED, AND THEN - - -

12 Q. SHAWN INTRODUCED YOU?

13 A. YES, SHAWN INTRODUCED - - -

14 Q. TO LENNIE AND ANGELA?

15 A. --- TO LENNIE AND TO ANGELA, AND THEN LENNIE  
16 STARTED TAKING OVER THE CONVERSATION AND WANTED TO  
17 TELL ME WHAT HE WAS PLANNING TO DO, WHAT HE REALLY  
18 WANTED TO DO.

19 Q. AND WHAT WAS HE TALKING ABOUT?

20 A. TALKING ABOUT ROBBING PEOPLE.

21 Q. WHO DID THEY WANT TO ROB?

22 A. THEY WANTED TO ROB SOME MEXICANS I KNEW AS  
23 CLIENTELE, SEVERAL OF MY CLIENTELE.

24 Q. WAS SHAWN IN THE CAR?

25 A. YES, SHAWN WAS IN THE CAR.

DIRECT -- SANDRA BARNES BY SOL. RUTLEDGE DURANT

412

1 Q. WAS SHAWN TALKING, TOO?

2 A. SHAWN WASN'T TALKING AT THAT TIME.

3 Q. WAS HE INTERESTED IN THE CONVERSATION?

4 A. YES.

5 Q. WHAT DID YOU TELL THEM?

6 A. I TOLD THEM, I SAID, NO, I DON'T HAVE ANYBODY LIKE  
7 THAT THAT HAS MONEY. MY CLIENTELE GET PAID AT  
8 CERTAIN TIMES.

9 Q. SO, WHERE DID Y'ALL END UP GOING?

10 A. WE ENDED UP GOING BACK TO THEIR ROOM.

11 Q. AND WHERE WAS THAT?

12 A. TO TRAVEL LODGE ON AVIATION.

13 Q. MS. BARNES, IF YOU COULD JUST LOOK BACK HERE, THIS  
14 IS STATE'S EXHIBIT FIVE, DO YOU RECOGNIZE THIS  
15 PHOTO?

16 A. YEAH. YES, I DO.

17 Q. WHAT IS IT? YOU CAN USE THIS POINTER.

18 A. IT'S THE MOTEL. THAT'S TRAVEL LODGE.

19 Q. PRESS THE TOP OF IT THAT'S RED.

20 A. THAT'S TRAVEL LODGE.

21 Q. OKAY. WHAT'S THE ONE ABOVE IT?

22 A. THAT'S BEST WESTERN.

23 Q. BEST WESTERN?

24 A. UH-HUH. AND THAT'S BUDGET INN.

25 Q. OKAY. LEAVE THAT UP THERE. WHAT HAPPENED AFTER

DIRECT - SANDRA BARNES BY SOL. RUTLEDGE DURANT

413

1 Y'ALL GOT BACK TO THE HOTEL ROOM?

2 A. OKAY. THAT'S WHEN SHAWN PHILLIPS SAID, I KNOW  
3 WHAT B.G. NEEDS TO GET HER CONVINCED TO TALK. SO,  
4 THEY GAVE ME A TWENTY PIECE ROCK OF CRACK.

5 Q. WHAT DID YOU DO WITH IT?

6 A. I WENT TO THE BATH ROOM BECAUSE THEY DIDN'T SMOKE.  
7 THEY DON'T SMOKE AND THEY DIDN'T WANT THE SMELL OF  
8 IT, SO THEY MADE ME GO TO THE BATH ROOM TO SMOKE.  
9 SO, I WENT IN THERE AND SMOKED THE TWENTY PIECE  
10 ROCK.

11 Q. WHO WAS WITH YOU?

12 A. I WAS BY MYSELF AT THE TIME.

13 Q. AND WHO WAS OUTSIDE IN THE MAIN ROOM?

14 A. SHAWN PHILLIPS AND LENNIE MICKEY AND ANGELA WERE  
15 IN THE ROOM.

16 Q. WHAT DID YOU DO AFTER YOU SMOKED THE CRACK?

17 A. I CAME BACK OUT AND STILL I'M SAYING, MICKEY --  
18 MICKEY WAS THE ONE THAT MAINLY WAS DOING THE  
19 TALKING.

20 Q. UH-HUH.

21 A. HE ASKED ME DID I STILL KNOW ANYBODY. I TOLD HIM  
22 AT THAT TIME I KNEW PEOPLE BUT I WASN'T GIVING UP  
23 NAMES, I WASN'T DOING THAT, BECAUSE I DON'T ROLL  
24 LIKE THAT.

25 Q. NOW, WAS SHAWN TALKING AS WELL AT THIS POINT?

DIRECT - SANDRA BARNES BY SOL. RUTLEDGE DURANT

414

1 A. SHAWN WAS AGREEING TO WHAT HE WAS SAYING, AND HE  
2 SAID, IT WOULD BE EASY, ALL YOU'VE GOT TO DO IS  
3 HAVE A DATE WITH THEM, AND WE'D COME IN AND WE'D  
4 DO WHAT WE'VE GOT TO DO, YOU'RE NOT INVOLVED.

5 Q. COULD YOU TELL THE JURY HOW Y'ALL RAN INTO ALANA  
6 NIESEN THAT NIGHT?

7 A. YES, I CAN. WE LEFT TO GO GET SOME, I WANT TO SAY  
8 DRINKS, CIGARETTES, AT THE GAS STATION. AS WE  
9 WERE LEAVING THE PARKING LOT OF TRAVEL LODGE WE  
10 MET ALANA NIESEN IN THE PARKING LOT. DO YOU WANT  
11 ME TO SHOW YOU ON THAT?

12 Q. SURE.

13 A. WE MET HER RIGHT THERE, RIGHT THERE, AND THEY  
14 TALKED FOR A BRIEF SECOND, EXCHANGED NUMBERS, AND

15 - - -

16 Q. WHAT KIND OF CAR DID Y'ALL LEAVE IN?

17 A. WE LEFT IN THE GEO TRACKER.

18 Q. WHAT WAS ALANA DRIVING?

19 A. SHE WAS DRIVING A, I KIND OF REMEMBER IT WAS, LIKE  
20 AN SUV TYPE, RED VEHICLE, FOUR DOOR.

21 Q. AND WHAT WAS SAID WHEN THEY MET UP?

22 A. THEY ASKED HER WHAT SHE WAS DOING. SHE SAID SHE  
23 WAS MEETING A FRIEND. AND THEY ASKED HER WHAT,  
24 YOU KNOW, IF SHE WAS WANTING TO HANG OUT. SHE  
25 SAID, YEAH, BUT RIGHT NOW SHE HAD TO HANDLE

DIRECT - SANDRA BARNES BY SOL. RUTLEDGE DURANT

415

1 SOMETHING. AND THEY EXCHANGED NUMBERS.

2 Q. WHO GOT HER NUMBER?

3 A. SHAWN.

4 Q. DID YOU KNOW ALANA BEFORE THAT NIGHT?

5 A. NO, I DID NOT.

6 Q. WHAT NICKNAME DID SHE GO BY?

7 A. CHINA DOLL.

8 Q. AND WHAT HAPPENED AFTER THEY GOT ALANA'S NUMBER?

9 A. WELL, THEY CALLED HER ON HIS CELL PHONE THEY, YOU  
10 KNOW, THEY TALKED, THEY HAD WORDS, WELL, THEY  
11 NEVER WENT TO THE GAS STATION, THEY NEVER WENT TO  
12 THE GAS STATION. WE TURNED AROUND AND WENT BACK TO  
13 THEIR ROOM, THEY WANTED TO TALK. ALANA ENDED UP  
14 COMING OVER. SO, WE WENT BACK TO THE ROOM FOR  
15 THEM TO DO THAT.

16 Q. AND WHEN YOU SAY, ALANA ENDED UP COMING OVER,  
17 WHERE DID SHE COME TO?

18 A. TO THE ROOM, TO THEIR ROOM AT TRAVEL LODGE.

19 Q. AND WHAT HAPPENED AFTER ALANA GOT BACK TO THE  
20 TRAVEL LODGE?

21 A. SHE WALKED IN -- SHE CALLED THEM AND TOLD THEM SHE  
22 WAS OUT IN THE PARKING LOT. MICKEY LENNIE WENT  
23 OUTSIDE TO MEET HER, GUIDE HER IN. WHEN SHE CAME  
24 IN SHE SAID, IF YOU DIDN'T HAVE NOTHING FOR ME TO  
25 CALL YOU, I'M NOT STAYING.

DIRECT - SANDRA BARNES BY SOL. RUTLEDGE DURANT

416

1 Q. AND WHAT DID SHE MEAN BY THAT?

2 A. IF SHE DIDN'T HAVE ANY CRACK SHE WASN'T STAYING.

3 Q. AND DID THEY HAVE CRACK?

4 A. YES, THEY DID. THAT'S WHEN THEY PULLED OUT MOST  
5 OF THEIR DOPE AND GAVE IT TO HER.

6 Q. AND WHO GAVE HER THE DOPE?

7 A. SHAWN.

8 Q. WERE THERE ANY FURTHER DISCUSSIONS CONCERNING A  
9 ROBBERY?

10 A. NONE AT THAT TIME. THEY TOLD HER LIKE THEY TOLD  
11 ME, GO INTO THE BATH ROOM AND SMOKE IT AND WE'LL  
12 TALK IN A MINUTE.

13 Q. WHAT ABOUT AFTER ALANA CAME OUT OF THE BATH ROOM?

14 A. THEN THAT'S WHEN THEY PROCEEDED TO TALK ABOUT WHAT  
15 HE WANTED TO DO, HOW HE WANTED TO MAKE QUICK MONEY  
16 AND ROB SOMEBODY.

17 Q. WHO WAS HE TELLING THIS TO?

18 A. TO ALANA AT THE TIME.,

19 Q. AND WHAT DID HE WANT HER TO DO?

20 A. HE WANTED HER TO GIVE UP SOME NAMES OF CLIENTELE  
21 SHE KNEW.

22 Q. AND WHAT DID SHE DO?

23 A. SHE, AT FIRST SHE SAID NOTHING, SHE JUST SAID SHE  
24 DIDN'T KNOW NOBODY. AND A FEW MINUTES LATER I  
25 BELIEVE SHE GOT A PHONE CALL, AND THEN RIGHT AFTER

DIRECT - SANDRA BARNES BY SOL. RUTLEDGE DURANT

417

1 THE PHONE CALL SHE MENTIONED THIS GUY AT THE  
2 BUDGET INN THAT WAS A CARNEY, AND SHE EXPLAINED  
3 HOW MUCH MONEY HE HAD.

4 Q. AND WHAT DO YOU MEAN, WHEN YOU SAY CARNEY, WHAT  
5 ARE YOU TALKING ABOUT?

6 A. HE WORKED FOR THE FAIR.

7 Q. SHE TOLD THESE GUYS ABOUT A GUY WHO WORKED FOR THE  
8 FAIR?

9 A. YEAH, HE WORKED FOR THE FAIR, AND WAS STAYING AT  
10 THE MOTEL, AND HE HAD A LOT OF MONEY, HE HAD A LOT  
11 OF MONEY AND A LOT OF CRACK.

12 Q. WERE THERE ANY GUNS IN THE ROOM?

13 A. YES, THERE WAS.

14 Q. WHERE DID YOU SEE A GUN?

15 A. I SEEN IT ON THE BED.

16 Q. WHAT DID IT LOOK LIKE?

17 A. IT WAS BLACK AND IT HAD, LIKE, SPIRAL THINGS - - -

18 Q. A CYLINDER THING ON IT?

19 A. YEAH.

20 Q. DID ANYONE PICK IT UP WHILE YOU WERE IN THE ROOM?

21 A. LENNIE PICKED IT UP AT FIRST, AND THEN HE HANDED  
22 IT TO SHAWN, AND THEN IT WENT BACK TO THE BED.

23 Q. WHAT DID ALANA TELL THESE GUYS ABOUT THE CARNEY?

24 A. SHE TOLD THEM THAT HE WANTED A FEMALE TO HAVE ANAL  
25 SEX WITH AND THAT HE HAD A LOT OF MONEY AND HE

DIRECT - SANDRA BARNES BY SOL. RUTLEDGE DURANT

418

1 SMOKED CRACK, AND HE HAD, HE BUYS A LOT OF CRACK.

2 Q. DID Y'ALL COME UP WITH A PLAN?

3 A. AT THAT TIME WE COME UP WITH A PLAN THAT WE WAS  
4 SUPPOSED TO, AT FIRST I WAS SUPPOSED TO GO IN AS A  
5 DATE, BECAUSE THAT'S WHAT HE WANTED, A FEMALE.  
6 AND THEN THEY WERE GOING TO COME IN AFTERWARDS  
7 ONCE I GOT IN. BUT I DIDN'T WANT TO GO INTO THE  
8 ROOM. SO I AGREED TO JUST KNOCK ON THE DOOR.

9 Q. AND WHAT ABOUT THE PROCEEDS FROM THIS ROBBERY,  
10 WHAT WAS THE PLAN FOR THAT?

11 A. WE WERE SUPPOSED TO GET WHATEVER, HALF THE MONEY  
12 THEY GOT AND ALL THE CRACK.

13 Q. AND WHO WAS SUPPOSED TO GET THAT?

14 A. ME AND ALANA.

15 Q. HOW DID YOU KNOW WHICH ROOM THE GUY WAS STAYING IN  
16 AT THE BUDGET INN?

17 A. BECAUSE ALANA STAYED WITH HIM THE NIGHT BEFORE,  
18 SHE MENTIONED THAT TO THEM. THAT'S HOW SHE KNEW  
19 HOW MUCH MONEY HE HAD, AND ALSO TOLD THEM WHERE HE  
20 KEPT HIS MONEY.

21 Q. DID SHE EVER GO POINT OUT THE ROOM?

22 A. YES, SHE DID.

23 Q. TELL US ABOUT THAT.

24 A. WE ALL WENT IN HER VEHICLE, ME, SHAWN, LENNIE AND  
25 I BELIEVE ANGELA WAS WITH US AT THAT TIME. WE ALL



DIRECT - SANDRA BARNES BY SOL. RUTLEDGE DURANT

419

1           WENT IN, WENT TO THE MOTEL TO THE PARKING LOT.  
2           SHE POINTED OUT THE ROOM WHERE WE HAPPENED TO SEE  
3           SOMEBODY ELSE THAT WE KNEW AS A DEALER, AND SHE  
4           SAID, NO, WE CAN'T GO NOW. SO, WE LEFT.

5           Q.   WHERE DID YOU GO?

6           A.   WE WENT BACK TO THE MOTEL ROOM. WE SAT THERE FOR  
7           A FEW MINUTES.

8           Q.   THE MOTEL ROOM, BEING?

9           A.   BEING TRAVEL LODGE. THEN WE PROCEEDED, BECAUSE WE  
10          HAD TO WAIT A FEW MINUTES, DECIDED TO GO TO  
11          ANOTHER MOTEL WHICH I MENTIONED THERE MIGHT BE  
12          SOMEBODY, BUT THEY DIDN'T LIKE THE SCENERY, SO WE  
13          CAME BACK TO THEIR MOTEL AT TRAVEL LODGE.

14          Q.   WHEN YOU GOT BACK TO THE TRAVEL LODGE WHAT  
15          HAPPENED?

16          A.   THAT'S WHEN THEY DECIDED THAT THEY WERE READY TO  
17          GO OVER TO THE BUDGET INN.

18          Q.   WHAT KIND OF ARRANGEMENTS WERE MADE HERE?

19          A.   IT WAS ARRANGED FOR ME, FOR ALANA TO CALL HIM AND  
20          TELL HIM THAT SHE WAS SENDING A GIRL OVER THERE,  
21          AND FOR ME AND SHAWN AND LENNIE TO RIDE OVER THERE  
22          AND GO TO THE BUDGET. AND ALL I WAS SUPPOSED TO  
23          DO WAS KNOCK ON THE DOOR.

24          Q.   DID YOU TAKE A VEHICLE?

25          A.   YES, WE DID.

DIRECT - SANDRA BARNES BY SOL. RUTLEDGE DURANT

420

1 Q. WHAT DID YOU TAKE?

2 A. WE TOOK THE GEO TRACKER.

3 Q. WHO WENT WITH YOU?

4 A. ME, SHAWN PHILLIPS, AND LENNIE MICKEY.

5 Q. DID ANYBODY ELSE GO WITH YOU?

6 A. NO, THERE WAS NOBODY ELSE.

7 Q. WHO WAS LEFT IN THE ROOM AT THE TRAVEL LODGE?

8 A. ANGELA AGAGAS AND ALANA NIESEN.

9 Q. WAS SHAWN IN ON THIS PLAN?

10 A. YES, AT THE TIME HE SEEMED TO AGREE TO IT.

11 Q. DID YOU EVER SEE LENNIE MICKEY HOLD A GUN TO HIS  
12 HEAD?

13 A. NO.

14 Q. DID YOU EVER SEE LENNIE MICKEY THREATEN HIM?

15 A. NO. THEY ACTED LIKE THEY WERE BUDDIES.

16 Q. SO, ON THIS DIAGRAM UP HERE CAN YOU SHOW THE JURY  
17 -- ACTUALLY, DO YOU RECOGNIZE THIS PHOTOGRAPH  
18 THAT'S ALREADY IN EVIDENCE AS WELL?

19 A. YES, YES, I DO.

20 Q. WHAT'S THAT?

21 A. THAT'S THE BUDGET INN.

22 Q. AND COULD YOU SHOW THE JURY WHERE Y'ALL PULLED IN?

23 A. WITH THIS?

24 Q. YEAH.

25 A. WE PULLED IN, WE PULLED IN THE MIDDLE.

DIRECT - SANDRA BARNES BY SOL. RUTLEDGE DURANT

421

1 Q. OKAY. AND WHERE DID YOU PARK?

2 A. ABOUT HALFWAY, WHERE THE BREEZE-WAY WAS.

3 Q. WHERE DID YOU GO?

4 A. IT WAS KIND OF DARK RIGHT THERE, RIGHT ABOUT  
5 THERE, IT WAS LIKE A BREEZE-WAY RIGHT HERE THAT  
6 COMES TO THE OTHER SIDE.

7 Q. OKAY. AND WHERE WAS THE VICTIM'S ROOM?

8 A. IT WAS ON THIS SIDE OF THERE, ON THIS SIDE OF THE  
9 BUILDING.

10 Q. SO, WHERE DID YOU GO?

11 A. SO, ONCE WE PULLED IN, WHERE WE PARKED, WE ALL  
12 THREE GOT OUT, AND I PROCEEDED TO GO THROUGH THE  
13 BREEZE-WAY. THEY WERE BEHIND ME AT THE TIME. I  
14 WENT UP THE STAIRS, THEY WERE STILL BEHIND ME. AS  
15 I WENT UP TO KNOCK ON THE MAN'S DOOR THEY WERE  
16 STILL BEHIND ME.

17 Q. AT THIS POINT WAS ANYBODY ELSE INVOLVED?

18 A. NO, THERE WAS NOBODY ELSE AROUND.

19 Q. AGAIN, WHO WAS INVOLVED?

20 A. SHAWN PHILLIPS AND LENNIE MICKEY AND MYSELF. LIKE  
21 I SAID, I WENT UP THE STAIRS. I HAD MY HAND UP  
22 READY TO KNOCK ON THE DOOR, BUT THE GENTLEMAN  
23 ALREADY HAD THE DOOR CRACKED AND PULLED IT OPEN  
24 SOME MORE, I GUESS BECAUSE HE SEEN ME COME UP.  
25 AND THEY RUSHED IN, THEY PUSHED ME OUT OF THE WAY

DIRECT - SANDRA BARNES BY SOL. RUTLEDGE DURANT

422

1 AND RUSHED IN AND SHUT THE DOOR.

2 Q. WHO WENT IN FIRST?

3 A. I BELIEVE IT WAS LENNIE MICKEY FIRST.

4 Q. DO YOU KNOW WHO SHUT THE DOOR?

5 A. SHAWN SHUT THE DOOR.

6 Q. ARE YOU SURE IT WAS BOTH OF THESE GUYS THAT WENT  
7 IN THAT HOTEL ROOM?

8 A. YES, I'M POSITIVE BOTH OF THEM WENT IN.

9 Q. AND WHERE DID YOU GO?

10 A. I WENT BACK TO THEIR ROOM, I RAN.

11 Q. WHICH WAS?

12 A. BACK TO THEIR MOTEL, TRAVEL LODGE.

13 Q. AND WHAT DID YOU DO WHEN YOU GOT BACK TO THE  
14 TRAVEL LODGE?

15 A. ALANA -- WHEN I GOT BACK TO THE ROOM ALANA ASKED  
16 ME WHAT HAPPENED AND I TOLD HER, I DON'T KNOW, I  
17 LEFT THE ROOM. I KNOCKED ON THE DOOR AND THAT WAS  
18 IT.

19 Q. WHEN DID LENNIE MICKEY AND SHAWN PHILLIPS RETURN  
20 TO THE ROOM?

21 A. WITHIN FIVE OR TEN MINUTES.

22 Q. FAIRLY QUICK?

23 A. YES.

24 Q. HOW WERE THEY ACTING?

25 A. SHAWN WAS CALM AND COOL. LENNIE WAS KIND OF

DIRECT - SANDRA BARNES BY SOL. RUTLEDGE DURANT

423

1 PANICKY AND RUSHING TO WANT TO GET OUT. LENNIE  
2 TELLS US, WE'VE GOT TO PACK UP OUR STUFF, LET'S  
3 GO, LET'S GO, LET'S GO.

4 Q. SO, DID Y'ALL LEAVE?

5 A. YES, WE DID. WE LEFT IN SEPARATE VEHICLES. ME  
6 AND LENNIE MICKEY AND ALANA LEFT IN HER VEHICLE  
7 WHILE SHAWN AND ANGELA WOULD LEAVE IN THEIR  
8 VEHICLE, BUT THAT DIDN'T HAPPEN. AFTER WE PULLED  
9 OFF ANGELA AND SHAWN STAYED BACK, AND THEY WERE  
10 TALKING ON THE PHONE. SO, LENNIE - - -

11 Q. WHO WAS TALKING ON THE PHONE?

12 A. LENNIE AND SHAWN. LENNIE WAS TALKING ON ALANA'S  
13 PHONE TO SHAWN. SO, WE TURNED AROUND AND WENT  
14 BACK TO THE MOTEL.

15 Q. YOU AND LENNIE AND ALANA TURNED AROUND AND WENT  
16 BACK TO THE HOTEL?

17 A. YEAH, WENT BACK TO THE HOTEL.

18 Q. AND WHAT HAPPENED AT THIS POINT?

19 A. AT THAT POINT, LIKE I SAID, LENNIE WENT IN, ASKED  
20 SHAWN WHY WEREN'T THEY LEAVING. THEY SAID, WAIT A  
21 MINUTE, THEY TALKED A FEW MINUTES. WE DIDN'T GO  
22 IN THE ROOM AT THAT TIME. THEY COME BACK OUT AND  
23 WE ALL LEFT IN SEPARATE VEHICLES LIKE WE WERE  
24 SUPPOSED TO THE FIRST TIME.

25 Q. AND WHERE DID Y'ALL GO?

DIRECT - SANDRA BARNES BY SOL. RUTLEDGE DURANT

424

1 A. WE WENT OVER TO ASHLEY PHOSPHATE TO DROP OFF THE  
2 TRACKER BECAUSE THEY WANTED TO HIDE THE TRACKER.

3 Q. WHO WANTED TO HIDE IT?

4 A. LENNIE. HE INSISTED ON HIDING THE TRACKER.

5 Q. BUT WHO WAS DRIVING THE TRACKER?

6 A. AT THAT, THE WHOLE ENTIRE TIME SHAWN ALWAYS DROVE  
7 IT.

8 Q. SO, DID Y'ALL MEET UP AT THE, BEHIND THE HOME  
9 DEPOT?

10 A. WE WENT BEHIND THE HOME DEPOT IN THIS LITTLE  
11 TRAILER PARK, AND DROPPED THE TRACKER OFF, AND WE  
12 ALL GOT IN THE VEHICLE TOGETHER AND RODE AROUND.

13 Q. Y'ALL GOT INTO WHOSE VEHICLE?

14 A. ALANA'S.

15 Q. SO, NOW IT'S THE FIVE OF YOU IN ONE VEHICLE?

16 A. ALL FIVE OF US WAS IN ONE VEHICLE.

17 Q. AND WHAT HAPPENED AT THAT POINT?

18 A. HONESTLY, THEY WERE LOOKING FOR MORE PEOPLE TO  
19 ROB, BECAUSE DURING THE TIME -- LET ME BACK UP ONE  
20 STATEMENT, DURING THE TIME THAT ME AND ALANA AND  
21 MICKEY WERE IN THE CAR TOGETHER WE ASKED LENNIE  
22 WHAT HAPPENED, AND HE TOLD US THAT THEY TIED HIM  
23 UP AND PUT HIM THE BATH TUB, BUT THEY ONLY GOT  
24 FIFTY DOLLARS, AND NO CRACK.

25 Q. SO WHAT HAPPENED?

DIRECT - SANDRA BARNES BY SOL. RUTLEDGE DURANT

425

1 A. SO, WHILE WE WERE ALL RIDING AROUND THEY WERE  
2 LOOKING FOR SOMEBODY ELSE TO DO. AND SO, I'M  
3 SAYING AT THAT TIME IT WAS GETTING LATE AND WE ALL  
4 DECIDED, YOU KNOW, LITTLE ENOUGH, SO THEY DECIDED  
5 TO GO BACK TO THE CAR, THEY WANTED TO DROP IT OFF  
6 SOMEWHERE ELSE. SO THERE AGAIN WE WERE IN TWO  
7 SEPARATE CARS AGAIN.

8 Q. AND WHO'S IN WHAT CAR?

9 A. SHAWN AND ANGELA WERE IN THE TRACKER, AND ALANA  
10 AND MICKEY AND ME ARE IN ALANA'S CAR.

11 Q. AT THIS POINT DO YOU SEE SHAWN AND ANGELA ANYMORE  
12 AT THAT TIME?

13 A. NOT AFTER WE DROPPED MICKEY OFF I DIDN'T.

14 Q. SO, WHAT HAPPENS NEXT?

15 A. AFTER ME AND ALANA DROPPED MICKEY OFF SHE TOOK ME  
16 BACK TO MY MOTEL. I WENT TO MY ROOM AND WENT TO  
17 SLEEP.

18 Q. AND WHAT HOTEL WAS THAT?

19 A. COUNTRY HEARTH.

20 Q. NOW LET'S MOVE ON TO DECEMBER THE FOURTEENTH, TWO  
21 THOUSAND AND SIX. THAT WAS THE DAY YOU WERE  
22 ARRESTED, CORRECT?

23 A. CORRECT.

24 Q. WHERE WERE YOU ARRESTED?

25 A. I WAS ARRESTED ON STAR ROAD AND MIDLAND PARK ROAD.

DIRECT - SANDRA BARNES BY SOL. RUTLEDGE DURANT

426

1 Q. AND WHERE WERE YOU TAKEN?

2 A. I WAS TAKEN TO MALL DRIVE.

3 Q. WHO WERE YOU TALKING TO, DETECTIVE SPEARS?

4 A. YES, I DID.

5 Q. DID YOU TELL HER WHAT YOU KNEW?

6 A. YES.

7 Q. DID YOU GIVE HER A WRITTEN STATEMENT?

8 A. YES, I DID.

9 Q. DO YOU REMEMBER HER SHOWING YOU A GROUP OF SIX  
10 PHOTOGRAPHS, - - -

11 A. YES.

12 Q. --- DID YOU IDENTIFY LENNIE MICKEY OUT OF THOSE  
13 PHOTOGRAPHS?

14 A. YES, I IDENTIFIED MICKEY LENNIE AND ANGELA AGAGAS  
15 AND ALANA NIESEN.

16 Q. WHERE HAVE YOU LIVED SINCE DECEMBER FOURTEENTH,  
17 TWO THOUSAND AND SIX?

18 A. WHERE HAVE I BEEN STAYING?

19 Q. YEAH.

20 A. PART OF IT WAS MOTELS BUT FOUR TIMES OUT OF THE  
21 WEEK I STAYED HOME IN SUMMERVILLE WITH MY MOM.

22 Q. SINCE DECEMBER THE FOURTEENTH, TWO THOUSAND AND  
23 SIX?

24 A. OH, I'M SORRY. JAIL.

25 Q. YOU'VE BEEN IN THE CHARLESTON COUNTY JAIL?



DIRECT - SANDRA BARNES BY SOL. RUTLEDGE DURANT

427

1 A. I'VE BEEN IN JAIL.

2 SOLICITOR RUTLEDGE DURANT: THANK  
3 YOU. PLEASE ANSWER ANY QUESTIONS MR. PEPER MAY HAVE.

4 THE COURT: MR. PEPER.

5 MR. PEPER: THANK YOU, YOUR HONOR,  
6 IF IT PLEASE THE COURT.

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

CROSS - SANDRA BARNES BY MR. PEPER

428

CROSS-EXAMINATION OF SANDRA BARNES

BY MR. PEPER:

Q. SANDRA, I'M MARK PEPER, I REPRESENT SHAWN. FOR THOSE OF US THAT AREN'T REAL FAMILIAR WITH CRACK COCAINE WHAT IS A TWENTY DOLLAR BAG OR WHATEVER?

A. IT'S A TWENTY PIECE OF ROCK. IT'S A FORM OF A LITTLE ROCK.

Q. JUST, HOW MANY PEOPLE DOES THAT GIVE A HIGH?

A. IF IT'S REAL GOOD YOU CAN GET TWO OR THREE PEOPLE HIGH OFF OF A TWENTY PIECE, BUT IF IT'S NOT, ONE PERSON.

Q. THAT NIGHT WAS IT GOOD OR - - -

A. NO, IT WAS NOT THAT GOOD.

Q. OKAY, SO, YOU, SO IT WOULD ONLY GET PROBABLY ABOUT ONE PERSON HIGH?

A. YEAH, IT MIGHT GET -- YEAH. YOU WOULD HAVE TO HAVE A LOT MORE - - -

Q. I'VE GOT YOU.

A. --- TO GET THE BUZZ.

Q. SO, WHEN YOU WENT BACK INTO THE BATH ROOM NOBODY ELSE WAS GETTING HIGH, YOU JUST SMOKED IT AND NOBODY ELSE DID?

A. OKAY. WHEN I FIRST GOT MY FIRST TWENTY PIECE ARE YOU TALKING ABOUT?

Q. YEAH.

CROSS - SANDRA BARNES BY MR. PEPER

429

1 A. YEAH.

2 Q. WAS THAT -- THAT WASN'T THE FIRST TIME YOU HAD  
3 SMOKED THAT DAY I'M ASSUMING?

4 A. NO, I'D BEEN SMOKING ALL NIGHT, I MEAN, ALL THAT  
5 DAY, AND THE NIGHT BEFORE.

6 Q. AND THE NIGHT BEFORE THAT?

7 A. AND THE NIGHT BEFORE THAT.

8 Q. AND THE NIGHT BEFORE THAT?

9 A. NO, I WAS HOME WITH MY FAMILY BECAUSE OF MY  
10 BIRTHDAY.

11 Q. DO YOU REMEMBER GETTING SICK LATER THAT NIGHT?

12 A. GETTING WHAT?

13 Q. GETTING SICK?

14 A. NO, I DIDN'T GET SICK.

15 Q. WHY DID YOU TELL THE OFFICER YOU DID?

16 A. I DIDN'T TELL THE OFFICER I GOT SICK.

17 Q. LET ME SHOW YOU WHAT, YOU'VE IDENTIFIED YOUR  
18 STATEMENT, RIGHT?

19 A. UH-HUH, YES.

20 Q. DO YOU REMEMBER TELLING DETECTIVE SPEARS THAT  
21 BROOKLYN WAS FEEDING CHINA DOLL CRACK AND BECAUSE  
22 SHE WAS GETTING SOME I WAS GETTING SOME, BUT I GOT  
23 TO THE POINT THAT I WAS SICK, I DIDN'T WANT  
24 ANYMORE CRACK, I WAS SICK.

25 A. OKAY, YEAH, I SAID THAT BUT IT WASN'T MEANING THAT

1 I WAS SICK AS IN PHYSICALLY SICK. THE DRUG WASN'T  
2 THAT GOOD, I WAS TIRED OF SMOKING IT. ONCE YOU  
3 DON'T CATCH THE BUZZ YOU'RE DONE WITH IT.

4 Q. YOU TESTIFIED EARLIER THAT YOU, MICKEY AND D GOT  
5 IN THE CAR AND WENT OVER TO BUDGET INN, CORRECT?

6 A. YES, AND THE PERSON I KNOW AS D IS SHAWN PHILLIPS.

7 Q. AND WHY DID YOU PICK OUT DOMINICK LAMAR BALLOU?

8 A. BECAUSE AT THE TIME THAT THEY SHOWED ME PICTURES  
9 OF THE INCIDENT I TOLD THEM THAT I DIDN'T KNOW,  
10 THAT IT WASN'T A GOOD ENOUGH PICTURE, BUT THEY  
11 SAID PICK OUT TO THE BEST OF YOUR ABILITY, AND  
12 THAT I DID, I THOUGHT AT THE TIME WAS D, WAS SHAWN  
13 PHILLIPS THAT I KNEW AS D.

14 Q. OKAY. AND YOU'D BEEN SMOKING CRACK?

15 A. I DIDN'T SMOKE -- YEAH, I WAS SMOKING CRACK THE  
16 DAY THEY PICKED ME UP.

17 Q. SO WHEN YOU PICKED THIS GUY OUT AND GAVE A  
18 STATEMENT YOU WERE HIGH?

19 A. YEAH, I WAS HIGH.

20 Q. BUT YOU WROTE RIGHT HERE THAT THIS IS THE PERSON I  
21 KNOW AS D?

22 A. AS D, AT THAT TIME, AND WHEN I WROTE MY STATEMENT,  
23 AFTER I WROTE MY STATEMENT THEY HAD ME GO IN A TWO  
24 WAY MIRROR AND PICK THE PERSON I KNEW AS D AS THE  
25 SAME PERSON I PICKED OUT IN THE PICTURE, WHICH - -

CROSS - SANDRA BARNES BY MR. PEPER

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Q. SO, YOU NOT ONLY PICKED OUT DOMINICK LAMAR BALLOU AS D ON TWELVE/FOURTEEN/O-SIX, AND S.B., IS THAT YOUR INITIALS?

A. YES.

Q. BUT THEN YOU PICKED HIM OUT OF A LINEUP IN A TWO WAY MIRROR?

A. YES. BUT AT THAT TIME IT WAS SHAWN PHILLIPS.

Q. YOU TESTIFIED EARLIER THAT BROOKLYN WAS THE ONE THAT ASKED YOU IF YOU MADE BREAD?

A. YES.

Q. THAT MEANS YOU -- AND BROOKLYN I BELIEVE YOU PUT IN YOUR STATEMENT WAS THE ONE THAT WANTED TO ROB SOMEBODY?

A. YES, BROOKLYN WAS THE ONE THAT WAS CONSTANTLY WANTING TO ROB SOMEBODY.

Q. DID YOU TRY TO TRICK HIM BY, WHEN HE WAS MAKING YOU CALL PEOPLE?

A. YES.

Q. HOW DID YOU DO THAT?

A. JUST ACTED LIKE I CALLED AND NOBODY ANSWERED AND HANG UP THE PHONE.

Q. WHY DIDN'T YOU JUST TELL HIM, I DON'T WANT TO?

A. I DID TELL HIM NO, BUT AT THAT POINT IN TIME THEY WERE INSISTING.

CROSS - SANDRA BARNES BY MR. PEPER

432

1 Q. DID HE EVER THREATEN YOU?

2 A. NO, NOT PHYSICALLY, BUT HE KEPT SAYING, I KNOW YOU  
3 KNOW SOMEBODY, AND ALSO, AT THAT TIME THEY HAD  
4 ALREADY GAVE ME A TWENTY PIECE ROCK.

5 Q. SO YOU FELT OBLIGATED?

6 A. THEY WEREN'T GOING TO LET ME GO.

7 Q. DO YOU REMEMBER TELLING DETECTIVE SPEARS THAT YOU  
8 FELT OBLIGATED BECAUSE THEY HAD BEEN GIVING YOU  
9 CRACK?

10 A. YES, BECAUSE THEY HAD BEEN GIVING ME THE CRACK.

11 Q. ALRIGHT. AND YOU ALSO TOLD DETECTIVE SPEARS THAT  
12 BROOKLYN HAD A GUN?

13 A. I, YES, I DID, THAT I SAW IT IN THE ROOM.

14 Q. WELL, THEN WHY DID YOU TELL DETECTIVE SPEARS THAT,  
15 I DIDN'T SEE ANYBODY ELSE WITH THE GUN BESIDES  
16 LENNIE MICKEY?

17 A. I TOLD MS. SPEARS AT THE TIME I WROTE THE  
18 STATEMENT, THAT THE STATEMENT WAS BEING MADE THAT  
19 I DID SEE MICKEY HANDLE THE GUN AND HAND IT TO  
20 SHAWN.

21 Q. NEGATIVE. THIS IS PAGE FIVE OF YOUR STATEMENT.  
22 WILL YOU READ THE HIGHLIGHTED PORTION FOR ME?

23 A. "I DID SEE A GUN WHILE WE WERE AT THE TRAVELERS  
24 INN. IT WAS A BLACK GUN AND IT WAS BIG AND IT HAD  
25 A WHEEL LIKE THING TO IT. BROOKLYN WAS THE ONLY

CROSS - SANDRA BARNES BY MR. PEPER

433

1 ONE I EVER SEEN, I SAW WITH IT. AS A MATTER OF  
2 FACT IT WAS LAYING OUT ON THE BED WHEN CHINA DOLL  
3 COME INTO THE ROOM."

4 Q. OKAY. THIS STATEMENT WAS GIVEN DECEMBER  
5 FOURTEENTH, ABOUT A MONTH AFTERWARDS, RIGHT?

6 A. YEAH.

7 Q. IS IT FAIR TO SAY THAT YOUR MEMORY OF THE EVENTS  
8 WERE A LOT BETTER FOUR WEEKS AFTER IT HAPPENED  
9 THAN TWO YEARS AFTER IT HAPPENED NOW, RIGHT?

10 A. PROBABLY, YES.

11 Q. NOW YOU TESTIFIED ON DIRECT IF I REMEMBER  
12 CORRECTLY THAT A FEW OF Y'ALL GOT INTO A VEHICLE  
13 TO GO KIND OF SCOPE THE BUDGET INN, OR CHECK OUT  
14 THE BUDGET INN?

15 A. WE ALL GOT IN THE SAME VEHICLE TO CHECK OUT THE  
16 BUDGET INN. ALANA POINTED OUT THE ROOM.

17 Q. OKAY. AND AT THAT POINT IN TIME WHO WAS IN THE  
18 CAR?

19 A. AT THAT POINT IN TIME IT WAS ME, SHAWN PHILLIPS,  
20 LENNIE MICKEY, ALANA NIESEN, I BELIEVE ANGELA WAS  
21 WITH US AT THAT TIME, TOO.

22 Q. YOU BELIEVE SO? SO, YOUR TESTIMONY IS THAT ALL  
23 FIVE OF YOU WERE IN THE CAR?

24 A. YES.

25 Q. THERE'S NO DOUBT IN YOUR MIND, THOUGH, THAT ALANA

CROSS - SANDRA BARNES BY MR. PEPER

434

1 WAS DRIVING?

2 A. RIGHT, BECAUSE IT WAS HER VEHICLE.

3 Q. WHY WOULD ALANA TELL THE JURY THAT IT WAS ONLY  
4 HERSELF DRIVING, LENNIE IN THE FRONT SEAT, AND YOU  
5 IN THE BACK SEAT?

6 SOLICITOR RUTLEDGE DURANT:  
7 OBJECTION, YOUR HONOR, THIS IS PITTING WITNESSES.

8 THE COURT: I SUSTAIN THAT.

9 Q. ARE YOU ABSOLUTE POSITIVE -- IT'S OKAY IF YOU'RE  
10 NOT -- ARE YOU ABSOLUTELY POSITIVE THAT ALL FIVE  
11 OF Y'ALL WERE IN THE CAR AND, WHEN YOU  
12 SPECIFICALLY WENT FOR ANGELA, I'M SORRY, FOR CHINA  
13 DOLL TO SHOW YOU THE ROOM?

14 A. I'M POSITIVE ALL FOUR OF US, I'M NOT QUITE SURE  
15 ABOUT ANGELA BUT I AM POSITIVE ALL FOUR OF US WAS  
16 IN THE CAR.

17 Q. OKAY. YOU WERE DEFINITELY IN THE BACK SEAT?

18 A. I WAS ALWAYS IN THE BACK SEAT.

19 Q. CHINA WAS DEFINITELY DRIVING?

20 A. CHINA DOLL WAS DEFINITELY DRIVING.

21 Q. LENNIE WAS DEFINITELY IN THE FRONT SEAT?

22 A. I DON'T THINK LENNIE WAS IN THE FRONT SEAT BECAUSE  
23 I THINK LENNIE WAS IN THE BACK SEAT WITH ME.  
24 SHAWN WAS IN THE FRONT SEAT.

25 Q. THIS WAS BEFORE OR AFTER YOU SMOKED THE CRACK



CROSS - SANDRA BARNES BY MR. PEPER

435

1 COCAINE?

2 A. THIS WAS BE -- AFTER THE -- WELL, ACTUALLY IT WAS  
3 DURING.

4 Q. SO YOU WERE SMOKING IN THE CAR?

5 A. NO, WE WEREN'T SMOKING IN THE CAR, WE HAD JUST GOT  
6 DONE, BUT WE STILL HAD SOME ON US.

7 Q. AND WHO SMOKED WITH YOU THAT TIME YOU'RE TALKING  
8 ABOUT RIGHT THERE?

9 A. ALANA, BECAUSE THEY GAVE THE REST OF WHAT THEY HAD  
10 TO ALANA.

11 Q. OKAY, SO -- BUT BEFORE THAT YOU SMOKED BY  
12 YOURSELF?

13 A. I SMOKED BY MYSELF.

14 Q. AND BEFORE THAT YOU HAD BEEN SMOKING EARLIER IN  
15 THE DAY?

16 A. RIGHT.

17 Q. AND THE NIGHT BEFORE?

18 A. RIGHT.

19 Q. DID YOU KNOCK ON THE DOOR OR NOT?

20 A. NO, I DIDN'T ACTUALLY HAVE TO KNOCK ON THE DOOR.

21 Q. WHY DID YOU TELL DETECTIVE SPEARS YOU DID?

22 A. BECAUSE I WAS SUPPOSED TO AND I DID HAVE MY HAND  
23 UP TO KNOCK ON THE DOOR, BUT THE GUY ALREADY HAD  
24 IT PULLED OPEN.

25 Q. DO YOU DENY TELLING DETECTIVE SPEARS THAT YOU DID?

CROSS - SANDRA BARNES BY MR. PEPPER

436

1 A. NO, I DID TELL HER I KNOCKED ON THE DOOR BECAUSE I  
2 TOLD HER ALSO THAT'S WHAT I WAS GUILTY OF, WAS  
3 KNOCKING ON THE DOOR.

4 Q. AND YOU WERE PUMPED UP WHEN YOU GAVE THE  
5 STATEMENT?

6 A. YEAH, I WAS HIGH UP.

7 Q. AS SOON AS YOU KNOCKED ON THE DOOR OR YOU WENT TO  
8 KNOCK ON THE DOOR, HE OPENED THE DOOR?

9 A. HE, YEAH, HE HAD ALREADY HAD THE DOOR, BASICALLY  
10 THAT'S WHAT, I DIDN'T REALLY ACTUALLY KNOCK  
11 PHYSICALLY ON THE DOOR.

12 Q. BUT YOU WENT TO KNOCK?

13 A. YEAH, I WENT TO KNOCK.

14 Q. AND AS SOON AS HE OPENED IT YOU TURNED - - -

15 A. NO, THEY PUSHED ME OUT OF THE WAY, BECAUSE THEY  
16 WERE DIRECTLY BEHIND ME.

17 Q. THEY, BEING - - -

18 A. SHAWN PHILLIPS - - -

19 Q. --- MICKEY AND D?

20 A. --- AND LENNIE. D IS THE SAME PERSON.

21 Q. WELL, I JUST, AGAIN, I'M JUST STILL CONFUSED AS TO  
22 WHY YOU PICKED DOMINICK LAMAR BALLOU OUT OF A  
23 LINEUP AS D, THE SAME PERSON THAT WAS WITH YOU  
24 THAT NIGHT?

25 A. WE DIDN'T, I FELT LIKE THAT WAS SHAWN, I FELT LIKE

CROSS - SANDRA BARNES BY MR. PEPPER

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1           THAT WAS THE PERSON THAT I ONLY KNEW AS D AT THAT  
2           TIME. I DID NOT KNOW THAT PERSON AT ALL.

3           Q.   WELL, LOOK AT THIS GUY, - - -

4           A.   I KNOW.

5           Q.   --- THIS DOESN'T LOOK ANYTHING LIKE SHAWN DOES IT?

6           A.   NO, IT DON'T, BUT FROM THE SIDE VIEW AT THAT POINT  
7           IN TIME I THOUGHT IT WAS.

8           Q.   YOU DO AGREE, THOUGH, THAT THIS GUY - - -

9           A.   IN THE - - -

10          Q.   --- LOOKS ABSOLUTELY NOTHING LIKE MY GUY?

11          A.   NO. YES, I DO AGREE WITH THAT. I DIDN'T - - -

12          Q.   AND YOU DO AGREE -- I'M SORRY. YOU DO AGREE THAT  
13          YOU TOLD DETECTIVE SPEARS THAT D - - -

14          A.   THAT'S WHO I KNEW AS D, YES.

15          Q.   --- BUT IN YOUR STATEMENT YOU SAID D AND MICKEY  
16          WERE WITH ME?

17          A.   YEAH, BUT I WAS USING, EVEN IN THE STATEMENT I  
18          USED MICKEY AS BROOKLYN BECAUSE THAT'S THEIR  
19          STREET NAMES.

20          Q.   WELL, I UNDERSTAND THAT WE'VE GOT A LOT OF STREET  
21          NAMES GOING ON HERE, I'M HAVING TROUBLE KEEPING  
22          THEM STRAIGHT MYSELF. WHAT WOULD HAVE HELPED IS  
23          IF YOU WOULD HAVE PUT ANYWHERE IN YOUR STATEMENT  
24          THAT SHAWN PHILLIPS WAS D. YOU NEVER DID THAT, DID  
25          YOU?

CROSS - SANDRA BARNES BY MR. PEPPER

438

1 A. NO, THEY DIDN'T, THEY NEVER ASKED -- AT THE TIME  
2 THAT I WAS DOING THE STATEMENT THEY DIDN'T ASK FOR  
3 REAL NAMES. I DIDN'T KNOW THEIR NAMES.

4 Q. EXACTLY, YOU DIDN'T EVEN KNOW - - -

5 A. WE USED OTHER NAMES. I ONLY KNEW STREET NAMES OFF  
6 THE STREET.

7 Q. EXACTLY. SO, AT THAT POINT IN TIME YOU HAD NO  
8 IDEA WHO SHAWN PHILLIPS WAS, DID YOU?

9 A. NO, BUT I'D JUST SEEN HIM AND I HAD TALKED WITH  
10 HIM. I HAD TALKED TWO WEEKS PRIOR BEFORE THE  
11 INCIDENT.

12 Q. WELL, THEN, WHY DID YOU PICK OUT DOMINICK LAMAR  
13 BALLOU?

14 A. BUT I DIDN'T KNOW HE WAS SHAWN PHILLIPS. I  
15 COULDN'T TELL YOU - - -

16 Q. EXACTLY. YOU ONLY KNEW A GUY NAMED D, - - -

17 A. AND I'M TELLING YOU - - -

18 Q. --- YOU DIDN'T KNOW SHAWN PHILLIPS, DID YOU?

19 A. HUH?

20 Q. YOU NEVER KNEW A SHAWN PHILLIPS, DID YOU?

21 A. NO, I NEVER KNEW A SHAWN - - -

22 Q. YOU NEVER KNEW HIS NAME WAS SHAWN PHILLIPS UNTIL  
23 YOU GOT IN JAIL?

24 A. NO, I DIDN'T, I FOUND OUT WHEN I WAS IN JAIL. AND  
25 I DIDN'T KNOW MICKEY'S NAME UNTIL I FOUND OUT WHEN

CROSS - SANDRA BARNES BY MR. PEPER

439

1 I WAS IN JAIL. I DIDN'T KNOW ALANA'S NAME UNTIL I  
2 FOUND OUT. I ONLY KNEW STREET NAMES.

3 Q. WHAT DID YOU GO BY?

4 A. B.G.

5 Q. WHICH IS BABY GIRL?

6 A. WHICH IS BABY GIRL. THAT'S ALL THEY KNEW ME AS.

7 Q. JUST TO MAKE SURE I UNDERSTAND THAT WHEN D AND  
8 MICKEY WERE BEHIND YOU, OKAY?

9 A. UH-HUH.

10 Q. TEN, TWENTY FEET, I'M ASSUMING THEY WEREN'T  
11 STANDING RIGHT NEXT TO YOU, WERE THEY?

12 A. NO, THEY WEREN'T RIGHT UP ON ME.

13 Q. RIGHT. OKAY.

14 A. BUT THEY WERE CLOSE ENOUGH.

15 Q. OKAY. BUT YOU ADMIT THAT IMMEDIATELY AFTER YOU  
16 KNOCKED OR ATTEMPTED TO KNOCK THAT D AND MICKEY  
17 THEN PUSHED YOU OUT OF THE WAY AND - - -

18 A. MICKEY PUSHED ME OUT OF THE WAY AND WENT IN THE  
19 ROOM FIRST.

20 Q. ALRIGHT. NOW, YOUR TESTIMONY IS THAT YOU RAN BACK  
21 - - -

22 A. YES.

23 Q. --- TO THE TRAVELERS INN?

24 A. YEAH, I RUN DOWN THE STEPS, WENT THROUGH THE  
25 PARKING LOT, THROUGH THE BEST WESTERN PARKING LOT,

CROSS - SANDRA BARNES BY MR. PEPER

440

1 UP TO THE TRAVELERS LODGE PARKING LOT, TO THEIR  
2 ROOM.

3 Q. WHY DIDN'T YOU JUST GET BACK IN THE CAR?

4 A. THEY WANTED ME TO BUT I DIDN'T WANT TO.

5 Q. YOU GOT BACK TO THE ROOM, ANGELA AND CHINA WERE  
6 STILL SMOKING?

7 A. CHINA DOLL, CHINA DOLL WAS THE ONLY ONE SMOKING  
8 THAT NIGHT.

9 Q. DID YOU GET A HIT?

10 A. NO.

11 Q. YOU WERE GOOD TO GO AT THAT POINT?

12 A. WELL, THEY DIDN'T HAVE ANY.

13 MR. PEPER: THE COURT'S INDULGENCE,  
14 YOUR HONOR.

15 Q. DID YOU TELL DETECTIVE SPEARS THAT YOU SAW THE GUN  
16 PRIOR TO GOING OVER TO THE BUDGET?

17 A. RIGHT.

18 Q. DO YOU REMEMBER TELLING HER THAT BROOKLYN HAD THE  
19 GUN?

20 A. YES. BROOKLYN WAS REALLY THE MAIN ONE WITH THE  
21 HAND ON THE GUN IN THE ROOM.

22 Q. DID YOU UNDERLINE THAT IN YOUR STATEMENT?

23 A. NO, I DIDN'T UNDERLINE THAT.

24 Q. WHERE YOU STATED, "I WILL SAY BEFORE WE LEFT THE  
25 TRAVELERS INN BROOKLYN HAD THE GUN." WHO

CROSS - SANDRA BARNES BY MR. PEPER

441

1 UNDERLINED, "BROOKLYN HAD THE GUN."?

2 A. MS. SPEARS, BECAUSE SHE ACTUALLY WROTE THIS. THIS  
3 WASN'T IN, I JUST SAID, I TALKED ABOUT IT AND SHE  
4 WROTE EVERYTHING DOWN.

5 Q. DID YOU GO ON AND SAY THAT, "I DIDN'T SEE THE GUN  
6 AFTER THAT."?

7 A. YEAH.

8 MR. PEPER: THAT'S ALL I HAVE,  
9 JUDGE, THANK YOU.

10 THE COURT: REDIRECT?

11 SOLICITOR RUTLEDGE DURANT: THANK  
12 YOU, JUDGE, BRIEFLY.

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

REDIRECT - SANDRA BARNES BY SOL. RUTLEDGE DURANT

442

REDIRECT EXAMINATION OF SANDRA BARNES

BY SOLICITOR RUTLEDGE DURANT:

Q. YOU SAID THAT MS. SPEARS WROTE THE STATEMENT FOR  
YOU?

A. YEAH.

Q. AND Y'ALL WENT OVER IT FOR ACCURACY, RIGHT?

A. YEAH.

Q. AND THEN YOU SIGNED IT?

A. YES, I SIGNED IT.

Q. SO, YOU DIDN'T WRITE YOUR OWN STATEMENT?

A. I DIDN'T WRITE MY OWN STATEMENT, SHE WROTE WHAT I  
WAS, SHE TOLD ME JUST TALK ABOUT IT, AND THAT'S  
WHAT I DID. A LOT OF STUFF SHE DIDN'T WRITE DOWN.

Q. BUT IT WAS PRETTY ACCURATE, FOR YOU TO SIGN IT?

A. PRETTY ACCURATE, YEAH.

Q. BUT YOU CAN MISS SOME THINGS, IS THAT RIGHT?

A. YEAH.

Q. AND THIS IS A, THIS IS YOUR IDENTIFICATION OF D, -

- -

A. YEAH.

Q. --- BUT IT'S REALLY DOMINICK BALLOU?

A. YEAH.

Q. AND I BELIEVE YOU SAID ON CROSS-EXAMINATION THAT  
YOU IDENTIFIED THIS MAN AS THE MAN YOU KNEW AS D?

A. AS D.



REDIRECT - SANDRA BARNES BY SOL. RUTLEDGE DURANT

443

1 Q. WHY?

2 A. BECAUSE I THOUGHT THAT WAS THE PERSON THAT'S KNOWN  
3 AS SHAWN PHILLIPS.

4 Q. DID YOU SAY IT BECAUSE OF HIS SIDE VIEW?

5 A. YES, I DID.

6 Q. NOW, LET ME SHOW YOU ANOTHER PICTURE AND ASK YOU,  
7 DO YOU RECOGNIZE THAT PERSON?

8 A. YES, THAT IS THE PERSON I KNEW AS D, THAT CAME AND  
9 PICKED ME UP FROM MY MOTEL.

10 Q. NOW, IS THIS WHAT HE LOOKED LIKE IN NOVEMBER,  
11 NOVEMBER THE SIXTH AND SEVENTH WHEN YOU KNEW HIM?

12 A. YES, THIS WAS EXACTLY WHAT HE LOOKED LIKE.

13 Q. AND YOU SAID YOU SUBSEQUENTLY IDENTIFIED SOMEBODY  
14 THROUGH A - - -

15 A. TWO WAY MIRROR.

16 Q. --- TWO WAY MIRROR? AND THAT WAS WHO?

17 A. SHAWN PHILLIPS, KNOWN AS D, THIS PERSON HERE.

18 Q. NOW, WHEN YOU IDENTIFIED DOMINICK BALLOU AS D DID  
19 YOU THINK THAT WAS REALLY D?

20 A. YES, I DID, AT THE TIME I DID.

21 Q. AND WHEN YOU IDENTIFIED THE PERSON THROUGH THE TWO  
22 MIRROR AS D, DID YOU THINK THAT THAT WAS THE SAME  
23 PERSON YOU HAD IDENTIFIED?

24 A. YES.

25 Q. DO THESE PEOPLE LOOK SIMILAR TO YOU?

REDIRECT - SANDRA BARNES BY SOL. RUTLEDGE DURANT

444

1 A. NO, THEY DON'T, THEY DON'T LOOK ALIKE IN THE FACE.

2 Q. WHAT ABOUT THE SIDE PROFILE?

3 A. THE SIDE PROFILE, YEAH, WITH THE HAIR, BECAUSE  
4 THAT'S WHAT I WAS GOING AS, WAS WITH THE HAIR,  
5 BECAUSE AT THE TIME HE HAD DREGS. AND I DID  
6 MENTION THAT TO MS. SPEARS WHEN THEY WERE SHOWING  
7 ME ALL THOSE PHOTOGRAPHS.

8 Q. ARE YOU POSITIVE THAT THIS MAN OVER HERE IS THE  
9 GUY NAMED D?

10 A. YES, YES, I AM.

11 Q. IS THIS MAN OVER HERE THE MAN WHO WAS IN ON THE  
12 ARMED ROBBERY?

13 A. YES.

14 SOLICITOR RUTLEDGE DURANT: THANK  
15 YOU, MA'AM.

16 THE COURT: RECROSS?

17 MR. PEPPER: THANK YOU, JUDGE.

18 (NOTE: Blank lines on this page do not indicate any  
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21 required by the Court. See next ensuing page for  
22 sequential continuation of record.)

RECROSS - SANDRA BARNES BY MR. PEPER

445

RECROSS-EXAMINATION OF SANDRA BARNES

BY MR. PEPER:

Q. NOWHERE IN YOUR STATEMENT, SANDRA, DO YOU TELL  
SPEARS THE REAL NAMES OF THE PEOPLE WITH THE  
NICKNAMES, RIGHT?

A. NO, I DID NOT BECAUSE I DID NOT KNOW THEIR NAMES.

Q. BUT YOU PICKED OUT LENNIE MICKEY AS BROOKLYN?

A. AS BROOKLYN.

Q. AND YOU PICKED OUT ANGELA AGAGAS - - -

A. AGAGAS, YEAH.

Q. OKAY. AND YOU PICKED OUT ALANA NIESEN AS CHINA  
DOLL?

A. AS CHINA DOLL.

Q. AND YOU PICKED OUT DOMINICK LAMAR BALLOU AS D?

A. YES.

Q. DID YOU SAY JUST NOW THAT THERE WERE A LOT OF  
THINGS YOU TOLD DETECTIVE SPEARS THAT SHE DIDN'T  
WRITE DOWN IN HER STATEMENT?

A. YEAH, BECAUSE I WAS TALKING REAL FAST. SO, SHE  
WAS TRYING TO JOT EVERYTHING DOWN.

Q. YOU WERE HIGH, RIGHT?

A. YEAH, I WAS HIGH.

MR. PEPER: THAT'S ALL I HAVE.

THANK YOU, JUDGE.

THE COURT: THANK YOU, MA'AM, YOU

RECROSS - SANDRA BARNES BY MR. PEPER

446

1 MAY STEP DOWN.

2 CALL YOUR NEXT WITNESS, PLEASE.

3 SOLICITOR RUTLEDGE DURANT: THE  
4 STATE CALLS DETECTIVE ERIC JOURDAN.

5 CLERK: PLEASE PLACE YOUR LEFT HAND  
6 ON THE BIBLE AND RAISE YOUR RIGHT HAND.

7 (Whereupon, Eric Michael Jourdan  
8 is duly sworn.)

9 CLERK: PLEASE HAVE A SEAT, PLEASE  
10 STATE YOUR FULLY NAME TO THE COURT AND SPELL YOUR LAST  
11 NAME.

12 WITNESS: ERIC MICHAEL JOURDAN.

13 (NOTE: Blank lines on this page do not indicate any  
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16 required by the Court. See next ensuing page for  
17 sequential continuation of record.)

DIRECT - ERIC M. JOURDAN BY SOL. RUTLEDGE DURANT

447

DIRECT EXAMINATION OF ERIC M. JOURDAN

BY SOLICITOR RUTLEDGE DURANT:

Q. DETECTIVE, WHERE ARE YOU EMPLOYED?

A. FOR THE CITY OF NORTH CHARLESTON POLICE  
DEPARTMENT.

Q. AND HOW LONG HAVE YOU BEEN EMPLOYED WITH THE CITY  
OF NORTH CHARLESTON?

A. I'VE BEEN A POLICE OFFICER IN CHARLESTON COUNTY  
FOR THE PAST TWENTY-TWO YEARS. THE LAST TEN OF  
THOSE I'VE BEEN EMPLOYED BY THE CITY OF NORTH  
CHARLESTON.

Q. AND WHAT IS YOUR CURRENT POSITION?

A. I'M A DETECTIVE SERGEANT, I SUPERVISE THE CRIMES  
AGAINST PERSONS UNIT AND THE SPECIAL  
INVESTIGATIONS DIVISION OF THE NORTH CHARLESTON  
POLICE DEPARTMENT.

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

A. I WAS A DETECTIVE ASSIGNED TO THE PERSONS CRIMES  
UNIT.

Q. IN YOUR CAPACITY AS A DETECTIVE WITH THE NORTH  
CHARLESTON POLICE DEPARTMENT DID YOU HAVE AN  
OCCASION TO COME IN CONTACT WITH SANDRA BARNES ON  
DECEMBER THE FOURTEENTH, TWO THOUSAND AND SIX?

A. YES, I DID.

DIRECT - ERIC M. JOURDAN BY SOL. RUTLEDGE DURANT

448

1 Q. WHERE DI YOU FIND MS. BARNES?

2 A. SHE WAS WALKING ALONG SAUL ROAD IN THE AREA OF  
3 SAUL AND MIDLAND PARK ROAD.

4 Q. DO YOU KNOW WHAT HER NICKNAME IS?

5 A. WE WERE TOLD, B.G.

6 Q. WHO WAS WITH YOU WHEN YOU ENCOUNTERED HER?

7 A. DETECTIVE DONNA SPEARS.

8 Q. WHERE WAS SHE TAKEN?

9 A. WE TOOK HER TO NORTH CHARLESTON POLICE DEPARTMENT  
10 HEADQUARTERS IN THE OFFICES OF THE DETECTIVE  
11 DEPARTMENT.

12 Q. WAS SHE ADVISED OF HER MIRANDA RIGHTS?

13 A. YES, SHE WAS.

14 Q. BY WHOM?

15 A. BY DETECTIVE SPEARS.

16 Q. WHO INTERVIEWED HER?

17 A. DETECTIVE SPEARS.

18 Q. AND WHAT WERE YOU DOING WHILE DETECTIVE SPEARS  
19 INTERVIEWED MS. BARNES?

20 A. I HAD SPOKE WITH THE LEAD DETECTIVE ON THE CASE,  
21 DETECTIVE HILL, JAMES HILL. HE HAD PROVIDED ME  
22 WITH A GROUP OF PHOTOGRAPHS THAT WE WERE SHOWING  
23 TO WITNESSES IN THIS INVESTIGATION, AND HE ASKED  
24 ME TO SHOW THOSE PHOTOGRAPHS TO MS. BARNES.

25 Q. DID MS. BARNES PROVIDE YOU WITH THE NAMES OR

DIRECT - ERIC M. JOURDAN BY SOL. RUTLEDGE DURANT

449

1 ALIASES OF PEOPLE INVOLVED IN THE MURDER?

2 A. YES, SHE HAD MENTIONED THE NAME, CHINA DOLL,  
3 ANGELA, SHE HAD MENTIONED D AND BROOKLYN, AND I  
4 ALSO BELIEVE AT ONE POINT, I CAN'T REMEMBER IF IT  
5 WAS HER, BUT I OVERHEARD THE NAME, PIT, AS WELL  
6 IN SOME CONVERSATION.

7 Q. WERE YOU NOT AWARE OF WHETHER OR NOT MS. BARNES  
8 PROVIDED THE NAME OF PIT?

9 A. NO, I JUST REMEMBER AT SOME POINT I HEARD THE  
10 NAME, PIT, BEING USED AS WELL BY THE PEOPLE FINAL  
11 INVOLVED.

12 Q. WAS SANDRA BARNES ABLE TO IDENTIFY ANY OF THE  
13 PEOPLE SHE SAID WERE INVOLVED IN THE MURDER?

14 A. YES, SHE WAS SHOWN SOME PHOTOGRAPHIC LINEUPS BY  
15 DETECTIVE SPEARS.

16 Q. WHO WAS SHE ABLE TO IDENTIFY?

17 A. SHE IDENTIFIED LENNIE MICKEY, ANGELA AGAGAS, ALANA  
18 NIESEN, I BELIEVE THOSE WERE THE PHOTO LINEUPS  
19 THAT SHE WAS SHOWN.

20 Q. WHAT ABOUT -- HOW WERE THESE PHOTO LINEUP  
21 IDENTIFICATIONS CONDUCTED?

22 A. WELL, THEY ARE SIX PICTURE PHOTOGRAPHIC LINEUPS,  
23 WE HAVE A FORM THAT WE READ TO THOSE WITNESSES OR  
24 THE VICTIM WHO IS VIEWING THE LINEUP. IT'S  
25 EXPLAINED WHAT THEY ARE VIEWING. THEY ARE ASKED

DIRECT - ERIC M. JOURDAN BY SOL. RUTLEDGE DURANT

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1 TO CONCENTRATE ON THE FACE OF THE PERSON IN THE  
2 PHOTOGRAPH, NOT TO PAY MUCH ATTENTION TO THE HAIR  
3 STYLE OR FACIAL HAIR IN REGARD TO A MALE WHOSE  
4 PICTURE IS IN THE PHOTOGRAPH. THEY'RE ASKED TO  
5 VIEW THE PHOTOGRAPHS AND TO PICK OUT THE PERSON  
6 THAT RESEMBLES OR WHO THEY WOULD IDENTIFY AS THE  
7 PERSON THAT THEY WITNESSED COMMIT A CRIME.

8 Q. AND HOW MANY PHOTOGRAPHS ARE IN THESE PHOTOGRAPHIC  
9 IDS?

10 A. SIX PHOTOGRAPHS IN A PHOTO LINEUP.

11 Q. AND WAS MS. BARNES ABLE TO PICK OUT LENNIE MICKEY  
12 OUT OF THE SIX PERSON PHOTOGRAPHIC LINEUP?

13 A. YES, SHE WAS.

14 Q. WAS SHE ABLE TO PICK OUT ANGELA AGAGAS OUT OF THE  
15 SIX PERSON PHOTOGRAPHIC LINEUP?

16 A. YES, SHE WAS.

17 Q. DID SHE EVER IDENTIFY SOMEBODY KNOWN AS D?

18 A. YES, SHE DID.

19 Q. AND WHO DID SHE IDENTIFY AS D?

20 A. SHE IDENTIFIED A PHOTOGRAPH OF A BLACK MALE BY THE  
21 NAME OF DOMINICK BALLOU.

22 SOLICITOR RUTLEDGE DURANT: PLEASE  
23 MARK THIS.

24 COURT REPORTER: ID?

25 SOLICITOR RUTLEDGE DURANT: YES,



DIRECT - ERIC M. JOURDAN BY SOL. RUTLEDGE DURANT

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1 MA'AM.

2 (State's Exhibit Thirteen,  
3 Photos of Dominick Ballou,  
4 marked for identification.)

5 SOLICITOR RUTLEDGE DURANT: THANK  
6 YOU, MA'AM.

7 Q. I'M SHOWING YOU WHAT THE STATE HAS LABELED STATE'S  
8 EXHIBIT THIRTEEN FOR IDENTIFICATION ONLY. DO YOU  
9 RECOGNIZE THAT?

10 A. YES, I DO.

11 Q. HOW DO YOU RECOGNIZE THAT?

12 A. THIS IS A PHOTOGRAPH OF DOMINICK BALLOU. I'M  
13 SORRY, I CAN'T READ THE BOTTOM PORTION, IT'S BEEN  
14 CUT OFF, BUT IT APPEARS TO STATE THE PERSON AS D  
15 UNDERNEATH THE PROFILE PHOTO ARE THE INITIALS,  
16 S.B., AND THEN THE DATE, TWELVE/FOURTEEN/O-SIX,  
17 AND TWO:FIFTY P.M. I RECOGNIZE THE  
18 TWO/FOURTEEN/O-SIX, TWO:FIFTY P.M., AS MY  
19 HANDWRITING.

20 Q. DID YOU SHOW THIS TO SANDRA BARNES?

21 A. YES, I DID.

22 Q. AND IS THIS HER IDENTIFICATION OF WHO SHE SAYS IS  
23 D?

24 A. YES, IT IS.

25 Q. AND IS THIS PHOTO IDENTIFICATION DIFFERENT FROM

DIRECT - ERIC M. JOURDAN BY SOL. RUTLEDGE DURANT

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1 THE SETUP THAT SHE IDENTIFIED LENNIE MICKEY AND  
2 ANGELA AGAGAS IN?

3 A. YES, IT IS.

4 Q. AND HOW IS IT DIFFERENT?

5 A. IT'S ONLY A FRONT SHOT AND A PROFILE SHOT OF ONE  
6 PERSON.

7 Q. ARE YOU AWARE OF WHETHER THERE WAS SUBSEQUENT  
8 IDENTIFICATION BY SANDRA BARNES OF SOMEBODY SHE  
9 KNOWS, OR SAID SHE KNEW AS D?

10 A. YES, THERE WAS.

11 Q. CAN YOU TELL THE JURY ABOUT THAT, SIR?

12 A. DURING THE INTERVIEW WITH MS. BARNES BY DETECTIVE  
13 SPEARS I WAS APPROACHED BY DETECTIVE HILL AND WAS  
14 TOLD THAT SHAWN PHILLIPS HAD BEEN BROUGHT IN FOR  
15 QUESTIONING, AND THAT HE WAS IN THE INTERVIEW  
16 ROOM. DETECTIVE HILL ASKED ME IF I WOULD BRING  
17 MS. BARNES INTO THE OBSERVATION ROOM, WHICH IS  
18 BETWEEN THE TWO INTERVIEW ROOMS, WHICH HAS A TWO  
19 WAY MIRROR, TO SEE IF SHE COULD IDENTIFY THE  
20 PERSON THAT WAS IN THE INTERVIEW ROOM. I  
21 INTERRUPTED THE INTERVIEW WITH DETECTIVE SPEARS, I  
22 ASKED, MS. BARNES TO ACCOMPANY ME INTO THE  
23 OBSERVATION ROOM. ONCE WE ENTERED THE OBSERVATION  
24 ROOM SHE LOOKED THROUGH THE TWO WAY MIRROR, SHE  
25 POINTED AND SHE SAID, THAT'S D, THAT'S D.

DIRECT - ERIC M. JOURDAN BY SOL. RUTLEDGE DURANT

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1 Q. AND WHO WAS SHE POINTING AT?

2 A. SHAWN PHILLIPS.

3 Q. WOULD YOU PLEASE POINT TO THE PERSON SHE WAS  
4 POINTING AT THROUGH THAT MIRROR?

5 A. RIGHT THERE, THE GUY OVER THERE.

6 Q. WHAT IS HE WEARING?

7 A. IT APPEARS TO BE A WHITE OR BEIGE SHIRT, A STRIPED  
8 TIE AND A BEIGE SUIT.

9 Q. WAS THIS THE MAN BEHIND THE TWO WAY MIRROR?

10 A. YES, SIR.

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

14 THE COURT: CROSS-EXAM.

15 MR. PEPER: MAY IT PLEASE THE COURT.

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

CROSS - ERIC M. JOURDAN BY MR. PEPER

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CROSS-EXAMINATION OF ERIC M. JOURDAN

BY MR. PEPER:

Q. DETECTIVE, I'M MARK PEPER, HOW ARE YOU?

A. FINE, THANK YOU.

Q. THERE WAS ONLY ONE GUY ON THE OTHER SIDE OF THAT MIRROR THAT SHE POSSIBLY COULD HAVE PICKED OUT, CORRECT?

A. THAT IS CORRECT, SIR.

Q. AND HE WAS A BLACK MALE?

A. YES, HE WAS.

Q. SHE DIDN'T PICK OUT -- WELL, LET ME MAKE SURE I HAVE THIS STRAIGHT, YOU INTERRUPTED WHATEVER WAS GOING ON SO THAT SANDRA BARNES COULD COME AND IDENTIFY SHAWN PHILLIPS AS D?

A. NO, THAT WAS NOT MY INTENT FOR HER TO IDENTIFY HIM AS D, IT WAS SIMPLY THE REQUEST OF DETECTIVE HILL TO HAVE HER LOOK AT THAT PERSON TO SEE SHE RECOGNIZED THAT PERSON.

Q. OKAY. SO, YOU SAID, SANDRA, I WANT TO TAKE YOU IN HERE TO SEE IF YOU RECOGNIZE THIS PERSON AS D?

A. I DON'T REMEMBER MY EXACT WORDING, I THINK I JUST ASKED HER TO STEP INTO THE ROOM WITH ME. I DON'T BELIEVE I DIRECTED HER AS TO WHAT SHE WOULD BE DOING.

Q IT'S POSSIBLE THAT SHE WAS UNDER THE IMPRESSION

CROSS - ERIC M. JOURDAN BY MR. PEPER

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1 SHE WAS GOING INTO A TWO WAY MIRROR ROOM TO  
2 IDENTIFY D?

3 A. I DON'T THINK SHE KNEW SHE WAS GOING TO IDENTIFY  
4 D, I JUST ASKED HER TO COME INTO THE OBSERVATION  
5 ROOM.

6 Q. HILL ASKED YOU TO GET HER?

7 A. YES.

8 Q. HILL ASKED YOU TO GO GET HER SO THAT SHE COULD  
9 COME AND IDENTIFY D AS SHAWN PHILLIPS?

10 A. NO. HE ASKED ME TO TAKE HER INTO THE OBSERVATION  
11 ROOM TO SEE IF SHE COULD IDENTIFY THE PERSON WHO  
12 WAS IN THE INTERVIEW ROOM.

13 Q. ON THE OTHER SIDE OF THE MIRROR WHO ELSE WAS IN  
14 THERE BESIDES MY CLIENT?

15 A. I BELIEVE IT WAS JUST YOUR CLIENT.

16 Q. JUST MY CLIENT?

17 A. YES.

18 Q. NO OTHER BLACK MALES?

19 A. NO.

20 Q. NO OTHER WHITE MALES?

21 A. NO.

22 Q. NOBODY?

23 A. NOBODY.

24 Q. YOU STATED IN YOUR EXAMINATION ON THE BOTTOM OF  
25 THAT PAGE THAT THERE'S A DATE ON THERE?

CROSS - ERIC M. JOURDAN BY MR. PEPER

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1 A. YES, SIR.

2 Q. IN YOUR HANDWRITING?

3 A. YES.

4 Q. YOU TESTIFIED IT WAS TWO/FOURTEEN, IS THAT  
5 TWELVE/FOURTEEN?

6 A. I APOLOGIZE FOR THAT, IT WAS TWELVE/FOURTEEN, THAT  
7 WAS DECEMBER FOURTEEN, DECEMBER FOURTEEN, TWO  
8 THOUSAND AND SIX.

9 Q. ROUGHLY A MONTH AFTER THE ROBBERY OCCURRED?

10 A. YES.

11 Q. ALRIGHT. AND HOW MUCH TIME TRANSPIRED AFTER THAT  
12 BETWEEN THE TIME SHE PICKED DOMINICK BALLOU AS D  
13 AND WHEN YOU TOOK HER INTO THE TWO WAY MIRROR  
14 ROOM?

15 A. I DO NOT RECALL THE EXACT LENGTH OF TIME. I  
16 BELIEVE THIS PHOTOGRAPH WAS SHOWN, WELL, I'VE GOT  
17 ON HERE TWO:FIFTY P.M., I DON'T RECALL EXACTLY  
18 WHAT TIME HER INTERVIEW BEGAN WITH DETECTIVE  
19 SPEARS, BUT I DON'T BELIEVE IT WAS MORE THAN  
20 POSSIBLY TWENTY MINUTES, FIFTEEN MINUTES, I CAN'T  
21 BE CERTAIN, BUT IT WAS IN THE SAME TIME FRAME OF  
22 HER INTERVIEW.

23 Q. REGARDLESS OF HOW MUCH TIME IT WAS, BY THE TIME  
24 YOU, OR HILL INSTRUCTED YOU TO BRING HER IN, SHE  
25 WAS O FOR ONE IN PICKING OUT THE RIGHT PERSON AS D

CROSS - ERIC M. JOURDAN BY MR. PEPER

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1 AT THAT POINT?

2 A. RIGHT.

3 Q. SHE HAD IDENTIFIED THIS PHOTOGRAPH AS THE PERSON,  
4 D?

5 A. RIGHT.

6 Q. BUT IT'S SAFE TO SAY THAT Y'ALL KNEW THAT THAT  
7 WASN'T SHAWN PHILLIPS THAT SHE HAD PICKED OUT AND  
8 SO YOU WANTED TO GIVE HER ANOTHER CHANCE?

9 A. I KNEW SHE HAD IDENTIFIED THE PERSON, DOMINICK  
10 BALLOU IN THIS PHOTOGRAPH, I WASN'T AWARE OF WHO  
11 SHAWN PHILLIPS WAS AT THAT TIME. I WASN'T  
12 ACTIVELY INVOLVED IN THE INVESTIGATION SO I WASN'T  
13 SURE.

14 Q. WHEN YOU ASKED HER ORIGINALLY TO SEE IF SHE COULD  
15 IDENTIFY, WHO HAPPENED TO BE MR. BALLOU, AS D, DID  
16 YOU GIVE HER ANY INSTRUCTIONS?

17 A. NO. AT THIS TIME WE WERE SHOWING THIS TYPE OF  
18 PHOTOGRAPH, WE JUST HAD A GROUP OF PHOTOGRAPHS  
19 THAT WERE SIMILAR TO THIS THAT SHOWED A FRONT VIEW  
20 AND PROFILE VIEW. THESE WERE THE TYPES OF  
21 PHOTOGRAPHS WE WERE SHOWING HER AT THAT POINT.

22 Q. SO, YOU JUST THREW IT IN FRONT OF HER WITHOUT ANY  
23 DIRECTIONS OR INSTRUCTIONS ON HOW TO GO ABOUT  
24 PICKING PEOPLE OUT IN LINEUPS?

25 A. THIS WASN'T A LINEUP, SO NO, I DID NOT GIVE HER

1 THE SAME INSTRUCTIONS THAT I WOULD HAVE GIVEN  
2 SOMEBODY THAT I WAS SHOWING A PAIRED SIX PHOTO  
3 LINEUP.

4 Q. I'VE GOT YOU. SO, THE INSTRUCTIONS THAT YOU GAVE  
5 TO HER WITH REGARDS TO PICKING OUT LENNIE MICKEY,  
6 ANGELA AGAGAS AND ALANA NIESEN WERE NOT THE SAME  
7 INSTRUCTIONS YOU GAVE HER WHEN SHE PICKED OUT  
8 DOMINICK BALLOU AS D?

9 A. NO.

10 Q. AND DO YOU RECALL WHAT ORDER THOSE LINEUPS WERE  
11 GIVEN IN?

12 A. NO, I DO NOT.

13 Q. IS IT POSSIBLE, ACCORDING TO YOUR RECOLLECTION,  
14 THAT SHE PICKED OUT D AT THE END, AFTER SHE HAD  
15 ALREADY PICKED OUT THE OTHER THREE?

16 A. I DON'T RECALL.

17 Q. OKAY. WHEN YOU HAD HER PICK OUT LENNIE MICKEY,  
18 CHINA DOLL AND ANGELA AGAGAS, DID YOU GIVE HER  
19 INSTRUCTIONS AT THAT POINT?

20 A. I BELIEVE THE INSTRUCTION SHEET WAS THERE, I  
21 BELIEVE DETECTIVE SPEARS WAS ACTUALLY THE ONE WHO  
22 GAVE HER THE INSTRUCTIONS ON THOSE LINEUPS.

23 Q. OKAY. YOU DO RECALL, THOUGH THAT INSTRUCTIONS  
24 WERE GIVEN?

25 A. I BELIEVE THEY WERE, YES.



CROSS - ERIC M. JOURDAN BY MR. PEPER

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1                    THE COURT: WERE YOU IN THE ROOM?

2            A.    I BELIEVE I WAS, YOUR HONOR. AT ONE POINT SHE WAS  
3                   NOT IN AN INTERVIEW ROOM. I THINK WHEN THOSE  
4                   LINEUPS WERE SHOWN SHE WAS SITTING OUT IN OUR  
5                   OFFICE AT OUR DESK WHEN THOSE LINEUPS WERE SHOWN,  
6                   AND I BELIEVE HER STATEMENT WAS ACTUALLY TAKEN IN  
7                   AN INTERVIEW ROOM.

8            Q.    WHAT ARE TYPICAL INSTRUCTIONS THAT ARE GIVEN TO  
9                   WITNESSES IN A PHOTOGRAPHIC LINEUP?

10          A.    AGAIN, WE HAVE A PREPARED FORM THAT EXPLAINS THE  
11                  PROCEDURE. THEY ARE ASKED TO VIEW EACH  
12                  PHOTOGRAPH, TO CONCENTRATE I BELIEVE ON THE FACE,  
13                  TO NOT LEND TOO MUCH TO A HAIR STYLE, FACIAL HAIR,  
14                  AND TO CONCENTRATE ON THE FACIAL FEATURES, AND IF  
15                  THEY RECOGNIZE, THEY CAN IDENTIFY THE PERSON TO,  
16                  ON THE FORM THERE'S A BLOCK WHERE THEY CAN WRITE  
17                  THE NUMBER OF THE PERSON'S PHOTO -- THE NUMBER OF  
18                  THE PHOTOGRAPH OF THE PERSON THEY WANT TO  
19                  IDENTIFY, AND THERE'S A SPACE FOR THEM TO WRITE  
20                  ANY COMMENT THAT THEY WISH, AND THEN THEY'RE ASKED  
21                  TO SIGN IT.

22          Q.    ISN'T IT TRUE THAT IT'S OKAY TO SIMPLY TELL THE  
23                  OFFICER, I DON'T SEE THIS PARTICULAR PERSON HERE?

24          A.    YES.

25          Q.    AND THAT HAPPENS OFTEN?

CROSS - ERIC M. JOURDAN BY MR. PEPER

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1 A. YES, IT DOES.

2 Q. YOU DON'T GET UPSET, YOU DON'T GET MAD, YOU  
3 APPRECIATE THEIR HONESTY?

4 A. CERTAINLY.

5 Q. THESE LINEUPS WITH REGARDS TO LENNIE, AGAGAS, AND  
6 CHINA DOLL, WERE A SIX PERSON LINEUP WITH SIX  
7 DIFFERENT PEOPLE, CORRECT?

8 A. CORRECT.

9 Q. HOWEVER, WHEN SHE PICKED OUT D THERE IS EVEN MORE  
10 THAN ONE PICTURE OF DOMINICK LAMAR BALLOU ON  
11 THERE, CORRECT? THERE IS A SIDE VIEW AND - - -

12 A. THERE IS A PROFILE AND A FRONT SHOT, YES.

13 Q. SO, SHE HAD MORE THAN ONE OPPORTUNITY TO ELIMINATE  
14 THAT GENTLEMAN AS D?

15 A. I SUPPOSE SHE COULD HAVE, YES.

16 Q. WELL, SHE HAD A CHANCE TO LOOK AT HIS FRONT AND  
17 SAY, NO, THAT'S NOT D, AND A SIDE VIEW AND SAY,  
18 NO, THAT'S NOT D, BUT SHE DIDN'T DO THAT, DID SHE?

19 A. NO, SIR, SHE DID NOT.

20 Q. SHE SAID, THAT'S D?

21 A. YES, SIR.

22 Q. AND SHE WROTE ON THE BOTTOM, THIS IS THE PERSON I  
23 KNOW AS D?

24 A. THAT'S CORRECT.

25 MR. PEPER: THAT'S ALL I HAVE, YOUR

1 HONOR, THANK YOU.

2 THE COURT: ANY REDIRECT?

3 SOLICITOR RUTLEDGE DURANT: NO  
4 REDIRECT, JUDGE.

5 THE COURT: ALRIGHT. YOU CAN STEP  
6 DOWN.

7 WITNESS: THANK YOU, YOUR HONOR.

8 THE COURT: ALRIGHT, LADIES AND  
9 GENTLEMEN, WE'RE GOING TO STOP FOR LUNCH AT THIS TIME.  
10 WE'LL START BACK AT TWO O'CLOCK. SO, PLEASE BE BACK IN  
11 THE JURY ROOM AT TWO O'CLOCK, PLEASE DO NOT TALK ABOUT  
12 THE CASE.

13 (Whereupon, the jury leaves  
14 the courtroom.)

15 (Recess)

16 THE COURT: IS THE STATE READY?

17 SOLICITOR RUTLEDGE DURANT: WE DO  
18 HAVE OUR WITNESS READY, YOUR HONOR.

19 THE COURT: IS THE DEFENSE READY?

20 MR. PEPPER: YOUR HONOR, I WOULD LIKE  
21 TO TALK TO YOU ABOUT, WE'RE GETTING READY TO GET INTO A  
22 LOT OF THE TESTIMONY THAT YOU HEARD IN CAMERA WITH  
23 REGARDS TO THE JACKSON V. DENNO.

24 THE COURT: RIGHT.

25 MR. PEPPER: I REALLY FEEL LIKE IT

1 WOULD BENEFIT MY CLIENT HERE IF THE WITNESSES WERE  
2 SEQUESTERED. I THINK THERE'S A LOT OF OVERLAPPING  
3 TESTIMONY.

4 THE COURT: ANY OBJECTION FROM THE  
5 STATE?

6 SOLICITOR RUTLEDGE DURANT: WELL, I  
7 THINK, JUDGE, THAT THE TESTIMONY HAS ALREADY BEEN  
8 PRESENTED.

9 MR. PEPPER: NOT TO THE JURY.

10 THE COURT: I'LL GRANT THE MOTION.  
11 WE CAN SEQUESTER ALL THE WITNESSES THAT HAVE TO DEAL  
12 WITH THE JACKSON-DENNO.

13 MR. PEPPER: THANK YOU, JUDGE.

14 THE COURT: ALRIGHT, ANYTHING ELSE?

15 SOLICITOR RUTLEDGE DURANT: DOES  
16 THAT START WHEN WE GET INTO THE JACKSON V. DENNO  
17 TESTIMONY, BECAUSE WE'RE NOT GOING TO PRESENT THAT  
18 TESTIMONY FIRST OFF.

19 THE COURT: WELL, WHAT WITNESSES DO  
20 YOU HAVE FIRST OFF?

21 SOLICITOR RUTLEDGE DURANT: WE'RE  
22 GOING TO CALL CRIME SCENE OFFICER SCOTT WYANT, AND THEN  
23 ILA SIMMONS FROM SLED.

24 THE COURT: YOU DON'T HAVE ANY  
25 PROBLEM WITH THEM BEING - - -

1                   MR. PEPER:   SCOTT WYANT AND ILA  
2       SIMMONS?

3                   SOLICITOR RUTLEDGE DURANT:   ILA  
4       SIMMONS, THE CRIME SCENE INVESTIGATOR.

5                   MR. PEPER:   NO, WE DON'T.

6                   THE COURT:   THAT'S FINE, THEY CAN  
7       STAY IN UNTIL WE START TALKING ABOUT THE JACKSON-DENNO,  
8       THAT WILL BE FINE.

9                   SOLICITOR RUTLEDGE DURANT:   YOUR  
10      HONOR, ONE ADDITIONAL MATTER.

11                  THE COURT:   YES, SIR.

12                  SOLICITOR RUTLEDGE DURANT:   CAN OUR  
13      CASE AGENT STAY IN FOR THE WHOLE - - -

14                  THE COURT:   OH, SURE, CERTAINLY.

15                  MR. PEPER:   I INTEND TO CALL TWO  
16      JAIL INMATES, ONE OF WHICH IS AT THE CHARLESTON  
17      DETENTION CENTER.   HOWEVER, THE OTHER ONE IS AT  
18      McDOUGALL.

19                  THE COURT:   AT WHERE?

20                  MR. PEPER:   McDOUGALL IN COLUMBIA.

21                  THE COURT:   YEAH.

22                  MR. PEPER:   IT, THEY'RE REQUIRING AN  
23      ORDER FROM YOU, AND - - -

24                  THE COURT:   YEAH.

25                  MR. PEPER:   --- I DIDN'T KNOW WHAT

1 KIND OF TIME FRAME I THOUGHT WE WERE LOOKING AT.

2 THE COURT: I THINK YOU'RE ALREADY  
3 CLOSE UP ON THE DEADLINE TO GET SOMEBODY TRANSPORTED  
4 DOWN HERE TOMORROW.

5 MR. PEPER: THAT'S WHAT I WAS  
6 THINKING, YOUR HONOR.

7 THE COURT: SOLICITOR, SEE WHAT YOU  
8 CAN DO TO HELP HIM GET THAT DONE, YOU CAN DO IT A LOT  
9 EASIER THAN HE CAN.

10 MR. PEPER: I'VE GOT INMATE NUMBERS  
11 AND - - -

12 SOLICITOR BRUCE DURANT: WE WILL,  
13 JUDGE.

14 THE COURT: GIVE HIM THE INMATES'  
15 NAMES AND INMATE NUMBERS, THAT'S WHAT HE NEEDS.

16 MR. PEPER: THANK YOU, YOUR HONOR.

17 THE COURT: THEY CAN GET IT DONE.

18 ALRIGHT, BRING IN THE JURY.

19 SOLICITOR BRUCE DURANT: CAN WE GET  
20 THIS INFORMATION SO WE CAN GO AHEAD AND BE WORKING ON  
21 IT, JUDGE?

22 THE COURT: WELL, HE'S GIVING IT TO  
23 YOU RIGHT NOW, HOPEFULLY.

24 MR. PEPER: SHE'S WRITING IT DOWN  
25 FOR YOU.

1 (Whereupon, the jury enters  
2 the courtroom and the following  
3 takes place in the presence  
4 of the jury.)

5 THE COURT: ALRIGHT, LADIES AND  
6 GENTLEMEN, WE'RE READY TO GET STARTED.

7 YOU MAY CALL YOUR WITNESS.

8 SOLICITOR RUTLEDGE DURANT: THANK  
9 YOU, JUDGE. THE STATE CALLS SCOTT WYANT.

10 CLERK: PLEASE PLACE YOUR LEFT HAND  
11 ON THE BIBLE AND RAISE YOUR RIGHT HAND.

12 (Whereupon, Scott Cameron Wyant  
13 is duly sworn.)

14 CLERK: PLEASE HAVE A SEAT, AND  
15 STATE YOUR FULL NAME TO THE COURT AND SPELL YOUR LAST  
16 NAME.

17 WITNESS: SCOTT CAMERON WYANT, W-Y-  
18 A-N-T.

19 SOLICITOR RUTLEDGE DURANT: YOU NEED  
20 TO MARK THESE.

21 COURT REPORTER: DO YOU WANT THEM  
22 MARKED INDIVIDUALLY?

23 THE COURT: NO USE TO MARK THEM FOR  
24 ID, JUST MARK THEM AS EXHIBITS. THAT WILL SAVE A LITTLE  
25 BIT OF TIME.

DIRECT - SCOTT C. WYANT BY SOL. RUTLEDGE DURANT

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DIRECT EXAMINATION OF SCOTT C. WYANT

BY SOLICITOR RUTLEDGE DURANT:

Q. OFFICER WYANT, GOOD AFTERNOON.

A. GOOD AFTERNOON.

Q. WOULD YOU PLEASE TELL THE JURY WHERE YOU'RE  
EMPLOYED?

A. THE CITY OF NORTH CHARLESTON POLICE DEPARTMENT.

Q. AND HOW LONG HAVE YOU BEEN WITH THE CITY OF NORTH  
CHARLESTON POLICE DEPARTMENT?

A. FOURTEEN YEARS.

Q. WHAT ARE YOU CURRENT DUTIES WITH NORTH CHARLESTON  
POLICE DEPARTMENT?

A. I'M A CRIME SCENE INVESTIGATOR.

Q. AND HOW LONG HAVE YOU BEEN A CRIME SCENE  
INVESTIGATOR?

A. GOING ON ELEVEN YEARS NOW.

Q. IN THAT CAPACITY DID YOU HAVE THE OPPORTUNITY TO  
RESPOND TO THE BUDGET INN, AT SIX ONE FIVE FIVE  
FAIN STREET ON NOVEMBER THE EIGHTH, TWO THOUSAND  
AND SIX?

A. THAT'S CORRECT, I DID.

Q. WHAT ROOM NUMBER DID YOU RESPOND TO?

A. ROOM TWO FORTY-FOUR.

Q. AND THIS WAS IN REFERENCE TO WHAT?

A. A HOMICIDE.



DIRECT - SCOTT C. WYANT BY SOL. RUTLEDGE DURANT

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1 Q. DO YOU KNOW APPROXIMATELY WHAT TIME YOU ARRIVED ON  
2 THE SCENE?

3 A. I ARRIVED AROUND NOON TIME, PRETTY CLOSE TO TWELVE  
4 O'CLOCK NOON.

5 Q. WHAT DID YOU OBSERVE UPON ARRIVING AT THE SCENE?

6 A. WHEN I GOT THERE THE HALLWAY IN FRONT OF THE ROOM  
7 ON SEVERAL FEET BEFORE AND AFTER WAS CORDONED OFF  
8 WITH YELLOW CRIME SCENE TAPE. THE FRONT DOOR TO  
9 THE, THE DOOR TO ROOM TWO FORTY-FOUR WAS OPEN, THE  
10 TELEVISION WAS ON. THE VICTIM WAS LAYING ON HIS  
11 BACK IN THE ROOM, IN THE BED WITH HIS FEET AND  
12 LEGS KIND OF DANGLING OVER THE FOOT OF THE BED.  
13 HE WAS LAYING ON A PILLOW AND HIS FACE WAS COVERED  
14 WITH A PILLOW. ON THE, AS YOU'RE FACING THE FOOT  
15 OF -- IF YOU'RE FACING THE HEAD OF THE BED, ON THE  
16 RIGHT HAND SIDE ON THE FLOOR WAS A TOWEL THAT WAS  
17 SORT OF WRINKLED ON THE FLOOR BUT IT WAS LAID OUT  
18 AS IF SOMEBODY HAD BEEN SLEEPING ON THE FLOOR NEXT  
19 TO HIM. ON THE FLOOR OF THE FOOT OF THE BED AS A  
20 GLASS CRACK PIPE. THERE WAS A CELL PHONE ON THE  
21 FLOOR IN A CASE, SOME POCKET, AND THE THING WAS  
22 SOME POCKET CHANGE, A CLEANING RAG FOR A CRACK  
23 PIPE, A PAIR OF GLASSES, EYE GLASSES. ON THE LEFT  
24 SIDE OF THE BED WAS A LAMP THAT HAD LIKE A TOWEL  
25 OR SOMETHING COVERED OVER IT, IT KIND OF SHIELDED

DIRECT - SCOTT C. WYANT BY SOL. RUTLEDGE DURANT

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1 SOME OF THE LIGHT. AND THEN, IN THE BACK CORNER  
2 OF THE OTHER ROOM WHERE THE, IT'S GOT THE COUNTER  
3 WITH THE SINK IN IT, IT HAD DUFFLE BAGS WITH THE  
4 VICTIM'S CLOTHING AND SHOES AND STUFF IN THERE.

5 Q. WERE YOU THE FIRST CRIME SCENE OFFICER TO ARRIVE?

6 A. NO, I WASN'T, AL HALLMAN WAS.

7 Q. DID YOU ARRIVE SHORTLY AFTER AL?

8 A. YES, I DID, WITHIN MINUTES AFTER HE DID.

9 Q. WHAT ACTIONS DID YOU TAKE AT THE SCENE?

10 A. SERGEANT HALLMAN HAD BEGAN TO PHOTOGRAPH THE SCENE  
11 BUT I WENT AHEAD AND TOOK MY DIGITAL CAMERA JUST  
12 AS A BACKUP AND WENT AHEAD AND BEGAN TO PHOTOGRAPH  
13 THE SCENE FROM AS I APPROACHED THE ROOM AND  
14 THROUGHOUT THE ROOM AND ALL OF MY FINDINGS.

15 Q. DID THE CORONER ARRIVE?

16 A. YES. ONCE THE CORONER ARRIVED AND SHE GOT HER  
17 PICTURES, JUDY COPELAND GOT HER PICTURES, THEN WE  
18 WENT AHEAD AND LIFTED THE PILLOW OFF THE VICTIM'S  
19 FACE AND THAT'S WHEN WE NOTICED THAT HE HAD BEEN  
20 SHOT IN THE LEFT HAND SIDE OF HIS HEAD AND EXITED  
21 THE RIGHT SIDE OF HIS HEAD. AND ONCE WE HAD MOVED  
22 HIM, MOVED THE BODY WE FOUND THE ACTUAL BULLET  
23 THAT HAD GONE THROUGH HIS HEAD LYING ON THE PILLOW  
24 BENEATH HIS HEAD.

25 SOLICITOR RUTLEDGE DURANT: YOUR

DIRECT - SCOTT C. WYANT BY SOL. RUTLEDGE DURANT

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1 HONOR, PERMISSION FOR THE WITNESS TO STEP DOWN?

2 THE COURT: YES, SIR.

3 Q. I SHOW YOU SOME PHOTOGRAPHS YOU, I BELIEVE ARE  
4 ALREADY IN EVIDENCE.

5 THE COURT: WHAT ARE THE NUMBERS?

6 SOLICITOR RUTLEDGE DURANT: NUMBERS  
7 FOURTEEN THROUGH TWENTY-SEVEN.

8 THE COURT: FOURTEEN THROUGH TWENTY-  
9 SEVEN ADMITTED WITHOUT OBJECTION.

10 MR. PEPER: THAT'S CORRECT.

11 (State's Exhibits Fourteen  
12 through Twenty-seven marked and filed.)

13 Q. THIS IS STATE'S NUMBER TWENTY-SEVEN. COULD YOU  
14 TELL THE JURY WHAT WE'RE LOOKING AT HERE?

15 A. YES, THIS IS A -- ONCE I CAME IN THE ROOM I COULD  
16 SEE THE VICTIM LYING ON HIS BACK ON THE BED WITH  
17 HIS LEGS AND FEET DANGLING OVER, AND HE HAD A  
18 PILLOW OVER HIS FACE, AND HE WAS STIFF AND COLD  
19 AND RIGOR MORTIS WAS ALREADY STARTING TO SET IN ON  
20 HIM.

21 Q. THIS IS STATE'S NUMBER TWENTY-SIX, COULD YOU TELL  
22 US WHAT WE'RE LOOKING AT HERE?

23 A. THAT'S A CLOSE UP PHOTO OF THE PILLOW OVER THE  
24 VICTIM'S FACE, AND IF YOU LOOK RIGHT THERE YOU'LL  
25 SEE THE GUN SHOT HOLE IN THE TOP PILLOW THAT'S

1 OVER HIS FACE.

2 Q. GOING TO STATE'S TWENTY-FIVE?

3 A. ANOTHER PHOTOGRAPH OF THE PILLOW OVER THE VICTIM'S  
4 FACE, IT'S A LITTLE BIT BETTER PICTURE OF THE  
5 BULLET HOLE GUN SHOT TO THE PILLOW OVER HIS FACE,  
6 AND THE HOLE IS KIND OF CAUTERIZED OR MELTED FROM  
7 THE GUN BEING RIGHT UP AGAINST THE PILLOW.

8 Q. MOVING ON TO STATE'S TWENTY-FOUR?

9 A. A CLOSE UP PHOTO OF THAT SAME HOLE, YOU CAN SEE  
10 THAT IT'S A GUN HOLE, SORRY, A BULLET HOLE THAT  
11 WAS BEING FIRED INTO THE VICTIM'S HEAD.

12 Q. AND MOVING ON TO STATE'S TWENTY-THREE?

13 A. AS I EXPLAINED, WE'LL, SEE, THE VICTIM'S BODY WAS  
14 MOVED, THIS IS WHAT WE FOUND UNDER THE VICTIM'S  
15 HEAD WAS THE BULLET THAT HAD TRAVELED THROUGH HIS  
16 SKULL ON THE LEFT SIDE AND ON THE RIGHT. IT HAS  
17 HAIR AND TISSUE AND STUFF ON IT.

18 Q. AND YOU COLLECTED THAT?

19 A. YES, I DID.

20 Q. MOVING ON TO STATE'S TWENTY-TWO?

21 A. PICTURES OF BEER BOTTLES IN HIS ROOM, DIFFERENT  
22 BRANDS, YOU'VE GOT BUDWEISER AND HINNEKIN, SITTING  
23 ON THE TABLE IN HIS ROOM.

24 Q. AND STATE'S TWENTY-ONE?

25 A. AND HERE IS THE TOWEL THAT I WAS DESCRIBING LYING

DIRECT - SCOTT C. WYANT BY SOL. RUTLEDGE DURANT

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1 ON THE FLOOR NEXT TO THE BED AND IT'S KIND OF  
2 DISHEVELED LIKE SOMEONE WAS POSSIBLY LYING ON THE  
3 FLOOR NEXT TO HIM. HERE'S THE NIGHT STAND WHERE  
4 WE FOUND THE POCKET CHANGE AND THE BROKEN GLASSES,  
5 AND THE LIGHTER AND THE CLEANING RAG FOR THE CRACK  
6 PIPE.

7 Q. STATE'S TWENTY?

8 A. A CLOSER PHOTO OF THAT SAME TOWEL, AND IT'S ON THE  
9 RIGHT HAND SIDE OF THE BED.

10 Q. STATE'S NINETEEN?

11 A. THIS IS THE CELL PHONE ON THE FLOOR NEXT TO THE  
12 TOWEL, WHICH WAS NEXT TO THE BED.

13 Q. STATE'S EIGHTEEN?

14 A. ONCE THE DRAWER OF THE NIGHT STAND WAS OPENED YOU  
15 CAN SEE IT IS A ROD USED TO CLEAN OUT A CRACK  
16 PIPE, IT'S GOT SCORCHING ON ONE END, THE LIGHTER,  
17 THE BROKEN GLASSES AND A TUBE OF LIPSTICK.

18 Q. AND STATE'S SEVENTEEN?

19 A. A CLOSE UP PHOTO OF THE SAME CLEANING ROD,  
20 LIGHTER, BROKEN EYE GLASSES AND LIPSTICK TUBE.

21 Q. MOVE ON TO STATE'S SIXTEEN?

22 A. THIS IS THE GLASS CRACK PIPE AT THE FOOT OF THE  
23 BED THAT I EXPLAINED IS SCORCHED ON THE ENDS AND  
24 SMOKY.

25 Q. STATE'S FIFTEEN?

DIRECT - SCOTT C. WYANT BY SOL.RUTLEDGE DURANT

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1 A. THIS IS IN THE VERY BACK OF THE ROOM, THIS IS THE  
2 COUNTER WHERE THE SINK WOULD BE. THE VICTIM HAD  
3 HIS SHOES ON THERE IT LOOKED LIKE HE MIGHT HAVE  
4 BEEN CLEANING THEM AT SOME POINT. BUT THESE ARE  
5 HIS CLOTHES IN THE DUFFLE BAG. AND I REMEMBER  
6 THIS LEATHER LIKE JACKET THAT HAD HARD LITTLE  
7 THINGS ON THE BACK OF IT, YOU KNOW, INDICATING  
8 THAT PART OF HIS JOB HE HAD GOTTEN IT FROM WORKING  
9 AT THE CARNIVAL.

10 Q. AND FINALLY, STATE'S FOURTEEN?

11 A. HERE'S A BETTER PHOTOGRAPH OF THAT SAME COUNTER  
12 WITH THE SINK WHERE HE WAS CLEANING HIS SHOES, AND  
13 THE, IT'S THE LINERS OF THE SHOES AND STUFF IN THE  
14 SINK HERE, AND TOILETRIES.

15 SOLICITOR RUTLEDGE DURANT: YOU CAN  
16 RESUME YOUR SEAT ON THE WITNESS STAND.

17 Q. I'M SHOWING YOU WHAT'S ALREADY IN EVIDENCE AS  
18 STATE'S TEN, DO YOU RECOGNIZE THAT?

19 A. YES, SIR, I DO.

20 Q. HOW DO YOU RECOGNIZE THAT?

21 A. WELL, FOR ONE, IT'S GOT MY WRITING ON THE PACKAGE  
22 AND IN THE BOX, ITSELF. THIS IS THE PROJECTILE  
23 THAT WAS ON TOP OF THE PILLOW THAT YOU SAW IN THE  
24 PHOTOGRAPH. THAT'S THE PROJECTILE THAT I  
25 COLLECTED THAT TRAVELED THROUGH THE VICTIM'S HEAD.

DIRECT - SCOTT C. WYANT BY SOL. RUTLEDGE DURANT

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1 Q. AND WHERE WAS THIS, WHERE DID YOU FIND IT?

2 A. ONCE THE VICTIM WAS REMOVED HE WAS LIFTED UP OFF  
3 OF THE BED, WE FOUND THE BULLET UNDERNEATH HIS  
4 HEAD ON TOP OF THE PILLOW HE WAS LYING ON.

5 Q. WHAT WAS DONE WITH THIS PROJECTILE AFTER YOU  
6 COLLECTED IT?

7 A. IT WAS, I BELIEVE IT WAS SUBSEQUENTLY SENT TO SLED  
8 FOR EXAMINATION.

9 Q. DID YOU SEARCH FOR A SHELL CASING?

10 A. YES, I DID.

11 Q. WERE YOU ABLE TO LOCATE ONE?

12 A. NO, I WAS NOT.

13 Q. AND WHAT DOES THAT INDICATE TO YOU?

14 A. TO ME IT INDICATES EITHER A REVOLVER WAS USED  
15 BECAUSE A REVOLVER DOESN'T EXPEL SHELL CASINGS, OR  
16 I'VE SEEN IN SOME CASES WHERE THE, SOMEBODY WILL  
17 POLICE, WHAT I CALL POLICING THE SCENE, WHERE  
18 THEY'LL PICK UP AFTER THEMSELVES BEFORE THEY  
19 LEAVE.

20 Q. DID YOU PLACE BAGS ON THE VICTIM'S HANDS?

21 A. YES, I DID, THAT'S CORRECT.

22 Q. WHY DID YOU DO THAT?

23 A. PUTTING BAGS ON THE VICTIM'S HANDS PREVENTS ANY,  
24 AS PART OF OUR POLICY WE DO THAT IN ANY SHOOTING  
25 CASE, ANY HOMICIDE OR SHOOTING CASE WE PUT BAGS ON

DIRECT - SCOTT C. WYANT BY SOL.RUTLEDGE DURANT

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1 THE VICTIM'S HANDS TO PREVENT ANY CONTAMINATION TO  
2 THE HANDS, ANYTHING GETTING ON THE HANDS THAT  
3 WASN'T THERE, THAT, YOU KNOW, FROM ANYTHING  
4 GETTING ON THE HANDS AFTER WE REMOVE THE BODY, AND  
5 FROM LOSING ANY EVIDENCE THAT MIGHT BE ON HIS  
6 HANDS AFTER WE REMOVE THE BODY.

7 Q. WHAT DID YOU DO AFTER YOU FINISHED AT THE SCENE?

8 A. AFTER I FINISHED AT THE SCENE I BELIEVE I WENT  
9 BACK TO THE -- I WENT BACK TO THE POLICE STATION  
10 AND BEGAN TO PACKAGE UP THE EVIDENCE AND STUFF  
11 THAT WAS COLLECTED FROM THE SCENE.

12 Q. MOVING ON TO NINE P.M. THAT NIGHT, WHERE DID YOU  
13 GO?

14 A. OKAY, AT NINE P.M. I WENT TO THE MORGUE WHERE THE  
15 VICTIM WAS.

16 Q. AND WHAT DID YOU DO AT THE MORGUE?

17 A. AT THE MORGUE I WENT AHEAD AND REMOVED THE BAGS  
18 OFF THE VICTIM'S HANDS AND DID A GUN SHOT RESIDUE  
19 TEST KIT ON HIS HANDS, AND THEN I FINGERPRINTED  
20 HIM. YOU HAVE TO DO, YOU KNOW, YOU HAVE TO DO GUN  
21 SHOT RESIDUE BEFORE YOU CAN FINGERPRINT THEM, AND  
22 THEY NEED TO BE FINGERPRINTED.

23 Q. AND WHAT IS A GUN SHOT RESIDUE KIT?

24 A. A GUN SHOT RESIDUE TEST KIT, IT COMES IN A SEALED  
25 PACKAGE AND YOU OPEN IT UP AND IT HAS TWO PARTS TO



DIRECT - SCOTT C. WYANT BY SOL. RUTLEDGE DURANT

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1 IT, IT HAS A STICKY, WHAT I CALL A STICKY PAD THAT  
2 YOU DO ON BOTH SIDES OF EACH HAND. IT HAS ONE  
3 STICKY PAD FOR THE PALM OF EACH HAND AND THEN A  
4 STICKY PAD FOR THE BACK OF EACH HAND. AND THEN,  
5 THE SECOND PART OF THE TEST IS, YOU TAKE SOME  
6 STERILE COTTON SWABS AND YOU MOISTEN THEM WITH  
7 NITRIC ACID, FIVE PER CENT, AND YOU SWAB THE BACK  
8 OF THE HANDS AND THE PALM OF THE HANDS, AND THEY  
9 HAVE THEIR OWN INDIVIDUAL TUBES THAT YOU PUT EACH  
10 OF THESE SAMPLES IN TO PREVENT CROSS-  
11 CONTAMINATION.

12 Q. SO, A GUN SHOT RESIDUE KIT IS ALSO KNOWN AS A GSR  
13 KIT?

14 A. A GSR KIT, THAT'S CORRECT.

15 Q. HOW ARE THE SAMPLES LABELED AND SEALED?

16 A. THE SAMPLES ALREADY COME LABELED, I'LL SAY, YOU  
17 KNOW, THE STICKY PADS ALREADY HAVE, LEFT PALM,  
18 RIGHT PALM, LEFT BACK, RIGHT BACK. AND THEN THE  
19 INDIVIDUAL TUBES ACTUALLY HAVE THE SAME LABELING  
20 ON THEM FOR THE RIGHT HAND PALM, LEFT HAND PALM,  
21 RIGHT BACK AND LEFT BACK, AND YOU KNOW, YOU PUT  
22 THEM IN THOSE TUBES, YOU PUT ALL THE SAMPLES IN  
23 THE PACKAGE, YOU FILL OUT THE DOCUMENTATION  
24 SAYING, IT ASKS QUESTIONS LIKE, WAS HE LEFT HANDED  
25 OR RIGHT HANDED? AND WAS HE LIVING OR DECEASED?

DIRECT - SCOTT C. WYANT BY SOL. RUTLEDGE DURANT

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1           AND ONCE YOU FILL OUT -- AND THE TIME THAT YOU  
2           ACTUALLY PERFORMED THE GSR TEST. EXCUSE ME. ONCE  
3           YOU FINISH THAT, THEN IT COMES WITH A SEALANT TAPE  
4           THAT YOU PUT IT ALL IN THE ENVELOPE, YOU SEAL IT  
5           AND YOU INITIAL IT, TO MAKE SURE THAT IT HASN'T  
6           BEEN OPENED BY ANYONE.

7                       COURT REPORTER:     STATE'S TWENTY-  
8           EIGHT.

9           (State's Exhibit Twenty-eight,  
10          Gun Shot Residue Kit,  
11          marked for identification.)

12                       SOLICITOR RUTLEDGE DURANT:   THANK  
13          YOU, MA'AM.

14          Q.    I SHOW YOU WHAT THE STATE HAS LABELED STATE'S  
15                EXHIBIT TWENTY-EIGHT FOR IDENTIFICATION, AND ASK  
16                YOU IF YOU RECOGNIZE THAT?

17          A.    YES, I DO.

18          Q.    AND HOW DO YOU RECOGNIZE THAT?

19          A.    THIS IS THE GUN SHOT RESIDUE TEST KIT THAT I  
20                PERFORMED ON MR. ROBERT THOMAS VARGO, WHO IS THE  
21                VICTIM IN THIS INCIDENT. IT'S GOT MY HANDWRITING  
22                ON THE FRONT WITH MY NAME AND THE CASE NUMBER, AND  
23                HERE IS THE SEALANT TAPE ON THE BACK THAT I HAD  
24                INDICATED WITH MY INITIALS ON IT.

25          Q.    WHAT DID YOU DO WITH THIS GSR KIT ONCE YOU

DIRECT - SCOTT C. WYANT BY SOL. RUTLEDGE DURANT

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1 COLLECTED IT?

2 A. ONCE IT'S COLLECTED AND SEALED IT'S LOGGED INTO  
3 OUR PROPERTY ROOM AS EVIDENCE AND THEN  
4 SUBSEQUENTLY I TYPE UP THE PAPERWORK AND IT GOES  
5 OFF TO SLED FOR EXAMINATION. THEY ACTUALLY  
6 EXAMINE IT TO SEE IF THERE'S ANY GUN SHOT RESIDUE  
7 ON THE SAMPLES THAT I COLLECTED.

8 SOLICITOR RUTLEDGE DURANT: YOUR  
9 HONOR, AT THIS TIME THE STATE WOULD MOVE TO ADMIT  
10 STATE'S TWENTY-EIGHT.

11 MR. PEPER: NO OBJECTION.

12 THE COURT: ADMITTED WITHOUT  
13 OBJECTION.

14 (State's Exhibit Twenty-eight  
15 marked and filed.)

16 Q. WHAT DID YOU DO WITH THE VICTIM'S FINGERPRINTS?

17 A. THE VICTIM'S FINGERPRINTS WERE GIVEN TO SERGEANT  
18 HALLMAN. WHILE WE WERE AT THE SCENE SERGEANT  
19 HALLMAN HAD PROCESSED AND LIFTED SOME PRINTS FROM  
20 THE SCENE AND HE NEEDED THE VICTIM'S FINGERPRINTS  
21 FOR COMPARATIVE, COMPARISON AND ELIMINATION  
22 PURPOSES. SO, I FINGERPRINTED HIM AND TURNED  
23 THOSE FINGERPRINTS OVER TO SERGEANT HALLMAN.

24 Q. SERGEANT HALLMAN'S A FINGERPRINT EXAMINER?

25 A. THAT'S CORRECT.

DIRECT - SCOTT C. WYANT BY SOL.RUTLEDGE DURANT

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1 Q. NOW, MOVING ON TO THE NEXT DAY, DID YOU HAVE AN  
2 OPPORTUNITY TO ATTEND THE VICTIM, ROBERT VARGO'S  
3 AUTOPSY?

4 A. I DID.

5 Q. AND WHERE DID THIS TAKE PLACE?

6 A. AT MUSC AUTOPSY ROOM.

7 Q. WHO WAS THE MEDICAL EXAMINER?

8 A. DR. ARON PRESNELL.

9 Q. WHAT DID YOU DO AT THE AUTOPSY?

10 A. WHAT I DO WHEN I GET TO THE AUTOPSY IS, I  
11 PHOTOGRAPH THE VICTIM ON THE TABLE, I TAKE SOME  
12 PHOTOGRAPHS THROUGHOUT THE AUTOPSY PROCEDURE.  
13 THEY USUALLY COLLECT FINGERNAIL CLIPPINGS, HAIR  
14 SAMPLES, THEY COLLECT A TUBE OF BLOOD FROM THE  
15 VICTIM, AND ANYTHING LIKE THAT. I GO AHEAD AND  
16 COLLECT THE VICTIM'S CLOTHING, I'LL COLLECT THAT  
17 AS EVIDENCE ALSO.

18 Q. DID YOU RECEIVE ANY ITEMS FROM DR. PRESNELL AT THE  
19 AUTOPSY?

20 A. THAT'S CORRECT, I DID.

21 Q. WHAT ITEMS DID YOU RECEIVE?

22 A. I RECEIVED, I COLLECTED -- LET'S SEE, A DARK BLACK  
23 T-SHIRT, DARK BLUE SHORTS, LET'S SEE, THE PURPLE  
24 TOP TUBE OF BLOOD, THE FINGERNAIL CLIPPINGS FROM  
25 BOTH LEFT AND RIGHT HAND FINGERNAIL CLIPPINGS, AND

DIRECT - SCOTT C. WYANT BY SOL. RUTLEDGE DURANT

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1 FULL HEAD OF HAIR FROM THE VICTIM.

2 Q. THE TUBE OF BLOOD FROM THE VICTIM?

3 A. THAT'S CORRECT.

4 Q. AND THE FINGERNAIL SCRAPINGS WERE FROM THE VICTIM?

5 A. THAT'S CORRECT.

6 Q. AS WELL AS THE HAIR?

7 A. THAT'S CORRECT, FULL HEAD OF HAIR FROM THE VICTIM.

8 Q. WHAT WAS THE VICTIM'S BLOOD AND FINGERNAIL  
9 SCRAPINGS?

10 A. AFTER I LEAVE THE AUTOPSY ROOM I IMMEDIATELY HAVE  
11 TO TAKE IT TO THE PROPERTY ROOM, ESPECIALLY THE  
12 BLOOD, AND GET IT, DO THE CHAIN OF CUSTODY SHEET  
13 ON IT AND GET IT LOGGED INTO THE REFRIGERATOR.  
14 AND IN ADDITION TO THAT, THE FINGERNAIL CLIPPINGS  
15 AND THE HAIR SAMPLES CAN JUST BE TURNED OVER TO  
16 THE EVIDENCE CUSTODIAN.

17 Q. LATER THAT DAY, THE SAME DAY AS THE AUTOPSY, DID  
18 YOU HAVE THE OCCASION TO RETURN TO ROOM TWO FORTY-  
19 FOUR AT THE BUDGET INN?

20 A. THAT I DID, YES, SIR.

21 Q. AND WHAT WAS THE PURPOSE OF THIS?

22 A. SERGEANT JELICO HAD REQUESTED THAT I RETURN BACK  
23 TO THE ROOM. HE HAD SEEN SOME ITEMS THAT POSSIBLY  
24 HADN'T BEEN PROCESSED FOR FINGERPRINTS YET, SUCH  
25 AS, I BELIEVE A BABY OIL BOTTLE AND SOME LOTION

DIRECT - SCOTT C. WYANT BY SOL. RUTLEDGE DURANT

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1 BOTTLES AND DIFFERENT THINGS THAT HE FOUND WITHIN  
2 THE ROOM THAT HADN'T BEEN PROCESSED FOR  
3 FINGERPRINTS.

4 Q. SO, WOULD YOU PLEASE TELL US AGAIN, WHAT AREAS  
5 ADDITIONALLY AT THIS TIME WERE PROCESSED FOR  
6 FINGERPRINTS?

7 A. HE HAD ME ADDITIONALLY GO INTO THE SAME ROOM AND  
8 LIFT, PROCESS VARIOUS AREAS LIKE THE, LET'S SEE, I  
9 PROCESSED THE DOOR CASING, A BABY BOTTLE OF OIL,  
10 SOME SKIN CLEANSER, ITEMS IN THE BATH ROOM TRASH  
11 CAN, AND VARIOUS OTHER AREAS WITHIN THE ROOM.

12 Q. HOW MANY LIFTS DID YOU OBTAIN?

13 A. TWELVE. TWELVE FINGERPRINT LIFTS.

14 Q. WHAT DID YOU DO WITH THOSE?

15 A. THOSE WERE LABELED AND TURNED OVER TO SERGEANT  
16 HALLMAN AS PART OF HIS FINGERPRINT EXAMINATION.

17 Q. WERE ANY ITEMS SENT TO SLED FOR DNA TESTING?

18 A. YES, THE, I BELIEVE THE PILLOW THAT WAS OVER THE  
19 VICTIM'S FACE, THE TUBE OF LIPSTICK, THE CRACK  
20 PIPE, OF COURSE, THE VICTIM'S BLOOD WAS SENT AND  
21 THINGS LIKE THAT WERE SENT FOR DNA TESTING.

22 Q. THE VICTIM'S FINGERNAILS?

23 A. FINGERNAILS, YES.

24 SOLICITOR RUTLEDGE DURANT: THANK  
25 YOU, SIR, PLEASE ANSWER ANY QUESTIONS MR. PEPER MAY

1 HAVE.

2 THE COURT: CROSS-EXAMINATION?

3 MR. PEPER: BRIEFLY, YOUR HONOR.

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

CROSS - SCOTT C. WYANT BY MR. PEPER

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CROSS-EXAMINATION OF SCOTT C. WYANT

BY MR. PEPER:

Q. THIS TELLS ME YOU WERE JUST IN CHARGE OF GATHERING  
THE PIECES OF EVIDENCE AT THE CRIME SCENE, IS THAT  
MY UNDERSTANDING?

A. THAT'S CORRECT.

Q. YOU DIDN'T PERFORM ANY OF THE TESTS, PER SE?

A. NO, SIR, I DID NOT.

Q. YOU JUST SENT THEM TO SERGEANT HALLMAN?

A. THE FINGERPRINTS, YES, SIR.

MR. PEPER: THAT'S ALL I HAVE.

THE COURT: THANK YOU, SIR, YOU CAN  
STEP DOWN.

CALL YOUR NEXT WITNESS.

SOLICITOR RUTLEDGE DURANT: JUDGE,  
THE STATE CALLS ILA SIMMONS, FROM SLED.

CLERK: PLEASE PLACE YOUR LEFT HAND  
ON THE BIBLE AND RAISE YOUR RIGHT HAND.  
(Whereupon, Ila Simmons  
is duly sworn.)

CLERK: PLEASE BE SEATED, AND IF YOU  
WOULD PLEASE STATE YOUR FULL NAME FOR THE COURT AND  
SPELL YOUR LAST NAME.

WITNESS: MY NAME IS ILA SIMMONS, MY  
LAST NAME IS SPELLED S-I-M-M-O-N-S.



DIRECT - ILA SIMMONS BY SOL.RUTLEDGE DURANT

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DIRECT EXAMINATION OF ILA SIMMONS

BY SOLICITOR RUTLEDGE DURANT:

Q. COULD YOU PLEASE TELL THE JURY WHERE YOU'RE  
EMPLOYED?

A. I WORK AT THE SOUTH CAROLINA LAW ENFORCEMENT  
DIVISION ALSO KNOWN AS SLED IN THE FORENSIC  
LABORATORY TRACE EVIDENCE DEPARTMENT.

Q. HOW LONG HAVE YOU BEEN IN TRACE EXAMINATION?

A. ALMOST NINE YEARS.

Q. WHAT IS TRACE EXAMINATION?

A. WE ANALYZE GUN SHOT RESIDUE, WE PERFORM GUN POWDER  
EXAMINATIONS, WE COMPARE GLASS SAMPLES, FIBER  
SAMPLES AND PAINT SAMPLES. WE ALSO ANALYZE  
EXPLOSIVES AND RESIDUES FROM ARSON.

Q. WHAT EDUCATION AND TRAINING HAVE YOU HAD IN THE  
AREA OF TRACE EXAMINATION?

A. I HAVE A BACHELOR'S OF SCIENCE DEGREE IN  
CHEMISTRY. AFTER COMPLETING THAT I CAME TO SLED  
AND BEGAN A THREE YEAR IN HOUSE TRAINING PROGRAM  
WHERE I WORKED WITH A QUALIFIED, COURT CERTIFIED  
TRACE EVIDENCE EXAMINER WHO TAUGHT ME HOW TO  
COLLECT TRACE EVIDENCE, ANALYZE IT, USE THE  
INSTRUMENTATION THAT'S REQUIRED. I HAD TO TAKE  
WRITTEN, PRACTICAL AND ORAL EXAMINATIONS AND  
COMPLETE THEM ALL SUCCESSFULLY.

DIRECT - IIA SIMMONS BY SOL. RUTLEDGE DURANT

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1 Q. ARE YOU CERTIFIED BY SLED IN GUN SHOT RESIDUE  
2 EXAMINATION?

3 A. YES, SIR, I AM.

4 Q. HOW LONG HAVE YOU BEEN CERTIFIED?

5 A. EIGHT YEARS.

6 Q. HOW MANY GUN SHOT RESIDUE TESTS HAVE YOU  
7 PERFORMED?

8 A. PROBABLY OVER TEN THOUSAND.

9 Q. HAVE YOU EVER BEEN QUALIFIED AS AN EXPERT IN THE  
10 AREA OF GUN SHOT RESIDUE EXAMINATION?

11 A. YES, SIR, OVER A HUNDRED AND TWENTY-FIVE TIMES.

12 SOLICITOR RUTLEDGE DURANT: YOUR  
13 HONOR, AT THIS TIME THE STATE OFFERS MS. SIMMONS AS AN  
14 EXPERT IN GUN SHOT RESIDUE EXAMINATION.

15 MR. PEPPER: NO OBJECTION.

16 THE COURT: I FIND THAT SHE'S SO  
17 QUALIFIED.

18 Q. WHAT IS GUN SHOT RESIDUE?

19 A. GUN SHOT RESIDUE IS A MIXTURE OF MICROSCOPIC  
20 CHEMICALS THAT COME OUT OF A GUN WHEN IT'S FIRED.  
21 THEY COME OUT OF THE CARTRIDGE OR WHAT'S COMMONLY  
22 CALL A BULLET THAT'S PLACE INTO THE GUN. WHEN THE  
23 TRIGGER IS PULLED A PRIMER ON ONE END OF THE  
24 CARTRIDGE CREATES A SMALL SPARK WHICH IGNITES THE  
25 GUN POWDER AND PUSHES THE PROJECTILE OUT OF THE

DIRECT - ILA SIMMONS BY SOL.RUTLEDGE DURANT

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1 GUN. WELL, ALL OF THESE CHEMICALS THAT ARE  
2 CONTAINED WITHIN THIS CARTRIDGE COME OUT OF THE  
3 GUN ALONG WITH THE BULLET. THEY COME OUT IN A  
4 CONE OR PLUME SHAPE CLOUD, AND THEY CAN GET ON  
5 ANYTHING THAT'S IN CLOSE PROXIMITY TO THIS GUN  
6 WHEN IT GOES OFF, INCLUDING THE PERSON SHOOTING  
7 THE GUN.

8 Q. HOW DOES GUN SHOT RESIDUE GET ON SOMEONE?

9 A. YOU CAN FIRE A GUN, YOU CAN HANDLE A GUN THAT HAS  
10 BEEN RECENTLY FIRED OR ANY OBJECT THAT MAY HAVE  
11 BEEN IN CONTACT WITH GUN SHOT RESIDUE, OR YOU CAN  
12 BE NEAR A GUN WHEN IT GOES OFF.

13 Q. HOW LONG DOES GUN SHOT RESIDUE REMAIN ON A LIVING  
14 HUMAN BEING?

15 A. NO LONGER THAN SIX HOURS. IT BEGINS TO FALL OFF  
16 IMMEDIATELY SO IT IS IMPORTANT TO TAKE THE GSR KIT  
17 AS CLOSELY TO THE TIME OF SHOOTING AS POSSIBLE.  
18 AFTER SIX HOURS WE DO NOT ACCEPT GSR KITS THAT ARE  
19 COLLECTED. SO IF SOMETHING HAPPENS AT NOON AND A  
20 PERSON ISN'T APPREHENDED UNTIL EIGHT O'CLOCK THAT  
21 NIGHT THERE'S NO NEED TO TAKE A GUN SHOT RESIDUE  
22 KIT.

23 Q. HOW ABOUT SOMEONE WHO HAS PASSED AWAY?

24 A. IT WILL REMAIN ON SOMEONE WHO HAS PASSED AWAY  
25 INDEFINITELY. WHAT REMOVES GUN SHOT RESIDUE IS

DIRECT - ILA SIMMONS BY SOL.RUTLEDGE DURANT

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1 SWEATING, THE SKIN'S NATURAL ABSORBENCY, MAKING  
2 CONTACT WITH THINGS WITH YOUR HANDS. SO, ONCE  
3 SOMEONE IS DECEASED THEIR HEART STOPS BEATING,  
4 THEY STOP SWEATING AND THEY BECOME LIKE AN  
5 INANIMATE OBJECT SO THE GUN SHOT RESIDUE IS NOT  
6 REMOVED UNLESS AN OUTSIDE SOURCE REMOVES IT.

7 Q. HOW ARE SAMPLES COLLECTED?

8 A. THEY'RE COLLECTED WITH A STANDARD GUN SHOT RESIDUE  
9 COLLECTION KIT.

10 Q. WHAT DO THESE TESTS CONSIST OF, THESE KITS?

11 A. THEY CONSIST OF PARTICLE LIFTS OR ALSO KNOWN AS  
12 STICKY TABS WHERE, IT'S A DOUBLE SIDED TAPE WITH A  
13 HANDLE THAT IS DABBED OVER THE AREAS OF THE HAND.  
14 A SAMPLE IS COLLECTED FROM PALM OF THE RIGHT HAND,  
15 ANOTHER SAMPLE, A SAMPLE FROM THE PALM OF THE  
16 LEFT, AND A SAMPLE FROM THE BACK OF THE LEFT HAND.  
17 AFTER THOSE ARE COMPLETED THERE ARE ALSO SWABS  
18 THAT ARE TAKEN, A SMALL AMOUNT OF DILUTE ACID  
19 PLACE ON THE SWABS AND THOSE AREAS ARE RESAMPLED  
20 WITH THE COTTON SWABS.

21 Q. RELATIVE TO THIS CASE AND YOUR LAB NUMBER L ZERO  
22 SIX, DASH, ONE SEVEN FOUR SIX FIVE, DID YOUR LAB  
23 RECEIVE A GUN SHOT RESIDUE KIT FROM THE VICTIM,  
24 ROBERT VARGO?

25 A. YES, SIR, WE DID.

DIRECT - IIA SIMMONS BY SOL. RUTLEDGE DURANT

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1 Q. I SHOW YOU WHAT'S ALREADY IN EVIDENCE, AND THIS IS  
2 STATE'S TWENTY-EIGHT, DO YOU RECOGNIZE THAT?

3 A. YES, SIR, THIS IS THE GUN SHOT RESIDUE KIT I  
4 RECEIVED TO ANALYZE. IT IS MARKED WITH OUR  
5 IDENTIFICATION NUMBER AND ITEM NUMBER AS WELL AS  
6 MY INITIALS AND THE DATE THAT IT WAS OPENED FOR  
7 ANALYSIS.

8 Q. WHEN WAS THIS KIT RECEIVED BY SLED?

9 A. IT WAS BROUGHT IN ON DECEMBER TWENTIETH OF TWO  
10 THOUSAND AND SIX AT AROUND NINE:THIRTY IN THE  
11 MORNING.

12 Q. AND WHAT TESTING WAS PERFORMED ON THESE SAMPLES?

13 A. I ANALYZED THE SWAB PORTION OF THE TEST TO  
14 DETERMINE IF GUN SHOT RESIDUE WAS PRESENT. WE  
15 LOOK FOR THREE SPECIFIC METALS, LEAD, BARIUM AND  
16 ANTIMONY, AND THESE THREE METALS IN CONJUNCTION  
17 WITH ONE ANOTHER IN CERTAIN CONCENTRATIONS  
18 INDICATE WHETHER OR NOT SOMEONE HAS GUN SHOT  
19 RESIDUE ON THEIR HANDS.

20 Q. WHAT WERE THE RESULTS?

21 A. I DID NOT FIND GUN SHOT RESIDUE ON ANY OF THE  
22 AREAS THAT WERE PROCESSED ON THE HANDS OF ROBERT  
23 VARGO.

24 Q. THERE WAS NO GUN SHOT RESIDUE FOUND ON ROBERT  
25 VARGO'S HANDS?

DIRECT - ILA SIMMONS BY SOL.RUTLEDGE DURANT

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1 A. NO, SIR, THERE WAS NOT QUANTITIES OF METALS THAT  
2 WOULD BE SUFFICIENT FOR US TO SAY THAT GUN SHOT  
3 RESIDUE WAS PRESENT.

4 Q. WERE FINDINGS CONSISTENT WITH ROBERT VARGO HAVING  
5 FIRED OR HANDLED A WEAPON?

6 A. NO, SIR, NOT WITHIN SIX HOURS OF HIS DEATH.

7 SOLICITOR RUTLEDGE DURANT: THANK  
8 YOU, MA'AM, PLEASE ANSWER ANY QUESTIONS MR. PEPER MAY  
9 HAVE FOR YOU.

10 THE COURT: ANY QUESTIONS?

11 MR. PEPER: NO, YOUR HONOR.

12 THE COURT: THANK YOU, MA'AM, YOU  
13 CAN STEP DOWN.

14 WITNESS: THANK YOU.

15 THE COURT: CALL YOUR NEXT WITNESS.

16 SOLICITOR RUTLEDGE DURANT: THE  
17 STATE CALLS TAMARA DICENZO DRIGGERS.

18 (Whereupon the witness  
19 enters the courtroom.)

20 CLERK: PLEASE PLACE YOUR LEFT HAND  
21 ON THE BIBLE AND RAISE YOUR RIGHT HAND.

22 (Whereupon, Tamara Dicenzo Driggers  
23 is duly sworn.)

24 CLERK: PLEASE BE SEATED. IF YOU  
25 WOULD, PLEASE STATE YOUR FULL NAME TO THE COURT AND

1 SPELL YOUR LAST.

2 WITNESS: TAMARA DICENZO DRIGGERS,  
3 D-R-I-G-G-E-R-S.

4 SOLICITOR RUTLEDGE DURANT: YOUR  
5 HONOR, MAY WE APPROACH?

6 THE COURT: YES, SIR.

7 (Whereupon, a bench conference  
8 is had out of the hearing of  
9 the jury and court reporter.)

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

DIRECT - TAMARA DICENZO DRIGGERS BY  
SOL. RUTLEDGE DURANT

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DIRECT EXAMINATION OF TAMARA DICENZO

BY SOLICITOR RUTLEDGE DURANT:

Q. MS. DRIGGERS, WHERE ARE YOU EMPLOYED?

A. NORTH CHARLESTON POLICE DEPARTMENT

Q. HOW LONG HAVE YOU BEEN EMPLOYED WITH THE NORTH  
CHARLESTON POLICE DEPARTMENT?

A. APPROXIMATELY TEN YEARS.

Q. WHAT IS YOUR CURRENT POSITION?

A. I'M A DETECTIVE IN THE PERSONS CRIMES UNIT.

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

A. A DETECTIVE IN THE PERSONS CRIMES UNIT.

Q. AND AS A DETECTIVE DID YOU HAVE THE OPPORTUNITY TO  
SPEAK TO THE DEFENDANT, SHAWN PHILLIPS, ON  
DECEMBER THE FOURTEENTH, TWO THOUSAND AND SIX?

A. YES, SIR.

Q. WHAT WAS THIS IN REGARD TO?

A. IT WAS IN REGARDS TO A MURDER AT THE BUDGET INN.

Q. DID YOU ADVISE HIM OF HIS RIGHTS?

A. YES, SIR, DETECTIVE HILL HAD ASKED FOR ME TO COME  
IN TO WITNESS AN ADVISEMENT OF RIGHTS.

Q. WHERE DID THIS TAKE PLACE?

A. ON THE THIRD FLOOR OF THE POLICE DEPARTMENT IN THE  
SERGEANTS OFFICE IN THE BACK RIGHT HAND CORNER OF  
THE DETECTIVE BAY.



DIRECT - TAMARA DICENZO DRIGGERS BY  
SOL. RUTLEDGE DURANT

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1 Q. WHO WAS WITH YOU IN THIS ROOM?

2 A. MR. SIMMONS, DETECTIVE HILL, THE DEFENDANT, SHAWN  
3 PHILLIPS, AND MYSELF.

4 Q. HOW WAS SHAWN PHILLIPS ADVISED OF HIS RIGHTS?

5 A. A STANDARD ADVISEMENT OF RIGHTS FORM.

6 Q. I SHOW YOU WHAT'S BEEN MARKED FOR IDENTIFICATION I  
7 BELIEVE AS STATE'S ONE, I ASK YOU TO TAKE A LOOK  
8 AT THAT. DO YOU RECOGNIZE IT?

9 A. YES, SIR.

10 Q. WHAT IS THAT?

11 A. IT'S OUR NORMAL ADVISEMENT OF CONSTITUTIONAL  
12 RIGHTS FORM, AND IT'S THE ONE THAT WAS READ TO MR.  
13 PHILLIPS AND FILLED OUT BY DETECTIVE HILL, AND  
14 MYSELF AND DETECTIVE HILL SIGNED AS WITNESSES, AND  
15 THE DEFENDANT SIGNED.

16 Q. AND USING THIS FORM WOULD YOU PLEASE DEMONSTRATE  
17 HOW MR. PHILLIPS WAS ADVISED OF HIS RIGHTS?

18 A. DETECTIVE HILL FILLED OUT THE FIRST PART WHICH HAS  
19 THE DEFENDANT'S INFORMATION, AND THEN EACH RIGHT  
20 WAS READ TO HIM. GO THROUGH THE RIGHTS?

21 Q. YES.

22 A. "YOU HAVE THE ABSOLUTE RIGHT TO REMAIN SILENT AND  
23 DO NOT HAVE TO ANSWER ANY QUESTIONS OR GIVE A  
24 STATEMENT AND THAT THAT CANNOT BE USED AGAINST  
25 ME." DETECTIVE HILL WOULD STOP AND THEN ASKED IF

DIRECT - TAMARA DICENZO DRIGGERS BY  
SOL. RUTLEDGE DURANT

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1 HE UNDERSTOOD THAT. MR. PHILLIPS ADVISED, YES.  
2 "IF I DO ANSWER QUESTIONS OR GIVE A STATEMENT,  
3 ANYTHING I SAY CAN AND WILL BE USED AGAINST ME IN  
4 A COURT OF LAW." AGAIN, DETECTIVE HILL STOPS AND  
5 ASKS IF HE UNDERSTANDS THAT ONE. HE GOES ON TO  
6 THE THIRD, "YOU HAVE THE RIGHT TO CONSULT WITH A  
7 LAWYER OF YOUR CHOICE BEFORE YOU ANSWER QUESTIONS  
8 OR GIVE A STATEMENT AND ALSO HAVE HIM PRESENT  
9 WHILE YOU ARE BEING QUESTIONED." AGAIN HE STOPS  
10 AND ASKS TO MAKE SURE THAT HE UNDERSTANDS. THE  
11 DEFENDANT ADVISED HE DID. "IF YOU WISH TO TALK TO  
12 A LAWYER OR HAVE HIM PRESENT BUT ARE UNABLE TO  
13 AFFORD TO HIRE A LAWYER ONE WILL BE APPOINTED TO  
14 REPRESENT YOU FREE OF CHARGE." AGAIN, HE ASKED IF  
15 HE UNDERSTANDS THAT RIGHT, HE STATES, YES. "IF  
16 YOU DECIDE TO ANSWER QUESTIONS OR GIVE A STATEMENT  
17 WITHOUT HAVING A LAWYER PRESENT REPRESENTING YOU,  
18 YOU HAVE THE ABSOLUTE RIGHT DURING THE INTERVIEW  
19 TO STOP ANSWERING QUESTIONS AND TO REMAIN SILENT."  
20 AGAIN, HE'S ASKED, HE STATES HE UNDERSTANDS. AND  
21 THEN IT SAYS, "I FULLY UNDERSTAND EACH OF THESE  
22 RIGHTS EXPLAINED TO ME." AND DETECTIVE HILL HAS  
23 HIM SIGN HIS NAME, SHAWN PHILLIPS, WHICH HE PRINTS  
24 OUT IN THE SIGNATURE AREA, AND THEN MYSELF AND  
25 DETECTIVE HILL SIGNED AND DETECTIVE HILL DATES AND

DIRECT - TAMARA DICENZO DRIGGERS BY  
SOL. RUTLEDGE DURANT

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1 PUTS THE TIME DOWN. UNDERNEATH IT, IT STATES,  
2 "HAVING THESE RIGHTS IN MIND I WISH TO WAIVE THESE  
3 RIGHTS AND ANSWER QUESTIONS CONCERNING THE," AND  
4 THEN IT NORMALLY SAYS, CHARGE OF, BUT DETECTIVE  
5 HAD CROSSED IT OUT, HE TOLD HIM HE WANTED TO SPEAK  
6 TO HIM ABOUT THE MURDER. "NO THREATS, FORCE OR  
7 PROMISES OF ANY KIND HAVE BEEN MADE TO ME BY  
8 ANYONE TO CAUSE ME TO WAIVE THESE RIGHTS AND/OR  
9 ANSWER QUESTIONS." AND AGAIN, WE ALL SIGNED THE  
10 BOTTOM.

11 Q. SO, IT'S A TWO PART FORM, THE FIRST PART UP AT THE  
12 TOP IS HIS ACTUAL RIGHTS?

13 A. YES, SIR.

14 Q. AND HE SIGNED THAT HE UNDERSTOOD HIS RIGHTS?

15 A. YES, SIR.

16 Q. AND THEN THE BOTTOM PART IS THE WAIVER OF THOSE  
17 RIGHTS?

18 A. YES, SIR.

19 Q. AND HE SIGNED THAT HE WAIVED THOSE RIGHTS?

20 A. YES, SIR.

21 Q. DID HE APPEAR TO UNDERSTAND HIS RIGHTS?

22 A. YES, SIR.

23 Q. AND HOW DID HE INDICATE THIS TO YOU?

24 A. DETECTIVE HILL STOPPED AFTER EACH AND EVERY RIGHT  
25 THAT'S NUMBERED ON THE FORM AND MADE SURE THAT HE

DIRECT - TAMARA DICENZO DRIGGERS BY  
SOL. RUTLEDGE DURANT

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1 UNDERSTOOD THEM, AND MR. PHILLIPS SPOKE WITH US,  
2 WELL, WITH DETECTIVE HILL WITH NO PROBLEMS OR  
3 ISSUES, AND - - -

4 Q. DID HE APPEAR TO BE UNDER THE INFLUENCE OF ALCOHOL  
5 OR DRUGS?

6 A. NO, SIR.

7 Q. DID HE SAY HE WAS?

8 A. NO, SIR.

9 Q. DID HE APPEAR CONFUSED?

10 A. NO, SIR.

11 Q. DID HE SAY HE WAS?

12 A. NO, SIR.

13 Q. DID HE PROVIDE YOU WITH RATIONAL RESPONSES TO YOUR  
14 QUESTIONS?

15 A. YES, SIR.

16 Q. DID YOU OR ANYONE IN YOUR PRESENCE THREATEN TO  
17 COERCE HIM IN ANY WAY?

18 A. NO, SIR.

19 Q. DID YOU OFFER A PROMISE OR HOPE OF A REWARD?

20 A. NO, SIR.

21 Q. AFTER HAVING BEEN ADVISED OF HIS RIGHTS DID MR.  
22 PHILLIPS INDICATE THAT HE WISHED TO WAIVE HIS  
23 RIGHTS AND TALK ABOUT THE MURDER?

24 A. YES, SIR.

25 Q. AND HOW DID HE INDICATE THIS?

DIRECT - TAMARA DICENZO DRIGGERS BY  
SOL. RUTLEDGE DURANT

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1 A. BOTH VERBALLY, AND THEN HE SIGNED HIS NAME AT THE  
2 BOTTOM.

3 Q. DID YOU WITNESS HIM SIGN HIS NAME AT THE BOTTOM?

4 A. YES, SIR.

5 SOLICITOR RUTLEDGE DURANT: YOUR  
6 HONOR, AT THIS TIME THE STATE WOULD MOVE FOR THE  
7 ADMISSION OF STATE'S ONE.

8 MR. PEPER: NO OBJECTION.

9 THE COURT: ADMITTED WITHOUT  
10 OBJECTION.

11 (State's Exhibit One  
12 marked and filed.)

13 SOLICITOR RUTLEDGE DURANT: THANK  
14 YOU, MA'AM, PLEASE ANSWER ANY QUESTIONS -- WELL - - -

15 Q. DID YOU STAY IN THE ROOM AFTER HE WAIVED HIS  
16 RIGHTS?

17 A. I GOT UP TO WALK OUT, I MEAN, AS DETECTIVE HILL  
18 BEGAN SPEAKING WITH HIM.

19 Q. DID YOU TAKE PART IN THE QUESTIONING OF THE  
20 DEFENDANT?

21 A. NO, SIR.

22 Q. WHO STAYED IN THIS ROOM?

23 A. DETECTIVE HILL, MR. SIMMONS, THE DEFENDANT, AND AS  
24 I WAS LEAVING DETECTIVE GOMES WAS WALKING IN.

25 SOLICITOR RUTLEDGE DURANT: THANK

DIRECT - TAMARA DICENZO DRIGGERS BY  
SOL. RUTLEDGE DURANT

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1 YOU, MA'AM, PLEASE ANSWER ANY QUESTIONS THAT MR. PEPER  
2 MAY HAVE.

3 THE COURT: CROSS-EXAM.

4 MR. PEPER: IF IT PLEASE THE COURT.

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.)

CROSS - TAMARA DICENZO DRIGGERS BY MR. PEPER

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CROSS-EXAMINATION OF TAMARA DICENZO DRIGGERS

BY MR. PEPER:

Q. DETECTIVE, I'M MARK PEPER, I REPRESENT SHAWN, HOW  
ARE YOU?

A. GOOD.

Q. JUST A FEW QUESTIONS FOR YOU HERE. YOU WERE AWARE  
AT THE TIME, WERE YOU NOT, THAT THE DEFENDANT  
COULD NOT READ OR WRITE?

A. I WAS INFORMED THAT HE HAD A FIFTH GRADE  
EDUCATION.

Q. YOU DON'T REMEMBER BEING TOLD BY INVESTIGATOR  
SIMMONS THAT THE DEFENDANT COULD NOT READ OR  
WRITE?

A. HE NEVER SPOKE TO ME, INVESTIGATOR SIMMONS DID  
NOT.

Q. OKAY. YOU WERE AWARE, THOUGH, AS YOU SAID, HE HAD  
A FOURTH OR FIFTH GRADE EDUCATION?

A. WHEN DETECTIVE HILL WAS SPEAKING WITH HIM, YES.

Q. ALRIGHT. THE EVIDENCE THAT'S BEEN ADMITTED, THE  
ADVICE OF CONSTITUTIONAL RIGHTS, YOU STATED THAT  
DETECTIVE HILL ACTUALLY WROTE DOWN SHAWN'S NAME,  
HIS AGE, THE GRADE COMPLETED, IS THAT CORRECT?

A. YES, AS HE WAS SPEAKING WITH HIM HE WOULD WRITE  
DOWN THE INFORMATION.

Q. WHY DIDN'T SHAWN FILL IN THE INFORMATION?

1 A. WE NORMALLY DON'T HAVE DEFENDANTS FILL THAT OUT.  
2 ACTUALLY, I'VE NEVER HAD A DEFENDANT FILL OUT HIS  
3 OWN ADVICE OF RIGHTS, WE FILL IT OUT RIGHT BEFORE  
4 THEM.

5 Q. SO IT'S ALWAYS COMMON THAT THE OFFICER  
6 ADMINISTERING THE RIGHTS PUTS DOWN THE INFORMATION  
7 AT THE TOP?

8 A. THAT'S HOW I DO IT.

9 Q. BUT YOU DON'T KNOW IF IT'S ALWAYS DONE LIKE THAT?

10 A. I'M NOT IN EVERY INTERVIEW ROOM, I'M SORRY.

11 Q. OKAY. AND I UNDERSTAND THAT. BUT IT'S,  
12 REGARDLESS, THAT WAS HOW IT WAS DONE THIS TIME,  
13 CORRECT?

14 A. YES, SIR.

15 Q. AND DO YOU NOTICE ANYTHING STRANGE ABOUT THE  
16 HEADING ON HIS CONSTITUTIONAL RIGHTS?

17 A. DETECTIVE HILL HAD MESSED UP ON ONE OF THE  
18 WRITINGS, AND HAD PUT THAT THE DEFENDANT WAS, THE  
19 HE WAS ADVISED BY THE DEFENDANT ON HIS RIGHTS, HE  
20 PUT THE NAMES BACKWARDS.

21 Q. SO, THE WAY THIS READS, "I, DETECTIVE HILL, HAVE  
22 BEEN ADVISED BY SHAWN PHILLIPS, OF THE NORTH  
23 CHARLESTON POLICE DEPARTMENT THAT," DAH, DAH, DAH?

24 A. YES, SIR, IT SHOULD BE THE OTHER WAY AROUND.

25 Q. RIGHT. OKAY. NOW, THE TWO WITNESSES ON THE ADVICE



CROSS - TAMARA DICENZO DRIGGERS BY MR. PEPER

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1 OF CONSTITUTIONAL RIGHTS ARE YOURSELF AND  
2 DETECTIVE HILL, IS THAT CORRECT?

3 A. YES, SIR.

4 Q. AND THERE WAS NOBODY ELSE IN THE ROOM AT THE TIME  
5 THE CONSTITUTIONAL RIGHTS WERE GIVEN?

6 A. MR. SIMMONS WAS.

7 Q. INVESTIGATOR SIMMONS?

8 A. YES.

9 Q. OKAY. AND ACCORDING TO THE PAPERWORK, THIS WAS  
10 DONE, THESE ADVICE, THESE CONSTITUTIONAL RIGHTS  
11 WERE ADVISED TO HIM ON DECEMBER FOURTEEN AT  
12 APPROXIMATELY SIX:TEN P.M., IS THAT CORRECT?

13 A. YES, SIR.

14 Q. AND AT THAT POINT YOU TESTIFIED THAT YOU LEFT THE  
15 ROOM?

16 A. YES, SIR.

17 Q. SO, YOU DID NOT WITNESS THE QUESTIONS BEING ASKED  
18 TO THE DEFENDANT NOR ANY STATEMENTS MADE BY THE  
19 DEFENDANT TO DETECTIVE HILL?

20 A. NO, SIR.

21 Q. AND ON THE BOTTOM HEADER, YOU TESTIFIED THAT TWO  
22 WORDS, CHARGE OF, WERE SCRATCHED OUT AND INITIALED  
23 BY DETECTIVE HILL?

24 A. YES, SIR.

25 Q. WERE, WHY WEREN'T THEY INITIALED BY SHAWN

1 PHILLIPS?

2 A. BECAUSE DETECTIVE HILL WAS THE ONE SCRATCHING THEM  
3 OUT. WHENEVER I DO THAT I INITIAL ONLY.

4 Q. YOU DON'T TELL THE DEFENDANT THAT YOU SCRATCHED IT  
5 OUT AND HAVE THEM - - -

6 A. I SHOW THE DEFENDANT I'M SCRATCHING THIS OUT RIGHT  
7 HERE BECAUSE I WANT TO TALK TO YOU ABOUT THIS, AND  
8 I INITIAL IT.

9 Q. ALRIGHT, BUT FOR A CLIENT WHO ALLEGEDLY CAN'T READ  
10 OR WRITE, WOULDN'T IT BE PRUDENT TO SAY, ARE YOU  
11 AWARE, AND ARE YOU OKAY WITH THE FACT THAT I'M  
12 CROSSING OFF, CHARGE OF, AND WHY DON'T YOU GO  
13 AHEAD AND INITIAL IT, WOULDN'T THAT BE PRUDENT?

14 A. WELL, DETECTIVE HILL TELL HIM THAT HE WAS  
15 SCRATCHING IT OUT AND SHOWED IT TO HIM.

16 Q. OKAY. SO, HE DID. SO, AT THIS POINT IN TIME  
17 SHAWN HAD NO IDEA HE WAS BEING CHARGED WITH  
18 MURDER?

19 A. DETECTIVE HILL TOLD HIM HE WAS NOT BEING CHARGED  
20 WITH MURDER ON THE FIRST INITIAL RIGHTS.

21 Q. SO, AT THE TIME IN WHICH HE AGREED TO WAIVE HIS  
22 RIGHTS HE KNEW FOR A FACT HE WAS NOT BEING CHARGED  
23 WITH MURDER?

24 A. YES, DETECTIVE HILL TOLD HIM HE JUST WANTED TO  
25 SPEAK WITH HIM ABOUT THE MURDER.