

Vol I of II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from York County

John C. Hayes, III, Circuit Court Judge

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S.C. Supreme Court

JALEEL PAGE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-001189

APPENDIX

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INDEX

INDEX	i
TRIAL TRANSCRIPT (dated May 23-27, 2005)	1
APPLICATION FOR POST-CONVICTION RELIEF	723
RETURN	734
POST-CONVICTION RELIEF HEARING TRANSCRIPT (dated August 16, 2012).....	740
HEARING FOR CO-DEFENDANT'S TESTIMONY TRANSCRIPT (dated May 13, 2013).....	787
APPLICANT'S EXHIBIT#1	811
ORDER OF DISMISSAL	815
MOTION TO RECONSIDER	824
ORDER DENYING MOTION TO RECONSIDER.....	829
INDICTMENTS, SENTENCE SHEETS AND ARREST WARRANTS	831

VOL I

STATE OF SOUTH CAROLINA

COUNTY OF YORK

COURT OF GENERAL SESSIONS
2004-GS-46-4004 TO 4007

STATE OF SOUTH CAROLINA)

VS.)

JALEEL V. PAGE)

TRANSCRIPT OF RECORD

May 23-27, 2005
York, South Carolina

B E F O R E:

HONORABLE MARC H. WESTBROOK

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

Mr. Thomas E. Pope, Solicitor
Mr. Willy Thompson, Deputy Solicitor
For the StateMr. Derrick Chiarenza, Attorney at Law
For the DefendantMichael C. Watkins
Circuit Court Reporter

<u>WITNESS</u>	<u>I N D E X</u>			
	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Pretrial Motions	5			
Voir Dire	14			
Pretrial Motions	54			
Opening Statements	120			
Joyce Cunningham				
Mr. Thompson	145			
Mr. Chiarenza		157		
Michael Keith Phillips				
Mr. Pope	152		170	
Mr. Chiarenza		165		
Mr. Boyd		169		
James E. Eubanks				
Mr. Pope	172			
John Naylis				
Mr. Pope	183		216	
Mr. Chiarenza		203		
Gaither Lee Williams				
Mr. Pope	217		230	
Mr. Chiarenza		223		230
Mr. Boyd		226		
Rashad Simpson				
Mr. Thompson	232			
Mr. Chiarenza		241		
Mr. Boyd		242		
Katrina Howard				
Mr. Thompson	243		279	
Mr. Chiarenza		257		280
Mr. Boyd		275		
Darrell Betsill				
Mr. Pope	286		311	
Mr. Chiarenza		306		
Mr. Boyd		308		
Antonia Javar Williams				
Mr. Thompson	313		361	
Mr. Chiarenza		336		
Mr. Boyd		347		384
Ila Simmons				
Mr. Pope	373		384	
Mr. Chiarenza		383		
Tracy J. Thrower				
Mr. Pope	386		405	
Mr. Chiarenza		402		
Sara Robbins				
Mr. Pope	402		504	
Mr. Chiarenza		432		
Mr. Boyd		463		525
James Maynard				
Mr. Pope	527			

Mr. Chiarenza	541
Motion for Directed Verdict	542
Charge Conference	557
Closing Arguments	597
Jury Charge	676
Verdict	706
Sentencing	709
Certificate of Reporter	722

1	<u>EXHIBITS</u>			
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
3	State's-			
4	1-32	- Photographs		145
5	33	- Autopsy Diagram		145
6	34	- Photo Lineup		145
7	35-41	- Photographs		145
8	42	- Diagram of Crime Scene		145
9	43	- Police Car Video		145
10	44	- 911 CD		145
11	45	- Number 2 Spent Shell Casing		145
12	46	- Number 3 Spent Shell Casing		145
13	47	- Number 1 Spent Shell Casing		145
14	48	- Carpet Piece		145
15	49	- Pants		145
16	50	- T-shirt		145
17	51	- Bullet from Victim		145
18	52	- Victim's Underwear		145
19	53	- McKnight SLED Statement		300
20	54	- McKnight York PD Statement		424
21	55	- Photograph		513
22	56	- Photograph		513
23				
24				
25				

PRETRIAL MOTIONS

1 THE COURT: All right. Solicitor, are you prepared
2 to call the next case?

3 MR. THOMPSON: Yes, Your Honor. However, at this
4 time before the case is called we would like to arraign
5 Jaleel Page as to one indictment, 2004-GS-46-4006 for
6 possession of a firearm during the commission of a violent
7 crime.

8 THE COURT: Madam Clerk, are you prepared to do that?

9 THE CLERK: To swear the witness?

10 THE COURT: To conduct the arraignment. I'll conduct
11 the arraignment. Where is Mr. Page, please? Counsel, you
12 represent Mr. Page?

13 MR. CHIARENZA: Yes, sir, Your Honor.

14 THE COURT: All right. Anything else, Solicitor,
15 before we go ahead?

16 MR. THOMPSON: If I could read off the indictment,
17 it's 2004-GS-45-4006, State of South Carolina vs. Jaleel
18 Page, possession of a weapon during the commission of a
19 violent crime. It has been true billed by the grand jury.

20 THE COURT: Okay. Madam Clerk, would you put
21 Mr. Page under oath, please?

22 THE CLERK: Yes, sir.

23 (The defendant was sworn.)

24 THE COURT: Counsel, have you had a chance to go over
25 this with Mr. Page?

PRETRIAL MOTIONS

1 MR. CHIARENZA: Yes, Your Honor. I advised him
2 despite the fact that this charge was dismissed at the
3 preliminary hearing based on a finding of no probable
4 cause the State -- it's within their discretion to
5 directly present this to a grand jury. I further advised
6 him that really the only question he has to answer today
7 is whether he's pleading guilty today or not guilty on
8 this charge.

9 THE COURT: Yes, sir. Mr. Page, your lawyer has just
10 been handed the indictment. Has it been explained to you
11 though, what the charge is?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: And you heard the solicitor read from the
14 indictment?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: And that at this time I will ask you, how
17 do you plead to the charge?

18 THE DEFENDANT: Not guilty.

19 THE COURT: How will you be tried?

20 MR. CHIARENZA: Your Honor, I have not advised him as
21 to that language.

22 THE COURT: Well, the answer -- if you wish you can
23 be tried -- actually the standard answer is by God and by
24 country if you wish, that's a jury trial. Do you wish to
25 have a jury trial?

PRETRIAL MOTIONS

1 THE DEFENDANT: Yes.

2 THE COURT: I find that he wishes to be tried by God
3 and country and a jury trial.

4 MR. CHIARENZA: Thank you, Your Honor.

5 THE COURT: Anything else?

6 MR. THOMPSON: Your Honor, I think the only other
7 thing before we draw the jury is Mr. Chiarenza has made a
8 motion of his pretrial motions that he handed us during
9 the lunch break, one includes a severance of his defendant
10 between him and Mr. Terrance McKnight. I would assume we
11 need to take that up before we actually pick the jury.

12 THE COURT: Okay. All right. Mr. Chiarenza?

13 MR. CHIARENZA: Thank you, Your Honor. Your Honor,
14 this is the I believe last numbered motion on the
15 consolidated motions that I handed up to the Court just
16 prior to the lunch break. And essentially, Your Honor, in
17 this motion I am seeking to have the Court order the
18 solicitor try my client separately from Mr. McKnight.
19 Grounds for that, Your Honor, are essentially that the
20 Court should grant a severance if there's a serious risk
21 that my -- I'm sorry, that by trying these clients
22 together that would compromise a specific trial right of
23 my defendant and prevent the jury from making a reliable
24 judgment about guilt or innocence. Your Honor, in this
25 case the specific trial right that we are concerned with

PRETRIAL MOTIONS

1 is my client's right to confront the witness against him.
2 Your Honor, I believe the solicitor has handed up to the
3 Court some statements, one a summary of an oral statement.

4 (At this time Court's Exhibits 1 and 2 were marked
5 for identification.)

6 THE COURT: Okay. I have those in front of me as
7 Court's Exhibits 1 and 2. Go ahead, Mr. Chiarenza.

8 MR. CHIARENZA: Thank you, Your Honor. And the
9 argument here is not lengthy, and obviously the Court
10 would want some time to review the statements. But
11 essentially I believe what the Court has there is -- one
12 is a summary of an oral statement that Defendant McKnight
13 gave to a prosecution agent at the time of his arrest or
14 right around that time, and the other is an actual written
15 statement of Defendant McKnight's.

16 Your Honor, the concern here is that while to be
17 candid with the Court I believe that those statements in
18 all likelihood would be admissible against Defendant
19 McKnight in the trial of Defendant McKnight, I do not
20 believe those statements would be admissible against my
21 client would he be tried separately from Mr. McKnight. I
22 believe that in order to elicit that information, the
23 State or for that matter ourselves if we felt the need to
24 would have to call Mr. McKnight to the witness stand, at
25 which time certainly Mr. McKnight could invoke his 5th

PRETRIAL MOTIONS

1 Amendment right against self incrimination. If he were
2 being called as a witness in that case and invoked that
3 right then I do not believe that the statements would come
4 in at that time, Your Honor, again in a trial against my
5 client.

6 Here we have a situation where these -- if the State
7 wants to get these statements in they're going to come in.
8 I see no way of being able to keep these statements out.
9 I don't believe that Mr. Boyd can keep the statements out,
10 I don't even think I have a standing to keep them out as
11 far as they are against Mr. McKnight. The problem is that
12 that puts my client in a position of having a witness
13 through these statements testifying against him and he
14 then cannot cross examine that witness if Mr. McKnight
15 chooses not to testify in this matter, which is his right
16 to do. Without belaboring the point, Your Honor, it's a
17 confrontation issue, I think there's a real potential for
18 prejudice and jeopardy against my client if this statement
19 comes in and he's not able to cross examine the statement.
20 For that matter, Your Honor, I would seek that the Court
21 sever the trials of these two defendants, and finally
22 submit that simply redacting portions of the statement
23 would not be sufficient in this case. I know at times
24 that can be a remedy in this type of situation. But here
25 given the nature of these statements and the context for

PRETRIAL MOTIONS

1 redactment, I just think it wouldn't serve the purpose of
2 preventing any prejudice against my client.

3 THE COURT: All right. I notice, Mr. Boyd, did you
4 want to address that at all?

5 MR. BOYD: No, sir. I don't take any position on
6 that matter.

7 THE COURT: Okay. Solicitor?

8 MR. THOMPSON: If it please the Court, Your Honor?
9 As a severance, Your Honor, I would point out a couple of
10 things. One is that the defendants are also charged with
11 conspiracy with each other. Much of these statements
12 themselves deal with the furtherance of conspiracy and I
13 believe anything in regards to furtherance of conspiracy
14 would not meet along the lines to violate the
15 confrontational clause of the Constitution. As well as I
16 point out if the trial were severed and we went ahead and
17 tried Jaleel Page at this point in time we would be in the
18 same position as to Terrance McKnight's statements because
19 once again, if we use the statement at that point any part
20 of it to use against this defendant we would be in the
21 same position as Mr. Chiarenza says we are now, so that
22 doesn't necessarily by itself create a reason for
23 severance. We would still have the same problems of
24 looking through possibly having to redact some names
25 within the statements. I believe these statements could

PRETRIAL MOTIONS

1 easily be redacted. The testimony from the officers could
2 easily pull out things to avoid any problems with the
3 confrontation clause, and as I said with the added fact
4 that they are charged with conspiracy and much of the
5 statements deal with the furtherance of the conspiracy --

6 THE COURT: Now these statements are redacted, right?

7 MR. THOMPSON: That's correct, they are not redacted
8 at this point.

9 THE COURT: I was hoping you weren't assuming these
10 are redacted.

11 MR. THOMPSON: I think they could easily be and I saw
12 numerous ways in which to do it, that's why I didn't
13 proffer one up because I think there could be many ways
14 they could be redacted with the satisfaction of the Court
15 and I think that's something we can do fairly quickly
16 without much of a problem. So I would point that out and
17 say that once again there would be no material prejudice
18 to this defendant calling these two defendants together to
19 these defendants trying them together with a proper
20 redacted statement, especially considering the light in
21 the furtherance of the conspiracy.

22 THE COURT: Anything else, Mr. Chiarenza?

23 MR. CHIARENZA: Just briefly, Your Honor. Your
24 Honor, one, I don't see how these statements are in
25 furtherance of the conspiracy. Statement one is an

PRETRIAL MOTIONS

1 interview given to law enforcement a year or so after the
2 alleged crime was committed. The other are statements
3 made to an agent of law enforcement while he was being
4 booked and arrested. So certainly they're not in
5 furtherance of a conspiracy, that's not a measure -- it's
6 not the kind of statements where we are dealing with an
7 admission on the point of Mr. McKnight which implicates my
8 client.

9 Secondly, I have to respectfully disagree with the
10 solicitor's office that they would be in the same position
11 were they to have to try these cases separately. As I
12 mentioned previously, I believe the statement is
13 admissible against Mr. McKnight and would be in the trial
14 against Mr. McKnight which is what we have here if the
15 Court does not sever these defendants. However, if the
16 Court severs these defendants and Mr. McKnight is not the
17 defendant and not involved in the trial of my client this
18 statement is not admissible or at the very least I would
19 argue that it would not be admissible. So clearly
20 admissible against Mr. McKnight, it's not clearly
21 admissible against my client if Mr. McKnight is not being
22 tried at the same time. So that's the whole basis of the
23 motion is that if they get this statement in there's
24 information in this statement that implicates my client
25 which he cannot address, you can't confront. If

PRETRIAL MOTIONS

1 Mr. McKnight is not here they can't get the statement in
2 and the confrontation issue becomes a moot point. That's
3 my concern.

4 THE COURT: Counsel, I am going to deny the motion at
5 this time. I believe that these statements can be
6 redacted to protect your client's rights. However if
7 we -- obviously as you know a motion to sever can be made
8 throughout the trial and if we come to another point where
9 it becomes a problem you can renew the motion if you need
10 to.

11 MR. CHIARENZA: Thank you, Your Honor.

12 THE COURT: Any other motions, counsel, before we
13 bring the jury in to begin that process?

14 MR. CHIARENZA: No, Your Honor, none before the jury.

15 THE COURT: Mr. Boyd, do you have any?

16 MR. BOYD: None, Your Honor.

17 THE COURT: Any from the State?

18 MR. POPE: No, sir, Your Honor. I think our
19 intention would be to bring the jury up, draw the jury,
20 perhaps let them go for the day and then deal with any
21 other motions. Mr. Chiarenza gave us a number of motions
22 as we could address those.

23 THE COURT: Do any of you have any particular voir
24 dire for the jury? And I have -- obviously I have a
25 number of questions I ask and I will go through those.

VOIR DIRE

1 (The jury panel entered the courtroom.)

2 THE COURT: All right. At this time we have all
3 jurors with us. Solicitor, are you ready to call your
4 first case?

5 MR. POPE: Please the Court, Your Honor? Docket
6 number 2004-GS-46-4003, the State vs. Jaleel V. Page also
7 known as Jameel Page, indictment for murder. It has been
8 true billed by the grand jury. Docket number
9 2004-GS-46-4004, State vs. Jaleel V. Page also known as
10 Jameel Page, indictment for attempted armed robbery. It
11 has been true billed by the grand jury. 2004-GS-46-4005,
12 State vs. Jaleel V. Page, also known as Jameel Page,
13 indictment for criminal conspiracy. It has been true
14 billed by the grand jury. 2004-GS-46-4006, State vs.
15 Jaleel V. Page, also known as Jaleel Page, indictment for
16 possession of a weapon during the commission of a violent
17 crime. This has also been true billed by the grand jury.
18 Docket number 2004-GS-46-4007, State of South Carolina vs.
19 Jaleel v. Page, possession of a pistol by a person under
20 21, also true billed by the grand jury. Mr. Page is
21 present in the courtroom, he is represented by Mr.
22 Chiarenza. The State is prepared to go to trial on these
23 charges.

24 THE COURT: Mr. Chiarenza, is the defense ready?

25 MR. CHIARENZA: Yes, Your Honor.

VOIR DIRE

1 THE COURT: All right. Go ahead.

2 MR. POPE: Please the Court, Your Honor? Docket
3 number 2005-GS-46-0863, the State vs. Terrance McKnight,
4 indictment for murder, it has been true billed by the
5 grand jury. 2005-GS-46-0864, State vs. Terrance McKnight,
6 indictment for criminal conspiracy, it has also been true
7 billed. 2005-GS-46-0865, the State vs. Terrance McKnight,
8 indictment for attempted armed robbery. Your Honor. That
9 has also been true billed. Mr. McKnight is present in the
10 courtroom. He's represented by Mr. Jim Boyd also of the
11 York County Bar, Your Honor.

12 THE COURT: Mr. Boyd, is the defense ready?

13 MR. CHIARENZA: Defense is ready, Your Honor.

14 THE COURT: All right. Thank you, sir. Ladies and
15 gentlemen, as you've heard the State now calls the cases
16 of the State vs. Jaleel V. Page and the State vs. Terrance
17 McKnight. They do so by virtue of these documents which I
18 hold in my hand. These documents are called indictments.
19 Now, let me hasten to tell you that an indictment is not
20 evidence. An indictment is only a statement of the
21 charges against the defendant and it is required simply to
22 tell the defendant what the State alleges that he is
23 supposed to have done. Obviously, the State cannot rely
24 on the indictment in their case, they must put up
25 witnesses and these witnesses will be the ones that you as

VOIR DIRE

1 a jury will consider and they must prove the guilt of each
2 defendant on each charge by evidence that they put before
3 you. So remember, indictments are not evidence, they are
4 only statements of the charge against each defendant.

5 With that in mind I am going to read to you very briefly
6 from the indictments, and again, remember these are simply
7 the charges. It is up to you the jury to decide whether
8 there is innocence or guilt on the charges.

9 First against Mr. Page, murder. The indictment
10 alleges that Jaleel V. Page, also known as Jaleel Page in
11 York County, South Carolina, on or about March 16, 2003
12 with malice aforethought did kill one Willie Cunningham by
13 means of shooting the victim with a firearm and the victim
14 died as a result thereof in violation of the code of laws
15 of South Carolina.

16 On the charge of attempted armed robbery, it alleges
17 that on or about March 16, 2003 Jaleel V. Page, also known
18 as Jameel Page in York County, South Carolina attempted to
19 steal goods or monies from the person or presence of
20 Willie Cunningham by means of force or intimidation while
21 armed with a deadly weapon, all in violation of the code
22 of laws of South Carolina.

23 On the charge of criminal conspiracy, it alleges that
24 Jaleel V. Page, also known as Jameel Page, in York County,
25 South Carolina, on or about March 16, 2003 willfully and

VOIR DIRE

1 unlawfully united, combined, conspired, confederated,
2 agreed or had tacit understanding with others for the
3 purpose of committing the crime of armed robbery in
4 violation of the code of laws of South Carolina.

5 Possession of a weapon during the commission of a
6 violent crime. The indictment alleges that on or about
7 March 16, 2003 Jaleel V. Page, also known as Jameel Page,
8 possessed a firearm during the commission of the violent
9 crime of murder, and/or of the attempted armed robbery of
10 Willie Cunningham in violation of the code of laws of
11 South Carolina.

12 And as to the charge of possession of a pistol by a
13 person under 21, it alleges that Jaleel V. Page did in
14 York County on or about March 16, 2003 did unlawfully and
15 knowingly take or have in his possession a .25 caliber
16 pistol, said defendant being under 21 years of age at the
17 time of the incident, all in violation of the code of laws
18 of South Carolina.

19 Now, as to the defendant Terrance McKnight, the first
20 indictment is on a charge of murder. It alleges that
21 Terrance McKnight did in the city of York, York County,
22 South Carolina on or about March 16th of 2003 with malice
23 aforethought did kill one Willie Cunningham by means of
24 shooting the victim with a firearm and the victim died as
25 a result thereof in violation of the code of laws of South

VOIR DIRE

1 Carolina.

2 On criminal conspiracy it alleges that Terrance
3 McKnight in the City of York, York County, South Carolina
4 on or about March 16, 2003 did wilfully and unlawfully
5 unite, combine, conspire, confederate, agree or have tacit
6 understanding of others for the purpose of committing the
7 crime of armed robbery in violation of the code of laws of
8 South Carolina:

9 And on the charge of attempted armed robbery alleges
10 that on or about March 16th of 2003, Terrance McKnight in
11 York County, South Carolina, attempted to steal goods or
12 monies from the person or presence of Willie Cunningham by
13 means of force or intimidation while armed with a deadly
14 weapon, all in violation of the code of laws of South
15 Carolina.

16 As I said earlier, again these are charges only, the
17 State is required to prove these charges with evidence put
18 before you and it is up for you, the jury, to determine
19 whether or not they have been proven. That having been
20 said, let me ask, is there any member of the jury venire
21 who has heard anything about this case or knows anything
22 about this case? All right, ma'am. What is your name and
23 number please, ma'am?

24 THE JUROR: My name is Ruth Cargile and I'm juror
25 number 23.

VOIR DIRE

1 THE COURT: Okay. Let me ask if you would step up
2 here, please, ma'am. I'm am going to let you just come up
3 here and talk to me. Counsel, you can come up if you
4 would like also.

5 (A bench conference was held.)

6 THE COURT: Okay. How did you hear anything about
7 the case, news media or word of mouth or how?

8 THE JUROR: Through the news media and I know him
9 personally.

10 THE COURT: You know who personally?

11 THE JUROR: I know Jaleel and his parents.

12 THE COURT: Okay. Would that affect you if you sat
13 as a juror?

14 THE JUROR: I'm not sure.

15 THE COURT: Would you be able to give both sides a
16 fair trial?

17 THE JUROR: I would be.

18 THE COURT: You would not feel like you having -- how
19 do you know Mr. Page?

20 THE JUROR: He has attended the church where my
21 husband pastored.

22 THE COURT: Who is your husband?

23 THE JUROR: Reverend Phillip Cargile, Sr.

24 THE COURT: He hasn't been here I assume in the
25 courtroom today, has he?

VOIR DIRE

1 THE JUROR: No.

2 THE COURT: Okay. You would not feel that you would
3 need to show any preference to Mr. Page at all by the fact
4 he went to the same church with you?

5 THE JUROR: No.

6 THE COURT: Okay. All right. And you feel like you
7 could give both sides a fair trial?

8 THE JUROR: I believe I could.

9 THE COURT: Okay. Thank you, ma'am. Is there anyone
10 else who has heard anything about the case? If you would,
11 come on up please, ma'am. Anyone else? Go ahead and just
12 come on up if you would. Stand right at those swinging
13 doors and we will let you come up here one at a time. All
14 right. Come on up, ma'am.

15 (The juror approached the bench.)

16 THE COURT: What is your name and number?

17 THE JUROR: Juror number 214, Wanda Simiril.

18 THE COURT: Okay. All right. And how have you heard
19 anything about this case?

20 THE JUROR: Well, I live on Green Street and I know
21 some of the families.

22 THE COURT: Of the defendants or --

23 THE JUROR: Both families.

24 THE COURT: On both sides?

25 THE JUROR: Yes.

VOIR DIRE

1 THE COURT: Do you feel like that would have any
2 affect on you at all if you sat as a juror?

3 THE JUROR: Yes, it does.

4 THE COURT: Do you feel like you would have trouble
5 giving both sides a fair trial?

6 THE JUROR: Uh-huh.

7 THE COURT: We will excuse you from having to sit on
8 this case. You can stay with us just in case there are
9 any other cases that come up. Your name and number if you
10 would stand at that corner right there. This court
11 reporter has to hear what you say.

12 THE JUROR: Martha McNeal.

13 THE COURT: Do you know your number?

14 THE JUROR: 112.

15 THE COURT: How do you know this case?

16 THE JUROR: Through the news media.

17 THE COURT: News media. You haven't talked with
18 anybody about the case at all, just heard it on the news
19 media?

20 THE JUROR: Different people that were talking about
21 it. We were talking about it at work, then I know some of
22 the family.

23 THE COURT: You know some of the family?

24 THE JUROR: Uh-huh.

25 THE COURT: On which side?

VOIR DIRE

1 THE JUROR: McKnight's.

2 THE COURT: Mr. McKnight's family? Would it affect
3 you in any way if you sat as a juror in this case, would
4 that have any affect on you?

5 THE JUROR: Possibly.

6 THE COURT: Okay. Do you feel it would keep you from
7 giving both sides a fair trial?

8 THE JUROR: Yes.

9 THE COURT: Okay. We will excuse you from having to
10 sit in this case, but if you would stay you might get
11 drawn on another case later. We will let you stay with us
12 just for right now. Anyone else who has heard anything
13 about the case or knows anything about the case? I am
14 going to introduce to you some of the folks involved in
15 the case and we will ask you basically if you know any of
16 them or if you have ever heard of any of them in any way
17 or do you know anything about them at all. Who will be
18 trying the case for State?

19 MR. POPE: Myself and Mr. Thompson.

20 THE COURT: This is as you know Mr. Tommy Pope, the
21 solicitor, Deputy Solicitor Thompson will be with him.
22 Does any member of the jury venire know or know of
23 Mr. Pope or Mr. Thompson?

24 THE JUROR: I know Mr. Pope.

25 THE COURT: Go ahead and stand if you would. If you

VOIR DIRE

1 know Mr. Pope or know of Mr. Pope would you go ahead and
2 stand? Let's start right over here. What is your name
3 and number, please, sir?

4 THE JUROR: 201, Daniel Lake. I believe Mr. Pope was
5 present when my daughter was molested by a gentleman here
6 in South Carolina and we went to trial on it.

7 THE COURT: Would that affect whether you could give
8 both sides a fair trial in this case?

9 THE JUROR: No, it will not.

10 THE COURT: All right. Thank you, sir.

11 THE JUROR: I'm number 69, William Givens. I just
12 know Mr. Pope through the news media.

13 THE COURT: Would that affect whether you could give
14 both sides a fair trial in this case?

15 THE JUROR: No, sir, it would not.

16 THE COURT: Thank you, sir. Yes, sir?

17 THE JUROR: Tennyson, 158. Just through news media.

18 THE COURT: And would that affect whether you could
19 give both sides a fair trial in this case?

20 THE JUROR: No, sir.

21 THE COURT: And you were 158?

22 THE JUROR: 158.

23 THE COURT: Okay.

24 THE JUROR: Juror number 57, Edwards, and I recall
25 him from the Susan Smith trial.

VOIR DIRE

1 THE COURT: Mr. Edwards?

2 THE JUROR: Yes.

3 THE COURT: Okay. And Mr. Edwards, would that affect
4 whether you could give both sides a fair trial in this
5 case?

6 THE JUROR: No, it doesn't.

7 THE COURT: All right. Thank you, sir. Yes, sir?

8 THE JUROR: Carl Houser, juror number 86, and just
9 through the news media.

10 THE COURT: All right. And would that affect whether
11 you could give both sides a fair trial?

12 THE JUROR: No, it wouldn't.

13 THE COURT: All right. Thank you, sir. Yes, sir?

14 THE JUROR: Dennis Fitch 197, I know him from video
15 poker.

16 THE COURT: All right. Mr. Fitch, one more question
17 please -- I won't even go in to that -- would that affect
18 whether you could give both sides a fair trial?

19 THE JUROR: He wasn't very nice to me.

20 THE COURT: Well, do you feel like it would prevent
21 you from being fair?

22 THE JUROR: I think so.

23 THE COURT: We'll excuse you. Mr. Terry I recall
24 from this morning. What was your number?

25 THE JUROR: Number 161. I just know that he's the

VOIR DIRE

1 solicitor for York County.

2 THE COURT: And would that affect whether you could
3 give both sides a fair trial in this case?

4 THE JUROR: No.

5 THE COURT: Yes, sir?

6 THE JUROR: Juror 104, Joel Manning. I know him
7 through the news media.

8 THE COURT: All right. And would that affect whether
9 you could give both sides a fair trial in this case?

10 THE JUROR: No.

11 THE COURT: Thank you, sir. Yes, ma'am?

12 THE JUROR: 223, Connie Youngblood. My ex-husband
13 was a York County sheriff's deputy.

14 THE COURT: Would that affect whether you could give
15 both sides a fair trial in this case?

16 THE JUROR: No.

17 THE COURT: All right. Thank you, ma'am. Yes, sir?

18 THE JUROR: Juror 199, Josh Holford. I knew him
19 through an assistant solicitor who used to work there,
20 Harold Staley.

21 THE COURT: Would that affect whether you could give
22 both sides a fair trial in this case?

23 THE JUROR: No, it does not.

24 THE COURT: All right. Thank you, sir. All right.
25 Yes, ma'am?

VOIR DIRE

1 THE JUROR: Frances Leitner, number 202. And I know
2 him through the news media.

3 THE COURT: Would that affect whether you could give
4 both sides a fair trial in this case?

5 THE JUROR: No.

6 THE COURT: Yes, ma'am?

7 THE JUROR: Juror number 133, Terry Polk. I went to
8 high school and am a friend of Tommy Pope's.

9 THE COURT: Would that affect whether you could give
10 both sides a fair trial in this case?

11 THE JUROR: No, sir.

12 THE COURT: All right. Thank you, ma'am. Yes, sir?

13 THE JUROR: 204, Paul Maree. I know him from the
14 media on the Susan Smith case.

15 THE COURT: Would that affect whether you could give
16 both sides a fair trial in this case?

17 THE JUROR: No, sir.

18 THE COURT: Thank you, sir. Anyone else who knows or
19 knows of Mr. Pope? All right. Any member of the jury
20 venire know or know of Mr. Thompson? Sorry, Mr. Thompson.

21 Did any member of the jury venire know or know of the
22 late Willie Cunningham? All right. Let me introduce you
23 first, this is Mr. Jaleel Page. Mr. Page, would you just
24 stand so they can see who you are, also known as Jameel
25 Page. Does any member of the jury venire know or know of

VOIR DIRE

1 Mr. Page? Thank you, sir.

2 Mr. Page is represented by Mr. Derrick Chiarenza.

3 Anyone know or know of Mr. Chiarenza? Thank you, sir.

4 And this is also Mr. Terrance McKnight.

5 MR. POPE: Please the court, Your Honor, it's already
6 been addressed but I believe is Ms. Carlisle, number 23,
7 raised her hand.

8 THE COURT: I'm sorry, I apologize.

9 THE JUROR: I was up there before.

10 MR. POPE: She had already come up.

11 THE COURT: She's already been up, that's right. All
12 right. And I note that then for the record. This is
13 Mr. Terrance McKnight. Does anyone know or know of
14 Mr. McKnight? Thank you, sir. And he's represented by
15 Mr. Jim Boyd. Anyone know or know of Mr. Boyd? Yes,
16 ma'am, your name and number please?

17 THE JUROR: Tiffany Jordan, 93. I had a consultation
18 with him.

19 THE COURT: Would that affect whether you could give
20 both sides a fair trial in this case?

21 THE JUROR: No, sir.

22 THE COURT: Thank you, ma'am. Yes, sir?

23 THE JUROR: Juror number 195. Mr. Boyd attends the
24 same church I do.

25 THE COURT: Would that affect whether you could give

VOIR DIRE

1 both sides a fair trial in this case?

2 THE JUROR: No, sir.

3 THE COURT: Thank you, sir. Yes, ma'am?

4 THE JUROR: Number 50. I went to high school with

5 him.

6 THE COURT: All right. And would that affect whether

7 you could give both sides a fair trial in this case?

8 THE JUROR: No.

9 THE COURT: What is your name, please, ma'am?

10 THE JUROR: Margaret Killinger.

11 THE COURT: All right. Thank you, ma'am. Anyone

12 else? Now, ladies and gentlemen of the jury, I am going

13 to go over with you a list of potential witnesses in this

14 case and I'm going to ask you as I call the name if you

15 know or know of any of these folks whose names I call I

16 will ask you to stand and give us your name and your juror

17 number and we will find out how you know the individual.

18 Now, there are a number of cases (sic), they may not all

19 testify necessarily but these are all just potential

20 witnesses. If any of the witnesses happen to be in the

21 courtroom we will let them stand. Most of them will not

22 be but if they are we will let them stand for your

23 convenience so that you can see who they are. But again,

24 they don't have to be here today so don't be concerned if

25 they are not.

VOIR DIRE

1 First of all Steven Barr. Does anyone know or know
2 of Mr. Steven Barr? Joseph Boyd? Robert Brown? Mary
3 Burris? Stephanie Burton? Adrian Byars? Dell Byars?
4 Joyce Cunningham? Mickey Tyler Martin? All right. From
5 EMS personnel Tommy Caldwell? Jimmy Eubanks? Yes, ma'am?
6 THE JUROR: I know a Jim Eubanks.
7 THE COURT: What is your name and number, please?
8 THE JUROR: Frances Leitner, number 202.
9 THE COURT: How do you know a Jim Eubanks?
10 THE JUROR: I work with him, I don't know if it's the
11 same one.
12 THE COURT: This one is apparently with the emergency
13 medical services. Is that a different one you think?
14 THE JUROR: I don't know that about him.
15 THE COURT: All right. If he were -- it's the same
16 one you know and he were to testify, would that give you
17 any problem in giving both sides a fair trial?
18 THE JUROR: No.
19 THE COURT: It would not affect your role as a juror?
20 THE JUROR: I don't think so.
21 THE COURT: Thank you, ma'am. Anyone else? All
22 right. Butch Lindsay?
23 THE JUROR: He's my brother-in-law's best friend.
24 THE COURT: What is your name and number?
25 THE JUROR: Juror number 104, Joel Manning.

VOIR DIRE

1 THE COURT: If Mr. Lindsay were then to testify,
2 would that affect you sitting as a juror in this case?

3 THE JUROR: No, sir.

4 THE COURT: Would you still be able to give both
5 sides a fair trial?

6 THE JUROR: Yes, sir.

7 THE COURT: Anyone else know or know of Mr. Butch
8 Lindsay? Gary Tomason? Derrick D. Floyd. Anyone know or
9 know of Mr. Derrick Floyd? Brian Bagwell? Todd Gardner?
10 Lofton Gardner? Katrina Howard? Kelly Littlejohn? Dr.
11 James L. Maynard? Ralph Merchant? Qjuan Porter?
12 Kenyatta Sherrer? Rashad Simpson?

13 And agents from the South Carolina Law Enforcement
14 division known as SLED: Darryl Betsill? Cecil
15 Bradstreet? Rhonda Fields? Dewhitt McGraw? Michael
16 Provan? Emily Reinhardt? Ila Simmons? Alfred Stuckey?
17 Tracy Thrower? Also from York Police Department: John
18 Naylis, Gene Robins, Sara Robbins. This is Officer
19 Robbins. Keith Wells. And also other potential witnesses
20 Andy Stewart? James Thompson? Adrian Twyman? Antonia
21 Havar Williams? Gaither Williams? Andrew Staffileno?
22 Lamont McCollum. All right, counsel, I believe that got
23 all of the names. Any other names I missed that you know
24 of?

25 MR. POPE: Nothing from the State, Your Honor.

VOIR DIRE

1 THE COURT: All right. Defense, do you know of any
2 others I missed?

3 MR. CHIARENZA: I don't believe so, Your Honor.

4 THE COURT: Again, any members of the jury venire
5 think that you may know or know of any of these folks
6 whose names I have just called?

7 All right. Now, is there any member of the jury
8 venire who either you or a family member or a close friend
9 has ever been a victim of a violent crime, of a crime
10 involving any sort of violence at all? Anyone, either you
11 or -- go ahead and stand up. I know some of you are
12 raising your hands but I need to tell you, at my advanced
13 age sometimes I can't always see that well so you've got
14 to stand up so I can see you. All right. Either you or a
15 family member or a close friend ever been involved in any
16 kind of -- or been the victim of any sort of crime of
17 violence? Okay. Let me -- I'm going to ask each of you
18 if you will come up here and talk about it. Just come if
19 you would to these swinging doors and I am going to let
20 you come from there and come up one at time.

21 THE JUROR: 163, Anna Turney. It was just a friend.

22 THE COURT: Would that affect you if you were to sit
23 as a juror in this case?

24 THE JUROR: No, sir.

25 THE COURT: Would you be able to give both sides a

VOIR DIRE

1 fair trial?

2 THE JUROR: Yes, sir.

3 THE COURT: Thank you, ma'am. You are Mr. Edwards?

4 THE JUROR: Yes, sir.

5 THE COURT: Was it you or a family member?

6 THE JUROR: It was a sister, my sister in Mecklenburg

7 County five years ago, she was found dead. It was ruled a

8 homicide but later changed to natural causes.

9 THE COURT: Would that affect your ability to give
10 both sides a fair trial?

11 THE JUROR: No, it doesn't.

12 THE COURT: You would still be able to give both
13 sides a fair trial?

14 THE JUROR: Yes, sir.

15 THE COURT: Thank you, sir. Your name and number?

16 THE JUROR: Juror 201, Danielle Lake. Eight years
17 ago my daughter was molested here in York County.

18 THE COURT: Would that affect you if you could give
19 both sides a fair trial?

20 THE JUROR: Not at all.

21 THE COURT: Thank you, sir. What's your number?

22 THE JUROR: Josh Holford, number 199. This past year
23 I was victim of a simple assault on campus at USC.

24 THE COURT: Would that affect whether you could give
25 both sides a fair trial in this case?

VOIR DIRE

1 A. No, it wouldn't.

2 THE COURT: Thank you, sir.

3 THE JUROR: Paul Henderson, number 80. In '97 a
4 friend of mine and close friend of the family's was killed
5 during a car jacking.

6 THE COURT: Okay. Would that affect your ability to
7 give both sides a fair trial in this case?

8 THE JUROR: I don't believe so.

9 THE COURT: Okay. Any question in your mind? When
10 you say I don't believe, is there any question at all?

11 THE JUROR: I don't think I would be able to be on a
12 jury and give a fair decision.

13 THE COURT: You said you do not believe you could?

14 THE JUROR: No, sir.

15 THE COURT: Okay. We will excuse you from having to
16 sit in this case. If you will just stay with us for now
17 though, okay? What's your name and number?

18 THE JUROR: Robert Morrow, I don't know my number.
19 One of my friends was killed last week, he got shot in his
20 own house.

21 THE COURT: Would that affect whether you could give
22 both sides a fair trial?

23 THE JUROR: No, sir.

24 THE COURT: What was the name of the friend?

25 THE JUROR: Eastwood Alan Hurst.

VOIR DIRE

1 THE COURT: Okay. All right. Thank you, sir.

2 What's your name and number?

3 THE JUROR: Michael Stiver, number 154. My sister
4 was assaulted by a stranger I guess about five or six
5 years ago.

6 THE COURT: Would that affect your ability to give
7 both sides a fair trial in this case?

8 THE JUROR: No, it wouldn't.

9 THE COURT: Thank you, sir. Mr. Maynard, what was
10 your number?

11 THE JUROR: 224. Again, ten years my best friend was
12 murdered while on duty as a police officer in Florida.

13 THE COURT: What was his name?

14 THE JUROR: Jeff Tacker.

15 THE COURT: Would that affect whether you could give
16 both sides a fair trial?

17 THE JUROR: I believe so, yes, sir. I believe it
18 would affect me.

19 THE COURT: We will excuse you from having to sit on
20 this case, just stay with us for right now, though.

21 Mr. Maynard is excused from this case. What's your name
22 and number?

23 THE JUROR: Juror number 206, Juan McMoore. My
24 father is in prison for murder.

25 THE COURT: Your father?

VOIR DIRE

1 THE JUROR: And attempted murder. My mom was
2 murdered by one of her boyfriends. As recently as last
3 week one of my brothers was here at the detention center
4 for aggravated assault and attempted murder.

5 THE COURT: Would that affect whether you could give
6 both sides a fair trial in this case?

7 THE JUROR: It possibly could.

8 THE COURT: Okay. We will excuse you then from
9 having to sit on this case. If you would stay with us for
10 right now, though, okay? Give us your name and number.

11 THE JUROR: Thomas W. Ratterree, juror 138. My
12 sister was murdered in 1964 over in Fort Mill.

13 THE COURT: Would that affect whether you could give
14 both sides a fair trial in this case?

15 THE JUROR: No, sir.

16 THE COURT: All right. Thank you, sir.

17 THE JUROR: 161. I was a victim of an armed robbery
18 in Miami, Florida.

19 THE COURT: Would that affect whether you would give
20 both sides a fair trial in this case?

21 THE JUROR: I can be fair to both sides.

22 THE COURT: I noticed some hesitation. Does that
23 cause any question in your mind at all?

24 THE JUROR: I'm not 100 percent sure. I'm not
25 100 percent sure.

VOIR DIRE

1 THE JUROR: Okay. Here is what I will do, I will
2 excuse you from having to sit in this case. All right.
3 Mr. Peterman will be excused from this case.

4 THE JUROR: My name is Doris Young, I'm juror 180.
5 Maybe 12 or 15 years ago I had my pocketbook snatched in
6 the parking lot, I think they called it strong armed
7 robbery. I never had to go to court.

8 THE COURT: Would that affect whether you could give
9 both sides a fair trial in this case?

10 THE JUROR: No, sir.

11 THE COURT: It wouldn't affect you? All right. All
12 right. Anyone else? Counsel, y'all might want to stay.
13 I will also ask if any member of the jury venire, that
14 would be either you or a family member or a close friend
15 has ever been charged or convicted of a crime of violence.
16 It may not be you, maybe a family member or a close
17 friend.

18 THE COURT: Give us your name and number.

19 THE JUROR: Thomas W. Ratterree, juror number 138. I
20 have a nephew that shot a fellow with a shotgun.

21 THE COURT: What's your nephew's name?

22 THE JUROR: Scott Bexler.

23 THE COURT: How long ago was that?

24 THE JUROR: This would have been back probably 15
25 years ago.

VOIR DIRE

1 THE COURT: Would that affect whether you could give
2 both sides a fair trial in this case?

3 THE JUROR: No, sir.

4 THE COURT: All right. Thank you, sir.

5 THE JUROR: Number 76. My stepbrother, he robbed a
6 bank and he's in prison.

7 THE COURT: Would that affect whether you could give
8 both sides a fair trial in this case?

9 THE JUROR: No.

10 THE COURT: Thank you, ma'am.

11 THE JUROR: Someone I grew up with and went to school
12 with I was really close friends with them was convicted of
13 murder.

14 THE COURT: Would that affect whether you could give
15 both sides a fair trial in this case?

16 THE JUROR: No.

17 THE COURT: What's your name and number?

18 THE JUROR: Richard Krug, its 95.

19 THE JUROR: Some years ago I did have a friend of
20 mine --

21 THE COURT: I believe -- did we excuse you a minute
22 ago, Mr. Edwards?

23 THE JUROR: No.

24 THE COURT: We did not. Come on up here then. Okay.
25 You say a friend of yours?

VOIR DIRE

1 THE JUROR: Yes. A friend of mine when I was in high
2 school is involved in a capital murder case here in York
3 County.

4 THE COURT: What is his name?

5 THE JUROR: It was Wayne Henson and Eric Gill.

6 THE COURT: Would that affect whether you could give
7 both sides a fair trial in this case?

8 THE JUROR: No.

9 THE COURT: All right. Thank you, sir. And let me
10 note one thing to you, if there is anyone -- anytime you
11 are excused you don't have to answer any other questions
12 after that. All right. Anybody else? All right. Thank
13 you, counsel.

14 Is there any member of the jury venire who is related
15 by -- whether either you or related by blood, marriage,
16 social acquaintance or otherwise with anyone who is
17 employed by any law enforcement agency? It could be city
18 police, county deputy, state trooper, SLED, attorney
19 general's office, solicitor's office, MP, anything that
20 would be considered law enforcement. Start with --
21 Mr. Edwards, we will start with you. What's your name and
22 number please, first?

23 THE JUROR: Number 57, Edwards. Dennis Chisolm.

24 THE COURT: Is he with the county or --

25 THE JUROR: Sheriff's department.

VOIR DIRE

1 THE COURT: Would that affect whether you could give
2 both sides a fair trial in this case?

3 THE JUROR: No.

4 THE COURT: All right. Thank you, sir. Yes, ma'am?

5 THE JUROR: My name is Ruth Cargile, juror number 23.
6 My son-in-law is a corrections officer.

7 THE COURT: Would that affect whether you could give
8 both sides a fair trial?

9 THE JUROR: No.

10 THE COURT: What is his name, please?

11 THE JUROR: Shedric Baxter.

12 THE COURT: Okay. Thank you, ma'am. Yes, sir?

13 THE JUROR: Joel Manning, juror number 104. My
14 brother-in-law, Wayne Mungo, is a sheriff's deputy.

15 THE COURT: Would that affect whether you could give
16 both sides a fair trial?

17 THE JUROR: No, sir.

18 THE COURT: Okay. Thank you, sir. Yes, ma'am?

19 THE JUROR: Anna Turney, number 163. My
20 brother-in-law was a highway patrol.

21 THE COURT: Would that affect whether you could give
22 both sides a fair trial?

23 THE JUROR: No, sir.

24 THE COURT: All right. Yes, sir?

25 THE JUROR: Mark Ghent, Juror 195. My oldest brother

VOIR DIRE

1 is a former South Carolina Highway Patrolman and my other
2 brother is a detective for the State Bureau of
3 Investigations in North Carolina.

4 THE COURT: Would that affect whether you could give
5 both sides a fair trial?

6 THE JUROR: No, sir.

7 THE JUROR: 223, Connie Youngblood. Bruce Bryan is
8 my cousin. My daughter works with the solicitor's office.

9 THE COURT: Would that affect whether you could give
10 both sides a fair trial?

11 THE JUROR: No.

12 THE COURT: All right. Thank you, ma'am. Yes, sir?

13 THE JUROR: Robert Combs, juror number 35. My
14 brother is a lieutenant in the North Carolina Highway
15 Patrol.

16 THE COURT: Would that affect whether you could give
17 both sides a fair trial?

18 THE JUROR: No, sir.

19 THE COURT: Thank you. Yes, sir?

20 THE JUROR: 154, Michael Stivers. My brother-in-law
21 worked for the detention Center in Norfolk, Virginia.

22 THE COURT: All right. And would that affect whether
23 you could give both sides a fair trial in this case?

24 THE JUROR: No.

25 THE COURT: All right. Thank you, sir. Yes, ma'am?

VOIR DIRE

1 THE JUROR: Wendy Williams, 171. I have known Judge
2 Melvin Howell for eight years.

3 THE COURT: Would that affect whether you could give
4 both sides a fair trial?

5 THE JUROR: No, sir.

6 THE COURT: Thank you, ma'am. Yes, ma'am?

7 THE JUROR: My brother is Lieutenant Jerry Waldrop,
8 he works for the City of Rock Hill.

9 THE COURT: Would that affect whether you could give
10 both sides a fair trial?

11 THE JUROR: No.

12 THE COURT: What is your name and number, please?

13 THE JUROR: It's Margaret Dillinger, number 50.

14 THE JUROR: Number 217, my boyfriend works for the
15 York Police.

16 THE COURT: Would it affect whether you could give
17 both sides a fair trial?

18 THE JUROR: No.

19 THE COURT: What is his name, please?

20 THE JUROR: Math Boykin.

21 THE COURT: Okay. Thank you, ma'am. Yes, ma'am?

22 THE JUROR: Juror number, 133 Terry Polk. My father
23 is a reserve officer for the York County Sheriff's
24 Department.

25 THE COURT: Would that affect whether you could give

VOIR DIRE

1 both sides a fair trial?

2 THE JUROR: No, sir.

3 THE COURT: All right. Thank you, ma'am. Yes, sir?

4 THE JUROR: Richard Grug, number 95. My cousin is a
5 police officer.

6 THE COURT: Would that affect whether you could give
7 both sides a fair trial?

8 THE JUROR: No, sir.

9 THE JUROR: My brother works for the county detention
10 center.

11 THE COURT: Would that affect whether you could give
12 both sides a fair trial?

13 THE JUROR: No, sir.

14 THE COURT: Thank you, sir. Anyone else? All right.
15 Now, a couple questions I didn't ask earlier. Any member
16 of the jury venire, either you or a family member or a
17 close friend ever had any dealings or any relationship
18 with the solicitor's office in this circuit or with the
19 attorney general's office? All right. Has any member of
20 the jury venire, again you or a close friend or a family
21 member, ever had any dealings or any relationship with any
22 public defender or any law firm who does defense work?

23 Yes, ma'am, Ms. Youngblood. Your number?

24 THE JUROR: 223, Connie Youngblood. My ex-husband,
25 we had to go up here in federal court.

VOIR DIRE

- 1 THE COURT: Would that affect whether you could give
2 both sides a fair trial?
- 3 THE JUROR: No.
- 4 THE COURT: Thank you, ma'am.
- 5 THE JUROR: My daughter is an attorney here in town,
6 she does domestic?
- 7 THE COURT: What is her name?
- 8 THE JUROR: Randy Hosenfeld, juror number 85.
- 9 THE COURT: What is your daughter's name?
- 10 THE JUROR: Elizabeth Rainey.
- 11 THE COURT: Would that affect whether you could give
12 both sides a fair trial?
- 13 THE JUROR: No, sir.
- 14 THE COURT: Anyone else? All right. Now, does any
15 member of the jury venire know of any other reason why you
16 could not give all parties a fair trial in this case?
- 17 THE JUROR: I have one question.
- 18 THE COURT: Why don't you come up here? Let me let
19 you come up here okay? Ms. Youngblood.
- 20 THE JUROR: The people standing against the wall, are
21 they family?
- 22 THE COURT: They're family members.
- 23 THE JUROR: Because I know some of the people
24 standing against the wall.
- 25 THE COURT: Would that affect --

VOIR DIRE

1 THE JUROR: Joyce Cunningham.

2 THE COURT: That was her husband?

3 MR. POPE: That is Willie Cunningham's widow.

4 THE JUROR: Yes, sir.

5 THE COURT: All right. Would that affect you?

6 THE JUROR: Yes.

7 THE COURT: We will excuse her from having to sit in

8 this case. Anyone else? All right, yes, sir?

9 THE JUROR: I just wanted to ask a question.

10 THE COURT: Why don't you come up here.

11 THE JUROR: My name is Grug, juror 95. I actually

12 should have mentioned it before, my children are

13 graduating from police school tomorrow at 6:00 and it's

14 just something that I had in mind.

15 THE COURT: You should be able to get away for that?

16 THE JUROR: I didn't -- we might be deliberating and

17 it might be in the back of my mind.

18 THE COURT: Thank you, sir. And I was going to get

19 into scheduling in the week anyway. I understand that

20 some of you may have protection for the end of the week

21 for Thursday and Friday. This case probably would go into

22 Thursday and Friday. Are there those who had protection

23 of some kind for Thursday and Friday? If so, would you

24 please stand? Okay. Yes, ma'am, your name and number,

25 please?

VOIR DIRE

1 THE JUROR: Teresa Clifford, juror number 30. I do
2 have plans to go out of town Thursday evening for a high
3 school reunion down in Florida. I didn't know that it
4 would last that long. I can wait until mid-afternoon
5 Friday if that was the case.

6 THE COURT: Well, we can't -- there's not a guarantee
7 we could be done by then. Is this something you had
8 already committed to go to?

9 THE JUROR: We do have tickets to the reunion, yes,
10 sir.

11 THE COURT: We'll excuse you then from -- what was
12 your name and number again?

13 THE JUROR: Teresa Clifford, juror number 30.

14 THE COURT: We will excuse you from sitting on this
15 case. In the event there were to be another case we will
16 let you stay with us just to be sure, though. Okay?

17 THE JUROR: Tennyson, 158. I haven't requested
18 protection but Saturday we have a cruise that's paid for,
19 if it's going to go past Friday that would be a problem
20 for next week.

21 THE COURT: Counsel, we should get it in by Friday,
22 do you think? We should get it in by then so you can stay
23 with us. Anyone else? All right. Now, ladies and
24 gentlemen, at this time we are going to begin the process
25 of drawing a jury and in just a moment the clerk is going

VOIR DIRE

1 to go through with you and tell you how to go about it.
2 She has done this many times before so she will treat you
3 kindly and gently. Counsel, I believe the strikes are
4 going to be ten and 20, does that sound right.

5 MR. POPE: That's correct.

6 THE COURT: Do you agree with that, Mr. Boyd?

7 MR. BOYD: I do, Your Honor.

8 THE COURT: Mr. Chiarenza?

9 MR. CHIARENZA: I'm sorry, Your Honor?

10 THE COURT: Ten and 20 on the strikes?

11 MR. CHIARENZA: That's our understanding, I have
12 confirmed that with the solicitor.

13 THE COURT: Okay. All right. Ladies and gentlemen,
14 if you will just give the clerk your attention now,
15 please.

16 THE CLERK: If your name is called please bring any
17 personal belongings that you have and please stand by the
18 bailiff. Number 220, Steven Williams. What say the
19 State?

20 MR. POPE: Please present Mr. Williams.

21 THE CLERK: Mr. Page?

22 MR. CHIARENZA: Present Mr. Williams.

23 THE CLERK: Mr. McKnight?

24 MR. BOYD: Swear the juror.

25 THE CLERK: Number 129, Billy Perdue. What say you

VOIR DIRE

- 1 for the State?
- 2 MR. POPE: Please excuse Mr. Perdue.
- 3 THE CLERK: Number 54, Phillip Dunn. What say you
- 4 for the State?
- 5 MR. POPE: Please excuse Mr. Dunn.
- 6 THE CLERK: Number 83, Suzette Hooper. What say you
- 7 for the State?
- 8 MR. POPE: Present Mrs. Hooper.
- 9 THE CLERK: Mr. Page?
- 10 MR. CHIARENZA: Present the juror.
- 11 THE CLERK: Mr. McKnight?
- 12 MR. BOYD: Swear the juror.
- 13 THE COURT: Number 86, Carl B. Houser. What say you
- 14 for the State?
- 15 MR. POPE: Present Mr. Houser.
- 16 THE CLERK: Mr. Page?
- 17 MR. CHIARENZA: Please excuse the juror.
- 18 THE COURT: Number 222, Carrie Wise. What say you
- 19 for the State?
- 20 MR. POPE: Present Ms. Wise.
- 21 THE CLERK: Mr. Page?
- 22 MR. CHIARENZA: Excuse the juror, please.
- 23 THE CLERK: Number 195, Mark Ghent. What say you for
- 24 the State?
- 25 MR. POPE: Present Mr. Ghent.

VOIR DIRE

1 THE CLERK: Mr. Page?
2 MR. CHIARENZA: Present the juror.
3 THE CLERK: Mr. McKnight?
4 MR. BOYD: Swear the juror.
5 THE CLERK: Number 202, Frances Leitner. What say
6 you for the State?
7 MR. POPE: Present Ms. Leitner.
8 THE CLERK: Mr. Page?
9 MR. CHIARENZA: Please excuse the juror.
10 THE CLERK: Number 171, Wendy Williams. What say you
11 for the State?
12 MR. POPE: Present Ms. Williams.
13 THE CLERK: Mr. Page?
14 MR. CHIARENZA: Present the juror.
15 THE CLERK: Mr. McKnight?
16 MR. BOYD: Swear the juror.
17 THE CLERK: Number 158, James Tennyson. What say you
18 for the State?
19 MR. POPE: Present Mr. Tennyson.
20 THE CLERK: Mr. Page?
21 MR. CHIARENZA: Please excuse the juror.
22 THE CLERK: Number 194, Shayna Culp. What say you
23 for the State?
24 MR. POPE: Present Ms. Culp.
25 THE CLERK: Mr. Page?

VOIR DIRE

1 MR. CHIARENZA: Present the juror.
2 THE CLERK: Mr. McKnight?
3 MR. BOYD: Swear the juror.
4 THE CLERK: Number 33, Judy M. Collins. What say you
5 for the State?
6 MR. POPE: Present Ms. Collins.
7 THE CLERK: Mr. Page?
8 MR. CHIARENZA: Please excuse the juror.
9 THE CLERK: Number 203, Kirby Lever. What say you
10 for the State?
11 MR. POPE: Present Ms. Lever.
12 THE CLERK: Mr. Page?
13 MR. CHIARENZA: Present the juror.
14 THE JUROR: Mr. McKnight?
15 MR. BOYD: Swear the juror.
16 THE CLERK: Number 215, Danielle Sweetapple. What
17 say you for the State?
18 MR. POPE: Present Ms. Sweetapple.
19 THE CLERK: Mr. Page?
20 MR. CHIARENZA: Present the juror.
21 THE CLERK: Mr. McKnight?
22 MR. BOYD: Swear the juror.
23 THE CLERK: Number 95, Richard Krug. What say you
24 for the State?
25 MR. POPE: Present Mr. Krug.

VOIR DIRE

1 THE CLERK: Mr. Page?
2 MR. CHIARENZA: Please excuse the juror.
3 THE CLERK: Number 45, Pamela Crosby. What say you
4 for the State?
5 MR. POPE: Present Ms. Crosby.
6 THE CLERK: Mr. Page?
7 MR. CHIARENZA: Please present the juror.
8 THE CLERK: Mr. McKnight?
9 MR. BOYD: Swear the juror.
10 THE CLERK: Number 182, Annette Ahtes. What say you
11 for the State?
12 MR. POPE: Present the juror.
13 THE CLERK: Mr. Page?
14 MR. CHIARENZA: Present the juror.
15 THE CLERK: Mr. McKnight?
16 MR. BOYD: Swear the juror.
17 THE CLERK: Number 204, Paul Maree. What say you for
18 the State?
19 MR. POPE: Please excuse Mr. Maree.
20 THE CLERK: Number 93, Tiffany Jordan. What say you
21 for the State?
22 MR. POPE: Present the juror.
23 THE CLERK: Mr. Page?
24 MR. CHIARENZA: Present the juror.
25 THE CLERK: Mr. McKnight?

VOIR DIRE

- 1 MR. BOYD: Swear the juror.
- 2 THE CLERK: Number 50, Margaret Killinger. What say
3 you for the State?
- 4 MR. POPE: Present Ms. Killinger.
- 5 THE CLERK: Mr. Page?
- 6 MR. CHIARENZA: Your Honor, may we approach?
- 7 THE COURT: Yes, sir.
- 8 (A bench conference was held.)
- 9 THE CLERK: Mr. Page?
- 10 MR. CHIARENZA: Excuse the juror.
- 11 THE CLERK: Number 163, Anna Turney. What say you
12 for the State?
- 13 MR. POPE: Present Ms. Turner.
- 14 THE CLERK: Mr. Page?
- 15 MR. CHIARENZA: Excuse the juror.
- 16 THE CLERK: Number 199, Joshua Holford. What say you
17 for the State?
- 18 MR. POPE: Present Mr. Holford.
- 19 THE CLERK: Mr. Page?
- 20 MR. CHIARENZA: Excuse the juror.
- 21 THE COURT: Counsel, let me ask all of y'all to step
22 up one second.
- 23 (A bench conference was held.)
- 24 THE CLERK: Number 23, Ruth Carlisle. What say you
25 for the State?

VOIR DIRE

1 MR. POPE: Please excuse Ms. Carlisle.

2 THE CLERK: Number 180, Dorothy Young. What say you
3 for the State?

4 MR. POPE: Present Ms. Young.

5 THE CLERK: Mr. Page?

6 MR. CHIARENZA: Please excuse the juror.

7 THE CLERK: Number 217, Jessica Walrath. What say
8 you for the State?

9 MR. POPE: Present Ms. Walrath.

10 MR. BOYD: Mr. Page?

11 MR. CHIARENZA: I'm out of strikes, madam clerk, so
12 present the juror.

13 THE CLERK: Mr. McKnight?

14 MR. BOYD: Swear the juror.

15 THE CLERK: Number 168, Mary Whitlock. What say you
16 for the State?

17 MR. POPE: Present Ms. Roseboro.

18 THE CLERK: Mr. McKnight?

19 MR. BOYD: Swear the juror.

20 THE CLERK: Number 187, July Basco. I think that's
21 12. This will be for the alternate.

22 THE COURT: Again, as you know, counsel, as per the
23 statute the State will have one strike on each alternate,
24 defense will have two, which means each defendant will
25 have one.

VOIR DIRE

1 THE CLERK: What say you for the State?

2 MR. POPE: Present Ms. Basco.

3 THE CLERK: Mr. Page?

4 MR. CHIARENZA: Present the juror.

5 THE CLERK: Mr. McKnight?

6 MR. BOYD: Swear the juror.

7 THE CLERK: Number 76, Melissa Harget. What say you

8 for the State?

9 MR. POPE: Please excuse Ms. Harget.

10 THE CLERK: Number 03, Ralph Aniba. What say you for

11 the State?

12 MR. POPE: Present Mr. Aniba.

13 THE CLERK: Mr. Page?

14 MR. CHIARENZA: Please excuse the juror.

15 THE CLERK: Number 189, Debra Peeples. What say you

16 for the State?

17 MR. POPE: Present Ms. Peeples.

18 THE CLERK: Mr. Page?

19 MR. CHIARENZA: Present the juror.

20 THE CLERK: Mr. McKnight?

21 MR. BOYD: Swear the juror.

22 THE COURT: Counsel, let me ask y'all to step up just

23 a minute.

24 (The remaining panel was dismissed at this time.)

25 THE COURT: All right. Jurors, we still have some

VOIR DIRE

1 motions we have to take up, we're going to spend the rest
2 of the evening, we may need a little time in the morning
3 to do with some of them, so I am going to ask you if you
4 will be back tomorrow morning at 11:00, be back at 11:00
5 tomorrow morning and we will be prepared to get started
6 with you then. When you come to the front door let them
7 know that you are here for the jury and they will see that
8 you get to the right room.

9 Now, it's very important that you don't talk about
10 the case with anyone. Certainly you want to let your
11 family members and your friends and coworkers know where
12 you are and what you are doing while you are away, but
13 just don't go into any detail about the cases at all.
14 With that in mind I will see you tomorrow at 11:00, I hope
15 you have a good evening.

16 (The jury left the courtroom.)

17 THE COURT: Now, in the matter of State vs. Page and
18 State vs McKnight. Counsel, I believe we have some
19 motions to take up today?

20 MR. POPE: Yes, sir, Your Honor. I can probably
21 address a couple of housekeeping measures. We have
22 premarked for identification State's Exhibits 1 through I
23 believe they are allowed -- 52. I've allowed the defense
24 to go through those items, made them a copy of the
25 pictures -- they've had them previously, they've had a

PRETRIAL MOTIONS

1 copy of the pictures and a list of the items of evidence,
2 each one has been premarked. It is my understanding that
3 the defense has no objection to these items of evidence
4 and really this is by way of stream-lining the trial as
5 opposed to back and forth and moving, my understanding
6 that they have no objection to any of these. So at the
7 appropriate time maybe at the beginning of trial we will
8 move them all into evidence. But I have provided them
9 with a copy and if any are added and are placed on the
10 sheet they can add those additional items of evidence.

11 THE COURT: Is that correct, Chiarenza?

12 MR. CHIARENZA: That's correct, Your Honor.

13 MR. BOYD: That's correct, Your Honor.

14 MR. POPE: Please the Court, Your Honor? If we can
15 go through Mr. Page's motions with Mr. Chiarenza.
16 However, first I think that we have a brief Jackson vs.
17 Denno hearing that requires some actual testimony and if
18 it pleases the Court we will address that issue first.

19 THE COURT: Any objection to taking that up first?

20 MR. CHIARENZA: No, Your Honor.

21 MR. BOYD: No, Your Honor.

22 THE COURT: All right. At this time we will convene
23 ourselves into a hearing under -- of a Jackson vs. Denno
24 to determine the admissibility of the alleged statements.
25 Call your first witness.

PRETRIAL MOTIONS

1 MR. POPE: Please the Court, Your Honor? I have
2 three exhibits marked as court's exhibits. Court's
3 Exhibit Number One would be a faxed copy of SLED Agent
4 Betsill's Miranda rights card that he will refer to.
5 Court's Exhibit 4 will be Agent Betsill's summary and
6 notes referencing his conversation with Mr. McKnight. And
7 State's Exhibit 5 will be the Miranda advisement of rights
8 form and the statement of Mr. McKnight to York Police
9 Department.

10 Your Honor, I will call to your attention -- I think
11 you received a copy perhaps as Court's Exhibit 1 and 2
12 yesterday of the actual statements, for purposes of this
13 hearing the statements still have not been redacted under
14 any Brewton issues and we will address that at the
15 appropriate time. For this purpose I will have them
16 present the whole statements but with the full
17 understanding that we have to address the redaction issue.

18 The witness, JOHNNY DARRYL BETSILL, was first duly
19 Sworn and testified as follows, on:

20 DIRECT EXAMINATION

21 BY MR. POPE::

22 Q. Agent Betsill, if you would state your name and spell
23 your last name for the court reporter, please.

24 A. My name is Johnny Darryl Betsill, B-e-t-s-i-l-l.

25 Q. All right. Could you tell the jury or could you tell

PRETRIAL MOTIONS

1 the Court where you are employed?

2 A. I'm an agent with the South Carolina Law Enforcement
3 Division.

4 Q. How long have you been with the South Carolina Law
5 Enforcement Division?

6 A. I have been with SLED for 12 years and I was
7 previously a state trooper with the highway patrol for 16
8 years.

9 Q. So you have been in law enforcement 18 years now?

10 A. That is correct.

11 Q. I want to call your attention to January of 2004, so
12 January of over a year ago. Were you working with the
13 state law enforcement division then?

14 A. I was.

15 Q. Did you have the opportunity to assist York Police
16 Department in the investigation of the murder in this
17 case?

18 A. I did.

19 Q. As part of your duties, did you have the opportunity
20 to assist in a transport of the defendant, Mr. Terrance
21 McKnight?

22 A. I did.

23 Q. Okay. And particularly I want to call your attention
24 to January 7th at around 12:00 noon. Did you have an
25 opportunity to transport him from McConnell's over to the

PRETRIAL MOTIONS

1 York Police Department?

2 A. Yes, sir.

3 Q. And was he understand arrest at that time?

4 A. He was.

5 Q. And during that time did he have any conversations
6 with you?

7 A. He did.

8 Q. Okay. Can you tell the judge how that arose? What
9 happened? Were you questioning him at that time?

10 A. We weren't. We went to his house in McConnells, when
11 we got to his house we met with his mother and
12 Mr. McKnight. At that time I stated we had an arrest
13 Warrant for Mr. McKnight. When we got to McConnells to
14 their residence we went in, introduced ourselves,
15 explained our business there, the mother told Mr. McKnight
16 that he made need an attorney or he should get an
17 attorney. Mr. McKnight was then arrested and he was
18 placed in my SLED vehicle and then we left the McConnells
19 area coming back to York. On the way back to York we --
20 an occasion arose where Mr. McKnight without being
21 questioned started volunteering information concerning the
22 Cunningham murder. At that time I stopped Mr. McKnight in
23 midsentence and I advised him of his Miranda rights.
24 Q. Let me stop you there. You said we went there, who
25 was with you at that time?

PRETRIAL MOTIONS

- 1 A. That was York City Detective John Naylis.
- 2 Q. And so what kind of vehicle were you in?
- 3 A. We were in a SLED Crown Victoria.
- 4 Q. That's an unmarked vehicle?
- 5 A. Yes, sir.
- 6 Q. Okay. And when you were transporting, Mr. Naylis,
- 7 were was he seated?
- 8 A. Mr. Naylis was seated in the front passenger seat.
- 9 Q. Okay. And you were driving the vehicle?
- 10 A. Correct.
- 11 Q. And Mr. McKnight, was he in the rear?
- 12 A. He was.
- 13 Q. Was he handcuffed?
- 14 A. He was.
- 15 Q. He was under arrest?
- 16 A. Correct.
- 17 Q. Did the SLED vehicle have what's commonly known as a
- 18 cage or anything of that nature in the back?
- 19 A. No, sir, it does not.
- 20 Q. So it's an open access between the front and the
- 21 back?
- 22 A. It was.
- 23 Q. At this point when he began talking about the case,
- 24 had you or Mr. Naylis been interrogating him?
- 25 A. No. He wasn't interrogated, no, sir.

PRETRIAL MOTIONS

- 1 Q. At some point when he began talking, you said you
2 stopped him and read him his rights?
- 3 A. I did.
- 4 Q. When you say read him his rights, what do you mean
5 when you say read him his rights?
- 6 A. I've got a card that I read him his Miranda rights
7 off of, and after reading him the rights I asked him did
8 he understand and he advised he did understand them.
- 9 Q. I'll show you what's been marked as Court's Exhibit 3
10 and ask you if you will look at that. Do you recognize
11 that?
- 12 A. Yes, sir, I do.
- 13 Q. Okay. And did you provide that to me?
- 14 A. I did.
- 15 Q. Okay. That's a faxed copy of your card; is that
16 correct?
- 17 A. Correct.
- 18 Q. And the information that was on that card, is that in
19 fact what you read?
- 20 A. It is.
- 21 Q. Okay. And did you read it verbatim from that card?
- 22 A. I did.
- 23 Q. And you were driving. How did you read him the card
24 and drive at the same time?
- 25 A. It just becomes a habit. And usually I would not do

PRETRIAL MOTIONS

1 that, but this became an occasion to where he -- I would
2 have read him his rights prior to starting the vehicle and
3 transporting him, but he started volunteering without us
4 questioning him information concerning the murder and at
5 that time to be on the safe side I wanted to advise him of
6 his Miranda.

7 Q. And you actually -- when you read that card, he is
8 back behind you now; is that correct?

9 A. Correct.

10 Q. Was he to your right or to your left or do you
11 recall?

12 A. He would have been to my right.

13 Q. So behind the passenger?

14 A. Correct.

15 Q. And the information reflected I believe as Court's
16 Exhibit 3, is that right, is that what you read?

17 A. It is.

18 MR. POPE: Your Honor, for purposes of this hearing
19 rather than having have him go through it I will hand it
20 up to the Court.

21 Q. Okay. Let me ask you, once you read him his rights,
22 did you do anything to ascertain whether he understood
23 what you read to him?

24 A. I did. I asked him did he understand his rights
25 after I read him his Miranda. He said, "Okay. But I want

PRETRIAL MOTIONS

1 to tell what I know because I wasn't involved." I then
2 stopped him again and asked him did he understand what I
3 just read him and he said, "Yeah, yeah." He said he still
4 wanted to talk to us because he wasn't involved.

5 Q. Okay. When he started giving this information, did
6 you or Detective Naylis threaten him in any manner?

7 A. No, sir.

8 Q. Did you promise him anything? In other words,
9 perhaps you would be able to be more leniency on him or
10 the prosecution would be more lenient on him if he
11 cooperated?

12 A. No, sir.

13 Q. Did he appear to you at the time you spent in his
14 presence to be able to carry on a conversation to know
15 what you were saying and respond appropriately? Did he
16 appear to have a sufficient intellect to understand what
17 he was saying?

18 A. Yes, sir, he did.

19 Q. Did you know based on your experience if he was under
20 the influence of alcohol or drugs or anything of that
21 nature?

22 A. He was not.

23 Q. Okay. Did you smell any odor of alcoholic beverage
24 or anything in the car or anything that would give you
25 that indication?

PRETRIAL MOTIONS

- 1 A. No, sir.
- 2 Q. And this is roughly noon -- 12:00 noon daytime; is
3 that correct?
- 4 A. Correct.
- 5 Q. Okay. Was there anything that -- certainly he was
6 not free to leave, right?
- 7 A. He was not.
- 8 Q. He was in custody in the car, right?
- 9 A. He was.
- 10 Q. Okay. Was there any inducement provided by you or
11 Detective McKnight either by threat or by promise to get
12 him to give this statement to you?
- 13 A. There was not.
- 14 Q. And did in fact he ultimately give you a statement?
- 15 A. He did.
- 16 Q. Okay. And how was that statement notarized or
17 brought down or recorded? What did you do to make a memo
18 of that statement?
- 19 A. We transported him to the York Police Department --
20 he was talking in the vehicle as we were transporting him,
21 when we got to the York Police Department he repeated what
22 he said at the police department in mine and Detective
23 Naylis's presence. He was more in detailed at the York
24 Police Department than he was as we were traveling in the
25 vehicle. It was all a verbal statement to us. After he

PRETRIAL MOTIONS

- 1 gave us the verbal statement I was taking handwritten
2 notes, I then read the handwritten notes back to him and
3 asked him would he consider or would he approve of giving
4 a written signed statement to the affect of what he had
5 told us. He said he would prefer not to give a signed
6 statement and then I advised him that it would be in a
7 report form via the verbal information he reported to us.
- 8 Q. The notes that you were reading back, you say you
9 convinced him -- or placed them in a report; is that
10 correct?
- 11 A. Yes, sir.
- 12 Q. I show you what has been marked Court's Exhibit 4 and
13 ask you if you can identify that?
- 14 A. I can.
- 15 Q. What is that item?
- 16 A. This is a reflection of the verbal information he
17 gave me both in the car and at the York Police Department.
- 18 Q. Okay. And you took notes initially and then typed
19 that up; is that correct?
- 20 A. I did.
- 21 Q. Okay. And you said the items that you took as notes
22 that are reflected in there, that you confirmed those with
23 him?
- 24 A. I did.
- 25 Q. Okay. And did he confirm that that was accurate,

PRETRIAL MOTIONS

1. that what you had was correct?

2 A. He did, yes.

3 Q. But when it finally came to saying give us a written
4 statement he preferred not to; is that correct?

5 A. That's correct.

6 Q. Does this accurately reflect what you wrote down and
7 what was told to you that day?

8 A. It does, yes, sir.

9 MR. POPE: Your Honor, I will hand up Court's
10 Exhibit 4 which I believe you may already have as Court's
11 Exhibit 2. Again, for purposes of this hearing, you have
12 it so I would not go through publishing it at this time.

13 Q. Agent Betsill, after he gave you that information,
14 did you have anymore verbal contact after that?

15 A. I did not, no, sir.

16 Q. Based on everything that you observed on that day,
17 did it appear he was giving that statement to you freely
18 and voluntarily?

19 A. Definitely was, yes, sir.

20 Q. When you got to the York Police Department, where
21 were you at when you were actually doing the riding, where
22 was that?

23 A. It would have been in the building to our left.

24 Q. Okay. Who was present when you were there?

25 A. Detective McKnight.

PRETRIAL MOTIONS

1 Q. So the same two of you. Was there any additional
2 officers present?

3 A. I don't recall, there may have been. I do recall
4 Detective Naylis.

5 Q. Do you recall anybody threatening him or promising
6 him anything independent of the two of you?

7 A. No, sir.

8 Q. Anyone one of you threaten or promise him anything?

9 A. No, sir.

10 Q. He was still in custody when you were at York PD?

11 A. He was.

12 Q. Was he still in handcuffs?

13 A. At that time I'm not sure.

14 Q. Okay. Was there any indication that he was under
15 duress or threats or promised anything when he gave you a
16 statement?

17 A. No, sir.

18 MR. POPE: Answer any questions defense may have.

19 MR. CHIARENZA: Your Honor, for the record I would be
20 making any cross examination by still preserving my
21 severance motions and my objection to this statement being
22 admissible against my client.

23 THE COURT: All right. We will certainly note your
24 motions.

25 CROSS EXAMINATION

PRETRIAL MOTIONS

- 1 BY MR. CHIARENZA::
- 2 Q. Agent, was your vehicle equipped with an in-car video
- 3 camera?
- 4 A. No, sir.
- 5 Q. Okay. And when you were at the York PD, are you
- 6 aware of whether there were any video recording devices
- 7 there?
- 8 A. In the room we were in, no, sir.
- 9 Q. Are you aware that there were any anywhere at the
- 10 York Police Department?
- 11 A. I'm not aware.
- 12 Q. You don't typically work up here in York, do you?
- 13 A. Occasionally but not consistently.
- 14 Q. Are you aware of whether or not there are any audio
- 15 recording devices at the York Police Department?
- 16 A. I did not see any.
- 17 Q. Do you think there were any available at the York
- 18 Police Department?
- 19 A. Speculation, yes, sir.
- 20 Q. Were you carrying one with you that day either on
- 21 your person or in your vehicle?
- 22 A. No, sir.
- 23 Q. To your knowledge was any audio or video recording of
- 24 Mr. McKnight's statement ever made?
- 25 A. No, sir.

PRETRIAL MOTIONS

1 Q. Ever attempted to be made?

2 A. No, sir.

3 Q. And you previously testified that you asked him
4 whether he would sign a statement and he declined to do so
5 at that time; is that correct?

6 A. That's correct.

7 Q. During the entire time of his statement he was in
8 fact in custody, correct?

9 A. That's correct.

10 Q. Not free to leave?

11 A. No, sir.

12 MR. CHIARENZA: Your Honor, I have nothing further.

13 THE COURT: Mr. Boyd?

14 CROSS EXAMINATION

15 BY MR. BOYD::

16 Q. You were there assisting the York Police Department
17 in that there was a warrant for misprision of a felony
18 being served on Mr. McKnight; is that correct?

19 A. Yes.

20 Q. And basically that involved misprision of the felony
21 being the murder of Willie Cunningham; is that correct?

22 A. York detectives signed a warrant for misprision of a
23 felony and that is an accurate statement. That was in
24 reference to the homicide.

25 Q. In looking at the type-written notes it indicates

PRETRIAL MOTIONS

1 that you -- at approximately 12:15 Mr. McKnight was being
2 transported to the -- it says the York Detention Center.
3 Is that the York Police Department or the detention center
4 here?

5 A. He was being transported to the York -- we would have
6 went by the police department prior to taking him to the
7 Moss Justice Center to be booked in.

8 Q. Okay. So at the point you're saying that he started
9 talking had he already been to the York Police Department
10 or was he on his way?

11 A. He was on his way.

12 Q. All right. Now, how long did the trip last from
13 12:15 until you got to the York Police Department?

14 A. I would estimate 15 minutes from the location we
15 picked him up at.

16 Q. But he didn't start talking until later on in the
17 ride; is that correct?

18 A. Approximately three to five minutes after he was in
19 my vehicle and we departed from his residence is when he
20 started talking.

21 Q. Okay. And you said you read the card to him, you
22 were driving at the same time; is that correct?

23 A. Correct.

24 Q. Again, I believe you answered the question already,
25 there's no recording device in that car; is that correct?

PRETRIAL MOTIONS

- 1 A. That's correct.
- 2 Q. And no recorder on you or Officer Naylis?
- 3 A. That's correct.
- 4 Q. Now, when you got to the York Police Department at
- 5 anytime did you or any other police officers have
- 6 Mr. McKnight sign a waiver of rights form?
- 7 A. I did not and I'm not aware if York detectives did.
- 8 Q. Do you know if he was asked to sign a waiver of
- 9 rights form?
- 10 A. No, sir, I do not.
- 11 Q. And so as far as having a signed written statement or
- 12 acknowledgement of rights or a signed waiver of those
- 13 rights, there is not one; is that correct?
- 14 A. To my knowledge there is not one, correct.
- 15 Q. And Mr. McKnight was at that time in a room with you
- 16 and Officer Naylis; is that correct?
- 17 A. That is correct.
- 18 Q. How long did y'all spend with Mr. McKnight at that
- 19 time?
- 20 A. I would estimate an hour to an hour and a half.
- 21 Q. And you took handwritten notes; is that correct?
- 22 A. I did.
- 23 Q. And after taking those notes you typed up this
- 24 summary of those notes; is that correct?
- 25 A. Yes, sir.

PRETRIAL MOTIONS

1 Q. And the -- did you read that back over to him after
2 it was typed up from your handwritten notes?

3 A. From my handwritten notes.

4 Q. You asked him about a written statement; is that
5 correct?

6 A. I asked him about a signed statement, yes, sir.

7 Q. And he told you at that time he did not want to sign
8 a statement; is that correct?

9 A. That's correct.

10 Q. Was anyone else present in the room when you
11 conducted -- besides Officer Naylis when you conducted
12 this interview with Mr. McKnight?

13 A. I only remember Detective Naylis. There could have
14 possibly been another investigator in there, I just -- I
15 don't recall.

16 MR. BOYD: That's all of the questions I have.

17 THE COURT: Any redirect?

18 MR. POPE: No, sir, Your Honor.

19 THE COURT: Anything else, Mr. Chiarenza?

20 MR. CHIARENZA: No, Your Honor.

21 MR. POPE: As far as this witness that would be the
22 proffer. We can go ahead and address the others and then
23 address arguments on it. I would ask that this witness be
24 excused.

25 THE COURT: All right. You are free to go.

PRETRIAL MOTIONS

1 MR. POPE: Your Honor, next we would address the
2 second statement and we would call Sara Robbins.

3 The witness, SARA ROBBINS, was first duly sworn and
4 testified as follows, on:

5 DIRECT EXAMINATION

6 BY MR. POPE:

7 Q. If you would, state your name and spell your last
8 name for the court reporter, please.

9 A. Sara Robbins, R-o-b-b-i-n-s.

10 Q. Where are you employed?

11 A. City of York Police Department.

12 Q. How long have you been in law enforcement?

13 A. 23 Years.

14 Q. How long have you been with the York Police
15 Department?

16 A. 23 Years.

17 Q. Did you have the opportunity to be involved as a case
18 agent in this particular case?

19 A. Yes, I did.

20 Q. I want to draw your attention to December 17th of
21 2004, which would be last December. Did you have an
22 opportunity to talk to Terrance McKnight?

23 A. Yes, I did.

24 Q. Could you relate to the Court how did that occur?

25 A. I had obtained warrants on Terrance McKnight for the

PRETRIAL MOTIONS

1 charges that he's here for today. He was arrested and
2 brought up to the police department, brought up to the
3 interview room at the York Police Department.

4 Q. Okay. So at that point when you were talking to him
5 he was in custody; is that correct?

6 A. Yes, he was.

7 Q. And where did you -- you say you brought him to the
8 York Police Department, where did you go with him?

9 A. To the interview room at the police department.

10 Q. Could you describe the interview room, what size
11 doors, things of that nature?

12 A. It's just a small office area that we used for
13 interviewing both defendants and witnesses, victims.

14 Q. How big is the room?

15 A. It's a small office, it's a relatively small room,
16 just big enough for a small table and two chairs.

17 Q. Is there a window?

18 A. There's a window, yes.

19 Q. Is there an exit? How many doors?

20 A. One door.

21 Q. So one door, one window, a table and two chairs?

22 A. Yes.

23 Q. And you had the opportunity to go in there and talk
24 to him?

25 A. Yes, I did.

PRETRIAL MOTIONS

- 1 Q. Was he in handcuffs at that time?
- 2 A. I don't remember.
- 3 Q. Okay. Who was present with you?
- 4 A. Detective Naylis was with me.
- 5 Q. Okay. And how were you dressed that day?
- 6 A. Just plain clothes.
- 7 Q. Okay. How about Detective Naylis?
- 8 A. Also plain clothes.
- 9 Q. Did you guys have weapons on or with you at that
- 10 time?
- 11 A. I did not. I don't recall if Detective Naylis did or
- 12 not.
- 13 Q. Okay. And when you talked to Mr. McKnight, did you
- 14 have an opportunity to read him his rights?
- 15 A. Yes, I did.
- 16 Q. Okay. And you use -- at York City, do you use a
- 17 particular form advisement of rights and waiver of rights?
- 18 A. Yes.
- 19 Q. I show you what has been marked as Court's Exhibit
- 20 Number 5, consists of two pages and ask you to look over
- 21 that and tell me if you can identify that.
- 22 A. Yes. This is a copy of the advisement of rights as
- 23 well as a statement that I typed up that he gave me.
- 24 Q. Okay. And did you go through the advisements of
- 25 rights with Mr. McKnight?

PRETRIAL MOTIONS

1 A. Yes, I did.

2 Q. And I note also that there's a waiver of rights on
3 the Court's Exhibit 5. Could you indicate to me what are
4 those three statements?

5 A. Do you understand each of the rights I have explained
6 to you? Answer, yes. Having these rights in mind do you
7 now wish to answer questions? Answer, yes. Do you wish
8 to answer questions without a lawyer present? Answer,
9 yes.

10 Q. And that was in response to the rights as reflected
11 at the top of the page?

12 A. That's correct.

13 MR. POPE: Please the Court, Your Honor? For
14 purposes of this hearing it's reflected on this document
15 and I will hand that up.

16 THE COURT: Yes, sir.

17 Q. Now, subsequently did he indicate by his signature
18 that he had those rights read to him and explained to him?

19 A. Yes, he did.

20 Q. Also there's a number of things that he explained,
21 that he understands these rights, that he waives these
22 rights, I think there's five different things that he
23 indicated?

24 A. Yes, he did.

25 Q. And he signed that in your presence?

PRETRIAL MOTIONS

1 A. Yes, he did.

2 Q. Okay. Let me ask you, when you were there spending
3 time with him, how close to him were you?

4 A. I was just right across the table, I was just like --
5 it's a small table here and he was just right on the other
6 side of me.

7 Q. Did he appear to understand the English language?

8 A. Yes.

9 Q. Did he appear to understand what you were saying and
10 what you are asking him?

11 A. Yes, he did.

12 Q. Did it appear that he was able to properly carry on a
13 conversation with you -- in other words appropriately
14 respond to what you are saying or ask questions to you?

15 A. Yes.

16 Q. Did he appear from your experience to be under the
17 influence of alcohol or drugs or anything of that nature?

18 A. No.

19 Q. Either you or the Detective Naylis, did you promise
20 him anything to give you a statement such as that you
21 would be more lenient or that you would talk to the
22 prosecutor for him or anything of that nature?

23 A. No.

24 Q. Did you threaten him in any manner, either you or
25 Detective Naylis, with either bodily harm or greater

PRETRIAL MOTIONS

1 punishment or anything of that nature?

2 A. No, we didn't.

3 Q. Was there any indication that he was not giving you
4 the statement freely and voluntarily?

5 A. No.

6 Q. Is the statement actually reflected on Court's
7 Exhibit Number Five on the second page?

8 A. Yes.

9 Q. And I notice it has end of statement marked through
10 and Terrance McKnight. Who marked through the end of the
11 statement and the line?

12 A. After he gave the statement I then went into my
13 office and typed it, brought it back and I drew the line
14 and wrote end of statement and had him sign it and he
15 signed it.

16 Q. Did he have the opportunity to read what you typed
17 up?

18 A. Yes, he did. I believe I read it to him.

19 Q. Did he have the opportunity to change anything if he
20 wanted to?

21 A. Yes.

22 Q. I notice the last statement says, "This is the real
23 story, I was scared." Were those his words?

24 A. Those were his words, yes, sir.

25 Q. And he ultimately signed that document also?

PRETRIAL MOTIONS

1 A. Yes, he did.

2 MR. POPE: Your Honor, I hand up Court's Exhibit
3 Number 5.

4 Q. Were there any promises or threats made at anytime by
5 any member of your department or anybody for that matter
6 to induce a statement from Mr. McKnight?

7 A. No, sir.

8 MR. POPE: Thank you. Answer any questions they may
9 have.

10 THE COURT: Mr. Chiarenza?

11 MR. CHIARENZA: Your Honor, no questions. But again,
12 just to renew my motions to sever this defendant from my
13 client based on the fact that I don't feel the statement
14 is admissible against my client, and also just object to
15 the admissibility of the statement.

16 THE COURT: Again, I will note the motion and deny
17 it. Mr. Boyd?

18 CROSS EXAMINATION.

19 BY MR. BOYD::

20 Q. Now, at the time that Mr. McKnight gave these
21 statements the warrants for murder and attempted robbery
22 and conspiracy had been served on him; is that correct?

23 A. That's correct.

24 Q. Okay. And basically he had actually come down to the
25 police station. Didn't his mother bring him down to the

PRETRIAL MOTIONS

1 police station and turn him in at that time?

2 A. No, sir. I believe a sheriff's deputy went and
3 picked him up along with Detective Naylis. I could
4 possibly be wrong about that but that was my
5 understanding. I was not present during the arrest.

6 Q. So you don't know?

7 A. I don't know for sure, no, sir.

8 Q. Now, at this time this was on 12/17/04; is that
9 correct?

10 A. That's correct.

11 Q. Now, prior to that time back on January 6, 2004 a
12 misprision of a felony warrant had been served on
13 Mr. McKnight; is that correct?

14 A. That's correct.

15 Q. And these were basically charges -- that was a
16 warrant that was concerning also the murder of Willie
17 Cunningham; is that correct?

18 A. Yes, it was.

19 Q. And that was a warrant for a misprision of a felony
20 in connection with the murder of Willie Cunningham; is
21 that correct?

22 A. Yes, sir.

23 Q. And these warrants that were served on him at the
24 York Police Department on that day on the date in question
25 moving forward to January 7, 2004, were these charges that

PRETRIAL MOTIONS

- 1 he is on trial for today; is that correct?
- 2 A. I'm sorry, could you repeat the question?
- 3 Q. The warrants that were served on him on I believe
- 4 it's December 17, 2004, those are the warrants that were
- 5 served on him that he's on trial for today.
- 6 A. That is correct.
- 7 Q. And at the time that the warrants were served on him
- 8 on December 17, 2004, was the misprision of a felony
- 9 warrant still an active charge?
- 10 A. I believe that charge had been dismissed.
- 11 Q. Do you know when it had been dismissed?
- 12 A. No. I'm not sure of the exact date, no, sir.
- 13 Q. Do you know whether Mr. McKnight had had an attorney
- 14 appointed for the misprision of a felony charge?
- 15 A. No, I don't.
- 16 Q. And you stated Mr. McKnight, he was taken to an
- 17 interrogation room; is that correct?
- 18 A. Yes, sir.
- 19 Q. Okay. Is that immediately after the warrants were
- 20 served on him?
- 21 A. Yes, sir. Within a half hour to an hour I would say.
- 22 Q. That was prior to any kind of hearing or bond hearing
- 23 or anything of that nature.
- 24 A. Yes, that's correct.
- 25 Q. Then how long did this interview with him last at

PRETRIAL MOTIONS

1 that time?

2 A. Maybe 30 minutes, 45 minutes, something like that.

3 MR. BOYD: That's all of the questions I have.

4 THE COURT: Any redirect?

5 MR. POPE: No, sir, Your Honor.

6 THE COURT: Anything else, Mr. Chiarenza?

7 MR. CHIARENZA: No, Your Honor.

8 THE COURT: All right. You may step down. Thank

9 you, ma'am.

10 MR. POPE: That would be the State's proffer on that

11 matter, Your Honor.

12 THE COURT: Mr. Chiarenza, do you wish to call --

13 MR. CHIARENZA: No, Your Honor.

14 THE COURT: Mr. Boyd?

15 MR. BOYD: None, Your Honor.

16 THE COURT: All right. And have you advised

17 Mr. McKnight of his right to testify in this hearing if he

18 wishes to?

19 MR. BOYD: Yes, sir.

20 THE COURT: All right. Mr. McKnight, let me -- Madam

21 Clerk, would you put Mr. McKnight under oath for me,

22 please?

23 (Defendant McKnight was sworn.)

24 THE COURT: Mr. McKnight, you understand that all we

25 are doing at this point is deciding whether or not to

PRETRIAL MOTIONS

1 allow a statement that the police said you made of whether
2 to allow that statement to be introduced, do you
3 understand?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Do you understand that you have a right
6 to testify in this part of the hearing if you want to and
7 if you do that doesn't mean that you have to testify later
8 during the trial, do you understand that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: It also means that you can testify just
11 on this issue and that anything you say in this hearing
12 cannot be taken by the State and used in their case
13 against you, do you understand that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Okay. Have you talked with your lawyer
16 about all of this?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Do you feel like you understand your
19 right on it?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: This morning -- I always ask this
22 question -- have you had any kind of medication, drugs or
23 alcohol or had any sort of physical condition or anything
24 that would keep you from understanding what's going on?

25 THE DEFENDANT: No, sir.

PRETRIAL MOTIONS

1 THE COURT: And understanding that, do you wish to
2 testify in this hearing?

3 THE DEFENDANT: No, sir.

4 THE COURT: Okay. Thank you, sir. All right.
5 Anything else by way of any final comment from the State?

6 MR. POPE: Not on this issue.

7 THE COURT: Mr. Chiarenza, anything?

8 MR. CHIARENZA: No, sir.

9 THE COURT: Mr. Boyd?

10 MR. BOYD: Yes, Your Honor. Your Honor, as to
11 January 6, 2004 statement, I would leave that to the
12 discretion of the Court. However, as to the December 17,
13 2004 statement, Your Honor, it appears -- and I believe
14 the court records will show that Mr. McKnight was arrested
15 prior to this incident on a misprision of a felony warrant
16 that was connected with the murder of Willie Cunningham
17 that we are on trial here for today. I believe the court
18 records from the clerk of court should establish that an
19 attorney was appointed to represent him on those charges,
20 I believe it was me as a matter of fact. And that the --
21 so at the time, Your Honor, unless that warrant had been
22 dismissed that charge was still pending, at this time he
23 had an attorney so he shouldn't have been questioned in
24 connection with this charge involving the murder of Willie
25 Cunningham without an attorney present. Whether he

PRETRIAL MOTIONS

1 requested it or not it would be improper I submit for the
2 State to contact him, to certainly arrest him, but as far
3 as questioning him concerning anything about this
4 situation when an attorney had been appointed for him and
5 he had been already arrested on a charge connected with
6 this particular charge.

7 Your Honor, I understand there's a South Carolina
8 case here that -- I think it's State vs. Howard in which a
9 person was represented by another counsel on a charge at
10 the time, he talked with officers about another charge and
11 the Court said this was a new charge and it didn't relate
12 to the old one so it didn't matter whether he had an
13 attorney, this was a separate matter. But in this case
14 it's not a separate matter, it's a connected matter so I
15 would submit it's improper for him to be questioned on
16 this matter when he had already been charged with a
17 misprision of a felony and he had an attorney appointed on
18 another charge that was directly related to this charge.

19 THE COURT: Anything else?

20 MR. POPE: Please the Court, Your Honor? I submit he
21 did not assert either time, also these are separate
22 charges. Thirdly -- and I will make a copy of the next
23 Court's Exhibit, which I think would be Number 6, it has
24 been brought to my attention that the misprision charge
25 was dismissed May 11th of '04. Of course, the statement

PRETRIAL MOTIONS

1 we are talking about is December of '04 so that would
2 address Mr. Boyd's concern. In fairness to him I don't
3 have a copy of it but I will provide a copy for the record
4 to the extent that argument will prevail, it was dismissed
5 May 11th, these will be new charges that will be asserted
6 and he have been given full rights and voluntarily gave a
7 statement.

8 THE COURT: Anything else, Mr. Boyd?

9 MR. BOYD: Your Honor, I would submit that even if
10 that was the case there had been another charge related to
11 this in which an attorney had been appointed which I would
12 submit it would still be improper for officers to make
13 contact and question him about those charges.

14 THE COURT: What about that issue, Mr. Pope?

15 MR. POPE: The fact that he at one point -- for one,
16 it's not the same charge. Number two, the fact that he at
17 some point had an attorney, there are cases where you can
18 have an attorney waiting in the lobby but if you don't
19 assert the right, and in this case he was arguably -- if
20 he was going to get Mr. Boyd again, which obviously he
21 ultimately did, that day when he was arrested if he does
22 not assert the right Mr. Boyd could not come to the police
23 department demanding to see him saying, "I am his
24 attorney." In this scenario he was given the opportunity
25 and chose to talk to law enforcement and chose to waive

PRETRIAL MOTIONS

1 those rights as indicated in Court's Exhibit Number 5,
2 Your Honor. So I believe even if Mr. Boyd would have
3 still been an attorney that would not still apply.

4 THE COURT: Anything else, Mr. Boyd?

5 MR. BOYD: No, sir.

6 THE COURT: Mr. Chiarenza, do you want to add
7 anything on this?

8 MR. CHIARENZA: No, Your Honor.

9 THE COURT: Counsel, I am going to find that the
10 State has carried the burden of proof on this issue at
11 this point by the greater weight of the evidence, and that
12 the defendant made the statement, made it with full
13 understanding of his rights in this matter and he did so
14 freely and voluntarily, so I will therefore allow the
15 statement to be admitted. Of course, I'll give the jury a
16 simple charge at the time of admission. Are there any
17 other Jackson v. Denno issues?

18 MR. POPE: No, sir, not from the State, Your Honor.

19 THE COURT: Let's move on through Mr. Chiarenza's
20 motions here. First as to the question of discovery. Has
21 everything been resolved on that?

22 MR. POPE: Yes, sir. I have spoken directly on the
23 issue of discovery. We have an open file policy, Your
24 Honor. We have provided copies of an entire file to both
25 Mr. Boyd and Mr. Chiarenza electronically, we image our

PRETRIAL MOTIONS

1 data here and have it on disc and I have provided -- at
2 least I know at least once to Mr. Chiarenza and Mr. Boyd.
3 So they have everything that we have, Your Honor. It's an
4 ongoing duty and we have continued to give it to them.

5 THE COURT: Mr. Chiarenza, do you have anything to
6 add?

7 MR. CHIARENZA: Your Honor, my only concern -- I
8 would hope it has been resolved at this point -- is that
9 we have been getting trickles of discovery for the last
10 year and a half. Some of the items I received have been
11 in somebody's custody and possession for months prior to
12 the time they were handed to me. And what I would submit
13 is going on is that law enforcement -- I don't believe the
14 solicitor is knowingly withholding information, I don't
15 think they are getting everything from law enforcement in
16 a timely fashion. I know for a fact that happened in one
17 specific instance in this case, and in fact just last week
18 I was given a statement by a potential prosecution witness
19 that is months old. So my concern is not so much has the
20 solicitor given me everything they have, but has law
21 enforcement -- is the solicitor aware, can they say
22 definitively that they have everything that law
23 enforcement has. Because again, last week I was given a
24 statement taken from one of their investigators of a
25 potential prosecution witness which was taken many months

PRETRIAL MOTIONS

1 ago, it wasn't given to me until last week. That's the
2 concern and I would just like to know definitely whether
3 or not they have exhausted all of law enforcement's
4 information.

5 THE COURT: Let me ask you this: Are the things that
6 what you feel like is a late schedule, are there any to
7 which you would need more time to respond?

8 MR. CHIARENZA: NO, Your Honor. At this point I am
9 satisfied that on those items, now enough time has gone by
10 so I wouldn't be seeking to suppress those or move for a
11 continuance on that basis. But just right now I want to
12 make sure there was nothing else potentially out there.

13 THE COURT: Solicitor, do you know of anything that
14 law enforcement has that would be given?

15 MR. POPE: To the best of our ability -- I will note
16 the one that Mr. Chiarenza is referencing most recently if
17 I'm not mistaken was one of the statements we took when we
18 talked to one of the witnesses that was not exculpatory, I
19 assume that's Mr. Boyd's statement we talked about the
20 most recent. I was just talking to Mr. Thompson, I think
21 there are things -- I was talking to Mr. Thompson and he's
22 telling me that we may have some recordings of our own
23 witnesses where we have talked to our own witnesses if I
24 understood what he was just saying that wouldn't be
25 discoverable but we will give them those, too. Again, I

PRETRIAL MOTIONS

1 would submit that the ones he is talking about receiving
2 most recently was actually done by the solicitor's office
3 and did not fall under any gammet that I would have to
4 give it over, but we did and we will continue to. As far
5 as law enforcement, we have addressed with law enforcement
6 numerous times the need to have everything and to my
7 knowledge -- they're right here. Do we have everything
8 you guys have?

9 I will say this case is voluminous, the defense has
10 received copies. Many parts of the case actually
11 pertain -- ended up being unrelated. For example, a
12 pistol they tried to check up in Rock Hill, there was
13 follow-up that we did on that that ended up obviously
14 being unrelated. To our knowledge they have everything.
15 If there's a specific item they feel like they don't
16 have -- my understanding they saying -- law enforcement is
17 here, I can only relate to the Court what law enforcement
18 is telling, to the best of our ability we feel they have
19 everything and we have provided that to the defense.

20 THE COURT: Mr. Chiarenza, anything else?

21 MR. CHIARENZA: Just briefly, Your Honor. I'm
22 appreciative of their open file policy. One, I would
23 just -- question as to whether or not something is
24 exculpatory I think is subject to interpretation. I would
25 just point out for the record that this particular

PRETRIAL MOTIONS

1 statement that Mr. Pope is referencing by an individual
2 named Joe Boyd directly contradicts a previous statement
3 that that witness has given to law enforcement. So I
4 would submit that it is exculpatory because in one of the
5 other of those statements he is lying and I would make
6 that point by a matter of illustration. Mr. Pope may
7 think something is not exculpatory but I love it when I
8 get a potential State's witness who is giving two
9 conflicting statements and I think there is exculpatory.

10 THE COURT: Regardless of that, though, is there
11 anything still about it that keeps you from being able
12 to --

13 MR. CHIARENZA: Not about that statement, Your Honor.

14 THE COURT: Okay. All right. Mr. Boyd, do you have
15 anything to add to this?

16 MR. BOYD: Not much. But I would I think there's
17 been an offer providing any tape recorded statements of
18 witnesses and I would just like to have those before the
19 witness testifies to have adequate time to listen if any
20 of those exist, particularly of one agent.

21 THE COURT: Next on Mr. Chiarenza's list is to
22 determine what evidence of prior bad act, i.e., 404-B the
23 State would introduce. Solicitor, do you know?

24 MR. POPE: Please the Court, Your Honor? I think
25 there was some evidence in the file. As I had indicated,

PRETRIAL MOTIONS

1 it was voluminous, they filed many other things. It
2 appears there was evidence in the file regarding another
3 robbery committed by Mr. Chiarenza's client and there was
4 no intent to the State to bring in any Lyle testimony to
5 use that in any way to prove common scheme or plan or
6 motive. So the short answer to that would be we have no
7 intention of using that prior robbery in any way to prove
8 the guilt in this case.

9 THE COURT: So there will be no prior bad acts?

10 MR. POPE: That's correct.

11 THE COURT: Anything else on that, Mr. Chiarenza?

12 MR. CHIARENZA: No, Your Honor.

13 THE COURT: Mr. Boyd?

14 MR. BOYD: Your Honor, I would just make the same
15 question as to my client, Mr. McKnight.

16 MR. POPE: We are focussing on the facts of this case
17 as to both of them.

18 THE COURT: Next, the defense requests an in-camera
19 hearing as to number two, I don't think we need to do that
20 obviously. Four, the defendant moves to suppress
21 testimony of travel activities I guess of Mr. Page or his
22 whereabouts prior to being arrested on the charges. What
23 about that?

24 MR. POPE: Please the Court, Your Honor? He was
25 ultimately located in Washington State. I would confine

PRETRIAL MOTIONS

1 the testimony to was he arrested? Where he was he
2 arrested? I wouldn't go into his travel activities.
3 However, I will note that the case law clearly says from a
4 closing argument standpoint, not from a court instruction
5 standpoint, a closing argument standpoint I am always free
6 to argue flight as evidence of guilt as well they said he
7 didn't know or whatever things are that Mr. Chiarenza has
8 delineated. So as far as any testimony so to say then he
9 went here and then he went there, we would confine it to
10 he was arrested in Washington State.

11 THE COURT: Mr. Chiarenza, anything to add to that?

12 MR. CHIARENZA: Your Honor, I would additionally just
13 submit to the Court that the location where he was
14 arrested and the fact he was wasn't located, he turned
15 himself in in Washington State has absolutely no probative
16 value whatsoever and potentially it could be prejudicial.
17 I don't want jurors speculating as to why my client was in
18 Washington State when it's clearly improper for them to
19 speculate. Because the time he went to Washington State
20 there was no warrant for his arrest, he was unaware he was
21 being investigated, he was free to travel the globe if he
22 chose to. So what possible probative value does it have
23 for anyone to testify to the fact that he was arrested in
24 Washington State? It's doesn't add to the likelihood of
25 his guilt or innocence because he was in Washington State

PRETRIAL MOTIONS

1 legally and had every right in the world to be there. He
2 did not find out there was a warrant and then go to
3 Washington State, he was in Washington State when he found
4 out there was a warrant and immediately turned himself in
5 to I believe it was the Clark County Sheriff's Department
6 in Washington State and waived extradition back to South
7 Carolina. So there is no reason for the jury to be left
8 to speculate as to why he would be left in Washington
9 State. I would just submit that the potential prejudice
10 far outweighs the probative value. I can't understand why
11 else the solicitor would possibly need to have the jurors
12 hear he was arrested. Clearly he was arrested. Where?
13 It's not relevant it doesn't seem.

14 MR. POPE: Please the Court? The evidence will show
15 he was present aiding abetting at the time this victim was
16 killed. From the time the victim was killed he made his
17 way to Washington State. They may have a perfectly
18 reasonable explanation that he was on vacation in
19 Washington State, but it doesn't draw from the time that
20 the warrant -- he doesn't have to be notified "you have
21 now done a bad thing," evidence is going to indicate he
22 has done a bad thing. Once that takes place the flight
23 therefrom is proper argument. Your Honor, I submit I
24 believe we could put in more evidence, I'm willing to
25 confine it to just where he was arrested, about the issue

PRETRIAL MOTIONS

1 of him going north and then going over whatever evidence
2 that may be admissible regarding that, Your Honor. But I
3 think it is still appropriate and it's still proper
4 that -- there may be a perfectly good explanation and they
5 may proffer that explanation. Mr. Chiarenza may make the
6 same argument he just made to the jury but the law clearly
7 allows me to go to argue flight as evidence of guilt.

8 THE COURT: Anything else, Mr. Chiarenza?

9 MR. CHIARENZA: No, Your Honor.

10 THE COURT: Do you want to add anything to that,
11 Mr. Boyd?

12 MR. BOYD: No, sir.

13 THE COURT: I'm going to overrule the objection on
14 it, Counsel. At the appropriate time I'm going to allow
15 the solicitor to seek testimony, again provided as I
16 understand it will be confined to where he was arrested
17 and the circumstances on and around that. Next is to
18 suppress the introduction of the 911 tape.

19 MR. POPE: We do have the 911 tape, they have been
20 premarked. It's my understanding that it was subject to
21 Mr. Chiarenza's objection and the Court's ruling on that.
22 Your Honor, we have prepared to keep for the record that
23 the Court has heard and I won't waste the Court's time on
24 the records exception as far as 911 tapes. I will note
25 too as far as the actual individual that I am taking from

PRETRIAL MOTIONS

1 Mr. Chiarenza's motions, that the individual who made the
2 call is available to testify, and in actuality we have not
3 been able to locate that citizen that called so they would
4 not be available to testify. I would submit under the
5 records exception it will be available. We have the
6 keeper of the records from 911 on standby ready to testify
7 to put the foundation in for that tape. However, it's my
8 understanding that the foundational issue is not really an
9 issue. If it is admissible then that part is not an
10 issue, so I guess Mr. Chiarenza's argument needs to be
11 heard and we would address that.

12 THE COURT: All right, Mr. Chiarenza?

13 MR. CHIARENZA: Your Honor, just the easy part first.
14 If the Court determines it is admissible I would not
15 require the records custodian of the tape. If it's
16 admissible I am satisfied that the tape is what it is and
17 I have advised the solicitor of that. Your Honor, clearly
18 if I understand the solicitor correctly he's claiming that
19 this witness is unavailable. I believe that any statement
20 on the 911 tape would be a hearsay statement and would
21 have to fall under one of the exceptions for unavailable.
22 First, the State has to meet an evidentiary hurdle to show
23 that in fact this witness is unavailable and what efforts
24 they have made to get this witness to court. And then
25 second if this witness is unavailable that the statements

PRETRIAL MOTIONS

1 that this witness makes on the 911 tape will fall under
2 some sort of unavailable witness hearsay exception.
3 Because whatever is said there my client is not going to
4 have the opportunity to cross examine that witness or to
5 confront that witness.

6 MR. POPE: Please the Court, Your Honor? I would
7 call the Court's attention that rule 803 when it talks
8 about hearsay exceptions notes that these are hearsay
9 exceptions and are not excluded by the hearsay rule even
10 though the claimant is available, so I don't think I
11 should have to reach the section 804 concerning
12 unavailability. Under 803 it was said utterance then,
13 existing mental, emotional or physical condition, recorded
14 recollection, the standard cases in which 911 tapes will
15 come in public records then reports. Your Honor, I'll
16 note too that this has been addressed, I think it was just
17 as Ralph King Anderson on the Court of Appeals on these
18 issues as well as Crawford issues in looking at whether
19 it's testimonial or not, I think the courts have said that
20 the 911 tapes for the most part have been deemed
21 non-testimonial. I have the tape available if the Court
22 needs to listen to it to make that determination, again, I
23 have it available to play. But I would submit it's not a
24 Crawford issue, it was not testimony, was not made in
25 preparation for testimony for court so it clearly -- that

PRETRIAL MOTIONS

1 hurdle falls clearly under numerous exceptions in the
2 hearsay rule.

3 THE COURT: Mr. Chiarenza, anything else?

4 MR. CHIARENZA: I'm not quite sure I understand. It
5 was my understanding that the solicitor said that this
6 witness is unavailable and then he told the Court to look
7 at rule 803 as opposed to 804. If he is telling the Court
8 a witness is unavailable --

9 MR. POPE: But 803 applies whether they're available
10 or unavailable, so we never have to get to the
11 unavailable. But if 803 applies it's immaterial whether
12 they're available or not.

13 THE COURT: Anything else, Mr. Chiarenza?

14 MR. CHIARENZA: No, Your Honor.

15 THE COURT: Mr. Boyd, do you want to add anything to
16 this?

17 MR. BOYD: Your Honor, I join in Mr. Chiarenza's
18 motions.

19 THE COURT: All right. Counsel, I am going to find
20 that it would be admissible and that would be under the --
21 if nothing else it will be cited utterance exceptions.
22 Next, the motion to have prosecution divulge criminal
23 histories of potential witnesses. Have you done that yet?
24 As you know, the standard procedure is to do it when your
25 witnesses are called.

PRETRIAL MOTIONS

1 MR. POPE: That's our intention.

2 THE COURT: Okay. Mr. Chiarenza, anything to add?

3 MR. CHIARENZA: Not as long as they're willing to do
4 that, Your Honor.

5 THE COURT: Mr. Boyd, anything?

6 MR. BOYD: No, sir.

7 THE COURT: Motion for sequestration of State's
8 witnesses. Of course, as you know, it would have to
9 involve sequestration of any potential witnesses to all
10 parties.

11 MR. POPE: Yes, sir.

12 THE COURT: What's the State's position on that?

13 MR. POPE: I have no objection as long as it is
14 reciprocal. The difficulty we have always is that making
15 sure that all sides understand we all have to be kind of
16 responsible for our own witnesses. When we have citizens
17 it will be incumbent upon each of the defense counsel to
18 do the same. Secondly -- I'm saying this as much for
19 the witnesses as for the Court -- that it's important that
20 it would be impressed upon each witness that you cannot
21 discuss your testimony with the other folks waiting
22 outside in the hall when you leave, that's where we run
23 into the biggest problem of things being overheard and
24 things of that nature. With that being said, of course
25 under the victims bill of rights the family members are

PRETRIAL MOTIONS

1 allowed to remain in the courtroom, and I think
2 potentially we have two family members that would be on
3 our witness list that potentially would testify. I would
4 also ask that the detectives be allowed to stay as our
5 lead investigator.

6 THE COURT: Mr. Chiarenza, anything?

7 MR. CHIARENZA: No, Your Honor.

8 THE COURT: Mr. Boyd?

9 MR. BOYD: Your Honor, the only thing I would have, I
10 would request that my client's mother be allowed to stay
11 in the courtroom. If she testifies it will be on a
12 peripheral issue basically. I don't know if she will even
13 testify, but just in case.

14 THE COURT: All right. We will grant the motion to
15 sequester. Counsel, it will trigger basically the point
16 that we start the evidence if you want to let them stay in
17 during opening statements. It will apply to all parties.
18 As you know, the only time it does not apply is in any
19 rebuttal witnesses that may be called by the State. I
20 will let each of you sort of brief your own folks and make
21 sure they don't come in or out. Obviously, the victim has
22 a Constitutional right to be present and we will allow
23 them to be present with one lead investigator for the
24 State. Also, I will let one family member for each
25 defendant to remain along with the other investigators,

PRETRIAL MOTIONS

1 they can stay in also.

2 All right. Next is suppress evidence of the
3 defendants behavior while incarcerated at the detention
4 center. What's your position on that, Solicitor?

5 MR. POPE: Please the Court, Your Honor? I really
6 wasn't aware of that, I have done some checking since. My
7 understanding is they have had numerous difficulties with
8 Mr. Page in the detention center here at York County; I'm
9 not aware of any as far as Mr. McKnight that I'm aware of.
10 There's really no reason that that would be germane to our
11 case. The only stretch I could see is if somehow on cross
12 examination he opened the door, and again, I'm not a
13 violent man or whatever the case may be. I don't see us
14 in any way placing that in unless he opens the door. If I
15 see that it appears the door has been opened out of
16 respect to the Court or the defense I would ask to
17 approach and address it rather than just bring it up in
18 front of the jury.

19 MR. CHIARENZA: That's fine, Your Honor. And just
20 with respect to the solicitor that motion was based on the
21 fact that I did receive voluminous documents of that
22 nature so I just wasn't quite sure what if anything they
23 intended to do.

24 THE COURT: Mr. Boyd, anything to add?

25 MR. BOYD: No, Your Honor.

PRETRIAL MOTIONS

1 THE COURT: Next is suppress autopsy photographs. I
2 normally prefer to take this up at the time that you seek
3 to introduce the photographs so that I can sort of keep it
4 in the context of the evidence up to that point. Anybody
5 have a problem with doing that?

6 MR. POPE: Well, I may make it even simpler for you,
7 Your Honor. I did not include any autopsy photographs in
8 the items of evidence that we had indicated, other than
9 there is an autopsy diagram that the doctor will testify
10 from. And so as far as any specific photographs of wounds
11 or injuries I do not intend to use those. So that may
12 address that issue.

13 THE COURT: All right. Do you have any problems with
14 that, Mr. Chiarenza?

15 MR. CHIARENZA: No, Your Honor.

16 THE COURT: Mr. Boyd?

17 MR. BOYD: No, Your Honor.

18 THE COURT: Next is to quash all indictments. Some
19 lawyers say to squash but to quash all indictments against
20 the defendant. I assume you object to that, Solicitor?

21 MR. POPE: Yes, sir, Your Honor. And I would submit
22 they are valid on their face. The language -- we cross
23 this sometimes when we are dealing with accomplice and the
24 hand of one, hand of all. Of course, the allegations to
25 the murder charge, for example, says that this defendant

PRETRIAL MOTIONS

1 did by means of using a weapon this defendant did. But
2 those have been held appropriate under the accomplice
3 liability and I submit they are appropriate in this case.

4 MR. CHIARENZA: Thank you, Your Honor. And not
5 meaning to ambush the solicitor on this matter, but I
6 would at this time just seek to slightly modify that
7 motion based on events of yesterday. And if the Court
8 will bear with me here what I am going to submit to the
9 Court based on the research I did last night and the lack
10 of results is to my mind potentially novel the issue, but
11 I feel like I need to protect the record and raise it.
12 Your Honor, yesterday -- and I would ask the Court to take
13 judicial notice of the fact that Lamont McCollum, a
14 codefendant in this matter, pled guilty before Your Honor
15 yesterday. And Mr. McCollum among other charges, which I
16 am not concerned with and are not a part of this motion,
17 pled guilty to voluntary manslaughter and that's the
18 charge that I am concerned with and it's the gist of my
19 motion at this point. As the Court is well aware in order
20 to accept the guilty plea the Court must find a factual
21 basis for that plea unless it's an Alford plea or no
22 contest plea and yesterday's plea was not, yesterday's
23 plea was a guilty plea. The solicitor's office of their
24 own accord reduced Mr. McCollum's charge from the murder
25 to a voluntary manslaughter thereby essentially submitting

PRETRIAL MOTIONS

1 to the Court that the elements of voluntary manslaughter
2 met in this case and allowing Mr. McCollum to plead as
3 such. Of course, the Court would have had to have found
4 that there was a factual basis for voluntary manslaughter
5 in order to accept the plea on that charge. Your Honor,
6 this is where we -- and I don't even pretend to be a legal
7 scholar but this is why I think we may be treading some
8 ground here -- is that -- and let me preface this by
9 saying it's my understanding that the State's position is
10 they really haven't taken a position on who the actual
11 shooter was. Their position is they don't have to take
12 that position, they don't have to prove that, they don't
13 have to go with one or the other because they're going
14 under accomplice liability theory here and certainly I
15 invite them to correct me if I'm wrong but I believe
16 that's their position despite the fact that probably 90
17 percent of their evidence would seem to indicate that
18 Mr. McCollum was the shooter. Be that as it may,
19 yesterday given the State's position that it can be either
20 way, McCollum or Page as the shooter, yesterday McCollum
21 pled to voluntary manslaughter. So if Mr. McCollum is
22 pleading to voluntary manslaughter under the possibility
23 that he was in fact the shooter then I am seeking to have
24 the murder indictment against my client quashed. Because
25 if my client can only be guilty of his accomplice

PRETRIAL MOTIONS

1 liability and if the hand of one is the hand of all, and
2 if the Court found that Mr. McCollum shot Mr. Cunningham
3 as a result of sudden passion, heat of the moment, then
4 necessarily and logically my client's being there in that
5 heat of the moment could only make him guilty of the hand
6 of one crime, which is voluntary manslaughter. It can't
7 be guilty of the murder if Mr. McCollum acted in the heat
8 of the moment. If Mr. McCollum's hand is the hand of all
9 in this case, the lead hand, the lead actor, then my
10 client can only be guilty of what Mr. McCollum is guilty
11 of.

12 The flip side is if they are going under the theory
13 that my client is the shooter and Mr. McCollum pled guilty
14 yesterday to acting in the heat of passion under an
15 accomplice liability theory, then logically my client
16 according to them by allowing Mr. McCollum to plead to
17 such acted in the heat of passion and can only be guilty
18 of voluntary manslaughter. By them presenting a guilty
19 plea to the Court and a factual basis to the Court which
20 says Lamont McCollum either A, acted himself personally in
21 the heat of passion and was guilty of voluntary
22 manslaughter then my client can be guilty of no more than
23 what Mr. McCollum did under the facts of this case.
24 There's one shooter, the bullets came from the same gun.
25 They are saying McCollum was the shooter and acted under

PRETRIAL MOTIONS

1 the heat of passion and my client's accomplice liability
2 can extend only as far as the reliability of Mr. McCollum.
3 If they're saying that my client is the shooter and
4 McCollum is guilty of acting in the heat of passion,
5 basically they are saying McCollum did nothing if they're
6 saying McCollum was the shooter. Mr. McCollum was guilty
7 because he plotted the robbery and went up there and was
8 standing next to my client at the time so we are going
9 under the hand of one theory make him guilty of what your
10 client did. If they're saying he's guilty of what my
11 client did they are saying my client acted in the heat of
12 passion, how can they go forward on a murder indictment
13 when they have already inherently made these statements to
14 the Court? Obviously, it will be a little clearer if
15 yesterday if they specifically questioned Mr. McCollum as
16 to his role here, but I think they were purposely vague
17 there so they could present all of the possible theories
18 of this case and that's their right to do. But I think we
19 can get past that in kind of peculiarity and still break
20 this down into the two halves and say McCollum was the
21 shooter and acted in the heat of passion and then my
22 client's liability as an accessory to Mr. McCollum's acts
23 can go only as far as Mr. McCollum's liability who acted
24 in the heat of passion according to them. And again, not
25 to beat a dead horse, if they're saying on the other hand

PRETRIAL MOTIONS

1 we are letting McCollum plead to being an accomplice in an
2 event that occurred as a result of the heat of passion and
3 sudden voluntary manslaughter situation then they are
4 necessarily saying that that is how he was acting.
5 Otherwise how could McCollum as an accomplice be guilty of
6 that? They presented the facts to the Court, the Court
7 accepted that plea and I just at this point don't believe
8 that they can move forward on the murder indictment.
9 Thank you.

10 THE COURT: Solicitor?

11 MR. POPE: Please the Court, Your Honor?

12 THE COURT: One second. Mr. Boyd?

13 MR. BOYD: Your Honor, I would join in with that
14 argument on behalf of Mr. McKnight.

15 MR. POPE: Please the Court, Your Honor? Just a few
16 things briefly. Had we gone forward yesterday on all
17 three and you had submitted it to the jury you would have
18 instructed the jury that they're considered each charged
19 separately, they are to consider each defendant
20 separately. So a jury could have determined based on the
21 facts and circumstances that one is guilty of murder and
22 for whatever reason the other is guilty of voluntary --
23 for that matter involuntary based on what you instructed
24 them on had they gone to trial. They have no greater
25 right the fact that one pleads and suddenly it lowers the

PRETRIAL MOTIONS

1 bar for everybody else. I would submit on the plea
2 yesterday that the fact that he accepted the benefit of
3 the bar and pled and you had to make a factual
4 determination as to whether the facts would support that
5 plea, that does not preclude murder. Anytime you have a
6 plea to the lesser included it does not mean that it
7 precludes the other charges. And I would submit that
8 nothing occurring yesterday would prohibit either one of
9 these charges to go forward with a defendant. They have
10 certainly a right to be here and that's why we are here
11 and have got a jury and we certainly have the right to go
12 forward on these charges. Mr. McCollum chose to accept
13 his responsibility and receive the benefit of that bar.
14 But nothing would precluded -- had he stayed and gone
15 forward the jury could have found voluntary on one and
16 murder on the other.

17 THE COURT: Mr. Chiarenza?

18 MR. CHIARENZA: Your Honor, we can speculate on what
19 a jury might have done. But it was the solicitor's office
20 who presented the facts to the Court yesterday in order
21 for the Court to find Mr. McCollum guilty of voluntary
22 manslaughter. In order to find Mr. McCollum guilty of
23 voluntary manslaughter the Court would have had to have
24 found that he acted in the sudden heat of passion and upon
25 sufficient legal provocation. Those elements do not exist

PRETRIAL MOTIONS

1 in murder. Murder is acting with malice without
2 sufficient provocation. So I would submit that a lesser
3 included charge can preclude the murder and in this case
4 it does, particularly since the only way -- and again,
5 they haven't stated which particular theory they're going
6 with -- but the only way that as an accomplice Mr.
7 McCollum could possibly be guilty of acting in the sudden
8 heat of passion with sufficient legal provocation is for
9 them to basically be telling the Court he did because he
10 did. So if they're going with that theory they have
11 already told the Court and the Court must take judicial
12 notice of the fact, they are saying there was sufficient
13 legal provocation and sudden heat of passion. They are
14 telling the Court that the facts exist if they are saying
15 Mr. McCollum was guilty basically of being my client's
16 accomplice. Mr. McCollum, if he was not the shooter then
17 was not acting in the sudden heat of anything. He is here
18 virtue of an accomplice liability. You can only be a
19 liable accomplice if your codefendant has done something
20 for which you are connected to it. So they're telling the
21 Court that he's an accomplice to this man's acts and this
22 man acted in the sudden heat of passion with sufficient
23 legal provocation. If they've already told the Court that
24 then how can we go forward on a murder charge? And again,
25 the flip side is what I have already addressed to the

PRETRIAL MOTIONS

1 Court that if they're telling the Court that McCollum
2 acted in the sudden heat of passion, McCollum is the
3 shooter but he has sufficient legal provocation, felt like
4 he was being attacked or whatever, they didn't go into
5 great detail, but if they're telling the Court that then
6 by virtue of the fact that there's only one shooter here,
7 they're telling the Court that my client we're just
8 boot-strapping him along with McCollum's guilt, McCollum
9 was the shooter but McCollum acted in the sudden heat of
10 passion. How can my client be more guilty than
11 Mr. McCollum if Mr. McCollum is the shooter and they've
12 already told the Court that this occurred because McCollum
13 had sufficient legal provocation? If McCollum has got
14 sufficient legal provocation, my client who did nothing
15 certainly cannot be more guilty than Mr. McCollum, that is
16 why I am asking the Court to say under what you've
17 presented us with, solicitor, you can't go forward with a
18 murder charge against this individual under either theory
19 of your case.

20 THE COURT: A few years ago in Sumter I tried a case
21 very somewhat similar with this, three defendants in this
22 case were charged with basically the same charges. At the
23 end of the case the jury came back with what I thought was
24 just a crazy verdict. I wouldn't say that publicly, I'm
25 not allowed to question a verdict, but it made no sense.

PRETRIAL MOTIONS

1 Because in that case the guy who was the shooter came out
2 with the lesser conviction than the guy who just happened
3 to be along with them. I didn't think it made much sense,
4 so based on that I granted a motion for a new trial to the
5 defendant who had just been along. But it got appealed to
6 the Supreme Court and the Supreme Court said, no, sir, you
7 don't make those decisions, the jury makes those
8 decisions. They decide the facts of the case and they
9 decide the role and all of the other issues involved with
10 every defendant in the case. And I think the bottom line
11 of it simply is it's a factual issue, these are issues to
12 be decided by the jury. One defendant's role or the fact
13 that the one defendant doesn't necessarily shadow or trail
14 or parallel another, the jury decides each one. I
15 understand there's a difference here where you have one
16 who gave a guilty plea, in fact I think in that one one
17 gave a guilty plea but it wasn't as much a factor as this
18 one. Regardless, it's up to the jury to make these
19 decisions, they're factual issues. Mr. Boyd, do you want
20 to add anything to it?

21 MR. BOYD: No, sir.

22 THE COURT: I am going to deny the motion. You also
23 have a motion to quash possession of a firearm during a
24 violent crime.

25 MR. CHIARENZA: Yes, Your Honor. That's just simply

PRETRIAL MOTIONS

1 the fact that no probable cause was found at the
2 preliminary hearing. I will in candor to the Court, I
3 understand that the State is allowed to make a direct
4 presentment. I would just submit that in order to make a
5 direct presentment they need to bring some new evidence
6 because otherwise the question of probable cause has
7 already been ruled on. I have not been advised of what
8 new evidence they presented to the grand jury that wasn't
9 presented at the probable cause.

10 THE COURT: I'm going to go ahead and deny that
11 motion, Counsel. I think obviously we will go through the
12 trial and there will be an appropriate time to make
13 motions if you need to on that. Solicitor, did you want
14 to add anything to it?

15 MR. POPE: No, sir. I think it was addressed, it was
16 heard by the grand jury. I don't think there was any
17 requirement in the statute that any new evidence was heard
18 by the grand jury. I will note that the possession of a
19 pistol under 21 was found probable cause with the
20 magistrate issue. But the bottom line is the Court -- to
21 be before you we have to send it to the grand jury to
22 bring it to trial. It has gone through the grand jury. I
23 will even further submit independently there will be
24 testimony that this individual had a gun independent of
25 the gun, so I think it's covered.

PRETRIAL MOTIONS

1 MR. CHIARENZA: I will withdraw number 13.

2 THE COURT: Mr. Boyd, did you want to add anything to
3 this one?

4 MR. BOYD: No, sir.

5 THE COURT: You are withdrawing 13 then?

6 MR. CHIARENZA: Yes, Your Honor. I wasn't certain
7 whether or not -- it's just not relevant, there was not --

8 THE COURT: I assume 14 is withdrawn then, too. And
9 15 I think I ruled on yesterday. Is that all of the
10 motions then?

11 MR. CHIARENZA: Your Honor, just for the record and
12 just based on the events of yesterday my trial posture
13 strategy and the way I was approaching this matter being
14 substantially affected by Mr. McCollum's plea, for that
15 reason I would move for a continuance.

16 THE COURT: Okay. I would have to deny the motion.
17 I assume that all of the parties -- were all defendants
18 given a chance to plead?

19 MR. POPE: Yes, sir.

20 THE COURT: Okay. And he chose to take it, the
21 others didn't. Each one has to take their own role and
22 you have to sort of anticipate that will happen, so I'll
23 deny the motions.

24 MR. POPE: Just for the record and the Court is
25 aware, we spent significant time allowing each attorney

PRETRIAL MOTIONS

1 with defendants with family members to whatever was
2 requested to try to accommodate that, Your Honor. I have
3 handed up to the court reporter and I think it will be
4 Court's Exhibit 6 and I am going to give a copy to each of
5 the defendants, this is on the nolle pros issue on the
6 misprision Mr. Boyd, May 11, 2004.

7 (End of the pretrial motions.)

8 THE COURT: Let me note for the record, Counsel, the
9 break took a little longer than anticipated. We had a
10 note from a juror who basically indicated I think all of
11 her concerns, all of you had a chance to look at the note;
12 is that correct? And they didn't say no so I guess they
13 did. Anyway, it's from juror number 194, Ms. Culp, based
14 on the note I have excused her and the next juror to --
15 and let me note all attorneys were present during the
16 discussions with her; is that correct?

17 MR. CHIARENZA: Yes Your Honor.

18 MR. POPE: That's correct, Your Honor.

19 MR. BOYD: Correct.

20 THE COURT: We will move the first alternate up.

21 (At this time the jury returned to the courtroom.)

22 THE COURT: All parties and attorneys are in the
23 courtroom and all jurors have now returned. Let me note,
24 jurors, that one juror has been excused and Ms. Bosco, who
25 is the first alternate, rather than an alternate you will

OPENING STATEMENTS

1 now move to the status of a regular juror. With that in
2 mind, Madam Clerk, would you put them under oath for me,
3 please?

4 (At this time the jury was sworn.)

5 THE COURT: All right. Thank you, ma'am. Ladies and
6 gentlemen, as we told you yesterday by virtue of these
7 indictments the State has brought charges against the
8 defendants, Mr. Page and Mr. McKnight. Remember, I told
9 you that the indictments are only statements of the
10 charges against the defendant, that does not mean they've
11 done anything wrong. It is up to the State to prove that
12 to you and it's up to you to determine whether the State
13 has carried the burden of proof. Now, to these charges
14 each defendant has pled not guilty and that thereby
15 requires the State to carry that burden of proof.

16 We're going to talk for a few moments about your role
17 in the case and about my role and about the procedure we
18 will take. First let's talk about the procedure. Once I
19 have given you these opening instructions the attorneys
20 are going to have opening statements, and then following
21 those statements we will move into the evidence of the
22 case. I am going to tell you in a moment what evidence
23 is. But once all of the evidence is completed we will
24 then have final closing statements by the attorneys, I
25 will then have a final instruction of law after that and

OPENING STATEMENTS

1 at that point it will be your case. We think it will take
2 a couple or a few days, we don't know but we certainly
3 will move as expeditiously as we can.

4 Now, let's talk about first of all your role in the
5 case. You sit as the finders of fact. That means it is
6 up to you to determine the true facts of the case. Nobody
7 can tell you what those facts are, they cannot dictate it
8 to you, I cannot do that. I'll tell you about my role in
9 just a moment, but one thing I cannot do is comment on the
10 facts and will not do so. And if I do anything even by
11 word of mouth or facial gesture or anything that causes
12 you to think I have some feeling about the facts you
13 should ignore that and rely only on the facts as you find
14 them. Your role as finders of facts gives you very wide
15 discretion. And, in fact, your finding of the facts can't
16 even be appealed, so you need to be sure to remember that
17 you have wide discretions that comes with finding the
18 facts.

19 How do you determine the facts of the case? That's
20 very simple, you determine it by determining the
21 credibility or in other words the believability of the
22 witnesses who testify and all of the evidence that's put
23 up. And when you determine -- and again, this
24 determination of the believability of the witnesses also
25 gives you very wide discretion. You can believe

OPENING STATEMENTS

1 everything a witness says, you can believe nothing a
2 witness says or you can choose to believe one part and
3 throw the rest of it out. You may believe one witness
4 against all of the others or vice versa. Again, very wide
5 discretion is given to you when it comes to determining
6 which witnesses you will believe or will not believe. And
7 again, remember that nobody can dictate those facts to
8 you.

9 When you come to the time of deliberations you must
10 consider only, only the evidence which comes into this
11 courtroom. So let's talk for a moment about what evidence
12 is and we're going to talk about what evidence is not.
13 What is evidence? It's very simple, evidence is the
14 testimony of the witnesses who come up and take the
15 witness chair along with any exhibits or items or
16 documents that come in through those witnesses. That's
17 all evidence is, testimony and the exhibits and that is
18 what you focus on. It's almost like having blinders, you
19 focus only on that in making your determination.

20 So then what is not evidence? Well, first of all
21 evidence is not anything that you may have heard outside
22 of the courtroom about this case or about any case like
23 it. You must put anything of that nature aside. I will
24 also tell you it's very important that you don't do your
25 own investigation outside of the courtroom. I know a lot

OPENING STATEMENTS

1 of people want to try and get on the internet and try to
2 find things, do not do that in any way. Don't make any
3 investigation outside of the courtroom. Why? Very
4 important. I've had people ask, it's very important.
5 There is a procedure and the procedure has to be handled
6 only in the courtroom and you have to trust us that we do
7 that the right way to guarantee that everyone involved is
8 protected in terms of his or her rights. So remember
9 that, you don't consider anything outside of the
10 courtroom, focus only and what comes into the courtroom.

11 Anything the lawyers say is not evidence, and that's
12 very hard to distinguish sometimes because the lawyers are
13 obviously quite involved. The lawyers ask questions of
14 the witnesses but those questions are not evidence and
15 it's always important to remember that, the question of
16 the lawyer is not evidence. You do not give any weight or
17 credibility whatsoever to the questions of the lawyer.
18 The only thing you make determinations are as to the
19 answer that comes from the mouth of the witness and that's
20 what the questions are for is simply to get the evidence
21 from the mouth of the witness.

22 Now, the lawyers will have opening statements in a
23 moment and they will give closing statements later on, but
24 those opening and closing statements are not evidence. It
25 is only their interpretation of the evidence and you are

OPENING STATEMENTS

1 free to accept or reject anything the lawyers suggest to
2 you as to the evidence of the case. So remember that
3 anything the lawyers say is not evidence.

4 And third, anything I say is not evidence. My role
5 is to sit as instructor of the law. The Constitution
6 requires that I keep you instructed as to the law as the
7 case goes on. Now, you must accept the law as I give it
8 to you as correct. Don't second guess it, don't try to
9 figure out whether I'm wrong or right. If I do happen to
10 be wrong about anything there is a time and a place that
11 it can be corrected, but for today's purposes you must
12 accept it as correct. And also you must remember that it
13 is not what you think the law should be, you must accept
14 the law as it's given to you. Remember, I told you
15 earlier that you have very wide discretion when it comes
16 to the facts, you don't have that discretion when it comes
17 to the law. You must accept it strictly and apply it to
18 the facts as you find them.

19 Now, from time to time the attorneys will have
20 objections. Don't be concerned if an attorney objects
21 more than you think he should or you don't think he
22 objects at the right times, don't be concerned about that.
23 Under our rules of evidence -- and I will tell you that
24 the rules of evidence are sort of a language to
25 themselves -- but under the rules of evidence there is

OPENING STATEMENTS

1 some times the lawyers have to object, so don't try to
2 figure out whether they're doing it at the right time,
3 whether they're doing it too much or too little, that's
4 just what they have to do. And, of course, never hold it
5 against the lawyers, never hold it against a client if
6 they object more than you think they should, that's just
7 their job that they have to do. And when I rule on an
8 objection don't be concerned that I am favoring one side
9 or another on the objection, I simply am applying the
10 rules of evidence to that particular objection. And
11 again, I try to do that in as dispassionate a way as
12 possible, you know, entering none of my feelings into it
13 but only ruling on the rules of evidence.

14 Now, I will ask that you not discuss the case, very,
15 very important that you not discuss the case in any way,
16 not with anyone outside of here and not with each other.
17 You know, I know we all like to say, "Well, I can talk
18 about something and I won't form any opinions," but that's
19 not human nature. Human nature is if we start talking
20 about something we're going to start forming opinions. It
21 may be tiny but at least we're there. And the fact is
22 that you must make your mind like a blank page throughout
23 the trial and don't begin to form opinions until you
24 actually get into the jury room and start deliberating.
25 You never know, the last thing you hear may be the most

OPENING STATEMENTS

1 important thing and if you've started to form an opinion
2 then that doesn't make that much difference. So it's very
3 important that you do so. I think the best thing that I
4 can do is just suggest that you listen closely, observe
5 the witnesses closely and all of the evidence closely and
6 then when it comes time just take the law as I give it to
7 you, go into the jury room and just use the good common
8 sense and judgement that you use everyday in your lives in
9 arriving at a verdict.

10 Now, at this time we're going to have opening
11 statements by each of the attorneys and I am going to ask
12 that you give them your undivided attention. Any
13 exception to the charge from the State?

14 MR. POPE: Nothing from the State, Your Honor.

15 THE COURT: Mr. Chiarenza?

16 MR. CHIARENZA: No, Your Honor.

17 THE COURT: Mr. Boyd?

18 MR. BOYD: None, Your Honor.

19 THE COURT: All right, Mr. Thompson.

20 MR. THOMPSON: Thank you, Your Honor. May it please
21 the Court? They thought they got away with murder. Back
22 on March 16th of 2003, Sunday afternoon right around 2:00,
23 it was a little bit after, Willie Cunningham answers a
24 call at his door, a knock. When he comes to the door
25 there's two men there, there's Jaleel Page before him

OPENING STATEMENTS

1 there, and as the evidence will show that's Lamont
2 McCollum standing next to him, and at his trailer right
3 next to that is Terrance McKnight seated over here and A.
4 J. Williams as they look out.

5 Now, Mr. Cunningham -- there's no evidence that shows
6 that he even knows who this man is or that he knows who
7 Lamont McCollum is, but they have come to his door.
8 There's going to be evidence from the testimony before you
9 that you will hear that a conversation starts, that
10 ultimately these men are there to rob and to take things
11 from his trailer. They begin demanding to be let in, they
12 pull a gun at some point they fire two shots, one into his
13 chest and one into his groin and he dies. And they run at
14 that point, all four take off. There's going to be
15 testimony that this man and his friend, Mr. Lamont
16 McCollum, were picked up by Lamont's girlfriend and driven
17 away from the scene. As for Terrance McKnight and A. J.
18 Williams, they ran over to A. J. Williams' trailer and
19 they thought they had got away with murder.

20 When the police began their investigation no one
21 other than the people who were right there saw it. It was
22 a lazy Sunday afternoon, no witnesses right off coming
23 forward. Not finding much the police questioned people
24 all throughout the trailer park right here in York,
25 questioning people all in the Hall Street Apartments

OPENING STATEMENTS

1 trying to find out who would have done this, who is
2 involved, who knows anything about this. And the
3 investigation will go on and you will hear how it was nine
4 months before they were able to make the first arrest
5 related to this case. And as is common with human nature
6 and four defendants, the way they do it is one of the
7 people who was there finally talks, and you will hear
8 testimony from that man, A. J. Williams. He will tell you
9 that while he was in the detention center on another
10 charge that he talked to Kenyatta Sherrer, another man in
11 the detention center and he told him of their involvement
12 in this crime in York that was still unsolved. And at
13 that point Kenyatta Sherrer went to the York Police
14 Department and told them how then he wore a wire and went
15 down and talked to A. J. Williams once again down here in
16 our detention center and the police now had some solid
17 evidence as to the people involved, all four of these
18 defendants. And at that point you will see that A. J.
19 Williams is arrested. And while they had thought at that
20 point or up to that time that they had gotten away with
21 murder, you will see that by the hand of one they were now
22 all caught.

23 And along that line I want you to understand the
24 theory of law and what the Judge will instruct you
25 ultimately at the end of the case, the hand of one is the

OPENING STATEMENTS

1 hand of all. When you commit a crime and you go in with a
2 group of people in order to commit that crime, the hand of
3 one defendant acts as the hand of all defendants. Each
4 person in that crime is responsible for what each other
5 person does because they are joined together to commit a
6 crime. And the evidence will show that in this case as A.
7 J. Williams will testify and as it will bear out through
8 other testimony as well, these men were hanging out
9 together that morning. They were talking. Jaleel Page
10 had a gun on him, Lamont McCollum had a gun on him, both
11 of them had small caliber firearms on them at the time.
12 They were showing them to each other, they were showing
13 them to Terrance McKnight, they were showing them to A. J.
14 Williams and they began talking about robbing someone.
15 And they saw Rashad Simpson who happens to live at Willie
16 Cunningham's trailer and he was dressed nice and he looked
17 like he had money, he looked like someone they could get
18 something from. The testimony will come that they talked
19 about robbing him and how they saw him walk by and at that
20 point they decided they will go ahead to the trailer where
21 he came from and they will take all of his stuff, and if
22 someone happens to be there, they will put their guns and
23 they will make them. The testimony will be how that
24 Terrance McKnight and A. J. Williams, their role was to be
25 a lookout. If Rashad was coming back they would bang on

OPENING STATEMENTS

1 the side of that trailer and they were going to get a cut
2 of whatever came out of it. And remember, the hand of one
3 is the hand of all and that is the law.

4 We will take it to another example. The most common
5 armed robbery I think most people think about is one that
6 happens maybe at a convenience store where you have a guy
7 drive up and might have a couple of friends get out of a
8 car and they run into the convenience store to commit a
9 robbery And at that point he's the driver. He has never
10 gone in but he knows that they were going to rob but
11 that's the whole deal. He's the lookout, he's ready to
12 drive off. Well, the robbery occurs, he comes out, gets
13 in and drives off. That man is guilty of the robbery just
14 as much as the two men who went in and committed the
15 robbery. What else under the law, if those two men go in
16 there and kill the clerk that man in the car is just as
17 guilty of the murder of that clerk as the two men who went
18 in and did it and you need to understand that to
19 understand this case. Because just as in that example
20 each person is guilty of each of those crimes if they're
21 committed during that time. In this case it's the same
22 way. The lookouts are just as responsible for the actions
23 of the men standing at the door as the men standing at the
24 door. Whoever fires that fatal shot and kills Willie
25 Cunningham, each one of those four men is just as

OPENING STATEMENTS

1 responsible as he is under the law as to whether he's
2 guilty or not guilty of murder as the man who pulled the
3 trigger. Each one is just as guilty as attempting to rob
4 somebody -- as an attempted armed robbery as the man who
5 had the gun, or the two men who had the gun in this
6 instance. Consider that as you consider this case and in
7 all aspects of this case, because there will be
8 interesting testimony. A. J. Williams, as I said, will
9 testify and he will testify that as they were looking out
10 that Lamont McCollum became loud, that Lamont pulled out a
11 gun and Jaleel Page had his hands in his pocket where he
12 kept his gun and as the victim, Willie Cunningham, reached
13 out to try and stop from being robbed and grabbed either
14 his wrist or his gun Lamont McCollum pulled away, came
15 back and fired the two shots.

16 Now, you will also hear testimony from forensics that
17 will tell you the bullets that were recovered were of a
18 .25 caliber. The two actual casings that are found on the
19 ground would have come from the same weapon. The two
20 actual bullets that one recovered that went through his
21 body and ended up on the floor and one recovered from his
22 body would likely have come from the same gun. So there's
23 likely only one gun was shot, however it cannot be ruled
24 out that another one was.

25 But other testimony will come from Lamont McCollum's

OPENING STATEMENTS

1 girlfriend who picked them up who said that she came by
2 right at the time all of this was happening and she will
3 testify that she looked back and she saw Jaleel and Lamont
4 on that front porch, the other man standing to the side
5 and that she saw Jaleel Page shoot the victim, shoot and
6 kill Willie Cunningham. Now, I want you to remember this,
7 when it comes down to it it doesn't matter whether Jaleel
8 Page shot and killed Willie Cunningham or whether Lamont
9 McCollum shot and killed Willie Cunningham, because the
10 hand of one is the hand of all. No matter which of these
11 two men did that they're both guilty of murder. With the
12 other two acting as lookouts, no matter which of those
13 other two men did the shooting the other two lookouts are
14 just as guilty of murder and that is the law.

15 Now, you will hear of A. J. Williams testifying, of
16 course, kind of like what you see on TV at times. They'll
17 talk about how he has a plea agreement and he will tell
18 you that plea agreement and what he pled to and that he's
19 pled to attempted armed robbery, that he pled to
20 conspiracy to commit that armed robbery and he pled to
21 accessory after the fact of murder and that the murder
22 charge against him was dismissed ultimately as part of the
23 plea, and that he is going to receive somewhere between
24 ten and 20 years without parole according to what the
25 judge sentences him to and you will hear that from him.

OPENING STATEMENTS

1 You will know that. Use your common sense in this case as
2 you do in all, to have one person testify unfortunately
3 the deal had to be made. But you will also see how he
4 made statements before any deal was ever made long ago,
5 that he gave statements to the police in December of 2003
6 when they came to him at that point in time confronting
7 him to the case that he confessed, that he ended up giving
8 more statements. He gave statements at the time that he
9 entered his guilty plea, you will hear those and you will
10 be able to match the other evidence that was found in this
11 case, all of the things that were brought forward to you
12 you will be able to match them with his confession so that
13 you can determine the validity of his confession and when
14 you see all of that you will find that it's true.

15 Once again, the gentlemen that are before you today
16 are two of the four that you are to consider at this time
17 of their guilt. Once again, these gentlemen are trying
18 now to get away with murder and what the State asks for
19 you to do is to bring a just verdict, to look at the
20 evidence that is presented and consider the witnesses and
21 to remember the law.

22 Now, what is murder? Murder is the killing of
23 another with malice aforethought, with malice of evil
24 intent. That can be inferred. Malice can be inferred
25 from the use of a deadly weapon like a gun in this case.

OPENING STATEMENTS

1 Malice can be inferred from the fact they are committing a
2 felony at the time you are committing the murder like the
3 robbery -- attempted robbery in this case. That is what
4 murder is. What is attempted armed robbery? Based on the
5 deadly weapon, in this case guns, going to somebody and
6 trying to take something from them as they did here with
7 Willie Cunningham. What is conspiracy? It's uniting and
8 combining or conspiring with two or more people, in this
9 case four commit an unlawful act. Now, how do you
10 determine how -- if conspiracy is happening? Well,
11 there's two ways. It can be expressed. There will still
12 be testimony it was expressed to you that their intent was
13 to go there and rob, that their intent was to take
14 everything Rashad had in that house, that if someone was
15 there they would pull their gun and take it. The intent
16 was to then give the lookout a cut of what their help was.
17 You will hear that expressed intent or intent. But it can
18 also be implied by the actions of the individual and you
19 will see that as well as you will see that each individual
20 acted along with the conspiracy, that they all went there
21 together, they all acted together and they all stayed
22 there together while this crime occurred.

23 Now, the other charges you will consider, there's two
24 that Mr. Page has that Terrance McKnight does not. Those
25 two are weapons charges, one possession of a pistol by

OPENING STATEMENTS

1 someone under 21, and the evidence will show that he's
2 under 21, he did possess a pistol during this time. The
3 other is possession of a firearm during the commission of
4 a violent crime. Well, attempted armed robbery is a
5 violent time and murder is a violent crime. If you
6 possess a firearm during the commission of one of those
7 crimes you are guilty of possession of a firearm during
8 the commission of a violent crime, whether or not you draw
9 the firearm out or whether or not you ever use it, that is
10 the law. So I submit to you that when you view the
11 evidence, when you consider the law that the hand of one
12 is the hand of all, no one gets away with murder. And I
13 will ask that you bring a just verdict, one that will
14 speak the truth and will show that no one gets away with
15 murder. Thank you.

16 THE COURT: Mr. Chiarenza?

17 MR. CHIARENZA: Thank you, Your Honor. Good
18 afternoon, mostly ladies and the two gentleman on the
19 jury. My name is Derrick Chiarenza, I represent Jaleel
20 Page. As you have heard from the solicitor he's charged
21 in this matter with a number of charges; murder, attempted
22 armed robbery, conspiracy, some weapons charges. The
23 Judge will tell you when you get charged on the law that
24 Mr. Page is innocent until the State proves his guilt
25 beyond a reasonable doubt. Right now he's innocent and he

OPENING STATEMENTS

1 is innocent throughout the course of this trial until they
2 do something to change that status to prove his guilt
3 beyond a reasonable doubt. You're in a different position
4 than the rest of us involved in this trial and what I mean
5 by that is everybody here wants something. The State,
6 they want convictions, they believe in their case. Law
7 enforcement wants a conviction, they believe in their
8 case. They have a duty and a right to seek justice and
9 what they think justice is in this case is for to you come
10 back with a guilty verdict against my client. If they
11 didn't think the trial was just of if they didn't think
12 they had the evidence they would have a duty not to go
13 forward. It's just a coincidence that the prosecution
14 wants a conviction, that's their job, they've been living
15 with this case for a year and a half, that's what they
16 want. I want something, my client wants something, we
17 want an acquittal. We have been working on this case for
18 a year and a half. It's just not a coincidence we want
19 that because clearly no one wants to be convicted of
20 murder. We want that because we believe that's the
21 verdict that speaks the truth in this case. We believe
22 that's justice in this case. Mr. Page is not guilty of
23 murder.

24 The solicitor told you a great deal and I want to
25 point out that the solicitor does not tell you what the

OPENING STATEMENTS

1 law is in this case, the Judge does. The Judge will
2 charge you that at the end of all of the facts the Judge
3 will say, "You've heard the facts, now this is the law
4 that you need to apply to the evidence that you've heard
5 in this case."

6 Also what the solicitor tells you is not evidence and
7 that goes equally for me as well. What I am telling you
8 here is not evidence. Evidence will come from that
9 witness chair and evidence will come from items that are
10 presented to you by either side, that's evidence in this
11 case. The solicitor told you about the hand of one is the
12 hand of all and that you must find that every one -- if
13 one person is guilty of this then everybody is equally
14 guilty. The Judge is going to charge you that's not
15 exactly right. You can find that one person is more
16 culpable, one person is less culpable. You can come back
17 with a verdict that Mr. Page is guilty and Mr. McKnight is
18 not, you can come back with a verdict that Mr. McKnight is
19 guilty and Mr. Page is not. You can come back with a
20 verdict that they're both guilty but of different crimes.
21 You can come back with a verdict that neither one of them
22 is guilty of anything. You're going to hear that others
23 involved in the crime have already admitted their guilt.
24 That's okay. You can take that fact and still find my
25 client not guilty. So while the law says there is this

OPENING STATEMENTS

1 legal concept that the hand of one actor is the hand of
2 all, it would be invading your province as jurors to tell
3 you that you must find equally for everybody. You weigh
4 the evidence and you make a determination as to where
5 guilt lies in this case and as to where liability lies in
6 this case. Who is at fault? Who is the primary actor?
7 Who should be punished? Who should be acquitted? Who
8 should be found guilty and of what in this case?

9 Where you differ from the rest of us is that you
10 should not want a particular thing. And what I mean by
11 that is I mean want in the sense that it's driven by an
12 emotion or particular desires to do something. You are
13 going to hear that an individual was killed. His name is
14 Willie Cunningham. I didn't know him. I feel like I know
15 a little bit about him in preparing for this case and by
16 all accounts he seemed to be a nice guy. I don't think he
17 deserved to get killed on that day. I certainly won't be
18 presenting any evidence to you that Willie had it coming
19 to him. So human nature is going to be for y'all to sit
20 here and say something bad happened, "these guys are
21 sitting in front of us, we need to make somebody pay for
22 it." You are not allowed to want that, you are not
23 allowed to even think that. You have to put your human
24 nature aside. You have to listen to the facts and the
25 evidence that are presented to you in this case and then

OPENING STATEMENTS

1 render a verdict.

2 So if you will allow me I will speak a little bit
3 about the facts and evidence that you will be presented
4 within this case. Mr. Thompson told you that a
5 codefendant, A. J. Williams, is going to testify. I would
6 submit to you that A. J. Williams is their star witness in
7 this case, and their star witness has given at least three
8 different versions of what happened on that day. Mr.
9 Thompson told you in his opening statement when the police
10 came there was nobody around who saw what happened and
11 months went by before they developed any leads or
12 witnesses. What he didn't tell you is A. J. Williams was
13 around, he was I believe one of the first people that law
14 enforcement spoke to. He was there. He was there at the
15 scene of the crime moments after it happened and they
16 spoke to A. J. Williams and A. J. Williams told them,
17 "Don't know nothing about it, don't know anything." So
18 they did talk to some people, and their star witness on
19 the day it happened was either lying then or he's lying
20 now. But he has given two different versions. The day it
21 happened he told them, "I don't know anything about it."

22 Eight months later A. J. Williams is in the detention
23 center charged with grand larceny, I believe you will hear
24 what he was charged with, and resisting arrest looking at
25 going to jail and he starts talking, says I have got some

OPENING STATEMENTS

1 evidence about this murder. Low and behold he ends up
2 getting a sit-down meeting with law enforcement and
3 eventually he is charged with murder but because of his
4 cooperation that charge is dismissed. So A. J. Williams
5 doesn't have to worry about murder now because A. J.
6 Williams, the guy who first said I don't know anything
7 about it then gave one version, then gave a different
8 version, and then finally gave his final version, which I
9 said -- I think he said, "Here, now this is my real final
10 version of what happened." That guy, Mr. Star Witness, he
11 has cut his deal so you have got to gage his credibility
12 and I submit to you that he has none.

13 I would also ask you to think. Doesn't it seem odd
14 that the prosecution would tell you we've got one witness
15 who is going to say Lamont McCollum killed him and we have
16 another witness who is going to say Jaleel Page killed
17 him? Don't worry about who really shot him because that's
18 not important, we don't even have to prove that, we don't
19 even care who shot him. We are going to put two different
20 witnesses up here on the stand after a year and a half of
21 police investigation they're going to say two completely
22 different things about who shot Mr. Cunningham and y'all
23 shouldn't be concerned with that? I submit that you ought
24 to be mighty concerned with that. They have a duty to put
25 up credible evidence and they're putting up their own

OPENING STATEMENTS

1 witnesses that conflict on the most important element in
2 this case, who pulled the trigger. So they're telling you
3 it doesn't matter, it's allowed, you are allowed to let it
4 matter when you deliberate in this case.

5 They are going to put in 40 or 50 items of evidence
6 in this case, or at least to have that many to potentially
7 put, in it's not up to me what they put in, but they've
8 got 50 or so potential items of evidence to put up in this
9 case. You can hold me to this, if you remember nothing
10 else from this opening statement remember this, there
11 isn't a single item of evidence they will submit -- I am
12 not talking about the testimony of Mr. Williams and such,
13 but those tangible things that you can hold in your hand,
14 there's not a single item that you will take back there of
15 those 50 items that in any way, shape or form link my
16 client to the crime as opposed to any other person on this
17 planet. Yes, a crime was committed. Yes, Willie
18 Cunningham was shot. He was shot two times. They
19 recovered two bullets, they recovered two shell casings,
20 they've got some bloody clothes that the victim was
21 wearing. We don't contest any of that. The problem is
22 that none of those items and none of the photographs that
23 they took, you won't be able to hold a single one of those
24 when you are back in the jury room and say, "What about
25 this item of evidence that links Mr. Page directly to this

OPENING STATEMENTS

1 crime?" Remember that. Remember that when you are asked
2 to render a verdict on this man's guilt or innocence. Not
3 a single item of evidence that you take back there will be
4 able to do that.

5 What does that mean? It means that after the efforts
6 of the great many resources of the State of South
7 Carolina -- they've had the York Police Department work on
8 this case, they've had assistance from the Rock Hill
9 Police Department, they've had SLED, the state law
10 enforcement division, work on this case, they've got
11 however many, 30 or 40 people in the solicitor's office,
12 right now in this courtroom there are probably four or
13 five or six people in law enforcement who have been
14 involved in this case. They've got technology, they are
15 going to put on an audio and video display for you. With
16 all of that they can't bring you a single piece of
17 forensic evidence, the kind that says this guy is more
18 likely to have done this than anybody else, this specific
19 person, Mr. Page, not a fingerprint, not one, not a blood
20 sample. We have got some blood from the victim but it
21 doesn't mean anything about -- they didn't get it from my
22 client or from his clothes or from his shoes or from his
23 house or from his car, they got it from the victim's house
24 where he was shot where you would expect to find blood if
25 a person was shot. There is no blood from my client, no

OPENING STATEMENTS

1 DNA from my client, no footprints from my client, no tire
2 tracks from my client. They have a guy who lied to the
3 police saying my client was involved and then they've got
4 a woman who is the mother of one of the other
5 co-defendant's child trying to protect him saying my
6 client was involved. That's what this case boils down to,
7 two fairly non-credible, non-believable witnesses and not
8 a single piece of direct forensic evidence that links my
9 client to the crime.

10 Again, what I say isn't evidence. You just wait and
11 see how much evidence is presented to you in this case. I
12 will submit at the end of the day -- and I'm speaking
13 figuratively when I say the end of the day because it's
14 going to be several days from here probably, but when you
15 go back into that jury room and you are asked to
16 deliberate you will get back there, and again, I don't
17 want to invade your province but I submit you will begin
18 gathering up or discussing the strength of the case that
19 was presented against Mr. Page amongst yourselves and say
20 what did they do to convince you? What do you think or
21 what do you think? How did they convince you? I am
22 asking you that question right now, how are they going to
23 convince you with no physical evidence and the statement
24 of two people that you will have really no reason in light
25 of their prior statements to give them full credibility.

OPENING STATEMENTS

1 I submit to you at the end of this trial you will have no
2 choice but to render a verdict of not guilty because they
3 simply will not have proven to you beyond a reasonable
4 doubt my client pulled the trigger, was there, plotted any
5 of this, was in fact in any way guilty of what he's
6 charged with. Thank you.

7 THE COURT: Mr. Boyd?

8 MR. BOYD: May it please the Court?

9 THE COURT: Yes, sir.

10 MR. BOYD: Solicitor Thompson told you that they're
11 trying to get away with murder. There's one thing worse
12 than someone getting away with murder and that's for an
13 innocent person to be convicted of a murder. And I submit
14 to you that if Terrance McKnight, my client, is convicted
15 of murder then an innocent person is going to be
16 convicted. Terrance is a young man that lives here in
17 York, knows a lot of people in York, hangs around with a
18 crowd here in York. On the date in question he was around
19 when people were talking about some things he should have
20 probably gone to the police and told about but he didn't
21 out of some various reasons including fear. It's not
22 alleged that Terrance shot anybody, it's not alleged that
23 Terrance had a gun on him. What the State is alleging is
24 that Terrance and an individual called A. J. Williams who
25 will take that witness stand were acting as lookouts while

OPENING STATEMENTS

1 other people went to the trailer of Willie Cunningham and
2 as a result of that Willie Cunningham was shot and he
3 died. Terrance was not acting as a lookout. Terrance was
4 with a group of people, a number of people and he
5 overheard a conversation and heard talk concerning a plan
6 of a robbery and he walked along with the people for some
7 distance, and then he turned around and he left and he was
8 not at this mobile home when the shooting took place. He
9 doesn't know who fired the fatal shot, but he heard shots
10 and at that time he ran. He didn't come forward and talk
11 to the police about it because of fear and it was
12 something he should have done and we admit that. If the
13 accusation is that he didn't come forward and he didn't do
14 something he should have done at that time then he's
15 guilty of that. But he is not guilty of murder, he is not
16 guilty of attempted armed robbery, he's not guilty of
17 conspiracy to do anything. Terrance had no part in this.
18 Terrance overheard what was going on, but he didn't have
19 any part of it. He should have come forward, he didn't,
20 but he didn't have any part of it.

21 The State has one witness I submit that's going to
22 consent that Terrance had something to do with it and
23 that's A. J. Williams. As you already heard A. J.
24 Williams made some various statements about this. One
25 thing you will see is that A. J. Williams is looking after

OPENING STATEMENTS

1 his own self because he has entered into a very favorable
2 plea agreement for himself agreeing to give testimony and
3 he's getting a lot back from that plea agreement. You
4 will see that's how it's favorable to him, not just for
5 this but for other charges he had. You will also see --
6 talk about A. J. Williams talking to the police. Now, the
7 first statement he gave to the police where he admitted
8 his involvement in this is entirely different than the
9 next statement he gave and who knows what he will say when
10 he takes the witness stand this time. It may change even
11 again. The State is going to ask you to take that
12 testimony of A. J. Williams and convict my client of
13 murder. The State also -- what Mr. Thompson said is going
14 to call another person, a girlfriend of a codefendant to
15 testify, and you will see that what she says is entirely
16 different than what A. J. Williams says, that what they
17 say is entirely different.

18 Terrance has pled not guilty to this charge because
19 he is not guilty and he under the law is presumed to be
20 innocent. He is -- the law says that anyone who is
21 charged with anything is presumed to be innocent and we
22 all have heard that over and given that lip service at
23 various times in our lives, a presumption of innocence.
24 But you know, when you see somebody sitting there on trial
25 or you see in the newspaper or somewhere that someone has

OPENING STATEMENTS

1 been charged with a crime your natural inclination is that
2 they caught the person that did that, or that person is
3 guilty or if they wasn't guilty they wouldn't be charged.
4 But as jurors you need to put that away, out of your mind
5 because he's presumed to be innocent. And what that means
6 is it's not up to him to come into this courtroom and
7 prove to you that he is innocent, it is up to the State of
8 South Carolina to prove to you that he is guilty and we
9 submit to you that the State of South Carolina could not
10 do that, and the State of South Carolina has a burden to
11 prove all cause and that's called proof beyond a
12 reasonable doubt. It's not enough for the State to
13 present evidence that Terrance could be guilty or that he
14 may be guilty, it's not even enough for them to introduce
15 evidence that he's probably guilty, although I don't think
16 the State could do that. The State has to prove his guilt
17 to you beyond a reasonable doubt, and if there is any
18 reasonable doubt you have a duty as jurors to render a
19 verdict of not guilty.

20 I'm representing Terrance, my concern is for him. We
21 are not locked together with any other codefendants. I am
22 asking you, you decide whether he should be found guilty
23 or not guilty based on the evidence that is presented
24 against him, not against anyone else. And I ask you to
25 fairly consider every bit of evidence that is introduced

OPENING STATEMENTS

1 and you will see when you go through this evidence that
2 the only evidence against him is the word of A. J.
3 Williams, a person that we will submit to you is totally
4 not credible. In the meantime I just ask you on behalf of
5 Terrance to keep an open mind, pay attention, listen to
6 the evidence. And it is our contention that after you've
7 heard all of the evidence in this case, after you've heard
8 the Judge explain the law to you you will understand why a
9 verdict of not guilty on behalf of Terrance should be
10 reached. Thank you.

11 THE COURT: All right. Counsel, it's about a couple
12 of minutes to 1:00, I think we will go ahead and take a
13 lunch break at this time. Ladies and gentlemen, we will
14 go ahead and take a break for lunch, I will ask you to be
15 back at 2:30 and at that time we will be prepared to begin
16 with evidence in the case. Now again, remember -- and you
17 will get sick of me telling you this, but be sure you
18 don't talk with anybody about the case, talk about
19 anything else you want to but just don't talk about the
20 case itself. With that in mind I'll see you back at 2:30,
21 have a good lunch.

22 MR. POPE: Your Honor, before the jury leaves can we
23 approach?

24 (A bench conference was held.)

25 THE COURT: One thing I usually mention in my opening

OPENING STATEMENTS

1 charge like this case, like all cases could have some
2 media coverage, I don't know whether there is or not, but
3 I would certainly instruct that you not read any
4 newspapers or stay away from any sort of news media for
5 the next couple of days just to be absolutely sure. I
6 don't think there will be much but even if there is you
7 just don't want to take a chance to that. I will see you
8 back at 2:30.

9 (At this time the jury left the courtroom and a
10 lunch break was taken.)

11 MR. POPE: Your Honor, I bring one more thing to the
12 Court's attention while we are waiting for the jury to run
13 in. I don't have the item number now but it will be the
14 videotape from the officers patrol car as I indicated,
15 State's Exhibit 43, I would only intend to publish brief
16 portions of it for the jury. In reviewing it it was
17 brought to my attention that having come from his patrol
18 car it also contains other items from earlier in the day
19 when the officer was working. I discussed with Mr. Boyd,
20 I haven't had a chance to tell Mr. Chiarenza yet, but my
21 intention would be this evening I would have the tape
22 redacted down to just the incident of this case. I'm
23 using the original but I just want to call that to the
24 Court's attention.

25 THE COURT: Mr. Chiarenza, any problem with that?

OPENING STATEMENTS

1 MR. CHIARENZA: No problem with that, Judge.

2 MR. BOYD: None, Your Honor.

3 THE COURT: All right. Are you ready, State?

4 MR. POPE: Yes, sir, Your Honor. Again, we have a
5 witness ready and would be prepared to go forward at the
6 beginning of testimony I will bring the Court's attention
7 and move into evidence the items 1 through I believe it's
8 going to be 52.

9 THE COURT: Okay. Defense ready?

10 MR. BOYD: Defense is ready.

11 MR. CHIARENZA: Yes, sir.

12 THE COURT: All right. Let's bring the jury in,
13 please.

14 (The jury returned to the courtroom.)

15 THE COURT: All parties and attorneys are in the
16 courtroom, all jurors are now with us. Call your first
17 witness.

18 MR. POPE: Please the Court, Your Honor? Before we
19 call our first witness we have marked State's Exhibits 1
20 through 52 for identification, they include both
21 photographs and physical evidence. They have been
22 provided to the defense to review and at this time I would
23 move State's Exhibit 1 through 52 into evidence without
24 objection.

25 THE COURT: Any objection, Mr. Chiarenza?

TESTIMONY OF JOYCE CUNNINGHAM

1 MR. CHIARENZA: No, Your Honor. We reviewed those
2 prior to trial and there's a proper foundation and we
3 would have no objection.

4 THE COURT: Mr. Boyd?

5 MR. BOYD: No objection, Your Honor.

6 THE COURT: All right. They are admitted.

7 (State's Exhibits 1-52 were received into evidence.)

8 MR. THOMPSON: The State would call Joyce Cunningham.
9 The witness, JOYCE CUNNINGHAM, was first duly sworn
10 and testified as follows, on:

11 DIRECT EXAMINATION

12 BY MR. THOMPSON::

13 Q. Good afternoon, Ms. Cunningham. Could you state your
14 name for the Court, please?

15 A. Yes. Joyce Cunningham.

16 Q. Ms. Cunningham, can you tell me, where do you live
17 now?

18 A. Court inside York.

19 Q. Inside York?

20 A. Uh-huh.

21 Q. Where do you work, Ms. Cunningham?

22 A. I work for the detention center, ABL Food Management
23 in Chester, South Carolina.

24 Q. Where did you live back on March 16th of 2003?

25 A. Drive in York.

TESTIMONY OF JOYCE CUNNINGHAM

- 1 Q. Who lived with you there?
- 2 A. My nephew lived with me and also my husband, Willie.
- 3 Q. What was your nephew's name?
- 4 A. Rashad Simpson.
- 5 Q. And your husband's name?
- 6 A. Willie Cunningham.
- 7 Q. All right. And can you tell me remembering back that
- 8 day, where did you work at that time?
- 9 A. I was working at food service at Moss Justice Center
- 10 here.
- 11 Q. Okay.
- 12 A. In York.
- 13 Q. And that actually services at the detention center;
- 14 is that correct?
- 15 A. Yes.
- 16 Q. Could you tell me, did you go to work that particular
- 17 day?
- 18 A. Yes.
- 19 Q. What happened after you went to work?
- 20 A. Well, at the time we didn't have a house phone so I
- 21 had left him my cellphone and I had asked him -- well, I
- 22 told him if I don't call you before 2:30 --
- 23 Q. I'm sorry, who was him?
- 24 A. Willie, I'm sorry.
- 25 Q. Okay.

TESTIMONY OF JOYCE CUNNINGHAM

1 A. If I didn't call him before 2:00 to pick me up for
2 break at 2:30. So I waited for him -- well, I won't
3 forget this, it was about two minutes until 3:00 and when
4 he didn't come I decided to go back into the office and
5 when I got back into the office I had a message on the
6 phone.

7 MR. CHIARENZA: We object, Your Honor, hearsay.

8 THE COURT: Well, what she has testified to so far is
9 okay as long as she doesn't go into the content of it.

10 Q. What did you do as a result of that message?

11 A. Well, I didn't get an answer. Rashad had called me
12 and he said, "It's urgent that you call me."

13 MR. CHIARENZA: We object, Your Honor, it's hearsay.

14 THE COURT: So far it's okay as long as she doesn't
15 get into the contents.

16 Q. Without saying what Rashad said if you could just
17 tell me what did you do as a result of the phone call?

18 A. I called York PD.

19 Q. All right. And what ended up happening after that?

20 A. What happened?

21 Q. Yes.

22 A. Well, York -- I don't remember exactly who answered
23 the phone when I called York PD. They wanted to know
24 where I was and they said, "We are going to send a car for
25 you." But at that particular time they didn't tell me

TESTIMONY OF JOYCE CUNNINGHAM

1 what had happened. They came and got me and took me
2 directly to my -- where I was living.

3 Q. Right. And what did you discover, what had happened
4 to your husband?

5 A. Well, the only thing I was told that he had been shot
6 and then they told me to go next door and get myself
7 together. And that's when I went to Piedmont, the
8 hospital, and once I got to the hospital that's when I
9 think the doctor came up to me and said he didn't make it.
10 And I said, "He who?" And he said, "Your husband,
11 Willie." So after that they let me go back and see him
12 and that's when it really dawned on me that he was really
13 dead.

14 Q. Okay. Now, can you tell me, at that time did you
15 have any idea what had happened?

16 A. No, I didn't.

17 Q. And when you left the house, who all was there when
18 you left the house to go to work that day?

19 A. Only Rashad was there.

20 Q. Only Rashad?

21 A. Uh-huh.

22 Q. Willie took you to work; is that right?

23 A. Yes.

24 Q. Do you remember what time you had to be at work that
25 day?

TESTIMONY OF JOYCE CUNNINGHAM

1 A. I had to be at work at 12:00.

2 Q. Okay. Do you remember what Rashad was doing when you
3 left?

4 A. Rashad was in the bed when I left.

5 Q. Okay.

6 A. He had been up but he had gotten back in the bed.

7 Q. Now, do you know Jaleel Page, the defendant here?

8 Did you know him before this day?

9 A. No, I don't. I didn't know him.

10 Q. How about Lamont McCollum, did you know him?

11 A. No.

12 Q. Did y'all know Terrance McKnight?

13 A. I had heard the name but I didn't know him.

14 Q. Okay. How about A. J. Williams?

15 A. I had seen him before. I remembered him when he was
16 a small baby but I didn't really know him.

17 Q. Did you know his family?

18 A. Yes.

19 MR. THOMPSON: Thank you. I don't have any further
20 questions.

21 THE COURT: Cross?

22 CROSS EXAMINATION

23 BY MR. CHIARENZA::

24 Q. Ma'am, Rashad is your nephew?

25 A. Yes.

TESTIMONY OF JOYCE CUNNINGHAM

- 1 Q. And he was living with you and Willie at the time?
- 2 A. Uh-huh.
- 3 Q. And you testified that when you went to work that day
- 4 Rashad was still in the bed?
- 5 A. Yes.
- 6 Q. And that was about noon or so, wasn't it?
- 7 A. I would say I left home about a quarter until 12:00.
- 8 Q. Until 12:00. Okay. And how old is Rashad now?
- 9 A. 22.
- 10 Q. So he was about 20 when this occurred?
- 11 A. Yes.
- 12 Q. Okay. From time to time he and Willie would argue;
- 13 isn't that correct?
- 14 A. Well, not really. Well, the only thing they would
- 15 really argue about is Rashad leaving his keys in the
- 16 house, not picking up and coming in, having to knock on
- 17 the door and one of us would have to get up and let him
- 18 in.
- 19 Q. Did you ever tell investigators in this case that
- 20 Rashad and Willie didn't get along?
- 21 A. I don't remember telling them that.
- 22 Q. Okay. And did you ever advise investigators that you
- 23 thought somehow the shooting of your husband had something
- 24 to do with Rashad?
- 25 A. No. I don't remember telling them that.

TESTIMONY OF JOYCE CUNNINGHAM

1 Q. You don't recall that?

2 A. No.

3 Q. You don't recall speaking with investigators and
4 advising them that it may have been somebody was actually
5 after Rashad and got Willie by mistake?

6 A. I could have said that. I don't remember but I could
7 have said that.

8 MR. CHIARENZA: Thank you, ma'am. I'm sorry for your
9 loss. I don't have anything further.

10 THE COURT: Cross?

11 MR. BOYD: I have no questions.

12 THE COURT: Anything else from the State?

13 MR. THOMPSON: Nothing from the State, Your Honor.
14 Your Honor, at this time I would like to publish the tape
15 of the 911 call.

16 MR. CHIARENZA: I would just renew the objection to
17 this, Your Honor.

18 THE COURT: Noted for record.

19 (At this time the 911 tape was played.)

20 MR. POPE: Please the Court, Your Honor? The State
21 would call officers Keith Wills to the stand please.

22 The witness, MICHAEL KEITH WILLS, was first duly
23 sworn and testified as follows, on:

24 DIRECT EXAMINATION

25 BY MR. POPE::

TESTIMONY OF MICHAEL KEITH WILLIS

1 Q. Officer Wills, if you would state your name and spell
2 your last name for the court reporter, please.

3 A. My name is Michael Keith Wills, my last name
4 is W-i-l-l-s.

5 Q. Would you tell the jury where you are employed?

6 A. I work with the York City Police Department.

7 Q. How long have you been in law enforcement?

8 A. I've been with York about five and a half years.

9 Q. Tell the jury basically what your duties are with the
10 York Police Department.

11 A. With York I respond to calls for service, respond to
12 crimes in progress or crimes that have already happened,
13 take reports, do traffic enforcement, things of that
14 nature. I'm also shift supervisor.

15 Q. Okay. Did you say you had been with York five and a
16 half years; is that right?

17 A. Yes, sir.

18 Q. I want to call your attention back to Sunday,
19 March 16th of 2003. Were you with the York Police
20 Department at that time?

21 A. Yes, sir, I was.

22 Q. What was your capacity at that time?

23 A. Just Lance Corporal Patrol Officer.

24 Q. What were the duties there? Are they pretty much the
25 same thing?

TESTIMONY OF MICHAEL KEITH WILLIS

1 A. Pretty much the same thing, yes, sir.

2 Q. This was a Sunday. Were you working that particular
3 day?

4 A. Yes, I was.

5 Q. Where were you stationed when this call came in?

6 A. I was actually at the police department at the time
7 of the call.

8 Q. What was your responsibility? What did you do in
9 relationship to this call?

10 A. Responded to the crime reported in progress.

11 Q. Okay. And did you actually go -- the call came in at
12 Westgate Lane. Could you tell the jury where that's
13 located?

14 A. It's in Meadowbrook Trailer Park located off of Hall
15 Street in the City of York.

16 MR. POPE: I'm going to ask the Court's permission if
17 this witness would step down, please.

18 THE COURT: All right. Yes, sir.

19 Q. Sir, if you would, I'm going to call your attention
20 to State's Exhibit 30. If you could orient the jury on
21 what State's Exhibit 30 depicts.

22 A. This is Hall Street right here, Main Street, it comes
23 off Congress Street which is Highway 49, Wood Street.
24 This is where I responded from, Hall Street, and Wood
25 Street is where I turned into the trailer park. This

TESTIMONY OF MICHAEL KEITH WILLIS

1 whole entire area here is the trailer park. When you turn
2 on Wood this is the corner of Sunset and Elon where I
3 placed my vehicle.

4 Q. So the 911 call said Westgate Lane, where would that
5 be?

6 A. Westgate is just the street that continues up from
7 Ambassador and it connects to Elon right about there where
8 the E is.

9 Q. And I call your attention now to Congress Street.
10 You indicated you came on Congress Street. Can you orient
11 the jury where Congress Street is on that particular
12 picture?

13 A. Congress Street is Highway 49, this is north, this
14 continues on down toward town to the main part of town
15 this way.

16 Q. Is Congress Street what some people would think of as
17 kind of Main Street in York, is that the same street?

18 A. Yes, sir.

19 Q. So if you came up toward the bottom of the picture it
20 would bring you down to Downtown York and the courthouse;
21 is that correct?

22 A. Yes. If you continued on out this direction this
23 would be Star's Corner here and the rest of it would be
24 Main Street.

25 Q. Where would Highway 5, the bypass that's across from

TESTIMONY OF MICHAEL KEITH WILLIS

1 the courthouse, where would that bypass be in this
2 picture?

3 A. West Liberty five or the bypass?

4 Q. The bypass, what is that Andrew -- Alexander Love?

5 A. Alexander Love would be continue on out Congress
6 Street out 49 out this way approximately a mile or mile
7 and a half.

8 Q. So it would kind of circle out toward there?

9 A. It would be on out here.

10 Q. I call your attention now to what's been marked
11 State's Exhibit 25 and ask if you can tell the jury what
12 this area depicts?

13 A. This is a close-up picture of the trailer park
14 itself. This is the street coming into Sunset and Elon.

15 Q. Could you indicate Drive on that particular
16 picture?

17 A. Right there, right at the corner.

18 Q. And I now call your attention to State's Exhibit 28.
19 And if you could indicate where the trailer is on that
20 picture.

21 A. Right on this corner.

22 Q. Are you aware where these overhead pictures came
23 from?

24 A. Not exactly, no.

25 Q. Do they accurately depict the area that was laid out

TESTIMONY OF MICHAEL KEITH WILLIS

1 that day?

2 A. They accurately depict the area. The day the
3 incident occurred there was a trailer --

4 Q. Where that dirt area is?

5 A. Where that dirt area is there.

6 Q. You can have a seat, please, sir. Was your vehicle
7 also equipped with a video, with an in-car video?

8 A. Yes, it was.

9 Q. How does that operate? How does that function?

10 A. You can either turn it on by pressing the record
11 buttons or if you activate your blue lights and siren it
12 activates automatically.

13 Q. On this particular incident on what's been marked
14 State's Exhibit 43, was the video from your car recovered?

15 A. Yes, it was.

16 Q. And did it in fact play from the time you left the
17 police department?

18 A. Yes.

19 Q. In addition once you arrived at the scene did it
20 continue to play?

21 A. Yes, it did.

22 Q. And at some point throughout the EMS coming and other
23 efforts, did it continue to play at that point?

24 A. Yes, it did.

25 Q. Is there a point that you finally cut it off?

TESTIMONY OF MICHAEL KEITH WILLIS

1 A. Yes, there was.

2 Q. What was the basis -- how did you decide when to
3 finally cut it off?

4 A. Basically at the time that I decided that everything
5 was calmed down to a point where it was no longer useful
6 basically everything went to a stand still.

7 MR. POPE: Your Honor, at this point I am going to
8 publish a portion of State's Exhibit 43.

9 THE COURT: Yes, sir.

10 (Part of the video was played.)

11 Q. Officer Wills, I noticed initially your vehicle was
12 pointing toward the victim, then I noticed it moved out of
13 the picture. Is there a purpose in the way that you park
14 your car in this particular configuration?

15 A. For one thing I wasn't sure if the crime -- if the
16 people had left so I was doing that to give me some cover
17 in case there was still a chance of gun fire. Also I was
18 doing it to secure the street, also trying to keep from
19 coming in that direction, also.

20 Q. So actually in parking you have angled your car
21 somewhat across the street and placed it between you and
22 the victim at that time?

23 A. Yes, sir.

24 Q. All right. I am going to call your attention now to
25 what's been marked as State's Exhibit 31 and 32. And

TESTIMONY OF MICHAEL KEITH WILLIS

- 1 again, if you need to step down to see with the Court's
2 permission that will be fine. State's Exhibit 31, can you
3 tell me what this depicts?
- 4 A. This area here is the intersection of Elon and
5 Sunset. This depicts Mr. Cunningham laying in the roadway
6 as I saw him when I pulled up. This area to the right
7 that's off camera would be where his residence would be
8 located.
- 9 Q. And State's Exhibit 32, was that taken from your car?
- 10 A. Yes, it is.
- 11 Q. The numbers up in the upper right hand, the
12 1400:0059, what does that depict?
- 13 A. That is the time.
- 14 Q. You say 1400, what would that be a.m. or p.m.?
- 15 A. Military time.
- 16 Q. So 14:00 is 2:00 p.m.?
- 17 A. Yes, sir.
- 18 Q. If you would, describe for the jury -- and, of
19 course, the jury has seen the video as you exited your
20 vehicle. Were you the first officer on the scene?
- 21 A. Yes, I was.
- 22 Q. Can you describe to the jury what you observed when
23 you exited the vehicle and approached Mr. Cunningham?
- 24 A. I saw Mr. Cunningham laying in the roadway, I saw
25 nobody else between my vehicle and the next intersection

TESTIMONY OF MICHAEL KEITH WILLIS

1 or anybody off the areas of the roadway at all. I went
2 up, I approached Mr. Cunningham and he was looking up and
3 I said, "Are you hurt? Are you okay?" He made a motion
4 with his arm to his chest area and he said what I believe
5 to be, "I shot."

6 Q. I shot?

7 A. Yes. He was very short in breath.

8 Q. Okay. What was his physical condition? What did you
9 observe about him at that point?

10 A. He was having very labored breathing, he was having
11 trouble breathing and he couldn't speak clearly. He
12 appeared to be very panicked.

13 Q. What was his condition as far as his clothing and
14 garments? What if anything did you observe?

15 A. On the shirt area I located a spot of blood up in the
16 upper chest area. It appeared to be the only injury that
17 I could see at the time, it was a small amount of blood.

18 Q. And so what did you do at that time?

19 A. At that time I went back to my vehicle to try to
20 obtain some supplies to apply medical treatment to try to
21 help Mr. Cunningham.

22 Q. Now, during that time period were there other
23 officers from York PD that arrived on the scene?

24 A. Yes.

25 Q. Who was that?

TESTIMONY OF MICHAEL KEITH WILLIS

1 A. That would be Sargent Metzger and Lieutenant Thompson.

2 Q. And what if anything did they do or did you do once
3 you went back and got the supplies?

4 A. When -- also Detective Naylis also, he was riding
5 with Sargent Metzger. When I went back to my vehicle to
6 get my supplies they also went up to Mr. Cunningham and
7 attempted to speak with him. At that time he went into
8 cardiac arrest or some type of where he quit breathing.
9 They began CPR.

10 Q. Now, ultimately -- and realizing this is reflected on
11 the videotape -- ultimately did other medical personnel,
12 or did medical personnel arrive?

13 A. Yes. EMS arrived a short time after, just a minute
14 or so after that.

15 Q. Okay. At the point when EMS arrived, what happened
16 as far as law enforcement rendering treatment, what do you
17 guys do then?

18 A. We surrender that to EMS.

19 Q. Is that what happened in this particular situation?

20 A. Yes, sir.

21 Q. Once you were through from the standpoint of
22 rendering aide, what did you do next?

23 A. I obtained some crime scene tape from my vehicle and
24 began securing the crime scene.

25 Q. Okay. And when you say securing it -- well, when you

TESTIMONY OF MICHAEL KEITH WILLIS

1 say crime scene tape, what is crime scene tape?

2 A. It's yellow tape that says police line, crime scene,
3 do not cross. We put that on the outer edges of the crime
4 scene or area we believed to be a crime scene to protect
5 contaminates from other people coming into the scene or
6 other things leaving.

7 Q. Okay. And I show you what's been marked as State's
8 Exhibit 6 and ask if you would take a look at that and
9 tell the jury what that depicts again. If you need to
10 step down with the Court's permission.

11 A. That would be the reverse of my video camera, this
12 would be my vehicle and the videotape that ran. This is
13 where I stopped my vehicle. This area right back in here
14 is where Mr. Cunningham would have been laying, this would
15 be his residence.

16 Q. And then the yellow like strands that are going
17 across the screen near your vehicle, what are those?

18 A. That's the crime scene tape that I ran around this
19 whole entire area.

20 Q. Let's see. I am going to call your attention also to
21 State's Exhibit 7. Tell me if you can tell what that
22 depicts.

23 A. This would be the outer edges of the direction where
24 Mr. Cunningham was laying and this would be the crime
25 scene tape that borders off that entire back area there,

TESTIMONY OF MICHAEL KEITH WILLIS

1 also.

2 Q. So when you secured the area with the crime scene

3 tape, you went up on both ends?

4 A. 360 degrees.

5 Q. Circled around?

6 A. Yes, sir.

7 Q. And again, tell the jury, what's the purpose of

8 securing the area with the crime scene tape?

9 A. To keep any unauthorized people or any contaminates

10 from coming into the crime scene, to keep them from

11 getting stuff in and taking stuff out.

12 Q. Now, these pictures were actually taken subsequently

13 by Investigator Naylis; is that correct?

14 A. That's correct.

15 Q. At this juncture Mr. Cunningham has been removed out

16 in the ambulance; is that correct?

17 A. That's correct.

18 Q. Calling your attention back to State's Exhibit 6, the

19 vehicle that is inside the crime scene tape, kind of

20 yellowish vehicle, where was it when you arrived?

21 A. It still was located in that area. That's where it

22 was when I arrived.

23 Q. Once you secured the area with crime scene tape, what

24 if anything did you do next?

25 A. At that point I just began a general sweep of the

TESTIMONY OF MICHAEL KEITH WILLIS

1 area to see if there was any evidence that could be
2 located outside of the residence, on the ground or near
3 the trailer.

4 Q. Did you, in fact, observe any items of potential
5 evidence in the area?

6 A. Yes, I did. On Mr. Cunningham's front little porch
7 right there there was two shell casings laying on that
8 area right there.

9 Q. Okay. And those shell casings on this porch, did you
10 alter or disturb them in any way?

11 A. No, I did not.

12 Q. What did you do in relation to the shell casings as
13 far as law enforcement?

14 A. I located Detective Naylis and advised him of their
15 location so they can be processed.

16 Q. Was Detective Naylis, was he acting as your crime
17 scene officer for that scene?

18 A. Yes, sir.

19 Q. What does that mean, crime scene officer, what do
20 they do?

21 A. They have control of all evidence and pictures and
22 that type of evidence collection.

23 Q. Okay. And so in this instance you were alerting him
24 of the potential of that evidence and made sure nobody
25 disturbed it, and then allowed him to collect it as part

TESTIMONY OF MICHAEL KEITH WILLIS

1 of his duties?

2 A. Yes, I did.

3 Q. Did you actually yourself collect any physical
4 evidence at the scene?

5 A. No, I did not.

6 Q. You can have a seat. Now, this area, the trailer
7 park, it's in York City?

8 A. Yes.

9 Q. Okay. And York City, that's in York County, South
10 Carolina?

11 A. Yes, it is.

12 Q. So you're in your city jurisdiction as well as in the
13 county jurisdiction.

14 A. Yes, I am.

15 Q. All right. Once you've identified that evidence and
16 securing the scene, what did you do then?

17 A. Basically just continued to see if I could locate
18 more evidence or keep people out of the crime scene. A
19 crowd started to gather a short time after that and we had
20 to maintain to make sure nobody else came into the area.

21 Q. The crowd or anybody that comes, you keep them on the
22 other side of that tape. Is that part of your duties,
23 also?

24 A. Yes, it is.

25 Q. Is that in fact what you did?

TESTIMONY OF MICHAEL KEITH WILLIS

1 A. Yes, it is.

2 Q. Other than trying to assist Mr. Cunningham as far as
3 trying to render aide to him, did you alter or change
4 anything in the crime scene?

5 A. No, I did not.

6 Q. Other than that putting up the tape?

7 A. No, I did not.

8 MR. POPE: Answer any questions the defense may have,
9 please.

10 THE COURT: Mr. Chiarenza?

11 CROSS EXAMINATION

12 BY MR. CHIARENZA::

13 Q. Officer, you were the first officer to respond,
14 correct?

15 A. Yes, I was.

16 Q. And just prior to getting to the incident location,
17 am I correct that there were approximately four people on
18 the street walking in front of your car that you passed
19 and then got to the location?

20 A. Yes.

21 Q. And that was within a block or so of where
22 Mr. Cunningham was laying, correct?

23 A. Approximately probably two blocks where they were,
24 yes.

25 Q. Two blocks? Did I correctly observe as well right

TESTIMONY OF MICHAEL KEITH WILLIS

1 around the same place on the videotape another individual
2 walking away from the incident location?

3 A. I seen somebody turn around and look back at my
4 patrol car but I didn't see somebody walk away.

5 Q. I'm talking about someone different from the four
6 that I have already mentioned, someone down the road walk
7 away.

8 A. Across on the other side of the video? I didn't see
9 that.

10 MR. CHIARENZA: Your Honor, I would ask if we could
11 replay that portion of the videotape.

12 THE COURT: Certainly.

13 (The video tape was played again.)

14 Q. Officer, if you could just take a look with us. So
15 here we have one, two, three, four people that you are
16 passing, correct?

17 A. That's correct.

18 Q. And here there's another individual -- two
19 individuals, one on the porch and one in the yard, does
20 that appear to be correct?

21 A. That's correct.

22 Q. Okay. Thank you. So Officer, apparently at minimum
23 when you arrived on the scene there were six individuals
24 in the immediate vicinity of Mr. Cunningham; is that
25 correct?

TESTIMONY OF MICHAEL KEITH WILLIS

1 A. That's correct.

2 Q. Did you interview any of those individuals?

3 A. I don't know if I talked to those specific people. I
4 talked to several later but I can't tell you if it was the
5 same. My focus was on Mr. Cunningham.

6 Q. Okay. So you may or may not have interviewed those
7 people.

8 A. That is correct.

9 Q. To the best of your recollection -- I watched the
10 tape the same as you did, I saw a couple of vehicles
11 during the time that you were coming maybe meet you or --

12 A. Right.

13 Q. Did you feel that any of those vehicles were
14 observing the characteristics of say a getaway vehicle,
15 someone fleeing the scene of the crime?

16 A. No, I did not.

17 Q. Okay. Other than those vehicles, did you observe any
18 vehicles that may not have been on the tape that observed
19 the characteristics of a getaway vehicle or someone
20 leaving at a high rate of speed?

21 A. No, I did not.

22 Q. Was there anything particularly notable about any
23 vehicle you saw while responding to this?

24 A. No.

25 Q. Approximately how big is that porch where you found

TESTIMONY OF MICHAEL KEITH WILLIS

- 1 the shell casings?
- 2 A. Approximately three by four maybe.
- 3 Q. Three feet by four feet?
- 4 A. It's small.
- 5 Q. It's a small porch, correct?
- 6 A. Yeah.
- 7 Q. Really, really just about enough to accommodate the
- 8 landing outside of the front door?
- 9 A. Exactly.
- 10 Q. And officer, you took part to some degree in this
- 11 investigation, correct?
- 12 A. Initially at the crime scene, but no further.
- 13 Q. After this day were you no longer involved?
- 14 A. No, sir.
- 15 Q. Okay. You are not aware of any firsthand evidence
- 16 which would tend to show that my client, Mr. Page, was
- 17 involved in this murder, were you?
- 18 A. Like I said, I wasn't involved in the investigation
- 19 from the point of the crime scene.
- 20 Q. And you heard nothing from that day from any of the
- 21 people you investigated.
- 22 A. No, sir.
- 23 Q. You retrieved no physical evidence on that day that
- 24 would link Mr. Page --
- 25 A. I wasn't involved in processing evidence, but not

TESTIMONY OF MICHAEL KEITH WILLIS

1 that immediately pointed him out, no.

2 MR. CHIARENZA: Thank you. Your Honor, that's all I
3 have of this witness.

4 CROSS EXAMINATION

5 BY MR. BOYD::

6 Q. Officer Wills, the location that Mr. Cunningham
7 lived, he was in a trailer that was on the corner; is that
8 correct?

9 A. That's correct.

10 Q. Okay. And that's the corner of Sunset and is it
11 Elon?

12 A. Yes, that's correct.

13 Q. And you were going down Elon; is that correct?

14 A. It actually enters -- the trailer park enters as Wood
15 Street and it changes to Elon at Sunset.

16 Q. Okay. All right. And so the position Mr. Cunningham
17 was in was outside of his front door where he apparently
18 was out in the street some distance from his front door;
19 is that correct?

20 A. It would be out. If you was coming from his trailer
21 it would be out and to the right.

22 Q. Okay. Out to the right. And if you go back to the
23 left in front of his trailer the street that runs by the
24 side, that's Sunset; is that correct?

25 A. You're referring to where my vehicle was parked at

TESTIMONY OF MICHAEL KEITH WILLIS

1 that intersection there?

2 Q. Right.

3 A. Yes.

4 Q. And at Sunset, it's a fairly steep hill there that
5 goes down; is that correct?

6 A. That is correct.

7 Q. Okay. And that goes on down into the trailer park;
8 is that correct?

9 A. That is correct.

10 Q. And there's another -- if you go on down there's an
11 office down there; is that correct?

12 A. Not on Sunset. It's back on the other side.

13 Q. You can take a right down there and it goes out on to
14 Mall Street; is that correct.

15 A. That's correct.

16 MR. BOYD: Thank you. That's all of the questions I
17 have.

18 THE COURT: Any redirect?

19 MR. POPE: Just briefly, Your Honor.

20 REDIRECT EXAMINATION

21 BY MR. POPE::

22 Q. I show you what has been marked as State's
23 Exhibit 28. And you said this street was Wood Street but
24 it turns into Elon. Can you see the area I'm referring
25 to?

TESTIMONY OF MICHAEL KEITH WILLIS

1 A. Turning off of Hall Street it enters the trailer park
2 as Wood, it continues down to Sunset which is where this
3 trailer would be, and where I stopped it changes to Elon
4 and it deadends at the end of the trailer park.

5 Q. I'm going to call your attention to State's
6 Exhibit 26, the same area you said the second trailer, in
7 essence the trailer that Chiarenza was talking to you
8 about, is not located in this picture right there, just a
9 dirt spot; is that correct?

10 A. Where those two subjects were?

11 Q. Right.

12 A. Yes. It would be in this dirt area right here.

13 Q. And the trailer that Mr. Cunningham lived in at the
14 end points toward Sunset and it's indicated as Sunset
15 Drive.

16 A. This is his -- they attached the address to the end
17 of the trailer, it's facing Sunset, also his driveway
18 comes in behind the trailer here.

19 Q. And so the trailer that was there and the trailer
20 that was there that day, the end of it faces towards
21 Westgate; is that correct?

22 A. This one here?

23 Q. Yes, sir.

24 A. Yes, it would be right here.

25 Q. Are you aware of the 911 call that came in came in

TESTIMONY OF JAMES EUBANKS

1 from Westgate; is that correct?

2 A. That's what I understood it to be Westgate, yes.

3 MR. POPE: Thank you, sir.

4 THE COURT: Mr. Chiarenza, anything else?

5 MR. CHIARENZA: No, sir.

6 THE COURT: Mr. Boyd?

7 MR. BOYD: No.

8 THE COURT: You can step down. Thank you.

9 The witness, JAMES B. EUBANKS, was first duly sworn
10 and testified as follows, on:

11 DIRECT EXAMINATION

12 BY MR. POPE::

13 Q. Mr. Eubanks, I'm going to ask you if you would state
14 your name and spell your last name for the court reporter,
15 please.

16 A. James B. Eubanks, last name E-u-b-a-n-k-s.

17 Q. And could you tell the jury where you are employed?

18 A. Piedmont Medical Center Emergency Medical Services.

19 Q. And how long have you been so employed?

20 A. Six years.

21 Q. And can you tell the jury basically what your duties
22 are, what you do day to day?

23 A. Emergency paramedic.

24 Q. Just tell the jury what that means, what you actually
25 do.

TESTIMONY OF JAMES EUBANKS

1 A. I respond to emergency calls through the County of
2 York each shift, render treatment to the sick and injured,
3 transport to Piedmont Medical Center and surrounding
4 hospitals.

5 Q. And I want to call your attention back to Sunday
6 March 16th of 2003 approximately 2:00 p.m. Were you on
7 duty that day?

8 A. Yes, sir.

9 Q. Where were you physically working at that day? Where
10 were you dispatched from?

11 A. I was working the York Substation on Highway 321
12 right outside of York.

13 Q. What is the name of that? There's a medical center
14 there to out on 321?

15 A. That is correct. That's Piedmont West Urgent Care
16 Center.

17 Q. So over there kind of where the Winn Dixie is, that
18 intersection, that's where that's located?

19 A. Yes, sir.

20 Q. And you guys are adjacent to that and kind of
21 dispatched out of there; is that correct?

22 A. Yes, sir, we are.

23 Q. Okay. And did you have an opportunity around
24 2:00 p.m. in the afternoon to get a call to be dispatched
25 to a location in York?

TESTIMONY OF JAMES EUBANKS

1 A. Yes, sir, I did. Dispatch was Westgate lane inside
2 of York, South Carolina. The way we were dispatched is
3 right adjacent to Westgate Lane.

4 Q. Can you tell the jury what you actually did? So you
5 are physically out at your headquarters and you get a
6 call. What did you do?

7 A. I proceeded to the passenger's side of the ambulance.
8 My partner drove to the scene, made sure the scene was
9 secured before we entered the scene.

10 Q. When you say that, do you mean from an evidence
11 standpoint?

12 A. No, sir. From a protection standpoint to make sure
13 everyone that's causing a threat is either off of the
14 scene or has been detained.

15 Q. Okay. And once that was determined, what did you do
16 then?

17 A. We proceeded on to the scene. Our other ambulance
18 stationed in York was actually dispatched along with us,
19 both of us responded together. Once we proceeded to the
20 scene and saw the police officers, police vehicles on the
21 scene and then we saw Mr. Cunningham in the road there.

22 Q. I want to call your attention, if you could just look
23 briefly at State's Exhibit 31. Now, realizing law
24 enforcement was there at the time that you arrived, but I
25 would ask if this fairly depicts the location of the

TESTIMONY OF JAMES EUBANKS

1 victim that day when you arrived?

2 A. Yes, sir.

3 Q. Could you tell the jury what if anything you and your
4 partner and/or members of the other team did when you
5 arrived, what condition you found the victim in?

6 A. We found the victim laying supine, which is what we
7 consider laying on his back there. He was breathing a
8 little bit but very shallow, very minimal. We proceeded
9 to remove his clothing to find the injuries, then we found
10 the injuries that was causing him to be deteriorating like
11 he was.

12 Q. Okay. When you say remove his clothing, what
13 actually physically did you do?

14 A. We cut the clothing away. We cut everything away so
15 we can pinpoint exactly what injuries he does have. We do
16 that pretty aggressively.

17 Q. Okay. When you say aggressively, what do you cut it
18 with?

19 A. Scissors.

20 Q. So you do it to the shirt and pants also; is that
21 correct?

22 A. Yes, sir. We make an attempt to cut away from any
23 bullet holes or any type of markings that we may find on
24 any call in order to try to attempt to preserve that
25 evidence.

TESTIMONY OF JAMES EUBANKS

1 Q. Before cutting, did you observe any bloody areas or
2 any areas of potential wounds on this victim?

3 A. Yes, sir. We saw a potential wound there around the
4 chest area at that particular time.

5 Q. Okay. Once you removed his clothing, obviously
6 that's not your first priority, but once the clothing is
7 removed, what happens to the clothes?

8 A. We try to secure that for the detectives and try to
9 put that in their hands if we can.

10 Q. Is that in fact what happened in this case?

11 A. Yes, sir.

12 Q. So once you removed the victim's clothing, was that
13 there in the same location? Had you moved his body or
14 moved him anywhere?

15 A. Not at that particular time. We removed the clothing
16 and the first police officer we saw we pretty much gave it
17 to him. If the police officers are not on the scene at
18 that time we pretty much let them get that evidence as
19 they can.

20 Q. Okay. As far as the aide you've now rendered, once
21 you remove the clothing, what aide were you rendering?
22 That was at the spot where he was laying; is that correct?

23 A. Yes, sir.

24 Q. What aide were you rendering?

25 A. We were aggressively managing the airway. One of the

TESTIMONY OF JAMES EUBANKS

1 top priorities is making sure his respirations were
2 intact. We continued to ventilate him. The CPR was being
3 performed as we arrived by a police officer. Once we
4 relieved him we started ventilating that patient, provided
5 respirations.

6 Q. Ventilating, what does that mean?

7 A. Providing air directly into the lungs, taking over
8 his breathing for him because his breathing was very
9 minimal.

10 Q. What about pulmonary activity and pulse activity,
11 what did you have it?

12 A. His pulse was very weak at that particular time.

13 Q. And specifically, what injuries did you note once you
14 removed his clothing? What areas of injuries did you
15 note?

16 A. We noted the injury to the right upper chest area,
17 what appeared to be an entrance wound from the bullet. We
18 found no exit wound at that particular time. The other
19 injury very high up on the back of his leg, we noticed
20 another wound, at the penis area we noticed a bullet wound
21 also.

22 Q. Was your determination -- I know you talked about
23 ventilation -- what would your determination of what you
24 would do there from a treatment standpoint as far as
25 removing him -- what would be your next step? What was

TESTIMONY OF JAMES EUBANKS

1 your next step?

2 A. Our first step was to secure that airway, verify that
3 he does have cardiac function. At that particular time we
4 did notify flight service because he needed to go to a
5 level one trauma center.

6 Q. Let me stop you there. Flight service, what does
7 that mean?

8 A. That's a helicopter service transporting them to the
9 closest facility that could provide surgical intervention.

10 Q. You say level one?

11 A. Yes, sir, that's correct.

12 Q. What does level one mean?

13 A. Level one is a top priority level, it's the highest
14 level for traumas. What that indicates is surgeons are
15 readily on standby, as soon as that patient arrives at
16 that facility they can go ahead and do surgery,
17 intervention to maintain life or to prevent further
18 injury.

19 Q. So a flight service was dispatched to come here to
20 York?

21 A. Yes, sir. The service was dispatched out of
22 Greenville, South Carolina.

23 Q. And to your knowledge, were they in fact in route?

24 A. Yes, sir, they were.

25 Q. So once that is established, what is the next step

TESTIMONY OF JAMES EUBANKS

1 that you took as far as trying to save Mr. Cunningham's
2 life?

3 A. We proceed on to maintaining the area by further
4 interventions, advantaged procedure such as tracheal
5 innervation, which is putting the tube directly in the
6 bronchial to provide further ventilations, that takes over
7 the airway totally to our control.

8 Q. Okay. And the time that you are spending there on
9 the scene, how much time is this over, how much time is
10 elapsing?

11 A. The time elapsed -- I can look if I may -- prior to
12 us leaving to go to Piedmont was about 45 times from the
13 time we arrived to the scene until the time we left
14 heading to Piedmont Medical Center.

15 Q. At the time you were at the scene, was there a time
16 that you determined to move him into the ambulance?

17 A. Yes, sir, there were. Our normal procedure is to get
18 the helicopter down safely, which was done near the scene
19 at the ball field there. About five minutes prior the
20 helicopter landing the patient went into full total
21 cardiopulmonary arrest.

22 Q. What does that mean?

23 A. All of the breathing of the patient's own ability and
24 all cardiac function has ceased.

25 Q. Okay. And so did you in fact go and still meet the

TESTIMONY OF JAMES EUBANKS

1 air crew at the ball field at that time?

2 A. Yes, sir, we did. We proceeded to the ball field.
3 We notified the helicopter about five minutes out by a
4 radio system and notified them that he was in full
5 cardiopulmonary arrest. Their procedure at that time is
6 not to fly simply because they can't do the aggressive
7 maneuvers that we needed to in the air. They proceeded to
8 land on the scene and assist us with the further
9 treatment.

10 Q. What treatment was rendered once the air crew landed?
11 What did you do try to do then?

12 A. The air crew provided a gastric tube into the stomach
13 because we did have some stomach distension and released
14 and blood suction wise from that stomach. It was really
15 getting engorged as far as causing us further hinderance
16 as far as our treatment.

17 Q. What was causing that?

18 A. Bleeding into the stomach.

19 Q. That would be from internally you're saying?

20 A. Yes, sir, that's correct.

21 Q. Okay. Once Mr. Cunningham went into cardiac arrest,
22 what if any other efforts were made, or what were you able
23 to do to revive him, or were you able to revive him?

24 A. We were not able to revive him. We made aggressive
25 attempts, CPR initiated. As his pulse started we

TESTIMONY OF JAMES EUBANKS

1 attempted to relieve pressure around his lungs with full
2 decompressions, which is simply inserting large needles
3 into the chest to try to relieve any pressure that would
4 be causing the lungs to deflate. That in return can allow
5 the breathing or the respirations to continue. We
6 attempted with i.v.'s which was fluids to try to replace
7 any blood that he was losing and we also placed him on an
8 external pacemaker.

9 Q. Okay. At that point if they decided not to fly him
10 by air, did you say you went then to PMC?

11 A. Yes, sir, that's correct.

12 Q. That is down in Rock Hill?

13 A. Yes, sir.

14 Q. During the trip to Rock Hill, were you able to revive
15 him or bring him back to life?

16 A. No, sir, we were not.

17 Q. What was his condition when you arrived at the
18 Piedmont Medical Center?

19 A. His condition without the pacemaker was
20 essentially -- which is no heart movement at all, that's a
21 flat line. The pacemaker did generate some rhythm for us
22 but the rhythm was not enough to continue life.

23 Q. Okay. And now, EMS personnel, do you guys actually
24 do the pronouncing -- in other words like you see on TV
25 pronouncing somebody dead?

TESTIMONY OF JAMES EUBANKS

1 A. No, sir, we do not.

2 Q. Who would do that?

3 A. It has to be a medical doctor or the coroner.

4 Q. As far as that's concerned, when you arrived at the
5 hospital there at the emergency room, ultimately was
6 Mr. Cunningham pronounced dead there at the hospital?

7 A. Yes, sir, he was.

8 MR. POPE: Thank you, sir. Answer any questions the
9 defense may have, please.

10 THE COURT: Cross?

11 MR. CHIARENZA: I don't have anything, Your Honor.

12 THE COURT: Mr. Boyd?

13 MR. BOYD: I have no questions.

14 THE COURT: All right, you can step down. Ladies and
15 gentlemen, we will just take a short break and give you a
16 chance to move around a little bit and get some
17 refreshments if you need to. Just remember, we don't talk
18 about the case. If any of you need to take a smoke break
19 please do that. I don't encourage it but it's up to you
20 if you want to.

21 (A recess was taken.)

22 THE COURT: All right. All parties and attorneys are
23 in the courtroom and all the jurors are present. Call
24 your next witness.

25 The witness, JOHN NAYLIS, was first duly sworn and

TESTIMONY OF JOHN NAYLIS

1 testified as follows, on:

2 DIRECT EXAMINATION

3 BY MR. POPE::

4 Q. Officer Naylis, if you would state your name and
5 spell your last name for the court reporter, please.

6 A. John Naylis, N-a-y-l-i-s.

7 Q. Where are you employed?

8 A. At the York City Police Department.

9 Q. What is your occupation there?

10 A. I'm a detective with the department.

11 Q. How long have you been in law enforcement?

12 A. 20 Years.

13 Q. How long have you been with the York Police
14 Department?

15 A. 15.

16 Q. As a detective with the York Police Department, could
17 you tell the jury basically what your duties are, what you
18 do day to day?

19 A. My day to day duties are to investigate cases
20 primarily with property crimes, also entailing all crime
21 scene investigations that are warranted.

22 Q. Okay. And I'm going to call your attention back to
23 Sunday, March 16th of 2003. Were you working that day?

24 A. Yes, I was.

25 Q. Were you acting as a detective with the York Police

TESTIMONY OF JOHN NAYLIS

1 Department that day?

2 A. Yes, I was.

3 Q. Did you have an opportunity around 2:00 p.m. in the
4 afternoon to respond to what ultimately was designated as
5 Drive in York, South Carolina?

6 A. That's correct.

7 Q. And what was your purpose in doing that?

8 A. We were called to respond in regard to a shooting
9 incident at that location. We were at another location at
10 that time. I responded with Officer Metzger in his patrol
11 car. When we arrived we found the victim in the roadway.

12 Q. Who was there from law enforcement when you first
13 arrived?

14 A. Initially Officer Wills and then Officer Metzger and
15 myself.

16 Q. And when you arrived and located the victim, what did
17 you actually physically do? What did you do?

18 A. When we found the victim in the roadway we
19 immediately went to his assistance, attempted to stop his
20 bleeding at which time he went into shock and we provided
21 what life saving efforts we could at the time.

22 Q. Ultimately did you actually provide CPR, you and the
23 other officer?

24 A. Officer Metzger provided CPR, mine was the mouth to
25 mouth.

TESTIMONY OF JOHN NAYLIS

1 Q. Okay. And at some point during those efforts did EMS
2 arrive and take over the life saving efforts?

3 A. Yes, they did.

4 Q. At that point what did you do in your capacity as the
5 detective?

6 A. At that point we immediately tried to secure the
7 scene as best as possible encompassing the victim's house
8 along with the residence next door and the immediate area
9 where his body was found.

10 Q. And as far as designating the scene, we have
11 already -- it has been indicated that was done with what's
12 called evidence tape; is that correct?

13 A. That's correct.

14 Q. Okay. At some point once the scene was secured, what
15 is the next step that you took? Do you have a special
16 role from an investigative standpoint that you performed
17 at this scene?

18 A. We immediately at that point attempt to identify and
19 recover any evidence that's left at the scene. Officer
20 Wills in his initial pass from his vehicle to where we
21 were standing advised that he had seen two empty shell
22 casings on the front porch of the victim's residence at
23 which time I got my camera and proceeded to photograph the
24 scene and then recover the evidence.

25 Q. So do you document the evidence or document the scene

TESTIMONY OF JOHN NAYLIS

1 with your camera before you move anything?

2 A. I always document the scene with my camera before I
3 take any evidence into custody.

4 Q. Okay. And also did you have assistance from any
5 other agency in any follow-up you did as far as processing
6 the scene?

7 A. FSU was called and they helped with the diagram of
8 the crime scene.

9 Q. Can you tell the jury what FSU is?

10 A. The forensic service unit multijurisdictional with
11 the sheriff, Rock Hill and Fort Mill police departments.

12 Q. And they assisted you you said with the diagram; is
13 that correct?

14 A. That's correct.

15 Q. Okay. I call your attention to what's been marked as
16 State's Exhibit 42 into evidence. Is that the diagram
17 that was drawn that day?

18 A. Yes, it is.

19 Q. Okay. And the forensics services unit though, they
20 came at some point after you basically were done
21 processing the scene. This is the assistance they
22 rendered at that point, you had already looked at
23 everything else; is that correct?

24 A. That's correct.

25 Q. I want to call your attention --

TESTIMONY OF JOHN NAYLIS

1 MR. POPE: With the Court's permission I would ask
2 the witness be allowed to step down.

3 THE COURT: Yes, sir.

4 Q. I call your attention to State's Exhibit 26. You can
5 step down, please, sir. Again, if you can orient the jury
6 on State's Exhibit 26 what area roughly the evidence tape
7 was surrounding and what area you were working at?

8 A. The victim's body was discovered approximately right
9 about here, crime scene tape was from this point of the
10 victim's building to this perimeter fence down along past
11 our patrol car. There would have been a trailer right
12 about there sealing off this general block right in that
13 area.

14 Q. These overhead photos, are you aware of where those
15 photos come from?

16 A. Yes.

17 Q. As far as the configuration of the trailer park and
18 the road, does it appear to you to be accurate?

19 A. Yes, it does.

20 Q. With the exception of some of the trailers either
21 that were not there at the time that was taken or have
22 subsequently been moved; is that correct?

23 A. That's correct.

24 Q. Okay. I want to call your attention now if I could
25 to State's Exhibit 28. Again on this item if you could

TESTIMONY OF JOHN NAYLIS

- 1 indicate where the trailer is.
- 2 A. Right there.
- 3 Q. Can you show up the road where the Hall Street
- 4 Apartments would be located, where the trees there at the
- 5 Hall Street Apartment is located?
- 6 A. Right there.
- 7 Q. Okay. And to proceed to the location there at
- 8 Sunset, how would you go from Hall Street?
- 9 A. Wood Street passes right up this block to that
- 10 location.
- 11 Q. And as far as actual photos on the scene that day,
- 12 you took a number of different photos; is that correct?
- 13 A. That's correct.
- 14 Q. Okay. I am going to start with State's Exhibit 1 and
- 15 ask if you can identify what this depicts, please?
- 16 A. This is the depiction shooting towards -- from Elon
- 17 and Wood Street toward Charlotte Street.
- 18 Q. So Elon Street is actually the road that runs in
- 19 front of the trailer?
- 20 A. That's correct.
- 21 Q. When you were taking this picture, where would
- 22 Mr. Cunningham's trailer be?
- 23 A. It would be -- I'm standing here, it would be
- 24 directly behind me.
- 25 Q. I call your attention to State's Exhibit 2. If you

TESTIMONY OF JOHN NAYLIS

1 can tell the jury where you would be standing and what
2 this depicts.

3 A. This is the exact opposite angle from the stop sign,
4 I would have turned 180 degrees to shoot this shot.

5 Q. What does this depict?

6 A. This is the front door of where -- you
7 can't see the shell casings but they would be located on
8 that porch.

9 Q. The vehicle that's present, did you determine whose
10 vehicle that was?

11 A. It was determined that it was at one time
12 Mr. Cunningham's, it was a trade of some sort with a
13 previous owner.

14 Q. Was it in the scene -- is that how it was when you
15 found it?

16 A. Yes, it was.

17 Q. And calling your attention to State's Exhibit 3, tell
18 me if you can indicate what this depicts.

19 A. It's another shot of the vehicle and a doorway
20 approximately 20 feet down the road.

21 Q. Where would Mr. Cunningham's body be in relation to
22 these photos?

23 A. He still would be approximately ten or 20 feet to my
24 left.

25 Q. I show you what's been marked State's Exhibit 4 and

TESTIMONY OF JOHN NAYLIS

1 ask if you can indicate to the jury what this depicts?

2 A. This marker right here was where we had discovered
3 Mr. Cunningham's body lying in the roadway. Once I got my
4 equipment out we marked it after EMS had moved him from
5 that back towards his house.

6 Q. Calling your attention to State's Exhibit 5. Can you
7 indicate what this depicts?

8 A. Another wider angle shot once again showing -- trying
9 to get as much of the crime scene as possible indicating
10 where the body was.

11 Q. Again you said where the body was. At this juncture
12 had EMS transported --

13 A. They had already transported him at this point.

14 Q. If I can call your attention to State's Exhibit 6.
15 Tell me what this depicts.

16 A. This would have been after they moved him but before
17 I put my markers down.

18 Q. That's the same angle looking toward the house?

19 A. That's correct.

20 Q. So you would be standing just past where he was
21 located?

22 A. Yes, sir. The marker would have ended up right here,
23 they had already moved him.

24 Q. State's Exhibit 7?

25 A. Once again from the other angle before the marker

TESTIMONY OF JOHN NAYLIS

1 went down as the location of his body and the rest of the
2 crime scene tape up there.

3 Q. Then I'll call your attention to State's Exhibit 8.

4 And can you tell me what this picture depicts?

5 A. It indicates the shell casings on the porch prior to
6 my marking and photographing.

7 Q. Call your attention now to State's Exhibit 9.

8 A. This would have been after I put the markers down on
9 the ruler for size of the verification.

10 Q. State's Exhibit 10.

11 A. Close up of number two shell casing right there.

12 Q. State's Exhibit 11.

13 A. Shell casing at the doorway prior to the marker going
14 down but with the graphic scale to the size.

15 Q. Did you alter -- I realize you are putting markers
16 down, you are putting measurements down -- did you alter
17 or move the location of anything?

18 A. No, I did not. Where they are is where I found them.
19 The markers are just as close to the item as possible.

20 Q. State's Exhibit 12.

21 A. Prior to the markers going down.

22 Q. Okay. States Exhibit 13?

23 A. Closer angle shot of the same item.

24 Q. State's Exhibit 14.

25 A. It's one of the shell casings, I couldn't tell you

TESTIMONY OF JOHN NAYLIS

1 which one it is at that angle.

2 Q. Call your attention to State's Exhibit 15. Can you
3 tell us what this is?

4 A. That will be the second shell casing along the
5 railing with the marker and the ruler next to it.

6 Q. Okay. State's Exhibit 16.

7 A. Once again same shot with a ruler outside, but that's
8 where it was located.

9 Q. 17.

10 A. Close-up angle without the marker in it.

11 Q. And 18.

12 A. Close-up with a scale.

13 Q. Okay. Now, on these two items, did you actually
14 physically recover them?

15 A. Yes, we did.

16 Q. You indicated those two casings as your items number
17 two and three?

18 A. That's correct.

19 Q. What was your item number one?

20 A. That would have been the body of Mr. Cunningham.

21 Q. I show you what's been marked as State's Exhibit 46
22 and ask if you can indicate what that item is?

23 A. Spent shell casing found on the front porch of item
24 number three. It has my signature and my seal.

25 Q. Okay. And State's Exhibit 45, if you would indicate

TESTIMONY OF JOHN NAYLIS

1 what that is for the jury.

2 A. Item number two spent shell casing front porch of
3 and it also has my signature and my sealing.

4 Q. I'm going to ask you first to open first to State's
5 Exhibit 45 --

6 MR. POPE: And permission to publish State's
7 Exhibit 45, Your Honor?

8 THE COURT: Okay.

9 Q. Can you indicate to the jury what State's Exhibit 45
10 is?

11 A. It's a .25 caliber automatic shell spent.

12 Q. When you say spent, what do you mean by spent?

13 A. It has no projectile in the front half here, also the
14 firing cap has been fired.

15 Q. Now, I'll ask you if we can package that one back up.
16 Referring now to your exhibit item number three, State's
17 Exhibit 46. And if you will publish that for the jury,
18 please.

19 A. This also is a spent .25 automatic caliber round, it
20 has no projectile. As indicated by that punch right there
21 it has been fired.

22 Q. I noticed that each item is packaged in an envelope
23 with various seals and tape on them. Did you do any of
24 this sealing on this particular item?

25 A. On this item I applied the original seal which would

TESTIMONY OF JOHN NAYLIS

1 be the red seal. When it was taken to SLED for forensics
2 they would have cut along this and they would have sealed
3 it also.

4 Q. Did you individually package these yourself that day?

5 A. Yes, I did.

6 Q. Did you alter it or change it any way once you
7 recovered it off that porch?

8 A. No, I did not.

9 Q. Okay. Did you have the opportunity -- ultimately
10 when you said SLED, what are you talking about when you
11 say --

12 A. That's the State Law Enforcement Division in
13 Columbia.

14 Q. And did you actually transport the items of evidence
15 in this case to SLED?

16 A. Yes, I did.

17 Q. What's the purpose of taking items to SLED?

18 A. So that they can do forensic tests that we ourselves
19 can't do.

20 Q. And that, in fact, took place in this case?

21 A. Yes, it did.

22 Q. I'm going to call your attention now to State's
23 Exhibit 19 and ask if you can indicate to the jury what
24 this depicts and where this is located?

25 A. This is a picture of the interior of the Cunningham

TESTIMONY OF JOHN NAYLIS

1 home. This is the door jam right here and this is what we
2 saw when we opened the door when we were securing it.

3 Item number four, although you can't see, it's a spent
4 round. And item number five is a blood stain.

5 Q. And item number five is State's Exhibit 20 and ask if
6 you can tell the jury what this depicts?

7 A. This is a closer-up shot of the spent bullet right
8 there.

9 Q. And 21?

10 A. A closer up -- more close-up shot of the same bullet.

11 Q. And that particular bullet, that was recovered where
12 is that location?

13 A. Just inside the doorway of the Cunningham residence
14 at .

15 Q. Okay. And I show you what's been marked as State's
16 Exhibit 47 and ask if you can take a look at that and tell
17 me if you can identify that, please.

18 A. One spent bullet head , it has my signature
19 and my seal.

20 MR. POPE: Permission to publish?

21 THE COURT: Yes, sir.

22 Q. If you can, explain what that is, please, sir.

23 A. This is the projectile from the .25 caliber automatic
24 pistol passed through the victim's body.

25 Q. Okay. If you had shown us the empty casing, what

TESTIMONY OF JOHN NAYLIS

- 1 part is this particular -- when you say projectile, what
2 part is that?
- 3 A. This is the part that as the gas is expended it
4 travels through the weapon and through the body projectile
5 or the head of the bullet itself.
- 6 Q. And again, did you collect it and package this for
7 purposes of sending it to SLED?
- 8 A. Yes, I did.
- 9 Q. And that was indicated as your item four; is that
10 correct?
- 11 A. That's correct.
- 12 Q. I call your attention now to State's Exhibit 22 and
13 ask if you can indicate what this item is?
- 14 A. This was a blood stain we found on the carpeting
15 inside the doorway at .
- 16 Q. States Exhibit 23?
- 17 A. Closer-up shot of it. It's here in the fabric of the
18 carpet.
- 19 Q. And again, State's Exhibit 24?
- 20 A. Another close-up angle shot of it.
- 21 Q. And as part of your crime scene collection that would
22 be your number five; is that correct?
- 23 A. That's correct.
- 24 Q. Did you also obtain a portion of that or a swab or
25 squash from the carpet?

TESTIMONY OF JOHN NAYLIS

1 A. After we determined that it was blood -- in fact
2 blood we took that as evidence, yes, sir.

3 Q. State's Exhibit 48, give you a previous opportunity
4 to look at that. You covered that item and sent it to
5 SLED ultimately contained there that in envelope to SLED?

6 A. That's correct.

7 Q. And then the blood item that was taken, your number
8 five, it was sent to SLED for testing at the DNA lab; is
9 that correct?

10 A. That's correct.

11 Q. In addition did you also send down the victim's
12 blood?

13 A. Yes, I did.

14 Q. And in fact, SLED matched the DNA as that being the
15 victim's blood there at the house; is that correct?

16 A. That's correct.

17 Q. Likewise on the two gun cartridges I think you called
18 them empty cartridges, you sent them to SLED also as you
19 indicated?

20 A. That's correct.

21 Q. You sent them to SLED, among other things it went to
22 SLED. In addition to firearms it also went to the
23 fingerprint lab; is that correct?

24 A. That's correct.

25 Q. And is it your knowledge as far as fingerprints, no

TESTIMONY OF JOHN NAYLIS

1 fingerprints were identified on either one of those?

2 A. No.

3 Q. In addition to the items that you recovered there,
4 you had indicated that State's Exhibit 42. Is this a
5 diagram?

6 A. That's correct.

7 Q. On this particular diagram you said that the forensic
8 services unit assisted you with this diagram; is that
9 correct?

10 A. That's correct.

11 Q. At the time they arrived and assisted with the
12 diagram, your items two and three which are these shell
13 casings, had they already been recovered at that time?

14 A. Yes, they had.

15 Q. Okay. Are the items two and three depicted on this
16 diagram?

17 A. No, they're not.

18 Q. Okay. Where would they have been located on this
19 particular diagram?

20 A. Two would have been approximately right about there
21 and three was resting up against the side rail right about
22 there.

23 Q. And then the item one that was Mr. Cunningham, is
24 that depicted in this diagram?

25 A. Yes, it is. It would have been right there.

TESTIMONY OF JOHN NAYLIS

1 Q. And items four and five, which were the spent -- the
2 bullet itself and the blood, where would that be?

3 A. The spent bullet was recovered right there and the
4 blood was right there.

5 Q. And there's actually a hard copy of 42 and the jury
6 will have that in the jury room. I noticed that this is
7 not to scale, what does that mean?

8 A. That means it is not to be depicted as scale, these
9 little blocks are not to be used. However, the
10 measurements are accurate and were taken at the time.

11 Q. Okay. And in fact, Mr. Cunningham's body from the
12 pictures you showed was actually down below -- down the
13 street a little below this trailer; is that correct?

14 A. That is correct. This is just the superimposed
15 sketch of the interior.

16 Q. Thank you, sir. While on the scene while EMS was
17 present or sometime during the -- did you have the
18 opportunity to recover the victims's clothing that they
19 cut from his body?

20 A. Yes, I did.

21 Q. Okay. I will call your attention to State's
22 Exhibit 50 and ask if you can take that and tell me if you
23 can identify that. You've had an opportunity previously
24 to look at it outside the jury's presence.

25 A. This would have been the shirt that Mr. Cunningham

TESTIMONY OF JOHN NAYLIS

- 1 was wearing, it's got my seal on it and my signature.
- 2 Q. Okay. And State's Exhibit 49?
- 3 A. This would have been the pair of pants he was wearing
- 4 at the time that we recovered from EMS. It also has my
- 5 signature and my seal.
- 6 Q. You also recovered these for evidentiary purposes?
- 7 A. That's correct.
- 8 Q. Did you alter or change these in any way?
- 9 A. No, I did not.
- 10 Q. When you first approached Mr. Cunningham before EMS
- 11 arrived, he had these garments on; is that correct?
- 12 A. Yes, he did.
- 13 Q. Were you present when EMS were removing the garments?
- 14 A. I was in the general area.
- 15 Q. When you approached him before EMS removed him, did
- 16 you notice any wounds from Mr. Cunningham?
- 17 A. He had a blood wound in the upper right quadrant up
- 18 and then there was some bleeding from the groin area.
- 19 Q. Did you alter or change anything other than what EMS
- 20 talked about cutting?
- 21 A. No.
- 22 Q. I will now call your attention to Monday -- this was
- 23 Sunday -- so Monday March 17th. Did you have the
- 24 opportunity to attend the autopsy in this case?
- 25 A. Yes, I did.

TESTIMONY OF JOHN NAYLIS

1 Q. Okay. And at the autopsy on the victim
2 Mr. Cunningham, was what's called a GSR or gunshot residue
3 kit performed?

4 A. Yes, it was.

5 Q. Could you tell the jury just briefly what that is and
6 what the purpose of it is?

7 A. Gunshot residue test is a test that tries to find
8 microscopic parts of gunshot on the hands. It's a sticky
9 pad that we try to obtain evidence, then it's sealed and
10 taken to a lab and gunshot residue comes up in the lab.

11 Q. And gunshot residue for the purpose of determining
12 whether these were handled or fired -- whether the victims
13 handled or fired the firearm?

14 A. That's correct.

15 Q. In addition, did you also recover what remaining
16 clothing Mr. Cunningham had, which I show you as State's
17 Exhibit 52?

18 A. Yes, I did.

19 Q. What is that?

20 A. This was one pair of men's black underwear I
21 recovered from his body at the time of the autopsy. It
22 also has my seal and my signature.

23 Q. In addition, you were present actually for the
24 autopsy, is that correct, with Dr. Maynard?

25 A. Yes.

TESTIMONY OF JOHN NAYLIS

1 Q. And were you present when the bullet was recovered
2 from the victim, Mr. Cunningham?

3 A. Yes, I was.

4 Q. I show you State's Exhibit 51. And can you tell me
5 what that indicates?

6 A. It's from the autopsy, bullet from the right back of
7 Mr. Cunningham, indicates that Dr. Maynard recovered it.
8 And I placed it into evidence and my seal and my signature
9 also on that.

10 Q. Did you alter or change -- this bullet that came from
11 Mr. Cunningham, did you alter or change that in any way?

12 A. No, I did not.

13 Q. I will ask if you will publish this to the jury at
14 this time. I tell you, if you will just start with it and
15 let them pass it around. You can have a seat. And this
16 item you transported also to SLED, State's Exhibit 51; is
17 that correct?

18 A. That's correct.

19 Q. Okay. In addition to those items, there were a
20 number of items that were transported to SLED including I
21 think you guys got a GSR, gunshot residue kit, from Rashad
22 Simpson too I believe that day or the day before; is that
23 correct?

24 A. That is correct.

25 Q. And when you transported this evidence to SLED

TESTIMONY OF JOHN NAYLIS

1 separately packaged, did you also take the GSR kit from
2 Mr. Simpson?

3 A. On that same day, yes, sir.

4 Q. Did you alter or change that in any way?

5 A. No, sir.

6 Q. Any of the items that you took to SLED, did you open
7 or tamper with it, change or alter in any way?

8 A. No, sir.

9 Q. From an evidence standpoint, was this basically your
10 involvement in this case from an evidence standpoint?

11 A. That's correct.

12 MR. POPE: Thank you, sir. Answer any questions the
13 defense may have.

14 THE COURT: Mr. Chiarenza?

15 CROSS EXAMINATION

16 BY MR. CHIARENZA::

17 Q. Detective, you have through the solicitor published a
18 number of items of evidence to the jury just now, correct?

19 A. That's correct.

20 Q. And those were items that you collected as part of
21 your investigation of the crime scene, correct?

22 A. Yes, sir.

23 Q. I am going to try to go through them one at a time.

24 The clothing that you recovered from Mr. Cunningham, those
25 are the clothes he was wearing on that day, right?

TESTIMONY OF JOHN NAYLIS

- 1 A. Yes, sir.
- 2 Q. Anything about those clothes that directly linked
3 Jaleel Page to the death of Mr. Cunningham?
- 4 A. Not in the clothes, no, sir.
- 5 Q. And in fact, those clothes can't specifically link
6 the murder to any person or rule out any person; is that
7 correct?
- 8 A. That's correct.
- 9 Q. I am going to ask you the same question about all of
10 the evidence. Let's go to that small blood stain. That
11 was Mr. Cunningham's blood on his own living room carpet,
12 correct?
- 13 A. That's correct.
- 14 Q. And that wouldn't tend to directly link any of the
15 charges here to my client, Mr. Page, would it?
- 16 A. No.
- 17 Q. And in fact, this is an aside just as that one piece
18 of evidence, do you have an indication as to whether or
19 not that blood stain occurred as a result of this shooting
20 or could it have happened months earlier?
- 21 A. It could have happened months earlier, but given the
22 fact of the case we took what we could.
- 23 Q. Was it dry?
- 24 A. Yes, it was. But there was a time lapse from the
25 initial shooting to us recovering it.

TESTIMONY OF JOHN NAYLIS

1 Q. So you can't say with any certainty when that stain
2 was deposited on the carpet.

3 A. No.

4 Q. Start with the shell casings. Either one of those
5 casings directly link Mr. Page to the crime?

6 A. No. Just that there were fired by the same weapon.

7 Q. Okay. So what we can say about those casings is that
8 the forensic examination or SLED examination concluded
9 that those two casings which hold the bullet came from the
10 same gun.

11 A. Correct.

12 Q. And am I correct in stating that the SLED or the
13 forensics also concluded that the two bullets, the part
14 that actually come out from the gun and do the business,
15 those two bullets came from the same gun.

16 A. That's correct.

17 Q. Okay. And it's not inclusive though my
18 understanding -- correct me if I'm wrong -- the two
19 casings came from the same gun and the two bullets came
20 from the same gun, we don't know for certain that all four
21 of those items came from the same gun, is that correct, or
22 did they?

23 A. They would have all came from the same gun. The two
24 projectiles would have been from the two spent casings.

25 THE COURT: Counsel, let me interrupt you. I have a

TESTIMONY OF JOHN NAYLIS

1 phone call that I have to take, it's from the Chief
2 Justice and I never want to turn that phone call down.
3 Ladies and gentlemen, let me ask you to step to the jury
4 room just for a few moments and while you are there
5 remember not to talk about the case.

6 (A recess was taken.)

7 (The jury returned to the courtroom.)

8 THE COURT: All parties and attorneys are in the
9 courtroom, all jurors have returned to us.

10 Q. Detective, I think when we left off I was asking you
11 about the cartridges and the bullets.

12 A. That's correct.

13 Q. And it's your opinion that all four of those items
14 came from the same weapon, correct?

15 A. That's correct.

16 Q. And all four of those items would be associated with
17 a .25 caliber; is that correct?

18 A. That's correct.

19 Q. And that would be an automatic pistol; is that
20 correct?

21 A. That's correct.

22 Q. And one characteristic unique to an automatic pistol
23 as opposed to a revolver is that it ejects the shell
24 casings, is that a correct statement?

25 A. That is correct.

TESTIMONY OF JOHN NAYLIS

1 Q. And so that if you were to fire a shot from an
2 automatic pistol not only would it shoot the bullet but it
3 would kick that empty cartridge out somewhere in the
4 vicinity where the gun was fired; is that correct?

5 A. That's correct.

6 Q. And in fact, that's the type of -- you use that as an
7 investigative technique to determine where the shots
8 likely came from; is that correct?

9 A. That's correct.

10 Q. All right. And so in this case based on the fact
11 that you found the shells on the porch, did you come to
12 the conclusion that the shots were fired either from
13 someone standing on or very close to the porch?

14 A. That's correct.

15 Q. And if the shots had been fired from a revolver you
16 would not have found spent shell casings; is that correct?

17 A. That's correct.

18 Q. Okay. So your ultimate conclusion regarding the four
19 items you found were that, one, they all came from the
20 same weapon and that weapon was a .25 caliber automatic,
21 and three the shots were all fired from either someone
22 right on the porch or someone very close to the porch.

23 A. That's correct.

24 Q. During your investigation of this case in addition to
25 what you have done regarding the physical evidence, did

TESTIMONY OF JOHN NAYLIS

1 you have an opportunity to interview witnesses?

2 A. Yes, I did.

3 Q. Okay. During the course of your interviewing of

4 witnesses, did you ever develop any information that

5 Mr. Page, my client, was in possession of a .25 caliber

6 automatic weapon?

7 A. No, I did not.

8 Q. Okay. And going back to the last line of

9 questioning, would you conclude in this case that in fact

10 a .25 caliber automatic weapon was the murder weapon in

11 this case?

12 A. Yes, it was.

13 Q. Okay. Now, y'all took a gunshot residue test of

14 Rashad Simpson; is that correct?

15 A. That's correct.

16 Q. And he is the nephew of the wife of the victim.

17 A. That's correct.

18 Q. So he was living at the residence at the time of the

19 murder, correct?

20 A. Yes.

21 Q. Correct me if I'm wrong, it's my understanding that

22 that test as well came back negative.

23 A. That's correct.

24 Q. Meaning you found no indication of gunshot residue on

25 Mr. Simpson's hands.

TESTIMONY OF JOHN NAYLIS

1 A. That's correct.

2 Q. All right. That doesn't conclusively rule out the
3 possibility that Mr. Simpson shot a weapon, but at the
4 same time it gives you no evidence that he did, correct?
5 Is that a correct statement?

6 A. It indicates that there was no residue on his hands
7 at the time, yes.

8 Q. And based on that indication you cannot completely
9 rule out the fact that Mr. Simpson at some point prior to
10 the test shot a weapon.

11 A. That's correct.

12 Q. But if it was positive it would have been more likely
13 that he in fact did shoot a weapon.

14 A. That's correct?

15 Q. So when you get a negative result basically it tells
16 you we have no proof before the test that this individual
17 shot a weapon.

18 A. It just indicates that a weapon was shot, yes, sir.

19 Q. And how many people were GSR'd in this investigation?

20 A. Best of my knowledge just those two.

21 Q. And the victim was GSR'd not because we think he shot
22 himself or fired a weapon; is that correct?

23 A. No, proximity of weapon.

24 Q. What is that called, a barrel blast or muzzle blast
25 or something like that?

TESTIMONY OF JOHN NAYLIS

1 A. Yes, sir.

2 Q. What that is is that theoretically or scientifically
3 there's an expectation that if someone is shot at close
4 range some gun shot residue would blow out the end of the
5 gun or side of the gun and be detectible on that person
6 who was within close range, correct?

7 A. The gunshot residue goes to the front and back of the
8 weapon.

9 Q. And there was none found on Mr. Cunningham?

10 A. No, there was not.

11 Q. Clearly we know Mr. Cunningham was indeed shot,
12 though.

13 A. That's correct.

14 Q. What would you conclude from the fact that there was
15 no gunshot residue found on Mr. Cunningham?

16 A. That he was not in proximity of the weapon when it
17 was fired, thereby he wasn't capable of defending himself
18 at that time.

19 Q. Okay. Why did you conduct a gunshot residue test of
20 Mr. Simpson?

21 A. That was -- when he came back to the scene he was the
22 last one that we knew of to have seen the victim. He had
23 left the residence moments prior to this so as he being
24 the last one we knew of that saw the victim he volunteered
25 to have a gunshot residue test.

TESTIMONY OF JOHN NAYLIS

- 1 Q. Okay. You asked him and he agreed.
- 2 A. Yes.
- 3 Q. He didn't just volunteer out of thin air, right?
- 4 A. We asked and yes, he did.
- 5 Q. The reason you did the test on him wasn't so much to
- 6 see if he was in the proximity of a shot but to see if he
- 7 in fact fired a shot.
- 8 A. Yes, sir.
- 9 Q. Regarding A. J. Williams, did you have any direct
- 10 dealings with him in this investigation of this case?
- 11 A. Yes.
- 12 Q. So you actually spoke to him and interviewed him at
- 13 some point?
- 14 A. On a number of occasions we spoke, yes, sir.
- 15 Q. Prior to A. J. Williams speaking, were there any
- 16 solid suspects in this case?
- 17 A. A number of leads but nothing solid, no.
- 18 Q. Okay. And after A. J. Williams making contact with
- 19 you and you taking a statement from him, the four
- 20 defendants that were ultimately charged were developed as
- 21 suspects and warrants were issued for them, correct?
- 22 A. Correct.
- 23 Q. Would you say that the information that A. J.
- 24 Williams gave you more than anything else led to those
- 25 four individuals being charged?

TESTIMONY OF JOHN NAYLIS

- 1 A. Yes.
- 2 Q. Okay. And those four individuals are in fact my
3 client, Mr. McKnight, Mr. Williams himself and Mr. Lamont
4 McCollum, correct?
- 5 A. That's correct.
- 6 Q. How did it come to be that you initially found out
7 that Mr. Williams had something to say?
- 8 A. An informant of mine called us from the detention
9 center and asked to speak to me. At that time he said he
10 had information regarding Mr. Williams and the Cunningham
11 murder.
- 12 Q. That's a gentleman called Kenyatta Sherrer, correct?
- 13 A. That's correct.
- 14 Q. And is it safe to categorize him as someone who has
15 had a long history of dealings with law enforcement?
- 16 A. Yes.
- 17 Q. As a criminal who is also an informant?
- 18 A. Correct.
- 19 Q. And you have used him personally in the past?
- 20 A. Yes.
- 21 Q. Okay. And I will summarize and you can elaborate if
22 you would like. But isn't it true that essentially
23 Mr. Sherrer told you that Mr. Williams had been talking
24 about this murder and I can get him to keep talking about
25 it. You gave Mr. Sherrer a tape recorder and taped

TESTIMONY OF JOHN NAYLIS

- 1 Mr. Williams talking about the murder.
- 2 A. That paraphrased it pretty well, yes, sir.
- 3 Q. At some point did you confront Mr. Williams with
- 4 this?
- 5 A. Our department did, yes, sir.
- 6 Q. Okay. And after confronting Mr. Williams with this
- 7 he then gave you a statement, correct?
- 8 A. He gave our department, I wasn't privy to that.
- 9 Q. But he gave the York Police Department a statement.
- 10 A. Yes.
- 11 Q. In regard to any statement Mr. Williams has given,
- 12 you've reviewed all of those documents in preparation for
- 13 today, haven't you?
- 14 A. Yes, sir.
- 15 Q. Okay. So there's not a statement out there that has
- 16 anything to do with that case that you probably haven't
- 17 seen or reviewed or gone over with your fellow detectives
- 18 and the solicitor's office.
- 19 A. During the course of the investigation, yes.
- 20 Q. So you are aware of the -- I think -- well, on a
- 21 number of different occasions Mr. Williams has given
- 22 statements.
- 23 A. Yes.
- 24 Q. You're aware of all of those statements.
- 25 A. Yes.

TESTIMONY OF JOHN NAYLIS

- 1 Q. In regard to what ultimately happened in this case,
2 detective, in your opinion, what happened?
- 3 A. Ultimately one of the parties that was involved
4 talked and we were able to develop that lead into solid
5 suspects and we arrested the suspects.
- 6 Q. That's not the question I am asking. In regard to
7 March 16th at the trailer park in York at --
- 8 A. I'm sorry.
- 9 Q. -- at or about 2:00 in the afternoon when Mr. Willie
10 Cunningham was shot, what is your opinion as to what
11 happened?
- 12 A. I believe parties or parties unknown to
13 Mr. Cunningham came to his house with the intention of
14 robbing the house. The robbery went bad and Mr.
15 Cunningham was shot and killed.
- 16 Q. And you believe those parties unknown are in fact the
17 four that have been charged, right?
- 18 A. Yes, sir.
- 19 Q. So now they are not as far as you're concerned
20 unknown.
- 21 A. That's correct.
- 22 Q. Y'all do believe you have got the right people.
- 23 A. Yes. You asked me until a point.
- 24 Q. I understand what you're talking about.
- 25 A. No, that's okay.

TESTIMONY OF JOHN NAYLIS

1 Q. So you believe that on the 16th the four individuals
2 who have been charged in this case were involved with the
3 murder of Mr. Cunningham.

4 A. That's correct.

5 Q. All right. Prior to speaking to Mr. Williams and him
6 giving various statements, you did not have that same
7 belief, did you, as far as those four definite
8 individuals?

9 A. Not those four definite individuals, it just gave
10 every indication of a robbery gone bad.

11 Q. So you did have on the one hand a theory of generally
12 what happened, we know Mr. Cunningham was shot, we know he
13 was shot two times, we know approximately where he was
14 shot, we know he ran out in the street and EMS came, he
15 was revived, we just didn't know who.

16 A. Correct.

17 Q. Up until Mr. Williams spoke it was still a
18 who-done-it.

19 A. Correct.

20 Q. In regard to the person who shot Mr. Williams, what
21 is your ultimate opinion there?

22 A. My opinion regarding as to who actually fired the
23 shot?

24 Q. The identity of the individual who fired two shots
25 into Willie Cunningham and ended his life.

TESTIMONY OF JOHN NAYLIS

1 A. In the course of the investigation it was determined
2 that Mr. Lamont McCollum was the one who had a .25
3 automatic. Given the evidence that was recovered at the
4 scene of the body the .25 automatic was shot by
5 Mr. McCollum and Mr. Cunningham perished.

6 Q. Okay. And, in fact, Mr. Williams' statement -- all
7 of his statements in spite of the fact that they vary in
8 numerous details never wavered on that fact, that
9 Mr. Lamont McCollum shot Mr. Cunningham, is that correct?

10 A. That's correct.

11 Q. Okay.

12 MR. CHIARENZA: Thank you. That's all I have.

13 MR. BOYD: I have no questions.

14 THE COURT: Any redirect?

15 REDIRECT EXAMINATION

16 BY MR. POPE::

17 Q. Just briefly. In the process -- I guess it was a
18 long process, what, close to nine months the investigation
19 and following various leads and things that your
20 department conducted; is that correct?

21 A. That's correct.

22 Q. Was one detective or investigator kind of assigned or
23 saddled with the duty of being your case agent and
24 collector of all of this different information?

25 A. Yes. That would have been my supervisor, Sara

TESTIMONY OF JOHN NAYLIS

1 Robbins.

2 Q. And so when different leads were followed up by
3 different ones of you, different pieces of information or
4 phone calls it would have always been channeled through
5 Ms. Robbins?

6 A. Uh-huh.

7 Q. Okay. And as far as the large volume of materials
8 you have in this case, was there in fact a large volume?

9 A. Yes, sir, there was.

10 Q. She's kind of the repository for your agency in that
11 regard?

12 A. Yes, sir.

13 MR. POPE: Thank you, sir.

14 THE COURT: Any recross?

15 MR. CHIARENZA: No, Your Honor.

16 THE COURT: Mr. Boyd?

17 MR. BOYD: No.

18 The witness, GAITHER LEE WILLIAMS, was first duly
19 sworn and testified as follows, on:

20 DIRECT EXAMINATION

21 BY MR. THOMPSON::

22 Q. Ms. Williams, could you give your whole name for the
23 court reporter?

24 A. Gaither Lee Williams.

25 Q. And Ms. Williams, where do you live?

TESTIMONY OF GAITHER LEE WILLIAMS

- 1 A. Street.
- 2 Q. Is that at the Hall Street Apartments?
- 3 A. Yes, it is.
- 4 Q. How long have you lived there?
- 5 A. Three years.
- 6 Q. For three years? Were you living there back in March
- 7 of 2003?
- 8 A. Yes.
- 9 Q. Can you tell me, do you remember the day that Willie
- 10 Cunningham was killed?
- 11 A. I do.
- 12 Q. Tell me, what if anything unusual happened that
- 13 morning that you noticed?
- 14 A. There were loud noises under my window seal. I was
- 15 upstairs and I heard loud noises, loud talking downstairs
- 16 like a bunch of guys downstairs talking on the ground
- 17 level. I was upstairs, they were downstairs.
- 18 Q. So they were outside, not in your house?
- 19 A. They wasn't in my house.
- 20 Q. But under your window?
- 21 A. Under the window seal.
- 22 Q. What happened at that time?
- 23 A. There were loud talking. I heard them say that
- 24 "Unload, Mont. You need to unload the gun or put it on
- 25 safety." At that time I got up and raised the window and

TESTIMONY OF GAITHER LEE WILLIAMS

1 told them they need to move on.

2 Q. Did that scare you at that point, is that why you
3 told them to move on?

4 A. Not scared me, it kind of worried me. When I heard
5 them say unload it or put it on safety then I felt like
6 they were doing something they shouldn't have been doing
7 out there anyway.

8 Q. Did you recognize any of the people in that group
9 when you looked out on them?

10 A. When I look out only thing I seen was a crowd of guys
11 moving away. I had seen -- was familiar with Lamont.

12 Q. Okay. And did you see Lamont in that group?

13 A. Yes.

14 Q. Is there anything that stands out to you about
15 Lamont?

16 A. Because he was bigger than the rest of them.

17 Q. Okay. And had you seen Lamont around that
18 neighborhood before?

19 A. Yes.

20 Q. How did you know Lamont?

21 A. Because he visits next door often.

22 Q. Who does he visit next door?

23 A. Carla Garvin.

24 Q. Carla Garvin?

25 A. Her son name is Lofton.

TESTIMONY OF GAITHER LEE WILLIAMS

1 Q. Lofton Gardner. The son visits with him next door?

2 A. Yes.

3 Q. Now, where did that group of guys head off to after
4 they left?

5 A. They went across the street, across the parking lot
6 underneath a big tree.

7 Q. Okay. Now, the big trees that are out there, how
8 many big trees are out there?

9 A. There's only one.

10 Q. Did they stay under that tree for awhile?

11 A. Yes. They stayed under there for awhile.

12 Q. Is there also a park right around there?

13 A. Yes. The park is off from the big tree.

14 Q. Okay. But not far from it?

15 A. Not far from it.

16 Q. Can you see the park from the tree?

17 A. Yes.

18 Q. Okay. And when they were out there, was there
19 anything you noticed about that crowd of guys?

20 A. They were still loud out there. What I heard, I
21 heard them still carrying on, so I got up again and looked
22 out the window at them and at that time Lamont threw a
23 bottle and hit the tree.

24 Q. Can you tell me about what time was it when you first
25 noticed this crowd of people under your window?

TESTIMONY OF GAITHER LEE WILLIAMS

- 1 A. It was early, must have been about 9:00.
- 2 Q. Do you remember what day of the week it was?
- 3 A. Sunday.
- 4 Q. How do you remember that?
- 5 A. Because we usually go to church on Sunday and I
- 6 didn't go because the baby was sick.
- 7 Q. You watch a baby?
- 8 A. I have a foster son.
- 9 Q. Okay. And as the morning progressed did you ever go
- 10 outside after that?
- 11 A. I did go outside that morning. Because when I looked
- 12 out as the morning went on it must have been up in the day
- 13 about 10:00 or 10:30, as I looked out I seen people
- 14 gathering in the parking lot so I got up and I went
- 15 downstairs and I went out.
- 16 Q. And can you tell me, did you notice any cars in
- 17 particular in a parking lot?
- 18 A. Before I went outside, before I even went outside
- 19 there was a loud car in the parking lot, in the parking
- 20 lot up the road from the apartment this way.
- 21 Q. All right.
- 22 A. But it's in the parking lot.
- 23 Q. Did you see who all was around that car?
- 24 A. A. J. and Adrian was standing outside the car.
- 25 Q. A. J. and Adrian who?

TESTIMONY OF GAITHER LEE WILLIAMS

- 1 A. Adrian Byars.
- 2 Q. Did you see anyone else that you recognized around
3 that car?
- 4 A. Lamont was sitting in the front seat.
- 5 Q. Did you see who the driver was of that car?
- 6 A. I did not.
- 7 Q. Could you even tell if the driver was a man or a
8 woman or anything like that?
- 9 A. No, sir.
- 10 Q. Now, I believe you described that car to the police,
11 didn't you?
- 12 A. It was a dark prime like the color had been taken
13 off, but it was extremely loud.
- 14 Q. And do you recall what kind of car you thought it
15 looked like?
- 16 A. Small car, maybe a Honda, might have been a little
17 Honda. You couldn't tell because it was a very small car.
- 18 Q. Okay. After that, was there another time that you
19 ended up hearing anything that causes you to go outside?
- 20 A. Only when the crowd started to come out in the
21 parking lot.
- 22 Q. When the crowd came out in the parking lot, what
23 happened then?
- 24 A. I went outside and I met with my two nieces and they
25 were coming down their sidewalk from their house, and I'm

TESTIMONY OF GAITHER LEE WILLIAMS

1 like what happened, you know? Why are y'all coming
2 outside? So I looked up the road out of the parking lot
3 and that's when I seen the police cars and stuff
4 gathering.

5 Q. Okay. And did -- you had mentioned that Lamont
6 visits Lofton Gardner next door. Did you have a chance to
7 talk to Lofton this day?

8 A. That Sunday? I did not. I woke them up after I seen
9 the police cars and the tape. I went to the window and I
10 yelled for them to get up.

11 Q. Okay. And did Lofton Gardner come out there when you
12 yelled for him?

13 A. He did.

14 Q. Who was he with, who was with him?

15 A. His girlfriend, Mary Burgess.

16 Q. Mary Burgess? Okay.

17 MR. THOMPSON: Thank you. I have no further
18 questions.

19 THE COURT: Mr. Chiarenza?

20 CROSS EXAMINATION

21 BY MR. CHIARENZA::

22 Q. Good afternoon, Ms. Williams.

23 A. How are you doing?

24 Q. I am just probably going to clarify a lot of what
25 Mr. Thompson just asked you. On this Sunday morning your

TESTIMONY OF GAITHER LEE WILLIAMS

1 testimony was that early on in the morning you heard some
2 racket and commotion outside of your window, right?

3 A. Uh-huh.

4 Q. And you looked out there and it was Lamont McCollum
5 and some other young boys, correct?

6 A. Right.

7 Q. And Lamont was the one being loud.

8 A. They are all were loud. They was trying to like get
9 him to calm down for some reason, but they were all loud
10 but you can hear voices over top of voices.

11 Q. So he was the loudest?

12 A. He was the loudest.

13 Q. Also you said the biggest. Compared to him all of
14 the other boys were short little guys and Lamont is tall,
15 right?

16 A. Not only tall but he was bigger than them and taller.

17 Q. He was noticeably larger than the other guys around
18 him.

19 A. Yes.

20 Q. And you ran them off and that's good for you. But
21 later on you heard some more noises a couple of hours
22 later, correct?

23 A. Uh-huh.

24 Q. And that was apparently Lamont. This second time was
25 when he was still being loud and he busted a beer bottle

TESTIMONY OF GAITHER LEE WILLIAMS

- 1 or something up against the tree?
- 2 A. He threw it up against the tree.
- 3 Q. Did it break?
- 4 A. Yes, it did.
- 5 Q. So he was still at this point being a little rowdy
- 6 out there.
- 7 A. Uh-huh.
- 8 Q. And then finally a third time that day you hear some
- 9 more activity going on, right?
- 10 A. Right.
- 11 Q. And that's when it seems like people are rushing
- 12 outside to go see if something happened.
- 13 A. Uh-huh.
- 14 Q. Now, did you hear gunshots yourself or --
- 15 A. I did not.
- 16 Q. Okay. Was it your niece or your cousin or someone
- 17 told you?
- 18 A. They were my two nieces, they said they heard
- 19 gunshots.
- 20 Q. But you didn't.
- 21 A. No, I didn't.
- 22 Q. You woke up your neighbors, is that right, Mary
- 23 Burgess and Lofton Gardner?
- 24 A. After this I did.
- 25 Q. After the gunshots you woke them and said something

TESTIMONY OF GAITHER LEE WILLIAMS

1 is going on or something like that.

2 A. Yes.

3 Q. Okay. So if there were any gunshots, you didn't see
4 that part of anything going on.

5 A. I did not.

6 Q. You saw what happened afterwards of people gathering
7 and police, ambulances and so on.

8 A. Yes.

9 Q. Okay. And the only people you recognized by their
10 face and their name were Lofton, Adrian Byars and A. J.
11 Williams, right?

12 A. Uh-huh.

13 MR. CHIARENZA: All right. Thank you very much, Ms.
14 Williams. That's all.

15 THE COURT: Mr. Boyd?

16 CROSS EXAMINATION

17 BY MR. BOYD::

18 Q. Ms. Williams, you said basically there was a crowd
19 outside your window or in that area; is that correct?

20 A. Yes.

21 Q. And you said after you told them to get away they
22 moved over near a big tree; is that correct?

23 A. Right.

24 Q. Okay. It was about seven or eight of them?

25 A. Yeah, I would say seven or eight. They were a crowd.

TESTIMONY OF GAITHER LEE WILLIAMS

- 1 Q. And you recognized Lamont as one of them?
- 2 A. Yes.
- 3 Q. And you're referring to Lamont McCollum?
- 4 A. Yes, sir.
- 5 Q. Okay. And you have known him previously; is that
- 6 correct?
- 7 A. Yes.
- 8 Q. Is he any relation to you?
- 9 A. No, sir.
- 10 Q. Okay. Now, then that was about 9:00; is that
- 11 correct?
- 12 A. Right.
- 13 Q. And then you said about 10:30 at that time you went
- 14 downstairs; is that correct?
- 15 A. Right.
- 16 Q. All right. At that time that's when you saw what you
- 17 described as the prime colored car?
- 18 A. Yes, sir.
- 19 Q. And was there some people in the car?
- 20 A. There were people in the car. You know, I could see
- 21 Lamont was sitting in the passenger seat, but there were
- 22 other people in the car. You could see shadows.
- 23 Q. So you saw Lamont inside the car in the passenger
- 24 seat; is that right?
- 25 A. Yes, sir.

TESTIMONY OF GAITHER LEE WILLIAMS

- 1 Q. All right. And then you did you see A. J. Williams
2 there?
- 3 A. Yes, sir.
- 4 Q. Okay. Where was he?
- 5 A. He was standing outside of the car.
- 6 Q. And did you see Adrian Byars there?
- 7 A. Yes, sir.
- 8 Q. And what was he doing?
- 9 A. They were both standing at the passenger door of the
10 car.
- 11 Q. Okay. And let me ask you, do you recall giving the
12 police a statement on this matter?
- 13 A. Yes, sir.
- 14 Q. Okay. And did you tell them there was some white
15 boys in the back seat?
- 16 A. Well, you can tell there were white boys in the back
17 seat because of their hair, you could see their hair.
18 Their hair wasn't African-American hair and that's why I
19 said I didn't know if they were male or female.
- 20 Q. So you saw what you described to the police as some
21 white boys in the back seat; is that correct?
- 22 A. I did.
- 23 Q. And you don't know who was driving the car?
- 24 A. I do not.
- 25 Q. You couldn't tell whether they were male or female?

TESTIMONY OF GAITHER LEE WILLIAMS

- 1 A. No, sir.
- 2 Q. Or white or black?
- 3 A. I couldn't.
- 4 Q. So you didn't recognize any of those people in the
5 car accept Lamont.
- 6 A. Yes, sir.
- 7 Q. Now then, later on is when you heard this commotion
8 and people running down the street; is that correct?
- 9 A. Well, they were coming out in the parking lot. They
10 wasn't running, they just seemed to be coming out of their
11 residence out in the residence out in the parking lot.
- 12 Q. Okay. And did you go out in the parking lot at that
13 time?
- 14 A. Yes, sir, I did.
- 15 Q. And at that time did you see the primed car again?
- 16 A. Yes, sir.
- 17 Q. What area was it coming from?
- 18 A. It came from the trailer park area.
- 19 Q. Okay. Did it seem to be driving at a high rate of
20 speed?
- 21 A. It did.
- 22 Q. And did you still see Lamont in the car at that time?
- 23 A. Yes, sir.
- 24 Q. Was he still in the passenger's seat?
- 25 A. Yes.

TESTIMONY OF GAITHER LEE WILLIAMS

1 MR. BOYD: Thank you. That's all of the questions I
2 have.

3 THE COURT: Any redirect?

4 REDIRECT EXAMINATION

5 BY MR. THOMPSON::

6 Q. Ms. Williams, do you know Jaleel Page?

7 A. I don't.

8 Q. So you don't know if he was out there that day or
9 not, do you?

10 A. No, I don't.

11 Q. Okay. How about Terrance McKnight, do you know him?

12 A. No, sir.

13 Q. So you're telling who you recognize that day,
14 correct?

15 A. Right.

16 Q. But there were other people in addition to the three
17 that you mentioned, Lamont and Adrian and A. J, there were
18 other people?

19 A. Right.

20 Q. Were there other people around the car as well?

21 A. Yes, sir.

22 MR. THOMPSON: Thank you. No further questions.

23 THE COURT: Anything else?

24 RECROSS EXAMINATION

25 BY MR. CHIARENZA::

TESTIMONY OF GAITHER LEE WILLIAMS

1 Q. You didn't see him there that day, did you?

2 A. No.

3 MR. CHIARENZA: That's all we have.

4 MR. BOYD: Nothing further.

5 MR. THOMPSON: Nothing further.

6 THE COURT: You can step down. We will go ahead and
7 call it a day at this time. Ladies and gentlemen, again
8 tomorrow we will need to start at 11:00. As I indicated,
9 I have some matters I am working on with the Chief Justice
10 I have to meet in her office at 8:00 and I won't be able
11 to get out of there until probably 9:30 so I should be
12 able to get back easily by 11:00 to get started. Again,
13 very important, don't talk about the case. And as I
14 indicated, stay away from any sort of newspapers or
15 anything like TV or anything like, don't know that there
16 would be any publicity about the case but we just don't
17 want to take a chance. With that -- and as I indicated,
18 don't do your own investigation of any kind, we will give
19 you everything you need in here to make a decision. With
20 that in mind I'll see you in the morning at 11:00. Have a
21 good evening.

22 (The jury left the courtroom.)

23 THE COURT: All right. Anything before we break for
24 today from the State?

25 MR. POPE: No, sir, Your Honor. I will say as I

TESTIMONY OF RASHAD WILLIAMS

1 indicated from the bench we may have to push but it's our
2 intent to rest tomorrow.

3 THE COURT: I will see you in the morning at 11:00.

4 (Court adjourned for the day and resumed the May 25,
5 2005 at 11:00 a.m.)

6 THE COURT: For the record all parties and attorneys
7 are in the courtroom and all of the jurors are with us.

8 Call your next witness, please.

9 The witness, RASHAD SIMPSON, was first duly sworn and
10 testified as follows, on:

11 DIRECT EXAMINATION

12 BY MR. THOMPSON::

13 Q. Mr. Simpson, will you state your full name for the
14 court reporter, please?

15 A. Rashad Jerimel Simpson.

16 Q. How is that spelled, Rashad?

17 A. R-a-s-h-a-d, J-e-r-i-m-e-l, S-i-m-p-s-o-n.

18 Q. Where did you live back in March of 2003?

19 A. On Drive, I mean trailer .

20 Q. If you could, could you turn a little bit towards the
21 microphone so we can hear better?

22 A. I'm sorry.

23 Q. Who lived with you there?

24 A. My Aunt Joyce and my uncle, Willie Cunningham.

25 Q. How long had y'all been living there together?

TESTIMONY OF RASHAD WILLIAMS

- 1 A. We were staying there ever since 2001 of November.
- 2 Q. Before this case happened did you know Jaleel Page?
- 3 A. No, sir.
- 4 Q. Did you know Lamont McCollum?
- 5 A. No, sir.
- 6 Q. Did you know Terrance McKnight?
- 7 A. Yes, sir.
- 8 Q. How did you know Terrance?
- 9 A. I know him real well.
- 10 Q. All right. From where, how did you know him?
- 11 A. From York growing up.
- 12 Q. Okay. And how about A. J. Williams, did you know him
- 13 as well?
- 14 A. Yes, sir.
- 15 Q. How did you know him?
- 16 A. Real well, the same as Terrance.
- 17 Q. Just grew up kind of around him in that area?
- 18 A. Yes.
- 19 Q. Can you tell me back on March 16th of 2003, how did
- 20 your day start that day? When did you get up?
- 21 A. I would say about 1:00 or 1:30 I decided to get up
- 22 and go take a bath.
- 23 Q. Is that in the afternoon?
- 24 A. Yes.
- 25 Q. Had you spent the night out before?

TESTIMONY OF RASHAD WILLIAMS

- 1 A. No. I had came in late, though.
- 2 Q. Oh, okay. When you got up, what did you do?
- 3 A. I got up, I took a bath, put on some clothes because
- 4 I decided to go down to my friends Adrian Twyman's house
- 5 and watch the basketball game, North Carolina and Duke.
- 6 As I went on out of the door I went down the street and as
- 7 I got to Adrian's street two guys approached me, Jaleel
- 8 Page and Lamont McCollum. As they came towards me I was
- 9 on the phone talking to my friend, I believe Jeff Ward,
- 10 and I didn't know them. So they came up to me and asked
- 11 me where could they buy some weed at and I told them I
- 12 didn't know. So as I kept walking toward Adrian's house
- 13 they kept telling me to come back. If somebody I don't
- 14 know I'm not going to go back so I just paid it no
- 15 attention and I kept walking.
- 16 Q. Now, the two guys that you saw at that time, did you
- 17 know them at that point?
- 18 A. No, sir.
- 19 Q. All right. Do you recall how either one of them was
- 20 dressed at that time?
- 21 A. Yes. One had on a toboggan, like some red and white
- 22 Nikes and the other one had on like some blue jeans and
- 23 like a black hoodie.
- 24 Q. Now, you said a black hoodie, was the other one was
- 25 the gray one, that was a hoodie as well?

TESTIMONY OF RASHAD WILLIAMS

1 A. Yes.

2 Q. And as I said, had you ever seen them in your area
3 before?

4 A. No, sir.

5 Q. All right. Now, did you notice anything about their
6 size at that time?

7 A. Pretty big, about six-three or six-four, something
8 like that.

9 Q. Were both of them about that size?

10 A. Yes.

11 Q. Did you note anything about the color of their skin
12 at that point?

13 A. One was lighter than the other. One was real dark
14 and one was light.

15 Q. Were they both black?

16 A. Yes.

17 Q. Okay. Now, when you got dressed do you recall kind
18 of what kind of clothes you were wearing when you went out
19 that day?

20 A. I think I had on some khaki pants like Timberlands
21 and a plain shirt with a necklace.

22 Q. Kind of like the necklace you have on today?

23 A. Yes, but not the same one.

24 Q. Okay. And are you usually pretty much dressed like
25 you are dressed today, is that how you are usually

TESTIMONY OF RASHAD WILLIAMS

- 1 dressed?
- 2 A. Yes, sir.
- 3 Q. Now, you had mentioned they asked you if you had any
- 4 drugs, is that correct? Or what exactly did they ask you
- 5 again?
- 6 A. Where could they buy some weed at.
- 7 Q. Where could they buy some weed?
- 8 A. Yes.
- 9 Q. What did you tell them?
- 10 A. I told them I don't know. I didn't have any so I
- 11 just kept walking.
- 12 Q. Did you see anybody else with those two at that point
- 13 in time?
- 14 A. No.
- 15 Q. Was that unusual to have that happen?
- 16 A. I mean, it never happened. That was the first time
- 17 somebody ever came to me like that and asked me about some
- 18 drugs.
- 19 Q. Okay. And did you talk to them more than that at
- 20 that point?
- 21 A. No.
- 22 Q. Did you ever stop to talk to them?
- 23 A. No.
- 24 Q. So as you walk along did they say anything else to
- 25 you as you were leaving?

TESTIMONY OF RASHAD WILLIAMS

- 1 A. No, just to come back and I wouldn't come back.
- 2 Q. All right. Now, Adrian Twyman's trailer, how far is
3 that from your place?
- 4 A. About two to three streets down.
- 5 Q. I believe I showed you this photograph earlier. If
6 you could, step down for just a moment.
- 7 A. You want me to come around?
- 8 Q. Yes. If you could just come right down here for me.
9 Do you recognize the trailer you lived in at that time?
- 10 A. At the top right there.
- 11 Q. Okay. So that's where y'all lived on ?
- 12 A. Yes.
- 13 Q. Where is the trailer you were going to?
- 14 A. Adrian stays going around that way. You can't see
15 the trailer but it's on down, it's like the third or
16 fourth trailer on down.
- 17 Q. All right. How were you walking to get there that
18 day?
- 19 A. I came out of my trailer and, you know, walked on
20 down this way and walked on down.
- 21 Q. All right. Where did you come across those two men?
- 22 A. About at the top right here.
- 23 Q. Okay. So right as you turned onto the end of Wood
24 you start going down?
- 25 A. Yes.

TESTIMONY OF RASHAD WILLIAMS

1 Q. Were they coming from a direction when you saw them?

2 A. They was coming from right in here.

3 Q. Okay.

4 A. Coming from in between the two trailers right there.

5 Q. Okay. All right. Thank you. You can have a seat.

6 THE COURT: Just for the record, what exhibit number
7 is that?

8 MR. THOMPSON: This is Exhibit Number 26.

9 Q. When you got to Adrian Twyman's trailer, what did you
10 do at that point?

11 A. I went in there, me and him sat and talked. We was
12 talking about the game because he likes North Carolina and
13 I like Duke. So at the time Duke was winning and I was
14 picking at him about it. And, you know, we sat there
15 about 20 to 30 minutes and I got a phone call telling me
16 that I need to come home, asked me did I know what was
17 going on at my house and I was like, "No." And I got the
18 phone call from A. J. and he was telling me that my uncle
19 had just got shot and that I needed to come home. So
20 immediately me and Adrian ran out of the house and ran up
21 the street.

22 Q. You say A. J. called you on the phone?

23 A. Yes, sir.

24 Q. When you got up to the trailer, was A. J. up around
25 the trailer or up around your house?

TESTIMONY OF RASHAD WILLIAMS

- 1 A. He was up there and then a couple of more people, I
2 can't recall everybody.
- 3 Q. Do you know where A. J. lives in relation to you?
- 4 A. He lives right across the street from Adrian.
- 5 Q. So right across from the house you -- the trailer you
6 were just in.
- 7 A. Yes.
- 8 Q. Okay. Now, when you went up there, what did you see
9 when you got there?
- 10 A. Police, people. My first reaction was what was going
11 on.
- 12 Q. Did you talk to the police at that time?
- 13 A. Yes.
- 14 Q. As a matter of fact, did you ultimately give a
15 statement to them that day about what you saw on your way
16 to Adrian's trailer?
- 17 A. Yes.
- 18 Q. Okay. And did the police do anything or ask you to
19 submit to any testing?
- 20 A. Yes.
- 21 Q. What did they ask you to do?
- 22 A. I had to go up there and get a gun powder test or
23 something like that.
- 24 Q. Okay. What did they do? Did they swab your hands?
- 25 A. Yes.

TESTIMONY OF RASHAD WILLIAMS

1 Q. And you agreed to do that with the police?

2 A. Yes.

3 Q. All right. Now, can you tell me, in August of 2003
4 did you get called to the York Police Department to view
5 any photos at that time?

6 A. It was July.

7 Q. In July? Okay. And when you got called there, what
8 if anything did they do when you arrived there at that
9 time?

10 A. They showed me some pictures and asked me did I
11 recognize anybody.

12 Q. All right. I'll show you State's Exhibit Number 34.
13 Are those the pictures they showed you?

14 A. Yes, sir.

15 Q. Do you recall what detective showed you these?

16 A. A Ms. Sara.

17 Q. Sara Robbins?

18 A. Yes.

19 Q. When she showed you those, did she say anything to
20 you about them when she showed them to you?

21 A. No, she didn't say nothing. She just asked me did I
22 recognize them as the people I saw that day.

23 Q. Did you recognize anybody at that time?

24 A. Yes.

25 Q. Who did you recognize?

TESTIMONY OF RASHAD WILLIAMS

1 A. Number three.

2 Q. Where did you recognize him from?

3 A. When I was walking to Adrian Twyman's house that day.

4 Q. Is this your signature down in the right-hand corner
5 of the document?

6 A. Yes, sir.

7 Q. Saying that you identified number three?

8 A. Yes.

9 Q. Did she suggest any picture to you or tell you there
10 would be anyone in that picture that you would recognize?

11 A. No.

12 Q. How long did it take you to recognize the person in
13 the picture?

14 A. I just went down from like to three and then as soon
15 as I got to three I recognized him. I didn't have to look
16 at the bottom.

17 Q. Did you ever get to see any other photocopy lineups?
18 Did they ever show you any others?

19 A. No.

20 MR. THOMPSON: Thank you, Rashad. Please answer any
21 questions the defense has.

22 THE COURT: Cross?

23 CROSS EXAMINATION

24 BY MR. CHIARENZA::

25 Q. Mr. Simpson, the number three that you identified was

TESTIMONY OF RASHAD WILLIAMS

1 Lamont McCollum, correct?

2 A. Yes, sir.

3 Q. And you said on the date that these two individuals
4 spoke to you you did not know who they were that day.

5 A. No, sir.

6 Q. Just two guys asking you if you had weed or you knew
7 where they could get weed; is that right?

8 A. That's correct.

9 Q. And you didn't know them before then. Did you ever
10 see them in person like around the trailer park at all to
11 your knowledge?

12 A. No, sir.

13 Q. Okay. But you testified to the solicitor that those
14 two people were Lamont McCollum and Jaleel Page, right?

15 A. Yes.

16 Q. Okay. Only way that you know Jaleel Page is because
17 the police told you that, right?

18 A. Yes.

19 MR. CHIARENZA: Okay. Nothing further.

20 CROSS EXAMINATION

21 BY MR. BOYD::

22 Q. Mr. Simpson, I believe you said you know Terrance; is
23 that correct?

24 A. Yes, sir.

25 Q. Okay. And you didn't see him with those two

TESTIMONY OF KATRINA HOWARD

1 individuals that day.

2 A. No, sir.

3 Q. Okay. Do you remember seeing him that day at all?

4 A. No, sir.

5 MR. BOYD: Thank you. That's all of the questions I
6 have.

7 THE COURT: Redirect?

8 MR. THOMPSON: No, sir, Your Honor.

9 The witness, KATRINA HOWARD, was first duly sworn and
10 testified as follows, on:

11 DIRECT EXAMINATION

12 BY MR. THOMPSON::

13 Q. Ms. Howard, can you give your full name for the court
14 record?

15 A. Katrina Darlene Howard.

16 Q. How do you spell your name?

17 A. K-a-t-r-i-n-a, Howard, H-o-w-a-r-d. Did you want me
18 to spell my middle name, too?

19 Q. Yes, please.

20 A. D-a-r-l-e-n-e.

21 Q. Okay. And you don't have to give your address, but
22 where do you live now?

23 A. Charlotte, North Carolina.

24 Q. Back in March of 2003, where did you live back then?

25 A. Gastonia.

TESTIMONY OF KATRINA HOWARD

- 1 Q. Gastonia?
- 2 A. Uh-huh.
- 3 Q. Did you know Lamont McCollum?
- 4 A. Yes, I did.
- 5 Q. How did you know him?
- 6 A. He was my boyfriend at the time and also my child's
- 7 father.
- 8 Q. Now, had you had the child at that time?
- 9 A. No.
- 10 Q. Were you pregnant with the child then?
- 11 A. Yes, I was.
- 12 Q. Okay. Did you know Jaleel Page?
- 13 A. Yes, I did.
- 14 Q. How do you know Jaleel Page?
- 15 A. He was one of Lamont's friends.
- 16 Q. Did you see him fairly often?
- 17 A. When he moved to Gastonia, yeah.
- 18 Q. When who?
- 19 A. When he moved to Gastonia, yes.
- 20 Q. When Jaleel did?
- 21 A. Yes.
- 22 Q. Had you ever met A. J. Williams before?
- 23 A. No.
- 24 Q. How about Terrance McKnight?
- 25 A. I don't know who that is.

TESTIMONY OF KATRINA HOWARD

- 1 Q. On March 16, 2003, did you come down to York?
- 2 A. Yes, I did.
- 3 Q. Can you tell me how that happened?
- 4 A. I know one of Lamont's friend's, Lofton, kept on
5 calling the phone and while we was in the area Lamont
6 said, "Let's go stop by and visit Lofton." So that's the
7 only reason we came to York.
- 8 Q. Did you drive him down at that point?
- 9 A. Yes, I did.
- 10 Q. What kind of car were you in?
- 11 A. A 1993 Nissan Sentra.
- 12 Q. What color was it?
- 13 A. Misty gray.
- 14 Q. Did anyone ride down with you at that time?
- 15 A. Yes.
- 16 Q. Who did?
- 17 A. Lamont McCollum and Jaleel Page and myself.
- 18 Q. Okay. So the three of you came down in the car that
19 day?
- 20 A. Yes.
- 21 Q. Where did you go to when you came down to York
22 County?
- 23 A. We went to Lofton's house and to the projects.
- 24 Q. Okay. Is that at the Hall Street Apartments?
- 25 A. I don't know the name of the street so I wouldn't

TESTIMONY OF KATRINA HOWARD

- 1 know.
- 2 Q. What did you do at that point?
- 3 A. Parked the car and he went to Lofton's house.
- 4 Q. Did you go to Lofton's?
- 5 A. No. I was in the car the whole time.
- 6 Q. And as a matter of fact you said you were pregnant
- 7 during that time?
- 8 A. Yes.
- 9 Q. How far along were you?
- 10 A. Four and a half months.
- 11 Q. Had you had any special things that you have as a
- 12 result of that pregnancy? Were you experiencing any
- 13 complications during that time?
- 14 A. Yes. I was threatening a miscarriage.
- 15 Q. Were you having to take anything at that time?
- 16 A. Yes. To stop my contractions, yes.
- 17 Q. So is that the reason you stayed in the car?
- 18 A. Yes.
- 19 Q. Can you tell me after that how long -- do you
- 20 remember what time y'all got down there?
- 21 A. No.
- 22 Q. Was it in the morning or in the afternoon?
- 23 A. It was like mid-afternoon. I know it was like -- it
- 24 had to be like no earlier than 11:00 and no later than
- 25 12:00. It was just mid-afternoon.

TESTIMONY OF KATRINA HOWARD

- 1 Q. Now, at that point did you watch where Lamont and
2 Jaleel went?
- 3 A. Yes.
- 4 Q. Where did they go?
- 5 A. I know they was walking towards Lofton's house. He
6 told me before that's where Lofton stayed at when they
7 were getting out of the car, so I knew that's where Lofton
8 stayed at.
- 9 Q. Did they hang around in that area for awhile?
- 10 A. Yes.
- 11 Q. Did other people hang around with you?
- 12 A. A whole bunch of people did. There was a lot of
13 people outside.
- 14 Q. Did they ever come over the car where you were?
- 15 A. Yeah. They were standing next to the car at one
16 point in time.
- 17 Q. All right. And did you hear them discussing anything
18 at that point?
- 19 A. Yes.
- 20 Q. What was that?
- 21 A. About somebody -- a gentleman had got in an argument
22 with Lofton and they wanted to handle it and they were
23 just discussing the whole situation.
- 24 Q. They had got in an argument with Lofton?
- 25 A. A gentleman had got in an argument with Lofton, yes.

TESTIMONY OF KATRINA HOWARD

- 1 Q. And who all was discussing that of the people that
2 you know?
- 3 A. Lamont McCollum, Jaleel Page, Lofton and there was a
4 whole bunch of other boys.
- 5 Q. Okay. After that what happened then?
- 6 A. After that they had -- after that conversation they
7 had walked off and went behind a building near the
8 playground near a big tree and they were discussing
9 something. Then it was like maybe 15 or 20 minutes later
10 they came back around the corner toward the car and I told
11 Lamont I was thirsty and he asked me to go to the store
12 and get something to drink.
- 13 Q. Did you do that?
- 14 A. Yes.
- 15 Q. Do you remember what store you went to?
- 16 A. I know it was up the street around the corner, it
17 wasn't too far to where they was.
- 18 Q. Is it like a convenience store or a regular grocery
19 store?
- 20 A. It was like a convenience store.
- 21 Q. Did you get a drink for yourself?
- 22 A. I got a drink for myself and Lamont.
- 23 Q. Did anyone go with you when you went there?
- 24 A. No.
- 25 Q. How long did that take for you to go there?

TESTIMONY OF KATRINA HOWARD

- 1 A. Maybe ten or 15 minutes, it wasn't that long.
- 2 Q. All right. When you came back what happened then?
- 3 A. When I came back Lamont and them was still out there
- 4 and they went across the street and they were walking down
- 5 the street.
- 6 Q. Okay. And what happened -- did you know what was
- 7 going on at that point?
- 8 A. No, I didn't.
- 9 Q. What happened then?
- 10 A. They were walking down the street and I had started
- 11 up the car because I wanted to know where he was going.
- 12 When I got to the street they was already on the porch of
- 13 the trailer.
- 14 Q. Who is they? If you could tell me that.
- 15 A. Lamont, Jaleel, the boys that was with Lamont.
- 16 Q. So there were more boys than Lamont and Jaleel at
- 17 that point?
- 18 A. Yeah.
- 19 Q. They were where again?
- 20 A. By the time I got around where they was they was
- 21 already at the trailer.
- 22 Q. Do you know the name of any of these streets?
- 23 A. No, I don't.
- 24 Q. What did you see after that?
- 25 A. They was arguing. I heard an argument on the porch

TESTIMONY OF KATRINA HOWARD

1 and I was calling Lamont's name and they was arguing. I
2 seen the victim grabbing Lamont and I heard another --
3 Jaleel Page say, "You're going to get off my boy." They
4 was up on the porch arguing and tussling or whatever and I
5 saw Jaleel pull out a gun and shoot the guy.

6 Q. So Jaleel and Lamont were on the porch?

7 A. Jaleel, Lamont and a whole bunch of boys were on the
8 porch.

9 Q. On the outside of the porch?

10 A. Yeah.

11 Q. Now, what happened -- when you see that what did you
12 do?

13 A. I was riding down the street, I was going past them.
14 I was going past them.

15 Q. So you were in front -- you end up passing in front
16 of this trailer at that point?

17 A. Yeah.

18 Q. What did you see after that?

19 A. Lamont and Jaleel was running towards the street,
20 they were running. I was almost half the way down in
21 street and they were running -- at the back of my car
22 running towards me.

23 Q. Did you hear anything at the time that you drove by?

24 A. As in what?

25 Q. Loud noises, anything like that?

TESTIMONY OF KATRINA HOWARD

- 1 A. The gunshots and running, that's about it.
- 2 Q. If you could slowdown just a minute because I don't
- 3 understand where you're telling me the gunshots came in.
- 4 A. When I was riding past after I seen Lamont and Jaleel
- 5 Page on the porch, the gunshots came after the guy had
- 6 grabbed him and I heard Jaleel say, "You're going to get
- 7 off my man. You're are going to get off my man." And he
- 8 shot him.
- 9 Q. Who is he?
- 10 A. Who is he?
- 11 Q. That shot him.
- 12 A. Jaleel Page.
- 13 Q. Did you see that?
- 14 A. Yes.
- 15 Q. How is it that you saw that?
- 16 A. Because I was riding past and I was looking behind me
- 17 because I was busy calling my baby daddy's name.
- 18 Q. You were busy calling Lamont's name?
- 19 A. Yes.
- 20 Q. After you saw that, what did you see next?
- 21 A. Jaleel and Lamont was running up towards -- where I
- 22 was riding to them were right behind me.
- 23 Q. So going away from the house at that time?
- 24 A. Yeah.
- 25 Q. What direction did the other people go?

TESTIMONY OF KATRINA HOWARD

- 1 A. They scattered the opposite way.
- 2 Q. Okay. What happened after that, as they were running
- 3 towards you? Where did they go?
- 4 A. Lamont caught up to me, he got in the car. By the
- 5 time Lamont got in the car Jaleel was right behind him.
- 6 Q. Did he get in the car as well?
- 7 A. Yes, he did.
- 8 Q. Did anyone else get in the car?
- 9 A. No.
- 10 Q. What happened then after that?
- 11 A. After that I was shaking and I was asking Lamont,
- 12 "What's going on?" He was like, "Nothing, just go." And
- 13 Jaleel was in the back seat saying, "You better go, you
- 14 better go."
- 15 Q. Did you take off then?
- 16 A. Yes, I did.
- 17 Q. When you left did you leave going fast or going slow?
- 18 How did you go?
- 19 A. I was going not fast, I wouldn't say fast. It was
- 20 faster than the normal speed limit. It was not like no
- 21 get away fast, it wasn't that fast.
- 22 Q. All right. Do you remember where you went after --
- 23 when they got in, had you already turned off that street
- 24 or were you going up the --
- 25 A. Yeah. I was turning off that street by then.

TESTIMONY OF KATRINA HOWARD

- 1 Q. Where did you go from there after they got in?
- 2 A. To tell you the truth I don't remember.
- 3 Q. Did you end up going back to Gaston County at that
- 4 time?
- 5 A. Yes.
- 6 Q. All right. Did Lamont stay with you at that point?
- 7 A. No.
- 8 Q. Where did Lamont go?
- 9 A. I don't know, I couldn't tell you. I don't remember
- 10 where I dropped him off or anything like that, I couldn't
- 11 tell you.
- 12 Q. How about Jaleel?
- 13 A. I don't remember.
- 14 Q. Did he get out with Lamont?
- 15 A. Yes.
- 16 Q. So they got out somewhere together. Do you remember
- 17 if they got out somewhere in York County?
- 18 A. See, I'm not familiar with Rock Hill and York so I
- 19 couldn't tell you. I don't know where --
- 20 Q. In driving the car, did anyone instruct you where to
- 21 drive or did you just drive it.
- 22 A. Huh?
- 23 Q. Did anyone instruct you on where to drive or did you
- 24 just drive?
- 25 A. Somebody instructed me to drive.

TESTIMONY OF KATRINA HOWARD

- 1 Q. Who?
- 2 A. Jaleel Page.
- 3 Q. Did he tell you which way to go?
- 4 A. They just told me to drive. Jaleel Page just told me
- 5 to drive, just keep on going. Don't stop.
- 6 Q. Okay. Is that what you did?
- 7 A. Yes, I did.
- 8 Q. Katrina, did you come to the police after this
- 9 happened?
- 10 A. Not right then.
- 11 Q. When did you end of up coming to the police?
- 12 A. Awhile after. I can't even -- it took a minute for
- 13 me to come. It took me a minute to come because I was
- 14 afraid.
- 15 Q. So what were you afraid of?
- 16 A. That somebody would hurt me, somebody would hurt me
- 17 for saying anything.
- 18 Q. Okay. Ultimately when you talked to the police was
- 19 Jaleel Page already under arrest at that time?
- 20 A. I'm not sure.
- 21 Q. Was Lamont already under arrest at that time?
- 22 A. Yes, he was.
- 23 Q. Okay. And how is it that you contacted the police?
- 24 A. I called.
- 25 Q. Did you call -- where?

TESTIMONY OF KATRINA HOWARD

- 1 A. I believe it was the police station. I don't know, I
2 don't remember where I called from. I know that somebody
3 said that a detective was looking for me, they wanted to
4 speak to me and I called this number that they gave me and
5 I called them.
- 6 Q. Okay. And did you speak I believe with Detective
7 Robbins at that time?
- 8 A. Is it her right there?
- 9 Q. Yes.
- 10 A. Yes, I did.
- 11 Q. Okay. And did you ultimately come in to her
12 department after that?
- 13 A. I talked to her on the phone for a little while and
14 then I came into the department.
- 15 Q. Did you give a statement at that time?
- 16 A. Yes, I did.
- 17 Q. Do you see Jaleel Page in the courtroom today?
- 18 A. Yes, I do.
- 19 Q. Can you point him out for me, please? If you could
20 describe where he is so the record can reflect that.
- 21 A. Right there, right on this side of the courtroom with
22 a black tie and white shirt on.
- 23 Q. If you could point him out, is it the first table or
24 the second table?
- 25 A. This table.

TESTIMONY OF KATRINA HOWARD

1 Q. The first table. Which gentleman at that table?

2 A. On this side.

3 Q. Okay. The black gentleman?

4 A. Yes.

5 MR. THOMPSON: Your Honor, I would ask the record to
6 reflect she's pointed out Jaleel Page.

7 THE COURT: So noted.

8 MR. THOMPSON: Thank you. No further questions.

9 CROSS EXAMINATION

10 BY MR. CHIARENZA::

11 Q. Ms. Howard, you could have identified Jaleel Page as
12 being Jaleel Page at any point in your life after you knew
13 him, right?

14 A. Yeah.

15 Q. You know him?

16 A. Not that well but I know him.

17 Q. Okay. And you said it took you a minute to come to
18 the police because you were scared, right?

19 A. Yes.

20 Q. Actually it took you a year and four months to come
21 to the police.

22 A. Yes, it sure did.

23 Q. So that's not a minute.

24 A. Well, in my eyes it's a minute because I was pregnant
25 with my daughter.

TESTIMONY OF KATRINA HOWARD

- 1 Q. Okay. Whatever that means. It took you a year and
2 four months for you to come to the police.
- 3 A. Okay.
- 4 Q. And the first time you told this story was in July
5 when you spoke to Sara Robbins.
- 6 A. Uh-huh.
- 7 Q. Over the telephone, right?
- 8 A. Uh-huh.
- 9 Q. And you weren't so much afraid of people, you were
10 afraid of going to prison yourself, weren't you?
- 11 A. No.
- 12 Q. Didn't you ask Sara Robbins if you would be arrested?
- 13 A. Yes.
- 14 Q. So it was a concern of yours, wasn't it?
- 15 A. It was a concern. But besides jail time I was afraid
16 for my life and my child's life.
- 17 Q. But you were concerned with being arrested.
- 18 A. Yes, I was.
- 19 Q. Because you have just told this jury that you had
20 knowledge of a murder which you kept from the police.
- 21 A. Yes.
- 22 Q. And you spoke to the police actually prior to that
23 day and told them you didn't know anything; is that
24 correct?
- 25 A. No, that's not correct.

TESTIMONY OF KATRINA HOWARD

- 1 Q. You never went down to the fire department in York
2 where the police station was set up?
- 3 A. Yes, I have.
- 4 Q. And you were interviewed regarding this crime.
- 5 A. No, I wasn't.
- 6 Q. What were you doing down at the police station?
- 7 A. I was with my baby father's mother at that time.
- 8 Q. Well, you didn't volunteer any information at that
9 time regarding this crime, did you?
- 10 A. No.
- 11 Q. And your testimony was that Lamont, Jaleel, Lofton
12 Garvin and a bunch of other boys were out there that day.
- 13 A. Yes.
- 14 Q. A bunch meaning eight, ten or so?
- 15 A. Approximately about eight.
- 16 Q. Okay. And your testimony was that they were all up
17 on that porch.
- 18 A. Yeah.
- 19 Q. So we have got Lamont, Jaleel, Lofton Garvin and
20 between eight and ten other boys for a total of roughly, I
21 don't know, 13.
- 22 A. Altogether there were eight boys.
- 23 Q. Okay. Now, altogether it's only eight boys. Because
24 in your statement it says Jaleel, Lamont and about eight
25 boys behind them.

TESTIMONY OF KATRINA HOWARD

- 1 A. Okay.
- 2 Q. So which one is it?
- 3 A. Altogether there was eight -- I don't remember how
- 4 many is it right --
- 5 Q. But see here in this sworn statement you gave to this
- 6 Sara Robbins it says Jaleel, Lamont, Lofton and about
- 7 eight boys behind them.
- 8 A. Correct.
- 9 Q. So three plus eight is 11, right?
- 10 A. Yeah. I can do math.
- 11 Q. So we have got 11 boys out there on the porch that
- 12 day according to you. Okay? Where it says Lamont and all
- 13 of them boys went on that porch.
- 14 A. Yeah.
- 15 Q. So we have got 11 boys on the porch.
- 16 A. Okay.
- 17 Q. And in July when you decided to tell this story to
- 18 Sara Robbins, the father of your child was in prison.
- 19 A. That's correct.
- 20 Q. Well, he was in the detention center on these
- 21 charges, right?
- 22 A. Correct.
- 23 Q. And you knew what he was charged with, right?
- 24 A. At that time they didn't say what he was charged for.
- 25 Q. You were on his phone list and his mailing list and

TESTIMONY OF KATRINA HOWARD

1 visitation list.

2 A. Okay. That's my child's father, come on now.

3 Q. So you mean to tell me that during your
4 correspondence and your telephone calls and your
5 visitations the subject of what he was charged with never
6 came up?

7 A. At that present time the police did not tell him what
8 he was charged for. Then a couple of days, maybe a week
9 later they told everybody what he was charged for. I did
10 have no knowledge of what he was charged for.

11 Q. He was arrested the very beginning of 2004.

12 A. Okay. When he got arrested -- if you look in the
13 records where he got arrested it was for the gun charge he
14 had before.

15 Q. That's not the one I am talking about.

16 A. What are you talking about? Because when he got
17 arrested that's what they said they had him for, a
18 warrant, they wanted to talk to him. That's all I knew of
19 at that time.

20 Q. Let me ask you a question and maybe you will know the
21 answer. You understand that he was in the detention
22 center here on these charges at some point.

23 A. At some point, yes.

24 Q. Are you aware that when he was served with the
25 warrants for these charges; murder, armed robbery, gun

TESTIMONY OF KATRINA HOWARD

1 law, conspiracy, that that happened just after New Years
2 2004?

3 A. I guess so.

4 Q. Okay. So even though he may have been brought in on
5 some other charges at one time, he had been sitting in the
6 York County Detention Center on these charges since
7 January 2004.

8 A. Okay.

9 Q. All right. So after he sits there for seven months
10 the whole time you being on his phone list and you went to
11 visit him, right?

12 A. That's correct.

13 Q. You spoke on the phone?

14 A. No, I haven't.

15 Q. You wrote letters to him.

16 A. Yeah.

17 Q. He wrote letters to you.

18 A. Yes.

19 Q. Okay. Seven months from the time he's arrested on
20 these charges writing back and forth and visiting, now you
21 come to Sara Robbins and you've got a story to tell her.
22 And according to you y'all were going for a Sunday visit
23 that day to see Lofton Garvin.

24 A. Yes.

25 Q. Okay. And as part of this social call you determined

TESTIMONY OF KATRINA HOWARD

1 or heard or overheard that Lofton Garvin had some sort of
2 beef with the guy, Willie Cunningham?

3 A. They didn't say who it was, they just said with a
4 guy.

5 Q. They had a beef with this guy. So during the course
6 of the day these guys got it in their head to go settle
7 this or talk about it or straighten it out or do whatever
8 they were going to do about this beef with this guy,
9 right?

10 A. Uh-huh.

11 Q. So your answer was what?

12 A. Uh-huh.

13 Q. That's a yes?

14 A. Yes.

15 Q. Okay. So if that were true, if Lamont were just
16 visiting with Lofton and it turned out that Lofton had an
17 argument with the guy and they were just going to try and
18 settle it, then all of this business about an armed
19 robbery, that wouldn't be right.

20 A. I don't know about that so I couldn't say. I don't
21 know nothing about no armed robbery.

22 Q. But what I'm asking you, Katrina, is if the only
23 reason that Lamont was on that man's porch that day was to
24 discuss this difficulty he was having with his friend
25 Lofton, then Lamont wouldn't have been involved in the

TESTIMONY OF KATRINA HOWARD

1 attempted robbery. I am just asking you to put two and
2 two together there.

3 A. Okay. You're saying that Lamont -- if a robbery --
4 if he was settling something for his homeboy wouldn't you
5 think if that was your friend you would go up there to
6 settle something to talk about it instead of your friend
7 and yourself having this beef with this friend?

8 MR. CHIARENZA: Your Honor, I ask to strike the
9 statement. One, the answer was nonresponsive; two, I
10 would ask the Court instruct the witness that I get to ask
11 the questions, not her.

12 THE COURT: Well, I think she's trying to answer the
13 question. Ma'am, if you would, try to answer the question
14 as directly as you can. Okay?

15 A. This was his friend.

16 THE COURT: Repeat the question.

17 Q. I will repeat the question for Ms. Howard. Follow me
18 here, if it was true -- if what you are saying is true, if
19 what you told this officer who has charged your boyfriend
20 and the father of your child with murder and armed
21 robbery, if she chooses to believe that what you're saying
22 is true, which is that Lamont was just helping Lofton work
23 out a difficulty with this man, that's what you told her,
24 right?

25 A. Yeah.

TESTIMONY OF KATRINA HOWARD

1 Q. Okay. So we're that far. And if this officer
2 chooses to believe your statement that that is all they
3 were there for, then logically they would no longer
4 believe that this was all an armed robbery gone bad; is
5 that correct?

6 A. Yeah.

7 Q. Okay. So after you had seven months of
8 correspondence and visitation with your boyfriend you came
9 to Sara Robbins and told her, "Let me tell you about that
10 day, they were just trying to settle some sort of
11 disagreement, that's the only reason they went up to that
12 man's porch that day."

13 A. Yes.

14 Q. Okay. And do I understand it correctly that your
15 testimony this whole morning from 11:00 until roughly 2:00
16 when Mr. Cunningham was shot you never got out of the car
17 except to go to the store?

18 A. That's correct.

19 Q. Okay. So you sat in the car for three hours?

20 A. Yeah, reading a magazine. I was pregnant, I was
21 miscarriaging, come on.

22 Q. Okay. So you were in such a critical state of
23 potential miscarriage but it was okay for you to go riding
24 down here to York and bring your boyfriend and visit his
25 buddy at the trailer park.

TESTIMONY OF KATRINA HOWARD

1 A. Okay. My doctor said I didn't have to be on bed
2 rest, just be careful. He didn't say I had to go to stay
3 in the house.

4 Q. Did he say you couldn't get out of the car?

5 A. No. He didn't say I couldn't get out of the car.

6 Q. You don't quite remember what time you got there but
7 it was no earlier than 11:00 according to your testimony.

8 A. Yes.

9 Q. All right. And you managed -- with the 11 people
10 that were standing on the porch, you managed to witness
11 Mr. Page shoot Mr. Cunningham while you were driving back,
12 looking behind you, calling Lamont's name, isn't that your
13 testimony?

14 A. When I was driving back they was standing around,
15 they was all on the porch, all of them was scattered
16 around the porch. They were near the porch, they were
17 standing.

18 Q. And you are driving by?

19 A. Yes.

20 Q. And you're looking behind you and you see my client.

21 A. Yes, I did.

22 Q. Shoot Mr. Cunningham.

23 A. Yes, I did.

24 Q. Okay.

25 MR. THOMPSON: Your Honor, I'm going to object on

TESTIMONY OF KATRINA HOWARD

1 commenting on the witness' testimony, the okay, okay,
2 stuff. That's not necessary I don't think.

3 THE COURT: I understand. Well, I don't think
4 there's any harm. I think he is just affirming that he
5 understands the answer.

6 MR. CHIARENZA: Thank you.

7 Q. And your testimony was that after you witnessed this
8 murder and Lamont jumped into your car and Jaleel was
9 right behind him, you took a leisurely drive out of the
10 apartment or the trailer park.

11 A. I did not say that.

12 Q. You weren't driving fast is what you testified to.
13 You weren't driving above the speed limit, that's your
14 testimony.

15 A. I did not say that. I said I was not driving the
16 speed limit but I was not driving fast either.

17 Q. But you don't remember exactly how fast you were
18 going.

19 A. No, I don't.

20 Q. Okay. And despite remembering the words that my
21 client allegedly said on the porch and despite recalling
22 seeing Mr. Cunningham grab Lamont and then Jaleel saying,
23 "Don't do my man that way" --

24 A. I did not say that.

25 Q. I'm sorry, what did you say that Jaleel said?

TESTIMONY OF KATRINA HOWARD

- 1 A. "You're going to get off my man."
- 2 Q. Get off my man. So you remember that?
- 3 A. Yes.
- 4 Q. Two years ago you remember the exact words that he
- 5 said. So despite your apparent ability to remember
- 6 details such as that, you don't remember where you went
- 7 after the shooting.
- 8 A. No, I don't.
- 9 Q. Okay. And you don't remember where Lamont went after
- 10 the shooting.
- 11 A. I don't.
- 12 Q. But you remember a sentence from two years ago.
- 13 A. I remember a lot of stuff from two years ago.
- 14 Q. Except for where you supposedly went after that.
- 15 A. Okay. After that, yes, sir, I don't remember -- I
- 16 dropped them off at, where they went I don't remember.
- 17 Come on now, I was in a shocking moment, I seen somebody
- 18 killed.
- 19 Q. What hospital did you supposedly call to check on the
- 20 status of the victim?
- 21 A. I don't remember.
- 22 Q. Okay. How did you happen to have the number for the
- 23 hospital?
- 24 A. 411.
- 25 Q. And you said, "Please give me any hospital?"

TESTIMONY OF KATRINA HOWARD

- 1 A. No. I called quite a few hospitals to find out.
- 2 Q. What sort of question were you asking them to check
- 3 on the status of the victim?
- 4 A. It was somebody shot in this area. I want to know if
- 5 you can give me any information if he's okay or not.
- 6 Q. And how many hospitals did you make that inquiry of?
- 7 A. About two.
- 8 Q. Ten? Okay.
- 9 A. I did not say ten, I said two.
- 10 Q. Oh, I'm sorry. And your testimony is that you didn't
- 11 see A. J. Williams out there that day.
- 12 A. I didn't know who A. J. was at that time.
- 13 Q. But you were shown a picture of A. J. --
- 14 A. I seen it in a newspaper and I knew who he was.
- 15 Q. And can't confirm that he was one of the guys out
- 16 there that day.
- 17 A. Well, after I seen a picture I knew who he was.
- 18 Q. Right. Well obviously, but my question is --
- 19 A. Do I remember was he out there?
- 20 Q. Yes.
- 21 A. Yes, I do.
- 22 Q. Now you remember him being out there. Okay. Because
- 23 I thought that you told Sara Robbins -- let me see if I've
- 24 got it exact here -- "I don't know where A. J. came into
- 25 this. I don't remember seeing A. J., A. J. wasn't there."

TESTIMONY OF KATRINA HOWARD

- 1 A. You're talking about my telephone conversation? Yes.
- 2 Q. Yes, I am. Your telephone conversation to Sara
- 3 Robbins you told her, "I don't know where A. J. came into
- 4 all of this. I don't remember seeing A. J. out there, he
- 5 wasn't there."
- 6 A. At that time I did not know him by name so I could
- 7 not tell Sara when she asked me this -- when we was
- 8 talking about it I did not know who A. J. was so I could
- 9 not say if he was out there or not because I did not know
- 10 who he was.
- 11 Q. You appear to be an intelligent woman, Ms. Howard.
- 12 Wouldn't you then say to Ms. Robbins other than saying, I
- 13 don't remember seeing A. J. Wouldn't you say something
- 14 like A. J. who? I don't know an A. J.?
- 15 A. Okay. If you listen to the telephone conversation I
- 16 was nervous and I was scared so how could I say -- at that
- 17 time I wasn't thinking, I was just talking to her on the
- 18 phone.
- 19 Q. How can you not remember seeing someone who you don't
- 20 know?
- 21 A. Okay. After I seen the picture -- are you hearing
- 22 me? After I seen the picture I knew who A. J. was. If I
- 23 didn't know him by name how am I going to say, yeah, he
- 24 was out there. I could not say that.
- 25 Q. Which is it then, Ms. Howard?

TESTIMONY OF KATRINA HOWARD

- 1 A. He was out there. I did not know him by name.
- 2 Q. Okay. When you spoke to Sara Robbins on the
- 3 telephone, was that before or after you were shown a
- 4 picture and then knew who A. J. was?
- 5 A. Did I speak to Sara after or before?
- 6 Q. Yes.
- 7 A. I believe it was after.
- 8 Q. Okay. So when you spoke to Sara Robbins you had
- 9 already -- now at this point now you know, "Hey, this is
- 10 the guy A. J. we're talking about and here is his
- 11 photograph," right?
- 12 A. Uh-huh. She did not show me, I seen it in the
- 13 newspaper.
- 14 Q. Okay. So at any rate the time you spoke to Sara
- 15 Robbins now you had knowledge you could put a name with a
- 16 face.
- 17 A. Yes.
- 18 Q. So you could put a name with a face.
- 19 A. Yes.
- 20 Q. So at that time even though you may not have known
- 21 him personally you knew who A. J. Williams was supposed to
- 22 be?
- 23 A. Yes.
- 24 Q. So now go back to the phone call with Sara Robbins
- 25 which comes after you note seeing this picture in the

TESTIMONY OF KATRINA HOWARD

1 paper. You told Sara Robbins, "I don't remember seeing A.
2 J. there, he wasn't there."

3 A. Because at that time I didn't know who he was, that's
4 why I said that.

5 Q. Ms. Howard, I'm not asking you if you know him. You
6 just told this jury you saw his picture in the paper --

7 A. Uh-huh.

8 Q. -- and so now you could put a name with a face.

9 A. Yes.

10 Q. So you knew who this person is, we could call him
11 Mr. X, it doesn't matter, A. J. Williams.

12 A. But you know I made the telephone call before I saw
13 the picture.

14 Q. You just told the jury you made the telephone call
15 after you saw the picture.

16 A. I thought you was talking about did I --

17 Q. Ms. Howard --

18 MR. THOMPSON: Your Honor, I object and ask that she
19 be able to answer the question.

20 THE COURT: Let her finish her answer.

21 Q. Go ahead.

22 A. I thought you were saying did I see the -- did I call
23 Sara after I seen the picture, no. I talked to Sara first
24 and then I seen the picture, that's what I am trying to
25 see.

TESTIMONY OF KATRINA HOWARD

- 1 Q. Is that the final version we are going with?
- 2 A. Yes, that's the final.
- 3 Q. So we're talking to Sara first before you knew A. J.
- 4 you never saw a picture in the paper.
- 5 A. That's right.
- 6 Q. Never saw -- law enforcement never showed you a
- 7 picture.
- 8 A. No.
- 9 Q. You had no clue who he was, is that what you're
- 10 telling us?
- 11 A. By name.
- 12 Q. Then why would you tell Sara Robbins, "I don't
- 13 remember seeing A. J." if you didn't know the guy you
- 14 wouldn't say, "I don't remember seeing A. J. you would
- 15 say, "A. J. who?" Saying, "I don't remember seeing A. J."
- 16 indicates that you would have remembered if you saw him.
- 17 Why did you tell her that, "I don't remember seeing A.
- 18 J.?"
- 19 A. If I knew his name I could have told her I had seen
- 20 him that day. I did not know him by name. I didn't know
- 21 who she was talking about.
- 22 Q. You also told Sara that you were way across the
- 23 street when it happened. Do you remember telling her that
- 24 in the phone call?
- 25 A. Yes.

TESTIMONY OF KATRINA HOWARD

1 Q. So not only are you driving by looking back towards
2 through a crowd of 11 people but you are way across the
3 street when it happened, you told her all of that, right?

4 A. Uh-huh.

5 Q. Despite all of that you saw my client shoot
6 Mr. Cunningham. In fact, the story that you told Sara
7 Robbins seven months after your boyfriend being in jail
8 would seem to remove responsibility from Lamont for any
9 sort of robbery, correct? You didn't tell her anything
10 about any robbery or planned robbery.

11 A. I didn't know nothing about no robbery.

12 Q. And the story you told Sara Robbins, you told her
13 Lamont didn't even have a gun, right?

14 A. I didn't know he had gun at all.

15 Q. But you said he didn't have a gun?

16 A. He didn't have no gun.

17 Q. Okay. So now what you're telling Sara Robbins
18 removes his responsibility for any sort of armed robbery
19 which he is charged with, you told her he didn't have a
20 gun which removes the possibility of him being charged
21 with any of these firearm charges. You told Sara Robbins
22 that my client did the shooting which removes any
23 responsibility from Lamont for any murder.

24 A. Uh-huh.

25 Q. And you told Sara Robbins that all these guys were

TESTIMONY OF KATRINA HOWARD

- 1 trying to do was settle some sort of argument on behalf of
2 Mr. Garvin, right?
- 3 A. Uh-huh.
- 4 Q. Which would remove any responsibility for any
5 criminal plan to do something bad, right? Is that
6 correct?
- 7 A. I guess so.
- 8 Q. Do you recall in the phone call to Sara Robbins
9 telling her that right after the incident everybody just
10 left and you didn't see them anymore?
- 11 A. Yes.
- 12 Q. Okay. So you didn't tell her that part about them
13 getting in the car with you?
- 14 A. No, I didn't. Because I was afraid and I was over
15 the phone.
- 16 Q. You didn't really want to come here and testify here
17 today; is that right?
- 18 A. No.
- 19 Q. Weren't you guaranteed you wouldn't be charged with a
20 crime?
- 21 A. There was no guarantee.
- 22 Q. Did you have any discussions with the prosecutor or
23 police that you would not be charged with a crime?
- 24 A. I don't recall.
- 25 Q. You don't recall that?

TESTIMONY OF KATRINA HOWARD

1 A. No.

2 MR. CHIARENZA: I have nothing else, Your Honor.

3 THE COURT: All right. Mr. Boyd?

4 CROSS EXAMINATION

5 BY MR. BOYD::

6 Q. Ms. Howard, I believe you said you don't know who
7 Terrance McKnight is; is that correct?

8 A. Right.

9 Q. Okay. And let me ask you just a few things about
10 what happened and what you told the police. Now, I
11 believe you said you came down here -- you said you came
12 down here with Lamont and Jaleel; is that correct?

13 A. Yes.

14 Q. And y'all came down to see a fellow named Lofton; is
15 that correct?

16 A. Yes.

17 Q. His name is Lofton Garvin; is that correct?

18 A. I don't know his last name. I know his first name is
19 Lofton.

20 Q. And Lofton was a friend of Lamont's; is that correct?

21 A. And Jaleel's, yes.

22 Q. And when you saw him, Lofton, and then there was
23 about eight people out there; is that correct?

24 A. Uh-huh.

25 Q. And they were talking. And then you said they went

TESTIMONY OF KATRINA HOWARD

1 up to the car and Lofton was talking about having an
2 argument with someone; is that right?

3 A. Yes, sir.

4 Q. And you went to get a drink; is that right?

5 A. Yes.

6 Q. You came back and when you came back then the
7 scenario -- I'm trying to understand -- you followed them
8 up to the trailer?

9 A. No.

10 Q. Or how did they get to the trailer?

11 A. They was walking.

12 Q. They were walking?

13 A. Yes.

14 Q. Were you driving behind them?

15 A. No.

16 Q. How did you find the trailer?

17 A. See, they was walking and I was going down the street
18 and I seen them -- somebody walking so I went that way
19 towards -- walking towards -- driving towards them.

20 Q. Okay. So when you got to them they were at this
21 trailer; is that correct?

22 A. Yes, sir.

23 Q. And I believe you described in your statement to the
24 police that there was about eight of them at that time.

25 A. Uh-huh.

TESTIMONY OF KATRINA HOWARD

- 1 Q. Eight people with them.
- 2 A. Uh-huh.
- 3 Q. And I believe you described they went up on the
- 4 porch; is that correct?
- 5 A. Uh-huh.
- 6 Q. And Lofton was up on the porch; is that correct?
- 7 A. I believe so.
- 8 Q. Okay. And you told the police up there on the
- 9 porch -- well, that you looked out the window of your car
- 10 and you saw them on the porch; is that correct?
- 11 A. Uh-huh.
- 12 Q. You told the police that Lofton was arguing with the
- 13 man; is that correct?
- 14 A. That Lofton was arguing with the man?
- 15 Q. Yes.
- 16 A. I know my baby's father -- I don't remember what I
- 17 said in that statement about it.
- 18 Q. Let me just show you. Do you recall making that
- 19 statement?
- 20 A. Yes, I do. I recall the statement.
- 21 Q. All right. And let me just ask you is --
- 22 A. Is that my handwriting and my signature?
- 23 Q. I ask you if this is your signature on this
- 24 statement?
- 25 A. Yes.

TESTIMONY OF KATRINA HOWARD

- 1 Q. Okay. So this is your statement I'm showing you.
- 2 A. Yes.
- 3 Q. And just let me -- if you could just read those two
- 4 sentences right there starting with, "I looked."
- 5 A. "I looked out my window of my car and saw them on the
- 6 porch. Lofton was arguing with the man and Lamont said,
- 7 'You ain't going to try my man.'"
- 8 Q. That's it. So you did tell the police that Lofton
- 9 was up there arguing.
- 10 A. Yeah.
- 11 Q. So what you told the police is that Lofton was up on
- 12 the porch arguing with the man.
- 13 A. Uh-huh.
- 14 Q. And then after this shooting occurred you said you
- 15 picked up Lamont and Jaleel; is that correct?
- 16 A. Uh-huh.
- 17 Q. And you left. When you picked them up you knew a
- 18 shooting had occurred; is that correct?
- 19 A. Yeah, because I heard the gunshots.
- 20 Q. Okay. And you were never charged with anything; is
- 21 that correct?
- 22 A. Correct.
- 23 MR. BOYD: I have no further questions.
- 24 THE COURT: Any redirect?
- 25 MR. THOMPSON: Just briefly, Your Honor.

TESTIMONY OF KATRINA HOWARD

1 REDIRECT EXAMINATION

2 BY MR. THOMPSON::

3 Q. Ms. Howard, have you had an opportunity to read your
4 statement before you testified today?

5 A. Yes, I have.

6 Q. And the written statement is one that you gave after
7 you called Sara; is that correct?

8 A. Yes.

9 Q. Was that the same day or a day or two after you
10 called?

11 A. I think it was the same day or the day after.

12 Q. Okay. And what you've testified today, is that in
13 the written statement as well that you gave?

14 A. I believe so.

15 Q. And I direct your attention specifically to the
16 second page of that statement. Did you talk about -- you
17 were talking about being questioned about A. J. Is that
18 where you mentioned in your statement about A. J. the
19 highlighted portion about two-thirds of the way down?

20 A. Where it's highlighted?

21 Q. Yes. Is that where you talked about A. J. in the
22 statement?

23 A. Yes.

24 Q. Would you read that for us, please?

25 A. "I remember A. J. being out there. I didn't know him

TESTIMONY OF KATRINA HOWARD

1 by name but he was always hanging around outside."

2 Q. All right. Thank you.

3 MR. THOMPSON: I have no further questions, Your
4 Honor.

5 THE COURT: Any recross?

6 RECROSS EXAMINATION

7 BY MR. CHIARENZA::

8 Q. But in your telephone call you said you didn't
9 remember A. J. being out there, correct?

10 A. Correct.

11 Q. And the telephone call was made first and then you
12 did the written statement, right?

13 A. Yes.

14 MR. CHIARENZA: Nothing else.

15 THE COURT: Mr. Boyd?

16 MR. BOYD: Nothing further.

17 THE COURT: You can step down and you are free to go
18 if you would like. Jurors, we will take a short break,
19 you can go to the jury room now. Remember while you are
20 there don't talk about the case.

21 (The jury left the courtroom.)

22 THE COURT: All right. The jury is secured.

23 Counsel?

24 MR. POPE: Your Honor, Mr. Betsill is not present yet
25 but we can still address this issue, I can change a

1 witness if we have to. We are on the issue of redaction
2 now and Mr. Thompson has been handling that. I will step
3 out just briefly and try to locate the witness and I will
4 be back, Judge.

5 MR. THOMPSON: The proposed redaction, Your Honor, I
6 would like to hand up to the Court, I have given a copy to
7 the defense. I will have these marked as court's exhibits
8 and these are being Court's Exhibits 8 and 9, 10 being
9 redacted statement and 9 being the summary of the
10 statement.

11 THE COURT: We have already agreed to use these.

12 MR. THOMPSON: Yes, sir.

13 THE COURT: We will stand in recess.

14 (A recess was taken.)

15 THE COURT: These typed documents I have that are
16 Court's 8 and 9 are the redacted statements and summaries;
17 is that right?

18 MR. THOMPSON: That's correct, Your Honor.

19 THE COURT: Okay. Have you had a chance to look it
20 over, counsel?

21 MR. CHIARENZA: Thank you, Your Honor. I will just
22 preface this for the record by saying that I obviously
23 have a continuing motion to suppress this statement as it
24 being not admissible against my client and prejudicial
25 against my client and that's obviously part of my ongoing

1 motion to sever and I understand the Court has ruled but I
2 want to make sure that in the event I cross examine the
3 witness who took this statement that I am not waiving any
4 prior objections.

5 THE COURT: I understand.

6 MR. CHIARENZA: Your Honor, I'm fairly happy with
7 what's been done so far, but would seek to just have a
8 little bit more. I think that they can still get the gist
9 of what they need out of these statements as far as it
10 relates to Mr. McKnight and accommodate my wishes.
11 Particularly, Your Honor, and I don't know that numbers of
12 the exhibits, but on the longer statement which is a two
13 page statement on the first page, the fifth paragraph down
14 I would just move that entire paragraph be redacted, Your
15 Honor. I don't believe that it adds any probative value
16 to what they would seek to introduce against Mr. McKnight
17 and I think clearly it contains volumes of prejudice
18 against my client despite the fact that they have changed
19 my client taking out his name and substituted "another
20 guy" in the place of his name. I would just submit given
21 the fact that my client is on trial here sitting at
22 defense table and the jury is aware that four people were
23 charged of this crime and that three of them were named in
24 the statement and another one is just called another guy
25 that it doesn't -- they might as well have his name in it.

1 So again I would just submit that the Court's balance here
2 is allowing the State to get in their evidence, the
3 statement that they took from Mr. McKnight for whatever
4 they may wish to do that for and assuming that the Court
5 rules it's in fact admissible against Mr. McKnight, but
6 also, you know, given the fact that our severance motion
7 was denied I think the Court needs to be mindful of
8 protecting the rights of my client in regard to this
9 statement. Clearly he will not have the ability to cross
10 examine on this statement, he won't have the ability to
11 cross examine the declarant on this statement, certainly
12 we can cross examine the SLED agent. So for that reason,
13 Your Honor, I would ask that that paragraph be redacted in
14 its entirety and any reference to my client either by name
15 or as some unnamed individual, another guy, something of
16 that nature. I think that another guy appears a number of
17 times in the combination of the two different statements.
18 So other than that I think at that point if the Court were
19 inclined to order that we would have no valid reason to
20 suppress the statement other than those previously stated
21 as far as severance is concerned. Okay?

22 THE COURT: All right. Mr. Boyd?

23 MR. BOYD: Your Honor, I guess my concern is opposite
24 of what you just heard. I certainly -- if the statement
25 is going to be introduced I think I would like to have the

1 entire statement introduced and I would even object to the
2 name being changed to the other guy. I think my client
3 told the correct name and to change it around may imply to
4 the jury that he was withholding information. So under
5 his rights I think if the State is going to introduce any
6 of the statement it should be the full statement. And I
7 understand about the protecting Mr. Page's rights, but I
8 think if my client's statement is going to be introduced
9 he needs to have the whole thing introduced and not make
10 it seem as if he's withholding information about someone
11 else to cover someone else.

12 THE COURT: All right. Counsel, over objection I am
13 going to allow the redacted statement to be introduced.
14 I'm sorry, something else, Mr. Chiarenza?

15 MR. CHIARENZA: Your Honor, just if I could address
16 Mr. Boyd's argument and factor it into the Court's
17 decision. If Mr. Boyd is concerned with the jury
18 misinterpreting this version of his client's story
19 certainly his client can testify. So I would just ask the
20 Court to weigh that as far as that being a valid point.
21 And other than that the Court has heard my argument.

22 THE COURT: I note that objection also, counsel. And
23 again, over the objection I would allow the redacted
24 statement to be admitted. Are we ready?

25 MR. POPE: Yes, sir. Please the Court, Your Honor?

1 The shorter version I am going to send Mr. Thompson now --
2 I note that for the purpose of this hearing we had it
3 headed the State's redacted statement, obviously I'm going
4 to get him to take that off the top of both of them.
5 Actually on the -- the second one was actually signed, the
6 first one is just a summary from the SLED agent, the two
7 page statement. The second was actually signed over lunch
8 that will be -- after lunch that would be Ms. Robbins
9 would testify as to the second one we had signed by Mr.
10 McKnight. We have dealt with this in the past sometimes
11 of being able to put the signature back on the base of it,
12 in other words making it look like it was the original
13 with the exception of the redaction.

14 As far as the second one, Mr. Betsill's -- normally I
15 would have him testify, and I'm kind of proffering this to
16 the Court, I'm going to present him this copy and allow
17 him to testify from that to make sure that he remains
18 within the confines of the redaction by testifying
19 directly from that if there's no objection from the
20 defense. Normally he could testify from memory, not from
21 the copy but obviously that allow him to address the copy.

22 THE COURT: All right. Anything to add to that, Mr.
23 Chiarenza?

24 MR. CHIARENZA: No, Your Honor. And I just don't
25 want to belabor the point. My objection is to keep the

1 officer or the statement from bringing in prejudicial
2 information about my client. As long as the officer
3 understands he is limited by the same redactions that have
4 been made in the written statement.

5 THE COURT: Mr. Boyd, anything to add?

6 MR. BOYD: No, sir.

7 THE COURT: All right. Are we ready for the jury?

8 MR. POPE: Yes, sir, as soon as Mr. Thompson -- he's
9 printing that off.

10 THE COURT: Bring in the jury.

11 (The jury returned to the courtroom.)

12 THE COURT: All right. All parties and attorneys are
13 present in the courtroom and all jurors have returned.
14 Call your next witness.

15 MR. POPE: State would call Darrell Betsill to the
16 stand.

17 The witness, DARRELL BETSIL, was first duly sworn and
18 testified as follows, on:

19 DIRECT EXAMINATION

20 BY MR. POPE::

21 Q. Agent Betsil, I'm going to ask you if you would state
22 your name and spell your name for the court reporter,
23 please?

24 A. My name is Darrell Betsil. It's spelled

25 D-a-r-r-e-l-l, B-e-t-s-i-l.

TESTIMONY OF DARRELL BETSIL

1 Q. Agent Betsil, would you tell the jury where you
2 employed?

3 A. I'm employed with the South Carolina Law Enforcement
4 Division.

5 Q. Is there an acronym for that we often hear?

6 A. It is, it's SLED.

7 Q. Okay. And could you tell the jury how long you have
8 been in law enforcement?

9 A. I have been with SLED for approximately 12 years, and
10 prior to going to work for SLED I was a state trooper with
11 the state highway patrol for approximately 16 years.

12 Q. For 16 prior to that?

13 A. Six years, I'm sorry.

14 Q. So approximately 18 years in law enforcement?

15 A. That's correct.

16 Q. Can you tell the jury as far as SLED you have a lab
17 division or forensic division so to speak; is that
18 correct?

19 A. We do.

20 Q. In addition you have an investigative component also;
21 is that correct?

22 A. That's correct.

23 Q. Where are you employed? Where do you work?

24 A. I work out Piedmont region, and in the Piedmont
25 region we assist local, state and federal law enforcement

TESTIMONY OF DARRELL BETSIL

1 agencies ranging from homicides to fraudulent birth
2 certificates. It's just a wide range of investigations
3 that we are charged with conducting.

4 Q. And so from SLED's standpoint you're investigators as
5 opposed to someone who works in the lab; is that correct?

6 A. That's correct.

7 Q. And when you said assist different agencies, what do
8 you mean by assist? What kind of stuff do you --

9 A. Okay. We usually get requests from as I said local
10 other state and federal agencies. And what we do is once
11 we obtain the request we go into their jurisdiction or
12 their counties or their cities and we help them with as I
13 stated numerous investigations, anything from like
14 fraudulent birth certificates all of the way up to
15 homicides.

16 Q. I want to call your attention back to March of 2003.
17 Did your agency receive a call to assist York Police
18 Department in the case we have at hand?

19 A. We did.

20 Q. Okay. How did that come about? How did you become
21 informed or become involved in this case?

22 A. The Chief of Police for York City, he made a request
23 to our captain, Captain Jeff Stevens at SLED in order for
24 us to assist them in a homicide investigation in the City
25 of York and I was assigned the agent to assist.

TESTIMONY OF DARRELL BETSIL

1 Q. Did you physically come here to York back in 2003?

2 A. I did.

3 Q. What type of things did you do just in general? What
4 type of things did you do to assist?

5 A. We got with the investigators from York Police
6 Department and we ran down numerous leads, I don't recall
7 how many. It was a lot of leads. We conducted
8 interviews, we did -- we canvassed the incident location,
9 when I say canvassed, we walked the incident location and
10 went to residents and trailers that were close to the area
11 and followed up on all leads that came in through people
12 we know and anonymously.

13 Q. And were you working with Detective Robbins and I
14 think perhaps Naylis with the York Police Department?

15 A. I was.

16 Q. Okay. I want to call -- and let me ask you this:
17 From March of 2003 up until the arrest was finally made,
18 did you continue to work in assisting the York Police
19 Department?

20 A. I did.

21 Q. I want to call your attention particularly to January
22 of 2004. Did you have an opportunity to come assist York
23 Police Department in the arrest of an individual in this
24 case?

25 A. I did.

TESTIMONY OF DARRELL BETSIL

1 Q. Okay. And how did you come to York that particular
2 day?

3 A. I came to the City of York and got with Detective
4 John Naylis and he had a warrant for an individual just
5 outside of York in the McConnells area and Detective
6 Naylis requested me accompany him to that location to
7 serve an arrest warrant.

8 Q. Okay. And that was for Mr. Terrance McKnight; is
9 that correct?

10 A. That's correct.

11 Q. Okay. And did you know Mr. McKinght prior to that
12 time?

13 A. I knew of Mr. McKinght, I didn't know very much of
14 him.

15 Q. You went that day to McConnells with Officer Naylis.
16 Did you pickup Mr. McKnight?

17 A. We did.

18 Q. Was the purpose in picking him up in reference to the
19 charges in this particular case?

20 A. That's correct.

21 Q. Riding back from McConnells to York, did Mr. McKnight
22 have an opportunity or choose to speak to you?

23 A. He did. He --

24 MR. CHIARENZA: Your Honor, just for the record I'm
25 going to object to anything Mr. McKnight said on hearsay

TESTIMONY OF DARRELL BETSIL

1 grounds as far as their admissibility against Mr. Page.

2 MR. BOYD: Your Honor, also note my objection on
3 grounds previously stated.

4 THE COURT: Are you prepared to go into it at this
5 point as to what he said?

6 MR. POPE: Yes, sir. We are going to deal with the
7 Miranda issue first.

8 THE COURT: Before you actually get into what he said
9 give me a chance to address the jury on that.

10 Q. As you are riding back from McConnells, could you
11 tell who was in the car?

12 A. It was myself driving and it was Detective John
13 Naylis in the passenger seat beside me and Mr. Terrance
14 McKnight was in the back seat behind the passenger.

15 Q. Okay. And was he under arrest at that time?

16 A. He was.

17 Q. And I believe at that point you had served the
18 warrant for misprision of a felony back at that time?

19 A. I did.

20 Q. He was under arrest. Was he handcuffed?

21 A. Yes, sir.

22 Q. Now, what vehicle were you in? Whose vehicle were
23 you in?

24 A. We were in an unmarked Crown Victoria and it was my
25 issued SLED vehicle.

TESTIMONY OF DARRELL BETSIL

1 Q. Okay. Now, does your SLED vehicle have one of those
2 cages like you see on the police shows like between like a
3 uniformed marked car? Did your car have a cage between
4 you and Mr. McKnight?

5 A. No, sir.

6 Q. Okay. And there came a point where he was talking
7 about this case?

8 A. He did.

9 Q. Were you or Detective Naylis questioning him at that
10 point?

11 A. No, sir.

12 Q. Okay. Did you or Detective Naylis threaten him in
13 any way to get him to start talking?

14 A. No.

15 Q. Did you promise him that you would go to the
16 solicitor or you would be more lenient on him or would get
17 him a hamburger or whatever if he would give you that
18 information?

19 A. We did not.

20 Q. Did either you or Detective Naylis brandish a weapon
21 or threaten him or physically harm him in any way?

22 A. No, sir.

23 Q. At that point when he began to speak with you in
24 reference to this matter, what if anything did you do at
25 that point?

TESTIMONY OF DARRELL BETSIL

1 A. As we were traveling from McConnells to York as I
2 stated, Mr. McKnight was in the rear seat of my SLED
3 vehicle and he started talking about the homicide
4 involving the victim, which was Mr. Cunningham. At that
5 time I interrupted Mr. McKnight and I read him his Miranda
6 Rights.

7 Q. When you say Miranda rights, we all watch TV, is
8 there particular means or method and on TV they just kind
9 of spit them out and start saying them, is that what you
10 did? Or how do you go about reading his rights?

11 A. No, sir. I have got a -- it's a laminated card that
12 I carry with my credentials and it is what I consistently
13 read from when I am advising an individual of their
14 Miranda rights.

15 Q. What is your credentials?

16 A. It's the SLED identification which identifies me as a
17 law enforcement officer.

18 Q. Do you have that with you today?

19 A. I do.

20 Q. Do you have that card that you read that from?

21 A. I do.

22 Q. Could you remove it from your wallet, please?

23 A. (Witness complies.)

24 Q. You are driving from McConnells to come over from the
25 York Police Department or sheriff's office, you were

TESTIMONY OF DARRELL BETSIL

- 1 coming in this direction; is that right?
- 2 A. That's correct.
- 3 Q. And you're driving?
- 4 A. I am.
- 5 Q. And you are reading the card too?
- 6 A. As I am driving I am reading off of the car. I know
- 7 the card pretty well by heart but just to be consistent I
- 8 always read from the card.
- 9 Q. What was Detective Naylis doing while you are reading
- 10 the card?
- 11 A. He was as I stated in the front passenger seat beside
- 12 me, and to the best of my recollection he was turned to
- 13 keep an eye on the individual that was sitting behind him,
- 14 Mr. McKnight.
- 15 Q. Okay. And at that point when you read the rights to
- 16 Mr. McKnight, could you tell the jury actually what you
- 17 read to Mr. McKnight?
- 18 A. Would you like for me to read it from the card?
- 19 Q. Yes, sir, please.
- 20 A. What I did is I was driving and Mr. McKnight started
- 21 talking to us. He had not at that time been advised of
- 22 his Miranda rights and that's when I interrupted him and
- 23 asked him to stop talking until I read him the rights.
- 24 And then when he stopped talking, which was immediately, I
- 25 stated to him that, "You have the right to remain silent."

TESTIMONY OF DARRELL BETSIL

1 Anything you say will be used in court as evidence against
2 you. You are entitled to talk to a lawyer now and have
3 him present now or at anytime during questioning. If you
4 cannot afford an attorney one will be appointed for you
5 without cost. If you decide to answer questions now
6 without a lawyer present you will still have the right to
7 stop answering at anytime. You also have the right to
8 stop answering -- you also have the right to stop
9 answering at anytime until you talk with a lawyer."

10 Q. Now, when you were talking before you had gotten
11 there when you arrested him, had you spoken to him at his
12 house?

13 A. I had, yes, sir.

14 Q. When he is talking in the car, did he appear
15 coherent? Did he appear like he could carry on a
16 conversation much like we are doing now?

17 A. He was, correct.

18 Q. Did he appear to understand -- even before we get
19 into Miranda rights, did he understand what you were
20 saying like, "You're going with us, get in the back seat,"
21 things like that? Did he understand that?

22 A. He understood.

23 Q. Did he appear based on your experience to respond to
24 appropriately?

25 A. He responded appropriate, yes, sir.

TESTIMONY OF DARRELL BETSIL

1 Q. Okay. As far as -- based on your law enforcement
2 experience, did you see any indication that he was under
3 the influence of say alcohol or drugs or did you smell the
4 odor of alcohol or anything in the car when you were
5 transporting him?

6 A. He was not.

7 Q. Okay. Once you read him those rights, did you have
8 an opportunity to ascertain whether you understood what
9 you just said? You know, again on TV they always go,
10 "You've got the right to remain silent," and start
11 talking. Did you have an opportunity to ascertain that he
12 understood what you were saying?

13 A. We did. As I stated, Mr. McKnight was talking,
14 that's when I interrupted him and read him the card. He
15 advised he understood all of that and then he went back to
16 talking and I stopped him again, and he said, "Yeah, I
17 know all of that." And I stopped him again and I said,
18 "Did you understand completely what I just read you?" And
19 he advised he did.

20 Q. Okay. And the ride back from McConnells without yet
21 getting into what he said, did he discuss the death of
22 Mr. Cunningham and what he did in that?

23 A. He did.

24 Q. And when you were coming back from McConnells, where
25 did you end up coming back to next driving over from

TESTIMONY OF DARRELL BETSIL

1 McConnells?

2 A. The York Police Department.

3 Q. And when you got to the York Police Department, where
4 did you go?

5 A. We went -- if you're looking at the front of the York
6 Police Department, we went to a building to the left of
7 the police department.

8 Q. Did you physically go in that building?

9 A. I did.

10 Q. Was there a particular room or particular area you
11 went in there?

12 A. It was a private setting room. There was nobody but
13 the investigators and Mr. McKnight in the room.

14 Q. And once you are in that room again just touching on
15 what we did before, did you threaten Mr. McKnight to get
16 him to give you a statement?

17 A. I did not.

18 Q. Did anybody in your presence?

19 A. No, sir.

20 Q. Did anybody promise him anything?

21 A. They did not.

22 Q. Did anybody hold out a hope of reward, that if you do
23 this this will work out or anything like that?

24 A. No, sir.

25 Q. And as you sat there in the department, did he in

TESTIMONY OF DARRELL BETSIL

- 1 fact elaborate more fully and give you a statement?
- 2 A. He did.
- 3 Q. How did you record the information he was giving?
- 4 A. I was writing it down on a legal pad, making notes as
- 5 he was talking about the information that he was conveying
- 6 to us.
- 7 Q. Okay. And once he finished with that information,
- 8 did you have an opportunity to take your notes and go
- 9 through and say, "Here is what I wrote and here is what
- 10 you said." Did you go back through it with him?
- 11 A. I did.
- 12 Q. And did he confirm your notes for you basically?
- 13 A. Yes, sir, he did.
- 14 Q. Did he ask you to alter or change anything?
- 15 A. No, sir, he did not.
- 16 Q. Now, ultimately did you take those notes and reduce
- 17 them to a typed version?
- 18 A. I did.
- 19 Q. And how or where did you do that?
- 20 A. It was the same day and it was after we had finished
- 21 our interview with him and I took my handwritten notes and
- 22 went to a computer and then I typed it up and of course
- 23 printed it out.
- 24 Q. Did you alter or change anything from your
- 25 handwritten notes to what he had told you as far as the

TESTIMONY OF DARRELL BETSIL

1 typewritten version?

2 A. I did not.

3 Q. Okay. And ultimately did you ask him if he would be
4 willing or would like to make a written statement? In
5 other words, instead of you just writing your notes did
6 you ask him if he would do a written statement?

7 A. He did. After he gave us the verbal information and
8 I had taken it down on a legal pad I asked him would he be
9 willing to put that verbal information into writing and
10 give us a signed statement.

11 Q. What did he say to you?

12 A. He said he would prefer not to sign his name or give
13 a signed statement.

14 Q. At anytime, either the notes or the typewritten
15 version, the summary that you wrote of what he told you,
16 did he indicate that anything was wrong or different than
17 what you had indicated?

18 A. No, sir.

19 Q. Did he try to interject or change or say in essence,
20 "You're putting words in my mouth," or, "I didn't say
21 that", or any indication of that?

22 A. No, sir. He affirmed everything I had on my
23 handwritten notes.

24 Q. I show you what's been marked as State's Exhibit 53.

25 MR. CHIARENZA: Your Honor, again just for -- this

TESTIMONY OF DARRELL BETSIL

1 will be the last time -- just for the record we just renew
2 and consolidate my prior objections to this and the other
3 anticipated exhibit at this time for hearsay and other
4 matters.

5 THE COURT: Don't worry about how much you have to
6 object, I understand you have to do it to preserve the
7 record. Mr. Boyd?

8 MR. BOYD: My same objection.

9 THE COURT: So noted. Go ahead.

10 Q. I call your attention to State's Exhibit 53. Does
11 that document accurately reflect the summary that you
12 drafted?

13 A. It does.

14 Q. Okay.

15 MR. POPE: Your Honor, at this point I would move
16 State's Exhibit 53 into evidence and request to publish.

17 THE COURT: Anything else to add, counsel?

18 MR. CHIARENZA: Same objection.

19 THE COURT: All right. Considering the previous
20 discussions regarding it we will allow it to be admitted.

21 (The statement was received as State's 53.)

22 MR. POPE: Your Honor, I will now go into substance,
23 I don't know if you had any further issue that you need to
24 address.

25 THE COURT: Ladies and gentlemen, let me tell you

TESTIMONY OF DARRELL BETSIL

1 what this is. At this time the State is going to present
2 to you a statement that they allege was made by Mr.
3 McKnight regarding this case. Now, you and I have two
4 different roles in this matter regarding the statement.
5 My role is to decide whether to allow the statement to be
6 admitted, as you gathered I have determined that the
7 statement will be admitted. Now, you have to make certain
8 factual determinations and I will tell you the State must
9 prove to you certain things and they must prove them
10 beyond a reasonable doubt. First, they must prove to you
11 beyond a reasonable doubt that Mr. McKnight actually made
12 the statement. Secondly they must prove beyond a
13 reasonable doubt that he did so freely and voluntarily and
14 knowingly and intelligently. And, of course, part of the
15 way to determine this is in the reading of the rights that
16 were given to him and also considering that you have to
17 consider all of the circumstances surrounding the giving
18 of the statement. So what you do is this: It's up to you
19 to determine whether the State has proven this. If you
20 first find that the State has proven that he did make the
21 statement the second thing is you will then determine
22 whether or not he did so freely, voluntarily, knowingly
23 and intelligently with the understanding of his rights in
24 the matter. If you find that he did those, then you will
25 determine how much weight and credibility to give to the

TESTIMONY OF DARRELL BETSIL

1 statement just as you do with all other evidence. Now,
2 for example, if you find that he did not make the
3 statement then you would go no further. But if you find
4 that he made the statement or that he did so and that it
5 was not knowingly or intelligently or freely or
6 voluntarily then you would go no further. But once you
7 make those determinations you then would decide how much
8 weight and credibility to give to the statement, and again
9 you do so considering all of the circumstances surrounding
10 the statement. Any exception to that charge from the
11 State?

12 MR. POPE: None from the State, Your Honor.

13 THE COURT: From the defense?

14 MR. CHIARENZA: None, Your Honor.

15 THE COURT: Go ahead, Mr. Pope.

16 MR. POPE: Please the Court, Your Honor?

17 Q. Mr. Betsil, I think it was State's Exhibit 53, is
18 that correct, that you have in your hand?

19 A. Yes, sir.

20 Q. I'm going to ask if you at this time could publish
21 that to the jury, please. You can read through yours, I
22 am just going to put it up here also.

23 A. Would you like me to just start at the top?

24 Q. Yes, sir.

25 A. On January 6, 2004 York City detectives signed a

TESTIMONY OF DARRELL BETSIL

1 misprision of felony warrant on Terrance Kenyatta
2 McKnight. That warrant was in reference to the homicide
3 of Willie Cunningham. On January 7, 2004 at approximately
4 12:05 p.m. York City Detective John Naylis and this writer
5 went to Highway in McConnells, South Carolina
6 where we met with McKnight and his mother, Michelle
7 Bowens. While at the residence this writer served the
8 warrant on McKnight. After serving the warrant Bowens
9 told McKnight that he needed an attorney, although
10 McKnight had no response to Bowens' statement. Officers
11 did not question McKnight at the time. At approximately
12 12:15 p.m. while being transported to the York Detention
13 Center in this writer's SLED vehicle McKnight started
14 talking about knowledge he had concerning the murder of
15 Willie Cunningham. This writer interrupted McKnight and
16 advised him of his Miranda rights. McKnight stated he
17 would tell what he knew because he wasn't involved.
18 Officers and McKnight then traveled to the York Police
19 Department. McKnight stated that on the day Cunningham
20 was killed he was at the tree area close to Hall Street
21 Apartments during the late morning or early afternoon
22 hours. While at the tree area McKnight observed Lamont
23 McCollum, also known to McKnight as "Monster", with a
24 small caliber silver/chrome handgun. During this time
25 McCollum was dressed in a gray sweater/fleece type shirt

TESTIMONY OF DARRELL BETSIL

1 with a hood. McCollum kept the gun in the middle pocket
2 area of the shirt occasionally pulling the gun out as if
3 to show it off. McCollum was also wearing long pants that
4 McCollum stated was probably blue jeans. McKnight advised
5 that another guy was also at the tree area. McKnight
6 observed him to be in possession of a black rusted type
7 handgun that McKnight thought to be a revolver. He had on
8 a dark colored coat and possibly blue jeans. McKnight
9 stated that he kept the gun in a coat pocket occasionally
10 pulling the gun out as if to show it off. McKnight went
11 on to say that during the weekend that Cunningham was
12 killed McCollum and the other guy were around the Hall
13 Street area as well as Meadowbrook Trailer Park numerous
14 days and times. McKnight said that while at the tree area
15 he and A. J. Williams overheard McCollum and the other guy
16 talking about robbing Rashad Simpson. The four of them
17 had witnessed Simpson walking around in the area dressed
18 well wearing an expensive gold chain around his neck and
19 flashing a large amount of money. McCollum and the other
20 guy talked openly and often about robbing Simpson.
21 McKnight advised that he and Williams did not participate
22 in the conversation, but heard McCollum and the other guy
23 discussing robbing Simpson multiple times. McKnight best
24 described the conversation between McCollum and the other
25 guy as McCollum stating, "We ought to rob this nigga," and

TESTIMONY OF DARRELL BETSIL

1 the other guy saying, "I'm serious, let's do it."
2 McKnight went onto say that McCollum said whoever told on
3 him they were as good as dead. McKnight stated that an
4 unknown black female driving a dark gray or charcoal car,
5 possibly a Stanza, was in the Hall Street area. McKnight
6 advised the reason that he remembered a female in the car
7 is that McCollum said, "That dumb ass bitch took all day
8 to get here." McKnight did not see anyone get into the
9 vehicle with the female. McKnight advised that during the
10 early afternoon hours on the date Cunningham was killed he
11 left the tree area and went to Cannon Court. When
12 McKnight left the tree area McCollum, the other guy
13 Williams and possibly Lofton Garvin were still there. At
14 the end of the interview he advised this writer that --
15 excuse me -- he advised this writer and Naylis that the
16 information was true and factual to the best of his memory
17 and that the only reason he did not contact law
18 enforcement was that he was afraid of McCollum and the
19 other guy. McKnight stated he would rather not give a
20 written statement, but would assist law enforcement if he
21 could.

22 MR. POPE: Thank you, sir. Answer any questions the
23 defense may have.

24 THE COURT: Mr. Chiarenza, cross?

25 CROSS EXAMINATION

TESTIMONY OF DARRELL BETSIL

1 BY MR. CHIARENZA::

2 Q. Agent, we've been calling this thing a statement, but
3 this really isn't -- in the form it's in it's really not a
4 law enforcement written statement, is it?

5 A. It's a verbal reflection -- excuse me, it's a typed
6 reflection of the verbal information that Mr. McKnight
7 presented to me.

8 Q. You wrote it, correct?

9 A. Correct.

10 Q. And there are numerous sentences in here which are
11 really more like literature than things that came out of
12 his mouth, right? For instance, on January 6, 2004 a
13 misprision of a felony warrant on Terrance McKnight. He
14 never said that, right?

15 A. He did not.

16 Q. Okay. And I'm not trying to be tricky here. My
17 point is, this is your summary of what you allege
18 Mr. McKnight told you, correct?

19 A. As I said, it's a typed statement reflecting the
20 verbal information that McKnight presented to me.

21 Q. Right. But it's not a word for word account of the
22 words that came out of Mr. McKnight's mouth.

23 A. No, sir.

24 Q. Okay. And sometimes y'all do have something like
25 that in an investigation though, right, a word for word

TESTIMONY OF DARRELL BETSIL

1 account?

2 A. That would be if he requested to give a voluntary
3 statement and he requested me to type it up as he was
4 giving the statement and then he would have signed it at
5 the end, but that was not the occasion here.

6 Q. My question is sometimes in an investigation you do
7 have that, correct?

8 A. Yes, sir, we do.

9 Q. Okay. Where -- y'all actually have a form for it and
10 if yours is like many that I have seen at the top it might
11 even have an advisement of your rights and the witness has
12 to sign it there and date it. You might sign it and have
13 another officer witness your signature. It's got some
14 pre-printed language that says now on this date on this
15 time this witness -- and put in his name -- gives the
16 following statement, and then there's a bunch of blank
17 lines. You've got forms like that, right?

18 A. Yes, sir.

19 Q. Okay. And then on those blank lines the witness will
20 actually in his own hand in his own handwriting will write
21 a statement and sign it, a sworn notarized statement,
22 correct?

23 A. If they choose to do so, yes, sir.

24 Q. I know it didn't happen in this case, I'm saying you
25 have taken part in that procedure before.

TESTIMONY OF DARRELL BETSIL

1 A. I have, yes, sir.

2 Q. Or alternatively that witness if he had a sloppy
3 handwriting or can't spell too well or what have you, you
4 may be sitting across the table giving you an oral version
5 and an agency, police officer or someone would take down
6 what he says and then later confirm with him, "I want you
7 to read this. Is this exactly what you told me?" And
8 then they would sign it. You could do it that way too,
9 right?

10 A. At their request.

11 Q. Okay. So in this case we do not have Mr. McKnight's
12 signature on a sworn notarized statement.

13 A. We do not.

14 Q. Okay. And I just wanted to clarify that.

15 MR. CHIARENZA: Thank you, Officer.

16 THE COURT: Mr. Boyd?

17 CROSS EXAMINATION

18 BY MR. BOYD::

19 Q. Now, you testified you were there assisting the
20 police and serving what's called a misprision of a felony
21 warrant on Mr. McKnight; is that correct?

22 A. That's correct.

23 Q. Okay. And basically what a misprision of a felony is
24 is either -- it's neglect to either to prevent a felony or
25 to assist in bringing someone who has committed a felony

TESTIMONY OF DARRELL BETSIL

1 to justice, is that basically --

2 A. That's accurate.

3 Q. And in the particular case the accusation against
4 Mr. McKnight was that he had information on the murder of
5 Willie Cunningham and had not come forward with it; is
6 that correct?

7 A. That's correct.

8 Q. Okay. And now I want to ask you a few questions
9 about the statement he gave you. First, I believe you
10 went to his home and you said Mr. McKnight and his mother
11 were there; is that correct?

12 A. Yes, sir.

13 Q. Okay. And Mr. McKnight came with you; is that
14 correct?

15 A. He did.

16 Q. Didn't give you any trouble or anything, did he?

17 A. He did not.

18 Q. In fact, while you were in the car before you even
19 started asking him questions he started talking before you
20 even read him his rights or anything; is that correct?

21 A. That's correct.

22 Q. And you stopped him and you read him his rights; is
23 that correct?

24 A. That's correct.

25 Q. You continued the conversation and then you went to

TESTIMONY OF DARRELL BETSIL

- 1 the York Police Department and y'all continued the
2 conversation; is that correct?
- 3 A. Yes, sir, that's correct.
- 4 Q. Okay. And then Mr. McKnight, one thing he stated to
5 you is that he will tell you what he knew; is that
6 correct?
- 7 A. He did.
- 8 Q. And he stated that he wasn't involved; is that
9 correct.
- 10 A. That is correct.
- 11 Q. And he stated about seeing McCollum and the other guy
12 and that McCollum was pulling a gun out as if to show it
13 off; is that correct?
- 14 A. That's correct.
- 15 Q. And he said the other guy was also doing that, two
16 people had guns; is that correct?
- 17 A. Correct.
- 18 Q. And he also said if you would look on the second page
19 that McKinght had talked about if anyone ever told on him
20 they were as good as dead; is that correct?
- 21 A. That's correct.
- 22 Q. And Mr. McKnight told you he didn't contact law
23 enforcement because he was afraid that McCollum because
24 and -- the he was afraid of McCollum and the other guy; is
25 that correct?

TESTIMONY OF DARRELL BETSIL

1 A. Yes, sir.

2 Q. And in fact, going back to what McKinght had already
3 said, if anyone told on him they were as good as dead; is
4 that correct?

5 A. That is correct.

6 MR. BOYD: Thank you. That's all of the questions I
7 have.

8 THE COURT: Any redirect?

9 MR. POPE: Just briefly, Your Honor.

10 REDIRECT EXAMINATION

11 BY MR. POPE::

12 Q. The discussions -- after your Miranda warnings the
13 discussions you had with Mr. McKnight, did it appear from
14 your experience in looking at it, did he appear to be
15 talking to you freely and voluntarily?

16 A. He was talking to us freely and voluntarily.

17 Q. When you asked him to give a written statement and he
18 would not -- chose not to give a written statement, did
19 you force him to give you a written statement?

20 A. No, sir.

21 Q. If he would have asked to give you a written
22 statement, would you have allowed him to give a written
23 one as Mr. Chiarenza talked about a signed statement,
24 would you have allowed him to do that?

25 A. We would have.

TESTIMONY OF DARRELL BETSIL

1 Q. Based on your knowledge of the investigation
2 ultimately, he was actually -- gave a statement on a form
3 like you are talking about with the rights form and
4 everything like that; is that correct?

5 A. That's correct.

6 Q. But that, of course, was not for you, that was to Ms.
7 Robbins.

8 A. Correct.

9 MR. POPE: Thank you, sir.

10 THE COURT: Anything else, Mr. Chiarenza?

11 MR. CHIARENZA: No, Your Honor.

12 THE COURT: Mr. Boyd?

13 MR. BOYD: Nothing further.

14 THE COURT: Thank you, sir, you can step down. All
15 right. Counsel, we will go ahead and take a lunch break
16 at this point, it's about 1:30. Now, ladies and
17 gentlemen, we will go ahead and take a break, let's be
18 back at 2:45 and be prepared to start back then.
19 Remember, be sure not to talk about the case during the
20 lunch break.

21 (The jury left the courtroom and a lunch break was
22 taken.)

23 The witness, ANTONIO JAVAR WILLIAMS, was first duly
24 sworn and testified as follows, on:

25 DIRECT EXAMINATION

TESTIMONY OF DARRELL BETSIL

1 MR. THOMPSON:

2 Q. Mr. Williams, will you give your full name for the
3 court, please?

4 A. Antonio Javar Williams.

5 Q. Can you spell that for the court reporter, please?

6 A. A-n-t-o-n-i-o, J-a-v-a-r, W-i-l-l-i-a-m-s.

7 Q. Thank you, Mr. Williams. Now, Mr. Williams, do you
8 know Jaleel Page?

9 A. Yes, sir.

10 Q. How do you know him?

11 A. Through some friends of mine.

12 Q. All right. How long have you known him?

13 A. For about two years.

14 Q. Okay. And that's -- at the time that this happened
15 is back in 2003?

16 A. Yes, sir.

17 Q. All right. Did you used to hang out with Jaleel
18 Page?

19 A. Yes, through some friends.

20 Q. All right. How about Lamont McCollum, how did you
21 know him?

22 A. The same.

23 Q. All right. Do you hang out with him as well.

24 A. Yes, sir.

25 Q. Did you know Terrance McKnight?

TESTIMONY OF ANTONIO JAVAR WILLIAMS

- 1 A. Yes, sir.
- 2 Q. How do you know him?
- 3 A. He's my first cousin.
- 4 Q. Your first cousin. How long have y'all -- I mean,
5 how long have y'all been close as first cousins?
- 6 A. All of our life.
- 7 Q. Have you known him all of your life?
- 8 A. Yeah.
- 9 Q. Y'all hang out, too?
- 10 A. Yeah.
- 11 Q. Where did Terrance live, do you remember?
- 12 A. McConnells.
- 13 Q. I'm sorry?
- 14 A. McConnells.
- 15 Q. McConnells? Okay. Do you remember where Jaleel Page
16 lives?
- 17 A. He stayed on Charlotte Street I believe, but he moved
18 to South Conners, I believe. That's where his mother
19 stayed.
- 20 Q. Okay. How about Lamont McCollum, do you know where
21 he lived?
- 22 A. I just think -- he bounced all around. I think he
23 stayed in Gastonia somewhere, I don't really know.
- 24 Q. Okay. Can you tell me how big of a fellow is Lamont
25 McCollum?

TESTIMONY OF ANTONIO JAVAR WILLIAMS

- 1 A. Pretty big follow.
- 2 Q. How about Jaleel Page?
- 3 A. About the same size, pretty big fellow.
- 4 Q. Okay. Are they bigger than you?
- 5 A. Yes, sir.
- 6 Q. Are they bigger than Terrance?
- 7 A. Yes, sir.
- 8 Q. You and Terrance, are y'all about the same size?
- 9 A. Yeah. He's a little bit bigger than me, though.
- 10 Q. Okay. Back in March of 2003 on that day, March 16,
- 11 tell me who you were hanging out with that day.
- 12 A. It was me, Lamont McCollum, Jaleel Page, Terrance
- 13 McKnight.
- 14 Q. All right. And where were y'all hanging out?
- 15 A. In the Hall Street Apartments.
- 16 Q. All right. Is that right next to Meadowbrook Trailer
- 17 Park?
- 18 A. Yes, sir.
- 19 Q. Where at Hall Street Apartments did you hang out?
- 20 A. We was down at the park that morning, early that
- 21 morning.
- 22 Q. Okay. And that's right there -- basically right
- 23 there at the apartments itself, right?
- 24 A. Yes, sir.
- 25 Q. Did y'all ever hang out under any of the trees at the

TESTIMONY OF ANTONIO JAVAR WILLIAMS

1 apartments as well?

2 A. Yes, sir.

3 Q. Do you remember what time you first began hanging out
4 around there?

5 A. Probably about earlier that morning, 10:00 or
6 11:00 that morning.

7 Q. Okay. And when y'all started hanging out, what were
8 you doing first?

9 A. We were smoking some weed and just chilling under a
10 big tree.

11 Q. Okay.

12 A. Just chilling out.

13 Q. Did any other people come by in addition to the four
14 of y'all?

15 A. Well, there was a lot of people, you know what I'm
16 saying, moving around. Adrian Byars was somewhere around
17 but I don't know where he was at, he was somewhere around.
18 I know it was us four under the tree.

19 Q. Okay. And what did you do while y'all were there?
20 You said you smoked some weed, what else did y'all do?

21 A. We was just talking and chilling.

22 Q. All right. Did either Lamont or Jaleel ever show you
23 anything while you were under that tree?

24 A. Yeah. Well, not under the tree, that was before we
25 went to the tree. At the park they showed me some guns.

TESTIMONY OF ANTONIO JAVAR WILLIAMS

1 Q. Okay. Can you describe the gun that Lamont showed
2 you?

3 A. He only showed me one gun, it was like a little small
4 .25.

5 Q. Do you remember what color it was?

6 A. Chrome.

7 Q. And were you able to see whether it was a revolver or
8 a semiautomatic?

9 A. It was an automatic.

10 Q. Okay. How about Jaleel, did he show you anything?

11 A. Yeah, it was like a little .32, old rusty looking
12 .32.

13 Q. Rusty?

14 A. Revolver.

15 Q. A revolver?

16 A. Yes, sir.

17 Q. Did they play around with those guns at all while
18 they were out there with you?

19 A. Yes, sir, but that was it. They just pulled them out
20 for a little bit and like put them up back in their
21 pocket.

22 Q. Do you recall what Jaleel was wearing that day?

23 A. I really -- I just know -- I think he had on like a
24 big black coat.

25 Q. How about Lamont, do you remember what he had on?

TESTIMONY OF ANTONIO JAVAR WILLIAMS

- 1 A. I know he had on like a gray hooded fleece.
- 2 Q. Where were they keeping their guns.
- 3 A. On the inside pocket.
- 4 Q. Where?
- 5 A. On the inside pocket of the fleece, that's where
- 6 Jaleel kept his.
- 7 Q. Where did Lamont keep his? In the pocket of his
- 8 pants or jacket?
- 9 A. In his jacket.
- 10 Q. Can you tell me, did you see how Lamont had gotten
- 11 there that day?
- 12 A. I believe it was his girlfriend, she brought him
- 13 down.
- 14 Q. Did you know her name?
- 15 A. No, sir.
- 16 Q. Okay. Did you see her down there that day?
- 17 A. Yes. She was just sitting in the car, though. I
- 18 didn't talk to her or anything but I seen her.
- 19 Q. Do you remember what kind of car it looked like she
- 20 was in?
- 21 A. A small car, Nissan, small, dark colored.
- 22 Q. Okay. And now, did you see her there from the time
- 23 you got there or did she come in later or do you recall
- 24 when she was there?
- 25 A. When Lamont and them was there she was there.

TESTIMONY OF ANTONIO JAVAR WILLIAMS

1 Q. Okay. So by the time you see Lamont, isn't that --
2 when you say Lamont and them, Lamont and who?

3 A. Jaleel, and then me and Terrance was together.

4 Q. Was Terrance with you there during the time they
5 showed their weapons?

6 A. Yes, sir.

7 Q. Was he there with you during the time you were
8 smoking weed?

9 A. Yes, sir.

10 Q. Now, tell me what happened. From the time that y'all
11 were together tell me what y'all did up until the time
12 that the shooting occurs.

13 A. Well, as we was sitting up under the tree Jaleel and
14 Lamont, they was talking about making a lick before they
15 go back home.

16 Q. What did they mean by making a lick?

17 A. When they say lick like coming up on some extra
18 money, doing something to come up with some extra money
19 some way or somehow. And while we was talking about it
20 that's when Rashad had walked up and then they were
21 talking about robbing Rashad Simpson because he had on
22 like necklaces, he was looking nice, nice clothes.

23 Q. Do you know Rashad Simpson?

24 A. Yes, sir.

25 Q. How do you know him?

TESTIMONY OF ANTONIO JAVAR WILLIAMS

- 1 A. I went to school with him.
- 2 Q. All right. Now, where did you live at that trailer
- 3 park?
- 4 A. I live on Drive.
- 5 Q. Was Rashad's near there?
- 6 A. Yes, sir.
- 7 Q. Okay. How about, did you know Adrian Twyman?
- 8 A. Yes, sir.
- 9 Q. Where was his trailer?
- 10 A. Right across from my trailer.
- 11 Q. Right across from yours? Go ahead. Describe the
- 12 ones when y'all were talking about making a lick, what
- 13 happened then?
- 14 A. Well, I had left for a couple of minutes to get
- 15 something to eat, went home and got something to eat. But
- 16 when I came back they was saying that they had ran up on
- 17 Rashad and he kept on walking. They was asking him where
- 18 the weed was and they was going to make a lick on him
- 19 right then and there but he kept on walking to Adrian
- 20 Twyman's house so they didn't get to make the lick on him.
- 21 Q. Okay. Now, you said you went back to your house to
- 22 eat lunch. How long were you at your house?
- 23 A. Not long, maybe an hour at the most.
- 24 Q. When you were back there, did you ever see Rashad
- 25 after you went back to your trailer?

TESTIMONY OF ANTONIO JAVAR WILLIAMS

- 1 A. I see him go over to Adrian Twyman's house.
- 2 Q. Right across the street?
- 3 A. Yes, sir.
- 4 Q. After he went to that house, how soon was it before
- 5 he came back out?
- 6 A. A few minutes maybe, not long.
- 7 Q. I am going to ask you to look at State's Exhibit
- 8 Number 28. With the Court's permission I would ask if he
- 9 can step down momentarily and step down for a moment. If
- 10 you will take a look at the picture or the photograph up
- 11 here. Is that Mr. Cunningham's trailer here in the corner
- 12 of Sunset and Elon?
- 13 A. Yes, sir.
- 14 Q. Okay. If you will press this button and point out
- 15 where on there was your trailer in relationship to that?
- 16 A. Somewhere around here, I think up in here.
- 17 Q. Right down here off of Inwood?
- 18 A. Yeah.
- 19 Q. Where was Adrian Twyman's?
- 20 A. Right there.
- 21 Q. Right across?
- 22 A. Yeah, right across.
- 23 Q. When you came out, did you meet up with that same
- 24 group again?
- 25 A. Yeah. I came up Inwood and when I was coming back to

TESTIMONY OF ANTONIO JAVAR WILLIAMS

- 1 Hall Street Apartments they was coming up from the
2 apartment up through this way.
- 3 Q. Okay.
- 4 A. And they was telling me about they had just run up on
5 Rashad and he kept --
- 6 Q. So you met them where, right about there at that
7 corner?
- 8 A. Somewhere up in there.
- 9 Q. Who all was there when you met up with them. You can
10 go ahead and sit back down.
- 11 A. It was Lamont, Jaleel and Terrance was coming up
12 behind them.
- 13 Q. Okay. Did Lamont have a nickname?
- 14 A. Monster.
- 15 Q. Is that what you called him?
- 16 A. Mont.
- 17 Q. Mont?
- 18 A. Mont.
- 19 Q. How about Jaleel, what did you call him?
- 20 A. Ja.
- 21 Q. Ja. Was that his nickname?
- 22 A. Yes, sir.
- 23 Q. Now, when you came up on that group, what happened
24 then when you came up on them?
- 25 A. They was just telling me about how they ran up on

TESTIMONY OF ANTONIO JAVAR WILLIAMS

1 Rashad and how he kept on walking, he wouldn't stop. They
2 was like where --

3 MR. BOYD: I am going to object to they said. I
4 would like him to point out who said what.

5 THE COURT: All right. Sustained.

6 Q. If you would -- in particular, who was telling you
7 that at the time?

8 A. Well, Lamont, he was like, you know, doing most of
9 the talking. Jaleel, he was talking too but Lamont was
10 doing most of it. But Lamont he was like, "We just ran up
11 on Rashad and he kept on walking, he wouldn't stop. He
12 kept on walking to one of the trailers down there. So we
13 will go to his house and take all of his stuff that he got
14 at home."

15 Q. Did Jaleel take part in that conversation as well?

16 A. Yes, sir.

17 Q. Do you recall anything Jaleel said at that time?

18 A. I really don't remember what he said, but he was
19 involved.

20 Q. But was he talking to you about doing the robbery at
21 that time?

22 A. Yes, sir.

23 Q. Okay. After that, how is it then that you and
24 Terrance become involved following that?

25 A. They was talking to us telling us if we go --

TESTIMONY OF ANTONIO JAVAR WILLIAMS

- 1 MR. BOYD: Your Honor, I am going to again object to
2 they said.
- 3 Q. If you would specifically tell us who was telling you
4 this.
- 5 A. Well, Lamont, like I said, he was the ring leader but
6 Jaleel, he was talking, too. Lamont told us all we had to
7 do was be the lookout men and we would get a cut of
8 whatever they take from Rashad's house.
- 9 Q. When you say us who are you talking about?
- 10 A. Me and Terrance. All Lamont wanted us to do was
11 knock on the trailer, if somebody comes stand outside the
12 house and knock on the trailer if somebody comes.
- 13 Q. Okay. Did you and Terrance actually do that then?
- 14 A. Yes, we did.
- 15 Q. Okay. How long did y'all stand there and talk before
16 y'all went to Willie Cunningham's trailer?
- 17 A. It wasn't long.
- 18 Q. All right. Now, did you walk right up Wood street
19 there going up to the trailer?
- 20 A. Yes, sir.
- 21 Q. What happened -- describe when you get there what
22 happens. Do y'all walk up together at that point?
- 23 A. Yeah. Lamont and Jaleel was kind of in front of us
24 but me and Terrance, we was coming.
- 25 Q. Okay. And when you got to the house what happened

TESTIMONY OF ANTONIO JAVAR WILLIAMS

1 then?

2 A. Well, when we walked up the street when we first got
3 up there me and Terrance was on the side of the trailer,
4 we picked up a ball, we was dribbling the ball trying to
5 like throw things off just playing around.

6 Q. Were you dribbling it back and forth to each other?

7 A. Yeah, back and forth. And a car came up the street,
8 that's when Jaleel and Lamont was on the porch, and a car
9 came up the street so they was trying to delay -- take
10 time and delay. Because I guess before they make their
11 move they are going to take some time.

12 Q. Had someone already came to the door at that point?

13 A. I don't think so, I'm not sure.

14 Q. All right.

15 A. But when the car went past, that's when -- by that
16 time Mr. Willie Cunningham -- he asked where Rashad was
17 and he was like he wasn't here, and he pulled out the gun
18 on him and when he pulled out the gun --

19 Q. Who was the he that pulled out the gun?

20 A. Lamont.

21 Q. Where was Jaleel during this time?

22 A. Standing right beside him.

23 Q. Where was Terrance during that time?

24 A. Right with me dribbling the ball beside the trailer.

25 Q. Could y'all see from where you were standing?

TESTIMONY OF ANTONIO JAVAR WILLIAMS

- 1 A. Yes, sir.
- 2 Q. Could you tell me -- if you would just show me
3 briefly again from this photograph, where were you in
4 relationship to the trailer here. This being the trailer
5 and I believe the porch is right about here. I know it's
6 a porch picture but could you point kind of where you guys
7 were?
- 8 A. The trailer right here, we were dribbling the
9 basketball right in here.
- 10 Q. You had gotten it from the trailer right across the
11 street, is that correct, this one right over here?
- 12 A. Yes, sir.
- 13 Q. So were you all in the roadway where that was right
14 next to the trailer?
- 15 A. Yeah, right in the middle of the road.
- 16 Q. Now, did anyone ever discuss what would happen if
17 someone was at the trailer?
- 18 A. Well, the plan was -- Lamont was saying if somebody
19 was at the trailer he will just hold them hostage and then
20 they will get what he want and then leave.
- 21 Q. Okay. State's Exhibit Number 2. States Exhibit
22 Number 2. If you would just step down. Is this the porch
23 you were talking about right here?
- 24 A. Yes, sir.
- 25 Q. Does a street come down that goes next to the trailer

TESTIMONY OF ANTONIO JAVAR WILLIAMS

1 here?

2 A. Yes, sir.

3 Q. Where this picture was, had you gotten onto the
4 gravel at all right here or were you still on the street
5 right here?

6 A. We was on the street right here.

7 Q. So right on the far corner here?

8 A. Yes, sir.

9 Q. Okay. So this is the street?

10 MR. CHIARENZA: Your Honor, I am going to ask that
11 the solicitor hand the pointing device to the witness and
12 the witness can indicate where he was.

13 MR. THOMPSON: I will be happy to, Judge.

14 Q. If you could point where you were.

15 A. Right here in the street.

16 Q. Okay.

17 A. Dribbling the basketball.

18 Q. And you were at a spot where you could see -- or were
19 you at a spot where you could see at that point?

20 A. Yes, sir.

21 Q. When Willie Cunningham came to the door, did y'all
22 continue to dribble the basketball at that point or did
23 you guys stop?

24 A. We stopped dribbling the basketball and we were just
25 watching.

TESTIMONY OF ANTONIO JAVAR WILLIAMS

1 Q. And tell me then at that point exactly what happened
2 in the shooting.

3 A. Well, they asked where Rashad was, he said he wasn't
4 there. Then he just pulled the gun out on him and said,
5 "Get down, get down." I can't really hear what he was
6 saying but he was real loud. And Mr. Cunningham tried to
7 grab the gun from his hand, grab the gun or grab his wrist
8 and Lamont pulled back the gun and came back and shot him
9 two times in the chest.

10 Q. Okay. Where was Jaleel when that happened?

11 A. Standing right beside him with his hands in his
12 pocket.

13 Q. Where were you and Terrance?

14 A. Still in the street right beside the house.

15 Q. What did they do -- what did everyone do when the
16 shots happened?

17 A. Well, Jaleel and Lamont, they ran to the left side of
18 the trailer and me and Terrance ran back to my trailer.

19 Q. So y'all ran -- if you would once again just point
20 out where you ran from the left side of the trailer, from
21 what aspect you are looking at?

22 A. Jaleel and Lamont ran that way somewhere, I didn't
23 see where they go, but I knew they went somewhere down
24 that way and me and Terrance ran down that way to my
25 house.

TESTIMONY OF ANTONIO JAVAR WILLIAMS

- 1 Q. Where did you go then after that?
- 2 A. We went to my house.
- 3 Q. Okay. Where did Terrance go?
- 4 A. Went to my house on Inwood Drive.
- 5 Q. All right. At that point what happened?
- 6 A. We stepped in the house we was like, "God, man, you
7 seen that? You seen that? Yeah, man, it's crazy, ain't
8 it?" And the next thing I know Terrance is like, "Man, I
9 better go to the apartments and catch a ride home." So he
10 went to the apartments and I ain't seen him no more so I
11 guess he got his ride.
- 12 Q. Okay. Tell me, A. J., did you end up at that point
13 ever going back up to the Willie Cunningham trailer?
- 14 A. Yes, sir.
- 15 Q. How did that happen?
- 16 A. Well, my mom came home -- I was at home by myself and
17 my mom had came home and the rescue squads and police cars
18 had started sounding, and everybody was like, "What's
19 going on?" I was trying to play it off like I didn't know
20 what was going on, but I knew the whole time and I was
21 like, "I don't know what's going on." I just walked back
22 up there trying to act like I didn't know what was going
23 on.
- 24 Q. Okay. When you got up there, did you see the police
25 and everyone there?

TESTIMONY OF ANTONIO JAVAR WILLIAMS

- 1 A. Yes, sir.
- 2 Q. Did the police ever talk to you while you were up
3 there?
- 4 A. Yes, sir.
- 5 Q. What did you tell the police?
- 6 A. Really they wasn't pertaining nothing about that. I
7 talked to like James Rickey and he was telling me that my
8 mom said I needed to do better or he was going to end up
9 taking me to jail or something like that. He really
10 wasn't saying nothing about the case.
- 11 Q. Did he end up asking you about it, though?
- 12 A. Yeah. He was like, "What's going on up there?" And
13 I was like, "I don't know."
- 14 Q. Can you tell me while you're up there, were you
15 present when a phone call was made to Rashad Simpson?
- 16 A. Yes, sir.
- 17 Q. What happened with that?
- 18 A. Well, a couple of Rashad's friends, they was out
19 there and they was asking where Rashad was. And I was
20 like, "I think I seen Rashad go over to Adrian Twyman's
21 house." They were like, "You know the number?" I was
22 like, "Yeah." This was Chris Floyd speaking. And he was
23 like, "What's the number?" I gave him the number and he
24 dialed the number and called Rashad.
- 25 Q. All right. After that did you have anymore

TESTIMONY OF ANTONIO JAVAR WILLIAMS

1 involvement that day with this?

2 A. No, sir.

3 Q. Now, can you tell me, did you go to the police right
4 away and tell them what happened?

5 A. No, sir.

6 Q. How is it that you got caught, A. J.?

7 A. Well, I was in here on some other charges
8 pertaining --

9 Q. The detention center?

10 A. Yes, sir -- pertaining to some four-wheelers and
11 things like that and a guy named Kenyatta Sherrer I had
12 been talking to and I ended up telling him what had
13 happened and he had been wired up. So he had got me on
14 tape telling him what had happened.

15 Q. All right. At that time, did the police come to you
16 after that?

17 A. Yes, sir.

18 Q. Did you give a statement at that time?

19 A. Yes, sir.

20 Q. And I believe -- was that -- who was that to? Do you
21 remember what detective that was that you gave a statement
22 to at that time?

23 A. I believe it was Ms. Sara Robbins, I don't know.

24 Q. And I believe that was a written statement, correct?

25 A. Yes, sir.

TESTIMONY OF ANTONIO JAVAR WILLIAMS

- 1 Q. Now, did you give any other statements after that to
2 the police?
- 3 A. Yes, sir.
- 4 Q. And can you tell me when that was?
- 5 A. I gave another one I think a couple of days later.
- 6 Q. So a couple of days after the first one?
- 7 A. Yes, sir.
- 8 Q. And do you recall who that was to?
- 9 A. SLED. What is it, SLED? I don't remember.
- 10 Q. Officers from SLED?
- 11 A. I believe so, I'm not sure.
- 12 Q. Okay. And did you give anymore statements?
- 13 A. I gave one more like in December 2004.
- 14 Q. Was that when you entered your guilty pleas at that
15 time?
- 16 A. Yes, sir.
- 17 Q. All right. And if you would, tell me what all did
18 you plead to at the time in December of 2004?
- 19 A. I pleaded to the grand larceny.
- 20 Q. That was what you had been over at the detention
21 center for?
- 22 A. The grand larceny, resisting arrest, common law
23 robbery, then they dropped the charge to accessory after
24 the fact.
- 25 Q. The murder charge?

TESTIMONY OF ANTONIO JAVAR WILLIAMS

- 1 A. Yes, the murder charge.
- 2 Q. To accessory after the fact?
- 3 A. Yeah.
- 4 Q. What else regarding the actual crime here did you
- 5 plead to?
- 6 A. Attempted armed robbery and conspiracy.
- 7 Q. And what is the range possibility of your sentencing
- 8 as a result of that plea?
- 9 A. Ten to 20 years.
- 10 Q. And have you remained incarcerated ever since the
- 11 time of your arrest?
- 12 A. Yes, sir.
- 13 Q. Can you tell me were you as well already sentenced to
- 14 some of that time at this point?
- 15 A. Yes, sir. I was sentenced to ten non-violent
- 16 pertaining to the grand larceny, common law robbery and --
- 17 Q. That's for the stuff you were in the detention center
- 18 for before you got charged to this?
- 19 A. Yes, sir.
- 20 Q. Now, the sentencing as to the stuff you pled to on
- 21 this, the attempted armed robbery -- you had mentioned
- 22 your current sentence was non-violent -- is that a violent
- 23 sentence on attempted armed robbery?
- 24 A. Yes, sir.
- 25 Q. And what is your possible sentence range at this

TESTIMONY OF ANTONIO JAVAR WILLIAMS

- 1 point when you are sentenced after the trial?
- 2 A. My possible sentence range?
- 3 Q. Right, according to the agreement.
- 4 A. I can get up to 20 years violent.
- 5 Q. Okay. Now, do you recall how long ago was it or how
- 6 long after this happened was it that you actually were
- 7 approached by the police because of talking to Kenyatta
- 8 Sherrer? Do you remember when that was?
- 9 A. After I talked to Kenyatta Sherrer?
- 10 Q. Right. When the police first came to you after you
- 11 talked to Kenyatta Sherrer and gave your first statement,
- 12 do you remember when that was?
- 13 A. It was a few days later. I don't know.
- 14 Q. Right, a few days after you talked to Kenyatta. But
- 15 I'm saying the time period when you actually gave the
- 16 statement?
- 17 A. Oh, I gave a statement I think when Ms. Sara Robbins
- 18 first came.
- 19 Q. I guess maybe this will help you. What month was it
- 20 that you gave the statement and what year?
- 21 A. Oh, what month? 2003, December.
- 22 Q. December? So about nine months or so after this had
- 23 actually happened?
- 24 A. Yes, sir.
- 25 Q. Now, as far as Terrance is concerned, did you tell

TESTIMONY OF ANTONIO JAVAR WILLIAMS

- 1 him everything about Terrance in the first statement?
- 2 A. I didn't tell them everything about it, no, sir.
- 3 Q. Why is that?
- 4 A. I didn't want to get him in any trouble.
- 5 Q. Why is that?
- 6 A. He's my first cousin. I didn't want to get him in no
- 7 trouble.
- 8 Q. Okay. Now, I notice when you came out today you are
- 9 dressed in those clothes. Where did the clothes come from
- 10 today?
- 11 A. My parents.
- 12 Q. Okay. And what do you usually wear now that you are
- 13 in the detention center?
- 14 A. Orange.
- 15 Q. One of the county jump suits?
- 16 A. Yes, sir.
- 17 Q. Going back to the day of the shooting, who all was
- 18 actually on the porch when the shooting occurred?
- 19 A. Jaleel Page and Lamont McCollum.
- 20 Q. Okay. Who was acting as lookout at that time?
- 21 A. Terrance McKnight and myself.
- 22 Q. Was there anyone else there at that point?
- 23 A. No, sir.
- 24 Q. Did you ever get a cut out of this?
- 25 A. No, sir.

TESTIMONY OF ANTONIO JAVAR WILLIAMS

1 Q. Did Terrance ever get a cut out of this?

2 A. No, sir.

3 MR. THOMPSON: Thank you. No further questions.

4 Please answer any questions that the defense has for you.

5 THE COURT: Mr. Chiarenza.

6 CROSS EXAMINATION

7 BY MR. CHIARENZA::

8 Q. Mr. William, your currently in prison, correct?

9 A. Yes, sir.

10 Q. Do you like it?

11 A. No, sir.

12 Q. Do you want to stay there for a long time?

13 A. No, sir.

14 Q. You want to get out?

15 A. Yes, sir.

16 Q. And you're currently doing a ten year sentence as a
17 result of your guilty plea, the deal you cut with the
18 solicitor's office, correct?

19 A. Yes, sir.

20 Q. But your sentence isn't completed yet. After this
21 trial they're going to finish it based on what happens in
22 this trial, right?

23 A. Yes, sir.

24 Q. And they can either give you what's called another
25 ten years concurrent, meaning really no more time, you

TESTIMONY OF ANTONIO JAVAR WILLIAMS

- 1 understand that, right?
- 2 A. Yes, sir.
- 3 Q. So that's a possibility.
- 4 A. Yes, sir.
- 5 Q. You could walk out of here today and then let the
- 6 judge finish up the last bit of business with the
- 7 sentencing and you could get ten concurrent on the stuff
- 8 they haven't sentenced you on, do you understand that?
- 9 A. Yes, sir.
- 10 Q. And that would mean that wouldn't add a single day to
- 11 the sentence you've got right now, do you understand that?
- 12 A. Yes, sir.
- 13 Q. Or the judge can go as high as making your sentence a
- 14 20 year sentence, isn't that a possibility?
- 15 A. Yes, sir.
- 16 Q. All right. And why didn't they take care of all of
- 17 sentencing at one time when you pled guilty several months
- 18 ago?
- 19 A. I have no clue.
- 20 Q. Okay. But they did a little beforehand and now
- 21 they're waiting until this trial is over until after you
- 22 testify to give you the other sentence, right?
- 23 A. Yes, sir.
- 24 Q. Like you said, you don't like prison.
- 25 A. No, sir.

TESTIMONY OF ANTONIO JAVAR WILLIAMS

- 1 Q. You want to get out of prison.
- 2 A. Yes, sir.
- 3 Q. You don't want to do any more time than you have to.
- 4 A. No, sir.
- 5 Q. So you're going to do whatever you need to do to get
- 6 that low sentence; isn't that correct?
- 7 A. I'm going to do what I have to do. I am going to,
- 8 tell the truth.
- 9 Q. And you've cut a deal already with the solicitor's
- 10 office, right?
- 11 A. A deal?
- 12 Q. Well, you were charged with murder, right?
- 13 A. Yeah.
- 14 Q. That charge is gone now, right?
- 15 A. Yeah.
- 16 Q. Okay. So you don't have to worry about that charge
- 17 anymore.
- 18 A. No.
- 19 Q. And that's part of the deal you made with the
- 20 solicitor's office, right?
- 21 A. Yeah.
- 22 Q. And, in fact, the ten year sentence you already got
- 23 for grand larceny, resisting arrest and common law
- 24 robbery, those are all things that had nothing to do with
- 25 this, right, something that -- it had nothing to do with

TESTIMONY OF ANTONIO JAVAR WILLIAMS

1 the murder of Willie Cunningham, correct?

2 A. Yes, sir.

3 Q. So you have got ten on that. So if you end up
4 getting ten concurrent, basically what that is going to
5 mean is all of your involvement in this thing didn't give
6 you anymore time, right? .

7 A. Can I say something?

8 Q. You can answer that question.

9 A. Yes, sir. No, sir. No, sir.

10 MR. THOMPSON: I will ask him to be able to explain
11 if that's what he is meaning.

12 THE COURT: He can explain.

13 A. It's the difference between ten non-violent and ten
14 violent.

15 Q. Okay. And I apologize, you are right. You could get
16 ten concurrent and doing violent time you might have to do
17 a little more than the ten you are doing; is that correct?

18 A. Yes, sir.

19 Q. But the option still exists right now, it's ten --
20 anywhere between ten and 20 more, right?

21 A. Yeah.

22 Q. Okay. And do you believe that what you end up
23 getting depends on how you testify here today?

24 A. Yes, sir.

25 Q. And you met with the solicitor just as recently as

TESTIMONY OF ANTONIO JAVAR WILLIAMS

- 1 before you took the witness stand, didn't you?
- 2 A. Yes, sir.
- 3 Q. To discuss your testimony here today.
- 4 A. Yes, sir.
- 5 Q. And have you met with people from the solicitor's
- 6 office before today to discuss this testimony?
- 7 A. Yes, sir.
- 8 Q. So you have a pretty good idea of what they expect
- 9 you to say.
- 10 A. The truth, yes, sir.
- 11 Q. But y'all have discussed what you will be saying here
- 12 today; isn't that correct?
- 13 A. I guess I will say yes, sir.
- 14 Q. And Mr. Williams, you did give a number of statements
- 15 in this case and I have looked at them hundreds of times,
- 16 it's difficult for me to keep up with them so I am going
- 17 to ask for your help. When you first spoke to Sara
- 18 Robbins who is the detective in this case, and if it
- 19 wasn't Sara Robbins please correct me, but my
- 20 understanding is when you first spoke to her you said that
- 21 on that day you were actually sitting in the car with the
- 22 black female who you some time or another says brought
- 23 Lamont down there, right?
- 24 A. Yes, sir.
- 25 Q. Okay. And you told the detectives that you even went

TESTIMONY OF ANTONIO JAVAR WILLIAMS

1 to the store to get something to drink with her, right?

2 A. Yes, sir.

3 Q. And you told the detectives that after the shooting
4 she asked you what happened, what have they done now,
5 right?

6 A. Yes, sir.

7 Q. Now, in statements you made after that you have
8 changed that.

9 A. Yes, sir.

10 Q. That you weren't sitting in the car, correct?

11 A. Yes, sir.

12 Q. You didn't go to the store with that woman.

13 A. Yes, sir.

14 Q. She never said that to you, "What have they done
15 now."

16 A. Yes, sir.

17 Q. You and she weren't really around when that happened.

18 A. Yes, sir.

19 Q. That's correct, right?

20 A. That's correct.

21 Q. So you've changed that much about your statement.

22 A. Yes, sir.

23 Q. And when you first spoke to detectives you told them
24 that Terrance McKnight, he just wasn't involved, had
25 nothing to do with this, right?

TESTIMONY OF ANTONIO JAVAR WILLIAMS

- 1 A. Yes, sir.
- 2 Q. And since that time you have changed that statement
- 3 too, correct?
- 4 A. Yes, sir.
- 5 Q. Okay. And initially before you were cooperating you
- 6 gave -- when you were questioned by police on the day or
- 7 shortly after it happened you told them you didn't know
- 8 anything, right?
- 9 A. Yes, sir.
- 10 Q. And you've since changed that statement.
- 11 A. Yes, sir.
- 12 Q. And at the time you decided to start speaking about
- 13 all of this, it was roughly nine months after the murder
- 14 and you were already locked up on other charges, right?
- 15 A. Yes, sir.
- 16 Q. Okay. And you said the person you started discussing
- 17 this with was someone named Kenyatta Sherrer who is also
- 18 an inmate in the jail, right?
- 19 A. Yes, sir.
- 20 Q. You knew him from York?
- 21 A. I knew of him.
- 22 Q. You knew of him?
- 23 A. Yes, sir.
- 24 Q. Okay. All right. Now, one of your statements, I
- 25 believe this is the final version dated December 16, 2004.

TESTIMONY OF ANTONIO JAVAR WILLIAMS

- 1 Your statement at that time was that Lamont and Jaleel
2 were talking about doing this thing and your words were,
3 "I told them I didn't want to go but they would give me a
4 cut of the money."
- 5 A. Yes, sir.
- 6 Q. But in an earlier statement, this may have been the
7 first written statement you gave to Sara Robbins, you
8 said, "I went as a lookout. I told them if I saw anything
9 I would knock on the door. It made me feel like I had a
10 job to do. I wanted to get a part of the cut."
- 11 A. Yeah.
- 12 Q. So those are kind of different, too, aren't they,
13 Mr. Williams?
- 14 A. Yes, sir.
- 15 Q. One makes it seem like they kind of pulled you in and
16 the other says you wanted to go, it made you feel big, you
17 wanted a piece of the action.
- 18 A. Yes, sir.
- 19 Q. And the solicitor asked you if you got a cut, but to
20 your knowledge was anything actually stolen on that day?
- 21 A. No, sir.
- 22 Q. Okay. So there was no cut of anything to get.
- 23 A. No, sir.
- 24 Q. And your testimony is that there were only two
25 individuals on the porch at the time of the shooting.

TESTIMONY OF ANTONIO JAVAR WILLIAMS

1 A. Yes, sir.

2 Q. And no one else was in the vicinity other than those
3 two and according to you, you and Mr. McKnight on the side
4 of the trailer.

5 A. Yes, sir.

6 Q. Other than that the coast was clear.

7 A. Yes, sir.

8 Q. And according to your testimony the way the shooting
9 actually occurred was that you saw Mr. Cunningham
10 wrestling with Lamont over the gun, Lamont pulled it from
11 him and shot him twice.

12 A. Yes, sir.

13 Q. At no time in any version of these statements did you
14 ever allege that Jaleel Page shot Mr. Cunningham; is that
15 correct?

16 A. That's correct.

17 Q. And in your earlier statements you referred to the
18 victim in this case as the guy, you saw a guy on the porch
19 and they were wrestling with this guy. Did you not know
20 him as Mr. Cunningham at that time?

21 A. Not at the time.

22 Q. Okay. Now you have been advised in fact that the
23 gentleman who was killed was named Willie Cunningham.

24 A. Yes, sir.

25 Q. But you didn't know him personally.

TESTIMONY OF ANTONIO JAVAR WILLIAMS

1 A. No, sir.

2 Q. But you knew his nephew, Rashad.

3 A. Yes, sir.

4 Q. And your statements also vary as to whether or not
5 you called Rashad or another individual telephoned Rashad,
6 correct?

7 A. Yes, sir.

8 Q. So that's another discrepancy in your statements.

9 A. Yes, sir.

10 Q. And your testimony is that Rashad was at a trailer
11 right across the street from your house, right, visiting
12 someone and his name was Adrian Twyman I believe?

13 A. Yes, sir.

14 Q. And why didn't you try to warn Rashad that these guys
15 were looking to rob him if that's what they had been
16 talking about?

17 A. I didn't want to get into that like that.

18 Q. You would have rather been a lookout and get your cut
19 then warn a guy you know that he's fixing to get robbed.

20 A. I knew him but I didn't know him like we was best of
21 friends.

22 Q. So it was okay to rob him?

23 A. It wasn't okay but I didn't want to get in the middle
24 of it.

25 Q. Well, you're in the middle of it now, aren't you,

TESTIMONY OF ANTONIO JAVAR WILLIAMS

1 Mr. Williams?

2 A. Yeah. I'm in the middle of it now.

3 Q. Mr. Williams, your statements also differ as to
4 whether you were gone at the time individuals asked Rashad
5 about drugs or whether you actually were there when they
6 asked him about drugs.

7 A. Right.

8 Q. Would you agree with that?

9 A. Can I respond?

10 Q. First yes. If you will just agree, you've got two
11 different statements about that, that's correct?

12 A. Yes, sir.

13 Q. Explain to me why you had two different versions of
14 that fact.

15 A. Well, just for majority -- all of the mistakes in the
16 statements I didn't want to put myself in the middle of
17 the situation. I was trying to back away from the
18 situation as much as possible. I didn't want to make it
19 look like I was at the scene because when they first came
20 I didn't want to get in trouble for murder, so I tried to
21 make it look like I went to go get something to eat with
22 the girl, tried to say this and say that. But as time
23 went passing I knew everything was serious, I had to just
24 come out with it. That's why the recent statements,
25 that's where they are telling everything instead of bits

TESTIMONY OF ANTONIO JAVAR WILLIAMS

1 and pieces.

2 Q. Okay. You don't want to get in trouble for murder.

3 A. I didn't.

4 Q. Now you are no longer charged with murder, correct?

5 A. Correct.

6 Q. Okay. So now you can tell us what really happened
7 because you took care of that murder charge.

8 A. Yes, sir.

9 Q. While you were in the jail that's when you first
10 heard that maybe this girl was Lamont's baby's mother?

11 A. Yes, sir.

12 Q. Okay. So in the jail people were even talking about
13 what happened and all.

14 A. Yes, sir.

15 Q. Information going on about who people were and what
16 went down that day, right?

17 A. Yes, sir.

18 MR. CHIARENZA: Nothing further, Your Honor.

19 THE COURT: Mr. Boyd?

20 CROSS EXAMINATION

21 BY MR. BOYD::

22 Q. I am going to ask you about the point you said you
23 had been with them earlier and you had gone back to your
24 home; is that correct?

25 A. Yes, sir.

TESTIMONY OF ANTONIO JAVAR WILLIAMS

- 1 Q. While you are at your home you notice Rashad going
2 into a neighbor's home; is that correct?
- 3 A. Yes, sir.
- 4 Q. And that was Adrian?
- 5 A. Twyman.
- 6 Q. It was Twyman, he had gone. So you knew where he was
7 at that time; is that correct?
- 8 A. Yes, sir.
- 9 Q. And then when you were walking back you said you saw
10 Lamont and Jaleel Page walking down the street; is that
11 correct?
- 12 A. Yes, sir.
- 13 Q. And you said Terrance was behind them; is that
14 correct?
- 15 A. Yes, sir.
- 16 Q. Is he some distance behind them or --
- 17 A. Not really. He was coming up with them.
- 18 Q. Okay. And at that point Lamont talked to you; is
19 that correct?
- 20 A. Talked to all of us.
- 21 Q. He talked to all of you. He said about committing a
22 robbery you say; is that correct?
- 23 A. Yes, sir.
- 24 Q. And then he said he wanted y'all to be lookouts; is
25 that correct?

TESTIMONY OF ANTONIO JAVAR WILLIAMS

- 1 A. Me and Mr. McKnight.
- 2 Q. When he said that, did Terrance say anything?
- 3 A. I don't know if he said something or not, but he went
4 along.
- 5 Q. All right. He walked along, but you don't remember
6 him saying anything.
- 7 A. No.
- 8 Q. And you don't remember him agreeing and saying,
9 "Yeah, I will be a lookout."
- 10 A. I don't remember.
- 11 Q. And in fact, the location you and he were you said
12 y'all were basically out on the road there; is that
13 correct?
- 14 A. Yes, sir.
- 15 Q. And in fact, nobody came along during this period of
16 time to warn anybody about it; is that correct?
- 17 A. Yes, sir.
- 18 Q. Okay. Now, let me go back. When you were first
19 interviewed by the police concerning this situation, you
20 denied knowing anything about it; is that correct?
- 21 A. Yes, sir.
- 22 Q. You said you didn't know anything.
- 23 A. Yes, sir.
- 24 Q. And then on December 31st of 2003 you talked to Sara
25 Robbins and Chief Mobley, didn't you?

TESTIMONY OF ANTONIO JAVAR WILLIAMS

- 1 A. Yes, sir.
- 2 Q. Chief Mobley, that's the chief of the York Police
3 Department; is that correct?
- 4 A. Yes, sir.
- 5 Q. And that's after you had been talking to Kenyatta
6 Sherrer at the jail.
- 7 A. Yes, sir.
- 8 Q. All right. Now, at that point at first when you
9 talked to him on that occasion first you denied
10 everything; is that right?
- 11 A. Yes, sir.
- 12 Q. And then you started talking to them; is that
13 correct?
- 14 A. Yes, sir.
- 15 Q. And you admitted about your involvement about being a
16 lookout.
- 17 A. Yes, sir.
- 18 Q. But at that point you said that Lamont and Jaleel
19 went on to the porch; is that right?
- 20 A. Yes, sir.
- 21 Q. You stated you were the lookout; is that right?
- 22 A. Yes, sir.
- 23 Q. You said you heard two shots.
- 24 A. Yes, sir.
- 25 Q. And you started running. And you also said at the

TESTIMONY OF ANTONIO JAVAR WILLIAMS

1 time that was going on that you were sitting in the car
2 with a black female whose name you did not know; is that
3 right?

4 A. Yes, sir.

5 Q. So at that point what you told the police was you
6 were sitting in the car with a black female whose name you
7 didn't know, and -- is that correct? You need to speak
8 up.

9 A. Yes, sir.

10 Q. Now, you said that the -- you said the black female
11 said, "What they done did now;" is that correct?

12 A. Yes, sir.

13 Q. So this black female that you said you were sitting
14 with at that time was Lamont's girlfriend; is that
15 correct?

16 A. I wasn't sitting with no black female. I just said
17 that to take myself away from the scene of the crime
18 because I didn't want to get charged for it.

19 Q. Okay. But there was a black female there.

20 A. Yes. But she was just sitting in the car down the
21 Hall Street Apartments.

22 Q. But you said you were sitting in the car with her and
23 that she said, "What they done did now."

24 A. That's what I said at first.

25 Q. That's what you said she said to the police when they

TESTIMONY OF ANTONIO JAVAR WILLIAMS

1 were talking to you; is that correct?

2 A. Yes, my first statement.

3 Q. And you're saying that's not true, the statement you
4 gave the police?

5 A. Yes, sir.

6 Q. And you said at that time you had told the police
7 that you got out of the car and started running; is that
8 right?

9 A. I don't remember. Could you show me or something? I
10 don't remember.

11 Q. Well, did you say you got out of the car and you saw
12 Willie laying in the street?

13 A. I don't remember. Could you point it out or
14 something to me?

15 Q. And did you say that you -- well, you didn't --

16 MR. THOMPSON: Object, Your Honor. He's asking to
17 see it. I would ask that he show it to him. He doesn't
18 remember and he's asking to see it.

19 THE COURT: Do you have a copy of the document to let
20 him look at it? Mr. Williams, do you need a second to
21 look that over?

22 A. Yes, sir. All right.

23 Q. Has that refreshed your memory?

24 A. Yeah, I remember it.

25 Q. So you did say you got out of the car; is that

TESTIMONY OF ANTONIO JAVAR WILLIAMS

1 correct?

2 A. Yes, sir.

3 Q. Okay. And you said you saw Willie lying in the
4 street.

5 A. Yes, sir.

6 Q. Is that correct? And said that the girl you said you
7 had been sitting with drove around the block and you guess
8 she picked him up; is that correct?

9 A. Yes, sir.

10 Q. Now, at that time you told the police that Terrance
11 was not involved.

12 A. Yes, sir.

13 Q. Now, on December 15th of 2004 you entered into a plea
14 agreement; is that correct?

15 A. Yes, sir.

16 Q. All right. And that was a written plea agreement,
17 wasn't it?

18 A. Yes, sir.

19 Q. And at that time you were facing murder charges; is
20 that correct?

21 A. Yes, sir.

22 Q. Okay. And you knew that under a murder charge you
23 were potentially facing life without parole; is that
24 correct?

25 A. Yes, sir.

TESTIMONY OF ANTONIO JAVAR WILLIAMS

1 Q. And in any event you knew if you were convicted of
2 murder you were facing a minimum of 30 years.

3 A. Yes, sir.

4 Q. And you understood also that under the law that
5 minimum of 30 years you would not be able to get out on
6 parole; is that correct?

7 A. Yes, sir.

8 Q. So you were facing at that time at a best case
9 scenario if you are convicted you were facing 30 years in
10 jail; is that correct?

11 A. Yes, sir.

12 Q. Without the possibility of parole; is that correct?

13 A. Yes, sir.

14 Q. All right. And in a worse case scenario you were
15 facing life; is that correct?

16 A. Yes, sir.

17 Q. And that would have been without the possibility of
18 parole.

19 A. Yes, sir.

20 Q. Which would have meant you would be in the jail until
21 you died.

22 A. Yes, sir.

23 Q. And you agreed to -- the murder charge was dismissed
24 against you; is that correct?

25 A. Yes, sir.

TESTIMONY OF ANTONIO JAVAR WILLIAMS

1 Q. Okay. And you pled guilty to accessory after the
2 fact of murder.

3 A. Yes, sir.

4 Q. And you knew that for accessory after the fact of
5 murder the maximum sentence was 15 years; is that correct?

6 A. I don't remember that.

7 Q. You don't remember?

8 A. No, sir.

9 Q. And you also pled guilty on that same date of the
10 attempted armed robbery of Willie Cunningham; is that
11 correct?

12 A. Yes, sir.

13 Q. And you know that the maximum sentence you were
14 facing on that charge was 20. And you pled guilty at that
15 time to conspiracy to commit armed robbery; is that
16 correct?

17 A. Yes, sir.

18 Q. And I believe the maximum sentence you were faced on
19 that you know was five years; is that correct?

20 A. Yes, sir.

21 Q. Now, at that time you also pled to some other charges
22 not related to the Cunningham situation; is that correct?

23 A. Yes, sir.

24 Q. You pled guilty to the common law robbery of Hosea
25 Ventura; is that correct?

TESTIMONY OF ANTONIO JAVAR WILLIAMS

- 1 A. Yes, sir.
- 2 Q. And that was something that had no connection; is
3 that correct?
- 4 A. Yes, sir.
- 5 Q. And you were facing on that charge a maximum sentence
6 of 15 years; is that correct?
- 7 A. Yes, sir.
- 8 Q. And you also pled guilty to conspiracy to commit
9 grand larceny of Michael Lacy and you knew you were facing
10 a maximum sentence on that charge of five years; is that
11 correct?
- 12 A. Yes, sir.
- 13 Q. And you also pled guilty to grand larceny of Michael
14 Lacy, with the victim being Michael Lacy; is that correct?
- 15 A. Yes, sir.
- 16 Q. And you knew you were facing a maximum sentence on
17 that charge of ten years in jail; is that correct?
- 18 A. Yes, sir.
- 19 Q. And you pled guilty to resisting arrest also.
- 20 A. Yes, sir.
- 21 Q. I think you pled guilty to section A resisting
22 arrest; is that correct?
- 23 A. Yes, sir.
- 24 Q. And you were facing a maximum sentence of one year,
25 is that correct, on that?

TESTIMONY OF ANTONIO JAVAR WILLIAMS

1 A. Yes, sir.

2 Q. And you pled guilty to all of these charges on
3 December 15th of 2004.

4 A. Yes, sir.

5 Q. On the charges not connected with the murder that we
6 are here for today you received a sentence of ten years;
7 is that correct?

8 A. Yes, sir.

9 Q. And it's your understanding are you under violent or
10 non-violent under that?

11 A. Non-violent.

12 Q. Non-violent. Which means because of that you can
13 actually get out earlier than if you were classified
14 violent; is that correct?

15 A. Yes, sir.

16 Q. Now, you also as part of your plea agreement agreed
17 that for everything else for the charges for the accessory
18 after the fact of murder, the attempted armed robbery, the
19 conspiracy, you would receive no more than 20 years; is
20 that correct?

21 A. Yes, sir.

22 Q. And that would be run together with the ten years you
23 already have.

24 A. Yes, sir.

25 Q. So you wouldn't receive ten and then an extra 20, the

TESTIMONY OF ANTONIO JAVAR WILLIAMS

1 worst case scenario you would receive a combined sentence
2 of 20 years altogether.

3 A. Yes, sir.

4 Q. And in fact you could receive as little as ten years;
5 is that correct?

6 A. Yes, sir.

7 Q. Which would run concurrently with what you are
8 already doing.

9 A. Yes, sir.

10 Q. So you would basically not get anymore time except
11 that it may affect the time you did because as violent on
12 the other charges; is that correct?

13 A. Yes, sir.

14 Q. Did you know that even when you consider the murder
15 charge dropped with all of the other charges you pled
16 guilty to, when you add them up you were facing up to 71
17 years just for that, weren't you?

18 A. I didn't ever think about it.

19 Q. And you're ending up getting a worse case scenario
20 20.

21 A. Yes, sir.

22 Q. And even with all of the other things you pled guilty
23 to under related to the murder, other unrelated to Willie
24 Cunningham you were facing up to -- all combined up to 31
25 years and all of that, weren't you?

TESTIMONY OF ANTONIO JAVAR WILLIAMS

1 A. Yes, sir.

2 Q. So by entering this plea agreement you go from a
3 possibility of life without parole to possibly as little
4 as ten years; is that correct?

5 A. Yes, sir.

6 Q. And as part of that plea agreement you agreed to give
7 testimony in this case; is that correct?

8 A. Yes, sir.

9 Q. And it's written in your plea agreement, is it not?
10 If you withdraw your plea the State will commence with the
11 trial and will seek life without parole from you; is that
12 correct?

13 A. Yes, sir.

14 Q. Now, on December 2004 which I think is the day you
15 entered this plea agreement and entered these pleas you
16 gave another statement to the police; is that correct?

17 A. I don't think. I don't remember. Can I see it?

18 Q. Certainly. And you signed this statement; is that
19 right?

20 A. Yes, sir.

21 Q. Now, at that time you told them you weren't sitting
22 in the car; is that correct?

23 A. Yes, sir.

24 Q. At that time you claimed you were passing the
25 basketball with Terrance.

TESTIMONY OF ANTONIO JAVAR WILLIAMS

- 1 A. Yes, sir.
- 2 Q. And at that time you stated that Mr. Cunningham was
3 shot two times in the chest; is that right?
- 4 A. Yes, sir.
- 5 Q. And you also told them on that occasion the girl in
6 question was sitting in a car down on the Hall Street
7 Apartments; is that right?
- 8 A. Yes, sir.
- 9 Q. So your second statement was entirely different than
10 your first statement.
- 11 A. Yes, sir.
- 12 Q. Now, you had originally -- I believe you had said you
13 were talking -- you were locked up in jail on other
14 charges; is that right?
- 15 A. Yes, sir.
- 16 Q. And those were the charges you eventually pled to,
17 the robbery and other charges.
- 18 A. Yes, sir.
- 19 Q. And you were talking to a Mr. Sherrer; is that
20 correct?
- 21 A. Yes, sir.
- 22 Q. And did you ever tell him that Lofton was the
23 lookout?
- 24 A. No, I didn't.
- 25 Q. Okay. And by Lofton, there's a Lofton Garvin that

TESTIMONY OF ANTONIO JAVAR WILLIAMS

- 1 lives down at the Hall Street Apartments; is that correct?
- 2 A. Yes, sir.
- 3 Q. And you deny that you ever told him that Lofton was
- 4 the lookout.
- 5 A. I don't remember.
- 6 Q. You don't remember or you say you didn't?
- 7 A. I don't remember telling them that.
- 8 Q. Are you sure you didn't tell him that?
- 9 A. Almost positive.
- 10 Q. Okay.
- 11 MR. BOYD: Thank you. That's all of the questions I
- 12 have.
- 13 THE COURT: Any redirect?
- 14 MR. THOMPSON: Yes, Your Honor.
- 15 REDIRECT EXAMINATION
- 16 BY MR. THOMPSON::
- 17 Q. A. J., how old are you?
- 18 A. 19 years old.
- 19 Q. And they were asking you about the other crimes that
- 20 you were over here on that you pled to that you did ten
- 21 years on now; is that correct?
- 22 A. Yes.
- 23 Q. Are any of those crimes considered violent crimes?
- 24 A. I don't think so, I'm not sure though.
- 25 Q. But you understand basically the grand larceny and

TESTIMONY OF ANTONIO JAVAR WILLIAMS

1 conspiracy and resisting arrest and common law robbery are
2 not violent crimes, correct?

3 A. All right. Yes, sir.

4 Q. And in actuality, ten years on that is something you
5 can be paroled from; isn't that right?

6 A. Yes, sir.

7 Q. And I'm sure your attorney advised you that parole
8 eligibility is one quarter.

9 A. Yes, sir.

10 Q. So a quarter of that you could be paroled from.

11 A. Yes, sir.

12 Q. However, you know that you are going to at least get
13 ten to 20 --

14 MR. CHIARENZA: Your Honor, is this a question?

15 Leading. He can't tell the witness what he knows.

16 THE COURT: Just rephrase your question.

17 Q. What is your understanding of the plea agreement you
18 are going to receive on these charges?

19 A. Ten to 20 years violent.

20 Q. Is that parolable or not parolable.

21 A. Not parolable.

22 Q. So in the explanation that was given to you on that,
23 it's your understanding then is what -- how much would you
24 have to serve?

25 A. Maximum 18 years.

TESTIMONY OF ANTONIO JAVAR WILLIAMS

1 Q. Okay. So if you got 20 you would have to serve 18 of
2 them from your understanding?

3 A. Yes, sir.

4 Q. So does it make a difference then that you are at
5 least -- even if you got a minimum sentence, can it make a
6 difference between the ten you currently have?

7 A. Yes, sir.

8 Q. Now, A. J., in your understanding who was to sentence
9 you? Is it the solicitor's office or the judge?

10 A. The judge.

11 Q. Okay. Now, you had mentioned you entered your plea
12 and the time that you actually entered the deal for your
13 plea I think you said it was December of 2004, right?

14 A. Yes, sir.

15 Q. So about six months ago; is that right?

16 A. Yes, sir.

17 Q. Okay. You said the time of your first statement was
18 December of what year?

19 A. 2003.

20 Q. So a year before that is when you gave that
21 statement.

22 A. Yes, sir.

23 Q. And the second statement was how many days after that
24 first one?

25 A. A couple of days.

TESTIMONY OF ANTONIO JAVAR WILLIAMS

1 Q. Okay. Now, in that first statement I think one of
2 the attorneys asked you something about Terrance McKnight
3 in that statement. I would like to show you a copy of it.
4 In the last sentence of that second page if you turn to
5 the second page and look at the last sentence on that page
6 do you mention about Terrance in that statement?

7 A. Yes, sir.

8 Q. What do you say in that statement about Terrance?

9 A. "Terrance knows what's going on, he put two and two
10 together."

11 Q. Okay. And so in that statement and in that first
12 thing then you told the police about Terrance that time,
13 right?

14 A. Yes, sir.

15 Q. Okay. And that was when, December of 2003?

16 A. Yes, sir.

17 Q. Okay. Now, as part of that plea agreement I believe
18 Mr. Boyd was asking -- discussing a number of things you
19 were going to get out of. He said you had to testify.
20 What testimony is required under your plea agreement?

21 A. I don't remember.

22 Q. Would it help if you saw it?

23 A. Yes, sir.

24 Q. If you will look in number three about the third line
25 down, what type of testimony is required of you?

TESTIMONY OF ANTONIO JAVAR WILLIAMS

1 A. Truthful and forthright statement.

2 Q. All right. And are you telling the truth today?

3 A. Yes, sir.

4 Q. Now, I believe one of the defense attorneys asked you
5 about the different statements given at the time you
6 decided to talk. Did you just decide to talk then or were
7 you caught?

8 A. I was caught.

9 Q. Okay. Terrance McKnight, the day that Willie
10 Cunningham was shot, did he act any differently than you
11 did?

12 A. When it happened?

13 Q. When it happened.

14 MR. BOYD: Your Honor, I am going to object, that
15 calls for a conclusion. He can testify to what he did
16 but --

17 THE COURT: Yes, sir. If -- what I will do is -- ask
18 the witness if he knows and if he can answer the
19 statement. I will allow him to answer it but if he
20 doesn't know he can say he doesn't know.

21 Q. Let me rephrase the question, then it may help you.
22 While it's happening did he do anything different than
23 what you did?

24 A. Not really, no, sir.

25 Q. Okay. I believe defense were talking about things

TESTIMONY OF ANTONIO JAVAR WILLIAMS

1 that were and weren't in statements.

2 MR. THOMPSON: Your Honor, may I approach? I believe
3 this may be taken care of if I can speak with the defense
4 and you at the same time.

5 (A bench conference was held.)

6 Q. A. J. do you remember why it is that the charges that
7 were unrelated, why you pled and asked to be sentenced on
8 those at that time?

9 A. No, sir.

10 Q. Okay. I am going to show you the first statement I
11 believe that you had given to Detective Robbins and ask if
12 you will look at that with me. In that statement did you
13 tell the detective at that time whether or not Lamont
14 McCollum had been talking about robbing Rashad? It was
15 just in the first few lines.

16 MR. BOYD: Your Honor, I would object to that. I
17 don't think this is anything that he was cross examined
18 on.

19 MR. THOMPSON: He was questioned about his
20 statements, showing inconsistencies in his statement.

21 THE COURT: I am going to allow it.

22 A. Yes, sir, I see it.

23 Q. All right. Did you at that time discuss whether both
24 Jaleel and Lamont McCollum had guns?

25 A. Yes, sir.

TESTIMONY OF ANTONIO JAVAR WILLIAMS

1 Q. Did you discuss at that time that the plan was to go
2 knock on the door and get the stash?

3 A. Yes, sir.

4 Q. Did you discuss at that time what would happen if
5 someone was at the trailer what they would do?

6 A. Yes, sir.

7 Q. What did you specifically say about that? I believe
8 it's the second to the last sentence of the first page.

9 A. They would hold them hostage, pull the gun out on
10 them and hold them hostage.

11 Q. If you would read the line from your statement
12 please. It's says on the first page it starts out they
13 said with someone, it's bottom of that first page.

14 A. "Pull the guns out and get it."

15 Q. Okay. Did you tell them that a girl had brought them
16 there?

17 A. Yes, sir.

18 Q. Did you tell them that you were acting as a lookout
19 when this happened?

20 A. Yes, sir.

21 Q. Did you tell them that Lamont McCollum had come to
22 visit Lofton?

23 A. Yes, sir.

24 Q. Did you tell them the type of car you saw the girl
25 driving in?

TESTIMONY OF ANTONIO JAVAR WILLIAMS

- 1 A. Yes, sir.
- 2 Q. Did you describe what type of gun you saw in Lamont's
3 hand?
- 4 A. Yes, sir.
- 5 Q. The size of both Lamont and Jaleel?
- 6 A. Yes, sir.
- 7 Q. I think we already covered the part about Terrance.
8 Have you told them at that same time that they shot Willie
9 Cunningham?
- 10 A. Yes, sir.
- 11 Q. And the statement that you gave just two days
12 following that to the police, I will show you that one as
13 well. This one is dated January 2, 2004. If you would
14 look at that one and go to the part where it's the typing
15 beginning if you would. Now, have you talked about how
16 long you had known Jaleel and Lamont?
- 17 A. Yes, sir.
- 18 Q. Did you tell them y'all were hanging out at that tree
19 that day?
- 20 A. Yes, sir.
- 21 Q. Who did you say in the statement was hanging out at
22 that tree?
- 23 A. Me, Terrance McKnight, Jaleel Page and Lamont
24 McCollum.
- 25 Q. Okay. Did you tell them then also again about the

TESTIMONY OF ANTONIO JAVAR WILLIAMS

1 girl sitting in the car close to the tree?

2 A. Yes, sir.

3 Q. And that you felt that she had given Lamont and

4 Jaleel a ride to the trailer park that day?

5 A. Yes, sir.

6 Q. And you described her as being a young girl in the

7 early twenties?

8 A. Yes, sir.

9 Q. Once again you mentioned in this statement -- you

10 once again mentioned that Jaleel and Lamont discussed

11 about robbing Rashad Simpson?

12 A. Yes, sir.

13 Q. During that statement you also talk about having seen

14 the gun on both Lamont and Jaleel.

15 A. Yes, sir.

16 Q. And you describe those in this statement as well?

17 A. Yes, sir.

18 Q. Did you tell about the confrontation they had when

19 they tried to get Rashad to stop?

20 A. Yes, sir.

21 Q. And they were going to rob him at that time?

22 A. Yes, sir.

23 Q. And that he kept going?

24 A. Yes, sir.

25 Q. Did you tell them at that time you went back to your

TESTIMONY OF ANTONIO JAVAR WILLIAMS

- 1 trailer for a little while?
- 2 A. Yes, sir.
- 3 Q. Did you tell them again that you ended up meeting up
- 4 again with the same group?
- 5 A. Yes, sir.
- 6 Q. Did you tell them here that you were going to get a
- 7 cut of what they got from the robbery?
- 8 A. Yes, sir.
- 9 Q. Did you tell them about the gray fleece hooded shirt
- 10 that Lamont was wearing?
- 11 A. Yes, sir.
- 12 Q. And the clothes that I believe Jaleel was wearing as
- 13 well, a possible black coat?
- 14 A. Yes, sir.
- 15 Q. And you mentioned in this about bouncing the
- 16 basketball; is that correct?
- 17 A. Yes, sir.
- 18 Q. You talk to them here about Lamont on the porch
- 19 wrestling with the victim about the gun, correct?
- 20 A. Yes, sir.
- 21 Q. And you mentioned that Jaleel was on the porch with
- 22 him, correct?
- 23 A. Yes, sir.
- 24 Q. And that after the shots were fired by Jaleel that
- 25 y'all ran, correct?

TESTIMONY OF ANTONIO JAVAR WILLIAMS

1 A. Yes, sir.

2 Q. I'm sorry, shots fired by Lamont. All right. So in
3 the first two statements that contains all of that
4 information, correct?

5 A. Yes, sir.

6 MR. THOMPSON: Thank you. No further questions.

7 THE COURT: Anything else, Mr. Chiarenza?

8 MR. CHIARENZA: No, Your Honor.

9 THE COURT: Mr. Boyd?

10 RECCROSS EXAMINATION

11 BY MR. BOYD::

12 Q. Let me ask you something. You were asked in the plea
13 agreement about the testimony required about telling the
14 truth.

15 A. Yes, sir.

16 Q. And you understand under that who determines whether
17 you are telling the truth or not as far as your plea
18 agreement goes?

19 A. Yes, sir.

20 Q. It's the State that determines whether you are
21 telling the truth, right?

22 A. Yes.

23 Q. Okay. So their interpretation is the truth is what
24 you are judged by on that, right?

25 A. Yes, sir.

TESTIMONY OF ANTONIO JAVAR WILLIAMS

1 Q. And let me ask you about your statement on -- you
2 made a statement on December 31st, Mr. Thompson went over
3 there. That was the time you said you saw all of this
4 from sitting in the car; is that correct?

5 A. Yes, sir.

6 Q. All right. And then two days later on January 2,
7 2004 you made a statement and at that time concerning
8 Terrance you said you knew what was going on; is that
9 correct?

10 A. Yes, sir.

11 Q. And you said he knew what was going on because he put
12 two and two together; is that correct?

13 A. Yes, sir.

14 Q. So he figured out what was going on.

15 A. Yeah.

16 MR. BOYD: Okay. Thank you, that's all I have.

17 THE COURT: All right. You can step down. All
18 right, ladies and gentlemen, we will take a short break,
19 that will give you a chance to move around some, get some
20 refreshments if you need to, smoke if you need to. Just
21 remember, don't talk about the case.

22 (The jury left the courtroom.)

23 THE COURT: The jury is secured. Counsel, we will
24 stand in recess.

25 (A recess was taken.)

TESTIMONY OF ANTONIO JAVAR WILLIAMS

1 THE COURT: Is the State ready?

2 MR. POPE: Yes, Your Honor.

3 THE COURT: Defense ready?

4 MR. CHIARENZA: Yes, Your Honor.

5 MR. BOYD: Yes, sir.

6 (The jury returned to the courtroom.)

7 THE COURT: All parties and attorneys are in the
8 courtroom and the jury has returned. Jurors, we may --
9 because of some of the witnesses nature of their testimony
10 we may have to go a little bit later this evening until
11 say 5:30 or 6:00. Is that going to give anybody a
12 particular problem if we do? Okay. The jury seems to be
13 okay with it. All right.

14 MR. POPE: Please the Court, Your Honor? The State
15 would call special agent Ila Simmons to the stand.

16 The witness, ILA SIMMONS, was first duly sworn and
17 testified as follows, on:

18 DIRECT EXAMINATION

19 BY MR. POPE::

20 Q. If you would, state your name and spell your last
21 name for the court reporter, please.

22 A. My name is Ila Simmons, S-i-m-m-o-n-s.

23 Q. You've got kind of a soft voice. If you would lean
24 into that microphone that might help, the chair won't move
25 here. Could you tell the jury your occupation, please,

TESTIMONY OF ILA SIMMONS

1 ma'am?

2 A. I work for the South Carolina Law Enforcement
3 Division in the forensics department in the area of trace
4 evidence.

5 Q. Okay. And in trace evidence, what is that
6 department? What is it you actually do day to day?

7 A. We analyze gunshot residue, gun powder residue, we do
8 paint comparisons, fiber comparisons. We analyze fire
9 debris and we analyze explosives.

10 Q. And what kind of background in education do you have
11 that qualifies you to perform these type of tests?

12 A. I have a Bachelors of Science in Chemistry. I also
13 underwent a three year training program in the area of
14 trace evidence at SLED. I have attended numerous courses
15 offered by the FBI and the ATF in the area of gunshot
16 residue, gun powder residue and other areas of trace
17 evidence.

18 Q. Have you been qualified as an expert in the past in
19 the field of trace evidence, in the area of trace
20 evidence?

21 A. Yes, sir, I have.

22 MR. POPE: Your Honor, at this time I would tender
23 Ms. Simmons as an expert in trace evidence analysis.

24 MR. CHIARENZA: No objection.

25 MR. BOYD: No objection.

TESTIMONY OF ILA SIMMONS

1 THE COURT: All right. Jurors, let me explain to you
2 what this is. I told you earlier that you are the judges
3 of the weight and the credibility of all of the testimony
4 and all of witnesses involved and that includes what are
5 called expert witnesses. Now, an expert witness is
6 allowed to testify as such because of the particular
7 background, education, training, experience, particular
8 knowledge in a certain area and they're allowed to give
9 what's called an expert opinion in that area. Now, the
10 expert opinion is designed only for your guidance to
11 basically just for your edification in your job and you
12 are free to accept or reject an expert's testimony. You
13 can give -- determine how much weight to give to an
14 expert's opinion. Of course, you are never bound by the
15 opinion. You decide how much weight and credibility to
16 give to it. Any exception to that charge from the State?

17 MR. POPE: Nothing from the State.

18 THE COURT: Defense?

19 MR. CHIARENZA: None, Your Honor.

20 MR. BOYD: No, Your Honor.

21 Q. Agent Simmons, what is gunshot residue?

22 A. Gunshot residue is a mixture of chemicals that come
23 out of a gun when they're fired. They come from the
24 cartridge of a gun. It's a mixture of gun powder, some
25 particles that come from the primer and some particulates

TESTIMONY OF ILA SIMMONS

1 of the bullet or projectile that come out of a gun.

2 Q. When you say cartridge of a bullet, what part is
3 that?

4 A. The cartilage is what is placed in the gun and is
5 fired. It contains a primer, some gun powder and also the
6 projectile or what's commonly known as the bullet that
7 comes out of the gun that strikes a target.

8 Q. We have in evidence an item that you did not receive
9 but it's an item that's State's Exhibit 45 that you did
10 not receive in the trace lab that's been noted as a spent
11 shell casing. Can you describe in context what you're
12 talking about gun powder residue and what that is?

13 A. Yes. This is the cartridge that holds all of the
14 materials that I discussed before. This is one that has
15 already been fired, therefore the bullet has been
16 discharged from this cartridge. And in here you would
17 have a primer that would have chemicals and you would have
18 some powder in the cartridge part here and then you would
19 have the bullet that would come out of the weapon.

20 Q. So in this item it's kind of brass and copper
21 colored, that is where the gun powder and things would
22 have been in?

23 A. In the primer, yes.

24 Q. You also mentioned again an item that's in evidence
25 but you did not receive this item. This lists as a spent

TESTIMONY OF ILA SIMMONS

1 bullet head but you were talking about the cartridge
2 that -- the projectile that actually comes out of that
3 bullet. I would ask you, State's Exhibit 47 and if you
4 would describe what part of the bullet, how that would
5 play into what you are talking about?

6 A. This is the actual bullet that comes out of the gun
7 and would eventually strike a target. This would be
8 crinkled into the cartridge that we showed a moment ago.

9 Q. The actual bullet that comes out, would the gun
10 powder or primer or the thing that you are looking for,
11 would it be on this also?

12 A. It could also be on the projectile itself, yeah.

13 Q. How is it -- the GSR or gunshot residue, how does it
14 actually form? How does it appear, how does it come?

15 A. Well, it's microscopic. But when it comes out of a
16 gun you can sometimes see like a grayish smoke and it
17 comes out in like a cone shaped form out of the muzzle of
18 the gun. Primarily the gunshot residue comes out of the
19 muzzle of the gun but it can also come out of cylinder gap
20 in the revolver when you have a gun that fires and you
21 have the shells that remain in the gun and the cylinder
22 turns, it can come out of the cylinder gap along the
23 cylinder, it can also come out of the ejector port. Like
24 on a semiautomatic weapon where the cartridge casing is
25 extracted and thrown out of the weapon the gunshot residue

TESTIMONY OF ILA SIMMONS

- 1 can come out of that area too.
- 2 Q. You say it's microscopic; is that right?
- 3 A. Yes.
- 4 Q. As far as visible, is the smoke you always see coming
5 from the gun, is that part of it?
- 6 A. That is part of it, yes.
- 7 Q. So when you said it could come out of the end of the
8 gun or out various parts along the gun; is that correct?
- 9 A. Yes, sir.
- 10 Q. What do you -- as far as the GSR and your testing you
11 are looking for the presence or absence of that in your
12 testing; is that correct?
- 13 A. That's correct.
- 14 Q. How would it actually come to be deposited on an
15 individual?
- 16 A. Someone can fire a weapon, therefore it would get on
17 their hands from the gun being fired. Someone can handle
18 an object that has gunshot residue on it and it would be
19 transferred onto their hands or they can be vicinity of a
20 weapon when it was fired and it can get on their hands
21 just from being in the vicinity of a weapon when it's
22 fired.
- 23 Q. Just microscopic material, how long does it remain on
24 your hands?
- 25 A. On a living person it will remain less than six
-

TESTIMONY OF ILA SIMMONS

1 hours. After a six hour time period you will not find any
2 gunshot residue on anyone's hands that's living.

3 Q. Based on this, does SLED have a protocol? In other
4 words, if I have somebody say a week later, month later or
5 week later, will you do a gunshot test on them?

6 A. No, we will not. There would be no gunshot residue
7 left after six hours and there would be no sense to take
8 or analyze the kit.

9 Q. And the actual capturing of evidence before you ever
10 receive it, does SLED prepare or provide a kit for that to
11 law enforcement?

12 A. Yes, we do. We have a company that prepares a kit
13 that we have helped to formulate and specify specific
14 particles for it and we provide that to different
15 agencies.

16 Q. Okay. And the kit itself when it goes to law
17 enforcement, it has instructions on how to take a GSR
18 test; is that correct?

19 A. Yes, it does.

20 Q. What does it basically entail? If I had a kit --
21 which I unfortunately do not -- but if I had a kit right
22 now to use as an example, what would I do with the kit?

23 A. It would have two basic tests in it. The first test
24 would be particle tests which is a piece of tape on a
25 little handle and it's dabbed over the different areas of

TESTIMONY OF ILA SIMMONS

1 the hands. You take one particle, it's called a particle
2 lift, you would take one particle lift from the right
3 palm, you would take another lift from the back of the
4 right hand, one from the left palm and one from the back
5 of the left hand. You would put those away and seal them,
6 then you would take some swabs and treat them a very
7 dilute acid and run those over the hands as well. You've
8 got two swabs from the right palm, you would put those in
9 a test tube, seal them up, two swabs from the back of the
10 right hand and left palm and back of the left hand and
11 that would be another part of the test.

12 Q. In this particular case referring now to your report,
13 you received two GSR kits; is that correct?

14 A. Yes, sir, I did.

15 Q. One is labeled as your item three, which was the GSR
16 kit from Willie Cunningham, the victim in this case that
17 was taken at autopsy; is that correct?

18 A. Yes, sir.

19 Q. The second is the GSR kit labeled your item ten that
20 was taken from Rashad Simpson.

21 A. Yes, sir.

22 Q. And now, when you have that in the lab, you have that
23 properly taken kit, what you are looking for is this
24 gunshot residue; is that correct?

25 A. That's correct.

TESTIMONY OF ILA SIMMONS

1 Q. And that helps you determine if for example they
2 handle the gun or shot a gun or so on and so forth?

3 A. Right.

4 Q. What were your results as far as Mr. Cunningham, the
5 victim, as far as any gunshot residue on his hands?

6 A. We did not find gunshot residue on his hands.

7 Q. How about on Mr. Rashad Simpson, was there any
8 indication of gunshot residue on his hands?

9 A. No. There was no indication of gunshot residue on
10 his hands either.

11 Q. Obviously by virtue of being a victim, Mr. Cunningham
12 was shot. Does the fact he does not have gunshot residue
13 on his hands preclude him from being in proximity of a
14 gun? How does that work?

15 A. No. If your hands are in a situation where they're
16 not in front of the weapon, the muzzle end of the gun, if
17 your hands were out to the side or behind the gun or in
18 some situation like that they may not get gunshot residue
19 on them.

20 Q. If I grabbed the wrist -- if the gun is pointed to me
21 and I grabbed behind the gun then you may not see it on
22 the hands?

23 A. That's correct.

24 Q. You also received the victim's T-shirt and his jeans.
25 In particular, his T-shirt I think you examined a whole in

TESTIMONY OF IIA SIMMONS

- 1 the chest area; is that correct?
- 2 A. Yes, I did.
- 3 Q. What were the results of that?
- 4 A. I did not find gun powder residue on the shirt or
- 5 lead.
- 6 Q. And again, does that mean that he was not shot?
- 7 A. No, it does not.
- 8 Q. What does that tell you as a sign?
- 9 A. It can mean that the weapon was far away from the
- 10 garment so that no gunshot residue reached the garment.
- 11 It could also mean that the garment was very bloody so the
- 12 garment could have had blood on it and it could have
- 13 washed the gunshot residue away.
- 14 Q. So the gunshot residue can be dissolved in a liquid.
- 15 A. Yes. It can be washed away with soap and water.
- 16 Q. And when you say far away or distant, that would be
- 17 opposed to what we commonly know as a contact?
- 18 A. Yes. Where the gun would be pressed directly against
- 19 the skin.
- 20 Q. So based on the fact you do not find gun powder on
- 21 his shirt would not prohibit a close shot but yet not this
- 22 close?
- 23 A. Correct.
- 24 Q. Okay. Also on the black jeans I think that you noted
- 25 the possibility of a hole maybe somewhere in the front of
-

TESTIMONY OF ILA SIMMONS

1 the thigh; is that correct?

2 A. Yes, front right thigh.

3 Q. What were the results of that?

4 A. I didn't find gunshot residue or lead on that hole
5 either?

6 Q. Were you able to ascertain whether there was a
7 gunshot wound?

8 A. I could not tell. It was a round hole and it may
9 have been a gunshot wound so I went ahead and analyzed
10 that hole.

11 Q. So in the evidence you received, you received -- for
12 your part of the SLED lab four items of evidence, two
13 gunshot residue kits, one from the victim, one from his
14 nephew and there was no indication of gunshot residue?

15 A. That's correct.

16 Q. Likewise on the victim's clothing there's no
17 indication of residue; is that correct?

18 A. That's correct.

19 Q. All right?

20 MR. POPE: Thank you, ma'am. Answer any questions
21 the defense may have.

22 CROSS EXAMINATION

23 BY MR. CHIARENZA::

24 Q. Is there any standard for how far or at what distance
25 would you be likely to find it as opposed to what distance

TESTIMONY OF ILA SIMMONS

1 would the likelihood of finding GSR start to go down?

2 A. It changes with the caliber of weapon. With like a
3 .22 it could probably be like maybe 12 inches. As the
4 weapons get larger -- the caliber of the weapons get
5 larger you could be farther away from someone and they
6 could get the gunshot residue on their clothing.

7 Q. And that's because there's more power and more gun
8 powder?

9 A. There's more in each cartridge.

10 Q. You said a .22, would a .25 be comparable to that
11 distance?

12 A. It could be, uh-huh.

13 Q. You would except at a distance greater than 12 or
14 18 inches or so the likelihood of finding some would
15 diminish considerably.

16 A. Yeah, it would diminish.

17 MR. CHIARENZA: I have no further questions.

18 THE COURT: Mr. Boyd?

19 MR. BOYD: I have no questions.

20 REDIRECT EXAMINATION

21 BY MR. POPE::

22 Q. Briefly one question, I may not have made it clear.

23 I think you indicated the gunshot residue kit you received
24 at autopsy, and we talk about the six hour window.

25 A. Uh-huh.

TESTIMONY OF IIA SIMMONS

1 Q. In this particular case the autopsy was of course
2 done the next day.

3 A. Right.

4 Q. Do you treat the six hour window different as a
5 decedent if I'm a victim?

6 A. Yeah. Because when someone is alive their body is
7 perspiring, your skin is absorbing things through the
8 pores. Once someone is deceased this all stops, you are
9 no longer perspiring, you are not absorbing. The body
10 will become like an inanimate object and it remains on
11 there indefinitely until it's removed by an outside
12 source. So the six hour window no longer holds true for a
13 decedent.

14 Q. So based on your protocol, the autopsy was actually
15 had a Monday and the GSR was done, then that would be
16 appropriate, it would give you the opportunity to find or
17 not find residue?

18 A. Yes, that's right.

19 MR. POPE: Thank you.

20 THE COURT: Anything else, Mr. Chiarenza?

21 MR. CHIARENZA: No.

22 THE COURT: Mr. Boyd?

23 MR. BOYD: No.

24 THE COURT: Thank you, ma'am.

25 The witness, TRACY J. THROWER, was first duly sworn

TESTIMONY OF TRACY J. THROWER

1 and testify as follows, on:

2 DIRECT EXAMINATION

3 BY MR. POPE::

4 Q. State your name and spell your last name for the
5 court reporter, please.

6 A. Tracy J. Thrower, T-h-r-o-w-e-r.

7 Q. Can you tell the jury where are you employed?

8 A. I'm employed with the South Carolina Law Enforcement
9 Division, also known as SLED in the forensics building in
10 the firearms department.

11 Q. And in the firearms department, what is it you
12 actually do day to day? What is your job?

13 A. I examine firearms and firearms related evidence,
14 tool mark, tool mark related evidence. I perform general
15 rifle and characteristic examination, serial number
16 restoration, weapons destruction for the State and other
17 physical examinations as necessary.

18 Q. Can you tell the jury what type of background in
19 education you have that allows you to do this type of
20 testing?

21 A. I graduated from Winthrop University with a Bachelor
22 of Science Degree with a major in Biology. The bulk of my
23 training in firearms and firearm identification was
24 received at SLED. During this three year course of
25 instruction that was supervised by court qualified firearm

TESTIMONY OF TRACY J. THROWER

1 examiners in an apprenticeship type role I was required to
2 do extensive reading and studying, I was given written
3 exams, practical exams, oral exams. I was required to
4 perform extensive microscopic comparison. I had to assist
5 examiners in preparing cases. Upon successful completion
6 of my course of instruction and past my final exam I was
7 allowed to work cases on my own. Since then I have
8 attended the federal bureau of investigations specialized
9 techniques and firearm identification school. I have also
10 attended a school put on by the bureau of alcohol and
11 firearms for serial number restoration and I have attended
12 many seminars and conferences on firearm identification.

13 Q. Have you had an opportunity to be qualified as an
14 expert in the past in firearm identification?

15 A. I have.

16 MR. POPE: Please the Court, Your Honor. At this
17 point I would tender Agent Thrower as an agent in firearms
18 identification.

19 MR. CHIARENZA: No objection.

20 MR. BOYD: No objection.

21 THE COURT: Without objection he will be qualified as
22 an expert. Again, ladies and gentlemen, remember an
23 expert is allowed to testify as an expert because of their
24 training, background, experience and knowledge in a
25 particular field, allowed to give an opinion. You are not

TESTIMONY OF TRACY J. THROWER

1 bound by the opinion. You decide how much weight and
2 credibility to give to it. Any exception to the charge?

3 MR. POPE: No, sir, Your Honor.

4 THE COURT: Defense?

5 MR. CHIARENZA: No, sir.

6 MR. BOYD: No, Your Honor.

7 THE COURT: Go ahead.

8 Q. Agent Thrower, for starters if you could, explain for
9 the jury the nature of firearms identification, what it is
10 you try to do or are able to do in your field.

11 A. In firearms identification it's simply a discipline
12 of forensic science in which an examiner attempts to
13 determine if a fired bullet or fire cartridge case or some
14 fired ammunition component was fired from a particular
15 firearm, or in the case if you have multiple bullets it's
16 possible to microscopically compare those bullets to each
17 other and determine if they were fired by a single firearm
18 or by different firearms.

19 Q. Now, what type of markings or indicators are there on
20 the bullets or on the cartridges that we learned about,
21 what is it you are actually looking for?

22 A. I'm examining microscopic striations or scratches or
23 impressions. I am looking at surface contour patterns,
24 just like looking at -- if you drag a rake through sand
25 there's going to be a series of lines and striations and

TESTIMONY OF TRACY J. THROWER

1 you look at the lines and how they compare to each. You
2 look at pattern analysis of how taller the lines, how
3 deeper the grooves between the lines, how the pattern of
4 the lines compare to each other. And by comparing a known
5 versus an unknown you are able to make a determination of
6 whether or not they were fired by the same firearm or not.

7 Q. Okay. And when you are able to make an
8 identification, the given guns, does each gun make a
9 unique mark or how does that work?

10 A. It does.

11 Q. How is that so? If I have got ten Smith and Wessons
12 and .38's how would each one make -- they are all made at
13 the same place, how do they make different marks?

14 A. During the manufacture of a firearm the tools that
15 are used to make the barrel of a firearm for instance are
16 rapidly changing. You're cutting metal, it's a very hard
17 substance. And on a microscopic level too small to see
18 with a naked eye the cutting surfaces of the blades and
19 the tools that are being used to form the inside of that
20 barrel are ever so slightly dulling or ever so slightly
21 changing and it leaves these microscopic scratches or pits
22 or debris that is changing the way that a barrel looks
23 from one end to the other and also the way a barrel -- a
24 barrel on one firearm marks compared to another firearm.
25 Beyond the manufacturer, once a firearm is taken out and

TESTIMONY OF TRACY J. THROWER

1 it started a fire any sort of rust, corrosion, the way the
2 firearm is used, the way the firearm is cleaned, all of
3 those things can cause a barrel to change especially at a
4 microscopic level. All of these things make that barrel
5 more and more individual, more and more unique.

6 Q. In a given case if you receive evidence such as
7 bullets or cartridges, then you receive a gun, if it's a
8 questioned gun, are you able to look at that and determine
9 whether it matches those bullet or those cartridges to the
10 exclusion of any other gun? Is that that unique?

11 A. Yes, sir. I think that is the case.

12 Q. I would like if you could, you received a number of
13 items in this particular case; is that correct?

14 A. Yes, sir.

15 Q. And in particular from the crime scene I'm referring
16 to your report now, you received what is listed as your
17 item four which is designated as a bullet from the right
18 back of Willie Cunningham that was received in autopsy as
19 State's Exhibit 51. You received that item?

20 A. Yes, sir.

21 Q. Okay. Also call your attention to what's listed as
22 your item six here designated as one spent bullet from

23 Drive I think is reflected in your report and you
24 also received that. That is designated as State's
25 Exhibit 47.

TESTIMONY OF TRACY J. THROWER

1 MR. POPE: With the Court's permission I want to ask
2 if Agent Thrower can step down, please.

3 THE COURT: Yes, sir, you may step down.

4 Q. If you could, let's take State's Exhibit 45, which is
5 a spent shell casing. Could you show the jury -- and
6 they've seen it earlier, but show them what is a case or
7 cartridge, what part of the bullet is that?

8 A. This is a cartridge case. And a cartridge case is
9 simply the container that holds the other components of an
10 unfired cartridge. What you see here is the silver
11 looking area in the rear of the cartridge, that's the
12 primer. That is the ignition component of a cartridge.
13 Inside the cavity or inside -- when you look down inside
14 is where all of the gun powder is stored. That is what
15 causes the -- when it's burned it caused the hot gasses
16 and forces the bullet to travel down the barrel towards
17 the target. But at the end of this is the bullet, that is
18 the actual -- or projectile and that is what travels down
19 the barrel and strikes the target.

20 Q. Using State's Exhibit 47 as an example, can you show
21 how that matches or how that works with a cartridge case?

22 A. This is simply a bullet. This is what travels down
23 the barrel and strikes a target and it fits down inside
24 the cavity.

25 Q. If you can make sure all of the jury can see that,

TESTIMONY OF TRACY J. THROWER

1 please, sir. And that is actually what is placed in the
2 gun to fire; is that correct?

3 A. The combination --

4 Q. The total package.

5 A. The combination of everything I just spoke of,
6 unfired cartridge being a cartridge case, primer, gun
7 powder and bullet.

8 Q. Could you tell the jury the difference between a
9 revolver and a semiautomatic as far as how it pertains to
10 how it handles the bullet?

11 A. In a revolver a revolver has what is called a
12 cylinder. It's a round object with numerous chambers, the
13 chamber being the portion of a firearm into which a
14 cartridge, the entire unit we spoke about is placed. The
15 cylinder rotates around the central axis so that it's --
16 during each pulled trigger a new cartridge is fired.
17 However when you cock it or pull the trigger the whole
18 cylinder rotates allowing the next cartridge to come into
19 play or come into line to be fired. The bullet exits the
20 firearm, the cartridge case remains in the firearm. In a
21 semiautomatic pistol you have a magazine. A magazine
22 holds all of the unfired cartridges. If you can imagine
23 my hand being a gun, you have got a slide that rotates in
24 a forward and backward motion. During firing when you
25 load it and say if you pull the slide back the slide grabs

TESTIMONY OF TRACY J. THROWER

1 a cartridge out of the magazine and loads the cartridge
2 into the barrel. When you pull the trigger it fires, the
3 bullet travels down the barrel towards the target. Due to
4 all of the pressure from all of the hot gasses that are
5 pushing the bullet down the barrel are also causing the
6 slide to go backwards. When the slide goes backwards the
7 cartridge case is pulled or extracted out of the chamber
8 and then is ejected out of either firearm leaving the
9 cartridge casing out at the scene.

10 Q. That was going to be my question. On a revolver
11 based on your experience, the cartridge -- unless I opened
12 it and dumped it out, the cartridge would remain within
13 the gun to leave with me if I chose to do so, right?

14 A. Yes, sir.

15 Q. On a semiautomatic it kicks them out unless I take
16 the time to take them out; is that correct?

17 A. Yes, sir.

18 Q. Now, as far as using the cartridge itself, a spent
19 cartridge, would you be looking for identifying marks on a
20 cartridge?

21 A. On a cartridge case, a fire cartridge case there are
22 numerous areas we can look for identifiable markings. The
23 first and foremost on the rear area here known as the
24 head, this is where I find identifiable markings as to
25 what caliber the markings that the manufacturer put on it.

TESTIMONY OF TRACY J. THROWER

1 As I told you before all of those exploding gasses are
2 burning gasses that are pushing down the barrel will put
3 qualifiers on this cartridge face shoving it into the gun
4 or breach face area. Any abnormalities that are on this
5 breach face area of the gun they are pressed into this
6 area we can look for and those are known as preface
7 markings and we can look at those. The fire pin is that
8 portion of the firearm that strikes cartridge case in the
9 area and causes the cartridge to fire. When the firing
10 pin strikes the case it puts a dent in the middle of the
11 primary as you see right here. We were able to look for
12 firing pin depression marks. If a gun has a striker that
13 is the hook that grabs this rim area and pulls the
14 cartridge case out of a gun after it's fired there can be
15 extractor marks. If the gun has an ejector you will be
16 looking for ejector marks. The extractor is pulling the
17 cartridge case out of the gun, the ejector is what pushes
18 the cartridge case out. The striker is merely pulling the
19 cartridge out of the chamber, the ejector strikes the
20 cartridge and forces the cartridge case out of the gun.
21 There are chamber marks, that portion of the firearm to
22 which a cartridge is loaded. Think of it as cylinder.
23 The cartridge is in here, all of this pressure -- the
24 burning gasses that are pushing the bullet down the barrel
25 and trying to remove the cartridge from the gun are also

TESTIMONY OF TRACY J. THROWER

1 causing the walls -- the outside areas to expand against
2 the inside chamber. And as that cartridge case is being
3 pulled or pushed out of the chamber the walls of the
4 cartridge are expanding and dragging across the inside of
5 the chamber and therefore leaving scratch marks on the
6 outside of the cartridge case.

7 Q. Okay. Now, on the bullet -- I hope I'm calling it
8 right, the bullet that actually comes out, where do you
9 look for items of identification on that?

10 A. I look for the rifle markings. The inside of a
11 handgun or a firearm has what is called rifling. Rifling
12 is placed there by the manufacturer. It is a series of
13 spiraling grooves that are placed on the inside of the
14 barrel. The reason for these grooves is to cause the
15 bullet to spend as it travels from the barrel to the
16 target. The reason we want the bullet to spin is for
17 stability. If you have ever thrown a football or seen a
18 football thrown, if a football is thrown end over end it's
19 not accurate, it does not go far or where you intend to
20 throw it. A bullet is the same way. If you throw a
21 football and it's got a nice tight spin on it, you've seen
22 the quarterbacks in the Super Bowl throw it, they can
23 throw it as far as they want, it's very accurate or makes
24 it more accurate. So that is the reason they put rifling
25 on there is simply a series of grooves that are cut or

TESTIMONY OF TRACY J. THROWER

1 etched inside of a barrel and they rotate or twist. If
2 you look at the bullet you can see them, they are just
3 little impressions that are on the outside of the bullet.

4 Q. Now, when you do your testing at SLED, do you mark or
5 alter the bullets that are doing anything so you can
6 identify the bullets? Do you put any markings on them?

7 A. I do. I describe a case number, item number and my
8 initials.

9 Q. Would that be true both for bullets and cartridge
10 casings?

11 A. I mark all evidence on items, number and initials.

12 Q. I want to call your attention now to the bullets that
13 you received, which make sure -- the one you hold in your
14 hand I believe is State's Exhibit 47, and then you also
15 received State's Exhibit 51, which was designated as the
16 bullets from the right back. With those two bullets, what
17 were you able to do or what testing were you able to do
18 and why if you could explain to the jury?

19 A. The first thing I did is I got departmental
20 worksheets. I documented everything about the bullet that
21 I could document as to construction, diameter, weight,
22 number of lands and grooves, direction and twist, the
23 width of land grooves, the land grooves being the land.
24 Land is simply the grooves that in that rifle.

25 Q. When you said direction or twist, what does that

TESTIMONY OF TRACY J. THROWER

1 mean?

2 A. The grooves as they go down the barrel they can
3 either go clockwise or counter clockwise. And that just
4 simply determines which direction the bullet is going to
5 spin, whether it's clockwise or counter clockwise.

6 Q. Do certain manufacturers use clockwise and some use
7 counter clockwise, does that help you determine any type
8 of gun?

9 A. Yes, it does. When we do a rifling characteristics
10 type of examination we look at first class
11 characteristics. Class characteristics are
12 characteristics that the manufacturer determines that he
13 wants to place in the firearm barrel, such as number of
14 lands and grooves in the rifling. Does he want five, six
15 or does he want nine? You look at the direction, the
16 grooves lean to the left, do they lean to the right? Is
17 the rotation in the barrel going to be in a clockwise
18 fashion or in a counter clockwise fashion? We measure how
19 wide each of the lands and grooves are. You take all of
20 these things and we can plug into a program that's
21 provided to us by the federal bureau of investigations and
22 by putting all of these measurements into that program,
23 and also simply the diameter of the bullet, what caliber
24 of firearm, if we place this into this program and it
25 searches a database and gives us a list of the known

TESTIMONY OF TRACY J. THROWER

1 firearms with those type characteristics so we are able to
2 produce a list of what firearms could have possibly fired
3 this bullet.

4 Q. What characteristics -- and again, for example when
5 you are holding -- you need your report?

6 A. Yeah.

7 Q. If you are holding your item six in your hand I
8 believe at this point this is designated State's
9 Exhibit 47, you took the two fired bullets and compared
10 your items four and your item six; is that correct?

11 A. Yes.

12 Q. What characteristics, what were you able to determine
13 about the bullets recovered from the victim's back and the
14 bullet recovered from his groin? What were you able to
15 determine characteristically first and then what was your
16 conclusion?

17 A. That they were most consistent with being bullets
18 that were loaded into a .25 auto caliber cartridge, that
19 they had six grooves, six lands and grooves with a left
20 hand twist. From that I was able to produce a list of
21 possible firearms that could have fired it. And then I
22 look at them microscopically using a comparison
23 microscope, which a comparison microscope is simply two
24 microscopes that sit side by side that are connected
25 optically into one set of objects. So when I look through

TESTIMONY OF TRACY J. THROWER

1 the microscope I can literally see both objects
2 simultaneously sitting side by side under the same
3 magnification. I can rotate both bullets at the same time
4 together so I can view both parts of the bullet at the
5 same time. By using this comparison microscope and
6 looking at the microscopic striations that are visible on
7 these two bullets I was able to determine they were both
8 fired by the same firearm.

9 Q. And is that the same type of firearm or what does
10 that mean? When you say the same firearm, to the
11 exclusion of any other?

12 A. They were fired by the same firearm and only one
13 firearm fired these bullets. They were both fired by one
14 gun.

15 Q. I will now call your attention to the cartridges that
16 you previously have shown the jury and get the states
17 numbers -- the spent casings 45 and 46 designated as your
18 number seven and eight. What determinations were you able
19 to make from that?

20 A. That two cartridge casings were also fired by a
21 single firearm and they were also .25 auto caliber
22 cartridge casings.

23 Q. Were they a specific brand or type? Is there a
24 designation on these cartridges?

25 A. On the head stamp it had a R-P .25 auto head stamp

TESTIMONY OF TRACY J. THROWER

1 which tells me it's a Remington, it's produced by
2 Remington or under their other name UMC or Union Metlick
3 Corporation.

4 Q. And those two fired .25 auto, is that consistent with
5 that?

6 A. Yes, sir.

7 Q. As far as the type of bullets that you have, the
8 bullets that you showed us earlier, is that consistent
9 with the .25 caliber as far as size and Remington
10 ammunition?

11 A. The two bullets that I looked at were the same
12 caliber and construction, and they were also consistent in
13 construction with a bullet that is normally loaded in
14 Remington .25 auto caliber cartridges.

15 Q. So you were able to say from your testing the two
16 bullets came from the same gun?

17 A. Two bullets from fired by a single firearm.

18 Q. Next on the two cartridges you were able to say that
19 they those two came from the same gun fired by the same
20 firearm?

21 A. The two cartridge casings were fired by a single
22 firearm.

23 Q. As far as saying that all four came from one gun, are
24 you able to say that?

25 A. I can say that the two bullets were fired by one gun,

TESTIMONY OF TRACY J. THROWER

1 the two cartridges were fired by the one gun. I cannot
2 tell if it was the same gun or not.

3 Q. The ammunition is of a consistent type, that much is
4 true; is that correct?

5 A. The two bullets were of a construction that I would
6 expect to find loaded into a Remington .25 auto
7 cartridge.

8 Q. Explain to the jury what component is missing. In
9 your technology normally you can say the cartridge and
10 bullets came from the same gun. How is it you do that?
11 What do you need to do that?

12 A. I need the gun. If the appropriate gun was submitted
13 for examination I would document that gun, I would take
14 that gun using laboratory ammunition, I would then test
15 fire that firearm in the laboratory in our water tank and
16 retrieve known fired cartridge cases and known fired
17 bullets because I fired them, I know they came from that
18 gun. I would then take these known or my test specimens
19 and microscopically compare them to each other using the
20 comparison microscope and see if the markings that were on
21 them were an individual, if they were reproducible and see
22 if the cartridge cases were fired, if I can tell this gun
23 is marked in a way that I know these cartridges were fired
24 by this gun. I then take the cartridge cases that I know
25 were fired by the gun and I can compare them to the

TESTIMONY OF TRACY J. THROWER

1 cartridge cases that were at the scene. By comparing the
2 same markings I am able to determine if the unknowns were
3 fired by a particular handgun.

4 Q. And in this particular case from York PD, did you --
5 over the course of a year or so did you receive a number
6 of guns submitted at different times of various calibers
7 and various types to try and compare? In other words, did
8 you make an attempt?

9 A. Yes, sir. I received numerous guns.

10 Q. To this day have you received the gun?

11 A. I have not received the correct gun. I have not been
12 able to make a perfect identification.

13 Q. Thank you, sir, you may have a seat.

14 MR. POPE: Answer any questions the defense may have.

15 THE COURT: Cross?

16 CROSS EXAMINATION

17 BY MR. CHIARENZA::

18 Q. Just briefly, Your Honor. All right. So nothing in
19 your testing would rule out the possibility that all four
20 of these items came from the same gun, right?

21 A. No, sir. It's possible all four -- the two bullets
22 and two cartridge cases may have been fired by the same
23 firearm but I cannot tell that.

24 Q. Right. You've worked, what, hundreds of cases
25 involving doing forensic analysis and bullets and casings

TESTIMONY OF TRACY J. THROWER

1 and things of that nature?

2 A. Yes, sir. I work many cases.

3 Q. I understand you are a scientist, I'm a lawyer so we
4 couldn't be further apart probably. But I am going to ask
5 you just to render an opinion if you're comfortable doing
6 that. Given the casings that you got in this case, which
7 were only these two and the bullets you got from this
8 case, which are only these two, and the fact that the
9 bullets are consistent with that tape of casing and both
10 the bullets and casings are consistent with a particular
11 caliber gun, would you say it's more likely than not --
12 not asking for a scientific conclusion but just your gut
13 feeling, that these four things came from the same
14 firearm?

15 A. It is possible, I cannot testify to gut feeling. I
16 can only testify to the evidence that I look at and the
17 conclusions that I render from examining that evidence.

18 Q. You can testify to your gut feeling, I'm giving
19 you -- allowing you. Give me an opinion. You've worked
20 hundreds of cases like this.

21 A. All I can state is the two bullets were fired by one
22 gun, the two cartridge casings were fired by one gun.

23 Q. You have no opinion as to whether or not they
24 probably came from the same gun.

25 A. I cannot testify to that, no, sir.

TESTIMONY OF TRACY J. THROWER

1 Q. Okay. But you can rule out the fact that they
2 certainly could have come from this same gun?

3 A. It is possible.

4 Q. Okay. One more question. Anything about all of the
5 analysis you did tend to lead to the fact -- do you know
6 who shot the gun or either gun or any gun in this case?

7 A. No, sir, I do not.

8 Q. Okay.

9 MR. CHIARENZA: Thank you.

10 THE COURT: Mr. Boyd?

11 MR. BOYD: No questions, Your Honor.

12 THE COURT: All right. Anything else from the State?

13 REDIRECT EXAMINATION

14 BY MR. POPE::

15 Q. Just one question. With this ammunition I think I
16 saw in your report is designated as a .25 auto, can a
17 revolver -- is there such thing as a .25 revolver? Can it
18 shoot that ammunition?

19 A. I'm not aware of any revolver chambered in .25 auto,
20 that's not to say there's not one out there that I simply
21 do not know about. But there's always the potential to
22 buy or to make a subcaliber device that would simply allow
23 a round that is not designed for a specific firearm to be
24 fired in it. They make subcaliber devices that allow
25 handgun ammunition to be fired in shotguns simply by

TESTIMONY OF TRACY J. THROWER

1 placing -- you can think of it as taking this cartridge,
2 wrapping tape around it so that it fits snugly inside the
3 chamber of another firearm and that would allow it to be
4 fired in something else. But I don't know of any other
5 .25 caliber revolvers.

6 Q. And again, if it was a revolver you wouldn't
7 necessarily expect to see it have kicked the cartridge --
8 if it's a recovery you wouldn't expect to see this
9 cartridge from the shooting mechanism.

10 A. Correct. If it is a revolver I would not expect to
11 find the cartridge cases.

12 MR. POPE: Thank you, sir.

13 THE COURT: Anything else?

14 MR. CHIARENZA: No, Your Honor.

15 MR. BOYD: Nothing.

16 THE COURT: You may step down. Ladies and gentlemen,
17 the next witness may take a little while so rather than
18 have you stay here too late this evening it will be better
19 that you come back in the morning and get started. With
20 that in mind I will ask you to be here at 9:30. This time
21 we will be here at 9:30, no Chief Justice, nobody calling
22 me away this time. We will get started at 9:30 and I will
23 ask you to be back then. Remember, don't talk about the
24 case, and also particularly important, remember to stay
25 away from any sort of newspapers or anything like that

TESTIMONY OF SARA ROBBINS

1 right now. See you then.

2 (The jury left the courtroom and court adjourned for
3 the evening and resumed at 9:30 a.m. on May 26,
4 2005.)

5 THE COURT: All parties and attorneys are in the
6 courtroom and all of the jurors have returned.

7 The witness, SARA ROBBINS, was first duly sworn and
8 testified as follows, on:

9 DIRECT EXAMINATION

10 BY MR. POPE::

11 Q. Mrs. Robbins, if you would state your name and spell
12 your last name please, ma'am.

13 A. Sara Robbins, R-o-b-b-i-n-s.

14 Q. Would you tell the jury where you are employed?

15 A. City of York Police Department.

16 Q. What are your duties there at the City of York Police
17 Department?

18 A. I am detective lieutenant and I'm over
19 investigations. I assign reports, investigate reports,
20 follow-up on things. I'm also our department
21 accreditation manager.

22 Q. Should I call you lieutenant or detective?

23 A. Either one.

24 Q. Okay. How long have you been in law enforcement?

25 A. 23 Years.

TESTIMONY OF SARA ROBBINS

1 Q. How long have you been with the York Police
2 Department?

3 A. 23 years.

4 Q. I am going to call your attention back to Sunday,
5 March 16th of 2003. I assume you were with York Police
6 Department that Sunday?

7 A. Yes.

8 Q. What was your duty or capacity as far as your police
9 department that day?

10 A. I was off duty that day. It was a Sunday afternoon
11 and I received a call in reference to a shooting at
12 Meadowbrook Trailer Park and I responded to the scene.

13 Q. And back then in 2003 were you a detective lieutenant
14 at that point?

15 A. Yes, I was.

16 Q. Okay. And the first place you came when you received
17 a call you said you went to the scene?

18 A. Yes.

19 Q. When you went out to the scene, what did you find?
20 What was going on at the time you arrived at the scene?

21 A. There were a good many people out there and crime
22 scene had already -- it was protected, the crime scene
23 tape was out, there were a lot of officers out there. The
24 ambulance had already left with Mr. Cunningham so I did
25 not see him. He was already gone at that time.

TESTIMONY OF SARA ROBBINS

- 1 Q. Okay. And at that point with the physical crime
2 scene being processed, what was your role or what was your
3 duty? What did you do at that time?
- 4 A. At that time I was informed that Rashad Simpson was
5 going to the police department to give a statement and I
6 went up there to take a statement from him and also to do
7 a gun residue kit on him.
- 8 Q. Let me ask you, York Police Department, what size
9 department is it? How many people do you have?
- 10 A. We have 34. We have about 28 or 29 sworn officers.
- 11 Q. Okay. As far as like detectives or investigators,
12 how many folks did you have back then?
- 13 A. At that time I had two.
- 14 Q. Is that including yourself?
- 15 A. Yes.
- 16 Q. Okay. Did you actually call on another agency for
17 assistance in this case?
- 18 A. Yes, we did.
- 19 Q. Who was that?
- 20 A. We called on the State Law Enforcement Division.
- 21 Q. In addition to the State Law Enforcement Division as
22 far as running down any leads or doing any investigation,
23 it was you and who was the other detective?
- 24 A. Detective Naylis.
- 25 Q. I know everybody watches television, but as far as

TESTIMONY OF SARA ROBBINS

1 actually doing an investigation, what is it as a detective
2 that you do? What kind of things do you do and what kind
3 of things do you generate? Tell the jury what you do.

4 A. Okay. When detectives respond to a crime scene they
5 process the crime scene, photograph, look for evidence,
6 collect evidence, which all of that is called processing
7 the scene. We interview people who were present, we knock
8 on doors, talk to people, follow-up on leads. We receive
9 calls from citizens, we talk to other officers who
10 responded before we did, talk to them, see what they may
11 have learned or what they may have observed, and generally
12 just in general following up on everything that we
13 possibly can.

14 Q. What is the role of a case agent or the case officer
15 in the case? What do they do in addition to everything
16 else?

17 A. In addition to all of that, keeping up with
18 everything, keeping everything documented, having all of
19 the paperwork, statements, crime lab reports, incident
20 reports, notes, everything.

21 Q. And so in this particular case -- of course I am
22 narrowing it down to -- there wasn't but two of you at
23 York PD, who acted as case agent or repository of all of
24 your information in this case?

25 A. I was.

TESTIMONY OF SARA ROBBINS

1 Q. Okay. And you receive the various statements,
2 reports. Is that the box that you brought with you today?

3 A. Yes.

4 Q. Okay. From that day, that Sunday in March 16th of
5 2003, how did your investigation proceed? You said first
6 that you had talked to Rashad Simpson?

7 A. Yes, I did.

8 Q. Where was that at?

9 A. At the police department.

10 Q. Okay. And what was your purpose for talking to
11 Mr. Simpson?

12 A. He was the last person that we knew had seen
13 Mr. Cunningham.

14 Q. Did he cooperate with you?

15 A. Yes, he did.

16 Q. Okay. And he gave you a statement?

17 A. Yes, he gave a statement.

18 Q. And you did the -- as we have heard the gunshot
19 residue test on him?

20 A. Yes.

21 Q. And it came back -- he had no gunshot residue?

22 A. That's correct.

23 Q. And did you do this in close proximity to the time of
24 the crime?

25 A. Yes. This was done in probably about an hour after

TESTIMONY OF SARA ROBBINS

1 the incident had occurred.

2 Q. Okay. From that Sunday on once you have done that
3 and you talked to Mr. Simpson, what did you do or what did
4 you have as far as trying to investigate this crime? How
5 did you go about it?

6 A. Well, we didn't have a lot to begin with, we didn't
7 have much of anything. We began by interviewing as I
8 said certain people in prior testimony referred to
9 canvassing the crime scene, knocking on doors,
10 interviewing neighbors, began to talk to family members,
11 talked to people that Mr. Cunningham worked with. In
12 general just trying to -- talking to everybody that we
13 could possibly think of to talk to.

14 Q. Okay. How long did your investigation -- of course,
15 I understand it continues here today as far as being here,
16 but as far as the investigation on the front end, how long
17 did it go on?

18 A. Nine and a half months.

19 Q. Okay. And during that nine and a half months you
20 were talking to different individuals, what other steps --
21 did you follow different leads or deal with different
22 agencies?

23 A. Yes, we did. We followed every lead that we could
24 get. We received bits and pieces of information from
25 different people and we would exhaust everything that we

TESTIMONY OF SARA ROBBINS

1 could as far as following up on that.

2 Q. At some point in your investigation did you get the
3 name of Mr. McCollum, or Mr. Lamont McCollum?

4 A. Yes, I did.

5 Q. Okay. And did you attempt to follow-up information
6 on him?

7 A. Yes, I did.

8 Q. At some point in the investigation did Mr. Jaleel
9 Page's name come up?

10 A. Yes, it did.

11 Q. Did you attempt to follow-up information on him?

12 A. Yes.

13 Q. Likewise with Mr. Williams and Mr. McKnight?

14 A. Yes.

15 Q. Okay. I want to call your attention -- now, this was
16 in March. At some point at the end of July and beginning
17 of August were you able to put a face with the name of
18 Mr. McCollum?

19 A. Yes.

20 Q. Okay. And when you did that, what if any steps did
21 you take to try to further identify Mr. McCollum?

22 A. I obtained a photographic lineup of Mr. McCollum.

23 Q. Okay. And could you just explain to the jury what a
24 photographic lineup is?

25 A. It's a series of photographs of people with

TESTIMONY OF SARA ROBBINS

1 similarities in their facial, composition of their hair,
2 their build. We get these photographs and they're
3 generated on a computer with a software program and the
4 pictures are printed out. We show these pictures to
5 witnesses, victims, etcetera.

6 Q. Now, do you compile these at your department or where
7 was this lineup compiled?

8 A. No, we don't have that capability. We got that from
9 the York County Sheriff's Office.

10 Q. And I show you what's been marked as State's
11 Exhibit 34 into evidence. Is this the photo lineup that
12 you received from York County Sheriff's Office?

13 A. Yes, it is.

14 Q. Okay. And I would ask you if you could tell the jury
15 just briefly how is it that they compiled the photo lineup
16 that the sheriff -- you said y'all didn't have the
17 capability. What did they have that y'all don't have?

18 A. They just have a computer software program where they
19 can just type in you know the facial features, the build,
20 the height, approximate weight, hair style and different
21 things like that and it generates different people that --
22 come up with photos of people who have these similarities.

23 Q. Okay. And once you had this photo lineup, who if
24 anybody did you show it to?

25 A. Rashad Simpson.

TESTIMONY OF SARA ROBBINS

1 Q. Why did you show it to Rashad Simpson?

2 A. When he had given me the statement on the day of the
3 shooting he had told me about some people who had
4 approached him in the trailer park wanting to know where
5 they could buy some weed. He had described this
6 individual --

7 MR. CHIARENZA: Your Honor, I'm going to object to
8 hearsay as to what Rashad Simpson told her.

9 MR. POPE: Mr. Simpson has already been present and
10 been subject to cross examination, Your Honor.

11 THE COURT: Yes, sir. Mr. Boyd, do you want to add
12 anything to it?

13 MR. BOYD: I will join in that motion.

14 THE COURT: Okay. Something else, Mr. Chiarenza?

15 MR. CHIARENZA: Well, and that may be true he has
16 always been subject to direct examination, which means
17 that the information that's being elicited now could have
18 been elicited by the State through their witness through
19 Mr. Simpson. So I did cross examine Mr. Simpson.
20 However, now what this witness says about what Mr. Simpson
21 said is improper and it is hearsay and that's not a
22 hearsay exception that he has already testified.
23 THE COURT: I'm going to overrule the objection
24 counsel. Basically I think it's appropriate for her to
25 testify to her investigation, what she did and the

TESTIMONY OF SARA ROBBINS

1 information she got from the investigation provided it's
2 appropriate. I think that's appropriate. Now, if it's
3 someone who has not been available that might be a
4 different story and in that circumstance I will allow it.
5 Thank you.

6 Q. Based on the statement that Mr. Simpson has already
7 testified to without getting into what Mr. Simpson said,
8 you had a number of individuals that he didn't know who
9 they were that day; is that correct?

10 A. That's correct.

11 Q. Okay. And at this point you had put a face to the
12 name of Lamont McCollum; is that correct?

13 A. Yes.

14 Q. And in this State's Exhibit 34 could you tell me
15 which one is Lamont McCollum?

16 A. Number three.

17 Q. Okay. When you showed this to Rashad Simpson, did
18 you point and say, "One of the guys that you saw on the
19 street that day is in this picture?"

20 A. No.

21 Q. Did you in any way indicate that either A, this was
22 one of the people involved with him on the street or
23 involved in his uncle's shooting?

24 A. No.

25 Q. Did you in any way intimate that he should or

TESTIMONY OF SARA ROBBINS

- 1 shouldn't choose a person in this particular picture?
- 2 A. No.
- 3 Q. Okay. And did he in fact choose one of the
- 4 photographs in the picture?
- 5 A. Yes, he did.
- 6 Q. Which one? Number three?
- 7 A. Number three, Lamont McCollum.
- 8 Q. And he signed this particular sheet, State's
- 9 Exhibit 34 indicating that?
- 10 A. Yes, he did.
- 11 Q. At this point in the investigation it was the end of
- 12 July, beginning of August, why did you not show him a
- 13 photo lineup of Jaleel Page at that point?
- 14 A. I didn't have a photograph. I didn't have any face
- 15 to go along with the name of Jaleel Page.
- 16 Q. After this identification and the photo lineup, did
- 17 you continue to follow evidence and interviews and things
- 18 of that nature, try to find out more about Mr. McCollum
- 19 and Mr. page?
- 20 A. Yes.
- 21 Q. As far as the physical evidence -- we have heard
- 22 testimony as to evidence that was recovered at the scene
- 23 and sent to SLED. Did you attempt to locate the gun that
- 24 would help the firearms guy make a match?
- 25 A. Yes, we did. We sent memos out to other agencies

TESTIMONY OF SARA ROBBINS

1 asking them to let us know if they recovered any weapons,
2 .25 semiautomatic weapons, and if they did they would
3 notify us at that time and we would take those weapons to
4 SLED and have them checked.

5 Q. And did that continue throughout 2003, the various
6 following leads and gathering evidence?

7 A. Yes.

8 Q. And the identification that Mr. Simpson made was as
9 to the -- based on the testimony as to the individuals
10 that had talked to him there on the street about some weed
11 and he walked off from them or whatever; is that correct?

12 A. Yes.

13 Q. Okay. In December of 2003, what if any information
14 about -- or new information did you receive at that time?

15 A. Got a phone call from the detention center that there
16 was an inmate who wanted to talk to us about the
17 Cunningham shooting. And at that point I asked Detective
18 Naylis to go down and talk to this inmate.

19 Q. Who was that inmate?

20 A. Kenyatta Sherrer.

21 Q. That's not A. J. Williams, the guy that testified
22 yesterday.

23 A. No.

24 Q. What was the purpose of Mr. Sherrer talking to you?
25 What information did he have?

TESTIMONY OF SARA ROBBINS

- 1 A. Mr. Sherrer stated that he had been having
2 conversations with A. J. Williams, and that A. J. Williams
3 had told him exactly what happened with the Cunningham
4 shooting and that he was there.
- 5 Q. Had A. J. Williams asked him to contact law
6 enforcement?
- 7 A. No.
- 8 Q. Okay. Had A. J. Williams contacted law enforcement?
- 9 A. No.
- 10 Q. Had you had A. J. Williams tell you anything about
11 being involved in this case prior to that?
- 12 A. No.
- 13 Q. How'did you obtain this evidence after Mr. Sherrer
14 contacted you?
- 15 A. We equipped him with a recording device.
- 16 Q. And that was here at the Moss Justice Center in the
17 holding cell?
- 18 A. Yes, sir.
- 19 Q. And he had the opportunity to talk to Mr. Williams
20 about this case?
- 21 A. Yes, he did.
- 22 Q. Pursuant to that what did you do?
- 23 A. We went to interview A. J. Williams.
- 24 Q. You've talked to A. J. Williams in December 2003 and
25 January 2004?

TESTIMONY OF SARA ROBBINS

1 A. That's correct.

2 Q. At that point did Mr. Williams give you the
3 information as he testified to yesterday?

4 A. Yes, he did.

5 Q. Okay. Prior to him spilling the bones to this other
6 guy, had he ever come and given you -- had he been helping
7 law enforcement?

8 A. No, he hadn't.

9 Q. Okay. Was it fair to say he basically got caught
10 talking to some other guy?

11 A. That's exactly right.

12 Q. Okay. Based on that information were you able to
13 then fit it with any of the leads or any of the other
14 information?

15 A. Yes. It was sort of like putting a puzzle together.
16 Based on the information A. J. gave us it all fit in with
17 the other bits and pieces of information that we had
18 obtained throughout the months.

19 Q. Did you tell Mr. Sherrer or Mr. Williams who to
20 name and who your suspects were? In other words, did you
21 tell them Lamont McCollum or Jaleel Page or Terrance
22 McKnight?

23 A. No, sir.

24 Q. Did you give him any of those names?

25 A. No, sir.

TESTIMONY OF SARA ROBBINS

- 1 Q. Were you able to determine based on your
2 investigation where the four co-defendants -- I'm talking
3 about Mr. Williams, Mr. McKnight, Mr. McCollum and
4 Mr. Page -- where they were from, where they went to
5 school?
- 6 A. They were all from York.
- 7 Q. Okay. At the time of the crime or through your
8 investigation were you able to determine at the time of
9 the crime where Mr. Williams was residing?
- 10 A. Mr. Williams was residing in Meadowbrook Trailer Park
11 on Inwood Drive.
- 12 Q. And that's actually been on one of the State's
13 exhibits, that's in that trailer park?
- 14 A. Yes.
- 15 Q. How about Mr. McKnight, where was he residing?
- 16 A. He was residing in McConnells, just south of York.
- 17 Q. How about Mr. McCollum? Were you able to determine
18 where Mr. McCollum was residing?
- 19 A. Yes. We were able to determine that Mr. McCollum was
20 living in Gastonia.
- 21 Q. How about Mr. Page?
- 22 A. Yes. We determined he was also living in Gastonia
23 with Lamont McCollum.
- 24 Q. Now, had Mr. Page also lived at Ross Cannon at some
25 point with his mother here in York?

TESTIMONY OF SARA ROBBINS

1 A. Yes, he had.

2 Q. Based on the totality of the investigation were you
3 then able to obtain arrest warrants for the charges that
4 we are here today on?

5 A. Yes, I was.

6 Q. Okay. And Mr. McCollum when he was arrested, where
7 was he located?

8 A. Mr. McCollum turned himself into the York County
9 Sheriff's Office.

10 Q. And do you have the information or do you know the
11 information of how old Mr. McCollum was at the time of
12 this crime?

13 A. He was 19.

14 Q. Could you tell the jury what size Mr. McCollum was?

15 A. He was six-four and about 280 pounds.

16 Q. Okay. Mr. Page, where was Mr. Page arrested?

17 A. Clark County in Vancouver, Washington State.

18 Q. Okay. What was his size -- I'm sorry, what was his
19 age when he was -- I'm sorry, when the crime was
20 committed?

21 A. 19.

22 Q. What was his size?

23 A. He was six-four, about 225 pounds.

24 Q. Okay. Did you actually have contact with him when he
25 was brought back from Washington?

TESTIMONY OF SARA ROBBINS

- 1 A. Yes.
- 2 Q. Did he appear bigger than he appears now?
- 3 A. Yes.
- 4 Q. Obviously not taller but physically?
- 5 A. He has lost some weight.
- 6 Q. Mr. McKnight, where was he when the warrants were
7 served on him?
- 8 A. In York. His grandmother or some family member
9 brought him to the York Police Department.
- 10 Q. Okay. How old was Mr. McKnight when this crime took
11 place?
- 12 A. He was 16 at the crime took place.
- 13 Q. Okay. Do you have a height and weight on him at the
14 time of his arrest?
- 15 A. Yes, sir. Five-seven, 160 pounds.
- 16 Q. And Mr. Williams, he was also here when he was
17 charged with this crime?
- 18 A. That is correct. He was here at the York County
19 Detention Center.
- 20 Q. How tall was he?
- 21 A. Five-seven.
- 22 Q. What was his weight?
- 23 A. 130 pounds.
- 24 Q. How old was he?
- 25 A. He was 17.

TESTIMONY OF SARA ROBBINS

1 Q. So Mr. McCollum and Mr. Page were around six-four and
2 Mr. McKnight and Mr. Williams were around five-seven; is
3 that correct?

4 A. Yes.

5 Q. Finally I will call your attention to December 17,
6 2004. And was there a time where Mr. McKnight -- I think
7 you said perhaps his grandmother or somebody brought him
8 to the York Police Department.

9 A. Yes. Officers had gone to his residence and he was
10 not there and someone brought him up to the police
11 department.

12 Q. Okay. Did you and Detective Naylis have an
13 opportunity to sit down -- this is a separate time from
14 when SLED had talked to him at some point earlier; is that
15 correct?

16 A. Yes, that's correct, about a year later.

17 Q. Did you have an opportunity to sit down and have a
18 conversation with him?

19 A. Yes, I did.

20 Q. Okay. Where did that conversation take place?

21 A. At the York Police Department.

22 Q. Okay. In what room or where was it located?

23 A. In the interview room down the hallway.

24 Q. Okay. And who was present when y'all talked to
25 Mr. McKnight?

TESTIMONY OF SARA ROBBINS

- 1 A. Myself and Detective Naylis.
- 2 Q. Okay. When you talked to Mr. McKnight that day, did
- 3 he appear to be under the influence of alcohol or drugs?
- 4 A. No.
- 5 Q. Did he appear to be again coherent and have the
- 6 ability to understand what you were saying and talk to you
- 7 and respond to your questions and visa versa?
- 8 A. Yes.
- 9 Q. Now, clearly at that point at York PD on that date on
- 10 December 17th of '04 he wasn't under arrest; is that
- 11 correct?
- 12 A. Yes, he was.
- 13 Q. Okay. Did you or Detective Naylis threaten him in
- 14 any way or promise him anything?
- 15 A. No, we didn't.
- 16 Q. Okay. Did he appear willing to talk to you?
- 17 A. Yes, he did.
- 18 Q. Okay. Before he talked to you, did you -- at York
- 19 PD, do you have a form that you actually use to -- and of
- 20 course, the jury has heard this issue about the form -- do
- 21 you have a form that you use to advise him of his rights?
- 22 A. Yes, we do.
- 23 Q. I show you what's been marked as State's Exhibit 54
- 24 and ask if you can identify that, please, ma'am?
- 25 A. Yes. This is the advisement of rights and Miranda.

TESTIMONY OF SARA ROBBINS

1 Q. Is that the actual form that you used that day when
2 you talked to them?

3 A. Yes, it is.

4 MR. POPE: Your Honor, at this time I would move
5 State's Exhibit 54 and subsequently there will be attached
6 statements, State's Exhibit 54 into evidence.

7 THE COURT: Any objection.

8 MR. CHIARENZA: Subject to my same stated earlier.

9 MR. BOYD: Yes, Your Honor, subject to previous
10 objections.

11 THE COURT: Subject to that we will allow it to be
12 admitted.

13 Q. I'm going to ask you if you could -- State's
14 Exhibit 54, if you could indicate what this document is
15 and what you went through with Mr. McKnight?

16 A. This is the advisement of rights. "Before we ask you
17 any questions you must understand your rights. You have
18 the right to remain silent. Anything you say can be used
19 against you in a court of law. You have the right to talk
20 to a lawyer and to have him present while you are being
21 questioned. If you cannot afford to hire a lawyer one
22 will be appointed to represent you before any questioning
23 if you wish. If you consent to answer questions now
24 without a lawyer present you will still have the right to
25 stop answering at anytime." And then the waiver of rights.

TESTIMONY OF SARA ROBBINS

- 1 Q. Back to the rights. Did he appear to understand
2 that?
- 3 A. Yes, he did.
- 4 Q. Did he understand what they meant?
- 5 A. Yes, he did.
- 6 Q. Did he ever question you about it?
- 7 A. No, he didn't.
- 8 Q. At this point who was present in the room?
- 9 A. Myself and Detective Naylis.
- 10 Q. At that point you went to the waiver of rights or
11 asked him if he would be willing to wait. How did that
12 take place?
- 13 A. I just told him that I had some questions I wanted to
14 ask him and for him to answer yes or no, like yes or no.
15 "Do you understand each of the rights I have explained to
16 you? Answer, yes. Having these rights in mind do you now
17 wish to answer questions? Answer, yes. Do you wish to
18 answer questions without a lawyer present? Answer, yes."
- 19 Q. And in fact, did he ultimately answer questions and
20 talk to you?
- 21 A. Yes, he did.
- 22 Q. Okay. Did you force him or threaten him or promise
23 him anything to make him sign yes to that?
- 24 A. No, I didn't.
- 25 Q. Now, I call your attention to the bottom of the form.
-

TESTIMONY OF SARA ROBBINS

1 What does that indicate?

2 A. "By my signature below I indicate that I have had the
3 above advisement of rights explained to me. I do
4 understand what my rights are. I have had the above
5 waiver of rights questions asked of me and the above
6 answers are as I stated when asked. I do fully understand
7 what I am doing and I waive my rights and do not want a
8 lawyer at this time." I do so with my own free will and no
9 promise or threats have been asked of me and no pressure
10 or coercion of any kind has been used against me."

11 Q. Who was the signatures there?

12 A. Terrance McKnight. Myself and John Naylis as
13 witnesses.

14 Q. Mr. McKnight signed in your presence?

15 A. Yes, he did.

16 Q. Was there any force or threat?

17 A. No.

18 Q. What if he would have chosen and said, I don't want
19 to write, or, I don't want to sign?

20 A. If he would have said he didn't want to sign it then
21 we wouldn't have questioned him.

22 Q. As far as the questioning itself, how did that
23 actually take place? Is he just talking or are you
24 talking in writing or are you taking notes? How is that
25 taking place?

TESTIMONY OF SARA ROBBINS

1 A. I was taking notes, and after we finished we went
2 when -- I say taking notes, I was writing what he said
3 pretty fast. But after he finished then I went into my
4 office and typed it up and brought it back to him, read
5 over it with him and he signed it.

6 Q. Okay. And that would be the second part of that
7 exhibit?

8 A. Yes.

9 Q. And when it relates to the statement of Terrance
10 McKnight, you took notes, he didn't physically write this
11 out himself, right?

12 A. No.

13 Q. You took notes and you typed it?

14 A. Yes.

15 Q. Okay. Then you went back. Did he have the
16 opportunity to change anything if he wanted to change it?

17 A. Yes.

18 Q. Could he have added anything if he would have wanted
19 to?

20 A. Yes.

21 Q. Is this the form that he desired to leave it in?

22 A. Yes.

23 Q. And he signed at the bottom then?

24 A. Yes, he did.

25 Q. It says end of statement. Who wrote end of

TESTIMONY OF SARA ROBBINS

1 statement?

2 A. I wrote that.

3 Q. What is the purpose of slashing across the page and
4 writing end of statement?

5 A. Just to indicate so that nothing can be added in the
6 middle of where he signed because there was a big blank
7 place in the page.

8 Q. So he couldn't sign a blank page and you could add
9 whatever you wanted to later?

10 A. Exactly.

11 MR. POPE: Permission to publish, Your Honor.

12 THE COURT: Any objection?

13 MR. CHIARENZA: The same one.

14 THE COURT: Okay.

15 Q. I would ask if you could publish this item to the
16 jury, please, ma'am.

17 A. Statement was taken at the York Police Department in
18 the presence of Lieutenant Sara Robbins and Detective John
19 Naylis. After warrants were served on the incident
20 occurring on 3-16-2003 --

21 THE COURT: Jurors, again, remember I told you
22 yesterday that the State is seeking to introduce a
23 statement. Remember, the State must prove to you beyond a
24 reasonable doubt that the defendant made the statement and
25 that secondly that he did so freely and voluntarily

TESTIMONY OF SARA ROBBINS

1 knowingly, intelligently understanding his rights. If you
2 do not find that they have proved either one of those you
3 can't consider the statement in any way. But if you find
4 that they did prove those considering all of the
5 circumstances around this statement then you would
6 determine how much weight and credibility to give to the
7 statement.

8 THE COURT: Any exception to that charge from the
9 State?

10 MR. POPE: Nothing from the State, Your Honor.

11 THE COURT: From the defense?

12 MR. BOYD: None, Your Honor.

13 THE COURT: Mr. Chiarenza?

14 MR. CHIARENZA: None, Your Honor.

15 Q. One thing, Detective Robbins. Mr. McKnight was 16 at
16 the time of the crime, so by this time he's about 17 when
17 he's talking to you?

18 A. Yes, he's 17.

19 Q. Thank you ma'am.

20 A. "I saw Lamont and another guy with guns at the Hall
21 Street Apartment, little pocket guns. Lamont had an
22 automatic .25 silver with a black handle. The other guy
23 had a small revolver, a .32 or something. We went up
24 under the tree at the apartments and smoked weed. Lamont
25 kept on saying that he didn't like Rashad. Rashad had

TESTIMONY OF SARA ROBBINS

1 walked over to the apartments and had went to an apartment
2 in the area and he was clean, he looked nice. Lamont and
3 another guy kept playing with their guns, pulling them out
4 and pointing at us playing. Lamont said he wanted to rob
5 somebody. He had a thing for Rashad and said he was
6 fixin' to rob that nigga. We started walking towards the
7 trailer where Rashad stayed. Me and A. J. was in the road
8 bouncing a ball. Lamont and another guy went up on the
9 porch, they had their hands on their guns inside the
10 pockets of their hoodies. I told A. J. I was fixin' to go
11 and I started walking away down the hill. I heard shots
12 fired and I looked and saw A. J. running and I took off
13 running. We met up behind A. J.'s house and he told me
14 that Lamont shot that man for no reason. This is the real
15 story. I was scared."

16 Q. Did you tell Mr. McKnight what to stay?

17 A. No, I didn't.

18 Q. Did you tell him what A. J. had said in his
19 statement?

20 A. No.

21 Q. Did you give him any names or anything to put in the
22 statement?

23 A. No.

24 Q. Did it appear from talking to him what he was telling
25 you he was doing freely and voluntary?

TESTIMONY OF SARA ROBBINS

1 A. Yes.

2 MR. POPE: Answer any questions the defense may have
3 for you.

4 THE COURT: Cross?

5 CROSS EXAMINATION

6 BY MR. CHIARENZA:.

7 Q. Detective, you investigated this case for nine months
8 or so without charging the four co-defendants who were
9 ultimately charged, correct?

10 A. That's correct.

11 Q. And would it be fair to say that what led you to
12 charge those four co-defendants more than anything else
13 was the statement of A. J. Williams?

14 A. A. J.'s statement that collaborated other leads that
15 we had that we hadn't been able to connect.

16 Q. Those other leads that you had were in your opinion
17 however not enough to charge anyone, correct?

18 A. That's correct, not in and of themselves.

19 Q. Okay. And I'm going to try to go through things that
20 the solicitor went through with you. Regarding the
21 identification that was put up on the screen of
22 Mr. McCollum, you testified that your reason for doing
23 that identification was that you had gotten to a point
24 where you could name -- you could match a name with the
25 face of Mr. McCollum, correct?

TESTIMONY OF SARA ROBBINS

1 A. Yes.

2 Q. And that identification was -- you put that together
3 sometime at the end of July; is that correct?

4 A. Yes.

5 Q. And the reason you were able to match a face with a
6 name was information that you had received in your
7 investigation, correct?

8 A. Yes.

9 Q. And that information was someone had pointed you to a
10 picture of Mr. McCollum, correct?

11 A. Yes. We did have some information pointing to a
12 picture of him in a yearbook.

13 Q. And along with that information was that that person
14 was supposedly the shooter, correct?

15 A. That, and some other information that we had that one
16 of the people involved had actually been arrested at Rock
17 Hill after the shooting of Mr. Cunningham for gun law
18 violations and I had obtained copies of Rock Hill Police
19 Department incident reports of all of the people that were
20 charged with gun law violations and we were able to match
21 that too.

22 Q. I would like to get to that in a second. My question
23 is the information you received regarding the yearbook
24 photo, there's a person in the yearbook who is the shooter
25 in the Cunningham case, correct?

TESTIMONY OF SARA ROBBINS

- 1 A. Yes.
- 2 Q. You went and actually got it. I think it was the
- 3 year 2000 copy of York Comprehensive yearbook, correct?
- 4 A. That is correct.
- 5 Q. You went to the page you were instructed to go to and
- 6 saw the photograph you were instructed to look at,
- 7 correct?
- 8 A. Yes.
- 9 Q. And that photograph was Lamont McCollum, correct?
- 10 A. Yes.
- 11 Q. And it was based on that information that you put
- 12 together the lineup and had Mr. Rashad Simpson look at it,
- 13 correct?
- 14 A. Yes.
- 15 Q. You testified that the reason you didn't put a lineup
- 16 together at that time on Mr. Page is you couldn't match a
- 17 photograph to the name, correct?
- 18 A. That's correct.
- 19 Q. But Mr. Page's name in no way came up with that
- 20 information that you developed from the yearbook, did it?
- 21 A. Not from the yearbook, no.
- 22 Q. And in fact, regarding incident reports from the City
- 23 of Rock Hill, Mr. Page's name was not involved in any
- 24 arrest subsequent to this murder, was it?
- 25 A. No.

TESTIMONY OF SARA ROBBINS

- 1 Q. So at this point in developing information on
2 Mr. McCollum you've got a photo of Mr. McCollum, you've
3 got a lineup of Mr. McCollum based on information that was
4 coming in on Mr. McCollum, correct?
- 5 A. That's correct.
- 6 Q. Okay. And as part of your investigation you
7 interviewed numerous witnesses in the area of the trailer
8 park, correct?
- 9 A. Yes.
- 10 Q. You interviewed in fact one of the witnesses who
11 testified here earlier in this case, Ms. Gaither Williams,
12 correct?
- 13 A. Yes, I did.
- 14 Q. And she gave you information regarding Lamont
15 McCollum, correct?
- 16 A. Yes, she did.
- 17 Q. No time in her statement does she mention Mr. Page,
18 does she?
- 19 A. No. She didn't know him.
- 20 Q. She never said she saw Mr. Page out there, did she?
- 21 A. She said she didn't know Mr. Page so she didn't know
22 if she saw him or not.
- 23 Q. But she never said she saw Mr. Page out there, did
24 she?
- 25 A. No.

TESTIMONY OF SARA ROBBINS

1 Q. Did you ever show her a photograph of Mr. Page at
2 that time?

3 A. No.

4 Q. But you had a photo after you arrested Mr. Page,
5 right?

6 A. Yes.

7 Q. Okay. Did you ever go back to the trailer park and
8 show anybody who lived there a photographic lineup of
9 Mr. Page?

10 A. No. Because at that point it had already been
11 published in the newspaper and television news, I felt it
12 would have been tainted.

13 Q. You never showed any photographic lineups to anyone
14 there of Mr. Page.

15 A. No.

16 Q. And you made the determination that it would be
17 tainted. What do you mean by that?

18 A. Well, it would have been suggested because his
19 picture had already been in the newspaper and on
20 television news the day the arrest warrants were issued.

21 Q. You were incapable of getting a photograph of
22 Mr. Page prior to this information hitting the newspaper,
23 is that what you are telling me?

24 A. Yes, sir.

25 Q. Okay. So you had a suspect, you had a description,

TESTIMONY OF SARA ROBBINS

1 you had his birth date, you had his name, you've got 30
2 officers working at the York Police Department, you have
3 the resources of the State Law Enforcement Division, you
4 have the York Sheriff's Department helping you in this
5 case, the Rock Hill Police Department helping you with
6 this case. And with a name, birth date, I don't know if
7 you had a social security number or not, you couldn't get
8 a photograph of Mr. page?

9 A. Not before the arrest warrants were issued.

10 Q. Why not?

11 A. We didn't have access to one.

12 Q. Did you even attempt to get a photograph of Mr. Page?

13 A. Prior to doing the arrest warrants, no.

14 Q. So it's not true that you didn't have access to one.
15 You never tried to get one.

16 A. The one we got later was from the DMV but that was
17 after the arrest warrants were done?

18 Q. So DMV had one.

19 A. Yes.

20 Q. So all you had to do at any time was ask DMV for a
21 photograph -- if they had a guy named Jaleel Page that
22 they had a photograph of, correct?

23 A. And we did get that, but it was after the arrest
24 warrants had already been done.

25 Q. And who chose to give a press conference in this

TESTIMONY OF SARA ROBBINS

1 case?

2 A. Chief Mobley.

3 Q. Of the York Police Department, correct?

4 A. Yes.

5 Q. Your chief, correct?

6 A. Yes.

7 Q. So you're claiming that you couldn't do a thorough
8 investigation and show people a photo lineup because it
9 was tainted by the press coverage. The press coverage
10 only existed because y'all did a press conference; is that
11 true?

12 A. Yes.

13 Q. All right. You're also saying that at anytime prior
14 to the press conference you could have contacted DMV and
15 actually got a photo of Jaleel Page, correct?

16 A. Yes.

17 Q. Okay. So if you were concerned about tainting the
18 potential witness pool out there, it was completely within
19 the control of the York Police Department to first do a
20 lineup and then do a press conference had they wanted to
21 do it that way, correct?

22 A. Well, at that time we didn't really feel we needed a
23 lineup on him also because we had a codefendant who was
24 also saying, "I was there, I did this and he was there
25 with me."

TESTIMONY OF SARA ROBBINS

1 Q. So why bother to get anymore evidence because we have
2 the truthful and believable A. J. Williams solving this
3 case for us.

4 A. And this was nine and a half months later.

5 Q. Okay. So what you're telling me is because you had a
6 guy in the detention center telling you how this all went
7 down that there was no reason to get anymore evidence in
8 this case, is that what you're telling the jury?

9 A. No.

10 Q. Okay. In fact, did you at anytime after speaking to
11 Mr. Williams collect anymore physical evidence in this
12 case?

13 A. Physical evidence nine and a half months later, no,
14 sir.

15 Q. Did you go and corroborate Mr. Williams' version of
16 things with any people in the trailer park after he spoke
17 to you?

18 A. His version corroborated bits and pieces that we had
19 already learned.

20 Q. Answer my question, please, detective. Did you
21 corroborate Mr. Williams' statement given to you on
22 December 31, 2004 -- 2003 -- after that statement was
23 given to you, did you then go back to the trailer park
24 where this crime occurred to corroborate the details he
25 had given to you?

TESTIMONY OF SARA ROBBINS

1 A. We did talk to other people and were unable to
2 corroborate it until we corroborated it through Terrance
3 McKnight's statement.

4 Q. Another co-defendant.

5 A. Yes.

6 Q. Any other of these witnesses that you spoke to, the
7 dozens of people that you spoke to originally, did you get
8 any corroboration from then?

9 A. All of the people that we had talked to originally
10 had not witnessed anything.

11 Q. And that's what A. J. Williams told you originally,
12 right, that he didn't know anything about it, right?

13 A. That's right.

14 Q. Okay. But nine months later you are willing to
15 accept his changed version of the story. So isn't it
16 possible that some of these other folks might not have
17 told you the truth at first too?

18 A. It's possible.

19 Q. Okay. But you never confronted them with
20 Mr. Williams' now new version of the facts.

21 A. We did talk to some other people.

22 Q. But they didn't corroborate anything he said.

23 A. They did tell us things that he had told them.

24 Q. Okay. So you got just another version of A. J.
25 Williams' story basically, is that what you're saying?

TESTIMONY OF SARA ROBBINS

1 A. Yes. There were several people.

2 Q. And isn't it true that Mr. Williams was getting
3 information about things himself while he was down in the
4 detention center?

5 A. No.

6 Q. Didn't Mr. Williams tell you that he heard while he
7 was in jail that the girl who came down there might be
8 Lamont's mother of his child?

9 A. I don't remember that.

10 Q. That's not in any statement you took from
11 Mr. Williams. I will be happy to find it, detective, if
12 you want to.

13 A. I just don't remember it, it may be. I don't recall
14 that.

15 Q. Okay. And Mr. Williams was in jail on three other
16 charges carrying a potential sentence of 31 years when he
17 started talking about this crime, correct?

18 A. That's correct.

19 Q. And of all of the people down in the detention center
20 he spoke to an individual named Kenyatta Sherrer, correct?

21 A. Yes.

22 Q. And Kenyatta Sherrer is an individual who has worked
23 hand in hand with the York Police Department in the past,
24 correct?

25 A. Yes, he has.

TESTIMONY OF SARA ROBBINS

- 1 Q. Okay.
- 2 A. But he wasn't at that time.
- 3 Q. When this initially happened you were trying -- well,
- 4 you looked at a number of people as potential suspects,
- 5 right?
- 6 A. Yes, we did.
- 7 Q. In fact as probably a natural course of police
- 8 investigation you looked at Mr. Simpson because he was the
- 9 last person to see Willie Cunningham alive, correct?
- 10 A. Yes.
- 11 Q. You also just as a natural course of investigation
- 12 had to determine whether or not his wife had anything to
- 13 do with it, correct?
- 14 A. Yes.
- 15 Q. Tell me about your investigation of Joyce Cunningham.
- 16 A. She was ruled out as having had involvement.
- 17 Q. Okay. So you interviewed Joyce Cunningham, didn't
- 18 you?
- 19 A. Yes.
- 20 Q. And as a result of speaking to her you believe she
- 21 had nothing to do with the killing of Willie; is that
- 22 correct?
- 23 A. That's correct.
- 24 Q. So you believed what Ms. Cunningham told you then?
- 25 A. The evidence shows that Ms. Cunningham had nothing to

TESTIMONY OF SARA ROBBINS

1 do with it.

2 Q. Okay. So Ms. Cunningham has told you various things
3 and as corroborated by the evidence, then you believe what
4 Ms. Cunningham told you.

5 A. Yes.

6 Q. Any reason to believe that she's not been truthful
7 with you?

8 A. No.

9 Q. Okay. One of the things Ms. Cunningham told you is
10 that Willie was a very safety conscious individual; is
11 that correct?

12 A. Yes.

13 Q. She told you Willie wouldn't open the door for
14 somebody he didn't know, correct?

15 A. Yes.

16 Q. She even told you he must have known the people who
17 were out there, correct?

18 A. Yes.

19 Q. Now, when A. J. Williams first started speaking about
20 this crime he didn't indicate a real familiarity with my
21 client, did he?

22 A. On a first name basis, yes.

23 Q. Well, in fact, at one point he told you he didn't
24 know his name; isn't that correct?

25 A. The way he was saying the name it sounded like he was

TESTIMONY OF SARA ROBBINS

- 1 saying Jaleeya (phonetically).
- 2 Q. Well, the indictments in this matter name my client
- 3 Jaleel Page otherwise known as Jameel Page; is that
- 4 correct?
- 5 A. Yes. That's what the indictments say.
- 6 Q. And this otherwise known as Jameel, the only source
- 7 of that otherwise known as is from what y'all were hearing
- 8 from A. J. Williams, correct?
- 9 A. Yes.
- 10 Q. Okay. You had put Jameel Page in some of your
- 11 earlier paperwork because that's what A. J. was calling
- 12 him.
- 13 A. That's what it sounded like he was saying at first.
- 14 Q. Okay. And originally when you spoke with A. J.
- 15 Williams he denied having any knowledge of this situation;
- 16 is that correct?
- 17 A. That's correct.
- 18 Q. And you spoke to him again at some point and I think
- 19 you were speaking to him and Adrian Byars and they
- 20 continued to deny any knowledge of this situation,
- 21 correct?
- 22 A. That's correct.
- 23 Q. You did a summary in this case, is that correct,
- 24 Detective?
- 25 A. Yes. Sort of a sequence of events.

TESTIMONY OF SARA ROBBINS

1 Q. I'm sorry?

2 A. A sequence of events. I believe I wrote summary on
3 there, it was kind of long.

4 Q. Do you have a copy of it?

5 A. Yes.

6 Q. Just on the top it has -- it says murder, right?

7 A. Yes.

8 Q. These are your notes, right, pursuant to your
9 investigation?

10 A. Yes.

11 Q. If you could turn to the fourth page just to make
12 sure you and I both have the fourth page. The first
13 paragraph on this page three lines up from the bottom
14 starting with he said, what does that say?

15 A. On the fourth --

16 Q. Three lines up from the bottom of the first
17 paragraph.

18 A. Oh. "He said he had not seen them since and didn't
19 know Jaleel's name nor the name of the girl."

20 Q. Okay. And your notes there are reflecting what A. J.
21 Williams said, right?

22 A. Yes.

23 Q. Okay. So at one point A. J. Williams told you as
24 summarized in your report here that he didn't know
25 Jaleel's name, correct?

TESTIMONY OF SARA ROBBINS

- 1 A. Correct. He knew Jaleel, he didn't know his full
2 name.
- 3 Q. Well, no, that's not what it says here, Detective.
- 4 A. But he said he didn't know Jaleel's. It's like he
5 said I don't know Jaleel's name.
- 6 Q. Okay. Nowhere in that summary does it say he didn't
7 know Jaleel's full name, does it?
- 8 A. No. He said he didn't know Jaleel's name.
- 9 Q. Right. Okay. And this is your summary made after
10 everyone was arrested, right?
- 11 A. Right.
- 12 Q. Okay. So this is kind of like a time line where you
13 started off with the murder and talk about some of the
14 people you spoke to, what A. J. Williams told you and then
15 it goes all of the way through to the very end of your
16 investigation when the warrants were served, right?
- 17 A. Right.
- 18 Q. So this is your recollection of your investigation,
19 correct?
- 20 A. That's correct. But when he said he didn't know --
21 he said, I don't know Jaleel's name. So he knew Jaleel,
22 he just didn't know --
- 23 Q. How can somebody tell you they don't know the name of
24 a person whose name they're telling you? How is that
25 possible, Detective?

TESTIMONY OF SARA ROBBINS

1 A. Well, that would be like if I said I don't know
2 John's name, I know his name is John but I don't know his
3 full name.

4 Q. Okay. But this doesn't say full name.

5 A. No, it doesn't.

6 Q. And it's not possible, Detective, that really what
7 you meant to say here is that when you first started
8 talking to Mr. Williams he didn't know the name of the
9 second individual.

10 A. He named him, he just didn't give a full name. He
11 didn't say Jaleel Page. He was saying -- what it first
12 sounded like Jameel and I believe I wrote Jameel.

13 Q. And that's the only place you get otherwise known as
14 Jameel, right? Either you heard it wrong or he said it
15 wrong, right?

16 A. Yes, sir, I think so.

17 Q. Okay. So my client doesn't have any sort of alias
18 that you're aware of, did he?

19 A. Not that I'm aware of.

20 Q. Okay. Now, as the course of your investigation went
21 on A. J. Williams' alleged familiarity with my client
22 increased, did it not? Let me clarify that question.
23 Originally he was telling you things like "I don't know
24 his name", whether it was the last name or his full name
25 he said, "I don't know his name." And then he said it was

TESTIMONY OF SARA ROBBINS

1 Lamont and someone named Jameel, that's in your report, is
2 it not?

3 A. Yes.

4 Q. Later on after he's had some time to revise his
5 statement he indicates to you that he and Jaleel are
6 friends; isn't that true?

7 A. I don't remember.

8 Q. Okay. At anytime in any of the three or four
9 versions that Mr. Williams gave you, did he ever indicate
10 to you that Jaleel Page shot Mr. Cunningham?

11 A. No.

12 Q. Did he ever indicate to you that Jaleel Page had a
13 .25 caliber auto pistol in his possession?

14 A. No. He said he had a revolver.

15 Q. Okay. Which is completely different than a
16 .25 caliber auto pistol, correct?

17 A. Yes.

18 Q. Would it be safe to say that the investigation in
19 this case has concluded that a .25 caliber auto pistol was
20 the murder weapon?

21 A. That's correct.

22 Q. In fact, is there any evidence anywhere from any
23 statement of any witness that Jaleel Page ever possessed a
24 .25 caliber auto pistol on the day of the murder?

25 A. No.

TESTIMONY OF SARA ROBBINS

1 Q. Is there any forensic evidence that puts Jaleel Page
2 in the trailer park on the day of this murder?

3 A. No.

4 Q. And all the jury has heard so far in this trial as
5 far as people putting Jaleel Page there are A. J. Williams
6 and Katrina Howard, is that a correct statement?

7 A. That's correct.

8 Q. Let's talk a little about Katrina. When did you
9 first encounter Ms. Howard in the course of your
10 investigation?

11 A. It was in July of 2004.

12 Q. Okay.

13 A. Around the first of July.

14 Q. How did that contact come about?

15 A. She called me.

16 Q. She called you on the telephone?

17 A. Yes.

18 Q. All right. And prior to speaking to Ms. Howard what
19 were your thoughts as to who shot Willie Cunningham?

20 Well, you were investigating the case for a year and a
21 half.

22 A. Yes.

23 Q. What were your thoughts about who the shooter was
24 before Ms. Howard spoke to you?

25 A. Lamont McCollum.

TESTIMONY OF SARA ROBBINS

1 Q. Okay. Ms. Howard called you and provided a version
2 that indicated Lamont McCollum wasn't the shooter; is that
3 correct?

4 A. That's correct.

5 Q. She provided a version that indicated Lamont McCollum
6 didn't even possess a weapon on that day, correct?

7 A. That's correct.

8 Q. She provided a version that indicated that in fact my
9 client was the shooter, correct?

10 A. Yes.

11 Q. She provided a version that indicated that the reason
12 that there was any contact between the suspects and the
13 victim, that they were trying to work out some sort of
14 disagreement, correct?

15 A. Yes.

16 Q. Every one of those things is in direct conflict with
17 what Mr. Williams told you, correct?

18 A. Except that they both said that they were all there.

19 Q. But every one of the things I have just mentioned to
20 you is in direct conflict with what Mr. Williams told you
21 the participants did on that day, correct?

22 A. Yes.

23 Q. All right. Do you believe anything Katrina Howard
24 had to tell you, Detective?

25 A. I believe that Katrina Howard took them there to the

TESTIMONY OF SARA ROBBINS

1 trailer park and took them back, that she dropped both of
2 them off. I believe that she had no knowledge that
3 anything was going to happen before it did and I believe
4 that she was very scared.

5 Q. Okay. Do you have your doubts about some of the
6 things Katrina Howard told you?

7 A. I think that if you are asking me to speculate --

8 Q. Well, you're a detective with 23 years law
9 enforcement experience who is the primary detective in
10 this case and who has seen all of the evidence and
11 interviewed all of the witnesses, so I'm not asking you to
12 speculate, I'm asking you to draw a conclusion as a
13 detective as to whether Katrina Howard was not completely
14 truthful with you?

15 MR. POPE: Your Honor, I would have to object. I
16 think he's not asking for a conclusion, he's pitting
17 witnesses and I think that's inappropriate. He is
18 basically asking -- the jury can judge the credibility of
19 any given witness including Ms. Howard. It's
20 appropriate -- he's now asking her to judge her
21 credibility and I think that's inappropriate to pit two
22 witnesses.

23 THE COURT: I am going to allow it in a little bit of
24 a different way. That's correct, counsel. Of course, as
25 you know you can't pit witnesses against each other.

TESTIMONY OF SARA ROBBINS

1 However, this is an experienced detective testifying as to
2 her investigation.

3 MR. CHIARENZA: Certainly, Your Honor. And I am
4 not -- it just happens that there's a difference of
5 opinion here between two witnesses and --

6 THE COURT: I understand. Well, that's --
7 differences of opinion can't come in as you know. All you
8 can do is just ask this witness what her impression was.

9 Q. Then without illuminating differences then, what is
10 your belief as to who shot Mr. Cunningham?

11 A. Going back to Katrina Howard, I can say that I know
12 that people -- witnesses -- my experience has shown me
13 that witnesses remember things differently. Mr. McCollum
14 was her boyfriend and the father of her child and I
15 believe that she was very scared as she indicated.

16 MR. CHIARENZA: Your Honor, I am requesting to -- ask
17 to strike, it's nonresponsive. I am just asking who she
18 believes.

19 THE COURT: You asked the question, she has a right
20 to answer.

21 MR. CHIARENZA: She's not answering.

22 THE COURT: Well, she can answer it. And, ma'am, I
23 assume you are getting to an answer.

24 A. Yes, sir.

25 THE COURT: I will give her an effort to do that.

TESTIMONY OF SARA ROBBINS

1 A. The evidence that we have indicates that both of them
2 have weapons but that Lamont McCollum had the .25. I
3 don't know but what they could have maybe switched guns, I
4 don't know that, I wasn't there. My personal belief is
5 that they were both present there and that Mr. McCollum
6 was actually the one who did the shooting. That's my
7 belief.

8 Q. Thank you, Detective. And your personal belief that
9 they were both present there, the jury -- the information
10 the jury has heard, that would substantiate that belief
11 that they were both present there is the testimony of A.
12 J. Williams and Katrina Howard and nothing more, correct?

13 A. A. J. Williams and Katrina Howard. But A. J. has
14 pled guilty to the charges and has nothing to gain by
15 that.

16 Q. Please just answer the question.

17 A. That's correct.

18 Q. Okay. You spoke to an individual named Lofton
19 Garvin, didn't you?

20 A. Yes.

21 Q. At anytime did he indicate to you that Jaleel Page
22 was in the area on the day of the shooting?

23 A. No.

24 Q. You spoke to Mary Burrese. At anytime did she
25 indicate to you that Jaleel Page was in the area on the

TESTIMONY OF SARA ROBBINS

- 1 day of the shooting?
- 2 A. I would need to go back and look at her statement. I
- 3 have a statement from her.
- 4 Q. I'm only asking you if anywhere on there she
- 5 indicates that she saw Jaleel Page on the day of the
- 6 shooting.
- 7 A. Yes.
- 8 Q. And in what respect?
- 9 A. She said -- do you want me to read her statement?
- 10 Q. Just go ahead and read that.
- 11 A. "On the day of the shooting I was at home with Lofton
- 12 in the bed. At one point Lamont knocked on the door and
- 13 Lofton went out on the porch with Lamont whom I know as
- 14 Monster and Jaleel who I know as Ja. He was out there
- 15 about five minutes."
- 16 Q. Okay. And what time was that?
- 17 A. She doesn't say what time that was.
- 18 Q. Does she indicate any time as to when the individuals
- 19 were out there?
- 20 A. She said about an hour and a half later we heard I
- 21 think four shots. So the shooting was around 2:00 so she
- 22 saw Jaleel and Lamont together at approximately an hour or
- 23 hour and a half before that.
- 24 Q. She doesn't indicate what time she saw them out there
- 25 though.
-

TESTIMONY OF SARA ROBBINS

1 A. No, it doesn't say what time. But as I stated she
2 heard shots about an hour and a half after that.

3 Q. Now, Gaither Williams said that when she heard the
4 shots she woke Mary Burress up, correct, and Lofton
5 Gardner?

6 A. Yes. She went outside and hollered up -- called up
7 to them.

8 Q. And got them out of bed.

9 A. And got them out of bed.

10 Q. Okay. Now, after Jaleel Page was identified, did you
11 ever go back to Mary Burress with any photographs or
12 anything of that nature to corroborate Mr. Williams'
13 statement?

14 A. Not with any photographs.

15 Q. Okay. In the course of your investigation prior to
16 Mr. Williams speaking to you, you developed a number of
17 leads, some that even potentially involved some white guys
18 from the neighborhood; isn't that correct?

19 A. Yes, sir.

20 Q. And you developed -- I'm sorry, you did receive
21 information from witnesses at the scene that they saw
22 Mr. McCollum hanging out with white guys earlier that day;
23 isn't that correct?

24 A. I don't remember that it was that day. We had
25 information -- we followed up on every lead we got, every

TESTIMONY OF SARA ROBBINS

1 little bit of speculation, every rumor if you will,
2 everything.

3 Q. Okay.

4 A. I don't recall anything about him hanging out with
5 any white guys that day.

6 Q. You don't recall Ms. Williams telling you that he was
7 in the car with some white guys earlier that day,
8 Mr. McCollum?

9 A. Oh, okay, I'm sorry, Mr. McCollum. Yes. She did
10 state that there were some white guys in the car.

11 Q. And Ms. Williams also told you that when she heard
12 this commotion outside of this window there was one big
13 guy and a bunch of other little guys, something of that
14 nature.

15 A. Something to that nature.

16 Q. She identified that one big guy as Lamont, correct?

17 A. Yes.

18 Q. Okay. Said it was obvious it was him because he was
19 loud and carrying on at the time.

20 A. Yes.

21 Q. And she says that she saw Lamont out there very early
22 in the morning, correct?

23 A. Yes.

24 Q. And that he had pretty much been out there all day or
25 that whole morning carrying on and being loud.

TESTIMONY OF SARA ROBBINS

1 A. Yes.

2 Q. She at no time indicates that Mr. Page was out there
3 or she at no time indicated there was even another tall
4 guy out there, did she?

5 A. She didn't know Mr. Page.

6 Q. She said one big guy and a bunch of other little
7 guys.

8 A. She specifically mentioned Lamont, yes.

9 Q. And she said he was the big guy.

10 A. Yes. She said he was the big guy.

11 Q. Okay. Back to Katrina Howard for a moment. You took
12 her statement in July of '04, correct?

13 A. That's correct.

14 Q. And not only did she call you on the telephone but a
15 day or so later she gave you a written statement, correct?

16 A. It was either the same day or the next day, I'm not
17 sure.

18 Q. So you had two encounters with her, one on the
19 telephone and one face to face where she wrote out her
20 statement.

21 A. Yes.

22 Q. And that was July of '04?

23 A. Yes.

24 Q. Do you recall when you provided that information to
25 the prosecution?

TESTIMONY OF SARA ROBBINS

1 A. No. I don't remember exactly when it was. There was
2 a delay because we were in the process of moving. Our
3 building had been renovated and we were moving things out
4 of the trailer back into the new building. I thought that
5 I had faxed it to Mr. Smith but I believe that I had
6 either not done that or at some point they changed
7 prosecutors. I'm not sure when that happened, it was some
8 time after that.

9 Q. Was it four or five months after that?

10 A. I don't remember.

11 Q. Okay. And do you recall how you finally came about
12 sending that information over?

13 A. Well, I realized that you didn't have it and then
14 that Mr. Thompson did not have it. But I had spoken to
15 Mr. Smith about it and I just don't remember if I faxed it
16 to him or not.

17 Q. Okay. But here is a statement from someone alleging
18 to have been there and seen the crime and you just
19 misplaced it or forgot to give it to the prosecutors?

20 A. No, I didn't misplace it. I thought I had faxed it
21 to Mr. Smith and I don't know if I did or not, but I had
22 it in the box and I had not given it to Mr. Thompson.

23 Q. As it turns out no one at the solicitor's office had
24 it; is that correct?

25 A. I believe that's correct.

TESTIMONY OF SARA ROBBINS

1 Q. And A. J. Williams, he had previously lied to you in
2 your investigation of this case; isn't that correct?

3 A. Yes. He said he didn't know anything about it.

4 Q. Why would you do a photo lineup of anyone in this
5 case as opposed to just showing them one photograph?

6 A. Because to show one photograph is suggestive.

7 Q. How so?

8 A. People will think that if you show them a picture
9 that they are going to give you the answer they think you
10 want. If I show one picture to somebody and say, "Did he
11 do it," that is just not enough, you can't do that. It
12 has to be a series of photographs so that they can pick
13 out the right one so that there's not any semblance of
14 suggestion there.

15 Q. Okay. Going back to your summary in this case, again
16 the same page we were on before, page -- I'm sorry, third
17 paragraph down. If you could begin reading from the first
18 sentence.

19 A. On reviewing notes?

20 Q. Uh-huh.

21 A. On reviewing notes I found the name Jaleel Page. A
22 photograph was obtained through DMV records and shown to
23 A. J. along with Lamont's photo for verification purposes.

24 Q. Okay. You can stop there. So this was --

25 A. This was after he had already named someone.

TESTIMONY OF SARA ROBBINS

- 1 Q. And you just testified that only showing one
2 photograph is suggestive and the likelihood is that that
3 person will give you the answer you are looking for.
- 4 A. No. But this is --
- 5 Q. Did you just testify to that, Detective?
- 6 A. Yes, I did. But I was referring to investigation
7 purposes when you are asking someone to identify someone.
8 He had already identified Jaleel and this picture was
9 shown to him for verification purposes.
- 10 Q. He had given you a name of someone whose last name he
11 didn't know.
- 12 A. Yes.
- 13 Q. He had given you a name of someone whose last name he
14 didn't know.
- 15 A. Yes.
- 16 Q. How much trouble would it have been to put this
17 photograph in a lineup and said, "Which one of these guys
18 is the one you are talking about"?
- 19 A. I cannot testify to that. SLED agents are the ones
20 who showed him that photograph, but this was done after he
21 had already identified Jaleel.
- 22 Q. Okay. But he didn't pick them out of a lineup.
- 23 A. No.
- 24 Q. He was shown the one single photograph, correct?
- 25 A. That's correct.
-

TESTIMONY OF SARA ROBBINS

1 Q. Detective, you previously testified that my client is
2 six feet-four, correct?

3 A. According to the booking records.

4 Q. Is there a reason you would have earlier described
5 him as being six-feet, two inches in this document.

6 A. I have a date of birth, height and weight there. I
7 don't know. That could possibly have come from DMV

8 records. I don't recall how I got that information,
9 six feet two. Six-four is what the booking records say.

10 Q. So basically you had worked this case for nine and a
11 half months and weren't prepared to issue any warrants,
12 correct?

13 A. That's correct.

14 Q. You got information through an informant who was
15 previously working with the York Police Department that
16 Mr. Williams was down in the jail talking about the case,
17 correct?

18 A. Yes.

19 Q. And you spoke to Mr. Williams and over the course of
20 the investigation Mr. Williams gave you three different
21 statements, correct?

22 A. Yes.

23 Q. And is it fair to say that there are some
24 inconsistencies in the statements Mr. Williams gave you?

25 A. A couple.

TESTIMONY OF SARA ROBBINS

1 Q. Okay. Yet today you want the jury to convict my
2 client primarily based on the testimony of A. J. Williams.

3 A. Yes, the evidence shows.

4 Q. Okay. Well, let's talk about the what the evidence
5 shows. We have got 53 or something items of evidence.
6 Did any single one of those items show that my client was
7 connected to this killing?

8 A. Forensically, no.

9 Q. So the evidence you're talking about again is A. J.
10 Williams.

11 A. Yes.

12 Q. So after nine and a half months and all of these
13 other items of evidence which don't link him to the crime,
14 you are satisfied that he ought to be convicted solely on
15 the words of A. J. Williams.

16 A. Yes. A. J. is not just saying that Jaleel Page took
17 part in this, he is saying he himself took part in it with
18 him.

19 Q. Well, I think we all know what he is saying when he
20 testified.

21 MR. POPE: Please the Court, Your Honor, I have tried
22 to give him latitude. He's now saying you're saying,
23 you're telling the jury, that's not her place and he is
24 testifying. And at some point I have tried to give him
25 some latitude but if he's got a question it needs to be

TESTIMONY OF SARA ROBBINS

1 asked. This is getting to the point of getting to be
2 argumentative.

3 THE COURT: We are kind of reaching the point we need
4 to sort of stop that, Counsel.

5 MR. CHIARENZA: I'm sorry. You know what, I will
6 leave it at that, Judge. Thank you, Detective.

7 THE COURT: Mr. Boyd?

8 CROSS EXAMINATION

9 BY MR. BOYD::

10 Q. I want to ask you about the -- first -- you talked to
11 A. J. Williams -- you talked to A. J. Williams one time I
12 believe about any knowledge of this murder before the
13 information you got from the informant in jail; is that
14 correct?

15 A. Yes.

16 Q. And at that point he had denied any knowledge of
17 anything; is that correct?

18 A. That's correct.

19 Q. And then after you were receiving that information,
20 he was interviewed somewhere around December the 31st, I
21 think it was December 31, 2003; is that correct?

22 A. Yes, sir.

23 Q. And that's when he gave the first statement that's
24 been referred to earlier in evidence; is that correct?

25 A. That's correct.

TESTIMONY OF SARA ROBBINS

1 Q. And then a few days after that he gave another
2 statement; is that correct?

3 A. Yes.

4 Q. Okay. And the first statement basically he had said
5 that he was sitting in a car watching it and basically he
6 said he was in the car with Katrina Howard but he didn't
7 name her by name; is that correct?

8 A. That's correct.

9 Q. And then a few days later he gave a statement saying
10 that wasn't correct.

11 A. Yes.

12 Q. Now, based on those statements -- now, a short time
13 after that a warrant was requested and a warrant was
14 obtained for Terrance McKnight for a charge of misprision
15 of a felony; is that correct?

16 A. Yes.

17 Q. Okay. And basically the basis of that charge was
18 that the allegation was that Terrance McKnight had
19 information about this murder and had not been forthcoming
20 with law enforcement about that information; is that
21 correct?

22 A. That's correct.

23 Q. It was when he was arrested on that charge that he
24 was -- he gave the first statement that I think the SLED
25 agent referred to yesterday; is that correct?

TESTIMONY OF SARA ROBBINS

1 A. Yes, sir.

2 Q. Okay. And then the next statement was made after he
3 was actually arrested on the charges that he's being tried
4 here today, is that correct, the murder charge, the
5 attempted armed robbery charge, the conspiracy charge?

6 A. Yes, sir.

7 Q. Now, that warrant for that charge was issued I
8 believe on or about -- it was issued on December 16, 2004;
9 is that correct?

10 A. That's correct, almost a year later.

11 Q. And it was issued the date that -- the same day that

12 A. J. Williams entered into a plea agreement and entered
13 into his plea in court; is that correct?

14 A. Yes, that's correct.

15 Q. And it was issued after A. J. Williams -- after his
16 plea agreement. And after his plea he gave another
17 statement to the police; is that correct?

18 A. Yes.

19 Q. And it was only at that point that a murder warrant
20 was issued for Terrance McKnight; is that correct?

21 A. That's correct.

22 Q. All right. Now, after that -- that was approximately
23 the same day or the day after on December 17, 2004
24 Terrance gave you and Detective Naylis the statement that
25 you have testified here to today; is that correct?

TESTIMONY OF SARA ROBBINS

- 1 A. Yes, sir.
- 2 Q. Now, when you were -- he had already given a
3 statement earlier; is that correct?
- 4 A. Yes.
- 5 Q. Okay. And you are familiar with that statement; is
6 that correct?
- 7 A. Yes.
- 8 Q. Okay. Now, the basic difference between the
9 statement he gave earlier and this statement -- well, this
10 is a shorter statement; is that correct?
- 11 A. Yes, sir.
- 12 Q. Now, the earlier statement had provided more detail;
13 is that correct?
- 14 A. Yes.
- 15 Q. And the earlier statement Terrance had said he had
16 left and gone to I believe the Hunter Street Apartments?
- 17 A. Hall Street.
- 18 Q. Hall Street Apartments? Well, I thought -- what I'm
19 actually referring to, didn't he say at that time that he
20 had left the tree area and went to Cannon Court? I'm
21 sorry, I'm talking about the first statement.
- 22 A. The first statement to Cannon Court.
- 23 Q. I can show it to you.
- 24 A. I've got it. Is that on the first page?
- 25 Q. Second page, next to the last paragraph.

TESTIMONY OF SARA ROBBINS

- 1 A. Stated he left the tree area and went to Cannon
2 Court.
- 3 Q. And then in this statement that you read today, in
4 that statement he talked about how -- he doesn't mention
5 Cannon Court but he in fact walked up the street, that A.
6 J. Williams and McCollum and another guy were there; is
7 that correct.
- 8 A. That's correct.
- 9 Q. All right. And so the basic difference between the
10 second statement -- the first statement and second
11 statement was that he added more information about what
12 happened later on in the second statement; is that
13 correct?
- 14 A. That's correct.
- 15 Q. Okay. He didn't refute anything that he had said in
16 the first statement about what had taken place up to that
17 point; is that correct?
- 18 A. No.
- 19 Q. Is that why this statement was taken down -- was a
20 shorter statement?
- 21 A. That's correct.
- 22 Q. Okay. And in this statement I believe he mentions
23 again that he was scared; is that correct?
- 24 A. Yes.
- 25 Q. Okay. And I believe you said earlier he was 16 years

TESTIMONY OF SARA ROBBINS

- 1 old at the time that this occurred.
- 2 A. At the time, yes, sir.
- 3 Q. When he gave this statement he was 17 years old.
- 4 A. Seventeen.
- 5 Q. And I believe you mentioned earlier -- in cross
6 examination earlier that Katrina Howard had also mentioned
7 that she was scared; is that correct?
- 8 A. Yes.
- 9 Q. And in this statement he said that he told A. J. he
10 was fixin' to go and started walking away down the hill;
11 is that correct?
- 12 A. That's correct.
- 13 Q. Okay. And at the corner where the Cunningham trailer
14 is or the trailer in question is there is a hill down
15 that -- isn't there -- if you go on down the street that's
16 a very steep hill and it goes on down the trailer park
17 toward the office area; is that correct?
- 18 A. Yes.
- 19 MR. BOYD: Thank you. That's all of the questions I
20 have.
- 21 MR. POPE: May I approach, Your Honor?
- 22 THE COURT: Yes, sir.
- 23 (A bench conference was held.)
- 24 THE COURT: Ladies and gentlemen, there's -- I need
25 to take this matter up with counsel and the attorneys
-

TESTIMONY OF SARA ROBBINS

1 outside of your presence. So I know you are terribly
2 disappointed you are going to have to step out for a few
3 minutes. We will also take a short break after that once
4 we get through with what we are doing now. It may take a
5 few minutes to do this but if you need refreshments or
6 anything, also if you need to smoke you can do that too.
7 But remember, the only thing we do is we don't talk about
8 the case. All right. See you back in a few minutes.

9 (The jury left the courtroom.)

10 THE COURT: Counsel, the jury has stepped out. Do
11 you want to take a break and then take this up or go ahead
12 and take it up first?

13 MR. POPE: Whatever pleases the Court.

14 THE COURT: We may as well just go ahead and take it
15 first.

16 MR. POPE: Please the Court? As the Court is aware
17 earlier the statements of Mr. McKnight were redacted to
18 eliminate any reference to Mr. Page. I would submit after
19 Mr. Chiarenza's cross examination on a number of fronts it
20 would open the door to the investigation which questioned
21 directly about the investigation, it would open the door
22 to me asking specifically what information came from
23 Mr. McKnight, in other words to get into that he
24 identified Mr. Page himself. In addition, one, just from
25 that line of questioning with respect to Mr. Chiarenza,

TESTIMONY OF SARA ROBBINS

1 one time he did say the only evidence that the jury has
2 before them, but he also opened the door and asked her for
3 her opinion of who do you think shot and why do you think
4 shot. Obviously if you have -- basically turned it into
5 an expert as an investigator you've allowed the opinion in
6 to get into the underlying basis of her opinion. Of
7 course, the underlying basis can include hearsay, Your
8 Honor. In addition he went through Mary Burress'
9 statements, A. J. Williams' statements, a number of
10 statements and the summary, which I have now pulled out.
11 Your Honor, in the -- both from the completeness and door
12 that was opened you made this summary of what you
13 investigated in the case and found this and found this and
14 all you have is the testimony and you want the jury to
15 believe the testimony of A. J. Williams, that's what you
16 have and that's what you want them to believe. That's not
17 accurate, that's not the case. I would note that if
18 nothing else on completeness I can ask her about the rest
19 of her summary now. I would suggest -- I tried to write
20 as quickly as I could -- I submit if the Court listens
21 just to his cross examination there's numerous times,
22 numerous opportunities that this door clearly has been
23 thrown wide open for me to go right into what information
24 you had. He mentioned all you have is you had A. J. and
25 all you had is Katrina, well that's not true. I submit he

TESTIMONY OF SARA ROBBINS

1 has opened the door through his own choice and we should
2 be allowed to proceed with that, Your Honor.

3 THE COURT: Mr. Chiarenza, what about that?

4 MR. CHIARENZA: Your Honor, I think what the
5 solicitor is suggesting is that I am not allowed to do a
6 cross examination of a witness. Because if my reasonable
7 cross examination about her evidence and her summary opens
8 the door to all of the hearsay that's involved in this
9 case then I wouldn't be able to ask her any questions.
10 She created a summary, they provided it in discovery, she
11 is here testifying as to her investigation. If she
12 testifies in such a way as is consistent to what she
13 previously put down in her summary, certainly I can ask
14 her about that. She testified about doing a photo lineup
15 and how one photo is suggestive and then in writing her
16 summary she talks about giving one photo. I can ask her
17 about that and I have no problem with the solicitor
18 developing that line of questions and getting her to
19 explain.-- I have no problem with the solicitor having her
20 clarify specifically the items in her summary that I
21 talked about. But to say that because I asked her a
22 question or two that were based on information she put in
23 her summary that I have now opened the entire summary up
24 and made it admissible, it's just simply ridiculous. What
25 we're saying then is she can create this narration of her

TESTIMONY OF SARA ROBBINS

1 investigation and I can't use anything in there because if
2 I do I have now opened the door to everything that's in
3 there, so I would certainly take issue with that. In
4 regard to the solicitor's contention that I opened the
5 door on redaction, I did not specifically cross examine
6 her on Mr. McKnight's statement. I did not ask her,
7 "Well, Mr. McKnight never named my client, did he?"
8 Clearly had I done that then I think I may have been in
9 some trouble. Your Honor, the case -- the law is clear --
10 Your Honor, the law is clear, the statement of
11 Mr. McKnight is inadmissible against my client. So if
12 Mr. McKnight weren't here I could argue to the jury that
13 the only information they've heard putting my client there
14 was what I said to her. I did not specifically cross
15 examine her on the statement. I opened no door and I was
16 very careful in choosing my words that I asked her -- and
17 certainly I can comment -- I can ask this detective as to
18 the evidence that's been presented so far. And I asked
19 her so all of the jury has heard -- I'm allowed to take
20 advantage of the fact that the Court has ruled and
21 redacted that statement, that's one of the very few
22 motions we prevailed on here. So I am allowed to take
23 advantage of that fact and to comment on that fact. I
24 didn't go directly into the statement and said say,
25 "Mr. McKnight didn't name my client, he was there, he

TESTIMONY OF SARA ROBBINS

1 didn't name him." What I said was the only evidence the
2 jury has heard and that the Court ruled as to what the
3 jury would hear is that Mr. Williams and Ms. Howard put my
4 client there. So that doesn't open the door on anyone
5 else who may or may not have provided some hearsay
6 information, it just doesn't, it just doesn't open the
7 door there. I am asking this detective to answer a
8 factual question regarding the evidence that's been
9 presented thus far. I did not say, "Did you hear anything
10 else from anybody else about whether or not Mr. Page was
11 there?" Well, actually I did say that on Mary Burress'
12 statement, but there's a method to my madness there. When
13 I asked her the question I asked her, "Isn't it true that
14 Mary Burress doesn't put my client there?" That wasn't
15 the case. She read in the statement that Mary Burress did
16 say her boyfriend went out and met with Lamont and someone
17 she knew as Ja. So she has responded to that question
18 through the statement. It doesn't open the door on the
19 entire statement because the statement can be brought in
20 to the extent that it's relevant to clarify the question
21 asked and the answer given, then they can get into the
22 rest of the statement so that the legal reasoning there is
23 to not have something that's completely out of context
24 which might confuse the jury. I would submit to the Court
25 there's no potential for confusion here. I asked a direct

TESTIMONY OF SARA ROBBINS

1 question regarding what Mary Burress told her whether or
2 not she had seen my client there that day. She went to
3 the statement, referenced it and said, "Well, she did say
4 that Lamont went out there for about five and -- that
5 Lofton went out there for about five minutes and met with
6 Lamont and Ja." So the entire rest of the statement is
7 clearly hearsay and the door was not opened on the entire
8 rest of the statement because I only asked her about one
9 little thing and she can respond. Otherwise we get into
10 an area where I can't reasonably cross examine the witness
11 for fear of opening every door everywhere. And the
12 solicitor could have objected. If he had that big of a
13 concern with Mary Burress' statement he could have
14 objected to it based upon hearsay grounds. The question I
15 asked really wasn't eliciting a hearsay statement as an
16 answer. I asked her if Mary Burress had indicated -- I
17 said Mary Burress didn't indicate that my client was there
18 and she read the statement and said, "Yes, she did right
19 here." So the statement has been addressed and I would
20 submit to the Court that at this point to let that entire
21 statement which goes into numerous other things completely
22 unrelated and unnecessary to answer the question that I
23 proposed would be terribly prejudicial to my client and
24 not allow me the opportunity to cross examine anything
25 else that's in that statement is completely unnecessary to

TESTIMONY OF SARA ROBBINS

1 address the one question that I asked which was answered
2 from reading that statement. So, Your Honor, I showed the
3 statement to the State, they didn't ask for a bench
4 conference, didn't say, "We feel if he gets into this he's
5 opening the door." The time to do that if we really felt
6 that's what was happening is prior to allowing that
7 question to come in in reference to the statement. Again,
8 I submit that I asked one small detail, she responded to
9 it. Had she not responded to it I would submit that they
10 could have asked her about that portion of the statement.
11 She responded to it, it doesn't open the door and
12 everything else in that statement. And as for the
13 summary, she created the summary. There are things in
14 there that I am obviously entitled to ask her about
15 without necessarily opening the door and everything else.
16 Otherwise, if she testified -- the detective testified to
17 something that was completely contradictory to an item she
18 had in her summary, according to Mr. Pope's theory I
19 couldn't ask her about that without opening up that
20 summary all of the other hearsay that's in there. So I
21 would strongly ask the Court to consider the prejudice of
22 opening all of this giving the context of my questioning.
23 I have no problem and I don't believe I have a legal
24 argument with the State being allowed to specifically
25 address in either Mary Burress' statement or the summary

TESTIMONY OF SARA ROBBINS

1 the portion which I specifically asked about. But to just
2 now say, "Okay. The door is open, here come the flood
3 gates, let's let all of this stuff in," he hasn't cited
4 any law and I don't think that is the law. And clearly
5 the prejudice at this point based on what I was asking her
6 would far outweigh any probative value.

7 THE COURT: Mr. Boyd, do you want to be heard?

8 MR. BOYD: A little bit. My concern is if the Court
9 is going to let it in I think one of the things the
10 solicitor is asking is that Mr. McKnight's statement about
11 that he did identify Mr. Page be allowed in because the
12 door has been opened. If the Court allows that I really
13 don't have a problem with that, I just think the jury
14 needs to be informed that the statement was redacted for
15 legal witnesses reasons. I don't want the jury to think
16 my client was actually saying another guy when he actually
17 was mentioning Mr. Page or that he would -- I don't want
18 the jury to get the impression he was trying to cover up
19 for somebody in those statements, that's my concern on
20 that. As far as opening the door to other statements and
21 other hearsay, my only -- I will leave that to the Court's
22 discretion. However, I will certainly object to any
23 mention in any hearsay stories that Mary Burrell or anyone
24 else, any mention of Terrance McKnight because I don't
25 believe I have opened any door. So I would ask that if

TESTIMONY OF SARA ROBBINS

1 the Court allows us to go into the summary or about
2 statements of any other individuals that Terrance
3 McKnight's name certainly not be mentioned. Thank you.

4 THE COURT: All right. Mr. Pope?

5 MR. POPE: Please the Court? Your Honor, a couple of
6 things. One, it's not --

7 THE COURT: Let me ask one thing specifically, is
8 that what you are asking to do, what Mr. Boyd said that is
9 to I guess sort of de-Brewtonize the statement and
10 basically let it go into using Mr. McKnight's statement
11 against Mr. Page?

12 MR. POPE: That would be correct, Your Honor. And I
13 think that a curative instruction or some type of
14 explanation -- we had actually drafted one while Mr.
15 Chiarenza was doing his cross so it would be appropriate
16 to explain and it addresses exactly the concern that
17 Mr. Boyd had. Your Honor, I will say it is not my
18 intention to go near as far field as Mr. Chiarenza had
19 indicated. However, the particular areas it seemed to be
20 continuously hit or danced around concern Mr. McKnight,
21 from adding Mr. McKnight was here, Mr. McKnight was there,
22 but actually McKnight's cooperation in that everything he
23 is saying A. J. did. A. J. looked at a picture, A. J.
24 identified Jaleel, so did Mr. McKnight and that what the
25 paragraph right under where Mr. Chiarenza went into

TESTIMONY OF SARA ROBBINS

1 showing him one picture. He can certainly say when you
2 showed Mr. McKnight a picture it was the same instance.
3 Your Honor, if you are inclined to rule against me I would
4 ask because -- we've gotten to Ms. Burress' statement or
5 that statement, I would ask that if you are inclined to
6 rule against me that you listen to the totality of Mr.
7 Chiarenza's cross examination. Because the issues is not
8 so much Ms. Burress' statement or using the summary. I
9 agree with Mr. Chiarenza, if she said six-foot two one
10 time and six-feet-four, that doesn't allow me to go
11 through the whole summary because he pointed out there was
12 a difference in that regard. But when he got into the
13 position of your experience, your opinion, you are asking
14 the jury to believe this, I submit at that point it's
15 opened the door. Because basically she's in the trap now
16 that was created to protect his client initially, but
17 she's in the trap now of saying, "Well, yeah that's all we
18 have got," when it really isn't all we have got. I don't
19 want to put words in Mr. Chiarenza's mouth as far as what
20 I heard and what I wrote down. I would say if the Court
21 is inclined to rule against me and I would submit in the
22 totality he has opened the door. He has basically made
23 her an expert. I can get her opinion from her now because
24 he has gone to who do you think was doing what and why, he
25 has taken that I think I can get into that. And the basis

TESTIMONY OF SARA ROBBINS

1 of her opinion, one of which is that this young man who
2 has a right not to testify too, but this young man has
3 confirmed that.

4 MR. CHIARENZA: Your Honor, she can offer an opinion
5 as a lay witness and the rules allow that, so simply
6 asking her to give an opinion doesn't all of the sudden
7 turn her into an expert. I would ask that if we are going
8 to get into various testimony -- hearsay testimony based
9 on some theory that the door be opened, that testimony be
10 proffered first prior to getting into it in front of a
11 jury. Because while I think the correct ruling here is
12 that they can go to these statements to clarify the
13 particular instances that I was addressing, I do not want
14 them getting into things that had absolutely nothing to do
15 with what I was questioning the witness about, don't see
16 how you can leap to those things. We are talking about
17 she's got a five or six -- the detective has a five or six
18 page summary here and because I referenced two or three
19 items in it it's absurd to say that now all of the hearsay
20 that she's gathered during the course of the investigation
21 is admissible. As far as me asking her what has been
22 presented, there are numerous rulings that have been made
23 regarding the admissible evidence in this case so that is
24 what it is. I certainly was not trying to specifically
25 take advantage of that fact. The fact that Mr. McKnight's

TESTIMONY OF SARA ROBBINS

1 statement is not admissible against my client doesn't
2 change. I mean, it doesn't change. And I went up to that
3 witness stand to cross examine the detective with that
4 ruling in hand that Mr. McKnight's statement against my
5 client is inadmissible against my client. So inadmissible
6 evidence doesn't suddenly become admissible evidence
7 simply because I'm cross examining a witness as to the
8 evidence that's been presented, otherwise then I can't
9 comment on really anything. I'm allowed to cross examine
10 her as to the veracity of A. J. Williams and what led up
11 to the charges and I don't think that the answer to every
12 question would have been -- well, I don't think the name
13 of Terrance McKnight came out of my mouth in the entire
14 time. I would submit to the Court that it would have been
15 improper and I would have opened the door if I had said
16 something like he didn't mention my client, no question
17 that would have been opening the door there. What I said
18 to her was what I said to -- what I questioned the
19 detective about was confusing about Mr. McKnight's
20 statement, that wasn't what was going through my mind at
21 the time but more to the weight of really what they have
22 in this case. And the Court can take notice of the fact
23 that there's no physical evidence here that links my
24 client to the crime and that their case is essentially
25 based on the statements of Mr. Williams and Ms. Howard.

TESTIMONY OF SARA ROBBINS

1 But their case against my client by this Court's ruling
2 cannot be based on the statement of Mr. McKnight. I'm up
3 there cross examining as an advocate for my client and
4 what I am asking her is essentially -- what you've got
5 here is a case with a lot of physical evidence that
6 doesn't link my client to the crime. You've got a
7 statement from A. J. Williams that I went into where I
8 thought there was some problems with that statement. And
9 yes, you've got a statement from Chris Hinton I went into
10 where we got some problems from that statement. The
11 statement doesn't come in against my guy. If my guy was
12 being tried separately they wouldn't have the statement
13 against him. It's just not admissible, it doesn't become
14 more admissible because it has been redacted. The Court I
15 hope will even charge the jury, and I think it's a proper
16 charge, that the co-defendant's statement is not to be
17 considered as evidence against my client. So I didn't
18 open the door on Mr. McKnight's statement. I submit it's
19 limited to the questions I was asking in the summary and
20 in Ms. Burress' statement I think is the easiest for the
21 Court to resolve. Clearly that statement can only be
22 brought in to put into context what I sought to get out of
23 that and that has already been done by her answer.

24 THE COURT: I am inclined to do a couple of things.
25 One of the concerns that I had, Mr. Chiarenza -- and I

TESTIMONY OF SARA ROBBINS

1 have not totally made up my mind at this point -- is that
2 the focus of questions did seem to be basically that that
3 was all she had. And one concern was that how it
4 reflected on the nature of her investigation, which could
5 intend to diminish the credibility in the minds of the
6 jury. And considering what she had was what could come
7 in, that may need to be heard. What I want to do is this,
8 I will agree with what Mr. Pope suggested, I think I want
9 to listen to that part of the testimony and what we will
10 do is let's go ahead and take a short break ourselves at
11 this point and Mr. Court Reporter, if you would, do you
12 think you can get back to that part of it? Okay.

13 (A recess was taken.)

14 THE COURT: I will note for the record I had a chance
15 to listen to the portion of cross examination that the
16 attorneys indicated. How long do you think a brief
17 proffer would take, Mr. Pope?

18 MR. POPE: Your Honor, I probably -- I guess it comes
19 down to the issue of -- the collateral issues. I have
20 talked with Mr. Chiarenza as far as other citizens and
21 their statements and I think I have minimized that, I went
22 through it with Mr. Chiarenza. I would not intend for
23 example to get into the statement of Littlejohn just
24 because it was in the summary or some other individuals.
25 I have narrowed down -- that would focus on the one just

TESTIMONY OF SARA ROBBINS

1 that he touched on within the summary. I think he
2 actually went into Ms. Burress' actual statement and Ms.
3 Howard's actual statement and I would go briefly into
4 those, Your Honor. The issue ultimately I think comes
5 down from a proffer standpoint. The only kind of
6 remaining -- obviously not remaining, not that he may
7 still object based on the form of the question, but the
8 remaining area of contention I believe would be as to the
9 information in the summary concerning a warrant was
10 obtained and I'm referring to the same page -- mine is not
11 numbered -- I think Mr. Chiarenza referred to it as page
12 four talking about the photographs with showing A. J. the
13 photos. The next paragraph is a warrant was obtained on
14 Terrance for misprision of felony. Upon his arrest and
15 after being advised of his rights Terrance gave a
16 voluntary statement that he had been there and he had seen
17 Lamont and Jaleel with guns and heard the plan to rob
18 Rashad, had made reference to the shooting -- to shooting
19 someone in Gastonia. He was also shown the photographs
20 for identification, also identified them as the one who
21 planned to rob Rashad. The description he gave also
22 matched what Rashad -- and then going into the statement,
23 Your Honor, of the two statements for law enforcement
24 again. And I don't have the number here before me, but
25 the statement she was testifying to of Terrance McKnight

TESTIMONY OF SARA ROBBINS

1 and then the one from law enforcement previously. And
2 that would basically be my proffer, in other words by
3 taking it back to their original form as far as those go.

4 THE COURT: All right. Mr. Chiarenza?

5 MR. CHIARENZA: Your Honor, one, I might just so we
6 are both on the same page want to hear the actual proffer
7 of Mary Burress' statement, because it's my belief that it
8 should only go as far as to address the specific question.

9 THE COURT: Why don't we go ahead and do that,
10 Mr. Pope?

11 MR. CHIARENZA: In the interim I don't mind being
12 heard on the other issue.

13 THE COURT: All right.

14 MR. CHIARENZA: Your Honor, the solicitor seeks to
15 introduce the paragraph that he read to the Court
16 regarding the photo identification made by Mr. McKnight
17 and also seeks to make a leap to un-redacting the redacted
18 statements. One, while I never cross examined Detective
19 Robbins on those statements specifically, she only took
20 one of the statements, so to go and redact the one from
21 the SLED agent just seems like almost an incomprehensible
22 thing to me. But I would think that necessarily if the
23 Court ruled with me that that would be folded in, so I
24 would just make my arguments as to the statements
25 combined. Your Honor, I just fail to see the logical leap

TESTIMONY OF SARA ROBBINS

1 or the legal leap whereby the solicitor claims I have
2 opened the door into these statements to the extent that
3 my client's name should now be re-injected into the
4 redacted statement. We all listened to the cross
5 examination in chambers. I took some notes as I know the
6 solicitor did, and my notes regarding that cross
7 examination as they relate to this particular issue are
8 that I was asking the detective why she would do a photo
9 lineup and she gave a rather logical and what I understand
10 is a correct response to that question, and that in order
11 to prevent any suggestiveness they mixed the one picture
12 in with a number of other photographs. After she
13 testified that that was the proper procedure to do a photo
14 lineup I then pointed out to her that as a part of her
15 investigation in this matter in dealing with Mr. Williams
16 she showed him a single photograph. The purpose of that
17 was simply to raise the issue that perhaps the photographs
18 shown to Mr. Williams was overly suggestive. The witness
19 was given an ample opportunity to explain and I would
20 submit to the Court that she did explain the fact that
21 that one photo was shown simply to confirm what
22 Mr. Williams had already been telling her. So if we take
23 the argument at this point I fail to see now how just
24 because I use this one photograph procedure on the part of
25 law enforcement to illustrate a deviation from what the

TESTIMONY OF SARA ROBBINS

1 detective had testified regarding their standard procedure
2 for photo lineups. I don't know how then the solicitor
3 gets to un-redact Terrance McKnight's statement simply
4 because in the summary there's another occasion where a
5 one photo ID was made and in this instance it was
6 something they did with Terrance McKnight. There's just
7 no logical connection saying that because I requested her
8 on the photo techniques and because a similar photo
9 technique was used with Mr. McKnight, now Mr. McKnight's
10 statement becomes admissible as to my client. By way of
11 illustration I would just ask the Court to consider what
12 if the next paragraph mentioned that a one photo lineup
13 was shown to any other witness would it then necessarily
14 open up the door on anything else about that other
15 witness? I was merely trying to illustrate here and if --
16 I would even submit that the witness could be asked this
17 question at anytime during our investigation, "Did
18 Mr. McKnight identify a photograph of Jaleel Page?" I
19 firmly believe there is no reason to make a leap, but if
20 the Court is inclined to do so within the context of my
21 cross examination the leap should only be to say, well, it
22 was fair to address this photo technique with Detective
23 Robbins as to one witness, then it's fair to address this
24 photo technique as to another witness and that's as far as
25 we should go. If we get into that statement there's

TESTIMONY OF SARA ROBBINS

1 nothing even in either statement about Mr. McKnight seeing
2 a photograph and identifying it, so the logical leap isn't
3 there, Your Honor. That's the reason. Additionally --
4 and this is just to anticipate the solicitor's argument
5 that I asked -- I heard myself ask the witness two
6 times --

7 THE COURT: Counsel, before we go through we're still
8 not getting the proffer yet. Why don't we go ahead and
9 get the proffer first of the witness and see what it is he
10 wanted to ask her.

11 MR. CHIARENZA: This is about Mary Burress' though,
12 Your Honor. I think --

13 THE COURT: I understand. What I would rather do is
14 let Mr. Pope go ahead and proffer what he wanted to get
15 then let's see if we can wrap it all up from there. Does
16 that sound okay?

17 MR. CHIARENZA: Suits me, Your Honor.

18 MR. POPE: And this would be now -- of course, at the
19 appropriate time I would like to be heard in response to
20 Mr. Chiarenza.

21 THE COURT: I certainly wasn't trying to cut either
22 of you off, I just think we need to go ahead and get to
23 the proffer so we will know where we are going.

24 MR. POPE: Again, when I elicited through this
25 witness I can tell you I think I'm fairly much in

TESTIMONY OF SARA ROBBINS

1 agreement with Mr. Chiarenza, we are now talking with
2 Gaither Williams and Mary Burress. The issue that he was
3 asking Mary Burress was basically did they come to the
4 door and I think there's some concern that I would get
5 into additional areas of the statement. The paragraph --
6 the first paragraph statement says, On the day of the
7 shooting -- this is Mary Burress' statement -- "On the day
8 of the shooting I was at home with Lofton in bed. At one
9 point Lamont knocked on the door. Lofton went out of the
10 door with Lamont, whom I know as Monster and Jaleel who I
11 know as Ja. He was out there about five minutes, about a
12 half an hour later we heard about four shots. Five or six
13 minutes later my Aunt Gaither Lee called out our names.
14 We lifted out our window, she said, "Y'all go out there, I
15 think somebody just got shot in the trailer park." So we
16 walked up there and it was taped off." My understanding
17 is that all he went into was whether Jaleel -- and I'm
18 talking Mary Burress now -- whether Jaleel and Lamont were
19 there that day and I would just confirm what he asked. As
20 far as any other information it was not my intention to go
21 further as to that.

22 MR. CHIARENZA: I'm okay with that.

23 MR. POPE: Okay. As far as Gaither Williams, the
24 biggest thing -- really it's just a redirect issue. Mr.
25 Chiarenza kept saying she said there's one big guy and

TESTIMONY OF SARA ROBBINS

1 some little guys, one big guy and some little guys. She
2 said something like that. I would just call again the
3 first paragraph, "That Sunday morning the man was shot and
4 killed in the trailer park I was home in the upstairs
5 bedroom about 9:00, heard a lot of guys outside window
6 doing a lot of talking. I heard one tell another 'you
7 need to unload it and put the safety on.' And so I got up
8 and went to the window and told them to move away from
9 there because they were making too much noise. At that
10 time they moved away from the window across the parking
11 lot up under the big tree. There was about seven or eight
12 of them, they were drinking. I don't know where they got
13 the beer from on Sunday morning. I seen the big guy,
14 Lamont, he's bigger than the rest of them and I know they
15 call him Lamont. He was kind of leading the pack like the
16 head of them, he had on a white T-shirt with baggy pants."
17 Again, the only point in going into that was just saying
18 there was a number of little guys. Well, that's not
19 exactly the context. I would bring up the context of what
20 she said.

21 MR. CHIARENZA: I am okay with that, Judge.

22 MR. POPE: And so again, Your Honor, to bring you
23 back to it, it would be the statement -- and again I will
24 let Mr. Chiarenza finish. But as far as the argument, the
25 basis for my motion wouldn't be based on that he talked

TESTIMONY OF SARA ROBBINS

1 about photo ID, the basis -- again I will address it at
2 the appropriate time where it would be where I believe
3 from what we heard in chambers that the door was open. I
4 will let him finish and then address it at the appropriate
5 time.

6 THE COURT: At some point are we going to ask some
7 questions of the witness?

8 MR. POPE: Basically what -- I would just have her
9 referring to those documents and ask those questions as
10 far as that. I have redirect -- general redirect to go
11 back through what Mr. Chiarenza did.

12 THE COURT: Is that all you are wanting to get into
13 is those -- that right there?

14 MR. POPE: As far as the statements, as far as any
15 objection. Of course, I am going back on redirect and
16 clarify some points like they talked about Joyce and Joyce
17 being you know a suspect or not, and I have some questions
18 about that. But as far as any hearsay issues or taking
19 those statements, which I think is Mr. Chiarenza's
20 concern, I don't have any intention to my knowledge to go
21 into any further in that regard.

22 THE COURT: Mr. Chiarenza, I think we are back to
23 you.

24 MR. CHIARENZA: Since Mr. Pope wants to un-redact the
25 statement maybe it's appropriate to hear his reasoning.

TESTIMONY OF SARA ROBBINS

1 He's asking you to do it and I'm kind of anticipating why
2 he's asking you to do it I guess because we've had a
3 number of conversations over the lunch break. But I think
4 it's more appropriate for him -- he's asking for the Court
5 to take some sort of action here regarding the statements
6 and I would prefer to respond to why.

7 THE COURT: Okay.

8 MR. POPE: I have no objection to that, Your Honor.
9 Calling your attention to the cross examination we heard,
10 in particular Mr. Chiarenza got to the point where in
11 essence he was qualifying her as an expert. Detective, in
12 your 23 years experience -- and again, the Court heard it,
13 whatever it said -- 23 years experience, whatever -- and
14 you have seen all of the evidence and all of the witnesses
15 in this case, what is your belief as to who shot -- what
16 is your personal belief and information -- then, of
17 course, he does say now from the information the jury has
18 that's just A. J. and nothing more, or Katrina and A. J.
19 and nothing more. But when he asked her what's your
20 personal belief of why you believe that and he kept
21 pinning her down to "and that's A. J. and that's A. J."
22 And then he got to a point because you remember that's
23 when I started objecting, "You want this jury to convict
24 my client based on just A. J. All of the evidence you are
25 talking about is A. J. You're satisfied he should be

TESTIMONY OF SARA ROBBINS

1 convicted solely on the evidence of A. J. Williams." Your
2 Honor, in that totality she does have more information. I
3 would submit that he can't have it both ways, he can't ask
4 what is your opinion or what your belief. I guess my
5 question to her would be your opinion is that Lamont shot,
6 you know, and Jaleel didn't, why do you have that opinion?
7 You know, of course, that would be obviously the totality
8 of the investigation and all that she went into from
9 there.

10 THE COURT: Do you want to ask her and see what she's
11 going to testify to?

12 Q. Mr. Chiarenza asked you, Ms. Robbins, your opinion in
13 this case as to Jaleel or who the shooter was. You had
14 testified you had information that Jaleel had a revolver,
15 Lamont had a semiautomatic or whatever and you said that
16 your opinion was that Lamont was the shooter; is that
17 correct?

18 A. Yes.

19 Q. Okay. Can you relate to the Court what information
20 you had in this investigation that distinguished Mr. Page
21 versus Mr. McCollum from being the shooter, what
22 information -- all of the information you had that put
23 them wherever you believe they would be?

24 A. The information that I had from A. J. Williams and
25 from Terrance McKnight that Lamont McCollum had the .25

TESTIMONY OF SARA ROBBINS

1 auto and that Jaleel had a revolver.

2 Q. Okay. Did that information tell you where they were
3 located as far as the crime itself, who was where?

4 A. That both of them were on the front porch of
5 Mr. Cunningham's residence.

6 Q. Did that information indicate who actually was doing
7 what on the porch?

8 A. That they had knocked on the door and were going to
9 rob whoever opened the door and had their hands in their
10 hoodies with their hands on their guns and that Lamont had
11 actually pulled his gun out.

12 Q. And what is that information based on?

13 A. Statements from A. J. Williams and Terrance McKnight.

14 Q. Is there any other basis for your opinion other than
15 that? In other words, just as an investigator tell the
16 Court why you think that that's what took place.

17 A. The physical evidence that were at the scene. The
18 casings from the .25, which the evidence shows that Lamont
19 had that weapon and the projectiles which were consistent
20 with those casings.

21 Q. Is your opinion in this case based only on what A. J.
22 Williams told you?

23 A. No.

24 MR. POPE: Again, I guess that just brings it to a
25 head, Your Honor. The whole issue is you only got that,

TESTIMONY OF SARA ROBBINS

1 you only got that and I would want to illicit what she
2 actually had.

3 THE COURT: Now, I noted incidentally, counsel, that
4 at one point during the cross examination -- I don't know
5 if this got by both of y'all -- but at one point she did
6 say the statement of Terrance McKnight, because I remember
7 hearing that on the tape.

8 MR. CHIARENZA: I have that in my notes, Your Honor.
9 And one of the first things she said when I asked about --
10 I was asking this line of questions, she has already
11 testified that when I was asking her about someone
12 corroborating A. J. Williams' statement Detective Robbins
13 said it was corroborated through the statement of Terrance
14 McKnight.

15 THE COURT: So it seems to me that it's already in
16 the record.

17 MR. CHIARENZA: And I would point out then that it's
18 cumulative and unduly prejudicial to now un-redact the
19 statement that's already been put in. That statement --
20 at the time I asked that statement -- I asked that
21 question, the Court had ruled and the law is that the
22 statement of Terrance McKnight is inadmissible against my
23 client. Perhaps I missed an opportunity to move for a
24 mistrial at that point because the Court has already ruled
25 that that statement is inadmissible against my client.

TESTIMONY OF SARA ROBBINS

1 Kind of the premise that I was going under during the
2 course of my cross examination is that if a certain piece
3 of evidence is inadmissible it may as well not exist and I
4 am asking the detective to comment on the evidence that's
5 been presented up to this point. And again, Your Honor,
6 and I don't want to beat a dead horse, but I'll point out
7 that certainly if I would have raised the statements
8 specifically and said, "Well, Terrance McKnight never
9 mentioned my client," obviously that would be taking
10 advantage of the situation and opening the door there, but
11 I never mentioned Terrance McKnight. I believe when I
12 asked Detective Robbins why she came to the conclusion she
13 did she said that's what the evidence showed. And I asked
14 her about the physical evidence and then I said -- I asked
15 her well, is it primarily a statement of A. J. Williams,
16 and that word primarily is in the record and I believe her
17 answer to that was yes. So I wasn't questioning her --
18 then obviously towards the end as I was wrapping it up I
19 was trying to illustrate the point that this case went on
20 for nine and a half months, no arrests and then when
21 Mr. Williams gave a statement from the jail warrants were
22 served for everybody. In fact, one of those people was
23 Terrance McKnight who at that point hadn't given
24 information on himself for murder. At any rate, Your
25 Honor, we are getting into ground here where they're

TESTIMONY OF SARA ROBBINS

1 asking to un-redact a redacted statement. That by law is
2 not admissible against my client based on the fact that I
3 was simply during a thorough cross examination of a
4 State's witness regarding the evidence that the State has
5 presented to the jury up to this point, and in light of
6 the offer to address that concern regarding a photographic
7 lineup at the worst case scenario I think that there is
8 absolutely no requirement to un-redact the statements now
9 that are in evidence.

10 THE COURT: Well, Counsel, I recall in the cross
11 examination you asked her several times if she wanted the
12 jury to convict Mr. Page on the basis of the statement of
13 A. J. Williams, which was appropriate to do. And of
14 course, the questions that you asked in this were not
15 inappropriate questions, you are doing your job as a
16 defense lawyer by honing in on the issues. At one point
17 you asked her, though, if she corroborated it with this
18 evidence with other statements from the people in the
19 trailer park. And as I recall I don't recall what she
20 said about the trailer park but she said she did
21 corroborate in essence -- paraphrased -- that she did
22 corroborate it through other statements including a
23 statement of Terrance McKnight. Now, of course, at that
24 point there were no motions and no objections to it and I
25 think it may have slid by everybody. I notice in the tape

TESTIMONY OF SARA ROBBINS

1 it was kind of in a low voice, I don't think it was
2 intentional, I think it's just the way she was talking.
3 But the result was that that did come in. The other
4 problem is that, of course, as a good defense lawyer is
5 supposed to do you have to in essence bring into question
6 the integrity of the investigation itself, you are
7 supposed to do that because the State has to prove that
8 the investigation was a rock solid investigation and the
9 more rock solid the stronger the case they have. So they
10 would have to prove the integrity of their investigation,
11 you have a right certainly to go after that, that's what
12 you are supposed to do. But the problem is that it
13 reflects on her credibility as a witness and particularly
14 when in essence you are asking if her -- she did her
15 investigation and she brought these charges against
16 Mr. Page based on Mr. Williams' statement, Mr. Williams
17 and Ms. Howard. There actually was other and there was
18 the statement of Mr. McKnight, again, she mentioned at one
19 time in passing. But I think she does have a right for
20 the jury to at least have a full picture of considering,
21 because what has happened is the jury is getting a little
22 bit of a warped picture of what she did in terms of her
23 investigation and what she relied on. So I think she has
24 a right to go into what she got from Mr. McKnight
25 regarding Mr. Page's involvement. Now, no question at

TESTIMONY OF SARA ROBBINS

1 anytime you sort of -- and I hate to use the word again --
2 de-Brewtonize something like this it's a little bit of a
3 strong step, we never like to do it. But I think we have
4 to do it if the circumstances are appropriate, and in
5 these circumstances frankly I think it is appropriate
6 because it does reflect on her credibility and gives the
7 jury the opportunity to see a little bit more about her
8 investigation. So what I'm going to do then is grant the
9 State's motion to do that, but I am going to give the
10 jury -- I have got to craft this charge as best I can and
11 give the jury an instruction that it is admitted only in
12 terms of credibility of the witnesses, that they're not to
13 still consider that against Mr. Page in any way but only
14 to consider it as to the credibility of this particular
15 witness in what she did in her investigation. I'm not
16 sure how much that helps on either side, probably neither
17 side is happy with that but that may mean it's the right
18 decision then.

19 MR. CHIARENZA: But, Your Honor, to just to point out
20 for the record if it's already out there and she's already
21 addressed her credibility --

22 THE COURT: We shouldn't be going through this and he
23 can ask it anyway.

24 MR. CHIARENZA: Her investigation is saying she
25 corroborated through Mr. McKnight who didn't live in the

TESTIMONY OF SARA ROBBINS

1 trailer park and ask if she corroborated through anyone in
2 the trailer park. But I still -- the Court has ruled and
3 I won't argue with the Court, I just want to cover that on
4 the record.

5 THE COURT: Well, I think for those reasons and for
6 the fact that it was -- that there was an untested and
7 unchallenged and uncontested statement by her about the
8 statement of Mr. McKnight in her cross examination I think
9 the State does have a right to ask that. Okay. Mr. Boyd,
10 we haven't left you out intentionally I just want to give
11 you a chance. I have been kind of letting you have the
12 last say on these things.

13 MR. BOYD: I appreciate that, Judge. I just need --
14 if the statement is going to be de-Brewtonized that's fine
15 with me, but I just want to make sure there was a proposed
16 charge to the jury about that. My concern is I don't want
17 it to appear that my client was covering up something
18 originally and now is not.

19 THE COURT: Well, did you read Mr. Pope's proposed
20 charge? It seems to me that that takes care of that.

21 MR. BOYD: I think that would be a good charge.

22 THE COURT: Right. Mr. Chiarenza, do you want to --
23 what is your position on this charge?

24 MR. CHIARENZA: It's as good as any I suppose under
25 the circumstance.

TESTIMONY OF SARA ROBBINS

1 THE COURT: I understand.

2 MR. BOYD: And, Your Honor, I also don't think I
3 would be precluded on cross examination now that it has
4 been de-Brewtonized to ask the witness this is what he
5 originally said and the other guy language wasn't the
6 language that he used. That was put in for technical
7 reasons, something to that nature.

8 THE COURT: Mr. Chiarenza, what is your position on
9 that?

10 MR. CHIARENZA: I'll leave that in the Court's
11 discretion.

12 THE COURT: I think if we go that far we have got to
13 do that too. Once we are in the water we are in the
14 water, there's no going back to the shore once we get
15 there, so we will do that. I will also instruct them that
16 they are still not to consider his statement as evidence,
17 direct evidence against Mr. Page, but only to consider it
18 in terms of the credibility of this particular witness.
19 Anything else?

20 MR. POPE: Your Honor, the original statements prior
21 to the redaction in which Mr. Page's name was removed, I
22 have got copies of those I have marked as State's Exhibits
23 55 and 56 and we will address that.

24 (The jury returned to the courtroom.)

25 THE COURT: Ladies and gentlemen of the jury, give me