

Volume I of II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Greenville County

Robin B. Stilwell, Circuit Court Judge

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S.C. Supreme Court

RUSSELL W RICE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

ROBERT M. PACHAK
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

KAREN RATIGAN
Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF GREENVILLE

STATE OF SOUTH CAROLINA,)

PLAINTIFF,)

-VS-)

RUSSELL W. RICE, JR.,)

DEFENDANT.)

2003-GS-23-3612, 3614, 3615 & 8779

TRANSCRIPT OF RECORD
(VOLUME ONE OF TWO)

APRIL 12 - 15, 2004
GREENVILLE, SOUTH CAROLINA

BEFORE:

THE HONORABLE C. VICTOR PYLE, JR.

APPEARANCES:

ATTORNEY FOR PLAINTIFF:

L. MARK MOYER, ASSISTANT SOLICITOR

ATTORNEY FOR DEFENDANT:

STEVEN SUMNER, ESQUIRE

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

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Case No.: 2003-GS-23-3612, 3614, 3615+
8779

Judge: C. Victor Pyle, Jr.

Date: 4/12/04 - 4/15/04

Court/County: Greenville

Plaintiff/State: State

Attorney: Mark Mayer

Defendant: Russell W. Rice

Attorney: Steve Sumner

Court Reporter: Susan Hudgins

Juror #	Name	Race	Sex	Strikes			Accept
				Court	Plaintiff	Defendant	
114	Warren Reaux	W	M				✓
79	James King	W	M		X		
34	Shedore Dankovich	W	M			X	
107	Margaret Powers	W	F				✓
142	Sara Wheeler	W	F			X	
8	Lisa Barbary	W	F			X	
82	Kimberly Lennon	W	F				✓
55	Jay George	W	F			X	
135	Andrew Sullivan	W	M				✓
134	Arthur Sulger	W	M			X	
94	Sharon McIntosh	B	F			X	
121	Sharon Seay	W	F			X	
112	Janie Ray	W	F				✓
85	Gregory Lomax	B	M		X		
28	Rebecca Clark	W	F				✓
131	Melvin Starks	B	M		X		

*For the Court column, please indicate who made the motion to strike the juror "for cause" with a "C" for Court, "P" for Plaintiff, or "D" for Defense.

Voir Dire

13

Case No.: 2003-GS-23-3612, 3614, 3615 + 8779 Judge: C. Victor Pyle, Jr.

Date: 4/12/04 - 4/15/04 Court/County: Greenville

Plaintiff/State: State Attorney: Mark Mager

Defendant: Russell W. Rice Attorney: Steve Summer

Court Reporter: Susan Hudgins

Juror #	Name	Race	Sex	Strikes		Accept
				Court	Plaintiff Defendant	
23	Michael Candee	W	M		X	
57	Dawn Dillepie	W	F			✓
99	Stephanie Jackson	B	F			✓
48	Raymond Farmer	W	M			✓
133	Patricia Stewart	W	F			✓
102	Bryan Paschal	W	M		X	
4	Andrew Arrowood	W	M		X	
92	Dianne McDavid	B	F		X	
9	Robert Batson	W	M			✓
5	Richard Ballenger	W	M			✓
100	Willie Hedwards	B	M			✓

*For the Court column, please indicate who made the motion to strike the juror "for cause" with a "C" for Court, "P" for Plaintiff, or "D" for Defense.

1 (WHEREUPON STATE'S EXHIBITS 1-5 WERE MARKED BEFORE THE
2 TRIAL BEGAN)

3 THE COURT: BE SEATED. ALL RIGHT. ANYTHING BEFORE WE
4 BRING THE PANEL OF JURORS UP?

5 MR. MOYER: NOTHING FROM THE STATE, YOUR HONOR.

6 MR. SUMNER: NO, SIR.

7 THE COURT: ALL RIGHT. WE'RE GOING TO NEED TO CLEAN
8 OUT THE COURTROOM.

9 MR. MOYER: IT IS MY UNDERSTANDING THAT THERE WILL BE A
10 SUPPRESSION MOTION, BUT ---

11 MR. SUMNER: YES, SIR, YOUR HONOR. THERE WILL --
12 WHENEVER THE COURT WILL HEAR IT THERE'LL BE A SUPPRESSION
13 MOTION AND PROBABLY TWO OTHER BRIEF MOTIONS FROM THE
14 DEFENSE, YOUR HONOR.

15 THE COURT: ALL RIGHT. OKAY, MARY, BRING OUR JURORS
16 UP.

17 MADAME CLERK: YES, SIR.

18 THE COURT: ARE YOU TRYING ALL FOUR INDICTMENTS,
19 SOLICITOR?

20 MR. MOYER: I AM, YOUR HONOR.

21 THE COURT: ALL FOUR, OKAY.

22 MR. MOYER: YES, SIR.

23 MR. SUMNER: YOUR HONOR, THERE MAY BE ONE PRETRIAL
24 MATTER THAT WE MIGHT WANT TO TAKE UP, ---

25 THE COURT: ALL RIGHT.

1 MR. SUMNER: --- A MOTION TO SEVER. I APOLOGIZE. I
2 WAS THINKING ABOUT SOMETHING ELSE.

3 THE COURT: ALL RIGHT. WE'D BETTER GO AHEAD AND GET
4 THAT ON THE RECORD.

5 MR. SUMNER: YEAH, LET'S GO AHEAD AND GET THAT ON THE
6 RECORD, YOUR HONOR.

7 THE COURT: TELL THEM TO CLOSE THE BACK DOOR.

8 MR. SUMNER: I APOLOGIZE. I SHOULD HAVE THOUGHT ABOUT
9 THAT PRIOR TO BRINGING THE JURY UP.

10 THE COURT: OKAY.

11 MR. SUMNER: THANK YOU, YOUR HONOR. MAY IT PLEASE THE
12 COURT? YOUR HONOR, AT THIS TIME THE DEFENSE WOULD MAKE A
13 PRETRIAL MOTION TO SEVER THE DRUG TRAFFICKING CHARGE FROM
14 THE GUN RELATED CHARGES.

15 YOUR HONOR, BRIEFLY FOR THE COURT, THIS CASE AROSE OUT
16 OF A TRAFFIC STOP, WHICH OCCURRED ABOUT SIX TO SEVEN WEEKS
17 AFTER THE MURDER OF THE DECEASED. A TRAFFIC STOP TOOK
18 PLACE. MY CLIENT WAS ARRESTED AS A RESULT OF THAT. HE THEN
19 BECAME CHARGED WITH, I BELIEVE, MURDER. DURING THE COURSE
20 OF THE TRAFFIC STOP PARTS OF A WEAPON WERE RETRIEVED FROM
21 THE TRUNK OF HIS CAR ALONG WITH A QUANTITY OF COCAINE WHICH
22 I BELIEVE WAS IN EXCESS OF THE MINIMUM BASE LEVEL FOR
23 TRAFFICKING IN COCAINE. YOUR HONOR, I WOULD ASK THAT THE
24 COURT CONSIDER SEVERING THE DRUG TRAFFICKING CHARGE FROM THE
25 MURDER CASE. I KNOW THAT THIS IS A MOTION THAT'S ADDRESSED

1 TO YOUR SOUND DISCRETION.

2 AS I LOOK HERE THE POINTS I WOULD LIKE TO MAKE TO THE
3 COURT AS IT RELATES TO THIS MOTION ARE FIRST OF ALL THE
4 POTENTIAL OF UNDUE PREJUDICE AGAINST THE DEFENDANT. AS HE'S
5 BEING CHARGED WITH MURDER THE JURY MAY FEEL LIKE IF THE
6 DRUGS -- WELL, IF HE'S GUILTY OF DRUGS, HE'S GUILTY OF
7 MURDER, AND LET'S JUST PUT ALL THAT TOGETHER. I THINK IT
8 MAY BRING AN UNDUE PREJUDICE THERE FROM THE JURY AGAINST MY
9 CLIENT.

10 YOUR HONOR, I'M UNAWARE OF NO COMMON NEXUS BETWEEN THE
11 TWO CHARGES OTHER THAN THE FACT THAT THE COCAINE WAS FOUND
12 IN THE SEARCH WITH THE WEAPON. I'M UNAWARE OF ANY
13 CONNECTION BETWEEN THAT AND THE MURDER CHARGE. THE MURDER
14 OCCURRED, YOUR HONOR, ON NOVEMBER 5TH OF 2002. I BELIEVE
15 THE SEARCH TOOK PLACE TOWARD THE END OF DECEMBER OF 2002. I
16 WANT TO SAY THE 28TH OF DECEMBER OF 2002. I'LL ASK MR.
17 MOYER TO CORRECT ME IF I'M INCORRECT THERE.

18 AND AGAIN, I DON'T BELIEVE THERE WOULD BE ANY EXCESS OR
19 EXTRA BURDEN UPON THE STATE TO TRY THE TWO CHARGES
20 SEPARATELY. AND AGAIN, I THINK THE MAIN FOCUS OF MY
21 ARGUMENT HERE, YOUR HONOR, WOULD BE A POTENTIAL FOR
22 PREJUDICE AGAINST MR. RICE AS IT RELATES TO THE DRUG
23 CHARGES.

24 THE COURT: THAT'S YOUR ONLY POINT?

25 MR. SUMNER: SIR?

1 THE COURT: THAT THE PREJUDICE OUTWEIGHS ---

2 MR. SUMNER: THAT'S PRIMARILY MY POINT, YOUR HONOR.

3 THE COURT: ALL RIGHT.

4 MR. SUMNER: YES, SIR.

5 THE COURT: SOLICITOR.

6 MR. MOYER: YOUR HONOR, MY ARGUMENT WOULD BE THAT

7 ESSENTIALLY IT WOULD REQUIRE THE SAME OR SIMILAR PROOF IN

8 THAT IT'S GOING TO COME DOWN TO THIS CAR STOP THAT OCCURRED

9 DECEMBER THE 28TH OF 2002 IN WHICH THE OFFICERS -- ONE OF

10 THE BASES FOR THE STOP AND CERTAINLY THE REASON THEY WERE

11 FOCUSING ON THE VEHICLE WAS THIS MURDER THAT TOOK PLACE ON

12 NOVEMBER THE 5TH OF 2002.

13 SO THE FACT THAT THERE WAS REASONABLE SUSPICION TO STOP

14 THE DEFENDANT IN ANY CASE WILL BE DEVELOPED IN THE MOTIONS

15 HEARING ESTABLISHED IN PART FROM THE MURDER CASE. THERE WAS

16 A CAR STOP. AND THERE WAS OVER TWO HUNDRED GRAMS OF COCAINE

17 FOUND IN THE VEHICLE, A PISTOL FOUND ON THE DEFENDANT'S

18 PERSON, AS WELL AS WHAT WE ARE GOING TO ESTABLISH THROUGH

19 TESTIMONY WAS THE MURDER WEAPON IN THE CASE. IT WAS A RIFLE

20 THAT HAD BEEN CUT INTO PIECES. AND THROUGH EXPERT TESTIMONY

21 WE'RE GOING TO BE ABLE TO LINK IT TO -- AS THE MURDER

22 WEAPON.

23 YOUR HONOR, I DON'T SEE PREJUDICE TO THE DEFENDANT IN

24 ANY -- FOR THIS REASON, IF WE WERE TO TRY EITHER OF THESE

25 CASES INDEPENDENTLY OF ONE ANOTHER I SEE NO WAY THAT FACTS

1 OF THE OTHER CASE WOULDN'T LEAK OVER INTO THE OTHER TRIAL.
2 IF WE TRIED THE DRUG CASE ONLY, WELL, I DON'T SEE HOW WE CAN
3 DO THAT AND ESTABLISH TO THE JURY WHY THE OFFICERS WERE
4 FOCUSING ON THIS MAN WITHOUT BRINGING OUT THE MURDER.

5 IF WE WERE TO TRY JUST THE MURDER, WELL, THERE WOULD BE
6 DRUG REFERENCES THROUGHOUT THAT ENTIRE CASE BOTH AS MOTIVE
7 AS A DRUG TRANSACTION WAS AT THE ROOT OF THE MURDER ITSELF,
8 IN ADDITION TO THERE BEING DRUGS AT ANOTHER TIME BEING
9 ESTABLISHED TO HAVE BEEN IN THIS DEFENDANT'S CAR AND HAVE
10 BEEN ACTUALLY STOLEN BY THE VICTIM, THAT BEING ANOTHER
11 REASON FOR ESTABLISHING A MOTIVE. SO, YOUR HONOR, FOR THOSE
12 REASONS WE WOULD ARGUE TO YOU THAT WE WOULD REQUIRE THE SAME
13 OR SIMILAR PROOF.

14 THE COURT: AND I'D HAVE TO AGREE WITH THE STATE ON
15 THAT. YOUR MOTION'S DENIED. ALL RIGHT. BRING OUR JURY UP.

16 (WHEREUPON THE JURY PANEL ENTERED THE COURTROOM AT
17 11:03 AM)

18 THE COURT: GOOD MORNING, LADIES AND GENTLEMEN. LADIES
19 AND GENTLEMEN, IF I COULD HAVE YOUR ATTENTION. AT THIS TIME
20 WE WILL SELECT A JURY IN THE CASE OF THE STATE AGAINST
21 RUSSELL WILLIAMS RICE, JR. NOW, MR. RICE, WOULD YOU PLEASE
22 STAND UP A MOMENT AND FACE THE JURY PANEL FOR ME PLEASE?
23 THANK YOU. YOU CAN BE SEATED.

24 MR. RICE IS INDICTED FOR MURDER, FOR TRAFFICKING IN
25 COCAINE, FOR CARRYING AN UNLAWFUL -- THE UNLAWFUL CARRYING

1 OF A PISTOL, AND POSSESSION OF A WEAPON DURING THE
2 COMMISSION OF A VIOLENT CRIME. THESE INDICTMENTS ALLEGE
3 SPECIFICALLY THAT ON OR ABOUT NOVEMBER THE 5TH OF 2002 MR.
4 RICE UNLAWFULLY AND WITH MALICE AFORETHOUGHT KILLED HOMER
5 DELANO JOHNSON, JR. BY MEANS OF SHOOTING HIM.

6 THE NEXT INDICTMENT FOR TRAFFICKING COCAINE ALLEGES
7 THAT ON OR ABOUT DECEMBER 28, 2002 MR. RICE KNOWINGLY SOLD,
8 MANUFACTURED, DELIVERED, OR BROUGHT INTO SOUTH CAROLINA MORE
9 THAN TWO HUNDRED GRAMS OF COCAINE.

10 THE NEXT INDICTMENT ALLEGES THAT ON DECEMBER THE 28TH
11 HE WILFULLY AND UNLAWFULLY CARRIED ABOUT HIS PERSON A
12 PISTOL.

13 AND THE LAST INDICTMENT ALLEGES THAT ON DECEMBER 28TH,
14 2002 HE POSSESSED A PISTOL DURING THE COMMISSION OR
15 ATTEMPTED COMMISSION OF A VIOLENT CRIME, THAT ALLEGED TO BE
16 TRAFFICKING IN COCAINE.

17 NOW POTENTIAL WITNESSES IN THE CASE WILL BE T. B. RICE,
18 A. R. LINDLER, T. T. THOMPSON, D. DEMPSEY, J. R. LONG, R. L.
19 FLOYD, AND D. C. FULLER, ALL WITH THE GREENVILLE POLICE
20 DEPARTMENT. CHRIS BRYAN, AUBREY TOMLIN, JAMES ARMSTRONG,
21 GAIL GLYMPH, DR. ERIK CHRISTENSEN, KAREN THOMAS, TERESA
22 THACKER, FRANCIS ZURAWSKI, GERALD REYNOLDS, ARCHIBALD
23 WARREN, ANGELA STAPLETON, TERRY LYNCH, DALE SHIRLEY, ZACHARY
24 SMITH, MELISSA WHITE, JOHNNY HAMBY, HOMER JOHNSON, SR.,
25 SHELLY JOHNSON, RUSSELL RICE, SHARON IRBY, HANNAH RICE,

1 HANNAH ...

2 MR. SUMNER: WHITE.

3 THE COURT: WHITE?

4 MR. SUMNER: YES, SIR.

5 THE COURT: BILLY WHITE..

6 MR. SUMNER: ABRA HAMBY..

7 THE COURT: SHAWN ROPER, AND TACKIE D. KELLY.

8 MR. SUMNER: YES, SIR. JACKIE D. KELLY, YOUR HONOR.

9 THE COURT: JACKIE D. KELLY.

10 MR. SUMNER: YES, SIR.

11 THE COURT: NOW I WOULD INQUIRE AT THIS TIME IF ANY

12 MEMBER OF THE JURY PANEL IS RELATED BY BLOOD OR MARRIAGE OR

13 CONNECTED BY EMPLOYMENT TO THE DEFENDANT OR TO ANY POTENTIAL

14 WITNESS IN THIS CASE? ARE YOU SENSIBLE OR AWARE OF ANY BIAS

15 OR ANY PREJUDICE WITH RESPECT TO THE DEFENDANT, TO THE

16 STATE, OR TO THE SUBJECT MATTER OF THE CASE, THAT BEING AN

17 ALLEGED MURDER, TRAFFICKING COCAINE, CARRYING AN UNLAWFUL

18 PISTOL, AND THE POSSESSION OF A PISTOL DURING THE COMMISSION

19 OF A VIOLENT CRIME? OR DO YOU KNOW ANY REASON WHY YOU COULD

20 NOT GIVE THIS DEFENDANT AND THE STATE A FAIR AND IMPARTIAL

21 TRIAL BASED ON THE LAW AND EVIDENCE TO BE PRESENTED? IF SO,

22 WOULD YOU PLEASE STAND AND GIVE ME YOUR NAME?

23 (NO RESPONSE)

24 THE COURT: DO I HAVE ANY MEMBER OF THE PANEL WHO HAS

25 ANY CONNECTION, FAMILY, BUSINESS, SOCIAL, OR OTHERWISE WITH

1 BOB ARIAIL, THE SOLICITOR, OR ANY MEMBER OF HIS STAFF
2 INCLUDING MARK MOYER, WHO IS THE PROSECUTOR ON THIS CASE, OR
3 WITH LAW ENFORCEMENT WHETHER THAT BE FEDERAL, STATE, COUNTY,
4 OR MUNICIPAL? IF SO, WOULD YOU PLEASE STAND AND GIVE ME
5 YOUR NAME? YOUR NAME PLEASE, MA'AM?

6 JUROR: DIANNE MCDAVID.

7 THE COURT: ALL RIGHT, MS. MCDAVID.

8 MS. MCDAVID: MY DAUGHTER IS A DEPUTY WITH THE
9 SPARTANBURG COUNTY SHERIFF'S ---

10 THE COURT: YOUR DAUGHTER IS A DEPUTY IN SPARTANBURG?

11 MS. MCDAVID: AND MY SON IN-LAW IS A DEPUTY WITH
12 GREENVILLE COUNTY.

13 THE COURT: IN GREENVILLE COUNTY?

14 MS. MCDAVID: YES.

15 THE COURT: WOULD THOSE FACTS IN ANY WAY INTERFERE WITH
16 YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR ON THIS CASE?

17 MS. MCDAVID: NO, SIR.

18 THE COURT: THANK YOU, MA'AM. STEVE SUMNER REPRESENTS
19 THE DEFENDANT IN THIS CASE. DO I HAVE ANY CLIENTS NOW OR
20 FORMERLY OF MR. SUMNER? IF SO, PLEASE STAND AND GIVE ME
21 YOUR NAME.

22 (NO RESPONSE)

23 THE COURT: DO I HAVE ANY MEMBER OF THE PANEL OR ANY
24 MEMBER OF YOUR FAMILY WHO HAS BEEN THE VICTIM OF A VIOLENT
25 CRIME? IF SO, WOULD YOU PLEASE STAND AND GIVE ME YOUR NAME?

1 (NO RESPONSE)

2 THE COURT: ALL RIGHT. THE STRIKES ARE FIVE FOR THE
3 STATE AND TEN FOR THE DEFENSE. LADIES AND GENTLEMEN, WHEN
4 YOUR NAME IS CALLED I WOULD ASK THAT YOU PLEASE COME FORWARD
5 TO THIS PODIUM UP FRONT, TURN AROUND AND FACE COUNSEL, AND
6 AWAIT FURTHER INSTRUCTIONS. THANK YOU.

7 MADAME CLERK: NUMBER 114, WARREN REAUX. WHAT SAYS THE
8 STATE?

9 MR. MOYER: PLEASE PRESENT MR. REAUX.

10 MADAME CLERK: WHAT SAYS THE DEFENDANT?

11 MR. SUMNER: PLEASE SWEAR MR. REAUX, YOUR HONOR.

12 MADAME CLERK: MR. REAUX, PLEASE HAVE A SEAT IN THE
13 JURY BOX. NUMBER 79, JAMES KING. WHAT SAYS THE STATE?

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

15 MADAME CLERK: MR. KING, YOU'RE EXCUSED FROM THIS CASE.
16 PLEASE TAKE YOUR SEAT. NUMBER 34, THEODORE DANKOVICH. WHAT
17 SAYS THE STATE?

18 MR. MOYER: PLEASE PRESENT MR. DANKOVICH.

19 MADAME CLERK: WHAT SAYS THE DEFENDANT?

20 MR. SUMNER: PLEASE EXCUSE MR. DANKOVICH FROM THIS
21 TRIAL.

22 MADAME CLERK: SIR, YOU ARE EXCUSED FROM THIS TRIAL.
23 YOU MAY HAVE A SEAT. NUMBER 107, MARGARET POWERS. WHAT
24 SAYS THE STATE?

25 MR. MOYER: PLEASE PRESENT MS. POWERS.

1 MADAME CLERK: WHAT SAYS THE DEFENDANT?

2 MR. SUMNER: PLEASE SWEAR MS. POWERS.

3 MADAME CLERK: MS. POWERS, PLEASE HAVE A SEAT IN THE
4 JURY BOX. NUMBER 142, SARA WHEELER. WHAT SAYS THE STATE?

5 MR. MOYER: PLEASE PRESENT MS. WHEELER.

6 MADAME CLERK: WHAT SAYS THE DEFENDANT?

7 MR. SUMNER: PLEASE EXCUSE MS. WHEELER FROM THE TRIAL
8 OF THIS CASE.

9 MADAME CLERK: MS. WHEELER, YOU'RE EXCUSED FROM THIS
10 CASE. YOU MAY HAVE A SEAT. NUMBER 8, LISA BARBERY. WHAT
11 SAYS THE STATE?

12 MR. MOYER: PLEASE PRESENT MS. BARBERY.

13 MADAME CLERK: WHAT SAYS THE DEFENDANT?

14 MR. SUMNER: PLEASE EXCUSE MS. BARBERY FROM THE TRIAL
15 OF THIS CASE.

16 MADAME CLERK: MS. BARBERY, YOU'RE EXCUSED FROM THIS
17 CASE. PLEASE HAVE A SEAT. NUMBER 82, KIMBERLY LENNON.
18 WHAT SAYS THE STATE?

19 MR. MOYER: PLEASE PRESENT MS. LENNON.

20 MADAME CLERK: WHAT SAYS THE DEFENDANT?

21 MR. SUMNER: PLEASE SWEAR MS. LENNON.

22 MADAME CLERK: MS. LENNON, PLEASE HAVE A SEAT IN THE
23 JURY BOX. NUMBER 55, JOY GEORGE.

24 MR. SUMNER: 65 OR 55?

25 MADAME CLERK: 55. WHAT SAYS THE STATE?

1 MR. MOYER: PLEASE PRESENT MS. GEORGE.

2 MADAME CLERK: WHAT SAYS THE DEFENDANT?

3 MR. SUMNER: PLEASE EXCUSE MS. GEORGE FROM THIS TRIAL.

4 MADAME CLERK: MS. GEORGE, YOU ARE EXCUSED FROM THIS

5 CASE. NUMBER 135, ANDREW SULLIVAN. WHAT SAYS THE STATE?

6 MR. MOYER: PLEASE PRESENT MR. SULLIVAN.

7 MADAME CLERK: WHAT SAYS THE DEFENDANT?

8 MR. SUMNER: PLEASE SWEAR MR. SULLIVAN.

9 MADAME CLERK: MR. SULLIVAN, PLEASE HAVE A SEAT IN THE
10 JURY BOX. NUMBER 134, ARTHUR SULGER. WHAT SAYS THE STATE?

11 MR. MOYER: PLEASE PRESENT MR. SULGER.

12 MADAME CLERK: WHAT SAYS THE DEFENDANT?

13 MR. SUMNER: PLEASE EXCUSE MR. SULGER FROM THIS TRIAL.

14 MADAME CLERK: YOU ARE EXCUSED, SIR. NUMBER 94, SHARON
15 MCINTOSH. WHAT SAYS THE STATE?

16 MR. MOYER: PLEASE PRESENT MS. MCINTOSH.

17 MADAME CLERK: WHAT SAYS THE DEFENDANT?

18 MR. SUMNER: PLEASE EXCUSE MS. MCINTOSH FROM THIS
19 TRIAL.

20 MADAME CLERK: MS. MCINTOSH, YOU'RE EXCUSED FROM THIS
21 TRIAL. YOU MAY HAVE A SEAT. NUMBER 121, SHARON SEAY. WHAT
22 SAYS THE STATE?

23 MR. MOYER: PLEASE PRESENT MS. SEAY.

24 MADAME CLERK: WHAT SAYS THE DEFENDANT?

25 MR. SUMNER: PLEASE EXCUSE MS. SEAY.

1 MADAME CLERK: MS. SEAY, YOU'RE EXCUSED FROM THIS CASE.

2 NUMBER 112, JANIE RAY.. WHAT SAYS THE STATE?

3 MR. MOYER: PLEASE PRESENT MS. RAY.

4 MADAME CLERK: WHAT SAYS THE DEFENDANT?

5 MR. SUMNER: PLEASE SWEAR MS. RAY.

6 MADAME CLERK: MS. RAY, PLEASE HAVE A SEAT IN THE JURY

7 BOX. NUMBER 85, GEORGE LOMAX.. WHAT SAYS THE STATE?

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

9 MADAME CLERK: MR. LOMAX, YOU'RE EXCUSED FROM THIS
10 CASE. YOU MAY HAVE A SEAT. NUMBER 28, REBECCA CLARK. WHAT
11 SAYS THE STATE?

12 MR. MOYER: PLEASE PRESENT MS. CLARK.

13 MADAME CLERK: WHAT SAYS THE DEFENDANT?

14 MR. SUMNER: PLEASE SWEAR MS. CLARK.

15 MADAME CLERK: MS. CLARK, PLEASE HAVE A SEAT IN THE

16 JURY BOX. NUMBER 131, MELVIN STARKS.

17 MR. SUMNER: CAN WE APPROACH THE BENCH A SECOND, YOUR
18 HONOR?

19 THE COURT: SURE.

20 (WHEREUPON A BENCH CONFERENCE WAS HELD OFF THE RECORD
21 IN THE PRESENCE OF THE JURY, BUT OUT OF THEIR HEARING)

22 THE COURT: COME AROUND PLEASE, MR. STARKS.

23 MADAME CLERK: WHAT SAYS THE STATE?

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

25 MADAME CLERK: MR. STARKS, YOU'RE EXCUSED FROM THIS

1 CASE. JUROR 23, MICHAEL CANDEE. WHAT SAYS THE STATE?

2 MR. MOYER: PLEASE PRESENT MR. CANDEE.

3 MADAME CLERK: WHAT SAYS THE DEFENDANT?

4 MR. SUMNER: PLEASE EXCUSE MR. CANDEE FROM THIS TRIAL,
5 YOUR HONOR.

6 MADAME CLERK: YOU ARE EXCUSED FROM THIS CASE, SIR.

7 NUMBER 57, DAWN GILLESPIE. WHAT SAYS THE STATE?

8 MR. MOYER: PLEASE PRESENT MS. GILLESPIE.

9 MADAME CLERK: WHAT SAYS THE DEFENDANT?

10 MR. SUMNER: PLEASE SWEAR MS. GILLESPIE.

11 MADAME CLERK: MS. GILLESPIE, PLEASE HAVE A SEAT IN THE
12 JURY BOX. NUMBER 99, STEPHANIE JACKSON. WHAT SAYS THE
13 STATE?

14 MR. MOYER: PLEASE PRESENT MS. JACKSON.

15 MADAME CLERK: WHAT SAYS THE DEFENDANT?

16 MR. SUMNER: PLEASE SWEAR MS. JACKSON.

17 MADAME CLERK: MS. JACKSON, PLEASE HAVE A SEAT IN THE
18 JURY BOX. NUMBER 48, RAYMOND FARMER. WHAT SAYS THE STATE?

19 MR. MOYER: PLEASE PRESENT MR. FARMER.

20 MADAME CLERK: WHAT SAYS THE DEFENDANT?

21 MR. SUMNER: PLEASE SWEAR MR. FARMER.

22 MADAME CLERK: MR. FARMER, PLEASE HAVE A SEAT IN THE
23 JURY BOX. NUMBER 133, PATRICIA STEWART. WHAT SAYS THE
24 STATE?

25 MR. MOYER: PLEASE PRESENT MS. STEWART.

1 MADAME CLERK: WHAT SAYS THE DEFENDANT?

2 MR. SUMNER: PLEASE SWEAR MS. STEWART.

3 MADAME CLERK: MS. STEWART, PLEASE HAVE A SEAT IN THE
4 JURY BOX. NUMBER 102, BRYAN PASCHAL. WHAT SAYS THE STATE?

5 MR. MOYER: PLEASE EXCUSE MR. PASCHAL IN THIS CASE.

6 MADAME CLERK: MR. PASCHAL, YOU'RE EXCUSED FROM THIS
7 CASE. NUMBER 4, ANDREW ARROWOOD. WHAT SAYS THE STATE?

8 MR. MOYER: PLEASE PRESENT MR. ARROWOOD.

9 MADAME CLERK: WHAT SAYS THE DEFENDANT?

10 MR. SUMNER: PLEASE EXCUSE MR. ARROWOOD FROM THIS
11 TRIAL.

12 MADAME CLERK: MR. ARROWOOD, YOU'RE EXCUSED FROM THIS
13 CASE. NUMBER 92, DIANNE MCDAVID. WHAT SAYS THE STATE?

14 MR. MOYER: PLEASE PRESENT MS. MCDAVID.

15 MADAME CLERK: WHAT SAYS THE DEFENDANT?

16 MR. SUMNER: PLEASE EXCUSE MS. MCDAVID.

17 MADAME CLERK: MS. MCDAVID, YOU ARE EXCUSED FROM THIS
18 CASE. NUMBER 9, ROBERT BATSON. WHAT SAYS THE STATE?

19 MR. MOYER: PLEASE PRESENT MR. BATSON.

20 MADAME CLERK: WHAT SAYS THE DEFENDANT?

21 MR. SUMNER: PLEASE PRESENT -- PLEASE SWEAR MR. BATSON.

22 MADAME CLERK: MR. BATSON, PLEASE HAVE A SEAT IN THE
23 JURY BOX. NUMBER 5, RICHARD BALLENGER. WHAT SAYS THE
24 STATE?

25 MR. MOYER: PLEASE PRESENT MR. BALLENGER.

1 MADAME CLERK: WHAT SAYS THE DEFENDANT?

2 MR. SUMNER: PLEASE SWEAR MR. BALLENGER.

3 MADAME CLERK: MR. BALLENGER, ---

4 THE COURT: MR. REAUX, WOULD YOU COME TAKE THIS FIRST
5 SEAT AND SERVE AS FOREMAN ON THIS CASE FOR ME PLEASE, SIR?
6 AND GIVE ME ONE ALTERNATE, ONE FOR THE STATE, TWO FOR THE
7 DEFENSE.

8 MADAME CLERK: 100, WILLIE NEDWARDS. WHAT SAYS THE
9 STATE?

10 MR. MOYER: PLEASE PRESENT MR. NEDWARDS.

11 MADAME CLERK: WHAT SAYS THE DEFENDANT?

12 MR. SUMNER: PLEASE SWEAR MR. NEDWARDS.

13 MADAME CLERK: MR. NEDWARDS, PLEASE HAVE A SEAT IN THE
14 JURY BOX.

15 THE COURT: OKAY. SWEAR THE JURY FOR ME.

16 MADAME CLERK: LADIES AND GENTLEMEN, PLEASE STAND,
17 RAISE YOUR RIGHT HAND FOR THE OATH IN THIS CASE. THE
18 CORRECT RESPONSE IS, I WILL.

19 (WHEREUPON THE JURY WAS DULY SWORN)

20 MADAME CLERK: THANK YOU. PLEASE BE SEATED.

21 THE COURT: LADIES AND GENTLEMEN, THERE ARE A COUPLE OF
22 MATTERS I NEED TO TAKE UP BEFORE WE START THIS TRIAL. I
23 WILL GIVE YOU A RECESS WHILE I DO THAT. YOU DON'T KNOW
24 ANYMORE ABOUT THIS CASE OTHER THAN WHAT I'VE BRIEFLY TOLD
25 YOU A MOMENT AGO. BUT I NEED TO INSTRUCT YOU THAT FROM THIS

1 POINT ON YOU DO NOT TALK ABOUT THIS CASE, YOU DON'T DISCUSS
2 THE FACTS OF THIS CASE UNTIL YOU'VE HEARD ALL OF THE
3 TESTIMONY TO BE PRESENTED, THE ARGUMENTS BY THE ATTORNEYS,
4 AND MY CHARGE ON THE LAW. SO IF YOU'LL BE AT EASE AND
5 FOLLOW THE BAILIFF WE'LL START JUST AS SOON AS WE CAN.
6 THANK YOU.

7 (WHEREUPON THE JURY EXITED THE COURTROOM AT 11:27 AM)

8 THE COURT: NOW I NEED THE BALANCE OF THE PANEL TO
9 REPORT BACK DOWNSTAIRS TO THE JURY ASSEMBLY ROOM. THANK YOU
10 VERY MUCH.

11 (WHEREUPON THE JURY PANEL EXITED THE COURTROOM)

12 THE COURT: ALL RIGHT. I UNDERSTAND YOU HAVE SOME
13 MOTIONS NOW.

14 MR. SUMNER: I DO, YOUR HONOR. MAY IT PLEASE THE
15 COURT? FIRST OF ALL, I WOULD JUST ASK ON THE RECORD FROM
16 THE SOLICITOR, ARE THERE ANY STATEMENTS BY THE DEFENDANT
17 THAT I'M NOT AWARE OF? I WAS NOT AWARE OF ANY THROUGH
18 DISCOVERY. IF THERE ARE STATEMENTS BY THE DEFENDANT IN THIS
19 CASE, RUSSELL RICE, I WOULD JUST ASK FOR A DENNO HEARING TO
20 IDENTIFY THE STATEMENTS, SEE IF THEY'RE ADMISSIBLE.

21 MR. MOYER: YOUR HONOR, NO CUSTODIAL STATEMENTS -- THE
22 EXTENT, HE MADE SOME COMMENTS ON THE VIDEOTAPE THAT WE'LL BE
23 WATCHING HERE SOON. BUT ---

24 MR. SUMNER: OTHER THAN THAT, IF THEY'RE ALL CONTAINED
25 ON THE VIDEOTAPE, THAT'S FINE. I'M UNAWARE OF ANY OTHER

1 STATEMENTS. I JUST WANT TO MAKE SURE.

2 MR. MOYER: THAT'S CORRECT.

3 MR. SUMNER: IS THAT CORRECT?

4 MR. MOYER: YES.

5 MR. SUMNER: OKAY. YOUR HONOR, I WANT TO ALSO -- I
6 BELIEVE BY AGREEMENT THE SOLICITOR AND I HAVE AGREED TO
7 SEQUESTER THE WITNESSES ONCE THE TRIAL BEGINS, SEQUESTER ALL
8 POTENTIAL WITNESSES.

9 MR. MOYER: I ACTUALLY, ---

10 MR. SUMNER: NO, -- OKAY. I JUST -- YOU AND I SPOKE
11 ABOUT IT. BUT I WOULD MAKE A MOTION AT THIS TIME THAT ALL
12 WITNESSES OR POTENTIAL WITNESSES FROM EITHER SIDE BE
13 SEQUESTERED ONCE THE OPENING STATEMENTS ARE GIVEN TO THE
14 JURY.

15 THE COURT: ALL RIGHT. WITH THE EXCEPTION OF YOUR LEAD
16 INVESTIGATOR AND YOU HAVE A VICTIM?

17 MR. MOYER: EX-WIFE, YES, SIR.

18 THE COURT: ALL RIGHT. SO YOU INTEND TO HAVE HER IN
19 THE COURTROOM?

20 MR. MOYER: WE WOULD LIKE TO KEEP HER IN THE COURTROOM.

21 THE COURT: ALL RIGHT. SO ---

22 MR. SUMNER: THAT'S FINE.

23 THE COURT: --- EXCEPT FOR THOSE THEN THE BALANCE WILL
24 BE SEQUESTERED.

25 MR. SUMNER: YES, SIR.

1 THE COURT: ALL RIGHT.

2 MR. SUMNER: YOUR HONOR, AS A BRIEF BACKGROUND ON THIS
3 CASE, AS I MENTIONED EARLIER, THE DEFENDANT'S VEHICLE IN
4 LATE DECEMBER OF 2002 WAS STOPPED DURING A TRAFFIC STOP IN
5 GREENVILLE COUNTY. THAT TRAFFIC STOP IS ON VIDEOTAPE IN THE
6 COURT. DURING THE COURSE OF THE TRAFFIC STOP A SEARCH OF
7 THE -- MY CLIENT'S TRUNK TOOK PLACE WHEREIN THE COCAINE AND
8 PARTS OF A WEAPON LINKED TO THIS MURDER WERE SEIZED. AND I
9 WOULD MAKE A MOTION AT THIS TIME TO SUPPRESS THOSE PIECES OF
10 EVIDENCE FROM COMING INTO THIS TRIAL ON THE BASIS THAT IT
11 WAS -- THE STOP ITSELF AND/OR THE SEIZURE OF HIS PERSON
12 AND/OR THESE ITEMS WERE UNCONSTITUTIONAL. SO ---

13 THE COURT: WHAT'S THE BASIS OF THAT ARGUMENT NOW, MR.
14 SUMNER?

15 MR. SUMNER: YOUR HONOR, BRIEFLY I WOULD JUST LIKE TO
16 PUT THE TAPE INTO EVIDENCE. THE TAPE HAS TWO REFERENCES TO
17 THE FACT THAT MY CLIENT'S VEHICLE WAS STOPPED FOR HAVING A
18 PAPER TAG. I WILL PRESENT -- UNDER STATE V. BUTLER, THIS
19 COURT OF APPEALS ADDRESSED THIS ISSUE REGARDING THE SEARCH
20 OF A VEHICLE OR THE STOP OF A VEHICLE BASED PURELY UPON A
21 PAPER TAG. I'LL SUBMIT THIS TO THE COURT. I'LL HAND THIS
22 OPINION UP.

23 THE COURT: IS THAT THE ONLY BASIS ---

24 MR. MOYER: IT'S NOT, YOUR HONOR. I THINK IT WOULD
25 REQUIRE TESTIMONY ---

1 THE COURT: ALL RIGHT. OKAY. THAT'LL BE FINE.

2 MR. SUMNER: YEAH. I'LL JUST GO AHEAD AND HAND THIS
3 UP, YOUR HONOR.

4 THE COURT: ALL RIGHT. THAT'S FINE.

5 MR. SUMNER: SURE.

6 THE COURT: ALL RIGHT. SOLICITOR, YOU MAY PROCEED.

7 MR. MOYER: AND, YOUR HONOR, FOR PURPOSES OF SCHEDULING
8 WE WILL HAVE THREE WITNESSES TO CALL FOR THIS. AND THERE'S
9 A TAPE RECORDING WHICH, UNLESS WE FAST FORWARD THROUGH PARTS
10 OF IT, IT IS ABOUT THIRTY MINUTES LONG. SO I JUST
11 ANTICIPATE THAT THE TESTIMONY WILL TAKE PROBABLY ABOUT AN
12 HOUR, TO MAKE THE COURT AWARE OF IT.

13 THE COURT: ALL RIGHT. YOU WANT TO EXCUSE THE JURY AND
14 BRING THEM BACK AFTER LUNCH TO START?

15 MR. SUMNER: THAT'S FINE.

16 MR. MOYER: YES, SIR.

17 THE COURT: ALL RIGHT. BRING OUR JURY.

18 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 11:33 AM)

19 THE COURT: LADIES AND GENTLEMEN, THE MATTERS I NEED TO
20 TAKE UP WITH COUNSEL ARE GOING TO TAKE A LITTLE LONGER THAN
21 I HAD ANTICIPATED. SO INsofar AS YOU'RE CONCERNED I'M GOING
22 TO LET YOU GO TO LUNCH AT THIS TIME. WE'LL START THE
23 TESTIMONY AFTER LUNCH.

24 NOW DURING THE LUNCH RECESS DO NOT TALK ABOUT THIS CASE
25 AMONG YOURSELVES OR WITH ANYONE ELSE. THIS INCLUDES EVEN

DANIEL FULLER - DIRECT EXAMINATION BY MR. MOYER

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1 MEMBERS OF YOUR OWN FAMILY IF YOU GO HOME FOR LUNCH. IF
2 ANYBODY CONTACTS YOU AND TRIES TO TALK TO YOU ABOUT THIS
3 CASE GET THEIR NAMES AND ADDRESSES AND REPORT THAT TO ME.
4 I'LL ASK THAT YOU KEEP YOUR BADGES ON DURING THIS
5 RECESS. I ASK THAT YOU DO THAT SO THAT EVERYONE INVOLVED
6 WITH THIS CASE WILL KNOW THAT YOU ARE A JUROR ON THE CASE
7 AND THEY SHOULD NOT DISCUSS THIS CASE IN YOUR PRESENCE. YOU
8 SEE SEATED OUT IN THE AUDIENCE POTENTIAL WITNESSES IN THIS
9 CASE. AND I NEED FOR EVERYONE TO UNDERSTAND THAT THIS CASE
10 IS NOT TO BE DISCUSSED IN YOUR PRESENCE.

11 NOW IF ANYBODY CONTACTS YOU AND TRIES TO TALK TO YOU
12 ABOUT THIS CASE GET THEIR NAMES AND ADDRESSES AND REPORT
13 THAT TO ME. I'LL ASK THAT YOU BE BACK IN YOUR JURY ROOM
14 WHERE YOU WERE ON RECESS AT TWO PM, 2:00. THANK YOU.

15 (WHEREUPON THE JURY EXITED THE COURTROOM AT 11:35 AM)

16 THE COURT: ALL RIGHT. SOLICITOR.

17 MR. MOYER: MAY IT PLEASE THE COURT? I CALL DETECTIVE
18 DAN FULLER TO THE STAND.

19 DANIEL FULLER, BEING DULY
20 SWORN TESTIFIED AS FOLLOWS:

21 DIRECT EXAMINATION BY MR. MOYER:

22 Q. OKAY. AND, DETECTIVE FULLER, YOU'RE AN INVESTIGATOR
23 WITH THE GREENVILLE POLICE DEPARTMENT, IS THAT CORRECT?

24 A. YES, I AM.

25 Q. OKAY. AND WERE YOU THE LEAD DETECTIVE IN THE

DANIEL FULLER - DIRECT EXAMINATION BY MR. MOYER

32

1 INVESTIGATION IN THE DEATH OF HOMER JOHNSON?

2 A. YES, I WAS.

3 Q. NOW DECEMBER THE 28TH OF 2002, HOW LONG HAD YOU BEEN
4 INVESTIGATING THAT CRIME BY THAT POINT?

5 A. SINCE THE TIME THAT IT OCCURRED, NOVEMBER THE 5TH AT
6 ABOUT SIX PM IS WHEN I BEGAN.

7 Q. OKAY. NOW HAD YOUR INVESTIGATION DIRECTED YOU IN ANY
8 WAY BY THE 28TH OF DECEMBER TOWARDS THIS DEFENDANT?

9 A. YES, IT HAD.

10 Q. AND WHAT WAS THE BASIS FOR THAT?

11 A. WE HAD LEARNED BY THE TIME OF THIS TRAFFIC STOP THAT
12 HOMER JOHNSON WAS INTENDING TO MEET WITH RUSSELL RICE, JR.
13 AT THE SUPER 8 MOTEL WHERE HIS BODY WAS FOUND. HE HAD NOT
14 BEEN -- WE HAD NOT BEEN ABLE TO LOCATE HIM SINCE THE MURDER.
15 NUMEROUS ATTEMPTS TO CONTACT HIM HAD FAILED. I'D NEVER
16 SPOKEN TO HIM UNTIL DECEMBER THE 26TH. IT WAS THE VERY
17 FIRST TIME. SHALL I GO ON?

18 Q. NOW WHEN YOU MENTIONED THAT YOU DETERMINED THAT THE
19 VICTIM, HOMER JOHNSON, WAS GOING TO MEET WITH THE DEFENDANT
20 WAS THAT ANYWHERE AROUND THE SAME TIME AS THE -- BELIEVED TO
21 BE CAUSE OF DEATH OR TIME OF DEATH?

22 A. YES. AT THE TIME, APPROXIMATE TIME OF DEATH IS WHEN
23 HOMER JOHNSON WAS INTENDED TO MEET WITH RUSSELL RICE AT THE
24 SUPER 8 MOTEL WHERE HOMER JOHNSON WAS KILLED.

25 Q. HAD YOU FORMULATED ANY POSSIBLE MOTIVES BY THAT POINT

DANIEL FULLER - DIRECT EXAMINATION BY MR. MOYER

33

1 AS WELL?

2 A. WE HAD FORMULATED A MOTIVE. REVENGE WAS THE MOTIVE
3 THAT WE BEST CAME UP WITH. WE HAD LEARNED THAT HOMER
4 JOHNSON HAD TAKEN PROPERTY FROM RUSSELL RICE PRIOR TO HOMER
5 JOHNSON'S MURDER, PROPERTY IN VALUE OF SEVERAL THOUSAND
6 DOLLARS CAUSING RUSTY RICE TO HAVE A POSSIBLE MOTIVE TO SEEK
7 REVENGE.

8 Q. OKAY. NOW YOU MENTIONED THAT YOU HAD TROUBLE GETTING
9 IN TOUCH WITH HIM. DID YOU HAVE HIS CELLULAR -- DID YOU
10 HAVE A TELEPHONE FOR -- NUMBER FOR HIM?

11 A. YES. I DID HAVE A CELL PHONE FOR RUSTY RICE, 420-0035.

12 Q. AND DID YOU CALL HIM FREQUENTLY?

13 A. YES, I DID.

14 Q. HOW FREQUENTLY?

15 A. RARELY A DAY WENT BY THAT I DID NOT CALL HIM.

16 Q. OKAY. AND OVER THOSE -- YOU'RE TALKING ABOUT FROM THAT
17 WHOLE TIME-FRAME, NOVEMBER THE 5TH UNTIL THE 28TH OF
18 DECEMBER?

19 A. I THINK I LEARNED OF HIS CELL PHONE NUMBER MAYBE A
20 COUPLE OF DAYS AFTER THE MURDER. AND IT WAS FROM THAT TIME
21 FORWARD TO DECEMBER 28TH I CONTINUALLY CALLED THAT NUMBER
22 NEARLY EVERY DAY.

23 Q. AND DID YOU LEAVE MESSAGES FOR HIM ASKING HIM TO CALL
24 YOU?

25 A. I WOULD FREQUENTLY LEAVE MESSAGES ON HIS VOICE-MAIL.

DANIEL FULLER - DIRECT EXAMINATION BY MR. MOYER

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1 BUT ON OCCASION HIS VOICE-MAIL WOULD BE FULL AND WOULD NOT
2 RECEIVE MY VOICE-MAIL MESSAGE.

3 Q. OKAY. NOW DID YOU EVER SPEAK TO HIM PRIOR TO DECEMBER
4 THE 28TH?

5 A. YES, I DID.

6 Q. AND HOW MANY TIMES?

7 A. ONCE.

8 Q. WHEN WAS THAT?

9 A. ON DECEMBER 26TH. THAT WAS ON A THURSDAY.

10 Q. DID YOU CALL HIM OR DID HE CALL YOU?

11 A. I CALLED HIM.

12 Q. AND DURING THAT CONVERSATION DID YOU TELL HIM THAT YOU
13 NEEDED TO SPEAK TO HIM?

14 A. YES, I DID.

15 Q. DID HE AGREE TO SPEAK TO YOU?

16 A. HE SAID HE WOULD LOVE TO TALK TO ME ABOUT THIS
17 INVESTIGATION.

18 Q. OKAY. DID HE SAY HE WOULD MEET WITH YOU RIGHT AWAY?

19 A. HE SAID THAT HE WAS OUT OF TOWN AND HE EXPECTED TO BE
20 BACK IN GREENVILLE LATE MONDAY.

21 Q. NOW THE DAY YOU WERE SPEAKING TO HIM WAS WHAT DAY OF
22 THE WEEK?

23 A. ON THURSDAY.

24 Q. OKAY. NOW WERE YOU ABLE TO DETERMINE HIS ACTUAL
25 WHEREABOUTS ON DECEMBER THE 26TH AT THE TIME YOU WERE

DANIEL FULLER - DIRECT EXAMINATION BY MR. MOYER

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1 TALKING TO HIM ON THE TELEPHONE?

2 A. YES, I WAS.

3 Q. AND WHERE DID YOU FIND OUT THAT IN ACTUALITY HE WAS?

4 A. WHEN HE WAS TELLING ME HE WAS OUT OF TOWN HE WAS

5 ACTUALLY REGISTERING AT A HOTEL IN GREENVILLE ON HAYWOOD

6 ROAD.

7 Q. OKAY. WELL, DID YOU, AFTER THAT CONVERSATION ON THE

8 26TH, DID YOU TAKE ANY ACTIONS TO TRY TO LOCATE HIM?

9 A. YES, I DID.

10 Q. OKAY. AND AT THAT POINT DID YOU HAVE A VEHICLE

11 DESCRIPTION THAT YOU WERE LOOKING FOR?

12 A. I DID, YES.

13 Q. AND WHAT WAS THAT?

14 A. IT WAS A 1994 MERCURY TOPAZ, FOUR DOOR, WHITE IN COLOR.

15 AND I HAD A SERIAL NUMBER FOR THAT VEHICLE.

16 Q. OKAY. AND DID YOU FIND A VEHICLE THAT MATCHED THE

17 DESCRIPTION OF THE ONE YOU WERE LOOKING FOR?

18 A. YES, I DID.

19 Q. WHERE DID YOU FIND IT?

20 A. IN THE PARKING LOT OF STUDIO PLUS MOTEL AT 530 WOODS

21 LAKE ROAD IN GREENVILLE.

22 Q. WHEN DID YOU FIND THE VEHICLE?

23 A. FRIDAY NIGHT, DECEMBER 27TH. IN REALITY IT MAY HAVE

24 BEEN DECEMBER 28TH. IT WAS CLOSE TO MIDNIGHT THAT NIGHT. I

25 DON'T RECALL BEFORE OR AFTER MIDNIGHT WHEN I FIRST LOCATED

DANIEL FULLER - DIRECT EXAMINATION BY MR. MOYER

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1 THAT VEHICLE.

2 Q. OKAY. AND YOU MENTIONED YOU HAD A VIN NUMBER FOR IT.

3 DID YOU TRY TO ESTABLISH USING THAT VIN NUMBER OR THAT VIN

4 WHETHER OR NOT IT WAS THE VEHICLE YOU WERE LOOKING FOR?

5 A. WELL, I WALKED UP TO THE CAR AND LOOKED AT THE VIN,

6 CONFIRMED IT WAS THE CAR I WAS LOOKING FOR.

7 Q. OKAY. AND WHERE DID YOU GET THE VEHICLE IDENTIFICATION
8 NUMBER?

9 A. I GOT IT FROM THE MYRTLE BEACH POLICE DEPARTMENT.

10 DURING THE INVESTIGATION I HAD DETERMINED OR HAD DISCOVERED

11 THAT RUSSELL RICE WAS INVOLVED IN A TRAFFIC ACCIDENT IN

12 MYRTLE BEACH APPROXIMATELY JULY 24TH OF 2002. I CONTACTED

13 THE MYRTLE BEACH POLICE DEPARTMENT. THEY FAXED ME A COPY OF

14 THE ACCIDENT REPORT, WHICH CONTAINED THE SERIAL NUMBER AND

15 LISTED RUSSELL WILLIAM RICE, JR. AS THE DRIVER OF THAT CAR.

16 Q. OKAY. NOW DID YOU EVER DETERMINE IF THE DEFENDANT WAS
17 IN FACT STAYING AT THAT HOTEL WHERE THE CAR WAS?

18 A. YES, I DID.

19 Q. AND TO WHOM DID YOU SPEAK TO ESTABLISH THAT FACT?

20 A. SPOKE TO A FRONT DESK CLERK NAMED FRANCIS ZURAWSKI.

21 Q. AND WHEN YOU SPOKE TO THE CLERK DID YOU GIVE THE CLERK
22 THE DEFENDANT'S NAME?

23 A. I DID.

24 Q. DID YOU HAVE A PHOTOGRAPH OF HIM AS WELL?

25 A. I SHOWED HIM OR HER A PHOTOGRAPH, YES, OF RUSTY RICE,

DANIEL FULLER - DIRECT EXAMINATION BY MR. MOYER

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1 JR.

2 Q. AND AGAIN, AT THAT TIME YOU WERE ABLE TO DETERMINE WHEN
3 HE HAD ACTUALLY CHECKED INTO THAT HOTEL?

4 A. HE HAD CHECKED IN ON THURSDAY, DECEMBER 26TH AT
5 APPROXIMATELY 4:45 PM.

6 Q. OKAY. AND YOU WOULD HAVE BEEN SPEAKING TO HIM ON THE
7 TELEPHONE RIGHT AROUND THAT SAME TIME?

8 A. TWENTY MINUTES PRIOR TO THAT CHECK-IN TIME.

9 Q. NOW -- OKAY. NOW LET ME ASK YOU THIS, HAD YOU, BY THIS
10 TIME, HAD YOU DETERMINED ANY TRAFFIC LAW VIOLATIONS THE
11 DEFENDANT WOULD BE COMMITTING IF HE DROVE THAT 1994 WHITE
12 MERCURY?

13 A. YES, SIR, I HAD.

14 Q. OKAY. AND WHAT VIOLATIONS DID YOU DETERMINE?

15 A. THE VEHICLE WAS NOT REGISTERED OR PROPERLY TAGGED.

16 Q. HOW DID YOU DETERMINE THAT INFORMATION?

17 A. AT 8:30 IN THE MORNING DECEMBER 28TH WHILE OBSERVING
18 THE CAR WAITING FOR IT TO MOVE I RAN THE VIN OF THAT CAR
19 AGAIN TO ENSURE THAT IT WAS NOT REGISTERED. IT WAS NOT ON
20 FILE.

21 Q. AND HAD YOU DETERMINED A TIME PERIOD DURING WHICH THIS
22 DEFENDANT HAD BEEN IN OWNERSHIP OF THAT VEHICLE OR HAD IT?

23 A. I SPOKE TO SHARON RICE SHORTLY AFTER THIS INVESTIGATION
24 STARTED. SHE IDENTIFIED HERSELF AS RUSTY'S EX-WIFE. SHE
25 STATED THAT SHE HAD PROVIDED THIS VEHICLE TO HIM IN JULY OF

DANIEL FULLER - DIRECT EXAMINATION BY MR. MOYER

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1 2002. I ASKED HER IF SHE HAD ANY PAPERWORK TO HELP ME

2 IDENTIFY THE TAG OR SERIAL NUMBER OF THAT CAR. SHE STATED

3 THAT THE TAG AND INSURANCE ON THAT CAR WAS RUSTY'S

4 RESPONSIBILITY. SHE HAD NO INFORMATION ON THAT.

5 Q. OKAY. AND THROUGH OTHER PEOPLE THAT YOU HAD SPOKEN TO

6 HAD OTHER PEOPLE REFERENCED THE VEHICLE MATCHING THAT

7 DESCRIPTION THAT THE DEFENDANT HAD BEEN IN?

8 A. SEVERAL PEOPLE THAT WE INTERVIEWED DURING THE

9 INVESTIGATION STATED THAT THEY ALWAYS KNEW RUSTY TO HAVE A

10 PAPER TAG ON THE CAR. THEY PARTICULARLY DESCRIBED IT AS A

11 TRUCK TAG.

12 Q. OKAY. NOW AT THAT POINT, ALSO, DID YOU HAVE ANY

13 SUSPICIONS AS TO WHETHER OR NOT THE VEHICLE WAS INSURED?

14 A. IT WAS MY REASONABLE BELIEF THAT THE CAR WAS NOT

15 INSURED.

16 Q. AND THAT WAS BASED ON?

17 A. SHARON RICE HAD TOLD ME THAT THE VEHICLE REGISTRATION

18 AND INSURANCE WAS RUSTY'S RESPONSIBILITY. SHE HAD NO

19 KNOWLEDGE OR INFORMATION ABOUT THAT. THE TAG WAS NOT ON

20 FILE. YOU'RE ALLOWED TO RIDE FORTY-FIVE DAYS ON A PAPER

21 TAG. MY INFORMATION STATED THAT HE WAS RIDING ON A PAPER

22 TAG SINCE JULY OF 2002 AT A MINIMUM. IT WAS REASONABLE TO

23 BELIEVE THIS CAR WAS NOT INSURED PROPERLY.

24 Q. OKAY. NOW DID YOU -- HAVING THAT INFORMATION DID YOU

25 PREPARE TO DO A TRAFFIC STOP ON THIS VEHICLE?

DANIEL FULLER - DIRECT EXAMINATION BY MR. MOYER

39

1 A. CAN YOU REPHRASE THAT?

2 Q. WITH THE INFORMATION THAT YOU HAD DID YOU PREPARE TO DO
3 A TRAFFIC STOP?

4 A. YES, WE DID.

5 Q. AND DID YOU BRING IN ANYONE ELSE FOR ASSISTANCE ON THAT
6 STOP?

7 A. YES, I DID.

8 Q. WHO DID YOU BRING IN FOR ASSISTANCE?

9 A. I SPOKE WITH CORPORAL DAVE DEMPSEY AT THE GREENVILLE
10 POLICE DEPARTMENT.

11 Q. OKAY. AND DID YOU MEET WITH HIM ON THE MORNING OF
12 DECEMBER THE 28TH?

13 A. IN PERSON, YES.

14 Q. DID YOU BRIEF IN FULL IN WHAT YOU WANTED HIM TO DO?

15 A. YES, I DID.

16 Q. DID YOU GIVE HIM A FULL DESCRIPTION OF THE VEHICLE?

17 A. YES, I DID.

18 Q. DID YOU GIVE HIM A DESCRIPTION OF THE SUSPECT?

19 A. YES, I DID.

20 Q. DID YOU TELL HIM DURING THAT CONVERSATION THAT WHAT YOU
21 WERE ASKING HIM TO ASSIST YOU WITH WAS IN THE FURTHERANCE OF
22 A MURDER INVESTIGATION?

23 A. YES, I DID.

24 Q. DID YOU TELL HIM THAT THE MAN YOU WANTED TO STOP WAS A
25 SUSPECT IN THAT CASE?

DANIEL FULLER - DIRECT EXAMINATION BY MR. MOYER

40

1 A. YES, I DID.

2 Q. AND DID YOU TELL HIM THAT HE MAY BE ARMED?

3 A. YES, I DID.

4 Q. AND WHAT WAS THE REASONS THAT YOU HAD AT THIS TIME TO
5 BELIEVE THAT HE MAY BE ARMED AND DANGEROUS?

6 A. NUMBER ONE, AS A SUSPECT IN A HOMICIDE WITH THE USE OF
7 A FIREARM. NUMBER TWO, WE HAD RECOVERED A PISTOL THAT HAD
8 ONCE BEEN OWNED BY RUSTY RICE. AND NUMBER THREE, A CRIMINAL
9 HISTORY BACKGROUND THAT I'D RAN ON RUSTY RICE SHOWED AN
10 ARREST FOR ARMED ROBBERY IN FLORIDA IN 1978.

11 Q. OKAY. NOW THERE WASN'T A CONVICTION ON THAT CASE,
12 CORRECT?

13 A. THAT'S CORRECT.

14 Q. BUT THERE WAS AN ARREST?

15 A. THAT'S CORRECT.

16 Q. NOW DID YOU TELL -- DID YOU POSITION CORPORAL DEMPSEY
17 THEN IN FURTHERANCE OF THIS CAR STOP?

18 A. YES, I DID.

19 Q. WHERE DID YOU HAVE HIM GO?

20 A. THE PARKING LOT WHERE THE VEHICLE WAS LOCATED HAD TWO
21 POINTS OF ENTRY/EXIT. I PARKED IN A LOCATION TO OBSERVE ONE
22 ENTRY AND REQUESTED CORPORAL DEMPSEY TO POST IN AN AREA
23 OPPOSITE OF ME TO OBSERVE THE SECOND ENTRY.

24 Q. AND WERE YOU IN A MARKED OR AN UNMARKED CAR?

25 A. I WAS IN AN UNMARKED CAR.

DANIEL FULLER - DIRECT EXAMINATION BY MR. MOYER

41

1 Q. WERE YOU IN UNIFORM?

2 A. NO, I WAS NOT.

3 Q. HOW ABOUT CORPORAL DEMPSEY?

4 A. HE WAS IN UNIFORM IN A MARKED POLICE CAR.

5 Q. AND DID YOU STAY IN REGULAR CONTACT WITH ONE ANOTHER
6 THEN WHILE YOU WERE WAITING?

7 A. I STAYED IN RADIO CONTACT AND TELEPHONE CONTACT WITH
8 HIM.

9 Q. NOW AT ANY POINT DURING -- WHILE YOU WERE WAITING DID
10 YOU THEN SEE THE VEHICLE START TO MOVE?

11 A. YES, I DID.

12 Q. AND AROUND WHAT TIME WAS IT WHEN YOU SAW IT START TO
13 LEAVE?

14 A. APPROXIMATELY ELEVEN AM, SHORTLY THEREAFTER.

15 Q. AND DID YOU NOTIFY CORPORAL DEMPSEY?

16 A. I TOLD HIM THE CAR IS MOVING, STAND BY, THE CAR IS AT
17 THE OFFICE.

18 Q. DID YOU SEE CORPORAL DEMPSEY OR WERE YOU AWARE OF
19 LISTENING TO THE RADIO THAT CORPORAL DEMPSEY DID BEGIN
20 FOLLOWING THE VEHICLE?

21 A. WHEN THE VEHICLE WENT OPPOSITE OF MY DIRECTION I TOLD
22 CORPORAL DEMPSEY, HE'S COMING YOUR DIRECTION.

23 Q. OKAY. NOW DID YOU GO FOLLOW THE CAR AS WELL?

24 A. I DID.

25 Q. WHERE DID THE CAR GO?

DANIEL FULLER - DIRECT EXAMINATION BY MR. MOYER

42

1 A. THE CAR EXITED ONTO HAYWOOD ROAD FROM THE STUDIO PLUS
2 MOTEL ACCESS ROAD, HAD TURNED RIGHT WHICH HEADED IT BACK
3 TOWARDS LAURENS ROAD.

4 Q. NOW TO POINT -- DID YOU SEE THE VEHICLE THEN WHEN YOU
5 GOT BACK OUT ONTO HAYWOOD ROAD?

6 A. YES.

7 Q. AND WAS CORPORAL DEMPSEY AHEAD OF YOU?

8 A. YES, HE WAS.

9 Q. AND DID YOU SEE CORPORAL DEMPSEY GET IN AND START
10 FOLLOWING THIS VEHICLE?

11 A. YES, I DID SEE THAT.

12 Q. AND WAS THIS THE VEHICLE THAT YOU WERE INDEED WANTING
13 TO PULL OVER?

14 A. YES, IT WAS.

15 Q. DID ANY OTHER PATROL CARS PARTICIPATE IN THIS?

16 A. YES, SIR.

17 Q. AND WHO WAS THAT?

18 A. I BELIEVE CORPORAL JEFF LONG WITH THE GREENVILLE POLICE
19 DEPARTMENT.

20 Q. OKAY. WAS A TRAFFIC STOP THEN CONDUCTED?

21 A. YES, IT WAS.

22 Q. AND CORPORAL DEMPSEY DID STOP THE CAR?

23 A. HE DID.

24 Q. WHERE DID THAT TAKE PLACE?

25 A. IT WAS IN A VACANT LOT ON HAYWOOD ROAD WHERE THEY SELL

DANIEL FULLER - DIRECT EXAMINATION BY MR. MOYER

43

1 CHRISTMAS TREES NEXT TO JOHNNY -- THE FORMER JOHNNY ROCKETS
2 RESTAURANT. A STREET CROSS REFERENCE WOULD BE HAYWOOD ROAD
3 AT TRANSIT DRIVE.

4 Q. OKAY. DID YOU PULL IN THEN AND STOP AT THAT LOCATION
5 AS WELL?

6 A. I PULLED IN BEHIND CORPORAL DEMPSEY AND OBSERVED HIM
7 CONDUCT THE TRAFFIC STOP.

8 Q. NOW FROM -- DID YOU STAY IN YOUR VEHICLE OR GET OUT?

9 A. I GOT OUT.

10 Q. WHAT ABOUT OFFICER LONG, WAS HE THERE AS WELL?

11 A. HE PULLED ALONGSIDE ME AND GOT OUT AND OBSERVED WITH
12 ME.

13 Q. WERE YOU ABLE TO OBSERVE CORPORAL DEMPSEY SPEAKING TO
14 THE DRIVER?

15 A. YES.

16 Q. WAS THERE ANYONE ELSE IN THE CAR?

17 A. NO.

18 Q. AT ANY POINT DID CORPORAL DEMPSEY COME OVER TO YOU AND
19 SPEAK?

20 A. YES, HE DID.

21 Q. DID HE SHOW YOU ANYTHING?

22 A. HE SHOWED ME THREE, FOUR DOCUMENTS TOTAL, A DRIVER'S
23 LICENSE, AND THREE PIECES OF PAPER THAT WERE PRESENTED TO
24 HIM BY THE DRIVER.

25 MR. SUMNER: I HAVE NO OBJECTION TO THESE DOCUMENTS.

DANIEL FULLER - DIRECT EXAMINATION BY MR. MOYER

1 THE COURT: ALL RIGHT.

2 Q. DETECTIVE FULLER, I WANT TO SHOW YOU STATE'S -- WHAT
3 HAS BEEN MARKED AS STATE'S EXHIBIT NUMBER 6 AND HAS BEEN
4 ENTERED INTO EVIDENCE FOR PURPOSES OF THIS HEARING. AND
5 WOULD YOU JUST TAKE A LOOK AT THOSE AND TELL THE COURT
6 WHETHER YOU CAN RECOGNIZE WHAT I'VE JUST HANDED YOU?

7 A. YES, I RECOGNIZE THESE.

8 Q. OKAY. AND ARE THESE -- IS THAT THE PAPERWORK THAT
9 CORPORAL DEMPSEY CAME BACK AND SHOWED YOU?

10 A. YES, IT IS.

11 Q. AND WHAT DOES THAT PAPERWORK CONSIST OF?

12 A. IT CONSISTS OF A GEORGIA CERTIFICATE OF TITLE FOR THE
13 CAR THAT WAS BEING STOPPED, THIS '94 MERCURY. IT CONSISTS
14 OF A SOUTH CAROLINA DEPARTMENT OF PUBLIC SAFETY BILL OF
15 SALE. IT'S A PREPRINTED FORM OFFERED BY THE STATE. IT'S
16 FILLED OUT. AND ALSO A GENERIC BILL OF SALE PROVIDED BY A
17 SELLER TO A BUYER WITH A DEED OF SALE ON IT.

18 Q. OKAY. LET ME ASK YOU ABOUT THE BILL OF SALE. WAS
19 THERE ANYTHING -- DID YOU LOOK OVER THOSE DOCUMENTS OUT
20 THERE ON HAYWOOD ROAD, THE SCENE OF THIS TRAFFIC STOP?

21 A. YES, I DID.

22 Q. WAS THERE ANYTHING ABOUT EITHER OF THOSE BILLS OF SALE
23 THAT CAUGHT YOUR ATTENTION?

24 A. YES, THERE WAS.

25 Q. AND WHICH ONE AND WHAT WAS IT ABOUT IT THAT CAUGHT YOUR

DANIEL FULLER - DIRECT EXAMINATION BY MR. MOYER

45

1 ATTENTION?

2 A. ONE OF THE THINGS THAT CAUGHT MY ATTENTION WAS THE
3 SOUTH CAROLINA DEPARTMENT OF PUBLIC SAFETY BILL OF SALE
4 INDICATED A SALE DATE OF THIS CAR TO RUSTY RICE AS BEING
5 DECEMBER 23RD, 2002, JUST FIVE DAYS PRIOR TO THIS STOP.

6 Q. AND WAS THAT CONTRARY TO INFORMATION YOU HAD LEARNED?

7 A. VERY CONTRARY TO WHAT I HAD LEARNED TO THIS POINT.

8 Q. WHICH WAS THAT THE SALE HAD TAKEN PLACE WHEN?

9 A. IN -- MY INFORMATION HAD -- WAS THAT RUSTY RICE HAD
10 TAKEN POSSESSION OF THIS CAR IN JULY, 2002, NOT DECEMBER
11 23RD.

12 Q. AND WHAT ABOUT THE TITLE? WAS THERE ANYTHING ABOUT IT
13 THAT CAUGHT YOUR ATTENTION?

14 A. YES. AT THE BOTTOM OF THE TITLE WRITTEN IN A FAT BLACK
15 MAGIC MARKER IS A SALE DATE OF JUNE 27TH, 2002. WHAT WAS
16 UNUSUAL ABOUT THAT IS ALL THE OTHER WRITING IS IN BALLPOINT
17 INK. AND FOR THE SALE DATE AND THE SALE DATE ONLY TO BE
18 WRITTEN IN A FAT BLACK MARKER GAVE ME EVERY IMPRESSION THAT
19 THIS WAS AN ALTERED TITLE AND THE SALE DATE INDICATED ON THE
20 TITLE WAS FALSE.

21 Q. OKAY. NOW DID CORPORAL DEMPSEY, WITH THE PAPERWORK
22 THAT HE GAVE YOU, DID HE HAVE PROOF OF INSURANCE FROM THE
23 DEFENDANT?

24 A. I HEARD CORPORAL DEMPSEY ASK FOR INSURANCE. AND
25 CORPORAL DEMPSEY CAME BACK TO ME WITH THESE DOCUMENTS AND

DANIEL FULLER - DIRECT EXAMINATION BY MR. MOYER

46

1 STATED THAT THE DRIVER TOLD HIM HE HAD INSURANCE THROUGH HIS
2 WIFE.

3 Q. AND WAS THAT CONSISTENT WITH WHAT YOU HAD LEARNED FROM
4 SPEAKING TO HIS WIFE?

5 A. IT WAS NOT CONSISTENT FROM WHAT I HAD BEEN TOLD BY THE
6 WIFE MYSELF.

7 Q. OKAY. AND IN ANY CASE DID HE HAVE ANY SORT OF
8 DOCUMENTATION WHATSOEVER TO SHOW THAT THE VEHICLE WAS
9 INSURED?

10 A. NO, HE DID NOT.

11 Q. OKAY. ALL RIGHT. WHAT DID CORPORAL DEMPSEY THEN DO?

12 A. CORPORAL DEMPSEY WENT BACK TO THE DRIVER AND ASKED HIM
13 TO STEP OUT OF THE VEHICLE.

14 Q. AND WERE YOU IN A POSITION TO BE ABLE TO WATCH THAT?

15 A. YES, I WAS.

16 Q. AND WHEN CORPORAL DEMPSEY GOT THE DEFENDANT OUT OF THE
17 VEHICLE DID HE DO ANY TYPE OF SEARCH OR PAT-DOWN?

18 A. HE CONDUCTED A STANDARD OFFICER PAT-DOWN FOR SAFETY
19 CHECKING FOR WEAPONS.

20 Q. AND YOU OBSERVED THAT?

21 A. YES, I DID.

22 Q. AND WHAT WAS THE RESULT OF THAT PAT-DOWN THAT YOU SAW?

23 A. I SAW CORPORAL DEMPSEY REMOVE A HANDGUN FROM THE
24 DRIVER'S RIGHT FRONT ---

25 THE COURT: NOW I'M NOT CONCERNED WITH THAT AT THIS

DANIEL FULLER - DIRECT EXAMINATION BY MR. MOYER

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1 POINT, AM I? I'M ONLY CONCERNED WITH WHETHER OR NOT THERE
2 WAS REASONABLE SUSPICION FOR THE STOP. IS THAT NOT RIGHT?

3 MR. SUMNER: YES, SIR. YES, SIR.

4 MR. MOYER: I JUST ASSUMED THAT WOULD BE AN ISSUE IN
5 THE CASE AS WELL, ---

6 THE COURT: YEAH.

7 MR. MOYER: --- BUT IF NOT, THEN NO.

8 Q. OKAY. WELL, AS A RESULT ---

9 MR. MOYER: WELL, YOUR HONOR, IF IT PLEASE THE COURT,
10 THE DEFENSE DID MENTION THAT THEY ARE MAKING A MOTION TO
11 SUPPRESS THE EVIDENCE THAT WAS FOUND WITHIN THE VEHICLE.
12 AND I THINK THIS WOULD GO TO FURTHER SHOW THE REASONS
13 THEY'RE GOING TO HAVE TO SEARCH THE VEHICLE.

14 MR. SUMNER: I'D RATHER JUST GO AHEAD INTO IT. THAT
15 MIGHT BE EASIER TO DEAL WITH ALL AT ONE TIME, YOUR HONOR.

16 THE COURT: ALL RIGHT. GO AHEAD.

17 Q. AND WHAT WAS THE RESULT OF THE PAT-DOWN THAT CORPORAL
18 DEMPSEY CONDUCTED?

19 A. CORPORAL DEMPSEY LOCATED AND REMOVED A HANDGUN FROM THE
20 DRIVER'S RIGHT FRONT PANTS POCKET.

21 Q. WHAT DID HE DO WITH THAT HANDGUN?

22 A. HE HANDED IT TO ME.

23 Q. AND WHAT KIND OF HANDGUN WAS IT?

24 A. IT WAS A BERETTA 25 CALIBER SIMI-AUTO PISTOL.

25 Q. WHAT WAS DONE WITH THE DEFENDANT AT THAT POINT?

DANIEL FULLER - DIRECT EXAMINATION BY MR. MOYER

1 A. HE WAS HANDCUFFED.

2 Q. AND WHERE WAS HE PLACED?

3 A. IN THE BACK SEAT OF CORPORAL DEMPSEY'S PATROL CAR.

4 Q. DID YOU SEE OFFICERS DEMPSEY AND LONG DO ANYTHING WITH
5 THE CAR AFTER THE DEFENDANT WAS PLACED INTO THE PATROL CAR?

6 A. YES. THEY DID AN INVENTORY SEARCH OF THE CAR. IT WAS
7 ABOUT TO BE TOWED. STANDARD PROCEDURE.

8 Q. OKAY. AND DID YOU WATCH THAT SEARCH?

9 A. YES, I DID.

10 Q. AND WAS THERE ANYTHING -- ANY ITEMS OF SIGNIFICANCE TO
11 THIS CASE THAT WERE RETRIEVED FROM -- AS A RESULT OF THAT
12 SEARCH?

13 A. YES, THERE WERE.

14 Q. AND DID YOU SEE OFFICERS DEMPSEY AND LONG RETRIEVE
15 THOSE ITEMS?

16 A. YES, I DID.

17 Q. WHERE DID THEY GET THEM FROM?

18 A. MOST SIGNIFICANTLY THE ITEMS -- THE MOST SIGNIFICANT
19 ITEMS WERE LOCATED IN THE TRUNK OF THE CAR.

20 Q. OKAY. AND WHAT ITEMS WERE THEY?

21 A. SEVERAL OUNCES OF COCAINE POWDER BROKEN INTO MANY
22 SPECIFIC PACKAGES AND ALSO MULTIPLE -- A RIFLE CUT INTO
23 MULTIPLE PARTS INSIDE OF A PLASTIC BAG. AND IT WAS THE
24 30-06 RIFLE LATER CONNECTED TO THIS MURDER.

25 Q. OKAY. AND THOSE OFFICERS HANDLED TAKING CUSTODY OF

DANIEL FULLER - CROSS EXAMINATION BY MR. SUMNER

49

1 THOSE PIECES OF EVIDENCE AFTER THAT?

2 A. YES, SIR. DEMPSEY AND LONG, YES.

3 Q. I'M SORRY?

4 A. YES, OFFICERS DEMPSEY AND LONG TOOK CONTROL OF THOSE
5 ITEMS.

6 Q. OKAY. PLEASE ANSWER ANY QUESTIONS DEFENSE MAY HAVE.

7 THE COURT: ALL RIGHT. MR. SUMNER.

8 MR. SUMNER: THANK YOU, YOUR HONOR. MAY IT PLEASE THE
9 COURT?

10 CROSS EXAMINATION BY MR. SUMNER:

11 Q. DETECTIVE FULLER, DID YOU TESTIFY EARLIER THAT THE CAR
12 WAS STOPPED BECAUSE THERE WAS SUSPICION THAT IT WAS BEING
13 OPERATED -- NOT PROPERLY REGISTERED TO MR. RICE, IS THAT NOT
14 CORRECT?

15 A. I WOULD CLASSIFY IT MORE AS MORE THAN SUSPICION. I HAD
16 DOCUMENTS TO SHOW THE CAR WAS NOT REGISTERED.

17 Q. OKAY. BUT, I MEAN, THE BASIS FOR THE STOP WAS TO
18 DETERMINE WHETHER OR NOT THE CAR WAS PROPERLY REGISTERED TO
19 MR. RICE, IS THAT CORRECT?

20 A. BECAUSE IT WAS NOT REGISTERED, THAT WAS THE BASIS OF
21 THE STOP.

22 MR. SUMNER: ONE SECOND PLEASE, YOUR HONOR. I DON'T
23 HAVE ANY OTHER QUESTIONS. THANK YOU.

24 THE COURT: ALL RIGHT. STEP DOWN. THANK YOU.

25 MR. MOYER: I CALL OFFICER DEMPSEY, CORPORAL DEMPSEY TO

DAVID DEMPSEY - DIRECT EXAMINATION BY MR. MOYER

50

1 THE STAND.

2 DAVID DEMPSEY, BEING DULY

3 SWORN TESTIFIED AS FOLLOWS:

4 DIRECT EXAMINATION BY MR. MOYER:

5 Q. ALL RIGHT. CORPORAL DEMPSEY, YOU WORK FOR THE
6 GREENVILLE POLICE DEPARTMENT?

7 A. YES, I DO.

8 Q. AND YOU WERE WORKING ON DECEMBER THE 28TH OF 2002?

9 A. YES.

10 Q. ON THAT MORNING WERE YOU ASKED TO PARTICIPATE IN THIS
11 CAR STOP THAT WE'RE TALKING ABOUT HERE TODAY?

12 A. I WAS.

13 Q. AND BY DETECTIVE FULLER?

14 A. UM-HUM (AFFIRMATIVE).

15 Q. NOW HAD YOU BEEN INVOLVED IN THAT MURDER INVESTIGATION
16 IN ANY WAY UP UNTIL THAT POINT?

17 A. NO, I HAD NOT.

18 Q. NOW IN RESPONSE TO YOUR CONVERSATION WITH DETECTIVE
19 FULLER WHERE DID YOU SET UP YOUR VEHICLE?

20 A. I WAS IN FRONT OF THE ITALIAN MARKET GRILL ON WOODS
21 CROSSING ROAD.

22 Q. AND WERE YOU LOOKING FOR A PARTICULAR VEHICLE?

23 A. A WHITE '94 MERCURY TOPAZ.

24 Q. AND THAT DESCRIPTION WAS GIVEN TO YOU BY DETECTIVE
25 FULLER?

DAVID DEMPSEY - DIRECT EXAMINATION BY MR. MOYER

51

1 A. YES.

2 Q. AND DID YOU EVENTUALLY SEE THE VEHICLE YOU WERE LOOKING
3 FOR?

4 A. YES, I DID.

5 Q. DURING THAT TIME WERE YOU KEEPING IN CONTACT VIA RADIO
6 AND CELLULAR PHONE WITH DETECTIVE FULLER?

7 A. YES, I WAS.

8 Q. AND WHAT WERE YOU ASKED TO DO IN REGARD TO THAT
9 VEHICLE?

10 A. WHEN THE VEHICLE STARTED TO MOVE I WAS ASKED TO FOLLOW
11 IT AND STOP IT.

12 Q. AND HAD DETECTIVE FULLER TOLD YOU ABOUT THE PROBLEM
13 WITH THE VEHICLE'S REGISTRATION AND POSSIBLY INSURANCE?

14 A. YES, HE DID THAT MORNING.

15 Q. HAD YOU BEEN TOLD WHEN YOU MET WITH HIM ALSO THAT HE
16 WAS A SUSPECT IN A MURDER INVESTIGATION?

17 A. YES, I WAS.

18 Q. NOW WHERE DID YOU FOLLOW THAT VEHICLE?

19 A. AS IT LEFT THE MOTEL IT WENT UP A PRIVATE DRIVE TIL IT
20 GOT TO HAYWOOD ROAD. AND AS IT TURNED ONTO HAYWOOD ROAD I
21 FOLLOWED IT UNTIL IT GOT TO THE AIRPORT ROAD. I ACTIVATED
22 MY BLUE LIGHTS. AND HE PULLED OVER IN A PARKING LOT NEAR
23 TRANSIT DRIVE.

24 Q. OKAY. SO HOW LONG -- FOR HOW LONG OF A PERIOD OF TIME
25 DID YOU FOLLOW IT BEFORE PULLING IT OVER?

DAVID DEMPSEY - DIRECT EXAMINATION BY MR. MOYER

52

1 A. LESS THAN A MINUTE.

2 Q. NOW DID YOU -- AFTER THE VEHICLE STOPPED YOU PULLED IN
3 BEHIND IT?

4 A. YES, I DID.

5 Q. WHERE DID YOU STOP YOUR VEHICLE IN RELATION TO THAT
6 CAR?

7 A. RIGHT BEHIND IT.

8 Q. AND COULD YOU TELL HOW MANY PEOPLE WERE IN THE VEHICLE?

9 A. THERE WAS JUST ONE.

10 Q. AND DID YOU ADVISE OVER THE RADIO AND DETECTIVE FULLER
11 THAT YOU WERE MAKING THE TRAFFIC STOP?

12 A. YEAH. I ADVISED DISPATCH WHAT MY INTENTIONS WERE.

13 Q. OKAY. AND DID ---

14 A. PRIOR TO MAKING A STOP.

15 Q. AND DID DETECTIVE FULLER PULL IN THERE BEHIND YOU?

16 A. YES, HE DID.

17 Q. NOW AFTER YOU STOPPED YOUR VEHICLE DID YOU APPROACH THE
18 DRIVER?

19 A. YES, I DID.

20 Q. AND THE DRIVER WAS -- WHO WAS THE DRIVER OF THE
21 VEHICLE?

22 A. RUSSELL RICE.

23 Q. DID YOU MAKE ANY OBSERVATIONS ABOUT THE TAG ITSELF
24 WHILE YOU APPROACHED THE VEHICLE?

25 A. THAT IT WAS DIRTY.

DAVID DEMPSEY - DIRECT EXAMINATION BY MR. MOYER

53

1 Q. DID IT LOOK RELATIVELY NEW OR ---

2 A. NO, IT WAS NOT NEW. THE VEHICLE WAS --- HAD A -- WAS
3 DIRTY, HAD LIKE A WHITE FILM. IT WAS A WHITE CAR. AND IT
4 HAD A GRUNGY FILM ON IT. AND THE TAG WAS SLIGHTLY
5 WEATHERED. AND I DID NOTICE THAT.

6 Q. OKAY. DID YOU APPROACH THE DRIVER THEN?

7 A. YES, I DID.

8 Q. DID HE STAY IN THE VEHICLE AT FIRST?

9 A. AT FIRST HE DID, YES.

10 Q. AND YOU WERE ABLE TO TALK TO HIM?

11 A. YES, I DID.

12 Q. DID YOU ASK HIM FOR HIS DRIVER'S LICENSE?

13 A. YES. AND HE DID GIVE ME A DRIVER'S LICENSE.

14 Q. AND DID YOU ALSO ASK HIM FOR THE BILL OF SALE?

15 A. YES.

16 Q. AND DID HE PROVIDE YOU THE DOCUMENTS THAT DETECTIVE
17 FULLER WAS JUST REFERRING TO?

18 A. YES.

19 Q. LOOK AT STATE'S EXHIBIT NUMBER 6. DID YOU SHOW THOSE
20 DOCUMENTS TO DETECTIVE FULLER?

21 A. YES. AFTER I OBTAINED THOSE -- THE PAPERWORK AND THE
22 DRIVER'S LICENSE I STEPPED TO THE BACK OF MY PATROL CAR
23 WHERE DETECTIVE FULLER WAS OBSERVING AND DISCUSSED WHAT HE
24 NEEDED DONE NEXT.

25 Q. NOW DID YOU ASK RUSSELL RICE FOR PROOF OF INSURANCE?

DAVID DEMPSEY - DIRECT EXAMINATION BY MR. MOYER

54

1 A. YES, I DID.

2 Q. DID HE PROVIDE YOU WITH PROOF OF INSURANCE?

3 A. WELL, HE SAID HIS WIFE HAD IT AND IT WAS THROUGH STATE
4 FARM. HE DIDN'T HAVE ANY DOCUMENTATION TO VERIFY THAT.

5 Q. WAS HE ABLE TO GIVE YOU ANY DOCUMENTATION IN WRITTEN
6 FORM WHATSOEVER TO SHOW PROOF OF INSURANCE ON THAT VEHICLE?

7 A. NO, HE DID NOT.

8 Q. OKAY. NOW AFTER TALKING TO DETECTIVE FULLER WHAT DID
9 YOU DO WITH REGARD TO THE DEFENDANT?

10 A. I APPROACHED HIS CAR AGAIN AND ASKED HIM TO STEP FROM
11 THE VEHICLE. AND AFTER HE STEPPED OUT OF THE VEHICLE HE WAS
12 FACING HIS VEHICLE, AND I STARTED TO PAT HIM DOWN. I FELT
13 THE OUTLINE OF A PISTOL IN HIS FRONT RIGHT POCKET, WHICH I
14 REMOVED AND THEN HANDED IT TO DETECTIVE FULLER WHO WAS
15 DIRECTLY BEHIND ME.

16 Q. OKAY. SO YOU FELT ON THE OUTSIDE OF HIS PANTS ---

17 A. YES, I DID.

18 Q. OKAY. NOW AS SOON AS YOU FELT IT DID YOU HAVE ANY
19 DOUBT AS TO WHAT IT WAS?

20 A. NO. I IMMEDIATELY RECOGNIZED THAT IT WAS A PISTOL.

21 Q. ALL RIGHT. THEN YOU TOOK THE DEFENDANT INTO CUSTODY?

22 A. YES, I DID.

23 Q. NOW AFTER TAKING HIM INTO CUSTODY WHAT PLANS DID YOU
24 HAVE FOR THE VEHICLE THAT THE DEFENDANT HAD BEEN IN?

25 A. IT WAS GOING TO BE TOWED. WE NEEDED TO INVENTORY THE

DAVID DEMPSEY - DIRECT EXAMINATION BY MR. MOYER

55

1 CONTENTS OF IT.

2 Q. AND WAS IT TOWED?

3 A. YES, IT WAS.

4 Q. BY --- WHO TOWED IT?

5 A. CITY COLLISION.

6 Q. OKAY. AND PRIOR TO HAVING IT TOWED WHAT DID YOU DO
7 WITH THE VEHICLE?

8 A. WE INVENTORIED THE CONTENTS IN THE TRUNK AND IN THE
9 INTERIOR.

10 Q. IS THAT STANDARD PROCEDURE FOR OFFICERS WITH THE
11 GREENVILLE POLICE DEPARTMENT TO DO AN INVENTORY SEARCH
12 BEFORE HAVING THE VEHICLE TOWED?

13 A. YES, IT IS.

14 Q. AND DID ANYONE PARTICIPATE IN THAT SEARCH WITH YOU?

15 A. OFFICER LONG.

16 Q. AND YOUR SEARCH DID INCLUDE A SEARCH OF THE TRUNK THEN?

17 A. YES, IT DID.

18 Q. AND DID YOU SEIZE ANY PROPERTY FROM THAT TRUNK?

19 A. YES.

20 Q. WHAT DID YOU SEIZE?

21 A. PIECES OF A RIFLE.

22 Q. DESCRIBE WHERE IN THE TRUNK IT WAS, WHAT WAS IN THE
23 TRUNK, AND START WITH THAT. WHERE IN THE TRUNK WERE THESE
24 ITEMS?

25 A. IT WAS ON THE LEFT HAND SIDE OF THE TRUNK IN A PLASTIC

DAVID DEMPSEY - DIRECT EXAMINATION BY MR. MOYER

56

1 BAG.

2 Q. WERE ALL THE PARTS IN THAT ONE BAG?

3 A. YES, THEY WERE. AND IT WAS A WHITE PLASTIC BAG.

4 Q. WAS THAT BAG -- WAS IT HIDDEN UNDER ANY COMPARTMENTS OF
5 THE VEHICLE?

6 A. NO, IT WAS NOT.

7 Q. WERE THERE OTHER THINGS ON TOP OF IT IN THE TRUNK,
8 HOWEVER?

9 A. THERE WERE OTHER THINGS THAT WE WERE REMOVING. AND WE
10 GOT TO THAT, I PICKED IT UP, AND I COULD TELL IT WAS METAL
11 PARTS IN THERE. WHEN I OPENED IT UP IT WAS THE RIFLE
12 BARREL, RECEIVER TO THE GUN, TO A GUN, A 30-06.

13 Q. OKAY. AND THAT WAS TAKEN INTO EVIDENCE BY YOU THEN?

14 A. YES, IT WAS.

15 Q. OKAY. AND WERE YOU PRESENT WHEN OFFICER LONG DID --
16 SEARCHED AS WELL?

17 A. YES. WE WERE SIDE BY SIDE IN THE TRUNK.

18 Q. SO WAS HE TO YOUR LEFT OR RIGHT?

19 A. HE WAS TO MY RIGHT.

20 Q. WHILE YOU WERE SEARCHING THE TRUNK?

21 A. YES.

22 Q. SO HE WAS SEARCHING THE RIGHT SIDE OF THE TRUNK AND YOU
23 WERE THE LEFT SIDE?

24 A. WE KIND OF SPLIT IT DOWN THE MIDDLE, YEAH.

25 Q. OKAY. AND YOU SAID YOU OBSERVED THEN WHAT HE SEIZED

DAVID DEMPSEY - DIRECT EXAMINATION BY MR. MOYER

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1 ---

2 A. YES.

3 Q. --- AS WELL? DID YOU THEN CONDUCT A FURTHER SEARCH OF
4 THE DEFENDANT?

5 A. OF THE DEFENDANT?

6 Q. YES.

7 A. NO, I DID NOT.

8 Q. DID YOU LOOK IN THE POCKETS OR ANYWHERE ELSE ON HIM?

9 A. THERE WAS -- I SEARCHED THE REST OF THEM, BUT I DON'T
10 RECALL WHAT I WAS -- WHAT WAS TAKEN OUT OF THE OTHER
11 POCKETS.

12 Q. OKAY. AND DID YOUR CAR HAVE A VIDEO CAMERA?

13 A. YES, IT DID.

14 Q. WERE YOU USING IT DURING THAT INCIDENT?

15 A. I WAS.

16 Q. DID IT TAPE THAT -- DID IT TAPE THE INCIDENT CORRECTLY?

17 A. THE TRAFFIC STOP AND THE SEIZURE OF THE OTHER EVIDENCE.

18 Q. OKAY. HAVE YOU GONE BACK AND LOOKED AT IT AGAIN SINCE
19 THEN?

20 A. YES, I HAVE.

21 Q. OKAY. AND IT'S AN ACCURATE DEPICTION OF THE EVENTS
22 THAT YOU JUST DESCRIBED TO THE COURT?

23 A. UM-HUM (AFFIRMATIVE).

24 MR. MOYER: YOUR HONOR, AT THIS TIME WE'D MOVE TO, FOR
25 PURPOSES OF THIS HEARING, HAVE THE VIDEO MOVED INTO

DAVID DEMPSEY - DIRECT EXAMINATION BY MR. MOYER

58

1 EVIDENCE.

2 THE COURT: THAT'S FINE. BUT FOR THE PURPOSES OF THIS
3 MOTION TO SUPPRESS WHY IS THAT NECESSARY FOR ME TO SEE?

4 MR. SUMNER: BECAUSE IT -- THERE'S SOME AUDIO TAPE,
5 THERE'S SOME STATEMENTS UTTERED BY OFFICER DEMPSEY REGARDING
6 WHY HE STOPPED THE CAR. AND SO I MEAN WE DON'T NEED TO GO
7 THROUGH THE TAPE MORE THAN A COUPLE OF MINUTES TO SEE WHAT
8 I'M TRYING TO ILLUSTRATE TO THE COURT.

9 THE COURT: WHAT DOES THE TAPE SAY? CAN YOU AGREE ON
10 WHAT IT SAYS?

11 MR. SUMNER: YOUR HONOR, I THINK WE CAN. MY NOTES
12 REFLECT THAT OFFICER DEMPSEY SAYS, HOW LONG HAVE YOU HAD
13 THAT TAG ON YOUR CAR, WHEN HE STOPPED HIM? AND THEN THEY GO
14 THROUGH FOR A SECOND AND HE SAYS, LATER ON OFFICER DEMPSEY
15 SAYS, WELL, I'VE GOT TO HAVE PROOF OF INSURANCE. THEN HE
16 SAYS, THAT TAG LOOKS LIKE IT'S BEEN ON THERE FOR QUITE A
17 WHILE AND THAT'S WHY I STOPPED YOU. I MEAN, THAT'S ---

18 THE COURT: IS THAT ---

19 MR. MOYER: THAT SOUNDS TO BE LIKE WHAT IT SAYS.

20 THE COURT: THEN I DON'T NEED TO SEE THE TAPE.

21 MR. MOYER: WELL, PLEASE ANSWER ANY QUESTIONS ---

22 THE COURT: ALL RIGHT. MR. SUMNER.

23 MR. SUMNER: OKAY. THANK YOU, YOUR HONOR. MAY IT
24 PLEASE THE COURT?

25 CROSS EXAMINATION BY MR. SUMNER:

DAVID DEMPSEY - CROSS EXAMINATION BY MR. SUMNER

59

1 Q. OFFICER DEMPSEY, YOU WERE TOLD BY DETECTIVE FULLER, I
2 BELIEVE, TO STOP THE CAR AND CHECK FOR REGISTRATION AND
3 INSURANCE, IS THAT CORRECT?

4 A. THAT'S CORRECT.

5 MR. SUMNER: ONE SECOND PLEASE, YOUR HONOR.

6 Q. WOULD YOU AGREE WITH ME IF I SAID THAT VERY EARLY ON
7 THE TAPE YOU SAY TO MR. RICE, HOW LONG HAVE YOU HAD THAT TAG
8 ON THE CAR?

9 A. I BELIEVE THAT IS WHAT I SAID. YES, I HAVE TO AGREE
10 WITH THAT.

11 Q. I'M NOT TRYING TO TRICK YOU.

12 A. NO, I UNDERSTAND THAT. I BELIEVE THAT'S WHAT I RECALL
13 FROM THE CONVERSATION.

14 Q. AND WOULD YOU AGREE WITH ME THAT PROBABLY FIFTEEN OR
15 THIRTY SECONDS LATER YOU SAY TO MR. RICE, QUOTE, WELL, I'VE
16 GOT TO HAVE PROOF OF INSURANCE. THAT TAG LOOKS LIKE IT'S
17 BEEN ON THERE FOR QUITE A WHILE, AND THAT'S WHY I STOPPED
18 YOU. IS THAT NOT CORRECT?

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

20 Q. NOW DID YOU OBSERVE ANY TRAFFIC VIOLATIONS FROM MR.
21 RICE?

22 A. NO, I DID NOT.

23 Q. AS HE WAS OPERATING THE CAR?

24 A. NO, I DID NOT.

25 Q. AND AGAIN, THERE'S NO QUESTION THAT YOU STOPPED THE CAR

DAVID DEMPSEY - CROSS EXAMINATION BY MR. SUMNER

60

1 TO CHECK FOR REGISTRATION AND INSURANCE, IS THAT NOT
2 CORRECT?

3 A. NO. IT WAS IN CONJUNCTION WITH THE INVESTIGATION
4 CONDUCTING -- CONDUCTED BY OFFICER FULLER IN THE MURDER
5 INVESTIGATION. THAT WAS PART OF IT, BUT IT WAS ALSO BASED
6 ON THE INFORMATION RECEIVED FROM OFFICER FULLER.

7 Q. OKAY.

8 MR. SUMNER: ONE SECOND PLEASE, YOUR HONOR. MAY I
9 APPROACH THE WITNESS PLEASE, YOUR HONOR?

10 THE COURT: SURE.

11 Q. YOU DID AN INCIDENT REPORT, IS THAT CORRECT?

12 A. YES, I DID.

13 Q. WITH THIS, OFFICER FULLER? AND DO YOU NOT STATE IN
14 YOUR INCIDENT REPORT, REPORTING OFFICER IN COOPERATION WITH
15 DETECTIVE DAN FULLER CONDUCTED A TRAFFIC STOP AFTER
16 INVESTIGATION REVEALED ABOVE SUBJECT WAS OPERATING ABOVE
17 VEHICLE WITHOUT INSURANCE AND NON-REGISTERED, PERIOD?

18 A. THAT'S CORRECT.

19 Q. IS THAT NOT CORRECT?

20 A. THAT'S RIGHT.

21 Q. WHEN DID YOU COMPLETE THIS REPORT?

22 A. RIGHT AFTER THE TRAFFIC STOP.

23 Q. OKAY. SO YOU SAY IN THE REPORT THAT YOU CONDUCTED THE
24 TRAFFIC STOP FOR OPERATING UNINSURED AND NOT HAVING THE
25 VEHICLE PROPERLY REGISTERED, IS THAT NOT CORRECT?

DAVID DEMPSEY - CROSS EXAMINATION BY MR. SUMNER

61

1 A. BASED ON THE INFORMATION THAT HE HAD GIVEN ME THAT
2 MORNING PRIOR TO THE TRAFFIC STOP, THE INFORMATION THAT HE
3 HAD DEVELOPED ---

4 Q. I MEAN, THAT WAS THE BASIS FOR THE STOP, WAS IT NOT, TO
5 CHECK THAT?

6 A. YES. AND TO CHECK THAT ALSO, YES. BUT IT WASN'T THE
7 SOLE REASON FOR THE TRAFFIC STOP.

8 Q. WELL, WHAT WAS THE OTHER REASON FOR THE STOP? I MEAN,
9 YOU SAID THERE WAS SOME CONVERSATION BETWEEN ---

10 A. INFORMATION THAT DETECTIVE FULLER HAD REGARDING HIS
11 INVESTIGATION OF THE MURDER, THAT HE NEEDED TO TALK WITH
12 RUSSELL RICE.

13 Q. DID HE TELL YOU ANYTHING ELSE BESIDES THAT? DID HE
14 SAY, I JUST WANT TO TALK WITH HIM?

15 A. NO, HE SAID HE WAS CONDUCTING AN INVESTIGATION.

16 Q. WHEN YOU ARE REFERRING ON THE TAPE TO THE TAG YOU'RE
17 TALKING ABOUT MR. RICE HAVING A PAPER TAG, IS THAT NOT
18 CORRECT?

19 A. THAT'S CORRECT.

20 MR. SUMNER: ONE SECOND PLEASE, YOUR HONOR. I DON'T
21 HAVE ANY OTHER QUESTIONS. THANK YOU.

22 MR. MOYER: NOTHING FURTHER.

23 THE COURT: YOU CAN STEP DOWN.

24 MR. MOYER: I CALL CORPORAL LONG TO THE STAND.

25 JEFFREY LONG, BEING DULY

JEFFREY LONG - DIRECT EXAMINATION BY MR. MOYER

62

1 SWORN TESTIFIED AS FOLLOWS:

2 DIRECT EXAMINATION BY MR. MOYER:

3 Q. YOU WORK FOR THE GREENVILLE POLICE DEPARTMENT, SIR?

4 A. YES.

5 Q. AND WERE YOU INVOLVED IN THE TRAFFIC STOP OF RUSSELL
6 RICE ON DECEMBER THE 28TH OF 2002?

7 A. YES.

8 Q. WHEN YOU PULL UP ONTO THE SCENE WERE CORPORAL DEMPSEY
9 AND DETECTIVE FULLER ALREADY THERE?

10 A. YES.

11 Q. OKAY. AND YOU ARRIVED PRETTY MUCH IN CONJUNCTION WITH
12 DETECTIVE FULLER?

13 A. CORRECT.

14 Q. NOW DID YOU PARTICIPATE IN THE SEARCH, IN THE INVENTORY
15 SEARCH OF THE VEHICLE?

16 A. I DID.

17 Q. AND YOU SEARCHED WHAT ALL PARTS OF THAT VEHICLE?

18 A. I BEGAN IN THE FRONT PASSENGER SIDE AND WORKED MY WAY
19 BACK TO THE TRUNK.

20 Q. NOW IN THE TRUNK DID YOU SEIZE ANY PROPERTY AS A RESULT
21 OF YOUR SEARCH?

22 A. YES, I DID.

23 Q. AND WHAT WAS IT THAT YOU SEIZED?

24 A. I SEIZED A SMALL PERSONAL SCALE. AND INCLUDED WITH
25 THAT WAS A LARGE BAG CONTAINING MULTIPLE BAGGIES OF A WHITE

JEFFREY LONG - DIRECT EXAMINATION BY MR. MOYER

63

1 POWDER SUBSTANCE, WHICH FIELD TESTED POSITIVE FOR COCAINE.

2 Q. AND WHERE WAS IT IN THE TRUNK?

3 A. IT WAS IN THE -- MORE TOWARDS THE RIGHT HAND SIDE OF
4 THE TRUNK.

5 Q. WERE YOU STANDING NEXT TO CORPORAL DEMPSEY AS HE
6 SEARCHED THE LEFT HAND SIDE OF THE TRUNK?

7 A. YES, I WAS.

8 Q. NOW WERE THE DRUGS UNDER ANYTHING? DID YOU ...

9 A. THERE WAS A LOT OF BAGGAGE AND OTHER BELONGINGS IN THE
10 TRUNK. AND DURING THE INVENTORY WE JUST HAD TO MOVE A
11 COUPLE OF THINGS. WHEN I DID WHAT CAUGHT MY -- WHAT MAYBE
12 -- WHAT CAUGHT MY EYE WAS THE COLORFUL BOX THAT THE SCALE
13 WAS IN. MY PAST HISTORY WITH DEALING WITH SCALES AND SO
14 FORTH WITH MY EXPERIENCE WITH THE POLICE DEPARTMENT, WHEN I
15 OBSERVED THE SCALE I AUTOMATICALLY NOTICED THE OTHER BAGGIES
16 THAT WAS WITH THE SCALE. SO I IMMEDIATELY RECOGNIZED WHAT
17 IT WAS.

18 Q. SO WERE THE DRUGS IN ANY KIND OF CONTAINER OTHER THAN
19 THE BAGS?

20 A. NO. THEY WERE -- INDIVIDUALLY THERE WAS MULTIPLE
21 BAGGIES THAT WERE INDIVIDUALLY WRAPPED IN PLASTIC BAGS. AND
22 THEN IT WAS IN A LARGER, I GUESS A GROCERY -- EVERYTHING WAS
23 CONTAINED IN A KIND OF A CARRY GROCERY BAG.

24 Q. OKAY. AND IT WASN'T IN SOME TYPE OF COMPARTMENT?

25 A. NO, IT WASN'T.

JEFFREY LONG - CROSS EXAMINATION BY MR. SUMNER

64

1 Q. UNDER ANY PART OF THE CAR BACK THERE?

2 A. NO.

3 Q. AND YOU SEIZED THAT EVIDENCE THEN?

4 A. I DID, YES.

5 Q. YOU PUT IT INTO THE PROPERTY IN EVIDENCE ROOM?

6 A. YES, I DID.

7 Q. OKAY. PLEASE ANSWER ANY QUESTIONS THE DEFENSE MAY
8 HAVE.

9 MR. SUMNER: BRIEFLY, YOUR HONOR.

10 CROSS EXAMINATION BY MR. SUMNER:

11 Q. OFFICER LONG, YOU CONDUCTED THE INVENTORY SEARCH OF THE
12 VEHICLE, IS THAT CORRECT, SIR?

13 A. I PARTAKED IN IT, YES.

14 Q. OKAY. I BELIEVE YOU SAID THAT THE -- THERE WERE PARTS
15 OF A GUN THAT WERE TAKEN FROM THE TRUNK OF THE CAR, IS THAT
16 CORRECT?

17 A. I DIDN'T TESTIFY TO ---

18 Q. I'M SORRY. WHAT WAS TAKEN FROM THE TRUNK?

19 A. I REMOVED THE POWDER SUBSTANCE, THE COCAINE, AND THE
20 SCALE.

21 Q. OKAY. OH, YOU DID. OKAY. ALL RIGHT. FORGIVE ME.

22 AND THE TRUNK WAS CLOSED, I'M ASSUMING, WHEN YOU GOT ON THE
23 SCENE, IS THAT CORRECT? THE TRUNK OF MR. RICE'S CAR?

24 A. YES.

25 Q. THEY WOULD NOT HAVE BEEN IN PLAIN VIEW, I GUESS IS MY

JEFFREY LONG - CROSS EXAMINATION BY MR. SUMNER

65

1 QUESTION, IF AN OFFICER APPROACHED THE VEHICLE?

2 A. AS SOON AS I APPROACHED THE VEHICLE WHEN I ARRIVED ON
3 THE SEEN, NO, THE TRUNK WASN'T OPEN.

4 Q. THE TRUNK LID WAS NOT OPEN?

5 A. RIGHT, BECAUSE HE WAS STILL IN THE VEHICLE.

6 Q. THANK YOU. DID YOU RECOVER ANYTHING BESIDES THE
7 COCAINE AND THE SCALES?

8 A. A -- I OBSERVED A SUPER 8 MATCHBOOK.

9 Q. OKAY. AND WHERE WAS THAT TAKEN FROM? DO YOU RECALL?

10 A. IT CAME FROM A LITTLE DRAW BAG, A LITTLE DUFFEL BAG.
11 IT WAS A DUFFEL BAG IN THE BACK SEAT.

12 Q. WAS THE DUFFEL BAG CLOSED OR OPEN WHEN YOU SAW IT?

13 A. IT WAS OPEN.

14 Q. IT WAS OPEN?

15 A. (AFFIRMATIVE NOD).

16 Q. COULD YOU SEE INTO THE DUFFEL BAG FROM OUTSIDE THE CAR
17 OR DID YOU NEED TO BE INSIDE THE CAR TO ---

18 A. NO. I WOULD HAVE BEEN INSIDE OF THE CAR DURING THE
19 INVENTORY.

20 Q. YOU WOULD NEEDED TO HAVE BEEN INSIDE THE VEHICLE TO SEE
21 THE SUPER 8 MATCHBOOK?

22 A. CORRECT.

23 Q. THANK YOU.

24 THE COURT: STEP DOWN.

25 MR. MOYER: I HAVE NO FURTHER WITNESSES FOR PURPOSES OF

1 THIS HEARING.

2 THE COURT: MR. SUMNER, DO YOU HAVE ANYTHING TO SUBMIT
3 TESTIMONY WISE?

4 MR. SUMNER: ONE SECOND PLEASE, YOUR HONOR. NO, SIR,
5 YOUR HONOR, I WOULD NOT OFFER ANY TESTIMONY AT THIS POINT.

6 THE COURT: HOW DOES BUTLER CONTROL THIS CASE, MR.
7 SUMNER?

8 MR. SUMNER: WELL, YOUR HONOR, THE TESTIMONY THAT I
9 HEARD FROM DETECTIVE FULLER WAS THAT THE CAR WAS STOPPED TO
10 MAKE SURE THAT IT WAS PROPERLY REGISTERED. I BELIEVE THAT
11 WAS THE ONLY QUESTION I ASKED HIM ON CROSS EXAMINATION. THE
12 SECOND LINE IN TERMS OF THE CASE SUMMARY OF BUTLER IN THE
13 OVERVIEW, THE SECOND SENTENCE OF THE OVERVIEW PARAGRAPH
14 SAYS, LAW ENFORCEMENT STOPPED THE CAR TO MAKE SURE IT WAS
15 PROPERLY REGISTERED AND HAD INSURANCE.

16 THERE WAS TESTIMONY FROM OFFICER DEMPSEY IN ADDITION TO
17 THAT THAT HE STOPPED THE CAR BASED ON THE ISSUE OF PROPER
18 REGISTRATION AND INSURANCE. AND HE ALSO MENTIONED THE PAPER
19 TAG. IT'S UNDISPUTED THAT ON THE VIDEOTAPE THAT IS IN
20 EVIDENCE, BUT I KNOW IT'S NOT BEEN VIEWED BY THE COURT, THAT
21 OFFICER DEMPSEY STATED TO MR. RICE, FIRST OF ALL, AFTER HE
22 SAYS, HOW ARE YOU DOING, HE SAYS, HOW LONG HAVE YOU HAD THAT
23 TAG ON THE CAR? AND I ASKED HIM ON CROSS EXAMINATION, ARE
24 YOU REFERRING TO THE PAPER TAG? AND HE SAID, TOLD THE
25 COURT, YES, SIR.

1 THE COURT: I UNDERSTAND THAT. BUT AS I READ BUTLER
2 THE ONLY PERSON THAT TESTIFIED IN THAT CASE WAS THE OFFICER
3 WHO MADE THE STOP AND THAT HE ADMITTED THAT OTHER THAN THE
4 PRESENCE OF THE TEMPORARY TAG THAT HE HAD NO INDICATION THAT
5 BUTLER WAS INVOLVED IN ANY CRIMINAL ACTIVITY.

6 MR. SUMNER: YES, SIR.

7 THE COURT: BUT IN THIS CASE YOU'VE GOT THE TESTIMONY
8 OF DETECTIVE FULLER THAT YOUR CLIENT WAS A SUSPECT IN A
9 MURDER CASE, THAT HE'D GOTTEN INFORMATION FROM THE WIFE
10 CONCERNING OWNERSHIP OF THE CAR AND REGISTRATION, INSURANCE.

11 MR. SUMNER: YES, SIR.

12 THE COURT: WHY WAS THAT NOT REASONABLE SUSPICION FOR
13 THE STOP? YOUR MOTION'S DENIED. ALL RIGHT. ANYTHING ELSE
14 NOW BEFORE WE RECESS FOR LUNCH?

15 MR. MOYER: WELL, I ---

16 MR. SUMNER: GO AHEAD.

17 MR. MOYER: I WAS JUST GOING TO SAY NOT FROM THE STATE,
18 YOUR HONOR.

19 MR. SUMNER: YOUR HONOR, BRIEFLY I JUST WANT TO MAKE
20 THE COURT AWARE OF SOMETHING. THERE MAY BE AN ISSUE OF
21 THIRD PARTY GUILT IN THIS CASE ON INFORMATION AND BELIEF,
22 YOUR HONOR, THERE'S BEEN A STATEMENT TAKEN BY LAW
23 ENFORCEMENT WHERE IT IS ALLEGED THAT ANOTHER PERSON HAS
24 TAKEN RESPONSIBILITY FOR THIS KILLING. AND I JUST WANTED TO
25 BRING TO THE COURT'S ATTENTION THAT THERE MAY BE A THIRD

1 PARTY GUILT ISSUE THAT FLOATS IN THIS TRIAL. AND I KNOW
2 THAT THAT IS LOOKED UPON CLOSELY, SCRUTINIZED CLOSELY BY THE
3 BENCH. AND I JUST WANTED TO MAKE THE COURT AWARE OF IT.

4 THE COURT: ALL RIGHT. ALL RIGHT. ANYTHING ELSE?

5 MR. MOYER: NO, SIR.

6 THE COURT: ALL RIGHT. SEE YOU BACK AT 2:00.

7 (WHEREUPON COURT WAS IN RECESS)

8 THE COURT: ALL RIGHT. YOU WANT TO MAKE BRIEF OPENING
9 STATEMENTS TO THE JURY?

10 MR. MOYER: YES, SIR.

11 MR. SUMNER: YES, SIR. DOESN'T THE COURT CHARGE VICTOR
12 V. NEBRASKA, REASONABLE DOUBT?

13 THE COURT: YES.

14 MR. SUMNER: WHICH IS PROOF THAT WOULD LEAVE YOU FIRMLY
15 CONVINCED ABSENT THE REAL POSSIBILITY OF THE DEFENDANT'S
16 INNOCENCE, IS THAT CORRECT?

17 THE COURT: YES.

18 MR. SUMNER: OKAY.

19 THE COURT: BRING OUR JURY. OKAY. YOU GOT ALL YOUR
20 WITNESSES SEQUESTERED?

21 MR. SUMNER: YES, SIR.

22 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 2:07 PM)

23 THE COURT: ALL RIGHT. BRIEF OPENING STATEMENT,
24 SOLICITOR.

25 MR. MOYER: THANK YOU, YOUR HONOR. MAY IT PLEASE THE

OPENING STATEMENT - MR. MOYER

69

1 COURT? MR. FOREMAN, LADIES AND GENTLEMEN OF THE JURY, MY
2 NAME IS MARK MOYER. I'M AN ASSISTANT SOLICITOR HERE IN
3 GREENVILLE COUNTY. I WORK FOR THE SOLICITOR'S OFFICE, BOB
4 ARIAIL, WHO IS THE SOLICITOR OF GREENVILLE COUNTY.

5 IT'S MY JOB TO PROSECUTE PEOPLE WHO HAVE BEEN CHARGED
6 WITH COMMITTING CRIMES IN GREENVILLE COUNTY. AND THAT'S
7 WHAT WE'RE DOING HERE TODAY. WE'RE PROSECUTING THIS MAN,
8 RUSSELL RICE, WHO'S SEATED OVER THERE ACROSS THE ROOM FOR
9 EACH CHARGE THAT YOU HAVE JUST HAD -- HEARD THE JUDGE READ
10 OUT TO YOU A LITTLE BIT BEFORE LUNCH.

11 AND I'M GOING TO TAKE JUST A FEW MOMENTS HERE THIS
12 MORNING BEFORE WE GET STARTED TO TELL YOU A LITTLE BIT ABOUT
13 WHAT TO EXPECT IN THIS TRIAL. FIRST OF ALL, WHAT IS THIS
14 CASE ABOUT? YOU'RE GOING TO HEAR THAT, LADIES AND
15 GENTLEMEN, VERY SOON IN THIS CASE THAT CLOSE TO DUSK ON
16 ELECTION DAY OF 2002, NOVEMBER THE 5TH, THAT A THIRTY YEAR
17 OLD MAN BY THE NAME OF HOMER JOHNSON PARKED IN THE BACK OF A
18 PARKING LOT IN A -- AT A MOTEL NOT TOO VERY FAR FROM WHERE
19 WE ARE RIGHT NOW, ON WADE HAMPTON BOULEVARD, NOT TOO FAR
20 FROM CHURCH STREET, PARKED IN THE BACK CORNER CLOSE TO DUSK.

21 AND YOU'RE GOING TO HEAR, LADIES AND GENTLEMEN, THAT
22 WHEN HE GOT OUT OF HIS VEHICLE AND HE GOT OUT INTO THE
23 PARKING LOT IN FRONT OF HIS CAR THAT HE WAS SHOT TWICE WITH
24 A HIGH POWERED RIFLE, ONCE IN THE SIDE AND ONCE IN THE BACK,
25 AND THAT HE WAS LEFT LYING FACE DOWN IN A POURING RAIN STORM

OPENING STATEMENT - MR. MOYER

70

1 TO BLEED TO DEATH. THAT IS WHAT THIS CASE REVOLVES AROUND.
2 AND THAT IS WHAT LED TO THE FOUR CHARGES THAT YOU HAVE HEARD
3 READ TO YOU A LITTLE BIT EARLIER.

4 LET ME TAKE JUST A MOMENT TO TALK TO YOU ABOUT THOSE
5 CHARGES. IT'LL ONLY TAKE ME A MOMENT BECAUSE A COUPLE OF
6 THEM ARE VERY, VERY STRAIGHT FORWARD. LET'S START WITH
7 THOSE. THE PISTOL CHARGES. IT IS UNLAWFUL IN SOUTH
8 CAROLINA, VERY SIMPLY, TO CARRY AROUND YOUR PERSON A PISTOL.
9 AND IT NEEDS VERY LITTLE MORE EXPLANATION THAN THAT.

10 ANOTHER CHARGE IS POSSESSION OF A PISTOL DURING THE
11 COMMISSION OF A VIOLENT CRIME. ONCE AGAIN, IT IS UNLAWFUL
12 IN SOUTH CAROLINA TO HAVE A PISTOL, HAVE A FIREARM IN YOUR
13 POSSESSION WHILE COMMITTING A VIOLENT OFFENSE, A VIOLENT
14 CRIME. AND IT'S NOT GOING TO BE WHAT YOU WOULD EXPECT IN
15 THIS CASE. THE VIOLENT CRIME THAT IS INVOLVED IN THAT
16 CHARGE, LADIES AND GENTLEMEN, IS THE DRUG CHARGE.

17 OUR LEGISLATURE HAS DESIGNATED AND CLASSIFIED DIFFERENT
18 OFFENSES, SOME OF WHICH HAVE BEEN DETERMINED TO BE VIOLENT
19 CRIMES. TRAFFICKING IN COCAINE HAS BEEN DESIGNATED A
20 VIOLENT CRIME. SO TO HAVE A PISTOL ON ONESELF WHILE
21 COMMITTING THE CRIME OF TRAFFICKING COCAINE IS AN OFFENSE.

22 WHAT ABOUT THAT DRUG CHARGE? I'LL TAKE A MOMENT TO
23 DISCUSS THAT. WE HAVE A LOT OF DIFFERENT DRUG CHARGES IN
24 SOUTH CAROLINA. MOST OF THEM HAVE TO DO -- MOST OF THEM
25 INVOLVE WHAT YOU'RE DOING WITH THE DRUGS, WHETHER IT BE

OPENING STATEMENT - MR. MOYER

71

1 BUYING THEM, SELLING THEM, USING THEM, MAKING THEM.
2 TRAFFICKING IN A DRUG IS DIFFERENT IN THAT IT HAS LESS TO DO
3 WITH WHAT ONE IS DOING WITH THE DRUGS THAN HOW MUCH DRUGS
4 ARE INVOLVED.
5 FOR TRAFFICKING, FOR THIS PARTICULAR CHARGE, THE CUTOFF
6 IS TWO HUNDRED GRAMS. SO REALLY IT DOESN'T MATTER -- AS
7 LONG AS ONE HAS SOME INVOLVEMENT, WHETHER IT'S BUYING THEM,
8 SELLING THEM, HAVING THEM IN YOUR POSSESSION, MAKING IT, OR
9 JUST HAVING IT AROUND, IF IT IS OVER THAT LIMIT OF TWO
10 HUNDRED GRAMS THEN THAT OFFENSE IS COMMITTED, TRAFFICKING IN
11 COCAINE.

12 THE FINAL CHARGE THAT WE ARE DEALING WITH HERE TODAY IN
13 THIS CASE IS MURDER. AND THAT HAS BEEN DEFINED AS THE
14 KILLING OF A PERSON WITH MALICE AFORETHOUGHT EITHER
15 EXPRESSED OR IMPLIED. AND HIS HONOR IS GOING TO TAKE
16 SUFFICIENT TIME AT THE END OF THIS CASE TO FULLY EXPLAIN TO
17 YOU WHAT THAT MEANS. AND HE'S GOING TO EXPLAIN THOSE
18 DIFFERENT TERMS AND HOW THAT MALICE ELEMENT, THE ILL-WILL OR
19 HATRED CAN BE EITHER EXPRESSLY GIVEN BY THE DEFENDANT OR BY
20 THE PERSON OR IT CAN BE IMPLIED AND WHAT SITUATIONS THERE IS
21 IMPLIED MALICE. FOR EXAMPLE, THE USE OF A DEADLY WEAPON,
22 YOU DON'T HAVE TO READ THE PERSON'S MIND, BUT YOU CAN IMPLY
23 MALICE.

24 LADIES AND GENTLEMEN, THIS CASE -- WHAT YOU'RE GOING TO
25 LEARN PRETTY QUICKLY IS THAT THIS CASE INVOLVES -- DOESN'T

OPENING STATEMENT - MR. MOYER

72

1 INVOLVE REALLY A DEFINITION OF THE TERM MURDER. THIS CASE
2 IS NOT GOING TO REVOLVE AROUND THE STATE OF MIND OF THE
3 SHOOTER. WAS THERE SOME TYPE OF SELF -- LIKE IN A LOT OF
4 MURDER CASES. WAS THERE A SELF DEFENSE ISSUE? WAS IT AN
5 ACCIDENTAL SHOOTING OR HOMICIDE? WAS IT MAYBE SOME LESSER
6 FORM OF HOMICIDE LIKE MANSLAUGHTER OR INVOLUNTARY
7 MANSLAUGHTER? NO. THE ISSUE IN THIS CASE IS NOT GOING TO
8 BE WHETHER HOMER JOHNSON WAS MURDERED, BUT WHO MURDERED
9 HOMER JOHNSON.

10 AND SO AT THE END OF THIS CASE YOU'RE GOING TO HAVE TO
11 BELIEVE BEYOND A REASONABLE DOUBT THAT THIS DEFENDANT,
12 RUSSELL RICE, IS THE ONE WHO MURDERED HOMER JOHNSON ON
13 NOVEMBER THE 5TH OF 2002 BEYOND A REASONABLE DOUBT. YOU'RE
14 GOING TO HEAR THAT TERM USED QUITE A NUMBER OF MORE TIMES
15 BEFORE THIS CASE IS OVER WITH BECAUSE THAT'S THE BURDEN OF
16 PROOF THAT THE STATE HAS IN A CRIMINAL CASE. AND THAT'S IN
17 ALL CRIMINAL CASES. AND IT'S FAIR. WE'RE DEALING WITH A
18 PERSON'S LIBERTY AS OPPOSED TO HIS OR HER CHECKBOOK AS YOU
19 WOULD HAVE IN A CIVIL CASE WHERE THE BURDEN IS MUCH LOWER.

20 IN A CRIMINAL CASE, IN ALL CRIMINAL CASES, THAT'S WHAT
21 WE'RE DEALING WITH. AND THAT'S WHY WE HAVE THAT BURDEN AS
22 IT IS. IT'S THE SAME IN ALL CRIMINAL CASES IN ALL
23 JURISDICTIONS, WHETHER YOU'RE IN ANOTHER STATE, WHETHER
24 YOU'RE DOWN IN MAGISTRATE'S COURT, FEDERAL COURT. CRIMINAL
25 CASES HAVE THAT BURDEN, BEYOND A REASONABLE DOUBT. FOR THE

OPENING STATEMENT - MR. MOYER

73

1 MOST SEEMINGLY IMPORTANT OR SERIOUS CHARGE, LIKE EVEN
2 CAPITAL MURDER, TO THE MOST SEEMINGLY INSIGNIFICANT CASE, A
3 TRAFFIC TICKET IN MAGISTRATE'S COURT WOULD BE THE SAME. SO
4 IT'S REASONABLE DOUBT. NOT BEYOND ALL DOUBT, NOT BEYOND
5 EVERY DOUBT, BUT AT THE END OF THE CASE ARE YOU FIRMLY
6 CONVINCED THAT THIS DEFENDANT IS THE ONE WHO COMMITTED THIS
7 CRIME -- THESE CRIMES?

8 NOW THE EVIDENCE IS GOING TO BE PRESENTED TO YOU IN A
9 SERIES OF WITNESSES. YOU HEARD THE LIST. THE STATE'S LIST
10 HAD ABOUT TWENTY-FIVE NAMES ON IT. WE'RE NOT GOING TO HAVE
11 TO CALL ALL OF THOSE PEOPLE. SOME OF THEM ARE -- SOME OF
12 THOSE WITNESSES ARE GOING TO BE VERY SHORT. OTHERS WILL BE
13 A BIT LONGER. I'LL TRY AS BEST I CAN TO CALL THEM IN AS
14 LOGICAL A SEQUENCE AS POSSIBLE.

15 SOME OF THE TESTIMONY BY NECESSITY IS GOING TO SEEM A
16 LITTLE OUT OF PLACE. IT MAY NOT QUITE SEEM RELEVANT WHEN
17 YOU FIRST HEAR IT, BUT BY THE END OF THE CASE IT SHOULD ALL
18 COME TOGETHER.

19 THERE WILL BE A NUMBER OF EXHIBITS SHOWN TO YOU, PIECES
20 OF EVIDENCE, PHOTOGRAPHS, SEVERAL OF WHICH I'LL WARN YOU ARE
21 NOT GOING TO BE ALL THAT PLEASANT TO LOOK AT. I AM HOPING
22 THAT THE CASE WILL BE ABLE TO BE -- IT'S HARD TO JUDGE THESE
23 THINGS, BUT I'M HOPING THE STATE WILL BE ABLE TO HAVE THE
24 EVIDENCE TO YOU BY THE END OF THE DAY TOMORROW, PERHAPS INTO
25 WEDNESDAY A BIT.

OPENING STATEMENT - MR. MOYER

74

1 BUT WHAT YOU'RE GOING TO HEAR FROM THESE -- YOU'RE
2 GOING TO HEAR FROM WITNESSES IN SEVERAL DIFFERENT
3 CATEGORIES. YOU'RE GOING TO HEAR FROM SOME PEOPLE WHO FOUND
4 HOMER JOHNSON ON NOVEMBER THE 5TH OF 2002, THE OFFICERS WHO
5 WENT TO THAT SCENE OUT THERE WHEN THAT BODY WAS FOUND AND
6 COLLECTED SOME EVIDENCE.

7 YOU'RE GOING TO HEAR FROM PEOPLE WHO KNEW HOMER JOHNSON
8 AND THIS DEFENDANT AND WHO ARE GOING TO BE ABLE TO FILL YOU
9 IN ON CIRCUMSTANCES THAT ARE SIGNIFICANT TO THEIR CASE,
10 CIRCUMSTANCES SURROUNDING THE TWO OF THEM THAT ARE
11 SIGNIFICANT TO THIS CASE. AND YOU'RE GOING TO HEAR FROM
12 OTHER LAW ENFORCEMENT OFFICIALS AND OTHER PERSONS WHO ARE
13 GOING TO TALK TO YOU ABOUT EVIDENCE THAT WAS COLLECTED AND
14 ANALYZED.

15 AND WHAT YOU'RE GOING TO HEAR, LADIES AND GENTLEMEN, IS
16 THAT THIS CASE STEMMED FROM AN INCIDENT THAT WAS SUPPOSED TO
17 BE THE CULMINATION OF A DRUG DEAL, THAT THEY WERE SCHEDULED
18 TO MEET AT THIS TIME AND PLACE. AND WHAT WAS SUPPOSED TO
19 HAPPEN IS THAT THERE WAS SUPPOSED TO BE AN EXCHANGE OF MONEY
20 FOR DRUGS THAT HAD BEEN GIVEN BY THE VICTIM, HOMER JOHNSON,
21 TO THE DEFENDANT. AND YOU'RE GOING TO HEAR HOW THE
22 INVESTIGATION LED TO THIS MAN, THE DEFENDANT, RUSSELL RICE,
23 AND HOW THAT INVESTIGATION CULMINATED ABOUT SIX OR SEVEN
24 WEEKS AFTER THE SHOOTING IN A TRAFFIC STOP ON HAYWOOD ROAD
25 NEAR THE MALL DECEMBER THE 28TH OF 2002.

OPENING STATEMENT - MR. SUMNER

75

1 THE DEFENDANT IN HIS VEHICLE -- AND YOU'RE GOING TO
2 HEAR, LADIES AND GENTLEMEN, HOW IN HIS CAR IS FOUND NEARLY
3 TWO HUNDRED AND FIFTY GRAMS OF COCAINE, IN HIS POCKET IS
4 FOUND A PISTOL LOADED AND COCKED, AND IN THE TRUNK OF HIS
5 CAR IS FOUND A HIGH POWERED RIFLE CUT INTO PIECES.

6 THE EVIDENCE, AGAIN, LIKE I SAID, FOR A CASE OF THIS
7 TYPE RELATIVELY IS NOT GOING TO TAKE, I HOPE, NOT ALL THAT
8 LONG TO PRESENT TO YOU. AT THIS TIME ALL I ASK OF YOU,
9 LADIES AND GENTLEMEN, IS TO LISTEN CLOSELY, HAVE AN OPEN
10 MIND, USE YOUR GOOD SENSE, AND YOUR GOOD JUDGMENT, AND
11 COMMON SENSE TO WEIGH THE EVIDENCE THAT YOU HEAR. AND AT
12 THE END OF THIS CASE WHAT I WILL ASK OF YOU IS TO DO
13 JUSTICE. THANK YOU.

14 THE COURT: MR. SUMNER.

15 MR. SUMNER: YES, SIR. GOOD AFTERNOON. HELLO. MY
16 NAME IS STEVE SUMNER. AND I PRACTICE LAW HERE IN
17 GREENVILLE. AND IT IS A PLEASURE TO BE WITH Y'ALL HERE THIS
18 AFTERNOON, AND IT WILL BE A PLEASURE TO BE WITH YOU
19 THROUGHOUT THE TRIAL.

20 I'M HONORED TO BE REPRESENTING RUSTY RICE. STAND UP,
21 RUSTY. RUSTY IS ACCUSED OF THE CHARGES THAT HAVE BEEN READ
22 TO YOU THIS MORNING, MURDER, TRAFFICKING IN COCAINE, AND
23 POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT
24 CRIME, AND ALSO, I BELIEVE, THE UNLAWFUL POSSESSION OF THE
25 WEAPON. HE IS FORTY-SEVEN YEARS OLD. HE'S DIVORCED. HE

OPENING STATEMENT - MR. SUMNER

76

1 HAS TWO DAUGHTERS WHO ARE NOT TEENAGERS, BUT NEAR TEENAGERS,
2 I THINK, TWELVE OR THIRTEEN YEARS OLD.

3 AND WHAT I WANT TO DO NOW IS TALK BRIEFLY ABOUT THIS
4 TRIAL. LADIES AND GENTLEMEN, HE COULDN'T FACE ANYMORE
5 SERIOUS CHARGES THAN HE DOES PRINCIPALLY BEING CHARGED WITH
6 THE TWO PRIMARY CHARGES OF MURDER AND TRAFFICKING IN
7 COCAINE. I DON'T BELIEVE THERE'S A MORE SERIOUS CHARGE THAN
8 MURDER. JUST AS MY COLLEAGUE, MR. MOYER SAID, CAPITAL
9 MURDER, WHERE THE DEATH PENALTY IS SOUGHT, WOULD BE
10 CONSIDERED MORE SERIOUS, BUT CERTAINLY MURDER IS AS SERIOUS
11 AS IT GETS.

12 AND BECAUSE THIS IS CRIMINAL COURT AND NOT CIVIL COURT,
13 AS MR. MOYER'S TOUCHED UPON, THERE'S SEVERAL IMPORTANT
14 GROUND RULES THAT WILL BE IN EFFECT THROUGH THE COURSE OF
15 THIS TRIAL. AND THE REASON THESE GROUND RULES ARE WHAT THEY
16 ARE IS JUST WHAT THE PROSECUTOR, MR. MOYER, STATED. AND
17 THAT IS HIS FREEDOM OR LIBERTY IS AT STAKE THROUGH THE
18 COURSE OF THIS TRIAL.

19 AND BECAUSE THIS IS NOT A CASE ABOUT MONEY DAMAGES
20 WHERE THERE'S A LAWSUIT OVER POTENTIALLY A BREACH OF
21 CONTRACT, OR A BOUNDARY, OR ANYTHING ALONG THOSE LINES, THIS
22 IS A CRIMINAL CHARGE AND BECAUSE IT'S A CRIMINAL CHARGE
23 THERE ARE SEVERAL IMPORTANT GROUND RULES THAT I'M GOING TO
24 TOUCH ON. AND I'LL CERTAINLY ASK YOU TO PAY ATTENTION AS I
25 KNOW THAT YOU WILL TO JUDGE PYLE AT THE CONCLUSION OF THE

OPENING STATEMENT - MR. SUMNER

77

1 CASE BECAUSE HE WILL CHARGE YOU ON THE LAW AS IT APPLIES.

2 FIRST OF ALL, GROUND RULE NUMBER ONE, RUSTY RICE IS

3 INNOCENT. NOW HE'S BEEN REFERRED TO AS RUSSELL RICE, BUT

4 I'VE GOTTEN TO KNOW HIM THROUGH THE COURSE OF REPRESENTING

5 HIM AND HE GOES BY RUSTY. GROUND RULE NUMBER ONE, RUSTY

6 RICE IS INNOCENT.

7 AND THE REASON HE'S INNOCENT, LADIES AND GENTLEMEN, IS

8 BECAUSE OF THE PRESUMPTION OF INNOCENCE. JUDGE PYLE WILL

9 TELL YOU AT THE CONCLUSION OF THIS CASE THAT ANYBODY WHO'S A

10 DEFENDANT IN A CRIMINAL CASE IS PRESUMED INNOCENT, AND THAT

11 PRESUMPTION OF INNOCENCE REMAINS WITH HIM THROUGHOUT THE

12 COURSE OF THE TRIAL AND DURING THE START OF Y'ALL'S

13 DELIBERATIONS AS A JURY.

14 GROUND RULE NUMBER TWO IS THE BURDEN OF PROOF ALWAYS

15 REMAINS WITH THE STATE. IT'S AT THIS TABLE RIGHT HERE,

16 OKAY? MR. RICE DOES NOT HAVE TO PROVE HIS INNOCENCE TO YOU

17 ALL THROUGH THE COURSE OF THIS TRIAL. THE BURDEN OF PROOF

18 REMAINS ENTIRELY WITH THE STATE UNTIL THE CONCLUSION OF THE

19 TRIAL.

20 NUMBER THREE, YOUR VERDICT MUST BE UNANIMOUS. IT IS

21 NOT ENOUGH FOR THE STATE TO PROVE IT TO THREE, SIX, TEN, OR

22 EVEN ELEVEN OF YOU. THE STATE OF SOUTH CAROLINA MUST PROVE

23 THIS -- THESE CHARGES TO YOU INDIVIDUALLY OR TOGETHER. YOU

24 NEED TO CONSIDER EACH OF THEM INDIVIDUALLY TO PROOF THAT

25 LEAVES YOU ALL UNANIMOUSLY CONVINCED OF MR. RICE'S GUILT.

OPENING STATEMENT - MR. SUMNER

78

1 NUMBER FOUR, HOW MUST THEY PROVE THE CASE? AND MR.
2 MOYER TOUCHED UPON IT IN HIS OPENING STATEMENT. HIS HONOR
3 WILL TELL YOU THAT THE STATE MUST PROVE EACH AND EVERY
4 ELEMENT OF THESE CHARGES BEYOND A REASONABLE DOUBT. NOW
5 WHAT DO THOSE WORDS MEAN? THEY'RE WORDS THAT WE HEAR A LOT,
6 TELEVISION, MAYBE THROUGH THE MOVIES. WE -- BELIEVE THERE
7 WAS A MOVIE ENTITLED REASONABLE DOUBT OR BEYOND A REASONABLE
8 DOUBT AT ONE TIME. WHAT DOES THAT MEAN?

9 HIS HONOR WILL TELL YOU THAT IN SOUTH CAROLINA PROOF
10 BEYOND A REASONABLE DOUBT IS PROOF THAT LEAVES YOU FIRMLY
11 CONVINCED OF THE DEFENDANT'S GUILT AND SO POWERFUL THAT YOU
12 SEE NO REAL POSSIBILITY OF THE DEFENDANT'S INNOCENCE OR THAT
13 HE'S NOT GUILTY. THAT IS THE TYPE OF PROOF THAT THEY MUST
14 ADDUCE TO YOU. THAT'S THE TYPE OF PROOF THAT MUST COME IN
15 BEFORE YOU CAN CONSIDER RENDERING A VERDICT AGAINST MR. RICE
16 OF GUILTY.

17 I'M GOING TO TOUCH BRIEFLY ON TWO OF THE CRIMES. FIRST
18 OF ALL, TRAFFICKING IN COCAINE BASICALLY I BELIEVE AS JUDGE
19 PYLE HAS ALREADY STATED IT IS OVER TWO HUNDRED GRAMS OF
20 COCAINE AND IT'S WHETHER OR NOT, AND I AGREE WITH MR. MOYER,
21 WHETHER OR NOT MR. RICE POSSESSED IT, MANUFACTURED IT, HAD A
22 ROLE IN ITS DISTRIBUTION OF ANY TYPE. THOSE ARE BASICALLY
23 THE ELEMENTS OF TRAFFICKING IN COCAINE.

24 MURDER, AS AGAIN MR. MOYER STATED, BASICALLY, AND ALSO
25 JUDGE PYLE, IS THE UNLAWFUL KILLING OF ANOTHER PERSON WITH

OPENING STATEMENT - MR. SUMNER

79

1 MALICE. WHAT DOES THAT SIMPLY MEAN? IT MEANS IT'S NOT AN
2 ACCIDENT. IT'S A PREMEDITATED THOUGHT OUT CRIME. IF YOU GO
3 UP AND YOU KILL SOMEBODY AND YOU MEANT TO DO IT, AND I
4 BELIEVE MR. MOYER REFERRED TO MANSLAUGHTER, WHICH INVOLVES
5 EMOTIONS RUNNING HIGH OR THINGS ALONG THAT LINE, THAT IS NOT
6 WHAT MR. RICE IS CHARGED WITH. HE'S CHARGED WITH A
7 PREMEDITATED, CONSCIOUS, AND PLANNED OUT KILLING, OR PLANNED
8 OUT MURDER.

9 NOW MR. MOYER HAS ALREADY GIVEN THE TIME-FRAME ON THIS
10 CASE AS THE LATE FALL, EARLY WINTER OF 2002. I BELIEVE THAT
11 YOU'RE GOING TO HEAR TESTIMONY FROM MR. RICE, WHEN HE TAKES
12 THE STAND, THAT HE WILL TELL YOU THAT DURING THIS POINT IN
13 TIME THAT HE WAS SELLING POWER TOOLS OUT OF HIS CAR, KIND
14 OF, I DON'T WANT TO SAY FLEA MARKET, BUT, YOU KNOW, I
15 BELIEVE Y'ALL KNOW WHAT I'M TRYING TO SAY.

16 HE WAS BUYING WHOLESALE POWER TOOLS, I BELIEVE HE MAY
17 SAY RYOBI, AND WAS GETTING THEM FROM A WHOLESALE HERE IN
18 GREENVILLE, AND WAS TRAVELING AROUND NORTH AND SOUTH
19 CAROLINA SELLING POWER TOOLS OUT OF HIS CAR. HE -- AND HE
20 TRAVELED A GOOD BIT BY CAR. IT WAS NOT UNUSUAL FOR HIM TO
21 BE ON THE ROAD FOR LONG STRETCHES OF TIME.

22 LADIES AND GENTLEMEN, I ALSO BELIEVE THAT HE WILL TELL
23 YOU THAT HE WAS INVOLVED IN THE DRUG TRADE. I BELIEVE THAT
24 HE WILL TAKE THAT WITNESS STAND AND TELL YOU THAT. THIS
25 TRIAL WILL NOT BE BORING. I WANT TO GO AHEAD AND TELL YOU

OPENING STATEMENT - MR. SUMNER

80

1 THAT RIGHT NOW. IT WILL NOT -- YOU SHOULD NOT HAVE TROUBLE
2 STAYING AWAKE DURING THIS TRIAL BECAUSE A LOT OF THE
3 WITNESSES IN THIS CASE, I BELIEVE, WERE INVOLVED IN THE
4 ILLEGAL DRUG TRADE. MR. MOYER HAS ALREADY ALLUDED TO THAT.
5 HE'S ALREADY ALLUDED TO THE FACT THAT THE DECEASED WHO WAS
6 KILLED, MR. JOHNSON, IT INVOLVED A DRUG TRANSACTION. THERE
7 WILL BE TALK OF NARCOTICS AND DRUGS THAT WILL BE -- YOU WILL
8 HEAR THROUGHOUT THE COURSE OF THIS TRIAL.

9 HE HAS ALREADY MENTIONED THAT IT WAS NOVEMBER 5TH,
10 ELECTION DAY, 2002, AT THE SUPER 8 MOTEL, WHICH IS, WHAT, IS
11 MAYBE A MILE FROM HERE RIGHT AT THE BOTTOM OF WADE HAMPTON
12 BOULEVARD. AND IT HAPPENED AROUND 5:30 PM.

13 LADIES AND GENTLEMEN, LIKE ALL CASES, THIS CASE IS
14 ABOUT PROOF. LET ME SAY THAT ONE MORE TIME. THIS CASE IS
15 ABOUT PROOF. IT'S ABOUT COLD HARD FACTS THAT PROVE THESE
16 CHARGES, EACH OF THESE CHARGES TO YOU BEYOND A REASONABLE
17 DOUBT AGAINST MR. RICE. IT'S ABOUT HARD EVIDENCE. PLEASE
18 REMEMBER THAT RUSTY RICE IS NOT CHARGED WITH CONSPIRACY.
19 HE'S NOT CHARGED WITH BEING PART OF A PLAN. HE'S NOT
20 CHARGED WITH BEING PART OF A GROUP THAT WERE INVOLVED IN A
21 KILLING OF HOMER JOHNSON. HE'S CHARGED SIMPLY WITH MURDER,
22 OF BEING THE PERSON WHO ACTUALLY KILLED HIM, BEING THE
23 PERSON WHO MURDERED THIS MAN.

24 THERE IS NO QUESTION THAT HE WAS MURDERED. YOU WILL
25 NOT HEAR ME ASK A LOT OF QUESTIONS ON CROSS EXAMINATION. I

OPENING STATEMENT - MR. SUMNER

81

1 BELIEVE THAT TODAY YOU MAY HEAR FROM THE CORONER. YOU MAY
2 HEAR FROM PEOPLE WHO WERE OUT THERE AT THE SCENE. I'M NOT
3 GOING TO ASK THEM A LOT OF QUESTIONS BECAUSE THERE'S NO
4 QUESTION THAT HOMER JOHNSON WAS MURDERED. HE WAS SHOT TO
5 DEATH. AND THAT IS NOT AT ISSUE. THE ISSUE IS WHETHER OR
6 NOT THE STATE OF SOUTH CAROLINA AS IT RELATES TO THE MURDER
7 CHARGE HAS ENOUGH EVIDENCE TO CONVINCE YOU BEYOND A
8 REASONABLE DOUBT THAT MY CLIENT, RUSTY RICE, IS GUILTY OF
9 THE MURDER.

10 VERY BRIEFLY, AND IN CLOSING, I'LL SAY THIS RIGHT
11 BEFORE WE START THROUGH THE COURSE OF THE TRIAL, THERE ARE
12 SEVERAL QUESTIONS THAT I WOULD LIKE TO LEAVE YOU WITH. AND
13 I DON'T KNOW WHAT THE PROOF -- I DON'T KNOW WHAT TESTIMONY
14 WILL BE ADDUCED. BUT JUST SOME QUESTIONS THAT YOU MIGHT ASK
15 AS YOU GO THROUGH IT.

16 DOES THE STATE HAVE A WITNESS TO THIS MURDER? WILL
17 THERE BE A WITNESS PLACING RUSTY RICE AT THE SCENE, WHICH
18 WOULD BE THE SUPER 8 MOTEL, EITHER IMMEDIATELY PRIOR TO OR
19 RIGHT AFTER THE MURDER? I DON'T KNOW. DOES THE STATE HAVE
20 THE MURDER WEAPON? CAN THE STATE PROVIDE PROOF, FORENSIC
21 PROOF, THAT ANY OF THE WEAPONS -- THAT ANY WEAPON SOUGHT TO
22 BE PLACED INTO EVIDENCE WAS THE WEAPON USED IN THE MURDER?
23 THEY WILL TALK ABOUT A WEAPON, BUT WILL THEY PROVIDE PROOF
24 THAT IT IS ACTUALLY THE WEAPON THAT WAS USED IN THIS CASE?
25 WILL THERE BE ANY FORENSIC EVIDENCE OR PROOF AGAINST RUSTY

GERALD REYNOLDS - DIRECT EXAMINATION BY MR. MOYER

82

1 RICE WHATSOEVER? WILL YOU HEAR ANY TESTIMONY ABOUT
2 FOOTPRINTS? WILL THERE BE ANY TESTIMONY OR EVIDENCE ABOUT
3 FIBERS? WILL THERE BE ANYTHING LINKING HIM TO THIS CRIME
4 OTHER THAN JUST TESTIMONY?

5 THOSE ARE A FEW THINGS THAT I'D LIKE YOU TO PONDER AS
6 YOU GO THROUGH THIS TRIAL. I'LL HAVE A CHANCE TO ADDRESS
7 YOU ALL AT THE CLOSE OF THE CASE. AND I BELIEVE AS MR.
8 MOYER SAID, IT MAY GO THROUGH TOMORROW, PROBABLY WIND UP
9 SOMETIME AROUND WEDNESDAY. THANK YOU VERY MUCH.

10 THE COURT: ALL RIGHT. SOLICITOR.

11 MR. MOYER: GERALD REYNOLDS.

12 GERALD REYNOLDS, BEING
13 DULY SWORN TESTIFIED AS FOLLOWS:

14 **DIRECT EXAMINATION BY MR. MOYER:**

15 Q. ALL RIGHT, MR. REYNOLDS, HOW OLD ARE YOU?

16 A. TWENTY-EIGHT.

17 Q. OKAY. WHERE WERE YOU WORKING BACK IN NOVEMBER OF 2002?

18 A. AT THE CORNER MART ON WADE HAMPTON BOULEVARD.

19 Q. OKAY. AND WHAT IS RIGHT NEXT TO THAT CORNER MART?

20 A. IT USED TO BE A SUPER 8 MOTEL.

21 Q. OKAY. IT HAS A DIFFERENT NAME NOW?

22 A. YES.

23 Q. OKAY. AND WERE YOU WORKING THERE ON NOVEMBER THE 5TH
24 OF 2002?

25 A. YES.

GERALD REYNOLDS - DIRECT EXAMINATION BY MR. MOYER

83

1 Q. NOW DID ANYTHING UNUSUAL HAPPEN DURING THE AFTERNOON OF
2 NOVEMBER 2002 THAT CAUGHT YOUR ATTENTION?

3 A. WELL, I HEARD A COUPLE OF BANGS LIKE. AND I THOUGHT IT
4 WAS A CAR WRECK. SO I WENT OUTSIDE UP UNDERNEATH THE CANOPY
5 TO LOOK OUT AT WADE HAMPTON BOULEVARD, BUT I DIDN'T SEE
6 ANYTHING. SO I WENT BACK IN TO WORK. ABOUT THIRTY MINUTES
7 LATER THE POLICE SHOWED UP. AND I WAS LIKE, WELL, SOMETHING
8 MUST HAVE HAPPENED AGAIN OVER THERE.

9 Q. OKAY. AND SO DID THE POLICE COME OVER AND TALK TO YOU
10 THERE?

11 A. YES, THEY DID.

12 Q. AT THE STORE? NOW THESE TWO LOUD BANGS THAT YOU HEARD,
13 WERE THEY PRETTY CLOSE IN PROXIMITY?

14 A. YEAH, PRETTY CLOSE.

15 Q. CAN YOU REMEMBER HOW MUCH -- HOW LONG -- DID A LONG
16 PERIOD OF TIME GO BETWEEN THE TWO BANGS?

17 A. SECONDS.

18 Q. OKAY. AND WHERE WERE YOU WHEN YOU HEARD THESE NOISES?

19 A. I BELIEVE I WAS IN THE BOOTH AREA WITH THE BULLET PROOF
20 GLASS AROUND ME.

21 Q. OKAY. AND SO DID THEY SOUND FAIRLY CLOSE THEN, THESE
22 TWO BANGS?

23 A. YES, SIR.

24 Q. CLOSE ENOUGH THAT YOU WENT OUTSIDE TO SEE IF THERE HAD
25 BEEN AN ACCIDENT OUT ON THE ROAD THERE?

GERALD REYNOLDS - CROSS EXAMINATION BY MR. SUMNER

84

1 A. YES, SIR.

2 Q. OKAY. AND WHEN YOU SAW NOTHING OUT THERE ON THE ROAD

3 WHAT DID YOU DO?

4 A. I WENT BACK INSIDE, WENT BACK TO MY SHIFT DUTIES.

5 Q. OKAY. ALL RIGHT. THANK YOU. PLEASE ANSWER ANY

6 QUESTIONS THE DEFENSE MAY HAVE.

7 MR. SUMNER: THANK YOU, YOUR HONOR. MAY IT PLEASE THE

8 COURT?

9 CROSS EXAMINATION BY MR. SUMNER:

10 Q. MR. REYNOLDS, DO YOU RECALL WHAT TIME YOU HEARD THE

11 BANGS OR POPS?

12 A. NOT EXACTLY, NO.

13 Q. WOULD YOU APPROXIMATE AS BEST YOU COULD?

14 A. IT WAS BEFORE 8:00. I'D SAY LIKE SIX TO SEVEN, EIGHT,

15 IN THAT AREA.

16 Q. SOMEWHERE IN THAT AREA?

17 A. YES, SIR.

18 Q. BUT IT WAS BEFORE YOU HEARD THE BANGS BEFORE THE POLICE

19 ARRIVED, WOULD THAT NOT BE CORRECT?

20 A. YES, SIR.

21 Q. OKAY. DO YOU RECALL APPROXIMATELY HOW LONG IT WAS

22 AFTER YOU HEARD THE BANGS THAT -- UNTIL THE POLICE ARRIVED?

23 A. I'M SORRY?

24 Q. FORGIVE ME. I ASKED THAT PRETTY CLUMSILY. DO YOU

25 RECALL HOW LONG IT WAS FROM THE TIME YOU HEARD THE TWO BANGS

ARCHIBALD WARREN - DIRECT EXAMINATION BY MR. MOYER

85

1 UNTIL THE POLICE ARRIVED?

2 A. ABOUT THIRTY MINUTES.

3 Q. ABOUT THIRTY MINUTES?

4 A. YES, SIR.

5 Q. SO IN OTHER WORDS, WHATEVER TIME THE POLICE FIRST

6 ARRIVED ON THE SCENE AT THE SUPER 8 IT WOULD HAVE BEEN ABOUT

7 THIRTY MINUTES BEFORE THAT THAT YOU HEARD THE BANGS?

8 A. I HEARD THE TWO BANGS, AND IT WAS ABOUT THIRTY MINUTES

9 LATER WHEN THE POLICE ARRIVED.

10 Q. ALL RIGHT. THANK YOU. I DON'T HAVE ANY OTHER

11 QUESTIONS.

12 THE COURT: THANK YOU. YOU CAN STEP DOWN.

13 MR. MOYER: ARCHIBALD WARREN.

14 ARCHIBALD WARREN, BEING

15 DULY SWORN TESTIFIED AS FOLLOWS:

16 DIRECT EXAMINATION BY MR. MOYER:

17 Q. ALL RIGHT, MR. WARREN, HOW OLD ARE YOU?

18 A. SIXTY-ONE.

19 Q. DO YOU LIVE HERE IN GREENVILLE?

20 A. YES, SIR.

21 Q. OKAY. HOW LONG HAVE YOU LIVED HERE IN GREENVILLE?

22 A. SINCE 1977.

23 Q. AND WHERE DO YOU WORK?

24 A. GREENVILLE COUNTY DETOX.

25 Q. HOW LONG HAVE YOU WORKED THERE?

ARCHIBALD WARREN - DIRECT EXAMINATION BY MR. MOYER

86

1 A. SINCE OCTOBER OF '97.

2 Q. AND LET ME TAKE YOU BACK TO NOVEMBER OF 2002. WHERE
3 WERE YOU LIVING AT THAT TIME?

4 A. I WAS LIVING AT THE SUPER 8 MOTEL.

5 Q. OKAY. AND WHERE IS THAT SUPER 8 MOTEL LOCATED?

6 A. ON WADE HAMPTON BOULEVARD.

7 Q. OKAY. DO YOU REMEMBER TAKING A LOOK A WHILE BACK AT AN
8 AERIAL MAP, AN OVERHEAD MAP OF THAT AREA?

9 A. YES, SIR.

10 Q. THIS HAS ALREADY BEEN MARKED AS STATE'S EXHIBIT NUMBER

11 1. CAN YOU JUST TAKE A LOOK AT THAT? AND DOES THAT LOOK
12 LIKE THE MAP THAT YOU HAD TO LOOK AT EARLIER?

13 A. YES, SIR.

14 Q. AND IS THAT AN ACCURATE REPRESENTATION OF THE LAYOUT OF
15 WHERE THAT HOTEL IS THERE?

16 A. YES, SIR.

17 Q. ON WADE HAMPTON BOULEVARD?

18 A. YES, SIR.

19 MR. MOYER: YOUR HONOR, AT THIS TIME I'D MOVE TO HAVE
20 STATE'S EXHIBIT NUMBER 1 MOVED INTO EVIDENCE.

21 MR. SUMNER: WITHOUT OBJECTION.

22 THE COURT: WITHOUT OBJECTION.

23 Q. MR. WARREN, I THINK I'M GOING TO HAVE TO ASK YOU TO
24 STEP DOWN HERE SO YOU CAN SEE THIS AND THE JURY CAN TOO.

25 WOULD YOU JUST POINT OUT ON THIS MAP FOR THE JURY STATE'S

ARCHIBALD WARREN - DIRECT EXAMINATION BY MR. MOYER

87

1 EXHIBIT NUMBER 1 WHERE THAT SUPER 8 MOTEL IS LOCATED?

2 A. RIGHT HERE.

3 Q. OKAY. AND WHAT ROOM WERE YOU LIVING IN?

4 A. I WAS ON THE END ROOM ON THIS SIDE, ON THE BACK.

5 Q. OKAY. DO YOU REMEMBER WHAT THE NUMBER WAS?

6 A. I THINK IT WAS ROOM 130, OR 131, OR 132.

7 Q. OKAY. BUT YOU REMEMBER THAT WAS THE LAST ROOM ON THAT
8 SIDE?

9 A. YES, I SURE DO.

10 Q. OKAY. AND SO IF YOU WERE FACING THE FRONT OF THE SUPER
11 8 MOTEL IT WOULD BE SORT OF ON THE LEFT SIDE?

12 A. IT WOULD BE ON THE LEFT, YES, SIR.

13 Q. LAST ONE ON THE END?

14 A. YES, SIR.

15 Q. IS THAT A ONE STORY OR A TWO STORY HOTEL?

16 A. TWO.

17 Q. AND WERE YOU ON THE TOP OR THE BOTTOM?

18 A. BOTTOM.

19 Q. OKAY. PLEASE HAVE A SEAT AGAIN. OKAY. NOW WERE YOU
20 LIVING THERE WITH ANYBODY AT THE TIME IN NOVEMBER OF 2002?

21 A. NO, SIR.

22 Q. HOW LONG HAD YOU LIVED THERE BY NOVEMBER THE 5TH OF
23 2002?

24 A. I BELIEVE THAT I HAD MOVED IN THERE -- IT WAS EITHER
25 JULY OR AUGUST. I THINK IT WAS AUGUST.

ARCHIBALD WARREN - DIRECT EXAMINATION BY MR. MOYER

88

1 Q. OF 2002?

2 A. YES, SIR.

3 Q. SOMETIME THAT SUMMER. ALL RIGHT. NOW DO YOU REMEMBER
4 THE DATE NOVEMBER THE 5TH OF 2002?

5 A. WELL, I DON'T REMEMBER THE EXACT DATE, BUT ---

6 Q. OKAY.

7 A. --- I KNOW IT WAS RIGHT AT THE FIRST OF NOVEMBER.

8 Q. OKAY. AND DID YOU WORK THAT DAY?

9 A. YES, SIR.

10 Q. DO YOU REMEMBER WHAT THE WEATHER WAS LIKE?

11 A. WHEN I CAME HOME IT WAS HORRIBLE. IT WAS STORMING REAL
12 BAD.

13 Q. OKAY. LET ME ASK YOU JUST TO MOVE THAT MICROPHONE A
14 LITTLE CLOSER TO YOU SO THAT YOU'RE -- WE CAN ALL HEAR YOU.
15 OKAY. NOW YOU DON'T REMEMBER -- DO YOU REMEMBER HOW LATE
16 YOU WORKED THAT DAY?

17 A. I WAS THINKING THAT IT WAS IN THE NEIGHBORHOOD OF MAYBE
18 5:30. WE'D BEEN WORKING -- A LOT OF US HAD BEEN WORKING TIL
19 LIKE 4:00 AND THEN A LOT OF DAYS WE'D BE WORKING TIL SIX OR
20 7:00.

21 Q. OKAY. SO WAS IT GETTING DARK BY THE TIME YOU GOT HOME?

22 A. IT WAS GETTING DARK, AND IT WAS STORMING. AND IT WAS
23 -- I THOUGHT IT WAS, YOU KNOW, ALMOST DARK.

24 Q. OKAY.

25 A. IT SEEMED TO ME LIKE -- THE BEST I REMEMBER IT WAS

ARCHIBALD WARREN - DIRECT EXAMINATION BY MR. MOYER

89

1 PRETTY DARK.

2 Q. NOW WHEN YOU GOT HOME -- HOW MANY ENTRY WAYS ARE THERE
3 INTO THAT SUPER 8 MOTEL?

4 A. TWO.

5 Q. OKAY. AND DO YOU ALWAYS -- DID YOU ALWAYS USE THE SAME
6 ENTRY WAY WHEN YOU CAME -- GOT HOME?

7 A. YES, SIR.

8 Q. AND WHICH ONE WOULD THAT BE?

9 A. DOWN ON THE RIGHT HAND SIDE.

10 Q. OKAY. AS YOU'RE FACING IT?

11 A. AS YOU'RE FACING THE MOTEL, I ALWAYS WENT THERE ON THE
12 RIGHT HAND SIDE AND WENT AROUND THE BACK AND PARKED ACROSS
13 FROM MY ROOM.

14 Q. LET ME ASK YOU JUST TO STEP DOWN HERE ONE MORE TIME AND
15 SHOW THE JURY HOW YOU ENTERED INTO THAT PARKING LOT ON
16 NOVEMBER THE 5TH OF 2002.

17 A. ON THIS SIDE RIGHT HERE, I ALWAYS WENT IN ON THE RIGHT
18 HAND SIDE, WENT AROUND AND PARKED OVER HERE RIGHT STRAIGHT
19 ACROSS FROM MY ROOM.

20 Q. OKAY. YOU CAN HAVE A SEAT AGAIN. THANK YOU. AND DID
21 YOU ALWAYS USED TO PARK AT THE SAME PLACE?

22 A. YES, SIR.

23 Q. ON THIS DATE THAT WE'RE TALKING ABOUT WERE YOU ABLE TO
24 PARK IN THE USUAL PARKING SPACE WHERE YOU USUALLY PARKED?

25 A. NO, SIR. THERE WAS A VEHICLE IN THAT SPACE. AND I

ARCHIBALD WARREN - DIRECT EXAMINATION BY MR. MOYER

90

1 PARKED IN THE ONE RIGHT TO THE RIGHT OF THAT VEHICLE.

2 Q. OKAY. DO YOU REMEMBER WHAT KIND OF VEHICLE IT WAS?

3 A. I'M THINKING IT WAS AN SUV.

4 Q. OKAY. DO YOU REMEMBER WHICH WAY IT WAS POINTED? WAS
5 IT POINTED IN OR OUT?

6 A. I BELIEVE IT WAS POINTED --- THEY HAD BACKED IN.

7 Q. OKAY.

8 A. IT WAS FACING OUT.

9 Q. AND WHAT KIND OF CAR WERE YOU DRIVING?

10 A. A 1989 CADILLAC.

11 Q. OKAY. AND SO WHERE DID YOU PARK IN RELATION TO THAT
12 CAR THAT WAS ALREADY IN YOUR PARKING SPACE?

13 A. WELL, I PARKED TO THE RIGHT OF THAT CAR, PULLED INTO
14 THE RIGHT OF THAT CAR.

15 Q. OKAY. ALL RIGHT. NOW AFTER YOU PARKED DID YOU GET OUT
16 AND START BACK INTO THE HOTEL?

17 A. YES, SIR.

18 Q. AND WHAT HAPPENED AS YOU WENT THROUGH THE PARKING LOT?

19 A. WHEN I GOT ABOUT HALF WAY ACROSS THE PARKING LOT I
20 TURNED AND LOOKED TO THE RIGHT, TO MY RIGHT, AND THERE WAS A
21 MAN'S BODY LAYING FACE DOWN IN THE DRIVEWAY AT THE MOTEL.

22 Q. OKAY. WHAT DID YOU DO WHEN YOU SAW THIS PERSON?

23 A. I LOOKED TO SEE IF I THOUGHT HE WAS BREATHING. AND I
24 RAN UP TO THE OFFICE AND ASKED THE LADY IN THE OFFICE TO
25 CALL 911, TOLD HER THERE WAS A MAN LAYING DOWN THERE IN THE

ARCHIBALD WARREN - DIRECT EXAMINATION BY MR. MOYER

91

1 PARKING LOT.

2 Q. OKAY. LET ME ASK YOU ONCE AGAIN TO PULL THAT

3 MICROPHONE CLOSE TO YOU.

4 A. I'M SORRY.

5 Q. IT'S KIND OF A BIG ROOM HERE AND IT'S HARD TO HEAR.

6 OKAY. SO YOU SAY YOU STOPPED TO LOOK TO SEE IF THERE WAS

7 ANYTHING WRONG WITH HIM?

8 A. I JUST STOPPED TO -- I'D BEEN TRAINED FOR MY WORK TO

9 THE FIRST THING I DO IS SEE IF SOMEBODY'S BREATHING. AND I

10 LOOKED AND I COULDN'T TELL. IT WAS STORMING REAL BAD. IT

11 WAS RAINING REAL HARD. SO I STOPPED AND LOOKED FOR A

12 MINUTE. AND I COULDN'T TELL. AND I RAN TO THE OFFICE IN

13 FRONT AND TOLD A LADY THAT THERE WAS SOMEBODY LAYING IN THE

14 PARKING LOT AND TO CALL 911.

15 Q. OKAY. NOW WHEN YOU DID STOP TO TAKE A LOOK AT HIM DID

16 YOU SEE ANY SIGNS THAT HE WAS CONSCIOUS, OR BREATHING, OR

17 ---

18 A. NO, SIR.

19 Q. OKAY. COULD YOU TELL ANYTHING ABOUT HIM? COULD YOU

20 SEE HIS FACE?

21 A. NO, SIR.

22 Q. OKAY. COULD YOU TELL ANYTHING ABOUT HIM AT ALL?

23 A. WELL, NO. I MEAN, JUST THERE WAS OBVIOUSLY SOMETHING

24 WRONG WITH HIM. HE WAS LAYING THERE FACE DOWN, BUT I DIDN'T

25 SEE ANYTHING.

ARCHIBALD WARREN - DIRECT EXAMINATION BY MR. MOYER

92

1 Q. OKAY. NOW WHAT ABOUT -- YOU SAID IT WAS RAINY. AND SO
2 IT WAS OBVIOUSLY DARK FOR THAT REASON. AND IT WAS GETTING
3 CLOSE TO DARK. ARE THERE ANY LIGHTS OUT THERE AT THAT
4 HOTEL?

5 A. THE MOTEL LIGHTS.

6 Q. OKAY. SO DO THEY -- DOES THAT LIGHT UP THE PARKING LOT
7 AT ALL?

8 A. I DON'T -- I GUESS A LITTLE BIT, BUT I DON'T REALLY
9 KNOW THAT IT DOES SIGNIFICANTLY.

10 Q. OKAY. BUT YOU DIDN'T HAVE ANY TROUBLE SEEING HIM THERE
11 WHEN YOU ---

12 A. NO, NOT WHEN I LOOKED.

13 Q. OKAY. NOW SO YOU WENT IN AND TALKED TO THE CLERK AT
14 THE HOTEL. AND WHAT DID YOU TELL THE CLERK?

15 A. I TOLD HER THAT THERE WAS A MAN LAYING DOWN THERE IN
16 THE PARKING LOT AND THAT SHE NEEDED TO CALL 911.

17 Q. OKAY. AND WHAT DID THE CLERK DO?

18 A. SHE WANTED TO GO LOOK FIRST. SO SHE CAME OUT AND WE
19 WENT BACK DOWN THERE, SHE LOOKED. AND I BELIEVE THAT SHE
20 SAID SOMETHING TO HIM LIKE TRYING TO GET HIM -- TO SEE IF HE
21 RESPONDED OR WHATEVER. AND THEN SHE WENT BACK AND I WENT
22 BACK WITH HER TO THE FRONT OFFICE. AND SHE CALLED 911.

23 Q. OKAY. AND THEN WHAT DID YOU DO AFTER THAT?

24 A. I CAME BACK TO MY ROOM. AND I KIND OF STOOD AROUND IN
25 THE DOOR TO MAKE SURE THAT NO TRAFFIC CAME BY, YOU KNOW, AND

ARCHIBALD WARREN - DIRECT EXAMINATION BY MR. MOYER

93

1 RAN OVER THE PERSON OR ANYTHING.

2 Q. OKAY. AND SO DID YOU STAY THERE UNTIL THE POLICE
3 SHOWED UP?

4 A. YES, SIR, STAYED IN MY DOORWAY.

5 Q. AND DID YOU MAKE SURE THAT NOBODY DID RUN OVER HIM?

6 A. RIGHT.

7 Q. DURING THAT PERIOD OF TIME THAT YOU WERE STANDING THERE
8 DID YOU EVER GO UP AND MOVE HIM OR TOUCH HIM?

9 A. NO, SIR.

10 Q. DID YOU EVER TOUCH HIM AT ALL DURING ---

11 A. NO, SIR.

12 Q. --- THAT PERIOD OF TIME? DID YOU -- DID ANYBODY ELSE
13 WALK UP AND TOUCH HIM ---

14 A. NO, SIR.

15 Q. --- OR MOVE HIM?

16 A. NO, SIR.

17 Q. OKAY. NOW SO YOU REMEMBER WHEN THE POLICE SHOWED UP?

18 A. YES, SIR.

19 Q. YOU REMEMBER AN AMBULANCE SHOWING UP TOO?

20 A. YES, SIR.

21 Q. OKAY.

22 A. IF I REMEMBER CORRECTLY THE POLICE SHOWED UP FIRST.

23 Q. OKAY. AND WHEN THE POLICE SHOWED UP DID YOU TALK TO
24 THE POLICE ABOUT WHAT HAD HAPPENED?

25 A. YES, SIR.

ARCHIBALD WARREN - DIRECT EXAMINATION BY MR. MOYER

94

1 Q. YOU TOLD THEM WHAT HAPPENED? ALL RIGHT. I'M GOING TO
2 SHOW YOU WHAT'S BEEN MARKED AS STATE'S EXHIBITS NUMBER 7 AND
3 8. WOULD YOU JUST TAKE A LOOK AT THOSE TWO PHOTOGRAPHS? DO
4 YOU RECOGNIZE WHAT IS SHOWN IN THOSE TWO PICTURES?

5 A. YES, SIR.

6 Q. WHAT IS SHOWN IN THOSE PICTURES?

7 A. MY CAR AND THE VEHICLE THAT WAS IN THE PLACE WHERE I
8 NORMALLY PARK.

9 Q. IS THAT YOUR PARKING LOT WHERE -- AND DOES IT SHOW
10 WHERE YOU PARKED THAT NIGHT, NOVEMBER THE 5TH?

11 A. YES, SIR.

12 Q. OKAY. AND IS THAT AN ACCURATE REPRESENTATION OF THE
13 WAY THAT AREA LOOKED ON NOVEMBER THE 5TH OF 2002?

14 A. YES, SIR.

15 MR. MOYER: YOUR HONOR, AT THIS TIME I'D MOVE TO HAVE
16 STATE'S EXHIBITS NUMBER 7 AND 8 ---

17 THE COURT: WITHOUT OBJECTION.

18 MR. MOYER: --- INTO EVIDENCE.

19 Q. ALL RIGHT. NOW, MR. WARREN, I'M GOING TO PUT THESE
20 PHOTOGRAPHS OVER HERE. AND I WANT YOU TO TELL THE JURY A
21 LITTLE BIT ABOUT WHAT IT IS WE'RE SEEING. ALL RIGHT. FIRST
22 OF ALL STATE'S EXHIBIT -- THIS IS STATE'S EXHIBIT NUMBER 8.
23 AND I'M GOING TO USE THIS LASER POINTER. AND IF YOU WOULD,
24 COULD YOU POINT OUT WHAT IT IS THAT'S BEING SHOWN IN THIS
25 PICTURE THAT THE LASER POINTER IS ON?

ARCHIBALD WARREN - DIRECT EXAMINATION BY MR. MOYER

95

1 A. THAT'S MY VEHICLE.

2 Q. OKAY. AND IS THAT WHERE YOU -- THAT'S WHERE YOU PARKED
3 ON NOVEMBER THE 5TH OF 2002?

4 A. YES, SIR.

5 Q. AND WHAT ABOUT -- WHAT IS DEPICTED IN THIS PICTURE?

6 A. AN SUV.

7 Q. OKAY. IS THAT THE SPACE THAT YOU NORMALLY PARKED IN?

8 A. YES, SIR.

9 Q. NOW I'M JUST GOING TO HAND THIS TO YOU AND ASK YOU TO
10 STEP OUT HERE IF YOU WOULD. AND USING THIS BUTTON, TO THE
11 BEST YOU REMEMBER, CAN YOU TRY TO SHOW ON THAT PICTURE WHERE
12 IT WAS THAT YOU SAW THAT BODY NOVEMBER THE 5TH?

13 A. RIGHT ALONG IN THERE.

14 Q. OKAY. SO WAS IT OUT IN FRONT OF THAT SUV?

15 A. YES, SIR. IT WAS LIKE -- IT WAS ALMOST IN THE MIDDLE
16 OF THE PARKING LOT, BUT IT WAS CLOSER TO THE VEHICLE THAN IT
17 WAS THE MOTEL.

18 Q. OKAY. LET ME SHOW YOU A PICTURE AT JUST A LITTLE BIT
19 OF A DIFFERENT ANGLE, STATE'S EXHIBIT NUMBER 7.

20 A. YOU WANT ME TO SHOW ---

21 Q. ONCE AGAIN SHOW -- WHERE WAS YOUR CAR?

22 A. THAT'S MY CAR.

23 Q. OKAY. AND WHERE DID YOU SEE THE BODY THERE?

24 A. RIGHT ALONG IN THERE.

25 Q. AND SO THAT WOULD BE OUT IN FRONT OF THE VEHICLE

ARCHIBALD WARREN - DIRECT EXAMINATION BY MR. MOYER

96

1 TOWARDS THE -- FACING THE VEHICLE TOWARDS THE LEFT SIDE OF
2 THAT VEHICLE?

3 A. YES, SIR.

4 Q. OKAY. PLEASE HAVE A SEAT AGAIN. MR. WARREN, I'M GOING
5 TO SHOW YOU -- IF YOU WOULD TAKE A LOOK AT STATE'S EXHIBIT
6 NUMBER 4. DOES THAT PHOTOGRAPH ALSO SHOW THAT LOCATION OUT
7 THERE AT THE HOTEL AND THAT PARKING LOT?

8 A. YES, SIR.

9 Q. DOES IT SHOW YOUR ROOM?

10 A. YES, SIR. RIGHT THERE.

11 Q. AND THAT'S THE WAY IT LOOKED ON NOVEMBER 5TH OF 2002?

12 A. YES, SIR.

13 MR. MOYER: I'D MOVE TO HAVE STATE'S EXHIBIT NUMBER 4
14 MOVED INTO EVIDENCE.

15 THE COURT: AND THAT'S WITHOUT OBJECTION.

16 Q. OKAY. NOW FOR THE BENEFIT OF THE JURY, MR. WARREN,
17 ONCE AGAIN CAN WE SEE THAT SUV THAT YOU SAW?

18 A. YES, SIR.

19 Q. IS THAT THE SUV THAT'S HERE ON THE LEFT SIDE OF THE
20 PARKING LOT?

21 A. YES, SIR.

22 Q. AND IS THAT YOUR CAR THAT WE SEE RIGHT TO THE RIGHT OF
23 IT?

24 A. YES, SIR.

25 Q. NOW IS YOUR -- THE ROOM THAT YOU WERE LIVING IN AT THAT

JONATHAN RICE - DIRECT EXAMINATION BY MR. MOYER

97

1 TIME, CAN WE SEE THAT ALSO?

2 A. YOU CAN SEE THE EDGE OF THE DOOR, YES, SIR.

3 Q. AND IS THAT RIGHT OVER HERE?

4 A. YES, SIR.

5 Q. OKAY. NOW WERE THERE ANY OTHER VEHICLES IN THAT
6 PARKING LOT -- IF YOU'RE FACING WHERE YOUR TWO VEHICLES
7 WERE, THE SUV AND YOUR VEHICLE, WERE THERE ANY OTHER
8 VEHICLES TO THE RIGHT OF THAT?

9 A. TO THE RIGHT OF MY VEHICLE?

10 Q. YES, SIR.

11 A. NO, SIR.

12 Q. OKAY. AND WE SAW IN THOSE PICTURES AT LEAST A SPACE OR
13 TWO TO THE LEFT THERE WERE NO VEHICLES, IS THAT TRUE AS
14 WELL?

15 A. YES, SIR.

16 Q. OKAY. PLEASE ANSWER AN QUESTIONS THE DEFENSE MAY HAVE.

17 MR. SUMNER: THANK YOU. I DON'T HAVE ANY QUESTIONS.

18 THE COURT: THANK YOU. YOU CAN STEP DOWN.

19 MR. MOYER: WE'D CALL OFFICER RICE.

20 JONATHAN B. RICE, BEING DULY

21 SWORN TESTIFIED AS FOLLOWS:

22 DIRECT EXAMINATION BY MR. MOYER:

23 Q. OKAY. HOW OLD ARE YOU, SIR?

24 A. I'M THIRTY-ONE YEARS OLD.

25 Q. YOU WORK FOR THE GREENVILLE POLICE DEPARTMENT?

JONATHAN RICE - DIRECT EXAMINATION BY MR. MOYER

98

1 A. I DO.

2 Q. HOW LONG HAVE YOU BEEN IN LAW ENFORCEMENT?

3 A. APPROXIMATELY FIVE YEARS AND AROUND EIGHT MONTHS.

4 Q. AND HAS IT ALL BEEN WITH THE GREENVILLE POLICE
5 DEPARTMENT?

6 A. YES, IT HAS.

7 Q. OKAY. AND WHAT IS YOUR POSITION WITH THE GREENVILLE
8 POLICE DEPARTMENT?

9 A. I'M JUST A UNIFORM PATROL OFFICER.

10 Q. OKAY. WHAT DO YOU DO AS A UNIFORM PATROL OFFICER?

11 A. MY JOB IS TO ANSWER CALLS THAT COME IN THROUGH DISPATCH
12 WHETHER IT BE CRIMINAL DOMESTIC VIOLENCES OR WHATEVER CALLS
13 THAT WE RECEIVE THROUGH DISPATCH.

14 Q. OKAY. AND JUST AS TO THE SIDE, YOU HAVE THE SAME LAST
15 NAME AS THE DEFENDANT. IS THAT JUST A COINCIDENCE?

16 A. YES, SIR.

17 Q. OKAY. YOU'RE ---

18 A. NO RELATION TO HIM.

19 Q. --- NOT RELATED TO HIM OR KNOW HIM?

20 A. NO, SIR.

21 Q. OKAY. LET ME TAKE YOU NOW TO NOVEMBER THE 5TH OF 2002.
22 WERE YOU WORKING ON THAT DAY?

23 A. I WAS.

24 Q. DID YOU RESPOND TO A CALL THAT EVENING IN THE CASE THAT
25 WE'RE TALKING ABOUT HERE TODAY?

JONATHAN RICE - DIRECT EXAMINATION BY MR. MOYER

99

1 A. I DID.

2 Q. WHAT WAS THE LOCATION OF THAT?

3 A. IT WAS 536 WADE HAMPTON BOULEVARD SUPER 8 MOTEL.

4 Q. AND THAT'S IN GREENVILLE COUNTY?

5 A. THAT'S IN THE CITY LIMITS OF GREENVILLE.

6 Q. OKAY. AND WHAT TIME DID YOU ARRIVE THERE?

7 A. I ARRIVED THERE APPROXIMATELY AROUND 5:49 PM.

8 Q. HOW MUCH EARLIER HAD THE CALL GONE OUT?

9 A. WE RECEIVED THE CALL AT 5:46 PM.

10 Q. WERE YOU THE FIRST OFFICER TO ARRIVE ON THE SCENE?

11 A. YES, I WAS.

12 Q. WHAT WAS THE NATURE OF THE CALL WHEN IT FIRST CAME OUT?

13 A. IT WAS A SUSPICIOUS PERSON DOWN, UNKNOWN PERSON DOWN

14 FOR WHATEVER REASON.

15 Q. OKAY. SO YOU DIDN'T HAVE A REASON FOR THE PERSON BEING

16 DOWN WHEN YOU FIRST ---

17 A. RIGHT.

18 Q. NOW IS THAT LOCATION, SUPER 8 MOTEL, IS THAT WITHIN

19 YOUR AREA?

20 A. NO, SIR, IT IS NOT.

21 Q. DID YOU GO THERE -- WELL, WHY DID YOU GO THERE?

22 A. I WAS LEAVING THE GREENVILLE COUNTY LAW ENFORCEMENT

23 CENTER. I WAS CLOSE TO THAT INCIDENT LOCATION. NORMALLY IF

24 WE'RE CLOSE AND NOT DOING -- WELL, I DID NOT HAVE A CALL IN

25 MY AREA. SO I JUST RESPONDED.

JONATHAN RICE - DIRECT EXAMINATION BY MR. MOYER

100

1 Q. OKAY. DO YOU REMEMBER WHAT THE WEATHER WAS LIKE WHEN
2 YOU ARRIVED OUT THERE?

3 A. YES, SIR. IT WAS POURING DOWN RAIN.

4 Q. SO YOU SAY YOU WERE THE FIRST OFFICE ON THE SCENE. HAD
5 THERE BEEN ANY EMS OR ANY OTHER PERSONNEL ON THE SCENE AT
6 THAT TIME?

7 A. NO, SIR, I WAS THE FIRST.

8 Q. OKAY. NOW WHEN YOU ARRIVED THERE AT THE HOTEL WHAT DID
9 YOU FIND?

10 A. WHEN I ARRIVED AT THE -- I TOOK THE FIRST ENTRANCE FROM
11 CHURCH STREET. I WENT AROUND TO THE -- WHAT WOULD BE FROM
12 WADE HAMPTON, THE LEFT CORNER END OF THE BUILDING. I
13 OBSERVED A WHITE MALE LYING FACE DOWN ON THE PAVEMENT
14 BETWEEN THE BUILDING AND THE VEHICLES.

15 Q. OKAY. DID YOU SEE ANYBODY AROUND THERE IN THE PARKING
16 LOT?

17 A. NO, I DID NOT.

18 Q. DID YOU ATTEND TO THIS PERSON THAT YOU SAW LAYING DOWN
19 IN THE PARKING LOT?

20 A. YES, SIR. I APPROACHED THE SUBJECT, SPOKE TO THE
21 SUBJECT TO TRY TO GET A RESPONSE FROM THE SUBJECT. I DID
22 NOT. I THEN TRIED TO FEEL FOR A PULSE FROM THE BACK OF HIS
23 NECK. I COULD NOT BECAUSE OF THE RAIN AND HIS HAIR WAS
24 LONG. AT THAT TIME I GENTLY TURNED THE SUBJECT OVER AND
25 TRIED TO FEEL FOR A PULSE AND DID NOT GET ONE.

JONATHAN RICE - DIRECT EXAMINATION BY MR. MOYER

101

1 Q. OKAY. DID YOU SEE ANY SIGNS OF TRAUMA AT THIS TIME?

2 A. NO, SIR, NOT AT THIS TIME.

3 Q. OKAY. DID HE HAVE -- WAS HE FULLY CLOTHED?

4 A. HE WAS FULLY CLOTHED. I DID PULL HIS SHIRT UP ABOUT
5 MIDWAY, BUT I DID NOT SEE ANYTHING.

6 Q. NOW WHAT ABOUT -- BY THIS TIME WAS IT GETTING KIND OF
7 DARK?

8 A. YES, SIR. IT WAS ALREADY DARK BY THE TIME I'D PULLED
9 UP.

10 Q. NOW ARE THERE LIGHTS OUT THERE?

11 A. THERE ARE.

12 Q. OKAY. DID YOU HAVE ANY TROUBLE SEEING?

13 A. I DID NOT. I COULD SEE FINE WITH THE LIGHTS, BUT IT
14 WAS ALREADY DARK.

15 Q. OKAY. DID YOU HAVE TO USE A FLASHLIGHT OR ANYTHING?

16 A. NOT TO ATTEND TO HIM, NO.

17 Q. OKAY. NOW DID YOU CALL FOR OTHER OFFICERS OR FOR EMS
18 PERSONNEL?

19 A. ONCE I COULD NOT FEEL FOR A PULSE OR COULD NOT FEEL A
20 PULSE I CALLED OUR DISPATCH AND TOLD THEM TO TELL EMS TO
21 STEP IT UP.

22 Q. AND DID EMS ARRIVE?

23 A. THEY DID. THEY ARRIVED SEVEN TO TEN MINUTES AFTER I
24 DID. I'M GUESSING. IT'S BEEN A WHILE.

25 Q. OKAY. OTHER OFFICERS START ARRIVING TOO?

JONATHAN RICE - DIRECT EXAMINATION BY MR. MOYER

102

1 A. YES. AN OFFICER ARRIVED JUST BEFORE EMS DID, ONE OF
2 THE ORIGINAL OFFICERS THAT DISPATCH HAD CALLED TO THAT
3 SCENE.

4 Q. NOW WHEN DID EMS ARRIVE IN RELATION TO THE OTHER
5 OFFICERS WHO WERE ARRIVING?

6 A. PRETTY MUCH RIGHT BEHIND HER. THEY PRETTY MUCH PULLED
7 IN AT THE SAME TIME.

8 Q. WAS EMS ALLOWED TO GO DIRECTLY TO THE VICTIM?

9 A. YES, THEY WERE.

10 Q. DID YOU STAY THERE WHILE EMS ATTENDED ---

11 A. YES, I DID.

12 Q. OKAY. AND DID THEY ATTEND TO HIM THERE IN THE PARKING
13 LOT OR IN THEIR VEHICLE?

14 A. THEY DID IN THE PARKING LOT AT FIRST, AND THEN THEY PUT
15 THE SUBJECT IN THE AMBULANCE.

16 Q. OKAY.

17 MR. SUMNER: I DON'T HAVE ANY OBJECTION TO THOSE TWO.

18 THE COURT: ALL RIGHT. WITHOUT OBJECTION.

19 MR. MOYER: STATE'S EXHIBITS NUMBERS 3 AND 5 HAVE BEEN
20 ADMITTED INTO EVIDENCE.

21 Q. LET ME JUST SHOW YOU THESE. DID YOU STAY -- LET ME ASK
22 YOU THIS, DID YOU STAY ON HAND AS EMS ATTENDED TO THE
23 VICTIM?

24 A. YES, I DID.

25 Q. DID YOU WATCH THEM AS THEY PLACED THE VICTIM INTO THEIR

JONATHAN RICE - DIRECT EXAMINATION BY MR. MOYER

103

1 VEHICLE?

2 A. YES, I DID.

3 Q. WAS A FORENSICS OFFICER THERE AT THE TIME?

4 A. NO, THEY WERE NOT. NOT AT THAT TIME, NO.

5 Q. OKAY. SO WERE ANY PHOTOGRAPHS TAKEN HASTILY BY ANY ---

6 A. ONE OF THE OTHER OFFICERS, OFFICER LINDLER, HAD A

7 CAMERA AND SHE TOOK SOME PHOTOGRAPHS.

8 Q. OKAY. PRIOR TO FORENSICS COMING IN ---

9 A. RIGHT.

10 Q. --- AND TAKING ALL ---

11 A. RIGHT.

12 Q. OKAY. IS THAT ONE OF THE PHOTOGRAPHS THAT ---

13 A. I'M ASSUMING ---

14 Q. --- TAKING A LOOK AT STATE'S EXHIBIT NUMBER 5, IS THAT

15 THE PHOTOGRAPH THAT WE'RE REFERRING TO?

16 A. YES, SIR.

17 Q. OKAY. LET ME SHOW YOU FIRST STATE'S EXHIBIT NUMBER 3.

18 CAN YOU EXPLAIN TO THE JURY WHAT IT IS THAT IS DEPICTED IN

19 THAT EXHIBIT?

20 A. YES, SIR. THAT IS THE PARKING LOT WHERE THE SUBJECT

21 WAS LOCATED BETWEEN PRETTY MUCH RIGHT IN FRONT OF THAT

22 VEHICLE.

23 Q. AND IF YOU WOULD JUST USE THIS LASER POINTER AND TRY TO

24 POINT OUT TO THE JURY WHERE IT WAS THAT YOU SAW THAT -- THIS

25 BUTTON RIGHT HERE.

JONATHAN RICE - DIRECT EXAMINATION BY MR. MOYER

104

1 A. ABOUT RIGHT IN THERE IS WHERE I FOUND THE SUBJECT

2 'CAUSE I HAD PULLED IN FROM THIS AREA. AND HE WAS LAYING

3 ABOUT RIGHT THERE.

4 Q. OKAY. I'M GOING TO SHOW YOU NOW STATE'S EXHIBIT NUMBER

5 5. CAN YOU EXPLAIN TO THE JURY -- THAT IS A PHOTOGRAPH THAT

6 WAS TAKEN BY THE OTHER OFFICER?

7 A. YES, ---

8 Q. IS THAT CORRECT?

9 A. --- IT WAS.

10 Q. AND IS THE PERSON THAT WE SEE THERE ON THE GROUND, IS

11 THAT THE VICTIM THAT YOU SAW OUT THERE IN THE MIDDLE OF THE

12 PARKING LOT?

13 A. YES, IT IS.

14 Q. NOW IT LOOKS LIKE WE CAN MAKE OUT SOMETHING IN THE

15 BACKGROUND JUST A LITTLE BIT. CAN YOU RECOGNIZE WHAT THAT

16 IS? I'M GOING TO USE A LASER POINTER.

17 A. I CAN'T TELL WHAT IT IS FROM THIS ANGLE.

18 Q. OKAY. IF YOU WOULD, LET ME JUST TAKE YOU A LITTLE

19 CLOSER. LET ME HAND THE EXHIBITS TO YOU. AND TAKING A LOOK

20 IN CONJUNCTION OF THE TWO PHOTOGRAPHS, ARE YOU ABLE TO TELL

21 BY LOOKING AT THAT WHAT COULD BE IN THE BACKGROUND?

22 A. ANOTHER VEHICLE. THAT'S ALL THAT I SEE.

23 Q. OKAY. SO THAT WOULD BE THE OTHER VEHICLES THEN THAT WE

24 SAW IN THE PICTURE?

25 A. YES, SIR.

JONATHAN RICE - DIRECT EXAMINATION BY MR. MOYER

105

1 Q. OKAY. ALL RIGHT. NOW AFTER THE EMS PERSONS TOOK THE
2 PERSON THAT YOU SAW IN THE PARKING LOT INTO THEIR VEHICLE
3 DID YOU STAY THERE WITHIN RANGE FOR COMMUNICATION WITH THE
4 EMS WORKERS?

5 A. YES, I DID.

6 Q. ALL RIGHT. AND DID YOU LEARN ANYTHING FROM THE EMS
7 WORKERS THAT CAUSED YOU TO TAKE A DIFFERENT COURSE OF ACTION
8 WITH REGARDS TO THE CALL THAT YOU HAD OUT THERE?

9 A. YES, SIR. I WAS RIGHT AROUND THE AMBULANCE WHEN
10 AMBULANCE WORKERS CAME OUT AND STATED THAT IF WE HAD KNOWN
11 OR HAD SEEN WHETHER THE SUBJECT HAD BEEN SHOT WITH SOME TYPE
12 OF WEAPON, WHICH I DID NOT AT FIRST, COULD NOT TELL. ONCE
13 WE DETERMINED THAT THE VICTIM HAD BEEN SHOT THEN I
14 IMMEDIATELY TURNED MY ATTENTION TO PRESERVING THE CRIME
15 SCENE. I STARTED TAPING OFF AND ROPING OFF THAT SEGMENT OF
16 THE PHOTOGRAPH THAT YOU SAW OF THE PARKING LOT.

17 Q. OKAY. AND HOW LATE -- HOW LONG DID YOU STAY THERE OUT
18 THERE AT THE SCENE?

19 A. I WANT TO SAY I STAYED ANYWHERE FROM FORTY-FIVE TO
20 FIFTY MINUTES LONGER.

21 Q. OKAY. AND WHAT WERE YOU DOING WHILE YOU WERE OUT
22 THERE?

23 A. WHILE I WAS OUT THERE WE WERE LOOKING FOR ANYTHING THAT
24 COULD INDICATE TO US WHAT HAD HAPPENED WITH THE SHOOTING,
25 WHAT WAS USED, WHICH WE -- I DID NOT FIND ANYTHING.

GAIL GLYMPH - DIRECT EXAMINATION BY MR. MOYER

106

1 Q. OKAY. AND DID THE OTHER OFFICERS, AND INVESTIGATORS,
2 OR FORENSIC PERSONNEL COME ON OUT THERE?

3 A. YES, SIR, THEY WERE CALLED. YES, SIR.

4 Q. AND YOU WERE STILL THERE WHEN THEY ARRIVED?

5 A. YES, SIR. I WAS STILL THERE.

6 Q. DID THEY COLLECT ANYTHING OR TAKE ANY ---

7 A. NOT THAT I'M AWARE OF. I KNOW THEY TOOK SOME
8 PHOTOGRAPHS, BUT ---

9 Q. WELL, LET ME BACK UP. DID YOU HAVE ANYTHING TO GIVE
10 THEM WHEN THEY SHOWED UP?

11 A. NO, SIR, I DID NOT.

12 Q. ALL RIGHT. NOW -- ALL RIGHT. PLEASE ANSWER ANY
13 QUESTIONS THE DEFENSE MAY HAVE. THANK YOU.

14 THE COURT: MR. SUMNER.

15 MR. SUMNER: NO, SIR. THANK YOU.

16 THE COURT: NO QUESTIONS. THANK YOU. YOU CAN ---

17 MR. RICE: THANK YOU, SIR.

18 THE COURT: --- STEP DOWN.

19 MR. MOYER: GAIL GLYMPH.

20 GAIL GLYMPH, BEING DULY

21 SWORN TESTIFIED AS FOLLOWS:

22 DIRECT EXAMINATION BY MR. MOYER:

23 Q. OKAY. WHERE ARE YOU EMPLOYED, MA'AM?

24 A. GREENVILLE COUNTY EMS.

25 Q. HOW LONG HAVE YOU WORKED FOR EMS?

GAIL GLYMPH - DIRECT EXAMINATION BY MR. MOYER

107

1 A. EIGHT YEARS.

2 Q. WHAT IS YOUR POSITION?

3 A. PARAMEDIC.

4 Q. WHAT DOES YOUR JOB ENTAIL?

5 A. RUNNING CALLS TO SICK OR INJURED PEOPLE, RENDERING AID,

6 AND TRANSPORTING THEM TO THE HOSPITAL.

7 Q. OKAY. AND DID YOU RECEIVE A CALL ON NOVEMBER THE 5TH

8 OF 2002?

9 A. YES.

10 Q. AND TO WHAT ADDRESS WAS THAT?

11 A. [REDACTED] WADE HAMPTON BOULEVARD.

12 Q. WHAT TIME DID YOU GET THE CALL?

13 A. AT 17:45.

14 Q. WHICH IS -- THAT'S MILITARY TIME, RIGHT?

15 A. YES. THAT WOULD BE 5:45 IN THE EVENING.

16 Q. OKAY. DID YOU LEAVE IMMEDIATELY TO THAT LOCATION?

17 A. YES.

18 Q. AND DID YOU -- DO YOU HAVE THE TIME THAT YOU ARRIVED?

19 DO YOU KNOW THE TIME?

20 A. WE HAD TO WAIT FOR THE POLICE TO GET THERE FIRST. SO

21 THERE WAS A SLIGHT DELAY IN OUR ACTUAL ARRIVAL TIME. IT WAS

22 APPROXIMATELY TEN TO FIFTEEN MINUTES LATER.

23 Q. OKAY. NOW UPON ARRIVAL -- SO THERE WERE POLICE

24 OFFICERS ALREADY THERE?

25 A. YES.

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1 Q. AND DID THEY DIRECT YOU TO ANYBODY?

2 A. YES. THERE WAS A PATIENT LYING ON THE GROUND IN THE
3 PARKING LOT.

4 Q. OKAY. AND WHO WAS THAT PERSON LATER IDENTIFIED TO BE?

5 A. WE BELIEVED IT TO BE HOMER JOHNSON.

6 Q. OKAY. AND HOW CAN --- CAN YOU DESCRIBE THIS PERSON FOR
7 US, HIS SEX?

8 A. IT WAS A WHITE MALE WITH LONG BLACK HAIR, I BELIEVE IT
9 WAS.

10 Q. OKAY. NOW WHEN YOU SAW HIM INITIALLY DID YOU SEE ANY
11 INITIAL SIGNS OF TRAUMA?

12 A. INITIALLY, NO.

13 Q. DID YOU SEE -- DID HE SHOW ANY SIGNS OF CONSCIOUSNESS?

14 A. NO.

15 Q. WAS THERE ANY MOVEMENT AT ALL, ANY RESPONSE?

16 A. NO.

17 Q. DID YOU CHECK FOR VITAL SIGNS?

18 A. YES.

19 Q. OKAY. AND DID YOU -- WHAT DID YOU FIND IN REGARDS TO
20 YOUR CHECK FOR VITAL SIGNS?

21 A. WE FOUND HIM UNRESPONSIVE TO ANY TYPE OF VERBAL OR
22 PAINFUL STIMULI. THERE WAS NO BREATHING, NO SPONTANEOUS
23 RESPIRATIONS, AND NO PULSE.

24 Q. OKAY. SO WHAT DID YOU DO WITH HIM THEN?

25 A. WE STARTED -- WE PUT THE HEART MONITOR ON HIM WHICH

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1 SHOWS IF THERE'S ANY ELECTRICAL ACTIVITY, WHICH WE DID FIND
2 ELECTRICAL ACTIVITY, BUT NO PULSE. AND WE STARTED CPR.

3 Q. OKAY. AND ARE THERE DIFFERENT DEGREES OF ELECTRONIC
4 ACTIVITY? AND CAN YOU SAY THERE'S A LOT OR A LITTLE?

5 A. YES. WELL, AS FAR AS A RATE GOES, HOW FAST THE
6 IMPULSES ARE FIRING. AND IT WAS VERY SLOW. AND IT DID GO
7 AWAY.

8 Q. AND DID YOU TAKE ANY MEASURES OF RESUSCITATION?

9 A. YES.

10 Q. AND WHAT WAS THAT?

11 A. WE INTUBATED THE PATIENT TO PROVIDE AN AIRWAY SO WE
12 COULD VENTILATE HIM TO PROVIDE OXYGEN. WE DID FIND THE
13 WOUND WHEN WE DISROBED HIM. WE FOUND THE INJURY. WE
14 BANDAGED THAT. WE DID CPR, CARDIAC PULMONARY RESPIRATIONS
15 AND CHEST COMPRESSIONS.

16 Q. OKAY. AND WERE YOU ABLE TO EVER GET ANY RESPONSE FROM
17 HIM WHATSOEVER?

18 A. NO.

19 Q. YOU MENTIONED INJURY. WHERE WAS IT THAT YOU FOUND HIS
20 INJURIES ON HIM?

21 A. JUST TO THE LEFT SIDE OF HIS CHEST. THERE WERE SEVERAL
22 HOLES.

23 Q. OKAY. LET ME BACK UP AND ASK THAT PROPERLY. WHERE
24 WERE YOU LOCATED WHEN YOU FOUND THE INJURIES?

25 A. WE WERE IN THE PARKING LOT. AND AS WE WERE LOADING HIM

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1 WE CUT THE SHIRT OFF OF HIM TO PUT THE ELECTRODES ON HIM.

2 AND IT WASN'T UNTIL WE CUT THE SHIRT OFF THAT WE ACTUALLY

3 SAW THE INJURY.

4 Q. OKAY. AND HOW WOULD YOU DESCRIBE THE INJURIES THAT YOU
5 SAW?

6 A. ALMOST LIKE SEVERAL HOLES RIPPED.

7 Q. OKAY. AND DID YOU TELL THE OFFICERS WHAT YOU HAD
8 FOUND?

9 A. YES.

10 Q. AND DID THAT AFFECT IN ANY WAY THE TYPE OF TREATMENT
11 THAT YOU WERE GIVING?

12 A. NO.

13 Q. DID YOU WAIT THERE IN THE PARKING LOT LONG OR DID YOU
14 TAKE HIM PRETTY IMMEDIATELY TO THE HOSPITAL?

15 A. PRETTY QUICK.

16 Q. WHAT HOSPITAL DID YOU GO TO?

17 A. GREENVILLE MEMORIAL.

18 Q. AND ON THE WAY TO GREENVILLE MEMORIAL -- THAT'S NOT A
19 VERY LONG DRIVE, IS IT?

20 A. NO.

21 Q. ABOUT HOW LONG WOULD IT TAKE TO GET THERE?

22 A. TEN MINUTES AT THE MOST.

23 Q. AND DID YOU CONTINUE TO ATTEMPT TO REVIVE HIM?

24 A. YES.

25 Q. AND DID YOU EVER HAVE ANY RESPONSE FROM HIM WHATSOEVER

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1 UNTIL THE TIME YOU GOT TO THE GREENVILLE HOSPITAL?

2 A. NO.

3 Q. WHAT DID YOU DO WITH HIM WHEN YOU GOT TO GREENVILLE
4 MEMORIAL HOSPITAL?

5 A. WE TOOK HIM INTO THE TRAUMA BAY WHERE THE TRAUMA TEAM
6 WAS WAITING FOR US AND GAVE THEM A REPORT ON WHAT WE FOUND
7 AND WHAT WE HAD DONE UP TO THAT POINT AND TRANSFERRED CARE
8 OVER TO THEM.

9 Q. OKAY. DID YOU ASSIGN A TRAUMA SCORE?

10 A. ZERO.

11 Q. AND WHAT DOES THAT MEAN?

12 A. BASED ON A COMA SCORE, WHICH WE GET INITIALLY, HIS WAS
13 THREE. THAT IS BASED ON HIS EYE OPENING -- MOTOR SKILLS AND
14 VERBAL RESPONSES. YOU GET A POINT FOR EACH ONE. SO HE
15 BASICALLY GOT THREE POINTS JUST FOR BEING THERE REGARDLESS
16 OF WHETHER HE COULD OPEN HIS EYES OR ANYTHING. YOU COMBINE
17 THAT WITH A BLOOD PRESSURE AND A RESPIRATORY RATE, WHICH HE
18 HAD NEITHER. SO HE GETS A SCORE OF ZERO FOR THAT. THE
19 RANGE FOR THE GLASGOW COMA SCORE WOULD HAVE BEEN A ZERO FOR
20 THE SCORE. SO YOU ADD THOSE THREE TOGETHER, IT COMES OUT
21 ZERO FOR A TRAUMA SCORE.

22 Q. OKAY. THAT'S OBVIOUSLY THE VERY LOWEST ---

23 A. YES.

24 Q. --- THAT YOU COULD ASSIGN?

25 A. YES.

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1 Q. LET ME SHOW YOU STATE'S EXHIBIT NUMBER 5. CAN YOU
2 RECOGNIZE THAT -- WHAT IS DEPICTED IN THAT PHOTOGRAPH?

3 A. UM-HUM (AFFIRMATIVE).

4 Q. AND WHO DO YOU RECOGNIZE?

5 A. THAT WOULD BE MY PARTNER, PATRICK.

6 Q. ARE YOU SHOWN IN THAT PICTURE TOO?

7 A. OH, I GUESS THAT IS ME ON THE RIGHT, ISN'T IT?

8 Q. OKAY.

9 A. I COULDN'T SEE MY FACE.

10 Q. OKAY. AND IS THAT THE SCENE AS IT LOOKED OUT THERE
11 NOVEMBER THE 5TH OF 2002?

12 A. YEAH, THE BEST I COULD REMEMBER IT WAS RAINING.

13 Q. OKAY. PLEASE ANSWER ANY QUESTIONS THE DEFENSE MAY
14 HAVE.

15 MR. SUMNER: (NEGATIVE NOD).

16 THE COURT: NO QUESTIONS. THANK YOU. YOU CAN STEP
17 DOWN.

18 MS. GLYMPH: THANK YOU.

19 THE COURT: SOLICITOR, DO YOU WANT TO EXCUSE THESE
20 WITNESSES AS THEY TESTIFY?

21 MR. SUMNER: NO OBJECTION.

22 MR. MOYER: THANK YOU, YOUR HONOR. I WILL. I WOULD
23 LIKE TO. THANK YOU FOR BRINGING THAT TO MY ATTENTION. THE
24 STATE WOULD CALL DR. CHRISTENSEN.

25

ERIK CHRISTENSEN, M.D.,

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1 BEING DULY SWORN TESTIFIED AS FOLLOWS:

2 DIRECT EXAMINATION BY MR. MOYER:

3 Q. DR. CHRISTENSEN, WHERE ARE YOU EMPLOYED?

4 A. I'M CURRENTLY EMPLOYED BY PATHOLOGY ASSOCIATES OF
5 GREENVILLE. IT'S A PRIVATE PATHOLOGY GROUP. AND WE HAVE A
6 CONTRACT WITH THE COUNTY CORONER TO PERFORM AUTOPSIES. AND
7 I ALSO HAVE AN APPOINTMENT FROM THE COUNTY TO WORK AS A
8 MEDICAL EXAMINER FOR THE COUNTY.

9 Q. OKAY. HOW MANY MEDICAL EXAMINERS DO WE HAVE HERE IN
10 GREENVILLE?

11 A. THERE ARE TWO OF US, MYSELF AND, MIKE WARD, MY PARTNER.

12 Q. HOW LONG HAVE YOU HELD THIS POSITION IN GREENVILLE?

13 A. I'VE WORKED HERE SINCE JUNE 10TH OF 2002.

14 Q. AND WHAT IS YOUR PROFESSION?

15 A. I AM BY TRAINING A PHYSICIAN WITH SPECIALTY TRAINING IN
16 PATHOLOGY AND A SUB SPECIALTY TRAINING IN FORENSIC
17 PATHOLOGY.

18 Q. CAN YOU TELL THE JURY A LITTLE BIT WHAT THOSE WORDS
19 MEAN?

20 A. SURE.

21 Q. WHAT IS FORENSIC PATHOLOGY?

22 A. SURE. PATHOLOGY IN GENERAL IS JUST A SUB SPECIALTY OF
23 MEDICINE THE SAME AS PEDIATRICS OR ANYTHING ELSE THAT DEALS
24 PRIMARILY WITH LAB ISSUES AND THE EXAMINATION OF TISSUES.

25 IF YOU WERE TO GO TO THE DOCTOR AND HAVE A MOLE OR SOMETHING

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1 SHAVED OFF IT GOES TO A PATHOLOGIST TO BE EVALUATED TO
2 DETERMINE IF IT'S CANCEROUS OR NOT.

3 FORENSIC PATHOLOGY IS A SUB SPECIALTY OF PATHOLOGY THAT
4 DEALS SPECIFICALLY WITH THE INVESTIGATION OF SUDDEN
5 UNEXPECTED AND VIOLENT DEATHS. AND WE RECEIVE TRAINING --
6 IN THE PERFORMANCE OF AUTOPSY WE RECEIVE TRAINING IN THE
7 EVALUATION OF THE MATERIALS THAT GO ALONG WITH EVALUATING
8 TESTS INCLUDING EVALUATION OF CRIME SCENES, INCLUDING
9 EVALUATION OF POLICE REPORTS, MEDICAL RECORDS, AND OTHER
10 SORTS OF WITNESS STATEMENTS AND TAKING THOSE THINGS ALL
11 TOGETHER TO DETERMINE THE CAUSE AND THE MANNER OF DEATH IN
12 ANY GIVEN CASE.

13 Q. OKAY. AND HOW LONG HAVE YOU BEEN DOING THAT TYPE OF
14 WORK?

15 A. I'VE BEEN DOING THIS FULL-TIME NOW SINCE JUNE OF 2000
16 AND HAVE BEEN DOING IT PART-TIME SINCE 1994.

17 Q. AND WHERE -- BEFORE GREENVILLE WHERE HAVE YOU DONE THIS
18 PRACTICE?

19 A. PRIOR TO WORKING HERE IN GREENVILLE I WAS EMPLOYED IN
20 THE OFFICE OF THE CHIEF MEDICAL EXAMINER IN RICHMOND,
21 VIRGINIA. I WAS THERE FOR APPROXIMATELY TWO YEARS BEFORE I
22 CAME HERE.

23 Q. OKAY. PLEASE TELL THE JURY WHAT YOUR EDUCATIONAL
24 BACKGROUND IS.

25 A. I HAVE A BACHELORS DEGREE IN PHILOSOPHY FROM BIRMINGHAM

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1 UNIVERSITY. I ATTENDED MEDICAL SCHOOL AT THE UNIVERSITY OF
2 VIRGINIA IN CHARLOTTESVILLE. AND I DID MY PATHOLOGY
3 TRAINING IN THE MILITARY AT MADIGAN ARMY MEDICAL CENTER IN
4 TACOMA, WASHINGTON. AND I DID MY FORENSIC PATHOLOGY
5 TRAINING IN RICHMOND, VIRGINIA IN THE OFFICE OF THE CHIEF
6 MEDICAL EXAMINER.

7 Q. OKAY. AND HOW MANY FORENSIC AUTOPSIES HAVE YOU DONE
8 OVER THE YEARS?

9 A. I'VE DONE JUST OVER NINE HUNDRED TOTAL.

10 Q. OKAY. AND HAVE YOU BEEN QUALIFIED AS AN EXPERT IN
11 FORENSIC PATHOLOGY IN COURTS?

12 A. YES, I HAVE.

13 Q. AND ROUGHLY HOW MANY TIMES?

14 A. PROBABLY TWENTY OR TWENTY-FIVE TIMES IN VIRGINIA, TWO
15 TIMES PREVIOUSLY IN THIS STATE.

16 MR. MOYER: YOUR HONOR, AT THIS TIME I WOULD OFFER
17 DR. CHRISTENSEN AS AN EXPERT IN FORENSIC PATHOLOGY.

18 THE COURT: ANY VOIR DIRE?

19 MR. SUMNER: (NEGATIVE NOD).

20 THE COURT: HE'S QUALIFIED. PROCEED.

21 Q. ALL RIGHT. NOW, DR. CHRISTENSEN, DID YOU PERFORM AN
22 AUTOPSY ON HOMER DELANO JOHNSON?

23 A. YES, I DID ON NOVEMBER 6TH, 2002.

24 Q. OKAY. AND THAT WAS A FORENSIC AUTOPSY?

25 A. YES.

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1 Q. YOU MENTIONED THE DATE. WHAT WAS THE TIME THAT YOU
2 PERFORMED THE AUTOPSY?

3 A. I'LL HAVE TO LOOK AT MY NOTES. WE BEGAN THE AUTOPSY
4 AROUND 9:30 IN THE MORNING.

5 Q. I'M SORRY?

6 A. WE BEGAN THE AUTOPSY AT ABOUT 9:30 IN THE MORNING.

7 Q. OKAY. AND WHERE WAS IT CONDUCTED?

8 A. IN THE COUNTY MORGUE, WHICH IS AN ANNEX TO THE
9 GREENVILLE MEMORIAL HOSPITAL.

10 Q. AND FROM WHERE WAS THE BODY RETRIEVED?

11 A. THE BODY WAS RETRIEVED FROM THE SCENE OF THE ALLEGED
12 SHOOTING, WHICH I DON'T -- I KNOW IT WAS A MOTEL 6, BUT I
13 DON'T ---

14 Q. OKAY.

15 A. I DON'T KNOW EXACTLY WHERE IT WAS.

16 Q. IN THE MORGUE ITSELF?

17 A. THE BODY -- ONCE THE BODY IS DELIVERED BY THE -- FROM
18 THE SCENE IT'S TAKEN TO -- PUT IN THE COOLER, LOGGED IN WITH
19 THE LOG BOOK, AND IT REMAINS THERE UNTIL SUCH TIME AS WE
20 BEGIN THE AUTOPSY.

21 Q. AND DID YOU NOTE THE PHYSICAL DIMENSIONS OF MR.
22 JOHNSON?

23 A. YES. HE WAS APPROXIMATELY SEVENTY-TWO INCHES TALL,
24 WHICH IS SIX FEET, AND JUST SHY OF TWO HUNDRED AND TWENTY
25 POUNDS.

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1 Q. OKAY. NOW DURING YOUR EXAMINATION OF MR. JOHNSON DID

2 YOU FIND ANY EVIDENCE OF INJURY OR TRAUMA?

3 A. YES, WE DID.

4 Q. AND WHAT TYPE OF INJURY DID YOU FIND?

5 A. HE HAD SUSTAINED TWO GUNSHOT WOUNDS. A SINGLE, WHAT WE

6 CALL A PENETRATING GUNSHOT WOUND MEANS THE BULLET GOES IN

7 BUT DOESN'T COME OUT, WITH AN ENTRANCE IN THE RIGHT SIDE OF

8 THE BACK. AND THEN HE HAD A SECOND GUNSHOT WOUND GOING

9 THROUGH THE LEFT SIDE OF THE CHEST, WHICH WE CALL A

10 PERFORATING INJURY, WHICH BOTH ENTERED AND EXITED THE BODY.

11 THERE WAS NO BULLET RECOVERED FROM THAT.

12 Q. OKAY. NOW DID YOU NUMBER THESE TWO WOUNDS IN YOUR
13 REPORT?

14 A. YES. IN THE REPORT THE WOUND TO THE RIGHT SIDE OF THE

15 BACK, THE PENETRATING INJURY, WAS LABELED NUMBER ONE. AND

16 THE OTHER WOUND WAS LABELED NUMBER TWO.

17 Q. AND IS THERE ANY SIGNIFICANCE TO THE SEQUENCE?

18 A. NO. WE LABEL THEM THAT WAY JUST SO WE CAN HAVE A

19 NUMBER TO REFER TO THE WOUND BY, BUT THERE'S NO REFERENCE TO

20 THE CHRONOLOGY WITH WHICH THEY HAPPENED. WE CAN'T TELL YOU

21 WHICH ONE HAPPENED FIRST IN THIS CASE. SOME CASES WE CAN.

22 Q. AND DID YOU PREPARE A DIAGRAM ON WHICH YOU WERE ABLE TO

23 DEPICT WHERE THE INJURIES WERE?

24 A. YES.

25 Q. I WANT TO SHOW YOU WHAT'S BEEN MARKED AS STATE'S

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1 EXHIBIT NUMBER 9. CAN YOU TAKE A LOOK AT WHAT I'VE JUST
2 HANDED YOU? DO YOU RECOGNIZE WHAT THAT IS?

3 A. YES. THAT'S A COPY OF THE BODY DIAGRAM THAT I PREPARED
4 INDICATING THE LOCATIONS OF THE BULLET WOUNDS.

5 Q. THAT'S THE ONE YOU PREPARED FOR THIS PARTICULAR CASE?

6 A. YES.

7 MR. MOYER: YOUR HONOR, I'D MOVE TO HAVE STATE'S
8 EXHIBIT NUMBER 9 MOVED INTO EVIDENCE.

9 THE COURT: WITHOUT OBJECTION.

10 Q. I'M GOING TO PLACE IT ON THE OVERHEAD FOR THE BENEFIT
11 OF THE JURY. IF YOU WOULD, DR. CHRISTENSEN, I'M GOING TO
12 HAND YOU -- THAT'S A LASER POINTER. I'M NOT SURE THAT ANGLE
13 WILL ALLOW YOU ---

14 A. THAT'S FINE.

15 Q. LET'S START OFF WITH GUNSHOT WOUND -- WHAT YOU REFER TO
16 AS GUNSHOT WOUND NUMBER ONE. YOU WERE ABLE TO DETERMINE AN
17 ENTRANCE WOUND FOR THAT?

18 A. YES. THAT WOUND -- THAT BULLET ENTERED THE BODY HERE
19 ON THE RIGHT SIDE OF THE BACK LABELED NUMBER ONE THERE AND
20 THEN TRAVERSED THE BODY ACROSS THE CHEST GOING THROUGH THE
21 LUNG, LIVER, AND AORTA, AND THE MAJOR VESSELS THAT RUN
22 THROUGH THE ABDOMEN. AND BEFORE COMING TO REST THE BULLET
23 DID NOT EXIT THE BODY, BUT IT WAS FOUND IN THE CHEST WALL
24 JUST BENEATH THE SKIN ON THE LEFT SIDE OF THE CHEST.

25 Q. OKAY. SO IT HAD ACTUALLY GONE ALL THE WAY THROUGH THE

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1 BODY?

2 A. GONE ALL THE WAY ACROSS THE BODY. AND IT HAD ACTUALLY
3 GONE OUT OF THE CHEST CAVITY AND WAS JUST SITTING UNDER THE
4 SKIN.

5 Q. OKAY. AND WERE YOU ABLE TO ACTUALLY NOTICE THE BULLET
6 BEFORE RETRIEVAL OF IT?

7 A. YES. YOU COULD SEE, THERE WAS A SLIGHT ELEVATION OF
8 THE SKIN ON THAT SIDE. AND YOU COULD FEEL THE BULLET IN THE
9 SOFT TISSUES BENEATH THE SKIN.

10 Q. OKAY. AND SO THE PATH OF THAT BULLET WOULD BE -- HOW
11 WOULD YOU -- YOU FOLLOWED THE PATH OF THE BULLET COMPLETELY
12 THROUGH THE BODY?

13 A. YES. THE BULLET MOVES IN A STRAIGHT LINE THROUGH THE
14 BODY. AND WE DESCRIBE IT WITH REFERENCE TO THE BODY. AND
15 IN THIS CASE THE BULLET MOVED FROM RIGHT TO LEFT, FROM HIS
16 RIGHT SIDE ACROSS TO HIS LEFT SIDE, VERY SLIGHTLY FROM BACK
17 TO FRONT, AND VERY SLIGHTLY UPWARD. MORE OR LESS STRAIGHT
18 ACROSS.

19 Q. OKAY.

20 MR. SUMNER: NO OBJECTION, YOUR HONOR, TO THIS.

21 MR. MOYER: STATE'S EXHIBIT NUMBER 10 IS COMING IN
22 WITHOUT OBJECTION.

23 Q. WOULD YOU TAKE A LOOK AT THAT AND JUST TELL THE JURY
24 BEFORE WE SHOW IT WHAT IS DEPICTED?

25 A. THIS IS A PHOTOGRAPH OF THE ENTRANCE WOUND TO WHAT'S

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1 LABELED IN THE REPORT A GUNSHOT WOUND NUMBER ONE.

2 Q. OKAY. AND ONCE AGAIN FOR THE BENEFIT OF THE JURY WOULD

3 YOU ---

4 A. SURE. THIS IS THE RIGHT SIDE OF THE BACK. AND THIS IS

5 THE ARMPIT AND THE ARM FOR REFERENCE. THIS IS THE -- THIS

6 ROUND DEFECT HERE IS THE HOLE. AND THE SURROUNDING

7 DISCOLORATION IS BRUISING AROUND THE ENTRANCE WOUND.

8 Q. DR. CHRISTENSEN, WOULD YOU CONSIDER THAT WOUND THAT YOU

9 HAVE JUST TOLD THE JURY ABOUT AND DESCRIBED IT IN THE

10 DIAGRAM, WOULD YOU CONSIDER THAT A MORTAL WOUND?

11 A. IN THIS CASE THE, YOU KNOW, THE MORTALITY OF A WOUND IS

12 DETERMINED BY WHAT IT HITS AS IT GOES THROUGH. SKIN

13 INJURIES IN AND OF THEMSELVES ARE NOT GENERALLY LETHAL. IN

14 THIS CASE WITH IT TRAVERSING BOTH THE MAJOR ARTERY AND THE

15 MAJOR VEIN THROUGH THE ABDOMINAL CAVITY, THIS WOULD BE A

16 LETHAL INJURY.

17 Q. OKAY. AND WHAT WOULD BE THE IMMEDIATE EFFECT OF A

18 WOUND LIKE THAT ON A PERSON?

19 A. IT WOULD NOT RENDER THEM IMMEDIATELY UNCONSCIOUS. IT

20 MAY KNOCK THEM DOWN DEPENDING ON THE TYPE OF WEAPON IT CAME

21 FROM. BUT IN THIS CASE THE MECHANISM OF DEATH, WHAT LEADS

22 TO DEATH ULTIMATELY FROM THE GUNSHOT WOUND IS THE LOSS OF

23 BLOOD INTO THE BODY CAVITIES.

24 Q. OKAY. NOW YOU REFERRED TO THE PROJECTILE THAT YOU HAD

25 SEEN.

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1 A. YES.

2 Q. WERE YOU ABLE TO COLLECT THAT PROJECTILE THAT YOU
3 DESCRIBED?

4 A. YES.

5 Q. DID YOU PHOTOGRAPH IT?

6 A. YES, WE DID.

7 Q. YOU SAY YOU PHOTOGRAPHED THOSE?

8 A. YES, WE DID.

9 MR. MOYER: YOUR HONOR, I WOULD MOVE TO HAVE STATE'S
10 EXHIBITS NUMBERS 11 AND 13 MOVED ---

11 THE COURT: THEY'RE IN WITHOUT OBJECTION.

12 MR. MOYER: AND EXHIBIT NUMBER 12.

13 MR. SUMNER: THAT'S FINE.

14 Q. ALL RIGHT. LET ME SHOW YOU WHAT'S MARKED AS STATE'S
15 EXHIBIT NUMBER 13. AND WOULD YOU DESCRIBE FOR THE JURY WHAT
16 IT IS?

17 A. YES. THIS IS A -- THIS IS THE BULLET, WHICH WAS A
18 MEDIUM CALIBER PROJECTILE, MEDIUM CALIBER, WHICH MEANS IT'S
19 NOT THE SMALLEST, IT'S NOT THE BIGGEST. THERE'S A WIDE
20 RANGE OF BULLET TYPES THAT WE DESCRIBE AS MEDIUM CALIBER.
21 THIS IS A MEDIUM CALIBER BULLET. THIS IS LOOKING AT IT FROM
22 THE TOP DOWN. AND IT IS SOMEWHAT MUSHROOMED, WHICH IS
23 FAIRLY TYPICAL FOR THIS TYPE OF A PROJECTILE. BASICALLY THE
24 LEAD OF THE BULLET DEFORMS AS IT GOES THROUGH THE BODY AND
25 PUSHES DOWN SORT OF LIKE AN ICE CREAM CONE OVER THE EDGE OF

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1 A -- EDGE OF A CONE. AND IT LEADS TO BASICALLY THE LEAD
2 SPREADING OUT AND BEING SOMEWHAT WIDER THAN IT MIGHT
3 ORIGINALLY HAVE BEEN.

4 Q. OKAY. AND STATE'S EXHIBIT NUMBER 11.

5 A. THIS IS THE SAME PROJECTILE BASICALLY FLIPPED UP AND
6 LOOKING AT IT FROM THE BACK SO YOU CAN SEE THE BASE. THIS
7 IS THE FRAGMENTS OF THE COPPER JACKET THAT HAVE BASICALLY
8 BEEN PEELED BACK AS THE BULLET GOES THROUGH THE BODY.

9 Q. OKAY. AND WHAT DID YOU DO WITH THAT PROJECTILE AFTER
10 YOU RECOVERED IT?

11 A. THAT BULLET WAS TURNED OVER TO THE POLICE.

12 Q. AND DO YOU KNOW THE NAME OF THE OFFICER THAT YOU GAVE
13 IT TO?

14 A. I DON'T KNOW OFF THE TOP OF MY HEAD. I BELIEVE IT WAS
15 ACTUALLY GIVEN TO LINDLE HOLBROOK, THE DEPUTY CORONER WHO
16 WAS IN ATTENDANCE AT THE AUTOPSY.

17 Q. OKAY. WERE THERE ANY OTHER OFFICERS THERE AS WELL?

18 A. I DON'T RECALL OFF THE TOP OF MY HEAD.

19 Q. BUT YOU DO RECALL GIVING IT TO ONE OF THE OFFICERS WHO
20 WAS THERE?

21 A. YES. STANDARD PROCEDURE IS THAT EVIDENCE THAT'S
22 COLLECTED FROM A BODY AT THE TIME OF AUTOPSY IS HANDED OVER
23 DIRECTLY TO THE FORENSICS OFFICER THAT'S PRESENT AT THE
24 AUTOPSY. AND THAT INCLUDES GENERALLY THE CLOTHING OF THE
25 DECEDENT, EVIDENCE COLLECTED FROM THE HANDS RELATIVE TO

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1 GUNSHOT RESIDUES, FINGERPRINTS, ALL THOSE THINGS ARE
2 COLLECTED BY THEM AT THE TIME IN MY PRESENCE WHILE THEY'RE
3 THERE. THE BULLET, I ACTUALLY RECOVERED FROM THE BODY AND
4 THEN TURNED IT OVER TO THEM.

5 Q. OKAY. NOW LET'S MOVE ON TO WHAT YOU REFERRED TO AS
6 GUNSHOT WOUND NUMBER TWO. AND DESCRIBE TO THE JURY WHERE IT
7 WAS THAT YOU LOCATED THAT GUNSHOT WOUND.

8 A. OKAY. THAT WOUND WAS BASICALLY ON THE OPPOSITE SIDE OF
9 THE CHEST AND BACK. THE ENTRANCE WAS SOMEWHAT POSTERIOR.
10 AND THE BULLET BASICALLY TRAVELED THROUGH THE CHEST WALL.

11 IT HAD ENTERED THE CHEST MINIMALLY, BUT BASICALLY WENT
12 THROUGH -- DESTROYED A COUPLE OF RIBS GOING THROUGH AND
13 CAUSED A LARGE LACERATION TYPE EXIT WOUND.

14 THE CHARACTERISTICS OF AN EXIT WOUND ARE BASICALLY
15 DETERMINED BY THE -- WHAT THE BULLET HAS GONE THROUGH AS IT
16 GOES THROUGH THINGS. AND IN THIS CASE IT HIT SOME RIBS
17 WHICH CAUSED SOME DISPERSION OF BOTH RIB FRAGMENTS AND
18 PROBABLY THE BULLET ITSELF AS WELL. ALTHOUGH WE DIDN'T
19 RECOVER A BULLET, SO I CAN'T TELL YOU WHAT STATE IT WAS IN
20 FOR SURE. BUT TYPICALLY A BULLET GOING THROUGH A CHEST WALL
21 LIKE THIS WOULD LOSE A LOT OF ENERGY.

22 AND A BULLET OF THIS TYPE COMING FROM A HUNTING RIFLE,
23 WHICH IS WHAT THESE TYPE OF BULLETS ARE FIRED FROM,
24 TYPICALLY ARE OF A RELATIVELY HIGH VELOCITY. AND AS SUCH
25 THEY CAUSE, IN ADDITION TO JUST THE HOLE THAT THE BULLET

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1 MAKES AS IT GOES THROUGH THE TISSUES, THERE'S ALSO A
2 PHENOMENON KNOWN AS THE TEMPORARY CAVITY FORMATION.

3 AND WHAT HAPPENS IS THE ENERGY OF THAT BULLET IS LOST
4 IN THE TISSUES. IT CAUSES EXPANSION OF THAT BULLET TRACK.
5 WHICH, YOU KNOW, THE BULLET'S ONLY MAYBE A THIRD OF AN INCH
6 ACROSS, AND THE HOLE IT MAKES WOULD BE THAT BIG. BUT THE
7 LOSS OF ENERGY WILL CAUSE A CAVITY TO FORM AROUND THAT TRACK
8 WHICH WILL BE MANY, MANY TIMES, SOMETIMES TWENTY, THIRTY
9 TIMES THE DIAMETER OF THE BULLET AND CAUSES DAMAGE TO THE
10 TISSUES, CAN CAUSE LACERATIONS TO THE SKIN, CAN CAUSE
11 FRACTURES OF BONES, HOLES IN BLOOD VESSELS, ALL SORTS OF
12 THINGS. IN THIS CASE THE VERY LARGE EXIT WOUND WAS CAUSED
13 BY THAT SORT OF BLAST EFFECT OF THIS HIGH VELOCITY BULLET
14 THROUGH THE CHEST WALL.

15 Q. OKAY. SO IS IT FAIR TO SAY THAT THE HIGHER THE
16 VELOCITY SHOT THE GREATER THAT PHENOMENON YOU DESCRIBED IS?

17 A. YES. THE SIZE OF THE TEMPORARY CAVITY THAT IS FORMED
18 IS OF RELATION OF THE SIZE OF THE BULLET. SO A LARGER
19 BULLET IS GOING TO CAUSE A BIGGER TEMPORARY CAVITY THAN A
20 SMALLER ONE. AND IT'S A FUNCTION OF THE SQUARE OF THE
21 VELOCITY. SO, YOU KNOW, IT MAGNIFIES THE EFFECT OF VELOCITY
22 MUCH, MUCH MORE. AND A HUNTING RIFLE IS IN A RANGE OF WHAT
23 WE CONSIDER HIGH VELOCITY WEAPONS. THE SPEEDS ARE TYPICALLY
24 IN EXCESS OF FIFTEEN HUNDRED, EIGHTEEN HUNDRED FEET PER
25 SECOND COMPARED TO HANDGUNS, WHICH ARE MORE IN THE -- SOME

ERIK CHRISTENSEN, M. D. - DIRECT EXAMINATION BY MR. MOYER

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1 OF THEM AS LOW AS SIX, SEVEN HUNDRED FEET PER SECOND RANGE.

2 Q. OKAY. AND YOU TOOK A PHOTOGRAPH OF THIS ONE AS WELL?

3 A. YES.

4 Q. OKAY. LET ME SHOW YOU STATE'S EXHIBIT -- WHAT'S

5 ALREADY BEEN INTRODUCED AS STATE'S EXHIBIT NUMBER 12. AND

6 DOES THIS PHOTOGRAPH DEPICT THAT VERY LARGE WOUND THAT YOU

7 DISCUSSED?

8 A. YES, IT DOES. THIS IS THE ENTRANCE WOUND. ON THE BACK

9 OF THE SIDE HERE YOU CAN SEE THERE IS A -- WHAT WE CALL AN

10 ECCENTRIC ABRASION. AS THE BULLET GOES IN AT AN ANGLE TO

11 THE CHEST WALL IT CAUSES BASICALLY A RUBBING OF THE SKIN

12 AWAY ON THE NEAR SIDE OF THE ENTRANCE WOUND. AND THEN AS IT

13 WENT THROUGH HERE ALL OF THESE LITTLE LACERATIONS AND THEN

14 THESE BIGGER LACERATIONS DOWN HERE ARE THE EFFECTS OF THAT

15 TEMPORARY CAVITY. AND IT DOESN'T SHOW UP VERY WELL IN THIS

16 PICTURE, BUT YOU CAN GET A HINT THAT THERE IS THIS BRUISING

17 ALL THE WAY AROUND HERE. THERE'S ALSO -- IT SORT OF DEFINES

18 THE EXTENT OF THAT TEMPORARY CAVITY CAUSED BY THE EXPANSION

19 OF GASES AND DISSIPATION OF KINETIC ENERGY.

20 Q. OKAY. AND CAN YOU SHOW THE JURY WHERE IT WAS THAT YOU

21 COLLECTED THE BULLET THAT YOU DESCRIBED?

22 A. OKAY. THIS IS, AGAIN, THIS IS GUNSHOT WOUND NUMBER

23 TWO. THE BULLET FROM GUNSHOT WOUND NUMBER ONE WAS RIGHT

24 HERE. YOU CAN SEE THERE'S JUST A LITTLE BIT OF AN ELEVATION

25 OF THE SKIN RIGHT THERE. AND THE BULLET WAS EASILY PALPABLE

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1 BENEATH THAT SPOT.

2 Q. OKAY. THANK YOU. NOW YOU DESCRIBED THAT BULLET THAT
3 YOU COLLECTED AND GAVE TO THE OFFICER AS MEDIUM CALIBER?

4 A. YES.

5 Q. AND WHAT RANGE DOES THAT COVER?

6 A. THAT WILL COVER BASICALLY ANYTHING FROM SAY A 30
7 CALIBER ON UP TO THE 40 CALIBER, 10 MILLIMETER.

8 Q. OKAY. NOW REGARDING GUNSHOT WOUND NUMBER TWO THAT YOU
9 WERE DESCRIBING TO US, WOULD A PROJECTILE OR A BULLET THAT
10 COULD CAUSE THAT WOUND AND HIT ALL THE DIFFERENT STRUCTURES
11 THAT YOU DESCRIBED, IS THAT CONSISTENT WITH CAUSING THE
12 BULLET TO COME APART?

13 A. IT WOULD NOT BE SURPRISING THAT A BULLET WOULD COME
14 APART AS IT PASSED THOUGH RIBS AND PARTICULARLY BONE.
15 BULLETS THAT HIT BONE ARE -- FREQUENTLY END UP IN FRAGMENTS.

16 Q. OKAY. NOW DID YOU FIND -- NOW LET ME ASK YOU ABOUT ONE
17 OTHER QUESTION ABOUT THAT WOUND NUMBER TWO. WOULD YOU
18 DESCRIBE THAT AS A MORTAL WOUND?

19 A. IT COULD BE. IT CERTAINLY WOULD NOT BE AS RAPIDLY
20 FATAL AS WOUND ONE WAS. BUT GOING THROUGH THE CHEST WALL
21 AND DISRUPTING RIBS THAT WAY -- THERE ARE ARTERIES THAT RUN
22 BETWEEN RIBS AND WHICH WERE DISRUPTED IN THIS CASE AND, YOU
23 KNOW, WOULD ALSO HAVE CAUSED LOSS OF BLOOD AND EVENTUAL
24 DEATH FROM HEMORRHAGE.

25 Q. OKAY. COULD IT CAUSE A PERSON TO FALL? IT'S

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1 CONSISTENT WITH CREATING A WOUND THAT WOULD HAVE THE

2 IMMEDIATE EFFECT OF CAUSING SOMEONE TO FALL DOWN?

3 A. IT COULD. IT CERTAINLY COULD KNOCK THEM DOWN. IT

4 WOULDN'T NECESSARILY DO THAT. AGAIN, THE AMOUNT OF ENERGY

5 THAT'S INVOLVED, TEMPORARY CAVITY FORMATION, THAT LOSS OF

6 ENERGY THERE, IT MIGHT CERTAINLY KNOCK A PERSON DOWN, BUT

7 THERE'S NO WAY TO KNOW FOR SURE WHETHER IT WOULD OR WOULD

8 NOT.

9 Q. OKAY. NOW DID YOU FIND ANY SIGNS OF INJURY TO HIS

10 LOWER EXTREMITIES?

11 A. I DON'T BELIEVE SO.

12 Q. HOW ABOUT TO HIS FEET?

13 A. OH, YES. HE DID HAVE SOME BRUISING ON TWO OF HIS TOES,

14 WHICH WERE WRAPPED IN TAPE AT THE TIME WE STARTED THE

15 AUTOPSY.

16 Q. SO IS THAT CONSISTENT WITH AN INJURY THAT WAS

17 PREEXISTENT TO ---

18 A. YEAH. WE BELIEVE THAT -- WHEN SOMEBODY COMES IN WITH

19 AN ALREADY TREATED WOUND WHETHER IT'S A BAND-AID OVER IT OR

20 A DRESSING OF SOME SORT THE ASSUMPTION IS THAT IT HAPPENED

21 SOMETIME PRIOR TO THE INJURY.

22 Q. OKAY. SO IT DID APPEAR TO HAVE ALREADY BEEN GIVEN SOME

23 MEDICAL ATTENTION, CARE?

24 A. YES.

25 Q. ALL RIGHT. NOW WERE YOU ABLE TO FORM ANY MEDICAL

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1 OPINION WITHIN A REASONABLE DEGREE OF MEDICAL CERTAINTY AS
2 TO THE CAUSE OF DEATH OF MR. HOMER JOHNSON?

3 A. YES. I BELIEVE ---

4 Q. AND WHAT WAS THAT?

5 A. --- THAT THE CAUSE OF DEATH WAS THE GUNSHOT WOUNDS TO
6 THE BACK AND CHEST.

7 Q. ONE MOMENT PLEASE. ALL RIGHT. PLEASE ANSWER ANY
8 QUESTIONS THE DEFENSE MAY HAVE.

9 THE COURT: ALL RIGHT. MR. SUMNER.

10 MR. SUMNER: VERY BRIEFLY.

11 CROSS EXAMINATION BY MR. SUMNER:

12 Q. DR. CHRISTENSEN, WAS A POST MORTEM TOXICOLOGY DONE OF
13 MR. JOHNSON?

14 A. YES, IT WAS.

15 Q. OKAY. AND DID IT -- WHAT DID IT REVEAL?

16 A. IT REVEALED THAT MARIJUANA CONSTITUENTS, SPECIFICALLY
17 TETRAHYDROCANNABINOL, AN ACID, WHICH IS BASICALLY A LONG
18 NAME FOR ONE OF THE ACTIVE COMPONENTS OF MARIJUANA.

19 THE COURT: THANK YOU, DOCTOR. CAN WE EXCUSE HIM?

20 MR. MOYER: PLEASE. THANK YOU, YOUR HONOR.

21 THE COURT: THANK YOU, SIR.

22 MR. MOYER: I CALL AUBREY TOMLIN.

23 AUBREY TOMLIN, BEING DULY

24 SWORN TESTIFIED AS FOLLOWS:

25 DIRECT EXAMINATION BY MR. MOYER:

AUBREY TOMLIN - DIRECT EXAMINATION BY MR. MOYER

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1 Q. ALL RIGHT, SIR, BY WHOM ARE YOU EMPLOYED?

2 A. GREENVILLE COUNTY DEPARTMENT OF PUBLIC SAFETY IN THE
3 FORENSICS DIVISION.

4 Q. HOW LONG HAVE YOU WORKED WITH THE FORENSICS DIVISION?

5 A. ALMOST THREE YEARS NOW.

6 Q. DID YOU WORK THERE IN NOVEMBER OF 2002?

7 A. YES.

8 Q. WHAT IS YOUR POSITION?

9 A. I'M A FORENSIC CRIME SCENE EVIDENCE TECHNICIAN.

10 Q. OKAY. NOW LET ME TAKE YOU BACK TO NOVEMBER THE 6TH OF

11 2002. DID YOU AT ANY POINT SEE THE VICTIM IN THIS CASE,

12 HOMER JOHNSON?

13 A. ON THE 2ND?

14 Q. ON THE 6TH.

15 A. ON THE 6TH? YES, SIR.

16 Q. OKAY. AND WHERE WAS THAT?

17 A. IN THE GREENVILLE MEMORIAL HOSPITAL MORGUE.

18 Q. OKAY. AND WHO ELSE WAS PRESENT?

19 A. FROM MY OFFICE?

20 Q. NO. I MEAN, WHO -- WHAT WAS THE PURPOSE OF YOUR BEING

21 THERE THAT DAY?

22 A. IT WAS TO COLLECT THE VICTIM'S CLOTHING AND ANY

23 POSSIBLE EVIDENCE FROM HIM.

24 Q. OKAY. DID YOU DO THAT?

25 A. YES, SIR.

AUBREY TOMLIN - DIRECT EXAMINATION BY MR. MOYER

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1 Q. OKAY. AND SO THIS WAS THE AUTOPSY PERFORMED BY DR.
2 CHRISTENSEN?

3 A. YES, SIR.

4 Q. WHAT TIME WAS IT THAT YOU WENT THERE?

5 A. I ARRIVED AT 9:20 IN THE MORNING.

6 Q. NOW YOU MENTIONED SOME EVIDENCE THAT YOU COLLECTED.

7 THE COURT: NO OBJECTION?

8 MR. SUMNER: YES.

9 THE COURT: ALL RIGHT. WITHOUT OBJECTION.

10 MR. MOYER: IT'S MY UNDERSTANDING IT'S MOVED INTO
11 EVIDENCE THEN?

12 MR. SUMNER: YEAH, THAT'S FINE. YES, SIR.

13 MR. MOYER: OKAY. STATE'S EXHIBIT NUMBER 14 HAS BEEN
14 MOVED INTO EVIDENCE.

15 Q. JUST TAKE A LOOK AT THIS JUST VERY BRIEFLY. AND CAN
16 YOU TELL THE COURT IF YOU RECOGNIZE WHAT IT IS I'VE JUST
17 HANDED YOU?

18 A. IT'S THE CONTAINER THAT I PUT THE POSSIBLE PROJECTILE
19 THAT WE GOT FROM THE VICTIM'S LEFT RIB-CAGE AREA.

20 Q. OKAY. AND YOU TOOK THAT FROM DR. CHRISTENSEN?

21 A. YES, SIR.

22 Q. AND WHAT DID YOU DO WITH IT AFTER YOU COLLECTED IT?

23 A. I PACKED IT AND TOOK IT BACK TO MY OFFICE AFTER I
24 COLLECTED EVERYTHING ELSE AND ---

25 Q. WHAT IS -- I'M SORRY. I DIDN'T MEAN TO INTERRUPT YOU.

AUBREY TOMLIN - DIRECT EXAMINATION BY MR. MOYER

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1 A. AND THEN PLACED IT IN PROPERTY IN EVIDENCE.

2 Q. OKAY. WHAT DID YOU PACKAGE IT IN?

3 A. I WRAPPED IT IN A TISSUE PAPER.

4 Q. AND WHEN YOU GOT BACK TO YOUR OFFICE WHAT DID YOU
5 PACKAGE IT IN?

6 A. THIS.

7 Q. OKAY. AND THEN YOU'RE SHOWING US A SMALL WHITE PLASTIC
8 CONTAINER?

9 A. CORRECT.

10 Q. AND THEN SO YOU TOOK THE PROJECTILE AND PUT IT IN THAT
11 CONTAINER AND THEN WHAT DID YOU DO WITH THAT CONTAINER?

12 A. PLACED IT IN PROPERTY IN EVIDENCE.

13 Q. OKAY. WHAT WAS THE DATE AND TIME THAT YOU PLACED THAT
14 INTO PROPERTY IN EVIDENCE?

15 A. 11/18/2002 AT 4:00 IN THE MORNING, 4:19 IN THE MORNING.

16 Q. OKAY. AND WHAT WAS THE DATE AGAIN?

17 A. 11/18/02.

18 Q. OKAY. WHERE WAS IT BETWEEN NOVEMBER THE 6TH OF 2002
19 AND NOVEMBER THE 18TH OF 2002?

20 A. ON MY SHELF WITH THE OTHER PROPERTY.

21 Q. OKAY. NOW YOUR SHELF, IS THAT A LOCKED AREA?

22 A. YES, SIR.

23 Q. OKAY. AND DID YOU KEEP IT LOCKED UP ON THAT SHELF FOR
24 THAT PERIOD OF TIME?

25 A. THE ROOM ITSELF IS THE LOCKED AREA. ALL OF US HAVE

AUBREY TOMLIN - DIRECT EXAMINATION BY MR. MOYER

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1 SHELVES WITH OUR NAMES ON IT THAT ARE NOT LOCKABLE.

2 Q. OKAY.

3 A. THEY'RE OPEN CONTAINERS.

4 Q. SO IT WAS KEPT IN THAT LOCKED ROOM THEN ---

5 A. YES, SIR.

6 Q. --- FOR THAT TIME? OKAY. NOW AFTER YOU LOCKED THAT --

7 AFTER YOU PUT THAT INTO THE PROPERTY IN EVIDENCE ROOM DID

8 YOU HAVE ANY FURTHER ASSOCIATION WITH THAT EVIDENCE?

9 A. NO, SIR.

10 Q. OKAY.

11 MR. MOYER: I HAVE NO FURTHER QUESTIONS FOR THIS

12 WITNESS.

13 THE COURT: ANY QUESTIONS, MR. SUMNER?

14 MR. SUMNER: NO, SIR.

15 THE COURT: THANK YOU, SIR. YOU CAN STEP DOWN.

16 MR. TOMLIN: THANK YOU, SIR.

17 MR. MOYER: MAY WE APPROACH, YOUR HONOR?

18 THE COURT: SURE.

19 (WHEREUPON A BENCH CONFERENCE WAS HELD OFF THE RECORD

20 IN THE PRESENCE OF THE JURY, BUT OUT OF THEIR HEARING)

21 THE COURT: ALL RIGHT. WE'LL GIVE THE JURY A RECESS

22 BEFORE WE TAKE THE NEXT WITNESS. TAKE THE JURY OUT PLEASE.

23 (WHEREUPON THE JURY EXITED THE COURTROOM AT 3:31 PM)

24 THE COURT: ALL RIGHT. WE'LL TAKE A SHORT RECESS.

25 MR. SUMNER: YES, SIR.

CHRIS BRYAN - DIRECT EXAMINATION BY MR. MOYER

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1 (WHEREUPON COURT WAS IN RECESS)

2 THE COURT: OKAY. BRING OUR JURY PLEASE.

3 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 3:45 PM)

4 THE COURT: OKAY.

5 MR. MOYER: I CALL CHRIS BRYAN.

6 CHRIS BRYAN, BEING DULY

7 SWORN TESTIFIED AS FOLLOWS:

8 DIRECT EXAMINATION BY MR. MOYER:

9 Q. ALL RIGHT, SIR, WHERE DO YOU WORK?

10 A. GREENVILLE COUNTY CORONER'S OFFICE.

11 Q. WHAT IS YOUR POSITION WITH THE CORONER'S OFFICE?

12 A. DEPUTY CORONER.

13 Q. WHAT DO YOU DO AT THE CORONER'S OFFICE?

14 A. I'M A MEDICAL DEATH INVESTIGATOR. I RESPOND TO SCENES
15 OF SUSPICIOUS OR UNNATURAL DEATHS. AND I INVESTIGATE THOSE
16 TO DETERMINE THE MANNER OF DEATH.

17 Q. OKAY. NOW HOW LONG HAVE YOU BEEN WORKING FOR THE
18 CORONER'S OFFICE?

19 A. ONE YEAR AND THREE MONTHS.

20 Q. WHERE WERE YOU WORKING ON NOVEMBER THE 5TH OF 2002?

21 A. GREENVILLE COUNTY FORENSICS DIVISION AS A CRIME SCENE
22 TECHNICIAN.

23 Q. OKAY. WHAT WAS YOUR POSITION WITH THE GREENVILLE
24 COUNTY FORENSICS?

25 A. AS A CRIME SCENE TECHNICIAN.

CHRIS BRYAN - DIRECT EXAMINATION BY MR. MOYER

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1 Q. HOW LONG BY THAT DATE IN NOVEMBER OF 2002 HAD YOU
2 WORKED FOR FORENSICS?

3 A. AT THAT DATE THREE YEARS AND ABOUT EIGHT MONTHS, SEVEN
4 OR EIGHT MONTHS.

5 Q. HOW LONG HAD YOU BEEN IN LAW ENFORCEMENT UP UNTIL THAT
6 POINT?

7 A. UP UNTIL THAT POINT PROBABLY ABOUT TEN, ELEVEN YEARS.

8 Q. WHERE ALL HAD YOU WORKED OTHER THAN GREENVILLE COUNTY?

9 A. PRIOR TO GREENVILLE COUNTY I WORKED FOR GREENWOOD
10 POLICE DEPARTMENT FOR ABOUT SEVEN YEARS. AND PRIOR TO THAT
11 I WAS A MILITARY POLICEMAN IN THE UNITED STATES ARMY.

12 Q. OKAY. NOW WHAT -- AS A FORENSICS OFFICER WHAT SORT OF
13 -- WHAT WERE YOUR DUTIES?

14 A. MY DUTIES AS A CRIME SCENE TECHNICIAN OR A FORENSICS
15 OFFICER IS PRETTY MUCH SYNONYMOUS WITH THE NAME, RESPOND TO
16 CRIME SCENES, GATHER AND COLLECT EVIDENCE, PROCESS THE CRIME
17 SCENE TO DETERMINE -- TRYING TO DETERMINE EXACTLY WHAT
18 OCCURRED, TO RECONSTRUCT THE CRIME SCENE, INTERPRET ANY
19 EVIDENCE THAT'S PRESENT, TRY AND DETERMINE AND FIGURE OUT
20 EXACTLY WHAT HAPPENED, AND FIGURE DIFFERENT SCENARIOS OF HOW
21 THE SCENE COULD HAVE OCCURRED, HOW THE CRIME COULD HAVE
22 OCCURRED.

23 Q. NOW WERE YOU CALLED OUT TO THE CRIME SCENE ON NOVEMBER
24 THE 5TH OF 2002 AT THE SUPER 8 MOTEL?

25 A. THAT IS CORRECT, I WAS.

CHRIS BRYAN - DIRECT EXAMINATION BY MR. MOYER

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1 Q. WHEN WAS IT THAT YOU RECEIVED THAT CALL?

2 A. I'LL REFER TO MY NOTES FROM THAT DATE. I'LL RESPOND --

3 WE RECEIVED THE CALL AT 6:33 PM.

4 Q. AND YOU -- WHAT TIME DID YOU ARRIVE THERE ON THE SCENE?

5 A. I ARRIVED ON THE SCENE AT 6:45 PM.

6 Q. AND HOW LONG DID YOU STAY THERE?

7 A. I STAYED AT THAT SCENE UNTIL 10:11 PM.

8 Q. WHAT WERE THE CONDITIONS AS YOU NOTED OUT THERE AT THE

9 SUPER 8 MOTEL WHEN YOU -- WHILE YOU WERE OUT THERE NOVEMBER

10 THE 5TH OF 2002?

11 A. AS I NOTED IN MY REPORT, IT WAS RAINING. IT WAS A

12 FAIRLY HEAVY RAIN. AND THE TEMPERATURE WAS FORTY-NINE

13 DEGREES FAHRENHEIT.

14 Q. NOW WHEN YOU ARRIVED -- BY THE TIME YOU ARRIVED WAS THE

15 VICTIM STILL THERE?

16 A. UPON MY ARRIVAL THE VICTIM HAD BEEN TAKEN TO THE

17 HOSPITAL BY EMS.

18 Q. WERE THERE POLICE OFFICERS THERE?

19 A. YES, THERE WAS.

20 Q. AND INVESTIGATORS?

21 A. YES, THERE WERE.

22 Q. WAS CRIME SCENE TAPE UP AND IN PLACE?

23 A. I DO -- IF I RECALL CORRECTLY THERE WAS TAPE UP.

24 Q. DID YOU SPEAK TO THE OFFICERS UPON YOUR ARRIVAL AT THE

25 SCENE?

CHRIS BRYAN - DIRECT EXAMINATION BY MR. MOYER

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1 A. THAT IS CORRECT. I MET WITH THE INVESTIGATING OFFICERS
2 AND DETECTIVES UPON MY ARRIVAL.

3 Q. AND WHAT IS YOUR REASON FOR TALKING TO THE OFFICERS
4 RIGHT AT THAT POINT WHEN YOU INITIALLY ARRIVE?

5 A. WHEN I INITIALLY ARRIVE JUST TO KIND OF GET AN IDEA OF
6 EXACTLY WHAT HAS HAPPENED FROM THEIR INTERPRETATION OF THE
7 SCENE AND WHAT THEY HAVE ALREADY LEARNED FROM WITNESSES OR
8 PEOPLE THAT HAVE NOTIFIED THEM AS TO WHAT HAS OCCURRED. IT
9 GIVES ME AN IDEA OF EXACTLY WHAT TYPE OF CASE I'M GETTING
10 READY TO WORK, TO GIVE ME AN IDEA OF EXACTLY HOW I NEED TO
11 PROCEED.

12 Q. NOW BY THE TIME YOU ARRIVED THERE AND SET ABOUT TO DO
13 YOUR WORK THERE ON THE SCENE HAD YOU BEEN INFORMED THAT THIS
14 WAS A HOMICIDE CASE?

15 A. I INITIALLY HAD BEEN INFORMED THAT IT WAS A SHOOTING
16 INVESTIGATION. AND UPON MY ARRIVAL AND AFTER RECEIVING A
17 BRIEFING AS TO WHAT HAD BEEN TRANSPIRED I WAS LATER ADVISED
18 THAT THE VICTIM IN THIS CASE HAD DIED AND THEREFORE IT
19 TURNED IT INTO A HOMICIDE INVESTIGATION OR A DEATH
20 INVESTIGATION. EXCUSE ME.

21 Q. NOW DESCRIBE THAT LOCATION THAT YOU RESPONDED TO.

22 A. IT WAS THE SUPER 8 MOTEL LOCATED AT 536 WADE HAMPTON
23 BOULEVARD IN THE CITY LIMITS OF GREENVILLE. THE INCIDENT
24 LOCATION IS A TWO STORY MOTEL THAT'S SUCH SITUATED
25 APPROXIMATELY PERPENDICULAR TO THE ROADWAY OF WADE HAMPTON.

CHRIS BRYAN - DIRECT EXAMINATION BY MR. MOYER

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1 AND IT'S RUNNING FOR EXAMPLE THIS WAY AND THE MOTEL SITS
2 BASICALLY LIKE THIS.

3 Q. I THINK YOU'VE TAKEN A LOOK IN THE PAST AT STATE'S
4 EXHIBIT NUMBER 1, THIS PHOTOGRAPH. IS THAT -- DOES STATE'S
5 EXHIBIT NUMBER 1 FAIRLY AND ACCURATELY REPRESENT THE WAY
6 THAT HOTEL LOOKED BACK THEN?

7 A. AS AN AERIAL VIEW THAT DOES ACCURATELY REPRESENT THE
8 SCENE, THE HOTEL.

9 Q. OKAY. AND TO WHAT AREA OF THAT HOTEL WERE YOU DIRECTED
10 WHEN YOU ARRIVED?

11 A. I WAS DIRECTED TO THE -- IF YOU'RE LOOKING AT THE HOTEL
12 FROM THE ROADWAY, THE LEFT SIDE TOWARDS THE BACK CORNER.

13 Q. AND DID YOU INSPECT THE PARKING LOT AT THAT LOCATION AT
14 ALL AS PART OF YOUR -- AS PART OF YOUR WORK THERE AT THAT
15 LOCATION?

16 A. AS PART OF MY INITIAL INVESTIGATION I DID A CRIME SCENE
17 SURVEY WHERE I WALK OVER THE AREA OF THE CRIME SCENE THAT
18 WAS IDENTIFIED TO ME AS TO WHERE THE VICTIM WAS OBSERVED AND
19 FOUND, IDENTIFIED VEHICLES THAT WERE IN THE VICINITY WITHIN
20 THE AREA WHERE THE CRIME SCENE TAPE WAS. WITHIN THAT
21 PROXIMITY I LOCATED SEVERAL AREAS OF INTEREST AND THEREFORE
22 DEVELOPED A PLAN OF ACTION AS TO HOW I WAS GOING TO PROCESS
23 THAT CRIME SCENE.

24 Q. OKAY. NOW DID YOU NOTE -- AS PART OF YOUR CRIME SCENE
25 WORK DID YOU NOTICE ANY AUTOMOBILES?

CHRIS BRYAN - DIRECT EXAMINATION BY MR. MOYER

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1 A. YES. I DO RECALL SEVERAL AUTOMOBILES, BUT TWO IN
2 PARTICULAR THAT WERE WITHIN THE AREA OF THE CRIME SCENE IN
3 QUESTION.

4 Q. DID YOU TAKE PHOTOGRAPHS OF THE SCENE THAT NIGHT?

5 A. YES, I DID.

6 Q. OKAY.

7 MR. MOYER: YOUR HONOR, AT THIS TIME IT'S MY
8 UNDERSTANDING THAT STATE'S EXHIBITS NUMBERS 15 AND 16 WILL
9 BE ADMITTED WITHOUT OBJECTION.

10 MR. SUMNER: THAT'S CORRECT.

11 THE COURT: WITHOUT OBJECTION.

12 Q. LET ME SHOW YOU STATE'S EXHIBIT NUMBER 15. LET ME HAND
13 YOU A LASER POINTER. WOULD YOU PLEASE POINT OUT TO THE JURY
14 -- YOU MENTIONED AN AUTOMOBILE. IS THAT AUTOMOBILE DEPICTED
15 IN STATE'S EXHIBIT NUMBER 15?

16 A. CORRECT. THIS AUTOMOBILE HERE. AND I INDICATED THERE
17 WAS TWO AUTOMOBILES. THIS IS ONE THAT WAS INDICATED TO ME
18 THAT WAS BELIEVED TO BE -- BELONGED TO THE VICTIM.

19 Q. OKAY. I'LL SHOW YOU STATE'S EXHIBIT NUMBER 16. ONCE
20 AGAIN, IS THAT A PHOTOGRAPH OF THAT AREA?

21 A. CORRECT. THAT IS THE BACK LOOKING AT THE VEHICLE FROM
22 THE REAR TO IDENTIFY THE LICENSE PLATE OF THE VEHICLE TO
23 IDENTIFY IT AS WELL AS LOCATING A PROXIMITY SHOT OF WHERE IT
24 WAS IN RELATIONSHIP TO OTHER PARTS OF THE CRIME SCENE.

25 Q. OKAY. I THINK THERE'S A BIT OF A GLARE, BUT BY TAKING

CHRIS BRYAN - DIRECT EXAMINATION BY MR. MOYER

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1 A CLOSER LOOK AT IT I BELIEVE THE LICENSE PLATE NUMBER IS
2 NOTICEABLE ON THAT PHOTOGRAPH, IS IT NOT?

3 A. THAT IS CORRECT.

4 Q. OKAY. NOW DID YOU FIND -- WERE YOU LOOKING FOR SHELL
5 CASINGS DURING YOUR SURVEY OF THAT PARKING LOT AREA?

6 A. I WAS LOOKING FOR ANYTHING THAT APPEARED TO HAVE BEEN
7 IN RELATIONSHIP TO THIS INCIDENT, ANYTHING OF SIGNIFICANCE
8 THAT WAS FELT TO HAVE BEEN -- HAVE SOMETHING TO DO WITH THAT
9 CRIME SCENE. PRETTY MUCH ANYTHING WITHIN THAT AREA WAS
10 EXAMINED CLOSELY TO DETERMINE IF IT PLAYED A PART IN THIS OR
11 IF IT DIDN'T PLAY A PART IN IT.

12 Q. AND THAT WOULD INCLUDE SHELL CASINGS?

13 A. AND THAT WOULD INCLUDE SHELL CASINGS.

14 Q. DID YOU FIND ANYTHING?

15 A. AT THAT PARTICULAR TIME IN THAT PARTICULAR AREA, NO, I
16 DID NOT.

17 Q. OKAY. WERE THERE OTHER OFFICERS LOOKING AS WELL?

18 A. YES, THERE WERE OTHER OFFICERS.

19 Q. OKAY. DID ANYONE ELSE FIND ANY SHELL CASINGS OUT THERE
20 IN THAT PARKING LOT?

21 A. NOT THAT WERE IDENTIFIED TO ME, NO, SIR.

22 Q. OKAY. NOW DID YOUR PROCESSING OF THE SCENE ALSO
23 INCLUDE AN EXAMINATION OF ANY PARTS OF THE HOTEL?

24 A. YES. WHEN I WAS EXAMINING -- DOING A CRIME SCENE

25 SURVEY I OBSERVED ONE OF THE HOTEL ROOMS IDENTIFIED WITH A

CHRIS BRYAN - DIRECT EXAMINATION BY MR. MOYER

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1 NUMBER 121, ROOM NUMBER 121. FROM THAT ROOM THERE WERE WHAT
2 APPEARED TO BE PROJECTILE HOLES IN A WINDOW FOR THAT
3 PARTICULAR ROOM.

4 Q. OKAY.

5 MR. MOYER: YOUR HONOR, AT THIS TIME STATE'S EXHIBITS
6 NUMBERS 17, 18, 19 AND 20, THE STATE WOULD MOVE TO HAVE
7 THOSE ADMITTED INTO EVIDENCE.

8 MR. SUMNER: WITHOUT ---

9 THE COURT: THOSE ARE ---

10 MR. SUMNER: --- OBJECTION.

11 THE COURT: --- WITHOUT OBJECTION? ALL RIGHT. WITHOUT
12 OBJECTION.

13 MR. SUMNER: AND, YOUR HONOR, IF IT'LL SAVE TIME, THERE
14 IS A SERIES OF PHOTOGRAPHS THAT MR. MOYER SHOWED ME DURING
15 THE BREAK. AND I DON'T HAVE AN OBJECTION TO ANY OF THEM.

16 THE COURT: THANK YOU. WITHOUT OBJECTION THEY'RE ALL
17 IN.

18 MR. MOYER: THAT WOULD BE EXHIBITS UP TO NUMBER 42.

19 MR. SUMNER: YES, SIR.

20 Q. LET ME SHOW YOU EXHIBIT NUMBER 17. AND IS THE HOTEL
21 ROOM THAT YOU JUST MENTIONED -- CAN THAT BE SEEN IN THAT
22 PHOTOGRAPH?

23 A. THIS IS THE DOORWAY TO THE -- THE DOOR IS OPEN TO THAT
24 ROOM, WHICH IS IDENTIFIED AS ROOM NUMBER 121.

25 Q. OKAY. DID YOU TAKE A CLOSE-UP PICTURE OF THE ROOM

CHRIS BRYAN - DIRECT EXAMINATION BY MR. MOYER

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1 NUMBER?

2 A. I -- YES, I DID.

3 Q. IS THAT WHAT'S DEPICTED IN STATE'S EXHIBIT NUMBER 18?

4 A. THAT IS CORRECT.

5 Q. NOW GOING BACK TO STATE'S EXHIBIT NUMBER 17, CAN YOU

6 TELL BY LOOKING AT THAT PHOTOGRAPH WHERE THE TWO HOLES IN

7 THE WINDOW WERE?

8 A. AT THIS DISTANCE YOU MAY NOT BE ABLE -- AT A CLOSE UP

9 DISTANCE THE PROJECTILE HOLES WERE IN THAT SECOND WINDOW

10 PANE AS INDICATED. THERE'S TWO WINDOWS HERE. AND IT WAS IN

11 THIS WINDOW HERE. THERE WERE WHAT APPEARED TO BE TWO

12 PROJECTILE HOLES WITHIN THAT WINDOW'S PANE ITSELF.

13 Q. OKAY. AND YOU TOOK CLOSER UP PHOTOGRAPHS OF THOSE

14 HOLES?

15 A. YES, I DID.

16 Q. I'LL SHOW YOU STATE'S EXHIBIT NUMBER 19. IS THAT A

17 CLOSE-UP PICTURE OF THAT WINDOW THAT YOU JUST TALKED ABOUT?

18 A. THAT IS CORRECT. THE ONE WITH THE CURTAIN IS THE ONE

19 THAT'S ON THE LEFT SIDE PANE OF THIS DOUBLE WINDOW. AND YOU

20 CAN SEE WHAT APPEARS TO BE TWO PROJECTILE HOLES THERE.

21 Q. OKAY. THE SAME AS STATE'S EXHIBIT NUMBER 1?

22 A. THIS IS AN EVEN CLOSER VIEW WITH -- WAS IDENTIFIED AS

23 SCALE TAPE. THIS TAPE GIVES -- IT HAS INCH AND ALSO

24 CENTIMETER MARKINGS ON IT TO GET AN IDEA OF RELATIVE SIZE OF

25 THE ACTUAL PROJECTILE HOLES THEMSELVES.

CHRIS BRYAN - DIRECT EXAMINATION BY MR. MOYER

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1 Q. I'M GOING TO BACK UP TO STATE'S EXHIBIT NUMBER 15 THAT
2 WE PUT IN EVIDENCE EARLIER. ONCE AGAIN, JUST SO WE CAN BE
3 CLEAR, CAN YOU POINT OUT THE HOTEL ROOM THAT YOU'RE TALKING
4 ABOUT ON THAT EVEN FARTHER AWAY SHOT?

5 A. THIS IS THE HOTEL ROOM, THE ROOM 121 WITH THE DOOR
6 OPEN. AND THIS IS THE WINDOWS THAT WE LOOKED AT IN THE
7 OTHER PHOTOGRAPH, THE TWO WINDOWS.

8 Q. THROUGH THE COURSE OF YOUR EXAMINATION WERE YOU GIVEN
9 THE INDICATION OF WHERE THE VICTIM HAD BEEN?

10 A. IT WAS EXPLAINED TO ME THAT UPON THE ARRIVAL OF THE
11 INITIAL OFFICERS AND THE PARAMEDICS THAT THE VICTIM WAS
12 FOUND IN FRONT OF THIS EXPEDITION LAYING ON THE GROUND, THE
13 PAVEMENT.

14 Q. ALL RIGHT. NOW HAVING FOUND THOSE HOLES IN THAT WINDOW
15 DID YOU ELECT TO GO IN THE ROOM?

16 A. YES, I DID.

17 Q. WAS IT OCCUPIED?

18 A. AFTER GAINING CONSENT FROM THE HOTEL CLERK, I -- IT WAS
19 NOT OCCUPIED, NO.

20 Q. OKAY. SO THERE WAS -- ANY INDICATION AFTER YOU WERE IN
21 THE ROOM THAT ANYONE HAD BEEN STAYING -- WAS CHECKED INTO
22 THAT ROOM?

23 A. THERE WAS -- ACCORDING TO THE INFORMATION THAT I
24 RECEIVED FROM THE HOTEL NO ONE HAD RENTED THAT ROOM.
25 THEREFORE, IT WAS UNOCCUPIED AT THE TIME OF THE INCIDENT.

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1 Q. IS THAT THE WAY IT LOOKED TOO?

2 A. THAT'S THE WAY IT APPEARED, YES, SIR.

3 Q. OKAY. ALL RIGHT. NOW ONCE INSIDE THE ROOM WHAT WAS
4 YOUR COURSE OF ACTION UPON ENTRY INTO THAT ROOM?

5 A. UPON ENTRY INTO THAT ROOM I ALSO DID ANOTHER CRIME
6 SCENE SURVEY, EXAMINED ALL PARTS OF THE ROOM, ALL WALLS, ANY
7 FURNITURE IN THE ROOM, MADE A THOROUGH EXAMINATION OF
8 EVERYTHING, AND JUST BASICALLY DID A SURVEY OF THE ENTIRE
9 ROOM TO SEE IF THERE WAS ANY EVIDENCE OR ANY ITEMS OF
10 INTEREST WITHIN THAT ROOM THAT I NEEDED TO EXAMINE CLOSER.

11 Q. OKAY. AND DID YOU END UP COLLECTING ANY EVIDENCE FROM
12 THAT ROOM?

13 A. YES, I DID.

14 Q. LET ME SHOW YOU STATE'S EXHIBIT NUMBER 21. IS THAT A
15 PHOTOGRAPH OF THE INSIDE OF THAT ROOM?

16 A. YES, THAT IS.

17 Q. NOW DID YOU FIND ANYTHING OF PARTICULAR NOTE THAT YOU
18 COLLECTED AS EVIDENCE THAT WOULD BE IN VIEW OF THIS EXHIBIT?

19 A. ON THE FLOOR DIRECTLY BENEATH THIS WINDOW THERE WAS, IF
20 I RECALL, SOME ITEMS OF INTEREST THERE. THERE WAS A
21 PROJECTILE THAT HAD WHAT APPEARED TO BE A FABRIC EMBEDDED
22 INTO IT ON THE FLOOR. AND THERE MAY HAVE BEEN A -- I THINK
23 THERE WAS ALSO A FRAGMENT, POSSIBLE FRAGMENT THAT WAS ALSO
24 FOUND ON THE FLOOR BENEATH THAT WINDOW.

25 Q. NOW DID THE CURTAIN ITSELF AS DEPICTED IN THAT EXHIBIT,

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1 IN THAT PHOTOGRAPH, DID THE CURTAIN -- WAS THERE ANYTHING
2 ABOUT THE CURTAIN THAT YOU TOOK NOTE OF?

3 A. I OBSERVED -- WHEN I OBSERVED THE CURTAIN AND TOOK A
4 CLOSER LOOK AT IT THERE WAS WHAT APPEARED TO BE HOLES IN
5 THAT THAT WOULD LEAD ONE TO DRAW THE CONCLUSION THAT WHEN
6 THE PROJECTILES ENTERED THE WINDOW THEY ALSO PENETRATED THE
7 CURTAIN.

8 Q. DID THEY CORRESPOND TO THOSE TWO HOLES?

9 A. THEY WERE CONSISTENT HAVING COME THROUGH THE WINDOW AND
10 THROUGH THE CURTAIN.

11 Q. OKAY. SO THE HOLE IN THE CURTAIN AND THE HOLES IN THE
12 WINDOWS CORRESPONDED TO ONE ANOTHER?

13 A. THAT IS CORRECT.

14 Q. LET ME SHOW YOU STATE'S EXHIBIT NUMBER 22. AND ON THAT
15 EXHIBIT CAN YOU -- ARE THE HOLES VISIBLE?

16 A. YOU CAN SEE ONE. I BELIEVE IT'S THERE. AND I BELIEVE
17 THERE'S ANOTHER ONE IN THIS AREA HERE.

18 Q. NOW SHOWING YOU STATE'S EXHIBIT NUMBER 23, WHAT IS --
19 WHAT AREA OF THE ROOM IS DEPICTED IN STATE'S EXHIBIT NUMBER
20 23?

21 A. THIS MORE CLEARLY SHOWS THE AREA BENEATH THE WINDOW.
22 YOU CAN SEE THE OUTLINE OF WHERE THE TABLE WAS IN THE PRIOR
23 PICTURE. THOSE -- THE TABLE AND CHAIRS HAD BEEN REMOVED.
24 THIS IS THE BOTTOM OF THE CURTAIN THAT WAS COVERING THE
25 WINDOW. AND THIS IS DIRECTLY ON THE FLOOR BENEATH THAT

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1 WINDOW.

2 Q. OKAY. AND I NOTICE THERE'S SOME MARKERS ON THE FLOOR.

3 WHAT ARE INDICATED BY THOSE MARKERS?

4 A. THOSE ARE EVIDENCE MARKERS IDENTIFYING ITEMS INDICATED

5 THAT I COLLECTED OF ITEMS NUMBER ONE AND TWO THAT WERE

6 COLLECTED.

7 Q. OKAY. LET ME SHOW YOU STATE'S EXHIBIT NUMBER 24. AND

8 I'M NOT SURE IF THERE'S A GLARE OR NOT, BUT ARE YOU ABLE TO

9 TELL WHAT IT IS THAT'S DEPICTED IN STATE'S EXHIBIT 24?

10 A. THAT IS A PHOTOGRAPH OF AN ITEM IDENTIFIED AS CB-1 IN

11 MY PROPERTY SHEET. THAT WAS A PROJECTILE JACKET WITH FABRIC

12 EMBEDDED INSIDE THAT WAS COLLECTED AS EVIDENCE.

13 Q. OKAY. AND DOES THAT CORRESPOND LOOKING BACK AT THE

14 PREVIOUS EXHIBIT, NUMBER 23, IS THAT THE NUMBER ONE THAT WE

15 SEE ON THE FLOOR THERE?

16 A. THAT IS CORRECT.

17 Q. OKAY. AND STATE'S EXHIBIT NUMBER 25, DOES THAT

18 CORRESPOND TO EVIDENCE MARKER NUMBER TWO THAT IS IN THE

19 PREVIOUS EXHIBIT?

20 A. THAT IS CORRECT.

21 Q. ONCE AGAIN FOR THE JURY'S BENEFIT, WHAT IS SHOWN IN

22 EXHIBIT NUMBER 2?

23 A. THERE IS A VERY SMALL FRAGMENT OF A PROJECTILE THAT'S

24 RIGHT IN THE VICINITY OF THE "L" SHAPED SCALE, AGAIN, TO

25 SHOW RELATIVE SIZE, GIVE AN INDICATION OF THE SIZE OF THE

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1 ACTUAL FRAGMENT ITSELF. IT'S VERY SMALL.

2 Q. OKAY. AND YOU COLLECTED THOSE TWO ITEMS OF EVIDENCE?

3 A. THAT IS CORRECT.

4 Q. NOW DID YOU CONTINUE SEARCHING THE ROOM -- WELL, LET ME
5 BACK UP. THOSE TWO ITEMS THAT YOU FOUND DID THEY CORRESPOND
6 IN ANY WAY WITH THE HOLES IN THE CURTAIN?

7 A. THEY WERE DIRECTLY -- DIRECTLY BENEATH THE CURTAIN
8 ITSELF. AND IT ALLUDED TO THAT ON ONE OF THE PHOTOGRAPHS --
9 SHOWED THE CURTAIN ON THE WINDOW BENEATH WHERE THE ONE AND
10 TWO EVIDENCE MARKERS WERE SEEN. THEY WERE DIRECTLY BENEATH
11 THAT.

12 Q. OKAY. AND CAN YOU GIVE US ANY FURTHER DESCRIPTION OF
13 THAT PROJECTILE ITSELF THAT WAS FOUND ON THE FLOOR?

14 A. ONE OF THE PROJECTILES APPEARED TO BE THE JACKET THAT
15 COMMONLY IS AROUND A FULL METAL JACKET BULLET THAT YOU WOULD
16 FIND IN A -- EITHER A PISTOL AMMUNITION OR A RIFLE
17 AMMUNITION. IT HAS A JACKET AROUND IT TO HELP IT STAY
18 TOGETHER BETTER. AND WHAT THAT APPEARED TO BE WAS THE
19 JACKET FROM ONE OF THOSE TYPES OF PROJECTILES, TYPES OF
20 AMMUNITION ROUNDS THAT HAD COME APART FROM THE LEAD CORE
21 ITSELF.

22 AND IT APPEARED AS IT CAME THROUGH THE GLASS AND
23 THROUGH THE WINDOW, WHICH WOULD BE THROUGH THE WINDOW AND
24 THROUGH THE FABRIC OF THE CURTAIN, IT CARRIED WITH IT SOME
25 OF THAT CURTAIN. AND THE FABRIC FROM THE CURTAIN, THE

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1 COLORS WERE SIMILAR. THEY APPEARED TO BE FROM THE SAME
2 PIECE OF FABRIC, WHICH WAS EMBEDDED WITHIN THAT PROJECTILE
3 JACKET.

4 Q. OKAY. SO THEN IT WASN'T A COMPLETE BULLET THEN?

5 A. IT WAS JUST A -- IT APPEARED TO BE JUST THE JACKET
6 ITSELF. THE LEAD -- IT APPEARED -- FROM WHAT I RECALL THE
7 LEAD CORE WAS NOT THERE.

8 Q. OKAY. WELL, DID YOU CONTINUE YOUR SEARCH IN THE ROOM
9 FOR THE LEAD CORE?

10 A. CORRECT. I CONTINUED MY CRIME SCENE SURVEY. I LOOKED
11 ALONG ONE OF THE WALLS. I BELIEVE IT WAS THE WEST WALL OF
12 THAT ROOM. THERE WAS -- CLOSE TO THE CEILING THERE WAS WHAT
13 APPEARED TO BE A PROJECTILE HOLE IN THE TOP PART OF THAT
14 WALL. AND IT WAS INCONSISTENT WITH ANYTHING ELSE IN THE
15 ROOM 'CAUSE THERE WERE NO OTHER HOLES THAT APPEARED TO BE IN
16 THE REST OF THE ROOM. AND I FELT THAT WAS A PROJECTILE HOLE
17 THAT WOULD HAVE BEEN ALONG THE SAME PROJECTORY AS THE ENTRY
18 THROUGH THE WINDOW AND THE CURTAIN.

19 Q. OKAY. NOW DID YOU -- YOU TOOK PHOTOGRAPHS OF THAT AS
20 WELL?

21 A. YES, I DID.

22 Q. LET ME SHOW YOU STATE'S EXHIBIT NUMBER 27 AND ASK YOU
23 CAN YOU DESCRIBE TO THE JURY WHAT IT IS THAT IS DEPICTED IN
24 THAT EXHIBIT?

25 A. THAT'S EVIDENCE MARKER NUMBER THREE, WHICH I HAVE TAPED

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1 TO THE WALL, AGAIN, TO GIVE RELATIVE SIZE AND IDENTIFY THE
2 ITEMS OF EVIDENCE TO BE COLLECTED. AND RIGHT IN THE RIGHT
3 ANGLE AREA OF THE EVIDENCE MARKER IS A HOLE IN THE WALL.

4 Q. OKAY. NOW TO GIVE IT A LITTLE PERSPECTIVE LET'S MOVE
5 BACK TO STATE'S EXHIBIT NUMBER 26. AND CAN YOU GIVE THE
6 JURY SOME PERSPECTIVE OF THE ROOM AS TO WHERE THAT -- WHERE
7 YOU LOCATED THAT HOLE?

8 A. IF YOU RECALL THE PREVIOUS PICTURES SHOW THE TOP OF AN
9 OBJECT ON A WALL. THE OBJECT ON THE WALL WAS THIS MIRROR.
10 THERE WAS A SOLID WOOD BORDER ABOVE THIS. AND RIGHT ABOUT
11 THIS PART OF THE WALL IS WHERE THAT PROJECTILE HOLE IS.

12 Q. WOULD YOU POINT THAT OUT?

13 A. RIGHT AT THIS AREA. THIS IS THE DOORWAY INTO THE ROOM,
14 THE WINDOW WHERE -- WAS IDENTIFIED BEFORE IS OVER HERE.

15 Q. OKAY. SO GOING BACK TO STATE'S EXHIBIT NUMBER 27 THEN,
16 THE LOWER RIGHT HAND CORNER, IS THAT THE MIRROR WE COULD SEE
17 IN THE PREVIOUS ---

18 A. THAT'S THE MIRROR YOU SEE IN THE PREVIOUS PHOTOGRAPH.

19 Q. NOW FINDING THAT HOLE THERE NEAR THE CEILING WHAT --
20 DID YOU TAKE ANY ACTION TO TRY TO DETERMINE WHETHER IT WAS,
21 IN FACT, A PROJECTILE HOLE?

22 A. IT APPEARED TO ME TO BE ONE. AND WHAT I DID IN THAT
23 CASE AFTER PHOTOGRAPHING IT I MARKED BOTH THE LOCATION
24 AROUND THE HOLE AND THEN CUT THAT SECTION OF WALL OUT.
25 GIVING AN INDICATION ON THE ACTUAL ITEM OF EVIDENCE THAT IT

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1 HAD TO BE -- TO GIVE AN IDEA OF WHERE IT CAME FROM THEN I
2 REMOVED THAT PIECE OF WALL, AND YOU COULD SEE WHAT APPEARED
3 TO BE A DIVOT BEHIND THAT WALL.

4 Q. OKAY. SO DID IT LOOK LIKE WHATEVER HAD MADE THAT HOLE
5 CONTINUED ON THROUGH?

6 A. CONTINUED ON THROUGH. IT PENETRATED THAT SECTION OF
7 THE SHEETROCK OR THAT PART OF THE WALL AND THEN MADE A DIVOT
8 INTO THE WALL ON THE OPPOSITE SIDE IN THAT LITTLE CAVITY
9 AREA.

10 Q. SO THE OPPOSITE WALL THEN? DIDN'T GO THROUGH THE NEXT
11 WALL?

12 A. DID NOT PENETRATE THE NEXT WALL. I HAD SOMEONE CHECK
13 THE NEXT ROOM, THE ADJACENT ROOM, TO ROOM 121 TO CHECK AND
14 VERIFY IF THAT PROJECTILE HAD PENETRATED INTO THE NEXT ROOM.
15 IT HAD NOT. SO IT APPARENTLY -- I CONCLUDED THAT IF IT --
16 THAT ONCE IT STRUCK THAT WALL IT MADE A DIVOT AND THEN IT
17 DROPPED STRAIGHT DOWN.

18 Q. WELL, DID YOU TAKE -- AT THAT POINT DID YOU TAKE ANY
19 ACTION TO TRY TO LOCATE WHATEVER MADE THAT HOLE?

20 A. AT THAT POINT WHAT I DID IS FOLLOWED THAT -- LOCATED
21 THE STUDS IN THE WALL AND FOLLOWED IT DOWN AND THEN MADE A
22 CUTOUT AT THE BOTTOM OF THE WALL NEAR THE FLOOR. AND IN
23 THERE -- WE REACHED IN THERE, THE TECHNICIAN THAT WAS
24 ASSISTING ME, WE REACHED IN THERE AND RECOVERED A
25 PROJECTILE.

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1 Q. OKAY.

2 A. A LEAD CORE.

3 Q. LET ME SHOW YOU STATE'S EXHIBITS 28 AND 29. EXHIBIT
4 NUMBER 28, WHAT DOES THAT SHOW?

5 A. THAT DEPICTS AFTER THE ITEM THAT WAS IDENTIFIED AS ITEM
6 THREE HAS BEEN REMOVED FROM THE WALL. THAT'S A SECTION OF
7 WALL THAT WE CUT OUT. ONCE WE CUT THAT OUT, LIKE I SAID,
8 THAT WAS WHAT WAS COLLECTED AND IDENTIFIED AS ITEM NUMBER
9 THREE.

10 Q. OKAY. STATE'S EXHIBIT NUMBER 29.

11 A. AND THAT IS DIRECTLY BENEATH THAT OPENING THAT WAS CUT
12 WITHIN THE STUDS OF THE WALL DIRECTLY BENEATH THAT AT THE
13 FLOOR LEVEL WHERE WE WERE TRYING TO RECOVER THE PROJECTILE
14 ITSELF.

15 Q. NOW THAT HOLE THAT WE CAN SEE IN THAT PHOTOGRAPH, IS
16 THAT THE HOLE OUT OF WHICH YOU WERE ABLE TO RECOVER A PIECE
17 OF EVIDENCE?

18 A. THAT IS CORRECT.

19 Q. AND TELL US AGAIN WHAT IT WAS THAT YOU RECOVERED OR ---

20 A. WHAT WAS RECOVERED FROM THERE WAS A LEAD CORE OF WHAT
21 APPEARED TO BE A PROJECTILE, LEAD CORE WHAT WAS CONCLUDED TO
22 HAVE COME FROM -- OUT OF THE LEAD JACKET -- THE METAL JACKET
23 THAT CAME THROUGH THE WINDOW THAT WOULD HAVE BEEN -- COME
24 FROM AN AMMUNITION FROM A -- PROBABLY MOST LIKELY A RIFLE.

25 Q. OKAY. SO THE CORE THAT YOU FOUND THEN DOWN IN THAT

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1 HOLE, WAS THERE A METAL JACKET WITH IT?

2 A. I DON'T RECALL. I DON'T -- ALL I REMEMBER RECOVERING
3 IS A PROJECTILE. AND I WOULD HAVE TO ACTUALLY VIEW THE ITEM
4 OF EVIDENCE TO -- THAT'S MARKED AS THAT.

5 Q. OKAY. BUT DID YOU COLLECT THOSE ITEMS AND ---

6 A. YES.

7 Q. WHAT DID YOU END UP DOING WITH THEM?

8 A. ONCE I COLLECTED THOSE ITEMS THEY WERE TURNED INTO
9 PROPERTY IN EVIDENCE.

10 Q. OKAY. AND I'LL GET TO THAT IN A MINUTE. WERE THEY
11 CONSISTENT WITH HAVING BEEN -- THE LEAD JACKET THAT YOU

12 FOUND BY THE CURTAIN AND THE CORE THAT YOU FOUND IN THE
13 WALL, WERE THEY CONSISTENT AS ---

14 A. THEY APPEARED TO BE CONSISTENT, COMING FROM THE SAME,
15 IT APPEARED.

16 Q. NOW LET ME ASK YOU THIS. WHILE YOU WERE STILL OUT
17 THERE ON THE SCENE DID YOU TAKE MEASUREMENTS OF THE SCENE?

18 A. YES, I DID.

19 Q. DID YOU TAKE MEASUREMENTS IN THE ROOM?

20 A. TOOK MEASUREMENTS IN THE ROOM. YES, I DID.

21 Q. AND MEASUREMENTS -- DID YOU TAKE MEASUREMENTS OUTSIDE
22 THE ROOM?

23 A. YES, I DID.

24 Q. AND DID YOU USE ALL THE INFORMATION THAT YOU GLEANED
25 FROM THIS TO PREPARE ANY DIAGRAMS?

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1 A. YES, I DID.

2 Q. LET ME SHOW YOU STATE'S EXHIBIT NUMBER 31. IS THIS ONE
3 OF THE DIAGRAMS THAT YOU PREPARED?

4 A. YES, IT IS.

5 Q. OKAY. AND WHEN YOU PREPARED IT INITIALLY DID IT HAVE
6 MORE ---

7 A. THERE WERE MORE THINGS ON -- MORE ITEMS ON THERE THAN
8 WHAT I -- THAN WHAT'S DISPLAYED HERE.

9 Q. YOU HAD NOTES, AND MEASUREMENTS, AND THINGS LIKE THAT?

10 A. I HAD MEASUREMENTS, ITEMS OF EVIDENCE INDICATING WHERE
11 THOSE ITEMS OF EVIDENCE WERE.

12 Q. OKAY. TAKING A LOOK NOW AT THAT DIAGRAM WHAT DOES THAT
13 ARROW INDICATE?

14 A. THIS IS THE BULLET, THE SUSPECTED PATH THAT THE
15 PROJECTILE TOOK AS IT CAME THROUGH THE WINDOW TO THE
16 LOCATION IN THE WALL WHERE IT STRUCK THE WALL. IT'S THE
17 BELIEVED PATH OF THAT PROJECTILE THAT WAS RECOVERED.

18 Q. LOOKING AT THE TOP LEFT HAND PART OF THAT EXHIBIT IT
19 APPEARS TO BE TWO SMALL HOLES, ALMOST LIKE A BULLS EYE. IS
20 THAT -- WHAT IS THAT AREA?

21 A. THOSE TWO -- THOSE ARE THE CRIME SCENE PROGRAMS WAY OF
22 DEPICTING A BULLET HOLE.

23 Q. OKAY. IN THAT WINDOW?

24 A. A PROJECTILE HOLE -- IN THAT WINDOW. THAT'S ACTUALLY
25 IN THE WINDOW.

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1 Q. OKAY. AND SO WHILE YOU WERE THERE ON THE SCENE ALSO
2 DID YOU TAKE ALL THE PHOTOGRAPHS THAT WE'VE BEEN SEEING HERE
3 TODAY?

4 A. YES, I DID.

5 Q. AFTER FINISHING UP WITH THE ROOM THEN DID THAT WRAP UP
6 YOUR PROCESSING OF THE SCENE OUT THERE AT THE SUPER 8 MOTEL
7 FOR THAT NIGHT?

8 A. FOR THAT NIGHT, YES, IT DID.

9 Q. NOW DID YOU GO BACK TO THAT LOCATION AT ANY LATER DATE?

10 A. YES, I DID. ON THE 11TH OF NOVEMBER THAT SAME YEAR I
11 WENT BACK TO THE -- TO THAT LOCATION TO DO A FOLLOW-UP
12 INVESTIGATION.

13 Q. DID YOU GO DURING THE DAY THAT TIME?

14 A. IT WAS DURING THE DAYLIGHT HOURS, YES, SIR.

15 Q. AND THE WEATHER WAS A LITTLE BIT BETTER?

16 A. 1:30 IN THE AFTERNOON.

17 Q. OKAY. AND THE WEATHER WAS A LITTLE BETTER THAN ---

18 A. THE WEATHER WAS A LOT MORE -- A LOT BETTER.

19 Q. NOW DID YOU TAKE ANY ACTION OR ANY EFFORTS ON THAT DATE
20 TO ATTEMPT TO LOCATE ANY FURTHER EVIDENCE?

21 A. YES, WE DID.

22 Q. WHAT EXACTLY DID YOU DO IN FURTHERANCE OF THAT?

23 A. UPON TAKING THE MEASUREMENTS AS ALLUDED TO BEFORE THE
24 MEASUREMENTS OF THE CRIME SCENE AND USING THOSE FROM THE
25 CRIME SCENE DIAGRAM PROGRAM I WAS ABLE TO CONCLUDE WHAT

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1 APPEARED TO BE AN ELEVEN DEGREE ANGLE OF ACCENT, THAT IT
2 APPEARED TO PROJECTILE THAT -- ENTERED THE GLASS AND THEN
3 ENTERED THE WALL IN THE ROOM. IT ENTERED THAT ON AN ELEVEN
4 DEGREE ANGLE OF ACCENT.

5 SO DRAWING FROM THAT, WENT BACK TO THE SCENE AND USED
6 WHAT'S CALLED A TRAJECTORY STRING, WHICH IS A -- BASICALLY
7 IT'S A PIECE OF COTTON STRING. AND THOSE WERE PLACED ON THE
8 AREAS OF LOCATION WHERE THE PROJECTILE STRUCK THE WALL AND
9 THEN IT WAS RUN THROUGH THE PROJECTILE HOLE IN THE WINDOW TO
10 A CERTAIN POINT TIL WE COULD GET AN ELEVEN DEGREE ANGLE.
11 AND ONCE THAT ELEVEN DEGREE ANGLE WAS OBTAINED IT WAS
12 MARKED.

13 Q. OKAY. AND HOW FAR DID YOU TAKE THAT STRING?

14 A. WE TOOK THAT STRING AT THAT ELEVEN DEGREE ANGLE UNTIL
15 IT STRUCK THE PAVEMENT. AND WE FIGURED IT COULDN'T GO ANY
16 FURTHER.

17 Q. OKAY.

18 A. AND FROM THAT POINT WE CONCLUDED THAT THINGS TRAVEL IN
19 A STRAIGHT LINE. SO FROM A STRAIGHT LINE FROM THAT POINT WE
20 CONTINUED THAT STRING INTO A HEAVILY WOODED AREA. AND IN
21 THAT AREA OUR CONCLUSION WAS THAT WE BELIEVED THAT
22 PROJECTILE CAME FROM THAT HEAVILY WOODED AREA. SO ONCE WE
23 -- THEN WE DID A SEVENTY-FIVE TO EIGHTY FOOT SWEEP WITHIN
24 THAT AREA LOOKING FOR ANY KIND OF -- ANYMORE EVIDENCE THAT
25 MAY BE THERE.

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1 Q. OKAY. AND WE'LL GET TO THAT IN JUST A MINUTE. NOW
2 THAT HEAVILY WOODED AREA THAT YOU DESCRIBED, IS THAT -- IF I
3 WOULD, LET ME ASK YOU JUST TO STEP DOWN TO STATE'S EXHIBIT
4 NUMBER 1, THE LARGE AERIAL MAP. AND CAN YOU JUST KIND OF
5 POINT OUT TO THE JURY USING THAT AREA WHERE YOU TOOK THE
6 STRING?

7 A. THE STRING IS IN THIS VICINITY HERE KIND OF IN THE
8 CORNER OF THE BACK PARKING LOT. AND IT'S BASICALLY IN THIS
9 -- YOU HAVE THIS AREA HERE THAT'S THE GRASS. QUITE
10 BASICALLY YOU HAVE GRASS AND NO TREES. AND THIS IS ALONG
11 THE RIM OF A STEEP EMBANKMENT. YOU CAN'T SEE IT VERY WELL
12 HERE, BUT IN ACTUAL, LEVEL GROUND AREA. IT KIND OF GOES A
13 LITTLE WAYS AND THEN DROPS OFF STEEPLY TO KIND OF A
14 RAVINEISH AREA.

15 Q. OKAY. ALL RIGHT. PLEASE HAVE A SEAT. JUST TO CLARIFY
16 WHAT YOU'VE BEEN TALKING ABOUT TAKE A LOOK AT SEVERAL MORE
17 OF THE PHOTOGRAPHS THAT YOU TOOK. FIRST OF ALL, STATE'S
18 EXHIBIT NUMBER 33, CAN YOU EXPLAIN TO THE JURY WHAT IS
19 SHOWN?

20 A. WHAT IS SHOWN THERE, AGAIN, IS THE WINDOW. AND YOU CAN
21 SEE THE TAPE THAT WE HAD EARLIER, IN AN EARLIER PHOTOGRAPH.
22 WHAT YOU SEE IS THE STRING THAT'S COMING, A TRAJECTORY
23 STRING THAT IS COMING THROUGH THE WINDOW. THESE LITTLE TAGS
24 ARE ON THERE TO HELP THE PHOTOGRAPH SO YOU CAN ACTUALLY SEE
25 THE STRING. IT'S A FLOURESCENT STRING, BUT THE LITTLE

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1 MARKERS HELP YOU SEE IT BETTER IN A PHOTOGRAPH.

2 Q. OKAY.

3 A. AND THAT'S ACTUALLY DEPICTING THE TRAJECTORY FROM THE

4 -- WHERE THE PROJECTILE STRUCK THE WALL AND THEN WENT

5 THROUGH THE GLASS OUT INTO THE PARKING LOT.

6 Q. SO YOU ACTUALLY STARTED INSIDE THE ROOM THEN?

7 A. WE BACKTRACKED. WE WENT BACKWARDS. THAT'S CORRECT.

8 Q. YOU STARTED FROM THE HOLE IN THE WALL ---

9 A. FROM THE HOLE IN THE WALL, THROUGH THE HOLE IN THE

10 WINDOW, AND AS FAR AS THE STRING WOULD GO UNTIL IT HIT THE

11 PAVEMENT OUTSIDE.

12 Q. OKAY. AND I THINK THE GLARE MAKES IT A LITTLE HARD TO

13 SEE, BUT WHAT SEEMS TO BE STRING SUSPENDED IN MID AIR OR A

14 CLOTH. THAT'S SOMETHING TIED ONTO THE STRING YOU WERE

15 TALKING ABOUT?

16 A. YES. THERE'S -- IT'S ADHERED OR FASTENED ON THE OTHER

17 END INSIDE THE ROOM WITH TAPE OR SOMEONE'S HOLDING IT, ONE

18 OR THE TWO, TO HOLD IT TIGHT. AND THEN IT'S ALSO TAPED

19 AND/OR HELD ON THE OPPOSITE END AND MAKE IT STRAIGHT AND

20 LEVEL LIKE THAT.

21 Q. LET ME SHOW YOU STATE'S EXHIBIT NUMBER 34. IS THAT A

22 FURTHER PICTURE OF WHAT YOU WERE TALKING ABOUT AT THAT AREA?

23 A. CORRECT. YOU CAN SEE THE STRING AND THE LITTLE MARKERS

24 OF TAPE TO KIND OF GIVE YOU A BETTER IDEA TO FOLLOW ALONG

25 THE LINE UNTIL IT GETS OUT TO A POINT WHERE IT STOPS AT THE

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1 PARKING LOT AND IT CAN'T -- IT'S JUST INTO THE PARKING LOT
2 AREA.

3 Q. OKAY.

4 A. FOLLOWING ALONG THAT ELEVEN DEGREE ANGLE OF ACCENT.

5 Q. AND FINALLY LET ME SHOW YOU STATE'S EXHIBIT 25.

6 A. THIS PHOTOGRAPH DEPICTS ACTUALLY LOOKING AT THE LINE
7 ITSELF. I'M ACTUALLY ON TOP OF THE LINE LOOKING DOWN. AND
8 YOU CAN SEE HOW THE LINE GOES DOWN TO A POINT. AND THEN
9 FROM WHEN IT GETS TO THIS POINT HERE WE JUST CONCLUDED IT
10 KEPT GOING IN A STRAIGHT LINE. SO WE JUST KEPT THE STRING
11 ALONG THIS SAME LINE STRAIGHT INTO THAT HEAVILY WOODED AREA.

12 Q. OKAY. NOW FROM WHAT WE CAN SEE THERE YOU TALKED ABOUT
13 IT DROPPING OFF. DOES IT DROP OFF PRETTY QUICKLY AFTER
14 THOSE INITIAL TREES THAT WE SEE, THAT WOOD LINE?

15 A. ONCE YOU GET INTO THIS AREA HERE THEN IT STARTS TO DROP
16 OFF. THAT IS CORRECT. JUST A FEW FEET WITHIN THAT WOODED
17 AREA THEN IT BEGINS TO DROP OFF.

18 Q. OKAY. SO YOU FOLLOW THAT STRING THEN BACK TO THAT WOOD
19 LINE. DID YOU DO ANYTHING -- DID YOU SEARCH FOR ANYTHING IN
20 THAT AREA IN WHICH THAT STRING ENDED?

21 A. IN ABOUT A SEVENTY-FIVE TO EIGHTY FOOT RADIUS FROM
22 WHERE THAT STRING ENDED USING METAL DETECTORS WE SEARCHED
23 THAT AREA. AND WE CAME UPON TWO CARTRIDGE CASES THAT WERE
24 IDENTIFIED AND THEY WERE HEAD-STAMPED RP 30-06 SPRG.

25 Q. OKAY. AND WHAT WAS IT THAT CAUSED YOU TO LOOK AT THE

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1 SPECIFIC LOCATION THAT YOU DID?

2 A. USING A METAL DETECTOR IT ALERTED TO A METAL OBJECT.

3 AND THEN ONCE WE DUG FURTHER TO SEE WHAT IT WAS THAT'S WHEN
4 WE CAME UPON THE CARTRIDGE CASES.

5 Q. OKAY. WELL, DID YOU LOOK TO EITHER SIDE OF THAT LINE?

6 A. WE LOOKED ON BOTH SIDES. WE LOOKED -- WHEN WE WERE --
7 WE ALSO -- WE DREW THE CONCLUSION THAT IF YOU'RE USING A
8 HIGH POWERED RIFLE OR EVEN USING A PISTOL THE EJECTION PART
9 IS -- IT'S GOING TO EJECT TO THE LEFT, EXCUSE ME, TO THE
10 RIGHT. IF YOU'RE LUCKY IT'S GOING TO EJECT THIS WAY. SO IF
11 SOMEONE IS FIRING A WEAPON, IF IT'S A SEMI-AUTOMATIC OR A
12 BOLT ACTION, WHEN THE NEXT ROUND IS CHAMBERED THE EJECTION
13 IS GOING TO GO AT AN ARCH TO THE RIGHT. SO WE FIGURED IF
14 THAT WAS THE TYPE OF WEAPON USED THEN THIS AREA IN HERE
15 SHOULD BE WHERE WE NEED TO LOOK IF THERE'S GOING TO BE ANY
16 KIND OF CARTRIDGE CASING OR EVIDENCE.

17 Q. OKAY. AND YOU MADE A DIAGRAM OF THAT AS WELL?

18 A. YES, I DID.

19 Q. LET ME SHOW YOU STATE'S EXHIBIT NUMBER 30. IS THAT THE
20 DIAGRAM THAT YOU MADE?

21 A. THAT IS ONE -- YES, THAT IS ONE OF THE DIAGRAMS THAT I
22 MADE.

23 Q. OKAY. AND ONCE AGAIN, DOES THAT SHOW THE LOCATION OF
24 THE STRING THAT YOU PUT OUT ACROSS THAT PARKING LOT?

25 A. THAT IS CORRECT.

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1 Q. OKAY. AND I NOTICE THERE'S A VEHICLE IN YOUR DIAGRAM.

2 WHAT IS THAT BASED ON?

3 A. THAT VEHICLE IS THE LOCATION WHERE THE VEHICLE, THE '99

4 EXPEDITION THAT WAS IDENTIFIED TO ME AS BELIEVED TO BE THE

5 VICTIM'S VEHICLE WAS LOCATED IN THE PARKING LOT FROM MY

6 EARLIER DIAGRAM THAT I'D DRAWN. THAT'S THE LOCATION WHERE

7 IT WAS TO KIND OF GIVE YOU AN IDEA OF RELATIVE LOCATION OF

8 WHERE THE VICTIM MAY HAVE BEEN.

9 Q. OKAY. AND ONCE AGAIN, WERE YOU GIVEN AN INDICATION OF

10 WHERE THE BODY -- WHERE HOMER JOHNSON WAS FOUND?

11 A. I WAS GIVEN AN INDICATION THAT THE VICTIM'S BODY WAS IN

12 THIS VICINITY IN FRONT OF THAT VEHICLE.

13 Q. OKAY. NOW YOU SAY YOU TOOK SOME MEASUREMENTS. FROM

14 THAT AREA -- LET ME BACK UP. YOU MENTIONED ABOUT THE

15 CARTRIDGE CASINGS YOU FOUND. CAN YOU SHOW US ON USING THIS

16 DIAGRAM WHERE THOSE CARTRIDGE CASINGS WERE?

17 A. RIGHT IN THIS AREA HERE.

18 Q. OKAY. NOW FROM THAT AREA TO THE HOTEL ROOM, WHAT IS

19 THAT DISTANCE?

20 A. FROM THAT AREA TO THE HOTEL ROOM WAS ABOUT

21 APPROXIMATELY EIGHTY FEET.

22 Q. OKAY. AND THE AREA WHERE THE BODY WAS FOUND, HOMER

23 JOHNSON, WHAT RATIO -- ABOUT HOW FAR IS THAT OF THAT EIGHTY

24 FEET?

25 A. ABOUT HALF. ABOUT FORTY, ABOUT FORTY, FORTY-FIVE FEET.

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1 Q. AND YOU TOOK PHOTOGRAPHS ALSO OF THE CARTRIDGE CASINGS
2 THAT YOU LOCATED?

3 A. THAT IS CORRECT.

4 Q. LET ME SHOW YOU STATE'S EXHIBIT NUMBER 36. AND IT MAY
5 BE A LITTLE DIFFICULT TO SEE. SO PLEASE POINT OUT TO THE
6 JURY.

7 A. IF YOU NOTICE THE -- AGAIN, THERE'S A SCALE MARKER
8 THERE TO IDENTIFY RELATIVE SIZE. AND WITHIN THE RIGHT ANGLE
9 OF THE MARKER YOU SEE THAT BRASS COLORED ITEM IS ONE OF THE
10 CARTRIDGE CASINGS.

11 Q. OKAY. AND IT LOOKS LIKE THERE'S SOMETHING WHITE
12 PROTRUDING FROM THE CENTER OF THAT. WHAT IS THAT?

13 A. THIS IS A FLAG THAT WE MADE TO IDENTIFY THE LOCATION
14 FOR PHOTOGRAPHIC PURPOSES.

15 Q. OKAY. AND THAT IS SHOWN IN SOME OF THE OTHER PICTURES?

16 A. IT IS SHOWN IN SOME OF THE OTHER PHOTOGRAPHS.

17 Q. LET ME SHOW YOU STATE'S EXHIBIT NUMBER 37.

18 A. THAT IS AN EVEN CLOSER SHOT WITHOUT THE EVIDENCE --
19 WITHOUT THE SCALE MARKER TO GIVE YOU A BETTER IDEA THAT IT
20 IS ACTUALLY A CARTRIDGE CASING 'CAUSE YOU CAN ACTUALLY SEE
21 THE BASE OF IT WHERE THE HEAD-STAMP IS LOCATED.

22 Q. OKAY. AND THE TWO, WERE THEY IN RELATIVE CLOSE
23 PROXIMITY?

24 A. WITHIN RELATIVE CLOSE PROXIMITY OF EACH OTHER, YES,
25 SIR.

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1 Q. LET ME SHOW YOU STATE'S EXHIBIT NUMBER 38. YOU
2 MENTIONED SOME FLAGS THAT INDICATED -- ARE THEY VISIBLE IN
3 STATE'S -- IN THAT EXHIBIT?

4 A. THESE ARE THE FLAGS THAT I ALLUDED TO EARLIER, THE
5 WHITE STICKS THAT YOU SAW OR ACTUALLY THE WHITE METAL RODS
6 THAT HAVE FLAGS ATTACHED TO THE TOP OF THEM. THAT GIVES YOU
7 AN IDEA OF WHERE THOSE CARTRIDGE CASINGS WERE LOCATED.

8 Q. IF YOU WOULD, I KNOW IT'S HARD TO HOLD STEADY, BUT IF
9 YOU CAN PUT THE LASER RIGHT ON THE TWO AND MAKE SURE WE SEE
10 IT. ONE?

11 A. TWO.

12 Q. OKAY. LET ME SHOW YOU STATE'S EXHIBIT NUMBER 39.

13 A. THIS IS EVEN CLOSER. I WALKED IN A LITTLE BIT CLOSER
14 TO THE ACTUAL LOCATION OF THE CARTRIDGE CASINGS. AND YOU
15 CAN SEE IT A LITTLE BIT BETTER AS FAR AS THEIR PROXIMITY AND
16 LOCATION. AGAIN, THERE'S ONE OF THE FLAGS. AND THERE'S A
17 SECOND FLAG.

18 Q. OKAY. LET ME SHOW YOU STATE'S EXHIBIT NUMBER 40. ARE
19 YOU ABLE TO SEE THE FLAGS IN THAT PHOTOGRAPH? OR MAYBE --
20 LET ME BRING IT TO YOU AND LET YOU TAKE A LOOK AT IT. YOU
21 CAN'T SEE THEM?

22 A. IN THAT PHOTOGRAPH YOU CAN SEE THEM, BUT IT'S A LITTLE
23 MORE DIFFICULT ON THE BIG VIEW.

24 Q. OKAY. IF I PUT IT BACK UP HERE DO YOU THINK YOU CAN

25 ---

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1 A. I BELIEVE I CAN.

2 Q. --- POINT THEM OUT?

3 A. THERE IS ONE OF THE STAKES, ONE OF THE FLAGS THERE.

4 AND THE OTHER ONE IS IN CLOSE PROXIMITY TO IT. BUT THERE IS
5 ONE THERE THAT YOU CAN SEE.

6 Q. STATE'S EXHIBIT NUMBER 41. WHAT IS THE ANGLE OF THAT
7 PHOTOGRAPH?

8 A. I'M ACTUALLY STANDING IN THE PARKING LOT LOOKING
9 TOWARDS THE WOODED AREA. AND THE FLAGS ARE LOCATED THERE.

10 Q. AND FINALLY STATE'S EXHIBIT NUMBER 42. CAN YOU
11 DESCRIBE TO THE JURY WHAT YOU'RE TRYING TO SHOW IN STATE'S
12 EXHIBIT NUMBER 42?

13 A. WHAT I'M TRYING TO SHOW IN THIS PHOTOGRAPH, IF YOU LOOK
14 CLOSE YOU CAN SEE, AGAIN, WITH THE LITTLE MARKERS ON THE
15 STRING, THIS IS THE WINDOW OF ROOM 121. AND THE LITTLE
16 MARKS HERE ARE THOSE "L" SHAPED SCALE MARKERS THAT ARE ON
17 THE WINDOW. IF YOU LOOK CLOSE YOU CAN SEE THE STRING AS IT
18 COMES FROM THAT WINDOW AT A STRAIGHT LINE TOWARDS THIS
19 WOODLINE AREA. YOU CAN SEE THE LITTLE FLAGS ON THE STRING
20 ITSELF TO HELP MAKE IT MORE VISIBLE. AND WHAT I'M TRYING TO
21 SHOW THERE IS IN A STRAIGHT LINE FROM THE WOODLINE TOWARDS
22 THE ROOM THE SUSPECTED PATH OF THE PROJECTILE.

23 Q. JUST TO COMPARE IT, ON THE RIGHT HAND SIDE OF STATE'S
24 EXHIBIT NUMBER 42 WE CAN SEE A TREE LIMB. LOOKING BACK AT
25 STATE'S EXHIBIT NUMBER 41 IS THAT -- ARE YOU ABLE TO TELL BY

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1 LOOKING AT THAT WHICH LIMB THAT IS?

2 A. YOU CAN SEE THIS IS THE STRING GOING IN HERE. THIS IS
3 THE TREE AREA THAT IT DEPICTS IN THE OTHER PICTURE LOOKING
4 FROM THE OPPOSITE DIRECTION.

5 Q. OKAY. NOW DID YOU COLLECT THOSE PROJECTILES?

6 A. YES, I DID.

7 Q. I'M SORRY.

8 A. EXCUSE ME. I COLLECTED THOSE CARTRIDGE CASINGS.

9 Q. THE CARTRIDGE CASINGS. AND WHAT DID YOU DO WITH THOSE
10 CARTRIDGE CASINGS?

11 A. THOSE CARTRIDGE CASINGS WERE TURNED INTO PROPERTY IN
12 EVIDENCE AFTER THEY WERE PROPERLY PACKAGED.

13 Q. AND WHAT -- WHAT WAS THE CALIBER OF THE CARTRIDGE
14 CASINGS?

15 A. THE HEAD-STAMP WAS MARKED RP, WHICH USUALLY STANDS FOR
16 REMINGTON PETERS, WHICH IS THE MANUFACTURER OF THE
17 AMMUNITION, 30-06, WHICH IS 30-06, WHICH IS THE CALIBER.
18 AND SPRG, WHICH IS SPRINGFIELD, WHICH IS A TYPE OF CALIBER
19 OF THE -- IT'S 30-06 SPRINGFIELD IS THE CALIBER.

20 Q. OKAY.

21 A. IT'S A SPECIFIC CALIBER.

22 Q. AND TELL US AGAIN WHAT IT WAS THAT YOU DID WITH THOSE
23 TWO CARTRIDGE CASINGS AFTER YOU COLLECTED THEM?

24 A. ONCE THEY WERE COLLECTED THEY WERE PROPERLY PACKAGED
25 AND MARKED AND PLACED IN THE PROPERTY -- GREENVILLE COUNTY

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1 DEPARTMENT OF PUBLIC SAFETY PROPERTY IN EVIDENCE SECTION.

2 Q. WHAT IS THE PROPERTY IN EVIDENCE SECTION?

3 A. IT'S A CENTRALIZED LOCATION LOCATED IN THE LAW

4 ENFORCEMENT CENTER WHERE ALL OF OUR EVIDENCE THAT IS

5 COLLECTED FOR GREENVILLE CITY, GREENVILLE COUNTY ARE PLACED

6 FOR STORAGE, SECURITY IN STORAGE.

7 Q. OKAY. CAN JUST ANYBODY WALK UP TO THAT AND GET

8 SOMETHING OUT?

9 A. A CHAIN OF CUSTODY FORM IS FILLED OUT FOR EVERY ITEM OF

10 EVIDENCE. AND THAT CHAIN OF CUSTODY FORM HAS TO BE

11 COMPLETED BY ANYONE WHO TURNS THE EVIDENCE IN AND/OR TAKES

12 THE EVIDENCE OUT. ONLY UPON REQUEST IN THAT -- THAT

13 PERSON'S NAME, WHOEVER TAKES THE EVIDENCE -- WHEN YOU TURN

14 IT IN THAT PERSON SIGNS FOR IT FROM YOU TO THE PERSON IN THE

15 EVIDENCE ROOM. AND THEN WHEN IT'S SIGNED OUT THE PERSON IN

16 THE EVIDENCE ROOM SIGNS IT OUT TO THE PERSON THAT'S

17 COLLECTING IT TO DO WHATEVER -- BUT THERE'S ALWAYS A CHAIN

18 OF CUSTODY WHENEVER THAT EVIDENCE IS TRACED ANYWHERE, GOES

19 ANYWHERE.

20 Q. IS A CASE NUMBER ASSIGNED?

21 A. CORRECT. A CASE NUMBER IS ASSIGNED TO THE INITIAL CASE

22 ITSELF, WHICH THAT CASE NUMBER IS APPLIED TO ANYTHING THAT

23 GOES ALONG WITH THAT EVIDENCE. THE REPORT FILE IS PLACED ON

24 THE EVIDENCE CONTAINER AND ALSO ON THE EVIDENCE TRACKING

25 SHEET OR THE PROPERTY IN EVIDENCE SHEET.

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1 Q. AND WAS A CASE NUMBER ASSIGNED TO THIS PARTICULAR CASE?

2 A. THAT'S CORRECT, IT WAS.

3 Q. OKAY. LET ME HAND YOU STATE'S EXHIBIT NUMBER 43. IF
4 YOU WOULD JUST TAKE A LOOK AT THAT. DO YOU HAVE A WAY TO
5 OPEN UP THAT ITEM, OPEN THE EVIDENCE TAPE? HAVING OPENED
6 THAT BOX -- YOU HAVEN'T YET.

7 A. THE TWO ITEMS OF EVIDENCE INSIDE THAT ARE IDENTIFIED BY
8 THE MARKINGS ON THE OUTSIDE OF THE BOX.

9 Q. AND WHAT KIND OF MARKINGS ARE ON THE OUTSIDE OF THAT
10 BOX?

11 A. IDENTIFIES THE DATE IN WHICH ITEMS WERE COLLECTED, THE
12 CASE NUMBER, THE TIME IN WHICH THEY WERE COLLECTED, AND A
13 BRIEF DESCRIPTION AS TO THE CONTENTS, THE TYPE OF
14 INVESTIGATION, AND THEN MY NAME, AND MY UNIT NUMBER.

15 Q. SO THAT IS THE EVIDENCE THEN, THE CARTRIDGE CASES THAT
16 YOU COLLECTED?

17 A. THAT IS CORRECT.

18 Q. WHEN DID YOU PUT THEM IN PROPERTY IN EVIDENCE?

19 A. THOSE TWO ITEMS WERE PLACED INTO EVIDENCE ON THE 11TH
20 AT 3:02 PM.

21 Q. 11TH OF NOVEMBER?

22 A. EXCUSE ME. I TAKE THAT BACK. THEY WERE COLLECTED --
23 THEY WERE PLACED INTO EVIDENCE ON THE 16TH OF NOVEMBER AT

24 10:10 PM -- AM.

25 Q. AND WOULD YOU HAVE KEPT THEM IN YOUR POSSESSION?

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1 A. THEY WOULD HAVE BEEN IN A SECURED LOCATION TO WHERE
2 ONLY I OR ANOTHER CRIME, YOU KNOW, IT WAS IN A SECURE AREA
3 THAT NO ONE ELSE COULD GET ACCESS TO.

4 A. NOW THOSE TWO ITEMS ARE IN YET SMALLER PACKAGES WITHIN
5 THAT BOX?

6 A. YES.

7 Q. AND ARE YOU ABLE TO OPEN THOSE UP AS WELL? AND WHAT IS
8 IT THAT YOU FOUND IN ONE OF THE PACKAGES WITHIN THAT BOX?

9 A. CARTRIDGE CASING WITH THE HEAD-STAMP RP 30-06 SPRG.

10 Q. OKAY. AND WOULD YOU LOOK IN THE OTHER PACKAGE AS WELL
11 AND SHARE THAT WITH THE JURY? ONCE AGAIN, WHAT IS IN THE
12 SECOND PACKAGE THAT WAS IN ---

13 A. THE SECOND PACKAGE IS A CARTRIDGE CASING HEAD-STAMPED
14 RP 30-06 SPRG.

15 Q. THAT'S A TYPE OF PROJECTILE, JUST FOR THOSE WHO ARE NOT
16 VERY FAMILIAR WITH GUNS, THAT'S SHOT FROM WHAT TYPE OF
17 WEAPON?

18 A. THAT'S SHOT FROM A 30-06 CALIBER RIFLE.

19 Q. OKAY. AND WHAT -- IS THAT A HIGH POWERED RIFLE?

20 A. THAT'S A HIGH POWERED RIFLE.

21 Q. OKAY. COULD YOU PLEASE RETURN THE ITEMS OF EVIDENCE TO
22 THE BAG?

23 MR. MOYER: AND WHILE YOU'RE DOING THAT I'D MOVE TO
24 HAVE STATE'S EXHIBIT NUMBER 43 MOVED INTO EVIDENCE.

25 THE COURT: ANY ---

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1 MR. SUMNER: NO, SIR. NO OBJECTION.

2 THE COURT: WITHOUT OBJECTION.

3 MR. SUMNER: NO OBJECTION TO THE CASINGS OR TO THE
4 PROJECTILES.

5 THE COURT: ALL RIGHT. THANK YOU.

6 MR. SUMNER: I BELIEVE THAT'S WHAT MR. MOYER'S ---

7 MR. MOYER: OKAY.

8 (WHEREUPON STATE'S EXHIBIT NUMBER 44 WAS ENTERED INTO
9 EVIDENCE)

10 Q. NOW THE NEXT ITEM WOULD BE STATE'S EXHIBIT NUMBER 44,
11 WHICH I BELIEVE HAS JUST GONE INTO EVIDENCE WITHOUT
12 OBJECTION. WOULD YOU PLEASE TAKE A LOOK AT THAT? CAN YOU
13 IDENTIFY WHAT I'VE JUST HANDED YOU? AND I WON'T ASK YOU TO
14 TAKE THAT ALL THE WAY APART, BUT IF YOU CAN IDENTIFY IT BY
15 LOOKING AT THE PACKAGE.

16 A. LOOKING AT THE PACKAGE IT'S IDENTIFIED WITH THE DATE IT
17 WAS COLLECTED, 11/5/02, THE CASE NUMBER, THE TIME IN WHICH
18 IT WAS COLLECTED. IT'S IDENTIFIED AS CB-1, WHICH IS ITEM
19 ONE, A METAL JACKET AND FABRIC FROM FLOOR NEAR WINDOW. CB-
20 2, METAL JACKET FRAGMENT FROM FLOOR NEAR WINDOW. CB-6, LEAD
21 CORE FROM WEST WALL. AND THEY WERE ALL COLLECTED FROM ROOM
22 121 AT 536 WADE HAMPTON BOULEVARD, GREENVILLE, SOUTH
23 CAROLINA. THE CASE TYPE IS DEFINITELY AN INVESTIGATION AND
24 MY NAME AND NUMBER.

25 Q. OKAY. SO STATE'S EXHIBIT 44 THEN THAT CONSISTS OF

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1 THOSE PROJECTILES THAT YOU WERE JUST TELLING US ABOUT
2 COLLECTING FROM THAT ROOM?

3 A. THAT IS CORRECT.

4 Q. OKAY. THANK YOU.

5 MR. MOYER: ONE MOMENT PLEASE, YOUR HONOR.

6 Q. ALL RIGHT. PLEASE ANSWER ANY QUESTIONS THE DEFENSE MAY
7 HAVE.

8 THE COURT: MR. SUMNER.

9 MR. SUMNER: YES, SIR. THANK YOU, YOUR HONOR.

10 CROSS EXAMINATION BY MR. SUMNER:

11 Q. MR. BRYAN, I BELIEVE YOU MENTIONED THAT YOU FIRST GOT
12 THERE AROUND 6:30 PM ON THE NIGHT OF NOVEMBER 5TH, IS THAT
13 CORRECT?

14 A. I RECEIVED THE CALL AT 6:30, AROUND 6:30 PM AND ARRIVED
15 ON THE SCENE ABOUT 6:45 PM. YES, SIR.

16 Q. APPROXIMATELY. AND STAYED THERE UNTIL I BELIEVE YOU
17 SAID AROUND ELEVEN OR 11:15, IS THAT RIGHT?

18 A. ACTUALLY IT WAS ABOUT 10:15.

19 Q. I'M SORRY?

20 A. AROUND TEN.

21 Q. SO YOU STAYED THERE AROUND THREE AND A HALF OR FOUR
22 HOURS, SOMEWHERE IN THAT BALLPARK?

23 A. BALLPARK, YES, SIR.

24 Q. I BELIEVE YOU TESTIFIED EARLIER HEAVY RAIN, IS THAT
25 RIGHT?

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1 A. YES, SIR. IT WAS A HEAVY RAIN.

2 Q. OKAY. AND I BELIEVE YOU PRIMARILY GOT THE WORK DONE
3 INSIDE AND AROUND THIS HOTEL ROOM, IS THAT RIGHT?

4 A. THAT IS CORRECT.

5 Q. OKAY. NOW I BELIEVE YOU TESTIFIED EARLIER YOU'VE BEEN
6 IN FORENSICS FOR EIGHT YEARS, IS THAT CORRECT?

7 A. NO, SIR. THAT'S NOT WHAT I TESTIFIED TO. I'VE BEEN IN
8 -- MY TOTAL TIME WITH GREENVILLE COUNTY FORENSICS WAS THREE
9 YEARS AND NINE MONTHS. AND UP UNTIL THIS TIME OF THIS CASE
10 IT WAS APPROXIMATELY THREE YEARS AND ABOUT EIGHT MONTHS.

11 AND PRIOR TO THAT I WAS ABOUT EIGHT YEARS IN LAW ENFORCEMENT
12 AS A PATROL OFFICER, BOTH CIVILIAN AND MILITARY, BUT ONLY IN
13 CRIME SCENE FOR ABOUT THREE YEARS AND EIGHT OR NINE MONTHS.

14 Q. OKAY. DID I UNDERSTAND YOU CORRECTLY THAT YOU NEXT
15 WENT BACK TO THE MURDER SCENE ON THE 11TH?

16 A. THAT IS CORRECT.

17 Q. OKAY. SO THERE WAS A SIX DAY DELAY BETWEEN THE TIME
18 YOU WENT THAT EVENING AND THEN WHEN YOU CAME BACK?

19 A. THAT IS CORRECT.

20 Q. IS THAT USUAL?

21 A. THE PROCESS OF PROCESSING THE CRIME SCENE, PROCESSING
22 THE EVIDENCE, GATHERING THE INFORMATION TOGETHER, AND
23 PUTTING ALL THE INFORMATION TOGETHER TO ACTUALLY PRODUCE THE
24 CRIME SCENE DIAGRAM, IT TOOK THOSE DAYS.

25 Q. OKAY. WAS THIS CRIME SCENE SECURED FOR SIX DAYS?

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1 A. NO, IT WAS NOT.

2 Q. SO ANY -- PEOPLE WERE JUST GOING IN AND OUT, I'M

3 ASSUMING? I MEAN, WAS THERE ANYTHING TO KEEP PEOPLE FROM

4 WALKING ALL AROUND IN THIS AREA HERE FOR SIX DAYS BEFORE YOU

5 WENT BACK?

6 A. THE CRIME SCENE WAS NOT SECURED, NO, SIR.

7 Q. NOW YOU HAVE DISCUSSED THIS DROP-OFF AREA, WHICH IS

8 WHERE THE WOODLINE BEGINS, IS THAT CORRECT?

9 A. THAT IS CORRECT.

10 Q. WOULD YOU DESCRIBE FOR THE JURY THE MAKEUP -- AND I'M

11 SPEAKING OF THIS AREA BACK IN HERE, AND YOU CAN GET DOWN IF

12 YOU NEED TO. YOU'RE FAMILIAR WITH WHAT I'M TALKING ABOUT?

13 A. YES, SIR, I AM.

14 Q. THE WOOD -- THE WOODED AREA. WOULD YOU DESCRIBE FOR

15 THE JURY THE GENERAL TERRAIN BACK IN THERE? I MEAN, ...

16 A. THERE IS A SLIGHT RIM -- IF YOU'RE -- IT'S LIKE A REALM

17 OF A -- ALMOST A REALM OF A VALLEY AREA. IT'S VERY HEAVILY

18 WOODED. THERE'S BROKEN DOWN TREES IN THE AREA JUST AS WHAT

19 YOU'D FIND IN A TYPICAL HEAVILY WOODED AREA. YOU GO BACK A

20 SHORT DISTANCE AND THEN IT DROPS STRAIGHT -- IT APPEARS THAT

21 IT DROPS STRAIGHT DOWN INTO KIND OF A VALLEY AREA. THERE

22 MAY BE A CREEK BED AT THE BOTTOM.

23 Q. OKAY. A CREEK BED THAT KIND OF RUNS TOWARD THE BOTTOM?

24 A. THERE IS SOMETHING DOWN THERE AT THE BOTTOM. IT MAY BE

25 A CREEK BED. I'M NOT SPECIFICALLY SURE. I DIDN'T

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1 INVESTIGATE THAT IN THAT DETAIL.

2 Q. SO IT WOULD BE OBVIOUSLY JUST DIRT? I MEAN, THERE'S NO

3 CONCRETE OR PAVEMENT BACK IN THERE, IS THERE?

4 A. NO, SIR. IT'S JUST TREES, AND GRASS, AND DIRT, AND

5 TREES, LEAVES, STUFF LIKE THAT. YES, SIR.

6 Q. TYPICAL WOOD TYPE AREA. NOW WHERE ARE THE CARTRIDGE

7 CASES?

8 A. THEY'RE ONE OF THE PACKAGES OVER THERE.

9 Q. ONE OF THE PACKAGES OVER HERE? DID YOU RESEAL THIS BY

10 CHANCE?

11 A. NO. THAT'S -- THAT WOULD BE THE ONE -- IT'S NOT

12 RESEALED. THERE SHOULD BE A DESCRIPTION ON THE VERY FRONT

13 OF THE PACKAGE THAT SHOWS WHAT'S IN THERE.

14 Q. I'M GOING -- I'LL TELL YOU WHAT, I'LL MAKE IT EASY.

15 I'LL JUST GIVE THESE BOTH BACK TO YOU SINCE THEY'RE IN

16 EVIDENCE AND YOU CAN PULL OUT THE ONES THAT WOULD BE THE

17 CARTRIDGE CASINGS. NOW WHILE YOU'RE DOING THAT A CARTRIDGE

18 CASE IS ACTUALLY WHAT A LAY PERSON MIGHT REFER TO AS A

19 BULLET, WOULD THAT BE CORRECT? I MEAN, IT'S -- WHEN I THINK

20 ABOUT A BULLET, I MEAN, THAT -- THE CASING HOLDS THE BULLET,

21 RIGHT?

22 A. CORRECT.

23 Q. AND --

24 A. A LAY PERSON MAY REFER TO IT AS A SHELL.

25 Q. THANK YOU. OKAY. A SHELL. AND WHEN A BULLET -- LET'S

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1 SAY A GUN, A REVOLVER IS LOADED, I MEAN, IT'S THE SHELLS
2 THAT ARE PUMPED IN THERE BY SOMEBODY AND THAT'S ACTUALLY THE
3 CARTRIDGE CASING, WOULD THAT BE CORRECT?

4 A. CORRECT. THE CARTRIDGE -- IT'S A CARTRIDGE IN FORENSIC
5 TERMS AND CRIME SCENE TERMS AND LAW ENFORCEMENT TERMS. IT'S
6 A CARTRIDGE WHEN THE BULLET IS ON THE END -- THE PART THAT'S
7 TO DO THE DAMAGE IS ON THE END. IT'S ALL CONNECTED. BUT
8 THE CARTRIDGE CASING, WHEN IT'S BEEN FIRED AND ALL YOU HAVE
9 IS THE BRASS SHELL SO TO SPEAK.

10 Q. OKAY.

11 A. THE BULLETS COME OFF -- THE ACTUAL PROJECTILES COME OFF
12 THE END OF IT.

13 Q. OKAY. WHILE YOU'RE LOOKING THROUGH THAT OR FINDING
14 THOSE WERE ANY SOIL SAMPLES TAKEN BACK IN THIS AREA? I'M
15 JUST CURIOUS. I MEAN, IT'S A DIRT AREA. WAS ANY KIND OF
16 SOIL RETRIEVED FROM BACK IN THERE?

17 A. NO, SIR.

18 Q. OKAY. NOW YOU'VE MENTIONED THAT IT WAS A HEAVY RAIN
19 THAT EVENING. FROM YOUR TESTIMONY ALREADY TO THE JURY IT
20 WOULD APPEAR THAT YOU BELIEVE THAT THE SHOOTER MIGHT HAVE
21 BEEN IN THE WOODS, IS THAT NOT CORRECT? OR DO YOU BELIEVE
22 THE SHOOTER WAS IN THE WOODS?

23 A. THAT WAS THE CONCLUSION THAT WAS DRAWN, YES, SIR.

24 Q. OKAY. ALL RIGHT. SO WAS THERE ANY, I MEAN, IF
25 SOMEBODY'S DOWN THERE WEARING JEANS OR SOMETHING DON'T YOU

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1 THINK THAT, I MEAN, WITH A HEAVY RAIN WOULD IT BE POSSIBLE
2 THAT THERE WOULD BE MUD OR SOIL THAT WOULD BE ON THE BOTTOMS
3 OF THEIR PANTS OR SOMETHING OR MAYBE THEIR SHORTS OR SHOES
4 THAT THEY'RE WEARING?

5 A. I DON'T KNOW WHAT TYPE OF PREPARATION THE PERSON MAY
6 HAVE TAKEN TO PREVENT THEMSELVES FROM GETTING WET.

7 Q. RIGHT.

8 A. THEY COULD HAVE TAKEN THOSE PREPARATIONS THAT I'M NOT
9 AWARE OF.

10 Q. BUT IF THEY DIDN'T, IN OTHER WORDS, IF THEY DIDN'T WRAP
11 THEMSELVES UP WOULDN'T IT BE POSSIBLE THAT THERE WOULD BE
12 SOME KIND OF SOIL MATCH THAT COULD HAPPEN BETWEEN THE SOIL
13 BACK THERE AND WHAT SOMEBODY WAS WEARING?

14 A. I DON'T KNOW. THAT'S A CONCLUSION THAT COULD BE DRAWN.
15 IT COULD BE -- I DON'T KNOW, SIR. IT COULD HAVE.

16 Q. ALL RIGHT. SO THAT AREA WHERE THE SHOOTER WAS WAS NOT
17 -- WASN'T REALLY SEARCHED FOR UNTIL FIVE DAYS LATER, WASN'T
18 SEARCHED UNTIL FIVE DAYS LATER, IS THAT RIGHT?

19 A. THAT IS CORRECT.

20 Q. OKAY. SO IF THE PERSON WAS SMOKING A CIGARETTE OR
21 SOMETHING LIKE THAT A CIGARETTE BUTT COULD HAVE BEEN THROWN
22 DOWN IF THE PERSON WAS IN THE WOODS, IS THAT CORRECT?

23 A. THAT'S IF ---

24 Q. YOU KNOW, OR A COKE CAN OR ANY KIND OF LIQUID THEY
25 COULD BE DRINKING. ANY TRACE OF THEIR APPEARANCE THERE

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1 WOULD HAVE POTENTIALLY BEEN GONE AFTER FIVE DAYS, IS THAT
2 RIGHT?

3 A. IF YOU'RE SAYING IF THEY DISCARDED AN ITEM THAT THEY
4 WERE STANDING THERE AND THEY WERE DRINKING AN ITEM THEN
5 DISCARDED THE CONTENT CAN OF THAT, THEN IF THEY DISCARDED IT
6 IT WOULD BE THERE IF THEY DISCARDED IT IN THAT WOODED AREA.

7 Q. OKAY.

8 A. THAT CAN ITSELF HAD NOT SOMEONE COME AND ---

9 Q. RIGHT.

10 A. IF THAT'S ---

11 Q. SINCE IT'S UNSECURED FOR THE NEXT FIVE DAYS ANYBODY
12 COULD HAVE BEEN ROAMING IN THROUGH THERE, COULD HAVE PICKED
13 IT UP, WOULD THAT BE RIGHT?

14 A. COULD.

15 Q. OKAY. ALL RIGHT. YOU MENTIONED A CREEK BED AREA THAT
16 GOES DOWN BEHIND THAT WOODLINE, IS THAT RIGHT?

17 A. WHAT APPEARED TO BE. LIKE I SAID, I DID NOT GO THAT
18 FAR TO INVESTIGATE. LAW ENFORCEMENT MAY HAVE DONE THE
19 INVESTIGATION. I -- IT APPEARED -- LOOKING THERE, IT
20 APPEARED TO BE THAT.

21 Q. OKAY. WERE ANY FOOTPRINTS TAKEN ---

22 A. NO, SIR.

23 Q. --- THE NEXT DAY OR ANYTHING? NOW DO YOU HAVE THOSE
24 CASINGS?

25 A. THOSE CASINGS?

CHRIS BRYAN - CROSS EXAMINATION BY MR. SUMNER

175

1 Q. DO YOU KNOW WHO COLLECTED THESE? THANK YOU.

2 A. HOW DO YOU MEAN COLLECTED?

3 Q. WHO PICKED THEM UP OFF THE GROUND?

4 A. I DID.

5 Q. MAY I HAVE THE OTHER ONE TOO? THAT'S FINE. OKAY. I

6 WANT YOU TO STEP DOWN FOR A SECOND.

7 A. OKAY.

8 Q. LET'S PRETEND THAT WE'RE OUT THERE WHERE THESE -- AND

9 WE'VE SEEN THE PHOTOGRAPHS UP ON THE PICTURE THERE OF THESE

10 LAYING IN THE GROUND, IS THAT CORRECT, OR LAYING ON TOP OF

11 THE GROUND?

12 A. LAYING ON TOP OF THE GROUND.

13 Q. OKAY. LET'S PRETEND THAT THEY'RE RIGHT THERE. WOULD

14 YOU SHOW THE JURY HOW YOU PICKED THESE UP?

15 A. I DON'T -- I HAVE A TOOL THAT I USE. IT'S A PLIERS, A

16 MULTI-TOOL. I DON'T HAVE THAT TOOL WITH ME TODAY.

17 Q. THAT'S OKAY.

18 A. WHAT I WOULD HAVE DONE IS TAKEN THAT TOOL AND IT HAS A

19 NEEDLE NOSE END ON IT, AND REACHED IN AND CLAMPED THAT AND

20 PICKED IT UP THAT WAY.

21 Q. OKAY. ALL RIGHT. SO IN OTHER WORDS, JUST SO EVERYBODY

22 ON THE JURY CAN SEE, YOU WOULD HAVE PICKED IT UP LIKE THAT,

23 NOT USING YOUR HANDS, IS THAT CORRECT, OFFICER BRYAN?

24 A. THAT IS CORRECT.

25 Q. PICKING IT UP AND THEN PLACING THE CASING INTO THE

CHRIS BRYAN - CROSS EXAMINATION BY MR. SUMNER

176

1 ENVELOPE?

2 A. INTO AN ENVELOPE, YES, SIR.

3 Q. AND I'M NOT GOING TO GO THROUGH THE SAME PROCESS WITH
4 THIS ONE. IT WOULD HAVE BEEN THE SAME WAY, IS THAT RIGHT?

5 A. THAT IS CORRECT.

6 Q. OKAY. YOU CAN HAVE A SEAT. THANKS. NOW WHY WOULD YOU
7 USE A MULTI-TOOL LIKE THAT OR A PAIR OF NEEDLE NOSE PLIERS?

8 A. IN CASE THERE IS ANY TRACE EVIDENCE OR ANY EVIDENCE
9 THAT MAY HAVE -- TO PRESERVE THE EVIDENCE THAT MAY HAVE BEEN
10 ON THERE. I DON'T KNOW WHAT'S ON THERE. THEREFORE, I DON'T
11 WANT TO TOUCH IT WITH MY HANDS AND LEAVE MY FINGERPRINTS
12 BEHIND TO -- THAT WOULD CONTAMINATE THAT EVIDENCE.

13 Q. OKAY. WELL, SPEAKING OF FINGERPRINTS, DON'T YOU PUT A
14 BULLET -- AND I'M NOT TOO GOOD WITH BULLETS, GUNS. WOULDN'T
15 YOU USE YOUR FINGERS TO PUT A BULLET IN A GUN? AND I'M
16 CALLING THIS A BULLET, BUT I SHOULD SAY SHELL. WOULDN'T YOU
17 USE YOUR FINGERS TO PUT THE SHELL IN THE GUN?

18 A. YOU WOULD MOST LIKELY, YES.

19 Q. OKAY. AND YOU'VE ALREADY TALKED ABOUT HOW YOU WOULD
20 PICK IT UP IN ORDER TO PRESERVE IT IF THERE'S ANY
21 FINGERPRINTS ON THE CASINGS?

22 A. THAT'S CORRECT.

23 Q. OKAY. ALL RIGHT. WELL, DID YOU EXAMINE THESE FOR
24 FINGERPRINTS?

25 A. WHEN A CARTRIDGE -- WHEN A PROJECTILE IS FIRED A

CHRIS BRYAN - REDIRECT EXAMINATION BY MR. MOYER

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1 GENEROUS AMOUNT OF HEAT IS GENERATED WITHIN THAT CASING.

2 ANY OILS THAT MAY BE ON THERE MOST LIKELY ARE ALL BURNED

3 OFF, BUT IT WOULD HAVE BEEN PROCESSED FOR PRINTS.

4 Q. I'M SORRY?

5 A. IT WOULD HAVE BEEN PROCESSED FOR FINGERPRINTS.

6 HOWEVER, THERE IS USUALLY A CHANCE THAT THAT'S GOING TO BURN

7 OFF BECAUSE OF THE HIGH HEAT THAT'S THERE.

8 Q. OKAY. OFFICER BRYAN, DO YOU KNOW IF THESE TWO CASINGS

9 WERE EXAMINED FOR FINGERPRINTS?

10 A. I DO NOT RECALL IF I DID OR NOT.

11 Q. I DON'T HAVE ANY OTHER QUESTIONS. THANK YOU.

12 THE COURT: ANY REDIRECT?

13 MR. MOYER: JUST REAL BRIEFLY.

14 REDIRECT EXAMINATION BY MR. MOYER:

15 Q. SO ARE YOU SAYING THAT THE HEAT OF FIRING THAT WOULD

16 LEAVE A VERY MINIMAL CHANCE OF ANYTHING BEING LEFT BEHIND?

17 A. CORRECT. IN THE TRAINING THAT I HAVE HAD WHEN ANY

18 BULLET, OR AS LAYMEN CALL IT, A BULLET IS FIRED THERE'S A

19 GENEROUS AMOUNT OF HEAT THAT IS PRODUCED. AND THE HEAT WILL

20 DISSIPATE THE FINGERPRINT OILS THAT ARE LEFT IF THERE'S ANY

21 THERE. AND I PROCESSED MANY CARTRIDGE CASINGS IN MY TIME AS

22 A TECHNICIAN AND HAVE YET TO BE ABLE TO RECOVER ANY

23 FINGERPRINTS FROM CARTRIDGE CASINGS THAT HAVE BEEN FIRED

24 FROM A WEAPON.

25 Q. OKAY. SO YOU NEVER HAVE BEEN ABLE TO?

CHRIS BRYAN - REDIRECT EXAMINATION BY MR. MOYER

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1 A. AND I'VE CONSULTED MANY OTHER LOCATIONS TO TRY --
2 PEOPLE THAT HAVE DONE THE SAME THING AND HAVE YET BEEN ABLE
3 TO FIGURE OUT A WAY TO ACTUALLY RECOVER FROM ONE THAT HAS
4 JUST BEEN FIRED OR HAD BEEN FIRED.

5 Q. IN ADDITION TO THAT DOES RAIN, AND WEATHER, AND MATTERS
6 LIKE THAT HAVE ANY EFFECT?

7 A. YES, IT DOES.

8 Q. WHAT EFFECT DOES THAT HAVE?

9 A. THE RAIN CAN HAVE AN EFFECT. I CAN LITERALLY WASH
10 THESE THINGS OFF. THE ELEMENTS, DIFFERENT KIND OF
11 ENVIRONMENTAL THINGS CAN HAVE A LOT OF EFFECT ON THE
12 EVIDENCE ITSELF. IT CAN MAKE IT DIFFICULT TO RECOVER
13 FINGERPRINTS.

14 Q. OKAY. AND WHAT DO YOU KNOW ABOUT THE WEATHER ON
15 NOVEMBER THE 5TH, 2002?

16 A. ON NOVEMBER THE 5TH, 2002 IT WAS RAINING VERY HEAVILY
17 AT THE TIME THAT THE INCIDENT -- THAT I ARRIVED ON THE SCENE
18 HAD OCCURRED.

19 Q. NOW WHEN YOU WENT BACK ON THE 11TH HAD THAT ROOM,
20 NUMBER 121, HAD ANYONE BEEN CHECKED INTO THAT ROOM?

21 A. NO, NO ONE HAD CHECKED INTO THAT ROOM.

22 Q. OKAY. THANK YOU. NOTHING FURTHER.

23 THE COURT: THANK YOU. YOU CAN STEP DOWN.

24 MR. MOYER: I CALL KAREN THOMAS.

25 KAREN THOMAS, BEING DULY

KAREN THOMAS - DIRECT EXAMINATION BY MR. MOYER

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1 SWORN TESTIFIED AS FOLLOWS:

2 DIRECT EXAMINATION BY MR. MOYER:

3 Q. ALL RIGHT, MS. THOMAS, WHERE DO YOU LIVE AND WORK RIGHT
4 NOW?

5 A. I LIVE IN CINCINNATI, OHIO. I WORK AT THE UNIVERSITY
6 OF CINCINNATI FOR UC PHYSICIANS.

7 Q. ALL RIGHT. WHERE DID YOU WORK BACK IN NOVEMBER OF
8 2002?

9 A. AT THE JUSTICE CENTER AT THE POLICE DEPARTMENT,
10 PROPERTY IN EVIDENCE.

11 Q. WHAT DID YOU DO WORKING IN THE PROPERTY IN EVIDENCE
12 ROOM?

13 A. I TOOK IN PROPERTY IN EVIDENCE. AND I ALSO PICKED UP
14 AND DELIVERED RECORDS.

15 Q. OKAY. AND WHAT DO YOU MEAN BY TAKING IN PROPERTY IN
16 EVIDENCE? HOW DOES THAT WORK?

17 A. POLICE OFFICERS WOULD GO OUT TO THE SCENE OF A CRIME
18 AND BRING EVIDENCE IN FROM THAT CRIME. AND I WOULD TAKE IT
19 FROM THEM, AND SIGN OFF ON IT, AND PUT IT IN ITS APPROPRIATE
20 SPOT IN THE PROPERTY IN EVIDENCE ROOM.

21 Q. OKAY. AND IS THAT A SECURED LOCATION, THAT PROPERTY IN
22 EVIDENCE ROOM?

23 A. YES.

24 Q. OKAY. ARE ALL -- IS ALL EVIDENCE THAT IS BROUGHT INTO
25 THE PROPERTY IN EVIDENCE ROOM IS IT ASSIGNED A CASE NUMBER?

KAREN THOMAS - DIRECT EXAMINATION BY MR. MOYER

180

1 A. YES.

2 Q. IS EVERY CASE NUMBER UNIQUE TO THAT PARTICULAR CASE?

3 A. YES.

4 Q. FROM EVERY OTHER CASE?

5 A. YES.

6 Q. OKAY. NOW I WANT TO SHOW YOU WHAT'S BEEN MARKED AS

7 STATE'S EXHIBIT NUMBER 45. AND I KNOW YOU HAVE -- YOU TOLD

8 ME EARLIER THAT YOU BROKE YOUR FINGER, I BELIEVE. BUT IF

9 YOU'RE ABLE TO IF YOU WOULD PULL THE CONTENTS OF THAT

10 EXHIBIT OUT AND TAKE A LOOK AND TELL THE JURY WHETHER THAT

11 HAS EVER BEEN IN YOUR CUSTODY.

12 A. YES.

13 Q. AND WHEN WAS THAT STATE'S EXHIBIT NUMBER -- I FORGOT

14 THE NUMBER, STATE'S EXHIBIT NUMBER 45, WHEN WAS THAT IN YOUR

15 CUSTODY?

16 A. DECEMBER THE 30TH OF 2002.

17 Q. OKAY. WHY WAS IT IN YOUR CUSTODY?

18 A. IT WAS BROUGHT TO THE EVIDENCE ROOM. AND I SIGNED IT

19 IN. IT WAS ACTUALLY SIGNED IN FROM THE DROP-BOX.

20 Q. OKAY. WHAT IS A DROP-BOX?

21 A. WHERE THE POLICE OFFICERS WHEN THEY'RE OUT OVERNIGHT

22 AND THE PROPERTY IN EVIDENCE ROOM IS CLOSED WE HAVE A LOCKED

23 DROP-BOX THAT THEY DEPOSIT ALL EVIDENCE INTO. AND AS WE

24 TAKE IT OUT WE SIGN FOR IT SO THAT THERE'S NO, YOU KNOW, I

25 GUESS BREAK IN THE CHAIN OF CUSTODY.

KAREN THOMAS - DIRECT EXAMINATION BY MR. MOYER

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1 Q. OKAY. NOW HOW MANY -- DO YOU KNOW HOW MANY PEOPLE HAVE
2 KEYS OR WHAT DIFFERENT DEPARTMENTS HAVE KEYS TO THAT LOCK-
3 BOX?

4 A. AS FAR AS I KNOW -- AS FAR AS I KNOW ONLY THE
5 LIEUTENANT MIGHT HAVE HAD A KEY AND SUPERVISOR, TONY
6 VINSKUS.

7 Q. OKAY. SUPERVISOR OF WHAT DEPARTMENT?

8 A. PROPERTY IN EVIDENCE.

9 Q. OKAY. AND SO YOU WOULD GET THE KEY FROM YOUR
10 SUPERVISOR?

11 A. YES. HE WOULD ACTUALLY UNLOCK IT AND BRING IT. AND WE
12 HAD TO LOG IN THE EVIDENCE.

13 Q. OKAY. WHAT WAS THE TIME ON DECEMBER THE 30TH OF 2002
14 WHEN YOU TOOK THAT PIECE OF EVIDENCE?

15 A. GREAT, MILITARY TIME. 10:26.

16 Q. I'M SORRY.

17 A. 10:26.

18 Q. 10:26. OKAY. AND AFTER YOU TOOK THAT ITEM OF EVIDENCE
19 WHAT DID YOU DO WITH IT?

20 A. I PUT IT ON -- I PUT IT IN THE VAULT.

21 Q. OKAY. DOES ALL EVIDENCE GO IN THE VAULT?

22 A. NO, NOT ALL EVIDENCE, BUT DRUGS, AND JEWELRY, AND CASH.

23 Q. AND SO WHAT WAS YOUR REASON FOR PUTTING THIS IN THE
24 VAULT?

25 A. IT'S DRUGS.

KAREN THOMAS - DIRECT EXAMINATION BY MR. MOYER

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1 Q. IT'S MARKED AS DRUGS?

2 A. UM-HUM (AFFIRMATIVE).

3 Q. OKAY. AND IS THE VAULT LOCKED?

4 A. YES. IT'S ACTUALLY A VAULT.

5 Q. OKAY.

6 A. SEALED.

7 Q. AN ACTUAL VAULT.

8 A. YES.

9 Q. SO IN ADDITION TO THE PROPERTY IN EVIDENCE ROOM BEING
10 LOCKED ---

11 A. THAT WAS ALSO SEALED AND LOCKED.

12 Q. OKAY. ALL RIGHT. I HAVE NO FURTHER QUESTIONS. PLEASE
13 ANSWER ANY QUESTIONS THE DEFENSE MAY HAVE.

14 THE COURT: NO QUESTIONS. THANK YOU. YOU'RE EXCUSED.

15 MR. MOYER: TERRY LYNCH.

16 THE COURT: IS THAT A SHORT ONE?

17 MR. MOYER: MAY WE APPROACH, YOUR HONOR?

18 THE COURT: YEAH.

19 (WHEREUPON A BENCH CONFERENCE WAS HELD OFF THE RECORD
20 IN THE PRESENCE OF THE JURY, BUT OUT OF THEIR HEARING)

21 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, WE'RE
22 GOING TO SUSPEND AT THIS TIME. WE'LL PICK BACK UP TOMORROW
23 MORNING.

24 WHEN YOU LEAVE PLEASE REMEMBER THAT YOU DO NOT TALK
25 ABOUT THIS CASE AMONG YOURSELVES OR WITH ANYONE ELSE. IF

1 ANYBODY CONTACTS YOU AND TRIES TO TALK TO YOU ABOUT THIS
2 CASE GET THEIR NAMES AND ADDRESSES AND REPORT THAT TO ME.

3 PLEASE KEEP YOUR BADGES ON. HAVE THEM ON WHEN YOU COME
4 BACK IN THE MORNING SO THAT EVERYONE INVOLVED WITH THE CASE
5 WILL KNOW THAT YOU ARE A JUROR AND THEY SHOULD NOT DISCUSS
6 THIS CASE IN YOUR PRESENCE. I'LL ASK THAT YOU BE BACK
7 TOMORROW MORNING AT 9:00. PLEASE REPORT TO THE ROOM WHERE
8 YOU'VE BEEN ON RECESS AT 9:00 IN THE MORNING. THANK YOU.

9 (WHEREUPON THE JURY EXITED THE COURTROOM AT 4:56 PM)
10 THE COURT: ALL RIGHT. WE'LL SEE YOU AT 9:00 IN THE
11 MORNING.

12 (WHEREUPON COURT WAS IN RECESS)

13 (END OF VOLUME ONE OF TWO)

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)

PLAINTIFF,)

-VS-)

RUSSELL W. RICE, JR.,)

DEFENDANT.)

2003-GS-23-3612, 3614, 3615 & 8779

TRANSCRIPT OF RECORD
(VOLUME TWO OF TWO)

APRIL 12 - 15, 2004
GREENVILLE, SOUTH CAROLINA

BEFORE:

THE HONORABLE C. VICTOR PYLE, JR.

APPEARANCES:

ATTORNEY FOR PLAINTIFF:

L. MARK MOYER, ASSISTANT SOLICITOR

ATTORNEY FOR DEFENDANT:

STEVEN SUMNER, ESQUIRE

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

CHRISTOPHER SHIRLEY - DIRECT EXAMINATION BY MR. MOYER

1 TUESDAY, APRIL 13, 2004 - VOLUME TWO:

2 THE COURT: ALL RIGHT. GENTLEMEN, WE READY TO GO?

3 MR. MOYER: YES, SIR, YOUR HONOR.

4 MR. SUMNER: SIR? I'M SORRY.

5 THE COURT: YOU READY?

6 MR. SUMNER: YES, SIR. YES, SIR.

7 THE COURT: BRING OUR JURY.

8 MR. SUMNER: YOUR HONOR, COULD I APPROACH FOR ONE
9 SECOND PLEASE?

10 THE COURT: SURE.

11 (WHEREUPON A BENCH CONFERENCE WAS HELD OFF THE RECORD)

12 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 9:06 AM)

13 THE COURT: GOOD MORNING.

14 THE JURY: GOOD MORNING.

15 THE COURT: ALL RIGHT. SOLICITOR, YOU MAY PROCEED.

16 MR. MOYER: MAY IT PLEASE THE COURT? DALE SHIRLEY.

17 CHRISTOPHER D. SHIRLEY,

18 BEING DULY SWORN TESTIFIED AS FOLLOWS:

19 DIRECT EXAMINATION BY MR. MOYER:

20 Q. OKAY. MR. SHIRLEY, HOW OLD ARE YOU?

21 A. THIRTY-TWO.

22 Q. AND YOU LIVE HERE IN THE UPSTATE OF SOUTH CAROLINA?

23 A. YES, SIR, IN EASLEY, SOUTH CAROLINA.

24 Q. YOU FROM THIS AREA OF THE COUNTRY?

25 A. MY WHOLE LIFE.

CHRISTOPHER SHIRLEY - DIRECT EXAMINATION BY MR. MOYER

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1 Q. BORN HERE AND GREW UP HERE IN THE GREENVILLE AREA?

2 A. YES, SIR.

3 Q. OKAY. NOW LET ME ASK YOU WHAT TYPE OF WORK DO YOU DO?

4 A. CURRENTLY I'M DOING SATELLITE AND CABLE WORK. IT'S

5 WHAT I'VE PRETTY MUCH ALWAYS DONE AND CELL TOWER

6 CONSTRUCTION EQUIPMENT PLACEMENT.

7 Q. WERE YOU DOING THAT BACK IN NOVEMBER OF -- BACK IN ---

8 A. YES, SIR, I WAS.

9 Q. --- BACK IN THE FALL OF 2002?

10 A. YES, SIR.

11 Q. OKAY.

12 A. I'M SORRY.

13 Q. DID YOU KNOW HOMER JOHNSON?

14 A. YES, SIR.

15 Q. HOW LONG DID YOU KNOW HOMER JOHNSON?

16 A. SINCE WE WERE ABOUT SEVEN.

17 Q. SO DID YOU GROW UP WITH HIM PRETTY MUCH?

18 A. YES.

19 Q. DID YOU REMAIN FRIENDS WITH HIM THROUGHOUT HIS LIFE?

20 A. YES, SIR.

21 Q. DID HOMER EVER DO ANY WORK FOR YOU?

22 A. YES, SIR. HE WORKED FOR ME OFF AND ON FOR ABOUT A YEAR

23 AND A HALF, TWO YEARS.

24 Q. YOU HAD TO LET HIM GO THEN?

25 A. YES, SIR. THE WORK HAD SLOWED DOWN AND JUST COULDN'T

CHRISTOPHER SHIRLEY - DIRECT EXAMINATION BY MR. MOYER

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1 KEEP HIM ON.

2 Q. AND HOW LONG WAS THAT BEFORE HE DIED?

3 A. APPROXIMATELY FOUR TO FIVE MONTHS.

4 Q. NOW BEFORE HE DIED AT SOME POINT DID HE GIVE YOU
5 ANYTHING?

6 A. YES, SIR, HE DID.

7 Q. AND WHAT WAS IT THAT HE GAVE YOU?

8 A. A SMALL PISTOL.

9 Q. WHAT CALIBER PISTOL WAS IT?

10 A. I'M NOT SURE. I JUST REMEMBER IT WAS A PUG-NOSE. I'M
11 THINKING IT WAS A 38 OR A 45.

12 Q. OKAY. AND HOW LONG BEFORE HE DIED WAS IT THAT HE GAVE
13 THAT TO YOU?

14 A. PROBABLY ABOUT A WEEK BEFORE, I BELIEVE.

15 Q. WHAT -- DID HE TELL YOU WHERE HE GOT IT?

16 A. YES, SIR, HE DID.

17 Q. WHERE DID HE SAY HE GOT IT?

18 A. FROM THE TRUNK OF RUSTY RICE'S CAR.

19 Q. OKAY. AND DID HE TELL YOU HOW HE GOT RUSTY RICE'S CAR?

20 A. YES, SIR.

21 Q. WHAT DID HE SAY?

22 A. HE SAID THAT HE TOOK RUSTY'S CAR WHILE RUSTY WAS IN

23 RYAN'S EATING, TOOK IT TO -- OR ACTUALLY HE WAS HAVING

24 DINNER WITH RUSTY AND SOME OTHER PEOPLE. AND HE SAID THAT

25 HE ACTED LIKE HE WAS SICK, WENT HOME AND GOT HIS WIFE, AND

CHRISTOPHER SHIRLEY - DIRECT EXAMINATION BY MR. MOYER

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1 TOOK HIS WIFE BACK UP THERE AND LET HIS WIFE DRIVE HIS
2 VEHICLE. AND THEN HE DROVE MR. RICE'S VEHICLE TO TRAVELERS
3 REST.

4 Q. OKAY.. HE STOLE IT?

5 A. YEAH, HE STOLE IT.

6 Q. DID HE SAY WHAT ELSE HE GOT OUT OF THE CAR?

7 A. COCAINE, SOME CASH. AND I'M NOT SURE IF HE GOT ANOTHER
8 GUN OR NOT.

9 Q. AND WHAT DID HE -- WHAT DID YOU DO WITH THE GUN THAT
10 YOU GOT FROM HOMER JOHNSON?

11 A. I JUST PUT IT -- HE TOLD ME HE DIDN'T WANT IT AT HIS
12 HOUSE AND HE DIDN'T WANT IT, YOU KNOW, AROUND HIM. RUSTY
13 WAS COMING OVER TO HIS HOUSE AND ----

14 Q. ALL RIGHT. WHAT DID YOU -- DID YOU END UP KEEPING IT
15 OR DID YOU GIVE IT TO ANYBODY?

16 A. I GAVE IT TO A POLICE OFFICER THAT TOOK MY STATEMENT
17 SHORTLY AFTER HOMER'S DEATH.

18 Q. NOW DID YOU SEE HOMER JOHNSON ON THE DAY THAT HE WAS
19 KILLED?

20 A. NO, SIR. I WAS IN, I BELIEVE, JACKSONVILLE, NORTH
21 CAROLINA.

22 Q. OKAY. WERE YOU WORKING?

23 A. YES, SIR.

24 Q. DID YOU SPEAK TO HIM THAT DAY?

25 A. YES, SIR.

CHRISTOPHER SHIRLEY - CROSS EXAMINATION BY MR. SUMNER

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1 Q. ON THE TELEPHONE?

2 A. YES, SIR.

3 Q. WHAT WAS YOUR CELL PHONE NUMBER AT THAT TIME?

4 A. QUITE HONESTLY I'D HAVE TO CHECK MY RECORDS.

5 Q. YOU DON'T REMEMBER?

6 A. UH-UH (NEGATIVE).

7 Q. NOW WHEN YOU SPOKE TO HIM DID HE TELL YOU WHAT HE WAS
8 INTENDING TO DO AT THAT MOMENT?

9 A. YES. HE SAID HE'D BEEN WAITING AROUND TO MEET RUSTY TO
10 TRADE SOME COCAINE FOR SOME POT. AND APPARENTLY RUSTY
11 HADN'T SHOWED UP. SO HE HAD LEFT. AND HE SAID HE WAS
12 GETTING TIRED OF WAITING ON HIM. HE SAID HE WAS GETTING
13 READY TO GO BACK AND WAIT ON RUSTY.

14 Q. DID HE SAY WHERE HE WAS GOING TO GO TO GO WAIT ON
15 RUSTY?

16 A. HE JUST -- HE SAID THE HOTEL, BUT HE DIDN'T TELL ME ANY
17 SPECIFICS.

18 Q. ALL RIGHT. PLEASE ANSWER ANY QUESTIONS THE DEFENSE MAY
19 HAVE.

20 THE COURT: MR. SUMNER.

21 MR. SUMNER: THANK YOU, YOUR HONOR. MAY IT PLEASE THE
22 COURT?

23 CROSS EXAMINATION BY MR. SUMNER:

24 Q. MR. SHIRLEY, DO YOU KNOW RUSSELL RICE OR RUSTY RICE?

25 A. NO, SIR.

CHRISTOPHER SHIRLEY - CROSS EXAMINATION BY MR. SUMNER

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1 Q. YOU DO NOT?

2 A. NO, SIR.

3 Q. DID YOU KNOW ABOUT THE FRIENDSHIP PRESENT BETWEEN THE
4 DECEASED AND RUSTY?

5 A. I KNEW THEY WERE DOING BUSINESS TOGETHER. I DON'T KNOW
6 ANYTHING ABOUT FRIENDSHIP.

7 Q. WHEN YOU SAY DOING BUSINESS TOGETHER, YOU TALKING ABOUT
8 DOPE?

9 A. YES, SIR.

10 Q. HOMER SOLD DRUGS, NO QUESTION, IS THAT RIGHT?

11 A. YEAH.

12 Q. OKAY. ALL RIGHT. AND HOW DO YOU KNOW THAT?

13 A. I COULD TELL YOU THE FIRST GIRL HE HAD SEX WITH. WE
14 WERE GOOD FRIENDS.

15 Q. OKAY. WELL, I MEAN, DID YOU -- MY QUESTION WASN'T
16 ABOUT SEX WITH A GIRLFRIEND IT WAS ABOUT HOW DID YOU KNOW
17 THAT HE WAS SELLING -- HE WAS INVOLVED IN THE DRUG TRADE,
18 DRUG BUSINESS?

19 A. MR. JOHNSON TOLD ME.

20 Q. HE DID?

21 A. YES, SIR.

22 Q. OKAY. DID HE TELL YOU EVERYBODY THAT HE DEALT WITH?

23 A. PRETTY MUCH, I MEAN, JUST ABOUT.

24 Q. ALL RIGHT.

25 A. I KNEW, YOU KNOW, JUST ABOUT EVERYONE HE DEALT WITH.

CHRISTOPHER SHIRLEY - CROSS EXAMINATION BY MR. SUMNER

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1 WE'VE JUST BEEN CLOSE FRIENDS FOR A LONG TIME.

2 Q. SURE. I MEAN, HE WAS ACTIVELY INVOLVED IN THE DRUG
3 TRADE, IS THAT RIGHT?

4 A. YES, SIR.

5 Q. IS THAT HOW HE MADE HIS LIVING?

6 A. NOT WHEN HE CAME TO WORK WITH ME, BUT AFTER I LET HIM
7 GO I ASSUME SO.

8 Q. NOW HE TOLD YOU -- I BELIEVE YOU TESTIFIED EARLIER
9 ABOUT THIS STORY ABOUT THE CAR THEFT, IS THAT RIGHT?

10 A. YES. HE TOLD ME ABOUT THE CAR THEFT.

11 Q. AND HE TOLD YOU THAT HE, I BELIEVE, WAS SUPPOSED TO BE
12 EATING WITH SEVERAL PEOPLE INCLUDING RUSTY, IS THAT RIGHT?

13 A. YES, SIR.

14 Q. AND THAT HE ACTED LIKE HE WAS SICK AND LEFT, IS THAT
15 RIGHT?

16 A. YES, SIR.

17 Q. AND THEN CAME BACK AND STOLE RUSTY'S CAR?

18 A. YES, SIR.

19 Q. AND THEN TOOK IT AND PRETTY MUCH RANSACKED IT OR TOOK
20 EVERYTHING OUT OF IT THAT HE COULD?

21 A. YEAH. HE TOOK HIS DOPE AND HIS CASH.

22 Q. OKAY. ALL RIGHT. DO YOU THINK THAT -- TO YOUR
23 KNOWLEDGE WAS HE A FRIEND OF RUSTY'S, A COLLEAGUE, IS THAT
24 RIGHT?

25 A. THEY WERE BUSINESS ASSOCIATES IN DRUG TRAFFICKING.

TERRY LYNCH - DIRECT EXAMINATION BY MR. MOYER

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1 MR. SUMNER: ONE SECOND PLEASE, YOUR HONOR. THANK YOU.

2 THE COURT: THANK YOU. YOU CAN STEP DOWN.

3 MR. MOYER: I CALL TERRY LYNCH.

4 TERRY LYNCH, BEING DULY

5 SWORN TESTIFIED AS FOLLOWS:

6 DIRECT EXAMINATION BY MR. MOYER:

7 Q. ALL RIGHT. MS. LYNCH, HOW OLD ARE YOU?

8 A. I'M THIRTY-SEVEN.

9 Q. YOU LIVE HERE IN GREENVILLE?

10 A. YES, SIR.

11 Q. YOU FROM GREENVILLE?

12 A. YES, SIR.

13 Q. AND HAVE YOU LIVED HERE ALL YOUR LIFE?

14 A. YES, SIR.

15 Q. WHERE DO YOU WORK?

16 A. I WORK FOR GREENPOINT CREDIT.

17 Q. HOW LONG HAVE YOU WORKED THERE?

18 A. ELEVEN YEARS.

19 Q. NOW DO YOU KNOW THE DEFENDANT IN THIS CASE, RUSSELL
20 RICE?

21 A. YES, SIR.

22 Q. HOW LONG DID YOU KNOW HIM BACK IN NOVEMBER OF 2002?

23 A. PROBABLY ABOUT A YEAR OR MORE.

24 Q. AND HOW DID YOU GET TO KNOW HIM?

25 A. I MET HIM THROUGH A MUTUAL FRIEND, CHAD MASON.

TERRY LYNCH - DIRECT EXAMINATION BY MR. MOYER

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1 Q. NOW WAS -- MR. RICE, THE DEFENDANT, DID HE BECOME A
2 GOOD FRIEND OF YOURS?

3 A. NOT BEST FRIENDS, BUT WE GOT TO KNOW EACH OTHER
4 SOMEWHAT.

5 Q. OKAY. AND WHERE DID HE WORK?

6 A. NOWHERE THAT I KNEW OF.

7 Q. DO YOU KNOW ANYTHING ABOUT HIM SELLING TOOLS OUT OF HIS
8 CAR?

9 A. NO, SIR.

10 Q. OKAY. NOW DID YOU SEE RUSSELL RICE ON NOVEMBER THE 5TH
11 OF 2002?

12 A. I DID.

13 Q. WHERE WAS IT THAT YOU SAW HIM?

14 A. AT THE IHOP ON WADE HAMPTON BOULEVARD.

15 Q. THAT'S A RESTAURANT?

16 A. YES, SIR. THE INTERNATIONAL HOUSE OF PANCAKES.

17 Q. OKAY. AND WHAT IS THAT RESTAURANT -- CAN YOU DESCRIBE
18 THAT AREA ON WADE HAMPTON, WHERE IT IS?

19 A. IT'S RIGHT AROUND SOME OF THE BOB JONES CAMPUS.
20 THERE'S AN OLD MOTEL THAT'S BEEN THERE FOR YEARS. I CAN'T
21 THINK OF THE NAME OF IT THOUGH. THERE'S ALSO A BUILDING
22 PLACE THAT SELLS COVERS FOR TRUCKS AND THINGS LIKE THAT.
23 AND THAT'S REALLY THE ONLY THING I CAN THINK OF IN THAT
24 AREA.

25 Q. OKAY. BUT IT'S THE ONLY IHOP RESTAURANT ON WADE

TERRY LYNCH - DIRECT EXAMINATION BY MR. MOYER

193

1 HAMPTON BOULEVARD NEAR ---

2 A. YES, SIR.

3 Q. --- BOB JONES?

4 A. YES, SIR. IT'S THE ONLY IHOP ON WADE HAMPTON
5 BOULEVARD.

6 Q. OKAY. WHAT TIME WAS IT THAT YOU MET WITH HIM THERE?

7 A. IT WAS AROUND 4:15.

8 Q. DID YOU WORK THAT DAY?

9 A. I DID.

10 Q. DID YOU WORK ALL DAY?

11 A. NOT ALL DAY. I HAD AN OFFICE MEETING AND LEFT EARLY.

12 Q. OKAY. AND DID YOU MEET HIM RIGHT AFTER YOU LEFT WORK?

13 A. YES, SIR. I HAD A FEW ERRANDS. AND THEN I MET HIM
14 SHORTLY AFTER.

15 Q. AND WHEN YOU GOT TO THE RESTAURANT WERE YOU THERE FIRST
16 OR WAS HE THERE FIRST?

17 A. HE WAS THERE, I BELIEVE.

18 Q. AND WHERE DID YOU MEET UP WITH HIM? INSIDE THE
19 RESTAURANT OR OUTSIDE?

20 A. NO, SIR. IN THE PARKING LOT.

21 Q. AND WAS HE IN HIS -- WHERE WAS HE?

22 A. HE WAS IN HIS CAR WHEN I PULLED IN.

23 Q. OKAY. WHAT DID HIS CAR LOOK LIKE? WHAT COLOR WAS IT?

24 A. WHITE.

25 Q. WAS THAT THE SAME CAR YOU HAD KNOWN HIM TO USE ALL THE

TERRY LYNCH - DIRECT EXAMINATION BY MR. MOYER

194

1 TIME THAT YOU KNEW HIM?

2 A. NOT ALL THE TIME, BUT I HAD SEEN HIM IN IT A COUPLE OF
3 TIMES.

4 Q. OKAY. UP IN AROUND THAT TIME ---

5 A. RIGHT.

6 Q. DID YOU THEN MEET WITH HIM INSIDE THE RESTAURANT OR
7 OUTSIDE?

8 A. OUTSIDE.

9 Q. WHERE?

10 A. IN THE PARKING LOT.

11 Q. OKAY. WERE YOU OUTSIDE IN THE PARKING LOT ---

12 A. HE GOT IN MY CAR.

13 Q. SO DID YOU EVER GET OUT OF YOUR CAR?

14 A. NO, SIR.

15 Q. DID YOU EVER GO IN THE RESTAURANT?

16 A. NO, SIR.

17 Q. HOW LONG WERE YOU THERE IN THE PARKING LOT WITH HIM?

18 A. ABOUT FIFTEEN TO TWENTY MINUTES.

19 Q. AND WHAT LED TO YOUR LEAVING?

20 A. I HAD A CALL A LITTLE BEFORE I GOT THERE. AND I HAD TO
21 PICK MY SON UP.

22 Q. AND WHERE DID YOU HAVE TO PICK YOUR SON UP?

23 A. OVER CLOSE TO FURMAN UNIVERSITY AT HIS BABYSITTER.

24 Q. WHEN YOU DECIDED TO LEAVE WHAT DID THE DEFENDANT DO?

25 WHERE DID HE GO?

TERRY LYNCH - CROSS EXAMINATION BY MR. SUMNER

195

1 A. HE WENT TO HIS CAR. I ASSUMED HE GOT IN HIS CAR THE
2 SAME, YOU KNOW, AND LEFT THE SAME TIME I DID.

3 Q. OKAY. NOW DID YOU HAVE ANY TELEPHONE CONVERSATIONS
4 WITH HIM RIGHT AROUND THAT TIME THAT YOU WERE MEETING WITH
5 HIM?

6 A. YES, SIR, WE DID.

7 Q. OKAY. BEFORE YOU MET WITH HIM?

8 A. YES, SIR.

9 Q. DID YOU HAVE ANY AFTER?

10 A. WE MAY HAVE HAD -- WE MAY HAVE TALKED AFTER I LEFT
11 THERE ALSO.

12 Q. HOW SOON AFTER?

13 A. IT WOULD HAVE BEEN WITHIN TEN MINUTES.

14 Q. WHAT WAS YOUR PHONE NUMBER AT THAT TIME?

15 A. MY PHONE NUMBER WAS 982-5064.

16 Q. OKAY.

17 A. IT'S MY CELL PHONE.

18 Q. OKAY. PLEASE ANSWER ANY QUESTIONS THE DEFENSE HAS.

19 THE COURT: MR. SUMNER.

20 MR. SUMNER: YES, YOUR HONOR. BRIEFLY.

21 CROSS EXAMINATION BY MR. SUMNER:

22 Q. MS. LYNCH, DID YOU TESTIFY THAT YOU LEFT THE IHOP
23 AROUND 4:30 THAT AFTERNOON, IS THAT CORRECT?

24 A. YES, SIR.

25 Q. OKAY. AND RUSTY LEFT AS WELL, IS THAT RIGHT? HE GOT

ZACHARY SMITH - DIRECT EXAMINATION BY MR. MOYER

196

1 IN HIS CAR?

2 A. I ASSUME HE DID. HE GOT IN HIS CAR THE SAME, YOU KNOW,
3 SO I ASSUMED HE WAS LEAVING THE SAME TIME I DID.

4 Q. OKAY. AND THERE'S NO QUESTION THIS IS THE IHOP RIGHT
5 THERE AT WADE HAMPTON BOULEVARD?

6 A. YES, SIR. THERE'S ONLY ONE ON WADE HAMPTON.

7 Q. THANK YOU.

8 THE COURT: THANK YOU. YOU CAN STEP DOWN.

9 MR. MOYER: I CALL ZACHARY SMITH. YOUR HONOR, IF IT'D
10 PLEASE THE COURT, WE WOULD ASK THAT THIS WITNESS BE
11 DISMISSED.

12 THE COURT: ANY OBJECTION?

13 MR. SUMNER: NO, SIR.

14 THE COURT: THANK YOU. YOU'RE EXCUSED.

15 ZACHARY SMITH, BEING DULY
16 SWORN TESTIFIED AS FOLLOWS:

17 **DIRECT EXAMINATION BY MR. MOYER:**

18 Q. ALL RIGHT. MR. SMITH, HOW OLD ARE YOU?

19 A. TWENTY-EIGHT.

20 Q. AND YOU LIVE HERE IN GREENVILLE?

21 A. YES, SIR.

22 Q. YOU'RE FROM GREENVILLE?

23 A. YES, SIR.

24 Q. OKAY. WHERE ARE YOU WORKING?

25 A. AT THE MOMENT SNC AND ASSOCIATES.

ZACHARY SMITH - DIRECT EXAMINATION BY MR. MOYER

197

1 Q. OKAY. THAT'S A HEATING AND AIR COMPANY?

2 A. YES.

3 Q. IT'S A FAMILY BUSINESS?

4 A. YES.

5 Q. OKAY. NOW DID YOU KNOW THE VICTIM IN THIS CASE, HOMER
6 JOHNSON?

7 A. YES, SIR.

8 Q. AND HOW LONG HAD YOU KNOWN HOMER JOHNSON?

9 A. AROUND SIX YEARS.

10 Q. WHEN WAS THE LAST TIME THAT YOU SAW HOMER JOHNSON?

11 A. THE DAY BEFORE THE MURDER.

12 Q. YOU REMEMBER WHAT DAY OF THE WEEK IT WAS?

13 A. I BELIEVE IT WAS ON MONDAY.

14 Q. AND WHERE WAS IT THAT YOU SAW HIM?

15 A. AT HIS HOUSE.

16 Q. WHERE WAS HIS HOUSE? WHAT ROAD WAS HIS HOUSE ON?

17 A. I BELIEVE IT WAS 6TH STREET, CITY VIEW.

18 Q. IN GREENVILLE?

19 A. YES, SIR.

20 Q. ABOUT WHAT TIME WAS IT THAT YOU WENT OVER THERE?

21 A. AROUND LATE AFTERNOON, FIVEISH.

22 Q. WHAT WAS YOUR REASON FOR GOING OVER THERE?

23 A. I DELIVERED A PACKAGE FROM SOMEONE.

24 Q. OKAY. AND TELL ME WHAT THIS PACKAGE LOOKED LIKE.

25 A. IT WAS A GREEN STEROLITE TOTE BOX. STEROLITE BRAND, I

ZACHARY SMITH - DIRECT EXAMINATION BY MR. MOYER

198

1 GUESS, AROUND TWO FOOT BY TWO FOOT, SOMETHING LIKE THAT.

2 Q. AND WHEN DID YOU GET IT?

3 A. I'D SAY AROUND FORTY-FIVE MINUTES BEFORE I DELIVERED
4 IT.

5 Q. OKAY. AND WHERE WAS IT BROUGHT TO YOU? WHERE WERE YOU
6 WHEN YOU GOT THAT PACKAGE?

7 A. I WAS AT MY SHOP.

8 Q. WHERE IS YOUR SHOP?

9 A. IT'S AT MY GRANDFATHER'S HOUSE.

10 Q. AND THAT'S IN GREENVILLE AS WELL?

11 A. YES.

12 Q. HOW FAR AWAY IS THAT FROM WHERE HOMER JOHNSON LIVED?

13 A. I'D SAY THREE OR FOUR MILES.

14 Q. SO THEN THAT PACKAGE WAS BROUGHT TO YOU? YOU DIDN'T GO
15 GET IT?

16 A. NO, SIR.

17 Q. AND WHAT WAS DONE WITH THAT PACKAGE AT YOUR PLACE OF
18 BUSINESS?

19 A. JUST TRANSPORTING IT FROM ONE VEHICLE TO ANOTHER.

20 Q. OKAY. AND IT WAS PUT INTO YOUR VEHICLE?

21 A. YES, SIR.

22 Q. YOU KNEW WHAT WAS IN THE PACKAGE?

23 A. YES, SIR.

24 Q. WHAT WAS IN THE PACKAGE?

25 A. MARIJUANA.

ZACHARY SMITH - DIRECT EXAMINATION BY MR. MOYER

199

1 Q. HOW MUCH?

2 A. I BELIEVE TWENTY POUNDS.

3 Q. NOW WAS HOMER JOHNSON -- DID YOU DO ANYTHING TO LET
4 HOMER JOHNSON KNOW THAT THAT PACKAGE WOULD BE BROUGHT TO
5 HIM?

6 A. I CALLED HIM.

7 Q. AND DID YOU CALL HIM AROUND THE TIME THAT -- SHORTLY
8 BEFORE YOU BROUGHT IT TO HIM?

9 A. YES.

10 Q. WHAT DID YOU TELL HIM?

11 A. I TOLD HIM THAT I WAS ON THE WAY TO HIS HOUSE.

12 Q. OKAY. AND DID YOU LEAVE PRETTY SOON AFTER YOU SPOKE TO
13 HIM?

14 A. YES, WITHIN FIFTEEN, TWENTY MINUTES.

15 Q. SO DID YOU DRIVE YOUR TRUCK OVER THERE THEN?

16 A. YES, SIR.

17 Q. YOU HAD THAT CONTAINER WITH YOU?

18 A. YES, SIR.

19 Q. DID ANYONE GO WITH YOU?

20 A. NO, SIR.

21 Q. NOW WHEN YOU GOT TO HOMER JOHNSON'S HOUSE DID YOU GO
22 INSIDE THE HOUSE?

23 A. NO, SIR.

24 Q. DID YOU SEE HOMER THERE?

25 A. YES, SIR.

ZACHARY SMITH - DIRECT EXAMINATION BY MR. MOYER

200

- 1 Q. AND WHERE DID YOU SEE HIM?
- 2 A. HE WAS OUTSIDE THE HOUSE.
- 3 Q. HOW LONG DID YOU STAY THERE WITH HOMER JOHNSON?
- 4 A. ROUGHLY TEN MINUTES.
- 5 Q. DID HOMER DO ANYTHING WITH THE PACKAGE THAT YOU BROUGHT
- 6 THERE?
- 7 A. JUST GOT IT OUT OF THE BACK OF MY TRUCK.
- 8 Q. AND WHAT DID HE DO WITH IT AFTER HE GOT IT OUT OF YOUR
- 9 TRUCK?
- 10 A. TOOK IT INSIDE.
- 11 Q. DID YOU EVER SEE WHAT HE DID WITH IT INSIDE?
- 12 A. NO, I LEFT AFTER.
- 13 Q. SO YOU DIDN'T GO IN WITH HIM THEN?
- 14 A. NO, SIR.
- 15 Q. ALL RIGHT. DID YOU SEE HOMER THE NEXT DAY THEN?
- 16 A. NO, SIR.
- 17 Q. DID YOU SPEAK TO HIM?
- 18 A. YES, SIR.
- 19 Q. AND HOW WERE YOU ABLE TO SPEAK TO HIM?
- 20 A. BY CELL PHONE.
- 21 Q. AND WHO CALLED WHOM?
- 22 A. I CALLED HIM.
- 23 Q. OKAY. AND DID HE EVER CALL YOU?
- 24 A. YES, SIR.
- 25 Q. WHAT WAS YOUR TELEPHONE NUMBER AT THAT TIME?

ZACHARY SMITH - DIRECT EXAMINATION BY MR. MOYER

201

1 A. 346-2655.

2 Q. OKAY. AND WHEN HE CALLED YOU DID HE TELL YOU WHAT HE
3 WAS INTENDING TO DO AT THAT TIME?

4 A. YES, SIR.

5 Q. WHAT DID HE SAY HE WAS INTENDING TO DO?

6 A. HE SAID THAT HE WAS GOING TO THE SUPER 8 MOTEL TO GET
7 THE OTHER HALF OF THE MONEY.

8 Q. THE OTHER HALF OF WHAT MONEY?

9 A. HE CALLED ME AND SAID HE HAD TEN THOUSAND DOLLARS AND
10 THAT HE WAS GOING TO THE SUPER 8 MOTEL TO GET THE OTHER HALF
11 OF THE MONEY.

12 Q. OKAY. DID YOU EVER SPEAK TO HIM AGAIN?

13 A. NO, SIR.

14 Q. DID YOU EVER SEE HIM AGAIN AFTER THAT TELEPHONE
15 CONVERSATION?

16 A. NO, SIR.

17 Q. OKAY. PLEASE ANSWER ANY QUESTIONS DEFENSE MAY HAVE.

18 THE COURT: MR. SUMNER.

19 MR. SUMNER: I DON'T HAVE ANY QUESTIONS OF THIS
20 WITNESS, YOUR HONOR.

21 THE COURT: STEP DOWN.

22 MR. MOYER: I CALL ANGELA STAPLETON. I CALL SHELLY
23 JOHNSON.

24 SHELLY JOHNSON, BEING

25 DULY SWORN TESTIFIED AS FOLLOWS:

SHELLY JOHNSON - DIRECT EXAMINATION BY MR. MOYER

202

1 DIRECT EXAMINATION BY MR. MOYER:

2 Q. ALL RIGHT. MS. JOHNSON, HOW OLD ARE YOU?

3 A. I'M TWENTY-FOUR.

4 Q. OKAY. AND YOU LIVE HERE IN GREENVILLE?

5 A. YES, I DO.

6 Q. YOU FROM GREENVILLE?

7 A. YES, I AM.

8 Q. AGAIN, YOU'VE LIVED HERE ABOUT ALL YOUR LIFE?

9 A. YES, SIR.

10 Q. NOW HOMER JOHNSON WAS YOUR HUSBAND?

11 A. YES, HE WAS.

12 Q. HOW LONG WERE YOU MARRIED?

13 A. NINE YEARS OR EIGHT YEARS. EIGHT YEARS..

14 Q. AND YOU AND HOMER HAD HOW MANY CHILDREN?

15 A. WE HAVE FOUR CHILDREN.

16 Q. HOW OLD WAS HOMER JOHNSON WHEN HE WAS KILLED?

17 A. THIRTY YEARS OLD.

18 Q. LET ME TAKE YOU TO THE DAY BEFORE HE WAS KILLED,

19 MONDAY, NOVEMBER THE 4TH.

20 A. YES, SIR.

21 Q. 2002. DO YOU KNOW ZACK SMITH, THE MAN WHO TESTIFIED

22 ---

23 A. I'VE SEEN HIM. I'VE HEARD MY HUSBAND SPEAK OF HIM, BUT

24 I DON'T KNOW HIM PERSONALLY. NEVER MET HIM FACE TO FACE.

25 Q. DID YOU SEE HIM ON THAT PARTICULAR DAY, THE DAY BEFORE

SHELLY JOHNSON - DIRECT EXAMINATION BY MR. MOYER

203

1 ---

2 A. YES, I DID.

3 Q. --- HOMER DIED? AND AROUND WHAT TIME WAS IT THAT YOU
4 SAW HIM?

5 A. ABOUT FOURISH, FIVE, LIKE MAYBE IN THE AFTERNOON AROUND
6 FIVE, 5:30.

7 Q. AND WERE YOU AT HOME WHEN HE ARRIVED?

8 A. YES. WELL, NO, I WASN'T. I'M THINKING BACK. I WAS AT
9 WAL-MART. BUT WHEN I GOT HOME HIM AND MY HUSBAND WAS IN MY
10 BACK YARD.

11 Q. OKAY. AND YOU SAW MR. SMITH SPEAKING TO YOUR HUSBAND
12 THEN IN THE BACK YARD?

13 A. YES, I DID.

14 Q. OKAY. AND DID HE HAVE -- YOU SAW HIS VEHICLE AS WELL?

15 A. YES, I DID.

16 Q. OKAY. AND WHAT WERE HOMER AND MR. SMITH DOING WHEN YOU
17 SAW THEM?

18 A. THEY WERE STANDING ON THE SIDE OF HIS TRUCK. AND THEY
19 WERE JUST SPEAKING, TALKING.

20 Q. WAS THERE ANYONE THERE WITH ZACK SMITH?

21 A. NO, THERE WASN'T.

22 Q. OKAY. DID YOU STAY OUT THERE WITH THEM?

23 A. NO, I DIDN'T. I WENT IN THE HOUSE.

24 Q. DID ZACK SMITH EVER COME IN?

25 A. NO, HE DIDN'T.

SHELLY JOHNSON - DIRECT EXAMINATION BY MR. MOYER

204

1 Q. OKAY. DID HOMER?

2 A. YES, HE DID. HE BROUGHT A BIG LIKE STEROLITE, BIG TALL
3 CONTAINER THING IN THE HOUSE.

4 Q. AND WHAT DID HE DO WITH IT?

5 A. HE TOOK IT TO THE MIDDLE BEDROOM AND LOCKED IT IN HIS
6 CLOSET.

7 Q. OKAY. AND WHAT DID YOU ALL DO THAT NIGHT?

8 A. WE WENT TO THE CAR SHOW. I HAD TO SELL REFRESHMENTS.
9 WE HAD A CAR SHOW AT THEIR STORE.

10 Q. AT WHOSE STORE?

11 A. IT WAS JOHNNY HAMBY, AND HOMER, AND RUSTY. THEY WERE
12 ALL THREE IN ALL THAT.

13 Q. OKAY. SO YOU KNEW -- DID YOU KNOW RUSTY RICE THEN?

14 A. YES, I DID.

15 Q. HOW DID YOU GET TO KNOW RUSTY RICE?

16 A. I KNEW HIM -- PROBABLY THE FIRST TIME I MET HIM WAS
17 MAYBE SIX YEARS OR SEVEN YEARS ROUGHLY BEFORE THAT, BEFORE
18 MY HUSBAND WAS KILLED. SO I'VE KNOWN HIM FOR QUITE A WHILE.

19 Q. DID HE SPEND A LOT OF TIME WITH YOUR HUSBAND?

20 A. OFF AND ON, YEAH. A LONG TIME AGO WHEN WE LIVED ON
21 WOOD STREET HE WOULD COME BY BRIEFLY. AND HOMER AND HIM
22 WOULD HANG OUT ON THE FRONT PORCH. AND THEN HE WOULD LEAVE.
23 AND THEN HE -- WE DIDN'T SEE HIM FOR A LONG TIME. AND THEN
24 HERE RECENTLY RIGHT BEFORE -- WELL, BEFORE HOMER GOT KILLED
25 MAYBE I'D SAY TEN MONTHS HE JUST POPPED BACK INTO OUR LIVES.

SHELLY JOHNSON - DIRECT EXAMINATION BY MR. MOYER

205

1 Q. AND YOU SAW HIM A GOOD BIT DURING THAT ---

2 A. YEAH.

3 Q. --- TEN MONTH PERIOD OR SO?

4 A. YES, SIR.

5 Q. WHERE WOULD THEY SPEND A LOT OF THEIR TIME TOGETHER?

6 A. THE STORE UP ON WHITE HORSE ROAD. THEY WOULD ALWAYS BE
7 UP THERE.

8 Q. WHAT WAS THE NAME OF THAT STORE?

9 A. HARD TIMES HUNTING AND FISHING.

10 Q. WHO ELSE -- DO YOU KNOW WHO OWNED THAT STORE?

11 A. JOHNNY HAMBY.

12 Q. OKAY. SO THE THREE OF THEM WOULD SPEND A LOT OF TIME
13 THERE?

14 A. YES, THEY WOULD, SIR.

15 Q. OKAY. NOW WHEN YOU WENT TO THIS CAR SHOW THAT WAS NEAR
16 THAT STORE YOU JUST DESCRIBED, ---

17 A. YES.

18 Q. --- DID YOU AND HOMER GO THERE?

19 A. ME AND MY SISTER DID. HE DIDN'T GO WITH ME. HE LEFT
20 WAY BEFORE I DID.

21 Q. DID YOU SEE MR. JOHNSON, HOMER JOHNSON, OVER THERE AT
22 THE CAR SHOW?

23 A. I SAW HIM BRIEFLY. HE WOULD COME IN AND OUT CHECKING
24 ON ME.

25 Q. OKAY. NOW DID Y'ALL GO HOME TOGETHER?

SHELLY JOHNSON - DIRECT EXAMINATION BY MR. MOYER

206

1 A. YES, WE DID.

2 Q. AND DO YOU REMEMBER HOW LATE -- WAS IT PRETTY LATE BY
3 THE TIME ---

4 A. ABOUT 10:40, 10:45. HE SAID HE WASN'T FEELING WELL AND
5 HE WANTED TO GO HOME WITH US.

6 Q. OKAY. NOW LET ME ASK YOU ABOUT THIS CAR.

7 A. YES, SIR.

8 Q. DID YOU KNOW WHAT KIND OF CAR THIS DEFENDANT, RUSSELL
9 RICE, DROVE?

10 A. I KNEW WHAT IT LOOKED LIKE. I DIDN'T KNOW EXACTLY THE
11 MAKE AND MODEL.

12 Q. WOULD YOU RECOGNIZE A PICTURE OF IT ---

13 A. YES, I WOULD. YES, SIR.

14 MR. SUMNER: NO OBJECTION, YOUR HONOR.

15 THE COURT: WITHOUT OBJECTION.

16 (WHEREUPON STATE'S EXHIBIT NUMBER 46 WAS ENTERED INTO
17 EVIDENCE)

18 Q. OKAY. I'M GOING TO SHOW YOU STATE'S EXHIBIT NUMBER 46.
19 WOULD YOU TAKE A LOOK AT THAT PHOTOGRAPH? AND DO YOU SEE
20 THE DEFENDANT'S CAR IN THAT PICTURE?

21 A. YES, I DO. YES, SIR.

22 Q. OKAY. VERY BRIEFLY, FOR THE BENEFIT OF THE JURY -- I
23 THINK IT'S GOING TO TAKE A MINUTE TO WARM UP. LET ME ASK
24 YOU SEVERAL OTHER QUESTIONS WHILE IT'S WARMING UP, MS.

25 JOHNSON.

SHELLY JOHNSON - DIRECT EXAMINATION BY MR. MOYER

207

1 A. OKAY.

2 Q. NOW THE CAR THAT YOU MENTIONED THAT HE HAD HAD YOU SEEN
3 RUSSELL RICE IN THIS CAR?

4 A. YES, I HAD.

5 Q. AND FOR A TIME PERIOD PRIOR TO YOUR HUSBAND'S DEATH DID
6 YOU SEE HIM EXCLUSIVELY IN THAT CAR?

7 A. YES, SIR.

8 Q. ALL RIGHT. DID YOU EVER KNOW OF HIM TO SELL TOOLS OUT
9 OF THAT CAR?

10 A. I NEVER REALLY KNEW, NO.

11 Q. OKAY.

12 A. I KNEW -- I WAS TOLD THAT HE BASICALLY LIVED IN HIS
13 CAR.

14 Q. DID YOU KNOW HIM TO HAVE A HOUSE OR ---

15 A. NO, SIR.

16 Q. --- STAY IN AN APARTMENT OR ANYTHING LIKE THAT?

17 A. NO. MY HUSBAND TOLD ME THAT HE WAS STAYING IN AND OUT
18 OF MOTELS AND IN HIS CAR.

19 Q. OKAY. ALL RIGHT. NOW ARE YOU FAMILIAR WITH THE
20 INCIDENT OF WHEN HIS CAR WAS STOLEN?

21 A. YES, I AM.

22 Q. AND WHO TOOK IT?

23 A. MY HUSBAND DID.

24 Q. AND DID YOU -- YOU HELPED HIM TO DO THAT?

25 A. YES, SIR, I DID.

SHELLY JOHNSON - DIRECT EXAMINATION BY MR. MOYER

208

1 Q. AND WHEN WAS IT THAT THAT TOOK PLACE?

2 A. THE END OF SEPTEMBER OR OCTOBER, EARLY OCTOBER, END OF
3 OCTOBER. I CAN'T REMEMBER EXACTLY WHEN ---

4 Q. OKAY. BUT IT WAS AROUND THE END OF SEPTEMBER OR
5 OCTOBER?

6 A. YEAH, IT WAS AROUND THAT TIME, SEPTEMBER, OCTOBER.

7 Q. I'M GOING TO SHOW YOU NOW FOR THE BENEFIT OF THE JURY,
8 IF YOU WOULD, CAN YOU RECOGNIZE THEN IN STATE'S EXHIBIT
9 NUMBER 46 THE DEFENDANT, RUSSELL RICE'S, CAR?

10 A. YES, SIR.

11 Q. I'M GOING TO POINT THE LASER POINTER. AND IS THIS
12 VEHICLE HERE RUSSELL RICE'S CAR?

13 A. YES, SIR, IT IS.

14 Q. AND THAT'S THE CAR YOU'RE TALKING ABOUT HERE ---

15 A. YES.

16 Q. --- AS FAR AS THE ONE THAT WAS STOLEN? ALL RIGHT.
17 WHERE DID THIS TAKE PLACE THAT THE CAR WAS TAKEN?

18 A. IT WAS AT RYAN'S ON WHITE HORSE ROAD.

19 Q. WHAT TIME OF DAY WAS IT?

20 A. IT WAS AT NIGHT. IT WAS LIKE AROUND EIGHT, NINE.

21 Q. OKAY. AND HOW DID YOU HELP HOMER TAKE ---

22 A. I DROVE HIM THERE IN MY MOTHER'S CAR. I DROVE HOMER TO
23 THE CAR. HE GOT IN THE CAR, AND HE DROVE OFF. I FOLLOWED
24 HIM TO OUR HOUSE.

25 Q. AND WHAT HAPPENED WHEN YOU GOT TO YOUR HOUSE?

SHELLY JOHNSON - DIRECT EXAMINATION BY MR. MOYER

209

1 A. I GOT OUT OF MY MOM'S CAR. I TALKED TO HIM BRIEFLY
2 OUTSIDE. AND THEN I WENT IN THE HOUSE. HE FOLLOWED ME IN.
3 HE WENT THROUGH THE CAR, PULLED SOME THINGS, YOU KNOW,
4 LOOKING IN. AND THEN HE DECIDED TO TAKE HIS CAR -- TAKE
5 THAT CAR TO HIS FATHER'S HOUSE AND CLEAN IT OUT.

6 Q. OKAY. AND DID YOU GO WITH HIM THERE?

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

8 Q. OKAY. DID HE COME BACK TO YOUR HOUSE ---

9 A. YES, HE DID. HE BROUGHT THE CAR BACK. AND THEN THAT'S
10 WHERE I FOLLOWED HIM UP TO -- UP 183 UP TO DACUSVILLE AREA.
11 AND WE DROPPED THE CAR OFF THERE.

12 Q. AND WHAT -- WHERE DID HE DROP IT OFF?

13 A. GO UP LIKE 183 AND THEN YOU BEAR OFF TO THE RIGHT AND
14 UP THAT ROAD A LITTLE WAYS, UP THAT FORK UP THAT ROAD.

15 Q. DID HE LEAVE IT WITH ANYBODY?

16 A. NO, HE DIDN'T. JUST ON THE SIDE OF THE ROAD.

17 Q. OKAY. WELL, WHAT DID YOU THEN DO WITH IT?

18 A. WHAT DID I DO WITH HOMER? OH, WE WENT BACK TO OUR
19 HOUSE.

20 Q. OKAY. AND DID HOMER SEEM TO HAVE ANYMORE MONEY OR
21 ANYTHING AFTER THAT INCIDENT TOOK PLACE?

22 A. YEAH. I DIDN'T SEE IT UNTIL PROBABLY MAYBE A DAY LATER
23 I'M THINKING. I'M NOT REALLY SURE. I CAN'T REMEMBER. BUT
24 THE ONLY THING I REALLY REMEMBER SEEING IS A BIG BAGGY OF
25 PILLS.

SHELLY JOHNSON - DIRECT EXAMINATION BY MR. MOYER

210

- 1 Q. OKAY. HOW ABOUT MONEY?
- 2 A. HE TOLD ME THAT ---
- 3 Q. I'M JUST ASKING WHAT YOU SAW.
- 4 A. OH, NO. I SAW IT MAYBE A DAY LATER, YEAH.
- 5 Q. WHAT DID YOU SEE A DAY LATER?
- 6 A. FIVE THOUSAND DOLLARS.
- 7 Q. OKAY. THAT HOMER HAD?
- 8 A. YES.
- 9 Q. OKAY. ALL RIGHT. LET ME TAKE YOU NOW TO NOVEMBER THE
- 10 5TH OF 2002, THE DAY THAT HOMER DIED.
- 11 A. YES.
- 12 Q. DID HE -- HAD HE SPENT THE NIGHT BEFORE THERE AFTER THE
- 13 CAR SHOW, HE SPENT THE NIGHT THERE AT THE HOUSE?
- 14 A. YES, HE DID.
- 15 Q. NOW THE NEXT DAY DID HE -- DO YOU REMEMBER ABOUT WHAT
- 16 TIME HE LEFT?
- 17 A. HE LEFT THAT MORNING. HE HAD TO GO TO THE HOSPITAL.
- 18 HE WENT TO ST. FRANCIS. HIS TOE WAS BROKE. OUR SONS, THEY
- 19 WERE WRESTLING, AND ONE OF OUR SONS CAUGHT HIS TOE AND IT
- 20 BROKE HOMER'S TOE. I DON'T REMEMBER WHICH FOOT, BUT HE
- 21 BROKE HIS TOE.
- 22 Q. OKAY.
- 23 A. SO HE HAD TO GO TO ST. FRANCIS.
- 24 Q. AND SO DID HE EVER COME HOME AGAIN AFTER ---
- 25 A. HE CAME HOME AROUND, I'D SAY, 4:30, SOMEWHERE AROUND IN

SHELLY JOHNSON - DIRECT EXAMINATION BY MR. MOYER

211

1 THERE, 3:45 OR 4:30. AND I MADE HIM SOMETHING TO EAT.

2 Q. NOW DID ANYONE COME OVER TO YOUR HOUSE?

3 A. ANGIE, ANGELA.

4 Q. WHAT'S HER FULL NAME?

5 A. WHO?

6 Q. WHAT'S ANGIE'S FULL NAME?

7 A. OH, ANGELA JOY STAPLETON.

8 Q. OKAY, SO SHE'S A FRIEND OF Y'ALL'S?

9 A. SHE'S MY COUSIN.

10 Q. WELL, NOW AFTER SHE SHOWED UP THERE WHAT -- DID HOMER
11 STAY THERE OR DID HE LEAVE AGAIN?

12 A. HE STAYED AND TALKED FOR A LITTLE BIT, AND THEN HE
13 LEFT. AND I DIDN'T KNOW WHERE HE WAS GOING. I ASKED HIM
14 WHERE HE WAS GOING. AND HE WAS WALKING OUT THE DOOR AND HE
15 SAID, NONE OF YOUR BUSINESS. I'LL BE BACK.

16 Q. OKAY. AND HOW DID HE LEAVE? IN WHAT KIND OF -- COULD
17 YOU TELL OR SEE WHAT KIND OF VEHICLE HE LEFT IN?

18 A. YES, I DID. HE LEFT IN ANGIE'S, MY COUSIN ANGIE'S,
19 EXPEDITION.

20 Q. AND ARE YOU FAMILIAR WITH THAT? HAVE YOU EVER BEEN IN
21 THAT VEHICLE?

22 A. YES, SIR, I HAVE.

23 Q. WOULD YOU RECOGNIZE IT?

24 A. YES, SIR.

25 Q. YOU WERE IN HERE YESTERDAY. YOU SAW THE PICTURES OF

SHELLY JOHNSON - DIRECT EXAMINATION BY MR. MOYER

212

1 THE HOTEL?

2 A. YES, SIR.

3 Q. WAS THAT HER VEHICLE?

4 A. YEAH, THAT WAS HER VEHICLE.

5 Q. OKAY. NOW AFTER HE LEFT AT THAT TIME IN ANGELA'S

6 VEHICLE DID YOU EVER SEE HIM AGAIN?

7 A. NO, I DIDN'T.

8 Q. DID HE RETURN -- DID YOU HAVE A TIME-FRAME IN WHICH YOU

9 WERE EXPECTING HIM BACK AFTER HE LEFT?

10 A. WE WERE EXPECTING HIM BACK IN SAY THIRTY, FORTY-FIVE

11 MINUTES. HE TOLD ANGIE HE WOULD BE GONE ABOUT THIRTY

12 MINUTES.

13 Q. OKAY. AND WHEN HE DIDN'T RETURN DID YOU TRY TO DO

14 ANYTHING TO TRY TO ---

15 A. YES. I CALLED HIM. I TALKED TO HIM ONCE. I DON'T

16 REMEMBER EXACTLY WHAT TIME THAT WAS. BUT I TOLD HIM ABOUT A

17 LETTER WE HAD GOTTEN IN THE MAIL. AND I TOLD HIM THAT THE

18 BABY NEEDED DIAPERS AND ASKED HIM IF HE HAD WROTE A BAD

19 CHECK TO A PLACE, WHICH IS WHAT THAT LETTER WAS ABOUT. AND

20 HE HAD SAID, YES. I TOLD HIM THAT I LOVE YOU -- HIM. AND

21 HE SAID, I LOVE YOU TOO. I'LL BE HOME IN A LITTLE BIT, BYE.

22 THAT'S THE LAST TIME I TALKED TO HIM.

23 Q. OKAY. NOW AFTER THAT DID YOU BEGIN -- WHEN YOU DIDN'T

24 HEAR FROM HIM AGAIN AFTER THAT DID YOU BEGIN CALLING AGAIN?

25 A. YES. I CALLED HIS PHONE MAYBE SIX OR MORE TIMES. THE

SHELLY JOHNSON - DIRECT EXAMINATION BY MR. MOYER

213

1 LAST TIME THAT I CALLED IT JUST WENT STRAIGHT TO VOICE-MAIL.
2 AND I THOUGHT HE HAD TURNED IT OFF BECAUSE THAT'S WHAT
3 HAPPENS WHEN HE WOULD TURN HIS PHONE OFF. AND I WAS -- I'D
4 GOTTEN WORRIED. I WAS WORRIED. HE WASN'T ANSWERING THE
5 PHONE.

6 Q. OKAY. NOW AFTER YOU WERE UNABLE TO REACH HOMER DID YOU
7 RECEIVE ANY PHONE CALLS FROM ANYBODY?

8 A. YES, I DID. HIS FATHER CALLED ME ---

9 Q. OKAY.

10 A. --- AND SAID -- OH, OKAY.

11 Q. DON'T TELL ME WHAT HE SAID. AFTER YOU RECEIVED THAT
12 CALL WHAT DID YOU DO?

13 A. WE LEFT RIGHT THEN IN A HURRY TO GO TO THE HOSPITAL.

14 Q. OKAY. AND IS THAT WHERE YOU FOUND OUT WHAT HAD
15 HAPPENED TO HIM?

16 A. YES, SIR, IT IS.

17 Q. WERE OTHER FAMILY AND FRIENDS THERE?

18 A. RIGHT AFTER WE GOT THERE PEOPLE STARTED SHOWING UP.

19 Q. ONE MOMENT PLEASE. DID YOU SEE THE DEFENDANT, RUSSELL
20 RICE, AT ANY TIME ON THE DAY THAT HOMER DIED?

21 A. NO, SIR.

22 Q. OKAY. YOU DIDN'T SEE HIM DURING THE DAY OR THAT NIGHT
23 EITHER?

24 A. NO, NOT ALL.

25 Q. THANK YOU. PLEASE ANSWER ANY QUESTIONS DEFENSE HAS.

ANGELA STAPLETON - DIRECT EXAMINATION BY MR. MOYER

214

1 THE COURT: MR. SUMNER.

2 MR. SUMNER: ONE SECOND. NO, SIR.

3 THE COURT: THANK YOU. YOU CAN STEP DOWN.

4 MR. MOYER: ANGELA STAPLETON.

5 ANGELA STAPLETON, BEING

6 DULY SWORN TESTIFIED AS FOLLOWS:

7 DIRECT EXAMINATION BY MR. MOYER:

8 Q. ALL RIGHT. MS. STAPLETON, YOU KNEW HOMER JOHNSON?

9 A. YES, SIR.

10 Q. HOW OLD ARE YOU?

11 A. TWENTY-EIGHT.

12 Q. IN FACT, YOU DATED HOMER JOHNSON AT ONE POINT IN THE
13 PAST?

14 A. UM-HUM (AFFIRMATIVE).

15 Q. AND Y'ALL HAVE A CHILD TOGETHER?

16 A. YES, WE DO.

17 Q. HOW OLD IS YOUR CHILD?

18 A. NINE.

19 Q. YOU NEED TO SPEAK UP A LITTLE BIT.

20 A. NINE.

21 Q. OKAY. AFTER THAT, AFTER YOU DATED HIM YEARS AGO, DID
22 YOU ALL REMAIN FRIENDS?

23 A. YES, WE DID.

24 Q. OKAY. LET ME TAKE YOU TO NOVEMBER THE 5TH OF 2002, THE
25 DAY THAT HE DIED. DID YOU HEAR FROM HOMER JOHNSON THAT DAY?

ANGELA STAPLETON - DIRECT EXAMINATION BY MR. MOYER

215

1 A. YES, SIR, I DID.

2 Q. AND AROUND WHAT TIME WAS IT THAT YOU HEARD FROM HIM?

3 A. 4:30, 4:25.

4 Q. WHERE WERE YOU WHEN YOU HEARD FROM HIM?

5 A. HOME.

6 Q. SO YOU HEARD FROM HIM ON THE TELEPHONE?

7 A. YES.

8 Q. AFTER HE CALLED YOU WHAT DID YOU DO?

9 A. I WENT OVER TO HIS HOUSE.

10 Q. HOW LONG DID IT TAKE YOU TO GET THERE?

11 A. FIVE MINUTES.

12 Q. SO YOU LIVE PRETTY CLOSE BY?

13 A. YEAH.

14 Q. AND YOU LEFT PRETTY MUCH RIGHT AWAY AFTER HE CALLED
15 YOU?

16 A. I DID.

17 Q. WHEN YOU ARRIVED WHO ALL WAS THERE?

18 A. HIM, SHELLY, THEIR KIDS, AND MY SON.

19 Q. DID HOMER STAY THERE AT THE HOUSE AFTER YOU SHOWED UP?

20 A. A FEW MINUTES.

21 Q. THEN WHAT DID HE DO?

22 A. HE LEFT IN MY CAR.

23 Q. WHAT KIND OF CAR DID YOU HAVE?

24 A. A FORD EXPEDITION.

25 Q. LET ME SHOW -- LET ME SHOW YOU STATE'S EXHIBIT NUMBER

ANGELA STAPLETON - DIRECT EXAMINATION BY MR. MOYER

216

1 7. IT'S A PHOTOGRAPH. YOU'VE TAKEN A LOOK AT THAT PICTURE
2 BEFORE, HAVEN'T YOU?

3 A. YES, I HAVE.

4 Q. AND DO YOU RECOGNIZE WHAT'S SHOWN IN THAT PICTURE?

5 A. I DO.

6 Q. WHAT IS IT?

7 A. IT'S MY CAR.

8 Q. OKAY. THAT'S YOUR FORD EXPEDITION AT THE SUPER 8
9 MOTEL?

10 A. IT IS.

11 Q. AND IS THAT WHAT HOMER JOHNSON DROVE AWAY THEN?

12 A. IT IS.

13 Q. ON NOVEMBER THE 5TH? SO YOU ALLOWED HIM TO USE IT
14 THEN?

15 A. I DID.

16 Q. DID HE USE IT A LOT?

17 A. SOMETIMES. NOT EVERY DAY, NO. OCCASIONALLY.

18 Q. DID YOU EXPECT HIM TO BE GONE A LONG TIME THEN WHEN HE
19 LEFT?

20 A. NO.

21 Q. HOW LONG DID YOU EXPECT HIM TO BE GONE?

22 A. ABOUT THIRTY MINUTES.

23 Q. WHAT DID YOU DO WHILE YOU WERE WAITING FOR HIM TO COME
24 BACK?

25 A. I STAYED AT HIS HOUSE WITH SHELLY AND THE KIDS.

ANGELA STAPLETON - DIRECT EXAMINATION BY MR. MOYER

217

1 Q. AND DID HOMER SHOW BACK UP WITHIN THAT TIME-FRAME THAT
2 YOU WERE EXPECTING HIM?

3 A. NO.

4 Q. WHEN HE DIDN'T SHOW UP WHAT DID YOU DO?

5 A. I HAD SHELLY TO CALL HIM, AND SHE SPOKE WITH HIM. AND
6 HE SAID HE WAS ON HIS WAY.

7 Q. SO SHE -- YOU WERE THERE WHEN SHE CALLED?

8 A. YEAH. AND SHE CALLED HIM BACK ABOUT SIX TIMES AND SHE
9 DIDN'T GET AN ANSWER. SHE WAS GOING TO TELL HIM TO HURRY,
10 THAT I WAS READY TO GO HOME, BUT SHE NEVER GOT AN ANSWER
11 AFTER THAT.

12 Q. OKAY. WELL, AFTER SHE DIDN'T GET THOSE -- AFTER SHE
13 MADE THE OTHER PHONE CALLS AND DIDN'T GET AN ANSWER DID YOU
14 ALL RECEIVE A PHONE CALL?

15 A. WE DID.

16 Q. WHO ANSWERED IT?

17 A. SHELLY.

18 Q. AND WHAT WAS HER REACTION OR RESPONSE AFTER THAT PHONE
19 CALL CAME?

20 A. SHE PANICKED. AND WE ALL JUMPED IN THE CAR. SHE SAID
21 THAT HE'D BEEN IN AN ACCIDENT.

22 Q. AND WHERE DID YOU ALL GO?

23 A. GREENVILLE MEMORIAL HOSPITAL.

24 Q. AND IS THAT WHERE YOU FOUND OUT WHAT HAD HAPPENED TO
25 HOMER?

LAURA M. WHITE - DIRECT EXAMINATION BY MR. MOYER

218

1 A. IT IS.

2 Q. NOW IS THAT WHERE YOU MET WITH THE POLICE OFFICER FOR
3 THE FIRST TIME?

4 A. IT IS.

5 Q. DID YOU TALK TO THEM ABOUT YOUR CAR?

6 A. I DID.

7 Q. AT THAT TIME DID THEY ASK YOU ANYTHING REGARDING YOUR
8 VEHICLE?

9 A. YEAH, IF I WOULD SIGN IT OVER TO THEM SO THEY COULD
10 TAKE IT.

11 Q. AND DID YOU ALLOW THEM TO DO SO?

12 A. I DID.

13 Q. OKAY. ALL RIGHT. PLEASE ANSWER ANY QUESTIONS DEFENSE
14 MAY HAVE.

15 THE COURT: MR. SUMNER.

16 MR. SUMNER: ONE SECOND PLEASE. I DON'T HAVE ANY
17 QUESTIONS. THANK YOU.

18 THE COURT: THANK YOU. YOU CAN STEP DOWN.

19 MR. MOYER: I CALL MELISSA WHITE.

20 LAURA M. WHITE, BEING

21 DULY SWORN TESTIFIED AS FOLLOWS:

22 DIRECT EXAMINATION BY MR. MOYER:

23 Q. HOW OLD ARE YOU, MS. WHITE?

24 A. THIRTY-THREE.

25 Q. AND YOU'RE FROM GREENVILLE?

LAURA M. WHITE - DIRECT EXAMINATION BY MR. MOYER

219

1 A. YES.

2 Q. YOU GREW UP IN THE GREENVILLE AREA?

3 A. YES.

4 Q. AND YOU STILL LIVE IN THIS AREA?

5 A. YES.

6 Q. WHERE DO YOU WORK?

7 A. THE HAIR AND BODY COMPANY.

8 Q. AND IS THAT ---

9 A. IT'S ON TOY STREET.

10 Q. --- THAT'S A HAIR SALON?

11 A. UM-HUM (AFFIRMATIVE), HAIR AND NAILS.

12 Q. HERE IN GREENVILLE?

13 A. UM-HUM (AFFIRMATIVE).

14 Q. HOW LONG HAVE YOU WORKED THERE?

15 A. SIX AND A HALF YEARS.

16 Q. OKAY. SO YOU WERE WORKING THERE IN NOVEMBER OF 2002?

17 A. YES, UH-HUH (AFFIRMATIVE), I WAS.

18 Q. OKAY. NOW YOU HAVE HAD A LONG-TERM RELATIONSHIP WITH A

19 MAN?

20 A. YES.

21 Q. WHAT IS HIS NAME?

22 A. JOHNNY HAMBY.

23 Q. HOW LONG HAVE YOU BEEN WITH HIM?

24 A. ALMOST SEVEN YEARS.

25 Q. AND Y'ALL HAVE TWO CHILDREN TOGETHER?

LAURA M. WHITE - DIRECT EXAMINATION BY MR. MOYER

220

1 A. YES.

2 Q. DID YOU KNOW HOMER JOHNSON?

3 A. YES.

4 Q. HOW DID YOU GET TO KNOW HIM?

5 A. THROUGH JOHNNY.

6 Q. THROUGH JOHNNY HAMBY?

7 A. UM-HUM (AFFIRMATIVE).

8 Q. AND WAS HE A GOOD FRIEND OF JOHNNY HAMBY?

9 A. YES.

10 Q. WHAT ABOUT THE DEFENDANT IN THIS CASE, RUSSELL RICE,

11 DID YOU KNOW HIM?

12 A. YES.

13 Q. HOW DID YOU GET TO KNOW HIM?

14 A. THROUGH JOHNNY.

15 Q. THROUGH JOHNNY HAMBY AS WELL?

16 A. YES.

17 Q. OKAY. AND WERE THE THREE OF THOSE -- WOULD THOSE THREE

18 MEN SPEND A LOT OF TIME TOGETHER?

19 A. YES.

20 Q. WOULD THE DEFENDANT, RUSSELL RICE, WOULD HE EVER COME

21 BY YOUR HOUSE?

22 A. YES.

23 Q. WOULD HE GO OVER TO MR. HAMBY'S STORE ALSO?

24 A. YES.

25 Q. IS THAT WHERE THEY SPENT MOST OF THEIR TIME TOGETHER?

LAURA M. WHITE - DIRECT EXAMINATION BY MR. MOYER

221

1 A. YES, TO MY KNOWLEDGE.

2 Q. WHERE IS -- WHAT'S THE NAME OF THE STORE?

3 A. HARD TIMES HUNTING AND FISHING SUPPLY.

4 Q. AND THE BUSINESS IS NO LONGER IN EXISTENCE, IS THAT
5 RIGHT?

6 A. RIGHT.

7 Q. WHERE WAS THAT BUSINESS?

8 A. IT WAS AT THE WHITE HORSE ROAD FLEA MARKET.

9 Q. OKAY. AND THAT'S NEAR I85?

10 A. YES.

11 Q. NOW DID RUSSELL RICE EVER STAY WITH YOU AND JOHNNY
12 HAMBY?

13 A. YES.

14 Q. I MEAN, WHEN I SAY STAY I MEAN STAY OVER NIGHT?

15 A. YES.

16 Q. DID HE EVER STAY AN EXTENDED PERIOD OF TIME?

17 A. HE STAYED FOR ABOUT TWO WEEKS.

18 Q. AND HOW LONG WAS THAT BEFORE HOMER DIED? WAS IT -- I'M
19 NOT LOOKING FOR EXACT DATES, BUT WAS IT WITHIN A PRETTY
20 CLOSE TIME-FRAME?

21 A. I WOULD SAY SO. IT WAS SOME TIME IN OCTOBER.

22 Q. DID HE HAVE HIS VEHICLE AT THAT TIME?

23 A. NO.

24 Q. HOW LONG DID HE STAY WITH YOU AT THAT TIME?

25 A. TWO WEEKS.

LAURA M. WHITE - DIRECT EXAMINATION BY MR. MOYER

222

1 Q. ABOUT TWO WEEKS?

2 A. UM-HUM (AFFIRMATIVE).

3 Q. OKAY. AND YOU SAY HE DID NOT HAVE A CAR WITH HIM?

4 A. NO.

5 Q. AND DO YOU KNOW WHY HE DIDN'T HAVE A CAR?

6 A. HIS CAR WAS STOLEN.

7 Q. AND DURING THAT TIME-FRAME WHEN HE WAS STAYING WITH YOU
8 DID HE TALK ABOUT HIS CAR BEING STOLEN?

9 A. YES.

10 Q. AND DID HE TALK ABOUT WHO HE SUSPECTED STEALING IT?

11 A. YES..

12 Q. AND WHO DID HE SUSPECT OF STEALING IT?

13 A. HE SUSPECTED THAT HOMER HAD STOLEN THE CAR.

14 Q. OKAY. DID HE APPEAR ANGRY ABOUT IT?

15 A. YES.

16 Q. DID YOU WORK ON THE DAY THAT HOMER JOHNSON WAS KILLED?

17 A. YES.

18 Q. HOW LATE DID YOU WORK?

19 A. IT WAS APPROXIMATELY 7:30.

20 Q. AND WHERE DID YOU GO AFTER THAT?

21 A. MY CUSTOMER AT THE TIME IS A MEMBER OF THE REPUBLICAN
22 PARTY, AND THEY WERE HAVING A FUNCTION AT THE HYATT. AND I
23 DROPPED HER OFF AT THE HYATT.

24 Q. OKAY. AND SO THAT WAS ELECTION DAY, WASN'T IT?

25 A. YES, IT WAS ELECTION DAY.

LAURA M. WHITE - DIRECT EXAMINATION BY MR. MOYER

223

1 Q. OKAY. NOW AFTER YOU WENT TO THE HYATT WITH YOUR CLIENT

2 WHERE DID YOU GO AFTER THAT?

3 A. I DROVE TO THE SHOP AND PICKED JOHNNY UP.

4 Q. OKAY. AND THAT WAS AT HARD TIMES HUNTING AND FISHING

5 THAT YOU JUST TALKED ABOUT?

6 A. YES.

7 Q. AND WHY DID YOU HAVE TO PICK HIM UP?

8 A. HE DIDN'T HAVE NO VEHICLE AT THE TIME.

9 Q. WHERE DID YOU AND JOHNNY HAMBY GO AT THAT TIME?

10 A. WE WENT TO THE BLOCK HOUSE FOR DINNER.

11 Q. AND WHAT IS ---

12 A. ON AUGUSTA ROAD.

13 Q. --- THE BLOCK HOUSE?

14 A. IT'S A RESTAURANT.

15 Q. ON AUGUSTA ROAD?

16 A. UM-HUM (AFFIRMATIVE).

17 Q. IN GREENVILLE?

18 A. YES.

19 Q. DID MR. HAMBY HAVE A TELEPHONE CONVERSATION WHILE IN

20 THE CAR?

21 A. YES.

22 Q. YOU COULD OVERHEAR HIM SPEAKING?

23 A. YES.

24 Q. NOW DID YOU SEE THE DEFENDANT, RUSSELL RICE, THAT DAY?

25 A. YES.

LAURA M. WHITE - DIRECT EXAMINATION BY MR. MOYER

224

1 Q. WHERE DID YOU SEE HIM?

2 A. AT THE BLOCK HOUSE.

3 Q. SO BY THIS POINT IT'S CERTAINLY SOMETIME AFTER 8:00 IN
4 THE EVENING?

5 A. YES.

6 Q. NOW WHO ARRIVED FIRST, YOU AND JOHNNY HAMBY, OR WAS THE
7 DEFENDANT THERE FIRST?

8 A. WE ARRIVED FIRST.

9 Q. AND DID Y'ALL BEGIN YOUR MEAL?

10 A. YES. WE HAD ALREADY --- WE HAD ALREADY STARTED EATING
11 OUR MEAL.

12 Q. OKAY. SO YOU HAD TO TAKE TIME TO ORDER YOUR MEAL AND
13 ---

14 A. YES.

15 Q. --- AND ALSO YOU STARTED EATING THEN?

16 A. UM-HUM (AFFIRMATIVE).

17 Q. NOW YOU HEARD ABOUT HOMER JOHNSON BEING KILLED?

18 A. YES.

19 Q. WHERE WERE YOU WHEN YOU HEARD ABOUT IT?

20 A. AT THE RESTAURANT.

21 Q. THE BLOCK HOUSE THAT YOU WERE TALKING ABOUT?

22 A. YES.

23 Q. AND DID YOU HEAR ABOUT IT BEFORE OR AFTER THE
24 DEFENDANT, RUSSELL RICE, APPEARED THERE WITH YOU?

25 A. BEFORE.

LAURA M. WHITE - CROSS EXAMINATION BY MR. SUMNER

225

1 Q. NOW AFTER YOU HEARD ABOUT WHAT HAPPENED WHERE DID YOU
2 GO?

3 A. WE WENT TO THE HOSPITAL.

4 Q. DID THE DEFENDANT GO WITH YOU?

5 A. NO.

6 Q. HAVE YOU SEEN THE DEFENDANT OTHER THAN HERE TODAY? DID
7 YOU SEE HIM AGAIN AFTER THAT TIME YOU LEFT HIM AT THE BLOCK
8 HOUSE?

9 A. NO. I HAVEN'T SEEN HIM SINCE.

10 Q. NOW YOU AND MR. HAMBY HAD CELLULAR PHONES?

11 A. YES.

12 Q. AND WHOSE NAME WERE THEY IN?

13 A. MY NAME.

14 Q. BOTH OF THEM?

15 A. BOTH OF THEM.

16 Q. AND DID MR. -- DID JOHNNY HAMBY USE ONE OF THEM?

17 A. YES.

18 Q. AND WHAT WAS THE PHONE NUMBER OF THE ONE THAT HE USED?

19 A. 918-9584.

20 Q. ONE MOMENT PLEASE. ALL RIGHT. PLEASE ANSWER ANY
21 QUESTIONS THE DEFENSE MAY HAVE.

22 THE COURT: MR. SUMNER.

23 MR. SUMNER: YES, SIR. THANK YOU, YOUR HONOR.

24 CROSS EXAMINATION BY MR. SUMNER:

25 Q. YOU PICKED UP JOHN HAMBY, YOUR COMMON-LAW HUSBAND, AND

JOHNNY HAMBY - DIRECT EXAMINATION BY MR. MOYER

226

1 WENT TO THE BLOCK HOUSE RESTAURANT ON THE NIGHT OF NOVEMBER
2 5TH, 2002, IS THAT CORRECT?

3 A. YES.

4 Q. AND DO YOU RECALL ABOUT WHAT TIME YOU GOT TO THE BLOCK
5 HOUSE?

6 A. IT WAS PROBABLY AROUND 8:00.

7 Q. AROUND 8:00?

8 A. UM-HUM (AFFIRMATIVE).

9 Q. AND YOU PICKED HIM UP FROM HARD TIMES, IS THAT CORRECT?

10 A. YES.

11 Q. ONE SECOND PLEASE. THANK YOU.

12 THE COURT: THANK YOU. YOU CAN STEP DOWN.

13 MR. MOYER: I CALL JOHNNY HAMBY.

14 JOHNNY HAMBY, BEING DULY

15 SWORN TESTIFIED AS FOLLOWS:

16 **DIRECT EXAMINATION BY MR. MOYER:**

17 Q. HOW OLD ARE YOU, MR. HAMBY?

18 A. THIRTY-NINE.

19 Q. AND YOU LIVE HERE IN GREENVILLE?

20 A. PIEDMONT.

21 Q. ARE YOU FROM THE UPSTATE OF SOUTH CAROLINA?

22 A. YES, SIR.

23 Q. AND YOU'VE HAD A LONG-TERM RELATIONSHIP WITH MELISSA
24 WHITE, WHO JUST TESTIFIED?

25 A. YES.

JOHNNY HAMBY - DIRECT EXAMINATION BY MR. MOYER

227

1 Q. DID YOU KNOW HOMER JOHNSON?

2 A. YES.

3 Q. HOW LONG DID YOU KNOW HOMER JOHNSON?

4 A. ABOUT FOURTEEN YEARS OR SO.

5 Q. OKAY. I'M GOING TO HAVE TO ASK YOU TO SPEAK UP. YOU

6 NEED TO SPEAK INTO THAT MICROPHONE JUST A LITTLE ---

7 A. ABOUT FOURTEEN YEARS OR SO.

8 Q. OKAY. SO WAS HE A CLOSE FRIEND OF YOURS?

9 A. YES.

10 Q. HOW OFTEN WOULD YOU SEE HIM? I'M TALKING ABOUT THE

11 TIME-FRAME UP TO ABOUT WHEN HE WAS KILLED.

12 A. ABOUT EVERY DAY.

13 Q. AND WHERE WOULD Y'ALL SPEND TIME TOGETHER MOSTLY?

14 A. AT THE SHOP, AT MY HOUSE. WE'D GO OUT TO EAT.

15 Q. YOU MENTIONED A SHOP. WHAT WAS THE NAME OF YOUR SHOP?

16 A. HARD TIMES HUNTING AND FISHING SUPPLY.

17 Q. OKAY. WHERE WAS THAT LOCATED?

18 A. WHITE HORSE ROAD.

19 Q. IS THAT NEAR THE INTERSECTION WITH 85?

20 A. YES, SIR.

21 Q. DO YOU STILL HAVE THAT BUSINESS?

22 A. I GOT THE BUSINESS, BUT NOT THE SHOP.

23 Q. OKAY. SO THAT BUILDING THAT YOU WERE -- THAT THE STORE

24 WAS IN IS NO LONGER YOURS?

25 A. NO, SIR.

JOHNNY HAMBY - DIRECT EXAMINATION BY MR. MOYER

228

1 Q. OKAY. BUT YOU WERE RENTING IT AT THE TIME?

2 A. YES, SIR.

3 Q. WHAT IS THAT ADJACENT TO? WHAT'S RIGHT NEXT DOOR TO
4 THAT SHOP?

5 A. ON ONE SIDE WAS A BODY PIERCING. ON THE OTHER SIDE WAS
6 -- THEY FIX UP SPORTS CARS.

7 Q. WAS THERE SOME TYPE OF FLEA MARKET IN ---

8 A. YES, THERE ---

9 Q. --- THAT VICINITY?

10 A. --- WAS A FLEA MARKET BEHIND IT.

11 Q. OKAY. AND WOULD THEY SOMETIMES HAVE CAR SHOWS THERE?

12 A. THEY'D HAVE CAR SHOWS AT THE CAR SHOP NEXT DOOR TO IT.

13 Q. HOW OFTEN WOULD THEY HAVE THESE CAR SHOPS -- CAR SHOWS?

14 A. ON FRIDAYS AND MONDAYS.

15 Q. NOW DID YOU KNOW -- DO YOU KNOW THE DEFENDANT IN THIS
16 CASE, RUSSELL RICE?

17 A. YES.

18 Q. HOW LONG PRIOR TO HOMER'S DEATH HAD YOU KNOWN HIM?

19 A. LESS THAN A YEAR.

20 Q. WHO DID YOU MEET HIM THROUGH?

21 A. HOMER.

22 Q. AND WOULD HE ALSO SPEND TIME WITH YOU AND HOMER THERE
23 AT THE STORE?

24 A. YES.

25 Q. DID HOMER -- I'M SORRY. DID THE DEFENDANT EVER LIVE

JOHNNY HAMBY - DIRECT EXAMINATION BY MR. MOYER

229

1 WITH YOU FOR A TIME?

2 A. YES. HE STAYED WITH ME FOR A SHORT PERIOD OF TIME WHEN
3 HIS CAR WAS STOLEN.

4 Q. OTHER THAN THAT WHERE DID HE LIVE?

5 A. MOTELS, OUT OF MOTELS AND STUFF.

6 Q. WOULD YOU VISIT HIM IN THE MOTELS?

7 A. I HAVE A COUPLE OF TIMES.

8 Q. AND DID HE -- WHAT ABOUT HIS PROPERTY, WHERE WOULD HE
9 KEEP HIS STUFF, HIS CLOTHES, THINGS LIKE THAT?

10 A. MOSTLY IN HIS CAR.

11 Q. SO WAS HIS CAR USUALLY PRETTY FULL OF STUFF?

12 A. YES, SIR.

13 Q. DID YOU EVER KNOW HIM TO SELL TOOLS OUT OF THE CAR?

14 A. I AIN'T NEVER KNOWN HIM TO SELL TOOLS. HE BOUGHT A
15 BUNCH OF TOOLS FROM ME ONE TIME.

16 Q. NOW DO YOU KNOW THE KIND OF CAR THAT HE HAD? WOULD YOU
17 RECOGNIZE A PICTURE OF IT?

18 A. YES.

19 Q. IF YOU WOULD TAKE A LOOK AT EXHIBIT NUMBER 46. JUST
20 TAKE A LOOK AT THAT PHOTOGRAPH. DO YOU SEE RUSSELL RICE'S
21 CAR SHOWN IN THAT PHOTOGRAPH?

22 A. YES, SIR, THAT LOOKS LIKE IT.

23 Q. OBVIOUSLY THERE'S A COUPLE OF CARS. AND WE'RE NOT
24 TALKING ABOUT THE POLICE CAR, IS THAT --

25 A. THAT'S RIGHT. THE FRONT CAR, YES.

JOHNNY HAMBY - DIRECT EXAMINATION BY MR. MOYER

230

1 Q. OKAY. WHAT KIND OF -- DID HE HAVE THAT CAR FOR A
2 PRETTY LONG PERIOD OF TIME?

3 A. AS LONG AS I'VE KNOWN HIM.

4 Q. WHAT KIND OF TAG DID IT HAVE, LICENSE PLATE?

5 A. LIKE A FARM TAG, A TRUCK TAG, FARM TAG 'CAUSE WE USED
6 TO RAG HIM ABOUT THAT.

7 Q. WAS IT A -- WAS IT AN ACTUAL LICENSE PLATE?

8 A. NO, SIR. IT WAS LIKE A PAPER TAG.

9 Q. LIKE A PAPER TAG? OKAY. DID HE HAVE THAT THE WHOLE
10 TIME THAT YOU SAW HIM IN THAT CAR?

11 A. YES, SIR.

12 Q. ALL RIGHT. SO YOU MENTIONED A MINUTE AGO ABOUT HIS CAR
13 BEING STOLEN. HOW DID YOU KNOW ABOUT THAT HAPPENING?

14 A. WE WAS UP AT RYAN'S EATING WHEN IT HAPPENED.

15 Q. SO YOU WERE THERE WHEN IT HAPPENED?

16 A. YES.

17 Q. WHO ALL WAS THERE?

18 A. ME, ---

19 Q. LET ME ASK YOU THIS. HOW MANY PEOPLE WERE THERE?

20 A. I'D HAVE TO THINK FOR A SECOND. I THINK IT WAS ME, AND
21 JODIE, LEIGH ANN, RUSTY, MY BOY, CHRIS. I THINK THAT'S ALL.

22 Q. AND WAS HOMER JOHNSON THERE?

23 A. NO, SIR.

24 Q. HAD YOU SEEN HOMER EARLIER THAT DAY THOUGH?

25 A. YES. HOMER WAS AT THE SHOP WHEN WE LEFT.

JOHNNY HAMBY - DIRECT EXAMINATION BY MR. MOYER

231

1 Q. BUT HE DIDN'T GO WITH Y'ALL?

2 A. NO. HE SAID HE WAS SICK.

3 Q. OKAY. NOW WHEN THE CAR WAS -- WHEN DID YOU NOTICE THE
4 CAR WAS STOLEN?

5 A. WHEN DID I NOTICE?

6 Q. WHEN DID Y'ALL FIND OUT THAT IT HAD BEEN STOLEN?

7 A. WHEN WE LEFT TO LEAVE THE RESTAURANT.

8 Q. WERE THERE OTHER -- WERE THERE A LOT OF OTHER CARS
9 THERE IN THE PARKING LOT?

10 A. YES, SIR. IT WAS FULL.

11 Q. CARS A LOT NICER THAN THE DEFENDANT'S?

12 A. OH, YEAH.

13 Q. WAS THE DEFENDANT'S CAR -- WAS THAT A VERY NICE CAR?

14 A. NO, SIR.

15 Q. DID THE DEFENDANT CALL THE POLICE AND REPORT IT STOLEN?

16 A. NOT TO MY KNOWLEDGE, HE DIDN'T.

17 Q. DID HE WHILE YOU WERE THERE WITH HIM, WHILE YOU WERE
18 ALL THERE TOGETHER?

19 A. NO, SIR. NOT THAT I CAN REMEMBER, HE DIDN'T.

20 Q. DID HE -- WERE YOU WITH HIM -- WERE YOU WITH THE
21 DEFENDANT WHEN HE SAW THE CAR -- THAT THE CAR WAS STOLEN?

22 A. YES.

23 Q. DID HE SAY ANYTHING?

24 A. THE FIRST THING THAT CAME OUT OF HIS MOUTH WAS HOMER.

25 Q. NOW AFTER THE CAR WAS STOLEN DID YOU SEE HOMER IN

JOHNNY HAMBY - DIRECT EXAMINATION BY MR. MOYER

232

1 POSSESSION OF ANYTHING THAT HE DIDN'T HAVE BEFORE THE CAR
2 WAS STOLEN?

3 A. AFTER THE CAR WAS STOLEN DID I SEE -- COULD YOU REPEAT
4 PLEASE?

5 Q. SURE. AFTER THE DEFENDANT'S CAR WAS STOLEN DID YOU SEE
6 HOMER WITH ANYTHING?

7 A. A FEW DAYS LATER I DID.

8 Q. AND WHAT DID YOU SEE HIM WITH? WHAT DID HE HAVE?

9 A. SOME DRUGS, SOME MONEY, SOME ---

10 Q. AND WHERE WAS IT THAT YOU SAW THIS STUFF?

11 A. AT HIS DADDY'S HOUSE.

12 Q. SO DID HE TAKE YOU OVER THERE?

13 A. YES.

14 Q. OKAY. WHAT KIND OF DRUGS?

15 A. COCAINE AND LORTABS.

16 Q. WAS IT A LOT OF MONEY?

17 A. ABOUT THAT MUCH. I MEAN, I DIDN'T COUNT IT OR NOTHING,
18 BUT IT WAS ABOUT THAT THICK OF MONEY.

19 Q. A STACK OF BILLS?

20 A. UM-HUM (AFFIRMATIVE). IT WAS FOLDED UP.

21 Q. YOU SHOWED SEVERAL INCHES THERE.

22 A. YES.

23 Q. OKAY. NOW YOU HAVE SOME ACTIVE PENDING CHARGES, DON'T
24 YOU?

25 A. YES.

JOHNNY HAMBY - DIRECT EXAMINATION BY MR. MOYER

233

1 Q. AND THAT IS FOR TRAFFICKING IN MARIJUANA?

2 A. YES.

3 Q. AND POSSESSION OF AN INCENDIARY DEVICE?

4 A. YES.

5 Q. AND WHEN WERE YOU CHARGED WITH THOSE OFFENSES?

6 A. FEBRUARY, I BELIEVE.

7 Q. FEBRUARY OF WHAT YEAR?

8 A. AFTER HOMER WAS -- SO IT WAS THE FEBRUARY FOLLOWING

9 THAT.

10 Q. OKAY. SO IF HOMER WAS KILLED IN NOVEMBER OF 2002 IT

11 WOULD BE FEBRUARY OF ...

12 A. 2003.

13 Q. 2003. WAS THAT AFTER YOU HAD SPOKEN TO DETECTIVE

14 FULLER ---

15 A. YES.

16 Q. --- ABOUT THE CASE? NOW THE NIGHT BEFORE HOMER WAS

17 KILLED DID YOU SEE HIM?

18 A. YES.

19 Q. WHERE DID YOU SEE HIM?

20 A. AT THE SHOP, AT MY SHOP.

21 Q. WHAT WAS GOING ON OVER THERE?

22 A. THEY HAD A CAR SHOW. AND HIS WIFE WAS SELLING HOTDOGS

23 AND STUFF.

24 Q. OKAY. AND WHERE DID YOU SEE HOMER THERE AT THE CAR

25 SHOW?

JOHNNY HAMBY - DIRECT EXAMINATION BY MR. MOYER

234

1 A. HE KEPT COMING IN AND OUT OF THE SHOP. AND THEN WE'D
2 GO UP TO WHERE HIS WIFE WAS SELLING HOTDOGS AND STUFF.

3 Q. DID YOU SEE THE DEFENDANT THERE AS WELL?

4 A. YES.

5 Q. AND WAS HE DOING THE SAME THING, COMING IN AND OUT OF
6 THE SHOP?

7 A. YES, COMING IN AND OUT OF THE SHOP, LOOKING AT CARS AND
8 WHATNOT.

9 Q. OKAY. NOW AT ANY POINT DID Y'ALL THREE LEAVE THE CAR
10 SHOW?

11 A. YES, SIR.

12 Q. WHERE -- DID Y'ALL LEAVE AT THE SAME TIME?

13 A. NO, SIR. ME AND HOMER LEFT. AND RUSTY LEFT IN HIS
14 VEHICLE.

15 Q. SO YOU LEFT -- YOU WENT IN TWO VEHICLES?

16 A. YES, SIR.

17 Q. AND WHERE DID YOU GO?

18 A. TO HOMER'S HOUSE.

19 Q. AND WHAT DID YOU DO WHEN YOU GOT THERE TO HOMER'S
20 HOUSE?

21 A. CUT UP TWENTY POUND OF POT.

22 Q. WHERE DID THAT TAKE PLACE?

23 A. IN A BEDROOM. I'M NOT SURE WHOSE BEDROOM, BUT ...

24 Q. IT WAS INSIDE HIS HOUSE THOUGH?

25 A. INSIDE HIS HOUSE, YES, SIR.

JOHNNY HAMBY - DIRECT EXAMINATION BY MR. MOYER

235

1 Q. AND WHAT WAS THAT -- WHEN YOU SAY POT, YOU'RE TALKING
2 ABOUT MARIJUANA?

3 A. YES, SIR.

4 Q. WHAT WAS THAT MARIJUANA IN?

5 A. IT WAS IN A RUBBERMAID CONTAINER THING, ONE BLOCK. AND
6 THEN HE CUT IT UP INTO POUNDS.

7 Q. OKAY. AND WERE THEY -- WAS IT PACKAGED, PACKAGED UP?

8 A. AFTER HE CUT IT UP HE PUT IT IN THE PLASTIC BAGS,
9 ZIPLOCK BAGS.

10 Q. INTO ONE POUND BAGS?

11 A. YES, SIR.

12 Q. ALL RIGHT. AND THEN DID ANYBODY LEAVE WITH ANY OF THAT
13 MARIJUANA?

14 A. YES, SIR.

15 Q. AND WHO DID?

16 A. RUSTY LEFT WITH TEN POUNDS.

17 Q. AND WAS HE HAPPY ABOUT JUST GETTING HALF OF IT?

18 A. HE WANTED ALL OF IT.

19 Q. OKAY. AND WHAT WAS HOMER -- DID HOMER ALLOW HIM TO
20 HAVE ALL OF IT?

21 A. NO, SIR.

22 Q. DID THE DEFENDANT GIVE HOMER JOHNSON ANY MONEY FOR IT
23 WHILE YOU WERE THERE IN THE HOUSE?

24 A. NO, SIR.

25 Q. DID THEY DISCUSS WHETHER ANY MONEY WAS OWED?

JOHNNY HAMBY - DIRECT EXAMINATION BY MR. MOYER

236

1 A. YES, SIR.

2 Q. AND HOW MUCH?

3 A. ELEVEN THOUSAND.

4 Q. DID THEY DISCUSS WHEN THAT PART OF THE TRANSACTION
5 WOULD TAKE PLACE?

6 A. YES. HE WAS -- HE SAID BY 12:00 THE NEXT DAY.

7 Q. AND THAT'S WHEN THE MONEY WAS SUPPOSED TO CHANGE HANDS?

8 A. YES.

9 Q. DID THEY DISCUSS WHAT THEY WOULD DO -- WHAT WOULD TAKE
10 PLACE WITH THE PROCEEDS OF THAT MARIJUANA?

11 A. YEAH. HOMER TOLD ME THAT HE WAS GOING TO TAKE ALL OF
12 THAT MONEY AND BUY COCAINE WITH IT.

13 Q. ALL RIGHT. WHERE DID Y'ALL -- HOW LONG DID YOU STAY
14 THERE AT HOMER'S HOUSE?

15 A. PROBABLY THIRTY, FORTY-FIVE MINUTES, MAYBE AN HOUR.

16 Q. AND WHERE DID Y'ALL GO FROM THERE?

17 A. I WENT BACK TO MY SHOP. AND HE WENT BACK UP TO THE
18 HOTDOG PLACE.

19 Q. ALL RIGHT. NOW THE NEXT DAY -- DID YOU SPEAK TO HOMER
20 JOHNSON THE NEXT DAY?

21 A. YES.

22 Q. MANY TIMES?

23 A. SEVERAL TIMES.

24 Q. AND HOW WERE YOU COMMUNICATING?

25 A. PHONE.

JOHNNY HAMBY - DIRECT EXAMINATION BY MR. MOYER

237

1 Q. DID HE EVER -- DID YOU EVER SEE HIM?

2 A. HE PULLED UP IN FRONT OF MY SHOP.

3 Q. DID HE COME IN?

4 A. NO, SIR.

5 Q. BUT YOU SAW HIM PULL UP THOUGH?

6 A. UM-HUM (AFFIRMATIVE).

7 Q. OKAY. AND DID YOU COMMUNICATE AT THAT TIME?

8 A. YES, SIR, ON THE PHONE.

9 Q. SO YOU WERE AT YOUR STORE, HARD TIMES?

10 A. YES, SIR.

11 Q. DID YOU STAY THERE AT THE STORE OR DID YOU GO WITH HIM?

12 A. I STAYED AT THE STORE.

13 Q. DID HE STAY THERE?

14 A. DID HOMER STAY THERE?

15 Q. YEAH.

16 A. NO, SIR. HE LEFT.

17 Q. DID HE CALL YOU MORE TIMES THROUGHOUT THE DAY?

18 A. YES, SIR.

19 Q. DID YOU SPEAK TO THE DEFENDANT, RUSSELL RICE, ALSO THAT
20 DAY?

21 A. YES, SIR.

22 Q. AND ONCE AGAIN, WERE YOU DOING IT BY YOUR CELL PHONES?

23 A. YES, SIR.

24 Q. SO WAS THAT PRETTY COMMON FOR YOU THREE TO TALK TO EACH
25 OTHER PRETTY FREQUENTLY WITH YOUR CELL PHONES?

JOHNNY HAMBY - DIRECT EXAMINATION BY MR. MOYER

238

1 A. YES.

2 Q. DID YOU TALK TO THE DEFENDANT A NUMBER OF TIMES
3 THROUGHOUT THAT DAY?

4 A. YES.

5 Q. AND WHAT WAS HE -- WHAT WAS HE CALLING YOU ABOUT? WHAT
6 WERE Y'ALL TALKING ABOUT ON THE PHONE?

7 A. ONLY ONE I CAN REMEMBER TALKING TO, RUSTY, HE SAID HIS
8 CAR HAD TORE UP AND FOR HOMER TO MEET HIM AT THE MOTEL.

9 Q. DID HE SAY WHAT MOTEL?

10 A. SUPER 8.

11 Q. AND DID YOU WONDER WHY -- DID THOSE TWO HAVE EACH
12 OTHERS CELL PHONE NUMBERS?

13 A. YEAH. HE SAID HE COULDN'T GET IN TOUCH WITH HOMER.

14 Q. DID YOU CALL HOMER AFTER THAT?

15 A. YES.

16 Q. AND DID YOU RELAY THE MESSAGE THAT YOU GOT FROM THE
17 DEFENDANT TO HOMER?

18 A. YES.

19 Q. WHAT DID YOU TELL HOMER?

20 A. THAT HIS CAR TORE UP, AND HE WAS AT THE MOTEL 8 ON WADE
21 HAMPTON. AND I FORGET -- IT WAS ONE TWENTY SOMETHING, THE
22 ROOM NUMBER HE SAID HE WAS IN.

23 Q. DID YOU HAVE ANY TROUBLE GETTING IN TOUCH WITH HOMER
24 JOHNSON?

25 A. NO.

JOHNNY HAMBY - DIRECT EXAMINATION BY MR. MOYER

239

1 Q. ALL RIGHT. AFTER YOU GAVE THAT INFORMATION TO HOMER

2 JOHNSON DID HE CALL YOU ANYMORE?

3 A. DID HOMER CALL ME ANYMORE?

4 Q. YEAH. DID HOMER CALL YOU?

5 A. YES.

6 Q. NOW WHEN HE SPOKE TO YOU DID HE INDICATE TO YOU WHERE

7 HE WAS AT THAT TIME WHEN HE CALLED YOU?

8 A. YES. THE LAST TIME I TALKED TO HIM HE SAID THAT HE WAS

9 AT THE MOTEL AND HE WAS GOING IN TO TALK TO HIM IN THE

10 OFFICE TO SEE IF HE'D CHECKED IN OR NOT.

11 Q. OKAY. DID HE INDICATE WHETHER OR NOT HE WAS SEEN OR

12 ---

13 A. YEAH. HE SAID HIS CAR WASN'T THERE.

14 Q. HE SAID WHOSE CAR WASN'T THERE?

15 A. RUSTY'S CAR WASN'T THERE.

16 Q. SO WHAT HE TOLD YOU WAS WHAT HE WAS INTENDING TO DO

17 THEN?

18 A. YES.

19 Q. WHICH WAS WHAT?

20 A. TO GO INTO THE OFFICE AND SEE IF HE'D CHECKED IN OR

21 NOT.

22 Q. OKAY. NOW DID YOU CALL -- DID YOU TALK TO HOMER

23 ANYTIME AFTER THAT?

24 A. AFTER THAT CONVERSATION, NO, SIR. I LEFT MESSAGES, BUT

25 I DIDN'T TALK TO HIM.

JOHNNY HAMBY - DIRECT EXAMINATION BY MR. MOYER

240

1 Q. OKAY. NOW WHERE DID YOU GO AFTER LEAVING THE SHOP?

2 A. I WENT TO THE BLOCK HOUSE. ME AND MELISSA WENT THERE
3 TO EAT.

4 Q. OKAY. AND DID YOU SEE THE DEFENDANT THERE?

5 A. YES, HE'D COME UP.

6 Q. AND NOW HOW DID Y'ALL KNOW TO MEET THERE AT THE BLOCK
7 HOUSE?

8 A. HE CALLED, AND I SAID WE WAS GOING TO EAT. SO WE WENT
9 TO THE -- SO HE MET US OVER AT THE BLOCK HOUSE TO EAT.

10 Q. OKAY. DO YOU REMEMBER WHO CALLED WHO?

11 A. HONESTLY, NO, SIR, I DON'T REMEMBER WHO CALLED WHO.

12 Q. DO YOU REMEMBER WHERE YOU WERE WHEN YOU HAD THAT
13 CONVERSATION?

14 A. IT HAD TO BE SOMEWHERE BETWEEN THE HOUSE -- THE SHOP
15 AND THE BLOCK HOUSE.

16 Q. SO YOU WERE IN THE CAR THEN?

17 A. I DON'T REMEMBER IF I WAS AT THE SHOP OR IF I WAS ON
18 THE WAY TO THE BLOCK HOUSE.

19 Q. OKAY. BUT YOU TOLD HIM WHERE YOU WERE GOING?

20 A. YES, SIR.

21 Q. AND DID YOU MEET HIM THERE?

22 A. YES. HE CAME IN AFTER WE WAS THERE.

23 Q. OKAY. WERE Y'ALL ALREADY EATING BY THAT POINT?

24 A. I BELIEVE SO, YES, SIR.

25 Q. DID YOU TALK TO HIM ABOUT WHETHER OR NOT THE

JOHNNY HAMBY - DIRECT EXAMINATION BY MR. MOYER

241

1 TRANSACTION WENT THROUGH?

2 A. NO. JUST ASKED HIM IF EVERYTHING WAS ALL RIGHT. AND
3 HE SAID, YEAH. I MEAN, MELISSA WAS THERE. SO YOU DON'T
4 DISCUSS STUFF LIKE THAT.

5 Q. OKAY. NOW WHEN DID YOU HEAR ABOUT HOMER'S BEING --
6 HOMER BEING KILLED?

7 A. SITTING THERE AT THE BLOCK HOUSE.

8 Q. AND FROM WHOM DID YOU GET THAT INFORMATION?

9 A. JODIE CALLED ME.

10 Q. WHAT WAS HIS PHONE NUMBER?

11 A. I BELIEVE IT WAS 346-3733, I THINK.

12 Q. OKAY. WHAT DID YOU DO WHEN YOU FOUND OUT?

13 A. I BELIEVE I TRIED TO CALL A COUPLE OF PEOPLE TO SEE
14 BECAUSE I TOLD JODIE THAT HOMER HAD BROKE HIS TOE THAT DAY
15 BECAUSE THEY SAID HE WAS AT THE HOSPITAL. AND I SAID, NO,
16 HE TOLD ME HE BROKE HIS TOE, THAT'S WHY HE'S AT THE
17 HOSPITAL.

18 Q. SO YOU MADE SOME OTHER PHONE CALLS?

19 A. I BELIEVE SO.

20 Q. OKAY. AND DID YOU FINALLY END UP GOING TO THE
21 HOSPITAL?

22 A. YES.

23 Q. OKAY. NOW WHEN YOU LEFT WAS THE DEFENDANT STILL THERE
24 AT THE BLOCK HOUSE?

25 A. YES. HE WAS LEAVING AS WE LEFT.

JOHNNY HAMBY - DIRECT EXAMINATION BY MR. MOYER

242

1 Q. AND DID Y'ALL DISCUSS WHERE YOU WERE GOING?

2 A. YES.

3 Q. WHAT DID YOU TELL HIM?

4 A. I TOLD HIM I WAS GOING TO THE HOSPITAL. AND HE SAID,
5 I'LL MEET YOU OVER THERE.

6 Q. AND DID YOU EVER MEET HIM OVER THERE?

7 A. NO.

8 Q. DID YOU EVER SEE HIM AGAIN AFTER THAT?

9 A. NO.

10 Q. NOW BEFORE HOMER DIED HOW OFTEN DID YOU USED TO SEE THE
11 DEFENDANT?

12 A. IF HE WAS IN TOWN, EVERY DAY.

13 Q. SO IF HE WAS IN TOWN YOU'D SEE HIM ABOUT EVERY DAY?

14 A. YES, SIR.

15 Q. SO DID IT SEEM ODD TO YOU NOT TO SEE HIM THEN AT ALL
16 FOR THAT LONG PERIOD OF TIME?

17 A. YES.

18 Q. DID YOU EVER SEE THE DEFENDANT WITH A FIREARM?

19 A. YES.

20 Q. WHAT KIND?

21 A. REMINGTON 30-06.

22 Q. AND DO YOU KNOW WHAT MODEL OR WHAT TYPE OF REMINGTON
23 30-06?

24 A. IT HAD TO BE A 7400 OR A 742, ONE OF THE TWO.

25 Q. AND WHY DO YOU SAY ONE OF THE TWO?

JOHNNY HAMBY - CROSS EXAMINATION BY MR. SUMNER

243

1 A. 'CAUSE BOTH OF THEM'S AUTOMATIC REMINGTONS, AND THEY
2 LOOK ALIKE IF YOU DON'T JUST LOOK AT THE MODEL NUMBER.

3 Q. OKAY. AND DID YOU LOOK AT THAT MODEL NUMBER?

4 A. NO, 'CAUSE I HAD PEOPLE IN THE STORE AT THE TIME. SO I
5 WOULD HAVE JUST GLANCED AT IT.

6 Q. AND HOW LONG PRIOR TO HOMER BEING KILLED WAS IT THAT
7 YOU SAW THIS? I'M NOT LOOKING FOR AN EXACT DATE.

8 A. IT HAD TO BE AROUND HUNTING SEASON 'CAUSE WE DISCUSSED
9 GOING DEER HUNTING. SO IT HAD TO BE LIKE OCTOBER.

10 Q. AND WHERE WAS IT THAT YOU SAW THIS RIFLE?

11 A. HE BRUNG IT INTO MY SHOP.

12 Q. DID HE LEAVE IT THERE AT ALL OR ...

13 A. YES, SIR.

14 Q. HOW LONG DID HE LEAVE IT THERE?

15 A. I'D SAY LESS THAN AN HOUR 'CAUSE HE WENT TO WAL-MART.

16 Q. AND DID HE COME BACK WITH ANYTHING?

17 A. YES, SIR, TWO BOXES OF SHELLS.

18 Q. OKAY. ONE MOMENT PLEASE. ALL RIGHT. PLEASE ANSWER
19 ANY QUESTIONS THE DEFENSE MAY HAVE.

20 THE COURT: MR. SUMNER.

21 MR. SUMNER: THANK YOU, YOUR HONOR. YES, SIR.

22 CROSS EXAMINATION BY MR. SUMNER:

23 Q. MR. HAMBY, YOU'VE ALREADY TESTIFIED TO THIS JURY THAT

24 YOU'RE CURRENTLY UNDER A CHARGE OF TRAFFICKING THIRTY-ONE

25 POUNDS OF MARIJUANA, IS THAT CORRECT?

JOHNNY HAMBY - CROSS EXAMINATION BY MR. SUMNER

244

1 A. YES.

2 Q. BEING PROSECUTED BY THIS SOLICITOR'S OFFICE, IS THAT
3 RIGHT?

4 A. YES.

5 Q. YOU BEEN TO COURT YET?

6 A. NO, SIR.

7 Q. I BELIEVE YOU SAID IT HAPPENED IN FEBRUARY OF 2002, IS
8 THAT RIGHT? NO, FORGIVE ME, ---

9 A. 2003.

10 Q. --- 2003. I GOT MY YEARS MIXED UP TOO. FEBRUARY,
11 FOURTEEN, FIFTEEN MONTHS AGO, IS THAT RIGHT?

12 A. YES, SIR.

13 Q. AND NOT ONLY ARE YOU CURRENTLY UNDER A CHARGE OF
14 TRAFFICKING IN EXCESS OF THIRTY POUNDS OF MARIJUANA, BUT
15 ALSO, I BELIEVE, YOU HAD SOME PIPE BOMBS IN YOUR HOUSE, IS
16 THAT RIGHT?

17 A. I HAD AN EXPLOSIVE DEVICE FOR BEAVER DAMS, YES.

18 Q. I'M SORRY? I COULDN'T UNDERSTAND YOU.

19 A. I HAD AN EXPLOSIVE DEVICE FOR BEAVER DAMS.

20 Q. EXPLOSIVE DEVICES FOR BEAVER DAMS.

21 A. YES, SIR.

22 Q. HOW MANY OF THOSE DID YOU HAVE?

23 A. I HAD ONE AT THE HOUSE AND TWO AT MY SHOP.

24 Q. YOU AND HOMER WERE GOOD FRIENDS, IS THAT RIGHT?

25 A. YES, SIR.

JOHNNY HAMBY - CROSS EXAMINATION BY MR. SUMNER

245

1 Q. I BELIEVE YOU TESTIFIED YOU'D KNOWN HIM FOR ABOUT

2 FOURTEEN YEARS?

3 A. YES, SIR.

4 Q. AND THROUGH YOUR TESTIMONY TODAY Y'ALL WERE IN BUSINESS

5 TOGETHER, WEREN'T YOU?

6 A. IN BUSINESS TOGETHER?

7 Q. Y'ALL WERE IN THE DOPE BUSINESS, WEREN'T YOU?

8 A. NO, SIR.

9 Q. YOU WEREN'T?

10 A. (NEGATIVE NOD).

11 Q. YOU DIDN'T TESTIFY ABOUT THIS TWENTY POUND CUT UP THAT

12 YOU WERE AT THE NIGHT BEFORE?

13 A. YES, SIR.

14 Q. OVER THERE ON MONDAY?

15 A. YES, SIR.

16 Q. THAT WASN'T BUSINESS? YOU DIDN'T TAKE ANY DOPE FROM

17 THAT?

18 A. NO, SIR, I DID NOT.

19 Q. WELL, HOMER WAS -- MADE HIS LIVING SELLING DOPE, DIDN'T

20 HE?

21 A. PARTLY, I WOULD SAY.

22 Q. AND OBVIOUSLY YOU'RE IN THE DRUG BUSINESS, AREN'T YOU?

23 A. NO, SIR.

24 Q. NOW YOU'VE TESTIFIED THAT YOU SAW AND SPOKE WITH HOMER

25 ON VIRTUALLY A DAILY BASIS, IS THAT RIGHT?

JOHNNY HAMBY - CROSS EXAMINATION BY MR. SUMNER

246

1 A. YES, SIR.

2 Q. AND YOU ALSO TESTIFIED TO THE JURY THAT YOU, AT THIS
3 POINT IN TIME, HAD A HUNTING AND FISHING SUPPLY STORE, IS
4 THAT CORRECT?

5 A. YES, SIR.

6 Q. NOW I BELIEVE YOU TESTIFIED THAT ON THE DAY OF THE
7 KILLING THAT YOU SPOKE WITH THE DECEASED SEVERAL TIMES, IS
8 THAT RIGHT?

9 A. YES.

10 Q. OKAY. LET ME BACK UP A MINUTE. DO YOU RECALL ABOUT
11 WHAT TIME THIS MARIJUANA TRANSACTION OCCURRED THE NIGHT
12 BEFORE, WHAT YOU SAW, DO YOU RECALL ABOUT WHAT TIME IT WAS?

13 A. IT WAS -- IT WAS DARK, BUT I CAN'T TELL YOU EXACTLY
14 WHAT TIME.

15 Q. NOW YOU'VE GIVEN SEVERAL STATEMENTS TO THE POLICE IN
16 THIS CASE, IS THAT NOT CORRECT?

17 A. YES.

18 Q. IN FACT, YOU GAVE A STATEMENT TO THE POLICE ON THE DAY
19 THAT THIS MURDER HAPPENED, DIDN'T YOU?

20 A. YES.

21 Q. OKAY. IN THAT STATEMENT IS IT NOT TRUE THAT YOU SAID
22 TO DETECTIVE RICK FLOYD THAT YOU HAD ONLY SPOKEN TO HOMER
23 THAT MORNING, IS THAT NOT CORRECT?

24 A. I DON'T REMEMBER.

25 Q. LET ME GIVE YOU A COPY OF IT. NOW WOULDN'T THINGS BE

JOHNNY HAMBY - CROSS EXAMINATION BY MR. SUMNER

247

1 PRETTY FRESH IN YOUR MIND ON THE DAY THAT THIS HAPPENED? I
2 MEAN, WOULDN'T THAT BE MUCH MORE CLEARER THAN TODAY SOME
3 HOWEVER MANY MONTHS DOWN THE LINE?

4 DID YOU NOT SAY, AND I QUOTE, I TALKED TO HOMER THIS
5 MORNING WHEN HE WAS GOING TO THE HOSPITAL? HE SAID HE WAS
6 PLAYING WITH HIS SON AND BROKE HIS TOE. HE CALLED ME WHEN
7 HE GOT OUT OF THE HOSPITAL AND ASKED IF I WANTED TO GO TO
8 LUNCH. AND I TOLD HIM I HAD TO STAY AT THE SHOP AND WOULD
9 NOT BE ABLE TO MEET HIM. HE CALLED ME BACK AROUND 2:00. HE
10 ASKED ME IF I WANTED TO GO RIDING WITH HIM, IS THAT NOT
11 CORRECT?

12 A. YES, SIR, THAT'S WHAT IT SAYS.

13 Q. OKAY. WELL, WHERE IN THIS STATEMENT DO YOU MENTION
14 THAT YOU SPOKE TO HIM SEVERAL TIMES THAT AFTERNOON.

15 Q. I DON'T MENTION IT IN THAT STATEMENT.

16 Q. I GUESS IT JUST MAYBE SLIPPED YOUR MIND?

17 A. NO, SIR.

18 Q. IN THAT STATEMENT YOU SAID HOMER ASKED YOU TO GO TO
19 LUNCH THAT DAY, IS THAT CORRECT?

20 A. THAT'S WHAT IT SAYS. YES, SIR.

21 Q. WELL, DID YOU SAY IT? DID SOMEBODY TAKE IT DOWN WRONG?

22 A. IT'S BEEN A LONG TIME. I ASSUME I SAID IT IF THEY
23 WROTE IT DOWN LIKE THAT.

24 Q. YOU ALSO SAID HE CALLED YOU AROUND 2:00 AND ASKED YOU
25 TO GO RIDING WITH HIM, IS THAT RIGHT?

JOHNNY HAMBY - CROSS EXAMINATION BY MR. SUMNER

248

1 A. HE CALLED ME SEVERAL TIMES. I'M NOT SURE IF IT WAS
2 2:00 OR WHAT, BUT ...

3 Q. YOU ACTUALLY SAW HIM THAT AFTERNOON, DIDN'T YOU?

4 A. WHEN HE CAME TO THE SHOP.

5 Q. TALKING ABOUT HOMER NOW. HE CAME TO YOUR SHOP THAT
6 AFTERNOON, DIDN'T HE?

7 A. (AFFIRMATIVE NOD).

8 Q. HE CAME TO YOUR SHOP BETWEEN AN HOUR, I'M SORRY,
9 BETWEEN ROUGHLY A HALF AN HOUR TO AN HOUR FROM THE TIME HE
10 WAS KILLED, DIDN'T HE?

11 A. I'M NOT SURE WHAT TIME HE GOT KILLED. AND I'M NOT SURE
12 WHAT TIME HE GOT TO THE SHOP, BUT HE CAME TO MY SHOP.

13 Q. OKAY. WOULD YOU AGREE WITH ME THAT YOU'VE STATED
14 BEFORE THAT HE CAME AROUND YOUR SHOP AROUND FOUR TO 5:00
15 THAT AFTERNOON?

16 A. PROBABLY, BUT I'M NOT GOOD WITH TIMES. BUT I'D SAY
17 THAT.

18 Q. YOU GAVE A SECOND STATEMENT TO THE POLICE, DIDN'T YOU?
19 DO YOU RECALL THAT, MR. HAMBY?

20 A. YES.

21 Q. I'LL HAND THAT TO YOU SO YOU CAN REFRESH YOUR MEMORY
22 WITH IT. ABOUT FIVE OR SIX DAYS LATER YOU SPOKE AGAIN WITH
23 DETECTIVE FLOYD, DIDN'T YOU?

24 A. YES.

25 Q. OKAY. THERE'S NO QUESTION THAT IN THE FIRST STATEMENT

JOHNNY HAMBY - CROSS EXAMINATION BY MR. SUMNER

249

1 ON THE DAY OF THE KILLING YOU DON'T EVEN MENTION TO
2 DETECTIVE FLOYD THAT YOU EVEN SEEN HIM, IS THAT RIGHT?

3 A. THAT'S RIGHT.

4 Q. YOU DON'T MENTION HOMER COMING BY YOUR STORE ROUGHLY AN
5 HOUR OR SO BEFORE 5:30, DO YOU?

6 A. NO, SIR.

7 Q. IN FACT, YOUR FIRST STATEMENT ONLY MENTIONS THAT YOU
8 SPOKE WITH HIM ON THE PHONE AROUND 2:00 THAT DAY, ISN'T THAT
9 RIGHT?

10 A. YES, SIR. THAT'S WHAT IT SAYS.

11 Q. EVERYTHING CHANGES ON THE 11TH, DOESN'T IT? EVERYTHING
12 CHANGES IN YOUR STATEMENT ON THE 11TH, DOESN'T IT?

13 A. I GUESS.

14 Q. OKAY. WELL, THAT'S WHEN YOU DECIDE TO TALK ABOUT THIS
15 MONEY THAT'S OWED BETWEEN RUSTY AND HOMER, ISN'T IT?

16 A. YES.

17 Q. AND, IN FACT, MR. HAMBY, YOU TAKE A LOOK AT THAT
18 STATEMENT THAT YOU GAVE ON THE 11TH. YOU MENTION RUSTY
19 RICE'S NAME NINE TIMES, DON'T YOU, IN A TWO PARAGRAPH
20 STATEMENT? IS THAT NOT CORRECT? I WAS GIVING YOU -- WOULD

21 YOU DISAGREE WITH ME IF I SAID YOU MENTIONED RUSTY'S NAME
22 NINE TIMES IN A TWO PARAGRAPH STATEMENT?

23 A. IT'S A BUNCH OF TIMES, YES, SIR.

24 Q. YEAH, IT'S A BUNCH OF TIMES, ISN'T IT?

25 A. UM-HUM (AFFIRMATIVE).

JOHNNY HAMBY - CROSS EXAMINATION BY MR. SUMNER

250

1 Q. NOW TODAY TO THIS JURY YOU TESTIFIED THAT RUSTY RICE
2 LEFT THE NIGHT BEFORE ON THIS TWENTY POUND DEAL AND YOU SAID
3 HE WAS MAD, DIDN'T YOU?

4 A. I DON'T REMEMBER SAYING HE WAS MAD.

5 Q. YOU DON'T REMEMBER SAYING -- TODAY YOU DIDN'T SAY RUSTY
6 LEFT MAD BECAUSE HE COULDN'T GET ALL THE DOPE?

7 A. OH, HE COULDN'T GET ALL THE DOPE. I DON'T REMEMBER
8 SAYING NOTHING ABOUT MAD.

9 Q. WHERE DO YOU SAY IN THAT STATEMENT OF THE 11TH THAT
10 RUSTY WAS SOMEHOW AGITATED OR COULDN'T GET ALL THE DOPE?
11 WHERE DO YOU SAY THAT IN THAT STATEMENT? YOU CAN TAKE A
12 LOOK AT IT.

13 A. IT DON'T SAY IT NOWHERE.

14 Q. OKAY. THEN YOU GAVE A THIRD STATEMENT, IS THAT NOT
15 RIGHT?

16 A. YES.

17 Q. AND THAT'S WHEN YOU START TALKING ABOUT RUSTY COMING BY
18 YOUR STORE AND SHOWING YOU THIS GUN, IS THAT RIGHT?

19 A. YES.

20 Q. AND I BELIEVE YOU JUST MENTIONED FOR THIS JURY THAT A
21 DEER HUNTING TRIP WAS BEING PLANNED OR -- IS THAT YOUR
22 TESTIMONY TODAY? IT WAS GOING TO BE A HUNTING TRIP PLANNED?

23 A. YES. WE ALL PLANNED TO GO HUNTING, YEAH.

24 Q. HAVE YOU EVER GONE HUNTING WITH RUSTY BEFORE?

25 A. NO.

JOHNNY HAMBY - CROSS EXAMINATION BY MR. SUMNER

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1 Q. OKAY. NOW HOW LONG HAVE YOU OWNED THIS HUNTING -- THIS
2 HARD TIMES HUNTING AND FISHING SUPPLY STORE?

3 A. THE STORE, FOR LESS THAN A YEAR, I'D SAY.

4 Q. I'M SORRY?

5 A. THE STORE, I WOULD SAY LESS THAN A YEAR OR AROUND A
6 YEAR, SOMETHING LIKE THAT.

7 Q. BUT YOU OBVIOUSLY HAVE A TREMENDOUS AMOUNT OF KNOWLEDGE
8 ABOUT HUNTING WEAPONS, DON'T YOU?

9 A. A LITTLE BIT.

10 Q. YOU TESTIFIED EARLIER THAT I BELIEVE YOU SAW SOME
11 THINGS OVER AT HOMER JOHNSON SENIOR'S HOUSE, TALKING ABOUT
12 THE CAR THEFT?

13 A. YES.

14 Q. WHERE HOMER -- HOMER HAD ALLEGEDLY OR DID STEAL OR
15 STOLE RUSTY'S CAR, IS THAT RIGHT?

16 A. HE HAD SOME DRUGS AT HIS DADDY'S HOUSE.

17 Q. AND SOME MONEY?

18 A. AND SOME MONEY.

19 Q. DIDN'T YOU SAY A BIG THICK STACK OF MONEY?

20 A. SOME MONEY, YES, SIR.

21 Q. OKAY. DID HE TELL YOU WHERE IT CAME FROM?

22 A. YES.

23 Q. WHAT DID HE SAY?

24 A. HE SAID IT CAME FROM RUSTY'S CAR.

25 Q. OKAY. AND YOU MET RUSTY THROUGH HOMER, IS THAT RIGHT?

JOHNNY HAMBY - CROSS EXAMINATION BY MR. SUMNER

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1 A. THAT'S RIGHT.

2 Q. AND I BELIEVE YOU TESTIFIED EARLIER, AND YOU CORRECT ME
3 IF I'M WRONG, THAT THEY WERE FRIENDS, CLOSE FRIENDS?

4 A. HOMER AND RUSTY?

5 Q. UM-HUM (AFFIRMATIVE).

6 A. I'M ASSUMING THEY WAS.

7 Q. BUT YET HE WAS TELLING YOU HOW HE HAD STOLEN RUSTY'S
8 CAR AND RANSACKED IT AND TOOK ALL HIS STUFF OUT OF IT?

9 A. YES, SIR.

10 MR. SUMNER: ONE SECOND PLEASE, YOUR HONOR. THANK YOU.

11 THE COURT: ANY REDIRECT?

12 MR. MOYER: NO, SIR, YOUR HONOR.

13 THE COURT: STEP DOWN. AND TAKE THE JURY OUT FOR A
14 RECESS PLEASE.

15 (WHEREUPON THE JURY EXITED THE COURTROOM AT 10:31 AM)

16 THE COURT: ALL RIGHT. WE'LL TAKE A RECESS.

17 MR. SUMNER: FIFTEEN MINUTES, YOUR HONOR. GIVE OR TAKE
18 FIFTEEN MINUTES?

19 THE COURT: THAT'LL BE FINE.

20 MR. SUMNER: OKAY. THANK YOU, YOUR HONOR.

21 (WHEREUPON COURT WAS IN RECESS)

22 THE COURT: BE SEATED. MS. SHELLY JOHNSON, I'VE JUST
23 BEEN INFORMED THAT YOU, DURING THIS RECESS, WERE OUT IN THE
24 LOBBY TALKING TO POTENTIAL WITNESSES IN THIS CASE TELLING
25 THEM WHAT ONE OF THE EARLIER WITNESSES TESTIFIED TO SCREWED

1 UP THE CASE, IS THAT TRUE?

2 MS. JOHNSON: NO. NO, SIR. I WAS TALKING ABOUT WHO
3 WAS NEXT. I WAS TALKING TO MY MOM ABOUT WHO WAS NEXT. AND
4 WAYNE KELLY WAS SITTING BESIDE HER AND ASKED HER, AM I NEXT?
5 I SAID, I DON'T KNOW WHO'S NEXT.

6 THE COURT: SO YOU'RE NOT ---

7 MS. JOHNSON: I SAID, I SUPPOSE WHATEVER THEY'RE
8 TALKING ABOUT WHENEVER THEY CALL THE NEXT ATTORNEY -- IT'LL
9 BE WHO'S COMING UP NEXT, NOBODY'S IN ORDER.

10 THE COURT: YOU MADE NO COMMENT ---

11 MS. JOHNSON: I'M TELLING EVERYBODY I'M NOT SAYING
12 ANYTHING.

13 THE COURT: YOU HAVE MADE NO COMMENT TO ---

14 MS. JOHNSON: NO, SIR.

15 THE COURT: --- ANYBODY ABOUT ANY PRIOR TESTIMONY IN
16 THIS CASE?

17 MS. JOHNSON: NO, SIR.

18 THE COURT: MR. SUMNER, YOU WANT ME TO BRING HER AROUND
19 AND PUT HER UNDER OATH AND LET YOU EXAMINE HER? OR DO YOU
20 HAVE ANY TESTIMONY THAT YOU'D LIKE TO ...

21 MR. SUMNER: THIS IS A FIRST FOR ME. I'M JUST
22 THINKING.

23 THE COURT: ASSUMING THAT IT OCCURRED TELL ME HOW YOU
24 WOULD BE PREJUDICED.

25 MR. SUMNER: THE ONLY THING IS --- LET ME ASK -- WOULD

1 YOU MIND IF I ASK MS. JOHNSON SOMETHING?

2 THE COURT: NO, SIR, GO RIGHT AHEAD.

3 MR. SUMNER: DID YOU DISCUSS WITH YOUR MOTHER ANY
4 TESTIMONY ABOUT A ---

5 MS. JOHNSON: NO, NO, ---

6 MR. SUMNER: --- CAR -- LET ME ---

7 THE COURT: WAIT JUST A MINUTE, MA'AM. LET HIM ASK THE
8 QUESTION, THEN YOU CAN ANSWER HIM.

9 MS. JOHNSON: YES, SIR.

10 MR. SUMNER: DID YOU DISCUSS ANY TESTIMONY WITH YOUR
11 MOTHER OR YOUR FATHER IN-LAW ABOUT THE CAR SHOW? DID YOU
12 MENTION ANYTHING ABOUT THE ---

13 MS. JOHNSON: I NEVER SAID ANYTHING ABOUT THE CAR SHOW.

14 MR. SUMNER: WELL, LET ME JUST FINISH, OKAY? DID YOU
15 DISCUSS WITH YOUR FATHER IN-LAW ANY TESTIMONY OFFERED TO THE
16 JURY, TO THE COURT ABOUT THE CAR SHOW?

17 MS. JOHNSON: NO, SIR. NO, I HAVEN'T.

18 MR. SUMNER: OKAY.

19 MS. JOHNSON: IT WAS ABOUT WHO WAS GOING TO COME UP ON
20 THE STAND NEXT, ABOUT WITNESSES OR ORDER ---

21 THE COURT: SPEAK UP PLEASE.

22 MR. SUMNER: WE CAN'T -- WHY DON'T YOU STEP AROUND,
23 THAT WAY YOU CAN BE HEARD. NOW JUST TALK TO THAT LADY RIGHT
24 HERE.

25 MS. JOHNSON: ALL RIGHT.

1 MR. SUMNER: JUST TELL THE JUDGE EVERYTHING THAT YOU
2 SAID. THAT'S WHAT WE'RE TRYING TO FIGURE OUT.

3 MS. JOHNSON: OKAY. I SAID -- WAYNE AND MY MOTHER WERE
4 SITTING RIGHT BY SIDE BY SIDE. MY FATHER IN-LAW'S OFF OVER
5 HERE. HE DIDN'T EVEN ASK ME ANYTHING, NOT AT THAT MOMENT.
6 HE -- SHE SAID, WELL, -- WAYNE SAID, WHO'S COMING IN? AM I
7 GOING TO BE COMING UP ON THE STAND NEXT? I SAID, I DON'T
8 KNOW WHO'S GOING TO BE COMING UP ON THE STAND NEXT. I
9 ASSUME WHOEVER'S TALKING OR WHATEVER THEY'RE TALKING ABOUT
10 DURING THAT TIME IN THE COURT WILL BE WHOEVER'S COMING UP
11 NEXT, WHICHEVER -- WHATEVER THEY'RE TALKING ABOUT WILL BE
12 WHO'S COMING UP NEXT.

13 MR. SUMNER: OKAY.

14 MS. JOHNSON: WHOEVER WROTE THAT WHATEVER -- I'VE NOT
15 SAID ANYTHING ABOUT A CAR SHOW OUT THERE.

16 MR. SUMNER: BUT YOU DID SPEAK TO ---

17 MS. JOHNSON: MY MOTHER.

18 MR. SUMNER: YOU DID SPEAK -- WHAT IS HER NAME?

19 MS. JOHNSON: BRENDA BEECHUM.

20 MR. SUMNER: BRENDA WHO?

21 MS. JOHNSON: BEECHUM.

22 MR. SUMNER: BRENDA BEECHUM?

23 MS. JOHNSON: YES.

24 MR. SUMNER: BRENDA BEECHUM.

25 THE COURT: IS SHE A WITNESS IN THIS CASE, SOLICITOR?

1 MR. MOYER: SHE'S NOT IN THE STATE'S CASE, YOUR HONOR.
2 THE ONLY POSSIBILITY WOULD BE IF SHE HAD TO BE CALLED IN
3 REPLY TO SOMETHING THE DEFENSE WOULD PUT UP.

4 THE COURT: ANY OTHER QUESTIONS.

5 MR. SUMNER: AND IT WOULD BE HOMER JOHNSON, SENIOR, IS
6 THAT CORRECT, THAT YOU ALSO SPOKE WITH?

7 MS. JOHNSON: YEAH, HOMER JOHNSON. BUT HE WAS STANDING
8 OFF TO THE SIDE. HE WASN'T EVEN IN THAT CONVERSATION. IT
9 WAS WAYNE KELLY AND MY MOTHER. WHEN I FIRST WALKED OUT HE
10 WALKED UP TO ME, HOMER'S DAD, AND I DIDN'T SAY ANYTHING TO
11 HIM.

12 MR. SUMNER: WHAT DID YOU SAY TO WAYNE KELLY?

13 MS. JOHNSON: I TOLD HIM I DON'T KNOW WHO WOULD BE
14 CALLED UP. THERE'S NO ORDER AND NOBODY KNOWS.

15 MR. SUMNER: OKAY. I DON'T HAVE ANY OTHER QUESTIONS,
16 YOUR HONOR.

17 THE COURT: WELL, IS WAYNE KELLY A WITNESS IN THIS CASE
18 OR HOMER JOHNSON A WITNESS?

19 MS. JOHNSON: I DON'T KNOW.

20 MR. MOYER: YOUR HONOR, HOMER JOHNSON'S ON MY WITNESS
21 LIST. I DON'T ANTICIPATE CALLING HIM.

22 THE COURT: ALL RIGHT. SO HE'S ---

23 MR. MOYER: AND THE OTHER PERSON, WAYNE KELLY, IS NOT
24 ON MY WITNESS LIST.

25 MR. SUMNER: WAYNE KELLY WAS SUBPOENAED BY THE DEFENSE

FRANCIS ZURAWSKI - DIRECT EXAMINATION BY MR. MOYER

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1 AS A POTENTIAL WITNESS.

2 THE COURT: BY THE DEFENDANT?

3 MR. SUMNER: YES, SIR. HE'S UNDER MY SUBPOENA.

4 THE COURT: OH. WELL, THEN HOW WOULD YOUR ---

5 MR. SUMNER: I WAS JUST GOING TO LET YOU KNOW THAT,
6 THAT HE IS ---

7 THE COURT: ALL RIGHT. I WANT EVERYONE IN THE
8 COURTROOM TO UNDERSTAND THAT THE TESTIMONY OF A WITNESS,
9 WITNESSES IN THIS CASE IS NOT TO BE DISCUSSED. THAT'S THE
10 REASON FOR THE SEQUESTERING OF THE WITNESSES. NOW IF
11 THERE'S ANY FURTHER DISCUSSION WITH ANY POTENTIAL WITNESS IN
12 THIS CASE, THAT'S GOING TO BE CONTEMPT OF COURT, AND I'LL
13 PUT YOU IN JAIL. YOU UNDERSTAND THAT?

14 MS. JOHNSON: YES, SIR.

15 THE COURT: ALL RIGHT. BRING THE JURY. THEY'RE HAVING
16 PROBLEMS WITH THE BATHROOMS. IT'LL BE A FEW MORE MINUTES
17 BEFORE THEY CAN BRING THE JURY.

18 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 11:06 AM)

19 THE COURT: ALL RIGHT, SOLICITOR.

20 MR. MOYER: THE STATE WOULD CALL FRANCIS ZURAWSKI.

21 FRANCIS ZURAWSKI, BEING
22 DULY SWORN TESTIFIED AS FOLLOWS:

23 DIRECT EXAMINATION BY MR. MOYER:

24 Q. MS. ZURAWSKI, WHERE ARE YOU EMPLOYED?

25 A. STUDIO PLUS.

FRANCIS ZURAWSKI - DIRECT EXAMINATION BY MR. MOYER

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1 Q. AND WHAT IS STUDIO PLUS?

2 A. IT'S A HOTEL.

3 Q. WHERE IS THAT, THE HOTEL ---

4 A. IT'S ON WOODS LAKE ROAD HERE IN GREENVILLE.

5 Q. IS THAT IN THE VICINITY OF HAYWOOD ROAD?

6 A. YES, RIGHT OFF OF HAYWOOD ROAD.

7 Q. IS THAT THE ONLY STUDIO PLUS HOTEL THAT'S OVER IN THAT
8 AREA?

9 A. YES.

10 Q. NOW WERE YOU ASKED THROUGH A SUBPOENA TO BRING SOME
11 RECORDS WITH YOU TODAY?

12 A. YES, SIR.

13 Q. AND DO THEY CONCERN RUSSELL RICE?

14 A. YES.

15 Q. WHAT KIND OF RECORDS ARE THEY?

16 A. IT'S THE CHECK-IN REPORT OF WHAT TIME HE CHECKED IN AND
17 THE DAY HE CHECKED OUT.

18 Q. OKAY. AND DID YOU BRING THOSE WITH YOU TODAY?

19 A. YES, I DID.

20 Q. NOW ARE THOSE RECORDS KEPT IN THE ORDINARY COURSE OF
21 BUSINESS THERE WITH THE COMPANY, WITH STUDIO PLUS?

22 A. YES. WE CAN PULL THEM AT ANY TIME.

23 Q. OKAY. AND THAT'S A REGULAR PART OF YOUR DUTIES AND ---

24 A. RIGHT. CHECKING TO MAKE SURE PEOPLE HAVE LEFT OR CHECK
25 TO SEE WHO'S CHECKED IN.

FRANCIS ZURAWSKI - DIRECT EXAMINATION BY MR. MOYER

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1 Q. AND YOU HAVE ACCESS TO ALL THOSE RECORDS?

2 A. YES.

3 Q. OKAY. AND DID YOU BRING THOSE RECORDS WITH YOU NOW?

4 A. YES.

5 MR. SUMNER: NO OBJECTION, YOUR HONOR, TO THE RECORDS.

6 THE COURT: THANK YOU.

7 (WHEREUPON STATE'S EXHIBIT NUMBERS 47 AND 48 WERE

8 ENTERED INTO EVIDENCE)

9 A. THIS IS THE CHECK-IN. AND IT GIVES THE MILITARY TIME
10 OF CHECK-IN. AND I CHECKED HIM IN. AND THIS IS THE CHECK-
11 OUT REPORT.

12 Q. OKAY. I'M GOING ---

13 A. IT DOESN'T GIVE YOU A TIME, BUT IT WAS SOMEWHERE
14 BETWEEN ELEVEN AND 11:30 THAT DAY.

15 Q. OKAY. I'M GOING TO GET TO THAT IN A MINUTE. IF YOU'LL
16 JUST GIVE ME A MOMENT WE'RE GOING TO HAVE THESE MARKED AS
17 EXHIBITS. I'M GOING TO HAND YOU WHAT'S NOW BEEN MARKED AS
18 AN EXHIBIT, STATE'S EXHIBIT NUMBER 48.

19 A. YES.

20 Q. AND ONCE AGAIN, JUST TAKE A LOOK AT THAT DOCUMENT.

21 DOES THAT STATE THE CHECK-IN TIME OF RUSSELL RICE?

22 A. YES, IT DOES.

23 Q. FOR WHAT DATE?

24 A. FOR DECEMBER 26TH, 2002.

25 Q. AND DOES IT STATE THE TIME?

FRANCIS ZURAWSKI - DIRECT EXAMINATION BY MR. MOYER

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1 A. YES. IT'S MILITARY TIME. IT'S 16:45, WHICH WOULD BE
2 6:45.

3 Q. 6:45 OR 4:45?

4 A. 4:45, I'M SORRY.

5 Q. OKAY.

6 A. SORRY.

7 Q. OKAY. NOW LET ME SHOW YOU STATE'S EXHIBIT NUMBER 47.

8 AND DOES THAT STATE -- WHAT DOES THAT DOCUMENT SHOW?

9 A. IT TELLS HIS CHECK-OUT DATE.

10 Q. AND WHAT WAS THE CHECK-OUT DATE?

11 A. 12/28/2002.

12 Q. NOW YOU STATED -- THIS DOCUMENT STATES, EXHIBIT 47,
13 DOES NOT LIST THE TIME.

14 A. UM-HUM (AFFIRMATIVE).

15 Q. DO YOU REMEMBER THE TIME?

16 A. IT HAS TO BE BETWEEN ELEVEN AND 11:30 THAT DAY. OUR
17 CHECK-OUT TIME IS AT ELEVEN. PEOPLE DO RUN A FEW MINUTES
18 LATE, BUT WE DO -- IT WOULD HAVE TO BE SOMEWHERE IN THAT
19 AREA.

20 Q. OKAY. AND DID YOU, IN FACT, ACTUALLY HAVE A
21 CONVERSATION WITH THIS DETECTIVE, DETECTIVE FULLER, ON THE
22 DATE THAT HE CHECKED OUT?

23 A. YES.

24 Q. DID YOU TALK TO HIM A COUPLE OF TIMES?

25 A. YES.

FRANCIS ZURAWSKI - DIRECT EXAMINATION BY MR. MOYER

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1 Q. DID HE COME INTO -- DID HE COME INTO THE ACTUAL HOTEL
2 THAT MORNING ---

3 A. YES, HE DID.

4 Q. --- AND SPEAK TO YOU?

5 A. YES. HE SHOWED ME A PICTURE.

6 Q. OKAY. AND WERE YOU ABLE TO RECOGNIZE THE PERSON?

7 A. YES.

8 Q. OKAY. AS BEING RUSSELL RICE?

9 A. UM-HUM (AFFIRMATIVE). YES, SIR.

10 Q. AND YOU WERE ABLE TO GIVE DETECTIVE FULLER THAT
11 INFORMATION?

12 A. YES.

13 Q. THAT HE WAS THERE IN THE HOTEL?

14 A. UM-HUM (AFFIRMATIVE).

15 Q. AND DID DETECTIVE FULLER THEN -- DID YOU RECEIVE ANY
16 TELEPHONE CALLS FROM HIM LATER?

17 A. YES, I DID. IN FACT, WHILE I WAS CHECKING OUT MR. RICE
18 MR. FULLER WAS ON THE PHONE WITH ME 'CAUSE HE WAS WONDERING
19 WHEN HE WAS LEAVING. AND AS WE WERE TALKING -- 'CAUSE WE
20 WERE TALKING AS -- THE CUSTOMER AND MYSELF. AND MR. FULLER
21 CALLED. AND HE KIND OF KNEW THAT HE WAS STANDING RIGHT
22 THERE IN FRONT OF ME.

23 Q. OKAY. AND WERE YOU -- DID YOU GIVE THE INFORMATION TO
24 DETECTIVE FULLER ---

25 A. YES.

DANIEL FULLER - DIRECT EXAMINATION BY MR. MOYER

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1 Q. --- THAT HE WAS STANDING THERE? AND DID YOU DO SO IN
2 SUCH A WAY AS ---

3 A. NOT TO ALERT THE PERSON THAT WAS IN FRONT OF ME.

4 Q. OKAY. THAT HE WAS ABOUT TO LEAVE?

5 A. UM-HUM (AFFIRMATIVE).

6 Q. THAT YOU WERE TALKING ABOUT?

7 A. UM-HUM (AFFIRMATIVE).

8 Q. ALL RIGHT. PLEASE ANSWER ANY QUESTIONS THE DEFENSE MAY
9 HAVE.

10 THE COURT: THANK YOU. NO QUESTIONS. ALL RIGHT. YOU
11 CAN STEP DOWN. THANK YOU.

12 MR. MOYER: I CALL DETECTIVE FULLER.

13 DANIEL FULLER, BEING DULY
14 SWORN TESTIFIED AS FOLLOWS:

15 MR. MOYER: JUST FOR THE RECORD, YOUR HONOR, WE WOULD
16 ASK THAT THE WITNESS BE EXCUSED FROM HER SUBPOENA.

17 MR. SUMNER: NO PROBLEM.

18 DIRECT EXAMINATION BY MR. MOYER:

19 Q. MR. FULLER, WHERE ARE YOU EMPLOYED?

20 A. WITH THE GREENVILLE POLICE DEPARTMENT.

21 Q. HOW LONG HAVE YOU WORKED FOR THE GREENVILLE POLICE
22 DEPARTMENT?

23 A. JUST OVER TEN YEARS.

24 Q. WHAT IS YOUR POSITION WITH THE POLICE DEPARTMENT?

25 A. I AM AN INVESTIGATOR, DETECTIVE DIVISION.

DANIEL FULLER - DIRECT EXAMINATION BY MR. MOYER

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1 Q. AND WHAT TYPE OF CRIMES DO YOU INVESTIGATE?

2 A. VIOLENT CRIMES INCLUDING MURDER, SHOOTINGS, STABBINGS,
3 CRIMINAL SEXUAL CONDUCT, ARMED ROBBERY.

4 Q. HOW LONG HAVE YOU BEEN A DETECTIVE?

5 A. ABOUT FIVE YEARS.

6 Q. AND THAT'S ALL BEEN WITH THE GREENVILLE POLICE
7 DEPARTMENT?

8 A. THAT IS CORRECT.

9 Q. AND SO YOUR DUTIES THEN INCLUDE HOMICIDE
10 INVESTIGATIONS?

11 A. YES, THEY DO.

12 Q. WERE YOU ASSIGNED THIS CASE THAT WE'VE BEEN TALKING
13 ABOUT TODAY?

14 A. YES, I WAS.

15 Q. WERE YOU ACTUALLY ASSIGNED THE CASE ON THE NIGHT OF
16 NOVEMBER THE 5TH OF 2002?

17 A. YES, I WAS.

18 Q. AND DID YOU RESPOND OUT TO THE SCENE THAT NIGHT?

19 A. I DID.

20 Q. ABOUT WHAT TIME WAS IT THAT YOU WENT OUT THERE?

21 A. I ARRIVED AT THE SUPER 8 MOTEL ON WADE HAMPTON
22 APPROXIMATELY SIX PM ON NOVEMBER 5TH, 2002.

23 Q. OKAY. AND HOW LONG DID YOU STAY THERE?

24 A. I WAS ON THE SCENE FOR APPROXIMATELY FOUR HOURS.

25 Q. AND WERE YOU -- WE'VE ALREADY HEARD A GOOD BIT OF

DANIEL FULLER - DIRECT EXAMINATION BY MR. MOYER

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1 TESTIMONY ABOUT THE SCENE, BUT WERE YOU THERE WHILE
2 DETECTIVE, I'M SORRY, WHILE FORENSICS TECHNICIAN BRYAN WAS
3 DOING HIS WORK THERE ON THE SCENE?

4 A. YES, SIR, I WAS.

5 Q. WERE YOU SUPERVISING THE SCENE?

6 A. MY LIEUTENANT WAS ON THE SCENE. HE WAS THE STANDING
7 SUPERVISOR. I CONSULTED WITH HIM AS THE INVESTIGATION WENT
8 ON, REQUESTED HIS HELP TO MAKE SURE THAT WHAT I NEEDED HE
9 ASSISTED ME IN GETTING IT DONE.

10 Q. OKAY. NOW LET ME ASK YOU A LITTLE BIT ABOUT THAT AREA.
11 AND WE'VE HEARD A LITTLE BIT OF TESTIMONY ON IT ALREADY, BUT
12 I WANT TO ASK YOU TO DEVELOP IT A LITTLE BIT FULLER. NOW
13 GOING FROM THAT NIGHT WHILE YOU WERE OUT THERE AND HAVE YOU
14 RETURNED TO THAT LOCATION ON OCCASIONS SINCE NOVEMBER THE
15 5TH?

16 A. YES, SEVERAL TIMES.

17 Q. OKAY. AND HAVE YOU EXAMINED THAT WOODED AREA IN THE
18 BACK CORNER OF THE HOTEL THAT'S BEEN TALKED ABOUT?

19 A. CLOSELY.

20 Q. I WOULD LIKE YOU TO DESCRIBE TO THE JURY A LITTLE BIT
21 ABOUT FIRST OF ALL WHAT THAT WOODLINE AREA IS LIKE. AND
22 IT'S BEEN DESCRIBED THERE AS A HILL THERE AS WELL. IF YOU
23 WOULD JUST TELL THE JURY A LITTLE BIT ABOUT THAT.

24 A. OKAY. AT THE -- FACING THE HOTEL ON THE LEFT SIDE AT
25 THE BACK CORNER THERE IS -- MAY I POINT TO THE MAP TO SHOW

DANIEL FULLER - DIRECT EXAMINATION BY MR. MOYER

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1 WHAT I'M INDICATING?

2 Q. PLEASE.

3 A. WHERE MY FINGER IS IF YOU CAN TELL -- CAN YOU ALL SEE
4 THE MAP? MY FINGER IS TOUCHING A LAWN TYPE AREA WHERE JUST
5 A STANDARD MOW THE GRASS TYPE LAWN THAT YOU WOULD FIND IN
6 YOUR YARD, THAT LAWN IS PERHAPS TEN TO TWELVE FEET WIDE.
7 AND THEN AT THE EDGE OF THE LAWN IS WHERE A WOODED AREA
8 BEGINS. IT IS A LOT OF BRUSH, AND BRAMBLE, AND TREES. AND
9 RIGHT WHERE THE BRUSH AND THE BRAMBLE OF TREES START IS A
10 VERY STEEP RAVINE. THE DEPTH OF THAT RAVINE IS AT LEAST
11 TWENTY FEET. AND IT GOES DOWN VERY QUICKLY.

12 Q. NOW IS IT A CLIFF? WHAT ARE YOU -- DESCRIBE IT A
13 LITTLE BIT MORE.

14 A. YOU CAN WALK DOWN IT. I REMEMBER WHILE WE WALKED UP
15 THIS RAVINE TO GET TO THE LAWN AREA OR HERE IN THE BACK PART
16 TO WALK UP THE RAVINE TO GET ONTO THE PARKING LOT YOU LEAN
17 FORWARD AND GRAB THE GROUND WITH YOUR HANDS. IT'S VERY
18 STEEP.

19 Q. NOW ARE THERE OTHER AREAS AROUND THAT VICINITY WHERE
20 IT'S EASIER TO ASCEND?

21 A. ALL BEHIND, ALL THIS WOODED AREA, ALL BEHIND IS A VERY
22 STEEP RAVINE, ALL THE REST IS.

23 Q. OKAY. NOW ---

24 A. AND AT THE BASE OF THAT RAVINE IS A STREAM. YOU CAN
25 JUMP ACROSS IT IN MOST AREAS, THAT STREAM. BUT IT'S VERY

DANIEL FULLER - DIRECT EXAMINATION BY MR. MOYER

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1 MUDDY ON THE OTHER SIDES.

2 Q. OKAY. NOW WHAT IS DOWN, IN ADDITION TO THAT STREAM,

3 WHAT IS BACK IN THAT AREA BEHIND THAT HOTEL?

4 A. AS SOON AS YOU CROSS THE STREAM YOU ARE IN THE

5 MAINTAINED AREA OF TIMMONS PARK. THERE IS A FRISBEE GOLF

6 COURSE ALL IN THIS WOODED AREA. THEN BEYOND THE FRISBEE

7 GOLF COURSE IS A BASEBALL FIELD. THERE ARE TENNIS COURTS

8 JUST BEYOND THIS PICTURE. THIS LITTLE BLACK TRIANGLE THAT

9 YOU'RE LOOKING AT, THAT IS A PARKING LOT AT THE OUTFIELD OF

10 THE BASEBALL FIELD. THERE ARE TENNIS COURTS FURTHER OUT.

11 THE ACTUAL DESIGNED ENTRANCE TO THE PARK IS OUT OF THIS

12 PICTURE FURTHER DOWN HERE. IT COMES IN OFF OF EAST NORTH

13 STREET.

14 Q. OKAY. IS THERE ANOTHER PARKING AREA SHOWN IN THAT

15 PHOTOGRAPH?

16 A. UP IN THE UPPER RIGHT HAND CORNER, THIS IS ACTUALLY A

17 SWIMMING POOL. THE NAME OF THAT POOL IS NOW NORTHSIDE PARK.

18 IT IS ADJACENT TO TIMMONS PARK AREA. THE ENTRANCE TO IT IS

19 NOT THROUGH TIMMONS PARK. IT IS ACTUALLY OFF OF ANOTHER

20 CITY MAINTAINED ROAD CALLED PRIMROSE. THEN YOU COME INTO --

21 OFF OF BATESVILLE?

22 Q. WELL, LET ME ASK YOU THIS. DID YOU -- WAS A MAP

23 PREPARED THAT SHOWS THAT AREA AS WELL? WAS THERE A MAP

24 PREPARED THAT ACTUALLY MOVES BACK A LITTLE BIT FARTHER AND

25 SHOWS A GREATER AREA?

DANIEL FULLER - DIRECT EXAMINATION BY MR. MOYER

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1 A. YES. WE DO HAVE A MAP FROM A HIGHER VANTAGE POINT
2 THAT'LL INCLUDE THAT POOL THERE.

3 Q. OKAY. AND ---

4 A. ANOTHER LOOK AT IT.

5 Q. IN FACT, LET ME ASK YOU TO TAKE A LOOK AT STATE'S
6 EXHIBIT NUMBER -- WHAT'S BEEN MARKED AS STATE'S EXHIBIT
7 NUMBER 2. IS THAT THE MAP THAT YOU WERE JUST REFERRING TO?

8 A. YES, IT IS.

9 Q. IS THAT AN ACCURATE REPRESENTATION OF THAT AREA THERE
10 OF WADE HAMPTON BOULEVARD, AND THIS HOTEL, AND THE AREA
11 BEHIND IT?

12 A. YES, IT IS.

13 MR. SUMNER: NO OBJECTION, YOUR HONOR.

14 MR. MOYER: I MOVE TO HAVE STATE'S EXHIBIT NUMBER 2
15 MOVED INTO EVIDENCE.

16 Q. AND IF YOU WOULD -- DID YOU ALSO GO THROUGH AND MARK
17 SEVERAL OTHER LOCATIONS THAT HAVE BEEN TALKED ABOUT FOR THE
18 INTERNATIONAL HOUSE OF PANCAKES?

19 A. YES, I DID. I HAVE THIS MAP. IT WAS MADE AT MY
20 REQUEST FROM OUR STAFF.

21 Q. AND WOULD YOU PLEASE POINT OUT FOR THE JURY WHERE THAT
22 INTERNATIONAL HOUSE OF PANCAKES IS?

23 A. THE VERY TIP OF THIS ARROW IS TOUCHING THE BUILDING OF
24 THE IHOP RESTAURANT. ON WADE HAMPTON BOULEVARD THERE IS A
25 TRAFFIC LIGHT RIGHT IN FRONT OF THE IHOP. AND IF YOU WERE

DANIEL FULLER - DIRECT EXAMINATION BY MR. MOYER

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1 TO GO ONE DIRECTION AT THE TRAFFIC LIGHT YOU WOULD BE IN THE
2 IHOP PARKING LOT. AND THE OTHER DIRECTION DOWN THIS ROAD --
3 THE NAME OF IT IS ESCAPING ME AT THE MOMENT.

4 Q. OKAY. AND DOES THAT ROAD ACTUALLY HAVE ACCESS TO THAT
5 OTHER PARKING LOT YOU WERE REFERRING TO?

6 A. YES, IT DOES. IF YOU COME STRAIGHT ACROSS FROM THE
7 IHOP PARKING LOT AND TURN RIGHT HERE THIS IS PRIMROSE.
8 THERE'S A TRAFFIC CIRCLE, THIS ISLAND IN THE CENTER OF THIS
9 TRAFFIC CIRCLE, IT'S JUST LANDSCAPED WITH BUSHES AND
10 FLOWERS. AND THEN THIS CUL-DE-SAC, THERE'S APPROXIMATELY
11 FOUR HOUSES IN THAT CUL-DE-SAC PARKING LOT FOR THE SWIMMING
12 POOL. NOW YOU CAN WALK BEHIND THE SWIMMING POOL. AND IT IS
13 NOT SO FENCED OFF THAT YOU CAN'T JUST WALK AROUND THE
14 BUILDING AND WALK AROUND THE POOL. AND YOU ARE IN THE
15 FRISBEE GOLF COURSE AREA OF TIMMONS PARK.

16 Q. OKAY. AND ONCE AGAIN WOULD YOU POINT OUT WHERE THE
17 HOTEL IS ON THAT MAP?

18 A. I AM TOUCHING IT WITH MY FINGER NOW. SUPER 8 MOTEL.

19 Q. AND THE CENTRAL PART OF TIMMONS PARK IS ALSO MARKED AS
20 FAR AS THE BASEBALL FIELD?

21 A. THE CENTRAL PART IS MARKED WITH -- THERE'S THE BASEBALL
22 FIELD. THE FRISBEE GOLF COURSE AREA IS PRIMARILY IN THIS
23 WOODED SECTION BETWEEN SUPER 8 AND THE BASEBALL FIELD.

24 Q. OKAY. AND IS ACCESS -- DOES THAT FRISBEE GOLF COURSE
25 AREA, DOES THAT KIND OF GO UP TO WHERE THAT HILL BEGINS THAT

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1 GOES UP TO THE SUPER 8 MOTEL?

2 A. ACTUALLY YOU CAN SEE A BIT OF A DARK LINE RIGHT -- THIS
3 IS THE BASE OF THE STEEP RAVINE DOWN FROM THE BACK OF THE
4 HOTEL. ONCE YOU CROSS THE STREAM, WHICH IS AT THE BASE OF
5 THE RAVINE YOU ARE NOW IN TIMMONS PARK IN THE FRISBEE GOLF
6 COURSE AREA.

7 Q. OKAY. NOW DID YOU MARK THE DISTANCES THAT ARE REFERRED
8 -- OF THOSE LOCATIONS THAT ARE REFERRED TO IN THAT MAP?

9 A. YES.

10 Q. CAN YOU TELL ME WHAT THE DISTANCE FROM THE IHOP
11 RESTAURANT TO THE -- THERE'S ALSO SOMETHING MARKED A WMUU
12 RADIO CELL TOWER.

13 A. YES. THE PARKING LOT ENTRANCE OF THE SUPER 8 TO THE
14 PARKING LOT ENTRANCE OF THE IHOP MEASURED ONE HALF MILE.

15 Q. OKAY. AND WHAT ABOUT THE -- WHERE WAS THE WMUU RADIO
16 CELL TOWER IN RELATION TO THE IHOP?

17 A. AT THE STOP LIGHT INTERSECTION IF YOU ARE WITH YOUR
18 BACK TO THE IHOP LOOKING ACROSS THE ROAD, THERE IS A
19 BUILDING THAT IS THE WMUU. IT IS A RADIO STATION RUN BY BOB
20 JONES UNIVERSITY. AND THERE ARE TWO TOWERS BEHIND THAT
21 BUILDING. ONE IS A RADIO TOWER FOR THE RADIO STATION, THE
22 OTHER IS A CELL TOWER.

23 Q. AND SO WHEN YOU MENTIONED DISTANCE FROM THE IHOP TO THE
24 SUPER 8 MOTEL THAT WOULD BE ABOUT THE SAME DISTANCE AS THE
25 SUPER 8 MOTEL TO THAT RADIO CELL TOWER?

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1 A. VERY, VERY CLOSE. ONE HALF MILE.

2 Q. NOW WHAT ABOUT TO TIMMONS PARK, THE BASEBALL FIELD,
3 WHAT IS THE APPROXIMATE DISTANCE TO THAT AREA?

4 A. I MEASURED TWO ROUTES TO TIMMONS PARK. ONE WOULD BE
5 FROM IHOP, TAKING THE SHORTEST MOST DIRECT ROUTE WOULD BE TO
6 COME DOWN PRIMROSE TO THE POOL AND PARK IN THE POOL TO WALK
7 INTO THE PARK. THAT IS ALSO ONE HALF MILE. IF YOU WERE TO
8 STAY ON THIS MAIN ROAD ALL THE WAY TO EAST NORTH STREET AND
9 COME AROUND TO THE DESIGNED ENTRANCE TO TIMMONS PARK, THAT
10 IS ONE MILE.

11 Q. OKAY. BUT THEN THAT'S KIND OF A CIRCUITOUS ROUTE
12 THOUGH?

13 A. YES, IT IS. HEAD DOWN TO EAST NORTH STREET AND THEN
14 MEANDER THROUGH A COUPLE OF ROADS TO GET TO THE ENTRANCE.

15 Q. OKAY. ALL RIGHT. THANK YOU. PLEASE TAKE YOUR SEAT
16 AGAIN. NOW, DETECTIVE FULLER, DID YOU TAKE A CELLULAR
17 TELEPHONE OF THE VICTIM AT ANY TIME DURING YOUR
18 INVESTIGATION OF THIS CASE?

19 A. YES, I DID.

20 Q. AND WHEN WAS IT THAT YOU COLLECTED THAT?

21 A. ON NOVEMBER 6TH. IT WAS THE NEXT MORNING AFTER THE
22 INCIDENT.

23 Q. AND WHERE WAS IT THAT YOU COLLECTED IT?

24 A. IT WAS ON THE CONSOLE OF THE '99 FORD EXPEDITION USED
25 OR LOANED TO HOMER JOHNSON BY ANGELA STAPLETON. IT WAS ON

DANIEL FULLER - DIRECT EXAMINATION BY MR. MOYER

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1 THE CONSOLE OF THAT VEHICLE.

2 Q. AND WHAT WAS THE CELLULAR --- WHAT WAS THE TELEPHONE
3 NUMBER FOR THAT CELLULAR PHONE?

4 A. 363-3849, IF I REMEMBER ACCURATELY.

5 Q. OKAY. NOW WERE YOU ABLE TO DETERMINE BY LOOKING OVER
6 THAT PHONE'S FUNCTIONS THE LAST TEN OUTGOING CALLS?

7 A. YES, I WAS.

8 Q. AND DID YOU TAKE NOTATIONS OF THOSE?

9 A. YES, I DID.

10 Q. AND WOULD IT REFRESH YOUR MEMORY IF YOU WERE ABLE TO
11 LOOK AT THE NOTES THAT YOU'VE MADE OF THAT?

12 A. YES. I MADE A NICE TYPED COPY OF WHAT THOSE WERE. AND
13 IT WOULD HELP ME TO RECALL A LOT OF DATA THERE.

14 Q. IF YOU WOULD JUST TAKE A LOOK AT THIS DOCUMENT THAT I'M
15 SHOWING YOU. IS THAT THE REPORT THAT YOU COMPILED FOR THAT?

16 A. YES, IT IS. THIS IS THE DATA I TOOK OUT OF THAT CELL
17 PHONE REGARDING THE LAST TEN OUTGOING CALLS, THE LAST TEN
18 INCOMING CALLS, AND OTHER INFORMATION.

19 Q. OKAY. AND BY LOOKING AT THAT IS IT ABLE TO REFRESH
20 YOUR MEMORY AS TO THE INFORMATION THAT YOU GOT FROM THE
21 PHONE THAT DAY?

22 A. YES, IT DOES.

23 Q. OKAY. NOW WHAT WAS THE PHONE NUMBER AND THE TIME OF
24 THE LAST OUTGOING CALL ON THAT PHONE?

25 A. THE LAST OUTGOING CALL THAT HOMER JOHNSON MADE WAS AT

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1 5:28 PM ON NOVEMBER 5TH TO PHONE NUMBER 918-9584. THAT IS A
2 KNOWN PHONE NUMBER FOR JOHNNY HAMBY.

3 Q. OKAY. NOW WAS THERE A PHONE CALL MADE AS WELL AT 4:48
4 PM?

5 A. YES, THERE WAS.

6 Q. AND WHAT NUMBER WAS THAT CALL MADE TO?

7 A. THAT WAS CALLED TO NUMBER 420-0035. THAT IS THE KNOWN
8 CELL PHONE OF RUSTY RICE.

9 Q. ALL RIGHT. WAS THERE A PHONE CALL MADE AT 5:06 PM?

10 A. YES, THERE WAS.

11 Q. AND TO WHAT NUMBER WAS THAT CALL MADE?

12 A. 275-9962. THAT WAS THE KNOWN CELL PHONE USED BY DALE
13 SHIRLEY.

14 Q. AND WAS THERE A CALL MADE AT 4:16 PM?

15 A. YES, THERE WAS.

16 Q. AND WHAT WAS THAT PHONE NUMBER?

17 A. 346-2655, THE KNOWN PHONE NUMBER FOR ZACK SMITH.

18 Q. AND FINALLY AT 4:15 PM, WAS THERE A CALL MADE?

19 A. YES, THERE WAS.

20 Q. AND TO WHAT NUMBER?

21 A. 242-0370. THAT WAS THE RESIDENCE OF HOMER AND SHELLY
22 JOHNSON.

23 Q. OKAY. LET ME TAKE YOU TO DECEMBER THE 27TH OF 2002.

24 BY THAT POINT HOW LONG HAD YOU BEEN INVESTIGATING THIS CASE?

25 A. SINCE NOVEMBER 5TH, APPROXIMATELY SIX TO SEVEN WEEKS.

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1 Q. OKAY. NOW BASED ON YOUR INVESTIGATION AND DISCUSSION
2 WITH OTHERS DID YOU WISH TO SPEAK WITH THIS DEFENDANT,
3 RUSSELL RICE?

4 A. I HAD MADE MANY ATTEMPTS TO TRY TO CONTACT HIM UP TO
5 THAT TIME.

6 Q. OKAY. WHEN YOU -- TELL ME WHAT YOU MEAN BY MANY. HOW
7 WERE YOU TRYING TO CONTACT HIM AND HOW FREQUENTLY?

8 A. WE HAD NO KNOWN ADDRESS. THE CONTACT ATTEMPTS THAT I
9 MADE WERE THROUGH HIS BROTHER, CHARLEY RICE, ASKING HIM IF
10 HE COULD CONTACT RUSTY TO PLEASE HAVE HIM GET WITH US. I
11 CONTACTED HIS EX-WIFE, SHARON RICE, AND MADE THAT SAME
12 REQUEST. I HAD A KNOWN CELL PHONE NUMBER FOR RUSTY RICE.
13 AND I CALLED THAT CELL PHONE NEAR DAILY. RARELY A DAY WENT
14 BY THAT I DIDN'T ATTEMPT TO CONTACT HIM AT HIS CELL PHONE.

15 Q. OKAY. DID YOU LEAVE MESSAGES?

16 A. EVERY TIME THAT I CALLED I EITHER LEFT A VOICE-MAIL
17 MESSAGE FOR HIM WITH MY NAME AND PHONE NUMBERS, MY DESK
18 PHONE AND MY CELL PHONE, TO CALL ME. NOW HALF THE TIME THAT
19 I CALLED HIM HIS VOICE-MAIL WAS FULL AND WOULD NOT ACCEPT MY
20 MESSAGE. I HAD NO WAY TO LEAVE A MESSAGE FOR ABOUT HALF OF
21 THOSE TIMES.

22 Q. OKAY. NOW DID HE EVER -- DID HE EVER CALL YOU?

23 A. HE DID CALL ME ONCE.

24 Q. OKAY. AND WHEN WAS THAT?

25 A. I BELIEVE IT WAS ON FRIDAY, NOVEMBER THE 15TH. HE

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1 CALLED AND LEFT A MESSAGE ON MY VOICE-MAIL FOR ME ON MY DESK
2 PHONE.

3 Q. AND AFTER THAT DID YOU EVER HEAR FROM HIM AGAIN?

4 A. HE NEVER MADE ANY ATTEMPTS TO CONTACT ME THAT I'M AWARE
5 OF, NO VOICE-MAILS.

6 Q. AND WHEN YOU WOULD CALL HIM WOULD YOU LEAVE YOUR PHONE
7 NUMBER?

8 A. EVERY TIME.

9 Q. NOW DID YOU FINALLY EVER SPEAK TO HIM?

10 A. YES, I DID.

11 Q. AND WHEN WAS IT THAT YOU SPOKE TO HIM?

12 A. SPOKE TO HIM FOR THE VERY FIRST TIME ON DECEMBER 26TH.
13 THAT WAS A THURSDAY.

14 Q. OKAY. OF 2002?

15 A. 2002.

16 Q. AND WHO CALLED WHOM?

17 A. I CALLED HIS CELL PHONE NUMBER. AND HE DID ANSWER. IT
18 WAS APPROXIMATELY 4:20 IN THE AFTERNOON.

19 Q. NOW AGAIN, DID YOU TELL HIM THAT YOU NEEDED TO SPEAK TO
20 HIM?

21 A. I DID. I TOLD HIM I'D BEEN TRYING TO GET AHOLD OF HIM.
22 I REALLY NEED TO SPEAK TO HIM ABOUT THIS INVESTIGATION
23 INVOLVING HOMER'S DEATH.

24 Q. AND DID HE AGREE TO SPEAK TO YOU?

25 A. HE SAID HE WOULD LOVE TO SIT DOWN AND TALK TO ME.

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1 Q. AND DID HE SAY HE WOULD DO SO RIGHT AWAY?

2 A. I ASKED HIM, I NEED TO MEET ASAP. HE TOLD ME AT THAT
3 TIME THAT HE WAS OUT OF TOWN AND WOULD NOT BE IN GREENVILLE
4 UNTIL THE FOLLOWING MONDAY, WHICH WOULD MAKE IT DECEMBER
5 30TH, I BELIEVE.

6 Q. WELL, DID YOU TAKE HIS WORD FOR HIS WHEREABOUTS OR DID
7 YOU START LOOKING FOR HIM?

8 A. I DID NOT TAKE HIS WORD. I DID BEGIN LOOKING FOR HIM.

9 Q. AND HOW DID YOU GO ABOUT LOOKING FOR HIM?

10 A. I HAD INFORMATION THAT IF HE WAS NOT SLEEPING IN HIS
11 CAR HE WAS STAYING AT AREA HOTELS AND/OR MOTELS. AND SINCE
12 SHORTLY AFTER THE INVESTIGATION BEGAN LATE AT NIGHT I WOULD
13 DRIVE THROUGH A LOT OF THE GREENVILLE AREA HOTELS AND MOTELS
14 LOOKING FOR THE CAR THAT I KNEW RUSTY RICE TO OPERATE.

15 Q. OKAY. AND WHAT WAS THE VEHICLE THAT YOU WERE LOOKING
16 FOR?

17 A. IT WAS A 1994 MERCURY TOPAZ, FOUR DOOR. IT WAS WHITE
18 IN COLOR. AND I HAD A SERIAL NUMBER FOR THAT CAR.

19 Q. OKAY. DID YOU FIND A VEHICLE THAT MATCHED THAT
20 DESCRIPTION?

21 A. YES, I DID.

22 Q. WHERE DID YOU FIND IT?

23 A. I FOUND IT IN THE PARKING LOT BEHIND THE BUILDING AT
24 STUDIO PLUS, 530 WOODS LAKE ROAD OFF OF HAYWOOD ROAD.

25 Q. OKAY. THAT'S A HOTEL?

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1 A. THAT IS.

2 Q. AND THAT'S NEAR HAYWOOD ROAD?

3 A. RIGHT ACROSS FROM HAYWOOD MALL.

4 Q. AND WHEN AGAIN WAS IT THAT YOU FOUND IT?

5 A. I FOUND THAT ON A FRIDAY NIGHT REAL CLOSE TO MIDNIGHT.

6 IT MAY HAVE BEEN JUST BEFORE OR JUST AFTER MIDNIGHT,

7 DECEMBER 27TH INTO DECEMBER 28TH.

8 Q. AND DID IT MATCH THE DESCRIPTION OF THE VEHICLE YOU

9 WERE LOOKING FOR?

10 A. YES, IT DID.

11 Q. IN ALL THE DIFFERENT PARTICULARS THAT YOU JUST

12 MENTIONED?

13 A. IN ALL THOSE PARTICULARS PLUS AN ADDITIONAL ONE.

14 Q. WHICH WAS?

15 A. THE WAY THAT I GATHERED THE SERIAL NUMBER FOR THE CAR

16 WAS I HAD OBTAINED AN ACCIDENT REPORT THAT THIS CAR HAD BEEN

17 INVOLVED IN WITH RUSTY AS THE DRIVER. AND THAT ACCIDENT

18 REPORT INDICATED THAT THERE WAS DAMAGE ON THE RIGHT REAR

19 DOOR OF THIS CAR FROM AN ACCIDENT WITH A MOTORCYCLE. I

20 SPOKE TO AN OFFICER WHO WORKED THAT ACCIDENT. HE STATED IT

21 WAS A RED MOTORCYCLE. WHEN I INSPECTED THE CAR IN THE HOTEL

22 PARKING LOT AND CONFIRMED THE SERIAL NUMBER, I ALSO SAW THAT

23 IT HAD SOME DAMAGE ON THE RIGHT REAR DOOR FROM -- AND SOME

24 RED PAINT RUB OFF IN THAT AREA.

25 Q. OKAY. WHAT ABOUT THE LICENSE TAG?

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1 A. THERE WAS A PAPER TAG FROM TRUCK FARM OF EASLEY ON THE
2 CAR.

3 Q. AND DID THAT MATCH THE DESCRIPTION OF WHAT YOU HAD AS
4 FAR AS HIS TAG?

5 A. WHILE INTERVIEWING SEVERAL PEOPLE IN THIS INVESTIGATION
6 IT WAS RELAYED TO ME THAT THE CAR HAD A TRUCK TAG ON IT. I
7 HAD NO MORE THAN THE WORDS TRUCK TAG. SO WHEN I SAW THE TAG
8 I UNDERSTOOD WHAT WAS TRYING TO BE DESCRIBED, TRUCK FARM OF
9 EASLEY.

10 Q. OKAY. AND WHAT ABOUT -- YOU MENTIONED YOU HAD THE
11 VEHICLE IDENTIFICATION NUMBER. WERE YOU ABLE TO MATCH IT
12 THAT NIGHT?

13 A. YES, I WAS.

14 Q. OKAY. YOU ACTUALLY WALKED UP TO THE VEHICLE THEN?

15 A. YES, I DID.

16 Q. OKAY. NOW LET ME TAKE YOU TO THE MORNING OF DECEMBER
17 THE 28TH OF 2002. WERE YOU EVER ABLE TO DETERMINE IF THE
18 DEFENDANT WAS STAYING IN THAT HOTEL?

19 A. YES, I WAS, ON DECEMBER 28TH, A SATURDAY.

20 Q. AND DID YOU SPEAK TO THE CLERK THAT WE JUST -- THAT WAS
21 JUST ON THE STAND A FEW MOMENTS AGO?

22 A. YES, SIR, I DID.

23 Q. DID YOU GIVE THE CLERK THE DEFENDANT'S NAME?

24 A. YES, I DID.

25 Q. AND DID YOU SHOW A PHOTOGRAPH AS WELL?

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1 A. YES, SIR.

2 Q. OKAY. NOW WHAT -- NOW BY THAT TIME HAD YOU DETERMINED
3 ANY TRAFFIC LAW VIOLATIONS THAT THE DEFENDANT WOULD BE
4 COMMITTING IF DRIVING THAT 1994 MERCURY?

5 A. YES, I DID.

6 Q. OKAY. AND WHAT TRAFFIC VIOLATION HAD YOU DETERMINED
7 THAT WOULD BE BEING COMMITTED?

8 A. I HAD FOUND OUT THAT THIS CAR WAS NEVER REGISTERED OR
9 PROPERLY TAGGED. I HAD SPOKEN TO SHARON RICE EARLY ON IN
10 THIS INVESTIGATION. AND SHE HAD TOLD ME THAT SHE HAD
11 PROVIDED THIS CAR TO RUSTY IN JULY OF 2002, IN JULY. AT
12 THAT TIME AFTER I GOT THAT INFORMATION WE FOUND OUT ABOUT
13 THE TRAFFIC ACCIDENT. AND I FOUND OUT THAT THIS CAR HAD NOT
14 BEEN TAGGED AT ALL IN THE YEAR 2002 IN THE STATE OF SOUTH
15 CAROLINA. NOW THAT SATURDAY MORNING AFTER TALKING TO THE
16 CLERK I RAN THE SERIAL NUMBER AGAIN. THAT WAS AT 8:30. AND
17 THE CAR WAS STILL NOT REGISTERED WITH THE SOUTH CAROLINA
18 DEPARTMENT OF MOTOR VEHICLES AT 8:30 THAT MORNING.

19 Q. OKAY. NOW HAVING THAT INFORMATION DID YOU PREPARE TO
20 DO A TRAFFIC STOP ON THE VEHICLE?

21 A. YES. I DID PREPARE FOR THAT, YES.

22 Q. AND DID YOU BRING ANYONE FOR ASSISTANCE ON THAT?

23 A. I REQUESTED THE HELP OF CORPORAL DAVE DEMPSEY.

24 Q. AND DID YOU MEET WITH HIM THAT MORNING?

25 A. YES, I DID.

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1 Q. AND WHERE AND WHEN DID YOU MEET WITH HIM?

2 A. AFTER CONFIRMING WITH THE CLERK THAT HE WAS ENROLLED, A
3 GUEST AT THE HOTEL, I REQUESTED CORPORAL DEMPSEY, WHO WORKED
4 THAT AREA, TO MEET ME NEARBY. AND I EXPLAINED TO HIM WHAT
5 MY GOAL WAS WITH THIS CAR. AND ---

6 Q. WHICH WAS TO STOP -- DO A TRAFFIC STOP?

7 A. THAT'S CORRECT.

8 Q. DID YOU BRIEF HIM FULLY ON WHAT YOU WANTED HIM TO DO?

9 A. YES, I DID.

10 Q. DID YOU GIVE HIM A FULL DESCRIPTION OF THE CAR?

11 A. YES, I DID.

12 Q. JUST AS YOU DESCRIBED IT HERE TO US?

13 A. CORRECT.

14 Q. AND DID YOU TELL HIM THAT THIS WAS IN CONNECTION TO A
15 MURDER INVESTIGATION THAT YOU WERE CONDUCTING?

16 A. YES, I DID.

17 Q. DID YOU TELL -- DID YOU POSITION OFFICER DEMPSEY IN
18 ORDER TO WAIT FOR THE CAR?

19 A. YES, I DID.

20 Q. AND WHERE DID YOU POSITION HIM?

21 A. THERE ARE TWO ENTRY/EXITS, TWO WAYS IN AND OUT OF THIS
22 PARKING LOT FOR THE STUDIO PLUS MOTEL. I POSITIONED MYSELF
23 TO OBSERVE ONE ENTRY/EXIT AND CORPORAL DEMPSEY TO BE ABLE TO
24 OBSERVE THE SECOND ONE.

25 Q. AND WERE YOU IN A MARKED OR AN UNMARKED CAR?

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1 A. I WAS IN AN UNMARKED CAR.

2 Q. WERE YOU IN UNIFORM?

3 A. NO. I WAS IN PLAIN CLOTHES.

4 Q. WAS CORPORAL DEMPSEY IN A MARKED OR AN UNMARKED CAR?

5 A. HE WAS IN A MARKED CAR.

6 Q. NOW WAS HE IN UNIFORM?

7 A. IN UNIFORM.

8 Q. DID YOU STAY IN RADIO CONTACT WITH ONE ANOTHER?

9 A. I STAYED IN RADIO CONTACT AND CELLULAR PHONE CONTACT
10 WITH CORPORAL DEMPSEY.

11 Q. AND AT ANY POINT DID YOU SEE THE CAR BEGIN TO MOVE?

12 A. YES, I DID.

13 Q. AND WHERE DID IT GO?

14 A. IT PULLED UP TO THE FRONT DOOR OF THE MOTEL.

15 Q. DID ANYBODY GET OUT OF THAT CAR?

16 A. A GENTLEMAN THAT I PERCEIVED TO BE RUSTY RICE EXITED
17 THE DRIVER'S DOOR AND WENT INSIDE.

18 Q. OKAY. AND DID HE MATCH THE DESCRIPTION OF THE PERSON
19 YOU WERE LOOKING FOR?

20 A. YES, HE DID.

21 Q. AND HOW LONG WAS HE IN THERE?

22 A. SEVERAL MINUTES.

23 Q. WERE YOU GETTING -- DID YOU HAVE ANY CONCERN ABOUT WHAT
24 MIGHT BE TAKING PLACE?

25 A. HE WAS IN THE LOBBY LONG ENOUGH THAT I CALLED INTO THE

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1 LOBBY AND I SPOKE TO THE CLERK. AND THE WAY SHE ANSWERED
2 THE PHONE, I SAID, RUSTY RICE IS STANDING IN FRONT OF YOU
3 RIGHT NOW, ISN'T HE? SHE SAID, YES. I SAID, HE IS CHECKING
4 OUT MOMENTARILY, IS THAT CORRECT? SHE SAID, YES. I SAID,
5 THANK YOU VERY MUCH. THAT WAS A VERY SHORT PHONE CALL.

6 Q. AND THEN DID SOMEONE EXIT THE HOTEL THEN AND GET INTO
7 THE CAR?

8 A. YES.

9 Q. AND ONCE AGAIN, DID IT MATCH THE DESCRIPTION OF THE
10 PERSON YOU'D BEEN LOOKING FOR?

11 A. YES. IT WAS THE CAR WE SOUGHT. AND ---

12 Q. AND WHO ENDED UP BEING THE PERSON WHO CAME OUT OF THAT
13 HOTEL AND GOT IN THE CAR?

14 A. IT ENDED UP BEING RUSTY RICE.

15 Q. OKAY. THE DEFENDANT IN THIS CASE?

16 A. THE DEFENDANT IN THIS CASE.

17 Q. DID HE LOOK ANY DIFFERENT THEN THAN HE DOES NOW?

18 A. YES. HE LOOKS MUCH DIFFERENT TODAY THAN HE DID THEN.

19 Q. AND WHAT WAS -- BUT YOU WERE STILL ABLE TO IDENTIFY
20 HIM?

21 A. YES. THE ONLY PICTURES THAT I HAD HAD OF HIM ON THAT
22 DAY, DECEMBER 28TH, WERE HIS DEPARTMENT OF MOTOR VEHICLE
23 LICENSE PHOTOS. AND HE LOOKED THEN LIKE HE DID IN THE
24 PHOTOS.

25 Q. WHICH WAS?

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1 A. HIS HAIR WAS DOWN -- LONG BROWN HAIR DOWN BELOW HIS
2 SHOULDERS, MUCH LONGER THAN IT IS NOW.

3 Q. OKAY. NOW WHEN HE GOT BACK INTO THE VEHICLE WHAT DID
4 HE DO?

5 A. HE WENT THE OPPOSITE DIRECTION OF THE EXIT THAT I WAS
6 OBSERVING. HE WENT TOWARD CORPORAL DEMPSEY'S POINT WHERE HE
7 WAS OBSERVING.

8 Q. AND DID YOU NOTIFY CORPORAL DEMPSEY THAT HE WAS COMING?

9 A. YES. I TOLD HIM, HE'S COMING YOUR DIRECTION. HE'S
10 COMING YOUR WAY.

11 Q. AND DID YOU SEE -- WERE YOU ABLE TO WATCH -- OBSERVE
12 CORPORAL DEMPSEY AND WHAT HE DID?

13 A. YES. HE PULLED IN BEHIND HIM TO PREPARE FOR A TRAFFIC
14 STOP.

15 Q. AND WHERE DID YOU GO?

16 A. I WENT -- MANEUVERED MY CAR AROUND SO I COULD GET
17 BEHIND CORPORAL DEMPSEY AND FOLLOW AND OBSERVE.

18 Q. AND WHERE DID YOU FIRST BEGIN TO OBSERVE WHAT WAS GOING
19 ON? WHAT ROAD WERE YOU ON WHEN YOU FINALLY SAW THE VEHICLE?

20 A. I SAW THE VEHICLE PULL ONTO HAYWOOD ROAD WITH CORPORAL
21 DEMPSEY BEHIND IT. AND I WAS ABLE TO GET IN BEHIND CORPORAL
22 DEMPSEY ONTO HAYWOOD ROAD.

23 Q. AND DID CORPORAL DEMPSEY BEGIN FOLLOWING THE CORRECT
24 VEHICLE THAT YOU WANTED HIM TO FOLLOW?

25 A. YES, HE DID.

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1 Q. WERE YOU ABLE TO CATCH UP TO THE VEHICLES?

2 A. YES. YES, SIR.

3 Q. AND WERE THERE ANY OTHER PATROL CARS PARTICIPATING IN
4 THIS?

5 A. ONE OTHER CAR CAME TO ASSIST, CORPORAL JEFF LONG.

6 Q. AND WAS A TRAFFIC STOP THEN CONDUCTED?

7 A. YES. CORPORAL DEMPSEY MADE A TRAFFIC STOP AT A
8 LOCATION HE FELT WAS SAFE AND PROPER. AND I WAS -- JUST
9 ACCOMPANIED HIM.

10 Q. AND WHERE WAS -- WHERE DID THAT TAKE PLACE?

11 A. AT THE INTERSECTION OF HAYWOOD JUST BEFORE TRANSIT
12 DRIVE. A LANDMARK NEAR THERE IS A VACANT LOT WHERE THEY
13 SELL CHRISTMAS TREES IN THE WINTER JUST BEFORE THE OLD
14 JOHNNY ROCKET'S RESTAURANT AS YOU'RE HEADED TOWARD LAURENS
15 ROAD.

16 Q. ALL THESE LOCATIONS THAT YOU'VE TALKED ABOUT HERE,
17 THEY'RE IN GREENVILLE COUNTY?

18 A. THEY'RE ALL IN THE CITY LIMITS OF GREENVILLE, YES, SIR.

19 Q. OKAY. DID OFFICER LONG STOP THERE AS WELL?

20 A. HE DID.

21 Q. AND WHERE DID YOU STOP YOUR VEHICLE?

22 A. I PARKED BEHIND CORPORAL DEMPSEY'S CAR.

23 Q. DID YOU STAY IN YOUR CAR OR DID YOU GET OUT?

24 A. I EXITED MY VEHICLE AND STOOD ALONGSIDE CORPORAL
25 DEMPSEY'S CAR TO OBSERVE THE TRAFFIC STOP.

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1 Q. AND WERE YOU -- FROM THAT PERSPECTIVE COULD YOU SEE THE
2 DRIVER'S SIDE OF THE CAR?

3 A. VERY CLEARLY.

4 Q. WHAT ABOUT OFFICER LONG, DID HE GET OUT OF HIS PATROL
5 CAR AS WELL?

6 A. HE PULLED ALONGSIDE CORPORAL DEMPSEY'S CAR AND GOT OUT
7 STANDING WITH ME TO OBSERVE.

8 Q. AND WERE YOU ABLE TO WATCH CORPORAL DEMPSEY SPEAKING TO
9 THE DRIVER?

10 A. YES, I DID.

11 Q. WAS THERE ANYONE ELSE IN THE CAR?

12 A. NO, SIR.

13 Q. NOW AT ANY POINT DID CORPORAL DEMPSEY COME OVER TO YOU
14 TO SPEAK?

15 A. YES.

16 Q. AND DID HE SHOW YOU ANYTHING?

17 A. YES.

18 Q. AND WHAT DID HE SHOW YOU?

19 A. HE BROUGHT TO ME FROM THE DRIVER A DRIVER'S LICENSE AND
20 THREE PIECES OF PAPER, THREE DOCUMENTS HAVING TO DO WITH
21 OWNERSHIP OF THE VEHICLE.

22 Q. DID YOU LOOK OVER THOSE DOCUMENTS?

23 A. YES, SIR, I DID.

24 Q. AND WHAT TYPE OF DOCUMENTS WERE THEY?

25 A. ONE WAS A GEORGIA STATE TITLE FOR THIS CAR. ONE WAS A

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1 SOUTH CAROLINA DEPARTMENT OF PUBLIC SAFETY GENERATED BILL OF
2 SALE THAT'S TO BE FILLED OUT TO TRANSFER OWNERSHIP FROM A
3 BUYER TO A SELLER. AND THE THIRD PAPER DOCUMENT WAS A
4 GENERIC BILL OF SALE THAT A CAR DEALER HAD ALLEGEDLY FILLED
5 OUT AND TRANSFERRED OWNERSHIP TO SHARON RICE.

6 Q. OKAY. LET ME SHOW YOU WHAT'S BEEN MARKED AS STATE'S
7 EXHIBIT NUMBER 6. JUST TAKE A LOOK OVER THOSE DOCUMENTS AND
8 SAY WHETHER OR NOT YOU CAN RECOGNIZE WHAT IT IS.

9 A. THESE ARE THE SAME THREE DOCUMENTS THAT WERE PRESENTED
10 BY THE DRIVER TO CORPORAL DEMPSEY WHO BROUGHT THEM TO ME.

11 Q. THE ONES THAT YOU JUST DESCRIBED?

12 A. THE ONES I JUST DESCRIBED, YES.

13 Q. OKAY. AND WHAT DID YOU DO WITH THOSE DOCUMENTS AFTER
14 YOU FINISHED WRAPPING THE SCENE UP THERE ON THAT DAY?

15 A. AFTER WE FINISHED UP THAT SCENE I MAINTAINED POSSESSION
16 OF THESE DOCUMENTS. AND I PLACED THEM INTO PROPERTY IN
17 EVIDENCE.

18 Q. AND YOU BROUGHT THEM HERE TO COURT TODAY?

19 A. AND I BROUGHT THEM HERE TO COURT TODAY.

20 Q. ARE THOSE DOCUMENTS IN SUBSTANTIALLY THE SAME CONDITION
21 NOW AS THEY WERE BACK ON DECEMBER THE 28TH OF 2002?

22 A. YES, SIR, THEY ARE.

23 MR. MOYER: AT THIS TIME I'D MOVE TO HAVE STATE'S
24 EXHIBIT NUMBER 6 MOVED INTO EVIDENCE.

25 THE COURT: WITHOUT OBJECTION.

DANIEL FULLER - DIRECT EXAMINATION BY MR. MOYER

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1 Q. NOW WAS THERE ANYTHING ABOUT THE BILL OF SALE THAT YOU
2 MENTIONED THAT LOOKED TO YOU TO BE NOT CORRECT OR PROPER?

3 A. YES, SIR. ONE OF THE THINGS THAT WAS IMMEDIATELY NOT
4 PROPER WAS ON THE SOUTH CAROLINA DEPARTMENT OF PUBLIC SAFETY
5 BILL OF SALE ABOUT THE THIRD LINE DOWN IT INDICATES THAT THE
6 BILL OF SALE OR THE DATE OF SALE FOR THIS CAR TO RUSTY RICE
7 WAS DECEMBER 23RD, 2002.

8 Q. AND DID YOU KNOW AT THAT POINT THAT HE'D BEEN IN
9 POSSESSION OF THAT VEHICLE FOR A MUCH LONGER PERIOD OF TIME?

10 A. YES.

11 Q. GOING BACK TO JULY?

12 A. AT LEAST TO JULY, 2002.

13 Q. AND WHAT ABOUT THE TITLE, WAS THERE ANYTHING ABOUT IT
14 THAT DID NOT LOOK -- THAT LOOKED OUT OF PLACE TO YOU THAT
15 CAUGHT YOUR ATTENTION?

16 A. YES. THE VERY BOTTOM ON THE BACK OF THIS GEORGIA TITLE
17 IS THE LAST TRANSFER OF OWNERSHIP TO SHARON RICE FROM A CAR
18 DEALER. AND ALL OF THE WRITING IS IN BALLPOINT INK PEN
19 EXCEPT FOR A LITTLE BLOCK DOWN IN THIS LOWER RIGHT HAND
20 CORNER. AND IT'S IN A FAT BLACK MAGIC MARKER DATED 6/27/02.
21 DEFINITELY THAT BILL DATE OF SALE TO SHARON RICE IS IN
22 WRITING. IT'S NOT CONSISTENT WITH ALL THE OTHER WRITING.
23 IT LED ME TO BELIEVE THIS IS AN ALTERED TITLE. IT WAS NOT
24 AN ACCURATE DATE.

25 Q. OKAY. NOW AMONG THE DOCUMENTS THAT CORPORAL DEMPSEY

DANIEL FULLER - DIRECT EXAMINATION BY MR. MOYER

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1 BROUGHT BACK TO YOU DID HE HAVE WITH HIM PROOF OF INSURANCE?

2 A. NO, HE DID NOT.

3 Q. AND AT ANY POINT DURING THAT INCIDENT OUT THERE ON
4 HAYWOOD ROAD WAS ANY PROOF OF INSURANCE EVER SHOWN TO YOU
5 FROM THE DEFENDANT?

6 A. NO, NO INSURANCE INFORMATION WAS EVER OFFERED.

7 Q. OKAY.

8 A. OR COLLECTED.

9 Q. NOW WERE YOU ABLE TO WATCH WHAT CORPORAL DEMPSEY DID
10 NEXT?

11 A. YES, SIR, I WAS.

12 Q. WHAT DID HE DO?

13 A. HE ASKED THE DRIVER TO STEP OUT OF THE CAR. AT THIS
14 TIME WE HAD DECIDED THAT THIS WOULD BE A CUSTODIAL ARREST
15 FOR THE TRAFFIC VIOLATIONS. THE CAR WAS TO BE TOWED. HE
16 ASKED THE DRIVER TO STEP OUT OF THE CAR. AND HE DID SO.

17 Q. AND DID HE DO ANY TYPE OF SEARCH OR PAT-DOWN?

18 A. STANDARD PROCEDURE, KNOWING WHAT WE KNEW AT THIS TIME
19 WAS TO PAT DOWN THIS DRIVER FOR WEAPONS. OFFICER SAFETY
20 ISSUE, STANDARD PROCEDURE. HE DID HAVE THE DRIVER FACING
21 THE CAR. CORPORAL DEMPSEY WAS STANDING BEHIND HIM. I SAW
22 HIM FIND A -- I SAW HIM REMOVE A PISTOL.

23 MR. SUMNER: YOUR HONOR, AT THIS TIME I WOULD -- NOT TO
24 INTERRUPT HIS -- I'D JUST LIKE TO RENEW MY PRETRIAL MATTER
25 THAT I BROUGHT UP ---

DANIEL FULLER - DIRECT EXAMINATION BY MR. MOYER

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1 THE COURT: ALL RIGHT, SIR.

2 MR. SUMNER: --- FOR THE RECORD AT THIS POINT. THANK
3 YOU.

4 THE COURT: CERTAINLY.

5 MR. SUMNER: I ASSUME THAT THE COURT'S POSITION IS THE
6 SAME, ---

7 THE COURT: YES.

8 MR. SUMNER: --- IS THAT CORRECT?

9 THE COURT: ALL RIGHT. GO AHEAD, SOLICITOR.

10 Q. BACK TO THAT, DETECTIVE FULLER. WHAT WAS THE RESULT OF
11 THAT PAT-DOWN AS YOU SAW IT?

12 A. THE RESULT OF THAT PAT-DOWN WAS MR. RICE WAS HANDCUFFED
13 AND ---

14 Q. LET ME BACK UP. I'M SORRY.

15 A. OKAY.

16 Q. DID CORPORAL DEMPSEY PRODUCE ANYTHING FROM THE
17 DEFENDANT AS A RESULT OF THAT PAT-DOWN?

18 A. YES. I SAW HIM REMOVE A PISTOL FROM THE DRIVER'S FRONT
19 RIGHT PANT'S POCKET.

20 Q. WHAT DID HE DO WITH THAT PISTOL AFTER IT CAME OUT OF
21 HIS POCKET?

22 A. HANDED THAT PISTOL TO ME.

23 Q. AND WHAT DID YOU DO WITH IT AFTER HE HANDED IT TO YOU?

24 A. I MADE THE WEAPON SAFE. THE HANDLE WAS BACK ON THE
25 WEAPON. THERE WAS A BULLET IN THE CHAMBER. I UNLOADED THE

DANIEL FULLER - DIRECT EXAMINATION BY MR. MOYER

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1 GUN AND DE-COCKED IT. I PUT THE HAMMER DOWN.

2 Q. SO IT WAS COCKED THEN?

3 A. YES, SIR, IT WAS.

4 Q. OKAY. HOW MANY BULLETS WERE IN IT?

5 A. THERE WAS ONE IN THE CHAMBER AND SIX MORE IN THE
6 MAGAZINE.

7 Q. NOW HAVE YOU GONE BACK AND -- YOU'VE LOOKED AT THE
8 VIDEOTAPE OF THIS INCIDENT?

9 A. YES, SIR, I HAVE LOOKED AT IT.

10 Q. AND SO DID YOU ACTUALLY DO THAT IN FRONT OF THE CAMERA?

11 A. YES, SIR, I DID.

12 Q. AND WHAT DID YOU -- AFTER YOU CHECKED THE WEAPON AND
13 TOOK THE BULLET OUT WHAT DID YOU DO WITH THE PISTOL AT THAT
14 POINT?

15 A. I LAID IT ON THE HOOD OF THE CAR OF CORPORAL DEMPSEY'S
16 CAR.

17 Q. AND DID YOU SEE ANYTHING ELSE COME OUT OF THE
18 DEFENDANT'S POCKETS?

19 A. YES. I SAW CORPORAL DEMPSEY REMOVE A LARGE SUM OF CASH
20 FROM RUSTY RICE'S FRONT LEFT POCKET, PISTOL FROM THE FRONT
21 RIGHT, CASH FROM THE FRONT LEFT.

22 Q. AND WAS THAT EVER -- WAS THAT EVER COUNTED?

23 A. IT WAS COUNTED ON THE HOOD OF THE CAR RIGHT THEN AFTER
24 BEING TAKEN OUT OF THE POCKET. RUSTY RICE WAS HANDCUFFED,
25 PLACED IN THE BACK OF THE CAR, MONEY WAS COUNTED ON THE HOOD

DANIEL FULLER - DIRECT EXAMINATION BY MR. MOYER

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1 OF THE CAR.

2 Q. OKAY. AND HOW MUCH MONEY WAS IT?

3 A. THERE WERE TWO DISTINCT PILES IN THE POCKET. ONE PILE

4 WAS AN EVEN TWENTY-FIVE HUNDRED DOLLARS IN FIFTIES AND

5 HUNDREDS. AND IT WAS WRAPPED WITH A PURPLE BAND THAT

6 FEMALES MAY HAVE TYPICALLY USED TO WRAP A PONYTAIL IN.

7 RIGHT NEXT TO IT WAS APPROXIMATELY TWENTY-SIX, TWENTY-SEVEN

8 OTHER DOLLARS IN SMALL BILLS. THERE WAS TWENTY-FIVE HUNDRED

9 WRAPPED SEPARATELY FROM TWENTY SOME OTHER DOLLARS ALL IN

10 THAT POCKET.

11 Q. OKAY. NOW WHAT DID THE -- WHAT DID CORPORAL DEMPSEY

12 THEN DO WITH THE DEFENDANT?

13 A. CORPORAL DEMPSEY HAD PLACED HIM IN THE BACK SEAT OF HIS

14 PATROL CAR HANDCUFFED BEHIND THE BACK.

15 Q. NOW DID YOU SEE OFFICERS DEMPSEY AND LONG DO ANYTHING

16 WITH THE CAR?

17 A. YES. AT THAT TIME THE PREPARATIONS WERE MADE TO TOW

18 THE CAR. AND AN INVENTORY SEARCH WAS CONDUCTED JUST TO

19 DETERMINE THE CONTENTS OF THE VALUE THAT WE SHOULD BE AWARE

20 OF BEFORE IMPOUNDING THE CAR.

21 Q. DID YOU PARTICIPATE IN THAT SEARCH AT THAT TIME, THAT

22 INVENTORY SEARCH?

23 A. AT THAT TIME I JUST VISUALLY OBSERVED.

24 Q. AND WHAT -- DID YOU TAKE NOTE OF THE APPEARANCE OF THE

25 INSIDE OF THAT CAR?

DANIEL FULLER - DIRECT EXAMINATION BY MR. MOYER

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1 A. YES, SIR, I DID.

2 Q. AND HOW WOULD YOU DESCRIBE THE CONTENTS AND HOW MUCH
3 THAT CAR WAS FILLED?

4 A. I GOT THE IMPRESSION THAT HE WAS LIVING OUT OF THE CAR.
5 THAT'S WHAT I HAD BEEN LED TO BELIEVE PRIOR TO THIS TRAFFIC
6 STOP. AND ON MY OBSERVANCE THAT EXPECTATION WAS MET. THERE
7 WERE PILLOWS, CLOTHING, BAGS OF FOOD ITEMS, AND JUST A LOT
8 OF PERSONAL ITEMS STREWN ABOUT THE CAR. PRETTY MESSY.

9 Q. OKAY. NOW WERE YOU THERE WHEN THE TRUNK OF THE CAR WAS
10 SEARCHED?

11 A. YES, SIR.

12 Q. AND DID YOU PARTICIPATE IN THE SEARCH OF THE TRUNK?

13 A. I OBSERVED.

14 Q. AND DID YOU OBSERVE WHAT CAME OUT OF THE TRUNK?

15 A. YES, I DID.

16 Q. AND DID YOU OBSERVE WHAT CORPORAL DEMPSEY TOOK OUT OF
17 THE TRUNK?

18 A. YES, SIR, I DID.

19 Q. AND WHAT DID CORPORAL DEMPSEY TAKE OUT OF THE TRUNK?

20 A. QUICKLY INTO THE SEARCH I SAW HIM PICK UP A WHITE
21 PLASTIC GARBAGE BAG. IT APPEARED TO BE VERY TAUGHT AS
22 THOUGH THERE WAS SOMETHING HEAVY IN IT. HE PICKED IT UP AND
23 HE LOOKED IN THERE AND HE SAID IT LOOKED LIKE SHOTGUN PARTS
24 TO IT. HE SAT IT DOWN ON THE GROUND NEXT TO THE CAR AND
25 CONTINUED HIS SEARCH. I LOOKED AT THESE PARTS TO SEE WHAT

DANIEL FULLER - DIRECT EXAMINATION BY MR. MOYER

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1 THIS SHOTGUN -- THAT HE WAS LEADING TO. AND I LOOKED CLOSER
2 AT THOSE PARTS.

3 Q. AND HOW WOULD YOU DESCRIBE WHAT THOSE PARTS LOOKED LIKE
4 UPON FURTHER CLOSER EXAMINATION?

5 A. IT WAS SEVERAL PIECES OF METAL, VERY RUSTY, EXTREMELY
6 RUSTY AND CORRODED, DIRTY, AND IN VERY POOR CONDITION FOR
7 METAL.

8 Q. AND WAS IT -- YOU MENTIONED AT THAT TIME THAT -- YOU
9 SAID YOU SAID IT COULD BE POSSIBLY A SHOTGUN. DID YOU TAKE
10 A CLOSER LOOK AT IT TO DETERMINE WHETHER OR NOT IT WAS
11 INDEED?

12 A. YES, I DID.

13 Q. AND WHAT IS YOUR CONCLUSION ABOUT THAT?

14 A. THE PIECE THAT APPEARED TO BE A BARREL, I PICKED IT UP
15 TO LOOK AT IT AND SAW THE INSCRIPTION, 30.06, 30 06.

16 Q. DID YOU LOOK FOR A SERIAL NUMBER ON THAT ITEM?

17 A. YES.

18 Q. OKAY. WERE YOU ABLE TO FIND ONE?

19 A. NO.

20 Q. AND WAS -- WHAT IMPEDED YOUR ABILITY TO FIND A SERIAL
21 NUMBER?

22 A. THE LOCATION WHERE IT MAY NORMALLY BE FOUND WAS
23 ACTUALLY MISSING. THERE WAS A CHUNK OF METAL ACTUALLY
24 REMOVED, CUT AWAY FROM ONE PART OF THE GUN. IT WAS ACTUALLY
25 MISSING, GONE.

DANIEL FULLER - DIRECT EXAMINATION BY MR. MOYER

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1 Q. OKAY. WHAT ABOUT -- DID YOU TRY TO LOOK AT THE MODEL
2 NUMBER OR THE BRAND OF RIFLE?

3 A. YES, SIR. THERE WAS A MODEL NUMBER AND A BRAND THAT
4 HAD WHAT IN MY EYES APPEARED TO BE GRINDER MARKS ON THEM. I
5 COULD NOT READ A MODEL NUMBER. AND I COULD MAKE OUT JUST
6 ENOUGH OF THE LETTERING OF THE BRAND TO TELL THAT IT WAS A
7 REMINGTON. I COULD NOT SEE THE ENTIRE WORD REMINGTON.

8 Q. NOW WAS THIS IN ONE PIECE OR ---

9 A. SEVERAL PIECES.

10 Q. OKAY. AND DID YOU LOOK AT THE ENDS OF THE DIFFERENT
11 PIECES AND CAN YOU SAY WHETHER OR NOT IT LOOKED SIMILAR TO
12 THE REST OF THE GUN?

13 A. WE TOOK THE GUN BACK TO THE LAW ENFORCEMENT CENTER AND
14 LOOKED AT IT A LITTLE CLOSER. AND WHEN WE SPREAD IT OUT THE
15 PIECES THAT NORMALLY WOULD BE JOINED, THOSE CONNECTING
16 POINTS WHERE IT SHOULD HAVE BEEN JOINED WERE EXTREMELY
17 SHINY, VERY CLEAN, NOT LIKE ANY OTHER PART OF THE GUN. THE
18 GUN WAS DIRTY, RUSTED, CORRODED, AND NASTY EXCEPT FOR THE
19 PARTS WHERE IT SHOULD HAVE BEEN CONNECTED.

20 Q. NOW WAS A PHOTOGRAPH TAKEN OF THE ITEMS OUT THERE ON
21 THE SCENE?

22 A. I DON'T RECALL IF WE TOOK PHOTOS OF THE GUN AT THE
23 SCENE.

24 Q. OKAY. BUT WERE PHOTOGRAPHS TAKEN THAT DAY?

25 A. YES. THAT DAY, YES.

DANIEL FULLER - DIRECT EXAMINATION BY MR. MOYER

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1 Q. AND LET ME, IN FACT, SHOW YOU STATE'S EXHIBITS NUMBERS
2 50 THROUGH -- 49 THROUGH 52. AND START OFF WITH STATE'S
3 EXHIBIT NUMBER 50. CAN YOU IDENTIFY WHAT IS SHOWN IN THAT
4 PHOTOGRAPH?

5 A. YES. WE DID TAKE A PHOTO OF THE RIFLE AT THE SCENE.
6 THIS IS THE RIFLE PARTS SPREAD OUT ON THE PLASTIC BAG. AND
7 IT'S ON THE HOOD OF THE POLICE CAR. THIS IS HOW WE FOUND
8 IT.

9 Q. OKAY. AND IS THAT THE WAY IT LOOKED OUT THERE?

10 A. YES.

11 Q. NOW WHAT IS DIRECTLY UNDERNEATH IT IN THAT PHOTOGRAPH?

12 A. WHITE PLASTIC BAG THAT IT WAS IN.

13 Q. AND THAT'S THE BAG THAT IT WAS IN IN THE TRUNK?

14 A. THE WHITE PLASTIC BAG.

15 Q. OKAY.

16 MR. MOYER: AT THIS TIME I'D MOVE TO HAVE STATE'S
17 EXHIBIT NUMBER 50 ---

18 MR. SUMNER: AGAIN, YOUR HONOR, ALL THIS INFORMATION IS
19 SUBJECT TO MY PRETRIAL.

20 THE COURT: SUBJECT TO YOUR OBJECTION. PUT IT IN.

21 Q. AND WHILE THEY'RE PULLING DOWN THE SCREEN IF YOU WOULD
22 TAKE A LOOK AT THOSE OTHER PHOTOGRAPHS AND ONCE AGAIN
23 BEGINNING -- IF YOU WOULD READ OFF THE EXHIBIT NUMBER AND
24 INDICATE WHAT IT IS THAT'S DEPICTED IN THAT EXHIBIT.

25 A. OKAY. MARKED STATE'S EXHIBIT 51 IS A PHOTO OF THE

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1 PAPER TAG ON THE BACK OF THIS CAR. IT IS -- SAYS TRUCK FARM
2 OF EASLEY. THIS IS THE TAG THAT WAS ON THE CAR WHEN I
3 OBSERVED IT AT STUDIO PLUS, STILL ON THE CAR AS WE DID THE
4 TRAFFIC STOP. THIS PICTURE WAS TAKEN AT THE TRAFFIC STOP.

5 Q. OKAY. AND THE OTHER EXHIBIT THAT'S IN FRONT OF YOU?

6 A. THIS IS MARKED EXHIBIT 49. THIS IS A PHOTO OF THE
7 SERIAL NUMBER ON THE CAR. THIS VIEW WAS ACTUALLY TAKEN
8 THROUGH THE WINDSHIELD, IF YOU WERE STANDING AT THE DRIVER'S
9 DOOR OUTSIDE OF THE CAR ON THE DASH FACING THE FRONT OF THE
10 CAR IN THE LOWER RIGHT CORNER OF THE WINDSHIELD.

11 Q. OKAY.

12 MR. MOYER: I'D MOVE TO HAVE STATE'S EXHIBITS NUMBERS

13 --- 49 AND --- 50 AND --- 51 AND --- 52

14 THE COURT: ANY OBJECTION TO THIS?

15 MR. MOYER: --- 49 AND --- 50 AND --- 51 AND --- 52

16 THE COURT: SUBJECT TO YOUR OBJECTION.

17 MR. SUMNER: YES, SIR.

18 (WHEREUPON STATE'S EXHIBIT NUMBERS 49, 50, 51 AND 52

19 WERE ENTERED INTO EVIDENCE)

20 Q. OKAY. I'M GOING TO SHOW YOU NOW FOR THE BENEFIT OF THE
21 JURY STATE'S EXHIBIT NUMBER 50. AND LET ME JUST ASK YOU TO
22 -- YOU'VE ALREADY DESCRIBED IT, BUT IS THIS THE RIFLE IN THE
23 PIECES AS YOU SAW IT OUT THERE ON DECEMBER THE 28TH OF 2002?

24 A. YES, SIR, IT IS.

25 Q. OKAY. WAS THERE ANY MORE TO IT THAN THAT?

DANIEL FULLER - DIRECT EXAMINATION BY MR. MOYER

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1 A. THAT IS ALL WE FOUND. THERE WERE NO WOODEN PARTS. IT
2 WAS ALL METAL. THERE WERE NO PROJECTILES LOCATED WITH THOSE
3 METAL PARTS, NO BULLETS, SHELL CASINGS, OR OTHER. JUST
4 THAT.

5 Q. OKAY. LET ME SHOW YOU WHAT'S ALREADY BEEN INTRODUCED
6 AS STATE'S EXHIBIT NUMBER 46. I'M GOING TO HAND YOU THE
7 LASER POINTER. IF YOU WOULD, IF YOU'RE ABLE TO FROM THAT
8 ANGLE, JUST POINT OUT TO THE JURY WHERE THE DEFENDANT'S
9 VEHICLE IS.

10 A. I HAVE -- THE POINTER IS ON THE HOOD OF THE CAR RUSTY
11 RICE WAS OPERATING.

12 Q. OKAY. AND CORPORAL DEMPSEY'S VEHICLE?

13 A. CORPORAL DEMPSEY'S VEHICLE WAS DIRECTLY BEHIND. THE
14 POINTER'S ON THE PASSENGER'S SIDE OF HIS CAR.

15 Q. AND OFFICER LONG?

16 A. AND THIS CAR THE POINTER IS ON IS CORPORAL LONG'S CAR.

17 Q. AND WHERE DID YOU PARK?

18 A. YOU MAY NOT BE ABLE TO DETECT, BUT I AM WHERE THE
19 POINTER IS JUST A SPACE OR TWO BEHIND CORPORAL LONG'S CAR.

20 Q. AND THAT THEN IS THE LOCATION ON HAYWOOD ROAD THAT YOU
21 WERE JUST DESCRIBING AS TO WHERE THE TRAFFIC STOP TOOK
22 PLACE?

23 A. CORRECT. YES, SIR.

24 Q. NOW DID YOU TAKE THAT PIECE OF EVIDENCE THAT WE JUST
25 TALKED ABOUT, THE RIFLE PARTS, DID YOU TAKE THAT INTO

DANIEL FULLER - DIRECT EXAMINATION BY MR. MOYER

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1 EVIDENCE YOURSELF OR DID SOMEBODY ELSE?

2 A. NO, CORPORAL DEMPSEY, I BELIEVE, IS THE ONE THAT
3 COLLECTED THAT GUN. HE FOUND IT, MAINTAINED A VISUAL AND
4 CUSTODY OF IT UNTIL IT WAS PLACED IN PROPERTY IN EVIDENCE.

5 Q. NOW WERE YOU PRESENT AS CORPORAL LONG CONDUCTED A
6 SEARCH OF THE TRUNK AS WELL?

7 A. YES, SIR, I WAS.

8 Q. AND WHAT, IF ANYTHING, DID YOU SEE HIM TAKE OUT OF THE
9 TRUNK?

10 A. I SAW HIM REMOVE A GARBAGE BAG. NOT THE SAME TYPE OF
11 GARBAGE BAG THAT HAD THE RIFLE PARTS IN IT. IT WOULD BE A
12 KIND YOU'D GET FROM WAL-MART OR THE GROCERY STORE, THOSE
13 LITTLE PLASTIC THROW AWAY BAGS. AND HE REMOVED SEVERAL
14 ITEMS FROM THAT CONTAINING ---

15 Q. AND WHAT DID IT -- WHAT DID THOSE ITEMS APPEAR TO YOU
16 BE? DESCRIBE THE ITEMS.

17 A. IT WAS A WHITE POWDERY SUBSTANCE BROKEN INTO MANY SMALL
18 PACKAGES.

19 Q. AND DID YOU TAKE CUSTODY OF THOSE ITEMS?

20 A. NO. CORPORAL JEFF LONG MAINTAINED CUSTODY OF THOSE
21 ITEMS HIMSELF. HE FOUND THEM, HE MAINTAINED CUSTODY OF
22 THEM.

23 Q. OKAY. NOW DURING THAT TIME DID YOU EITHER PARTICIPATE
24 IN THE SEARCH OF THE VEHICLE OR LOOK OVER ANY OF THE ITEMS
25 THAT WERE TAKEN OUT?

DANIEL FULLER - DIRECT EXAMINATION BY MR. MOYER

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1 A. I LOOKED OVER A LOT OF THE ITEMS THAT WERE TAKEN OUT OF
2 THE CAR JUST TO OBSERVE THEM AND DETERMINE WHETHER I WOULD
3 NEED THEM FOR FURTHERANCE OF THIS INVESTIGATION.

4 Q. AND DID -- THE ITEMS THAT WERE TAKEN OUT OF THE VEHICLE
5 DID IT INCLUDE ANY CLOTHING WHATSOEVER?

6 A. YES, IT DID.

7 Q. OKAY. WHAT KIND OF CLOTHING?

8 A. CAMOUFLAGE TYPE CLOTHING.

9 Q. LET ME HAND YOU STATE'S EXHIBIT NUMBER 52, WHICH I
10 BELIEVE HAS JUST GONE INTO EVIDENCE. AND CAN YOU JUST
11 DESCRIBE TO THE JURY WHAT IS SHOWN IN STATE'S EXHIBIT NUMBER
12 52?

13 A. ALSO OBSERVED LAYING -- THIS IS EXHIBIT 52. I ALSO
14 OBSERVED LAYING IN THE TRUNK OF THE CAR PULLED OUT FOR
15 REVIEW WAS A MESH CLOTH DRAW BAG WITH -- CONTAINING
16 FRISBEES.

17 Q. AND A PHOTOGRAPH WAS TAKEN OF THOSE?

18 A. YES, IT WAS.

19 Q. AND THAT'S WHAT YOU'RE HOLDING UP?

20 A. I FELT THAT IT WAS PERTINENT JUST TO DOCUMENT THAT THEY
21 WERE PRESENT.

22 Q. THANK YOU. NOW LET ME SHOW YOU STATE'S EXHIBIT NUMBER
23 53. WOULD YOU TAKE A LOOK AT THAT EXHIBIT? HAVE YOU LOOKED
24 AT THAT PREVIOUS TO TODAY?

25 A. YES, I HAVE.

DANIEL FULLER - DIRECT EXAMINATION BY MR. MOYER

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1 Q. AND IS THAT A FAIR AND -- A FAIRLY ACCURATE MAP OF
2 GREENVILLE?

3 A. YES, IT IS.

4 MR. MOYER: YOUR HONOR, I'D MOVE TO HAVE STATE'S
5 EXHIBIT NUMBER 53 ---

6 MR. SUMNER: NO OBJECTION, YOUR HONOR.

7 THE COURT: ALL RIGHT. WITHOUT OBJECTION.

8 Q. REAL BRIEFLY I'M GOING TO ASK YOU TO POINT OUT SEVERAL
9 DIFFERENT LOCATIONS ON THIS MAP TO THE JURY. IT MAY BE A
10 LITTLE DIFFICULT TO SEE FROM THAT FAR. BUT IF YOU'RE ABLE
11 TO -- IF YOU NEED TO STEP DOWN I'LL ASK YOU TO STEP DOWN.
12 BUT IF YOU WOULD JUST POINT OUT ON THAT MAP THE LOCATION OF
13 WHERE THAT WMUU RADIO TOWER IS?

14 A. MAY I STEP DOWN?

15 THE COURT: SURE.

16 Q. JUST PUT THE LASER POINTER ON THAT AREA.

17 A. MAY I LOOK AT THE MAP HERE A LITTLE BIT?

18 Q. OKAY.

19 A. I CAN'T READ ON THE SCREEN AS WELL AS I CAN READ THIS
20 PAPER IN PERSON. BUT WMUU IS AT THIS LOCATION WHERE YOU SEE
21 A GOLD, EXCUSE ME, A GREEN STAR. THIS IS HIGHWAY 29, WADE
22 HAMPTON BOULEVARD. AND THAT STAR IS AT A CELL TOWER SITE
23 LOCATION.

24 Q. OKAY.

25 A. THAT'S WHERE WMUU IS.

DANIEL FULLER - DIRECT EXAMINATION BY MR. MOYER

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1 Q. AND THE SUPER 8 MOTEL AND THAT PARK THAT WE'VE BEEN
2 TALKING ABOUT ---

3 A. THE SUPER 8 MOTEL IS NOT DEPICTED ON THIS MAP. BUT IT
4 WOULD BE JUST DOWN TOWARD THE CITY FROM THAT GREEN STAR.

5 Q. HALF MILE OR SO?

6 A. YES.

7 Q. AND WHAT ABOUT -- YOU'VE HEARD TESTIMONY ABOUT JOHNNY
8 HAMBY'S STORE. ARE YOU FAMILIAR WITH WHERE THAT STORE WAS?

9 A. YES, I AM.

10 Q. AND CAN YOU POINT THAT OUT ON THE MAP?

11 A. THIS INTERSECTION -- THIS GREEN STAR THAT I'M ON, THIS
12 IS WHITE HORSE ROAD THAT I AM MOVING THE LASER ON RIGHT NOW.
13 AND THIS BLUE ROAD CROSSING IT IS PART OF THE INTERSTATE
14 185. AT THAT INTERSECTION IS THE WHITE HORSE ROAD
15 FAIRGROUNDS. THAT IS WHERE THE HARD TIMES HUNTING AND
16 FISHING SUPPLY STORE WAS LOCATED. ON THE OPPOSITE SIDE OF
17 THE WHITE HORSE ROAD IS ANOTHER CELL TOWER SITE. PERHAPS A
18 HALF A MILE FROM THE HARD TIMES HUNTING AND FISHING STORE.

19 Q. OKAY. AND FINALLY, ARE YOU FAMILIAR WITH WHERE THE
20 BLOCK HOUSE RESTAURANT WOULD BE LOCATED?

21 A. YES, I AM.

22 Q. ROUGH AREA?

23 A. THE LASER POINTER RIGHT NOW IS MOVING UP AND DOWN
24 AUGUSTA ROAD. RIGHT NOW IN THE CITY ON AUGUSTA ROAD COMING
25 OUT OF THE CITY. PART WAY DOWN AUGUSTA ROAD THERE IS AN

DAVID DEMPSEY - DIRECT EXAMINATION BY MR. MOYER

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1 INTERSECTION WHERE THERE IS A FIRE DEPARTMENT, THAT IS FARIS
2 ROAD. JUST BACK FROM FARIS ROAD IS THE BLOCK HOUSE,
3 MCPHEARSON LANE AND THIS CELL TOWER.

4 Q. ALL RIGHT. THANK YOU.

5 MR. MOYER: ONE MOMENT PLEASE, YOUR HONOR.

6 Q. ALL RIGHT. PLEASE ANSWER ANY QUESTIONS THE DEFENSE MAY
7 HAVE.

8 MR. SUMNER: ONE SECOND PLEASE, YOUR HONOR.

9 THE COURT: ALL RIGHT.

10 MR. SUMNER: NO, SIR.

11 THE COURT: NO QUESTIONS?

12 MR. SUMNER: NO EXAMINATION. NO, SIR.

13 THE COURT: THANK YOU. YOU CAN STEP DOWN.

14 MR. MOYER: CALL CORPORAL DEMPSEY.

15 DAVID DEMPSEY, BEING DULY

16 SWORN TESTIFIED AS FOLLOWS:

17 DIRECT EXAMINATION BY MR. MOYER:

18 Q. MR. DEMPSEY, WHERE ARE YOU EMPLOYED?

19 A. GREENVILLE POLICE DEPARTMENT.

20 Q. HOW LONG HAVE YOU BEEN IN LAW ENFORCEMENT?

21 A. NINETEEN YEARS.

22 Q. WHERE -- HAS IT ALL BEEN WITH THE GREENVILLE POLICE
23 DEPARTMENT?

24 A. IT HAS BEEN, YES.

25 Q. WHAT IS YOUR POSITION WITH THE GREENVILLE POLICE

DAVID DEMPSEY - DIRECT EXAMINATION BY MR. MOYER

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1 DEPARTMENT?

2 A. UNIFORM PATROL, CORPORAL.

3 Q. NOW LET ME TAKE YOU BACK TO DECEMBER THE 28TH OF 2002.

4 WERE YOU WORKING ON THAT DAY?

5 A. YES, I WAS.

6 Q. WHAT SHIFT WERE YOU WORKING?

7 A. DAY SHIFT.

8 Q. WHICH BEGINS AT WHAT TIME?

9 A. SEVEN IN THE MORNING.

10 Q. OKAY. AND WERE YOU ASKED THAT MORNING BY DETECTIVE

11 FULLER TO PARTICIPATE IN AN ASPECT OF THIS INVESTIGATION?

12 A. YES, I WAS.

13 Q. NOW HAD YOU BEEN INVOLVED IN THIS CASE IN ANY WAY UP

14 UNTIL THAT DATE?

15 A. NO, I WAS NOT.

16 Q. DID YOU MEET WITH DETECTIVE FULLER?

17 A. YES, I DID.

18 Q. WHERE DID YOU MEET WITH HIM?

19 A. IN THE PARKING LOT OF THE STUDIO PLUS.

20 Q. WERE YOU IN UNIFORM THAT DAY?

21 A. YES, I WAS.

22 Q. WHEN YOU SAID STUDIO PLUS, THAT'S A HOTEL?

23 A. YEAH, A MOTEL OFF OF WOODS CROSSING AND HAYWOOD ROAD.

24 Q. SO YOU MENTIONED YOU WERE IN UNIFORM.

25 A. YES, I WAS.

DAVID DEMPSEY - DIRECT EXAMINATION BY MR. MOYER

303

1 Q. WERE YOU IN A MARKED CAR?

2 A. I WAS.

3 Q. NOW AFTER SPEAKING TO DETECTIVE FULLER DID HE -- WERE
4 YOU POSITIONED TO GO TO A PARTICULAR PLACE THERE AND SET UP?

5 A. YES, IN FRONT OF THE ITALIAN MARKET AND GRILL.

6 Q. AND WHEN YOU STOPPED YOUR VEHICLE THERE WERE YOU
7 LOOKING FOR A PARTICULAR CAR?

8 A. YES.

9 Q. AND WHAT -- DID YOU HAVE A DESCRIPTION OF THAT?

10 A. IT WAS A WHITE '94 MERCURY TOPAZ.

11 Q. AND WAS IT DESCRIBED TO YOU BY DETECTIVE FULLER?

12 A. YES, IT WAS.

13 Q. AS YOU WERE SITTING THERE DID YOU EVENTUALLY SPOT THE
14 VEHICLE YOU WERE LOOKING FOR?

15 A. YES.

16 Q. HAD YOU BEEN KEEPING IN CONSTANT RADIO AND TELEPHONE
17 COMMUNICATION WITH DETECTIVE FULLER?

18 A. YES. HE WAS ADVISING ME WHEN HE WAS GOING TO BE
19 LEAVING THE MOTEL.

20 Q. AND WHAT WERE YOU ASKED TO DO WITH REGARD TO THIS
21 VEHICLE?

22 A. WHEN THE VEHICLE LEFT WE WEREN'T SURE WHICH DIRECTION
23 IT WAS GOING TO LEAVE, WHETHER IT WAS GOING TO LEAVE OUT THE
24 BACK ENTRANCE OR THE SIDE ENTRANCE. AND HE WAS WATCHING THE
25 SIDE, AND I WAS WATCHING THE BACK ENTRANCE. AND WHEN IT DID

DAVID DEMPSEY - DIRECT EXAMINATION BY MR. MOYER

304

1 LEAVE HE ADVISED ME IT WAS LEAVING. I STARTED TO FOLLOW IT
2 UP THE SIDE ROAD TO HAYWOOD ROAD.

3 Q. AND WERE YOU INTENDING TO PULL THE CAR OVER?

4 A. YES, I WAS.

5 Q. AND HAD YOU BEEN ASKED BY DETECTIVE FULLER TO PULL THE
6 CAR OVER?

7 A. YES.

8 Q. HAD DETECTIVE FULLER TOLD YOU ABOUT ANY -- ABOUT A
9 TRAFFIC VIOLATION THAT THE DRIVER WOULD BE COMMITTING?

10 A. HE SAID THAT THE VEHICLE WASN'T REGISTERED AND HAD NO
11 PROOF OF INSURANCE ON IT.

12 Q. NOW -- SO DID YOU BEGIN FOLLOWING THIS -- THE VEHICLE?

13 A. YES, I DID.

14 Q. OKAY. AND YOU'VE ALREADY DESCRIBED IT AS A 1994
15 MERCURY TOPAZ. WHAT COLOR WAS IT?

16 A. IT WAS WHITE.

17 Q. AND WHAT ABOUT A TAG?

18 A. IT HAD A FARM TAG ON IT.

19 Q. OKAY.

20 A. A TRUCK FARM TAG ACTUALLY.

21 Q. LET ME SHOW YOU STATE'S EXHIBIT NUMBER 51. IS THAT THE
22 TAG THAT WAS ON THE VEHICLE THAT DAY?

23 A. YES, IT IS.

24 Q. AND WERE YOU ABLE TO FOLLOW THE VEHICLE OUT ON HAYWOOD
25 ROAD?

DAVID DEMPSEY - DIRECT EXAMINATION BY MR. MOYER

305

1 A. YES, I DID.

2 Q. AND DID YOU END UP DOING A TRAFFIC STOP?

3 A. YES.

4 Q. HOW LONG DID YOU WAIT BEFORE DOING IT?

5 A. I HAD TO -- AS HE PULLED ONTO HAYWOOD ROAD THERE WAS

6 ONE CAR BETWEEN THE DEFENDANT'S VEHICLE AND MY VEHICLE. BY

7 THE TIME I GOT AROUND IT IT WAS PROBABLY LESS THAN A MINUTE.

8 BY THE TIME I GOT AROUND THE VEHICLE THAT PULLED BEHIND HIM

9 AFTER HE HAD TURNED ONTO HAYWOOD ROAD, IT JUST TOOK ME A

10 MINUTE TO GET AROUND THAT VEHICLE TO GET BEHIND HIS VEHICLE.

11 Q. OKAY. SO DID YOU GO A DISTANCE OF MILES OR ...

12 A. NO. IT WASN'T PROBABLY A QUARTER OF A MILE.

13 Q. OKAY. DID YOU TURN ON YOUR BLUE LIGHTS?

14 A. YES. AFTER I GOT TO THE POSITION WHERE I COULD CALL

15 THE VEHICLE OUT I NOTIFIED DISPATCH OF MY INTENTIONS,

16 DESCRIBED THE VEHICLE AND THE TAG THAT WAS ON THERE, THE

17 PAPER TAG, AND ACTIVATED MY EMERGENCY EQUIPMENT.

18 Q. OKAY. AND DID THE VEHICLE PULL OVER?

19 A. YES, IT DID.

20 Q. AND WOULD YOU DESCRIBE THE AREA THERE WHERE IT WAS THAT

21 THE TRAFFIC STOP DID END UP TAKING PLACE?

22 A. IT'S ON HAYWOOD ROAD JUST PAST THE PANTRY HEADED TOWARD

23 LAURENS ROAD ON THE RIGHT HAND SIDE. IT'S ACTUALLY ACROSS

24 FROM WHERE THE NEW PUMPERS IS AT ON HAYWOOD ROAD. IT'S AT

25 THE INTERSECTION OF TRANSIT AND HAYWOOD ROAD. IT'S JUST

DAVID DEMPSEY - DIRECT EXAMINATION BY MR. MOYER

306

1 LIKE AN OPEN FIELD.

2 Q. OKAY. LET ME SHOW YOU STATE'S EXHIBIT NUMBER 46. IS
3 THAT AN ACCURATE DEPICTION OF THE AREA WHERE THIS TRAFFIC
4 STOP TOOK PLACE?

5 A. YES, IT IS.

6 Q. NOW WHERE DID YOU STOP YOUR PATROL CAR IN RELATION TO
7 THE WHITE TOPAZ?

8 A. DIRECTLY BEHIND THE DEFENDANT'S VEHICLE.

9 Q. AND AT THIS POINT COULD YOU TELL HOW MANY PEOPLE WERE
10 IN THE VEHICLE?

11 A. THERE WAS JUST ONE.

12 Q. AND DID YOU -- YOU'D BEEN ADVISING OVER THE RADIO THEN
13 THE WHOLE TIME WHAT YOU WERE DOING AND WHERE YOU WERE MAKING
14 THE STOP?

15 A. YES.

16 Q. WERE YOU KEEPING DETECTIVE FULLER ADVISED?

17 A. WELL, HE WAS LISTENING, MONITORING ON THE RADIO. HE
18 COULD OVERHEAR ON THE RADIO.

19 Q. NOW WAS THERE ANOTHER BACKUP OFFICER INVOLVED AS WELL?

20 A. YES, THERE WAS.

21 Q. AND WHO WAS THAT?

22 A. CORPORAL LONG.

23 Q. AND HE ALSO ARRIVED THERE ON THE SCENE?

24 A. YES.

25 Q. AND AROUND THE SAME TIME AS DETECTIVE FULLER?

DAVID DEMPSEY - DIRECT EXAMINATION BY MR. MOYER

307

1 A. I BELIEVE THEY WERE BEHIND ME THE WHOLE TIME.

2 Q. OKAY. NOW AFTER THE VEHICLE CAME TO A STOP DID YOU
3 APPROACH THE DRIVER?

4 A. YES.

5 Q. YOU APPROACHED THE DRIVER'S SIDE OF THE CAR?

6 A. I WENT TO THE DRIVER'S SIDE OF THE VEHICLE. YES, I
7 DID.

8 Q. DID THE DRIVER STAY IN THE VEHICLE?

9 A. YES.

10 Q. AND WERE YOU ABLE TO TALK TO HIM?

11 A. YES.

12 Q. AND WHO WAS THE DRIVER OF THE VEHICLE?

13 A. RUSSELL RICE.

14 Q. THIS DEFENDANT?

15 A. THIS DEFENDANT.

16 Q. AND DID YOU ASK HIM FOR A DRIVER'S LICENSE?

17 A. YES.

18 MR. SUMNER: YOUR HONOR, AGAIN, I JUST DON'T WANT TO
19 INTERRUPT THIS WITNESS, JUST WANT TO CONTINUE ---

20 THE COURT: ALL RIGHT. SO NOTED.

21 MR. SUMNER: THANK YOU.

22 Q. DID YOU ASK HIM ABOUT THE REGISTRATION OF THE VEHICLE?

23 A. YES, I DID.

24 Q. AND DID HE HAVE ANY PAPERWORK WITH HIM SHOWING PROOF OF
25 REGISTRATION OR OWNERSHIP?

DAVID DEMPSEY - DIRECT EXAMINATION BY MR. MOYER

308

1 A. HE HAD A TITLE AND A BILL OF SALE. AND THAT'S ABOUT
2 IT.

3 Q. AND DID YOU TAKE THAT PAPERWORK AND GO SHOW IT TO
4 DETECTIVE FULLER?

5 A. YES. INCLUDING HIS DRIVER'S LICENSE, YES.

6 Q. AND YOU GAVE THOSE DOCUMENTS TO DETECTIVE FULLER?

7 A. YES.

8 Q. AND YOU HAD A CONVERSATION WITH HIM AT THAT POINT ABOUT
9 THOSE PARTICULAR DOCUMENTS?

10 A. YES, I DID.

11 Q. NOW LET ME -- DID YOU TALK TO THE DEFENDANT ABOUT
12 INSURANCE FOR THE VEHICLE?

13 A. YES, I DID. I ASKED HIM IF HE HAD PROOF OF INSURANCE.

14 Q. AND DID HE HAVE PROOF OF INSURANCE WITH HIM?

15 A. HE SAID HE HAD -- HIS WIFE HAD IT AND IT WAS WITH STATE
16 FARM.

17 Q. WAS HE ABLE TO PROVIDE YOU ANY DOCUMENTATION WHATSOEVER
18 THAT THE VEHICLE WAS INSURED?

19 A. NO, HE DID NOT.

20 Q. NOW AFTER TALKING TO DETECTIVE FULLER DID YOU TAKE ANY
21 ACTION WITH REGARD TO THE DEFENDANT AT THAT POINT?

22 A. AT THAT POINT WE DECIDED TO GET HIM OUT OF THE CAR.

23 AND DUE TO THE, YOU KNOW, AS PART OF THE INVESTIGATION. AND

24 AFTER I GOT HIM OUT OF THE CAR I DID A PAT-DOWN OF HIS

25 PERSON TO SEE IF HE HAD ANY OTHER WEAPONS.

DAVID DEMPSEY - DIRECT EXAMINATION BY MR. MOYER

309

1 Q. NOW AT THIS POINT HAD YOU BEEN TOLD BY DETECTIVE FULLER
2 THAT THIS WAS A MURDER INVESTIGATION?

3 A. YES, I WAS AWARE OF THAT.

4 Q. ALL RIGHT. SO THEN AT THAT POINT YOU DID A PAT-DOWN OF
5 THE DEFENDANT?

6 A. YES.

7 Q. WHAT WAS THE RESULT OF YOUR PAT-DOWN SEARCH OF THE
8 DEFENDANT?

9 A. AFTER I GOT MR. RICE OUT OF THE VEHICLE I TURNED HIM
10 FACING HIS VEHICLE, AND I WAS PATTING HIM DOWN AND I FELT
11 THE OUTLINE OF A PISTOL IN HIS FRONT RIGHT POCKET. AT THAT
12 POINT I SECURED HIM AGAINST HIS VEHICLE AND REMOVED THE -- A
13 25 CALIBER BERETTA, BLACK IN COLOR, FROM HIS FRONT RIGHT
14 POCKET, TURNED AND HANDED IT TO DETECTIVE FULLER, WHO WAS
15 STANDING RIGHT BEHIND ME.

16 Q. NOW WHEN YOU FELT THE -- WHEN YOU FELT HIS PANTS DID
17 YOU KNOW IMMEDIATELY WHAT YOU WERE FEELING WHEN YOU FELT
18 THAT?

19 A. YEAH, GRASPING IT LIKE THAT I COULD FEEL THE BUTT OF
20 THE GUN, THE OUTLINE OF IT.

21 Q. AND YOU GAVE IT TO DETECTIVE FULLER?

22 A. YES.

23 Q. DID YOU EVER TAKE THAT BACK? DID YOU EVER GET THAT
24 PISTOL BACK?

25 A. YES, I DID. HE JUST SECURED IT WHILE I WAS SECURING

DAVID DEMPSEY - DIRECT EXAMINATION BY MR. MOYER

310

1 MR. RICE UNTIL WE GOT HIM IN THE BACK OF MY PATROL CAR.

2 Q. AND WHAT DID YOU DO WITH IT?

3 A. I PUT IT INTO PROPERTY IN EVIDENCE AT THE END.

4 Q. OKAY. AT THE END OF ---

5 A. RIGHT. AT THE END OF THE SHIFT. IT DID HAVE SEVEN
6 UNSPENT SHELLS IN THE CHAMBER. WE EMPTIED IT ALSO.

7 THE COURT: NO OBJECTION. WITHOUT OBJECTION.

8 MR. SUMNER: YOUR HONOR, I'VE JUST INDICATED, NOTED TO
9 MY PRETRIAL. YES, SIR.

10 THE COURT: OKAY.

11 MR. SUMNER: MR. MOYER SHOWED ME WHAT IS GOING IN.

12 THE COURT: ALL RIGHT.

13 MR. MOYER: MAY IT PLEASE THE COURT?

14 Q. I'M GOING TO HAND YOU WHAT'S BEEN MARKED AS STATE'S
15 EXHIBIT NUMBER 24 [SIC]. IF YOU WOULD JUST LOOK INTO THE
16 CONTENTS OF THAT ENVELOPE AND SAY WHETHER OR NOT YOU CAN
17 IDENTIFY WHAT IT IS THAT IS CONTAINED WITHIN THAT.

18 A. IT'S A BLACK SEMI-AUTOMATIC PISTOL.

19 Q. AND WOULD YOU TAKE IT OUT OF THE PACKAGE PLEASE? AND
20 HAS THAT -- FOR ALL OF OUR ASSURANCES, WOULD YOU JUST TAKE A
21 LOOK AT IT AND MAKE SURE THAT IT HAS BEEN -- THAT THERE ARE
22 NO BULLETS IN IT AND THAT IT IS NOT IN A POSITION WHERE IT
23 CAN BE FIRED?

24 A. IT IS SAFE.

25 Q. OKAY. AND NOW BY LOOKING AT IT AND BY LOOKING AT THE

DAVID DEMPSEY - DIRECT EXAMINATION BY MR. MOYER

311

1 DOCUMENTATION THAT COMES ALONG WITH IT ARE YOU ABLE TO
2 RECOGNIZE WHAT PARTICULAR PISTOL IT IS?

3 A. IT'S A BERETTA, 25 AUTOMATIC, MODEL 21A.

4 Q. OKAY. AND IS THAT THE PISTOL THAT YOU TOOK FROM
5 RUSSELL RICE ON DECEMBER THE 28TH OF 2002?

6 A. IT IS.

7 Q. AND DOES IT INDICATE WHEN YOU PUT THAT INTO THE
8 PROPERTY IN EVIDENCE ROOM?

9 A. AT 14:50 HOURS, WHICH IS LIKE TEN OF THREE IN THE
10 AFTERNOON.

11 Q. OKAY.

12 MR. MOYER: YOUR HONOR, AT THIS TIME I WOULD MOVE TO
13 HAVE STATE'S EXHIBIT NUMBER ---

14 THE COURT: ALL RIGHT. SUBJECT TO THE OBJECTION, PUT
15 IT IN.

16 MR. MOYER: I WOULD LIKE TO HAVE STATE'S EXHIBIT NUMBER
17 54.

18 (WHEREUPON STATE'S EXHIBIT 54 WAS ENTERED INTO
19 EVIDENCE)

20 Q. NOW YOU MENTIONED THAT THERE WERE BULLETS IN ADDITION
21 AS WELL WITH THAT PISTOL?

22 A. YES.

23 Q. ARE THE BULLETS CONTAINED IN THERE AS WELL?

24 A. YES, THEY ARE.

25 Q. OKAY. PLEASE PUT THEM BACK IN THAT PACKAGE. NOW WHAT

DAVID DEMPSEY - DIRECT EXAMINATION BY MR. MOYER

312

1 DID YOU DO WITH THE DEFENDANT AT THIS POINT AFTER FINDING
2 THIS PISTOL?

3 A. I PLACED HIM IN -- AFTER I GAVE THE PISTOL TO DETECTIVE
4 FULLER HE WAS THEN HANDCUFFED AND PLACED IN THE BACK OF MY
5 PATROL CAR.

6 Q. WAS THE VEHICLE THEN TOWED?

7 A. NOT AT THAT POINT. THEY ---

8 Q. LATER ON THAT DAY WAS IT ---

9 A. YES, IT WAS TOWED.

10 Q. NOW DID YOU DO ANYTHING WITH THE VEHICLE PRIOR TO
11 HAVING IT TOWED?

12 A. IT WAS INVENTORIED.

13 Q. AND BY INVENTORIED YOU'RE TALKING ABOUT YOU DID AN
14 INVENTORY SEARCH?

15 A. SEARCH TO SEE IF THERE'S ANY ITEMS THAT BELONG -- THAT
16 WERE IN THAT CAR THAT BELONGED TO THE DEFENDANT. THEY WOULD
17 BE THERE WHEN HE RECOVERED THE VEHICLE LATER ON AT A LATER
18 DATE.

19 Q. OKAY. NOW IS THAT STANDARD PROCEDURE FOR THE
20 GREENVILLE POLICE DEPARTMENT TO DO AN INVENTORY SEARCH ---

21 A. YES.

22 Q. --- WHEN TOWING A VEHICLE? AND DID ANYONE PARTICIPATE
23 IN THE SEARCH WITH YOU?

24 A. YES, CORPORAL LONG WITH THE POLICE DEPARTMENT.

25 Q. AND WHERE DID YOU BEGIN YOUR SEARCH?

DAVID DEMPSEY - DIRECT EXAMINATION BY MR. MOYER

313

1 A. WHAT WE DID IS HE -- CORPORAL LONG STARTED ON THE RIGHT
2 HAND SIDE OF THE VEHICLE AND I STARTED ON THE DRIVER'S SIDE
3 AND STARTED IN THE FRONT. AND WE JUST WORKED OUR WAY TO THE
4 TRUNK.

5 Q. OKAY. NOW WHEN YOU GOT TO THE TRUNK DID YOU SEIZE ANY
6 PROPERTY FROM THE TRUNK AS A RESULT OF YOUR SEARCH?

7 A. YES, I DID.

8 Q. WHAT DID -- WHAT WAS IT? CAN YOU DESCRIBE WHAT IT WAS
9 THAT YOU TOOK OUT OF THE TRUNK?

10 A. OUT OF THE TRUNK THERE WAS A WHITE PLASTIC BAG WHICH
11 HAD A BARREL FROM A LONG GUN IN IT, WHICH WAS A 30-06, A
12 RECEIVER, AND A RECOIL SPRING.

13 Q. WHERE WAS IT IN THE TRUNK?

14 A. IT WAS ON THE LEFT HAND SIDE IN THE -- JUST ON THE
15 BOTTOM.

16 Q. ON THE BOTTOM? DESCRIBE WHAT YOU MEAN BY ON THE
17 BOTTOM. WAS THERE A LOT OF STUFF IN THE TRUNK?

18 A. THERE WAS A LOT OF THINGS IN THE TRUNK. WE'RE --
19 THERE'S THINGS THAT ARE BEING MOVED AROUND. I CAN'T
20 REMEMBER IF IT WAS UNDERNEATH ANYTHING ELSE INITIALLY
21 BECAUSE THERE WERE -- IT WAS A FULL TRUNK.

22 Q. WHAT KIND OF THINGS WERE IN THE TRUNK?

23 A. THERE WAS SOME DUFFEL BAGS AND SOME OTHER SMALLER BAGS
24 AND THINGS. IT'S JUST A LOT OF TRASH IN THE TRUNK.

25 Q. OKAY. BUT THAT BAG, WAS IT OUT IN THE COMPARTMENT PART

DAVID DEMPSEY - DIRECT EXAMINATION BY MR. MOYER

314

1 OF THE TRUNK?

2 A. YES. IT WAS IN THE COMPARTMENT AREA, YES.

3 Q. OKAY. IF YOU WOULD TAKE A LOOK AT -- AND DID YOU EVER
4 TAKE A LOOK INSIDE THAT PLASTIC BAG AT THE CONTENTS?

5 A. YES. WHEN I LIFTED IT UP I COULD HEAR METAL STRIKING
6 EACH OTHER. AND WHEN I DID OPEN IT UP I RECOGNIZED THE GUN
7 PARTS.

8 Q. LET ME SHOW YOU STATE'S EXHIBIT NUMBER 50. DOES THAT
9 INDICATE -- IS THAT AN ACCURATE PICTURE OF WHAT YOU FOUND
10 THERE IN THE TRUNK?

11 A. YES, IT IS. THAT IS EXACTLY WHAT I FOUND.

12 Q. NOW WAS CORPORAL LONG SEARCHING ALONG WITH YOU AT THE
13 SAME TIME?

14 A. YES, HE WAS.

15 Q. SO WHERE WAS HE WHILE YOU WERE SEARCHING THE LEFT SIDE
16 OF THE TRUNK?

17 A. DIRECTLY TO MY RIGHT.

18 Q. AND WHAT AREA WAS HE SEARCHING?

19 A. THE RIGHT SIDE OF THE TRUNK.

20 Q. OKAY. NOW DID YOU CONDUCT A -- AT ANY POINT DURING
21 THIS TIME DID YOU LOOK -- CONDUCT A FURTHER SEARCH OF THE
22 DEFENDANT'S PERSON THERE IN HIS OTHER POCKETS?

23 A. YES, I DID.

24 Q. OKAY. WHAT -- DID YOU RETRIEVE ANYTHING ELSE FROM HIS
25 POCKETS?

DAVID DEMPSEY - DIRECT EXAMINATION BY MR. MOYER

315

1 A. THERE WAS SOME MONEY IN HIS POCKETS.

2 Q. OKAY. AND WHAT -- WHICH POCKET WAS IT?

3 A. I BELIEVE IT WAS HIS LEFT, LEFT POCKET.

4 Q. WAS IT THE SAME POCKET OUT OF WHICH YOU TOOK THE GUN?

5 A. I DON'T BELIEVE IT WAS. I DON'T RECALL THAT.

6 Q. LET ME HAND YOU STATE'S EXHIBIT NUMBER 55. AND IF YOU

7 WOULD JUST TAKE A LOOK AT THE CONTENTS OF THAT ENVELOPE AND

8 TELL US IF YOU CAN BY LOOKING AT THE CONTENTS AND THE

9 PAPERWORK IF YOU CAN IDENTIFY WHAT IT IS THAT IS CONTAINED

10 WITHIN THAT EXHIBIT.

11 A. YEAH. THIS IS THE MONEY THAT WAS REMOVED FROM HIS

12 POCKET.

13 Q. AND HOW MUCH MONEY WAS IT?

14 A. TOTAL OF TWENTY-FIVE HUNDRED AND TWENTY-SIX DOLLARS AND

15 SEVENTY-SIX CENTS.

16 Q. TWENTY-FIVE HUNDRED AND TWENTY-SIX DOLLARS. SO TWO

17 THOUSAND FIVE HUNDRED AND TWENTY-SIX DOLLARS ...

18 A. AND SEVENTY-SIX CENTS.

19 Q. AND SEVENTY-SIX CENTS. DID YOU COUNT IT OUT THERE AT

20 THE SCENE?

21 A. I BELIEVE WE DID.

22 Q. OKAY.

23 A. IT WAS ALL IN THIS PURPLE HEADBAND OR HAIRBAND.

24 Q. OKAY. SO IT WAS ACTUALLY WRAPPED UP IN SOMETHING?

25 A. IT WAS WRAPPED IN THAT WHEN I TOOK IT OUT OF HIS

DAVID DEMPSEY - DIRECT EXAMINATION BY MR. MOYER

316

1 POCKET, YES.

2 Q. OKAY. SO IT WAS IN KIND OF A CLUMP?

3 A. IT WAS IN A BUNDLE, YES.

4 Q. A BUNDLE. OKAY. IS THAT IN SUBSTANTIALLY THE SAME
5 CONDITION -- LET ME BACK UP. AFTER YOU TOOK POSSESSION OF
6 THAT MONEY WHAT -- DID YOU KEEP IT WITH YOU AT THAT POINT?

7 A. YES, I DID.

8 Q. AND WHAT DID YOU END UP DOING WITH IT?

9 A. PLACING IT IN PROPERTY IN EVIDENCE.

10 Q. AND DID YOU PLACE IT THERE YOURSELF?

11 A. YES, I DID.

12 Q. AND WHEN DID YOU PUT IT IN PROPERTY IN EVIDENCE?

13 A. THE TIME WAS AT 3:00 ON THE SAME DAY.

14 Q. ON THE SAME DAY?

15 A. YES, THREE PM.

16 Q. OKAY.

17 MR. MOYER: YOUR HONOR, AT THIS TIME I'D MOVE TO HAVE
18 STATE'S EXHIBIT NUMBER TWENTY, I'M SORRY, 55 INTO EVIDENCE.

19 THE COURT: PUT IT IN SUBJECT TO OBJECTION.

20 Q. ALL RIGHT. NOW THEN DID YOU TAKE BACK POSSESSION
21 YOURSELF OF THAT WHITE PLASTIC BAG THAT YOU DESCRIBED HAVING
22 THE GUN PARTS?

23 A. YES, I DID.

24 Q. OKAY. AND WHAT DID YOU DO WITH IT?

25 A. THAT WAS ALSO -- I THEN SHOWED DETECTIVE FULLER WHAT I

DAVID DEMPSEY - DIRECT EXAMINATION BY MR. MOYER

317

1 HAD, YOU KNOW, LETTING HIM KNOW THAT I HAD A LONG RIFLE
2 BARREL AND RECEIVER WITH A RECOIL SPRING. AND THEN I PUT IT
3 -- I BELIEVE I TOOK IT BACK.

4 Q. OKAY. TOOK IT BACK WHERE?

5 A. SO THAT I COULD PUT IT IN PROPERTY IN EVIDENCE.

6 Q. DID YOU PUT IT IN PROPERTY IN EVIDENCE?

7 A. I CAN'T REMEMBER THAT IF I DID OR NOT.

8 Q. OKAY. WOULD IT REFRESH YOUR MEMORY IF YOU WERE ABLE TO
9 TAKE A LOOK AT THE PAPERWORK AND DOCUMENTATION?

10 A. YES.

11 Q. I'M GOING TO SHOW YOU STATE'S EXHIBIT NUMBER 56 AND ASK
12 YOU TO LOOK AT THAT AND THE PAPERWORK. AND JUST TELL ME AT
13 THIS TIME WHETHER OR NOT THAT WILL REFRESH YOUR MEMORY AS TO
14 WHETHER OR NOT YOU PUT THAT INTO THE PROPERTY IN EVIDENCE
15 ROOM?

16 A. NO, I DID NOT.

17 Q. OKAY. IF YOU WOULD LOOK UP AT BOXES NUMBERS FIFTEEN,
18 BOX NUMBER FIFTEEN, WHAT DOES THAT STATE?

19 A. OKAY. THAT I DID IMPOUND IT. YES, I DID.

20 Q. AND WHAT IS THE DATE THAT IT WAS IMPOUNDED?

21 A. 12/28.

22 Q. OKAY. AND DID YOU SIGN THAT AS HAVING IMPOUNDED IT?

23 A. YES, I DID.

24 Q. AND BY IMPOUNDED DOES THAT MEAN THAT YOU PLACED IT INTO
25 THE PROPERTY IN EVIDENCE ROOM?

DAVID DEMPSEY - DIRECT EXAMINATION BY MR. MOYER

318

1 A. YES, I DID.

2 Q. AND YOU WOULD HAVE DONE SO WHEN YOU TOOK THE OTHER
3 EVIDENCE?

4 A. YES.

5 Q. NOW DID YOUR CAR HAVE A VIDEO CAMERA?

6 A. YES.

7 Q. WERE YOU USING IT DURING THAT INCIDENT?

8 A. YES, I WAS.

9 Q. DID IT TAPE -- DID YOU TURN IT ON AND YOU ACTUALLY
10 TAPED THE INCIDENT FROM THE BEGINNING OF THE TRAFFIC STOP
11 THROUGH THE SEARCH?

12 A. YES, I DID.

13 Q. OKAY. AND HAVE YOU GONE BACK AND TAKEN A LOOK AT IT?

14 A. YES, I DID.

15 Q. AND DID IT TAPE IT CORRECTLY?

16 A. YES, IT DID.

17 Q. AND IS THE VIDEO AN ACCURATE DESCRIPTION OF WHAT
18 HAPPENED OUT THERE ON DECEMBER THE 28TH OF 2002?

19 A. YES, IT IS.

20 MR. MOYER: YOUR HONOR, AT THIS TIME I WOULD MOVE TO
21 HAVE STATE'S EXHIBIT NUMBER 57, THE VIDEOTAPE, MOVED INTO
22 EVIDENCE AND PUBLISHED TO THE JURY.

23 MR. SUMNER: NO OBJECTION, YOUR HONOR.

24 THE COURT: ALL RIGHT. HOW LONG IS IT?

25 MR. MOYER: IT'S ABOUT THIRTY MINUTES, YOUR HONOR.

DAVID DEMPSEY - DIRECT EXAMINATION BY MR. MOYER

319

1 THE COURT: OKAY. YOU'RE GOING TO SHOW IT NOW?

2 MR. MOYER: IF IT PLEASE THE COURT.

3 THE COURT: WE'LL DO THAT AND RECESS FOR LUNCH.

4 MR. MOYER: THANK YOU.

5 Q. AND I WOULD ASK YOU IF YOU WOULD, CORPORAL DEMPSEY,

6 JUST TO STEP DOWN SO YOU CAN SEE IT AS WELL.

7 (WHEREUPON STATE'S EXHIBIT 57 WAS PLAYED FOR THE JURY)

8 Q. AND, CORPORAL DEMPSEY, IF YOU WOULD ALERT THE JURY AS

9 TO WHEN YOU SEE THE VEHICLE.

10 A. OKAY. I'M SITTING IN THE PARKING LOT OF THE ITALIAN

11 MARKET AND GRILL, WHICH IS DIRECTLY IN FRONT OF THE MOTEL.

12 I'M LOOKING TOWARD THE BABY SUPER STORE. IT'S A PRIVATE

13 ROAD TO THE --- RIGHT IN FRONT THERE. AND IT RUNS UP BY

14 LEBO'S AND THAT OLD DOLLAR THEATER. IT RUNS TO THE BACK OF

15 IT.

16 Q. AND DOES --- WILL THE CAR COME FROM OUR RIGHT OR FROM

17 OUR LEFT?

18 A. FROM THE RIGHT. YOU'LL SEE IT AT THE TOP THERE.

19 YOU'LL SEE IT COMING UP THIS WAY. THERE IT IS. THERE'S THE

20 TOP OF IT RIGHT THERE.

21 Q. OKAY.

22 A. THAT WAS AFTER DETECTIVE FULLER ADVISED ME.

23 Q. IS THAT THE VEHICLE WE JUST SAW TURN ONTO HAYWOOD ROAD?

24 A. THAT'S RIGHT.

25 Q. IS THAT THE VEHICLE DIRECTLY IN FRONT OF YOU?

DAVID DEMPSEY - DIRECT EXAMINATION BY MR. MOYER

320

1 A. YES, IT IS.

2 THE COURT: YOU NEED TO TURN THE SOUND UP.

3 Q. IS THAT WHEN YOU LOCATED THE GUN?

4 A. YES.

5 MR. MOYER: MAY IT PLEASE THE COURT, YOUR HONOR? IT'S

6 BEEN AGREED UPON THAT I CAN SPEED IT UP UNTIL A MORE

7 RELEVANT POINT.

8 THE COURT: ALL RIGHT.

9 MR. SUMNER: HE CAN SPEED IT ALL UP, BUT WHATEVER'S ---

10 THE COURT: THAT'S FINE.

11 MR. SUMNER: --- WHATEVER IS QUICKEST IS FINE.

12 Q. IS THIS WHEN YOU'RE BEGINNING YOUR -- CORPORAL DEMPSEY,

13 IS THIS WHEN YOU'RE BEGINNING YOUR SEARCH OF THE TRUNK?

14 A. YES, IT IS. THAT'S OFFICER LONG ON THE RIGHT HAND SIDE

15 OF THE VEHICLE.

16 Q. IS THAT THE BAG YOU REFERRED TO THAT YOU JUST TOOK OUT

17 OF THE TRUNK?

18 A. YES, IT IS. THAT'S THE BAG.

19 Q. NOW WERE YOU PRESENT WHEN CORPORAL LONG SEIZED ANY

20 PROPERTY OUT OF THE TRUNK?

21 A. YES.

22 Q. AND WAS -- WHAT HE SEIZED FROM THE TRUNK, WAS IT

23 DISPLAYED IN FRONT OF THE CAMERA AS WELL?

24 A. YEAH. THE ---

25 THE COURT: SPEAK UP.

DAVID DEMPSEY - DIRECT EXAMINATION BY MR. MOYER

321

1 A. OH, THE ITEMS WERE -- I'M SORRY. THE ITEMS WERE PLACED
2 ON THE HOOD OF THE CAR. THE REASON IT'S SO DARK IS THE SUN
3 WAS SHINING IN. IT WAS CLOSING IN ON -- IT'S A LITTLE BIT
4 DIFFICULT TO SEE, BUT YOU CAN SEE. IT'LL BRIGHTEN UP HERE
5 IN JUST A LITTLE BIT.

6 Q. IS THAT CORPORAL LONG THAT WE SEE IN THE RIGHT HAND
7 SIDE?

8 A. YES, IT IS.

9 Q. THE PROPERTY THAT CORPORAL LONG SEIZED, IS THAT WHAT IS
10 NOW BEING DISPLAYED IN FRONT OF THE CAMERA?

11 A. THAT'S CORRECT. IMMEDIATELY WE REMOVED IT FROM THE
12 TRUNK, THEN WE BROUGHT IT TO THE VIEW OF THE CAMERA.

13 Q. THANK YOU. LET ME ASK YOU TO PLEASE TAKE YOUR SEAT.

14 FINALLY, CORPORAL DEMPSEY, LET ME ASK YOU, DID YOU SEIZE ANY
15 BULLETS DURING THE SEARCH OF THE CAR?

16 A. YES, I DID.

17 Q. IN ADDITION TO THE ONES YOU TOOK OUT HIS POCKET?

18 A. YES.

19 Q. AND WHERE DID YOU FIND THOSE?

20 A. IN A SMALL BAG, I BELIEVE, IT WAS IN THE TRUNK.

21 Q. AND DID YOU COLLECT THOSE ITEMS?

22 A. YES, I DID.

23 Q. DID YOU PLACE THEM INTO THE PROPERTY IN EVIDENCE ROOM?

24 A. YES, I DID.

25 MR. SUMNER: SUBJECT TO THE SAME OBJECTION.

DAVID DEMPSEY - DIRECT EXAMINATION BY MR. MOYER

322

1 THE COURT: SUBJECT TO THE SAME OBJECTION, PUT THEM IN.

2 Q. CORPORAL DEMPSEY, I'M JUST GOING TO SHOW YOU WHAT'S

3 ALREADY BEEN INTRODUCED INTO EVIDENCE AS STATE'S EXHIBIT

4 NUMBER 58. AND IF YOU WOULD, JUST TAKE A LOOK INTO THAT

5 PACKAGE AND TELL ME IF THAT -- IF THEY ARE THE BULLETS THAT

6 YOU FOUND IN THE OTHER CONTAINER IN THE CAR.

7 A. YES, THEY ARE.

8 Q. WHAT CALIBER OF BULLETS ARE THEY?

9 A. 44.

10 Q. OKAY. YOU DIDN'T FIND THE GUN TO MATCH THOSE BULLETS

11 ---

12 A. NO, WE DID NOT.

13 Q. --- IN THE CAR? ALL RIGHT. THANK YOU. PLEASE -- NO

14 FURTHER QUESTIONS.

15 THE COURT: ALL RIGHT, SIR. YOU HAVE NO QUESTIONS?

16 MR. SUMNER: NO, SIR, I DON'T. THANK YOU.

17 THE COURT: THANK YOU. STEP DOWN. ALL RIGHT. LADIES

18 AND GENTLEMEN, WE'RE GOING TO SUSPEND AT THIS TIME FOR

19 LUNCH. AND WE'LL PICK BACK UP AT 2:15. DURING THE LUNCH

20 RECESS DO NOT TALK ABOUT THIS CASE AMONG YOURSELVES OR WITH

21 ANYONE ELSE. IF ANYBODY CONTACTS YOU AND TRIES TO TALK TO

22 YOU ABOUT THIS CASE GET THEIR NAMES AND ADDRESSES AND REPORT

23 THAT TO ME. PLEASE KEEP YOUR BADGES ON DURING THE RECESS.

24 PLEASE BE BACK AT 2:15. THANK YOU.

25 (WHEREUPON THE JURY EXITED THE COURTROOM AT 12:51 PM)

JEFFREY LONG - DIRECT EXAMINATION BY MR. MOYER

323

1 THE COURT: ALL RIGHT. BE BACK AT 2:15.

2 MR. SUMNER: YES, SIR.

3 (WHEREUPON COURT WAS IN RECESS)

4 THE COURT: ALL RIGHT. WE READY TO GO?

5 MR. SUMNER: YES, SIR.

6 MR. MOYER: YES, SIR.

7 THE COURT: BRING THEM ON.

8 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 2:16 PM)

9 THE COURT: TAKE THE JURY BACK OUT A MINUTE.

10 MR. SUMNER: I JUST REALIZED THAT WE HAD SOMETHING OUT
11 OF PLACE, JUDGE. I APOLOGIZE.

12 (WHEREUPON THE JURY EXITED THE COURTROOM AT 2:17 PM)

13 THE COURT: OKAY.

14 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 2:18 PM)

15 THE COURT: ALL RIGHT, SOLICITOR.

16 MR. MOYER: CALL OFFICER LONG TO THE STAND.

17 JEFFREY LONG, BEING DULY

18 SWORN TESTIFIED AS FOLLOWS:

19 DIRECT EXAMINATION BY MR. MOYER:

20 Q. OFFICER LONG, WHERE DO YOU -- WHERE ARE YOU EMPLOYED?

21 A. GREENVILLE CITY POLICE DEPARTMENT.

22 Q. HOW LONG HAVE YOU BEEN IN LAW ENFORCEMENT?

23 A. SIX YEARS.

24 Q. AND HAS IT ALL BEEN WITH THE GREENVILLE POLICE
25 DEPARTMENT?

JEFFREY LONG - DIRECT EXAMINATION BY MR. MOYER

324

1 A. YES.

2 Q. WHAT IS YOUR POSITION WITH THE GREENVILLE POLICE
3 DEPARTMENT?

4 A. CORPORAL.

5 Q. LET ME TAKE YOU BACK TO DECEMBER THE 28TH OF 2002. DID
6 YOU PARTICIPATE IN THIS TRAFFIC STOP ON HAYWOOD ROAD THAT
7 WE'VE BEEN TALKING ABOUT TODAY?

8 A. YES, I DID.

9 Q. AND HOW DID YOU BECOME INVOLVED WITH THE CASE?

10 A. I WAS A RESPONDING OFFICER TO CORPORAL DEMPSEY'S
11 TRAFFIC STOP.

12 Q. OKAY. SO WERE YOU THEN -- WAS YOUR ROLE TO BE A BACKUP
13 THEN?

14 A. YES.

15 Q. WERE YOU FOLLOWING -- DID YOU ACTUALLY GO TO THE STUDIO
16 PLUS MOTEL?

17 A. NO, I DID NOT.

18 Q. OKAY. AND WHERE WERE YOU STAGED OR WHERE WERE YOU
19 WAITING?

20 A. I WAS ACTUALLY TRAVELING IN -- TOWARDS THE AREA ON 385
21 AND I CAME ONTO HAYWOOD ROAD. AND THAT'S WHERE -- AFTER HE
22 ALREADY BEGAN HIS TRAFFIC STOP. I JUST FOLLOWED UP BEHIND
23 HIM.

24 Q. OKAY. AND DID YOU PULL INTO THE LOCATION WHERE THE
25 TRAFFIC STOP WAS MADE?

JEFFREY LONG - DIRECT EXAMINATION BY MR. MOYER

325

1 A. YES.

2 Q. WHERE DID YOU LOCATE YOUR VEHICLE?

3 A. TO THE RIGHT HAND SIDE OF CORPORAL DEMPSEY'S PATROL
4 VEHICLE.

5 Q. OKAY.. LET ME SHOW YOU STATE'S EXHIBIT NUMBER 46. IS
6 YOUR PATROL VEHICLE DISPLAYED IN THAT PHOTOGRAPH?

7 A. IT IS, YES.

8 Q. OKAY. IT'S THE ONE RIGHT BEHIND -- IT'S THE ONLY OTHER
9 ONE OTHER THAN CORPORAL DEMPSEY'S?

10 A. CORRECT.

11 Q. NOW DID YOU APPROACH THE VEHICLE WHEN CORPORAL DEMPSEY
12 DID?

13 A. YES, I DID.

14 Q. OKAY. WHAT DID YOU DO WHEN CORPORAL DEMPSEY APPROACHED
15 THE DEFENDANT?

16 A. I STAYED MORE TOWARDS THE BACK PASSENGER SIDE OF HIS
17 VEHICLE JUST AS A SUPPORT, JUST AS A BACKUP OFFICER.

18 Q. AND DID YOU OBSERVE WHAT HE DID?

19 A. YES, I DID.

20 Q. DID YOU OBSERVE HIM WHEN HE WALKED UP AND BEGAN TALKING
21 TO THE DEFENDANT?

22 A. YES.

23 Q. DID YOU OBSERVE THE PAT-DOWN SEARCH?

24 A. I DID, YES.

25 Q. WHAT DID YOU DO WHEN THE PAT-DOWN SEARCH BEGAN?

JEFFREY LONG - DIRECT EXAMINATION BY MR. MOYER

326

1 A. ONCE THE PAT-DOWN SEARCH BEGAN AND CORPORAL DEMPSEY
2 ADVISED OF THE PISTOL THAT WAS IN HIS POCKET I THEN ENGAGED
3 HIM AND THE DEFENDANT AND ASSISTED CORPORAL DEMPSEY IN
4 PLACING HIM UNDER ARREST.

5 Q. AND DID YOU SEE WHAT CAME OUT OF THE DEFENDANT'S
6 POCKET?

7 A. YES, I DID.

8 Q. AND WHAT WAS IT?

9 A. A SMALL DARK IN COLOR PISTOL.

10 Q. NOW DID YOU PARTICIPATE IN THE SEARCH OF THE AUTOMOBILE
11 PRIOR TO IT BEING TOWED?

12 A. YES, I DID.

13 Q. DID YOU SEIZE ANY PROPERTY AS A RESULT OF YOUR SEARCH?

14 A. YES.

15 Q. WHAT DID YOU SEIZE AND FROM WHERE DID YOU SEIZE IT?

16 A. A LARGE QUANTITY OF WHITE POWDER SUBSTANCE OUT OF THE
17 TRUNK ON THE RIGHT HAND SIDE OF THE TRUNK AREA, AND ALSO
18 TOOK A SMALL MATCHBOOK, A SUPER 8 HOTEL MATCHBOOK. THAT
19 CAME OUT OF A LITTLE CANVAS BAG OUT OF THE BACK SEAT OF HIS
20 CAR.

21 Q. OKAY. NOW LET'S TALK ABOUT THE -- WHAT YOU DESCRIBED
22 AS A POWDER SUBSTANCE. WHERE IN THE TRUNK WAS IT?

23 A. IT WAS ON THE RIGHT HAND SIDE OF THE TRUNK OF THE
24 DEFENDANT'S VEHICLE, INSIDE THE TRUNK.

25 Q. WAS IT IN THE COMPARTMENT SECTION OF THE TRUNK OR WAS

JEFFREY LONG - DIRECT EXAMINATION BY MR. MOYER

327

1 IT UNDER -- HIDDEN IN SOME ---

2 A. IT WAS IN A -- KIND OF LIKE A BI-LO BAG. IT WAS ALL
3 TOGETHER, THAT AND A DIGITAL SCALE. AND IT REALLY WASN'T
4 HIDDEN. IT WAS JUST -- IT WAS JUST IN THE TRUNK. THERE WAS
5 A COUPLE OF OTHER ITEMS THAT HAD BEEN ON TOP OF IT. WHEN WE
6 INVENTORIED THE VEHICLE WE HAD TO MOVE SOME THINGS JUST TO
7 MAKE SURE THERE WAS OTHER VALUABLES IN THE TRUNK. AND I
8 DISCOVERED THAT BAG.

9 Q. OKAY. WHEN YOU DISCOVERED THE BAG DID YOU DISCOVER
10 WHAT WAS IN IT PRETTY MUCH?

11 A. YES, I DID.

12 Q. WAS THE BAG TIED UP OR CLOSED OFF?

13 A. NO, IT WAS NOT. IT WAS ACTUALLY JUST LAYING HALF WAY
14 OPEN. THAT'S WHERE I OBSERVED THE COLORFUL BOX THAT THE
15 DIGITAL SCALE WAS IN. AND AS SOON AS I SAW THE BOX I
16 RECOGNIZED THE SCALE. AND THEN JUST RIGHT THERE BESIDE THE
17 SCALE WAS THE POWDER SUBSTANCE.

18 Q. IN THAT SAME BAG?

19 A. YES.

20 Q. AND SO IT WAS THE SCALE ITSELF THAT CAUGHT YOUR
21 ATTENTION FIRST?

22 A. YES, SIR.

23 Q. OKAY. AND WHAT DID YOU DO WITH THAT POWDER SUBSTANCE
24 THAT YOU FOUND IN THAT BAG?

25 A. ONCE I REMOVED IT FROM THE TRUNK AND IDENTIFIED IT, I

JEFFREY LONG - DIRECT EXAMINATION BY MR. MOYER

328

1 THEN PLACED IT -- I TOOK IT OVER TO THE IN-CAR CAMERA TO
2 DISPLAY WHAT WAS LOCATED IN THE TRUNK. AND THEN I SEPARATED
3 IT ON THE CAMERA TO SHOW WHAT WAS FOUND.

4 Q. OKAY. AND SO DID YOU HOLD IT UP ON THE ---

5 A. I DID. I HELD MULTIPLE INDIVIDUAL BAGGIES AND ALSO
6 SOME LARGER BAGS.

7 MR. SUMNER: NO OBJECTION TO THIS PHOTOGRAPH, YOUR
8 HONOR.

9 (WHEREUPON STATE'S EXHIBIT NUMBER 59 WAS ENTERED INTO
10 EVIDENCE)

11 Q. AND WAS A PHOTOGRAPH TAKEN OUT THERE ON THE SCENE OF
12 WHAT IT WAS THAT YOU FOUND IN THE TRUNK?

13 A. YES. FORENSICS HAD RESPONDED TO TAKE PHOTOGRAPHS OF
14 EVERYTHING FOUND.

15 Q. LET ME SHOW YOU WHAT HAS BEEN ADMITTED INTO EVIDENCE AS
16 STATE'S EXHIBIT NUMBER 59. WOULD YOU JUST TAKE A LOOK AT
17 THAT PHOTOGRAPH? AND DO YOU RECOGNIZE WHAT IS PICTURED IN
18 THAT PHOTOGRAPH?

19 A. YES.

20 Q. AND WHAT IS IT?

21 A. IT'S MULTIPLE BAGGIES AND PACKAGES OF A WHITE POWDER
22 SUBSTANCE, WHICH FIELD TESTED POSITIVE FOR COCAINE.

23 Q. AND IS THAT WHAT YOU DESCRIBED AS COMING OUT OF THIS
24 TRUNK?

25 A. YES, IT IS. ALL OF THESE WERE PACKAGED TOGETHER.

JEFFREY LONG - DIRECT EXAMINATION BY MR. MOYER

329

1 Q. NOW YOU MENTIONED A MULTI-COLORED SCALE. WAS THAT
2 PICTURED IN THAT PHOTOGRAPH AS WELL?

3 A. YES.

4 Q. OKAY. NOW AFTER IT WAS PHOTOGRAPHED THERE ON THE SCENE
5 DID YOU TAKE IT INTO YOUR CUSTODY?

6 A. YES, I DID.

7 Q. AND WHAT DID YOU EVENTUALLY DO WITH IT?

8 A. ONCE I TOOK IT INTO CUSTODY AND SECURED IT WITH MY
9 PATROL VEHICLE, INSIDE MY VEHICLE, I THEN TRANSPORTED IT TO
10 THE LAW ENFORCEMENT CENTER, PLACED IT INTO PROPERTY IN
11 EVIDENCE.

12 Q. OKAY. I WANT TO HAND YOU WHAT'S ALREADY BEEN MARKED AS
13 AN EXHIBIT, STATE'S EXHIBIT NUMBER 45, AN ENVELOPE. IF YOU
14 WOULD, JUST OPEN UP THAT ENVELOPE AND SEE IF YOU CAN
15 RECOGNIZE THE CONTENTS OF STATE'S EXHIBIT NUMBER 45. ARE
16 YOU ABLE TO RECOGNIZE WHAT THAT IS?

17 A. YES.

18 Q. WHAT IS IT?

19 A. IT'S COCAINE.

20 Q. OKAY. IS THAT THE PACKAGES OF THE WHITE POWDER
21 SUBSTANCE THAT YOU FOUND ---

22 A. YES, IT IS.

23 Q. --- OUT THERE ON THE SCENE ON DECEMBER THE 28TH OF
24 2002?

25 A. YES.

JEFFREY LONG - DIRECT EXAMINATION BY MR. MOYER

330

1 Q. OKAY. AND DOES IT INDICATE TO YOU WHEN YOU PLACED THAT
2 INTO PROPERTY IN EVIDENCE?

3 A. YES. THIS SHEET DOES ADVISE US WHEN IT WAS IMPOUNDED
4 AND PLACED INTO PROPERTY IN EVIDENCE.

5 Q. AND WHEN WAS THAT?

6 A. IT WAS ACTUALLY IMPOUNDED ON THE 28TH OF DECEMBER OF
7 2002 AT 11:25.

8 Q. AND THEN WHAT DID YOU DO WITH IT WHEN YOU GOT IT BACK
9 TO THE LAW ENFORCEMENT CENTER?

10 A. WHEN I PLACED IT INTO PROPERTY IN EVIDENCE AT THE LAW
11 ENFORCEMENT CENTER IT WAS ON THE 28TH OF DECEMBER OF 2002 AT
12 1:40 PM.

13 Q. OKAY. AND WAS THERE A PARTICULAR PLACE WHERE YOU PUT
14 IT INTO PROPERTY IN EVIDENCE?

15 A. I PLACED IT INTO A DROP-BOX. WHAT IT IS IS IT'S -- YOU
16 JUST PLACE IT -- IF IT'S A NON-DANGEROUS ITEM, LIKE A
17 FIREARM OR SO FORTH, ONCE I HEAT-SEAL IT SO IT CAN'T BE
18 TAMPERED WITH AT ALL I PLACE IT IN THE DROP-BOX SO IT'S
19 SECURED. IT'S A LOCKED BOX. AND THEN THE FOLLOWING MORNING
20 THE PROPERTY IN EVIDENCE STAFF WILL TAKE IT AND SECURE IT
21 INTO THE ACTUAL LOCKER DOWNSTAIRS.

22 Q. OKAY. SO THIS LOCK-BOX THAT YOU MENTIONED, NOW IT IS A
23 SECURE LOCATION THEN?

24 A. YES, IT IS.

25 Q. OKAY. CAN JUST ANYBODY JUST WALK UP AND HAVE A KEY AND

JEFFREY LONG - DIRECT EXAMINATION BY MR. MOYER

331

1 OPEN THAT AND TAKE SOMETHING OUT OF IT?

2 A. NO, ONLY PRIVILEGED STAFF OF THE PROPERTY IN EVIDENCE.

3 Q. OKAY. AND BEFORE PLACING IT INTO THAT LOCKED BOX DID

4 YOU ASSIGN A CASE NUMBER TO IT?

5 A. I DID, YES.

6 Q. AND WHAT WAS THE CASE NUMBER THAT YOU ASSIGNED?

7 A. THE CASE NUMBER THAT WAS ASSIGNED IS CITY CASE NUMBER

8 2002-101655.

9 Q. AND YOU MENTIONED ABOUT HEAT-SEALING IT. TELL THE JURY

10 A LITTLE BIT ABOUT THAT PROCESS.

11 A. YES. ANY TYPE OF JEWELRY, OR CONTROLLED SUBSTANCE, OR

12 NARCOTICS HAS TO BE HEAT-SEALED WITH MY INITIALS, THE DATE

13 AND CASE NUMBER INSIDE THE HEAT-SEAL SO THAT ONCE SEALED IT

14 CANNOT BE TAMPERED WITH OR CHANGED UNTIL IT'S TESTED BY OUR

15 LAB.

16 Q. OKAY. DID YOU PUT YOUR INITIALS ANYWHERE ON THAT?

17 A. YES, I DID.

18 Q. OKAY. AND YOU DID SO IN THIS CASE?

19 A. YES, I DID.

20 Q. AND UP UNTIL THAT TIME, UP UNTIL WHEN YOU PUT IT IN THE

21 DROP-BOX AND HAD IT HEAT-SEALED DID YOU KEEP IT IN YOUR

22 CUSTODY THAT PERIOD OF TIME?

23 A. ONCE IT'S HEAT-SEALED ---

24 Q. ACTUALLY, I'M SORRY, PRIOR TO IT BEING HEAT-SEALED?

25 FROM WHEN YOU COLLECTED IT OUT THERE ON THE SCENE TO WHEN

JEFFREY LONG - DIRECT EXAMINATION BY MR. MOYER

332

1 YOU HAD IT HEAT-SEALED?

2 A. YES. ONCE I COLLECTED IT FROM THE SCENE I KEPT IT IN
3 MY POSSESSION THE ENTIRE TIME UNTIL IT WAS TRANSPORTED TO
4 THE LAW ENFORCEMENT CENTER AND PLACED IN PROPERTY IN
5 EVIDENCE.

6 Q. OKAY. ACTUALLY, LET ME ASK YOU IF YOU WOULD, PUT IT
7 BACK INTO THE ENVELOPE.

8 A. OKAY.

9 MR. SUMNER: YOUR HONOR, AS TO BOTH THE DRUGS AND, I
10 THINK, WHAT MR. MOYER HAS THERE, JUST SUBJECT TO WHAT I --
11 PRETRIAL ---

12 THE COURT: OKAY. SUBJECT TO YOUR OBJECTION.

13 MR. MOYER: SO IT'S MY UNDERSTANDING IT'S BEEN PLACED
14 INTO EVIDENCE THEN?

15 MR. SUMNER: I JUST ANTICIPATED THAT YOU WERE TRYING TO
16 DO THAT.

17 THE COURT: SUBJECT TO THE OBJECTION.

18 (WHEREUPON STATE'S EXHIBIT NUMBERS 45 AND 60 WERE
19 ENTERED INTO EVIDENCE)

20 Q. I'M GOING TO HAND YOU WHAT'S BEEN MARKED AS STATE'S
21 EXHIBIT NUMBER 60 AND IT'S ACTUALLY NOW INTO EVIDENCE AS
22 STATE'S EXHIBIT NUMBER 60. WOULD YOU TAKE A LOOK AT THAT
23 PACKAGE AND TELL THE JURY WHAT IT IS THAT I'VE JUST HANDED
24 YOU?

25 A. IT'S THE DIGITAL SCALE, THE MULTI-COLORED BOX THAT

JEFFREY LONG - DIRECT EXAMINATION BY MR. MOYER

333

1 CAUGHT MY ATTENTION TO THE PACKAGE IN THE FIRST PLACE,
2 MULTIPLE PLASTIC BAGGIES. THEY ARE EMPTY ZIPLOCK BAGS.

3 Q. NOW WHERE DID YOU FIND THOSE MULTIPLE PLASTIC ZIPLOCK
4 BAGGIES?

5 A. ALSO WITH THE ENTIRE PACKAGE, WITH THIS ---

6 Q. WITH THE SCALE AND WITH THE WHITE POWDER SUBSTANCE?

7 A. YES.

8 Q. NOW WERE THE BAGS, THE EMPTY BAGS, WERE THEY AT ALL ANY
9 SIMILAR TO THE BAGS THAT HAD THE WHITE POWDER SUBSTANCE IN
10 IT?

11 A. YES. THEY'RE ALL ZIPLOCK BAGS. SOME WERE, LIKE I
12 SAID, SMALLER PACKAGES, BUT IT'S THE SAME TYPE BAG.

13 Q. OKAY. IF YOU WOULD JUST TAKE A LOOK AT STATE'S EXHIBIT
14 NUMBER 59 AND -- THE PHOTOGRAPH THAT INCLUDES THE POWDER
15 SUBSTANCE. ARE THEY SIMILAR IN APPEARANCE TO THE BAGS THAT
16 WERE EMPTY?

17 A. YES, THEY DO. THEY ALL DISPLAY A PINK AND PURPLE SEAL,
18 WHICH IS CONSISTENT TO THE SAME AS THIS.

19 Q. OKAY. IF YOU WOULD, LET ME ASK YOU JUST TO PUT THE
20 EXHIBIT BACK INTO THE BAG. ALL RIGHT. PLEASE ANSWER ANY
21 QUESTIONS THE DEFENSE MAY HAVE.

22 MR. SUMNER: I DON'T HAVE ANY.

23 THE COURT: NO QUESTIONS? ALL RIGHT. THANK YOU. YOU
24 CAN STEP DOWN.

25 MR. MOYER: I CALL DEPUTY RICK FLOYD.

RICKY FLOYD - DIRECT EXAMINATION BY MR. MOYER

334

1 RICKY FLOYD, BEING DULY

2 SWORN TESTIFIED AS FOLLOWS:

3 DIRECT EXAMINATION BY MR. MOYER:

4 Q. DETECTIVE FLOYD, YOU'RE EMPLOYED BY THE GREENVILLE
5 POLICE DEPARTMENT?

6 A. I AM.

7 Q. HOW LONG HAVE YOU WORKED FOR THE GREENVILLE POLICE
8 DEPARTMENT?

9 A. JUNE WILL BE TWELVE YEARS.

10 Q. NOW DID YOU COLLECT ANY EVIDENCE IN CONNECTION TO THIS
11 CASE?

12 A. I DID.

13 Q. AND WHO WAS THAT FROM?

14 A. IT WAS FROM DALE SHIRLEY.

15 Q. LET ME HAND YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT
16 NUMBER 61. IF YOU WOULD, JUST TAKE A LOOK AT THE CONTENTS
17 OF THAT ENVELOPE. AND WHAT IS CONTAINED IN STATE'S EXHIBIT
18 61?

19 A. IT'S A PISTOL.

20 Q. OKAY.

21 A. I MEAN, I'M SORRY, IT'S A REVOLVER.

22 Q. OKAY. HAS THAT REVOLVER BEEN MADE SAFE SO THAT IT
23 CANNOT FIRE?

24 A. IT HAS BEEN.

25 Q. AND ANY BULLETS?

RICKY FLOYD - DIRECT EXAMINATION BY MR. MOYER

335

1 A. NO.

2 Q. OKAY. AND DO YOU RECOGNIZE THAT?

3 A. I DO. YES, SIR.

4 Q. AND HOW ARE YOU ABLE TO RECOGNIZE THAT?

5 A. I FILLED OUT A PROPERTY IN EVIDENCE SHEET AFTER I
6 RECEIVED THE GUN WITH THE NAME OF THE GUN AND SERIAL NUMBER
7 ON THE GUN, WHICH MATCHES -- THE GUN MATCHES THE PROPERTY IN
8 EVIDENCE SHEET.

9 Q. AND WHAT DID YOU DO WITH IT AFTER YOU COLLECTED IT?

10 A. I PUT IT IN PROPERTY IN EVIDENCE.

11 Q. WHAT WAS THE DATE THAT YOU TOOK THAT?

12 A. ON NOVEMBER 12TH OF 2002.

13 Q. AND AFTER YOU COLLECTED, I MEAN, WHO WAS IT YOU
14 COLLECTED IT FROM?

15 A. FROM DALE SHIRLEY.

16 Q. WHERE WERE YOU?

17 A. WE WERE AT EITHER HIS MOTHER OR HIS GRANDMOTHER'S HOUSE
18 OFF OF EASLEY BRIDGE ROAD.

19 Q. OKAY.

20 Q. AND AT WHOSE DIRECTION DID YOU GO OUT THERE AND MEET
21 WITH HIM? DID DETECTIVE FULLER ASK YOU TO GO OUT THERE OR
22 DID YOU RECEIVE THE INFORMATION YOURSELF TO GO OUT THERE?

23 A. I THINK I RECEIVED THE PHONE CALL. WE HAD PREVIOUSLY
24 SPOKEN TO HIM. AND THEN HE WAS LIKE ON A BREAK OR IN
25 BETWEEN JOBS AND I MET HIM IN A PARKING LOT. AND THAT'S

TERESA THACKER - DIRECT EXAMINATION BY MR. MOYER

336

1 WHEN HE TOLD ME ABOUT THE GUN. AND I -- AND HE RODE WITH ME
2 TO THE HOUSE TO PICK IT UP.

3 Q. OKAY. ALL RIGHT. AND YOU PLACED IT INTO EVIDENCE --
4 INTO THE PROPERTY IN EVIDENCE ROOM THEN THE SAME DAY THAT
5 YOU COLLECTED IT?

6 A. I DID.

7 Q. OKAY.

8 MR. MOYER: YOUR HONOR, AT THIS TIME I'D MOVE TO HAVE
9 STATE'S EXHIBIT NUMBER 61 MOVED INTO EVIDENCE.

10 MR. SUMNER: NO OBJECTION.

11 MR. MOYER: NOTHING FURTHER FOR THIS WITNESS.

12 MR. SUMNER: NO, SIR.

13 THE COURT: THANK YOU. YOU CAN STEP DOWN.

14 MR. MOYER: I CALL TERESA THACKER.

15 TERESA THACKER, BEING
16 DULY SWORN TESTIFIED AS FOLLOWS:

17 DIRECT EXAMINATION BY MR. MOYER:

18 Q. MS. THACKER, WHERE ARE YOU EMPLOYED?

19 A. VERIZON WIRELESS.

20 Q. WHAT KIND OF COMPANY IS VERIZON?

21 A. WE'RE A CELLULAR PHONE COMPANY.

22 Q. WHAT DEPARTMENT DO YOU WORK FOR AT VERIZON?

23 A. I'M IN THE EXECUTIVE RELATIONS DEPARTMENT.

24 Q. IS THAT LOCATED HERE IN GREENVILLE?

25 A. IT IS.

TERESA THACKER - DIRECT EXAMINATION BY MR. MOYER

337

1 Q. WHAT IS YOUR POSITION?

2 A. I'M A COORDINATOR.

3 Q. OKAY. AND WHAT ARE YOUR DUTIES?

4 A. I WOULD HANDLE COMPLAINTS THAT ARE DIRECTED TO THE
5 PRESIDENT OF THE COMPANY. AND I RESPOND TO THE BETTER
6 BUSINESS BUREAU, THE FCC, AND THE DEPARTMENT OF JUSTICE. I
7 WOULD ALSO RESPOND TO SUBPOENAS AND APPEAR IN COURT.

8 Q. I DON'T REMEMBER IF I JUST ASKED YOU THIS OR NOT, BUT
9 HOW LONG HAVE YOU WORKED FOR VERIZON?

10 A. FIVE AND A HALF YEARS.

11 Q. AND HOW LONG OF THAT TIME HAVE YOU WORKED IN THE
12 CAPACITY THAT YOU DO NOW?

13 A. TWO AND A HALF.

14 Q. AND DO YOUR DUTIES INCLUDE MAKING COURT APPEARANCES AND
15 IN RESPONSE TO SUBPOENAS FOR VERIZON BUSINESS RECORDS?

16 A. YES, SIR.

17 MR. SUMNER: YOUR HONOR, I HAVE NO OBJECTION TO THOSE
18 RECORDS, THAT WOULD BE BUSINESS RECORDS. AND SHE'S GOING TO
19 IDENTIFY THEM.

20 THE COURT: ALL RIGHT. WITHOUT OBJECTION.

21 (WHEREUPON STATE'S EXHIBIT NUMBER 62 WAS ENTERED INTO
22 EVIDENCE)

23 Q. MS. THACKER, I'M GOING TO HAND YOU STATE'S EXHIBIT
24 NUMBER 62, WHICH IS NOW IN EVIDENCE. AND I'M GOING TO ASK
25 YOU, DO YOU RECOGNIZE THOSE CONTAINING RECORDS OF VERIZON?

TERESA THACKER - DIRECT EXAMINATION BY MR. MOYER

338

1 A. I DO.

2 Q. NOW ARE THOSE RECORDS THAT I'VE JUST HANDED YOU, THEY
3 ARE FOR PHONE RECORDS FOR WHAT TELEPHONE NUMBER?

4 A. 864-420-0035.

5 Q. AND NOVEMBER OF 2002 WHOSE NAME WAS THAT ACCOUNT IN?

6 A. IN THE NAME OF BEVERLY RICE.

7 Q. OKAY. SO WITH THE INFORMATION THAT IS CONTAINED IN
8 THOSE RECORDS, THEY'RE KEPT IN THE ORDINARY COURSE OF
9 BUSINESS PRACTICE FOR VERIZON?

10 A. YES, THEY ARE.

11 Q. OKAY. LET ME PLACE DUPLICATES ON THE SCREEN. I WANT
12 TO ASK YOU, IF YOU WOULD, TO FOLLOW ALONG WITH THE RECORDS
13 THAT YOU HAVE. IF YOU WOULD, MS. THACKER, WHAT I'D LIKE TO
14 DO FIRST IS ASK YOU TO EXPLAIN TO THE JURY WHAT THE
15 DIFFERENT COLUMNS INDICATE STARTING WITH -- STARTING FROM
16 LEFT TO RIGHT.

17 A. THE DETAIL COLUMN, WHICH IS THE FIRST COLUMN, WOULD BE
18 THE NUMBER OF CALL. THE SECOND IS THE SENSOR. THE SENSOR
19 IS ACTUALLY ALL CALLS ARE ROUTED THROUGH A SWITCH. AND THE
20 SENSOR IS A SWITCH THAT PROCESSED THE CALL. THE DATE, OF
21 COURSE, IS THE DATE THAT THE CALL WAS MADE. THE TIME IS THE
22 TIME OF THE CALL.

23 Q. NOW LET ME STOP YOU THERE REAL QUICK. THE TIMES AS
24 THEY ARE LISTED ON THESE RECORDS, THE WAY THEY'RE LISTED
25 DOWN STARTING FROM TOP TO BOTTOM, DO THEY GO BACKWARDS OR

TERESA THACKER - DIRECT EXAMINATION BY MR. MOYER

339

1 FORWARDS?

2 A. THEY GO BACKWARDS.

3 Q. OKAY. NOW THE NEXT -- WHAT ABOUT THE COLUMN THAT IS
4 TITLED ORIG C/G, WHAT DOES THAT COLUMN STAND FOR?

5 A. THAT IS THE CALL ORIGINING CELL GROUP, WHICH IS
6 ACTUALLY THE CELLULAR TOWER THAT THE CALL WOULD HAVE BEEN
7 RECEIVED ON OR THE VERY FIRST CELLULAR TOWER THAT WAS THE
8 CALL WAS PLACED OR RECEIVED ON.

9 Q. OKAY. AND SO THERE'S A NUMBER THAT'S LISTED IN THAT
10 COLUMN, IS THAT CORRECT?

11 A. THAT IS CORRECT.

12 Q. THERE ARE DIFFERENT NUMBERS THAT ARE LISTED?

13 A. THAT IS CORRECT. AND THOSE ARE USUALLY THE CELLULAR
14 TOWER NUMBERS.

15 Q. OKAY. AND THERE'S A COUPLE OF EXCEPTIONS, IS THAT
16 RIGHT?

17 A. CORRECT.

18 Q. AND IS ONE OF THE EXCEPTIONS NUMBER 1201?

19 A. THAT IS CORRECT. AND THAT IS A TRUNK GROUP.

20 Q. OKAY. SO IF WE SEE 1201 IN THAT COLUMN DOES THAT
21 INDICATE A CELL TOWER?

22 A. NO, SIR.

23 Q. OKAY. WHAT ABOUT IN SOME OF THE -- IN SOME OF THEM

24 THERE'S A ZERO INDICATED. DOES THAT INDICATE A CELL TOWER?

25 A. NO, SIR, IT DOESN'T.

TERESA THACKER - DIRECT EXAMINATION BY MR. MOYER

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1 Q. OKAY. OTHER THAN THAT THE OTHER NUMBERS INDICATE CELL
2 TOWERS?

3 A. THAT'S CORRECT.

4 Q. AND IT INDICATES TOWERS FROM WHICH THE TELEPHONE CALL
5 WAS MADE?

6 A. CORRECT.

7 Q. OKAY. AND HOW GREAT A DISTANCE FROM THAT CELL TOWER
8 WOULD THAT CALL HAVE BEEN MADE?

9 A. WITHIN A LARGE CITY SUCH AS GREENVILLE YOU COULD BE
10 WITHIN ONE TO THREE MILES AND PICK UP A CELL TOWER 'CAUSE
11 THERE ARE SO MANY. BUT IF YOU WERE IN A SMALLER TOWN YOU
12 COULD BE WITHIN FIVE MILES.

13 Q. OKAY. BUT FOR PURPOSES OF GREENVILLE IT WOULD BE ONE
14 TO THREE MILES?

15 A. THAT'S CORRECT.

16 Q. AND DID YOU ACTUALLY PREPARE A MAP THAT SHOWS THE
17 DIFFERENT CELL TOWERS IN GREENVILLE?

18 A. I DID.

19 Q. IT'S ALREADY BEEN INTRODUCED INTO EVIDENCE, BUT LET ME
20 JUST SHOW YOU STATE'S EXHIBIT NUMBER 53. IS THERE ENOUGH
21 LIGHT IN HERE FOR YOU TO BE ABLE TO SEE THAT AND RECOGNIZE
22 THAT AS THE MAP YOU PREPARED?

23 A. YES.

24 Q. NOW GOING ALONG THE COLUMNS, THE COLUMN THAT'S ENTITLED
25 MID, WHAT DOES THAT STAND FOR?

TERESA THACKER - DIRECT EXAMINATION BY MR. MOYER

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1 A. MID IS THE MOBILE ID NUMBER, WHICH IS THE MOBILE NUMBER
2 THAT OWNS THESE PARTICULAR CALL RECORDS.

3 Q. OKAY. AND THERE IS THEN A COLUMN THAT'S ENTITLED -- IT
4 HAS THE WORD CALL WITH A NUMBER ---

5 A. CORRECT.

6 Q. WHAT DOES THAT STAND FOR?

7 A. THOSE WOULD BE THE DIGITS THAT WERE DIALED BY THE
8 PARTICULAR MOBILE NUMBER OWNING THESE RECORDS.

9 Q. OKAY. AND THERE'S A COLUMN ENTITLED CPN.

10 A. CPN IS THE CALLER ID INFORMATION, WHICH WOULD INDICATE
11 THE NUMBER THAT WAS CALLING. IT WAS AN INTERNAL OR INCOMING
12 CALL.

13 Q. AND THEN FINALLY THERE'S A COLUMN ENTITLED SZR. WHAT
14 DOES THAT COLUMN INDICATE?

15 A. THAT IS THE CALL DURATION IN SECONDS, HOW LONG THE
16 ACTUAL CALL LASTED.

17 Q. OKAY. AND ACTUALLY THERE'S ONE FINAL COLUMN THERE THAT
18 SAYS SUCCESS FAIL. WHAT DOES THAT SIGNIFY?

19 A. THAT JUST LETS US KNOW IF THE CALL WAS A SUCCESS OR IF
20 IT WAS A FAILURE.

21 Q. NOW BY THOSE DESIGNATIONS, SUCCESS OR FAILURE, WOULD AN
22 ANSWERING MACHINE PICKING UP, WOULD THAT QUALIFY AS A
23 SUCCESS?

24 A. THAT IS CORRECT.

25 Q. OKAY. AND BUSY SIGNAL?

TERESA THACKER - DIRECT EXAMINATION BY MR. MOYER

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1 A. A BUSY SIGNAL WOULD BE A FAILURE.

2 Q. OKAY. NOW LET ME TAKE YOU TO A SPECIFIC TELEPHONE
3 CONVERSATION. I'M SORRY. LET ME TAKE YOU TO A SPECIFIC
4 TIME. AND ON THE SECOND -- ON PAGE TWO NUMBER FORTY-NINE.
5 WHAT WAS THE DATE THAT THAT TELEPHONE CALL WAS MADE?

6 A. NOVEMBER 5TH, 2002.

7 Q. AND WHAT WAS THE TIME THE CALL WAS MADE?

8 A. 3:40 IN THE AFTERNOON.

9 Q. AND THAT CALL WAS MADE FROM WHAT PHONE NUMBER?

10 A. 864-420-0035.

11 Q. OKAY. AND WAS THAT THE CALL -- WAS THAT THE NUMBER
12 THAT WAS CALLED OR WAS THAT THE NUMBER THAT MADE THE CALL?

13 A. THAT WAS THE NUMBER THAT -- IT RECEIVED A PHONE CALL.

14 Q. RECEIVED A CALL?

15 A. UM-HUM (AFFIRMATIVE).

16 Q. OKAY. AND WHAT WAS THE NUMBER THAT MADE THE PHONE
17 CALL?

18 A. 864-982-5064.

19 Q. NOW THE FOLLOWING TWO -- THE FOLLOWING TWO CALLS,
20 NUMBERS FORTY-SEVEN AND FORTY-EIGHT, THEY WERE MADE -- DID
21 THEY INVOLVE THE SAME TWO PHONES?

22 A. YES, THEY DID.

23 Q. OKAY. AND WHAT WERE THE TIMES FOR THOSE CALLS?

24 A. 3:46 IN THE AFTERNOON AND 4:14 IN THE AFTERNOON.

25 Q. OKAY. AND WHAT IS THE CELL TOWER THAT WAS USED FOR

TERESA THACKER - DIRECT EXAMINATION BY MR. MOYER

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1 THAT CALL, FOR THOSE CALLS? I'M SORRY.

2 A. THAT WAS CELL TOWER NUMBER THIRTY-THREE, WHICH IS THE
3 WMUU CELL TOWER.

4 Q. OKAY. AND IF YOU WOULD -- IF I CAN SHOW YOUR MAP ON
5 THE OVERHEAD, ARE YOU ABLE TO PINPOINT ON THAT MAP WHERE THE
6 WMUU SITE IS? I HAVE A LASER POINTER IF YOU ARE ABLE TO, IF
7 YOU'RE ABLE TO SEE IT. IF YOU NEED TO STEP DOWN AND LOOK AT
8 THE MAP OVER HERE I'LL ASK YOU TO DO THAT. YOU CAN LOOK AT
9 THE OVERHEAD. YOU CAN LOOK AT THE ACTUAL MAP ON THE
10 OVERHEAD ITSELF.

11 A. RIGHT THERE.

12 Q. OKAY. AND THAT'S CELL TOWER WHAT NUMBER?

13 A. THIRTY-THREE. YES, THAT IS RIGHT.

14 Q. OKAY. THANK YOU. PLEASE TAKE YOUR SEAT AGAIN. NOW IF
15 YOU WOULD, GOING UP -- GOING IN PROPER TIME SEQUENCE THERE
16 IS A CALL MADE, CALL NUMBER FORTY-FOUR, WHAT WAS THE DATE
17 AND TIME OF THAT CALL?

18 A. IT WAS NOVEMBER 5TH, 2002 AT 4:24 IN THE AFTERNOON.

19 Q. OKAY. AND WHAT WAS THE PHONE NUMBER THAT MADE THAT
20 CALL?

21 A. IT WAS 864-363-3849.

22 Q. OKAY. AND THE NEXT CALL, NUMBER FORTY-THREE, WAS MADE
23 AT WHAT TIME?

24 A. AT 4:25 IN THE AFTERNOON.

25 Q. AND THAT CALL WAS MADE FROM WHICH CELL PHONE?

TERESA THACKER - DIRECT EXAMINATION BY MR. MOYER

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- 1 A. IT WAS MADE FROM 864-420-0035.
- 2 Q. WHICH IS THE CELL PHONE IN QUESTION?
- 3 A. CORRECT.
- 4 Q. AND WHAT PHONE NUMBER WAS CALLED?
- 5 A. IT WAS DIALING 918-9584.
- 6 Q. AND WAS A CELL TOWER LISTED FOR THAT?
- 7 A. IT WAS THIRTY-THREE, WHICH IS WMUU.
- 8 Q. IF YOU WOULD MOVE ON TO THE NEXT CALL, NUMBER FORTY-
- 9 TWO. WHAT CELL PHONE DIALED THAT NUMBER?
- 10 A. 864-363-3849 WAS CALLING THE CELL PHONE IN QUESTION.
- 11 Q. OKAY. AND THAT WAS AT WHAT TIME?
- 12 A. AT 4:49 IN THE AFTERNOON.
- 13 Q. AND LET ME ASK YOU, ARE YOU ABLE TO DETERMINE A CELL
- 14 TOWER SITE FOR THAT CALL?
- 15 A. NO, SIR.
- 16 Q. OKAY. AND THEN THE NEXT CALL WAS AT WHAT TIME, CALL
- 17 NUMBER FORTY-ONE?
- 18 A. AT 4:53 IN THE AFTERNOON.
- 19 Q. AND WHAT WAS -- WHICH CELL PHONE MADE THAT CALL?
- 20 A. 864-420-0035 PLACED THE CALL.
- 21 Q. AND THAT WENT TO -- CALLED WHAT NUMBER?
- 22 A. IT CALLED 864-918-9584.
- 23 Q. OKAY. NOW THAT WAS MADE FROM WHICH CELL TOWER SITE?
- 24 A. SITE THIRTY-THREE, WHICH IS THE WMUU SITE.
- 25 Q. NOW LOOKING AT CALL NUMBER FORTY, AND THIRTY-EIGHT, AND

TERESA THACKER - DIRECT EXAMINATION BY MR. MOYER

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1 THIRTY-SIX, WOULD YOU JUST STATE WHAT THE CELLULAR SITE WAS
2 FOR THOSE CALLS?

3 A. ALL THREE WERE NUMBER THIRTY-THREE, WHICH IS THE WMUU
4 SITE.

5 Q. AND THAT TAKES US UP TO WHAT TIME?

6 A. THAT WAS 4:59 IN THE AFTERNOON.

7 Q. OKAY. I'LL ASK YOU TO CONTINUE ON IN SEQUENCE NOW,
8 PAGE ONE. AND IF YOU WOULD LOOK AT CALLS NUMBER THIRTY-FOUR
9 AND THIRTY-FIVE. WHAT TIMES WERE THOSE CALLS MADE?

10 A. THEY WERE MADE AT 4:59 AND 5:25 IN THE AFTERNOON.

11 Q. OKAY. AND WHAT ABOUT CALL NUMBER -- OKAY. NOW THOSE
12 TWO CALLS WERE MADE FROM WHAT CELLULAR SITE?

13 A. SITE THIRTY-THREE, WHICH IS THE WMUU SITE.

14 Q. NOW WHEN IS THE NEXT TIME-FRAME THAT A CALL WAS MADE
15 THAT GOES TO A DIFFERENT CELLULAR SITE?

16 A. AT 6:15 PM.

17 Q. AND WHAT CELLULAR SITE WAS USED FOR THAT CALL?

18 A. IT WAS SITE FIFTY-SIX.

19 Q. AND WHICH -- WHERE IS THAT CELLULAR TOWER? AND WOULD
20 YOU LIKE TO REFER TO THE MAP?

21 A. PLEASE.

22 Q. IF YOU NEED THE LIGHTS TELL US AND WE CAN TURN THE
23 LIGHTS ON.

24 A. THAT IS THE I-85 AND HIGHWAY 276 CELLULAR TOWER.

25 Q. OKAY. FOR THE BENEFIT OF THE JURY THEN, THAT SITE THAT

TERESA THACKER - DIRECT EXAMINATION BY MR. MOYER

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1 YOU'RE REFERRING TO IS RIGHT HERE?

2 A. CORRECT.

3 Q. NOW MOVING IN SEQUENCE WHEN IS THE NEXT CELLULAR --

4 WHAT TIME DO WE HAVE A DIFFERENT CELLULAR SITE LISTED AGAIN
5 AFTER 6:15?

6 A. THE NEXT CELLULAR WOULD BE 6:46 PM ON SITE NUMBER
7 SEVENTY.

8 Q. OKAY. AND CAN YOU SAY WHERE THAT CELLULAR TOWER SITE
9 IS?

10 A. THAT IS THE STANDING SPRINGS ROAD CELLULAR SITE.

11 Q. AND WHAT -- WHERE IS THE INTERSECTION FOR THAT SITE?

12 A. THAT IS 385 AND 276.

13 Q. OKAY. FOR THE BENEFIT OF THE JURY THAT IS DOWN HERE IN
14 THE LOWER RIGHT HAND CORNER OF THE MAP WHERE MY FINGER IS,
15 IS THAT CORRECT?

16 A. YES, ---

17 Q. OKAY.

18 A. --- THAT IS CORRECT.

19 Q. IF YOU WOULD NOW LOOK TO CALL NUMBER TWENTY-FIVE, I'M
20 SORRY, CALL NUMBER TWENTY-FOUR. WHAT CELLULAR SITE IS
21 LISTED FOR CALL NUMBER TWENTY-FOUR?

22 A. NUMBER TWENTY-FOUR, THERE'S NOT ONE LISTED.

23 Q. OKAY. I'M SORRY. I MEANT TWENTY-FIVE.

24 A. FOR TWENTY-FIVE IT'S NUMBER FIFTY-SEVEN.

25 Q. OKAY. AND SHOULD I HAND YOU THE MAP BACK TO DETERMINE

TERESA THACKER - DIRECT EXAMINATION BY MR. MOYER

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1 WHERE THAT SITE IS?

2 A. THANK YOU. AND THAT IS THE MAULDIN CITY CELLULAR SITE.

3 Q. OKAY. REFERRING BACK TO YOUR MAP THAT WOULD BE WHERE
4 MY FINGER IS?

5 A. THAT'S CORRECT.

6 Q. OKAY. LET ME TAKE YOU NOW TO CALL NUMBERS TEN, I'M
7 SORRY, ELEVEN, TWELVE, AND THIRTEEN. AND WHAT TIMES WERE
8 THOSE CALLS MADE?

9 A. AT 9:05, 9:06, AND 9:26 PM.

10 Q. AND FROM WHAT CELLULAR SITE WERE THOSE CALLS MADE?

11 A. THOSE WERE MADE FROM CELLULAR SITE ONE THIRTY-SEVEN,
12 WHICH IS THE MCPHEARSON SITE.

13 Q. OKAY. AND IS THAT THIS SITE WHERE MY FINGER IS
14 POINTING RIGHT NOW?

15 A. THAT'S CORRECT.

16 Q. LET ME SHOW YOU NOW WHAT'S BEEN MARKED AS STATE'S
17 EXHIBIT NUMBER 63. AND IF YOU WOULD, CAN YOU IDENTIFY --

18 ARE THOSE THE SAME TYPE OF RECORDS AS THE ONES THAT WE WERE
19 JUST -- YOU WERE JUST REFERRING TO?

20 A. THEY ARE.

21 Q. AND THE SAME COLUMNS, THE SAME INFORMATION CONTAINED IN
22 THOSE AS WELL?

23 A. YES.

24 Q. AND WHAT NUMBER -- WHAT TELEPHONE NUMBER HAVE THOSE
25 RECORDS BEEN MADE FOR?

TERESA THACKER - DIRECT EXAMINATION BY MR. MOYER

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1 A. THOSE WERE OWNED BY 864-918-9584.

2 Q. AND THOSE RECORDS OR THAT ACCOUNT WAS IN WHOSE NAME?

3 A. IN THE NAME OF MELISSA WHITE.

4 Q. IF YOU WOULD, I JUST WANT TO REFER YOU TO A COUPLE ---

5 MR. MOYER: YOUR HONOR, AT THIS TIME I'D MOVE TO HAVE

6 STATE'S EXHIBIT NUMBER -- STATE'S EXHIBIT NUMBER 63 MOVED

7 INTO EVIDENCE.

8 MR. SUMNER: WITHOUT OBJECTION, JUDGE.

9 THE COURT: ALL RIGHT.

10 Q. LET ME REFER YOU TO CALL NUMBER SIXTY-THREE AND SIXTY-

11 FOUR. I'M SORRY. LET ME REFER YOU TO CALL NUMBER SIXTY-

12 THREE. WOULD YOU PLEASE STATE WHAT THE TELEPHONE NUMBER WAS

13 THAT MADE THAT TELEPHONE CALL?

14 A. 864-363-3849.

15 Q. AND WHAT TIME WAS THAT TELEPHONE CALL MADE?

16 A. AT 5:28 PM.

17 Q. AND WHAT TELEPHONE NUMBER WAS CALLED FROM THAT NUMBER?

18 A. 864-918-9584 RECEIVED THAT CALL.

19 Q. OKAY. NOW IF YOU WOULD LOOK AT THE TWO CALLS THAT

20 SURROUND THAT, CALL NUMBER SIXTY-TWO AND CALL NUMBER SIXTY-

21 FIVE. ARE CELLULAR SITES LISTED FOR THOSE CALLS?

22 A. YES, THEY ARE.

23 Q. AND WHAT SITE IS LISTED FOR THOSE CALLS?

24 A. SITE NUMBER SIXTEEN.

25 Q. AND WHERE IS SITE NUMBER SIXTEEN? AND LET ME ALLOW YOU

TERESA THACKER - CROSS EXAMINATION BY MR. SUMNER

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1 TO REFER BACK TO THE MAP.

2 A. THAT IS THE AUGUSTA ROAD CELLULAR SITE.

3 Q. SO LOOKING AT THE MAP YOU MENTIONED -- THE NUMBER IS
4 SIXTEEN. AND WE CAN SEE A NUMBER SIXTEEN LISTED BY THIS
5 STAR. IS THAT THE SITE THAT YOU WERE REFERRING TO?

6 A. THAT'S CORRECT.

7 Q. OKAY. NOW JUST TO MAKE SURE WE WERE CLEAR, THE SITE
8 THAT IS LISTED, IS THAT THE SITE OF THE TELEPHONE -- WHERE
9 THE TELEPHONE WAS FOR THE PHONE THAT'S IN QUESTION HERE, FOR
10 THE PHONE FOR WHOSE RECORDS YOU BROUGHT?

11 A. THAT IS CORRECT.

12 Q. SO WHETHER IT'S -- OKAY. ONE MOMENT PLEASE. OKAY.
13 PLEASE ANSWER ANY QUESTIONS THE DEFENSE MAY HAVE.

14 MR. SUMNER: BRIEFLY.

15 CROSS EXAMINATION BY MR. SUMNER:

16 Q. MS. THACKER, I BELIEVE YOU MENTIONED EARLY ON THAT THE
17 CELL TOWER RANGE IS HOW MANY MILES, THESE INNER CITY TOWERS?

18 A. THEY'RE WITHIN ONE TO THREE MILES.

19 Q. ONE TO THREE MILES?

20 A. CORRECT.

21 Q. AND THAT WOULD BE AS THE CROW FLIES, IS THAT RIGHT? IN
22 OTHER WORDS, A CIRCULAR THREE MILE RADIUS AROUND THE TOWER?

23 A. YES, SIR.

24 Q. SO IT WOULD, I MEAN, A ROAD MAY GO KIND OF ZIG-ZAG, BUT
25 IT WOULD GO STRAIGHT OUT? IF YOU TRAVELED BY ROAD IT WOULD

JAMES ARMSTRONG - DIRECT EXAMINATION BY MR. MOYER

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1 BE MORE THAN THREE MILES POTENTIALLY, WOULD THAT BE CORRECT?

2 A. CORRECT.

3 Q. OKAY. ALL RIGHT. THANK YOU. I DON'T HAVE ANY OTHER
4 QUESTIONS.

5 THE COURT: THANK YOU. YOU CAN STEP DOWN. YOU WANT TO
6 EXCUSE THIS WITNESS?

7 MR. MOYER: YES, PLEASE. THANK YOU, YOUR HONOR.

8 THE COURT: THANK YOU.

9 MR. MOYER: I CALL JAMES ARMSTRONG.

10 JAMES ARMSTRONG, BEING

11 DULY SWORN TESTIFIED AS FOLLOWS:

12 DIRECT EXAMINATION BY MR. MOYER:

13 Q. OKAY. MR. ARMSTRONG, BY WHOM ARE YOU EMPLOYED?

14 A. EMPLOYED BY THE GREENVILLE COUNTY DEPARTMENT OF PUBLIC
15 SAFETY FORENSICS DIVISION CRIME LABORATORY.

16 Q. HOW LONG HAVE YOU BEEN WITH THE DEPARTMENT OF PUBLIC
17 SAFETY?

18 A. JUST A LITTLE OVER EIGHT YEARS.

19 Q. NOW DID YOU HAVE ANY LAW ENFORCEMENT EXPERIENCE PRIOR
20 TO THAT?

21 A. YES, SIR. I WAS A UNIFORM PATROL OFFICER IN LAURENS
22 COUNTY FOR APPROXIMATELY A YEAR AND NINE MONTHS AND WORKED
23 THREE MONTHS AT THE PROBATION, PAROLE, AND PARDON SERVICES
24 FOR THE STATE OF SOUTH CAROLINA.

25 Q. OKAY. NOW WHAT IS YOUR POSITION NOW WITH THE

JAMES ARMSTRONG - DIRECT EXAMINATION BY MR. MOYER

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1 DEPARTMENT OF PUBLIC SAFETY?

2 A. I'M A FORENSIC CHEMIST AND FIREARMS EXAMINER.

3 Q. AND SO YOU DO BOTH FIREARM EXAMINATIONS AND WHAT IS THE
4 PART OF YOUR -- THE FORENSIC CHEMIST PART ASPECT OF IT?

5 A. I ANALYZE SUSPECTED CONTROLLED SUBSTANCES AND REPORT MY
6 FINDINGS.

7 Q. DO YOU DO ABOUT EQUAL WORK ON THOSE TWO DIFFERENT TYPES
8 OF ENDEAVORS OR IS IT MORE HEAVILY WEIGHTED TOWARDS ONE OR
9 THE OTHER?

10 A. IT'S -- AT THE CURRENT MOMENT DOING A LITTLE MORE TIME
11 ON FIREARMS THAN I AM ON THE DRUG SECTION. HOWEVER, IT WAS
12 EASING INTO THE FIREARM SECTION FROM WHEN I FIRST STARTED MY
13 TRAINING.

14 Q. OKAY. DOES ANYONE ELSE DO FIREARM EXAMINATIONS FOR
15 GREENVILLE COUNTY?

16 A. WE HAVE A PART-TIME EXAMINER THAT RETIRED FROM THE
17 PHILADELPHIA P. D., CAME DOWN AND TRAINED ME. HE WORKS
18 PART-TIME ANYWHERE FROM TEN HOURS A WEEK TO TWENTY HOURS.

19 Q. OKAY. AND SO IT'S JUST YOU TWO THEN?

20 A. YES.

21 Q. HOW ABOUT FOR THE DRUG ANALYSIS, DOES ANYONE ELSE WITH
22 THE DEPARTMENT OF PUBLIC SAFETY FOR GREENVILLE COUNTY WHO
23 ANALYZES CONTROLLED SUBSTANCES?

24 A. THERE ARE THREE FULL-TIME CHEMISTS THAT ARE FULLY
25 TRAINED IN THAT AREA. AND WE HAVE ONE PART-TIME PERSON WHO

JAMES ARMSTRONG - DIRECT EXAMINATION BY MR. MOYER

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1 WORKS ON MARIJUANA AND TABLET IDENTIFICATION.

2 Q. NOW WHAT IS YOUR -- WHAT IS YOUR SCHOOLING HISTORY?

3 HOW FAR DID YOU GO IN SCHOOL?

4 A. I HAVE A BACHELOR OF SCIENCE IN CHEMISTRY FROM ERSKINE
5 COLLEGE.

6 Q. AND HOW LONG HAVE YOU BEEN A FIREARMS EXAMINER?

7 A. BE APPROXIMATELY FOUR YEARS.

8 Q. AND WHAT DOES YOUR WORK IN FIREARMS EXAMINATIONS
9 CONSIST OF? WHAT'S THE RANGE OF WORK?

10 A. RANGE CONSISTS OF IDENTIFYING FIREARMS, RESTORANCE OF
11 OBLITERATED SERIAL NUMBERS, IDENTIFYING AMMUNITION AND THEIR
12 COMPONENTS, EXAMINING FOR FUNCTIONALITY AND OPERABILITY OF
13 FIREARMS, IDENTIFYING AND EXAMINING FIRED BULLET SPECIMENS,
14 FIRED CARTRIDGE CASINGS, AND ANY DAMAGE THAT MAY COME FROM A
15 FIREARM AND TRY TO LOOK AT KNOWN SAMPLES AND COMPARE THEM TO
16 THOSE UNKNOWN SAMPLES.

17 Q. OKAY. AND PLEASE DETAIL THE TRAINING, AND EDUCATION,
18 AND COURSE WORK THAT YOU HAVE HAD TO PREPARE YOU FOR YOUR
19 FIREARMS EXAMINATIONS.

20 A. AS I SAID, I HAVE A BACHELOR OF SCIENCE IN CHEMISTRY
21 FROM ERSKINE COLLEGE, WHICH GAVE ME THE BASICS FOR A
22 SCIENTIFIC BACKGROUND. I HAVE ATTENDED AND COMPLETED THE
23 SOUTH CAROLINA CRIMINAL JUSTICE ACADEMY BASIC CLASS 296
24 WHERE AT THAT CLASS I WAS GIVEN TRAINING IN THE AREA OF THE
25 REMINGTON 870 AND THE MOSSBERG 500 POLICE SHOTGUNS, WHICH

JAMES ARMSTRONG - DIRECT EXAMINATION BY MR. MOYER

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1 DEALT WITH THE OPERATIONS, SAFETY FEATURES, THE DISASSEMBLY,
2 CLEANING, AND MAINTENANCE OF THOSE GUNS AS WELL AS THE GLOCK
3 MODEL 22 SEMIAUTOMATIC HANDGUN.

4 AND I WENT TO THE PROBATION, PAROLE, AND PARDON
5 SERVICES ACADEMY. THAT'S SOUTH CAROLINA ALSO. RECEIVED THE
6 SAME TYPE OF TRAINING IN THE AREA OF DOUBLE ACTION
7 REVOLVERS. BACK IN AUGUST OF '95 I RECEIVED AN AWARD FOR
8 OUTSTANDING MARKSMANSHIP.

9 WHEN I CAME TO GREENVILLE COUNTY AS FAR AS TRAINING
10 HERE I WENT THROUGH AN EXTENSIVE COURSE IN POLARIZED LIGHT
11 MICROSCOPY, WHICH GAVE ME APPROXIMATELY TWO HUNDRED AND
12 TWENTY-FOUR HOURS OF LECTURE AND TIME WORKING ON A
13 MICROSCOPE DOING COMPARISONS OF KNOWN AND UNKNOWN. I'VE
14 BEEN THROUGH GLOCK AND SIG/SAUER ARMOR COURSES, WHICH WENT
15 OVER THE DISASSEMBLY, ASSEMBLY, NOMENCLATURE, SAFETY
16 FEATURES, ERGONOMIC FEATURES, AND VARIOUS ASPECTS OF THOSE
17 FIREARMS.

18 I'VE BEEN THROUGH A BASIC TRAINING COURSE THAT WAS
19 DESIGNED BY MARK STEPHAN AS A RETIRED FIREARMS EXAMINER
20 GOING OVER THE IDENTIFICATION OF FIREARMS AND AMMUNITION,
21 PRESERVING AND MARKING EVIDENCE, RECOVERY TECHNIQUES OF
22 GETTING SPECIMENS FOR COMPARISON, USE OF THE COMPARISON
23 MICROSCOPE.

24 I'VE BEEN DOING THE APPRENTICESHIP TYPE TRAINING WITH
25 MARK STEPHAN SINCE MARCH OF 2000. I HAVE VISITED TWO

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1 DIFFERENT STATE LABS, OUR STATE LAB HERE IN COLUMBIA AND A
2 CONNECTICUT STATE LAB WHERE WE DISCUSSED VARIOUS EXAMINATION
3 TECHNIQUES AND WENT OVER METHODS OF IDENTIFYING FIREARMS AND
4 OTHER RELATED EVIDENCE.

5 I'VE HAD FACTORY TRAINING BY A GUY, ED BENTLEY, IN THE
6 AREA OF WHAT WE CALL RAPID BRASS IDENTIFICATION. THAT'S A
7 COMPUTER SYSTEM THAT WE USE TO ENTER FIRED CARTRIDGE CASINGS
8 IN THAT CAN POSSIBLY BE LINKED TO OTHER CRIMES IN OTHER
9 STATES OR OTHER AGENCIES. I HAVE RECEIVED FACTORY TRAINING
10 ON-SITE AT MY OFFICE FROM THE LEICA CORPORATION BY A GUY
11 NAMED SAM PENNINGTON, WHO TRAINED ME ON THE MICROSCOPE THAT
12 I USE FOR MY COMPARISON IN FIREARMS.

13 I HAVE ATTENDED AND BEEN THROUGH SEVERAL DIFFERENT
14 COURSES WITH THE GREENVILLE COUNTY SHERIFF'S OFFICE SWAT
15 TEAM GOING OVER THE -- HOW THEY LOAD, AND UNLOAD, ASSEMBLE,
16 DISASSEMBLE, AND WHATNOT, ALL THE FIREARMS USED BY
17 GREENVILLE COUNTY SHERIFF'S OFFICE.

18 I'VE ATTENDED AN AMMUNITION MANUFACTURING FACILITY AT
19 GEORGIA ARMS WHERE I ACTUALLY GOT TO OBSERVE THE PROCESS AND
20 ACTUALLY GET TO ASSIST IN MANUFACTURING AMMUNITION FOR A
21 COUPLE OF DIFFERENT LOTS. IN DECEMBER OF 2002 I ATTENDED A
22 GUNPOWDER AND GUNSHOT RESIDUE CLASS WHERE WE ACTUALLY LOOKED
23 AT DETERMINING DISTANCE OF GUNSHOTS FROM A MUZZLE OF A GUN
24 TO THE TARGET.

25 AND IN DECEMBER OF 2003 I'VE ALSO ATTENDED TEN

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1 DIFFERENT FACTORY SEMINARS WHERE I GOT TO VISIT AND OBSERVE
2 THE FIREARM MANUFACTURING PROCESS FROM RAW MATERIALS TO A
3 FINISHED PRODUCT. WE ALSO WENT OVER DIFFERENT DESIGN
4 SPECIFICATIONS AND COMPONENT MATERIALS. I'VE ALSO ATTENDED
5 THE SPRINGFIELD ARMY MUSEUM WHERE I WENT OVER JUST THE BASIC
6 HISTORY OF ALL FIREARMS FROM THE HAND CANNON ALL UP TO
7 MODERN DAY ISSUED FIREARMS.
8 I'VE BEEN THROUGH A SEMINAR ON FIREARMS IDENTIFICATION
9 CONCERNING TRACKING, TRACING, AND LAW SPONSORED BY THE ATF,
10 THE ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES AND THE U. S.
11 ATTORNEY'S OFFICE. I'M A MEMBER OF INTERNATIONAL WOUND
12 BALLISTICS ASSOCIATION. AND I'M ALSO A MEMBER OF THE
13 ASSOCIATION OF FIREARM AND TOOLMARK EXAMINERS. AND I HAVE
14 TESTIFIED AS AN EXPERT IN THE AREA OF FIREARMS
15 IDENTIFICATION IN THE COURT OF LAW.

16 Q. ALL RIGHT. LET ME MOVE ONTO THE AREA OF CONTROLLED
17 SUBSTANCES. HOW LONG HAVE YOU BEEN ANALYZING CONTROLLED
18 SUBSTANCES?

19 A. JUST A LITTLE OVER EIGHT YEARS.

20 Q. AND SO THAT'S STILL -- THAT'S A PRETTY FREQUENT AND
21 REGULAR PART OF YOUR JOB STILL?

22 A. YES, SIR.

23 Q. AND DOES THAT INCLUDE COCAINE?

24 A. YES, SIR, IT DOES.

25 Q. GIVE AN ESTIMATE AS TO HOW MANY TIMES YOU'VE ANALYZED

JAMES ARMSTRONG - DIRECT EXAMINATION BY MR. MOYER

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1 COCAINE.

2 A. IT'S BEEN THOUSANDS OF TIMES.

3 Q. AND WHAT TYPE OF TRAINING HAVE YOU HAD FOR THE -- FOR
4 ANALYZING CONTROLLED SUBSTANCES?

5 A. I HAVE A BACHELOR OF SCIENCE IN CHEMISTRY FROM ERSKINE
6 COLLEGE. I'VE ATTENDED NUMEROUS INSTRUMENTAL SCHOOLS
7 CONCERNING THE INSTRUMENTS I USE IN MY ANALYSIS. I TRAINED
8 IN THE AREA OF DRUG IDENTIFICATION UNDER THE SUPERVISION OF
9 A LAB SUPERVISOR FOR APPROXIMATELY ONE YEAR. I'VE ATTENDED
10 A FORENSIC CHEMIST SEMINAR SPONSORED BY THE DRUG ENFORCEMENT
11 ADMINISTRATION IN WASHINGTON, D. C. I WAS CERTIFIED -- HAVE
12 BEEN CERTIFIED BY THE SOUTH CAROLINA LAW ENFORCEMENT
13 DIVISION TO ANALYZE DANGEROUS AND CONTROLLED SUBSTANCES.
14 AND I HAVE TESTIFIED AS AN EXPERT IN THE AREA OF DRUG
15 IDENTIFICATION NO FEWER THAN SIXTY TIMES.

16 MR. MOYER: YOUR HONOR, AT THIS TIME I WOULD SUBMIT
17 THIS WITNESS AS AN EXPERT IN FIREARMS EXAMINATION AND IN THE
18 ANALYSIS, CHEMICAL ANALYSIS OF COCAINE.

19 THE COURT: ANY VOIR DIRE ABOUT HIS EXPERTISE IN THOSE
20 AREAS?

21 MR. SUMNER: YES, SIR, NOT AS TO THE CONTROLLED
22 SUBSTANCE. I'LL STIPULATE IN TERMS OF CONTROLLED
23 SUBSTANCES.

24 THE COURT: ALL RIGHT.

25 MR. SUMNER: BUT I WOULD LIKE TO VOIR DIRE HIM

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1 REGARDING FIREARMS IDENTIFICATION.

2 THE COURT: ALL RIGHT. GO AHEAD.

3 MR. SUMNER: MAY IT PLEASE THE COURT?

4 JAMES ARMSTRONG - VOIR DIRE BY MR. SUMNER:

5 Q. MR. ARMSTRONG, WHEN YOU WENT THROUGH YOUR RESUME, SO TO
6 SPEAK, FOR THE JURY I NOTICED THAT THE MAJORITY OF WHAT I
7 HEARD REGARDING FIREARM IDENTIFICATION DEALT WITH PUTTING
8 TOGETHER A SHOTGUN, TAKING APART A SHOTGUN, THIS TYPE THING,
9 IS THAT CORRECT OR WOULD THAT BE INCORRECT?

10 A. THAT'S PART OF IT, YES, SIR.

11 Q. NOW YOU MENTIONED THAT -- AND I JUST WANT TO GO THROUGH
12 IT HERE WITH YOU. AND AGAIN, I'M ONLY SPEAKING NOW TO THE
13 FIREARMS IDENTIFICATION, THAT IS MATCHING A BULLET FROM A
14 FIRED WEAPON ---

15 A. YES, SIR.

16 Q. --- TO A BULLET POTENTIALLY RECOVERED FROM A CRIME
17 SCENE AND TRYING TO MAKE A MATCH THERE. YOUR SOUTH CAROLINA
18 CRIMINAL JUSTICE ACADEMY DIDN'T HAVE ANYTHING TO DO WITH
19 THAT, WOULD THAT BE RIGHT?

20 A. NO, SIR. THAT'S CORRECT.

21 Q. THE PROBATION, PARDON, AND PAROLE SERVICES AGENT
22 TRAINING HAD NOTHING TO DO WITH THAT?

23 A. NO, SIR.

24 Q. THE OUTSTANDING MARKSMAN AWARD HAD NOTHING TO DO WITH
25 THAT?

JAMES ARMSTRONG - DIRECT EXAMINATION BY MR. MOYER

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1 A. NO, SIR.

2 Q. OKAY. YOU MENTIONED YOU HAVE AN INTENSIVE COURSE IN
3 POLARIZED LIGHT -- AM I SAYING THAT RIGHT?

4 A. MICROSCOPY.

5 Q. MICRO -- I CAN'T SAY IT.

6 A. MICROSCOPY.

7 Q. NOW DOES THAT HAVE ANYTHING TO DO WITH THAT?

8 A. YES, SIR.

9 Q. OKAY. NOW YOU MENTION HERE ON YOUR RESUME INTENSIVE
10 COURSE IN LIGHT -- I CAN'T SAY THAT WORD, MICROSCOPY, WHERE
11 WAS THAT TAKEN?

12 A. THAT WAS AT GREENVILLE AT OUR -- AT THE BASEMENT OF THE
13 LAW ENFORCEMENT CENTER.

14 Q. I'M SORRY?

15 A. AT THE BASEMENT OF OUR LAW ENFORCEMENT CENTER.

16 Q. WHO TAUGHT THAT CLASS?

17 A. JEFF HOLLIFIELD. HE WORKED FOR TEN YEARS AT OUR -- AT
18 THE SOUTH CAROLINA LAW ENFORCEMENT DIVISION, WENT TO THE
19 MCCRONE INSTITUTE AND GOT HIS MASTER'S DEGREE IN MICROSCOPY
20 AND CAME IN AND GAVE US A TWO HUNDRED AND TWENTY-FOUR HOUR
21 COURSE ON JUST MICROSCOPIC TECHNIQUES.

22 Q. WHO ALL WAS IN THE CLASS WITH YOU?

23 A. SEAN COLLINS AND MYSELF.

24 Q. AND YOU'VE GOT HERE TWO HUNDRED AND TWENTY-FOUR HOURS
25 OF INSTRUCTION, AND LECTURE, AND LABORATORY EXERCISES, IS

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1 THAT RIGHT?

2 A. YES, SIR.

3 Q. HOW MUCH OF IT WAS LECTURE AND HOW MUCH OF IT WAS LAB?

4 A. WE HAD -- MOST OF IT WAS LAB. THE LECTURE WAS GOING ON
5 WHILE WE WERE WORKING ON THE LAB PORTION OF IT.

6 Q. OKAY. DID YOU RECEIVE ANY KIND OF CERTIFICATE, OR

7 GRADUATION, OR ---

8 A. WE DO RECEIVE A CERTIFICATE OF COMPLETION OF THE
9 COURSE.

10 Q. AND WHAT WAS THE TITLE OF YOUR CERTIFICATE? DO YOU
11 RECALL?

12 A. IT WAS JUST SOMETHING TO DO WITH POLARIZED LIGHT
13 MICROSCOPY COURSE.

14 Q. OKAY. AND YOU'VE GOT HERE IN AUGUST 1999 YOU BEGAN IN-
15 SERVICE TRAINING IN THE LABORATORY, IS THAT RIGHT?

16 A. YES, SIR.

17 Q. OKAY. WHAT IS IN-SERVICE TRAINING?

18 A. MY IN-SERVICE TRAINING BEGAN, LIKE I SAID, IN '99.

19 IT'S WHERE I CONTACTED OUR STATE LAB, FOUND OUT WHAT THEY

20 NEED TO DO FOR FIREARMS IDENTIFICATION. IT REALLY ENTAILS

21 -- HOOKED UP DIFFERENT MATERIALS, DID A LOT OF READING,

22 RESEARCH, AND ACTUALLY DID SOME TEST FIRING OF MY OWN, AND

23 STARTED MOUNTING PROJECTILES ON THE SCOPE COMPARING THEM TO

24 MY KNOWNS. AND THEN I HAD SOMEONE MIX UP PROJECTILES SO I

25 COULD START LOOKING TO TRY TO IDENTIFY THEM FROM THERE ON

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1 OUT AS WELL. I ALSO WENT THROUGH HISTORY AND JUST BASICALLY
2 ALL FACETS OF FIREARMS IDENTIFICATION BY RESEARCH AND
3 READING.

4 Q. DID I UNDERSTAND YOU CORRECTLY AT THE BEGINNING OF YOUR
5 ANSWER WHEN YOU SAID THAT YOU CALLED DOWN TO SLED AND JUST
6 TALKED WITH THEM ABOUT MAYBE WHAT YOU NEEDED TO DO OR ---

7 A. THAT WAS IN OUR BEGINNING STAGES, YES, SIR. WE CALLED
8 OUR STATE LAB TO FIND OUT WHAT WE MAY NEED TO DO TO GET INTO
9 THE AREA OF TRAINING IN THE FIREARMS IDENTIFICATION. THIS
10 WAS GOING TO BE A NEW FIELD FOR US TO GET INTO BACK IN '99.
11 AND THAT'S WHY I STARTED MY TRAINING.

12 Q. AND THAT WOULD HAVE BEEN LESS THAN FIVE YEARS AGO,
13 RIGHT?

14 A. THAT'S CORRECT.

15 Q. THEN YOU TESTIFIED ABOUT GOING THROUGH THE SIG/SAUER
16 SCHOOL. THAT'S THE NAME OF A GUN, IS THAT RIGHT?

17 A. THAT'S CORRECT.

18 Q. THAT DIDN'T HAVE ANYTHING TO DO WITH WHAT YOU'RE
19 TALKING ABOUT TODAY, DOES IT?

20 A. NOT COMPLETELY, NO, SIR.

21 Q. THE GLOCK ARMORERS SCHOOL, THAT DOESN'T HAVE ANYTHING
22 TO DO WITH TODAY, DOES IT?

23 A. JUST BASICALLY DEALS IN THE FUNCTION OF FIREARMS.

24 Q. BUT, I MEAN, WE'RE NOT TALKING ABOUT -- ARE WE GOING TO
25 TALK ABOUT A GLOCK?

JAMES ARMSTRONG - DIRECT EXAMINATION BY MR. MOYER

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1 A. NO, SIR.

2 Q. SO IT DOESN'T HAVE ANYTHING TO DO WITH THIS CASE TODAY,
3 DOES IT?

4 A. RIGHT.

5 Q. THEN I NOTICE IN DECEMBER OF 2000 YOU'VE GOT DOWN HERE
6 THAT YOU VISITED THE SOUTH CAROLINA LAW ENFORCEMENT DIVISION
7 AND TALKED TO VELLO PAAVEL AND DAVID COLLINS ABOUT
8 PROCEDURES IN FIREARMS ANALYSIS, IS THAT RIGHT?

9 A. YES, SIR.

10 Q. NOW WE'RE KIND OF GETTING BACK TO WHAT WE'RE TALKING
11 ABOUT TODAY, IS THAT RIGHT?

12 A. THAT'S -- YES, SIR.

13 Q. I MEAN, WHEN YOU SAY YOU VISITED THE -- VISITED SLED
14 AND TALKED TO SOME PEOPLE, I MEAN, DOES THAT MEAN Y'ALL WENT
15 TO HAVE LUNCH OR WHAT ARE YOU SAYING THERE?

16 A. NO, SIR. WHAT I DID ON THAT DAY WAS ACTUALLY I WENT
17 DOWN FOR THE ENTIRE DAY, GOT THERE WHEN THE OTHER EXAMINERS
18 ARRIVED. WE WENT OVER DIFFERENT TECHNIQUES OF EVIDENCE AND
19 TEST SAMPLES ON THE SCOPE, LOOKED AT AND COMPARED, WENT
20 THROUGH ALL THEIR PROCESSES OF IDENTIFICATION TECHNIQUES,
21 AND ALSO GOT TO OBSERVE THE IBIS SYSTEM, WHICH IS -- WHICH
22 IS NOW CALLED THE NATIONAL INTEGRATED BALLISTIC
23 IDENTIFICATION SYSTEM.

24 Q. OKAY. THEN I BELIEVE YOU SAID THAT IN SEPTEMBER OF '02
25 YOU PARTICIPATED IN THE SWAT TEAM TRAINING, IS THAT RIGHT?

JAMES ARMSTRONG - DIRECT EXAMINATION BY MR. MOYER

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1 A. THAT'S CORRECT.

2 Q. OKAY. AND YOU LIST THAT WOULD BE A REMINGTON SHOTGUN,
3 AN AR-15, A REMINGTON 700, IS THAT RIGHT?

4 A. YES, SIR.

5 Q. OKAY. AND THEN I BELIEVE THAT, TO TRY TO GET DOWN
6 TOWARD THE END HERE, WHEN YOU FIRST CERTIFIED OR FIRST
7 TESTIFIED, FORGIVE ME, I COULDN'T THINK OF THE RIGHT WORD,
8 FIRST TESTIFIED AS AN EXPERT IN NOVEMBER OF 2003, IS THAT
9 RIGHT?

10 A. YES, SIR.

11 Q. SO THAT WOULD HAVE BEEN ROUGHLY SIX MONTHS AGO?

12 A. YES, SIR.

13 Q. IS THAT CORRECT?

14 A. YES, SIR.

15 Q. AND WOULD THAT HAVE BEEN AFTER THE WORK THAT YOU'VE
16 PERFORMED IN THIS CASE?

17 A. YES, SIR.

18 Q. AND ANY OTHER WORK THAT YOU'VE PERFORMED IN THIS CASE
19 WAS DONE COMPLETELY BY YOURSELF. THERE'S NO SLED -- AND
20 SLED IS THE STATE LAW ENFORCEMENT DIVISION, IS THAT RIGHT?

21 A. YES, SIR.

22 Q. COMMONLY REFERRED TO AS SLED.

23 A. YES, SIR.

24 Q. THAT'S IN COLUMBIA. THAT'S A STATE -- AND THEY HAVE A
25 FIREARMS LAB DOWN THERE AS WELL.

JAMES ARMSTRONG - DIRECT EXAMINATION BY MR. MOYER

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1 A. YES, SIR.

2 Q. IS IT MORE EXTENSIVE THAN THE ONE UP HERE?

3 A. THEY HAVE MORE PEOPLE. WE HAVE BASICALLY THE SAME
4 EQUIPMENT.

5 Q. SO THERE'S NOBODY -- SLED IS NOT INVOLVED IN THIS CASE,
6 IS THAT RIGHT?

7 A. THAT'S CORRECT.

8 Q. IT'S JUST YOU, IS THAT CORRECT?

9 A. YES, SIR.

10 MR. SUMNER: YOUR HONOR, THAT WILL CONCLUDE MY VOIR
11 DIRE.

12 THE COURT: ALL RIGHT. HE'S QUALIFIED. PROCEED,
13 SOLICITOR.

14 DIRECT EXAMINATION BY MR. MOYER CONTINUED:

15 Q. ALL RIGHT. NOW, MR. ARMSTRONG, HAVE YOU BEEN -- WERE
16 YOU GIVEN EVIDENCE IN THIS CASE FOR PURPOSES OF EXAMINATION?

17 A. YES, SIR, I WAS.

18 Q. I'M GOING TO START OFF BY HANDING YOU STATE'S EXHIBIT
19 NUMBER 54. IF YOU WOULD JUST TAKE A MOMENT TO LOOK AT
20 EXHIBIT NUMBER 54 THAT'S ALREADY IN EVIDENCE AND TELL US IF
21 THAT WAS EVER IN YOUR POSSESSION FOR PURPOSES OF ANALYSIS.

22 A. YES, SIR, IT WAS.

23 Q. AND WHEN WAS IT?

24 A. I SIGNED IT OUT OF THE PROPERTY IN EVIDENCE ROOM ON MAY
25 THE 2ND OF 2003.

JAMES ARMSTRONG - DIRECT EXAMINATION BY MR. MOYER

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1 Q. AND HOW LONG DID YOU HAVE IT?

2 A. I HAD IT RIGHT AT TWELVE DAYS.

3 Q. TIL MAY 14TH?

4 A. MAY 14TH, YES, SIR.

5 Q. THEN WHEN YOU WERE FINISHED WITH IT WHAT DID YOU DO
6 WITH IT?

7 A. ONCE I FINISHED MY EXAMINATION I TOOK IT BACK TO OUR
8 PROPERTY IN EVIDENCE ROOM WHERE IT WAS PLACED BACK INTO
9 STORAGE.

10 Q. NOW WHAT WAS THE EXTENT OF YOUR EXAMINATION OF THE
11 PARTICULAR ITEMS THAT ARE INCLUDED IN THIS EXHIBIT?

12 A. THAT ONE WAS PRIMARILY OPERABILITY AND FUNCTION OF THE
13 FIREARM AND JUST IDENTIFY THE AMMUNITION THAT IT WAS THE
14 CORRECT CALIBER FOR USE.

15 Q. OKAY. AND WAS THE AMMUNITION INCLUDED WITH THAT
16 EXHIBIT, THE PROPER AMMUNITION FOR USE IN THAT FIREARM?

17 A. YES, SIR, IT WAS.

18 Q. AND WAS THE FIREARM OPERABLE?

19 A. YES, SIR, IT WAS.

20 Q. SO THAT PISTOL THEN WOULD FIRE THOSE BULLETS ---

21 A. YES, SIR.

22 Q. --- IF IT WERE -- IF THE TRIGGER WERE PULLED?

23 A. YES, SIR.

24 Q. OKAY. I'M GOING TO HAND YOU NOW STATE'S EXHIBIT NUMBER

25 56. IF YOU WOULD, I'M GOING TO ASK -- DO YOU HAVE A WAY TO

JAMES ARMSTRONG - DIRECT EXAMINATION BY MR. MOYER

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1 OPEN THAT EXHIBIT?

2 A. NO, SIR.

3 Q. WHILE WE'RE LOOKING FOR SOMETHING DO YOU ---

4 A. I MAY BE ABLE TO JUST TEAR THE TAPE.

5 Q. OKAY.. IF YOU'RE ABLE TO DO THAT LET ME ASK YOU TO DO

6 THAT. AND I'D LIKE YOU TO LOOK IT OVER AND --- YOU DO HAVE

7 SOME SCISSORS.. IF YOU WOULD SEE IF YOU CAN IDENTIFY WHAT IT

8 IS THAT'S CONTAINED WITHIN THAT EXHIBIT.

9 A. OKAY.

10 Q. OKAY. NOW DO YOU RECOGNIZE WHAT I'VE JUST HANDED YOU,

11 THAT EXHIBIT?

12 A. YES, SIR, I DO.

13 Q. WAS THAT EVER IN YOUR CUSTODY AND CONTROL?

14 A. YES, SIR, IT WAS.

15 Q. FROM WHERE DID YOU GET THAT?

16 A. THE PROPERTY IN EVIDENCE ROOM.

17 Q. WHEN DID YOU GET IT?

18 A. ON JANUARY THE 3RD OF 2003..

19 Q. HOW LONG DID YOU HAVE IT?

20 A. I HAD IT FOR RIGHT AT ONE MONTH. I TURNED IT BACK IN

21 TO PROPERTY ON FEBRUARY THE 3RD, 2003.

22 Q. OKAY. AND DID YOU HAVE TO SIGN THEM OUT OF THAT

23 LOCATION?

24 A. YES, SIR.

25 Q. AND WHEN YOU FINISHED WITH THEM YOU TOOK THEM BACK TO

JAMES ARMSTRONG - DIRECT EXAMINATION BY MR. MOYER

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1 THAT LOCATION, THE PROPERTY IN EVIDENCE ROOM?

2 A. YES, SIR, I DID.

3 Q. YOU HAD TO SIGN THEM BACK IN?

4 A. YES, SIR.

5 Q. NOW THAT EXISTS -- THAT EXHIBIT CONSISTS OF HOW MANY

6 DIFFERENT COMPONENTS?

7 A. THE OFFICER HAD LISTED DOWN SEVEN DIFFERENT COMPONENTS.

8 Q. OKAY. AND DO YOU HAVE THEM LISTED SEQUENTIALLY EITHER

9 BY NUMBER OR BY LETTER?

10 A. YES, SIR, WE DO. HAVE ITEM A, WHICH ON THE PROPERTY

11 SHEET IS STATED AS A REMINGTON ARMS 30-06 BARREL.

12 Q. OKAY. WELL, LET'S START WITH THAT ITEM A. WELL, FIRST

13 OF ALL LET ME ASK YOU THIS, ABOUT ALL THOSE COMPONENTS AS A

14 WHOLE. ARE THEY IN NOW SUBSTANTIALLY THE SAME CONDITION AS

15 -- SUBSTANTIALLY THE SAME CONDITION NOW AS WHEN YOU HAD THEM

16 BACK IN JANUARY AND FEBRUARY OF 2003?

17 A. YES, SIR, THEY ARE.

18 MR. MOYER: YOUR HONOR, AT THIS TIME I WOULD MOVE TO

19 HAVE STATE'S EXHIBIT NUMBER 56 MOVED INTO EVIDENCE.

20 MR. SUMNER: SUBJECT TO ---

21 THE COURT: SUBJECT TO ---

22 MR. SUMNER: --- PRETRIAL.

23 THE COURT: PUT IT IN.

24 MR. SUMNER: THANK YOU.

25 Q. LET ME START WITH ITEM A THEN. HOW WOULD YOU DESCRIBE

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1 -- LET ME ASK YOU TO HOLD ITEM A UP AND DESCRIBE THAT ITEM
2 TO THE JURY.

3 A. ITEM A IS A FIREARM BARREL CUT TO THE LENGTH OF TWENTY-
4 ONE AND FIVE EIGHTHS INCHES, CONSTRUCTED OF WORN BLUED
5 STEEL. IT HAS CORROSION ON THE EXTERIOR. THE GENERAL
6 RIFLING CHARACTERISTICS, WHICH IS THE RIFLE INSIDE THE
7 BARREL, IS SIX LANDS AND GROOVES WITH A RIGHT HAND DIRECTION
8 OF TWIST. IT HAS CORROSION AND DIRT IN THE BARREL. IT HAS
9 BEEN STAMPED ON THE SIDE, REMINGTON ARMS COMPANY,
10 INCORPORATED IN ILION, NEW YORK, OVER, MADE IN THE UNITED
11 STATES PATENT NUMBER -2747313, THE SIDE 30-06 SPRG FOR THE
12 30-06 SPRINGFIELD.

13 Q. OKAY.

14 A. PORTION OF THE MUZZLE CROWN IS OBLITERATED, WHICH IS
15 THE MUZZLE -- THE CROWN, THE VERY END OF THE BARREL IS
16 OBLITERATED BY SOME KIND OF MECHANICAL ABRASION.

17 Q. HOW CAN YOU TELL? WHAT MAKES YOU SAY IT'S BEEN
18 OBLITERATED BY MECHANICAL ABRASION?

19 A. THE MUZZLE CROWN, IT ACTUALLY HAS LIKE A CROWN EFFECT.
20 IT GOES UP FROM THE BARREL AND GOES -- AND YOU HAVE LIKE A
21 LITTLE CROWN ALL THE WAY AROUND. THIS CROWN HAS ACTUALLY
22 BEEN REMOVED. ON A PORTION OF IT YOU STILL HAVE PART OF THE
23 CROWN ON ONE SIDE. AND THE CROWN ON THIS OTHER SIDE OVER
24 HERE IS PRACTICALLY GONE. IT'S ALSO NOT A FLUSH OR A SMOOTH
25 FINISH THAT IT WOULD COME FROM A FACTORY.

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1 Q. OKAY. AND THAT'S THE, JUST IN LAYMAN'S TERMS, THAT
2 WOULD BE THE END AT WHICH THE BULLET WOULD FINALLY PROTRUDE?

3 A. YES, SIR. THERE ARE ALSO IMPACT AND FOREIGN TYPE MARKS
4 THAT WOULD NOT COME FROM THE FACTORY ON THE EXTERIOR. AND
5 THE FRONT SIGHT ASSEMBLY IS MISSING. THE REAR SIGHT IS
6 LOOSE, CAN WOBBLE. THE FAR PORTION OF THE BARREL HAS TWO
7 SCREW HOLES WHICH ONE OF THEM CONTAINS A BROKEN SCREW.

8 Q. NOW THE OTHER END -- YOU ALREADY TOLD US ABOUT THE
9 MUZZLE END OF IT. THE OTHER END OF THE BARREL, WHAT CAN YOU
10 TELL US ABOUT THAT END OF IT?

11 A. THIS END DOES HAVE -- IT DOES HAVE ABRASIONS WHERE IT
12 HAS BEEN CUT OFF FROM A FIREARM.

13 Q. OKAY. NOW IF YOU WOULD MOVE ON TO ITEM B. WHAT IS
14 ITEM B?

15 A. ITEM B IS A REMINGTON WOODSMaster MODEL 742 RECEIVER.
16 THE SERIAL NUMBER HAS BEEN REMOVED COMPLETELY BY ---

17 Q. I'M SORRY. DESCRIBE THAT A LITTLE BIT WHEN YOU SAY
18 IT'S BEEN REMOVED.

19 A. BY SOME KIND OF GRINDING OR CUTTING EFFECT WHERE THE
20 SERIAL NUMBER WOULD BE LOCATED, RIGHT THERE WHERE THERE IS A
21 GAP AND THE RECEIVER. YOU DO SEE MECHANICAL ABRASION MARKS
22 UP TO THE SIDE OF THE CUT OUT SECTION. THERE'S --
23 UNDERNEATH HERE WHERE YOU START TO SEE REMINGTON ON THE TOP,
24 THE SERIAL NUMBER WOULD BE LOCATED HERE. AND IT HAS BEEN
25 COMPLETELY REMOVED.

JAMES ARMSTRONG - DIRECT EXAMINATION BY MR. MOYER

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1 Q. AND SO YOU WERE UNABLE TO DETERMINE A SERIAL NUMBER FOR

2 THIS ---

3 A. THAT'S TRUE.

4 Q. OKAY.

5 A. THERE'S ALSO CORROSION AND FOREIGN MARKS ON THE

6 EXTERIOR. CUT PORTION OF THE REARWARD FIREARM BARREL

7 SECTION IS ATTACHED INSIDE THE RECEIVER. THAT'S

8 APPROXIMATELY HALF -- ABOUT AN EIGHTH OF AN INCH IN LENGTH.

9 THERE'S A TANG ATTACHED. THE SAFETY WAS IN THE OFF

10 POSITION. THE LOCKING LUG PORTION OF THE BARREL ASSEMBLY

11 WAS ATTACHED TO THE BARREL TAKE DOWN NUT, PORTION OF THE

12 LOCKING LUG IS BROKEN OFF, THE LOCKING LUG, THIS LITTLE

13 SECTION RIGHT HERE WHERE IT'S BEEN CUT AND BROKEN OFF.

14 IT IS CONSTRUCTED OF BLUED STEEL. THE BREECH BOLT IS

15 IN THE OPEN POSITION. THE BREECH BOLT, YOU STICK YOUR

16 FINGER IN AND CAN TOUCH IT. AND HERE IS WHERE THE CARTRIDGE

17 WOULD SIT, IT'S WHERE THE FIRING PIN IMPRESSION WOULD BE

18 CAUSED FROM. AND THE LOCKING LUG, PARTIALLY CUT THROUGH

19 BELOW WHERE THE BARREL WAS CUT.

20 Q. OKAY. WAS IT IN THE SAME CONDITION -- YOU MENTIONED

21 CORROSION AND DIRT. IS IT CONSISTENT WITH ITEM A AS FAR AS

22 THAT GOES?

23 A. YES, SIR. THEY ARE CONSISTENT.

24 Q. OKAY. NOW LOOKING AT ITEM C, WHAT DID ITEM C CONSIST

25 OF?

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1 A. ITEM C IS A PORTION OF THE ACTION BAR ASSEMBLY, WHICH
2 HAS A SPRING. YOU ALSO HAVE AN ACTION TUBE, WHICH IS INSIDE
3 THE SPRING. AND IT ALSO BEARS MARKS CONSISTENT OF BEING CUT
4 AND BROKEN OFF FROM A FIREARM, WHICH THIS IS CONSISTENT WITH
5 BEING PART OF LIKE A REMINGTON WOODSMaster MODEL FIREARM.

6 Q. WHICH IS WHAT A AND B ARE?

7 A. YES, SIR.

8 Q. OKAY. WHAT ABOUT ITEM D?

9 A. ITEM D. ITEM D IS A FRONT SIGHT ASSEMBLY CONSTRUCTED
10 OF WORN BLUED STEEL WITH A BRASS SIGHT BEAD. IT BEARS
11 SURFACE CORROSION AND IMPACT MARKS ON THE RIGHT SIDE. THE
12 ASSEMBLY CONTAINS A BROKEN SCREW, WHICH IS CONSISTENT WITH A
13 BROKEN SCREW IN THE ITEM A BARREL.

14 Q. OKAY. WOULD YOU MOVE ON THEN TO ITEM E?

15 A. ITEM E IS A STOCK BEARING PLATE. IT BEARS A LITTLE
16 CORROSION. IT'S CONSTRUCTED OF A FERROUS METAL.

17 Q. AND IS THAT CONSISTENT WITH ---

18 A. IT IS CONSISTENT WITH THE CONSTRUCTION OF THE REMINGTON
19 WOODSMaster MODEL RIFLE.

20 Q. OKAY. AND THE PRIOR ITEMS, A THROUGH D, THAT YOU'VE
21 JUST DESCRIBED?

22 A. YES, SIR.

23 Q. AND ITEM F?

24 A. THIS IS A PORTION OF THE LOCKING LUG BEARING FOREIGN
25 MARKS CONSISTENT WITH BEING BROKEN OFF AND CONSTRUCTED OF

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1 BLUED STEEL.

2 Q. WHAT IS A LOCKING LUG?

3 A. A LOCKING LUG, THE LUG IS PLACED -- IT'S KIND OF LIKE A
4 LUG ON YOUR TIRE OF YOUR CAR. IT ACTUALLY LOCKS THE TIRE
5 ON. THIS ACTUALLY HELPS ASSIST IN LOCKING THE BARREL ON THE
6 FIREARM.

7 Q. SO IT'S A PIECE OF THE GUN?

8 A. YES, SIR.

9 Q. IF THAT WERE -- DOES THAT HAVE ANYTHING TO DO WITH
10 HOLDING THE GUN TOGETHER?

11 A. IT DOES ASSIST IN HOLDING IT TOGETHER, YES, SIR.

12 Q. OKAY. AND IS THERE ANY MECHANICAL ABRASIONS WHATSOEVER
13 ON THAT THAT YOU CAN TELL?

14 A. THERE ARE SOME IMPACT TYPE MARKS ON IT.

15 Q. OKAY. NOW IS THAT CONSISTENT -- DOES THAT TAKE CARE OF
16 ALL THE PIECES THAT WERE GIVEN TO YOU THEN FOR THIS EXHIBIT?

17 A. YES, SIR, IT IS.

18 Q. NOW DID YOU EVER TAKE ALL THOSE PARTS AND ATTEMPT TO
19 ALIGN THEM UP?

20 A. YES, SIR, I DID.

21 Q. DID YOU TAKE A PHOTOGRAPH OF THAT?

22 A. YES, SIR, I DID.

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

24 NUMBER 66. CAN YOU RECOGNIZE WHAT IS SHOWN IN THAT

25 PHOTOGRAPH?

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1 A. YES, SIR. THIS IS ACTUALLY ON MY WORK BENCH IN MY
2 OFFICE WHERE I TRIED TO ASSEMBLE THE FIREARM OR PUT THE
3 PIECES IN CLOSE PROXIMITY WHERE THEY WOULD BE IF IT WAS ONE
4 GUN IN ITS ENTIRETY.

5 Q. AND WERE ALL THOSE PIECES CONSISTENT WITH HAVING COME
6 FROM THE SAME GUN?

7 A. YES, SIR, THEY WERE.

8 Q. WHAT -- WAS THERE ANYTHING MISSING?

9 A. THERE WERE SEVERAL PIECES MISSING. PART OF THE ACTION
10 BAR ASSEMBLY APPEARED TO BE MISSING AS WELL AS THE STOCKS
11 WERE MISSING OFF OF IT.

12 Q. STOCK BEING THE WOODEN PART?

13 A. YES, SIR. WOODEN OR SYNTHETIC. YES, SIR.

14 Q. OKAY. THAT WOULD REST AGAINST ONE'S SHOULDER?

15 A. YES, SIR.

16 Q. OKAY. DID YOU TAKE OTHER PHOTOGRAPHS AS WELL AS YOU
17 CONTINUED YOUR WORK ON THIS GUN?

18 A. YES, SIR. I ACTUALLY TOOK SEVERAL.

19 Q. WOULD YOU TAKE A LOOK AT STATE'S EXHIBITS NUMBERS 64
20 THROUGH 72? JUST TAKE A LOOK THROUGH THOSE AND SEE IF YOU
21 CAN IDENTIFY THOSE.

22 A. YES, SIR.

23 Q. AND DO THEY ACCURATELY PORTRAY THE RIFLE AS IT APPEARED
24 TO YOU BACK IN JANUARY AND FEBRUARY OF 2003 WHEN YOU WERE
25 WORKING ON IT?

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1 A. YES, SIR, THEY DO.

2 MR. MOYER: I MOVE TO HAVE EXHIBITS NUMBERS 64 THROUGH
3 72 ENTERED INTO EVIDENCE.

4 MR. SUMNER: I DON'T HAVE ANY OBJECTION TO ANY OF THE
5 PHOTOGRAPHS, YOUR HONOR.

6 THE COURT: WITHOUT OBJECTION.

7 Q. I'M JUST GOING TO SHOW YOU A COUPLE OF THESE FOR THE
8 BENEFIT OF THE JURY. IF YOU WOULD, THERE'S A LASER POINTER
9 THAT GOES WITH THIS. CAN YOU JUST POINT OUT TO THE JURY BY
10 USE OF THIS PHOTOGRAPH -- FIRST OF ALL, JUST TELL THE JURY,
11 WHAT IS IT THAT'S DISPLAYED IN THAT PHOTOGRAPH?

12 A. THAT'S DISPLAYING THE COMPONENTS THAT ARE INSIDE THIS
13 WRAPPED UP PAPER ALL LAID OUT ON MY WORK BENCH AND IN CLOSE
14 PROXIMITY TO WHERE THEY WOULD BE IN RELATIONSHIP HAD IT BEEN
15 A COMPLETE FIREARM.

16 Q. OKAY. AND ARE ALL THE DIFFERENT COMPONENTS THAT YOU
17 JUST DESCRIBED INCLUDED IN THAT PHOTOGRAPH?

18 A. YES, SIR, THEY ARE.

19 Q. OKAY. LET ME SHOW YOU STATE'S EXHIBIT NUMBER 69.
20 THERE'S A BIT OF A GLARE, BUT WHAT IS SHOWN IN STATE'S
21 EXHIBIT NUMBER 69?

22 A. THIS EXHIBIT IS SHOWING THE LEFT HAND SIDE OF WHAT IS
23 KNOWN ON THE PROPERTY SHEET AS ITEM B. THIS PORTION RIGHT
24 HERE IS WHERE THE MECHANICAL ABRASION HAS REMOVED THE SERIAL
25 NUMBER. YOU CAN SEE LITTLE SCRATCH MARKS HERE FROM SOME

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1 KIND OF -- AS WELL AS THERE'S SOME MECHANICAL ABRASION HERE
2 WHICH TRIED TO -- HERE IT IS APPARENTLY COVERING PART OF THE
3 WORDING FOR THE MODEL OF THAT PARTICULAR FIREARM.

4 Q. OKAY. STATE'S EXHIBIT NUMBER 71, WHAT IS SHOWN IN THAT
5 PHOTOGRAPH?

6 A. THIS RIGHT HERE IS ACTUALLY SHOWING THE MUZZLE CROWN,
7 THE END OF THE BARREL WHERE IT SHOWS THAT THERE'S NOT A
8 COMPLETE CROWN, YOU KNOW, THE CROWNING EFFECT ON THE -- THE
9 PHOTO DOESN'T SHOW IT REAL CLEAR HERE, BUT THERE ARE
10 ACTUALLY SOME STRIATION MARKS THAT ARE RUNNING ALONG THIS
11 DIRECTION WITH THIS -- WITH THAT BARREL. IT SHOWS THAT IT
12 WAS SOME KIND OF MECHANICAL ABRASION EFFECT.

13 Q. STATE'S EXHIBIT NUMBER 70.

14 A. THIS IS THE REARWARD PORTION OF THE BARREL WHERE IT
15 WOULD ATTACH INTO THE RECEIVER. AGAIN, YOU SEE SOME
16 ABRASION TYPE OR CUT TYPE MARKS ON THAT BARREL.

17 Q. NOW THE AREAS WHERE THE CUTS WERE MADE, OTHER THAN THE
18 ABRASION MARKS, DID THEY APPEAR ANY DIFFERENT THAN THE REST
19 OF THE GUN?

20 A. THERE WAS NOT A GREAT DEAL OF CORROSION AS COMPARED TO
21 THE REST OF THE FIREARM.

22 Q. STATE'S EXHIBIT NUMBER 72.

23 A. FROM THE PREVIOUS PHOTO, THIS RIGHT HERE IS THE AREA
24 WHERE THE BARREL WOULD BE SITTING. AND THAT LITTLE PORTION
25 RIGHT HERE IS PART OF THE BARREL THAT GOES UP INSIDE THE

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1 RECEIVER. THE PART BACK IN HERE, THAT'S THE RECEIVER. AND
2 THAT'S WHERE THE BARREL WAS SITTING. THAT'S PART OF THE
3 LOCKING LUG THAT WOULD MOUNT THE BARREL TO THE FIREARM.

4 Q. STATE'S EXHIBIT NUMBER 68.

5 A. THIS IS THE RIGHT HAND SIDE OF THE RECEIVER. IT SHOWS
6 THE CORROSION WHERE THE BREECH BOLT HAD ACTUALLY LOCKED IN
7 THE REARWARD POSITION. AGAIN, THE BARREL IS CUT WITH THE
8 LOCKING LUG HERE.

9 Q. STATE'S EXHIBIT NUMBER 67.

10 A. THIS IS THE LEFT HAND SIDE OF THE BARREL WHICH HAS THE
11 MARKINGS OF REMINGTON AND THE 30-06 FOR SPRINGFIELD, THE
12 REAR SIGHT, AND A PORTION OF THE BARREL, WHICH -- WHERE THE
13 ACTION BAR ASSEMBLY WOULD ATTACH.

14 Q. STATE'S EXHIBIT NUMBER 64.

15 A. THIS IS ALL COMPONENTS, ITEMS A THROUGH F, LAID OUT ON
16 THE TABLE JUST TO SHOW A GENERAL OVERVIEW.

17 Q. OKAY. IS THAT THE SAME THING AS STATE'S EXHIBIT 65?

18 A. YES, SIR. THOSE ARE JUST -- ACTUALLY THAT'S JUST DOWN
19 ON THE CARPET.

20 Q. OKAY. NOW A 30-06 RIFLE, WHAT CAN YOU TELL THE JURY
21 ABOUT THAT TYPE OF GUN AS FAR AS THE POWER, THE VELOCITY,
22 THE ACCURACY OF A RIFLE LIKE THAT?

23 A. A 30-06 IS A JUST -- IT'S A 30 CALIBER RIFLE. IT WAS
24 USED PRIOR MILITARY, STARTED IN 1903 PRACTICALLY, AND THEN
25 IT BECAME A -- 1906, THEY ADAPTED THE CARTRIDGE. USED IN

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1 THE MILITARY FOR A LONG TIME. BUT IT'S A 30 CALIBER. IT'S
2 A WELL VERSATILE CARTRIDGE. CAN BE USED FOR VARMINT
3 HUNTING, BIG GAME HUNTING, AS WELL AS JUST GENERAL SHOOTING.

4 Q. IS IT A HIGH VELOCITY RIFLE?

5 A. IT IS A FAIRLY HIGH VELOCITY DEPENDING ON THE CARTRIDGE
6 THAT YOU DECIDE TO SHOOT. IF YOU HAVE APPROXIMATELY A
7 HUNDRED AND FIFTY RANGE PROJECTILE IT CAN REACH VELOCITY OF
8 AROUND TWENTY-EIGHT HUNDRED FEET PER SECOND.

9 Q. NOW HOW DOES THIS PARTICULAR ONE THAT YOU'VE BEEN
10 TALKING ABOUT, HOW WOULD IT RELOAD? IN OTHER WORDS, AFTER
11 YOU TAKE ONE SHOT WHAT WOULD HAVE TO TAKE PLACE FOR IT TO BE
12 READY TO SHOOT AGAIN?

13 A. IN THAT SITUATION ALL IT WOULD HAVE TO HAVE IS -- IF IT
14 HAD A MAGAZINE, AND HAVE AMMUNITION IN THE MAGAZINE, ONCE
15 YOU PULL THE TRIGGER IT WILL RELOAD AUTOMATICALLY. IT'S A
16 SEMIAUTOMATIC RIFLE.

17 Q. OKAY. SO YOU DON'T HAVE TO COCK ANYTHING OR ...

18 A. ONLY ON THE FIRST SHOT.

19 Q. AND AFTER THAT AS FAST AS YOU CAN PULL THE TRIGGER?

20 A. PRACTICALLY, YES, SIR.

21 Q. NOW LET ME HAND YOU STATE'S EXHIBITS NUMBERS 14 AND 44,
22 WHICH ARE ALREADY INTO EVIDENCE. AND I'D LIKE YOU TO TAKE A
23 LOOK AT THOSE TWO ITEMS OF EVIDENCE AND SAY WHETHER OR NOT
24 THEY HAVE BEEN IN YOUR POSSESSION FOR PURPOSES OF ANALYSIS
25 IN THIS CASE.

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1 A. YES, SIR, THEY HAVE.

2 Q. OKAY. LET'S START WITH STATE'S EXHIBIT NUMBER 14. AND

3 WHAT DOES THAT ITEM -- WHAT IS THAT ITEM IDENTIFIED AS?

4 A. EXHIBIT 14 IS IDENTIFIED AS ITEM AT9, HAS A POSSIBLE

5 PROJECTILE FROM WITHIN THE BODY OF THE VICTIM, LEFT SIDE

6 RIB-CAGE AREA.

7 Q. OKAY. AND WAS THAT -- YOU SAID YOU HAVE ALREADY

8 RECOGNIZED THIS -- THAT AS SOMETHING THAT WAS IN YOUR

9 POSSESSION. WAS IT -- WHAT WAS THE REASON YOU HAD IT?

10 A. HAD IT FOR ANALYSIS OR EXAMINATION TO COMPARE WITH THE

11 ITEMS, A REMINGTON BARREL.

12 Q. OKAY. AND WHEN WAS IT IN YOUR POSSESSION?

13 A. I SIGNED IT OUT FROM OUR PROPERTY IN EVIDENCE ROOM ON

14 JANUARY THE 3RD OF 2003.

15 Q. AND YOU HAD IT FOR HOW LONG?

16 A. FOR APPROXIMATELY RIGHT AT ONE MONTH. RETURNED IT ON

17 FEBRUARY THE 3RD.

18 Q. OKAY. AND IS THAT THE SAME PERIOD OF TIME THAT YOU HAD

19 THE OTHER EXHIBIT? I BELIEVE IT WAS NUMBER 44.

20 A. YES, SIR.

21 Q. AND WHAT IS EXHIBIT NUMBER 44? WHAT IS THAT IDENTIFIED

22 AS?

23 A. OUR EXHIBIT 56?

24 Q. I'M SORRY. THE OTHER CONTAINER THAT I JUST HANDED UP

25 TO YOU.

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1 A. YES, SIR. I SIGNED THIS OUT AS WELL ON JANUARY 3RD,
2 2003.

3 Q. AND WHAT IS THAT IDENTIFIED AS?

4 A. IDENTIFIED AS ITEM CB-1, CB-2, AND CB-6.

5 Q. OKAY. AND BEING -- WHAT ---

6 A. ITEM ---

7 Q. I'M SORRY. GO AHEAD. PLEASE TELL US WHAT WERE THOSE
8 PARTICULAR ITEM NUMBERS.

9 A. ITEM CB-1 IS A METAL JACKET AND FABRIC FROM FLOOR NEAR
10 WINDOW. CB-2 IS A METAL JACKET FRAGMENT FROM FLOOR NEAR
11 WINDOW. ITEM CB-6 IS A LEAD CORE FROM THE WEST WALL.

12 Q. NOW TALKING ABOUT THOSE TWO DIFFERENT EXHIBITS, DID YOU
13 EXAMINE THEM TO DETERMINE WHAT THEY WERE?

14 A. YES, SIR, I DID.

15 Q. AND WHAT WERE YOU ABLE TO CONCLUDE THAT THOSE EXHIBITS
16 WERE AND ARE?

17 A. ITEM AT9 WAS A COPPER FIRED BULLET SPECIMEN WEIGHING
18 88.3 GRAINS. IT'S A CALIBER -- IT'S A 30 CALIBER. IT'S AN
19 EXPANDING TYPE. THE GENERAL RIFLING CHARACTERISTICS WERE
20 SIX LANDS AND GROOVES WITH A RIGHT HAND DIRECTION OF TWIST.
21 THE BASE EDGE IS INTACT WITH A NOSE EDGE FLATTENED AND
22 DISTORTED. THE JACKET IS TORN FROM THE NOSE AREA DOWN TO
23 THE BEARING SURFACE. IT BEARS ONE KNURLED CANNELURE. IT
24 HAS A LEAD CORE AND PORTION OF JACKET SEPARATED FROM THE
25 SPECIMEN DURING MY EXAMINATION. I CLEANED AND REPACKAGED

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1 THIS MYSELF. AND I MARKED THE COMPONENTS "AT9" OVER "JWA"
2 FOR IDENTIFICATION PURPOSES.

3 Q. OKAY. AND SO AND THAT CALIBER THAT YOU DESCRIBED, IS
4 THAT WHAT CAN BE SHOT IN A 30-06 RIFLE?

5 A. YES, SIR.

6 Q. WHAT CONDITION WAS IT IN?

7 A. THE NOSE AREA WAS FLATTENED AND DISTORTED. THE JACKET
8 WAS TORN FROM THE NOSE AREA TO THE BEARING SURFACE.

9 Q. AND WHAT WOULD CAUSE THAT DISTORTION?

10 A. THE DISTORTION ON THAT WAS CONSISTENT WITH STRIKING A
11 HARD SURFACE.

12 Q. INCLUDING A BODY, RIBS?

13 A. IT'D BE BODY, BONE, WALL, GLASS.

14 Q. ANY HARD SURFACE?

15 A. ANY HARD TYPE SURFACE, YES, SIR.

16 Q. NOW THE OTHER EXHIBIT, IF YOU WOULD START WITH CB-1,
17 THE BULLET FROM THE ROOM. WHAT DID YOU IDENTIFY THAT AS
18 BEING?

19 A. ITEM CB-1 IS A COPPER FIRED BULLET JACKET SPECIMEN
20 WEIGHING 44.4 GRAINS, 30 CALIBER. IT'S AN EXPANDING TYPE
21 PROJECTILE WITH A GENERAL RIFLING CHARACTERISTICS OF SIX
22 LANDS AND GROOVES, RIGHT HAND DIRECTION OF TWIST. THE BASE
23 EDGE IS INTACT. THE JACKET IS TORN AND MUTILATED. AND IT
24 BEARS ONE KNURLED CANNELURE. TWO PORTIONS OF THE JACKET
25 BROKE OFF DURING MY EXAMINATION. I CLEANED AND REPACKAGED

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1 IT MYSELF. AND I LABELED IT CB-1 OVER JWA FOR
2 IDENTIFICATION PURPOSES. ALSO A FIBROUS MATERIAL WHICH WAS
3 REMOVED FROM THE INITIAL PACKAGING. AND I REPACKAGED IT
4 PRIOR TO EXAMINATION AND CLEANING OF THE PROJECTILE.

5 Q. OKAY. NOW YOU REFERRED TO IT AS A 30 CALIBER?

6 A. YES, SIR.

7 Q. SO ONCE AGAIN, IS THAT CONSISTENT WITH BEING SHOT
8 THROUGH A RIFLE SUCH AS THE ONE THAT YOU EXAMINE?

9 A. YES, SIR, IT IS.

10 Q. AND TELL THE JURY A LITTLE BIT ABOUT WHAT A JACKET IS
11 AND WHAT'S THE DIFFERENCE BETWEEN A JACKET AND A CORE, HOW
12 THEY CORRESPOND.

13 A. THE JACKET OF A PROJECTILE IS A -- IT'S A COATING.
14 IT'S BASICALLY LIKE A -- LIKE IF YOU PUT A JACKET OVER THE
15 TOP OF A SHIRT. THE JACKET ENCLOSES THE LEAD WHICH IS
16 COMMONLY USED AS THE CORE TO GIVE THE WEIGHT OF A
17 PROJECTILE. COPPER IS USED -- IT'S A GOOD METAL TO USE.
18 IT'S GOOD -- IT'S SOFT ENOUGH THAT THEY CAN USE, BUT IT'S
19 ALSO HARD ENOUGH THAT IT'S NOT GOING TO DEFORM INSIDE OF THE
20 BARREL. THIS JACKET ENCLOSES THE LEAD CORE TO KEEP THE LEAD
21 FROM TOUCHING AND ALSO GIVES IT MORE ACCURACY IN SHOOTING.

22 Q. OKAY. NOW DO JACKETS AND CORES EVER COME APART FROM
23 ONE ANOTHER?

24 A. YES, SIR, THEY DO.

25 Q. AND WHAT TYPE OF ACTIVITY CAN CAUSE A JACKET AND A CORE

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1 TO COME APART?

2 A. DEPENDING ON THE WAY THAT THE JACKETS ARE BONDED OR NOT
3 BONDED ONTO THE CORE. IF IT STRIKES A HARD SURFACE YOU CAN
4 GET SEPARATION FROM THE JACKET AND THE CORE.

5 Q. NOW GOING BACK TO THE OTHER ONE, THE BULLET THAT WAS
6 FOUND IN THE BODY, WAS THE JACKET AND THE CORE TOGETHER IN
7 THAT ONE?

8 A. IT WAS. AND DURING MY EXAMINATION THEY BECAME
9 SEPARATED.

10 Q. OKAY. NOW EXHIBIT CB-2, WHAT DID YOU IDENTIFY EXHIBIT
11 CB-2 AS?

12 A. CB-2 IS CONSISTENT WITH BEING A COPPER BULLET JACKET
13 FRAGMENT AND WEIGHS 1.1 GRAINS. IT'S IRREGULAR IN SHAPE,
14 BUT IT WAS NOT SUITABLE FOR MICROSCOPIC COMPARISON.

15 Q. NOW BY 1.1, I MEAN, HOW SMALL IS THAT? LET ME -- IN
16 COMPARISON, ITEM CB-1, HOW MANY GRAINS WAS THAT?

17 A. CB-1 WAS 44.4 GRAINS.

18 Q. OKAY. SO THIS IS ABOUT ONE FORTIETH OF THAT SIZE?

19 A. YES, SIR.

20 Q. WHICH IS A VERY MINUTE PORTION?

21 A. YES, SIR.

22 Q. OKAY. IS IT CONSISTENT WITH HAVING COME -- ONCE BEEN A
23 PART OF CB-1?

24 A. IT'S JUST CONSISTENT WITH BEING -- AT ONE TIME BEING A
25 COPPER BULLET JACKET FRAGMENT. THAT'S ALL I CAN TELL YOU.

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1 Q. OKAY. NOW MOVING ON TO EXHIBIT CB-6. AND THAT HAS
2 BEEN IDENTIFIED AS THE BULLET FROM THE WALL.

3 A. YES, SIR. LEAD CORE FROM THE WEST WALL.

4 Q. OKAY.

5 A. IT'S ---

6 Q. WHAT DID YOU IDENTIFY THAT AS?

7 A. IDENTIFIED AS A LEAD FIRED BULLET CORE WEIGHING 37.1
8 GRAINS. IT'S CONSISTENT WITH BEING 30 CALIBER. IT IS AN
9 EXPANDING TYPE CORE. THE NOSE AREA IS FLATTENED AND
10 DISTORTED. AND IT WAS MARKED CB-2 OVER JWA BY MYSELF FOR
11 IDENTIFICATION. AND IT WAS NOT SUITABLE FOR MICROSCOPIC
12 COMPARISON PURPOSES.

13 Q. OKAY. IS IT CONSISTENT WITH HAVING BEEN SHOT THROUGH A
14 RIFLE SUCH AS THE ONE THAT YOU JUST IDENTIFIED TO US?

15 A. YES, SIR.

16 Q. IS IT CONSISTENT WITH BEING PART OF THE JACKET, CB-1
17 AND 2? WHEN I SAY PART OF -- AT ONE TIME, COULD IT?

18 A. IT COULD HAVE BEEN.

19 Q. NOW DID YOU ATTEMPT ANY ANALYSIS OF THESE DIFFERENT
20 PROJECTILES IN COMPARISON TO THE RIFLE BARREL?

21 A. YES, SIR, I DID.

22 Q. AND DOING THAT ANALYSIS WHAT ARE YOU LOOKING FOR?

23 A. I'M LOOKING FOR AGREEMENT IN THE LANDS AND GROOVES, THE
24 STRIATIONS THAT ARE CAUSED ON THE PROJECTILES THAT WOULD
25 COME FROM THE BARREL.

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1 Q. TELL THE JURY A LITTLE BIT ABOUT THAT. SO YOU'RE

2 SAYING A BARREL WILL LEAVE MARKS IN A FIRED BULLET?

3 A. YES, SIR. WHEN A FIREARM IS FIRED THERE'S

4 APPROXIMATELY THREE, UP TO FIVE DIFFERENT AREAS WHERE YOU

5 MAY HAVE A FINGERPRINT REGION LEFT BEHIND ON SOME PIECE OF

6 EVIDENCE. THE PROJECTILE, WHEN IT'S PUSHED DOWN THE BARREL

7 IS ENGAGING IN WHAT IS CALLED LANDS AND GROOVES. IT'S

8 RAISED AND LOWERED SECTIONS OR CUT SECTIONS IN THE BARREL.

9 SOMETHING LIKE A JAMES BOND MOVIE, WHEN IT COMES ON YOU CAN

10 SEE LIKE THE SPIRAL EFFECT BEFORE YOU SEE JAMES BOND.

11 THAT'S LIKE LOOKING THROUGH A BARREL, IT'S JUST A TWIST. IT

12 FORMS STABILITY ON THE PROJECTILE THAT IS FIRED.

13 THOSE LANDS AND GROOVES ARE UNIQUE IN EACH INDIVIDUAL

14 FIREARM BECAUSE OF THE WAY THEY'RE CUT AND MADE. ONCE IT

15 GOES THROUGH THERE AND COMES OUT THE END YOU ACTUALLY HAVE A

16 FINGERPRINT ON THAT PROJECTILE OF THAT ACTUAL FIREARM. AND

17 THAT'S JUST ONE OF THE MANY THAT YOU CAN GET FROM IT.

18 Q. NOW YOU'VE REFERRED TO IT AS A FINGERPRINT. I MEAN, IS

19 IT POSSIBLE FOR TWO DIFFERENT GUNS TO LEAVE IDENTICAL

20 MARKINGS?

21 A. IT IS NOT POSSIBLE FOR THAT, NO, SIR.

22 Q. NOW HOW DO YOU GO ABOUT DOING AN ANALYSIS LIKE THIS,

23 ATTEMPTING TO MATCH A BULLET AGAINST A GUN?

24 A. THE EXAMINATION IS ACTUALLY DONE ON A COMPARISON

25 MICROSCOPE WHERE YOU MOUNT THE -- WE ALWAYS MOUNT OUR

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1 EVIDENCE, PROJECTILES, OR SPECIMENS ON OUR LEFT HAND SIDE.
2 WE MOUNT OUR TEST OR OUR KNOWN ON OUR RIGHT HAND SIDE.
3 WE'RE LOOKING THROUGH THE MICROSCOPE LOOKING AT BOTH AT THE
4 SAME TIME AND TRYING TO OVERLAP AREAS THAT AGREE. WE'RE
5 LOOKING FOR THE FINE STRIATIONS THAT ARE CAUSED FROM THE
6 LANDS AND GROOVES THAT ARE TRANSFERRED TO THAT JACKET ON THE
7 PROJECTILE. WHEN IT LEAVES THOSE MARKINGS YOU CAN LOOK
8 UNDER A MICROSCOPE, YOU CAN SEE AGREEMENT OR DISAGREEMENT
9 DEPENDING ON IF YOU HAVE THE MATCH OR NOT. AND WE'RE
10 LOOKING FOR THOSE AGREEMENT -- AGREEING AREAS AND LOOKING
11 FOR AGREEMENT THROUGHOUT THE ENTIRE PROJECTILE.

12 Q. NOW WERE YOU ABLE TO -- SO DID YOU DO SO IN THIS
13 PARTICULAR CASE? DID YOU TAKE THOSE FOUR ITEMS, AT9, CB-1,
14 CB-2, AND CB-6, FOUR DIFFERENT BULLET FRAGMENTS AND DID YOU
15 ATTEMPT TO MAKE A COMPARISON OF THOSE WITH THE RIFLE BARREL
16 IN THIS CASE?

17 A. YES, SIR, I DID. HOWEVER, CB-2 AND CB-6 WERE NOT
18 SUITABLE FOR MICROSCOPIC COMPARISONS. I WAS ABLE TO COMPARE
19 ITEM AT9 AND CB-1 WITH EACH OTHER AS WELL AS WITH THE
20 BARREL.

21 Q. AND TO REFRESH THE MEMORY, AT9 WAS ...

22 A. AT9 IS A COPPER FIRED BULLET SPECIMEN WHICH -- LABELED
23 BY THE OFFICER WHICH CAME FROM THE BODY OF THE VICTIM.

24 Q. AND CB-1?

25 A. IS A METAL JACKET AND PIECE OF FABRIC FROM THE FLOOR

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1 NEAR WINDOW.

2 Q. AND WERE YOU ABLE TO COME UP WITH AN EXPERT OPINION, A
3 CONCLUSION AS TO THAT ANALYSIS?

4 A. YES, SIR. ITEMS AT9 AND CB-1, FIRED BULLET SPECIMENS,
5 WERE FIRED FROM THE SAME FIREARM. AND IN COMPARING AGAINST
6 THE BARREL THAT ITEM -- ITEMS AT9 AND CB-1 UNDER CASE NUMBER
7 20288481 WERE FIRED THROUGH THE ITEM A1 CASE NUMBER

8 2-02101655 BARREL.

9 Q. THE BARREL THAT YOU JUST DESCRIBED TO US?

10 A. YES, SIR.

11 Q. NOW THE FACT THAT THIS BARREL WAS CUT INTO PIECES DID
12 THAT PROVIDE A SPECIAL CHALLENGE FOR YOU IN MAKING THIS
13 IDENTIFICATION?

14 A. IT WASN'T AS EASY AS NORMAL.

15 Q. OKAY. BUT YOU WERE ABLE TO -- YOU WERE ABLE TO STILL
16 GO ABOUT YOUR WORK AND MAKE THAT ANALYSIS?

17 A. YES, SIR.

18 Q. SO YOU WERE UNABLE TO FIRE THE WEAPON, CORRECT?

19 A. THAT'S CORRECT.

20 Q. OKAY. SO WHAT DID YOU DO TO MAKE THE ANALYSIS AND
21 COMPARISON?

22 A. WE HAVE LABORATORY TECHNIQUES WHICH WE CAN APPLY WHAT
23 IS KNOWN AS MIKROSIL. IT FORMS A CASTING OF THE BARREL. WE
24 FORMED A CASTING OF THE BARREL BEFORE WE CLEANED IT AND
25 AFTER WE CLEANED THE BARREL, THE MUZZLE PORTION. WE LOOKED

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1 AT THE MIKROSIL COMPARISONS, FOUND SIMILARITIES THAT WE WERE
2 -- THAT I WAS AGREEING WITH AND LIKED. THEN DECIDED TO GO A
3 STEP FURTHER AND PUSH A LEAD SLUG INTO THE MUZZLE AREA AND
4 PUSH IT RIGHT BACK OUT. WENT TO THE SCOPE, LOOKED, SEEING
5 MORE AGREEMENT, WANTED TO DO A LITTLE BIT FURTHER. WENT AND
6 GOT A JACKET, A 32 CALIBER PROJECTILE, FORCED IT INTO THE
7 MUZZLE END AND BACK OUT AS IT WAS FIRED AND THEN WENT TO THE
8 SCOPE AND DID MY COMPARISON AND FOUND AGREEMENT FROM EACH
9 LAND AND EACH GROOVE IMPRESSED AREA.

10 Q. OKAY. THANK YOU. LET ME ASK YOU FOR EXHIBITS NUMBER
11 14 AND 44, IF YOU WOULD PUT THOSE BACK INTO THE APPROPRIATE
12 BAGS. ALL RIGHT. LET ME HAND YOU WHAT'S ALREADY BEEN
13 ENTERED INTO EVIDENCE AS STATE'S EXHIBIT NUMBER 43. CAN YOU
14 RECOGNIZE WHAT I'VE JUST HANDED YOU AS STATE'S EXHIBIT
15 NUMBER 43?

16 A. YES, SIR, I CAN.

17 Q. AND WAS THAT EVER IN YOUR POSSESSION?

18 A. YES, SIR, IT WAS.

19 Q. WHEN WAS IT?

20 A. JANUARY 3RD, 2003 UNTIL FEBRUARY 3, 2003.

21 Q. OKAY. AND WHAT CAN YOU IDENTIFY THE CONTENTS OF THAT
22 EXHIBIT AS?

23 A. THE OFFICER DESCRIBED IT AS ITEM CB-A AND CB-B, WHICH
24 ARE TWO CARTRIDGE CASINGS HEAD-STAMPED RP 30-06 SPRG.

25 Q. OKAY. AND WERE YOU ABLE TO DO ANY ANALYSIS WITH REGARD

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1 TO THOSE TWO CARTRIDGE CASINGS?

2 A. YES, SIR.

3 Q. AND WHAT DID YOU CONCLUDE ABOUT THOSE CARTRIDGE
4 CASINGS?

5 A. BOTH OF THEM WERE FIRED CARTRIDGE CASINGS. BOTH WERE
6 MARKETING BY REMINGTON. THEY'RE CONSTRUCTED OF BRASS BEARING
7 A HEMISPHERICAL FIRING PIN IMPRESSION. THEY'RE BOTH CALIBER
8 30-06 SPRINGFIELD. THEY BOTH -- ITEM CB-A AND CB-B FIRE
9 CARTRIDGE CASINGS HAVE SIMILAR, BUT INSUFFICIENT MICROSCOPIC
10 MARKS WHEN COMPARED AGAINST EACH OTHER.

11 Q. OKAY. SO ARE YOU SAYING THAT THE -- WHAT YOU HAD TO
12 WORK WITH THEN WAS JUST NOT ENOUGH FOR YOU TO BE ABLE TO
13 MAKE A COMPARISON?

14 A. SOMETIMES WE CAN'T MAKE A COMPLETE IDENTIFICATION BASED
15 ON THE TYPE OF MARKS THAT ARE LEFT BEHIND. IN THIS
16 SITUATION THERE ARE JUST SIMILARITIES THAT WE'LL -- IT WILL
17 NOTE AND NOT ABLE TO MAKE A COMPLETE IDENTIFICATION WITH
18 THEM.

19 Q. OKAY. WERE THEY INCONSISTENT?

20 A. NO, SIR.

21 Q. OKAY. ALL RIGHT. I'M GOING TO ASK YOU TO REPACKAGE
22 THOSE. FINALLY, LET ME ASK YOU TO TAKE A LOOK AT STATE'S
23 EXHIBIT NUMBER 45. LOOKING AT STATE'S EXHIBIT NUMBER 45 ARE
24 YOU ABLE TO IDENTIFY WHAT HAS JUST BEEN GIVEN TO YOU?

25 A. YES, SIR, I CAN.

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1 Q. AND WAS THAT EVER IN YOUR CUSTODY AND CONTROL?

2 A. YES, SIR, IT WAS.

3 Q. WHEN WAS IT?

4 A. I RECEIVED THIS ON MARCH THE 17TH OF 2003.

5 Q. AND HOW ARE YOU ABLE TO RECOGNIZE THIS, IDENTIFY IT?

6 A. MY NAME, MY SIGNATURE, AND DATE ARE ON THE PROPERTY IN
7 EVIDENCE SHEET. THE OUTER BAG HERE HAS MY INITIALS AND THE
8 DATE IN BETWEEN A DOUBLE HEAT-SEAL, AND THE INSIDE BAG HAS
9 MY INITIALS AND THE DATE ALONG WITH THE -- THE SMALLER BAGS
10 WHICH ARE INSIDE ALSO HAVE MY INITIALS ON THEM ALONG WITH
11 ITEM NUMBERS. AND THIS BAG AS WELL HAS MY INITIALS AND THE
12 DATE BETWEEN A DOUBLE HEAT-SEAL. AND MY INITIALS AND THE
13 DATE ARE ON THE INNER BAG SIGNIFYING THAT I CUT IT OPEN.
14 AND THE SMALLER BAGS ALSO HAVE MY INITIALS ON THE BAG.

15 Q. NOW WHY ARE THERE SO MANY BAGS?

16 A. IT'S JUST -- THE OUTER BAG IS WHAT I ACTUALLY PLACE THE
17 EVIDENCE IN WHEN I WAS THROUGH WITH MY ANALYSIS. THE NEXT
18 BAG ON THE INSIDE IS WHAT WAS SUBMITTED TO ME FOR ANALYSIS.
19 AND IT WAS SEALED BY THE OFFICER. AND THEN I HAD TO CUT IT
20 OPEN AND PUT THE INITIALS AND THE DATE. INSIDE THAT IS
21 ACTUALLY THE EVIDENCE AND OUR BAGS WITH THE EVIDENCE IN IT.

22 Q. OKAY. AND SO DID YOU CUT AWAY THE BAG THAT THE OFFICER
23 MADE TO GET DOWN TO THE CONTENTS OF THAT?

24 A. YES, SIR, I DID.

25 Q. OKAY. AND WHAT WAS YOUR PURPOSE FOR HAVING IT FOR THAT

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1 PERIOD OF TIME?

2 A. I WAS ASKED TO DO AN ANALYSIS TO CONFIRM OR TELL THE
3 OFFICER WHAT HE MAY OR MAY NOT HAVE AS LINES OF DRUGS.

4 Q. OKAY. AND WERE YOU ABLE TO DO AN ANALYSIS OF THE
5 CONTENTS OF ALL THOSE BAGS?

6 A. YES, SIR, I WAS.

7 Q. AND WERE YOU ABLE TO FORM AN EXPERT OPINION AS TO WHAT
8 THE CONTENTS OF THOSE BAGS IS?

9 A. YES, SIR.

10 Q. AND WHAT IS THAT OPINION?

11 A. IN ITEM 1 THERE'S THIRTEEN BAGS CONTAINING WHITE
12 POWDER. I FOUND IT TO CONTAIN COCAINE WITH A WEIGHT OF
13 40.08 GRAMS. ITEM 2 IS SIX BAGS OF WHITE POWDER, WHICH I
14 FOUND TO CONTAIN COCAINE WITH A WEIGHT OF 10 GRAMS. AND
15 ITEM 3 IS SEVEN BAGS CONTAINING WHITE POWDER; WHICH I FOUND
16 TO CONTAIN COCAINE WITH A WEIGHT OF 189.76 GRAMS.

17 Q. OKAY. AND DID YOU TOTAL UP THE TOTAL WEIGHT OF THOSE
18 THREE DIFFERENT ITEMS?

19 A. NO, SIR, I DID NOT.

20 Q. CAN YOU JUST TAKE A MOMENT TO DO SO?

21 A. A TOTAL WEIGHT OF 239.84 GRAMS.

22 Q. OKAY. I HAVE NO FURTHER ---

23 THE COURT: ALL RIGHT. TAKE THE JURY OUT FOR A RECESS
24 PLEASE. YOU CAN STEP DOWN.

25 (WHEREUPON THE JURY EXITED THE COURTROOM AT 3:59 PM)

1 THE COURT: ALL RIGHT. WE'LL TAKE A SHORT RECESS.

2 (WHEREUPON COURT WAS IN RECESS)

3 THE COURT: ALL RIGHT.

4 MR. SUMNER: YOUR HONOR, WOULD THE COURT PREFER ME TO
5 GO AHEAD AND PUT MY MOTIONS ON THE RECORD IN TERMS OF WHEN
6 THE STATE CONCLUDES THEIR CASE? YOU KNOW, I THOUGHT WE
7 MIGHT JUST GO RIGHT INTO MY CASE. AND I THOUGHT IF THE JURY
8 WAS HERE -- I KNOW THIS IS A MERE FORMALITY, BUT ---

9 THE COURT: IT'S A GOOD IDEA. GO AHEAD.

10 MR. SUMNER: YOUR HONOR, MAY IT PLEASE THE COURT? THE
11 ONLY THING REMAINING, I BELIEVE, IS THE CROSS EXAMINATION OF
12 THE FIREARMS EXPERT IN THE STATE'S CASE. I WOULD MAKE A
13 MOTION AT THIS TIME FOR A DIRECTED VERDICT OF ACQUITTAL
14 AND/OR NOT GUILTY AS TO ALL CHARGES CURRENTLY PENDING. I
15 WILL NOT RECITE -- I BELIEVE THERE ARE FOUR INDICTMENTS,
16 YOUR HONOR. I WILL NOT RECITE THOSE INDICTMENTS. I WILL
17 SIMPLY STATE THAT -- I WOULD ASK THE COURT TO EXAMINE TO SEE
18 WHETHER OR NOT THE COURT FEELS THAT THERE IS SUFFICIENT
19 EVIDENCE TO PROCEED AT THE CONCLUSION OF THE STATE'S CASE.
20 AND I WOULD ASK AT THIS TIME FOR A DIRECTED VERDICT OF NOT
21 GUILTY AS TO EACH INDICTMENT.

22 THE COURT: AND I WILL DENY YOUR MOTIONS. OKAY. BRING
23 OUR JURY.

24 MR. SUMNER: YOUR HONOR, I WOULD ALSO, ON THE RECORD,
25 REITERATE MY MOTION TO SEVER THAT I MADE AT PRETRIAL. I

JAMES ARMSTRONG - CROSS EXAMINATION BY MR. SUMNER

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1 WOULD ASSUME THAT WOULD CONTINUE TO BE DENIED.

2 THE COURT: DENIED. YOU'RE PROTECTED.

3 MR. SUMNER: OKAY, PROTECTED. OKAY, THANK YOU. I HATE

4 TO BRING THAT UP, BUT YOU READ THOSE SHEETS LIKE I DO.

5 THE COURT: I KNOW.

6 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 4:16 PM)

7 THE COURT: ALL RIGHT, SIR.

8 MR. SUMNER: THANK YOU, YOUR HONOR. MAY IT PLEASE THE

9 COURT?

10 CROSS EXAMINATION BY MR. SUMNER:

11 Q. JUST A FEW QUESTIONS, MR. ARMSTRONG.

12 A. YES, SIR.

13 Q. THERE'S NO QUESTION, YOU DID NOT EVER FIRE THESE PARTS
14 OF A GUN THAT YOU TALKED ABOUT DURING DIRECT EXAMINATION FOR
15 THE JURY THIS AFTERNOON. THE WEAPON WAS NOT EVER
16 REASSEMBLED, IS THAT CORRECT?

17 A. THAT'S CORRECT.

18 Q. AND IT WAS NOT FIRED?

19 A. THAT'S CORRECT.

20 Q. AND YOU DID NOT HAVE THE BENEFIT OF EXAMINING A FIRED
21 PROJECTILE FROM THAT BARREL -- I DON'T KNOW WHERE IT IS
22 RIGHT NOW. IS IT UP THERE WITH YOU?

23 A. NO, SIR. I THINK IT'S ON THE FLOOR.

24 Q. OVER HERE. OKAY. YEAH, RIGHT THERE. I'M NOT GOING TO
25 GET IT OUT. YOU DID NOT HAVE A FIRED PROJECTILE FROM THAT

JAMES ARMSTRONG - CROSS EXAMINATION BY MR. SUMNER

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1 BARREL THAT YOU COULD COMPARE WITH PROJECTILES TAKEN FROM
2 THE SCENE OR FROM THE DECEASED, IS THAT CORRECT?

3 A. THAT'S CORRECT. I HAD TO SIMULATE.

4 Q. OKAY. AND I GUESS YOU WOULD AGREE WITH ME THAT THE
5 BEST WAY TO DRAW A COMPARISON WOULD BE TO GO FROM A FIRED
6 PROJECTILE AND COMPARE IT AGAINST A FIRED PROJECTILE?

7 A. THAT IS THEORETICALLY THE BEST AND EASIEST WAY, YES,
8 SIR. HOWEVER, THE MARKINGS CAN BE TRANSFERRED TO ANOTHER
9 PIECE WITHOUT BEING ACTUALLY FIRED. IT IS JUST -- YOU CAN
10 PUSH IT THROUGH THE ROD OR OTHER MEANS. BUT IT CAN -- THE
11 MARKINGS ARE STILL GOING TO BE TRANSFERRED TO OTHER EVIDENCE
12 AS WELL.

13 Q. SO WOULD YOU AGREE WITH ME THAT IT'S BEST TO COMPARE A
14 FIRED PROJECTILE WITH A FIRED PROJECTILE OR IS IT NOT BEST
15 TO DO THAT?

16 A. IT'S THE EASIEST WAY. BEST IN TERMS OF ACTUALLY
17 LOOKING UNDER A MICROSCOPE FOR COMPARISON PURPOSES, THAT IS
18 ALL DEPENDENT ON THE METAL OF THE PROJECTILE AS WELL. BUT
19 AS LONG AS THE PROJECTILE IS PUSHED THROUGH THAT MUZZLE
20 AREA, THAT'S GOING TO LEAVE THE MOST MARKINGS ON THE
21 PROJECTILE AND THE MOST IDENTIFYING MARKS. THAT'S THE LAST
22 PART OF THE BARREL AND THE LAST PART THE PROJECTILE IS GOING
23 TO BE TOUCHING. THAT'S WHERE -- AND IT DOESN'T REALLY
24 MATTER THE SPEED PER SE.

25 Q. WELL, WOULD YOU AGREE WITH ME THAT IF YOU HAD A WEAPON

JAMES ARMSTRONG - CROSS EXAMINATION BY MR. SUMNER

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1 THAT HAD BEEN RETRIEVED THAT WAS CAPABLE OF FIRING A
2 PROJECTILE OR BULLET, I MEAN, YOU WOULD JUST SIMPLY TAKE IT
3 IF IT WAS A PISTOL AND FIRE IT INTO A JUG OF WATER, OR A
4 SANDBAG, OR SOMETHING ---

5 A. YES, SIR. YES, SIR.

6 Q. OKAY. YOU WOULD DO THAT AS OPPOSED TO PUSHING
7 SOMETHING THROUGH ---

8 A. YES, SIR.

9 Q. --- AND THEN TRYING TO EXAMINE IT?

10 A. YES, SIR.

11 Q. OKAY. NOW THE GUN PARTS THAT HAVE ALREADY BEEN
12 RECEIVED INTO EVIDENCE BY THE COURT, THERE'S NO QUESTION
13 THAT THEY WERE HEAVILY RUSTED, IS THAT CORRECT?

14 A. YES, SIR. THERE WAS A LOT OF CORROSION.

15 Q. A LOT OF CORROSION, A LOT OF DIRT, A LOT OF DIRT WAS IN
16 THE BARREL, IS THAT NOT CORRECT AS WELL?

17 A. YES, SIR.

18 Q. OKAY. NOW WOULD THESE FACTORS NOT MAKE IT MORE
19 DIFFICULT TO TESTIFY REGARDING A MATCH BETWEEN PROJECTILES?
20 WOULD THOSE FACTORS NOT AFFECT YOUR ABILITY TO EXAMINE IT?

21 A. THE AMOUNT OF CORROSION CAN. IT DEPENDS ON IF IT'S
22 GROSSLY CORRODED, HOW LONG IT'S BEEN CORRODED, AND OTHER
23 FACTORS. IT CAN DISTURB SOME OF THE MARKINGS THAT ARE
24 THERE. HOWEVER, IN THIS CASE I DID NOT SEE ANY DISTURBANCES
25 THAT WOULD CAUSE ME TO BELIEVE OTHERWISE.

JAMES ARMSTRONG - CROSS EXAMINATION BY MR. SUMNER

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1 Q. WELL, WOULD IT HAVE BEEN IMPORTANT FOR YOU TO KNOW THE
2 CONDITION OF THE BARREL WHEN THE WEAPON WAS LAST FIRED?

3 A. THAT WOULD HAVE BEEN -- IT WOULD HAVE BEEN NICE, YES,
4 SIR.

5 Q. OKAY. BECAUSE THEN YOU WOULD HAVE KNOWN OR BEEN ABLE
6 TO TALK ABOUT HOW MUCH CORROSION WAS THERE, HOW MUCH DIRT
7 WAS THERE.

8 A. THAT'S CORRECT.

9 Q. OKAY. AND YOU DIDN'T HAVE THAT HERE, DID YOU?

10 A. NO, SIR.

11 Q. OKAY. I BELIEVE I NOTICED IN YOUR REPORT THAT YOU
12 CLEANED THIS BARREL, IS THAT CORRECT?

13 A. I CLEANED THE MUZZLE END, YES, SIR.

14 Q. OKAY. WHY DID YOU CLEAN IT?

15 A. I CLEANED IT -- WELL, I TOOK A MIKROSIL CASTING OF THE
16 BARREL BEFORE I CLEANED IT JUST SO I WOULD NOT LOSE WHAT MAY
17 HAVE BEEN THERE TO BEGIN WITH. I CLEANED IT SO I COULD
18 ACTUALLY GET PAST ANY CORROSION THAT WAS THERE AND DIRT AND
19 GET NOTHING BUT TO THE METAL OF THE BARREL WHERE THE ACTUAL
20 LANDS AND GROOVES ARE, TO REMOVE THAT AND GET ACTUALLY TO
21 THE MARKINGS THAT ARE LEFT BEHIND FROM THE RIFLING PROCESS.

22 Q. DO YOU RECALL WHEN YOU CLEANED IT? WAS IT IMMEDIATELY
23 PRIOR TO WHEN YOU TRIED TO PUSH THE BULLET PROJECTILE
24 THROUGH OR WOULD IT HAVE BEEN IN ADVANCE OF THAT OR ---

25 A. WELL, I DID A MIKROSIL CASTING, WHICH IS JUST A CAST

JAMES ARMSTRONG - CROSS EXAMINATION BY MR. SUMNER

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1 MADE OF THE BARREL FIRST BEFORE I CLEANED ANYTHING. I THEN
2 KEPT THAT AND PLACED IT IN AN ENVELOPE AS ANOTHER ITEM
3 NUMBER. AND THEN I CLEANED IT WITH A SOLVENT AND PATCHES.
4 I DID A REAL LIGHT CLEANING SO I WOULD NOT DISTURB ANY OF
5 THE MARKINGS ON THE BARREL.

6 Q. AND AGAIN, I BELIEVE YOU TESTIFIED YOU CLEANED IT SO
7 THAT YOU COULD BEST SEE THESE BARREL MARKINGS, IS THAT
8 CORRECT, MR. ARMSTRONG?

9 A. YES, SIR.

10 Q. NOW A -- YOU WERE NOT -- WHAT IS A BREECH MARK? HAVE
11 YOU EVER HEARD THAT TERM?

12 A. BREECH? YES, SIR.

13 Q. WHAT IS A BREECH MARK? HAVE YOU EVER HEARD THE TERM
14 BREECH MARK?

15 A. BREECH MARKS ARE LEFT BEHIND ON FIRED CARTRIDGE CASINGS
16 ON THE BUTT OF THE BRASS WHERE THE -- THE BREECH IS WHERE
17 THE FIRING PIN IS MAINLY KEPT INSIDE A FIREARM. WHEN THE
18 FIRING PIN COMES OUT AND STRIKES IT CAUSES A SMALL SPARK.
19 THEN THAT SPARK GOES INTO THE FLASH HOLE CAUSING THE
20 IGNITION OF THE POWDER. THEN GASES EXPAND AND WHATNOT.
21 THEN THE CARTRIDGE -- THEN THE PROJECTILE GOES DOWN THE
22 BARREL.

23 WELL, AT THAT POINT AT THE SAME TIME THE BARREL -- THE
24 BULLET'S GOING DOWN THE BARREL THE FIRE CARTRIDGE CASING IS
25 BEING PUSHED AGAINST THE BREECH. THAT'S WHERE THE FIRING

JAMES ARMSTRONG - CROSS EXAMINATION BY MR. SUMNER

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1 PIN IS RESTING. THOSE MARKINGS ON THAT BREECH ARE WHAT ARE
2 CALLED BREECH MARKS, ARE TRANSFERRED TO THE BRASS AT THAT
3 TIME.

4 Q. I NOTICED IN YOUR REPORT THAT YOU PUSHED A 32 CALIBER
5 SLUG DOWN THE BARREL, IS THAT RIGHT?

6 A. YES, SIR.

7 Q. OKAY. WHY WOULD YOU PUSH A 32 CALIBER SLUG DOWN A 30
8 CALIBER BARREL?

9 A. I WANTED IT TO BE A LITTLE BIGGER TO MAKE SURE I GOT
10 ALL THE LANDS AND GROOVES IMPRESSED AREA BECAUSE A 30
11 CALIBER, DEPENDING ON THE WAY IT'S MANUFACTURED, MAY NOT
12 TOUCH ALL THE LANDS AND GROOVES OF ACTUALLY PUSHING IT
13 THROUGH. SO I GOT IT A LITTLE BIT LARGER SO I'D MAKE SURE I
14 HAD ALL THE AREA ENCLOSED WITH THAT PROJECTILE.

15 Q. OKAY. SO YOU COMPARED A 32 CALIBER SLUG TO A 30
16 CALIBER SLUG, IS THAT RIGHT?

17 A. YES, SIR. THE 32 CALIBER SLUG WAS PUSHED INTO A 30
18 CALIBER.

19 Q. I'M SORRY?

20 A. THE 32 WAS PUSHED INTO THE 30 CALIBER BARREL. IT MADE
21 A 30 CALIBER.

22 Q. I UNDERSTAND BY THE WIDTH WAS REDUCED?

23 A. YES, SIR.

24 Q. BUT THE ORIGINAL WIDTH WAS 32 CALIBER?

25 A. THAT'S WHAT I STARTED WITH, YES, SIR.

JAMES ARMSTRONG - CROSS EXAMINATION BY MR. SUMNER

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1 Q. OKAY. AND THE ORIGINAL WIDTH OF THE FIRED BULLETS
2 WOULD HAVE BEEN 30 CALIBER?

3 A. YES, SIR.

4 Q. OKAY. HOW DID YOU PUSH THE SLUG THROUGH THE BARREL?

5 A. THE BARREL WAS STOOD UP ON END. I PUT THE CUT END OF
6 THE BARREL WHERE IT WOULD HAVE BEEN -- FROM WHERE IT WOULD
7 HAVE BEEN ATTACHED TO THE RECEIVER, PLACED IT ON THE FLOOR.
8 PLACED THE NOSE OF THE 32 CALIBER SLUG, ON MY FINAL PART OF
9 THE TEST, PLACED IT DOWN INTO AND THEN JUST STRUCK IT REAL
10 HARD WITH A HAMMER TO GO DOWN IN. THAT JUST GOT IT SEATED
11 INTO THE BARREL. THEN TURNED IT OVER AND GOT A ROD AND
12 PUSHED AND HIT REAL HARD AND KNOCKED THE SLUG OUT AS IF IT
13 WAS GOING OUT THE BARREL BEING FIRED.

14 Q. THANK YOU. I BELIEVE YOUR TESTIMONY WAS THAT THE
15 REPORT REFLECTS, MR. ARMSTRONG, THAT THERE WERE SUFFICIENT
16 POINTS OF AGREEMENT WITH BULLET IDENTIFICATION FOR ITEMS AT9
17 AND CB-1, IS THAT RIGHT? YOU JUST REFLECT BACK ON YOUR
18 REPORT AND SEE IF I'VE SAID THAT CORRECTLY?

19 A. ITEMS AT9 AND CB-1 WERE FIRED FROM THE SAME GUN. AND
20 ITEMS AT9 AND CB-1 WERE FIRED THROUGH ITEM A BARREL.

21 Q. OKAY. AND SO I STATED THAT CORRECTLY, IS THAT RIGHT?

22 A. YES, SIR. THERE'S SUFFICIENT MARKINGS, YES, SIR.

23 Q. OKAY. SO YOUR TESTIMONY IS THAT THE BULLET RECOVERED
24 FROM THE DECEASED'S BODY AND ALSO, I BELIEVE, A BULLET
25 FRAGMENT RECOVERED FROM A WALL OR SOMETHING AROUND THAT

JAMES ARMSTRONG - CROSS EXAMINATION BY MR. SUMNER

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1 HOTEL WERE FIRED FROM THAT BARREL RIGHT THERE?

2 A. THAT'S CORRECT.

3 Q. OKAY. NOW WHEN YOU SAY THERE'S SUFFICIENT POINTS OF
4 AGREEMENT -- IS THAT A CORRECT STATEMENT BY ME FOR YOU TO
5 SAY THERE'S SUFFICIENT AGREEMENT BETWEEN THESE SAMPLES?

6 A. YOU CAN PUT IT THAT WAY, YES, SIR.

7 Q. OKAY. WELL, WOULD THAT BE -- I KNOW YOU MENTIONED THE
8 WORD FINGERPRINT EARLY ON IN YOUR TESTIMONY TO THE JURY.

9 AND I BELIEVE THAT YOU SAID THAT A BULLET, FORGIVE ME, I'M
10 SORRY, THAT A GUN IS LIKE A FINGERPRINT IN THAT IT LEAVES --
11 THERE'S NO OTHER GUN THAT CAN MAKE THE SAME PRINTS ON A
12 BULLET, IS THAT CORRECT?

13 A. THAT'S CORRECT.

14 Q. WELL, HAVE YOU EVER HEARD THE TERM POINTS OF AGREEMENT
15 WITH FINGERPRINTS AND THAT THERE MUST BE MAYBE TEN POINTS OR
16 FIFTEEN POINTS OF AGREEMENT BETWEEN A SAMPLE AND A PRINT, A
17 KNOWN PRINT, FOR SOMEBODY TO SAY THEY'RE THE SAME PERSON,
18 THEY'RE THE SAME FINGERPRINT?

19 A. I'VE HEARD THAT, BUT I DON'T REALLY USE POINTS OF
20 AGREEMENT IN MY IDENTIFICATION. I LOOK AT EACH AND -- EACH
21 LAND IMPRESSED AREA AND GROOVE IMPRESSED AREA AND LOOK
22 THROUGH ALL THE STRIATIONS AND SEE AGREEMENT. IF I SEE
23 DISAGREEMENT THEN I HAVE TO KNOW WHY THERE'S DISAGREEMENT.

24 AND IF I DON'T -- IF I CAN'T EXPLAIN DISAGREEMENT EITHER
25 FROM STRIKING HARD SURFACES OR CORROSION FROM SAY IF A

JAMES ARMSTRONG - CROSS EXAMINATION BY MR. SUMNER

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1 PROJECTILE STAYED IN A BODY TOO LONG OR SOMETHING, THEN I
2 WOULD JUST GO SIMILAR INSUFFICIENT. I ACTUALLY HAVE TO SEE
3 AGREEMENT THROUGH THE ENTIRE PROJECTILE FOR ME TO MAKE A
4 CALL SUCH AS WAS FIRED FROM.

5 Q. WELL, HOW MANY DIFFERENT --- AND I HATE TO KEEP USING
6 THE WORD POINTS. MAYBE I NEED TO GET AWAY FROM THAT WORD.
7 BUT HOW MANY DIFFERENT THINGS DO YOU LOOK AT POTENTIALLY
8 WHEN YOU LOOK AT -- YOU TALKED ABOUT LANDS AND GROOVES. I
9 MEAN, WOULD YOU LOOK AT TWENTY DIFFERENT ANGLES? WOULD YOU
10 LOOK AT FIFTY? WOULD YOU LOOK AT SEVENTY-FIVE? WOULD YOU
11 LOOK AT A HUNDRED?

12 A. IT DEPENDS ON THE ACTUAL PROJECTILE YOU'RE LOOKING AT.
13 THERE MAY BE ONE OR TWO AREAS OF AGREEMENT, SO TO SPEAK, IN
14 EACH LAND AND GROOVE IMPRESSED AREA. THERE MAY BE A
15 HUNDRED. YOU JUST HAVE TO LOOK AND SEE IF YOU HAVE AN
16 OVERWHELMING AGREEMENT OF ACTUALLY LINING UP WHERE -- WHEN
17 YOU LOOK UNDER THE SCOPE WE HAVE WHAT WE CALL A DIVIDING
18 LINE THAT WE CAN MOVE LEFT AND RIGHT TO LOOK AT OUR
19 PROJECTILE OF EVIDENCE AS WELL AS OUR PROJECTILE OF OUR
20 TEST.

21 WHEN WE LINE UP THE LAND IMPRESSED AREAS WITH EACH
22 OTHER WE CAN MOVE THAT DIVIDING LINE ACROSS AND LOOK AND SEE
23 FROM THE BASE EDGE OF THE PROJECTILE WHICH IS THE LAST PART
24 OF THE PROJECTILE THAT WAS IN THE BARREL AND LOOK AND MOVE
25 OUT TOWARD WHAT WE CALL THE BEARING SURFACE IS WHERE THE

JAMES ARMSTRONG - CROSS EXAMINATION BY MR. SUMNER

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1 OTHER PART WAS ACTUALLY IN TOUCH WITH THE RIFLING. WE LOOK
2 FOR AGREEMENT ALL THE WAY FROM THE BASE EDGE ON OUT.

3 Q. SO YOU DON'T RECALL -- DO YOU RECALL IN THIS PARTICULAR
4 CASE HOW MUCH AGREEMENT YOU SAW OR IS THAT JUST SOMETHING
5 YOU SAY THERE'S AGREEMENT OR THERE'S NOT AGREEMENT? DID I
6 UNDERSTAND THAT CORRECTLY?

7 A. THERE'S AGREEMENT THROUGHOUT THE ENTIRE PROJECTILE FROM
8 MY TEST TO THE UNKNOWN.

9 Q. NOW YOU'VE ALSO EXAMINED THE TWO CARTRIDGE CASINGS, IS
10 THAT CORRECT?

11 A. YES, SIR.

12 Q. AND I BELIEVE THAT YOU TESTIFIED THAT THEY WERE
13 SIMILAR, BUT INSUFFICIENT MARKS AS TO ---

14 A. YES, SIR.

15 Q. --- COMPARE THOSE TO -- WHAT DID YOU COMPARE THOSE TWO
16 CASINGS WITH, MR. ARMSTRONG?

17 A. I COMPARED THOSE WITH A MIKROSIL CASTING OF THE BREECH
18 FACE AREA OF THE BOLT. I MADE THAT CASTING, PLACED IT UNDER
19 THE SCOPE, AND COMPARED JUST AS IF IT WAS ANOTHER FIRED
20 CARTRIDGE CASING.

21 Q. OKAY. SO I GUESS TO BOIL IT DOWN ON THAT YOU CANNOT
22 MATCH THE SHELL CASINGS FOUND AT THE SCENE TO THE PARTS OF
23 THAT WEAPON THAT YOU EXAMINED?

24 A. THAT'S CORRECT.

25 Q. OKAY. I BELIEVE YOU SAID -- IS THAT A 742 OR 740 ---

JAMES ARMSTRONG - CROSS EXAMINATION BY MR. SUMNER

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1 A. 742 WOODSMaster.

2 Q. WOODSMaster?

3 A. YES, SIR.

4 Q. 742 WOODSMaster REMINGTON 30-06, IS THAT CORRECT?

5 A. YES, SIR.

6 Q. OKAY. THAT'S WHAT THAT BARREL AND OTHER PARTS WERE?

7 A. YES, SIR.

8 Q. WOULD YOU AGREE WITH ME THAT THAT IS A VERY POPULAR AND

9 WIDE SPREAD GUN IN SOUTH CAROLINA OR IN AMERICA?

10 A. YES, SIR.

11 Q. I MEAN, YOU TALKED, AND I'M NOT GOING TO GO BACK OVER

12 ALL THAT WITH THE JURY, BUT YOU TALKED ABOUT HOW VERSATILE

13 THIS GUN IS. I MEAN, IT'S USED TO HUNT EVERYTHING FROM, I

14 GUESS, BEAR, OR BIG HORN SHEEP, DOWN TO RABBITS, WOULD THAT

15 NOT BE CORRECT? MAYBE NOT A RABBIT. I DON'T KNOW IF I

16 SHOULD HAVE SAID THAT. MAYBE SOMETHING BIGGER THAN A

17 RABBIT. I'M NOT A HUNTER AS ---

18 A. YES, SIR.

19 Q. --- YOU CAN TELL. MAYBE NOT A RABBIT. SHOTS A

20 VERSATILE BULLET. I MEAN, ---

21 A. THERE ARE A VARIETY OUT THERE FOR THAT PARTICULAR

22 CALIBER, YES, SIR.

23 Q. OKAY. I GUESS MY POINT HERE IS A REMINGTON 742

24 WOODSMaster IS SOMETHING YOU WOULD SEE AT WAL-MART, OR K-

25 MART, OR ANY HUNTING AND SUPPLY STORE. I MEAN, THERE'S TONS

JAMES ARMSTRONG - REDIRECT EXAMINATION BY MR. MOYER

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1 OF -- LITERALLY TONS OF THEM OUT THERE.

2 A. YES, SIR.

3 Q. OKAY. IT IS A MASS PRODUCED WEAPON, IS IT NOT?

4 A. YES, SIR.

5 Q. THEY'RE ROLLING THESE THINGS OFF THE FACTORY A LOT AT A

6 TIME ---

7 A. PRETTY REGULARLY, YES, SIR.

8 Q. SIR?

9 A. PRETTY REGULARLY, YES, SIR.

10 MR. SUMNER: ONE SECOND PLEASE, YOUR HONOR. THANK YOU.

11 MR. MOYER: BRIEF FOLLOW-UP, YOUR HONOR.

12 REDIRECT EXAMINATION BY MR. MOYER:

13 Q. MR. ARMSTRONG, YOU MENTIONED THAT THE CARTRIDGE CASING

14 THAT -- AND YOU REITERATED HOW ON CROSS EXAMINATION HOW IT

15 COULDN'T BE MATCHED.

16 A. YES, SIR.

17 Q. COULD THEY BE EXCLUDED?

18 A. NO, SIR.

19 Q. AND THEY ARE -- THAT IS THE TYPE OF SHELL CASING THAT

20 WOULD BE FIRED FROM A RIFLE LIKE THAT?

21 A. YES, SIR.

22 MR. MOYER: NOTHING FURTHER.

23 THE COURT: THANK YOU. YOU CAN STEP DOWN. CAN WE

24 EXCUSE MR. ARMSTRONG?

25 MR. MOYER: THANK YOU, YOUR HONOR.

1 MR. SUMNER: YES, SIR.

2 THE COURT: THANK YOU, SIR. MR. ARMSTRONG, YOU DON'T
3 HAVE ANY OF OUR EXHIBITS, NOW DO YOU?

4 MR. ARMSTRONG: NO, SIR.

5 THE COURT: OKAY.

6 MR. MOYER: MAY IT PLEASE THE COURT, YOUR HONOR? AT
7 THIS TIME THE STATE WOULD REST.

8 THE COURT: ALL RIGHT. MR. SUMNER, YOU HAVE A COUPLE
9 OF SHORT WITNESSES?

10 MR. SUMNER: I DO. I DO, YOUR HONOR. IF THE COURT
11 WOULD ENTERTAIN THEM. I KNOW IT'S 4:30. I THINK WE CAN
12 MOVE THROUGH A FEW.

13 THE COURT: THAT'LL BE FINE.

14 MR. SUMNER: YOUR HONOR, PRIOR TO CALLING A WITNESS I
15 WOULD LIKE TO ANNOUNCE A STIPULATION I BELIEVE THAT I HAVE
16 REACHED WITH MR. MOYER.

17 THE COURT: ALL RIGHT.

18 MR. SUMNER: AND THAT IS THAT ON NOVEMBER 5TH, 2002
19 GREENVILLE COUNTY SCHOOLS WERE NOT IN SESSION. IT WAS
20 ELECTION DAY AND THE CHILDREN WERE NOT IN SCHOOL THAT DAY.
21 IS THAT CORRECT, MR. MOYER?

22 MR. MOYER: THAT'S CORRECT.

23 MR. SUMNER: OKAY. ALL RIGHT. THANK YOU. HANNAH
24 WHITE.

25 HANNAH WHITE, BEING DULY

HANNAH WHITE - DIRECT EXAMINATION BY MR. SUMNER

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1 SWORN TESTIFIED AS FOLLOWS:

2 MR. SUMNER: YOU'RE GOING TO NEED TO MOVE CLOSER TO THE
3 MICROPHONE, MS. WHITE, PLEASE.

4 DIRECT EXAMINATION BY MR. SUMNER:

5 Q. YOUR FULL NAME AGAIN?

6 A. HANNAH MICHELLE WHITE.

7 Q. OKAY. TRY TO LEAN OVER ONTO THE MICROPHONE SO THAT THE
8 LADIES AND GENTLEMEN OF THE JURY CAN HEAR YOU.

9 A. OKAY.

10 Q. WHERE DO YOU LIVE, MS. WHITE?

11 A. GASTON.

12 Q. GASTON, SOUTH CAROLINA?

13 A. YES, SIR.

14 Q. HOW LONG HAVE YOU LIVED IN GASTON? AGAIN, I'M GOING TO
15 GET YOU TO LEAN IN.

16 A. GOING ON TWO YEARS.

17 Q. OKAY. GOING ON THREE YEARS?

18 A. TWO.

19 Q. TWO?

20 A. (AFFIRMATIVE NOD).

21 Q. NOW WHERE DID YOU -- ARE YOU MARRIED?

22 A. YES.

23 Q. AND WHAT IS YOUR HUSBAND'S NAME?

24 A. BILLY WHITE.

25 Q. PRIOR TO LIVING IN GASTON WHERE DID YOU LIVE?

HANNAH WHITE - DIRECT EXAMINATION BY MR. SUMNER

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1 A. TRAVELERS REST.

2 Q. TRAVELERS REST HERE IN GREENVILLE COUNTY?

3 A. YES, SIR.

4 Q. WERE YOU LIVING IN, YOU AND YOUR HUSBAND, LIVING IN
5 TRAVELERS REST ON NOVEMBER 5TH OF 2002?

6 A. YES, SIR.

7 Q. DO YOU KNOW THE DEFENDANT, RUSTY RICE?

8 A. YES, SIR.

9 Q. WOULD YOU PLEASE TELL THE JURY HOW LONG YOU'VE KNOWN
10 RUSTY?

11 A. ABOUT EIGHT YEARS.

12 Q. NOW LET ME TURN YOUR ATTENTION BACK TO NOVEMBER 5TH,
13 2002 AND ASK YOU DO YOU HAVE SCHOOL AGED CHILDREN?

14 A. YES.

15 Q. DO YOU RECALL THAT DAY SPECIFICALLY?

16 A. YES, SIR.

17 Q. WOULD YOU PLEASE TELL THE JURY DID YOU EVER SEE RUSTY
18 WRIGHT, FORGIVE ME, RUSSELL RICE OR RUSTY RICE, LET ME SAY
19 THAT, THAT AFTERNOON OR THAT EARLY EVENING?

20 A. YES, SIR.

21 Q. TELL THE JURY WHAT YOU RECALL ABOUT SEEING RUSTY RICE
22 THAT EVENING.

23 A. HE SHOWED UP A LITTLE BIT AFTER 5:30, ATE A LITTLE BIT.
24 WE JUST STARTED WATCHING A MOVIE. AND HIM AND MY HUSBAND
25 WAS TALKING ABOUT PLAYING BALL. AND THEN RUSTY LEFT. THE

HANNAH WHITE - CROSS EXAMINATION BY MR. MOYER

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1 REASON I REMEMBER IS BECAUSE HE WAS SICK. MY KIDS WERE HOME
2 THAT DAY. RUSTY SHOWED UP. I HAD NEVER SEEN HIM SICK
3 BEFORE. WE GAVE HIM SOME ANTIBIOTICS, SOME ALLERGY
4 MEDICINE. AFTER THAT HE JUST LEFT. HE WAS THERE PROBABLY
5 ABOUT FIFTEEN, TWENTY MINUTES AT THE LONGEST.

6 Q. OKAY. DO YOU RECALL WHAT HE WAS WEARING?

7 A. T-SHIRT AND A PAIR OF SWEATS.

8 Q. T-SHIRT AND A PAIR OF SWEATS?

9 A. (AFFIRMATIVE NOD).

10 Q. DID HE APPEAR IN ANY WAY UNUSUAL TO YOU OR HAVE A
11 DEMEANOR THAT YOU THOUGHT WAS ODD?

12 A. HE WAS JUST SICK.

13 MR. SUMNER: ONE SECOND PLEASE, YOUR HONOR.

14 THE COURT: OKAY.

15 Q. THANK YOU. PLEASE ANSWER ANY QUESTIONS MR. MOYER MIGHT
16 HAVE.

17 THE COURT: SOLICITOR.

18 CROSS EXAMINATION BY MR. MOYER:

19 Q. OKAY, MA'AM, WHERE IN TRAVELERS REST?

20 A. WALDROP DRIVE.

21 Q. IS THAT IN THE ACTUAL TOWN OF TRAVELERS REST?

22 A. YES.

23 Q. SO WITHIN THE CITY LIMITS OF TRAVELERS REST?

24 A. YES.

25 Q. AND SO IT'S YOUR TESTIMONY HERE TODAY THAT HE WAS WITH

HANNAH WHITE - CROSS EXAMINATION BY MR. MOYER

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1 YOU AT ABOUT 5:30?

2 A. IT WAS A LITTLE AFTER 5:30.

3 Q. HOW MUCH AFTER 5:30?

4 A. I REALLY DON'T KNOW BECAUSE I HAD JUST SAT MY KIDS DOWN
5 TO EAT AND WE EAT AT 5:30. THEY WERE SITTING AT THE TABLE
6 AND HAD DONE MADE THEIR PLATES.

7 Q. SO YOU'RE SAYING THAT YOU EAT EVERY DAY AT 5:30?

8 A. WHEN WE LIVED UP THERE WE WERE ON A SCHEDULE AND I HAVE
9 SIX KIDS.

10 Q. AND SO YOU'RE REMEMBERING THIS BECAUSE THAT WAS ABOUT
11 THE TIME YOU WERE SITTING DOWN TO EAT? SO THAT WAS THE TIME

12 ---

13 A. YES.

14 Q. --- HE SHOWED UP? OKAY. NOW ISN'T IT TRUE THAT YOU
15 DIDN'T REMEMBER ANY OF THIS THAT YOU WERE TALKING ABOUT
16 UNTIL AFTER YOU RECEIVED A SERIES OF PHONE CALLS BACK IN THE
17 SUMMER?

18 A. NO. I TALKED TO ONE PERSON.

19 Q. OKAY.

20 A. AND SHE ASKED ME WHEN WAS THE LAST TIME I'D SEEN RUSTY.

21 Q. AND THAT WAS SHARON RICE?

22 A. YES.

23 Q. OKAY. AND YOU DIDN'T SPEAK TO CHARLIE RICE?

24 A. AFTER THAT.

25 Q. OKAY. AND ---

HANNAH WHITE - CROSS EXAMINATION BY MR. MOYER

408

1 A. AND ALL SHE ASKED ME WAS WHEN WAS THE LAST TIME I'D
2 SEEN HIM.

3 Q. OKAY.

4 A. AND I TOLD HER THAT IT WAS THAT DAY, KIDS HAD BEEN OUT
5 OF SCHOOL BECAUSE OF ELECTION DAY. WE HAD NEIGHBOR'S KIDS
6 OVER AND STUFF LIKE THAT. AND THEN SHE SAID THAT SHE WAS
7 GOING TO HAVE HIS BROTHER CALL ME.

8 Q. OKAY. AND DID HIS BROTHER CALL YOU?

9 A. YEAH, PROBABLY ABOUT AN HOUR LATER.

10 Q. AND YOU KIND OF TALKED IT OVER WITH HIM TOO?

11 A. HE JUST ASKED ME WHAT DID I REMEMBER, THAT KIND OF
12 THING, AND THAT HE WAS GOING TO HAVE SOMEONE COME OUT AND
13 TAKE A STATEMENT FROM US.

14 Q. AND YOUR HUSBAND, BILLY WHITE, YOUR HUSBAND, BILLY, WAS
15 THERE TOO, RIGHT?

16 A. NO, AT THAT TIME HE WAS IN GREENVILLE.

17 Q. OKAY. BUT HE SPOKE TO THESE PEOPLE AS WELL?

18 A. WHEN THEY CAME OUT TO TAKE A STATEMENT HE WAS THERE.

19 Q. OKAY. AND DIDN'T Y'ALL GET A CALL FROM RUSTY TOO?

20 A. I BELIEVE SO.

21 Q. OKAY. AND HE TALKED IT OVER WITH Y'ALL ABOUT THESE
22 TIME -- THE TIME-FRAME?

23 A. NO.

24 Q. NO?

25 A. UH-UH (NEGATIVE).

HANNAH WHITE - CROSS EXAMINATION BY MR. MOYER

409

1 Q. BUT IT WAS -- IT WAS AFTER YOU RECEIVED THOSE PHONE
2 CALLS THAT YOU TALKED TO THE INVESTIGATOR?

3 A. YEAH.

4 Q. OKAY. IN FACT, THIS INVESTIGATOR HERE, DETECTIVE
5 FULLER, CAME OUT AND MET WITH Y'ALL, DIDN'T HE?

6 A. I THINK THAT'S HIM.

7 Q. OKAY. BUT IT WAS SOMEONE FROM THE GREENVILLE POLICE
8 DEPARTMENT?

9 A. YES.

10 Q. AND SAT DOWN WITH YOU AND BILLY WHITE AT THE TABLE?

11 A. YEAH.

12 Q. AND Y'ALL TOLD HIM THIS INFORMATION.

13 A. I DIDN'T TALK, MY HUSBAND DID. I WAS BUSY RUNNING
14 AROUND AFTER THE KIDS.

15 Q. OKAY. AND BUT BASICALLY WHAT HE WAS SAYING WAS WHAT
16 Y'ALL HAD AGREED UPON WAS WHAT HAD, I MEAN, WHAT HAD
17 HAPPENED ON NOVEMBER 5TH, RIGHT?

18 A. LIKE I SAID, I WAS KIND OF RUNNING AROUND. I JUST
19 CAUGHT LIKE LITTLE PARTS OF IT HERE AND THERE. OUR THREE
20 YEAR OLD WAS KIND OF RAMBUNCTIOUS.

21 Q. OKAY. WELL, ISN'T IT TRUE THAT Y'ALL TOLD DETECTIVE
22 FULLER THAT THE REASON YOU REMEMBER THAT DAY IS BECAUSE THE
23 CHILDREN WERE HOME?

24 A. YES, SIR.

25 Q. AND THEY WERE PLAYING OUTSIDE?

HANNAH WHITE - CROSS EXAMINATION BY MR. MOYER

410

- 1 A. YES, SIR.
- 2 Q. OKAY. AND YOU HAVE SIX CHILDREN?
- 3 A. YES, SIR.
- 4 Q. WHAT ARE THE AGES OF THE CHILDREN?
- 5 A. THEN OR NOW?
- 6 Q. I'M SORRY?
- 7 A. THEN OR NOW?
- 8 Q. AT THAT TIME.
- 9 A. OH, GOODNESS. I'M SO NERVOUS I CAN'T EVEN ADD UP AT
- 10 THAT TIME.
- 11 Q. THAT'S OKAY. TAKE YOUR TIME. TAKE YOUR TIME. YOU CAN
- 12 SAY NOW IF THAT'S EASIER.
- 13 A. CHAD IS FIFTEEN. CANDACE IS FOURTEEN. COREY IS
- 14 THIRTEEN. CHRIS IS TWELVE. AND CODY IS FIVE. AND CHASE IS
- 15 THREE RIGHT NOW.
- 16 Q. OKAY. AND YOU REMEMBER THAT BECAUSE ALL THE CHILDREN
- 17 WERE OUTSIDE PLAYING THAT DAY?
- 18 A. YES.
- 19 Q. OKAY. EVEN THE YOUNG ONES?
- 20 A. CHASE WAS NOT. CODY WAS NEXT DOOR WITH ANITA'S
- 21 CHILDREN.
- 22 Q. OKAY. NOW IF YOU WERE TO KNOW THAT IT'D BEEN
- 23 ABSOLUTELY POURING DOWN BUCKETS OF RAIN ALL DAY LONG ---
- 24 A. ON AND OFF.
- 25 Q. OKAY. WELL, YOU WOULDN'T HAVE HAD THE CHILDREN OUTSIDE

HANNAH WHITE - CROSS EXAMINATION BY MR. MOYER

411

1 PLAYING ON A DAY WHERE IT WAS ABOUT FORTY-FIVE DEGREES AND

2 POURING DOWN RAIN ALL DAY, WOULD YOU?

3 A. WHEN THEY'RE RUNNING BACK AND FORTH AND PLAYING ON THE

4 PORCH, ON THE ROLLER BLADES, YEAH.

5 Q. SO YOU'RE SAYING THEY WERE OUTSIDE PLAYING ON ROLLER

6 BLADES THAT DAY IN THE RAIN IN FORTY ---

7 A. WELL, THERE'S A PORCH KIND OF THING OVER THE TOP OF THE

8 BACK PORCH.

9 Q. OKAY.

10 A. SO, YEAH. YOU'VE GOT TO REALIZE, THERE WERE SO MANY

11 KIDS OVER AT THE HOUSE. THERE'S NO WAY MY HOUSE COULD HAVE

12 HELD EVERYBODY. THERE WAS ABOUT THIRTEEN KIDS OVER THERE

13 THAT DAY.

14 Q. OKAY. AND THAT'S WHAT YOU'RE SAYING IS THE REASON YOU

15 REMEMBER THAT DAY?

16 A. YEAH.

17 Q. AND Y'ALL ALSO TOLD THE DETECTIVE THAT HE CAME OVER

18 ABOUT 1:00, DIDN'T YOU?

19 A. I BELIEVE SO.

20 Q. OKAY. AND YOU REMEMBERED IT SPECIFICALLY -- YOU AND

21 YOUR HUSBAND SAT DOWN, YOU TALKED IT OVER, DIDN'T YOU?

22 A. NOT REALLY. HIS SCHEDULE WAS KIND OF DIFFERENT FROM

23 MINE.

24 Q. BUT Y'ALL THOUGHT ABOUT IT TOGETHER A LITTLE BIT?

25 A. YEAH, A LITTLE BIT.

HANNAH WHITE - CROSS EXAMINATION BY MR. MOYER

412

1 Q. AND TALKED IT OVER WITH DETECTIVE FULLER?

2 A. MY HUSBAND TALKED TO HIM.

3 Q. OKAY. AND YOU REMEMBERED IT BECAUSE BILLY WENT OUT AND
4 RENTED SOME MOVIES RIGHT AROUND 1:00, RIGHT?

5 A. I DON'T KNOW THE TIME-FRAME THAT HE RENTED MOVIES.

6 Q. OKAY. IT WAS DURING THE DAY THOUGH?

7 A. YEAH.

8 Q. AND YOU REMEMBERED THE TIME-FRAME BECAUSE WHEN BILLY
9 GOT HOME RUSTY RICE WAS THERE?

10 A. BILLY PULLED UP AND WAS UNLOADING THE CAR AND THEN
11 RUSTY CAME UP.

12 Q. OKAY. SO WHEN YOU TALKED TO DETECTIVE FULLER BACK ON
13 AUGUST 8TH YOU TOLD DETECTIVE FULLER THAT HE WAS THERE FROM
14 1:00 OR 1:30 ALL THE WAY UP UNTIL 6:00 OR SO.

15 A. NO. HE SHOWED UP, HE HAD A PHONE CALL, AND HE LEFT.

16 Q. OH, HE LEFT?

17 A. YES.

18 Q. OKAY. NOW YOU DIDN'T -- YOU DIDN'T TELL DETECTIVE
19 FULLER THAT HE LEFT, DID YOU?

20 A. HE DIDN'T TALK TO ME. HE TALKED TO MY HUSBAND. AND MY
21 HUSBAND WAS ON THE THIRD SHIFT AND REALLY DIDN'T KNOW --
22 REALLY COULDN'T KEEP UP WITH ANYTHING.

23 Q. OKAY. SO IS BILLY HERE TODAY?

24 A. I BELIEVE SO. HE'S OUT THERE IF HE HASN'T WALKED
25 OUTSIDE.

HANNAH WHITE - CROSS EXAMINATION BY MR. MOYER

413

1 Q. OKAY. AND SO YOU'RE SAYING YOU DIDN'T AGREE THAT HE'D
2 BEEN THERE FROM 1:00 ALL THE WAY UP TIL HE LEFT AT SIX?

3 A. NO.

4 Q. AND Y'ALL HAD PORK CHOPS FOR DINNER?

5 A. WE HAD PORK CHOPS.

6 Q. OKAY. BUT YOUR TESTIMONY TODAY IS THAT HE DIDN'T
7 ARRIVE UNTIL AROUND 5:30 OR SO?

8 A. THE SECOND TIME HE COME UP.

9 Q. WELL, WHAT TIME DID HE GET BACK?

10 A. IT WAS A LITTLE AFTER 5:30.

11 Q. WHAT TIME DID HE LEAVE?

12 A. I DON'T KNOW. IT WAS EARLIER THAT DAY.

13 Q. AND YOU AREN'T ABLE TO ESTIMATE THE TIME-FRAME AT ALL?

14 A. I HAD ALL THOSE KIDS RUNNING IN AND OUT. THE ONLY WAY
15 I CAN REMEMBER WHAT TIME HE GOT THERE IS BECAUSE WE WERE
16 SITTING DOWN TO EAT. AND THAT WAS THE SCHEDULE, 5:30.
17 AFTER YOU EAT, BATHS.

18 Q. WELL, WHAT WAS HE DOING THERE THE FIRST TIME HE WAS
19 THERE AROUND ---

20 A. HE WANTED TO TALK TO BILLY, BUT BILLY WORKS THIRD. HE
21 WAS ASLEEP.

22 Q. BILLY WAS ASLEEP?

23 A. (AFFIRMATIVE NOD).

24 Q. OKAY. THANK YOU.

25 THE COURT: ANY REDIRECT?

JACKIE KELLY - DIRECT EXAMINATION BY MR. SUMNER

414

1 MR. SUMNER: NO, SIR.

2 THE COURT: THANK YOU. YOU CAN STEP DOWN.

3 MR. SUMNER: JACKIE DEWAYNE KELLY. CAN THIS WITNESS BE
4 EXCUSED, YOUR HONOR?

5 THE COURT: ANY OBJECTION TO EXCUSING THIS WITNESS?

6 MR. MOYER: NO, SIR, YOUR HONOR.

7 THE COURT: THANK YOU.

8 JACKIE KELLY, BEING DULY

9 SWORN TESTIFIED AS FOLLOWS:

10 DIRECT EXAMINATION BY MR. SUMNER:

11 Q. MR. KELLY, YOU LIVE IN GREENVILLE?

12 A. YES, SIR.

13 Q. HOW LONG HAVE YOU LIVED IN GREENVILLE?

14 A. ALL MY LIFE.

15 Q. DO YOU KNOW JOHN HAMBY?

16 A. YES, SIR.

17 Q. DID YOU KNOW HOMER JOHNSON BEFORE HE DIED?

18 A. YES, SIR.

19 Q. DO YOU RECALL GOING TO THE HOSPITAL THE NIGHT THAT
20 HOMER DIED, HE WAS SHOT?

21 A. YES, SIR.

22 Q. AND, IN FACT, WHEN YOU GOT TO THE HOSPITAL YOU SAW JOHN
23 HAMBY, IS THAT CORRECT?

24 A. NO, HE CAME UP AFTER I WAS THERE.

25 Q. BUT JOHN HAMBY DID COME TO THE HOSPITAL ---

JACKIE KELLY - DIRECT EXAMINATION BY MR. SUMNER

415

1 A. OH, YEAH. YEAH, I DID SEE HIM.

2 Q. BECAUSE YOU WERE THERE AT THE HOSPITAL AS WELL, IS THAT
3 RIGHT?

4 A. RIGHT.

5 Q. AND DID HE TELL YOU OR COMMUNICATE TO YOU SOMEHOW THAT
6 HOMER HAD HAD TEN POUNDS OF MARIJUANA ON HIM EARLIER THAT
7 DAY?

8 A. YES, SIR.

9 Q. AND YOU ASKED HIM OR HE TOLD YOU THAT SPECIFICALLY, IS
10 THAT CORRECT? I MEAN, HE TOLD YOU HOMER HAD TEN POUNDS ON
11 HIM EARLIER TODAY?

12 A. RIGHT. HE SAID HE SAW HIM EARLIER THAT DAY.

13 Q. OKAY. DO YOU RECALL WHAT TIME HE SAID HE HAD MET HOMER
14 EARLIER THAT DAY?

15 A. HE DIDN'T TELL ME ALL THAT.

16 Q. OKAY. DID HE NOT TELL YOU THAT HE HAD SEEN HOMER, THAT
17 JOHNNY HAMBY HAD SEEN HOMER AROUND FIVE PM THAT AFTERNOON?

18 A. I'M NOT -- I'M NOT POSITIVE.

19 Q. OKAY. I'M GOING TO HAND YOU A STATEMENT AND JUST ASK
20 YOU TO TAKE A LOOK AT IT TO REFRESH YOUR MEMORY.

21 A. OKAY.

22 Q. AND THIS WAS GIVEN ON 11/7/02, IS THAT CORRECT? YOU
23 TAKE A LOOK AT IT AND SEE. IS THAT YOUR NAME RIGHT THERE?

24 A. YES.

25 Q. OKAY. DID YOU TELL DETECTIVE FULLER, AND I'M QUOTING,

JACKIE KELLY - DIRECT EXAMINATION BY MR. SUMNER

416

1 THAT HE, MEANING HAMBY, HAD SEEN HOMER RIGHT AROUND FIVE PM
2 BEFORE THIS HAPPENED? TAKE A LOOK RIGHT THERE AND TAKE YOUR
3 TIME PLEASE.

4 A. YES, SIR.

5 Q. AND YOU TOLD THAT TO DETECTIVE FULLER, IS THAT CORRECT?

6 A. EVIDENTLY. I MEAN, IT'S THE STATEMENT.

7 Q. YOU ALSO SAW MIKE, A FELLOW NAMED MIKE AT THE HOSPITAL,
8 IS THAT CORRECT?

9 A. YES, SIR.

10 Q. AND HE WAS PRESENT WHEN HOMER, I MEAN, FORGIVE ME, MIKE
11 WAS PRESENT WHEN JOHN HAMBY TOLD YOU ABOUT SEEING HOMER WITH
12 THE TEN POUNDS OF MARIJUANA THAT DAY, IS THAT CORRECT?

13 A. CORRECT.

14 Q. I DON'T HAVE ANY OTHER QUESTIONS. THANK YOU.

15 THE COURT: SOLICITOR.

16 MR. MOYER: I HAVE NO QUESTIONS.

17 THE COURT: THANK YOU. YOU CAN STEP DOWN.

18 MR. SUMNER: I DON'T NEED THIS WITNESS TO REMAIN UNLESS
19 THE SOLICITOR DOES.

20 MR. MOYER: I DO NOT.

21 THE COURT: YOU MAY BE EXCUSED.

22 MR. SUMNER: YOUR HONOR, NEXT I WOULD CALL ABRA HAMBY,
23 ABRA HAMBY. AND THIS WOULD BE -- THIS WITNESS, YOUR HONOR,
24 AND MAYBE ONE MORE SHORT WITNESS.

25 THE COURT: OKAY.

ABRA HAMBY - DIRECT EXAMINATION BY MR. SUMNER

417

1 MR. SUMNER: THAT'LL PUT US AROUND 5:00 OR SO.

2 ABRA HAMBY, BEING DULY

3 SWORN TESTIFIED AS FOLLOWS:

4 DIRECT EXAMINATION BY MR. SUMNER:

5 Q. MS. HAMBY, YOU LIVE IN GREENVILLE COUNTY, IS THAT

6 CORRECT?

7 A. YES, SIR.

8 Q. AND WHAT RELATION ARE YOU TO JOHNNY HAMBY?

9 A. EX-SISTER IN-LAW. I'M HIS EX-SISTER IN-LAW.

10 Q. YOU KNOW JOHN HAMBY, IS THAT CORRECT?

11 A. YES, I DO.

12 Q. DID YOU -- LET ME TURN YOUR ATTENTION BACK IF I COULD,

13 MA'AM, TO NOVEMBER 6TH OF 2002. THAT WOULD HAVE BEEN THE

14 DAY AFTER HOMER JOHNSON WAS KILLED, IS THAT CORRECT?

15 A. YES, SIR.

16 Q. DID YOU HAVE AN OCCASION TO BE PRESENT AT THE HARD

17 TIMES HUNTING AND FISHING SUPPLY STORE ON ---

18 A. YES.

19 Q. --- WHITE HORSE ROAD?

20 A. YES, SIR, I DID.

21 Q. AND DID YOU SPEAK WITH JOHN HAMBY?

22 A. YES, I DID.

23 Q. WOULD YOU PLEASE TELL THE JURY WHAT YOU RECALL ABOUT

24 THAT CONVERSATION WITH MR. HAMBY?

25 A. THE CONVERSATION THAT I HAD WITH JOHN HAMBY THAT DAY

ABRA HAMBY - DIRECT EXAMINATION BY MR. SUMNER

418

1 WAS, IN FACT, THAT HE HAD TOLD ME THAT HE HAD A -- I'M
2 GETTING CONFUSED. THAT HE -- HE HAD ON TWO MORPHINE
3 PATCHES. SO THAT MADE HIM WANT TO TALK. AND HE TOLD ME
4 THAT HE HAD SENT -- WHY SEND THE BOYS TO DO A MAN'S JOB?
5 AND HE SAID THAT AFTER HE FOUND OUT THAT THEY DIDN'T KILL
6 HOMER JOHNSON THAT HE GOT INTO THE BACK OF THE VAN AND WAS
7 WAITING ON HOMER, AND WHEN HOMER ENTERED THE VAN THAT HE
8 SHOT HOMER IN THE BACK OF THE HEAD AND THEN HE SHOT HIM IN
9 THE BACK.

10 Q. DID HE SAY ANYTHING ELSE -- HE WAS TALKING ABOUT
11 HIMSELF? HE SAID ---

12 A. HE SAID HISSELF, JOHNNY HAMBY, HE WAS TALKING ABOUT
13 HISSELF. HE WASN'T TALKING ABOUT NOBODY ELSE BUT HISSELF
14 BECAUSE HE SAID WHY DO YOU SEND A BOY TO DO A MAN'S JOB,
15 THAT HE HAD SHOT THE MOTHER FUCKER IN THE BACK OF THE HEAD
16 AND IN THE CHEST.

17 Q. OKAY. DO YOU RECALL ANYTHING ELSE ABOUT THAT
18 CONVERSATION THAT AFTERNOON WITH MR. HAMBY AT THE HARD TIMES
19 STORE RELATED TO -- ONLY RELATED TO THIS SHOOTING OR
20 KILLING?

21 A. THEY WAS A LOT OF CONVERSATION BEFORE THE SHOOTING.
22 BUT HE SAID IF I HAD TOLD ANYBODY WHAT HE HAD DID TO HOMER
23 THAT HE WOULD KILL ME AND HE WOULD KILL MY GIRLS.

24 Q. PLEASE ANSWER ANY QUESTIONS THAT MR. MOYER MIGHT HAVE
25 AT THIS TIME.

ABRA HAMBY - CROSS EXAMINATION BY MR. MOYER

419

1 THE COURT: SOLICITOR.

2 CROSS EXAMINATION BY MR. MOYER:

3 Q. MS. HAMBY OR IS IT MS. FRICKS?

4 A. IT'S HAMBY AT THE PRESENT.

5 Q. OKAY. AND THAT'S BECAUSE YOU'RE MARRIED TO JOHNNY

6 HAMBY'S BROTHER?

7 A. YES, SIR.

8 Q. OKAY. AND HOW LONG HAVE YOU BEEN MARRIED TO HIM?

9 A. EIGHTEEN YEARS.

10 Q. AND Y'ALL ARE SEPARATED NOW, RIGHT?

11 A. YES, SIR.

12 Q. AND YOU DON'T REALLY GET ALONG WITH THE HAMBY FAMILY

13 VERY WELL, DO YOU?

14 A. NO.

15 Q. YOU DON'T GET ALONG -- AND THERE'S A LOT OF THEM, ISN'T

16 THERE?

17 A. THEY'S A LOT OF THEM, BUT I GET ALONG WITH SOME ---

18 Q. YOU GET ALONG WITH SOME OF THEM?

19 A. YES, SIR.

20 Q. BUT YOU DON'T GET ALONG WITH -- OBVIOUSLY YOU DON'T GET

21 ALONG WITH ---

22 A. I DON'T ---

23 Q. --- YOUR HUSBAND.

24 A. --- GET ALONG WITH MY EX --- SOON TO BE EX-HUSBAND.

25 Q. YOU DON'T GET ALONG WITH JOHNNY?

ABRA HAMBY - CROSS EXAMINATION BY MR. MOYER

420

1 A. NO, SIR, I DO NOT.

2 Q. AND THEY HAVE A SISTER TOO THAT YOU'VE BEEN IN A FIGHT
3 WITH, ISN'T THAT RIGHT?

4 A. NO, SIR.

5 Q. OKAY. BUT AT LEAST THOSE TWO?

6 A. JUST JOHNNY AND TOMMY IS THE ONES I DON'T GET ALONG
7 WITH.

8 Q. AND NONE OF WHAT YOU JUST SAID HERE IN COURT TODAY
9 REALLY CAME OUT TIL JUST ABOUT A WEEK AGO?

10 A. THAT'S THE TRUTH.

11 Q. AND THAT'S WHEN YOU SAID SOMETHING ABOUT THIS?

12 A. YES, SIR.

13 Q. EVEN THOUGH WHAT YOU'RE SAYING NOW IS THAT HE TOLD YOU
14 THIS BACK IN NOVEMBER THE 6TH OF 2002?

15 A. THAT'S THE TRUTH.

16 Q. AND ISN'T IT TRUE THAT -- DIDN'T JOHNNY HAMBY SELL YOU
17 A TRUCK?

18 A. YES, SIR, HE DID.

19 Q. AND HE CAME AND TOOK THAT TRUCK BACK, DIDN'T HE?

20 A. YES, HE DID.

21 Q. AND THAT DIDN'T MAKE YOU VERY HAPPY, DID IT?

22 A. IT DIDN'T BOTHER ME. HE DIDN'T REALLY COME TO GET THE
23 TRUCK.

24 Q. DIDN'T HE REPOSSESS IT?

25 A. HE SENT A FRIEND BY THE NAME OF JODIE TO GET THE TRUCK.

ABRA HAMBY - CROSS EXAMINATION BY MR. MOYER

421

1 Q. BUT IT WENT BACK TO JOHNNY?

2 A. YEAH, IT WENT BACK TO JOHNNY.

3 Q. OKAY. EVEN THOUGH HE'D GIVEN IT TO YOU OR SOLD IT TO
4 YOU ---

5 A. I WAS WORKING FOR HIM PART-TIME PAYING HIM. THAT'S HOW
6 I WAS PAYING THE PAYMENTS FOR THE TRUCK.

7 Q. BUT HE JUST CAME AND TOOK IT. AND THAT DIDN'T MAKE YOU
8 VERY HAPPY, DID IT?

9 A. IT DIDN'T REALLY BOTHER ME.

10 Q. IT DIDN'T BOTHER YOU?

11 A. NO, BECAUSE AT THE TIME I HAD DONE PURCHASED ANOTHER
12 VEHICLE.

13 Q. OKAY. NOW YOU MENTIONED -- YOU TALKED TO THIS
14 DETECTIVE NOT TOO LONG AGO, DIDN'T YOU?

15 A. YES, SIR, I DID.

16 Q. AND YOU GAVE HIM A VERY DETAILED STORY ABOUT WHAT
17 JOHNNY HAMBY TOLD YOU?

18 A. YES, SIR.

19 Q. AND YOU SAID -- ISN'T IT TRUE THAT THE TWO PEOPLE THAT
20 WERE INVOLVED WERE -- ONE WAS THIS DEFENDANT, RIGHT, RUSSELL
21 RICE?

22 A. YES, SIR.

23 Q. AND WHAT YOU SAID THAT JOHNNY HAMBY TOLD YOU WAS THAT
24 THEY WERE WAITING IN A ROOM SOMEWHERE THERE AT THE HOTEL?

25 A. WHAT I HAD SAID WAS THEY WAS THREE PEOPLE WAITING IN A

ABRA HAMBY - CROSS EXAMINATION BY MR. MOYER

422

1 MOTEL ROOM WHICH WAS -- I CALLED HIM PREACHER, WHICH IS
2 RUSSELL RICE, AND A GUY NAMED STEVE, AND A GUY NAMED MIKE.

3 Q. OKAY. AND SO THEY WERE IN THE HOTEL ROOM?

4 A. YES, WAITING ON HOMER.

5 Q. AND THEY WERE SUPPOSED TO DO THE JOB IN THE HOTEL ROOM?

6 A. YES. THEY WAS SUPPOSED TO BOOT HOMER OFF, WHICH I TOOK
7 IT AS THAT THEY WAS SUPPOSED TO KILL HIM.

8 Q. BOOT? B-O-O-T?

9 A. BOOT HIM OFF.

10 Q. OKAY. AND SOMEHOW THEY WERE THE BOYS WHO DIDN'T DO THE
11 MAN'S JOB ---

12 A. THAT'S THE WAY I TOOK IT.

13 Q. AND YOUR TESTIMONY THEN IS THAT JOHNNY HAMBY TOLD YOU
14 THAT HOMER GOT IN A FIGHT WITH THEM IN THE HOTEL ROOM?

15 A. AND HE KICKED ALL THREE OF THEM'S ASS. AND SO THAT'S
16 WHEN JOHNNY SAID THAT YOU DIDN'T SEND BOYS -- A BOY TO DO A
17 MAN'S JOB, SO HE HAD TO DO IT HIMSELF.

18 Q. AND HE DID IT HIMSELF USING A PISTOL.

19 A. HOMER'S GUN.

20 Q. USING HOMER'S PISTOL?

21 A. HOMER'S GUN THAT HE HAD TOOK FROM HIM EARLIER IN THE
22 DAY.

23 Q. OKAY. HOMER'S PISTOL?

24 A. HOMER'S PISTOL.

25 Q. SHOOTING HIM IN THE HEAD?

DAVID S. ROPER - DIRECT EXAMINATION BY MR. SUMNER

423

1 A. SHOOT HIM IN THE HEAD AND IN THE CHEST.

2 Q. AND IN THE CHEST AT CLOSE RANGE?

3 A. AT POINT -- HE SAID AT POINT BLANK RANGE.

4 Q. OKAY. I HAVE NOTHING FURTHER. THANK YOU.

5 THE COURT: THANK YOU. YOU CAN STEP DOWN.

6 MR. SUMNER: ANY REASON SHE CAN'T BE EXCUSED?

7 THE COURT: NO, SHE'S EXCUSED. THANK YOU.

8 MR. SUMNER: YOUR HONOR, THE LAST WITNESS TODAY FOR THE

9 DEFENSE WILL BE SHAWN ROPER.

10 THE COURT: OKAY.

11 DAVID SHAWN ROPER, BEING

12 DULY SWORN TESTIFIED AS FOLLOWS:

13 DIRECT EXAMINATION BY MR. SUMNER:

14 Q. YOU GO BY SHAWN, IS THAT CORRECT?

15 A. THAT'S CORRECT.

16 Q. DO YOU LIVE IN GREENVILLE, SHAWN?

17 A. I DO.

18 Q. DO YOU KNOW THE DEFENDANT, RUSTY RICE?

19 A. I DO.

20 Q. HOW LONG HAVE YOU KNOWN RUSTY?

21 A. I WOULD SAY IT'S BEEN ABOUT FIVE, FIVE YEARS OR SO.

22 Q. SINCE YOU'VE KNOWN HIM IS IT UNUSUAL FOR RUSTY TO GO

23 OUT OF TOWN FOR LONG STRETCHES OF TIME?

24 A. NO.

25 Q. OKAY. IS IT UNUSUAL FOR RUSTY TO RECEIVE PHONE CALLS

DAVID S. ROPER - CROSS EXAMINATION BY MR. MOYER

424

1 FROM YOU AND NOT RETURN THEM PROMPTLY?

2 A. YEAH, WITHIN LIKE A WEEK OR SO SOMETIMES.

3 Q. SOMETIMES IT COULD BE UP TO A WEEK?

4 A. YES.

5 Q. YOU MIGHT COMMUNICATE WITH HIM AND TELL HIM TO CALL YOU
6 BACK?

7 A. YES.

8 Q. PLEASE ANSWER ANY QUESTIONS THE PROSECUTOR MIGHT HAVE.

9 THE COURT: SOLICITOR.

10 MR. MOYER: ONE MOMENT PLEASE.

11 CROSS EXAMINATION BY MR. MOYER:

12 Q. YOUR FIRST NAME IS DAVID?

13 A. THAT'S CORRECT.

14 Q. DAVID SHAWN ROPER?

15 A. THAT'S CORRECT.

16 Q. OKAY. I HAVE NOTHING FURTHER.

17 THE COURT: THANK YOU. YOU CAN STEP DOWN.

18 MR. SUMNER: WE CAN STOP NOW TODAY, YOUR HONOR.

19 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, WE'LL

20 SUSPEND AT THIS TIME. WE'LL PICK BACK UP TOMORROW MORNING

21 AT 9:00. AND PLEASE REMEMBER WHEN YOU LEAVE DON'T TALK

22 ABOUT THE CASE. IF ANYBODY CONTACTS YOU OR TRIES TO TALK TO

23 YOU ABOUT THIS CASE GET THEIR NAMES AND ADDRESSES AND REPORT

24 THAT TO ME. PLEASE KEEP YOUR BADGES ON. HAVE THEM ON WHEN

25 YOU COME BACK IN THE MORNING. SEE YOU BACK AT 9:00. THANK

1 YOU.

2 (WHEREUPON THE JURY EXITED THE COURTROOM AT 4:58 PM)

3 THE COURT: SEE YOU BACK AT 9:00 IN THE MORNING.

4 MR. SUMNER: THANK YOU, YOUR HONOR.

5 (WHEREUPON COURT WAS IN RECESS)

6 WEDNESDAY, APRIL 14, 2004:

7 THE COURT: BE SEATED. ALL RIGHT. ANYTHING BEFORE I
8 BRING THE JURY?

9 MR. MOYER: JUST ONE QUICK ISSUE, YOUR HONOR, I JUST
10 WANT TO PUT FOR THE RECORD. THE COURT REPORTER BROUGHT TO
11 MY ATTENTION THE OTHER DAY THAT THERE WAS ONE EXHIBIT,
12 NUMBER 32, THAT WAS PUT INTO EVIDENCE IN BULK, BULK NUMBER
13 OF PHOTOGRAPHS THAT DIDN'T END UP ACTUALLY GOING INTO
14 EVIDENCE. SO I JUST WANTED TO PUT FOR THE RECORD THAT THE
15 ONE THAT WAS MARKED 32 DIDN'T ---

16 THE COURT: SO IT'S -- ALL RIGHT. OKAY. BRING OUR
17 JURY.

18 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 9:09 AM)

19 THE COURT: GOOD MORNING.

20 THE JURY: GOOD MORNING.

21 THE COURT: ALL RIGHT. MR. SUMNER.

22 MR. SUMNER: THANK YOU, YOUR HONOR. MAY IT PLEASE THE
23 COURT? I CALL SHARON IRBY TO THE STAND.

24 SHARON IRBY, BEING DULY

25 SWORN TESTIFIED AS FOLLOWS:

SHARON IRBY - DIRECT EXAMINATION BY MR. SUMNER

426

1 DIRECT EXAMINATION BY MR. SUMNER:

2 Q. YOU ARE SHARON IRBY, IS THAT CORRECT?

3 A. YES, SIR.

4 Q. OKAY. I'M GOING TO GET YOU TO LEAN INTO THE MICROPHONE

5 IF YOU WOULD SO THAT WE CAN MAKE SURE THAT EVERYBODY ON THE

6 JURY CAN HEAR YOU, OKAY? ARE YOU -- WERE YOU FORMERLY

7 MARRIED TO RUSTY RICE?

8 A. YES, SIR.

9 Q. AND YOU ALL HAVE TWO CHILDREN TOGETHER, IS THAT

10 CORRECT?

11 A. YES, SIR.

12 Q. THEIR NAMES AND AGES PLEASE?

13 A. HANNAH IS THIRTEEN AND ANGEL IS TWELVE.

14 Q. I'M GOING TO ASK YOU TO TURN YOUR ATTENTION PLEASE TO

15 NOVEMBER 4TH OF 2002, WHICH WOULD HAVE BEEN ONE DAY PRIOR TO

16 THE MURDER THAT'S ON TRIAL HERE. DO YOU RECALL THAT DAY?

17 A. YES, SIR.

18 Q. DID YOU SEE RUSTY RICE ON MONDAY, NOVEMBER 4TH OF 2002?

19 A. YES, SIR.

20 Q. WOULD YOU PLEASE TELL THE JURY WHEN YOU FIRST SAW HIM?

21 A. IT WOULD HAVE BEEN AFTER SCHOOL WHEN HE CAME TO GET MY

22 GIRLS.

23 Q. DID HE PICK UP THE CHILDREN?

24 A. YES.

25 Q. AND WHERE WERE YOU RESIDING AT THE TIME OR WHAT SCHOOL

SHARON IRBY - DIRECT EXAMINATION BY MR. SUMNER

427

1 WAS THIS? YOU SAID YOU MET HIM AT THE SCHOOL.

2 A. YES.

3 Q. WAS IT IN ANDERSON COUNTY OR GREENVILLE COUNTY?

4 A. NO, IT WAS -- WELL, IT'S ANDERSON COUNTY, BUT IT'S

5 SILOAM CHRISTIAN SCHOOL IN POWERSVILLE.

6 Q. NOW DID YOU HAVE AN OCCASION TO SEE -- DID THE GIRLS --

7 HOW LONG DID THE GIRLS STAY WITH HIM IS MY QUESTION?

8 A. THAT DAY?

9 Q. YES, MA'AM.

10 A. THEY WERE WITH HIM -- WELL, HANNAH DIDN'T GET OUT OF

11 SCHOOL TIL 3:30 LAST YEAR. AND HE PICKED THEM UP AROUND

12 3:45. WE TALKED FOR A LITTLE BIT IN THE PARKING LOT. SOME

13 OF MY VOLLEY BALL GIRLS AND STUFF WERE OUT IN THE PARKING

14 LOT WITH US TALKING. AND THEN THEY LEFT. AND THEY WERE

15 GONE FOR A GOOD WHILE AND MET ME BACK AT THE SCHOOL AND

16 WANTED TO STAY WITH THEIR DAD LONGER ---

17 Q. OKAY.

18 A. --- BECAUSE HE WAS GETTING READY TO GO OUT OF TOWN.

19 AND ANGEL GOT A LITTLE BIT UPSET BECAUSE HE SAID HE'D

20 PROBABLY BE GONE FOR A LITTLE WHILE, YOU KNOW, A GOOD WHILE.

21 AND BEGGED ME TO LET THEM STAY -- IT WAS A SCHOOL NIGHT.

22 AND --- BUT I AGREED TO GO AHEAD AND LET THEM. AND I'M NOT

23 SURE OF THE EXACT TIME THAT HE BROUGHT THEM BACK. IT WAS

24 ABOUT AT LEAST 9:30 OR 10:00.

25 Q. DID YOU SEE HIM ANYMORE THAT EVENING?

SHARON IRBY - DIRECT EXAMINATION BY MR. SUMNER

428

1 A. NO.

2 Q. NOW YOU MENTIONED THAT ONE OF THE CHILDREN WAS UPSET
3 BECAUSE RUSTY WAS GOING TO GO OUT OF TOWN. WAS IT UNCOMMON
4 FOR RUSTY TO, DURING THIS POINT AND TIME IN THE SUMMER AND
5 FALL, EARLY WINTER OF 2002 TO GO OUT OF TOWN FOR SOME
6 LENGTHS OF TIME?

7 A. NO, SIR.

8 Q. AND WAS IT UNUSUAL FOR HIM NOT TO RETURN PHONE CALLS OR
9 TO BE TOUGH TO GET IN TOUCH WITH?

10 A. AT TIMES IT WAS DIFFICULT. THE GIRLS WOULD CALL AND
11 LEAVE MESSAGES. SOMETIMES HIS VOICE-MAIL WAS FULL. BUT
12 WHENEVER HE WAS IN TOWN HE WOULD SEE THEM. BUT WE RESIDE IN
13 ANDERSON SO HE WASN'T ALWAYS IN ANDERSON. BUT THAT
14 PARTICULAR TIME HE WAS -- HE HAD TOLD THEM HE WAS GOING TO
15 BE GONE FOR A WHILE AT THAT PARTICULAR TIME. HE HAD ALREADY
16 BEEN PLANNING TO GO OUT OF TOWN.

17 MR. SUMNER: ONE SECOND PLEASE, YOUR HONOR.

18 Q. HOW LONG WERE YOU MARRIED TO RUSSELL?

19 A. THIRTEEN YEARS.

20 Q. DURING THAT TIME WAS HE A HUNTER? DID HE EVER GO
21 HUNTING?

22 A. NO, SIR. HE DIDN'T LIKE HUNTING. WHEN HE WAS A PASTOR
23 IN TRAVELERS REST SEVERAL MEN, MEMBERS OF A DEER CAMP THERE,
24 AND THEY INVITED HIM TO GO, BUT HE WAS NOT INTERESTED. WE
25 DID GO RIDING FOUR WHEELERS WITH SOME FRIENDS, BUT HE DIDN'T

SHARON IRBY - CROSS EXAMINATION BY MR. MOYER

429

1 LIKE TO HUNT AT ALL.

2 AND SO THEY WOULD BRING THE DEER MEAT TO OUR HOUSE.

3 AND THEY WOULD ALL -- THE MEN WOULD. AND THEY WOULD GET

4 TOGETHER AND CUT UP THE DEER MEAT AT OUR HOUSE. BUT RUSTY

5 LIKES SOFTBALL AND WATER SKIING, SNOW SKIING, AND

6 BASKETBALL. BUT HE WAS NEVER A HUNTER AS LONG AS WE WERE

7 MARRIED OR AS LONG AS I'VE KNOWN HIM. AND I'VE KNOWN HIM

8 SINCE I WAS SIXTEEN.

9 Q. THANK YOU. PLEASE ANSWER ANY QUESTIONS THAT MR. MOYER

10 MIGHT HAVE FOR YOU.

11 CROSS EXAMINATION BY MR. MOYER:

12 Q. MS. IRBY, JUST A FEW QUESTIONS. WHEN WAS IT THAT YOU

13 AND THE DEFENDANT SEPARATED?

14 A. WE SEPARATED A COUPLE OF TIMES, BUT I DON'T REMEMBER

15 THE -- LET'S SEE. ANGEL WAS ALMOST THREE, I THINK, THE

16 FIRST TIME. SHE'S TWELVE NOW. I'M NOT SURE OF THE EXACT

17 YEAR.

18 Q. OKAY. AND WHEN WAS ---

19 A. THEN HE CAME BACK AND WE SEPARATED AGAIN.

20 Q. WHEN WAS THE FINAL SEPARATION?

21 A. I DON'T REMEMBER THE EXACT YEAR. I THINK WE WERE

22 SEPARATED AROUND, THE TOTAL, I THINK, AROUND THREE YEARS OFF

23 AND ON.

24 Q. OKAY. FOR ABOUT THREE YEARS PRIOR TO ---

25 A. TWO OR THREE YEARS. I DON'T KNOW EXACTLY.

SHARON IRBY - CROSS EXAMINATION BY MR. MOYER

430

1 Q. A COUPLE OF YEARS PRIOR TO NOVEMBER, 2002. HOWEVER,
2 Y'ALL STILL KEPT A PRETTY CLOSE RELATIONSHIP THOUGH, DIDN'T
3 YOU, FOR THE CHILDREN?

4 A. YES, FOR THE CHILDREN. WE SAW EACH OTHER A LOT.

5 Q. IN FACT, HE WOULD SOMETIMES EVEN SPEND THE NIGHT OVER
6 THERE?

7 A. YES, HE DID.

8 Q. RIGHT UP UNTIL THE TIME, IN FACT, UP TO CHRISTMAS OF
9 2002?

10 A. YES.

11 Q. IN FACT, HE WAS AT YOUR PLACE ON CHRISTMAS, DECEMBER
12 THE 25TH, 2002, WASN'T HE?

13 A. NO.

14 Q. OKAY. HE DIDN'T SPEND CHRISTMAS WITH YOU AND THE
15 CHILDREN?

16 A. HE SPENT, I THINK IT WAS THE DAY BEFORE MAYBE,
17 CHRISTMAS EVE.

18 Q. OKAY. BUT YOU SAW HIM RIGHT THEN AT THAT TIME-FRAME?

19 A. YES.

20 Q. OKAY. AND HE WOULD SPEND HOLIDAYS FREQUENTLY WITH YOU
21 ALL?

22 A. YES. WE DID ALL THEIR HOLIDAYS AND BIRTHDAYS TOGETHER.

23 Q. AND HE DIDN'T HAVE A PLACE TO LIVE. DIDN'T HAVE A
24 HOUSE, OR AN APARTMENT, OR ANYTHING LIKE THAT, DID HE?

25 A. I THINK HE STAYED WITH HIS PARENTS SOME AND FRIENDS,

SHARON IRBY - CROSS EXAMINATION BY MR. MOYER

431

1 BUT I DON'T KNOW OF ---

2 Q. AND HOTELS?

3 A. YES.

4 Q. AND HE PRETTY MUCH JUST LIVED OUT OF HIS CAR, DIDN'T
5 HE?

6 A. WHEN -- I DON'T EXACTLY KNOW WHERE ALL HE LIVED.

7 Q. OKAY. NOW YOU MENTIONED THAT YOU SAW HIM ON MONDAY.

8 NOW EARLY ON, RIGHT AROUND THE BEGINNING OF NOVEMBER 2002

9 ABOUT WHEN THIS HOMICIDE OCCURRED ---

10 A. RIGHT.

11 Q. --- YOU WERE CONTACTED BY A POLICE OFFICER?

12 A. RIGHT.

13 Q. AND DETECTIVE FULLER GOT IN TOUCH WITH YOU ---

14 A. YES.

15 Q. --- AND TOLD YOU HE WAS TRYING TO GET IN TOUCH WITH

16 RUSTY, ---

17 A. YES.

18 Q. --- AND ASKED YOU TO PASS ON THE WORD TO HIM.

19 A. YES.

20 Q. IN WHICH YOU DID.

21 A. YES.

22 Q. YOU TALKED TO HIM ABOUT THE SAME DAY THAT DETECTIVE
23 FULLER TALKED TO YOU, RIGHT?

24 A. TO RUSTY?

25 Q. YOU TALKED TO RUSTY THAT DAY OR THE DAY AFTER?

SHARON IRBY - CROSS EXAMINATION BY MR. MOYER

432

1 A. I DON'T REMEMBER.

2 Q. AND YOU TOLD HIM TO GET IN TOUCH WITH ---

3 A. HE TOLD ME TO TRY TO GET IN TOUCH WITH RUSTY.

4 Q. OKAY. AND DETECTIVE -- ANOTHER THING THE DETECTIVE

5 ASKED WAS HE WANTED TO KNOW THE LAST TIME YOU HAD SEEN HIM.

6 A. YES, HE DID.

7 Q. AND YOU WANTED TO THINK ABOUT IT FOR A LITTLE BIT.

8 A. I DON'T REMEMBER THAT. IT WAS A YEAR AND A HALF AGO.

9 Q. OKAY. YOU REMEMBER YOU GOT TOGETHER WITH YOUR FIANCÉ
10 AND TALKED IT OVER.

11 A. I DON'T -- WE DID LATER ON. WELL, I THINK DETECTIVE
12 FULLER ASKED ME SOMETHING THAT DAY, BUT I DON'T REMEMBER.

13 Q. AND DO YOU REMEMBER TELLING DETECTIVE FULLER THAT YOU
14 GOT -- YOU SAT DOWN WITH YOUR FIANCÉ AND YOU THOUGHT ABOUT
15 IT AND -- BECAUSE IT'D BEEN ABOUT A WEEK LATER, WASN'T IT,
16 AND YOU WERE HAVING TO LOOK BACK ABOUT A WEEK IN TIME?

17 A. I DON'T KNOW EXACTLY WHAT DAY. YOU PROBABLY HAVE IT
18 THERE.

19 Q. IT WAS NOVEMBER THE 16TH.

20 A. OKAY.

21 Q. DOES THAT SOUND RIGHT?

22 A. THAT SOUNDS ABOUT -- THAT WOULD HAVE BEEN ABOUT TWO
23 WEEKS AFTER.

24 Q. SO ABOUT TWO WEEKS OR ---

25 A. UM-HUM (AFFIRMATIVE).

SHARON IRBY - CROSS EXAMINATION BY MR. MOYER

433

1 Q. --- ELEVEN DAYS OR SO? AND SO YOU TRIED TO RECONSTRUCT
2 WHEN THE LAST TIME YOU SAW HIM. AND YOU SAT DOWN WITH YOUR
3 FIANCÉ, RIGHT, AND TALKED IT OVER?

4 A. I DON'T REMEMBER. THIS WAS -- WE HAVEN'T HAD ANYBODY
5 TO TALK TO US ABOUT THIS UNTIL YOU MET WITH ME. SO I DON'T,
6 YOU KNOW, IF YOU CAN REFRESH ME ON WHAT I EXACTLY SAID I CAN
7 HELP YOU, BUT OTHERWISE I DON'T REMEMBER.

8 Q. WELL, DO YOU REMEMBER TELLING DETECTIVE FULLER THAT THE
9 LAST TIME YOU SAW HIM WAS ON SUNDAY, NOVEMBER THE 3RD?

10 A. I DON'T REMEMBER THAT. IF I DID IT WOULD HAVE BEEN A
11 GUESS BECAUSE WE WERE JUST GUESSING AT THAT POINT UNTIL WE
12 REALLY GOT DOWN -- WE DIDN'T REALIZE HOW IMPORTANT IT WAS TO
13 KNOW THIS PARTICULAR DATE.

14 Q. WELL, YOU KNEW THE POLICE WERE TRYING TO CONTACT HIM?

15 A. RIGHT, FOR NOVEMBER 5TH.

16 Q. UM-HUM (AFFIRMATIVE). SO THAT HAD TO BE IMPORTANT?

17 A. WELL, I WOULD THINK SO. BUT THE FACT OF THE MATTER IS

18 I DON'T KNOW -- I DON'T REMEMBER WHAT I TOLD DETECTIVE

19 FULLER. THAT WAS TOO LONG AGO. AS YOU KNOW, AS I'VE TOLD

20 YOU, YOU WERE THE FIRST PERSON I SPOKE TO ABOUT IT. RUSTY

21 HAD A COUPLE OTHER LAWYERS WHO NEVER CONTACTED US.

22 Q. OKAY.

23 A. AND I DON'T KNOW WHAT I TOLD DETECTIVE FULLER. I DON'T

24 REMEMBER THAT. BUT THE FACT IS, WE SAW HIM ON MONDAY.

25 Q. OKAY. WELL, LET ME ASK YOU THIS, IS IT NOT SAFE TO SAY

SHARON IRBY - CROSS EXAMINATION BY MR. MOYER

434

1 THAT WHATEVER YOU TOLD DETECTIVE FULLER ON NOVEMBER THE 16TH
2 OF 2002 ---

3 A. ARE YOU TALKING ABOUT WHEN HE CAME TO MY SCHOOL?
4 THAT'S THE ONLY TIME ---

5 Q. DIDN'T YOU CALL DETECTIVE FULLER?

6 A. HE CAME TO MY SCHOOL.

7 Q. ALL RIGHT. WELL, YOU DID SPEAK TO HIM, RIGHT?

8 A. YES. HE CAME TO MY SCHOOL AND ASKED THE SCHOOL PEOPLE
9 IF HE COULD SEE ME. AND I WAS IN THE MIDDLE OF A MATH
10 CLASS. AND I WENT OUT IN THE HALLWAY AND TALKED TO HIM AND
11 ANOTHER MAN. AND THAT'S WHEN HE ASKED ME QUESTIONS.

12 Q. AND HE ASKED YOU TO THINK IT OVER AND GET BACK TO HIM
13 ABOUT WHEN YOU LAST SAW ---

14 A. AND I THINK I -- I DON'T REMEMBER WHAT I SAID. AND IF
15 I SAID SOMETHING IT WOULD HAVE BEEN A GUESS BECAUSE I WAS IN
16 THE MIDDLE OF A CLASS.

17 Q. ALL RIGHT. WELL, LET ME JUST ASK -- LET ME JUST ASK
18 YOU THIS QUESTION. IS IT NOT SAFE TO SAY THAT WHATEVER YOU
19 TOLD HIM JUST ELEVEN DAYS AFTER THAT TIME-FRAME WOULD HAVE
20 BEEN MORE FRESHLY ON YOUR -- ON YOUR MIND AND IN YOUR MEMORY
21 THAN WOULD BE NOW, FOURTEEN MONTHS LATER?

22 A. WELL, THEY'VE GOTTEN TOGETHER AND TRIED TO TALK ABOUT
23 IT SINCE THEN. AND AT THAT PARTICULAR TIME I HAD STUDENTS
24 IN THE CLASSROOM. AND I WAS TALKING TO HIM IN THE HALLWAY.
25 SO ...

SHARON IRBY - REDIRECT EXAMINATION BY MR. SUMNER

435

1 Q. OKAY. NOW -- ALL RIGHT. YOU MENTIONED THE DEFENDANT
2 DIDN'T LIKE HUNTING, BUT HE DID HAVE GUNS? HE HAD PISTOLS,
3 RIGHT?

4 A. ONLY PISTOLS. I NEVER SAW ANYTHING ELSE.

5 Q. ALL RIGHT. IN FACT, HE TAUGHT YOU HOW TO SHOOT, DIDN'T
6 HE?

7 A. HE TAUGHT ME TO SHOOT IN NORTH CAROLINA A PISTOL FOR
8 SAFETY.

9 MR. MOYER: ALL RIGHT. NOTHING FURTHER.

10 MR. SUMNER: BRIEFLY, IF I COULD ON REDIRECT. IF THE
11 COURT WILL BEAR WITH ME I NEED TO LOOK AT AN EXHIBIT. I'M
12 NOT SURE WHAT NUMBER IT IS. I'LL JUST ASK THE PROSECUTOR.

13 REDIRECT EXAMINATION BY MR. SUMNER:

14 Q. MS. IRBY, WHAT WAS YOUR CELL PHONE NUMBER ON NOVEMBER
15 4TH, 2002? WAS IT 940-4626?

16 A. YES, SIR. YES.

17 Q. I'M GOING TO HAND YOU WHAT'S BEEN MARKED AS STATE'S
18 EXHIBIT 62, IT'S ALREADY IN EVIDENCE, AND ASK YOU TO LOOK,
19 IF YOU WOULD PLEASE, MA'AM, WITH ME RIGHT THERE. IS YOUR
20 NUMBER SHOWING ON THE CALLED NUMBER RIGHT THERE?

21 A. YES, SIR.

22 Q. OKAY. ARE YOU SHOWING RECEIVING A CALL FROM RUSTY RICE
23 ON 3:35 PM ON MONDAY, NO, I'M SORRY, ON 3:45 PM? IT'S CALL
24 NUMBER 111. JUST TAKE YOUR TIME.

25 A. WHERE DOES IT TELL THE TIME?

HANNAH RICE - DIRECT EXAMINATION BY MR. SUMNER

436

1 Q. YES, MA'AM. GO ACROSS ON 111. THAT'S 15:45, WHICH
2 WOULD BE 3:45 PM. IS IT SHOWING A CALL TO YOU?

3 A. YES, SIR.

4 Q. OKAY. IS THERE ALSO, IF YOU'LL LOOK TWO CALLS ABOVE
5 THAT, IS THERE ANOTHER CALL AT 3:30 PM, OR, NO, 3:58? I'M
6 SORRY. FOUR PM THAT DAY?

7 A. YES, SIR.

8 Q. OKAY. THANK YOU. AND THAT WOULD HAVE BEEN ON MONDAY,
9 IS THAT CORRECT?

10 A. YES, SIR.

11 Q. OKAY. WOULD THAT HAVE BEEN THE PHONE CALLS REGARDING
12 PICKING UP THE CHILDREN?

13 A. YES, SIR.

14 Q. I DON'T HAVE ANY OTHER QUESTIONS. THANK YOU.

15 THE COURT: THANK YOU. YOU CAN STEP DOWN.

16 MR. SUMNER: HANNAH RICE.

17 HANNAH RICE, BEING DULY

18 SWORN TESTIFIED AS FOLLOWS:

19 DIRECT EXAMINATION BY MR. SUMNER:

20 Q. HOW OLD ARE YOU, HANNAH?

21 A. THIRTEEN.

22 Q. I'M GOING TO ASK YOU TO LEAN INTO THAT MICROPHONE A
23 LITTLE BIT SO EVERYBODY ON THE JURY CAN HEAR YOU, OKAY?

24 A. OKAY.

25 Q. ARE YOU NERVOUS TODAY?

HANNAH RICE - DIRECT EXAMINATION BY MR. SUMNER

437

1 A. SORT OF.

2 Q. DO YOU -- YOU'RE THIRTEEN YEARS OLD?

3 A. YES, SIR.

4 Q. DO YOU UNDERSTAND THE DIFFERENCE BETWEEN RIGHT AND
5 WRONG?

6 A. YES, SIR.

7 Q. AND YOU UNDERSTAND THAT YOU'VE TAKEN AN OATH TO TELL
8 THE TRUTH AND THAT'S WHAT YOU NEED TO DO TODAY?

9 A. YES, SIR.

10 Q. ALL RIGHT. NOW YOUR FATHER IS RUSTY RICE, IS THAT
11 CORRECT?

12 A. CORRECT.

13 Q. HANNAH, I'M GOING TO TURN YOUR ATTENTION BACK TO
14 NOVEMBER 4TH OF 2002. THAT'S THE DAY BEFORE THE KILLING
15 THAT YOUR FATHER'S ACCUSED OF. DO YOU RECALL THAT DAY? IT
16 WAS A MONDAY.

17 A. YES, SIR.

18 Q. OKAY. NOW DID YOU SEE YOUR FATHER THAT DAY?

19 A. YES, SIR.

20 Q. OKAY. TELL US AS BEST YOU CAN WHEN YOU SAW HIM AND
21 WHAT Y'ALL DID.

22 A. WHAT TIME DO YOU MEAN?

23 Q. YOU CAN START WITH WHAT TIME AND JUST TAKE THE JURY
24 THROUGH WHEN YOU SAW HIM THAT DAY.

25 A. OKAY. HE PICKED ME UP FROM SCHOOL. AND I GOT OUT

HANNAH RICE - DIRECT EXAMINATION BY MR. SUMNER

438

1 ABOUT 3:30. HE GOT THERE ABOUT 3:45. AND HE TOOK US OUT TO
2 EAT. AND SINCE HE WAS GOING OUT OF TOWN HE WAS GOING TO
3 TAKE ME TO MY FAVORITE RESTAURANT AND THEN MY SISTER TO
4 HERS. SO AFTER WE ATE WE WENT TO GET MY MOM A FEW THINGS
5 FOR HER KITCHEN. AND THEN WE WENT BACK TO THE SCHOOL AND
6 MET MY MOM AROUND SIX, I THINK. AND WE WANTED TO STAY WITH
7 MY DAD LONGER SINCE HE WAS GOING OUT OF TOWN. SO WE TALKED
8 MAMA INTO IT.

9 AND HE TOOK US WITH HIM. AND I THINK WE WENT BY WAL-
10 MART AFTERWARDS BECAUSE HE WAS GOING OUT OF TOWN, HE WANTED
11 SOME NEW CLOTHES TO TAKE WITH HIM, A FEW SHIRTS AND STUFF.
12 AND THEN WE LEFT FROM THERE AND DROVE AROUND TOWN FOR A
13 LITTLE WHILE. AND THEN WE WENT AND GOT SOME ICE CREAM. AND
14 THEN HE TOOK US HOME AFTER THAT, LATER THAT EVENING.

15 Q. DO YOU RECALL APPROXIMATELY WHAT TIME YOU GOT HOME?

16 A. I'M NOT SURE EXACTLY, BUT I THINK IT WAS AROUND 10:00.

17 Q. HANNAH, TELL THE JURY WHY YOU HAVE A CLEAR MEMORY OF
18 THAT DAY IN YOUR MIND.

19 A. BECAUSE THE FRIDAY BEFORE ON THE 1ST ME AND MY
20 BOYFRIEND AND SOME OF MY FRIENDS HAD GONE UP TO THE
21 MOUNTAINS. AND ON MY WAY BACK I HAD GOT MY FIRST KISS. AND
22 I REMEMBER THAT MONDAY MY MOM CAME UP TO THE CAR AND TOLD
23 ME, SHE -- LIKE WHEN WE MET HER BACK AT THE SCHOOL AFTER WE
24 ATE SHE SAID, HAVE YOU TOLD YOUR DADDY YET? AND I HADN'T
25 TOLD HIM. AND SO THEN I TOLD HIM ABOUT MY FIRST KISS.

HANNAH RICE - CROSS EXAMINATION BY MR. MOYER

439

1 Q. PLEASE ANSWER ANY QUESTIONS THAT MR. MOYER MIGHT HAVE
2 FOR YOU.

3 THE COURT: SOLICITOR.

4 MR. MOYER: JUST A COUPLE OF QUESTIONS, HANNAH.

5 CROSS EXAMINATION BY MR. MOYER:

6 Q. YOU DON'T RECALL THE LAST TIME YOU SAW YOUR DAD THAT
7 Y'ALL WENT AND PLAYED FRISBEE GOLF?

8 A. I'M NOT SURE EXACTLY THE DATE, BUT IT WASN'T -- I DON'T
9 THINK -- WE DIDN'T GO THAT DAY, I KNOW.

10 Q. OKAY. BUT SO THE LAST TIME YOU SAW HIM Y'ALL DIDN'T GO
11 PLAY FRISBEE GOLF ON A SUNDAY AFTERNOON?

12 A. I DON'T THINK WE SAW HIM THAT SUNDAY.

13 Q. OKAY. SO DO YOU RECALL GOING OUT WITH HIM PLAYING
14 FRISBEE GOLF ON A SUNDAY AFTERNOON?

15 A. I'M NOT SURE. WE WENT A FEW TIMES. SO I DON'T KNOW
16 EXACTLY.

17 Q. AND HE CALLED YOU A LOT, DIDN'T HE?

18 A. YEAH. WHEN HE WAS IN -- WHEN HE WAS IN TOWN HE CALLED
19 US MORE THAN WHEN HE WAS OUT OF TOWN.

20 Q. HE WOULD CALL ABOUT EVERY DAY?

21 A. YEAH, WHEN HE WAS IN TOWN.

22 Q. SO YOU'D SEE HIM A LOT WHEN HE WAS IN TOWN?

23 A. YES, SIR.

24 Q. AND HE'D CALL Y'ALL AND TALK TO Y'ALL?

25 A. YES, SIR.

RUSSELL RICE - DIRECT EXAMINATION BY MR. SUMNER

440

1 Q. OKAY.

2 MR. MOYER: I HAVE NO FURTHER QUESTIONS.

3 MR. SUMNER: NOTHING ON REDIRECT.

4 THE COURT: YOU CAN STEP DOWN.

5 MR. SUMNER: YOUR HONOR, THE DEFENSE WOULD CALL RUSSELL
6 RICE TO THE STAND.

7
8 RUSSELL RICE, BEING DULY
9 SWORN TESTIFIED AS FOLLOWS:

10 DIRECT EXAMINATION BY MR. SUMNER:

11 Q. YOU ARE RUSSELL WILLIAM RICE?

12 A. YES, THAT'S CORRECT.

13 Q. DO YOU GO BY RUSTY?

14 A. RUSTY.

15 Q. I'M GOING TO ASK YOU TO MAKE SURE THAT YOU CONTINUE TO
16 LEAN INTO THE MICROPHONE. YOU'VE BEEN HERE THROUGH THE
17 COURSE OF THE TRIAL. YOU UNDERSTAND THAT THE JURY NEEDS TO
18 HEAR THE ANSWERS TO YOUR QUESTIONS, MY QUESTIONS AND MR.
19 MOYER'S QUESTIONS.

20 A. SURE.

21 Q. HOW OLD ARE YOU, RUSTY?

22 A. I'M FORTY-SEVEN.

23 Q. THIS MORNING WE HAVE HEARD FROM YOUR FORMER WIFE, IS
24 THAT CORRECT, SHARON?

25 A. THAT'S CORRECT.

Q. AND YOUR DAUGHTER, HANNAH?

RUSSELL RICE - DIRECT EXAMINATION BY MR. SUMNER

441

1 A. RIGHT.

2 Q. YOU ALSO HAVE ANOTHER DAUGHTER?

3 A. YES.

4 Q. WHO IS THAT?

5 A. ANGEL.

6 Q. I'M GOING TO CUT RIGHT TO THE CHASE AND I'M GOING TO
7 ASK YOU ARE YOU GUILTY OF MURDERING HOMER JOHNSON?

8 A. NO, ABSOLUTELY NOT.

9 Q. DID YOU HAVE COCAINE IN THE TRUNK OF YOUR CAR WHEN YOU
10 WERE STOPPED IN DECEMBER?

11 A. YES, I DID.

12 Q. DID YOU HAVE A PISTOL IN YOUR POCKET?

13 A. YES, I DID.

14 Q. I'M GOING TO ASK YOU NOW TO GO BACK, IF I COULD FOR THE
15 JURY, TO DISCUSS YOUR BACKGROUND WITH HOMER. WHY DON'T WE
16 JUST GO BACK TO THE SUMMER OF 2002? WHY DON'T YOU TALK
17 ABOUT HOW YOU GOT TO KNOW HIM, IF IT WAS THEN, AND WHAT YOUR
18 RELATIONSHIP WAS?

19 A. YES. IN 2002 I ALREADY KNEW HOMER, BUT JUST A LITTLE
20 BIT FROM SEVERAL YEARS BEFORE. I MET HIM THROUGH HIS
21 COUSIN, AT LEAST TRACY MARCHBANKS TOLD ME HE WAS HIS COUSIN.
22 THAT'S WHO I MET HOMER THROUGH. I SAW HIM JUST MAYBE TWO OR
23 THREE TIMES, BUT DIDN'T KNOW HIM THAT WELL AND DIDN'T SPEND
24 ANY TIME AROUND HIM THEN.

25 BUT LATER IN 2002 IN THE MIDDLE OF THAT SUMMER I WAS AT

RUSSELL RICE - DIRECT EXAMINATION BY MR. SUMNER

442

1 RUMORS ON PLEASANTBURG WITH OTHER PEOPLE AND JUST HAPPENED
2 TO SEE HOMER. HE WAS SINGING IN THERE. AND I WENT UP AND
3 TALKED WITH HIM. HE DIDN'T RECOGNIZE ME. MY HAIR WAS
4 LONGER. WE TALKED A LITTLE BIT. HE INTRODUCED ME TO JOHNNY
5 HAMBY. AND ACTUALLY JOHNNY AND I STARTED TALKING MORE THAN
6 HOMER AND I DID ABOUT DOING -- OPENING A STORE NEAR WHERE
7 JOHNNY HAMBY'S STORE ALREADY WAS IN THAT SAME BUILDING.

8 Q. NOW YOU'RE REFERRING TO THE JOHN HAMBY THAT'S ALREADY
9 TESTIFIED IN THIS TRIAL, IS THAT CORRECT?

10 A. THAT'S RIGHT.

11 Q. WELL, TAKE US THROUGH THE EARLY FALL, I GUESS. DID YOU
12 CONTINUE TO HAVE A RELATIONSHIP WITH HOMER AND JOHN HAMBY?

13 A. YES, I DID, THROUGH THAT -- LATER ON -- FROM THAT
14 SUMMER ON INTO THE FALL.

15 Q. NOW TAKE US TO -- I WANT TO TALK A LITTLE BIT ABOUT
16 JOHN HAMBY MENTIONED A RIFLE. DID YOU EVER SEE JOHN HAMBY
17 PURCHASE A RIFLE?

18 A. YES, I DID. I WAS WITH HIM WHEN HE BOUGHT A RIFLE.

19 Q. DO YOU RECALL WHAT TYPE OF RIFLE IT WAS?

20 A. YES, VERY SIMILAR TO THE ONE THAT'S IN QUESTION. I
21 MEAN, I DON'T KNOW GUNS ENOUGH TO SAY -- TO IDENTIFY ONE
22 FROM THE OTHER, BUT IT LOOKED EXACTLY LIKE WHAT THEY'RE
23 TALKING ABOUT.

24 Q. WAS IT, I MEAN, IT WAS A RIFLE ---

25 A. A RIFLE, A DEER GUN. UM-HUM (AFFIRMATIVE).

RUSSELL RICE - DIRECT EXAMINATION BY MR. SUMNER

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1 Q. TELL THE JURY ABOUT WHERE YOU WERE WHEN THAT PURCHASE
2 TOOK PLACE WITH JOHN HAMBY AND AS MUCH AS YOU CAN RECALL
3 ABOUT IT.

4 A. JOHN HAMBY CALLED ME AND WANTED ME TO MEET HIM AND GO
5 HELP HIM LOAD UP SOME FISHING EQUIPMENT. HE WAS BUYING SOME
6 MORE FISHING SUPPLIES FOR HIS STORE. AND SO I MET HIM
7 SOMEWHERE OVER IN, I THINK, NEAR WHITE HORSE ROAD AND MAYBE
8 THE WAL-MART STORE. I CAN'T REMEMBER EXACTLY, BUT WE WENT
9 OUT 253 OVER TO -- OUT TO PICKENS.

10 EVENTUALLY WE WENT TO PICKENS TO THE PICKENS FLEA
11 MARKET. AND WE -- HE WANTED TO WALK THROUGH THE FLEA MARKET
12 BEFORE HE LOADED HIS TRUCK UP. SO WE WALKED THROUGH THE
13 FLEA MARKET. HE STOPPED AT TWO OR THREE PLACES. BUT HE
14 FINALLY SAW A MAN WHO HAD A LOT OF RIFLES AND SHOTGUNS. HE
15 STOPPED. HE TALKED WITH THE MAN. HE GOT HIM DOWN TO THREE
16 HUNDRED AND FIFTY DOLLARS AND INCLUDED THROWING IN A COVER
17 WITH IT. AND WE BOUGHT THE GUN. IT WAS HIS GUN. I JUST
18 HAPPENED TO BE STANDING THERE WHEN HE DID IT.

19 BUT -- AND HE WANTED TO GO GET HIS FISHING STUFF. WE
20 STARTED TOWARD THE MAN WHO HAD THE FISHING EQUIPMENT. AND
21 HE SAID, WHY DON'T YOU TAKE THE GUN TO THE TRUCK AND BRING
22 THE TRUCK AROUND OVER HERE SO WE CAN LOAD THAT STUFF UP? SO
23 I TOOK THE GUN, PUT IT IN THE TRUCK, AND I DROVE IT AROUND
24 TO WHERE HE TOLD ME TO GO. AND WE LOADED A GOOD BIT OF
25 FISHING EQUIPMENT UP INTO THE BACK OF HIS TRUCK AS WELL AND

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1 STARTED BACK TOWARD HIS STORE.

2 ON THE WAY BACK HE TRIED TO TALK ME INTO GETTING
3 INTERESTED IN HUNTING. I'VE NEVER EVER -- THAT'S ABOUT THE
4 HUNDREDTH TIME SOMEONE'S TRIED TO TALK ME INTO HUNTING. I
5 DON'T ENJOY HUNTING AT ALL. AND SO HE SAID THAT IF I EVER
6 HUNTED THAT I COULD USE THIS GUN, THAT IT WAS ONE LIKE HE
7 HAD, AND HE HAD AT LEAST TWO OR THREE OTHERS VERY SIMILAR TO
8 IT. HE WAS DESCRIBING IT. I THINK HIS WIFE EVEN HAD SHOT A
9 DEER WITH A GUN JUST LIKE THIS ONE, PART OF HIS ATTEMPT TO
10 GET ME INTERESTED.

11 WE GOT BACK. I HELPED HIM UNLOAD THE FISHING STUFF. I
12 HAD SOME ERRANDS TO RUN. I WENT TO RUN THE ERRANDS. HE
13 ASKED ME TO GO TO PICK TWO BOXES OF SHELLS UP. AND I -- HE
14 STARTED RATTLING OFF ALL THESE -- IT WAS A LONG NAME, AND I
15 DIDN'T -- I COULDN'T -- I WOULD NOT BE ABLE TO REMEMBER IT.
16 SO I HAD HIM WRITE IT DOWN. HE WROTE IT DOWN.

17 I WENT TO THE STORE, PICKED UP THE SHELLS. HE CALLED
18 ME LATER AS I WAS RUNNING MY ERRANDS AND ASKED ME TO MEET
19 HIM AT HIS HOUSE. I MET HIM AT HIS HOUSE. HE HAD THE GUN
20 AT HIS STORE. I THINK HE WAS EVEN GOING TO SHOW IT A LITTLE
21 BIT TO SOME PEOPLE OR SOMETHING. I CAN'T REMEMBER FOR SURE.

22 BUT ANYWAY WE WENT -- I MET HIM AT HIS HOUSE. WE WENT
23 OUT BACK. HE WANTED TO SIGHT IT IN. HE LOADED THE GUN UP.
24 HE SHOT IT. HE HANDED IT TO ME A COUPLE OF TIMES. I NEVER
25 SHOT THAT -- A GUN LIKE THAT. I SHOT A COUPLE OF TIMES, BUT

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1 I DON'T THINK I COULD HIT THE TARGET HE WAS TRYING TO HIT.

2 BUT HE WAS ABLE TO -- I THINK I SHOT TWO OR THREE TIMES

3 MAYBE. AND HE SHOT IT EIGHT OR TEN TIMES PROBABLY AS HE

4 MADE ADJUSTMENTS TO GET IT SIGHTED LIKE HE WANTED.

5 HE ZIPPED IT BACK UP IN THE ZIPPER. HE WALKED BACK IN

6 HIS HOUSE AND PUT IT BEHIND HIS LOVESEAT BESIDE HIS FRONT

7 DOOR. AND I DIDN'T SEE THAT GUN AGAIN FOR SOME TIME.

8 Q. DO YOU RECALL -- WAS THIS DAYS OR WEEKS PRIOR TO THE

9 MURDER OF HOMER OR DO YOU REMEMBER?

10 A. IT WOULD HAVE BEEN SIX, MAYBE SIX OR MORE WEEKS BEFORE.

11 Q. YOU CONVOLUTED TO THIS OR YOU MIGHT HAVE ALREADY SAID

12 THIS. HAVE YOU EVER OWNED A RIFLE?

13 A. NO. I'VE NEVER HAD ANY LONG GUNS AT ALL. PISTOLS,

14 LITTLE SHORT PISTOLS IS ALL I'VE EVER HAD.

15 Q. NOW DURING -- HOW WERE YOU MAKING YOUR LIVING DURING

16 THE SUMMER AND FALL AND EARLY WINTER OF 2002?

17 A. RYOBI -- I HAD RYOBI TOOLS, A GOOD BIT OF RYOBI TOOLS.

18 JOHNNY HAD SOLD ME A LOT OF THEM. AND HE INTRODUCED ME TO A

19 MAN WHERE HE GOT HIS RYOBI TOOLS FROM. AND THROUGH THAT I

20 STARTED MEETING -- I GOT SORT OF INTO THAT. SO I STARTED

21 BUYING -- ANYTIME I COULD FIND SOME TOOLS I THOUGHT WERE

22 PRETTY GOOD TOOLS I'D BUY THEM AND SELL THEM. I ALSO HAD

23 WORKED A LITTLE CONSTRUCTION HERE AND THERE AND DID SELL

24 SOME DRUGS, POT, MARIJUANA, AND COCAINE, SMALL, VERY LITTLE,

25 SMALL AMOUNTS.

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1 Q. AND YOU DON'T DENY THAT, IS THAT CORRECT?

2 A. I DO NOT DENY THAT.

3 Q. NOW WE ALSO HEARD TESTIMONY EARLIER IN THE TRIAL ABOUT
4 THE THEFT OF YOUR CAR. DO YOU RECALL THAT INCIDENT?

5 A. YES, I DO.

6 Q. TELL US EVERYTHING THAT YOU CAN RECALL ABOUT THE THEFT
7 OF YOUR CAR.

8 A. I WAS INVITED BY JOHNNY HAMBY TO GO UP TO RYAN'S TO EAT
9 DINNER WITH HE AND SOME FRIENDS. AND WHEN I GOT UP THERE I
10 THINK LEIGH ANNA PHILLIPS WAS THERE, CHRIS' SON, JODIE CLEM,
11 AS WELL AS JOHNNY HAMBY. AND WE WENT IN TO EAT. I -- THEY
12 WERE IN A VAN, BUT I -- THEY CALLED AND INVITED ME, I THINK.
13 I CAN'T REMEMBER EXACTLY HOW IT WENT, BUT I KNOW I WAS IN MY
14 CAR. I WAS NOT WITH THEM.

15 AND I HAD -- AND I PARKED MY CAR IN THE FRONT TOWARDS
16 THE SIDEWALK OFF OF WHITE HORSE ROAD. AND THEY PARKED THEIR
17 VAN SORT OF A LITTLE BIT CLOSER TO THE WAL-MART PARKING LOT
18 THERE BECAUSE RYAN'S SITS RIGHT BESIDE OF WAL-MART PARKING
19 LOT. AND I -- WE WENT IN, WE ATE MAYBE AN HOUR OR SO. I
20 DON'T RECALL. AND WE CAME BACK OUT AND LEIGH ANN PHILLIPS
21 SAYS, YOUR CAR IS GONE. AND I, YOU KNOW, I HADN'T EVEN
22 LOOKED IN THAT DIRECTION. I'M TURNING. I THOUGHT MAYBE I'D
23 PARKED SOMEWHERE ELSE JUST -- MISTAKE -- BEEN A MISTAKE, BUT
24 IT WAS GONE.

25 AND WE STARTED TO WALK -- I STARTED WALKING WITH THEM

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1 TOWARDS THE VAN. AND THEN JODIE, I THINK, WENT BACK INSIDE
2 THE STORE. THE NEXT THING I KNOW THE MANAGER OR SOMEBODY
3 COMES OUT AND SAYS, DO YOU WANT TO CALL THE -- THEY'D HAD
4 ALREADY CALLED THE POLICE AND WAS HANDING ME THE PHONE.
5 THAT'S WHAT IT WAS, A MOBILE PHONE.

6 AND I GOT ON THE PHONE, AND I TALKED TO THE POLICE.
7 AND -- BUT I DID NOT KNOW THE INFORMATION. THEY WANTED TO
8 KNOW THE SERIAL NUMBERS AND ALL THAT STUFF. I HAD NO IDEA
9 WHAT THEY WERE. I TOLD THEM IT WAS MY WIFE'S CAR, AND THAT
10 SHE HAD BOUGHT IT, AND IT HAD NOT BEEN PUT INTO MY NAME YET,
11 AND THAT I DID NOT KNOW THE INFORMATION. AND THEY SAID,
12 WELL, WE CAN'T DO ANYTHING WITHOUT THAT INFORMATION.

13 Q. THE CAR WAS LOCATED A WEEK OR TEN DAYS LATER OR
14 SOMETHING LIKE THAT, IS THAT RIGHT?

15 A. YEAH, MAYBE A COUPLE OF WEEKS. I DON'T REMEMBER. A
16 WEEK AND A HALF, TWO WEEKS WOULD BE A GOOD GUESS.

17 Q. DID YOU EVER ACCUSE HOMER OF IT?

18 A. NEVER DID. NO, I NEVER -- JOHNNY HAMBY DID, BUT I
19 DIDN'T.

20 Q. DID YOU THINK YOU EVER FOUND WHO STOLE YOUR CAR?

21 A. YES. LATER ON, IT WOULD HAVE BEEN SOME TIME AFTER
22 THAT. I HAD BEEN TOLD -- ANOTHER FELLOW HAD BROKEN INTO MY
23 CAR AND TRIED TO STEAL IT A COUPLE OF TIMES BEFORE. AND
24 SOME FRIENDS TOLD ME WHO IT WAS. AND EVENTUALLY I FOUND
25 HIM.

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1 Q. BUT DID I UNDERSTAND YOUR TESTIMONY CORRECTLY THAT

2 JOHNNY HAMBY TOLD YOU THAT HE SUSPECTED HOMER?

3 A. IMMEDIATELY IN THE PARKING LOT. WHEN EVERYONE WAS SORT

4 OF JUST CATCHING ON THAT MY CAR WAS GONE HE SAID, HOMER, HE

5 SAID, I BET YOU HOMER DID THAT. HE'S THE ONLY ONE THAT KNEW

6 WHERE WE WERE GOING TO EAT. AND I THOUGHT ABOUT IT WHEN HE

7 SAID IT, BUT LATER ON JOHNNY CONTINUED THAT, YOU KNOW, DAYS

8 LATER JOHNNY CONTINUED THAT. NOT AROUND ANYBODY ELSE, BUT

9 WHEN HE GOT AROUND ME HE WOULD SORT OF CONTINUE TO TRY TO

10 INFEST THAT. I REALLY DID NOT AT ALL SUSPECT HOMER AT ALL.

11 HOMER AND I WERE NOT BEST BUDDIES, BUT WE WERE GOOD ENOUGH

12 FRIENDS THAT I WOULD HAVE NEVER DREAMED THAT HE WOULD HAVE

13 DONE THAT.

14 Q. I'M GOING TO TURN YOUR ATTENTION NOW TO MONDAY

15 AFTERNOON, NOVEMBER 4TH, AND THAT WOULD AGAIN HAVE BEEN THE

16 DAY PRIOR TO THE MURDER, AND ASK, WHAT WERE YOU DOING AROUND

17 THREE OR 4:00 THAT AFTERNOON? AND IF YOU WOULD TAKE US

18 THROUGH THAT EVENING.

19 A. THIS IS MONDAY AFTERNOON ON THE 4TH?

20 Q. YES, SIR.

21 A. YES. MONDAY AFTERNOON IN THE AFTERNOON I CALLED MY

22 GIRLS. BEFORE THAT I DON'T REMEMBER EXACTLY WHAT I WAS

23 DOING. BUT AT SOME TIME APPROACHING THE TIME -- WE'D

24 ALREADY TALKED BEFORE ABOUT ME GETTING MY GIRLS. I WAS JUST

25 CALLING AFTER SCHOOL TO LINE IT UP AND TO MAKE SURE

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1 EVERYTHING WAS OKAY. AND I CALLED. AND I THINK THEY CALLED
2 ME. I DON'T REMEMBER THE SEQUENCE. BUT THERE WERE TWO OR
3 THREE PHONE CALLS. AND IT WAS AS I WAS APPROACHING THEIR
4 SCHOOL. PROBABLY THE LAST CALL THE TOWER IS GOING TO SHOW
5 THAT I WAS RIGHT THERE PROBABLY AT THE SCHOOL AS I WAS
6 PICKING THEM UP BECAUSE I DON'T KNOW WHICH DOOR TO MEET THEM
7 AT OR IF THEIR MOM IS OUT DOING VOLLEY BALL PRACTICE OR
8 WHERE EXACTLY THEY'LL BE. IT'S A PRETTY BIG SET-UP. SO I
9 HAVE TO FIND OUT WHERE THEY ARE.

10 Q. WELL, DID YOU PICK THE KIDS UP?

11 A. I PICKED THE KIDS UP. AND I -- WE WENT OUT. AS HANNAH
12 INDICATED THAT'S -- MY MEMORY IS ALMOST EXACTLY LIKE THAT.
13 WE WENT TO GET PIZZA AT A LITTLE CAESAR'S BECAUSE ANGEL
14 LOVES PIZZA. HANNAH LIKES MEXICAN. WE TOOK THE PIZZA TO
15 THE MEXICAN PLACE. WE ATE. WE WENT TO SEVERAL STORES. WE
16 ALWAYS DO. AND THEY LIKE TO JUST KIND OF GO AROUND AND
17 BROWSE AND LOOK AT STUFF. I DO REMEMBER THEM PICKING SOME
18 THINGS UP FOR THEIR MOTHER FOR -- KITCHEN THINGS. AND THE
19 GIRLS ARE GETTING OLD ENOUGH WHERE THEY LIKE THEIR OWN
20 THINGS TOO. SO I WAS LETTING THEM GET A FEW THINGS BEFORE I
21 LEFT TOWN.

22 WE WENT BACK TO THE SCHOOL AND -- BECAUSE THEY WAS DEAD
23 SET ON STAYING WITH ME FOR SOME MORE TIME BECAUSE THEY KNOW
24 USUALLY WHEN I SAY I'M GOING TO LEAVE -- BE GONE FOR A
25 WHILE, I AT LEAST KEEP MY WORD, I DON'T GO FURTHER. SO THEY

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1 WERE SURE THAT THEY WERE PROBABLY SEEING ME FOR THE LAST
2 TIME IN A GOOD WHILE.

3 AND WE WENT BACK OUT AND SPENT THE REST OF THE EVENING
4 -- I DO REMEMBER THE ICE CREAM INCIDENT. WE WENT TO MANY
5 STORES AND RODE AROUND. I WAS TRYING TO ENTERTAIN THEM AND
6 LET THEM HAVE SOME FUN BEFORE I LEFT.

7 Q. APPROXIMATELY WHAT TIME DID YOU DROP THE KIDS OFF? DID
8 YOU ---

9 A. I WOULD HAVE GUESSED ---

10 Q. --- DROP THEM OFF AT SHARON'S HOUSE?

11 A. YES, BEST I REMEMBER BECAUSE -- AND PHONE RECORDS DON'T
12 INDICATE US EVER TALKING AGAIN, UNLESS I JUST AGREED TO MEET
13 HER SOMEWHERE, BUT I THINK I TOOK THEM BACK TO THE HOUSE.
14 BUT I REMEMBER IT WAS 9:30 TO 10:30. IT WOULD HAVE BEEN
15 LATE BECAUSE SHE WON'T LET THEM STAY OUT ANY LATER THAN TEN
16 OR 10:30. AND I'M SURE THE GIRLS PUSHED IT RIGHT TO THE
17 LIMIT. I RECALL IT BEING -- IF WE WENT BACK AND HAD TO TALK
18 HER INTO IT WE HAD TO STAY SEVERAL MORE HOURS PLUS GOING TO
19 MEET HER. SO IT WOULD HAVE HAD TO HAVE BEEN NINE TO 10:00.

20 Q. NOW THERE'S BEEN TESTIMONY THAT THAT EVENING ON MONDAY
21 IN THE EARLY PARTS OF THAT EVENING THAT YOU WERE WITH JOHN
22 HAMBY AND HOMER JOHNSON AND CUTTING UP TWENTY POUNDS OF
23 MARIJUANA AT, I BELIEVE, HOMER'S HOUSE. HAVE YOU HEARD THAT
24 TESTIMONY?

25 A. I'VE HEARD THAT, YES.

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1 Q. IS IT TRUE?

2 A. THAT'S ABSOLUTELY NOT TRUE. I DID SEE JOHNNY HAMBY AND
3 HOMER AT THE STORE BRIEFLY WITH MY -- MY GIRLS WERE RIGHT
4 THERE. I STOOD IN FRONT OF THE CAR BETWEEN THE CAR AND THE
5 FRONT OF THE STORE. AND THEY WERE TRYING TO WORK SOME MONEY
6 UP. AND THEY KNEW A FRIEND OF MINE THAT OWED SOME MONEY.
7 AND WE HAD THAT DISCUSSION IN FRONT OF THE STORE. AND THEN
8 I LEFT WITH MY GIRLS.

9 Q. NOW YOU MENTIONED ABOUT LEAVING TOWN OR GOING TO TAKE
10 YOUR GIRLS OUT BEFORE YOU LEFT. HAD YOU MADE PLANS TO LEAVE
11 TOWN THE NEXT DAY OR ...

12 A. YES. YES, IT HAD BEEN PLANNED FOR SOME TIME TO LEAVE
13 -- TO LEAVE THAT DAY, THE NEXT DAY.

14 Q. WELL, LET'S GO NOW TO NOVEMBER 5TH, WHICH WOULD HAVE
15 BEEN THE DAY OF THE MURDER. DO YOU RECALL WHERE YOU SPENT
16 THE NIGHT ON NOVEMBER 4TH, WHICH GOES INTO THE MORNING OF
17 NOVEMBER 5TH?

18 A. YES. I STAYED AT THE STUDIO PLUS, WHICH IS WHERE I
19 ALMOST ALWAYS STAY. RARELY I STAYED AT ANOTHER MOTEL OR
20 TWO, BUT THAT'S ALMOST ALWAYS WHERE I STAYED WHEN I COME TO
21 TOWN.

22 Q. WELL, TELL US ABOUT THAT MORNING AND THE EARLY
23 AFTERNOON HOURS. IF YOU WOULD JUST RECREATE THAT DAY AS
24 BEST YOU CAN.

25 A. I WOKE UP, TOOK A SHOWER, TRIED TO GET AHOLD OF JOHN.

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1 COULDN'T GET -- HIS PHONE WOULD NOT EVEN GO THROUGH EVEN TO
2 HIS ANSWERING MACHINE. I WAS GOING TO ASK HIM ABOUT SOME
3 MORE DRILLS. I NEEDED A HANDFUL OF MORE DRILLS AND COULDN'T
4 GET THROUGH. CALLED HOMER. ALL I GOT WAS HIS ANSWERING
5 MACHINE. I DIDN'T LEAVE HIM A MESSAGE.

6 I LOADED MY CAR, CHECKED OUT. IT WAS RAINING. MY CAR
7 WOULD NOT START BECAUSE MY BATTERY POST IS LOOSE AND IT
8 NEEDS TO -- IT'S STRIPPED OUT AND YOU CAN'T TIGHTEN IT. AND
9 WHEN IT RAINS, AND IT HAD BEEN RAINING A LOT, IT SOMETIMES
10 WILL DO THIS. AND I HAD TO FOOL WITH IT. AND THAT WAS A
11 REPEATED PROBLEM THROUGH THE DAY. I WAS HAVING PROBLEMS
12 WITH MY PHONE CHARGING AS WELL AS GETTING THE CAR TO TURN
13 OVER EVERY TIME I TRIED TO START IT.

14 I LEFT. I WENT OUT, RAN ERRANDS ACROSS TOWN. I DON'T
15 REMEMBER THE SEQUENCE BECAUSE I WAS ASKED TOO AFTER -- TOO
16 FAR AFTER THE FACT TO START REMEMBERING DETAILS, BUT I KNOW
17 THAT I HAD SEVERAL PEOPLE THAT I WAS DELIVERING THINGS TO
18 AROUND TOWN AND GETTING PREPARED TO LEAVE, TALKING TO PEOPLE
19 AT THE LAST MINUTE, SAYING GOODBYE TO SOME OF MY FRIENDS,
20 JUST THINGS OF THAT NATURE.

21 Q. LET ME KIND OF MOVE FORWARD THEN. DO YOU RECALL SEEING
22 TERRY LYNCH AT THE INTERNATIONAL HOUSE OF -- THE IHOP?

23 A. YES.

24 Q. MID-AFTERNOON?

25 A. YES.

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1 Q. OKAY.

2 A. YES. I MET HER. SHE CALLED ME I WANT TO SAY THREE TO

3 4:00, SOMEWHERE IN THAT BALLPARK, SHE CALLED ME. I DON'T

4 REMEMBER THE EXACT TIMES. AND SHE WAS WANTING TO GET

5 TOGETHER AND TALK WITH ME ABOUT A FRIEND OF OURS, CHAD

6 MASON, THAT HAD BEEN HAVING A LOT OF PROBLEMS. AND SHE

7 WANTED TO KNOW WHAT I KNEW ABOUT HIS SITUATION. SHE CALLED

8 ME. I WAS ALREADY GOING OVER IN THAT GENERAL AREA ANYWAY OR

9 IN THAT GENERAL AREA BECAUSE I'D AGREED TO GO OVER BY THE

10 MOTEL OVER THERE TO CHECK ON A FRIEND OF OURS WHO OWED

11 JOHNNY AND HOMER SOME MONEY. AND THAT'S THE REASON I SET IT

12 UP FOR THE IHOP.

13 I WENT TO THE IHOP. I THINK I MIGHT HAVE EVEN GONE TO

14 THE MOTEL FIRST. WENT TO THE IHOP, MET HER. NO ONE WAS AT

15 THE IHOP THAT I RECOGNIZED. AND I WENT TO THE IHOP, MET

16 HER. AND IHOP -- SHE'S NOT THE ONLY ONE I MET. I MET

17 SEVERAL PEOPLE BETWEEN IHOP, AND RED LOBSTER, AND THE BI-LO.

18 THAT'S -- MOST OF MY FRIENDS AND PEOPLE ARE IN THAT GENERAL

19 VICINITY RIGHT THERE.

20 Q. DO YOU RECALL WHAT -- YOU MET HER OR DID Y'ALL GO IN

21 THE RESTAURANT?

22 A. NO, WE DID NOT.

23 Q. HOW LONG DO YOU RECALL -- WHAT TIME DID YOU LEAVE OR

24 WHAT TIME DID SHE LEAVE?

25 A. WE FIRST AGREED TO MEET AT 4:15. AND THEN FIVE MINUTES

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1 LATER I CALLED HER BACK 'CAUSE I NEEDED TO GO BY MY SHED TO
2 CHECK -- TO CLEAN IT OUT REAL GOOD AND MAKE SURE THERE --
3 DIDN'T HAVE ANY TOOLS THAT I COULD TAKE WITH ME ON THE TRIP
4 BEFORE THEY LOCKED THE GATE AT MY STORAGE. AND SO I CALLED
5 HER BACK TO TELL HER THAT. AND SO I TOLD HER THAT WE MIGHT
6 WANT TO MEET CLOSER TO 4:30.

7 I WENT TO THE SHED. I CAME BACK. AND I CALLED HER
8 AROUND 4:14 OR 4:15. IT SHOWS ON MY RECORDS, I THINK. AND
9 SHE SAID SHE WAS ON THE WAY, THAT SHE WOULD BE THERE RIGHT
10 ABOUT THE TIME WE AGREED. AND I REMEMBERED HER GETTING
11 THERE RIGHT PRETTY CLOSE TO WHEN SHE SAID SHE WOULD. I
12 THOUGHT SHE'D BEEN JUST A MINUTE OR TWO LATE BECAUSE I GOT
13 THERE FIRST. AND IT SEEMED TO ME IT WAS AROUND 4:30.

14 WE TALKED FOR LESS THAN A HALF HOUR. I WOULD SAY
15 FIFTEEN TO TWENTY MINUTES. NORMALLY I WAS HITTING PEOPLE,
16 JUST SEEING PEOPLE REAL QUICKLY. SHE WANTED TO TALK ABOUT
17 CHAD. SO WE TALKED. I STAYED WITH HER A LITTLE LONGER THAN
18 I WOULD PROBABLY ANYBODY ELSE AS I WAS DRIVING AROUND.

19 Q. SO I GUESS QUARTER OF FIVE, 5:00 OR SO THAT MEETING ---

20 A. YES.

21 Q. --- IS FINISHED OR BREAKS UP?

22 A. NO LATER THAN THAT WE WOULD HAVE BEEN BROKE UP. SHE
23 WOULD HAVE -- SHE LEFT FIRST AS SHE TESTIFIED. I REMEMBER
24 HER LEAVING FIRST. AND I WAS GOING -- I WAS GETTING IN MY
25 CAR AS SHE PULLED OUT.

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1 Q. ULTIMATELY DID YOU MAKE IT TO THE WHITE RESIDENCE IN
2 T. R.?

3 A. YES. YES, AFTER THAT. YEAH, I THINK ---

4 Q. TELL US WHAT YOU DID IN THE MEANTIME AFTER YOU LEFT
5 IHOP AND ---

6 A. IHOP, I WENT -- THERE WAS -- I HAD THREE OR FOUR PEOPLE
7 RIGHT AROUND THAT AREA. I'M CONTINUING MEETING PEOPLE RIGHT
8 AROUND THAT AREA, RED LOBSTER, IHOP, BOB JONES LITTLE PLAZA
9 THEY BOUGHT, THAT PLAZA THERE, WAL-MART, K-MART, ANYWHERE IN
10 THAT VICINITY. I'VE GOT FRIENDS ALL OVER THOSE
11 NEIGHBORHOODS. AND I WRAPPED THAT UP AND THEN REALIZED I
12 NEEDED TO GET ON OUT OF THERE BECAUSE I HAD -- I KNOW THEY
13 EAT AT 5:30. AND SO HANNAH PUTS THE FOOD DOWN. IF YOU'RE
14 THERE YOU JUST MISS IT. AND I TOOK OFF THERE.

15 AS I WAS GOING THERE A FRIEND OF MINE CALLED, THE ONE
16 THAT TESTIFIED EARLIER, SHAWN, HE AND DOUG HAD CALLED ME AND
17 WANTED ME TO MEET THEM. I TOLD THEM I WAS GOING TO
18 TRAVELERS REST AND MAYBE TO CLEVELAND AND THAT I WOULD MEET
19 THEM BACK ON THE OTHER SIDE OF TOWN AS I WAS LEAVING TOWN.
20 AND I WENT ON-UP TO TRAVELERS REST. SOMEWHERE I HAD THAT
21 CONVERSATION IN ROUTE TO TRAVELERS REST.

22 Q. HOW LONG -- APPROXIMATELY HOW LONG DID YOU STAY IN
23 TRAVELERS REST?

24 A. NOT LONG. I GOT THERE AND IT SEEMS LIKE THE KIDS WERE
25 ALREADY EATING. SHE -- THEY DON'T ALL SIT AT THE TABLE.

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1 THEY HAVE SIX CHILDREN. SO -- THAT'S ABOUT ALL THEY CAN FIT
2 AT THE TABLE. THEY WERE ALREADY EATING. HANNAH AND BILLY
3 WERE GRABBING THEIR FOOD. AND THEY ALWAYS SIT IN FRONT OF
4 THE TV. AND I GOT THERE. THERE WAS SOME -- AT LEAST A PORK
5 CHOP LEFT AND SOME -- I ATE A LITTLE BIT OF FOOD WITH THEM
6 VERY QUICKLY BECAUSE I WAS IN A HURRY. AND WE TALKED ABOUT
7 SOFTBALL WHILE I WAS -- I THINK I LITERALLY WAS HOLDING A T-
8 BONE OR A PORK CHOP IN MY HAND AND JUST SCOOPING UP A LITTLE
9 BIT OF LEFT OVER BROCCOLI AND RICE. AND WE BRIEFLY TALKED,
10 AND I LEFT. IT COULDN'T HAVE BEEN, YOU KNOW, I WOULD HAVE
11 GUESSED IT TO BE TEN MINUTES, BUT LESS THAN FIFTEEN MINUTES
12 FOR SURE, EIGHT TO FIFTEEN MINUTES.

13 Q. AFTER YOU LEFT THERE WHERE DID YOU GO? ULTIMATELY YOU
14 MADE IT TO THE BLOCK HOUSE LATER THAT EVENING, IS THAT
15 CORRECT?

16 A. YES. I DROVE TO MEET A COUPLE OF MORE PEOPLE. I MET
17 SHAWN AND DOUG, CALLED THEM AND TOLD THEM. THEY MET ME. I
18 WENT TO ONE OR TWO OTHER PEOPLE. I DON'T REMEMBER THE EXACT
19 DETAILS. I JUST REMEMBER JOHNNY CALLING ME AND SAYING THAT
20 HE WANTED TO EAT, WANTED ME TO MEET HIM TO EAT. AND I
21 REALLY HAD -- WAS NOT HUNGRY, I WASN'T FEELING GOOD, BUT I
22 WANTED TO SAY GOODBYE TO HIM AND MELISSA.

23 SO -- AND THAT'S -- HE HAD TOLD -- EARLIER IN THE DAY
24 HE'D ASKED ME THAT IF I WAS STILL IN TOWN MAYBE WE CAN GO
25 OUT TO EAT BEFORE I LEFT. HE CALLED. I THINK THIS WOULD

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1 HAVE BEEN AROUND 7:30. HE SAID IF I -- HE WANTED TO MAKE
2 SURE I WAS IN AGREEMENT. I SAID, YES, I WOULD. HE SAID,
3 I'LL CALL YOU RIGHT BACK AND LET YOU KNOW. WELL, IT WAS A
4 LONG TIME BEFORE HE CALLED BACK. AND I WAS THINKING I WAS
5 JUST GOING TO GO AHEAD AND LEAVE TOWN.

6 HE DID CALL BACK MAYBE LIKE AN HOUR LATER, SAID TO MEET
7 HIM AT THE BLOCK HOUSE. I FIND OUT LATER HE WAS ALREADY AT
8 THE BLOCK HOUSE AT 7:30. I DIDN'T REALIZE THAT. BUT WHEN I
9 GOT THERE THEY HAD ALREADY GOTTEN THERE, ORDERED, AND EATEN.
10 WHEN I GOT THERE THERE WAS NOTHING LEFT BUT JUST A FEW
11 PIECES OF COLD -- PIECES OF STUFF, YOU KNOW, THERE WAS VERY
12 LITTLE THERE. I DIDN'T ORDER. I JUST -- WE -- I WAS -- WE
13 PROBABLY DIDN'T SIT AT THE TABLE TOGETHER MORE THAN FIVE OR
14 TEN MINUTES BECAUSE THAT'S WHEN JOHNNY GOT THE PHONE CALLS
15 THAT HOMER WAS IN THE HOSPITAL.

16 Q. OKAY. WHAT DID YOU -- WHAT CONVERSATION TOOK PLACE AT
17 THE TABLE THEN? I MEAN, DID HE TELL YOU THAT HOMER HAS HAD
18 AN ACCIDENT, OR BEEN SHOT, OR WHAT ---

19 A. THE FIRST CALL HE SAID, HE SAID, SOMEBODY JUST CALLED
20 AND SAID THEY TOOK HOMER TO THE HOSPITAL. AND I SAID, WELL,
21 THEY PROBABLY HAVE THAT MIXED UP. WE AGREED PROBABLY THAT
22 HE HAD BROKEN HIS TOE AND BEEN IN THE HOSPITAL EARLIER THAT
23 DAY.

24 AND THEN RIGHT AFTER THAT ANOTHER PHONE CALL COMES AND
25 SAID HE'D BEEN SHOT. AND I SAID, I'LL BET YOU I KNOW WHO

RUSSELL RICE - DIRECT EXAMINATION BY MR. SUMNER

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1 SHOT HIM. AND I DID HAVE AN IDEA. AND WE WENT -- QUICKLY,
2 WE GOT UP. IT WAS LIKE EVERYTHING WAS IN A PANIC THEN. WE
3 ALL WALKED OUT TO THE FRONT. THEIR CAR WAS PARKED IN THE
4 FRONT. I WAS TWO BUILDINGS DOWN. IT WAS SO FULL I HAD TO
5 PARK A COUPLE OF BUILDINGS DOWN IN THE BACK.

6 AND SO JOHNNY SAID HE WANTED TO TALK TO ME. AS MELISSA
7 GOT IN THE CAR WE WALKED OFF TO THE SIDE. AND JOHNNY SAYS,
8 SOMEBODY SAID THAT YOU WERE MEETING HIM. AND I SAID, WHO
9 WOULD HAVE SAID THAT? HE SAID, I DON'T KNOW, I JUST HEARD
10 IT. WELL, IT HAD TO BE ONE OF THE TWO CALLS HE'D JUST GOT
11 BECAUSE HE JUST -- UNLESS HE KNEW IT PRIOR, HE'D JUST FOUND
12 OUT. BUT ANYWAY I SAID, THAT'S CRAZY.

13 I SAID, -- AND THEN HE -- HE SAYS, WHAT YOU'D BETTER DO
14 IS JUST DISAPPEAR FOR A LITTLE WHILE. I SAID, I'M ALREADY
15 GOING OUT OF TOWN. I DON'T SEE ANY REASON FOR ME TO HIDE.
16 AND HE SAID, WELL, I'M JUST TELLING YOU IF I WERE YOU I JUST
17 WOULDN'T BE AROUND FOR A WHILE. AND I WAVED TO MELISSA. HE
18 GOT IN THE CAR, AND THEY DROVE OFF. AND I GOT IN MY CAR.

19 Q. LATER ON THAT EVENING WHERE DID YOU GO? ULTIMATELY
20 WHERE DID YOU WIND UP?

21 A. I STARTED -- AT THAT POINT I THOUGHT I WAS GOING TO GO
22 RIGHT ON OUT AND GO TO MYRTLE BEACH, BUT I REMEMBERED -- THE
23 PERSON I THOUGHT MIGHT BE INVOLVED IN THIS, I CALLED AS I
24 JUST -- JUST SHORTLY AFTER I LEFT THE BLOCK HOUSE. MY
25 THINKING WAS TO LEAVE TOWN, BUT AT THE SAME TIME I WANTED TO

RUSSELL RICE - DIRECT EXAMINATION BY MR. SUMNER

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1 FIND OUT IF WHAT I SUSPECTED WAS ANYWHERE NEAR TRUE.

2 Q. AND DID YOU SPEAK WITH SOMEONE ---

3 A. YES, I DID. I TRIED SEVERAL TIMES. I FINALLY HAD TO
4 GO TO ABOUT HALF A DOZEN PAY PHONES AND GOT WET. AND I
5 EVENTUALLY GOT AHOLD OF MY FRIEND, KEVIN MOORE, WHO I KNEW
6 HAD A PROBLEM. HE OWED HOMER A LOT OF MONEY. AND HOMER HAD
7 DONE SOME THINGS, HAD RIPPED HIM AND HIS FRIENDS OFF AS WELL
8 AS WAS KNOWN WAS POSSIBLY SUSPECT OF HAVING AN AFFAIR WITH
9 HIS WIFE AT RUMORS.

10 Q. ALL RIGHT. DID YOU ASK KEVIN MOORE ABOUT THE KILLING?

11 A. YES, I DID. I ASKED HIM WHAT HE KNEW. HE ACTED LIKE
12 HE DIDN'T KNOW WHAT I WAS TALKING ABOUT AT FIRST. AND THEN
13 HE GOT -- IT SOUNDED LIKE HE MUST HAVE WENT IN ANOTHER ROOM
14 WHERE HE WASN'T AROUND WHOEVER HE WAS AROUND. AND HE
15 STARTED TALKING MORE CANDID AND LOUDER. AND HE SAID, HOMER
16 WOULD HAVE NOT GOTTEN SHOT IF HE HADN'T TRIED TO BE SUCH A
17 BAD ASS COWBOY OR SOMETHING LIKE THAT.

18 AND THEN HE WENT ON -- I KEPT TRYING TO ASK HIM WHAT
19 HAPPENED. THE MORE I -- HE GOT HYSTERICAL. I COULDN'T
20 UNDERSTAND HIM. HE EVENTUALLY -- HE SAID SOMETHING ABOUT
21 THEY AND GUNS AND STUFF. AND I COULDN'T UNDERSTAND QUITE
22 WHAT HE WAS TRYING TO SAY. AND EVERY TIME I TRIED TO GET
23 HIM TO CALM DOWN HE JUST WOULDN'T MAKE SENSE. AND THEN
24 FINALLY HE JUST GOT REAL LOUD AND CLEAR. AND HE SAID, YOU
25 GO OUT TO THE STASH, AND YOU GET WHATEVER YOU FIND IN THAT

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1 STASH, AND YOU TAKE IT TO JOHNNY, AND YOU -- AND GIVE IT TO
2 THEM WHEN THIS THING'S OVER WITH. I DON'T WANT MY FAMILY
3 HURT. I'M KILLING MYSELF, AND IT'S OVER WITH. AND HE SAID
4 SOMETHING LIKE -- HE SCREAMED KIND OF LIKE A CRYING SOUND
5 LIKE AN AH OR AN OH SOUND AND HUNG UP THE PHONE. I TRIED TO
6 CALL HIM BACK SEVERAL TIMES COULD NOT GET A HOLD OF HIM.

7 Q. DID YOU -- WHEN HE REFERRED TO A STASH TELL US BRIEFLY
8 WHAT YOU'RE TALKING ABOUT.

9 A. KEVIN AND I HAD A PLACE NEXT TO HIS LOT THAT IF WE OWED
10 EACH OTHER MONEY OR WE WERE GOING TO EXCHANGE ANY MATERIALS
11 WE WOULD DO IT OUT THERE.

12 Q. WHEN YOU SAY MATERIALS YOU'RE TALKING ABOUT DOPE,
13 AREN'T YOU?

14 A. WOULD BE COKE OR POT WITH KEVIN AND I, YES.

15 Q. LET'S -- OKAY.

16 A. IT'S A STASH FOR MONEY OR DRUGS, YES.

17 Q. OKAY.

18 A. AND HE HAD A PARTICULAR TREE. HE'D CHANGE IT A COUPLE
19 OF TIMES, BUT I KNEW -- I KNEW BOTH TWO OR THREE LITTLE
20 SPOTS THAT HE HAD UP THERE. I KNEW WHERE THEY WERE. AND WE
21 USUALLY -- I WAS FAMILIAR WITH WHAT HE WAS TALKING ABOUT. I
22 WENT OUT THERE -- WELL, LATER ON -- I DON'T KNOW IF YOU WANT
23 TO GET INTO THAT NOW OR NOT, BUT ...

24 Q. WELL, I'M JUST ASKING THE QUESTION, DID YOU GO OUT
25 THERE?

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1 A. YES. WHEN I GOT BACK TO TOWN, I DID.

2 Q. OKAY.

3 A. I LEFT TOWN AND CAME BACK. FOUND OUT KEVIN DID COMMIT
4 SUICIDE TWO DAYS AFTER HOMER DIED. AND SO I WENT OUT TO THE
5 STASH MANY TIMES. I WENT AT NIGHTTIME FIRST AND I COULD NOT
6 FIND ANYTHING. SO I RETURNED IN THE DAYTIME AT LEAST A
7 COUPLE OF MORE TIMES. I DUG EVERY TREE IN THAT LOT UP OVER
8 THERE. I COULDN'T FIND ANYTHING.

9 Q. NOW HOW LONG WERE YOU OUT OF TOWN?

10 A. I'D SAY MAYBE A COUPLE OF WEEKS. I DON'T REMEMBER
11 EXACTLY. AND I WENT RIGHT BACK OUT OF TOWN. I CAME BACK
12 INTO TOWN, STAYED JUST A SHORT TIME. WENT BACK OUT OF TOWN
13 AND THEN CAME BACK AROUND CHRISTMAS.

14 Q. OKAY. NOW THERE'S BEEN TESTIMONY OFFERED THAT YOU MAY
15 HAVE DODGED DETECTIVE FULLER OR TRIED TO AVOID SPEAKING WITH
16 HIM. TELL US ABOUT THAT. DID YOU EVER TRY TO GET BACK IN
17 TOUCH WITH DETECTIVE FULLER?

18 A. YES, SIR, I DID.

19 Q. I MEAN, WAS HE TRYING TO GET IN TOUCH WITH YOU?

20 A. WELL, THAT'S WHAT HE SAID TO MY EX-WIFE. WHEN I GOT
21 BACK TO -- SEE, I DON'T ANSWER MY PHONE. I GET ON THE ROAD.
22 I HAVE SO MANY PEOPLE THAT PUT MESSAGES ON MY THING THAT I
23 DON'T LISTEN TO THEM AND I DON'T WANT TO TALK CHIT-CHAT WITH
24 PEOPLE LONG DISTANCE. SO I JUST BASICALLY TURN MY PHONE OFF
25 AND TURN IT ON WHEN I NEED IT TO USE TO CALL OUT. AND EVERY

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1 ONCE IN A WHILE I'LL CLEAR ALL MY MESSAGES. I DON'T -- I
2 GENERALLY DON'T LISTEN TO THEM. I JUST CLEAR THEM BECAUSE
3 THE ONLY THING THAT'S IMPORTANT TO ME IS MY GIRLS. AND I
4 CHECK WITH THEM MYSELF.

5 SO I DID NOT RECEIVE ANY MESSAGES FROM HIM. BUT WHEN I
6 GOT BACK TO TOWN I -- ON THE 15TH, I THINK IT WAS, SHARON
7 TOLD ME. AND ON THE 16TH, THE NEXT DAY, I TOOK THE NUMBER,
8 I CALLED IT. HE WAS NOT THERE. IT WENT TO HIS ANSWERING
9 MACHINE. I LEFT HIM A MESSAGE. HE DID NOT RETURN MY CALL.
10 I HAD MY PHONE ON. I DID TRY TO CALL BACK SEVERAL TIMES
11 FROM OTHER PHONES, NOT JUST MY PHONE. I TRIED TO CALL BACK.
12 AND ALL I GOT WAS HIS ANSWERING MACHINE. I NEVER DID LEAVE
13 ANYMORE MESSAGES AFTER THAT.

14 Q. ALL RIGHT. WERE YOU AVOIDING HIM ---

15 A. NO, ABSOLUTELY NOT. I WASN'T AVOIDING HIM.

16 Q. NOW ULTIMATELY YOU MENTIONED THAT YOU CAME BACK INTO
17 TOWN, IS THAT RIGHT?

18 A. YES, I DID.

19 Q. FROM THESE TRIPS YOU WERE TAKING?

20 A. THAT'S RIGHT.

21 Q. AND DID YOU EVER CHECK ANYWHERE ELSE TO TRY TO FIND ---

22 A. YES, EVENTUALLY ---

23 Q. --- ANYTHING RELATIVE TO KEVIN MOORE?

24 A. YES. THE SECOND TIME -- ACTUALLY THIS WOULD HAVE ALL
25 BEEN TRIGGERED WHEN DAN FULLER CALLED THE -- DETECTIVE

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1 FULLER CALLED THE NEXT TIME, WHICH WOULD HAVE BEEN, I
2 BELIEVE, ON THE 26TH AS HE STATED ON A THURSDAY.

3 AND WHEN HE CALLED THE DETECTIVES HAD BEEN, YOU KNOW,
4 QUESTIONING MY FAMILY SO MUCH THAT I WAS -- I FELT KIND OF
5 RESPONSIBLE TO DO SOMETHING, YOU KNOW, TO GET TO RESOLVING
6 THIS OR TALKING TO HIM. AND SO WHEN HE CALLED I SAID, YES,
7 I WOULD LOVE TO TALK WITH YOU. I SAID, BUT I AM -- I'M OUT
8 OF TOWN. AND I LIVE IN ANDERSON. AND I WAS REFERRING -- HE
9 SAID HE WANTED --- IN THE CONTEXT HE WAS WANTING TO COME TO
10 MY HOME OR HE SAID, IF YOU'RE NOT COMFORTABLE AT HOME WE'LL
11 MEET AT A NEUTRAL PLACE, A RESTAURANT, OR SOMETHING. AND I
12 SAID THAT WOULD BE FINE.

13 AND WHEN I SAID I WASN'T AT HOME I WAS REFERRING TO --
14 MY ADDRESS IS AT MY PARENTS' HOUSE, BUT I STAY ON THE ROAD.
15 SO I DON'T HAVE A HOME. THAT'S -- WHEN I SAY I'M NOT HOME
16 THAT'S WHAT I'M REFERRING TO. AND SO I TOLD HIM I WOULD BE
17 HOME ON MONDAY OR TUESDAY. AND SO I -- WE HUNG UP AND WE
18 AGREED TO MEET -- I WOULD CALL HIM WHEN I WAS AVAILABLE TO
19 HAVE A MEETING WITH HIM.

20 AND SO THAT'S WHAT JOGGED MY MIND. I STARTED TO GO
21 BACK UP TO KEVIN'S HOUSE ONE MORE TIME BECAUSE I THOUGHT IF
22 THERE'S ANY EVIDENCE THAT'S GOING TO HELP IN ANY WAY WITH
23 THIS CASE IT'S GOING TO BE UP THERE. KEVIN'S DEAD AND HE
24 DOESN'T -- I CAN'T -- I DON'T KNOW WHAT ELSE TO DO. AND SO
25 I STARTED BACK UP THERE AGAIN.

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1 AND JUST ABOUT -- JUST SHORTLY BEFORE I GOT TO HIS
2 HOUSE, I WAS IN HIS NEIGHBORHOOD ACTUALLY, IT DAWNED ON ME
3 THAT HE HAD TOLD ME ABOUT ANOTHER PLACE. WE HAD NEVER USED
4 THAT PLACE BECAUSE I -- KEVIN HAD STARTED SMOKING CRACK AND
5 I JUST STOPPED FOOLING WITH HIM WHEN IT COME TO DRUG
6 EXCHANGES AND MONEY. AND SO I JUST HAD NOT BEEN OUT -- HE
7 SHOWED ME THE STASH, BUT I HAD NEVER BEEN TO THIS STASH. I
8 NEVER USED IT, AND I JUST FORGOT ABOUT IT.

9 AND IT DAWNED ON ME AS I WAS GOING UP THERE THAT DAY.
10 AND SO I WENT TO THE OTHER PLACE. AND THAT'S WHEN I FOUND A
11 LARGE BAG WITH BAGS INSIDE OF IT. IT WAS HEAVY. I CARRIED
12 IT BACK TO STUDIO PLUS.

13 Q. THAT BAG CONTAINED WHAT'S BEEN RECEIVED IN EVIDENCE,
14 DID IT NOT?

15 A. YES, WITH OTHER THINGS. YES, EXACTLY. IT CERTAINLY
16 DID.

17 Q. IT CONTAINED PARTS OF A GUN?

18 A. YES, IT DID.

19 Q. AND DID IT CONTAIN ALSO COCAINE?

20 A. COCAINE, SCALES, MONEY.

21 Q. WHAT DID YOU DO WITH THE MONEY?

22 A. I PUT IT IN MY POCKET.

23 Q. WHAT WAS YOU GOING TO DO WITH THE DRUGS?

24 A. I HAD -- I JUST GOT IT, HADN'T MADE UP MY MIND

25 COMPLETELY. IT WAS A LOT MORE THAN I -- I WAS SCARED OF IT

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1 ACTUALLY. I WAS THINKING OF TAKING SOME OF THE SMALLER
2 PACKAGES AND SELLING THEM. THE LARGER STUFF I WAS -- I WAS
3 ACTUALLY -- WHEN THEY PULLED ME OVER I WAS HEADED TO THE
4 WOODS TO PUT IT BACK AND TO HIDE IT BECAUSE I WAS -- I WAS
5 AFRAID OF IT. IT WAS AN AWFUL LOT. AND I'M JUST USED TO
6 CARRYING LITTLE PACKAGES AROUND.

7 Q. THERE'S NO QUESTION THE COCAINE WAS IN YOUR TRUNK?

8 A. THAT'S EXACTLY RIGHT.

9 Q. AND YOU'RE NOT DENYING THAT?

10 A. I'M NOT DENYING THAT AT ALL, NO.

11 Q. WE'VE SEEN THE VIDEOTAPE OF THE CAR STOP. AND IT'S
12 ACCURATE, IS THAT CORRECT?

13 A. I DIDN'T ACTUALLY VIEW IT, BUT IT -- FROM WHAT I COULD
14 HEAR IT SOUNDED CORRECT. I WOULDN'T DISPUTE ANYTHING.

15 Q. I MEAN, YOU WERE ON HAYWOOD ROAD ---

16 A. OH, YEAH, ABSOLUTELY.

17 Q. NO QUESTION ---

18 A. NO QUESTION.

19 Q. --- THAT OFFICER DEMPSEY PULLED YOU OVER?

20 A. THAT'S RIGHT.

21 Q. DID YOU KILL HOMER JOHNSON?

22 A. ABSOLUTELY NOT. NO, I DID NOT.

23 Q. WERE YOU A PART OF THIS KILLING?

24 A. I HAD NOTHING TO DO WITH IT, NOT AT ALL.

25 Q. PLEASE ANSWER ANY QUESTIONS MR. MOYER MIGHT HAVE.

RUSSELL RICE - CROSS EXAMINATION BY MR. MOYER

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1 THE COURT: SOLICITOR.

2 CROSS EXAMINATION BY MR. MOYER:

3 Q. OKAY. SO TO START OFF THEN, MR. RICE, THE STORY THAT
4 ABRA HAMBY TESTIFIED HERE TO ABOUT YOU BEING IN THE HOTEL
5 ROOM AND THAT YOU WERE THERE TO BOOT HIM OFF, SO THAT'S JUST
6 OUT OF THE WAY? THAT'S NOT WHAT HAPPENED?

7 A. NOT ME BEING -- I DID GO TO THAT MOTEL THAT DAY. AND I
8 THINK I PROBABLY WAS USED TO DRAW HOMER THERE.

9 Q. OKAY. YOUR TESTIMONY IS YOU WEREN'T IN THAT ROOM THERE
10 TO GO ---

11 A. NO, NO, ABSOLUTELY NOT.

12 Q. SO NONE OF THAT -- NONE OF THAT IS TRUE, IS IT?

13 A. THE STORY SOUNDS LIKE IT MIGHT HAVE BEEN CLOSE TO WHAT
14 HAPPENED, BUT I WASN'T THERE?

15 Q. WELL, HOW DO YOU KNOW WHAT HAPPENED?

16 A. BECAUSE JOHNNY HAMBY AND -- FROM TALKING WITH JOHNNY
17 HAMBY AFTER THE FACT AND WHAT KEVIN MOORE TOLD ME, IT SOUNDS
18 VERY SIMILAR TO WHAT HAPPENED.

19 Q. THAT SHOOTING HIM WITH A PISTOL IN THE HEAD?

20 A. ACTUALLY I THINK IT WAS A RIFLE. AND SHE SAID IT WAS
21 HIS GUN. HOMER HAD A GUN THAT WENT TO JOHNNY THAT WAS A
22 RIFLE. AND SHE SAID IT WAS HIS GUN. SHE'S JUST GUESSING
23 WHEN SHE SAYS IT WAS A PISTOL BECAUSE THAT'S THE PISTOL HE
24 NORMALLY CARRIED, HOMER.

25 Q. YOU'RE THINKING SHE'S JUST GUESSING BECAUSE THAT FITS

RUSSELL RICE - CROSS EXAMINATION BY MR. MOYER

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1 YOUR STORY A LITTLE BETTER?

2 A. I'M JUST TELLING YOU WHAT I KNOW FROM KNOWING THESE
3 PEOPLE. AND I KNOW HE CARRIED A BIG PISTOL JUST LIKE SHE
4 SAID.

5 Q. OKAY. WELL, LET'S TALK A LITTLE BIT -- YOU MENTIONED
6 THAT YOU WERE AFRAID OF THESE DRUGS THAT YOU FOUND OUT
7 THERE.

8 A. THE AMOUNT.

9 Q. YOU'D BEEN SELLING DRUGS FOR YEARS AT THAT POINT,
10 HADN'T YOU?

11 A. A COUPLE OF YEARS, YEAR AND A HALF MAYBE.

12 Q. COCAINE AND MARIJUANA?

13 A. COCAINE AND MARIJUANA. MOSTLY COKE, SMALL AMOUNTS OF
14 COKE AND OCCASIONALLY SMALL AMOUNTS OF POT. NOT A WHOLE LOT
15 OF MARIJUANA.

16 Q. BUT THAT'S HOW YOU MADE YOUR LIVING?

17 A. NO.

18 Q. ALL RIGHT. SO YOU'RE TELLING US THAT YOU MADE YOUR
19 LIVING BY SELLING THESE POWER TOOLS?

20 A. NO, NO. I'VE WORKED CONSTRUCTION A LITTLE BIT. I SOLD
21 POWER TOOLS.

22 Q. WHO DID YOU WORK FOR?

23 A. I WORKED FOR HALF -- KEVIN MOORE FOR ONE. HE AND I DID
24 SOME STUFF TOGETHER. HE WAS AN ELECTRICIAN. HE BECAME
25 UNEMPLOYED. AND SO WE STARTED DOING JOBS TOGETHER.

RUSSELL RICE - CROSS EXAMINATION BY MR. MOYER

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1 ACTUALLY THEY WERE HIS JOBS, I JUST HELPED HIM WITH THEM. I
2 WORKED FOR VAUGHN COWAN AND HIS BROTHER, CHRIS. I HELPED
3 THEM WITH CONSTRUCTION. I COULD NAME OTHERS, BUT THOSE ARE
4 SOME OF THE MORE KEY FIGURES.

5 Q. WERE YOU ON SALARY WITH THOSE PEOPLE?

6 A. YES. WELL, WITH -- WITH THE COWANS, I WAS. WITH
7 KEVIN, WE JUST SPLIT -- HE BASICALLY TOOK THE BIGGER CHUNK
8 AND WE SPLIT WHATEVER WE MADE OFF THE JOBS.

9 Q. BUT WITH THE OTHER PEOPLE YOU WERE ON SALARY?

10 A. WITH ---

11 Q. WITH THESE OTHER ---

12 A. WELL, I GOT A PAYCHECK, A REGULAR PAYCHECK. I WOULDN'T
13 CALL IT SALARY. I WAS PAID BY THE HOUR. BUT I GOT A CHECK
14 EVERY WEEK FROM THEM.

15 Q. GET A PAYCHECK EVERY WEEK?

16 A. UM-HUM (AFFIRMATIVE).

17 Q. AND YOU HAD A BANK ACCOUNT TO PUT ALL THAT MONEY IN?

18 A. NO. I -- I HAVEN'T HAD A BANK ACCOUNT SINCE WAY BACK.

19 Q. OKAY. YOU JUST KEPT CASH, DIDN'T YOU?

20 A. THAT'S RIGHT.

21 Q. RIGHT. AND SO YOU DIDN'T HAVE A BANK ACCOUNT THAT NONE
22 OF YOUR -- NONE OF THESE SO CALLED CHECKS WERE BEING
23 DEPOSITED INTO.

24 A. NO. BANKS -- I HAD A SERIES OF BOUNCED CHECKS RIGHT
25 AFTER THE DIVORCE. AND FROM THAT TIME ON I COULDN'T GET A

RUSSELL RICE - CROSS EXAMINATION BY MR. MOYER

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1 BANK -- THEY WOULDN'T LET ME OPEN AN ACCOUNT.

2 Q. AND YOU WERE -- YOU WERE BASICALLY AT THIS TIME LIVING
3 OUT OF YOUR CAR, WEREN'T YOU?

4 A. I DON'T UNDERSTAND WHAT LIVING OUT OF THE CAR MEANT. I
5 LIVED -- I STAYED AT MOTELS.

6 Q. OKAY. YOU DIDN'T HAVE A CENTRALIZED HOUSE, OR
7 APARTMENT, OR SOMEWHERE WHERE EVERYTHING WAS. ALL YOUR
8 BELONGINGS WERE IN THE CAR.

9 A. NO, NO. I HAD -- AT MY PARENTS' HOUSE I HAVE A ROOM
10 FULL OF CLOTHES AND THINGS THERE. AND MY BELONGINGS ARE
11 STORED IN THEIR -- RIGHT NEXT TO MY ROOM IS A STORAGE ROOM.
12 I CAN JUST OPEN IT UP, GET IN IT AND GET ALL MY STUFF OUT OF
13 THERE AS WELL.

14 Q. AND SO I ASSUME THAT'S CONVENIENT WHERE ALL THESE SO
15 CALLED CHECK STUBS AND INVOICES, THEY WOULD ALL BE THERE AT
16 YOUR FATHER'S APARTMENT?

17 A. YOU COULD PROBABLY -- YEAH, I'M SURE YOU'D FIND SOME
18 CHECK STUBS. BUT I -- I'M NOT A RECORD KEEPER. I DIDN'T
19 KEEP UP -- I DIDN'T KEEP UP WITH EVERYTHING.

20 Q. OKAY. NO INVOICES FROM ALL THESE TOOLS THAT YOU WERE
21 SUPPOSEDLY SELLING OUT OF YOUR TRUNK?

22 A. NO INVOICES? I COULD PROBABLY LOOK AROUND AND FIND
23 SOME. BUT I'M NOT -- AGAIN, I'M NOT A -- I DIDN'T KEEP LIKE
24 A BUSINESSMAN RECORD OF THAT, NO.

25 Q. DIDN'T KEEP RECEIPTS?

RUSSELL RICE - CROSS EXAMINATION BY MR. MOYER

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1 A. THERE MIGHT BE SOME, BUT I DIDN'T KEEP THEM LIKE FILE
2 THEM AND KEEP UP WITH ALL OF THEM, NO.

3 Q. IF YOU HAD ANY THEY'D BE IN YOUR CAR, WOULDN'T THEY?

4 A. NO, NO. THEY'D BE -- THERE'S NO TELLING WHERE THEY'D
5 BE. I LEAVE A TRAIL EVERYWHERE I GO.

6 Q. OKAY.

7 A. HALF OF THEM PROBABLY GOT THROWN AWAY IN MOTELS. I WAS
8 NOT KEEPING A RECORD OF THEM PURPOSELY. ANY THAT WERE LEFT
9 AROUND WERE JUST -- JUST LIKE YOU WOULD CANDY WRAPPERS.
10 THEY JUST GOT LEFT ALONG THE TRAIL.

11 Q. OKAY. AND SO, I MEAN, YOU'RE SELLING THIS STUFF OUT OF
12 YOUR CAR, RIGHT? THE TOOLS?

13 A. WHAT DO YOU MEAN OUT OF THE CAR?

14 Q. I MEAN IT'S NOT LIKE ---

15 A. I CARRIED THEM IN THE CAR, YES.

16 Q. OKAY. IT'S NOT LIKE YOU HAD A BUSINESS WHERE PEOPLE
17 WOULD COME AND MEET YOU AND YOU'D SELL THESE TOOLS?

18 A. LIKE A FLEA MARKET KIND OF A THING, YEAH. I SOLD -- I
19 CARRIED THEM IN MY CAR TO PEOPLE, IF THAT'S WHAT YOU'RE
20 ASKING, YES.

21 Q. SO YOU'RE DOING THE BUSINESS TRANSACTIONS THERE AT YOUR
22 CAR?

23 A. YES, SOMETIMES. OR SOMETIMES I CARRIED THEM TO THE
24 PEOPLE AND CARRIED THEM INTO CONSTRUCTION SITES. A LOT OF
25 TIMES YOU -- THE BEST TIME -- THE BEST WAY TO SELL TOOLS IS

RUSSELL RICE - CROSS EXAMINATION BY MR. MOYER

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1 TO GO TO CONSTRUCTION SITES.

2 Q. OKAY. SO ANY RECEIPTS OR ANY INVOICES THAT YOU WOULD
3 HAVE HAD FROM ANY OF THESE TRANSACTIONS, SOME OF THEM WOULD
4 HAVE GOT IN YOUR CAR, WOULDN'T THEY?

5 A. I WOULD THINK SO AT SOME TIME. I CLEANED MY CAR OUT
6 FROM TIME TO TIME 'CAUSE -- AS WAS STATED, MY CAR STAYS FULL
7 OF STUFF. SO, YOU KNOW, I JUST HAVE ROOM FOR MY STUFF. I
8 CLEANED MY CAR OUT AND THROW ALL THAT STUFF AWAY. AND
9 SELLING DRUGS, OF COURSE, YOU ALWAYS CLEAN YOUR CAR OUT FROM
10 TIME TO TIME.

11 Q. OKAY. YEAH, YOU CLEANED THE CAR OUT OF THE -- ANY OF
12 THE DRUGS OUT OF OBVIOUS PLAIN VIEW, BUT, I MEAN, YOU
13 DIDN'T, I MEAN, YOUR CAR WAS FULL OF FAST FOOD PACKAGES, AND
14 NAPKINS, AND, I MEAN, YOUR CAR WASN'T CLEAN WHEN YOU GOT
15 PULLED OVER ON DECEMBER THE 28TH, WAS IT?

16 A. I DON'T EVEN REMEMBER EXACTLY. IT WAS FULL OF MY STUFF
17 'CAUSE I'D JUST PACKED IT. I DIDN'T REALLY LOOK AT THE
18 FLOORBOARD THAT CLOSE.

19 Q. WELL, WHO WERE YOU SELLING THESE TOOLS TO?

20 A. JUST ANYBODY WHO WOULD BUY THEM.

21 Q. WELL, TELL ME SOMEBODY.

22 A. WHAT DO YOU MEAN TELL YOU SOMEBODY?

23 Q. GIVE ME A NAME OF SOMEBODY YOU SOLD TOOLS TO.

24 A. MOST OF THE TIME I'D -- NORTH CAROLINA IS THE LAST TIME
25 -- ONE OF THE LAST BIG SALES I HAD WAS WITH A FRIEND NAMED

RUSSELL RICE - CROSS EXAMINATION BY MR. MOYER

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1 JEFF MABE, JEFFREY DALE MABE.

2 Q. AND WHERE WAS THAT?

3 A. WINSTON, SALEM.

4 Q. AND ---

5 A. HE WAS BUYING ABOUT TWO OR THREE OF EVERYTHING I HAD.

6 Q. AND WHERE ELSE WOULD YOU SELL THESE SO CALLED TOOLS?

7 A. JUST ANYWHERE I GO. WHEN I GO ON THE ROAD I USUALLY

8 LOAD THE CAR UP AS MUCH AS I CAN AND I GO SEE OLD FRIENDS

9 ALL AROUND. AND WHEN I'M THERE I CHECK -- WHEN I SEE NEW

10 CONSTRUCTION SITES, THAT'S WHERE I GO.

11 Q. WELL, TELL US A NAME OF ANOTHER OLD FRIEND THAT YOU

12 SOLD TOOLS TO.

13 A. JEFF MABE JUST HAPPENED TO BE ONE OF THE LAST ONES. I

14 DON'T GENERALLY SELL TO FRIENDS. I SELL IT TO ANYBODY I

15 FIND WHO IS INTERESTED IN BUYING -- I JUST GO -- YOU WALK

16 UP, YOU SEE AN APARTMENT, A HOUSE BEING BUILT, YOU JUST

17 DRIVE UP, AND MOST OF THE TIME THEY'RE IN -- THERE'S A MAN

18 THAT OWNS THE COMPANY AND HE'S READY TO BUY WHATEVER HE CAN

19 FIND AT A DISCOUNT BECAUSE THEY'RE WEARING TOOLS OUT ALL THE

20 TIME. AND THAT'S MOSTLY HOW I WOULD DO IT.

21 Q. OKAY. SO YOUR TESTIMONY THEN IS THAT YOU JUST WOULD

22 DRIVE UP TO PEOPLE AND JUST START SELLING THEM -- SELLING

23 THEM TOOLS FOR CASH, RIGHT?

24 A. ABSOLUTELY.

25 Q. OKAY. NOW HOW MUCH MONEY WOULD YOU MAKE FROM THESE

RUSSELL RICE - CROSS EXAMINATION BY MR. MOYER

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1 TOOLS?

2 A. WELL, I WAS GETTING THE SMALLER TOOLS FOR THIRTY
3 DOLLARS AND LIKE PORTABLE -- MITER SAW TABLES, AND TABLE
4 SAWS; AND THINGS OF THAT NATURE AND THAT SIZE FOR FIFTY
5 DOLLARS.

6 Q. HOW MUCH A WEEK WERE YOU GETTING?

7 A. I DIDN'T KEEP UP WITH IT. I JUST STUCK IT IN MY POCKET
8 AND LIVED OFF OF IT.

9 Q. AND JUST KEPT THE CASH?

10 A. WELL, YES. UM-HUM (AFFIRMATIVE).

11 Q. NOW LET ME TALK TO YOU A LITTLE BIT ABOUT YOUR -- ABOUT

12 WHEN YOUR CAR WAS STOLEN. THAT HAPPENED -- IT WAS AROUND

13 THE END OF SEPTEMBER, WASN'T IT, 2002?

14 A. END OF SEPTEMBER? NO, I THINK IT WAS CLOSER TO

15 PROBABLY TO THE BEGINNING OR MIDDLE, BUT I'M NOT SURE. IT

16 WAS A GOOD WHILE BEFORE HOMER DIED. HE DIED AT THE

17 BEGINNING OF NOVEMBER. SO I WOULD HAVE GUESSED IT TO HAVE

18 BEEN SEVERAL WEEKS OR A MONTH.

19 Q. OKAY. WELL, YOU KNOW IT WAS RECOVERED ON OCTOBER THE

20 4TH, RIGHT? THAT'S WHEN THE -- THAT'S WHEN PICKENS COUNTY

21 FOUND THE CAR?

22 A. OH, YOU SAID SEPTEMBER. I WAS -- YEAH, YEAH, THAT'S

23 PROBABLY TRUE. YEAH, YEAH. YOUR TIME IS RIGHT.

24 Q. OKAY.

25 A. YOUR DATES ARE PROBABLY CLOSE.

RUSSELL RICE - CROSS EXAMINATION BY MR. MOYER

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1 Q. OKAY. AND IT WAS GONE FOR A COUPLE OF WEEKS, RIGHT?

2 A. PROBABLY TWO WEEKS, YEAH.

3 Q. OKAY. NOW THIS HAPPENED, YOU'VE ALREADY TESTIFIED, AT
4 RYAN'S, WHICH IS A RESTAURANT ON WHITE HORSE ROAD.

5 A. THAT'S RIGHT.

6 Q. AND YOU WENT THERE WITH JOHNNY HAMBY AND ABOUT FOUR OR
7 FIVE OTHER PEOPLE, RIGHT?

8 A. YES.

9 Q. AND YOU'D SEEN HOMER OVER -- Y'ALL LEFT FROM JOHNNY
10 HAMBY'S STORE, DIDN'T YOU?

11 A. I DON'T REMEMBER EXACTLY. I KNOW THEY DID BECAUSE THEY
12 WERE ALL IN ONE VEHICLE. I CAME IN MY OWN CAR. SO IT KIND
13 OF MAKES ME THINK THAT I WAS MEETING THEM. THEY CALLED ME,
14 BUT I MIGHT HAVE GONE BY. I'M IN AND OUT OF THAT STORE SO
15 MUCH I DON'T REALLY RECALL FOR SURE.

16 Q. SO YOU DID SPEND A LOT OF TIME OVER AT THE STORE,
17 DIDN'T YOU?

18 A. IN AND OUT, YES. I DIDN'T JUST STAY AT THE STORE, BUT
19 I WOULD GO IN AND OUT OF THE STORE.

20 Q. AND THAT'S WHERE YOU, AND HOMER, AND JOHNNY HAMBY USED
21 TO SPEND A LOT OF TIME THERE AT THE STORE?

22 A. JOHNNY MORE THAN HOMER ---

23 Q. WELL, JOHNNY OWNED IT, RIGHT?

24 A. JOHNNY OWNED IT, YES.

25 Q. RIGHT.

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1 A. AND HE WAS ALWAYS THERE. HOMER, IT'D JUST DEPEND. HE
2 DID A LOT -- HE STAYED HIGH AN AWFUL LOT. AND HE WOULD COME
3 IN SPURTS. BUT HE WOULD GET ON LITTLE BINGES OR SPELLS WHEN
4 HE WAS PARTYING. AND PLUS HE WENT TO RUMORS MORE THAN --
5 JOHNNY AND I WEREN'T REALLY BAR PEOPLE LIKE HE WAS. AND SO
6 HE ---

7 Q. ALL RIGHT. I DIDN'T ASK YOU ALL ABOUT HIS BAR
8 ACTIVITY. I ASKED YOU DID Y'ALL SPEND A LOT OF TIME THERE
9 AT JOHNNY HAMBY'S STORE?

10 A. YES. JOHNNY AND I, HOMER LESS.

11 Q. OKAY. AND SO THIS PARTICULAR DAY THAT IT WAS STOLEN
12 HOMER DIDN'T -- HOMER WASN'T THERE AT RYAN'S, WAS HE?

13 A. NO, HE WAS NOT.

14 Q. AND HE -- BUT FOR THE MOST PART Y'ALL, I MEAN, Y'ALL
15 WOULD EAT OUT TOGETHER A LOT, WOULDN'T YOU?

16 A. YEAH, PRETTY -- TWO OR THREE TIMES A WEEK AT LEAST,
17 MAYBE.

18 Q. THE GROUP. BUT THIS DAY HE WASN'T BECAUSE HE WAS -- HE
19 WAS AT THE SHOP, AND HE SAID HE WAS SICK, AND HE WENT HOME.

20 A. YES.

21 Q. ALL RIGHT. AND THERE -- YOUR CAR WAS KIND OF A -- FOR
22 LACK OF A BETTER TERM, IT WAS KIND OF A CLUNKER, WASN'T IT?
23 IT WAS KIND OF AN OLDER CAR?

24 A. SEVEN HUNDRED DOLLARS, I PAID FOR IT.

25 Q. SEVEN HUNDRED DOLLARS?

RUSSELL RICE - CROSS EXAMINATION BY MR. MOYER

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1 A. YEAH.

2 Q. AND IT CAME FROM YOUR WIFE, DIDN'T IT?

3 A. YES.

4 Q. SHARON RICE BOUGHT THAT FOR YOU.

5 A. THAT'S RIGHT.

6 Q. AND YOU WERE PAYING HER BACK.

7 A. RIGHT.

8 Q. AND, IN FACT, IT WAS BOUGHT IN JUNE, WASN'T IT?

9 A. IT'S PRETTY CLOSE. I HONESTLY DON'T REALLY REMEMBER
10 EXACTLY THE DAY, BUT I WOULD PUT IT IN THE SUMMER FOR SURE.

11 Q. OKAY. AND SO IT WAS BOUGHT BACK THEN IN JUNE, BUT THE
12 BILL OF SALE SAID DECEMBER 23RD, DIDN'T IT?

13 A. YES.

14 Q. ALL RIGHT. AND THAT'S BECAUSE YOU WOULD JUST -- YOU
15 HAD A COPY OF THAT WITH THE BILL OF SALE DATE LEFT BLANK,
16 DIDN'T YOU?

17 A. I THOUGHT YOU WERE ASKING ABOUT HER, WHEN SHE BOUGHT
18 THE CAR BACK ---

19 Q. WELL, NOW I'M ASKING YOU.

20 A. YEAH, THAT'S A DIFFERENT TIME WHEN I -- WHEN I ACTUALLY
21 -- WHEN WE SIGNED THE PAPERS FOR THE CAR MAYBE IT WAS IN
22 DECEMBER.

23 Q. OH, DECEMBER IS WHEN YOU ---

24 A. EARLY DECEMBER. I COULDN'T HAVE TOLD YOU THE EXACT
25 DATE. BUT WE DIDN'T SIGN THE PAPERS UNTIL THEN. THAT'S

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1 RIGHT.

2 Q. OKAY. BUT IT WAS BOUGHT -- YOU HAD THAT CAR SINCE JUNE
3 THE 27TH, DIDN'T YOU?

4 A. IT WAS IN THE SHOP. IT WAS AT HER HOUSE AT ONE TIME.

5 IT WAS AT THE SHOP. THEN I DROVE IT JUST A LITTLE BIT.

6 WENT TO THE BEACH AND HAD A WRECK IN IT. TOOK IT BACK TO

7 THE SHOP. IT NEEDED A LOT OF WORK. IT WAS JUST -- I BOUGHT

8 IT FOR SEVEN HUNDRED. IT HAD PROBABLY FIFTEEN HUNDRED

9 DOLLARS WORTH OF STUFF THAT NEEDED TO BE DONE TO IT OFF AND

10 ON AT TIMES. SO IT STAYED IN THE SHOP A GOOD BIT. AND I

11 USED OTHER PEOPLE'S CAR. I HAD SEVERAL FRIENDS. I BORROWED

12 CHAD'S CAR AN AWFUL LOT. I BORROWED KEVIN'S CAR AN AWFUL

13 LOT. I BORROWED SHARON'S CAR A LITTLE BIT. AND EVEN JOHNNY

14 HAMBY LOANED ME SOME VEHICLES FROM TIME TO TIME.

15 Q. OKAY. BUT IT WAS YOUR -- BUT THAT CAR WAS YOUR CAR

16 SINCE SHARON RICE BOUGHT IT IN JUNE, WASN'T IT?

17 A. WE DIDN'T SIGN IT TIL DECEMBER.

18 Q. I'M NOT ASKING YOU ---

19 A. SHE BOUGHT THE CAR THEN.

20 Q. --- WHEN YOU SIGNED IT. I'M ASKING YOU WHEN YOU HAD

21 IT.

22 A. THAT'S WHEN SHE BOUGHT THE CAR.

23 Q. SHE BOUGHT IT THEN?

24 A. AT AN AUCTION, UM-HUM (AFFIRMATIVE).

25 Q. YOU GOT IT IN JUNE, DIDN'T YOU?

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1 A. I TOOK IT TO THE SHOP IN JUNE, YES. YOU TALKING ABOUT

2 WHEN SHE FIRST BOUGHT IT? YES. I TOOK IT TO THE SHOP.

3 THAT'S WHEN I TOOK IT TO THE SHOP.

4 Q. AND YOU ---

5 A. IT STAYED IN THE SHOP A WHILE.

6 Q. AND YOU'VE BEEN DRIVING THAT THING SINCE JUNE OR JULY

7 OF ---

8 A. A COUPLE OF TIMES I DROVE IT, BUT I DROVE OTHER

9 VEHICLES PROBABLY MORE 'CAUSE I BORROWED A VEHICLE -- THE

10 CAR WASN'T RUNNING. IT WAS -- IT HAD A LOT OF WORK THAT

11 NEEDED TO BE DONE.

12 Q. AND YOU DROVE IT DOWN TO MYRTLE BEACH IN AUGUST?

13 A. YES. I WAS GOING TO TRY TO SELL IT BECAUSE WE JUST

14 WEREN'T HAPPY WITH IT. EVEN AFTER IT WAS FIXED UP IT JUST

15 WASN'T THAT DESIRABLE OF A CAR.

16 Q. AND THAT'S WHERE YOU HAD THE ACCIDENT AND YOU DIDN'T

17 HAVE INSURANCE?

18 A. I THOUGHT THERE WAS INSURANCE ON IT, BUT WE FOUND OUT

19 -- ACTUALLY I THINK THE INSURANCE COMPANY SORT OF DODGED THE

20 BULLET ON THAT THING BECAUSE THERE WAS A TECHNICALITY ABOUT

21 THE SALE DATE. AND WE COULDN'T GET A TITLE FROM, I MEAN, A

22 BILL -- THE BILL OF SALE WAS NOT SIGNED BY THE GUY WHO

23 ACTUALLY OWNED IT. IT WAS SIGNED BY THE AUCTION PERSON.

24 AND WE WENT BACK AND FORTH AND EVENTUALLY THEY MOVED OUT OF

25 COVERING THE ACCIDENT.

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1 Q. AND THE TECHNICALITY IS THAT Y'ALL WERE TRYING TO -- IT
2 WAS BOUGHT IN JUNE AND Y'ALL HAD PUT JUNE 27TH AS THE DATE
3 TO TRY TO GET IT WITHIN THAT THIRTY DAY TIME PERIOD OF THE
4 ACCIDENT. ISN'T THAT THE TECHNICALITY?

5 A. NO, NO, ---

6 Q. THAT'S WHY THE INSURANCE COMPANY DIDN'T PAY?

7 A. NO, NO. I DON'T REMEMBER RECALLING ANYTHING ---

8 Q. ALL RIGHT. LET ME GET BACK TO THE CAR. SO IT WAS AN
9 OLD CAR, ABOUT A SEVEN HUNDRED DOLLAR CAR?

10 A. SURE. YEAH, ORIGINALLY THAT'S WHAT IT COST.

11 Q. OKAY. AND YOU WENT TO RYAN'S AT DINNERTIME.

12 A. YES.

13 Q. SO, I MEAN, THERE WAS A LOT OF PEOPLE THERE EATING,
14 RIGHT?

15 A. IT WAS PRETTY FULL, YEAH.

16 Q. AND THAT RYAN'S IS IN THE SAME PARKING LOT WITH A
17 LARGE, I GUESS, A WAL-MART, ISN'T IT?

18 A. RIGHT NEXT TO IT. REALLY YOU CAN DRIVE FROM ONE RIGHT
19 STRAIGHT INTO THE OTHER.

20 Q. SO THERE'S A LOT OF CARS THERE IN THAT PARKING LOT?

21 A. A PRETTY GOOD BIT OF CARS.

22 Q. AND NO OFFENSE, BUT YOUR CAR WAS PROBABLY THE LEAST
23 VALUABLE CAR IN THAT ---

24 A. I WOULD SAY IT WAS THE LEAST. UM-HUM (AFFIRMATIVE).

25 Q. SO SOMEONE GOING AFTER THAT CAR WASN'T GOING AFTER THE

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1 CAR, WERE THEY?

2 A. NO.

3 Q. THEY WERE GOING AFTER WHAT WAS IN THE CAR?

4 A. RIGHT.

5 Q. WHICH WAS THE DRUGS?

6 A. NO, I JUST LOADED IT WITH TOOLS. IT WAS PACKED FULL OF
7 TOOLS.

8 Q. TOOLS. IT WASN'T DRUGS ---

9 A. I HAD MY SOFTBALL EQUIPMENT IN IT. I HAD SOME MONEY IN
10 THERE. THERE WAS A LITTLE BIT OF COKE, I THINK. I CAN'T
11 SAY FOR SURE.

12 Q. OKAY. SO SOMEONE WAS AFTER THE SOFTBALL EQUIPMENT, IS
13 THAT WHAT ---

14 A. NO, NO, THE TOOLS. IT WAS A FRESHLY LOADED -- IN
15 TOOLS, YEAH. I DON'T RECALL THE EXACT AMOUNT, BUT IT WAS
16 PACKED FULL.

17 Q. OKAY. AND SO YOU'RE SAYING SOMEONE -- NOW THE CAR
18 WASN'T VERY EASY TO START, WAS IT? DIDN'T YOU HAVE TO KIND
19 OF JIGGLE THAT ...

20 A. YEAH, YOU'RE RIGHT. IT WAS MESSED UP. EVEN MORE AFTER
21 THAT. WHOEVER DID IT KIND OF MESSED IT UP WORSE.

22 Q. YEAH, TO MAKE IT LOOK LIKE IT HAD BEEN STOLEN BY
23 SOMEBODY ELSE?

24 A. OH, IT WAS ALREADY WIGGLY. YOU HAD TO WIGGLE IT, BUT
25 IT WAS ACTUALLY -- IT BROKE OFF. YOU HAD TO STICK THE

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1 LITTLE PIECE BACK IN THERE TO GET THE KEY TO GO IN THERE

2 AFTER THAT.

3 Q. NOW HOMER DIDN'T DRIVE HIS OWN VEHICLES, DID HE?

4 A. WHAT DO YOU ---

5 Q. HOMER WOULD BORROW OTHER PEOPLE'S VEHICLES.

6 A. HE DID BORROW VEHICLES. HE CLAIMED THAT HE HAD -- HE

7 OWNED SOME OF THEM, BUT I DON'T KNOW FOR SURE IF HE DID OR

8 NOT.

9 Q. AND HE HAD BORROWED YOUR CAR, HADN'T HE? HE'D USED

10 YOUR CAR?

11 A. ACTUALLY THE ONE TIME BEFORE THAT HE DID, BUT I DIDN'T

12 GIVE HIM PERMISSION. I'D LEFT MY KEYS AT THE SHOP. AND

13 WHEN I CAME BACK MY CAR WAS GONE. AND HE CAME IN A FEW

14 MINUTES AFTER THAT, THREW ME MY KEYS BECAUSE I HAD USED

15 JOHNNY'S CAR.

16 Q. OKAY. SO A PERFECT OPPORTUNITY WHEN HE WAS USING YOUR

17 CAR TO GET A COPY OF THAT KEY MADE, WASN'T IT?

18 A. EVIDENTLY SO, YES.

19 Q. AND WHEN THE CAR WAS STOLEN WITH HOMER NOT BEING THERE

20 AND KNOWING WHAT WAS IN THE TRUNK, THE DRUGS AND THE MONEY,

21 HOMER WAS THE OBVIOUS CHOICE FOR WHO HAD TAKEN IT, RIGHT?

22 A. I DIDN'T KNOW HE HAD MADE A KEY OF MY CAR AT ALL. AND

23 I TRUST HIM. I HAD NO REASON TO THINK THAT. EXCEPT FOR I

24 -- I WILL ADMIT WHEN JOHNNY STARTED BRINGING IT UP I, YOU

25 KNOW, IT BROUGHT TO MY ATTENTION THE FACT THAT HE DIDN'T

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1 COME TO EAT WITH US AND THAT HE WOULD HAVE BEEN ONE OF, IF
2 NOT THE ONLY ONE, THAT KNEW WHERE WE'D GONE TO EAT. BUT
3 THAT -- I REALLY AT THAT POINT SUSPECTED THAT JOHNNY WAS
4 BEING A LITTLE, YOU KNOW, IT WAS OUT OF CHARACTER FOR HIM TO
5 KEEP CONTINUING TO TRY TO BADGER THAT IDEA.

6 Q. OKAY. AND THERE HAD BEEN A 44 CALIBER PISTOL IN THE
7 CAR TOO?

8 A. YES, THERE WAS.

9 Q. ALL RIGHT. IN FACT, YOU STILL HAD BULLETS IN YOUR CAR
10 ---

11 A. PROBABLY FROM THAT, YES.

12 Q. THE 44 CALIBER BULLETS THAT WERE IN YOUR CAR ---

13 A. LATER, YEAH. I WOULD ASSUME TO BE, YEAH.

14 Q. AND WENT TO THAT PISTOL THAT WAS FOUND, DIDN'T THEY?

15 A. UM-HUM (AFFIRMATIVE).

16 Q. AND WHEN THEY GOT THE CAR BACK THE BACK SEAT WAS BROKEN
17 DOWN, WASN'T IT?

18 A. YEAH. I'D PUT IT BACK. YOU TALKING ABOUT WHEN I GOT
19 IT BACK?

20 Q. WHEN YOU GOT IT BACK.

21 A. YES, IT WAS. IT WAS SORT OF BENT AND OPENED.

22 Q. FROM SOMEONE GETTING IN THE TRUNK.

23 A. THAT'S RIGHT. IT LOOKED TO ME, YES.

24 Q. THAT WOULD BE A WAY TO GET IN THE TRUNK, RIGHT?

25 A. EXACTLY.

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1 Q. TO GET THE DRUGS AND THE MONEY OUT?

2 A. YES, THE TOOLS.

3 Q. AND THE GUN?

4 A. THERE WAS A LOT OF STUFF -- A THOUSAND DOLLARS WORTH OF
5 SOFTBALL EQUIPMENT.

6 Q. NOW LET ME TAKE YOU TO THE DAY THIS INCIDENT HAPPENED
7 ON TUESDAY, NOVEMBER THE 5TH. SO YOUR TESTIMONY THEN HAS
8 BEEN THAT THE NIGHT BEFORE YOU STAYED AT THE STUDIO PLUS
9 MOTEL?

10 A. YES.

11 Q. WHICH IS THE SAME HOTEL THAT YOU WERE IN WHEN THE
12 POLICE STOPPED YOU, RIGHT?

13 A. THAT'S RIGHT.

14 Q. RIGHT ON HAYWOOD ROAD IN GREENVILLE.

15 A. RIGHT OFF OF HAYWOOD, YES.

16 Q. AND THAT DAY WHAT YOU DID WAS YOU DROVE AROUND MEETING
17 ALL OF YOUR FRIENDS.

18 A. THAT DAY, YES.

19 Q. AND YOU'RE MEETING ALL THESE PEOPLE BECAUSE YOU'RE
20 GOING TO BE GOING OUT OF TOWN FOR A LONG PERIOD OF TIME.

21 A. UM-HUM (AFFIRMATIVE).

22 Q. FOR A LONG PERIOD OF TIME.

23 A. USUALLY I STAY TWO OR THREE WEEKS AT LEAST. SOMETIMES
24 IT'S AS SHORT AS A WEEK. BUT MOST OF THE TIME I TELL
25 EVERYBODY A WEEK, BUT IT HARDLY EVER WORKS OUT THAT WAY.

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1 Q. SO YOU'RE GOING TO GO SAY GOODBYE TO A LOT OF THESE
2 PEOPLE BECAUSE YOU'RE ABOUT TO HEAD OUT OF TOWN?

3 A. YES. SOME OF THEM I WAS TELLING GOODBYE TO, SOME OF
4 THEM I WAS GETTING DRUGS TO.

5 Q. GETTING DRUGS TO AND GETTING MONEY FROM?

6 A. THAT'S RIGHT.

7 Q. SO YOU WENT AROUND THE HAYWOOD ROAD AREA?

8 A. I DON'T RECALL EXACTLY, BUT I WENT -- I'VE GOT A LOT OF
9 FRIENDS -- HAYWOOD ROAD IS NOT AS POPULAR -- IT'S WHERE I
10 STAYED BECAUSE I LIKE THE EATING AND THE ATMOSPHERE OVER
11 THERE, BUT MY PEOPLE ARE MORE CENTERED AROUND BOB JONES.

12 Q. OKAY. AND ---

13 A. TAYLORS.

14 Q. OKAY. AND THESE PEOPLE OVER AT THIS BOB JONES AREA,
15 THEY'RE ALL PEOPLE THAT YOU'RE GETTING DRUGS TO AND GETTING
16 MONEY FROM TOO?

17 A. NOT ALL OF THEM, BUT A GOOD NUMBER OF THEM.

18 Q. AND SO WHO ARE THESE PEOPLE THAT YOU WERE MEETING WITH
19 OVER THERE?

20 A. A FRIEND, JEFF, JEFF PATTY, JONATHAN LIVES NEAR THERE,
21 KEVIN, BRIAN LIVES OVER THERE, EVEN TERRY WHO CAME TO MEET
22 ME -- SHE LIVES OVER BY CHERRYDALE. YOU KNOW, THERE -- I
23 GOT -- I COULD NAME -- JUST GO ON. IT'S BEEN A YEAR AND A
24 HALF SINCE I'VE BEEN OUT, FIFTEEN MONTHS, BUT I COULD ASSUME
25 IT TO BE TWO OR THREE DOZEN WITHIN JUST A FEW MINUTES OF

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1 THAT AREA.

2 Q. OKAY. AND THEY ALL LIVED RIGHT THERE IN THAT AREA.

3 MAINLY SO ---

4 A. PRETTY CLOSE, YEAH. I MEAN, I KNOW PEOPLE BESIDES THAT
5 AREA, BUT THAT'S A REAL CENTER PLACE FOR ME.

6 Q. SO THAT WOULD HAVE TAKEN YOU -- THAT WOULD HAVE TAKEN

7 YOU A GOOD PERIOD OF TIME TO GO VISIT AND MEET WITH A COUPLE
8 OF DOZEN PEOPLE.

9 A. NO. I'M SAYING THAT'S HOW MANY PEOPLE I KNEW IN THAT
10 AREA. I DON'T RECALL HOW MANY I ACTUALLY SAW THAT DAY.

11 Q. WELL, ABOUT HOW MANY DID YOU SEE? ONE? TWO?

12 A. NO, IT WOULD HAVE BEEN A NUMBER OF THEM.

13 Q. FIVE?

14 A. I MEAN, HOWEVER LONG IT TAKES TO DRIVE AROUND, I MEAN,
15 ALL I CAN DO IS COUNT UP THE HOURS OF THE DAY AND FIGURE,
16 YOU KNOW, MAYBE SEEING A COUPLE OR THREE AN HOUR.

17 Q. SO YOU DON'T REMEMBER WHO YOU MET WITH THEN?

18 A. SOME OF THEM I DO, BUT I REALLY DIDN'T FOCUS ON TRYING
19 TO REMEMBER THAT. SO I CAN'T SAY FOR SURE, BUT ...

20 Q. BUT YOU CAN SAY FOR SURE THAT THAT'S WHAT YOU WERE
21 DOING, IS THAT YOU WERE OVER THERE MEETING THESE PEOPLE?

22 A. OH, YES.

23 Q. AND THAT'S WHAT YOU WERE DOING?

24 A. EVERY DAY WHEN I'M IN TOWN USUALLY.

25 Q. AND SO THAT WOULD HAVE TAKEN YOU ABOUT, I MEAN, THAT

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1 TOOK UP A MAJORITY OF THAT DAY, DIDN'T IT? IS THAT YOUR
2 TESTIMONY?

3 A. OF WHAT? MEETING PEOPLE? YES. AND I WENT TO THE
4 STORE. AND I RAN SOME ERRANDS. AND I WENT TO GET A BITE TO
5 EAT PROBABLY FOR LUNCH WHILE I WAS OUT. AND I WENT TO
6 HAMBY'S STORE TO TALK TO HIM ABOUT GETTING SOME MORE DRUGS,
7 WHICH HE DIDN'T HAVE.

8 Q. AND YOU MADE AN AWFUL LOT OF PHONE CALLS BACK AND FORTH
9 TO HAMBY THAT DAY, DIDN'T YOU?

10 A. NO. I MADE MAYBE ONE OR TWO. HE CALLED ME A BUNCH,
11 BUT GOING BY THE RECORDS THEY WERE ALL SHORT. PROBABLY HE
12 HIT MY ANSWERING MACHINE A FEW TIMES.

13 Q. YOU MADE A COUPLE OF CALLS WITH HOMER TOO, DIDN'T YOU?

14 A. I CALLED HOMER EARLY IN THE MORNING, BUT IT JUST WENT
15 TO HIS ANSWERING MACHINE. HE TRIED TO CALL ME A FEW TIMES,
16 BUT THEY ALL HIT MY ANSWERING MACHINE.

17 Q. OKAY. SO YOU DECIDED NOT TO ANSWER YOUR CALLS THAT
18 MORNING?

19 A. NO, MY PHONE WAS DEAD MOST OF THE TIME. I TURNED IT ON
20 WHEN I WANTED TO USE IT BECAUSE I -- AND WHEN I DID
21 SOMETIMES PEOPLE WOULD CALL. YOU KNOW, THEY'D CATCH THAT
22 TIME WHEN I HAD IT ON. BUT MY PHONE -- MY BATTERY WOULD NOT
23 STAY GOING VERY WELL BECAUSE MY BATTERY POST WAS LOOSE. I
24 HAD A TERRIBLE TIME WITH THAT.

25 Q. OKAY. SO YOU SPENT ALL THAT DAY THEN DRIVING AROUND

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1 GREENVILLE MEETING WITH THESE FRIENDS AS YOU'RE ABOUT TO
2 HEAD OUT OF TOWN?

3 A. YES, AMONG OTHER THINGS. YEAH. BUT THAT WAS PROBABLY
4 THE GIST OF WHAT EAT MY TIME UP THAT DAY.

5 Q. OKAY. YOUR TESTIMONY THEN IS, DID ALL THAT, THEN YOU
6 DROVE UP TO TRAVELERS REST ABOUT -- YOU GOT UP THERE AROUND
7 5:30.

8 A. YEAH, THE SECOND TIME. YES.

9 Q. THE SECOND TIME?

10 A. RIGHT.

11 Q. WHEN WAS THE FIRST TIME?

12 A. IT WAS IN THE MIDDLE OF THE AFTERNOON, I THINK, MAYBE
13 ONE OR 2:00. I CAN'T REMEMBER EXACTLY. BUT I WENT UP THERE
14 BRIEFLY. AND I WOULD GUESS IT TO BE ONE, 1:30, SOMETHING
15 LIKE THAT, CLOSE TO IT.

16 Q. AND TRAVELERS REST, THAT'S A GOOD DRIVE FROM
17 GREENVILLE?

18 A. FIFTEEN.

19 Q. TWENTY?

20 A. TWENTY, MAYBE. YEAH, TWENTY -- IT'S ABOUT TWENTY
21 MINUTES FROM DOWNTOWN.

22 Q. TWENTY MINUTES FROM DOWNTOWN, WHICH IS WHERE YOU WERE.

23 A. SOME OF THE TIME, YEAH. NOT WHEN I WENT THE FIRST
24 TIME. I PROBABLY WASN'T IN THE DOWNTOWN AREA. I THINK I'D
25 JUST GONE TO HAMBY'S STORE ACTUALLY AND THEN STARTED BACK TO

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1 GO IN SOME DIRECTION. AND I EVENTUALLY WENT TO TRAVELERS
2 REST.

3 Q. WELL, HAMBY'S STORE IS EVEN FARTHER AWAY, ISN'T IT?

4 A. NO, IT'S RIGHT ON WHITE HORSE. YOU JUST TAKE WHITE
5 HORSE RIGHT STRAIGHT TO TRAVELERS REST.

6 Q. BUT IT'S, I MEAN, IT'S THE LOWER PART OF GREENVILLE?

7 A. IT'S FIFTEEN OR TWENTY MINUTES FROM THERE TOO, IF
8 THAT'S WHAT -- YOU'RE ASKING ABOUT THE TIME?

9 Q. SO YOUR TESTIMONY IS THEN CONVENIENTLY AT 1:00 YOU
10 DROVE UP TO TRAVELERS REST AND SAW HIM BRIEFLY AND THEN ALSO
11 YOU GOT UP THERE BY 5:30?

12 A. THAT'S RIGHT.

13 Q. AND ONCE AGAIN SPENT -- JUST ATE DINNER AND LEFT?

14 A. ACTUALLY WENT AND TALKED WITH HIM ABOUT SOFTBALL, BUT
15 THEY WERE EATING DINNER. AND I GRABBED A CHOP OF PORK CHOP.
16 I DO REMEMBER -- MOST LIKELY ATE A LITTLE BIT BECAUSE I LIKE
17 HER CASSEROLES. SO I PROBABLY ATE A LITTLE BIT OF
18 CASSEROLE.

19 Q. OKAY. AND THEN YOUR TESTIMONY IS THEN AT THAT POINT
20 YOU HEADED BACK AND YOU WENT OVER -- YOU HEARD FROM JOHNNY
21 HAMBY AND YOU TALKED AND WENT TO THE BLOCK HOUSE?

22 A. YEAH -- NO. YOU TALKING -- AFTER I MET THEM I WENT TO
23 MEET SHAWN AND DOUG AND ONE OR TWO OTHER PEOPLE IN THAT
24 AREA.

25 Q. AND WHERE ARE THEY?

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1 A. OVER IN MAULDIN. THEY LIVE ON WHITE HORSE, BUT THEY
2 WERE OVER ON THE OTHER SIDE OF TOWN AROUND HAYWOOD MALL. SO
3 WE MET AT MAULDIN 'CAUSE I WAS STILL TRYING TO GET ON 385
4 AND LEAVE TOWN.

5 Q. OKAY. AND THEN YOU WENT TO THE BLOCK HOUSE. AND
6 THAT'S WHERE YOU SAID YOU MET --- YOU MET WITH JOHNNY HAMBY,
7 AND HE TOLD YOU TO DISAPPEAR.

8 A. AFTER HE GOT THOSE PHONE CALLS, YES.

9 Q. AFTER HE GOT THE PHONE CALLS AND YOU HEARD THAT YOUR
10 GOOD FRIEND, HOMER JOHNSON, HAD BEEN KILLED AND SHOT ---

11 A. THAT'S RIGHT.

12 Q. --- YOU DECIDED TO DISAPPEAR?

13 A. I DECIDED TO LEAVE TOWN LIKE I WAS PLANNING. HE USED
14 THOSE WORDS. AND I THOUGHT THEM TO BE A LITTLE ODD, BUT,
15 YOU KNOW, I CAN'T JUDGE WHAT HIS THOUGHTS WERE.

16 Q. AND THAT'S WHEN YOU LEFT TOWN AND WERE GONE FOR WEEKS.

17 A. A COUPLE OF WEEKS MAYBE. I DON'T KNOW FOR SURE.

18 Q. AND BROKE OFF CONTACT WITH JOHNNY HAMBY?

19 A. NO, I TALKED TO JOHNNY HAMBY.

20 Q. TALKED TO HIM A COUPLE OF TIMES?

21 A. MAYBE THREE TIMES.

22 Q. OKAY.

23 A. ON THE PHONE SEVERAL TIMES. I MET HIM IN PERSON TWO OR
24 THREE TIMES.

25 Q. AND YOU DIDN'T SEE TERRY LYNCH ANYMORE?

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1 A. YES, I SAW TERRY LYNCH.

2 Q. A COUPLE OF WEEKS LATER, RIGHT?

3 A. TWO WEEKS LATER PROBABLY. YOU KNOW, WHEN I CAME -- THE
4 FIRST TIME I CAME BACK TO TOWN I SAW ALL THESE PEOPLE. I
5 WENT DOWN AND SAW ALL MY FRIENDS AGAIN. AND TERRY LYNCH WAS
6 -- I'D ALREADY FOUND OUT ABOUT THIS -- ABOUT KEVIN DYING

7 TOO. AND SHE KNEW KEVIN, NOT GOOD, BUT SHE KNEW HIM. SO I
8 WENT OVER TO TALK TO HER, YES.

9 Q. WELL, WHAT YOU DIDN'T DO IS TRY TO TELL ANYBODY ABOUT
10 THIS IMPORTANT INFORMATION THAT YOU ARE SAYING NOW THAT YOU
11 LEARNED ABOUT THIS GUY NAMED KEVIN MOORE.

12 A. YOU TALKING ABOUT WHAT KEVIN TOLD ME ON THE PHONE?

13 Q. YEAH.

14 A. I DIDN'T TELL ANYBODY EXCEPT FOR -- I ALLUDED TO IT
15 WITH A GOOD FRIEND OF KEVIN'S, WHO WAS REAL CONCERNED ABOUT
16 WHAT HAPPENED TO KEVIN. HE SUSPECTED SOME OF THIS. AND I
17 DIDN'T TELL HIM DETAILS FOR HIS OWN SAFETY, BUT I DID -- I
18 DID -- I DID -- WE DID ACKNOWLEDGE BASICALLY IN GENERAL WHAT
19 HAPPENED.

20 Q. OKAY. SO THIS IMPORTANT INFORMATION THAT YOU JUST
21 HEARD ABOUT HOMER WHO WAS JUST KILLED, AND YOU KEPT ALL THIS
22 INFORMATION TO YOURSELF.

23 A. KEPT IT TO MYSELF? YEAH.

24 Q. AND YOU KNEW THE DETECTIVE WAS TRYING TO CONTACT YOU?

25 A. I FOUND OUT WHEN I GOT BACK, YES.

RUSSELL RICE - CROSS EXAMINATION BY MR. MOYER

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1 Q. AND YOU WERE BACK ON DECEMBER THE 24TH, WEREN'T YOU?

2 A. THE SECOND TIME, THAT'S PROBABLY RIGHT, YEAH.

3 Q. IN FACT, YOU HAD CHRISTMAS OVER WITH YOUR FAMILY.

4 A. THAT'S RIGHT.

5 Q. AND YOU STAYED IN TOWN THE 24TH, THE 25TH, 26TH, 27TH.

6 A. THAT SOUNDS RIGHT.

7 Q. AND THE 28TH IS WHEN YOU GOT STOPPED.

8 A. EXACTLY, RIGHT.

9 Q. AND THE 28TH OR WAS IT THE 27TH IS WHEN YOU -- IT
10 SUDDENLY DAWNED ON YOU, YOU'RE SAYING, IS WHAT KEVIN MOORE
11 SAID ABOUT THIS STASH?

12 A. NO, NO. I KNEW ABOUT THE STASH. I COULDN'T FIND IT.

13 WHEN DAN FULLER CALLED ME JOHN -- I -- I WENT UP TO HIS

14 HOUSE AND REMEMBERED THAT HE HAD MENTIONED ANOTHER PLACE.

15 WE DIDN'T USE IT. SO I -- IT JUST KIND OF SLIPPED MY MIND.

16 Q. OKAY. SLIPPED YOUR MIND? AND THEN ALL OF A SUDDEN YOU
17 REMEMBER?

18 A. YES.

19 Q. RIGHT AROUND THE TIME THE DETECTIVE PICKED YOU UP?

20 A. BETWEEN WHEN HE CALLED, YES, AND WHEN HE PICKED ME UP,
21 THAT THURSDAY OR FRIDAY WOULD HAVE HAD TO HAVE BEEN WHEN I
22 WENT OUT AND FOUND THAT, YES.

23 Q. SO YOUR TESTIMONY IS YOU WENT OUT THERE AND FOUND THAT.

24 AND YOU TOOK COCAINE AND A MURDER WEAPON AND PUT IT IN YOUR
25 CAR.

RUSSELL RICE - CROSS EXAMINATION BY MR. MOYER

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1 A. I DIDN'T KNOW THAT -- JOHNNY HAMBY TOLD ME HE WAS SHOT
2 WITH TWO PISTOLS. AND WHEN I SAW THAT IT LOOKED LIKE PIECES
3 OF A SHOTGUN, I WAS AFRAID OF IT, BUT I REALLY DIDN'T EQUATE
4 IT TO BEING THE MURDER WEAPON AT THAT TIME.

5 Q. OKAY. SO WHAT -- SO IT WAS ALL IN PIECES THERE IN THE
6 GROUND?

7 A. CUT UP INTO --- YEAH. IT WAS -- AND I'M NOT FAMILIAR
8 WITH GUNS EVEN WHEN THEY'RE WHOLE PIECES. AND THIS THING
9 WAS PRETTY TORE -- LIKE IN THE PICTURE.

10 Q. OKAY. AND ---

11 A. AND BAGGED UP.

12 Q. SO IT WAS, I MEAN, HOW DEEP WAS IT THERE IN THE GROUND?

13 A. IT WASN'T DEEP AT ALL. THE WAY HE HAD -- HE HAD LIKE A
14 -- HE'D GONE OUT AND LOOKED THESE WOODS OVER TIL HE FOUND A
15 PLACE THAT HAD A LITTLE RISE. AND HE HOLLOWED THE CENTER OF
16 THAT RISE OUT AND THEN COVERED IT BACK UP WITH LEAVES SO IT
17 LOOKED LIKE IT WASN'T DUG OUT. ALL YOU HAD TO DO WAS PULL
18 THE LEAVES BACK. BUT IT WAS ABOUT MAYBE A FOOT AND A HALF
19 OR TWO FOOT DEEP.

20 Q. OKAY. AND YOU CONVENIENTLY KNEW WHERE THAT LOCATION
21 WAS?

22 A. YES.

23 Q. AND YOU'RE SAYING THE DRUGS WAS IN THERE TOO?

24 A. IT WAS ALL IN THE SAME -- THERE WERE OTHER BAGS INSIDE
25 OF BAGS, BUT IT WAS ALL IN ONE BIG BAG ORIGINALLY WHEN I

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1 FOUND IT.

2 Q. AND IT WAS ALL CUT UP IN PIECES LIKE WE FOUND IT HERE?

3 A. THAT'S EXACTLY THE WAY I FOUND IT. I MEAN, I DIDN'T

4 TAKE IT APART LIKE YOU HAVE IN THE PICTURES, BUT IT WAS ALL

5 -- WHEN I LOOKED IN IT WAS JUST A BUNCH OF CUT UP PIECES.

6 TO ME, THAT'S WHAT IT LOOKED LIKE.

7 Q. SO YOUR TESTIMONY THEN IS THAT YOU PUT IT IN YOUR CAR?

8 A. BACK OF MY --

9 Q. PUT IT IN THE TRUNK OF YOUR CAR?

10 A. THAT'S RIGHT. AFTER I EXAMINED THE -- I ACTUALLY

11 WEIGHED THE DRUGS. AND I WENT THROUGH THE -- I PUT THE

12 MONEY IN MY POCKET. AND WHEN I GOT READY TO LOAD THE CAR

13 BACK UP THAT MORNING I PUT IT ALL BACK IN THE CAR. AS THEY

14 FOUND IT IS THE WAY I REMEMBER. IT WAS KIND OF SITTING IN

15 -- I JUST KIND OF HAD MY ARMS FULL, AND I JUST PUT

16 EVERYTHING DOWN AND LOADED THE REST OF MY CAR UP AND SHUT

17 IT.

18 Q. KIND OF BURIED DOWN UNDER SOME BIG CONTAINERS AND

19 THINGS IN THERE?

20 A. IT WAS IN THERE WITH ALL THE STUFF I BROUGHT IN MY

21 ARMS. I DIDN'T REALLY PAY THAT CLOSE OF ATTENTION. I'M NOT

22 SURE.

23 Q. SO YOU TOOK THAT CUT UP RIFLE AND KIND OF BURIED IT

24 DOWN IN THE BOTTOM OF THE TRUNK, DIDN'T YOU?

25 A. THAT'S NOT WHAT I SAID. I SAID I JUST PUT EVERYTHING

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1 DOWN. AND I REALLY DON'T RECALL HAVING ANY PARTICULAR ORDER
2 OR TRYING TO HIDE ANYTHING. I JUST STUCK IT IN THE CAR AND
3 CLOSED -- IT WAS RAINING. I DIDN'T WANT TO STAND THERE
4 LONG.

5 Q. AND WHEN YOU TALKED -- IT WAS RAINING -- IT RAINED THAT
6 WHOLE DAY, DIDN'T IT?

7 A. OFF AND ON ALL DAY. IN FACT, THE NIGHT BEFORE. WHEN I
8 LEFT TOWN IT WAS STILL RAINING. IT RAINED ALL THE WAY TO
9 MYRTLE BEACH.

10 Q. OKAY. NOW ---

11 A. OFF AND ON.

12 Q. MYRTLE BEACH?

13 A. YEAH, I WENT TO MYRTLE BEACH WHEN I LEFT.

14 Q. SO HOW LONG HAD THAT GUN BEEN IN YOUR CAR THEN?

15 A. THE GUN WAS IN MY CAR FROM WHEN I DUG IT UP ON THURSDAY
16 OR FRIDAY UNTIL SATURDAY. IT WAS -- I GOT IT AND TOOK IT
17 INTO THE MOTEL ROOM. I PUT IT BACK IN MY CAR. AND I
18 PROBABLY DIDN'T GET THIRTY SECONDS DOWN THE ROAD. SO IT WAS
19 IN MY CAR THIRTY SECONDS OR A MINUTE.

20 Q. SO YOU'RE SAYING YOU LEFT THAT MORNING, WENT AND GOT
21 THE -- SO YOU GOT IT THE SAME DAY THAT IT WAS FOUND BY THE
22 DETECTIVES?

23 A. IT WAS EITHER THAT -- HE CALLED ME ON THURSDAY. AND I
24 EITHER WENT RIGHT THEN OR THE NEXT DAY. I DON'T RECALL FOR
25 SURE, BUT IT WAS BETWEEN THURSDAY NIGHT WHEN HE CALLED ME

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1 AND FRIDAY NIGHT BECAUSE IT WAS IN THE DAYTIME.

2 Q. OKAY. AND IT RAINED ALL DAY -- AND SO IT'D BEEN IN
3 YOUR CAR FOR ABOUT A DAY THEN?

4 A. NO. IT WASN'T IN MY CAR. IT WAS IN THE MOTEL. I
5 DIDN'T CARRY IT -- I DIDN'T DRIVE AROUND WITH IT IN MY CAR.

6 Q. OKAY. BUT YOU PUT IT IN YOUR CAR THAT MORNING?

7 A. THAT MORNING WHEN I LOADED EVERYTHING UP, ALL MY OTHER
8 STUFF FROM STAYING IN THE MOTEL.

9 Q. OKAY. AND YOU PULLED OUT, AND YOU CHECKED OUT, YOU
10 CHECKED OUT OF THE STUDIO PLUS MOTEL, AND YOU WERE LEAVING
11 TOWN. AND IT'S YOUR TESTIMONY THAT YOU DECIDED NOW YOU'RE
12 GOING TO GO REBURY THAT STUFF. IS THAT WHAT YOU SAID?

13 A. YEAH, I WAS GOING TO TAKE IT RIGHT BACK WHERE I FOUND
14 IT.

15 Q. TAKE IT RIGHT BACK WHERE YOU FOUND IT.

16 A. UM-HUM (AFFIRMATIVE).

17 Q. OKAY.

18 A. THAT WAS A GOOD ENOUGH PLACE FOR ME.

19 Q. NO -- OKAY. AND IS THAT WHY YOU TOLD THE DETECTIVE,
20 DETECTIVE FULLER, THAT YOU WOULD MEET WITH HIM ON MONDAY,
21 DECEMBER THE 30TH?

22 A. NO, I HADN'T GONE OUT TO GET IT AT THAT TIME. YOU'RE
23 SAYING IS THAT WHY BECAUSE OF THE STUFF BEING IN THE CAR?

24 NO. HE CALLED ME BEFORE I WENT THERE.

25 Q. THAT WOULD GIVE YOU SOME TIME TO GO GET RID OF IT?

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1 A. HOW COULD I GET RID OF IT IF I DIDN'T HAVE IT? YOU'RE
2 SAYING -- I'M NOT FOLLOWING YOUR QUESTION.

3 Q. THE BOTTOM LINE IS WHEN YOU TALKED TO DETECTIVE FULLER
4 ON DECEMBER THE 26TH YOU TOLD HIM THAT YOU COULD MEET WITH
5 HIM THAT MONDAY.

6 A. THAT'S RIGHT.

7 Q. AND YOU TOLD HIM THAT YOU WERE OUT OF TOWN, DIDN'T YOU?

8 A. YES.

9 Q. AND, IN FACT, YOU WERE CHECKING INTO THE STUDIO PLUS
10 MOTEL WHILE YOU WERE TALKING TO HIM, WEREN'T YOU?

11 A. NO. I WAS SITTING AT A PIZZA HUT EATING.

12 Q. IT WAS ABOUT TWENTY MINUTES BEFORE YOU CHECKED -- YOU
13 CHECKED IN AT 4:45, ISN'T THAT TRUE?

14 A. I DON'T RECALL. I KNOW I WAS AT A PIZZA HUT WHEN HE
15 CALLED. THAT'S -- BUT I DON'T REMEMBER ABOUT THE CHECKING
16 IN ---

17 Q. AND ABOUT TWENTY MINUTES BEFORE YOU CHECKED INTO THAT
18 STUDIO PLUS MOTEL?

19 A. IF THE RECORDS SHOW THAT -- I WOULD NEVER HAVE GUESSED
20 IT WITHOUT LOOKING AT THE RECORDS.

21 Q. BUT IT WAS HERE IN TOWN, WASN'T IT?

22 A. IN GREENVILLE, STUDIO PLUS AT THE HAYWOOD MALL.

23 Q. NOW THE TRUTH OF THE MATTER IS, MR. RICE, ISN'T IT,
24 THAT THE REASON YOU WERE HEADING OUT OF TOWN IS BECAUSE YOU
25 KNEW THE HEAT WAS ON YOU BY DETECTIVE FULLER, DIDN'T YOU?