

**VOLUME ONE OF TWO**

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

---

Appeal from Richland County

Alison Renee Lee, Circuit Court Judge

---

**RECEIVED**

JAN - 7 2015

**S.C. Supreme Court**

JERENE HAYWARD,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000633

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**A P P E N D I X**

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STATE OF SOUTH CAROLINA )  
 ) COURT OF GENERAL SESSION  
 COUNTY OF RICHLAND ) 2005-GS-40-5072

STATE OF SOUTH CAROLINA )  
 VS. ) TRANSCRIPT OF RECORD  
 )  
 JERENE HAYWARD )  
 DEFENDANT ) VOLUME I

MARCH 13, 2006  
 COLUMBIA, SOUTH CAROLINA

B E F O R E:

HONORABLE JAMES W. JOHNSON, JR., JUDGE

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

MR. AARON JOPHLIN, ASSISTANT SOLICITOR  
 MS. VANNESSA COOPER, ASSISTANT SOLICITOR  
 ATTORNEYS FOR THE STATE

JEANETTE VAN GINHOVEN, ASSISTANT PUBLIC DEFENDER  
 LAUREN MOBLEY, ASSISTANT PUBLIC DEFENDER  
 ATTORNEYS FOR THE DEFENDANT

JOY E. HOLSTON  
 OFFICIAL COURT REPORTER

① stamped  
 ② Doyle

I N D E X   O F   W I T N E S S E S

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 (DW) - DENOTES DEFENSE WITNESS  
 (SW) - DENOTES STATE'S WITNESS

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1 (WHEREUPON STATE'S EXHIBITS 1 - 35 WERE PREMARKED FOR  
 2 IDENTIFICATION PURPOSES ONLY.)

3 EXHIBITS

4 STATE'S

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E X H I B I T S

STATE'S

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21	PHOTO	X		---
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23	PHOTO	X	X	213
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47	PHOTO		X	346
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57	COPY SLED		X	595
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E X H I B I T S

COURT'S

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6	JURY NOTE	X		817

1 THE COURT: WE WILL START WITH SOME PRETRIAL MATTERS.  
2 THIS IS THE STATE VERSUS JERENE HAYWARD. THERE ARE, I  
3 BELIEVE THERE ARE SEVEN INDICTMENTS THAT HAVE BEEN HANDED  
4 UP, IS THAT RIGHT?

5 MS. COOPER: LET ME JUST DOUBLE CHECK. THAT'S  
6 CORRECT, SEVEN INDICTMENTS.

7 THE COURT: SEVEN INDICTMENTS, WE WILL START WITH  
8 SOME PRETRIAL MATTERS. THE JURY PANEL WILL NOT BE  
9 AVAILABLE UNTIL AFTER LUNCH TODAY. I HAD A BRIEF  
10 CONFERENCE WITH THE ATTORNEYS THIS MORNING TO GIVE ME AN  
11 IDEA OF WHAT KIND OF CASE WE WOULD BE TRYING THIS WEEK AND  
12 WHAT PRETRIAL MATTERS. AND I THINK WE INDICATED WE WOULD  
13 GO AHEAD AND HANDLE A MOTION TO QUASH, SOME OR ALL THE  
14 INDICTMENTS, FIRST THING. SO, THAT IS WHERE WE ARE.

15 MS. COOPER: THANK YOU, YOUR HONOR, I THINK, IF I  
16 COULD JUST ADDRESS ONE MATTER, YOUR HONOR.

17 THE COURT: POSSIBLY A MOTION TO AMEND AN INDICTMENT.  
18 I THINK THERE WAS SOME DISCUSSIONS ABOUT THAT.

19 MS. COOPER: YES, SIR. MY COCOUNSEL JUST RAN A COPY  
20 OF A CERTIFIED CONVICTION FOR THE DEFENSE, HE WILL BE  
21 RIGHT BACK. HE IS PREPARED TO ARGUE THE MOTION TO QUASH  
22 THE INDICTMENT. HOWEVER, IN REVIEWING THE INDICTMENTS,  
23 YOUR HONOR, IF WE COULD JUST GO AHEAD AND ADDRESS THE  
24 BURGLARY, FIRST DEGREE INDICTMENT. THIS MIGHT DO AWAY  
25 WITH THEIR MOTION. I AM NOT SURE. BUT THE INDICTMENT

1 ALLEGES THAT, BY THE WAY JUST FOR THE RECORD. IT IS  
 2 2005-GS-40-2824, INDICTMENT FOR BURGLARY IN THE FIRST  
 3 DEGREE. IT ALLEGES THAT ~~JERENE HAYWARD DID IN RICHLAND~~  
 4 COUNTY ON OR ABOUT APRIL 13TH OF 2004 WILLFULLY AND  
 5 UNLAWFULLY ENTERED THE DWELLING OF JEFFREY CONNELL WITHOUT  
 6 CONSENT AND WITH THE INTENT TO COMMIT A CRIME THEREIN.  
 7 ~~AND THAT THE DEFENDANT ENTERED DURING THE HOURS OF~~  
 8 DARKNESS. YOUR HONOR, WE WOULD STRIKE THAT, ENTERING  
 9 DURING THE HOURS OF DARKNESS. THIS CRIME HAPPENED DURING  
 10 THE DAYTIME, YOUR HONOR. IT CONTINUES TO SAY ARMED WITH A  
 11 DEADLY WEAPON WHILE THEREIN AND/OR CAUSED PHYSICAL INJURY  
 12 TO THE VICTIM AND/OR USED OR THREATENED TO USE A DANGEROUS  
 13 INSTRUMENT AND/OR THE DEFENDANT HAS A PRIOR RECORD OF TWO  
 14 OR MORE CONVICTIONS OF BURGLARY OR HOUSEBREAKING OR A  
 15 COMBINATION OF BOTH. YOUR HONOR, THE STATE SEEKS TO  
 16 STRIKE THE MENTION THAT THE DEFENDANT HAS A PRIOR RECORD  
 17 OF TWO OR MORE CONVICTIONS FOR BURGLARY OR HOUSEBREAKING  
 18 OR A COMBINATION OF BOTH. HE DOES NOT HAVE A PRIOR  
 19 CONVICTION OF THAT. I BELIEVE WHEN THE INDICTMENT WAS  
 20 PRESENTED IT JUST GAVE THE WHOLE LINE OF LIST OF THE  
 21 ELEMENTS THAT MADE THE BURGLARY, FIRST DEGREE. BUT THOSE  
 22 TWO AGGRAVATED CIRCUMSTANCES DO NOT APPLY IN THIS CASE.

23 THE COURT: MS. VAN GINHOVEN.

24 MS. VAN GINHOVEN: YES, YOUR HONOR. THIS WAS ONE OF  
 25 THE ISSUES IN OUR MOTION TO QUASH THE INDICTMENT. YOUR

1 HONOR, WE WOULD FURTHER ASK THAT THE LANGUAGE, CAUSED  
2 PHYSICAL INJURY TO THE VICTIMS AND/OR USED WITH A  
3 DANGEROUS INSTRUMENT WOULD ALSO BE STRICKEN BECAUSE THIS  
4 INDICTMENT IS REFERRING TO JEFFREY CONNELL AS THE VICTIM.  
5 CLEARLY, MR. CONNELL WAS NOT IN THE HOUSE AT THIS TIME.  
6 AND WE DON'T BELIEVE THAT THAT LANGUAGE IS APPROPRIATE, I  
7 BELIEVE IS THE ONLY LANGUAGE THAT WE NEED TO GO FORWARD ON  
8 WOULD BE, HE WAS ARMED WITH A DEADLY WEAPON WHILE THEREIN.

9 THE COURT: ALL RIGHT, LET ME BACK UP NOW. THERE  
10 WOULD BE NO OBJECTION OF STRIKING THE LANGUAGE DURING THE  
11 HOURS OF DARKNESS, IS THAT RIGHT?

12 MS. VAN GINHOVEN: THAT IS RIGHT.

13 MS. COOPER: THAT IS CORRECT, YOUR HONOR.

14 THE COURT: HOLD ON ONE SECOND. AND THERE IS NO  
15 OBJECTION TO REMOVING THE LANGUAGE, THE DEFENDANT HAD A  
16 PRIOR RECORD OF TWO OR MORE CONVICTIONS OF BURGLARY OR  
17 HOUSEBREAKING. YOU HAVE NO OBJECTION TO THAT.

18 MS. VAN GINHOVEN: THAT IS CORRECT, YOUR HONOR.

19 THE COURT: MS. COOPER, RESPOND TO THE ARGUMENT, THE  
20 ONLY AGGRAVATING CIRCUMSTANCE WOULD BE IS ARMED WITH A  
21 DEADLY WEAPON. IS THAT RIGHT, THAT WOULD BE THE NET  
22 RESULT OF YOUR MOTION, IS THAT CORRECT?

23 MS. VAN GINHOVEN: THAT IS CORRECT, YOUR HONOR.

24 THE COURT: ALL RIGHT, MS. COOPER.

25 MS. COOPER: YOUR HONOR, THE LANGUAGE THAT STATES,

1 CAUSE PHYSICAL INJURY TO THE VICTIM, WE WOULD MOVE TO  
2 AMEND TO CHANGE FROM THE TERM, VICTIM, TO THE LANGUAGE  
3 REFLECTED IN THE STATUTE, WHICH STATES ANY PERSON WHO IS  
4 NOT A PARTICIPANT IN THE CRIME. THAT IS NOT CHANGING THE  
5 NATURE OF THE OFFENSE, IT IS JUST THAT, YOUR HONOR,  
6 JEFFREY CONNELL WHO IS THE ACTUAL OWNER OF THE RESIDENCE  
7 WAS NOT IN THE RESIDENCE DURING THIS CRIME. HIS NANNY,  
8 LOURDES ANTONIO, WAS THE VICTIM OF THE ASSAULT.

9 THE COURT: AS FAR AS THE IDENTIFICATION OF WHO THE  
10 ALLEGED VICTIM IS, THAT COMES AS NO SURPRISE, YOU HAVE  
11 KNOWN THAT THAT PERSON THAT MS. COOPER JUST INDICATED WAS  
12 THE ALLEGED VICTIM?

13 MS. VAN GINHOVEN: THAT IS CORRECT, YOUR HONOR. YOUR  
14 HONOR, I WOULD POINT OUT THAT THIS DID GO TO THE GRAND  
15 JURY, AND THE WORDING IS, I AM NOT SURE HOW IT WAS  
16 PRESENTED TO THE GRAND JURY, BUT IN THIS INDICTMENT, IT  
17 WAS THAT JEFFREY CONNELL WAS THE ONE WHO WAS BEING  
18 INJURED. I AM NOT PRIVY AS TO IF THE GRAND JURY HAD OF  
19 COME BACK DIFFERENTLY OR NOT. BUT IN ALL CANDOR TO THE  
20 COURT I AM AWARE THAT THE PERSON WHO WAS, ALLEGEDLY  
21 INJURED WAS LOURDES ANTONIO. BUT I DO BELIEVE IT CHANGES  
22 THE EFFICIENCY OF THE INDICTMENT. YOU CAN'T TELL WHAT  
23 HAPPENED IN THE GRAND JURY, IF THAT WORDING HAD OF BEEN  
24 REFERRING TO JEFFREY CONNELL.

25 THE COURT: WELL, THE INDICTMENT DOESN'T SAY THAT MR.

1 CONNELL IS THE VICTIM, IT JUST SAYS THE DWELLING OF  
2 CONNELL, IT DOESN'T INDICATE ONE WAY OR THE OTHER. IT  
3 DOESN'T SAY THE VICTIM, JEFFREY CONNELL. LET ME TAKE A  
4 LOOK AT THE LANGUAGE IN THE STATUTE. ALL RIGHT, ANYTHING  
5 ELSE?

6 MS. COOPER: NO, YOUR HONOR.

7 THE COURT: I AM GOING TO OVERRULE THE OBJECTION TO  
8 THE AMENDMENT. DELETE THE WORD, VICTIM, IN CERTAIN THE  
9 LANGUAGE, A PERSON WHO IS NOT A PARTICIPANT IN THE CRIME.  
10 SO, LET ME NOW READ THIS INDICTMENT AS I HAVE IT HERE.  
11 THAT JERENE HAYWARD DID IN RICHLAND COUNTY ON OR ABOUT  
12 APRIL THE 13TH, 2004 WILLFULLY AND UNLAWFULLY ENTERED THE  
13 DWELLING OF JEFFREY CONNELL WITHOUT CONSENT AND WITH  
14 INTENT TO COMMIT A CRIME THEREIN. AND THE DEFENDANT WAS  
15 ARMED WITH A DEADLY WEAPON, OR EXCUSE ME, YES, AND THE  
16 DEFENDANT WAS ARMED WITH A DEADLY WEAPON WHILE THEREIN  
17 AND/OR CAUSED PHYSICAL INJURY TO A PERSON WHO IS NOT A  
18 PARTICIPANT IN THE CRIME AND/OR USED OR THREATENED TO USE  
19 A DANGEROUS INSTRUMENT ALL IN VIOLATION OF THE CODE  
20 SECTION. THAT IS HOW THE INDICTMENT NOW READS AFTER THE  
21 COURT'S RULING ON THE STATE'S MOTION TO AMEND ON THOSE  
22 MATTERS. ALL RIGHT, MS. VAN GINHOVEN.

23 MS. VAN GINHOVEN: YOUR HONOR, MY OTHER MOTION TO  
24 QUASH THE INDICTMENT IS REGARDING 2005-GS-40-5074.

25 THE COURT: ON WHICH CHARGE IS THAT.

1 MS. VAN GINHOVEN: THAT IS POSSESSION OF A WEAPON BY  
2 A CONVICTED FELON. YOUR HONOR, I UNDERSTAND THAT, THE  
3 ARGUMENT OF THIS INDICTMENT IS NOT SUFFICIENT IF IT IS NOT  
4 STATED CLEARLY. THE OFFENSE THAT WE ARE SUPPOSE TO BE  
5 DEFENDING HERE AND ALL THE ELEMENTS. BASICALLY WHAT THEY  
6 HAVE DONE IS THEY HAVE INDICTED HIM WITH POSSESSION WITH  
7 AN UNLAWFUL WEAPON BY A CONVICTED FELON. THE BODY MERELY  
8 READS THAT MR. HAYWARD DID HAVE A WEAPON AFTER BEING A  
9 CONVICTED FELON. THERE IS NO SUCH CRIME IN SOUTH CAROLINA,  
10 THE STATUTE THAT THEY WERE, I BELIEVE, POSSIBLY PROCEED  
11 UNDER IS WHERE A PERSON IS CONVICTED OF A CRIME OF  
12 VIOLENCE. I DO NOT BELIEVE THAT THE INDICTMENT IS  
13 SUFFICIENT AND DOES NOT STATE THE ACTUAL LANGUAGE OF THE  
14 STATUTE WHICH ALLEGEDLY IS PERTAINING TO. YOUR HONOR, I  
15 BELIEVE I HAVE MADE THIS MOTION BEFORE WHERE THEY ACTUAL  
16 HAD A CONVICTION WITHIN THE INDICTMENT. SOLELY WHAT THIS  
17 SAYS, IF YOU ARE CONVICTED OF ANY FELONY THAT YOU CAN'T  
18 POSSESS A WEAPON. AND CLEARLY THAT IS NOT THE LAW IN  
19 SOUTH CAROLINA, CLEARLY IT IS NOT THE LAW, THE ACTUAL  
20 WORDING IN THE STATUTE. SO, WE WOULD MOVE THAT THIS  
21 INDICTMENT IS NOT SUFFICIENT, IT SHOULD BE QUASHED.

22 THE COURT: SOLICITOR.

23 MR. JOPHLIN: THANK YOU, YOUR HONOR. THE STATE WOULD  
24 BE, THE MOTION THAT I WAS SPEAKING ABOUT EARLIER IN  
25 CHAMBERS, WANTING TO AMEND THIS MOTION TO STATE POSSESSION

1 OF A WEAPON BY A PERSON CONVICTED OF A CRIME OF VIOLENCE.  
2 THE DEFENSE HAS STATED THAT THEY THINK WHAT STATUTE WE ARE  
3 GOING TO PROCEED UNDER. ACTUALLY, THE OFFENSE OR CODE  
4 NUMBER THAT WE ARE SEEKING TO GO UNDER IS ~~ON THE FACE AND~~  
5 ~~THE BACK OF THE INDICTMENT.~~ THE FACE READS, 16-23-30(A),  
6 THE BACK READS, 16-23-30(A). THERE ARE FOUR SUBSECTIONS  
7 AND ONLY ONE HAS TO DO WITH SOMEONE BEING CONVICTED OF  
8 ANYTHING. AND IN THAT SUBSECTION IT DOES READ, A PERSON  
9 WHO HAS BEEN CONVICTED OF A CRIME OF VIOLENCE IN ANY COURT  
10 OF THE UNITED STATES. IT IS SUFFICIENT TO, BECAUSE IT  
11 STATES HE HAS BEEN CONVICTED OF A FELONY. I THINK WHEN  
12 YOU VIEW IT WITH A PRACTICAL EYE AND IN THE VARIOUS  
13 CIRCUMSTANCES OF THIS SPECIFIC CASE THAT IT IS SUFFICIENT  
14 TO GIVE THE ONE PRIOR INCIDENT OR ONE PRIOR CONVICTION ON  
15 HIS RAP SHEET AND THAT IS THE CRIME OF VIOLENCE, ROBBERY,  
16 SECOND DEGREE.

17 THE COURT: WHAT CHARGE?

18 MR. JOPHLIN: ROBBERY, SECOND DEGREE. THERE IS NO  
19 OTHER CONVICTION FOR ANYTHING MUCH LESS ANY OTHER  
20 CONVICTED FELONIES. THEREFORE THERE WOULD BE NO SURPRISE  
21 TO THE DEFENSE THAT HE ONLY HAS ONE CHARGE ON HIS RECORD.  
22 AND MOREOVER AS FAR AS THE GRAND JURY HEARING THIS MATTER,  
23 THEY HAD THE CHANCE TO HEAR THE SPECIFIC BASIS. BASED ON  
24 THAT STATUE, BECAUSE THEY HAVE HEARD, AND THE BASIS OF THE  
25 AMENDED INDICTMENT, BECAUSE THEY HEARD HE HAD A PRIOR

1 FELONY AND WAS DESCRIBED AS A ROBBERY IN THE SECOND DEGREE  
2 IN ALABAMA.

3 THE COURT: NOW, WE DON'T KNOW THAT, DO WE.

4 MR. JOPHLIN: BASED ON INDICTMENT HE WOULD HAVE, THE  
5 OFFICER WOULD HAVE SHOWN THAT THERE WAS A REASONABLE DOUBT  
6 THAT HE WAS CONVICTED OF A FELONY. HE ONLY HAS ONE  
7 FELONY.

8 THE COURT: AREN'T THERE FELONIES THAT ARE NOT  
9 VIOLENT OFFENSES.

10 MR. JOPHLIN: YES, SIR. BUT IT WOULD BE MY  
11 UNDERSTANDING TO SHOW A FELONY HE WOULD HAVE TO STATE WHAT  
12 FELONY THAT WOULD BE. AS OPPOSED TO A PERSON WHO HAD  
13 MULTITUDE CRIMES ON THEIR RECORD, SOME BEING FELONIES,  
14 SOME NOT BEING FELONIES, SOME BEING VIOLENT CRIMES, SOME  
15 NOT BEING VIOLENT CRIMES. AS IN THIS CASE, THERE WAS ONLY  
16 ONE AND IT IS A VIOLENT CRIME. AND IF I MAY PROCEED?

17 THE COURT: GO AHEAD.

18 MR. JOPHLIN: I THINK THIS CASE FALLS IN LINE WITH  
19 STATE VERSUS MEANS, IT CAME OUT FEBRUARY OF 2006. WE ARE  
20 TALKING ABOUT THE PRIMARY PERSON OF THE INDICTMENT TO PUT  
21 THE DEFENDANT ON NOTICE TO WHAT HE IS CALLED UPON TO  
22 ANSWER. AND LET HIM DECIDE TO PLEAD GUILTY OR TO STAND  
23 TRIAL AND ALLOW YOU, THE CIRCUIT COURT JUDGE, TO KNOW WHAT  
24 JUDGMENT TO PRONOUNCE. AGAIN, WE HAVE A STATUTE AND THE  
25 PARTICULAR CIRCUMSTANCES OF THIS CASE, YOU ONLY HAVE ONE

1 PRIOR CONVICTION AND THAT WOULD BE A CRIME OF VIOLENCE.  
2 AND THEN ALSO, WELL, IN STATE V. MEANS, JUST FOLLOW STATE  
3 V. GENTRY WHICH IS ANOTHER BASIS.

4 THE COURT: WHAT IS THE EQUIVALENT OF ROBBERY, SECOND  
5 DEGREE. WHAT IS THE EQUIVALENT OFFENSE IN SOUTH CAROLINA?

6 MR. JOPHLIN: YOUR HONOR, THE STATUE, EXCUSE ME. WHAT  
7 HE PLEAD TO IN ALABAMA IS SECTION 13(A)-8-42, ROBBERY IN  
8 THE SECOND DEGREE. A PERSON WHO COMMITS THE CRIME OF  
9 ROBBERY IN THE SECOND DEGREE, A PERSON WHO COMMITS THE  
10 CRIME OF ROBBERY IN THE SECOND DEGREE, IT VIOLATES 8-43  
11 AND IS AIDED BY A ANOTHER PERSON WHO IS ACTUALLY PRESENT.  
12 8-43 IS, USE FORCE AGAINST A PERSON OF THE OWNER OR ANY  
13 PERSON PRESENT WHO OVERCOMES PHYSICAL RESIDENCE OR  
14 PHYSICAL POWER OR THREAT OF IMMINENT USE OF FORCE AGAINST  
15 A PERSON OR THE OWNER OR ANY PERSON PRESENT WITH THE  
16 INTENT TO COMMIT ACQUIESCENCE WITH THE TAKING OF OR  
17 ESCAPING OF THE PROPERTY. SO, PROBABLY MORE LED ITSELF TO  
18 THE STRONG ARMED ROBBERY IN THIS STATE.

19 THE COURT: AND THERE IS ANOTHER VIOLENT CRIME?

20 MR. JOPHLIN: IN THIS STATE, THAT CRIME IS NOT  
21 ENUMERATED IN 17-25-45, HOWEVER, I DON'T FIND ANY  
22 REFERENCE IN 16-23-30 THAT A CRIME OF VIOLENCE HAS TO BE  
23 ENUMERATED IN THE LISTING OF THE CRIMES OF 17-25-45. THE  
24 STATUTE, 16-23-30, JUST MERELY SAYS, A CRIME OF VIOLENCE,  
25 IT DOESN'T USE THE TERM, OF A VIOLENT CRIME IN ANYWHERE IN

1 17-25-45.

2 THE COURT: THE CODE, 16-23-10, DOES HAVE A  
3 DEFINITION OF THE CRIME OF VIOLENCE. MEANS MURDER,  
4 MANSLAUGHTER OR RAPE, KIDNAPPING, BURGLARY, ROBBERY,  
5 HOUSEBREAKING, ASSAULT WITH INTENT TO KILL, COMMIT RAPE OR  
6 ROB, ASSAULT WITH A DANGEROUS WEAPON OR ASSAULT WITH  
7 INTENT TO COMMIT ANY OFFENSE THAT IS PUNISHABLE BY  
8 IMPRISONMENT FOR MORE THAN ONE YEAR. ROBBERY IS NOT  
9 DISTINGUISHED IN THE DEFINITION AS BEING EITHER ARMED  
10 ROBBERY OR COMMON LAW OR STRONG ARMED ROBBERY. BASED ON  
11 THE WORDING OF THE INDICTMENT I AM GOING TO GRANT THE  
12 MOTION TO QUASH, YOU CAN REINDICT, IT IS NOT A DOUBLE  
13 JEOPARDY PROBLEM. I THINK IT NEEDS TO BE STRAIGHT. THE  
14 STATE NEEDS TO TAKE A LOOK, I KNOW THIS IS THE SECOND ONE  
15 OF THESE THAT I HAVE, THERE MAY BE SOME OTHERS FLOATING  
16 AROUND OUT THERE. AND I DON'T KNOW, QUITE FRANKLY, UNTIL  
17 I HEARD THAT FIRST MOTION SEVERAL WEEKS AGO I WAS THINKING  
18 THERE WAS A CRIME OUT THERE, POSSESSION BY A CONVICTED  
19 FELON BUT THE LANGUAGE IS SOMEONE CONVICTED OF A CRIME OF  
20 VIOLENCE. I AM GOING TO QUASH THAT INDICTMENT, YOU CAN  
21 REINDICT IT IF YOU WANT TO REINDICT IT. I NEED, I GUESS  
22 ON THIS INDICTMENT I JUST PUT QUASH AND SIGN IT AND DATE  
23 IT. THAT WOULD BE THE THING TO DO, THAT IS WHAT THE CLERK  
24 IS INDICATING TO DO.

25 CLERK OF COURT: THAT IS RIGHT.

1 THE COURT: OKAY. I ALSO THINK IT WOULD BE A GOOD  
2 IDEA WHEN YOU HAVE GOT THAT CHARGE, YOU CAN DELINEATE WHAT  
3 THAT OFFENSE IS, JUST SO THAT WE DON'T HAVE TO GO THROUGH  
4 ALL OF THAT. YES MA'AM, MS. VAN GINHOVEN.

5 MS. VAN GINHOVEN: YES, SIR. THERE IS ONE MORE ISSUE  
6 ABOUT THE INDICTMENT OF OUR MOTION TO QUASH. SINCE YOUR  
7 RULING OF IT, IT ONLY WOULD RELATE TO THE KIDNAPPING AND  
8 THE ASSAULT AND BATTERY WITH INTENT TO KILL INDICTMENT.  
9 YOUR HONOR, THERE WERE THREE INDICTMENTS THAT WERE  
10 DIRECTLY PRESENTED TO THE GRAND JURY AFTER MY CLIENT  
11 REFUSED THE PLEA OFFER. THE THREE BEING THE KIDNAPPING,  
12 THE ASSAULT AND BATTERY WITH INTENT TO KILL AND THE  
13 POSSESSION OF A WEAPON BY A CONVICTED FELON. THE TWO LEFT  
14 TO DEAL WITH ARE THE KIDNAPPING AND THE ABWIK. OUR ONLY  
15 ISSUE WITH THOSE, YOUR HONOR, IS NOT WITHIN THE LANGUAGE  
16 OF THE INDICTMENT, THE BODY OF THE INDICTMENT BUT THE  
17 INDICTMENT ON THE FRONT WERE TRUE BILLED BY THE GRAND  
18 JURY. AND THERE ARE TWO DATES, THE DATE OF JUNE 15, 2005  
19 AND THE DATE OF MAY 15, 2005. WITHIN THE BODY OF THE  
20 INDICTMENT IT SAYS AS THE GRAND JURY MEETING ON JUNE 15TH  
21 OF 2005. I THINK THAT THIS IS HIGHLY IRREGULAR, USUALLY  
22 THERE IS ONLY ONE DATE. I AM NOT SURE WHY MAY 15TH IS  
23 STAMPED ON THERE, IT POTENTIALLY WENT TO THE GRAND JURY,  
24 WE WOULD JUST MOVE THAT THE SUFFICIENCY OF THE INDICTMENT  
25 ARE NOT CLEAR, WE DON'T KNOW WHAT THE PROCESS OF THE GRAND

1 JURY WAS. WE DON'T UNDERSTAND WHY THERE ARE TWO DATES ON  
2 ALL THREE INDICTMENTS. BUT, AGAIN, THESE ARE INDICTMENTS  
3 THAT WERE DIRECTLY PRESENTED BY THE GOVERNMENT IN THIS  
4 CASE.

5 THE COURT: ALL RIGHT, SOLICITOR.

6 MR. JOPHLIN: YOUR HONOR, I DON'T UNDERSTAND HOW THIS  
7 HAS ANYTHING TO DO WITH THE SUFFICIENCY OF THE INDICTMENT.  
8 THESE INDICTMENTS THAT SHE IS REFERRING TO, THIS IS WITHIN  
9 THE CURFEW OF THE GRAND JURY. AS SHE STATES, WE DON'T  
10 KNOW WHAT HAPPENS IN THE GRAND JURY ROOM, THE FOREMAN HAS  
11 SIGNED THESE INDICTMENTS INDICATING THEY ARE TRUE BILLED.  
12 THERE MAY OF BEEN A MISTAKE WITH THE STAMP, THEY REALIZE  
13 IT WAS ON MAY AND THEY FLIPPED IT OVER TO JUNE. MOREOVER,  
14 THERE IS CASE LAW AND I AM SORRY THAT THE NAME ESCAPES ME.  
15 I AM SORRY, ON THE BACK IT DOES READ ON JUNE 15TH, AS WELL  
16 AS THE FRONT WHICH STATES THE JUNE TERM OF 2005. THERE IS  
17 CASE LAW AND THE NAME ESCAPES ME AND THE SUPREME COURT HAS  
18 DEALT WITH THE ISSUE OF DATES ON THE FRONT OF INDICTMENTS.  
19 AND THEY SAY IT DOES NOT AFFECT THE SUFFICIENCY OF AN  
20 INDICTMENT, THAT IT CAN MERELY BE A SCRIVENER'S ERROR ON  
21 THE PART OF THE GRAND JURY. THEY STAMP THINGS, THEY HEAR  
22 THINGS ON DIFFERENT DAYS THROUGHOUT THE MONTH AND WE JUST  
23 SAY IT IS A SCRIVENER'S ERROR ON THE PART OF THE GRAND  
24 JURY.

25 THE COURT: ALL RIGHT, MS. VAN GINHOVEN.

1 MS. VAN GINHOVEN: YOUR HONOR, I RESPECTFULLY  
2 UNDERSTAND BUT THE PROBLEM IS WE HAVE A GRAND JURY  
3 PROCEDURE, A TRUE BILLED INDICTMENT. THEIR FUNCTION IS TO  
4 GIVE US AN INDICTMENT AND THEREFORE NOTICE US AS TO WHAT  
5 WE ARE PREPARED TO TRY AND I DON'T UNDERSTAND HOW THE  
6 ACTUAL PROCESS IS NOT IMPORTANT TO HOW THE INDICTMENT CAME  
7 INTO EXISTENCE. CLEARLY, THERE ARE TWO DATES ON HERE, IT  
8 SEEMS LIKE SOMEBODY WOULD BE ABLE TO FIGURE OUT WHY THERE  
9 ARE TWO DATES ON THERE, WHY THERE IS MAY 15TH, WHY THERE  
10 IS JUNE 15TH. I JUST, DIRECTLY PRESENTED INDICTMENT BY  
11 THE STATE, THERE ARE FEW CHARGES THAT CARRY AN EXORBITANT  
12 AMOUNT OF TIME AND WE DON'T NEED, I GUESS THE STATE'S  
13 POSITION, WE DON'T NEED ANY EXPLANATION AS TO WHY THOSE  
14 TWO DATES ARE ON THERE. AND WE GET INDICTMENTS ALL THE  
15 TIME, THERE IS ONE DATE, FOR SOME REASON THERE ARE TWO  
16 DATES, I DON'T KNOW WHY THAT IS. AND THEY DO SOMETHING  
17 WITH IT AND WENT BACK ON JUNE 15TH OR WAS IT JUST STAMPED,  
18 THAT QUESTION CAN'T BE ANSWERED.

19 THE COURT: WHAT DIFFERENCE DOES IT MAKE WHETHER IT  
20 WAS DONE ON JUNE 15TH OR MAY THE 15TH, PART WAS PRESENTED  
21 ON MAY 15TH AND MORE INFORMATION ON JUNE THE 15TH OR MAYBE  
22 THEY HAD PRESTAMPED THEM AND DIDN'T GIVE IT TO THEM IN MAY  
23 AND THEY DEALT WITH IT IN JUNE. IT REALLY DOESN'T HAVE  
24 ANYTHING TO DO WITH BEING PUT ON NOTICE OF THE CHARGE.

25 MS. VAN GINHOVEN: I GUESS MY ARGUMENT, YOUR HONOR,

1 IS THAT FOR US TO BE PUT ON NOTICE OF A CHARGE-  
2 THE COURT: WITH SERIOUS CHARGES LIKE THIS,  
3 EVERYTHING OUGHT TO BE DONE, THE I'S OUGHT TO BE DOTTED  
4 AND THE T'S OUGHT TO BE CROSSED AND EVERYTHING OUGHT TO BE  
5 ALL IN LINE, RIGHT?

6 MS. VAN GINHOVEN: I BELIEVE IT SHOULD AND THE  
7 PROBLEM IS THE PROCESS IS GETTING THE INDICTMENTS  
8 THEMSELVES. THERE IS A REASON THAT WE HAVE TO GO TO THE  
9 GRAND JURY. IT IS MEANINGLESS AND WHY DO THEY DO IT AND  
10 WHAT, MAYBE MAY THE 15TH THEY WENT THERE, THEY DECIDED TO  
11 NO BILL IT OR SOMETHING HAPPENED AND THEY WENT BACK ON  
12 JUNE 15TH, WE JUST DON'T KNOW.

13 THE COURT: I AM GOING TO DENY THAT MOTION. I DON'T  
14 THINK THAT THE FACT THAT THERE ARE TWO DATES AND IT IS  
15 CLEAR AND IT WILL BE IN THE RECORD THAT THERE ARE TWO  
16 DATES STAMPED ON THE FACE OF THE INDICTMENT. ONE  
17 INDICATING MAY THE 15TH, 2005, THE OTHER JUNE THE 15TH OF  
18 2005, JUST BELOW THE FOREPERSON OF THE GRAND JURY'S  
19 SIGNATURE. THE BODY OF THE INDICTMENT, EACH ONE OF THEM  
20 SAYS THAT, COURT OF GENERAL SESSIONS CONVENED ON JUNE THE  
21 15TH OF 2005, THE GRAND JURY FOR RICHLAND COUNTY PRESENT  
22 UPON THEIR OATH AND SO FORTH. YOUR MOTION IS NOTED BUT I  
23 AM DENYING THE MOTION TO QUASH.

24 MS. VAN GINHOVEN: THANK YOU, YOUR HONOR. THAT IS  
25 ALL THE MOTIONS OF THE DEFENSE.

1 THE COURT: ALL RIGHT, ARE THERE ANY OTHER MATTERS WE  
2 CAN TAKE UP WITHOUT THE TESTIMONY OF THE WITNESSES THAT  
3 ARE GOING TO BE HERE.

4 MR. JOPHLIN: YES, SIR. WE WOULD HAVE FOR OUR MOTION  
5 IN LIMINE, THE VICTIMS IN THIS CASE ARE HISPANIC. SHE AND  
6 HER HUSBAND, LOURDES ANTONIO AND BENITO LOZANO ARE BOTH  
7 FROM MEXICO. BOTH HAVE GAINED LEGAL STATUS IN THIS  
8 COUNTRY AND WE WOULD LIKE TO MAKE A MOTION IN LIMINE TO  
9 KEEP OUT ANY AND ALL REFERENCE TO THEIR LEGAL STATUS OR  
10 RESIDENT STATUS IN THIS COUNTRY.

11 THE COURT: MS. VAN GINHOVEN.

12 MS. VAN GINHOVEN: YES, YOUR HONOR, WE WOULD ASK THAT  
13 WE WOULD BE ABLE TO GO INTO THAT BECAUSE IT GOES DIRECTLY  
14 TO THE CREDIBILITY OF A WITNESS, JUST AS OUR CLIENT WILL  
15 TAKE THE STAND AND HAVE A PRIOR BAD ACT OF SOME SORT, HE  
16 MIGHT BE ABLE TO BE IMPEACHED BY IT. AND I BELIEVE THAT  
17 WE SHOULD BE ABLE TO GO INTO WHETHER OR NOT SOMEONE IS IN  
18 THE COUNTRY ILLEGALLY. I BELIEVE THAT THAT WOULD GO, THAT  
19 WE SHOULD BE ABLE GO INTO THE CREDIBILITY OF THEIR  
20 TESTIMONY AND WE WOULD ASK TO BE ABLE TO GO INTO IT.

21 MR. JOPHLIN: YOUR HONOR, SHE HAS POINTED TO THEIR  
22 STATUS OF RESIDENCY AS SOME BAD ACT OF SOME SORT. THEIR  
23 RESIDENCE HAS NOTHING TO DO WITH ANY KIND OF PRIOR  
24 CONVICTION, THEY HAVE NO PRIOR RECORD, THEY HAVE NO PRIOR  
25 CONVICTION. AND HOW CAN A RESIDENCE BE DETERMINED AS A

1 BAD ACT. THAT HAS NO RELEVANCE--

2 THE COURT: I AM ASSUMING THAT THE ALLEGED ACT WOULD  
3 BE ENTERING THE COUNTRY ILLEGALLY.

4 MS. VAN GINHOVEN: YES, SIR.

5 MR. JOPHLIN: BUT FURTHER VALUE OF THAT WOULD BE WHAT  
6 WE QUESTION, QUESTIONING THEM ON THEIR LEGAL RESIDENCY  
7 MORE--

8 THE COURT: HAVE YA'LL LOOKED AT ANY CASE LAW ON  
9 THAT? YOU ARE ON THE OTHER SIDE OF THE ARGUMENT OF THIS  
10 NATURE, IS THAT RIGHT?

11 MS. VAN GINHOVEN: YES, YOUR HONOR.

12 THE COURT: THAT IS WHY IT IS A LITTLE STRANGE TO  
13 LOOK ON THAT SIDE AND HEAR THE ARGUMENT.

14 MS. VAN GINHOVEN: YOUR HONOR, I WILL SAY THAT I  
15 DON'T KNOW OF ANY CASES, I WILL BE HAPPY TO LOOK AT THAT.

16 THE COURT: I AM INCLINED TO GRANT THE MOTION BUT I  
17 WILL GIVE YOU UNTIL OVER LUNCH TO SEE WHAT LAW YOU CAN  
18 FIND ON IT.

19 MS. VAN GINHOVEN: THANK YOU.

20 THE COURT: LET ME GO AHEAD AND PUT ON THE RECORD. I  
21 WILL GRANT IT NUMBER ONE, I AM NOT SURE OF THE RELEVANCY  
22 OF IT BUT EVEN IF IT IS RELEVANT MY GUT REACTION IS THAT  
23 THE PREJUDICIAL EFFECT WOULD OUTWEIGH THE PROBATIVE VALUE  
24 OF THAT TYPE OF EVIDENCE. BUT IF YOU CAN FIND SOME LAW I  
25 WILL BE GLAD TO TAKE A LOOK AT IT.

1 MS. VAN GINHOVEN: THANK YOU, YOUR HONOR.

2 MR. JOPHLIN: THANK YOU, YOUR HONOR.

3 MS. COOPER: YOUR HONOR, WE HAVE AN INTERPRETER THAT  
4 WE WILL BE USING THROUGHOUT THE TRIAL. ALTHOUGH HE IS NOT  
5 ON THE SUPREME COURT LIST OF INTERPRETERS HE IS QUALIFIED  
6 UNDER SECTION 15-27-155. AND HE HAS PREPARED AN AFFIDAVIT  
7 STATING THAT HE IS OVER THE AGE OF 18 YEARS, HE IS NOT A  
8 FAMILY MEMBER OF ANY PARTY OR WITNESS IN THIS MATTER. AND  
9 THAT HE IS EXPERIENCED AND HAS BEEN ABLE TO SPEAK SPANISH  
10 FLUENTLY AND TO INTERPRET SPANISH LANGUAGE FOR ANOTHER  
11 PERSON. AND JUST FOR THE RECORD HIS NAME IS ANGEL  
12 CAMPUSANO AND I WILL HAND UP THE AFFIDAVIT TO THE COURT  
13 THAT I HAVE PROVIDED THE DEFENSE A COPY.

14 THE COURT: IS THERE ANY OBJECTION TO HIM ACTING AS A  
15 COURT INTERPRETER. I KNOW, COUNSEL, YOU INDICATED THAT  
16 YOU WOULD HAVE YOUR OWN INTERPRETER ALSO?

17 MS. VAN GINHOVEN: THAT IS CORRECT, YOUR HONOR.

18 THE COURT: HAS THIS PERSON INTERPRETED ANY COURT  
19 PREVIOUSLY?

20 MS. COOPER: HE HAS, HE INDICATED THAT HE INTERPRETED  
21 A CASE IN ORANGEBURG COUNTY.

22 THE COURT: GO AHEAD, MS. VAN GINHOVEN.

23 MS. VAN GINHOVEN: YOUR HONOR, AT THIS TIME WE DON'T  
24 HAVE ANY OBJECTION. BUT CAN WE HAVE THAT CITE NUMBER  
25 AGAIN.

1 MS. COOPER: SURE, IT IS 15-27-155 AND IT BASICALLY  
2 STATES THAT IF HE IS NOT ON THE SUPREME COURT LIST OF  
3 REGISTERED INTERPRETERS HE MUST QUALIFY UNDER, I BELIEVE  
4 IT IS ACTUALLY SUBSECTION(B) AND THOSE MATTERS THAT ARE ON  
5 AFFIDAVIT.

6 MS. VAN GINHOVEN: YOUR HONOR, AT THIS POINT WE DON'T  
7 HAVE ANY OBJECTION.

8 THE COURT: WITHOUT OBJECTION MR. CAMPUSANO WILL BE  
9 PERMITTED TO ACT AS AN INTERPRETER. I MAY ASK SOME  
10 QUESTIONS OF HIM BEFORE WE GET STARTED. I WILL MAKE THIS  
11 AFFIDAVIT A COURT EXHIBIT SO IT WILL BE A PART OF THE  
12 RECORD.

13 (WHEREUPON, COURT'S EXHIBIT NO. 1 WAS MARKED FOR  
14 IDENTIFICATION ONLY.)

15 MR. JOPHLIN: I BELIEVE FINALLY, YOUR HONOR, WE  
16 TALKED ABOUT SETTLING THE RECORD WITH ANY WITNESSES THIS  
17 MORNING. WE CAN DO THAT NOW, SINCE WE HAVE REVIEWED THE  
18 RAP SHEETS THEN THERE ARE NO PRIOR RECORDS FOR ANY--

19 THE COURT: YOU ARE NOT AWARE OF ANY PRIOR RECORD OF  
20 ANY WITNESSES?

21 MR. JOPHLIN: CORRECT.

22 THE COURT: ALL RIGHT, THE DEFENSE HAD ALSO MENTIONED  
23 THAT YOU WOULD HAVE A MOTION TO SEQUESTER, IS THAT  
24 CORRECT?

25 MS. VAN GINHOVEN: THAT IS CORRECT, YOUR HONOR.

1 THE COURT: DOES THE STATE HAVE ANY OBJECTION TO  
2 THAT?

3 MR. JOPHLIN: NO SIR, YOUR HONOR, EXCEPT FOR OUR LEAD  
4 INVESTIGATOR, ERIC BARNES AND OR COURSE OUR VICTIM.

5 THE COURT: WHICH VICTIM.

6 MR. JOPHLIN: LOURDES ANTONIO AND JEFFREY CONNELL,  
7 THE HOME OWNER.

8 THE COURT: ALL RIGHT, THEY WILL BOTH BE PERMITTED TO  
9 STAY IN HERE. THE INTERPRETER WILL BE PERMITTED TO STAY,  
10 WELL, HE IS NOT A WITNESS ANYWAY. BUT THEY, THE  
11 INTERPRETER OF COURSE CAN BE IN HERE AND YOUR LEAD  
12 INVESTIGATOR. ALL OTHER WITNESSES, BOTH THE STATE AND THE  
13 DEFENSES WILL BE SEQUESTERED. YA'LL KEEP UP WITH THEM  
14 BECAUSE I DON'T KNOW WHO THEY ARE. AND JUST TO GET ON THE  
15 RECORD, I KNOW YOU ARE FAMILIAR WITH MY RULE ON  
16 SEQUESTRATION, IF THEY STAY IN THE COURTROOM AFTER THEY  
17 TESTIFY THEY CANNOT BE RECALLED IN REBUTTAL.

18 MR. JOPHLIN: AND WE JUST ASK THAT UNLESS SPECIFIED  
19 TO HAVE TO RELEASE EACH WITNESS.

20 THE COURT: ANY PROBLEM WITH THAT?

21 MS. VAN GINHOVEN: THAT IS FINE, YOUR HONOR.

22 THE COURT: THE STANDING RULE IS ONCE A WITNESS HAS  
23 TESTIFIED THEY ARE EXCUSED UNLESS ONE OF YOU MAKES A NOTE  
24 TO ME THAT YOU WANT THEM AVAILABLE JUST IN CASE YOU WANT  
25 TO RECALL THEM.

1 MR. JOPHLIN: THANK YOU, YOUR HONOR.

2 MS. VAN GINHOVEN: YOUR HONOR, WOULD YOU LIKE TO DO  
3 THE OTHER MOTIONS, I THINK WE CAN DO RIGHT NOW.

4 THE COURT: LET ME, I KNOW WE HAVE GOT THE JACKSON V.  
5 DENNO, NEIL V. BIGGERS MOTION TO SUPPRESS IS THE ONLY  
6 OTHER ONE YOU HAVE MENTIONED THAT WE HAVE NOT HEARD. IS  
7 THAT RIGHT?

8 MS. VAN GINHOVEN: THAT IS RIGHT, YOUR HONOR.

9 THE COURT: WE WILL PROBABLY NEED SOME TESTIMONY ON  
10 THAT, DON'T WE?

11 MS. VAN GINHOVEN: I THINK WE CAN GO AHEAD AND DO THE  
12 OTHER HEARINGS AND WE WILL PROBABLY NEED TESTIMONY.

13 THE COURT: OKAY.

14 MS. VAN GINHOVEN: WE DO WANT TO RENEW DISCOVERY AT  
15 THIS TIME, YOUR HONOR. WE BOTH SAT DOWN ON FRIDAY AND  
16 WENT THROUGH PAGE FOR PAGE FOR DISCOVERY TO MAKE SURE WE  
17 DIDN'T HAVE ANY PROBLEMS WITH THIS. HOWEVER, WE ARE  
18 CONCERNED THAT, NUMBER ONE, THAT THERE IS NO VICTIMS  
19 STATEMENT. NUMBER TWO, WE HAVE NO REPORT FROM THE  
20 LIEUTENANT TYLER WHO INVESTIGATED THIS CASE. THE STATE  
21 HAS TOLD US THAT THEY DO NOT EXIST AND WE JUST WANT TO  
22 MAKE SURE THAT NOTHING HAS COME TO LIGHT OVER THE WEEKEND.

23 THE COURT: ANYTHING NEW SINCE YOU FOLKS MET ON  
24 FRIDAY?

25 MR. JOPHLIN: NO SIR, YOUR HONOR.

1 THE COURT: ALL RIGHT.

2 MR. JOPHLIN: AND THE STATE WOULD ALSO LIKE TO RENEW  
3 OUR RULE 5 MOTION.

4 THE COURT: ANYTHING NEW FROM THE DEFENSE?

5 MS. VAN GINHOVEN: NO, SIR.

6 THE COURT: ALL RIGHT.

7 MR. JOPHLIN: THE ONLY THING I THINK WE NEED TO GO  
8 OVER IS THE DEFENDANT'S RECORD AND WE CAN GO OVER THAT  
9 LATER.

10 THE COURT: IF YOU ARE READY TO DO I CAN GO AHEAD AND  
11 HEAR WHAT YOU HAVE GOT.

12 MR. JOPHLIN: YES, SIR. I WILL HAND UP TO YOUR HONOR  
13 A COPY OF A CERTIFIED CONVICTION FROM THE STATE OF  
14 ALABAMA.

15 THE COURT: IS THIS THE ONLY RECORD THAT YOU WOULD  
16 USE FOR PURPOSES OF IMPEACHMENT.

17 MR. JOPHLIN: THAT IS THE ONLY PRIOR CONVICTION THAT  
18 HE HAS. HE HAS PENDING CHARGES, HOWEVER, THE ONLY PRIOR  
19 CONVICTION HE HAS IS A ROBBERY SECOND DEGREE FROM ALABAMA  
20 WHICH WE SPOKE OF.

21 THE COURT: WAS THIS A PLEA OR A TRIAL.

22 MR. JOPHLIN: THIS WAS A PLEA, HE IS ACTUALLY CHARGED  
23 WITH ROBBERY, FIRST DEGREE WHICH WOULD OF BEEN ARMED  
24 ROBBERY IN OUR STATE AND HE PLEAD GUILTY. IF YOU WILL  
25 NOTICE FIVE PAGES BACK, ON APRIL 3RD OF 1998 THEY TALKED

1 ABOUT WHERE THEY TALK WHERE THEY ACCEPTED HIS PLEA OF  
2 GUILTY TO ROBBERY IN THE SECOND DEGREE.

3 THE COURT: THESE FOLKS IN ALABAMA MAY CAN READ THESE  
4 THINGS BUT I AM HAVING TROUBLE READING IT. WHAT WAS HIS  
5 SENTENCE.

6 MR. JOPHLIN: I BELIEVE PROBATION, YOUR HONOR. AT  
7 THE BOTTOM OF THE PAGE I REFERENCED YOU TO.

8 THE COURT: THIS LOOKS LIKE A HISTORY OF THE CASE IS  
9 WHAT IT LOOKS LIKE TO ME.

10 MR. JOPHLIN: YES, SIR. I REQUESTED NUMEROUS TIMES  
11 FROM THE CLERK OF COURT.

12 THE COURT: HOLD ON ONE SECOND. CHANGES HIS PLEA  
13 FROM NOT GUILTY TO GUILTY TO ROBBERY IN THE SECOND DEGREE.  
14 THE DEFENDANT SHALL BE IMPRISONED IN THE PENITENTIARY IN  
15 THE STATE OF ALABAMA FOR 10 YEARS. HIS PUNISHMENT,  
16 ORDERED TO PAY VICTIMS COMPENSATION, \$50.00 DOLLARS,  
17 RESTITUTION, PROBATION, A HEARING WAS SCHEDULED FOR JUNE  
18 THE 16TH, GOES BACK FROM JUNE THE 16TH AND IT SAYS, THE  
19 DEFENDANT IS ORDERED TO SERVE AN ADDITIONAL ONE YEAR,  
20 SPLIT SENTENCE STARTING TODAY FOLLOWED BY 5 YEARS OF  
21 PROBATION. THE FOLLOWING CONDITIONS, I DON'T KNOW IF THAT  
22 MEANS HE WENT TO PRISON FOR A YEAR OR NOT. BUT ANYWAY, IT  
23 WAS A 10 YEAR OFFENSE AND IS WITHIN 10 YEARS. THE STATE  
24 WANT TO BE HEARD ON IT?

25 MR. JOPHLIN: YES, SIR.

*Pratt  
Prob/Prob*

1 THE COURT: I DON'T MEAN THE STATE, MS. VAN GINHOVEN.  
 2 MS. VAN GINHOVEN: YOUR HONOR, WE OF COURSE WOULD  
 3 ARGUE THAT CLEARLY THIS WOULD BE MORE PREJUDICIAL THAN  
 4 PROBATIVE SHOULD MR. HAYWARD TAKE THE STAND. WE  
 5 ACKNOWLEDGE THAT IT CARRIES OVER, IT HAS BEEN WITHIN THE  
 6 10 YEAR PERIOD. WE JUST WANT TO MAKE SURE THAT IS THE  
 7 ONLY CHARGE THAT THEY PLAN TO GO FORWARD WITH. AND, OF  
 8 COURSE, WE WILL ARGUE THAT, ALLOWING THAT IN IS EXTREMELY  
 9 PREJUDICIAL VERSUS PROBATIVE VALUE AND WE WOULD ASK TO  
 10 LEAVE IT OUT.

11 THE COURT: ALL RIGHT, THE STATE WOULD BE PERMITTED.  
 12 IT LOOKS LIKE THAT IT FALLS WITHIN THE PARAMETERS OF THE  
 13 RULE. AND I DON'T THINK IT IS ANY MORE PREJUDICIAL THAN  
 14 ANY OTHER CRIMINAL HISTORY TO COME IN FOR IMPEACHMENT  
 15 PURPOSES. ANYWAY, AT THIS POINT AND TIME THE COURT IN ALL  
 16 LIKELIHOOD WILL ADMIT IT FOR IMPEACHMENT PURPOSES.

*permitted* →

17 MS. VAN GINHOVEN: THANK YOU, YOUR HONOR.

18 THE COURT: ALL RIGHT, SO AFTER LUNCH WE WILL HAVE  
 19 THE JACKSON V. DENNO HEARING, THE MOTION TO SUPPRESS AND  
 20 THE NEAL V. BIGGERS.

21 MS. VAN GINHOVEN: YES, YOUR HONOR.

22 MR. JOPHLIN: AND ARE WE GOING TO PICK A JURY BEFORE  
 23 THOSE HEARINGS OR AFTER.

24 THE COURT: HOW LONG DO YOU THINK THOSE HEARINGS ARE  
 25 GOING TO TAKE. THE JURY PANEL WILL NOT BE HERE UNTIL

1 2:30.

2 MR. JOPHLIN: WE WILL HAVE LOURDES ANTONIO ALONG WITH  
3 THE INTERPRETER AS PART OF ONE OF THE HEARINGS. SHE DID  
4 MAKE IDENTIFICATION. AND THERE WILL BE A SECOND  
5 IDENTIFICATION--

6 THE COURT: LET'S GET A JURY, THEY WON'T BE SWORN AND  
7 THEN DEAL WITH ALL THE PRETRIAL STUFF. IS THAT GOING TO  
8 PUT US IN A BIND TIME WISE IF WE GET ALL OF THESE PRETRIAL  
9 THINGS TAKEN CARE OF TODAY?

10 MR. JOPHLIN: I DON'T THINK, IF WE START TOMORROW  
11 MORNING THAT WILL BE FINE.

12 THE COURT: LET'S DO THAT AND I WILL SEE YOU FOLKS  
13 BACK HERE AT 2:30.

14 MR. JOPHLIN: THANK YOU, YOUR HONOR.

15 (WHEREUPON, A LUNCH BREAK WAS TAKEN.)

16 THE COURT: ALL RIGHT, YOU HAVE HANDED UP SOME  
17 REQUESTED VOIR DIRE THAT I HAVE GONE THROUGH. SOLICITOR,  
18 HAVE YOU SEEN THAT?

19 MS. COOPER: YES SIR, YOUR HONOR.

20 THE COURT: BEFORE YOU OBJECT LET ME GO AHEAD AND  
21 TELL YOU WHAT I AM GOING TO ASK SO WE WON'T HAVE TO HEAR  
22 ANY ARGUMENT ON IT. 15, 16, 17, 18 AND 19 ON THE REQUEST  
23 WILL NOT BE ASKED. 6 AND 7 ARE NOT GOING TO BE ASKED BUT  
24 I WILL BE ASKING 8, 9 AND 10 OR SOMETHING ALONG THOSE  
25 LINES. I WILL ALSO ASK IF THERE IS ANYTHING IN THE NATURE

1 OF THE CHARGES THAT HAVE BEEN MADE IN THE CASE THAT WOULD  
2 PROHIBIT ANYONE FROM BEING FAIR AND BIASED. AND THE REST  
3 OF THEM, UNLESS THERE IS ANY SPECIFIC OBJECTION TO ANY OF  
4 THE OTHER REQUESTS?

5 MS. COOPER: THOSE ARE EXACTLY THE ONES THAT WE WERE  
6 GOING TO OBJECT TO. WE WOULD JUST SIMPLY REQUEST FOR A  
7 RECIPROCAL LINE OF QUESTIONING AS FAR AS VICTIMS RIGHTS  
8 AND PERHAPS OF ANY AFFILIATION OF GROUPS OR SOMETHING OF  
9 THAT FASHION.

10 THE COURT: ANY OTHER REQUESTS OR OBJECTIONS FROM THE  
11 STATE?

12 MS. COOPER: NO, YOUR HONOR.

13 THE COURT: ALL RIGHT, ANYTHING ELSE FROM THE  
14 DEFENSE?

15 MS. VAN GINHOVEN: I WOULD JUST LIKE TO MAKE THIS A  
16 COURT RECORD.

17 THE COURT: YOUR REQUEST?

18 MS. VAN GINHOVEN: YES, YOUR HONOR.

19 THE COURT: I WILL DO THAT.

20 MS. VAN GINHOVEN: THANK YOU.

21 THE COURT: LET'S BRING THE JURY IN, PLEASE.

22 MR. JOPHLIN: YOUR HONOR, WHILE WE ARE WAITING THE  
23 STATE WOULD LIKE TO DELETE ONE OF THE WITNESSES OFF OF THE  
24 WITNESS LIST.

25 THE COURT: ALL RIGHT.

1 MR. JOPHLIN: THE LAST WITNESS, BONITA LOZANO, HE  
2 WILL NOT BE TESTIFYING.

3 THE COURT: BONITA LOZANO, IS THAT CORRECT?

4 MR. JOPHLIN: YES.

5 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT  
6 APPROXIMATELY 3:00 P.M.)

7 THE COURT: LADIES AND GENTLEMEN, WELCOME TO  
8 COURTROOM 3A. MY NAME IS JIM JOHNSON, I AM FROM LAURENS  
9 COUNTY, THE CITY OF CLINTON AND I AM ASSIGNED TO HOLD  
10 COURT HERE IN COLUMBIA ALL OF THIS YEAR. SO, IT IS MY  
11 PLEASURE, I AM ABOUT A FORTH OF THE WAY THROUGH MY  
12 ASSIGNMENT. WE ARE HOLDING WHAT IS CALLED GENERAL  
13 SESSIONS OR CRIMINAL COURT IN THIS COURTROOM. THE JURY  
14 SELECTION PROCESS DIFFERS WITH THAT IN CIVIL CASES. I  
15 WON'T TALK ABOUT THAT. WHO QUALIFIED YA'LL THIS MORNING,  
16 JUDGE MANNING. OKAY. LET ME EXPLAIN TO YOU BRIEFLY WHAT  
17 WE WILL DO. THE CASE WE ARE ABOUT TO SELECT A JURY IN HAS  
18 BEEN PROCESSED THROUGH THE COURT SYSTEM BY WHAT ARE CALLED  
19 INDICTMENTS. THEY ARE THESE DOCUMENTS THAT I AM HOLDING,  
20 THEY HAVE SOME INFORMATION, A CASE NUMBER AND A CASE NAME  
21 AND WHAT THE CHARGES ARE IN THIS CASE. THE INDICTMENTS  
22 CONTAIN THE ALLEGATIONS, THEY PUT THE DEFENDANT ON NOTICE  
23 OF THE CHARGE OR CHARGES THAT HE OR SHE WILL FACE WHEN THE  
24 CASE IS CALLED FOR TRIAL. YOU DO NEED TO UNDERSTAND THAT  
25 THE INDICTMENTS, WHILE THEY DO CONTAIN THE ALLEGATIONS OF

1 THE CHARGES THEY ARE NOT EVIDENCE AND CANNOT BE CONSIDERED  
2 BY THE JURY AS THE EVIDENCE OR ANY EVIDENCE OF THE CHARGES  
3 THAT THEY CONTAIN. IN THIS CASE THERE ARE SIX INDICTMENTS,  
4 EACH CONTAINING A SEPARATE CHARGE. THEY ARE ALL ENTITLED  
5 THE STATE VERSUS JERENE HAYWARD, MR. HAYWARD IS PRESENT,  
6 HE IS REPRESENTED BY MS. VAN GINHOVEN AND MS. MOBLEY. MS.  
7 VAN GINHOVEN, IF YOU WILL INTRODUCE YOURSELF AND YOUR  
8 CLIENT AND COCOUNSEL TO THE JURY PANEL, PLEASE.

9 MS. VAN GINHOVEN: I AM JEANETTE VAN GINHOVEN AND I  
10 AM WITH THE PUBLIC DEFENDERS OFFICE. AND WE REPRESENT  
11 JERENE HAYWARD AND THIS IS MY COCOUNSEL IS LAUREN MOBLEY.

12 THE COURT: THANK YOU, THE STATE IN THIS CASE IS  
13 REPRESENTED BY THE FIFTH CIRCUIT SOLICITORS OFFICE. AND  
14 IN THIS CASE WILL BE MS. COOPER AND MR. JOPHLIN. IF YOU  
15 WILL INTRODUCE YOURSELF TO THE JURY PANEL, PLEASE.

16 MR. JOPHLIN: MY NAME IS AARON JOPHLIN.

17 MS. COOPER: MY NAME IS VANESSA COOPER AND I WORK FOR  
18 RICHLAND COUNTY SOLICITORS OFFICE AND OUR JOB IS TO  
19 PROSECUTE CRIMES THAT HAPPEN IN THIS COUNTY.

20 THE COURT: THANK YOU. AS I HAVE INDICATED THERE ARE  
21 SIX DIFFERENT INDICTMENTS IN THE CASE. I HAVE PUT THE  
22 NUMBERS IN THE RECORD. 05-GS-40-2824 CONTAINS A CHARGE OF  
23 BURGLARY, FIRST DEGREE. INDICTMENT 05-GS-40-5073 CONTAINS  
24 THE CHARGE OF ASSAULT AND BATTERY WITH INTENT TO KILL.  
25 05-GS-40-5072 CONTAINS THE CHARGE OF KIDNAPPING.

1 05-GS-40-4570 CONTAINS THE CHARGE OF POSSESSION OF  
2 MARIJUANA. 05-GS-40-2802 CONTAINS THE CHARGE OF POINTING  
3 AND PRESENTING A FIREARM. AND 05-GS-40-2825 CONTAINS THE  
4 CHARGE OF PETTY LARCENY. THOSE ARE THE CHARGES THAT ARE  
5 MADE IN THIS CASE. THERE ARE A NUMBER OF POTENTIAL  
6 WITNESSES IN THE CASE. I AM GOING TO READ TO YOU A LIST  
7 OF THESE POTENTIAL WITNESSES IN THE CASE. SOME OF THESE  
8 PEOPLE WILL BE PRESENT, SOME WILL NOT BE PRESENT. I WILL  
9 ASK YOU TO PLEASE PAY CLOSE ATTENTION TO THE NAMES AS I GO  
10 OVER THEM. IF THE WITNESSES ARE PRESENT I AM GOING TO ASK  
11 THEM TO STAND FOR JUST A MOMENT AND TO FACE YOU SO THAT  
12 YOU CAN SEE THEM BECAUSE I WILL BE ASKING YOU IF YOU ARE  
13 RELATED OR HAVE ANY KIND OF RELATIONSHIP WITH ANY OF THESE  
14 FOLKS. POTENTIAL WITNESSES, JEFFREY CONNELL,  
15 C-O-N-N-E-L-L, THANK YOU. RONALD COWART, LOURDES,  
16 L-O-U-R-D-E-S, ANTONIO. THANK YOU. M. ROE, R-O-E, WITH  
17 THE RICHLAND SHERIFFS OFFICE. SERGEANT MCCOLMAN WITH THE  
18 RICHLAND SHERIFFS OFFICE, CORPORAL HOLT, H-O-L-T ALSO WITH  
19 THE SHERIFFS OFFICE. ALSO A LIEUTENANT TYLER WITH THE  
20 SHERIFFS DEPARTMENT. DEPUTY GRAZIOSO WITH THE SHERIFFS  
21 OFFICE, ERICK BARNES ALSO WITH THE RICHLAND SHERIFFS  
22 OFFICE, TRISHA COLLINS, STAN RICHARDS, CHARLES EARLES,  
23 GRAYSON AMICK, TENA GOFF, HOLLY WAGNER, ALL OF THOSE LAST  
24 SIX OR SEVEN WITNESSES ARE WITH THE RICHLAND COUNTY  
25 SHERIFFS OFFICE. THE NEXT FEW POTENTIAL WITNESSES WITH

1 THE STATE LAW ENFORCEMENT DIVISION, JANICE BRYSON, DENISE  
2 EARGLE, SHERRY BROWN, EMILY NORRIS ALSO WITH SLED, KATIE  
3 CORLEY, ALSO WITH SLED. A MARILYN FITZPATRICK AND LAURA  
4 CORLEY ALSO WITH SLED. THE NEXT TWO POTENTIAL WITNESSES  
5 ARE WITH EMS, A RUSSELL REDD, R-E-D-D. AND A BEN HAIGH,  
6 H-A-I-G-H. A DR. RICHARD BOYER, MIGUEL MONTJOY, RAMOS  
7 GREGARIO GONZALEZ, ANDY MCMAHON, TERRY WRIGHT, EMME DELL  
8 MCMAHON. THOSE ARE POTENTIAL WITNESSES IN THE CASE. IT  
9 IS ALLEGED IN THE INDICTMENT THAT THESE OFFENSES OCCURRED  
10 IN RICHLAND COUNTY ON OR ABOUT APRIL THE 13TH OF 2004. I  
11 HAVE GOT SEVERAL QUESTIONS TO ASK YOU BEFORE WE ACTUALLY  
12 SELECT A JURY. AND I NEED FOR YOU TO KEEP IN MIND IN  
13 GOING THROUGH THE JURY SELECTION PROCESS ESSENTIAL OF WHAT  
14 WE ARE LOOKING FOR ARE TWELVE INDIVIDUALS WHO DO NOT KNOW  
15 AND ARE NOT RELATED AND HAVE NO KIND OF RELATIONSHIP WITH  
16 ANY OF THE POTENTIAL WITNESSES OR THE DEFENDANT OR THE  
17 VICTIMS IN THE CASE. THAT IS WHY I WILL BE ASKING YOU THE  
18 QUESTIONS THAT I GO OVER. IF AFTER OR AT THE END OF THE  
19 QUESTIONING YOU FEEL LIKE THERE IS SOMETHING THAT I NEED  
20 TO BE AWARE OF OR THE ATTORNEYS NEED TO BE MADE AWARE OF  
21 BEFORE WE SELECT A JURY PLEASE GO AHEAD AND BRING THAT TO  
22 MY ATTENTION. BUT HOPEFULLY I WILL COVER ANY POSSIBLE  
23 RELATIONSHIP WITH ANYONE WITH THE QUESTIONS THAT I WILL  
24 ASK YOU. FIRST OF ALL, IS THERE ANYONE ON THE JURY PANEL  
25 RELATED BY BLOOD OR CONNECTED BY MARRIAGE EITHER TO THE

1 DEFENDANT, MR. HAYWARD WHO HAS BEEN INTRODUCED TO YOU OR  
2 TO ANY OF THE POTENTIAL WITNESSES IN THE CASE. IF YOU ARE  
3 RELATED BY BLOOD OR CONNECTED BY MARRIAGE TO ANY OF THESE  
4 INDIVIDUALS WOULD YOU PLEASE STAND.

5 (NO RESPONSE.)

6 THE COURT: IS THERE ANYONE ON THE JURY PANEL WHO HAS  
7 ANY TYPE OF BUSINESS, PERSONAL OR SOCIAL RELATIONSHIP  
8 EITHER WITH MR. HAYWARD OR ANY OF THE POTENTIAL WITNESSES  
9 WHOSE NAMES I HAVE READ TO YOU. NOW, I HAVE SOMETIMES  
10 BEEN ASKED WHAT YOU MEAN BY PERSONAL RELATIONSHIP.  
11 BUSINESS RELATIONSHIP, IF YOU TRANSACT ANY KIND OF  
12 BUSINESS, IF YOU BELONG TO THE SAME CIVIC ORGANIZATIONS,  
13 GO TO THE SAME CHURCH, AT THE SAME PTA ORGANIZATION.  
14 ANYTHING LIKE THAT, IF YOU HAVE ANY TYPE OF BUSINESS,  
15 PERSONAL OR SOCIAL RELATIONSHIP EITHER WITH THE DEFENDANT  
16 OR THE POTENTIAL WITNESSES WHOSE NAMES HAVE BEEN READ TO  
17 YOU WOULD YOU PLEASE STAND AT THIS TIME. YOUR NAME,  
18 PLEASE, SIR.

19 JUROR: CLAUDE SMITH.

20 THE COURT: AND IF YOU CAN IDENTIFY THE PERSON AND  
21 JUST GENERALLY THE NATURE OF THE RELATIONSHIP.

22 JUROR: RICHARD BOYER IS THE PHYSICIAN OF THE  
23 HOSPITAL THAT I WORK IN.

24 THE COURT: ALL RIGHT, SIR, YOU WORK THERE IN THE  
25 SAME EMERGENCY ROOM?

1 JUROR: NO, I DO NOT.

2 THE COURT: ALL RIGHT, SIR. BUT YOU DO KNOW HIM ON A  
3 SOCIAL BASIS?

4 JUROR: NO, PROFESSIONAL.

5 THE COURT: IS THE RELATIONSHIP OF SUCH A NATURE THAT  
6 IT WOULD AFFECT YOUR ABILITY TO BE A FAIR AND IMPARTIAL  
7 JUROR IN THIS CASE?

8 JUROR: I DON'T THINK SO.

9 THE COURT: ALL RIGHT, WHAT WAS YOUR NAME, SIR.

10 JUROR: CLARK SMITH.

11 THE COURT: THANK YOU, YOU CAN HAVE A SEAT, MR.  
12 SMITH. I HAVE VERY BRIEFLY TOLD YOU WHAT THE CHARGES ARE  
13 IN THIS CASE AND WHEN IT IS ALLEGED THAT THESE OFFENSES  
14 OCCURRED. IF ANY MEMBER OF THIS JURY PANEL HAS READ OR  
15 HEARD OR SEEN ON TELEVISION OR FROM ANY SOURCE AT ALL  
16 KNOWS ANYTHING ABOUT THE ALLEGATIONS IN THIS CASE I WILL  
17 ASK YOU TO PLEASE STAND AT THIS TIME.

18 (NO RESPONSE.)

19 THE COURT: IS THERE ANY MEMBER OF THE JURY PANEL WHO  
20 IS SENSITIVE TO OR AWARE OF ANY KIND OF BIASED OR  
21 PREJUDICED THAT YOU MIGHT HAVE THAT WOULD PREVENT YOU FROM  
22 BEING A FAIR AND IMPARTIAL JUROR IN THIS CASE, IF SO,  
23 WOULD YOU PLEASE STAND.

24 (NO RESPONSE.)

25 THE COURT: HAS ANY MEMBER OF THE JURY PANEL FORMED

1 OR EXPRESSED AN OPINION AS TO THE GUILT OR THE INNOCENCE  
2 OF THE DEFENDANT, MR. HAYWARD, IN THIS CASE. IF SO WOULD  
3 YOU PLEASE STAND.

4 (NO RESPONSE.)

5 THE COURT: IS THERE ANYTHING ABOUT THE NATURE OF THE  
6 CHARGES THAT I HAVE GONE OVER WITH YOU THAT WILL PREVENT  
7 YOU OR GIVE YOU ANY PROBLEM AS BEING A FAIR AND IMPARTIAL  
8 JUROR IF YOU ARE SELECTED IN THIS CASE. IF SO WOULD YOU  
9 PLEASE STAND.

10 (NO RESPONSE.)

11 THE COURT: IS THERE ANY MEMBER OF THE JURY PANEL WHO  
12 IS EITHER PRESENTLY OR IN THE PAST BEEN REPRESENTED BY ANY  
13 OF THE ATTORNEYS INVOLVED IN THIS CASE OR IF YOU HAVE ANY  
14 KIND OF BUSINESS, PERSONAL OR SOCIAL RELATIONSHIP WITH THE  
15 ATTORNEYS IN THE CASE WOULD YOU PLEASE STAND. YOUR NAME,  
16 PLEASE, SIR.

17 JUROR: I AM NOT SURE BUT I THINK COOPER, SHE MAY  
18 HAVE A SISTER NAMED DEBORAH AND I HAVE KNOWN HER IN THE  
19 PAST.

20 THE COURT: ALL RIGHT, WOULD THAT RELATIONSHIP, IF IN  
21 FACT THAT IS THE CORRECT PERSON, AFFECT YOUR ABILITY TO BE  
22 FAIR AND IMPARTIAL?

23 JUROR: NOT AT ALL.

24 THE COURT: ALL RIGHT, WHAT IS YOUR NAME, PLEASE.

25 JUROR: RANDY FELDER.

1 THE COURT: THANK YOU, SIR, YOU CAN HAVE A SEAT. HAS  
2 ANY MEMBER OF THE JURY PANEL EITHER CURRENTLY OR IN THE  
3 PAST BEEN REPRESENTED OR EXCUSE ME, EMPLOYED BY ANY  
4 CIVILIAN OR MILITARY LAW ENFORCEMENT AGENCY. IF YOU ARE  
5 EITHER PRESENTLY OR IN THE PAST BEEN SO EMPLOYED WOULD YOU  
6 PLEASE STAND. YOUR NAME, PLEASE, MA'AM?

7 JUROR: ARENETTA CLINE.

8 THE COURT: MS. CLINE, IN THE PRESENT OR IN THE PAST?

9 JUROR: I WAS IN THE NAVY.

10 THE COURT: IN THE NAVY, WERE YOU IN LAW ENFORCEMENT  
11 FORM OF THAT?

12 JUROR: YES.

13 THE COURT: ALL RIGHT, WOULD THAT IN ANY WAY AFFECT  
14 YOUR ABILITY TO BE FAIR AND IMPARTIAL?

15 JUROR: NO.

16 THE COURT: THANK YOU, THAT IS MS. CLINE. IS THERE  
17 ANY MEMBER OF THIS JURY PANEL OR ANY MEMBER OF YOUR  
18 IMMEDIATE FAMILY WHO IS EMPLOYED BY OR CLOSE FRIENDS WITH,  
19 EMPLOYED BY THE ATTORNEY GENERALS OFFICE, THE SOLICITORS  
20 OFFICE OR ANY PROSECUTING ATTORNEYS OFFICE OR THE PUBLIC  
21 DEFENDERS OFFICE OR ANY CRIMINAL DEFENSE LAWYERS OFFICE.  
22 IF YOU OR ANY MEMBER OF YOUR IMMEDIATE FAMILY IS EITHER  
23 EMPLOYED BY OR CLOSE FRIENDS WITH ANYONE SO EMPLOYED  
24 PLEASE STAND.

25 (NO RESPONSE.)

1 THE COURT: IS THERE ANY MEMBER OF THIS JURY PANEL  
2 WHO IS A MEMBER OF OR CONTRIBUTES TO ANY GROUP WHO HAS AS  
3 ONE OF ITS PRIMARY CONCERNS, THE PROMOTION OF EITHER LAW  
4 ENFORCEMENT OR VICTIMS RIGHTS OR CRIMINAL DEFENDANTS  
5 RIGHTS. IF YOU EITHER BELONG TO OR CONTRIBUTE TO ANY SUCH  
6 GROUP WOULD YOU PLEASE STAND. YES SIR, YOUR NAME, PLEASE.

7 JUROR: SEAN GOUGH.

8 THE COURT: AND WHICH GROUP IS IT, PLEASE, SIR.

9 JUROR: I DONATED MONEY SEVERAL TIMES TO THE SOUTH  
10 CAROLINA TROOPERS ASSOCIATION.

11 THE COURT: WOULD THAT IN ANY WAY AFFECT YOUR ABILITY  
12 IN THIS CASE TO BE A FAIR AND IMPARTIAL JUROR?

13 JUROR: NO.

14 THE COURT: THANK YOU, SIR, YOU CAN HAVE A SEAT. IS  
15 THERE ANY MEMBER OF THIS JURY PANEL OR ANY MEMBER OF YOUR  
16 IMMEDIATE FAMILY WHO HAS EVER BEEN ACCUSED OF OR THE  
17 VICTIM OF AN ASSAULT, A BURGLARY, OR A KIDNAPPING. IF SO  
18 WOULD YOU PLEASE STAND. YOUR NAME, PLEASE, MA'AM.

19 JUROR: KAREN GAMBLE.

20 THE COURT: MS. GAMBLE, WAS IT YOU OR A MEMBER OF  
21 YOUR FAMILY.

22 JUROR: ME.

23 THE COURT: AND HOW LONG AGO HAS THAT BEEN.

24 JUROR: 20 YEARS.

25 THE COURT: AND I HAVE TO ASK THE QUESTION, ACCUSED

1 OF OR A VICTIM OF.

2 JUROR: A VICTIM.

3 THE COURT: AND WOULD THAT IN ANY WAY AFFECT YOUR  
4 ABILITY TO BE FAIR AND IMPARTIAL IN THIS CASE?

5 JUROR: NO.

6 THE COURT: MR. GOUGH, WAS IT YOU OR A MEMBER OF YOUR  
7 FAMILY?

8 JUROR: ME.

9 THE COURT: AND HOW LONG AGO HAS THAT BEEN.

10 JUROR: ONE TIME, 30 YEARS AGO.

11 THE COURT: AND ACCUSED OF OR A VICTIM OF.

12 JUROR: A VICTIM OF.

13 THE COURT: AND WOULD THAT EXPERIENCE IN ANY WAY  
14 AFFECT YOUR ABILITY TO BE FAIR AND IMPARTIAL?

15 JUROR: NO.

16 THE COURT: THANK YOU, SIR, YOU MAY HAVE A SEAT.  
17 YOUR NAME, PLEASE, MA'AM.

18 JUROR: RENDA ALLEN.

19 THE COURT: AND WAS IT YOU OR A MEMBER OF YOUR  
20 FAMILY?

21 JUROR: A MEMBER OF MY FAMILY.

22 THE COURT: HOW LONG AGO HAS THAT BEEN?

23 JUROR: ALMOST 20 YEARS.

24 THE COURT: AND WOULD THAT EXPERIENCE IN ANY WAY  
25 AFFECT YOUR ABILITY TO BE FAIR AND IMPARTIAL?

1 JUROR: NO, SIR.

2 THE COURT: AND WERE THEY A VICTIM OF OR ACCUSED OF?

3 JUROR: A VICTIM.

4 THE COURT: ALL RIGHT, THANK YOU, SIR. YOUR NAME,  
5 PLEASE, MA'AM.

6 JUROR: DIANNA HALL.

7 THE COURT: MS. HALL, WAS IT YOU OR A MEMBER OF YOUR  
8 FAMILY?

9 JUROR: A MEMBER OF MY FAMILY.

10 THE COURT: AND HOW LONG HAS THAT BEEN?

11 JUROR: 25 YEARS.

12 THE COURT: AND ACCUSED OF OR A VICTIM OF?

13 JUROR: THEY WERE A VICTIM.

14 THE COURT: AND WOULD THAT EXPERIENCE IN ANY WAY  
15 AFFECT YOUR ABILITY TO BE FAIR AND IMPARTIAL?

16 JUROR: THERE WAS NEVER ANY CLOSURE.

17 THE COURT: YOU FEEL LIKE IT WOULD STILL HAVE SOME  
18 IMPACT?

19 JUROR: YES.

20 THE COURT: BASED ON THAT I AM GOING TO EXCUSE YOU  
21 FROM THE TRIAL OF THIS CASE. IF YOU WILL JUST STEP BACK  
22 TO THE BACK ROW AND HAVE A SEAT, PLEASE. YOUR NAME,  
23 PLEASE, MA'AM.

24 JUROR: EMMA HART.

25 THE COURT: AND WAS IT YOU OR A MEMBER OF YOUR

1 FAMILY.

2 JUROR: FAMILY.

3 THE COURT: HOW LONG AGO HAS THAT BEEN.

4 JUROR: LAST YEAR.

5 THE COURT: LAST YEAR. AND ACCUSED OF OR A VICTIM  
6 OF?

7 JUROR: A VICTIM.

8 THE COURT: AND WOULD THAT IN ANY WAY AFFECT YOUR  
9 ABILITY TO BE FAIR AND IMPARTIAL AS A JUROR IN THIS CASE?

10 JUROR: NO, SIR.

11 THE COURT: THANK YOU, YOU MAY HAVE A SEAT. YOUR  
12 NAME, PLEASE.

13 JUROR: CYNTHIA WOODS.

14 THE COURT: AND WAS IT YOU OR A MEMBER OF YOUR  
15 FAMILY?

16 JUROR: A MEMBER OF MY FAMILY.

17 THE COURT: AND HOW LONG AGO?

18 JUROR: FOUR YEARS AGO.

19 THE COURT: AND WOULD THAT EXPERIENCE AFFECT YOUR  
20 ABILITY TO BE FAIR AND IMPARTIAL IN THIS CASE?

21 JUROR: NO, SIR.

22 THE COURT: YOU MAY HAVE A SEAT, THANK YOU. MR.  
23 SMITH, IS THAT RIGHT?

24 JUROR: CLAUDE SMITH.

25 THE COURT: MR. SMITH, YOU OR A MEMBER OF YOUR

1 FAMILY?

2 JUROR: ME.

3 THE COURT: AND HOW LONG AGO?

4 JUROR: ABOUT A YEAR.

5 THE COURT: AND ACCUSED OF OR A VICTIM OF, MR. SMITH.

6 JUROR: A VICTIM.

7 THE COURT: WOULD THAT EXPERIENCE AFFECT YOUR ABILITY  
8 TO BE FAIR AND IMPARTIAL?

9 JUROR: IT MIGHT.

10 THE COURT: BASED ON THAT I AM GOING TO EXCUSE YOU  
11 FROM THE TRIAL OF THIS CASE. IF YOU WILL HAVE A SEAT IN  
12 THE BACK OF THE COURTROOM, PLEASE. AND ON THE BACK ROW.  
13 YOUR NAME, PLEASE, SIR.

14 JUROR: MICHAEL J. ODEN.

15 THE COURT: AND YOU OR A MEMBER OF YOUR FAMILY?

16 JUROR: MEMBER OF MY FAMILY ABOUT 30 YEARS AGO.

17 THE COURT: ACCUSED OF OR A VICTIM OF.

18 JUROR: A VICTIM.

19 THE COURT: AND WOULD THAT EXPERIENCE AFFECT YOUR  
20 ABILITY TO BE FAIR AND IMPARTIAL?

21 JUROR: NO, YOUR HONOR.

22 THE COURT: YOU MAY HAVE A SEAT, THANK YOU. I HAVE  
23 ASKED YOU A NUMBER OF QUESTIONS AND I HAVE GOT ONE SORT OF  
24 FOLLOW-UP QUESTION. I HAVE TOUCHED ON RELATIONSHIPS AND  
25 THE NATURE OF THE CHARGES, THINGS LIKE THAT. IF THERE IS

1 ANY REASON THAT IS RELATED TO ANYTHING THAT I HAVE ALREADY  
2 ASKED YOU OR IF YOU KNOW OF ANY OTHER REASON, BASED ON  
3 SOMETHING THAT I HAVE NOT ASKED YOU ABOUT, THAT YOU COULD  
4 NOT GIVE BOTH THE DEFENDANT, MR. HAYWARD AND THE STATE OF  
5 SOUTH CAROLINA A FAIR AND IMPARTIAL TRIAL IN THIS CASE IF  
6 YOU ARE SELECTED ON A JURY, WOULD YOU PLEASE STAND AT THIS  
7 TIME.

8 (NO RESPONSE.)

9 THE COURT: SOLICITOR, ANYTHING FURTHER FROM THE  
10 STATE?

11 MR. JOPLIN: NOTHING FURTHER.

12 THE COURT: FROM THE DEFENSE?

13 MS. VAN GINHOVEN: NO, YOUR HONOR.

14 THE COURT: I WILL MAKE YOUR REQUEST A COURT EXHIBIT.  
15 NOW, LADIES AND GENTLEMEN, WE ARE GOING TO SELECT A JURY  
16 AND THE WAY WE DO THAT HERE IN GENERAL SESSIONS COURT,  
17 YOUR NAMES ARE GOING TO BE CALLED ONE AT A TIME. IF YOUR  
18 NAME IS CALLED, IF YOU WILL BRING YOUR PERSONAL BELONGINGS  
19 WITH YOU AND COME DOWN TO THIS MICROPHONE HERE IN THE  
20 MIDDLE OF, RIGHT IN THE CORNER OF THIS TABLE HERE. WE ARE  
21 NOT GOING TO ASK YOU ANY MORE QUESTIONS. BUT YOU WILL,  
22 WHEN YOU GET TO THE MICROPHONE IF YOU WILL JUST TURN AND  
23 STATE YOUR NAME AND WHERE YOU ARE EMPLOYED AND THEN THE  
24 ATTORNEYS ARE GOING TO BE ASKED, FIRST THE SOLICITOR AND  
25 THEN THE DEFENSE ATTORNEY WHETHER THEY WOULD LIKE FOR YOU

1 TO BE SEATED AS A JUROR IN THIS CASE OR WHETHER THEY WOULD  
2 LIKE TO EXCUSE YOU FROM THE TRIAL OF THIS CASE. IF BOTH  
3 ATTORNEYS ASK YOU TO BE SEATED, YOU WILL BE SEATED IN THE  
4 JURY BOX. IF EITHER ONE OF THE ATTORNEYS SAY PLEASE  
5 EXCUSE THIS JUROR FROM THE TRIAL OF THIS CASE THEN YOU  
6 WILL SIMPLY GO BACK TO THE BACK OF THE COURTROOM AND TAKE  
7 A SEAT BACK THERE. ALL RIGHT, MADAME CLERK. THE STRIKES  
8 ARE 10 AND 5.

9 (THE JURY IS IMPANELED AT 3:35 P.M. LOCATED BEHIND  
10 INDEX.)

11 THE COURT: ANYTHING CONCERNING THE STRIKING OF THE  
12 JURY, ANYTHING FROM THE STATE?

13 MR. JOPHLIN: NO, YOUR HONOR.

14 THE COURT: FROM THE DEFENSE?

15 MS. VAN GINHOVEN: NO, YOUR HONOR.

16 THE COURT: LADIES AND GENTLEMEN, THOSE OF YOU WHO  
17 WERE NOT SELECTED ON THE CASE, IF YOU WILL RETURN BACK  
18 DOWNSTAIRS TO THE ASSEMBLY ROOM. THANK YOU VERY MUCH, YOU  
19 ARE EXCUSED AND EVERYONE ELSE REMAIN SEATED, PLEASE.

20 (WHEREUPON, THE JURY PANEL WAS EXCUSED FROM OPEN  
21 COURT.)

22 THE COURT: LADIES AND GENTLEMEN, THOSE OF YOU WHO  
23 HAVE BEEN SELECTED IN THE CASE, WE ARE GOING TO START THE  
24 TRIAL OF THIS CASE TOMORROW MORNING. I WANTED TO GO AHEAD  
25 AND GET THE JURY SELECTED THIS AFTERNOON. THERE ARE STILL

1 A NUMBER OF PRETRIAL MATTERS THAT I AM REQUIRED TO TAKE  
2 UP. I AM REQUIRED TO TAKE THEM UP OUTSIDE OF YOUR  
3 PRESENCE. SO, I AM GOING TO EXCUSE YOU IN JUST A MINUTE.  
4 BUT BEFORE YOU GO, WHEN I EXCUSE YOU I WILL SEND YOU BACK  
5 TO THE JURY ROOM FOR A FEW MINUTES AND LET YOU SELECT YOUR  
6 FOREMAN OR YOUR FORELADY. IN SOUTH CAROLINA THERE ARE TWO  
7 DIFFERENT WAYS IN DOING THAT, ONE IS FOR ME TO PICK ONE OF  
8 YOU AND APPOINT THAT PERSON, THE OTHER IS TO LET THE JURY  
9 DECIDE WHO THEY WANT THAT PERSON TO BE. WHOEVER THAT  
10 PERSON IS, THEIR VOTE IS NO MORE IMPORTANT, IT DOES NOT  
11 COUNT ANYMORE THAN ANY OTHER MEMBER OF THE JURY. BUT THAT  
12 PERSON WILL PRESIDE IN THE JURY ROOM AND WILL BE THE  
13 SPOKESPERSON FOR THE JURY HERE IN THE COURTROOM. SO, WHEN  
14 I SEND YOU BACK TO YOUR JURY ROOM, YOU MAKE THAT DECISION  
15 AND WRITE THAT NAME ON A SLIP OF PAPER AND GIVE IT TO YOUR  
16 BAILIFF AND THEN YOU WILL BE EXCUSED UNTIL TOMORROW  
17 MORNING. ANY OF THE ORIGINAL TWELVE JURORS THAT ARE  
18 ELIGIBLE TO SERVE AS THE FOREMAN, MR. TULLIS, YOU ARE THE  
19 ALTERNATE JUROR SO YOU ARE NOT ELIGIBLE TO SERVE AS THE  
20 FOREMAN. IF YOU WILL KEEP THE SEAT WHERE YOU ARE  
21 THROUGHOUT THE TRIAL AND THEN THE FOREMAN OR THE FORELADY  
22 OF THE JURY, WHEN YOU FOLKS COME BACK IN TOMORROW MORNING  
23 YOU TAKE THIS FIRST SEAT ON THE FRONT ROW AND KEEP THAT  
24 SEAT THROUGHOUT THE TRIAL. AND THEN THE REST OF YOU CAN  
25 SIT WHERE YOU WANT TO IN THE JURY BOX. I DO NEED TO GIVE

1 YOU SOME VERY BRIEF INSTRUCTIONS AND I DON'T THINK IT WILL  
2 COME AS ANY SURPRISE WHEN I TELL YOU YOU ARE NOT PERMITTED  
3 TO DISCUSS THE CASE WITH ANYBODY INSIDE OR OUTSIDE OF THE  
4 COURT HOUSE. YOU ARE NOT PERMITTED TO READ ANYTHING ABOUT  
5 THE CASE, TO WATCH ANYTHING ABOUT THE CASE, TO LISTEN TO  
6 ANYTHING ABOUT THE CASE FROM ANY SOURCE AT ALL. I NEVER  
7 KNOW WHAT CASES MIGHT GENERATE PUBLICITY, IF YOU HAPPEN TO  
8 PICK UP A NEWSPAPER AND YOU SEE FROM THE TITLE OF THE  
9 ARTICLE THAT IS DEALING WITH THIS CASE, PLEASE DON'T READ  
10 IT. AGAIN, WE DON'T WANT ANY OF YOU FOLKS TO BE  
11 INFLUENCED BY SOMETHING THAT SOMEONE ELSE MAY SAY. YOU  
12 ARE THE ONLY ONES THAT WILL BE MAKING A DECISION IN THIS  
13 CASE AND IT HAS TO BE BASED ONLY ON THE EVIDENCE THAT IS  
14 PRESENTED HERE IN THE COURTROOM. I THINK ALL OF THAT IS  
15 FAIRLY COMMON KNOWLEDGE. I THINK SOMETIMES JURORS ARE  
16 SURPRISED TO HEAR THE JUDGE TELLING THEM THAT YOU CANNOT  
17 EVEN DISCUSS THIS CASE AMONG YOURSELVES WHILE THE TRIAL IS  
18 GOING ON. IT IS IMPROPER, HIGHLY IMPROPER TO DO THAT.  
19 SO, WHEN WE TAKE BREAKS, IF YOU GO TO LUNCH WITH ANOTHER  
20 JUROR OR YOU ARE SITTING BACK THERE WAITING FOR ALL THE  
21 JURORS TO GET HERE YOU CAN TALK ABOUT ANYTHING YOU WANT TO  
22 IN THIS WORLD EXCEPT THIS CASE. SO, PLEASE DON'T DISCUSS  
23 IT UNTIL I INSTRUCT YOU TO AND THAT IS GOING TO BE AT THE  
24 END OF THE CASE. WE WILL START TOMORROW MORNING AT 9:30,  
25 I WILL DEAL WITH THE PRETRIAL MATTERS THIS AFTERNOON. SO,

1 WE WILL BE READY TO GO AT 9:30. WE CANNOT START WITHOUT  
2 ALL THE JURORS AND THE ALTERNATE BEING HERE, SO PLEASE BE  
3 HERE AT 9:30 AND WE WILL PROCEED AT THAT TIME. YOU WILL  
4 HEAR FIRST FROM ME FOR JUST A COUPLE OF MINUTES AND THEN  
5 YOU WILL HEAR FROM THE ATTORNEYS FOR A FEW MINUTES AND  
6 THEN WE WILL GET INTO THE TESTIMONY. AGAIN, PLEASE DON'T  
7 DISCUSS THE CASE WITH ANYONE, GO TO THE JURY ROOM WITH THE  
8 BAILIFF AND THAT IS WHERE YOU WILL COME BACK TOMORROW  
9 MORNING. AND IF YOU WILL PLEASE BE HERE AT 9:30 AND WE  
10 WILL START AT THAT TIME. EVERYONE ELSE STAY SEATED.

11 (WHEREUPON, THE JURY WAS EXCUSED AT 4:00 P.A.M.)

12 THE COURT: ALL RIGHT, WE CAN START WITH JACKSON V.  
13 DENNO OR NEIL V. BIGGERS OR SUPPRESSION. IT DOES NOT  
14 MATTER TO ME, JACKSON V. DENNO, IS THAT A GOOD PLACE AS  
15 ANYWHERE.

16 MR. JOPHLIN: WELL, YOUR HONOR, I GUESS WE CAN  
17 CONTINUE THIS MORNING WITH THE MOTION IN LIMINE THAT THE  
18 STATE HAS MADE.

19 THE COURT: WHY DO WE NEED TO DEAL WITH THAT BEFORE  
20 WE GO IN FRONT OF THE JURY. I CAN DEAL WITH THAT LATER.  
21 I HAVE TENTATIVELY RULED ON THAT AND I HAVEN'T BEEN GIVEN  
22 ANY LAW, HAVE YA'LL FOUND ANY CASE LAW?

23 MS. VAN GINHOVEN: YOUR HONOR, I WILL TELL YOU RIGHT  
24 BEFORE WE DREW A JURY I HAD SOME CASES SENT DOWN, I HAVE  
25 NOT READ THEM YET.

1 THE COURT: WHY DON'T YOU GET A COPY OF THEM AND I  
2 CAN LOOK OVER THEM OVERNIGHT. I CAN DEAL WITH THAT IN THE  
3 MORNING BEFORE WE GET STARTED.

4 MR. JOPHLIN: THAT IS FINE, YOUR HONOR.

5 THE COURT: IT IS NOT GOING TO HAVE ANY IMPACT ON  
6 THESE OTHER PRETRIAL MATTERS, I DON'T BELIEVE, IS IT?

7 MR. JOPHLIN: NO, SIR.

8 THE COURT: ALL RIGHT, LET'S START WITH JACKSON V.  
9 DENNO, THE STATEMENTS. HOW MANY STATEMENTS ARE THERE THAT  
10 THE STATE INTENDS TO INTRODUCE.

11 MS. COOPER: WE HAVE JUST, NO WRITTEN STATEMENTS,  
12 YOUR HONOR. WE HAVE ONLY, HAVE STATEMENTS MADE WHEN THE  
13 DEFENDANT WAS APPREHENDED AFTER HE WAS MIRANDIZED BY A  
14 ROAD OFFICER AND THEN AGAIN AFTER HE WAS MIRANDIZED AT  
15 HEADQUARTERS. MADE A STATEMENT, LIKE VERBAL COMMENTS TO  
16 THE INVESTIGATOR. BUT THERE IS NOTHING IN WRITING.

17 THE COURT: ALL RIGHT, IS THE DEFENSE READY?

18 MS. VAN GINHOVEN: YOUR HONOR, I JUST WANTED TO BE  
19 CLEAR. I THINK INVESTIGATOR BARNES IS GOING TO BE ALSO  
20 HAVING OTHER MATTERS. ARE WE GOING TO RECUSE HIM ON THE  
21 JACKSON V. DENNO AND HAVE HIM CALLED AGAIN TO GIVE THE  
22 IDENTIFICATION OR ARE WE GOING TO DO IT ALL AT ONE TIME.

23 THE COURT: LET'S GO AHEAD AND SOLICIT WHATEVER  
24 TESTIMONY YOU NEED FROM ANY WITNESS ON ANY OF THESE ISSUES  
25 THAT I WILL BE DEALING WITH. WHEN HE COMES UP DO IT ALL,

1 YES.

2 MS. COOPER: AT THIS TIME THE STATE WOULD CALL DEPUTY  
3 ROE TO THE STAND.

4 DEPUTY LLOYD ROE, JR., AFTER BEING DULY SWORN,  
5 TESTIFIED AS FOLLOWS:

6 DIRECT EXAMINATION

7 BY MS. COOPER:

8 Q YOU ARE AN INVESTIGATOR, IS THAT CORRECT?

9 A YES.

10 Q INVESTIGATOR ROE, WILL YOU PLEASE TELL THE JUDGE  
11 WHERE YOU ARE EMPLOYED?

12 A RICHLAND COUNTY SHERIFFS DEPARTMENT.

13 Q AND HOW LONG HAVE YOU BEEN EMPLOYED WITH THEM?

14 A A TOTAL OF APPROXIMATELY SIX YEARS.

15 Q AND HOW LONG HAVE YOU BEEN AN INVESTIGATOR?

16 A APPROXIMATELY TWO YEARS, MAY 15TH WILL BE TWO YEARS.

17 Q SO, MAY 15TH OF 2004 YOU WERE PROMOTED TO  
18 INVESTIGATOR, IS THAT CORRECT?

19 A YES, MA'AM.

20 Q AND PRIOR TO BEING AN INVESTIGATOR WHAT WAS YOUR  
21 TITLE OR DUTIES AT THE SHERIFFS DEPARTMENT?

22 A I WAS A ROAD DEPUTY OR UNIFORM PATROL AND A MASTER  
23 DEPUTY BEFORE I BECAME AN INVESTIGATOR.

24 Q OKAY. AND BACK ON APRIL 13TH OF 2004 WHAT REGION DID  
25 YOU WORK OUT OF?

with cop

1 A REGION SIX, MA'AM.

2 Q CAN YOU TELL JUDGE JOHNSON WHICH REGION THAT  
3 ENCOMPASSES?

4 A IT BASICALLY ENCOMPASSES THE NORTHERN PART OF THE  
5 RICHLAND COUNTY, BASICALLY FROM KILLIAN ROAD, THE LINE  
6 MARK THAT I LIKE TO USE. IF YOU DREW THAT EAST AND WEST,  
7 BASICALLY PARALLEL TO A COUPLE OF LITTLE SIDE STREETS.  
8 BUT EVERYTHING NORTH OF THAT, THE SUMMIT AND SEVERAL OTHER  
9 GROWING AREAS OUT THERE.

10 Q DID YOU HAVE AN OCCASION TO BE CALLED TO 117  
11 TAM-O-SHANTER ON APRIL 13TH OF 2004?

12 A YES, MA'AM.

13 Q AND APPROXIMATELY WHAT TIME DID YOU RESPOND TO THAT?

14 A IT WAS APPROXIMATELY, SHORTLY AFTER 4:00 P.M., I  
15 BELIEVE IT WAS ABOUT QUARTER AFTER I BELIEVE.

16 Q AND DO YOU KNOW, RECALL THE NATURE OF THE CALL?

17 A THE CALL ORIGINALLY WENT OUT AT TO EMS, WE DIDN'T  
18 KNOW THE COMPLETE NATURE OF THE INCIDENT UNTIL WE ARRIVED.

19 Q AND WHEN YOU ARRIVED WHO DID YOU MAKE CONTACT WITH?

20 A IT WAS WITH THE HOMEOWNER, MR. CONNELL.

21 Q AND WHAT DID YOU LEARN FROM MR. CONNELL, WHAT TYPE OF  
22 CALL DID YOU THEN CHANGE IT TO?

23 A IT WAS AN AGGRAVATED, AGGRAVATED BURGLARY, AGGRAVATED  
24 ASSAULT AND A MISSING PISTOL WAS STOLEN DURING THE  
25 BURGLARY.

1 Q OKAY. AND AS THE RESULT OF MAKING CONTACT WITH MR.  
2 CONNELL AT THE SCENE WHAT WAS YOUR INITIAL RESPONSIBILITY  
3 AT THE SCENE?

4 A I WAS A MASTER DEPUTY AT THE TIME SO I HAD DEPUTY  
5 WAGNER ARRIVE APPROXIMATELY AT THE SAME TIME WITH ME. I  
6 DIRECTED HER TO THE HOSPITAL TO GET MORE INFORMATION FROM  
7 THE VICTIM OF THE AGGRAVATED ASSAULT SITUATION AND THEN OF  
8 COURSE I SECURED THE SCENE. AND THEN I MADE CONTACT WITH  
9 THE HOMEOWNER AND BASICALLY GOT HIM AWAY TO SECURE THE  
10 SCENE AND THEN I STARTED JUST DIRECTING AND PUTTING OUT  
11 WHAT INFORMATION I COULD AS I RECEIVED IT.

12 Q AND WHO WAS SENDING YOU INFORMATION?

13 A DEPUTY WAGNER ONCE SHE GOT TO THE HOSPITAL.

14 Q AND WHAT SPECIFIC INFORMATION DID SHE RELAY TO YOU?

15 A SHE RELATED A GENERAL DESCRIPTION OF THE SUSPECT AND  
16 THEN LATER ON, OF COURSE, WE STARTED PUTTING SMALL PIECES  
17 TOGETHER.

18 Q AND WERE YOU ABLE TO MAKE CONTACT WITH THE  
19 DEFENDANT--

20 MS. VAN GINHOVEN: JUDGE, WE HAVE ONE MATTER. THERE  
21 ARE WITNESSES IN HERE AND THERE IS A SEQUESTRATION ORDER  
22 IN EFFECT FOR THE PRETRIAL REQUEST?

23 THE COURT: YES.

24 MS. COOPER: MR. CONNELL AND MR. COWART, PLEASE GO  
25 OUT OF THE COURTROOM. MR. CONNELL IS THE VICTIM, CAN HE

1       REMAIN?

2               THE COURT:   HE MAY REMAIN.   HE IS A VICTIM OF THE  
3       BURGLARY, IS THAT RIGHT?

4               MS. COOPER:   YES, SIR.

5               THE COURT:   HE HAS GOT THE RIGHT TO STAY.

6       Q       AS THE RESULT OF OBTAINING THE DESCRIPTION OF THE  
7       SUSPECT, PERPETRATOR OF THIS CRIME. DID YOU MAKE CONTACT  
8       WITH THE SUSPECT LATER THAT DAY?

9       A       YES, MA'AM.

10      Q       APPROXIMATELY HOW MANY HOURS AFTER YOU HAD BEEN  
11      DISPATCHED TO [REDACTED] DID YOU MAKE CONTACT WITH  
12      A SUSPECT?

13      A       APPROXIMATELY A COUPLE OF HOURS LATER.

14      Q       AND WHERE DID YOU MAKE CONTACT AND WHAT WERE THE  
15      CIRCUMSTANCES OF THAT CONTACT?

16      A       WE MADE CONTACT IN THE SUBDIVISION, IT IS CALLED  
17      SOUTHWOOD, IT IS A SUBDIVISION. AFTER PROCEEDING, PUTTING  
18      THE PIECES TOGETHER AND WE DETERMINED WHO THE SUSPECT, A  
19      PLAN WAS MADE BY INVESTIGATOR BARNES, A LIEUTENANT TYLER  
20      AND OTHER INDIVIDUALS, AS FAR AS APPROACHING THAT AREA.

21      MY JOB WAS TO, JUST A REGULAR DEPUTY TO ASSIST WE MET UP  
22      NEAR THE PUBLIX IN THE PARKING LOT. WE DIDN'T WANT TO, WE  
23      BASICALLY WANTED TO APPREHEND THE SUSPECT, THE DEFENDANT  
24      AT THAT TIME. THEY CALLED FOR ASSISTANCE THAT THEY WERE  
25      WITH THE SUSPECT, DETAINING HIM. AND OUR JOB, THEY WERE

1 IN A VAN AND OUR JOB WAS TO COME UP AND ASSIST AS BACKUP.

2 Q AND WHOSE VAN WERE THE OTHER OFFICES IN WHEN THEY  
3 MADE CONTACT WITH THE DEFENDANT?

4 A THEY HAD GOTTEN INTO A CLEANING, A BUSINESS VAN OF  
5 PEOPLE WHO WERE SELLING HOUSEHOLD CLEANING SUPPLIES, IT IS  
6 MY UNDERSTANDING.

7 Q AND WOULD THAT HAD BEEN THE SUPERVISOR, THE  
8 DEFENDANT, THE OFFICERS WHO ARRIVED IN THE VAN?

9 A YES, MA'AM.

10 Q ONCE THEY APPREHENDED THE DEFENDANT IN THE VAN AT THE  
11 SOUTHWOOD SUBDIVISION. DESCRIBE TO JUDGE JOHNSON WHAT YOU  
12 OBSERVED WHEN YOU FIRST PULLED UP BEHIND THE VAN OR AT THE  
13 VAN?

14 A WHEN I FIRST PULLED UP WE SCREAMED UP THERE TO BACKUP  
15 BECAUSE IT WAS A SERIOUS MATTER. THEY WERE JUST BRINGING  
16 THE DEFENDANT UP OFF THE GROUND. AND, OF COURSE, I JUST  
17 JUMPED OUT OF MY CAR AND RAN UP THERE TO ASSIST ANY WAY I  
18 COULD.

19 Q AND COULD YOU OBSERVE WHETHER OR NOT HE WAS CUFFED,  
20 HANDCUFFED?

21 A YES, HE WAS.

22 Q AND SO WHEN YOU SAY THEY WERE JUST BRINGING HIM UP  
23 OFF THE GROUND, THEY HAD JUST FINISHED HANDCUFFING HIM, IS  
24 THAT CORRECT?

25 A YES, MA'AM.

*cuffed &  
in custody*

1 Q DESCRIBE WHAT YOU DID NEXT WHEN YOU CAME UPON HIM,  
2 WHAT DID YOU DO?

3 A I PROCEEDED TO TERRY FRISK THE INDIVIDUAL.

4 Q DID YOU TAKE HIM TO ANOTHER LOCATION TO DO THAT TERRY  
5 FRISK?

6 A NO, MA'AM.

7 Q RIGHT THERE AT THE PATROL CAR?

8 A RIGHT AT THE SCENE, YES.

9 Q AND WHO ASSISTED YOU IN THE TERRY FRISK OF THIS  
10 SUSPECT?

11 A SERGEANT MCCOLMAN.

12 Q AND DESCRIBE FOR THE JUDGE WHAT IT IS YOU WERE ABLE  
13 TO RECOVER FROM THE TERRY FRISK?

14 A IT WAS A, THE PANT LEG WAS CUFFED A LITTLE BIT AND IT  
15 WAS INSIDE THE SOCK. I DID FIND A GUN DURING THE TERRY  
16 FRISK. I FELT A HARD OBJECT AND IT FELT LIKE A PISTOL,  
17 FROM MY EXPERIENCE. GETTING IT OUT, A .45 CAME OUT AND IT  
18 ACTUALLY DID STRIKE THE PAVEMENT.

19 Q AND SO IT FLIPPED THROUGH YOUR HANDS PREVIOUS TO THE  
20 PAVEMENT?

21 A YES, MA'AM.

22 Q WHAT DID YOU DO ONCE THE GUN, ONCE YOU HAD FINISHED  
23 MAKING SURE HE WAS NO LONGER ARMED WHAT DID YOU DO NEXT  
24 WITH THE DEFENDANT?

25 A JUST FINISHED A MORE THOROUGH SEARCH AND THAT IS WHEN

1 THE MARIJUANA WAS DISCOVERED. IMMEDIATELY AFTER THAT, I  
2 WANTED TO GET HIM AWAY FROM THE PISTOL AND OTHER EVIDENCE  
3 AND JUST SECURE HIM. THAT IS STANDARD PROCEDURE, SO  
4 BEFORE I DID THAT, IN MY WALLET, NOW I CARRY IT IN MY  
5 WALLET BUT WHEN I WAS A PATROLMAN I ALSO CARRIED A MIRANDA  
6 CARD WITH THE MIRANDA WARNING ON IT IN MY RIGHT UNIFORM  
7 POCKET, UPPER RIGHT-HAND POCKET. AND I MIRANDIZED HIM.

8 Q DO YOU HAVE THAT CARD WITH YOU TODAY?

9 A YES, MA'AM.

10 Q COULD YOU PLEASE SHARE THAT WITH US.

11 A IT IS A LITTLE MESSED UP.

12 MS. COOPER: YOUR HONOR, MAY I APPROACH.

13 THE COURT: YES.

14 Q WHEN YOU PULLED THAT CARD OUT, CAN YOU DO EXACTLY  
15 WHAT YOU DID WITH THE DEFENDANT ON APRIL 15TH OF 2004 AS  
16 IT PERTAINS TO HIS RIGHTS?

17 A I START AT THE TOP AND I DIDN'T SAY NUMBER ONE. I  
18 SAID, YOU HAVE THE RIGHT TO REMAIN SILENT, ANYTHING YOU  
19 SAY CAN AND WILL BE USED AGAINST YOU IN A COURT OF LAW.  
20 YOU HAVE THE RIGHT TO HAVE AN ATTORNEY TO BE PRESENT, IF  
21 YOU CANNOT AFFORD AN ATTORNEY ONE WILL BE APPOINTED TO YOU  
22 FREE OF COST BY THE COURT. IF YOU DECIDE TO ANSWER  
23 QUESTIONS AND HAVE, YOU HAVE A RIGHT AT ANY TIME TO STOP  
24 AND ASK FOR AN ATTORNEY. DO YOU UNDERSTAND YOUR RIGHTS.

25 Q AND AT THAT POINT WHAT DID YOU DO WITH THE DEFENDANT?

1 A PLACED HIM IN THE BACK OF THE PATROL CAR, ALSO  
2 INVESTIGATOR BARNES, HE WAS PART OF THIS WHOLE INCIDENT  
3 FROM THE BEGINNING BECAUSE HE HAD MET ME OUT AT THE  
4 ORIGINAL INCIDENT SCENE. I KNEW HE WOULD BE IN ROUTE, HE  
5 WASN'T THERE YET, I KNEW HE WAS IN ROUTE. HE WOULDN'T BE  
6 LONG SO THAT IS ANOTHER REASON I JUST READ HIM HIS RIGHTS  
7 AND PUT HIM, SECURED HIM IN THE CAR.

8 Q DID YOU ATTEMPT TO QUESTION HIM IN ANY WAY?

9 A NO, MA'AM.

10 Q DID HE MAKE ANY STATEMENTS TO YOU WHILE YOU WERE  
11 PLACING HIM IN THE BACK OF THE PATROL CAR?

12 A HE YELLED AT ME FOR SETTING HIM UP. I THINK IT WAS  
13 DIRECTED TOWARDS HIS SUPERVISOR OR SOMEONE, I WANT TO SAY  
14 COWORKER. HE JUST SCREAMED THAT WE WERE SETTING HIM UP.

15 Q DID YOU PARTICIPATE IN ANY FURTHER QUESTIONING OF  
16 THIS DEFENDANT AFTER THIS INITIAL CONTACT?

17 A NO, MA'AM.

18 Q AND YOU SEE THE MAN THAT YOU HAVE MIRANDIZED ON APRIL  
19 13TH OF 2004 IN THE COURTROOM?

20 A YES, MA'AM.

21 Q COULD YOU PLEASE POINT HIM OUT FOR THE JUDGE?

22 A (WITNESS POINTS TO DEFENDANT.)

23 Q COULD YOU DESCRIBE WHAT COLOR SHIRT HE HAS ON?

24 A HE IS WEARING A BLUE SHIRT.

25 Q THANK YOU, WE HAVE NO FURTHER QUESTIONS.

1 THE COURT: CROSS-EXAMINE.

2 CROSS-EXAMINATION

3 BY MS. VAN GINHOVEN:

4 Q OFFICER ROE, YOU SAID YOU HAVE BEEN WITH RICHLAND  
5 COUNTY SHERIFFS DEPARTMENT FOR SIX YEARS, IS THAT RIGHT?

6 A TOTAL TIME PUT TOGETHER, I MET A WOMAN AND I GOT  
7 MARRIED AND WENT TO GREENVILLE COUNTY FOR TWO YEARS. AND  
8 THAT DIDN'T WORK OUT SO I AM BACK IN RICHLAND COUNTY.

9 Q YOU HAVE BEEN IN LAW ENFORCEMENT FOR ABOUT SIX YEARS  
10 THOUGH, IS THAT RIGHT?

11 A NO, MA'AM. A TOTAL FOR ABOUT EIGHT YEARS.

12 Q NOW, AS PART OF BEING IN THE SHERIFFS DEPARTMENT YOU  
13 HAVE BEEN TRAINED, IS THAT RIGHT?

14 A YES, MA'AM.

15 Q AND YOU HAVE HAD TRAINING FOR GOING TO CRIME SCENES  
16 OR INTERROGATING PEOPLE, INTERVIEWING PEOPLE, RIGHT?

17 A I WOULD AGREE WITH THAT, YES MA'AM.

18 Q YOU HAVE ALSO BEEN TRAINED ON HOW TO WRITE A REPORT,  
19 ISN'T THAT RIGHT?

20 A YES, MA'AM.

21 Q IN OTHER WORDS, YOU HAVE BEEN TRAINED TO GO TO CRIME  
22 SCENES, TO CHECK OUT ALL THE INFORMATION AND TO PUT IT  
23 INTO YOUR REPORT, ISN'T THAT RIGHT?

24 A CAN YOU REPEAT THE QUESTION.

25 Q YOU HAVE BEEN TRAINED IN INVESTIGATION, RIGHT, ON HOW

1 TO CONDUCT AN INVESTIGATION?

2 A I AM AN INVESTIGATOR, YES MA'AM.

3 Q SO, YOU HAVE BEEN TRAINED TO DO THAT, RIGHT?

4 A I HAVEN'T BEEN TO SOUTH CAROLINA CRIMINAL JUSTICE  
5 INVESTIGATOR SCHOOL. SO I HAVEN'T HAD, I HAVE HAD  
6 SPECIFIC TRAINING IN SAY HOMICIDE INVESTIGATION, THINGS  
7 LIKE THAT SINCE I HAVE BEEN UPSTAIRS. BUT I HAVE NOT HAD  
8 ANY FORMAL TRAINING IN BEING AN INVESTIGATOR OTHER THAN  
9 WHEN I WAS IN THE MILITARY POLICE, ON THE JOB TYPE  
10 TRAINING.

11 Q NO SPECIFIC TRAINING AS AN INVESTIGATOR?

12 A ON THE JOB TRAINING.

13 Q AND IN FACT ON THIS DAY YOU WERE THE RESPONDING  
14 OFFICER, IS THAT RIGHT?

15 A YES, I RESPONDED TO THE CALL.

16 Q OKAY, AND WHEN YOU RESPOND YOUR JOB IS TO GET  
17 INFORMATION, IS THAT RIGHT?

18 A YES, MA'AM.

19 Q AND YOU JUST TESTIFIED TO MS. COOPER THAT IS WHAT YOU  
20 DID?

21 A YES.

22 Q THE DESCRIPTION AND ALL OF THAT, RIGHT?

23 A CORRECT.

24 Q AND THEN ANOTHER BIG PART OF YOUR JOB IS TO PUT ALL  
25 OF THAT INFORMATION INTO A REPORT, RIGHT, YOUR REPORT

1 NEEDS TO BE ACCURATE?

2 A CORRECT.

3 Q YOUR REPORTS NEED TO BE THOROUGH?

4 A CORRECT.

5 Q BECAUSE THIS CASE HAPPENED IN 2004, RIGHT?

6 A CORRECT.

7 Q SO, YOU NEED TO GET A REPORT SO YOU CAN RELY ON THEM  
8 WHEN YOU COME TO COURT?

9 A RIGHT.

10 Q IT HAS BEEN A YEAR AND ELEVEN MONTHS SINCE THIS  
11 HAPPENED?

12 A CORRECT.

13 Q AND YOU RESPOND TO LOTS OF CRIMES IN BETWEEN APRIL  
14 AND--

15 A YES, MA'AM.

16 Q SO, YOU KNOW YOUR REPORTS NEED TO BE ACCURATE,  
17 THOROUGH AND COMPLETE. NOW, YOU DID TESTIFY HERE THAT,  
18 WELL LET ME ASK YOU THIS. DO YOU HAVE A COPY OF YOUR  
19 SUPPLEMENTAL REPORTS WITH YOU?

20 A YES, I DO.

21 Q OKAY. I HAVE ONE WITH YOUR NAME ON IT, I DON'T KNOW  
22 IF THIS IS FAMILIAR TO YOU. IS THAT THE ONLY REPORT THAT  
23 YOU SAY YOU DID?

24 A CORRECT, THIS IS TYPED UP BY SERGEANT MCCOLMAN.

25 Q BUT YOUR NAME IS ON THE BOTTOM, CORRECT?

1 A THE REASON MY NAME IS BECAUSE I HAD SOMETHING TO DO  
2 WITH THAT, IN OTHER WORDS, I GUESS, I WAS WITNESS TO A  
3 PART OF THINGS THAT HE IS SAYING.

4 Q OKAY. SO, WELL, LET'S GO TO YOUR SUPPLEMENTAL REPORT  
5 THAT YOU HAVE THEN.

6 A OKAY.

7 Q DO YOU SEE ANYTHING IN THERE ABOUT ADVISING MR.  
8 HAYWARD OF HIS MIRANDA RIGHTS?

9 A NO, MA'AM.

10 Q DO YOU SEE ANYTHING IN THERE ABOUT FINDING ANY  
11 MARIJUANA ON HIM?

12 A NO.

13 Q OKAY. NOW, I AM GOING TO ASK YOU TO LOOK AT THIS,  
14 THAT HAS YOUR NAME ON IT THAT YOU JUST SAID, I WANT YOU TO  
15 LOOK AT THIS REPORT THAT YOU SAID THAT YOU WOULD KNOW  
16 SOMETHING ABOUT IT, IT HAS YOUR NAME ON IT. AND I WANT  
17 YOU TO FIND ON THERE WHERE YOU SAY YOU ADVISED HIM OF HIS  
18 MIRANDA RIGHTS.

19 A WHAT IS YOUR QUESTION?

20 Q IN THAT REPORT IS THERE ANYWHERE SPECIFICALLY STATED  
21 THAT MR. HAYWARD WAS READ HIS MIRANDA RIGHTS?

22 A NO, MA'AM.

23 Q IT SAYS THEY WERE ATTEMPTING TO HANDCUFF THE  
24 INDIVIDUAL, THEY HANDCUFFED HIM, STARTED THE PAT-DOWN AND  
25 YOU FOUND THE GUN, ISN'T THAT RIGHT?

1 A CORRECT.

2 Q NO MIRANDA RIGHTS MENTIONED IN THERE?

3 A THIS IS SERGEANT MCCOLMAN'S REPORT.

4 Q WITH YOUR NAME ON IT THAT YOU JUST SAID THAT YOU KNEW  
5 SOMETHING ABOUT IT. ISN'T THAT RIGHT?

6 A I SAID THAT IS PROBABLY WHY HE PUT MY NAME ON IT  
7 BECAUSE WE DID THAT PORTION OF THIS INCIDENT, LIKE YOU  
8 SAID IT WAS TWO HOURS LATER. HE PUT MY NAME ON IT BECAUSE  
9 I WAS THERE AND HE TOOK CARE OF THAT PORTION. THERE IS NO  
10 REASON FOR THREE OR FOUR PEOPLE TO WRITE THE SAME THING.

11 Q BUT YOU JUST GOT ON THE STAND AND TESTIFIED ABOUT MR.  
12 HAYWARD SAYING, THEY ARE SETTING ME UP. THAT IS THE  
13 STATEMENT YOU ARE TALKING ABOUT?

14 A I WAS ASKED A QUESTION AND I RESPONDED.

15 Q OKAY. AND IN THIS REPORT WITH MCCOLMAN'S NAME ON IT?

16 A YES, MA'AM.

17 Q BUT IT IS NOT MENTIONED IN YOUR SUPPLEMENTAL REPORT?

18 A MY SUPPLEMENTAL REPORT EXPLAINS THE STANDARD  
19 OPERATING PROCEDURE. I MENTIONED THE HOMEOWNER AND GOT  
20 THE INFORMATION, THAT IS WHAT I PUT IN MY SUPPLEMENTAL  
21 WITH MY NAME ON IT. BECAUSE DEPUTY WAGNER WENT DOWN TO  
22 THE EMERGENCY ROOM. THAT WAS PREPARED BY SERGEANT  
23 MCCOLMAN WHEN WE WENT UP AND DID THIS TOGETHER. WE BOTH  
24 DID NOT DO IT, I DID NOT DO THE SUPPLEMENTAL REPORT.  
25 SERGEANT MCCOLMAN DID IT.

1 Q SO, SERGEANT MCCOLMAN WROTE IN HIS REPORT WHAT YA'LL  
2 DID TOGETHER, RIGHT, ISN'T THAT RIGHT. THAT IS WHAT YOU  
3 JUST SAID, RIGHT?

4 A CORRECT.

5 Q OKAY, GOOD. AND, AGAIN, YOUR SUPPLEMENTAL REPORT  
6 DOESN'T HAVE ANYTHING ABOUT MIRANDA AND DOESN'T HAVE  
7 ANYTHING ABOUT MARIJUANA BEING FOUND ON HIM, RIGHT?

8 A MY SUPPLEMENTAL REPORT HAS TO DO WITH THE SCENARIO AT  
9 THE INCIDENT LOCATION. I CAN'T MAKE IT ANY CLEARER.

10 Q SO, THE ONLY THING YOU EVER HEARD MR. HAYWARD SAY  
11 WHEN YOU WERE AT THE SCENE WHEN HE WAS BEING ARRESTED WHEN  
12 YOU WERE WITH MR. MCCOLMAN, INVESTIGATOR MCCOLMAN, OFFICER  
13 MCCOLMAN.

14 A SERGEANT MCCOLMAN.

15 Q SERGEANT MCCOLMAN, SO THE ONLY THING YOU WERE SAYING  
16 THERE IS THAT MR. HAYWARD SAID, THEY ARE SETTING ME UP,  
17 RIGHT?

18 A THAT IS NOT THE ONLY THING THAT WAS SAID.

19 Q THAT IS THE ONLY STATEMENT THAT YOU HEARD MR. HAYWARD  
20 SAY IS THAT THEY WERE SETTING ME UP, RIGHT?

21 A RIGHT, THAT IS WHAT I TESTIFIED TO EARLIER.

22 Q I HAVE NO FURTHER QUESTIONS.

23 THE COURT: REDIRECT?

24 REDIRECT EXAMINATION

25 BY MS. COOPER:

1 Q I AM GOING TO SHOW YOU TWO REPORTS. DO YOU RECOGNIZE  
2 THOSE REPORTS?

3 A YES, MA'AM.

4 Q WHAT REPORT IS YOUR REPORT?

5 A THIS ONE HERE.

6 Q AND THAT REPORT REFLECTS WHAT PART OF YOUR  
7 INVOLVEMENT IN THE CASE?

8 A THE INCIDENT SCENE ON [REDACTED]

9 Q AND THAT IS THE EXTENT OF HOW YOU DOCUMENTED IN  
10 WRITING YOUR INVOLVEMENT IN THIS CASE, IS THAT CORRECT?

11 A CORRECT.

12 Q YOU DID NOT WRITE DOWN THAT YOU MIRANDIZED HIM BY  
13 READING YOUR CARD, DID YOU?

14 A NO, MA'AM.

15 Q DO YOU HAVE A RECOLLECTION, INDEPENDENT RECOLLECTION  
16 OF THE FACT OR YOUR INVOLVEMENT IN THIS CASE, DO YOU  
17 REMEMBER THIS CASE FROM YOUR OWN PERSONAL RECOLLECTION?

18 A YES, MA'AM.

19 Q AND COULD YOU DESCRIBE TO JUDGE JOHNSON, IS THIS TYPE  
20 OF CRIME THAT YOU WERE ASSISTING ON APRIL 13TH OF 2004,  
21 DOES THAT HAPPEN OFTEN IN THIS AREA OF RICHLAND COUNTY?

22 A NO, MA'AM. IT HAS SOME MAJOR CRIMES BUT IT IS VERY  
23 SPORADIC AS TO OTHER AREAS OF A HIGHER CRIME NATURE. WE  
24 HAVE A BIG AREA WHERE THERE TENDS TO BE LESS VIOLENT  
25 CRIME. THAT COMBINED WITH MY PAST EXPERIENCE WITH THIS

1 SAME KIND OF SITUATION, A HOMICIDE OR WHATEVER WHERE  
2 EXCITED UTTERANCE AND STUFF. BACK A FEW YEARS AGO I HAD  
3 MADE A HABIT OF CARRYING THAT CARD WITH ME.

4 Q AND SO YOU DO THIS ANY TIME YOU ENCOUNTER A SUSPECT,  
5 YOUR ROUTINE IS TO PULL OUT THE CARD AND READ THEM THEIR  
6 RIGHTS, IS THAT YOUR TESTIMONY?

7 A OF COURSE, NOT USING A TRAFFIC SIGNAL OR SOMETHING  
8 LIKE THAT. ANYTHING MAJOR, SIGNIFICANT, THAT IS A HABIT  
9 THAT I HAVE GOTTEN INTO BASED ON MY EXPERIENCE.

10 Q AND WOULD YOU CATEGORIZE THIS CASE TO BE A MAJOR OR  
11 SERIOUS GOOD ENOUGH FOR YOU TO PULL OUT YOUR CARD AND READ  
12 THE RIGHTS TO THE DEFENDANT?

13 A YES, MA'AM.

14 Q I HAVE NOTHING FURTHER.

15 THE COURT: RECROSS?

16 MS. VAN GINHOVEN: VERY BRIEFLY.

17 RECROSS-EXAMINATION

18 BY MS. VAN GINHOVEN:

19 Q THIS INCIDENT HAPPENED APRIL 15TH OF 2004?

20 A YES, MA'AM.

21 Q NO WHERE IN YOUR REPORT DO YOU MENTION ANYTHING ABOUT  
22 TAKING A CARD OUT OF YOUR POCKET AND READING THE MIRANDA  
23 RIGHTS THAT WERE ON THAT CARD. IS THAT CORRECT, NO WHERE  
24 IN THIS REPORT?

25 A NO WHERE IN MY WRITTEN REPORT, CORRECT.

SW 2 cap 7-1  
RMS

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Q NOTHING FURTHER.

THE COURT: ALL RIGHT, YOU MAY STEP DOWN.

MR. JOPHLIN: THE STATE CALLS ERIC BARNES.

ERIC BARNES, AFTER BEING DULY SWORN, TESTIFIED  
AS FOLLOWS:

DIRECT EXAMINATION

BY MR. JOPHLIN:

Q MR. BARNES, WHERE ARE YOU EMPLOYED?

A RICHLAND COUNTY SHERIFFS OFFICE.

Q AND HOW LONG HAVE YOU BEEN EMPLOYED THERE?

A I WAS AT THE SHERIFFS OFFICE IN '89.

Q AND WHAT IS YOUR CURRENT POSITION?

A I AM AN INVESTIGATOR IN MAJOR CRIME FIELDS.

Q AND IN APRIL OF 2004 WAS THAT YOUR POSITION THEN,  
WHAT WAS YOUR POSITION IN APRIL OF 2004?

A THAT WAS MY POSITION THEN.

Q DID YOU HAVE A CHANCE TO RESPOND TO AN INCIDENT THAT  
OCCURRED AT [REDACTED] ON APRIL 13TH OF 2004?

A I DID.

Q AND WHERE DID YOU RESPOND TO INITIALLY?

A INITIALLY I RESPONDED TO THE HOSPITAL TO THE VICTIM  
AND TO DEPUTY WAGNER.

Q AND DEPUTY WAGNER HAD ALREADY MADE CONTACT WITH THE  
VICTIM PRIOR TO YOUR GETTING THERE?

A THAT IS CORRECT, FROM THERE I WENT OVER TO THE

1 INCIDENT LOCATION.

2 Q WHILE AT THE HOSPITAL WERE YOU ABLE TO SPEAK TO THE  
3 VICTIM?

4 A I ATTEMPTED TO, I WAS USING HER HUSBAND AS AN  
5 INTERPRETER BECAUSE SHE SPOKE SPANISH AND I DID NOT SPEAK,  
6 HER ENGLISH WAS VERY, VERY ROUGH.

7 Q AND AS A RESULT OF YOU SPEAKING WITH HER THROUGH HER  
8 HUSBAND WERE YOU ABLE TO DEVELOPE ANY KIND OF SUSPECT IN  
9 THIS CASE OF WHO ATTACKED HER?

10 A THE DESCRIPTION I GOT WAS A BLACK MALE, ABOUT 5'8",  
11 23 YEARS OLD ABOUT, SLIM BUILD, NO MUSTACHE, SHE DESCRIBED  
12 A LONG-SLEEVED SHIRT, DARK IN COLOR, BLUE JEANS, TENNIS  
13 SHOES AND A DARK BLUE BACKPACK AND DESCRIBED A PISTOL THAT  
14 WAS STOLEN DURING THE COMMISSION OF THE CRIME OR STATED  
15 THERE WAS A PISTOL STOLEN.

16 Q AND AFTER RECEIVING THAT DESCRIPTION WHERE DID YOU GO  
17 NEXT?

18 A I WENT TO THE INCIDENT LOCATION ON TAM-O-SHANTER.

19 Q OKAY. WHILE THERE DID YOU SEE OR THEREAFTER DID YOU  
20 RECEIVE ANY OTHER INFORMATION REGARDING ANY WITNESSES WHO  
21 MAY OF COME INTO CONTACT WITH THAT SUSPECT?

22 A I DID. THE LINE UNITS WERE CUTTING THE AREA, I  
23 BELIEVE WHEN MR. COWART CAME ACROSS THERE. MR. COWART WAS  
24 LANDSCAPING THE AREA WHO WOULD CLAIM TO HAVE PICKED UP A  
25 BLACK MALE SUBJECT FITTING THIS SAME GENERAL DESCRIPTION.

1 RUNNING FROM THE AREA, THE INCIDENT LOCATION. HE PICKED  
2 HIM UP ON LONGTOWN ROAD AND TOOK HIM DOWN TO A SUBDIVISION  
3 JUST DOWN FROM TAM-O-SHANTER.

4 Q ALL RIGHT. AND WERE YOU ABLE, DID MR. COWART GIVE  
5 YOU A PHYSICAL DESCRIPTION OF WHOM HE ENCOUNTERED?

6 A HE DID.

7 Q WOULD YOU PLEASE DETAIL THAT DESCRIPTION FOR US?

8 A IN HIS DESCRIPTION WAS A BLACK MALE, HE DESCRIBE HIM  
9 AS 6', SLENDER BUILT, HE HAD A DARK COLORED BACKPACK ON AS  
10 WELL AND BAGGY BLUE JEANS, HE STATES THE BLUE JEANS WERE  
11 UNZIPPED BUT THE TOP BUTTON WAS BUTTONED. AND THAT IS  
12 ABOUT IT, THAT IS ABOUT THE GENERAL DESCRIPTION THAT HE  
13 GAVE.

14 Q OKAY. AND DID MR. COWART SAY ANYTHING ABOUT  
15 OBSERVING ANY TYPE OF CIGARETTES ON THE INDIVIDUAL?

16 A HE OBSERVED THAT THE SUSPECT HAD WHAT APPEARED TO BE  
17 A HALF OF PACK OF CIGARETTES IN A GREEN PACKAGE, NEWPORT  
18 OR ONE OF THOSE BRANDS.

19 Q AND AFTER YOU HAD FINISHED SPEAKING WITH MR. COWART  
20 THE SHERIFFS DEPARTMENT ENCOMPASSED THE AREA?

21 A RIGHT, WE HAD QUITE A NUMBER OF LINE UNITS IN THE  
22 AREA.

23 Q ABOUT WHAT TIME WAS THIS?

24 A IT WAS AFTER 5:00 O'CLOCK, BEFORE 7:00.

25 Q SO, IT WAS A GOOD HOUR OR SO.

1 A YES, WE WERE THERE QUITE A BIT. (reading)

2 Q OKAY. AND AS A RESULT OF THE INVESTIGATION YOU HAD  
3 FOUND OUT THAT THE SUSPECT HAD BEEN TRYING TO SELL  
4 CLEANING SUPPLIES IN THE NEIGHBORHOOD?

5 A WE FELT CONFIDENT BASED ON OUR CONVERSATIONS WITH THE  
6 LADY OR THE OWNER OF THE BUSINESS THAT THEY WERE SELLING  
7 DOOR TO DOOR. IT WAS QUITE POSSIBLE THAT THE SUSPECT WAS  
8 FROM HER VAN. SHE HAD TWO PEOPLE AND ONE OF THOSE WAS HER  
9 NEPHEW, HER DESCRIPTION OF THE NEPHEW DID NOT FIT THE  
10 DESCRIPTION THAT WE HAD BEEN GIVEN BUT THE OTHER SUBJECT,  
11 JERENE, DID FIT THAT DESCRIPTION. AND SHE JUST RECEIVED A  
12 CALL FROM HIM TO GO, TO COME PICK HIM UP IN AN AREA THAT  
13 HE WAS NOT IN ORIGINALLY.

14 Q FROM THERE WAS IT YOUR DIRECTION THAT OTHER OFFICERS  
15 WENT WITH HER AND OTHER OFFICERS WENT TO THE LOCATION  
16 WHERE THE DEFENDANT WAS, OR THE SUSPECT WAS AT?

17 A THAT IS CORRECT, UNDER MY DIRECTION I SENT DEPUTY  
18 ROE, LIEUTENANT TYLER AND DEPUTY WAGNER IN THE VAN WITH  
19 THE LADY OR THE OWNER AND THEY WENT TO THE NEIGHBORHOOD TO  
20 PICK JERENE UP.

21 Q SO, YOU DID NOT ACTUALLY GO WITH HER?

22 A NO, I STAYED WITH THE PEOPLE OUT ON THE SCENE, THE  
23 OTHER WORKERS TRYING TO GAIN SOME INFORMATION, WHO THEY  
24 WERE, WHO JERENE WAS, WHAT WAS HIS RELATIONSHIP TO THE  
25 COMPANY, THOSE TYPES OF THINGS.

1 Q AND WHEN IS THE NEXT TIME, WHEN DID YOU COME INTO  
2 CONTACT WITH THE SUSPECT?

3 A I RECEIVED A WORD THAT THEY HAD HIM DETAINED OFF OF  
4 AARON COURT BY HARD SCRABBLE ROAD. I RESPONDED TO THAT  
5 LOCATION AND THEN WALKED UP TO THAT POINT.

6 Q AND WHEN YOU ARRIVED WERE YOU INFORMED BY DEPUTY ROE  
7 THAT HE HAD ALREADY MIRANDIZED THE DEFENDANT?

8 A YES, SIR. THAT IS MY RECOLLECTION.

9 Q AND AT THAT TIME DID THE DEFENDANT MAKE ANY  
10 STATEMENTS. LET ME BACK UP A LITTLE BIT, AS YOU  
11 APPROACHED THE DEFENDANT DID HE MAKE ANY ALLEGATIONS OR  
12 ANY STATEMENTS AT FIRST?

13 A HE DID. I INTRODUCED MYSELF TO HIM. HE DENIED BEING  
14 INVOLVED IN ANYTHING. HE YELLED OUT FOR HIS BOSS LADY, I  
15 REMEMBER HIM BEING AGITATED, I REMEMBER HIM GETTING UPSET.

16 Q DID HE SAY ANYTHING ABOUT THE GUN THAT WAS FOUND ON  
17 HIM?

18 A HE SAID HE GOT IT OFF OF A GUY ON THE STREET. AT  
19 THAT POINT I PULLED HIM OUT OF THE CAR, I NOTICED THE  
20 SHOES, THEY LOOKED TO BE SOME SIMILAR TO THE ONES THAT I  
21 OBSERVED AT THE CRIME SCENE. I OBSERVED WHAT APPEARED TO  
22 BE BLOOD ON THE SHOES, I MADE A COMMENT SAYING HE WAS  
23 GOING TO HAVE A HARD TIME, HE IS GOING TO HAVE A HARD  
24 TIME, AND I REFER TO MY NOTES RIGHT HERE. HARD TIME  
25 EXPLAINING HOW THE LADY'S BLOOD WAS ON THE SHOE IF HE

1 WASN'T INVOLVED AT THAT POINT. WHEN I HAD MADE THAT  
2 COMMENT HE STATED THAT HE WAS IN THE HOUSE BUT IT WASN'T  
3 HIM THAT HIT THE LADY, IT WAS THE OTHER GUY.

4 Q DID HE SAY ANYTHING ELSE?

*showup  
i.d.*

5 A AT THAT PARTICULAR TIME, NO, HE CONTINUED TO SAY HE  
6 WAS INNOCENT AND THAT SORT OF THINGS. WE HAD MR. COWART  
7 COME UP AND IDENTIFY HIM ON A SHOWUP LINEUP. MR. COWART  
8 DIDN'T HAVE ANY HESITANCY THERE IN PICKING HIM. HE DID  
9 HOWEVER SAY THAT THERE WAS A, HE DESCRIBED THE SHIRT THAT  
10 JERENE DID NOT HAVE ON AT THE TIME. THE BACKPACK THAT WAS  
11 WITH MR. HAYWARD WE PULLED OUT A SHIRT AND HE POINTED OUT  
12 THAT THAT WAS THE SHIRT THAT HE HAD ON PRIOR TO THIS.

13 Q AT THE TIME OF THE ARREST WHAT WAS HE WEARING?

14 A I DON'T RECALL.

15 Q OKAY. BUT HE WAS NOT WEARING A SWEATER?

16 A HE WAS NOT WEARING THE SWEATER.

17 Q OKAY. AND DID MR. COWART IDENTIFY THAT SWEATER?

18 A HE DID.

19 Q AT THIS POINT YA'LL HEADED BACK TO THE SHERIFFS  
20 DEPARTMENT?

21 A WE DID.

22 Q AND YOU CONTINUED YOUR DISCUSSIONS WITH THE  
23 DEFENDANT?

24 A WE DID OR I DID. HE IS CONTINUING TO BE AGITATED.  
25 HE IS, I AM TRYING TO DEVELOPE SOME SORT OF REPERTOIRE

1 WITH HIM. I DID A BACKGROUND CHECK ON HIM, THERE IS A  
2 GREAT DEAL ON HIS BACKGROUND.

3 Q LET ME BACK UP, BEFORE YOU STARTED TALKING TO HIM DID  
4 YOU MIRANDIZE HIM?

5 A RIGHT, I VERBALLY MIRANDIZED HIM, BEFORE I STARTED  
6 TALKING TO HIM I VERBALLY MIRANDIZED HIM OF HIS RIGHTS  
7 AGAIN. AND I DID THAT OFF OF MEMORY AT THAT PARTICULAR  
8 POINT. AND I SAID YOU HAVE A RIGHT TO REMAIN SILENT.  
9 ANYTHING YOU SAY CAN AND WILL BE USED AGAINST YOU. YOU  
10 HAVE THE RIGHT TO TALK TO A LAWYER AND HAVE THEM WITH YOU  
11 DURING QUESTIONING. IF YOU CANNOT AFFORD A LAWYER ONE  
12 WILL BE APPOINTED FOR YOU FOR QUESTIONING IF YOU WISH. IF  
13 YOU DECIDE TO ANSWER QUESTIONS NOW WITHOUT A LAWYER  
14 PRESENT YOU STILL HAVE THE RIGHT TO STOP ANSWERING AT ANY  
15 TIME. YOU ALSO HAVE THE RIGHT TO STOP ANSWERING AT ANY  
16 TIME UNTIL YOU TALK TO A LAWYER. AND HE MADE  
17 ACKNOWLEDGEMENT THAT HE UNDERSTOOD HIS RIGHTS.

18 Q SO, HE ACKNOWLEDGED THAT HE UNDERSTOOD WHAT YOU TOLD  
19 HIM?

20 A YES.

21 Q AND JUMPING BACK TO WHERE YOU LEFT OFF. YOU MADE A  
22 BACKGROUND TO TRY TO BUILD A REPERTOIRE WITH HIM?

23 A I DID.

24 Q CAN YOU PLEASE READ THE DESCRIPTION THAT YOU WROTE ON  
25 YOUR BACKGROUND INFORMATION SHEET?

1 A JERENE MARKWELL HAYWARD, DATE OF BIRTH, 1/9/80.  
2 BLACK MALE, WEIGHT 165, HEIGHT 5'9", BROWN EYES, BLACK  
3 HAIR, FACIAL HAIR ON THE CHIN.

4 Q AND DOES HE HAVE ANY TYPE OF DISTINGUISHING MARK  
5 ABOUT HIS HEAD OR FACE?

6 A HE HAD TATTOOS ON THE RIGHT NECK AND LEFT NECK.

7 Q OKAY. THANK YOU. AND YA'LL WERE CONTINUING SPEAKING  
8 AND DURING THIS TIME WAS HE BEING COOPERATIVE?

9 A I GUESS THE COOPERATION WOULD HAVE TO DO, WAS HE  
10 SPEAKING ABOUT THE CASE, WHAT HE WAS THERE FOR. I WOULD  
11 HAVE TO SAY FROM THAT STANDPOINT, HE WAS TALKING ABOUT  
12 EVERYTHING ELSE OTHER THAN THE INCIDENT THAT WE WERE  
13 TALKING ABOUT.

14 Q HE WAS SAYING THINGS LIKE WHERE HE LIVES?

15 A HE WENT INTO A GREAT DETAIL ABOUT SURVIVING ON THE  
16 STREETS OF DETROIT. BUT WHEN I WOULD TRY TO STEER THE  
17 CONVERSATION BACK TO THE CRIME AT HAND OR THE INCIDENT AT  
18 HAND HE WOULD BECOME AGITATED AND BECOME UPSET, IT THEN  
19 BECAME OBVIOUS THAT HE WASN'T GOING TO TALK ABOUT THIS.

20 Q DID YOU FINALLY CALL--

21 A I DID, I ACTUALLY HAD AN ADVICE OF RIGHTS FORM THAT I  
22 WAS READY TO FILL OUT AND GO THROUGH IT FROM A WRITTEN  
23 STANDPOINT. BUT IT BECAME OBVIOUS IT WASN'T GOING TO GO  
24 ANYWHERE SO I JUST STOPPED THAT AND WENT AHEAD WITH THE  
25 PAPERWORK FOR THE JAIL.

1 Q YOU DID START ONE BUT IT IS NOT MARKED AND CHECKED  
2 OFF, IT IS NOT SIGNED?

3 A USUALLY WHEN I AM DOING THAT I WILL FEEL OUT THE TOP  
4 OF IT AND HAVE THEM READ THROUGH IT AND THEN I WILL CHECK  
5 OFF EACH LINE. YOU HAVE THE RIGHT TO REMAIN SILENT, I  
6 WILL CHECK THAT OFF AND EACH LINE. WE DIDN'T GO THROUGH  
7 THAT.

8 Q IN YOUR OPINION WAS HE GOING TO GIVE YOU A WRITTEN  
9 STATEMENT OR ORAL STATEMENT?

10 A NO, IN MY OPINION, NO.

11 Q AND UPON THIS WAS HE CHARGED WITH ANY OFFENSES?

12 A YES, HE WAS CHARGED WITH BURGLARY FIRST.

13 Q DID HE SAY ANYTHING TO YOU AFTER YOU INFORMED HIM OF  
14 WHAT HE WAS CHARGED WITH?

15 A YES, HE DID. HE SAID DO YOU HAVE EVERYTHING THAT YOU  
16 NEED. YOU HAVE GOT MY SHOES AND CLOTHES AND EVERYTHING.  
17 AND THEN AS HE WAS GETTING INTO THE, RIGHT BEFORE HE GOT  
18 INTO THE PATTY WAGON HE SAYS SOMETHING TO THE EFFECT OF  
19 THAT WE DIDN'T NEED ANYTHING ELSE TO DO OUR JOB.

20 Q AND YOUR ARREST WARRANT WAS FILLED OUT?

21 A YES, SIR.

22 Q BASED ON THOSE CHARGES. WHERE DID THAT INFORMATION  
23 COME FROM. I AM SORRY, REGARDING THE PHYSICAL DESCRIPTION  
24 IN YOUR ARREST REPORT?

25 A THAT INFORMATION CAME FROM MY OBSERVATIONS.

1 Q AND FINALLY, DID YOU HAVE AN OPPORTUNITY TO COME INTO  
2 CONTACT WITH THE VICTIM AT A LATER DATE?

3 A YES, I DID, AFTER THE BOND HEARING.

4 Q WHAT DATE WERE YOU ABLE TO TALK TO HIM?

5 A ACCORDING TO MY NOTES IT WAS APRIL 22ND OF 2004.

6 Q AND WERE YOU ABLE TO AGAIN RECEIVE A PHYSICAL  
7 DESCRIPTION FROM THE VICTIM?

8 A I DID.

9 Q AND WHAT WAS THAT PHYSICAL DESCRIPTION SHE GAVE YOU?

10 A SHE DESCRIBED A BLACK MALE, 5'8", SKINNY.

11 Q AND DID YOU HAVE AN OPPORTUNITY TO SHOW HER A PHOTO  
12 LINEUP THAT DAY?

13 A I DID.

14 Q AND I WILL REFER TO WHAT HAS BEEN PREMARKED AS  
15 STATE'S EXHIBIT 7 FOR IDENTIFICATION. IS THIS YOUR  
16 WRITING?

17 A IT IS, SIR.

18 Q WOULD YOU PLEASE GO THROUGH THE FORM, WHAT IS THE  
19 DATE ON THAT FORM?

20 A APRIL 22ND, 2004.

21 Q AND WOULD, BEFORE THE PHOTO LINEUP WAS SHOWN, WAS THE  
22 VICTIM, WAS ALL OF THAT WRITING ON THERE, DID THE VICTIM  
23 SEE THAT WHERE SHE WAS SHOWN THE PHOTOS?

24 A NO.

25 Q AND I WILL SHOW YOU WHAT HAS BEEN PREMARKED AS

1 STATE'S EXHIBIT 6 FOR IDENTIFICATION PURPOSES. WHAT IS  
2 THIS?

3 A THIS WAS GENERATED TO SHOW TO HER, WHICH WE PLACE THE  
4 SUSPECTS IN THE COMPUTER AND THE COMPUTER PUTS IT RANDOMLY  
5 IN ORDER AND PUTS OUT A PHOTO LINEUP BASED ON THAT.

6 Q AND THERE ARE SIX INDIVIDUALS?

7 A SIX INDIVIDUALS, YES.

8 Q I SEE SOME NUMBERS ON HERE, WERE THESE NUMBERS THERE  
9 WHEN THEY WERE GIVEN TO HER?

10 A I WILL WALK YOU BRIEFLY ON HOW I DO THIS.

11 Q OKAY.

12 A THE NUMBERS ARE NOT ON THERE ORIGINALLY WHEN I SHOW  
13 THE PHOTO LINEUP. I DON'T DO THAT. BUT THE NUMBERS  
14 AREN'T ON THERE, DURING THE COURSE OF THIS, SHE ACTUALLY  
15 PICKS THEM THREE TIMES. THE FIRST TIME I SHOW IT THERE IS  
16 NO NUMBERS AND I PUT IT DOWN AND I SAID, DO YOU SEE, I  
17 WILL HAVE IT LIKE THIS. AND I WILL SAY, LET ME SHOW YOU  
18 SOME PHOTO LINEUPS, THE PERSON MAY BE IN THERE AND THEY  
19 MAY NOT BE IN THERE. JUST LOOK CAREFULLY AND SEE IF YOU  
20 CAN PICK ANYONE OUT THAT YOU RECOGNIZE. AND THEN I WILL  
21 TURN IT OVER AND I WILL TURN AWAY. SHE IMMEDIATELY GOES  
22 TO NUMBER SIX. AND THEN I WILL NUMBER THEM, 1, 2, 3, 4, 5  
23 AND 6. AND I WILL STATE, AND I DID SAY, SO YOU ARE  
24 TELLING ME YOU ARE PICKING OUT NUMBER 6 AS BEING THE  
25 PERSON INVOLVED IN THIS INCIDENT. AND SHE WILL SAY, YES.

1 AND THEN WE WILL GO TO OUR PHOTO LINEUP AFFIDAVIT AND SHE  
2 AGREES TO THAT AGAIN. AND SHE SAID IT AGAIN. SO,  
3 TECHNICALLY SHE PICKS HIM OUT THREE TIMES IN THE COURSE OF  
4 THIS.

5 Q AND HOW IS IT MEMORIALIZED ON THIS PHOTO LINEUP THAT  
6 SHE PICKED NUMBER 6.

7 A SHE PUT HER INITIALS BY NUMBER 6.

8 Q OKAY. AND WE HAVE ALREADY ESTABLISHED THE VICTIM,  
9 MS. ANTONIO DOES NOT SPEAK ENGLISH?

10 A CORRECT.

11 Q AND THIS FORM IS IN ENGLISH?

12 A CORRECT.

13 Q DOES SHE HAVE ANYBODY THERE WITH HER?

14 A WE HAD A SECRETARY THAT ACTUALLY TALKED SPANISH AT  
15 THE SHERIFFS OFFICE, WONDERFUL LADY, SHE WAS ABLE TO SPEAK  
16 AND BE OUR GO BETWEEN ON THAT PARTICULAR CONVERSATION.

17 Q OKAY. AND DID SHE HELP MS. ANTONIO ON THIS FORM?

18 A THAT IS CORRECT.

19 Q AND DID YOU SEE MS. ANTONIO SIGN HER NAME AT THE  
20 BOTTOM?

21 A I DID.

22 Q AND DID SHE EXPLAIN ON THIS DATE INVESTIGATOR BARNES  
23 SHOWED ME SIX PICTURES AT THE SHERIFFS DEPARTMENT, I  
24 PICKED OUT NUMBER 6 WHICH IS THE PERSON, MALE, BLACK THAT  
25 COMMITTED THE CRIMES AGAINST HER?

1 A THAT IS CORRECT.

2 Q AND SHE EXPLAINED ALL OF THAT AND THEN SHE SIGNED IN  
3 YOUR PRESENCE?

4 A THAT IS CORRECT.

5 MR. JOPHLIN: I BEG THE COURT'S INDULGENCE.

6 Q AND I WANT TO GO BACK BRIEFLY WHEN HE WAS ARRESTED  
7 AND PLACED INTO THE PATROL CAR.

8 A YES, SIR.

9 Q DO YOU REMEMBER AT ALL WHAT HE WAS WEARING, WHAT HE  
10 HAD IN HIS POSSESSION AT THAT TIME?

11 A I REMEMBER HE DID HAVE THE BAGGY BLUE JEANS. I DON'T  
12 RECALL THE SHIRT HE HAD ON. HE ALSO HAD A BACKPACK AND I  
13 REMEMBER THAT THE GUN THAT HAD FALLEN OUT ACCORDING TO THE  
14 DEPUTIES WAS ACTUALLY IN A PLASTIC BAG ALONG WITH TWO  
15 LOADED CLIPS.

16 Q AND WHEN YA'LL WENT BACK TO THE STATION BESIDES  
17 OFFERING HIM A CIGARETTE BREAK, DID YOU MAKE ANY PROMISES  
18 TO GET HIM TO SAY ANYTHING, ANY OF THE THINGS HE TOLD YOU?

19 A ABSOLUTELY NOT.

20 Q WAS HE COERCED IN ANY WAY?

21 A NO.

22 Q ANY THREATS MADE?

23 A NO.

24 Q WAS ANYTHING DONE TO MAKE HIM GIVE THE INFORMATION  
25 THAT HE DID?

1 A NO.

2 Q NOTHING FURTHER.

3 THE COURT: ~~CROSS-EXAMINATION.~~

4 CROSS-EXAMINATION

5 BY MS. VAN GINHOVEN:

6 Q GOOD AFTERNOON, INVESTIGATOR BARNES.

7 A GOOD AFTERNOON.

8 Q LET'S START WITH THE SCENE ON APRIL 13TH OF 2004.

9 WELL, FIRST OF ALL, OF COURSE YOU HAVE BEEN TRAINED AS AN  
10 INVESTIGATOR, IS THAT RIGHT?

11 A YES, MA'AM.

12 Q HOW LONG DID YOU SAY YOU WERE WITH THE SHERIFFS  
13 DEPARTMENT?

14 A I HAVE BEEN WITH THE SHERIFFS OFFICE SINCE 1989 SO I  
15 GUESS THAT IS ABOUT 17 YEARS.

16 Q AND YOU KNOW HOW IMPORTANT IT IS TO PUT THINGS IN  
17 YOUR REPORT AS WELL, ISN'T THAT RIGHT?

18 A YES, MA'AM.

19 Q OF COURSE, SINCE THIS HAPPENED OVER A YEAR AGO,  
20 ALMOST TWO YEARS AGO NOW. NOW, IN YOUR INVESTIGATIVE  
21 REPORT YOU SAY JERENE WAS SPOTTED AND HE ULTIMATELY GOT TO  
22 THE VAN AND HE WAS DETAINED, IT IS ON PAGE 2. THAT DEPUTY  
23 ROE AND SERGEANT MCCOLMAN DID A TERRY FRISK ON THE SUBJECT  
24 AND FOUND A RIGGER .45 CALIBER HANDGUN. THE FOUR CLIPS IN  
25 A BLUE PLASTIC BAG IN THE LEFT LEG OF SUSPECT'S JEANS.

1 OFFICER ARRIVED AND INTRODUCED MYSELF TO THE SUSPECT. SO,  
2 THAT IS ALL IN YOUR REPORT, RIGHT?

3 A YES, MA'AM.

4 Q NOW, AT NO TIME BEFORE THIS, DURING THE INVESTIGATIVE  
5 REPORT PAGE 1 OR THE REST OF THAT PAGE DO YOU MENTION ANY  
6 TYPE OF MIRANDA RIGHTS BEING READ?

7 A ARE YOU TALKING ABOUT LATER ON?

8 Q I AM TALKING ABOUT RIGHT, ON THE SCENE.

9 A NO, THERE IS NO MENTION OF THE MIRANDA RIGHTS AT THAT  
10 MOMENT.

11 Q RIGHT. AND YOU SAID THAT THE DEPUTIES ROE AND  
12 LIEUTENANT MCCOLMAN DID A TERRY FRISK, NO MENTION OF THE  
13 MIRANDA RIGHTS?

14 A THAT IS CORRECT.

15 Q THERE IS NO MENTION OF THE MARIJUANA BEING FOUND  
16 SUBJECT TO THIS TERRY FRISK?

17 A THAT IS CORRECT.

18 Q NOW, YOU ALSO PUT IN THIS REPORT THAT YOU OBSERVED  
19 THE SHOE TRACKS THAT HE HAD ON WERE THE SAME AS THOSE LEFT  
20 AT THE SCENE, IS THAT RIGHT?

21 A THAT IS MY INDICATION.

22 Q YOU TOOK HIS SHOES?

23 A I DID.

24 Q NOW, IN YOUR REPORT YOU SAY, I TOLD HIM HE WAS GOING  
25 TO HAVE A HARD TIME EXPLAINING HOW THE LADY'S BLOOD WAS ON

1 HIS SHOE IF HE WASN'T INVOLVED?

2 A THAT IS CORRECT.

3 Q LET ME ASK YOU, WHEN, THAT IS THE FIRST THING THAT I  
4 AM TALKING ABOUT. THAT IS THE ONE STATEMENT AT THE SCENE.

5 NOW, THEN LET'S GO TO THE HEADQUARTERS WHERE YOU TAKE  
6 ANOTHER STATEMENT FROM HIM.

7 A YES, MA'AM.

8 Q HERE YOU SAY YOU VERBALLY MIRANDIZED HIM?

9 A THAT IS CORRECT.

10 Q AND HE STARTED TALKING TO YOU AND AGAIN HE IS DENYING  
11 HIS INVOLVEMENT. YOU SAID YOU REMINDED HIM OF HIS  
12 STATEMENTS MADE AT THE SCENE BUT HE NOW DENIED THOSE AS  
13 WELL?

14 A THAT IS CORRECT.

15 Q YOU CONTINUE TO SAY THAT HE BOUGHT THE GUN FROM A GUY  
16 THIS AFTERNOON, RIGHT?

17 A I AM TRYING TO CATCH UP.

18 Q I AM ON PAGE 3.

19 A OKAY.

20 Q SAID HE WASN'T IN THE HOUSE, HE CONTINUED TO GET  
21 LOUDER AND IT WAS OBVIOUS HE WAS NOT GOING TO GIVE A  
22 STATEMENT OF ADMISSION AT THIS POINT.

23 A CORRECT.

24 Q AND THAT IS WHEN YOU PLACED HIM IN THE DETENTION  
25 CENTER?

1 A RIGHT.

2 Q AND THEN YOU CALLED THE TRANSPORT VAN?

3 A CORRECT.

4 Q AND WHEN YOU WERE GETTING READY TO PUT HIM IN THE  
5 TRANSPORT VAN THIS IS WHEN HE ASKED YOU ABOUT SMOKING AND  
6 YOU REMINDED THAT OUR AGREEMENT WAS THAT IF HE TOLD YOU  
7 THE TRUTH THAT WE WOULD ALLOW HIM TO SMOKE, BUT HE WASN'T  
8 BEING TRUTHFUL ABOUT EVEN THE BASIC FACTS, RIGHT?

9 A CORRECT.

10 Q NOW, ALSO DURING ALL OF THIS YOU HAD ALREADY TOLD MR.  
11 HAYWARD THAT HIS SHOE PRINTS MATCHED, THE BLOODY SHOE  
12 PRINT AT THE SCENE AND HIS SHOES MATCH?

13 A I DON'T RECALL TELLING HIM THAT, NO. I DON'T RECALL,  
14 A DEFENDANT MATCH BEING MADE AT THAT PARTICULAR TIME  
15 EITHER, BUT BASED ON MY EXPERIENCE IT LOOKED TO BE  
16 SIMILAR, IT LOOKED LIKE IT WAS GOING TO BE A MATCH.  
17 THINGS KIND OF FELL TOGETHER BUT I DON'T RECALL ACTUALLY  
18 TELLING HIM THAT.

19 Q OKAY. NOW, YOU SAID WHEN YOU GOT TO THE HEADQUARTERS  
20 THAT YOU DID VERBALLY MIRANDIZE HIM, IS THAT CORRECT?

21 A THAT IS CORRECT.

22 MS. VAN GINHOVEN: YOUR HONOR, CAN I MARK THIS AS A  
23 COURT EXHIBIT?

24 THE COURT: ALL RIGHT.

25

1 (WHEREUPON, COURTS EXHIBIT NO. 2 WAS MARKED FOR  
2 IDENTIFICATION ONLY.)

3 MS. VAN GINHOVEN: CAN I APPROACH THE OFFICER, YOUR  
4 HONOR.

5 THE COURT: YES, YOU MAY.

6 Q IS THIS THE STANDARD ADVICE OF RIGHTS FORM WHEN YOU  
7 GO OVER WITH PEOPLE WHEN THEY ARE GIVING A STATEMENT?

8 A THAT IS CORRECT.

9 Q AND YOU WOULD AGREE WITH ME ON THIS FORM YOU HAVE  
10 WRITTEN MR. HAYWARD'S NAME, THE PLACE, YOUR NAME, THE DATE  
11 AND THE TIME. IS THAT RIGHT?

12 A THAT IS CORRECT.

13 Q THERE ARE NO CHECKED OFF BOXES, AND THERE IS NO  
14 SIGNATURES AT ALL ON THIS FORM, IS THERE?

15 A ON THAT FORM, NO MA'AM. I WOULD LIKE TO EXPLAIN THE  
16 DIFFERENCES IN I THINK YOUR VERBIAGE. WHEN I SAID,  
17 STATEMENT IN REGARDS TO THIS WRITTEN ADVICE OF RIGHTS,  
18 WHEN I AM TALKING ABOUT A WRITTEN STATEMENT, A FORMAL  
19 STATEMENT. THE VERBAL STATEMENTS MADE WERE AFTER THE  
20 VERBAL MIRANDA.

21 Q SO, YOU ARE SAYING YOU NEVER GO OVER THAT FORM WITH  
22 ANYONE UNLESS THEY ARE GOING TO GIVE A CONFESSION, IS THAT  
23 WHAT YOU ARE SAYING?

24 A NO, UNLESS THEY ARE READY TO PUT IT INTO WRITING. I  
25 AM NOT GOING TO SAY NEVER EITHER. EACH INTERVIEW IS

1 DIFFERENT DEPENDING ON HOW THOSE INTERVIEWS FLOW.

2 Q I UNDERSTAND, INVESTIGATOR BARNES, I THINK I  
3 UNDERSTAND. BUT YOU HAD SPOKE WITH JERENE AT  
4 HEADQUARTERS?

5 A CORRECT.

6 Q HE HAD GIVEN YOU INFORMATION ABOUT HIS BACKGROUND, HE  
7 HAD GIVEN YOU INFORMATION ABOUT THE INCIDENT. AND YOU  
8 STATE IN YOUR NOTE THAT WHEN YOU REALIZED THERE WASN'T  
9 GOING TO BE AN ADMISSION YOU JUST PUT HIM BACK IN THE  
10 HOLDING CELL, RIGHT?

11 A YES, MA'AM.

12 Q I GUESS WHAT I AM SAYING IS, YOU COULD OF GONE OVER  
13 THOSE RIGHTS WITH HIM?

14 A I DID.

15 Q WHAT I AM SAYING IS YOU COULD OF GONE OVER THIS PIECE  
16 OF PAPER WITH HIM AND YOU COULD OF CHECKED OFF EVERY BOX  
17 AND YOU COULD OF HAD HIM SIGN IT AND YOU COULD OF SIGNED  
18 IT, RIGHT?

19 A I COULD HAVE.

20 Q AND IF HE DECIDED NOT TO PUT ANYTHING IN WRITING YOU  
21 WOULD STILL HAVE THAT SHEET OF PAPER?

22 A THAT IS CORRECT.

23 Q OKAY. BUT AFTER YOUR DISCUSSION WITH HIM YOU DECIDED  
24 THERE WASN'T GOING TO BE AN ADMISSION AND THAT YOU DIDN'T  
25 NEED TO TAKE THE STATEMENT?

1 A THAT IS MY PREROGATIVE AS AN INVESTIGATING OFFICER,  
2 THAT IS WHAT I DID.

3 Q OKAY. NOW, LET'S GET BACK TO THE ID INVOLVING MR.  
4 COWART. HOW DID MR. COWART GET TO THE SUBDIVISION WHERE  
5 JERENE WAS?

6 A I OR ANOTHER OFFICER CALLED HIM.

7 Q YOU DON'T REMEMBER?

8 A I DON'T RECALL IF IT WAS MYSELF OR ONE OF THE OTHER  
9 OFFICERS THAT I HANDED THE PHONE OR HANDED, I DON'T RECALL  
10 HOW WE GOT IN TOUCH WITH HIM BUT I KNOW WE CALLED HIM.

11 Q AND HE JUST SHOWED UP IN HIS OWN CAR?

12 A HE HAD HIS LANDSCAPE TRUCK WITH HIS TWO EMPLOYEES.

13 Q AND WHERE WAS JERENE WHEN HE SHOWED UP?

14 A STANDING BESIDE THE CAR.

15 Q STANDING BESIDE THE POLICE CAR?

16 A YES, MA'AM.

17 Q WAS HE HANDCUFFED?

18 A YES, MA'AM.

19 Q WHAT DID YOU TELL MR. COWART WHEN HE WAS COMING TO  
20 THE SCENE?

21 A AS I RECALL I TOLD HIM, WE NEEDED HIM TO COME OVER  
22 AND TAKE A LOOK AT SOMEBODY.

23 Q AND JUST PREVIOUSLY EARLIER ON THAT AFTERNOON YOU HAD  
24 BEEN ASKING ABOUT A DESCRIPTION FOR A SUSPECT INVOLVING  
25 THIS CRIME?

1 A YES, MA'AM.

2 Q AND THEN YOU TOLD HIM YOU NEEDED HIM TO COME LOOK AT  
3 SOMEBODY?

4 A CORRECT.

5 Q DID YOU HAVE THE WORKERS, WERE THE WORKERS WITH HIM?

6 A THEY WERE.

7 Q WERE THEY ALL LOOKING AT JERENE AT THE SAME TIME?

8 A THEY WERE.

9 Q SO, BASICALLY WHAT YOU HAVE GOT, YOU HAVE GOT MR.  
10 HAYWARD AT THE SCENE AND HANDCUFFED STANDING BESIDE A  
11 POLICE CAR. APPROXIMATELY HOW MANY DEPUTIES WERE OUT  
12 THERE OR INVESTIGATORS THAT WERE OFFICERS?

13 A IT WAS QUITE A FEW, I WOULD SAY FIVE OR SIX PLUS ME.

14 Q THERE WERE A COUPLE OF CARS?

15 A YES, YOU CAN'T MISS US.

16 Q AND MR. COWART, HIS TWO WORKERS, BOTH SHOW UP AT THE  
17 SCENE?

18 A THE WORKERS WERE IN THE TRUCK WITH MR. COWART, YES.  
19 I WAS SPEAKING TO MR. COWART ALONE BECAUSE I CAN'T  
20 COMMUNICATE WITH THE TWO WORKERS.

21 Q LET ME ASK YOU ABOUT THE PHOTO LINEUP, DO YOU HAVE  
22 THE COLOR COPY OF THESE PICTURES?

23 A NO.

24 Q DO YOU HAVE THE NAMES OF THE PEOPLE IN THIS LINEUP?

25 A NO.

1 Q COULD YOU GET THEM?

2 A I IMAGINE I COULD GET THEM, ESPECIALLY THOSE NUMBERS,  
3 YOU COULD GET THEM OFF THE RICHLAND COUNTY DATA BASE IF  
4 YOU WANT.

5 Q WOULD YOU AGREE WITH ME THAT SUBJECT NUMBER 3,  
6 SUBJECT NUMBER 4, POSSIBLY SUBJECT NUMBER 1 HAS FACIAL  
7 HAIR?

8 A YES, I AGREE WITH THAT. I ALSO AGREE THAT SUBJECT  
9 NUMBER 6 HAS FACIAL HAIR AS WELL.

10 Q WOULD YOU AGREE THAT 1, 2, 3, 4 AND 5 ALL HAVE ON  
11 STREET CLOTHES, COLLARED SHIRTS, JACKETS?

12 A I AGREE IT COULD APPEAR THAT ALL OF THEM HAVE THAT.

13 Q IS THIS THE ONE THAT YOU SHOWED THE VICTIM, THIS  
14 BLACK AND WHITE COPY?

15 A YES.

16 Q YOU DIDN'T SHOW THEM COLORED PHOTOS?

17 A OUR PRINTER DOESN'T PRINT COLORED PHOTOS.

18 Q AND YOU CAN'T TELL ME WHAT THE NAMES OF THESE PEOPLE  
19 ARE?

20 A NOT HERE, MA'AM, I CAN GO PULL UP THE RICHLAND COUNTY  
21 DETENTION CENTER WEB SITE AND START PULLING THEM UP.

22 Q WHEN YOU WERE INTERVIEWING MS. ANTONIO AT  
23 HEADQUARTERS OR AT YOUR OFFICE, WAS HER HUSBAND WITH HER?

24 A I WILL REFER TO MY NOTES RIGHT HERE, PLEASE. I DON'T  
25 HAVE A RECOLLECTION THAT HE WAS WITH HER BUT BY THE SAME

1       TOKEN IT WOULD NOT BE SURPRISING TO ME IF HE WASN'T OR IF  
2       HE WAS.   BECAUSE THEY ARE VERY CLOSE.

3       Q       SO, YOU JUST DON'T REMEMBER RATHER HE WAS THERE OR  
4       NOT WHEN SHE WAS LOOKING AT THE LINEUP AND WHEN YOU WERE  
5       INTERVIEWING HER?

6       A       NOW THAT WE HAVE BROUGHT THIS UP SHE AND HER HUSBAND  
7       WERE IN THE ROOM, THAT IS CORRECT AND WE TALKED ABOUT THE  
8       MAP WHERE SHE WAS WALKING THAT DAY.   YES MA'AM, HE WAS  
9       THERE.

10      Q       AND WHAT WAS IT AGAIN THAT YOU TOLD, DON'T YOU SAY IN  
11      HERE THAT YOU ACTUALLY STOP HER AT ONE POINT AND SHOW HER  
12      THE PHOTO LINEUP OF SIX PICTURES?

13      A       THAT IS CORRECT.

14      Q       AND HER HUSBAND WAS THERE IN THE ROOM WITH HER?

15      A       THAT IS CORRECT.

16      Q       AND WHAT EXACTLY DID YOU TELL HER ABOUT THE LINEUP?

17      A       WHAT I TESTIFIED TO EARLIER.

18      Q       WHICH IS WHAT?

19      A       THERE MAY OR MAY NOT BE A PERSON THAT HAS ANYTHING TO  
20      DO WITH THIS CASE.   TAKE A LOOK AT THE PHOTO LINEUP,  
21      SOMETHING ALONG THOSE LINES.   MAKE A HABIT OF COVERING  
22      THOSE BASIS, MAY OR MAY NOT BE INVOLVED.

23            MS. VAN GINHOVEN:   I BEG THE COURT'S INDULGENCE FOR A  
24      MOMENT.

25            THE COURT:   SURE.

1 MS. VAN GINHOVEN: NO FURTHER QUESTIONS, YOUR HONOR.

2 THE COURT: REDIRECT.

3 MR. JOPHLIN: THANK YOU, YOUR HONOR.

4 REDIRECT EXAMINATION

5 BY MR. JOPHLIN:

6 Q DURING THIS WHOLE DAY, APRIL 13, 2004 WHEN YA'LL HAD  
7 FOUND OUT WHAT HAPPENED AND LOOKED FOR THE DEFENDANT, IN  
8 YOUR SEARCH, EVERY SINGLE DETAIL THAT OCCURRED IN THOSE  
9 SEVERAL HOURS IN THESE THREE PAGES?

10 A NO, SIR.

11 Q DESPITE AND IT MAY NOT BE IN YOUR REPORT, WHAT DO YOU  
12 REMEMBER ROE TELLING YOU WHEN YOU ARRIVED?

13 A HE HAD ALREADY MIRANDIZED HIM OF HIS RIGHTS.

14 Q AND IN THE PHOTO LINEUP THAT SHE WAS SHOWN, CAN YOU  
15 DESCRIBE TO THE COURT WHERE IT APPEARS NUMBER SIX MAY BE  
16 WEARING?

17 A HE MAY BE WEARING THE JUMP SUIT FROM THE JAIL, IT  
18 COULD BE THAT.

19 Q BUT IT COULD BE A V-NECK SWEATER WITH A T-SHIRT  
20 UNDERNEATH?

21 A IT COULD BE.

22 Q AND IN YOUR REPORT AND DIRECT YOU TO PAGE 4 AND  
23 TWO-THIRDS OF THE WAY ON YOUR APRIL 22ND ENTRY, THIS IS  
24 FINISHING UP ON THE VICTIM AS TO WHAT HAPPENED TO HER, HE  
25 STARTED KICKING HER. CAN YOU READ THE NEXT TWO SENTENCES

1 OF YOUR REPORT.

2 A I AS INVESTIGATING OFFICER STOPPED AT ONE POINT AND  
3 SHOWED HER A PHOTO LINEUP OF SIX PICTURES. SHE PICKED  
4 JERENE HAYWARD WITHOUT HESITATION.

5 Q SO THERE IS NO HESITATION ABOUT HER, HOW IMMEDIATE  
6 WAS DID SHE PICK?

7 A INSTANTANEOUS.

8 Q AND YOU SAY YOUR BACK WAS TURNED?

9 A I TURNED MY BODY, TURNED MY HEAD SO I WOULD NOT BE  
10 GIVING HER INDICATIONS ONE WAY OR THE OTHER.

11 Q SO YOU STRIVE FOR AND IN THIS CASE DID, WAS THERE ANY  
12 KIND OF INTIMIDATION?

13 A NO.

14 Q INDICATION OF ANY KIND SHOWING WHICH PICTURE WAS THE  
15 DEFENDANT?

16 A NO.

17 Q AND YOU MADE NO INDICATION WHATSOEVER AS TO WHICH  
18 PICTURE SHE SHOULD PICK OR SHOULD NOT PICK?

19 A CORRECT.

20 Q NOTHING FURTHER.

21 THE COURT: RECROSS?

22 MS. VAN GINHOVEN: VERY FEW QUESTIONS.

23 RECROSS-EXAMINATION

24 BY MS. VAN GINHOVEN:

25 Q OFFICER, WHEN SHE GAVE YOU THE DESCRIPTION AT

1 HEADQUARTERS, THAT WAS THROUGH AN INTERPRETER, IS THAT  
2 RIGHT?

3 A CORRECT.

4 Q THAT WAS THE SECRETARY AT YOUR OFFICE?

5 A RIGHT.

6 Q YOU KNEW WHAT QUESTIONS YOU WERE ASKING MS. ANTONIO?

7 A THAT IS RIGHT.

8 Q BUT YOU CAN'T BE CERTAIN WHAT KIND OF ANSWERS OR WHAT  
9 WAS BEING INTERPRETED BY THE SECRETARY?

10 A I COULD BE CERTAIN ON SOME THINGS BECAUSE I KNOW A  
11 LITTLE BIT OF SPANISH BUT I AM NOT CERTAIN TO EVERYTHING  
12 THAT WAS SAID. WHEN SHE TALKS ABOUT THE HEIGHT, I CAN  
13 PICK UP ON SOME OF THE NUMERICS AND SOME OF THE THINGS SHE  
14 SAID. YOU ARE CORRECT, I CAN'T BE TOTALLY SURE WHAT SHE  
15 IS SAYING.

16 Q WAS THE HUSBAND HELPING AT ALL AT THIS POINT, LIKE HE  
17 HELPED AT THE SCENE IN THE TRANSLATION?

18 A AT THE SCENE?

19 Q YOU KNOW, AT THE SCENE WHEN HE TALKED TO WAGNER HE  
20 WAS--

21 A SHE WAS AT THE HOSPITAL AT THAT POINT. I THINK AT  
22 SOME POINT, I DON'T RECALL AND I AM TRYING TO RECOLLECT  
23 THIS. BUT I THINK MY CONVERSATIONS WITH HER WERE DIRECTED  
24 THROUGH MS. COREZ AND THEY CAME BACK THROUGH MS. COREZ AS  
25 MUCH AS POSSIBLE. I DON'T RECALL ANYTHING FROM AN IN

1 DEPTH STANDPOINT WHERE THE HUSBAND WAS INTERJECTING THIS  
2 OR INTERJECTING THAT OR TRYING TO BE A PART, HE WAS THERE  
3 FOR MORAL SUPPORT AND WAS DOING A VERY GOOD JOB ON THAT.  
4 I DON'T RECALL HIM INTERJECTING ON A CONSTANCE BASIS INTO  
5 THE CONVERSATION.

6 MS. VAN GINHOVEN: I HAVE NO FURTHER QUESTIONS, YOUR  
7 HONOR.

8 THE COURT: YOU MAY STEP DOWN.

9 MR. JOPHLIN: THE STATE WOULD CALL RONALD COWART.

10 RONALD COWART, AFTER BEING DULY SWORN, TESTIFIED  
11 AS FOLLOWS:

12 DIRECT EXAMINATION

13 BY MR. JOPHLIN:

14 Q ON APRIL 13TH OF 2004 DID YOU HAVE THE OCCASION TO  
15 BECOME INVOLVED IN THIS CASE?

16 A YES, I DID.

17 Q AND YOU SAY YOU ARE IN LANDSCAPING?

18 A YES.

19 Q WHERE WERE YOU ON THE AFTERNOON OF APRIL THE 13TH?

20 A WE WERE GOING OVER TO THE SUBDIVISION, CRESCENT LAKE,  
21 TO FINISH UP A JOB PUTTING DOWN SOME PINE STRAW. AND I  
22 HAD MY TRUCK FULL OF PINE STRAW AND TWO GUYS IN THE TRUCK  
23 WITH ME. AND WE TURNED OFF OF KELLY MILL ROAD ONTO THE  
24 ROAD THERE I PICKED HIM UP ON, LONG PINE WEST AND RIGHT  
25 AFTER I TURNED OFF OF KELLY MILL ROAD THIS GENTLEMAN RAN

1 OUT IN FRONT OF ME AND I ALMOST HIT HIM. AND HE CAME  
2 AROUND TO THE PASSENGER SIDE AND SAID TWO PEOPLE WERE  
3 AFTER HIM SO HE WANTED A RIDE. HE SAID THEY WANTED TO  
4 BEAT HIM UP AND I SAID, YOU CAN'T GET IN HERE, YOU WILL  
5 HAVE TO GET IN THE BACK OF THE TRUCK.

6 Q AND YOU TOLD HIM HE COULD HAVE A RIDE IN THE BACK OF  
7 THE TRUCK?

8 A YES, I TOLD HIM HE COULD JUMP IN THE BACK OF THE  
9 TRUCK.

10 Q AND DID HE?

11 A YES.

12 Q OKAY. AND WHERE DID YA'LL GO NEXT?

13 A WENT ON DOWN LONG PINE WEST AND TURNED INTO THE  
14 SUBDIVISION AND WENT IN THERE.

15 Q WHICH SUBDIVISION WOULD THAT BE?

16 A CRESCENT LAKE SUBDIVISION. AND THAT WAS ON PAST THE  
17 HOUSE WHERE HE HAS ALLEGED TO BROKEN IN TO. BUT ANYWAY I  
18 GOT THERE AND HE LEANED OVER THE TOP OF THE TRUCK AND HE  
19 ASKED ME IF WE WERE OUT OF GAS. AND I SAID, NO, WE WERE  
20 HERE TO DO A JOB. SO THE OTHER TWO MEN GOT OUT AND WENT  
21 IN THE YARD AND STARTED PUTTING DOWN PINE STRAW.

22 Q YOU SAY TWO WORKERS THAT YOU HAD WITH YOU?

23 A YES, TWO WORKERS.

24 Q AND AT THIS POINT DID YOU HAPPEN TO HAVE A  
25 CONVERSATION WITH THE DEFENDANT?

1 A YES, I GOT OUT OF MY VEHICLE AND I JUST HAD THAT  
2 FEELING THAT SOMETHING WASN'T RIGHT. HE WAS DRENCHED DOWN  
3 WITH SWEAT AND SO I TOOK THE KEYS OUT OF MY TRUCK AND I  
4 PUT THEM IN MY POCKET. AND I HAD A CELL PHONE AND I HID  
5 IT. AND HE WANTED TO GO TO THE HOUSE AND USE THE  
6 TELEPHONE AND I SAID IT WASN'T MY HOUSE AND WE COULDN'T  
7 GET IN ANY WAY.

8 Q ABOUT HOW LONG WAS THIS CONVERSATION LAST BETWEEN YOU  
9 AND HE?

10 A IT MUST OF LASTED MAYBE FOUR MINUTES, FIVE MINUTES,  
11 SOMETHING LIKE THAT.

12 Q OKAY, AND WAS IT STILL DAYLIGHT OUTSIDE?

13 A YES.

14 Q AND YOU WERE FACING HIM WHILE YOU WERE TALKING TO  
15 HIM?

16 A YES. I WAS ONLY ABOUT THREE FEET AWAY.

17 Q OKAY. AND CAN YOU SORT OF DESCRIBE THE MAN THAT YOU  
18 PICKED UP AND THEN GAVE A RIDE TO CRESCENT LAKE AND YOU  
19 WERE HAVING A CONVERSATION WITH.

20 A WELL, HE WAS TALLER THAN I WAS AND WAS WEARING BLUE  
21 JEANS, BAGGY BLUE JEANS. HE WAS A BLACK GENTLEMAN, CLOSE  
22 CUT HAIR, OTHER THAN THAT I THOUGHT AND I STILL THINK THAT  
23 HE HAD SOME TYPE OF A MARK ON HIS NECK.

24 Q WHAT KIND OF MARK?

25 A IT MUST OF BEEN A TATTOO, I DON'T KNOW.

1 Q AND WHAT HAPPENED, YOU TOLD HIM THAT HE COULDN'T USE  
2 THE PHONE, WHAT HAPPENED NEXT?

3 A WELL, HE WANTED TO KNOW WHERE THE NEAREST STORE WAS.  
4 I THINK HE WANTED TO USE THE TELEPHONE SO I JUST POINTED  
5 AT THE ENTRANCE WHERE WE CAME IN. AND AFTER THAT HE  
6 DISAPPEARED. I DROVE ON OUT AND I WAS CONCERNED AND I  
7 DROVE ON OUT AND I LOOKED FOR HIM, TO TELL YOU THE TRUTH.

8 Q HOW LONG AFTER THAT DID YOU GO?

9 A IT MUST OF BEEN FIVE OR TEN MINUTES LATER.

10 Q OKAY. DID YOU HAVE A CHANCE TO COME IN CONTACT WITH  
11 SOME RICHLAND COUNTY SHERIFFS DEPUTIES A LITTLE LATER ON  
12 IN THE AFTERNOON?

13 A YES. IN OTHER WORDS AND WE WERE WORKING THERE AND I  
14 WAS IN THE FRONT YARD AND I SAW A LOT OF ACTIVITY, YOU  
15 KNOW, PATROL CARS GOING BY. SO, I NOTICED ONE WENT ON  
16 DOWN AND TURNED AROUND AND WENT DOWN ANOTHER STREET AND  
17 CAME ON OUT. AND THEN I THOUGHT I HAD BETTER FLAG  
18 SOMEBODY DOWN BECAUSE I THOUGHT I KNEW SOMETHING. SO, I  
19 WENT OUT THERE AND FLAGGED ONE OF THE MEN IN THE CAR AND I  
20 TOLD THEM THAT I THOUGHT I HAD SOMETHING TO TELL THEM.  
21 AND WE TALKED FOR A VERY BRIEF PERIOD AND HE SAID, WHAT  
22 DOES THIS GENTLEMAN LOOK LIKE. AND I DESCRIBED HIM AND IT  
23 WASN'T VERY LONG AFTER THAT THAT ONE OF THE INVESTIGATORS  
24 CAME BY AND TOOK MY STATEMENT.

25 Q OKAY.

1 MR. JOPHLIN: I BEG THE COURT'S INDULGENCE.

2 THE COURT: ALL RIGHT.

3 Q AND I AM GOING TO HAND YOU UP A FEW PAGES. YOU GAVE  
4 A WRITTEN STATEMENT TO ONE OF THE INVESTIGATORS?

5 A YES.

6 Q DO YOU REMEMBER IN THE TOP PART OF THAT STATEMENT DID  
7 YOU GIVE A PHYSICAL DESCRIPTION, DID YOU WRITE DOWN A  
8 PHYSICAL DESCRIPTION OF THE MAN YOU PICKED UP?

9 A WELL, RIGHT HERE I HAVE THAT, SIX FEET TALL, SLENDER,  
10 CLOSE HAIRCUT AND HE WAS CARRYING A BACKPACK, AND HE HAS  
11 BAGGY BLUE JEANS.

12 Q OKAY. THE PERSON YOU PICKED UP WHEN YOU FIRST PICKED  
13 HIM UP, WAS HE WEARING A BACKPACK?

14 A WHEN I PICKED HIM UP HE HAD IT IN HIS HAND.

15 Q OKAY. AND WHEN HE LEFT YOU--

16 A HE HAD IT WITH HIM.

17 Q WHEN YOU POINTED HIM OFF TO THE DIRECTION OF THE  
18 STORE AND HE LEFT YOU DID HE STILL HAVE A BACKPACK WITH  
19 HIM?

20 A FROM WHAT I COULD SEE, YES, OR A BAG OR A BACKPACK,  
21 SOME TYPE OF BAG.

22 Q SOME TYPE OF BAG?

23 A YES.

24 Q AND YOU SAY IT WAS DARK COLORED?

25 A YES.

1 Q NOW, IN HERE I NOTICED YOU DO NOT SAY ANYTHING ABOUT  
2 A TATTOO?

3 A NO, I DIDN'T SAY ANYTHING ABOUT THE TATTOO BUT I KNOW  
4 THIS IS THE MAN.

5 Q AND WHEN YOU, AFTER FINISHING GIVING THE STATEMENT  
6 WHAT DID YOU DO THEN?

7 A AFTER I GAVE THE STATEMENT AND EVERYTHING OF COURSE  
8 THE OFFICER LEFT AND WE WORKED A LITTLE WHILE LONGER AND  
9 WE WERE ON OUR WAY BACK TO OUR BASE OF OPERATION. AND I  
10 HAD GIVEN HIM MY TELEPHONE NUMBER AND HE CALLED ME AND HE  
11 WANTED TO KNOW IF I COULD IDENTIFY THE GUY. AND I SAID,  
12 YES, I CERTAINLY WOULD.

13 Q OKAY AND WHERE DID YOU GO TO DO THAT?

14 A I WENT BACK ON HARD SCRABBLE ROAD HEADING BACK TOWARD  
15 COLUMBIA.

16 Q AND WHEN YOU ARRIVED DESCRIBE WHAT YOU SAW, HOW YOU  
17 SAW THE DEFENDANT WHEN YOU FIRST SHOWED UP?

18 A WELL, WE WENT IN THE SUBDIVISION AND THEN WE TOOK A  
19 RIGHT AND WENT UP THE HILL AND THEY WERE AT THE END OF THE  
20 STREET UP THERE. AND HE WAS IN HANDCUFFS AT THE TIME AND  
21 THEN I WAS ASKED WAS THIS THE GUY. AND I SAID YES THIS IS  
22 HIM, I KNOW HIM. AND HE WAS HOLLERING TO SOME LADY THERE  
23 THAT HE DIDN'T DO IT, HE DIDN'T DO IT. I DON'T KNOW WHO  
24 THE LADY WAS BUT HE JUST KEPT TELLING HER THAT.

25 Q AND SO WHEN HE SHOWED UP HE WAS IN HANDCUFFS?

show up

1 A YES.

2 Q WERE THERE OFFICERS, DEPUTES STANDING AROUND HIM?

3 A YES.

4 Q AND POLICE CARS OR RICHLAND COUNTY SHERIFFS

5 DEPARTMENT CARS?

6 A CORRECT.

7 Q DID YOU FEEL ANY INFLUENCE IN ANY WAY IN SEEING HIM

8 IN THAT--

9 A NO.

10 Q HOW DID YOU KNOW THAT THAT MAN THAT YOU SAW RIGHT

11 THERE WAS THE SAME PERSON THAT YOU HAD TALKED UP AND

12 PICKED UP?

13 A AS I TOLD YOU A WHILE AGO I WAS ABOUT THREE FEET AWAY

14 TALKING WITH HIM FOR ABOUT FOUR MINUTES. I JUST

15 RECOGNIZED HIM.

16 Q YOU SAY YOU HAD A CONVERSATION WITH HIM AT THE WORK

17 SITE YOU WERE AT AND YOU HEARD HIM YELLING?

18 A YES.

19 Q WAS IT THE SAME VOICE?

20 A YES.

21 Q AND THE FACE WAS SIMILAR?

22 A YES.

23 Q DID YOU SEE ANY KIND OF MARKING, AT THE SCENE WHERE

24 YOU IDENTIFIED TO THE POLICE, DID YOU SEE ANY KIND OF

25 MARKS ON HIM THAT YOU RECOGNIZED FROM PREVIOUS ENCOUNTERS?

1 A WELL, IT CAME BACK AGAIN, HE HAD A TATTOO AND IN MY  
2 MIND I KNEW THAT HE HAD A TATTOO. I DON'T SEE THAT MANY  
3 TATTOOS SO I AM NOT THAT TYPE OF PERSON ANYWAY.

4 Q JUST TO CLARIFY AND REITERATE, ONCE AGAIN, EVEN  
5 THOUGH YOU SAW THE TATTOO THE FIRST TIME, BEFORE YOU WROTE  
6 THE STATEMENT AND THEN YOU LATER FIGURED OUT WHO IT WAS.  
7 IT IS NOT IN THE STATEMENT THOUGH?

8 A NO, IT IS NOT IN THE STATEMENT.

9 Q AND THE PERSON THAT WAS ON THE SCENE, WERE THEY, THAT  
10 YOU SAW BEING ARRESTED, WAS ARRESTED IN HANDCUFFS. WHAT  
11 WERE THEY WEARING?

12 A ARE YOU TALKING ABOUT THE DEPUTIES?

13 Q NO, I AM SORRY, THE DEFENDANT.

14 A HE WAS IN HANDCUFFS AND HE HAD ON A T-SHIRT WHEN I  
15 SAW HIM.

16 Q WHAT ELSE WAS HE WEARING?

17 A HIS T-SHIRT AND HE HAD ON HIS JEANS.

18 Q OKAY. DID THE DEPUTIES SHOW YOU ANYTHING ELSE WHICH  
19 SORT OF CONFIRMED THAT PERSON YOU WERE PICKING OUT WAS THE  
20 SAME PERSON YOU PICKED UP. IS THERE ANY KIND OF ARTICLE  
21 OR CLOTHING THAT--

22 A NOT REALLY.

23 Q DID THEY LATER PRODUCE, PULL OUT A SWEATER AND YOU  
24 IDENTIFIED THAT?

25 MS. MOBLEY: OBJECTION, ASKED AND ANSWERED.

1 THE COURT: NO, I OVERRULE, GO AHEAD.

2 Q DID THEY PULL OUT A SWEATER THAT WAS, IN HIS BACKPACK  
3 AND ASK YOU--

4 A I DON'T KNOW, THAT WAS TWO YEARS AGO.

5 Q OKAY. AND IS THE PERSON YOU PICKED UP THAT AFTERNOON  
6 THAT YOU HAD A CONVERSATION WITH A FEW MINUTES AND THE  
7 PERSON THAT THE POLICE PICKED UP, IS HE IN THE COURTROOM?

8 A YES, HE IS. HE IS RIGHT OVER THERE.

9 Q WHAT IS HE WEARING?

10 A HE IS WEARING A BLUE SHIRT.

11 MR. JOPHLIN: I BEG THE COURT'S INDULGENCE.

12 Q LET'S GO BACK A LITTLE BIT IN THE CONVERSATION YOU  
13 HAD AT THE WORK SITE. DID YOU OBSERVE A PACK OF  
14 CIGARETTES ON THE DEFENDANT?

15 A YES, HE WANTED A JOB, HE WANTED TO WORK FOR THE REST  
16 OF THE DAY WITH US, WE HAD ENOUGH PEOPLE TO HANDLE THAT  
17 WORK. AND HE SHOWED ME HE ONLY HAD TWO DOLLARS AND HE  
18 SAID, I WOULD LIKE TO BE IN THE LANDSCAPING WORK. HE HAD  
19 A HALF OF A PACK CIGARETTES OR SOMETHING AND THE TWO  
20 DOLLARS AND THAT IS ALL.

21 Q AND CAN YOU DESCRIBE THE PACK OF CIGARETTES YOU SAW  
22 HIM PULL OUT?

23 A I THINK THEY WERE GREEN, I AM NOT SURE. BUT THIS IS  
24 SOMETHING THAT SOMEBODY PULLS OUT AND SHOWED ME THAT HE  
25 DIDN'T HAVE ANY MONEY AND THEN THAT WAS IT.

1 Q AND BETWEEN THEN AND WHEN THE POLICE OR WHEN THE  
2 DEPUTIES CALLED YOU OUT TO PICK THIS PERSON OUT, ABOUT HOW  
3 MUCH TIME WAS IT?

4 A I PROBABLY PICKED HIM UP A LITTLE AFTER 4:00 O'CLOCK  
5 AND THEN I GOT A CALL FROM THE GENTLEMAN THAT TOOK MY  
6 STATEMENT, RIGHT BEFORE 7:00, MAYBE 6:45 OR SOMETHING LIKE  
7 THAT.

8 Q YOU RECALL THAT?

9 A YES.

10 Q AND IN BETWEEN THAT TIME YOU HAD GIVEN A WRITTEN  
11 STATEMENT TO INVESTIGATOR BARNES?

12 A YES, THEY HAD CHECKED THE TRUCK FOR SOME  
13 FINGERPRINTS.

14 Q NOTHING FURTHER.

15 THE COURT: CROSS-EXAMINE.

16 MS. MOBLEY: THANK YOU, YOUR HONOR.

17 CROSS-EXAMINATION

18 BY MS. MOBLEY:

19 Q GOOD AFTERNOON, MR. COWART.

20 A GOOD AFTERNOON TO YOU.

21 Q MR. COWART, DO YOU STILL HAVE THE COPY OF YOUR  
22 STATEMENT THAT THE SOLICITOR HANDED YOU?

23 A NO.

24 Q DO YOU HAVE A COPY WITH YOU?

25 A NO.

1 MS. MOBLEY: MAY I APPROACH THE WITNESS, YOUR HONOR.

2 THE COURT: YOU MAY.

3 Q IS THIS THE STATEMENT THAT YOU GAVE TO INVESTIGATOR  
4 BARNES?

5 A YES.

6 Q AND YOU GAVE A DESCRIPTION IN THAT STATEMENT LIKE  
7 SOLICITOR JOPHLIN WAS GOING OVER WITH YOU AND I BELIEVE  
8 YOU MENTIONED THAT THE GENTLEMAN THAT YOU PICKED UP WAS  
9 SIX FEET, SLIM. CAN YOU READ THE ENTIRE DESCRIPTION,  
10 PLEASE?

11 A LET'S SEE, WE WERE FLAGGED DOWN BY A BLM, IS THAT--

12 Q A BLACK MALE.

13 A BLACK MALE, SIX FEET TALL, SLENDER, CLOSE HAIRCUT,  
14 WHAT IS THE NEXT--

15 Q DID YOU NOT WRITE THE STATEMENT?

16 A NO, I DIDN'T WRITE THE STATEMENT. I SIGNED THE  
17 STATEMENT.

18 Q OKAY. SO INVESTIGATOR BARNES WROTE OUT THE STATEMENT  
19 FOR YOU?

20 A YES.

21 Q OKAY. DO YOU SEE, WHAT I AM GETTING AT, DO YOU SEE  
22 IN THAT STRING OF AGGITIVES THAT YOU USE TO DESCRIBE THIS  
23 GENTLEMAN WHERE YOU MENTIONED THAT HE WAS WEARING A LONG  
24 SLEEVE BLACK T-SHIRT?

25 A NO, NOT A T-SHIRT.

1 Q DO YOU SEE THAT IN YOUR STATEMENT?

2 A NO, I DON'T SEE BLACK T-SHIRT.

3 Q CAN YOU PLEASE READ THE DESCRIPTION IN YOUR STATEMENT  
4 AGAIN.

5 A ALL RIGHT. HE HAD A PACK ON AND THEN A BLACK LONG  
6 SLEEVED SHIRT AND BAGGY BLUE JEANS. NOW, THERE SEEMS LIKE  
7 TO ME HE WAS WEARING A SHIRT AT THE TIME. BUT IT  
8 DEFINITELY WOULDN'T BE A WHITE T-SHIRT.

9 Q SO THAT JUST MEANS THAT THE GENTLEMAN YOU PICKED OUT,  
10 THE DESCRIPTION THAT YOU GIVE THERE, YOU DESCRIBED HIM  
11 BEING ABOUT SIX FEET TALL, SLENDER.

12 A WELL, LET ME PUT IT THIS WAY, HE WAS TALLER THAN I AM  
13 AND I AM 5'8".

14 Q BUT SLENDER, WEARING A BLACK LONG SLEEVED SHIRT,  
15 BAGGY BLUE JEANS, NOT A BLACK LONG SLEEVED SHIRT. IS THE  
16 STATEMENT INCORRECT?

17 A HE HAD, HE HAD DARK, HE HAD ON A DARK SHIRT.

18 Q SO, THE STATEMENT IS INCORRECT?

19 A WELL, IF IT IS INCORRECT I MEANT DARK SHIRT.

20 Q OKAY.

21 A AND IT HAD SLEEVES ON IT TOO.

22 Q SO THAT PART OF YOUR STATEMENT IS INCORRECT, THE PART  
23 OF YOUR STATEMENT THAT YOU SIGNED, IS THAT CORRECT?

24 A WHAT PART ARE YOU TALKING ABOUT?

25 Q ABOUT THE BLACK LONG SLEEVED SHIRT?

1 A IT COULD BE A DARK LONG SLEEVED SHIRT.

2 Q OKAY. SO, YOU ARE TELLING US NOW THAT YOUR  
3 RECOLLECTION OF EVENTS IS DIFFERENT THAN WHAT YOU WROTE ON  
4 THAT DAY?

5 A IT COULD OF BEEN A DARK SHIRT, NOT A T-SHIRT, A LONG  
6 SHIRT.

7 Q OKAY. AND I BELIEVE YOU TESTIFIED THAT IT WAS A  
8 LITTLE AFTER 4:00 THAT YOU PICKED OUT THE GENTLEMAN?

9 A A LITTLE AFTER 4:00 O'CLOCK.

10 Q OKAY. AND IT WAS SOMETIME 6:45 TO 7:00 WHEN YOU WERE  
11 CALLED BACK TO THE SCENE BY INVESTIGATOR BARNES?

12 A IT WAS SOMETIME AROUND THEN.

13 Q WHAT EXACTLY DID HE TELL YOU WHEN HE CALLED YOU?

14 A WHEN HE CALLED HE WANTED ME TO IDENTIFY SOMEBODY.

15 Q OKAY. DO YOU REMEMBER EXACTLY WHAT HE SAID?

16 A NO, THIS HAS BEEN TWO YEARS AGO.

17 Q TWO YEARS AGO, SURE, A LOT CAN CHANGE IN TWO YEARS.  
18 BUT YOU JUST DON'T RECALL WHAT WAS SAID?

19 A NO.

20 Q AND I BELIEVE IT WAS YOUR TESTIMONY WHEN YOU PULLED  
21 UP YOU WERE DRIVING THROUGH THE NEIGHBORHOOD TO IDENTIFY A  
22 PERSON WHO INVESTIGATOR BARNES SAID FOR YOU TO MAKE AN  
23 IDENTIFICATION. SO, YOU KNEW YOU WERE ON YOUR WAY TO MAKE  
24 AN IDENTIFICATION. AND WERE THERE POLICE CARS AROUND?

25 A THERE WERE A FEW OF THEM.

1 Q A FEW POLICE CARS AND POLICE OFFICERS?

2 A A FEW OF THEM.

3 Q AND THE GENTLEMAN WAS IN HANDCUFFS, I BELIEVE YOUR  
4 TESTIMONY WAS?

5 A YES.

6 Q WERE YOU EVER GIVEN THE OPPORTUNITY LATER ON TO VIEW  
7 A PHOTO LINEUP?

8 A NOT A PHOTO LINEUP BUT I DID LOOK AT PICTURES AND SO  
9 FORTH.

10 Q SO, YOU DID A, YOU LOOKED AT SOME PHOTOGRAPHS LATER  
11 ON. I AM SORRY, I MISUNDERSTOOD YOUR ANSWER. WERE YOU  
12 EVER GIVEN THE OPPORTUNITY TO LOOK AT PHOTOGRAPHS OF  
13 PEOPLE TO SEE IF YOU CAN IDENTIFY THE SAME PERSON?

14 A YOU MEAN AT THAT TIME OR RECENTLY?

15 Q ANY TIME THEREAFTER, ANY TIME WITHIN THE PAST TWO  
16 YEARS?

17 A RECENTLY I LOOKED AT SOME PHOTOS AND IDENTIFIED HIM.

18 Q YOU DID, OKAY. DID YOU WRITE A STATEMENT AT THAT  
19 TIME?

20 A NO.

21 Q BUT YOU DID WRITE A STATEMENT, HOW LONG AFTERWARDS  
22 WERE YOU SHOWN THE PHOTOS?

23 A JUST A COUPLE OF WEEKS AGO.

24 Q JUST A COUPLE OF WEEKS AGO. OKAY, DID YOU HAVE AN  
25 OPPORTUNITY TO GIVE ANOTHER STATEMENT AT THAT TIME?

1 A NO.

2 Q SO, YOU MET WITH INVESTIGATOR BARNES AT HEADQUARTERS?

3 A NO, IT WAS HERE.

4 Q HERE?

5 A IT WAS AT THE SOLICITORS OFFICE THAT WE SAW SOME  
6 PHOTOGRAPHS.

7 Q SO, YOU HAD AN OPPORTUNITY TO VIEW THE PHOTOGRAPHS  
8 THEN?

9 A SURE.

10 Q NOW, JUST SO I CAN GET A FEEL FOR THE AREA WE ARE  
11 TALKING ABOUT AND I AM NOT FAMILIAR WITH THE NORTHEAST  
12 PART OF THE COUNTY SO YOU ARE GOING TO HAVE TO FORGIVE ME.  
13 IS THIS SORT OF A CLUSTER OF NEWER NEIGHBORHOODS IN THIS  
14 AREA OR HOW WOULD YOU DESCRIBE THE AREA. IS IT MOSTLY  
15 RESIDENTIAL OR MOSTLY COMMERCIAL?

16 A OKAY, IT IS IN THE RICHLAND NORTHEAST AREA, IT IS  
17 OUTSIDE THE BLYTHEWOOD. THE NEIGHBORHOOD WAS STARTED, SAY  
18 ABOUT, 15 YEARS AGO, SOMETHING LIKE THAT. LONGSHORE  
19 PLANTATION IS THE GENERAL NAME OF THE DIFFERENT  
20 SUBDIVISIONS THAT ARE AROUND THERE.

21 Q ABOUT HOW MANY SUBDIVISIONS DO YOU THINK WE ARE  
22 TALKING ABOUT?

23 A PROBABLY THREE, FOUR, FIVE DIFFERENT TYPES. IT ALL  
24 DEPENDS UPON THE SIZE OF THE HOMES THAT ARE BEING BUILT.  
25 BUT IT HAS NOT EVOLVED QUICKLY, IT HAS EVOLVED OVER A

1 PERIOD OF YEARS.

2 Q SO, IT IS STILL A WORK IN PROGRESS?

3 A YES, IT IS A WORK IN PROGRESS.

4 MS. MOBLEY: I BEG THE COURT'S INDULGENCE.

5 THE COURT: SURE.

6 Q JUST BRIEFLY, GOING BACK TO YOUR OPPORTUNITY TO SEE  
7 SOME PHOTOGRAPHS. COULD YOU TELL US WHO YOU WERE WITH  
8 WHEN THAT WAS GOING ON?

9 A THIS GENTLEMAN HERE.

10 Q MR. JOPHLIN?

11 A YES.

12 Q OKAY. YOU WERE SITTING WITH MR. JOPHLIN LOOKING AT  
13 PHOTOGRAPHS?

14 A YES.

15 Q OKAY. THAT IS ALL I HAVE.

16 THE COURT: REDIRECT?

17 MR. JOPHLIN: YES SIR, BRIEFLY, YOUR HONOR.

18 REDIRECT EXAMINATION

19 BY MR. JOPHLIN:

20 Q NOW, BETWEEN THE TIME THAT YOU HAD SPOKEN, THE DATE  
21 OF THE INCIDENT WHEN YOU PICKED OUT THE DEFENDANT AND THE  
22 TIME YOU HAD SPOKEN TO ME A FEW WEEKS AGO DID YOU SPEAK  
23 WITH ANYONE ELSE AT THE SHERIFFS DEPARTMENT?

24 A NO.

25 Q OR ANYBODY REGARDING THIS CASE?

1 A NO.

2 Q AND WHEN I SHOWED YOU THE PHOTOS IT WAS AFTER YOU HAD  
3 FINISHED TELLING ME WHAT HAD HAPPENED?

4 A YES.

5 Q AND DID I INSINUATE TO YOU IN ANY WAY WHICH PERSON  
6 THAT WAS ON THERE?

7 A NO.

8 Q I JUST ASKED YOU IF YOU RECOGNIZE ANYONE ON THIS  
9 SHEET?

10 A THAT IS RIGHT.

11 Q DID YOU RECOGNIZE SOMEONE ON THIS SHEET?

12 A YES.

13 Q AND YOU TOLD ME YOU DID?

14 A RIGHT.

15 Q OKAY. BUT AT THAT TIME YOU WERE AWARE YOU WERE GOING  
16 TO BE A WITNESS IN THIS TRIAL?

17 A SURE.

18 Q AND THE REASON WHY YOU WERE GOING TO BE A WITNESS?

19 A YES.

20 MR. JOPHLIN: NOTHING FURTHER, YOUR HONOR.

21 THE COURT: ANY RECROSS?

22 MS. MOBLEY: NO, YOUR HONOR.

23 THE COURT: YOU MAY STEP DOWN, SIR.

24 MS. COOPER: YOUR HONOR, OUR NEXT WITNESS IS GOING TO  
25 BE QUITE LENGTHY, THE VICTIM WITH THE INTERPRETER.

1 THE COURT: LET'S GO AHEAD. I DIDN'T REALIZE WE WERE  
2 GOING TO HAVE ALL OF THIS TESTIMONY, LET'S GO AHEAD. I  
3 HAVE GOT THE JURY COMING BACK IN THE MORNING.

4 MS. COOPER: OKAY. THE STATE CALLS LOURDES ANTONIO.

5 THE COURT: SIR, YOU ARE GOING TO BE INTERPRETING, IS  
6 THAT RIGHT?

7 MR. CAMPUSANO: YES, SIR.

8 THE COURT: HAVE YOU GOT AN AFFIDAVIT OVER THERE THAT  
9 I WAS HANDED THIS MORNING?

10 COURT REPORTER: YES, SIR.

11 THE COURT: HAND IT TO ME, PLEASE. YOU ARE MR.  
12 CAMPUSANO?

13 MR. CAMPUSANO: YES, SIR.

14 THE COURT: AM I PRONOUNCING THAT CORRECTLY?

15 MR. CAMPUSANO: YES, SIR.

16 THE COURT: IF YOU WILL RAISE YOUR RIGHT HAND FOR ME,  
17 PLEASE, SIR. DO YOU SWEAR OR AFFIRM THAT THE  
18 INTERPRETATION YOU WILL GIVE THIS COURT WILL BE A VERBATIM  
19 TRANSLATION OF THE QUESTIONS ASKED, THE ANSWERS GIVEN BY  
20 THE WITNESS TO THE BEST OF YOUR ABILITY SO HELP YOU GOD?

21 MR. CAMPUSANO: I DO.

22 THE COURT: YOU CAN PUT YOUR HAND DOWN. SIR, HAVE  
23 YOU INTERPRETED IN COURT BEFORE?

24 MR. CAMPUSANO: YES, SIR.

25 THE COURT: ALL RIGHT, SIR. ALL RIGHT, MADAME CLERK,

1 IF YOU WILL SWEAR THE WITNESS AND IF YOU WILL HAVE THE  
2 WITNESS RAISE HER RIGHT HAND, PLEASE.

3 LOURDES ANTONIO, AFTER BEING DULY SWORN,  
4 TESTIFIED AS FOLLOWS:

5 THE COURT: BEFORE WE BEGIN, MR. CAMPUSANO, HAVE YOU,  
6 YOU HAVE COMMUNICATED WITH THE WITNESS, IS THAT CORRECT?

7 MR. CAMPUSANO: YES, SIR.

8 THE COURT: HAVE YOU HAD ANY PROBLEMS IN  
9 UNDERSTANDING HER OR COMMUNICATING WITH HER?

10 MR. CAMPUSANO: ABSOLUTELY NOT.

11 THE COURT: ALL RIGHT, THANK YOU, SIR. WE WILL  
12 CONTINUE, SOLICITOR.

13 (WHEREUPON, THE INTERPRETER, ANGEL CAMPUSANO,  
14 INTERPRETS FOR THE WITNESS, LOURDES ANTONIO)

15 DIRECT EXAMINATION

16 BY MS. COOPER:

17 Q MS. ANTONIO, HOW OLD ARE YOU?

18 A 38 YEARS OLD.

19 Q AND WHERE ARE YOU FROM?

20 A FROM MEXICO.

21 Q AND HOW LONG HAVE YOU LIVED IN SOUTH CAROLINA?

22 A FOR FIVE YEARS.

23 Q AND WHERE DO YOU WORK?

24 A I WORK WITH MR. CONNELL.

25 Q AND WHAT KIND OF WORK DO YOU DO FOR HIM?

1 A I TAKE CARE OF THE CHILD.

2 Q AND HOW OLD IS THE CHILD?

3 A ALMOST THREE YEARS.

4 Q AND DO YOU RECALL WHEN YOU STARTED WORKING FOR THE

5 CONNELL'S?

6 A APPROXIMATELY THREE YEARS AGO?

7 Q HOW OLD WAS THE BABY WHEN YOU FIRST STARTED WORKING

8 FOR THE CONNELL'S?

9 A THREE MONTHS OLD.

10 Q CAN YOU DESCRIBE HOW MANY DAYS A WEEK YOU WORKED FOR

11 THE CONNELL'S?

12 A FIVE DAYS.

13 Q WHAT TIME DO YOU GET TO THEIR HOUSE?

14 A AT 8:00 O'CLOCK IN THE MORNING.

15 Q AND WHAT TIME DO YOU TYPICALLY LEAVE?

16 A AT 5:00 O'CLOCK IN THE AFTERNOON.

17 Q AND WHAT DAYS OF THE WEEK DO YOU WORK THERE?

18 A FROM MONDAY TO FRIDAY.

19 Q WHEN YOU GET TO THE CONNELL'S WHAT DO YOU DO WITH THE

20 BABY WHEN YOU FIRST ARRIVE AT WORK?

21 A I WAKE HIM UP SOMETIMES AND I FEED HIM HIS BREAKFAST.

22 Q AND DO YOU TAKE HIM FOR WALKS?

23 A NOT IN THE MORNING, THAT HAPPENS IN THE AFTERNOON.

24 Q OKAY. WHAT TIME DO YOU TAKE THE BABY FOR WALKS?

25 A SOMETIMES AT 10:00 OR IN THE AFTERNOONS. BUT WE

1 DON'T GO OUT FOR WALKS ANYMORE.

2 Q BACK AROUND APRIL OF 2004 WAS IT YOUR CUSTOM TO WALK  
3 THE BABY IN THE AFTERNOONS?

4 A YES.

5 Q BUT YOU DON'T WALK THE BABY ANYMORE?

6 A NO.

7 Q HOW LONG WOULD YOU TYPICALLY TAKE THE BABY FOR A WALK  
8 WHEN YOU DID WALK HIM?

9 A ONE HOUR, SOMETIMES THIRTY MINUTES, HALF AN HOUR.

10 Q AND ON APRIL THE 13TH OF 2004 DO YOU REMEMBER TAKING  
11 THE BABY FOR A WALK ON THAT DAY?

12 A YES.

13 Q AND DID YOU HAVE ANY ENCOUNTERS WITH ANYONE WHEN YOU  
14 WALKED TO THE STREET?

15 A YES.

16 Q COULD YOU PLEASE DESCRIBE WHO APPROACHED YOU WHEN YOU  
17 WERE WALKING THE BABY ON THE STREET?

18 A A MAN.

19 Q CAN YOU DESCRIBE WHAT THIS MAN LOOKED LIKE?

20 A YES.

21 Q WHAT WAS HE WEARING THAT DAY?

22 A A DARK SWEATER, WITH DARK PANTS ALSO AND A BACKPACK.

23 THE COURT: AND WHAT WAS THAT LAST THING?

24 MS. COOPER: AND A BACKPACK.

25 THE COURT: GO AHEAD.

1 Q DO YOU RECALL THE COLOR OF THE BACKPACK?

2 A DARK.

3 Q DO YOU REMEMBER WHAT KIND OF SHOES HE WAS WEARING?

4 A YES, TENNIS SHOES.

5 Q WHEN YOU DESCRIBED THE PANTS CAN YOU DESCRIBE HOW  
6 THEY FIT HIM?

7 A WERE BAGGY PANTS.

8 Q DO YOU RECALL WHETHER HE WAS, DESCRIBE HIS HEIGHT?

9 A YES, HIGH, TALL.

10 Q WHAT ABOUT HIS BUILD, WHAT DID HIS BODY BUILD APPEAR  
11 TO BE LIKE?

12 A SLENDER.

13 Q WHAT ABOUT HIS HAIR?

14 A VERY SHORT AND CURLY.

15 Q DID YOU NOTICE ANY FACIAL HAIR?

16 A NO.

17 Q DO YOU RECALL WHETHER OR NOT THE SWEATER HE WAS  
18 WEARING?

19 A YES, THERE WAS A SORT OF LETTERS OR FIGURES IN THE  
20 FRONT.

21 Q OF HIS SWEATER?

22 A YES.

23 Q TELL ME WHAT HAPPENED WHEN HE CAME UP TO YOU ON THE  
24 STREET?

25 A HE SAID, HELLO. HE TOLD ME THAT HE WAS SELLING

1 CLEANING SUPPLIES.

2 Q AND HOW DID YOU KNOW WHAT HE WAS TRYING TO SELL YOU?

3 A BECAUSE I UNDERSTAND A LITTLE ENGLISH.

4 Q DID HE SHOW YOU ANYTHING OF THE PRODUCT HE WAS TRYING  
5 TO SELL?

6 A YES, THERE WAS A PAPER WITH PRICES AND ONE BOTTLE OF  
7 THE THINGS THAT HE WAS OFFERING.

8 Q WHEN HE APPROACHED YOU ON THE STREET AND HANDED YOU,  
9 SHOWED YOU THE PRICE LIST HOW CLOSE DID HE GET TO YOU?

10 A AROUND ONE METER.

11 Q I AM GOING TO WALK TO YOU RIGHT NOW AND YOU TELL ME  
12 WHEN TO STOP.

13 A YES.

14 Q AND TO SHOW HOW FAR AWAY HE WAS ON THE DATE ON THE  
15 STREET.

16 (WHEREUPON, MS. COOPER WALKS TOWARD THE WITNESS.)

17 A THERE.

18 MS. COOPER: YOUR HONOR, LET THE RECORD REFLECT IT IS  
19 APPROXIMATELY THREE TO FOUR FEET IN AMERICAN MEASUREMENTS.

20 THE COURT: ALL RIGHT.

21 Q HOW LONG DO YOU THINK YOU SPOKE WITH HIM WHEN YOU  
22 WERE ON THE STREET?

23 A TWO OR THREE MINUTES, I DON'T KNOW.

24 Q CAN YOU DESCRIBE WHAT THE WEATHER WAS LIKE OUTSIDE?

25 A IT WAS SUNNY AND IT WAS WINDY.

1 Q DID YOU, WHAT DID YOU TELL HIM WHEN HE TRIED TO SELL  
2 YOU THE CLEANING SUPPLIES?

3 A I TOLD HIM THAT I WAS NOT INTERESTED AND I WAS NOT  
4 GOING TO BUY.

5 Q AND CAN YOU SHOW, DEMONSTRATE FOR US WHAT ENGLISH  
6 WORDS YOU USED TO TALK TO HIM?

7 A I TOLD HIM I DON'T INTEREST, THANK YOU.

8 Q DID HE, DID HE STILL TRY, AFTER YOU SAID THAT TO HIM  
9 DID HE STILL TRY TO SELL YOU PRODUCTS?

10 A YES.

11 Q AND PLEASE DESCRIBE WHAT HAPPENED.

12 A HE TOLD ME THAT I WAS ABLE TO PAY HIM WITH A CHECK.

13 Q AND COULD YOU PLEASE USE THE WORDS HE USED FOR YOU TO  
14 UNDERSTAND THAT?

15 A YOU CAN PAY ME WITH A CHECK.

16 Q AND AFTER HE TOLD YOU YOU COULD PAY HIM WITH A CHECK  
17 WHAT DID YOU DO?

18 A I TOLD HIM THAT I DIDN'T HAVE ANY CHECK.

19 Q AND COULD YOU DEMONSTRATE AGAIN WHAT ENGLISH WORDS  
20 YOU USED TO SAY THAT?

21 A I DO NOT HAVE A CHECK.

22 Q WHERE DID YOU GO WHEN YOU TOLD HIM YOU DIDN'T HAVE  
23 CHECKS?

24 A I KEPT WALKING.

25 Q DID YOU EVER LOOK TO SEE WHERE HE WAS WHEN YOU WALKED

1 AWAY?

2 A YES, HE KEPT STANDING THERE.

3 Q AND WHERE DID YOU GO ON YOUR WALK, WHAT ROAD DID YOU  
4 TAKE?

5 A I WAS WALKING BY THE STREET, AT THE END OF THAT  
6 STREET, IS THE OTHER STREET.

7 MR. CAMPUSANO: MAY YOU ASK, PLEASE, TO REPEAT.

8 Q PLEASE REPEAT THE STREET NAMES?

9 A TAM-O-SHANTER STREET WHERE I WAS WALKING AND AT THE  
10 END THE STREET START THE OTHER STREET, IN THE LEFT SIDE  
11 AND THE NAME OF THE STREET IS COLUMBIA CLUB.

12 Q AND WHEN YOU TOOK A LEFT ON COLUMBIA CLUB DID YOU SEE  
13 THE DEFENDANT, DID YOU SEE THE MAN ANY MORE?

14 A YES.

15 Q AND WHAT WAS HE DOING WHEN YOU TURNED THIS CORNER?

16 A HE WAS MERELY LOOKING FOR SOMETHING IN HIS BACKPACK,  
17 I DON'T KNOW.

18 Q HOW LONG DID YOU WALK THE BABY THAT DAY?

19 A FOR A HALF AN HOUR.

20 Q AND DID YOU HAVE TO CUT THE WALK SHORT?

21 A YES.

22 Q WHY?

23 A BECAUSE IT WAS SO BREEZY.

24 Q WHERE DID YOU GO FROM THERE, DID YOU RETURN TO THE  
25 HOUSE?

1 A YES.

2 Q WHEN YOU GOT TO THE HOUSE DID YOU NOTICE ANYTHING  
3 DIFFERENT?

4 A YES.

5 Q WHAT DID YOU NOTICE DIFFERENT?

6 A THE DOOR WAS NOT COMPLETELY CLOSED, WAS ALMOST OPEN.

7 Q DID YOU CLOSE THE DOOR WHEN YOU LEFT WITH THE BABY  
8 FOR THE WALK?

9 A YES.

10 Q WHAT DID YOU THINK HAD OPENED THE DOOR?

11 A THE WIND.

12 Q WHAT DID YOU DO WITH THE BABY?

13 A I LEFT HIM OUTSIDE.

14 Q AND WHERE DID YOU GO?

15 A INSIDE THE HOUSE.

16 Q WHAT WERE YOU DOING, TRYING TO FIGURE OUT WHEN YOU  
17 GOT INSIDE THE HOUSE?

18 A I WAS WALKING TO CHECK IF EVERYTHING WAS ALRIGHT.

19 Q WHEN YOU WERE WALKING THROUGH THE HOUSE PLEASE TELL  
20 US WHAT YOU DISCOVERED?

21 A WHEN I WAS WALKING IN THE LIVING ROOM I HEARD SOME  
22 STEPS AND I STOOD THERE. AND ONE MAN WAS WALKING OUT OF  
23 THE BEDROOMS AND HE KEPT WALKING. AND I SAW HIM AND I  
24 STOOD THERE, I DIDN'T MOVE BECAUSE I WAS SURPRISED SEEING  
25 HIM COMING OUT OF THE BEDROOM.

1 Q DID HE NOTICE YOU WHEN HE WALKED OUT OF THE BEDROOM  
2 INTO THE HALLWAY?

3 A YES.

4 Q HOW DO YOU KNOW THAT?

5 A BECAUSE I WAS STANDING IN FRONT OF HIM WHEN HE TURNED  
6 LEFT.

7 Q DID HE SAY ANYTHING TO YOU OR DID YOU SAY ANYTHING TO  
8 HIM?

9 A I ASKED HIM WHAT WAS HE DOING THERE.

10 Q AND COULD YOU PLEASE DEMONSTRATE WHAT WORDS YOU USED  
11 IN ENGLISH TO ASK HIM THAT?

12 A WHAT ARE YOU DOING HERE.

13 Q DID HE ANSWER YOU?

14 A HE SAID, WHY.

15 Q AND WHAT DID YOU RESPOND IN RETURN?

16 A BECAUSE YOU CANNOT BE HERE.

17 Q AND HOW DID HE RESPOND TO THAT?

18 A NOTHING.

19 Q WHERE DID YOU BEGIN TO GO DURING THIS CONVERSATION?

20 A TO THE EXIT.

21 Q I AM GOING TO PRETEND I AM IN THE HALLWAY, WHEN I GET  
22 AS CLOSE AS HE GOT TO YOU WHEN YOU FIRST NOTICED HIM IN  
23 THE HALLWAY STOP ME.

24 (WHEREUPON, MS. COOPER WALKS TOWARDS THE WITNESS.)

25 A RIGHT THERE.

1 MS. COOPER: YOUR HONOR, I GUESS LET THE RECORD  
2 REFLECT APPROXIMATELY SIX TO EIGHT FEET AWAY.

3 THE COURT: ALL RIGHT.

4 Q WHEN YOU WERE WALKING TOWARDS THE EXIT WAS THAT THE  
5 SAME DOOR YOU HAD USED TO COME INSIDE OF THE HOUSE?

6 A YES.

7 Q DID HE SAY ANYTHING TO YOU WHILE YOU WERE TRYING TO  
8 LEAVE THE HOUSE?

9 A YES.

10 Q WHAT WAS HE SAYING TO YOU?

11 A HE ASKED ME IF I WAS GOING TO CALL THE POLICE.

12 Q AND DID YOU ANSWER HIM?

13 A I TOLD HIM YES.

14 Q WHEN YOU WERE WALKING THROUGH THE HOUSE TOWARDS THE,  
15 TO LEAVE THE HOUSE DID HE AT ANY POINT TRY TO STOP YOU?

16 A YES.

17 Q PLEASE DESCRIBE HOW HE TRIED TO DO THAT?

18 A HE TOLD ME, DO NOT DO THAT AND HE HELD ME BY MY ARM.

19 Q AND WHERE DID HE TAKE YOU WHEN HE GRABBED YOU BY YOUR  
20 ARM?

21 A BECAUSE WE WERE CLOSE TO THE DOOR AND HE PULLED ME  
22 AND PUSHED ME.

23 Q AND DID HE PUSH YOU TO THE FLOOR?

24 A YES.

25 Q AND WHERE ON YOUR BODY DID YOU FALL DOWN ON?

- 1 A I FALL DOWN ON MY BACK.
- 2 Q WHAT DID HE DO TO YOU WHEN YOU WERE ON YOUR BACK?
- 3 A HE STARTED KICKING ME.
- 4 Q WHERE DID HE START KICKING YOU?
- 5 A IN MY CHEST.
- 6 Q WHEN HE IS KICKING YOU HOW CLOSE IS HE TO YOU?
- 7 A VERY CLOSE.
- 8 Q IS HE ALMOST ON TOP OF YOU KICKING YOU?
- 9 A YES.
- 10 Q WERE YOU ABLE TO SEE HIS FACE AGAIN DURING THIS TIME?
- 11 A YES.
- 12 Q WHEN YOU SAW HIM IN THE HALLWAY DID YOU RECOGNIZE HIM
- 13 FROM HAVING SEEING HIM ANYWHERE BEFORE?
- 14 A YES.
- 15 Q WHERE DID YOU RECOGNIZE HIM FROM?
- 16 A BECAUSE I SAW HIM IN THE STREET.
- 17 Q DID YOU RECOGNIZE HIM BY HIS FACE?
- 18 A YES, BY THE CLOTHES.
- 19 Q AND ALSO BY THE FACE?
- 20 A YES.
- 21 Q SO, HE IS WEARING THE EXACT SAME CLOTHES AS THE
- 22 PERSON FROM THE STREET?
- 23 A YES.
- 24 Q AFTER HE KICKS YOU IN THE CHEST DID YOU SEE HIM GO
- 25 TO, DID YOU SEE IF HE HAD ANY BAGS WITH HIM?

1 A YES.

2 Q AND DESCRIBE THE BAG YOU SEE HIM WITH AND WHERE YOU  
3 SAW HIM WITH IT IN THE HOUSE?

4 A THE BAG THAT HE HAD WAS A BACKPACK AND HE PUT IT  
5 CLOSE TO THE DOOR.

6 Q DID YOU SEE HIM, IS THAT THE SAME BAG YOU HAD SEEN  
7 HIM WITH EARLIER?

8 A YES.

9 Q DID YOU SEE HIM WITH ANY OTHER OBJECT AT THAT TIME?

10 A YES.

11 Q WHAT?

12 A A PISTOL.

13 Q COULD YOU DESCRIBE THE COLOR OF THE GUN?

14 A GRAY.

15 Q AT ANY POINT DID YOU, DID HE COME BACK TOWARDS YOU?

16 A YES.

17 Q DID YOU TRY TO PROTECT YOURSELF?

18 A YES.

19 Q WHAT DID YOU USE TO PROTECT YOURSELF?

20 A A CONTAINER THAT WAS LAID NEXT TO THE WALL.

21 Q AND WHAT EXACTLY DID THE CONTAINER HAVE?

22 A IT WAS A BOX THAT WAS NOT OPENED YET AND WAS MORE OR  
23 LESS THIS SIZE.

24 Q AND WHAT DID IT HAVE INSIDE OF IT?

25 A SOMETHING, I DON'T KNOW HOW TO DESCRIBE IT, SOMETHING

1 TO CURTAINS.

2 Q WHAT CURTAINS?

3 A TO HANG THEM.

4 Q TO HANG CURTAINS?

5 A YES.

6 Q WHEN YOU HIT HIM WITH THE CURTAIN ROD WHAT DID HE DO  
7 TO YOU?

8 A HE STANDS OFF AND HE IS START HITTING ME AGAIN.

9 Q AND DOES HE EVENTUALLY STOP KICKING YOU?

10 A YES.

11 Q AND WHERE DOES HE GO?

12 A HE GOES INTO ONE DOOR THAT WAS CLOSED TO US.

13 Q AND WHAT ROOMS ARE THROUGH THAT DOOR?

14 A TO THE BATHROOM AND TO A LAUNDRY ROOM.

15 Q WHAT DID YOU DO WHEN HE WALKED IN THROUGH THAT DOOR?

16 A I STOOD UP AND I LEFT BY THE GARAGE DOOR.

17 Q WHERE DID YOU GO FROM THE GARAGE DOOR?

18 A I WENT TO ANOTHER DOOR THAT WILL TAKE ME OUTSIDE.

19 Q AND DID YOU RUN OUTSIDE?

20 A YES.

21 Q HOW FAR DID YOU MAKE IT BEFORE HE CAUGHT UP TO YOU?

22 A WHERE THE GARAGE IS THERE STARTS WHERE THE TREES ARE.  
23 AND THERE HE GRABBED ME AGAIN.

24 Q WHEN HE CAUGHT UP WITH YOU OUTSIDE WHAT DID HE DO TO  
25 YOU?

1 A HE PUSHED ME.

2 Q AND HOW DID YOU FALL DOWN?

3 A I FALL DOWN LAYING ON MY STOMACH.

4 Q AND WHAT DID HE BEGIN TO DO TO YOU WHILE YOU WERE ON  
5 YOUR STOMACH?

6 A HE STARTED KICKING ME AGAIN.

7 Q WHERE DID HE KICK YOU?

8 A IN MY BODY.

9 Q HOW MANY TIMES DID HE KICK YOU?

10 A MANY TIMES.

11 Q AT ONE POINT DID YOU TURN AROUND?

12 A YES.

13 Q AND WERE YOU ABLE TO FACE HIM?

14 A YES.

15 Q AND COULD YOU SEE HIS FACE AGAIN?

16 A YES.

17 Q AND DID HE START KICKING YOU AGAIN?

18 A YES.

19 Q WHAT PART OF YOUR BODY?

20 A AGAIN MY CHEST.

21 Q DO YOU RECALL HIM LEAVING YOU OUTSIDE?

22 A NO.

23 Q WHY DON'T YOU REMEMBER HIM LEAVING YOU?

24 A BECAUSE I WAS, HE HIT ME AND IT WAS HARD FOR ME TO  
25 BREATHE. AND I CLOSED MY EYES AND I LOST THE TIME THAT

1 WAS THEN.

2 Q APPROXIMATELY HOW MANY MINUTES PASSED FROM THE TIME  
3 YOU FIRST SAW HIM IN THE HALLWAY TO THE TIME HE KICKED YOU  
4 THE LAST TIME IN THE CHEST OUTSIDE?

5 A I DON'T KNOW EXACTLY THE TIME.

6 Q CAN YOU GIVE US AN APPROXIMATION OF HOW MANY MINUTES?

7 A MAYBE 15 OR 20 MINUTES.

8 Q WHEN YOU FIRST SAW HIM ON THE STREET HOW MUCH  
9 ATTENTION DID YOU PAY TO HIM?

10 A FROM THE TIME THAT I TALKED TO HIM IT WAS WEIRD FOR  
11 ME THAT SOMEBODY WOULD BE SELLING IN THE STREET.

12 Q THE FACT THAT YOU FIND FOR SOMEBODY TO BE SELLING  
13 THINGS ON THE STREET, DID THAT MAKE YOUR ATTENTION  
14 HEIGHTEN?

15 A YES.

16 Q WHEN YOU FIRST SAW HIM IN THE HALLWAY HOW MUCH  
17 ATTENTION DID YOU PAY HIM?

18 A IT WAS THE SAME PERSON THAT I SAW OUTSIDE IN THE  
19 STREET.

20 Q AND DID, WAS IT NORMAL FOR YOU TO SEE STRANGERS IN  
21 THE HOUSE?

22 A NO.

23 Q CAN YOU DESCRIBE HOW THIS MADE YOU FEEL KNOWING THERE  
24 WAS A STRANGER IN THE HOUSE?

25 A FEAR.

1 Q DO YOU REMEMBER GOING TO THE HOSPITAL?

2 A YES.

3 Q DO YOU RECALL WHAT YOUR INJURIES, THE INJURIES YOU  
4 HAD?

5 A YES.

6 Q WHAT DID THE DOCTORS TELL YOU WAS WRONG WITH YOU?

7 A HE BROKE ME TWO RIBS.

8 Q DO YOU REMEMBER TALKING TO INVESTIGATOR ERIC BARNES  
9 AT THE HOSPITAL?

10 A NO.

11 Q DO YOU REMEMBER COMING TO HEADQUARTERS TO THE POLICE  
12 DEPARTMENT WITH YOUR HUSBAND LATER ON?

13 A YES.

14 Q DO YOU REMEMBER TALKING TO A FEMALE OFFICER AT THE  
15 HOSPITAL ON THE DAY THIS HAPPENED?

16 A YES.

17 Q WHEN YOU WENT TO THE POLICE DEPARTMENT DO YOU RECALL  
18 INVESTIGATOR BARNES WITH AN INTERPRETER?

19 A YES.

20 Q AND DO YOU RECALL TELLING INVESTIGATOR BARNES WHAT  
21 HAD HAPPENED TO YOU ON APRIL 13TH OF 2004?

22 A YES.

23 Q DO YOU REMEMBER HIM SHOWING YOU SOME PICTURES?

24 A YES.

25 Q I AM GOING TO HAND YOU WHAT IS STATE'S NUMBER 6 FOR

1 ID AND ASK YOU IF YOU RECOGNIZE THIS?

2 A YES.

3 Q AND WHAT IS IT?

4 A PHOTOGRAPH OF PEOPLE.

5 Q AND IS THIS THE SAME PHOTOGRAPHS THAT INVESTIGATOR  
6 BARNES SHOWED YOU?

7 A YES.

8 Q WHEN INVESTIGATOR BARNES HANDED THIS TO YOU WHAT DID  
9 HE ASK YOU TO DO?

10 A TO POINT THE PERSON THAT I SAW INSIDE OF THE HOUSE.

11 Q DID HE TELL YOU OR MAKE ANY GUARANTEES THAT A  
12 PHOTOGRAPH OF THAT PERSON WOULD BE AMONG THESE SIX PHOTOS?

13 A NO.

14 Q DID HE TELL YOU WHICH PICTURE TO POINT OUT TO?

15 A NO.

16 Q WHEN HE HANDED THESE PICTURES TO YOU WHAT PICTURE DID  
17 YOU POINT OUT?

18 A NUMBER SIX.

19 Q DID YOU HAVE ANY DOUBT IN POINTING THAT PICTURE OUT?

20 A NO.

21 Q DID YOU INITIAL THAT PHOTOGRAPH?

22 A YES.

23 Q HOW MUCH TIME DID IT TAKE YOU TO PICK THAT PHOTOGRAPH  
24 OUT?

25 A IT DIDN'T TAKE ME LONG.

1 Q DO YOU RECALL SEEING THIS PIECE OF PAPER BEFORE?

2 A YES.

3 Q DOES IT HAVE YOUR SIGNATURE ON IT?

4 A YES.

5 MS. COOPER: AND, YOUR HONOR, I AM REFERRING TO  
6 STATE'S NUMBER 7.

7 THE COURT: ALL RIGHT.

8 Q I AM GOING TO SHOW YOU STATE'S NUMBER 7 AND ASK YOU  
9 IF YOU REMEMBER SIGNING THIS DOCUMENT?

10 A YES.

11 Q AND IT INDICATES YOU PICKED PHOTOGRAPH NUMBER SIX?

12 A YES.

13 Q WHY DID YOU PICK PHOTOGRAPH NUMBER SIX OUT?

14 A BECAUSE IT IS THE SAME PERSON.

15 Q THE PERSON THAT ATTACKED YOU ON APRIL 13TH OF 2004,  
16 DO YOU SEE HIM IN THE COURTROOM TODAY?

17 A YES.

18 Q COULD YOU PLEASE POINT AT HIM AND TELL ME WHAT COLOR  
19 SHIRT HE IS WEARING.

20 A IT IS HIM, HIS SHIRT IS BLUE.

21 Q ANY QUESTION IN YOUR MIND THAT IS THE SAME MAN?

22 A NO.

23 MS. COOPER: NOTHING FURTHER, YOUR HONOR.

24 THE COURT: CROSS-EXAMINE.

25

CROSS-EXAMINATION

1 BY MS. VAN GINHOVEN:

2 Q HELLO.

3 A HELLO.

4 Q MS. ANTONIO, WHAT TIME DID YOU LEAVE FOR YOUR WALK?

5 A I USED TO GO OUT, I DON'T DO THAT ANYMORE.

6 Q ON APRIL 13TH, 2004 WHAT TIME DID YOU GO ON THE WALK  
7 WITH THE CHILD?

8 A IT WAS BETWEEN 2:30 TO 2:45 IN THE AFTERNOON.

9 Q APPROXIMATELY HOW LONG DID YOU TALK WITH MR. HAYWARD  
10 ON THE STREET?

11 A I DON'T KNOW, IT WAS TOO SHORT TIME.

12 Q IT WAS A VERY SHORT TIME?

13 A I DON'T KNOW, FIVE MINUTES, I DON'T KNOW.

14 Q WHEN YOU WERE IN THE HOUSE DID YOU FOCUS ON MR.  
15 HAYWARD'S FACE THE WHOLE TIME?

16 A YES.

17 Q THIS INCIDENT HAPPENED ON APRIL 13TH?

18 A YES.

19 Q AND YOU DIDN'T SPEAK WITH INVESTIGATOR BARNES AND  
20 LOOK AT THE PHOTOS UNTIL APRIL 22ND?

21 A YES.

22 Q DID INVESTIGATOR BARNES TELL YOU THAT THE PERSON WHO  
23 ATTACKED YOU MAY NOT BE IN THE PICTURES THAT HE SHOWED  
24 YOU?

25 A NO.

1 Q WHEN YOU WENT DOWN TO THE STATION AND YOU GAVE HIM  
 2 YOUR STATEMENT THEN YOU LOOK AT THE PHOTOS, I AM SORRY, I  
 3 WITHDRAW THAT QUESTION. WHEN THE OFFICER CALLED YOU DOWN  
 4 TO HEADQUARTERS DID HE TELL YOU HE WANTED TO TALK TO YOU  
 5 AND SHOW YOU SOME PICTURES?

6 A YES.

7 Q WHAT DID HE TELL YOU WHEN HE GAVE YOU THE PICTURES,  
 8 WHAT WERE YOU EXPECTING HIM TO DO?

9 A IF IT WOULD BE POSSIBLE FOR ME TO RECOGNIZE THE  
 10 PERSON THAT GOT INSIDE OF THE HOUSE.

11 Q WHEN YOU GAVE THE DESCRIPTION OF THE SUSPECT TO THE  
 12 POLICE DID YOU TELL THEM THAT HE DID HAVE FACIAL HAIR?

13 A NO.

14 Q YOU DON'T REMEMBER THE INVESTIGATOR SAYING THAT?

15 A NO.

16 Q BUT YOU TOLD MS. COOPER THAT THE PERSON THAT ATTACKED  
 17 YOU DID NOT HAVE FACIAL HAIR?

18 A I DIDN'T SAY THAT HE HAD FACIAL HAIR.

19 Q DID THE PERSON WHO ATTACKED YOU HAVE FACIAL HAIR?

20 A WHAT DO YOU MEAN FOR FACIAL HAIR.

21 Q DID HE HAVE A MUSTACHE?

22 A NO.

23 Q YOU TOLD MS. COOPER THAT YOU WERE WITH THE PERSON  
 24 THAT ATTACKED YOU FOR FIFTEEN TO TWENTY MINUTES, IS THAT  
 25 CORRECT?

1 A IN THE HOUSE?

2 Q YES, TOTAL TIME AFTER YOU GOT BACK FROM THE WALK.

3 A I DID THE WALK FOR AROUND A HALF OF AN HOUR. THE TIME  
4 SPAN WITH THIS INCIDENT INSIDE OF THE HOUSE, I DON'T KNOW  
5 HOW CLEAR, HOW LONG THAT TIME WAS.

6 Q SO, AGAIN, THE PERSON THAT YOU SAY ATTACKED YOU DID  
7 NOT HAVE ANY FACIAL HAIR, NO MUSTACHE AND YOU TOLD THE  
8 POLICE THAT IN YOUR DESCRIPTION?

9 A YES.

10 Q I HAVE NO FURTHER QUESTIONS.

11 THE COURT: REDIRECT.

12 MS. COOPER: BRIEFLY, YOUR HONOR.

13 REDIRECT EXAMINATION

14 BY MS. COOPER:

15 Q I AM GOING TO SHOW YOU PICTURE NUMBER SIX AND DO YOU  
16 SEE A MUSTACHE ON THE MAN WHO IS PICTURE NUMBER SIX?

17 A NO.

18 Q DO YOU SEE SOME ON HIS CHIN, HOWEVER?

19 A YES, SOME HAIR BUT SO FEW.

20 Q DID YOU PICK NUMBER SIX OUT BASED ON FACIAL HAIR?

21 A NO.

22 Q NO FURTHER QUESTIONS, YOUR HONOR.

23 THE COURT: RECROSS.

24 MS. VAN GINHOVEN: NO, YOUR HONOR.

25 THE COURT: YOU MAY STEP DOWN, WATCH YOUR STEP. ANY

1 FURTHER TESTIMONY?

2 MS. COOPER: NO, YOUR HONOR.

3 THE COURT: ANY FURTHER TESTIMONY FROM THE DEFENSE?

4 MS. VAN GINHOVEN: NO, YOUR HONOR.

5 THE COURT: ALL RIGHT, I WILL HEAR YOUR ARGUMENTS IN  
6 THE MORNING AND BE HERE AT 9:00.

7 MS. VAN GINHOVEN: I DO HAVE ONE ISSUE THAT I JUST  
8 WANT TO STATE RIGHT NOW SO I DON'T FORGET. OFFICER ROE  
9 WAS IN HERE FOR THE TESTIMONY OF INVESTIGATOR BARNES AND  
10 FOR HALF THE TESTIMONY OF MS. ANTONIO AND FOR MR. COWART,

11 WAS HERE BEFORE HE LEFT THE COURTROOM. AND THE  
12 SEQUESTRATION WAS IN ORDER, WE WOULD JUST ASK YOU THAT YOU  
13 MAY CONSIDER TOMORROW TO EXCLUDE HIS TESTIMONY.

14 THE COURT: I WILL GIVE IT SOME CONSIDERATION.

15 MS. VAN GINHOVEN: THANK YOU, YOUR HONOR.

16 MR. JOPHLIN: YOUR HONOR, I JUST WANTED TO STATE THAT  
17 I DID NOT REALIZE AND THE MOMENT IT WAS REALIZED I TURNED  
18 AROUND AND SAW HIM AND TOLD HIM TO GET OUT IMMEDIATELY.  
19 INVESTIGATOR BARNES LEFT IMMEDIATELY, THERE WAS NO  
20 INTENTION ON OUR PART.

21 THE COURT: ALL RIGHT, I WILL GIVE IT SOME  
22 CONSIDERATION AND YA'LL BE HERE AT 9:00 O'CLOCK PLEASE.

23 (WHEREUPON, THE TRIAL WILL START THE NEXT DAY AT 9:00  
24 A.M.)

25 THE COURT: ALL RIGHT, I WILL ENTERTAIN ARGUMENTS ON

1 JACKSON V. DENNO, NEIL VERSUS BIGGERS AND THERE WAS GOING  
2 TO BE A MOTION TO SUPPRESS. WE WILL START WITH JACKSON V.  
3 DENNO.

4 MR. JOPHLIN: YES SIR, YOUR HONOR, THE STATE WOULD  
5 JUST SHOW THAT WE HAD DEPUTY ROE TESTIFY THAT WHEN HE  
6 ARRIVED ON THE SCENE BEFORE THE DEFENDANT GAVE A STATEMENT  
7 OF ANY KIND THAT HE WAS MIRANDIZED. THEY ARRIVED, HE WAS  
8 PLACED IN CUSTODY, HE WAS HANDCUFFED, SEARCH TO A TERRY  
9 FRISK, FOUND A GUN. AS HE WAS BEING PLACED IN THE CAR  
10 DEPUTY ROE TESTIFIED THAT HE PULLED OUT HIS MIRANDA CARD  
11 WHICH HE CARRIED ALL THE TIME AND READ FROM AT ALL TIMES,  
12 OR DURING MOST ARRESTS THAT THE MIRANDA WARNINGS AND HE  
13 READ THOSE FROM THAT CARD FOR YOU. AFTER RECEIVING THOSE  
14 MIRANDA WARNINGS THE DEFENDANT THEN MADE THE UTTERANCES  
15 WITHOUT PROVOCATION TO THE OFFICERS AT THE SCENE. AND  
16 AFTER BEING TRANSPORTED BACK TO THE SHERIFFS DEPARTMENT HE  
17 WAS AGAIN MIRANDIZED VERBALLY BY ERIC BARNES AND AT THAT  
18 TIME HE FURTHER GAVE, GENERAL STATEMENTS, WHEN OFFICER  
19 BARNES FINALLY FIGURED THAT ANY FURTHER DISCUSSION WOULD  
20 BE FRUITLESS, A WRITTEN WAIVER RIGHTS WERE NOT ENTERED  
21 INTO AND A WRITTEN STATEMENT WAS NOT RECEIVED. AGAIN,  
22 THIS IS ALL AFTER HIS MIRANDA RIGHTS, INVESTIGATOR BARNES  
23 INDICATED THAT HE UNDERSTOOD THOSE RIGHTS BEFORE ANY  
24 STATEMENTS WERE MADE AT THE SHERIFFS DEPARTMENT. THERE  
25 WAS NO COERCION, NO KIND OF INTIMIDATION OR ANYTHING

1       WHATSOEVER ON THE DEFENDANT TO GET ANY OF THESE STATEMENTS  
2       TO BE MADE. AND THE STATE WOULD SEEK TO INTRODUCE THOSE  
3       STATEMENTS AT TRIAL IN AND OF THEIR ENTIRETY WHILE BEING  
4       PLACED, AT THE SCENE WHILE HE WAS BEING ARRESTED AND WHILE  
5       AT THE SHERIFFS DEPARTMENT WHEN TALKING TO INVESTIGATOR  
6       BARNES.

7               THE COURT: ALL RIGHT, LET ME HEAR FROM THE DEFENSE.

8               MS. VAN GINHOVEN: YOUR HONOR, I WOULD LIKE TO FIRST  
9       ADDRESS THE SCENE. OF COURSE, THE DEFENDANT WAS CLEARLY  
10      IN CUSTODY AT THAT TIME. YOUR HONOR, I UNDERSTAND THAT  
11      INVESTIGATOR ROE TESTIFIED YESTERDAY THAT AT SOME POINT HE  
12      DID READ HIS MIRANDA RIGHTS. HOWEVER, I THAT A SUSPECT,  
13      CONSIDERING THE FACT THAT IN HIS WRITTEN REPORT THAT THE,  
14      THE SUPPLEMENTAL INCIDENT REPORT HE NEVER MENTIONED THE  
15      MIRANDA RIGHTS. IN THE SUPPLEMENTAL REPORT, HE AND BOTH  
16      SERGEANT MCCOLMAN ARE LISTED AS REPORTING OFFICERS. AND  
17      THAT WHOLE SUPPLEMENTAL REPORT REGARDING THE TERRY FRISK  
18      THERE IS NO MENTION OF ANY MIRANDA RIGHTS BEING READ.  
19      YOUR HONOR, MY CLIENT'S INTENTION IS THAT THE MIRANDA  
20      RIGHTS WERE NOT READ AT THE SCENE. CLEARLY, HE WAS  
21      INTERROGATED, BASICALLY WHAT HAPPENED IN THE SEQUENCE IS  
22      THAT HE SAID HE HAD NOTHING TO DO WITH IT. INVESTIGATOR  
23      BARNES OBSERVES THE SHOE TREADS ON HIS SHOES AND SAYS THEY  
24      MATCH THE ONES AT THE SCENE AND TOLD THE DEFENDANT THAT HE  
25      WAS GOING TO HAVE A HARD TIME EXPLAINING HOW THE LADY'S

1 BLOOD WAS ON HIS SHOES IF HE WASN'T INVOLVED THUS  
2 SOLICITING INCRIMINATING STATEMENTS FROM MR. HAYWARD. AND  
3 AT THAT POINT IS WHEN HE MADE A SUBSEQUENT STATEMENT. WE  
4 WOULD ARGUE THAT CLEARLY THAT MR. HAYWARD WAS IN CUSTODY,  
5 THAT HE WAS BEING INTERROGATED AND HE WAS NOT READ HIS  
6 MIRANDA RIGHTS AND WE WOULD ASK THAT YOU SUPPRESS ANY  
7 STATEMENTS AT THE SCENE. GOING TO THE STATEMENT AT  
8 HEADQUARTERS, AGAIN, CLEARLY THE DEFENDANT WAS IN CUSTODY.  
9 HE WAS UNDER ARREST OR IN HANDCUFFS BEING HELD AT A  
10 DETENTION CELL. HE WAS NOT FREE TO LEAVE. YOUR HONOR,  
11 AGAIN, THE TESTIMONY WAS THAT MR. HAYWARD WAS ADVISED OF  
12 MIRANDA VERBALLY. HOWEVER, AT NO TIME DID THEY GO OVER  
13 THE ADVISE OF RIGHTS FORM, THAT IS CLEAR FROM THE OFFICER.  
14 AT NO TIME DID HE SIGN THOSE FORMS, THEY NEVER CHECKED OFF  
15 THE BOXES GOING OVER EACH AND EVERY RIGHTS. AND AT NO  
16 TIME DID THEY NOTE ON THAT FORM THAT THE DEFENDANT REFUSED  
17 TO SIGN. OF COURSE, MY UNDERSTANDING IS THERE IS NO AUDIO  
18 OR VIDEO TAPE OF THIS INTERROGATION THAT WOULD  
19 CONCLUSIVELY SHOW THAT HE WAS ADVISED OF MIRANDA. YOUR  
20 HONOR, CLEARLY HE WAS INTERROGATED ONCE HE WAS AT  
21 HEADQUARTERS, THE QUESTIONS THAT WERE BEING ASKED.  
22 PROMISES WERE MADE TO THE EFFECT THAT HE COULD SMOKE  
23 CIGARETTES AND HE WAS REFUSED THAT AT SOME POINT.  
24 CLEARLY, THE OFFICER WAS TELLING MR. HAYWARD THEY HAD  
25 EVIDENCE AGAINST HIM. WE WOULD ASK THAT THOSE ALSO BE

1 SUPPRESSED, INVOLUNTARILY MADE.

2 THE COURT: ALL RIGHT, MR. JOPHLIN.

3 MR. JOPHLIN: THANK YOU, YOUR HONOR. AS TO, ACTUALLY  
4 WHILE HE WAS ON THE STAND HE DID TESTIFY THAT, TO A  
5 SPECIFIC CHAIN OF EVENTS. THEY TERRY FRISK, THEY  
6 RECOVERED A PISTOL, THERE WAS AN ARREST BECAUSE HE WAS  
7 CARRYING A PISTOL, MARIJUANA WAS FOUND. THEY SECURED THE  
8 GUN AND THEN HE READ HIM THE MIRANDA RIGHTS FROM HIS CARD.  
9 THERE IS NO WRITTEN REQUIREMENT THAT I KNOW OF, THERE IS  
10 NO REQUIREMENT THAT SUPPLEMENTAL REPORTS, THAT OFFICERS  
11 MUST STATE IN THEIR SUPPLEMENTAL REPORTS OR ANY REPORT  
12 THAT THEY READ A DEFENDANT THE MIRANDA RIGHTS. AND AS TO  
13 THE SUPPLEMENTAL REPORTS, IF YOU WILL RECALL WHILE HE WAS  
14 ON THE STAND HE SAID HIS HANDWRITTEN SUPPLEMENTAL REPORT  
15 WHICH REGARDING THE INCIDENT LOCATION WOULD BE IN CONTACT  
16 OF THE VICTIM, JEFFREY CONNELL. THE SECOND TYPEWRITTEN  
17 SUPPLEMENTAL REPORT REGARDING TERRY FRISK WAS WRITTEN BY  
18 SERGEANT MCCOLMAN. FURTHER AS TO BARNES CONTACT,  
19 INVESTIGATOR BARNES CONTACT WITH THE DEFENDANT,  
20 INVESTIGATOR DID NOT SAY ANYTHING ABOUT THE SHOE PRINTS.  
21 HE SAID SOMETHING ABOUT THE VICTIM'S BLOOD ON HIS SHOES  
22 AND BARNES INTRODUCED HIMSELF TO DEFENDANT AS AN OFFICER  
23 AND THEN DEFENDANT, AFTER INITIATING CONTACT WITH  
24 INVESTIGATOR BARNES. AND THE ADVICE OF RIGHTS FORM, ONCE  
25 AGAIN, I DON'T KNOW OF ANY REQUIREMENTS, THERE IS A

1 REQUIREMENT THAT A DEFENDANT RECEIVE HIS MIRANDA RIGHTS.  
2 THERE IS NO REQUIREMENT THAT DEFENDANT MUST SIGN AND CHECK  
3 OFF THE ADVICE OF RIGHTS FORM. ONCE AGAIN, AUDIO VISUAL  
4 OF ANY KIND OF VIDEO, THERE IS NO REQUIREMENT IN THIS  
5 STATE.

6 THE COURT: IF THERE WERE WE SURE WOULDN'T HAVE TO  
7 HAVE NEARLY SO MANY JACKSON V. DENNO HEARINGS.

8 MR. JOPHLIN: YES SIR, I AGREE. HOWEVER,  
9 INVESTIGATOR NOTES DO REFLECT THAT MIRANDA WARNING WAS  
10 READ TO DEFENDANT WHILE AT THE SHERIFFS DEPARTMENT BEFORE  
11 INTERVIEWING HIM AND THAT DEFENDANT UNDERSTOOD THOSE  
12 RIGHTS, WAIVED THOSE RIGHTS AND BY THE TIME IT CAME TO  
13 MEMORIALIZING THOSE RIGHTS TO WRITTEN FORM, THE INTERVIEW  
14 BECAME FUTILE, WASTE OF TIME, DEFENDANT WASN'T  
15 COOPERATING.

16 THE COURT: ALL RIGHT, MS. VAN GINHOVEN, ANYTHING  
17 FURTHER?

18 MS. VAN GINHOVEN: YOUR HONOR, YES, MY WHOLE CONCERN  
19 IS THAT THE CASE HAS BEEN PENDING FOR ALMOST TWO YEARS  
20 NOW. WITHIN ALL THE DOCUMENTS THAT I HAVE BEEN HANDED  
21 INVOLVING POLICE REPORTS, THERE IS NOT ONE MENTION FROM  
22 ANY OFFICER THAT MY CLIENT WAS ADVISED OF THE MIRANDA  
23 RIGHTS AT THE SCENE. NOW, I UNDERSTAND THAT THEY ARE NOT  
24 REQUIRED TO DO THAT BUT IT IS ONE OF THE MOST IMPORTANT  
25 PARTS OF A TRIAL, IT IS THE STATEMENT OF THE AMENDMENT,

1 THE FACT THAT SOMEONE IS READ THE MIRANDA IS VERY  
2 IMPORTANT. BECAUSE IN THIS TYPE OF HEARING AND THIS  
3 REPORT THAT OFFICER ROE SAID SERGEANT MCCOLMAN WROTE, AS A  
4 REPORTING OFFICER LISTED ON THAT REPORT IS SERGEANT  
5 MCCOLMAN AND OFFICER ROE. AND THAT FULL REPORT, ALL IT  
6 DOES IS HOW THE TERRY FRISK HAPPENED AND THERE IS NOT ONE  
7 MENTION OF MIRANDA RIGHTS IN THERE. AT THE DAY OF TRIAL,  
8 AT THE PRETRIAL HEARING, THE FIRST TIME WE EVER HEAR THAT  
9 OFFICER ROE ADVISED MR. HAYWARD OF HIS MIRANDA RIGHTS. I  
10 CLEARLY THINK THAT IS SUSPECT, I WILL CONCEIVE THAT ANY  
11 INVESTIGATIVE NOTES BY INVESTIGATOR BARNES DID SAY THAT HE  
12 VERBALLY MIRANDIZED MY CLIENT. HOWEVER, AT THE SCENE  
13 THERE IS NO EVIDENCE OF THAT EXCEPT THAT OFFICER ROE  
14 COMING IN HERE AT THE BEGINNING OF OUR, OF THIS TRIAL AND  
15 STATING THAT. AS TO WHAT MR. BARNES DID TELL MR. HAYWARD  
16 AT THE SCENE, ELICITING CRIMINAL RESPONSES IN HIS  
17 INVESTIGATIVE NOTES. HE TOLD THE DEFENDANT HE WAS GOING  
18 TO HAVE A HARD TIME EXPLAINING HOW THE LADY'S BLOOD WAS ON  
19 HIS SHOE AND HE WASN'T INVOLVED. I THINK THAT IS CLEARLY  
20 AN INTERROGATION AND I THINK IT IS CLEARLY HE ELICITS, AN  
21 INCRIMINATING RESPONSE FROM MY CLIENT. AS TO THE  
22 STATEMENT AT HEADQUARTERS, I SEE NUMEROUS TIMES WHERE  
23 STATEMENTS WERE TAKEN FROM PEOPLE. JUST BECAUSE SOMEONE  
24 IS SAYING THEY ARE NOT INVOLVED AND ARE NOT ADMITTING TO  
25 THE CRIME DOESN'T MEAN THAT THEY ALWAYS DON'T TAKE A

1 WRITTEN STATEMENT. AND NORMALLY THEY DO GO OVER THE  
2 ADVISE OF RIGHTS FORM JUST FOR THIS SPECIFIC PURPOSE.  
3 YOUR HONOR, I WOULD JUST ASK, AGAIN, CLEARLY THE STATEMENT  
4 AT THE SCENE SHOULD BE SUPPRESSED, NOT VOLUNTARILY MADE IN  
5 VIOLATION OF MIRANDA. AND ALSO THAT THE STATEMENT AT  
6 HEADQUARTERS SHOULD BE SUPPRESSED, IT WAS NOT VOLUNTARILY  
7 MADE.

8 THE COURT: ALL RIGHT. I BELIEVE THE ARGUMENTS GOES  
9 MORE TO THE WEIGHT OF THE TOTALITY OF THE CIRCUMSTANCES, I  
10 THINK THE STATE HAS MADE A SUFFICIENT SHOWING THAT THE  
11 DEFENDANT WAS ADVISED OF HIS RIGHTS, THERE IS NO  
12 REQUIREMENT THAT THE ADVICE BE IN WRITING, THAT HE GAVE UP  
13 THOSE RIGHTS AND WHATEVER STATEMENTS, THEY REALLY WEREN'T  
14 STATEMENTS BUT UTTERANCES THAT WERE MADE FREELY AND  
15 VOLUNTARILY. AFTER BEING ADVISED OF HIS RIGHTS AND HE  
16 GAVE UP THOSE RIGHTS AND MADE THOSE STATEMENTS OR  
17 UTTERANCES. AGAIN, QUITE FRANKLY, SOMETIMES I WISH THAT  
18 THERE WERE SOME REQUIREMENT FOR THE VIDEO OF STATEMENTS,  
19 GETTING IT ALL ON TAPE SO ALL OF THESE ISSUES WOULD GO  
20 AWAY. THAT IS APPARENTLY NOT THE WAY IT IS DONE OR GOING  
21 TO BE DONE. FOR THAT REASON THE STATEMENTS TESTIFIED TO  
22 WILL BE ADMITTED AND I THINK THE ARGUMENTS MADE BY THE  
23 DEFENSE COUNSEL, PRIMARILY WOULD GO TO THE WEIGHT, NOT TO  
24 THE ADMISSIBILITY. AND WHEN A STATEMENT IS MADE THAT THE  
25 DEFENDANT DOESN'T REMEMBER BEING MIRANDIZED, THERE IS

1.9

1 NOTHING IN THE RECORD TO THAT EFFECT.

2 ALL RIGHT. IDENTIFICATION ISSUES, NEIL VERSUS  
3 BIGGERS.

4 MS. COOPER: THANK YOU, YOUR HONOR. I WILL GO OVER  
5 LOURDES ANTONIO'S IDENTIFICATION FIRST, YOUR HONOR. THE  
6 FIRST FACTOR, THE OPPORTUNITY VIEW, WE HAD THREE DIFFERENT  
7 TIMEFRAMES, YOUR HONOR, WE ARE DEALING WITH HERE. YOU  
8 HEARD TESTIMONY THAT MS. ANTONIO LEFT THE HOUSE TO WALK  
9 THE CHILD ON THE STREET AND THAT THE DEFENDANT APPROACHED  
10 HER TRYING TO SELL HER SOME CLEANING SUPPLIES. SHE IS  
11 ABLE TO TALK TO HIM FOR ABOUT TWO TO THREE MINUTES AND IT  
12 IS SUNNY OUTSIDE, A BIT BREEZY OUTSIDE AS WELL. IT IS  
13 ABOUT 2:45 TO 3:00 O'CLOCK IN THE AFTERNOON WHEN THIS  
14 ENCOUNTER TAKES PLACE. SHE NOTICES HIM WEARING BAGGY DARK  
15 PANTS, BLUE SWEATER WITH WRITING ON IT, WHITE LETTERS ON  
16 IT. ALSO HE PROVIDES HER WITH PAPERWORK WITH CLEANING  
17 SUPPLIES. SHE DESCRIBES THEM AS YELLOW AND WHITE. ALSO  
18 SHE DESCRIBES HIM WEARING TENNIS SHOES, SHE DESCRIBES HIM  
19 AS A BLACK MALE, 23 YEARS OF AGE. SHE DESCRIBES HIM AS  
20 BEING TALL, YET SLIM WITH VERY SHORT HAIR AND CURLY. SHE  
21 DESCRIBES THAT HE DID NOT HAVE A MUSTACHE. HE ALSO  
22 PROVIDED HER OR PRESENTED TO HER A BOTTLE OF SOME SORT OF  
23 A CLEANING PRODUCT HE WAS TRYING TO SELL. SHE TESTIFIED  
24 THAT AS SHE WAS WALKING AWAY SHE TURNED YET AGAIN,  
25 OBSERVED THE DEFENDANT STANDING IN THE ROAD, SHE TESTIFIED

1 AFTER SHE TURNED LEFT ON COLUMBIA CLUB DRIVE SHE WAS STILL  
2 ABLE TO OBSERVE THE DEFENDANT. AT THIS POINT HE WAS  
3 CROUCHING OVER HIS BOOK BAG THAT SHE DESCRIBED AS BEING A  
4 DARK IN COLOR BOOK BAG. AT THAT POINT SHE CONTINUES TO  
5 WALK THE BABY FOR ABOUT THIRTY MINUTES WHEN SHE RETURNS TO  
6 THE HOUSE. YOUR HONOR, AT THAT POINT WHEN SHE FINDS IT  
7 STRANGE, ALSO, YOUR HONOR, HER DEGREE OF ATTENTION IS  
8 HEIGHTENED WHEN SHE ENCOUNTERED THE DEFENDANT ON THE  
9 STREET BECAUSE SHE FOUND IT STRANGE THAT SOMEONE IS  
10 WALKING AROUND IN THAT PARTICULAR NEIGHBORHOOD TRYING TO  
11 SELL THINGS. THAT IS A PARTICULAR OCCASION OR INCIDENT  
12 THAT OCCURRED IN THAT AREA. WHEN SHE RETURNS TO THE  
13 HOUSE, YOUR HONOR, SHE TESTIFIED THAT THE DOOR WAS AJAR,  
14 SHE THOUGHT THAT COULD OF BEEN CAUSED BY THE WIND. THEN  
15 SHE LEFT THE CHILD OUTSIDE AND WENT INSIDE TO INVESTIGATE  
16 TO MAKE SURE EVERYTHING WAS OKAY. WHEN SHE WAS IN THE  
17 LIVING ROOM SHE LOOKS DOWN THE HALLWAY BECAUSE SHE HEARS  
18 FOOTSTEPS. AND AS SHE TURNS AND LOOKS DOWN THE HALLWAY  
19 SHE SEES THE DEFENDANT EXITING A BEDROOM, TAKING A LEFT  
20 DOWN THE HALLWAY TOWARDS HER. SHE INDICATES THAT HE IS  
21 ABOUT EIGHT TO TEN FEET AWAY WHEN SHE SEES HIM AND SHE  
22 IMMEDIATELY RECOGNIZES HIM BECAUSE OF THE SAME FACE AND  
23 SAME CLOTHING AS THE INDIVIDUAL SHE HAD SEEN ON THE STREET  
24 JUST THIRTY MINUTES BEFORE. SHE INDICATES THAT SHE IS  
25 FACING THE DEFENDANT AND THAT SHE THEN TURNS, WALKS AWAY

1 TO CALL, TO LEAVE THE RESIDENCE. THEY HAVE AN EXCHANGE  
2 WHERE THEY ARE SPEAKING TO ONE ANOTHER, SHE INDICATES I  
3 BELIEVE IT IS THE SAME VOICE FROM THE INDIVIDUAL THAT SHE  
4 SPOKE TO ON THE STREET. SHE THEN ALSO SAYS THAT SHE WAS  
5 THEN GRABBED BY THE DEFENDANT AND THAT HE SHOVES HER OR  
6 PUSHES HER DOWN TO THE FLOOR BY THE DOOR AND THAT SHE IS  
7 ON HER BACK AT WHICH POINT HE STARTS KICKING HER IN THE  
8 CHEST. AND HE IS STANDING OVER HER AND SHE IS LOOKING UP  
9 AT HIM AND CAN SEE HIS FACE. AND THEN AT THAT POINT SHE  
10 IS ABLE TO EVENTUALLY ESCAPE, AFTER SHE STRIKES HIM HE  
11 GOES INTO ANOTHER ROOM AND SHE TAKES THAT OPPORTUNITY TO  
12 LEAVE. THE ENCOUNTER WITH THE DEFENDANT IS OUTSIDE WHEN  
13 SHE RUNS AWAY AND HE CATCHES UP TO HER, PUSHES HER DOWN,  
14 SHE FALLS ON HER STOMACH, HE THEN KICKS HER IN THE BACK AT  
15 WHICH POINT SHE TURNS AROUND TO PROTECT HERSELF AND IS  
16 ABLE TO SEE THE DEFENDANT AGAIN WHERE HE BEGINS STOMPING  
17 HER ON THE CHEST. THAT IS THE THIRD ENCOUNTER. SHE ALSO  
18 TESTIFIES THAT THE ENTIRE LENGTH OF THE TIME SHE SAW HIM  
19 IN THE HALLWAY UNTIL THE TIME HE KICKED HER FOR THE LAST  
20 TIME OUTSIDE WAS ABOUT FIFTEEN TO TWENTY MINUTES DURATION.  
21 ALSO SHE TESTIFIED THAT SHE WAS STARTLED OR SHOCKED TO SEE  
22 OR SURPRISED TO SEE THE DEFENDANT IN THE HALLWAY BECAUSE  
23 HE WAS NOT SUPPOSE TO BE IN THE HOUSE. AGAIN, HER DEGREE  
24 OF ATTENTION WAS HEIGHTENED. SHE PROVIDES A DESCRIPTION  
25 TO THE POLICE AT THE HOSPITAL, A FEMALE OFFICER AND SAID A

1 BLACK MALE, 23 YEARS OF AGE, WELL SHE GIVES A HEIGHT OF  
2 ~~5'8" TO 5'11", 5'8" LATER ON AND 5'11" TO THE RESPONDING~~  
3 OFFICER AT THE HOSPITAL. SHE DESCRIBES HIM AGAIN AS BEING  
4 SLIM WITH DARK SKIN, NO MUSTACHE, LONG SLEEVED DARK BLUE  
5 SWEATER WITH WRITING ON IT, BAGGY JEANS OR BAGGY DARK  
6 PANTS, TENNIS SHOES AND A DARK BACKPACK. AND SHE ALSO  
7 TESTIFIED THAT SHE SAW HIM WITH A PISTOL, GRAY IN COLOR.  
8 WHEN THE DEFENDANT IS APPREHENDED, YOUR HONOR, HE IS  
9 APPREHENDED WITH BAGGY BLUE JEANS, NIKE AIR TENNIS SHOES,  
10 WHICH THE VICTIM TESTIFIED THAT HE HAD TENNIS SHOES ON. HE  
11 ALSO WAS FOUND WITH A GRAY SILVER PISTOL, ALSO A BLUE  
12 SWEATER WAS FOUND AND HIS DARK COLORED BOOK BAG. ALSO THE  
13 DEFENDANT, YOU HEARD FROM ERIC BARNES IN THE BOOKING  
14 REPORT IN THE QUESTIONNAIRE THAT HE WAS 5'9", 165 POUNDS,  
15 24 YEARS OF AGE AND THAT HE DID NOT HAVE A MUSTACHE  
16 HOWEVER HE DID HAVE HAIR ON HIS CHIN. THE VICTIM'S LEVEL  
17 OF CERTAINTY AT THE TIME OF CONFRONTATION, YOUR HONOR, IS  
18 ON APRIL 22ND OF 2004 WHICH IS ONLY NINE DAYS LATER AFTER  
19 THE CRIME SHE IMMEDIATELY POINTS TO PHOTOGRAPH NUMBER SIX  
20 WHICH AT THE TIME WAS NOT LABELED NUMBER SIX BUT SHE  
21 POINTED TO IT. YOU HEARD ERIC BARNES TESTIFY THAT HE WENT  
22 THROUGH THIS PROCESS THREE TIMES AND ESSENTIALLY SHE  
23 IDENTIFIED THE SAME PHOTOGRAPH THREE TIMES. SHE TESTIFIED  
24 SHE HAD NO DOUBT THAT THE PERSON IS THE SAME MAN THAT  
25 ATTACKED HER ON THE DATE OF THE CRIME. AND YOU HEARD FROM

1 INVESTIGATOR BARNES THAT SHE DID NOT HESITATE IN ANY WAY  
2 WHEN SHE IMMEDIATELY IDENTIFIED THAT PHOTOGRAPH. ALSO,  
3 AND THE QUESTION AS TO FACIAL HAIR. I ASKED HER, DID YOU  
4 PICK THAT PHOTOGRAPH BECAUSE OF THE FACIAL HAIR AND SHE  
5 SAID, NO, I PICKED HIM OUT BECAUSE OF HIS FACE WHICH YOU  
6 CAN ALSO DEFER OR INFER THE ANSWER THAT SHE DID NOT PICK  
7 HIM DUE TO THE CLOTHING IN THE PHOTOGRAPH EITHER. THE  
8 DEFENSE IS GOING TO ARGUE THAT HE IS WEARING A JUMPSUIT.  
9 I DON'T KNOW IF YOU RECEIVED AN OPPORTUNITY TO REVIEW THE  
10 PHOTOGRAPHS, HE IS WEARING A WHITE T-SHIRT WITH A V-NECK  
11 AND YOU CANNOT TELL IF IT IS A JUMPER SUIT OR NOT. SO,  
12 THE TIME BETWEEN THE CRIME AND THE PHOTOGRAPHIC LINEUP IS  
13 SIMPLY ONLY NINE DAYS LATER AND SHE WAS ABLE TO IDENTIFY  
14 HIM WITHOUT ANY QUESTION INSIDE THIS COURTROOM. AS TO  
15 COWART'S DESCRIPTION, HE TESTIFIED, YOUR HONOR, THAT HE  
16 ENCOUNTERED THE DEFENDANT AND FLAGGED HIM DOWN IN THE SAME  
17 NEIGHBORHOOD IN CLOSE PROXIMITY TO THE CRIME SCENE. HE  
18 DESCRIBED THE INDIVIDUAL AS BLACK MALE, 6', SLENDER, DARK  
19 COLORED BACKPACK, BAGGY BLUE JEANS, PANTS WERE UNZIPPED.  
20 ACTUALLY I DON'T THINK HE TESTIFIED AS TO UNZIPPED PANTS  
21 IN THE PRETRIAL, HE HAD CLOSE HAIRCUT, HALF OF A PACK OF  
22 CIGARETTES AND A BLACK LONG SLEEVE SHIRT. HE DROPPED THE  
23 DEFENDANT OFF AT WINDING WOOD WHICH IS A SUBDIVISION NEAR  
24 THE VICTIM'S SUBDIVISION. HE DISCUSSES HOW HE HAD A  
25 CONVERSATION WITH THE DEFENDANT, THE DEFENDANT IS ASKING

1 FOR A RIDE AND HE IS SWEATY AND CLAIMING THAT PEOPLE ARE  
2 CHASING HIM, HE GOT INTO THE BACK OF THE PICKUP TRUCK  
3 WHERE THERE IS SOME PINE STRAW. HE THEN TESTIFIED THAT HE  
4 THOUGHT SOMETHING WAS STRANGE AND THAT WOULD SHOW HIS  
5 DEGREE OF ATTENTION WAS HEIGHTENED WHICH IS WHY HE GOT OUT  
6 OF HIS PICKUP TRUCK AND PULLED THE KEYS OUT OF THE  
7 IGNITION. AND THEN ALL OF A SUDDEN THE DEFENDANT WANTS TO  
8 WORK FOR HIM, HE TELLS HIM I HAVE ALREADY GOT ENOUGH  
9 WORKERS. THEN THE DEFENDANT WANTS TO GO INSIDE THE HOUSE  
10 TO USE THE TELEPHONE AND HE INDICATES TO HIM, YOU CANNOT  
11 GO INTO THAT HOUSE, WE DON'T HAVE ACCESS TO THAT HOUSE,  
12 THAT IS NOT MY HOUSE. HE THEN TELLS THE DEFENDANT HOW TO  
13 REACH THE NEXT STORE. DURING THIS TIME, YOUR HONOR, HE IS  
14 ABLE TO HEAR HIS VOICE AND HE HAS AN EXCHANGE WITH HIM.  
15 HE TESTIFIED THAT HE IS WITHIN A FEW FEET OF HIM AND AGAIN  
16 THE SAME CONDITIONS EXISTED OUTSIDE AS THEY DID EARLIER  
17 WITH MS. ANTONIO. YOUR HONOR, AT THAT POINT WHEN RONALD  
18 COWART SEES ALL THE POLICE ACTIVITY IN THE NEIGHBORHOOD HE  
19 ISN'T SURE IF THE INFORMATION HE HAS IS GOING TO BE  
20 RELEVANT BUT HE FELT THE NEED TO FLAG THE OFFICER DOWN, TO  
21 SHARE THE INFORMATION CONCERNING THE UNUSUAL CONTACT HE  
22 HAD WITH THIS DEFENDANT. HE THEN STOPPED THE OFFICER AND  
23 TOLD HIM, I DON'T KNOW IF THIS IS GOING TO HELP YOU BUT I  
24 PICKED UP SOMEBODY AND HE GIVES THE DESCRIPTION OF THE  
25 INDIVIDUAL. AND SURE ENOUGH THAT IS THE SAME DESCRIPTION

1 PROVIDED BY THE VICTIM AS TO THE PERPETRATOR OF THE CRIME.  
2 ABOUT 6:45, 7:00 O'CLOCK WHICH IS APPROXIMATELY TWO AND A  
3 HALF OR THREE HOURS LATER THE SAME DAY HE IS CALLED BY THE  
4 INVESTIGATOR BARNES TO THE SCENE WHERE THE DEFENDANT HAD  
5 BEEN DETAINED AND WAS ASKED IF HE RECOGNIZED HIM. AND HE  
6 IMMEDIATELY SAID, THAT IS HIM. AND HE ALSO HEARD THE  
7 DEFENDANT YELLING AT HIS SUPERVISOR, THEY ARE SETTING ME  
8 UP OR I DIDN'T DO IT, DON'T BELIEVE THEM AND HE RECOGNIZES  
9 HIS VOICE. AND SO, YOUR HONOR, THE FACT THAT HE IS  
10 HANDCUFFED AND SURROUNDED BY DEPUTIES OR PATROL CARS YOU  
11 MAY FIND THAT TO BE UNDULY SUGGESTIVE. HOWEVER, THE  
12 RELIABILITY OF THAT WITNESS'S IDENTIFICATION IS STILL  
13 EXTREMELY, IT IS STILL RELIABLE. THERE IS NO DANGER OF  
14 MISIDENTIFICATION. THIS WAS WITHIN A THREE HOUR PERIOD.  
15 ALSO THE FACT THAT THE DEFENDANT WAS WEARING A DIFFERENT  
16 TOP, I THINK SHOWED HOW RELIABLE HIS IDENTIFICATION IS  
17 BECAUSE THE DEFENDANT HAS TAKEN OFF HIS SWEATER AND PUT IT  
18 IN HIS BOOK BAG. AND AT THE TIME THAT MR. COWART  
19 IDENTIFIES HIM HE IS JUST WEARING A WHITE T-SHIRT. AND,  
20 AGAIN, THAT SHOWS HOW RELIABLE HIS IDENTIFICATION IS AND  
21 ANY DANGER OF MISIDENTIFICATION IS GONE AS A RESULT.

22 I BEG THE COURT'S INDULGENCE. I BELIEVE THAT THE  
23 STATE HAS PROVIDED SUFFICIENT TESTIMONY CONCERNING THE  
24 FIVE FACTORS AND DUE TO THE TOTALITY OF THE CIRCUMSTANCES  
25 THAT THE IDENTIFICATION OF BOTH INDIVIDUALS SHOULD BE

1 ADMITTED AND THEIR COURT IDENTIFICATION SHOULD BE ALLOWED.  
2 ALSO, YOUR HONOR, WHEN I READ THE CASE, I AM NOT EVEN SURE  
3 IF WE ARE REQUIRED TO HAVE A NEIL V. BIGGERS AS TO MR.  
4 RONALD COWART BECAUSE HE IS NOT IDENTIFYING THIS DEFENDANT  
5 AS COMMITTING THIS CRIME. HE IS ESSENTIALLY TESTIFYING  
6 THAT HE PICKED HIM UP AND DROPPED HIM OFF. ACCORDING TO  
7 STATE VERSUS CARLSON, IT STATES THAT A TRIAL PURPOSE TO  
8 PULL A IN-CAMERA HEARING WHEN THE STATE OFFERS A WITNESS  
9 WHOSE TESTIMONY IDENTIFIES THE DEFENDANT AS THE PERSON WHO  
10 COMMITTED THE CRIME. AND, YOUR HONOR, THIS WITNESS IN  
11 PARTICULAR MR. COWART DOES NOT SAY THIS MAN COMMITTED THIS  
12 CRIME. HE IS SIMPLY TESTIFYING THAT HE PICKED HIM UP AND  
13 DROPPED HIM OFF AND HE THOUGHT IT WAS UNUSUAL, HIS  
14 BEHAVIOR WAS UNUSUAL. THANK YOU.

15 THE COURT: MS. VAN GINHOVEN.

16 MS. VAN GINHOVEN: YES, YOUR HONOR.

17 THE COURT: I HAVE NOT SEEN THAT.

18 MS. VAN GINHOVEN: I WAS GOING TO HAND IT UP TO YOU.

19 THE COURT: THANK YOU.

20 MS. VAN GINHOVEN: YOUR HONOR, I WILL ADDRESS THE  
21 VICTIM, MS. ANTONIO'S IDENTIFICATION FIRST. THE FIRST  
22 PRONG IS WHETHER OR NOT THE IDENTIFICATION PROCESS WAS  
23 UNDULY SUGGESTIVE. YOUR HONOR, I THINK IT IS CLEAR THAT  
24 ON APRIL 13TH OF 2004, ONCE THE DESCRIPTION THAT SHE GAVE  
25 TO THE POLICE OFFICER AT THE HOSPITAL WAS A BLACK MALE,

1 23, 5'8", SLIM, DARK SKIN, NO MUSTACHE, LONG SLEEVED DARK  
2 BLUE SWEATER, BLUE JEANS, TENNIS SHOES AND A DARK BLUE  
3 BACKPACK. WHEN SHE CAME INTO THE POLICE HEADQUARTERS NINE  
4 DAYS LATER TO DO, WELL, FIRST OF ALL THAT SHE KNEW GOING  
5 TO HEADQUARTERS, WHAT SHE WAS GOING THERE TO DO IS TO GIVE  
6 A STATEMENT AND TO LOOK AT PICTURE TO IDENTIFY SOMEBODY.  
7 SHE GETS THERE, SHE TESTIFIED THAT THE OFFICER DID NOT  
8 TELL HER THAT THE DEFENDANT MAY OR MAY NOT BE IN THE  
9 LINEUP THAT HE WAS GOING TO SHOW HER. I UNDERSTAND THAT  
10 HE TESTIFIED TO THAT BUT THE VICTIM WHO ACTUALLY DID THE  
11 IDENTIFICATION TESTIFIED THAT HE DID NOT TELL HER THAT THE  
12 DEFENDANT MAY OR MAY NOT BE IN THAT LINEUP. NOW, THE  
13 PROBLEM WITH THE LINEUP BECOMES, NUMBER ONE, IT IS IN  
14 BLACK AND WHITE. YOU CAN'T TELL SKIN TONE, THERE ARE  
15 DIFFERENT SKIN TONES FOR EVERYBODY. THAT LINEUP IN AND OF  
16 ITSELF, THE PICTURES ARE NOT EXTREMELY CLEAR. FIRST OF  
17 ALL, AND SECONDLY ON THE 13TH WHEN SHE SAYS THAT THE  
18 DEFENDANT HAD NO MUSTACHE. THEY PUT TWO PEOPLE IN THAT  
19 LINEUP WHO DO HAVE MUSTACHES. SO, CLEARLY IF SHE BELIEVED  
20 THAT THE DEFENDANT DID NOT HAVE A MUSTACHE AND SHE IS  
21 LOOKING AT TWO PICTURES WITH A MUSTACHE I SUBMIT YOU CAN  
22 JUST PULL THOSE PICTURES OUT AND SHE IS NOT GOING TO PICK  
23 THOSE TWO. AND THEN PERSON NUMBER TWO AND FOUR TO ME  
24 LOOKS LIKE IT COULD BE THE SAME PERSON. I ASKED THE  
25 OFFICER YESTERDAY ABOUT THE NAMES OF THE PEOPLE IN THE

1 PICTURES. HE SAID HE DIDN'T HAVE THOSE NAMES, THAT HE  
2 DIDN'T KNOW. PICTURES NUMBER TWO AND FOUR LOOK DIFFERENT  
3 TO ME IN THAT IT LOOKS LIKE IT IS THE SAME PERSON, HE HAD  
4 A MUSTACHE AT ONE TIME AND HE IS FACING DIFFERENT ANGLES.  
5 THE OFFICER COULDN'T TELL ME WHAT THE NAMES OF THOSE  
6 PEOPLE WERE SO, AGAIN, I AM NOT SURE. YOUR HONOR, AND  
7 CLEARLY IN THAT LINEUP, ALL OF THE PICTURES, EACH PICTURE  
8 IS SOMEONE IN STREET CLOTHES. A COLLARED SHIRT, A JACKET,  
9 IT IS SOMETHING OF THAT NATURE. MR. HAYWARD IS THE ONLY  
10 ONE IN THOSE PICTURES THAT HAS ON A JUMPSUIT FROM THE  
11 JAIL. CLEARLY, I BELIEVE THAT THE PHOTO LINEUP WAS UNDULY  
12 SUGGESTIVE IN THE PICTURES THAT THEY USED AND THE FACT  
13 THAT THE OFFICER DIDN'T TELL HER THAT HE MAY OR MAY NOT BE  
14 IN THE PICTURES. IN THAT SHE KNEW GOING THERE WHAT SHE  
15 WAS GOING TO HEADQUARTERS TO DO. YOUR HONOR, SECONDLY  
16 WHEN SHE IS LOOKING AT THE PHOTO LINEUP AND WHEN SHE IS  
17 GIVING HER STATEMENT, HER HUSBAND IS PRESENT WITH HER.  
18 THE REASON THAT THIS IS IMPORTANT IS BECAUSE ON THE DAY OF  
19 THE INCIDENT AND WHEN SHE GIVES HER DESCRIPTION, THE  
20 PERSON WHO IS TRANSLATING TO THE POLICE OFFICERS, THE  
21 DESCRIPTION THAT MS. ANTONIO IS GIVING IS STILL HER  
22 HUSBAND, AT THE HOSPITAL, HER HUSBAND WAS TRANSLATING TO  
23 THE OFFICER EVERYTHING HAD HAPPENED AND WHAT THE  
24 DESCRIPTION WAS. AND THEN WHEN SHE GETS TO HEADQUARTERS  
25 HE IS THERE WHILE SHE IS TALKING AND OR TRANSLATING AND HE

1 IS THERE WHILE SHE IS MAKING THE ID. YOUR HONOR, I JUST  
2 THINK CLEARLY THAT THAT PROCESS HAS BEEN UNDULY  
3 SUGGESTIVE. AND WE ARE NOW ENGAGED IN THE PHOTO LINEUP TO  
4 THE INCIDENT. AND WHAT IS INTERESTING IS NINE DAYS LATER,  
5 APRIL 22ND, THE ONLY DESCRIPTION SHE GIVES AT HEADQUARTERS  
6 IS THAT HE IS A BLACK MALE, 5'8" AND SKINNY. I DON'T  
7 BELIEVE THAT THE IDENTIFICATION WAS RELIABLE. CLEARLY,  
8 WHEN ALL OF THIS WAS GOING ON, WHEN THE INCIDENT ITSELF  
9 WAS GOING ON THERE WERE NUMEROUS TIMES WHERE SHE WAS ON  
10 THE FLOOR, WAS NOT LOOKING AT THE SUSPECT. SHE WAS UPSET,  
11 SHE DID LEAVE, TURN HER BACK TO HIM ON NUMEROUS OCCASIONS.  
12 ORIGINALLY WHEN SHE IS DEALING WITH HIM ON THE STREET FOR  
13 A MERE TWO TO THREE MINUTES THERE WERE NUMEROUS PEOPLE IN  
14 THE AREA SELLING CLEANING PRODUCTS. AND, AGAIN, YOUR  
15 HONOR, THE OTHER PROBLEM THAT COMES IS AT THE HEADQUARTERS  
16 WHERE THERE IS A SECRETARY WHO IS TRANSLATING. WE DON'T  
17 KNOW HOW SHE TRANSLATED ONE WAY OR THE OTHER. SHE IS NOT  
18 A CERTIFIED TRANSLATOR, THERE HAS BEEN NO EVIDENCE OF  
19 THAT. WE JUST DON'T KNOW EXACTLY WHAT MS. ANTONIO WAS  
20 TOLD VIA THE SECRETARY THROUGH INVESTIGATOR BARNES AND  
21 WHAT CAME BACK AGAIN. AND I BELIEVE AT THAT TIME THEY  
22 SHOULD OF BEEN USING AT LEAST SOME TYPE OF TRANSLATOR WHO  
23 IS CERTIFIED. THAT WILL BE MY ARGUMENT FOR THE  
24 IDENTIFICATION BY MS. ANTONIO. AS TO THE IDENTIFICATION  
25 BY MR. COWART. HIS TESTIMONY HAS NOTHING TO DO WITH THIS

1 INCIDENT, THEN IT IS COMPLETELY IRRELEVANT AND I DON'T  
2 KNOW WHY THEY ARE CALLING HIM. I DO BELIEVE WE HAVE TO  
3 HAVE A NEIL VERSUS BIGGERS HEARING ON THIS IF HE IS GOING  
4 TO ID.

5 THE COURT: IT DOESN'T MATTER IF WE DO OR DON'T, WE  
6 HAVE HAD IT. LET'S GO AHEAD.

7 MS. VAN GINHOVEN: YES, YOUR HONOR. THIS IS CLEARLY  
8 IS A SHOWUP ID. AND CLEARLY THE CASE LAW, PEOPLE, PERSON  
9 SHOW UP AND THEY ARE JUSTIFIED IN THEIR NATURE. YOUR  
10 HONOR, WHAT IS INTERESTING ABOUT MR. COWART IS HIS  
11 DESCRIPTION DESCRIBING THE SUSPECT AS 6' AND HE IS WEARING  
12 A LONG SLEEVED BLACK SHIRT. WHEN HE ARRIVED ON THE SCENE  
13 HE WAS WEARING A T-SHIRT. UPON CROSS-EXAMINATION  
14 YESTERDAY HE KNEW NOTHING ABOUT A SWEATER. ALTHOUGH THERE  
15 IS NOTHING THROUGHOUT THIS CASE ABOUT A SWEATER BEING  
16 IDENTIFIED. HE DOESN'T REMEMBER LOOKING AT A SWEATER. HE  
17 ALSO TESTIFIED THAT HE GOT A CALL FROM THE OFFICER WHO  
18 TOLD HIM, WHAT HE SAID THE OFFICER TOLD HIM WAS, I NEED  
19 YOU TO COME AND IDENTIFY SOMEONE. ON HIS WAY TO AN  
20 INCIDENT TO HELP LAW ENFORCEMENT TO IDENTIFY A PERSON WHO  
21 IS THERE. WHEN HE DOES SHOW UP THERE ARE NUMEROUS POLICE  
22 CARS THERE, THERE ARE NUMEROUS POLICE OFFICERS THERE. MR.  
23 HAYWARD IS THE ONLY PERSON WHO IS HANDCUFFED IN THE POLICE  
24 CAR. AND THEN WE HAVE A PROBLEM IN AND I AM ASSUMING WE  
25 WOULDN'T BE GOING INTO THIS DURING THE TRIAL BUT JUST TWO

1 WEEKS AGO HE GOES TO THE SOLICITORS OFFICE AND HE LOOKS AT  
2 A PHOTO LINEUP AND THEN ID'S MR. HAYWARD IN THE LINEUP. I  
3 AM ASSUMING THAT IS NOT COMING IN THE TRIAL AT ANY POINT  
4 BECAUSE WE COULD NOT CROSS-EXAMINE.

5 THE COURT: WELL, IF YOU COULDN'T CROSS-EXAMINE HIM  
6 HE COULDN'T PROSECUTE THE CASE.

7 MR. JOPHLIN: I DIDN'T PLAN, THEY BROUGHT THAT UP,  
8 YOUR HONOR, ON CROSS-EXAMINE.

9 MS. VAN GINHOVEN: WE ASKED IF HE EVER LOOKED AT  
10 PICTURES AND THAT IS WHEN HE TOLD US HE HAD BEEN IN THE  
11 SOLICITORS OFFICE LOOKING AT A LINEUP. AND CLEARLY I  
12 BELIEVE THAT THAT, WHY WOULD HE BE LOOKING AT THE LINEUP  
13 IF HE REMEMBERED MR. HAYWARD. CLEARLY, IT WAS TO LOOK AT  
14 THE LINEUP TO SEE A FACE AND HE AGAIN IDENTIFIED HIM HERE  
15 TODAY. AND CLEARLY WHEN HE IS LOOKING AT THE LINEUP THAT  
16 WE HAVE IN EVIDENCE MS. ANTONIO HAD ALREADY INITIALED MR.  
17 HAYWARD'S PICTURE. SO, IT IS NOT PART TO HIM COMING HERE  
18 AND IDENTIFYING MR. HAYWARD WHO IS SITTING BETWEEN US.  
19 YOUR HONOR, I BELIEVE THAT THE, AGAIN, THERE IS  
20 SUBSTANTIAL LIKELIHOOD OF MISIDENTIFICATION IN THIS CASE,  
21 THE CLOTHING DOES NOT MATCH. WHEN HE GOES TO THE SCENE  
22 FOR THE SHOWUP ID HE WAS TOLD BY THE OFFICER TO COME UP  
23 THERE AND SEE IF HE CAN IDENTIFY SOMEBODY. AND CLEARLY  
24 MR. HAYWARD IS THERE AND THE ONLY ONE HANDCUFFED AND IN  
25 THE POLICE CAR. AND HE ALSO HAD TWO OTHER WORKERS WITH

1 HIM, WHEN I ASKED MR. BARNES ABOUT THAT HE SAID THEY WERE  
2 LOOKING AT HIM TOO. THERE IS THREE PEOPLE STANDING THERE  
3 LOOKING AT ONE PERSON WHO HAD BEEN HANDCUFFED. AND,  
4 AGAIN, I JUST DON'T, I JUST BELIEVE THERE IS SUBSTANTIAL  
5 LIKELIHOOD OF MISIDENTIFICATION. AND THERE WAS ALSO  
6 NUMEROUS PEOPLE IN THE AREA WORKING AND THEY NEVER DID ANY  
7 OTHER ID'S WITH ANY OF THOSE PEOPLE. SO, I JUST BELIEVE  
8 IT IS TRULY SUGGESTIVE IN THIS NATURE AND THAT THERE IS A  
9 SUBSTANTIAL LIKELIHOOD AND THAT IS BY THE FACT HE DID MEET  
10 WITH THE SOLICITOR AND THEY DID GO THROUGH A PHOTO LINEUP  
11 THAT CLEARLY HAD A MARKING ON IT WHO THE SUSPECT WAS. AND  
12 HE IS NOW COMING IN HERE TO THIS COURTROOM AND IDENTIFIED  
13 MR. HAYWARD.

14 THE COURT: ALL RIGHT, MS. COOPER.

15 MS. COOPER: YOUR HONOR, I HOPE YOU HAVE HAD AN  
16 OPPORTUNITY TO REVIEW THAT PHOTOGRAPHIC LINEUP. THE PHOTO  
17 NUMBER SIX, WHEN I ASKED MS. ANTONIO ON DIRECT  
18 EXAMINATION, DID INVESTIGATOR BARNES MAKE ANY GUARANTEES  
19 WHATSOEVER THE PERSON WHO COMMITTED THIS CRIME WOULD BE  
20 AMONG THE SIX PHOTOS. SHE ANSWERED, NO. ALSO, YOUR  
21 HONOR, SHE TESTIFIED THAT SHE DID NOT IDENTIFY THE  
22 DEFENDANT BASED ON FACIAL HAIR. SHE IDENTIFIED HIM BASED  
23 ON HIS FACE WHICH YOU CAN INFER FROM THAT ANSWER THAT IT  
24 IS NOT BASED ON THE CLOTHING. I THINK IF YOU EXAMINE  
25 PHOTOGRAPH NUMBER SIX IT IS VERY DIFFICULT TO TELL WHAT HE

1 WAS WEARING. IT LOOKS LIKE A V-NECK SWEATER WITH A  
2 T-SHIRT UNDERNEATH IT. SECONDLY, YOUR HONOR, THE FACT  
3 THAT THE HUSBAND WAS PRESENT AT THE HOSPITAL AND  
4 SUBSEQUENTLY AT THE HEADQUARTERS IS IRRELEVANT. HE NEVER  
5 SAW THIS DEFENDANT, HOW COULD HE POSSIBLY IDENTIFY HIM.  
6 HE NEVER ONCE ENCOUNTERED THE DEFENDANT. SO, HIS  
7 INVOLVEMENT OR HE WAS THERE FOR MORAL SUPPORT. HIS  
8 INVOLVEMENT OR BEING PRESENT IS IRRELEVANT. THE FACT THAT  
9 THE VICTIM GAVE A STATEMENT TO THE OFFICER, INVESTIGATOR  
10 BARNES AT HEADQUARTERS BY A PERSON WHO IS NOT A CERTIFIED  
11 TRANSLATOR. WELL, THE DEFENSE HAS THE NOTES THAT  
12 INVESTIGATOR BARNES TOOK FROM THAT INTERVIEW AND THE  
13 VICTIM TESTIFIED EXACTLY WHAT SHE HAS TOLD INVESTIGATOR  
14 BARNES. IT IS COMING FROM HER OWN MOUTH AND IT IS  
15 CONSISTENT WITH WHAT SHE REPORTED TO INVESTIGATOR BARNES.  
16 ALSO, YOUR HONOR, AT FAR AS RONALD COWART IS INVOLVED,  
17 UNDER NEIL VERSUS BIGGERS, IN THAT CASE THE POLICE WERE  
18 CALLED, CALLED A VICTIM TO VIEW A SUSPECT THAT WAS BEING  
19 RETAINED ON ANOTHER CHARGE, THEY TRIED TO DO A LINEUP AND  
20 WEREN'T ABLE TO FIND ANYONE AT THE JAIL MATCHING THE  
21 DEFENDANT'S DESCRIPTION SO THEN THEY JUST CONDUCTED A  
22 SHOWUP IDENTIFICATION OR A SHOWUP AND THEN THE VICTIM  
23 IDENTIFIED THE PERPETRATOR, THE DEFENDANT AS THE  
24 PERPETRATOR. NEIL VERSUS BIGGERS FOUND THAT UNDER THE  
25 TOTALITY OF THE CIRCUMSTANCES IDENTIFICATION WAS RELIABLE

1 EVEN THOUGH THE CONFRONTATION WAS SUGGESTIVE. THE SUPREME  
2 COURT OF THE UNITED STATES FOUND NO SUBSTANTIAL LIKELIHOOD  
3 OF MISIDENTIFICATION. CLEARLY, YOUR HONOR, THAT IS EVEN  
4 MORE SUGGESTIVE IN A JAIL SETTING WHERE THE VICTIM WAS  
5 BROUGHT TO THE JAIL HOUSE AND IDENTIFIED THE PERPETRATOR  
6 OR THE DEFENDANT AS A PERPETRATOR IN THAT CASE. ALSO, IN  
7 STATE VERSUS BROWN WHICH SOUTH CAROLINA COURT OF APPEALS  
8 CASE WHICH IS CITED 589 S.E. 2ND, 781. IT STATES THE  
9 SHOWUP MAY BE PROPER EVEN THOUGH THE POLICE REFERRED TO  
10 THE SUSPECT AS A SUSPECT AND EVEN THOUGH THE SUSPECT IS  
11 HANDCUFFED OR IS IN THE PRESENCE OF THE POLICE. SO, YOUR  
12 HONOR, THE FACT THAT IT WAS SUGGESTIVE STILL DOES NOT MAKE  
13 THE, THERE IS NO DANGER OF MISIDENTIFICATION IN THIS  
14 MATTER. THE FACT THAT MR. COWART AND I WANT TO MAKE THIS  
15 A COURT'S EXHIBIT IF I MAY. IT IS A PHOTOGRAPHIC LINEUP  
16 WITHOUT ANY NUMBERS ON IT AND WITHOUT ANY INITIALS ON IT.  
17 IF WE COULD MAKE THAT COURT'S EXHIBIT NUMBER 1 OR 2, 3.

18 (WHEREUPON, COURT'S EXHIBIT NO. 3 WAS MARKED FOR  
19 IDENTIFICATION ONLY.)

20 MS. COOPER: YOU WILL NOTICE THERE ARE NO INITIALS,  
21 NO MARKINGS OF ANY KIND, LETTERS OF NUMBERS ON ANY OF  
22 THOSE PHOTOGRAPHS AND MR. JOPHLIN IS THE ONE THAT SHOWED  
23 THAT VERSION TO THE WITNESS IN PREPARATION FOR TRIAL TO  
24 INSURE THAT HE, BECAUSE OF THE LENGTH OF THE CASE, WAS  
25 STILL ABLE TO RECALL WHAT THE DEFENDANT LOOKED LIKE AND

1 THE WITNESS TESTIFIED THAT MR. JOPHLIN DID NOT IN ANY WAY  
2 SUGGEST TO WHAT PHOTOGRAPH TO IDENTIFY. THE FACT THAT THE  
3 WITNESS, MR. COWART WAS NOT PRESENTED OR ASKED TO IDENTIFY  
4 ANYBODY ELSE OR ANY OF THE WORKERS REPRESENTATIVES IN THE  
5 AREA IS BECAUSE THE POLICE WERE ABLE TO ELIMINATE ALL  
6 OTHER SUSPECTS BASED ON THE CLOTHING DESCRIPTION. YOU  
7 HEARD FROM INVESTIGATOR BARNES THAT THE SUPERVISOR TOLD  
8 HIM THAT HER NEPHEW WAS ACCOUNTED FOR. HE ASKED HER WHAT  
9 THE NEPHEW WAS WEARING AND SHE SAID A WHITE BUTTON SHIRT.  
10 AND INVESTIGATOR BARNES KNEW RIGHT THEN AND THERE THAT  
11 THAT DID NOT FIT THE DESCRIPTION PROVIDED BY THE VICTIM  
12 NOR BY MR. COWART. AND SO THAT IS WHY NO ONE ELSE WAS  
13 ASKED TO IDENTIFY ANYONE ELSE AT THE SCENE.

14 THE COURT: ALL RIGHT, ANYTHING FURTHER, MS. VAN  
15 GINHOVEN.

16 MS. VAN GINHOVEN: YES, YOUR HONOR. MY CONCERN TO  
17 CLEARLY TO SHOW UP, I THINK THIS IS DEFINITELY SUGGESTIVE  
18 AND THAT THERE WAS A POTENTIAL ELEMENT FOR  
19 MISIDENTIFICATION. AND THE PHOTO LINEUP, CLEARLY YOU  
20 USUALLY HAVE SIX PICTURES IN IT, IN A PHOTO LINEUP. AND I  
21 JUST DON'T SEE HOW YOU PUT PICTURE FIVE AND SIX, IT IS  
22 ELIMINATING BECAUSE THERE WAS NO MUSTACHE, THAT LEAVES  
23 FOUR. AND, AGAIN, WHEN YOU ARE LOOKING AT THOSE FOUR YOU  
24 CAN CLEARLY TELL THAT THE OTHER SHIRTS THAT ARE ON ARE  
25 COLLARED SHIRTS, THEY ARE STREET SHIRTS. IT IS PRISON

1 WEAR, I AM NOT SURE WHY THAT THEY PUT THAT ON HIM BEFORE  
2 THEY TOOK THE PICTURE OR WHY THEY USED THIS PICTURE.  
3 SECONDLY, WHAT THEY COULD OF DONE WITH MR. COWART, THEY  
4 EASILY COULD HAVE HIM COME TO HEADQUARTERS TO LOOK AT THE  
5 PHOTO LINEUP AND HAVE HIM PICK HIM OUT OF THE PHOTO  
6 LINEUP. THEY HAD ALREADY ARRESTED HIM, THEY CLEARLY COULD  
7 HAVE DONE THAT. OF COURSE, I HAVEN'T BEEN PROVIDED WITH  
8 THE PHOTO LINEUP WITHOUT THE NUMBERS.

9 THE COURT: IT IS JUST LIKE THAT ONE. A LITTLE BIT  
10 DARKER IN TONE.

11 MS. VAN GINHOVEN: BUT CLEARLY, THEY WANTED HIM TO  
12 LOOK AT THAT BEFORE HE CAME IN HERE TO IDENTIFY MR.  
13 HAYWARD WHICH THEY COULD OF EASILY DONE FROM THE STAND  
14 SINCE HE REMEMBERS SO WELL. AND WE JUST, THEY ARE MERELY  
15 SUGGESTIVE AND THERE IS A POTENTIAL LIKELIHOOD OF  
16 MISIDENTIFICATION ON THOSE.

17 THE COURT: ALL RIGHT, AS TO THE VICTIM'S  
18 IDENTIFICATION OF THE DEFENDANT, I HAVE REVIEWED THE  
19 FACTORS OF HER OPPORTUNITY TO VIEW THE DEFENDANT AT THE  
20 TIME OF THE CRIME. THOSE ARE ON THE STREET AND IN THE  
21 HOUSE AND BACK OUT AT THE DRIVE. HER DEGREE OF ATTENTION,  
22 THE ACCURACY OF ANY PRIOR DESCRIPTION OF THE DEFENDANT,  
23 THE LEVEL OF CERTAINTY, THE TIME BETWEEN THE OFFENSE AND  
24 THE CONFRONTATION. OF COURSE, THOSE ARE FACTORS THAT THE  
25 COURT LOOKS AT WITH BOTH IDENTIFICATIONS AND I FIND THAT

1 BOTH IDENTIFICATIONS WILL BE ADMITTED. THERE IS ONE  
2 PERSON SHOW ARE DISFAVORED, THAT IN MANY INSTANCES THEY  
3 ARE STILL ADMITTED BECAUSE OF THE TOTALITY OF THE  
4 CIRCUMSTANCES. CASE LAW INDICATES THAT EVEN IF THE  
5 IDENTIFICATION IS UNNECESSARILY SUGGESTIVE THE EVIDENCE  
6 NEED NOT BE EXCLUDED IF THE TOTALITY OF THE CIRCUMSTANCES  
7 INDICATES THAT THE IDENTIFICATION IS RELIABLE. AND I FIND  
8 THAT THERE IS SUFFICIENT EVIDENCE THAT HAS BEEN SHOWN TO  
9 THIS COURT THAT THE IDENTIFICATION IS RELIABLE. AS TO  
10 NUMBER ONE, THE DEFENSE COMPLAINS THAT THE PHOTOGRAPHIC  
11 LINEUP SHOWS THAT THE PICTURE WAS NOT IN COLOR. IT NOT  
12 BEING IN COLOR, IF IN FACT HE IS IN A DETENTION JUMPSUIT,  
13 I REALLY CAN'T TELL IF HE IS OR IS NOT. IF IT WERE IN  
14 COLOR AND THAT WOULD OF BEEN AN ORANGE JUMPSUIT, THERE IS  
15 NO QUESTION THAT IT WOULD BE UNDULY SUGGESTIVE. IN THE  
16 PHOTOGRAPH AS I VIEW IT, OF COURSE, THIS ARRAY OF SIX  
17 PHOTOGRAPHS IS AN EXHIBIT AND WILL BE IN THE RECORD. I  
18 DON'T FIND ANYTHING ABOUT THE PHOTOGRAPHIC LINEUP TO BE  
19 UNDULY SUGGESTIVE. AND IT COULD BE, I AM NOT POSITIVE  
20 THAT IT IS A JUMPSUIT, BECAUSE IT IS IN BLACK AND WHITE,  
21 HE HAS GOT A WHITE T-SHIRT ON UNDER WHATEVER THE GARMENT  
22 HE HAS GOT ON THE OUTSIDE. IT IS AN EXHIBIT AND IT IS IN  
23 THE RECORD AND I UNDERSTAND YOUR ARGUMENTS. I AM GOING TO  
24 PERMIT BOTH IDENTIFICATIONS ON BOTH, THE VICTIM AND BY MR.  
25 COWART. ALL RIGHT, I KNOW THERE WAS ALSO GOING TO BE A

1 MOTION TO SUPPRESS AND THERE IS AN ISSUE OF THE WITNESS  
2 WHO REMAINED IN THE COURTROOM YESTERDAY.

3 MS. VAN GINHOVEN: YOUR HONOR, AT THIS TIME WE ARE  
4 GOING TO WITHDRAW THE MOTION TO SUPPRESS THE EVIDENCE.

5 THE COURT: ALL RIGHT, THAT MOTION IS WITHDRAWN.  
6 THERE WAS DISCUSSION OR A MOTION MADE YESTERDAY, I BELIEVE  
7 IT WAS MR. ROE, AFTER HE TESTIFIED HE REMAINED IN THE  
8 COURTROOM FOR SOME PERIOD OF TIME. QUITE FRANKLY, I DID  
9 NOT NOTICE IT ALTHOUGH IT IS NOT UP TO ME TO DO. I TELL  
10 COUNSEL TO KEEP UP WITH WHO IS IN HERE AND WHO IS NOT IN  
11 HERE. AND I AM SURE WHEN IT WAS REALIZED AND WHEN HE WAS  
12 SENT BACK OUT OF THE COURTROOM. MS. VAN GINHOVEN.

13 MS. VAN GINHOVEN: YOUR HONOR, WHEN DEPUTY ROE WAS ON  
14 THE STAND, HE WAS THE FIRST WITNESS IN PRETRIAL. I  
15 THOUGHT AND SAID, YOUR HONOR, IS THE SEQUESTRATION ORDER  
16 IN EFFECT NOW AND MR. COWART WAS IN THE ROOM. AND YOU  
17 SAID, YES, AND MR. COWART LEFT AND MR., OFFICER ROE WAS ON  
18 THE STAND. I BELIEVE THAT WHEN OFFICER ROE GOT OFF THE  
19 STAND HE CAME AND SAT BACK BEHIND THE TABLE. HE STAYED  
20 FOR MR. COWART'S TESTIMONY, INVESTIGATOR BARNES TESTIMONY,  
21 AND HALF OF THE VICTIM'S TESTIMONY, SHE WAS ON TWO HOURS  
22 AND FORTY-FIVE MINUTES. WE BELIEVE HE LEFT AT 5:43. I  
23 JUST FEEL THAT WE CLEARLY STATED THERE WAS GOING TO BE  
24 SEQUESTRATION ORDER, AND SOMEONE VIOLATED THAT AND THAT  
25 THEY MAY BE CLEAR TO TESTIFY. WE REMINDED OR MADE SURE

1 THAT EVERYONE KNEW THE SEQUESTRATION ORDER WAS IN EFFECT  
2 DURING PRETRIAL WHILE OFFICER ROE WAS ON THE STAND. AND  
3 WE WOULD MOVE TO EXCLUDE TESTIMONY, OUR WHOLE ISSUE  
4 BECOMES, THE REPORTS THAT WE HAVE AND WHAT THE OFFICER IS  
5 GOING TO TESTIFY TO. AND WHEN THE OFFICERS IN HERE AND WE  
6 BELIEVE THAT THE TESTIMONY IS TAINTED. AND HE SAT IN HERE  
7 FOR ALL OF THAT. AND WE WOULD THEREFORE ASK TO EXCLUDE  
8 THAT TESTIMONY.

9 THE COURT: SOLICITOR.

10 MR. JOPHLIN: THANK YOU, YOUR HONOR. FIRST, WE WOULD  
11 LIKE TO APOLOGIZE FOR THE INAPPROPRIATE STANDING OF MR.  
12 ROE IN THE COURTROOM. NEITHER MYSELF OR MS. COOPER WAS  
13 AWARE OF THAT UNTIL, WHEN I DID NOTICE THIS WE MADE IT  
14 QUITE CLEAR TO HIM TO LEAVE IMMEDIATELY. I THINK WE WERE  
15 ALL FOCUSED ON THE TESTIMONY AND THE PRETRIAL MATTERS. I  
16 KNOW THE ORDER WAS IN EFFECT, HE DID SIT THROUGH MR.  
17 COWART AND INVESTIGATOR BARNES AND HALF OF THE VICTIM'S  
18 TESTIMONY. HOWEVER INVESTIGATOR ROE HAD ALREADY TESTIFIED  
19 HERE AS WHAT HE IS GOING TO SAY ON THE RECORD IN REGARDS  
20 TO THIS PRETRIAL MATTERS. IN ADDITION, INVESTIGATOR ROE'S  
21 TESTIMONY DOES NOT DERIVE FROM ANY OF THE WITNESSES THAT  
22 HE HEARD TESTIFYING. HE HAD NO DEALINGS WITH COWART, HIS  
23 TESTIMONY ISN'T INTERRELATED IN ANY WAY. HE HAD NO  
24 FEELINGS FOR THE VICTIM, ONCE AGAIN THEIR TESTIMONY IS NOT  
25 INTERRELATED IN ANY WAY. AND AS FAR AS ROE'S TESTIMONY

1 AND WHAT HE DID WITH INVESTIGATOR BARNES, THE FEW  
2 INSTANCES WHERE THEY MET AT THE AFTERNOON, INVESTIGATOR  
3 BARNES CAME TO THE SCENE, INVESTIGATOR ROE DIDN'T TESTIFY  
4 TO WHAT HAPPENED AFTER THE SCENE. AND INVESTIGATOR BARNES  
5 DOESN'T TESTIFY TO ANY INVOLVEMENT HE HAD WITH ROE AFTER  
6 THE SCENE IN REGARDS TO ANY PRETRIAL MATTERS. SO,  
7 THEREFORE THERE WOULD BE NO TAINING OF ANY TESTIMONY BY  
8 INVESTIGATOR ROE BASED ON THE UNRELATED MATTERS THAT THE  
9 OFFICER TESTIFIED ABOUT IN FRONT OF HIM. FURTHER, YOUR  
10 HONOR, THE STATE WOULD JUST POINT OUT THAT EXCLUSION OF  
11 THE WITNESS WOULD BE A HARSH REMEDY FOR WHAT HAPPENED  
12 ESPECIALLY IN RELATION TO OUR ARGUMENT THAT UNRELATED  
13 MATTERS OF TESTIMONY. I DO HAVE A COUPLE OF CASES THAT  
14 JUST POINT OUT, THEY MORE DEAL WITH DEFENSE REQUEST FOR A  
15 MISTRIAL BASED ON A VIOLATION OF SEQUESTRATION ORDER. BUT  
16 THERE ARE CASES AS WELL THAT EXCLUSION OF TESTIMONY,  
17 ESPECIALLY UNITED STATES V. RHYNES, A 4TH CIRCUIT COURT OF  
18 APPEALS CASE, 218 FEDERAL 3RD, 310. WHERE IT TALKS ABOUT  
19 A DEFENSE ATTORNEY, MULTIPLE DEFENDANTS ON TRIAL, THE  
20 DEFENSE ATTORNEY TALKED TO ONE SEQUESTERED WITNESS ABOUT  
21 WHAT WAS TESTIFIED TO. THAT HAD TO DO WITH THE ATTORNEY  
22 NOT BEING UNDER SPECIAL ORDER. BUT THE TRIAL JUDGE  
23 EXCLUDED THE TESTIMONY AND THE COURT OF APPEALS THAT WAS  
24 TOO HARSH--

25 THE COURT: WHAT IS NOT TOO HARSH OR SANCTION?

1 MR. JOPHLIN: I AM SORRY?

2 THE COURT: WHAT IS NOT TOO HARSH FOR SANCTION?

3 MR. JOPHLIN: AN EXCLUSION OF THE WITNESS WOULD BE  
4 TOO HARSH.

5 THE COURT: I UNDERSTAND WHAT YOU THINK IS, I AM  
6 ASKING WHAT YOU THINK IS NOT.

7 MR. JOPHLIN: ADMONISHING THE WITNESS, YOUR HONOR.  
8 AND ONCE AGAIN REITERATING THE IMPORTANCE OF THE  
9 SEQUESTRATION ORDER AND THE ROLE OF THE REASON WHY WE HAVE  
10 THAT IN PLACE AND THE ROLE IT PLAYS IN THIS TRIAL.

11 THE COURT: I AM NOT GOING TO PROHIBIT HIS TESTIMONY.  
12 BECAUSE ONE OF THE COURT'S FUNCTION IS TO SEE THAT JUSTICE  
13 IS DONE. AT THE SAME TIME I AM NOT REAL HAPPY THAT THE  
14 SEQUESTRATION IN ORDER WAS NOT MADE. AND I AM NOT BLAMING  
15 COUNSEL, YA'LL HAVE ENOUGH GOING ON IN TRIAL TO HAVE TO  
16 WORRY ABOUT WHAT IS GOING ON BEHIND YOU WHERE THE WITNESS  
17 IS SEATED. I WILL TELL YOU THIS, IF HIS TESTIMONY AND THE  
18 PRIMARY REASON I AM NOT PROHIBITING HIS TESTIMONY IS THAT  
19 HE WAS, IN FACT, THE FIRST WITNESS. HE COULD NOT BASE  
20 ANYTHING HE SAID ON ANYTHING THAT MIGHT OF BEEN SAID  
21 AFTERWARDS. IF HIS TESTIMONY DURING THE TRIAL VARIES AT  
22 ALL WITH WHAT HE TESTIFIED TO IN THE PRETRIAL HEARING.  
23 THE DEFENDANT CAN GO INTO THE FACT THAT HE REMAINED IN  
24 THIS COURTROOM, VIOLATED THE SEQUESTRATION ORDER AND HIS  
25 TESTIMONY IS NOW CHANGED. THAT WOULD BE PERMITTED.

1 MR. JOPHLIN: YES SIR, YOUR HONOR.

2 THE COURT: THAT IS THE BEST THAT I CAN COME UP WITH.

3 MR. JOPHLIN: THANK YOU.

4 THE COURT: ANY OTHER PRETRIAL MATTERS?

5 MS. VAN GINHOVEN: YOUR HONOR, NOW WHAT WE HAVE BEEN  
6 TALKING ABOUT FOR THE JACKSON VERSUS DENNO, I UNDERSTAND  
7 THAT THEY ARE NOW, THEY WERE VOLUNTARILY MADE AND THEY ARE  
8 GOING TO BE ADMITTED. WE DO HAVE, WITH THIS STATEMENT AT  
9 HEADQUARTERS, WE HAVE ISSUES WITH SOME OF THE STATEMENT  
10 BEING CLEARLY RELEVANT IN THIS CASE. AND MOVING TO NOT  
11 HAVING THE OFFICER TESTIFY ABOUT THAT.

12 THE COURT: WHICH PORTION OF IT.

13 MS. VAN GINHOVEN: THE ONE AT HEADQUARTERS, YOUR  
14 HONOR, WHERE THEY ARE TALKING ABOUT HIS BEING VAGUE ABOUT  
15 HIS LIFE, WHERE HE LIVED, ABOUT HIS--

16 THE COURT: YOU ARE LOOKING AT SOMETHING AND I AM NOT  
17 SURE BECAUSE I DON'T HAVE THAT, I DON'T KNOW EXACTLY WHAT  
18 IT IS, I AM ASSUMING THAT ALL THEY ARE GOING IN TO IS WHAT  
19 WAS TESTIFIED TO HERE YESTERDAY. AND I DON'T RECALL THAT  
20 WAS TESTIFIED TO YESTERDAY.

21 MS. VAN GINHOVEN: I DON'T BELIEVE IT WAS, YOUR  
22 HONOR.

23 THE COURT: I DIDN'T HEAR IT AND THERE IS OFTEN TIMES  
24 THAT I DON'T HEAR THINGS THAT ARE TESTIFIED TO. BEFORE WE  
25 GO INTO ALL OF THAT WHAT IS IT, WHAT STATEMENT OF THE

1 DEFENDANT THAT THE STATE INTENDS TO INTRODUCE.

2 MR. JOPHLIN: YOUR HONOR, WE DO INTEND TO GO INTO, AS  
3 INVESTIGATOR BARNES BRIEFLY SUMMARIZED YESTERDAY, HE  
4 DIDN'T GO IN FULL DETAIL FROM HIS REPORT. BUT THAT WHERE  
5 HE HAD BEEN MANY PLACES ABOUT HIS LIFE, EXCUSE ME, HE  
6 LIVED IN SEVERAL DIFFERENT CITIES AND STATES. WE DO NOT  
7 INTEND TO GO INTO ANY KIND OF PRISON.

8 THE COURT: I DON'T NEED TO KNOW WHAT YOU ARE NOT  
9 GOING TO GO INTO, AGAIN, JUST TELL ME WHAT YOU DO WANT TO  
10 ILLICIT FROM THE WITNESS.

11 MR. JOPHLIN: I APOLOGIZE, YOUR HONOR. HE GOT INTO  
12 TOWN A FEW WEEKS BEFORE, HE HAD BEEN WITH THIS SPECIFIC  
13 CLEANING SUPPLY COMPANY FOR A COUPLE OF WEEKS. THAT HE  
14 LIVED IN TUSCAN, DETROIT, MISSISSIPPI AND ALABAMA AND THAT  
15 HE IS GENERALLY TRANSIENT, HE HAD NO REAL FAMILY ROOTS.  
16 THAT THE DEFENDANT HAS ATTEMPTED TO STEER QUESTIONING INTO  
17 UNRELATED MATTERS AND HOW TO SURVIVE ON THE STREET OF  
18 DETROIT. AND FINALLY--

*D. not relevant*

19 THE COURT: YOU ARE GOING TO GO INTO THAT, TELL ME  
20 AGAIN WHAT IT SAYS OR MAYBE YOU NEED TO HAND ME A COPY. I  
21 AM HAVING TROUBLE UNDERSTANDING EXACTLY WHAT ALL IS BEING  
22 SAID. I WAS UNDER THE IMPRESSION THE ESSENCE OF THE  
23 STATEMENT MADE AT HEADQUARTERS THAT THE STATE WANTED TO  
24 PUT IN WAS SOMETHING TO THE EFFECT, I DON'T REMEMBER THE  
25 EXACT WORDS, YOU HAVE WHAT YOU NEED TO MAKE A CASE AGAINST

1 ME OR SOMETHING TO THAT EFFECT. I GUESS I MISSED THAT  
2 SOMEWHERE.

3 MR. JOPHLIN: DIRECTLY BEFORE THAT, YOUR HONOR,  
4 INVESTIGATOR BARNES DID TESTIFY THAT THE DEFENDANT WAS  
5 SPEAKING ABOUT HIS LIFE, HIS FAMILY LIFE, WHERE HE HAD  
6 BEEN PRIOR TO COMING TO COLUMBIA AND THEN HE STATED THAT  
7 YOU HAVE GOT EVERYTHING YOU NEED, YOU HAVE GOT MY SHOES  
8 AND CLOTHES AND EVERYTHING. HE SAID WE AT THE SHERIFFS  
9 DEPARTMENT DIDN'T NEED ANYTHING ELSE TO DO OUR JOB.

10 THE COURT: ALL RIGHT, WHAT IS THAT YOU ARE  
11 ESSENTIALLY YOU ARE MOVING TO LIMIT, WHAT PORTIONS OF THE  
12 ORAL STATEMENT WOULD BE PERMITTED, IS THAT RIGHT?

13 MR. JOPHLIN: THAT IS CORRECT.

14 THE COURT: AND TELL ME AGAIN WHAT PORTIONS YOU WOULD  
15 OBJECT TO.

16 MS. VAN GINHOVEN: YOUR HONOR, I WOULD TO THE PORTION  
17 THAT I AM BEING VAGUE ABOUT HIS LIFE.

18 THE COURT: ABOUT BEING VAGUE ABOUT HIS LIFE?

19 MS. VAN GINHOVEN: RIGHT. I DON'T KNOW WHAT  
20 RELEVANCE IT IS WHERE HE HAS BEEN IN THE PAST YEAR. AND  
21 CLEARLY I DON'T WANT THEM TO GO INTO THAT HE GOT OUT OF  
22 PRISON OVER A YEAR AGO.

23 THE COURT: YOU DON'T WANT TO WHAT?

24 MS. VAN GINHOVEN: THAT HE ADMITTED THAT HE JUST GOT  
25 OUT OF PRISON JUST OVER A YEAR AGO.

1 THE COURT: DO YOU INTEND TO GO INTO THAT, SOLICITOR?

2 MR. JOPHLIN: NO, SIR. WE ARE NOT PLANNING TO GO  
3 INTO ANYTHING REGARDING PRISON OR MARIJUANA ABUSE.

4 MS. VAN GINHOVEN: I JUST DON'T BELIEVE THAT THE  
5 OFFICERS OPINION THAT HE SEEMED VAGUE ABOUT HIS LIFE AND  
6 WHERE MR. HAYWARD LIVED IN THE PAST YEAR HAS ANY RELEVANCE  
7 IN THIS CASE.

8 THE COURT: WHAT ABOUT THAT, SOLICITOR?

9 MR. JOPHLIN: YOUR HONOR, I THINK WE SHOULD USE THAT  
10 BASES DURING THIS QUESTIONING. IT IS NOT HARD FOR  
11 SOMEBODY, ANYONE ASKING QUESTIONS THAT THEY ARE NOT, THAT  
12 THE QUESTIONS ARE NOT BEING ANSWERED DIRECTLY. AS FAR AS  
13 LIVING IN DIFFERENT PLACES, IT SHOWS THE DEFENDANT HAS NO  
14 ROOTS IN THIS COMMUNITY, HE IS TRANSIENT, HE HAD JUST  
15 GOTTEN INTO TOWN AND ALLOW THE JURY TO HEAR THAT. *Y2 granted*

16 THE COURT: ALL RIGHT, THE MOTION IS GRANTED AS FAR  
17 ANY STATEMENTS MADE BY THE DEFENDANT DEALING WITH THE FACT  
18 THAT HE HAS BEEN IN PRISON EVER INCLUDING RECENTLY AS WELL  
19 AS ANYTHING HAVING TO DO WITH MARIJUANA, BE IT POSSESSING  
20 IT OR SELLING IT ON THE STREETS IN DETROIT OR ANYTHING  
21 ELSE. AND THE OTHER INFORMATION AS I REVIEW IT IN HERE  
22 WOULD BE THE OBJECTION TO THAT OTHER INFORMATION  
23 CONCERNING IN VAGUENESS IN ANSWERING QUESTIONS AND THE  
24 FACT THAT HE HAD BEEN IN SOME DEGREE WONDERING OR HAD NO  
25 PARTICULAR ROOTS, THAT WOULD BE ADMISSIBLE: THE OBJECTION

1 TO THAT TESTIMONY OR THAT PORTION OF THE STATEMENT WOULD  
2 BE OVERRULED. ANYTHING FURTHER?

3 MS. VAN GINHOVEN: YOUR HONOR, I JUST WOULD LIKE TO  
4 STATE THAT CLEARLY I WILL BE GOING INTO THE REST OF THE  
5 CONVERSATION THAT HE HAD WITH THE OFFICER REGARDING THAT  
6 HE WASN'T INVOLVED, I WOULD ASK, IF THE STATE PLANS ON  
7 OBJECTING TO THAT, THE REST OF THE CONVERSATION WITH THE  
8 POLICE OFFICER. I WOULD REQUEST THAT I BE ABLE TO GO INTO  
9 THAT.

10 MR. JOPHLIN: NO OBJECTION.

11 THE COURT: ALL RIGHT.

12 MS. VAN GINHOVEN: YOUR HONOR, THE ONLY OTHER THING--

13 THE COURT: LET ME GIVE YOU BACK, YOU ARE PROBABLY  
14 GOING TO NEED THAT.

15 MS. VAN GINHOVEN: THE ONLY OTHER ISSUE FROM  
16 YESTERDAY REGARDING WHETHER OR NOT WE CAN GO INTO  
17 QUESTIONING OF THE VICTIM IF SHE IS AN ILLEGAL RESIDENT.  
18 I DO HAVE SOME CASE LAW, I WILL TELL YOU THAT IT IS ALL  
19 FROM THE FEDERAL COURT.

20 THE COURT: WE RECOGNIZE THEM FROM TIME TO TIME.

21 MS. VAN GINHOVEN: LET ME HAND YOU A COPY.

22 MR. JOPHLIN: THANK YOU.

23 MS. VAN GINHOVEN: IN ALL CANDOR SOME OF THESE CASES  
24 DEAL WITH THE DEFENDANT, THEM TRYING TO USE IT FOR THE  
25 DEFENDANT. I ARGUE THAT WE WOULD BE ABLE TO ASK THOSE

*Dispute on illegal status*

1. QUESTIONS UNDER THE RULE 608, EVIDENCE OF CHARACTERS  
2. CONDUCT OF WITNESSES UNDER 608(D). MERELY GOES TO THE  
3. CHARACTER OF TRUTHFULNESS OR NOT, IF YOU ARE RESIDING IN  
4. THIS COUNTRY ILLEGALLY THAT IS PROBATIVE OF TRUTHFULNESS.  
5. IN THE FIRST CASE IT APPEARS THAT, IF THE DEFENDANT HAD  
6. TAKEN THE STAND HIS STATUS WOULD HAVE BEEN ABLE TO COME  
7. INTO PLAY. HIS CREDIBILITY WOULD BE ATTACKED ON THAT  
8. BASIS.

9. THE COURT: ALL RIGHT, SOLICITOR, DID YOU FIND  
10. ANYTHING?

11. MR. JOPLIN: I DID FIND A FEW CASES, YOUR HONOR.  
12. THE FIRST CASE I WILL GO INTO, IT IS A CIVIL CASE, YOUR  
13. HONOR. ROBERT MISCHALSKI VERSUS FORD MOTOR COMPANY, 935,  
14. FED. 2ND, 203. ALTHOUGH IT IS A CIVIL MATTER, IT TALKS  
15. ABOUT SOMEBODY WHO ACTUALLY OBTAINED A SOCIAL SECURITY AND  
16. DRIVERS LICENSE UNDER FALSE PRETENSES WHO IS AN ILLEGAL  
17. ALIEN. THAT ILLEGAL ALIEN STATUS DID NOT IMPUTE HIS  
18. CREDIBILITY AND THERE IS NO SPECIFIC EVIDENCE TO SUPPORT  
19. THAT THE PLAINTIFF MADE MISREPRESENTATIONS TO ANYONE ABOUT  
20. THE IMMIGRATION STATUS. THE SECOND CASE, COURT OF APPEALS  
21. TEXAS CASE. 681, SW, 2ND, 734. EVIDENCE CONCERNING ALIEN  
22. STATUS AND OF THE COMPLAINANT OR VICTIM AND TWO OF THE  
23. STATE'S WITNESSES WAS IMMATERIAL TO THE DEFENSE'S  
24. PROSECUTION FOR ROBBING THEM AND THEREFORE DEFENDANT'S  
25. RIGHT OF CONFRONTATION, CROSS-EXAMINATION WERE NOT DENIED.

1 WHERE THE TRIAL COURT REFUSED TO ALLOW THE DEFENDANT TO  
2 ILLICIT TESTIMONY CONCERNING THE EVIDENCE. SO, BASICALLY  
3 THE COURT OF APPEALS OF TEXAS FOUND THAT EVIDENCE OF THE  
4 VICTIM AND TWO OF THE STATE'S WITNESSES, THEIR ALIEN  
5 STATUS WAS IMMATERIAL AND THE PROSECUTION FOR ROBBERY,  
6 THAT DEFENDANT'S RIGHT OF CONFRONTATION IN  
7 CROSS-EXAMINATION WERE NOT DENIED WHEN THE TRIAL COURT  
8 WOULD NOT ALLOW THAT. FURTHER, THE COURT STATES THE ALIEN  
9 STATUS OF THE VICTIM AND THE WITNESSES CLEARLY HAS NO  
10 RELATIONSHIP TO THE ALLEGED CRIME. AS IN THIS CASE THERE  
11 IS NO RELATIONSHIP BETWEEN THE VICTIM'S ALIEN STATUS AND  
12 HER BEING ATTACKED AND WHEN THE DEFENDANT BROKE INTO THE  
13 HOUSE SHE WAS WORKING AT.

14 THE COURT: I AM JUST, I AM HEARING WHAT YOU ARE  
15 SAYING AND I HAVE TRIED TO HURRY AND GO THROUGH SOME OF  
16 THE CASES THAT THE DEFENSE HANDED UP. AND THE CASE I AM  
17 LOOKING AT RIGHT NOW IS THE US VERSUS GUERRA, G-U-E-R-R-A.  
18 AND IN THIS CASE IT WAS ON APPEAL, ONE OF THE ISSUES WAS  
19 THAT THE DEFENDANT ALLEGED THE PROSECUTION COMMITTED  
20 MISCONDUCT BY ELICITING TESTIMONY REGARDING DEFENDANT'S  
21 STATUS AS AN ILLEGAL ALIEN AND FOUND FOR THE CREDIBILITY  
22 OF THE GOVERNMENTS WITNESSES, WE WON'T GO THERE. IT  
23 STARTS OUT BY SAYING AN IMPROPER QUESTION BY THE  
24 GOVERNMENT COUNSEL MAY CONSTITUTE PROSECUTORIAL  
25 MISCONDUCT, GOES THROUGH ANALYSIS AND APPARENTLY DURING

1 THE EXAMINATION BY THE U.S. ATTORNEY HE ASKED, DID YOU  
2 DETERMINE AT THE TIME THE DEFENDANT WAS ARRESTED AS TO  
3 WHETHER OR NOT HE WAS A U.S. CITIZEN. AND THE OFFICER  
4 REPLIED AND TOLD ME HE WAS NOT A U.S. CITIZEN, IN FACT I  
5 WROTE ON THE BOOKING FORM THAT HE WAS AN ILLEGAL ALIEN  
6 ALTHOUGH A SUSPECT AS TO HIS ACTUAL HOME ADDRESS. THERE  
7 WAS AN OBJECTION, THE COURT SUSTAINED THE OBJECTION, THE  
8 ANSWER WAS ORDERED STRICKEN FROM THE RECORD. THE DISTRICT  
9 COURT ACTED PROPERLY IN SUSTAINING THE OBJECTION SINCE THE  
10 DEFENDANT'S ALIENAGE WAS NOT RELEVANT. IT IS NOT RELEVANT  
11 IN THIS CASE AND I AM NOT GOING TO PERMIT IT. AND IT IS  
12 BASED ON THAT CASE AS WELL AS THE OTHER CASES YOU HAVE  
13 CITED.

*alien status Not relevant*

14 MR. JOPHLIN: THANK YOU, YOUR HONOR.

15 THE COURT: ANYTHING ELSE?

16 MS. VAN GINHOVEN: NO, YOUR HONOR.

17 THE COURT: WE WILL TAKE A SHORT BREAK.

18 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

19 THE COURT: BEFORE WE GET STARTED I DO NEED TO NOTE  
20 THAT THERE WAS A NOTE HANDED OUT BY ONE OF THE JURORS  
21 CONCERNING A COUSIN THAT THEY, THE JUROR REMEMBERED A  
22 COUSIN IN CALIFORNIA COMMITTED A CRIME AND THIS WOULD NOT  
23 AFFECT THE JUDGMENT, MY JUDGMENT IN THIS CASE. I SHARED  
24 THAT WITH COUNSEL, THERE WAS NO OBJECTION TO CONTINUE WITH  
25 THE JURY AS THEY WERE SELECTED YESTERDAY. ALSO SOME

1 CONCERN HAS BEEN EXPRESSED, I THINK THE DEFENSE COUNSEL  
2 HAS AN INTERPRETER, THERE IS SOME CONCERN THAT PERHAPS ALL  
3 OF THE PROCEEDINGS WILL NOT BE INTERPRETED TO THE VICTIM  
4 WHO TESTIFIED IN PRETRIAL MATTERS YESTERDAY. THE COURT  
5 HAS INSTRUCTED COUNSEL TO HAVE THE INTERPRETER INTERPRET  
6 EVERYTHING THAT IS GOING ON IN THE COURTROOM EITHER IN  
7 SUMMARY FORM OR VERBATIM WITH THE VICTIM. ANYTHING ELSE  
8 BEFORE WE GET STARTED?

9 MR. JOPLIN: NOTHING FROM THE STATE.

10 MS. VAN GINHOVEN: NO, YOUR HONOR.

11 (WHEREUPON, COURT'S EXHIBIT NO. 4 WAS MARKED FOR  
12 IDENTIFICATION ONLY.)

13 THE COURT: ON THE SEQUESTRATION ORDER, I RELY ON  
14 COUNSEL TO ENFORCE IT. BRING THE JURY IN, PLEASE.

15 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT  
16 APPROXIMATELY 10:35 A.M.)

17 THE COURT: LADIES AND GENTLEMEN, I APOLOGIZE THE  
18 DELAY, WE WERE HERE UNTIL ABOUT 6:00 O'CLOCK LAST NIGHT  
19 DEALING WITH PRETRIAL MATTERS AND I HAD TO FINISH THOSE UP  
20 THIS MORNING. BUT WE ARE NOW IN THE POSITION TO GET  
21 STARTED. MY FIRST FUNCTION THIS MORNING WILL BE TO  
22 APPOINT MR. EISENHOWER TO THE FOREMAN OF THE JURY. AGAIN,  
23 YOUR VOTE DOES NOT COUNT ANYMORE THAN ANYONE ELSE'S BUT YOU  
24 WILL PRESIDE IN THE JURY ROOM AND BE THE SPOKESMAN FOR THE  
25 JURY HERE IN THE COURTROOM. I NEED ALL OF YOU TO PLEASE


1 STAND AND RAISE YOUR RIGHT HAND AND YOU WILL BE  
2 ADMINISTERED YOUR OATH BY THE CLERK AS THE JURY IN THIS  
3 CASE.

4 (WHEREUPON, THE JURY WAS SWORN AT 10:40 A.M.)

5 THE COURT: NOW, MR. FOREMAN AND LADIES AND  
6 GENTLEMEN, LET ME MAKE A FEW COMMENTS TO YOU AND SORT OF  
7 EXPLAIN TO YOU WHAT YOU CAN EXPECT PROCEDURALLY HERE  
8 DURING THE COURSE OF THIS TRIAL. WHAT I AM ABOUT TO GO  
9 OVER WITH YOU IS CERTAINLY NOT INTENDED TO BE A SUBSTITUTE  
10 FOR THE DETAILED INSTRUCTIONS OF LAW THAT I AM GOING TO  
11 GIVE YOU AT THE END OF THE CASE. AGAIN, THIS IS A  
12 CRIMINAL CASE THAT HAS BEEN COMMENCED BY THE STATE. I MAY  
13 REFER TO THE STATE AS THE PROSECUTION OR THE SOLICITOR.  
14 IT IS A CASE AGAINST JERENE HAYWARD WHO WAS INTRODUCED TO  
15 YOU YESTERDAY. THE CASE IS BASED ON THE INDICTMENT THAT I  
16 BRIEFLY WENT OVER WITH YOU YESTERDAY AND THESE WILL BE  
17 EXPLAINED TO YOU IN JUST A FEW MINUTES. THE INDICTMENTS,  
18 AGAIN, I NEED TO EXPLAIN AS I DID YESTERDAY, THAT THE  
19 INDICTMENTS ARE THESE WRITTEN DOCUMENTS THAT HAVE  
20 PROCESSED THIS CASE THROUGH THE COURT SYSTEM. THEY DO  
21 CONTAIN THE CHARGES THAT ARE MADE IN THIS CASE, THEY ARE  
22 NOT EVIDENCE OF THE CHARGES THAT THEY CONTAIN AND THE JURY  
23 CANNOT CONSIDER THE INDICTMENT AS EVIDENCE OF THE CHARGES  
24 THAT THEY OBTAIN. THE DEFENDANT HAS PLED NOT GUILTY TO  
25 THE CHARGES IN THESE INDICTMENTS AND THEREFORE THE STATE

1 HAS THE BURDEN OF PROVING EACH OF THE ESSENTIAL ELEMENTS  
2 OF THESE OFFENSES BEYOND A REASONABLE DOUBT. AND I WOULD  
3 DEFINE THAT TERM AS WELL AS OTHER LEGAL TERMS FOR YOU AT  
4 THE CONCLUSION OF THE CASE. BUT THE PURPOSE OF THE TRIAL  
5 IS TO DETERMINE WHETHER THE STATE HAS MET THAT BURDEN.  
6 YOUR PURPOSE AND YOUR FUNCTION AS JURORS IS TO DETERMINE  
7 WHAT THE FACTS ARE IN THE CASE. UNDER OUR SYSTEM OF  
8 CRIMINAL PROCEDURE YOU ARE THE SOLE JUDGE OF THE FACTS OF  
9 THE CASE. IF I SHOULD AT ANY TIME DURING THE COURSE OF  
10 THIS TRIAL MAKE ANY COMMENT OR DO ANYTHING THAT YOU THINK  
11 REFLECTS WHAT I THINK ABOUT THE FACTS YOU SHOULD  
12 COMPLETELY DISREGARD THAT. UNDER OUR LAW I AM NOT  
13 PERMITTED AND I WILL TELL YOU NOW I DO NOT AND I WILL NOT  
14 HAVE AN OPINION AS TO WHAT THE FACTS ARE IN THIS CASE.  
15 THIS IS A MATTER SOLELY FOR THE JURY TO DETERMINE. THE  
16 SAME LAW THAT MAKES YOU AS THE JURY THE SOLE JUDGE OF THE  
17 LAW MAKES ME, EXCUSE ME, YOU ARE THE JUDGE OF THE FACTS.  
18 THE SAME LAW DOES MAKE ME THE JUDGE OF THE LAW. SO, YOU  
19 DETERMINE WHAT THE FACTS ARE AND I WILL DETERMINE WHAT LAW  
20 APPLIES IN THE CASE AND I WILL EXPLAIN IT TO YOU AT THE  
21 END OF THE CASE. AGAIN, I WOULD CAUTION YOU AND ORDER YOU  
22 NOT TO READ OR DISCUSS OR WATCH ANYTHING ABOUT THIS CASE  
23 WITH ANYONE EITHER INSIDE OR OUTSIDE OF THE COURT HOUSE OR  
24 THE COURTROOM BEFORE OR DURING THE TRIAL. AGAIN, UNTIL  
25 THE CASE HAS BEEN SUBMITTED TO YOU YOU CANNOT DISCUSS IT

1 EITHER AMONG YOURSELVES OR WITH ANYONE ELSE. FROM TIME TO  
2 TIME DURING THE TRIAL THERE MAY BE OBJECTIONS MADE BY THE  
3 ATTORNEYS. FIRST OF ALL, IF AN OBJECTION IS MADE YOU DO  
4 NOT HOLD THAT AGAINST THE ATTORNEY OR THE ATTORNEYS  
5 CLIENT. IF ONE OF THE LAWYERS MAKES AN OBJECTION THAT IS  
6 SIMPLY IS OR HER WAY OF LETTING THIS COURT KNOW THAT A  
7 RULE OF EVIDENCE HAS COME INTO PLAY. AT THAT TIME I WILL  
8 HAVE TO MAKE A RULING. IF I SUSTAIN AN OBJECTION YOU ARE  
9 NOT PERMITTED TO TRY TO GUESS AT WHAT THE ANSWER TO THAT  
10 QUESTION WOULD HAVE BEEN. YOU ARE NOT PERMITTED TO TRY TO  
11 GUESS AT WHAT THAT EXHIBIT MIGHT OF BEEN, IF IT HAD BEEN  
12 ADMITTED INTO EVIDENCE BECAUSE YOU, THE JURY, CAN RELY  
13 ONLY ON THE TESTIMONY AND OTHER EVIDENCE THAT IS ADMITTED  
14 INTO THE RECORD. NOW, FROM TIME TO TIME IF AN EXHIBIT IS  
15 ADMITTED INTO EVIDENCE THE ATTORNEYS MAY ASK THAT IT BE  
16 PUBLISHED TO THE JURY AND THAT SIMPLY MEANS TO PASS IT  
17 AROUND AMONG YOU FOLKS WHILE THE TRIAL IS GOING ON. THERE  
18 IS NOTHING WRONG WITH THAT BUT I DO NEED TO CAUTION YOU TO  
19 PLEASE CONTINUE TO LISTEN TO THE TESTIMONY THAT IS GOING  
20 ON WHILE YOU MIGHT BE PASSING AN EXHIBIT AROUND IN THE  
21 JURY BOX. SOME JURORS IN THE PAST HAVE EXPRESSED SOME  
22 CONCERN THAT THEY DID NOT FEEL LIKE THEY HAD ENOUGH TIME  
23 TO EXAMINE SOMETHING WHILE IT WAS BEING PUBLISHED TO THE  
24 JURY. AND I WOULD SIMPLY POINT OUT TO YOU THAT ALL OF THE  
25 EXHIBITS IN THIS CASE THAT ARE ADMITTED INTO THE RECORD



1 ARE GOING TO BE WITH YOU IN THE JURY ROOM WHEN YOU ARE  
2 DELIBERATING. SO, YOU CAN LOOK AT EXHIBITS FOR AS LONG  
3 AND AS HARD AS YOU WANT TO BACK IN THE JURY ROOM DURING  
4 YOUR DELIBERATIONS. PROCEDURALLY WHAT IS GOING TO OCCUR  
5 IN JUST A MOMENT, I WILL RECOGNIZE THE ATTORNEYS FOR THE  
6 PURPOSE OF MAKING BRIEF OPENING STATEMENTS TO YOU. I WILL  
7 BE RECOGNIZING THE SOLICITORS OFFICE FIRST BECAUSE THE  
8 STATE DOES HAVE THE BURDEN OF PROOF. AND AFTER THE  
9 SOLICITORS OFFICE HAS MADE AN OPENING STATEMENT THEN THE  
10 DEFENSE IS GIVEN THAT SAME OPPORTUNITY. THE ATTORNEYS,  
11 WHEN THEY ARE MAKING THEIR OPENING STATEMENT YOU DO NEED  
12 TO UNDERSTAND THE LAWYERS DON'T TESTIFY. THE TESTIMONY  
13 COMES FROM THE WITNESSES UP HERE BUT THE PURPOSE OF THE  
14 OPENING STATEMENTS IS FOR THE ATTORNEYS TO EXPLAIN TO YOU  
15 THEIR POSITION IN THIS CASE. AND WHAT YOU HAVE HEARD FROM  
16 THE ATTORNEYS, WE WILL PROCEED WITH THE PRESENTATION OF  
17 ALL OF THE TESTIMONY AND EVIDENCE AND WHEN IT HAS ALL BEEN  
18 PRESENTED TO YOU THEN THE ATTORNEYS WILL COME BACK AND  
19 MAKE WHAT WE CALL THEIR CLOSING ARGUMENTS AND AFTER THEY  
20 HAVE MADE THEIR CLOSING ARGUMENTS THEN I WILL INSTRUCT YOU  
21 IN THE LAW THAT APPLIES. THEN YOU WILL BE SENT BACK TO  
22 DELIBERATE AND TO REACH A VERDICT. WE NORMALLY WILL TAKE  
23 A BREAK ABOUT EVERY HOUR, HOUR AND FIFTEEN MINUTES.  
24 AGAIN, YOUR JOB, I HAVE TOLD YOU WHAT YOU ARE, YOU ARE THE  
25 JUDGES OF THE FACTS AND TO MAKE YOUR DETERMINATION OF WHAT

1 THE FACTS ARE YOU, OF COURSE, SIT AND YOU LISTEN AND YOU  
2 WATCH AND IT IS HARD TO STAY FRESH FOR MORE THAN ABOUT AN  
3 HOUR OR AN HOUR AND FIFTEEN MINUTES. AT LEAST THAT IS MY  
4 EXPERIENCE. SO, WE WILL TAKE A BREAK AND SEND YOU BACK TO  
5 THE JURY ROOM AND LET YOU STRETCH YOUR LEGS, USE THE  
6 RESTROOM. FROM TIME TO TIME WE WILL PROVIDE REFRESHMENTS  
7 FOR YOU. BUT IF WE GET TO THE POINT WHERE YOU HAVE TO  
8 TAKE A BREAK AND IT DOESN'T LOOK LIKE I AM ABOUT THERE  
9 RAISE YOUR HAND, GET MY ATTENTION AND WE WILL TAKE A  
10 BREAK. ONE OF THE THINGS THAT I DO DURING THE COURSE OF  
11 THE TRIAL IS I KEEP MY EYE ON YOU TO BE SURE EVERYBODY IS  
12 AWAKE AND PAYING ATTENTION TO WHAT IS GOING ON. AND THE  
13 SAME WOULD HOLD TRUE, IF YOU ARE NOT ABLE TO SEE OR HEAR  
14 OR UNDERSTAND SOMETHING THAT IS BEING TESTIFIED TO, GET MY  
15 ATTENTION AND I WILL BE SURE ALL THE WITNESSES SPEAK  
16 LOUDLY AND CLEARLY ENOUGH FOR YOU TO UNDERSTAND WHAT THEY  
17 HAVE GOT TO SAY IN THIS CASE. I WOULD ASK YOU TO PLEASE  
18 GIVE ALL THE ATTORNEYS AND ALL OF THE WITNESSES WHO  
19 TESTIFIED YOUR FULL ATTENTION AND WE WILL PROCEED AT THIS  
20 TIME WITH THE OPENING STATEMENTS. SOLICITOR, MS. COOPER.

21 MS. COOPER: THANK YOU, YOUR HONOR, MAY IT PLEASE THE  
22 COURT.

23 THE COURT: ALL RIGHT.

24 MS. COOPER: GOOD MORNING, LADIES AND GENTLEMEN.

25 LOURDES ANTONIO SEATED AT THE STATE'S TABLE. LOURDES, CAN

1 YOU PLEASE STAND UP. THANK YOU. SHE ENJOYED TAKING THE  
2 ONE-YEAR-OLD BOY THAT SHE CARED FOR AS A NANNY, SHE  
3 ENJOYED TAKING HIM FOR WALKS IN THE NEIGHBORHOOD. SHE  
4 WORKED FOR MR. CONNELL AND HIS FAMILY TAKING CARE OF THEIR  
5 ONE-YEAR-OLD SON. THEY LIVED ON TAM-O-SHANTER ROAD WHICH  
6 IS LOCATED IN THE NORTHEAST SECTION OF RICHLAND COUNTY IN  
7 THE LONGCREEK SUBDIVISION. ON APRIL 13TH OF 2004 LOURDES,  
8 LIKE ANY OTHER DAY, TOOK CARE OF THE BABY WHEN THE PARENTS  
9 WENT OFF TO WORK. AND SHE HAD DIFFERENT ROUTINES THAT SHE  
10 FOLLOWED EVERYDAY. ONE OF THOSE ROUTINES WAS TAKING THE  
11 BABY FOR A WALK IN HIS STROLLER. TYPICALLY SHE WOULD TAKE  
12 THE BABY FOR A WALK FOR ABOUT AN HOUR EVERY AFTERNOON. ON  
13 APRIL 13TH OF 2004 THIS WALK IS A WALK SHE WILL NEVER  
14 FORGET FOR THE REST OF HER LIFE. AS SHE WALKED OUT OF THE  
15 DRIVEWAY OF THE CONNELL'S RESIDENCE, SHE WAS WALKING DOWN  
16 TAM-O-SHANTER ROAD WHEN AN INDIVIDUAL APPROACHED HER  
17 TRYING TO SELL HER CLEANING SUPPLIES. SHE THOUGHT THAT  
18 WAS KIND OF STRANGE BECAUSE THEY DON'T GET A LOT OF FOOT  
19 TRAFFIC IN THAT AREA, THEY DON'T GET A LOT OF SOLICITORS  
20 IN THAT AREA. SHE STOPPED AND SPOKE TO THIS INDIVIDUAL,  
21 SHE SPOKE TO HIM FOR ABOUT TWO TO THREE MINUTES AS HE  
22 TRIED TO CONVINCED HER TO BUY SOME CLEANING SUPPLIES FROM  
23 HIM. SHE WAS ABOUT FOUR FEET AWAY FROM HIM WHILE HE SPOKE  
24 IN THE MIDDLE OF THE ROAD. AND SHE IN HER BROKEN ENGLISH,  
25 BECAUSE SHE DOESN'T SPEAK ENGLISH VERY WELL, TOLD HIM I AM

1 NOT INTERESTED, I DON'T WANT IT. HE THEN TOLD HER, WELL,  
2 I ACCEPT CHECKS AND SHE TOLD HIM I DON'T HAVE CHECKS. AND  
3 SHE JUST CONTINUED TO WALK AND WENT ON HER WAY. AS SHE  
4 WALKED AWAY SHE KEPT KIND OF TURNING BACK LOOKING AT HIM  
5 AND AS SHE TURNED ONTO A DIFFERENT ROAD WALKING THE BABY,  
6 HER TYPICAL ROUTINE AND TYPICAL PATH SHE STILL TURNED  
7 AROUND LOOKING AT HIM. THIS INDIVIDUAL WAS A BLACK MALE  
8 ABOUT 23 YEARS OLD, TALLER THAN SHE WAS, SLENDER, WEARING  
9 BAGGY DARK PANTS, A BLUE SWEATER WITH WHITE WRITING ON IT.  
10 ALSO WEARING TENNIS SHOES AND HE HAD A DARK COLORED  
11 BACKPACK. IN FACT, WHEN SHE TURNED ONTO THE OTHER ROAD TO  
12 CONTINUE TO WALK SHE NOTICED THAT MAN BENDING OVER AND  
13 RUMMAGING THROUGH HIS BACKPACK. SHE ALSO RECALLED THE  
14 PRICE LIST THIS MAN SHOWED HER TRYING TO SELL HER CLEANING  
15 SUPPLIES, SHE RECALLS IT BEING WHITE AND YELLOW PAPER WITH  
16 PRICES. SHE DIDN'T THINK ANY MORE OF IT, SHE WENT ON HER  
17 WAY TAKING THE BABY FOR A WALK. IT HAPPENED TO BE QUITE  
18 WINDY THAT TUESDAY AFTERNOON AND SO SHE CUT HER WALK  
19 SHORT. INSTEAD OF HER TYPICAL ONE HOUR SHE CUT IT DOWN TO  
20 THIRTY MINUTES AND SHE WENT BACK TO THE RESIDENCE OF MR.  
21 AND MS. CONNELL. WHEN SHE GOT BACK SHE REALIZED THAT THE  
22 SIDE DOOR THAT SHE HAD USED TO LEAVE THE RESIDENCE AND  
23 THAT SHE HAD SHUT ALL THE WAY WAS ADJOURN. AND THAT KIND  
24 OF MADE HER NERVOUS. SHE WASN'T SURE IF THE WIND, BECAUSE  
25 IT WAS WINDY HAD BLOWN IT OPEN OR IF SOMEONE WAS INSIDE.

1 SO, SHE LEFT THE BABY OUTSIDE BY THE GARAGE DOOR AND SHE  
2 WENT INSIDE. AND SHE HEARD FOOTSTEPS AND SHE WENT THROUGH  
3 THE HOUSE, WENT THROUGH THE LIVING ROOM, LOOKED DOWN THE  
4 HALLWAY TO THE BEDROOM AND SAW THE SAME MAN THAT SHE HAD  
5 JUST LEFT ON THE STREET THIRTY MINUTES EARLIER WALKING OUT  
6 OF ONE OF THE BEDROOMS. SHE TELLS HIM, YOU ARE NOT  
7 SUPPOSE TO BE IN HERE IN HER BROKEN ENGLISH. AND HE TELLS  
8 OR ASKED HER, ARE YOU GOING TO CALL THE POLICE. AND SHE  
9 SAYS, YES, I AM GOING TO CALL THE POLICE, YOU ARE NOT  
10 SUPPOSE TO BE HERE. AND I AM PARAPHRASING, LADIES AND  
11 GENTLEMEN. SHE THEN IS FEARFUL AND BEGINS TO WALK  
12 BACKWARDS TRYING TO GET TO THAT DOOR WHERE SHE HAD LEFT  
13 THE BABY. AND AS SHE IS LEAVING SHE BEGINS TO TURN TO  
14 WALK OUT OF THAT HOUSE AND HE CATCHES UP TO HER AND GRABS  
15 HER BY THE ARM AND SHE TRIES TO GET AWAY. AND HE PUSHES  
16 HER DOWN TO THE FLOOR IN THE FOYER BY THE DOOR. SHE FALLS  
17 ON HER BACK AND ON HER ELBOWS CUTTING HER ELBOW. AND HE  
18 BEGIN TO STOMP HER THREE TIMES IN THE CHEST KNOCKING THE  
19 WIND OUT OF HER. SHE IS STUNNED. AT THAT POINT SHE  
20 NOTICES HIM GOING TO THAT BOOK BAG SHE HAD SEEN HIM WITH  
21 EARLIER. AND SHE SEES HIM TAKE A GUN, SILVER IN COLOR OR  
22 GRAY IN COLOR ON THE FLOOR. SHE DIDN'T KNOW WHAT WAS  
23 GOING THROUGH HIS MIND, SHE HAD NEVER SEEN THAT GUN  
24 BEFORE. HE THEN COMES BACK TO HER IN A KNEELING FASHION  
25 BECAUSE SHE IS STILL LAYING ON HER BACK IN THAT FOYER.

1 AND SHE, AS HE APPROACHES HER CLOSELY SHE GRABS A BOX OF A  
2 CURTAIN ROD IN IT, HITS HIM WITH IT. THAT DOESN'T DO  
3 ANYTHING FOR HER, LADIES AND GENTLEMEN, ALL THAT DOES IS  
4 ANGERS HIM. HE GETS UP AND STARTS STOMPING HER AGAIN IN  
5 THE CHEST. WHEN SHE JUST LAYS THERE STILL HE GOES THROUGH  
6 A DOOR IN THE FOYER THAT LEADS TO A BATHROOM AND A LAUNDRY  
7 ROOM AND THAT IS HER CHANCE TO ESCAPE. BECAUSE THERE IS  
8 ANOTHER DOORWAY IN THAT FOYER THAT LEADS TO THE GARAGE  
9 WHICH LEADS TO A DOOR WHICH LEADS TO OUTSIDE AND SHE GETS  
10 ALL THE ENERGY SHE CAN, SHE GETS UP, RUNS TO THE GARAGE  
11 BUT BY THEN HE ALREADY HEARS HER AND HE IS ALREADY CHASING  
12 HER. AND SHE RUNS TO THE DOOR TO GET OUT OF THE GARAGE  
13 AND RUNS OUT INTO THE YARD, RUNS ALONGSIDE THE GARAGE  
14 TRYING TO GET TO A NEIGHBORS HOUSE FOR HELP. AND HE  
15 CATCHES UP WITH HER, LADIES AND GENTLEMEN, CATCHES UP TO  
16 HER FROM BEHIND AND PUSHES HER TO THE GROUND OUTSIDE BY  
17 THE DRIVEWAY AS SHE IS TRYING TO GET TO A NEIGHBORS HOUSE.  
18 AND HE STARTS STOMPING HER AGAIN ON HER BACK. AND SHE IS  
19 JUST LAYING THERE TRYING TO PROTECT HERSELF AND IT WAS SO  
20 PAINFUL SHE THEN TURNS ONTO HER SIDE AND SHE SEES HIM  
21 AGAIN. SHE IMMEDIATELY RECOGNIZED HIM IN THE HALLWAY AS  
22 THE SAME MAN SHE SAW ON THE STREET THIRTY MINUTES BEFORE.  
23 SHE HAS ALWAYS REPORTED TO THE POLICE IT WAS ONLY ONE  
24 INDIVIDUAL, ONLY ONE PERPETRATOR, NO MORE. AFTER HE  
25 STOMPED ON HER SHE BLACKED OUT AND HE LEAVES. SHE DOESN'T

1 KNOW WHICH DIRECTION HE FLED TO BUT AS SOON AS SHE CAN GET  
2 THE STRENGTH TO GET SHE RUNS TO THE BABY. THANKFULLY THE  
3 BABY IS STILL ASLEEP IN THE CRIB AND DIDN'T WITNESS ANY OF  
4 THIS. SHE GRABBED THE BABY WITH ALL OF THE ENERGY THAT  
5 SHE HAD LEFT AND TAKES THE BABY TO A NEIGHBORS HOUSE. THE  
6 NEIGHBOR NOT UNDERSTANDING SPANISH CLEARLY COULD SEE THAT  
7 SHE NEEDED HELP AND CALLED FOR AN AMBULANCE. NOT UNTIL  
8 THE AMBULANCE ARRIVED THAT THEY REALIZED SOMETHING  
9 CRIMINAL HAD HAPPENED. AND SO THEY CALLED LAW ENFORCEMENT  
10 FOR ASSISTANCE. AND YOU ARE GOING TO HEAR FROM THE  
11 RESPONDING OFFICERS THAT GO TO THE RESIDENCE, YOU ARE  
12 GOING TO HEAR FROM THE HOMEOWNER, MR. JEFF CONNELL, HOW HE  
13 GOT A CALL FROM HIS NEIGHBORS SAYING SOMETHING IS WRONG  
14 WITH YOUR NANNY, MS. ANTONIO. AND HE COMES AND TALKS TO  
15 MS. ANTONIO ON THE TELEPHONE, A BLACK MAN WAS IN THE  
16 HOUSE. AT THAT POINT, LADIES AND GENTLEMEN, OFFICERS GET  
17 THERE, MR. CONNELL GOES HOME AND REALIZES HIS GUN, SILVER  
18 IN COLOR, .45 CALIBER RUGER WAS MISSING FROM A DRESSER  
19 NIGHTSTAND IN A BEDROOM. HE REPORTS THAT IT HAD BEEN  
20 STOLEN. AT THAT POINT THE VICTIM IS TAKEN TO THE HOSPITAL  
21 WHERE YOU WILL HEAR FROM DR. RICHARD BOYER THAT SHE  
22 SUFFERED TWO FRACTURED RIBS BY BEING STOMPED. YOU ARE  
23 ALSO GOING TO HEAR FROM A FEMALE OFFICER BY THE NAME OF  
24 HOLLY WAGNER WHERE SHE ARRIVED AT THE HOSPITAL AND WITH  
25 THE ASSISTANCE OF THE VICTIM'S HUSBAND SHE WAS ABLE TO GET

1 A DESCRIPTION OF THE PERPETRATOR. THE SAME DESCRIPTION  
2 THAT I ALREADY TOLD YOU. THAT IS DISTRIBUTED TO ALL OF  
3 THE LAW ENFORCEMENT IN THE AREA AND OFFICERS BEGAN  
4 RESPONDING TO THE NEIGHBORHOOD LOOKING, CASING THE AREA  
5 FOR THE PERPETRATOR WHO FLED ON FOOT. YOU ARE ALSO GOING  
6 TO HEAR FROM A LANDSCAPER THAT HAPPENED TO BE IN THAT  
7 NEIGHBORHOOD DOING HIS WORK WITH HIS TWO EMPLOYEES AND HOW  
8 HE GETS FLAGGED DOWN BY A BLACK MALE, YOUNG. AND HOW HE  
9 GETS FLAGGED DOWN BY A BLACK MALE, YOUNG, 6' TALL,  
10 SLENDER, WEARING BAGGY PANTS, A LONG SLEEVED DARK SHIRT,  
11 TENNIS SHOES, HAD A PACK OF CIGARETTES ON HIM, A DARK IN  
12 COLORED BOOK BAG. THE SAME DESCRIPTION MATCHING THE  
13 DESCRIPTION OF THE VICTIM. HE PICKED HIM UP, HE WAS  
14 FLAGGED DOWN AND HOW THIS MAN TELLS HIM, I AM BEING CHASED  
15 BY TWO GUYS WHO ARE GOING TO BEAT ME UP. ONE IS WHITE AND  
16 ONE IS BLACK AND SO MR. COWART, THE LANDSCAPER SAYS, HOP  
17 ON IN THE BACK, HE HAD PINE STRAW IN THE BACK. AND HE  
18 NOTICED THAT THE DEFENDANT SEEMED VERY EXCITED AND HE WAS  
19 SWEATY. AND HE THEN TAKES HIM TO THE NEXT JOB SITE AND  
20 SAYS, THIS IS AS FAR AS I CAN TAKE YOU, ME AND MY MEN HAVE  
21 WORK TO DO HERE. YOU ARE GOING TO HEAR MORE ABOUT THE  
22 DETAILS OF THEIR ENCOUNTER AND HOW MR. COWART WAS UNEASY  
23 AND SO UNEASY HE TOOK THE CAR KEYS OUT OF THE IGNITION,  
24 JUST DIDN'T FEEL, SOMETHING WASN'T RIGHT. WELL THEN AS  
25 MR. COWART, THE LANDSCAPER IS DOING HIS WORK AND IS GOING

1 AROUND THAT GENERAL AREA OF LONGCREEK SUBDIVISION HE  
2 NOTICED A LOT OF POLICE ACTIVITY. AND WHICH IS UNUSUAL  
3 FOR THAT AREA AND SO HE STARTS FIGURING, DOING THE MATH,  
4 AND DECIDES, I AM GOING TO SHARE WITH THE POLICE ABOUT MY  
5 ENCOUNTER WITH THIS INDIVIDUAL. SO HE FLAGS DOWN A POLICE  
6 OFFICER AND SAYS, I DON'T KNOW IF THIS IS IMPORTANT TO YOU  
7 OR NOT BUT I PICKED UP A BLACK MALE, SUBJECT IN THE NEAR  
8 AREA. AND SO THE POLICE, OBVIOUSLY LOOKING FOR SOMEBODY  
9 HAD COMMITTED A VERY ATROCIOUS AND VIOLENT HOME INVASION,  
10 THEY WILL TELL THEM WHAT HE LOOKS LIKE. AND SURE ENOUGH  
11 THE DESCRIPTION MR. COWART GIVES THEM IS IDENTICAL TO WHAT  
12 THE VICTIM, MS. ANTONIO PROVIDED. SO, THEY KNOW, WE HAVE  
13 GOT THE SAME GUY ON THE LOOSE. AND THEN THEY DO FURTHER  
14 INVESTIGATION AND FIND OUT THAT HE IS INDEED, THERE ARE  
15 PEOPLE IN THE NEIGHBORHOOD SELLING CLEANING SUPPLIES. AND  
16 THEY MAKE CONTACT WITH A SUPERVISOR IN CHARGE OF THE  
17 CLEANING SUPPLY GROUP, SALES GROUP, WHO SAYS WE ARE  
18 MISSING TWO EMPLOYEES. ONE IS MY NEPHEW WEARING A WHITE  
19 BUTTON DOWN SHIRT AND SO THEY ALREADY KNEW THAT IS NOT  
20 HIM. THAT CLOTHING DESCRIPTION DOESN'T FIT. AND THEN SHE  
21 SAYS I AM ALSO MISSING JERENE AND SHE DESCRIBES WHAT HE IS  
22 WEARING. AND IT FITS THE DESCRIPTION PROVIDED BY THE  
23 VICTIM, MS. ANTONIO AND BY THE LANDSCAPER, MR. COWART. AT  
24 THAT POINT THEY SAY WELL, TAKE US TO HIM. SHE SAID HE  
25 CALLED ME AND WANTS TO BE PICKED UP. SHE TAKES THE POLICE

1 TO HIM, THEY HIDE IN THE VAN. AND HE GETS INTO THE VAN  
2 AND AT THAT POINT HE IS APPREHENDED. THEY CUFF HIM, YOU  
3 ARE GOING TO HEAR HOW HE STRUGGLES WITH THEM AND THEY  
4 BEGIN SEARCHING HIM FOR WEAPONS FOR THEIR OWN SAFETY. AND  
5 THEY DISCOVER A SILVER .45 CALIBER RUGER WHICH WAS  
6 POSITIVELY IDENTIFIED BY MR. CONNELL AS BEING HIS GUN THAT  
7 WAS STOLEN FROM HIS BEDROOM, DRESSER OR NIGHTSTAND. YOU  
8 ARE ALSO GOING TO HEAR HOW THE INVESTIGATOR NOTICED THAT  
9 HIS SHOES HAD A SIMILAR TREAD TO A FOOTPRINT FOUND AT THE  
10 CRIME SCENE WHICH ANOTHER INVESTIGATOR SAYS DOESN'T MATCH.  
11 HOWEVER, HE NOTICED THIS HAD A SIMILAR SHOE PRINT AND HE  
12 ALSO NOTICES THAT THE SHOES THAT MR. HAYWARD WAS WEARING  
13 HAD BLOOD ON IT. AND MR. HAYWARD, HE HAD ALREADY BEEN  
14 MIRANDIZED SAYS, I DON'T HAVE ANYTHING TO DO WITH THIS,  
15 AND TO HIS BOSS HE STARTED YELLING, THEY ARE TRYING TO SET  
16 ME UP. I DIDN'T DO ANYTHING. AND THEN WHEN HE IS ASKED,  
17 WELL, I HOPE THIS BLOOD DOESN'T COME BACK TO BELONG TO THE  
18 VICTIM, YOU ARE GOING TO HAVE TROUBLE EXPLAINING THAT HE  
19 THEN SAID, WELL, I DIDN'T DO IT, THE OTHER GUY DID IT. I  
20 WAS IN THERE BUT THE OTHER GUY BEAT HER UP. AND THEN YOU  
21 ARE GOING TO HEAR HOW HE WAS TAKEN TO HEADQUARTERS AND  
22 RE-MIRANDIZED, REGIVEN HIS RIGHTS AND THEN HE TELLS THEM  
23 AND DENIES EVER BEING IN THERE. SO, HE CHANGES HIS STORY,  
24 LADIES AND GENTLEMEN. LOURDES ANTONIO ENJOYED WALKING  
25 THAT BABY EVERY AFTERNOON. SHE DOESN'T WALK HIM ANY MORE.

1 AS A RESULT OF THIS CRIMINAL ACT ON APRIL 13TH OF 2004  
2 JERENE HAYWARD HAS BEEN CHARGED WITH SEVERAL OFFENSES.  
3 THE FIRST ONE IS BURGLARY IN THE FIRST DEGREE, FOR  
4 ENTERING THE DWELLING OF MR. CONNELL WITHOUT HIS  
5 PERMISSION AND WITH THE INTENT TO COMMIT A CRIME INSIDE.  
6 WHAT CRIME DID HE COMMIT INSIDE, PETTY LARCENY, HE STOLE  
7 HIS GUN. WHY DOES IT MAKE IT BURGLARY, FIRST DEGREE.  
8 BECAUSE HE ARMED HIMSELF WITH A DEADLY WEAPON AND HE  
9 CAUSED INJURY TO A PERSON WHO IS NOT INVOLVED WITH THE  
10 COMMISSION OF THE CRIME. HE CAUSED INJURIES TO LOURDES  
11 ANTONIO. HE IS ALSO CHARGED WITH POINTING AND POSSESSING  
12 A FIREARM. AS YOU RECALL, I TOLD YOU THAT THE VICTIM  
13 STATED THAT HE PRESENTED A GUN AND PUT IT ON THE FLOOR AND  
14 THAT SHE SAW HIM WITH A GUN. SO HE IS ALSO CHARGED WITH  
15 POINTING AND PRESENTING A FIREARM. HE DIDN'T HAVE TO  
16 POINT IT TO HER, JUST PRESENT IT. HE IS ALSO CHARGED WITH  
17 KIDNAPPING. ANYTIME ANYBODY, FREEDOM OF MOVEMENT IS  
18 RESTRICTED IN ANY WAY WITHOUT AUTHORITY OF THE LAW IT IS  
19 CONSIDERED A KIDNAPPING. IT IS NOT TYPICAL WHERE YOU  
20 STUFF A CHILD IN THE TRUNK OF THE CAR AND DRIVE OFF TO THE  
21 WILDERNESS. THAT IS NOT KIDNAPPING IN OUR STATE. ANYTIME  
22 THAT YOUR FREEDOM OF MOVEMENT IS RESTRICTED IN ANY FASHION  
23 FOR A SECOND TO AN HOUR TO A WEEK IT IS KIDNAPPING. AND  
24 YOU WILL HEAR FROM MS. ANTONIO HOW SHE WAS TRYING TO GET  
25 OUT OF THE HOUSE AND HE GRABBED HER BY THE ARM AND HE

1 PUSHED HER DOWN TO THE GROUND AND HE BEGIN ASSAULTING HER.  
2 HE IS ALSO CHARGED WITH ASSAULT AND BATTERY WITH INTENT TO  
3 KILL FOR STOMPING HER TO THE POINT WHERE SHE BLACKED OUT  
4 AND BREAKING TWO OF HER RIBS. AND LASTLY, LADIES AND  
5 GENTLEMEN, WHEN THEY FRISKED HIM AT THE SCENE AND FOUND  
6 THAT GUN THEY FOUND SOME MARIJUANA IN ONE OF HIS POCKETS.  
7 SO HE IS ALSO CHARGED WITH SIMPLE POSSESSION OF MARIJUANA.  
8 THE STATE, AS THE JUDGE TOLD YOU, HAS THE BURDEN OF PROOF  
9 IN THIS CASE. AS IT SHOWS IN EVERY CRIMINAL CASE THAT  
10 BURDEN IS BEYOND A REASONABLE DOUBT. SO, WHAT IS  
11 REASONABLE DOUBT, SOMETHING THAT MAKES YOU HESITATE TO ACT  
12 OR IT IS SOMETHING THAT MAKES YOU FIRMLY CONVINCED OF  
13 SOMEONE'S GUILT. WE DON'T HAVE TO PROVE EVERY ELEMENT OF  
14 THOSE CRIMES BEYOND ANY REASONABLE DOUBT OR BEYOND A  
15 SHADOW OF A DOUBT. A REASONABLE DOUBT, WHAT IS REASONABLE  
16 DOUBT. AN EXAMPLE I CAN PROVIDE IS, YOU MAY HAVE A DOUBT  
17 THAT THE SUN IS GOING TO RISE TOMORROW MORNING. THAT  
18 DOUBT IS UNREASONABLE. THE DEFENSE IS GOING TO TELL YOU  
19 THAT REASONABLE DOUBT IS THE HIGHEST BURDEN OF PROOF IN  
20 OUR COURT SYSTEM AND THAT IS TRUE. BUT MAKE NO MISTAKE,  
21 LADIES AND GENTLEMEN, IT IS A STANDARD THAT HAS BEEN MET  
22 FOR CENTURIES IN OUR LEGAL SYSTEM. AND IT HAS BEEN  
23 STANDARD THAT IS ALWAYS ACCOMPLISHED AND IT IS NOT  
24 UNATTAINABLE. ALSO, LADIES AND GENTLEMEN, YOU ARE THE  
25 JUDGES OF THE FACTS. YOU ARE THE ONES THAT DECIDE WHAT

1 HAPPENED ON APRIL 13TH OF 2004. AND HOW ARE YOU GOING TO  
2 DECIDE THAT, THROUGH THE TESTIMONY OF THE WITNESSES. AND  
3 IT IS GOING TO BE UP TO YOU TO DECIDE WHETHER OR NOT TO  
4 BELIEVE THESE WITNESSES AND THERE ARE CERTAIN FACTORS YOU  
5 CAN USE IN DECIDING WHETHER OR NOT TO BELIEVE THESE  
6 WITNESSES. ARE THEY HESITANT IN ANSWERING QUESTIONS OR  
7 ARE THEY FORTHRIGHT. WHAT IS THEIR DEMEANOR LIKE ON THE  
8 WITNESS STAND. JUST USE YOUR EVERY DAY COMMON SENSE, YOU  
9 ALL HAVE DIFFERENT WORK HISTORIES, FAMILY BACKGROUND, YOU  
10 ARE ALL FROM DIFFERENT AGES, DIFFERENT JOB EXPERIENCES,  
11 USE ALL OF YOUR EXPERIENCES AS A COLLECTIVE UNIT IN  
12 DETERMINING WHETHER OR NOT TO BELIEVE A CERTAIN WITNESS.  
13 AND WHEN YOU DO USE THOSE FACTORS AND YOU DO WEIGH THE  
14 CREDIBILITY OF ALL OF THE EVIDENCE AND ALL OF THE  
15 WITNESSES IN THIS CASE WE ASK THAT YOU RETURN A VERDICT  
16 THAT SPEAKS THE TRUTH. WE ARE HERE FOR THE TRUTH AND THAT  
17 IS FINDING THE DEFENDANT GUILTY OF EVERY COUNT AS CHARGED.  
18 THANK YOU.

19 THE COURT: MS. MOBLEY.

20 MS. MOBLEY: THANK YOU, YOUR HONOR, IF IT PLEASES THE  
21 COURT.

22 THE COURT: ALL RIGHT.

23 MS. MOBLEY: LADIES AND GENTLEMEN, JERENE HAYWARD IS  
24 NOT GUILTY. NOW, YOU HAVE JUST HEARD WHAT SOUNDS LIKE A  
25 REALLY SCARY INCIDENT, WHAT SOUNDS LIKE A PRETTY ATROCIOUS

1 FACT. BUT LET'S MAKE NO MISTAKE THAT THE GOVERNMENT, THE  
2 STATE IS HOLDING THEIR BREATH HOPING THAT YOUR EMOTIONAL  
3 REACTIONS TO WHAT YOU JUST HEARD IS GOING TO OVERSHADOW  
4 THE EVIDENCE. YOU ARE GOING TO HEAR FROM A LOT OF  
5 WITNESSES IN THIS CASE, OKAY. SO, THEY TAKE THE STAND,  
6 THEY ARE GOING TO HAVE AN OPPORTUNITY TO QUESTION THEM, SO  
7 ARE WE. KEEP A CLOSE, CLOSE EAR FOR WHAT YOU ARE GOING TO  
8 HEAR BECAUSE THE EVIDENCE IS GOING TO SHOW YOU THAT JERENE  
9 HAYWARD IS NOT GUILTY. YOU JUST HEARD MS. COOPER SAY IN  
10 HER OPENING, THERE IS A SHOE PRINT, IT DOESN'T MATCH.  
11 LADIES AND GENTLEMEN, THEY ARE BANKING ON THE FACTS THAT  
12 YOUR SYMPATHY WILL OVERRIDE YOUR COMMON SENSE AND ALL THE  
13 DEFENSE IS REQUESTING FROM YOU RIGHT NOW IS USE YOUR  
14 COMMON SENSE, THAT IS ALL. WHILE YOU ARE LISTENING TO ALL  
15 OF THE EVIDENCE, WHILE YOU ARE HEARING ALL OF THE  
16 WITNESSES TESTIFY, EVERYTHING ELSE, JUST USE YOUR COMMON  
17 SENSE, LISTEN TO THE EVIDENCE, LISTEN TO WHAT IS SAID AND  
18 WHAT IS NOT SAID AND YOU WILL BE ABLE TO PIECE THEM  
19 TOGETHER BY THE END OF THE DAY, BY THE END OF THIS TRIAL,  
20 TO SEE WHAT IS GOING ON, TO SEE WHAT IS REALLY GOING ON.  
21 AND SHE ALSO MENTIONS THAT THE STATE HAS THE BURDEN OF  
22 PROOF. THEY ARE WORKING FOR THE MOST POWERFUL GOVERNMENT  
23 IN THE WORLD. THEY OUGHT TO HAVE THE BURDEN OF PROOF AND  
24 WE ASK THAT YOU HOLD THEM TO THAT. AND AT THE END OF THE  
25 DAY, THE END OF THIS TRIAL AFTER YOU HEARD ALL OF THE

1 EVIDENCE, YOU HAVE HEARD ALL OF THE TESTIMONY, SEEN ALL OF  
2 THE EXHIBITS AND YOU SEE THE EVIDENCE IN THIS CASE, TO  
3 HOLD THEM TO THAT BURDEN OF PROOF. BEYOND A REASONABLE  
4 DOUBT IS THE HIGHEST ROLE WE HAVE, AND THERE IS A REASON  
5 FOR THAT CALLED THE CONSTITUTION OF THE UNITED STATES.  
6 THE MOST IMPORTANT DOCUMENT, THE MOST IMPORTANT GOVERNMENT  
7 DOCUMENT THAT WE HAVE THAT WOULD TEST INNOCENT PEOPLE FROM  
8 BEING CONVICTED OF CRIMES. AND I WOULD JUST ASK, JUST  
9 LISTEN, YOU WILL HEAR, JUST LISTEN, PAY ATTENTION DURING  
10 THE TRIAL TO WHAT YOU HEAR AND WHAT YOU WILL NOT HEAR,  
11 APPLY THE APPROPRIATE STANDARD, THE JUDGE IS GOING TO  
12 INSTRUCT YOU ON THE LAW, HE IS THE JUDGE OF THE LAW AND HE  
13 WILL TELL YOU ALL ABOUT THAT KIND OF STUFF. AND I CAN SIT  
14 OUT HERE AND GO THROUGH IT ALL WITH YOU AGAIN. JUST  
15 LISTEN AND AT THE END OF THIS WEEK, AT THE END OF THIS  
16 TRIAL YOU ARE GOING TO SEE THAT JERENE HAYWARD IS NOT  
17 GUILTY. THANK YOU.

18 THE COURT: CALL YOUR FIRST WITNESS, SOLICITOR.

19 MR. JOPHLIN: THANK YOU, YOUR HONOR, THE STATE CALLS  
20 JEFF CONNELL.

21 JEFFREY CONNELL, AFTER BEING DULY SWORN,  
22 TESTIFIED AS FOLLOWS.

23 DIRECT EXAMINATION

24 BY MR. JOPHLIN:

25 Q GOOD MORNING, MR. CONNELL.

1 A GOOD MORNING.

2 Q WHERE DO YOU LIVE?

3 A I LIVE IN LONGCREEK PLANTATION, [REDACTED] IN  
4 THE BLYTHEWOOD AREA.

5 Q AND THAT IS OUR NORTHEAST PART OF COLUMBIA?

6 A CORRECT.

7 Q AND WHAT DO YOU DO FOR A LIVING?

8 A I AM A GOLF COURSE SUPERINTENDENT AT COLUMBIA COUNTRY  
9 CLUB AT THE GOLF COURSE.

10 Q AND WHERE IS THAT IN RELATION TO YOUR HOME?

11 A JUST RIGHT ACROSS THE STREET, AN EIGHTH OF A MILE  
12 FROM WHERE I LIVE.

13 Q HOW LONG HAVE YOU LIVED THERE?

14 A SINCE 2002.

15 Q CAN YOU SORT OF DESCRIBE WHAT KIND OF, ESPECIALLY  
16 WHERE YOUR HOUSE IS LOCATED, WHAT KIND OF TERRAIN IS  
17 AROUND THERE. ARE THERE A LOT OF HOUSES, IS IT VERY  
18 WOODY?

19 A NO, IT IS A RELATIVELY SECLUDED STREET, THERE ARE 12  
20 OR 15 HOUSES ON THE STREET, THEY ARE THREE AND FOUR ACRE  
21 LOTS SO WHEN WE BUILT WE LEFT A LOT OF WOODS AROUND THE  
22 HOUSE SO IT WOULD STAY SECLUDED SO WE WOULD HAVE A LITTLE  
23 BIT OF PRIVACY.

24 Q AND THAT IS IN GENERAL, THE IMMEDIATE AREA RIGHT  
25 AROUND YA'LL?

1 A YES, IT IS RELATIVELY SEMI-RURAL AREA, IT IS NOT A  
2 TYPICAL SUBDIVISION, THE STREETS ARE PAVED AND A LOT OF  
3 WOODED AREAS.

4 Q SO IT IS NOT A SUBDIVISION WHERE YOU SEE AROUND WHERE  
5 EVERYTHING IS CLEAR CUT AND THE HOUSES ARE RIGHT AROUND  
6 EACH OTHER?

7 A NO, IT HAS BEEN THERE FOR QUITE SOME TIME, IT WAS  
8 DEVELOPED 15, 20 YEARS AGO AND THEY BROKE IT UP INTO REAL  
9 BIG LOTS AND IT IS STILL KIND OF A WORK IN PROGRESS.

10 Q AND HOW DO YOU KNOW THE VICTIM IN THE CASE, MS.  
11 LOURDES ANTONIO?

12 A THEY WERE EMPLOYED AT THE GOLF COURSE SINCE 2000, SO  
13 THEY WERE EMPLOYED FOR SIX YEARS, EMPLOYED THEM BOTH.

14 Q HOW DID SHE COME ABOUT COMING INTO YOUR HOUSEHOLD?

15 A WELL, WHEN MY WIFE AND I WERE EXPECTING OUR CHILD,  
16 LOURDES AND BENITO WERE BOTH WORKING FOR US. MY WIFE HAS  
17 A VERY GOOD JOB ALSO SO SHE WANTED TO GO BACK TO WORK.  
18 AND SHE HAD THE BABY, LOURDES HAD EXPRESSED INTEREST EVERY  
19 SINCE CHANEY WAS BORN TO WANT TO TAKE CARE OF HIM AND I  
20 ALWAYS FELT GUILTY ABOUT HER WORKING ON THE GOLF COURSE  
21 DOING PHYSICAL LABOR. SO, IT WAS KIND OF A GOOD FIT FOR  
22 HER TO COME OVER AND HELP TAKE CARE OF CHANEY.

23 Q AND WHEN DID SHE START, THAT IS YOUR SON, CHANEY?

24 A CORRECT.

25 Q AND WHEN DID SHE START TAKING CARE OF CHANEY?

1 A PROBABLY MAY OF '03, HE WAS BORN IN MARCH OF '03, SO  
2 ABOUT TWO OR THREE MONTHS AFTERWARDS.

3 Q OKAY. AND SHE HAS BEEN WITH YOU EVER SINCE?

4 A YES.

5 Q SHE STILL WORKS WITH YA'LL?

6 A THAT IS CORRECT.

7 Q AND HOW OFTEN DOES SHE COME IN YOUR HOUSE AND TAKE  
8 CARE OF CHANEY?

9 A SHE IS THERE MONDAY THROUGH FRIDAY, PHYSICALLY 8:30  
10 IN THE MORNING TO 4:00 TO 6:00 IN THE AFTERNOON, DEPENDING  
11 ON WHAT MY WIFE AND MY SCHEDULE IS.

12 Q OKAY. AND I AM GOING TO SHOW YOU THIS. DOES THIS  
13 MAP SHOW LONGTOWN ROAD AND THE VICINITY WHERE YOU LIVE IN  
14 THAT AREA?

15 A CORRECT.

16 Q AND IS YOUR STREET ANYWHERE IN THIS VICINITY, THIS IS  
17 LONGTOWN ROAD?

18 A WE BACK UP TO LONGTOWN AND TAM-O-SHANTER, WE ARE  
19 RIGHT IN BETWEEN THE TWO.

20 MR. JOPHLIN: YOUR HONOR, THE STATE WOULD SEEK TO  
21 ADMIT THIS AS STATE'S EXHIBIT NUMBER 13.

22 THE COURT: ANY OBJECTION TO THIS EXHIBIT?

23 MS. MOBLEY: IF I MAY EXAMINE IT, YOUR HONOR. NO  
24 OBJECTION. YOUR HONOR, WE WOULD SUGGEST THAT THIS IS A  
25 MORE APPROPRIATELY FOR DEMONSTRATIVE.

1 MR. JOPHLIN: WE WOULD SEEK TO ADMIT IT SO LATER  
2 REFERENCES COULD BE MADE TO IT, COULD BE EXPLAINED AS TO  
3 WHERE THINGS ARE.

4 THE COURT: I WILL ADMIT IT AS STATE'S 13. HE IS  
5 FAMILIAR WITH IT AND IT BEING ACCURATE, IS THAT CORRECT?

6 MR. JOPHLIN: CORRECT, THIS IS AN ACCURATE  
7 REPRESENTATION OF THE AREA?

8 A YES.

9 THE COURT: STATE'S 13 IS ADMITTED.

10 (WHEREUPON, STATE'S EXHIBIT NO. 13 WAS ADMITTED INTO  
11 EVIDENCE.)

12 Q I AM GOING TO HAND YOU A COUPLE OF SMALLER PHOTOS OR  
13 ONE SMALLER PHOTO TO HAND YOU. CAN YOU IDENTIFY THAT  
14 BLOWUP AREA?

15 A THIS IS TAM-O-SHANTER, KIND OF THE QUADRANT THAT WE  
16 LIVE ON, THE MIDDLE OF THE ROAD ACTUALLY.

17 Q CAN YOU IDENTIFY YOUR HOUSE ON THAT?

18 A IT WOULD BE THE FIRST ONE ON THE LEFT.

19 Q OKAY.

20 MR. JOPHLIN: THE STATE WOULD INTRODUCE THIS AS STATE  
21 NUMBER 36.

22 MS. MOBLEY: WITHOUT OBJECTION, YOUR HONOR.

23 THE COURT: WITHOUT OBJECTION STATE'S NUMBER 36 IS  
24 ADMITTED.

25

1 (WHEREUPON, STATE'S EXHIBIT NO. 36 WAS ADMITTED INTO  
2 EVIDENCE.)

3 MR. JOPHLIN: YOUR HONOR, CAN THIS WITNESS STEP DOWN.

4 THE COURT: JUST KEEP YOUR VOICE UP, THIS COURT  
5 REPORTER AND EVERYONE IN THE COURTROOM NEEDS TO HEAR YOU.

6 Q I WANT TO GET YOU, YOU EXPLAINED THIS IS LONGTOWN AND  
7 THE SUBDIVISION THAT YOU LIVE IN IS WHERE ON THIS MAP?

8 A THIS IS COLUMBIA CLUB DRIVE, THE WHOLE THING GOES ALL  
9 THE WAY AROUND, YOU COME IN THIS WAY AND COME AROUND.

10 THE COURT: I SEE SOME FOLKS STRAINING TO SEE, I WANT  
11 TO BE SURE THEY CAN SEE THE WITNESS.

12 Q YOU ENTER INTO LONGCREEK PLANTATION AND COME THIS  
13 WAY, YOU WOULD GO THIS WAY, THIS IS THE COLUMBIA COUNTRY  
14 CLUB AREA AND THE GOLF COURSE AREA. THIS ROAD RIGHT HERE  
15 THAT GOES ALONG LONGTOWN IS TAM-O-SHANTER RIGHT THERE.  
16 AND YOU SAY THAT STATE'S EXHIBIT NUMBER 36 IS ACTUALLY A  
17 BLOWUP OF THAT AREA?

18 A THAT IS CORRECT, ESPECIALLY RIGHT THERE IN THE  
19 MIDDLE.

20 Q AND CAN YOU PIN THIS ON THE LARGER MAP AS TO WHERE  
21 THAT WOULD BE.

22 A (THE WITNESS PINS ON MAP.)

23 Q AND IF I CAN HAND YOU THIS MARKER TO SORT OF, ON THIS  
24 MAP JUST PLACE A SMALL CIRCLE WHERE YOUR HOUSE IS LOCATED  
25 ON THAT BLOWUP.

1 A (THE WITNESS DRAWS ON THE MAP.)

2 Q AND THAT IS AS DESCRIBED EARLIER THE WOODED AREA  
3 RIGHT AROUND THERE?

4 A CORRECT.

5 Q AND JUST THE GENERAL VICINITY OF THE GREENERY RIGHT  
6 AROUND THERE.

7 A CORRECT.

8 Q YOU CAN HAVE A SEAT. LET ME BRING YOUR ATTENTION TO  
9 THE MATTER AT HAND, APRIL 13TH OF 2004. WHERE WERE YOU  
10 WORKING THAT DAY, EARLY AFTERNOON HOURS.

11 A I WAS ON THE GOLF COURSE ALL DAY.

12 Q AND WHAT HAPPENED THAT AFTERNOON?

13 A IT WAS ABOUT, SOMEWHERE AROUND 3:30, MY CELL PHONE  
14 FROM THE RADIO FROM THE PRO SHOP HAD CALLED ME AND TOLD ME  
15 THAT I HAD AN EMERGENCY AT HOME AND THAT I NEEDED TO GET  
16 HOME IMMEDIATELY. SO, I GOT IN MY CAR OR TRUCK AND HEADED  
17 HOME DOWN COLUMBIA CLUB DRIVE TOWARD TAM-O-SHANTER  
18 IMMEDIATELY.

19 Q AND DID THEY TELL YOU WHAT WAS GOING ON?

20 A NO, JUST THAT THERE WAS AN EMERGENCY AT MY HOUSE AND  
21 WHEN YOU HAVE A ONE-YEAR-OLD CHILD YOU WANT TO GET HOME AS  
22 SOON AS YOU CAN. SO, I MADE IT OVER AS FAST AS I COULD,  
23 TWO TO THREE MINUTES AT THE MOST.

24 Q AND WHAT HAPPENED WHEN YOU GOT TO YOUR HOUSE, DID YOU  
25 ACTUALLY MAKE IT TO YOUR HOUSE?

1 A I DIDN'T, THE LADY THAT LIVES ONE HOUSE PAST US, MS.  
2 WRIGHT, SHE WAS STANDING AT THE END OF HER DRIVEWAY WITH  
3 CHANEY IN HER ARMS AND KIND OF FLAGGING ME DOWN. SO, I  
4 DROVE TO THE END OF HER DRIVEWAY AND BY THE TIME I GOT TO  
5 HER SHE WAS ALREADY HEADING UP HER DRIVEWAY. AND I MET  
6 HER AT HER GARAGE WHERE LOURDES WAS LAYING ON THE GROUND  
7 WITH BLOOD ON HER BLOUSE AND KIND OF GASPING FOR AIR.  
8 CHANEY WAS FINE, MS. WRIGHT WAS VERY FORWARD IN TELLING ME  
9 EVERYTHING WAS OKAY WITH CHANEY, THAT LOURDES IS DOWN ON  
10 THE GROUND AND WE DON'T KNOW WHAT HAS HAPPENED BECAUSE I  
11 DON'T UNDERSTAND SPANISH. CAN YOU HELP ME.

12 Q AND WHEN YOU SAY NEXT DOOR, WHICH HOUSE ARE YOU  
13 REFERRING TO?

14 A ONE HIGHER ON THERE.

15 Q THIS HOUSE RIGHT HERE?

16 A THAT IS CORRECT.

17 Q AND WHAT WAS, YOU ARE SAYING THAT LOURDES WAS LAYING  
18 ON THE GROUND GASPING FOR AIR. COULD YOU UNDERSTAND WHAT  
19 WAS GOING ON, WHAT AS HER DEMEANOR?

20 A I HAD NO IDEA WHAT WAS GOING ON, I UNDERSTOOD THAT  
21 CHANEY WAS FINE, BUT MY NEXT CONCERN WAS LOURDES, SHE  
22 REALLY COULDN'T SPEAK, SHE COULDN'T BREATHE REAL WELL. IT  
23 WAS VERY WINDY OUT SO THERE WAS QUITE A BIT OF NOISE IN  
24 THE ATMOSPHERE BECAUSE OF THE WIND AND A LITTLE BIT OF  
25 CHAOS, YOU KNOW, JUST KIND THE HEAT OF THE MOMENT WHEN YOU

1 DON'T KNOW WHAT WAS GOING ON. THE NEIGHBORS DON'T KNOW  
2 WHAT IS GOING ON, BY THAT TIME THE OTHER NEIGHBOR LADY HAD  
3 COME OVER AND SHE DOESN'T REALLY UNDERSTAND SPANISH SO I  
4 AM DEALING WITH TWO LADIES AND A BABY AND THE LADY ON THE  
5 GROUND. IT WAS CHAOTIC.

6 Q VERY HECTIC SITUATION?

7 A YES.

8 Q AS YOU ARE SITTING THERE TRYING TO FIGURE OUT WHAT IS  
9 GOING ON, WERE YOU ABLE TO DETERMINE WHAT WAS, WHAT  
10 HAPPENED IN YOUR HOUSE?

11 A SHE HAD ALREADY CALLED 911 SO THE EMS WAS ON THE WAY  
12 SO WE WERE JUST BASICALLY WAITING FOR EMS TO GET THERE AND  
13 I WAS TRYING TO COMFORT HER. SHE KEPT TRYING TO SPEAK,  
14 SHE KEPT TRYING TO TELL ME WHAT WAS GOING ON, SHE JUST  
15 COULDN'T REALLY GET OUT ANY SENSIBLE WORDS. FINALLY SHE  
16 GOT OUT THAT THERE WAS A BLACK MAN IN THE HOUSE.

17 MS. MOBLEY: OBJECTION, HERESAY.

18 MR. JOPHLIN: EXCITED UTTERANCE, YOUR HONOR.

19 THE COURT: PARDON ME?

20 MR. JOPHLIN: EXCITED UTTERANCE.

21 THE COURT: OVERRULED, GO AHEAD.

22 Q SHE SAID THERE WAS A BLACK MAN IN THE HOUSE?

23 A CORRECT.

24 Q DID SHE SAY THAT TO YOU IN ENGLISH?

25 A NO, SHE SAID IT IN SPANISH.

1 Q AND HOW IS THAT SHE SAID IT?

2 A SHE SAID, (FOUR SPANISH WORDS,) BUT IT WAS REAL  
3 BROKEN, IT TOOK BASICALLY A MINUTE FOR HER TO GET THAT  
4 ENTIRE PHRASE OUT AND KIND OF PUT IT TOGETHER. AND WHEN I  
5 DID AND REALIZED THAT I IMMEDIATELY GOT OFF OF MY KNEES  
6 AND RAN OVER NEXT DOOR TO MY HOUSE TO SEE WHAT WAS GOING  
7 ON.

8 Q AND WHEN YOU, DID YOU GO INSIDE THE HOUSE?

9 A YES.

10 Q AND WHAT DID YOU OBSERVE WHEN YOU HAD GONE IN THE  
11 HOUSE?

12 A WHEN I CAME IN THE FOYER, THE SIDE DOOR, THERE WAS  
13 BLOOD ON THE FLOOR WHICH EXCITED ME A LITTLE BIT MORE.  
14 SO, THE FIRST THING I DID WAS RUN TO MY NIGHTSTAND TO GO  
15 LOOK FOR MY GUN.

16 Q AND WHEN YOU WENT THERE TO YOUR NIGHTSTAND WHAT DID  
17 YOU FIND?

18 A A DRAWER WAS OPEN AND A GUN WAS MISSING. 

19 Q AND YOU SAY THERE IS BLOOD ON THE FLOOR, WAS THERE  
20 LARGE PUDDLES EVERYWHERE OR JUST--

21 A NO, THERE WAS ONE LARGER SPOT THE SIZE OF YOUR FIST,  
22 AND THEN A COUPLE OF BLOODLETS THAT ARE REAL OBVIOUS WHEN  
23 YOU FIRST GO THROUGH AND YOU WALK IN THE HOUSE THAT IS THE  
24 FIRST THING YOU SEE. SO, YOU KNOW SOMETHING OBVIOUSLY IS  
25 NOT RIGHT OR HAD HAPPENED. AND THEN FRANTIC OF THAT YOU

1 CONTINUE ON.

2 Q AND WHAT WAS THE CONDITION OF YOUR HOUSE WHEN YOU  
3 WENT IN?

4 A I COULDN'T TELL THAT ANYTHING HAD BEEN, NOTHING HAD  
5 REALLY TOUCHED AT ALL. YOU COULDN'T TELL THAT ANYONE HAD  
6 BEEN IN THERE WHATSOEVER WITH THE EXCEPTION OF THAT DOOR  
7 BEING OPENED AND IMMEDIATELY NOT KNOWING WHAT WAS MISSING.

8 Q AND WHEN WAS THE LAST TIME THAT YOU KNEW THE GUN WAS  
9 IN THAT DRAWER?

10 A PROBABLY LESS THAN A WEEK, I WAS TARGET SHOOTING.

11 Q YOU HAVE PEOPLE IN AND OUT OF YOUR HOUSE, IN AND OUT  
12 OF YOUR BEDROOM?

13 A NO, WE DON'T HAVE MANY VISITORS IN THE HOUSE, MUCH AT  
14 ALL.

15 Q HAD YOU HAD ANYONE OVER THAT WOULD HAVE OCCASION TO  
16 COME OVER IN YOUR BEDROOM?

17 A NOT IN THE BEDROOM, WE HAD GUESTS OVER THERE IN THE  
18 HOUSE BUT NOT IN THE BEDROOM.

19 Q AND IS THIS A REPRESENTATION OF A PORTION OF YOUR  
20 HOUSE?

21 A YES.

22 Q IS THIS TO SCALE?

23 A NO.

24 MR. JOPHLIN: YOUR HONOR, WE INTRODUCE STATE'S  
25 EXHIBIT NUMBER 12.

1 MS. MOBLEY: YOUR HONOR, IT IS CLEARLY DEMONSTRATIVE.

2 THE COURT: IT WILL BE MARKED FOR DEMONSTRATIVE  
3 PURPOSES, IT WILL NOT BE AN EXHIBIT. IT WILL BE MARKED,  
4 WHAT IS IT MARKED?

5 MR. JOPHLIN: 12, YOUR HONOR.

6 THE COURT: STATE'S 12 FOR IDENTIFICATION.

7 (WHEREUPON, STATE'S EXHIBIT NO. 12 WAS MARKED FOR  
8 IDENTIFICATION ONLY.)

9 MR. JOPHLIN: CAN I ASK THE WITNESS TO STEP DOWN FOR  
10 A SECOND?

11 THE COURT: SURE, KEEP YOUR VOICE UP, PLEASE.

12 Q IF YOU COULD JUST POINT OUT FOR THE JURY KIND OF  
13 WHERE YOU WALKED IN THAT DAY, WHERE YOUR BEDROOM IS YOU  
14 ARE SPEAKING OF AND THE NIGHTSTAND WHERE THE GUN WAS.

15 A I CAME THROUGH THIS SIDE OF THE HOUSE, THE NEIGHBOR  
16 LIVES ON EITHER SIDE SO I ENTERED DIRECTLY THROUGH THE  
17 PATIO, FOYER TYPE AREA.

18 Q AND JUST TAKE THE ROUTE OF YOUR BEDROOM.

19 A BASICALLY CAME THROUGH THIS WAY AND NOTICED THAT  
20 THERE WAS BLOOD RIGHT THERE IN THE FOYER AND CONTINUED ON  
21 THROUGH THE LIVING ROOM AND MY BEDROOM IS BACK HERE ON THE  
22 OTHER SIDE OF THE LIVING ROOM, THE GUN BEING ON THE OTHER  
23 SIDE OF THE BED, IN THE BACK RIGHT-HAND CORNER OF THE  
24 HOUSE.

25 Q OKAY. AND YOU CAN HAVE A SEAT. AND ONCE YOU FOUND

1 THE GUN WHAT DID YOU DO?

2 A RAN BACK OVER TO CHECK BECAUSE EMS HAD ARRIVED AT  
3 THAT TIME AND I ASKED THE LADY IF SHE WOULD BE KIND ENOUGH  
4 TO CALL THE SHERIFFS DEPARTMENT. I HAD GOTTEN ON MY PHONE  
5 AND STARTED MAKING SOME PHONE CALLS TO SEE IF ANYONE AT  
6 THE GOLF COURSE WAS STILL THERE BECAUSE I NEEDED SOME HELP  
7 TAKING CARE OF CHANEY.

8 Q AND DID THE POLICE ARRIVE?

9 A YES, THEY DID.

10 Q AND, WELL ACTUALLY LET'S BACK UP. DID THE AMBULANCE  
11 ARRIVE?

12 A THE AMBULANCE ARRIVED, THEY GOT HER LOADED UP. ABOUT  
13 THE TIME THEY WERE PULLING UP THE SHERIFFS DEPARTMENT  
14 ARRIVED.

15 Q AND WHO DID YOU FIRST MEET UP WITH THE SHERIFFS  
16 DEPARTMENT?

17 A DEPUTY ROE.

18 Q AND DID YOU TELL ROE WHAT HAPPENED?

19 A WELL, WE WERE STILL REALLY TRYING TO PIECE EVERYTHING  
20 TOGETHER AND I TOLD HIM IT LOOKED LIKE SOMEONE HAD BROKEN  
21 INTO THE HOME, THAT THEY ASSAULTED MS. ANTONIO AND THAT I  
22 HAD A WEAPON MISSING. AT THAT POINT AND TIME THAT KIND OF  
23 PUT HIM ON A DIFFERENT SCALE OF PAYING ATTENTION TO IT NOT  
24 BEING JUST A BURGLARY BUT THERE WAS A WEAPON MISSING.

25 Q AND WERE YOU ABLE TO DESCRIBE THE WEAPON?

1 A IT WAS A .45 CALIBER RUGER, SILVER IN GRAY IN TONE,  
2 BLACK PISTOL GRIP.

3 Q AND WAS THERE ANYTHING ELSE MISSING BESIDES THE GUN?

4 A AT THAT POINT AND TIME WE STARTED GOING THROUGH THE  
5 HOUSE TO SEE BUT WE REALLY COULDN'T FIND ANYTHING ELSE  
6 WITH THE EXCEPTION OF MS. ANTONIO'S CELL PHONE WAS MISSING  
7 AND WAS LATER DISCOVERED BUT NOTHING ELSE IN THE HOME HAD  
8 BEEN TOUCHED.

9 Q WERE THERE ANY ACCESSORIES TO THE GUN MISSING AS  
10 WELL?

11 A YES, IT HAD FOUR CLIPS WITH IT SO IT HAD BASICALLY 30  
12 ROUNDS OF AMMUNITION WITH THE GUN.

13 Q WAS THE CLIP LOADED?

14 A YES.

15 Q AND EXPLAIN THE CLIP, WHAT DOES IT DO?

16 A THE CLIP BASICALLY HOLDS SEVEN TO NINE BULLETS THAT  
17 GOES INTO THE PISTOL GRIP OF THE GUN. WHEN YOU ARE DONE  
18 YOU DISCHARGE THE CLIP SO IT DOESN'T JUST HOLD ONE ROUND,  
19 IT HOLDS MULTIPLE ROUNDS OF AMMUNITION.

20 Q AND WERE YOU ABLE TO GIVE A SERIAL NUMBER OR ANY KIND  
21 OF IDENTIFYING NUMBER FROM THE GUN?

22 A WE HAD THE NUMBERS WRITTEN DOWN AT THE HOUSE FOR  
23 INSURANCE PURPOSES. WHEN I WENT TO THE DEPARTMENT,  
24 DETECTIVE BARNES WAS, ALLOWED ME TO IDENTIFY THE GUN AND  
25 THEN PLACE IT BACK INTO MY CUSTODY.

*gun serial #*

1 Q AND SO THE GUN WAS MISSING AND FROM THERE YOU TOLD  
2 OFFICER ROE ABOUT WHAT HAD HAPPENED, THE GUN MISSING.  
3 WHAT HAPPENED THEN. DID THE SHERIFF COME BY, DID YA'LL  
4 LEAVE THE HOUSE?

5 A NO, MR. ROE STAYED THERE AND AN INVESTIGATOR GROUP  
6 SHOWED UP TO ROPE OFF THE CRIME SCENE, TO DO THEIR JOB,  
7 FINGERPRINTS AND THIS AND THAT. IN THE MEAN TIME THE  
8 NEIGHBORS HAD SHOWED UP BECAUSE OF POLICE CARS AND WE  
9 STARTED TO PUT SOME PIECES TOGETHER THAT ANOTHER NEIGHBOR  
10 SAID THERE HAD BEEN SOMEONE IN THE AREA SELLING--

11 MS. MOBLEY: OBJECTION, YOUR HONOR.

12 THE COURT: SUSTAINED. ASK ANOTHER QUESTION,  
13 SOLICITOR.

14 MR. JOPHLIN: YES, SIR.

15 Q WE DON'T WANT TO GET INTO WHAT ANYONE ELSE SPOKE TO  
16 YOU ABOUT. LET ME ASK YOU, YOU SAID LATER ON THAT EVENING  
17 YOU WENT TO THE SHERIFFS DEPARTMENT TO RECOVER YOUR  
18 WEAPON, THE GUN THAT WAS STOLEN?

19 A CORRECT.

20 Q AND IS THIS, IS THIS YOUR SIGNATURE?

21 A THAT IS IT.

22 Q AND WHEN DID YOU SIGN THAT?

23 A THAT EVENING, APRIL THE 13TH.

24 Q OKAY. I KNOW WHAT I WANTED TO ASK YOU ABOUT. WHERE  
25 DID YOU GET THIS GUN?

1 A I BROUGHT IT WITH ME FROM KENTUCKY, I MOVED DOWN HERE  
2 TEN YEARS AGO, I BOUGHT IT FROM A FRIEND, HIS FATHER SOLD  
3 IT TO ME.

4 Q AND THE VALUE OF THE GUN?

5 A \$500.00 OR \$600.00 DOLLARS.

6 Q AND I AM GOING TO SHOW YOU A FEW PICTURES THAT HAVE  
7 BEEN MARKED STATE'S EXHIBIT 11, 10 AND 11. DO YOU  
8 RECOGNIZE WHAT IS IN THESE PICTURES?

9 A THAT IS MY .45 RUGER WITH THE CLIPS.

10 Q HOW MANY CLIPS ARE IN BOTH OF THOSE PICTURES?

11 A THERE IS FOUR.

12 Q AND DOES THIS ACCURATELY REPRESENT THE GUN?

13 A THAT IS CORRECT.

14 MR. JOPHLIN: YOUR HONOR, THE STATE WOULD SEEK TO  
15 INTRODUCE STATE'S EXHIBIT NUMBER 10 AND 11.

16 THE COURT: ANY OBJECTION.

17 MS. MOBLEY: YES YOUR HONOR, MAY WE APPROACH.

18 THE COURT: SURE.

19 (WHEREUPON, A BENCH CONFERENCE WAS HELD IN THE  
20 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE  
21 JURY.)

22 MR. JOPHLIN: THE STATE WOULD SEEK TO INTRODUCE  
23 STATE'S EXHIBIT NUMBER 10.

24 THE COURT: STATE'S 10 IS ADMITTED, A PORTION OF IT  
25 MAY BE REDACTED FOR THAT PURPOSE. AT THIS TIME IT WILL

1 NOT BE PUBLISHED TO THE JURY.

2 MS. MOBLEY: THANK YOU.

3 (WHEREUPON, STATE'S EXHIBIT NO. 10 WAS ADMITTED INTO  
4 EVIDENCE.)

5 Q I AM GOING TO SHOW YOU SOME PICTURES AND ASK YOU IF  
6 YOU RECOGNIZE THEM, WHAT THEY ARE OF AND IF YOU WILL SORT  
7 OF EXPLAIN THEM OR JUST THE LOCATION OF WHERE THEY ARE.

8 A THIS IS A VIEW OF THE LIVING ROOM--

9 MR. JOPHLIN: YES, YOUR HONOR.

10 THE COURT: TELL YOU WHAT, THE BEST THING TO DO,  
11 IDENTIFY THE NUMBER. ASK HIM IF HE CAN IDENTIFY THE PHOTO  
12 AND IF HE CAN SHOW IT TO COUNSEL AND THEN HE CAN TALK  
13 ABOUT WHAT IT IS. DO IT BY NUMBER, LET'S GET IT IN THE  
14 RECORD AND GET IT CLEAN, PLEASE.

15 Q STATE'S EXHIBIT NUMBER 14.

16 MS. MOBLEY: WITHOUT OBJECTION, YOUR HONOR.

17 THE COURT: WITHOUT OBJECTION, STATE'S 14 IS  
18 ADMITTED.

19 (WHEREUPON, STATE'S EXHIBIT NO. 14 WAS ADMITTED INTO  
20 EVIDENCE.)

21 Q AND YOU DESCRIBE THAT AS--

22 A THE LIVING ROOM AND THE BACK OF THE KITCHEN.

23 Q OKAY, STATE'S NUMBER 15.

24 MS. MOBLEY: YOUR HONOR, MAY WE APPROACH?

25 THE COURT: SURE.

1 (WHEREUPON, A BENCH CONFERENCE WAS HELD IN THE  
2 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE  
3 JURY.)

4 Q STATE'S NUMBER 15, WHAT DOES THIS SHOW?

5 A IT IS A CLOSER VIEW IN THE KITCHEN, BREAKFAST AREA  
6 LOOKING BACK TOWARDS THE FOYER.

7 Q AND DOES THIS ACCURATELY REFLECT YOUR HOME?

8 A YES.

9 Q WAS IS THERE NOW OR WHAT WAS THERE BACK IN 2004?

10 A IT IS THE SAME.

11 MR. JOPHLIN: STATE'S NUMBER 15.

12 MS. MOBLEY: NO OBJECTION, YOUR HONOR.

13 THE COURT: WITHOUT OBJECTION STATE'S 15 IS ADMITTED.

14 (WHEREUPON, STATE'S EXHIBIT NO. 15 WAS ADMITTED INTO  
15 EVIDENCE.)

16 Q STATE'S NUMBER 16, DOES THIS FAIRLY AND ACCURATELY  
17 DEPICT WHAT IS IN YOUR HOUSE?

18 A CORRECT.

19 Q AND WHAT IS IT SHOWING?

20 A A VIEW DOWN THE HALLWAY.

21 Q AND WOULD IT BE THIS HALLWAY?

22 A CORRECT. FROM THE LIVING ROOM LOOKING DOWN THE HALL.

23 Q AND DOES THIS SHOW WHAT IS CURRENTLY IN YOUR HOME OR  
24 BACK IN 2004?

25 A 2004.

1 Q HAS IT CHANGED?

2 A NO.

3 MR. JOPHLIN: STATE'S NUMBER 16, YOUR HONOR.

4 THE COURT: ANY OBJECTION.

5 MS. MOBLEY: YOUR HONOR, I WOULD JUST OBJECT TO THE  
6 RELEVANCE AT THIS POINT.

7 THE COURT: ALL RIGHT, OVERRULED, STATE'S 16 IS  
8 ADMITTED.

9 (WHEREUPON, STATE'S EXHIBIT NO. 16 WAS ADMITTED INTO  
10 EVIDENCE.)

11 Q STATE'S EXHIBIT NUMBER 19 AND WHAT DOES THIS SHOW,  
12 MR. CONNELL?

13 A THE LIVING ROOM LOOKING AT THE HALL AND THE DOORWAY  
14 TO THE KITCHEN BREAKFAST AREA.

15 Q AND DOES THIS ACCURATELY DEPICT YOUR HOME?

16 A CORRECT.

17 Q AND IS THIS IS HOW IT WAS IN 2004 OR IS IT HOW IT IS  
18 CURRENTLY?

19 A 2004.

20 Q HAS IT CHANGED?

21 A NO.

22 MR. JOPHLIN: STATE'S EXHIBIT NUMBER 19.

23 MS. MOBLEY: WITHOUT OBJECTION.

24 THE COURT: WITHOUT OBJECTION, STATE'S 19 IS  
25 ADMITTED.

1 (WHEREUPON, STATE'S EXHIBIT NO. 19 WAS ADMITTED INTO  
2 EVIDENCE.)

3 Q I WANT TO SHOW YOU WHAT HAS BEEN MARKED AS STATE'S  
4 EXHIBIT NUMBER 23. CAN YOU DESCRIBE WHAT IS IN THAT  
5 PICTURE?

6 A THAT IS LOOKING AT THE PATIO ONTO THE FOYER FROM THE  
7 SIDE OF THE HOUSE.

8 Q DOES THAT FAIRLY AND ACCURATELY DEPICT YOUR HOUSE?

9 A CORRECT.

10 Q THE FOYER, WHAT IS IN THE PICTURE?

11 A YES.

12 Q AND WAS THIS HOW IT WAS IN 2004 OR HOW IT IS  
13 CURRENTLY?

14 A 2004.

15 MR. JOPHLIN: STATE'S EXHIBIT NUMBER 23.

16 MS. MOBLEY: WITHOUT OBJECTION.

17 THE COURT: WITHOUT OBJECTION STATE'S 23 IS ADMITTED.

18 (WHEREUPON, STATE'S EXHIBIT NO. 23 WAS ADMITTED INTO  
19 EVIDENCE.)

20 Q STATE'S EXHIBIT NUMBER 24, CAN YOU DESCRIBE WHAT IS  
21 IN THAT PICTURE.

22 A THAT IS A PICTURE OF THE GARAGE.

23 Q IS THAT FROM THE INSIDE OF THE GARAGE?

24 A THAT IS FROM THE OUTSIDE LOOKING IN.

25 Q OKAY. DOES THAT FAIRLY AND ACCURATELY DEPICT WHAT IS

1 IN THE PICTURE?

2 A CORRECT.

3 Q AND IS THAT HOW IT IS CURRENTLY OR IN 2004?

4 A 2004.

5 MR. JOPHLIN: STATE'S EXHIBIT NUMBER 24.

6 MS. MOBLEY: WITHOUT OBJECTION.

7 THE COURT: WITHOUT OBJECTION STATE'S EXHIBIT NUMBER  
8 24 IS ADMITTED.

9 (WHEREUPON, STATE'S EXHIBIT NO. 24 WAS ADMITTED INTO  
10 EVIDENCE.)

11 Q STATE'S EXHIBIT NUMBER 25. DESCRIBE FIRST WHAT IS IN  
12 THAT PHOTO?

13 A THAT IS THE DOORWAY LEADING OUT TO THE FOYER INTO THE  
14 GARAGE.

15 Q AND DOES THAT FAIRLY AND ACCURATELY DEPICT WHAT IS  
16 SHOWN?

17 A CORRECT.

18 Q AND IS, WOULD THIS BE AN ACCURATE DEPICTION OF WHAT  
19 WAS IN 2004 OR IS CURRENTLY?

20 A ABOUT THE SAME.

21 MR. JOPHLIN: STATE'S EXHIBIT NUMBER 25.

22 MS. MOBLEY: WITHOUT OBJECTION.

23 THE COURT: WITHOUT OBJECTION STATE'S 25 IS ADMITTED.  
24 (WHEREUPON, STATE'S EXHIBIT NO. 25 WAS ADMITTED INTO  
25 EVIDENCE.)

1 Q STATE'S EXHIBIT NUMBER 26, CAN YOU DESCRIBE WHAT IS  
2 IN THAT PICTURE.

3 A THAT IS A VIEW OUTSIDE LOOKING AT THE EXIT TO THE  
4 GARAGE, THE REAR EXIT OF THE GARAGE.

5 Q AND IS THIS THE SAME SIDE OF THE PHOTO THAT WE JUST  
6 SHOWED A COUPLE OF PICTURES AGO?

7 A JUST THE OPPOSITE DOOR.

8 Q OKAY, DOES THAT FAIRLY AND ACCURATELY DEPICT WHAT IS  
9 SHOWN IN THE PICTURE?

10 A CORRECT.

11 Q AND IS THAT FROM, IS IT HOW IT LOOKED IN 2004 OR HOW  
12 IT LOOKS CURRENTLY?

13 A 2004.

14 MR. JOPHLIN: STATE'S NUMBER 26.

15 MS. MOBLEY: WITHOUT OBJECTION.

16 THE COURT: WITHOUT OBJECTION STATE'S 26 IS ADMITTED.  
17 (WHEREUPON, STATE'S EXHIBIT NO. 26 WAS ADMITTED INTO  
18 EVIDENCE.)

19 Q I AM GOING TO SHOW YOU STATE'S EXHIBIT NUMBER 27 AND  
20 28. WHAT DO THOSE PHOTOS SHOW?

21 A THAT WOULD BE FROM OUR HOUSE LOOKING OVER TO THE  
22 NEIGHBORS AND THAT IS ALSO THE SIDE FOYER LOOKING OVER TO  
23 THE NEIGHBORS, MS. WRIGHT.

24 Q AND DOES THAT FAIRLY AND ACCURATELY DEPICT WHAT IS  
25 SHOWN IN THE PICTURE?

1 A CORRECT.

2 Q AND IS THAT FROM 2004 OR IS THIS WHAT REFLECTS WHAT  
3 IS NOW?

4 A BOTH.

5 MR. JOPHLIN: THE STATE SEEKS TO ADMIT NUMBER 27 AND  
6 28.

7 MS. MOBLEY: YOUR HONOR, MAY WE APPROACH?

8 THE COURT: SURE.

9 (WHEREUPON, A BENCH CONFERENCE WAS HELD IN THE  
10 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE  
11 JURY.)

12 THE COURT: OBJECTION OVERRULED, WELL, I THINK FIRST  
13 THERE WAS AN OBJECTION ON THE GROUNDS THAT IT LOOKED, VERY  
14 SIMILAR, IDENTICAL PHOTOS. IT IS NOT, ANY OTHER  
15 OBJECTIONS?

16 MS. MOBLEY: NO, SIR.

17 THE COURT: STATE'S 27 AND 28 ARE ADMITTED.

18 MR. JOPHLIN: THANK YOU, YOUR HONOR.

19 (WHEREUPON, STATE'S EXHIBIT NOS. 27 AND 28 WERE  
20 ADMITTED INTO EVIDENCE.)

21 Q STATE'S EXHIBIT NUMBER 30, WHAT DOES THAT DEPICT?

22 A A VIEW FROM THE EXIT OF THE GARAGE, THE FOYER AREA TO  
23 THE EXIT OF THE GARAGE OF THE OTHER SIDE.

24 Q DOES THIS FAIRLY AND ACCURATELY DEPICT WHAT IS SHOWN  
25 IN THE PHOTO?

1 A CORRECT.

2 Q AND IS THIS HOW IT IS CURRENTLY OR HOW IT IS IN 2004?

3 A THE SAME.

4 Q ALL THE ITEMS RIGHT HERE, WERE THEY THERE IN 2004?

5 A YES.

6 MR. JOPHLIN: THE STATE WOULD SEEK TO INTRODUCE  
7 STATE'S NUMBER 30.

8 MS. MOBLEY: WITHOUT OBJECTION.

9 THE COURT: STATE'S 30 IS ADMITTED.

10 (WHEREUPON, STATE'S EXHIBIT NO. 30 WAS ADMITTED INTO  
11 EVIDENCE.)

12 Q STATE'S EXHIBIT NUMBER 32, CAN YOU DESCRIBE WHAT IS  
13 IN THAT PHOTO.

14 A IT IS THE MIDDLE OF THE FOYER LOOKING OUT TO THE SIDE  
15 PATIO, THE ENTRANCE TO THE FOYER.

16 Q AND DOES THIS FAIRLY AND ACCURATELY DEPICT WHAT IS  
17 SHOWN IN THE PHOTO?

18 A CORRECT.

19 Q AND WOULD THIS BE HOW IT LOOKED IN 2004 OR HOW IT IS  
20 CURRENTLY?

21 A BOTH.

22 MR. JOPHLIN: STATE'S NUMBER 32?

23 MS. MOBLEY: YOUR HONOR, MAY WE APPROACH?

24 THE COURT: SURE.

25

1 (WHEREUPON, A BENCH CONFERENCE WAS HELD IN THE  
2 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE  
3 JURY.)

4 THE COURT: SO YOU ARE OFFERING STATE'S 32?

5 MR. JOPHLIN: 32, YOUR HONOR.

6 MS. MOBLEY: WITHOUT OBJECTION.

7 THE COURT: WITHOUT OBJECTION STATE'S 32 IS ADMITTED.

8 (WHEREUPON, STATE'S EXHIBIT NO. 32 WAS ADMITTED INTO  
9 EVIDENCE.)

10 Q STATE'S NUMBER 34, WHAT DOES THAT DEPICT, SIR.

11 A THAT IS THE EXIT TO THE GARAGE FROM THE FOYER.

12 Q AND DOES THAT FAIRLY AND ACCURATELY DEPICT WHAT IS  
13 SHOWN IN THE PICTURE?

14 A CORRECT.

15 Q AND IS THAT HOW IT LOOKED IN 2004?

16 A NO, IT DIDN'T HAVE THE ALARM SYSTEM.

17 MS. MOBLEY: YOUR HONOR, THE PHOTOGRAPH IS DIFFERENT.

18 THE COURT: SUSTAINED.

19 MR. JOPHLIN: THANK YOU, YOUR HONOR.

20 Q HERE ARE THREE MORE QUICK ONES. THE STATE'S EXHIBIT  
21 NUMBER 29, WHAT DOES THAT DEPICT?

22 A LOOKING AT OUR DRIVEWAY FROM TAM-O-SHANTER.

23 Q DOES IT FAIRLY AND ACCURATELY DEPICT WHAT THE PICTURE  
24 IS OF?

25 A CORRECT.

1 Q AND IS THIS IS HOW IT IS CURRENTLY OR HOW IT WAS IN  
2 2004?

3 A BOTH.

4 MR. JOPHLIN: STATE'S EXHIBIT NUMBER 29.

5 MS. MOBLEY: WITHOUT OBJECTION.

6 THE COURT: WITHOUT OBJECTION STATE'S NUMBER 29 IS  
7 ADMITTED.

8 (WHEREUPON, STATE'S EXHIBIT NO. 29 WAS ADMITTED INTO  
9 EVIDENCE.)

10 Q STATE'S EXHIBIT NUMBER 31, WHAT DOES THAT DEPICT?

11 A THAT IS LOOKING OUT TO THE RIGHT, FROM THE RIGHT OF  
12 OUR DRIVEWAY ONTO TAM-O-SHANTER.

13 Q DOES THAT FAIRLY AND ACCURATELY DEPICT WHAT IS SHOWN  
14 IN THE PICTURE?

15 A CORRECT.

16 Q AND IS THIS IS HOW IT APPEARS IN 2004 OR TODAY?

17 A BOTH.

18 MR. JOPHLIN: STATE'S EXHIBIT NUMBER 31?

19 MS. MOBLEY: WITHOUT OBJECTION.

20 THE COURT: STATE'S 31 IS ADMITTED.

21 (WHEREUPON, STATE'S EXHIBIT NO. 31 WAS ADMITTED INTO  
22 EVIDENCE.)

23 Q AND FINALLY STATE'S EXHIBIT NUMBER 33, WHAT DOES THAT  
24 DEPICT?

25 A THAT IS A VIEW FROM COLUMBIA CLUB DRIVE TO

1 TAM-O-SHANTER.

2 Q IS THIS YOUR SIDE OF THE STREET?

3 A FROM OUR SIDE OF THE STREET.

4 Q AND DOES THIS FAIRLY AND ACCURATELY DEPICT WHAT IS  
5 SHOWN IN THE PHOTO?

6 A CORRECT.

7 Q IS THIS HOW IT LOOKED IN 2004 OR HOW IT LOOKS TODAY?

8 A BOTH.

9 MR. JOPHLIN: STATE'S NUMBER 33.

10 MS. MOBLEY: YOUR HONOR, I WOULD OBJECT TO THAT ON A  
11 CUMULATIVE BASIS, THEY HAVE ALREADY GOT A FULL BLOWN MAP.

12 THE COURT: YEAH BUT A MAP AND A GROUND VIEW WOULD  
13 SHOW TWO DIFFERENT THINGS. THERE IS NOT ANOTHER PHOTO OF  
14 THAT PARTICULAR SCENE, IS THAT RIGHT?

15 MS. MOBLEY: NOT AS FAR AS I CAN TELL.

16 THE COURT: ALL RIGHT, STATE'S 33 IS ADMITTED.

17 MR. JOPHLIN: THANK YOU, YOUR HONOR.

18 (WHEREUPON, STATE'S EXHIBIT NO. 33 WAS ADMITTED INTO  
19 EVIDENCE.)

20 THE COURT: THE ONE THAT WAS NOT ADMITTED, MADAM  
21 COURT REPORTER, DO YOU HAVE IT.

22 COURT REPORTER: 34 WAS NOT ADMITTED.

23 THE COURT: I JUST NEED YOU TO HAVE IT BECAUSE IT IS  
24 NOT ADMITTED RIGHT NOW. GIVE IT TO THE COURT REPORTER.

25 MR. JOPHLIN: YES, SIR.

1 Q EARLIER YOU SAID THIS HAPPENED, YOU GOT A CALL AROUND  
2 3:30 IN THE AFTERNOON, ARE YOU SURE THAT IS EXACTLY THE  
3 TIME IT WAS?

4 A SOMEWHERE RIGHT AROUND IN THERE, THE GUYS USUALLY  
5 LEAVE BETWEEN 3:30 AND 4:00. AND I THINK THEY WERE  
6 LEAVING SO IT WAS SOMEWHERE RIGHT IN THERE. THEY WENT  
7 RIGHT IN THERE, TIME GOES IN THE AFTERNOON ON THE GOLF  
8 COURSE.

9 Q AND YOU DID NOT, DID YOU GIVE A STATEMENT IN THIS  
10 MATTER TO ANY POLICE OFFICER OR ANY DEPUTY?


11 A NO.

12 Q AND BECAUSE OF HER INJURIES, HOW LONG WAS LOURDES OUT  
13 OF WORK?

14 A PROBABLY CLOSE TO A MONTH OR A LITTLE LONGER.

15 Q AND YOU STILL PAID HER DURING THAT TIME, DIDN'T YOU?

16 A CORRECT.

17 MS. MOBLEY: OBJECTION TO RELEVANCE. 

18 THE COURT: SUSTAINED, IRRELEVANT, DISREGARD THAT  
19 LAST QUESTION AND ANSWER, MR. FOREMAN AND LADIES AND  
20 GENTLEMEN.

21 Q DOES LOURDES WALK THE BABY ANYMORE IN YOUR  
22 NEIGHBORHOOD?

23 A NO.

24 Q NOTHING FURTHER.

25 THE COURT: BEFORE YOU CROSS-EXAMINE WE WILL TAKE A

1 SHORT RECESS. MR. FOREMAN AND LADIES AND GENTLEMEN, DON'T  
2 DISCUSS THE CASE, WE WILL TAKE ABOUT A TEN MINUTE BREAK  
3 AND THEN WE WILL CONTINUE. YOU ARE EXCUSED TO YOUR JURY  
4 ROOM AND EVERYONE STAY SEATED, PLEASE.

5 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT FOR  
6 A BREAK.)

7 THE COURT: WE WILL TAKE TEN MINUTES. MR. CONNELL,  
8 YOU CAN STEP DOWN FOR THE BREAK, DON'T DISCUSS YOUR  
9 TESTIMONY.

10 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

11 THE COURT: COUNSEL, THE NOTE THAT I HAD FROM THE  
12 JUROR, I MADE INQUIRY AND HE SAID THAT WOULD NOT IN ANY  
13 WAY EFFECT HIS ABILITY TO BE FAIR AND IMPARTIAL IN THIS  
14 CASE. THE FELLOW SAID HE WAS A MEMBER OF THE COUNTRY CLUB,  
15 HE DOESN'T KNOW THAT WITNESS. ANYTHING ELSE THAT NEEDS TO  
16 GO ON THE RECORD CONCERNING THAT? I WILL MAKE THIS A  
17 COURT EXHIBIT IN THE CASE.

18 MS. VAN GINHOVEN: NO, YOUR HONOR. AFTER THIS  
19 WITNESS, WHEN WE FINISH THIS WITNESS, I HAVE BEEN INFORMED  
20 BY THE STATE THAT THERE ARE TWO WITNESSES THEY ARE  
21 PLANNING TO CALL, WE MAY HAVE ISSUES WITH THEM.

22 THE COURT: THAT IS FINE, WE CAN DEAL WITH THAT. WE  
23 WILL PROBABLY BREAK FOR LUNCH AT THAT TIME.

24 MS. MOBLEY: IT WILL BE BRIEF, YOUR HONOR.

25 THE COURT: WELL, WE MAY BE READY FOR LUNCH AND THEN

1 I WILL DEAL WITH THAT. MAKE THAT A COURT EXHIBIT. DID WE  
2 GET THE JURORS SOME PADS TO MAKE NOTES ON?

3 CLERK OF COURT: YES, SIR.

4 THE COURT: BRING THE JURY IN, PLEASE.

5 (WHEREUPON, COURT'S EXHIBIT NO. 5 WAS MARKED FOR  
6 IDENTIFICATION ONLY.)

7 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT  
8 APPROXIMATELY 11:45 A.M.)

9 THE COURT: MR. FOREMAN AND LADIES AND GENTLEMEN,  
10 BEFORE WE CONTINUE I HAD GOTTEN YOUR MESSAGE, INQUIRY  
11 ABOUT TAKING NOTES. IT USED TO BE THAT NO JUDGE WOULD  
12 PERMIT THAT IN THE STATE. AND THAT HAS SORT OF BEEN  
13 RELAXED AND SORT OF LEFT UP TO THE JUDGES. I USED TO ASK  
14 JURORS NOT TO TAKE NOTES BUT I RELAXED THAT SEVERAL YEARS  
15 AGO AND I DON'T HAVE ANY OBJECTION TO IT BUT THERE ARE  
16 SOME RESTRICTIONS. NUMBER ONE, IF YOU DO TAKE NOTES, YOU  
17 DON'T HAVE TO TAKE NOTES, IF YOU DO TAKE NOTES THEY ARE  
18 YOUR PERSONAL NOTES, THEY ARE NOT TO BE SHARED WITH OTHER  
19 MEMBERS OF THE JURY. AND NUMBER TWO, THEY NEED TO STAY IN  
20 THE JURY ROOM AT ALL TIMES. WHEN YOU LEAVE FOR THE DAY  
21 THEY STAY IN THE JURY ROOM, THE CLERK WILL TAKE THEM UP  
22 AND WHEN YOU COME BACK IN THE MORNING THEY WILL GIVE THEM  
23 BACK OUT. WHEN YOU TAKE A BREAK FOR LUNCH AND WHATNOT  
24 THEY NEED TO STAY IN THE JURY ROOM. AS LONG AS YOU COMPLY  
25 WITH THOSE RESTRICTIONS THERE IS NO PROBLEM WHEN YOU ARE

1 TAKING NOTES. ALL RIGHT, MS. MOBLEY, YOU MAY  
2 CROSS-EXAMINE.

3 MS. MOBLEY: THANK YOU, YOUR HONOR.

4 CROSS-EXAMINATION

5 BY MS. MOBLEY:

6 Q MR. CONNELL, AM I SAYING THAT RIGHT?

7 A YES, MA'AM.

8 Q OKAY. COULD YOU DO ME A FAVOR PLEASE AND STEP OFF  
9 THE WITNESS STAND. I JUST WANT TO MAKE SURE I HAVE THE  
10 LAYOUT THAT WE HAVE GOT GOING ON HERE, RIGHT, OKAY. SO,  
11 THIS IS THE PATIO AND YOU HAD TESTIFIED EARLIER THAT THIS  
12 IS A, NOT TO SCALE BUT SORT OF A MOCKUP OF YOUR, PART OF  
13 YOUR FIRST FLOOR, IS THAT RIGHT?

14 A THAT IS CORRECT.

15 Q SO, WE HAVE THE PATIO, IS THAT CORRECT?

16 A CORRECT.

17 Q AND THEN THIS WOULD BE THE FOYER?

18 A YES, MA'AM.

19 Q WOULD THAT BE THE AREA THAT SORT OF LOOKS LIKE MARBLE  
20 ALMOST?

21 A YES, THAT IS CORRECT.

22 Q AND THAT IS WHERE YOU FOUND THE BLOOD?

23 A YES.

24 Q SO, THEN WE COME FROM THE FOYER TO ANOTHER ROOM, IT  
25 IS LIKE A LARGE KITCHEN, BREAKFAST NOOK TYPE THING?

1 A YES.

2 Q NOW, PLEASE TELL ME, YOUR BEDROOM IS UP HERE  
3 SOMEWHERE?

4 A RIGHT AT THE END OF THE PATIO.

5 Q OKAY. SO, THIS IS ALL THE WAY TO HERE AND YOUR  
6 BEDROOM IS UP HERE?

7 A CORRECT.

8 Q AND THEN WE HAVE GOT SOME OTHER BEDROOMS UP HERE?

9 A YES.

10 Q AND THERE IS THE LIVING ROOM?

11 A CORRECT.

12 Q IF YOU WILL TAKE A SEAT, I JUST WANTED TO MAKE SURE I  
13 HAD THAT. AND I BELIVE YOU TESTIFIED THAT THE DRESSER,  
14 LET ME SEE IF I CAN FIND THE PHOTOGRAPH. I BEG THE  
15 COURT'S INDULGENCE.

16 THE COURT: SURE.

17 Q I AM NOT SURE WE HAD ONE OF THE BEDROOM. SO, THE  
18 DRESSER, YOU KEEP YOUR GUN IN A VERY SPECIFIC SPOT IN YOUR  
19 HOUSE, RIGHT.

20 A YES, MA'AM.

21 Q IS IT ALWAYS IN THAT DRESSER?

22 A YES, MA'AM.

23 Q AND THE DRESSER IS, I BELIEVE YOU TESTIFIED IN YOUR  
24 BEDROOM TO WHICH SIDE OF THE BED?

25 A TO THE RIGHT.

1 Q TO THE RIGHT. SO, IT WOULD BE ON THE FAR SIDE OF THE  
2 ROOM?

3 A THAT WOULD BE CORRECT.

4 Q NOW, I BELIEVE YOU ALSO TESTIFIED THAT YOU WENT IN  
5 THE HOUSE AND YOU WERE IMMEDIATELY LOOKING FOR THE GUN AND  
6 YOU SAW THAT THE DRESSER DRAWER WAS OPEN, IS THAT RIGHT?

7 A YES, MA'AM.

8 Q THAT IS WHEN YOU NOTICED THE GUN WAS GONE?

9 A CORRECT.

10 Q AND I BELIEVE YOU ALSO TESTIFIED THAT THERE DIDN'T  
11 SEEM TO BE ANYTHING ELSE DISTURBED?

12 A NO, MA'AM.

13 Q SO, EVERYTHING ELSE SEEMED TO BE IN ORDER IN YOUR  
14 HOUSE?

15 A CORRECT.

16 Q DID YA'LL GO THROUGH LATER AND CHECK IT OUT AND  
17 NOTHING ELSE WAS TAKEN FROM YOUR HOUSE, RIGHT?

18 A WE DIDN'T NOTICE ANYTHING ELSE MISSING.

19 Q OKAY. DO YOU KNOW MR. HAYWARD?

20 A NEVER SEEN HIM BEFORE.

21 MS. MOBLEY: YOUR HONOR, THAT IS ALL OF MY QUESTIONS.

22 THE COURT: ALL RIGHT, ANY REDIRECT?

23 MR. JOPHLIN: BRIEFLY, YOUR HONOR.

24 REDIRECT EXAMINATION

25 BY MR. JOPHLIN:

1 Q YOU SAID, CAN I HAVE YOU TO STEP DOWN FOR A SECOND.  
2 JUST BRIEFLY DRAW A LITTLE BOX WHERE YOUR BEDROOM WOULD BE  
3 ON THAT.

4 A (THE WITNESS DRAWS ON DIAGRAM.)

5 Q AND YOUR BED IN THAT ROOM.

6 A (THE WITNESS DRAWS ON DIAGRAM.)

7 Q AND THE DRESSER, IS THIS A SIX DRAWER DRESSER.

8 A NIGHTSTAND.

9 Q IT IS A NIGHTSTAND?

10 A CORRECT.

11 Q AND WHICH NIGHTSTAND WOULD IT HAVE BEEN WAS AT THE  
12 DOOR?

13 A (WITNESS DRAWS ON DIAGRAM.)

14 Q AND YOU SAID ON CROSS-EXAMINATION THAT YOU DON'T KNOW  
15 THE DEFENDANT?

16 A EXCUSE ME?

17 Q YOU SAID ON CROSS-EXAMINATION YOU DON'T KNOW THE  
18 DEFENDANT?

19 A I HAVE NEVER SEEN HIM BEFORE.

20 Q DID YOU EVER GIVE HIM PERMISSION TO COME TO YOUR  
21 HOUSE?

22 A NO, SIR.

23 Q THAT IS ALL I HAVE.

24 THE COURT: ANY RECROSS?

25 MS. MOBLEY: NO, SIR.

1 THE COURT: YOU MAY STEP DOWN, SIR. COUNSEL, YA'LL  
2 STEP UP FOR ONE SECOND, PLEASE.

3 (WHEREUPON, A BENCH CONFERENCE WAS HELD IN THE  
4 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE  
5 JURY.)

6 THE COURT: MR. FOREMAN AND LADIES AND GENTLEMEN OF  
7 THE JURY, THE ATTORNEYS HAVE TOLD ME THERE MIGHT BE  
8 ANOTHER MATTER OF LAW THAT I WOULD NEED TO DEAL WITH  
9 BEFORE THE NEXT WITNESSES ARE CALLED. AND IT LOOKS LIKE  
10 THERE WILL BE SOME MATTERS THAT I NEED TO HEAR OUTSIDE OF  
11 YOUR PRESENCE. RATHER THAN HAVE YOU SIT BACK IN THE JURY  
12 ROOM AND YOU CAME BACK IT WILL PROBABLY BE LUNCH TIME, WE  
13 WILL GO AHEAD AS FAR AS YOU ARE CONCERNED TAKE A EARLY,  
14 EARLIER THAN USUAL, I USUALLY TRY TO GO TO ABOUT 1:00  
15 BEFORE WE BREAK FOR LUNCH. WE WILL GO AHEAD AND BREAK, I  
16 WILL DEAL WITH THIS AND WE WILL TAKE A SHORT BREAK. IF  
17 YOU WILL BE BACK IN YOUR JURY ROOM AT 2:00 O'CLOCK AND WE  
18 WILL CONTINUE WITH THE TESTIMONY AT THAT TIME. DON'T  
19 DISCUSS THE CASE WITH ANYONE, HAVE A GOOD LUNCH AND BE  
20 BACK AT 2:00 PLEASE. EVERYONE ELSE STAY SEATED.

21 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT TO  
22 GO TO LUNCH.)

23 THE COURT: ALL RIGHT, LET'S GET THE PROBLEM ON THE  
24 RECORD AND THEN WE WILL DEAL WITH IT. MS. VAN GINHOVEN.

25 MS. VAN GINHOVEN: YOUR HONOR, WHEN WE RECEIVED THE

1 WITNESS LIST ON MONDAY THERE WERE THREE NAMES I WAS  
2 UNFAMILIAR WITH. IT APPEARS THAT THEY, THROUGHOUT THE  
3 INVESTIGATION NOTES THAT I HAVE, A POLICE OFFICER SAYS  
4 THERE WAS A NEIGHBOR THAT SAW SOMEONE SELLING PRODUCTS.  
5 HOWEVER, THERE WERE NO NAMES, THERE WERE NO STATEMENTS  
6 TAKEN, THEY WERE NOT IN THE INCIDENT REPORT ANYWHERE. IT  
7 APPEARS THAT THEY PLAN ON CALLING, FROM MY UNDERSTANDING  
8 WITH MR. JOPHLIN, ANDY MCMAHON AND EMME DELL MCMAHON, ONE,  
9 TESTIFIED THAT THEY SAW HIM SELLING PRODUCTS. AND TWO TO  
10 TESTIFIED THAT THEY SOLD PRODUCTS TO THEM. I DON'T KNOW  
11 IF SHE PLANS ON IDENTIFYING ON THE CLIENT OR WHAT SHE IS  
12 PLANNING TO DO ON THE STAND. AND I JUST WANTED TO BRING  
13 THAT TO YOUR ATTENTION. OF COURSE, IF THAT IS SOMETHING  
14 THAT SHOULD HAPPEN WE WOULD BE OBJECTING TO IT AND  
15 POSSIBLY MOVE FOR A MISTRIAL IF IT HAPPENS.

16 THE COURT: SOLICITOR.

17 MR. JOPHLIN: THANK YOU, YOUR HONOR. YES, THE STATE  
18 IS PLANNING ON CALLING ANDY MCMAHON AND HIS WIFE, EMME  
19 DELL MCMAHON IN ADDITION TO TERRY WRIGHT. THOSE NAMES ARE  
20 LISTED IN THE REPORTS GIVEN. HOWEVER, THE INVESTIGATOR'S  
21 REPORT ON THE FIRST PAGE, TALKS ABOUT LOURDES ANTONIO, THE  
22 VICTIM, IS TELLING WHAT HAPPENED. SHE IS APPROACHED BY A  
23 BLACK MALE, HE TRIED TO SELL HER SOME CLEARING PRODUCTS,  
24 SHE REFUSED. THIS WAS WITNESSED BY A NEIGHBOR FROM HIS  
25 HOUSE. I WENT OUT AND KNOCKED ON DOORS AND FOUND THAT,

1 THESE TWO WITNESSES ARE COMPLETELY WORK PRODUCT, RELATED.  
2 AND NO THEY ARE NOT PLANNING ON POINTING TO THE DEFENDANT,  
3 THAT THEY NOTICED HIM BECAUSE THEY DID, WERE NOT CLOSE  
4 ENOUGH TO MAKE ID. HOWEVER, THEY ARE ABLE TO GIVE A  
5 DESCRIPTION AND THEY ARE ABLE TO SAY, CORROBORATING THE  
6 VICTIM'S ACCOUNT, THAT A SINGLE PERSON APPROACHED HER AND  
7 A SINGLE PERSON ON THE STREET THAT AFTERNOON. IN  
8 ADDITION, TERRY WRIGHT, AGAIN I WENT OUT AND KNOCKED DOORS  
9 AND FOUND, THE NEXT DOOR NEIGHBORS HOUSE. SHE WAS THERE,  
10 GAVE A CORROBORATING, BOTH THE VICTIM AND MR. CONNELL AS  
11 TO WHAT HAPPENED WHEN SHE WENT OVER THAT DAY AFTER BEING  
12 ATTACKED.

13 THE COURT: NEITHER OR NONE OF THESE WITNESSES WILL  
14 IDENTIFY THE DEFENDANT AS THE PERSON THEY SAW, IS THAT  
15 CORRECT?

16 MR. JOPHLIN: CORRECT, THEY WILL SIMPLY GIVE A  
17 DESCRIPTION OF THE PERSON THEY SAW ON THE STREET THAT DAY  
18 OR WHO, AS IN THE CASE, WAS MS. MCMAHON WHO APPROACHED,  
19 WHO CAME TO HER HOUSE THAT DAY.

20 THE COURT: ALL RIGHT, COUNSEL.

21 MS. VAN GINHOVEN: YOUR HONOR, WHAT THEY ARE TRYING  
22 TO DO AND THEY ARE TRYING TO CORROBORATE THE  
23 IDENTIFICATION MADE BY THE VICTIM OF MR. HAYWARD, BY  
24 LETTING THEM DESCRIBE THE CLOTHES THAT SOME BLACK MALE HAD  
25 ON WHO WAS SELLING PRODUCTS. I MEAN, I DON'T BELIEVE IT

1 IS RELEVANT AND MY UNDERSTANDING WAS THAT EMME DELL  
2 MCMAHON IS GOING TO TESTIFY ABOUT SOMEONE ACTUALLY COMING  
3 TO THE DOOR AND SELLING HER PRODUCTS. I DON'T THINK IT IS  
4 RELEVANT. I THINK WHAT THEY ARE TRYING TO DO IS TO  
5 CORROBORATE THE IDENTIFICATION WHERE THEY ALREADY HAVE A  
6 VICTIM ID. THE VICTIM ID IS GOING TO COME IN AND ANOTHER  
7 WITNESS ID IS GOING TO COME IN. WE MET ON FRIDAY AND  
8 SPECIFICALLY WENT OVER ALL OF THE DISCOVERY AND NEVER  
9 BEFORE WERE THESE WITNESSES MENTIONED. I JUST THINK IT  
10 IS, I DON'T THINK THAT THERE IS, AND WE NEED TO KNOW  
11 WHETHER, WERE THEY SHOWN A LINEUP OR DID MR. JOPLIN JUST  
12 TALK TO THEM AND I JUST DON'T KNOW WHERE THIS TESTIMONY IS  
13 COMING FROM OR WHAT THEY PLAN ON ACTUALLY TESTIFYING TO.  
14 AND I DON'T THINK IT IS RELEVANT AND THEY CAN'T SAY IT WAS  
15 MR. HAYWARD THAT WAS IN THE STREET DOING THAT. ALL THEY  
16 WANT TO DO IS JUST DESCRIBE THE CLOTHES SO THEY CAN  
17 CORROBORATE THE VICTIM OF WHAT ANOTHER ONE IS ALREADY  
18 GOING TO SAY WHICH IS AN ID BASICALLY, THAT IS WHAT THEY  
19 ARE TRYING TO DO.

20 MR. JOPLIN: MAY I RESPOND?

21 THE COURT: SURE.

22 MR. JOPLIN: FIRST OFF, AS I HAVE ALREADY STATED,  
23 ALL THREE OF THESE WITNESSES, TWO OF THEM ARE NAMED, NOT  
24 NAMED BUT AS INDIVIDUALS IN THESE REPORTS. I WENT OUT AND  
25 FOUND THEM, THEY COULD HAVE WENT OUT AND KNOCKED ON DOORS

1 JUST AS WELL AS I HAVE FOUND THESE WITNESSES. THIS IS  
2 WORK PRODUCT RELATED, IT WAS COURTESY TO INFORM THEM TO  
3 WHAT THESE WITNESSES WOULD TESTIFY ABOUT. IN ADDITION,  
4 THIS IS RELEVANT TO IDENTITY AS CORROBORATING EVIDENCE  
5 WHICH IS ADMISSIBLE AND IS RELEVANT, IT IS CORROBORATING  
6 THE VICTIM'S IDENTIFICATION, IT IS CORROBORATING OTHER  
7 IDENTIFICATION BY MR. COWART. IT IS FURTHER CORROBORATING  
8 THAT THERE IS ONE SINGLE PERSON THAT APPROACHED THE VICTIM  
9 IN THE STREET THAT DAY AND THAT THERE WAS SOMEBODY IN THAT  
10 NEIGHBORHOOD THAT AFTERNOON GOING AND SELLING CLEANING  
11 SUPPLIES. NOBODY IS GOING TO COME OUT AND POINT FINGERS  
12 AT ANYBODY. BECAUSE BOTH, MS. WRIGHT DOESN'T KNOW  
13 ANYTHING ABOUT THIS PERSON. BUT MR. MCMAHON, BUT THEY  
14 CAN'T GIVE A DESCRIPTION OF WHOM THEY SAW, PERSONALLY WITH  
15 THEIR OWN EYES THAT AFTERNOON ON THEIR STREET.

16 THE COURT: HOW LONG HAS THE STATE KNOWN THE IDENTITY  
17 OF THESE WITNESSES.

18 MR. JOPLIN: SINCE I BELIEVE LAST WEDNESDAY. TERRY  
19 WRIGHT, ACTUALLY WAS NOT UNTIL FRIDAY.

20 THE COURT: I AM TRYING TO FIGURE OUT WHETHER, I SORT  
21 OF ASSUMED THE DEFENSE FILED A BRADY MOTION.

22 MS. VAN GINHOVEN: YES, YOUR HONOR.

23 THE COURT: IS THAT NOT BRADY MATERIAL?

24 MR. JOPLIN: I VIEW IT MORE AS WORK PRODUCT, YOUR  
25 HONOR.

1 THE COURT: YOU HAVE GOT A WITNESS WHO CAN IDENTIFY  
2 THAT THERE WERE PEOPLE IN THE NEIGHBORHOOD SELLING BUT  
3 THEY CAN'T IDENTIFY AS THE DEFENDANT, THAT IS NOT  
4 EXCULPATORY? I AM JUST THINKING OUT LOUD, I AM NOT TRYING  
5 TO PUT YOU ON THE SPOT, I AM JUST A LITTLE CONCERNED BY  
6 IT.

7 MR. JOPHLIN: AND I AM WONDERING TOO IF THEY KNEW THE  
8 DESCRIPTION, BLACK MALE AND THE SAME THINGS HE IS WEARING  
9 THAT THE VICTIM DOES. IF THAT IS MORE OF JUST A  
10 CORROBORATION AND SHOW UP EXCULPATORY IN CORROBORATING HER  
11 IDENTIFICATION AS WELL AS MR. COWART'S IDENTIFICATION AND  
12 DESCRIPTIONS. I HAVE NEVER GIVEN A FORMAL WRITTEN  
13 STATEMENT TO ANYONE. AND THEY ARE NOT NAMES BUT THEY ARE  
14 ADMISSION REPORTS. AS MR. CONNELL TESTIFIED, THERE ARE  
15 NOT THAT MANY HOUSES OF THAT STREET.

16 THE COURT: WELL, THE FACT THAT THEY ARE NOT NAMED,  
17 IF YOU DON'T KNOW THE NAMES, THERE IS NOTHING THAT YOU  
18 CAN, YOU CAN'T GIVE THE DEFENSE WHAT YOU DON'T HAVE. BUT  
19 ONCE YOU GET IT THERE WOULD BE SOME OBLIGATION TO GIVE IT  
20 TO THEM. LET ME HEAR FROM COUNSEL. GO AHEAD, MS. VAN  
21 GINHOVEN.

22 MS. VAN GINHOVEN: YOUR HONOR, WELL THAT IS  
23 DEFINITELY ONE OF THE ISSUES. WE JUST GOT A BRADY MOTION  
24 BACK FROM APRIL 26TH OF 2004. EVEN MORE, MORE TOWARDS  
25 THIS IS SPECIFICALLY ON FRIDAY, LAUREN MOBLEY AND I MET

1 WITH MR. JOPHLIN. WE DIDN'T WANT ANY PROBLEMS WITH THIS  
2 CASE GOING TO TRIAL THIS WEEK. WE WENT THROUGH ALL THE  
3 RECORDS, WE LOOKED AT ALL THE EVIDENCE AND AT OF THIS  
4 DATE, THE SECOND DAY OF TRIAL WE ARE FINDING OUT ABOUT  
5 WITNESSES THAT THEY PLAN TO CALL. AND I DON'T KNOW, IS  
6 THERE ANY GOVERNMENT ACTION INVOLVED, WHAT DID THE STATE  
7 TELL THEM, DID THEY SHOW HIM A LINEUP. THESE ARE SOME OF  
8 THE THINGS WE NEED TO KNOW IN ORDER TO DETERMINE WHETHER  
9 WE EVEN NEED A BIGGER HEARING IN ORDER, REGARDING, I THINK  
10 HE SAID THEY ARE NOT GOING TO IDENTIFY HIM. BUT WHAT THEY  
11 ARE GOING TO DO IS BASICALLY DO THAT BY SAYING THAT  
12 SOMEONE WITH THE EXACT SAME CLOTHES THAT MY CLIENT HAD ON  
13 DID, IN THE SAME AREA AND IT IS ULTIMATELY AN ID. WE JUST  
14 HAVE ABSOLUTELY NOTHING ON EXCEPT THE NEIGHBORS SAW  
15 SOMETHING AND SHE WENT NEXT DOOR TO THE NEIGHBORS FOR, TO  
16 CALL EMS. AND IF SHE CAN'T IDENTIFY HIM THEN, YOUR HONOR,  
17 ESPECIALLY WHEN IT COULD BE A BRADY MATERIAL. IT COULD BE  
18 EXCULPATORY, I MEAN SPECIFICALLY I THINK IN OUR MOTION,  
19 ANY OTHER INFORMATION OR EVIDENCE THAT THE STATE THAT  
20 TENDS TO INDICATE THE INNOCENCE OF THE DEFENDANT BUT IT  
21 TENDS TO, SHOULD HE BE FOUND GUILTY IN OUR PREADMISSIONS,  
22 PRESTANDARD. AND I JUST FIND IT, I MEAN I FIND IT EVEN  
23 WORSE IN THE FACT THAT WE HAVE MET ABOUT THIS CASE AND WE  
24 MET ON FRIDAY AND WE WENT THROUGH EVERYTHING. AND NOW  
25 WITHOUT ANY SURPRISE IN THE TRIAL AND THAT IS WHAT WE WERE

1 TRYING TO AVOID SO WE COULD GET THIS CASE TRIED.

2 THE COURT: ARE THESE WITNESSES HERE?

3 MR. JOPHLIN: YES, SIR. AND TO RESPOND TO HER, YES  
4 WE DID MEET FRIDAY. BUT THAT GOES TO MY ARGUMENT THAT  
5 ONCE AGAIN THAT IN MY OPINION THIS IS NOT DISCOVERY, THIS  
6 IS WORK PRODUCT. I HAVE GOT, ME AND MYSELF WENT OUT THERE  
7 AND KNOCKED ON DOORS, FOUND THEM, TALKED ON MY CELL, THEY  
8 NEVER GAVE STATEMENTS TO ANYONE. THERE IS NO WRITTEN  
9 RECOMMENDATION OF ANYWHERE IN THIS CASE FILE OF ANYTHING  
10 BESIDE WORK PRODUCT THAT WOULD BE DISCOVERABLE. YOUR  
11 HONOR, IT IS A CORROBORATING DESCRIPTION, NOT A  
12 CORROBORATING IDENTITY.

13 MS. VAN GINHOVEN: I BEG THE COURT'S INDULGENCE FOR  
14 JUST A MOMENT.

15 THE COURT: SURE.

16 MS. VAN GINHOVEN: YOUR HONOR, I HAVE JUST ONE MINOR  
17 ISSUE TO ADD.

18 THE COURT: SURE.

19 MS. VAN GINHOVEN: BASICALLY MR. JOPHLIN JUST SAID  
20 THAT HE WAS THE ONE THAT WENT OUT THERE AND SPOKE TO ALL  
21 OF THESE WITNESSES. I DON'T KNOW WHAT THEY SAID BACK AT  
22 THIS POINT. THEY ARE MAKING THEMSELVES A WITNESS AT THIS  
23 POINT AND HE IS GOING THERE AND DISCUSSING WHAT HAPPENED.  
24 I MEAN HE JUST SAID HE WENT THERE AND I TALKED TO THEM AND  
25 I DID THIS AND I DID THAT. AND IF IT WERE A POLICE

1 OFFICER I WOULD HAVE A REPORT AND I WOULD BE ABLE TO ASK A  
2 QUESTION ABOUT IT.

3 MR. JOPHLIN: YOUR HONOR, IN MY OPINION THAT WOULD BE  
4 CALLED TRIAL PREP. AND IN TRIAL PREPARATION AND JUST I  
5 HAD A CHANCE TO BRING THESE WITNESSES UP HERE AND TALK TO  
6 THEM, THEY HAVE THE CHANCE TO GET UP THERE AND  
7 CROSS-EXAMINE THEM.

8 THE COURT: ALL RIGHT, I WILL RULE ON THAT ISSUE  
9 BEFORE WE START BACK AT 2:00.

10 MR. JOPHLIN: THANK YOU, YOUR HONOR.

11 MS. VAN GINHOVEN: THANK YOU.

12 THE COURT: HAVE A NICE LUNCH.

13 (WHEREUPON, A LUNCH BREAK WAS TAKEN.)

14 THE COURT: ANY FURTHER ARGUMENT BEFORE WE PROCEED ON  
15 THE ISSUE OF THESE OTHER WITNESSES.

16 MS. VAN GINHOVEN: YOUR HONOR, I WOULD REALLY LIKE TO  
17 PUT ON THE RECORD THAT MY UNDERSTANDING IS THAT THE  
18 SOLICITORS OFFICE HAS AN OPEN FILE POLICY. AND WE HAVE  
19 BEEN TOLD THAT THE SOLICITOR HAS AN OPEN FILE POLICY WHICH  
20 IS WHY ON FRIDAY WE WENT THROUGH THE FILE. I WOULD LIKE  
21 TO PUT THAT ON THE RECORD REGARDING THAT. SPECIFICALLY I  
22 STILL WOULD LIKE TO KNOW WHETHER OR NOT MR. JOPHLIN DID  
23 SHOW ANY OF THESE WITNESSES A LINEUP AND ENGAGE IN  
24 ANYTHING LIKE THAT WHEN HE WAS DISCUSSING THE CASE WITH  
25 THEM.

1 THE COURT: ALL RIGHT, SOLICITOR.

2 MR. JOPHLIN: THANK YOU, YOUR HONOR. I WILL BEGIN BY  
3 SAYING THAT NO LINEUP WAS SHOWN TO ANY OF THESE THREE  
4 WITNESSES. AND AS TO THE FACT, IT IS STILL THE SAME  
5 CONDITION THAT IS STILL WORK PRODUCT, IT IS NOT  
6 EXCULPATORY INFORMATION. IN OUR OPINION, IT WOULD BE  
7 CULPATORY. EVEN IF YOUR HONOR WERE TO DECIDE THAT IT WAS  
8 INVOLVED IN THE MEANING OF BRADY AND BRADY DISCLOSURE I  
9 DON'T THINK THAT, THEY WERE PUT ON NOTICE YESTERDAY BY  
10 THIS WITNESS LIST THAT THESE WITNESSES WOULD BE CALLED OR  
11 A CHANCE TO BEING CALLED. NEXT, THAT I WILL KNOW, THEY  
12 ARE NOW GOING TO HAVE A CHANCE TO CROSS-EXAMINE SHOULD  
13 THEY WISH OF THESE WITNESSES. SO, I DON'T UNDERSTAND HOW,  
14 AS FAR AS BRADY VIOLATION THAT THE RESULT OF THIS TRIAL  
15 WOULD BE ANY DIFFERENT HAD THEY BEEN AWARE OF THESE  
16 WITNESSES EARLIER. FINALLY, I AM NOT SURE OF ANY  
17 PREJUDICE CAN BE SHOWN. ACTUALLY THEY HAVE BEEN AWARE  
18 SINCE THEY RECEIVED DISCOVERY A LONG TIME AGO, THERE WAS A  
19 NEIGHBOR WHO SAW THE SUSPECT APPROACH LOURDES IN THE  
20 STREET AND THAT SHE WENT TO THE NEIGHBORS HOUSE. AND I AM  
21 NOT SURE THERE IS ANY PREJUDICE TO BE SHOWN.

22 THE COURT: ALL RIGHT, MS. VAN GINHOVEN, ANYTHING  
23 FURTHER IN RESPONSE?

24 MS. VAN GINHOVEN: WELL, YOUR HONOR, CLEARLY I THINK  
25 IF THEY CAN ID MY CLIENT AS THEY SAY, IT IS POINTING HIM

1     OUT, THAT WOULD BE EXCULPATORY AND I THINK IT WOULD BE IN  
2     ~~VIOLATION OF BRADY.~~ SECONDLY, THEY WERE ON THE WITNESS  
3     LIST ON THE BOTTOM YESTERDAY, WE INQUIRED AS TO WHO THEY  
4     WERE AND WE WERE TOLD, RIGHT BEFORE TRIAL OF WHO THEY WERE  
5     AND WHAT THEY WERE GOING TO TESTIFY TO. AT THIS LATE  
6     DATE, YOUR HONOR, THIS CASE HAS BEEN PENDING FOR TWO  
7     YEARS. WE FILED A MOTION FOR DISCOVERY APRIL OF 2004, WE  
8     MET ON FRIDAY AND I JUST AGAIN THINK THAT IT WOULD BE A  
9     VIOLATION OF BRADY. AND THEY ARE INTRODUCING IT, IT IS OF  
10    COURSE TO IDENTIFY THE CLIENT, MR. HAYWARD. EVEN THOUGH  
11    IT MAY BE BY HIS CLOTHING CLEARLY THAT IS WHAT THEIR  
12    INTENT IS ON THIS ISSUE. THANK YOU.

13           THE COURT: YES, SOLICITOR.

14           MR. JOPLIN: AND, YOUR HONOR, I AM NOT GOING TO  
15    RESPOND ANY FURTHER TO THE ALLEGATIONS OF THE ID VERSUS  
16    DESCRIPTION, I DON'T WANT TO BELABOR THE POINT AS OPPOSED  
17    TO ANY PREJUDICE OR NOT BEING READY. THERE ARE A COUPLE  
18    OF CASES I WANT TO HAND UP. SOUTH CAROLINA SUPREME COURT,  
19    335, S.E. 2ND, 869. WHERE ON, RIGHT BEFORE TRIAL THEY  
20    SOUGHT TO INTRODUCE A DNA EXPERTS REPORT. THAT REPORT WAS  
21    NOT GIVEN TO DEFENSE UNTIL THE THIRD DAY OF TRIAL. THE  
22    DEFENSE OBJECTED, THE TRIAL JUDGE ALLOWED A RECESS FOR THE  
23    DEFENSE PREPARATION. THEY DID NOT ACCEPT THE RECESS,  
24    TRYING TO SUPPRESS THE EVIDENCE. THE COURT DENIED THEIR  
25    MOTION. AND THE SUPREME COURT NOTED THAT A REVIEW OF THE

1 RECORD SHOWS THAT THE DEFENSE DECLINED, OF DNA EXPERT WAS  
2 TO BE CALLED. AND THE TRIAL COURT OFFERED SUFFICIENT  
3 OPPORTUNITY TO PREPARE FOR CROSS-EXAMINATION AND THE  
4 DEFENSE DECLINED THE OPPORTUNITY TO PREPARE IT. AND THAT  
5 IS ON PAGE 5, YOUR HONOR.

6 THE COURT: WELL, I UNDERSTAND THE ARGUMENT. I THINK  
7 WHAT IS GIVING ME SOME PROBLEM IS THAT IF THERE IS A  
8 WITNESS AND THE WITNESS IS NOT ABLE TO IDENTIFY THE  
9 DEFENDANT, THAT IN AND OF ITSELF IS EXCULPATORY. NOW,  
10 WHAT THEY CAN DO, IF THEY TESTIFY IN THE MATTER THE STATE  
11 IS INDICATING AND ANTICIPATE THEY ARE GOING TO TESTIFY,  
12 THEN IF IT IS NOT EXCULPATORY WHAT THEY ARE GOING TO, BUT  
13 I DON'T KNOW THAT THE STATE HAS THE RIGHT TO MAKE THAT  
14 CALL ONCE YOU KNOW THAT THEY CANNOT IDENTIFY THE WITNESS,  
15 I MEAN THE DEFENDANT. AND THEN IT COMES, WELL HOW WOULD  
16 WE RESOLVE THE PROBLEM IF THERE IS IN FACT A PROBLEM. I  
17 GUESS ONE POSSIBLE SANCTION WOULD BE TO DISALLOW THE  
18 TESTIMONY OF THESE THREE WITNESSES, ONE POSSIBLE REMEDY  
19 WOULD BE TO PROVIDE THE DEFENSE WITH AS MUCH TIME AS THEY  
20 NEED TO INTERVIEW THESE PEOPLE IN ORDER TO PREPARE FOR  
21 THEIR CROSS-EXAMINATION OF THEM. THERE ARE OTHER  
22 POSSIBILITIES OUT THERE. COUNSEL, I WILL BE GLAD TO HEAR  
23 FROM YOU ON THAT. I THINK THERE IS A PROBLEM, IT MAY BE A  
24 TECHNICALITY BUT IN CRIMINAL CASES TECHNICALITIES BECOME  
25 PRETTY IMPORTANT. I AM OPEN TO SUGGESTIONS, NOT THAT I

1 WILL ACCEPT ANYTHING THAT YOU SUGGEST.

2 MS. VAN GINHOVEN: I BEG THE COURT'S INDULGENCE, YOUR  
3 HONOR. YOUR HONOR, WE WOULD ASK FOR TIME FOR AN  
4 INVESTIGATOR TO GO AND SPEAK WITH THESE WITNESSES AND FIND  
5 OUT WHAT THEY ARE GOING TO SAY. OR UNDER THE ALTERNATIVE  
6 WE WOULD ASK FOR A MISTRIAL AT THIS POINT. THE PROBLEM  
7 BECOMES IS IF WE HAVE TIME TO INTERVIEW THE WITNESSES I  
8 WOULD LIKE TO HAVE AN INVESTIGATOR TO DO THAT. WE WOULD  
9 HAVE TO GET ONE AND GET THEM TO DO THAT. BUT AT THIS  
10 POINT WE WOULD ALSO MOVE FOR A MISTRIAL, I THINK IT DOES  
11 PREJUDICE US, WE NEED TO FIND OUT WHAT THEY ARE GOING TO  
12 SAY. I BELIEVE WE HAVE DONE EVERYTHING WE COULD DO TO GET  
13 THIS TRIAL GOING, BUT WE WOULD MOVE AT THIS TIME FOR A  
14 MISTRIAL.

15 THE COURT: ALL RIGHT, SOLICITOR.

16 MR. JOPLIN: THANK YOU, YOUR HONOR. I DON'T BELIEVE  
17 A MISTRIAL IS THE APPROPRIATE REMEDY, NOTHING HAS BEEN  
18 PRESENTED IN FRONT OF THE JURY, THE TESTIMONY. IN  
19 ADDITION, THEY HAVE HAD TWO YEARS TO GO OUT AND KNOCK ON  
20 DOORS ON THAT STREET AND TALK TO THE PEOPLE AS WE HAVE.

21 AS FOR STATE V. COUNCIL OF THE CASE THAT I HAVE HANDED UP,  
22 515, SE 2ND, 508. THAT CASE, ONCE AGAIN IT IS DNA AND  
23 THAT THE REPORT CAME IN ON THE DAY OF TRIAL. AND THE  
24 COURT FOUND THAT THE APPROPRIATE REMEDY WAS TO HAVE  
25 IN-CAMERA HEARINGS TO ALLOW THE DEFENSE TO CROSS-EXAMINE

1 THE WITNESS BEFORE THE JURY COMES IN AND HEARS THE  
2 TESTIMONY. THE COURT FOUND THAT THE CROSS-EXAMINATION,  
3 CONTRARY EVIDENCE AND CAREFUL INSTRUCTIONS ON THE BURDEN  
4 OF PROOF.

5 THE COURT: I CAN'T HEAR YOU AND I KNOW THE COURT  
6 REPORTER CAN'T HEAR YOU, WHEN YOU ARE GOING THAT FAST.

7 MR. JOPHLIN: I AM SORRY, YOUR HONOR. SAYING  
8 CROSS-EXAMINATION AND CONTRARY EVIDENCE WOULD BE MORE  
9 APPROPRIATE REMEDY THAN AN IN-CAMERA HEARING TO ALLOW THE  
10 COURT, THE JURY HEARS THE TESTIMONY.

11 THE COURT: I AM GOING TO GIVE THE DEFENSE TIME TO  
12 HAVE AN INVESTIGATOR TO INTERVIEW THESE FOLKS WHICH MEANS  
13 THEY CANNOT BE CALLED THIS AFTERNOON. WHETHER OR NOT I  
14 WILL PERMIT AN IN-CAMERA HEARING WITH CROSS-EXAMINATION, I  
15 AM NOT GOING TO ANSWER THAT QUESTION RIGHT NOW UNTIL THE  
16 INTERVIEW HAS TAKEN PLACE. BUT AT THIS POINT AND TIME THE  
17 STATE WOULD NOT BE PERMITTED TO CALL ANY OF THE THREE  
18 WITNESSES UNTIL THE DEFENSE HAS HAD AN OPPORTUNITY TO  
19 INTERVIEW THEM. DO YOU HAVE ANY IDEA, MS. VAN GINHOVEN,  
20 HOW LONG THAT WOULD TAKE?

21 MS. VAN GINHOVEN: WE HAVE AN INVESTIGATOR THAT WORKS  
22 IN OUR OFFICE AND IF HE IS DOWNSTAIRS I BELIEVE WE CAN DO  
23 THAT.

24 THE COURT: ARE THE WITNESSES HERE?

25 MR. JOPHLIN: YES, SIR.

1 THE COURT: THOSE THREE?

2 MR. JOPHLIN: YES, SIR.

3 MS. VAN GINHOVEN: WE CAN TRY TO GET IT DONE TODAY.

4 BUT IF HE IS NOT HERE WE ARE GOING TO HAVE--

5 MR. STRICKLAND: EXCUSE ME, PUBLIC DEFENDER, WE HAVE

6 ANOTHER ATTORNEY DOWN IN OUR OFFICE AND GO AHEAD AND DO

7 THAT.

8 THE COURT: RIGHT NOW LET'S GO AHEAD AND GET THAT

9 DONE WITH SOMEBODY.

10 MR. STRICKLAND: WE CAN GET THAT DONE THIS AFTERNOON.

11 IF THE STATE, IF THEY CAN JUST ASK THOSE THREE PEOPLE TO

12 GO DOWNSTAIRS TO OUR OFFICE, I WILL HAVE SOMEONE SPEAK

13 WITH THEM.

14 MS. COOPER: YOUR HONOR, I JUST SEND MY PARALEGAL TO

15 TELL THE WITNESSES TO TALK TO THEIR INVESTIGATOR.

16 MR. JOPHLIN: YOUR HONOR, I APOLOGIZE, I AM NOT

17 INTENTIONALLY TRYING TO FIND ANYTHING FOR THE DEFENSE,

18 THIS WAS INITIALLY DONE IN GOOD FAITH, NOT ADVERSARY.

19 THE COURT: OKAY. ARE YOU READY TO PROCEED NOW?

20 MS. COOPER: YES, SIR.

21 THE COURT: IS THE DEFENSE READY?

22 MS. VAN GINHOVEN: YES, SIR.

23 THE COURT: GET THE JURY IN, PLEASE.

24 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT

25 APPROXIMATELY 2:20 P.M.)

1 THE COURT: ALL RIGHT, LADIES AND GENTLEMEN, WE WILL  
2 CONTINUE. SOLICITOR, CALL YOUR NEXT WITNESS, PLEASE.

3 MS. COOPER: THANK YOU, YOUR HONOR, THE STATE CALLS  
4 LOURDES ANTONIO.

5 THE COURT: LADIES AND GENTLEMEN, THIS WITNESS WILL  
6 BE TESTIFYING THROUGH AN INTERPRETER. THE COURT WILL  
7 FIRST SWEAR THE INTERPRETER AND THEN THE CLERK WILL SWEAR  
8 THE WITNESS. MR. CAMPUSANO, IF YOU WILL RAISE YOUR RIGHT  
9 HAND, PLEASE, SIR.

10 ANGEL CAMPUSANO, DO YOU SWEAR OR AFFIRM THAT THE  
11 INTERPRETATION THAT YOU WILL PROVIDE FOR THIS COURT WILL  
12 BE A VERBATIM INTERPRETATION OF THE QUESTIONS THAT ARE  
13 ASKED THE WITNESS AND THE ANSWERS THAT THE WITNESS GIVES  
14 TO THE BEST OF YOUR ABILITY SO HELP YOU GOD?

15 MR. CAMPUSANO: I DO.

16 THE COURT: ALL RIGHT, MADAM CLERK, IF YOU WILL  
17 ADMINISTER THE OATH TO THE WITNESS, PLEASE.

18 LOURDES ANTONIO, AFTER BEING DULY SWORN,  
19 TESTIFIED AS FOLLOWS:

20 (WHEREUPON, ANGEL CAMPUSANO INTERPRETS TESTIMONY FOR  
21 THE WITNESS, LOURDES ANTONIO.)

22 DIRECT EXAMINATION.

23 BY MS. COOPER:

24 Q MS. ANTONIO, WHERE ARE YOU FROM?

25 A MEXICO.

- 1 Q AND HOW OLD ARE YOU?
- 2 A 38 YEARS OLD.
- 3 Q AND ARE YOU MARRIED?
- 4 A YES.
- 5 Q AND WHO ARE YOU MARRIED TO?
- 6 A BONITO LOZANO.
- 7 Q AND DO YOU SEE MR. LOZANO IN THE COURTROOM TODAY?
- 8 A YES.
- 9 Q COULD YOU PLEASE POINT HIM OUT FOR THE JURY AND TELL
- 10 US WHAT COLOR SHIRT HE IS WEARING?
- 11 A HE HAS A YELLOW SHIRT AND HE IS SITTING THERE.
- 12 Q DO YOU HAVE ANY CHILDREN?
- 13 A NO.
- 14 Q WHEN DID YOU MOVE TO SOUTH CAROLINA?
- 15 A IN THE YEAR OF 2000.
- 16 Q AND WHAT BROUGHT YOU TO THE UNITED STATES?
- 17 A TO WORK.
- 18 Q AND WHERE DID YOU WORK WHEN YOU FIRST MOVED TO SOUTH
- 19 CAROLINA?
- 20 A IN A LAUNDRY MAT.
- 21 Q AND WHERE DID YOUR HUSBAND WORK?
- 22 A IN THE GOLF CLUB.
- 23 Q AND HOW DID YOU MEET MR. JEFF CONNELL?
- 24 A THROUGH MY HUSBAND.
- 25 Q AND WHEN DID YOU START WORKING FOR MR. CONNELL?

1 A IN THE YEAR OF 2003.

2 Q AND WHAT DID YOU START DOING FOR HIM?

3 A TO TAKE CARE OF HIS CHILD.

4 Q AND CAN YOU DESCRIBE THE CHILD FOR US, PLEASE?

5 A HE WAS SMALL, THREE MONTHS OLD.

6 Q AND TELL US A LITTLE BIT ABOUT YOUR WORK SCHEDULE,  
7 WHAT DAYS OF THE WEEK WOULD YOU WORK?

8 A FIVE DAYS OF THE WEEK.

9 Q WOULD THAT BE MONDAY THROUGH FRIDAY?

10 A YES.

11 Q AND WHAT TIME WOULD YOU TYPICALLY GET TO WORK IN THE  
12 MORNING?

13 A AT 8:00 O'CLOCK IN THE MORNING.

14 Q AND WHAT TIME DID YOU WORK UNTIL IN THE AFTERNOON?

15 A UNTIL 5:00 O'CLOCK IN THE AFTERNOON.

16 Q AND HOW MUCH DID YOU MAKE WORKING FOR THE CONNELL'S?

17 A \$250.00 DOLLARS.

18 Q IS THAT PER WEEK, PER MONTH, PER YEAR, CAN YOU  
19 DESCRIBE?

20 A PER WEEK.

21 Q WHEN YOU WOULD GET TO THE CONNELL'S AROUND 8:00 IN  
22 THE MORNING, WHAT WOULD BE THE FIRST THING YOU WOULD DO  
23 WITH THE CHILD?

24 A TO WAKE HIM UP SOMETIMES. WHEN HE IS ALREADY UP I  
25 DRESS HIM AND I FEED HIM HIS BREAKFAST AND THE THINGS THAT

1 I DO TO BE WITH HIM.

2 Q AND WHAT IS THE BOY'S NAME?

3 A CHANEY.

4 Q WOULD YOU TAKE CHANEY FOR WALKS BACK WHEN YOU STARTED  
5 WORKING FOR THE CONNELL'S?

6 A YES.

7 Q AND WHEN WOULD YOU TYPICALLY LIKE TO TAKE CHANEY FOR  
8 WALKS?

9 A THE SAME STREET WHERE WE LIVE.

10 Q AND WHEN, WHAT TIME OF THE DAY WOULD YOU LIKE TO TAKE  
11 HIM FOR WALKS?

12 A IN THE AFTERNOONS.

13 Q AND HOW LONG WOULD YOU TYPICALLY TAKE HIM FOR WALKS?

14 A FROM THIRTY MINUTES TO ONE HOUR.

15 Q AND WHAT ROUTE WOULD YOU WALK IN THE NEIGHBORHOOD?

16 A IT IS ONLY ROUTE IN THE SAME STREET.

17 Q I AM GOING TO SHOW YOU A MAP AND ASK YOU IF THE  
18 STREET YOU ARE REFERRING TO IS TAM-O-SHANTER?

19 A YES.

20 Q AND YOU WOULD, WHERE WOULD YOU WALK THE BABY?

21 A IN THIS PART THERE FROM THE STREET.

22 Q OKAY. AND IS IT MY UNDERSTANDING YOU WOULD WALK THE  
23 BABY UP AND DOWN THE SAME STREET?

24 A NOT ALWAYS, SOMETIMES WE WOULD TAKE ANOTHER STREET  
25 THAT IS COLUMBIA DRIVE.

1 Q AND CAN YOU SEE COLUMBIA DRIVE ON THIS MAP? IF THIS  
2 IS TAM-O-SHANTER RIGHT HERE, DO YOU SEE COLUMBIA DRIVE?

3 A THIS IS THE STREET, WE USE TO WALK THIS STREET.

4 Q AND SO YOU WOULD HAVE TO TAKE A LEFT ONTO COLUMBIA  
5 DRIVE?

6 A YES.

7 Q WHEN YOU WOULD LEAVE FROM THE HOUSE WHAT DOOR WOULD  
8 YOU USE?

9 A WE USED A DOOR THAT IS ON THE SIDE OF THE HOUSE THAT  
10 IS NORMALLY, THE DOOR THAT ALL THE PEOPLE THAT WE BELONG  
11 TO THIS HOUSE WE USE.

12 Q I AM GOING TO SHOW YOU A DIAGRAM AND ASK YOU DO YOU  
13 SEE THE DOOR TO, THAT YOU USED THAT DAY OR ALL OF THE  
14 TIME?

15 A YES, THERE.

16 Q I AM GOING TO SHOW YOU WHAT HAS BEEN MARKED AS  
17 STATE'S EXHIBIT 23 AND CAN YOU TELL ME WHAT THAT PICTURE  
18 IS OF?

19 A FROM THE DOOR THAT WE ARE TALKING ABOUT.

20 MS. COOPER: YOUR HONOR, MAY I PUBLISH IT TO THE  
21 JURY.

22 THE COURT: ALL RIGHT.

23 Q WHEN YOU WOULD LEAVE THROUGH THAT DOOR WOULD YOU LOCK  
24 IT BEHIND YOU WHEN YOU WENT FOR WALKS?

25 A WE NEVER USED TO LOCK IT BUT I KNOW I CLOSE THE DOOR.

1 Q WHEN YOU WENT FOR YOUR WALK ON APRIL 13TH OF 2004 DID  
2 YOU SHUT THE DOOR BEHIND YOU?

3 A YES.

4 Q SO, YOU DID NOT LOCK IT, IS THAT CORRECT?

5 A NO.

6 MS. VAN GINHOVEN: YOUR HONOR, OBJECTION TO THE  
7 LEADING.

8 THE COURT: I WILL PERMIT IT, GO AHEAD.

9 MS. COOPER: THANK YOU, YOUR HONOR.

10 Q COULD YOU DESCRIBE IF THE ROAD, THIS HOUSE WHERE YOU  
11 WORK AT ON TAM-O-SHANTER, IS IT A BUSY ROAD?

12 A NO.

13 Q ON APRIL 13TH OF 2004 APPROXIMATELY WHAT TIME WAS IT  
14 THAT YOU TOOK THE BABY FOR A WALK THAT DAY?

15 A IT WAS BETWEEN 2:30 TO 3:00 IN THE AFTERNOON.

16 Q AND IS THERE A DRIVEWAY TO THE HOUSE?

17 A YES.

18 Q AND I AM GOING TO SHOW YOU WHAT HAS BEEN MARKED AS  
19 STATE'S EXHIBIT NUMBER 29. IS THAT THE DRIVEWAY TO THE  
20 HOUSE?

21 A YES.

22 MS. COOPER: MAY I PUBLISH IT, YOUR HONOR.

23 THE COURT: YES.

24 Q ON APRIL 13TH, 2004 DID YOU WALK DOWN THAT DRIVEWAY?

25 A YES.

1 Q AND WHEN YOU GOT TO TAM-O-SHANTER WHICH WAY DID YOU  
2 TURN ON TO TAM-O-SHANTER?

3 A I TOOK COLUMBIA DRIVE.

4 Q AND WHEN YOU GOT TO THE END OF THE DRIVEWAY WHICH WAY  
5 DID YOU TURN ONTO TAM-O-SHANTER?

6 A ON MY LEFT SIDE.

7 Q DID YOU EVENTUALLY TURN BACK DOWN TAM-O-SHANTER?

8 A YES.

9 Q AND DID YOU ENCOUNTER SOMEONE ON THE STREET WHEN YOU  
10 WERE WALKING UP ON TAM-O-SHANTER?

11 A YES.

12 Q COULD YOU PLEASE TELL THE JURY WHO YOU RAN IN TO?

13 A WITH A PERSON THAT WAS SELLING PRODUCTS.

14 Q CAN YOU DESCRIBE THIS PERSON FOR THE JURY?

15 A YES.

16 Q COULD YOU PLEASE DO SO NOW?

17 A YES.

18 Q PLEASE DESCRIBE HIM.

19 A IT WAS A YOUNG MAN, TALL, DARK SKIN, AND HE WAS  
20 BRINGING ONE BOTTLE OF THE PRODUCT IN HIS HAND.

21 Q AND COULD YOU DESCRIBE WHETHER OR NOT HE WAS FAT,  
22 SKINNY, DESCRIBE HIS BUILD?

23 A HE WAS SLIM.

24 Q CAN YOU REMEMBER WHAT KIND OF CLOTHES HE WAS WEARING?

25 A YES.

1 Q AND WHAT WAS HE WEARING?

2 A A SWEATER.

3 Q WHAT COLOR OF SWEATER?

4 A IT WAS A DARK COLOR.

5 Q WAS THERE ANYTHING ON THE SWEATER THAT YOU NOTICED?

6 A YES, FIGURES OR LETTERS, I DON'T KNOW.

7 Q AND DO YOU KNOW WHAT COLOR THE FIGURES OR LETTERS  
8 WERE?

9 A NO.

10 Q AND WHAT ABOUT PANTS, DID YOU NOTICE THE PANTS?

11 A YES.

12 Q AND COULD YOU PLEASE DESCRIBE THEM?

13 A BLUE JEANS, WIDE.

14 Q AND HOW DID THEY FIT THIS PERSON?

15 A VERY WIDE.

16 Q DID YOU NOTICE WHAT KIND OF SHOES HE WAS WEARING?

17 A TENNIS SHOES.

18 Q CAN YOU DESCRIBE HIS HAIR FOR US, PLEASE?

19 A VERY SHORT AND CURLY.

20 Q DID YOU NOTICE ANY FACIAL HAIR ON HIM?

21 A NO.

22 Q DID YOU NOTICE HIM CARRYING ANYTHING ELSE BESIDE THE  
23 BOTTLE OF PRODUCT?

24 A A BACKPACK.

25 Q CAN YOU DESCRIBE WHAT THE BACKPACK LOOKED LIKE?

1 A IT WAS DARK ALSO.

2 Q CAN YOU DESCRIBE THE FABRIC OF THE BACKPACK, PLEASE?

3 A YES.

4 Q PLEASE DESCRIBE THE FABRIC?

5 A IT WAS SYNTHETIC FABRIC.

6 Q DID HE APPROACH YOU ON THE STREET?

7 A YES.

8 Q AND WHAT DID HE ASK OF YOU?

9 A HE ASKED ME TO BUY THE PRODUCT THAT HE WAS CARRYING.

10 Q DID HE SHOW YOU ANYTHING ABOUT HIS PRODUCT?

11 A YES, A BOTTLE AND ONE PAPER WITH LIST PRICE.

12 Q DO YOU REMEMBER WHAT COLOR THAT PIECE OF PAPER WAS?

13 A WHITE.

14 Q WHAT DID YOU SAY TO HIM WHEN HE ASKED YOU TO BUY HIS  
15 PRODUCTS?

16 A I TOLD HIM NO, THANK YOU.

17 Q AND CAN YOU DESCRIBE OR DEMONSTRATE WHAT ENGLISH  
18 WORDS YOU USED TO SAY THAT?

19 A NO, THANK YOU.

20 Q I AM GOING TO SHOW YOU WHAT HAS BEEN MARKED AS  
21 STATE'S EXHIBIT NUMBER 33. DO YOU SEE WHERE ON THE STREET  
22 HE STOPPED YOU AND TRIED TO SELL PRODUCTS TO YOU?

23 A YES.

24 Q COULD YOU PLEASE POINT IT OUT ON THIS PHOTOGRAPH  
25 NUMBER 33?

1 A YES.

2 Q WHERE?

3 A HERE.

4 Q IS AT THE END OF THAT DRIVEWAY OF THAT HOUSE?

5 A YES.

6 Q DID YOU SEE HIM COMING FROM THAT HOUSE?

7 A YES.

8 Q WHEN YOU TOLD HIM, NO THANK YOU, WHAT DID HE SAY TO  
9 YOU?

10 A THAT I WAS ABLE TO PAY HIM WITH A CHECK.

11 Q DO YOU REMEMBER THE ENGLISH WORDS HE USED TO SAY THAT  
12 TO YOU?

13 A YES.

14 Q COULD YOU PLEASE TELL US THOSE WORDS, PLEASE?

15 MS. VAN GINHOVEN: YOUR HONOR, THAT IS HERESAY.

16 MS. COOPER: YOUR HONOR, THESE ARE STATEMENTS BY THE  
17 DEFENDANT.

18 THE COURT: OVERRULED, GO AHEAD.

19 A HE TOLD ME THAT I COULD PAY HIM WITH A CHECK.

20 Q WHAT WORDS DID YOU UNDERSTAND IN ENGLISH?

21 A YES.

22 Q SAY THEM, PLEASE?

23 A YOU CAN PAY ME WITH A CHECK.

24 Q WHAT DID YOU SAY TO HIM WHEN HE TOLD YOU THAT YOU  
25 COULD PAY HIM WITH A CHECK?

1 A THAT I DIDN'T HAVE ANY CHECK WITH ME.

2 Q WHEN YOU TOLD HIM THAT WHAT DID YOU DO NEXT?

3 A I TOLD HIM THAT I DIDN'T HAVE ANY CHECK WITH ME.

4 Q AFTER YOU TOLD HIM THAT YOU DIDN'T HAVE A CHECK WHAT  
5 DID YOU DO NEXT?

6 A I KEPT WALKING.

7 Q AND WHERE DID YOU WALK TO?

8 A I KEPT WALKING THE SAME STREET I WAS WALKING BEFORE.

9 Q AND WHICH ROAD WERE YOU WALKING TOWARDS?

10 A I WAS THERE, TAM-O-SHANTER STARTS THE ROAD, COLUMBIA  
11 CLUB.

12 Q AND I AM GOING TO SHOW YOU THIS MAP AGAIN AND DO YOU  
13 SEE THE END OF TAM-O-SHANTER?

14 A YES.

15 Q WHICH DIRECTION DID YOU TURN ON COLUMBIA CLUB DRIVE?

16 A TO THE LEFT.

17 Q WHEN YOU TURNED TO THE LEFT DID YOU TURN BACK TO  
18 OBSERVE THE MAN WHO JUST TRIED TO SELL YOU PRODUCTS?

19 A YES.

20 Q AND IS THERE ANYTHING OBSTRUCTING YOUR VIEW IN THAT  
21 CORNER?

22 A NO.

23 Q WHEN YOU TURNED TO LOOK AT HIM WHAT DID YOU OBSERVE  
24 HIM DOING?

25 A HE WAS KNEELING.

1 Q DID YOU SEE WHAT HE WAS DOING WITH HIS HANDS?

2 A NO, BUT HE WAS KNEELING.

3 Q AND WHEN YOU WALKED UP COLUMBIA CLUB DRIVE, HOW LONG  
4 DID YOU WALK FOR?

5 A AROUND A HALF OF AN HOUR.

6 Q AND WHY DID YOU STOP AROUND AN HALF OF AN HOUR?

7 A BECAUSE IT WAS TOO BREEZY.

8 Q AND WHERE DID YOU GO, WHERE DID YOU RETURN TO AFTER  
9 YOU DECIDED TO END YOUR WALK?

10 A I CAME BACK BY THE SAME ROUTE.

11 Q AND DID YOU GO BACK TO THE HOUSE?

12 A YES.

13 Q TELL THE JURY WHAT YOU SAW ABOUT THE HOUSE THAT WAS  
14 DIFFERENT?

15 A THE DOOR WAS OPEN.

16 Q WHAT DID YOU THINK HAD CAUSED THE DOOR TO OPEN?

17 A BECAUSE OF THE WIND THAT WAS AT THAT MOMENT.

18 Q WHAT DID YOU DO WITH THE BABY?

19 A I PUT HIM CLOSE TO THE DOOR, THE GARAGE DOOR.

20 Q I AM GOING TO SHOW YOU STATE'S NUMBER 23, CAN YOU  
21 SHOW ON THIS PICTURE WHERE YOU LEFT THE BABY?

22 A YES.

23 Q CAN YOU PLEASE POINT IT OUT TO THE JURY?

24 A THERE.

25 Q WHY DID YOU LEAVE THE BABY THERE?

1 A BECAUSE THAT WAS A PLACE WHERE I LEFT THE BABY TO  
2 TAKE HIM OUT OF THE HOLDER AND THEN GO AND TAKE THE HOLDER  
3 INSIDE.

4 Q AND DID YOU HAVE HIM IN A CARRIAGE OR A STROLLER?

5 A A STROLLER.

6 Q STROLLER?

7 A STROLLER.

8 Q AND WHERE WOULD YOU PUT THE STROLLER AFTER YOU WOULD  
9 TAKE THE BABY INSIDE?

10 A I USED TO PUT IT INSIDE OF THE GARAGE.

11 Q WHEN YOU WENT INSIDE, DID YOU GO INSIDE OF THE HOUSE  
12 AFTER YOU PUT CHANEY BY THE GARAGE DOOR THAT DAY?

13 MR. CAMPUSANO: CAN YOU REPEAT THE QUESTION.

14 Q DID YOU GO INSIDE OF THE HOUSE?

15 A YES.

16 Q TELL THE JURY WHAT YOU HEARD WHEN YOU WENT INSIDE OF  
17 THE HOUSE?

18 A WHEN I GOT IN I DIDN'T HEAR ANYTHING BUT WHEN I WENT  
19 WALKING, WHEN I WAS IN THE LIVING ROOM I HEARD STEPS.

20 Q I AM GOING TO SHOW YOU WHAT HAS BEEN MARKED AS  
21 STATE'S EXHIBIT NUMBER 12. AND IF YOU COULD SHOW THE JURY  
22 WHERE THE LIVING ROOM IS.

23 A HERE.

24 Q CAN YOU SHOW THE JURY HOW IT IS THE ROUTE YOU TOOK TO  
25 GET TO THE LIVING ROOM FROM THE DOOR YOU USED?

1 A YES, I GOT IN THIS WAY THEN I, THIS WAY AND WHEN I  
2 HEARD THE STEPS I WAS THERE. AND I STOOD UP THERE.

3 Q AND WHEN YOU WERE STANDING THERE WHERE DID YOU HEAR  
4 THE FOOTSTEPS COMING FROM?

5 A FROM THERE.

6 Q AND IS THIS A HALLWAY RIGHT HERE?

7 A YES.

8 Q AND TELL THE JURY WHAT IT IS YOU SAW WHEN YOU LOOKED  
9 DOWN THE HALLWAY?

10 A ONE MAN COMING OUT OF THE BEDROOM.

11 Q DID YOU RECOGNIZE HIM?

12 A YES.

13 Q WHERE HAD YOU SEEN THAT MAN BEFORE?

14 A IN THE STREET.

15 Q WAS THAT THE SAME MAN THAT TRIED TO SELL YOU PRODUCTS  
16 EARLIER?

17 A YES.

18 Q HOW DID YOU KNOW IT WAS THE SAME MAN?

19 A IT WAS THE SAME MAN.

20 Q COULD YOU SEE HIS CLOTHES?

21 A YES.

22 Q COULD YOU SEE HIS FACE?

23 A YES.

24 Q WHAT DID YOU SAY TO THIS MAN WHEN YOU SAW HIM IN YOUR  
25 BOSS'S HOUSE?

1 A I ASKED HIM WHAT WAS HE DOING THERE.

2 Q COULD YOU PLEASE USE THE ENGLISH WORDS THAT YOU USED  
3 TO ASK HIM THAT?

4 A YES, WHAT ARE YOU DOING HERE.

5 Q AND DID HE ANSWER YOU?

6 A HE SAID, WHY.

7 Q AND HOW DID YOU RESPOND?

8 A YOU CANNOT BE HERE.

9 Q AND CAN YOU USE THE ENGLISH WORDS THAT YOU USED THAT  
10 DAY TO TELL HIM THAT?

11 A YES, YOU CANNOT STAY HERE.

12 Q WHEN YOU WERE TALKING TO HIM DESCRIBE FOR THE JURY,  
13 DID YOU STAY STANDING BY THAT SOFA?

14 A NO, WHEN HE WAS WALKING THIS WAY I WAS THERE. HE WAS  
15 WALKING TOWARD ME AND I WAS WALKING AWAY FROM HIM. BUT HE  
16 GOT THERE AND WHEN I WAS ON THAT SIDE OF THE CORNER THERE  
17 IS ANOTHER DOOR THAT TAKES YOU TO THE PANTRY, HERE. HE  
18 GRABBED ME BY MY ARM AND HE ASKED ME IF I WAS GOING TO  
19 CALL THE POLICE.

20 Q AND WHAT DID YOU SAY TO HIM?

21 A I TOLD HIM YES.

22 Q AND AT THIS TIME WHERE ARE YOU TRYING TO GO IN THE  
23 HOUSE?

24 A TO GETTING OUT THIS WAY.

25 Q AND WHERE WAS IT THAT HE GRABBED YOU BY THE ARM?

1 A AND I KEPT WALKING AND HE KEPT ME, GRABBED ME BY MY  
2 ARM.

3 Q WERE YOU FREE TO LEAVE AT THAT TIME?

4 A NO.

5 Q DID YOU EVENTUALLY MAKE IT INTO THIS ROOM?

6 A NO.

7 Q WHERE DID HE THROW YOU DOWN TO THE FLOOR?

8 A WE WERE STANDING THERE AND STANDING THERE AND HE  
9 PULLED ME AND PUSHED ME.

10 Q AND WHERE DID YOU FALL DOWN?

11 A IN THAT PLACE.

12 Q AND WHERE WAS YOUR HEAD?

13 A ALL OF MY BODY WAS ON THE FLOOR.

14 Q AND WHICH DIRECTION, CAN YOU PLEASE DRAW A PICTURE OF  
15 WHERE YOUR HEAD WAS AND HOW YOU WERE LAYING ON THE FLOOR?

16 A MY HEAD WAS HERE AND HE WAS STANDING THERE.

17 Q WHEN HE PUSHED YOU TO THE FLOOR DID YOU GET HURT?

18 A YES.

19 Q WHAT PART OF YOUR BODY GOT HURT?

20 A MY ELBOWS.

21 Q DID YOU BEGIN TO BLEED?

22 A YES.

23 MS. COOPER: YOUR HONOR, BEG THE COURT'S INDULGENCE.  
24 YOUR HONOR, THE BACK OF THIS PHOTOGRAPH HAS WRITING FROM A  
25 MATTER THAT IS NOT RELATED TO THIS CASE.

1 THE COURT: WHAT NUMBER IS THAT?

2 MS. COOPER: IT HAS JUST BEEN MARKED STATE'S NUMBER  
3 37.

4 THE COURT: DON'T PUBLISH THAT TO THE JURY, WE WILL  
5 GET THAT TAKEN CARE OF. ANY OBJECTION TO THAT WITH THAT  
6 CONDITION, THAT THE BACK NEEDS TO BE CLEANED UP.

7 MS. VAN GINHOVEN: NO OBJECTION.

8 THE COURT: STATE'S 37 IS ADMITTED.

9 (WHEREUPON, STATE'S EXHIBIT NO. 37 WAS ADMITTED INTO  
10 EVIDENCE.)

11 Q I AM GOING TO SHOW YOU WHAT HAS BEEN MARKED STATE'S  
12 37 FOR IDENTIFICATION OR IS IT IN EVIDENCE, CORRECT, YOUR  
13 HONOR.

14 THE COURT: YES.

15 Q I AM GOING TO SHOW YOU WHAT HAS BEEN MARKED STATE'S  
16 NUMBER 37. CAN YOU TELL ME WHAT THAT IS, PLEASE?

17 A THAT IS THE HALL.

18 Q CAN YOU SEE WHERE HE PUSHED YOU DOWN IN THAT  
19 PHOTOGRAPH?

20 A THERE.

21 Q IS THERE A DOOR IN THAT HALLWAY THAT LEADS TO THE  
22 GARAGE?

23 A YES.

24 Q AND IS THERE ANOTHER DOOR THAT LEADS TO A BATHROOM OR  
25 A LAUNDRY ROOM?

1 A YES.

2 Q AND DO YOU SEE THEM ON THE DIAGRAM?

3 A YES. THESE ARE THE DOOR THAT GOES TO THE BATHROOM  
4 AND THE OTHER DOOR GOES TO THE GARAGE.

5 Q TELL THE JURY WHAT HAPPENED TO YOU WHEN HE PUSHED YOU  
6 TO YOUR BACK ON THE FLOOR.

7 A HE STARTED KICKING ME.

8 Q WHERE DID HE START KICKING YOU.

9 A IN MY CHEST.

10 Q AND WHERE WAS HE STANDING WHILE HE WAS KICKING YOU?

11 A RIGHT BESIDE TO ME.

12 MS. COOPER: YOUR HONOR, MAY I ASK THE WITNESS TO GET  
13 DOWN, PLEASE?

14 THE COURT: YES.

15 Q DEMONSTRATE FOR THE JURY THE MANNER HE KICKED YOU IN  
16 THE CHEST?

17 A HE WAS STANDING LIKE THIS AND HE WAS DOING LIKE THIS.

18 Q AND DO IT ONE MORE TIME SO EVERYONE ON THE JURY CAN  
19 SEE.

20 A (WITNESS DEMONSTRATES TO THE JURY.)

21 Q AND HOW MANY TIMES DID HE STRIKE YOU OR STOMP YOU IN  
22 YOUR CHEST?

23 A AROUND THREE TIMES MORE OR LESS.

24 Q HOW DID IT MAKE YOU FEEL WHEN YOU GOT HIT IN THE  
25 CHEST?

1 A VERY BAD, AND I SHOUT AT HIM TO STOP KICKING ME.

2 Q AFTER HE STOPPED KICKING YOU AFTER THE THIRD TIME  
3 WHAT DID HE DO NEXT?

4 A HE LEFT ME AND HE WENT WALKING TO THE DOOR WHERE HIS  
5 ~~BACKPACK WAS.~~

6 Q AND I AM GOING TO SHOW YOU STATE'S NUMBER 32 AND ASK  
7 YOU, CAN YOU PLEASE POINT TO WHERE YOU SAW HIM WITH HIS  
8 BOOK BAG.

9 A THERE.

10 Q DID YOU SEE WHAT HE WAS DOING WITH HIS BOOK BAG?

11 A YES, I DON'T KNOW WHAT HE WAS DOING, IF HE WAS  
12 PUTTING THINGS IN OR PUTTINGS THINGS OUT BUT I SAW A GUN.

13 Q WHERE DID YOU SEE HIM PUT THE GUN?

14 A ON THE FLOOR.

15 Q COULD YOU DESCRIBE THE GUN, PLEASE?

16 A YES.

17 Q WHAT COLOR WAS IT?

18 A GRAY.

19 Q I AM GOING TO SHOW YOU A PHOTOGRAPH, NUMBER 10, AND  
20 ASK YOU IF THIS LOOKS SIMILAR TO THE GUN YOU SAW?

21 A YES.

22 Q WHEN YOU SAW THE GUN WHAT DID THE DEFENDANT DO NEXT?

23 A HE CAME BACK WHERE I WAS.

24 Q WERE YOU STILL LAYING IN THE SAME POSITION IN THE  
25 HALLWAY?

1 A YES.

2 Q HAD YOU MOVED AT ALL WHILE HE WAS AT HIS BACKPACK?

3 A NO.

4 Q WHEN HE CAME TOWARDS YOU DESCRIBE HOW HE CAME TOWARDS  
5 YOU?

6 A HE WAS WALKING IN HIS KNEES APPROACHING ME.

7 Q AND WHEN HE GOT TO YOU WHAT DID YOU DO?

8 A I TOOK A CURTAIN HANGER THAT WAS LAYING TOWARD THE  
9 WALL.

10 Q CAN YOU SEE IN THIS PICTURE WHERE THAT CURTAIN HANGER  
11 WAS?

12 A THERE.

13 Q AND HOW IS IT PACKAGED?

14 A IT WAS SEALED, IT WAS NOT OPENED YET.

15 Q AND CAN YOU DESCRIBE THE CONTAINER WHERE THE CURTAIN  
16 HANGER WAS.

17 A YES.

18 Q WHAT WAS IT?

19 A IT WAS CARDBOARD AND WAS THIS SIZE.

20 Q WHAT DID YOU DO WITH IT?

21 A I GRABBED IT AND HIT HIM WITH THIS.

22 Q AND WHERE DID YOU HIT HIM WITH IT?

23 A IN ONE PART OF HIS SHOULDER.

24 Q WHAT DID HE DO WHEN YOU HIT HIM WITH THE BOX WITH THE  
25 CURTAIN HANGER IN IT?

1 A HE STOOD UP AND HE STARTING KICKING ME AGAIN.

2 Q WHERE WAS HE KICKING YOU THIS TIME?

3 A IN MY CHEST.

4 Q AND WHAT WAS THE MANNER IN WHICH HE WAS KICKING?

5 A THE SAME MANNER THAT HE DID THE FIRST TIME.

6 Q AND HOW MANY TIMES DID HE KICK YOU IN THE CHEST THIS  
7 TIME?

8 A TWO OR THREE TIMES.

9 Q COULD YOU DESCRIBE HOW, THE FORCE HE USED IN KICKING  
10 YOU IN THE CHEST?

11 A VERY STRONG.

12 Q HOW DID IT MAKE YOU FEEL AFTER HE KICKED YOU THE  
13 SECOND TIME?

14 A I WAS NOT FEELING ANYTHING ON MY BODY AND I WAS NOT  
15 ABLE TO BREATHE AND I STARTED COUGHING.

16 Q DID HE STOP KICKING YOU AT THIS POINT?

17 A YES.

18 Q AND WHERE DID HE GO AFTER HE STOPPED KICKING YOU THIS  
19 TIME?

20 A HE GOT IN THE DOOR THAT GOES TO THE BATHROOM AND TO  
21 THE LAUNDRY ROOM.

22 Q AND CAN YOU PLEASE POINT ON THIS DIAGRAM WHICH DOOR  
23 YOU ARE TALKING ABOUT?

24 A THIS ONE.

25 Q WHEN YOU SAW HIM GO THROUGH THAT DOOR WHAT DID YOU

1 DECIDE TO DO NEXT?

2 A I STOOD UP AND I WENT OUT BY THE GARAGE DOOR.

3 Q AND IS THERE A WAY TO GET OUTSIDE OF THE GARAGE?

4 A YES, THERE IS ANOTHER DOOR THAT IS HERE.

5 Q AND CAN YOU DESCRIBE HOW QUICKLY YOU WERE WALKING OR  
6 DESCRIBE HOW YOU WERE GETTING THROUGH THE GARAGE?

7 A RUNNING.

8 Q DID HE FOLLOW YOU?

9 A YES.

10 Q ~~WHEN DID YOU NOTICE HIM CHASING YOU?~~

11 A WHEN I WAS IN THE MIDDLE OF THE GARAGE.

12 Q WERE YOU ABLE TO GET OUT OF THE GARAGE?

13 A YES.

14 Q I AM GOING TO SHOW YOU WHAT HAS BEEN MARKED 25 AND  
15 26. WHAT IS 25?

16 A THE GARAGE.

17 Q AND ARE THOSE THE STEPS THAT YOU HAD TO GO DOWN?

18 A YES.

19 Q CAN YOU PLEASE POINT THEM OUT FOR THE JURY?

20 A YES, I CAME OUT THIS WAY AND HE WAS FOLLOWING ME.

21 Q AND I AM GOING TO SHOW YOU WHAT HAS BEEN MARKED  
22 STATE'S EXHIBIT NUMBER 30. DO YOU SEE THE DOOR WHERE YOU  
23 RAN OUT OF?

24 A YES.

25 Q COULD YOU PLEASE POINT IT OUT FOR THE JURY?

1 A THIS ONE.

2 Q WHEN YOU GOT OUTSIDE OF THE GARAGE WHICH DIRECTION DO  
3 YOU RUN?

4 A I COME OUT THIS WAY AND THERE, FINISH TO THE GARAGE  
5 AND I TOOK THIS WAY. THERE IS A HILL WHERE THE TREES  
6 START.

7 Q AND I AM GOING TO SHOW YOU WHAT HAS BEEN MARKED  
8 STATE'S 26, WHAT IS THIS A PICTURE OF?

9 A IT IS THE ROUTE I TOOK TO GET AWAY FROM THERE.

10 Q AND CAN YOU SHOW THE JURY HOW YOU RAN OUTSIDE OF THE  
11 GARAGE AND WHERE YOU WENT?

12 A I CAME OUT THIS WAY, HE DROPPED ME THERE.

13 Q WHY WERE YOU RUNNING IN THAT DIRECTION?

14 A BECAUSE THAT WAS THE DIRECTION OF THE NEIGHBORS HOUSE  
15 THAT WAS THE NEIGHBOR.

16 Q AND I AM GOING TO SHOW YOU WHAT HAS BEEN MARKED AS  
17 STATE'S NUMBER 27 AND 28. DO YOU RECOGNIZE THOSE  
18 PHOTOGRAPHS?

19 A YES.

20 Q AND WHAT ARE THEY PICTURES OF?

21 A THOSE ARE FROM THE NEIGHBORS HOUSE.

22 Q AND SO IS THAT THE DIRECTION YOU WERE RUNNING TO?

23 A YES.

24 Q DO YOU SEE WHERE IT IS THAT HE CAUGHT UP TO YOU IN  
25 ONE OF THOSE PHOTOGRAPHS?

1 A YES.

2 Q AND CAN YOU PLEASE SHOW ME WHICH ONE?

3 A HERE.

4 Q STATE'S NUMBER 27?

5 A YES.

6 Q AND POINT ON THIS PICTURE WHERE IT IS HE CAUGHT UP TO  
7 YOU.

8 A HERE.

9 Q TELL THE JURY WHAT HE DID TO YOU WHEN HE CAUGHT UP TO  
10 YOU.

11 A HE PUSHED ME.

12 Q AND HOW DID YOU FALL DOWN?

13 A OVER MY STOMACH.

14 Q WHAT DID HE START DOING TO YOU WHEN YOU FELL ON YOUR  
15 STOMACH?

16 A HE STARTED KICKING ME BY MY BODY.

17 Q AND DO YOU REMEMBER THE MANNER IN WHICH HE KICKED YOU  
18 THIS TIME?

19 A THE SAME WAY HE KICKED ME WHEN I WAS LAYING ON MY  
20 BODY.

21 Q AND DESCRIBE FOR THE JURY HOW MANY TIMES YOU FELT HIM  
22 KICK YOU IN THE BACK?

23 A MANY TIMES.

24 Q WHAT DID YOU TRY TO DO TO PROTECT YOUR BODY?

25 A I COVERED WITH MY ARMS AND I FLIPPED AROUND.

1 Q AND WHERE WERE YOU, DID YOU FLIP ONTO THE SIDE OR  
2 ONTO YOUR BACK?

3 A OVER MY BACK.

4 Q AND WHAT DID HE START DOING TO YOU WHEN YOU WERE  
5 LAYING ON YOUR BACK?

6 A HE KICKED ME AGAIN.

7 Q AND WHERE ON THE FRONT OF YOUR BODY DID HE KICK YOU  
8 THIS TIME?

9 A IN THE SAME PLACE, IN MY CHEST.

10 Q DO YOU REMEMBER HOW MANY TIMES HE KICKED YOU IN THE  
11 CHEST THIS TIME?

12 A YES.

13 Q HOW MANY TIMES APPROXIMATELY?

14 A TWO OR THREE TIMES.

15 Q DO YOU REMEMBER HIM STOPPING?

16 A NOT VERY WELL BECAUSE I CLOSED MY EYES AND I STARTED  
17 ASKING GOD, BECAUSE I DIDN'T WANT TO DIE AND ASKING THE  
18 LORD TO HELP ME. I JUST CLOSED MY EYES AND I DIDN'T KNOW  
19 ANYTHING ELSE.

20 Q DO YOU KNOW HOW MUCH TIME PASSED BEFORE YOU KNEW HE  
21 WAS GONE?

22 A NO.

23 Q WHEN YOU DID GET UP AND FINALLY LEAVE, I AM SORRY,  
24 WHERE DID YOU GO FIRST AFTER YOU GOT UP?

25 A I WENT AND I PICKED UP THE BABY AND I WENT TO THE

1 NEIGHBORS HOUSE ASKING FOR HELP.

2 Q AND I AM GOING TO SHOW YOU STATE'S NUMBER 36. IS  
3 THIS THE HOUSE WHERE YOU WORK?

4 A YES.

5 Q AND WHICH NEIGHBORS HOUSE DID YOU GO TO?

6 A TO THIS ONE.

7 Q DO YOU KNOW THE NAMES OF THE PEOPLE THAT LIVE THERE?

8 A NO.

9 Q HAVE YOU EVER SEEN THESE PEOPLE BEFORE?

10 A NO.

11 Q SO, WHEN YOU ARRIVED TO THEIR HOUSE WITH THE BABY  
12 WHAT HAPPENED?

13 A I SHOUT, SOMEBODY HELP ME. THE LADY COMES OUT AND  
14 SHE ASKED ME WHAT IS HAPPENING. AND I TELL WHAT HAS BEEN  
15 GOING ON BUT SHE DOESN'T UNDERSTAND ME. AND I GIVE HER  
16 THE BABY AND I SIT DOWN ON THE FLOOR BECAUSE I COULD NOT  
17 BREATHE. AND I ASKED HER TO CALL MY BOSS. AND AFTER I  
18 DON'T KNOW WHAT HAPPENED.

19 Q DO YOU REMEMBER AN AMBULANCE COMING TO GET YOU?

20 A YES.

21 Q AND DO YOU REMEMBER THEM TAKING YOU TO THE HOSPITAL?

22 A YES.

23 Q WERE YOU IN THE EMERGENCY ROOM?

24 A YES.

25 Q WHILE YOU WERE BEING TREATED BY DOCTORS DO YOU

1 REMEMBER A FEMALE OFFICER COMING TO TALK TO YOU?

2 A YES.

3 Q AND DID YOUR HUSBAND COME TO THE HOSPITAL?

4 A HE GOT THERE BEFORE I WAS TAKEN TO THE HOSPITAL.

5 Q AND DID HE RIDE WITH YOU TO THE HOSPITAL?

6 A YES.

7 Q AND WHEN THE POLICE OFFICER, THE FEMALE POLICE  
8 OFFICER SHOWED UP WAS YOUR HUSBAND WITH YOU?

9 A YES.

10 Q AND DO YOU REMEMBER YOUR HUSBAND TRANSLATING FOR YOU  
11 AND TELLING THE OFFICER WHAT HAPPENED TO YOU?

12 A YES.

13 Q AND WHAT KIND OF INFORMATION DID YOU TELL THE  
14 OFFICER?

15 A I TOLD HIM WHAT HAPPENED TO ME.

16 Q AND THIS IS A FEMALE OFFICER, RIGHT?

17 A YES.

18 Q AND DID YOU GIVE THIS OFFICER A DESCRIPTION OF THE  
19 MAN THAT DID THIS TO YOU?

20 A YES.

21 Q AND IS IT THE SAME DESCRIPTION THAT YOU ALREADY TOLD  
22 THIS JURY ABOUT THE PERSON YOU RAN INTO ON THE STREET?

23 A YES.

24 Q I AM GOING TO SHOW YOU WHAT HAS BEEN MARKED STATE'S  
25 NUMBER 8 FOR IDENTIFICATION PURPOSES. AND ASK YOU DO

1 THESE APPEAR TO BE SIMILAR TO THE PANTS YOU SAW THE MAN  
2 WEARING?

3 A YES.

4 Q I AM GOING TO SHOW YOU THIS PIECE OF PAPER AND ASK  
5 YOU DOES THAT LOOK SIMILAR TO THE PRICE LIST YOU WERE  
6 SHOWN BY THE MAN ON THE STREET?

7 A YES.

8 Q I AM GOING TO SHOW YOU WHAT HAS BEEN MARKED AS  
9 STATE'S NUMBER 9 FOR IDENTIFICATION PURPOSES AND ASK YOU  
10 DOES THIS LOOK SIMILAR TO THE BAG YOU SAW THE MAN WHO  
11 ASSAULTED YOU IN HIS POSSESSION?

12 A YES.

13 Q AND IN THE HOUSE?

14 A YES.

15 Q I AM GOING TO SHOW YOU WHAT HAS BEEN MARKED STATE'S  
16 EXHIBIT NUMBER 4 AND ASK YOU DO THESE APPEAR TO BE THE  
17 SAME TYPE OF TENNIS SHOES YOU SAW THE PERPETRATOR WEARING?

18 A YES.

19 Q I AM GOING TO SHOW YOU WHAT HAS BEEN MARKED AS  
20 STATE'S EXHIBIT NUMBER 3 FOR IDENTIFICATION AND ASK YOU  
21 DOES THIS APPEAR TO BE A SIMILAR SWEATER WORN BY THE  
22 PERPETRATOR THAT ATTACKED YOU?

23 A YES.

24 Q DO YOU KNOW WHAT THE DOCTORS, WHAT TYPE OF INJURIES  
25 DID YOU SUFFER FROM AS THE RESULT OF BEING ATTACKED?

1 A HE BROKE ME TWO RIBS. ONE IN MY BACK AND ONE ON MY  
2 CHEST.

3 Q HOW LONG WERE YOU IN THE HOSPITAL?

4 A ALL THE AFTERNOON.

5 Q HOW MUCH TIME DID YOU HAVE TO MISS FROM WORK, WHEN  
6 DID YOU FINALLY GO BACK TO WORK?

7 A THREE MONTHS AFTER.

8 Q WERE YOUR INJURIES HEALED BY THOSE THREE MONTHS?

9 A NOT COMPLETELY.

10 Q OTHER THAN THE PHYSICAL INJURIES THAT YOU SUFFERED,  
11 DID YOU SUFFER ANYTHING ELSE?

12 A YES.

13 Q AND WHAT WAS THAT?

14 A ALL OF THIS PRODUCED FEAR, DEPRESSION. I HAVE  
15 NIGHTMARES ON THE NIGHT THAT I COULDN'T SLEEP. THE FIRST  
16 DAYS AFTER THAT HAPPENED IT WAS IMPOSSIBLE FOR ME TO  
17 SLEEP, LAY DOWN, I HAD TO SLEEP SITTING. EVEN TODAY I  
18 HAVE PROBLEMS ON MY BACK BECAUSE OF THE INJURY HE PROVOKED  
19 ME. THAT IS WHY IT IS NOT EASY TO FORGET ALL OF THOSE  
20 EXPERIENCES.

21 Q AFTER YOU WERE RELEASED FROM THE HOSPITAL DID YOU GO  
22 TO THE RICHLAND COUNTY HEADQUARTERS?

23 A YES.

24 Q AND DO YOU REMEMBER HOW MUCH, WHEN YOU WENT TO THE  
25 RICHLAND COUNTY HEADQUARTERS?

1 A TWO WEEKS AFTER.

2 Q AND DO YOU REMEMBER MEETING WITH INVESTIGATOR ERIC  
3 BARNES.

4 A YES.

5 Q AND DO YOU REMEMBER HIM HAVING A FEMALE INTERPRETER  
6 WITH HIM?

7 A YES.

8 Q AND DID YOU ANSWER QUESTIONS ABOUT WHAT HAPPENED TO  
9 YOU INSIDE OF THAT HOUSE?

10 A YES.

11 Q DID ANYONE ANSWER FOR YOU THESE QUESTIONS?

12 A NO.

13 Q WAS EVERYTHING THAT YOU TOLD TO THIS INVESTIGATOR  
14 FROM YOUR OWN MOUTH?

15 A YES.

16 Q AND IS IT EVERYTHING THAT YOU JUST TOLD THIS JURY?

17 A YES.

18 Q DO YOU REMEMBER THE INVESTIGATOR ASKING YOU, DO YOU  
19 REMEMBER THE INVESTIGATOR SHOWING YOU SOME PICTURES?

20 A YES.

21 Q I AM GOING TO SHOW YOU WHAT HAS BEEN MARKED STATE'S  
22 NUMBER 6 FOR IDENTIFICATION PURPOSES. DO YOU RECOGNIZE  
23 THAT FORM?

24 A YES.

25 Q WHAT IS IT?

1 A PHOTOGRAPHS OF SOME PEOPLE.

2 Q HOW MANY PHOTOGRAPHS?

3 A SIX.

4 Q AND WHEN THE INVESTIGATOR SHOWED YOU THOSE  
5 PHOTOGRAPHS WHAT DID HE ASK YOU TO DO?

6 A IF I WAS ABLE TO IDENTIFY AMONG THESE PEOPLE, IF  
7 THERE WAS THE PERSON THAT I SAY ATTACKED ME.

8 Q AND WHEN HE GAVE YOU THOSE SIX PICTURES DID HE  
9 SUGGEST IN ANY WAY WHICH PICTURE TO PICK?

10 A NO.

11 Q DID HE MAKE ANY GUARANTEES THAT THE MAN WHO DID  
12 ATTACK YOU, THAT THE PHOTO WOULD BE AMONG THE SIX  
13 PICTURES?

14 A NO.

15 Q HOW LONG DID IT TAKE YOU TO IDENTIFY, OR DID YOU  
16 IDENTIFY A PICTURE?

17 A YES.

18 Q HOW LONG DID IT TAKE YOU TO IDENTIFY OR PICK OUT A  
19 PICTURE?

20 A IT DIDN'T TAKE ME ANY TIME TO RECOGNIZE HIM.

21 Q AND WHICH PICTURE DID YOU PICK OUT?

22 A NUMBER SIX.

23 Q AND WHEN YOU PICKED NUMBER SIX DOES THE INVESTIGATOR  
24 ASK YOU TO PUT YOUR INITIALS BY THE PHOTOGRAPH THAT YOU  
25 PICKED?

1 A YES.

2 Q AND DID YOU PUT YOUR INITIALS?

3 A YES.

4 Q DO YOU USE THEM ON THAT DOCUMENT?

5 A YES.

6 MS. COOPER: YOUR HONOR, AT THIS TIME THE STATE SEEKS  
7 TO INTRODUCE NUMBER 6 INTO EVIDENCE.

8 MS. VAN GINHOVEN: YOUR HONOR, I HAVE AN OBJECTION.

9 THE COURT: SAME OBJECTION AS PREVIOUSLY?

10 MS. VAN GINHOVEN: THAT OBJECTION AND CAN WE APPROACH  
11 FOR A MINUTE?

12 THE COURT: SURE.

13 (WHEREUPON, A BENCH CONFERENCE WAS HELD IN THE  
14 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE  
15 JURY.)

16 THE COURT: OBJECTION IS OVERRULED, STATE'S NUMBER 6  
17 IS IN EVIDENCE.

18 (WHEREUPON, STATE'S EXHIBIT NO. 6 WAS ADMITTED INTO  
19 EVIDENCE.)

20 Q AND JUST SHOW ON THIS DOCUMENT WHERE YOU PUT YOUR  
21 INITIALS, WHICH PHOTOGRAPH DID YOU PUT YOUR INITIALS?

22 A RIGHT HERE.

23 Q AND AFTER YOU PICKED THIS PHOTOGRAPH WERE YOU ASKED  
24 TO FILL OUT SOME PAPERWORK?

25 A YES.

1 Q I AM GOING TO SHOW YOU WHAT HAS BEEN MARKED STATE'S  
2 NUMBER 7, DO YOU RECOGNIZE THAT DOCUMENT?

3 A YES.

4 Q AND WHAT IS THAT DOCUMENT?

5 A WHERE MY PERSONAL DATA AND THE DATE THAT I WENT THERE  
6 WAS WRITTEN.

7 Q AND DID YOU SIGN THAT FORM?

8 A YES.

9 Q AND DO YOU SEE IT ON THE DOCUMENT?

10 A YES.

11 Q AND CAN YOU PLEASE POINT IT OUT?

12 A (WITNESS POINTS TO DIAGRAM.)

13 Q AND WHAT PICTURE ARE YOU SIGNING THAT YOU IDENTIFIED?

14 A NUMBER SIX.

15 MS. COOPER: YOUR HONOR, AT THIS TIME THE STATE WOULD  
16 SEEK TO INTRODUCE NUMBER 7 INTO EVIDENCE.

17 MS. VAN GINHOVEN: JUST NOTE OUR PRIOR OBJECTION.

18 THE COURT: OKAY, OVERRULED, STATE'S 7 IS ADMITTED.

19 (WHEREUPON, STATE'S EXHIBIT NO. 7 WAS ADMITTED INTO  
20 EVIDENCE.)

21 Q AND DO YOU SEE THE DATES ON THE DOCUMENT?

22 A YES.

23 Q AND WHAT WAS THE DATE?

24 A APRIL 22ND OF 2004.

25 MS. COOPER: MAY I PUBLISH IT, YOUR HONOR?

1 THE COURT: ALL RIGHT.

2 Q DO YOU HAPPEN TO KNOW THE NAME OF THE COUNTY WHERE  
3 YOUR BOSS LIVES?

4 A I DON'T REMEMBER.

5 Q AFTER YOU WERE ATTACKED ON APRIL 13TH OF 2004 AND  
6 RETURNED TO WORK HAD YOU TAKEN CHANEY OUT FOR WALKS AGAIN?

7 A NO.

8 Q DO YOU SEE THE MAN THAT ATTACKED YOU ON APRIL 13TH OF  
9 2004 IN THE COURTROOM?

10 A YES.

11 Q CAN YOU PLEASE POINT HIM OUT TO THE JURY AND DESCRIBE  
12 WHAT COLOR SHIRT HE IS WEARING?

13 A IT IS WHITE WITH SQUARES.

14 Q AND COULD YOU POINT HIM OUT PLEASE USING A FINGER.

15 A IT IS HIM.

16 MS. COOPER: YOUR HONOR, LET THE RECORD REFLECT SHE  
17 HAS IDENTIFIED THE DEFENDANT, JERENE HAYWARD.

18 THE COURT: ALL RIGHT.

19 Q HOW LONG DO YOU THINK THIS MAN, THE DEFENDANT, WAS IN  
20 THE HOUSE?

21 A THE TIME THAT I WENT TO WALK.

22 Q AND WHEN YOU DISCOVERED HIM IN THE HOUSE UP UNTIL THE  
23 TIME HE KICKED YOU FROM THE VERY LAST TIME OUTSIDE HOW  
24 MANY MINUTES DO YOU THINK THAT WHOLE THING LASTED?

25 A FROM FIFTEEN TO TWENTY MINUTES MORE OR LESS.

1 Q DO YOU HAVE ANY DOUBT IN YOUR MIND THAT THIS MAN IS  
2 THE MAN THAT ATTACKED YOU ON APRIL 13TH OF 2004?

3 A NO.

4 MS. COOPER: I BEG THE COURT'S INDULGENCE.

5 Q MS. ANTONIO, DO YOU REMEMBER WHEN YOU WERE AT THE  
6 SHERIFFS DEPARTMENT?

7 A YES.

8 Q MAKING SOME DRAWINGS?

9 A NO, I DON'T REMEMBER. THAT HAPPENED TWO YEARS AGO.

10 Q I AM GOING TO SHOW YOU TWO PIECES OF PAPER AND ASK  
11 YOU IF YOU RECOGNIZE THEM?

12 MS. VAN GINHOVEN: OBJECTION, SHE SAYS SHE DIDN'T  
13 REMEMBER ANY OF THESE DRAWINGS. I DON'T KNOW IF SHE IS  
14 GOING TO REFRESH HER MEMORY.

15 THE COURT: SHE CAN SHOW HER THESE DOCUMENTS AND SEE  
16 IF SHE RECOGNIZES THEM. I OVERRULE THE OBJECTION. GO  
17 HEAD, MS. COOPER.

18 Q I HAVE JUST SHOWN YOU TWO PIECES OF PAPER, DO YOU  
19 RECOGNIZE THEM?

20 A YES.

21 Q WHERE DO YOU RECOGNIZE THEM FROM?

22 A THEY ARE DESCRIPTIONS OF THE STREET AND THE  
23 DESCRIPTION OF THE HOUSE.

24 Q AND DID YOU DRAW THESE?

25 A YES.

1 Q AND DID YOU GIVE THEM TO INVESTIGATOR ERIC BARNES?

2 A YES.

3 Q DO YOU SEE SOME WRITING IN ENGLISH IN THESE PIECES OF  
4 PAPER?

5 A YES.

6 Q WHO WROTE THOSE ENGLISH WORDS DOWN?

7 A MY BOSS MAN.

8 Q AND DID YOU TELL HIM TO WRITE THOSE WORDS DOWN?

9 A YES.

10 Q AND DID HE DO THAT FOR BOTH PICTURES?

11 A I JUST TRIED SOME FORMS OF THE HOUSE AND HE ONLY  
12 WROTE THE NAMES.

13 Q AND HE DID THAT THROUGH THE DESCRIPTION OF THE HOUSE  
14 AND THE DESCRIPTION OF THE STREET?

15 A YES.

16 MS. COOPER: YOUR HONOR, AT THIS TIME THE STATE SEEKS  
17 TO INTRODUCE 38 WHICH IS A PICTURE OF THE HOUSE AND 39  
18 WHICH IS A PICTURE OF THE STREET.

19 MS. VAN GINHOVEN: YOUR HONOR, WE ARE OBJECTING ON  
20 BOTH OF THE PICTURES IN THE WRITING, SHE DIDN'T WRITE ON  
21 THESE.

22 THE COURT: LET ME TAKE A LOOK AT THOSE.

23 MS. COOPER: YES, SIR.

24 THE COURT: THE OBJECTION IS OVERRULED, STATE'S 38  
25 AND 39 ARE ADMITTED.

1 (WHEREUPON, STATE'S EXHIBIT NOS. 38 AND 39 WERE  
2 ADMITTED INTO EVIDENCE.)

3 MS. COOPER: MAY I PUBLISH THESE TO THE JURY, YOUR  
4 HONOR.

5 THE COURT: YOU MAY.

6 Q MS. ANTONIO, DO YOU REMEMBER A POLICE OFFICER COMING  
7 TO YOU AND COLLECTING YOUR SALIVA?

8 A I THINK, YES.

9 Q ON OCTOBER 11, 2004 DO YOU REMEMBER AN OFFICER COMING  
10 TO THE CONNELL'S RESIDENCE?

11 A YES.

12 MS. VAN GINHOVEN: I OBJECT TO LEADING AT THIS POINT,  
13 YOUR HONOR.

14 THE COURT: WAIT JUST A MINUTE. I SUSTAIN TO THE  
15 FORM OF THE QUESTION, YOU WILL HAVE TO REPHRASE YOUR  
16 QUESTION, SOLICITOR.

17 MS. COOPER: THANK YOU, YOUR HONOR.

18 Q DID ANYONE COME VISIT YOU AT THE CONNELL'S HOUSE ON  
19 OCTOBER THE 11TH OF 2004?

20 A YES.

21 Q AND WAS THAT PERSON IN LAW ENFORCEMENT?

22 A YES.

23 Q AND WHAT DID THAT PERSON WANT?

24 A HE WAS INVESTIGATING ABOUT THIS CASE AND HE WAS  
25 LEAVING--

1 Q WHAT DID HE TAKE FROM YOU?

2 A HE TOLD ME TO GIVE HIM A SAMPLE OF MY SALIVA.

3 MS. COOPER: YOUR HONOR, MAY WE APPROACH FOR A  
4 MINUTE?

5 THE COURT: SURE.

6 (WHEREUPON, A BENCH CONFERENCE WAS HELD IN THE  
7 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE  
8 JURY.)

9 MS. COOPER: THANK YOU, SENORITA ANTONIO, PLEASE  
10 ANSWER ANY QUESTIONS FROM THE DEFENSE.

11 THE COURT: WE ARE GOING TO TAKE A BREAK BEFORE WE  
12 BEGIN CROSS-EXAMINATION. MR. FOREMAN AND LADIES AND  
13 GENTLEMEN, WE WILL TAKE A RECESS AT THIS TIME. PLEASE  
14 DON'T DISCUSS THE CASE. PROBABLY TEN OR TWELVE MINUTES.  
15 EVERYONE ELSE STAY SEATED, PLEASE.

16 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT FOR  
17 A SHORT BREAK.)

18 THE COURT: MR. CAMPUSANO, WOULD YOU PLEASE TELL MS.  
19 ANTONIO THAT SHE CANNOT DISCUSS HER TESTIMONY WITH ANYONE  
20 DURING THIS BREAK.

21 (WHEREUPON, MR. CAMPUSANO TRANSLATES TO THE WITNESS.)

22 THE COURT: WE WILL TAKE ABOUT TEN OR FIFTEEN  
23 MINUTES.

24 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

25 THE COURT: IF YOU WILL HAVE MS. ANTONIO COME BACK UP

1 ON THE STAND. IS THE DEFENSE READY TO CROSS-EXAMINE?

2 MS. VAN GINHOVEN: YES, YOUR HONOR.

3 THE COURT: IS THE STATE READY?

4 MS. COOPER: YOUR HONOR, YES. JUST FOR PURPOSES OF  
5 DISCUSSION OF WITNESSES, WHAT TIME DO YOU THINK WE WILL GO  
6 TO.

7 THE COURT: SOMETIME PROBABLY AROUND 5:30 OR 6:00,  
8 SOMETHING LIKE THAT. IT SORT OF DEPENDS ON THE  
9 CROSS-EXAMINATION, HOW LONG IT IS GOING TO BE AND WHERE WE  
10 ARE ONCE THE CROSS-EXAMINATION OF THIS WITNESS HAS BEEN  
11 COMPLETED. I WANT TO TRY TO GET FINISHED WITH MS. ANTONIO  
12 TODAY AND HOW MUCH FURTHER WE GO AFTER THAT DEPENDS ON HOW  
13 YOU FOLKS DO. BUT I DON'T ANTICIPATE BEING HERE PAST 6:00  
14 O'CLOCK.

15 MS. COOPER: OKAY, THANK YOU, YOUR HONOR.

16 THE COURT: BRING THE JURY BACK IN, PLEASE.

17 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT  
18 APPROXIMATELY 4:15 P.M.)

19 THE COURT: ALL RIGHT, CROSS-EXAMINATION.

20 CROSS-EXAMINATION

21 BY MS. VAN GINHOVEN:

22 Q GOOD AFTERNOON, MS. ANTONIO.

23 A GOOD AFTERNOON.

24 Q NOW, MS. ANTONIO, YOU STATED THAT YOU LEFT THE HOME  
25 AT 2:45 TO GO ON A WALK WITH THE CHILD?

1 A I DIDN'T SEE EXACTLY WHAT TIME, IT WAS AROUND THAT  
2 TIME.

3 Q DO YOU REMEMBER TESTIFYING IN A PRIOR HEARING WHERE  
4 YOU SAID YOU LEFT AROUND 2:45?

5 A I SAID BETWEEN 2:30 AND 2:45 APPROXIMATELY.

6 Q OKAY. DO YOU REMEMBER TALKING WITH THE INVESTIGATORS  
7 ON APRIL 22ND OF 2004?

8 A YES.

9 Q AND YOU REMEMBER TELLING THEM IT WAS AROUND 2:45 WHEN  
10 YOU WENT ON YOUR WALK?

11 A YES.

12 Q AND YOU SAY THE WALK TAKES ABOUT A HALF OF AN HOUR,  
13 RIGHT?

14 A YES.

15 Q AND WHEN YOU WENT ON THIS WALK AND YOU ENCOUNTERED  
16 THE PERSON SELLING PRODUCTS ONCE YOU TOLD THEM THAT YOU  
17 DIDN'T WANT TO BUY ANYTHING YOU WENT YOUR SEPARATE WAYS,  
18 IS THAT RIGHT?

19 A I WALKED AWAY FROM HIM, HE STAYED THERE.

20 Q AND YOU CONTINUED TO WALK THE CHILD, IS THAT RIGHT?

21 A YES.

22 Q NOW, WHEN YOU CAME BACK TO THE HOME YOU TESTIFIED  
23 THAT YOU LEFT THE CHILD IN THE STROLLER BY THE GARAGE?

24 A YES.

25 Q AND THAT WAS OUTSIDE?

1 A YES.

2 Q AND DURING THIS INCIDENT YOU TESTIFIED THAT YOU SAW A  
3 PISTOL ON THE FLOOR, IS THAT RIGHT?

4 A YES, BUT THAT HAPPENED AFTER THAT MAN KICKED ME.

5 Q RIGHT, AFTER YOU ARE BACK IN THE HOUSE YOU SEE THE  
6 GUY ON THE FLOOR?

7 A YES.

8 Q AND ALSO DURING THIS ENCOUNTER YOU ALSO STRUCK HIM  
9 WITH A CURTAIN ROD OR CURTAIN HANGER?

10 A YES.

11 Q WHEN YOU WENT OUT ON A WALK WITH THE CHILD, WHEN YOU  
12 WENT ON YOUR WALK YOU SAW THE PERSON SELLING PRODUCTS, IS  
13 THAT RIGHT?

14 A YES.

15 Q AND YOU CAME BACK TO THE HOUSE?

16 A YES.

17 Q YOU DIDN'T SEE ANYBODY ELSE WHILE YOU WERE ON THAT  
18 WALK?

19 A NO.

20 Q WHEN YOU SPOKE WITH THE FEMALE OFFICER AT THE  
21 HOSPITAL, ON THE DESCRIPTION YOU SAID THE PERSON WHO  
22 ATTACKED YOU HAD NO FACIAL HAIR, NO MUSTACHE?

23 A NO.

24 Q SO YOU TOLD THEM THAT PERSON DID NOT HAVE A MUSTACHE?

25 A YES.

1 Q SO, WE ARE CLEAR WHEN YOU TOLD THE POLICE THE  
2 DESCRIPTION YOU TOLD THEM THE PERSON THAT ATTACKED YOU DID  
3 NOT HAVE A MUSTACHE?

4 A NO, I BEG YOUR PARDON, YES. I TOLD THEM THAT HE  
5 DIDN'T HAVE ANY MUSTACHE.

6 Q YOU ALSO TOLD THEM THAT HE HAD ON A LONG SLEEVED DARK  
7 BLUE SWEATER, IS THAT RIGHT?

8 A YES.

9 Q WHEN YOU WENT TO HEADQUARTERS DID THE OFFICER INFORM  
10 YOU THAT YOU WERE COMING THERE TO LOOK AT PICTURES AND TO  
11 GIVE A STATEMENT?

12 A YES.

13 MS. VAN GINHOVEN: MAY I APPROACH THE WITNESS, YOUR  
14 HONOR?

15 THE COURT: YOU MAY.

16 Q IN STATE'S EXHIBIT NUMBER 6 ARE THESE THE PICTURES  
17 THAT YOU LOOKED AT?

18 A YES.

19 Q AND THESE PICTURES, PHOTO NUMBER 3 AND 4, THOSE  
20 PEOPLE HAVE MUSTACHES, IS THAT CORRECT?

21 A 5 AND 6, THEY HAVE MUSTACHES.

22 Q YOU THINK 5 AND 6 DO BUT 3 AND 4 DON'T?

23 A IT IS NOT TO THEM, IT IS JUST A SHADOW AND I DON'T  
24 CONSIDER IT A MUSTACHE.

25 Q OKAY. WELL, PICTURES NUMBER 3 AND 4 HAVE HAIR ON

1 THEIR LIP, IS THAT RIGHT?

2 MR. CAMPUSANO: SAY AGAIN, PLEASE.

3 Q PICTURES NUMBER 3 AND 4 HAVE HAIR ON THEIR LIP.

4 A I CANNOT SEE IT.

5 MS. VAN GINHOVEN: YOUR HONOR, I ASK TO PUBLISH THIS  
6 TO THE JURY.

7 THE COURT: THAT IS FINE.

8 MS. VAN GINHOVEN: I BEG THE COURT'S INDULGENCE.

9 THE COURT: ALL RIGHT.

10 Q MS. ANTONIO, DID YOU JUST SAY THAT YOU CANNOT SEE THE  
11 PICTURES VERY WELL IN THE LINEUP?

12 A I SEE THE PHOTOGRAPHS CLEARLY BUT TO CONSIDER THAT A  
13 SHADOW IS CALLED A MUSTACHE IS DIFFERENT FOR ME.

14 Q FIRST OF ALL YOU TESTIFIED THAT YOUR HUSBAND CAME TO  
15 THE NEIGHBORS HOUSE, IS THAT RIGHT?

16 A YES.

17 Q AND THEN HE WENT WITH YOU TO THE HOSPITAL?

18 A YES.

19 Q AND WHEN YOU SPOKE WITH THE POLICE OFFICER AT THE  
20 HOSPITAL YOUR HUSBAND TRANSLATED FOR YOU, IS THAT RIGHT?

21 A YES.

22 Q AND WHEN YOU WENT TO HEADQUARTERS TO SPEAK WITH THE  
23 POLICE OFFICERS YOUR HUSBAND WENT THERE WITH YOU AS WELL?

24 A YES.

25 Q AND HE WAS WITH YOU WHEN YOU GAVE YOUR STATEMENT AND

1 WHEN YOU LOOKED AT THE PHOTO LINEUP?

2 A YES.

3 Q THESE PICTURES THAT YOU DREW, STATE'S 38 AND 39, YOU  
4 SAY THAT WAS YOUR HUSBAND'S HANDWRITING ON STATE'S 38?

5 A THE NAMES OF THE PLACES OF THE HOUSE, THE DRAWING WAS  
6 DONE BY ME.

7 Q BUT YOUR HUSBAND PUT IN THE ENGLISH WORDS THAT  
8 DESCRIBED THE ROOMS?

9 A YES.

10 Q AND STATE'S 39 THE ENGLISH WORDS WRITTEN ON THERE,  
11 DID YOUR HUSBAND WRITE THOSE AS WELL?

12 A WERE WRITTEN BY THE PERSON THAT WAS INTERPRETING FOR  
13 US.

14 Q SO, YOUR HUSBAND DID NOT WRITE THE WORDS ON THIS  
15 PIECE OF PAPER?

16 A NO.

17 Q AGAIN, IN YOUR DESCRIPTION YOU DESCRIBED THE PERSON  
18 AS A BLACK MALE WITH DARK SKIN?

19 A YES.

20 MS. VAN GINHOVEN: I BEG THE COURT'S INDULGENCE.

21 THE COURT: SURE.

22 Q MS. ANTONIO, WHEN YOU WENT TO THE POLICE DEPARTMENT,  
23 TO HEADQUARTERS, BEFORE YOU LOOKED AT THE PHOTOS DID THE  
24 OFFICER TELL YOU THAT THE PERSON THAT ATTACKED YOU MAY NOT  
25 BE IN THERE?

1 A NO.

2 Q DID YOU HAVE THE OPPORTUNITY TO LOOK AT THESE  
3 PICTURES IN COLOR?

4 A YES, NO, IN THE SAME COLOR.

5 Q ALL YOU SAW WAS THIS BLACK AND WHITE LINEUP THAT IS  
6 MARKED AS STATE'S EXHIBIT NUMBER 6?

7 A YES.

8 Q AND AFTER YOU SPOKE WITH THE POLICE OFFICERS DID YOU  
9 GIVE A STATEMENT THAT YOU SIGNED?

10 A YES.

11 Q YOU GAVE A STATEMENT THAT YOU PUT YOUR SIGNATURE ON?

12 A I DON'T KNOW WHAT IS A STATEMENT.

13 Q AFTER YOU SPOKE WITH THE OFFICERS ABOUT WHAT HAPPENED  
14 DID YOU WRITE ANYTHING ON A PIECE OF PAPER OR DID THE  
15 OFFICERS WRITE ANYTHING DOWN ON A PIECE OF PAPER?

16 A I WROTE IN A PAPER WHERE IT WAS SPECIFIED THAT THE  
17 PERSON I RECOGNIZED WAS THE SAME PERSON.

18 Q OKAY. SO, YOU NEVER SIGNED A PIECE OF PAPER THAT  
19 STATED WHAT YOU SAID HAPPENED AT MR. CONNELL'S HOUSE?

20 A I SIGNED THAT PAPER.

21 MS. VAN GINHOVEN: YOUR HONOR, CAN WE APPROACH?

22 THE COURT: SURE.

23 (WHEREUPON, A BENCH CONFERENCE WAS HELD IN THE  
24 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE  
25 JURY.)

1 THE COURT: ALL RIGHT, MS. VAN GINHOVEN, YOU MAY  
2 CONTINUE.

3 MS. VAN GINHOVEN: THANK YOU, YOUR HONOR.

4 Q THIS EXHIBIT THAT IS MARKED STATE'S NUMBER 7, IS THIS  
5 THE PIECE OF PAPER YOU ARE TALKING ABOUT SIGNING?

6 A YES.

7 Q DID YOU SIGN A WRITTEN DECLARATION?

8 A YES, I SIGNED THAT PAPER.

9 Q DID YOU SIGN ANYTHING ELSE OTHER THAN THIS PIECE OF  
10 PAPER?

11 A NO.

12 Q AND YOU TALKED TO THE POLICE ON APRIL THE 22ND?

13 A YES.

14 Q AND THAT IS THE ONLY PIECE OF PAPER THAT YOU SIGNED?

15 A YES.

16 Q I HAVE NO FURTHER QUESTIONS.

17 THE COURT: REDIRECT.

18 MS. COOPER: BRIEFLY, YOUR HONOR.

19 REDIRECT EXAMINATION

20 BY MS. COOPER:

21 Q IF YOU LEFT THE HOUSE BETWEEN 2:30 AND 2:45 TO TAKE  
22 THE BABY FOR A WALK HOW MANY MINUTES AFTER YOU STARTED THE  
23 WALK DID YOU ENCOUNTER THE DEFENDANT ON THE STREET?

24 A AROUND FIVE MINUTES, I WAS WALKING SLOWLY.

25 Q AND HOW LONG DID YOU TALK TO HIM ON THE STREET,

1 APPROXIMATELY?

2 A TWO OR THREE MINUTES, I DON'T KNOW.

3 Q AND YOU WEREN'T WATCHING YOUR CLOCK WHEN YOU WALKED  
4 THE BABY FOR THE REST OF THE TIME, DID YOU?

5 MS. VAN GINHOVEN: I WILL OBJECT TO THE LEADING.

6 THE COURT: SUSTAINED TO THE FORM OF THE QUESTION,  
7 REPHRASE YOUR QUESTION.

8 Q ARE YOU ABSOLUTELY SURE YOU WALKED THE BABY FOR  
9 THIRTY MINUTES?

10 A IT IS AN APPROXIMATE TIME.

11 Q PLEASE REPEAT YOUR ANSWER.

12 A IT IS AN APPROXIMATE TIME, I DIDN'T SEE THE CLOCK.

13 Q THE FACT THAT YOUR HUSBAND WAS WITH YOU AT THE  
14 HOSPITAL AND AT THE POLICE HEADQUARTERS DOES THAT  
15 INFLUENCE YOUR STORY IN ANY WAY?

16 A NO.

17 MS. VAN GINHOVEN: OBJECTION TO LEADING.

18 THE COURT: I OVERRULE ON THAT. WHAT WAS THE ANSWER.

19 Q PLEASE REPEAT THE ANSWER.

20 A NO.

21 Q EVERYTHING THE POLICE OFFICERS TOOK DOWN, WERE THOSE  
22 WORDS FROM YOUR MOUTH?

23 A YES.

24 Q DID YOU PICK PICTURE NUMBER 6 BASED ON FACIAL HAIR?

25 A NO.

1 Q WHAT DID YOU BASE, WHY DID YOU PICK NUMBER 6?

2 A BECAUSE IT IS THE SAME PERSON.

3 Q AND WHAT DID THAT PERSON DO?

4 A WAS THE SAME THAT I FOUND INSIDE OF THE HOUSE AND  
5 ATTACKED ME INSIDE OF THE HOUSE.

6 Q WERE YOU EVER ASKED TO SIGN A WRITTEN DECLARATION?

7 A TO WHAT DECLARATION DO YOU REFER.

8 Q YOU WERE NOT ASKED BY THE POLICE TO SIGN ANYTHING  
9 OTHER THAN THIS FORM, IS THAT CORRECT?

10 A YES.

11 Q THANK YOU.

12 THE COURT: RE CROSS?

13 MS. VAN GINHOVEN: VERY BRIEFLY.

14 RE CROSS-EXAMINATION

15 BY MS. VAN GINHOVEN:

16 Q WHEN YOU WERE AT HEADQUARTERS AND YOU WERE SPEAKING  
17 TO THE POLICE YOUR HUSBAND WAS THERE AND A SECRETARY WHO  
18 SPOKE SPANISH WAS THERE?

19 A YES.

20 Q NO FURTHER QUESTIONS.

21 THE COURT: PLEASE TELL MS. ANTONIO SHE CAN STEP DOWN  
22 AND PLEASE WATCH HER STEP, PLEASE.

23 MR. JOPHLIN: THE STATE CALLS RON COWART.

24 THE COURT: ALL RIGHT.

25 RONALD COWART, AFTER BEING DULY SWORN, TESTIFIED

1 AS FOLLOWS:

2 DIRECT EXAMINATION

3 BY MR. JOPHLIN:

4 Q GOOD AFTERNOON, MR. COWART.

5 A GOOD AFTERNOON.

6 Q COULD YOU TELL THE JURY A LITTLE BIT ABOUT YOURSELF,  
7 WHERE ARE YOU FROM?

8 A I LIVE BETWEEN BLYTHEWOOD AND ELGIN, SOUTH CAROLINA.  
9 I LIVE IN KERSHAW COUNTY.

10 Q OKAY AND THAT IS IN NORTHEASTERN?

11 A NORTHEASTERN COLUMBIA.

12 Q AND WHERE ARE YOU EMPLOYED?

13 A I AM SELF EMPLOYED, I AM A NURSERYMAN AND A  
14 LANDSCAPER.

15 Q AND WHERE DO YOU GENERALLY DO YOUR WORK?

16 A WE GENERALLY DO OUR WORK IN THE NORTHEAST AREA.

17 Q AND ARE THESE LIKE BUSINESS, LIKE LANDSCAPING?

18 A WE HAVE SPECIALIZED IN THE LAST TWO YEARS IN SOLID  
19 INSTALLATION AND WE ARE ALSO WHOLESALE TREE GROWERS.

20 Q OKAY. AND BRINGING YOUR ATTENTION TO THE INCIDENT AT  
21 HAND. EXCUSE ME, WHERE WERE YOU ON THE AFTERNOON OF APRIL  
22 THE 13TH OF 2004?

23 A OKAY, ON APRIL THE 13TH OF 2004, THAT WAS ON TUESDAY.  
24 WE HAD RAIN ALL MORNING LONG AND WE DID NOT GO TO WORK  
25 UNTIL 2:30. THE CONDITIONS WERE CLOUDY, IT WAS DARK. WE

*Handwritten notes:*  
Joplin  
wit 3

1 LOADED 80 BALES OF PINE STRAW ON THE TRUCK, THAT IS ALL IT  
2 HOLDS AND WE WERE GOING OVER TO CRESCENT LAKE TO PUT OUT  
3 PINE STRAW.

4 Q AND WHERE WERE YOU COMING FROM TO GET TO CRESCENT  
5 LAKE?

6 A WE LEFT AND WE WERE ON KELLY MILL ROAD THEN ON TO  
7 RIMER POND ROAD AND THEN TO LONGTOWN WEST.

8 Q I AM GOING TO SHOW YOU THIS MAP RIGHT HERE. THIS IS  
9 LONGTOWN RIGHT HERE AND THEN RIMER POND?

10 A YES.

11 Q AND CAN YOU SORT OF SHOW US WHERE YOU ARE COMING  
12 FROM.

13 A OKAY, THIS IS RIMER POND RIGHT HERE AND THERE IS  
14 LONGTOWN WEST.

15 Q PUT A BIG CIRCLE RIGHT THERE.

16 A THIS IS THE LAKE RIGHT THERE. THIS IS THE SCHOOL.  
17 THIS IS LONGTOWN RIGHT HERE?

18 Q YES, SIR.

19 A AND THEN LONGTOWN ROAD, WE CAME RIGHT ON DOWN THAT  
20 ROAD AND WE TOOK A RIGHT ON HERE. AND I PICKED HIM UP  
21 SOMEWHERE ALONG RIGHT THERE.

22 Q OKAY. SO, YOU WERE COMING FROM RIMER POND AND YOU  
23 TURNED ON THIS ROAD HERE BESIDE THE SCHOOL?

24 A THAT IS RIGHT.

25 Q AND THEN YOU TURNED ON LONGTOWN WEST?

1 A THAT'S RIGHT.

2 Q WHICH GOES AROUND BASICALLY AROUND THIS WHOLE AREA?

3 A THAT'S RIGHT.

4 Q NOW, YOU SAY YOU PICKED SOMEBODY UP. WHO DID YOU  
5 PICK UP RIGHT AROUND THIS AREA WHERE YOU SHOWED ME?

6 A I PICKED UP THE GENTLEMAN RIGHT OVER THERE, THE  
7 DEFENDANT.

8 Q CAN YOU DESCRIBE ACTUALLY WHO, HOW THAT HAPPENED, HOW  
9 YOU PICKED HIM UP?

10 A WELL, THERE WAS THREE OF US IN THE CAB AND I WAS  
11 DRIVING AND TWO WORKERS WITH ME. AND THE TRUCK WOULD ONLY  
12 HOLD THREE PEOPLE. AND AFTER I GOT ONTO LONGTOWN WEST HE  
13 JUMPED OUT IN FRONT OF THE TRUCK. IF I HAD BEEN LOADED  
14 DOWN WITH MY TRACTOR AND ALL OF THAT, THE EQUIPMENT I  
15 WOULD HAVE HIT HIM. BUT THE PINE STRAW WAS A LIGHT LOAD  
16 SO I WAS ABLE TO STOP, HE WAS WAIVING HIS HANDS FOR ME TO  
17 STOP.

18 Q AND WHEN YOU STOPPED WHY DID YOU GIVE HIM A RIDE?

19 A HE TOLD ME TWO MEN WERE AFTER HIM, ONE WAS BLACK AND  
20 ONE WAS WHITE AND THEY WANTED TO BEAT HIM UP AND THEY  
21 TRIED TO DO THE SAME THING THE DAY BEFORE.

22 Q AROUND WHAT TIME OF DAY WAS THIS?

23 A IS WAS A LITTLE AFTER 4:00 O'CLOCK.

24 Q AND CAN YOU DESCRIBE FOR THE JURY WHAT THE PERSON  
25 LOOKED LIKE THAT YOU PICKED UP?

1 A IT WAS A BLACK MALE, SHORT HAIR AND HE HAD ON BLUE  
2 JEANS AND HE HAD ON A DARK SHIRT, IT WAS LONG SLEEVED AND  
3 HE HAD A BACKPACK WITH HIM. AND HE WAS DRENCHING SWEAT,  
4 HE WAS WET WITH SWEAT AND HE WANTED A RIDE.

5 Q AND WHEN HE WAS TRYING TO GET A RIDE WHAT WAS HIS  
6 Demeanor, HIS GENERAL Demeanor AS HE WAS TALKING TO YOU.

7 A HE WAS EXCITED.

8 Q AND DID YOU NOTICE ANYTHING ELSE ABOUT WHAT HE WAS  
9 WEARING, HIS Demeanor AS TO WHAT HE WAS WEARING AS HE  
10 APPROACHED THE TRUCK?

11 A AS FAR AS THE SHOES, I DON'T KNOW, WHEN I FIRST SAW  
12 HIM IT WAS JUST RIGHT IN FRONT OF ME. I DRIVE A CAB OVER  
13 THE WINDSHIELD AND THE ENGINE IS UNDERNEATH ME. IT WAS  
14 BLUE JEANS, A DARK COLORED SHIRT, LONG SLEEVED, I SAW NO  
15 HAT.

16 Q AND WHAT HAPPENED, DID YOU GIVE HIM A RIDE?

17 A YES, HE WANTED TO GET IN THE CAB WITH US AND I SAID,  
18 NO, THE CAB ONLY HOLDS THREE PEOPLE. IF YOU WANT TO RIDE  
19 YOU CAN CLIMB ON TOP OF THE STRAW.

20 Q AND DID HE?

21 A HE CLIMBED ON TOP OF THE STRAW AND HE MUST OF MELTED  
22 IN THAT STRAW BECAUSE I HAD ALL THE WAY TO THE TOP RAIL, I  
23 MEAN SHE WAS LOADED. HE GOT BEHIND THE HEADBOARD IS WHAT  
24 HE DID RIGHT BEHIND US LAYING UP THERE.

25 Q AND WAS THAT PART VISIBLE?

1 A FROM THE ROAD?

2 Q CORRECT.

3 A IT COULD OF BEEN AND IT COULD NOT HAVE BEEN. IF HE  
4 HAD OF SPREAD EAGLE AND REALLY FLATTENED OUT BUT MAYBE  
5 NOT.

6 Q WHAT HAPPENED THEN WHEN HE GOT IN THE TRUCK, WHERE  
7 DID YA'LL GO THEN?

8 A WE WENT ON DOWN THE ROAD AND THAT IS LONGTOWN WEST  
9 AND WE TURNED INTO THE SUBDIVISION THAT THEY WERE TALKING  
10 ABOUT, CRESCENT LAKE. TOOK ONE LEFT AND TOOK ONE RIGHT  
11 AND THE HOUSE IS ON THE LEFT-HAND SIDE.

12 Q I WILL SHOW YOU ON THIS MAP AGAIN. YOU ARE SAYING  
13 YOU WERE COMING THIS WAY ON LONGTOWN, WHERE IS CRESCENT  
14 LAKE?

15 A CRESCENT LAKE SHOULD BE IN THIS AREA RIGHT IN HERE.

16 Q SO, YOU WENT INTO ANOTHER LITTLE SUBDIVISION IN THE  
17 AREA?

18 A RIGHT. NOW, WE PASSED TAM-O-SHANTER, IS THAT THE  
19 STREET, WE PASSED WITHIN A BLOCK OF THAT, YES.

20 Q WHAT HAPPENED WHEN YOU GOT TO THIS HOUSE?

21 A WHEN WE GOT TO THE HOUSE I PULLED OVER AND HE  
22 HOLLERED DOWN TO ME, HE SAID WHY ARE WE STOPPING, ARE WE  
23 OUT OF GAS. AND I SAID, NO, THIS IS WHERE WE ARE GOING TO  
24 WORK THIS AFTERNOON. SO MY GUYS GOT OUT AND THEY GRABBED  
25 A FEW BALES OF STRAW AND WENT RIGHT AROUND THE BACK YARD

1 AND STARTED SPREADING STRAW. AND HE GOT DOWN AND HE CAME  
2 UP TO ME AND HE WAS STILL EXCITED AND STILL SWEATY, HE  
3 WANTED TO WORK WITH ME JUST TO MAKE MONEY.

4 Q AND SO YOU HAD A CONVERSATION WITH HIM?

5 A I HAD A CONVERSATION WITH HIM, PROBABLY DID NOT LAST  
6 MAYBE OVER FOUR OR FIVE MINUTES, SOMETHING LIKE THAT.

7 Q OKAY. AND AS HE WAS TALKING TO YOU ASKING YOU ABOUT  
8 WORK, EXCUSE ME, WHAT DID HE PULL OUT OF HIS POCKET AS HE  
9 WAS TALKING TO YOU.

10 A HE TOLD ME THAT HE ONLY HAD \$2.00 DOLLARS AND HE  
11 REACHED IN HIS POCKET AND HE PULLED OUT THE \$2.00 DOLLARS  
12 AND HE ALSO HAD A HALF OF A PACK OF CIGARETTES.

13 Q DO YOU REMEMBER WHAT COLOR THOSE CIGARETTES WERE?

14 A GREEN IT LOOKED TO ME.

15 Q AND WHAT DID YOU TELL HIM ABOUT WORKING WITH YOU?

16 A I TOLD HIM I HAD ENOUGH PEOPLE TO WORK WITH ME THAT  
17 DAY.

18 Q AND WHAT HAPPENED THEN?

19 A THEN HE WANTED TO KNOW WHICH WAY WAS THE STORE AND I  
20 POINTED TO THE ENTRANCE WHERE WE CAME IN. AND I SAID YOU  
21 CAN JUST FOLLOW THAT ROAD AND GO ON BACK AND YOU WILL  
22 EVENTUALLY COME TO A STORE ABOUT THREE MILES AWAY.

23 Q OKAY. HOW DID YOU FEEL DURING THIS, HOW WERE YOU  
24 FEELING DURING THIS WHOLE CONVERSATION AND PICKED HIM UP  
25 AND TALKED WITH HIM. HOW WERE YOU FEELING ABOUT THE WHOLE

1 SITUATION?

2 A I BEGAN TO FEEL UNEASY ABOUT IT BECAUSE IT WAS  
3 UNUSUAL FOR SOMEBODY TO BE ACTING THE WAY HE WAS ACTING.  
4 I TOOK THE KEYS OUT OF MY TRUCK AND I HID MY CELL PHONE.

5 Q AND DID YOU GO TO WORK AT THAT HOUSE ALONG WITH YOUR  
6 TWO OTHER WORKERS?

7 A YES, THE GUYS STARTED PUTTING OUT PINE STRAW AND  
8 EVERYTHING. AND IT WAS WITHIN, JUST A FEW MINUTES HE WAS  
9 GONE.

10 Q HOW DO YOU KNOW THAT HE WAS GONE AFTER A LITTLE  
11 WHILE?

12 A I WENT AROUND THE BACK YARD AND WHEN I CAME BACK HE  
13 WAS NO WHERE TO BE FOUND.

14 Q AND WHILE YOU WERE STILL IN THE SUBDIVISION DID YOU  
15 NOTICE ANYTHING UNUSUAL ABOUT THE ACTIVITY GOING ON?

16 A I SAW A LOT OF ACTIVITY. I THINK I HEARD THE SIREN  
17 FROM THE AMBULANCE, THE EMS COMING DOWN THERE. AND THEN  
18 THERE WAS A LOT OF ACTIVITY AND A LOT OF DEPUTY SHERIFFS  
19 AROUND.

20 Q AND DID YOU HAVE AN OCCASION TO SPEAK TO ANY OF THOSE  
21 DEPUTES AROUND?

22 A YES, I CERTAINLY DID. I BELIEVE IT WAS THE SECOND  
23 ONE THAT CAME INTO THE SUBDIVISION CHECKING AROUND ALL OF  
24 THE CUL-DE-SACS. AS ONE WAS COMING BACK OUT I WENT OUT  
25 AND FLAGGED HIM DOWN.

1 Q WHY DID YOU DO THAT?

2 A BECAUSE I JUST KNEW SOMETHING WAS GOING ON.

3 Q AND WHEN YOU FLAGGED DOWN THE DEPUTY WHAT DID YOU  
4 SAY?

5 A I FLAGGED HIM DOWN AND I SAID, I THINK I HAVE GOT  
6 SOMETHING TO TELL YOU. I DON'T KNOW IF IT MEANS ANYTHING  
7 OR NOT. AND HE ASKED ME WHAT IT WAS AND THEN HE ASKED ME  
8 TO DESCRIBE THE PERSON SO I DESCRIBED HIM. AND IT WAS JUST  
9 A VERY FEW MINUTES LATER THAT AN OFFICER CAME OVER AND I  
10 GAVE A STATEMENT.

11 Q AND DO YOU REMEMBER WHICH OFFICER YOU GAVE A  
12 STATEMENT TO?

13 A YES, I THINK IT IS THE GENTLEMAN RIGHT OVER HERE.

14 Q INVESTIGATOR BARNES?

15 A YES, BARNES, YES.

16 Q I AM GOING TO SHOW YOU THIS PIECE OF PAPER, IS THAT  
17 YOUR SIGNATURE ON THE BOTTOM THERE?

18 A YES, IT IS.

19 Q AND CAN YOU, IN THIS STATEMENT YOU GAVE DID YOU GIVE  
20 A DESCRIPTION, WRITE DOWN A DESCRIPTION?

21 A HE WAS TAKING NOTES AND I WAS TELLING HIM ABOUT WHAT  
22 WENT ON.

23 Q OKAY, YOU DIDN'T WRITE IT, HE WROTE IT AND YOU WERE  
24 JUST TELLING HIM?

25 A RIGHT HE WROTE IT.

1 Q DID YOU READ OVER IT WHEN HE WAS FINISHED?

2 A I READ OVER IT, YES SIR.

3 Q THAT IS WHEN YOU SIGNED IT?

4 A YES.

5 Q COULD YOU READ FROM THERE TO--

6 MS. MOBLEY: YOUR HONOR, I AM GOING TO OBJECT, THERE  
7 IS AN IMPROPER FOUNDATION.

8 THE COURT: SUSTAINED.

9 Q DO YOU REMEMBER TELLING THE OFFICER ANYTHING ELSE  
10 ABOUT THE PANTS, SPECIFICALLY THAT YOU HAVE NOT TESTIFIED  
11 TO ABOUT THIS AFTERNOON?

12 A ALL I KNOW IS THAT HE WAS WEARING BLUE JEANS.

13 Q WOULD IT HELP YOU TO REFRESH YOUR MEMORY IF YOU  
14 LOOKED AT YOUR STATEMENT?

15 A I GUESS SO.

16 MS. MOBLEY: THE SAME OBJECTION, YOUR HONOR. HE  
17 HASN'T TESTIFIED TO ANYTHING ELSE.

18 MR. JOPHLIN: I WILL PROCEED, YOUR HONOR.

19 THE COURT: ALL RIGHT, PROCEED.

20 Q YOU GAVE A WRITTEN STATEMENT TO INVESTIGATOR BARNES  
21 THAT AFTERNOON AND THEN WHAT HAPPENED?

22 A AFTER I GAVE HIM A STATEMENT AND ALL OF THAT THEN HE  
23 WAS GONE AND WE CONTINUED OUR WORK.

24 Q AND HOW MUCH LONGER DID YOU CONTINUE TO WORK, UNTIL  
25 ABOUT WHAT TIME DID YOU WORK TO?

1 A WE WORKED ON UNTIL ABOUT 7:00 O'CLOCK OR SOMETHING  
2 LIKE THAT. WE WERE ON OUR WAY HOME ABOUT 7:25, 7:15,  
3 SOMEWHERE ALONG IN THERE. AND I GOT A PHONE CALL FROM MR.  
4 BARNES.

5 Q AND WHAT DID HE TELL YOU?

6 A HE SAID THAT THEY HAD CAUGHT SOMEBODY AND WANTED ME  
7 TO IDENTIFY THEM.

8 Q AND DID YOU GO SOMEWHERE TO DO THAT?

9 A YES, I WAS ON MY WAY HOME AND ALL I HAD TO DO WAS  
10 TAKE A RIGHT ONTO HARD SCRABBLE ROAD AND I WAS OVER THERE  
11 IN A MATTER OF MINUTES.

12 Q AND APPROXIMATELY WHERE WERE YOU ASKED TO GO?

13 A I WAS ASKED TO GO ON HARD SCRABBLE ROAD AND GO ON  
14 TOWARD COLUMBIA AND THEY WERE IN A SUBDIVISION AND I TOOK  
15 A LEFT AND WENT IN THERE AND I TOOK A RIGHT AND THEY WERE  
16 AT THE END OF THE ROAD UP IN THERE.

17 Q AND WHAT HAPPENED WHEN YOU GOT THERE?

18 A WHEN I GOT THERE THERE WERE SOME PATROL CARS AROUND  
19 ABOUT AND THEY HAD HIM STANDING THERE AT THE END OF THE  
20 STREET. AND HE WAS HANDCUFFED BUT THAT DIDN'T MAKE ANY  
21 DIFFERENCE TO ME. I MEAN, I COULD OF MET WITH ONE  
22 PATROLMAN OR ONE PERSON AND I CAN STILL IDENTIFY HIM.

23 Q YOU GOT THERE AND HE WAS HANDCUFFED WHEN YOU GOT  
24 THERE?

25 A THAT IS RIGHT.

1 Q DO YOU REMEMBER HOW MANY POLICE CARS OR DEPUTY POLICE  
2 CARS WERE OUT THERE?

3 A MAYBE FOUR.

4 Q DO YOU REMEMBER APPROXIMATELY HOW MANY OFFICERS?

5 A ABOUT FOUR OR FIVE, SOMETHING LIKE THAT.

6 Q AND DID THAT INFLUENCE YOUR DECISION IN ANY WAY?

7 A NO.

8 Q HOW DID YOU KNOW OR WHAT DID YOU TELL THE OFFICERS  
9 ABOUT THE PERSON THEY ASKED YOU TO IDENTIFY?

10 A WELL, THEY ASKED ME IF THAT WAS THE GUY AND I SAID,  
11 YES IT IS.

12 MS. MOBLEY: YOUR HONOR, WE WOULD JUST RENEW OUR  
13 PRIOR OBJECTIONS.

14 THE COURT: ALL RIGHT, IT IS OVERRULED, GO AHEAD

15 Q HOW DO YOU KNOW THAT THE PERSON YOU WERE LOOKING AT  
16 WITH HANDCUFFS AND INSIDE THE POLICE CAR WAS THE SAME  
17 PERSON YOU PICKED UP AND GAVE A RIDE TO EARLIER THAT DAY?

18 A BECAUSE WHEN WE GOT TO THE JOBSITE AND HE GOT OUT OF  
19 THE TRUCK AND I GOT OUT OF THE TRUCK THAT WAS WITHIN THREE  
20 OR FOUR FEET AWAY FROM HIM.

21 Q DID THE PERSON THEY ASK YOU TO IDENTIFY, DID HE LOOK  
22 THE SAME?

23 A YES.

24 Q DID YOU HEAR HIM YELLING ANYTHING?

25 A YES, HE WAS YELLING AT SOME LADY OVER THERE THAT HE

1 DIDN'T DO IT.

2 Q AND WAS THAT THE SAME VOICE THAT YOU HEARD BEFORE?

3 A YES. HE WAS TALKING AND I FORGOT NOW WHAT HE WAS  
4 SAYING BUT IT WAS THE SAME VOICE.

5 Q WERE THERE ANY RECOGNIZABLE OR UNIQUE MARKS ABOUT HIS  
6 FACE OR NECK?

7 A MOST DEFINITELY SO.

8 Q WHAT WAS THAT?

9 A HE HAS GOT A BIRTHMARK I SAW, NOT A BIRTHMARK BUT HE  
10 HAS GOT A TATTOO ON HIS NECK RIGHT OVER HERE. AND I SAW  
11 THAT WHEN HE GOT OUT OF THE TRUCK ON THE JOBSITE, I FAILED  
12 TO TELL THE OFFICER THAT. BUT WHEN I SAW THAT TATTOO  
13 THERE, I MEAN, THAT CONFIRMED WHO HE WAS BUT EVEN IF I HAD  
14 NOT OF SEEN THAT I COULD STILL CONFIRM THAT WAS THE GUY.

15 Q SO, YOU DIDN'T BASE YOUR IDENTIFICATION ON A TATTOO?

16 A NO, NO, NO.

17 Q AND JUST TO CLEAR UP, YOU DIDN'T SEE HIM COMMIT ANY  
18 CRIME?

19 A NO.

20 Q YOU JUST SAW HIM, KNEW HIM FROM GETTING IN YOUR TRUCK  
21 AND ASKING FOR A RIDE?

22 A THAT'S RIGHT.

23 Q AND TO VERIFY AGAIN, IN YOUR STATEMENT THAT YOU GAVE,  
24 THE WRITTEN STATEMENT THAT YOU SIGNED AND GAVE TO ERIC  
25 BARNES, DID YOU PUT ANYTHING IN THERE ABOUT A TATTOO?

1 A NO, NOT IN THE STATEMENT, NO. THESE THINGS HAPPEN SO  
2 QUICKLY, SO QUICKLY.

3 Q AND I AM GOING TO ASK YOU REAL QUICK, IS THIS BAG  
4 SIMILAR TO THE ONE THAT YOU SAW THE DEFENDANT CARRYING?

5 A IT WAS A DARK BAG.

6 MS. MOBLEY: I WILL OBJECT, YOUR HONOR. WE NEED TO  
7 APPROACH.

8 (WHEREUPON, A BENCH CONFERENCE WAS HELD IN THE  
9 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE  
10 JURY.)

11 THE COURT: ALL RIGHT, CONTINUE, SOLICITOR.

12 Q LET ME JUST ASK THAT ONE MORE TIME. THIS BAG THAT  
13 HAS BEEN MARKED AS STATE'S EXHIBIT NUMBER 9 FOR  
14 IDENTIFICATION. IS THIS THE ONE YOU SAW?

15 A YES.

16 Q IS THIS PACK A CIGARETTE CONTAINED INSIDE OF THE BAG,  
17 IS THAT SIMILAR TO WHAT YOU SAW HIM PULL OUT?

18 A THAT IS A GREEN, YES, IT WAS HALF FULL AND IT LOOKS  
19 LIKE IT IS HALF FULL.

20 MR. JOPHLIN: BEG THE COURT'S INDULGENCE.

21 Q DID ANY OTHER INVESTIGATORS COME OUT AND LOOK AT YOUR  
22 TRUCK?

23 A THERE WAS ONE INVESTIGATOR THAT CAME OUT AND DUSTED  
24 THE TRUCK FOR FINGERPRINTS.

25 Q AND WHILE AT THE WORKSITE YOU WERE AT BEFORE YOU SENT

1 HIM ON HIS WAY, SENT THE GENTLEMAN ON HIS WAY, DID HE ASK  
2 TO GO ANYWHERE AROUND THAT WORKSITE, GO INSIDE THE HOUSE?

3 A YES, HE DID. HE WANTED TO GO IN THERE AND USE THE  
4 TELEPHONE. AND MR. AND MS. YORK WERE GONE AND TOLD HIM  
5 THAT NOBODY WAS THERE. BUT HE WANTED TO USE THE  
6 TELEPHONE.

7 Q AND FINALLY, THE PERSON YOU PICKED UP AND GAVE A RIDE  
8 TO AND THEN THE PERSON YOU IDENTIFIED WITH THE DEPUTIES,  
9 DO YOU SEE HIM IN THE COURTROOM HERE TODAY?

10 A YES, I DO.

11 MS. MOBLEY: I RENEW MY PRIOR OBJECTION.

12 THE COURT: ALL RIGHT, OVERRULED.

13 Q CAN YOU DESCRIBE WHAT HE IS WEARING FOR US?

14 A RIGHT NOW HE IS WEARING A CHECKED SHIRT, LIGHT  
15 COLORED WITH LINES ON IT.

16 Q AND CAN YOU POINT HIM OUT FOR US?

17 A YES, HE IS SITTING RIGHT THERE BETWEEN THE TWO  
18 LADIES.

19 MR. JOPHLIN: LET THE RECORD REFLECT HE IS POINTING  
20 TO THE DEFENDANT.

21 THE COURT: ALL RIGHT.

22 MR. JOPHLIN: NOTHING FURTHER, YOUR HONOR.

23 THE COURT: MS. MOBLEY.

24 MS. MOBLEY: THANK YOU, YOUR HONOR.

25

CROSS-EXAMINATION

1 BY MS. MOBLEY:

2 Q HOW ARE YOU, MR. COWART?

3 A FINE AND HOW ARE YOU.

4 Q THIS WAS A TUESDAY, IS THAT MY UNDERSTANDING?

5 A THIS WAS A TUESDAY.

6 Q OKAY, AND I BELIEVE YOUR TESTIMONY WAS THAT IT WAS  
7 SORT OF DARK, RAINY, CLOUDY THAT DAY, IS THAT RIGHT?

8 A WE HAD RAIN THROUGH THE MORNING AND THEN MY NOTES  
9 THAT I HAVE GOT HERE, I ALWAYS KEEP RECORDS THAT WAY  
10 REPORTED TO WORK AT 2:30 IN THE AFTERNOON. IF WE WOULD OF  
11 HAD SHOWERS WE WOULD OF WORKED DURING THE SHOWERS BUT WITH  
12 RAIN WE DON'T WORK IN RAIN.

13 Q SO, YOU CAN'T LAY PINE STRAW IN RAIN, IS THAT WHAT  
14 YOU ARE TELLING ME?

15 A WE HAVE A POLICY THAT WHEN WE ARRIVE AT A JOB IF IT  
16 IS SHOWERS WE ALL TAKE OUR WALLETS OUT AND WE LAY OUR  
17 WALLETS ON THE DASH OF THE TRUCK. AND WE ALL GET OUT AND  
18 WE WORK IN THE RAIN. LIGHTENING, NO, WE WILL NOT WORK.

19 Q AND I BELIEVE YOUR TESTIMONY THAT YOUR UNDERSTANDING  
20 FROM MR. HAYWARD WHEN HE JUMPED IN FRONT OF YOUR VEHICLE  
21 AND HE TOLD YOU THAT TWO MEN WERE CHASING HIM. IS THAT  
22 CORRECT?

23 A THAT IS RIGHT.

24 Q AND HE WAS SWEATY?

25 A THAT IS RIGHT.

1 Q OKAY. NOW, YOU DIRECTED HIM TO A STORE I BELIEVE YOU  
2 SAID. WHAT STORE WOULD THAT HAVE BEEN, WHAT AREA ARE WE  
3 TALKING ABOUT HERE?

4 A RIGHT OFF THE TOP OF MY HEAD ALL I COULD THINK ABOUT  
5 WAS TO GET HIM SOMEWHERE UP CLEMSON ROAD UP IN THAT AREA  
6 THERE.

7 Q OKAY. IF I SHOW YOU STATE'S EXHIBIT 13 CAN YOU TELL  
8 ME A LITTLE BIT ABOUT WHAT DIRECTION WE ARE TALKING ABOUT?

9 A I HAVE TO LOOK AT THIS. I POINTED THIS AWAY. IN  
10 OTHER WORDS, WE WERE IN CRESCENT LAKE RIGHT IN THAT AREA  
11 THERE AND I POINTED THIS WAY. I COULD OF POINTED ANYWHERE  
12 BUT THERE ARE NO STORES CLOSE BY.

13 Q SURE SO THE STORES ARE DOWN THERE?

14 A THE STORES ARE DOWN THERE.

15 Q AND THEY WOULD BE LIKE DOWN THERE?

16 A THAT'S RIGHT, IT COULD OF BEEN MORE THAN THREE MILES.  
17 IT WAS JUST POINTING TO THE WAY HE COULD GET OUT.

18 Q OKAY. THANK YOU.

19 A AND I BELIEVE THAT IS THE WAY THAT HE DID GO.

20 Q SO, YOU GAVE A STATEMENT TO INVESTIGATOR BARNES PRIOR  
21 TO AND YOU MADE CONTACT WITH INVESTIGATOR BARNES PRIOR TO  
22 BEING CALLED TO IDENTIFY A SUSPECT, IS THAT CORRECT?

23 A I HAD MET INVESTIGATOR BARNES AND GAVE THIS REPORT,  
24 YES.

25 Q OKAY. AND THAT IS WHEN YOU GOT THE CALL AND YOU TOLD

1 MR. JOPHLIN YOU GOT THE CALL BECAUSE THEY HAD HIM IN  
2 CUSTODY AND THEY WANTED YOU TO IDENTIFY HIM?

3 A THAT IS RIGHT.

4 Q OKAY. AND WHEN YOU GET THERE TO IDENTIFY HIM WHAT  
5 DID HE HAVE ON, DO YOU REMEMBER?

6 A FROM WHAT I UNDERSTAND NOW, I DON'T HAVE ANYTHING  
7 WRITTEN DOWN ABOUT THAT PART OF IT.

8 Q JUST YOUR RECOLLECTION.

9 A WHAT I SAW, WHEN I FIRST SAW HIM AND YOU HAVE TO  
10 REMEMBER NOW THIS HAS BEEN TWO YEARS AGO, TWO YEARS. BUT  
11 I NEVER DID FORGET HIS FACE, NOW I BELIEVE HE WAS WEARING  
12 A T-SHIRT.

13 Q A WHITE T-SHIRT?

14 A LIKE A WHITE T-SHIRT.

15 Q IS THAT CORRECT?

16 A YES. BUT I WAS MORE INTERESTED IN IDENTIFYING HIS  
17 FACE.

18 Q AND I KNOW YOU UNDERSTOOD YOUR ROLE TO BE THERE. YOU  
19 THOUGHT SOMETHING WAS GOING ON AND YOU WANTED TO MAKE SURE  
20 THAT YOU IDENTIFIED HIM?

21 A I WANTED TO MAKE SURE THAT I WAS RIGHT.

22 Q FAIR ENOUGH.

23 MS. MOBLEY: BEG THE COURT'S INDULGENCE.

24 THE COURT: SURE.

25 MS. MOBLEY: YOUR HONOR, I DON'T HAVE ANY FURTHER

1 QUESTIONS.

2 THE COURT: ANY REDIRECT.

3 MR. JOPHLIN: BRIEFLY, YOUR HONOR.

4 REDIRECT EXAMINATION

5 BY MR. JOPHLIN:

6 Q YOU SAY IT WAS RAINING IN THE MORNING?

7 A YES, IT WAS.

8 Q THAT MORNING?

9 A YES.

10 Q AND ABOUT 2:30 YOU WENT BACK TO WORK, DO YOU REMEMBER  
11 WHAT THE WHETHER WAS LIKE WHEN YOU WENT BACK TO WORK?

12 A IT WAS STILL DARK AND VERY CLOUDY, YES.

13 Q NOTHING FURTHER.

14 THE COURT: YOU MAY STEP DOWN, SIR.

15 MS. COOPER: THANK YOU, YOUR HONOR, THE STATE CALLS  
16 EMT RUSSELL REDD.

17 RUSSELL REDD, AFTER BEING DULY SWORN, TESTIFIED  
18 AS FOLLOWS:

19 DIRECT EXAMINATION

20 BY MS. COOPER:

21 Q MR. REDD, CAN YOU TELL THE JURY WHERE YOU ARE  
22 EMPLOYED?

23 A RICHLAND COUNTY EMS.

24 Q AND HOW LONG HAVE YOU BEEN EMPLOYED BY RICHLAND  
25 COUNTY EMS?

*5ms*  
*3*

1 A TWO YEARS.

2 Q AND WHAT ARE YOUR DUTIES?

3 A TAKING CARE, NORMAL DUTIES INVOLVING AN AMBULANCE.

4 Q DO YOU ALSO DRIVE AMBULANCES?

5 A YES.

6 Q I AM GOING TO BRING YOUR ATTENTION TO APRIL 13TH OF  
7 2004. DO YOU RECALL BEING DISPATCHED TO 125  
8 TAM-O-SHANTER?

9 A VAGUELY, YES.

10 Q AND I AM GOING TO HAND YOU A REPORT AND ASK IF YOU  
11 RECOGNIZE IT?

12 A YES, I DO.

13 Q AND WHAT IS IT?

14 A THIS IS A COPY OF THE VEHICULAR REPORT THAT WE FILL  
15 OUT ON EVERY AMBULANCE RUN WE DO. THIS IS INVOLVING THE  
16 CALL AT TAM-O-SHANTER.

17 Q WOULD REVIEWING THAT REPORT ASSIST YOU IN REFRESHING  
18 YOUR MEMORY.

19 MS. MOBLEY: YOUR HONOR, I OBJECT, THERE HAS NOT BEEN  
20 A QUESTION YET AS TO THAT HE DOESN'T REMEMBER ANYTHING.

21 THE COURT: SHE HAD ASKED IF HE REMEMBERED AND HE  
22 SAID VAGUELY AND FOR THAT REASON I WILL PERMIT IT. I  
23 OVERRULE THE OBJECTION, GO AHEAD.

24 Q MR. REDD, I ASKED YOU IF THAT WOULD HELP YOU TO  
25 REFRESH YOUR MEMORY?

1 A YES, SIR.

2 Q IN FACT, HOW MANY CALLS DO YOU GO ON IN A GIVEN YEAR?

3 A RICHLAND COUNTY, OVER 40,000. HOW MANY DO I GO ON, I  
4 CAN'T GIVE YOU AN EXACT NUMBER, HUNDREDS.

5 Q AND THAT IS WHY YOU ARE REQUESTED TO FILL OUT A  
6 REPORT SO YOU CAN REPORT TO JURORS LATER ON WHAT YOU DID?

7 A THAT IS PART OF IT, YES MA'AM, THAT AND TO DOCUMENT  
8 THE PATIENT CARE THAT IS PERFORMED ON CALLS.

9 Q OKAY. NOW, I ASKED YOU IF YOU RECALL BEING  
10 DISPATCHED TO AN ADDRESS OF [REDACTED] DRIVE?

11 A YES, MA'AM.

12 Q WHAT TIME WERE YOU DISPATCHED?

13 A OUR DISPATCH TIME ON THIS SHEET, WE WERE DISPATCHED  
14 AT 15:53 WHICH IS 3:53 IN THE AFTERNOON.

15 Q AND DO YOU HAVE A SORT OF CATEGORIZATION OF WHAT TYPE  
16 OF CALL YOU ARE RESPONDING TO?

17 A ON HERE, NO, AS WE ARE DISPATCHED ON THIS, NO MA'AM,  
18 WE DON'T. THIS PERTAINS STRICTLY TO WHAT WE FIND WHEN WE  
19 GET ON THE SCENE.

20 Q HOW LONG DID IT TAKE YOU TO ARRIVE ON THE SCENE?

21 A WE DEPARTED OUR STATION AT 15:54 AND WE WERE OUT TEN  
22 MINUTES LATER AT 16:04.

23 Q JUST AFTER 4:00 P.M. IN THE AFTERNOON?

24 A YES, MA'AM.

25 Q AND WHEN YOU ARRIVED AT THE SCENE CAN YOU PLEASE

1 DESCRIBE WHAT PATIENT YOU WERE THERE TO TREAT?

2 A THE PATIENT THAT I TREATED WAS MS. LOURDES ANTONIO.

3 Q AND WHERE WAS SHE WHEN YOU ARRIVED ON THE SCENE?

4 A WHEN WE ARRIVED ON THE SCENE SHE WAS LYING ON THE  
5 GROUND.

6 Q LYING ON THE GROUND?

7 A YES, MA'AM, LYING MEANING LYING ON HER BACK.

8 Q AND COULD YOU PLEASE REFER TO YOUR NOTES IF YOU NEED  
9 TO, DO YOU RECALL WHAT HER DEMEANOR WAS LIKE AND HER  
10 PHYSICAL CONDITION WAS LIKE?

11 A MS. ANTONIO WAS CONSCIOUS, ALERT AND ORIENTED TIMES  
12 THREE WHICH MEANS SHE KNEW WHERE SHE WAS, WHO SHE WAS AND  
13 WHAT TIME, WHAT YEAR IT WAS. AND SHE WAS COMPLAINING OF  
14 SOME PAIN TO HER CHEST AND TO HER LEFT ELBOW.

15 Q AND DID SHE INDICATE HOW SHE RECEIVED THESE INJURIES.

16 A I HAVE HERE SHE HAD BEEN, BEING ASSAULTED BY AN  
17 UNKNOWN SUBJECT BROKE INTO HER HOUSE.

18 Q AND SHE ONLY INDICATED THAT THERE WAS ONLY ONE  
19 UNKNOWN SUBJECT?

20 A YES, MA'AM. THAT IS WHAT I COULD GET THROUGH HER  
21 THROUGH MY EXAM.

22 Q AND WHEN YOU ASKED HER QUESTIONS TO FIGURE OUT WHAT  
23 HER CONSCIOUSNESS, YOU KNOW, LIKE TIMES THREE YOU SAID,  
24 PERSON, PLACE OR TIME. DO YOU HAVE A PERSONAL  
25 RECOLLECTION OF WHETHER OR NOT SOMEONE WAS THERE TO HELP

1 HER TO RELAY INFORMATION TO YOU?

2 A THERE WAS SOMEONE ON THE SCENE BUT WE DID, WE HAD TO  
3 USE BASICALLY A VERY BASIC KNOWLEDGE OF SPANISH TO OBTAIN  
4 THAT INFORMATION.

5 Q AND DO YOU HAVE ANY EXPERIENCE IN SPANISH?

6 A VERY LITTLE, BASICALLY WHAT I HAVE IN MY LITTLE FLIP  
7 CHARTS.

8 Q AND IS THAT WHAT YOU RELIED ON TO GET THAT CONSCIOUS  
9 ALERT TIMES THREE?

10 A YES, MA'AM.

11 Q OKAY. AND WHAT DID YOU FIRST DO WHEN YOU GOT TO HER,  
12 HOW DID YOU BEGIN YOUR TREATMENT OR ASSESSMENT OF HER?

13 A THE FIRST THING I DID, I COME UP, I SPOKE WITH THE  
14 PATIENT AND WE DID FIGURE OUT HER LEVEL OF CONSCIOUSNESS  
15 WHICH WAS THE CONSCIOUS TYPE ORDER TIMES THREE. SHE, FROM  
16 THERE I PROGRESSED INTO A PHYSICAL EXAM THAT REVEALED PAIN  
17 TO HER CHEST PER THIS REPORT, ANGULAR CHEST SUBSTERNAL  
18 WHICH IS THE MIDDLE OF THE CHEST, NON-RADIATING WHICH  
19 MEANS IT DIDN'T MOVE ANYWHERE WITH AN INCREASED PAIN ON  
20 PALPATION.

21 Q AND WHAT DOES THAT MEAN?

22 A WHICH MEANS IF I PALPATED HER CHEST IT HURT MORE.

23 Q OKAY. SO, IT WAS TENDER TO THE TOUCH?

24 A YES, MA'AM.

25 Q OKAY.

1 A ALSO FOUND AN ABRASION TO HER LEFT ELBOW. FROM THERE  
2 HER, WE OBTAINED VITAL SIGNS, SAYS GOOD COLOR WHICH IS AN  
3 INDICATION THAT CIRCULATORY SYSTEM IS ADEQUATE, PUPILS  
4 WERE EQUAL AND ACTIVE TO LIGHT AND LUNGS WERE CLEAR  
5 BILATERAL.

6 Q AND WHEN YOU TOOK HER, WHERE DID YOU TAKE HER AFTER  
7 YOU DID THIS ASSESSMENT AT THE SCENE?

8 A WE PACKAGED HER AND TRANSPORTED HER TO PROVIDENCE  
9 NORTHEAST.

10 Q AND WITH YOUR RIDE FROM THE TAM-O-SHANTER ADDRESS TO  
11 PROVIDENCE NORTHEAST, WAS THAT WITH THE SIRENS AND LIGHTS  
12 GOING OR HOW WOULD YOU DESCRIBE THE RIDE?

13 A NO, MA'AM. IT WAS A NON-EMERGENT.

14 Q NON-EMERGENT.

15 A OR NON-URGENT.

16 Q NON-URGENT?

*Non urgent*

17 A YES, MA'AM.

18 Q OKAY.

19 A WHICH MEANS WE WERE TRANSPORTING BUT NOT WITH LIGHTS  
20 AND SIREN.

21 Q DID YOU HAVE PROVIDE HER WITH ANY OXYGEN?

22 A WE JUST PLACED HER ON OXYGEN, YES MA'AM, ACCORDING TO  
23 THE REPORT SHE HAD, THE TWO LITTLE PRONGS THAT STICK IN  
24 YOUR NOSE.

25 Q AND EXPLAIN WHAT THE PURPOSE OF PROVIDING HER WITH

1 OXYGEN?

2 A THAT IS A STANDARD CARE WITH ANYONE WITH ANY TYPE OF  
3 CHEST PAIN BE IT TRAUMATIC OR CARDIAC CONNECTED.

4 Q OKAY. WHAT TIME DID YOU LEAVE THE SCENE WHERE YOU  
5 PICKED UP THE PATIENT?

6 A WE LEFT THE SCENE AT 16:18.

7 Q SO YOU WERE THERE FOR ABOUT 14 MINUTES?

8 A YES, MA'AM.

9 Q AND DO YOU RECALL GETTING LAW ENFORCEMENT INVOLVED IN  
10 THIS MATTER?

11 A I DON'T. I THINK WE NOTIFIED DISPATCH BUT I AM NOT  
12 ONE-HUNDRED PERCENT SURE OF THAT COMPLETELY, THEY MAY OF  
13 TOLD US THEY WERE ALREADY IN ROUTE.

14 Q OKAY. AND WHAT TIME DID THE PATIENT ARRIVE AT THE  
15 EMERGENCY ROOM?

16 A 16:31.

17 Q AND THAT IS IN CIVILIAN TIME?

18 A 4:31 P.M.

19 Q AND IF YOU WERE TO SEE THE PATIENT AGAIN DO YOU THINK  
20 YOU COULD RECOGNIZE HER?

21 A TO BE HONEST WITH YOU, NO.

22 MS. COOPER: BEG THE COURT'S INDULGENCE.

23 Q THANK YOU, PLEASE ANSWER ANY QUESTIONS THE DEFENSE  
24 MAY HAVE.

25 THE COURT: MS. MOBLEY.

CROSS-EXAMINATION

1

2 BY MS. MOBLEY:

3 Q I WILL KEEP THIS REAL SHORT.

4 A OKAY.

5 Q SO, YA'LL WERE DISPATCHED AT 15:53. FOR THOSE OF US  
6 WHO ARE NOT VERY FAMILIAR WITH MILITARY TIME WHAT TIME IS  
7 THAT?

8 A THAT IS 3:53 IN THE AFTERNOON.

9 Q AND CAN YOU TELL ME WHAT TIME YOUR CALL WAS RECEIVED?

10 A OUR CALL WAS RECEIVED AT 3:52.

11 Q SO THAT WAS JUST A MINUTE?

12 A YES, MA'AM.

13 Q AND I BELIEVE YOU TESTIFIED THAT YOU, SHE WAS  
14 CONSCIOUS AND ALERT AND KNEW WHAT TIME IT WAS, WHAT YEAR,  
15 WHAT HAVE YOU?16 A YES, MA'AM. SHE WAS CONSCIOUS, ALERT AND ORIENTED  
17 TIMES THREE.18 Q OKAY. AND I BELIEVE YOU TESTIFIED THAT SHE HAD AN  
19 ABRASION OF THE LEFT ELBOW?

20 A YES, MA'AM.

21 Q AND WAS COMPLAINING ABOUT CHEST PAINS?

22 A YES, MA'AM.

23 Q AND JUST SO WE ARE CLEAR, SO IF I WERE TO JUMP INTO  
24 YOUR AMBULANCE AND SAY I HAVE CHEST PAINS YOU WOULD PUT  
25 THE THING, THE OXYGEN UP MY NOSE AND HOOK ME UP TO OXYGEN?

*deputy investigator sheriff  
SW*

1 A YES, MA'AM. THAT IS PROBABLY STANDARD CARE.

2 Q AND I BELIEVE YOU TESTIFIED THIS WAS A NON-URGENT  
3 CALL WHICH MEANS YA'LL DIDN'T HAVE TO TURN ON THE SIRENS  
4 AND GO SCREAMING DOWN THE HIGHWAY, RIGHT?

5 A WE RESPONDED EMERGENTLY WHICH WE ARE DISPATCHED TO  
6 ALL CALLS THAT WAY. AND THEN FROM THE SCENE TO THE  
7 HOSPITAL WE WERE IN ROUTE NON-URGENT.

8 Q SO, WHEN YOU DONE YOUR ANALYSIS, YOU RESPOND TO  
9 EVERYTHING EMERGENT, BUT ONCE YOU HAVE DONE YOUR ANALYSIS  
10 YOU REALIZE THAT THAT WASN'T NECESSARY TO GET HER TO THE  
11 HOSPITAL?

12 A YES, MA'AM.

13 Q THANK YOU, THAT IS ALL I HAVE.

14 THE COURT: ANY REDIRECT?

15 MS. COOPER: NO, YOUR HONOR, MAY THIS WITNESS BE  
16 EXCUSED.

17 THE COURT: WITHOUT OBJECTION, HE IS EXCUSED. YOU  
18 ARE EXCUSED, SIR. CALL YOUR NEXT WITNESS.

19 MS. COOPER: THANK YOU, YOUR HONOR. THE STATE CALLS  
20 DEPUTY MARSDEN ROE.

21 DIRECT EXAMINATION

22 BY MS. COOPER:

23 Q INVESTIGATOR ROE, CAN YOU PLEASE TELL THIS JURY WHERE  
24 YOU ARE EMPLOYED?

25 A RICHLAND COUNTY SHERIFFS DEPARTMENT, MA'AM.

1 Q HOW LONG HAVE YOU EMPLOYED BY THE SHERIFFS  
2 DEPARTMENT?

3 A A TOTAL OF SIX YEARS WITH THE RICHLAND COUNTY  
4 SHERIFFS DEPARTMENT.

5 Q OKAY. AND HOW LONG HAVE YOU BEEN AN INVESTIGATOR?

6 A APPROXIMATELY TWO YEARS.

7 Q BACK ON MAY 13TH OF 2004 WHAT WAS YOUR TITLE?

8 A I WAS A MASTER DEPUTY IN UNIFORMED PATROL.

9 Q AND YOUR DUTIES BACK THEN, WHAT WERE THEY?

10 A MY DUTIES WAS TO PATROL REGION SIX IN RICHLAND COUNTY  
11 WHICH IS IN THE NORTHERN PART OF THE COUNTY. BASICALLY  
12 KILLIAN ROAD AND NORTH AND IT IS KIND OF, WAS A  
13 SUPERVISORY ROLE AND SINCE TO MASTER DEPUTY TO THE YOUNGER  
14 PATROLMAN, YOU KNOW, IF THEY HAVE QUESTIONS. BUT MY JOB  
15 WAS TO ANSWER CALLS JUST LIKE A UNIFORMED PATROLMAN WOULD.

16 Q AND YOU INDICATED THAT WAS REGION SIX?

17 A YES, MA'AM.

18 Q AND CAN YOU DESCRIBE IN FURTHER DETAIL WHAT REGION  
19 THAT ENCOMPASSES?

20 A BASICALLY IF YOU TOOK, I USED A GUIDELINE OF THE  
21 LANDMARKS OF KILLIAN ROAD AND CLEMSON ROAD IS ONE. BUT  
22 KILLIAN ROAD, IF YOU TOOK A, AND WENT EAST AND WEST AND  
23 JUST KIND OF IMAGINARY DREW IT OUT EAST AND WEST AND JUST  
24 TOOK THE REST OF THE RICHLAND COUNTY UP NORTH, THAT WOULD  
25 ENCOMPASS REGION SIX, ROUGHLY SPEAKING.

1 Q I AM GOING TO BRING YOUR ATTENTION TO THE DATE OF  
2 APRIL 13TH OF 2004, DO YOU REMEMBER BEING DISPATCHED TO  
3 [REDACTED] DRIVE?

4 A YES, MA'AM.

5 Q AND WHAT TIME WERE YOU DISPATCHED?

6 A IT WAS APPROXIMATELY, A FEW MINUTES AFTER 4:00  
7 O'CLOCK P.M.

8 Q AND DID YOU PROVIDE A WRITTEN REPORT IN THIS CASE?

9 A YES, MA'AM.

10 Q WOULD IT BE HELPFUL FOR YOU TO REFRESH YOUR MEMORY AS  
11 TO MORE SPECIFIC TIME?

12 MS. VAN GINHOVEN: YOUR HONOR, I OBJECT, HE HASN'T  
13 SAID HE HADN'T REMEMBERED ANYTHING ABOUT IT.

14 THE COURT: SUSTAINED.

15 Q DO YOU RECALL WRITING IN YOUR REPORT THAT YOU ARRIVED  
16 OR THAT YOU WERE DISPATCHED AT 16:14 HOURS?

17 A THAT SOUNDS CORRECT, YES, MA'AM.

18 Q WHEN YOU RESPONDED TO [REDACTED] BY THE WAY,  
19 IS THAT ADDRESS IN RICHLAND COUNTY?

20 A YES, MA'AM.

21 Q WHO DID YOU MAKE CONTACT WITH?

22 A I MADE CONTACT WITH THE HOMEOWNER, I DON'T KNOW IF I  
23 AM PRONOUNCING IT RIGHT, MR. CONNELL.

24 Q OKAY, WOULD THAT BE MR. JEFF CONNELL RIGHT HERE?

25 A YES, MA'AM.

1 Q AND DO YOU RECALL WHAT IT WAS HE REPORTED TO YOU WHEN  
2 YOU ARRIVED ON THE SCENE?

3 A HE REPORTED THAT THERE WAS AN ASSAULT THAT HAD TAKEN  
4 PLACE AND THAT IT WAS A BURGLARY AND THAT HIS PISTOL WAS  
5 STOLEN DURING THE BURGLARY.

6 Q AND DID YOU KNOW WHETHER OR NOT HE WAS THE ONE THAT  
7 WAS ASSAULTED OR WHO WAS ASSAULTED.

8 A HE DIDN'T SAY HOUSEKEEPER, I BELIEVE HE SAID THE  
9 CHILD CARE GIVER, CHILD CARE NANNY IS WHAT I TOOK, IS WHAT  
10 I RECALL WORDS TO THE EFFECT OF, THAT HIS NANNY HAD BEEN  
11 ASSAULTED.

12 Q OKAY. AND DID HE INDICATE WHAT EXACTLY HAD HAPPENED  
13 TO LOURDES ANTONIO, THE HOUSEKEEPER OR THE NANNY?

14 A NO, HE DIDN'T GO INTO DETAIL, MA'AM.

15 Q OKAY. DID HE INDICATE WHAT HIS GUN LOOKED LIKE?

16 A I BELIEVE, THE ONLY INFORMATION I GOT WAS A .45  
17 CALIBER, AT THAT TIME.

18 Q WERE YOU ABLE TO GET FURTHER DETAILED INFORMATION  
19 ABOUT IT AT A LATER POINT?

20 A YES, MA'AM.

21 Q OKAY. DID HE INDICATE HOW IT WAS HIS HOUSEKEEPER  
22 BECAME ATTACKED OR ASSAULTED?

23 A NO, MA'AM.

24 Q OKAY. DO YOU RECALL WRITING IN YOUR REPORT THAT HE  
25 REPORTED TO YOU THAT SHE HAD INTERRUPTED A BURGLARY?

1 A I WOULD HAVE TO LOOK AT THE REPORT.

2 Q WOULD THAT HELP YOU TO REFRESH YOUR MEMORY?

3 A YES, MA'AM.

4 MS. COOPER: YOUR HONOR, NOW AM I PERMITTED TO SHARE  
5 THIS WITH HIM?

6 THE COURT: YOU MAY.

7 Q IF YOU COULD REFER TO LINE, THE FIFTH LINE DOWN.

8 A YES, MA'AM.

9 Q CAN YOU PLEASE READ THE LAST TWO LINES?

10 A MR. CONNELL SAID THE VICTIM WAS HIS HOUSEKEEPER AND I  
11 DON'T KNOW HOW TO PRONOUNCE THE NAME, LOURDES ANTONIO.  
12 MR. CONNELL SAYS HIS HOUSEKEEPER HAD INTERRUPTED THE  
13 BURGLARY AND WAS ASSAULTED INSIDE THE HOUSE. MR. CONNELL  
14 FURTHER STATED THAT THE ONLY THING THAT WAS STOLEN WAS HIS  
15 PISTOL LISTED BELOW AND I LISTED IT BELOW.

16 Q NOW, WHEN YOU WERE TOLD A GUN HAD BEEN TAKEN FROM  
17 THIS RESIDENCE, WERE THERE ANY OTHER OFFICERS WITH YOU  
18 WHEN YOU ARRIVED ON THE SCENE?

19 A A DEPUTY WAGNER HAD ARRIVED AT APPROXIMATELY THE SAME  
20 TIME BUT, ME BEING A MASTER DEPUTY AND UNDERSTANDING THERE  
21 WAS A FEMALE, I SENT HER, KNOWING THE VICTIM WAS A FEMALE.  
22 SOMETIMES THAT IS BETTER, THEY CONNECT BETTER.

23 Q AND IS DEPUTY WAGNER A FEMALE?

24 A YES, MA'AM.

25 Q WHERE DID YOU ASK DEPUTY WAGNER TO RESPOND TO?

1 A TO THE HOSPITAL WHERE THE VICTIM HAD BEEN  
2 TRANSPORTED.

3 Q WHAT HOSPITAL?

4 A I BELIEVE R AND--

5 Q I AM SORRY?

6 A RICHLAND MEMORIAL EMERGENCY ROOM.

7 Q COULD YOU PLEASE REFER TO LINE FOUR OF YOUR  
8 STATEMENT, OF YOUR REPORT?

9 A I MADE CONTACT--

10 Q WHAT HOSPITAL DO YOU HAVE LISTED ON YOUR REPORT?

11 A THAT IS CORRECT, IT SAYS PROVIDENCE NORTHEAST ER.

12 Q NOT RICHLAND MEMORIAL HOSPITAL?

13 A CORRECT.

14 Q OKAY. AND WHEN YOU FOUND OUT THAT A GUN WAS STOLEN  
15 FROM THE RESIDENCE AND THAT THE HOUSEKEEPER HAD BEEN  
16 ASSAULTED WHAT WAS THE PURPOSE OF YOU SENDING DEPUTY  
17 WAGNER TO THE PROVIDENCE NORTHEAST ER?

18 A TO GET FURTHER DETAILS AND INFORMATION FROM THE  
19 VICTIM.

20 Q AND SPECIFICALLY WHAT KIND OF INFORMATION?

21 A INFORMATION, THE DESCRIPTION, ANYTHING THAT COULD  
22 HELP US OF THE SUSPECT WHO COMMITTED THE CRIME.

23 Q AND THEN DID YOU THEN REQUEST ANY BACKUP TO THE  
24 RESIDENCE, THE INCIDENT LOCATION?

25 A WE REQUESTED A LAB UNIT.

1 Q AND WHO WAS THE LAB TECHNICIAN THAT ARRIVED ON THE  
2 SCENE?

3 A I BELIEVE IT WAS MR., LET'S SEE IF I HAVE IT IN MY  
4 REPORT. OFF THE TOP OF MY HEAD I WOULD SAY INVESTIGATOR  
5 RICHARDS.

6 Q OKAY. IS THAT INVESTIGATOR STAN RICHARDS?

7 A YES, MA'AM.

8 Q NOW, WHY WAS IT NECESSARY FOR YOU TO CALL A  
9 TECHNICIAN OR CRIME SCENE INVESTIGATOR TO THE SCENE?

10 A BECAUSE BASICALLY, I WANTED TO SECURE THE SCENE AND  
11 HAVE IT PROCESSED PROPERLY.

12 Q AND WHEN YOU SAY THAT YOU WANTED TO SECURE THE SCENE,  
13 WHAT DOES THAT MEAN?

14 A THAT IS WHY I REMAIN THERE INSTEAD OF GOING AND  
15 LOOKING FOR THE SUSPECT. AT THAT TIME I NEEDED TO SECURE  
16 THE SCENE UNTIL THE FORENSICS GOT THERE, THEY TOOK CONTROL  
17 OF THE SCENE. BECAUSE I HAD WENT, AFTER BEING TOLD ABOUT  
18 THE ASSAULT I WENT RIGHT, WENT BASICALLY A LITTLE BIT INTO  
19 THE HOUSE AND IT LOOKED LIKE THERE WERE SOME THINGS MAYBE  
20 TO BE PROCESSED.

21 Q OKAY..

22 A THERE WAS A BROKEN, AT FIRST I THOUGHT IT WAS A PAIR  
23 OF GLASSES BUT IT LOOKED LIKE PLASTIC, KIND OF LIKE A  
24 BARRETTE HAIR THING. AND THERE WAS A LITTLE BIT OF BLOOD  
25 ON THE FLOOR, WHAT APPEARED TO BE BLOOD.

1 Q AND DID YOU SEE ANY FOOTPRINTS IN THE HALLWAY?

2 A YES, MA'AM. I AM TRYING TO DESCRIBE IT, IN ONE OF  
3 THE BLOOD, IT LOOKED LIKE THERE WAS SOME RINGS IN IT, WHAT  
4 I WOULD CALL SOME RINGS IN IT, SOME RINGS IN WHAT I WOULD  
5 ASSUME TO BE SOME KIND OF SHOE PATTERN.

6 Q SHOE PRINT.

7 A YES.

8 Q AND BECAUSE YOU OBSERVED ALL OF THESE PIECES OF  
9 EVIDENCE IS THAT WHY YOU CALLED A CRIME SCENE INVESTIGATOR  
10 TO THE SCENE?

11 A YES, MA'AM.

12 Q AND WHEN YOU SECURED THE SCENE DOES THAT MEAN YOU  
13 ALLOW EVERYBODY TO COME IN AND TRAMPLE ALL OVER THIS  
14 EVIDENCE?

15 A NO, MA'AM.

16 Q WHAT DOES IT MEAN?

17 A TO MAKE SURE THAT NOBODY EXCEPT ONLY NECESSARY  
18 PERSONNEL GO INTO THAT CRIME SCENE.

19 Q AND TO YOUR KNOWLEDGE NO ONE ENTERED THAT CRIME SCENE  
20 WHILE YOU WERE THERE?

21 A CORRECT.

22 Q NOW, ONCE THE CRIME SCENE INVESTIGATOR ARRIVED ON THE  
23 SCENE WHERE DID YOU GO?

24 A WELL, I HELPED THE OTHER UNIFORM PATROL, FORENSIC  
25 INVESTIGATOR RICHARDS ARRIVED AND THEN I HELPED OTHER

1 DEPUTES CUT THROUGH THE AREA LOOKING FOR THE SUSPECT TO  
2 TRY HELP OUT IN ASSISTING THEM.

3 Q AND IS THERE A WAY THAT ALL DEPUTIES COMMUNICATE WITH  
4 ONE OTHER?

5 A YES, MA'AM. EITHER RADIO OR WE DO USE NEXTEL.

6 Q AND DURING THE SEARCH FOR A SUSPECT DO YOU RECALL  
7 HEARING ANY ANNOUNCEMENTS ON THE RADIO OR NEXTEL  
8 CONCERNING DESCRIPTIONS OF THE SUSPECT?

9 A YES, MA'AM. IN FACT WE HAD GOTTEN INFORMATION FROM  
10 DEPUTY WAGNER AND PASSED THAT THROUGH, GOING THROUGH THE  
11 CHANNELS.

12 Q AND DO YOU RECALL MAKING CONTACT WITH A SERGEANT MARK  
13 MCCOLMAN?

14 A YES, MA'AM.

15 Q AND WHAT ABOUT INVESTIGATOR OR LIEUTENANT TYLER?

16 A LIEUTENANT TYLER IS THE REGION SIX LIEUTENANT AND  
17 SERGEANT MCCOLMAN WAS ONE OF THE REGIONS SERGEANTS. WE  
18 HAVE TWO SERGEANTS AND BASICALLY A LIEUTENANT AND A  
19 CAPTAIN PER REGION.

20 Q OKAY. AND DID, WHAT DID YOU DISCUSS WITH THEM WHEN  
21 YOU MET WITH THEM?

22 A BASICALLY WE MET AND WHAT INFORMATION WE HAD, WHAT  
23 OUR GAME PLAN WAS. YOU TAKE THIS AREA, THE SUBDIVISIONS  
24 ARE CLOSE TOGETHER SO A LOT OF STREETS TO COVER AND IT IS  
25 JUST A SPREAD OUT SUBDIVISION COMPARED TO SOME OF THEM.

1 YOU HAVE A GAME PLAN, I HAVE COVERED THIS AREA, OR NOT  
2 COVERED THIS AREA, WHY DON'T YOU LOOK AT THIS AREA, YOU  
3 KNOW, JUST ORGANIZE.

4 Q DID YOU HAVE AN OCCASION TO MEET WITH LIEUTENANT  
5 WAGNER AND HOLLY WAGNER ABOUT GETTING INTO A VAN?

6 A YES, MA'AM.

7 Q AND DESCRIBE FOR THE JURY WHAT VAN INVESTIGATOR OR  
8 LIEUTENANT TYLER AND HOLLY WAGNER WERE GETTING INTO?

9 A THEY GOT INTO A WHITE VAN.

10 Q AND DO YOU KNOW WHO THE DRIVER WAS OF THE WHITE VAN?

11 A I BELIEVE IT WAS THE SUPERVISOR.

12 Q AND DO YOU KNOW WHAT KIND OF COMPANY SHE SUPERVISED?

13 A IT WAS PART OF THE CLEANING, THE LIEUTENANT AND THE  
14 SERGEANT AND OTHER PEOPLE DID THE COORDINATION OF THE  
15 SUPERVISOR OF THE CLEANING COMPANY. BUT I BELIEVE THAT  
16 WAS WHO WAS IN CHARGE OF THAT VAN.

17 Q WHAT WAS YOUR ROLE AS FOLLOWING THE VAN?

18 A I WAS GOING TO BE ACTING AS A BACKUP UNIT, STAND IN  
19 THE AREA, WE WENT TO CONTAIN THE SUBJECT AND I HAD TO BE  
20 MOBILE IF THE SUSPECT RAN AND WE WANTED TO BE ABLE TO BE  
21 MOBILE AND MOVE AND CAPTURE THE SUSPECT.

22 Q WHERE DID YOU UNDERSTAND THAT THIS VAN WAS HEADING  
23 TOWARDS?

24 A THE SOUTHWOOD SUBDIVISION WHICH IS OFF OF HARD  
25 SCRABBLE.

1 Q AND WHY WAS THE VAN GOING THERE?

2 A PARDON ME, MA'AM?

3 Q WHY WAS THE VAN GOING TO SOUTHWOOD SUBDIVISION?

4 A THE INFORMATION I GOT WAS THAT IS WHERE THE  
5 SUPERVISOR HAD DROPPED OFF THE SUSPECT.

6 Q AND WAS THAT SUPERVISOR IN ROUTE TO PICK BACK UP THE  
7 SUSPECT?

8 A THAT WAS MY UNDERSTANDING.

9 Q AND DID YOU WITNESS LIEUTENANT TYLER AND DEPUTY  
10 WAGNER GET INTO THE VAN?

11 A YES, MA'AM.

12 Q AND DID THE REST OF THE EMPLOYEES THAT WORKED FOR THE  
13 CLEANING SUPPLY COMPANY, DID THEY GET OUT OF THE VAN OR  
14 DID YOU EVEN SEE THEM?

15 A I BELIEVE I HAD SEEN A COUPLE, TO THE BEST OF MY  
16 RECOLLECTION I BELIVE A COUPLE OF THEM STAYED THERE AND WE  
17 WANTED TO GET IN POSITION SO WE WENT AHEAD AND HEADED THAT  
18 WAY. WE DIDN'T GO INTO SOUTHWOOD BECAUSE WE DIDN'T WANT  
19 TO, FOR LACK OF A BETTER WORD, SPOOK THE SUSPECT BY SEEING  
20 A BUNCH OF UNIFORMED DEPUTIES. SO, WE DIDN'T GO INTO  
21 SOUTHWOOD, WE WERE WAITING FOR FURTHER INSTRUCTIONS.

22 Q AND AT ONE POINT DID YOU RECEIVE A CALL FROM EITHER  
23 LIEUTENANT TYLER OR DEPUTY WAGNER TO RESPOND TO WHERE THEY  
24 WERE?

25 A YES, MA'AM.

1 Q AND HAD THEY INDICATED TO YOU WHETHER OR NOT THEY HAD  
2 A SUSPECT IN THEIR CUSTODY?

3 A CORRECT, WE HEARD, YOU KNOW, FOR ASSISTANCE ON THE  
4 HERON, I BELIEVE.

5 Q HERON COURT?

6 A YES, MA'AM.

7 Q AND WHO WAS WITH YOU WHEN YOU RESPONDED TO HERON  
8 COURT?

9 A ME AND SERGEANT MCCOLMAN WERE BOTH IN UNITS.

10 Q WERE YOU BOTH DRIVING YOUR OWN CARS?

11 A YES, MA'AM.

12 Q AND WHEN YOU ARRIVED TO THE SCENE WHERE YOU HAD BEEN  
13 TOLD THAT THE SUSPECT HAD BEEN APPREHENDED WHAT DID YOU  
14 OBSERVE WHEN YOU FIRST ARRIVED THERE?

15 A DEPUTY WAGNER AND LIEUTENANT TYLER WAS PICKING THE  
16 SUSPECT UP OFF THE GROUND.

17 Q AND DID HE APPEAR TO BE CUFFED AT THAT POINT?

18 A YES, MA'AM.

19 Q AND WHAT DID YOU AND SERGEANT MCCOLMAN DO?

20 A WE IMMEDIATELY GOT OUT OF OUR CAR AND WENT OUT THERE  
21 TO ASSIST AND BASICALLY TOOK OVER CONTROL OF HIM BECAUSE,  
22 LIKE I SAID, THEY HAD JUST, WHAT I ASSUMED BECAUSE OF, THE  
23 WAY THE RADIO TRAFFIC WE GET THE INSTINCT FOR WHEN  
24 SOMEBODY IS STRUGGLING A LITTLE BIT OR OUT OF BREATH, IT  
25 SEEMS THEY NEED TO CATCH THEIR BREATH OR WHATEVER, WE TOOK

1 CONTROL OF THE SUSPECT.

2 Q SO, IT APPEARED TO YOU THAT LIEUTENANT TYLER AND  
3 DEPUTY WAGNER WERE OUT OF BREATH?

4 A YES, MA'AM. THAT IS WHAT I REMEMBERED, YES.

5 Q AND SO WHEN YOU AND SERGEANT MCCOLMAN TOOK OVER WHAT  
6 DID YOU DO FIRST WITH THE SUSPECT?

7 A WE DID A TERRY FRISK, PAT-DOWN.

8 Q PAT-DOWN. AND WHAT IS THE PURPOSE OF A TERRY FRISK  
9 OR A PAT-DOWN?

10 A TO DETERMINE IF THE INDIVIDUAL HAS ANY WEAPONS ON  
11 THEM THAT WOULD HARM US.

12 Q SO, A WAY TO PROTECT OFFICERS FROM A POSSIBLE WEAPON,  
13 IS THAT CORRECT?

14 A YES, MA'AM.

15 MS. VAN GINHOVEN: YOUR HONOR, I AM GOING TO OBJECT  
16 TO LEADING QUESTIONS.

17 THE COURT: I SUSTAIN TO THE LAST QUESTION, GO AHEAD.

18 MS. COOPER: I APOLOGIZE, YOUR HONOR.

19 THE COURT: GO AHEAD.

20 Q AND WERE YOU AWARE WHETHER OR NOT THIS PERSON COULD  
21 POSSIBLY BE ARMED?

22 A YES, MA'AM. BASED ON THE REPORT FROM THE VICTIM MR.  
23 CONNELL, I ASSUMED THAT HE WOULD LIKELY HAVE A WEAPON ON  
24 HIM.

25 Q AND SO WHEN YOU BEGAN TO PAT HIM DOWN, YOU AND MR.

1 MCCOLMAN, WERE YOU ABLE TO FIND ANYTHING ON THE  
2 DEFENDANT'S PERSON?

3 A YES, MA'AM.

4 Q AND WHAT WAS IT THAT YOU FOUND AND WHERE WAS IT THAT  
5 YOU FOUND IT.

6 A I FELT A HARD OBJECT ON HIS LEFT LEG AND STARTED  
7 FURTHER AND AS SOON AS I PULLED ON HIS PANTS A LITTLE BIT  
8 THE WEAPON FELL ONTO THE GROUND AND IT WAS HELD ON, IT  
9 APPEARED TO ME HE HAD ROLLED UP HIS, KIND OF CUFFED HIS  
10 PANTS SLIGHTLY TO HELP HOLD THE WEAPON IN. AND I DIDN'T  
11 GET A GOOD HAND ON IT WHEN IT HIT THE GROUND.

12 Q OKAY, AND SO YOU OBSERVED, WHAT KIND OF WEAPON DID  
13 YOU SEE HIT THE GROUND.

14 A I DIDN'T EXAMINE IT RIGHT THEN, IT WAS DETERMINED TO  
15 BE A .45 AND I WAS THE ONE THAT GOT THE SERIAL NUMBER AND  
16 STUFF OFF OF IT.

17 Q AND IN FACT, THAT GUN, DID YOU DECIDE TO LOG IT INTO  
18 EVIDENCE?

19 A YES, MA'AM.

20 Q AND DID YOU ALLOW INVESTIGATOR STAN RICHARDS TO  
21 PHOTOGRAPH THE GUN AT ONE POINT?

22 A YES, MA'AM.

23 Q AND I AM GOING TO SHOW YOU WHAT HAS BEEN MARKED AS  
24 STATE'S NUMBER 10 AND ASK YOU IS THAT THE GUN THAT YOU  
25 FOUND ON THE DEFENDANT?

1 A YES, MA'AM.

2 Q ALL RIGHT. AND IF YOU WOULD COMPARE THE SERIAL, I  
3 DON'T KNOW IF THERE IS A SERIAL NUMBER ON THE CARD. NEVER  
4 MIND. WERE YOU ABLE THEN TO RETURN THIS GUN TO THE  
5 RIGHTFUL OWNER, MR. CONNELL?

6 A YES, MA'AM.

7 Q AND YOU RECALL DELIVERING THAT GUN TO HIM OR ASKING  
8 HIM TO PICK IT UP FROM HEADQUARTERS?

9 A YES, MA'AM.

10 Q AFTER YOU FOUND THE DEFENDANT, YOU TOOK THE GUN AWAY  
11 FROM THE DEFENDANT DID YOU CONTINUE TO SEARCH HIM?

12 A YES, MA'AM.

13 Q AND WERE YOU ABLE TO FIND ANYTHING ELSE ON HIS  
14 POSITION?

15 A MARIJUANA, MA'AM.

16 Q OKAY. ARE YOU EXACTLY SURE, WHERE DID YOU FIND THE  
17 MARIJUANA?

18 A IT WAS IN HIS PANTS POCKET.

19 Q WERE YOU ABLE TO RECALL, WHETHER IT WAS HIS LEFT OR  
20 RIGHT POCKET?

21 A NO, MA'AM.

22 Q AND WHY IS THAT?

23 A MY FOCUS WAS ON THE PISTOL AND OF COURSE WHEN I WAS  
24 DOING A MORE THOROUGH SEARCH, I WAS ALSO LOOKING FOR OTHER  
25 WEAPONS WHETHER IT BE A KNIFE, I DIDN'T KNOW IF IT WAS A

1 SMALL KNIFE, I WAS JUST GOING AND DOING A THOROUGH SEARCH.  
2 AND MY FOCUS WAS ON WEAPONS AND SAFETY TO ME. NOT THAT IT  
3 IS NOT IMPORTANT BUT MY FOCUS IS ON THE WEAPON.

4 Q I AM GOING TO SHOW YOU WHAT HAS BEEN MARKED STATE'S  
5 EXHIBIT NUMBER 1 FOR IDENTIFICATION PURPOSES AND ASK YOU  
6 TO LOOK INTO THE CONTENTS OF THAT ENVELOPE?

7 A YES, MA'AM.

8 Q DOES THAT APPEAR TO BE THE MARIJUANA THAT YOU  
9 RECOVERED FROM THE SUSPECT?

10 A YES, MA'AM.

11 Q AND DOES THAT APPEAR TO BE THE SAME QUANTITY THAT YOU  
12 FOUND IN HIS POCKET?

13 A YES, MA'AM.

14 Q AND IS THERE A PIECE OF PLASTIC WHERE IT WAS  
15 INITIALLY PACKAGED IN?

16 A YES, MA'AM AND TWISTED.

17 MS. COOPER: YOUR HONOR, AT THIS TIME THE STATE SEEKS  
18 TO INTRODUCE NUMBER 1 INTO EVIDENCE.

19 MS. VAN GINHOVEN: YOUR HONOR, I OBJECT.

20 THE COURT: SUSTAINED. WILL BE MARKED FOR  
21 IDENTIFICATION AT THIS TIME.

22 (WHEREUPON, STATE'S EXHIBIT NO. 1 WAS MARKED FOR  
23 IDENTIFICATION ONLY.)

24 Q AND WHO DID YOU GIVE THAT MARIJUANA TO WHEN YOU  
25 RECOVERED IT?

1 A INVESTIGATOR BARNES UPSTAIRS.

2 Q UPSTAIRS IN HEADQUARTERS?

3 A IN RICHLAND COUNTY HEADQUARTERS, YES.

4 Q AND DID YOU TAMPER WITH IT IN ANY FASHION?

5 A NO, MA'AM.

6 Q NOW, WHAT DID YOU DECIDE TO DO WITH THE DEFENDANT  
7 WHEN YOU FOUND THE GUN AND THE MARIJUANA, WHERE DID YOU  
8 PUT HIM?

9 A I DECIDED TO GET HIM AWAY FROM THE GUN. I BELIEVE  
10 SERGEANT MCCOLMAN WAS MAKING SURE IT WAS UNLOADED FOR  
11 SAFETY REASONS AND I WANTED TO GET IT SECURED IN THE CAR.  
12 SO, AFTER IT WAS TAKEN OFF, IT WAS BASICALLY ALREADY KIND  
13 OF, TO TAKE CONTROL OR HEADQUARTERS AND TO ASSIST  
14 INVESTIGATOR BARNES. SO, I JUST WANTED TO GET HIM IN THE  
15 CAR SO WE COULD SECURE, TO GET HIM AWAY FROM THE WEAPON.  
16 THE STANDARD THING IS TO GET HIM IN A CAGED UNIT FOR  
17 SAFETY REASONS.

18 Q AND AS YOU WERE GETTING HIM INTO YOUR PATROL CAR, IS  
19 THAT CORRECT?

20 A I BELIEVE IT WAS MY PATROL UNIT.

21 Q DO YOU RECALL SWAPPING OUT HANDCUFFS WITH ANY OTHER  
22 OFFICERS?

23 A RIGHT, WE GAVE, WHOEVER IT WAS, DEPUTY WAGNER OR  
24 LIEUTENANT TYLER, BUT WE SWAPPED OUT CUFFS AND I TOOK HIM  
25 DIRECTLY TO THE PATROL CAR AFTER READING HIM HIS MIRANDA

1 RIGHTS.

2 Q OKAY. AND WHEN YOU WERE PUTTING HIM IN THE PATROL  
3 CAR WHAT DO YOU MEAN BY READING HIM HIS MIRANDA RIGHTS?

4 A IT IS LIKE WHEN YOU SEE ON TV, IT IS BASICALLY, YOU  
5 HAVE THE RIGHT TO REMAIN SILENT, THINGS LIKE THAT. BUT I  
6 CARRY A CARD.

7 Q DO YOU HAVE THAT CARD WITH YOU?

8 A YES, MA'AM.

9 Q COULD YOU PLEASE SHARE THAT WITH US?

10 A (WITNESS HANDS A CARD TO MS. COOPER.)

11 Q IS THIS THE CARD THAT YOU READ FROM ON APRIL 13TH OF  
12 2004?

13 A YES, MA'AM.

14 Q COULD YOU PLEASE READ IT FOR THE JURY?

15 A IT HAS MARKED 1 THROUGH 6 BUT I DIDN'T READ THE  
16 NUMBERS. I JUST SAID, YOU HAVE A RIGHT TO REMAIN SILENT.  
17 ANYTHING YOU SAY CAN AND WILL BE USED AGAINST YOU IN A  
18 COURT OF LAW. YOU HAVE THE RIGHT TO HAVE AN ATTORNEY TO  
19 BE PRESENT. IF YOU CANNOT AFFORD AN ATTORNEY ONE WILL BE  
20 APPOINTED TO YOU FREE OF COST BY THE COURT. IF YOU STOP  
21 ANSWERING QUESTIONS YOU HAVE THE RIGHT AT ANY TIME TO STOP  
22 AND ASK FOR AN ATTORNEY. DO YOU UNDERSTAND YOUR RIGHTS.

23 Q AND AT THAT POINT WHAT DID YOU DO WITH THE DEFENDANT?

24 A PUT HIM IN THE BACK OF THE CAGED PATROL CAR.

25 Q AND DID YOU LEAVE THE DOOR TO THE CAR OPENED OR

1       CLOSED?

2       A       CLOSED.

3       Q       AFTER YOU READ HIM THESE RIGHTS DID YOU TRY TO  
4       QUESTION HIM IN ANY WAY?

5       A       NO, MA'AM. I KNEW INVESTIGATOR BARNES WAS ON HIS  
6       WAY.

7       Q       AND THE ROLE OF A DEPUTY IS NOT TO QUESTION THE  
8       SUSPECT, IS THAT CORRECT.

9             MS. VAN GINHOVEN: YOUR HONOR, I OBJECT, LEADING.

10            THE COURT: SUSTAINED TO THE FORM OF THE QUESTION.  
11       DISREGARD THE LAST QUESTION AND ANSWER, LADIES AND  
12       GENTLEMEN OF THE JURY.

13            MS. COOPER: I WILL REPHRASE, YOUR HONOR.

14       Q       WHAT IS THE ROLE OF THE DEPUTY IN REGARDS TO  
15       ENCOUNTERING SUSPECTS?

16       A       BASICALLY TO CONFINE AND IN THIS SITUATION SINCE AN  
17       INVESTIGATOR WAS INVOLVED IN THIS THING. THERE IS A LOT  
18       OF THINGS WE HANDLE ON THE ROAD WHERE AN INVESTIGATOR  
19       AIN'T REQUIRED. BUT ONCE AN INVESTIGATOR IS INVOLVED YOU  
20       WANT TO LET THEM DO THEIR EXPERTISE. SO, YOU WANT THE  
21       INVESTIGATOR TO DO HOW THEY WANT TO DO, THEY ARE BASICALLY  
22       IN CHARGE OF THINGS.

23       Q       AND WHAT ROLE DOES AN INVESTIGATOR HAVE WITH A  
24       DEFENDANT, WHAT ARE THE DUTIES OF AN INVESTIGATOR IN  
25       REGARDS TO A DEFENDANT?

1 A AS FAR AS A DEFENDANT, IT WOULD BE HIS DUTY AND JOB  
2 TO QUESTION HIM AND INTERVIEW.

3 Q OKAY. NOW, DO YOU RECALL APPROXIMATELY WHAT TIME IT  
4 WAS THAT YOU ARRIVED AT HERON COURT TO ASSIST TYLER AND  
5 WAGNER?

6 A YES, MA'AM. IT WAS APPROXIMATELY TWO HOURS AFTER  
7 THE ORIGINAL CALL, TWO HOURS AND SOME CHANGE.

8 Q ALL RIGHT. AND DO YOU RECALL GETTING A PAIR OF SHOES  
9 FROM THE SUSPECT?

10 A YES, MA'AM.

11 Q WERE YOU PRESENT WHEN THOSE SHOES WERE TAKEN FROM HIM  
12 BY INVESTIGATOR BARNES?

13 A YES, MA'AM.

14 Q WHERE DID YOU TAKE THOSE SHOES TO?

15 A I SECURED THEM, I BELIEVE, IN MY TRUNK.

16 Q AND WHERE DID YOU DELIVER THOSE SHOES TO?

17 A WITH EVERYTHING ELSE, I TOOK TO INVESTIGATOR BARNES  
18 UP IN, TO HEADQUARTERS AT RICHLAND COUNTY SHERIFFS  
19 DEPARTMENT TO HEADQUARTERS.

20 Q AND DID YOU, WERE YOU REQUESTED TO GIVE THE SHOES TO  
21 ANYONE ELSE?

22 A YES, INVESTIGATOR BARNES ASKED ME IF I COULD SEE IF  
23 MR. STAN RICHARDS COULD TAKE A LOOK AT THEM RIGHT AWAY.

24 Q AND I AM GOING TO SHOW YOU A DOCUMENT AND ASK YOU  
25 WHAT IT IS?

1 A THIS IS A FORENSIC LAB, KIND OF LIKE A REQUEST OR A  
2 CHAIN OF CUSTODY FORM THAT WE USE AT THE RICHLAND COUNTY  
3 SHERIFFS DEPARTMENT.

4 Q OKAY. AND WHAT ITEM OF EVIDENCE DOES IT REFER TO?

5 A IT IS NIKE AIR SHOES.

6 Q AND WHAT TIME DID YOU DELIVER IT TO INVESTIGATOR STAN  
7 RICHARDS?

8 A THE TRANSFER TOOK OVER AT 20:42 WHICH CIVILIAN TIME  
9 IF 8:42 P.M.

10 Q AND ON WHAT DAY?

11 A ON THE 13TH OF APRIL OF 2004.

12 Q AND I AM GOING TO SHOW YOU WHAT HAS BEEN MARKED AS  
13 IDENTIFICATION PURPOSES NUMBER 4 AND ASK YOU IF YOU  
14 RECOGNIZE IT?

15 A YES, MA'AM.

16 Q ARE THESE THE TENNIS SHOES THAT YOU DELIVERED TO  
17 INVESTIGATOR STAN RICHARDS?

18 A YES, MA'AM.

19 Q AND ARE THESE THE TENNIS SHOES THE DEFENDANT WAS  
20 WEARING WHEN HE WAS APPREHENDED?

21 A YES, MA'AM.

22 Q ALSO DID YOU LOG IN ANY EVIDENCE INTO THE RICHLAND  
23 COUNTY PROPERTY ROOM?

24 A YES, MA'AM.

25 Q AND WHAT ITEM WAS THAT?

1 A SEVERAL, THE BACKPACK AND THE PISTOL WAS TURNED BACK  
2 OVER TO THE OWNER.

3 Q I AM GOING TO SHOW YOU TWO FORMS AND ASK YOU IF YOU  
4 RECOGNIZE THESE FORMS?

5 A YES, BOTH OF THESE ARE FORMS FILLED OUT PREPARED BY  
6 ME.

7 Q OKAY. AND WHAT FORMS ARE THEY?

8 A THEY ARE EVIDENCE FORMS. ONE WHERE I HAD FILLED IT  
9 OUT WITH A .45 CALIBER PISTOL AND THE MAGAZINE.

10 Q AND ARE THOSE DEPICTED IN STATE'S NUMBER 10?

11 A YES, MA'AM.

12 Q OKAY. AND THEN WHAT ABOUT THE, AND WHEN DID YOU GIVE  
13 THE GUN TO THE VICTIM?

14 A I RELEASED IT BACK TO THE OWNER AT 8:30 P.M.

15 Q ON WHAT DAY?

16 A ON THE 13TH OF APRIL OF 2004.

17 Q ALL RIGHT, AND THEN IF YOU COULD PLEASE REFER TO THE  
18 EVIDENCE LOG FOR THE BOOK BAG?

19 A YES, MA'AM.

20 Q DID YOU ALSO FILL THAT FORM OUT ON THE DAY OF THE  
21 INCIDENT?

22 A YES, MA'AM.

23 Q AND I AM GOING TO SHOW YOU WHAT HAS BEEN MARKED FOR  
24 STATE'S NUMBER 9 FOR IDENTIFICATION PURPOSES. DO YOU  
25 RECOGNIZE THIS?

1 A YES MA'AM.

2 Q AND WHAT IS IT?

3 A BACKPACK.

4 Q AND WHICH ONE IN PARTICULAR?

5 A IT IS THE ONE THAT I LOGGED INTO EVIDENCE.

6 Q AND CAN YOU TELL IF IT IS THE SAME ONE?

7 A YES, MA'AM.

8 MS. COOPER: YOUR HONOR, AT THIS TIME THE STATE SEEKS  
9 TO INTRODUCE NUMBER 9 INTO EVIDENCE.

10 MS. VAN GINHOVEN: YOUR HONOR, WE ARE OBJECTING AND  
11 WE NEED TO APPROACH FOR ONE MINUTE.

12 THE COURT: ALL RIGHT.

13 (WHEREUPON, A BENCH CONFERENCE WAS HELD IN THE  
14 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE  
15 JURY.)

16 THE COURT: MR. FOREMAN AND LADIES AND GENTLEMEN,  
17 THIS MAY TAKE ME A FEW MINUTES TO DEAL WITH. WE ARE AT A  
18 GOOD BREAKING POINT, I CAN DEAL WITH THIS WITHOUT YOU  
19 FOLKS HAVING TO GO BACK IN THE JURY ROOM. SO, I AM GOING  
20 TO SEND YOU HOME FOR THE NIGHT AND ASK YOU TO BE BACK AT  
21 9:30 TOMORROW MORNING AND WE WILL CONTINUE WITH THE  
22 TESTIMONY AT THAT TIME. LET ME AGAIN REMIND YOU NOT TO  
23 DISCUSS THE CASE WITH FAMILY OR FRIENDS OR ANYONE ELSE AND  
24 WE WILL CONTINUE WITH THE TESTIMONY TOMORROW AT 9:30 SO  
25 PLEASE BE IN YOUR JURY READY TO GO. YOU ARE EXCUSED AND

1 EVERYONE STAY SEATED, PLEASE.

2 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT FOR  
3 THE DAY.)

4 THE COURT: AS I UNDERSTAND THE OBJECTION, THE BOOK  
5 BAG HAS A NUMBER OF ITEMS IN IT, SOME OF WHICH THERE WOULD  
6 BE NO OBJECTION AND SOME OF WHICH THERE ARE OBJECTIONS TO,  
7 IS THAT RIGHT?

8 MS. VAN GINHOVEN: YES, YOUR HONOR.

9 THE COURT: AND THERE IS NO OBJECTION TO WHAT HAS  
10 BEEN SEPARATED IN A SEPARATE BAG.

11 MS. COOPER: YES, SIR. WE WENT THROUGH THE BAG  
12 EARLIER AND I BASICALLY PULLED OUT EVERYTHING THAT I  
13 AGREED IS NOT RELEVANT AND ACTUALLY SOME OF IT IS  
14 PREJUDICIAL, IT REFERS TO MENTAL HEALTH APPOINTMENTS.

15 THE COURT: IS THAT THE MATERIAL THAT IS IN THE BAG?

16 MS. COOPER: YES, SIR.

17 THE COURT: SO, THOSE TIMES ARE AGREED, THE STATE IS  
18 NOT SEEKING TO PUT THOSE IN.

19 MS. COOPER: THAT IS CORRECT, YOUR HONOR.

20 THE COURT: SO, WHAT IS IN THE BAG THAT THERE IS AN  
21 OBJECTION TO.

22 MS. COOPER: OKAY. THERE IS A CIGAR, WE HAVE A  
23 CONDOM, KLEENEX, DEODORANT, WE HAVE A PEN, LIGHTER, DOO  
24 RAG, WE HAVE THE PACK OF CIGARETTES THAT WAS TESTIFIED TO  
25 ALREADY. THERE IS A HOTEL ROOM KEY, THERE IS TWO CD'S,

1 MUSIC CD'S. THERE IS A FAIRGROUND PLAZA HOTEL BUSINESS  
2 CARD WHICH WE SUBMIT IS PART OF THE KEY BECAUSE THAT IS  
3 WHERE THE SUPERVISOR WAS STAYING. THERE IS IDENTIFYING  
4 DOCUMENTS, BASICALLY HIS BIRTH CERTIFICATE FROM ALABAMA,  
5 CERTIFICATE OF LIVE BIRTHS, THERE ARE TWO COPIES AND WE  
6 WOULD SUBMIT THAT IS RELEVANT TO OWNERSHIP OF THE BAG.  
7 THEN THERE IS SOME NOTES WHERE IT HAS GOT HIS HANDWRITING  
8 ON IT AND IT SAYS, HI, I AM JERENE HAYWARD AND I AM A  
9 SALES MANAGER WORKING FOR, UNDER THE DISCRETION OF A  
10 RATHER LARGE COMPANY BY THE NAME OF PCMC. TODAY I AM HERE  
11 TO AID AND ASSIST YOUR HOUSEHOLD NEEDS. AND THEN THERE IS  
12 SOME NOTES ON HOW TO, WHAT STRATEGIES YOU USE TO MAKE A  
13 SELL. THAT SHOWED, YOUR HONOR, THAT HE WAS SELLING THESE  
14 CLEANING PRODUCTS. THEN THERE IS A PIECE OF PAPER,  
15 LOTTERY, I THINK. THE LOTTERY PIECE OF PAPER WITH WRITING  
16 ON IT SAYING, MINUTE MEN. AND I DON'T THINK IS RELEVANT.  
17 AND THEN THERE IS A BUSINESS LICENSE AND IT HAS GOT THE  
18 SAME NAME OF THE COMPANY. WHERE IT SAYS PCMC.

19 THE COURT: BUSINESS LICENSE FROM WHERE?

20 MS. COOPER: ARCADIA LAKES IS A TOWN FROM RICHLAND  
21 COUNTY AND IT IS RELATED TO THE WOMAN, THE SUPERVISOR IS  
22 FROM FLORIDA SO IT HAS GOT HER, I GUESS, PERMISSION TO  
23 SELL IN THE AREA. AND THERE IS A NAME, HE HAS GOT PCMC,  
24 WHERE CMBC IS ON HIS OTHER SHEET. THEN, YOUR HONOR, THERE  
25 IS A BLACK BELT, THERE IS HIS CELL PHONE, A CHARGER, THE

1 BLUE GROCERY BAG WHERE THE GUN WAS LOCATED IN. AND THEN  
2 THIS DOCUMENT THAT SAYS AS THE VICTIM TESTIFIED TO SIMILAR  
3 DOCUMENTS, HE PRESENTED TO HER ON THE STREET, A PRICE LIST  
4 OF ALL OF THE SUPPLIES.

5 MR. JOPHLIN: THERE IS A BRUSH OF SOME SORT.

6 MS. MOBLEY: A HAIRBRUSH AND A GUM WRAPPER, MORE GUM.

7 MS. VAN GINHOVEN: YOUR HONOR, THE BAG REALLY HAS  
8 JERENE WRITTEN ON THE BACK, HE HAS HIS NAME ON THE BACK.

9 THE COURT: ALL RIGHT, GENERALLY SPEAKING, I KNOW YOU  
10 HAVE ALREADY VOICED ONE OBJECTION ON THE GROUND OF  
11 RELEVANCE.

12 MS. VAN GINHOVEN: YES, YOUR HONOR.

13 THE COURT: ANY OTHER GROUNDS FOR ANY OF THOSE ITEMS.

14 MS. MOBLEY: YES, SIR. YOUR HONOR, WE UNDERSTAND THE  
15 BAG, WE UNDERSTAND THE CIGARETTES. WE WOULD OBJECT TO THE  
16 CD, WE WOULD OBJECT TO THE DOO RAG, THE TRASH, THE BRUSH,  
17 I MEAN PRETTY MUCH EVERYTHING EXCEPT FOR THE SHEETS, THE  
18 BAG.

19 MS. VAN GINHOVEN: AND I DON'T THINK THERE HAS BEEN  
20 ANY TESTIMONY ABOUT THIS BAG.

21 MS. MOBLEY: SO, WE WOULD ASK FOR THAT NOT TO BE  
22 EXHIBITED UNTIL--

23 MS. COOPER: I WAS GOING TO GO THROUGH THE CONTENTS  
24 OF THE BAG.

25 THE COURT: WHAT IS THE RELEVANCE OF THE CD OR

1 HAIRBRUSH OR PIECES OF PAPER.

2 MS. COOPER: YOUR HONOR, THE CD'S PROBABLY AREN'T  
3 RELEVANT, YOUR HONOR.

4 THE COURT: THE DOO RAG.

5 MS. COOPER: I THINK THEY SAID, THE TIMES, LIKE THE  
6 TOILETRY ITEMS IS CONSISTENT WITH WHAT INVESTIGATOR BARNES  
7 IS PREPARED TO TESTIFY, HE WAS TRANSIENT, ON THE GO WHICH  
8 WOULD EXPLAIN WHY HE HAD PERSONAL ITEMS.

9 MS. MOBLEY: THAT IS NOT PROBATIVE OF ANYTHING, YOUR  
10 HONOR. ALL IT IS IS ONE LITTLE CONTENT FOR THE JURY TO  
11 WAIVE AROUND IN THERE, IT IS NOT RELEVANT.

12 THE COURT: THE CONDOM IS IRRELEVANT.

13 MS. COOPER: I AGREE.

14 THE COURT: I AM GOING TO LET THE TOOTH BRUSH, THE  
15 BRUSH, THE LIP BALM, THE KLEENEX, THE COMB.

16 MS. COOPER: THE PIECE OF PAPER ABOUT HOW HE--

17 THE COURT: THAT STAYS, I WOULD OVERRULE THE  
18 OBJECTION ON THAT.

19 MS. MOBLEY: THE BUSINESS LICENCE.

20 THE COURT: THE SAME THING.

21 MS. COOPER: YOUR HONOR, ON THE DATE OF BIRTH HE  
22 PROVIDES TWO DIFFERENT DATES OF BIRTH. ONE IS JANUARY THE  
23 9TH OF 1980 AND THE OTHER ONE IS JUNE THE 11TH OF 1983.

24 MR. JOPHLIN: THERE HAVE BEEN TWO DIFFERENT DATES.

25 MS. MOBLEY: AND TWO SEPARATE NAMES.

1 MS. COOPER: I THINK THE CARD AND THE KEY.

2 THE COURT: THAT IS FINE.

3 MS. COOPER: THE CELL PHONE, HE HAD MADE CALLS TO THE  
4 SUPERVISOR.

5 THE COURT: THE CELL PHONE IS IN, I HAVE NO PROBLEM  
6 WITH LETTING THE CELL PHONE IN.

7 MS. MOBLEY: YOUR HONOR, ARE THERE CELL PHONE RECORDS  
8 THAT YOU ARE PLANNING TO INTRODUCE?

9 MS. COOPER: NO.

10 MS. MOBLEY: WHAT IS THE RELEVANCE.

11 THE COURT: WHAT IS THE RELEVANCE.

12 MS. COOPER: YOUR HONOR, THERE IS TESTIMONY THAT THE  
13 SUPERVISOR HAD BEEN IN CONTACT WITH HIM AND THAT HE THEN,  
14 THEY ARRANGED TO MEET AT HERON COURT WHERE HE WAS  
15 APPREHENDED.

16 MS. VAN GINHOVEN: THERE IS ULTIMATE, THAT THE CELL  
17 NUMBER IS DEAD, I MEAN I THINK HE COULD OF CALLED THE  
18 SUPERVISOR FROM A STORE OR ANYWHERE.

19 THE COURT: I WILL THINK ABOUT THAT.

20 MS. COOPER: AND THEN THE BELT.

21 THE COURT: I WILL LET THAT STAY.

22 MS. COOPER: AND THE DOO RAG.

23 MS. MOBLEY: THE DOO RAG, I HAVE A PROBLEM, IT IS  
24 JUST PLAIN IRRELEVANT.

25 THE COURT: NO TESTIMONY OF HIM WEARING IT.

1 MS. MOBLEY: NO, SIR.

2 THE COURT: IT IS OUT.

3 MS. COOPER: THE LIGHTER TO GO WITH THE CIGARETTES,  
4 YOUR HONOR.

5 THE COURT: IT WILL STAY IN.

6 MS. COOPER: WHAT ABOUT THE CIGAR.

7 THE COURT: THE CIGAR STAYS IN.

8 MS. COOPER: AND THE PEN.

9 MS. MOBLEY: I DON'T CARE.

10 MS. COOPER: THE TRASH.

11 THE COURT: THE TRASH, ANYTHING SIGNIFICANT ABOUT THE  
12 TRASH.

13 MS. MOBLEY: THE TISSUE.

14 THE COURT: THOSE ITEMS THAT YOU HAVE JUST TAKEN I  
15 WOULD SUSTAIN THE OBJECTION ON THE GROUNDS OF RELEVANCY.  
16 THE OTHER ITEMS WILL BE PERMITTED TO BE PLACED BACK IN THE  
17 BAG AND TESTIFIED.

18 MS. COOPER: THANK YOU, YOUR HONOR.

19 THE COURT: MR. ROE, YOU ARE AT A SENSITIVE STAGE AT  
20 THE TRIAL BECAUSE YOU ARE IN THE MIDDLE OF YOUR TESTIMONY.  
21 YOU CANNOT DISCUSS YOUR TESTIMONY WITH ANYBODY. WE WILL  
22 BREAK UNTIL 9:30 IN THE MORNING.

23 (WHEREUPON, THE CASE WILL CONTINUE THE NEXT MORNING  
24 AT 9:30 A.M.)

25 THE COURT: I WILL BE GLAD TO HEAR FROM YOU, MS. VAN

1 GINHOVEN.

2 MS. VAN GINHOVEN: YOUR HONOR, I WOULD JUST SAY THAT  
3 DOUG STRICKLER IN OUR OFFICE SPOKE WITH US YESTERDAY. WE  
4 HAVE HAD THE OPPORTUNITY TO REVIEW WHAT THEY TOLD HIM AND  
5 WE ARE READY TO CROSS-EXAMINE THEM IF YOU ARE GOING TO  
6 ALLOW THEM TO TESTIFY.

7 THE COURT: I WILL PERMIT THEM TO TESTIFY SINCE YOU  
8 HAVE HAD TIME TO SPEAK WITH THEM. ANYTHING FURTHER?

9 MR. JOPHLIN: NO, YOUR HONOR.

10 THE COURT: AND WE CAN'T DO ANYTHING UNTIL 9:30,  
11 RIGHT. DIDN'T I TELL THE JURY 9:30.

12 MR. JOPHLIN: YES, SIR.

13 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

14 THE COURT: ANYTHING WE NEED TO TAKE CARE OF BEFORE  
15 THE JURY IS BROUGHT BACK.

16 MS. COOPER: YOUR HONOR, WE HAVE GONE OVER THE  
17 PHOTOGRAPHS THAT WE PLAN TO INTRODUCE THROUGH INVESTIGATOR  
18 STAN RICHARDS. AND WE AGREE THAT EXHIBITS 40 THROUGH 51,  
19 THERE IS NO OBJECTION.

20 THE COURT: IS THAT CORRECT.

21 MS. VAN GINHOVEN: THAT IS CORRECT, YOUR HONOR.

22 THE COURT: THOSE WILL BE PUT IN EVIDENCE AND I WILL  
23 ADVISE THE JURY OF THAT WHEN THEY COME IN.

24 MS. COOPER: JUST FOR THE RECORD, 52 THEY OBJECTED TO  
25 AND I AGREE.

1 (WHEREUPON, STATE'S EXHIBIT NOS. 40 - 51 WERE  
2 ADMITTED INTO EVIDENCE.)

3 THE COURT: BRING THE JURY IN, PLEASE.

4 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT  
5 APPROXIMATELY 9:30 A.M.)

6 THE COURT: MR. FOREMAN AND LADIES AND GENTLEMEN, WE  
7 WILL CONTINUE WITH THE TESTIMONY. I APPRECIATE YOU FOLKS  
8 BEING HERE WHEN I ASKED YOU TO BE HERE. MS. COOPER.

9 MS. COOPER: THANK YOU, YOUR HONOR.

10 CONTINUE DIRECT EXAMINATION

11 BY MS. COOPER:

12 Q GOOD MORNING, INVESTIGATOR ROE.

13 A GOOD MORNING.

14 Q I BELIEVE WE LEFT OFF YOU PUT THE BOOK BAG THAT YOU  
15 CONFISCATED FROM THE DEFENDANT INTO EVIDENCE, IS THAT  
16 CORRECT?

17 A YES, MA'AM.

18 Q IS THIS THE BOOK BAG THAT YOU LOGGED INTO EVIDENCE.

19 A YES, MA'AM.

20 Q AND THIS IS STATE'S EXHIBIT NUMBER 9, CORRECT?

21 A YES, MA'AM.

22 MS. COOPER: YOUR HONOR, AT THIS TIME THE STATE WOULD  
23 SEEK TO INTRODUCE STATE'S EXHIBIT NUMBER 9 INTO EVIDENCE.

24 THE COURT: WITH THE CONTENTS OF IT AS I UNDERSTAND  
25 IT.

1 MS. COOPER: THAT'S CORRECT, WITH THE CONTENTS.

2 THE COURT: SAME OBJECTION AS YESTERDAY, IS THAT  
3 CORRECT?

4 MS. VAN GINHOVEN: YES, YOUR HONOR.

5 THE COURT: THE OBJECTION IS OVERRULED. STATE'S 9 IS  
6 ADMITTED IN IT'S CONDITION OR WITH THE ITEMS THAT WERE  
7 REVIEWED YESTERDAY IN-CAMERA.

8 (WHEREUPON, STATE'S EXHIBIT NO. 9 WAS ADMITTED INTO  
9 EVIDENCE.)

10 THE COURT: GO AHEAD.

11 Q SIR, I AM GOING TO ASK YOU TO OPEN EVERY ZIPPER AND  
12 PULL OUT ALL OF THE ITEMS AND PLEASE DESCRIBE WHAT YOU  
13 FIND IN THIS BOOK BAG, PLEASE.

14 A A PACK OF, A SMALL THING OF RIGHT GUARD EXTREME  
15 SUPPORT DEODORANT, A JAR OF CARMEX, A TOOTHBRUSH, A PACK  
16 OF REAL PORT CIGARETTES OPENED UP, A CIGAR, A HAIRBRUSH, A  
17 CIGARETTE LIGHTER, A PLASTIC CARD THAT IS MARKED 313B, IT  
18 LOOKS LIKE IT TO BE A HOTEL DOOR, A BIC INK PEN, A  
19 FAIRGROUND PLAZA BUSINESS CARD, A BLACK AND LEATHER TYPE  
20 POUCH, A LIGHT BLUE PLASTIC GROCERY BAG.

21 Q AND IS THAT THE GROCERY BAG WHERE THE GUN WAS  
22 RECOVERED FROM THE DEFENDANT'S LEFT LEG?

23 A YES.

24 MS. VAN GINHOVEN: YOUR HONOR, OBJECT TO LEADING.

25 THE COURT: I SUSTAIN TO THE FORM OF THE QUESTION.

1 Q WHAT WAS IN THAT BAG ORIGINALLY WHEN YOU RECOVERED  
2 IT?

3 A IT WAS WHERE THE PISTOL WAS WRAPPED UP IN THE BAG.

4 Q ALONG WITH WHAT?

5 A ALONG WITH SOME MAGAZINES, MAGAZINES BEING FOR THE  
6 PISTOL. WE HAVE GOT SOME PAPERWORK HERE, ADVANTAGE WONDER  
7 CLEANER DISTRIBUTED CBMC SALES.

8 Q AND DOES THAT REFLECT ANY NUMBERS IN IT?

9 A IT SAYS ONE QUART, TWO QUART, THREE QUART, ALL THE  
10 WAY UP TO EIGHT QUARTS, SPRAY BOTTLES, LIKE AN INVENTORY  
11 OF SALES IS WHAT APPEARS TO ME.

12 Q OKAY.

13 A ANOTHER PIECE OF PAPER FROM ADVANTAGE, THE WONDER  
14 CLEANER, THE SAME COMPANY. IT ALSO HAS ITEMS, ONE QUART  
15 SPRAY BOTTLES, SIX QUARTS, EIGHT QUARTS AND HAS PRICES AND  
16 NUMBERS. IT LOOKS LIKE A PHOTOCOPY OF A COLUMBIA, SOUTH  
17 CAROLINA METRO AREA WITH SOME HANDWRITING.

18 Q AND CAN YOU READ THAT HANDWRITING?

19 A IT SAYS, HI, I AM JERENE HAYWARD AND I AM A SALESMAN  
20 WORKING FOR UNDER THE DISCRETION OF A SMALL BUT LARGE  
21 COMPANY BY THE NAME CMBC. TODAY I AM HERE TO ASSIST AND  
22 AID YOUR EVERY CLEANING HOUSEHOLD NEEDS. AND IT HAS SOME  
23 NOTES, IT SAYS NOT FIRMLY SHAKE HANDS, NUMBER TWO, SHAKE  
24 HANDS, NUMBER THREE, RETAIN SMILE AND COMPOSURE,  
25 DEMONSTRATION IS REQUIRED FOR A SECURE SALE. NUMBER SIX,

1 KEEP EXTREMELY PROFESSIONAL AND BUSINESS LIKE AT ALL  
2 TIMES. AND IT SAYS THE PRODUCT IS A FLOOR SHOW AND  
3 GUARANTEED USEFUL HOUSEHOLD REQUIREMENT. MAKE SURE TO USE  
4 A HALF OF A CUP OF WATER WITH SOLUTION FOR BEST RESULTS.

5 Q IS THAT EVERYTHING THAT IS WRITTEN ON THAT?

6 A YES, MA'AM.

7 Q WHAT IS THE NEXT DOCUMENT?

8 A IT APPEARS TO BE FROM THE ALABAMA CENTER OF  
9 STATISTICS AND IT APPEARS TO BE A CERTIFICATE OF A LIVE  
10 BIRTH FROM THE STATE OF ALABAMA AND THE INFORMATION ON IT,  
11 HIS NAME IS JERENE HAYWARD, DATE OF BIRTH, JANUARY 9, 1980  
12 AND IT SAYS 10:29 A.M. AND WAS THE TIME OF BIRTH.

13 Q OKAY, THAT IS FINE, THANK YOU.

14 A ANOTHER PIECE OF PAPERWORK, IT SAYS THE TOWN OF  
15 ARCADIA LAKES BUSINESS LICENSE AND THE NAME IS CMBC,  
16 LIMITED SALES, 696 WILSHIRE DRIVE, PALM COAST, FLORIDA.  
17 TYPE OF BUSINESS IS DIRECT SALES AND IT HAS ALL PURPOSE  
18 CLEANER. EXPIRATION DATE DECEMBER 31, 2004. AND IT LOOKS  
19 LIKE IT WAS ISSUED BY THE TOWN CLERK AND HAS THE  
20 SIGNATURE, IT LOOKS LIKE CHRISTINA MURPHY.

21 Q OKAY AND CAN YOU DOUBLE CHECK AND MAKE SURE THERE IS  
22 NOTHING ELSE IN THERE.

23 A (WITNESS LOOKS AT BAG.)

24 Q DOES THAT APPEAR TO BE EVERYTHING IN THE BAG, SIR?

25 A YES, MA'AM.

1 Q COULD YOU REFER TO THE STRAPS OF THAT BAG AND  
2 DESCRIBE IF YOU SEE ANY WRITING ON THE STRAPS?

3 A YES, ON THE SHOULDER STRAPS, IT SAYS JERENE,  
4 J-E-R-E-N-E, AND IT SAYS 7414 AND ON THE OTHER STRAP IT  
5 SAYS DOLLARS.

6 Q OKAY, THANK YOU. COULD YOU PLEASE PUT EVERYTHING  
7 BACK IN THE BAG FOR ME.

8 A (WITNESS PUTS ITEMS IN BAG.)

9 Q YESTERDAY I ASKED IF YOU RECOGNIZE STATE'S NUMBER 4,  
10 CAN YOU PLEASE REVIEW THE ITEMS IN THERE AND TELL ME WHAT  
11 THEY ARE.

12 A A BLACK AND WHITE IN COLOR NIKE AIR TENNIS SHOE.

13 Q AND WHAT IS IN THE OTHER BAG?

14 A THE SAME TYPE OF SHOE EXCEPT THE OTHER FOOT.

15 Q OKAY, WHICH SIDE IS IT?

16 A THE ONE IN THE OTHER BAG WOULD BE THE LEFT FOOT.

17 Q OKAY, COULD YOU PLEASE PUT IT BACK IN THERE. ARE  
18 THOSE THE SHOES YOU RECOVERED FROM THE SUSPECT ON APRIL  
19 13, 2004?

20 A YES, MA'AM.

21 MS. COOPER: YOUR HONOR, AT THIS TIME THE STATE SEEKS  
22 TO INTRODUCE NUMBER 4 INTO EVIDENCE.

23 THE COURT: ANY OBJECTION?

24 MS. VAN GINHOVEN: YOUR HONOR, MAY WE APPROACH?

25 THE COURT: SURE.

1 (WHEREUPON, A BENCH CONFERENCE WAS HELD IN THE  
2 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE  
3 JURY.)

4 THE COURT: OBJECTION IS OVERRULED, STATE'S 4 IS  
5 ADMITTED.

6 (WHEREUPON, STATE'S EXHIBIT NO. 4 WAS ADMITTED INTO  
7 EVIDENCE.)

8 Q CAN YOU DESCRIBE THE PANTS THAT JERENE HAYWARD WAS  
9 WEARING WHEN YOU APPREHENDED HIM?

10 A YES, THEY WERE DARK BLUE.

11 Q AND I AM GOING TO SHOW YOU STATE'S NUMBER 8. WHAT  
12 KIND OF FABRIC WERE THEY?

13 A BLUE JEANS.

14 Q I AM GOING TO ASK YOU IF YOU RECOGNIZE STATE'S NUMBER  
15 8?

16 A THEY APPEAR TO BE THE SAME PANTS.

17 MS. COOPER: YOUR HONOR, AT THIS TIME THE STATE SEEKS  
18 TO INTRODUCE NUMBER 8 INTO EVIDENCE.

19 THE COURT: ANY OBJECTION.

20 MS. VAN GINHOVEN: NO OBJECTION, YOUR HONOR.

21 THE COURT: STATE'S 8 IS IN EVIDENCE.

22 (WHEREUPON, STATE'S EXHIBIT NO. 8 WAS ADMITTED INTO  
23 EVIDENCE.)

24 Q YOU TESTIFIED YESTERDAY THAT WHEN YOU WERE PLACING  
25 MR. HAYWARD INTO THE PATROL CAR THAT YOU READ HIM YOUR

1 MIRANDA CARD, IS THAT CORRECT?

2 A YES, MA'AM.

3 Q WHEN INVESTIGATOR BARNES ARRIVED ON THE SCENE DID YOU  
4 SHARE THAT INFORMATION WITH HIM?

5 A YES, MA'AM.

6 MS. VAN GINHOVEN: YOUR HONOR, OBJECT TO LEADING.

7 THE COURT: I SUSTAIN.

8 Q WHAT DID YOU TELL INVESTIGATOR BARNES WHEN HE ARRIVED  
9 AT THE SCENE WHERE MR. HAYWARD WAS APPREHENDED?

10 A I INFORMED HIM THAT MR., THAT THE SUSPECT WAS ALREADY  
11 MIRANDIZED.

12 Q NOW, YOU WROTE A REPORT CONCERNING YOUR INVOLVEMENT  
13 AT THE SCENE, IS THAT CORRECT?

14 A YES, MA'AM.

15 Q DID YOU WRITE A REPORT CONCERNING YOUR INVOLVEMENT IN  
16 APPREHENDING OR FRISKING THE SUSPECT, MR. HAYWARD.

17 MS. VAN GINHOVEN: YOUR HONOR, I OBJECT TO THE  
18 LEADING.

19 THE COURT: LET HIM DO THE TESTIMONY.

20 MS. COOPER: YES, YOUR HONOR.

21 Q WHAT REPORT DID YOU WRITE?

22 A THE ONLY REPORT I GENERATED WAS THE ONE AT THE  
23 INCIDENT AND IT REFERS TO, IN REFERENCE TO THE INCIDENT  
24 SCENE OUT ON TAM-O-SHANTER.

25 Q DID YOU ISSUE ANY REPORT BESIDES THAT?

1 A OTHER THAN EVIDENCE REPORTS, NO MA'AM.

2 Q AND WHY DID YOU NOT ISSUE A REPORT CONCERNING YOUR  
3 INVOLVEMENT IN FRISKING THE SUSPECT?

4 A BECAUSE SERGEANT MCCOLMAN, WELL HE IS A LIEUTENANT  
5 NOW, SERGEANT MCCOLMAN WAS GOING TO PREPARE THAT REPORT.

6 Q AND DESCRIBE FOR THE JURY WHAT YOUR, WHAT YA'LL  
7 TYPICALLY DO WHEN THERE ARE SEVERAL LAW ENFORCEMENT  
8 MEMBERS INVOLVED IN ONE CASE AS FAR AS ISSUING REPORTS.

9 A OUR NORMAL PROCEDURE SO THAT THERE ARE NOT  
10 DUPLICATIONS IS FOR, GOOD PRACTICE AND, DEPUTY WAGNER IS  
11 AT THE HOSPITAL SO SHE IS GOING TO GET MORE INFORMATION  
12 THERE SO IT MAKES MORE SENSE FOR HER TO DO THE, THAT  
13 REPORT AS FAR AS THE INITIAL INCIDENT REPORT. AND OTHER  
14 THINGS THAT WOULD HAPPEN IS WHAT WE WOULD CALL A  
15 SUPPLEMENTAL AND THAT IS WHAT I PREPARED IS THE  
16 SUPPLEMENTAL REPORT TO GO WITH THE ORIGINAL, WHAT WE CALL  
17 THE ORIGINAL INCIDENT REPORT.

18 Q AND SO YOU RECALL INVESTIGATOR, I AM SORRY, SERGEANT  
19 MCCOLMAN ISSUING A REPORT DESCRIBING WHAT HAPPENED WHEN  
20 THE SUSPECT WAS APPREHENDED?

21 A CORRECT, I WASN'T WITH HIM, I WAS GOING TO  
22 HEADQUARTERS AND I WAS GOING TO BE BUSY WITH THAT SO HE  
23 WAS GOING TO TAKE CARE OF THE PAPERWORK IN REFERENCE TO  
24 THE INCIDENT OF DURESS.

25 Q OKAY. AND AFTER YOU ASSISTED INVESTIGATOR BARNES AT

1 HEADQUARTERS, DID THAT END YOUR ROLE AND AFTER YOU LOGGED  
2 IN THE EVIDENCE, DID THAT END YOUR ROLE IN THIS CASE?

3 A YES, MA'AM.

4 MS. COOPER: BEG THE COURT'S INDULGENCE, YOUR HONOR.

5 THE COURT: ALL RIGHT.

6 Q THANK YOU AND PLEASE ANSWER ANY QUESTIONS THAT MS.  
7 VAN GINHOVEN HAS FOR YOU.

8 THE COURT: COUNSEL.

9 MS. VAN GINHOVEN: THANK YOU, YOUR HONOR.

10 CROSS-EXAMINATION

11 BY MS. VAN GINHOVEN:

12 Q GOOD MORNING, INVESTIGATOR ROE.

13 A GOOD MORNING, MA'AM.

14 Q TELL ME HOW LONG AGAIN YOU HAVE BEEN A POLICE  
15 OFFICER?

16 A EIGHT YEARS EXPERIENCE IN LAW ENFORCEMENT AND SIX OF  
17 THOSE BEING WITH RICHLAND COUNTY SHERIFFS DEPARTMENT.

18 Q AND IN ORDER TO BECOME A POLICE OFFICER YOU HAVE TO  
19 GO TO THE ACADEMY, IS THAT CORRECT?

20 A YES, MA'AM.

21 Q AND WHEN YOU, PART OF YOUR TRAINING IS HOW TO BE A  
22 POLICE OFFICER AND WHAT TECHNIQUE TO USE?

23 A YES, MA'AM.

24 Q AND SO WHEN YOU GO TO THE ACADEMY YOU LEARN THAT WHEN  
25 YOU RESPOND TO THE SCENE THAT, YOUR ROLE IS TO GATHER

1 INFORMATION, IS THAT CORRECT?

2 A YES, MA'AM.

3 Q AND YOU ALSO KNOW THAT IT IS VERY IMPORTANT TO WRITE  
4 DOWN ALL THE INFORMATION THAT YOU COLLECT IN YOUR REPORT?

5 A YES, MA'AM.

6 Q AND THAT IS BECAUSE, FOR INSTANCE IN THIS CASE THE  
7 INCIDENT HAPPENED IN APRIL OF 2004?

8 A YES, MA'AM.

9 Q AND ALMOST TWO YEARS LATER?

10 A YES, MA'AM.

11 Q SO IN BETWEEN APRIL 2004 AND NOW, I THINK YOU  
12 TESTIFIED THAT YOU ARE NOW AN INVESTIGATOR, IS THAT RIGHT?

13 A YES, MA'AM.

14 Q AND YOU HAVE RESPONDED TO NUMEROUS CRIME SCENES SINCE  
15 2004?

16 A YES, MA'AM.

17 Q AND SO THE REASON THAT IT IS SO IMPORTANT TO PUT  
18 INFORMATION IN A REPORT IS SO THAT YOU CAN REMEMBER IT  
19 WHEN YOU DO COME TO TRIAL ON YOUR CASES, ISN'T THAT RIGHT.

20 A YES MA'AM, FOR DOCUMENTATION.

21 Q DOCUMENTATION IS EXTREMELY IMPORTANT, CORRECT?

22 A YES, MA'AM.

23 Q AND THE DOCUMENTATION SHOULD BE VERY COMPLETE, WOULD  
24 YOU AGREE?

25 A YES, MA'AM.

1 Q AND THOROUGH?

2 A YES, MA'AM.

3 Q AND ACCURATE?

4 A YES, MA'AM.

5 Q OKAY. NOW, YOUR FIRST ROLE IN THIS WAS TO RESPOND TO  
6 THE ACTUAL SCENE, THAT BEING THE HOME OF MR. CONNELL, IS  
7 THAT RIGHT?

8 A YES, MA'AM.

9 Q AND THEN YOU SAID YOU DID WRITE A REPORT REGARDING  
10 WHAT YOU DID THERE?

11 A YES, MA'AM. I PREPARED A SUPPLEMENTAL REPORT.

12 Q YOU PREPARED A SUPPLEMENTAL INCIDENT REPORT, RIGHT?

13 A YES, MA'AM.

14 Q ON APRIL 13TH OF 2004?

15 A YES, MA'AM.

16 Q DO YOU HAVE A COPY OF THAT REPORT WITH YOU?

17 A YES, MA'AM.

18 Q AND WHILE YOU WERE THERE YOU SPOKE TO THE HOMEOWNER,  
19 MR. CONNELL, RIGHT?

20 A YES, MA'AM.

21 Q AND THAT IS THE ONLY PERSON YOU SPOKE TO, IS THAT  
22 RIGHT, IS THAT THE ONLY PERSON YOU SPOKE TO AT THE SCENE?

23 A AT THE SCENE?

24 Q YES.

25 A TO THE BEST OF MY RECOLLECTION, NO MA'AM.

1 Q SO, YOU SPOKE TO OTHER PEOPLE AT THE SCENE?

2 A I BELIEVE TO THE BEST OF MY RECOLLECTION, A NEIGHBOR  
3 HAD STOPPED BY.

4 Q BUT YOU DIDN'T PUT THAT NAME OF THE NEIGHBOR OR  
5 ANYBODY ELSE THAT YOU MAY OF SPOKEN TO IN YOUR REPORT?

6 A NO, MA'AM.

7 Q WILL YOU LOOK AT YOUR SUPPLEMENTAL REPORT THAT YOU  
8 WROTE AND ON THE BOTTOM WHERE IT SAYS REPORTING OFFICER,  
9 IS THAT YOUR NAME?

10 A YES, MA'AM.

11 Q SO, YOU WERE THEREFOR RESPONSIBLE FOR THIS REPORT?

12 A YES, MA'AM.

13 Q AND ALSO IN YOUR REPORT THAT ONCE INVESTIGATOR BARNES  
14 GOT THERE YOU BRIEFED HIM AT THE SCENE, IS THAT RIGHT?

15 A ARE YOU REFERRING TO THE LAST SENTENCE?

16 Q RIGHT, INVESTIGATOR BARNES RESPONDED TO THE SCENE,  
17 DID YOU THEN BRIEFED HIM ABOUT WHAT YOU HAD FOUND OUT?

18 A YES, MA'AM.

19 Q NOW, YOUR NEXT INVOLVEMENT BECOMES, YOU FOLLOWED THE  
20 VAN, THE NEXT INVOLVEMENT WITH THIS CASE IS YOU FOLLOWED A  
21 VAN TO THE SUBDIVISION WHERE THEY HAD THE SUSPECT, IS THAT  
22 RIGHT?

23 A THAT OCCURRED SOME TIME LATER, YES MA'AM.

24 Q AFTER THIS REPORT YOU DID OTHER THINGS THAT IS NOT IN  
25 YOUR REPORT?

1 A YES, MA'AM.

2 Q THAT IS NOT WRITTEN DOWN?

3 A I DID NOT WRITE DOWN THAT I ASSISTED OTHER OFFICERS.  
4 ONCE THE LAB UNIT GOT THERE, LIKE I SAID I WAS THERE TO  
5 SECURE THE SCENE. ONCE THE LAB STARTED DOING THEIR WORK  
6 THERE WAS NO NEED FOR ME TO STAY THERE. THE LAB HAD THAT  
7 PART UNDER CONTROL. AND I WAS ASSISTING OTHER UNITS, JUST  
8 CHECKING THE AREA, WE WERE LOOKING FOR THE SUSPECT. AND  
9 PIECES WERE BEING PUT TOGETHER AND APPROXIMATELY TWO HOURS  
10 LATER IS WHEN THE INVOLVEMENT WITH THE VAN AND WE HAD  
11 ENOUGH TO DO FURTHER ACTION.

12 Q AND ALL OF THIS IS OFF OF YOUR MEMORY, YOU TESTIFIED  
13 EARLIER THAT IT IS YOUR MEMORY THAT YOU TALKED TO A  
14 NEIGHBOR, THAT IT IS YOUR MEMORY THAT YOU MAY OF TALKED TO  
15 OTHER PEOPLE THAT IS NOT IN YOUR REPORT?

16 A WHAT I SAID WAS I BELIEVE A NEIGHBOR, TO THE BEST OF  
17 MY RECOLLECTION A NEIGHBOR DID STOP BY BRIEFLY BUT IT  
18 WASN'T SIGNIFICANT ENOUGH IN MY OPINION TO PUT IT ON HERE.  
19 AND THEN AFTER THE, EVERYTHING INVESTIGATOR BARNES AGREED  
20 THAT I WOULD HELP OTHER UNITS TO ASSIST IN THE AREA TO  
21 LOOK FOR THE SUSPECT.

22 Q AND AGAIN THIS IS TO THE BEST OF YOUR RECOLLECTION,  
23 TO THE BEST OF YOUR MEMORY, RIGHT?

24 A YES, MA'AM.

25 Q NOW, ONCE YOU FOLLOWED THE VAN AND ARRIVED AT THE

1 SUBDIVISION WHERE THEY HAD A SUSPECT IN CUSTODY I BELIEVE  
2 YOU TESTIFIED THAT YOU AND OFFICER MCCOLMAN DID A TERRY  
3 FRISK OF HIM, IS THAT RIGHT?

4 A YES, ME AND SERGEANT MCCOLMAN TERRY FRISKED THE  
5 SUSPECT.

6 MS. VAN GINHOVEN: YOUR HONOR, MAY I APPROACH THE  
7 WITNESS?

8 THE COURT: YOU MAY.

9 Q I AM HANDING YOU A SUPPLEMENTARY REPORT. ON THE  
10 BOTTOM OF THAT REPORT WHERE IT SAYS REPORTING OFFICERS,  
11 TELL ME WHOSE NAMES ARE THERE?

12 A IT SAYS, M.A. MCCOLMAN AND M. ROE.

13 Q SO YOU ARE ON THIS REPORT AS WELL AS THE REPORTING  
14 OFFICER?

15 A MY NAME IS ON THIS REPORT, YES MA'AM.

16 Q BUT YOU DIDN'T TYPE UP THIS REPORT?

17 A NO, MA'AM.

18 Q BUT THIS REPORT IS EXPLAINING WHAT YOU AND SERGEANT  
19 MCCOLMAN DID REGARDING THE TERRY FRISK OF THE SUSPECT AT  
20 THE SUBDIVISION, ISN'T THAT RIGHT?

21 A CAN YOU REPEAT THAT?

22 Q SURE. THE REPORT THAT YOU HAVE IN YOUR HAND HAS YOUR  
23 NAME AS THE REPORTING OFFICER ON IT?

24 A YES, MA'AM.

25 Q THAT DESCRIBES WHAT YOU AND SERGEANT MCCOLMAN DID TO

1 THE SUSPECT AT THE SUBDIVISION?

2 A YES, MA'AM.

3 Q AND YOU TESTIFIED IN A HEARING PREVIOUS TO THIS ONE  
4 THAT THE REASON BOTH OF YOUR NAMES ARE ON THIS REPORT IS  
5 THIS IS WHAT YA'LL DID?

6 A AS I STATED EARLIER, IT IS A COMMON PRACTICE THAT MY  
7 NAME WOULD BE ON THERE BECAUSE I WAS ALSO INVOLVED IN THIS  
8 PARTICULAR PORTION OF THE INCIDENT.

9 Q AND YOU REMEMBER AT A PRIOR HEARING SAYING THAT THE  
10 REASON YOUR NAME WOULD BE ON THERE IS BECAUSE YOU AND  
11 SERGEANT MCCOLMAN CONDUCTED THAT ACTIVITY?

12 A YES.

13 Q NOW, WHEN YOU ARRIVED IN THE SUBDIVISION THE SUSPECT  
14 WAS IN HANDCUFFS, CORRECT?

15 A YES, MA'AM.

16 Q AND THERE WERE NUMEROUS POLICE CARS THERE?

17 A YES, MA'AM.

18 Q THERE WERE NUMEROUS POLICE OFFICERS THERE?

19 A YES, MA'AM.

20 Q AND ACTUALLY THE FIRST PEOPLE TO CONTACT MR. HAYWARD  
21 WAS LIEUTENANT TYLER AND WAGNER?

22 A YES, MA'AM.

23 Q AND AT THAT POINT YOU AND SERGEANT MCCOLMAN TAKE OVER  
24 THE TERRY FRISK OF MR. HAYWARD, THE PAT-DOWN?

25 A WE TOOK OVER CONTROL OF THE SUSPECT.

1 Q AND THEN YOU PATTED HIM DOWN?

2 A AND CONDUCTED A TERRY FRISK. YES, MA'AM.

3 Q THAT MEANS YOU PAT HIM DOWN?

4 A YES, MA'AM.

5 Q OKAY. AND THIS SUPPLEMENTAL REPORT HAS YOUR NAME ON  
6 IT, THIS IS DESCRIBING THAT PAT-DOWN, IS THAT RIGHT?

7 A IT DOES TALK ABOUT THE PAT-DOWN IN THE REPORT, YES  
8 MA'AM.

9 Q BUT NO WHERE IN THAT REPORT DOES IT MENTION YOU  
10 READING HIM HIS MIRANDA RIGHTS?

11 A CORRECT.

12 Q SO, THE FACT THAT YOU READ HIM HIS MIRANDA RIGHTS,  
13 THAT IS COMING FROM YOUR BEST RECOLLECTION, COMING FROM  
14 YOUR MEMORY?

15 A YES, MA'AM.

16 Q ALSO I THINK YOU TESTIFIED EARLIER THAT DURING THAT  
17 PAT-DOWN IS WHEN YOU FOUND A GREEN LEAFY SUBSTANCE THAT  
18 YOU SAY IS MARIJUANA ON MR. HAYWARD, IS THAT RIGHT?

19 A YES, MA'AM. AND I SUSPECTED IT TO BE MARIJUANA.

20 Q AND THAT IS NO WHERE IN THIS REPORT EITHER, IS IT?

21 A NO, MA'AM.

22 Q AND IT IS NOT IN YOUR HANDWRITTEN REPORT THAT YOU  
23 HAVE ALREADY TESTIFIED TO?

24 A NO, MA'AM.

25 Q AND YOU REMEMBER TESTIFYING AT A PRETRIAL HEARING OR

1 AT A PRIOR HEARING THAT YOU HAVE HAD NO TRAINING AS AN  
2 INVESTIGATOR?

3 A I DON'T BELIEVE THOSE WERE MY WORDS.

4 Q REGARDING THE SHOES, YOU TESTIFIED YESTERDAY YOU TOOK  
5 THE SHOES AND PUT THEM IN YOUR TRUNK, IS THAT RIGHT?

6 A I DID PUT THEM IN MY TRUNK OR THE FLOORBOARD IN THE  
7 FRONT, IN THE EMPTY SEAT BESIDE ME.

8 Q AND THEN YOU GAVE THEM TO INVESTIGATOR BARNES?

9 A I TOOK THEM UPSTAIRS AND CONSULTED WITH INVESTIGATOR  
10 BARNES AND THAT IS WHEN HE ASKED ME TO SEE IF THE LAB  
11 COULD PROCESS THEM NOW.

12 Q SO, THEY WENT TO YOUR TRUNK, TO INVESTIGATOR BARNES  
13 AND THEN BACK TO YOU. THEY WENT TO YOUR CAR TO  
14 INVESTIGATOR BARNES--

15 A I CARRIED THE SHOES AWAY FROM THE SUSPECT, I EITHER  
16 THREW THEM IN THE FLOORBOARD OF THE TRUNK, WITH THE OTHER  
17 STUFF. I WOULD THINK IT WOULD BE IN THE TRUNK BUT I  
18 REALIZE THAT I PUT THEM IN THE FLOORBOARD, BASICALLY IT  
19 WAS TO TRANSPORT THE SUSPECT AND THE EVIDENCE TO  
20 HEADQUARTERS AND TO CONSULT WITH INVESTIGATOR BARNES.

21 Q AND THIS IS ALL OF YOUR RECOLLECTION, NONE OF THIS IS  
22 WRITTEN DOWN ANYWHERE. IT COULD OF BEEN IN THE TRUNK,  
23 COULD OF BEEN IN THE FLOORBOARD?

24 A YES, MA'AM.

25 Q NOW, AND THEN IT WENT TO INVESTIGATOR BARNES, IS THAT

1 RIGHT?

2 A I BROUGHT THE EVIDENCE TO INVESTIGATOR BARNES,  
3 UPSTAIRS TO HEADQUARTERS.

4 Q THEN DID IT COME BACK TO YOU?

5 A NO, I TOOK IT TO THE LAB WHICH IS LOCATED IN  
6 HEADQUARTERS DOWN THE HALL.

7 Q SO, AND JUST BEAR WITH ME. YOU TAKE THE SHOES OUT OF  
8 YOUR CAR, YOU TAKE THEM TO INVESTIGATOR BARNES CUBICLE. I  
9 BELIEVE YOU TESTIFIED YESTERDAY THAT YOU GAVE THEM TO  
10 INVESTIGATOR BARNES?

11 A YES, MA'AM.

12 Q THEN YOU GET THEM BACK AND YOU TAKE THEM TO SOMEBODY  
13 ELSE?

14 A WE GO IN THE REAR DOOR OF HEADQUARTERS AND THE  
15 INVESTIGATION IS ALL ON ONE FLOOR AND I DID CONSULT WITH  
16 INVESTIGATOR BARNES, HE SAID WHY DON'T YOU -- YOU KNOW, WE  
17 HAD THE EVIDENCE THERE AND HE SAYS CAN YOU GO SEE IF A  
18 FORENSIC INVESTIGATOR CAN LOOK AT THEM NOW. IN OTHER  
19 WORDS, DEAL WITH THEM NOW AS FAR AS THE SHOES, HE  
20 REQUESTED THAT I SEE IF HE COULD DO IT, THAT HE COULD  
21 PROCESS THE SHOES AT THAT POINT.

22 MS. VAN GINHOVEN: BEG THE COURT'S INDULGENCE.

23 Q OFFICER ROE, JUST ONE LAST QUESTION. WE DISCUSSED  
24 THAT YOU HAD TRAINING AT THE ACADEMY, IS THAT RIGHT?

25 A YES, MA'AM.

1 Q ON WHAT YOU SHOULD DO AT A CRIME SCENE, MEANING  
2 GATHERING INFORMATION, TALKING TO PEOPLE, HOW TO INTERVIEW  
3 PEOPLE, HOW TO INTERROGATE PEOPLE, ALL OF THESE TYPE OF  
4 THINGS. YOU DON'T GET THAT TRAINING AT THE ACADEMY?

5 A YOU DO IF YOU GO TO THE INVESTIGATOR COURSE AT THE  
6 SOUTH CAROLINA ACADEMY, I HAVEN'T BEEN TO THAT YET, MA'AM.  
7 I HAVE BEEN TO THE REGULAR ACADEMY FOR JUST THE UNIFORM  
8 PATROL.

9 Q EXACTLY, BUT WHEN YOU DID GO TO THE ACADEMY FOR  
10 UNIFORM PATROL YOU ARE SAYING YOU ARE NOT TAUGHT ANYTHING  
11 ABOUT HOW TO RESPOND TO CRIME SCENES, THAT YOU ARE NOT  
12 TAUGHT ANYTHING ABOUT HOW TO COLLECT INFORMATION, IS THAT  
13 WHAT YOU ARE SAYING.

14 A YOU HAVE ASKED ME ABOUT INTERVIEWS, YOU ARE NOT  
15 TAUGHT HOW TO INTERVIEW OR INTERROGATE SUSPECTS.

16 Q AT THE ACADEMY?

17 A CORRECT, MA'AM.

18 Q YOU ARE NOT TAUGHT HOW TO COLLECT INFORMATION THAT IS  
19 INTERVIEWING WITNESSES AND SUSPECTS AT THE ACADEMY IN  
20 ORDER TO BECOME A POLICE OFFICER. IS THAT WHAT YOU ARE  
21 TELLING ME?

22 A NO, MA'AM. YES, YOU ARE TRAINED TO COLLECT  
23 INFORMATION, THAT IS TRUE. BUT TO DO A REGULAR  
24 INVESTIGATIVE TYPE INTERVIEW, NO MA'AM, YOU ARE NOT, NOT  
25 AT THE BASIC LEVEL.

1 Q I HAVE NO FURTHER QUESTIONS.

2 THE COURT: REDIRECT.

3 MS. COOPER: BRIEFLY, YOUR HONOR.

4 REDIRECT EXAMINATION

5 BY MS. COOPER:

6 Q BACK ON APRIL THE 13TH OF 2004 WHAT WAS YOUR TITLE  
7 WITH RICHLAND COUNTY SHERIFFS DEPARTMENT?

8 A I WAS A MASTER DEPUTY IN UNIFORMED PATROL DIVISION.

9 Q SO, YOU WERE A ROAD DEPUTY, IS THAT CORRECT?

10 A YES, MA'AM.

11 Q YOU WERE NOT AN INVESTIGATOR?

12 A CORRECT.

13 Q AND AT THE ACADEMY, DESCRIBE THE DIFFERENT LEVELS OF  
14 TEACHING THEY HAVE FOR LAW ENFORCEMENT THERE?

15 A IT IS YOUR BASIC LAW ENFORCEMENT TO BE A ROAD DEPUTY,  
16 EVERYTHING FROM HANDCUFFING TO SELF-DEFENSE AND IT IS  
17 BROKEN DOWN INTO BLOCKS, DIFFERENT WEEKS. YOU ARE NOT  
18 THERE ON HOW TO DO THE BREATHALYZER AND OTHER THINGS, THAT  
19 IS LATER ON IN FOLLOW-UP ON TRAINING. YOU GET TAUGHT THE  
20 LAW, I BELIEVE, TWO WEEKS, WHEN I WENT THROUGH NOTHING BUT  
21 CRIMINAL LAW AND THEN YOU GO INTO SELF-DEFENSE FOR A WEEK,  
22 THINGS OF THAT NATURE. HOW TO DRIVE A PATROL CAR,  
23 SHOTTING RANGE, THINGS LIKE THAT. IT IS BROKEN DOWN TO  
24 EIGHT, NINE WEEK PERIOD.

25 Q AND ARE YOU AWARE OF A SPECIAL PROGRAM OR WHERE

1 INVESTIGATORS ARE SENT TO BE TRAINED?

2 A YES MA'AM, AT HEADQUARTERS.

3 Q AND WHAT DO YOU UNDERSTAND THE INVESTIGATORS PROGRAM  
4 TO CONSIST OF?

5 A BASICALLY A LOT TO DO WITH HOW TO INVESTIGATE CRIMES  
6 WHERE, SAY, AN EXAMPLE, WHERE A BURGLARY OR SOMETHING LIKE  
7 THAT. WHAT TO LOOK FOR, WHAT CLUES MAY GUIDE YOU INTO THE  
8 INVESTIGATION. A BIG PORTION OF IT THE WAY I UNDERSTAND  
9 IT IS THE INTERVIEW AND THE INTERROGATION.

10 Q AND YOU NEVER MADE ANY EFFORT IN THIS CASE TO  
11 INTERROGATEEE JERENE HAYWARD, DID YOU?

12 A NO, MA'AM.

13 Q ALSO LET'S TALK ABOUT THE SHOES. WHEN YOU PICK UP  
14 THE SHOES FROM THE SCENE WHERE THE SUSPECT WAS APPREHENDED  
15 DESCRIBE FOR THE JURY WHERE YOU WENT NEXT?

16 A I WENT DIRECTLY TO HEADQUARTERS.

17 Q AND WERE THOSE SHOES IN YOUR POSSESSION AT THAT TIME?

18 A YES.

19 Q WHEN YOU MET WITH INVESTIGATOR BARNES DID THOSE SHOES  
20 LEAVE YOUR POSSESSION AT ANY TIME?

21 A NO, MA'AM.

22 Q WHERE DID YOU TAKE THE SHOES FROM THAT POINT, FROM  
23 THE CUBICLE BELONGING TO INVESTIGATOR BARNES?

24 A RIGHT DOWN THE HALL, APPROXIMATE HALF WAY DOWN THE,  
25 BESIDE THE, MAYBE 50 FEET, 100 FEET IS WHERE THE FORENSIC

1 LAB IS.

2 Q AND WHO DID YOU GIVE THE SHOES TO AT THE LAB?

3 A RICHARDS, FORENSIC INVESTIGATOR RICHARDS.

4 Q DID YOU EVER TAKE THE SHOES BACK TO THE CRIME SCENE?

5 A NO, MA'AM.

6 Q HAD YOU EVER ENCOUNTERED THE VICTIM DURING THIS DAY?

7 A NO, MA'AM.

8 Q YOU WERE SHOWN A REPORT AND I AM GOING TO SHOW IT TO  
9 YOU. WHOSE REPORT IS THAT?

10 A SERGEANT, HE IS NOW LIEUTENANT SERGEANT MCCOLMAN.

11 Q AND YOUR NAME IS ON THAT, IS THAT CORRECT?

12 A YES MA'AM, IT IS UNDERNEATH HIS.

13 Q AND WHO WROTE THAT REPORT?

14 A SERGEANT MCCOLMAN.

15 Q YOU DID NOT WRITE THAT REPORT?

16 A NO, MA'AM.

17 Q WAS SERGEANT MCCOLMAN AROUND YOU WHEN YOU PUT THE  
18 SUSPECT IN THE CAR AND MIRANDIZED HIM?

19 A NO, MA'AM.

20 Q WHERE WAS SERGEANT MCCOLMAN TO THE BEST OF YOUR  
21 RECOLLECTION?

22 A TO THE BEST OF MY RECOLLECTION, HE WAS UNLOADING THE  
23 PISTOL, THE .45 CALIBER PISTOL.

24 Q OKAY, AND WHO FOUND THE SUBSTANCE BELIEVED TO BE  
25 MARIJUANA?

1 A I DID, MA'AM.

2 Q IN YOUR TIME THAT YOU WERE A ROAD DEPUTY IN THIS  
3 GENERAL REGION SIX AREA HOW MANY TIMES HAVE YOU HAD TO BE  
4 ON STANDBY WHILE YOUR COLLEGES GOT INTO A WHITE VAN TO GO  
5 APPREHEND A SUSPECT?

6 A THE FIRST TIME, MA'AM.

7 Q AND THE REPORT THAT YOU DEVELOPED, IS THAT COMPLETE  
8 AS FAR AS WHAT YOU DID AT THE CRIME SCENE?

9 A YES, MA'AM.

10 Q IS IT ACCURATE AS TO WHAT YOU DID AT THE CRIME SCENE?

11 A YES, MA'AM.

12 Q THAT IS ALL I HAVE.

13 THE COURT: ANY RECROSS?

14 MS. VAN GINHOVEN: BRIEFLY, YOUR HONOR.

15 RECROSS-EXAMINATION

16 BY MS. VAN GINHOVEN:

17 Q YOU DID TESTIFY THAT SERGEANT MCCOLMAN WAS NO WHERE  
18 NEAR YOU WHEN YOU MIRANDIZED MR. HAYWARD, IS THAT RIGHT?

19 A HE WASN'T RIGHT ON TOP OF ME, HE WAS FOCUSED ON  
20 UNLOADING THE WEAPON, MA'AM.

21 Q AND HOW MANY OFFICERS WERE OUT THERE APPROXIMATLEY?

22 A DEPUTY WAGNER AND LIEUTENANT TYLER WAS IN THE VAN, ME  
23 AND SERGEANT MCCOLMAN WERE THE FIRST UNIFORM DEPUTIES THAT  
24 ARRIVED.

25 Q SO, ABOUT FOUR OR FIVE, RIGHT?

1 A CORRECT.

2 Q AND WHEN YOU JUST TESTIFIED ABOUT YOUR WRITTEN REPORT  
3 BEING COMPLETE, DOES THIS HAVE A NAME OF ANY OF THE  
4 NEIGHBORS THAT YOU MAY OR MAY NOT HAVE TALKED TO THAT DAY?

5 A I DID NOT DOCUMENT A NAME.

6 Q SO IT IS NOT FULLY COMPLETE, IS IT, IF YOU TALKED TO  
7 SOMEBODY AND YOU DIDN'T GET THEIR NAME AND PUT IN THE  
8 REPORT IT IS NOT COMPLETE?

9 A (NO RESPONSE.)

10 Q I HAVE NO FURTHER QUESTIONS.

11 THE COURT: ANYTHING FURTHER?

12 MS. COOPER: NO, YOUR HONOR.

13 THE COURT: YOU MAY STEP DOWN. CALL YOUR NEXT  
14 WITNESS, PLEASE.

15 MS. COOPER: ~~AT THIS TIME~~ THE STATE CALLS DR. RICHARD  
16 BOYER.

17 DR. RICHARD BOYER, AFTER BEING DULY SWORN,  
18 TESTIFIED AS FOLLOWS:

19 DIRECT EXAMINATION

20 BY MS. COOPER:

21 Q GOOD MORNING, DR. BOYER. DR. BOYER, CAN YOU TELL THE  
22 JURY WHERE YOU ARE EMPLOYED?

23 A I AM A FULL-TIME PHYSICIAN AT BOTH PROVIDENCE  
24 HOSPITALS HERE IN COLUMBIA.

25 Q AND BOTH OF THEM, MEANING ARE THERE TWO SEPARATE

*Witness  
Dr*

1 LOCATIONS?

2 A THERE IS THE OLD DOWNTOWN HOSPITAL ON FORREST DRIVE  
3 AND THE NEW HOSPITAL AT NORTHEAST OFF OF FARROW ROAD.

4 Q AND AS PART AS BEING EMPLOYED BY BOTH, YOU COME BACK  
5 AND FORTH BETWEEN THE TWO FREQUENTLY?

6 A I WORK AT BOTH HOSPITALS.

7 Q AND HOW LONG HAVE YOU BEEN EMPLOYED AT THE PROVIDENCE  
8 HOSPITAL?

9 A I HAVE BEEN THERE FOR 12 YEARS.

10 Q AND WHAT IS YOUR TITLE OR DUTIES WITH THE HOSPITAL?

11 A I AM A FULL-TIME EMERGENCY ROOM PHYSICIAN, I AM ALSO  
12 THE MEDICAL DIRECTOR OF BOTH EMERGENCY ROOMS.

13 Q AND SO YOU WERE IN CHARGE FOR EACH EMERGENCY ROOM FOR  
14 EACH HOSPITAL?

15 A I AM.

16 Q AND, DR. BOYER, CAN YOU PLEASE BRIEFLY DESCRIBE YOUR  
17 EDUCATIONAL BACKGROUND FOR THE JURY?

18 A I WENT TO A COLLEGE, AT CAL STATE IN SOUTHERN  
19 CALIFORNIA. GRADUATED FROM MEDICAL SCHOOL AT WASHINGTON  
20 UNIVERSITY, DID A RESIDENCY IN SAN FRANCISCO AND I  
21 PRACTICED MEDICINE HERE IN COLUMBIA SINCE 1979.

22 Q AND SO PRIOR TO BEING WITH PROVIDENCE FOR 12 YEARS  
23 YOU PRACTICED MEDICINE AT OTHER FACILITIES IN THE AREA?

24 A THAT IS CORRECT.

25 Q AND WHAT FACILITIES ARE THOSE?

1 A FOR FOUR YEARS I WAS STATIONED AT FORT JACKSON AND  
2 THEN FOR 11 YEARS I WAS AN EMERGENCY PHYSICIAN AT  
3 LEXINGTON MEDICAL CENTER.

4 Q HAVE YOU EVER BEEN QUALIFIED AS AN EXPERT WITNESS IN  
5 THE FIELD OF EMERGENCY MEDICINE?

6 A I HAVE.

7 Q AND APPROXIMATE HOW MANY TIMES?

8 A FIVE OR SIX.

9 MS. COOPER: YOUR HONOR, AT THIS TIME THE STATE WOULD  
10 SEEK TO OFFER DR. BOYER AS AN EXPERT IN THE FIELD OF  
11 EMERGENCY MEDICINE.

12 THE COURT: ANY OBJECTION, ANY CROSS-EXAMINATION FOR  
13 QUALIFICATIONS.

14 MS. MOBLEY: WITHOUT OBJECTION.

15 THE COURT: THANK YOU. MR. FOREMAN AND LADIES AND  
16 GENTLEMEN, LET ME TELL YOU AT THIS TIME, NORMALLY  
17 WITNESSES ARE NOT PERMITTED TO TESTIFY AS TO THEIR  
18 OPINIONS. ONE EXCEPTION TO THAT GENERAL RULE IS IF A  
19 WITNESS IS FOUND TO BE QUALIFIED AS AN EXPERT, THAT DOES  
20 ENTITLE THAT WITNESS TO VOICE HIS OR HER OPINION IN THAT  
21 PARTICULAR FIELD. THIS WITNESS IS QUALIFIED AS AN EXPERT  
22 IN THE FIELD OF EMERGENCY MEDICINE, WE WILL CONTINUE.  
23 SOLICITOR.

24 MS. COOPER: THANK YOU, YOUR HONOR.

25 Q CAN YOU DESCRIBE FOR THE JURY WHAT A TYPICAL DAY IN

1 YOUR LIFE PROFESSIONALLY ENTAILS?

2 A MY SHIFT STARTS AT 7:00 A.M. TO 7:00 P.M., I WORK FOR  
3 TWELVE CONSECUTIVE HOURS. I SEE PATIENTS WHO COME IN  
4 EITHER BY AMBULANCE, BY PRIVATE AUTO OR WHO WALK IN THE  
5 EMERGENCY ROOM.

6 Q AND THESE PATIENTS THAT YOU SEE, DESCRIBE THE  
7 CONDITIONS TYPICALLY THAT YOU ENCOUNTER?

8 A THERE IS REALLY A FULL SPECTRUM OF THE PROBLEMS THAT  
9 CAN EXIST. IT CAN BE CHILDREN WITH FEVERS, YOUNG PEOPLE  
10 WITH SORE THROATS, ORTHOPEDIC INJURIES, LACERATIONS, MOTOR  
11 VEHICLE ACCIDENTS, HEART ATTACKS, STROKES.

12 Q DO YOU ALSO TREAT ANY PATIENTS THAT HAVE BEEN VICTIMS  
13 OF CRIME?

14 A YES.

15 Q AND WHEN YOU ENCOUNTER A PATIENT IN THE EMERGENCY  
16 ROOM, WHAT IS YOUR, THE FIRST GOAL YOU HAVE IN ORDER TO  
17 TREAT THEM?

18 A MY ULTIMATE GOAL IS TO BE ABLE TO DETERMINE WHAT  
19 THEIR ILLNESS IS OR WHAT THEIR INJURIES ARE AND TREAT THEM  
20 THE BEST WAY THAT I CAN POSSIBLY DO.

21 Q AND HOW DO YOU GO ABOUT GETTING THAT INFORMATION YOU  
22 NEED IN ORDER TO TREAT THAT PATIENT?

23 A THE FIRST COMPONENT OF THAT IS TO TAKE A HISTORY AND  
24 TO FIND OUT FROM THE PATIENTS WORDS, WHAT IS THEIR PROBLEM  
25 OR WHAT IS THEIR CHIEF COMPLAINT.

1 Q AND HISTORY IS WHAT, DOCTOR, HISTORY MEANS WHAT?

2 A HISTORY MEANS DISCUSSING WITH THE PATIENT THEIR  
3 PROBLEMS, THEIR PAIN, THEIR PERCEPTION OF WHAT IS WRONG.

4 Q AND WOULD ALSO PART OF THE HISTORY INCLUDE HOW THEY  
5 RECEIVE THE INJURY THAT THEY ARE PRESENTED WITH?

6 A ABSOLUTELY.

7 Q WHEN YOU OBTAIN THE HISTORY FROM A PATIENT DOES THAT  
8 ASSIST YOU IN REACHING A MEDICAL DIAGNOSIS?

9 A IT DOES, PRIMARILY IT HELPS ME ACCESS OF WHERE MY  
10 PHYSICAL EXAMINATION SHOULD BE DIRECTED AND ULTIMATELY  
11 WHAT TEST I WAS ORDERED TO FURTHER EVALUATE THEIR INJURY  
12 OR ILLNESS.

13 Q I AM GOING TO BRING YOUR ATTENTION TO APRIL 13TH OF  
14 2004, DR. BOYER. DO YOU RECALL TREATING A PATIENT BY THE  
15 NAME OF LOURDES ANTONIO?

16 A I DON'T REMEMBER THE SPECIFIC PATIENT BUT AFTER  
17 REVIEWING THE RECORD I CAN ATTEST TO WHAT HAPPENED ON THAT  
18 OCCASION.

19 Q AND WOULD IT ASSIST YOU TO REFRESH YOUR MEMORY TO  
20 REFER TO YOUR RECORDS?

21 A YES.

22 Q COULD YOU PLEASE TELL THE JURY WHAT TIME YOU  
23 ENCOUNTERED MS. ANTONIO IN THE EMERGENCY ROOM?

24 A THE PATIENT PRESENTED THE TRIAGE AREA WHERE THE NURSE  
25 FIRST SAW HER AT 5:22 P.M.

1 Q AND COULD IT BE THAT THE PATIENT, PRIOR TO BE SEEN  
2 HAD TO WAIT IN A WAITING ROOM FOR A PERIOD OF TIME PRIOR  
3 TO BEING TREATED?

4 A THAT IS MOST LIKELY.

5 Q OKAY. AND DO YOU RECALL WHAT MS. ANTONIO'S CHIEF  
6 COMPLAINT WAS?

7 A SHE COMPLAINED OF INJURIES TO HER LEFT SHOULDER, LEFT  
8 ELBOW, HER CHEST AND HER BACK THAT WERE RESULTS OF BEING  
9 KICKED OR BEING STRUCK WITH A FIST.

10 Q AND COULD YOU TELL THE JURY WHAT HISTORY MS. ANTONIO  
11 PROVIDED TO YOU AND YOUR NURSE DESCRIBING HOW SHE RECEIVED  
12 THESE INJURIES?

13 A SHE CLAIMED THAT SHE WAS--

14 MS. MOBLEY: YOUR HONOR, I WILL OBJECT AT THIS POINT  
15 BEING CUMULATIVE AND NOT NECESSARY, THIS TESTIMONY--

16 THE COURT: STEP UP FOR ONE SECOND, PLEASE.

17 (WHEREUPON, A BENCH CONFERENCE WAS HELD IN THE  
18 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE  
19 JURY.)

20 THE COURT: OBJECTION IS OVERRULED, YOU MAY CONTINUE,  
21 SOLICITOR.

22 Q DR. BOYER, CAN YOU PLEASE TELL THE JURY WHAT MS.  
23 ANTONIO REPORTED TO YOU HAPPENED TO HER IN ORDER FOR HER  
24 TO RECEIVE THESE INJURIES?

25 A SHE STATED THAT SHE WAS STRUCK WITH A FIST, SHE WAS

1 PUSHED DOWN AND SHE WAS ALSO KICKED.

2 Q AND IF I COULD REFER YOU TO THE FIFTH PAGE OF YOUR  
3 RECORDS UNDER THE EMERGENCY DEPARTMENT TRIAGE, COULD YOU  
4 PLEASE, DID SHE ELABORATE A LITTLE MORE ABOUT WHO THE  
5 PERSON WAS THAT COMMITTED THIS ACT ON HER.

6 MS. MOBLEY: OBJECTION.

7 THE COURT: GROUNDS?

8 MS. MOBLEY: GROUNDS, FIRST OF ALL THAT IT IS HERESAY  
9 AND IT IS CUMULATIVE AND FRANKLY I AM NOT QUITE SURE WHERE  
10 WE ARE GOING WITH THIS.

11 THE COURT: IF THIS WAS PROVIDED IN THE HISTORY THAT  
12 WAS GIVEN TO THE DOCTOR ABOUT THE PATIENT, THAT IS AN  
13 EXCEPTION TO THE HERESAY RULE.

14 MS. MOBLEY: YES, SIR.

15 THE COURT: I OVERRULE THE OBJECTION, GO AHEAD.

16 Q DOCTOR, PLEASE PROCEED.

17 A THE PATIENT TOLD THE TRIAGE NURSE THAT SHE WAS  
18 ASSAULTED BY AN UNKNOWN ASSAILANT AND THAT SHE HAD BEEN  
19 INJURED IN HER LEFT SHOULDER, HER BACK, HER CHEST AND HER  
20 LEFT ELBOW.

21 Q AND DID YOU RELY ON THIS HISTORY IN ORDER TO DEVELOPE  
22 SOME SORT OF MEDICAL DIAGNOSIS TO TREAT HER?

23 A YES.

24 Q AND AGAIN SHE DESCRIBED IT AS A SINGLE ASSAILANT, IS  
25 THAT CORRECT?

1 A YES, MA'AM.

2 Q ONCE YOU RECEIVED THE HISTORY FROM THE PATIENT DID  
3 YOU DOCUMENT HER INJURY?

4 A I DID.

5 Q I AM GOING TO SHOW YOU A DIAGRAM THAT HAS BEEN MARKED  
6 AS STATE'S EXHIBIT NUMBER 53 AND ASK YOU IF YOU CAN  
7 IDENTIFY THIS?

8 A YES, MA'AM. THAT IS AN ENLARGEMENT OF PAGE TWO OF  
9 OUR PHYSICAL EXAMINATION IN THE EMERGENCY ROOM VISIT.

10 Q AND DID, WHO WROTE ON THIS CHART?

11 A MOST OF THE WRITING IS MY OWN.

12 Q AND DID YOU SIGN THIS DOCUMENT?

13 A I DID.

14 MS. COOPER: YOUR HONOR, AT THIS TIME THE STATE SEEKS  
15 TO INTRODUCE NUMBER 53 INTO EVIDENCE.

16 THE COURT: ANY OBJECTION.

17 MS. MOBLEY: YOUR HONOR, WE OBJECT AND ASK THAT IT BE  
18 USED AS DEMONSTRATIVE PURPOSES.

19 THE COURT: DO YOU HAVE A SMALLER ONE THAT I CAN  
20 HAVE.

21 MS. COOPER: SURE.

22 THE COURT: I AM ASSUMING IT IS THE SAME THING.

23 MS. COOPER: YES, SIR.

24 THE COURT: THE EXHIBIT WILL BE MARKED FOR  
25 IDENTIFICATION, THE EXHIBIT ITSELF, THE TESTIMONY WILL BE

1 THE EVIDENCE, NOT THE CHART. STATE'S 53 MARKED FOR  
2 IDENTIFICATION ONLY.

3 (WHEREUPON, STATE'S EXHIBIT NO. 53 WAS MARKED FOR  
4 IDENTIFICATION ONLY.)

5 MS. COOPER: THANK YOU, YOUR HONOR. YOUR HONOR, MAY  
6 I ASK FOR THE WITNESS TO STEP DOWN?

7 THE COURT: DOCTOR, IF YOU WILL KEEP YOUR VOICE UP  
8 WHILE YOU ARE AWAY FROM THE MICROPHONE SO THAT THE COURT  
9 REPORTER AND EVERYONE ELSE IN THE COURTROOM IS ABLE TO  
10 HEAR, PLEASE.

11 Q DR. BOYER, I AM GOING TO ASK YOU TO PLEASE GO OVER  
12 THIS DIAGRAM WITH THE JURY AND EXPLAIN, IF YOU COULD, AND  
13 PLEASE JUST EXPLAIN TO THE JURY WHAT YOU NOTED ON THE PAGE  
14 OF YOUR REPORT THAT YOU THOUGHT WAS SIGNIFICANT.

15 A ON THE RECORD THERE ARE AREAS THAT ARE DESCRIBED BY  
16 THE BODY, SKIN, BACK AND EXTREMITIES AND IN THE CASE OF  
17 THE BACK EACH EXTREMITY IS CIRCLED, REFER TO THE DIAGRAM.  
18 THIS IS THE FRONT OF THE PATIENT, THIS WOULD BE LOOKING AT  
19 THE BACK. THE AREAS THAT ARE IN BLACK ALL ARE AREAS IN  
20 WHICH THE PATIENT COMPLAINED OF PAIN. AND ON PHYSICAL  
21 EXAM WHEN YOU TOUCH THESE AREAS THEY WERE PAINFUL TO HER.  
22 THIS WOULD OF BEEN ALONG THE RIGHT RIBCAGE FROM HERE, THIS  
23 IS THE STERNUM HERE, THIS WOULD BE THE LEFT SHOULDER HERE  
24 AND THIS WOULD BE THE LEFT RIBCAGE. THEN ON THE BACK OF  
25 THE PATIENT, THIS WOULD BE THE BACKSIDE OF THE LEFT

1 SHOULDER, THE BACK SIDE OF THE LEFT AND THE RIGHT RIBS AND  
2 THIS WOULD BE RIGHT IN THE MIDDLE OF THE BACK. IN  
3 ADDITION, IT IS WRITTEN HERE THERE IS A SMALL PUNCTURE  
4 WOUND TO THE LEFT ELBOW.

5 Q AND, DOCTOR, DID YOU HAVE TO TREAT THAT WOUND TO THE  
6 ELBOW?

7 A IT WAS NOT SUTURED, IT WAS CLEANED UP WITH A  
8 DRESSING.

9 Q IT HAD APPEARED TO BE BLEEDING AT ONE POINT?

10 A YES.

11 Q DOCTOR, ONCE YOU WERE ABLE TO DETERMINE WHERE SHE WAS  
12 SORE TO THE TOUCH, WHAT DID YOU HAVE ORDERED DONE FOR THIS  
13 PATIENT?

14 A WE ORDERED SEVERAL X-RAYS AND WE ALSO LOOKED AT HER  
15 KIDNEY, JUST TO MAKE SURE HER KIDNEY WASN'T BRUISED.

16 Q AND BASED ON YOUR REVIEWS OF THE X-RAYS YOU ORDERED  
17 WHAT WERE YOU ABLE TO DETERMINE, WERE THERE ANY INJURIES  
18 THAT YOU NOTED INTERNALLY ON THIS PATIENT?

19 A BECAUSE THE PATIENT HURT IN BOTH RIBCAGE AND THE  
20 STERNUM IN THE BACK WE DID A CAT SCAN OF THE CHEST WHICH  
21 IS A SOPHISTICATED X-RAY, IT LOOKS HOW THINGS ARE IN A  
22 MUCH DETAILED LEVEL AND FROM THAT CAT SCAN WE DETERMINED  
23 THAT SHE HAD ONE BROKEN RIB.

24 Q I AM GOING TO REFER YOU TO A DOCUMENT AND ASK YOU IF  
25 YOU RECOGNIZE IT. DO YOU RECOGNIZE THAT THERE?

1 A YES, THIS IS THE X-RAY REPORT.

2 Q AND OTHER THAN THE RIB FRACTURE WERE THERE ANY OTHER  
3 NOTED INJURIES ON ANY OTHER RIBS?

4 A THIS CHEST X-RAY ACTUALLY DESCRIBED NOT ONLY A  
5 FRACTURE IN THE EIGHTH BUT ALSO IN THE NINTH RIB.

6 Q THANK YOU, DOCTOR. NOW, IF YOU COULD RETURN TO YOUR  
7 SEAT. THANK, YOU. DR. BOYER, HOW IS IT THAT YOU GO ABOUT  
8 TREATING A FRACTURED RIB?

9 A A SINGLE OR A FEW FRACTURED RIBS ARE TREATED WITH  
10 PAIN MEDICATION AND ALSO WARNINGS TO RETURN IF YOU GET  
11 SHORT OF BREATH OR IF YOU COUGH UP BLOOD OR DEVELOPE A  
12 FEVER.

13 Q AND IS THERE ANY WAY, FOR INSTANCE, IF YOU BROKE AN  
14 ARM YOU COULD PUT A CAST ON IT. IS THERE ANY TYPE OF  
15 TREATMENT YOU COULD DO FOR A RIB?

16 A OCCASIONALLY PEOPLE WILL BE PUT IN CHEST SPLINTS BUT  
17 THAT IS UNCOMMON. THAT CERTAINLY WOULDN'T APPLY TO JUST A  
18 FEW BROKEN RIBS.

19 Q SO, IN THIS PATIENT WHAT WAS DONE TO HER AS FAR AS  
20 TREATMENT TO HER BROKEN RIBS?

21 A SHE WAS PRESCRIBED PAIN MEDICATION.

22 Q APPROXIMATELY HOW LONG DOES A FRACTURED RIB TAKE TO  
23 HEAL?

24 A TWO TO FOUR WEEKS.

25 Q AND DO YOU RECALL WHEN THIS PATIENT WAS DISCHARGED

1 FROM THE HOSPITAL, IF YOU COULD REFER TO YOUR NOTES.

2 A DISCHARGE TIME IS USUALLY NOT REPORTED BY PHYSICIANS.

3 Q I AM SORRY, DOCTOR.

4 A NOW, YOU KNOW, I WOULD HAVE TO GO THROUGH AND LOOK AT  
5 INDIVIDUAL PAGES TO SEE THE LAST DISCHARGE NURSING NOTE.

6 Q IF I CAN JUST SAVE YOU SOME TIME.

7 A PATIENT DISCHARGE WITH VERBAL UNDERSTANDING AT 20:36,  
8 THAT WOULD OF BEEN 8:36 P.M.

9 Q THANK YOU, DOCTOR. DOCTOR, I AM GOING TO POSE A  
10 HYPOTHETICAL TO YOU AND IF YOU COULD PROVIDE YOUR EXPERT  
11 OPINION TO A REASONABLE DEGREE OF MEDICAL CERTAINTY. THE  
12 INJURES THAT YOU FOUND ON LOURDES ANTONIO, ARE THOSE  
13 CONSISTENT WITH HER BEING PUSHED DOWN ONTO HER BACK AND  
14 ELBOWS ON A TILE OR GRANITE FLOOR AND THEN STRUCK SEVERAL  
15 TIMES IN THE CHEST IN A KICKING FASHION AND THEN STRUCK  
16 AGAIN IN THE BACK IN A KICKING FASHION AND THEN ONE MORE  
17 TIME FLIPPED OVER AND KICKED TWO TO THREE TIMES  
18 ADDITIONALLY IN A STOMPING FASHION ON HER CHEST?

19 A YES, MA'AM. HER WOUNDS WOULD BE CONSISTENT WITH THAT  
20 TYPE OF ATTACK.

21 Q AND IF YOU COULD, DID YOU HAVE A CLINICAL IMPRESSION  
22 TO THIS CASE?

23 A YES, MA'AM.

24 Q AND IF YOU COULD READ WHAT YOUR CLINICAL IMPRESSION  
25 WAS?

1 A SHE HAD CONTUSIONS TO HER LEFT SHOULDER AND LEFT  
2 ELBOW, A SPRAIN TO HER NECK. IN ADDITION, HAD A FRACTURED  
3 EIGHTH RIB ON THE RIGHT.

4 Q THANK YOU, DR. BOYER, NO FURTHER QUESTIONS.

5 THE COURT: MS. MOBLEY.

6 CROSS-EXAMINATION

7 BY MS. MOBLEY:

8 Q DR. BOYER, GOOD MORNING, I AM LAUREN MOBLEY.

9 A GOOD MORNING.

10 Q DR. BOYER, LET'S GO THROUGH THIS FIRST THAT WAS  
11 MARKED FOR ID, STATE'S 53. NOW, THIS LOOKS, THIS DRAWING  
12 UP HERE LOOKS KIND OF FRIGHTENED ALMOST, BECAUSE WHEN YOU  
13 FIRST LOOK AT IT YOU ARE DESCRIBING, YOU KNOW, BLOOD OR  
14 SOMETHING LIKE THAT. CAN YOU TELL US AGAIN, WAS THIS,  
15 THIS WAS DESCRIBING SIMPLY WHERE WHEN YOU TOUCHED HER SHE  
16 FELT PAIN, RIGHT?

17 A RIGHT.

18 Q SO, THESE ARE NOT, YOU ARE NOT TRYING TO SORT OF  
19 SCIENTIFICALLY DOCUMENT THE INJURIES WITH THIS TYPE OF A  
20 DRAWING ON THIS SPECIFIC DRAWING LIKE VISUAL TYPE  
21 INJURIES, ARE YOU?

22 A THESE ARE ALL AREAS OF TENDERNESS.

23 Q ALL RIGHT, THANK YOU. AND IF I COULD REFER YOU TO OR  
24 IF I COULD HAND YOU THE EMERGENCY PHYSICIAN RECORD FOR MS.  
25 ANTONIO, IT IS ONE OF THE FIRST PAGES, IT LOOKS LIKE THIS.

1 A YES, THAT IS PAGE 1.

2 Q NOW, SINCE THIS IS PAGE 1 AM SAFE TO SORT OF SAY THIS  
3 IS THE INITIAL THING YOU START FILLING OUT TRYING TO  
4 FIGURE OUT WHAT IS GOING ON WITH THE PATIENT, IS THAT  
5 GENERALLY WHAT THIS IS ABOUT?

6 A THIS WOULD BE THE FIRST TIME I WOULD WRITE SOMETHING,  
7 I WOULD REVIEW THE TRIAGE NOTES DONE BY THE NURSE.

8 Q OKAY. SO, THIS IS SORT OF YOUR FIRST IMPRESSION?

9 A FIRST PART OF THE EXAM.

10 Q AND I BELIEVE IN THE FIRST, ON THE LEFT SIDE OF THE  
11 PAGE, THE FIRST SEVEN BOXES, THE BOX TO THE RIGHT IT SAYS  
12 WHERE IT OCCURRED. CAN YOU TELL ME WHICH TWO PLACES ARE  
13 CIRCLED, PLEASE?

14 A IT IS CIRCLED AS NEIGHBORS OR STREET.

15 Q AND TAKING YOU DOWN THROUGH THAT SAME COLUMN YOU HAVE  
16 A BOX LABELED THE SEVERITY OF PAIN. CAN YOU TELL ME WHAT  
17 IS CIRCLED THERE, PLEASE?

18 A MILD TO MODERATE.

19 Q THANK YOU. AND TO THE OTHER SIDE OF THE PAGE LIKE  
20 FOR PHYSICAL EXAM, YOU HAVE AN ALERT MARK THERE, CORRECT?

21 A YES.

22 Q SO, SHE WASN'T UNCONSCIOUS, CORRECT?

23 A CORRECT.

24 Q AND YOU HAVE A, BY DISTRESS, YOU HAVE THE MILD BOX IS  
25 CHECKED?

1 A YES.

2 Q AND THERE IS NO EVIDENCE OR TRAUMA TO HER HEAD, IS  
3 THAT CORRECT?

4 A YES, THAT IS CORRECT.

5 Q I BELIEVE YOU TESTIFIED ON DIRECT YOU DID A CAT SCAN?

6 A YES.

7 Q AND I AM NOT VERY FAMILIAR WITH MEDICAL TERMINOLOGY.  
8 IS THAT SORT OF LIKE A, IS THAT THE FULL BODY THING THAT  
9 WE SEE LIKE IN MOVIES AND STUFF?

10 A IT IS NOT FULL BODY, THIS WOULD BE TO, BELOW THE RIBS  
11 AT THE DIAPHRAM TO THE TOP OF THE LUNGS. IT WOULD BE  
12 BASICALLY--

13 Q RIGHT HERE, THIS IS WHAT WE ARE LOOKING AT?

14 A RIGHT.

15 Q AND A CHEST SPLINT WASN'T NECESSARY IN THIS KIND OF A  
16 SITUATION, IS THAT RIGHT?

17 A THAT IS CORRECT.

18 Q AND I BELIEVE YOU TESTIFIED THAT A BROKEN RIB TAKES  
19 ABOUT TWO TO FOUR WEEKS TO HEAL?

20 A YES, MA'AM.

21 Q SO, IT IS NOT SOMETHING THAT TAKES SIX MONTHS, IT CAN  
22 HEAL IN A FEW WEEKS?

23 A THAT IS CORRECT.

24 Q I DON'T HAVE ANYTHING FURTHER.

25 THE COURT: REDIRECT?



1 THE COURT: ANYTHING BEFORE WE BRING THE JURY OUT?

2 MS. MOBLEY: HOLLY WAGNER IS THE NEXT DEPUTY THAT  
3 THEY ARE PLANNING TO CALL.

4 THE COURT: RIGHT.

5 MS. MOBLEY: SHE DOES THE INCIDENT REPORT AND SHE  
6 DOES OTHER THINGS TOO WHICH I UNDERSTAND THAT THOSE COME  
7 IN. IN HER INCIDENT REPORT, BENITO LOZANO, HER HUSBAND,  
8 THE VICTIM'S HUSBAND, THEY GIVE AN ENTIRE ACCOUNT OR  
9 REACCOUNT OF WHAT WE HAVE ALREADY HEARD FROM THE VICTIM.  
10 YOUR HONOR, WE WOULD OBJECT TO HER GOING THROUGH JUST THAT  
11 SPECIFIC PART OF HER REPORT, THE ACCOUNTS OF THE ATTACK  
12 AND EVERYTHING AGAIN ON TWO GROUNDS. FIRST, UNDER  
13 801(D) (1) WHICH IS THE HERESAY STATUTE. A STATEMENT IS  
14 NOT HERESAY IF THE STATEMENT BY A WITNESS HAS BEEN  
15 CROSS-EXAMINED AND THE STATEMENT IS EITHER INCONSISTENT  
16 UNDER A. B, CONSISTENT BUT OFFER TO REBUT AN EXPRESSED OR  
17 IMPLIED CHARGE AGAINST THE DECLARANT OR RECENT FABRICATION  
18 OR IMPROPER INFLUENCE OR MOTIVE. AND THAT HAS BEEN  
19 ALLEGED AT SOME POINT. C, ONE OF IDENTIFICATION THAT  
20 REFERS TO MADE AFTER RECEIVING THE PERSON IF THERE IS NOT  
21 AN INDICATION IN HERE OR D AND THAT IS A SEX CASE, D  
22 APPLIES TO A RAPE CASE. YOUR HONOR, WE WOULD ARGUE THAT  
23 THIS IS HERESY--

24 THE COURT: LET ME STOP YOU, IS THE STATE GOING TO  
25 OFFER THE STATEMENT MADE BY THE VICTIM'S HUSBAND THROUGH

1 THIS WITNESS?

2 MS. COOPER: YES, YOUR HONOR, UNDER THE EXCITED  
3 UTTERANCE. WE WERE PLANNING ON LAYING THE FOUNDATION AT  
4 THE TIME SHE ARRIVED, THE VICTIM'S DEMEANOR. SHE ARRIVED  
5 AT THE HOSPITAL--

6 THE COURT: NO, NO, AS I UNDERSTAND IT, THIS IS A  
7 STATEMENT BY THE HUSBAND IF I AM NOT MISTAKEN.

8 MS. COOPER: HE HAS TRANSLATED FOR THE VICTIM, YOUR  
9 HONOR, TO THE DEPUTY.

10 THE COURT: I DIDN'T MEAN TO CUT YOU OFF. I JUST  
11 DIDN'T KNOW IF THE STATE WAS GOING TO OFFER THAT. I  
12 UNDERSTAND THAT IT WOULD BE A STATEMENT. THE HUSBAND  
13 TALKED ABOUT PERSONAL KNOWLEDGE AS OPPOSED TO TRANSLATING  
14 WHAT THE VICTIM MAY OF SAID. THIS IS TWO DIFFERENT  
15 THINGS.

16 MS. MOBLEY: YES SIR, AND THAT IS A PROBLEM AS WELL.  
17 WE WILL ARGUE IT IS NOT, IT CAN'T BE AN EXCITED UTTERANCE  
18 WITH ANOTHER PERSON SAYING IT. AND WE HAVEN'T HAD AN  
19 OPPORTUNITY TO CROSS-EXAMINE MR. BENITO LOZANO AS TO WHAT  
20 THE EXCHANGE AND WE CANNOT NOW HAVE AN OPPORTUNITY BECAUSE  
21 OF THE SEQUESTRATION ORDER. AND ANOTHER ARGUMENT WE WOULD  
22 HAVE WOULD BE CUMULATIVE TO THE TESTIMONY, THEY HAVE  
23 ALREADY HEARD FROM HER IN DETAIL. THOSE ARE OUR  
24 POSITIONS, YOUR HONOR.

25 THE COURT: MY RULING WILL BE THIS AND SOME OF IT

1 WILL BE WHAT DEVELOPS DURING THE TESTIMONY. IF THE  
2 TESTIMONY IS THAT THE STATEMENT, THE STATE IS TENDERING IS  
3 IN FACT THE STATEMENT OF THE VICTIM SIMPLY BEING  
4 TRANSLATED BY THE SPOUSE. THEN THE COURT WILL MAKE ITS  
5 ANALYSIS ON WHETHER OR NOT IT IS ADMISSIBLE UNDER THE  
6 EXCEPTIONS AS IF IT WOULD BE THE VICTIM'S STATEMENT AS  
7 OPPOSED TO THE VICTIM'S HUSBAND'S STATEMENT. IF IT TURNS  
8 OUT IT IS MORE THAN THAT THEN I WILL RULE ON IT AS BEING A  
9 STATEMENT, NOT BY THE VICTIM AND I DON'T KNOW THAT THE  
10 EXCITED UTTERANCE EXCEPTION HAS COME INTO PLAY. IT MAY  
11 COME INTO PLAY, DEPENDING ON THE FINDING WHETHER SHE IS  
12 STILL UNDER THE INFLUENCE OF THE INCIDENT, THINGS OF THAT  
13 NATURE. THAT WILL BE THE BASIS FOR WHATEVER RULING I  
14 MAKE. I CAN'T MAKE A RULING AT THIS TIME.

15 MS. MOBLEY: I JUST WANTED TO BRING IT TO YOUR  
16 ATTENTION.

17 THE COURT: THAT IS FINE, I APPRECIATE THAT.  
18 ANYTHING FURTHER BEFORE WE GET STARTED?

19 MS. MOBLEY: NO, SIR.

20 THE COURT: BRING THE JURY IN, PLEASE.

21 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT  
22 APPROXIMATELY 11:10 A.M.)

23 THE COURT: CALL YOUR NEXT WITNESS, PLEASE.

24 MS. COOPER: THE STATE CALLS DEPUTY HOLLY WAGNER TO  
25 THE STAND.

1 DEPUTY HOLLY WAGNER, AFTER BEING DULY SWORN,  
2 TESTIFIED AS FOLLOWS:

3 DIRECT EXAMINATION

4 BY MS. COOPER:

5 Q DEPUTY WAGNER, WHERE ARE YOU EMPLOYED?

6 A RICHLAND COUNTY SHERIFFS DEPARTMENT.

7 Q AND WHAT IS YOUR TITLE AND WHAT ARE YOUR DUTIES AT  
8 THE SHERIFFS DEPARTMENT?

9 A CURRENTLY I AM A MASTER DEPUTY WORKING IN REGION SIX  
10 AND I WORK THE ROAD SO I RESPOND TO CALLS FOR SERVICE AND  
11 PROPERTY CHECKS AND THOSE SORTS OF THINGS.

12 Q AND BACK IN APRIL OF 2004 WERE YOU A MASTER DEPUTY  
13 THEN AS WELL?

14 A NO, MA'AM. I WAS A ROAD DEPUTY.

15 Q OKAY. AND HOW LONG HAVE YOU BEEN IN LAW ENFORCEMENT?

16 A I HAVE BEEN WITH RICHLAND COUNTY FOR ALMOST THREE  
17 YEARS. PRIOR TO THAT I WORKED FOR N.C. STATE UNIVERSITY  
18 AS A PUBLIC SAFETY OFFICER FOR TWO AND A HALF YEARS. AND I  
19 HAD ABOUT FOUR YEARS WITH THE NORTH CAROLINA AUTHORITY IN  
20 A POLICE OFFICER STATUS.

21 Q I AM GOING TO BRING YOUR ATTENTION TO APRIL 13TH OF  
22 2004, DO YOU RECALL BEING DISPATCHED TO [REDACTED]  
23 ROAD?

24 A YES, I DO.

25 Q CAN YOU DESCRIBE WHAT IT IS YOU WERE CALLED ABOUT,

1 WHO NEEDED YOU THERE?

2 A WE WERE CALLED. I BELIEVE TO RESPOND TO EMS FOR A  
3 PROBLEM.

4 Q AND THE REGION WHERE YOU WORKED AT IN APRIL OF 2004,  
5 WAS THAT REGION NUMBER SIX?

6 A YES, IT IS.

7 Q AND IS THAT IN RICHLAND COUNTY?

8 A YES, IT IS.

9 Q PLEASE TELL THE JURY WHAT TIME YOU WERE DISPATCHED TO  
10 THAT ADDRESS?

11 A I DON'T HAVE THAT RIGHT IN FRONT OF ME. I THINK IT  
12 WAS 16 SOMETHING, IT WAS 4:00 O'CLOCK IN THE AFTERNOON  
13 BASICALLY.

14 Q I AM GOING TO SHOW YOU, WOULD IT ASSIST YOU TO  
15 REFRESH YOUR MEMORY OF THE DATES AND TIMES THAT YOU REFER  
16 TO YOUR REPORT.

17 A YES.

18 MS. COOPER: YOUR HONOR, MAY I HAND THE WITNESS HER  
19 REPORT?

20 THE COURT: YES, YOU MAY.

21 A THE DISPATCH TIME WAS 16:14, THAT WOULD BE 4:14 IN  
22 THE AFTERNOON.

23 Q APPROXIMATELY WHAT TIME DID YOU ARRIVE AT THAT  
24 ADDRESS?

25 A AT 4:37.

1 Q AND COULD YOU PLEASE DESCRIBE FOR THE JURY WHAT  
2 HAPPENED WHEN YOU GOT THERE?

3 A DEPUTY ROE RESPONDED BASICALLY AT THE SAME TIME, I  
4 THINK I PULLED IN THE DRIVEWAY RIGHT BEFORE HIM AND WE  
5 WERE MET BY THE HOMEOWNER IN THE DRIVEWAY WHO AT THAT TIME  
6 INFORMED US THAT THERE HAD BEEN A BURGLARY. AND I THINK  
7 THAT WHEN WE WENT TO ASSIST EMS WE KNEW THERE MAY OF BEEN  
8 SOME SORT OF ASSAULT. BUT WE HAD NO IDEA THAT IT WAS A  
9 BURGLARY. SO, WE MET WITH HIM AND THERE WAS A BURGLARY  
10 AND EMS HAD ALREADY LEFT. AND DEPUTY ROE INSTRUCTED ME,  
11 HE WAS THE MASTER DEPUTY AT THE TIME, AND INSTRUCTED ME TO  
12 GO TO THE ER WHERE THE VICTIM WAS AND TO TRY TO GET AS  
13 MUCH INFORMATION ABOUT WHAT HAD HAPPENED CONCERNING THE  
14 BURGLARY AND A SUSPECT AS I COULD.

15 Q OKAY. AND SO DID YOU REMAIN AT THE SCENE FOR ANY  
16 PERIOD OF TIME?

17 A NO, MA'AM. I PULLED INTO THE DRIVEWAY AND I MAY OF  
18 BEEN THERE FOR TWO MINUTES AND THEN LEFT AND WENT TO THE  
19 HOSPITAL.

20 Q AND WHAT HOSPITAL DID YOU GO TO?

21 A I THINK WE WENT TO, I AM NOT SURE. AT THIS TIME I  
22 HAD LIVED IN SOUTH CAROLINA FOR A SHORT TIME AND THEY HAD  
23 TO GIVE ME DIRECTIONS. I DON'T RECALL WHICH HOSPITAL I  
24 WENT TO.

25 Q OKAY, IF YOU COULD REFER TO THE LAST LINE OF THE

1 FIRST PAGE?

2 A THAT IS WHERE I WENT, PROVIDENCE NORTHEAST.

3 Q OKAY. AND SPECIFICALLY WHERE AT PROVIDENCE NORTHEAST  
4 DID YOU GO TO?

5 A TO THE EMERGENCY ROOM.

6 Q PLEASE TELL THE JURY WHO YOU ENCOUNTERED WHEN YOU GOT  
7 THERE?

8 A I SPOKE, I SAW THE VICTIM.

9 Q IS THAT MS. ANTONIO RIGHT HERE?

10 A YES. AND I DON'T RECALL IF HER HUSBAND WAS IN THE  
11 ROOM YET OR I WAITED A FEW MINUTES FOR HER HUSBAND. I  
12 TRIED TO SPEAK TO HER BUT SHE WAS VERY UPSET AND THERE WAS  
13 A LANGUAGE BARRIER, SHE SPEAKS SPANISH. BUT I DID SEE HER  
14 AND IT TOOK A COUPLE OF MINUTES BEFORE I WAS ABLE TO EVEN  
15 QUESTION HER BECAUSE OF THE MEDICAL STAFF WAS WORKING WITH  
16 HER, TALKING TO HER.

17 Q CAN YOU ELABORATE A LITTLE BIT MORE ABOUT HER  
18 Demeanor?

19 A SHE WAS REALLY UPSET AND SHE WAS IN A LOT OF PAIN.  
20 SHE KEPT COMPLAINING ABOUT HER CHEST HURTING AND THAT IS  
21 WHAT I RECALL, SHE WAS SHAKEN UP QUITE A BIT.

22 Q DID SHE APPEAR TO BE UNDER DISTRESS OF THE ASSAULT?

23 A I THINK SO, YES.

24 Q WHEN YOU DID MAKE CONTACT WITH MR. LOZANO, HER  
25 HUSBAND, WHAT DID YOU ASK HIM TO DO FOR YOU?

1 A I ASKED HIM TO TRANSLATE SO I COULD FIND OUT AS MUCH  
2 AS I COULD ABOUT WHAT HAD HAPPENED.

3 Q AND AT THAT POINT DID YOU BEGIN ASKING QUESTIONS  
4 THROUGH MR. LOZANO?

5 A YES, I DID.

6 Q AND WHO WERE THESE QUESTIONS DIRECTED TOWARDS?

7 A TOWARDS HIS WIFE.

8 Q AND WERE YOU ABLE TO DETERMINE WHETHER OR NOT SHE WAS  
9 PROVIDING ANSWERS TO YOUR QUESTIONS?

10 A YES, I BELIEVE SHE WAS.

11 Q YOU HEARD HER ANSWER?

12 A YES, HE WOULD ASK HER QUESTIONS AND SHE WOULD ANSWER  
13 AND THEN HE WOULD TELL ME WHAT SHE HAD SAID.

14 MS. COOPER: YOUR HONOR, AT THIS TIME I WOULD SEEK TO  
15 INTRODUCE THE STATEMENT MADE BY THE VICTIM AT THE HOSPITAL  
16 UNDER THE EXCITED UTTERANCE EXCEPTION TO THE HERESAY RULE.

17 MS. MOBLEY: I WOULD OBJECT BASED ON OUR PRIOR  
18 OBJECTION, BASED ON EITHER THE TESTIMONY BEING CUMULATIVE  
19 OR RULE 801(D) WHERE THERE HAS BEEN NO FACIION OF THE  
20 POSITIONS. AND THE TESTIMONY IS COMING DIRECTLY FROM A  
21 WITNESS WHO IS NOT THE VICTIM.

22 THE COURT: I BELIEVE IT DOES FALL WITHIN THE  
23 EXCEPTION OF THE HERESAY RULE, THE OBJECTION IS OVERRULED.

24 MS. MOBLEY: THANK YOU, YOUR HONOR.

25 Q IF YOU COULD, DEPUTY WAGNER, REFER TO YOUR NOTES IF

*hearsay  
through interpreter*

1 THE COURT: I SUSTAIN.

2 Q WHAT OTHER ITEMS DID, WHAT OTHER ITEMS DID SHE  
3 INDICATE IN HER DESCRIPTION?

4 A THOSE ARE THE ONLY ONES THAT I RECALL.

5 Q OKAY. NOW, HOW LONG DO YOU THINK YOU REMAINED AT THE  
6 HOSPITAL WITH THE VICTIM?

7 A PROBABLY TWENTY MINUTES, I WAS NOT THERE VERY LONG,  
8 JUST ENOUGH TO GET THE INITIAL SYNOPSIS OF WHAT HAD  
9 HAPPENED AND A DESCRIPTION.

10 Q AND WHEN YOU ISSUED YOUR REPORT, IS THAT JUST THE  
11 GENERAL SYNOPSIS?

12 A YES, MA'AM.

13 Q WERE YOU ABLE TO DETERMINE WHAT KIND OF INJURIES THE  
14 VICTIM HAD SUSTAINED?

15 A NOT WHEN I WAS INITIALLY THERE, I CALLED BACK LATER  
16 IN THE EVENING TO FIND OUT EXACTLY HOW SEVERE SHE HAD BEEN  
17 HURT.

18 Q DID YOU OBSERVE ANY MARKS ON HER WHEN YOU WERE  
19 TALKING TO HER?

20 A I THINK SHE HAD SOME ABRASIONS ON HER ARM, I AM NOT  
21 REALLY SURE, ON HER ELBOW. SHE WAS SCRATCHED UP A LITTLE  
22 BIT. SHE COMPLAINED MOSTLY OF THE INTERNAL INJURIES.

23 Q AND WHEN YOU WERE ABLE TO GET A DESCRIPTION OF THE  
24 SUSPECT FROM THE VICTIM WHAT DID YOU DO WITH THAT  
25 INFORMATION?

1 A I RADIOED BACK TO MASTER DEPUTY ROE SO THEY COULD  
2 START TRYING TO LOOK FOR THE SUSPECT.

3 Q AND WAS IT JUST THAT MASTER DEPUTY ROE THAT RECEIVED  
4 INFORMATION OVER THE RADIO OR DO ALL OFFICERS?

5 A EVERYONE THAT IS ON THAT CHANNEL WOULD HAVE HEARD  
6 THAT DESCRIPTION.

7 Q AND HOW DOES THAT WORK, HOW DO YOU DECIDE WHAT  
8 CHANNELS--

9 A WE ARE ASSIGNED A SPECIFIC CHANNEL FOR EVERYONE.

10 Q SO, ANY OFFICER IN REGION SIX WOULD HAVE HEARD YOUR  
11 DESCRIPTION OVER THE RADIO?

12 A YES, MA'AM.

13 Q NOW, AFTER YOU LEFT THE HOSPITAL WHERE DID YOU GO  
14 NEXT?

15 A I WENT BACK TO THE REGION, BACK TO LONGCREEK WHERE IT  
16 TOOK PLACE AND MET UP WITH THE OFFICERS THAT WERE  
17 PATROLLING THE AREA AND TRYING TO DETERMINE, TRYING TO  
18 FIND THE PEOPLE THAT WERE DOING THE CLEANING OR SELLING  
19 THE CLEANING.

20 Q AND WHY WAS IT IMPORTANT TO FIND THOSE PEOPLE?

21 A BECAUSE SHE HAD SAID THAT THE PERSON THAT HAD  
22 ATTACKED HER HAD TRIED TO SELL HER THE CLEANING SUPPLIES.

23 Q DID YOU PERSONALLY MAKE ANY CONTACT WITH ANY PEOPLE  
24 INVOLVED IN THE SELLING OF THE CLEANING SUPPLIES?

25 A YES, MA'AM.

1 Q AND DID THEY, ANY OF THOSE PEOPLE FIT THE DESCRIPTION  
2 THAT THE VICTIM PROVIDED?

3 A YES, MA'AM.

4 Q AND WAS THAT LATER ON WHEN YOU WERE WITH LIEUTENANT  
5 TYLER?

6 A YES.

7 Q BUT INITIALLY OTHER PEOPLE, DID ANY OTHER PEOPLE THAT  
8 YOU ENCOUNTERED FIT THAT DESCRIPTION?

9 A NO.

10 Q DID YOU AT ANY POINT MEET UP WITH LIEUTENANT TYLER TO  
11 DISCUSS OR TO MEET WITH A SUPERVISOR OF THE CLEANING?

12 MS. MOBLEY: I OBJECT TO THE LEADING.

13 A YES, WE DID.

14 THE COURT: I SUSTAIN TO THE FORM OF THE QUESTION.

15 Q WHEN DID YOU MEET LIEUTENANT TYLER TO APPREHEND THE  
16 SUSPECT?

17 A WE WERE JUST GETTING READY TO GET OFF SHIFT AND WE  
18 MET BACK AT LONGCREEK AND THERE WERE OTHER OFFICERS THERE  
19 AS WELL. THEY HAD MET WITH THE LADY OF THE CLEANING  
20 COMPANY AND SHE HAD SAID--

21 MS. MOBLEY: OBJECTION TO HERESAY.

22 THE COURT: SUSTAINED.

23 Q YOU CAN'T TESTIFY TO WHAT SHE SAID.

24 A OKAY.

25 Q YOU SAID THIS WAS CLOSE TO THE END OF YOUR SHIFT?

1 A YES, MA'AM.

2 Q WHEN DOES YOUR SHIFT END?

3 A 6:45.

4 Q COULD YOU HAVE, EVER ENCOUNTERED WHEN YOU WERE  
5 TALKING ABOUT THIS WOMAN, THE SUPERVISOR, WHAT KIND OF  
6 VEHICLE WAS SHE DRIVING?

7 A A WHITE VAN.

8 Q AND WHAT PLAN DID YOU AND LIEUTENANT TYLER AND OTHERS  
9 DEVELOPE IN ORDER TO APPREHEND A POSSIBLE SUSPECT?

10 A WE WERE GOING TO RIDE OVER TO WHERE HE WAS WITH THE  
11 SUPERVISOR, SHE WAS GOING TO PICK HIM UP BECAUSE IT WAS  
12 TOWARDS THE END OF THEIR WORK DAY AS WELL. SO, SHE WAS  
13 GOING TO IDENTIFY HIM TO US AND SAY THIS IS THE GENTLEMAN,  
14 THE DESCRIPTION WE WERE LOOKING FOR.

15 MS. MOBLEY: OBJECTION,--

16 THE COURT: WAIT JUST A MINUTE. YOU CANNOT REPEAT  
17 ANYTHING THAT SOMEONE TOLD YOU. YOU CAN ANSWER THE  
18 QUESTION THAT WAS ASKED BY YOU, I SUSTAIN THE OBJECTION TO  
19 THE LAST STATEMENT WHICH YOU WERE REPEATING SOMETHING THAT  
20 WAS SAID. COUNSEL, ASK YOUR NEXT QUESTION, PLEASE.

21 Q WHERE DID YOU UNDERSTAND YOU WERE GOING WITH THE  
22 SUPERVISOR IN THE VAN?

23 A WE WERE GOING TO ANOTHER SUBDIVISION, SOUTH, IT IS  
24 RIGHT ACROSS FROM THE PUBLIX ON HARD SCRABBLE. WE KNEW WE  
25 WERE GOING TO THAT SUBDIVISION.

1 Q OKAY. I AM GOING TO SHOW YOU WHAT HAS BEEN MARKED AS  
2 IDENTIFICATION PURPOSES, NUMBER 54. IF YOU COULD  
3 FAMILIARIZE YOURSELF WITH THAT.

4 A OKAY.

5 Q DO YOU RECOGNIZE THAT, WHAT IS THAT FIRST OF ALL?

6 A A MAP, A LITTLE OVERHEAD PICTURE.

7 Q AND WHAT IS THE OVERHEAD MAP OF?

8 A OF THAT LITTLE SUBDIVISION.

9 Q AND DO YOU SEE ANY STREETS?

10 A HARD SCRABBLE AND PALMETTO STREET.

11 Q ARE YOU FAMILIAR WITH THAT AREA?

12 A YES, MA'AM.

13 Q DOES THAT ACCURATELY DEPICT THE AREA WHERE YOU  
14 RESPONDED.

15 A YES, MA'AM.

16 MS. COOPER: YOUR HONOR, AT THIS TIME THE STATE SEEKS  
17 TO INTRODUCE NUMBER 54 INTO EVIDENCE.

18 MS. MOBLEY: WITHOUT OBJECTION.

19 THE COURT: WITHOUT OBJECTION STATE'S 54 IS ADMITTED  
20 INTO EVIDENCE.

21 (WHEREUPON, STATE'S EXHIBIT NO. 54 WAS ADMITTED INTO  
22 EVIDENCE.)

23 Q I AM GOING TO ASK YOU TO SHOW THE JURY EXACTLY WHERE  
24 YOU CAN FIND THIS LOCATION ON THIS LARGER MAP WHICH IS  
25 STATE'S NUMBER 13.

1 A (WITNESS POINTS TO MAP.)

2 Q AND SO IF YOU COULD PIN THIS NEXT TO THAT AREA.

3 A (WITNESS PINS TO MAP.)

4 Q AND JUST TO ORIENT THE JURY, COULD YOU FIND THE  
5 CROSSROADS TO THIS INTERSECTION?

6 A YES, THIS IS HARD SCRABBLE ROAD AND THIS IS PALMETTO  
7 STREET.

8 Q AND WHAT STREET DID YOU RESPOND TO, WHERE DID YOU,  
9 DID YOU KNOW WHAT STREET YOU HAD GONE TO WHEN YOU FIRST  
10 GOT THERE IN THE VAN?

11 A I WAS NOT SURE, I WAS DOWN BEHIND THE SEAT.

12 Q IF YOU COULD, JUST DESCRIBE FOR THE JURY WHAT YOU DID  
13 WHEN THE SUPERVISOR OF THE CLEANING COMPANY ARRIVED IN THE  
14 VAN, WHEN YOU WERE AT LONGCREEK?

15 A WHEN WE WERE AT LONGCREEK?

16 Q YES.

17 A I AM SORRY, SAY THAT AGAIN.

18 Q SURE, NO PROBLEM. WHAT DID YOU DO WHEN THE  
19 SUPERVISOR ARRIVED IN HER WHITE VAN AT LONGCREEK?

20 A I GOT IN THE VAN.

21 Q WHERE IN THE VAN?

22 A IN THE VERY BACK BEHIND THE VERY LAST SEAT AND  
23 CROUCHED DOWN BEHIND THERE.

24 Q AND ON THIS VAN, DO YOU HAVE, DESCRIBE IF THERE ARE  
25 ANY ENTRIES OR EXITS IN THE BACK OF THE VAN?

1 A YES, THERE IS A DOUBLE OPENING BACK DOOR IN THE BACK  
2 AND THERE IS A SLIDING DOOR ON THE SIDE AND THEN THERE IS  
3 A FRONT PASSENGER DOOR.

4 Q AND WHY WAS IT THAT YOU DECIDED TO GET IN THE BACK OF  
5 THE VAN?

6 A I GOT IN THE BACK OF THE VAN BECAUSE WHEN WE FOUND  
7 THE SUSPECT, THE PERSON WE WERE LOOKING FOR, WE DIDN'T  
8 WANT HIM TO KNOW THE DEPUTIES WERE THERE BECAUSE WE FELT  
9 HE MIGHT RUN. SO I HID IN THE BACK OF THE VAN AND ALSO I  
10 WAS IN THE BACK OF THE VAN BECAUSE I COULD GET OUT VERY  
11 QUICKLY THROUGH THE BACK DOOR IF I NEEDED TO RUN AFTER,  
12 CHASE SOMEBODY.

13 Q WHO ELSE GOT IN THE VAN WITH YOU?

14 A LIEUTENANT TYLER.

15 Q AND WHERE DID LIEUTENANT TYLER SIT?

16 A LIEUTENANT TYLER SAT IN THE FIRST BENCH SEAT BEHIND  
17 THE DRIVER AND PASSENGER BUCKET TYPE SEAT.

18 Q AND SO JUST SO I AM CLEAR, THE, HOW MANY ROWS OR  
19 SEATS IN THIS VAN, APPROXIMATELY?

20 A I WOULD SAY THERE ARE TWO OR THREE. I THINK THERE  
21 ARE TWO BENCH SEATS BECAUSE THERE WAS KIND OF A BIGGER  
22 OPEN CARGO SPACE WHERE I CRAWLED IN. SO, I THINK IT MIGHT  
23 OF BEEN TWO BENCH SEATS.

24 Q AND WHERE DID LIEUTENANT TYLER SIT IN?

25 A HE SAT IN THE VERY FIRST BENCH SEAT.

1 Q AND WHICH IS BEHIND WHAT?

2 A HE WAS KIND OF IN THE MIDDLE.

3 Q AND SO IF THIS IS THE DRIVERS SEAT AND THIS IS THE  
4 FRONT PASSENGER SEAT, THE ROW AND THERE IS A ROW, WHERE  
5 DID HE SIT?

6 A HE WAS RIGHT HERE.

7 Q AND WHERE WERE YOU?

8 A I WAS UP HERE CROUCHING DOWN.

9 Q COULD YOU SEE WHERE THE VAN TRAVELED TO IN ORDER TO  
10 PICK UP THE SUSPECT?

11 A YES, MA'AM.

12 Q AND HOW COULD YOU SEE?

13 A I COULD SEE OVER THE BACK GLASS WINDOWS AND ALSO  
14 WHILE WE WERE DRIVING I WAS LOOKING OVER THE SEAT. I  
15 THINK I WAS SITTING ON A BUCKET, ACTUALLY.

16 Q AND WHAT IS IT THAT HAPPENED AND WHAT DID YOU HEAR  
17 WHEN YOU ARRIVED AT THE LOCATION TO PICK UP THE SUSPECT?

18 A WHAT DID I HEAR?

19 Q YES, WHAT HAPPENED WHEN YOU GOT THERE?

20 A WHEN WE GOT THERE HE WAS POINTED OUT TO US.

21 Q AND WHAT DID YOU DO ONCE THAT HAPPENED?

22 A I STAYED HIDDEN AND THE VAN PULLED AROUND IN A  
23 CUL-DE-SAC AND KIND OF STOPPED SIDWAYS BECAUSE HE WAS  
24 TALKING TO SOME PEOPLE AT A CAR. AND I OPENED THE BACK  
25 DOORS AND SLID OUT AND STOOD BEHIND THE VAN OUT OF HIS

1 VIEW AND THEY WERE WAITING ON HIM TO FINISH TALKING TO  
2 THOSE CUSTOMERS. THEN SHE WAS ASKING HIM, HIS SUPERVISOR  
3 WAS ASKING HIM TO COME TO THE VAN. WHEN HE CAME OVER TO  
4 THE VAN TO GET INTO THIS PASSENGER SEAT UP HERE--

5 Q SO, HE SAT IN THE FRONT PASSENGER SEAT?

6 A HE OPENED THE DOOR AND GOT IN THE FRONT PASSENGER  
7 SEAT. AS SOON AS HE GOT THE DOOR OPENED AND STARTED TO  
8 STEP UP IN THE FRONT PASSENGER SEAT, HIS BACK TO ME AND I  
9 CAME AROUND INSIDE OF THE VAN UP TO THE PASSENGER DOOR SO  
10 HE COULDN'T SHUT IT. I WANTED TO GET THERE BEFORE HE SHUT  
11 THE DOOR. SO, I GOT THERE AND I GOT IN THE WAY OF THE  
12 DOOR AND GRABBED AHOLD OF HIS RIGHT BICEPS AND AT THAT  
13 TIME LIEUTENANT TYLER GRABBED HIM BY THE SHOULDERS AND WE  
14 TRIED TO IDENTIFY HIM.

15 Q AND WHAT DID YOU ASK HIM?

16 A LIEUTENANT TYLER ASKED HIM IF HE WAS MR. HAYWARD--  
17 MS. MOBLEY: OBJECTION.

18 THE COURT: WAIT JUST A MINUTE, I SUSTAIN THE  
19 OBJECTION. GO AHEAD, SOLICITOR.

20 Q DID YOU EVER ASK HIM FOR HIS IDENTITY?

21 A I DON'T RECALL ASKING HIM THAT.

22 Q DID YOU HEAR THE MAN SAY ANYTHING?

23 A HE WANTED TO KNOW WHAT WE WANTED AND WHO WE WERE, YOU  
24 KNOW, WHAT DO YOU WANT.

25 Q AND DESCRIBE IF HE, WERE YOU HOLDING ON TO HIS ARM AT

1 THIS POINT?

2 A YES, I WAS.

3 Q OKAY. DESCRIBE WHAT HAPPENED NEXT?

4 A I WAS HOLDING ON TO HIS ARM AND I REALIZED HE HAD BIG  
5 BICEPS, I MEAN, SO THAT CONCERNED ME BECAUSE I ALSO  
6 THOUGHT THAT HE MIGHT RUN AND HE WAS TENSE. AND SO I  
7 GRABBED THE HANDCUFFS QUICKLY TO PUT ON HIS RIGHT WRIST IN  
8 CASE HE WOULD TRY TO RUN BECAUSE HE WAS MUCH LARGER THAN I  
9 WAS. SO, I GOT THE HANDCUFF ON HIS FRONT WRIST AND ASKED  
10 HIM TO STEP OUT OF THE VAN. AND AS HE CAME OUT OF THE VAN  
11 HE ATTEMPTED TO JERK AWAY FROM ME AND I HAD A HOLD OF THE  
12 OTHER HANDCUFFS AND I WAS NOT ABLE TO SECURE HIS WRIST.  
13 SO HE HAD A HANDCUFF ON HIS RIGHT WRIST, I WAS HOLDING ON  
14 TO IT, BOTH HANDS BECAUSE OF HIS STRENGTH. AND AS HE COME  
15 OUT HE JERKED A COUPLE OF TIMES TRYING TO GET AWAY AND WE  
16 KIND OF WENT INTO A HALF CIRCLE AND THEN I WAS HOLDING ON,  
17 I NOTICED HIM LOOKING AT MY GUN. AND YOU KNOW, WHICH MADE  
18 ME KIND OF NERVOUS AND WITHIN A COUPLE OF SECONDS, I WOULD  
19 SAY LESS THAN TEN, LIEUTENANT TYLER HAD EXITED THE VAN AND  
20 WAS ABLE TO COME AND TOOK HIM DOWN TO THE GROUND AND WAS  
21 ABLE TO HANDCUFF HIM AT THAT POINT AND RADIOED FOR THE  
22 OTHER OFFICERS THAT WERE IN MARKED UNITES TO COME TO THE  
23 SCENE.

24 Q DID YOU PERSONALLY, NOT WITH ANYONE ELSE, DID YOU  
25 PERSONALLY MAKE ANY COMMANDS TO THIS MAN?

1 A YES, PUT YOUR HANDS BEHIND YOU.

2 Q WAS HE COMPLYING WITH YOUR COMMAND?

3 A NO.

4 Q AND WHAT ROAD DID THIS ALL TAKE PLACE ON?

5 A NIGHT HERON COURT.

6 Q AND IF YOU COULD, JUST POINT THAT ROAD OUT SO THEY  
7 WILL KNOW EXACTLY WHAT YOU ARE TALKING ABOUT. YOU CAN USE  
8 THIS ONE.

9 A IT IS RIGHT HERE.

10 Q AND DESCRIBE THE ROAD FOR THE JURY?

11 A IT IS A CUL-DE-SAC.

12 Q WHO WERE YOU CALLING FOR BACKUP?

13 A THE UNITS THAT WERE WORKING. THERE WAS MASTER DEPUTY  
14 ROE AND I BELIEVE SERGEANT MCCOLMAN AT THAT TIME WAS OUT.  
15 AND THEY HAD OTHER PEOPLE OUT, CORPORAL HOLT AND I THINK  
16 WE HAD A CANINE UNIT STANDING BY IN CASE HE RAN. SO THERE  
17 WERE SOME OTHER UNITS IN HERE.

18 Q AND WHO RESPONDED TO YOUR REQUEST FOR BACKUP?

19 A I BELIEVE THE FIRST ONES THERE WERE MASTER DEPUTY ROE  
20 AND SERGEANT MCCOLMAN.

21 Q AND WHAT HAPPENED WITH THE SUSPECT ONCE THEY ARRIVED?

22 A ONCE THEY ARRIVED, WHEN THEY GOT THERE LIEUTENANT  
23 TYLER AND I HAD BEEN ABLE TO GET THE SECOND HANDCUFF ON  
24 HIM AND WERE STANDING HIM UP. AND ONCE WE GOT HIM STOOD  
25 UP OTHER OFFICERS WERE THERE AND THEY TOOK HIM OVER TO A

1 VEHICLE AND I WENT OVER TO A DIFFERENT VEHICLE BECAUSE I  
2 CUT MY HAND.

3 Q WHAT DID YOU CUT YOUR HAND ON?

4 A ON THE, THE LITTLE THING ON THE HANDCUFF. SO, I  
5 DIDN'T HAVE ANY CONTACT WITH HIM AFTER THAT.

6 Q AND WERE YOU PRESENT WHEN MASTER DEPUTY ROE AND  
7 SERGEANT MCCOLMAN WERE MEETING WITH THE SUSPECT?

8 A I DID NOT OBSERVE ANYONE. I WAS AT THE SCENE, I WAS  
9 AT LEAST FROM HERE TO THE, TO WHERE THOSE PEOPLE ARE  
10 SITTING OVER THERE AND THERE WERE OTHER VEHICLES AROUND  
11 AND OTHER PEOPLE.

12 Q ABOUT THIS DISTANCE?

13 A RIGHT AND I WASN'T REALLY PAYING ATTENTION TO WHAT  
14 THEY WERE DOING AT THAT POINT, THERE WERE OTHER PEOPLE  
15 ASKING ME QUESTIONS AND GIVING ME A BANDAID.

16 Q AND DO YOU RECALL IF YOU EVER SAW INVESTIGATOR BARNES  
17 APPROACH AND ARRIVE TO THE SCENE?

18 A YES, OH YES.

19 Q AND YOU PROVIDED A REPORT ABOUT WHAT TOOK PLACE ON  
20 NIGHT HERON COURT, YOU MADE A STATEMENT OR A REPORT ABOUT  
21 IT?

22 A YES, I DID.

23 Q APPROXIMATELY, YOU INDICATED ALL OF THIS TOOK PLACE  
24 ON NIGHT HERON COURT, APPROXIMATELY?

25 A I WOULD SAY BETWEEN 6:30 AND 7:00, MAYBE.

1 Q NOW, DURING, BETWEEN THE TIME YOU ARRIVED IN  
2 LONGCREEK AND THE TIME THAT YOU CAPTURED THE DEFENDANT  
3 WHERE, WHAT WERE YOU DOING DURING THAT PERIOD?

4 A AFTER THE HOSPITAL?

5 Q WHEN YOU RETURNED TO LONGCREEK YOU INDICATED YOU  
6 DIDN'T GO TO HERON COURT UNTIL ABOUT 6:30 OR 7:00. WHAT  
7 DID YOU DO DURING THAT PERIOD OF TIME?

8 A I PATROLLED AROUND A LITTLE BIT.

9 Q AND WHAT AREA DID YOU PATROL?

10 A LONGCREEK.

11 Q DO YOU RECALL ENCOUNTERING ANYBODY DURING YOUR  
12 PATROL?

13 A I DID SPEAK TO THE LAWN MAINTENANCE MEN WHO HAD  
14 TALKED ABOUT PICKING UP--

15 MS. MOBLEY: OBJECTION.

16 Q OKAY.

17 THE COURT: GO AHEAD, COUNSEL.

18 Q YOU ENCOUNTERED A LAWN SERVICE PERSON?

19 A YES, I DID.

20 Q WERE YOU ABLE TO GET A DESCRIPTION FROM HIM?

21 A YES, I DID.

22 Q AND DID YOU SHARE THAT WITH OTHER PEOPLE IN THE AREA?

23 A YES, I DID.

24 Q COULD YOU DESCRIBE THE DEFENDANT'S DEMEANOR WHEN YOU  
25 WERE HANDCUFFING HIM AND WHAT YOU OBSERVED ABOUT HIS

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSION
<u>COUNTY OF RICHLAND</u>	)	2005-GS-40-5072

STATE OF SOUTH CAROLINA	)	
VS.	)	TRANSCRIPT OF RECORD
	)	
JERENE HAYWARD	)	
<u>DEFENDANT</u>	)	<u>VOLUME II</u>

MARCH 13, 2006  
 COLUMBIA, SOUTH CAROLINA

B E F O R E:

HONORABLE JAMES W. JOHNSON, JR., JUDGE

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

MR. AARON JOPLIN, ASSISTANT SOLICITOR  
 MS. VANNESSA COOPER, ASSISTANT SOLICITOR  
 ATTORNEYS FOR THE STATE

JEANETTE VAN GINHOVEN, ASSISTANT PUBLIC DEFENDER  
 LAUREN MOBLEY, ASSISTANT PUBLIC DEFENDER  
 ATTORNEYS FOR THE DEFENDANT

JOY E. HOLSTON  
 OFFICIAL COURT REPORTER



1 Q UNDER VICTIM, THE PARAGRAPH THAT SAYS VICTIMS  
2 INFORMATION THERE IS A LINE THAT SAYS VISIBLE INJURY. CAN  
3 YOU TELL IF THOSE BOXES ARE CHECKED?

4 A NO.

5 Q OKAY. AFTER THAT IT SAYS COMPLAINT OF ANY  
6 NONPHYSICAL INJURIES. CAN YOU TELL ME IF EITHER OF THOSE  
7 BOXES ARE CHECKED?

8 A NO.

9 Q AND I BELIEVE YOU TESTIFIED ON DIRECT THAT YOUR  
10 UNDERSTANDING LOURDES ANTONIO'S ENCOUNTER WAS THAT SHE HAD  
11 MET THE GENTLEMAN SELLING CLEANING PRODUCTS. IS THAT  
12 CORRECT?

13 A YES, MA'AM.

14 Q IS THAT IN YOUR REPORT?

15 A NO.

16 Q OKAY. THE INCIDENT DATE OF THIS IS APRIL THE 13TH OF  
17 2004, IS THAT RIGHT?

18 A YES, MA'AM.

19 Q DID YOU REVIEW ANYTHING ELSE IN PREPARATION FOR YOUR  
20 TESTIMONY TODAY OR IS THAT SOMETHING THAT STOOD OUT IN  
21 YOUR MIND. DID YOU REVIEW ANY OTHER DOCUMENTATION IN  
22 PREPARATION OF YOUR TESTIMONY TODAY?

23 A I REVIEWED THIS REPORT.

24 Q ANYTHING ELSE?

25 A NO, MA'AM.

1 Q NOW, I THINK THAT BRINGS US TO PRETTY MUCH LET'S MOVE  
2 ON TO WHEN YOU ARE GOING TO THIS WHITE VAN AND THAT  
3 SITUATION.

4 A OKAY.

5 Q NOW, YOU MADE CONTACT WITH THE, I GUESS OWNER OF THIS  
6 PRODUCT CLEANING BUSINESS, IS THAT CORRECT?

7 A YES, MA'AM.

8 Q WAS THERE ONLY ONE EMPLOYEE THAT SHE HAD OUT THERE?

9 A NO, MA'AM. THERE WERE OTHER PEOPLE.

10 Q CAN YOU GIVE ME A ROUGH ESTIMATE OF HOW MANY, DO YOU  
11 KNOW?

12 A I ONLY SAW TWO OTHERS.

13 Q YOU SAW TWO OTHERS?

14 A YES.

15 Q WHEN DID YOU SEE THEM?

16 A WHEN WE WERE IN LONGCREEK, WHEN SHE CAME UP WITH THE  
17 VAN.

18 Q OKAY, SO YOU HAD TWO OTHER PEOPLE IN THE VAN?

19 A NO, THEY WERE ACTUALLY, I THINK OTHER OFFICERS HAD  
20 SEEN THEM, THEY WERE STANDING WITH OTHER OFFICERS WHO WERE  
21 ALSO THERE IN THEIR CARS.

22 Q OKAY. AND I BELIVE YOU TESTIFIED YOU AND YOUR, I  
23 WANT TO MAKE SURE I HAVE THIS RIGHT. THIS IS THE WORK  
24 VAN, THIS IS THE LADIES VAN, YOU ARE CROUCHING HERE WITH  
25 LIEUTENANT TYLER HERE?

1 A YES, MA'AM.

2 Q SO, IS IT YOUR UNDERSTANDING THIS WAS THE VAN WHO WAS  
3 GOING TO PICK UP THE VARIOUS WORKERS IN THE NEIGHBORHOOD  
4 TO TAKE THEM WHEREVER THEY GO?

5 A YES, MA'AM.

6 Q AND I BELIEVE YOU TESTIFIED THAT WHEN YOU FIRST COME  
7 UP ON MR. HAYWARD HE WAS WAXING A CAR OR HE WAS  
8 DEMONSTRATING A CLEANING PRODUCT?

9 A HE WAS WITH SOME PEOPLE NEAR A CAR.

10 Q THEY APPEARED TO BE DOING SOMETHING WITH LIKE THE  
11 CLEANING?

12 A I DIDN'T LOOK FOR A REAL LONG TIME BECAUSE I DIDN'T  
13 WANT TO BE SEEN. BUT, YES, HE WAS THERE DOING SOMETHING.

14 Q SO, HE SEES THE VAN, COMES OVER AND FINISHES UP WITH  
15 HIS DAY AT WORK AND HE HOPS IN THE VAN?

16 A YES.

17 Q AND THAT IS WHEN YOU COME AROUND THE VAN TO THIS  
18 FRONT WINDOW SO HE WOULD HAVE BEEN HERE?

19 A YES, MA'AM.

20 Q WERE THERE OTHER POLICE AROUND AT THIS POINT?

21 A JUST LIEUTENANT TYLER AND I.

22 Q SO, THERE WEREN'T A BUNCH OF COP CARS AND THINGS  
23 AROUND?

24 A NO.

25 Q NOW, I BELIEVE YOU TESTIFIED THAT HE WAS TENSE AND

1 THIS WAS RIGHT AFTER YOU RUN TO THE FRONT OF THE VAN, YOU  
2 LOCK THE DOOR, ARE YOU IN UNIFORM?

3 A YES, MA'AM.

4 Q SO, YOU ARE DRESSED LIKE YOU ARE NOW?

5 A YES, MA'AM.

6 Q SO, YOU BLOCK THE DOOR AND YOU ARE GRABBING ON TO HIM  
7 AND THIS IS THE FIRST HE HAS SEEN OF THE POLICE AT THIS  
8 POINT?

9 A YES MA'AM, I BELIEVE SO.

10 Q YOU GRAB HIS ARM, YA'LL ARE STRUGGLING, YOU ARE  
11 TRYING TO GET THE CUFFS ON. LIEUTENANT TYLER COMES AROUND  
12 FROM SOMEWHERE. WHERE DOES LIEUTENANT TYLER COME AROUND  
13 FROM?

14 A FROM RIGHT THERE WAS HE DOES, HE JUST REACHED OVER  
15 AND I THINK TOUCHED HIM ON HIS SHOULDERS AND HELD HIS  
16 SHOULDERS.

17 Q SO, HE HAS GOT HIM BY THE SHOULDERS AND YOU HAVE GOT  
18 HIM BY HIS ARM AT THIS POINT?

19 A YES.

20 Q OKAY. AND WOULD THAT MAKE SENSE TO YOU THAT HE WOULD  
21 BE TENSE?

22 A YES, MA'AM.

23 Q OKAY. WITH OFFICERS AROUND AND WITH OFFICERS  
24 GRABBING HIM. WAS HE INFORMED AT THAT POINT WHAT HE WAS  
25 BEING CHARGED WITH?

1 A NO.

2 Q WAS HE PLACED UNDER ARREST AT THAT POINT?

3 A NO.

4 Q SO, HE IS JUST BEING HANDCUFFED AT THAT POINT AND I  
5 BELIEVE YOU TESTIFIED YOU WERE TELLING HIM, PUT YOUR HANDS  
6 BEHIND YOUR BACK, PUT YOUR HANDS BEHIND YOUR BACK.

7 A YES, MA'AM.

8 Q SO, THIS IS AN INVESTIGATION ATTENTION THAT IS SORT  
9 OF COMING OUT OF THE BLUE FOR HIM AND YA'LL ARE COMING IN  
10 HANDCUFFING HIM, THIS IS WHAT IS GOING ON?

11 A YES.

12 Q OKAY. AND YOU MENTIONED HE WAS TRYING TO JERK AWAY.  
13 IS THAT POSSIBLE THAT HE COULD OF BEEN STARTLED BY THE  
14 SUDDEN--

15 MS. COOPER: OBJECTION, YOUR HONOR, THIS IS  
16 SPECULATIVE.

17 MS. MOBLEY: IT WAS SPECULATIVE IN THE FIRST PLACE.

18 THE COURT: I SUSTAIN THE OBJECTION. GO AHEAD.

19 Q NOW, ON THE SECOND PAGE OF YOUR SUPPLEMENTAL REPORT,  
20 THE PAGE AFTER YOUR INCIDENT REPORT.

21 A OKAY.

22 Q AND I BELIEVE YOU TESTIFIED ON DIRECT YOU DID NOT  
23 OBSERVE ANY OF MASTER DEPUTY ROE, SERGEANT MCCOLMAN  
24 CONTACT WITH MR. HAYWARD?

25 A YES.

1 MS. MOBLEY: I BEG THE COURT'S INDULGENCE FOR JUST A  
2 MOMENT.

3 THE COURT: ALL RIGHT.

4 Q THE SECOND PAGE OF YOUR REPORT THAT I DIRECTED YOU TO  
5 JUST A MOMENT AGO. YOU INDICATE THAT YOU DIDN'T SEEK  
6 FURTHER CONTACT WITH MR. HAYWARD BY ROE AND MCCOLMAN, IS  
7 THAT CORRECT, BY MASTER DEPUTY ROE AND SERGEANT MCCOLMAN?

8 A ARE YOU SAYING, WHERE IT SAYS DURING THE TERRY FRISK?

9 Q YES.

10 A I DID NOT OBSERVE THE TERRY FRISK.

11 Q YOU DIDN'T?

12 A NO.

13 Q SO YOU DIDN'T OBSERVE ANYTHING ELSE AFTER YOUR  
14 INITIAL INVESTIGATIVE ATTENTION.

15 A RIGHT.

16 Q SO IT IS IN YOUR REPORT BUT IT IS NOT SOMETHING THAT  
17 YOU OBSERVED?

18 A RIGHT.

19 Q THAT IS ALL I HAVE.

20 THE COURT: REDIRECT.

21 MS. COOPER: YES, YOUR HONOR.

22 REDIRECT EXAMINATION

23 BY MS. COOPER:

24 Q YOU JUST TESTIFIED ON CROSS-EXAMINATION THAT YOU DID  
25 NOT ACTUALLY OBSERVE THE TERRY FRISK DONE BY ROE AND

1 MCCOLMAN, IS THAT CORRECT?

2 A THAT IS CORRECT.

3 Q HOW DID YOU COME TO LEARN THAT IN ORDER TO INCLUDE IT  
4 INTO YOUR REPORT?

5 A WHILE I WAS THERE THEY TOLD ME THAT THE GUN HAD BEEN  
6 FOUND ON HIM.

7 Q OKAY. AND YOU WERE ASKED IF YOU HAD CHECKED OFF A  
8 BOX BY VISIBLE INJURY AND OR COMPLAINT OF NON-VISIBLE  
9 INJURIES. WHAT BOXES WERE MS. MOBLEY REFERRING TO?

10 A THERE ARE BOXES IS UNDER THE VICTIM SECTION THAT  
11 ASKED ABOUT PHYSICAL INJURY, COMPLAINING ABOUT NONPHYSICAL  
12 INJURY, WHETHER OR NOT THE PERSON IS ON ALCOHOL OR DRUGS.

13 Q AND WHAT IS NEXT TO THE BOX, ARE THERE ANY WORDS NEXT  
14 TO EACH BOX?

15 A YES, IT SAYS EXPLAIN AND THERE IS NOTHING THAT I  
16 WROTE THERE.

17 Q OKAY. DID YOU MARK ANY OF THOSE BOXES?

18 A I DON'T RECALL. IT IS OBVIOUS IT IS NOT ON THIS ONE  
19 THAT HAS BEEN PRINTED OFF OF THE COMPUTER. SOMETIMES WE  
20 PRINT THEM OUT AND MARK IT WITH AN INK PEN. SO, IF THIS  
21 WAS A REPORT THAT WAS GIVEN TO ME FROM A DISK AND I DON'T  
22 RECALL WHETHER AFTER I PRINTED IT OUT THAT WE CHECKED  
23 THOSE, I SHOULD HAVE.

24 Q AND WHAT IS NEXT TO EACH BOX, WHAT IS STATED ON THE  
25 FORM?

1 A WHERE IT SAYS YES, NO, EXPLAIN.

2 Q THANK YOU. I AM GOING TO SHOW YOU PAGE NUMBER 2.

3 ALTHOUGH YOU DID NOT CHECK OFF VISIBLE INJURY OR COMPLAINT  
4 OF NON-VISIBLE INJURY DID YOU DOCUMENT WHAT YOU OBSERVED?

5 A YES, MA'AM.

6 Q AND WHAT WAS THAT?

7 A IT SAYS THE VICTIM HAD INJURED HER ELBOW AND  
8 COMPLAINED OF CHEST PAINS, BOTH ARMS HAD RED SWOLLEN SPOTS  
9 ON THEM, SHE WAS VERY UPSET AND HAD A HARD TIME TALKING.

10 Q ALTHOUGH YOU DIDN'T CHECK OFF THE BOXES, YOU WROTE IT  
11 DOWN IN YOUR REPORT?

12 A YES, MA'AM.

13 Q WHEN YOU ARRIVED AND PLACED THE HANDCUFF ON MR.  
14 HAYWARD YOU INDICATED YOU HAD HIM UNDER INVESTIGATIVE  
15 DETENTION?

16 A YES, MA'AM.

17 Q HE WAS NOT UNDER ARREST?

18 A NO, MA'AM.

19 Q WHY WASN'T HE UNDER ARREST AT THAT POINT?

20 A I GUESS, I AM NOT SURE.

21 Q WELL, INVESTIGATOR BARNES WASN'T THERE YET, WAS HE?

22 A NO, MA'AM.

23 Q AND HOW MANY TIMES HAVE YOU GOT INTO A WHITE VAN AND  
24 GONE TO A SCENE, ANY SCENE TO APPREHEND A SUSPECT IN A  
25 BURGLARY CASE?

1 A THAT WAS THE FIRST ONE.

2 Q HAVE YOU EVER BEEN ON ANY SINCE?

3 A NO, MA'AM.

4 Q DO YOU HAVE A RECOLLECTION OF EVENTS FROM THIS  
5 PARTICULAR CRIME?

6 A YES, MA'AM.

7 Q THAT IS ALL I HAVE.

8 THE COURT: RECROSS?

9 MS. MOBLEY: VERY BRIEFLY, YOUR HONOR.

10 FURTHER RECROSS-EXAMINATION

11 BY MS. MOBLEY:

12 Q WAS MR. HAYWARD FREE TO LEAVE WHILE HE WAS IN THOSE  
13 HANDCUFFS?

14 A NO.

15 Q SO, HE WAS DETAINED?

16 A HE WAS DETAINED.

17 Q THANK YOU.

18 THE COURT: ANYTHING FURTHER?

19 MS. COOPER: NO, YOUR HONOR.

20 THE COURT: YOU MAY STEP DOWN.

21 MS. COOPER: YOUR HONOR, MAY THIS WITNESS BE EXCUSED.

22 THE COURT: WITHOUT OBJECTION THE WITNESS IS EXCUSED.

23 CALL YOUR NEXT WITNESS, PLEASE.

24 MS. COOPER: THANK YOU, YOUR HONOR, THE STATE CALLS

25 LIEUTENANT MARK MCCOLMAN.

1 MARK MCCOLMAN, AFTER BEING DULY SWORN, TESTIFIED  
2 AS FOLLOWS:

3 DIRECT EXAMINATION

4 BY MS. COOPER:

5 Q LIEUTENANT MCCOLMAN, CAN YOU TELL THE JURY WHERE YOU  
6 ARE EMPLOYED?

7 A RICHLAND COUNTY SHERIFFS DEPARTMENT.

8 Q AND WHAT ARE YOUR DUTIES?

9 A MY DUTIES NOW IS A LIEUTENANT OVER SCHOOL RESOURCE  
10 OFFICE PROGRAM.

11 Q WHAT IS A SCHOOL RESOURCE OFFICE PROGRAM?

12 A WE HAVE OFFICERS THAT IS IN THE SCHOOLS THAT TEACH  
13 AND MAKE SURE WE HAVE A SAFE AND SECURE ENVIRONMENT FOR  
14 OUR STUDENTS.

15 Q AND BEFORE YOU BECAME IN CHARGE OF THAT PROGRAM WHERE  
16 WERE YOU WITHIN THE DEPARTMENT?

17 A BEFORE THIS I WAS A SERGEANT IN REGION SIX AREA.

18 Q AND IS THAT REGION UP IN THE NORTHEAST SECTION OF  
19 RICHLAND COUNTY.

20 A YES, NORTHEAST.

21 Q BACK THEN YOU WERE A SERGEANT, IS THAT CORRECT?

22 A THAT'S CORRECT.

23 Q AND AS A SERGEANT WHAT WERE YOUR DUTIES IN THAT  
24 REGION?

25 A MY DUTIES WAS HANDLING TWO SQUADS, OBSERVING, ANSWER

1 CALLS AND DEALING WITH PAPERWORK.

2 Q AND I AM GOING TO BRING YOUR ATTENTION TO APRIL 13TH  
3 OF 2004. DO YOU RECALL BEING, DO YOU RECALL SOMEONE  
4 REQUESTED YOUR ASSISTANCE CONCERNING A HOME INVASION IN  
5 THE LONGCREEK SUBDIVISION?

6 A LIEUTENANT TYLER HAD CALLED ME, I HAD JUST WALKED  
7 INTO THE HOUSE. I GOT MY GUN OFF, MY SHIRT AND VEST AND  
8 MY PHONE WENT OFF AND LIEUTENANT TYLER CALLED ME AND TOLD  
9 ME THEY JUST HAD A HOME INVASION OVER IN THE LONGCREEK  
10 SUBDIVISION.

11 Q AND WHY WERE YOU TAKEN OFF OF YOUR EQUIPMENT?

12 A I HAD JUST GOT HOME, I WAS DONE FOR THE DAY.

13 Q AND SO WHAT DID YOU DO AS THE RESULT OF LIEUTENANT  
14 TYLER CONTACTING YOU?

15 A I PUT BACK ON MY UNIFORM AND RESPONDED TO THE SCENE.

16 Q AND WHERE DID YOU GO?

17 A MET WITH LIEUTENANT TYLER ON COLUMBIA CLUB DRIVE.

18 Q AND WHAT, WHO ALL WAS THERE WHEN YOU ARRIVED?

19 A I KNOW LIEUTENANT TYLER WAS THERE, DEPUTY ROE AND  
20 CORPORAL HOLT.

21 Q AND DO YOU RECALL WHETHER OR NOT, HOLLY WAGNER,  
22 DEPUTY WAGNER WAS THERE?

23 A I KNOW THAT HOLLY WAS IN THAT AREA.

24 Q WITHOUT SAYING WHO SAID WHAT WAS YOUR UNDERSTANDING  
25 OF THAT MEETING?

1 A THE MAIN THING IS THAT LIEUTENANT TYLER BRIEFED ME ON  
2 WHAT WAS GOING ON.

3 Q AND DID YOU, HAD YOU BEEN BRIEFED AS TO WHETHER OR  
4 NOT THE SUSPECT SUPERVISOR HAD BEEN LOCATED.

5 MS. COOPER: I OBJECT TO THE LEADING.

6 THE COURT: I WILL PERMIT THAT QUESTION, GO AHEAD,  
7 OVERRULED.

8 MS. COOPER: THANK YOU, YOUR HONOR.

9 Q PLEASE ANSWER MY QUESTION.

10 A CAN YOU REPEAT THE QUESTION.

11 Q DO YOU RECALL WHETHER OR NOT LIEUTENANT TYLER HAD  
12 MADE CONTACT WITH THE SUPERVISOR OF A CLEANING SERVICE  
13 WORKING IN THAT AREA?

14 A YES, THEY HAD. AS A MATTER OF FACT, NOT LONG AFTER I  
15 GOT IN MY POSITION ON THAT ROADWAY WAS WHEN A WHITE VAN  
16 PULLED UP.

17 Q WHO WAS DRIVING THAT WHITE VAN?

18 A IT WAS THE SUPERVISOR OF THE SERVICE.

19 Q AND CAN YOU DESCRIBE THE DRIVER?

20 A NO, I CAN'T. I AM SORRY.

21 Q YOU DON'T KNOW IF IT WAS A MAN OR A WOMAN?

22 A I THINK IT WAS A FEMALE.

23 Q AND WHAT PLAN DID YOU DEVELOPE WITH THE OTHER  
24 OFFICERS CONCERNING THE VAN?

25 A LIEUTENANT TYLER AND DEPUTY WAGNER WERE GOING TO GET

1 INTO THE VAN. THEY HAD SOMEHOW KNEW WHERE THIS PERSON  
2 THAT MATCHED THE DESCRIPTION WAS AT AND THEY WERE GOING TO  
3 PICK UP. MYSELF AND THE OTHER DEPUTIES WERE GOING TO LAY  
4 BACK BECAUSE WE WERE IN MARKED UNITS AND LIEUTENANT TYLER  
5 AND DEPUTY WAGNER WERE ACTUALLY IN THE VAN.

6 Q WERE THERE ANY OTHER PEOPLE BESIDES THE DRIVER IN THE  
7 VAN OTHER THAN DEPUTY WAGNER AND LIEUTENANT TYLER?

8 A I AM NOT SURE.

9 Q AND DID YOU, WHY DID YOU NOT WANT TO BE INVOLVED WITH  
10 YOUR VEHICLE AND YOUR UNIFORM?

11 A I KIND OF STAND OUT.

12 Q AND WHAT WAS YOUR CONCERN SHOULD YOU BE TO STAND OUT  
13 TO SOMEBODY?

14 A WELL, THAT WAS GOING TO BE A POSSIBILITY IF HE SAW ME  
15 HE WAS GOING TO RUN.

16 Q AND SO AS A RESULT YOU INDICATED YOU STAYED BACK,  
17 WHAT DO YOU MEAN YOU STAYED BACK.

18 A WE WERE IN MARKED UNITS WITH BLUE LIGHTS ON TOP. SO,  
19 WE KNEW THE AREA THAT HE WAS GOING TO BE IN AND WE DID NOT  
20 WANT HIM TO SPOT OUR MARKED UNITS SO WE STAYED BACK  
21 WAITING FOR LIEUTENANT TYLER AND DEPUTY WAGNER TO CALL US.

22 Q AND AT ONE POINT DID YOU RECEIVE A CALL FROM EITHER  
23 ONE OF THEM REQUESTING YOUR ASSISTANCE?

24 A WE DID.

25 Q WHERE DID YOU RESPOND TO?

1 A WELL, ACTUALLY WE WERE TOLD TO TAKE THE FIRST LEFT AS  
2 WE WENT INTO SOUTHWOOD.

3 Q AND I AM GOING TO SHOW YOU A PICTURE OR A MAP AND ASK  
4 YOU IF YOU RECOGNIZE THE STREET IN THIS SECTION MARKED AS  
5 STATE'S NUMBER 54?

6 A YES, I DO.

7 Q AND IS THAT, WHAT IS THAT AREA CALLED?

8 A THIS IS LEE ROAD HERE WHICH CONNECTS TO HARD SCRABBLE  
9 AND THE LONGCREEK SUBDIVISION. IF YOU TRAVEL PAST THIS  
10 GROCERY STORE YOU WILL SEE THE SUMMIT SUBDIVISION,  
11 SOUTHERN PARKWAY YOU TAKE A RIGHT.

12 Q AND YOU INDICATED YOU RESPONDED TO A SUBDIVISION AT  
13 THE REQUEST OF DEPUTY WAGNER?

14 A YES.

15 Q AND WHAT IS THE NAME OF THAT SUBDIVISION?

16 A SOUTHWOOD SUBDIVISION.

17 Q AND WHAT STREET DID YOU TURN ON FIRST?

18 A I KNOW WE MADE OUR, WE WERE TOLD TO TAKE OUR FIRST  
19 LEFT. THEN AS WE WENT UP WE CALLED BACK, I ASKED HIM  
20 WHERE ARE YOU AT BECAUSE WE WERE TRYING TO LOCATE THEM  
21 BECAUSE IT SEEMED LIKE IT WAS TAKING US FOREVER TO GET TO  
22 THEM. FINALLY DEPUTY WAGNER GOT BACK ON THE RADIO AND  
23 GAVE US THE ROAD MAP.

24 Q AND WHAT WAS THE NAME OF THAT ROAD NAME?

25 A AS I INDICATED IN MY REPORT, SOUTHWOOD, IT WOULD BE

1 IN NIGHT HERON COURT.

2 Q AND DO YOU SEE THAT ON 54, RIGHT HERE.

3 A YES.

4 Q YOU SEE IT AND WHAT IS, RIGHT THERE?

5 A YES.

6 Q ALL RIGHT AND SO WHAT HAPPENED WHEN YOU GOT THERE,  
7 WHAT DID YOU OBSERVE?

8 A WE OBSERVED, WHAT I REMEMBER, WHAT I OBSERVED WAS  
9 DEPUTY WAGNER HAD THE SUSPECT AND HE WAS KIND OF  
10 STRUGGLING WITH HER. I WENT UP TO HIM AND GOT HIM AND SHE  
11 ADVISED ME THEY HAD NOT DONE THE PAT-DOWN ON HIM.

12 Q AND WHO ASSISTED YOU TO PAT-DOWN THE SUBJECT?

13 A DEPUTY ROE.

14 Q AND WHAT WERE YOU PATTING HIM DOWN FOR?

15 A WELL, WE KNEW THAT THE CALL THAT WE RESPONDED TO WAS  
16 CONSIDERED A VIOLENT CRIME AND WE KNEW THERE WAS A  
17 POSSIBILITY HE HAD SOME TYPE OF WEAPON ON HIM, THE SUSPECT  
18 THAT WE WERE LOOKING FOR. FOR OUR SAFETY WE DID A  
19 PAT-DOWN TO MAKE SURE HE DIDN'T HAVE A WEAPON ON HIM.

20 Q DID YOU AND DEPUTY ROE PAT HIM DOWN AT THAT POINT?

21 A YES.

22 Q WHAT DID YOU DISCOVER?

23 A WELL, I HEARD A CLUNK ON THE ASPHALT AND WE SAW THE  
24 BAG FALL OUT FROM HIM AND IT WAS SOME TYPE OF METAL OBJECT  
25 IN THE BAG.

1 Q AND WHO TOOK CUSTODY OF THAT OBJECT, BY THE WAY,  
2 WHERE DID IT FALL OUT OF?

3 A AS I INDICATED IN MY REPORT, HIS LEFT PANTS LEG.

4 Q AND WHAT DID YOU DO WITH IT?

5 A I HELD ON TO IT, ONCE THEY PULLED THE SUSPECT AWAY  
6 FROM THE CAR, FROM ONE OF OUR PATROL CARS I THEN CHECKED  
7 THE WEAPON TO MAKE SURE IT WAS NOT LOADED.

8 Q I AM GOING TO SHOW YOU WHAT HAS BEEN MARKED FOR  
9 IDENTIFICATION PURPOSES ONLY, NUMBER 10. DO YOU RECOGNIZE  
10 WHAT IS IN THAT?

11 A YES.

12 Q WHAT IS IT?

13 A IT IS A SEMI-AUTOMATIC PISTOL.

14 Q AND WHAT ELSE IS IN THE PICTURE?

15 A FOUR MAGAZINES.

16 Q ARE THOSE THE SAME OR APPEAR TO BE THE SAME AS FOUND  
17 IN THE GROCERY BAG?

18 A THEY APPEAR TO BE THE SAME.

19 Q SO, WHAT DID YOU DO WITH THE WEAPON, YOU INDICATED  
20 THAT YOU WERE TRYING TO SECURE IT, IS THAT CORRECT?

21 A YES.

22 Q WHAT DO YOU MEAN BY TRYING TO SECURE IT?

23 A I MADE SURE THAT IF IT WAS LOADED TO MAKE SURE IT WAS  
24 UNLOADED.

25 Q WAS IT LOADED WHEN YOU RECOVERED IT FROM THE SUSPECT?

1 A TO MY RECOLLECTION, YES.

2 Q AND AT THAT POINT WHAT, WHAT HAPPENED WITH THE  
3 SUSPECT AT THAT POINT. DID YOU ASSIST IN ANY FURTHER,  
4 HAVE ANY MORE CONTACT WITH THE DEFENDANT AT THAT POINT?

5 A NO, I DID NOT.

6 Q DID YOU HAVE TO EXCHANGE ANY ITEMS WITH ANY OTHER  
7 OFFICERS AT THE SCENE?

8 A I KNOW THAT WE, AS I INDICATED ON THE REPORT, WE  
9 CHANGED OUT OF HANDCUFFS.

10 Q DO YOU RECALL WHOSE HANDCUFFS GOT EXCHANGED?

11 A I DO NOT.

12 Q DID YOU HEAR ANYTHING BY THE DEFENDANT, DID YOU HEAR  
13 HIM SAY ANYTHING?

14 A YES, AS I INDICATED IN MY REPORT HE WAS YELLING, THEY  
15 ARE SETTING ME UP.

16 Q DO YOU HAVE ANY IDEA OF WHERE THAT COMMENT WAS  
17 DIRECTED TO?

18 A NO, BECAUSE WE HAD, OF COURSE, THE VAN THERE AND  
19 THERE WAS NEIGHBORS THAT WERE COMING OUT.

20 Q WERE YOU PRESENT OR DID YOU HEAR DEPUTY ROE TALK TO  
21 THE SUSPECT AT ALL?

22 A NO.

23 Q AND WHAT WERE, WHAT WAS THE FOCUS OF YOUR ATTENTION  
24 AT THIS POINT?

25 A MY FOCUS WAS THE WEAPON AND MAKE SURE WE HAD IT

1 SECURED.

2 Q OKAY. AND ONCE YOU SECURED THE WEAPON WHERE DID YOU  
3 GO?

4 A HOME.

5 Q AND WHO DID YOU LEAVE THE WEAPON WITH?

6 A WHAT I REMEMBER IS INVESTIGATOR BARNES, THE OFFICER  
7 THAT CAME UP THERE.

8 Q DO YOU RECALL IF YOU GAVE IT TO HIM?

9 A I BELIEVE I TURNED IT OVER TO BARNES.

10 Q DID YOU TURN, DID YOU HAVE ANY MORE INVOLVEMENT WITH  
11 THIS CASE?

12 A NO.

13 Q DID YOU LOG IN ANY EVIDENCE IN THIS CASE?

14 A NO, MA'AM.

15 Q AND YOU JUST LITERALLY WENT HOME AFTER?

16 A YES, ONCE WE FINISHED UP I WENT HOME.

17 MS. COOPER: I BEG THE COURT'S INDULGENCE.

18 Q THAT IS ALL I HAVE, PLEASE ANSWER ANY QUESTIONS MS.  
19 VAN GINHOVEN HAS FOR YOU.

20 CROSS-EXAMINATION

21 BY MS. VAN GINHOVEN:

22 Q I JUST WANT TO BE CLEAR ABOUT A COUPLE OF THINGS.  
23 THIS REPORT THAT YOU ARE TESTIFYING ABOUT WAS WRITTEN ON  
24 APRIL THE 13TH, RIGHT?

25 A YES, MA'AM.

1 Q AND AS A REPORTING OFFICER YOU ALSO HAVE MR. ROE'S  
2 NAME LISTED ON THE BOTTOM, IS THAT CORRECT?

3 A THAT IS RIGHT.

4 Q BUT THIS IS DESCRIBING THE ENTIRE TERRY FRISK THAT  
5 YOU AND OFFICER ROE CONDUCTED, WITH OTHER THINGS BUT THERE  
6 IS A LOT IN HERE ABOUT THE TERRY FRISK. AND OF COURSE,  
7 YOU HAVE BEEN TRAINED ON HOW TO RESPOND TO SCENES AND HOW  
8 TO DO REPORTS?

9 A YES, MA'AM.

10 Q AND THERE WERE AT LEAST FOUR POLICE OFFICERS THERE AT  
11 THE SCENE?

12 A YES.

13 Q AND YOU STATED THAT THE HANDCUFF, THE PAT-DOWN  
14 HAPPENED AND THAT THE PISTOL WAS FOUND IN THE PANTS LEG?

15 A YES.

16 Q AND THE HANDCUFFS WERE CHANGED OUT SO YOU HAD CONTACT  
17 WITH HIM AT THAT POINT AND HE WAS PUT INTO A PATROL CAR?

18 A RIGHT, I KNOW WE CHANGED OUT HANDCUFFS.

19 Q NOW, AT ANY TIME DID YOU HEAR ANYBODY READ MR.  
20 HAYWARD HIS MIRANDA RIGHTS?

21 A PERSONALLY, NO BUT I WAS NOT AROUND.

22 Q BUT YOU WERE THERE FOR THE ACTUAL FRISK, THE PAT-DOWN  
23 AND GOING TO THE CAR AND CHANGING OUT THE HANDCUFFS. YOU  
24 WERE THERE FOR AT LEAST THOSE PARTS?

25 A THERE ARE TWO MAJOR SAFETY MEASURES. ONE, MY MAIN

1 CONCERN IS THAT HE HAD A WEAPON. THE SECOND IS THAT WE  
2 WERE CHANGING OUT HANDCUFFS AND WHEN WE DO THAT THAT IS  
3 THE MAIN SAFETY TO SECURE.

4 Q NOW, ALSO IN THIS REPORT YOU DON'T MENTION ANYTHING  
5 ABOUT ANY MARIJUANA BEING FOUND OR ANYTHING LIKE THAT?

6 A NO.

7 Q SO YOU DIDN'T FIND ANY OF THAT DURING THE PAT-DOWN,  
8 JUST THE GUN.

9 A THAT'S RIGHT.

10 Q I HAVE NO FURTHER QUESTIONS.

11 THE COURT: ANY REDIRECT?

12 MS. COOPER: NO, YOUR HONOR.

13 THE COURT: YOU MAY STEP DOWN.

14 MS. COOPER: YOUR HONOR, MAY HE BE EXCUSED.

15 THE COURT: YOU MAY BE EXCUSED. CALL YOUR NEXT  
16 WITNESS, SOLICITOR.

17 MS. COOPER: THANK YOU, YOUR HONOR.

18 MS. VAN GINHOVEN: YOUR HONOR, CAN WE APPROACH BEFORE  
19 WE GO TO THE NEXT WITNESS?

20 THE COURT: SURE.

21 (WHEREUPON, A BENCH CONFERENCE WAS HELD IN THE  
22 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE  
23 JURY.)

24 THE COURT: BEFORE THIS WITNESS IS SWORN LET'S NOTE  
25 FOR THE RECORD THAT MS. VAN GINHOVEN HAS MADE A MOTION AND

1 WE WILL STATE IT INTO THE RECORD WHEN WE BREAK FOR LUNCH.

2 MS. COOPER: THE STATE CALLS LIEUTENANT PAUL TYLER TO  
3 THE STAND.

4 LIEUTENANT PAUL TYLER, AFTER BEING DULY SWORN,  
5 TESTIFIED AS FOLLOWS:

6 DIRECT EXAMINATION

7 BY MS. COOPER:

8 Q LIEUTENANT TYLER, CAN YOU PLEASE TELL THE JURY WHERE  
9 YOU ARE EMPLOYED.

10 A WITH THE RICHLAND COUNTY SHERIFFS DEPARTMENT.

11 Q AND HOW LONG HAVE YOU BEEN EMPLOYED WITH THEM?

12 A 25 YEARS.

13 Q AND WHAT ARE YOUR DUTIES?

14 A I AM A LIEUTENANT IN THE UNIFORM DIVISION AND  
15 ASSISTANT COMMANDER FOR REGION SIX WHICH IS THE OUTLINING  
16 AREA OF NORTHEAST COLUMBIA.

17 Q AND CAN YOU DESCRIBE FOR THE JURY, HAVE YOU ALWAYS  
18 BEEN IN THESE 25 YEARS IN REGION SIX?

19 A NO, I STARTED OUT AS A DISPATCHER, I WENT ON THE  
20 ROAD, I WAS A RESIDENCE DEPUTY IN THE BLYTHEWOOD AREA  
21 WHICH IS PART OF THE AREA WE ARE IN NOW. AND FROM THAT I  
22 WAS IN REGION THREE AND THEN WENT TO REGION SIX, THREE AND  
23 A HALF YEARS AGO REGION SIX WAS STARTED AND I HAVE BEEN  
24 WITH REGION SIX EVER SINCE ITS CONCEPTION.

25 Q SO, YOU ARE FAMILIAR WITH THE NEIGHBORHOOD OF

1 LONGCREEK SUBDIVISION AND SOUTHWOOD AND ALL OF THOSE  
2 SUBDIVISIONS IN THAT AREA?

3 A YES, I AM.

4 Q I AM GOING TO BRING YOUR ATTENTION TO APRIL 13TH OF  
5 2004. DO YOU RECALL BEING DISPATCHED ALONG WITH OTHER  
6 OFFICERS IN YOUR REGION TO [REDACTED] DRIVE?

7 A YES.

8 Q CAN YOU TELL THE JURY EXACTLY WHAT ROLE YOU PLAYED  
9 DURING THE INVESTIGATION OF THIS CASE?

10 A YES, WHEN THE CALL WENT OUT IT WAS A BURGLARY. IT  
11 WAS SAID THAT THE SUSPECT WAS A, WAS SELLING CLEANING  
12 ITEMS. NOW IN MY EXPERIENCE THAT PEOPLE SELLING CLEANING  
13 ITEMS, USUALLY WHEN THEY GO INTO A NEIGHBORHOOD THEY GO IN  
14 AS A GROUP. SO, I STARTED DIRECTING PEOPLE TO START  
15 LOOKING IN THE AREA FOR PEOPLE SELLING CLEANING ITEMS. I  
16 CAME ACROSS ONE ON COLUMBIA CLUB DRIVE, A YOUNG MAN  
17 SELLING CLEANING ITEMS AND HE DIDN'T MATCH THE  
18 DESCRIPTION. BUT I STOPPED HIM AND ASKED HIM WHO HE WAS  
19 WITH, STARTED TALKING TO HIM. AND THE OTHER OFFICER WAS  
20 CHECKING OTHER AREAS AND WE STARTING FINDING DIFFERENT  
21 PEOPLE THAT WERE SELLING CLEANING ITEMS AND WE FINALLY GOT  
22 EVERYBODY IN A GROUP TOGETHER BACK ON COLUMBIA CLUB DRIVE.  
23 I FIND OUT WHO THE SUPERVISOR WAS FOR THE GROUP, ONE OF  
24 THE PEOPLE TOLD ME WHICH MOTEL THEY WERE STAYING AT.

25 Q AND WHICH MOTEL WAS THAT?

1 A IT WAS THE FAIRGROUND PLAZA, I CAN'T REMEMBER WHAT  
2 STREET IT IS ON.

3 Q LET ME SEE IF I CAN ASSIST YOU. HOW MANY FAIRGROUND  
4 PLAZA'S ARE IN REGION SIX?

5 A NONE.

6 Q AND WHERE IS THE CLOSEST FAIRGROUND PLAZA?

7 A ASSEMBLY STREET DOWN BY THE FAIRGROUNDS.

8 Q OKAY, PLEASE TELL THE JURY HOW IT IS YOU WERE ABLE TO  
9 MAKE CONTACT WITH THE SUPERVISOR OF THAT CLEANING SUPPLY.

10 A I CALLED THE MOTEL AND THEY HAD GIVEN ME A ROOM  
11 NUMBER AND I ASKED FOR THAT ROOM AND I GOT THE GENTLEMAN  
12 IN THE ROOM. I TOLD HIM I NEEDED TO SPEAK TO THE  
13 SUPERVISOR OF THE PEOPLE THAT WAS IN LONGCREEK. HE GAVE  
14 ME A LADIES CELL PHONE NUMBER, I CALLED THAT NUMBER AND  
15 THEN, I AM SORRY, HE DIDN'T GIVE ME HER CELL PHONE NUMBER.  
16 HE MADE CONTACT WITH HER AND I GAVE HIM MY CELL PHONE  
17 NUMBER. HE MADE CONTACT WITH HER AND SHE CALLED ME, SHE  
18 CALLED ME AND I EXPLAINED TO HER THAT I WAS WITH THE  
19 SHERIFFS DEPARTMENT, GAVE HER A DESCRIPTION OF THE PERSON  
20 WE HAD THAT WE WERE LOOKING FOR. I DIDN'T TELL HER WHY WE  
21 WERE LOOKING FOR THEM. FIRST SHE SAID,--

22 MS. MOBLEY: OBJECTION, YOUR HONOR,--

23 THE COURT: SUSTAINED.

24 Q WITHOUT SAYING WHAT SHE RESPONDED JUST TELL THE JURY  
25 WHAT YOU TOLD HER?

1 A I JUST TOLD HER THAT I WAS LOOKING FOR THIS SUBJECT.  
2 SHE CAME TO MY LOCATION, AFTER SHE CAME TO MY LOCATION AND  
3 I GAVE HER THE DESCRIPTION SHE TOLD ME SHE HAD PICKED THE  
4 SUBJECT UP.

5 MS. MOBLEY: OBJECTION.

6 THE COURT: SUSTAINED, YOU CANNOT GO INTO A  
7 CONVERSATION OF WHAT SHE TOLD YOU. GO AHEAD, SOLICITOR.

8 Q ONCE YOU PROVIDED THIS SUPERVISOR OF A DESCRIPTION OF  
9 WHO YOU WERE LOOKING FOR DID, WHAT DID YOU DO NEXT WITH  
10 THE SUPERVISOR?

11 A THE SUPERVISOR AND OTHER OFFICERS ON THE SCENE CAME  
12 UP WITH A PLAN TO TRY TO FIND THE YOUNG MAN WITHOUT  
13 CAUSING A BIG SCENE OR WITHOUT HAVING HIM RUN FROM US AND  
14 US NOT BEING ABLE TO APPREHEND HIM.

15 Q AND SO WHAT PLAN DID YOU COME UP WITH?

16 A WE KNEW THAT IF WE APPROACHED HIM IN A PATROL CAR  
17 THAT HE WOULD LIKELY RUN, THE PERSON WHO DID THE CRIME.  
18 SO, I MYSELF AND DEPUTY WAGNER GOT IN THE VAN. DEPUTY  
19 WAGNER GOT IN THE BACK BY THE BACK DOORS, I GOT IN THE  
20 BACKSEAT.

21 Q AND WHERE EXACTLY WERE YOU SEATED IN THE BACKSEAT?

22 A I WAS SEATED BY THE SLIDING DOOR, IT WAS THREE ROWS  
23 OF SEATS AND I GOT IN THE CENTER ROW RIGHT BEHIND THE  
24 PASSENGER SEAT.

25 Q AND WE HAVE ALREADY GONE THROUGH THE LAYOUT OF THE

1 VAN, IS THIS THE PASSENGER SEAT AND IS THAT THE GENERAL  
2 AREA BEHIND THE PASSENGER SEAT?

3 A YES, MA'AM.

4 Q WHAT IF ANYTHING DID YOU DO IN THE VAN?

5 A THERE WAS A BLUE HOODED SWEATER, PULLOVER SWEATER  
6 LAYING ON THE SEAT BESIDE OF ME AND I KNEW IF THE SUSPECT  
7 SAW ME SITTING IN THE BACK WITH A UNIFORM ON HE WAS GOING  
8 TO KNOW RIGHT AWAY AND HE WOULDN'T NEVER GET IN. SO, I  
9 PULLED THE BLUE SWEATER ON AND PUT MY HEAD DOWN LIKE THIS  
10 SO HE COULDN'T SEE MY FACE UNTIL HE ACTUALLY GOT IN, UNTIL  
11 IT WAS TOO LATE.

12 Q AND WHAT HAPPENED, WHERE DID YOU GO TO, WHERE DID YOU  
13 TRAVEL TO IN THE VAN?

14 A WE WENT TO SOUTHWOOD SUBDIVISION WHICH IS OFF OF HARD  
15 SCRABBLE ROAD WHICH IS ON NIGHT HERON COURT.

16 Q AND WHAT DID YOU OBSERVE OCCUR WHEN YOU GOT THERE?

17 A THE DRIVER OF THE VAN, THE SUPERVISOR POINTED HIM OUT  
18 AND SAID, THAT IS HIM. HE WAS AT THE TIME TALKING WITH A  
19 GENTLEMAN, I ASSUME WAS TRYING TO SELL HIM CLEANING  
20 PRODUCTS. I DON'T KNOW BECAUSE HE WAS DOING SOME  
21 DEMONSTRATION. SHE STARTED TO PULL UP TO HIM AND I SAID,  
22 NO, GO PAST HIM. JUST TELL HIM WHEN HE GETS FINISHED TO  
23 COME TO THE VAN AND SHE STOPPED AND TOLD HIM THAT, WE WERE  
24 IN NIGHT HERON COURT IN THE CUL-DE-SAC. SHE TURNED INTO  
25 THE CUL-DE-SAC, PULLED TO THE SIDE AND WAITED FOR HIM TO

1 APPROACH THE VAN. WE WAITED FOR A LITTLE WHILE, I DON'T  
2 KNOW HOW LONG BUT SHE FINALLY CALLED HIM OVER TO THE VAN.

3 Q DID YOU HEAR HER USE A PARTICULAR NAME?

4 MS. MOBLEY: OBJECTION.

5 MS. COOPER: PRESENT SENSE IMPRESSION.

6 THE COURT: I OVERRULE, GO AHEAD.

7 Q DID YOU HEAR HER USE A PARTICULAR NAME WHEN SHE  
8 CALLED HIM OVER?

9 A I DO NOT RECALL.

10 Q AND SO, DESCRIBE FOR THE JURY WHEN SHE CALLED FOR HIM  
11 WHAT HAPPENED?

12 A HE CAME OVER AND GOT IN THE FRONT SEAT OF THE VAN AND  
13 WHEN HE DID I IDENTIFIED MYSELF, GRABBED HIM BY THE  
14 SHOULDERS. AT THE SAME TIME DEPUTY WAGNER HAD SNEAKED OUT  
15 THE VERY BACK DOOR OF THE VAN AND SHE WAS WATCHING. SHE  
16 CAME UP BESIDE THE VAN AND GOT IN FROM HIS RIGHT SIDE AND  
17 I HAD HIM ON HIS LEFT SIDE SO HE COULDN'T RUN. SHE  
18 MANAGED TO GET A HANDCUFF ON HIM AT THAT POINT.

19 Q AND AT THE TIME, I KNOW IT HAS BEEN TWO YEARS, DID  
20 YOU KNOW HIS NAME AT THE TIME?

21 A I KNEW IT WAS HAYWARD AND THE FIRST NAME I DID NOT  
22 KNOW.

23 Q BUT WHEN YOU INTRODUCED YOURSELF DID YOU ASK HIM IF  
24 THAT IS WHO HE WAS?

25 A I ASKED HIM IF HE WAS MR. HAYWARD.

1 Q DO YOU RECALL WHAT HIS RESPONSE WAS?

2 A I DON'T RECALL.

3 Q WHAT HAPPENED WHEN YOU OBSERVED DEPUTY WAGNER PUT A  
4 CUFF ON HIS HAND?

5 A AT THAT TIME HE STARTED STRUGGLING, HE GOT OUT OF THE  
6 VAN AND THEN, THE PASSENGER DOOR, THE SLIDING DOOR DIDN'T  
7 WORK, I HAD TO CRAWL ACROSS THE FRONT SEAT TO GET OUT OF  
8 THE VAN. HE WAS STRUGGLING WITH DEPUTY WAGNER, SHE HAD  
9 THE CUFF AND HE WAS SWINGING HER AROUND IN A CIRCLE SORT  
10 OF. SO, I TOLD HIM, GAVE HIM THE COMMAND TO GET ON THE  
11 GROUND AND I GRABBED HIM AND WE FELL TO THE GROUND AT  
12 WHICH TIME WE WERE ABLE TO GET HIM HANDCUFFED.

13 Q AND WHAT HAPPENED ONCE YOU GOT HIM HANDCUFFED ON THE  
14 GROUND?

15 A WE GOT HIM HANDCUFFED ON THE GROUND AND I LET THE  
16 OTHER OFFICERS KNOW WHERE WE WERE. BY THE TIME WE GOT HIM  
17 UP THEY WERE WAITING IN THE PUBLIX PARKING LOT ACROSS THE  
18 STREET. BY THE TIME WE GOT HIM UP THEY WERE ON THE SCENE  
19 AND WE STARTED GETTING A GROUP OF NEIGHBORS OUT. I TURNED  
20 HIM OVER, MYSELF AND DEPUTY WAGNER TURNED HIM OVER TO  
21 LIEUTENANT MCCOLMAN AND INVESTIGATOR ROE AND I PROCEEDED  
22 TO TALK TO THE NEIGHBORS THAT HAD COME OUT IN THE YARD TO  
23 LET THEM KNOW THAT EVERYTHING WAS SAFE AND NOBODY WAS IN  
24 ANY DANGER.

25 Q AND DID YOU HAVE ANY CONTACT WITH THE SUSPECT THAT

1 YOU APPREHENDED AT THE SCENE, ANY FURTHER?

2 A I HAD NO FURTHER CONTACT WITH HIM.

3 Q DID YOU, WERE YOU PRESENT WHEN MCCOLMAN OR ROE WERE  
4 DEALING WITH HIM?

5 A I WAS BUT NOT IN THIS AREA.

6 Q DID YOU OBSERVE ANYTHING THAT THEY WERE DOING WITH  
7 MR. HAYWARD?

8 A I DID, AS I WAS TALKING TO THE NEIGHBORS I HEARD A  
9 NOISE, IT SOUNDED LIKE SOMETHING HIT THE GROUND SO I  
10 TURNED AROUND AND WHEN I DID I OBSERVED A PISTOL LAYING ON  
11 THE GROUND.

12 Q OKAY. BESIDES THAT DID YOU HAVE ANY MORE INVOLVEMENT  
13 WITH THE CASE?

14 A NOT THAT I RECALL.

15 Q WERE YOU, DID YOU HEAR DEPUTY ROE MIRANDIZE THE  
16 DEFENDANT?

17 A NO, I DIDN'T. AT THAT TIME I WAS STILL TALKING TO  
18 THE NEIGHBORS BECAUSE SOME WERE IN DIFFERENT GROUPS IN THE  
19 STREETS AND I WAS GOING TO EACH GROUP TRYING TO REASSURE  
20 THEM THAT THEY WERE SAFE.

21 Q AND SO WHEN YOU WERE WITH THE NEIGHBORS DID YOU  
22 OBSERVE WHETHER OR NOT ANY OTHER ITEMS OF EVIDENCE WERE  
23 RECOVERED FROM MR. HAYWARD?

24 A NO, I DID NOT.

25 Q AND DID YOU WRITE A REPORT CONCERNING YOUR

1 INVOLVEMENT IN THIS CASE?

2 A NO, MA'AM.

3 Q AND WHY NOT?

4 A I WAS SUPERVISOR ON THE SCENE AND THE OTHER PEOPLE  
5 KNEW WHAT KIND OF PROBLEM IT WAS.

6 Q OKAY. AND I AM GOING TO SHOW YOU A DOCUMENT. DO YOU  
7 SEE YOUR NAME MENTIONED ON THIS DOCUMENT?

8 A YES, I DO.

9 Q AND WHO WROTE THAT DOCUMENT?

10 A DEPUTY WAGNER.

11 Q THANK YOU, PLEASE ANSWER ANY QUESTIONS MS. MOBLEY HAS  
12 FOR YOU.

13 THE COURT: ALL RIGHT, MS. MOBLEY.

14 MS. MOBLEY: THANK YOU, YOUR HONOR.

15 CROSS-EXAMINATION

16 BY MS. MOBLEY:

17 Q GOOD AFTERNOON, LIEUTENANT TYLER.

18 A GOOD AFTERNOON.

19 Q I BELIEVE YOU TESTIFIED THAT IN YOUR EXPERIENCE AS AN  
20 OFFICER, IN YOUR EXPERIENCE WHERE THERE IS SORT OF A GROUP  
21 OF SALESMEN IN THE NEIGHBORHOOD, THERE IS A NUMBER OF  
22 THEM. IS THAT CORRECT?

23 A YES, MA'AM.

24 Q AND THAT WAS THE CASE ACTUALLY HERE, WASN'T IT?

25 A YES, MA'AM.

1 Q GOING TO NIGHT HERON COURT WHERE THE SCENE WAS TAKING  
2 PLACE WITH YOU AND DEPUTY WAGNER. I BELIEVE YOU INDICATED  
3 YOU PUT ON A BLUE SWEATER TYPE THING TO DISGUISE YOU WHILE  
4 YOU WERE IN THE VAN?

5 A IT WAS A PULLOVER SWEATER JACKET WITH A HOOD ON IT,  
6 YES MA'AM.

7 Q AND HE WAS IN, APPARENTLY DOING SOME SORT OF A  
8 DEMONSTRATION WITH THE CLEANING PRODUCT OR WHAT HAVE YOU?

9 A HE WAS TALKING TO A GENTLEMAN AND HE APPEARED TO BE  
10 WORKING WITH THE CLEANING PRODUCT, I ASSUME IT WAS A  
11 DEMONSTRATION HE WAS DOING.

12 Q OKAY. SO, HE FINALLY SPOTS THE VAN AND THAT IS THEIR  
13 WORK VAN, RIGHT?

14 A YES MA'AM, THAT WAS THEIR WORK VAN.

15 Q OKAY. SO, HE SPOTS THE VAN AND COMES AND GETS IN?

16 A WHEN WE FIRST PULLED UP SHE TOLD HIM TO FINISH HIS  
17 DEMONSTRATION AND COME TO THE VAN. THE DRIVER OF THE VAN,  
18 I DO NOT RECALL THE LADY'S NAME BUT SHE WAS A SUPERVISOR.

19 Q AND JUST SO WE CLEAR YOU ARE SOMEWHERE IN HERE?

20 A YES.

21 Q AND HE GETS HERE?

22 A HE GETS IN THE FRONT RIGHT PASSENGER SEAT OF THE VAN,  
23 THE FIRST FRONT SEAT.

24 Q AND THIS IS WHERE, BACK TO DEPUTY WAGNER, CORRECT?

25 A YES, MA'AM.

1 Q SO, HE HOPS INTO THE VAN AND WHAT HAPPENS FIRST, DOES  
2 DEPUTY WAGNER COME AROUND TO THE DOOR AND SWING THE DOOR  
3 OPEN OR DO YOU GET HIM BY THE SHOULDERS FIRST?

4 A I GRABBED HIM FIRST. IT WAS PRETTY MUCH  
5 SIMULTANEOUSLY BUT I AM PRETTY SURE I PUT MY HANDS ON HIM  
6 FIRST.

7 Q DID YOU STILL HAVE ON THE BLUE SWEATER?

8 A YES MA'AM, I DID.

9 Q SO, YOU GOT HIM BY THE SHOULDERS AND SHE HAD GOT HIM  
10 BY THE ARM?

11 A YES, MA'AM.

12 Q AND TRYING TO GET HIM OUT OF THE CAR?

13 A YES, MA'AM.

14 Q WAS HE INFORMED AT THAT POINT WHAT HE WAS BEING  
15 ARRESTED FOR?

16 A AT THAT POINT HE WASN'T BEING ARRESTED, HE WAS BEING  
17 DETAINED.

18 Q OKAY.

19 A FOR QUESTIONING.

20 Q SO HE WOULD OF BEEN FREE TO LEAVE?

21 A IF HE HADN'T OF STRUGGLED, YES MA'AM.

22 Q DID YA'LL CHARGE HIM FOR RESISTING ARREST?

23 A NO, MA'AM.

24 Q BECAUSE HE WASN'T BEING ARRESTED?

25 A IT WAS JUST WITHIN THIRTY SECONDS OR SO.

- 1 Q IS THIS SOMETHING YOU CALL INVESTIGATIVE DETENTION?
- 2 A YES, MA'AM.
- 3 Q SO HE WAS DETAINED?
- 4 A YES, MA'AM.
- 5 Q IN HANDCUFFS?
- 6 A YES, MA'AM.
- 7 Q BY TWO OFFICERS?
- 8 A YES, MA'AM.
- 9 Q I BELIEVE YOU TESTIFIED THAT WHILE YOU WERE SPEAKING  
10 WITH THE NEIGHBORS THAT EVERYTHING WAS OKAY, WHAT HAVE  
11 YOU, WHATEVER IT WAS THAT WAS BEING SAID. YOU HEARD A  
12 THUD, IS THAT CORRECT?
- 13 A LIKE METAL HITTING PAVEMENT THAT I HEARD.
- 14 Q AND THEN YOU SAW A GUN FALL OUT?
- 15 A I SAW A GUN ON THE GROUND BY HIS LEGS.
- 16 Q OKAY AND IT WAS JUST THE GUN?
- 17 A YES, MA'AM.
- 18 Q AND YOU TESTIFIED THAT YOU WERE ON NIGHT HERON COURT,  
19 IS THAT CORRECT?
- 20 A THAT'S CORRECT.
- 21 Q DO YOU REMEMBER THE INCIDENT DATE OF THIS DAY?
- 22 A IT WAS APRIL THE 13TH OF 2004.
- 23 Q WHAT DOCUMENTS ARE YOU REFERRING TO?
- 24 A I AM REFERRING TO A REPORT THAT SERGEANT, LIEUTENANT  
25 MCCOLMAN WROTE.

1 Q SO YOU DIDN'T DO YOUR OWN REPORT?

2 A NO, MA'AM.

3 MS. MOBLEY: I BEG THE COURT'S INDULGENCE.

4 THE COURT: ALL RIGHT.

5 Q I HAVE NO FURTHER QUESTIONS.

6 THE COURT: REDIRECT.

7 REDIRECT EXAMINATION

8 BY MS. COOPER:

9 Q LIEUTENANT TYLER, YOU INDICATED THAT YOU HAD THAT  
10 HOODED SWEATSHIRT ON, DID YOU IDENTIFY YOURSELF TO MR.  
11 HAYWARD?

12 A YES, MA'AM. I DIDN'T SAY I AM LIEUTENANT TYLER, I  
13 JUST SAID THE SHERIFFS DEPARTMENT.

14 Q AND SO, HE KNEW YOU WERE LAW ENFORCEMENT?

15 A YES, MA'AM.

16 Q NOW, YOU ALSO TESTIFIED ON CROSS-EXAMINATION THAT HE  
17 WAS DETAINED IN HANDCUFFS, IS THAT CORRECT?

18 A YES, MA'AM.

19 Q DO YOU ALWAYS HAVE TO USE HANDCUFFS TO DETAIN PEOPLE  
20 OF INTEREST?

21 A NOT ALWAYS BUT WHEN THE SITUATION THAT THE PERSON IS  
22 A DANGER AND WE KNEW THAT A GUN HAD BEEN STOLEN FROM THE  
23 HOUSE WE PUT THEM IN HANDCUFFS FOR THEIR SAFETY AS WELL AS  
24 OURS.

25 Q NOW, DO YOU RECALL WHETHER OR NOT THE GUN THAT YOU

1 OBSERVED WAS PACKAGED IN ANY FASHION?

2 A I DON'T RECALL.

3 Q DO YOU RECALL SEEING ANYTHING OTHER THAN A GUN?

4 A NO MA'AM, I DON'T.

5 Q AND YOU INDICATED THAT TYPICALLY IN YOUR EXPERIENCE  
6 IN REGION SIX THAT THESE TYPE OF SALES COMPANIES HAVE A  
7 LARGE NUMBER OF CREW MEMBERS THAT GO FROM NEIGHBOR TO  
8 NEIGHBOR, IS THAT CORRECT?

9 A YES MA'AM, THAT IS CORRECT.

10 Q WERE YOU ABLE TO MAKE CONTACT WITH OTHER SALESMEN  
11 FROM THIS COMPANY?

12 A WE DID.

13 Q DID ANY OF THE ONES THAT YOU ENCOUNTERED FIT THE  
14 DESCRIPTION PROVIDED TO YOU BY MS. WAGNER?

15 A NO, MA'AM.

16 Q THAT IS ALL I HAVE, THANK YOU.

17 THE COURT: RECROSS.

18 MS. MOBLEY: YES SIR, YOUR HONOR.

19 RECROSS-EXAMINATION

20 BY MS. MOBLEY:

21 Q ASSISTANT SOLICITOR COOPER JUST ASKED YOU IF ANY OF  
22 THE OTHER PEOPLE MATCHED THE DESCRIPTION GIVEN, WHAT WERE  
23 THE DESCRIPTIONS OF ANY OF THE OTHER PEOPLE?

24 A THAT I DON'T RECALL BUT THEY WEREN'T WEARING THE SAME  
25 CLOTHING THAT WAS GIVEN TO US.

1 Q BUT YOU DON'T HAVE A DESCRIPTION OF ANY OF THE OTHER  
2 PEOPLE?

3 A NOT AT THIS TIME I DON'T.

4 Q WHETHER THEY WERE BLACK OR WHITE?

5 A THEY WERE BLACK, I THINK ONE WAS FEMALE AND MOST OF  
6 THEM WERE MALES.

7 Q YOU DON'T REMEMBER IF THEY WERE YOUNG OR OLD?

8 A THEY WERE ALL LET'S SAY, EARLY 20'S, MOST OF THEM.

9 Q YOU REFERRING TO OTHER PEOPLES REPORTS TO TESTIFY  
10 WHICH I UNDERSTAND, THIS IS A TWO-YEAR-OLD INCIDENT. THE  
11 REPORTS THAT YOU ARE REFERRING TO, ARE THERE DESCRIPTIONS  
12 OF THESE OTHER YOUNG PEOPLE IN THOSE REPORTS?

13 A NO, MA'AM.

14 Q OKAY. WERE ANY OF THE OTHER PEOPLE DETAINED?

15 A NO, MA'AM.

16 Q THANK YOU, I HAVE NOTHING FURTHER.

17 THE COURT: ANYTHING FURTHER?

18 MS. COOPER: NO, YOUR HONOR.

19 THE COURT: YOU MAY STEP DOWN.

20 MS. COOPER: MAY HE BE EXCUSED, YOUR HONOR.

21 THE COURT: ANY OBJECTION.

22 MS. MOBLEY: NO, SIR.

23 THE COURT: HE IS EXCUSED WITHOUT OBJECTION. CALL  
24 YOUR NEXT WITNESS.

25 MS. COOPER: THANK YOU, YOUR HONOR. THE STATE CALL

1 INVESTIGATOR STAN RICHARDS.

2 STAN RICHARDS, AFTER BEING DULY SWORN, TESTIFIED  
3 AS FOLLOWS:

4 DIRECT EXAMINATION

5 BY MS. COOPER:

6 Q INVESTIGATOR RICHARDS, PLEASE TELL THE JURY WHERE YOU  
7 ARE EMPLOYED?

8 A I HAVE BEEN EMPLOYED WITH THE RICHLAND COUNTY  
9 SHERIFFS DEPARTMENT SINCE 1994, I HAVE BEEN A CRIME SCENE  
10 INVESTIGATOR FOR THE LAST FIVE AND A HALF YEARS WITH THEM.

11 Q AND PRIOR TO YOU WORKING IN THE CRIME SCENE UNIT WHAT  
12 DID YOU DO FOR THE SHERIFFS DEPARTMENT?

13 A I WAS A PATROLMAN.

14 Q AND DID YOU HAVE, UNDERGO ANY SPECIAL TRAINING TO  
15 BECOME A MEMBER OF THE CRIME SCENE LAB UNIT?

16 A YES MA'AM, I DID.

17 Q CAN YOU DESCRIBE THAT TRAINING FOR THE JURY?

18 A BESIDES MY ORIGINAL TRAINING WITH THE SOUTH CAROLINA  
19 CRIMINAL JUSTICE ACADEMY I WENT THROUGH TRAINING IN THE  
20 AREAS LATENT PRINT DEVELOPMENT, LATENT PRINT  
21 IDENTIFICATION, PALM PRINT IDENTIFICATION, BLOOD SPATTER  
22 ANALYSIS, DRUG ANALYSIS, DNA PROCEDURES AS WELL AS  
23 CRIMINAL PHOTOGRAPHY AND CRIME SCENE INVESTIGATION.

24 Q WHAT ABOUT ANY TRACE EXPERIENCE?

25 A TRACE IS A PART OF CRIME SCENE INVESTIGATION COURSES,

*Investigator*

1 MA'AM.

2 Q OKAY. AND WHAT ABOUT SHOE PRINT ANALYSIS?

3 A SHOE PRINT ANALYSIS GOES HAND IN HAND WITH LATENT  
4 IDENTIFICATIONS ALONG WITH SHOE PRINT IDENTIFICATIONS.

5 Q AND WHAT ABOUT BLOOD IDENTIFICATION?

6 A BLOOD PATTERN ANALYSIS, YES MA'AM.

7 Q AND SPECIFICALLY IN THE FIVE AND A HALF YEARS THAT  
8 YOU HAVE BEEN A CRIME SCENE INVESTIGATOR HAS THAT PROVIDED  
9 YOU WITH SOME EXPERIENCE IN THESE FIELDS?

10 A YES, MA'AM.

11 Q DID YOU ATTEND ANY COURSES ANYWHERE CONCERNING YOUR  
12 CAREER AS AN INVESTIGATOR AT A CRIME SCENE UNIT?

13 A ARE YOU TALKING ABOUT EDUCATIONAL COURSES?

14 Q YES, SIR.

15 A YES, I HAVE A DEGREE IN CRIMINOLOGY.

16 Q OKAY. AND HAVE YOU EVER BEEN QUALIFIED AS AN EXPERT  
17 WITNESS IN CRIME SCENE INVESTIGATION?

18 A YES MA'AM, I HAVE.

19 Q APPROXIMATELY HOW MANY TIMES?

20 A TEN TIMES.

21 MS. COOPER: YOUR HONOR, AT THIS TIME THE STATE WOULD  
22 SEEK TO INTRODUCE INVESTIGATOR STAN RICHARDS AS AN EXPERT  
23 IN THE FIELD OF CRIME SCENE ANALYSIS.

24 MS. VAN GINHOVEN: NO OBJECTION.

25 THE COURT: WITHOUT OBJECTION THE WITNESS IS FOUND TO

1 BE QUALIFIED IN THAT FIELD. YOU MAY CONTINUE.

2 MS. COOPER: THANK YOU, YOUR HONOR.

3 Q I AM GOING TO BRING YOUR ATTENTION TO APRIL 13TH OF  
4 2004. DO YOU RECALL BEING REQUESTED TO RESPOND TO A CRIME  
5 SCENE?

6 A YES MA'AM, I DO.

7 Q SPECIFICALLY IN THE LONGCREEK SUBDIVISION?

8 A YES, MA'AM.

9 Q WHERE EXACTLY DID YOU RESPOND TO?

10 A YOUR HONOR, IF I MAY REFER TO MY NOTES?

11 THE COURT: YES.

12 A I RESPONDED TO [REDACTED] DRIVE IN LONGCREEK.

13 Q OKAY. AND WHAT WAS THE TYPE OF CALL THAT YOU WERE  
14 RESPONDING TO?

15 A I WAS GIVEN THE TYPE OF CALL BEING A HOME INVASION.

16 Q OKAY. AND DO YOU RECALL WHAT TIME YOU WERE NOTIFIED  
17 TO COME OUT THERE?

18 A APPROXIMATELY 16:50 OR THEREABOUTS ARRIVING ABOUT  
19 17:00.

20 Q OKAY. AND 16:50?

21 A THAT IS 4:50 IN THE AFTERNOON.

22 Q AND WHAT TIME DID YOU ARRIVE?

23 A ABOUT 5:00 O'CLOCK.

24 Q NOW, WHEN YOU FIRST ARRIVED TO THE SCENE WHO DID YOU  
25 ENCOUNTER?

1 A I SPOKE WITH DEPUTY ROE WHO WAS IN THE SCENE WHEN I  
2 ARRIVED.

3 Q AND WHEN YOU TYPICALLY ARRIVE AT A CRIME SCENE WHAT  
4 IS THE FIRST THING YOU LIKE TO DO?

5 A THE FIRST THING IS I TALK TO THE FIRST RESPONDER ON  
6 THE SCENE TO TRY AND FIND OUT WHAT ACTUALLY HAPPENED OR AT  
7 LEAST GET SOME DETAIL AS TO WHAT HAPPENED.

8 Q AND WHEN YOU WERE BRIEFED BY DEPUTY ROE AS TO WHAT  
9 TOOK PLACE IN THAT RESIDENCE?

10 A YES, MA'AM.

11 Q BASED ON YOUR CONVERSATION WITH DEPUTY ROE WHAT DID  
12 YOU DO FIRST?

13 A BASED ON THE CONVERSATION WITH HIM I WAS TOLD AT THAT  
14 TIME THAT THERE HAD BEEN A HOME INVASION THERE. BASICALLY  
15 AN EMPLOYEE OF THAT RESIDENCE HAD BEEN OUT WALKING AND  
16 WHEN SHE CAME BACK SHE NOTICED THAT A DOOR WAS OPEN AND IT  
17 HAD NOT BEEN LOCKED, SO, DEPUTY ROE WAS TELLING ME. SHE  
18 NOTICED THAT THE SIDE DOOR WAS OPEN, SHE LEFT THE BABY IN  
19 A STROLLER OUTSIDE GOING INSIDE TO CHECK THINGS OUT. AND  
20 THERE SHE ENCOUNTERED A SUBJECT IN THE HOUSE. WHAT ENSUED  
21 WHAT I WAS TOLD AND AN ASSAULT ON HER AND SHE WAS  
22 TRANSPORTED TO A HOSPITAL, A MEDICAL FACILITY BEFORE I  
23 ARRIVED. AND THAT IS WHERE I WAS AND THAT IS WHERE I  
24 BEGAN MY PROCESS.

25 Q AND WHY IS IT IMPORTANT TO FIND OUT EXACTLY WHAT

1 HAPPENED IN A CRIME SCENE?

2 A WELL, I HAVE TO KNOW WHERE TO BEGIN, HOW FAR TO  
3 EXTEND MY CRIME SCENE PROCESSING AND IT GIVES ME A FEELING  
4 OF WHAT TYPE OF EVIDENCE THAT I MIGHT FIND, WHAT I SHOULD  
5 BE LOOKING FOR.

6 Q NOW, BASED ON YOUR OBTAINING SORT OF A HISTORY ON  
7 WHAT HAPPENED IN THAT RESIDENCE WHAT DID YOU DO FIRST AS  
8 FAR AS YOUR DUTIES?

9 A I ENTERED THROUGH THE SIDE DOOR WHICH WAS THE DOOR  
10 THAT WAS TOLD TO ME WAS THE ONE BEING OPENED. SO, I  
11 ENTERED THERE AND I CAME INTO A HALLWAY JUST INSIDE THE  
12 SIDE DOOR. I OBSERVED BLOOD ON THE FLOOR OF THAT HALLWAY,  
13 THREE SEPARATE AREAS LEADING FROM APPROXIMATELY THE CENTER  
14 OF THE HALLWAY, CURVING KIND OF AROUND TO A SET OF STAIRS  
15 ON THE RIGHT SIDE THAT WENT UP TO I GUESS, WHERE A ROOM  
16 OVER THE GARAGE. I ALSO OBSERVED A BARRETTE WHICH I WAS  
17 TOLD LATER ON THAT BELONGED TO THE VICTIM, WAS LAYING ON  
18 THE FLOOR NEXT TO THE KITCHEN ENTRANCE AND THE LIVING ROOM  
19 ENTRANCE. WENT ON INTO THE HOUSE LOOKING AT THE LIVING  
20 ROOM AREA AND I HAD BEEN TOLD ALSO THAT THEY HAD BEEN,  
21 THERE HAD BEEN A GUN TAKEN FROM A REAR MASTER BEDROOM AND  
22 I WENT IN THERE. AFTER DOING MY FIRST ENCOUNTER, MY FIRST  
23 SERVICE MYSELF I CAME BACK OUTSIDE. BEFORE I TALKED TO  
24 THE OWNER OF THE RESIDENCE AND ALLOWED HIM TO ACCOMPANY ME  
25 INSIDE AND SHOW ME SOME THINGS THAT I MIGHT NOT HAVE

1 PICKED UP ON, I PHOTOGRAPHED ALL OF THOSE AREAS THAT I  
2 WENT TO. I MARKED THE BLOOD AREAS ON THE FLOOR JUST  
3 INSIDE THE SIDE DOOR AS ONE, TWO AND THREE. I FOUND THAT  
4 THE THIRD AND LAST ONE CLOSEST TO THE STAIRS ON THE RIGHT  
5 HAD A PARTIAL SHOE PRINT.

6 Q AND I AM GOING TO STOP YOU SO WE CAN GO THROUGH THESE  
7 PHOTOGRAPHS. STATE'S NUMBER 4 THROUGH 51 ARE ALREADY IN  
8 EVIDENCE. IS THAT CORRECT, YOUR HONOR.

9 THE COURT: STATE'S 40 THROUGH 51 HAVE BEEN ADMITTED  
10 WITHOUT OBJECTION EARLIER TODAY, YES.

11 MS. COOPER: YOUR HONOR, MAY THE WITNESS STEP DOWN.

12 THE COURT: YES, KEEP YOUR VOICE UP WHILE YOU ARE OFF  
13 THE WITNESS STAND, PLEASE, SIR.

14 Q INVESTIGATOR RICHARDS, ARE YOU FAMILIAR WITH THE  
15 GENERAL LAYOUT OF THE HOUSE?

16 A YES.

17 Q OKAY. GOING THROUGH THESE PHOTOGRAPHS, IF YOU COULD,  
18 SORT OF DESCRIBE FOR THE JURY WHAT THEY DEPICT. JUST  
19 FAMILIARIZE YOURSELF WITH THIS, THIS IS THE SIDE DOOR OF  
20 THE HALLWAY. WHAT IS STATE'S NUMBER 40, WHAT DOES THAT  
21 SHOW?

22 A NUMBER 40, THIS IS A PICTURE FROM INSIDE OUT OF THE  
23 DOOR, THE SIDE DOOR THAT WAS OPENED WHEN I ARRIVED, WHAT I  
24 OBSERVED. THIS DOOR RIGHT HERE INTO THE HOUSE.

25 Q AND STATE'S NUMBER 41, WHAT IS THAT A PICTURE OF?

1 A THAT IS ALSO A PICTURE OF THE SIDE DOOR FROM OUTSIDE  
2 LOOKING IN, THE SAME DOOR.

3 Q NOW, AS TO THIS DOOR WHAT TYPE OF CRIME SCENE  
4 ANALYSIS DID YOU PERFORM?

5 A WHAT I DID ON THAT DOOR AND NOT IN THIS PARTICULAR  
6 ORDER WAS I PRINTED THAT DOOR ESPECIALLY FROM THE OUTSIDE  
7 FOR LATENT PRINTS.

8 Q AND WHAT ARE LATENT PRINTS?

9 A LATENT PRINTS ARE JUST PRINTS, OF COURSE, THAT PEOPLE  
10 LEAVE. AND IF YOU LOOK AT THEIR FINGERS, WHEN THEY TOUCH  
11 A SURFACE SOMETIMES BASED ON THE AMOUNT OF COILS THAT IS  
12 ON THE PERSON'S FINGERPRINT ITSELF, THOSE ARE POSITIVE AND  
13 LEFT ON THE ITEM THAT ARE BEING TOUCHED. AT TIMES WE ARE  
14 ABLE TO DEVELOPE THOSE AND LIFT THOSE PRINTS.

15 Q WHY DO YOU NEED A LATENT PRINT, WHAT DO YOU USE IT  
16 FOR?

17 A LATENT PRINT IS USED FOR IDENTIFICATION, WHOEVER  
18 MIGHT OF LEFT THAT PRINT ON THE ITEM THAT WE ARE LIFTING  
19 THE PRINT FROM.

20 Q AND SO WHEN YOU, WERE YOU ABLE TO DEVELOPE A LATENT  
21 PRINT FROM THE DOORKNOB OF THIS DOOR?

22 A NO MA'AM, I WAS NOT.

23 Q AND EXPLAIN HOW SOMETIMES YOU CAN LEAVE A LATENT  
24 PRINT AND SOMETIMES YOU DON'T?

25 A AS I SAID BEFORE IT DEPENDS ON DIFFERENT THINGS.

1 WHETHER OR NOT A PERSON WILL LEAVE A PRINT EVEN THOUGH  
2 THEY MIGHT HAVE DIRECTLY TOUCHED SOMETHING. BUT IT  
3 DEPENDS ON THE ENVIRONMENT, THAT MEANS THE WEATHER,  
4 WHETHER IT IS COLD, WHETHER IT IS HOT, THE TYPE OF TEXTURE  
5 THAT THE TIME BEING TOUCHED IS, HOW MUCH SECRETION OR OIL  
6 IS ON A PERSON'S FINGER WHEN THEY TOUCH THE ITEM, THEY CAN  
7 HAVE TOO MUCH OIL AND IT JUST SMEARS, THEY CAN HAVE NOT  
8 ENOUGH OIL AND NOT LEAVE A PRINT. SO A LOT OF  
9 CIRCUMSTANCES COME INTO PLAY WHETHER OR NOT A PRINT WILL  
10 ATTACH ITSELF TO AN ITEM AND I AM ABLE TO DEVELOPE IT.

11 Q AND WHAT IF SOMEONE TRIED TO COVER THEIR HANDS IN ANY  
12 WAY?

13 A IF A PERSON HAD ON SOME FORM OF CLOTH OR ANY ITEM  
14 SUCH AS GLOVE THEN A PRINT OF COURSE WOULDN'T COME  
15 THROUGH.

16 Q AND THEN HYPOTHETICALLY WHAT ABOUT A LONG SLEEVED OF  
17 A SHIRT OF SWEATER, COULD YOU USE THAT?

18 A YES, ANY ITEMS THAT COMES BETWEEN YOUR FINGER TIPS,  
19 OF COURSE, AN ITEM THAT YOU TOUCH IS NOT GOING TO LEAVE A  
20 PRINT ON THAT ITEM THAT HAS BEEN TOUCHED.

21 Q WHAT IS DEPICTED IN STATE'S NUMBER 42?

22 A THIS IS THE ENTRANCE WAY JUST INSIDE THE SIDE DOOR  
23 THAT I TOLD YOU THAT WAS OPEN. AND THIS IS THE FLOOR  
24 WHERE I FOUND BLOOD ON THE FLOOR IN ONE, TWO AND THREE.  
25 IF YOU CAN SEE THAT, THEY ARE STARTING ALMOST FROM THE

1 CENTER GOING TOWARDS THAT, THE STAIRWELL TOWARDS THE RIGHT  
2 AS I MENTIONED BEFORE.

3 Q AND I AM GOING TO GIVE YOU THIS PEN SO APPROXIMATELY  
4 YOU CAN WRITE DOWN ONE, TWO, THREE AND FOUR WHERE YOU  
5 FOUND IT IN THAT ROOM.

6 A THIS IS GOING UP THE STAIRS, THIS WOULD OF BEEN  
7 NUMBER ONE, TWO, THREE--

8 COURT REPORTER: I CAN'T HEAR, MR. RICHARDS.

9 THE COURT: WHY DON'T YOU GET ON THIS OTHER SIDE.

10 Q OKAY, CONTINUE, WHERE WAS NUMBER ONE, TWO.

11 A APPROXIMATELY THIS IS WHERE THE BLOOD WAS GOING TO  
12 BE, YOU CAN SEE WITH THE PICTURE IT IS GOING TO BE ONE,  
13 TWO AND THREE. THE ENTRANCE TO THE DOOR AND INTO THE  
14 HALLWAY AND THIS WAS WHERE THE BLOOD WAS FOUND ON THE  
15 FLOOR.

16 Q AND IF YOU COULD GO TO THE NEXT PHOTOGRAPH WHICH IS  
17 43?

18 A THIS IS MARKED AS I HAVE PREVIOUSLY STATED ONE, TWO  
19 AND THREE WITH BLOOD. THIS IS TWO AND THREE, TWO AND THREE  
20 IS HERE.

21 Q IS THAT A CLOSE UP OF TWO AND THREE?

22 A IT IS A VERY GOOD CLOSE UP AND YOU CAN SEE AS I  
23 STATED BEFORE ON NUMBER THREE, THERE IS A PARTIAL SHOE  
24 PRINT.

25 Q AND WHAT IS IN THE NEXT PHOTOGRAPH, NUMBER 44?

1 A THE NEXT PHOTOGRAPH IS A CLOSE UP OF MARK NUMBER 3.  
2 IT IS THE PARTIAL SHOE PRINT THAT WAS ON THE FLOOR AT  
3 NUMBER 3.

4 Q OKAY. AND WHAT IS DEPICTED IN NUMBER 45?

5 A NUMBER 45 HERE IS A NUMBER 4 WHICH IS HARD TO TELL  
6 BUT IT IS A HALF OR A PIECE OF BARRETTE THAT I WAS TOLD  
7 THAT BELONGED TO THE VICTIM THAT HAD BROKEN IN TWO AND  
8 THIS IS ONE-HALF OF IT. THAT IS NUMBER 4.

9 Q COULD YOU PUT NUMBER 4 APPROXIMATELY ON THE DIAGRAM?

10 A THIS IS RIGHT HERE.

11 Q ALL RIGHT, WHAT IS THE NEXT PHOTOGRAPH, STATE'S  
12 NUMBER 46?

13 A AND THIS IS NUMBER 5 WHICH IS THE OTHER HALF OF THE  
14 BARRETTE THAT WAS BROKEN IN TWO MARKED NUMBER 5.

15 Q AND APPROXIMATELY WHERE WOULD THE JURY BE ABLE TO  
16 FIND THIS ON THIS MAP OR DIAGRAM?

17 A RIGHT ABOUT HERE.

18 Q WHAT IS SHOWN IN PICTURE NUMBER 47?

19 A WHAT IS SHOWN IN PICTURE NUMBER 47 IS THE MAP OF THE  
20 BEDROOM THAT I WAS SHOWN AND TAKEN TO BY THE OWNER OF THE  
21 HOUSE AND SHOWN. THIS IS WHERE A HANDGUN HAD BEEN TAKEN BY  
22 A SIDE DRESSER OR NEXT TO THE BED. AND THIS I THINK WOULD  
23 HAVE BEEN THE BEDROOM THAT WAS ADDED HERE ON THE DRAWING,  
24 RIGHT THERE.

25 Q AND WHAT IS THE NEXT PICTURE?

1 A NUMBER 48 SHOWS THE SIDE DRESSER OR NIGHTSTAND OR  
2 WHATEVER PEOPLE LIKE TO CALL, OPEN DRAWER WHERE I WAS TOLD  
3 THAT A HANDGUN HAD BEEN TAKEN.

4 Q AND AS A RESULT OF THAT A HANDGUN THAT HAD BEEN TAKEN  
5 FROM THAT DRAWER, WHAT DID YOU DO WITH THAT NIGHTSTAND?

6 A THE NIGHTSTAND WAS PROCESSED BY ME BECAUSE THAT IS  
7 ONE OF THE ITEMS THAT WAS SHOWN TO ME BY THE RESIDENCE OF  
8 THE HOUSE SAYING THAT SOMETHING HAD BEEN TAKEN, THAT HAD  
9 BEEN DISTURBED SO THAT MAKES ME THINK THAT THERE MIGHT BE  
10 SOMETHING ON THE NIGHTSTAND, PARTICULARLY THE DRAWER SO I  
11 PRINTED THE DRAWER OF THE NIGHTSTAND, A LATENT PRINT.

12 Q AND HOW DID YOU GO ABOUT DOING IT ON WOOD?

13 A ON WOOD IT IS THE SAME THING, THERE IS, ESPECIALLY  
14 THERE IS SHALACK OR SLICK WOOD. IT IS THE SAME PROCESS ON  
15 WOOD THAN ANY OTHER SOLID OR CLEAR ITEM AND YOU USE THIS  
16 BLACK POWDER, PUT THE POWDER OVER IT, THE AREA WHERE  
17 SOMEONE MIGHT HAVE PUT THEIR FINGERPRINT AND THE POWDER  
18 APPEARS THROUGH THIS OIL THAT ARE LEFT THERE AND THEN YOU  
19 CAN GET A FINGERPRINT. I USE FINGERPRINT, JUST ONE SIDE  
20 OF STICKY TAPE AND PUT IT OVER THE PRINT AND LIFT IT UP  
21 AND YOU HAVE A FINGERPRINT.

22 Q WERE YOU ABLE TO DEVELOPE ANY LATENT PRINTS FROM THAT  
23 DRESSER OR NIGHTSTAND?

24 A I DEVELOPED ONE LATENT PRINT FROM THE DRAWER OF THE  
25 NIGHTSTAND NEXT TO THE BED, THE MASTER BEDROOM.

1 Q AND WHAT WAS YOUR ANALYSIS OF THAT LATENT PRINT?

2 A THAT LATENT PRINT LOOKED TO ME, ON THE SCENE THAT IT  
3 WAS A, SUFFICIENT ENOUGH RIGGED DETAIL TO MAYBE MAKE A  
4 COMPARISON WITH IT. SO THAT LATENT WAS TAKEN BY ME BACK  
5 TO RICHLAND COUNTY LAB AND TURNED INTO OUR ID SECTION FOR  
6 IDENTIFICATION IF POSSIBLE.

7 Q AND WAS AN IDENTIFICATION POSSIBLE COMPARED TO THAT  
8 PRINT?

9 A THAT PRINT HAD FIRST, WHAT WE DID WAS RUN IT ON OUR  
10 AFIS COMPUTER SYSTEM. THAT IS OUR AUTOMATED FINGERPRINT  
11 IDENTIFICATION SYSTEM FOR THE STATE OF SOUTH CAROLINA. IT  
12 WILL POSSIBLY, IF WE POINT TO THE POINT, MAKE THE POINTS  
13 TO THE FINGERPRINT, IT COULD POSSIBLY MAKE A MATCH THROUGH  
14 THE COMPUTER. THAT IS THE FIRST STEP THAT WE ALWAYS TAKE.  
15 AND THAT WAS RUN ON THE AFIS SYSTEM AND WE DID NOT GET A  
16 MATCH. HOWEVER, LATER DOWN THE LINE AFTER I WAS REQUESTED  
17 TO HAVE A COMPARISON MADE OF THE DEFENDANT WITH THE PRINT  
18 THAT I TOOK FROM THE DRESSER, WE DID THAT THROUGH OUR ID  
19 TECH AND SHE DID THAT ON 101 AND WE FOUND IT, IT WAS NOT A  
20 MATCH.

21 Q AND SO DID YOU COMPARE THESE PRINTS WITH THE  
22 HOMEOWNER?

23 A NO, I DIDN'T COMPARE AND THIS IS WHY. ONCE YOU DO  
24 THIS, LIKE I SAID, THE FIRST THING I DO WHEN I LIFT A  
25 PRINT IS I TAKE IT BACK AND I RUN IT THROUGH AFIS TO START

1 WITH JUST TO SEE IF WE CAN GET A MATCH REAL QUICK. NOW,  
2 WHEN WE ARE ONE PERSON OR SEVERAL PEOPLE AT THE CRIME  
3 SCENE WHERE YOU MIGHT TAKE ILLUMINATION PRINTS AND THOSE  
4 ARE PRINTS OF THE PEOPLE THERE AND YOU CAN SAY, OKAY, THIS  
5 IS NOT YOUR PRINT. YOU CAN GET A MATCH, SOMETIMES I DO  
6 AND SOMETIMES I DON'T DO THAT, BASED ON WHAT IS HAPPENING  
7 AT THE CRIME SCENE AND ELSEWHERE. WHILE I WAS THERE AND  
8 TOWARDS THE END OF PROCESSING THAT CRIME SCENE I WAS  
9 REQUESTED TO COME TO ANOTHER LOCATION BECAUSE THERE WAS A  
10 PICKUP TRUCK AT THE SCENE AND THE INVESTIGATOR CALLED ME  
11 THERE TO TRY TO GET LATENT PRINTS OFF OF THAT TRUCK  
12 BECAUSE THEY THOUGHT MAYBE THAT THE SUSPECT IN THE HOUSE  
13 HAD TOUCHED THAT TRUCK. SO I DID THAT KNOWING THAT I COULD  
14 HAVE GONE BACK AT ANY TIME AND GOT THE ONLY PERSON THAT  
15 WAS THERE ON THE SCENE THAT I SAW AND THAT WAS THE OWNER  
16 OF THE RESIDENCE AT THE TIME, I COULD DO THAT AT ANY TIME.

17 Q AND WHEN YOU DUSTED THAT PICKUP TRUCK FOR PRINTS,  
18 WERE YOU ABLE TO LIFT ANY LATENT PRINTS?

19 A I TOOK SOME PARTIALS OFF OF THE TRUCK BUT THEY WERE  
20 INSUFFICIENT WITH RIG DETAIL, THEY WERE NOT, WERE NOT ABLE  
21 TO USE THOSE PRINTS.

22 Q NOW, IF YOU COULD JUST GO BACK ON THE WITNESS STAND  
23 AND WE WILL MOVE ALONG. AFTER YOU WERE NOT ABLE TO  
24 DEVELOPE LATENT PRINTS FROM THE TRUCK YOU RETURNED TO THE  
25 RESIDENCE, IS THAT CORRECT?

1 A NO. I DID EVERYTHING THAT I NEEDED TO DO AT THE  
2 RESIDENCE BEFORE I LEFT THERE. I AM NOT FINISHED WHAT I  
3 DID AT THE RESIDENCE.

4 Q OKAY. AND IF WE COULD JUST GO BACK TO THE RESIDENCE  
5 AND DISCUSS EXACTLY WHAT YOU DID IN FURTHER DETAIL. I  
6 BELIEVE WE HAD ALREADY DISCUSSED THAT YOU HAD DUSTED THIS  
7 DOOR?

8 A THAT IS CORRECT.

9 Q DESCRIBE FOR THE JURY WHAT YOU DID NEXT?

10 A AFTER I DUSTED THE DOOR, I HAD TAKEN THE OWNER OF THE  
11 RESIDENCE WHO WAS THERE WITH ME THROUGH THE HOUSE, WE DID  
12 A WALK THROUGH AND I WANTED TO MAKE SURE THAT EVERYTHING  
13 THAT HE SAW SINCE IT WAS HIS HOUSE THAT HE COULD TELL ME.  
14 SO I MADE SURE THAT I PROCESSED EVERYTHING THAT MIGHT OF  
15 BEEN DISTURBED OR KNOW WHAT WAS MISSING IN THERE BESIDES A  
16 HANDGUN. WHICH WE DID, HE DID WITH ME IN ORDER TO NOT  
17 DISTURB ANYTHING IN THE HOUSE PARTICULARLY EVIDENCE THAT I  
18 HAD ALREADY MARKED. AFTER THAT I WENT TO, I DUSTED THE  
19 DOOR, THE SIDE DOOR TO THE RESIDENCE, I WENT BACK AND I  
20 DUSTED THE DOOR TO THE SIDE DRESSER IN THE MASTER BEDROOM.  
21 I WENT UPSTAIRS OVER THE GARAGE AND THERE WAS AN OPEN  
22 WOODEN DOOR THROUGH A SMALL ATTIC THEY HAVE UP THERE.  
23 THERE WAS NOTHING MENTIONED ACCORDING TO THE OWNER. I  
24 DUSTED THAT DOOR ANYWAY AND I DIDN'T GET ANY PRINTS THERE.  
25 Q AND DID THAT DOOR, DID THE OWNER BRING THAT TO YOUR

1 ATTENTION?

2 A WE FOUND IT AS WE WENT UPSTAIRS TOGETHER.

3 Q AND WAS IT, WHY DID THE OWNER ASK YOU TO DUST IT?

4 A HE DID NOT, I DID THAT ON MY OWN.

5 Q DID YOU ASK OR IMPLY AS PART OF YOUR DUTIES WHETHER  
6 IT IS USUAL OR UNUSUAL FOR THAT DOOR TO REMAIN OPENED?

7 A THAT IS THE REASON WHY I DUSTED IT BECAUSE IT USUALLY  
8 STAYS CLOSED.

9 Q AND THEN WHERE DID YOU GO FROM THE ATTIC GARAGE  
10 BEDROOM?

11 A AFTER THAT I ESCORTED THE RESIDENT OF THE HOUSE  
12 OUTSIDE SO I COULD CONTINUE MY PROCESS. WHAT I DID NEXT  
13 WAS TO TAKE ALL THE REST OF THE PHOTOS THAT I HAD SHOWN  
14 YOU, THAT IS THE CLOSE UP OF THE ONE, TWO AND THREE MARK,  
15 PARTICULARLY THE CLOSE UP OF THE PARTIAL SHOE PRINT AND  
16 THE BLOOD. AND WHAT I DID NEXT, AFTER ALL OF THAT TIME  
17 HAD ELAPSED AND THAT WOULD OF BEEN MAYBE AN HOUR AND A  
18 HALF, THE BLOOD ON THE FLOOR WAS DRY SO I TRIED TO LIFT  
19 THE SHOE PRINT UP WITH WHAT WE CALL A JELL LIFTER, THAT IS  
20 LIKE A RUBBER MAP IF YOU WILL, WHERE THERE IS ADHESIVE  
21 SIDE ON IT. YOU PUT THAT DOWN AND WHATEVER YOU ARE TRYING  
22 TO LIFT UP, IF IT IS A PRINT OF A SHOE OR WHETHER IT COULD  
23 BE DIRT OR DUST OR WHATEVER HAS MADE THAT PRINT, SOMETIMES  
24 IT WILL LIFT UP AND I CAN USE THAT AS EVIDENCE ALSO. IT  
25 WOULD NOT LIFT WHEN THE JELL LIFTER WAS UNABLE TO COLLECT

1 IT INTACT AND BRING IT BACK TO THE LAB. BUT IT WAS  
2 PHOTOGRAPHED.

3 Q AND WHAT DID YOU DO AFTER YOU COMPLETED PHOTOGRAPHING  
4 THE SCENE?

5 A AFTER I FINISHED WITH THE PROCESSING OF THE SCENE  
6 WHAT I TOOK AWAY WITH ME FROM THERE AT THE HOUSE WAS THE  
7 ONE PRINT FROM THE SIDE DRESSER IN THE MASTER BEDROOM AND  
8 THE PHOTOGRAPH THAT I HAD OF THE SCENE AND I HAD ONE SWAB,  
9 ONE BLOOD SWAB FROM ITEM NUMBER THREE, THAT IS AROUND  
10 WHERE THE PARTIAL SHOE PRINT WAS.

11 THE COURT: SOLICITOR, WE ARE AT A GOOD BREAKING  
12 POINT, LET'S STOP FOR LUNCH AT THIS TIME. MR. FOREMAN AND  
13 LADIES AND GENTLEMEN, WE WILL BREAK FOR LUNCH, BE BACK AT  
14 2:15 AND DON'T DISCUSS THE CASE WITH ANYONE. HAVE A GOOD  
15 LUNCH AND PLEASE RETURN AT 2:15. EVERYONE ELSE STAY  
16 SEATED WHILE THE JURY IS EXCUSED.

17 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT.)

18 THE COURT: MR. RICHARDS, YOU CAN STEP DOWN FOR  
19 LUNCH, DON'T DISCUSS YOUR TESTIMONY WITH ANYONE, PLEASE.  
20 WILL SEE YOU AT 2:15.

21 MS. COOPER: YOUR HONOR, DID YOU WANT TO ENTERTAIN  
22 THE MOTION FOR A MISTRIAL?

23 THE COURT: WE WILL PUT THAT ON THE RECORD WHEN WE  
24 GET BACK. LET ME TALK TO YA'LL OVER HERE AT THE BENCH,  
25 PLEASE.

1 (WHEREUPON, A BENCH CONFERENCE WAS HELD IN THE  
2 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE  
3 JURY.)

4 MS. VAN GINHOVEN: THE DEFENSE WOULD MOVE FOR A  
5 MISTRIAL AT THIS POINT.

6 THE COURT: LET ME INTERRUPT YOU, THIS IS THE MOTION  
7 THAT WE MADE AT THE BENCH DURING THE COURSE OR PRIOR TO  
8 THE TESTIMONY OF THE LAST WITNESS. I THINK I NOTED ON THE  
9 RECORD THAT A MOTION HAD BEEN MADE AND IT WOULD BE STATED  
10 IN FULL AT THE APPROPRIATE TIME. GO AHEAD.

11 MS. VAN GINHOVEN: YES, THAT IS CORRECT, YOUR HONOR.  
12 WE ARE MOVING FOR A MISTRIAL AT THIS POINT. YOUR HONOR  
13 MADE A PRETRIAL RULING REGARDING THE VOLUNTARINESS OF MR.  
14 HAYWARD'S STATEMENT AT THE SCENE. REGARDING TESTIMONY FROM  
15 INVESTIGATOR ROE AS TO MIRANDA RIGHTS BEING READ. DURING  
16 THAT PRETRIAL HEARING CLEARLY THERE IS A REPORT WITH HIS  
17 AND SERGEANT MCCOLMAN'S NAME ON IT WHICH DOES NOT MENTION  
18 THAT. IN RECROSS-EXAMINATION HE SAID AT THAT ONE POINT  
19 THAT REPORT WAS BASED ON WHAT HE AND SERGEANT MCCOLMAN DID  
20 DO AND THE MIRANDA WARNINGS ARE NOT MENTIONED IN THAT  
21 REPORT. HE DID TESTIFY, EVERYTHING HE IS TESTIFYING TO IS  
22 COMING FROM MEMORY. ALL OF THE OTHER OFFICERS WHO WERE  
23 ALSO PRESENT, I BELIEVE THERE WERE FOUR OR FIVE, WAGNER,  
24 AND LIEUTENANT TYLER WERE THERE AS WELL AS WELL AS  
25 SERGEANT MCCOLMAN AND NO ONE CAN TESTIFY AS TO THE MIRANDA

1 . WARNINGS BEING READ. WE WOULD MOVE FOR A MISTRIAL ON  
2 THOSE BASIS.

3 THE COURT: SOLICITOR.

4 MS. COOPER: THANK YOU, YOUR HONOR. THE REPORT THAT  
5 MS. VAN GINHOVEN REFERS TO IS A REPORT THAT IS GENERATED  
6 BY SERGEANT MCCOLMAN AND SERGEANT MCCOLMAN WROTE DOWN  
7 MASTER DEPUTY ROE'S NAME ON THAT REPORT AS A REPORT OF  
8 WHAT THEY BOTH PARTICIPATED IN WHEN THEY TERRY FRISK THE  
9 DEFENDANT. WE HEARD TESTIMONY FROM ROE THAT HE REMAINED  
10 WITH THE SUSPECT AND WAS PUTTING HIM IN THE PATROL CAR.  
11 YOU HEARD TESTIMONY FROM SERGEANT MCCOLMAN THAT IN THE  
12 MEANTIME HE WAS DEALING WITH THE GUN AND HE DID NOT LISTEN  
13 OR HEAR WHAT WAS GOING ON BETWEEN THEM AND THAT IS WHY HE  
14 DID NOT HEAR THE MIRANDA. YOU ALSO HEARD FORM DEPUTY  
15 WAGNER AND LIEUTENANT TYLER, THEY WERE AND I BELIEVE I WAS  
16 STANDING OVER HERE WHEN WAGNER WAS ON THE STAND. SHE WAS  
17 THAT FAR AWAY SO SHE WOULD NOT HAVE HEARD DEPUTY ROE WHEN  
18 HE MIRANDIZED HIM AND PUT THE SUSPECT IN THE PATROL CAR.  
19 AND AGAIN LIEUTENANT TYLER SAID HE WAS ALSO TALKING TO  
20 NEIGHBORS IN THE VICINITY EXPLAINING WHAT WAS GOING ON TO  
21 THEM AND NOT TO WORRY THAT EVERYTHING WAS SAFE. AND SO,  
22 YOUR HONOR, THIS IS NOTHING DIFFERENT FROM WHAT WAS  
23 TESTIFIED TO IN THE BEGINNING IN PRETRIAL. DEPUTY ROE  
24 TESTIFIED THAT HE READ FROM HIS MIRANDA CARD TO THE  
25 SUSPECT WHEN HE WAS PLACED IN THE PATROL CAR AND SO THAT

1 HAS NOT CHANGED FROM PRETRIAL OR IN THE CASE-IN-CHIEF FOR  
2 THE STATE. AND SO WE RESPECTFULLY REQUEST THAT YOU DENY  
3 THEIR REQUEST FOR A MISTRIAL. AND ALSO I FORGOT TO SAY,  
4 THEY CAN ATTACK AND BRING THAT UP IN THEIR CLOSING  
5 ARGUMENT AND CHALLENGE THE CREDIBILITY OF ROE AND THE FACT  
6 THAT NO ONE ELSE HEARD HIM. THAT IS SOMETHING THAT THEY  
7 ARE FREE IN CLOSING AND CROSS-EXAMINATION OR IN CLOSING.

8 THE COURT: ANY RESPONSE.

9 MS. VAN GINHOVEN: AND, YOUR HONOR, THE ONLY THING  
10 THAT I WANT TO ADD IS THAT SERGEANT MCCOLMAN DID SAY THAT  
11 HE DID GO BACK TO THE CAR AND CHANGE OUT THE HANDCUFFS AND  
12 SO HE WAS THERE WHEN, AT THE TIME WHEN INVESTIGATOR ROE  
13 ALLEGEDLY GAVE THE MIRANDA RIGHTS.

14 THE COURT: I THINK THE MATTERS THAT YOU HAVE BROUGHT  
15 FORTH AND ARGUED AND THE BASIS FOR THE MISTRIAL REALLY  
16 GOES TO THE CREDIBILITY OF THE WITNESS WHICH IS SOMETHING  
17 THAT THE JURY HAS TO MAKE THE DETERMINATION OF. I HAVEN'T  
18 HEARD ANYTHING, ANY TESTIMONY FROM ANYONE THAT WOULD  
19 CHANGE THE RULING THAT I MADE AT PRETRIAL. I THINK THERE  
20 IS SUFFICIENT BASIS FOR THE COURT HAVING RULED THAT THE  
21 DEFENDANT WAS ADVISED OF HIS RIGHTS AND HE UNDERSTOOD THEM  
22 AND HE GAVE THEM UP AND MADE A STATEMENT. OF COURSE, WHEN  
23 I INSTRUCT THE JURY ABOUT THAT, I WILL EXPLAIN TO THEM  
24 THAT I MAKE THE RULING ON THE ADMISSIBILITY BUT THEN THEY  
25 HAVE TO GO THROUGH ALL OF THOSE FACTORS AND DETERMINE

1 WHETHER IN FACT THEY BELIEVE AND WHAT SAFEGUARDS ARE ON IT  
2 AND OF COURSE WEIGH THE CREDIBILITY OF ALL OF THE  
3 WITNESSES. THE MOTION FOR THE MISTRIAL ON THAT GROUND IS  
4 DENIED.

5 MS. VAN GINHOVEN: THANK YOU, YOUR HONOR.

6 THE COURT: ANYTHING FURTHER BEFORE WE RESUME?

7 MS. COOPER: NOTHING FROM THE STATE, YOUR HONOR.

8 THE COURT: IF THE WITNESS WILL COME BACK ON THE  
9 STAND, PLEASE. BRING THE JURY IN, PLEASE, SIR.

10 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT  
11 APPROXIMATELY 2:20 P.M.)

12 THE COURT: LADIES AND GENTLEMEN, WE WILL CONTINUE.  
13 MS. COOPER, I BELIEVE YOU WERE ON DIRECT TESTIMONY.

14 CONTINUE DIRECT EXAMINATION

15 BY MS. COOPER:

16 Q GOOD AFTERNOON, INVESTIGATOR RICHARDS.

17 A GOOD AFTERNOON.

18 Q INVESTIGATOR RICHARDS, I BELIEVE WE LEFT OFF WHERE  
19 YOU WERE DESCRIBING, COLLECTING BLOOD AT THE SCENE?

20 A THAT IS CORRECT, MA'AM.

21 Q COULD YOU JUST REFRESH OUR MEMORY?

22 A ONE OF THE LAST THINGS THAT I DID AT THE SCENE AT THE  
23 HOUSE WAS I TOOK A BLOOD SWAB OF BLOOD ON THE FLOOR IN THE  
24 ENTRANCE WAY. I TOOK THAT FROM THE PART THAT WAS MARKED  
25 NUMBER THREE WHICH ALSO HAS THE PARTIAL SHOE PRINT IN IT.

1 WHAT THAT ENTAILS IS THAT I TAKE A COTTON SWAB, MOISTEN IT  
2 IN WITH DISTILLED WATER, TAKE A LITTLE BLOOD AND THEN I  
3 SECURE IT IN A CARDBOARD CARTON FOR POSSIBLE TRACE  
4 EVIDENCE.

5 Q AND JUST SO IF YOU COULD REFRESH OUR MEMORY, WHAT  
6 ITEM NUMBER AND WHERE?

7 A ITEM NUMBER THREE.

8 Q AND THAT IS DEPICTED IN THE PHOTOGRAPH, CORRECT?

9 A YES, MA'AM.

10 Q I AM GOING TO SHOW YOU WHAT HAS BEEN MARKED AS  
11 STATE'S EXHIBIT NUMBER 2 AND ASK YOU IF YOU RECOGNIZE THIS  
12 ITEM AND ITS CONTENTS?

13 A THIS IS MY ITEM NUMBER ONE WHICH COINCIDES WITH MY  
14 EVIDENCE SHEET OF THE BLOOD SWAB TAKEN FROM THE SCENE.

15 Q AND COULD YOU OPEN IT IN THE MANNER IN WHICH YOU  
16 PACKAGE IT, BY THE WAY, WHOSE EVIDENCE TAPE IS THAT?

17 A MINE.

18 Q AND THAT RED TAPE IS?

19 A YES, MA'AM. (WITNESS OPENS PACKAGE.) THE SWAB IS  
20 INSIDE AND THIS IS THE CARDBOARD CARTON THAT WAS PLACED  
21 INTO AND IT ALSO HAS MY HANDWRITING AND MY NAME ON IT  
22 WHERE I TOOK IT AND THE DATE AND TIME.

23 Q AND ONCE YOU COLLECTED THAT SWAB WHAT DID YOU DO WITH  
24 IT?

25 A THAT SWAB WAS TRANSPORTED BY ME BACK TO MY LAB.

1 Q AND WHEN YOU TOOK IT BACK TO YOUR LAB DESCRIBE WHAT  
2 YOUR LAB LOOKS LIKE?

3 A WELL, WE HAVE OFFICES IN THE OUTER PORTION OF THE  
4 LAB, THE FORENSICS DEPARTMENT ITSELF. BUT INSIDE IS WHAT  
5 WE CALL OUR LAB IS WHERE WE DO ALL OF OUR PROCESSING OF  
6 EVIDENCE, IS CLOSED DOOR AND LOCKED AT ALL TIMES WITH  
7 ENTRANCE ONLY TO MEMBERS OF THE FORENSICS DEPARTMENT.

8 Q AND WHEN YOU TAKE IT BACK TO YOUR LAB DO YOU SECURE,  
9 WHAT DO YOU DO WITH THAT ITEM.

10 A INSIDE THE LAB I HAVE MY OWN EVIDENCE LOCKER WHICH IS  
11 UNDER LOCK AND KEY AND I HAVE A KEY TO IT AND THAT IS  
12 WHERE ALL EVIDENCE THAT I COLLECT, THE MAIN THING, UNTIL  
13 IT IS TURNED INTO EVIDENCE.

14 Q AND WHO IS THE ONLY OTHER PERSON WHO HAS ACCESS TO  
15 YOUR PERSONAL LOCKER?

16 A IT WOULD BE MY SUPERVISOR.

17 Q AND WHO IS YOUR SUPERVISOR?

18 A LIEUTENANT PADGET.

19 Q NOW, WAS THAT ITEM OF EVIDENCE, WHAT DID YOU  
20 EVENTUALLY DO WITH IT?

21 A EVENTUALLY THIS ITEM WITH TWO OTHER ITEMS WAS  
22 FORWARDED TO SLED FOR ANALYSIS.

23 Q AND BEFORE IT WAS FORWARDED TO SLED DID YOU, WHAT DID  
24 YOU DO WITH IT AS FAR AS PROCEEDING TO THE DEPARTMENT, THE  
25 SHERIFFS DEPARTMENT?

1 A I DO NOTHING WITH IT, AT THAT TIME WE DID NOT HAVE  
2 DNA LAB WITHIN THE FORENSICS DEPARTMENT OF THE SHERIFFS  
3 DEPARTMENT. WE TOOK EVERYTHING AS BLOOD OR TRACE EVIDENCE  
4 WAS SENT TO SLED AT THAT TIME. SO, I DID NOTHING ELSE BUT  
5 TO PACKAGE IT, SECURE IT AND IN ORDER TO SHIP IT TO SLED  
6 EVENTUALLY.

7 Q AND DID YOU AT ANY TIME LOG IT IN THE PROPERTY ROOM  
8 AT THE SHERIFFS DEPARTMENT?

9 A YES, I DID.

10 Q AND SO WHEN WE SEE THIS TAPE ON HERE DID YOU PUT IT,  
11 YOU PUT THIS SWAB IN THIS BOX AND YOU SEAL THE BOX, IS  
12 THAT CORRECT?

13 A THAT IS CORRECT.

14 Q AND THEN WHAT DID YOU DO WITH IT?

15 A JUST PUT IT IN AN ENVELOPE AND SEAL IT WITH THE  
16 EVIDENCE TAPED BY ME.

17 Q AND DO YOU SEE ANY IDENTIFYING FEATURES ON STATE'S  
18 NUMBER 2.

19 A YES, MA'AM. THIS IS MY WRITING AND MY INITIALS.

20 Q AND ALSO DOES THE PACKAGING REFLECT WHERE YOU  
21 COLLECTED IT FROM?

22 A YES, AT THE TOP, TAM-O-SHANTER.

23 Q OKAY. YOU INDICATED THAT YOU SUBMITTED THAT ITEM AND  
24 LOGGED IT INTO THE PROPERTY ROOM ALONG WITH TWO OTHER  
25 ITEMS?

1 A THAT'S CORRECT.

2 Q WHAT OTHER ITEMS DID YOU COME INTO POSSESSION?

3 A LATER THAT SAME EVENING AROUND 9:00 O'CLOCK I WAS  
4 PRESENTED WITH TWO ITEMS, ONE BY INVESTIGATOR BARNES AND  
5 ONE BY DEPUTY ROE. DEPUTY ROE, I RECEIVED A PAIR OF NIKE  
6 AIR TENNIS SHOES FROM DEPUTY ROE THROUGH A CHAIN OF  
7 CUSTODY FORM WHICH I SIGNED FOR. I SIGNED FOR THE SHOES  
8 FROM HIM.

9 Q AND WHEN HE PRESENTED YOU WITH THE SHOE HOW WAS THE  
10 SHOE PACKAGED, THE PAIR OF SHOES?

11 A THEY WERE IN A GROCERY BAG, BROWN PAPER BAG.

12 Q BROWN PAPER BAG?

13 A YES, MA'AM.

14 Q AND WHAT DID YOU, WHAT TIME DID YOU RECEIVE THAT FROM  
15 DEPUTY ROE?

16 A BOTH OF THE ITEMS THAT I AM TALKING ABOUT WERE  
17 RECEIVED AROUND 9:00 O'CLOCK.

18 Q DO YOU HAVE A CHAIN OF CUSTODY FORM FOR THE NIKE AIR  
19 TENNIS SHOES?

20 A YES, I DO.

21 Q AND IF YOU COULD JUST BE A LITTLE MORE EXACT OF THE  
22 TIME AND DATE.

23 A OKAY. THE NIKE AIR TENNIS SHOES WAS RECEIVED BY ME  
24 ON APRIL THE 13TH OF '04 AT 8:42 IN THE EVENING FROM  
25 DEPUTY ROE.

1 Q OKAY. AND WHEN YOU RECEIVED THE SHOES FROM DEPUTY  
2 ROE WHAT EXACTLY DID YOU DO WITH THEM?

3 A WELL, THEY COINCIDE WITH THE ADDITIONAL PROPERTY THAT  
4 I ALSO RECEIVED. AND I RECEIVED IT FROM INVESTIGATOR  
5 BARNES.

6 Q AND WHY DON'T WE GO AHEAD AND IF YOU CAN IDENTIFY THE  
7 CONTENTS OF STATE'S NUMBER 4?

8 A THIS IS A BOX WHICH CONTAINED THE PAIR OF NIKE SHOES  
9 THAT I RECEIVED FROM DEPUTY ROE. IT WAS PLACED INTO THE  
10 BOX BY ME AND INITIALED BY ME IN ORDER TO GO TO THE  
11 EVIDENCE ROOM AND EVENTUALLY TO SLED.

12 Q AND ARE YOU THE ONE THAT PUTS THEM IN TWO DIFFERENT  
13 PAPER BAGS OR IS THAT HOW YOU RECEIVED THEM?

14 A THAT IS WHAT I DID.

15 Q AND AGAIN DOES THAT HAVE YOUR RICHLAND COUNTY  
16 SHERIFFS DEPARTMENT EVIDENCE TAPE ON IT?

17 A YES, IT DOES.

18 Q AND DOES IT HAVE YOUR NAME ON THAT BOX?

19 A YES, IT DOES.

20 Q AND THE OTHER ITEM THAT YOU WERE REFERRING TO, THE  
21 LAST ITEM THAT YOU DEALT WITH?

22 A I RECEIVED A, ONE BLUE ICEHOUSE SWEATER THROUGH  
23 INVESTIGATOR BARNES, ALSO THROUGH THE CHAIN OF CUSTODY  
24 SHEET THAT I SIGNED FOR IT AND I RECEIVED IT ON APRIL THE  
25 13TH ALSO AT 9:02.

1 Q IN THE EVENING?

2 A IN THE EVENING.

3 Q OKAY. I AM GOING TO SHOW YOU WHAT HAS BEEN MARKED  
4 FOR IDENTIFICATION PURPOSES, STATE'S NUMBER 3 AND ASK YOU  
5 IF YOU CAN IDENTIFY THAT?

6 A MA'AM, THIS WOULD BE THE SWEATER THAT I RECEIVED FROM  
7 INVESTIGATOR BARNES, IT IS IN THE BAG THAT I PLACED IT IN  
8 AS I RECEIVED IT. IT HAS RICHLAND COUNTY EVIDENCE TAPE  
9 AND MY INITIALS ON THE OUTSIDE.

10 Q AND WHAT IS THAT FLORESCENT STICKER ON THERE?

11 A THIS MEANS POSSIBLE BIOHAZARD, ANYTHING THAT WE  
12 PERCEIVE MAY HAVE BLOOD OR DOES HAVE BLOOD WE PUT THE  
13 BIOHAZARD STICKER ON IT SO PEOPLE WILL BE ABLE TO IDENTIFY  
14 THAT BAG.

15 Q OKAY. PLEASE EXPLAIN TO THE JURY WHAT IT IS YOU DO  
16 WITH THESE TWO ITEMS.

17 A OKAY. I WAS ASKED TO MAKE A COMPARISON, NUMBER ONE,  
18 FROM THE NIKE SHOES THAT WAS DELIVERED TO ME BY DEPUTY ROE  
19 WITH THE PARTIAL SHOE PRINT, BLOOD SHOE PRINT THAT I  
20 PHOTOGRAPHED AT THE SCENE. ALSO ADDITIONALLY I WAS ASKED  
21 TO CHECK FOR TRACE EVIDENCE ON THE SWEATER, POSSIBLE BLOOD  
22 THAT MAY OF BEEN ON THE SWEATER.

23 Q AND WERE YOU EVER ASKED TO EXAM THE SHOES FOR ANY  
24 POSSIBLE TRACE EVIDENCE SUCH AS BLOOD?

25 A ONCE THAT I FINISHED WITH THE SWEATER AND I DO GO

1 OVER THE SWEATER LOOKING FOR TRACE EVIDENCE OF BLOOD WHICH  
2 I DID NOT FIND OR I DID NOT SEE. SO, I SET THAT ASIDE, I  
3 WAS GOING TO PHOTOGRAPH THE TENNIS SHOES IN ORDER TO MAKE  
4 THE COMPARISON WITH THE SHOE PRINT. AS I WAS DOING THAT I  
5 NOTICED SOME SPECS OF RED SUBSTANCE ON THE RIGHT REAR HEEL  
6 OF THE RIGHT SHOE. AND IN MY EXPERIENCE THAT APPEARED TO  
7 ME TO BE BLOOD. SO WHAT I DID AT THAT POINT IS I TOOK A  
8 PRESUMPTIVE TEST FOR BLOOD USING HEMATEIN. WHAT THAT  
9 MEANS I TOOK A COTTON SWAB AGAIN, MOISTENED IT WITH A  
10 DISTILLED WATER, TOOK A SMALL PORTION OF THE RED SPEC OFF  
11 OF THE RIGHT HEEL OF THE NIKE SHOE, I PLACED IT IN AN AMPULE  
12 AND BREAK IT UP AND IF IT IS BLOOD IT WILL GIVE OFF A BLUE  
13 GREEN COLOR IN WHICH IT DID. AT THAT POINT I FELT I HAD A  
14 POSITIVE TEST FOR BLOOD AND I STOPPED AT THAT POINT AND  
15 DID NOT TAKE ANY MORE OF THE SPECS OFF OF THE SHOE.

16 Q AND WHEN YOU DO THIS PRESUMPTIVE TEST ON THE SHOE AND  
17 THE BLOOD THAT YOU SAW ON THE SHOE DOES THAT PRESUMPTIVE  
18 EXAMINATION IN ANY WAY INTERFERE WITH THE BLOOD ON THAT  
19 SHOE FOR FURTHER ANALYSIS DOWN THE ROAD?

20 A NO, ABSOLUTELY NOT.

21 Q AND HAD YOU NOT HAD ENOUGH BLOOD TO ANALYZE ON THE  
22 SHOE FOR PRESUMPTIVE EXAMINATION WHAT WOULD YOU HAVE DONE?

23 A I WOULD OF SENT THE SHOE TO SLED AND ASK THEM TO DO  
24 IT THEMSELVES.

25 Q NOW, ONCE YOU GOT A POSITIVE FOR BLOOD ON THE SHOE

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1 AND JUST SO WE ARE ALL CLEAR, THERE IS NO BLOOD ON THE  
2 SWEATER?

3 A I DID NOT FIND ANY, NO MA'AM.

4 Q WHAT DID YOU DO WITH THE SHOE?

5 A THE SHOE WAS PHOTOGRAPHED AND THE PORTION OF THE  
6 RIGHT REAR HILL OF THE SHOE WAS ALSO PHOTOGRAPHED TO TRY  
7 TO SHOW THE SPECS OF BLOOD THAT I HAD FOUND THERE. THE  
8 BOTTOM OF THE SHOE WAS PHOTOGRAPHED WHICH HELPED IN ORDER  
9 FOR ME TO TRY TO MAKE A COMPARISON OF THE SHOE WITH THE  
10 PARTIAL PRINT THAT I HAD COLLECTED THROUGH PHOTOGRAPHS AT  
11 THE SCENE.

12 Q AND I AM GOING TO SHOW YOU STATE'S NUMBER 49, 50 AND  
13 51 AND ASK YOU, ARE THOSE THE PHOTOGRAPHS THAT YOU TOOK OF  
14 THE SHOE?

15 A YES, THEY ARE.

16 Q OKAY. AND COULD YOU PLEASE POINT TO THE PHOTOGRAPH  
17 WHERE YOU SEE THE BLOOD?

18 A IT IS IN STATE'S EXHIBIT 51, AS YOU CAN SEE I HAVE A  
19 SCALE, IT IS UPSIDE DOWN BUT IT IS THE BOTTOM PORTION OF  
20 THE SHOE, THE RIGHT SHOE AND YOU CAN MAKE OUT THE SPECS  
21 THAT ARE THERE. THAT IS WHAT I PROCESSED FOR BLOOD USING  
22 HEMATEIN THAT IS WHAT I FOUND TO BE POSITIVE FOR BLOOD.

23 Q AND WHEN YOU PHOTOGRAPHED THE SOLES OF THE SHOES DID  
24 YOU INTERFERE AT ALL WITH THE BLOOD?

25 A NO MA'AM, I MADE SURE THAT I DID NOT.

1 MS. COOPER: YOUR HONOR, MAY I PUBLISH NUMBER 51 TO  
2 THE JURY?

3 THE COURT: SURE.

4 Q AFTER YOU PHOTOGRAPHED THE SOLE OF THE SHOE EXPLAIN  
5 TO THE JURY WHAT YOU DID NEXT?

6 A WHAT I DID NEXT WAS TO MAKE A COMPARISON OR ATTEMPT  
7 TO MAKE A COMPARISON, IF THERE WAS ONE, ON THE SHOES THAT  
8 WERE GIVEN TO ME TO THE PARTIAL SHOE PRINT THAT WAS FOUND  
9 IN THE BLOOD AT THE SCENE MARKED AS NUMBER THREE. AND  
10 DURING THAT ANALYSIS I CAME TO THE CONCLUSION THAT THEY  
11 WERE NOT A MATCH.

12 Q AND HOW IS THAT YOU COMPARE AND EXPLAIN THE PROCESS  
13 AND EVERYTHING YOU DO.

14 A THE PROCESS FOR COMPARING THE SHOE PRINTS IS  
15 BASICALLY THE SAME AS COMPARING LATENT PRINTS. WHAT YOU  
16 HAVE TO DO FIRST, IT IS A PROCESS OF CONTINUATION, IF YOU  
17 LOOK AT THE BOTTOM OF THE SOLES OF THE SHOE AND GET A  
18 GENERAL IDEA OF THE FLOW PATTERN OF THE TREAD. YOU DO THE  
19 SAME WITH THE PRINT IF YOU HAVE ENOUGH OF THE SOLE IN THE  
20 TREAD, THE FLOW PATTERN ON THE TREAD ON THE PRINT THAT YOU  
21 ARE DEALING WITH. YOU GET A CONSISTENCY IF YOU CAN, THAT  
22 IS HOW THE PATTERN FLOWS, HOW THE TREAD FLOWS, YOU CAN  
23 TAKE A SCALE OF THOSE, YOU MEASURE ANYTHING THAT COMES IN  
24 CONTACT WITH THE FLOW OR CIRCULAR MOVEMENT, YOU MEASURE  
25 THOSE. IF YOU HAVE ANGLES OF THE TREAD AT ANY POINT YOU

1 MEASURE THOSE TO SEE IF THE ANGLES ARE CONSISTENT. FIRST  
2 GET A CONSISTENCY BETWEEN THE TWO ITEMS YOU ARE COMPARING.  
3 AFTER THAT IF YOU HAVE A CONSISTENCY OF THE FLOW OF  
4 PATTERN AND THEY ARE THE SAME AND THEN YOU MOVE ON TO  
5 TRYING TO ANALYZE THOSE BY PINPOINTING CERTAIN ITEMS ON  
6 THE SHOE THAT WILL COMPARE TO THE PRINT. THAT MEANS YOU  
7 LOOK AT CUTS IN THE SOLE, LOOK FOR TREADS, PORTIONS OF THE  
8 TREAD MISSING, WEAR PATTERN ON THE BOTTOM OF THE SHOE.  
9 BUT BEFORE YOU CAN DO THAT, LIKE I SAID, YOU HAVE TO HAVE  
10 A CONSISTENCY BETWEEN THE TWO IN ORDER TO PROCEED.

11 Q OKAY, DID YOU EVEN GO BEYOND THAT POINT?

12 A I DID NOT.

13 Q AND THAT SURETRACK, (PHONETIC), JUST DESCRIBE WHAT IT  
14 IS?

15 A SURETRACK, (PHONETIC), IS JUST ANOTHER PIECE OF  
16 PROCESSING THAT WE CAN DO IN ORDER TO TAKE A BETTER LOOK  
17 SOMETIMES AT THE COMPARISON OF A SHOE TO WHATEVER EVIDENCE  
18 OR ITEMS YOU ARE TRYING TO COMPARE IT TO. WHAT THAT  
19 ENTAILS IS TAKING THE SHOE AND PLACING IT ON, SAY CARBON  
20 PAPER AND GETTING THE PRINT THAT COMES OUT ON THE  
21 UNDERSIDE OF THE CARBON PAPER AND YOU JUST HAVE ANOTHER  
22 PRINT. YOU CAN USE THAT, YOU CAN USE YOUR PHOTOGRAPHS OR  
23 YOU CAN USE THE SHOE ITSELF.

24 Q SO, IN LOOKING AT STATE'S NUMBER 44 AND STATE'S  
25 NUMBER 50 WOULD YOU AGREE THAT THERE ARE CIRCULAR TREADS

1 IN THOSE TWO DIFFERENT ITEMS?

2 A YES, THEY ARE.

3 Q BUT YOUR TESTIMONY IS YOU COULD NOT FIND FURTHER  
4 DETAILS TO MAKE YOU COMFORTABLE TO FIND A MATCH?

5 A CONSISTENCY IS NOT THERE BASED ON THE ANGLE OF THE  
6 TREAD THAT COMES INTO A CIRCULAR PATTERN. SO I DID NOT  
7 HAVE CONSISTENCY.

8 Q AND DID YOU BY CHANCE TEST THE HEEL AND THE FRONT OF  
9 THE SOLE OF THE SHOE?

10 A YES, MA'AM.

11 Q NOW, BASED ON YOUR ANALYSIS OF THAT DID YOU ISSUE A  
12 REPORT?

13 A YES, I DID.

14 Q AND WHAT IS THE DATE OF THAT REPORT?

15 A 4/16.

16 Q OKAY. NOW, AFTER YOU DID YOUR ANALYSIS WITH THE SHOE  
17 AND BY THE WAY ON THIS TYPE OF COMPARISON OF THE SOLE,  
18 COULD THAT IN ANY WAY INTERFERE WITH THE BLOOD ON THE  
19 SHOE?

20 A ABSOLUTELY NOT, I MAKE SURE OF THAT.

21 Q AND DID YOU EVER INTERACT ANY ITEMS OF THIS EVIDENCE  
22 TOGETHER, FOR INSTANCE, DID YOU EVER RUB THE BLOOD THAT  
23 YOU COLLECTED FROM THE SCENE, DID YOU RUB IT ON THE SHOE?

24 A NO, WE WERE VERY CAREFUL ABOUT CROSSING CONTAMINATION  
25 OF ANY ITEMS OF EVIDENCE.

1 Q AND SO WHAT IS THE PURPOSE OF PACKAGING EVERYTHING?

2 A SO IT DOES NOT GET CROSS CONTAMINATED ESPECIALLY WHEN  
3 YOU ARE DEALING WITH BLOOD OR TRACE EVIDENCE.

4 Q AND IN FACT WHEN WAS IT THAT YOU PACKAGED THE SWAB,  
5 WHERE WERE YOU WHEN YOU PUT THE SWAB IN THE LITTLE  
6 CARDBOARD BOX?

7 A I WAS ON THE SCENE AT THAT TIME IN THE HOUSE.

8 Q AND WHEN WAS IT THAT YOU PUT THAT CARDBOARD BOX WITH  
9 THE SWAB OF BLOOD IN THE HOUSE INTO THE ENVELOPE?

10 A AT THE SCENE.

11 Q AND WHERE WAS IT THAT YOU SEALED IT?

12 A IN THE LAB.

13 Q BUT DID YOU OPEN UP THE ENVELOPE UP AGAIN AFTER YOU  
14 GOT BACK TO THE OFFICE?

15 A I MAY HAVE, USUALLY NOT. ONCE I PLACE A CARTON FOR  
16 BLOOD SWAB INSIDE THE ENVELOPE I KNOW WHAT IS THERE. IF  
17 IT HAS BEEN ANNOTATED ON THE OUTSIDE OF THE CARDBOARD  
18 CARTON WHICH I USUALLY DO AT THE SCENE WITH ALL OF THE  
19 INFORMATION. THE FIRST THING THAT I DO IS SEAL IT WHEN I  
20 GET TO THE LAB.

21 Q OKAY. AND AGAIN WHEN IS IT THAT YOU GOT THE PAIR OF  
22 SHOES?

23 A WHEN?

24 Q YES.

25 A IT WAS THAT EVENING ABOUT 9:00 O'CLOCK.

1 Q OKAY. NOW, DID YOU FILL OUT A EVIDENCE LOG FORM?

2 A YES MA'AM, I DID.

3 Q WHEN IS IT THAT YOU TURN IN THE EVIDENCE TO THE  
4 PROPERTY ROOM?

5 A ON THE 16TH, ON APRIL THE 16TH I STATED I SUBMITTED  
6 THE TENNIS SHOE AND A BLUE ICEHOUSE SWEATER FOR BLOOD  
7 ANALYSIS AND COMPARISON FOR BLOOD SWAB TAKEN AT THE SCENE.  
8 THAT IS WHEN IT WOULD OF BEEN SUBMITTED TO OUR EVIDENCE  
9 ROOM IN ORDER TO GO TO SLED.

10 Q AND WAS THERE A RECIPIENT ON THE OTHER END OF YOUR  
11 EVIDENCE, IS THERE SOMEONE THAT WORKS IN THAT PROPERTY  
12 ROOM IN THE SHERIFFS DEPARTMENT?

13 A YES, THERE IS.

14 Q AND WHO IS THAT?

15 A WELL, THE PERSON IN CHARGE IS TENA GOFF.

16 Q AND I AM GOING TO SHOW YOU WHAT HAS BEEN MARKED  
17 STATE'S, THAT IS RIGHT, I DON'T HAVE IT MARKED. LET ME  
18 SHOW YOU A DOCUMENT, DO YOU RECOGNIZE THAT DOCUMENT?

19 A YES, I DO.

20 Q AND WHAT IS THE DOCUMENT?

21 A THIS DOCUMENT IS A PORTION OF THE SLED DOCUMENT THAT  
22 IS FILLED OUT BY ME REQUESTING SLED TO DO AN ANALYSIS ON  
23 THREE ITEMS THAT I TURNED IN.

24 Q AND WAS THAT DOCUMENT GENERATED AT THE SAME TIME THAT  
25 YOU LOGGED IN THE EVIDENCE?

1 A IT WOULD HAVE BEEN GENERATED AT THE SAME TIME THAT I  
2 WAS FILLING OUT THE EVIDENCE FORM TO PUT INTO EVIDENCE,  
3 YES MA'AM.

4 Q AND IF YOU COULD, JUST TO REFRESH YOUR MEMORY, WHAT  
5 IS THE DATE?

6 A ON MY EVIDENCE FORM?

7 Q THE SLED REQUEST FORM.

8 A WELL, THE ONLY EVIDENCE, THE ONLY DATE THAT IS ON THE  
9 EVIDENCE REQUEST FORM WOULD BE THE DATE THAT IT WAS  
10 DELIVERED BY OUR EVIDENCE TAPE WHICH TENA GOFF, NOW IS  
11 THE 21ST.

12 Q SO, YOU TURNED IT IN ON THE 16TH?

13 A THAT IS CORRECT AND IT WAS SIGNED FOR ON THE 19TH.

14 Q AND CAN YOU DESCRIBE IF IT WAS SIGNED FOR ON THE 19TH  
15 WHERE IT GOES IN THE INTERIM?

16 A IT GOES INTO A LOCK ROOM, EVIDENCE ROOM UNDER LOCK  
17 AND KEY. NO ONE HAS A KEY TO THAT EXCEPT FOR THE EVIDENCE  
18 TECH. THE 16TH I BELIEVE WAS ON A FRIDAY, I WORKED NIGHT  
19 SHIFT AND IT WOULD HAVE BEEN PLACED INTO THE EVIDENCE THAT  
20 NIGHT, FRIDAY NIGHT AND RECEIVED BY THEM MONDAY MORNING  
21 WHICH WAS THE 19TH.

22 Q OKAY. AND IS THERE ANY PARTICULAR WAY TO USE THESE  
23 LOCKERS FOR BIOHAZARD MATERIALS OR ARE THERE DIFFERENT  
24 LOCKERS FOR DIFFERENT MATERIALS?

25 A THERE IS NO NEED FOR, I WOULD NOT PUT A BIOHAZARD

1 ARTICLE OR ARTICLES THAT WERE GOING TO BE BIOHAZARD INTO  
2 THE SAME CONTAINER. SO, THEY WOULD HAVE BEEN SEPARATED IF  
3 NEED BE. BUT ONCE YOU SEAL OR SECURE THE LOCKER AND  
4 NOBODY ELSE CAN GET INTO IT AND ONCE THEY OPEN IT UP THEY  
5 CAN SEE IT IS BIOHAZARD.

6 Q AND WHY IS IT THAT YOU REQUESTED FOR SLED TO DO  
7 FURTHER ANALYSIS ON THIS?

8 A AS I STATED AT THAT TIME WE DID NOT HAVE OUR OWN DNA  
9 LAB SO I HAD TO SEND ANYTHING OF TRACE EVIDENCE, BLOOD  
10 EVIDENCE OR ANYTHING OF THAT NATURE TO SLED IN ORDER FOR  
11 THEM TO LOOK AT IT. SO ONCE I FOUND THAT I HAD A POSITIVE  
12 PRESUMPTION FOR BLOOD ON THE SHOE ITSELF I SENT THE SHOE  
13 FOR THEM TO TAKE A LOOK AT AND TO MAKE SURE IT WAS BLOOD  
14 AND TO TAKE AND ANALYZE THAT AND COMPARE TO THE BLOOD SWAB  
15 PERHAPS THAT I COLLECTED AND IT WENT TO SLED ALSO. AND I  
16 HAPPENED TO TAKE ANOTHER LOOK AT THE SWEATER TO MAKE SURE  
17 I MIGHT HAD MISSED SOMETHING.

18 Q OKAY. ON ANOTHER OCCASION DID YOU HAPPEN TO COMPARE  
19 THAT SHOE PRINT AT THE SCENE WITH ANOTHER PAIR OF SHOES?

20 A YES MA'AM, I DID.

21 Q AND WHEN WAS THAT?

22 A IF YOU CAN BEAR WITH ME, PLEASE.

23 Q SURE.

24 A ON THE APRIL THE 30TH OF THAT YEAR INVESTIGATOR  
25 BARNES BROUGHT ME A PAIR OF SKECHERS TENNIS SHOES WHICH

1 BELONGED TO THE VICTIM. AND ASKED ME TO ALSO COMPARE THAT  
2 TO THE PHOTOGRAPHS AT THE SCENE AS FAR AS THE SHOE PRINT  
3 AND THE BLOOD AND I DID SO AND FOUND THAT IT WAS NOT A  
4 MATCH.

5 Q AFTER YOU DID THAT ANALYSIS DID YOU HAVE ANY FURTHER  
6 INVOLVEMENT IN THIS CASE?

7 A NO, MA'AM.

8 Q OKAY.. AND DID YOU AT ONE POINT RECEIVE A LETTER FROM  
9 SLED REQUESTING FURTHER ITEMS?

10 A YES, AFTER I SENT THE ITEMS TO SLED AND ASKED THEM TO  
11 ANALYZE, THE THREE ITEMS WERE SENT THEY SENT ME A LETTER  
12 BACK SAYING THAT THEY HAD COLLECTED BLOOD FROM THE HEEL OF  
13 THE RIGHT SHOE. AND THAT IT WOULD BE MAINTAINED BY THEM  
14 IN LIEU OF A DNA SWAB FROM THE VICTIM SO THEY COULD MAKE A  
15 COMPARISON. I PASSED THAT INFORMATION ALONG TO  
16 INVESTIGATIONS.

17 Q AND THE CHIEF INVESTIGATOR IN THIS CASE IS WHO?

18 A INVESTIGATOR BARNES.

19 MS. COOPER: I BEG THE COURT'S INDULGENCE, YOUR  
20 HONOR.

21 THE COURT: ALL RIGHT.

22 Q AND WHEN YOU ARE DEALING WITH EVIDENCE, IS THERE A  
23 CERTAIN NUMBER ASSIGNED TO EVIDENCE FOR A CERTAIN CASE?

24 A WE REVIEW THEM AT THE TIME AND STILL DO THE CASE  
25 NUMBER THAT WAS ASSIGNED TO THEM, THAT IS USED ON

1 EVERYTHING THAT WE DO.

2 Q AND SO THOSE EVIDENCE LOGS THAT YOU PREPARED WHEN YOU  
3 TURNED IN THE SWEATER, THE BLOOD SWABS AND THE TENNIS  
4 SHOES ALL--

5 A HAS A CASE NUMBER, YES MA'AM.

6 Q AND ARE YOU AWARE OF WHETHER OR NOT THE EVIDENCE  
7 ROOM, PROPERTY ROOM AT THE SHERIFFS DEPARTMENT THEN  
8 ASSIGNS IT ANOTHER NUMBER?

9 A THEY MAY WELL DO THAT, I COULD NOT SPEAK TO THAT IN  
10 DETAIL BECAUSE I DON'T WORK THERE AND I DON'T KNOW THE  
11 PROCEDURES. BUT, YES, AT THAT TIME THEY PROBABLY ASSIGNED  
12 IT THEIR OWN EVIDENCE NUMBER AND PLACED IT ON THERE ALSO,  
13 THE WAY THEY KEEP TRACK ON WHAT THEY DO.

14 Q THANK YOU VERY MUCH, INVESTIGATOR RICHARDS, PLEASE  
15 ANSWER ANY QUESTIONS FROM THE DEFENSE.

16 THE COURT: CROSS-EXAMINE.

17 CROSS-EXAMINATION

18 BY MS. VAN GINHOVEN:

19 Q I BELIEVE YOU TESTIFIED EARLIER THAT, THE FIRST THING  
20 THAT YOU DID AFTER WALKING THROUGH THE HOME BY YOURSELF  
21 WAS WALK THROUGH WITH MR. CONNELL, THE HOMEOWNER AND YOU  
22 WERE LOOKING FOR ANYTHING THAT WAS DISTURBED OR MISSING  
23 WHEN YOU WERE TAKING PICTURES?

24 A I WAS NOT TAKING PICTURES AT THAT TIME. I WAS  
25 LISTENING TO WHAT HE HAD TO SAY.

1 Q SO, YOU WERE GOING TO TAKE PICTURES OF ANYTHING THAT  
2 WAS DISTURBED OR MISSING?

3 A YES.

4 Q AND THE ONLY THING YOU TOOK A PICTURE OF WAS THE  
5 DRAWER WHERE THE GUN HAD BEEN TAKEN?

6 A THAT IS CORRECT.

7 Q AND WHICH YOU TESTIFIED HERE TODAY WAS THAT THE  
8 SWEATER DID NOT HAVE BLOOD ON IT?

9 A I DID NOT FIND ANY BLOOD ON IT, THE REPORT THAT I  
10 RECEIVED FROM SLED, THEY INDICATED THAT THEY DID NOT  
11 EITHER.

12 Q AND THE DRAWER THAT HAD A GUN IN IT, THERE WAS A  
13 FINGERPRINT THAT YOU REMOVED FROM THAT DRAWER?

14 A THAT IS CORRECT.

15 Q AND THAT FINGERPRINT DOES NOT MATCH MR. HAYWARD?

16 A NO, MA'AM.

17 Q AND IS IT YOUR TESTIMONY THAT YOU DID NOT COMPARE  
18 THAT PRINT TO THE HOMEOWNER?

19 A I DID NOT AT THAT TIME, NO MA'AM.

20 Q DID YOU EVER?

21 A I NEVER WENT BACK TO GET AN ILLUMINATION PRINT FROM  
22 HIM, NO MA'AM.

23 Q AND ONE OF THE FIRST THINGS YOU SAW WHEN YOU WENT  
24 INTO THE HOUSE WAS A SHOE PRINT THAT WAS ACTUALLY IN THE  
25 VICTIM'S BLOOD, IS THAT RIGHT?

1 A SUPPOSEDLY THE VICTIM'S BLOOD, YES MA'AM.

2 Q AND THAT SHOE PRINT IN THE BLOOD DOES NOT MATCH MR.  
3 HAYWARD'S SHOES?

4 A IT DID NOT MATCH THE SHOES THAT WERE GIVEN TO ME BY  
5 DEPUTY ROE, NO MA'AM.

6 Q AND YOU FOUND NO BLOOD ON THE BOTTOM OF THE SHOES?

7 A NO, MA'AM.

8 Q AND THEN THEY, AFTER LATER ON IN THE CASE THEY THEN  
9 BROUGHT YOU THE VICTIM'S SHOES?

10 A THAT IS CORRECT.

11 Q AND THOSE DO NOT MATCH EITHER?

12 A NO, MA'AM.

13 MS. VAN GINHOVEN: I BEG THE COURT'S INDULGENCE.

14 THE COURT: ALL RIGHT.

15 Q AND OFFICER, I MEAN I AM SORRY, INVESTIGATOR.

16 INVESTIGATOR, WHEN YOU ARRIVED YOU SECURED THE SCENE, IS  
17 THAT RIGHT?

18 A THE SCENE WAS SECURED WHEN I ARRIVED.

19 Q AND WHEN, A SCENE IS SECURED AND WHAT THAT MEANS IS  
20 PEOPLE JUST CAN'T WALK IN AND OUT OF THE HOUSE?

21 A THAT IS CORRECT.

22 Q BECAUSE THAT WOULD CONTAMINATE THE EVIDENCE THAT IS  
23 THERE?

24 A ONCE A PERSON IS THERE TO SECURE THE SCENE THAT IS  
25 WHAT IS SUPPOSE TO HAPPEN. WHAT HAPPENS BEFORE A PERSON

1 ARRIVES TO SECURE THE SCENE, I CAN'T TESTIFY TO.

2 Q RIGHT, BUT WHEN YOU ARRIVED THERE THE SCENE HAD  
3 ALREADY BEEN SECURED?

4 A YES. NO ONE WAS IN THE HOUSE WHEN I WAS THERE EXCEPT  
5 FOR MYSELF AND THE HOMEOWNER.

6 Q I HAVE NO FURTHER QUESTIONS, YOUR HONOR.

7 THE COURT: REDIRECT?

8 MS. COOPER: JUST ONE QUESTION.

9 REDIRECT EXAMINATION

10 BY MS. COOPER:

11 Q WERE YOU EVER BROUGHT ANY SHOES TO COMPARE THE SHOE  
12 PRINT TO FROM JEFF CONNELL, THE HOMEOWNER?

13 A NO, I WAS NOT.

14 Q THANK YOU, NOTHING FURTHER.

15 THE COURT: YOU MAY STEP DOWN. CALL YOUR NEXT  
16 WITNESS, PLEASE.

17 MR. JOPHLIN: THE STATE CALLS INVESTIGATOR CHARLES  
18 EARLES TO THE STAND.

19 CHARLES EARLES, AFTER BEING DULY SWORN,  
20 TESTIFIED AS FOLLOWS:

21 DIRECT EXAMINATION

22 BY MR. JOPHLIN:

23 Q GOOD AFTERNOON, INVESTIGATOR EARLES.

24 A GOOD AFTERNOON.

25 Q WHERE ARE YOU EMPLOYED?

1 A RICHLAND COUNTY SHERIFFS DEPARTMENT.

2 Q AND WHAT ARE YOUR DUTIES THERE?

3 A I AM THE TECHNICAL INVESTIGATOR AT THE SHERIFFS  
4 DEPARTMENT. MY DUTIES ARE PRETTY VARIOUS AS IT RELATES TO  
5 THIS CASE. I AM FREQUENTLY CALLED UPON TO COLLECT SOME  
6 DNA SAMPLES.

7 Q AND IN APRIL OF 2004, I AM SORRY, IN OCTOBER OF 2004  
8 WERE YOU IN THE SAME POSITION AT THE SHERIFFS DEPARTMENT?

9 A YES, I WAS.

10 Q DID YOU HAVE AN OCCASION TO COME INTO CONTACT WITH  
11 ANY INVOLVEMENT IN THIS CASE?

12 A YES, I DID. I WAS REQUESTED BY INVESTIGATOR BARNES  
13 TO GO TO [REDACTED] ROAD AND MAKE CONTACT WITH  
14 LOURDES ANTONIO WHO WAS IDENTIFIED AS BEING THE VICTIM IN  
15 THE CASE AND COLLECT A DNA SAMPLE.

16 Q AND WHAT DATE WAS THAT?

17 A OCTOBER 11TH OF 2004.

18 Q AND WHAT TIME OF DAY DID YOU GO THERE?

19 A I ARRIVED AT THE RESIDENCE AT 10:07 IN THE MORNING.

20 Q AND WHAT EXACTLY DID YOU GET FROM THE VICTIM?

21 A TO COLLECT A DNA, WE DO IT WITH ORAL SWABS IN THESE  
22 CASE. AND I HAD TOOK TWO ORAL SWABS OF THE MOUTH, THE  
23 BASE OF THE GUM AND PACKAGED THEM TO RETURN BACK IN  
24 EVIDENCE.

25 Q AND BEFORE PACKAGING AND RETURNING TO EVIDENCE, AFTER

1 YOU TAKE THE SWABS, COTTON SWABS OF THE MOUTH, IT TAKES  
2 THE WHOLE PROCESS OF FROM TAKING THEM TO PACKAGING THEM?

3 A INITIALLY I GLOVE UP WITH EXAMINATION GLOVES. IN  
4 THIS CASE WE USED BROWN SWABS, I USED THE BROWN SWABS THAT  
5 HAVE A PLASTIC CAP THAT GOES ON THE END OF THE SWAB.

6 GLOVE UP, REMOVE THE CAP OF THE TWO SWABS, PUSH THE  
7 PLASTIC SHEET DOWN SO THE SWAB IS EXPOSED, HOLD THEM  
8 TOGETHER AND SWAB THE BASE OF THE MOUTH. PULL THE SHEET  
9 BACK UP AND CLOSE THE CAP AND PLACE THEM IN AN ENVELOPE.

10 Q AND DID YOU TAKE THEM DIRECTLY TO THE EVIDENCE ROOM?

11 A I TOOK THEM BACK TO MY OFFICE AND SECURED THEM IN MY  
12 STORAGE ROOM IN MY OFFICE SO THEY COULD AIR DRY. AIR DRY  
13 IS A NECESSARY STEP SO THE SAMPLES DON'T MOLD.

14 Q AND DOES ANYBODY ACCESS TO YOUR AREA THAT YOU ARE  
15 SPEAKING ABOUT, YOUR OFFICE?

16 A THE ONLY OTHER PERSON THAT HAS ACCESS TO THAT IS THE  
17 FORENSICS LIEUTENANT.

18 Q IS IT A SECURE AREA?

19 A YES, IT IS.

20 Q I WILL SHOW YOU WHAT HAS BEEN MARKED AS STATE'S  
21 EXHIBIT NUMBER 5 AND ASK YOU IF YOU RECOGNIZE THAT?

22 A YES, THIS IS EVIDENCE THAT I PREPARED.

23 Q OKAY, IF YOU COULD, HOW DO YOU KNOW THAT IS THE  
24 ENVELOPE THAT YOU PREPARED?

25 A THE EVIDENCE LABELED THE FRONT IS SOMETHING THAT I

1 PREPARED WITH MY PRINTER. AND ON THE BACK WE HAVE THE  
2 EVIDENCE SEALED, WHERE I SEALED IT WITH MY SIGNATURE AND  
3 THE DATE ON IT.

4 Q AND WHO PUT THAT TAPE THERE?

5 A I DID.

6 Q AND THOSE ARE YOUR INITIALS?

7 A THAT IS MY SIGNATURE.

8 Q AND CAN YOU OPEN THAT FOR US AND TELL US WHAT IS  
9 INSIDE OF THAT ENVELOPE?

10 A THESE ARE THE TWO SWABS THAT I SPOKE OF EARLIER.

11 Q AND ARE THEY THE SAME CONDITION THAT YOU PLACED THEM  
12 IN THE ENVELOPE?

13 A YES.

14 Q AND HAVE THEY BEEN CHANGED OR ALTERED IN ANY WAY?

15 A NO, NOT AT ANY TIME.

16 MR. JOPHLIN: I BEG THE COURT'S INDULGENCE.

17 THE COURT: ALL RIGHT.

18 Q AND YOU STATED THAT YOU TURNED THIS INTO THE EVIDENCE  
19 ROOM?

20 A THAT'S CORRECT.

21 Q AND DO YOU KNOW WHAT DATE?

22 A IT WAS SUBMITTED TO EVIDENCE ON THE 12TH OF OCTOBER  
23 OF 2004 AT 11:30 IN THE MORNING.

24 Q AND DID YOU ASSIGN ANY PARTICULAR ITEM NUMBER OR  
25 ANYTHING ASSIGNED TO THAT?

1 A I ASSIGNED ITEM NUMBER 1CE WHICH IS THE STANDARD THAT  
2 WE USE, AS WE ENTER THINGS INTO EVIDENCE WE GIVE AN ITEM  
3 NUMBER 1CE AND MY INITIALS ARE ABOVE IT. THIS IS THE  
4 FIRST ITEM THAT I SUBMITTED.

5 Q AND WAS THAT ITEM RECEIVED BY ANYBODY?

6 A YES, IT WAS RECEIVED BY OUR EVIDENCE TECHNICIAN, TENA  
7 GOFF.

8 Q AND WHEN YOU ARE DEALING WITH THE SWABS, YOU TAKE A  
9 SWAB AND YOU ARE HANDLING THEM, OF COURSE, YOU ARE TALKING  
10 ABOUT RUBBER GLOVES AND PLASTIC TIPS TO GO OVER THE SWABS.  
11 IS THERE ANY POSSIBLE OR DO YA'LL TAKE AS MANY MEASURES AS  
12 POSSIBLE TO KEEP IT FROM GETTING CONTAMINATED, THE SAMPLE?

13 A YES, ANY TIME I HANDLE THE SAMPLE, WHETHER THE SHEET  
14 IS OVER THE TIP OR NOT ARE WHERE THE GLOVES THAT WE USE.  
15 AND THEN SEAL THEM IN THE ENVELOPE.

16 Q AND IS THAT ITEM NUMBER 1CE, IS THAT ON THE ENVELOPE  
17 AS WELL?

18 A YES, IT IS.

19 Q AND IS THERE A PARTICULAR INCIDENT NUMBER IN THIS  
20 CASE?

21 A YES, THE INCIDENT NUMBER IS 04041318.

22 Q IS THAT THE RICHLAND COUNTY INCIDENT NUMBER?

23 A YES, IT IS.

24 Q IS THAT LOCATED ON THE ENVELOPE?

25 A YES, IT IS.

1 Q AND WHEN YOU TURN IT INTO THE EVIDENCE ROOM DO YOU  
2 MARK OR WHAT DISPOSITION OF THE ITEM DID YOU HAVE WITH IT?

3 A THAT IT WAS TO GO TO THE RICHLAND COUNTY SHERIFFS  
4 DEPARTMENT LAB FOR DNA TESTING.

5 Q AT THAT POINT ON OCTOBER OF 2004 DID THE RICHLAND  
6 COUNTY HAVE A DNA LAB?

7 A I BELIEVE SO.

8 Q OKAY. NOTHING FURTHER. ANSWER ANY QUESTIONS FOR THE  
9 DEFENSE.

10 THE COURT: ALL RIGHT.

11 MS. VAN GINHOVEN: WE HAVE NO QUESTIONS.

12 THE COURT: ALL RIGHT, YOU MAY STEP DOWN.

13 MR. JOPHLIN: THE STATE WOULD CALL DENISE EARGLE.

14 DENISE EARGLE, AFTER BEING DULY SWORN, TESTIFIED  
15 AS FOLLOWS:

16 DIRECT EXAMINATION

17 BY MR. JOPHLIN:

18 Q GOOD AFTERNOON, MS. EARGLE.

19 A HELLO.

20 Q WHERE ARE YOU CURRENTLY EMPLOYED?

21 A SOUTH CAROLINA LAW ENFORCEMENT DIVISION.

22 Q AND WHAT ARE YOUR DUTIES THERE?

23 A I AM OR I WAS IN THE LOGIN SECTION.

24 Q BACK IN 2004?

25 A YES, SIR.

1 Q AND AS PART OF YOUR DUTIES WHAT DOES THOSE DUTIES  
2 ENTAIL BACK WHEN YOU WERE WORKING IN THE EVIDENCE LOGIN?

3 A WE RECEIVED EVIDENCE FROM ALL THE AGENCIES IN THE  
4 STATE AND I WOULD LOG IN EVIDENCE, STOCK IN AND ALSO  
5 DISPOSE THE EVIDENCE.

6 Q AND DID YOU HAVE A CHANCE TO BECOME INVOLVED WITH ANY  
7 OF THE EVIDENCE IN THIS CASE?

8 A YES, I DID.

9 Q AND WE WILL GO BY, THERE ARE SEVERAL PIECES OF  
10 EVIDENCE THAT YOU TOOK INTO THE LAW ENFORCEMENT DIVISION.  
11 WE WILL GO ONE BY ONE. THE FIRST ONE, FIRST LET'S START  
12 OFF. DID YOU RECEIVE A REQUEST FROM THE SHERIFFS  
13 DEPARTMENT, ANY PAPERWORK ALONG WITH ANY EVIDENCE WHEN  
14 TAKING IN CERTAIN PIECES?

15 A YES, SIR. THE REQUEST FORM?

16 Q YES.

17 A YES.

18 Q AND WHAT ITEMS ARE LISTED ON THAT REQUEST FORM?

19 A THERE IS A BLOOD SWAB, A SWEATER AND SOME SHOES.

20 Q OKAY. AND AT THE TIME, ON THE FIRST OR FRONT PAGE OF  
21 THAT REQUEST FORM DO YOU ASSIGN A LAB NUMBER AT THE TIME  
22 YOU BRING IT IN?

23 A YES, I DO.

24 Q AND WHAT IS THE LAB NUMBER THAT YOU ASSIGNED?

25 A IT IS LS44126.

1 Q AND WE WILL GO THROUGH EACH AND EVERY PIECE. AND AS  
2 YOU TAKE IN EACH PIECE DO YOU ASSIGN A NUMBER TO EACH  
3 PIECE COMING INTO SLED?

4 A EACH CONTAINER.

5 Q EACH CONTAINER?

6 A YES, SIR.

7 Q OKAY. LET'S START WITH WHAT HAS MARKED AS STATE'S  
8 EXHIBIT NUMBER 2. CAN YOU PLEASE IDENTIFY THAT FROM THE  
9 PACKAGING?

10 A WELL, MY RECORDS INDICATE, WHEN I RECEIVED THE  
11 EVIDENCE IT MUST HAVE ALL BEEN IN ONE BOX BECAUSE I HAVE  
12 ONE CONTAINER NUMBER. SO, IF THAT WAS THE CASE, I WOULD  
13 NOT INVENTORY EACH PIECE THAT WAS ALREADY BROUGHT TO ME IN  
14 A BOX.

15 Q OKAY. IN REGARDS TO, LET'S SAY FOR EXAMPLE THE FIRST  
16 ITEM ON THE REQUEST SHEET. THE INTEGRA SWAB, BLOOD SWAB.

17 A YES, SIR.

18 Q HOW DO YOU KNOW THAT YOU TOOK THAT IN?

19 A IT IS ITEM NUMBER 1 AND BY MY RECORDS I TOOK CUSTODY  
20 OF IT AND IT WAS IN ONE CONTAINER NUMBER.

21 Q AND WHAT WAS THAT CONTAINER NUMBER?

22 A E206623.

23 Q AND WHAT DATE DID YOU TAKE THAT?

24 A 4/21/04.

25 Q AND DO YOU KNOW FROM WHOM?

1 A TENA GOFF.

2 Q AT WHAT TIME?

3 A THE TIME WAS 10:20 A.M.

4 Q AND WHERE DID YOU PLACE THAT ITEM?

5 A AFTER I LOGGED IT IN?

6 Q YES.

7 A I PUT IT DOWN IN TO PROCESSING. THERE IS A SECURED

8 CALLED D16, LARGE PROCESSING. I PUT IT DOWN THERE.

9 Q DID YOU PLACE ANY KIND OF CONTAINER IN THAT D16 OR IS  
10 IT A GENERAL AREA?

11 A IT IS A GENERAL AREA.

12 Q AND WHEN YOU, WHAT WAS THE CONDITION THE ITEM WOULD  
13 OF BEEN IN WHEN YOU CHECKED IT IN?

14 A I BELIEVE IT WAS IN A BOX AND IT WOULD OF BEEN  
15 PACKAGED WITH THE EVIDENCE TAPE.

16 Q AND DID YOU TAMPER WITH IT IN ANY WAY?

17 A NO, SIR.

18 Q DID YOU ALTER IT IN ANY WAY?

19 A NO, SIR.

20 Q AND IN THE EVIDENCE ROOM, D16, OR HOLDING AREA D16  
21 DOES ANYBODY AND EVERYBODY HAVE ACCESS TO THAT?

22 A NO, SIR. THE LOGIN TECHNICIAN AND THE INDIVIDUALS  
23 THAT ARE WORKING IN PROCESSING, IN EVIDENCE PROCESSING.

24 Q AND DID YOU DO ANYTHING TO THE EVIDENCE, TO THIS  
25 BLOOD SWAB PACKAGE OR THAT BOX THAT YOU TOOK IN, CHANGE

1 THE NATURE OF THE EVIDENCE IN ANY WAY?

2 A NO, SIR.

3 Q AND DO YOU HAVE ANY DOCUMENTATION THAT YOU TOOK IN  
4 THIS PIECE EVIDENCE?

5 A YES, SIR.

6 Q OKAY. AND DID YOU AGAIN ON A LATER DATE RELEASE THAT  
7 EVIDENCE?

8 A YES, I DID.

9 Q AND WHAT DATE DID YOU RELEASE THAT EVIDENCE?

10 A THAT WAS ON 10/20/04.

11 Q AND WHERE WAS THE EVIDENCE AT BEFORE YOU RELEASED IT?

12 A IT WAS IN EVIDENCE LOGIN, WE HAVE A HOLDING AREA  
13 WHERE THE EVIDENCE HAS BEEN WORKED AND IT IS READY TO GO  
14 BACK TO THE AGENCY. WE HAVE A, WHAT YOU CALL A ROOM, AND  
15 ON THIS PARTICULAR DATE TENA CAME AND BROUGHT SOME  
16 EVIDENCE AND SHE ALSO PICKED UP EVIDENCE AND THIS HAD  
17 ALREADY BEEN PROCESSED AND READY TO GO BACK.

18 Q AND WHAT TIME DID SHE PICK THIS UP?

19 A SHE PICKED IT UP AT 8:45.

20 Q AND WAS THERE A SPECIFIC EVIDENCE ROOM IT WAS PLACED  
21 IN?

22 A WHEN SHE PICKED IT UP IT WAS BACK IN LOGIN IN THAT  
23 EVIDENCE AREA.

24 Q OKAY. AND AGAIN DID YOU TAMPER WITH IT IN ANY WAY,  
25 ALTER IT?

1 A NO, SIR.

2 Q CONTAMINATE IT IN ANY WAY?

3 A NO, SIR.

4 Q I WILL GO WITH TO THE NEXT ITEM WHICH WILL YOU READ  
5 THE SECOND ITEM ON THE REQUEST SHEET?

6 A A SWEATER.

7 Q DO YOU KNOW WHICH PACKAGE IT WAS IN WHEN IT CAME TO  
8 YOU OR WHAT PACKAGE NUMBER?

9 A IT WOULD HAVE BEEN IN THAT SAME BOX, E206623.

10 Q OKAY. AND WHAT DATE DID YOU RECEIVE THAT?

11 A 4/21/04.

12 Q AND LET'S GO WITH THE THIRD ITEM ON THAT REQUEST  
13 SHEET.

14 A TENNIS SHOES.

15 Q AND CAN YOU READ THE FULL DESCRIPTION FOR THAT  
16 REQUEST SHEET.

17 A A PAIR OF NIKE AIR TENNIS SHOES, BLACK-BLUE.

18 Q OKAY, BLACK-BLUE?

19 A RIGHT.

20 Q WAS THIS IN THAT SAME CONTAINER, IS IT NOTED ON THAT  
21 REQUEST WHAT PACKAGE NUMBER THAT WAS?

22 A I HAD THE SAME NUMBER, E206623.

23 Q AND BOTH OF THOSE ITEMS, WHAT DATE DID YOU TAKE THOSE  
24 IN?

25 A 4/21/04.

1 Q AND DO YOU KNOW FROM WHOM?

2 A TENA GOFF.

3 Q AND WHERE DID YOU PLACE THEM?

4 A IN LARGE PROCESSING, D16.

5 Q AND DO YOU KNOW WHAT TIME YOU TOOK THEM IN?

6 A IT WAS 10:20 A.M.

7 Q AND WHAT TIME DID YOU PLACE THEM IN THE D16?

8 A D16, 10:30.

9 Q AND BOTH OF THESE ITEMS, DID YOU AGAIN HAVE A CHANCE  
10 TO RELEASE THEM AT A LATER POINT?

11 A YES, SIR.

12 Q WELL, ACTUALLY LET ME BACK UP A LITTLE BIT.

13 A WELL, YES, I DID.

14 Q OKAY, LET ME BACK UP A LITTLE BIT FIRST. WHEN YOU  
15 BROUGHT THESE TWO ITEMS THE BLUE SWEATER AND THE PAIR OF  
16 NIKE SHOES THAT WERE BLACK AND BLUE IN COLOR, DID YOU  
17 ALTER THEM IN ANY WAY WHEN YOU BROUGHT THEM IN?

18 A NO, SIR.

19 Q WERE THEY SECURE?

20 A YES, SIR.

21 Q DID YOU TAMPER WITH THE EVIDENCE OR CONTAMINATE IT IN  
22 ANY WAY?

23 A NO, SIR.

24 Q AND THE AREA YOU PLACED IT IN, D16, WAS IT A SECURE  
25 AREA?

1 A YES, SIR.

2 Q AND DO YOU KNOW HOW IT WAS STORED IN THAT AREA?

3 A IT WAS IN A BOX AND IT IS A LARGE REFRIGERATOR.

4 Q OKAY. AND BOTH OF THESE PIECES OF EVIDENCE, THE BLUE  
5 SWEAT AND THE PAIR OF NIKE SHOES, DID YOU HAVE A CHANCE TO  
6 RELEASE THEM AT A LATER DATE?

7 A YES, SIR.

8 Q AND WHAT DATE WAS THAT AND TIME?

9 A THAT WAS 10/20/04.

10 Q I AM SORRY, NOT RELEASE THEM, DID YOU HAVE A CHANCE  
11 AT A LATER DATE TO TRANSFER THEM?

12 A TO TRANSFER THEM, YES SIR.

13 Q I AM SORRY. DID YOU HAVE A CHANCE TO TRANSFER THEM  
14 TO SOMEWHERE ELSE IN SLED?

15 A YES, I DID.

16 Q WHERE DID YOU PICK THEM UP FROM?

17 A I PICKED THEM UP FROM D16, LARGE PROCESSING.

18 Q AND WHAT DATE?

19 A THAT WAS 8/30/04.

20 Q AND IS THAT BOTH ITEMS?

21 A THAT WAS FOR ITEM NUMBER 1, 2 AND 3, YES SIR.

22 Q AND YOU SAY ITEM 1, WHAT ARE YOU REFERRING TO?

23 A THE BLOOD SWABS.

24 Q AND THE BLOOD SWABS, WE WENT OVER, YOU TOOK IT IN  
25 FROM TENA AND PUT IT IN THE REFRIGERATOR OF D16. AND THEN

1 YOU TESTIFIED ON OCTOBER THE 20TH YOU TOOK IT FROM THE  
2 EVIDENCE ROOM AND GAVE IT BACK TO TENA GOFF. AND THAT  
3 WOULD BE ITEM NUMBER 1?

4 A YES, SIR.

5 Q DID YOU HAVE ANY OTHER CHANCE TO TOUCH THAT BLOOD  
6 SWAB WHILE IT WAS A SLED?

7 A NO, SIR. NOT ONCE IT WAS RETURNED TO HER.

8 Q WHILE AT SLED YOU ONLY TOUCHED THAT BLOOD SWAB THOSE  
9 TWO TIMES?

10 A I LOGGED IT IN AND I DISPOSED IT.

11 Q NOW, ITEMS, THE BLUE SWEATER WOULD BE ITEM 1?

12 A NO, THE BLUE SWEATER IS ITEM NUMBER 2.

13 Q AND THE PAIR OF SHOES WOULD BE ITEM WHAT?

14 A 3.

15 Q YOU TESTIFIED THAT YOU TOOK THOSE THROUGH INTAKE FROM  
16 TENA GOFF ON APRIL THE 21ST OF 2004 AND PLACED THEM IN THE  
17 REFRIGERATOR OF D16?

18 A YES, SIR.

19 Q AND THOSE TWO ITEMS, DID YOU LATER HAVE A CHANCE TO  
20 PLACE THEM SOMEWHERE ELSE WITHIN SLED?

21 A I TRANSFERRED THEM ON 8/30/04 INTO A BIN IN THE  
22 EVIDENCE ROOM.

23 Q AND FROM WHERE DID YOU GET THEM?

24 A I GOT THEM FROM D16.

25 Q AND WHAT TIME DID YOU PLACE THOSE ITEMS IN THERE?

1 A 9:04.

2 Q AND THAT WAS BOTH ITEMS, 2 AND 3?

3 A YES, SIR.

4 Q AND DID YOU HAVE A CHANCE TO COME INTO CONTACT WITH  
5 ONE LAST PIECE OF EVIDENCE WHILE AT SLED?

6 A ITEM NUMBER 3?

7 Q ITEM, THE PAIR OF SHOES, ITEM NUMBER 3?

8 A ITEM NUMBER 3, YES SIR.

9 Q AND WHAT NUMBER WOULD THAT BE?

10 A 3.1.

11 Q LET ME SHOW YOU STATE'S EXHIBIT NUMBER 55, IS THAT  
12 THE ITEM YOU ARE REFERENCING TO?

13 A THIS ITEM I DISPOSED.

14 Q OKAY. AND ON WHAT DATE AND WHAT ITEM NUMBER IS THAT  
15 AGAIN?

16 A THIS IS ITEM NUMBER 3.2.1.

17 Q WHILE IN SLED, THE PAIR OF SHOES, DID THEY GET  
18 SEPARATED, I AM SORRY, GET CLASSIFIED AS TWO SEPARATE  
19 NUMBERS?

20 A YES, SIR.

21 Q WHAT WERE THOSE TWO NUMBERS IN THE CORRESPONDING  
22 SHOES WITH?

23 A WELL, THE SHOES WERE ITEM NUMBER 3 WHICH WAS THE  
24 WHOLE ITEM. AND THEN DOWN IN PROCESSING THEY MADE IT ITEM  
25 NUMBER 3.2.1.

1 Q BUT THE SHOES I AM TALKING ABOUT, LIKE THE LEFT SHOE,  
2 WHAT WAS THE LEFT SHOE NUMBER WHEN IT CAME TO PROCESSING?

3 A THE LEFT SHOE WAS ITEM NUMBER 3.1.

4 Q AND THE RIGHT SHOE.

5 A 3.2.

6 Q AND THE SWABS, I AM SORRY WE ARE TALKING ABOUT NOW IS  
7 SWABS NUMBER?

8 A 3.2.1.

9 Q AND IS THAT LOCATED ON THAT SMALL PACKAGE, NUMBER 55  
10 THAT I SHOWED YOU?

11 A YES, SIR.

12 Q AND HOW DID YOU COME INTO CONTACT WITH THAT?

13 A I DISPOSED IT.

14 Q DOES THAT MEAN RELEASE IT?

15 A YES SIR, I AM SORRY, I GAVE IT, I DISPOSED IT TO TENA  
16 GOFF AT RICHLAND COUNTY.

17 Q AND FROM WHERE DID YOU GET IT TO RELEASE IT TO HER?

18 A THAT WOULD OF BEEN OUR EVIDENCE ROOM ON A BIN.

19 Q AND DO YOU KNOW WHAT TIME?

20 A I DISPOSED IT ON 8:45 ON 10/20/04.

21 Q AND DID YOU TAMPER WITH THAT PIECE OF EVIDENCE IN ANY  
22 WAY?

23 A NO, SIR.

24 Q ALTER IT IN ANY WAY?

25 A NO, SIR.

1 Q WAS IT SECURE WHEN YOU TRANSFERRED IT?

2 A YES, SIR.

3 Q FINALLY, DOES SLED PRODUCE ANY KIND OF RECEIPT OR  
4 PRINTOUT OR ANYTHING OF THAT NATURE WHEN YOU RELEASE  
5 EVIDENCE TO AN AGENCY?

6 A YES SIR, IT DOES.

7 Q AND WAS THAT DONE ON OCTOBER 20TH WHEN THE BLOOD SWAB  
8 AND THE, STATE'S EXHIBIT NUMBER 5, 3.2.1 WAS DONE?

9 A YES, SIR.

10 Q AND DO YOU HAVE THAT IN FRONT OF YOU?

11 A NO, SIR.

12 Q IF I CAN SHOW YOU THIS AND ASK YOU IF IT IS, THIS  
13 SHOWS YA'LL'S LAB NUMBER ON CORRESPONDING TO THIS CASE?

14 A YES, SIR.

15 Q AND WHAT IS THAT LAB NUMBER ON THERE?

16 A IT IS L044126.

17 Q AND DOES IT SHOW ON THERE WHERE YOU RELEASED THAT TO  
18 TENA GOFF ON OCTOBER THE 20TH OF 2004?

19 A YES SIR, IT DOES.

20 Q AND IS YOUR SIGNATURE LOCATED ON THERE?

21 A YES, SIR.

22 Q AND ITEMS, DOES IT LIST AS BEING RELEASED ON OCTOBER  
23 20TH OF 2004 TO TENA GOFF?

24 A I HAVE A CONTAINER NUMBER AND ITEM, EXCUSE ME, ITEM  
25 NUMBER 1, ITEM NUMBER 3.2.1.

1 Q OKAY. NOTHING FURTHER, IF YOU CAN ANSWER ANYTHING  
2 FROM THE DEFENSE.

3 THE COURT: CROSS-EXAMINE?

4 MS. VAN GINHOVEN: I HAVE NO QUESTIONS, YOUR HONOR.

5 THE COURT: YOU MAY STEP DOWN. MR. FOREMAN AND  
6 LADIES AND GENTLEMEN, WE WILL TAKE A BREAK FOR ABOUT TEN  
7 MINUTES, PLEASE DON'T DISCUSS THE CASE. IF YOU WILL STEP  
8 BACK TO YOUR JURY ROOM, PLEASE, EVERYONE ELSE STAY SEATED.

9 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT.)

10 THE COURT: WE WILL TAKE ABOUT TEN MINUTES.

11 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

12 MS. COOPER: YOUR HONOR, IS THERE ANY WAY THAT THE  
13 DEFENSE WILL STIPULATE TO ALL OF THESE, WE HAVE LIKE FOUR  
14 OR FIVE MORE SLED AGENTS THAT HANDLED THE EVIDENCE INSIDE  
15 SLED. THIS IS JUST REALLY, REALLY, PAINFUL. ANY CHANCE?

16 MS. VAN GINHOVEN: YOUR HONOR, I CAN'T. I WISH THAT  
17 I COULD BUT I JUST CAN'T.

18 MS. COOPER: JUST WANTED TO CHECK.

19 THE COURT: LET'S GET THE JURY BACK IN.

20 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT  
21 APPROXIMATELY 3:45 P.M.)

22 THE COURT: SOLICITOR, CALL YOUR NEXT WITNESS,  
23 PLEASE.

24 MR. JOPHLIN: THE STATE CALLS TERRY WRIGHT TO THE  
25 STAND.

1 TERRY WRIGHT, AFTER BEING DULY SWORN, TESTIFIED  
2 AS FOLLOWS:

3 DIRECT EXAMINATION neighbor

4 BY MR. JOPHLIN:

5 Q HOW YOU DOING THIS AFTERNOON, MS. WRIGHT?

6 A FINE.

7 Q TELL US A LITTLE BIT ABOUT YOURSELF, WHERE ARE YOU  
8 FROM?

9 A I LIVE IN BLYTHEWOOD.

10 Q AND WHERE DO YOU LIVE IN BLYTHEWOOD?

11 A ON TAM-O-SHANTER DRIVE.

12 Q AND WHAT IS YOUR ADDRESS?

13 A 125.

14 Q AND IF I WERE TO SHOW YOU A MAP WOULD YOU IDENTIFY  
15 FOR THE JURY IF THIS IS THE CONNELL'S HOME, WHERE WOULD  
16 YOUR HOME BE?

17 A I BELIEVE THAT IS MY HOUSE.

18 Q RIGHT THERE NEXT TO IT?

19 A YES.

20 Q YOU LIVE NEXT DOOR TO THE CONNELL'S?

21 A YES.

22 Q AND DID YOU HAVE A CHANCE TO BECOME INVOLVED IN THIS  
23 CASE IN ANY WAY BACK ON OCTOBER THE 13TH OF 2004?

24 A YES.

25 Q AND COULD YOU BRIEFLY DESCRIBE FOR THE JURY JUST

1 STARTING OUT WHAT HAPPENED THAT AFTERNOON?

2 A ON THAT AFTERNOON I SAW THE NEIGHBORS NANNY RUN  
3 THROUGH MY BACK DOOR WITH THE BABY AND I COULD TELL SHE  
4 WAS DISTRESSED AND I WALKED OUT MY BACK DOOR AND SHE WAS  
5 ALREADY AROUND TO THE SIDE OF MY HOUSE. ACTUALLY SHE HAD  
6 KNOCKED ON MY BACK DOOR. AND I DIDN'T GET IN THE BACK DOOR  
7 IN TIME, SHE WASN'T THERE SO I WALKED OUT MY BACK DOOR AND  
8 CALLED TO HER. AND SHE TURNED AND RAN TO ME AND HANDED  
9 THE BABY TO ME AND THEN LAID DOWN ON MY DRIVEWAY.

10 Q AND YOU SAY SHE LAID DOWN ON YOUR DRIVEWAY, WHAT WAS  
11 SHE DOING WHEN SHE LAID DOWN?

12 A SHE WAS, I COULD TELL SHE WAS IN PAIN OF SOME SORT  
13 AND SHE WAS SPEAKING IN SPANISH. AND I TRIED TO  
14 COMMUNICATE WITH HER, I JUST IMMEDIATELY TOLD HER IN  
15 BROKEN SPANISH THAT I WOULD BE BACK IN A MINUTE. AND I  
16 WENT ACROSS THE STREET AND GOT A NEIGHBOR THAT DOES SPEAK  
17 SPANISH AND WE CAME BACK OVER TO MY HOUSE. AND I WENT  
18 INSIDE AND GOT MY CELL PHONE AND CALLED D911.

19 Q AND COULD YOU DESCRIBE THE VICTIM'S Demeanor AS SHE  
20 WAS LAYING IN YOUR DRIVEWAY, IT LOOKED LIKE SHE WAS IN  
21 PAIN?

22 A SHE WAS IN PAIN AND SHE WAS ROLLING BACK AND FORTH  
23 AND OBVIOUSLY DISTRESSED. I DON'T KNOW IF SHE WAS IN  
24 SHOCK.

25 Q COULD YOU UNDERSTAND?

1 A I COULD NOT.

2 Q WHAT SHE WAS TRYING TO COMMUNICATE TO YOU?

3 A NO.

4 Q AND WAS THERE ANY REASON, DID ANYTHING HAPPEN LATER  
5 THAT DAY TO MAKE YOU THINK COULD OF CAUSED HER INJURY?

6 A NO, I HAD, YOU KNOW, I DIDN'T HAVE ANY IDEA WHAT WAS  
7 GOING ON AT THE TIME.

8 Q SO, WHEN YOU CALLED 911, WHAT KIND OF EMERGENCY  
9 SERVICE DID YOU ASK FOR?

10 A I ASKED FOR MEDICAL. I SAW THAT SHE HAD BLOOD ON HER  
11 SHIRT, SPATTER, SPLATTER.

12 Q AND AFTER YOU CALLED 911 DID YOU CALL ANYONE ELSE?

13 A I CALLED JEFF AT THE COUNTRY CLUB AND I SPOKE TO  
14 SOMEBODY THAT WORKED THERE THAT I ALSO KNEW AND JEFF, I  
15 CAN'T REMEMBER JEFF'S LAST NAME. BUT HE GREW UP ON OUR  
16 STREET SO I KNEW HIM AND I TOLD HIM WHO I WAS AND I SAID,  
17 FIND JEFF, TELL HIM THE BABY IS FINE BUT HE NEEDS TO COME  
18 TO MY HOUSE BECAUSE HIS HOUSEKEEPER IS INJURED.

19 Q AND DID YOU ASK FOR ANYONE ELSE TO COME, SEEK ANYONE  
20 ELSE'S HELP WHILE YOU WERE THERE SINCE YOU DIDN'T SPEAK  
21 SPANISH?

22 A NO, JEFF CAME RATHER QUICKLY, SO WHEN HE CAME AND  
23 THEY DETERMINED THAT A OFFICER NEEDED TO COME.

24 Q AND DID YOU HEAR LOURDES TELL JEFF ANYTHING ABOUT  
25 WHAT HAD HAPPENED, ABOUT WHY SHE WAS HURT SO BAD?