

VOLUME ONE OF TWO

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Horry County

J. Cordell Maddox, Jr., Circuit Court Judge

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S.C. Supreme Court

DERRICK HOLLINGSWORTH,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000308

APPENDIX

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STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF HORRY

99-GS-26-1651

99-GS-26-1653

STATE OF SOUTH CAROLINA,)

vs.)

CORTREAL LAMONT SWINTON, AND)
DERRICK MARCEL HOLLINGSWORTH.)

TRANSCRIPT OF RECORD

VOL. I

PAGES 1 - 272

APRIL 11-13, 2000

CONWAY, SOUTH CAROLINA

BEFORE:

THE HONORABLE, HOWARD P. KING, JUDGE; AND A JURY

APPEARANCES:

BY: FRANCES A. HUMPHRIES, JR., ESQ., ASSISTANT SOLICITOR
ATTORNEY FOR STATE

HOWELL V. BELLAMY, III, ESQ., ASSISTANT SOLICITOR
ATTORNEY FOR STATE

BY: WILLIAM H. MONCKTON, VI, ESQ.
ATTORNEY FOR DERRICK MARCEL HOLLINGSWORTH

WILLIAM E. CHRISCO, ESQ., OFFICE OF PUBLIC DEFENDER
ATTORNEY FOR CORTREAL LAMONT SWINTON

BRENDA R. BABB
Circuit Court Reporter

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PRE-TRIAL HEARING

7

1 (REPORTER'S NOTE: THE JURY WAS QUALIFIED AND SELECTED BY
2 JUDGE MARC H. WESTBROOK ON APRIL 11, 2000.)

3 (STATE'S EXHIBIT'S NUMBER 1, 2, 3, 4, 5A, 5B, 5C,
4 5D, AND 7 WERE MARKED FOR IDENTIFICATION PRIOR TO THE
5 COMMENCEMENT OF THE PROCEEDINGS.)

6 (DEFENDANT HOLLINGSWORTH'S EXHIBITS NUMBER 3, 4,
7 9, 10, AND 11 WERE MARKED FOR IDENTIFICATION PRIOR TO THE
8 COMMENCEMENT OF THE PROCEEDINGS.)

9 THE COURT: WE'LL GET STARTED JUST A SHORT WHILE
10 BUT WE ARE GOING TO GO INTO SOME MATTERS NOW REGARDING THIS
11 CASE. AND COUNSEL, WHAT I WILL TELL YOU IS THAT I KNOW
12 THAT THIS MATTER HAS BEEN PENDING FOR SOME TIME. I THINK
13 THAT YOU'RE APPEARING BEFORE THE THIRD JUDGE, AT LEAST, IN
14 CONNECTION WITH THIS CASE. JUDGE PEEPLES HEARD SOME
15 MATTERS IN CONNECTION WITH IT EARLIER; YESTERDAY JUDGE
16 WESTBROOK HAVING TAKEN CARE OF THE JURY SELECTION. AND I
17 WOULD ASK MR. BELLAMY AND MR. HUMPHRIES IF THERE'S ANYTHING
18 THAT NEEDS TO BE PUT ON THE RECORD FOR CLARIFICATION OR
19 JUST TO MAKE SURE THAT EVERYBODY'S ON THE SAME BOOK AND
20 PAGE NUMBER WITH REGARD TO THE PREVIOUS RULINGS THAT HAVE
21 GONE BEFORE SO THAT WE'LL HAVE A CLEAR UNDERSTANDING OF
22 WHAT THE MATTER IS ABOUT.

23 MR. HUMPHRIES: YES, YOUR HONOR. JUDGE, WE JUST
24 NEED TO, ON THE RECORD, CONFIRM THE PRIOR COURT'S RULINGS
25 WITH REGARD TO A NUMBER OF THE DEFENSE MOTIONS. I DON'T

PRE-TRIAL HEARING

8

1 BELIEVE THERE ARE ANY. THE ONLY STATE'S MOTION THAT HAS
2 BEEN PREVIOUSLY RULED ON WAS BY CONSENT AND THAT WAS AN
3 ORDER TO SEQUESTER CERTAIN WITNESSES. TO MY RECOLLECTION
4 THE COURT'S RULING IN THAT REGARD IS THAT THE STATE'S
5 EYEWITNESSES WOULD BE SEQUESTERED AND DEFENDANT'S ALIBI --
6 SUPPOSED ALIBI WITNESSES WOULD BE SEQUESTERED, OBVIOUSLY
7 SET APART FROM EACH OTHER, AND THOSE WERE THE ONLY
8 WITNESSES TO BE SEQUESTERED.

9 THE COURT: DO YOU CONCUR THAT THAT'S THE RULING
10 OF THE COURT, MR. CHRISCO?

11 MR. CHRISCO: YES, YOUR HONOR, THAT WAS THE
12 RULING OF THE COURT.

13 THE COURT: IS THAT WHAT YOU UNDERSTAND, MR.
14 MONCKTON?

15 MR. MONCKTON: YES, SIR, YOUR HONOR. THERE
16 SHOULD BE A COURT FILE WITH THAT ORDER IN IT WITH THE NAMES
17 OF ---

18 THE COURT: I'M SURE THERE PROBABLY IS. ALL
19 RIGHT, AS PREVIOUSLY RULED ON THEN, THOSE WITNESSES WILL BE
20 SEQUESTERED, THE STATE'S EYEWITNESSES AND THE DEFENSE ALIBI
21 WITNESSES. THEN I WOULD THINK THAT WE WOULD NEED TWO
22 ROOMS, PROBABLY, WHERE THEY WOULD BE KEPT SEPARATE AND
23 APART BUT SEQUESTERED DURING THE TRIAL. ALL RIGHT, GO
24 AHEAD, MR. ---

25 MR. HUMPHRIES: YOUR HONOR, I BELIEVE WE'LL LET

PRE-TRIAL HEARING

9

1 THE DEFENSE, SINCE IT WAS THEIR MOTIONS, AND I'LL COMMENT
2 ON THEM THEN.

3 THE COURT: ALL RIGHT. MR. MONCKTON?

4 MR. MONCKTON: YES, SIR, YOUR HONOR. I'D JUST
5 LIKE TO MAKE PART OF THE RECORD THAT THERE WERE PRETRIAL
6 MOTION HEARINGS HEARD BEFORE JUDGE PEEPLES ON MARCH THE
7 7TH. GRACE HURLEY WAS THE COURT REPORTER AT THAT TIME.
8 THE MOTIONS THAT I THINK THAT WE AGREED ON WERE THOSE
9 MOTIONS MADE BY MR. CHRISCO TO AMEND THE INDICTMENT TO
10 CORTREAL SWINTON, WHICH I BELIEVE HAS BEEN DONE AND WAS
11 AGREED TO BY THE STATE. THERE WAS ALSO A MOTION IN LIMINE
12 TO RESTRICT THE USE OF THE TERM "GANG" DURING THE TRIAL
13 WHICH I BELIEVE THE STATE HAS AGREED TO AND WILL MAKE NO
14 REFERENCE TO. THERE WAS ALSO A MOTION MADE TO NO REFERENCE
15 TO ANY MUG SHOT, WHICH I BELIEVE THE STATE HAS AGREED TO.
16 WE'VE COVERED THE SEQUESTRATION ISSUE. THERE WAS A MOTION
17 TO REDACT THE TESTIMONY OF JOSEPH SCOTT BUT IT'S MY
18 UNDERSTANDING FROM TALKING TO THE PROSECUTION THIS MORNING
19 THAT HE WILL NOT TESTIFY IN THIS CASE. YOUR HONOR HEARD IN
20 CHAMBERS A MOTION TO REDACT THE STATEMENT OF JOSEPH HOWARD,
21 WHICH I THINK PURSUANT TO OUR DISCUSSIONS IN CHAMBERS
22 BEFORE HE COMES UP WE WILL STOP AND SPEAK WITH YOU.

23 THE COURT: JUST LET ME INTERPOSE HERE THAT THAT
24 WAS A MOTION IN LIMINE AND MY POSITION ON THAT IS THAT
25 DON'T REFER TO IT, NEITHER SIDE REFER TO IT IN OPENING

PRE-TRIAL HEARING

10

1 STATEMENTS AND THEN BEFORE IT BECOMES AN ISSUE BEFORE THE
2 JURY TO STOP AND ADVISE ME AND WE'LL EXCUSE THE JURY AND
3 RESOLVE IT BASED UPON THE RECORD IN THE CASE AT THAT TIME.

4 MR. MONCKTON: THERE WAS ALSO A MOTION MADE AT
5 THAT TIME, YOUR HONOR, ON BEHALF OF THE DEFENDANT
6 HOLLINGSWORTH WITH REGARD TO THREATS THAT WERE APPARENTLY
7 MADE AGAINST A STATE'S WITNESS, MISS SARAH WEAVER, AND I
8 THINK WE AGREED IN CHAMBERS WE'LL SEE HOW THE TESTIMONY
9 DEVELOPS AND BEFORE WE GO INTO THAT WE WILL NOTIFY THE
10 COURT. I ALSO FILED A MOTION THIS MORNING ON BEHALF OF MY
11 CLIENT TO PREVENT THE IN-COURT IDENTIFICATION OF MY CLIENT
12 BY A WITNESS PROSECUTION INTENDS TO CALL WHOSE NAME IS MR.
13 JOSEPH HOWARD. I BELIEVE IN CHAMBERS WE DISCUSSED THAT WE
14 WOULD WAIT UNTIL THAT TESTIMONY TOOK PLACE BEFORE WE WENT
15 ANY FURTHER INTO THAT MATTER.

16 THE COURT: YES, MR. CHRISCO?

17 MR. CHRISCO: YOUR HONOR, THERE'S A COUPLE.
18 THERE WAS ALSO A MOTION TO VIEW TANGIBLE EVIDENCE. THAT
19 HAS BEEN DONE BY ME. THERE'S ALSO -- I WANT TO GO BACK TO
20 THE MOTION TO AMEND THE INDICTMENT ON MY CLIENT. IT HAD
21 HIS NAME MISSPELLED AND THEN IT HAD TWO ALIASES AND THE
22 ALIASES WAS BECAUSE OF DIFFERENT SPELLINGS OF HIS NAME AND
23 NOT BY ANY INTENTION OF MY CLIENT TO DECEIVE SO, THEREFORE,
24 THE COURT RULED -- JUDGE PEEPLES RULED THAT A DUMMY
25 INDICTMENT WOULD BE MADE UP WITH JUST THE ONE CORRECT NAME

PRE-TRIAL HEARING

11

1 ON IT AND IF THAT WENT TO THE JURY, THE DUMMY INDICTMENT
2 WOULD GO TO THE JURY SINCE THE ONE THAT WAS TRUE BILLED HAD
3 ALL THREE OF THE NAMES ON IT.

4 THE COURT: WELL, MY POLICY, OF COURSE, IS THAT
5 THE INDICTMENT DOESN'T GO TO THE JURY ANYHOW, SO THAT ---

6 MR. CHRISCO: THAT WOULD BE EVEN BETTER, YOUR
7 HONOR.

8 THE COURT: -- IT'S NOT A PROBLEM.

9 MR. CHRISCO: I ALSO THINK THERE WAS A MOTION BY
10 THE DEFENSE TO CLARIFY SARAH WEAVER, THE THREATS AND STUFF,
11 AND JUDGE PEEPLES ORDERED MR. HUMPHRIES TO TALK WITH HER
12 AND GET THE PARTICULARS ON THOSE THREATS AND THEN RELAY
13 THEM TO THE DEFENSE AND HE HAS DONE SO, YOUR HONOR.

14 THE COURT: ALL RIGHT. YES, MR. HUMPHRIES?

15 MR. HUMPHRIES: YOUR HONOR, THERE WAS ONE OTHER
16 MATTER AND THAT WAS THERE WAS A MOTION BY THE STATE TO TAKE
17 A VIDEOTAPE DEPOSITION OF THE PATHOLOGIST IN THIS CASE.
18 THAT MOTION WAS HEARD AND AFTER ARGUMENT AND SOME
19 SUPPLEMENTAL FILINGS, JUDGE PEEPLES ORDERED THAT THE
20 VIDEOTAPED DEPOSITION BE HEARD AND IT WAS. IT WAS HEARD,
21 AND I BELIEVE IT WAS LAST THURSDAY. AND THE WAY WE DID
22 THAT, JUDGE, WAS IF THERE WERE OBJECTIONS, THEY WERE NOTED,
23 GROUNDS WERE STATED AND THERE WAS AN AGREEMENT AMONG ALL
24 PARTIES THAT THE COURT PRIOR TO PUBLISHING THAT VIDEOTAPED
25 DEPOSITION EITHER IN WRITTEN FORM BY VIRTUE OF THE

PRE-TRIAL HEARING

12

1 TRANSCRIPT OR BY VIDEO FORM, THAT YOU WOULD RULE ON THOSE
2 OBJECTIONS; AND WE'VE GOT THAT FOR YOUR HONOR. WE DON'T
3 ANTICIPATE CALLING THAT WITNESS TODAY SO WE CAN POTENTIALLY
4 DO THAT AFTER COURT OR AT YOUR CONVENIENCE.

5 THE COURT: ALL RIGHT.

6 MR. HUMPHRIES: YOUR HONOR, THERE IS ONE THING
7 WHICH WAS BROUGHT TO THE STATE'S ATTENTION, WHICH IS
8 OBVIOUSLY TRUE, BY LAWYER MONCKTON. THAT WAS THAT THE
9 THIRD CO-DEFENDANT HAS NOW BEEN SEPARATED FROM THE CASE.
10 CURTIS WILSON WAS REPRESENTED BY HIS ATTORNEY, KURT
11 TRUSLOW, DURING THAT VIDEO DEPOSITION, AND HE DID ENTER
12 OBJECTIONS, ALTHOUGH I DON'T BELIEVE HE WAS THE PRIMARY
13 MOVER IN ANY OF THE OBJECTIONS, BUT ENJOINED A NUMBER OF
14 OBJECTIONS AND WAS HEARD ON THE RECORD AND LAWYER MONCKTON
15 SUGGESTS THAT WE READ THE DEPOSITION AS OPPOSED TO PLAY IT
16 AND THEREBY EXCISING ANY REFERENCE TO MR. WILSON OR MR.
17 TRUSLOW. THE STATE DOESN'T HAVE ANY OBJECTION TO THAT.
18 IT'S NOT A VERY LONG DEPOSITION. WE COULD PUT SOMEBODY ON
19 THE WITNESS STAND AND READ IT.

20 THE COURT: WE MIGHT. WE'LL LOOK AT IT THIS
21 AFTERNOON AND SEE IF THE OBJECTIONS AND WHAT THEY -- THOSE
22 THAT I SUSTAIN, BUT IF IT IS GOING TO BE A SITUATION OF
23 STOPPING AND STARTING A VIDEO DEPOSITION AND TRYING TO SKIP
24 OVER IT, IT PROBABLY WOULD BE EASIER TO READ IT.

25 MR. HUMPHRIES: THE OTHER SUGGESTION IS THIS,

PRE-TRIAL HEARING

13

1 YOUR HONOR. THEY DO THESE VIDEO DEP -- I NEVER PRACTICED
2 CIVIL LAW IN MY LIFE BUT I'VE NOW BEEN INVOLVED IN TWO
3 VIDEO DEPOSITIONS AND THEY DO AN EXCELLENT JOB OF EDITING
4 THE VIDEO DEPOSITION. AND THE WAY WE SET IT UP AT THEIR
5 SUGGESTION WAS IF THERE WAS AN OBJECTION, WHO MADE THE
6 OBJECTION WOULD PAUSE FOR A FEW SECONDS TO GIVE THEM TIME
7 TO TAKE SOMETHING OUT IF THEY NEEDED TO AND THEN STATED OUR
8 OBJECTIONS. SO, WHILE IT'S THEORETICALLY POSSIBLE THAT
9 THEY COULD DO THAT OVERNIGHT IF WE AGREED ON IT, IT
10 PROBABLY IS LOGISTICALLY NOT POSSIBLE. THE LAST TIME WE
11 DID IT WE HAD TO HAVE A COURT REPORTER SITTING BY THE VIDEO
12 CAMERA -- THE TV -- AND JUST SORT OF FAST-FORWARDING
13 THROUGH THE OBJECTIONABLE PARTS. I DON'T HAVE ANY PROBLEM
14 WITH READING THE TRANSCRIPT.

15 THE COURT: TO EDIT IT YOU USUALLY DO NEED TO
16 GIVE THEM A -- GIVE THE VIDEOGRAPHERS A LITTLE BIT OF
17 NOTICE AND THEY CAN EDIT IT WHEN IT GOES THROUGH VERY
18 SMOOTHLY BUT I DON'T KNOW IF WE HAVE TIME.

19 MR. HUMPHRIES: IT'S PRETTY CLOSE TIMING.

20 THE COURT: OKAY.

21 MR. HUMPHRIES: I JUST WANTED TO MAKE THE COURT
22 AWARE OF THAT.

23 THE COURT: ALL RIGHT.

24 MR. HUMPHRIES: YOUR HONOR, THERE ARE A NUMBER OF
25 EXHIBITS, SOME OF THEM PREVIOUSLY MARKED. WE NEED TO

PRE-TRIAL HEARING

14

1 REVIEW THOSE. MOST, HOWEVER, I BELIEVE WERE MARKED FOR
2 IDENTIFICATION PURPOSES.

3 THE COURT: CAN YOU AGREE ON ---

4 MR. HUMPHRIES: THAT'S WHAT WE NEED TO SEE.

5 THE COURT: YES, SEE IF YOU CAN. WHAT I'D LIKE
6 TO DO, THE PROCEDURE THAT I LIKE TO FOLLOW IS THAT IF THEY
7 CAN BE AGREED UPON, THEN GO AHEAD AND MARK THEM AS STATE'S
8 NUMBER SO-AND-SO OR DEFENSE NUMBER SO-AND-SO. IF THERE IS
9 AN OBJECTION, HAVE THE REPORTER MARK THEM STATE'S NUMBER
10 SO-AND-SO FOR IDENTIFICATION AND THEN WE'LL TAKE THAT UP AT
11 THE TIME. BUT THOSE THAT YOU CAN AGREE UPON JUST LEAVE THE
12 ID NOTICE OFF OF IT AND THEN AS SOON AS YOU GET THAT DONE,
13 WE'LL PUT ON THE RECORD THAT THE FOLLOWING EXHIBITS HAVE
14 BEEN ADMITTED INTO EVIDENCE WITHOUT OBJECTION BY EITHER
15 SIDE AND THEN YOU DON'T NEED TO GO BACK AND FORTH AND SHOW
16 THEM TO EACH OTHER AND ALL THAT SORT OF THING. BUT IF
17 THERE IS AN OBJECTION TO THEM, GO AHEAD AND MARK IT WITH AN
18 IDENTIFICATION NUMBER SO THAT YOU'LL HAVE IT TO REFER TO.
19 NOW, THIS DOESN'T PRECLUDE ANY OF YOU FROM -- IF SOMETHING
20 COMES UP LATER, FROM OFFERING SOMETHING IF YOU NEED IT.

21 MR. HUMPHRIES: YES, SIR. AND WE'LL ATTEMPT --
22 WE'LL GET TOGETHER RIGHT AFTER THIS SESSION TO MAKE SURE
23 THAT'S DONE AND THEN PRIOR TO THE JURY COMING IN WE'LL PUT
24 ON THE RECORD WHAT WE'VE BEEN ABLE TO AGREE TO, IF THAT
25 SUITS THE COURT.

PRE-TRIAL HEARING

15

1 THE COURT: ALL RIGHT. YES, SIR?

2 MR. CHRISCO: YOUR HONOR.

3 THE COURT: YES, SIR, MR. CHRISCO.

4 MR. CHRISCO: YOUR HONOR, THERE'S ONE MORE MOTION
5 I FAILED TO MENTION AND THAT WAS THE MOTION TO SUPPRESS THE
6 DEFENDANT'S CRIMINAL CONVICTION. THIS MURDER HAPPENED ON
7 OCTOBER 4TH, 1997. AFTER THAT HE WAS ARRESTED FOR DRUGS
8 AND IN 1999 HE WAS -- APRIL OF 1999 HE WAS TRIED BY A JURY
9 AND CONVICTED OF THAT AND RECEIVED A PROBATIONARY SENTENCE.
10 WHAT JUDGE PEEPLES HELD IN HIS RULING IS THAT HE DENIED IT
11 BUT MAYBE WILL RECONSIDER IF THE CASE LAW CAN CHANGE THE
12 JUDGE'S MIND.

13 THE COURT: WHAT'S YOUR POSITION ON THAT, MR.
14 HUMPHRIES?

15 MR. HUMPHRIES: YOUR HONOR, WHEN IT WAS PRESENTED
16 TO US, I BELIEVE MR. CHRISCO'S GROUNDS WERE THAT IT WAS A
17 SUBSEQUENT -- THAT THE CRIME HAD TO HAPPEN SUBSEQUENT TO
18 THIS CRIME BUT IT STILL IS A PRIOR CONVICTION. THE STATE
19 ARGUED AND THE COURT ADOPTED THE POSITION, WHICH I THINK IS
20 THE POSITION OF THE RULING, THAT IT DOESN'T MATTER AT WHAT
21 TIME THE CRIME OCCURRED. IF IT IS A PRIOR CONVICTION AT
22 THE TIME THAT THE WITNESS PURPORTS TO TAKE THE STAND OR
23 INTENDS TO TAKE THE STAND, THEN IT'S ADMISSIBLE IF IT MEETS
24 THE OTHER QUALIFICATIONS. AND THE SECOND GROUND WAS THAT
25 IT WOULD HAVE BEEN MORE PREJUDICIAL THAN PROBATIVE. THIS

PRE-TRIAL HEARING

16

1 IS NOT A DRUG CASE. WE'VE SEEN SOME PROBLEMS WITH THE CASE
2 LAW OF LATE IN THAT REGARD WHERE WE'RE TRYING SOMEBODY FOR
3 DRUGS AND YOU'VE GOT PRIOR DRUG CONVICTIONS. THE COURT IS
4 GIVING A FOUR- OR FIVE-STEP PROCESS OR PRACTICE TO LOOK AT
5 IN ORDER TO DETERMINE WHETHER OR NOT IT SHOULD BE ADMITTED.
6 IT'S NOT ONE AND THE SAME THING. THIS IS A MURDER. THIS
7 WAS DRUGS. AND MY RECOLLECTION IS THE JUDGE DENIED THAT --
8 AND HE MAY HAVE LEFT THE DOOR OPEN. I DON'T HAVE ANY
9 PROBLEMS WITH THAT.

10 THE COURT: HE DENIED THE MOTION TO SUPPRESS IT
11 AT THIS POINT? IS THAT WHERE IT IS, MR. CHRISCO?

12 MR. CHRISCO: THAT'S WHERE IT STANDS, YOUR HONOR.

13 THE COURT: OKAY. WELL, RENEW YOUR MOTION BUT
14 JUDGE PEEPLES HAS ALREADY RULED ON IT. I MEAN, I'LL LISTEN
15 AND SEE WHAT IT'S GOING TO SAY BUT WE NEED A MOTION AT THE
16 APPROPRIATE TIME.

17 MR. CHRISCO: YES, YOUR HONOR.

18 THE COURT: OKAY.

19 MR. CHRISCO: I JUST WANTED TO MAKE THE COURT
20 AWARE OF THAT ONE MOTION THAT I LEFT OUT.

21 MR. HUMPHRIES: YOUR HONOR, LET ME HAND YOU A
22 COPY OF A MOTION IN LIMINE TO EXCLUDE TESTIMONY AND WE'VE
23 DISCUSSED THIS BRIEFLY WITH THE DEFENSE AND, OBVIOUSLY,
24 WE'RE GOING TO RAISE THIS AT THE TIME IT BECOMES RELEVANT.
25 THIS MOTION GOES TO THE SUBJECT OF HOWARD PARKER. THERE

PRE-TRIAL HEARING

17

1 HAS BEEN SOME DISCUSSION ABOUT MR. PARKER PRIOR TO THIS
2 HEARING TODAY. HOWARD PARKER WAS INTENDED TO BE ONE OF THE
3 STATE'S CHIEF WITNESSES IN TERMS OF IDENTIFICATION AND A
4 FACTUAL WITNESS IN REGARD TO THIS INCIDENT. BECAUSE OF MR.
5 PARKER'S ACTIONS AT THE LAST TRIAL, THIS CASE WAS
6 CONTINUED, OBVIOUSLY BEFORE THE JURY WAS SWORN. THERE HAVE
7 BEEN SUBSTANTIAL ATTEMPTS BY THE STATE AND ITS AGENTS TO
8 LOCATE MR. PARKER OVER THE LAST THREE OR SO WEEKS WITH NO
9 SUCCESS. IN ANY EVENT, YOUR HONOR, WHAT THE STATE IS DOING
10 BY VIRTUE OF THAT MOTION IS MOVE TO EXCLUDE ANY TESTIMONY
11 REGARDING HOWARD PARKER, PARTICULARLY AS A PARTICIPANT IN
12 THIS CRIME. THERE WAS ONE STATEMENT --- AND I BELIEVE IT'S
13 GOING TO BE THE ONLY STATEMENT WHICH MAY IMPACT AT ALL ON
14 THIS SUBJECT --- AND THAT WAS THE STATEMENT BY SARAH WEAVER
15 PROVIDED SOME TEN TO TWELVE HOURS AFTER, AFTER SHE HAD BEEN
16 CONFRONTED BY MR. SWINTON'S MOTHER, WHERE SHE INDICATED
17 HOWARD PARKER WAS THERE BUT NOT PARTICIPATING IN THE
18 MURDER. HE, IN FACT, BASED ON OUR INTERVIEWS, WAS SOME
19 BLOCK TO A BLOCK AND A HALF AWAY. THE FACT THAT HE WAS
20 PRESENT AND NOT PARTICIPATING CERTAINLY WOULDN'T ENTITLE
21 THE DEFENSE TO SUGGEST TO THIS JURY BY VIRTUE OF CROSS-
22 EXAMINATION THAT HE WAS A PARTICIPANT OR WAS THE SHOOTER IN
23 THIS CASE, BASED ON THE PREVAILING CASE LAW, AND THE STATE
24 JUST MOVES IN LIMINE TO ADDRESS THAT OUT OF THE PRESENCE OF
25 THE JURY IF THERE IS A WITNESS THROUGH WHICH THEY INTEND TO

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18

1 ELICIT THAT TYPE OF INFORMATION. I SUSPECT IT WOULD BE
2 THROUGH SARAH WEAVER, IF AT ALL, SO THERE ARE A NUMBER OF
3 THINGS WE CAN TAKE UP ABOUT SARAH WEAVER'S TESTIMONY. BUT,
4 BASED ON MY MOTION WE ASK THAT YOU HEAR THAT OUT OF THE
5 PRESENCE OF THE JURY, OUTSIDE THE PRESENCE OF THE JURY AND
6 BEFORE IT'S ELICITED ON THE STAND.

7 THE COURT: ALL RIGHT. MR. MONCKTON?

8 MR. MONCKTON: YOUR HONOR, I DON'T HAVE ANY
9 PROBLEM WITH DISCUSSING THAT OUTSIDE THE PRESENCE OF THE
10 JURY. OBVIOUSLY, HE'S TALKING ABOUT SOME OTHER SUI
11 EVIDENCE IS WHAT HE'S TRYING TO GET INTO. BUT MR. PARKER
12 WAS IDENTIFIED AT THE SCENE, YOU KNOW. THE DEFENDANT WILL
13 GO ON INTO THAT BUT WE CAN COVER THAT WHEN MISS WEAVER
14 COMES UP.

15 THE COURT: I THINK THAT'S WHAT WE'LL HAVE TO DO.
16 I'LL HAVE TO HEAR THE TESTIMONY, SO THE COURT WILL WITHHOLD
17 AGAIN THE RULING AS FAR AS IT BEING A MOTION IN LIMINE WITH
18 CAUTIONING THE PARTIES AGAINST MAKING ANY REFERENCE TO THAT
19 IN THE OPENING STATEMENTS OR AT ANY TIME UNTIL THE
20 TESTIMONY COMES UP AND THEN PRIOR TO THAT TESTIMONY COMING
21 UP IF THE LAWYERS WILL ADVISE THE COURT THAT THERE IS THIS
22 POTENTIAL PROBLEM, WE CAN EXCUSE THE JURY AND TAKE IT UP AT
23 THAT TIME. ALL RIGHT. THAT IS THIS MOTION THAT YOU JUST
24 HANDED ME, MR. HUMPHRIES?

25 MR. HUMPHRIES: YES, SIR. JUDGE.

PRE-TRIAL HEARING

19

1 THE COURT: OKAY.

2 MR. HUMPHRIES: IF I SIT HERE LONG ENOUGH, I'M
3 GOING TO THINK ABOUT SOMETHING ELSE. THERE'S ONE OTHER
4 MATTER. IT SHOULD NOT BE A PROBLEM BUT THERE IS -- STATE'S
5 WITNESS, SARAH WEAVER, DOES HAVE PRIOR CONVICTIONS FOR
6 PROSTITUTION AND DISORDERLY CONDUCT. CLEARLY, BY OUR
7 READING OF THE RULE IN THAT REGARD, THOSE ARE NOT CRIMES
8 FOR WHICH YOU CAN BE IMPEACHED. WE JUST WANT TO SETTLE THE
9 RECORD IN THAT REGARD. WE'VE SHARED WITH THE DEFENSE HER
10 PRIOR CRIMINAL HISTORY AND JUST WANT TO MAKE SURE THAT
11 THAT'S NOT BROACHED.

12 THE COURT: ALL RIGHT. I THINK CLEARLY THAT
13 THOSE ARE NONIMPEACHABLE OFFENSES.

14 MR. MONCKTON: YOUR HONOR, THAT'S THE FIRST WE'VE
15 HEARD THAT THERE WAS A CONVICTION. ALL THAT WE'VE BEEN
16 PROVIDED IS THAT ---

17 MR. HUMPHRIES: I'M SORRY. I'M SORRY, YOUR
18 HONOR. THEY ARE NOT CONVICTIONS. THEY ARE ARRESTS. I
19 MISSPOKE.

20 THE COURT: OKAY. THAT SOLVES THAT PROBLEM.

21 MR. MONCKTON: AND I WOULD LIKE TO ARGUE, YOUR
22 HONOR, ON THAT POINT THAT THERE IS EXACTLY A CASE ON POINT
23 ON THIS, YOUR HONOR. AND I WOULD SAY STATE V. BROWN, SINCE
24 THERE ARE PENDING CHARGES AGAINST MISS WEAVER AND THERE IS
25 THE POSSIBILITY THAT THERE COULD HAVE BEEN AN ALLEGATION OR

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20

1 AN AGREEMENT MADE BY HER WITH THE POLICE BECAUSE THE SAME
2 POLICE DEPARTMENT THAT MADE THE CASES AGAINST HER IS THE
3 SAME POLICE DEPARTMENT PROSECUTING THIS CASE AND SINCE THIS
4 IS A MURDER PROSECUTION, IF THE WITNESS HAS ANY PENDING
5 CHARGES THEN THEY ARE ALLOWED -- I'M ALLOWED TO GO INTO
6 THEM UNDER THE SIXTH AMENDMENT CONFRONTATION BECAUSE THERE
7 IS POTENTIAL BIAS FROM THAT WITNESS' TESTIMONY AND I'LL
8 PROVIDE THAT CASE TO YOUR CLERK.

9 THE COURT: ALL RIGHT.

10 MR. HUMPHRIES: YOUR HONOR, I'M ADVISED BY MR.
11 BELLAMY THAT THERE ARE NO PENDING CHARGES, THAT SHE
12 RECEIVED TIME-SERVED SENTENCES ON THESE TWO ARRESTS,
13 PROSTITUTION, WHICH I THINK WAS --

14 MR. BELLAMY: THAT WAS DISORDERLY.

15 MR. HUMPHRIES: DISORDERLY CONDUCT. IN ANY
16 EVENT, WE'LL GET SOME -- PRIOR TO HER TESTIMONY WE'LL TRY
17 AND GET SOME CONFIRMATION OF THE DISPOSITION OF THOSE
18 CHARGES AND GIVE THAT TO THE DEFENSE.

19 THE COURT: WHAT'S YOUR POSITION IF THE CHARGES
20 HAVE BEEN DISPOSED OF BUT DON'T FALL WITHIN THE IMPEACHMENT
21 CATEGORY?

22 MR. MONCKTON: WELL, YOUR HONOR, I'D LIKE TO --
23 THE NCIC I WAS PROVIDED ON MISS WEAVER WAS FEBRUARY 14TH OF
24 2000. IF SOMETHING'S HAPPENED BETWEEN NOW AND TODAY --
25 BETWEEN FEBRUARY 14TH OF 2000 AND TODAY, THEN I MAY LIKE TO

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21

1 INQUIRE AS TO WHAT HAPPENED TO HER CHARGES, HOW THEY GOT
2 WORKED OUT BY THE TIME OF THE TRIAL.

3 THE COURT: I'LL LET YOU TALK WITH THE SOLICITOR
4 ABOUT THAT AND FIND OUT. BUT BEFORE IT COMES UP I
5 CERTAINLY WANT TO KNOW ABOUT IT BECAUSE IT WOULD APPEAR TO
6 ME -- MY FIRST IMPRESSION IS THAT IF THEY WERE SIMPLY
7 CHARGES THAT HAD BEEN DISPOSED OF, THEN THEY DON'T FALL
8 WITHIN THE IMPEACHMENT RULE UNLESS THERE WERE SOME
9 DISPOSITION MADE OF THEM IN ANTICIPATION OF THE TRIAL OF
10 THIS CASE.

11 MR. MONCKTON: I WOULD AGREE WITH YOUR HONOR.

12 THE COURT: OKAY. MR. CHRISCO?

13 MR. CHRISCO: AUGUST 27, 1996, SARAH WEAVER WAS
14 SERVED WITH A PETTY LARCENY WARRANT. SUBSEQUENTLY, SHE
15 PLED GUILTY TO PETTY LARCENY. I HAD MY INVESTIGATOR,
16 JEROME RANDALL, GO OVER TO THE CITY OF CONWAY AND CHECK IT
17 OUT, WHICH HE DID. SHE GOT TIME SERVED FOR THAT PARTICULAR
18 CRIME. THE CRIME OF PETTY LARCENY DOES FALL UNDER AN
19 IMPEACHABLE ---

20 THE COURT: AND WHO'S THE WITNESS? I MEAN, WHO'S
21 THE INDIVIDUAL?

22 MR. CHRISCO: IT WOULD BE SARAH WEAVER.

23 THE COURT: THAT'S THE SAME ONE THAT WE JUST
24 TALKED ABOUT, ISN'T IT?

25 MR. CHRISCO: YES, YOUR HONOR.

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22

1 THE COURT: ALL RIGHT. I THOUGHT THE ONLY THING
2 THEN WAS THE DISORDERLY CONDUCT AND THE PROSTITUTION
3 CHARGES.

4 MR. HUMPHRIES: THAT'S WHAT I UNDERSTOOD. IF
5 THERE'S BEEN A CONVICTION ---

6 MR. CHRISCO: THIS IS A CERTIFIED TRUE COPY OF
7 THE WARRANT.

8 THE COURT: ALL RIGHT. I'LL LET YOU ALL ---

9 MR. HUMPHRIES: WE DIDN'T KNOW ABOUT THAT, JUDGE.

10 THE COURT: I'LL LET Y'ALL GET TOGETHER ON THAT
11 AND WE'LL TAKE IT UP BEFORE MISS WEAVER TESTIFIES. BUT
12 Y'ALL GET YOUR RECORDS STRAIGHT AND FIND OUT EXACTLY WHAT
13 IT IS AND WE'LL FIND OUT WHAT PART OF HER TESTIMONY IS --
14 WHAT PART OF HER RECORD IS IMPEACHABLE, IF ANY, OR UPON
15 WHICH SHE CAN BE IMPEACHED.

16 MR. HUMPHRIES: THE ONLY OTHER THING, JUDGE, WITH
17 REGARD TO THAT WITNESS IS THIS. THERE HAVE BEEN SOME
18 ALLEGATIONS REGARDING USE OF ILLICIT DRUGS BY MISS WEAVER.
19 WHETHER OR NOT THAT'S TRUE, THE USE OF ILLICIT DRUGS IF IT
20 DIDN'T OCCUR ON THIS NIGHT AND WOULD NOT HAVE IMPACTED ON
21 HER ABILITY TO SEE AND SUBSEQUENTLY HEAR AND SUBSEQUENTLY
22 RECALL WHAT SHE SAW AND HEARD, WOULD NOT BE RELEVANT TO A
23 TRIER OF FACT IN THIS CASE AND WE MOVE IN LIMINE TO EXCLUDE
24 ANY REFERENCE TO THAT. WE HAVE BEEN ADVISED THAT SHE WAS
25 NOT UNDER THE INFLUENCE OF EITHER ALCOHOL OR DRUGS AT THE

PRE-TRIAL HEARING

23

1 TIME OF THIS EVENT. I DON'T THINK IT IS NECESSARILY
2 IMPROPER FOR THE DEFENSE TO ASK ON THIS EVENING WAS SHE
3 UNDER THE INFLUENCE OF ALCOHOL OR DRUGS. I THINK THAT'S A
4 FAIR QUESTION ON CROSS-EXAMINATION. IT IS NOT A FAIR
5 QUESTION, HOWEVER, TO ASK ABOUT HER MISUSE OF DRUGS ON SOME
6 NIGHT OTHER THAN THIS NIGHT AND WE WOULD OBJECT TO ANY
7 REFERENCE TO THE USE OF DRUGS OR ALCOHOL EXCEPT IN THE
8 CONTEXT OF THIS EVENING.

9 THE COURT: MR. MONCKTON? MR. CHRISCO?

10 MR. MONCKTON: YOUR HONOR, I DON'T HAVE ANY
11 PROBLEM WITH THAT.

12 THE COURT: I WOULD RESTRICT IT TO THE USE OF
13 DRUGS ON THE PARTICULAR TIME THAT SHE WAS ACTING AS A
14 WITNESS. I THINK IT WOULD IMPACT ON THAT. BUT ANY PRIOR
15 USE OF DRUGS I THINK IS PREJUDICIAL AND OUTWEIGHS THE
16 PROBATIVE VALUE AND SO I WILL SUSTAIN THAT OBJECTION. ALL
17 RIGHT, IF YOU ALL WILL -- I THINK THEN ONE OF THE THINGS
18 YOU NEED TO DO WITH THE -- THE THREE OF YOU NEED TO GET
19 TOGETHER ON THE SITUATION WITH MISS WEAVER SO WE CAN MAKE A
20 DETERMINATION ON THAT. I UNDERSTAND THERE ARE FOUR
21 QUESTIONS: THE DISORDERLY CONDUCT, THE PROSTITUTION, THE
22 PETTY LARCENY AND, OF COURSE, THE USE OF ILLEGAL -- THREE
23 QUESTIONS NOW BECAUSE THE USE OF ILLEGAL DRUGS WE'VE
24 ALREADY RESOLVED. ALL RIGHT. ANYTHING ELSE, MR. HUMPHRIES
25 OR MR. BELLAMY THAT WE NEED TO TALK ABOUT BEFORE WE GET THE

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24

1 JURY IN OR WHEN THEY COME IN? WE'VE GOT A LITTLE WHILE YET
2 BEFORE THEY'LL GET HERE.

3 MR. BELLAMY: YOUR HONOR, THE ONLY THING I CAN
4 THINK ABOUT IS IS DURING THE DEPOSITION OF YOU HAD INDICTED
5 AS FAR AS IDENTIFY AND ESTABLISH THE RELEVANCY AS FAR AS
6 IDENTIFICATION OF THE FOUR BULLETS THAT DR. PROCTOR REMOVED
7 FROM ISAAC COX'S BODY ON OCTOBER 4, 1997, AND THEY WERE IN
8 FIVE PLASTIC CONTAINERS -- NO, EXCUSE ME, THEY WERE IN FOUR
9 PLASTIC CONTAINERS AND I ASKED DR. PROCTOR, "CAN YOU
10 IDENTIFY THEM?" HE WAS ABLE TO IDENTIFY THEM AND HE WAS
11 ABLE TO TESTIFY REGARDING EACH BULLET HE REMOVED FROM A
12 GUNSHOT WOUND THAT IT WAS IN THE SAME -- IN SUBSTANTIALLY
13 THE SAME CONDITION ON OCTOBER 4TH, 1997. HE TESTIFIED THAT
14 HE TURNED THE BULLETS THAT WERE PLACED IN PLASTIC
15 CONTAINERS OVER TO BILL TAYLOR OF THE CONWAY POLICE
16 DEPARTMENT. AT THIS TIME WE WOULD MOVE UNDER STATE V.
17 GLENN TO INTRODUCE THE FOUR BULLETS INTO EVIDENCE BECAUSE
18 THEY'RE NOT FUNGIBLE ITEMS. THEY'RE UNIQUE, READILY
19 IDENTIFIABLE AND THERE WAS NO ANALYSIS PERFORMED ON THEM IN
20 THE SENSE LIKE CHEMICAL ANALYSIS OR ANYTHING LIKE THAT.
21 THEY WERE SENT TO ---

22 THE COURT: IS DR. PROCTOR GOING TO TESTIFY?

23 MR. HUMPHRIES: YOUR HONOR, HE IS BY VIRTUE OF A
24 VIDEO DEPOSITION. THERE WAS A MOTION AT THAT TIME TO
25 INTRODUCE THEM. THERE WERE OBJECTIONS BY ALL COUNSEL. AND

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25

1 THE STATE IS MOVING TO INTRODUCE THEM AS TO EVIDENCE OF
2 MALICE. OBVIOUSLY, YOU CAN INFER MALICE WITH THE USE OF A
3 DEADLY WEAPON. THE EFFECT ON THE BODY ON ISAAC COX WOULD
4 SUPPORT THAT. WE ARE NOT MOVING THEM INTO EVIDENCE FOR
5 FUTURE TESTIMONY BASED ON SOME FUTURE EXAMINATION THAT SLED
6 MIGHT HAVE DONE. THEY ARE BEING INTRODUCED INTO EVIDENCE
7 THROUGH THIS DOCTOR WHO IDENTIFIES THEM. THEY ARE NON-
8 FUNGIBLE AND READILY IDENTIFIABLE.

9 THE COURT: AND HE'S THE PATHOLOGIST?

10 MR. HUMPHRIES: CORRECT. HE'S THE ONE WHO
11 REMOVED THEM AND PLACED THEM INTO PACKAGING AND MADE
12 MARKINGS ON THAT PACKAGING TO INDICATE WHERE HE TOOK THEM
13 FROM ON THE BODY.

14 THE COURT: LET ME FIND OUT WHAT THE OBJECTION
15 IS. DO YOU OBJECT TO THEM, MR. CHRISCO?

16 MR. CHRISCO: WELL, YOUR HONOR, I THINK WE'RE
17 TRYING TO PUT THE CART BEFORE A HORSE HERE. I THINK HIS
18 TESTIMONY SHOULD BE INTRODUCED INTO EVIDENCE BEFORE WE EVEN
19 ARGUE THIS POINT. BUT THE ORDER FOR THE VIDEOTAPING WAS
20 FOR THE TAPED TESTIMONY OF DR. PROCTOR. IT WASN'T TO TRY
21 TO GET AMMUNITION OR ANY EVIDENCE IN ---

22 THE COURT: I UNDERSTAND ALL THAT BUT TELL ME, IS
23 YOUR POSITION THAT YOU OBJECT AND IF SO, WHAT ARE THE
24 GROUNDS FOR YOUR OBJECTION?

25 MR. CHRISCO: YOUR HONOR ---

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26

1 THE COURT: IS IT THE IDENTIFICATION OF THEM? IS
2 IT THE RELEVANCE OF THEM? WHAT EXACTLY IS THE OBJECTION?

3 MR. CHRISCO: YOUR HONOR, DR. PROCTOR STATES IN
4 THERE THAT THEY ARE SUBSTANTIALLY THE SAME, TO THE BEST OF
5 HIS RECOLLECTION. YOUR HONOR, IT'S BEEN TWO AND A HALF
6 YEARS. HE'S SEEN A LOT OF BULLETS SINCE THEN. ALL WE'RE
7 DOING IS TRYING TO PROVE THE CHAIN; THAT THESE BULLETS WERE
8 PASSED UPON TO SLED. IF THEY WANT TO GET IT IN, THEY CAN
9 GET IT IN AFTER THE SLED AGENT TESTIFIES THAT HE EXAMINED
10 THEM.

11 THE COURT: SO YOUR OBJECTION IS THEN ON THE
12 CHAIN OF CUSTODY? I'M NOT SURE IF I -- I'M STILL ---

13 MR. CHRISCO: YES, YOUR HONOR, I THINK THE CHAIN
14 OF CUSTODY. IF YOU LOOK AT THESE BULLETS, THEY'RE VERY
15 DIFFERENT.

16 THE COURT: MR. MONCKTON, WHAT'S YOUR POSITION?

17 MR. MONCKTON: YOUR HONOR, NUMBER ONE, I THINK
18 WE'RE KIND OF GOING BEFORE WE EVEN ENTER THE VIDEO
19 DEPOSITION.

20 THE COURT: WELL, I AGREE, BUT GO AHEAD.

21 MR. MONCKTON: THAT'S MY FIRST OBJECTION. NUMBER
22 TWO, YOUR HONOR, I'D OBJECT THAT THE CHAIN OF CUSTODY HAS
23 NOT BEEN PROVEN. IN THE VIDEO DEPOSITION THESE BULLETS
24 WERE PLACED INTO A CONTAINER THAT HAD NUMEROUS MARKINGS ON
25 THEM. DR. PROCTOR COULD NOT IDENTIFY WHO PUT THE MARKINGS

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1 ON THE CONTAINERS. HE ASSUMED THEY MAY HAVE BEEN PUT ON
2 THERE FROM SLED OR SOMEBODY ELSE. SO I THINK WE NEED TO
3 HAVE SOMEBODY TESTIFY WHO PUT THESE OTHER IDENTIFICATION
4 MARKINGS ON THESE BULLETS BEFORE THEY CAME IN. THEY ALSO
5 WENT TO SLED AND WERE EXAMINED BY THE BALLISTICS OFFICER UP
6 THERE. NOW, I THINK WE NEED TO HAVE HIS TESTIMONY IN THE
7 RECORD THAT HE DID NOT DO ANY CHEMICAL ANALYSIS, THAT HE
8 DID NOT MESS WITH THEM, THAT HE DID NOT MANIPULATE THEM
9 BEFORE THEY CAN COME INTO EVIDENCE. I THINK WE NEED THE
10 CHAIN OF CUSTODY PROVEN HERE WHICH THE STATE HAS AND I
11 THINK TO ENTER THEM AT THIS POINT IS COMPLETELY PREMATURE.

12 THE COURT: I'M NOT GOING TO LET THEM IN AT THIS
13 POINT. I WAS JUST TRYING TO FIND OUT WHAT WE'RE TALKING
14 ABOUT HERE. I CAN'T DO THAT UNTIL I HAVE HEARD THE
15 TESTIMONY AND THE IDENTIFICATION OF THEM. SO I'LL RULE ON
16 THAT AT THE APPROPRIATE TIME AS TO WHETHER OR NOT THEY'RE
17 ADMISSIBLE. THOSE WILL BE -- WE WERE TALKING ABOUT
18 EXHIBITS A FEW MINUTES AGO. THOSE WOULD BE SOME OF THE
19 EXHIBITS THAT WILL BE MARKED WITH AN ID NUMBER AND I'LL
20 JUST HAVE TO RULE ON THEM.

21 MR. HUMPHRIES: THEY ARE AT THIS TIME, JUDGE.
22 THEY ARE ALREADY MARKED WITH AN ID NUMBER.

23 MR. MONCKTON: THAT'S MY ARGUMENT, YOUR HONOR.

24 THE COURT: OKAY.

25 MR. HUMPHRIES: THANK YOU, JUDGE.

PRE-TRIAL HEARING

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1 THE COURT: ALL RIGHT. ANYTHING ELSE THAT YOU
2 THINK WE NEED TO APPROACH OR NEED TO RESOLVE? I THINK WE
3 ARE READY TO GO FORWARD WHENEVER THE JURY GETS HERE. JUDGE
4 WESTBROOK HAD HAD THEM NOT COMING BACK BEFORE 11 O'CLOCK SO
5 WE'VE GOT A LITTLE BIT BEFORE THEY COME BACK AND THEN WE'LL
6 START WITH THEM AS SOON AS WE HAVE ALL THE JURORS BACK IN.
7 BUT DOES ANYBODY KNOW OF ANY REASON THAT THE JURY SHOULD
8 NOT BE SWORN WHEN WE GET STARTED? ANY MOTIONS WHATSOEVER
9 ON BEHALF OF THE DEFENSE BEFORE WE SWEAR THE JURY THAT
10 WOULD IMPACT THE MATTER?

11 MR. MONCKTON: THE DEFENSE IS READY TO GO AGAIN,
12 YOUR HONOR.

13 THE COURT: ALL RIGHT.

14 MR. CHRISCO: WE'RE READY, YOUR HONOR.

15 THE COURT: ALL RIGHT, WE'LL PROCEED AT 11
16 O'CLOCK. WE'LL BE IN RECESS UNTIL THEN.

17 (WHEREUPON, THE COURT WAS IN RECESS.)

18 THE COURT: MR. HUMPHRIES, THE MATTER HAS BEEN
19 CALLED BY THE STATE. IT IS THE STATE OF SOUTH CAROLINA
20 VERSUS CORTREAL SWINTON AND DERRICK HOLLINGSWORTH. I
21 UNDERSTAND THAT THE JURY IS HERE AND IN THE JURY ROOM.
22 ANYTHING BEFORE WE BRING THE JURY IN AND PROCEED?

23 MR. HUMPHRIES: NOTHING FROM THE STATE, YOUR
24 HONOR.

25 THE COURT: ALL RIGHT. MR. CHRISCO, ON BEHALF OF

PRE-TRIAL HEARING

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1 THE DEFENDANT?

2 MR. CHRISCO: NOTHING FROM DEFENDANT SWINTON,
3 YOUR HONOR.

4 THE COURT: MR. MONCKTON?

5 MR. MONCKTON: NO, SIR, YOUR HONOR.

6 THE COURT: ALL RIGHT. BRING THE JURY IN,
7 PLEASE.

8 (WHEREUPON, THE JURY ENTERED THE COURTROOM AND
9 THE FOLLOWING PROCEEDINGS WERE HAD.)

10 THE COURT: GOOD MORNING, LADIES AND GENTLEMEN,
11 AND THANK YOU FOR YOUR PROMPTNESS IN BEING BACK HERE THIS
12 MORNING. I HAVE NOT HAD AN OPPORTUNITY TO MEET YOU. MY
13 NAME IS HOWARD KING AND I AM A RESIDENT JUDGE OF THE THIRD
14 JUDICIAL CIRCUIT, WHICH IS COMPRISED OF SUMTER, LEE,
15 CLARENDON AND WILLIAMSBURG COUNTIES. I HAVE BEEN ASSIGNED
16 IN THE 15TH CIRCUIT, WHICH IS HORRY, GEORGETOWN COUNTIES
17 SINCE THE FIRST OF JUNE -- I MEAN, THE FIRST OF JANUARY AND
18 WILL BE HERE UNTIL JUNE THE 3RD. I HAD OTHER DUTIES THAT I
19 HAD TO TEND TO YESTERDAY SO WAS NOT ABLE TO BE HERE FOR
20 JURY QUALIFICATION AND JURY SELECTION, WHICH WAS HANDLED BY
21 JUDGE WESTBROOK, BUT THIS MATTER WAS ASSIGNED TO ME TO TRY
22 AND SO THAT'S WHY HE HANDLED THE JURY SELECTION YESTERDAY
23 AND THEN I WAS ABLE TO BE HERE THIS MORNING AND TEND TO THE
24 MATTERS THAT I NEEDED TO TEND TO IN PRETRIAL AND WE ARE NOW
25 READY TO BEGIN THE TRIAL OF THIS CASE. IN THAT CONNECTION,

CALL OF CASE

30

1 SINCE I WAS NOT HERE FOR JURY SELECTION AND DON'T KNOW
2 WHO'S WHO ON THIS JURY, MR. PHILLIP WEHRUNG; IS THAT
3 CORRECT? ALL RIGHT, MR. WEHRUNG, I'M GOING TO ASK IF Y'ALL
4 COME DOWN AND TAKE THE FOREMAN'S SEAT FOR ME AND SERVE AS
5 THE FOREMAN OF THIS JURY AND IF YOU'LL JUST CHANGE PLACES
6 WITH HIM AND GO RIGHT BACK UP THERE. ALL RIGHT, MADAME
7 CLERK, YOU MAY SWEAR THE JURY.

8 (WHEREUPON, THE JURY WAS SWORN.)

9 THE COURT: ALL RIGHT, MR. FOREMAN AND LADIES AND
10 GENTLEMEN OF THE JURY, BEFORE WE BEGIN THE ACTUAL TRIAL OF
11 THIS CASE I THOUGHT IT MIGHT BE HELPFUL IF I EXPLAIN TO YOU
12 BASICALLY HOW A TRIAL PROCEEDS. FIRST OF ALL, THIS IS THE
13 CASE OF THE STATE OF SOUTH CAROLINA VERSUS CORTREAL LAMONT
14 SWINTON AND DERRICK MARCEL HOLLINGSWORTH WHO ARE CHARGED
15 WITH THE INDICTMENT FROM THE GRAND JURY WITH THE CRIME OF
16 MURDER. I WILL SPEAK MORE TO THAT IN JUST A FEW MINUTES.
17 BUT I WILL TELL YOU THAT THE TRIAL STARTS BY THE STATE
18 MAKING AN OPENING STATEMENT. AN OPENING STATEMENT IS NOT
19 EVIDENCE. IT IS SIMPLY AN OUTLINE TO HELP YOU UNDERSTAND
20 WHAT THE STATE EXPECTS THE EVIDENCE WILL SHOW. THE
21 DEFENDANT MAY OR THE DEFENDANTS MAY, IF THEY WISH TO,
22 PRESENT AN OPENING STATEMENT BUT THEY DON'T HAVE TO FOR
23 REASONS THAT I WILL EXPLAIN TO YOU LATER. FOLLOWING THE
24 OPENING STATEMENT YOU WILL HEAR THE TESTIMONY AND EVIDENCE
25 IN THIS CASE. THIS WILL CONSIST OF TESTIMONY FROM THE

CALL OF CASE

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1 STATE'S WITNESSES AS WELL AS ANY PHYSICAL EXHIBITS WHICH
2 MAY BE INTRODUCED INTO EVIDENCE. AND I WILL TELL YOU RIGHT
3 NOW THAT IF THERE ARE -- AND I EXPECT THAT THERE WILL BE --
4 SOME PHYSICAL EXHIBITS INTRODUCED INTO EVIDENCE, I WILL
5 TELL YOU RIGHT NOW THAT THE LAWYERS HAVE THE RIGHT TO PASS
6 THOSE AROUND TO YOU WHILE YOU ARE IN THE COURTROOM AND IN
7 THE JURY BOX. BUT DON'T WORRY ABOUT IT IF YOU DON'T HAVE
8 TIME TO LOOK AT THEM FOR AS LONG AS YOU MIGHT WANT TO WHILE
9 YOU'RE SITTING THERE IN THE JURY BOX. MANY EXHIBITS THAT
10 ARE INTRODUCED INTO EVIDENCE CAN BE TAKEN WITH YOU AND WILL
11 BE SENT WITH YOU TO THE JURY ROOM WHEN YOU RETIRE TO
12 DELIBERATE YOUR VERDICT IN THIS CASE AND YOU WILL HAVE
13 AMPLE OPPORTUNITY TO LOOK AT THEM FOR AS LONG AS YOU
14 DESIRE. FOLLOWING THE COMPLETION OF THE TESTIMONY, THE
15 ATTORNEYS WILL AGAIN HAVE THE OPPORTUNITY TO MAKE WHAT IS
16 CALLED A CLOSING STATEMENT OR SUMMATION TO YOU. THIS IS AN
17 OPPORTUNITY FOR THE ATTORNEYS TO SUMMARIZE THE CASE FROM
18 THEIR RESPECTIVE POINTS OF VIEW. AGAIN, THESE ARGUMENTS
19 ARE NOT EVIDENCE. FOLLOWING THE CLOSING STATEMENTS BY THE
20 ATTORNEYS I WILL INSTRUCT YOU ON THE LAW OF SOUTH CAROLINA
21 AS IT PERTAINS TO THE ISSUES THAT HAVE ARISEN IN THIS CASE.
22 WHEN I HAVE COMPLETED MY INSTRUCTIONS TO YOU, YOU WILL BE
23 PERMITTED TO BEGIN YOUR DELIBERATIONS IN ORDER TO REACH A
24 VERDICT.

25 NOW, LADIES AND GENTLEMEN, YOU'RE NOW THE JURY IN

CALL OF CASE

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1 EQUAL WEIGHT TO BOTH BUT IT IS FOR YOU TO DECIDE HOW MUCH
2 WEIGHT TO GIVE TO ANY OF THE EVIDENCE IN THIS CASE.

3 THERE ARE RULES OF EVIDENCE WHICH CONTROL WHAT
4 CAN BE RECEIVED INTO COURT. WHEN A LAWYER ASKS A QUESTION
5 OR OFFERS AN EXHIBIT INTO EVIDENCE AND THE LAWYER ON THE
6 OTHER SIDE THINKS THAT IT IS NOT PERMITTED BY THE RULES,
7 THE LAWYER MAY OBJECT. IF I OVERRULE THE OBJECTION, THE
8 QUESTION MAY BE ANSWERED OR THE EXHIBIT MAY BE RECEIVED.
9 IF I SUSTAIN THE OBJECTION, THE QUESTION CANNOT BE ANSWERED
10 AND THE EXHIBIT CANNOT BE RECEIVED. WHENEVER I SUSTAIN AN
11 OBJECTION TO A QUESTION OR DENY A MOTION TO ADMIT AN
12 EXHIBIT INTO EVIDENCE, YOU MUST IGNORE THE QUESTION OR THE
13 EXISTENCE OF THE EXHIBIT AND YOU MUST NOT GUESS WHAT THE
14 ANSWER WOULD HAVE BEEN OR WHAT THE EXHIBIT WOULD HAVE
15 SHOWN. SOMETIMES IT MAY BE NECESSARY FOR ME TO REQUEST
16 THAT YOU LEAVE THE COURTROOM WHILE I DISCUSS WITH THE
17 ATTORNEYS LEGAL ISSUES THAT COME UP DURING THE TRIAL. IF
18 THIS OCCURS, YOU SHOULD NOT SPECULATE ABOUT OUR DISCUSSIONS
19 OR THE REASONS THAT YOU WERE ASKED TO LEAVE THE ROOM. THIS
20 IS SIMPLY A PROCEDURE THAT THE LAW REQUIRES WHEN CERTAIN
21 LEGAL ISSUES ARISE. THERE ALSO MAY BE OCCASIONS WHEN I ASK
22 THE ATTORNEYS TO APPROACH THE BENCH SO THAT I CAN DISCUSS A
23 LEGAL ISSUE WITH THEM IN PRIVATE. I WILL DO THIS AS OFTEN
24 AS POSSIBLE SO YOU WILL NOT BE REQUIRED TO LEAVE THE
25 COURTROOM MORE THAN IS ABSOLUTELY NECESSARY. AGAIN, IF I

CALL OF CASE

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1 ASK THE ATTORNEYS TO STEP UP TO THE BENCH, PLEASE DON'T
2 THINK THAT ANYBODY IS TRYING TO HIDE ANYTHING FROM YOU OR
3 TO KEEP ANY EVIDENCE FROM YOU. THIS IS SIMPLY A PROCEDURE
4 USED BY ALL LAWYERS AND ALL COURTS TO DETERMINE AND DECIDE
5 LEGAL QUESTIONS.

6 IN DECIDING THE FACTS OF THIS CASE YOU MAY HAVE
7 TO DECIDE WHICH WITNESSES TO BELIEVE AND WHICH WITNESSES
8 NOT TO BELIEVE. YOU MAY BELIEVE EVERYTHING A WITNESS SAYS
9 OR PART OF IT OR NONE OF IT. IN DECIDING WHAT TO BELIEVE,
10 YOU MAY CONSIDER A NUMBER OF FACTORS, INCLUDING THE
11 FOLLOWING: THE WITNESS' ABILITY TO SEE OR HEAR OR KNOW THE
12 THINGS THE WITNESS TESTIFIED TO; THE QUALITY OF THE
13 WITNESS' MEMORY; THE WITNESS' MANNER OR DEMEANOR WHILE
14 TESTIFYING; WHETHER THE WITNESS HAS AN INTEREST IN THE
15 OUTCOME OF THE CASE OR ANY MOTIVE, BIAS OR PREJUDICE;
16 WHETHER THE WITNESS WAS CONTRADICTED BY ANYTHING THE
17 WITNESS SAID OR WROTE BEFORE THE TRIAL OR BY ANY OTHER
18 EVIDENCE. AND HOW REASONABLE WAS THE WITNESS' TESTIMONY
19 WHEN CONSIDERED IN THE LIGHT OF THE OTHER EVIDENCE WHICH
20 YOU DO BELIEVE.

21 NOW, JUST A FEW WORDS TO YOU ABOUT YOUR CONDUCT
22 AS JURORS. FIRST, DO NOT TALK TO EACH OTHER ABOUT THIS
23 CASE OR ABOUT ANYONE WHO HAS ANYTHING TO DO WITH IT UNTIL
24 THE END OF THE CASE WHEN YOU GO TO THE JURY ROOM TO DECIDE
25 YOUR VERDICT. DO NOT TALK WITH ANYONE ELSE ABOUT THE CASE

CALL OF CASE

36

1 OR ANYBODY THAT HAS ANYTHING TO DO WITH IT UNTIL THE TRIAL
2 HAS ENDED FOLLOWING YOUR VERDICT AND YOU HAVE BEEN
3 DISCHARGED AS JURORS. THIS MEANS DO NOT DISCUSS THE CASE
4 WITH MEMBERS OF YOUR FAMILY OR FRIENDS OR ANYONE ELSE. YOU
5 CAN TELL THEM THAT YOU'RE A JUROR BUT DON'T TELL THEM
6 ANYTHING ABOUT THE CASE UNTIL YOU HAVE BEEN DISCHARGED BY
7 ME. THE REASON FOR THIS IS PRETTY APPARENT. YOU'VE GOT TO
8 DECIDE THIS CASE BASED UPON WHAT YOU HEAR IN THIS COURTROOM
9 AND NOT BASED UPON WHAT ANYBODY ELSE MIGHT SAY ABOUT IT.
10 THIRD, DO NOT LET ANYONE TALK TO YOU ABOUT THE CASE OR
11 ABOUT ANYONE WHO HAS ANYTHING TO DO WITH IT. IF ANYONE
12 SHOULD TRY TO TALK WITH YOU, PLEASE GET THEIR NAME AND
13 THEIR DESCRIPTIONS, REPORT IT TO THE BAILIFF OR TO THE
14 CLERK AND I WILL DEAL WITH THEM. FOURTH, DO NOT READ ANY
15 NEWS STORIES OR ARTICLES OR LISTEN TO ANY RADIO OR
16 TELEVISION REPORTS ABOUT THE CASE. THIS IS A CASE THAT WE
17 WILL VERY LIKELY HAVE SOME MEDIA COVERAGE IN THE FORM OF
18 POSSIBLY NEWSPAPER OR TELEVISION AND I WILL TELL YOU THAT
19 IF ANYTHING IS IN THE MEDIA OR ON TELEVISION ABOUT THIS
20 CASE, YOU SHOULD TURN IT OFF AND NOT LISTEN TO IT BECAUSE
21 YOU'VE GOT TO DECIDE THE CASE BASED UPON THE EVIDENCE THAT
22 YOU HEAR IN THIS COURTROOM AND NOT ON THE BASIS OF ANYTHING
23 THAT YOU MIGHT READ OR HEAR THROUGH THE NEWS MEDIA.
24 YOU'RE NOT TO CONSIDER AS EVIDENCE ANYTHING YOU
25 MAY SEE OR HEAR WHEN COURT IS IN SESSION -- WHEN COURT IS

CALL OF CASE

37

1 NOT IN SESSION, EVEN IF WHAT YOU SEE OR HEAR IS DONE OR
2 SAID BY ONE OF THE PARTIES OR ONE OF THE WITNESSES. DO NOT
3 DO ANY RESEARCH SUCH AS CONSULTING DICTIONARIES OR OTHER
4 REFERENCE MATERIALS AND DO NOT MAKE ANY INVESTIGATION ABOUT
5 THE CASE ON YOUR OWN. IF YOU NEED TO COMMUNICATE WITH ME,
6 THE BAILIFF CAN SIMPLY GIVE A SIGNED NOTE - I MEAN, THE
7 FOREMAN CAN SIMPLY GIVE A SIGNED NOTE TO THE BAILIFF AND HE
8 WILL GIVE IT TO ME AND I WILL TRY TO RESOLVE WHATEVER
9 PROBLEM IT IS THAT YOU HAVE.

10 AND FINALLY -- AND PROBABLY THE MOST IMPORTANT --
11 DO NOT MAKE UP YOUR MIND ABOUT WHAT YOUR VERDICT SHOULD BE
12 UNTIL YOU HAVE HEARD ALL OF THE TESTIMONY AND EVIDENCE IN
13 THIS CASE AND THE CHARGE ON THE LAW BY THE COURT. YOU WILL
14 BE INSTRUCTED WHEN TO BEGIN YOUR DELIBERATIONS BY EITHER ME
15 OR THE BAILIFF.

16 NOW, JUST TWO OR THREE HOUSEKEEPING MATTERS. THE
17 ONLY SEATS IN THE JURY BOX WHICH ARE RESERVED ARE THE SEAT
18 WHERE THE FOREMAN IS SITTING AND THE TWO SEATS ON THE
19 OUTSIDE OF THE JURY BOX WHERE THE ALTERNATES ARE SITTING.
20 THEY SHOULD ALWAYS SIT IN THOSE SEATS WHEN THEY COME OR GO
21 FROM THE COURTROOM. IT DOES NOT MATTER WHAT ORDER YOU COME
22 AND GO FROM THE COURTROOM WHEN YOU'RE IN THE JURY ROOM AND
23 YOU COME IN. YOU CAN COME IN ANY ORDER. I WOULD SIMPLY
24 ASK THAT YOU GO ALL THE WAY DOWN SO THAT IT WOULDN'T BE A
25 SITUATION OF FALLING OVER ONE ANOTHER, RESERVING FOR THE

CALL OF CASE

38

1 FOREMAN THE SEAT RIGHT HERE ON THE END AND THE TWO SEATS ON
2 THE OUTSIDE FOR THE TWO ALTERNATES. SECONDLY, SOMETIMES
3 JURORS ASK ME ABOUT TAKING NOTES. IT'S NORMALLY MY POLICY
4 NOT TO ALLOW JURORS TO TAKE NOTES FOR TWO REASONS. ONE IS
5 THAT SOMETIMES WHEN YOU'RE TAKING A NOTE, YOU'RE GOING TO
6 MISS SOMETHING THAT IS MORE IMPORTANT THAN THE MATTER ABOUT
7 WHICH YOU WERE TAKING THE NOTE AND THAT SHOULDN'T BE;
8 WHEREAS, IF YOU WERE PAYING ATTENTION TO THE TESTIMONY, YOU
9 WOULDN'T HAVE MISSED THAT MATTER. BUT SECONDLY AND
10 PROBABLY MORE IMPORTANT IS THAT IF YOU HAVE TWO OR THREE
11 JURORS WHO ARE TAKING NOTES, THE OTHER JURORS MIGHT PUT
12 MORE EMPHASIS ON THEIR RECOLLECTION OF THE TESTIMONY THAN
13 THE RECOLLECTION OF THE -- THEIR OWN RECOLLECTION OF THE
14 TESTIMONY AND THAT SHOULD NOT BE. EVERYBODY SHOULD HAVE AN
15 EQUAL VOICE IN THE JURY ROOM. AND, FINALLY, I WILL TELL
16 YOU THAT -- AND I DIDN'T LEARN THIS UNTIL ABOUT THREE YEARS
17 AGO WHEN MY DAUGHTER WAS SERVING ON A JURY IN ANOTHER
18 STATE. I DO NOT MIND IF YOU BRING YOUR WATER OR YOUR
19 COFFEE OR YOUR SOFT DRINK BACK INTO THE COURTROOM WITH YOU.
20 THE CLERKS DON'T LIKE FOR ME TO SAY THIS BECAUSE THEY'RE
21 CHARGED WITH THE MAINTENANCE OF THE COURTROOM AND THEY'RE
22 ALWAYS WORRIED ABOUT SPILLS BUT, AS MY DAUGHTER SAID, SHE
23 WAS SITTING ON A JURY AND THE JUDGE HAS GOT WATER ON HIS
24 DESK AND THE LAWYERS HAVE GOT WATER ON THEIR DESKS AND THE
25 JURY WAS SITTING OVER THERE PARCHED AS THEY COULD BE AND

OPENING STATEMENT BY MR. BELLAMY

39

1 COULDN'T GET ANYTHING TO DRINK. SO I DON'T HAVE ANY
2 OBJECTION IF YOU BRING YOUR WATER OR YOUR SOFT DRINKS OR
3 YOUR COFFEE BACK INTO THE COURTROOM WITH YOU ANYTIME THAT
4 YOU ARE EXCUSED.

5 ARE THERE ANY OBJECTIONS TO MY OPENING REMARKS ON
6 BEHALF OF THE STATE, MR. BELLAMY?

7 MR. BELLAMY: NONE FROM THE STATE, YOUR HONOR.

8 THE COURT: MR. CHRISCO?

9 MR. CHRISCO: I HAVE NONE, YOUR HONOR.

10 THE COURT: MR. MONCKTON?

11 MR. MONCKTON: NO, SIR, YOUR HONOR.

12 THE COURT: ALL RIGHT, LADIES AND GENTLEMEN, THE
13 FIRST THING THAT WE WILL DO IS YOU WILL HEAR OPENING
14 STATEMENTS AT THIS TIME AND AFTER THE OPENING STATEMENTS
15 HAVE BEEN MADE WE WILL GO INTO THE TRIAL OF THE MATTER.
16 THE COURT RECOGNIZES MR. BELLAMY ON BEHALF OF THE STATE.

17 MR. BELLAMY: MAY IT PLEASE THE COURT, YOUR
18 HONOR.

19 THE COURT: YES, SIR.

20 MR. BELLAMY: LADIES AND GENTLEMEN OF THE JURY,
21 ON OCTOBER 4, 1997, WITHOUT HESITATION, WITHOUT CONCERN OF
22 ANYBODY WATCHING, THESE TWO DEFENDANTS, CORTREAL SWINTON
23 AND DERRICK HOLLINGSWORTH, SHOT ISAAC COX NOT ONCE, NOT
24 TWICE BUT FOUR TIMES RESULTING IN GUNSHOT WOUNDS IN THE
25 LEFT SIDE OF HIS CHEST, TO HIS RIGHT UPPER SHOULDER, THE

OPENING STATEMENT BY MR. BELLAMY

40

1 RIGHT SIDE OF HIS NECK AND TO THE RIGHT SIDE OF HIS HEAD.
2 THE GUNSHOT WOUND TO THE RIGHT SIDE OF HIS HEAD WAS A
3 CONTACT SHOT. THE GUN WAS HELD IN CLOSE PROXIMITY TO HIS
4 HEAD WHEN THE TRIGGER WAS PULLED, CAUSING IRREPARABLE HARM
5 AND DAMAGE TO HIS BRAIN AS THE PROJECTILE AND FRAGMENTS
6 PASSED FROM THE RIGHT TO THE LEFT HEMISPHERE OF HIS BRAIN.
7 AT THE POINT IN TIME THAT ISAAC COX WAS SHOT HE WAS HOLDING
8 A BAG OF CHIPS AND A BOTTLE OLD ENGLISH BEER IN A PUBLIC
9 INTERSECTION SURROUNDED BY STREET LIGHTS. LADIES AND
10 GENTLEMEN OF THE JURY, ISAAC COX WAS 21 YEARS OLD AT THE
11 TIME OF HIS DEATH. HE WAS A LIFELONG RESIDENT OF CONWAY.
12 HE ATTENDED CONWAY HIGH SCHOOL WHERE HE EXCELLED IN THE
13 SPORTS OF FOOTBALL AND WRESTLING. ON OCTOBER 3RD, 1997,
14 ISAAC COX HAD JUST GOTTEN OFF WORK. SOMETIME THEREAFTER HE
15 ARRIVED AT THE RESIDENCE OF JENNIFER GRAHAM, WHO WAS HAVING
16 A COOKOUT. WHILE AT JENNIFER GRAHAM'S RESIDENCE, HE COMES
17 IN CONTACT WITH HIS BROTHER, TONY COX, FREDERICK MCDONALD,
18 HIS COUSIN, FREDERICK MCDONALD'S GIRLFRIEND, SHAUN
19 MITCHELL, VALERIE COX. AT SOME POINT IN TIME THIS GROUP
20 CATCHES A CAB EXXON EXPRESS STOP FOR THE PURPOSE OF
21 PURCHASING FOOD AND BEVERAGES. THEY ARRIVED SOMETIME
22 AROUND 1:50 IN THE MORNING. ABOUT TEN MINUTES LATER
23 FREDERICK MCDONALD AND ISAAC COX WERE STANDING OUTSIDE THE
24 EXXON EXPRESS STOP, WHICH IS LOCATED ON 501 AND RACEPATH
25 AVENUE. THEY NOTICE THE DEFENDANT DERRICK HOLLINGSWORTH,

OPENING STATEMENT BY MR. BELLAMY

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1 WHO'S WEARING ALL BLACK, APPROACHING THEM ON A BICYCLE.
2 DEFENDANT DERRICK HOLLINGSWORTH CIRCLES AROUND THE EXXON
3 EXPRESS STOP TWO TIMES. EACH TIME HE CIRCLES AROUND THE
4 EXXON EXPRESS STOP HE PASSES CLOSE BY WHERE ISAAC COX IS
5 STANDING AND THEN HE RIDES HIS BIKE OFF TOWARDS 378. ISAAC
6 COX BECOMES IMPATIENT WAITING ON OTHER MEMBERS OF THE GROUP
7 TO PURCHASE THE FOOD. HE BEGINS TO WALK UP 378 -- EXCUSE
8 ME. HE BEGINS TO WALK UP RACEPATH AVENUE TOWARDS THE
9 INTERSECTION OF 378 AND RACEPATH. AS HE REACHES THE
10 INTERSECTION, HE IS APPROACHED BY INDIVIDUALS DRESSED IN
11 BLACK RIDING BICYCLES. THEY STOP AND GET OFF THEIR
12 BICYCLES. THEY APPROACH HIM. THEY QUICKLY SURROUND HIM
13 AND THEY BEGAN TO TAUNT AND ARGUE WITH HIM. AT SOME POINT
14 IN TIME DERRICK HOLLINGSWORTH AND CORTREAL SWINTON PULLED
15 OUT PISTOLS AND BEGAN TO SHOOT ISAAC COX. THEY CONTINUED
16 TO SHOOT ISAAC COX AS HE IS LAYING FACE DOWN IN THE ROAD.
17 THEY DISAPPEAR INTO THE NIGHT AND LEAVE ISAAC COX LAYING
18 FACE DOWN IN THE ROAD.

19 LADIES AND GENTLEMEN, AS WE PRESENT OUR CASE,
20 YOU'RE GOING TO HEAR FROM EYEWITNESSES AND EYEWITNESSES
21 WILL TELL YOU THEY SAW THESE TWO DEFENDANTS, DERRICK
22 HOLLINGSWORTH AND CORTREAL SWINTON, SHOOT ISAAC COX
23 REPEATEDLY. WE'LL HEAR FROM DR. PROCTOR, THE FORENSIC
24 PATHOLOGIST IN THE CASE, WHO PERFORMED AN AUTOPSY ON THE
25 BODY OF ISAAC COX ON OCTOBER 4TH, 1997. DR. PROCTOR WILL

OPENING STATEMENT BY MR. BELLAMY

42

1 TESTIFY THAT HE REMOVED FOUR PROJECTILES FROM THE BODY OF
2 ISAAC COX. DR. PROCTOR WILL TESTIFY AS AN EXPERT IN THE
3 FIELD OF FORENSIC PATHOLOGY THAT THE CAUSE OF DEATH WAS
4 FROM THE MULTIPLE GUNSHOT WOUNDS AND THAT THE MANNER OF
5 DEATH WAS HOMICIDE. YOU'LL HEAR FROM OFFICERS OF THE
6 CONWAY POLICE DEPARTMENT WHO SECURED THE CRIME SCENE AND
7 COLLECTED EVIDENCE AND PROVIDED MEDICAL ASSISTANCE FOR
8 ISAAC COX. LADIES AND GENTLEMEN, THE ISSUE IN THIS CASE I
9 THINK WE CAN AGREE ONCE YOU LISTEN TO THE TESTIMONY, IS A
10 QUESTION OF CREDIBILITY, THE CREDIBILITY OF THE PEOPLE WHO
11 KNOW THESE DEFENDANTS AS FAR AS WHO THEY RECOGNIZED. AS
12 YOU LISTEN TO THE TESTIMONY OF THE EYEWITNESSES AND OTHER
13 WITNESSES, THEY'LL BEGIN TO PAINT A CLEAR AND VIVID PICTURE
14 OF HOW THESE TWO DEFENDANTS, DERRICK HOLLINGSWORTH AND
15 CORTREAL SWINTON, ASSAULTED AND REPEATEDLY SHOT ISAAC COX
16 WHO WAS STANDING BY HIMSELF UNARMED.

17 AFTER ALL THE EVIDENCE HAS BEEN PRESENTED AND
18 JUDGE KING, WHO IS THE SOLE JUDGE OF THE LAW, HAS CHARGED
19 YOU THE LAW, I AND MR. HUMPHRIES WILL ASK YOU, THE SOLE
20 JUDGE OF THE FACTS, TO RETURN A VERDICT AND FIND THE
21 DEFENDANT CORTREAL SWINTON GUILTY OF THE MURDER OF ISAAC
22 COX ON OCTOBER 4, 1997, AND FIND DEFENDANT DERRICK
23 HOLLINGSWORTH GUILTY OF THE MURDER OF ISAAC COX ON OCTOBER
24 4, 1997. THANK YOU.

25 THE COURT: MR. CHRISCO OR MR. MONCKTON?

OPENING STATEMENT BY MR. CHRISCO

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1 MR. CHRISCO: MY NAME IS ED CHRISCO. I'M A
2 SENIOR TRIAL ATTORNEY FOR THE OFFICE OF THE PUBLIC
3 DEFENDER. I REPRESENT CORTREAL SWINTON SITTING RIGHT HERE
4 BESIDE ME. THE JUDGE HAS GIVEN US SOME PRETTY GOOD
5 INSTRUCTIONS. HE TOLD YOU WITNESSES WILL BE TAKING THE
6 STAND AND HOW DO YOU JUDGE THEIR CREDIBILITY. THAT'S
7 BASICALLY WHAT I'M GOING TO ASK YOU TO DO. WHEN YOU WERE
8 PICKED YESTERDAY YOU BROUGHT ONE THING TO THE COURTHOUSE
9 AND AGAIN THIS MORNING WHEN YOU BROUGHT IT BACK. I WANT
10 YOU TO LISTEN TO THE WITNESSES, WHAT THEY SAY, WHAT THEY
11 DIDN'T SAY, HOW THEY SAID IT, WHY THEY SAID IT. THAT'S
12 WHAT I WANT YOU TO LISTEN TO. I THINK THAT AFTER YOU HEAR
13 FROM THE WITNESSES YOU'LL GET A LITTLE BIT DIFFERENT
14 PICTURE OF THINGS IN YOUR HEAD. THAT'S ALL I ASK YOU TO DO
15 IS LISTEN AND PAY ATTENTION. PAY ATTENTION AND I'LL BE
16 BACK LATER TO TALK TO YOU AFTER YOU HEAR FROM THE
17 WITNESSES. THANK YOU.

18 THE COURT: MR. MONCKTON:

19 MR. MONCKTON: MAY IT PLEASE THE COURT, YOUR
20 HONOR.

21 THE COURT: YES, SIR.

22 MR. MONCKTON: MR. CHRISCO, MR. HUMPHRIES AND MR.
23 BELLAMY. NOBODY IS GOING TO DISPUTE TODAY THAT ON OCTOBER
24 4TH, 1997, ISAAC COX WAS SHOT. NOBODY IS GOING TO DISPUTE
25 THAT HIS MOTHER, WHO IS SITTING IN THE FRONT ROW BACK

OPENING STATEMENT BY MR. CHRISCO

44

1 THERE, LOST HER CHILD. AND NOTHING THAT WE DO TODAY IS
2 GOING TO BRING THAT CHILD BACK. WE ARE GOING TO DISPUTE
3 THE FACT THAT DERRICK HOLLINGSWORTH AND CORTREAL SWINTON
4 PARTICIPATED IN THIS CASE. IF IT WAS AS EASY AS HOWELL
5 BELLAMY, THE SOLICITOR, SAID IT WAS, WE WOULDN'T BE HERE
6 TODAY. I'M NOT GOING TO WASTE YOUR TIME. THIS EVENT TOOK
7 PLACE ON 378 AND RACEPATH AT APPROXIMATELY 2:25 IN THE
8 MORNING ON A DARK STREET. I'M GOING TO SHOW YOU PICTURES
9 OF THAT EVENING. I'M GOING TO SHOW YOU WHERE THE WITNESSES
10 WERE STANDING. I'M GOING TO SHOW YOU NUMEROUS STATEMENTS
11 THAT THE WITNESSES HAVE MADE AND WHETHER OR NOT THEY'VE
12 CHANGED AND WHY THEY'VE CHANGED. THIS CASE HAPPENED
13 OCTOBER 4TH, 1997. IT'S NOW APRIL 11TH OF THE YEAR 2000.
14 AS WE GO THROUGH THESE WITNESSES AND YOU HEAR THEIR
15 TESTIMONY, MR. CHRISCO WAS RIGHT, YOU BROUGHT COMMON SENSE.
16 WHY WOULD THINGS CHANGE? WHY DOES TESTIMONY ABOUT AN EVENT
17 THAT TOOK PLACE ON OCTOBER THE 4TH, 1997, GET BETTER. A
18 PERSON MOVES CLOSER TO THE CRIME SCENE THE CLOSER THE CASE
19 COMES TO TRIAL. THAT'S ONE THING I WANT YOU TO KEEP IN
20 MIND.

21 I INTRODUCED MYSELF THE OTHER DAY. MY NAME IS
22 BILLY MONCKTON. I PRACTICE OVER IN MYRTLE BEACH AND SEATED
23 WITH ME TODAY IS MY PARALEGAL, DANA SHULER. AND, DERRICK,
24 STAND UP. THAT'S DERRICK HOLLINGSWORTH. THAT'S MY CLIENT.
25 YOU CAN SIT DOWN, DERRICK. HE'S PLED NOT GUILTY BECAUSE HE

OPENING STATEMENT BY MR. MONCKTON

45

1 WAS NOT INVOLVED IN THIS CRIME. I'M GOING TO WALK YOU ALL
2 THROUGH THIS CASE. I'M GOING TO SHOW YOU EVERYTHING THE
3 STATE MAY NOT WANT TO SHOW YOU. I'M GOING TO SHOW YOU ALL
4 KINDS OF STATEMENTS. I'M GOING TO SHOW YOU PICTURES. I'M
5 GOING TO TAKE YOU AS CLOSE TO THAT CRIME SCENE THAT NIGHT
6 AS I CAN POSSIBLY DO IN THIS COURTROOM. AND THERE'S A
7 REASON FOR THAT. BY ME DOING THAT IS THE ONLY WAY YOU CAN
8 SEE WHETHER OR NOT THESE WITNESSES COULD HAVE SEEN WHAT
9 THEY SAW. THAT'S REAL IMPORTANT. AS WE GO THROUGH THIS
10 TRIAL, I BET I'M THE ONLY PERSON THAT INTRODUCES NIGHTTIME
11 PHOTOS. THE CRIME OCCURRED AT 2:30 IN THE EVENING BUT I
12 THINK THE ONLY PHOTOS YOU'LL SEE FROM THE SOLICITOR'S
13 OFFICE ARE DAYTIME PHOTOS. NO REASON FOR THAT. AS MY
14 CLIENT SITS THERE PLEADING NOT GUILTY, THERE'S ANOTHER
15 THING I WANT YOU TO KEEP IN MIND. HE'S PRESUMED INNOCENT.
16 NOW, YOU'VE OBVIOUSLY HAD EXPERIENCES WITH TV ABOUT
17 REASONABLE DOUBT, WHAT THE PRESUMPTION OF INNOCENCE IS AND
18 THE CONSTITUTION BUT THERE'S A REAL SIMPLE WAY TO KEEP IN
19 MIND EXACTLY WHAT THE PRESUMPTION OF INNOCENCE IS. WHAT
20 YOU DO IS YOU TAKE YOUR SON, YOUR DAUGHTER, YOUR SPOUSE ---

21 MR. BELLAMY: OBJECTION.

22 THE COURT: YES, SIR, WHAT'S YOUR OBJECTION?

23 MR. BELLAMY: YOUR HONOR, IT'S A PERSONAL
24 REFERENCE TO THE JURY. IT'S IMPROPER.

25 THE COURT: ALL RIGHT. I DON'T THINK I CAN

OPENING STATEMENT BY MR. MONCKTON

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1 OVERRULE IT AT THIS POINT. : JUST PROCEED.

2 MR. MONCKTON: YES, SIR, YOUR HONOR. AND YOU
3 TAKE THAT FAMILY AND HOW YOU WOULD JUDGE THEM IF THEY WERE
4 ACCUSED OF A CRIME. YOU WOULD PRESUME THEM INNOCENT.
5 THAT'S THE EXACT SAME PRESUMPTION WITHOUT THE LEGAL
6 GOBBLEDYGOOK THAT YOU'LL HEAR IN HERE A LOT OF TIMES.
7 LAWYERS TEND TO TALK TOO MUCH. BUT IN THE SIMPLEST FORM
8 YOU TAKE A FAMILY MEMBER OR SPOUSE OR CHILD AND THAT'S THE
9 SAME PRESUMPTION OF INNOCENCE YOU'RE GOING TO GIVE MY
10 CLIENT, DERRICK. YOU TOOK THAT OATH. YOU CAN'T SAY, "I
11 DON'T WANT TO DO THAT." THAT'S THE OATH YOU TOOK AND
12 THAT'S REAL IMPORTANT. THAT'S HOW OUR COUNTRY WORKS AND HE
13 HAS THE PRESUMPTION OF INNOCENCE ON HIM. THE STATE'S ON
14 TRIAL, NOT DERRICK. THE STATE. THEY'RE THE ONES THAT HAVE
15 THE BURDEN OF PROOF AND AFTER THEY PUT UP THEIR ENTIRE CASE
16 AND MR. BELLAMY AND THE CONWAY POLICE DEPARTMENT ARE PUT UP
17 AND WHATEVER WITNESSES THEY DECIDE TO CALL AND WE GO
18 THROUGH CROSS-EXAMINATION OF THE CREDIBILITY OF THE
19 WITNESSES, YOU'RE PROBABLY GOING TO BE IN THE SAME POSITION
20 I AM. HE DIDN'T DO IT. ALL I'LL DO IS I'LL ASK YOU JUST
21 TO LISTEN CAREFULLY. THAT'S ALL. LISTEN CAREFULLY AND
22 WATCH WHAT I SHOW YOU AND KEEP AN OPEN MIND WHILE THE STATE
23 GIVES THEIR VERSION. YOU KEEP AN OPEN MIND IN THIS CASE
24 AND YOU'LL SEE THAT THERE ARE MAJOR PROBLEMS, MAJOR, AND
25 IT'S SCARY THAT THE CASE COULD ACTUALLY COME THIS FAR.

OPENING STATEMENT BY MR. MONCKTON

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1 THANK YOU VERY MUCH.

2 THE COURT: ALL RIGHT, MR. BELLAMY, BEFORE YOU
3 CALL YOUR FIRST WITNESS, I UNDERSTAND THAT THE CLASS THAT
4 WAS HERE AND HAS BEEN OBSERVING NEEDS TO LEAVE SO I'LL
5 ALLOW Y'ALL TO LEAVE AT THIS TIME IF YOU WOULD LIKE TO DO
6 SO.

7 (WHEREUPON, A SHORT BREAK WAS TAKEN AT THIS
8 TIME.)

9 THE COURT: ALL RIGHT, MR. BELLAMY, YOU MAY CALL
10 YOUR FIRST WITNESS.

11 MR. BELLAMY: MAY IT PLEASE THE COURT, YOUR
12 HONOR. I CALL OFFICER GREG RICHARDSON TO THE STAND.

13 GREG RICHARDSON,

14 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

15 DIRECT EXAMINATION

16 BY MR. BELLAMY:

17 Q OFFICER RICHARDSON, HOW LONG HAVE YOU BEEN
18 EMPLOYED BY THE CONWAY POLICE DEPARTMENT?

19 A SINCE SEPTEMBER OF 1994.

20 Q CURRENTLY, WHAT ARE YOUR DUTIES AND
21 RESPONSIBILITIES?

22 A I AM CURRENTLY THE SUPERVISOR OF THE
23 EVIDENCE AND PROPERTY MANAGEMENT DIVISION OF THE POLICE
24 DEPARTMENT AND THE TRAINING OFFICERS FOR THE CONWAY POLICE
25 DEPARTMENT.

MR. RICHARDSON-DIRECT EXAMINATION BY MR. BELLAMY

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1 Q BACK ON OCTOBER 4, 1997, WHAT WERE YOUR
2 DUTIES AND RESPONSIBILITIES?

3 A I WAS A CORPORAL WITH THE POLICE DEPARTMENT
4 AND THAT NIGHT I WAS FILLING IN AS THE SHIFT SUPERVISOR AND
5 MY DUTIES AT THAT TIME WAS EVIDENCE AND PROPERTY
6 MANAGEMENT.

7 Q DID YOU HAVE OCCASION TO BE DISPATCHED TO A
8 CRIME SCENE?

9 A YES, SIR.

10 Q WHAT TIME DID YOU ARRIVE?

11 A SOMEWHERE AROUND 2:26, 2:27 IN THE MORNING.

12 Q WHEN YOU GOT THERE, CAN YOU TELL US WHAT YOU
13 DID?

14 A I ARRIVED AT RACEPATH AND 378. OFFICER
15 HARRIS HAD ARRIVED JUST PRIOR TO MY ARRIVAL AND WE NOTICED
16 A YOUNG BLACK MALE LAYING IN THE STREET FACE DOWN. WHEN WE
17 APPROACHED HIM, AT THAT POINT WE HAD NOT HAD ANY REASON OR
18 ANY IDEA OF WHAT HAD TAKEN PLACE BUT WE NOTICED HE WAS
19 BLEEDING SEVERELY AND HAD SOME WHAT IS KNOWN AS AGONAL
20 BREATHING OR SOME RESPIRATORY ATTEMPTS BEING MADE ON HIS
21 OWN. WE ROLLED HIM OVER TO HIS BACK AND BEGAN TO ASSIST
22 HIM WITH BREATHING IN AN EFFORT TO SAVE HIS LIFE.

23 Q OFFICER RICHARDSON, LET ME SHOW YOU WHAT'S
24 BEEN PREVIOUSLY MARKED AS STATE'S EXHIBIT NUMBER 1 FOR
25 IDENTIFICATION. TAKE A MINUTE TO LOOK AT IT. HAVE YOU HAD

MR. RICHARDSON-DIRECT EXAMINATION BY MR. BELLAMY

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1 AN OPPORTUNITY TO REVIEW THIS PRIOR TO TRIAL?

2 A YES, SIR.

3 Q DOES IT FAIRLY AND ACCURATELY DEPICT THE
4 SCENE BACK ON OCTOBER 4, 1997?

5 A YES, SIR. IT WAS A PHOTO TAKEN THAT NIGHT
6 OF THE CRIME SCENE.

7 MR. BELLAMY: YOUR HONOR, AT THIS TIME THE STATE
8 WOULD MOVE TO OFFER STATE'S EXHIBIT NUMBER 1 FOR ID INTO
9 EVIDENCE.

10 THE COURT: ANY OBJECTION, MR. CHRISCO?

11 MR. CHRISCO: NO OBJECTION, YOUR HONOR.

12 THE COURT: ANY OBJECTION, MR. MONCKTON?

13 MR. MONCKTON: NO OBJECTION, YOUR HONOR.

14 THE COURT: ALL RIGHT, ADMITTED INTO EVIDENCE
15 WITHOUT OBJECTION. HAVE THE REPORTER REMOVE THE ID
16 MARKING.

17 (WHEREUPON, EXHIBIT NUMBER 1 WAS FILED.)

18 MR. BELLAMY: YOUR HONOR, WITH THE COURT'S
19 PERMISSION, CAN OFFICER RICHARDSON STEP DOWN FROM THE
20 STAND?

21 THE COURT: YES.

22 MR. BELLAMY: (CONTINUING)

23 Q OFFICER RICHARDSON, WHAT I'LL DO IS HOLD
24 THIS UP. IF YOU WOULD EXPLAIN TO THE JURY HOW ISAAC COX'S
25 BODY WAS POSITIONED BACK ON OCTOBER 4, 1997.

MR. RICHARDSON-DIRECT EXAMINATION BY MR. BELLAMY

50

1 A WHEN I ARRIVED THAT NIGHT, MR. COX WAS
2 LAYING FACE DOWN. HIS HEAD WAS IN THIS AREA RIGHT HERE.
3 THERE IS SOMEWHAT OF A CONCRETE HERE UNDER THIS SAND
4 BETWEEN THE CURBING AND THE ASPHALT THAT ACTS AS A BUFFER
5 FOR EXPANSION. HIS HEAD WAS LAYING HERE FACE DOWN AND HIS
6 BODY EXTENDED ALONG THAT CURB BACK TOWARD 501, BUT HE WAS
7 COMPLETELY FACE DOWN IN THAT AREA. WE ROLLED HIM STRAIGHT
8 OVER ONTO HIS BACK FROM THE CURBING.

9 Q THANK YOU. OFFICER RICHARDSON, CAN YOU
10 DESCRIBE WHICH SIDE OF HIS HEAD WAS EXPOSED? WAS IT THE
11 RIGHT OR THE LEFT SIDE?

12 A WHEN WE GOT THERE, HIS FACE WAS PRETTY MUCH
13 JUST STRAIGHT DOWN IN THE AREA OF THE CURBING. WE DID NOT
14 KNOW, LIKE I SAID, WHAT HAD HAPPENED TO HIM AT THAT POINT.
15 WHEN WE ROLLED HIM OVER, IT WAS APPARENT THAT HE DID HAVE
16 WHAT APPEARED TO BE SOME GUNSHOT INJURIES. WE REQUESTED
17 AND MADE SURE EMS AND THE FIRE DEPARTMENT WAS ON THE WAY
18 AND WE DID WHAT WE COULD TO SUPPORT HIS LIFE UNTIL THEY
19 ARRIVED.

20 Q WHAT EVIDENCE DID YOU RECOVER FROM THE
21 SCENE?

22 A ONCE HE WAS TRANSPORTED BY THE EMS TO THE
23 HOSPITAL, I NOTIFIED OUR DETECTIVES THAT WERE ON CALL TO
24 RESPOND TO THE SCENE AND THEN WE PUT SOME YELLOW BARRIER
25 TAPE UP WITH THE ASSISTANCE OF THE FIREMEN AND SECURED THE

MR. RICHARDSON-DIRECT EXAMINATION BY MR. BELLAMY

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1 AREA AND KEPT EVERYONE BACK UNTIL THE DETECTIVES ARRIVED.
2 THERE WERE SEVERAL ITEMS THAT WERE LEFT AT THE SCENE. WE
3 HAD REMOVED HIS CLOTHES FROM HIM TO SEE ANY OTHER KIND OF
4 INJURIES THAT HE HAD AND THAT WAS, OF COURSE, TURNED OVER
5 TO THE DETECTIVES. THE DETECTIVES DID MOST OF THE
6 RECOVERING OF THE EVIDENCE.

7 MR. BELLAMY: YOUR HONOR, LET THE RECORD REFLECT
8 I'M SHOWING STATE'S EXHIBIT NUMBER 4 TO MR. CHRISCO. I'M
9 SHOWING STATE'S EXHIBIT NUMBER 4 TO MR. MONCKTON.

10 MR. BELLAMY: (CONTINUING)

11 Q OFFICER RICHARDSON, I SHOW YOU STATE'S
12 EXHIBIT NUMBER 4 FOR IDENTIFICATION. WOULD YOU TAKE A
13 MINUTE TO LOOK AT IT? OFFICER RICHARDSON, YOU WERE
14 EVIDENCE CUSTODIAN BACK ON OCTOBER 4TH 1997?

15 A YES, SIR.

16 Q CAN YOU TELL US WHAT YOUR RECORDS REFLECT AS
17 FAR AS WHAT WAS RECOVERED FROM THE CRIME SCENE?

18 THE COURT: IF HE'S GOING TO TESTIFY FROM THIS
19 EXHIBIT, IT NEEDS TO BE INTRODUCED INTO EVIDENCE.

20 Q OFFICER RICHARDSON, WOULD YOU TAKE A MINUTE
21 TO LOOK AT STATE'S EXHIBIT NUMBER 4 FOR IDENTIFICATION.

22 A YES, SIR.

23 Q HAVE YOU HAD AN OPPORTUNITY TO REFRESH YOUR
24 MEMORY?

25 A YES, SIR.

MR. RICHARDSON-DIRECT EXAMINATION BY MR. BELLAMY

52

1 Q WOULD YOU PLEASE TELL ME, BASED UPON THE
2 EVIDENCE LOG ---

3 MR. MONCKTON: OBJECTION, YOUR HONOR.

4 THE COURT: ALL RIGHT. I THINK HE'S USED IT AS A
5 MEMORY REFRESHMENT. I THINK IT'S ADMISSIBLE. HE'S NOT
6 TESTIFYING FROM THE EXHIBIT. THE QUESTION WAS: DOES THAT
7 REFRESH HIS MEMORY AND IF HE SAYS THAT IT DOES, THEN HE CAN
8 TESTIFY AS TO WHAT HIS REFRESHED MEMORY IS. THE OBJECTION
9 IS OVERRULED.

10 A THAT NIGHT THERE WERE SEVERAL ITEMS OF
11 EVIDENCE LEFT ON THE SCENE, THE CLOTHING THAT WAS REMOVED
12 FROM MR. COX WAS BAGGED UP. THERE WAS -- WHEN WE ACTUALLY
13 ROLLED HIM OVER AND TRANSPORTED HIM, THERE WAS A 40-OUNCE
14 BOTTLE OF BEER THAT WAS IN A SAV-WAY PLASTIC BAG, LIKE A
15 GROCERY BAG. IT WOULD HAVE BEEN UNDER HIS BODY WHEN WE
16 INITIALLY GOT THERE BUT WE ROLLED HIM OVER. THAT WAS
17 THERE. THERE WAS A BICYCLE LAYING BACK AWAY FROM THE BODY
18 NEAR THE SIDEWALK AND TREE AREA THAT NOBODY KNEW ANYTHING
19 ABOUT. THAT WAS RECOVERED AND PLACED INTO EVIDENCE. THERE
20 WERE SEVERAL OTHER ITEMS OF EVIDENCE THAT SERGEANT TAYLOR
21 HAD RECOVERED FROM THE BICYCLE AND FROM THE SCENE THAT WAS
22 TURNED OVER TO ME. LIKE I SAID, I WAS THE SHIFT SUPERVISOR
23 THAT NIGHT SO I HAD OTHER RESPONSIBILITIES AND DUTIES BUT
24 FOLLOWING THAT NIGHT THAT EVIDENCE WAS TURNED IN TO ME FOR
25 SECURING, PUTTING IN A SAFE, SECURED AREA UNTIL IT IS

MR. RICHARDSON-DIRECT EXAMINATION BY MR. BELLAMY .

53

1 PROCESSED OR UNTIL IT'S BROUGHT TO COURT. SO I DID RECEIVE
2 ALL THIS EVIDENCE BACK FROM SERGEANT TAYLOR AFTER WE
3 COLLECTED IT.

4 Q OFFICER RICHARDSON, I SHOW YOU WHAT'S BEEN
5 MARKED AS STATE'S EXHIBIT 5A THROUGH 5D FOR IDENTIFICATION.
6 TAKE A MINUTE TO LOOK AT IT. DO YOU RECOGNIZE WHAT IT IS?

7 A YES, SIR. THESE ARE SOME CONTAINERS THAT
8 WERE TURNED IN TO ME BY SERGEANT TAYLOR AND I TRANSPORTED
9 THEM TO COLUMBIA ON THE 14TH OF OCTOBER. I TRANSPORTED
10 THEM TO SLED FOR PROCESSING AND ANALYSIS.

11 Q WOULD YOU LOOK AT STATE'S EXHIBIT NUMBER 5A
12 AND DESCRIBE WHAT THE CONTENTS ARE INSIDE THE PLASTIC
13 CONTAINER?

14 THE COURT: AGAIN, IF HE'S GOING TO TESTIFY TO
15 THESE EXHIBITS, TO THESE EXHIBITS, THEY NEED TO BE
16 INTRODUCED INTO EVIDENCE.

17 MR. BELLAMY: YOUR HONOR, THE STATE WOULD MOVE TO
18 INTRODUCE THEM INTO EVIDENCE AT THIS POINT.

19 THE COURT: ANY OBJECTION, MR. CHRISCO?

20 MR. CHRISCO: YES, SIR. THE STATE -- THE
21 DEFENDANT WOULD OBJECT IN THAT THE CHAIN' OF CUSTODY HAS NOT
22 BEEN PROVED ON THOSE ITEMS AT THIS TIME.

23 THE COURT: ALL RIGHT, GO AHEAD AND LAY YOUR
24 FOUNDATION, MR. BELLAMY. I THINK YOU MAY HAVE BUT GO AHEAD
25 AND DO IT AGAIN.

MR. RICHARDSON-DIRECT EXAMINATION BY MR. BELLAMY

54

1 MR. BELLAMY: (CONTINUING)

2 Q OFFICER RICHARDSON, WHEN DID THESE ITEMS
3 COME INTO YOUR CUSTODY AND CONTROL?

4 A I RECEIVED THESE MONDAY FOLLOWING THE
5 INCIDENT FROM SERGEANT TAYLOR.

6 Q WHAT DAY WAS THAT?

7 A IT WOULD HAVE BEEN THE SIXTH OF OCTOBER.

8 Q WHERE DID YOU RECOVER THE ITEMS FROM?

9 A THEY WOULD HAVE BEEN PUT IN THE EVIDENCE
10 LOCKER. I WOULD HAVE RECEIVED THEM FROM THE EVIDENCE
11 LOCKER THAT SERGEANT TAYLOR WOULD HAVE SECURED THEM IN OVER
12 THE WEEKEND AND THEN ---

13 THE COURT: I UNDERSTAND AND I UNDERSTAND YOUR
14 OBJECTION, MR. CHRISCO. MR. MONCKTON, DO YOU HAVE ANY
15 OBJECTION?

16 MR. MONCKTON: IT'S THE SAME OBJECTION, YOUR
17 HONOR.

18 THE COURT: THEY ARE TO BE ADMITTED INTO EVIDENCE
19 SUBJECT TO THE TESTIMONY LINKING THEM UP FROM THE TIME OF
20 THE --- THAT THEY WERE TURNED OVER TO HIM. THE TESTIMONY
21 CAN BE STRICKEN IF IT'S NOT LINKED UP OR IT CAN BE ADMITTED
22 INTO EVIDENCE SUBJECT TO THOSE OBJECTIONS.

23 (WHEREUPON, EXHIBIT NUMBERS 5A THROUGH 5D WERE
24 FILED.)

25 MR. BELLAMY: (CONTINUING)

MR. RICHARDSON-DIRECT EXAMINATION BY MR. BELLAMY

55

1 Q OFFICER RICHARDSON, I'D LIKE YOU TO LOOK AT
2 STATE'S EXHIBIT NUMBER 5A, WHICH IS IN EVIDENCE, AND
3 DESCRIBE WHAT'S ON THE CONTAINER, THE MARKINGS ON THE
4 CONTAINER.

5 A THERE IS SOME WRITING ON TOP OF THE
6 CONTAINER THAT HAS THE VICTIM'S NAME, COX, ISAAC. THE DATE
7 IS OCTOBER 4, 1997. IT HAS THE INITIALS "LP" AND THEN IN
8 PARENTHESES IT SAYS "HEAD."

9 Q WOULD YOU OPEN THE PLASTIC CONTAINER AND
10 DESCRIBE THE CONTENTS THEREIN?

11 A THERE IS A PLASTIC BAG THAT HAS THE SLED
12 LABORATORY NUMBER WRITTEN ON IT. IT HAS INITIALS, STATE'S
13 I-1 AND INSIDE APPEARS TO BE SOME LEAD BULLET FRAGMENTS.
14 AND ALSO THE SLED LAB NUMBER IS ON THE OUTSIDE OF THIS
15 CONTAINER AS WELL.

16 Q WOULD YOU LOOK AT STATE'S EXHIBIT NUMBER 5B
17 WHICH IS NOW IN EVIDENCE? WOULD YOU DESCRIBE THE MARKINGS
18 ON THE PLASTIC CONTAINER?

19 A THIS ONE ALSO HAS THE NAME COX, ISAAC
20 WRITTEN ON IT. IT'S DATED OCTOBER THE 4TH, '97. IT HAS
21 THE SLED LABORATORY NUMBER WRITTEN ON THE TOP AND THEN ON
22 THE SIDE OF THE CONTAINER IT STATES "NECK."

23 Q WOULD YOU REMOVE THE CONTENTS FROM WITHIN
24 THE PLASTIC BAG, JUST WHAT'S IN THAT PLASTIC BAG.

25 A APPEARS TO BE A LEAD FRAGMENT FROM A BULLET.

MR. RICHARDSON-DIRECT EXAMINATION BY MR. BELLAMY

56

1 Q OFFICER RICHARDSON, I HAND YOU WHAT'S BEEN
2 MARKED AS WHAT'S NOW IN EVIDENCE AS STATE'S EXHIBIT 5C.
3 WOULD YOU DESCRIBE THE MARKINGS ON THE CONTAINER, ON THE
4 PLASTIC VIAL?

5 A THIS ONE IT APPEARS SOME OF THE INK HAS COME
6 OFF. THERE'S AN X WITH A COMMA AND THEN IT SAYS ISAAC, THE
7 DATE 10/4/97. THERE'S SOME INITIALS AND THIS SAYS --
8 THERE'S AN "L" WITH A CIRCLE, WHICH WOULD INDICATE FOR
9 LEFT, AND IT SAYS "LUMBAR AREA" AND IT ALSO HAS A SLED
10 LABORATORY NUMBER AND NUMBERED I-4.

11 Q LET ME HAND YOU WHAT NOW IS STATE'S EVIDENCE
12 5D. WOULD YOU DESCRIBE THE MARKINGS ON THE PLASTIC
13 CONTAINER?

14 A IT SAYS COX, ISAAC. THE DATE IS SOMEWHAT
15 SMUDGED. IT SAYS 10/97. I-2 AND IT HAS A SLED LABORATORY
16 NUMBER AND ON THE OUTSIDE IT SAYS -- HAS AN "R" CIRCLED,
17 WHICH WAS INDICATING RIGHT AND THEN THE WORD "CLAVICLE."

18 Q WOULD YOU OPEN THE PLASTIC CONTAINER AND
19 DESCRIBE THE CONTENTS THEREOF?

20 A IT APPEARS TO BE A BULLET OR LEAD FRAGMENT
21 FROM A BULLET.

22 MR. BELLAMY: THANK YOU, OFFICER RICHARDSON.
23 YOUR HONOR, IF THE COURT WILL INDULGE ME.

24 THE COURT: YES, SIR.

25 MR. BELLAMY: (CONTINUING)

MR. RICHARDSON-DIRECT EXAMINATION BY MR. BELLAMY

57

1 Q OFFICER RICHARDSON, LET ME SHOW YOU WHAT'S
2 BEEN MARKED AS STATE'S EXHIBIT NUMBER 2, WHICH IS IN
3 EVIDENCE. DID YOU HAVE AN OPPORTUNITY TO REVIEW THIS PRIOR
4 TO TRIAL?

5 A YES, SIR.

6 Q DOES IT FAIRLY AND ACCURATELY REPRESENT THE
7 INTERSECTION OF 378 AND RACEPATH AVENUE?

8 A YES, IT DOES.

9 Q AND CAN YOU DESCRIBE ---
10 THE COURT: YOU CAN STEP DOWN.

11 Q CAN YOU DESCRIBE WHAT THE "X" REPRESENTS?

12 A THIS "X" HERE WOULD REPRESENT THE GENERAL
13 AREA THAT MR. COX WAS FOUND IN NEAR THAT BIG TREE.

14 Q WOULD YOU POINT OUT THE BIG TREE. IS THIS
15 THE BIG TREE?

16 A YES, SIR, THIS WOULD INDICATE THE SHADED
17 AREA OR THE GREEN AREA OF A TREE OVERHANGING AND THEN THE
18 SIDEWALK RUNS RIGHT UNDER THAT TREE AREA AND THEN A STOP
19 SIGN LOCATED RIGHT THERE ON THE CORNER.

20 Q AND DOES -- DO YOU SEE WHERE IT SAYS "LIGHT
21 POLE" RIGHT HERE? DOES THE DIAGRAM CLEARLY AND FAIRLY
22 REFLECT WHERE THE LIGHT POLES WERE BACK ON OCTOBER 4, 1997?

23 A YES, SIR. FROM WHAT I REMEMBER, THERE WAS
24 ONE DIRECTLY ACROSS THE STREET. THIS IS MORE OR LESS A
25 PARKING LOT THAT'S WIDE OPEN ACROSS THE STREET HERE AND

MR. RICHARDSON-CROSS-EXAMINATION BY MR. MONCKTON

58

1 THERE'S A LIGHT ON THAT CORNER.

2 Q THANK YOU. OFFICER RICHARDSON, WHAT COUNTY
3 DID THIS HAPPEN IN?

4 A HORRY.

5 Q THAT MAP REFLECTS THE INTERSECTION OF 378
6 AND RACEPATH. IS IT INCLUDED IN HORRY COUNTY?

7 A YES, SIR.

8 Q WITHIN THE CITY LIMITS OF CONWAY?

9 A YES, SIR.

10 Q THANK YOU.

11 MR. BELLAMY: YOUR HONOR, THE STATE HAS NO
12 FURTHER QUESTIONS AT THIS TIME. PLEASE ANSWER ANY
13 QUESTIONS THAT MR. CHRISCO OR MR. MONCKTON MAY HAVE.

14 THE COURT: ALL RIGHT. CROSS-EXAMINATION?

15 MR. MONCKTON: YES, SIR, YOUR HONOR.

16 CROSS-EXAMINATION

17 BY MR. MONCKTON:

18 Q MR. RICHARDSON, WERE YOU THE FIRST OFFICER
19 ON THE SCENE?

20 A NO, SIR, I WAS THE SECOND OFFICER TO ARRIVE.

21 Q AND THE FIRST OFFICER, I BELIEVE, WAS MR.
22 JAMES HARRIS; IS THAT CORRECT?

23 A YES, SIR. HE ARRIVED JUST MOMENTS BEFORE I
24 DID.

25 Q NOW, YOU TESTIFIED THAT ALL THE EVIDENCE

MR. RICHARDSON-CROSS-EXAMINATION BY MR. MONCKTON

59

1 COLLECTED ON BEHALF OF THE CONWAY POLICE DEPARTMENT THAT
2 NIGHT WOULD HAVE BEEN TURNED OVER TO THE LEAD DETECTIVE; IS
3 THAT CORRECT?

4 A THE LEAD DETECTIVE WAS ON THE SCENE WITH ME,
5 YES, SIR.

6 Q AND THE LEAD DETECTIVE IN THIS CASE WAS BILL
7 TAYLOR; IS THAT CORRECT?

8 A YES, SIR.

9 Q SO ANY EVIDENCE REGARDING THE INVESTIGATION
10 OR COLLECTION OF EVIDENCE WOULD COME FROM MR. TAYLOR.
11 WOULD THAT BE CORRECT?

12 A RIGHT. WE WERE THERE TOGETHER. WE WOULD
13 HAVE WORKED IT TOGETHER. HE WOULD HAVE PROCESSED IT,
14 MAINTAINED IT AND THEN I WOULD HAVE SECURED IT AT A LATER
15 POINT, LIKE I DID ON MONDAY.

16 Q OTHER THAN THE TAKING OF EVIDENCE OR SOME OF
17 THE EVIDENCE THAT NIGHT, DID YOU HAVE ANY OTHER INVOLVEMENT
18 IN THIS CASE?

19 A IN THE INVESTIGATION PART JUST THOSE TWO
20 JUST THOSE TWO EVENTS.

21 Q AND THE ITEMS THAT MR. BELLAMY SPOKE WITH
22 YOU ABOUT EARLIER, WERE YOU PRESENT AT THE AUTOPSY WHEN
23 THOSE WERE RECOVERED?

24 A NO, SIR. THOSE CAME FROM SERGEANT TAYLOR.

25 Q JUST FROM SERGEANT TAYLOR?

MR. RICHARDSON-CROSS-EXAMINATION BY MR. CHRISCO

60

1 A UH-HUH.

2 Q OKAY. NO FURTHER QUESTIONS.

3 THE COURT: MR. CHRISCO?

4 MR. CHRISCO: IF IT PLEASE THE COURT. THANK YOU,
5 YOUR HONOR.

6 CROSS-EXAMINATION

7 BY MR. CHRISCO:

8 Q I NOTICED THAT YOU WERE READING -- THAT WHEN
9 YOU WERE LOOKING AT THESE EXHIBITS, STATE'S 5A, 5B, 5C AND
10 5D, THAT YOU WERE READING FROM THOSE. WOULD YOU OPEN THAT
11 ONE, PLEASE?

12 A UH-HUH.

13 Q YOU WERE READING FROM THE LABELS THERE. IS
14 THAT YOUR WRITING?

15 A NO, SIR, BUT I KNOW THAT THIS IS THE SLED
16 LAB NUMBER THAT'S ASSIGNED TO THIS CASE.

17 Q BUT YOU DIDN'T WRITE THAT?

18 A NO, SIR. THERE'S SOMEONE ELSE'S INITIALS
19 THERE.

20 Q LET'S TAKE A LOOK AT A BULLET. IS THAT THE
21 SAME BULLET THAT YOU HAD?

22 A YES, SIR. THIS IS ONE OF THE SAME ONES THAT
23 I TRANSPORTED TO COLUMBIA.

24 Q HOW WOULD YOU KNOW THAT?

25 A BECAUSE I CARRIED ALL FOUR OF THESE

MR. RICHARDSON-CROSS-EXAMINATION BY MR. CHRISCO

61

1 CONTAINERS TO COLUMBIA AND IT'S INDICATED ON THE PROPERTY
2 SHEET THAT I DELIVERED UP THERE. AND, LIKE I SAID, THIS
3 SLED LAB NUMBER IS THE SAME ONE THAT COINCIDES WITH THIS
4 CASE.

5 Q AND LOOK AT THE BULLET, PLEASE, SIR.

6 A UH-HUH.

7 Q IS THERE ANY MARK OR AN IDENTIFICATION YOU
8 HAVE ON THAT BULLET THAT IT PASSED THROUGH YOUR HANDS, SIR?

9 A NO, SIR, JUST THE FACT THAT IT WAS IN THIS
10 CONTAINER AND WENT UP THERE.

11 Q SO IF ANOTHER BULLET WAS IN THAT SAME
12 CONTAINER, IT'S JUST THE CONTAINER THAT YOU ARE
13 RECOGNIZING?

14 A YES, SIR, THAT'S WHAT I TRANSPORTED UP
15 THERE.

16 Q YOU HAD ANOTHER SHEET THAT YOU WERE LOOKING
17 AT. IT WAS AN EVIDENCE SHEET OR IMPOUND SHEET OR
18 SOMETHING.

19 THE COURT: IT WASN'T INTRODUCED. IT WAS THE ---

20 Q ALL RIGHT. DID YOU MAKE UP THAT REPORT?

21 A NO, SIR. SERGEANT TAYLOR DID.

22 Q SERGEANT TAYLOR?

23 A UH-HUH.

24 Q WHO WAS THE LEAD INVESTIGATOR ON THE CASE?

25 A RIGHT.

MR. RICHARDSON-CROSS-EXAMINATION BY MR. CHRISCO

62

1 Q THE PICTURE -- AND WE'RE TALKING ABOUT
2 STATE'S EXHIBIT NUMBER 1. HOW WAS HE LAYING?

3 A HIS HEAD WAS LAYING RIGHT IN HERE IN THIS
4 PUDDLE OF BLOOD AND HIS FEET WERE EXTENDED STRAIGHT BACK
5 ALONG THE CURB. HE WAS LAYING PARALLEL WITH THE CURB FACE
6 DOWN IN THE DIRT.

7 Q AND HIS HEAD WAS LAYING WHERE?

8 A IN THIS PUDDLE OF BLOOD FACE DOWN AND WHEN
9 WE ROLLED HIM OVER, HIS HEAD WOULD HAVE BEEN LAYING HERE
10 WHERE THE BLOOD MOVED FROM THIS AREA TO THIS AREA.

11 Q WAS HE SHOT IN OTHER PLACES BESIDES THE
12 HEAD?

13 A AT THE TIME WE WERE NOT SURE UNTIL WE ROLLED
14 HIM OVER AND THEN WE SAW THE NECK INJURY AND WE REMOVED HIS
15 CLOTHING AND SAW THE OTHER INJURIES AND WE WERE IN THE
16 PROCESS OF TRYING TO SAVE HIS LIFE AND GOT HIM TRANSPORTED
17 BY EMS.

18 Q DOES THIS PICTURE INDICATE ANY OTHER PLACES
19 WHERE THERE IS BLOOD BESIDES WHERE HIS HEAD WAS LAYING?

20 A THIS PICTURE DOES NOT, NO, SIR.

21 Q ARE YOU SAYING THAT THERE WERE OTHER SPOTS?

22 A YES, SIR.

23 Q NOW, WHEN THIS PICTURE WAS TAKEN -- GO BACK
24 TO STATE'S EXHIBIT NUMBER 1 -- WAS A FLASHBULB USED?

25 A IT APPEARS TO BE.

MR. RICHARDSON-CROSS-EXAMINATION BY MR. CHRISCO

63

1 Q WHEN YOU SAY APPEARS TO BE, WHAT DO YOU MEAN
2 BY APPEARS TO BE?

3 A JUST THE LIGHTNESS OF THE TREE IT APPEARS
4 THERE WAS A FLASH USED.

5 Q IS THERE ANY GREEN FOLIAGE ON THE TREE?

6 A YES, SIR.

7 Q SO AT THAT TIME ON OCTOBER THE 4TH OF 1997
8 THERE WOULD HAVE BEEN FOLIAGE ON THE TREE, LEAVES?

9 A CLEARLY, YES, SIR.

10 Q UNDER THE TREE IS IT DARK AND SHADED?

11 A IMMEDIATELY UNDER IT PROBABLY SOMEWHAT BUT -

12 --

13 Q NOW, THERE IS AN OUTSIDE LIGHT, A STREET
14 LIGHT?

15 A RIGHT, ACROSS THE STREET.

16 Q NOW, WHAT IS THE RELATIONSHIP OF HEIGHT
17 BETWEEN THIS PARTICULAR TREE AND THE STREET LIGHT? THE
18 STREET LIGHT IS HIGHER?

19 A FROM MY RECOLLECTION THEY'RE ABOUT THE SAME.
20 THEY'RE PROBABLY ABOUT THE SAME LEVEL.

21 Q BUT DOESN'T THE FOLIAGE ON THE TREE
22 ELIMINATE A LOT OF THE LIGHT AND IT'S FILTERED THROUGH?

23 A IF THE LIGHT WAS ABOVE IT BUT THIS LIGHT'S
24 ACROSS THE STREET AND THE LIGHT TRAVELS SIDEWAYS.

25 Q YOU WERE NOT THERE WHEN THE INCIDENT

MR. TAYLOR-DIRECT EXAMINATION BY MR. BELLAMY

64

1 HAPPENED?

2 A NO, SIR. WE RECEIVED THE REPORT AND WITHIN
3 MINUTES ---

4 Q DID IT ALREADY HAPPEN?

5 A IT ALREADY HAPPENED.

6 Q HAVE YOU BEEN OVER YOUR TESTIMONY WITH MR.
7 BELLAMY?

8 A BEEN OVER IT?

9 Q WHAT YOU WERE GOING TO TESTIFY TO TODAY.
10 HAVE YOU TALKED ABOUT IT?

11 A YES, SIR. WE REVIEWED THE FILES AND TALKED
12 ABOUT IT.

13 Q HOW MANY TIMES DO YOU THINK YOU TALKED ABOUT
14 IT?

15 A I DON'T KNOW. TWO OR THREE.

16 MR. CHRISCO: THANK YOU, SIR.

17 THE COURT: REDIRECT, MR. BELLAMY?

18 MR. BELLAMY: NOTHING FROM THE STATE, YOUR HONOR.

19 THE COURT: ALL RIGHT. THANK YOU, MR.

20 RICHARDSON. YOU MAY STEP DOWN. YOU MAY CALL YOUR NEXT
21 WITNESS, MR. BELLAMY.

22 MR. BELLAMY: THE STATE CALLS FREDERICK MCDONALD,
23 YOUR HONOR.

24 MR. MONCKTON: YOUR HONOR, BEFORE THIS WITNESS IS
25 BROUGHT IN TO TESTIFY, I THINK WE HAVE A MATTER OF LAW WE

MR. TAYLOR-DIRECT EXAMINATION BY MR. BELLAMY

65

1 NEED TO TAKE UP.

2 THE COURT: ALL RIGHT.

3 (WHEREUPON, A SIDE BAR WAS HELD OFF THE RECORD IN
4 THE PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE
5 JURY.)

6 MR. BELLAMY: YOUR HONOR, THE STATE AT THIS TIME
7 WOULD CALL OFFICER BILL TAYLOR.

8 WILLIAM F. TAYLOR,

9 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

10 DIRECT EXAMINATION

11 BY MR. BELLAMY:

12 Q OFFICER TAYLOR, I HAND YOU WHAT'S BEEN
13 MARKED STATE'S EXHIBIT -- EXCUSE ME, STATE'S EVIDENCE WHICH
14 IS 5A THROUGH 5B. OFFICER, I APOLOGIZE. FIRST LET ME ASK
15 YOU THIS. HOW LONG HAVE YOU BEEN EMPLOYED WITH THE CONWAY
16 POLICE DEPARTMENT?

17 A SINCE 1985.

18 Q WHAT ARE YOUR DUTIES AND RESPONSIBILITIES
19 WITH THE CONWAY POLICE DEPARTMENT?

20 A AT PRESENT I'M A SHIFT SERGEANT OVER A
21 PATROL DIVISION. IT'S DELTA SQUAD. AT THE TIME OF THIS
22 INCIDENT I WAS AN INVESTIGATOR IN CHARGE.

23 Q BACK ON OCTOBER 4, 1997, YOU WERE THE
24 INVESTIGATOR IN CHARGE?

25 A THAT'S CORRECT.

MR. TAYLOR-DIRECT EXAMINATION BY MR. BELLAMY

66

1 Q NOW, DID YOU HAVE AN OCCASION TO GO TO GRAND
2 STRAND GENERAL HOSPITAL?

3 A THAT'S CORRECT.

4 Q AND WHY DID YOU GO THERE?

5 A I WENT THERE TO BE PRESENT DURING THE
6 AUTOPSY OF ISAAC COX.

7 Q AND WHO PERFORMED THE AUTOPSY?

8 A DR. PROCTOR.

9 Q WAS ANYBODY PRESENT BESIDES YOURSELF AND DR.
10 PROCTOR?

11 A DETECTIVE PARKER WAS, DON PARKER, AND AN
12 ASSISTANT FOR DR. PROCTOR WAS THERE.

13 Q WHEN DID YOU TAKE CUSTODY AND CONTROL OF
14 STATE'S EXHIBIT -- STATE'S EVIDENCE 5A THROUGH 5B?

15 A AFTER THE AUTOPSY WAS PERFORMED AND WAS
16 COMPLETED DR. PROCTOR PUT THEM IN THOSE CASES, INITIALED
17 THEM AND IDENTIFIED THE LOCATION THEY WERE REMOVED FROM AND
18 GAVE THEM TO ME.

19 Q DID HE INITIAL THEM?

20 A YES, HIS INITIALS ARE ON THEM.

21 Q HOW DID HE INITIAL THOSE?

22 A APPEARS TO BE CP OR LP.

23 Q LP.

24 MR. BELLAMY: YOUR HONOR, AT THIS TIME WE DON'T
25 HAVE ANY FURTHER QUESTIONS FROM THIS WITNESS.

MR. TAYLOR-CROSS-EXAMINATION BY MR. CHRISCO

67

1 THE COURT: ALL RIGHT. MR. CHRISCO, ANY CROSS-
2 EXAMINATION OF SERGEANT TAYLOR?

3 MR. CHRISCO: YES, YOUR HONOR.

4 THE COURT: ALL RIGHT.

5 MR. CHRISCO: IF THE COURT WOULD INDULGE US FOR
6 JUST ONE MOMENT.

7 CROSS-EXAMINATION

8 BY MR. CHRISCO:

9 Q WHAT TIME DID YOU RESPOND OUT THERE TO THE
10 INCIDENT ON OCTOBER 4, 1997, SERGEANT TAYLOR?

11 A THE EXACT TIME IS GOING TO BE ABOUT 20
12 MINUTES OR SO AFTER THE INITIAL CALL.

13 Q DID YOU FILE AN INCIDENT REPORT ON THAT?

14 A YES, I DID. I DID A PRELIMINARY INCIDENT
15 REPORT.

16 Q DID YOU WRITE IT YOURSELF?

17 A YES, SIR, I DID.

18 Q WHAT EVIDENCE DID YOU COLLECT?

19 A AT THE SCENE?

20 Q YES.

21 A I COLLECTED AN UNOPENED 40-OUNCE BEER BOTTLE
22 IN A BAG.

23 Q WHERE WAS THAT LOCATED?

24 A ON THE STREET CURB.

25 Q ON THE STREET CURB WHERE?

MR. TAYLOR-CROSS-EXAMINATION BY MR. CHRISCO

68

1 A IT WAS UP AGAINST THE CURB NEAR WHERE THE
2 BLOOD WAS AT.

3 Q I SHOW YOU STATE'S EXHIBIT NUMBER 1 THAT'S
4 BEEN MARKED AS EVIDENCE. THE BODY WAS LAYING HERE WHERE
5 THEY SAY THE RED. THIS IS ---

6 A YEAH. THE BEER BOTTLE WAS LAYING JUST
7 BEYOND THAT POTATO CHIP BAG THERE.

8 Q AND WHO DID IT BELONG TO?

9 A IT BELONGED TO ISAAC COX.

10 Q WHAT SIZE BEER BOTTLE WAS THAT?

11 A IT WAS A 40-OUNCE SINGLE BEER BOTTLE.

12 Q ANYTHING ELSE COLLECTED?

13 A A BICYCLE, A WALLET, YES, SIR.

14 Q WHAT KIND OF BICYCLE?

15 A A YELLOW BICYCLE, SMALL 24-INCH. THE CHAIN
16 WAS OFF OF IT.

17 Q WHO DID THAT BELONG TO?

18 A AT THE TIME IT WAS REPORTED TO US BY
19 STATEMENTS AND STUFF THAT IT BELONGED TO THE SUSPECT.

20 Q WHO REPORTED THAT TO YOU?

21 A ONE OF THE OFFICERS THAT WAS GATHERING
22 INFORMATION.

23 Q YOU DON'T REMEMBER WHICH OFFICER?

24 A JAMES HARRIS.

25 Q SO IT WAS HARRIS THAT REPORTED TO YOU THAT

MR. TAYLOR-CROSS-EXAMINATION BY MR. CHRISCO

69

1 THE BICYCLE BELONGED TO WHO?

2 A ONE OF THE SUSPECTS INVOLVED IN THE
3 SHOOTING.

4 Q DID YOU LATER FIND OUT DIFFERENTLY?

5 A NO, I DIDN'T FIND OUT DIFFERENTLY.

6 Q WELL, ISN'T IT TRUE THAT IN YOUR OCTOBER 4TH
7 REPORT YOU HAD PUT THE BIKE WAS NOT THE SUSPECT'S BUT WAS
8 THE VICTIM'S?

9 A IN THE INITIAL REPORT, THAT'S CORRECT.

10 Q WHAT YOU'RE TRYING TO SAY IS THE OFFICER
11 TOLD YOU THAT IT WAS THE SUSPECT'S, THEN YOU FOUND IT TO BE
12 THE VICTIM'S?

13 A YEAH. AT THE TIME DIDN'T KNOW WHO THE BIKE
14 BELONGED TO BUT IT WAS REPORTED FROM AN OFFICER THAT HE
15 BELIEVED THAT IT WAS A SUSPECT. IT WAS ALSO REPORTED FROM
16 SOMEBODY ELSE THEY BELIEVED IT WAS THE VICTIM. WE TOOK IT
17 INTO CUSTODY AND I DUSTED IT FOR PRINTS.

18 Q ARE THERE WRITTEN STATEMENTS THAT IT
19 BELONGED TO THE SUSPECT OR WRITTEN STATEMENTS THAT IT
20 BELONGED TO THE VICTIM?

21 A NO, IT WAS JUST A VERBAL STATEMENTS TO
22 OFFICERS OUT TRYING TO GATHER INFORMATION.

23 Q DO YOU KNOW WHO MADE THOSE STATEMENTS?

24 A NO, SIR, I DO NOT.

25 Q DO YOU KNOW WHO MADE THE STATEMENTS TO YOU,

MR. TAYLOR-CROSS-EXAMINATION BY MR. CHRISCO

70

1 SIR?

2 A YEAH.

3 Q WHICH OFFICER, SIR?

4 A JAMES HARRIS TOLD ME THAT IT WAS A SUSPECT'S
5 BICYCLE FROM INFORMATION THAT HE HAD GOTTEN. THERE WAS A
6 PERSON ON THE STREET THAT SAID THAT THEY THOUGHT IT WAS THE
7 VICTIM'S BICYCLE.

8 Q AND WHO TOLD YOU THAT IT WAS THE VICTIM'S
9 BICYCLE?

10 A I DON'T RECALL THAT PERSON'S NAME.

11 Q HAVE YOU STILL GOT THE BICYCLE?

12 A YES, SIR. WE HAVE THE BICYCLE IN EVIDENCE.

13 Q HAS THE BICYCLE BEEN LINKED TO CORTREAL
14 SWINTON?

15 A ONLY BY STATEMENTS.

16 Q WHAT STATEMENTS, SIR?

17 A WITNESS STATEMENTS.

18 MR. CHRISCO: SIR, MAY WE APPROACH?

19 THE COURT: YES, SIR.

20 (WHEREUPON, A SIDE BAR WAS HELD OFF THE RECORD IN
21 THE PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE
22 JURY.)

23 MR. CHRISCO: (CONTINUING)

24 Q ARE THESE WRITTEN STATEMENTS, SIR?

25 A YES, SIR, I HAVE A WRITTEN STATEMENT.

MR. TAYLOR-CROSS-EXAMINATION BY MR. CHRISCO

71

1 Q YOU HAVE A WRITTEN STATEMENT BY SOMEONE ELSE
2 THAT SAYS THAT THIS BICYCLE WAS LINKED TO CORTREAL SWINTON?

3 A THAT'S CORRECT.

4 Q CAN I SEE THAT STATEMENT PLEASE, SIR?

5 A I DON'T HAVE IT WITH ME. IT'S IN THE CASE
6 BOOK.

7 Q FIND THE CASE FILE, SIR.

8 THE COURT: FURNISH HIM WITH THE STATEMENT, MR.
9 BELLAMY.

10 MR. BELLAMY: YOUR HONOR, MAY I APPROACH?

11 THE COURT: YES. LADIES AND GENTLEMEN, THERE ARE
12 SOME MATTERS OF LAW WHICH I HAVE TO TAKE UP WITH THE
13 LAWYERS AND SO I'M GOING TO ASK IF YOU'LL GO TO YOUR JURY
14 ROOM FOR JUST A FEW MINUTES WHILE WE TAKE UP THESE MATTERS
15 OF LAW. PLEASE DO NOT DISCUSS THE CASE AMONG YOURSELVES
16 WHILE WE'RE HANDLING THESE MATTERS.

17 (WHEREUPON, THE JURY LEFT THE COURTROOM AND THE
18 FOLLOWING TOOK PLACE ON THE RECORD OUTSIDE THEIR PRESENCE.)

19 THE COURT: WHEN THIS SUBJECT FIRST CAME UP AND
20 WE MET AT SIDE BAR, MY RECOLLECTION OF THE WITNESS'
21 TESTIMONY AT THAT TIME WAS THAT SOMEBODY HAD TOLD HIM IN A
22 VERBAL STATEMENT THAT IT BELONGED TO ONE OF THE SUSPECTS
23 WITHOUT IDENTIFYING THE PARTICULAR SUSPECT. I FELT LIKE IF
24 IT WAS JUST A MATTER OF CROSS-EXAMINATION AT THAT TIME AND
25 REQUIRED MR. CHRISCO TO GO AHEAD CROSS-EXAMINATION. IT NOW

MR. TAYLOR-CROSS-EXAMINATION BY MR. CHRISCO

72

1 APPEARS THAT THE WITNESS HAS TESTIFIED THAT THERE WAS A
2 WRITTEN STATEMENT THAT CONNECTED THE YELLOW BICYCLE --
3 ACCORDING TO THE WITNESS, THERE'S A WRITTEN STATEMENT
4 CONNECTING THE YELLOW BICYCLE TO THE DEFENDANT MR. SWINTON
5 AND I BELIEVE THAT HE SAID IT WAS IN THE CASE FILE. HE'S
6 LOOKING FOR THAT RIGHT NOW. MY CONCERN, OF COURSE, IS OVER
7 RULE 5, A BRADY COMPLIANCE IF THERE IS SUCH A WRITTEN
8 STATEMENT. DO YOU NOT HAVE A WRITTEN STATEMENT TO THAT
9 EFFECT, MR. CHRISCO?

10 MR. CHRISCO: NO, SIR, YOUR HONOR.

11 THE COURT: OKAY.

12 MR. HUMPHRIES: YOUR HONOR, LET ME SAY THIS. THE
13 STATE IS UNAWARE OF ANY WRITTEN STATEMENT WHICH WOULD TIE
14 THIS DEFENDANT TO THAT BICYCLE. THERE HAVE BEEN A NUMBER
15 OF INTERVIEWS BY THE STATE AND THE STATE'S AGENTS WITH
16 HOWARD PARKER. HOWARD PARKER HAS TOLD US ORALLY THAT THAT
17 WAS -- THAT CORTREAL SWINTON AND DERRICK HOLLINGSWORTH AND
18 CURTIS WILSON, THE THREE WERE ON TWO BICYCLES, ONE RIDING
19 ON THE HANDLEBARS. SO IN THAT RESPECT THIS OFFICER IS
20 CORRECT. THERE HAVE BEEN VERBAL STATEMENTS THAT CORTREAL
21 SWINTON HAS BEEN TIED TO THIS BICYCLE. I WAS UNAWARE OF
22 ANY WRITTEN STATEMENT. I'VE LOOKED THROUGH OUR FILE AND WE
23 DON'T HAVE ANY SUCH WRITTEN STATEMENT. I UNDERSTAND THE
24 OFFICER'S CONFUSION IN THAT REGARD. HOWARD PARKER DID GIVE
25 A WRITTEN STATEMENT. HE DID NOT INCLUDE THAT INFORMATION

MR. TAYLOR-CROSS-EXAMINATION BY MR. CHRISCO

73

1 IN THE FIRST WRITTEN STATEMENT. HE DIDN'T MENTION BICYCLES
2 IN ANY FORM OR FASHION.

3 THE COURT: ALL RIGHT. IT APPEARS TO ME THEN THE
4 CORRECT WAY TO DO IT WOULD BE WHEN WE RECONVENE, MR.
5 CHRISCO, TO ASK HIM IF HE'S HAD A CHANCE TO REVIEW THE FILE
6 AS TO WHETHER THERE IS A WRITTEN STATEMENT AND IF HE SAYS
7 HE HAS HAD A CHANCE TO REVIEW THE FILE AND COULDN'T FIND A
8 WRITTEN STATEMENT, AT LEAST, AS I UNDERSTAND IT FROM WHAT
9 MR. HUMPRHIES TELLS ME, HE'S GOING TO HAVE TO SAY NO, THERE
10 WAS NO WRITTEN STATEMENT. AND THEN YOU CAN CROSS-EXAMINE
11 HIM ON ANY VERBAL STATEMENTS THAT WERE MADE TO HIM.

12 MR. CHRISCO: YES, YOUR HONOR.

13 THE COURT: OKAY. ALL RIGHT, LET'S TAKE FIVE
14 MINUTES AND WE'LL BE READY TO START BACK.

15 (WHEREUPON, A SHORT BREAK WAS TAKEN AT THIS
16 TIME.)

17 (WHEREUPON, DEFENDANT HOLLINGSWORTH EXHIBIT
18 NUMBER 1 IS MARKED FOR IDENTIFICATION.)

19 THE COURT: ALL RIGHT, MR. CHRISCO, BEFORE WE
20 BRING THE JURY IN, LET'S LET YOU GO AHEAD A LITTLE BIT WITH
21 CROSS-EXAMINATION TO SEE WHERE WE ARE AND SEE WHAT THE
22 ANSWERS ARE GOING TO BE.

23 CROSS-EXAMINATION CONTINUED

24 BY MR. CHRISCO:

25 Q DID YOU FIND THE WRITTEN STATEMENT THAT

MR. TAYLOR-CROSS-EXAMINATION BY MR. CHRISCO

74

1 INDICATED THAT THE BICYCLE BELONGED TO CORTREAL SWINTON?

2 A NO, I DIDN'T.

3 THE COURT: ARE YOU GOING TO ASK HIM ABOUT VERBAL
4 STATEMENTS?

5 MR. CHRISCO: NO.

6 THE COURT: OKAY. ALL RIGHT, BRING THE JURY IN,
7 PLEASE.

8 (WHEREUPON, THE JURY ENTERED THE COURTROOM AND
9 THE FOLLOWING PROCEEDINGS WERE HAD.)

10 THE COURT: ALL RIGHT. THANK YOU, LADIES AND
11 GENTLEMEN. WE ARE READY TO RESUME. YOU MAY RESUME YOUR
12 CROSS-EXAMINATION, MR. CHRISCO.

13 MR. CHRISCO: THANK YOU, YOUR HONOR.

14 Q (CONTINUING) SERGEANT TAYLOR, DID YOU FIND
15 THE WRITTEN STATEMENT THAT SAID THAT CORTREAL SWINTON
16 BELONGED TO THAT BICYCLE?

17 A NO, I DIDN'T.

18 Q YOU TOOK THE BICYCLE INTO CUSTODY, DID YOU
19 NOT, SIR?

20 A THAT'S CORRECT.

21 Q DID YOU SEND IT TO BE FINGERPRINTED?

22 A YES, SIR, I DID.

23 Q AND WHAT WERE THE RESULTS OF THAT?

24 A INSUFFICIENT RIDGE DETAIL.

25 Q NO PRINTS.

MR. TAYLOR-CROSS-EXAMINATION BY MR. CHRISCO

75

1 A WELL, THERE WAS PLENTY OF PRINTS, JUST
2 NOTHING THAT THEY COULD READ.

3 Q ON THAT WHOLE BICYCLE THERE WAS NOTHING THEY
4 COULD READ?

5 A THAT'S CORRECT.

6 Q DID YOU QUESTION A MISS MARGARET OVER THERE
7 AT THE EXPRESS STOP?

8 A NO, I DID NOT.

9 Q DO YOU KNOW IF SHE WAS INTERVIEWED BY ANY OF
10 YOUR OFFICERS?

11 A I BELIEVE SHE WAS BUT ---

12 Q WHAT WAS THE PURPOSE OF THAT INTERVIEW?

13 A TO CORROBORATE THE STATEMENTS THAT WE
14 RECEIVED, CURRENT EVENTS, THE WAY THINGS HAPPENED.

15 Q WASN'T THERE A VIDEOTAPE OVER THERE?

16 A I BELIEVE THERE WAS.

17 Q AND DO YOU HAVE THAT VIDEOTAPE WITH YOU,
18 SIR?

19 A NO, I DO NOT.

20 Q WHO WOULD HAVE THAT VIDEOTAPE?

21 A IN THE EVIDENCE, I GUESS.

22 Q THAT VIDEOTAPE WAS OBTAINED FROM MARGARET
23 OVER THERE AT THE EXPRESS STOP, WAS IT?

24 A THE OFFICER WENT BY AND GOT THE TAPE.

25 Q WHAT TIME DID YOU ARRIVE THERE AT THE SCENE,

MR. TAYLOR-CROSS-EXAMINATION BY MR. CHRISCO

76

1 SERGEANT TAYLOR?

2 A IT WAS ABOUT 20 MINUTES AFTER THE INITIAL
3 RESPONSE.

4 Q SO THAT WOULD HAVE BEEN ABOUT WHAT TIME,
5 SIR?

6 A TWO O'CLOCK.

7 Q IF I WAS TO TELL YOU THAT THE ORIGINAL TIME
8 OF ARRIVAL IN THE REPORT IS 2:26, THAT WOULD HAVE BEEN WHEN
9 THE PATROL OFFICERS ARRIVED?

10 A RIGHT, THAT WAS WHEN THE PATROL OFFICERS
11 ARRIVED.

12 Q SO YOU ARRIVED SOME 30 TO 34 MINUTES LATER?

13 A I'M ABOUT 15 BLOCKS AWAY. BY THE TIME THEY
14 GOT THERE AND MADE AN EVALUATION TO CALL ME AND MY RESPONSE
15 TIME WOULD HAVE BEEN ABOUT 20 MINUTES OR SO.

16 Q I BELIEVE THAT SAME DAY YOU OBTAINED A
17 WARRANT ON MY CLIENT, MR. CORTREAL SWINTON, DID YOU NOT,
18 SIR?

19 A I DON'T BELIEVE IT WAS THE SAME DAY BUT I
20 DON'T RECALL, TO BE HONEST WITH YOU.

21 MR. CHRISCO: THE COURT'S INDULGENCE JUST FOR ONE
22 MINUTE, YOUR HONOR.

23 Q (CONTINUING) DOES THIS REFRESH YOUR
24 RECOLLECTION?

25 A THAT'S CORRECT.

MR. TAYLOR-CROSS-EXAMINATION BY MR. CHRISCO

77

1 Q AND WHAT DAY DID YOU TAKE OUT THE WARRANT?

2 A PARDON? OCTOBER THE 4TH.

3 Q THE SAME DAY?

4 A YES, SIR.

5 Q DO YOU KNOW WHAT TIME IT WAS?

6 A IT WOULD HAVE BEEN ON IN THE AFTERNOON
7 BECAUSE WE HAD SEVERAL THINGS DONE.

8 Q DID YOU TALK WITH ANYBODY WHEN YOU WERE OUT
9 THERE AT THE SCENE?

10 A I TALKED TO SEVERAL PEOPLE OUT THERE AT THE
11 SCENE.

12 Q WHO DID YOU TALK TO?

13 A AN IDA MAE HOWARD, JAMES PARKER.

14 Q IDA MAE?

15 A I THINK THAT WAS HER NAME. IT'S IN THE
16 REPORT.

17 Q IDA MAE HARRELL?

18 A YEAH.

19 Q OR HOWARD?

20 A HOWARD. IT MIGHT BE HARRELL. I'M NOT SURE.
21 IT'S WRITTEN IN THE REPORT.

22 Q WOULD THAT HAVE BEEN A CLARA MAE HOWARD?

23 A CLARA MAE, THAT'S CORRECT.

24 Q WAS SHE HELPFUL TO YOU?

25 A NO, SIR, SHE WASN'T.

MR. TAYLOR-CROSS-EXAMINATION BY MR. CHRISCO

78

1 Q AND WHY WASN'T SHE HELPFUL TO YOU?

2 A BECAUSE SHE WASN'T THERE. SHE DIDN'T
3 ACTUALLY SEE ANYTHING. THE INFORMATION SHE WAS GIVEN
4 DIDN'T FOLLOW ANYWHERE IN THE INVESTIGATION.

5 Q WHY DO YOU RECKON SHE'D TELL YOU SOMETHING
6 THAT WASN'T RIGHT?

7 A JUST TRYING TO BE HELPFUL. I DON'T KNOW
8 THAT SHE WAS TELLING ME ANYTHING WRONG. IT JUST -- SHE
9 DIDN'T HAVE ANY OF THE FACTS.

10 Q SHE WAS JUST TELLING YOU WHAT SHE SAW.
11 YOU'RE NOT SAYING THAT SHE'S LYING.

12 A RIGHT.

13 Q SHE WAS JUST TELLING YOU WHAT SHE SAW.

14 A YEAH. SHE WAS TALKING ABOUT THINGS THAT
15 TOOK PLACE, YOU KNOW, PRIOR TO THE INCIDENT.

16 Q I UNDERSTAND. WAS THERE A MAC OR A MIKE
17 WHOSE NAME WAS BROUGHT UP IN RELATIONSHIP TO THIS SHOOTING?

18 A YEAH, THERE WAS -- THEY DIDN'T KNOW THE
19 NAME. THEY THOUGHT IT MIGHT BE A MAC OR A MIKE.

20 Q LET'S GO OVER ON THIS BICYCLE.

21 A THAT MIKE OR MAC WAS RELATED TO THE THIRD
22 PERSON INVOLVED, TOO.

23 Q HOW MANY PEOPLE WERE INVOLVED?

24 A IN THE INCIDENT?

25 Q RIGHT.

MR. TAYLOR-CROSS-EXAMINATION BY MR. CHRISCO

79

1 A THERE WAS THREE PEOPLE INVOLVED.

2 MR. CHRISCO: THE COURT'S INDULGENCE JUST ONE
3 MINUTE, YOUR HONOR.

4 Q (CONTINUING) I'VE GOTTEN CONFUSED HERE ON
5 THIS INCIDENT REPORT AND STUFF. I'LL TRY TO TAKE YOU
6 THROUGH IT. PLEASE HELP ME OUT IF YOU CAN. I'M TRYING TO
7 FIGURE THIS OUT. YOU STATED THAT THE SUSPECTS HAD NOT BEEN
8 IDENTIFIED ON THE BOTTOM OF YOUR OCTOBER 4TH REPORT.

9 A AT THE TIME THEY HADN'T.

10 Q AND ON THE BOTTOM OF THAT SAME REPORT YOU
11 STATED THAT THEY HADN'T BEEN LOCATED. THERE'S A BOX DOWN
12 ON THE BOTTOM OF THE REPORT, ISN'T THERE?

13 A RIGHT.

14 Q THAT SAYS, "HAVE THEY BEEN IDENTIFIED?" AND
15 THEN THERE'S ANOTHER LITTLE BOX THAT SAYS, "HAVE THEY BEEN
16 LOCATED?"

17 A RIGHT.

18 Q OKAY, AND IT'S GOT A CHECK YES OR NO.

19 A THAT'S CORRECT.

20 Q AND ON THOSE PARTICULAR REPORTS FOR BEING
21 IDENTIFIED YOU CHECKED NO AND FOR BEING LOCATED YOU CHECKED
22 NO. IS THAT CORRECT?

23 A THAT'S CORRECT.

24 Q NOW, ON THE BOTTOM OF YOUR INCIDENT REPORT
25 DATED OCTOBER THE 9TH THERE'S A NUMBER OF BOXES DOWN THERE.

MR. TAYLOR-CROSS-EXAMINATION BY MR. CHRISCO

80

1 YOU STATED THAT THE SUSPECT HAD NOT BEEN IDENTIFIED AND
2 THEN YOU STATED THAT HAD NOT BEEN LOCATED. IS THAT
3 CORRECT?

4 A THAT'S CORRECT.

5 Q THERE'S ALSO A BLOCK ON THAT SAME REPORT
6 THAT THE SUBJECT HAD BEEN ARRESTED OR NOT, YES OR NO.

7 A THAT'S CORRECT.

8 Q AND ON BOTH DATES, ON OCTOBER THE 4TH AND
9 OCTOBER 9TH ON THE REPORTS THAT YOU FILLED OUT YOURSELF YOU
10 STATED THAT YOU LEFT THIS BLOCK BLANK ON BOTH ONES.

11 A I WOULD IF I DIDN'T MAKE AN ARREST.

12 Q THE FACT IS THAT CORTREAL SWINTON -- SOMEONE
13 HAD CALLED HIS GRANDMOTHER AND TOLD HER THERE WAS A WARRANT
14 ON HIM AND HE TURNED HIMSELF IN ON OCTOBER THE 7TH; IS THAT
15 CORRECT, SIR?

16 A THAT'S CORRECT.

17 Q SO BY THE TIME YOU DID THIS OCTOBER 9TH
18 REPORT, SURELY HE HAD BEEN IDENTIFIED, LOCATED, ARRESTED -
19 - MR. SWINTON.

20 A NOT ALL OF THEM WERE ARRESTED AT THAT TIME.

21 Q AS PERTAINS TO MR. SWINTON.

22 A YEAH, I DID A DIFFERENT REPORT WHEN WE
23 ARRESTED HIM.

24 Q WHEN DID YOU DO A REPORT OF THIS CASE?

25 A THE PRELIMINARY REPORT YOU HAVE THERE I DID

MR. TAYLOR-CROSS-EXAMINATION BY MR. CHRISCO

81

1 THE SAME DAY.

2 Q THESE ARE THE INCIDENT REPORTS BUT DIDN'T
3 YOU DO AN INVESTIGATIVE REPORT, SIR?

4 A WE DID ONE FOR THE SOLICITOR'S CASE FILE
5 YOU'RE TALKING ABOUT?

6 Q YES. DO YOU KNOW WHEN THAT WAS DONE?

7 A NO, I DON'T KNOW THE EXACT DATE. IT WOULD
8 HAVE BEEN LATER.

9 Q IF I WAS TO SHOW YOU THE INVESTIGATIVE
10 REPORT TO REFRESH YOUR RECOLLECTION, COULD YOU TELL ME THE
11 DATE THAT YOU FILLED THAT OUT, SIR?

12 A NO, IT'S NOT DATED.

13 Q DO YOU NOT DATE REPORTS, SIR?

14 A NOT THAT PARTICULAR REPORT. IT DOESN'T
15 REQUIRE A DATE ON IT. IT WOULD HAVE BEEN ON THE DATE THAT
16 THE CASE FOLDER WAS SUBMITTED TO THE SOLICITOR'S OFFICE.

17 Q DO YOU FIND THAT IT MIGHT BE HELPFUL TO DATE
18 REPORTS, SIR?

19 A YEAH, BUT THE ENTIRE CASE FOLDER WAS DATED
20 WHEN IT WAS SUBMITTED TO THE SOLICITOR'S OFFICE.

21 Q LET ME ASK YOU, SIR. YOU WERE OUT THERE
22 THAT NIGHT. DOES THE TREE SHADE THE STREET LIGHT?

23 A NO, SIR.

24 Q NOT AT ALL?

25 A NOT AT ALL. IT'S A OAK TREE --

MR. TAYLOR-CROSS-EXAMINATION BY MR. CHRISCO

82

1 Q YOU WOULDN'T SEE A SHADOW OUTLINE?

2 A WELL, SURE, ON THE OPPOSITE SIDE OVER ON THE
3 B & T -- THE ---

4 Q I'M SORRY. I'M TALKING ABOUT ---
5 THE COURT: WAIT A MINUTE. LET HIM ANSWER THE
6 QUESTION.

7 THE WITNESS: (CONTINUING)

8 A ON THE SIDE THAT MR. COX WAS LYING ON, IT'S
9 NOT SHADED.

10 Q BUT IF YOU WERE TO LOOK DIRECTLY UNDER THAT
11 TREE, YOU WOULD NOT SEE A SHADOW OUTLINE, SIR?

12 A NOT ON THE SIDE THAT HE WAS ON. ON THE
13 OTHER SIDE YOU WOULD.

14 MR. CHRISCO: NO FURTHER QUESTIONS AT THIS TIME,
15 YOUR HONOR.

16 THE COURT: ALL RIGHT. MR. MONCKTON?

17 MR. MONCKTON: YES, SIR, YOUR HONOR.

18 CROSS-EXAMINATION

19 BY MR. MONCKTON:

20 Q MR. TAYLOR, HOW LONG HAVE YOU BEEN A
21 DETECTIVE PURSUING INVESTIGATIONS FOR THE CONWAY POLICE
22 DEPARTMENT?

23 A A TOTAL OF THREE YEARS.

24 Q THREE YEARS? THREE YEARS PRIOR TO OCTOBER
25 THE 4TH, 1997?

MR. FREDERICK-CROSS-EXAMINATION BY MR. MONCKTON

83

1 A NO. PROBABLY A YEAR PRIOR.

2 Q WHAT WERE YOUR RESPONSIBILITIES PRIOR TO
3 OCTOBER THE 4TH, 1997?

4 A SHIFT SERGEANT.

5 Q SHIFT SERGEANT? NOW, YOU MADE MENTION OF A
6 VIDEOTAPE FROM THE EXPRESS SHOP, WHICH I SEE THAT'S ENTERED
7 ON YOUR EVIDENCE SHEET. HAVE YOU HAD AN OPPORTUNITY TO
8 REVIEW THAT VIDEOTAPE?

9 A NO, I HAVEN'T.

10 Q DO YOU KNOW WHETHER OR NOT THE STATE IS
11 GOING TO INTRODUCE IT IN TRIAL?

12 A NO, I DO NOT.

13 Q YOU TOOK FINGERPRINTS OFF THE YELLOW BICYCLE
14 AT THE SCENE?

15 A NO, I DID IT IN MY OFFICE.

16 Q AND YOU SENT THEM TO SLED, WHICH IS THE
17 SOUTH CAROLINA LAW ENFORCEMENT DIVISION; IS THAT CORRECT?

18 A THAT'S CORRECT.

19 Q AND THEY SENT YOU A REPORT BACK. I'M GOING
20 TO SHOW YOU DEFENSE EXHIBIT NUMBER 1 FOR ID ONLY. AND IN
21 THAT REPORT I BELIEVE YOU TESTIFIED THEY SAID THAT THERE
22 WAS INSUFFICIENT RIDGE DETAIL.

23 A THAT'S CORRECT.

24 Q OKAY. DIDN'T THEY ASK YOU TO DO SOMETHING
25 ELSE?

MR. FREDERICK-CROSS-EXAMINATION BY MR. MONCKTON

84

1 A NO, SIR.

2 Q LOOK ON THE SECOND PAGE. DON'T THEY MAKE A
3 REQUEST OF YOU?

4 A ABOUT SUBMITTING MAJOR CASE PRINTS?

5 Q THAT'S RIGHT. THE SLED INVESTIGATOR
6 REQUESTED YOU SEND MAJOR CASE PRINTS TO THEM FOR ANALYSIS.
7 DO YOU KNOW WHAT A MAJOR CASE PRINT IS?

8 A YES, SIR, I DO.

9 Q WHAT IS A MAJOR CASE PRINT?

10 A IT SHOWS THE ENTIRE PALM, THE SIDES OF THE
11 FINGERS, THE ENTIRE RIDGE DETAILED PORTION OF YOUR HAND.

12 Q BASICALLY, LIKE PAPER TOWEL HOLDER WHERE YOU
13 JUST GRAB ON? YOU DO THE WHOLE HAND?

14 A CONTINUED ROLL.

15 Q WHEN DID YOU SEND THOSE TO SLED?

16 A I DON'T RECOLLECT.

17 Q DO YOU NEED YOUR FILE TO REVIEW?

18 A I DON'T KNOW THAT WE SENT THEM.

19 Q IS IT FAIR TO SAY THAT YOU DIDN'T SEND THE
20 MAJOR CASE PRINTS TO SLED LIKE THEY REQUESTED?

21 A THAT'S FAIR TO SAY THAT, YES.

22 Q YES OR NO?

23 A I DON'T KNOW WHETHER THEY SENT THEM.

24 Q YOU WERE THE LEAD DETECTIVE ON THE CASE; IS
25 THAT CORRECT?

MR. FREDERICK-CROSS-EXAMINATION BY MR. MONCKTON

85

1 A THAT'S CORRECT.

2 Q ARE YOU STILL THE LEAD DETECTIVE ON THIS
3 CASE?

4 A I GUESS. I ASSUME I'M STILL THE LEAD
5 DETECTIVE ON THIS CASE. I'M NOT IN THE DETECTIVES ANYMORE.

6 Q YOU ISSUED AN ARREST WARRANT ON OCTOBER THE
7 4TH, 1997.

8 A THAT'S CORRECT.

9 Q OKAY. AND IN YOUR JOB AS AN INVESTIGATOR
10 WOULD IT BE FAIR TO SAY THAT YOU'RE SUPPOSED TO BASICALLY
11 LOOK UNDER EVERY STONE AND USE ANY INVESTIGATIVE PROCESS
12 YOU CAN TO INVESTIGATE A CASE?

13 A THAT'S CORRECT.

14 Q OKAY. DID YOU DO IT IN THIS CASE?

15 A I DID. THE QUESTION ABOUT THE MASTER CASE
16 PRINTS I'M WANTING TO THINK AND I'M NOT SURE THAT THEY WERE
17 DONE BUT THEY WERE DONE INCORRECTLY. I DIDN'T DO THEM.
18 THEY WEREN'T ABLE TO USE THEM.

19 Q OKAY. DO YOU KNOW IF THERE'S BEEN ANY
20 EFFORT WHATSOEVER BY THE CONWAY POLICE DEPARTMENT TO SECURE
21 MAJOR CASE PRINTS IF THEY WERE DONE INCORRECTLY TO SEND TO
22 SLED?

23 A NO.

24 Q SO THE REQUEST BY THE SLED INVESTIGATOR WAS
25 NOT COMPLIED WITH, TO THE BEST OF YOUR KNOWLEDGE?

MR. FREDERICK-CROSS-EXAMINATION BY MR. MONCKTON

86

1 A THAT'S CORRECT.

2 Q I'VE BEEN LOOKING OVER YOUR EVIDENCE SHEET.
3 DID YOU RECOVER A GUN OR GUNS IN THIS CASE?

4 A NO.

5 Q DID YOU EXECUTE ANY SEARCH WARRANTS TO LOOK
6 FOR ANY GUNS?

7 A NO.

8 Q WOULD THAT BE AN INVESTIGATIVE PROCESS THAT
9 YOU WOULD NORMALLY FOLLOW IN A MURDER INVESTIGATION?

10 A IT WOULD BE ONE IF YOU HAD REASON TO BELIEVE
11 THAT THE GUN WAS PRESENT, YOU KNOW, AT A LOCATION. I HAD
12 NO EVIDENCE OR ANYTHING TO GET A SEARCH WARRANT ON THAT.

13 Q YOU DIDN'T SEARCH ANY OF THESE DEFENDANTS'
14 HOUSES FOR EVIDENCE OF A GUN OR CLOTHING OR ANYTHING
15 LINKING TO THIS CRIME, DID YOU?

16 A THAT'S CORRECT.

17 Q YOU TESTIFIED THAT THERE WAS A THIRD PERSON
18 INVOLVED IN THIS CRIME?

19 A THAT'S CORRECT.

20 Q HOW MANY PEOPLE ARE SITTING OVER THERE?

21 A TWO.

22 MR. MONCKTON: NO FURTHER QUESTIONS.

23 THE COURT: REDIRECT, MR. BELLAMY?

24 MR. BELLAMY: YOUR HONOR, NO REDIRECT FROM THE
25 STATE.

MR. MCDONALD-DIRECT EXAMINATION BY MR. BELLAMY

87

1 THE COURT: ALL RIGHT. THANK YOU, MR. TAYLOR.
2 COUNSEL APPROACH JUST A MOMENT, PLEASE.

3 (WHEREUPON A SIDE BAR WAS HELD OFF THE RECORD IN
4 THE PRESENCE OF THE JURY BUT OUT OF THEIR HEARING.)

5 THE COURT: CALL YOUR NEXT WITNESS, PLEASE, MR.
6 BELLAMY.

7 MR. BELLAMY: MAY IT PLEASE THE COURT, YOUR
8 HONOR, THE STATE CALLS FREDERICK MCDONALD.

9 FREDERICK MCDONALD,

10 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

11 DIRECT EXAMINATION

12 BY MR. BELLAMY:

13 Q FREDERICK, DO YOU LIVE IN THE CITY OF
14 CONWAY?

15 A YES, SIR.

16 Q HOW LONG HAVE YOU LIVED IN THE CITY OF
17 CONWAY?

18 A ALL MY LIFE.

19 Q DID YOU ATTEND CONWAY HIGH SCHOOL?

20 A YES, SIR.

21 Q DID YOU KNOW THE VICTIM IN THIS CASE, ISAAC
22 COX?

23 A YES, SIR.

24 Q WHAT RELATION?

25 A MY FIRST COUSIN.

MR. MCDONALD-DIRECT EXAMINATION BY MR. BELLAMY

88

1 Q FIRST COUSIN. HOW WOULD YOU DESCRIBE ISAAC
2 AS A PERSON?

3 MR. MONCKTON: OBJECTION, YOUR HONOR.

4 THE COURT: ALL RIGHT. WHAT'S YOUR OBJECTION,
5 MR. MONCKTON?

6 MR. MONCKTON: PUTTING THE CHARACTER OF THE
7 VICTIM INTO EVIDENCE, YOUR HONOR. I DON'T THINK IT'S
8 RELEVANT.

9 THE COURT: MR. BELLAMY?

10 MR. BELLAMY: YOUR HONOR, WE'LL MOVE ON.

11 THE COURT: ALL RIGHT.

12 Q DO YOU KNOW THE DEFENDANT CORTREAL SWINTON?

13 A YES, SIR.

14 Q HOW DO YOU KNOW THE DEFENDANT CORTREAL
15 SWINTON?

16 A I WENT TO SCHOOL WITH HIM.

17 Q DO YOU KNOW THE DEFENDANT DERRICK
18 HOLLINGSWORTH?

19 A YES, SIR.

20 Q HOW DO YOU KNOW THE DEFENDANT DERRICK
21 HOLLINGSWORTH?

22 A I SEEN HIM FROM AROUND THE NEIGHBORHOOD.

23 Q MR. MCDONALD, I'D LIKE TO DIRECT YOUR
24 ATTENTION TO OCTOBER 3RD, 1997. DID YOU HAVE OCCASION TO
25 COME IN CONTACT WITH ISAAC COX?

MR. MCDONALD-DIRECT EXAMINATION BY MR. BELLAMY

89

1 A YES, SIR.

2 Q WHERE DID YOU MEET UP WITH HIM?

3 A OVER JENNIFER GRAHAM'S HOUSE.

4 Q WHAT WERE YOU ALL DOING AT JENNIFER GRAHAM'S
5 HOUSE?

6 A HAVING A COOKOUT.

7 Q AT SOME POINT IN TIME DID YOU LEAVE JENNIFER
8 GRAHAM'S HOUSE?

9 A YES, SIR.

10 Q WHERE DID YOU GO?

11 A WE CAUGHT A CAB TO MY GRANDMOTHER'S HOUSE.

12 Q WHERE IS YOUR GRANDMOTHER'S HOUSE LOCATED?

13 A NOT TOO FAR FROM CONWAY, COTTONTOWN.

14 Q WHEN YOU GOT TO YOUR GRANDMOTHER'S HOUSE,
15 WHAT DID YOU DO?

16 A WE SAT AND CHILLED FOR AWHILE, MADE TWO
17 FRYERS, THEN WE CAUGHT ANOTHER CAB AND PROCEEDED TO COME
18 BACK TO THIS SIDE

19 Q LET ME ASK YOU. WHEN YOU WERE AT YOUR
20 GRANDMOTHER'S HOUSE, WHO WAS PRESENT WITH YOU?

21 A ISAAC COX, ME MYSELF, CHANTELL MITCHELL ---

22 Q WHO IS CHANTELL MITCHELL?

23 A THAT'S MY GIRLFRIEND.

24 Q OKAY.

25 A AND VALERIE. I DON'T KNOW HER LAST NAME.

MR. MCDONALD-DIRECT EXAMINATION BY MR. BELLAMY

90

1 SHE WAS ALSO WITH US. AND TONY, ISAAC'S BROTHER.

2 Q NOW, WHEN YOU LEFT YOUR GRANDMOTHER'S HOUSE
3 -- DID YOU LEAVE YOUR GRANDMOTHER'S HOUSE?

4 A YES, SIR.

5 Q WHERE DID YOU GO?

6 A WE CAUGHT A CAB AND WENT TO EXXON.

7 Q DO YOU REMEMBER WHAT TIME YOU ARRIVED AT THE
8 EXXON EXPRESS STATION?

9 A NOT EXACTLY WHAT TIME BUT I KNOW WE CAUGHT
10 THE CAB FROM PROBABLY 1:30 BETWEEN 2:00.

11 Q WHEN YOU ARRIVED AT THE EXXON EXPRESS
12 STATION, WHAT DID YOU DO?

13 A WE GOT OUT OF THE CAB. WE STOOD UP, TALKED
14 FOR A LITTLE WHILE, JUST STOOD THERE. THAT'S WHEN WE SEEN
15 THE ASSAILANT COME THROUGH.

16 Q DID YOU HAVE AN OCCASION TO SEE THE
17 DEFENDANT DERRICK HOLLINGSWORTH AT THE EXXON EXPRESS
18 STATION?

19 A YES, SIR.

20 Q TELL US HOW YOU CAME IN CONTACT WITH HIM.

21 A AS WE WERE STANDING IN THE PARKING LOT, HE
22 RODE UP ON THE BICYCLE RIDING IN CIRCLES, YOU KNOW, JUST
23 STARING AT US AND LOOKING, GAZING, LOOKING AT, YOU KNOW.

24 Q MR. MCDONALD, LET ME SHOW YOU WHAT'S STATE'S
25 EVIDENCE NUMBER 2. HAVE YOU HAD AN OPPORTUNITY TO REVIEW

MR. MCDONALD-DIRECT EXAMINATION BY MR. BELLAMY

91

1 THIS DIAGRAM PRIOR TO TRIAL?

2 A YES, SIR.

3 Q DOES IT FAIRLY AND ACCURATELY REPRESENT THE
4 INTERSECTION OF 378 AND RACEPATH?

5 A YES, SIR.

6 MR. BELLAMY: YOUR HONOR, WITH THE COURT'S
7 PERMISSION IF I COULD ASK MR. MCDONALD TO STEP DOWN FROM
8 THE STAND.

9 THE COURT: YOU MAY STEP DOWN.

10 Q MR. MCDONALD ---

11 THE COURT: THERE'S ONE THING YOU'RE GOING TO
12 HAVE TO REMEMBER. KEEP YOUR VOICE UP BECAUSE THE COURT
13 REPORTER HAS STILL GOT TO HEAR EVERYTHING THAT YOU'RE
14 TESTIFYING TO.

15 Q WOULD YOU INDICATE AT WHAT LOCATION YOU SAW
16 THE DEFENDANT DERRICK HOLLINGSWORTH?

17 A IN THE PARKING LOT RIGHT HERE.

18 Q AND WHERE WERE YOU STANDING?

19 A TO THE SIDE OF THE EXXON STORE.

20 THE COURT: SHE'S HAVING A HARD TIME HEARING YOU,
21 SO BE SURE TO SPEAK UP LOUD ENOUGH SO SHE CAN HEAR YOU. GO
22 AHEAD.

23 Q LET ME HAND YOU ---

24 MR. BELLAMY: YOUR HONOR, FOR THE RECORD, I'M
25 HANDING MR. MCDONALD A PEN.

MR. MCDONALD-DIRECT EXAMINATION BY MR. BELLAMY

92

1 Q WOULD YOU INITIAL WHERE YOU WERE STANDING AT
2 AT THE EXXON EXPRESS PARKING LOT?

3 A YES, SIR.

4 Q ON WHAT SIDE OF THE BUILDING? JUST WRITE
5 YOUR INITIALS DOWN THERE.

6 A (THE WITNESS COMPLIES.)

7 Q WAS ISAAC STANDING THERE WITH YOU?

8 A YES, SIR.

9 Q WOULD YOU INITIAL?

10 A (THE WITNESS COMPLIES.)

11 Q IN WHAT DIRECTION WAS DEFENDANT DERRICK
12 HOLLINGSWORTH COMING FROM?

13 A HE WAS COMING FROM UP THE ROAD TO THIS SIDE
14 OF THE STORE.

15 THE COURT: SPEAK UP.

16 A COMING UP FROM RACEPATH TO THE OTHER SIDE OF
17 THE STORE.

18 Q HOW MANY TIMES DID HE CIRCLE THE STORE?

19 A TWICE.

20 Q DID HE CIRCLE IT CLOCKWISE OR
21 COUNTERCLOCKWISE?

22 A CLOCKWISE.

23 Q WOULD YOU INDICATE THAT ON THE DIAGRAM.

24 A (THE WITNESS COMPLIES.)

25 Q NOW, AFTER HE CIRCLED THE STORE TWICE --

MR. MCDONALD-DIRECT EXAMINATION BY MR. BELLAMY

93

1 AFTER DEFENDANT DERRICK HOLLINGSWORTH CIRCLED THE STORE
2 TWICE, WHAT DIRECTION DID HE LEAVE IN?

3 A (INAUDIBLE).

4 THE COURT: SPEAK UP.

5 A HE LEAVES THE STORE AND GOES BACK DOWN THE
6 ROAD.

7 Q WHAT ROAD ARE YOU POINTING TO?

8 A RACEPATH AVENUE.

9 Q RACEPATH AVENUE? SO HE LEAVES BY RACEPATH
10 AVENUE?

11 A YES, SIR.

12 Q GO AHEAD AND TAKE THE STAND. MR. MCDONALD,
13 THE TWO TIMES THE DEFENDANT DERRICK HOLLINGSWORTH CIRCLED
14 THE STORE, WERE YOU ABLE TO OBSERVE WHAT HE WAS LOOKING AT?

15 A YES, SIR.

16 Q WHO WAS HE LOOKING AT?

17 A HE WAS STARING AT THE BOTH OF US. I DIDN'T
18 TAKE IT UPON US HE WAS STARING AT ISAAC, YOU KNOW. HE JUST
19 GAVE US A GAZED LOOK, CONSTANTLY STARING AT US THE WHOLE
20 TIME. WE DIDN'T KNOW.

21 Q DID HE EVER ACKNOWLEDGE YOU OR ISAAC?

22 A NO, SIR.

23 Q NOW, DID YOU SEE DEFENDANT DERRICK
24 HOLLINGSWORTH PURCHASE ANYTHING FROM THE EXXON EXPRESS
25 SHOP?

MR. MCDONALD-DIRECT EXAMINATION BY MR. BELLAMY

94

1 A YES, SIR.

2 Q WHAT DID HE PURCHASE?

3 A TWO BEERS.

4 Q NOW, AFTER THE DEFENDANT DERRICK
5 HOLLINGSWORTH LEFT -- YOU SAID HE WENT UP RACEPATH TOWARDS
6 378 -- WHAT DID YOU AND ISAAC DO NEXT?

7 A WE WENT INTO THE STORE LOOKING FOR BEER FOR
8 ISAAC AND WHEN WE PROCEEDED TO GO ACROSS THE STREET TO SAV-
9 WAY.

10 Q NOW, AT SOME POINT IN TIME DID ISAAC LEAVE
11 Y'ALL?

12 A YES, SIR. AFTER WE COME FROM SAV-WAY AND
13 GOT BACK TO THE EXXON ISAAC SEPARATED FROM US.

14 Q DO YOU KNOW WHERE HE WENT?

15 A HE PROCEEDED TO WALK -- HE WAS WALKING ON
16 THE ROAD. HE LEFT -- HE TAPPED ON THE WINDOW, TOLD US BYE
17 AND THEN HE WALKED OFF DOWN THE ROAD, DOWN RACEPATH AVENUE.

18 Q NOW, LET ME ASK YOU THIS. DID YOU HAVE
19 OCCASION TO HEAR SOMETHING THAT STARTLED YOU?

20 A YES, SIR.

21 Q WHAT DID YOU HEAR?

22 A GUNSHOTS.

23 Q CAN YOU DESCRIBE HOW YOU HEARD THE GUNSHOTS?

24 A THEN WENT POP, POP, POP -- POP, POP.

25 Q SO THERE WAS A PAUSE?

MR. MCDONALD-DIRECT EXAMINATION BY MR. BELLAMY

95

1 A YES, SIR.

2 Q IF I UNDERSTAND YOUR TESTIMONY, YOU HEARD
3 FIVE GUNSHOTS?

4 A YES, SIR.

5 Q AS A RESULT OF HEARING THE GUNSHOTS, WHAT
6 DID YOU DO?

7 A BEGAN TO RUN OUT DOWN THE ROAD TOWARDS HIM.

8 Q WHAT DIRECTION WERE YOU -- LET ME SHOW YOU
9 STATE'S EVIDENCE 2. I'LL HOLD IT THIS WAY. WOULD YOU
10 INDICATE ON THE DIAGRAM WHAT DIRECTION YOU RAN?

11 A I CAME OUT OF THE EXXON AND I PROCEEDED
12 GOING DOWN ON RACEPATH AVENUE, ON DOWN TOWARDS THE
13 SHOOTING.

14 Q THEN WHEN YOU GOT TO THE INTERSECTION OF
15 RACEPATH AND 378, WHAT DID YOU SEE?

16 A I SAW ISAAC ON THE GROUND, COPS ALL AROUND
17 TELLING US TO GET BACK AND STUFF.

18 Q CAN YOU DESCRIBE HOW HIS BODY WAS
19 POSITIONED?

20 A HE WAS LAYING FACE DOWN, YOU KNOW, FACING
21 TOWARDS US AS WE WERE FACING THE TREE AND HIS ARMS WERE --
22 ONE WAS UNDER HIM AND THE OTHER ONE WAS OUT -- LAYING OUT.

23 Q AT SOME POINT IN TIME DID THEY TURN HIS BODY
24 OVER?

25 A YES, SIR.

MR. MCDONALD-DIRECT EXAMINATION BY MR. BELLAMY

96

- 1 Q DID YOU SEE THAT?
- 2 A YES, SIR.
- 3 Q AS A RESULT OF THAT, WHAT DID YOU DO?
- 4 A BEGAN TO RUN.
- 5 Q WHERE DID YOU GO?
- 6 A UP RACEPATH AVENUE.
- 7 Q NOW, DO YOU KNOW WHERE THEY TOOK ISAAC?
- 8 A TO THE HOSPITAL.
- 9 Q WHICH HOSPITAL?
- 10 A CONWAY HOSPITAL.
- 11 Q DID YOU GO TO CONWAY HOSPITAL?
- 12 A YES, SIR.
- 13 Q DID YOU GO INTO THE EMERGENCY ROOM AREA, THE
- 14 WAITING ROOM AREA?
- 15 A YES, SIR.
- 16 Q WOULD YOU DESCRIBE WHAT WAS GOING ON IN
- 17 THERE?
- 18 A THERE WAS A LOT OF TORMENTED AND HURT
- 19 PEOPLE, YOU KNOW. EVERYBODY WAS CRYING. IT WAS JUST VERY
- 20 SAD. I COULDN'T TAKE IT, YOU KNOW.
- 21 Q NOW, AT SOME POINT IN TIME DID YOU WANT TO
- 22 TAKE STEPS TO FIND OUT WHO DID THIS?
- 23 A YES, SIR.
- 24 Q WHAT MEASURES DID YOU TAKE TO FIND OUT WHO
- 25 DID THIS?

MR. MCDONALD-DIRECT EXAMINATION BY MR. BELLAMY

97

1 A WE STARTED RIDING AROUND LOOKING FOR PEOPLE,
2 YOU KNOW, SEEING WHO WAS INVOLVED ---

3 MR. CHRISCO: OBJECTION.

4 THE COURT: ALL RIGHT. WHAT'S YOUR OBJECTION?

5 MR. CHRISCO: WE NEED TO TALK ON A SIDE BAR, YOUR
6 HONOR.

7 (WHEREUPON, A SIDE BAR WAS HELD OFF THE RECORD IN
8 THE PRESENCE OF THE JURY BUT OUT OF THEIR HEARING.)

9 THE COURT: THE QUESTION WAS, "WHAT WERE YOU
10 DOING?" JUST TELL WHAT YOU WERE DOING.

11 THE WITNESS: AT THE TIME?

12 THE COURT: YES, SIR.

13 THE WITNESS: AT THE TIME IN THE HOSPITAL?

14 THE COURT: NO, NO. THE QUESTION THAT WAS ASKED
15 WAS, "WHAT DID YOU DO AFTER YOU GOT OUT OF THE HOSPITAL?"
16 AND I THINK YOU SAID YOU WERE RIDING AROUND.

17 THE WITNESS: (CONTINUING)

18 A I WENT TO MY AUNT'S HOUSE FIRST AND THEN WE
19 BEGAN RIDING AROUND ASKING QUESTIONS AND LOOKING FOR PEOPLE
20 WHO WERE INVOLVED WITH IT.

21 MR. BELLAMY: YOUR HONOR, AT THIS TIME, I'M GOING
22 TO ASK THE COURT'S PERMISSION IF MR. MCDONALD COULD STEP
23 DOWN FROM THE STAND?

24 THE COURT: YES, SIR.

25 MR. BELLAMY: MR. MCDONALD, WOULD YOU MOVE BACK

MR. MCDONALD-DIRECT EXAMINATION BY MR. BELLAMY

98

1 SO I CAN HOLD THIS MAP UP.

2 Q AND WHEN YOU WERE RIDING AROUND, DID YOU
3 HAVE AN OCCASION TO TURN OFF A CERTAIN STREET?

4 A YES, SIR.

5 Q WHAT STREET DID YOU TURN OFF?

6 A HEMINGWAY STREET.

7 THE COURT: SPEAK UP.

8 THOMPSON WITNESS: (CONTINUING)

9 A HEMINGWAY STREET.

10 Q NOW, WHO WERE YOU RIDING AROUND WITH?

11 A MY BROTHER.

12 Q AND WHERE WERE YOU SITTING IN THE CAR?

13 A ON THE PASSENGER SIDE.

14 Q NOW, AS YOU TOOK A RIDE ON HEMINGWAY STREET,
15 WOULD YOU DESCRIBE WHAT YOU SAW?

16 A I SAW TWO MALES STANDING UP ON A LITTLE HILL
17 TO THE RIGHT.

18 Q NOW, WHAT DIRECTION WERE YOU LOOKING OUT OF
19 THE CAR? WHAT DIRECTION WERE YOU LOOKING OUT OF?

20 A THE RIGHT SIDE.

21 Q THE RIGHT SIDE? YOU WERE LOOKING OUT OF THE
22 PASSENGER WINDOW?

23 A YES, SIR.

24 Q NOW, WOULD YOU DESCRIBE AS FAR AS WHAT THE
25 TWO INDIVIDUALS WERE WEARING?

MR. MCDONALD-DIRECT EXAMINATION BY MR. BELLAMY

99

1 A THEY HAD ON ALL BLACK. ONE OF THEM I SEEN
2 HE HAD HIS HOODIE ON. THE OTHER ONE DIDN'T. THEY JUST
3 BEGAN TO RUN.

4 Q ALL RIGHT, AND SLOW DOWN A SECOND. WOULD
5 YOU DESCRIBE -- CAN YOU IDENTIFY, AS FAR AS THE BEST OF
6 YOUR MEMORY, THE HEIGHT OF THE TWO INDIVIDUALS?

7 A YES, SIR.

8 Q OKAY. WOULD YOU DESCRIBE THE HEIGHT?

9 A ONE OF THE GUYS WAS SHORT, PROBABLY FIVE-
10 EIGHT, FIVE-SIX, SOMETHING LIKE THAT. THE OTHER GUY
11 PROBABLY WAS SIX-THREE, SIX-FOUR, SOMETHING LIKE THAT.

12 Q NOW, WHEN YOU WERE GOING -- I GUESS IF YOU
13 LOOK AT THE DIAGRAM, YOU WERE PROBABLY GOING IN A NORTHEAST
14 DIRECTION -- DO YOU SEE RIGHT HERE? -- IF YOU WERE DRIVING
15 IN THIS DIRECTION; IS THAT CORRECT?

16 A YES, SIR.

17 Q DID YOU MAKE EYE CONTACT?

18 A YES, SIR.

19 Q WOULD YOU DESCRIBE WHEN YOU MADE EYE CONTACT
20 WITH THE OTHER INDIVIDUALS AS FAR AS ANY GESTURES THEY
21 MADE?

22 A THEY WERE JUST STUNNED. THEY JUST BROKE OUT
23 AND RUN. THEY WERE SHOCKED TO SEE US.

24 Q DO YOU SEE ONE OF THE INDIVIDUALS IN THE
25 COURTROOM?

MR. MCDONALD-DIRECT EXAMINATION BY MR. BELLAMY

100

1 A YES, SIR.

2 Q WOULD YOU POINT HIM OUT?

3 A RIGHT THERE IN THE FRONT WITH THE PLAID
4 SHIRT ON WITH RED MARKS ON IT AND SQUARES.

5 Q DO YOU KNOW HIS NAME?

6 A YES, SIR.

7 Q WOULD YOU IDENTIFY HIM?

8 A THAT'S CORTREAL SWINTON.

9 Q NOW, DID YOU KNOW THE NAME OF THE OTHER
10 INDIVIDUAL HE WAS STANDING WITH?

11 A YES, SIR.

12 Q WHAT WAS HIS NAME?

13 A CURTIS WILSON.

14 MR. BELLAMY: YOUR HONOR, THE STATE HAS NO
15 FURTHER QUESTIONS AT THIS TIME. PLEASE ANSWER ANY
16 QUESTIONS THAT MR. MONCKTON OR MR. CHRISCO HAVE.

17 THE COURT: ALL RIGHT. MR. CHRISCO?

18 MR. CHRISCO: MR. MONCKTON WILL GO FIRST.

19 THE COURT: ALL RIGHT, MR. MONCKTON.

20 CROSS-EXAMINATION

21 BY MR. MONCKTON:

22 Q MR. MCDONALD, YOU TESTIFIED THAT MY CLIENT,
23 MR. HOLLINGSWORTH, CIRCLED THE STORE FIRST, CIRCLED THE
24 STORE TWICE; IS THAT CORRECT?

25 A YES, SIR.

MR. MCDONALD-CROSS-EXAMINATION BY MR. MONCKTON

101

1 Q DID HE GO INTO THE STORE AND BUY HIS ITEMS
2 BEFORE HE CIRCLED THE STORE OR AFTER HE CIRCLED THE STORE?

3 A AFTER.

4 Q SO HE BOUGHT TWO BEERS; IS THAT CORRECT?

5 A NO, SIR, NOT AFTER. I MISUNDERSTOOD YOU.

6 THE COURT: MR. MONCKTON, MOVE AWAY FROM HIM.

7 MR. MONCKTON: YES, SIR, YOUR HONOR.

8 Q YOU ALSO -- HOW FAR WOULD YOU SAY IS THE
9 STORE FROM THE BIG TREE?

10 A I COULDN'T TELL YOU ALL THAT.

11 Q HOW LONG WOULD IT TAKE YOU TO GET THERE IF
12 YOU WERE RUNNING OR WALKING? HOW LONG WOULD IT TAKE YOU TO
13 GET THERE?

14 A PROBABLY THREE, FOUR MINUTES.

15 Q THREE OR FOUR MINUTES? YOU TESTIFIED THAT
16 THE POLICE WERE ALREADY THERE WHEN YOU GOT THERE.

17 A THEY WERE.

18 Q YOU HEARD FIVE SHOTS FROM THE STORE AND WENT
19 STRAIGHT TO THE SCENE AND THE POLICE WERE ALREADY THERE?

20 A YUP.

21 Q YOU TESTIFIED THAT YOU SAW ANOTHER
22 INDIVIDUAL RUNNING WITH MR. SWINTON. WHO WAS THAT AGAIN?

23 A CURTIS WILSON.

24 Q IS CURTIS WILSON IN THE COURTROOM TODAY?

25 A NO, SIR.

MR. MCDONALD-CROSS-EXAMINATION BY MR. MONCKTON

102

1 Q MR. MCDONALD, YOU HAVE CHARGES CURRENTLY
2 PENDING AGAINST YOU ---

3 MR. BELLAMY: YOUR HONOR, I OBJECT AT THIS POINT
4 IN TIME. THAT'S A MATTER OF LAW.

5 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN OF
6 THE JURY, IT'S A COUPLE OF MINUTES AFTER ONE SO I THINK
7 IT'S AN APPROPRIATE TIME THAT WE BREAK FOR LUNCH ANYHOW AT
8 THIS TIME, SO I'M GOING TO GO AHEAD AND RECESS FOR LUNCH.
9 I'LL ASK THAT YOU BE BACK IN YOUR JURY ROOM, PLEASE, AT
10 2:15. THAT GIVES YOU ABOUT AN HOUR AND FIFTEEN MINUTES AND
11 I DO HAVE A MATTER I HAVE TO ATTEND TO AT 2:00. OVER LUNCH
12 RECESS DO NOT DISCUSS THIS CASE WITH ANYONE. DO NOT ALLOW
13 ANYONE TO DISCUSS IT WITH YOU AND DO NOT DISCUSS IT AMONG
14 YOURSELVES WHEN YOU COME BACK TO THE JURY ROOM. ANY
15 DISCUSSION AMONG YOURSELVES WOULD BE PREMATURE AT THIS
16 TIME. BUT I AM GOING TO EXCUSE YOU FOR LUNCH AND ASK YOU
17 TO PLEASE BE BACK IN THE JURY ROOM AT 2:15. THANK YOU.
18 YOU MAY GO.

19 (WHEREUPON, THE JURY LEFT THE COURTROOM AND THE
20 FOLLOWING PROCEEDINGS WERE HAD.)

21 THE COURT: ALL RIGHT, MR. BELLAMY, WHAT'S YOUR
22 OBJECTION?

23 MR. BELLAMY: YOUR HONOR, MY OBJECTION IS THAT
24 MR. MCDONALD DOES HAVE A CRIMINAL RECORD BUT IT'S SIMPLE
25 POSSESSION OF MARIJUANA.

MR. MCDONALD-CROSS-EXAMINATION BY MR. MONCKTON

103

1 THE COURT: THAT WASN'T WHAT HE ASKED HIM. HE
2 ASKED HIM IF HE HAD CHARGES PENDING AGAINST HIM, I BELIEVE.
3 ISN'T THAT WHAT YOU ASKED HIM, MR. MONCKTON?

4 MR. MONCKTON: THAT'S CORRECT, YOUR HONOR. IT'S
5 OUR UNDERSTANDING HE HAS A POSSESSION OF A CONTROLLED
6 SUBSTANCE EVENT AND A POSSESSION OF A CONTROLLED SUBSTANCE
7 WITHIN CLOSE PROXIMITY OF A SCHOOL THAT ARE PENDING AGAINST
8 HIM FROM THIS SOLICITOR'S OFFICE AND THAT IS FROM
9 INFORMATION I RECEIVED FROM OUR SOLICITOR'S OFFICE ON
10 FEBRUARY THE 14TH OF 2000. PURSUANT TO STATE V. SMITH ---

11 THE COURT: I UNDERSTAND. I KNOW ABOUT STATE V.
12 SMITH. LET ME HEAR FROM MR. BELLAMY. HOW ABOUT PENDING
13 CHARGES THAT HE'S GOT AGAINST HIM, MR. BELLAMY?

14 MR. BELLAMY: YOUR HONOR, AS FAR AS THE STATUS OF
15 THE CHARGES, WHETHER THEY'RE STILL PENDING OR NOT, I DON'T
16 KNOW. YOUR HONOR, WHAT WE DID WAS WE LOOKED AT HIS NCIC
17 CRIMINAL RECORD AND THE ONLY THING THAT HE HAD WAS A
18 CONVICTION FOR SIMPLE POSSESSION OF MARIJUANA. AND AS FAR
19 AS MR. MONCKTON IS, IF HE WANTED TO INTRODUCE IT AS A PRIOR
20 BAD ACT, HE WOULD HAVE TO SHOW CLEAR AND CONVINCING
21 EVIDENCE. THE THING IS, YOUR HONOR, HE HASN'T EVEN LAID A
22 FOUNDATION TO ASK THE QUESTION.

23 THE COURT: WHAT ABOUT THE CASE OF STATE VS.
24 SMITH WHERE THE SUPREME COURT HELD IN 1994 THAT THE REFUSAL
25 TO ALLOW IMPEACHMENT OF AN IDENTIFICATION WITNESS WITH

MR. MCDONALD-CROSS-EXAMINATION BY MR. MONCKTON

104

1 EVIDENCE THAT CRIMINAL CHARGES WERE PENDING AGAINST THE
2 WITNESS VIOLATED THE DEFENDANT'S SIXTH AMENDMENT RIGHT OF
3 CONFRONTATION? I THINK THAT'S MR. MONCKTON'S POSITION IS
4 THAT HE HAS THE RIGHT TO ASK HIM ABOUT PENDING CHARGES
5 AGAINST HIM UNDER -- HE'S NOT TRYING TO IMPEACH HIS
6 TESTIMONY ON THE BASIS OF PRIOR BAD ACTS BUT HE'S TRYING TO
7 -- IT'S UNDER THE SIXTH AMENDMENT CONFRONTATION CLAUSE.
8 AND IF HE'S GOT PENDING CHARGES AGAINST HIM, THEN THEY HAVE
9 THE RIGHT TO ASK HIM THAT UNDER THE CONFRONTATION CLAUSE.

10 MR. BELLAMY: YOUR HONOR, I WOULD ASK WHAT THE
11 RELEVANCE WOULD BE IF I ASKED HIM -- IT DOESN'T AFFECT HIS
12 TRUTH OR VERACITY AS FAR AS THOSE CHARGES. IF HE THEN
13 WANTS TO SAY AS FAR AS THE DISTRIBUTION OF MARIJUANA AND
14 DISTRIBUTION OF MARIJUANA IN CLOSE PROXIMITY TO A SCHOOL
15 WHAT IS AS FAR AS THE RELEVANCY AS FAR AS MR. MCDONALD'S
16 VERACITY? IF HE HAD A CHARGE OR A CONVICTION FOR A BREACH
17 OF TRUST, I CAN UNDERSTAND THAT. YOUR HONOR, THIS IS NOT
18 EVEN A CONVICTION. THESE ARE PENDING CHARGES.

19 MR. HUMPHRIES: YOUR HONOR, LET US DO THIS. LET
20 US CHECK THE RECORDS AND FIND OUT WHAT THE STATUS IS.

21 THE COURT: ALL RIGHT, FIND OUT WHAT IT IS AND
22 LET ME KNOW AFTER LUNCH AND IF -- YOU KNOW, IF HE HAS GOT
23 PENDING CHARGES AGAINST HIM, FIRST LET DEFENSE KNOW AND
24 THEN WE'LL APPROACH IT AT 2:15.

25 MR. HUMPHRIES: YES. THANK YOU, JUDGE.

MR. MCDONALD-CROSS-EXAMINATION BY MR. MONCKTON

105

1 THE COURT: ALL RIGHT, WE'LL BE IN RECESS UNTIL
2 2:15 ON THIS CASE. THANK YOU.

3 (WHEREUPON, COURT WAS RECESSED FOR LUNCH AND THE
4 FOLLOWING TAKES PLACE ON THE RECORD FOLLOWING THE LUNCH
5 RECESS.)

6 THE COURT: ALL RIGHT, MR. BELLAMY, MR.
7 HUMPHRIES, WHAT DID YOU FIND OUT ABOUT THE PENDING -

8 MR. HUMPHRIES: JUDGE, HERE'S WHAT WE FOUND.
9 THERE WAS AN ARREST FOR POSSESSION OF COCAINE AND
10 POSSESSION OF A CONTROLLED SUBSTANCE IN CLOSE PROXIMITY TO
11 A SCHOOL IN MAY OF 1998. THAT WAS DISMISSED ON AUGUST 18,
12 1998, BY SENIOR ASSISTANT SOLICITOR CAROLINE FOX AND THE
13 RECORD SHOULD REFLECT THAT CAROLINE FOX DISMISSED THE
14 CHARGE AS ABSOLUTELY MERITLESS. THERE WAS AN ARREST FOR
15 POSSESSION OF MARIJUANA WITH INTENT TO DISTRIBUTE AND
16 POSSESSION OF MARIJUANA IN CLOSE PROXIMITY TO A SCHOOL IN
17 DECEMBER OF 1997. THERE WAS A PLEA IN NOVEMBER OF 1998
18 BEFORE JUDGE BREEDEN TO THE OFFENSE OF SIMPLE POSSESSION OF
19 MARIJUANA AND BREACH OF THE PEACE. THAT CASE WAS HANDLED
20 BY CORA SANDERS, WHO IS NO LONGER WITH THE OFFICE. AND
21 THERE WAS ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED
22 NATURE CHARGE, ARREST DATE DECEMBER 25, 1997, AND THAT
23 CHARGE WAS DISMISSED ON OCTOBER 19, 1998, BY ED CHRISCO.
24 WHILE THERE WAS AT LEAST -- WHILE THESE CHARGES WERE
25 PENDING DURING THE -- AFTER THIS INCIDENT DATE, NEITHER MR.

MR. MCDONALD-CROSS-EXAMINATION BY MR. MONCKTON

106

1 BELLAMY NOR MYSELF HAD ANY INVOLVEMENT IN THE DISPOSITION
2 OF THOSE CHARGES. WE CAN REPRESENT TO THE COURT THAT -- IN
3 FACT, THIS WITNESS I DON'T BELIEVE WAS TALKED TO AS A
4 SERIOUS WITNESS UNTIL MR. BELLAMY AND I BECAME INVOLVED IN
5 THIS CASE SOME SIX MONTHS AGO. SO THIS WITNESS HAS
6 RECEIVED NO BENEFIT AS A RESULT OF THE DISPOSITION OF THOSE
7 PRIOR CHARGES IN CONNECTION WITH THIS CASE. I DON'T
8 BELIEVE THE DEFENSE TAKES ANY EXCEPTION TO THAT
9 REPRESENTATION.

10 THE COURT: ALL RIGHT. MR. MONCKTON, DUE TO THE
11 FACT THOSE CHARGES HAVE BEEN DISMISSED AND HE DOES NOT HAVE
12 PENDING CHARGES, WHAT IS YOUR POSITION AS FAR AS YOUR LINE
13 OF CROSS-EXAMINATION?

14 MR. MONCKTON: YOUR HONOR, I WOULD SUBMIT TO THE
15 COURT THAT I THINK SINCE THE CHARGES HAVE BEEN DISMISSED
16 THAT ANY FURTHER PURSUIT AT THIS TIME WOULD BE IMPROPER.
17 I'VE ALSO TALKED TO MR. HUMPHRIES AND MR. BELLAMY AND
18 INFORMED THEM THAT SINCE, OBVIOUSLY, THE RECORDS THEY HAVE
19 GIVEN ME ARE ACCURATE FROM THE NCIC THAT BEFORE I ATTEMPT
20 TO GO INTO ANY OF THIS WITH ANY OTHER FUTURE WITNESS, WE
21 WILL DISCUSS THAT PERSON'S PRIOR RECORD PRIOR TO DOING SO.

22 THE COURT: OKAY, FINE. THAT RESOLVES THE ISSUE
23 AND THAT'S FINE. I WILL TELL YOU, MR. MONCKTON, AND
24 PROBABLY MR. BELLAMY AND MR. HUMPHRIES WILL TELL YOU AS
25 WELL, NCIC IS NOT A REAL GOOD THING TO RELY ON BECAUSE YOU

MR. MCDONALD-CROSS-EXAMINATION BY MR. MONCKTON

107

1 CAN NEVER TELL WHAT'S GOING TO HAPPEN WITH NCIC ALL RIGHT,
2 THAT RESOLVES THE ISSUE. OKAY.

3 MR. MONCKTON: YES, SIR, YOUR HONOR, AND I WOULD
4 STILL HAVE SOME ADDITIONAL QUESTIONS.

5 THE COURT: HAVE THE WITNESS COME BACK AROUND.
6 HE'S STILL SUBJECT TO CROSS-EXAMINATION. HAVE A SEAT BACK
7 UP HERE PLEASE, MR. MCDONALD. ALL RIGHT, BRING THE JURY
8 IN.

9 (WHEREUPON, THE JURY ENTERED THE COURTROOM AND
10 THE FOLLOWING PROCEEDINGS WERE HAD.)

11 THE COURT: ALL RIGHT. THANK YOU, LADIES AND
12 GENTLEMEN. THANK YOU FOR YOUR PROMPTNESS IN BEING BACK
13 HERE THIS AFTERNOON. WE ARE NOW READY TO RESUME THE
14 TESTIMONY. THE CROSS-EXAMINATION OF THIS WITNESS WILL
15 CONTINUE BY MR. MONCKTON. ALL RIGHT, SIR.

16 MR. MONCKTON: MAY IT PLEASE THE COURT, YOUR
17 HONOR.

18 THE COURT: YES, SIR.

19 CROSS-EXAMINATION CONTINUED

20 BY MR. MONCKTON:

21 Q MR. MCDONALD, WHEN MR. HOLLINGSWORTH LEFT
22 THE STORE WITH THE ITEMS HE PURCHASED, YOU TESTIFIED HE
23 LEFT GOING DOWN RACEPATH TOWARD 378; IS THAT CORRECT?

24 A YES, SIR.

25 Q HOW LONG DID HE LEAVE BEFORE MR. COX LEFT?

MR. MCDONALD-CROSS-EXAMINATION BY MR. MONCKTON

108

1 A PROBABLY ABOUT THREE TO FOUR MINUTES.

2 Q DID YOU SEE WHAT HAPPENED TO MR. COX?

3 A NO.

4 MR. MONCKTON: THANK YOU. NO FURTHER QUESTIONS.

5 THE COURT: REDIRECT?

6 MR. CHRISCO: YOUR HONOR ---

7 THE COURT: OH, THAT'S RIGHT. WE GOT OUT OF
8 ORDER A LITTLE BIT THERE. MR. CHRISCO HAS THE RIGHT TO
9 CROSS-EXAMINATION.

10 CROSS-EXAMINATION

11 BY MR. CHRISCO:

12 Q YOU ARRIVED -- WAS IT CONWAY HOSPITAL?

13 A YES, SIR.

14 Q ISAAC COX WAS TAKEN?

15 A YES, SIR.

16 Q AND ABOUT HOW LONG DID YOU SIT OVER THERE?

17 A I DO NOT REALLY KNOW.

18 Q A COUPLE OF HOURS?

19 A YEAH.

20 Q AND THEN YOU LEFT THERE AND YOU WENT WHERE?

21 A TO MY AUNT'S HOUSE.

22 Q AND WHERE DOES YOUR AUNT LIVE?

23 A SHE LIVES IN WEST RIDGE, DOWN 378 IN CONWAY.

24 Q AND HOW LONG DID YOU STAY OUT THERE?

25 A FOR A LITTLE WHILE.

MR. MCDONALD-CROSS-EXAMINATION BY MR. CHRISCO

109

1 Q AND THEN IT WAS SOMETIME LATER THAN THAT
2 THAT YOU SAY YOU SAW CORTREAL AND CURTIS WILSON?

3 A YES, SIR.

4 Q AND YOU SAID YOU SAW THEM ON WHAT STREET?

5 A HEMINGWAY STREET.

6 Q AND THAT WOULD BE WHERE, SIR?

7 A THIS IS HEMINGWAY STREET. THEY WERE
8 STANDING ACROSS FROM THIS HOUSE RIGHT HERE.

9 Q NORA JACKSON'S HOUSE?

10 A YES, SIR.

11 Q SO THAT WOULD HAVE BEEN SIX, SIX-THIRTY IN
12 THE MORNING?

13 A I COULDN'T TELL YOU.

14 Q WAS IT DAYLIGHT?

15 A I WASN'T KEEPING NOTE OF THE TIME.

16 Q WAS IT DAYLIGHT OR WAS IT DARK?

17 A I COULDN'T TELL YOU THAT. IT'S BEEN THREE
18 YEARS.

19 Q DID YOU GO OVER YOUR TESTIMONY HERE TODAY
20 WITH MR. BELLAMY?

21 THE WITNESS: AM I SUPPOSED TO ANSWER THAT?

22 THE COURT: YES, SIR.

23 THE WITNESS: (CONTINUING)

24 A YES, SIR.

25 Q AND HOW MANY TIMES DID YOU DO THAT?

MR. MCDONALD-REDIRECT EXAMINATION BY MR. BELLAMY

110

1 A ONCE.

2 Q JUST ONCE? THANK YOU, SIR.

3 THE COURT: REDIRECT, MR. BELLAMY?

4 MR. BELLAMY: YES, SIR, YOUR HONOR.

5 REDIRECT EXAMINATION

6 BY MR. BELLAMY:

7 Q FREDERICK, DO YOU KNOW WHO NORA JACKSON IS?

8 A YES, SIR.

9 Q WHO IS SHE?

10 A SHE'S CORTREAL'S AUNT OR GRANDMOTHER OR

11 SOMETHING LIKE THAT.

12 Q AND AS FAR AS WHAT TIME IT WAS WHEN YOU SAW
13 THE DEFENDANT CORTREAL SWINTON AND CURTIS WILSON, WAS IT
14 DURING THE EARLY MORNING HOURS OR WAS IT BETWEEN 3:00 AND
15 6:00 IN THE MORNING OR ---

16 A YES, SIR.

17 MR. BELLAMY: NO FURTHER QUESTIONS.

18 THE COURT: RECROSS?

19 MR. MONCKTON: NOTHING, YOUR HONOR.

20 THE COURT: RECROSS, MR. CHRISCO?

21 MR. CHRISCO: NOTHING, YOUR HONOR.

22 THE COURT: ALL RIGHT. THANK YOU, MR. MCDONALD.
23 YOU MAY STEP DOWN.

24 MR. BELLAMY: THE STATE CALLS KIM BROWN, YOUR
25 HONOR.

MS. BROWN-DIRECT EXAMINATION BY MR. BELLAMY

111

1 THE COURT: ALL RIGHT.

2 MR. BELLAMY: YOUR HONOR, WE MAY HAVE A MATTER OF
3 LAW WE NEED TO TAKE UP.

4 THE COURT: OKAY. COME AROUND AND LET'S SEE WHAT
5 IT IS.

6 (WHEREUPON, A SIDE BAR WAS HELD OFF THE RECORD IN
7 THE PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE
8 JURY.)

9 KIMBERLY ANN BROWN,

10 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

11 DIRECT EXAMINATION

12 BY MR. BELLAMY:

13 Q MS. BROWN, HOW ARE YOU DOING TODAY?

14 A JUST FINE.

15 Q HAVE YOU EVER TESTIFIED IN COURT BEFORE?

16 A NO, I HAVEN'T.

17 Q ARE YOU A LITTLE NERVOUS?

18 A VERY.

19 Q MS. BROWN, WHERE ARE YOU CURRENTLY EMPLOYED?

20 A CONWAY HOSPITAL.

21 Q HOW LONG HAVE YOU WORKED AT CONWAY HOSPITAL?

22 A ALMOST ABOUT NINE MONTHS TO A YEAR.

23 THE COURT: ALL RIGHT, MS. BROWN, NOW YOU'RE
24 GOING TO HAVE TO -- LET'S SEE IF WE CAN GET THIS MICROPHONE
25 A LITTLE BIT CLOSER. IF YOU SPEAK TO THE MICROPHONE, IT'S

MS. BROWN-DIRECT EXAMINATION BY MR. BELLAMY

112

1 OKAY, BUT OTHERWISE YOU'VE GOT A REAL SOFT VOICE AND IT'S
2 HARD FOR ME TO HEAR YOU. I KNOW IT'S GOING TO BE HARD FOR
3 THE JURY TO HEAR YOU SO IF YOU CAN, SPEAK UP. ALL RIGHT.
4 GO AHEAD, MR. BELLAMY.

5 MR. BELLAMY: YES, SIR.

6 Q MS. BROWN, WOULD YOU GIVE THE JURY THE
7 BENEFIT OF YOUR EDUCATIONAL BACKGROUND?

8 A CONWAY HIGH SCHOOL, TWELFTH GRADE.

9 THE COURT: IF YOU LEAN UP INTO THE MICROPHONE --
10 THERE YOU GO.

11 A TWELFTH GRADE.

12 Q NOW, YOU LIVE WITHIN THE CITY OF CONWAY?

13 A YES.

14 Q HOW LONG HAVE YOU LIVED IN THE CITY OF
15 CONWAY?

16 A PRACTICALLY ALL MY LIFE.

17 Q AND IS YOUR FAMILY FROM CONWAY?

18 A YES.

19 Q MS. BROWN, I'M GOING TO SHOW YOU WHAT'S BEEN
20 PREVIOUSLY MARKED AS STATE'S EVIDENCE 2.

21 A UH-HUH.

22 Q HAVE YOU HAD AN OPPORTUNITY TO LOOK AT THIS
23 DIAGRAM PRIOR TO TRIAL?

24 A UH-HUH.

25 Q DOES IT FAIRLY AND ACCURATELY REPRESENT THE

MS. BROWN-DIRECT EXAMINATION BY MR. BELLAMY

113

1 INTERSECTION OF 378 AND RACEPATH?

2 A YES, IT IS.

3 Q MS. BROWN, DO YOU KNOW THE DEFENDANT DERRICK
4 HOLLINGSWORTH?

5 A NO.

6 Q DO YOU KNOW THE DEFENDANT CORTREAL SWINTON?

7 A NO.

8 Q NOW, DID YOU KNOW THE VICTIM IN THIS CASE,
9 ISAAC COX?

10 A YES.

11 Q HOW LONG HAD YOU KNOWN ISAAC COX?

12 A FIVE OR SIX YEARS.

13 Q LET ME DIRECT YOUR ATTENTION TO OCTOBER 4TH,
14 1997.

15 A UH-HUH.

16 Q PARTICULARLY THE EARLY MORNING HOURS. NOW,
17 BACK ON OCTOBER 4, 1997, WHERE WERE YOU LIVING AT THAT
18 TIME?

19 A HUCKABEE HEIGHTS.

20 Q AND ON THE MAP IF YOU WOULD YOU INDICATE
21 WHERE IT WOULD BE.

22 A HUCKABEE IS RIGHT HERE (INDICATING).

23 Q NOW, DID YOU HAVE AN OCCASION TO LEAVE YOUR
24 APARTMENT?

25 A YES.

MS. BROWN-DIRECT EXAMINATION BY MR. BELLAMY

114

1 Q IN THE EARLY MORNING HOURS?

2 A YES.

3 Q WERE YOU WITH ANYBODY?

4 A YES. I WAS WITH NATASHA AND VICKY CAMPBELL.

5 Q WHOSE CAR WERE YOU RIDING IN?

6 A NATASHA'S. KESHIA'S.

7 Q WHERE WAS -- LET ME ASK YOU THIS. WHERE
8 WERE YOU SITTING IN THE CAR?

9 A THE BACK SEAT ON THE PASSENGER SIDE.

10 Q WHERE WAS VICKY CAMPBELL SITTING?

11 A IN FRONT OF ME ON THE PASSENGER SIDE, FRONT
12 SEAT ON THE PASSENGER SIDE.

13 Q NOW, WHEN YOU LEFT YOUR APARTMENT, WOULD YOU
14 INDICATE ON THE MAP WHAT DIRECTION ---

15 MR. BELLAMY: YOUR HONOR, THE COURT'S PERMISSION?

16 Q MS. BROWN, IF YOU WOULD STEP DOWN FROM THE
17 STAND.

18 THE COURT: LET ME TELL YOU RIGHT NOW THAT SHE'S
19 GOT A SOFT VOICE SO SHE'S GOING TO HAVE TO KEEP IT UP SO
20 THIS REPORTER CAN HEAR WHAT SHE HAS TO SAY, SO YOU NEED TO
21 PROBABLY HAVE HER STAND AT AN ANGLE OR SOMETHING WHERE
22 SHE'S FACING THE REPORTER.

23 Q AND SPEAK UP, MS. BROWN. WOULD YOU INDICATE
24 ON THE MAP IN WHAT DIRECTION YOU WENT?

25 A WE LEFT HUCKABEE HEIGHTS AND CAME ON 9TH

MS. BROWN-DIRECT EXAMINATION BY MR. BELLAMY

115

1 AVENUE AND CAME DOWN ANDERSON AND TO RACEPATH AND RACEPATH

2 ---

3 Q STOP RIGHT THERE. YOU WENT DOWN ANDERSON
4 ALLEY TO RACEPATH AND YOU'RE RIGHT HERE AT THE INTERSECTION
5 OF RACEPATH AND 378?

6 A RIGHT.

7 Q OKAY. AT THIS TIME IF YOU WOULD TAKE THE
8 STAND AGAIN, PLEASE. BEFORE YOU ENTERED THE INTERSECTION
9 OF RACEPATH AND 378 WHAT DIRECTION WAS VICKY CAMPBELL
10 FACING?

11 A FORWARDS.

12 Q FORWARDS?

13 A UH-HUH.

14 Q AND WHAT DIRECTION WERE YOU FACING?

15 A FORWARDS.

16 Q WHEN YOU ENTERED THE INTERSECTION, WHAT IF
17 ANYTHING DID YOU SEE OR HEAR?

18 A AS WE PROCEEDED IN THE INTERSECTION, I SAID
19 -- EXCUSE MY FRENCH. I SAID, "OH, SHIT, IT'S GUNSHOTS."
20 AND I SAW THREE SHOTS COMING FROM BEHIND THE OAK TREE AND
21 VICKY, SHE WAS IN FRONT OF ME, SHE SAID, "OH, I KNOW WHO
22 THAT IS. THAT'S BEADY" ---

23 MR. MONCKTON: OBJECTION, YOUR HONOR.

24 THE COURT: ALL RIGHT, JUST A MOMENT. WHAT'S
25 YOUR GROUNDS FOR THE OBJECTION?

MS. BROWN-DIRECT EXAMINATION BY MR. BELLAMY

116

1 MR. MONCKTON: HEARSAY, YOUR HONOR.

2 MR. BELLAMY: YOUR HONOR, EXCITED UTTERANCE AND
3 PRESENT SENSE IMPRESSION.. YOUR HONOR, WE'VE GOT SOME CASE
4 LAW WE WOULD ----

5 THE COURT: I FAMILIAR WITH THE EXCEPTION.
6 OBJECTION OVERRULED UNDER 803(1) AND (2).

7 MR. BELLAMY: (CONTINUING)

8 Q MS. BROWN, TAKE YOUR TIME AND SLOW DOWN AND
9 DESCRIBE WHAT YOU SAW. FIRST DESCRIBE WHAT VICKY SAID.

10 A VICKY SAID, "OH, SHIT" ---

11 Q SPEAK UP, SPEAK UP.

12 A VICKY SAID, "OH, SHIT, THAT'S BEADY. I KNOW
13 WHO THAT WAS. THAT'S SA AND CORTREAL." THAT'S EXACTLY
14 WHAT SHE TOLD ME. AND I SAID, "STOP THE CAR. LET ME GET
15 OUT. STOP THE CAR." SO AS SHE SWERVED TO THE OPPOSITE
16 DIRECTION TO KEEP FROM US GETTING HIT FROM THE BULLETS, I
17 GOT OUT AND RAN BACK UP AND WHEN I RAN BACK UP THERE, IT
18 WAS THE OFFICER -- OFFICER HARRIS, I BELIEVE IT WAS. HE
19 WAS ALREADY ON THE SCENE AND VICKY AND NATASHA CAME BACK
20 UP. SHE SAID, "I'M GOING TO GET SPIKE TO LET THEM KNOW
21 THAT THEY SHOT HIS BROTHER." THAT'S EXACTLY WHAT SHE SAID.

22 Q NOW, WHO IS SPIKE?

23 A IT'S ISAAC'S BROTHER.

24 Q ISAAC'S BROTHER. NOW, TELL ME -- FIRST LET
25 ME ASK YOU THIS. MS. BROWN, WHO IS BEADY? WHAT IS HIS

MS. BROWN-DIRECT EXAMINATION BY MR. BELLAMY

117

1 NAME?

2 A ISAAC COX.

3 Q ISAAC COX. THAT'S WHAT YOU ALL CALLED HIM?

4 A YES.

5 Q NOW, FROM YOUR VANTAGE POINT IN THE CAR YOU
6 SAW HOW MANY?

7 A I SAW PRACTICALLY THREE PEOPLE, INCLUDING
8 THE VICTIM WOULD MAKE FOUR.

9 Q DID YOU HEAR ANY SHOTS?

10 A YES, I DID.

11 Q WOULD YOU DESCRIBE WHAT YOU SAW COMING
12 BEHIND THE TREE?

13 A I SAW CONSTANTLY IT WAS LIKE POW, POW, POW,
14 CONSTANTLY SHOTS.

15 Q WERE THEY LIKE FLASHES?

16 A UH-HUH.

17 Q I SHOW YOU STATE'S EXHIBIT NUMBER 1 WHICH IS
18 IN EVIDENCE. NOW, TAKE A MINUTE TO LOOK AT IT. DO YOU
19 RECOGNIZE WHAT IT IS?

20 A UH-HUH.

21 Q WHAT IS IT?

22 A IT'S THE OAK TREE. IT'S RIGHT HERE ON
23 RACEPATH BEHIND THE OAK TREE.

24 MR. BELLAMY: YOUR HONOR, LET THE RECORD REFLECT
25 I'VE GOT THESE WHITE STICKY DOTS AND I'M SHOWING THEM TO

MS. BROWN-DIRECT EXAMINATION BY MR. BELLAMY

118

1 MR. CHRISCO. I'M SHOWING THEM TO MR. MONCKTON. WHAT I'M
2 GOING TO ASK HER TO DO IS I'M GOING TO HAND HER ONE OF
3 THESE DOTS AND I'M GOING TO ASK HER TO PUT IT ON THE
4 DIAGRAM AND WRITE CERTAIN LOCATIONS ON IT.

5 THE COURT: ANY OBJECTION, MR. CHRISCO?

6 MR. CHRISCO: NOT AT THIS TIME, YOUR HONOR.

7 THE COURT: ANY OBJECTION, MR. MONCKTON?

8 MR. MONCKTON: NO, SIR, YOUR HONOR.

9 THE COURT: ALL RIGHT.

10 MR. BELLAMY: MS. BROWN, HOLD THAT FOR A SECOND.
11 YOUR HONOR, AT THIS TIME I WOULD ASK THE COURT'S PERMISSION
12 FOR MS. BROWN TO STEP DOWN.

13 THE COURT: YES, MS. BROWN, STEP DOWN.

14 Q MS. BROWN, WOULD YOU -- LET ME ASK YOU THIS
15 FIRST. HOW MANY PEOPLE DID YOU SEE AROUND THE BIG OAK
16 TREE?

17 A I SAW ONE STANDING BEHIND THE TREE HERE AND
18 I SAW TWO ON THE OPPOSITE OF THE CURB.

19 Q I WANT YOU TO INITIAL THOSE.

20 THE COURT: WHAT INITIALS IS SHE PUTTING ON
21 THERE?

22 MR. BELLAMY: JUST HER INITIALS.

23 THE COURT: OKAY.

24 A (THE WITNESS COMPLIES.)

25 Q NOW, AS FAR AS THE PERSON THAT WAS STANDING

MS. BROWN-DIRECT EXAMINATION BY MR. BELLAMY

119

1 BY THE OAK TREE ---

2 A UH-HUH.

3 Q FIRST LET ME ASK YOU THIS.. HOW TALL ARE
4 YOU?

5 A FIVE-SIX.

6 Q COMPARED TO YOUR HEIGHT HOW TALL IS THIS
7 PERSON?

8 A THAT WAS BEHIND THE TREE? ABOUT MY HEIGHT.

9 Q FIVE-SIX?

10 A YES.

11 Q OKAY. NOW, THE TWO PEOPLE THAT WERE
12 STANDING AT THE CURB -- FIRST LET ME ASK YOU THIS. WHERE
13 WAS THE VICTIM, ISAAC COX, POSITION AT THE POINT IN TIME
14 YOU SAW HIM?

15 A THE BICYCLES, THEN HE SHOULD HAVE BEEN ---
16 THE COURT: SPEAK UP, PLEASE.

17 A BETWEEN THE TWO BICYCLES. HE SHOULD HAVE
18 BEEN RIGHT HERE IN THE CENTER.

19 Q OKAY, INITIAL THAT.

20 A (THE WITNESS COMPLIES.)

21 Q NOW, REGARDING THESE TWO RIGHT HERE.

22 A UH-HUH.

23 Q HOW TALL WERE THEY?

24 A THEY WAS TALL.

25 MR. BELLAMY: YOUR HONOR, IF I COULD ASK OFFICER

MS. BROWN-DIRECT EXAMINATION BY MR. BELLAMY

120

1 SESSIONS TO STAND UP.

2 Q COMPARED TO OFFICER SESSIONS HOW TALL WERE
3 THEY?

4 A ABOUT HIS HEIGHT.

5 Q ABOUT HIS HEIGHT?

6 A ABOUT HIS HEIGHT.

7 Q THIS IS WHERE YOU SAW THE FLASHES COMING
8 FROM RIGHT THERE?

9 A UH-HUH.

10 Q NOW, WHERE DID YOU SEE THE BICYCLES AT?

11 A THEY WAS LIKE ON THE CURB OF THE ROAD
12 BECAUSE FIRST THE BICYCLES WAS FACING TOWARDS EACH OTHER
13 THIS WAY AND IN ORDER FOR US NOT TO HIT THEM OR WE NOT GET
14 SHOT WE HAD TO SWERVE THE OTHER DIRECTION TO THE RIGHT TO
15 KEEP US FROM CONTINUING TO GETTING SHOT, SO THE BICYCLES
16 WERE NEAR THE CURB ON RACEPATH.

17 MR. BELLAMY: FOR THE RECORD, YOUR HONOR, LET THE
18 RECORD REFLECT THIS WHITE DOT SHE INITIALED THE PERSON
19 STANDING HERE WAS FIVE-SIX. YOUR HONOR, RIGHT HERE THIS
20 OUTER DOT RIGHT HERE ON MY RIGHT REFLECTS THE PERSON WAS AS
21 TALL AS OFFICER SESSIONS, WHICH IS ABOUT SIX-FOUR, SIX-
22 FIVE.

23 MR. MONCKTON: OBJECTION, YOUR HONOR, HE'S
24 TESTIFYING.

25 THE COURT: ALL RIGHT, THERE IS NO TESTIMONY.

MS. BROWN-DIRECT EXAMINATION BY MR. BELLAMY

121

1 YOU ARE TESTIFYING NOW. THERE'S NO TESTIMONY ON THE RECORD
2 AS TO THE MAN'S HEIGHT. THAT WILL BE STRICKEN AND THE JURY
3 WILL DISREGARD.

4 MR. BELLAMY: YOUR HONOR, LET THE RECORD REFLECT
5 THAT THESE TWO OUTER DOTS REFLECT TWO PEOPLE THAT ONE WAS
6 ON THE OUTSIDE OF ---

7 THE COURT: SHE'S ALREADY TESTIFIED WHO WAS THERE
8 AND WHAT WAS THERE AND YOU DON'T NEED TO REPEAT IT. THIS
9 IS NOT ARGUMENT AT THIS TIME.

10 MR. BELLAMY: OKAY.

11 Q YOU CAN TAKE THE STAND. MS. BROWN, DID
12 KESHIA AND VICKY DROP YOU OFF?

13 A YES, I GOT OUT OF THE CAR.

14 Q WHERE DID THEY DROP YOU OFF AT?

15 A BETWEEN KENTUCKY FRIED CHICKEN AND THE RED
16 LIGHT.

17 Q WHERE DID YOU GO AFTER THEY DROPPED YOU OFF?

18 A I RAN BACK UP TOWARDS WHERE THE VICTIM THAT
19 HAD BEEN SHOT.

20 Q THAT WOULD BE ISAAC COX?

21 A ISAAC COX, YES.

22 Q WOULD YOU DESCRIBE WHAT YOU SAW?

23 A WHEN I GOT THERE, THERE WAS A LOT OF BLOOD.
24 THERE WAS AN OFFICER THERE. HE WOULD NOT LET US TOUCH HIM
25 OR GO NEAR HIM. SO VICKY AND NATASHA THEY CAME BACK AND

MS. BROWN-CROSS-EXAMINATION BY MR. CHRISCO

122

1 THEY SAID, "WELL, I'M GOING TO GET HELP. I'M GOING TO TELL
2 SPIKE THAT THEY SHOT HIS BROTHER." AND I STAYED THERE AND
3 I WAS UPSET SO I JUST WENT TO MY MOTHER'S HOUSE.

4 Q AGAIN, WHO WERE THEY TALKING ABOUT THEY WERE
5 GOING TO TELL SPIKE? WHO WAS ---

6 MR. MONCKTON: OBJECTION.

7 THE COURT: WAIT JUST A MOMENT. SHE'S REPEATING
8 WHO THEY WERE TALKING ABOUT?

9 MR. BELLAMY: YES, SIR.

10 THE COURT: ALL RIGHT. WHAT'S YOUR OBJECTION?

11 MR. MONCKTON: YOUR HONOR, AGAIN HEARSAY.

12 THE COURT: SUSTAINED.

13 Q WHO WAS VICKY AGAIN GOING TO TELL SPIKE?

14 A SA AND CONTREAL. THAT'S WHAT SHE SAID.

15 THEY SHOT HER BROTHER -- HIS BROTHER.

16 MR. BELLAMY: YOUR HONOR, I HAVE NO FURTHER
17 QUESTIONS AT THIS TIME.

18 THE COURT: ALL RIGHT. MR. CHRISCO OR MR.
19 MONCKTON?

20 CROSS-EXAMINATION

21 BY MR. CHRISCO:

22 Q WHEN WAS THE FIRST TIME, MS. BROWN, THAT YOU
23 GAVE A STATEMENT TO THE POLICE?

24 A WHEN WAS THE FIRST TIME? IT HAD TO BE
25 SOMETIME IN JANUARY, THE END OF JANUARY OR FEBRUARY. I'M

MS. BROWN-CROSS-EXAMINATION BY MR. CHRISCO

123

1 NOT SURE OF THE DATES.

2 Q FEBRUARY 22ND?

3 A IT COULD HAVE BEEN.

4 Q DO YOU REMEMBER WHAT YOU TOLD THEM THEN?

5 A YES, I DO.

6 Q DIDN'T YOU TELL THEM THAT YOU HAD CARRIED
7 BEADY, WHICH WOULD BE ISAAC COX. YOU HAD LEFT THE COOKOUT
8 AND DECIDED TO GO TO THE BEACH. YOU HAD CARRIED BEADY UP
9 TO THE SAVE AND STOP, THE EXXON STORE?

10 A NO, SIR. IT WAS MISUNDERSTOOD. BEADY WAS
11 ALREADY AT THE EXXON. I MAY HAVE BEEN THE LAST ONE TO HAVE
12 SPOKE WITH HIM BECAUSE AT THE TIME HE WAS IN THERE
13 PURCHASING I THINK IT WAS SOME POTATO CHIPS AND BEER AND I
14 WAS PURCHASING SOME POTATO CHIPS FOR MY BABYSITTER AND I
15 ASKED HIM -- ME, NATASHA AND VICKY ASKED HIM TO RIDE BACK
16 WITH US IN THE PROJECTS. SO HE SAID "NO, HE WAS OKAY."

17 Q DO YOU REMEMBER WHEN YOU MADE THE STATEMENT
18 ON FEBRUARY THE 22ND OF 2000, JUST ABOUT SIX WEEKS AGO, DO
19 YOU REMEMBER IF IT WAS TAPED?

20 A UH-HUH.

21 THE COURT: ANSWER IT YES OR NO.

22 THE WITNESS: (CONTINUING)

23 A YES.

24 Q I NOW SHOW YOU A TRANSCRIPT OF THAT TAPE.
25 COULD YOU REFRESH YOUR RECOLLECTION ON WHAT YOU SAID OR

MS. BROWN-CROSS-EXAMINATION BY MR. CHRISCO

124

1 DIDN'T SAY AT THAT TIME?

2 A FIRST OF ALL, THIS HAS BEEN LIKE THREE YEARS
3 AGO AND WHEN YOU'RE REFLECTING BACK -- THIS IS THE FIRST
4 TIME I EVER SAW A MURDER AND WHEN YOU'RE REFLECTING BACK SO
5 FAR BACK, YOU'RE NOT RECOLLECTING EVERYTHING UNTIL YOU
6 ACTUALLY GO BACK TO THE SCENERY TO RECOLLECT AND THEN IT
7 ALL COMES TO YOU. YES, THEY WAS AT MY HOUSE AT A COOKOUT.

8 THE COURT: DON'T READ IT OUT LOUD. JUST READ IT
9 TO YOURSELF.

10 THE WITNESS: OH, I'M SORRY.

11 (THE WITNESS IS READING A STATEMENT.)

12 A YES, IT'S PRACTICALLY THE SAME THING I TOLD

13 ---

14 THE COURT: YOU READ IT. NOW ANSWER ANY
15 QUESTIONS THAT HE MIGHT ASK YOU ABOUT IT.

16 Q IN THE REPORT IT SAYS YOU TOOK MR. COX UP TO
17 THE EXXON STORE; IS THAT CORRECT?

18 A NO, IT ISN'T.

19 Q THAT'S WHAT WAS IN THE REPORT. SO THIS IS
20 NOT CORRECT?

21 A THAT PART IS NOT.

22 Q AND DID THE POLICE COME BACK TO YOU AND TAKE
23 ANOTHER STATEMENT FROM YOU AFTER YOU MADE THIS STATEMENT TO
24 THE POLICE?

25 A NO, I DON'T THINK SO. NO, SIR.

MS. BROWN-CROSS-EXAMINATION BY MR. CHRISCO

125

1 Q THEY DID NOT TALK WITH YOU AGAIN?

2 A YES, THEY TALKED WITH ME AGAIN. REPEATEDLY
3 THEY TALKED WITH ME.

4 Q HOW MANY TIMES HAVE THEY TALKED WITH YOU?

5 A MAYBE THREE OR FOUR TIMES.

6 Q THE CAR THAT YOU WERE RIDING IN THAT NIGHT,
7 WHAT KIND OF CAR WAS THAT?

8 A I THINK IT'S A WHITE ESCORT, A WHITE HONDA
9 ACCORD. IT'S ONE OF THOSE TWO. A HONDA ACCORD OR A WHITE
10 ESCORT.

11 Q AND WHERE WERE YOU SEATED IN THE VEHICLE?

12 A I WAS SEATED ON THE PASSENGER SIDE ON THE
13 RIGHT-HAND SIDE BACK SEAT.

14 Q AND THAT WOULD BE BEHIND THE PASSENGER?

15 A YES, IT WOULD BE.

16 Q AND CAN YOU TELL ME WHAT KIND OF WINDOWS?
17 ARE THEY TINTED WINDOWS?

18 A THERE COULD BE A LIGHT TINT ON THE WINDOWS.

19 Q CAN YOU SEE OUT OF THEM?

20 A YES, YOU CAN.

21 Q CAN YOU SEE OUT OF THEM VERY WELL?

22 A YES, YOU CAN.

23 Q WHO DID THE CAR BELONG TO?

24 A I THINK IT BELONGS TO NATASHA -- KEISHA. I
25 THINK IT'S HER CAR. I'M NOT SURE. SHE WAS THE DRIVER.

MS. BROWN-CROSS-EXAMINATION BY MR. CHRISCO

126

1 Q IT WAS KEISHA'S CAR?

2 A IT COULD BE. IT COULD BE HER MOTHER'S CAR
3 OR WHOEVER. I DON'T KNOW.

4 Q AND YOU SAID YOU SAW FLASHES. HOW MANY
5 FLASHES DID YOU SEE, MA'AM?

6 A THREE.

7 Q YOU SAW THREE FLASHES?

8 A UH-HUH.

9 Q AND WHERE DID THOSE THREE FLASHES COME FROM?

10 A BEHIND THE TREE.

11 Q FROM BEHIND THE TREE?

12 A UH-HUH.

13 Q AND HOW FAR AWAY FROM THE TREE WAS MR. COX?

14 A MAYBE FIVE FEET.

15 Q COULD YOU TELL WHO THE PEOPLE WERE?

16 A NO, I COULD NOT.

17 Q AND WHY IS THAT, MA'AM?

18 A BECAUSE I COULD NOT -- I DID NOT SEE THEM.

19 THEY HAD ON DARK CLOTHING AND I JUST COULD NOT SEE THEM. I
20 COULD NOT SAY THAT I SAW THEM WHEN I DIDN'T.

21 Q WAS IT DARK UP UNDER THE TREE?

22 A YES.

23 Q AND ONCE YOU SAW THE FLASHES WHAT DID YOU
24 ALL DO THEN, MA'AM?

25 A WHEN WE SAW THE FLASHES, WE IMMEDIATELY

MS. BROWN-CROSS-EXAMINATION BY MR. CHRISCO

127

1 SWERVED TO THE RIGHT SIDE OF THE TRAFFIC AND VICKY BLURTED
2 IT OUT. SHE SAID, "OH, SHIT, I KNOW WHO THAT WAS. THAT'S
3 BEADY. THAT'S CONTREAL AND SA." THAT'S WHAT VICKY SAID.

4 Q WOULD YOU SHOW ME THE DIRECTION THAT YOU
5 WENT?

6 A OKAY. THIS IS ---

7 Q SPEAK UP NOW.

8 A --- THIS IS HUCKABEE HEIGHTS. COMING DOWN -
9 --

10 Q I'M TALKING ABOUT AFTER YOU SAW THE FLASHES,
11 MA'AM.

12 A AFTER I SAW THE FLASHES? WE WAS COMING DOWN
13 RACEPATH. WE WAS COMING DOWN NINTH AVENUE, CAME DOWN
14 RACEPATH, ENTERED THE INTERSECTION OF 378. AS WE CROSSED
15 THE INTERSECTION ACROSS RACEPATH, WE SWERVED IN THE RIGHT
16 DIRECTION TOWARDS GOING TO THE OTHER SIDE OF 378, AS YOU'RE
17 GOING TO KENTUCKY FRIED CHICKEN.

18 Q HEADING DOWN TOWARD KFC?

19 A YES.

20 Q AND THEN WHAT DID YOU DO?

21 A I TOLD HER TO STOP THE CAR AND LET ME GET
22 OUT TO SEE CAN I GET SOME HELP.

23 Q AND THEN WHAT DID YOU DO?

24 A SHE STOPPED THE CAR IN THE MIDDLE OF THE
25 ROAD AT THE LIGHT AND I GOT OUT AND I RAN BACK UP ON

MS. BROWN-CROSS-EXAMINATION BY MR. CHRISCO

128

1 RACEPATH.

2 Q NOW, IN THIS SEGMENT HERE IT SAYS THAT YOU
3 SAW THE FLASHES. THEY WERE HIGH. WHAT DOES THAT MEAN?

4 A THEY WAS TALLER. THE FLASHES WAS COMING
5 TALLER THAN I WAS. I'M NOT GOOD WITH MEASUREMENTS BUT WHEN
6 I SAW THE SHOTS, THEY WAS UP. THEY WAS HIGH. THEY WAS
7 HIGH ENOUGH FOR ME TO SEE THEM COME FROM BEHIND THE TREE.

8 Q WHEN YOU SAY HIGH, THEY WERE HIGHER THAN YOU
9 WERE?

10 A WELL, BASICALLY, PROBABLY ABOUT THE SAME
11 HEIGHT THAT I WAS, THAT I AM.

12 Q AND HOW MANY SHOTS DID YOU HEAR?

13 A THREE.

14 Q THREE SHOTS?

15 A YES, SIR.

16 MR. CHRISCO: ANSWER ANY QUESTIONS MR. MONCKTON
17 MAY HAVE.

18 MR. MONCKTON: MAY IT PLEASE THE COURT, YOUR
19 HONOR.

20 THE COURT: YES, SIR.

21 CROSS-EXAMINATION

22 BY MR. MONCKTON:

23 Q MS. BROWN, SO WE CAN FIGURE OUT WHERE
24 EVERYBODY WAS SITTING IN THIS HONDA CIVIC ---

25 A UH-HUH.

MS. BROWN-CROSS-EXAMINATION BY MR. MONCKTON

129

1 Q I'VE JUST DRAWN A BOX. THIS WILL BE THE
2 FRONT. THIS WILL BE THE BACK. THAT'S THE DRIVER'S SEAT.
3 WHICH BOX WERE YOU SITTING IN? THIS ONE?

4 A NO. NO. YES, SIR.

5 Q ALL RIGHT, I WILL MARK YOUR NAME RIGHT
6 THERE. WHO'S SITTING RIGHT HERE IN THE PASSENGER SEAT?

7 A VICKY CAMPBELL.

8 Q VICKY CAMPBELL. WHO WAS DRIVING THE CAR?

9 A NATASHA. LAKESHIA.

10 Q LAKESHIA?

11 A UH-HUH.

12 Q LAKESHIA SMITH?

13 A UH-HUH.

14 Q HOW FAST WAS THE CAR GOING WHEN YOU HEARD
15 THE SHOTS?

16 A FIVE OR SIX MILES PER HOUR BECAUSE THERE IS
17 A STOP SIGN AND WE HAD TO MAKE A COMPLETE STOP.

18 Q OKAY, SO YOU'RE SAYING THE CAR WAS GOING
19 FIVE TO SIX MILES PER HOUR. WHICH WAY WERE YOU LOOKING?

20 A FORWARDS.

21 Q SO YOU WERE LOOKING FORWARD?

22 A UH-HUH.

23 Q WAS VICKY'S HEAD IN YOUR WAY?

24 A NO, IT WASN'T.

25 Q HOW TALL IS VICKY?

MS. BROWN-CROSS-EXAMINATION BY MR. MONCKTON

130

1 A MAYBE FIVE-FOUR, FIVE-SIX. I'M NOT GOOD
2 WITH HEIGHT. SHE'S SHORTER THAN ME.

3 Q SHORTER THAN YOU?

4 A UH-HUH.

5 Q OKAY, AND THERE WAS SOME TESTIMONY ABOUT THE
6 WINDOWS BEING TINTED. YOU SAID THEY WERE TINTED OR WERE
7 NOT?

8 A I SAID THEY WERE TINTED BUT IT WAS A LIGHT
9 TINT.

10 Q LIGHT TINT. DID THAT TINT IN ANY WAY
11 OBSTRUCT YOUR VISION?

12 A NO, SIR. I HAVE 20/20.

13 Q GOOD. I WISH I HAD 20/20. YOU SAID YOU
14 COULD NOT SEE WHO DID THE SHOOTING. WHY NOT?

15 A BECAUSE WHEN I -- I WAS IN THE BACK SEAT. I
16 SAW THE FLASHES FROM THE GUN. I DID NOT SEE THE
17 INDIVIDUAL. I SAW THE PEOPLE STANDING THERE. I SAW THE
18 FLASHES, A PERSON STANDING BEHIND THE TREE AND I SAW THE
19 TWO BICYCLES AND THE PEOPLE IN THE ROAD. THEY HAD ON VERY
20 DARK CLOTHING. I DID NOT SEE NO FACES. I COULD NOT SEE NO
21 FACES.

22 Q WAS IT TOO DARK TO SEE FACES?

23 A IT HAPPENED SO FAST I WAS NOT LOOKING FOR
24 FACES.

25 Q WAS IT TOO DARK TO SEE FACES?

MS. BROWN-CROSS-EXAMINATION BY MR. MONCKTON

131

1 A YES. FOR ME, YES.

2 Q ALL RIGHT. THIS PICTURE RIGHT HERE THAT YOU
3 PUT THE LITTLE WHITE DOTS, ON WHICH IS ON STATE'S EXHIBIT
4 NUMBER 1, HOW MANY TIMES DID YOU PRACTICE DOING THAT WITH
5 THE PROSECUTOR?

6 A MAYBE TWICE.

7 Q TWICE?

8 A UH-HUH.

9 Q OKAY. WHEN YOU PRACTICED DOING THIS WITH
10 THE PROSECUTOR, WERE LAKESHIA AND VICKY IN HERE, TOO?

11 A NO, THEY WEREN'T.

12 Q JUST BY YOURSELF?

13 A YES.

14 Q YOU CAME IN HERE AND DID IT?

15 A YES.

16 Q HAVE YOU TALKED TO VICKY AND LAKESHIA AT ALL
17 ABOUT WHAT HE TALKED ABOUT YOU WERE DOING WITH THIS
18 DIAGRAM?

19 A NO, SIR.

20 MR. MONCKTON: ALL RIGHT, THANK YOU. I DON'T
21 HAVE ANY FURTHER QUESTIONS OF THIS WITNESS, YOUR HONOR.

22 THE COURT: REDIRECT, MR. BELLAMY?

23 MR. BELLAMY: YES, SIR.

24 REDIRECT EXAMINATION

25 BY MR. BELLAMY:

MS. BROWN-REDIRECT EXAMINATION BY MR. BELLAMY

132

1 Q MS. BROWN, WHEN YOU ALL ENTERED THE
2 INTERSECTION, WERE THE HEADLIGHTS OF THE CAR ON?

3 A YES, THEY WERE.

4 Q DID THEY ILLUMINATE THE SCENE?

5 A YES, THEY DID.

6 MR. BELLAMY: NO FURTHER QUESTIONS.

7 THE COURT: RECROSS, MR. CHRISCO?

8 MR. CHRISCO: NONE, YOUR HONOR.

9 THE COURT: MR. MONCKTON?

10 MR. MONCKTON: NO, SIR, YOUR HONOR.

11 THE COURT: ALL RIGHT. THANK YOU, MS. BROWN.
12 YOU MAY STEP DOWN.

13 MR. MONCKTON: YOUR HONOR, I'D LIKE THE COURT TO
14 JUST REMIND THE WITNESS SHE IS STILL SEQUESTERED.

15 THE COURT: WELL, COME HERE AND TALK TO ME ABOUT
16 THAT.

17 (WHEREUPON, A SIDE BAR WAS HELD OFF THE RECORD IN
18 THE PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE
19 JURY.)

20 THE COURT: MR. BELLAMY, YOU CAN CALL YOUR NEXT
21 WITNESS.

22 MR. BELLAMY: YOUR HONOR, THE STATE CALLS
23 FREDERICK COX.

24 FREDERICK COX,

25 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

MR. COX-DIRECT EXAMINATION BY MR. BELLAMY

133

1 DIRECT EXAMINATION

2 BY MR. BELLAMY:

3 Q MR. COX, WHERE DO YOU CURRENTLY LIVE RIGHT
4 NOW?

5 A EL PASO, TEXAS.

6 Q AND WHAT RELATION IS THE VICTIM IN THIS CASE
7 TO YOU?

8 A MY BROTHER.

9 Q AND DO YOU KNOW THE DEFENDANT DERRICK
10 HOLLINGSWORTH?

11 A YES, I DO.

12 Q DO YOU KNOW THE DEFENDANT CONTREAL SWINTON?

13 A YES, I DO.

14 Q MR. COX, LET ME TAKE YOU BACK TO OCTOBER 4,
15 1997, DURING THE EARLY HOURS OF THE MORNING. WHERE WERE
16 YOU AT THIS TIME?

17 A NORTH CONWAY MOTOR INN.

18 Q AND WHO WAS PRESENT WITH YOU?

19 A MY COUSIN, CHRISTOPHER -- CHRISTOPHER
20 SINGLETON AND TWO OTHER PEOPLE.

21 Q DID YOU HAVE AN OCCASION TO COME IN CONTACT
22 WITH VICKY CAMPBELL AND LAKESHIA AND MS. BROWN?

23 A YES, I DID. THEY COME TO THE ROOM AND
24 NOTIFIED ME THAT WHAT HAPPENED AND THEY SEEN WHAT HAPPENED.

25 Q WHAT DID THEY TELL YOU?

MR. COX-DIRECT EXAMINATION BY MR. BELLAMY

134

1 A THAT THEY WAS RIDING DOWN RACEPATH AT A STOP
2 SIGN ---

3 MR. CHRISCO: OBJECTION, YOUR HONOR.

4 THE COURT: ALL RIGHT. WHAT'S THE OBJECTION?

5 MR. CHRISCO: TRYING TO THINK WHAT IT WOULD BE.

6 THE COURT: WHAT WAS TOLD TO HIM IS WHAT ---

7 MR. CHRISCO: HEARSAY, YOUR HONOR.

8 THE COURT: ALL RIGHT. WHY IS THAT ADMISSIBLE,
9 MR. BELLAMY?

10 MR. BELLAMY: YOUR HONOR, EXCITED UTTERANCE.

11 THE COURT: ESTABLISH A TIME FRAME.

12 MR. BELLAMY: YOUR HONOR, THE STATE'S POSITION
13 WOULD BE ---

14 THE COURT: I'M GOING TO OVERRULE IT. I DON'T
15 BELIEVE IT'S ADMISSIBLE UNDER 803.

16 MR. BELLAMY: YOUR HONOR, CAN I HAND YOU SOME
17 CASES?

18 THE COURT: YES, SIR. I'LL LISTEN TO YOU BUT IT
19 DOESN'T SOUND LIKE TO ME THAT IT'S ADMISSIBLE AT ALL. I'LL
20 BE GLAD TO ---

21 ALL RIGHT. LADIES AND GENTLEMEN OF THE JURY,
22 WHILE I'M REVIEWING THIS MATTER -- APPARENTLY THERE'S
23 SOMETHING THE LAWYERS WANT TO PURSUE AND I'D BETTER MAKE
24 SURE THAT I DO THIS IN YOUR ABSENCE. SO IF YOU'LL GO TO
25 YOUR JURY ROOM FOR A FEW MINUTES, I'LL SEND FOR YOU IN JUST

MR. COX-DIRECT EXAMINATION BY MR. BELLAMY

135

1 A FEW MINUTES.

2 (WHEREUPON, THE JURY LEFT THE COURTROOM AND THE
3 FOLLOWING PROCEEDINGS WERE HAD.)

4 THE COURT: ALL RIGHT, PROFFER THE TESTIMONY, MR.
5 BELLAMY.

6 Q DESCRIBE THE CONDITION OF MS. CAMPBELL AND
7 LAKESHIA SMITH WHEN THEY ENTERED THE ROOM.

8 A WHEN I WAS THERE AND WHEN THEY KNOCKED ON
9 THE ---

10 Q DESCRIBE ---

11 A OH, DESCRIBE. THEY ENTERED THE ROOM. THEY
12 SAID, "SPIKE, YOUR BROTHER JUST GOT SHOT." I LIKE, "NO,
13 QUIT LYING." THEN THEY STARTED CRYING AND THEY WAS LIKE,
14 "FOR REAL. I'M NOT PLAYING. I SEEN IT." AND THAT'S WHEN
15 THEY SAID THEY SEEN TREAL AND SA AND DERRICK HOLLINGSWORTH.
16 AND I HAD LEFT.

17 Q WERE THEY VISIBLY UPSET?

18 A YES. THEIR FACE WAS RED. THEY WERE JUST
19 HOLDING THEIR FACES. THEY WAS CRYING AND EVERYTHING.

20 Q NOW, AS A RESULT OF WHAT THEY TOLD YOU,
21 WHERE DID YOU GO?

22 A I WENT TO THE SCENE AND THAT'S WHEN I SEEN
23 MY BROTHER LAYING THERE.

24 Q HE WAS STILL THERE AT THE SCENE?

25 A STILL LAYING THERE.

MR. COX-DIRECT EXAMINATION BY MR. BELLAMY

136

1 MR. BELLAMY: YOUR HONOR, THE STATE'S POSITION
2 WOULD BE THEY WERE STILL UNDER THE STRESS AND THE
3 EXCITEMENT IN THE SENSE THAT THEY HADN'T HAD AN OPPORTUNITY
4 TO REFLECT ON WHAT THEY SAW OR FABRICATE IT IN ANY WAY.
5 AND THEN MR. COX SAID AS A RESULT OF WHAT THEY TOLD HIM, HE
6 WENT TO THE SCENE AND HIS BROTHER WAS STILL THERE.

7 THE COURT: WELL, THE MOST DAMAGING PART -- I
8 DON'T THINK THERE'S ANY PROBLEM WITH THE TESTIMONY AS TO
9 WHAT THEY SAY THEY SAW WITH REGARD TO THE FACT THAT THEY
10 HAD SEEN HIS BROTHER GET SHOT AND THAT HIS BROTHER WAS
11 THERE. THE PROBLEM WE HAVE, OBVIOUSLY, IS WITH THE
12 IDENTIFICATION PORTION OF IT. I THINK THAT'S THE KEY PART
13 THAT THE DEFENSE OBJECTS TO. IS THAT RIGHT, MR. CHRISCO?

14 MR. CHRISCO: THAT'S CORRECT, YOUR HONOR.

15 THE COURT: MR. MONCKTON?

16 MR. MONCKTON: YES, SIR, YOUR HONOR.

17 THE COURT: ALL RIGHT. MR. CHRISCO, DO YOU WANT
18 TO BE HEARD?

19 MR. CHRISCO: YOUR HONOR, I JUST BELIEVE THAT
20 IT'S NOT AN EXCITED UTTERANCE. THEY HAD DONE SEVERAL
21 THINGS BEFORE THEY WENT BACK THERE. WHEN SOMEONE IS TOLD
22 OF SOMETHING, IT DOESN'T MAKE IT AN EXCITED UTTERANCE. YOU
23 CAN STILL HAVE THAT FEELING TWO OR THREE DAYS LATER. YOUR
24 HONOR, THEY'VE GOTTEN -- THE STATE HAS GOTTEN IT IN THROUGH
25 THE OTHER WITNESSES. IT'S LITTLE BIT OF PILING IT ON HERE.

MR. COX-DIRECT EXAMINATION BY MR. BELLAMY

137

1 I THINK IT'S PROBABLY AGAINST THE RULES AND WE'VE NOT HEARD
2 THE STATE'S CASE.

3 THE COURT: MR. MONCKTON?

4 MR. MONCKTON: YOUR HONOR, THE SAME GROUNDS, NOT
5 TO BELABOR THE POINT.

6 MR. HUMPHRIES: JUDGE, I'D HATE TO GET TWO
7 LAWYERS FROM THE STATE ARGUING THE SAME POINT AND I'LL
8 FOLLOW YOUR LEAD ON THAT. IF YOU GIVE ME LEAVE TO DO IT, I
9 WILL.

10 THE COURT: YES, SIR, I'D PREFER IT NOT HAPPEN.
11 WHOEVER'S HANDLING THE WITNESS SEEMS TO BE THE PERSON
12 THAT'S DOING THE ARGUMENT ON THE MATTER.

13 MR. HUMPHRIES: YES, SIR.

14 THE COURT: YOU CAN TALK WITH MR. BELLAMY IF
15 YOU'VE SOMETHING YOU WANT HIM TO SAY.

16 MR. BELLAMY: YOUR HONOR, IN STATE V. BURDETTE
17 THEY GIVE A SITUATION WHERE AN EXCITED UTTERANCE CAN OCCUR
18 ANYWHERE FROM AN HOUR TO TEN HOURS AFTER THE ACTUAL
19 INCIDENT. THEY TALK ABOUT THAT. AND THEY SAY WHAT THE KEY
20 ISSUE IS IS WHETHER THE PERSON WHO MADE THE STATEMENT WAS
21 UNDER THE STRESS OR THE EXCITEMENT OF WHAT THEY SAW OR THE
22 EVENT. AND THE STATE'S POSITION IS IS WHEN VICKY CAMPBELL
23 AND LAKESHIA SMITH ENTERED THE HOTEL ROOM, THEY WERE
24 CRYING. THEY WERE UPSET. THEY WERE STILL UNDER THE STRESS
25 AND THE EXCITEMENT. AS A RESULT OF WHAT FREDERICK COX SAW,

MR. COX-DIRECT EXAMINATION BY MR. BELLAMY

138

1 HE WENT TO THE SCENE. HIS BROTHER WAS STILL THERE. YOUR
2 HONOR, UNDER 803(1) AND (2), THERE'S NO EXCEPTION THAT
3 EXCLUDES IDENTIFICATION TESTIMONY.

4 THE COURT: THERE'S NO EXCEPTION WHAT?

5 MR. BELLAMY: THAT EXCLUDES IDENTIFICATION
6 TESTIMONY.

7 THE COURT: IT'S STILL HEARSAY, WHETHER IT'S ID
8 TESTIMONY OR NOT. I'LL HEAR FROM YOU, MR. HUMPHRIES, BUT
9 JUST BECAUSE IT'S ID TESTIMONY DOESN'T TAKE IT OUT OF THE
10 HEARSAY EXCEPTION.

11 MR. HUMPHRIES: THAT'S EXACTLY MY POINT; THAT IS,
12 THIS EXCEPTION -- IT DOESN'T MATTER TO THIS EXCEPTION
13 WHETHER IT'S IDENTIFICATION TESTIMONY OR SOME OTHER FACT.
14 EITHER IT'S ADMISSIBLE OR IT'S NOT, REGARDLESS OF WHETHER
15 IT'S IDENTIFICATION OR ---

16 THE COURT: IT'S HEARSAY OR NOT HEARSAY.

17 MR. HUMPHRIES: JUDGE, THAT'S WHAT I'M SAYING.
18 THE FACT THAT IT'S IDENTIFICATION TESTIMONY, WHETHER IT'S
19 HEARSAY OR NOT IS THE ISSUE, NOT WHETHER IT'S
20 IDENTIFICATION.

21 MR. MONCKTON: YOUR HONOR.

22 THE COURT: YES, SIR.

23 MR. MONCKTON: IF MR. CHRISCO OR I COULD CROSS
24 THIS WITNESS WITH MAYBE TWO OR THREE QUESTIONS, IT WOULD
25 PROBABLY RESOLVE THE ISSUE.

MR. COX-DIRECT EXAMINATION BY MR. BELLAMY

139

1 THE COURT: WELL, THAT BECOMES A CROSS-
2 EXAMINATION QUESTION. THE QUESTION IS WHETHER I'M GOING TO
3 LET IT IN AS THEY HAVE PRESENTED IT. YOU HAVE THE RIGHT TO
4 CROSS-EXAMINE HIM ON WHATEVER YOU WANT TO.

5 MR. BELLAMY: YOUR HONOR, AT THIS TIME IF YOU
6 WANT US, WE WILL WITHDRAW THE WITNESS TO ESTABLISH ---

7 THE COURT: NO, SIR. WE'RE GOING FORWARD. JUST
8 GIVE ME A MINUTE. ALL RIGHT. UNDER 803, SUB-PARAGRAPH 2,
9 THE RULE PROVIDES THAT AN EXCEPTION TO THE HEARSAY RULE IS
10 A STATEMENT RELATING TO A STARTLING EVENT OR CONDITION MADE
11 WHILE THE DECLARANT -- IN THIS CASE IT WOULD BE THE
12 INDIVIDUALS WHO CAME TO THE MOTEL TO SEE THIS WITNESS --
13 WAS UNDER THE STRESS OR EXCITEMENT CAUSED BY THE EVENT OR
14 CONDITION. AS WAS SAID IN THE BURDETTE CASE, THE RATIONALE
15 FOR THIS EXCEPTION LIES IN THE SPECIAL RELIABILITY ACCORDED
16 TO A STATEMENT UTTERED IN SPONTANEOUS EXCITEMENT WHICH
17 SUSPENDS THE DECLARANT'S POWERS OF REFLECTION AND
18 FABRICATION. THE BURDETTE CASE ALSO SAID THAT IT NEED BE
19 ONLY SUBSTANTIALLY CONTEMPORANEOUS WITH THE TRANSACTION.
20 IT DOES NOT HAVE TO BE EXACTLY CONTEMPORANEOUS OR HAPPENING
21 AT THE TIME. IT SO HAPPENED IN THE BURNETT CASE BUT IT WAS
22 AN HOUR AFTER THE EVENT. BASED UPON THIS WITNESS'
23 TESTIMONY, IT APPEARS TO ME THAT THESE TWO WITNESSES WENT
24 DIRECTLY FROM THE SITE OF THE INCIDENT TO THE MOTEL, WERE
25 EXCITED AND UPSET AT THE TIME AND I THINK IT MEETS THE

MR. COX-DIRECT EXAMINATION BY MR. BELLAMY

140

1 REQUIREMENTS OF THE EXCITED UTTERANCE TEST AND I'M GOING TO
2 ALLOW IT UNDER 803(2).

3 ALL RIGHT, BRING THE JURY IN, PLEASE.

4 (WHEREUPON, THE JURY ENTERED THE COURTROOM AND
5 THE FOLLOWING PROCEEDINGS WERE HAD.)

6 MR. HUMPHRIES: YOUR HONOR, SIDE BAR ON RELATED
7 MATTERS REGARDING THIS WITNESS?

8 (WHEREUPON, A SIDE BAR WAS HELD AT THIS TIME IN
9 THE PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE
10 JURY.)

11 THE COURT: PROCEED, MR. BELLAMY.

12 MR. BELLAMY: IF IT PLEASE THE COURT, YOUR HONOR.

13 DIRECT EXAMINATION CONTINUED

14 BY MR. BELLAMY:

15 Q MR. COX, WE NEED TO START OVER. DID
16 SOMEBODY KNOCK AT YOUR DOOR?

17 A YES, THEY DID.

18 Q AND WHEN YOU OPENED THE DOOR, WHO DID YOU
19 SEE?

20 A KESHIA, CAMPBELL AND -- I MEAN KESHIA SMITH
21 AND VICKY CAMPBELL.

22 Q WOULD YOU DESCRIBE THEIR APPEARANCE AT THAT
23 TIME?

24 A THEY WAS UPSET. THEY WAS CRYING AND THEY
25 HAD THEIR HANDS OVER THEIR FACE AND THEY WAS TELLING ME

MR. COX-DIRECT EXAMINATION BY MR. BELLAMY

141

1 THAT MY BROTHER HAD JUST GOT SHOT AND THEY SEEN TREAL AND
2 DERRICK HOLLINGSWORTH OVER ON RACEPATH. THEY SAID THEY WAS
3 COMING OUT OF RACEPATH AND THEY SEEN IT. THEY WAS ON TWO
4 BIKES. THEY SEEN TWO BIKES, WHATEVER. AND, I MEAN, AT
5 FIRST I DIDN'T BELIEVE THEM AND THEIR EXPRESSIONS AND THEN
6 IT HIT ME AND THEN I WAS -- I JUST GOT UP AND LEFT. I
7 DIDN'T ASK THEM NO MORE QUESTIONS.

8 Q DID YOU GO TO THE SCENE?

9 A YES, I DID.

10 Q WHEN YOU GOT TO THE SCENE -- WHERE WAS THE
11 SCENE AT?

12 A OVER THERE ON RACEPATH, AT THE CORNER OF 378
13 AND RACEPATH.

14 Q A BIG TREE?

15 A BY THE OAK TREE.

16 Q WAS YOUR BROTHER THERE?

17 A YES, HE WAS LAYING THERE ON HIS BACK.

18 Q CAN YOU DESCRIBE HOW HIS BODY WAS
19 POSITIONED?

20 A HE WAS LAYING ON HIS BACK. HIS HEAD WAS
21 FACING LIKE 378 AND HE WAS JUST LAYING THERE.

22 Q MR. COX, WOULD YOU IDENTIFY WHO IS SA?

23 A S. A. IS RIGHT THERE.

24 Q WOULD YOU DESCRIBE WHAT HE'S WEARING?

25 A A WHITE SHIRT, BUTTON-UP SHIRT WITH A

MR. COX-DIRECT EXAMINATION BY MR. BELLAMY

142

1 COLLAR.

2 Q IS TREAL SITTING IN THE COURTROOM?

3 A YES, HE IS. HE'S RIGHT THERE WITH THE BLACK
4 AND RED AND GRAY OR WHATEVER KIND OF PLAID SHIRT, KIND OF
5 SHIRT THAT IS.

6 Q JUST FOR CLARIFICATION, DID THEY INDICATE
7 WHO SHOT YOUR BROTHER?

8 A YES, THEY DID.

9 Q WHO DID THEY TELL YOU THAT SHOT YOUR
10 BROTHER?

11 A THEY SAID TREAL -- THEY SEEN TREAL, THAT
12 TREAL PULLED THE TRIGGER FIRST AND THEY SAID THEY SEEN S.A.
13 STANDING OVER HIM SHOOTING.

14 MR. BELLAMY: YOUR HONOR, CAN MR. COX STEP DOWN
15 FROM THE STAND WITH THE COURT'S PERMISSION?

16 THE COURT: YES, SIR, BUT I DON'T KNOW WHAT HE
17 CAN DEMONSTRATE. WHAT HE'S DEMONSTRATING IS WHAT SOMEBODY
18 TOLD HIM, BUT GO AHEAD.

19 MR. CHRISCO: OBJECTION.

20 MR. BELLAMY: I'LL WITHDRAW IT, YOUR HONOR.

21 THE COURT: OKAY.

22 Q MR. COX, IF YOU COULD SHOW ME WITH YOUR HAND
23 DID THEY INDICATE AS TO HOW HE WAS HOLDING THE GUN?

24 MR. MONCKTON: OBJECTION, YOUR HONOR.

25 THE COURT: I WILL SUSTAIN THAT. HE'S ALREADY

MR. COX-DIRECT EXAMINATION BY MR. BELLAMY

143

1 SAID THAT -- I WILL SUSTAIN THAT OBJECTION.

2 Q MR. COX, HAVE YOU EVER BEEN CONVICTED OF
3 ANYTHING?

4 A YES, ABHAN.

5 Q ABHAN?

6 A I WAS ON PROBATION FOR IT.

7 Q NO FURTHER QUESTIONS.

8 THE COURT: CROSS-EXAMINATION.

9 MR. CHRISCO: YES, YOUR HONOR.

10 CROSS-EXAMINATION

11 BY MR. CHRISCO:

12 Q YOU STATED THAT YOU'D BEEN CONVICTED OF ---

13 A ABHAN.

14 Q ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED
15 NATURE?

16 A YES, SIR.

17 Q WHEN WAS THAT?

18 A OCTOBER -- WELL, WHEN I GOT CONVICTED? WHEN
19 I GOT CONVICTED?

20 Q RIGHT.

21 A ABOUT THE 15TH OF SEPTEMBER '98.

22 Q WHY WERE YOU OUT AT THE CONWAY MOTOR INN
23 THAT NIGHT, SIR?

24 A WHY? I WAS CHILLING WITH A COUPLE OF
25 FRIENDS.

MR. COX-CROSS-EXAMINATION BY MR. CHRISCO

144

1 Q YOU WERE WHAT?

2 A I WAS CHILLING WITH SOME OF MY FRIENDS.

3 Q CHILLING?

4 A I WAS LIKE JUST -- I WAS WITH A FEMALE.

5 Q AND WHAT TIME DID THE GIRLS GET OUT THERE TO
6 YOUR MOTEL ROOM?

7 A WHAT TIME DID THEY COME TO THE ROOM?

8 Q RIGHT.

9 A THEY CAME WHEN I CAME. I CAME TO THE ROOM,
10 THAT WAS ABOUT 10:30, 11:00.

11 Q I'M TALKING ABOUT MS. BROWN AND ---

12 A OH, WHAT TIME THEY CAME TO THE MOTEL ROOM?
13 THEY CAME ABOUT 2:15, BETWEEN 2 AND 2:15, SOMETHING LIKE
14 THAT.

15 Q AND WHAT DID THEY SAY?

16 A EXCUSE ME?

17 Q WHAT DID THEY SAY?

18 A WHAT DID THEY SAY?

19 Q YEAH.

20 A THEY SAID THAT THEY SEEN TREAL, SA AT THE
21 CORNER OF RACEPATH, THAT THEY SHOT MY BROTHER.

22 Q HOW DID THEY SAY IT?

23 A THEY SAID WITH A LOT OF ANGER. THEY WAS
24 CRYING AND UPSET AND THEY WAS LIKE THEIR EYES WERE RED AND
25 FULL OF WATER.

MR. COX-CROSS-EXAMINATION BY MR. CHRISCO

145

1 Q WHERE WERE YOU STANDING WHEN THIS WAS SAID
2 TO YOU?

3 A WHERE I WAS STANDING?

4 Q YEAH.

5 A WHERE I WAS STANDING AT? I WAS STANDING
6 RIGHT THERE IN THE HOTEL ROOM BY THE BED.

7 Q WHAT DID YOU DO?

8 A WHAT DID I DO?

9 Q YEAH. WHEN YOU HEARD IT, WHAT DID YOU DO?

10 A I JUST JUMPED UP AND I LEFT. FIRST I WAS
11 LAYING ON THE BED WHEN THEY CAME IN THE ROOM. THAT'S WHEN
12 THEY TOLD ME AND I WAS LIKE, "MAN, YOU'RE LYING." AND I
13 STOOD UP AND THEN WHEN THEY SAID WHAT THEY SAID, I JUST
14 LEFT OUT OF THE ROOM.

15 Q AND THEN YOU WENT AND DID WHAT?

16 A I WENT TO THE SCENE.

17 Q HAVE YOU TALKED WITH THE POLICE ON THIS
18 MATTER?

19 A DID I TALK TO THE POLICE? AS IF IN WHAT?
20 AS IF IN WHAT?

21 Q HAVE YOU TALKED TO THE POLICE IN REGARDS TO
22 THE TESTIMONY THAT YOU HAVE JUST GIVEN HERE IN THE
23 COURTROOM?

24 A YES, I DID.

25 Q AND WHEN DID YOU DO THAT?

MR. COX-CROSS-EXAMINATION BY MR. CHRISCO

146

1 A WELL, I GAVE MY TESTIMONY LIKE LAST MONTH,
2 TWO MONTHS WHEN AN OFFICER CAME TO ME.

3 Q FEBRUARY THE 16TH OF THIS YEAR, ABOUT SIX
4 WEEKS AGO?

5 A I'M NOT SURE WHAT DAY IT WAS ON BUT IT WAS
6 IN FEBRUARY, I BELIEVE. I'M NOT SURE.

7 Q YOUR BROTHER JUST GOT SHOT. YOU JUST HEARD
8 TWO PEOPLE TELL YOU.

9 A YES.

10 Q AND YOU DID NOT GO TO THE POLICE AND TELL
11 THEM THAT YOU'VE GOT WITNESSES THAT SAW IT?

12 A OKAY. OKAY, THE NIGHT THAT IT HAPPENED WHEN
13 THEY TOLD ME, I DID SPOKE TO THE OFFICERS AND TOLD THEM WHO
14 TOLD ME BUT I DIDN'T GIVE NO STATEMENT THEN.

15 Q DIDN'T YOU THINK IT WAS IMPORTANT ENOUGH TO
16 GO DOWN TO THE POLICE STATION AND TELL THEM?

17 A I TALKED TO THE POLICE AND I TOLD THEM WHAT
18 ---

19 Q WHO DID YOU TALK TO, SIR?

20 A I CAN'T REMEMBER EXACTLY WHAT OFFICER I
21 TALKED TO BECAUSE I HAD A BUNCH OF STUFF ON MY MIND.

22 Q THIS WAS YOUR BROTHER, WASN'T IT, SIR?

23 A YES, IT WAS.

24 Q HOW MANY TIMES DID YOU TALK TO THE POLICE
25 SINCE FEBRUARY 16TH?

MR. COX-CROSS-EXAMINATION BY MR. CHRISCO

147

1 A HOW MANY TIMES DID I TALK TO THEM?

2 Q YES.

3 A I DIDN'T COUNT THEM.

4 Q HOW MANY TIMES DID YOU TALK TO THE
5 PROSECUTORS?

6 A SEVERAL.

7 Q SEVEN TIMES.

8 A I SAID SEVERAL.

9 Q SEVERAL TIMES.

10 A NOW, YOUR TESTIMONY HERE TODAY IS THAT THE
11 TWO GIRLS CAME OVER AND TOLD YOU BUT THAT WAS NOT WHAT YOU
12 WROTE IN YOUR OWN HANDWRITING BACK ON FEBRUARY THE 16TH OF
13 2000, IS IT, SIR?

14 A NO, IT'S NOT.

15 Q IN THAT STATEMENT YOU SAID THAT THEY CAME
16 OVER AND TOLD YOU YOUR BROTHER WAS SHOT; IS THAT NOT
17 CORRECT, SIR?

18 A CAN YOU REPEAT THAT AGAIN?

19 Q THEY CAME OVER TO THE MOTEL ROOM AND TOLD
20 YOU YOUR BROTHER HAD BEEN SHOT. IS THAT NOT CORRECT, SIR?

21 A YES.

22 Q IS THAT CORRECT?

23 A THAT'S WHAT I SAID AND THEY TOLD ME THAT --
24 WHO SHOT HIM.

25 Q THAT'S NOT WHAT YOU SAID IN YOUR STATEMENT.

MR. COX-CROSS-EXAMINATION BY MR. MONCKTON

148

1 YOU WROTE IN YOUR STATEMENT THAT IT WAS THE NEXT DAY WHEN
2 KESHIA AND VICKY TOLD YOU THEY HAD SEEN WHAT HAPPENED.
3 ISN'T THAT WHAT'S IN THE STATEMENT, SIR?

4 A CAN I EXPLAIN MYSELF?

5 Q IS THAT NOT ---

6 A CAN I ---

7 Q IS THAT NOT WHAT IS IN THE STATEMENT, SIR?

8 THE COURT: HE WANTS TO SEE IT. LET HIM SEE IT.

9 THE WITNESS: CAN I EXPLAIN MYSELF?

10 THE COURT: WAIT JUST A MOMENT. YOU'VE GOT TO
11 ANSWER THE QUESTION AS TO WHETHER THAT'S WHAT'S IN THE
12 STATEMENT OR NOT AND THEN YOU HAVE THE RIGHT TO EXPLAIN
13 YOUR ANSWER.

14 THE WITNESS: (CONTINUING)

15 A THAT'S WHAT I SAID.

16 MR. BELLAMY: YOUR HONOR ---

17 THE COURT: YOU CAN ASK HIM WHAT YOU WANT TO WHEN
18 YOU GET TO REDIRECT.

19 MR. CHRISCO: NO FURTHER QUESTIONS, YOUR HONOR.

20 THE COURT: MR. MONCKTON?

21 MR. MONCKTON: YES, SIR, YOUR HONOR.

22 CROSS-EXAMINATION

23 BY MR. MONCKTON:

24 Q MR. COX, WE'VE GOT APPARENTLY TWO DIFFERENT
25 VERSIONS OF THE EVENTS THAT TOOK PLACE WITH MS. CAMPBELL

MR. COX-CROSS-EXAMINATION BY MR. MONCKTON

149

1 AND MS. SMITH. LET ME ASK YOU ---

2 THE COURT: WAIT JUST A MOMENT. YES, SIR.

3 MR. BELLAMY: YOUR HONOR, COUNSEL IS TESTIFYING
4 AS FAR AS TWO DIFFERENT VERSIONS.

5 THE COURT: ALL RIGHT. DON'T PREFACE YOUR
6 QUESTIONS. JUST ---

7 MR. MONCKTON: YES, SIR, YOUR HONOR.

8 THE COURT: DON'T MAKE STATEMENTS OR PREFACE
9 THEM. JUST ASK THE QUESTION.

10 Q WHICH STATEMENT IS CORRECT? THE STATEMENT
11 YOU GAVE US HERE TODAY OR THE STATEMENT YOU TOLD THE POLICE
12 ON FEBRUARY THE 16TH OF THE YEAR 2000?

13 A THE ONE I'M GIVING RIGHT NOW TODAY.

14 Q IS YOUR MEMORY BETTER TODAY THAN IT WAS
15 FEBRUARY THE 16TH OF 2000?

16 A AT THE TIME WHEN THE OFFICER CAME TO ME, I
17 DIDN'T HAVE TIME TO LOOK OVER NOTHING. I DIDN'T HAVE TIME
18 TO THINK ABOUT IT. HE JUST CAME OUT OF THE BLUE AND TALKED
19 TO ME AND I GAVE A QUICK STATEMENT.

20 Q LOOK OVER? WHAT DID YOU NEED TO LOOK OVER?

21 A THE PICTURE OF WHAT HAPPENED THAT DAY. THAT
22 WAS LIKE TWO YEARS AGO.

23 Q THE PICTURE OF WHAT HAPPENED? WHAT PICTURE
24 ARE YOU TALKING ABOUT?

25 A TO REMEMBER WHAT HAPPENED, WHAT THEY TOLD

MR. COX-CROSS-EXAMINATION BY MR. MONCKTON

150

1 ME, WHAT WAS SAID TO ME.

2 Q WHAT DO YOU MEAN WHAT WAS SAID TO YOU? WHO
3 SAID SOMETHING TO YOU?

4 A VICKY CAMPBELL AND KESHIA SMITH.

5 Q DID YOU WRITE ANOTHER STATEMENT FOR THE
6 POLICE OFFICER TELLING HIM YOU CHANGED YOUR TESTIMONY?

7 A NO, SIR, I DIDN'T BUT I WAS IN TEXAS. I
8 STAY IN TEXAS.

9 Q DO THEY HAVE TELEPHONES IN TEXAS?

10 A YES.

11 Q COULDN'T YOU HAVE CALLED THE POLICE OFFICER
12 AND SAID, "HEY, I MADE A MISTAKE IN MY TESTIMONY AFTER
13 THINKING ABOUT IT?"

14 A I CALLED HIM AND I TOLD IT TO HIM. I DID.
15 I CALLED AND TALKED TO HIM.

16 Q WHO DID YOU TALK TO?

17 A I TALKED TO OFFICER SESSIONS AND I TALKED TO
18 HOWELL BELLAMY.

19 Q DID YOU TELL MR. BELLAMY YOU CHANGED YOUR
20 TESTIMONY FROM THIS?

21 A DID I TELL HIM?

22 Q YES.

23 A I SAID I HAD TALKED TO HIM.

24 Q DID YOU TELL HIM YOU WERE CHANGING YOUR
25 TESTIMONY FROM THIS BEFORE YOU TESTIFIED TODAY?

MR. COX-CROSS-EXAMINATION BY MR. MONCKTON

151

1 A YES.

2 MR. BELLAMY: YOUR HONOR, WE CHECKED WITH THE
3 DEFENSE.

4 THE COURT: ALL RIGHT, JUST WAIT A MINUTE. ASK
5 HIM THE QUESTIONS. HAVE YOU GOT AN OBJECTION? HE HASN'T
6 ASKED HIM A QUESTION YET.

7 MR. BELLAMY: YOUR HONOR, I OBJECT BECAUSE WE DID
8 SEND THEM DISCOVERY REFLECTING THIS.

9 THE COURT: WELL -- GO AHEAD, MR. MONCKTON.

10 MR. MONCKTON: YOUR HONOR, I DON'T HAVE ANY
11 FURTHER QUESTIONS AT THIS TIME BUT I WOULD LIKE TO HOLD THE
12 WITNESS AND JUST TAKE A SIDE BAR UP HERE FOR A SECOND, YOUR
13 HONOR.

14 THE COURT: ALL RIGHT.

15 (WHEREUPON, A SIDE BAR WAS HELD OFF THE RECORD IN
16 THE PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE
17 JURY.)

18 THE COURT: LADIES AND GENTLEMEN, THERE ARE -- WE
19 HAVE BEEN IN THE COURTROOM ABOUT AN HOUR AND 15 TO 20
20 MINUTES AND WE NEED TO TAKE OUR AFTERNOON RECESS AND THERE
21 ARE SOME MATTERS I NEED TO ADDRESS AT THIS TIME, SO WE'RE
22 GOING TO TAKE THIS TIME A LITTLE BIT LONGER RECESS,
23 PROBABLY ABOUT 15 MINUTES, AND THE BAILIFFS WILL GET YOU
24 SOME REFRESHMENTS OR SOMETHING AND WE'LL SEND FOR YOU IN
25 JUST A FEW MINUTES. BUT IF YOU WOULD GO TO YOUR JURY ROOM.

MR. COX-CROSS-EXAMINATION BY MR. MONCKTON

152

1 PLEASE DO NOT DISCUSS THE CASE AMONG YOURSELVES AT THIS
2 TIME. THANK YOU. YOU MAY GO TO YOUR JURY ROOM.

3 (WHEREUPON, THE JURY LEFT THE COURTROOM AND THE
4 FOLLOWING TOOK PLACE OUTSIDE THE PRESENCE OF THE JURY.)

5 THE COURT: ALL RIGHT. FROM WHAT I UNDERSTAND,
6 THE PRESENT STATUS OF THE MATTER IS THAT ON DIRECT
7 EXAMINATION THIS WITNESS TESTIFIED THAT ON THE EARLY
8 MORNING RIGHT AFTER THE INCIDENT HAPPENED AND THE VICTIM
9 WAS SHOT, THAT THEY CAME TO THE MOTEL ROOM AND UNDER THE
10 EXCITED UTTERANCE SECTION OF 803(1) AND (2) OR, ACTUALLY,
11 803, SUBPARAGRAPH 2, I ALLOWED THAT TESTIMONY IN. WHAT HAS
12 BEEN FURNISHED TO ME NOW IS THE STATEMENT ABOUT WHICH HE
13 WAS BEING CROSS-EXAMINED AND IN THAT STATEMENT HE APPEARS
14 TO HAVE TOLD THE POLICE ON FEBRUARY THE 16TH THAT "KESHIA
15 AND VICKY THE NEXT DAY TOLD ME THEY SEEN WHAT HAPPENED AND
16 TOLD ME THAT THEY SEEN CONTREAL AND" -- IS IT SA?

17 MR. BELLAMY: YES, SIR, YOUR HONOR.

18 THE COURT: OKAY. AND, OF COURSE, HAD IT BEEN
19 THE NEXT DAY, I WOULD NOT HAVE ALLOWED IT IN UNDER THE
20 EXCITED UTTERANCE. THEN ON CROSS-EXAMINATION THE WITNESS
21 HAS ALSO TESTIFIED THAT HE CALLED THE POLICE AND THE
22 SOLICITOR'S OFFICE AND TALKED WITH THEM AND TOLD THEM THAT
23 THIS STATEMENT WAS NOT CORRECT. I BELIEVE THAT'S WHAT HE'S
24 TESTIFIED TO. NOW, WHAT'S YOUR ALL'S POSITION ON IT, MR.
25 HUMPHRIES OR MR. BELLAMY, AS FAR AS THE CALL TO THE POLICE

MR. COX-CROSS-EXAMINATION BY MR. MONCKTON

153

1 THAT THE STATEMENT WAS NOT CORRECT AND THE CALL TO THE
2 SOLICITOR'S OFFICE THAT THE STATEMENT WAS NOT CORRECT?

3 MR. BELLAMY: YOUR HONOR, THE STATE'S POSITION IS
4 THIS. OFFICER SESSIONS RE-INTERVIEWED VICKY CAMPBELL AND
5 DURING THAT CONVERSATION WE -- AT LEAST WHEN WE TALKED TO
6 VICKY CAMPBELL, SHE SAID THAT SHE WENT BY TO THE MOTEL
7 ROOM, NORTH CONWAY MOTOR INN, AND THAT SHE TOLD HIM THAT
8 EVENING WHO SHOT ISAAC COX. BASED UPON THAT, I CALLED
9 FREDERICK COX TO ASK HIM. I SAID, "THIS IS WHAT VICKY
10 CAMPBELL SAID." AND I ASKED HIM OVER THE PHONE TO THINK
11 ABOUT IT AND HE CALLED BACK THE NEXT WEEK. HE THOUGHT
12 ABOUT IT OVER THE WEEKEND AND HE CALLED BACK OFFICER
13 SESSIONS AND SAID -- HE GAVE A STATEMENT TO OFFICER
14 SESSIONS. WE FURNISHED A COPY OF THAT STATEMENT TO BOTH
15 MR. MONCKTON AND ---

16 THE COURT: OF WHAT STATEMENT?

17 MR. BELLAMY: THE SUPPLEMENTAL REPORT THAT TALKS
18 ABOUT CHRIS SINGLETON AND WHAT VICKY CAMPBELL SAID.

19 THE COURT: DID YOU FURNISH TO THE DEFENSE ---

20 MR. BELLAMY: YES, SIR.

21 THE COURT: WAIT JUST A MINUTE. LISTEN TO ME.
22 DID YOU FURNISH TO THE DEFENSE THE SUBSTANCE OF THE
23 CONVERSATION WITH THIS WITNESS THAT HE WAS GOING TO TESTIFY
24 THAT THAT NIGHT THEY TOLD HIM THEY IDENTIFIED THESE TWO
25 DEFENDANTS?

MR. COX-CROSS-EXAMINATION BY MR. MONCKTON

154

1 MR. BELLAMY: THAT'S MY UNDERSTANDING, YOUR
2 HONOR.

3 THE COURT: SHOW ME WHAT YOU FURNISHED THEM.

4 MR. BELLAMY: RIGHT HERE, YOUR HONOR.

5 THE COURT: ALL RIGHT.

6 MR. BELLAMY: THIS IS A LETTER TO MR. CHRISCO AND
7 HERE IS THE SUPPLEMENTAL STATEMENT RIGHT THERE.

8 THE COURT: ALL RIGHT, MR. MONCKTON, IT LOOKS
9 LIKE TO ME THAT IF YOU GOT THIS COPY OF THE INVESTIGATIVE
10 FOLLOW-UP OF MARCH THE 29TH, 2000, THEN AS FAR AS BRADY AND
11 RULE 5 IS CONCERNED THAT THEY DID FURNISH YOU WITH THAT
12 INFORMATION.

13 MR. MONCKTON: YOUR HONOR, I THINK IT'S -- I
14 DON'T KNOW HOW FAR YOU'LL LET ME GO INTO THIS NOW THAT MR.
15 BELLAMY HAS STATED THAT HE CALLED THE WITNESS AND TOLD THE
16 WITNESS HE HAD THIS INFORMATION AND WANTED HIM TO THINK
17 ABOUT IT BEFORE HE TOOK AN ADDITIONAL STATEMENT FROM HIM.

18 THE COURT: WELL, WE'VE GOT TWO DIFFERENT ISSUES
19 HERE. FIRST OF ALL, WE'VE GOT THE BRADY AND THE RULE 5
20 SITUATION. THE BRADY AND THE RULE 5 SITUATION IT APPEARS
21 TO ME UNDER THE INVESTIGATIVE FOLLOW-UP OF MARCH 29TH,
22 2000, THAT WAS SENT TO THE THREE DEFENSE LAWYERS ON MARCH
23 29TH, THE SAME DAY, THAT THE BRADY AND RULE 5 MATTER IS
24 RESOLVED, IF THAT'S WHAT YOUR OBJECTION IS.

25 MR. MONCKTON: YES, SIR, YOUR HONOR, LOOKING IN

MR. COX-CROSS-EXAMINATION BY MR. MONCKTON

155

1 THE NOTES I DO SEE THAT NOW.

2 THE COURT: ALL RIGHT. THEN THE OTHER MATTER IS
3 JUST A MATTER OF CREDIBILITY OR BELIEVABILITY. IT'S JUST A
4 MATTER OF -- YOU'VE GOT THE RIGHT OF IN ARGUMENT ALL YOU
5 WANT TO ARGUE THAT HE SAID ONE THING ONE TIME AND SOMETHING
6 ELSE ANOTHER TIME AND THAT'S CREDIBILITY OR BELIEVABILITY
7 AND THAT'S IN EVIDENCE AND ---

8 MR. MONCKTON: YES, SIR, YOUR HONOR. I WOULD
9 AGREE THAT I DO HAVE THE BRADY INFORMATION. I DON'T HAVE
10 ANY FURTHER OBJECTIONS AT THIS TIME BUT I WOULD LIKE TO
11 CONTINUE MY CROSS-EXAMINATION OF THE WITNESS.

12 MR. CHRISCO: YOUR HONOR, I DON'T HAVE ANY
13 PROBLEM WITH BRADY. I DON'T THINK IT'S A BRADY VIOLATION
14 HERE BUT, YOUR HONOR, WITH THE ADVENT OF HEARING THAT HE
15 WAS GIVEN WHAT SOMEBODY ELSE SAID AND THEN LATER GAVE THIS
16 STATEMENT, I KNOW IT'S BEEN MY TURN BUT HAD I KNOWN THAT, I
17 WOULD HAVE ASKED ABOUT THAT EXACT THING AND I WOULD LIKE TO
18 BE ALLOWED THE OPPORTUNITY TO ASK THIS WITNESS THOSE
19 QUESTIONS.

20 THE COURT: WHAT'S YOUR POSITION? WHAT YOU'RE
21 ASKING IS FOR ADDITIONAL CROSS-EXAMINATION THAT MAY OR MAY
22 NOT BE OUTSIDE THE SCOPE OF REDIRECT, DEPENDING ON WHAT MR.
23 BELLAMY ASKS HIM ON REDIRECT?

24 MR. CHRISCO: THAT'S CORRECT, SIR.

25 THE COURT: WHAT'S YOUR POSITION ON THAT, MR.

MR. COX-CROSS-EXAMINATION BY MR. MONCKTON

156

1 BELLAMY?

2 MR. BELLAMY: YOUR HONOR, I'M NOT GOING TO ASK
3 HIM ANYTHING ON REDIRECT.

4 THE COURT: I'M STILL GOING TO LET HIM ASK THE
5 QUESTIONS. I THINK THAT IN FAIRNESS TO THE DEFENSE HE HAS
6 THE RIGHT TO CROSS-EXAMINE THIS WITNESS AND TO ATTACK HIS
7 CREDIBILITY ON INCONSISTENT STATEMENTS ONLY. THAT'S THE
8 ONLY THING THAT I'M GOING TO ALLOW IS JUST ON INCONSISTENT
9 STATEMENTS. ALL RIGHT. WE'LL TAKE ABOUT TEN MINUTES AND
10 BE READY TO CONVENE.

11 (WHEREUPON, COURT WAS RECESSED FOR A SHORT
12 BREAK.)

13 THE COURT: FOR THE RECORD TO SEE WHERE WE ARE AT
14 THIS POINT AND JUST TO MAKE SURE THAT EVERYBODY IS ON THE
15 SAME BOOK AND PAGE NUMBER, IT'S MY UNDERSTANDING THAT THE
16 STATE OR THAT THE DEFENSE HAS NO OBJECTION TO THE WITNESS'
17 TESTIMONY ON THE GROUNDS OF EITHER A BRADY OR RULE 5
18 VIOLATION. IS THAT A CORRECT STATEMENT, MR. MONCKTON?

19 MR. MONCKTON: THAT'S CORRECT, YOUR HONOR.

20 THE COURT: MR. CHRISCO?

21 MR. CHRISCO: THAT'S CORRECT.

22 THE COURT: ALL RIGHT, AND THAT THE ISSUES THAT
23 THE DEFENSE TAKES WITH THE WITNESS' TESTIMONY WOULD BE THE
24 DISCREPANCY IN HIS TESTIMONY AS COMPARED TO HIS STATEMENT
25 MADE TO THE POLICE ON FEBRUARY THE 16TH OF THE YEAR 2000

MR. COX-CROSS-EXAMINATION BY MR. MONCKTON

157

1 AND BOTH OF YOU WANT TO BE ALLOWED TO CROSS-EXAMINE HIM
2 SOME FURTHER ON THOSE DISCREPANCIES.

3 MR. CHRISCO: THAT'S CORRECT, YOUR HONOR.

4 MR. MONCKTON: YES, SIR, YOUR HONOR.

5 THE COURT: ANY COMMENTS WITH REGARD TO THAT, MR.
6 HUMPHRIES OR MR. BELLAMY?

7 MR. BELLAMY: YOU HONOR, I THOUGHT YOU HAD
8 ALREADY RULED ON THAT.

9 THE COURT: ALL RIGHT. THAT'S THE WAY WE'RE
10 GOING TO HANDLE IT. WE'LL LET THEM BOTH SOLICIT FURTHER
11 CROSS-EXAMINATION AND I'LL CALL ON MR. CHRISCO TO DO THAT
12 AND I'LL CALL ON MR. MONCKTON IF HE'S GOT ANY FURTHER
13 CROSS-EXAMINATION. THEN I'LL ALLOW YOU TO COME BACK WITH
14 ANYTHING THAT YOU'VE GOT ON REDIRECT AFTER YOU'VE HEARD
15 THEIR CROSS-EXAMINATION.

16 MR. BELLAMY: THANK YOU, YOUR HONOR.

17 THE COURT: ALL RIGHT.

18 MR. HUMPHRIES: JUDGE, IN TERMS OF SCHEDULING,
19 MR. MONCKTON, I THINK AND PERHAPS MR. CHRISCO, TOO,
20 ALTHOUGH I HAVEN'T SPOKEN WITH THEM, HAVE INDICATED SOME
21 CONCERN IN REGARD TO THE LENGTH OF TESTIMONY OF OUR NEXT
22 WITNESS, THAT BEING SARAH WEAVER. HER DIRECT WILL BE NO
23 MORE THAN 20 TO 25 MINUTES AT THE MOST. I BELIEVE THEY
24 ANTICIPATE A FAIRLY LONG CROSS. I WANT THE COURT TO
25 UNDERSTAND THAT IN TERMS OF SCHEDULING. I CAN'T IMAGINE

MR. COX-CROSS-EXAMINATION BY MR. MONCKTON

158

1 WE'RE GOING TO GO MUCH PAST 4:00 WITH THIS WITNESS BUT
2 SIMPLY TRYING TO DETERMINE WHAT THE COURT'S DESIRE IS IN
3 THAT REGARD.

4 THE COURT: WE'RE GOING TO TRY TO FINISH THAT
5 NEXT WITNESS. WE'LL SEE HOW LONG IT GOES BUT WE'LL TRY TO
6 FINISH THAT NEXT WITNESS. ONE OTHER THING, MR. HUMPHRIES.
7 YOU HAD INDICATED A PROBLEM -- A POSSIBLE PROBLEM WITH THE
8 WITNESS THAT I BELIEVE MR. MONCKTON WAS GOING TO BE ABLE TO
9 TAKE CARE OF.

10 MR. HUMPHRIES: I BELIEVE HE HAS RESOLVED THAT AT
11 THIS TIME.

12 THE COURT: HAS THAT BEEN RESOLVED?

13 MR. MONCKTON: ALREADY RESOLVED, YOUR HONOR.

14 THE COURT: ALL RIGHT, GOOD. OKAY, BRING THE
15 JURY IN, PLEASE.

16 (WHEREUPON, THE JURY ENTERED THE COURTROOM AND
17 THE FOLLOWING PROCEEDINGS WERE HAD.)

18 THE COURT: ALL RIGHT. THANK YOU, LADIES AND
19 GENTLEMEN, AND WE HAVE RESOLVED THOSE LEGAL ISSUES AND ARE
20 READY TO GO FORWARD AT THIS TIME. MR. CHRISCO, YOU MAY
21 EXAMINE THE WITNESS.

22 CROSS-EXAMINATION CONTINUED

23 BY MR. CHRISCO:

24 Q ISN'T IT TRUE, SIR, THAT YOU'VE GIVEN TWO
25 STATEMENTS?

MR. COX-CROSS-EXAMINATION BY MR. MONCKTON

159

1 A YES.

2 Q AND THE LAST STATEMENT WAS GIVEN ON MARCH
3 THE 29TH, SOME 12 DAYS AGO; IS THAT NOT CORRECT?

4 A YES, IT WAS.

5 Q BETWEEN YOUR FIRST STATEMENT OF FEBRUARY THE
6 16TH AND THE ONE OF MARCH 29TH, YOU WERE CALLED BY MR.
7 BELLAMY AND READ ANOTHER WITNESS' TESTIMONY; IS THAT
8 CORRECT?

9 A I WASN'T READ ANOTHER WITNESS' TESTIMONY.

10 Q HE TOLD YOU WHAT ANOTHER WITNESS WAS GOING
11 TO TESTIFY TO AND TOLD YOU TO THINK ABOUT IT OVER THE
12 WEEKEND AND SOMEONE WOULD CALL YOU, DID HE NOT, SIR?

13 A HE DIDN'T SAY NO ONE WOULD CALL ME.

14 Q DID SOMEONE CALL YOU?

15 A I CALLED HIM.

16 Q AND WHEN DID YOU ---

17 A I CALLED THE OFFICER. I CALLED RONNIE
18 SESSIONS. I DIDN'T CALL HIM.

19 Q IT WAS ONLY AFTER MR. BELLAMY CALLED THAT
20 YOU CALLED?

21 A YES.

22 MR. CHRISCO: NO FURTHER QUESTIONS, YOUR HONOR.

23 THE COURT: MR. MONCKTON?

24 MONCKTON: YES, SIR, YOUR HONOR.

25 CROSS-EXAMINATION CONTINUED

MR. COX-CROSS-EXAMINATION BY MR. MONCKTON

160

1 BY MR. MONCKTON:

2 Q AND AFTER THAT CALL FROM MR. BELLAMY IS WHEN
3 YOU DECIDED TO CHANGE YOUR TESTIMONY; IS THAT CORRECT?

4 A NO, SIR.

5 Q YES OR NO?

6 A NO, SIR.

7 Q SO YOU DIDN'T CHANGE YOUR TESTIMONY?

8 A YES, I CHANGED MY TESTIMONY.

9 Q AND YOU CHANGED YOUR TESTIMONY AFTER
10 SPEAKING WITH MR. BELLAMY; ISN'T THAT CORRECT?

11 A YES, IT WAS.

12 Q THANK YOU.

13 THE COURT: ALL RIGHT. MR. BELLAMY?

14 MR. BELLAMY: YES, SIR, YOUR HONOR.

15 REDIRECT EXAMINATION

16 BY MR. BELLAMY:

17 Q MR. COX, I SHOW YOU STATE'S EXHIBIT NUMBER 6
18 FOR I.D. DO YOU RECOGNIZE WHAT IT IS?

19 A YES.

20 Q WHAT IS THE DATE ON THE STATEMENT?

21 A EXCUSE ME?

22 Q WHAT'S THE DATE ON THE STATEMENT?

23 A OCTOBER THE 5TH. WHICH ONE ARE YOU TALKING
24 ABOUT? THE DATE OF THE STATEMENT?

25 Q THE DATE OF THE STATEMENT.

MR. COX-CROSS-EXAMINATION BY MR. MONCKTON

161

1 A 2/16, FEBRUARY THE 16TH.

2 Q DID YOU SIGN IT?

3 A YES.

4 Q WHO DID YOU GIVE THE STATEMENT TO?

5 A RONNIE SESSIONS.

6 Q AND IT WAS REGARDING THE INCIDENT THAT
7 OCCURRED ON OCTOBER 4, 1997?

8 A YES.

9 Q WOULD YOU READ WHAT'S HIGHLIGHTED RIGHT
10 THERE?

11 A "THEN I TALKED TO KESHIA AND" ---

12 Q SPEAK UP.

13 A "THEN I TALKED TO KESHIA AND VICKY THE NEXT
14 DAY. THEY TOLD ME THAT THEY SEEN WHAT HAPPENED. THEY TOLD
15 ME THEY SEEN CONTREAL AND SA, ISAAC AND THE LADY SEEN SHOTS
16 FIRED."

17 Q AND THAT'S WHAT YOU TOLD OFFICER SESSIONS ON
18 FEBRUARY 16TH?

19 A YES.

20 Q OKAY.

21 MR. BELLAMY: YOUR HONOR, I'D JUST LIKE THE
22 RECORD TO REFLECT THIS IS AN INVESTIGATIVE FOLLOW-UP REPORT
23 ---

24 MR. MONCKTON: OBJECTION, YOUR HONOR. HE'S
25 TESTIFYING.

MR. COX-CROSS-EXAMINATION BY MR. MONCKTON

162

1 THE COURT: YES, SIR. COME UP HERE.

2 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
3 RECORD IN THE PRESENCE OF THE JURY BUT OUT OF THEIR
4 HEARING.)

5 THE COURT: OBJECTION SUSTAINED.

6 Q MR. COX, DID YOU GIVE A STATEMENT TO OFFICER
7 SESSIONS?

8 A YES, I DID.

9 Q AND WHAT DID YOU TELL OFFICER SESSIONS?

10 A I TOLD OFFICER SESSIONS THAT I WAS AT NORTH
11 CONWAY MOTOR INN. I WAS LAYING ON THE BED WHEN SOMEONE
12 KNOCKED ON THE DOOR. VICKY AND KESHIA CAME. SOMEBODY LET
13 VICKY AND KESHIA IN. THEN THEY WAS CRYING. THEY WAS UPSET
14 AND THEY TOLD ME MY BROTHER JUST GOT SHOT. I WAS LIKE,
15 "QUIT PLAYING. YOU'RE LYING." AND THEN I LOOKED AT THEIR
16 FACES AND THEY WAS CRYING. THEY WAS ALL UPSET AND I'M
17 SAYING -- I WAS LIKE -- I JUST LEFT AND THEY SAID IT WAS
18 LIKE -- BEFORE I LEFT IT WAS LIKE, "WE SEEN TREAL AND S.A.
19 ON THE CORNER OF RACEPATH AND 378 AND SAID S.A. WAS
20 STANDING OVER HIM AND SHOT HIM WHEN HE WAS ON THE GROUND.
21 THEY SAID TREAL SHOT HIM FIRST, FIRED THE FIRST SHOT.

22 Q CAN YOU EXPLAIN THE DIFFERENCE IN TIME SINCE
23 THE FIRST TIME YOU GAVE A STATEMENT? CAN YOU EXPLAIN WHY
24 YOUR STATEMENTS CHANGED AS FAR AS THE TIME, NOT THE
25 SUBSTANCE BUT THE TIME?

MR. COX-CROSS-EXAMINATION BY MR. MONCKTON

163

1 A THE TIME WHEN THEY TOLD ME?

2 Q WELL, IN THIS STATEMENT RIGHT HERE YOU
3 INDICATED THEY TOLD YOU THE NEXT DAY WHAT HAD HAPPENED.

4 A OKAY.

5 Q OKAY? NOW, YOU CALLED OFFICER SESSIONS AND
6 YOU TOLD HIM WHAT YOU THOUGHT ABOUT. CAN YOU EXPLAIN WHY
7 YOU WERE ABLE TO REMEMBER THAT THEY TOLD YOU THAT NIGHT.

8 A BECAUSE I HAD TIME TO THINK ABOUT WHAT WAS
9 REALLY, YOU KNOW WHAT I'M SAYING, WHAT REALLY HAPPENED AND
10 AT THE TIME OF THE FIRST STATEMENT I DIDN'T HAVE TIME TO
11 THINK ABOUT IT. HE JUST ASKED ME, YOU KNOW WHAT I'M
12 SAYING, TO GIVE A STATEMENT ON WHAT I REMEMBER AND AT THE
13 TIME THAT'S WHAT I GAVE AND THEN AS I LOOKED OVER IT, I
14 THOUGHT ABOUT IT A LITTLE MORE AND I TALKED TO MY COUSIN
15 AND HE TOLD ME, YOU KNOW WHAT I'M SAYING, THAT SHE TOLD ME
16 THAT NIGHT, YOU KNOW WHAT I'M SAYING. THAT'S WHEN YOU TOLD
17 ME WHAT -- TOLD ME THAT ---

18 Q LET ME ASK YOU. HAS ANYBODY ASKED YOU TO
19 COME IN THE COURTROOM TODAY AND LIE ABOUT ANYTHING?

20 A NO, YOU DIDN'T.

21 Q WHAT HAVE WE ASKED YOU TO DO THE WHOLE TIME
22 YOU TALKED TO US?

23 A TELL WHAT I KNOW. TELL THE TRUTH.

24 MR. BELLAMY: NO FURTHER QUESTIONS.

25 THE COURT: RECROSS, MR. CHRISCO?

MR. COX-CROSS-EXAMINATION BY MR. MONCKTON

164

1 MR. CHRISCO: YES, YOUR HONOR.

2 RECROSS-EXAMINATION

3 BY MR. CHRISCO:

4 Q YOU HAD TWO YEARS, FIVE AND A HALF MONTHS TO
5 THINK ABOUT WHAT YOU SAID BEFORE YOU WROTE THE FIRST
6 STATEMENT; ISN'T THAT TRUE, MR. COX?

7 A I HAD THAT TIME BUT I WASN'T THINKING ABOUT
8 IT.

9 Q NO FURTHER QUESTIONS.

10 THE COURT: MR. MONCKTON?

11 MR. MONCKTON: NO, SIR, YOUR HONOR, NOTHING
12 FURTHER.

13 THE COURT: ALL RIGHT. THANK YOU, MR. COX. YOU
14 MAY STEP DOWN. ALL RIGHT, MR. BELLAMY, YOU MAY CALL YOUR
15 NEXT WITNESS.

16 MR. BELLAMY: YOUR HONOR, THE STATE CALLS SARAH
17 WEAVER.

18 SARAH WEAVER,

19 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

20 DIRECT EXAMINATION

21 BY MR. BELLAMY:

22 Q MS. WEAVER, DO YOU LIVE IN THE CITY OF
23 CONWAY?

24 A YES.

25 Q HOW LONG HAVE YOU LIVED IN CONWAY?

MR. COX-CROSS-EXAMINATION BY MR. MONCKTON

165

1 A THIRTY-ONE YEARS.

2 Q IS YOUR FAMILY FROM CONWAY?

3 A YES.

4 Q WHERE DID YOU ATTEND HIGH SCHOOL?

5 A CONWAY HIGH.

6 Q LET ME SHOW YOU STATE'S EXHIBIT -- STATE'S
7 EVIDENCE NUMBER 2. WOULD YOU TAKE A MINUTE TO LOOK AT IT?
8 HAVE YOU HAD AN OPPORTUNITY TO REVIEW THIS PRIOR TO TRIAL?

9 A YES.

10 Q DOES IT FAIRLY AND ACCURATELY REPRESENT THE
11 INTERSECTION OF 378 AND RACEPATH?

12 A YES.

13 Q DID YOU KNOW THE VICTIM, ISAAC COX?

14 A I KNEW HIM BY HIS NAME AND BY FACE BUT I
15 DIDN'T KNOW OF HIM BECAUSE HE WASN'T A STREET PERSON.

16 Q WHAT DO YOU MEAN HE WASN'T A STREET PERSON?

17 A WELL, YOU KNOW, I DIDN'T -- I NEVER SEEN HIM
18 HANGING OUT IN THE STREETS.

19 Q WHAT IS A STREET PERSON? HOW WOULD YOU ---

20 A WELL, A STREET PERSON TO ME IS PEOPLE THAT
21 BE OUT THERE MOSTLY EVERY DAY, YOU KNOW, JUST HANGING
22 AROUND.

23 Q DO YOU KNOW THE DEFENDANT DERRICK
24 HOLLINGSWORTH?

25 A YES.

MR. COX-CROSS-EXAMINATION BY MR. MONCKTON

166

- 1 Q HOW DO YOU KNOW HIM?
- 2 A FROM AROUND THE NEIGHBORHOOD.
- 3 Q AND HOW LONG HAVE YOU KNOWN HIM?
- 4 A ABOUT THREE OR FOUR YEARS.
- 5 Q PRIOR TO THE INCIDENT?
- 6 A YES.
- 7 Q DO YOU KNOW THE DEFENDANT CONTREAL SWINTON?
- 8 A YES.
- 9 Q OR CORTREAL SWINTON. HOW LONG HAVE YOU
- 10 KNOWN HIM?
- 11 A ABOUT THREE OR FOUR YEARS.
- 12 Q PRIOR TO THE INCIDENT?
- 13 A YES.
- 14 Q HAVE YOU HAD CONVERSATIONS WITH MR.
- 15 HOLLINGSWORTH -- DERRICK HOLLINGSWORTH, EXCUSE ME, THE
- 16 DEFENDANT DERRICK HOLLINGSWORTH?
- 17 A YES.
- 18 Q HOW MANY CONVERSATIONS HAVE YOU HAD WITH
- 19 HIM?
- 20 A VARIOUS.
- 21 Q ARE YOU FAMILIAR WITH HIS VOICE?
- 22 A YES.
- 23 Q HAVE YOU HAD CONVERSATIONS WITH THE
- 24 DEFENDANT CONTREAL -- CORTREAL SWINTON?
- 25 A YES.

MR. COX-CROSS-EXAMINATION BY MR. MONCKTON

167

1 Q ARE YOU FAMILIAR WITH HIS VOICE?

2 A YES.

3 Q MS. WEAVER, LET ME TAKE YOU BACK TO OCTOBER
4 4, 1997. WHERE WERE YOU LIVING BACK ON OCTOBER 4, 1997?

5 A [REDACTED]

6 Q AND WOULD YOU STEP DOWN FROM THE STAND,
7 PLEASE?

8 THE COURT: YES, SIR.

9 MR. BELLAMY: WITH THE COURT'S PERMISSION.

10 Q WILL YOU INDICATE WHERE YOUR RESIDENCE IS?

11 A RIGHT HERE (INDICATING).

12 Q 1835?

13 A YES, SIR.

14

15 Q DID YOU HAVE AN OCCASION TO LEAVE YOUR
16 RESIDENCE THAT EVENING?

17 A YES.

18 Q WHERE DID YOU GO?

19 A I WAS GOING UP THE STREET TOWARDS B&B.

20 Q TOWARDS THE B&B?

21 A YES.

22 Q WOULD YOU INDICATE ON THE MAP WHERE THE B&B
23 IS?

24 MR. BELLAMY: THE COURT'S PERMISSION, YOUR HONOR?

25 THE COURT: YES.

MR. COX-CROSS-EXAMINATION BY MR. MONCKTON

168

1 A RIGHT HERE.

2 THE COURT: KEEP YOUR VOICE UP. SHE STILL HAS TO
3 TAKE YOU DOWN WHEN YOU'RE AWAY FROM HER.

4 Q RIGHT THERE?

5 A YES, RIGHT THERE.

6 Q OKAY. DID YOU REACH THE INTERSECTION OF 378
7 AND RACEPATH?

8 A NO, I STOPPED.

9 Q WHERE DID YOU STOP?

10 A A LITTLE BIT PAST THE SUBSTATION.

11 Q IS THAT THE CITY OF CONWAY POLICE
12 SUBSTATION?

13 A YES.

14 Q WHAT, IF ANYTHING, DID YOU HEAR OR SEE?

15 A I HEARD ARGUMENTS.

16 Q THE VOICES THAT WERE ARGUING, WERE THEY
17 FAMILIAR TO YOU?

18 A YES.

19 Q WOULD YOU POINT OUT IN THE COURTROOM THE
20 VOICES THAT YOU HEARD?

21 THE COURT: MR. BELLAMY, HOW ABOUT STAYING BACK
22 OVER HERE.

23 MR. BELLAMY: YES, SIR.

24 A CONTREAL SWINTON, DERRICK HOLLINGSWORTH.

25 Q DID THE ARGUMENT ESCALATE?

MR. COX-CROSS-EXAMINATION BY MR. MONCKTON

169

1 A YES.

2 Q WHAT HAPPENED NEXT?

3 A AFTER THE ARGUMENT, WELL, THE NEXT THING I
4 HEARD THERE WAS GUNFIRE.

5 Q NOW, TELL US WHAT YOU SAW.

6 A THEY WAS ARGUING, JUST LIKE I SAID, AND THE
7 NEXT THING I HEARD I SEEN CONTREAL AND DERRICK
8 HOLLINGSWORTH SHOOTING. THEY WAS SHOOTING, YOU KNOW.

9 Q DID DEFENDANT CONTREAL SWINTON HAVE A GUN IN
10 HIS HAND?

11 A YES.

12 Q DID DEFENDANT DERRICK HOLLINGSWORTH HAVE A
13 GUN IN HIS HAND?

14 A YES.

15 Q NOW, WHEN YOU HEARD THE SHOTS, WHAT DID YOU
16 DO?

17 A I STOOD THERE AND THEN I TURNED AROUND AND I
18 WENT BACK HOME. I RAN HOME.

19 Q NOW, DID YOU HAVE AN OCCASION TO SEE THEM
20 AGAIN?

21 A YES, WHEN THEY CAME BY. THEY WAS RUNNING
22 FAST, HOWEVER, THEY CAME BY MY HOUSE GOING BACK UP THE
23 STREET AFTER THE SHOOTING.

24 Q NOW, WHO WAS WITH THEM AT THAT TIME?

25 A I RECOGNIZED CONTREAL AND DERRICK. THE

MR. COX-CROSS-EXAMINATION BY MR. MONCKTON

170

1 THIRD PERSON I DID NOT RECOGNIZE.

2 Q CAN YOU DESCRIBE HIM AS FAR AS HIS HEIGHT OR

3 ---

4 A NO.

5 Q OKAY. NOW, DID YOU GO BACK DOWN TO THE
6 INTERSECTION?

7 A YES.

8 Q WHEN YOU GOT DOWN THERE, DID YOU SEE BEADY?

9 A YES. HE WAS LAYING FACE DOWN.

10 Q I MEAN, EXCUSE ME, ISAAC COX. HE WAS LAYING
11 FACE DOWN?

12 A YES.

13 Q NOW, DID YOU TALK TO A POLICE OFFICER?

14 A I CALLED HIM TO THE SIDE BECAUSE I WAS
15 SCARED. I HAD CALLED HIM TO THE SIDE AND TOLD HIM THAT I
16 SEEN IT BUT I WASN'T GOING TO TALK THERE.

17 Q IS THE OFFICER IN THE COURTROOM THAT YOU
18 TALKED TO?

19 A YES.

20 Q WOULD YOU INDICATE WHERE HE'S SITTING?

21 A RIGHT THERE (INDICATING).

22 Q SO YOU APPROACHED AN OFFICER FROM THE CONWAY
23 POLICE DEPARTMENT?

24 A YES.

25 Q NOW, AFTER YOU LEFT THE INTERSECTION WHERE

MR. COX-CROSS-EXAMINATION BY MR. MONCKTON

171

1 DID YOU GO? DID YOU GO BACK HOME?

2 A YES.

3 Q NOW, THE NEXT — DID YOU HAVE AN OCCASION TO
4 TALK TO ANOTHER OFFICER FROM THE CONWAY POLICE DEPARTMENT?

5 A YES.

6 Q WHO DID YOU TALK TO?

7 A RONNIE SESSIONS.

8 Q DID YOU GIVE OFFICER SESSIONS A STATEMENT
9 ABOUT WHAT YOU SAW AND HEARD?

10 A YES, I DID.

11 Q NOW, DID YOU WRITE IT OUT OR DID HE WRITE IT
12 OUT?

13 A I ASKED HIM TO WRITE IT FOR ME.

14 Q DID YOU SIGN IT?

15 A YES.

16 Q MS. WEAVER, HERE'S A PLASTIC STICKY. WOULD
17 YOU PLACE ON THE DIAGRAM WHERE YOU WERE WHEN YOU HEARD OR
18 SAW THE CONFRONTATION?

19 A (THE WITNESS COMPLIES.)

20 Q IF YOU WOULD INITIAL THAT.

21 A (THE WITNESS COMPLIES.)

22 Q DO YOU REMEMBER HOW FAR AWAY YOU WERE WHEN
23 THIS ALTERCATION WAS TAKING PLACE, WHAT DISTANCE?

24 A NO. LIKE I SAID, I WAS LIKE A LITTLE PAST
25 THE SUBSTATION, JUST RIGHT BEFORE YOU GET UP THERE TO THE

MR. COX-CROSS-EXAMINATION BY MR. MONCKTON

172

1 INTERSECTION.

2 Q NOW, ARE YOU FAMILIAR WHERE THE BIG TREE IS?

3 A YES.

4 Q ARE YOU FAMILIAR WHERE THE ISLAMIC CENTER
5 IS?

6 A THE WHAT?

7 Q THE ISLAMIC CENTER.

8 A (NO RESPONSE.)

9 Q LET ME ASK YOU THIS, MS. WEAVER. DID YOU
10 WITNESS THIS INCIDENT ---

11 MR. MONCKTON: OBJECTION, YOUR HONOR. HE'S
12 LEADING.

13 THE COURT: SUSTAINED. REPHRASE THE QUESTION.

14 Q LET ME ASK YOU THIS. HOW WAS THE LIGHTING
15 WITHIN THE INTERSECTION?

16 A IT WAS BRIGHT.

17 Q HOW LONG WERE YOU OUTSIDE BEFORE YOU SAW THE
18 INCIDENT?

19 A ABOUT 15 MINUTES.

20 Q HAD YOUR EYES HAD A CHANCE TO ADJUST?

21 A YES.

22 Q NOW, DID YOU HAVE ANYTHING TO DRINK THAT
23 NIGHT?

24 A YES.

25 Q WERE YOU UNDER THE INFLUENCE OF ANYTHING AT

MR. COX-CROSS-EXAMINATION BY MR. MONCKTON

173

1 THE TIME YOU SAW THIS ALTERCATION?

2 A ALCOHOL, YES.

3 Q DID IT AFFECT YOUR ABILITY TO SEE WHAT YOU
4 SAW AND HEAR?

5 A NO.

6 MR. BELLAMY: THE STATE HAS NO FURTHER QUESTIONS.

7 THE COURT: CROSS-EXAMINATION, MR. MONCKTON?

8 MR. MONCKTON: YOUR HONOR, THIS IS ONE OF THE
9 WITNESSES WE TALKED ABOUT IN CHAMBERS. WE MAY WANT TO
10 COVER SOME ISSUES RIGHT QUICK TO MAKE THE CROSS-EXAMINATION
11 RUN QUICKER.

12 THE COURT: ALL RIGHT, LET'S COME OVER HERE JUST
13 A MINUTE AND LET'S SEE IF WE CAN RESOLVE THIS.

14 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
15 RECORD IN THE PRESENCE OF THE JURY BUT OUT OF THE HEARING
16 OF THE JURY.)

17 THE COURT: ALL RIGHT. PROCEED WITH CROSS-
18 EXAMINATION, MR. MONCKTON.

19 MR. MONCKTON: THANK YOU, YOUR HONOR.

20 **CROSS-EXAMINATION**

21 **BY MR. MONCKTON:**

22 Q MS. WEAVER, WHEN YOU WERE TALKING ABOUT
23 STREET PEOPLE, I GUESS I DIDN'T QUITE UNDERSTAND THAT. ARE
24 YOU A STREET PERSON?

25 A I USED TO BE.

MR. COX-CROSS-EXAMINATION BY MR. MONCKTON

174

1 Q WHAT DOES A STREET PERSON DO?

2 A JUST LIKE I SAID, HANG OUT, WALK THE
3 STREETS, DO WHAT THEY WANT TO DO.

4 Q AND HOW MANY HOURS DO YOU JUST HANG OUT?

5 A ANY HOURS I FEEL LIKE IT OR THEY FEEL LIKE
6 IT.

7 Q HOW LONG WERE YOU A STREET PERSON?

8 A PROBABLY ABOUT NINE OR TEN YEARS.

9 Q WERE YOU A STREET PERSON ON OCTOBER THE 4TH,
10 1997?

11 A YES.

12 Q MS. WEAVER, I'M GOING TO PUT UP A CHART SO
13 WE CAN KEEP IT UP AND WE'LL GO THROUGH SOME TESTIMONY, IF
14 THAT'S ALL RIGHT. I BELIEVE YOU TESTIFIED THAT YOU LIVE AT
15 [REDACTED]

16 A YES.

17 Q DO ME A FAVOR, PLEASE. IF YOU WOULD, STEP
18 DOWN AND PUT A GREEN STICKER ON YOUR HOUSE WHERE YOUR
19 ADDRESS WOULD BE.

20 A (THE WITNESS COMPLIES.)

21 Q AND YOU WERE LIVING AT 1835 ON OCTOBER THE
22 4TH, 1997?

23 A YES.

24 Q NOW, YOU SAID YOU WERE WALKING TO, I
25 BELIEVE, THE B&B SUPERMARKET THE NIGHT THIS OCCURRED BUT

MR. COX-CROSS-EXAMINATION BY MR. MONCKTON

175

1 YOU ONLY MADE IT AS FAR AS THE WHITE STICKER; IS THAT
2 CORRECT?

3 A TRUE.

4 Q I BELIEVE YOU ALSO TESTIFIED IT TOOK YOU 15
5 MINUTES TO GET FROM THE GREEN DOT TO THE WHITE STICKER.

6 A NO. HE ASKED ME HOW LONG WAS I STANDING
7 OUTSIDE.

8 Q OKAY. WERE YOU STANDING OUTSIDE WITH
9 ANYBODY?

10 A NO.

11 Q YOU WERE JUST STANDING BY YOURSELF?

12 A YES.

13 Q WHAT WERE YOU DOING?

14 A STANDING AROUND.

15 Q AT 2:30 IN THE MORNING?

16 A YES.

17 Q NOW, WHEN YOU GAVE YOUR INITIAL STATEMENT TO
18 RODNEY SESSIONS, DO YOU REMEMBER THAT?

19 A YES.

20 Q AND YOU GAVE IT ON - I'LL SHOW YOU A COPY OF
21 IT JUST TO REFRESH YOUR MEMORY. WOULD THIS BE THE
22 STATEMENT YOU GAVE, MS. WEAVER?

23 A YES.

24 Q AND IN THE STATEMENT WHERE DID YOU SAY YOU
25 WERE STANDING WHEN YOU ALLEGEDLY SAW ALL THIS TAKE PLACE?

MR. COX-CROSS-EXAMINATION BY MR. MONCKTON

176

1 A BY THE MAILBOX.

2 Q BY YOUR MAILBOX. ALL RIGHT. IF YOU WOULD,
3 MS. WEAVER, PUT A YELLOW STICKER FOR ME WHERE THE MAILBOX
4 IS.

5 A (THE WITNESS COMPLIES.)

6 Q I'M GOING TO SHOW YOU SOME PICTURES THAT
7 HAVE ALREADY BEEN ADMITTED INTO EVIDENCE AND I SHOW YOU
8 WHAT'S BEEN MARKED AS DEFENSE EXHIBIT NUMBER 11 AND ASK YOU
9 IF THAT FAIRLY REPRESENTS A VIEW FROM YOUR MAILBOX IN THE
10 DAYTIME DOWN TO THE BIG OAK TREE.

11 A YES.

12 Q OKAY. I'M GOING TO SHOW YOU WHAT'S ALSO
13 BEEN MARKED AND ENTERED INTO EVIDENCE WITHOUT OBJECTION
14 DEFENSE EXHIBIT NUMBER 4 AND ASK YOU IF THAT ACCURATELY
15 REPRESENTS THE VIEW FROM THE BIG OAK TREE BACK DOWN TO YOUR
16 MAILBOX IN THE DAYTIME.

17 A YES.

18 Q I'M GOING TO SHOW YOU WHAT'S BEEN MARKED AS
19 DEFENSE EXHIBIT NUMBER 10 THAT'S BEEN ENTERED INTO EVIDENCE
20 WITHOUT OBJECTION AND IT SHOWS YOU A NIGHTTIME PHOTO FROM
21 YOUR MAILBOX DOWN TO THE BIG OAK TREE.

22 A YES.

23 MR. MONCKTON: YOUR HONOR, MAY I PUBLISH?

24 THE COURT: YES. AS I TOLD YOU EARLIER, LADIES
25 AND GENTLEMEN, PUBLISH IS JUST A FANCY LAWYER WORD MEANING

MR. COX-CROSS-EXAMINATION BY MR. MONCKTON

177

1 SHOW TO THE JURY BUT YOU WON'T BE ABLE TO LOOK AT THESE
2 PHOTOGRAPHS NOW BUT YOU'LL ALSO BE ABLE TO TAKE THEM INTO
3 YOUR JURY ROOM WITH YOU AND STUDY THEM AS LONG AS YOU WOULD
4 LIKE AT THAT TIME, SO DON'T WORRY ABOUT THE FACT THAT YOU
5 DO NOT HAVE TIME TO LOOK AT THEM AS LONG AS YOU MIGHT LIKE
6 AT THIS TIME. YOU MAY PROCEED, MR. MONCKTON.

7 MR. MONCKTON: THANK YOU, YOUR HONOR.

8 THE COURT: PASS THEM OUT TO THE ALTERNATES, TOO.
9 THEY NEED TO LOOK AT THEM, TOO, IF THEY ---

10 Q MS. WEAVER, HOW FAR WOULD YOU SAY
11 APPROXIMATELY IT IS FROM YOUR MAILBOX DOWN TO THE BIG OAK
12 TREE?

13 A I HAVE NO IDEA.

14 Q HOW ABOUT THIS. HOW LONG DO YOU THINK IT
15 WOULD TAKE YOU TO WALK FROM YOUR MAILBOX DOWN TO THE BIG
16 OAK TREE?

17 A PROBABLY ABOUT TWO OR THREE MINUTES.

18 Q TWO- OR THREE-MINUTE WALK? NOW, MS. WEAVER,
19 I BELIEVE YOU ALSO -- I HATE TO ASK YOU THIS BUT I BELIEVE
20 YOU HAVE A PRIOR RECORD, AS WELL, FOR PETTY LARCENY; IS
21 THAT CORRECT?

22 A YES.

23 Q WHERE ARE YOU CURRENTLY EMPLOYED, MS.
24 WEAVER?

25 A I DON'T WORK.

MR. COX-CROSS-EXAMINATION BY MR. MONCKTON

178

1 Q YOU DON'T WORK. WERE YOU EMPLOYED THE DAY
2 THIS HAPPENED?

3 A NO.

4 Q HAVE YOU BEEN EMPLOYED BEFORE?

5 A YES.

6 Q DO YOU REMEMBER MEETING WITH AN INVESTIGATOR
7 OF MINE, A MR. C. E. MARTIN?

8 A YES.

9 Q WHO CAME TO SEE YOU. DO YOU REMEMBER
10 TELLING HIM DURING THAT INTERVIEW HE HAD WITH YOU THAT YOU
11 DIDN'T SEE WHAT HAPPENED?

12 A YES.

13 Q WAS THAT THE TRUTH?

14 A NO, THAT WASN'T THE TRUTH.

15 Q WHY DID YOU LIE TO HIM?

16 A BECAUSE I DIDN'T HAVE TO TALK TO HIM.

17 Q DID YOU TELL HIM YOU DIDN'T HAVE TO TALK TO
18 HIM OR YOU JUST DECIDED YOU WERE GOING TO LIE TO HIM?

19 A I JUST TOLD HIM I DIDN'T HAVE NOTHING TO SAY
20 TO HIM.

21 Q THAT'S NOT WHAT YOU SAID, MS. WEAVER. YOU
22 TOLD ME YOU TOLD HIM YOU DIDN'T SEE WHAT HAPPENED; IS THAT
23 CORRECT?

24 A I TOLD HIM THAT I DIDN'T HAVE NOTHING TO
25 SAY.

MR. COX-CROSS-EXAMINATION BY MR. MONCKTON

179

1 Q I'LL LET YOUR TESTIMONY STAND, MS. WEAVER.
2 MS. WEAVER, WHEN YOU'RE STANDING AT YOUR MAILBOX AT 1835
3 RACEPATH, CAN YOU ACCURATELY SEE WHAT'S UNDER THE BIG OAK
4 TREE?

5 A I WASN'T STANDING AT MY MAILBOX. THAT'S
6 WHAT I TOLD HIM.

7 Q ANSWER THE QUESTION. WHEN YOU'RE STANDING
8 AT THE MAILBOX AT 1835, CAN YOU SEE ACCURATELY WHAT'S UNDER
9 THE BIG OAK TREE? YES OR NO?

10 A NO.

11 Q BUT THAT'S WHAT YOU TOLD OFFICER SESSIONS IN
12 YOUR WRITTEN STATEMENT THAT I JUST SHOWED YOU. I'LL SHOW
13 IT TO YOU AGAIN. IN YOUR WRITTEN STATEMENT YOU TOLD HIM
14 THAT'S WHERE YOU WERE STANDING; ISN'T THAT CORRECT?

15 A YES.

16 Q AND YOU'RE TELLING THIS JURY THAT IF YOU'RE
17 STANDING RIGHT THERE, YOU CAN'T SEE WHAT OCCURS UNDER THE
18 BIG OAK TREE. THAT'S CORRECT, ISN'T IT?

19 A RIGHT.

20 MR. MONCKTON: NO FURTHER QUESTIONS AT THIS TIME,
21 YOUR HONOR.

22 THE COURT: MR. CHRISCO? EXCUSE ME JUST A MINUTE
23 BEFORE YOU GET STARTED. MR. BELLAMY, DO YOU WANT TO GET
24 THESE PICTURES AND GIVE THEM BACK TO THE REPORTER? THANK
25 YOU. ALL RIGHT, MR. CHRISCO.

MR. COX-CROSS-EXAMINATION BY MR. MONCKTON

180

1 MR. CHRISCO: THANK YOU, YOUR HONOR.

2 CROSS-EXAMINATION

3 BY MR. CHRISCO:

4 Q I SHOW YOU THE STATEMENT THAT YOU GAVE ON
5 OCTOBER THE 4TH, 1997, TO OFFICER SESSIONS. WHO IS RED?

6 A DERRICK HOLLINGSWORTH.

7 Q WHO IS DUCK?

8 A HE'S A FRIEND OF MINE.

9 Q HOW MANY SHOTS DID YOU HEAR?

10 A FOUR.

11 Q THAT'S ALL?

12 A THAT'S ALL I HEARD.

13 Q MS. WEAVER, YOU STATED THAT YOU WERE
14 STANDING WHERE THE YELLOW MARK IS, THE MAILBOX, AND SAW THE
15 SHOOTING; IS THAT CORRECT?

16 A THAT'S WHAT WAS ON MY FIRST STATEMENT, YES,
17 SIR.

18 Q AND ON YOUR NEXT STATEMENT YOU SAID YOU WERE
19 STANDING OVER HERE WHERE THE WHITE STICKER IS; IS THAT
20 CORRECT?

21 A YES.

22 Q WAS YOUR LINE OF VISION CLEAR?

23 A YES, IT WAS.

24 Q WAS ANY CARS ON THE HIGHWAY?

25 A CARS WAS PASSING.

MR. COX-CROSS-EXAMINATION BY MR. MONCKTON

181

1 Q WAS ANY OF THEM STOPPED IN FRONT OF YOU?

2 A NO.

3 Q NO CARS WERE STOPPED?

4 A NOT IN FRONT OF ME.

5 Q AND WHEN YOU SAY THERE WAS CARS ON THE
6 HIGHWAY, COULD YOU SHOW ME? YOU CAN STEP DOWN, IF YOU'D
7 LIKE. YOU'LL HAVE TO TALK UP NOW SO THE REPORTER CAN HEAR
8 YOU.

9 A (THE WITNESS COMPLIES.)

10 Q CARS WERE GOING THAT WAY?

11 A UH-HUH.

12 Q NO CARS COMING THIS WAY?

13 A I WASN'T REALLY PAYING THAT MUCH ATTENTION.

14 Q ANY CARS ON THE SIDE STREETS?

15 A NO.

16 Q NO CARS ON THE SIDE STREETS. YOU SAID YOU
17 HEARD ARGUING.

18 A YES.

19 Q WHAT DID YOU HEAR?

20 A I CAN'T MAKE OUT THE EXACT WORDS BUT I HEARD
21 AN ARGUMENT.

22 Q AFTER THE INCIDENT HAPPENED, WHAT DID YOU DO
23 THEN, MA'AM?

24 A I WENT BACK HOME.

25 Q WENT BACK HOME?

MR. COX-CROSS-EXAMINATION BY MR. MONCKTON

182

1 A YES.

2 Q AND YOU STAYED AT HOME FOR HOW LONG?

3 A FOR ABOUT, MAYBE ABOUT TEN MINUTES, TEN OR
4 FIFTEEN MINUTES AND I WENT BACK UP THERE.

5 Q AND WHAT DID YOU DO THEN?

6 A WELL, I WENT UP THERE AND I SEEN HIM LAYING
7 DOWN ON THE GROUND AND I CALLED OFFICER HARRIS OVER AND
8 TOLD HIM THAT I SEEN IT BUT I WASN'T GOING TO TALK THERE.

9 Q DID YOU TALK -- DID YOU SEE A FREDERICK
10 MCDONALD OUT THERE?

11 A I WASN'T REALLY PAYING NO ATTENTION.

12 Q HE SAYS THAT YOU TOLD HIM THAT YOU TRIED TO
13 CALM HIM DOWN AND SAID GOD WILL TAKE CARE OF HIM.

14 A THAT WASN'T ME.

15 Q THEN THAT WOULDN'T BE A TRUTHFUL STATEMENT?

16 A NO.

17 Q HOW MANY TIMES HAVE YOU TALKED TO THE POLICE
18 ABOUT THIS?

19 A TWICE.

20 Q AND WHAT DATES WERE THOSE, MA'AM?

21 A I DON'T REMEMBER EXACTLY. THE DAY AFTER --
22 THE NIGHT IT HAPPENED AND THE DAY AFTER.

23 Q THAT'S THE LAST TIME YOU TALKED TO THE
24 POLICE?

25 A NO. I TALKED TO THEM BEFORE THE TRIAL

MR. COX-CROSS-EXAMINATION BY MR. MONCKTON

183

1 STARTED.

2 Q AND HOW MANY TIMES DID YOU TALK TO THEM?

3 A THREE OR FOUR TIMES. I DON'T REMEMBER.

4 Q WHEN YOU SAY AFTER THE TRIAL STARTED ---

5 A I SAID BEFORE THE TRIAL STARTED.

6 Q YOU TALKED TO THEM IN FEBRUARY?

7 A I DON'T REMEMBER DATES WHEN I TALKED TO
8 THEM.

9 Q IN THE LAST MONTH? DID YOU TALK TO THEM IN
10 THE LAST MONTH?

11 A YES.

12 Q ABOUT HOW MANY TIMES DO YOU THINK YOU'VE
13 TALKED TO THEM?

14 A I DON'T REMEMBER.

15 Q DID YOU TALK WITH MR. BELLAMY?

16 A YES.

17 Q HOW MANY TIMES DO YOU THINK YOU TALKED WITH
18 HIM?

19 A I DON'T REMEMBER BUT THEY WAS COMING BACK
20 AND FORTH TO GET ME.

21 Q MORE THAN ONCE?

22 A MORE THAN ONCE.

23 Q MORE THAN FIVE TIMES?

24 A YES.

25 Q MORE THAN TEN TIMES?

MR. COX-CROSS-EXAMINATION BY MR. MONCKTON

184

1 A I DON'T REMEMBER. I WASN'T KEEPING COUNT.

2 MR. CHRISCO: THE COURT'S INDULGENCE.

3 THE COURT: YES, SIR.

4 Q YOU ALSO SAID THAT YOU SEEN A THIRD

5 INDIVIDUAL THERE, DID YOU NOT?

6 A YES.

7 Q DID YOU RECOGNIZE WHO THAT PERSON WAS?

8 A NO.

9 MR. CHRISCO: YOUR HONOR, I HAVE NO FURTHER
10 QUESTIONS OF THIS WITNESS.

11 THE COURT: REDIRECT, MR. BELLAMY?

12 MR. BELLAMY: YES, SIR, YOUR HONOR.

13 REDIRECT EXAMINATION

14 BY MR. BELLAMY:

15 Q MS. WEAVER, WHEN YOU FIRST SAW THE INCIDENT,
16 I THINK YOU INDICATED WITH THE WHITE STICKY HALFWAY BETWEEN
17 THE POLICE SUBSTATION?

18 A YES.

19 Q AFTER YOU SAW THE INCIDENT YOU SAID YOU WENT
20 BACK TO YOUR RESIDENCE?

21 A YES.

22 Q NOW, WHEN YOU WENT BACK TO YOUR RESIDENCE,
23 WHERE WERE YOU?

24 A I WAS STANDING IN THE YARD.

25 Q NOW, WOULD YOU DESCRIBE THE LIGHTING

MR. COX-CROSS-EXAMINATION BY MR. MONCKTON

185

1 CONDITIONS THERE?

2 A THERE'S A STREET LIGHT RIGHT THERE.

3 Q RIGHT IN FRONT OF YOUR RESIDENCE?

4 A LIKE RIGHT DOWN THE SIDE LIKE IN FRONT OF
5 THE SUBSTATION THEY'VE GOT LIGHTS SHINING FROM THE BACK
6 DOOR, THOSE BRIGHT LIGHTS.

7 Q DID YOU HAVE AN OCCASION TO SEE DEFENDANT
8 DERRICK HOLLINGSWORTH AND DEFENDANT CORTREAL SWINTON AGAIN?

9 A YES.

10 Q HOW FAR AWAY FROM YOU WERE THEY?

11 A THEY JUST PASSING BY. THEY WERE MOVING
12 FAST. I'M LIKE PROBABLY ABOUT TEN STEPS FROM THEM BECAUSE
13 THEY WAS LIKE RUNNING BY AND I WAS STANDING RIGHT THERE IN
14 MY YARD RIGHT THERE IN THE FRONT.

15 Q NOW, FROM THE TIME YOU HEARD THE ARGUMENT
16 UNTIL THE TIME YOU SAW THEM RUNNING BY YOUR RESIDENCE, HOW
17 MUCH TIME ELAPSED?

18 A PROBABLY ABOUT TEN MINUTES, SOMETHING LIKE
19 THAT.

20 Q DO YOU WANT TO BE HERE TODAY?

21 A NO.

22 Q WHY ARE YOU HERE TODAY?

23 A BECAUSE I WAS SUBPOENAED.

24 Q NOW, DO YOU HAVE ANYTHING TO GAIN BY
25 TESTIFYING TODAY?

MR. COX-CROSS-EXAMINATION BY MR. MONCKTON

186

1 A NO.

2 MR. BELLAMY: NO FURTHER QUESTIONS.

3 THE COURT: RECROSS, MR. MONCKTON?

4 MR. MONCKTON: JUST ONE QUESTION, YOUR HONOR.

5 RECROSS-EXAMINATION

6 BY MR. MONCKTON:

7 Q MS. WEAVER, YOU JUST TESTIFIED THAT YOU WERE
8 STANDING RIGHT AT THE WHITE DOT, WENT BACK TO YOUR HOUSE
9 AND SOME TEN MINUTES LATER MY CLIENT, DERRICK
10 HOLLINGSWORTH, COMES RUNNING BY YOUR HOUSE?

11 A YES, IT WAS SOMETHING LIKE THAT.

12 Q OKAY. NO FURTHER QUESTIONS.

13 THE COURT: MR. CHRISCO?

14 MR. CHRISCO: I'VE GOT NONE, YOUR HONOR.

15 THE COURT: ALL RIGHT. THANK YOU, MA'AM. YOU
16 MAY STEP DOWN.

17 MR. BELLAMY: CAN WE SIDE BAR, JUDGE?

18 THE COURT: YES, SIR.

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

22 THE COURT: LADIES AND GENTLEMEN, ONCE AGAIN I
23 HAVE A LEGAL MATTER THAT I HAVE TO HANDLE AND I HAVE TO
24 HANDLE IT ON THE RECORD AND OUTSIDE YOUR PRESENCE. I DON'T
25 THINK THIS WILL TAKE LONG BUT IF YOU WOULD GO TO YOUR JURY

MR. COX-CROSS-EXAMINATION BY MR. MONCKTON

187

1 ROOM FOR JUST A FEW MINUTES. DON'T DISCUSS THE CASE AMONG
2 YOURSELVES AND I'LL SEND FOR YOU IN JUST A FEW MINUTES.

3 (WHEREUPON, AT 4:35 P.M., THE JURY LEFT THE
4 COURTROOM AND THE FOLLOWING PROCEEDINGS WERE HAD.)

5 THE COURT: ALL RIGHT, MR. BELLAMY AND MR.
6 HUMPHRIES, CALL YOUR NEXT WITNESS.

7 MR. BELLAMY: THE STATE CALLS VICKY CAMPBELL.

8 MR. HUMPHRIES: SHE SAID THAT WE CAN SEND HER TO
9 JAIL BECAUSE SHE'S NOT COMING IN FRONT OF THE DEFENDANTS.
10 SHE'S GOT HER LITTLE BOY WITH HER.

11 THE COURT: ALL RIGHT, I'LL ASK SOME OF THE
12 OFFICERS TO PHYSICALLY BRING HER INTO THE COURTROOM,
13 PLEASE.

14 THE COURT: JUST STAND RIGHT THERE. MS.
15 CAMPBELL. MS. CAMPBELL. ARE YOU VICKY CAMPBELL; IS THAT
16 CORRECT? IS THAT YOUR NAME? ANSWER OUT, PLEASE.

17 MS. CAMPBELL: YEAH.

18 THE COURT: ALL RIGHT. MS. CAMPBELL, YOU'VE BEEN
19 SUBPOENAED TO TESTIFY IN THIS CASE. THAT MEANS THAT YOU
20 HAVE TO COME IN HERE AND YOU HAVE TO TESTIFY TRUTHFULLY
21 UNLESS THE ANSWERS TO THE QUESTIONS THAT ARE ASKED YOU ARE
22 INCRIMINATING OF YOURSELF AND MIGHT LEAD TO A CRIMINAL
23 CHARGE AGAINST YOU, IN WHICH CASE YOU WOULD HAVE THE RIGHT
24 TO INVOKE THE FIFTH AMENDMENT. BUT IF YOU ARE NOT ASKED
25 QUESTIONS THAT WOULD BE INCRIMINATING TO YOU, YOU MUST TAKE

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1 THE STAND AND YOU MUST ANSWER THE QUESTIONS TRUTHFULLY.

2 NOW, THERE ARE TWO THINGS THAT CAN BE DONE. IF YOU REFUSE

3 TO TESTIFY, I CAN FIND YOU IN CONTEMPT OF THIS COURT AND I

4 CAN SEND YOU TO JAIL FOR CONTEMPT OR IF YOU TESTIFY

5 FALSELY, YOU CAN BE CHARGED WITH PERJURY. DO YOU

6 UNDERSTAND THOSE THINGS? DO YOU UNDERSTAND?

7 MS. CAMPBELL: UH-HUH.

8 THE COURT: MA'AM?

9 MS. CAMPBELL: YEAH.

10 THE COURT: I WILL ASK YOU NOW THAT IF YOU'RE
11 CALLED AND ASKED TO TAKE THIS WITNESS STAND, ARE YOU GOING
12 TO TESTIFY OR ARE YOU NOT GOING TO TESTIFY? ARE YOU GOING
13 TO -- ANSWER OUT, PLEASE. ARE YOU GOING TO TESTIFY OR ARE
14 YOU NOT GOING TO TESTIFY?

15 MS. CAMPBELL: YEAH.

16 THE COURT: MA'AM?

17 MS. CAMPBELL: YEAH.

18 THE COURT: YOU WILL TESTIFY?

19 MS. CAMPBELL: YEAH.

20 THE COURT: ALL RIGHT. THAT'S ALL WE NEEDED TO
21 KNOW, THEN. IF YOU COME IN HERE, YOU'RE GOING TO BE ASKED
22 SOME QUESTIONS BY ALL THESE LAWYERS IN THIS CASE AND ALL
23 THAT YOU'VE GOT TO DO -- YOU'RE NOT IN ANY TROUBLE YOURSELF
24 AT THIS POINT BUT ALL YOU'VE GOT TO DO IS TO ANSWER THE
25 QUESTIONS AND GIVE TRUTHFUL ANSWERS AND AS LONG AS YOU DO

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1 THAT, YOU'RE NOT GOING TO BE IN ANY TROUBLE. DO YOU
2 UNDERSTAND THAT?

3 MS. CAMPBELL: YES.

4 THE COURT: ARE YOU WILLING TO COME IN AND ANSWER
5 THE QUESTIONS OF THE LAWYERS TRUTHFULLY?

6 MS. CAMPBELL: YES.

7 THE COURT: ALL RIGHT. THAT'S ALL I NEEDED TO
8 KNOW. ALL RIGHT, IF YOU WOULD HAVE HER COME AROUND RIGHT
9 HERE AND IF YOU WOULD SWEAR THE WITNESS AND THEN WE'LL HAVE
10 HER TAKE THE STAND AND WE'LL HAVE THE QUESTIONS ASKED AND
11 ANSWERED.

12 VICKY CAMPBELL,

13 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

14 THE COURT: THIS TESTIMONY IS IN THE ABSENCE OF
15 THE JURY TO START WITH, MR. HUMPHRIES.

16 MR. HUMPHRIES: YES, YOUR HONOR.

17 THE COURT: NOW, JUST LISTEN TO THE QUESTIONS AND
18 THEN ANSWER OUT, PLEASE, SO THAT EVERYBODY IN THE COURTROOM
19 CAN HEAR YOU. SPEAK INTO THE MICROPHONE SO THAT IT WILL BE
20 LOUD ENOUGH. AND I WILL TELL YOU AGAIN THAT NOBODY IS
21 PICKING ON YOU OR TRYING TO CAUSE YOU ANY PROBLEM. ALL
22 WE'RE TRYING TO DO HERE IS GET TO THE TRUTH AND AS LONG AS
23 YOU ANSWER THE QUESTIONS TRUTHFULLY OF ALL THE LAWYERS IN
24 THIS CASE, THERE WILL BE NO PROBLEMS. DO YOU UNDERSTAND?

25 THE WITNESS: YES.

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1 THE COURT: ALL RIGHT. OKAY, MR. HUMPHRIES.

2 DIRECT EXAMINATION

3 BY MR. HUMPHRIES:

4 Q MS. CAMPBELL, ON OCTOBER 4, 1997, IN THE
5 EARLY MORNING HOURS WERE YOU IN A VEHICLE DRIVEN BY
6 LAKESHIA SMITH, ALSO WITH ANOTHER INDIVIDUAL AS A
7 PASSENGER?

8 A YES.

9 Q WERE YOU THE FRONT SEAT PASSENGER OF THAT
10 VEHICLE?

11 A YES.

12 Q DID YOU HAVE AN OCCASION TO PASS BY THE
13 INTERSECTION OF RACEPATH AND 378 WHERE YOU OBSERVED AN
14 ALTERCATION OR A FIGHT?

15 A YES.

16 Q HOW MANY PEOPLE DID YOU SEE AT THAT
17 INTERSECTION ENGAGED IN THAT ALTERCATION OR CONFRONTATION?

18 A I CAN'T REMEMBER.

19 Q DO YOU RECALL HAVING BEEN INTERVIEWED AT THE
20 SOLICITOR'S OFFICE IN THE PRESENCE OF RODNEY SESSIONS, A
21 DETECTIVE WITH THE CONWAY POLICE DEPARTMENT, IN MARCH OF
22 2000 -- I'M SORRY, IT WASN'T MARCH; IT WAS FEBRUARY IN MY
23 OFFICE. DO YOU RECALL THAT?

24 A YES.

25 Q DO YOU RECALL HAVING SAID AT THAT TIME THAT

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1 YOU SAW FOUR PEOPLE BEATING THE VICTIM AND THREE OTHERS
2 ENGAGED IN THAT CONFRONTATION? DO YOU RECALL THAT?

3 A NO.

4 Q YOU DON'T RECALL THAT?

5 A UH-UH.

6 Q DO YOU RECALL THAT YOU TOLD MR. SESSIONS
7 THAT ALL THREE OF THE AGGRESSORS IN THAT CONFRONTATION --

8 MR. CHRISCO: YOUR HONOR, I'M GOING TO OBJECT. I
9 KNOW THE CIRCUMSTANCES WITH THE WITNESS HERE BUT THERE'S A
10 LOT OF LEADING QUESTIONS HERE, YOUR HONOR.

11 MR. HUMPHRIES: RULE 611.

12 THE COURT: I REALIZE RULE 611 PROVIDES FOR THE
13 HOSTILE WITNESS -- PROVIDES FOR CROSS-EXAMINATION WITH
14 LEADING QUESTIONS WHEN A WITNESS IS ASSOCIATED WITH THE
15 OTHER SIDE BUT AT THIS POINT I DON'T KNOW THAT SHE'S
16 ASSOCIATED WITH EITHER SIDE; HOWEVER, I ALSO KNOW THAT RULE
17 611 ALLOWS THE INTERROGATION OF A WITNESS TO BE WITHIN THE
18 CONTROL OF THE COURT AND I THINK THAT IT'S NECESSARY IN
19 THIS SITUATION AND I'M GOING TO ALLOW THE TESTIMONY AS IS
20 RIGHT NOW UNDER 611(a).

21 MR. HUMPHRIES: THANK YOU, YOUR HONOR.

22 Q DO YOU RECALL HAVING TOLD DETECTIVE SESSIONS
23 THAT THE THREE AGGRESSORS WERE DRESSED IN ALL BLACK
24 HOODEDS?

25 A WHAT?

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- 1 Q HOODEDS. HOODED SWEATSHIRTS.
- 2 A UH-UH.
- 3 Q YOU DON'T RECALL THAT?
- 4 A I SAID SOME PEOPLE WAS DRESSED IN HOODS,
- 5 THAT'S ALL.
- 6 Q YOU SAID YOU DID SEE SOME PEOPLE DRESSED
- 7 WITH HOODEDS ON?
- 8 A UH-HUH.
- 9 Q YOU RECALL THAT?
- 10 A UH-HUH.
- 11 Q OKAY. DO YOU RECALL HAVING TOLD DETECTIVE
- 12 SESSIONS THAT YOU SAW ISAAC COX FALL TO THE GROUND?
- 13 A NOPE.
- 14 Q DO YOU RECALL THAT YOU TOLD ISAAC -- THAT
- 15 YOU TOLD DETECTIVE SESSIONS THAT YOU SAW THE TALLER
- 16 INDIVIDUAL WITH THE GUN STAND OVER ISAAC COX AND SHOOT HIM?
- 17 A YES.
- 18 Q DO YOU RECALL HAVING TOLD DETECTIVE SESSIONS
- 19 THAT THE INDIVIDUALS SHOOTING ISAAC COX WERE SOMEONE YOU
- 20 KNEW AS TREAL AND SOMEONE YOU KNEW AS S.A.?
- 21 A CAN YOU REPEAT THAT QUESTION?
- 22 Q DO YOU RECALL HAVING TOLD DETECTIVE SESSIONS
- 23 THAT THE INDIVIDUALS YOU SAW SHOOTING ISAAC COX WAS AN
- 24 INDIVIDUAL YOU KNEW AND HAD PREVIOUSLY KNOWN AS TREAL,
- 25 BEING THE SHORTER ONE, AND THE TALLER ONE WITH THE GUN

MR. COX-CROSS-EXAMINATION BY MR. MONCKTON

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1 BEING S.A., THAT BEING THE INDIVIDUAL WHO STOOD OVER ISAAC
2 COX WHEN HE WAS LAYING ON THE GROUND AND SHOT HIM? DO YOU
3 RECALL HAVING TOLD DETECTIVE SESSIONS THAT?

4 A YES.

5 Q DO YOU RECALL HAVING TOLD DETECTIVE SESSIONS
6 THAT AFTER OBSERVING THESE THINGS YOU WENT TO TELL SPIKE,
7 ALSO KNOWN AS FREDERICK COX, THE BROTHER OF ISAAC COX, THAT
8 HIS BROTHER HAD BEEN SHOT?

9 A UH-HUH.

10 Q AT THE NORTH CONWAY MOTOR INN?

11 A UH-HUH.

12 Q AND THAT YOU WENT TO ISAAC COX -- I'M SORRY,
13 SPIKE'S ROOM OR FREDERICK COX'S ROOM, TOLD HIM THAT HIS
14 BROTHER HAD BEEN SHOT AND THAT TREAL AND S.A. HAD SHOT HIM.
15 DO YOU RECALL THAT?

16 A I TOLD HIM THAT THEY SHOT HIM. I DIDN'T SAY
17 WHO SHOT HIM.

18 Q DO YOU RECALL HAVING TESTIFIED THAT YOU SAW
19 THREE TO FOUR SHOTS THERE AT THE STOP SIGN BY THE BIG OAK,
20 BIG TREE?

21 A UH-HUH.

22 Q DO YOU RECALL HAVING TOLD DETECTIVE SESSIONS
23 THAT THE SHORT BOY BY THE TREE ALSO SHOT AND THAT WAS
24 TREAL?

25 A NOPE.

MR. COX-CROSS-EXAMINATION BY MR. MONCKTON

194

1 Q DO YOU RECALL HAVING TOLD DETECTIVE SESSIONS
2 THAT THE LAST ONE LEAVING WAS S.A.?

3 A YEP.

4 MR. BELLAMY: THAT'S ALL WE NEED FROM THIS
5 WITNESS AT THIS TIME.

6 THE COURT: THAT'S THE PROFFERED TESTIMONY, MR.
7 CHRISCO. IS THERE ANY OBJECTION TO IT?

8 MR. CHRISCO: NO, YOUR HONOR.

9 THE COURT: MR. MONCKTON?

10 MR. MONCKTON: YOUR HONOR, THE ONLY THING THAT
11 CONCERNS THE DEFENSE IS HOW FAR WE'LL BE ALLOWED TO GET ON
12 CROSS-EXAMINATION WITH THIS WITNESS.

13 THE COURT: WELL, WE'LL SEE WHAT HAPPENS BUT I'M
14 GOING TO ALLOW YOU TO CROSS-EXAMINE HER PURSUANT TO THE
15 CONFRONTATION CLAUSE AND I WILL ALLOW YOU TO CROSS-EXAMINE
16 HER. I DO BELIEVE THAT THE PROFFERED TESTIMONY IS
17 APPROPRIATE AND I KNOW THAT MR. HUMPRHIES HAS MOVED UNDER
18 611 TO EXAMINE HER A LITTLE BIT DIFFERENTLY THAN YOU WOULD
19 A NORMAL WITNESS. I DON'T THINK THAT IT FALLS UNDER THE
20 EXCEPTION OF 611(c) BUT I THINK IT DOES FOLLOW THE
21 EXCEPTION OF 611(a), SUBPARAGRAPH 1, WHICH ALLOWS THE COURT
22 TO -- PLACES THE CONTROL OF THE WITNESS IN THE HANDS OF THE
23 COURT AND THE WITNESS HAS DEFINITELY BEEN A RELUCTANT
24 WITNESS AND SO I AM GOING TO ALLOW HIM TO GO THROUGH THE
25 SAME TYPE OF CALM EXAMINATION OF HER THAT HE HAS JUST DONE

MR. COX-CROSS-EXAMINATION BY MR. MONCKTON

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1 IN ORDER TO MAKE THE INTERROGATION AND PRESENTATION
2 EFFECTIVE FOR THE ASCERTAINMENT OF THE TRUTH BECAUSE I
3 THINK THAT'S WHAT WE'RE AFTER IN THIS CASE. SO I WILL
4 ALLOW THE TESTIMONY. I WILL ALLOW THE EXAMINATION. ALL
5 RIGHT, BRING THE JURY IN, PLEASE.

6 THE COURT: NOW, MS. CAMPBELL, THEY'RE GOING TO
7 ASK YOU THE SAME QUESTIONS. HE'S JUST GOING TO DO IT WHEN
8 THE JURY IS HERE. THAT'S THE ONLY DIFFERENCE IS THAT HE'S
9 GOING TO ASK YOU VIRTUALLY THE SAME QUESTIONS HE WAS ASKING
10 BEFORE. WE HAD TO HEAR IT OUTSIDE OF THE PRESENCE OF THE
11 JURY AND NOW WE HAVE TO HEAR IT IN THE PRESENCE OF THE
12 JURY.

13 (WHEREUPON, AT 4:53 P.M., THE JURY ENTERED THE
14 COURTROOM AND THE FOLLOWING PROCEEDINGS WERE HAD.)

15 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN,
16 THANK YOU FOR YOUR PATIENCE. I WILL TELL YOU THAT THE NEXT
17 WITNESS THAT THE STATE HAS CALLED IS MS. VICKY CAMPBELL.
18 THIS IS MS. CAMPBELL ON THE WITNESS STAND. SHE HAS ALREADY
19 BEEN SWORN AND THE STATE WILL CONDUCT THEIR EXAMINATION.
20 ALL RIGHT, MR. HUMPHRIES.

21 MR. HUMPHRIES: THANK YOU, YOUR HONOR.

22 DIRECT EXAMINATION

23 BY MR. HUMPHRIES:

24 Q MS. CAMPBELL, YOU ARE A RESIDENT OF THE
25 CONWAY AREA?

MR. COX-CROSS-EXAMINATION BY MR. MONCKTON

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1 A UH-HUH.

2 Q YOU HAVE BEEN SUBPOENAED TO BE HERE TODAY;
3 IS THAT CORRECT?

4 A YUP.

5 Q YOU ARE HERE AGAINST YOUR WILL; IS THAT
6 CORRECT?

7 A YUP.

8 Q MS. CAMPBELL, DO YOU RECALL HAVING BEEN
9 INTERVIEWED BY DETECTIVE RODNEY SESSIONS ON OR ABOUT MARCH
10 16TH OF THE YEAR 2000 IN MY OFFICE? DO YOU RECALL THAT
11 INTERVIEW?

12 A YES.

13 Q AND AT THAT TIME YOU WERE QUESTIONED
14 REGARDING YOUR KNOWLEDGE ABOUT THIS INCIDENT; THAT IS, THE
15 SHOOTING AND THE KILLING OF ISAAC COX. DO YOU RECALL THAT?

16 A YES.

17 Q DO YOU RECALL THAT EVENING, THAT IS OCTOBER
18 4TH, THE EARLY MORNING HOURS OF 1997, OCCUPYING A VEHICLE
19 WITH TWO OTHER INDIVIDUALS, KIM BROWN AND LAKESHIA SMITH?

20 A YEAH.

21 Q WHOSE VEHICLE WAS THAT?

22 A KESHIA'S.

23 Q KESHIA'S. AND IN THAT VEHICLE, MS.
24 CAMPBELL, WHERE WERE YOU SEATED?

25 A ON THE FRONT PASSENGER SIDE.

MR. COX-CROSS-EXAMINATION BY MR. MONCKTON

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1 Q DO YOU RECALL WHAT TYPE OF VEHICLE IT WAS?

2 A A HONDA CIVIC.

3 Q DID YOU HAVE OCCASION WHILE IN THAT VEHICLE
4 TO PASS BY THE INTERSECTION OF RACEPATH AVENUE AND HIGHWAY
5 378?

6 A YEAH.

7 Q AND WHEN PASSING BY THAT INTERSECTION OF
8 RACEPATH AVENUE AND 378, DID YOU SEE AN ALTERCATION OR
9 CONFRONTATION?

10 A UH-HUH.

11 Q NOW, DO YOU KNOW ISAAC COX?

12 A YEAH.

13 Q DO YOU KNOW THAT ISAAC COX IS NOW DEAD?

14 A YEAH.

15 Q HOW DID YOU KNOW ISAAC COX, BY WHAT NAME?

16 A BEADY.

17 Q AND HOW LONG DID YOU KNOW ISAAC COX?

18 A SINCE SECOND GRADE.

19 Q YOU'VE KNOWN HIM QUITE SOME TIME.

20 A UH-HUH.

21 Q WENT TO SCHOOL TOGETHER.

22 A UH-HUH.

23 Q DO YOU KNOW CONTREAL -- CORTREAL SWINTON?

24 A YEAH.

25 Q YOU KNOW HIM BY WHAT NICKNAME?

MR. COX-CROSS-EXAMINATION BY MR. MONCKTON

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1 A TREAL.

2 Q TREAL. DO YOU KNOW DERRICK HOLLINGSWORTH?

3 A YEAH.

4 Q AND WHAT NICKNAME DO YOU KNOW HIM BY?

5 A S.A.

6 Q S.A. NOW, IN PASSING BY THIS INTERSECTION,
7 TELL THIS JURY WHAT YOU OBSERVED IN TERMS OF THE
8 ALTERCATION. HOW MANY PEOPLE WERE IN THE INTERSECTION AT
9 THE TIME OF THIS ALTERCATION?

10 A I CAN'T REMEMBER.

11 Q LET ME ASK IT THIS WAY THEN, MS. CAMPBELL.
12 DURING THE INTERVIEW THAT YOU HAD WITH DETECTIVE SESSIONS,
13 DO YOU RECALL HAVING TOLD DETECTIVE SESSIONS, WHO'S SEATED
14 HERE IN THE COURTROOM TODAY, THAT YOU OBSERVED FOUR
15 INDIVIDUALS, THE VICTIM BEADY OR ISAAC COX AND THREE OTHER
16 INDIVIDUALS DRESSED IN DARK CLOTHING AND HOODEDS AT THAT
17 INTERSECTION. DO YOU RECALL HAVING TOLD HIM THAT?

18 A NO. IT WAS MORE THAN THREE PEOPLE.

19 Q YOU SAW MORE THAN THREE PEOPLE?

20 A YEAH.

21 Q DID YOU TELL DETECTIVE SESSIONS THAT ON YOUR
22 INTERVIEW ON MARCH 16TH OR 15TH OF 2000?

23 A YEAH.

24 Q YOU DID?

25 A UH-HUH.

MR. COX-CROSS-EXAMINATION BY MR. MONCKTON

199

1 Q THAT IS YOUR TESTIMONY?

2 A UH-HUH.

3 Q HOW MANY PEOPLE DID YOU SEE AT THAT
4 INTERSECTION AT THAT TIME, AT THE TIME OF THE
5 CONFRONTATION?

6 A I DON'T REMEMBER. I WASN'T TRYING TO COUNT.

7 Q DO YOU RECALL HAVING TOLD DETECTIVE SESSIONS
8 IN MARCH OF 2000 THAT YOU SAW DERRICK HOLLINGSWORTH, WHOM
9 YOU CALL S.A., AND TREAL, WHOM YOU CALL -- OR TREAL, WHO IS
10 CORTREAL SWINTON, SHOOT ISAAC COX? DO YOU RECALL HAVING
11 TOLD DETECTIVE SESSIONS THAT, MS. CAMPBELL?

12 A CAN YOU REPHRASE THAT QUESTION?

13 Q I'D BE GLAD TO. DO YOU RECALL HAVING TOLD
14 DETECTIVE SESSIONS IN MARCH OF 2000 THAT YOU SAW, WHEN
15 GOING THROUGH THAT INTERSECTION, S.A. -- DERRICK
16 HOLLINGSWORTH -- AND TREAL -- CORTREAL SWINTON -- SHOOT AND
17 KILL ISAAC COX WHOM YOU CALLED BEADY? DO YOU RECALL HAVING
18 TOLD DETECTIVE SESSIONS THAT?

19 A YES.

20 Q YOU DO RECALL THAT?

21 A YES -- NOPE.

22 Q WELL, DO YOU OR DO YOU NOT?

23 A I CAN'T REMEMBER.

24 Q YOU CAN'T REMEMBER. THIS WAS MARCH OF 2000.
25 DO YOU RECALL HAVING TOLD DETECTIVE SESSIONS THAT YOU

MR. COX-CROSS-EXAMINATION BY MR. MONCKTON

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1 OBSERVED S.A. SHOOT BEADY IN THE HEAD AFTER HE WAS ON THE
2 GROUND?

3 A YUP.

4 Q YOU RECALL THAT?

5 A UH-HUH.

6 Q DO YOU RECALL HAVING TOLD DETECTIVE SESSIONS
7 THAT THE SHORT BOY KNOWN TO YOU AS TREAL WAS STANDING BY
8 THE TREE WHEN HE SHOT ISAAC COX?

9 A I DID NOT SAY HE SHOT HIM.

10 Q YOU DID NOT ---

11 A I SAID I SEEN HIM. I DIDN'T KNOW WHAT PART
12 HE WAS DOING THERE BUT I SEEN HIM.

13 Q NO QUESTION IN YOUR MIND THAT YOU SAW TREAL
14 AT THAT INTERSECTION AT THE TIME OF THE SHOOTING BUT YOUR
15 TESTIMONY TODAY IS YOU DIDN'T SEE TREAL SHOOT BEADY; IS
16 THAT CORRECT?

17 A I TOLD YOU ALREADY.

18 Q I'M ASKING YOU. IS THAT A TRUE STATEMENT?

19 A YEAH.

20 Q YOU SAW S.A. SHOOT BEADY IN THE HEAD AFTER
21 HE WAS ON THE GROUND. IS THAT A TRUE STATEMENT?

22 A YEAH.

23 Q BUT IN TERMS OF CORTREAL SWINTON, YOU SAW
24 HIM PRESENT BUT YOUR TESTIMONY TODAY IS YOU DID NOT SEE
25 TREAL SHOOT BEADY; IS THAT CORRECT?

MR. COX-CROSS-EXAMINATION BY MR. MONCKTON

201

1 A UH-HUH.

2 Q DO YOU RECALL HAVING TOLD DETECTIVE SESSIONS
3 THAT ALL THESE OTHER INDIVIDUALS; THAT IS, TREAL, ANOTHER
4 INDIVIDUAL WHO WAS AS TALL AS S.A., RUN OFF BUT S.A. WAS
5 THE LAST ONE TO RUN OFF? DO YOU RECALL HAVING SAID THAT?

6 A YEAH.

7 Q DO YOU RECALL HAVING DESCRIBED TREAL --
8 CORTREAL SWINTON -- AS THE SHORT ONE OR THE SHORT BOY?

9 A YEAH.

10 Q AND HAVING DESCRIBED S.A. OR DERRICK
11 HOLLINGSWORTH AND THIS THIRD INDIVIDUAL AS TALLER, MUCH
12 TALLER THAN CORTREAL SWINTON? DO YOU RECALL THAT?

13 A YUP.

14 Q DO YOU RECALL AFTER HAVING LEFT THAT SCENE
15 THAT YOU TOLD DETECTIVE SESSIONS THAT YOU WENT IMMEDIATELY,
16 AFTER DROPPING OFF KIM BROWN, WENT IMMEDIATELY TO TELL
17 SPIKE COX OR FREDERICK COX THAT HIS BROTHER HAD BEEN SHOT?

18 A YEAH.

19 Q DO YOU RECALL THAT YOU DID GO TO THE NORTH
20 CONWAY MOTOR INN IMMEDIATELY AFTER THE SHOOTING AND YOU
21 TOLD FREDERICK COX, WHOM YOU KNEW AS SPIKE, THAT HIS
22 BROTHER ISAAC OR BEADY HAD BEEN SHOT AND THAT S.A. AND
23 TREAL HAD DONE THE SHOOTING? DO YOU RECALL THAT?

24 A I TOLD HIM HE GOT SHOT BUT I DIDN'T SAY WHO
25 SHOOT HIM.

MR. COX-CROSS-EXAMINATION BY MR. MONCKTON

202

1 Q YOUR TESTIMONY NOW IS THAT YOU DID NOT TELL
2 SPIKE WHO SHOT HIS BROTHER; IS THAT CORRECT?

3 A NO. I SAID THEM BOYS.

4 Q THOSE BOYS?

5 A THEM BOYS.

6 Q THE BOYS. DID YOU AT ANY TIME TELL SPIKE OR
7 FREDERICK COX WHO SHOT HIS BROTHER?

8 A UH-HUH.

9 Q WHEN DID YOU DO THAT, MA'AM?

10 A WHEN?

11 Q YES.

12 A AFTER.

13 Q HOW LONG AFTER, MA'AM?

14 A I CAN'T REMEMBER.

15 Q AND WHO DID YOU SAY SHOT HIS BROTHER AFTER,
16 MA'AM?

17 A S.A.

18 Q MA'AM?

19 A S.A.

20 Q S.A. -- DERRICK HOLLINGSWORTH. YOU NEVER
21 INDICATED THAT TREAL -- CORTREAL SWINTON -- WAS ONE OF THE
22 SHOOTERS; IS THAT YOUR TESTIMONY?

23 A UH-HUH.

24 Q BUT IT IS A TRUTHFUL STATEMENT THAT TREAL --
25 CORTREAL SWINTON -- WAS PRESENT AT THE TIME OF THAT

MR. COX-CROSS-EXAMINATION BY MR. MONCKTON

203

1 ALTERCATION; IS THAT CORRECT?

2 A UH-HUH.

3 MR. BELLAMY: THANK YOU, JUDGE.

4 THE COURT: ALL RIGHT. CROSS-EXAMINE, MR.
5 CHRISCO OR MR. MONCKTON.

6 CROSS-EXAMINATION

7 BY MR. CHRISCO:

8 Q HOW ARE YOU DOING TODAY?

9 A FINE.

10 Q I REPRESENT CORTREAL SWINTON. I'D LIKE TO
11 ASK YOU ARE YOU 100 PERCENT SURE CORTREAL WAS OUT THERE
12 THAT NIGHT?

13 A YES.

14 Q ONE HUNDRED PERCENT SURE, NO DOUBT IN YOUR
15 MIND?

16 A YES.

17 MR. CHRISCO: NO FURTHER QUESTIONS.

18 THE COURT: CROSS-EXAMINATION, MR. MONCKTON?

19 MR. MONCKTON: YES, SIR, YOUR HONOR.

20 CROSS-EXAMINATION

21 BY MR. MONCKTON:

22 Q MS. CAMPBELL, I KNOW YOU'RE UNDER THE
23 COURT'S SUBPOENA AND DON'T WISH TO BE HERE BUT I'VE GOT TO
24 ASK YOU SOME QUESTIONS. IF YOU WOULD, MS. CAMPBELL, STEP
25 DOWN AND SHOW US ON THIS MAP, PLEASE, WHICH WAY YOU,

MR. COX-CROSS-EXAMINATION BY MR. MONCKTON

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1 LAKESHIA AND KIM WERE GOING THAT NIGHT.

2 THE COURT: JUST SHOW HER THE MAP, MR. MONCKTON.

3 MR. MONCKTON: YES, SIR, YOUR HONOR.

4 Q HERE'S THE MAP. HERE'S THE OAK TREE.

5 HERE'S RACEPATH. HERE'S 378. WHERE WERE YOU ALL HEADED
6 THAT NIGHT?

7 A WE WAS GOING TO THE EXXON AND WE WAS JUST
8 COMING FROM THE EXXON SO WE WAS COMING DOWN RACEPATH.

9 Q WOULD YOU DRAW IT WITH YOUR FINGER PLEASE,
10 MA'AM?

11 A (THE WITNESS COMPLIES.)

12 Q IF THIS WERE LAKESHIA'S CAR AND LAKESHIA IS
13 SITTING HERE, WHERE WERE YOU SITTING?

14 A ON THE RIGHT-HAND SIDE.

15 Q RIGHT HERE. AND I BELIEVE KIM WOULD HAVE
16 BEEN BEHIND YOU. AND IT'S A HONDA CIVIC?

17 A UH-HUH.

18 Q ARE THE WINDOWS TINTED?

19 A YEAH.

20 Q IS IT DARK TINT OR LIGHT TINT?

21 A DARK.

22 Q HOW FAST WERE YOU ALL GOING WHEN YOU ALL SAW
23 THIS ALTERCATION?

24 A WE WAS MAKING A STOP AT THE STOP SIGN.

25 Q YOU WERE STOPPED?

MR. COX-CROSS-EXAMINATION BY MR. MONCKTON

205

1 A WE WAS MAKING A STOP.

2 Q HOW FAST WERE YOU GOING, MS. CAMPBELL?

3 A NOT EVEN FIVE.

4 Q NOT EVEN FIVE MILES AN HOUR?

5 A UH-UH.

6 Q HAVE YOU TALKED TO KIM BROWN ABOUT HER

7 TESTIMONY TODAY?

8 A NO.

9 Q APPROXIMATELY HOW FAR AWAY FROM WHERE YOU
10 SAW EVERYTHING WERE YOU FROM THE OAK TREE?

11 A STRAIGHT AHEAD.

12 Q HOW FAR WOULD YOU SAY?

13 A A COUPLE OF FEET.

14 Q A COUPLE OF FEET?

15 A UH-HUH.

16 Q DID YOU SEE -- YOU SAID YOU SAW OTHER
17 PEOPLE. WHO ELSE DID YOU SEE THERE?

18 A I DON'T KNOW.

19 Q YOU DON'T KNOW WHO THEY WERE?

20 A NO.

21 Q HOW MANY PEOPLE WERE STANDING AROUND BEADY?

22 A I DON'T KNOW.

23 Q COULD YOU GUESS A NUMBER?

24 A FIVE.

25 Q YOU SAW FIVE PEOPLE?

MR. COX-CROSS-EXAMINATION BY MR. MONCKTON

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1 A PERHAPS.

2 Q WHAT WAS THE LIGHTING LIKE OUT THERE THAT
3 NIGHT, MS. CAMPBELL?

4 A DIM.

5 Q DIM? AND YOU WERE LOOKING THROUGH DARK
6 TINTED WINDOWS, SO IT WAS REAL DARK?

7 A NO.

8 Q IT WASN'T REAL DARK?

9 A NO. THAT'S WHY IT LOOKED DIM.

10 Q MA'AM?

11 A THAT'S WHY IT WAS DIM. IT LOOKED DIM INSIDE
12 THE CAR ---

13 Q IT LOOKED DIM ---

14 A --- LOOKING OUTSIDE.

15 Q WHAT WAS EVERYBODY WEARING?

16 A I DON'T KNOW.

17 Q YOU DON'T KNOW WHAT KIND OF CLOTHES THEY
18 WERE WEARING?

19 A WHO ARE THEY?

20 Q THE PEOPLE YOU IDENTIFIED UNDER THE BIG OAK
21 TREE.

22 A THEY HAD ON DARK CLOTHES, HOODIES, PANTS,
23 SNEAKERS.

24 Q WERE THE HOODS UP OR DOWN?

25 A DOWN, UP, I DON'T REMEMBER.

MR. COX-CROSS-EXAMINATION BY MR. MONCKTON

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1 Q I MEAN, WERE THE HOODS PULLED UP OR WERE THE
2 HOODS PULLED DOWN?

3 A THEY WAS UP.

4 Q AND THESE PEOPLE THAT YOU SAW WERE
5 UNDERNEATH THE OAK TREE WITH HOODS PULLED UP. IS THAT YOUR
6 TESTIMONY?

7 A YEAH.

8 MR. MONCKTON: NO FURTHER QUESTIONS OF THIS
9 WITNESS, YOUR HONOR.

10 THE COURT: REDIRECT, MR. HUMPHRIES?

11 MR. HUMPHRIES: NO, YOUR HONOR. WE REQUEST THIS
12 WITNESS BE EXCUSED.

13 THE COURT: ALL RIGHT. ANY OBJECTION? ANY
14 OBJECTION TO THIS WITNESS BEING EXCUSED?

15 MR. CHRISCO: NO OBJECTION, YOUR HONOR.

16 THE COURT: ANY OBJECTION, MR. MONCKTON?

17 MR. MONCKTON: NO, SIR, YOUR HONOR.

18 THE COURT: ALL RIGHT. THANK YOU, MS. CAMPBELL.
19 YOU ARE EXCUSED. YOU MAY LEAVE. THANK YOU.

20 ALL RIGHT, LADIES AND GENTLEMEN OF THE JURY, IT'S
21 ABOUT 5:15 AND I USUALLY TRY TO BREAK AROUND 5:15 OR 5:30
22 AND I THINK IF WE START ANY OTHER WITNESSES, IT WOULD RUN
23 LATER THAN THAT NORMAL TIME OF TRYING TO RECESS. I TELL
24 JURIES THIS ALL THE TIME. I DON'T MIND MAKING THE COURT
25 PERSONNEL WORK LATE AND MAKING THE LAWYERS WORK LATE OR

MR. COX-CROSS-EXAMINATION BY MR. MONCKTON

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1 WORK LATE MYSELF. I'M 100 MILES AWAY FROM HOME AND I'VE
2 GOT NOTHING TO DO TONIGHT ANYHOW BUT I DO KNOW THAT JURORS
3 HAVE A LIFE OUTSIDE THIS COURTROOM SO I'M NOT GOING TO TRY
4 TO RUN TOO LATE. SO WE ARE GOING TO RECESS AT THIS TIME
5 AND ALLOW YOU TO GO TO YOUR HOMES AND FAMILIES. I WOULD
6 REMIND YOU THAT YOU SHOULD NOT DISCUSS THIS CASE WITH
7 ANYONE OVER THE EVENING RECESS. DO NOT ALLOW ANYONE TO
8 DISCUSS IT WITH YOU. DO NOT WATCH ANY TELEVISION REPORTS
9 OR READ ANY MEDIA REPORTS ABOUT THE CASE BECAUSE YOU'VE GOT
10 TO MAKE YOUR DECISION BASED ON THE EVIDENCE THAT YOU HEAR
11 IN THIS COURTROOM. I ASK YOU TO REPORT BACK TOMORROW
12 MORNING, PLEASE, AT 9:30. AS YOU ASSEMBLE IN THE COURTROOM
13 -- IN YOUR JURY ROOM, DO NOT TALK ABOUT THIS CASE AMONG
14 YOURSELVES. IT STILL WOULD BE PREMATURE TO BEGIN ANY
15 DISCUSSION ABOUT THE CASE AMONG YOURSELVES. YOU CAN TALK
16 ABOUT ANYTHING YOU WANT TO, YOUR SPORTS, WEATHER, YOUR
17 GRANDCHILDREN, ANYTHING YOU WANT TO BUT DON'T TALK ABOUT
18 THIS CASE AND WE'LL TRY TO START PROMPTLY AT 9:30. SO YOU
19 ARE EXCUSED UNTIL 9:30 IN THE MORNING. PLEASE COME
20 DIRECTLY BACK TO YOUR JURY ROOM AT 9:30 AND WE'LL SEE YOU
21 AT THAT TIME. EVERYONE ELSE PLEASE REMAIN SEATED.

22 (WHEREUPON, AT THE JURY WAS EXCUSED.)

23 THE COURT: I WANT EVERYONE ELSE TO REMAIN FOR
24 JUST A MINUTE OR TWO TO GIVE THE JURORS TIME TO GET OUT OF
25 THE BUILDING AND GET TO THEIR CARS BEFORE WE RECESS. WHILE

MR. COX-CROSS-EXAMINATION BY MR. MONCKTON

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1 WE'RE DOING THAT, IS THERE ANYTHING WE NEED TO PUT ON THE
2 RECORD AT THIS TIME, MR. HUMPHRIES?

3 MR. HUMPHRIES: YOUR HONOR, I DON'T HAVE ANYTHING
4 THAT WE NEED TO PUT ON THE RECORD AT THIS TIME. WE DO HAVE
5 THE DEPOSITION OF DR. PROCTOR. WE CAN DO THAT ANY WAY
6 YOU'D LIKE, JUDGE. THERE MAY BE SOME THINGS THAT ALL OF US
7 CAN STIPULATE TO IN TERMS OF THE OBJECTIONS, WHICH WE ---

8 THE COURT: WHAT I THINK THE BEST WAY TO DO THAT
9 -- WHAT I'D ASK IS THAT WHEN WE BREAK THAT YOU -- THE THREE
10 OF YOU GET TOGETHER AND THEN MEET WITH ME AT NINE IN THE
11 MORNING IF THERE ARE ANY THINGS THAT I NEED TO RESOLVE WITH
12 REGARD TO THOSE OBJECTIONS OR ANYTHING LIKE THAT. SO IF
13 YOU ALL BEFORE YOU LEAVE THIS AFTERNOON WILL GO OVER THAT
14 DEPOSITION AND SEE IF YOU ALL CAN GET THAT RESOLVED AND
15 THEN IF YOU CAN'T SETTLE IT AMONG YOURSELVES, I'LL SETTLE
16 IT IN THE MORNING.

17 MR. HUMPHRIES: THANK YOU, JUDGE. AND THE OTHER
18 THING IN TERMS OF SCHEDULING, I DON'T ANTICIPATE THE
19 TESTIMONY FROM THE STATE GOING VERY MUCH LONGER. WE'VE GOT
20 THE DEPOSITION OF THE DOCTOR. WE'VE GOT A BRIEF
21 EXAMINATION OF DETECTIVE SESSIONS. WE'VE GOT TWO RECORDS
22 KEEPERS AND THAT WILL BE THE STATE'S CASE.

23 THE COURT: WELL, LET'S DO SOMETHING THAT WILL
24 PROBABLY SAVE US A LITTLE BIT OF TIME IN THE MORNING IN THE
25 MIDDLE OF THE TRIAL AND THAT IS LET ME -- I WON'T REQUIRE

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1 AN ANSWER THIS AFTERNOON, MR. MONCKTON AND MR. CHRISCO, BUT
2 LET ME GO OVER THE FIFTH AMENDMENT RIGHTS WITH THE
3 INDIVIDUALS NOW ON THE RECORD AND THEN THEY CAN BE THINKING
4 ABOUT IT OVER THE EVENING RECESS AND I CAN SPECIFICALLY ASK
5 THEM ABOUT IT TOMORROW. SO IF YOU WOULD COME AROUND.

6 MR. CHRISCO: CORTREAL.

7 THE COURT: ALL RIGHT. MR. SWINTON AND MR.
8 HOLLINGSWORTH, I'D ASK THAT YOU BOTH COME UP IN FRONT OF
9 THE BENCH, PLEASE. TO EACH OF YOU AS THE DEFENDANTS IN
10 THIS CASE, MR. CORTREAL SWINTON AND MR. DERRICK
11 HOLLINGSWORTH, I WILL TELL YOU THAT YOU MAY BE CALLED AS A
12 WITNESS TO TESTIFY ON YOUR OWN BEHALF. I NOW ADVISE YOU
13 THAT YOU HAVE THE RIGHT TO INVOKE THE PROTECTIONS GIVEN TO
14 YOU BY THE FIFTH AMENDMENT TO THE CONSTITUTION OF THE
15 UNITED STATES AND A SIMILAR COUNTERPART PROVISION OF THE
16 CONSTITUTION OF THE STATE OF SOUTH CAROLINA. THE FIFTH
17 AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES PROVIDES
18 IN PART THAT NO PERSON SHALL BE COMPELLED IN ANY CRIMINAL
19 CASE TO BE A WITNESS AGAINST HIMSELF. THIS PROVISION OF
20 CONSTITUTIONAL LAW MEANS THAT YOU CANNOT BE COMPELLED OR
21 REQUIRED TO TESTIFY IN THIS CASE. THIS IS A RIGHT AND A
22 PRIVILEGE WHICH THE LAW EXTENDS TO YOU. YOU HAVE THE RIGHT
23 NOT TO TESTIFY BUT YOU ALSO HAVE THE RIGHT TO TESTIFY. THE
24 COURT WILL GIVE YOU A CHANCE OR WILL GRANT YOU THE RIGHT TO
25 CONSULT WITH YOUR LAWYER BEFORE YOU MAKE A DECISION. IF

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1 YOU ELECT NOT TO TESTIFY, YOUR FAILURE TO TESTIFY CANNOT BE
2 USED BY THE STATE AS AN INFERENCE OF GUILT AND YOUR FAILURE
3 TO TESTIFY CANNOT BE CONSIDERED BY THE JURY IN ITS
4 DELIBERATIONS. IN FACT, THE LAWYERS CAN'T ARGUE -- THE
5 STATE CANNOT ARGUE THAT ANY INFERENCE CAN BE RAISED FROM
6 YOUR FAILURE TO TESTIFY. IF YOU ELECT TO TESTIFY AND WAIVE
7 THE PRIVILEGE EXTENDED TO YOU BY THE FIFTH AMENDMENT, I
8 ADVISE YOU NOW THAT YOU WILL THEN ASSUME THE ROLE OF A
9 WITNESS IN THIS CASE AND YOU THEN WAIVE OR GIVE UP YOUR
10 CONSTITUTIONAL PRIVILEGE AGAINST SELF-INCRIMINATION. THIS
11 MEANS THAT IF YOU VOLUNTARILY TAKE THE WITNESS STAND AND
12 TESTIFY, YOU WILL THEN SUBJECT YOURSELF TO THE SAME RULES
13 THAT GOVERN OTHER WITNESSES AND YOU MAY BE EXAMINED AND
14 CROSS-EXAMINED ON ANY RELEVANT ISSUE IN THIS CASE AND YOU
15 MAY BE IMPEACHED TO THE SAME EXTENT AS ANY OTHER WITNESS,
16 ALL OF WHICH IS SUBJECT TO THE RULES OF LAW. I FURTHER
17 ADVISE YOU THAT IF YOU ELECT TO TESTIFY AND ELECT TO TAKE
18 THE STAND AND TESTIFY, THAT THIS DECISION ON YOUR PART MUST
19 BE MADE FREELY, VOLUNTARILY, INTELLIGENTLY AND WITH
20 KNOWLEDGE OF THE PROTECTIONS GIVEN YOU BY THE FIFTH
21 AMENDMENT TO THE CONSTITUTION AND WITH KNOWLEDGE OF THE
22 CONSEQUENCES OF YOUR ELECTION TO TESTIFY. MR. SWINTON, I
23 WOULD ASK YOU. DO YOU UNDERSTAND WHAT I HAVE EXPLAINED TO
24 YOU?

25 DEFENDANT SWINTON: YES, SIR.

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1 THE COURT: ALL RIGHT, AND MR. HOLLINGSWORTH, I
2 WOULD ASK YOU THE SAME QUESTION. DO YOU UNDERSTAND WHAT I
3 HAVE EXPLAINED TO YOU?

4 DEFENDANT HOLLINGSWORTH: YES, SIR.

5 THE COURT: DO EITHER OF YOU HAVE ANY QUESTIONS
6 ABOUT WHAT I HAVE JUST EXPLAINED TO YOU?

7 DEFENDANT SWINTON: NO, SIR.

8 DEFENDANT HOLLINGSWORTH: NO, SIR.

9 THE COURT: ALL RIGHT. I'M NOT GOING TO -- WELL,
10 I'LL ASK YOU AT THIS POINT AND I'LL ASK YOU AGAIN TOMORROW.
11 HAVE YOU, MR. SWINTON, DISCUSSED WITH YOUR LAWYER ABOUT
12 WHETHER YOU SHOULD OR YOU SHOULD NOT TESTIFY IN THIS CASE?

13 DEFENDANT SWINTON: YES, SIR.

14 THE COURT: YOU HAVE DISCUSSED IT? ALL RIGHT. I
15 WILL ADVISE YOU THAT IF YOU HAVE ANY FURTHER QUESTIONS
16 ABOUT THAT OVER THE EVENING RECESS THAT YOU CONSULT WITH
17 HIM MORE. I'M NOT GOING TO REQUIRE A DECISION THIS
18 AFTERNOON BECAUSE I'LL WAIT UNTIL THE STATE HAS COMPLETED
19 THEIR CASE, BUT I WANTED TO GET THIS ON THE RECORD. MR.
20 HOLLINGSWORTH, HAVE YOU DISCUSSED WITH YOUR LAWYER ABOUT
21 WHETHER YOU SHOULD OR SHOULD NOT TESTIFY?

22 DEFENDANT HOLLINGSWORTH: YES, SIR.

23 THE COURT: AND I WILL TELL YOU THE SAME THING,
24 THAT IF YOU HAVE ANY QUESTIONS ABOUT WHAT I HAVE BEEN OVER
25 WITH YOU ABOUT WHETHER YOU SHOULD OR SHOULD NOT TESTIFY,

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1 YOU SHOULD TALK WITH YOUR LAWYER ABOUT IT OVER THE EVENING
2 RECESS BECAUSE TOMORROW I'M GOING TO SPECIFICALLY ASK EACH
3 OF YOU WHETHER YOU DO OR DO NOT WISH TO TESTIFY IN THIS
4 CASE AND I'LL HAVE YOU GIVE ME A DECISION AT THAT TIME AND
5 I WANT TO MAKE SURE YOU UNDERSTAND YOUR RIGHTS AT THE TIME
6 YOU GIVE ME THAT DECISION. DO YOU UNDERSTAND, MR. SWINTON?

7 DEFENDANT SWINTON: YES, SIR.

8 THE COURT: MR. HOLLINGSWORTH?

9 DEFENDANT HOLLINGSWORTH: YES, SIR.

10 THE COURT: OKAY, THANK YOU.

11 MR. MONCKTON: YOUR HONOR, I DO HAVE ONE QUICK
12 MATTER. THERE HAS BEEN SOME DISCUSSION ABOUT A VIDEOTAPE
13 AT AN EXPRESS MART. IT WAS MY UNDERSTANDING THAT THEY HAD
14 MY CLIENT ON THE VIDEOTAPE. I HAVE NOT BEEN PRODUCED THAT
15 VIDEOTAPE AND I'D JUST LIKE TO INQUIRE ABOUT ITS EXISTENCE
16 OR WHAT'S HAPPENED TO IT.

17 THE COURT: WELL, I DON'T KNOW THAT ANYBODY
18 TESTIFIED THAT ANYBODY WAS SEEN ON IT. WHAT'S THE STORY ON
19 THE VIDEOTAPE, MR. BELLAMY?

20 MR. BELLAMY: YOUR HONOR, THERE WAS A VIDEOTAPE
21 AT SAV-WAY AND WHAT IT SHOWED, IT SHOWED MR. MONCKTON'S
22 CLIENT IN THERE AT 2:01 IN THE MORNING AND WHEN WE TRIED TO
23 COPY THE TAPE, IT JUST MESSED UP. THE TAPE WASN'T ERASED.
24 IT WAS JUST MESSED UP. IT WAS AN OLD TAPE.

25 MR. HUMPHRIES: THE BOTTOM LINE, JUDGE, IS THIS.

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1 NONE OF OUR OFFICERS WILL TESTIFY THAT ---

2 THE COURT: YES, SIR.

3 MR. HUMPHRIES: --- MR. HOLLINGSWORTH WAS
4 PICTURED.

5 THE COURT: THERE'S BEEN NO EVIDENCE ON THIS.

6 MR. HUMPHRIES: NO, SIR. IN FACT, ALL THE
7 QUESTIONS RELATING TO THE TAPE CAME FROM THE DEFENSE, NOT

8
9 FROM US. WE DIDN'T ELICIT ANY TESTIMONY IN THAT REGARD.
10 THERE IS NO TAPE AT THIS TIME WHICH SHOWS ANYTHING. IT'S
11 BASICALLY -- IT'S NOT WHITE NOISE BUT IT'S WHITE VIDEO.

12 THE COURT: WHAT'S YOUR POSITION, MR. MONCKTON?

13 MR. MONCKTON: THAT'S ALL I WANT TO KNOW, YOUR
14 HONOR, WHETHER THEY HAVE ONE OR NOT.

15 THE COURT: THEY DON'T AND THEY HAVE NOT MADE ANY
16 REFERENCE TO A TAPE. ALL RIGHT, WE'LL BE IN RECESS UNTIL -
17 --

18 MR. CHRISCO: YOUR HONOR.

19 THE COURT: YES, SIR.

20 MR. CHRISCO: I DON'T KNOW WHETHER THE STATE HAS
21 A VIDEO -- A VCR, BUT I HAVE A COPY OF THE DOCTOR'S ---

22 THE COURT: I THOUGHT WE HAD JUST DECIDED THE
23 BETTER WAY TO HANDLE THAT BECAUSE OF THE OBJECTIONS IS JUST
24 TO DO IT BY ---

25 MR. CHRISCO: THIS WOULD GIVE THE COURT A PREVIEW

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1 OF WHAT THOSE OBJECTIONS ARE BEFORE WE GET TOGETHER AT 9:00
2 IN THE MORNING, YOUR HONOR.

3 THE COURT: OH, YOU'RE JUST GOING TO LET ME TAKE
4 IT AND LET ME LOOK AT IT TONIGHT BECAUSE YOU TOOK ME TO
5 HEART WHEN I SAID I DIDN'T HAVE ANYTHING TO DO TONIGHT.

6 MR. CHRISCO: THAT'S CORRECT, YOUR HONOR.

7 THE COURT: ALL RIGHT, THANK YOU. WE'LL BE IN
8 RECESS UNTIL 9:30 TOMORROW MORNING -- 9:00 IN THE MORNING.

9 (WHEREUPON, AT 5:30 P.M., COURT WAS ADJOURNED
10 UNTIL APRIL 12, 2000.)

11 THE COURT: ALL RIGHT, MR. HUMPHRIES AND MR.
12 BELLAMY, I UNDERSTAND THAT THE STATE'S FIRST WITNESS IS TO
13 BE DR. LEE PROCTOR BY DEPOSITION; IS THAT CORRECT?

14 MR. HUMPHRIES: YOUR HONOR, ACTUALLY THE FIRST
15 WITNESS WILL BE DETECTIVE RODNEY SESSIONS.

16 THE COURT: OKAY.

17 MR. HUMPHRIES: WHO WILL BE A WITNESS IN RESPONSE
18 TO SOME OF THE TESTIMONY ELICITED FROM VICKY CAMPBELL OR
19 THAT WAS NOT ELICITED. THAT WILL BE A VERY BRIEF WITNESS,
20 AT LEAST ON DIRECT, AND THEN DR. PROCTOR WILL BE THE NEXT
21 WITNESS. IT'S PROBABLY APPROPRIATE TO TAKE UP ANY
22 OBJECTIONS OR ANYTHING.

23 THE COURT: WELL, THAT'S WHY I WANT TO GO AHEAD
24 AND DO THAT. LET THE RECORD REFLECT THAT THE COURT WAS
25 ADVISED THAT THE STATE INTENDED TO PRESENT THE TESTIMONY OF

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1 DR. PROCTOR, DR. LEE PROCTOR, BY DEPOSITION. EVEN THOUGH
2 HIS DEPOSITION WAS TAKEN AS A VIDEO DEPOSITION, THE PARTIES
3 HAVE AGREED NOT TO PRESENT THE VIDEO INASMUCH AS THERE'S
4 SOME OBJECTIONABLE MATERIAL ON THE VIDEO AND RATHER THAN
5 TRY TO EDIT THE VIDEO, TO DO IT BY THE TRANSCRIPT OF THE
6 DEPOSITION BY HAVING A MEMBER OF THE SOLICITOR'S OFFICE
7 READ THE PART OF DR. PROCTOR. THE RECORD SHOULD ALSO
8 REFLECT THAT THE PARTIES HAVE GONE THROUGH THE DEPOSITION
9 AND HAVE AGREED WHAT PART WOULD BE PRESENTED AT THIS TIME
10 TO THE JURY BUT THAT ALL OF THE OBJECTIONS SET FORTH IN THE
11 ORIGINAL DEPOSITION ARE PRESERVED FOR PURPOSES OF APPEAL.
12 IS THAT RIGHT?

13 MR. HUMPHRIES: THAT'S CORRECT, YOUR HONOR.

14 THE COURT: OKAY. DO YOU AGREE WITH THAT, MR.
15 MONCKTON?

16 MR. MONCKTON: YES, SIR, YOUR HONOR.

17 THE COURT: AND MR. CHRISCO?

18 MR. CHRISCO: YES, YOUR HONOR.

19 THE COURT: ALL RIGHT, SO ALL THE OBJECTIONS AS
20 SET FORTH IN THE TRANSCRIPT ARE PRESERVED BUT AS FAR AS THE
21 PRESENTATION TODAY IS CONCERNED, CERTAIN PARTS WILL BE
22 OMITTED. NOW, THE OTHER THING WOULD BE THAT I UNDERSTAND
23 THAT PART OF WHAT IS GOING TO BE TAKEN OUT DURING THE
24 PRESENTATION OF THE DEPOSITION WILL BE CERTAIN EXHIBITS AND
25 THE STATE PLANS TO MOVE FOR THE ADMISSION OF THOSE EXHIBITS

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1 AFTER THE DEPOSITION IS HEARD, AT WHICH TIME COUNSEL WILL
2 HAVE AN OPPORTUNITY TO BE HEARD ON THAT.

3 MR. HUMPHRIES: YES, YOUR HONOR. THERE WILL BE
4 REFERENCE TO THE EXHIBITS WITHIN THE CONTEXT OF THE
5 TESTIMONY BUT THE ACTUAL MOTION BY THE STATE TO INTRODUCE
6 THEM IS BEING EXCISED FROM THE DEPOSITION. WE'LL DO THAT
7 AT THE END OF THE DEPOSITION. IN ADDITION, THE STATE IN
8 CONTEXT WITH THE DEPOSITION, WHICH IS STILL IN THE
9 DEPOSITION, THE STATE MOVED TO QUALIFY DR. LEE PROCTOR AS
10 AN EXPERT IN THE FIELD OF FORENSIC PATHOLOGY. WE WOULD ASK
11 THAT YOUR HONOR, BASED ON THE DEPOSITION TESTIMONY IN THE
12 DEPOSITION TO MAKE A FINDING IN THAT REGARD. THERE WAS
13 VOIR DIRE BY MR. CHRISCO IN THAT REGARD. I DON'T BELIEVE
14 THERE WAS ANY OBJECTION FROM EITHER OF THESE TWO COUNSEL
15 REGARDING HIS BEING OFFERED AS AN EXPERT. I MAY BE WRONG
16 ABOUT THAT BUT I DON'T BELIEVE SO.

17 THE COURT: ALL RIGHT. MR. CHRISCO, DO YOU HAVE
18 ANY OBJECTION TO THE QUALIFICATION OF DR. PROCTOR AS AN
19 EXPERT IN THE FIELD OF ---

20 MR. HUMPHRIES: FORENSIC PATHOLOGY.

21 THE COURT: OKAY, FORENSIC PATHOLOGY.

22 MR. CHRISCO: NO, YOUR HONOR.

23 THE COURT: ALL RIGHT, MR. MONCKTON?

24 MR. MONCKTON: NO, SIR, YOUR HONOR.

25 THE COURT: THE COURT WILL QUALIFY DR. PROCTOR

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1 THEN AS AN EXPERT IN THE FIELD OF FORENSIC PATHOLOGY AND
2 WILL ADVISE THE JURY THAT HE IS SO QUALIFIED AND WHAT THAT
3 MEANS AS FAR AS TESTIMONY IS CONCERNED.

4 MR. HUMPHRIES: THANK YOU, JUDGE.

5 THE COURT: OKAY. NOW, I UNDERSTAND, MR.
6 MONCKTON, THAT YOU HAVE SOME OTHER OBJECTION OR ANOTHER
7 OBJECTION THAT YOU NEED TO MAKE WITH REGARD TO THE USE OF
8 THE DEPOSITION.

9 MR. MONCKTON: YES, SIR, YOUR HONOR. AT THIS
10 TIME, AS I DISCUSSED IN CHAMBERS, I WOULD MOVE TO SUPPRESS
11 THE DEPOSITION OF DR. LEE PROCTOR BASED ON THE FACTS AND
12 THE CASES THAT I SUBMITTED TO THE COURT, JAMES VS. LISTER,
13 331 S.C., 277, BALDWIN VS. AMERICAN CELL PHONE, 306 S.C.,
14 101, STATE VS. MCWEE, 322 S.C., 387, DOE VS. DOE, 319 S.C.,
15 151, ELLIS VS. OLIVER, 323 S.C., 121, AND JAMES -- I
16 BELIEVE I'VE ALREADY CITED THAT AND WON'T REPEAT THAT ONE.
17 YOUR HONOR, WHENEVER EXPERTS GIVE AN OPINION IN SOUTH
18 CAROLINA BASED ON THESE CASES, ESPECIALLY WHEN IT APPLIES
19 TO CAUSATION, THESE CASES SET FORTH THAT THE STANDARD OF
20 PROOF IS VERY STRICT WITH THAT REGARDS. IT HAS BEEN
21 REQUIRED BY OUR COURTS THAT WHEN AN EXPERT GIVES AN
22 OPINION, ESPECIALLY A MEDICAL EXPERT, IT'S TO BE GIVEN TO A
23 REASONABLE DEGREE OF MEDICAL CERTAINTY MORE PROBABLE THAN
24 NOT. AN OPINION WAS ELICITED FROM DR. PROCTOR BUT THAT
25 TERMINOLOGY WAS NOT USED IN GIVING HIS OPINION; THEREFORE,

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1 I WOULD SAY HIS OPINION DOES NOT MEET THE STRICT TESTS SET
2 FORTH IN THESE CASES AND, THEREFORE, HIS OPINION SHOULD NOT
3 BE ADMITTED INTO EVIDENCE AS TO THE CAUSATION OF DEATH.

4 THE COURT: NO QUESTION THAT THAT IS THE RULE,
5 THAT IT DOES REQUIRE THE DOCTOR TO TESTIFY OR THE EXPERT TO
6 TESTIFY TO A REASONABLE DEGREE OF MEDICAL CERTAINTY OR
7 WHATEVER THE EXPERT'S FIELD IS. BUT LET ME HEAR FROM MR.
8 HUMPHRIES WITH REGARD TO THIS MATTER.

9 MR. HUMPHRIES: YOUR HONOR, THERE ARE TWO THINGS.
10 NUMBER ONE, THERE WAS NO CONTEMPORANEOUS OBJECTION TO DR.
11 PROCTORS TESTIMONY REGARDING THE CAUSE OF DEATH, THE MANNER
12 OF DEATH. THIS ISSUE OBVIOUSLY IS NOT PRESERVED FOR THIS
13 COURT. AND THE SECOND THING IS THIS. WHILE THERE IS A
14 REQUIREMENT, THOSE WORDS ARE NOT NECESSARILY MAGIC AND, IN
15 FACT, EVEN IF THE WORDS "MOST PROBABLY" ARE NOT USED, IF BY
16 VIRTUE OF THE ENTIRE TESTIMONY OF THE DOCTOR, INCLUDING HIS
17 QUALIFICATIONS, IT IS APPARENT FROM HIS TESTIMONY THAT HE'S
18 TESTIFYING BASED ON HIS EXPERTISE, THEN THERE'S NO
19 NECESSITY THAT THE MAGIC WORDS "MOST PROBABLY" BE USED.

20 THE COURT: WELL, I DON'T THINK HE'S OBJECTING TO
21 THE LACK OF THE USE OF "MOST PROBABLY." I THINK HE'S
22 OBJECTING TO THE FACT THAT ---

23 MR. HUMPHRIES: REASONABLE DEGREE OF MEDICAL
24 CERTAINTY.

25 THE COURT: --- TO A REASONABLE DEGREE OF MEDICAL

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1 ---

2 MR. HUMPHRIES: YES, YOUR HONOR.

3 THE COURT: BUT I AGREE WITH YOU. THERE ARE SOME
4 CASES THAT HOLD THAT YOU HAVE TO LOOK AT THE TESTIMONY OF
5 THE EXPERT IN ITS ENTIRETY AND WHILE THAT IS THE STANDARD,
6 IF IT'S APPARENT THAT THAT IS THE STANDARD THAT THE EXPERT
7 WAS USING THAT THE USE OF MAGIC WORDS DOESN'T MAKE IT ANY
8 DIFFERENT IF IT'S CLEAR FROM AN OVERALL READING OF THE
9 DEPOSITION OR FROM THE TESTIMONY THAT HE IS TESTIFYING TO
10 THE REQUIRED DEGREE OF PROOF. LET ME ASK YOU, MR.

11 MONCKTON, ABOUT THE OBJECTION QUESTION. WAS IT YOUR
12 UNDERSTANDING THAT AT THE TIME THE DEPOSITION WAS TAKEN
13 THAT ALL OBJECTIONS WOULD BE MADE AT THAT TIME?

14 MR. MONCKTON: YOUR HONOR, THIS IS A MOTION TO
15 SUPPRESS; THEREFORE, I DO NOT BELIEVE AN OBJECTION WOULD BE
16 NEEDED TO BE MADE AT THAT TIME ON THE ISSUE OF REASONABLE
17 DEGREE OF MEDICAL CERTAINTY.

18 THE COURT: WELL, IF YOU ---

19 MR. MONCKTON: THE PROOF PRESENTED BY THE VIDEO
20 DEPOSITION DOES NOT MEET THE STANDARDS SET FORTH FOR
21 MURDER, THE ELEMENT OF CAUSATION OF DEATH; THEREFORE, WE'RE

22 ---

23 THE COURT: I UNDERSTAND BUT YOU STILL HAVEN'T
24 ANSWERED MY QUESTION. MY QUESTION WAS ---

25 MR. MONCKTON: OBJECTIONS SHOULD HAVE BEEN MADE

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1 DURING THE VIDEO DEPOSITION.

2 THE COURT: OKAY, BECAUSE WASN'T YOUR
3 UNDERSTANDING THAT OBJECTIONS WERE GOING TO BE MADE AT THE
4 TIME THE DEPOSITION WAS TAKEN?

5 MR. MONCKTON: OBJECTIONS TO WHAT WAS BEING
6 TESTIFIED TO. OBJECTIONS TO WHATEVER WAS TESTIFIED TO WERE
7 THE STANDARD HE USED IT'S MY UNDERSTANDING WOULD BE
8 PRESENTABLE FOR THE COURT.

9 THE COURT: WELL, THE POINT IS IF YOU HAD MADE OR
10 IF THE OBJECTION HAD BEEN TIMELY MADE, THE QUESTION COULD
11 HAVE BEEN REPHRASED AND IT COULD HAVE BEEN POSSIBLY CURED
12 AND NOW WE'VE GOT THIS SITUATION. YOU CAN'T SIT BACK AND
13 LET A WITNESS TESTIFY AND THEN OBJECT TO HIS TESTIMONY
14 WITHOUT OBJECTING TO THE TESTIMONY AT THE TIME TO GIVE THE
15 OTHER PARTY AN OPPORTUNITY TO CURE THE PROBLEM AND HE HAD
16 NO OPPORTUNITY TO CURE THE PROBLEM BECAUSE NO OBJECTION WAS
17 MADE.

18 MR. MONCKTON: YOUR HONOR, I DON'T THINK -- FOR
19 THE RECORD PURPOSES HERE, I DON'T THINK THE BURDEN IS ON
20 THE DEFENSE TO FIX THE STATE'S CASE.

21 THE COURT: IT'S ON IT IF YOU DON'T WANT IT TO
22 COME IN. IT'S CERTAINLY ON YOUR -- THE OBLIGATION IS ON
23 THE DEFENSE TO MAKE AN OBJECTION IF YOU WANT TO PRESERVE
24 THAT OBJECTION. AND THEN HE MAY NOT BE ABLE TO FIX IT, BUT
25 AT LEAST HE'S GOT AN OPPORTUNITY TO ASK THE QUESTION OR TO

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1 ELICIT TESTIMONY THAT WOULD ATTEMPT TO CURE THE OBJECTION
2 BUT YOU CAN'T SIMPLY -- LET'S SUPPOSE THAT THE DOCTOR WERE
3 HERE AND YOU MADE THE OBJECTION NOW THAT HE HADN'T MET THE
4 REQUIRED DEGREE OF PROOF. WOULD NOT THE STATE HAVE AN
5 OPPORTUNITY TO COME BACK AND ASK HIM, "DOCTOR, TO A
6 REASONABLE DEGREE OF MEDICAL CERTAINTY, IS IT YOUR
7 OPINION," AND SO ON AND SO FORTH? AND WHAT YOU'RE DOING IS
8 AMBUSHING HIM BECAUSE HE'S NOT HERE AND DIDN'T GIVE HIM
9 THAT OPPORTUNITY AT THE TIME THAT HE WOULD HAVE HAD THE
10 OPPORTUNITY TO REPHRASE THE QUESTION OR TO CURE THE
11 OBJECTIONABLE MATERIAL, ESPECIALLY IN VIEW OF THE FACT THAT
12 THE PARTIES -- AND ONE OF THE THINGS THAT CONCERNED ME WHEN
13 I LOOKED AT THIS DEPOSITION WAS THAT THERE'S NOTHING IN THE
14 DEPOSITION REGARDING OBJECTIONS AND THAT'S WHY I ASKED YOU
15 THE QUESTION, "WAS IT YOUR UNDERSTANDING THAT OBJECTIONS
16 WERE TO BE CONTEMPORANEOUSLY MADE?" AND IT'S MY
17 UNDERSTANDING THAT THE ANSWER TO THAT IS YES. IS THAT
18 CORRECT?

19 MR. MONCKTON: YES, SIR, YOUR HONOR. OBJECTIONS
20 WERE TO BE MADE CONTEMPORANEOUSLY WITH THE DEPOSITION. MY
21 POSITION IS I'M NOT OBJECTING TO WHAT THE DOCTOR SAYS. I
22 OBJECT THAT HE DID NOT MEET THE STANDARD OF PROOF REQUIRED
23 UNDER THE CASES I SUBMITTED; THEREFORE, THE DEPOSITION,
24 SINCE IT DOES NOT MEET THE STANDARD OF PROOF ON CAUSATION,
25 I DON'T SEE WHERE I COULD OBJECT DURING THE DEPOSITION TO

MR. COX-CROSS-EXAMINATION BY MR. MONCKTON

223

1 FIX THE STATE'S CASE.

2 THE COURT: THAT'S NOT WHAT YOU'RE DOING AT ALL,
3 MR. MONCKTON. YOU'VE GOT TO OBJECT TO THE TESTIMONY THAT
4 YOU THINK IS INADMISSIBLE AT TRIAL IN WHAT IS ESSENTIALLY A
5 DE BENE ESSE DEPOSITION. THIS IS THE SAME THING THAT WE
6 WOULD CALL IN THE CIVIL COURT A DE BENE ESSE DEPOSITION. A
7 DEPOSITION IS BEING TAKEN FOR THE PURPOSES OF TRIAL AND IF
8 YOU OBJECT TO HIS QUESTION OR TO HIS ANSWER, YOU NEED TO
9 MAKE THAT OBJECTION AT THE TIME JUST AS YOU WOULD DO IF HE
10 WERE IN OPEN COURT AND THE STATE HAS THE OPPORTUNITY TO --
11 OR THE OTHER SIDE, BE IT CIVIL OR CRIMINAL. THE OTHER SIDE
12 WOULD THEN HAVE THE OPPORTUNITY TO TRY TO ASK THE QUESTION
13 IN A MANNER THAT THE TESTIMONY WOULD BE ADMISSIBLE. BUT
14 YOU CAN'T SIT BACK AND NOT MAKE THE OBJECTION AND THEN
15 AMBUSH HIM AT TRIAL AND TRY TO THROW OUT THE ENTIRE
16 DEPOSITION WHEN YOU DIDN'T MAKE THE OBJECTION AT THE TIME.
17 BASED UPON THE FACT THAT THE UNDERSTANDING OF THE PARTIES
18 WAS THAT ALL OBJECTIONS WOULD BE MADE AT THE TIME THAT THE
19 DEPOSITION WAS TAKEN -- AND I BELIEVE THAT'S PRETTY CLEAR
20 ON THE RECORD -- THE COURT IS GOING TO DENY THE MOTION TO
21 SUPPRESS THE DEPOSITION SINCE NO CONTEMPORANEOUS OBJECTION
22 WAS MADE.

23 MR. MONCKTON: THANK YOU, YOUR HONOR.

24 THE COURT: ANYTHING ELSE, MR. CHRISCO, BEFORE WE
25 BRING THE JURY IN?

MR. COX-CROSS-EXAMINATION BY MR. MONCKTON

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1 MR. CHRISCO: YES, YOUR HONOR. ON BEHALF OF MY
2 CLIENT I MAKE A MOTION TO STRIKE THE TESTIMONY OF KIM BROWN
3 AND FREDERICK DOUGLAS AS IT RELATES TO WHAT VICKY CAMPBELL
4 HAD SAID. AS THE COURT MAY REMEMBER, OVER OBJECTION THE
5 TESTIMONY OF KIM BROWN AND FREDERICK DOUGLAS WAS ALLOWED
6 UNDER THE HEARSAY EXCEPTION OF AN EXCITED UTTERANCE BY
7 VICKY CAMPBELL. WHEN VICKY CAMPBELL TOOK THE STAND
8 YESTERDAY AFTERNOON, SHE SAID THAT SHE DID NOT TELL HIM SO,
9 THEREFORE, THERE WAS NO EXCITED UTTERANCE TO UTTER.

10 THE COURT: WELL, YOU'RE ASKING ME TO WEIGH THE
11 FACTS AS FAR AS CREDIBILITY IS CONCERNED AND THAT'S FOR THE
12 JURY'S DETERMINATION. ALL I CAN DO IS RULE ON THE
13 ADMISSIBILITY BASED UPON WHAT THE WITNESS TESTIFIED TO AND
14 THE WITNESS TESTIFIED THAT SHE CAME INTO THE MOTEL ROOM.
15 SHE WAS EXCITED. SHE WAS UPSET. SHE TOLD HIM THAT HIS
16 BROTHER HAD BEEN SHOT AND THAT -- AND GAVE THE NAMES OF
17 THESE TWO DEFENDANTS. FROM THE STANDPOINT OF RULING ON THE
18 ADMISSIBILITY, I HAVE TO TAKE THE WITNESS' TESTIMONY ON ITS
19 FACE AND DECIDE THE ISSUE BASED UPON WHAT THE TESTIMONY IS.
20 I DON'T THINK THAT I CAN RULE ON THE TRUTHFULNESS OR
21 UNTRUTHFULNESS OF THAT TESTIMONY AND THAT BECOMES A
22 CREDIBILITY ISSUE FOR THE JURY. SO YOUR MOTION TO SUPPRESS
23 THE TESTIMONY OF THOSE WITNESSES ---

24 MR. CHRISCO: YOUR HONOR, MAY I BE HEARD FURTHER?

25 THE COURT: --- WOULD BE DENIED. SIR?

MR. COX-CROSS-EXAMINATION BY MR. MONCKTON

225

1 MR. CHRISCO: MAY I BE HEARD FURTHER?

2 THE COURT: YES, SIR.

3 MR. CHRISCO: YOUR HONOR, THE STATE CALLS ITS
4 WITNESSES IN A CERTAIN ORDER. THAT'S THE ITS DONE. THEY
5 COULD HAVE CALLED VICKY CAMPBELL FIRST. THAT WOULD HAVE
6 ALLOWED THE DEFENSE AN OPPORTUNITY TO REALIZE THAT SHE
7 DIDN'T SAY WHAT SHE SAID AND WE COULD ATTACK EITHER KIM
8 BROWN OR FREDERICK MCDONALD -- OR FREDERICK ---

9 THE COURT: COX.

10 MR. CHRISCO: --- MCDONALD ON -- I THINK IT'S
11 FREDERICK MCDONALD.

12 THE COURT: MCDONALD?

13 MR. CHRISCO: ON THOSE ISSUES, YOUR HONOR.

14 THE COURT: BUT IT WOULDN'T HAVE MADE ANY
15 DIFFERENCE AS TO THE ADMISSIBILITY WHAT ORDER THEY HAD
16 CALLED THEM IN. IF THEY HAD CALLED HER FIRST AND HE HAD
17 STILL TESTIFIED THE WAY HE TESTIFIED, I WOULD HAVE HAD TO
18 LET IT IN BECAUSE OTHERWISE I'D BE WEIGHING THE
19 CREDIBILITY.

20 MR. CHRISCO: I JUST WANTED THAT IN THE RECORD.

21 THE COURT: ALL RIGHT, THANK YOU. I'M NOT GOING
22 TO SUPPRESS THE TESTIMONY.

23 MR. HUMPHRIES: YOUR HONOR, PROCEDURALLY, WHAT I
24 PROPOSE WE DO IN REGARD TO THE DEPOSITION, I'VE GOT A COPY
25 OF THE DEPOSITION, WHICH I'M GOING TO PROVIDE OUR NEW DR.

MR. COX-CROSS-EXAMINATION BY MR. MONCKTON

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1 PROCTOR.

2 THE COURT: ALL RIGHT.

3 MR. HUMPHRIES: GEORGE DEBUSK. THIS WILL BE WHAT
4 HE'S READING FROM. WE'VE GOT AN EXACT COPY THAT MR.
5 BELLAMY WILL BE ASKING QUESTIONS FROM. I'M TOLD THAT BOTH
6 MR. CHRISCO AND MR. MONCKTON WISH TO POSE THEIR OWN
7 QUESTIONS.

8 THE COURT: OKAY.

9 MR. HUMPHRIES: BUT I PROPOSE THAT WE MARK THIS
10 COPY, THAT IS THE COPY THAT MR. DEBUSK WILL BE READING
11 FROM, AS ONE EXHIBIT, I GUESS AS A COURT'S EXHIBIT BECAUSE
12 IT WOULDN'T NECESSARILY GO TO THE JURY.

13 THE COURT: IT DOES NOT. THE WAY I HANDLE THAT,
14 MR. HUMPHRIES, IS THAT YOU ALL JUST USE THOSE. THEY'RE ALL
15 DUPLICATE ORIGINALS. I WILL GIVE THE REPORTER THE ORIGINAL
16 DEPOSITION, WHICH I HAVE, MARKED IN RED AND THAT WILL
17 BECOME THE COURT'S EXHIBIT AND THAT WILL BE THE RECORD.

18 (WHEREUPON, COURT'S EXHIBIT NUMBER 1 IS MARKED.)

19 MR. HUMPHRIES: VERY GOOD. THANK YOU, SIR.

20 THE COURT: ALL RIGHT. ANYTHING ELSE? ALL
21 RIGHT, BRING THE JURY IN, PLEASE.

22 (WHEREUPON, AT 9:53 A.M., THE JURY ENTERED THE
23 COURTROOM AND THE FOLLOWING PROCEEDINGS WERE HAD.)

24 THE COURT: GOOD MORNING, LADIES AND GENTLEMEN.
25 THANK YOU FOR YOUR PROMPTNESS IN BEING BACK HERE. WE ARE

MR. COX-CROSS-EXAMINATION BY MR. MONCKTON

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1 A THAT IS CORRECT.

2 Q DID YOU HAVE AN OPPORTUNITY TO REVIEW MR.
3 TAYLOR'S CASE FILE AFTER YOU TOOK OVER THE CASE?

4 A YES, SIR, I DID.

5 Q DID YOU HAVE AN OPPORTUNITY TO REVIEW A SLED
6 REPORT FROM THE FINGERPRINT EXPERT?

7 A NO, SIR, I DID NOT.

8 Q YOU NEVER SAW THAT REPORT?

9 A NO, SIR, I DID NOT.

10 Q SO THE REPORT I SHOWED MR. TAYLOR YESTERDAY
11 YOU NEVER SAW?

12 A I'VE NEVER SEEN THAT REPORT BEFORE.

13 Q YOU'VE NEVER SEEN THAT REPORT?

14 A NO, SIR.

15 Q HAVE YOU EVER DISCUSSED THAT REPORT WITH MR.
16 BELLAMY OR MR. HUMPHRIES FROM THE SOLICITOR'S OFFICE?

17 A NO, SIR, I HAVE NOT.

18 Q IF YOU HAD KNOWN THAT SLED REQUESTED MAJOR
19 CASE PRINTS BE SENT TO THEM, WOULD YOU HAVE DONE IT?

20 A YES, SIR, I PROBABLY WOULD HAVE.

21 Q DO YOU HAVE ANY REASON TO KNOW WHY MR.
22 TAYLOR NEVER DID THE MAJOR CASE PRINTS?

23 A NO, SIR, I CAN'T ANSWER THAT QUESTION. I
24 DON'T KNOW WHY.

25 Q DID YOU ALSO HAVE AN OPPORTUNITY TO RECEIVE

MR. COX-CROSS-EXAMINATION BY MR. MONCKTON

232

1 A SLED, SOUTH CAROLINA LAW ENFORCEMENT DIVISION, FORENSIC
2 REPORT WITH REGARDS TO THE BULLETS?

3 A I DIDN'T RECEIVE IT.

4 Q DID YOU REVIEW THE CASE FILE OF MR. TAYLOR
5 AND FIND A SLED FORENSIC REPORT WITH REGARDS TO THE BULLETS
6 COMPILED BY MR. DAN DEFREEZE?

7 A I DON'T THINK I'VE EVER SEEN THAT SLED
8 REPORT EITHER.

9 Q SO YOU'VE NEVER SEEN THE SLED REPORT
10 REGARDING FINGERPRINTS AND YOU'VE NEVER SEEN THE SLED
11 REPORT WITH REGARD TO THE BULLETS?

12 A NO, SIR, I HAVE NOT.

13 Q DID YOU EVER PARTICIPATE IN ANY SEARCH
14 WARRANT LOOKING FOR THE GUN INVOLVED IN THIS INCIDENT?

15 A NO, SIR, I DID NOT. I WAS NOT ASSIGNED ANY
16 INVESTIGATIONS AT THAT TIME.

17 Q BUT WHEN YOU REVIEWED THE FILE NOW THAT
18 YOU'RE AN INVESTIGATOR, WOULD YOU HAVE ATTEMPTED TO GET A
19 SEARCH WARRANT TO LOOK FOR THE GUN?

20 A MY ONLY INVOLVEMENT ---.

21 Q NO. WOULD YOU? YOU'RE AN INVESTIGATOR.
22 WOULD YOU HAVE DONE IT?

23 A REPEAT ---

24 MR. BELLAMY: YOUR HONOR, I OBJECT. THAT'S
25 SPECULATION.

MR. COX-CROSS-EXAMINATION BY MR. MONCKTON

233

1 THE COURT: OVERRULED. CROSS-EXAMINATION.

2 A WOULD YOU REPEAT THAT QUESTION, PLEASE?

3 Q AFTER REVIEWING THE CASE FILE IN THIS CASE,
4 WOULD YOU AS AN INVESTIGATOR ATTEMPTED TO GET A SEARCH
5 WARRANT TO GO LOOK FOR THESE GUNS?

6 A AT THAT POINT IN THIS INVESTIGATION, I WOULD
7 HAVE HAD NO NEED TO DO THAT. THE CASE HAS BEEN COMPLETED.
8 IT HAD ALREADY BEEN SUBMITTED FOR PROSECUTION.

9 Q OKAY. YOU TOOK PLACE IN INTERVIEWING THE
10 WITNESS ON OCTOBER THE 4TH, 1997; ISN'T THAT CORRECT?

11 A THAT IS CORRECT.

12 Q AND THAT WAS MS. SARAH WEAVER; ISN'T THAT
13 CORRECT?

14 A THAT IS CORRECT.

15 Q AND IN HER STATEMENT SHE TOLD YOU IN THAT
16 INITIAL STATEMENT THAT SHE WAS STANDING AT HER MAILBOX AT
17 [REDACTED] WHEN SHE SAW SOMETHING HAPPEN.

18 A THAT'S WHAT I WROTE FOR HER, CORRECT.

19 Q YOU WROTE IT OUT FOR HER.

20 A CORRECT.

21 Q AND SHE SIGNED IT.

22 A CORRECT.

23 Q AND WE'VE HEARD A BUNCH OF STATEMENTS TODAY
24 THAT MS. CAMPBELL MAY HAVE MADE OR MS. WEAVER HAVE MADE.
25 DOES THE CONWAY POLICE DEPARTMENT OWN ANY TAPE RECORDERS?

MR. COX-CROSS-EXAMINATION BY MR. MONCKTON

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1 A YES, SIR, WE DO BUT IT'S NOT COMMON PRACTICE
2 FOR POLICE OFFICERS, IF THEY'RE OUT IN THE STREETS, TO
3 CARRY TAPE RECORDERS AROUND IN THEIR POCKET. WE HAVE TO
4 DEAL WITH THE SITUATION THERE ON THE SCENE. WE HAVE TO
5 WORK WITH WHAT EQUIPMENT WE HAVE THERE AT THAT TIME WHEN
6 WE'RE INTERVIEWING PEOPLE.

7 Q WHAT ABOUT INVESTIGATORS? DO INVESTIGATORS
8 HAVE ACCESS TO TAPE RECORDING DEVICES IN THE CONWAY POLICE
9 DEPARTMENT?

10 A SURE AT THE CONWAY POLICE DEPARTMENT. .

11 Q SO IF YOU HAVE A WITNESS THAT YOU WANTED TO
12 INTERVIEW, IT WOULD NOT BE HARD FOR YOU TO GET A TAPE
13 RECORDER TO DO IT, WOULD IT?

14 A YES, IF THAT WITNESS WOULD BE WILLING TO
15 COME WITH ME TO THE CONWAY POLICE DEPARTMENT, I CAN PLUG
16 THE TAPE RECORDER IN THE WALL AND I WOULD BE ABLE TO TAKE
17 THAT STATEMENT. BUT IF THE WITNESS WAS NOT WILLING TO COME
18 TO THE POLICE DEPARTMENT WITH ME, I WOULD HAVE TO TAKE THAT
19 STATEMENT BY WHATEVER MEANS THAT I COULD THERE ON THE
20 SCENE.

21 Q YOU MEAN TO TELL THIS COURTROOM AND THE JURY
22 AND THE JUDGE AND EVERYBODY HERE THAT THE CONWAY POLICE
23 DEPARTMENT DOES NOT HAVE A PORTABLE, BATTERY-OPERATED TAPE
24 RECORDER TO USE FOR INTERVIEWS?

25 A SOME PEOPLE DO BUT THEY USUALLY GO PURCHASE

MR. COX-CROSS-EXAMINATION BY MR. MONCKTON

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1 THEM ON THEIR OWN.

2 Q SO YOU DON'T HAVE ONE?

3 A OFFICERS USUALLY DON'T PURCHASE THOSE THINGS
4 ON THEIR OWN, THEY ARE NOT SUPPLIED.

5 Q DO YOU HAVE ONE?

6 A I DON'T HAVE ONE NOW. IT'S BROKEN.

7 Q HAVE YOU HAD AN OPPORTUNITY TO GO TO THE
8 CRIME SCENE, MR. SESSIONS?

9 A TO THE CRIME SCENE?

10 Q YES, SIR.

11 A WHAT TIME PERIOD ARE YOU TALKING ABOUT?

12 Q SINCE OCTOBER THE 4TH, 1997, HAVE YOU BEEN
13 BACK THERE?

14 A YES, SIR, I HAVE.

15 Q DID YOU HAVE THE OPPORTUNITY TO EVER WALK TO
16 THE VANTAGE POINT THAT MS. WEAVER IDENTIFIED IN HER OCTOBER
17 4, 1997 STATEMENT TO SEE WHAT HER VANTAGE POINT WOULD HAVE
18 BEEN LIKE?

19 A NO, SIR, I'VE NEVER BEEN TO THAT VANTAGE
20 POINT.

21 Q NEVER BEEN TO THE VANTAGE POINT?

22 A NO, SIR, I HAVE NOT.

23 Q IS THERE A REASON WHY?

24 A BECAUSE I WENT TO THE VANTAGE THERE AT THE
25 POLICE SUBSTATION.

MR. COX-CROSS-EXAMINATION BY MR. MONCKTON

236

1 Q AND WHEN DID MS. WEAVER GIVE THAT STATEMENT?

2 A I BELIEVE THAT STATEMENT WAS GIVEN FEBRUARY
3 14TH, IF I'M NOT MISTAKEN.

4 Q TO BE CORRECT, FEBRUARY 14TH OF 2000.

5 A THAT IS CORRECT.

6 Q BUT THE INITIAL STATEMENT THAT YOU HANDWROTE
7 FOR HER ON OCTOBER THE 4TH, 1997, YOU NEVER WENT TO THAT
8 SPOT?

9 A NO, SIR. I COMPLETED THAT STATEMENT. THAT
10 WAS MY ONLY INVOLVEMENT IN THE CASE AT THAT TIME, WRITING
11 THAT STATEMENT FOR MS. WEAVER. THAT STATEMENT WAS FOR
12 SERGEANT TAYLOR AND THAT WAS ALL THE INVOLVEMENT I HAD IN
13 THE CASE AT THAT TIME.

14 Q WHEN WERE YOU ASSIGNED THIS CASE?

15 A I WANT TO SAY -- I'M NOT FOR CERTAIN BUT I
16 BELIEVE IT WAS THE END OF DECEMBER OR THE FIRST OF JANUARY
17 OF THIS YEAR.

18 Q AND THAT'S WHEN YOU HAD THE OPPORTUNITY TO
19 MEET WITH MR. HUMPHRIES AND MR. BELLAMY WITH REGARD TO YOUR
20 INVESTIGATION?

21 A THAT IS CORRECT.

22 Q IN SEARCHING THAT CASE FILE, DID YOU HAVE
23 ANY OPPORTUNITY TO FIND ANY INTERVIEWS WITH KIM BROWN PRIOR
24 TO FEBRUARY THE 16TH OF 2000?

25 A I ONLY FOUND THEIR NAMES INDICATED IN THE

MR. COX-CROSS-EXAMINATION BY MR. MONCKTON

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1 CASE FILE. I DID NOT FIND ANY INTERVIEWS THAT HAD BEEN
2 CONDUCTED OF THEM.

3 Q DID YOU FIND ANY INTERVIEWS THAT HAD BEEN
4 DONE WITH VICKY CAMPBELL PRIOR TO FEBRUARY THE 16TH OF
5 2000?

6 A NONE INDICATED IN THE FILE. I SAW NO
7 INTERVIEWS.

8 Q DID YOU FIND ANY INTERVIEWS THAT HAD BEEN
9 CONDUCTED WITH LAKESHIA SMITH PRIOR TO FEBRUARY 16TH OF
10 2000?

11 A THE SAME ANSWER, SIR.

12 Q FREDERICK MCDONALD?

13 A NO, SIR.

14 Q ISAAC COX?

15 A HE'S THE DECEASED.

16 Q FREDERICK COX.

17 A NO, SIR.

18 Q SO ALL THE INTERVIEWS CONDUCTED WITH THE
19 WITNESSES WAS DONE ALMOST TWO AND A HALF YEARS AFTER THE
20 INCIDENT OCCURRED?

21 A THAT WOULD BE CORRECT. IF YOU'RE SPEAKING
22 ABOUT THE INTERVIEWS THAT I WOULD BE INVOLVED IN, THAT
23 WOULD BE CORRECT.

24 Q IN REVIEWING THE CASE FILE, ARE THERE ANY
25 OTHER INTERVIEWS OF THOSE INDIVIDUALS THAT WE JUST TALKED

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1 ABOUT PRIOR TO FEBRUARY 16TH OF 2000?

2 A NOT THAT I'VE SEEN, NO.

3 Q NOT THAT YOU'VE SEEN. DO YOU KNOW WHETHER
4 OR NOT THE SLED FINGERPRINT EXPERT IS GOING TO BE
5 TESTIFYING IN THIS TRIAL?

6 A THAT'S NOT A QUESTION THAT I CAN ANSWER.

7 Q YES OR NO? DO YOU KNOW?

8 A THAT WOULD BE A QUESTION FOR THE GENTLEMEN
9 AT THE TABLE HERE. I HAVE NO IDEA.

10 Q NO IDEA.

11 MR. BELLAMY: YOUR HONOR.

12 THE COURT: ALL RIGHT, WHAT'S THE PROBLEM?

13 MR. BELLAMY: YOUR HONOR, I OBJECT. I MEAN,
14 THAT'S NOT ---

15 THE COURT: HE SAID HE DIDN'T KNOW. WHAT'S YOUR
16 OBJECTION?

17 MR. BELLAMY: NOTHING, YOUR HONOR.

18 THE COURT: ALL RIGHT, SIR.

19 MR... MONCKTON: (CONTINUING

20 Q WHAT ABOUT THE SLED FORENSIC BULLET EXPERT?
21 DO YOU KNOW WHETHER OR NOT HE'S GOING TO TESTIFY?

22 MR. BELLAMY: YOUR HONOR, I OBJECT.

23 THE COURT: OVERRULED. HE CAN SAY WHETHER HE
24 KNOWS OR NOT.

25 THE WITNESS: (CONTINUING)

MR. COX-CROSS-EXAMINATION BY MR. MONCKTON

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1 A I DON'T KNOW.

2 Q YOU DON'T KNOW. DO YOU KNOW IF THERE'S ANY
3 OTHER EVIDENCE THAT'S GOING TO BE ADMITTED OTHER THAN THE
4 BULLETS AND THIS ONE PICTURE HERE AND THAT DIAGRAM FROM THE
5 STATE?

6 A SIR, YOU'RE ASKING ME QUESTIONS. MY
7 POSITION IS I ONLY CAME ON BOARD, AS I'VE ADVISED YOU MY
8 INVOLVEMENT IN THIS CASE, AT THE END OF DECEMBER, 1ST OF
9 JANUARY.

10 Q BUT YOU SAID YOU REVIEWED THE WHOLE CASE
11 FILE.

12 A NO, I SAID I REVIEWED THE FILE. THERE ARE
13 CERTAIN THINGS THAT YOU'VE ASKED ME ABOUT THE FILE THAT I
14 TOLD YOU THAT I HAVEN'T SEEN.

15 Q THAT'S FAIR TO SAY.

16 A OKAY.

17 Q IF YOU DON'T KNOW, THAT'S FINE. AND IN
18 REVIEWING THIS ENTIRE CASE FILE, WERE THERE OTHER SUSPECTS
19 IDENTIFIED AT THE SCENE?

20 A SIR, I BELIEVE MY ANSWER WAS THAT I DID NOT
21 REVIEW THE ENTIRE CASE FILE. THE ONLY THING I REVIEWED IN
22 THAT FILE INITIALLY WHEN I CAME ON BOARD IN THIS
23 INVESTIGATION I REVIEWED THE INCIDENT REPORT. I REVIEWED
24 THE INVESTIGATIVE REPORT. I REVIEWED THE NAMES OF THE
25 WITNESSES AND AT THAT TIME THE ONLY OTHER PART THAT I TOOK

MR. COX-CROSS-EXAMINATION BY MR. MONCKTON

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1 PART IN THIS INVESTIGATION WAS THE INTERVIEWING OF POSSIBLE
2 WITNESSES.

3 MR. BELLAMY: YOUR HONOR, I'D LIKE TO SEE WHAT
4 MR. MONCKTON HAS JUST OUT OF COURTESY.

5 Q YOU IDENTIFIED SOME DOCUMENTS, MR. SESSIONS

6 ---

7 MR. MONCKTON: YOUR HONOR, MAY I APPROACH?

8 THE COURT: YES, SIR.

9 Q ARE THOSE THE DOCUMENTS YOU'VE JUST
10 IDENTIFIED? I BELIEVE YOU SAID INCIDENT REPORT, THE NAMES
11 AND A SUPPLEMENTAL REPORT.

12 A THAT WOULD BE CORRECT.

13 Q HOW MANY PAGES IS THERE?

14 A NINE PAGES.

15 Q NINE PAGES. SO OUT OF A MURDER
16 INVESTIGATION IN A CASE THAT YOU WERE ASSIGNED THERE WERE
17 ONLY NINE PAGES IN THE FILE?

18 A YOU MEAN THE DOCUMENTATION THAT I PREPARED
19 AS FAR AS THIS CASE IS CONCERNED?

20 Q THAT YOU REVIEWED. NINE PAGES.

21 A THAT IS CORRECT. THAT'S WHAT I REVIEWED. I
22 HAD NO REASON TO REVIEW ANYTHING ELSE. THE CASE HAD
23 ALREADY BEEN FORWARDED AND PREPARED FOR PROSECUTION.

24 Q SO THOSE NINE -- SO BETWEEN OCTOBER THE 4TH,
25 1997, AND FEBRUARY THE 16TH OF 2000 WE HAVE NINE PAGES IN

MR. COX-CROSS-EXAMINATION BY MR. MONCKTON

241

1 AN INVESTIGATION FILE?

2 A NO, THERE WAS MORE PAGES IN THE
3 INVESTIGATIVE FILE BUT I DID NOT REVIEW THE ENTIRE FILE.
4 AS I EXPLAINED TO YOU EARLIER, WHEN I CAME ON BOARD MY
5 PURPOSE WAS ONLY TO INTERVIEW WITNESSES -- POSSIBLE
6 WITNESSES IN THIS CASE. I ONLY NEEDED TO REFRESH MYSELF
7 WITH THE BASICS OF THE CASE, WHICH WERE ENTAILED IN THE
8 INCIDENT REPORT AND THE INVESTIGATIVE REPORT. THOSE ARE
9 THE ONLY ITEMS I NEEDED TO READ TO FULFILL WHAT I NEEDED TO
10 DO AS FAR AS THIS INVESTIGATION WAS CONCERNED.

11 Q WELL, WHO WAS HEADING UP THE INVESTIGATION?
12 YOU, MR. TAYLOR OR MR. BELLAMY OR MR. HUMPHRIES? WHO WAS
13 LEADING IT UP FOR THE CONWAY POLICE DEPARTMENT?

14 A BILL TAYLOR LED AND INVESTIGATED THE
15 INVESTIGATION.

16 Q AND PUT TOGETHER NINE PIECES OF PAPER?

17 A NO. YOU'RE NOT UNDERSTANDING. THERE WAS
18 MORE PAGES IN THE INVESTIGATIVE REPORT -- IN THE CASE FILE.
19 I ONLY -- AS I EXPLAINED TO YOU, THOSE ARE THE ONLY
20 DOCUMENTS THAT I NEEDED TO READ TO COMPLETELY FAMILIARIZE
21 MYSELF WITH THE CASE BECAUSE MY SOLE PURPOSE WAS ONLY TO
22 INTERVIEW POSSIBLE WITNESSES IN THIS CASE. I HAD NO NEED
23 TO READ ANY OTHER INFORMATION IN THAT FILE.

24 Q DO YOU THINK SLED REPORTS MAY HAVE BEEN
25 HELPFUL?

8 Q DO YOU KNOW IF MR. TAYLOR FOLLOWED UP ON ANY
9 OTHER SUSPECTS?

12 MR. MONCKTON: NO FURTHER QUESTIONS AT THIS TIME,
13 YOUR HONOR.

15 MR. CHRISCO: I'M SORRY, YOUR HONOR.

18 MR. CHRISCO: YOUR HONOR, I ASKED MR. MONCKTON IF
19 HE WAS GOING TO GO FIRST.

21 BY MR. CHRISCO:

23 | A GOOD MORNING, MR. CHRISCO..

24 Q YOU SAY THAT YOU READ THE INCIDENT REPORT;
25 IS THAT CORRECT, SIR?

MR. COX-CROSS-EXAMINATION BY MR. MONCKTON

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1 A THAT'S CORRECT.

2 Q AND I NOTICE ON ONE OF THE INCIDENT REPORTS
3 THAT YOUR NAME IS LISTED AS A REPORTING OFFICER; IS THAT
4 CORRECT, SIR?

5 A I WOULD NEED TO FAMILIARIZE MYSELF WITH IT.
6 WOULD I BE ABLE TO LOOK AT THAT, PLEASE? YES, SIR, THAT'S
7 MY NAME.

8 Q WOULD IT APPEAR ON BOTH OF THOSE REPORTS?

9 A YES, THESE TWO SUPPLEMENTALS. THESE ARE
10 SUPPLEMENTALS TO THE ACTUAL REPORT.

11 Q RIGHT.

12 A RIGHT.

13 Q THANK YOU, SIR. DID YOU RESPOND OUT THERE
14 THAT NIGHT?

15 A NO, SIR, I DID NOT.

16 Q YOU DID NOT GO OUT THERE AT ALL?

17 A NO, SIR, I DID NOT.

18 Q NOW, WHEN YOU -- KIND OF CATCH ME UP TO
19 SPEED HERE. YOU SAID THAT YOU TOOK OVER THE CASE IN
20 DECEMBER OF 1999.

21 A RIGHT.

22 Q NOW, WHY DID YOU TAKE OVER THE CASE?

23 A BECAUSE THE CASE WAS ABOUT TO GO TO TRIAL
24 AND THERE WERE SOME WITNESSES THAT -- OR POSSIBLE WITNESSES
25 THAT NEEDED TO BE INTERVIEWED AND THAT WAS WHAT PART I TOOK

MR. COX-CROSS-EXAMINATION BY MR. MONCKTON

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1 IN THE INVESTIGATION.

2 Q IN PREPARING YOURSELF FOR INTERVIEWING THESE
3 WITNESSES -- IS THAT WHERE YOU FOUND THESE OTHER WITNESSES
4 WHEN YOU READ THROUGH THESE REPORTS?

5 A NO, SIR, THAT'S NOT HOW I FOUND THEM.

6 Q HOW DID YOU COME ABOUT THESE WITNESSES?

7 A I WAS TOLD BY MR. BELLAMY WHO GAVE ME THE
8 NAME OF SOME INDIVIDUALS THAT I POSSIBLY NEEDED TO GO
9 INTERVIEW AS FAR AS THIS CASE WAS CONCERNED.

10 Q DO YOU KNOW WHERE HE GOT THESE NAMES?

11 A NO, SIR, I DO NOT. YES, SIR, I DO. I'M
12 SORRY, I DO. I BELIEVE THOSE NAMES WERE GIVEN TO HIM BY
13 FREDERICK MCDONALD.

14 Q YOU MENTIONED THERE WAS SOME MENTION OF
15 THREE NAMES. I BELIEVE VICKY CAMPBELL ---

16 A YES, SIR.

17 Q --- LAKESHIA SMITH AND KIM BROWN THAT WAS
18 MADE IN A NOTATION IN THE CASE FILE.

19 A YES, SIR. THAT'S THE FIRST THING I SAW AS
20 SOON AS THE FILE WAS OPEN. THOSE NAMES WERE JUST WRITTEN
21 IN THE FILE. I DIDN'T KNOW WHAT THEY SIGNIFIED OR WHAT
22 THEY MEANT BUT AS SOON AS YOU OPENED THE FILE, ON THE LEFT-
23 HAND SIDE OF THE FOLDER THOSE NAMES WERE WRITTEN IN A BLACK
24 MAGIC MARKER IN THE FILE.

25 Q NOW, DID YOU POINT THOSE OUT TO MR. BELLAMY

MR. COX-CROSS-EXAMINATION BY MR. MONCKTON

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1 OR DID MR. BELLAMY POINT THOSE OUT TO YOU?

2 A I MAY HAVE POINTED THEM OUT TO MR. BELLAMY.

3 Q BUT YOU HAVE REVIEWED ALL THE REPORTS?

4 A YES, SIR, THE INCIDENT REPORT AND THE
5 INVESTIGATIVE REPORT. THAT WOULD BE CORRECT.

6 Q BUT YOU DIDN'T REVIEW THE SLED FORENSIC
7 REPORT ON THE BULLETS?

8 A NO, SIR, I DID NOT.

9 Q OR YOU DIDN'T REVIEW THE SLED REPORT ON
10 FINGERPRINTS?

11 A NO, SIR, I DID NOT.

12 Q WHY WOULDN'T THOSE BE IMPORTANT THINGS FOR
13 YOU IN A MURDER CASE?

14 A AGAIN I'LL SAY, MR. CHRISCO, THE
15 INVESTIGATION HAD ALREADY BEEN COMPLETED. MY ONLY POSITION
16 OR INVOLVEMENT IN THIS INVESTIGATION WAS TO GO INTERVIEW
17 POSSIBLE WITNESSES IN THIS CASE. I WOULD HAVE HAD NO NEED
18 TO GO BACK BECAUSE SERGEANT TAYLOR'S INVESTIGATION WAS
19 COMPLETED. I WAS NOT INSTRUCTED BY THE SOLICITOR'S OFFICE
20 TO GO BACK AND LOOK OVER ANY OF THOSE THINGS AND I DIDN'T
21 HAVE THE NEED TO GO BACK AND LOOK AT ANY OF THOSE THINGS SO
22 THERE WOULD BE NO NEED FOR ME TO LOOK AT OR INVESTIGATE
23 THOSE ITEMS. MY SOLE PURPOSE WAS ONLY TO INTERVIEW
24 POSSIBLE WITNESSES IN THIS CASE.

25 Q AS A TRAINED INVESTIGATOR, SIR, WOULDN'T THE

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1 SLED REPORT -- FORENSIC REPORT ON THE BULLETS BE HELPFUL
2 WHEN INTERVIEWING THE WITNESSES AND WHAT THE WITNESSES WERE
3 SAYING TO RECONCILE EVERYTHING?

4 A NO, SIR. ALL THAT INFORMATION WAS INDICATED
5 IN THE INCIDENT REPORT, THE INFORMATION ABOUT HOW MANY
6 TIMES THE VICTIM WAS SHOT, THAT STUFF WAS IN THERE. ALL
7 THE WHOS, WHATS, WHEN, WHERE'S AND WHYS WERE INDICATED IN
8 THE INCIDENT REPORT AND ALSO IN THE INVESTIGATIVE REPORT
9 AND THOSE PROVIDED ALL THE INFORMATION I NEEDED AS FAR AS
10 MY PARTICIPATION IN THE CASE TO ASK THE QUESTIONS THAT I
11 NEEDED TO ASK.

12 Q WHAT IF THE REPORT HAD STATED THAT ALL OF
13 THE BULLETS WERE OF THE SAME TYPE OF CALIBER? WOULDN'T ONE
14 WITNESS SAYING THAT THERE WAS TWO OR MORE SHOOTERS IN THIS
15 CASE, WOULDN'T THAT BE HARD TO RECONCILE, SIR?

16 A AGAIN, YOU'RE ASKING ME A QUESTION AND I
17 HAVE TO ANSWER THAT AGAIN. MY ONLY PARTICIPATION IN THIS -
18 - AS FAR AS I WAS CONCERNED, THE INVESTIGATION WAS
19 COMPLETED. YOU'RE ASKING ME QUESTIONS THAT I COULDN'T
20 ANSWER BECAUSE I DIDN'T LOOK INTO -- I DIDN'T GET INVOLVED
21 IN THE INVESTIGATION. MY ONLY POSITION WAS IN THIS THING I
22 WAS GOING OUT TO INTERVIEW POSSIBLE WITNESSES IN THIS CASE.
23 AS FAR AS ANY OTHER QUESTIONS YOU'RE ASKING, I CAN'T ANSWER
24 THAT BECAUSE I DIDN'T GET THAT INVOLVED IN THE
25 INVESTIGATION. IT WAS MY UNDERSTANDING THAT THE

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1 INVESTIGATION WAS COMPLETED. THE FILE HAD BEEN SUBMITTED
2 AND MY ONLY INVOLVEMENT WAS TO INTERVIEW POSSIBLE WITNESSES
3 IN THE CASE. I'M TRYING TO FIGURE OUT WHAT YOU'RE ASKING
4 ME. YOU'RE ASKING ME TO GO BACK ---

5 Q I'M ASKING YOU TO DO A MURDER INVESTIGATION
6 I GUESS IS WHAT I'M ASKING YOU, SIR. IS THAT NOT RIGHT?

7 A I DIDN'T PERFORM THAT INVESTIGATION. I
8 DON'T UNDERSTAND WHAT YOU'RE ASKING ME, MR. CHRISCO.

9 Q I'M ASKING YOU WHY DIDN'T YOU DO YOUR JOB.
10 THE COURT: ALL RIGHT, THAT'S AN IMPROPER
11 COMMENT. I'LL ASK THE JURY TO DISREGARD THAT REMARK.

12 Q YOU TOOK STATEMENTS FROM A LOT OF WITNESSES
13 IN THIS CASE.

14 A YES, SIR, I DID.

15 Q ISN'T IT TRUE THAT YOU LEARNED FROM KIM
16 BROWN WHEN YOU TOOK HER STATEMENT THAT SHE HAD GIVEN ---

17 MR. BELLAMY: I OBJECT.

18 THE COURT: LET HIM FINISH THE QUESTION.

19 Q THAT SHE HAD GIVEN BEADY, WHICH IS ISAAC
20 COX, A RIDE UP TO THE EXXON STORE?

21 THE COURT: ALL RIGHT, WHAT'S YOUR OBJECTION?

22 MR. BELLAMY: YOUR HONOR, IT'S HEARSAY.

23 THE COURT: SUSTAINED.

24 A YES, SIR.

25 THE COURT: HOLD ON. I SUSTAINED THE OBJECTION.

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1 THAT MEANS THE QUESTION IS NOT ANSWERED. I WOULD ASK THE
2 JURY TO DISREGARD THE ANSWER. MR. WITNESS, WHENEVER I
3 SUSTAIN AN OBJECTION, THAT MEANS YOU DON'T HAVE TO ANSWER
4 THE QUESTION.

5 THE WITNESS: YES, SIR.

6 Q IN YOUR INCIDENT REPORT -- IN THE INCIDENT
7 REPORT YOU REVIEWED THERE WAS A REFERENCE IN THERE TO
8 ANOTHER SUSPECT, WAS THERE NOT, SIR?

9 MR. BELLAMY: OBJECTION, YOUR HONOR.

10 THE COURT: WHAT'S YOUR OBJECTION?

11 MR. BELLAMY: STATE VS. GREGORY, YOUR HONOR,
12 THIRD-PARTY GUILT.

13 THE COURT: PARDON ME?

14 MR. BELLAMY: STATE VS. GREGORY, YOUR HONOR,
15 THIRD-PARTY GUILT.

16 THE COURT: ALL RIGHT, I'M GOING TO ALLOW THE
17 ANSWER TO THIS QUESTION AS TO WHETHER OR NOT THERE WERE
18 OTHER SUSPECTS BUT THEN THAT'S AS FAR AS IT'S GOING TO GO.

19 MR. CHRISCO: YOUR HONOR, MAY WE BE HEARD ON IT?

20 THE COURT: YES, SIR. COME AROUND HERE.

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

24 THE COURT: LADIES AND GENTLEMEN, THIS IS
25 SOMETHING THAT I AM GOING TO HAVE TO RESOLVE ON THE RECORD

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1 AND OUTSIDE OF YOUR PRESENCE SO I'LL ASK YOU TO GO TO YOUR
2 JURY ROOM.

3 (WHEREUPON, AT 10:25 A.M., THE JURY LEFT THE
4 COURTROOM AND THE FOLLOWING TOOK PLACE OUTSIDE THEIR
5 PRESENCE.)

6 THE COURT: ALL RIGHT, MR. CHRISCO, PROFFER THE
7 QUESTION.

8 Q ON THE OCTOBER 4TH INCIDENT REPORT WASN'T
9 THERE ANOTHER SUSPECT NOTED?

10 THE COURT: ALL RIGHT NOW, I UNDERSTAND THAT YOU
11 DON'T OBJECT TO THAT QUESTION OF ANOTHER SUSPECT; IS THAT
12 RIGHT?

13 MR. BELLAMY: THE FIRST THING IS IN HIS OCTOBER
14 4TH REPORT. I MEAN, THIS IS A QUESTION THAT BILL TAYLOR
15 SHOULD ANSWER. THEY CAN CALL BILL TAYLOR WHEN THEIR CASE
16 IS UP. THEY'RE TRYING TO GO THROUGH THE BACK DOOR WITH
17 OFFICER SESSIONS.

18 THE COURT: WELL, THAT'S A DIFFERENT OBJECTION
19 FROM A MINUTE AGO. LET'S GET THE GROUNDS ON THE RECORD AND
20 FIND OUT WHERE WE ARE. HE ASKED THE QUESTION WHETHER THERE
21 WAS ANOTHER SUSPECT IDENTIFIED IN THE CASE FILE REGARDLESS
22 OF WHAT REPORT IT IS OR ANYTHING ELSE. THAT WAS THE FIRST
23 QUESTION THAT HE ASKED. AND MY OBJECTION TO YOU -- I MEAN,
24 MY QUESTION TO YOU IS DO YOU OBJECT TO THAT QUESTION BEING
25 ASKED AND IF SO, ON WHAT GROUNDS?

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1 MR. BELLAMY: FIRST I WOULD OBJECT THAT HE'S
2 ASKING THE QUESTION OFF OF OFFICER TAYLOR'S REPORT.

3 THE COURT: ALL RIGHT. ANY OTHER OBJECTION? ANY
4 OTHER GROUNDS?

5 MR. BELLAMY: THIRD-PARTY GUILT, YOUR HONOR.

6 THE COURT: ALL RIGHT, NEXT QUESTION, MR.
7 CHRISCO.

8 Q WAS THAT SUSPECT THAT WAS LISTED IN THAT
9 REPORT, WAS HE IN FACT NOT NAMED IN THAT REPORT?

10 THE COURT: ALL RIGHT, DO YOU OBJECT TO THAT? DO
11 YOU OBJECT TO THAT?

12 MR. BELLAMY: YOUR HONOR, I APOLOGIZE. I DIDN'T
13 HEAR THAT.

14 THE COURT: ASK THE QUESTION AGAIN, MR. CHRISCO.

15 MR. CHRISCO: YES, YOUR HONOR.

16 Q IN THE OCTOBER 4TH INCIDENT REPORT DID IT
17 NOT IN FACT NAME THAT SUSPECT?

18 THE COURT: ALL RIGHT, DO YOU OBJECT TO THAT?

19 MR. BELLAMY: YES, SIR, YOUR HONOR.

20 THE COURT: GROUNDS?

21 MR. BELLAMY: AS FAR AS WHAT REPORT IS MR.
22 CHRISCO REFERRING TO?

23 THE COURT: THAT WASN'T MY QUESTION. MY QUESTION
24 -- YOU'RE NOT ASKING THE QUESTIONS. I'M ASKING THE
25 QUESTIONS. GROUNDS FOR YOUR OBJECTION.

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1 MR. BELLAMY: HEARSAY, YOUR HONOR.

2 THE COURT: ANYTHING ELSE?

3 MR. BELLAMY: THIRD-PARTY GUILT, YOUR HONOR.

4 THE COURT: ANY OTHER QUESTIONS, MR. CHRISCO?

5 Q WHAT WAS THAT SUSPECT'S NAME?

6 THE COURT: WELL, THAT WAS THE LAST QUESTION.

7 I'M ASKING YOU IF YOU'VE GOT ANY MORE QUESTIONS BEYOND THAT
8 BEFORE I RULE ON THE OBJECTIONS. THAT WAS YOUR LAST
9 QUESTION.

10 Q ISN'T IT A FACT THAT HOWARD PARKER, THE
11 NAMED SUSPECT IN THE INCIDENT REPORT OF OCTOBER 4TH, WASN'T
12 HE ALSO NAMED IN OTHER STATEMENTS?

13 THE COURT: DO YOU OBJECT ON THE SAME GROUNDS?

14 MR. BELLAMY: YES, YOUR HONOR. WE ALREADY MADE A
15 MOTION IN LIMINE ON THAT, ON HOWARD PARKER.

16 THE COURT: ALL RIGHT, I'LL BE GLAD TO HEAR FROM
17 YOU, MR. BELLAMY, WITH REGARD TO THE BASIS OF YOUR
18 OBJECTION OR THE BASES. AS I UNDERSTAND IT, THE FIRST
19 COUPLE OF QUESTIONS IT WAS NOT IN HIS REPORT OR HEARSAY,
20 WHICH IS THE SAME THING, AND THE OTHER IS ON THE THIRD-
21 PARTY GUILT. I'LL BE GLAD TO HEAR FROM YOU ON BOTH OF
22 THEM.

23 MR. CHRISCO: YOUR HONOR ---

24 THE COURT: NO, I'M ASKING MR. BELLAMY.

25 MR. BELLAMY: YOUR HONOR, WHAT I'M REFERRING TO

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1 IS THE CASE OF STATE VS. PARKER AND I'D LIKE TO READ
2 SOMETHING INTO THE RECORD WITH THE COURT'S PERMISSION.

3 THE COURT: GO AHEAD. I WANT TO HEAR YOUR
4 ARGUMENTS.

5 MR. BELLAMY: YOUR HONOR, IT STATES, THAT "THE
6 EVIDENCE OFFERED BY AN ACCUSED AS TO THE COMMISSION OF A
7 CRIME BY ANOTHER PERSON MUST BE LIMITED TO SUCH FACTS AS
8 ARE INCONSISTENT WITH HIS OWN GUILT AND SUCH FACTS AS RAISE
9 A REASONABLE INFERENCE OR PRESUMPTION AS TO HIS OWN
10 INNOCENCE. EVIDENCE WHICH CAN HAVE NO OTHER EFFECT THAN TO
11 CAST A BARE SUSPICION UPON ANOTHER OR RAISED A CONJECTURAL
12 INFERENCE AS TO THE COMMISSION OF THE CRIME BY ANOTHER IS
13 NOT ADMISSIBLE." THE COURT KNOWS ALL THIS, YOUR HONOR.
14 "REMOTE ACTS DISCONNECTED AND OUTSIDE THE CRIME ITSELF
15 CANNOT BE SEPARATELY PROVED FOR ANY SUCH PURPOSE AS AN
16 UNBIASED JUDICIAL INQUIRY AS TO THE GUILT OR INNOCENCE OF
17 THE DEFENDANT ON TRIAL DOES NOT CONTEMPLATE SUCH DEFENDANT
18 ---

19 THE COURT: HOLD ON, MR. BELLAMY. IF YOU JUST
20 GIVE ME THE CASES AND LET ME READ THEM RATHER THAN YOU
21 READING THEM TO ME.

22 MR. BELLAMY: YES, SIR. YOUR HONOR.

23 THE COURT: YES?

24 MR. BELLAMY: MAY I APPROACH?

25 THE COURT: SURE.

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1 MR. BELLAMY: YOUR HONOR, THIS IS -- WE MADE THIS
2 IS THE MOTION IN LIMINE TO EXCLUDE THE TESTIMONY ON HOWARD
3 PARKER ON THIRD-PARTY GUILT.

4 THE COURT: ALL RIGHT, ANYTHING ELSE THAT YOU
5 WANT TO SUBMIT TO ME FOR CONSIDERATION, MR. BELLAMY? YOU
6 MENTIONED THE GREGORY CASE. HAVE YOU GOT THAT? I CAN GET
7 IT IF YOU DON'T HAVE IT.

8 MR. BELLAMY: IF YOU GIVE ME A SECOND, I'LL FIND
9 IT.

10 THE COURT: ALL RIGHT. ALL RIGHT, MR. CHRISCO,
11 ANYTHING YOU'D LIKE TO SUBMIT?

12 MR. CHRISCO: YES, YOUR HONOR. DOES THE COURT
13 DESIRE TO HEAR MY ARGUMENTS, YOUR HONOR?

14 THE COURT: YES, SIR.

15 MR. CHRISCO: YOUR HONOR, I'LL PASS UP STATE VS.
16 GREGORY. YOUR HONOR, THIS CASE IS VERY DISTINGUISHABLE
17 FROM GREGORY. GREGORY IS A 1941 CASE AND IN IT IT WAS AN
18 EMBEZZLEMENT CASE UP IN GREENVILLE COUNTY AND THERE AT THE
19 GREENVILLE HOSPITAL RECORDS AND STUFF WERE BEING
20 MANIPULATED AND MONEYS AND FUNDS WERE BEING TAKEN. DURING
21 THE INVESTIGATION OF THAT PARTICULAR CRIME THEY HAD AN
22 AUDITOR TO COME IN AND THE AUDITOR FOUND THAT THERE WAS A
23 LOT OF PEOPLE THAT WORKED THERE THAT COULD HAVE DONE THE
24 SAME THING. AT THE TRIAL GREGORY WAS WANTING TO POINT THE
25 FINGER AT EVERYBODY THAT HAD ACCESS AND THEY SAID NO, YOU

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1 CAN'T POINT THE FINGER OVER THERE. HERE YOU'VE GOT A
2 DEFENDANT WHO IS -- YOU'VE GOT A SUSPECT WHO WAS PUT THERE,
3 ACCORDING TO THEIR REPORT BY A CLARA MAE HARRELL WAS THERE,
4 BY SARAH WEAVER WAS THERE AND BY THEIR OWN INDICATION IN
5 THEIR REPORT IS THAT HOWARD PARKER WAS THERE. HOWARD
6 PARKER BECAME -- HE WAS A SUSPECT AT THAT POINT AND THEN
7 LATER BECAME A SNITCH TO THE POLICE DEPARTMENT AND IS A
8 SNITCH THAT THE POLICE DEPARTMENT HAD USED BEFORE. THEY
9 HAD EVEN LABELED HIM AS A CONFIDENTIAL INFORMANT 007. THEY
10 HAD PAID HIM MONIES FOR VARIOUS INFORMATION THAT HE HAD
11 GIVEN THEM OVER THE PAST. IN THIS PARTICULAR CASE HE
12 SUPPOSEDLY POINTED OUT CORTREAL SWINTON AND DERRICK
13 HOLLINGSWORTH AS BEING THE SHOOTERS. YOUR HONOR, I PASS UP
14 TO YOU NOW -- AND I APOLOGIZE. I DON'T HAVE BUT JUST THIS
15 ONE COPY OF IT. IT'S THE UNITED STATES SUPREME COURT CASE,
16 1995, STATE VS. WHITLEY, AND IN STATE VS. WHITLEY WHAT THE
17 JUDGE HAS GOT TO DO THERE IS THAT THEY APPROVE OF THE
18 DEFENSE IMPEACHING THE POLICE INVESTIGATION CONCERNING A
19 SNITCH THAT MAY HAVE BEEN INVOLVED IN THE CRIME ITSELF. SO
20 I THINK IT LENDS RIGHT TO WHAT WE'RE TALKING ABOUT HERE,
21 YOUR HONOR.

22 YOUR HONOR, AS FAR AS THE HEARSAY ISSUE, LET ME
23 ADDRESS THAT WHILE I'M STANDING. IT'S A FACT THAT THIS
24 WITNESS, DETECTIVE SESSIONS, HAD STATED THAT HE IS THE LEAD
25 INVESTIGATOR ON THE CASE AND ---

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1 THE COURT: NOW BUT NOT AT THE TIME.

2 MR. CHRISCO: THAT HE HAS REVIEWED THE WHOLE CASE
3 FILE.

4 MR. BELLAMY: YOUR HONOR, THAT'S ---

5 THE COURT: YOU'LL GET YOUR CHANCE.

6 MR. CHRISCO: YOUR HONOR, A POLICE FILE IS MADE
7 UP OF HEARSAY AND IT'S UP TO A DETECTIVE TO DISCERN THROUGH
8 IT TO MAKE HIS FINAL DECISION.

9 THE COURT: ALL RIGHT, SIR. ALL RIGHT, MR.
10 BELLAMY, I'LL HEAR FROM YOU NOW.

11 MR. BELLAMY: YOUR HONOR, THERE'S NOTHING IN THE
12 CASE FILE AND NONE OF THE FACTS THAT WE TURNED OVER TO MR.
13 CHRISCO AND TO MR. MONCKTON THAT INDICATE THAT HOWARD
14 PARKER HAD ANYTHING TO DO WITH THE SHOOTING, OKAY. WHAT I
15 MEAN BY THAT IS THE STATEMENT THAT SARAH WEAVER HAD, SHE
16 SAID -- THE FIRST STATEMENT SHE GAVE SHE SAID THAT DERRICK
17 HOLLINGSWORTH -- WHAT SHE REFERS TO AS S.A. -- FIRED FOUR
18 SHOTS. HOWARD PARKER IS ONE OF OUR WITNESSES. HE'S THE
19 ONE THAT IDENTIFIED CURTIS WILSON AS BEING THE THIRD
20 DEFENDANT INCLUDING THE VICTIM AT THE SCENE. WE WERE
21 GETTING READY TO GO TO TRIAL IN THE EARLY PART OF MARCH AND
22 HE DISAPPEARS AND WE TRY TO FIND HIM AND SINCE THIS TIME WE
23 HAVE NOT BEEN ABLE TO LOCATE HIM.

24 THE COURT: I UNDERSTAND.

25 MR. BELLAMY: HIS TESTIMONY IS CONSISTENT WITH

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1 WHAT SARAH WEAVER HAS SAID AND WHAT ALL THE OTHER STATE'S
2 WITNESSES HAVE SAID, YOUR HONOR.

3 THE COURT: WELL, LET'S SEE WHERE WE ARE AT THIS
4 POINT. MR. CHRISCO, IS IT YOUR IDEA -- AND I UNDERSTOOD
5 THAT ANYTHING -- AND I'LL LOOK THROUGH THE MOTION IN LIMINE
6 AGAIN THAT HAS BEEN FURNISHED TO ME. BUT IT'S MY
7 UNDERSTANDING THAT JUDGE PEEPLES HAD ALREADY RULED ON THE
8 PARKER TESTIMONY OR THE PARKER -- ABSENCE OF PARKER AS THE
9 WITNESS, BUT ARE YOU GETTING AT WILSON BEING A SUSPECT OR
10 PARKER BEING A SUSPECT?

11 MR. CHRISCO: YOUR HONOR, CURTIS WILSON WOULD BE
12 OUR NEXT POINT OF INQUIRY TO DETECTIVE SESSIONS BUT ---

13 THE COURT: WE'VE GOT TWO DIFFERENT SITUATIONS
14 THEN.

15 MR. CHRISCO: I UNDERSTAND, YOUR HONOR, BUT THEY
16 -- THE POLICE DEPARTMENT PUT DOWN HOWARD PARKER AS A
17 SUSPECT AND THEY PUT HIM DOWN AS A SUSPECT BECAUSE TWO
18 WITNESSES -- CLARA MAE HARRELL SAID THAT SHE SAW HOWARD
19 PARKER RIDING AROUND ON THE HANDLEBARS OF ---

20 THE COURT: I THOUGHT THIS HAD ALREADY BEEN
21 RESOLVED BY JUDGE PEEPLES.

22 MR. CHRISCO: NO, YOUR HONOR. HE JUST CONTINUED
23 THE CASE BECAUSE THEY COULD NOT FIND HOWARD PARKER AND THEY
24 SAID IF HE COULDN'T FIND HIM BY APRIL THE 10TH THEN THE
25 CASES WOULD BE DISMISSED WITH PREJUDICE.

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1 THE COURT: SO FROM THE STANDPOINT OF WHAT YOU'RE
2 TRYING TO ESTABLISH AT THIS TIME IS THAT AT ONE TIME HOWARD
3 PARKER WAS A SUSPECT AND LATER YOUR QUESTIONS ARE GOING TO
4 BE THAT -- WHAT'S WILSON'S FIRST NAME?

5 MR. BELLAMY: CURTIS WILSON, YOUR HONOR.

6 THE COURT: CURTIS WILSON WAS A SUSPECT. THOSE
7 ARE THE TWO THINGS YOU WANT TO ESTABLISH.

8 MR. CHRISCO: YES, YOUR HONOR.

9 THE COURT: NOW, WHAT IS YOUR POSITION WITH
10 REGARD TO HE DIDN'T GO AS FAR AS WANTING TO KNOW IF THERE
11 WERE ANY OTHER SUSPECTS, WERE THEY NAMED, WHO THEY WERE AND
12 WHAT HE'S TRYING TO DO. I SEE WHERE HE'S GOING. I'LL HEAR
13 FROM YOU WITH REGARD TO THAT, MR. BELLAMY. I HEARD FROM
14 YOU ON PARKER. I KNOW WHERE YOU STAND ON PARKER. WHAT'S
15 YOUR POSITION ON WILSON?

16 MR. BELLAMY: YOUR HONOR, ON CURTIS WILSON THE
17 EVIDENCE WE HAVE IN THE CASE CAME FROM HOWARD PARKER AND
18 ALL HOWARD PARKER SAID THAT CURTIS WILSON DID AT THE TIME
19 THIS INCIDENT OCCURRED WAS HIT ISAAC COX ON THE JAW AND
20 S.A. AND TREAL DID THE SHOOTING. THAT'S WHAT HOWARD PARKER
21 SAID. THE OTHER EVIDENCE WE HAVE REGARDING CURTIS WILSON
22 WAS FROM JOEY SCOTT. CURTIS WILSON CONTACTED JOEY SCOTT
23 SOMETIME TWO MONTHS AFTER THE INCIDENT DATE AND HAD A PHONE
24 CONVERSATION AND SAID TO HIM, "I ONLY HIT HIM ON THE JAW.
25 THE OTHER TWO BOYS SHOT HIM."

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1 THE COURT: JOEY SCOTT IS A NAME I HADN'T HEARD
2 BEFORE.

3 MR. BELLAMY: YOUR HONOR, JOEY SCOTT IS A WITNESS
4 WHEN WE DISMISSED THE CASE AGAINST CURTIS WILSON THEN AT
5 THAT POINT IN TIME HIS TESTIMONY WASN'T RELEVANT ANYMORE.
6 HIS TESTIMONY WAS REALLY CONCERNED WAS CURTIS WILSON. JOEY
7 SCOTT WOULD HAVE JUST TESTIFIED THAT CURTIS WILSON TOLD HIM
8 ---

9 THE COURT: WHAT'S THAT GOT TO DO WITH THE ISSUE
10 WE'RE DEALING WITH NOW? I DIDN'T THINK HE WAS TRYING TO
11 CAST ANY DOUBT ON JOEY SCOTT AS BEING A SUSPECT.

12 MR. BELLAMY: JOEY SCOTT WAS ---

13 THE COURT: OKAY, THEN LET'S SKIP THAT. LET'S GO
14 TO THE PEOPLE THAT WE'RE TALKING ABOUT HERE, PARKER AND
15 WILSON. WHAT ABOUT WILSON?

16 MR. BELLAMY: YOUR HONOR, WILSON ---

17 THE COURT: HAS HE GOT THE RIGHT -- AND IF NOT,
18 WHY NOT. HAS HE GOT THE RIGHT TO ASK IF CURTIS WILSON WAS
19 A SUSPECT IN THIS CASE?

20 MR. BELLAMY: NO, SIR, NOT ON THIRD-PARTY GUILT.

21 THE COURT: WHY NOT?

22 MR. BELLAMY: IT WOULD BE MERE CONJECTURE.
23 THERE'S NOTHING ---

24 THE COURT: HOW IS IT CONJECTURE WHEN THE STATE
25 INDICTED HIM?

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1 MR. BELLAMY: YOUR HONOR, IT'S NOT INCONSISTENT
2 WITH THE GUILT.

3 THE COURT: ALL RIGHT. ANYTHING ELSE?

4 MR. BELLAMY: YOUR HONOR, IF I COULD JUST CLARIFY
5 SOMETHING. WHAT I WAS TRYING TO SAY WITH REGARD TO JOEY
6 SCOTT, HE'S A STATE'S WITNESS AND ALL JOEY SCOTT WILL
7 TESTIFY IS THAT CURTIS WILSON TOLD HIM THAT HE HIT ISAAC
8 COX AND THAT DERRICK HOLLINGSWORTH AND CORTREAL SWINTON
9 SHOT HIM. AND WHEN WE DISMISSED THE CHARGE ON CURTIS
10 WILSON, AT THAT POINT IN TIME JOEY SCOTT WAS A NONFACTOR
11 BECAUSE HE CANNOT NOT TESTIFY AGAINST DERRICK HOLLINGSWORTH
12 AND HE CANNOT NOT TESTIFY AGAINST CORTREAL SWINTON BASED
13 HEARSAY AND SO ON.

14 THE COURT: ALL RIGHT, I UNDERSTAND. MR.
15 MONCKTON, DO YOU WANT TO BE HEARD IN REGARD TO ANY OF THIS?

16 MR. MONCKTON: YOUR HONOR, THE STATE INDICTED
17 SOMEBODY ELSE FOR THE CHARGE OF MURDER. THEY DIDN'T CHARGE
18 HIM FOR ABHAN. THEY CHARGED HIM AS A PRINCIPAL IN A MURDER
19 AND I THINK THAT MR. CHRISCO IS PROPER TO GO INTO THIS LINE
20 OF QUESTIONING SINCE THEY ARRESTED AND THEY INDICTED
21 SOMEBODY ELSE AS A PRINCIPAL IN A MURDER, NOT ---

22 THE COURT: WELL, WE HAVEN'T GOTTEN THAT FAR YET
23 AND THAT'S A LITTLE BIT MORE SERIOUS IF I HAD KNOWN YOU
24 WERE GOING IN THAT DIRECTION. RIGHT NOW HE'S FISHING FOR
25 SUSPECTS AND I'M PROBABLY NOT GOING TO LET HIM DO THAT

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1 BECAUSE ANYTIME A CRIME IS COMMITTED THERE ARE A LOT OF
2 INITIAL SUSPECTS THAT ARE ELIMINATED BY THE POLICE AND I
3 THINK THAT -- AND I'M GOING TO THINK ABOUT THAT BUT I HAVE
4 A LITTLE PROBLEM WITH THAT.

5 MR. CHRISCO: YOUR HONOR, MAY I BE HEARD ON THAT
6 PARTICULAR ISSUE?

7 THE COURT: YES, SIR.

8 MR. CHRISCO: AND I AGREE WITH THE COURT, YOUR
9 HONOR. IN MOST CRIMES THEY DEVELOP SOME LEADS AND THEY
10 BECOME SUSPECTS AND THEN THEY WEED THOSE OUT. IN THIS
11 PARTICULAR CASE THE SUSPECT WHO WAS NAMED BY TWO OTHER
12 WITNESSES AS BEING THERE AT THE TIME THE INCIDENT OCCURRED
13 LATER BECOMES A CONFIDENTIAL INFORMANT WHOM THE STATE
14 RELIES ON TO SAY THAT TWO OTHER PEOPLE DID IT.

15 THE COURT: BUT THEY DIDN'T INTRODUCE THAT
16 TESTIMONY TO IDENTIFY THESE TWO PEOPLE. THEY HAVE TO
17 INTRODUCE TESTIMONY FROM ANOTHER SOURCE THAT IDENTIFIES
18 THESE TWO PEOPLE.

19 MR. CHRISCO: BUT, YOUR HONOR ---

20 THE COURT: THEY ONLY USE THAT INDIVIDUAL'S
21 TESTIMONY AS THEIR IDENTIFICATION.

22 MR. CHRISCO: BUT, YOUR HONOR, THE SAME SNITCH
23 THAT WAS A SNITCH IN THE POLICE DEPARTMENT THAT WAS THERE
24 AND PUT THERE BY OTHER WITNESSES AT THE TIME OF THE
25 INCIDENT, NOW HE IS A STATE'S WITNESS TESTIFYING AGAINST

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1 TWO OTHER PEOPLE.

2 THE COURT: NO, HE'S NOT. HE HASN'T BEEN -- ARE
3 YOU TALKING ABOUT PARKER?

4 MR. CHRISCO: HOWARD PARKER.

5 THE COURT: HE HASN'T BEEN IN HERE TESTIFYING
6 AGAINST ANYBODY.

7 MR. CHRISCO: YOUR HONOR, HE WAS THE MAIN STATE'S
8 WITNESS BEFORE THIS STARTED. THEY GOT A CONTINUANCE. HE
9 IS STILL THE STATE'S WITNESS. IF THEY COULD HAVE FOUND HIM
10 THIS WEEK, HE WOULD HAVE BEEN A STATE'S WITNESS.

11 THE COURT: IT MAY BE BUT HE'S NOT A STATE'S
12 WITNESS TODAY.

13 MR. CHRISCO: AND WE HAVE SUBPOENAED HOWARD
14 PARKER, DEFENSE HAS ITSELF. WE WANT HIM TO GET ON THE
15 STAND, YOUR HONOR.

16 Q THE COURT: WELL, I DISAGREE WITH YOU, MR.
17 CHRISCO. I CAN'T GO ON WHO THEY MIGHT HAVE CALLED OR WHO
18 THEY MIGHT NOT HAVE CALLED. I'VE GOT TO GO ON WHO THEY
19 HAVE CALLED AND MR. PARKER HAS NOT BEEN IN THIS COURT AND
20 HAS NOT SAID ANYTHING. I WOULD LET YOU GO INTO IT IF THAT
21 WERE THE CASE. BUT THE POINT IS ALL HE DID WAS GIVE
22 INFORMATION TO THE POLICE THAT LED THEM TO OTHER WITNESSES
23 WHOM THEY HAVE CALLED AND I DON'T -- YOU KNOW, I DON'T SEE
24 THAT THAT MAKES ANY DIFFERENCE.

25 MR. CHRISCO: YOUR HONOR, I HATE TO BELABOR THE

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1 POINT.

2 THE COURT: WELL, DON'T. I DON'T WANT TO HEAR
3 FROM YOU ANYMORE.

4 MR. CHRISCO: BUT, YOUR HONOR, I ---

5 THE COURT: I DON'T WANT TO HEAR FROM YOU
6 ANYMORE, MR. CHRISCO. I'VE HEARD ENOUGH. I'LL BE GLAD TO
7 HEAR FROM YOU WITH REGARD IF THERE ARE ANY OTHER
8 AUTHORITIES THAT THE PARTIES WANT TO SUBMIT TO ME WITH
9 REGARD TO THE ISSUES OF WHETHER MR. PARKER CAN BE
10 IDENTIFIED BEFORE THE JURY OR MR. WILSON CAN BE IDENTIFIED
11 BEFORE THE JURY OR GARY SCOTT. RIGHT OFFHAND, THE ISSUE OF
12 SCOTT DOESN'T SEEM -- SEEMS TO ME TO BE COMPLETELY
13 EXTRANEOUS. BUT IF THERE'S ANYTHING THAT ANYBODY WANTS TO
14 SUBMIT TO ME, I WANT TO GO BACK AND READ THE CASES AND
15 THINK ABOUT IT FOR A MINUTE. MY OFFHAND IMPRESSION IS -
16 AND I'LL HEAR FROM YOU MORE IN A FEW MINUTES IF YOU WANT
17 TO. MY OFFHAND IMPRESSION IS THE MATTER WITH REGARD TO MR.
18 PARKER IS PROBABLY NOT ADMISSIBLE. THE MATTER THAT MR.
19 WILSON WAS INDICTED MAY BE ADMISSIBLE AND WAS CONSIDERED
20 THE SUSPECT IN THIS CASE. BUT I WANT TO READ THESE THINGS
21 AND I'LL BE IN FRONT OF YOU IN A FEW MINUTES.

22 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

23 THE COURT: THE COURT HAS CONSIDERED THE MATTER
24 OF THE PROFFERED TESTIMONY AND THE AUTHORITIES CITED TO THE
25 COURT. IN MY VIEW THE TESTIMONY REGARDING MR. PARKER'S

MR. COX-CROSS-EXAMINATION BY MR. MONCKTON

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1 ROLE IN THIS CASE IS VERY REMOTE AND UNDER THE GREGORY CASE
2 AND UNDER A LATER CASE OF STATE VS. COOPER THE SUPREME
3 COURT HELD THAT THE COURT HAD IMPOSED STRICT LIABILITY --
4 STRICT LIMITS ON THE ADMISSIBILITY OF THIRD-PARTY GUILT.
5 THE EVIDENCE OFFERED BY AN ACCUSED AS TO THE COMMISSION OF
6 A CRIME BY ANOTHER PERSON MUST BE LIMITED TO SUCH FACTS AS
7 ARE INCONSISTENT WITH HIS OWN GUILT AND AS SUCH FACTS AS TO
8 RAISE A REASONABLE INFERENCE OR PRESUMPTION OF HIS OWN
9 INNOCENCE. THE OTHER CASES THAT HAVE BEEN CITED THAT I
10 HAVE ALSO REVIEWED INCLUDE THE STATE VS. PARKER. IN MY
11 VIEW THE TESTIMONY I BELIEVE OF MR. HOWARD PARKER IN THIS
12 CASE WOULD BE SO REMOTE THAT IT WOULD BE SIMPLY NOTHING
13 MORE THAN TO CAST A MERE SUSPICION AND IS INADMISSIBLE.
14 HOWEVER, WITH REGARD TO THE PROFFERED TESTIMONY CONCERNING
15 MR. WILSON, A DIFFERENT SITUATION ARISES BECAUSE HE WAS
16 ACTUALLY ARRESTED AND INDICTED IN THIS CASE OR IN A
17 SEPARATE CASE ON HIS OWN BUT AS A PARTICIPANT IN THESE
18 CRIMES. AND THE COURT IS IN THE POSITION OF HAVING TO
19 WEIGH THE FACT THAT IT IS NOT INCONSISTENT WITH THE
20 INNOCENCE OR GUILT OF THESE DEFENDANTS BUT IS MORE THAN A
21 MERE SUSPICION OR CONJECTURAL INFERENCE BECAUSE HE WAS
22 ACTUALLY CHARGED WITH THE CRIME. WE'RE GOING TO FALL
23 WITHIN THE STANDARD TEST FOR DETERMINING THIRD-PARTY GUILT,
24 WHICH REQUIRES THOSE TWO THINGS. ONE OF THEM IS PRESENT
25 AND ONE OF THEM IS NOT. IT GOES BEYOND A BARE SUSPICION OR

MR. COX-CROSS-EXAMINATION BY MR. MONCKTON

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1 CONJECTURAL INFERENCE BECAUSE HE WAS ACTUALLY CHARGED BUT
2 IT DOES NOT MEET THE TEST OF THE INCONSISTENCY. BASED ON
3 THAT, I AM GOING TO ALLOW THE TESTIMONY THAT MR. WILSON WAS
4 ARRESTED, HE WAS INDICTED AND CHARGED WITH THESE CRIMES;
5 BUT AT THE SAME TIME I WILL ALLOW THE STATE UNDER WHATEVER
6 MEANS THEY DESIRE TO SHOW TO THE JURY EITHER THROUGH THE
7 COURT OR THROUGH THEIR TESTIMONY THEY WISH TO PRESENT THAT
8 THESE -- THAT HIS INDICTMENT AND CHARGE FOR THESE CRIMES IS
9 NOT INCONSISTENT WITH THE GUILT OF THE TWO DEFENDANTS IN
10 THIS CASE. AND ACCORDING TO THE WAY WE DISCUSSED THAT IN
11 CHAMBERS, MR. HUMPHRIES, I BELIEVE THAT YOU INDICATED THAT
12 THE STATE WOULD PREFER TO MEET THAT BURDEN BY JUST HAVING
13 THE COURT READ ALL THREE INDICTMENTS TO THE JURY, THE
14 INDICTMENT ON DERRICK HOLLINGSWORTH, THE INDICTMENT ON
15 CORTREAL SWINTON AND THE INDICTMENT ON CURTIS WILSON, JR.

16 MR. HUMPHRIES: YES, SIR, YOUR HONOR, THAT IS THE
17 STATE'S PREFERENCE.

18 THE COURT: ALL RIGHT.

19 MR. HUMPHRIES: AND WE WOULD ASK THAT YOU DO THAT
20 CONTEMPORANEOUSLY WITH THE OTHER TESTIMONY.

21 THE COURT: AFTER THE QUESTIONS ARE ASKED. ALL
22 RIGHT. DO YOU UNDERSTAND WHERE WE ARE, MR. CHRISCO?

23 MR. CHRISCO: YES, YOUR HONOR.

24 MR. MONCKTON: YES, SIR, YOUR HONOR.

25 THE COURT: ALL RIGHT, READY TO GO FORWARD.

MR. COX-CROSS-EXAMINATION BY MR. MONCKTON

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1 BRING THE JURY IN, PLEASE.

2 (WHEREUPON, AT 11:18 A.M., THE JURY ENTERED THE
3 COURTROOM AND THE FOLLOWING PROCEEDINGS WERE HAD.)

4 THE COURT: THANK YOU, LADIES AND GENTLEMEN, AND
5 THANK YOU FOR YOUR PATIENCE. WE DID HAVE RATHER SERIOUS
6 EVIDENTIARY MATTERS THAT WE HAD TO DEAL WITH THAT REQUIRED
7 SOME RESEARCH AND I WANTED TO MAKE SURE THAT WE HANDLED
8 THOSE CORRECTLY SO THAT WAS THE REASON FOR KEEPING YOU IN
9 THE JURY ROOM FOR A LITTLE LONGER THAN I WOULD NORMALLY
10 LIKE TO. AS I TOLD YOU AT THE BEGINNING OF THIS TRIAL, I
11 TRY TO RESOLVE EVIDENTIARY MATTERS FROM THE BENCH OR EITHER
12 AT A BENCH CONFERENCE TO KEEP YOU FROM HAVING TO GO BACK
13 AND FORTH TO YOUR JURY ROOM MORE THAN IS ABSOLUTELY
14 NECESSARY, BUT THIS WAS ONE OF THOSE SITUATIONS WHERE IT
15 WAS NECESSARY THAT YOU GO TO YOUR JURY ROOM. HOWEVER, WE
16 ARE NOW READY TO PROCEED. MR. CHRISCO, YOU MAY RESUME YOUR
17 CROSS-EXAMINATION.

18 CROSS-EXAMINATION CONTINUED

19 BY MR. CHRISCO:

20 Q DETECTIVE SESSIONS, THERE WAS ANOTHER
21 INDIVIDUAL WHO WAS ARRESTED AND CHARGED FOR THE MURDER OF
22 ISAAC COX; IS THAT NOT TRUE?

23 A YES, SIR, THAT IS CORRECT.

24 Q AND THIS OTHER INDIVIDUAL, WAS HE INDICTED
25 BY THE GRAND JURY OF HORRY COUNTY?

MR. COX-CROSS-EXAMINATION BY MR. MONCKTON

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1 A YES, SIR, THAT IS ALSO CORRECT.

2 Q WOULD YOU TELL ME WHAT HE WAS INDICTED FOR,
3 IF YOU KNOW?

4 A I THINK MURDER, SIR.

5 MR. BELLAMY: YOUR HONOR, AT THIS TIME WE WOULD
6 REQUEST THE COURT PUBLISH.

7 THE COURT: ALL RIGHT, LET ME SEE. ARE THERE ANY
8 MORE QUESTIONS YOU'VE GOT IN CONNECTION WITH THIS, MR.
9 CHRISCO?

10 MR. CHRISCO: YES, YOUR HONOR, I HAVE JUST A FEW
11 MORE.

12 THE COURT: LET HIM GO AHEAD AND THEN ---

13 MR. BELLAMY: I WAS UNAWARE HE HAD ANY MORE
14 QUESTIONS ON THAT LINE OF QUESTIONING.

15 THE COURT: BEFORE WE CHANGE THE SUBJECT.

16 MR. CHRISCO: YES, SIR. I'M GETTING READY TO
17 CHANGE THE SUBJECT.

18 THE COURT: ALL RIGHT, OKAY. LADIES AND
19 GENTLEMEN, IN THAT CONNECTION SINCE HE'S GOING TO CHANGE TO
20 A DIFFERENT SUBJECT, I DO WANT TO READ TO YOU AT THIS TIME
21 FOR YOUR INFORMATION AND YOU ARE TO CONSIDER THIS IN ANY
22 DELIBERATIONS THAT YOU WILL HAVE IN THIS CASE. I WANT TO
23 READ TO YOU THREE INDICTMENTS. I'M GOING TO READ YOU THE
24 INDICTMENT THAT WAS RETURNED BY THE GRAND JURY OF HORRY
25 COUNTY ON DERRICK HOLLINGSWORTH. I'M GOING TO READ YOU THE

MR. COX-CROSS-EXAMINATION BY MR. MONCKTON

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1 INDICTMENT THAT WAS RETURNED BY THE GRAND JURY OF HORRY
2 COUNTY ON CORTREAL SWINTON AND I'M GOING TO READ YOU THE
3 INDICTMENT THAT WAS RETURNED BY THE GRAND JURY OF HORRY
4 COUNTY ON CURTIS WILSON, JR.

5 FIRST IS THE INDICTMENT ON DERRICK MARCEL
6 HOLLINGSWORTH. THE INDICTMENT SAYS THAT DERRICK MARCEL
7 HOLLINGSWORTH DID ALONG WITH CORTREAL LAMONT SWINTON AND/OR
8 CURTIS WILSON, JR., IN HORRY COUNTY ON OR ABOUT OCTOBER THE
9 4TH, 1997, WILFULLY, FELONIOUSLY AND INTENTIONALLY WITH
10 MALICE AFORETHOUGHT KILLED THE VICTIM ISAAC LEE COX BY
11 MEANS OF SHOOTING THE VICTIM IN THE HEAD AND THE UPPER
12 TORSO AREA AND THE VICTIM DIED AS A PROXIMATE RESULT
13 THEREOF IN HORRY COUNTY ON OR ABOUT OCTOBER THE 4TH, 1997,
14 IN VIOLATION OF SECTION 16-3-10 OF THE CODE OF LAWS OF
15 SOUTH CAROLINA, 1976 AS AMENDED AND THE COMMON LAW OF SOUTH
16 CAROLINA.

17 THE INDICTMENT ON CORTREAL LAMONT SWINTON THAT
18 CORTREAL LAMONT SWINTON DID ALONG WITH DERRICK MARCEL
19 HOLLINGSWORTH AND/OR CURTIS WILSON, JR., IN HORRY COUNTY ON
20 OR ABOUT OCTOBER THE 4TH, 1997, WILFULLY, FELONIOUSLY AND
21 INTENTIONALLY WITH MALICE AFORETHOUGHT KILL THE VICTIM,
22 ISAAC LEE COX BY MEANS OF SHOOTING THE VICTIM IN THE HEAD
23 AND UPPER TORSO AREA AND THE VICTIM DIED AS THE PROXIMATE
24 RESULT THEREOF IN HORRY COUNTY ON OR ABOUT OCTOBER THE 4TH,
25 1997 IN VIOLATION OF SECTION 16-3-10 OF THE CODE OF LAWS OF

MR. COX-CROSS-EXAMINATION BY MR. MONCKTON

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1 SOUTH CAROLINA, 1976 AS AMENDED, AND THE COMMON LAW OF
2 SOUTH CAROLINA.

3 AND THEN THE INDICTMENT ON CURTIS WILSON, JR.
4 THAT CURTIS WILSON, JR., DID ALONG WITH DERRICK MARCEL
5 HOLLINGSWORTH AND/OR CORTREAL LAMONT SWINTON IN HORRY
6 COUNTY ON OR ABOUT OCTOBER THE 4TH, 1997, WILFULLY,
7 FELONIOUSLY AND INTENTIONALLY WITH MALICE AFORETHOUGHT
8 KILL THE VICTIM, ISAAC LEE COX BY MEANS OF SHOOTING THE
9 VICTIM IN THE HEAD AND UPPER TORSO AREA AND THE VICTIM DIED
10 AS THE PROXIMATE RESULT THEREOF IN HORRY COUNTY ON OR ABOUT
11 OCTOBER THE 4TH, 1997, IN VIOLATION OF SECTION 16-3-10 OF
12 THE CODE OF LAWS OF SOUTH CAROLINA, 1976 AS AMENDED, AND
13 THE COMMON LAW OF SOUTH CAROLINA.

14 MR. HUMPHRIES: THANK YOU, YOUR HONOR.

15 THE COURT: ALL RIGHT, MR. CHRISCO, YOU MAY
16 RESUME.

17 CROSS-EXAMINATION CONTINUED

18 BY MR. CHRISCO:

19 Q I NEED TO CLEAR UP ONE THING IF YOU COULD
20 FOR ME, DETECTIVE SESSIONS. THERE WAS A NAME USED IN ONE
21 OF THE STATEMENTS, THE NAME OF - I THINK IT WAS IN SARAH
22 WEAVER'S STATEMENT, RED. WHO IS RED?

23 A I BELIEVE SHE LATER IDENTIFIED HIM AS
24 DERRICK HOLLINGSWORTH.

25 MR. CHRISCO: THE COURT'S INDULGENCE, YOUR HONOR.

MR. COX-CROSS-EXAMINATION BY MR. MONCKTON

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1 THE COURT: YES, SIR.

2 Q DETECTIVE SESSIONS, I DON'T WANT TO BELABOR
3 THE POINT BUT THERE WAS ONLY ONE TAPED INTERVIEW IN THIS
4 WHOLE CASE, THAT BEING OF KIM BROWN.

5 A ACTUALLY, I CONDUCTED A TAPED INTERVIEW AND
6 I BELIEVE SERGEANT TAYLOR ALSO CONDUCTED A TAPED INTERVIEW.

7 Q DO YOU KNOW WHAT TAPED INTERVIEWS SERGEANT
8 TAYLOR CONDUCTED?

9
10 A I DON'T RECALL RIGHT OFF.

11 Q IF YOU WOULD SEE YOUR CASE FILE, WOULD THAT
12 REFRESH YOUR RECOLLECTION?

13 A IT WOULDN'T BE IN MY CASE FILE. IT MIGHT BE
14 IN THE CASE FILE THAT BILL - SERGEANT TAYLOR HAS. I ONLY
15 HAVE THE INFORMATION AND THE DOCUMENTATION THAT I PREPARED
16 AS FAR AS THIS CASE IS CONCERNED.

17 Q SO YOU'RE SAYING THAT THERE'S TWO SEPARATE
18 FILES?

19 A NO. I'M SAYING THAT I AM ONLY IN POSSESSION
20 OF THE INFORMATION AND THE INTERVIEWS THAT I CONDUCTED AS
21 FAR AS THIS CASE IS CONCERNED. THAT IS ALL THAT I AM IN
22 POSSESSION OF.

23 Q ARE YOU NOT THE LEAD INVESTIGATOR OF THIS
24 CASE NOW?

25 A RIGHT, BUT AS I EXPLAINED AND I'LL EXPLAIN

MR. COX-CROSS-EXAMINATION BY MR. MONCKTON

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1 AGAIN, MY ONLY PURPOSE IN THIS INVESTIGATION WAS TO
2 INTERVIEW POSSIBLE WITNESSES IN THIS CASE.

3 Q AND YOU DIDN'T BRING THE WHOLE CASE FILE?

4 A NO, SIR, I DIDN'T HAVE A NEED TO. YOU TOLD
5 ME ABOUT THE WHOLE CASE FILE YESTERDAY.

6 MR. CHRISCO: NO FURTHER QUESTIONS.

7 THE COURT: REDIRECT, MR. BELLAMY?

8 MR. BELLAMY: THE STATE HAS NO FURTHER QUESTIONS.

9 THE COURT: ALL RIGHT, THANK YOU SERGEANT. YOU
10 MAY STEP DOWN.

11 THE WITNESS: THANK YOU, SIR.

12 THE COURT: ALL RIGHT, WHO IS THE NEXT WITNESS,
13 MR. BELLAMY?

14 MR. BELLAMY: YOUR HONOR, THIS WOULD BE THE
15 TRANSCRIPT OF THE VIDEOTAPE DEPOSITION OF DR. PROCTOR, YOUR
16 HONOR.

17 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN OF THE
18 JURY, THE NEXT WITNESS THAT THE STATE IS CALLING IS DR. LEE
19 PROCTOR. I WILL TELL YOU THAT OUR RULES PROVIDE THAT UNDER
20 CERTAIN CIRCUMSTANCES THE TESTIMONY OF A WITNESS MAY BE
21 PRESENTED BY WHAT WE CALL DEPOSITION. UNDER CERTAIN
22 CIRCUMSTANCES A WITNESS CAN BE REQUIRED TO APPEAR AT A
23 GIVEN TIME AND PLACE. THE WITNESS IS PUT UNDER OATH AND
24 THE LAWYERS ARE ALL THERE AND THE WITNESS IS ASKED A SERIES
-25 OF QUESTIONS AND A SERIES OF ANSWERS ARE GIVEN AND THEN

MR. COX-CROSS-EXAMINATION BY MR. MONCKTON

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1 THOSE ARE EITHER VIDEOTAPED OR TYPED UP INTO A TRANSCRIPT,
2 WHICH WE CALL A DEPOSITION. SO, BASICALLY, A DEPOSITION IS
3 PRETRIAL SWORN TESTIMONY. THE PARTIES HAVE AGREED TO
4 PRESENT THE TESTIMONY OF DR. PROCTOR BY DEPOSITION RATHER
5 THAN HIM BEING HERE. YOU SHOULD TREAT THIS TESTIMONY JUST
6 EXACTLY AS IF THE WITNESS WERE HERE TESTIFYING. THEY ARE
7 GOING TO -- THE LAWYERS WILL READ THE SAME QUESTIONS THAT
8 WERE ASKED AT THE DEPOSITION. MR. DEBUSK IS GOING TO ASK
9 AS DR. PROCTOR AND HE'S GOING TO READ THE ANSWERS. BUT YOU
10 SHOULD TREAT THIS AS THE TESTIMONY OF DR. PROCTOR JUST AS
11 IF HE WERE TESTIFYING TODAY AND GIVE IT SUCH WEIGHT AS YOU
12 THINK IS APPROPRIATE. I WILL ALSO TELL YOU THAT I HAVE
13 QUALIFIED DR. PROCTOR AS AN EXPERT IN THE FIELD OF FORENSIC
14 PATHOLOGY. NOW, WHAT THAT MEANS IS THAT ORDINARILY A
15 WITNESS WHO IS NOT QUALIFIED AS AN EXPERT WITNESS CAN ONLY
16 TESTIFY TO THOSE THINGS THAT ARE WITHIN HIS OR HER
17 PERCEPTION; THAT IS, THAT HE SAW, HEARD, DID, SOMETHING OF
18 THAT NATURE. HOWEVER, WHEN A WITNESS IS QUALIFIED BY
19 REASON OF EXPERIENCE, TRAINING, EDUCATION OR OTHERWISE,
20 THAT WITNESS MAY GIVE AN OPINION IF HE WAS QUALIFIED AS AN
21 EXPERT. SO THE DIFFERENCE, BASICALLY, BETWEEN AN EXPERT
22 WITNESS AND A LAY WITNESS IS THAT AN EXPERT WITNESS CAN
23 GIVE AN OPINION WHEREAS A LAY WITNESS CANNOT GIVE AN
24 OPINION. AND I QUALIFIED DR. PROCTOR AS AN EXPERT IN THE
25 FIELD OF FORENSIC PATHOLOGY. ALL RIGHT, MR. DEBUSK.

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF HORRY

99-GS-26-1651

99-GS-26-1653

STATE OF SOUTH CAROLINA,)

vs.)

CORTREAL LAMONT SWINTON, AND)
DERRICK MARCEL HOLLINGSWORTH.)

TRANSCRIPT OF RECORD

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APRIL 11-13, 2000

CONWAY, SOUTH CAROLINA

BEFORE:

THE HONORABLE, HOWARD P. KING, JUDGE; AND A JURY

APPEARANCES:

BY: FRANCES A. HUMPHRIES, JR., ESQ., ASSISTANT SOLICITOR
ATTORNEY FOR STATEHOWELL V. BELLAMY, III, ESQ., ASSISTANT SOLICITOR
ATTORNEY FOR STATEBY: WILLIAM H. MONCKTON, VI, ESQ.
ATTORNEY FOR DERRICK MARCEL HOLLINGSWORTHWILLIAM E. CHRISCO, ESQ., OFFICE OF PUBLIC DEFENDER
ATTORNEY FOR CORTREAL LAMONT SWINTONBRENDA R. BABB
Circuit Court Reporter

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DR. LEE PROCTOR - DIRECT EXAMINATION BY MR. BELLAMY

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1 GEORGE DEBUSK

2 HAVING BEEN DULY SWORN,

3 READ FROM THE TRANSCRIPT OF DR. E. LEE PROCTOR

4 AS FOLLOWS:

5 DIRECT EXAMINATION OF DR. PROCTOR

6 BY MR. BELLAMY:

7 Q DR. PROCTOR, HOW ARE YOU EMPLOYED?

8 A I'M SELF-EMPLOYED.

9 Q IN WHAT CAPACITY ARE YOU EMPLOYED?

10 A I'M A PHYSICIAN ENGAGED IN THE PRACTICE OF
11 PATHOLOGY.

12 Q WHERE DO YOU PRACTICE?

13 A MY PRACTICE IS AT A HOSPITAL IN MYRTLE
14 BEACH, GRAND STRAND REGIONAL MEDICAL CENTER.

15 Q TELL THE JURY, IF YOU WILL JUST BRIEFLY,
16 WHAT A PATHOLOGIST IS AND WHAT TRAINING AND EDUCATION YOU
17 HAVE RECEIVED IN ORDER TO BECOME A PATHOLOGIST.

18 A OKAY, TRAINING AND EDUCATION. I RECEIVED AN
19 UNDERGRADUATE DEGREE IN BIOLOGY AT CLEMSON UNIVERSITY. I
20 RECEIVED A MEDICAL DEGREE AT THE MEDICAL UNIVERSITY OF
21 SOUTH CAROLINA. THIS WAS FOLLOWED BY A COMBINED RESIDENCY
22 PROGRAM IN ANATOMIC AND CLINICAL PATHOLOGY AT WALTER REED
23 ARMY MEDICAL CENTER IN WASHINGTON, D.C. UPON COMPLETION OF
24 THAT TRAINING I SAT FOR AND PASSED THE COMBINED ANATOMIC
25 AND CLINICAL PATHOLOGY BOARD EXAM FOR THE AMERICAN BOARD OF

DR. LEE PROCTOR - DIRECT EXAMINATION BY MR. BELLAMY

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1 PATHOLOGY AND I'VE BEEN BOARD-CERTIFIED SINCE 1982.
2 FOLLOWING THAT I WAS CHIEF OF CLINICAL PATHOLOGY AT THE
3 ARMY HOSPITAL AT FORT BRAGG, NORTH CAROLINA. I CAME TO
4 MYRTLE BEACH IN 1986 AND IN 1994 COMPLETED ALL THE
5 REQUIREMENTS, SAT FOR AND WAS SUB-SPECIALTY CERTIFIED BY
6 THE AMERICAN BOARD OF PATHOLOGY AND FORENSIC PATHOLOGY.
7 NOW, A PATHOLOGIST IS A PHYSICIAN ENGAGED IN THE STUDY OF
8 DISEASE OR THE DIAGNOSIS OF DISEASE. AS AN ANATOMICAL
9 CLINICAL PATHOLOGIST, WE DO BIOPSY SPECIMENS. WE DO
10 PSYCHOLOGY. WE DO PAP SMEARS AND WE RUN A CLINICAL LAB,
11 WHICH INCLUDES A BLOOD BANK. MICROBIOLOGY, HEMATOLOGY,
12 CHEMISTRY AND ALL THOSE AREAS. AS A FORENSIC PATHOLOGIST.
13 I'M ENGAGED IN THE SCIENTIFIC INVESTIGATION OF DEATH. I'VE
14 WORKED WITH LAW ENFORCEMENT, THE CORONER'S OFFICE AND
15 TOGETHER DO A MEDICAL INVESTIGATION AS TO THE CAUSE AND
16 MANNER OF DEATH.

17 Q NOW THAT WE'VE HAD YOUR QUALIFICATIONS AS A
18 FORENSIC PATHOLOGIST, DID YOU HAVE AN OCCASION TO PERFORM
19 AN AUTOPSY ON THE BODY OF ISAAC COX?

20 A YES, SIR, I DID.

21 Q DOCTOR, WHEN WAS THE FIRST TIME YOU CAME IN
22 CONTACT WITH THE BODY OF ISAAC COX?

23 A I WAS CONTACTED BY THE HORRY COUNTY DEPUTY
24 CORONER, MR. DAN BELLAMY, AND TOLD THAT THERE HAD BEEN A
25 GUNSHOT DEATH AND HE ASKED IF I WOULD DO AN AUTOPSY. I

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1 TOLD HIM OF COURSE. AND THIS WAS PERFORMED ON OCTOBER 4,
2 1977 -- IN PARENTHESES SIC, INDICATING AN ERROR -- AND THAT
3 WAS THE FIRST TIME I CAME IN CONTACT.

4 THE COURT: LINE 21.

5 MR. DEBUSK: LINE 21, YES, YOUR HONOR. LINE 21
6 IS A QUESTION, YOUR HONOR.

7 THE COURT: I KNOW IT.

8 MR. DEBUSK: WHERE WAS THE BODY TRANSPORTED FROM?

9 THE COURT: THE QUESTION IS LINE 21. PAGE 8,
10 LINE 21, MR. BELLAMY.

11 MR. DEBUSK: I BELIEVE THAT'S MR. CHRISCO'S
12 QUESTION.

13 MR. BELLAMY: THAT'S MR. CHRISCO'S QUESTION, YOUR
14 HONOR.

15 THE COURT: OH, OKAY.

16 MR. CHRISCO: IT IS.

17 MR. BELLAMY: (CONTINUING)

18 Q AGAIN, DR. PROCTOR ---

19 MR. BELLAMY: YOUR HONOR, I THINK WE GO TO THIS
20 PORTION RIGHT HERE.

21 MR. BELLAMY: (CONTINUING)

22 Q --- WHERE WAS THE BODY TRANSPORTED FROM?

23 THE COURT: WHERE ARE YOU READING FROM, MR.
24 BELLAMY?

25 MR. BELLAMY: YOUR HONOR, IT'S LINE 18 ON PAGE 9.

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1 THE COURT: OKAY. KEEP US UP TO DATE.

2 THE WITNESS: (CONT)

3 A THAT I DO NOT KNOW. I WAS TOLD THAT THERE
4 WAS AN ALTERCATION OR AN INCIDENT SOMEWHERE IN THE CONWAY
5 AREA AND I THINK THAT HE WAS PRONOUNCED DEAD AT THE CONWAY
6 HOSPITAL SO IT WOULD HAVE BEEN TRANSPORTED FROM THAT
7 HOSPITAL.

8 Q DR. PROCTOR, WHO WAS PRESENT DURING THAT
9 AUTOPSY?

10 A I WAS PRESENT AND MY ASSISTANT WHO HELPS ME
11 WITH AUTOPSIES, MR. LEROY RICH, AND I THINK TWO OFFICERS
12 FROM THE CONWAY CITY POLICE DEPARTMENT; THAT IS, OFFICER
13 TAYLOR AND OFFICER PARKER, IF I'M NOT MISTAKEN.

14 Q BRIEFLY, DOCTOR, HOW DOES ONE CONDUCT AN
15 AUTOPSY?

16 A A FORENSIC AUTOPSY STARTS WITH WHAT HISTORY
17 THAT I HAVE AVAILABLE. IT IS USUALLY GIVEN TO ME BY THE
18 CORONER OR ANY INVESTIGATIVE AUTHORITIES WHO ARE THERE.
19 THIS IS FOLLOWED BY AN EXTERNAL EXAMINATION, THEN AN
20 INTERNAL EXAMINATION WITH A REVIEW OF ALL ORGANS. THIS IS
21 ALSO FOLLOWED BY A MICROSCOPIC EXAMINATION OF WHAT IS
22 DEEMED NECESSARY TO EXAMINE AND THEN A FINAL REPORT IS PUT
23 TOGETHER GIVING ALL OF THAT DATA.

24 Q ALL RIGHT.

25 A ADDITIONAL THINGS THAT WE DO ARE

DR. LEE PROCTOR - DIRECT EXAMINATION BY MR. BELLAMY 276

1 TOXICOLOGICAL EVALUATIONS AND THE RADIOGRAPHS AND THAT KIND
2 OF THING ALSO.

3 Q AND DID YOU DO THAT IN THIS CASE?

4 A YES, SIR, WE DID.

5 Q AS IT RELATES TO THE FIELD OF FORENSIC
6 PATHOLOGY, WOULD YOU DEFINE AND EXPLAIN THE TERM "RANGE OF
7 FIRE?"

8 A RANGE OF FIRE. WELL, RANGE OF FIRE IN TERMS
9 OF FORENSIC PATHOLOGY, THE RANGE OF FIRE IS BASICALLY THE
10 DISTANCE OF THE MUZZLE OF A GUN FROM THE BODY AT THE TIME A
11 PROJECTILE WAS FIRED FROM THAT WEAPON. IN OUR TERMS WE
12 LOOK FOR SEVERAL THINGS. NUMBER ONE IS THE CONTACT WHICH
13 THE WEAPON GETS TO THE SKIN OF THE PERSON BEING SHOT. WE
14 LOOK FOR CLOSE RANGE AND THEN FOR GREAT DISTANCE. CONTACT
15 WOULD USUALLY BE ASSOCIATED WITH AN IMPRINT OF THE MUZZLE
16 OF THE WEAPON. YOU USUALLY DO NOT SEE POWDER RESIDUE
17 BECAUSE THAT IS FORCED INTO THE WOUND BECAUSE OF THE
18 CONTACT. CLOSE RANGE YOU SEE RESIDUE OF POWDER THAT COMES
19 OUT OF THE END OF THE BARREL. IN A SITUATION WITH
20 HANDGUNS, THAT IS USUALLY SEEN WITHIN A DISTANCE OF 18 TO
21 24 INCHES. WITH THINGS LIKE SHOTGUNS THE DISTANCE MAY BE
22 UP TO ABOUT 30 TO 36 INCHES. AND THEN DISTANCE IS ANYTHING
23 -- WOULD BE ANYTHING GREATER THAN A DISTANCE OF 18 TO 24
24 INCHES. THERE'S JUST NO RESIDUE THAT YOU CAN SEE, SO IT'S
25 VERY DIFFICULT TO TELL.

DR. LEE PROCTOR - DIRECT EXAMINATION BY MR. BELLAMY 277

1 Q DOCTOR, WHAT I'D LIKE FOR YOU TO DISCUSS NOW
2 WAS THE PRESENCE OF ANY CHARACTERISTICS OF THE WOUNDS
3 LOCATED ON THE BODY OF ISAAC COX AND BEFORE YOU TALK ABOUT
4 THAT, LET ME SHOW YOU WHAT HAS BEEN PREVIOUSLY MARKED AS
5 STATE'S EXHIBIT NUMBER 4 FOR IDENTIFICATION. TAKE A MINUTE
6 TO LOOK AT THEM.

7 A (THE WITNESS COMPLIES.)

8 Q HAVE YOU PREVIOUSLY REVIEWED THIS DRAWING?

9 A YES, SIR, I HAVE. YOU BROUGHT ME A SMALL
10 COPY OF THAT.

11 Q DOCTOR, FOR WHAT PURPOSE DID YOU REVIEW IT?

12 A I REVIEWED THAT FOR ILLUSTRATIVE PURPOSES TO
13 DEMONSTRATE THE WOUNDS RECEIVED BY THE VICTIM, ISAAC COX.

14 Q IS IT ANATOMICALLY CORRECT?

15 A THE DRAWING IS OF A MALE INDIVIDUAL, WHICH
16 CERTAINLY MR. COX WAS, AND THE DIAGRAMS FOR THAT DRAWING
17 ARE CORRECT, YES.

18 Q WOULD THE DRAWING, OR THE DIAGRAM, ASSIST
19 YOU IN EXPLAINING YOUR TESTIMONY TO THE JURY?

20 A IT CERTAINLY WOULD BE HELPFUL.

21 Q DOCTOR, I MARKED THE DRAWING AS STATE'S
22 EXHIBIT NUMBER 4 FOR IDENTIFICATION AT THIS TIME AND I'M
23 GOING TO HAND YOU THE DRAWING AND AS WE DISCUSS EACH
24 GUNSHOT WOUND, WOULD YOU ATTACH THE APPROPRIATE LABEL TO
25 EACH ONE?

DR. LEE PROCTOR - DIRECT EXAMINATION BY MR. BELLAMY 278

1 A OKAY, ALL RIGHT. I EXAMINED THE BODY OF MR.
2 COX AND THERE WERE FOUR IDENTIFIABLE WOUNDS I EXAMINED.
3 I'M JUST GOING TO TAKE THEM TOP TO BOTTOM. THE FIRST WAS A
4 GUNSHOT WOUND TO THE RIGHT HEAD. THIS WAS IN THE RIGHT
5 HEAD JUST RIGHT ANTERIOR TO THE HAIRLINE ON THE RIGHT SIDE.
6 THIS WAS A CONTACT WOUND WITH A MUZZLE IMPRINT. THERE WAS
7 NO RESIDUE OR STIPPLING AROUND THE WOUND SITE. THE PATH OF
8 THE PROJECTILE WAS FROM RIGHT TO THE LEFT. IT PENETRATED
9 BOTH LOBES OF THE BRAIN AND I RECOVERED THE PROJECTILE FROM
10 THE BRAIN AND TRANSFERRED THAT DIRECTLY TO THE POLICE
11 OFFICER FROM CONWAY POLICE DEPARTMENT. SO THIS WOUND A ON
12 THE DIAGRAM WAS A GUNSHOT WOUND TO THE RIGHT SIDE OF THE
13 HEAD.

14 THERE WAS A GUNSHOT WOUND TO THE RIGHT NECK THAT
15 PENETRATED THE NECK, RIGHT NECK Laterally AND PASSED INTO
16 THE RIGHT-LEFT DIRECTION WITH THE PROJECTILE BEING
17 RECOVERED FROM THE TISSUES IN THE LEFT SIDE OF THE NECK,
18 PROBABLY FURTHER OVER IN THIS DIRECTION.

19 Q DR. PROCTOR, WOULD YOU READ EACH TAB?

20 A I'LL BE GLAD TO DO WHAT PLEASES THE COURT.
21 I HAD PREVIOUSLY PLACED A TAB HERE THAT SAYS, "GUNSHOT
22 WOUND, RIGHT SIDE OF THE HEAD." IN MY HAND I'M HOLDING A
23 TAB THAT SAYS, "GUNSHOT WOUND, RIGHT SIDE OF THE NECK."
24 "GUNSHOT WOUND, RIGHT UPPER ARM" AND "GUNSHOT WOUND, LEFT
25 LATERAL CHEST."

DR. LEE PROCTOR - DIRECT EXAMINATION BY MR. BELLAMY 279

1 Q DR. PROCTOR, WITH RESPECT TO THE TABS THAT
2 SAY, "GUNSHOT WOUND RIGHT SIDE OF THE HEAD," IS THAT
3 CONSISTENT WITH YOUR TESTIMONY?

4 A THE TAB WAS PLACED ON THIS BODY BY THE AREA
5 MARKED A, WHICH IS ILLUSTRATING A GUNSHOT WOUND TO THE
6 RIGHT SIDE OF THE HEAD. YES, THAT IS CONSISTENT. B ON
7 THIS DIAGRAM IS AN ILLUSTRATION OF A GUNSHOT WOUND TO THE
8 RIGHT NECK. THIS ENTERED THE LATERAL ASPECT OF THE RIGHT
9 NECK AND PASSED RIGHT TO LEFT DIRECTION. THE PROJECTILE
10 WAS REMOVED FROM THE LEFT NECK AREA. I HAVE A TAB WHICH
11 SAYS, "GUNSHOT WOUND, RIGHT SIDE OF THE NECK," WHICH I WILL
12 PLACE IN THIS AREA.

13 THE THIRD WOUND THAT I EXAMINED ON MR. COX WAS A
14 GUNSHOT WOUND THAT PENETRATES THE BODY ON THE SUPERIOR
15 ASPECT OF THE RIGHT UPPER ARM, SORT OF A HUMERAL AREA,
16 LATERAL ASPECT OF THE ARM. IT TRAVERSED THE BODY IN A
17 RIGHT TO LEFT DIRECTION. IT WAS ACTUALLY FOUND EMBEDDED IN
18 THE MEDIAL ASPECT OF THE CLAVICLE, WHICH IS THE COLLAR
19 BONE. I HAVE A TAB THAT HAS BEEN GIVEN TO ME AND IT SAYS,
20 "GUNSHOT WOUND, RIGHT UPPER ARM" AND I WILL PLACE THIS IN
21 THE GENERAL AREA HERE. THERE WAS A FOURTH GUNSHOT WOUND
22 THAT I EXAMINED ON THE BODY OF MR. COX AND THIS WAS A
23 GUNSHOT WOUND THAT ENTERED THE BODY ON THE LEFT SIDE JUST
24 AT THE AREA OF THE DIAPHRAGM. THERE WAS A GRAZING INJURY
25 ON THE ANTERIOR ASPECT OF THE ARM JUST ADJACENT TO THE

DR. LEE PROCTOR - DIRECT EXAMINATION BY MR. BELLAMY 280

1 BULLET TRACK OR THE ENTRANCE ON THE LEFT SIDE OF THE BODY.
2 THIS PROJECTILE ENTERED THE LEFT SIDE OF THE BODY JUST AT
3 THE DIAPHRAGM AREA AT THE BOTTOM OF THE RIBS ON THE LEFT
4 SIDE, PASSED THROUGH THE RIBS, THROUGH THE DIAPHRAGM AND
5 LOWER THORACIC CAVITY AND THE SPLEEN AND WAS FOUND IN THE
6 PERITONEAL CAVITY OF THE BODY ADJACENT OR ACTUALLY FOUND IN
7 THE SOFT TISSUES OF THE BACK ADJACENT TO THE VERTEBRAL
8 COLUMN. AND I HAVE A TAB THAT HAS BEEN STATED AS "GUNSHOT
9 WOUND, LEFT LATERAL CHEST." THAT I'LL JUST PUT THERE IN
10 THAT AREA RIGHT THERE. THOSE WERE THE FOUR WOUNDS.

11 Q DOCTOR, THE GUNSHOT WOUNDS TO THE RIGHT SIDE
12 OF THE HEAD, THE RIGHT UPPER ARM AND THE LEFT LATERAL SIDE
13 OF THE CHEST, ARE THE TABS CONSISTENT WITH YOUR AUTOPSY
14 REPORT?

15 A THE DIAGRAM WITH THESE ARROWS HERE ARE
16 CONSISTENT WITH WHAT IS STATED IN MY AUTOPSY REPORT. AND
17 THE TAB LABELS PLACED BY EACH OF THESE DIAGRAMS ARE
18 CONSISTENT WITH WHAT IS IN MY REPORT.

19 Q DID YOU FORM AN OPINION AS TO THE NUMBER OF
20 EXIT WOUNDS AS OPPOSED TO -- EXCUSE ME. DOCTOR, LET ME
21 RESTATE THAT. DID YOU FORM AN OPINION AS TO THE NUMBER OF
22 ENTRANCE WAYS AS OPPOSED TO THE EXIT WOUNDS?

23 A IN MY EXAMINATION OF MR. COX I FOUND FOUR
24 WOUNDS. THERE WAS THE ENTRANCE WOUND IN THE RIGHT HEAD.
25 THERE WAS AN ENTRANCE SITE IN THE RIGHT NECK AND AN

DR. LEE PROCTOR - DIRECT EXAMINATION BY MR. BELLAMY 281

1 ENTRANCE SITE IN THE UPPER ARM AND AN ENTRANCE SITE IN THE
2 LEFT CHEST. I DID NOT SEE AN EXIT WOUND.

3 Q DOCTOR, LET ME DIRECT YOUR ATTENTION TO THE
4 GUNSHOT WOUND TO THE RIGHT SIDE OF ISAAC COX' HEAD. WHAT
5 WAS THE SHAPE AND SIZE OF THE ENTRANCE WOUND?

6 A THE WOUND ON THE RIGHT SIDE OF MR. COX' HEAD
7 WAS A CONTACT WOUND. IT HAD A MUZZLE IMPRINT AND IT HAD A
8 SIMPLE ENTRANCE SITE WHICH WAS SLIGHTLY OBLONG. THIS WAS A
9 CONTACT TYPE WOUND AND THERE WAS NO STIPPLING OR RESIDUE
10 PRESENT AROUND THAT SITE.

11 Q TELL THE JURY, IF YOU WILL, THE DAMAGE
12 CREATED TO ISAAC COX' BRAIN AS A RESULT OF THIS GUNSHOT
13 WOUND.

14 A THE WOUND TO THE HEAD OF MR. COX PASSING IN
15 THE RIGHT TO LEFT DIRECTION PENETRATING BOTH LOBES OF THE
16 BRAIN THERE WAS EXTENSIVE -- THE MEDICAL TERM IS
17 MACERATION, WHICH MEANS TEARING OF THE TISSUES AND
18 PALPATIONS, JUST TEARING UP OF THE TISSUES ALONG THE
19 PROJECTILE PATH. AS IT PASSES THROUGH, IT GIVES OFF ENERGY
20 AND JUST EXPANDS AND THERE IS A FINITE SPACE FOR THE
21 EXPANSION SO IT CAUSES A SIGNIFICANT AMOUNT OF DAMAGE TO
22 THE SOFT BRAIN TISSUE.

23 Q WOULD THE GUNSHOT TO THE RIGHT SIDE OF ISAAC
24 COX' HEAD INCAPACITATE HIM ON IMPACT?

25 A THE GUNSHOT WOUND TO THE HEAD IS A VERY

DR. LEE PROCTOR - DIRECT EXAMINATION BY MR. BELLAMY 282

1 SIGNIFICANT TYPE OF INJURY THAT IS AN ULTIMATELY FATAL
2 INJURY AND IN MOST INSTANCES A WOUND LIKE THAT IS VERY
3 RAPIDLY INCAPACITATIVE. NOW, IN TERMS OF IT IS IMMEDIATE
4 OR DOES HE HAVE FIVE MINUTES, THREE MINUTES, IT'S JUST HARD
5 TO SAY BUT IN MOST CASES IT IS VERY RAPIDLY INCAPACITATING
6 AND USUALLY, USUALLY ALMOST IMMEDIATELY.

7 Q DOCTOR, I SHOW YOU WHAT HAS BEEN MARKED
8 STATE'S EXHIBIT NUMBER 5 FOR IDENTIFICATION. TAKE A MINUTE
9 TO LOOK AT IT.

10 A (THE WITNESS COMPLIES.) OKAY.

11 Q DO YOU RECOGNIZE WHAT THIS IS?

12 A THIS IS A CONTAINER. IN MY HANDWRITING ON
13 TOP OF IT IT HAS THE NAME ISAAC COX. THAT'S THE DATE,
14 10/4/97. HAS MY INITIALS AND IT SAYS, "HEAD." AND THERE
15 IS ALSO SOME OTHER LABELING HERE WHICH I ASSUME ARE EXHIBIT
16 NUMBERS.

17 Q WOULD YOU DESCRIBE THE CONTENTS OF THE
18 PLASTIC CONTAINER?

19 A IN THIS CONTAINER IN A PLASTIC BAG IS A
20 PROJECTILE AND ANOTHER SMALL FRAGMENT WHICH IS FLATTENED
21 AND IS THE REMNANTS OF A BULLET.

22 Q IS THE PROJECTILE AND THE FRAGMENTS IN THE
23 SAME OR SUBSTANTIALLY THE SAME CONDITION WHEN YOU REMOVED
24 IT FROM ISAAC COX' BODY ON OCTOBER 4, 1997?

25 A I REMOVED A SOMEWHAT FLATTENED PROJECTILE

DR. LEE PROCTOR - DIRECT EXAMINATION BY MR. BELLAMY

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1 FROM THE BRAIN AND TRANSFERRED THAT TO INVESTIGATIVE
2 AUTHORITIES. YES, THIS IS CONSISTENT WITH WHAT I REMOVED.
3 YES, SIR.

4 Q THIS FLATTENED PROJECTILE, WHICH IS MARKED
5 STATE'S -- MARKED STATE'S EXHIBIT NUMBER 4 -- EXCUSE ME, AS
6 STATE'S EXHIBIT NUMBER 5. DID YOU TURN IT OVER TO ANYBODY?

7 A THIS PROJECTILE AND ALL THE OTHER
8 PROJECTILES THAT I REMOVED WERE GIVEN TO THE INVESTIGATORS
9 FROM THE CITY OF CONWAY. I THINK IT WAS DETECTIVE TAYLOR
10 AND PARKER WERE THERE AND THEY WERE TRANSFERRED DIRECTLY.

11 Q DOCTOR, LET ME DIRECT YOUR ATTENTION TO THE
12 GUNSHOT WOUND TO THE RIGHT SIDE OF ISAAC COX' NECK.

13 A (NODDING AFFIRMATIVELY.)

14 Q WHAT ARE THE SIZE AND DIMENSIONS OF THE
15 ENTRANCE WOUND?

16 A THE WOUND TO THE NECK MEASURED APPROXIMATELY
17 .5 CENTIMETERS IN DIAMETER.

18 Q DOCTOR, IN YOUR REPORT DO YOU INDICATE
19 WHETHER YOU FOUND ANY EVIDENCE OF ANY TYPE OF GUNPOWDER
20 RESIDUE AROUND THE WOUND SITE?

21 A THIS WOUND WAS A GUNSHOT WOUND TO THE NECK.
22 THERE WAS NO STIPPLING THERE OR RESIDUE.

23 Q BASED UPON YOUR FINDING, WHAT DOES THAT MEAN
24 AND AS FAR AS THE DISTANCE FROM THE BARREL, THE MUZZLE OF
25 THE GUN TO THE ENTRANCE WOUND?

DR. LEE PROCTOR - DIRECT EXAMINATION BY MR. BELLAMY

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1 A BASED ON THIS PARTICULAR ENTRANCE SITE AND
2 THE LACK OF RESIDUE OR STIPPLING, THE WEAPON WAS FIRED FROM
3 A DISTANCE PROBABLY GREATER THAN 18 TO 24 INCHES.

4 Q WOULD YOU TELL THE JURY, IF YOU WILL, THE
5 DAMAGE CREATED TO ISAAC COX' UPPER RIGHT SHOULDER AS A
6 RESULT OF THIS GUNSHOT WOUND?

7 A WELL, THE UPPER RIGHT SHOULDER IS A
8 DIFFERENT WOUND THAN THE ONE YOU'RE ASKING ME ABOUT.

9 Q I APOLOGIZE. THE GUNSHOT WOUND TO THE RIGHT
10 SIDE OF HIS NECK.

11 A THE GUNSHOT WOUND TO THE RIGHT SIDE OF HIS
12 NECK TRAVERSED THE NECK IN A RIGHT TO LEFT MANNER,
13 PENETRATING ALL THE MUSCULATURE AND TISSUE WITHIN THE NECK
14 AND IT WAS REMOVED FROM THE LEFT SIDE OF THE NECK.

15 Q WOULD THE GUNSHOT WOUND TO THE RIGHT SIDE OF
16 THE NECK HAVE INCAPACITATED ISAAC COX ON IMPACT?

17 A THE WOUND I EXAMINED IN THIS NECK CERTAINLY
18 WOULD HAVE BEEN PAINFUL BUT IT WOULD NOT HAVE BEEN A WOUND
19 THAT WOULD HAVE STOPPED HIM IN HIS TRACKS OR FOR THAT
20 MATTER HAVE KILLED HIM IMMEDIATELY.

21 Q DR. PROCTOR, I HAND YOU WHAT HAS BEEN MARKED
22 STATE'S EXHIBIT NUMBER 5B FOR IDENTIFICATION. WOULD YOU
23 LOOK AT IT?

24 A (THE WITNESS COMPLIES.) THIS IS ALSO A
25 CONTAINER WITH THE NAME ISAAC COX, THE DATE. I DO NOT SEE

DR. LEE PROCTOR - DIRECT EXAMINATION BY MR. BELLAMY 285

1 MY INITIALS ON HERE. I ASSUME THEY WERE ON AT THE TIME ON
2 THE SIDE AND IN MY WRITING IT SAYS "NECK" AND THERE ARE
3 OTHER IDENTIFYING MARKS, I GUESS, WHICH ARE THE STATE'S
4 EXHIBITS.

5 Q DR. PROCTOR, WOULD YOU DESCRIBE THE CONTENTS
6 OF THE PLASTIC CONTAINER?

7 A THE CONTENTS OF THE CONTAINER ARE AGAIN A
8 FLATTENED PROJECTILE CONSISTENT WITH WHAT I REMOVED FROM
9 THE NECK OF ISAAC COX.

10 Q IS IT IN THE SAME OR SUBSTANTIALLY THE SAME
11 CONDITION WHEN YOU REMOVED IT FROM THE BODY OF ISAAC COX ON
12 OCTOBER 4TH, 1997?

13 A TO THE BEST OF MY RECOLLECTION AND MY
14 AUTOPSY REPORT, YES, SIR.

15 Q AND THE ORIGINAL OF STATE'S EXHIBIT 5B, WHO
16 DID YOU TURN IT OVER TO?

17 A THIS WAS ALSO TURNED OVER TO THE OFFICERS
18 FROM CONWAY CITY POLICE DEPARTMENT.

19 Q DR. PROCTOR, LET ME DIRECT YOUR ATTENTION TO
20 THE GUNSHOT WOUND TO THE RIGHT UPPER ARM OF ISAAC COX.
21 WHAT IS THE SIZE AND DIMENSION OF THE ENTRANCE WOUND?

22 A OKAY. THIS WOUND MEASURED APPROXIMATELY A
23 CENTIMETER IN DIAMETER AND SHOWED NO EVIDENCE OF STIPPLING
24 OR RESIDUE.

25 Q BASED UPON THAT, WHAT CAN YOU TELL US ABOUT

DR. LEE PROCTOR - DIRECT EXAMINATION BY MR. BELLAMY

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1 THE RANGE OF FIRE?

2 A THE ONLY STATEMENT REGARDING THE RANGE OF
3 FIRE THAT I CAN MAKE IS THAT WITH THE LACK OF RESIDUE AT
4 THE TIME OF MY EXAMINATION THAT THIS WAS FIRED FROM A
5 WEAPON AT A DISTANCE GREATER THAN 18 TO 24 INCHES.

6 Q AND WHAT DAMAGE WOULD ISAAC COX HAVE
7 RECEIVED IN HIS RIGHT UPPER ARM AS A RESULT OF THIS GUNSHOT
8 WOUND?

9 A OKAY. THE DAMAGE THAT HE DID RECEIVE WAS A
10 SUPERFICIAL WOUND, PASSING ALONG THE DIRECTION OF THE RIGHT
11 CLAVICLE AND WAS ACTUALLY -- THE PROJECTILE WAS ACTUALLY
12 EMBEDDED IN THE MEDIAL ASPECT OF THE CLAVICLE, ACTUALLY IN
13 THE BONE SURFACE OF THE CLAVICLE ITSELF.

14 Q DR. PROCTOR, I SHOW YOU WHAT HAS BEEN MARKED
15 AS STATE'S EXHIBIT NUMBER 5C FOR IDENTIFICATION. TAKE A
16 MINUTE AND LOOK AT IT.

17 A (THE WITNESS COMPLIES.) THIS IS ALSO A
18 CONTAINER WITH MY NAME ON IT WITH THE NAME ISAAC COX, THE
19 DATE AND ON THE SIDE IT SAYS "RIGHT CLAVICLE" AND THERE ARE
20 MY INITIALS AND SOME ADDITIONAL MARKINGS WHICH I ASSUME ARE
21 FOR STATE'S EXHIBITS.

22 Q WOULD YOU DESCRIBE THE CONTENTS OF THE
23 PLASTIC CONTAINER?

24 A THIS IS ALSO A PARTIALLY FLATTENED
25 PROJECTILE THAT IS CONSISTENT WITH WHAT I REMOVED.

DR. LEE PROCTOR - DIRECT EXAMINATION BY MR. BELLAMY 287

1 Q IS IT IN THE SAME CONDITION OR SUBSTANTIALLY
2 THE SAME CONDITION WHEN YOU REMOVED IT FROM ISAAC COX' BODY
3 BACK ON OCTOBER 4TH, 1997?

4 A TO THE BEST OF MY RECOLLECTION, YES.

5 Q DR. PROCTOR, AFTER HAVING ORIGINAL CUSTODY
6 OF STATE'S EXHIBIT NUMBER 5C DID YOU TURN IT OVER TO
7 ANYBODY?

8 A THE PROJECTILE WAS ALSO GIVEN TO THE
9 OFFICERS FROM THE CONWAY POLICE DEPARTMENT.

10 Q ALL RIGHT, DOCTOR, LET ME DIRECT YOUR
11 ATTENTION TO THE GUNSHOT WOUND TO THE LEFT LATERAL CHEST OF
12 ISAAC COX. WHAT IS THE SIZE AND DIMENSION OF THE ENTRANCE
13 WOUND?

14 A OKAY, THIS -- LET ME REFER TO MY NOTES.
15 THIS WOUND WAS OF BASICALLY APPROXIMATELY A CENTIMETER IN
16 SIZE, SIMILAR IN SIZE TO THE OTHER WOUNDS AND THE OTHER
17 WOUND TO THE HEAD.

18 Q DID YOU FIND ANY GUNSHOT RESIDUE AROUND THE
19 WOUND SITE?

20 A I DID NOT.

21 Q BASED UPON THAT CAN YOU TELL US WHAT THE
22 RANGE OF FIRE WAS?

23 A THE RANGE OF FIRE WOULD HAVE BEEN FROM A
24 DISTANCE GREATER AGAIN THAN 18 TO 24 INCHES.

25 Q CAN YOU TELL THE JURY IF YOU WILL THE DAMAGE

DR. LEE PROCTOR - DIRECT EXAMINATION BY MR. BELLAMY 288

1 CREATED TO ISAAC COX' LEFT LATERAL SIDE AS A RESULT OF THIS
2 GUNSHOT WOUND?

3 A OKAY. THIS PROJECTILE PASSED IN A LEFT TO
4 RIGHT DIRECTION, PENETRATING THE LOWER PORTION OF THE
5 THORACIC CAVITY OF THE DIAPHRAGM AND SPLEEN AND WAS FOUND
6 BETWEEN THE SUBCUTANEOUS TISSUE OF THE LEFT BACK ADJACENT
7 TO THE VERTEBRAL COLUMN. THE INJURIES RESULTING FROM THIS
8 WERE DAMAGE TO THE SPLEEN, AS WELL AS A SIGNIFICANT DEGREE
9 OF HEMORRHAGING INTO THE PERITONEAL CAVITY IN THE LEFT
10 CHEST CAVITY.

11 Q DOCTOR, DID YOU RETRIEVE THE BULLET?

12 A YES, I DID.

13 Q DOCTOR, I SHOW YOU WHAT HAS BEEN MARKED AS
14 STATE'S EXHIBIT NUMBER 5D FOR IDENTIFICATION. DO YOU
15 RECOGNIZE WHAT IT IS?

16 A THIS IS A CONTAINER WITH THE NAME ISAAC COX,
17 THE DATE. IT SAYS, "LEFT" -- IT IS PARTIALLY OBLITERATED -
18 - "LEFT" SOMETHING "AREA." IT IS IN MY WRITING.

19 Q IS THIS YOUR WRITING?

20 A YES.

21 Q IS THE BULLET IN THE CONTAINER THAT'S
22 STATE'S EXHIBIT NUMBER 5D FOR IDENTIFICATION IS IT IN THE
23 SAME OR SUBSTANTIALLY THE SAME CONDITION WHEN YOU REMOVED
24 IT FROM ISAAC COX' BODY ON OCTOBER 4, 1997?

25 A YES, IT IS.

DR. PROCTOR - CROSS-EXAMINATION BY MR. CHRISCO

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1 Q AFTER HAVING ORIGINAL CUSTODY OF STATE'S
2 EXHIBIT NUMBER 5D FOR IDENTIFICATION, DID YOU TURN IT OVER
3 TO ANYBODY?

4 A THIS WAS ALSO GIVEN TO THE OFFICERS FROM THE
5 CONWAY POLICE DEPARTMENT.

6 Q HAVING COMPLETED THE AUTOPSY OF ISAAC COX,
7 DID YOU THEN COME TO AN OPINION AS TO THE CAUSE OF DEATH?

8 A YES, SIR, I DID.

9 Q WHAT WAS YOUR OPINION?

10 A MR. COX DIED AS A RESULT OF THESE GUNSHOT
11 WOUNDS, THE MOST SIGNIFICANT BEING THE WOUND TO THE HEAD
12 AND THE WOUND TO THE LEFT LATERAL CHEST WITH THE ASSOCIATED
13 HEMORRHAGE.

14 Q AND AS A FORENSIC PATHOLOGIST, DID YOU THEN
15 CLASSIFY THE MANNER OF DEATH?

16 A THE MANNER OF DEATH WAS CLASSIFIED BASED ON
17 THE INFORMATION I HAD FROM THE CORONER, THE POLICE
18 DEPARTMENT AND MY EXAMINATION AND USUALLY THIS INFORMATION
19 IS CLASSIFIED AS HOMICIDE.

20 MR. BELLAMY: THANK YOU.

21 THE COURT: ALL RIGHT, MR. CHRISCO.

22 CROSS-EXAMINATION

23 BY MR. CHRISCO:

24 Q GOOD AFTERNOON, DR. PROCTOR. HOW ARE YOU
25 DOING TODAY?

DR. PROCTOR - CROSS-EXAMINATION BY MR. CHRISCO

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1 THE COURT: STAND PLEASE. STAND PLEASE. GO
2 AHEAD.

3 THE WITNESS: (CONTINUING)

4 A DOING GOOD, MR. CHRISCO. HOW ARE YOU?

5 Q OH, FAIR TO MIDDLING. THIS LAST ONE THERE,
6 THE ONE THERE REFERRED TO ---

7 A OKAY.

8 Q STATE'S EXHIBIT NUMBER 5D.

9 A OKAY.

10 Q I THINK THAT SAYS NUMBER 5D, DOESN'T IT?

11 A NO. 5D, YES.

12 Q WOULD YOU TAKE THAT OUT AND LOOK AT IT,
13 PLEASE?

14 A (THE WITNESS COMPLIES.) YES, SIR.

15 Q WHAT KIND OF BULLET IS THAT?

16 A THIS BULLET IS PROBABLY A .38 TO .357. I'M
17 NOT AN EXPERT BY ANY MEANS AND IT APPEARS TO BE A HOLLOW
18 POINT.

19 Q THAT WAS FOUND IN THE LEFT SIDE, AM I NOT
20 RIGHT?

21 A THE LEFT BACK AREA. THE BULLET HAD COME IN
22 ON THE LEFT SIDE BASICALLY HITTING THE POSTERIOR THORACIC
23 CAVITY, POSTERIOR SIDE OF THE SPLEEN AND AS A RESULT OF
24 PASSING THERE DEFLECTED SLIGHTLY POSTERIOR TO THE
25 SUBCUTANEOUS TISSUES IN THE LEFT BACK.

DR. PROCTOR - CROSS-EXAMINATION BY MR. CHRISCO

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1 Q THAT BULLET REMAINED WHOLE. IS IT YOUR
2 OPINION, DOCTOR, THAT IT REMAINED WHOLE FOR WHAT REASON?

3 A BULLETS ARE USUALLY DEFORMED AS A RESULT OF
4 HITTING SOMETHING HARD, YOU KNOW, AND IN A HUMAN BEING THE
5 HARDEST THING THEY'RE GOING TO HIT IS BONE. SOMETIMES A
6 SOFT LEAD PROJECTILE HITTING A SOLID VISCERAL ORGAN BECOMES
7 DEFORMED BUT IN GENERAL BULLETS ARE DEFORMED BY HITTING
8 SOMETHING HARD.

9 Q NOW, IN THIS PARTICULAR WOUND TO THE LEFT
10 SIDE WERE THERE ANY BONES IN ITS PATH AS IT WENT IN HIM?

11 A THE BULLET CAME IN AND PENETRATED A PORTION
12 OF THE THORACIC CAVITY. I DO NOT RECOLLECT SEEING ANY
13 BROKEN BONES IN THAT AREA AND, CERTAINLY, HAVE NOT
14 DESCRIBED THEM IN MY REPORT. PROBABLY TRAVERSED BETWEEN
15 THE RIBS AND WENT ON THROUGH THE THORACIC CAVITY WHICH ONLY
16 CONTAINS THE LUNGS, DIAPHRAGM, SOFT TISSUE AND SPLEEN IS A
17 SOFT -- A SOLID ORGAN.

18 Q AND THE OTHER THREE EXHIBITS MARKED BY THE
19 STATE, WOULD YOU TAKE ONE OF THOSE OUT AND TELL US WHICH
20 EXHIBIT YOU ARE LOOKING AT?

21 A I'VE GOT EXHIBIT 5C.

22 Q WOULD YOU HOLD THAT UP SO I CAN SEE IT OVER
23 HERE?

24 A YES, SIR.

25 Q AND IS THAT DEFORMED OR ---

DR. PROCTOR - CROSS-EXAMINATION BY MR. CHRISCO

292

1 A THIS BULLET IS PARTIALLY DEFORMED, YES, SIR.
2 THE BASE OF THE BULLET IS SOMEWHAT INTACT BUT THE FRONT END
3 OF THE BULLET OR THE POINTED END OF THE BULLET IS VERY
4 DEFORMED.

5 Q NOW, THAT PARTICULAR BULLET THERE WENT INTO
6 THE RIGHT SHOULDER?

7 A WENT INTO THE RIGHT SHOULDER, YES.

8 Q AND DID THAT PARTICULAR BULLET HIT BONE?

9 A IT HIT THE MEDIAL ASPECT OF THE CLAVICLE,
10 WITH THE END OF IT STRIKING IN THE CLAVICLE AND THE BACK
11 END VISIBLE AS IT OPENED UP TO PULL IT OUT.

12 Q WHEN YOU SAY CLAVICLE, IS THERE A ---

13 A IT'S THE COLLARBONE.

14 Q COLLABONE. NOW, THAT IS A TERM I
15 UNDERSTAND. SO IT HIT THE COLLARBONE AND DEFORMED UP A
16 LITTLE BIT?

17 A YES, SIR.

18 Q NOW, WHAT TYPE OF BULLET THAT IS?

19 A BASED UPON LOOKING AT THE BASE OF THIS
20 BULLET, IT PROBABLY AGAIN IS POSSIBLY A .38, .357; APPEARS
21 TO BE SIMILAR TO THE ONE, BY LOOKING AT THE BASE ONLY, THAT
22 IS IN THE OTHER CONTAINER.

23 Q DOCTOR, LOOKING AT THE REMAINING TWO
24 PROJECTILES, WHICH WOULD BE THE WOUND TO THE RIGHT HEAD AND
25 THE WOUND TO THE NECK, THESE PROJECTILES ARE EXTREMELY

DR. PROCTOR - CROSS-EXAMINATION BY MR. CHRISCO

293

1 FLAT.

2 A THE ACTUAL SIZES ARE SIMILAR IN SIZE TO THE
3 OTHER TWO PROJECTILES BUT THAT IS THE ONLY SIMILARITY I CAN
4 REALLY GIVE YOU THERE.

5 Q ALL RIGHT, DOCTOR, COULD YOU TELL ME IF I
6 WOULD BE CORRECT IN SAYING THAT IN YOUR AUTOPSY REPORT THAT
7 YOU SAY THAT SAME EXACT THING ABOUT WHAT TYPE OF BULLETS
8 THAT THEY WERE AND CALIBER?

9 A BASED UPON JUST THE ACTUAL SIZE OF THE
10 MATERIAL I HAVE, THE PROJECTILES ARE PROBABLY OF THE SAME
11 CALIBER.

12 Q AND YOU STATED THAT -- AND YOU STATED THAT
13 IN YOUR REPORT?

14 A YES, SIR, I DID.

15 Q DOCTOR, DO YOU KNOW WHAT THE ORDER OF THE
16 SHOTS WERE?

17 A NO, SIR.

18 Q AND WHY?

19 A WHY? WELL, THE MOST OBVIOUS REASON BEING,
20 SIR, I WASN'T THERE, NUMBER ONE. NUMBER TWO, THERE IS
21 NOTHING BASED UPON MY EXAMINATION THAT WOULD -- THAT I
22 COULD SAY INDICATES ONE CAME BEFORE THE OTHER. IT IS JUST,
23 YOU KNOW, I HAVE FOUR WOUNDS BUT I DID NOT HAVE ANYTHING
24 THAT WAS -- THAT WOULD GIVE ME REASON TO BELIEVE OR GIVE ME
25 A REASON TO DETERMINE WHICH CAME FIRST OR WHICH CAME LAST.

DR. PROCTOR - CROSS-EXAMINATION BY MR. CHRISCO

294

1 Q DOCTOR, IF I COULD GET AN EXPERT OPINION ON
2 A HYPOTHETICAL QUESTION. YOU HAD STATED EARLIER THAT THE
3 BULLET THAT ENTERED THE RIGHT SIDE OF THE HEAD DID -- AND I
4 WILL USE THE LANGUAGE TERM -- MASSIVE DAMAGE IN THERE AND
5 IT COULD HAVE CAUSED DEATH INSTANTANEOUSLY.

6 A YES, SIR.

7 Q WHAT HAPPENS WHEN DEATH OCCURS AS FAR AS THE
8 BODILY ORGANS IS CONCERNED?

9 A OKAY. WELL, THERE ARE A LOT OF THINGS THAT
10 HAPPEN AND USUALLY, HYPOTHETICALLY, A WOUND TO THE HEAD, AS
11 IN THE HYPOTHETICAL EXAMPLE THIS WOUND CAUSING DEATH, RAPID
12 DEATH, THE DAMAGE IS DONE TO THE BRAIN ITSELF. THIS
13 TRIGGERS A RESPONSE THAT STARTS TO SHUT DOWN THE HEART,
14 SHUTS DOWN THE BREATHING APPARATUS AND EVERYTHING JUST
15 STOPS. EVERYBODY -- THE PERSON RECEIVING THIS KIND OF
16 INJURY JUST BASICALLY FALLS TO THE GROUND, IF THEY ARE
17 STANDING.

18 Q DOCTOR, YOU SAID THAT THE HEART WOULD SHUT
19 DOWN. WOULD THAT IN YOUR OPINION SHUT DOWN THE BLOOD FLOW?

20 A WHEN THE HEART QUILTS BEATING, THE BLOOD
21 CEASES TO PUMP. IT CAN OOZE OUT OF THE WOUNDS BUT IT
22 DOESN'T ACTUALLY GET PUMPED OUT. THAT'S CORRECT.

23 Q NOW, DOCTOR, YOU EARLIER TESTIFIED THAT HE
24 GOT A SHOT IN THE LEFT SHOULDER. WAS THERE ANY EXTREMITY
25 BLEEDING THERE?

DR. PROCTOR - CROSS-EXAMINATION BY MR. CHRISCO

295

1 A I DID NOT SEE WHAT WAS AT THE SCENE BUT
2 THERE WAS BLOOD INTERNALLY AS A RESULT OF THIS WOUND.

3 Q AND HOW MUCH BLOOD WAS THERE INTERNALLY?

4 A IN THE CHEST CAVITY I THINK I DESCRIBED, OH,
5 PROBABLY 2,000 CC'S.

6 Q IS THAT A LOT OF BLOOD?

7 A THAT'S TWO OR THREE UNITS OF BLOOD, YES,
8 SIR, PROBABLY.

9 Q WHEN YOU SAY 2,000 CC'S, YOU'RE TALKING
10 ABOUT ONE OF THOSE BIG BAGS THAT THEY HANG AROUND YOUR ARM
11 WHEN THEY'RE TAKING BLOOD?

12 A A BAG IS ABOUT 300 OR SO CC'S OF BLOOD.

13 Q SO HE HAD ---

14 A THERE WAS BLOOD. THERE WAS BLOOD THERE,
15 YES, SIR.

16 Q A LARGE AMOUNT?

17 A A FAIR AMOUNT OF BLOOD, THAT'S CORRECT.

18 Q BASED UPON THE LARGE AMOUNT OF BLOOD THERE,
19 COULD IT BE A POSSIBILITY THAT THE LEFT SIDE GUNSHOT WAS
20 BEFORE THE ONE TO THE HEAD?

21 A IT'S CERTAINLY POSSIBLE, YES.

22 Q BEAR WITH ME JUST A MOMENT, DOCTOR. IN YOUR
23 REPORT I COULD NOT HELP BUT NOTICE IN ONE SECTION IT SAID
24 THE DIRECTION OF THE BULLET TO THE HEAD WAS FROM LEFT TO
25 RIGHT.

DR. PROCTOR - CROSS-EXAMINATION BY MR. CHRISCO

296

1 A THAT'S TRUE.

2 Q AND I BELIEVE THEN ON THE NEXT PAGE IT SAYS
3 FROM RIGHT TO LEFT.

4 A RIGHT TO LEFT.

5 Q WOULD YOU CLEAR THAT UP?

6 A I'LL BE GLAD TO. THAT'S A TYPOGRAPHICAL
7 ERROR AND THERE ARE A COUPLE OF TYPOGRAPHICAL ERRORS THERE.
8 THE ACTUAL ENTRANCE SITE WAS ON THE RIGHT SIDE OF THE HEAD
9 WITH THE PROJECTILE PATH EXTENDING FROM THE RIGHT SIDE OF
10 THE HEAD TO THE LEFT SIDE OF THE HEAD, RIGHT TO LEFT, NOT
11 LEFT TO RIGHT.

12 Q WHILE WE'RE CLEARING UP SOME INACCURACIES OF
13 THE REPORT, ALSO IN ONE PLACE THERE YOU SAY YOU GAVE THE
14 BULLET TO THE CONWAY POLICE DEPARTMENT.

15 A YES, SIR.

16 Q AT ANOTHER POINT YOU SAY YOU GAVE IT TO
17 TERRY ATKINS OF THE HORRY COUNTY POLICE DEPARTMENT. NOW,
18 WHO, WHAT PERSON DID YOU GIVE THOSE BULLETS TO?

19 A THE BULLETS IN THIS CASE WERE GIVEN TO
20 OFFICER TAYLOR OF THE CONWAY CITY POLICE DEPARTMENT AND
21 OFFICER PARKER THERE AT THE COMPLETION OF THIS CASE. I
22 THINK WE WERE DOING ANOTHER CASE AND AT THAT TIME OFFICER
23 ATKINS WAS THE CRIME SCENE INVESTIGATOR AND THE EVIDENCE
24 OFFICER FOR THE HORRY COUNTY POLICE DEPARTMENT.

25 Q NOW, WHEN YOU DID THE AUTOPSY, WERE THERE

DR. PROCTOR - CROSS-EXAMINATION BY MR. CHRISCO

297

1 CLOTHES STILL ON MR. COX?

2 A NO, SIR. THE ONLY THING THAT WAS ON MR. COX
3 AT THE TIME I RECEIVED MR. COX WAS RED UNDERSHORTS.

4 Q NOW, ON THE LEFT SIDE WAS THERE ANY
5 STIPPLING OR POWDER RESIDUE AROUND THE WOUND?

6 A NOT ON MY EXAMINATION, NO, SIR.

7 Q IS IT POSSIBLE THAT DEPENDING ON WHAT TYPE
8 OF CLOTHING SOMEONE IS WEARING THAT IT COULD FILTER OUT A
9 LOT OF THE POWDER RESIDUE?

10 A YES, SIR, IT CERTAINLY CAN.

11 Q BUT YOU DID NOT LOOK AT THE CLOTHING?

12 A I DID NOT HAVE THE CLOTHES TO EXAMINE, NO,
13 SIR.

14 Q THOSE TYPE OF BULLETS ARE HOLLOW POINTS?

15 A WELL, THIS ONE, STATE'S 5B, IS CERTAINLY A
16 HOLLOW POINT ROUND, YES, SIR. I CAN SAY THAT.

17 Q DO YOU KNOW WHERE THOSE CLOTHES OF THE
18 VICTIM THAT WERE ON THE VICTIM, WHERE THEY ARE?

19 A NO, SIR. I SUGGEST YOU ASK THE CONWAY CITY
20 POLICE BECAUSE WHEN I RECEIVED THE BODY, THE ONLY THING
21 THERE WERE WERE RED UNDERSHORTS AND I DID DISPOSE OF THOSE
22 BUT I DO NOT KNOW ANYTHING ABOUT THE REMAINING CLOTHES.

23 Q NOW, YOU DID A TOXIOLOGY -- AM I SAYING THAT
24 RIGHT?

25 A TOXICOLOGY.

DR. PROCTOR - CROSS-EXAMINATION BY MR. CHRISCO

298

1 Q TOXICOLOGY REPORT. ANYTHING UNUSUAL?

2 A TOXICOLOGY. FLUORESCENT WAS DONE AND WAS
3 NEGATIVE. DRUG SCREEN WAS POSITIVE FOR MARIJUANA
4 METABOLISM.

5 Q NOW, HOW MANY BULLETS WERE IN MR. COX?

6 A OKAY. I RECOVERED FOUR BULLETS FROM MR. COX
7 AND FOUND FOUR ENTRANCE WOUNDS. I WAS UNABLE TO GET THE X-
8 RAYS FOR YOU. THEY'RE IN THE STORAGE FOR X-RAYS. BUT IN
9 REVIEWING THE RADIOGRAPHS, THERE WERE FIVE PROJECTILES IN
10 MR. COX, ONE WHICH I LOOKED FOR WITHIN THE NECK TISSUE BUT
11 COULD NOT FIND. SOMETIMES IT'S JUST DEEPLY EMBEDDED IN THE
12 TISSUES AND SHORT OF MUTILATING SOMEONE TO GET THEM OUT,
13 SOMETIMES YOU JUST CAN'T FIND THEM. SO WE REMOVED FOUR
14 BULLETS WITH FOUR ENTRANCE WOUNDS AND THERE WAS ANOTHER
15 BULLET LEFT.

16 Q SO THERE WAS NOT AN ENTRANCE WOUND FOR THIS
17 FIFTH PROJECTILE?

18 A NOT AT THE TIME OF AUTOPSY, NO, SIR.

19 Q IF IT HAD BEEN THERE, YOU WOULD HAVE FOUND
20 IT?

21 A IF THERE HAD BEEN ANOTHER WOUND TO MR. COX'
22 BODY, YES, SIR, WE WOULD HAVE FOUND IT.

23 Q IS IT POSSIBLE THAT THE PROJECTILE WAS IN
24 THE VICTIM BEFORE THIS INCIDENT?

25 A YES, SIR, IT CERTAINLY IS.

DR. PROCTOR - CROSS-EXAMINATION BY MR. MONCKTON

299

1 Q IS IT POSSIBLE IT COULD HAVE BEEN IN THERE
2 WEEKS OR MONTHS BEFORE?

3 A YES, SIR.

4 THE COURT: ALL RIGHT, MR. MONCKTON.

5 MR. MONCKTON: THANK YOU, YOUR HONOR.

6 CROSS-EXAMINATION

7 BY MR. MONCKTON:

8 Q JUST A COUPLE OF QUESTIONS, DR. PROCTOR.
9 THE EXHIBIT THAT HAS BEEN PRESENTED SO FAR, IF YOU COULD
10 WITH MY RED MARKER STEP DOWN AND DRAW ME A RED "X" WHERE
11 THE FIFTH BULLET WAS.

12 A (THE WITNESS COMPLIES.) THIS FIFTH BULLET
13 WAS IN THE GENERAL AREA OF THE NECK OVER HERE, DOWN IN THIS
14 AREA, IF I RECOLLECT.

15 Q AND IF YOU WOULD, RIGHT NEXT TO THAT "X"
16 JUST WRITE "FIFTH BULLET."

17 A OKAY, I'LL BE GLAD TO AND MAKE SURE AS I
18 REFER TO IT. THAT'S OKAY. OKAY. (THE WITNESS COMPLIES.)

19 Q AND JUST TO CLEAR IT UP, DR. PROCTOR, YOU
20 SAID YOU FOUND NO ENTRANCE WOUND WITH REGARD TO THIS FIFTH
21 BULLET.

22 A THAT'S CORRECT.

23 Q AND AS I UNDERSTAND, THAT FIFTH BULLET IS
24 STILL IN THE BODY OF MR. COX.

25 A YES, SIR. I DID NOT REMOVE IT.

DR. PROCTOR - CROSS-EXAMINATION BY MR. MONCKTON

300

1 Q AND HAVE THERE BEEN ANY EFFORTS TO REMOVE
2 THAT FIFTH BULLET AS OF TODAY?

3 A TO MY KNOWLEDGE, NO. AFTER I COMPLETED THE
4 AUTOPSY I HAVE NO RECOLLECTION OF ANY OTHER EFFORTS BY
5 ANYONE TO REMOVE THAT BULLET.

6 MR. MONCKTON: THANK YOU. NO FURTHER QUESTIONS.

7 THE COURT: THANK YOU. YOU MAY STEP DOWN.

8 THE WITNESS: THANK YOU, YOUR HONOR.

9 THE COURT: ALL RIGHT, MR. BELLAMY.

10 MR. BELLAMY: YOUR HONOR, MAY I APPROACH?

11 THE COURT: YES.

12 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
13 RECORD IN THE PRESENCE OF THE JURY OUT OF THE HEARING OF
14 THE JURY.)

15 MR. HUMPHRIES: YOUR HONOR, THERE IS A
16 STIPULATION OF FACT THAT THE PARTIES HAVE ENTERED INTO I'D
17 LIKE TO PUBLISH AT THIS TIME.

18 THE COURT: ALL RIGHT, THAT WILL BE FINE. GO
19 AHEAD. LADIES AND GENTLEMEN, I THINK I TOLD YOU IN THE
20 OPENING STATEMENT OR THE OPENING INSTRUCTIONS TO YOU THAT
21 IF THE PARTIES STIPULATED TO FACTS, THAT IS SOMETHING THAT
22 THEY HAVE AGREED UPON ARE FACTS IN THIS CASE AND MR.
23 HUMPHRIES IS GOING TO PUBLISH OR READ TO YOU THE
24 STIPULATION THE PARTIES HAVE AGREED TO IN THIS CASE.

25 MR. HUMPHRIES: THANK YOU, YOUR HONOR. AS TO THE

MS. STAFFORD-DIRECT EXAMINATION BY MR. BELLAMY

301

1 DEFENDANT DERRICK MARCEL HOLLINGSWORTH, HIS CERTIFIED
2 DRIVING RECORD INDICATES HIS HEIGHT AS BEING SIX FOOT,
3 THREE INCHES AND HIS WEIGHT 155 POUNDS. AS TO THE
4 DEFENDANT CORTREAL LAMONT SWINTON, HIS CERTIFIED DRIVING
5 RECORD INDICATES HIS HEIGHT AS BEING FIVE FOOT, SEVEN
6 INCHES AND HIS WEIGHT 170 POUNDS. THANK YOU, YOUR HONOR.

7 THE COURT: ALL RIGHT. ALL RIGHT, MR. BELLAMY,
8 CALL YOUR NEXT WITNESS.

9 MR. BELLAMY: AT THIS POINT, THE STATE CALLS
10 SUSAN SAFFORD.

11 SUSAN SAFFORD,
12 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

13 MR. BELLAMY: YOUR HONOR, AT THIS TIME THE STATE
14 WOULD GO AHEAD AND MOVE TO INTRODUCE STATE'S EXHIBIT NUMBER
15 4 FOR IDENTIFICATION.

16 THE COURT: ALL RIGHT. IS THAT THE ONE THAT DR.
17 PROCTOR REFERRED TO?

18 MR. BELLAMY: YES, SIR.

19 THE COURT: ALL RIGHT. ANY OBJECTION, MR.
20 CHRISCO?

21 MR. CHRISCO: YES, YOUR HONOR.

22 THE COURT: GROUNDS?

23 MR. CHRISCO: YOUR HONOR, WE WOULD OBJECT THAT
24 THE ORIGINAL 5 -- NUMBER 4 -- WHAT NUMBER IS IT, 5 -- THE
25 ORIGINAL STATE'S EXHIBIT NUMBER 4 FOR IDENTIFICATION DID

MS. STAFFORD-DIRECT EXAMINATION BY MR. BELLAMY

302

1 NOT HAVE ALL THE STICKERS ON IT AND WOULD REQUEST THAT EACH
2 ONE OF THESE STICKERS, SINCE THEY WERE ADDED ON AFTER IT
3 WAS INTRODUCED FOR IDENTIFICATION.

4 THE COURT: WEREN'T THEY DONE BY DR. PROCTOR?

5 MR. CHRISCO: YES, YOUR HONOR, BUT HE WAS HANDED
6 THESE LABELS BY MR. BELLAMY.

7 THE COURT: AND HE PLACED THEM, CORRECT?

8 MR. CHRISCO: HE PLACED THEM ON THERE.

9 THE COURT: ALL RIGHT, AND THAT'S THE EXHIBIT
10 THAT DR. PROCTOR REFERRED TO.

11 MR. CHRISCO: YES, YOUR HONOR.

12 THE COURT: ALL RIGHT. THE OBJECTION IS
13 OVERRULED.

14 MR. CHRISCO: THANK YOU, YOUR HONOR.

15 THE COURT: ANYTHING, MR. MONCKTON?

16 MR. MONCKTON: NO OBJECTION, YOUR HONOR.

17 THE COURT: ALL RIGHT. ADMITTED INTO EVIDENCE AS
18 STATE'S NUMBER ---

19 MR. BELLAMY: YOUR HONOR, IT WOULD BE STATE'S
20 NUMBER 4.

21 THE COURT: STATE'S NUMBER 4.

22 THE COURT REPORTER: NUMBER 8.

23 THE COURT: NUMBER 8, ALL RIGHT.

24 (WHEREUPON, STATE'S EXHIBIT NUMBER 5 FROM DR.
25 PROCTOR'S DEPOSITION IS MARKED AS STATE'S EXHIBIT NUMBER 8

MS. STAFFORD-DIRECT EXAMINATION BY MR. BELLAMY

303

1 AND FILED.)

2 DIRECT EXAMINATION

3 BY MR. BELLAMY:

4 Q MS. SAFFORD, WOULD YOU PLEASE STATE YOUR
5 FULL NAME FOR THE RECORD?

6 A SUSAN SAFFORD.

7 Q HOW ARE YOU SO EMPLOYED?

8 A I WORK AT J. REUBEN LONG DETENTION CENTER.

9 Q HOW LONG HAVE YOU WORKED FOR J. REUBEN LONG
10 DETENTION CENTER?

11 A ELEVEN YEARS.

12 Q WHAT ARE YOUR CURRENT DUTIES AND
13 RESPONSIBILITIES?

14 A PART OF THIS TESTIMONY HERE IS GOING TO BE
15 MAINTAINING INMATE RECORDS AND THE RECORDS OF THE FACILITY
16 SUCH AS SHIFT CLOSEOUTS, DIFFERENT LOGS, THINGS SUCH AS
17 THAT. I MAINTAIN THE RECORDS PRIOR TO TRANSFER TO A
18 RECORDS MANAGEMENT LOCATION.

19 MR. BELLAMY: YOUR HONOR, LET THE RECORD REFLECT
20 I'M SHOWING STATE'S EXHIBIT NUMBER 9 TO MR. CHRISCO AND
21 MONCKTON.

22 Q MS. SAFFORD, THIS IS STATE'S EXHIBIT NUMBER
23 9 FOR IDENTIFICATION. WOULD YOU TAKE A MINUTE TO LOOK AT
24 IT?

25 A OKAY.

MS. STAFFORD-DIRECT EXAMINATION BY MR. BELLAMY

304

1 Q DO YOU RECOGNIZE WHAT IT IS?

2 A YES, I DO.

3 Q WHAT IS IT?

4 A IT'S AN OUTLINE OF PART OF THE DETENTION
5 CENTER. IT SHOWS THE SALLY PORT, THE BOOKING AREA, CENTRAL
6 CONTROL, SOME HOLDING CELLS, MEDICAL SERVICES.

7 Q DOES IT FAIRLY AND ACCURATELY REPRESENT THE
8 CUSTODY AND SECURITY AREA, THE BOOKING AREA?

9 A YES, IT DOES.

10 MR. BELLAMY: YOUR HONOR, AT THIS TIME I WOULD
11 MOVE TO INTRODUCE THIS INTO EVIDENCE.

12 THE COURT: ANY OBJECTION, MR. CHRISCO?

13 MR. CHRISCO: NO OBJECTION, YOUR HONOR.

14 THE COURT: ANY OBJECTION?

15 MR. MONCKTON: NO OBJECTION, YOUR HONOR.

16 THE COURT: ADMITTED AS DEFENDANT'S [SIC] EXHIBIT
17 NUMBER 9 WITHOUT OBJECTION.

18 (WHEREUPON, STATE'S EXHIBIT NUMBER 9 IS FILED.)

19 MR. BELLAMY: (CONTINUING)

20 Q MS. SAFFORD, AT THIS TIME WOULD YOU EXPLAIN
21 THE PROCESS OF HOW ONE IS BOOKED AS FAR AS WHEN THEY'RE
22 PICKED UP ON AN ARREST WARRANT AND THEY'RE BROUGHT TO THE
23 J. REUBEN LONG DETENTION CENTER, THE PROCESS THEY GO
24 THROUGH AS FAR AS BOOKING PROCEDURES?

25 A ARE YOU TALKING ABOUT THEIR ACTUAL ROUTE AS

MS. STAFFORD-DIRECT EXAMINATION BY MR. BELLAMY

305

1 THEY COME IN OR WHAT WE DO WHEN WE BOOK THEM?

2 Q AS FAR AS THE ROUTE WHEN THEY COME IN AND
3 ONCE THEY GET INSIDE THE BOOKING AREA THE STEPS AND PROCESS
4 THEY GO THROUGH.

5 A OKAY. ONCE THE PERSON IS ARRESTED, AT THE
6 MAIN GATE THERE IS AN INTERCOM SYSTEM AND THE ARRESTING
7 OFFICER NOTIFIES OUR CENTRAL CONTROL THAT THEY ARE THERE
8 AND OUR CENTRAL CONTROL THEN ASKS WHAT AGENCY IT IS AND
9 WHETHER THEY HAVE ANY 1095S, WHICH IS SOMEONE WHO HAS BEEN
10 ARRESTED AND WHETHER IT'S A MALE OR A FEMALE. ONCE THAT
11 HAS BEEN IDENTIFIED, THEY'RE ALLOWED THROUGH THE MAIN GATE
12 AND THEN THEY PULL INTO WHAT'S CALLED A VEHICULAR SALLY
13 PORT AND THAT IS WHERE THE OFFICER WILL SECURE HIS WEAPON
14 AND THEN TAKE THE PERSON THAT HAS BEEN ARRESTED OUT OF THE
15 VEHICLE AND INTO OUR BOOKING AREA. ONCE INSIDE THE BOOKING
16 AREA THE PERSON IS SEARCHED AND THEN GENERALLY IS PLACED
17 INTO A HOLDING CELL PRIOR TO ACTUAL BOOKING.

18 Q MS. SAFFORD, DID YOU BRING RECORDS, THE
19 CENTRAL CONTROL LOG, THE ARRIVAL LOG AND THE BOOK LOG WITH
20 YOU PURSUANT TO A SUBPOENA DUCES TECUM?

21 A YES, I DID.

22 Q WOULD YOU HAND THOSE TO ME, PLEASE?

23 A CAN YOU REMOVE THE STAPLE?

24 Q MS. SAFFORD, AT THIS TIME WOULD YOU REMOVE
25 THOSE THREE DOCUMENTS THAT I REQUESTED?

MS. STAFFORD-DIRECT EXAMINATION BY MR. BELLAMY

306

1 A THAT IS YOUR CENTRAL CONTROL LOG. THAT'S
2 YOUR ARRIVAL LOG AND THAT IS YOUR BOOKING LOG.

3 (WHEREUPON, STATE'S EXHIBIT NUMBERS 10, 11 AND 12
4 ARE MARKED FOR IDENTIFICATION.)

5 MR. BELLAMY: YOUR HONOR, LET THE RECORD REFLECT
6 THAT I'M TAKING STATE'S EXHIBIT NUMBER 10, NUMBER 11 AND
7 NUMBER 12 FOR ID AND SHOWING MR. CHRISCO.

8 MR. CHRISCO: NO OBJECTION, YOUR HONOR.

9 MR. BELLAMY: YOUR HONOR, LET THE RECORD REFLECT
10 I'M SHOWING STATE'S EXHIBIT NUMBER 10, NUMBER 11 AND NUMBER
11 12 FOR ID TO MR. MONCKTON.

12 MR. MONCKTON: YOUR HONOR, I DON'T HAVE AN
13 OBJECTION AS ID PURPOSES FOR 11 AND 12 BUT NUMBER 10 HAS
14 NEVER BEEN PRESENTED TO THE DEFENSE.

15 THE COURT: WHICH ARE THEY? I DON'T -- I HAVEN'T
16 SEEN THEM SO TELL ME WHAT 10 IS. WHAT IS NUMBER 10, MR. --
17 -

18 MR. BELLAMY: YOUR HONOR, NUMBER 10 IS THE
19 CENTRAL CONTROL REPORT.

20 THE COURT: OKAY. ALL RIGHT, GO AHEAD AND WE'LL
21 SEE WHAT HE DOES WITH THEM AT THIS POINT.

22 MR. BELLAMY: (CONTINUING)

23 Q MS. SAFFORD, I HAND YOU STATE'S EXHIBITS
24 NUMBER 10, 11 AND 12 FOR IDENTIFICATION. WOULD YOU TELL
25 THE COURT HOW THESE DOCUMENTS RELATE TO DEFENDANT DERRICK

MS. STAFFORD-DIRECT EXAMINATION BY MR. BELLAMY

307

1 HOLLINGSWORTH AND JOSEPH HOWARD AS FAR AS THEIR ARRIVAL ON
2 SEPTEMBER 3, 1998?

3 THE COURT: ALL RIGHT, I'M GOING TO -- OFFER THEM
4 INTO EVIDENCE IF SHE'S GOING TO TESTIFY FROM THEM. ARE
5 THEY BEING OFFERED INTO EVIDENCE? AT THIS POINT THEY'RE
6 JUST FOR IDENTIFICATION.

7 MR. BELLAMY: YOUR HONOR, AT THIS TIME WE MOVE TO
8 OFFER THEM IN EVIDENCE.

9 THE COURT: ALL RIGHT, AND MY UNDERSTANDING IS
10 THAT MR. CHRISCO HAS NO OBJECTION TO THE THREE. MR.
11 MONCKTON OBJECTS TO NUMBER 10 AS HAVING NOT BEEN FURNISHED,
12 YOU SAID, PURSUANT TO BRADY AND RULE 5, MR. MONCKTON?

13 MR. MONCKTON: THAT'S CORRECT, YOUR HONOR.

14 THE COURT: ALL RIGHT. HOW ARE YOU PREJUDICED BY
15 THE FACT THAT THEY HAVEN'T GIVEN IT TO YOU?

16 MR. MONCKTON: YOUR HONOR, I WAS JUST BRIEFLY
17 SHOWN IT FOR THE FIRST TIME WHEN MR. BELLAMY WALKED OVER
18 HERE. THAT'S THE FIRST TIME I'VE SEEN IT. I DON'T KNOW
19 WHAT'S IN THE DOCUMENT OR WHAT SHE'S GOING TO TESTIFY TO.

20 THE COURT: ALL RIGHT. WHAT ABOUT THAT, MR.
21 BELLAMY?

22 MR. BELLAMY: YOUR HONOR, AS FAR AS THE CENTRAL
23 CONTROL DOCUMENT, I DIDN'T HAVE THAT IN MY CUSTODY AND
24 CONTROL.

25 THE COURT: THE RULE REQUIRES IF IT'S UNDER YOUR

MS. STAFFORD-DIRECT EXAMINATION BY MR. BELLAMY

308

1 -- YOU KNOW, YOU CAN'T DUCK IT LIKE THAT, MR. BELLAMY. IF
2 IT'S UNDER STATE'S CONTROL -- AND THIS IS THE STATE IN THIS
3 CASE -- IT MEANS THAT IT'S UNDER YOUR CONTROL. IT DOESN'T
4 MATTER WHETHER IT'S IN YOUR PHYSICAL POSSESSION OR NOT.

5 MR. BELLAMY: YOUR HONOR, THE INFORMATION IN
6 NUMBER 10 IS CUMULATIVE OF WHAT'S BEEN PROVIDED IN 11 AND
7 12.

8 THE COURT: ALL RIGHT, LET'S TESTIFY ON 11 AND 12
9 AND SEE. THERE'S NO OBJECTION TO THOSE. GO AHEAD AND MARK
10 11 AND 12 INTO EVIDENCE AND ALLOW THE WITNESS TO TESTIFY TO
11 THOSE. TAKE 10 AWAY FROM HER NOW AND WE'LL HOLD OFF ON
12 THAT AND COME BACK TO IT LATER SINCE THERE IS AN OBJECTION.
13 11 AND 12 WILL BE ADMITTED INTO EVIDENCE WITHOUT OBJECTION.

14 (WHEREUPON, STATE'S EXHIBIT NUMBERS 11 AND 12 ARE
15 AND FILED.)

16 MR. BELLAMY: (CONTINUING)

17 Q MS. SAFFORD, WOULD YOU DESCRIBE THE CONTENTS
18 OF STATE'S EXHIBIT NUMBER 11 FOR IDENTIFICATION AS IT
19 RELATES TO -- IN EVIDENCE AS IT RELATES TO DEFENDANT
20 DERRICK HOLLINGSWORTH AND JOSEPH HOWARD?

21 A WHAT THIS IS IS AN INMATE ARRIVAL LOG AND
22 OUR BOOKING OFFICERS MAINTAIN IT. WHAT THEY DO IS THEY
23 PLACE AN ARRIVAL TIME IN ONE BLOCK WITH THE INMATE'S NAME,
24 THEN THEY LIST THE BOOKING NUMBER, THE BOOKING TIME, THE
25 ARRESTING AGENCIES AND IF THERE'S ANY COMMENTS IN THAT

MS. STAFFORD-DIRECT EXAMINATION BY MR. BELLAMY

309

1 SECTION. ACCORDING TO THIS INMATE ARRIVAL LOG, WHICH IS
2 DATED SEPTEMBER 3RD OF 1998, DERRICK HOLLINGSWORTH AND
3 JOSEPH HOWARD ARRIVED AT OUR FACILITY AT 1430 HOURS. IT
4 LISTS THEIR BOOKING NUMBER, THE TIME THAT THEY WERE BOOKED
5 IN AND THAT BOTH INMATES WERE BROUGHT IN BY THE HORRY
6 COUNTY SHERIFF'S DEPARTMENT.

7 Q WHAT WAS THE BOOKING NUMBER OF DERRICK
8 HOLLINGSWORTH?

9 A 74689.

10 Q AND WHAT WAS THE BOOKING NUMBER OF JOSEPH
11 HOWARD?

12 A 74688.

13 Q AND AS FAR AS THE BOOKING TIME OF DERRICK
14 HOLLINGSWORTH?

15 A 1523 HOURS.

16 Q AND JOSEPH HOWARD?

17 A 1511 HOURS.

18 Q SO IT WOULD BE FAIR TO SAY JOSEPH HOWARD WAS
19 BOOKED BEFORE DERRICK COX WAS?

20 A THAT WOULD BE CORRECT.

21 Q WHO WAS THE ARRESTING AGENCY?

22 A HORRY COUNTY SHERIFF'S DEPARTMENT.

23 Q NOW, WHEN YOU SAY 1430, WHAT DOES THAT MEAN
24 JUST REGULAR TIME? THAT'S MILITARY TIME. WHAT IS IT IN
25 REGULAR TIME?

MS. STAFFORD-DIRECT EXAMINATION BY MR. BELLAMY

310

1 A 2:30 P.M.

2 Q LET ME REFER YOU TO STATE'S EXHIBIT NUMBER
3 12. WOULD YOU DESCRIBE HOW THE BOOKING ROOM LOG AS IT
4 RELATES TO THE DEFENDANT DERRICK HOLLINGSWORTH AND JOSEPH
5 HOWARD?

6 A WHAT THIS LOG DOES IS IT KEEPS A RECORD OF
7 ALL THE INMATES THAT ARE INCARCERATED IN OUR FACILITY,
8 WHICH HOUSING UNIT THEY'RE ASSIGNED TO AND IT KEEPS A
9 RUNNING TOTAL OF EACH HOUSING UNIT. AND ON THIS PARTICULAR
10 LOG IT SHOWS THAT AT 1511 HOURS JOSEPH HOWARD WAS BOOKED IN
11 AND PLACED IN A MAXIMUM SECURITY UNIT AND THAT HE'D BEEN
12 BROUGHT IN BY Horry COUNTY SHERIFF'S OFFICER PARKER AND AT
13 1523 HOURS DERRICK HOLLINGSWORTH WAS BOOKED INTO THE
14 FACILITY, BY Horry COUNTY SHERIFF'S DEPARTMENT PARKER AS
15 THE ARRESTING OFFICER, AND WAS PLACED IN OUR SEGREGATION
16 UNIT.

17 Q DID DEFENDANT DERRICK HOLLINGSWORTH AND
18 JOSEPH HOWARD ARRIVE TOGETHER?

19 A ACCORDING TO THESE DOCUMENTS, YES, THEY DID.

20 Q AND THEY WERE BROUGHT IN BY WHAT AGENCY
21 AGAIN?

22 A Horry COUNTY SHERIFF'S OFFICE. PARKER WAS
23 THE ARRESTING OFFICER.

24 MR. BELLAMY: YOUR HONOR, MAY I APPROACH?

25 THE COURT: YES, SIR. COME UP HERE.

MS. STAFFORD-CROSS-EXAMINATION BY MR. MONCKTON

311

1 MR. BELLAMY: WOULD YOU READ STATE'S EXHIBIT
2 NUMBER 10 FOR IDENTIFICATION FOR THE PURPOSE OF SHOWING
3 THAT'S IT'S CUMULATIVE.

4 THE COURT: ALL RIGHT, MR. MONCKTON, DO YOU STILL
5 OBJECT TO NUMBER 10 AFTER THE TESTIMONY?

6 MR. MONCKTON: YES, SIR, YOUR HONOR. I STILL
7 HAVEN'T HAD A CHANCE TO REVIEW IT. I DON'T KNOW WHAT IT
8 IS.

9 THE COURT: COME LOOK AT IT.

10 (WHEREUPON, COUNSEL APPROACH THE BENCH TO REVIEW
11 STATE'S EXHIBIT NUMBER 10 FOR ID.)

12 THE COURT: WHEN WE TAKE THE NEXT BREAK WE'LL SEE
13 WHAT THE PROBLEMS ARE.

14 MR. MONCKTON: THANK YOU, YOUR HONOR.

15 MR. BELLAMY: YOUR HONOR, THE STATE HAS NO
16 FURTHER QUESTIONS AT THIS TIME.

17 THE COURT: ALL RIGHT. CROSS-EXAMINATION, MR.
18 CHRISCO?

19 MR. CHRISCO: NO, YOUR HONOR.

20 THE COURT: MR. MONCKTON?

21 MR. MONCKTON: YES, SIR, YOUR HONOR.

22 CROSS-EXAMINATION

23 BY MR. MONCKTON:

24 Q YOU'VE BEEN AT J. REUBEN LONG FOR AWHILE,
25 HAVEN'T YOU?

MS. SAFFORD-CROSS-EXAMINATION BY MR. MONCKTON

312

1 A YES, I HAVE.

2 Q HOW MANY HOLDING CELLS DOES J. REUBEN LONG
3 HAVE?

4 A FOUR.

5 Q FOUR? COULD YOU STEP DOWN FOR ME, MS.
6 SAFFORD, AND SHOW THE JURY WHERE THE HOLDING CELLS ARE?

7 A THERE'S ONE LARGE HOLDING CELL HERE AND THEN
8 THERE'S THREE INDIVIDUAL HOLDING CELLS.

9 Q THANK YOU. BE SEATED. YOU TESTIFIED THAT
10 AFTER MR. JOSEPH HOWARD WAS BOOKED IN, BASED ON YOUR
11 NOTATION ON THE RECORDS, HE WAS PUT IN THE MAX. EXPLAIN TO
12 THE JURY WHAT THE MAX IS AT J. REUBEN LONG.

13 A IT'S A MAXIMUM SECURITY UNIT WHERE THE
14 INMATES ARE ONLY PERMITTED OUT FOR ONE HOUR A DAY. THEY
15 REQUIRE HIGHER SECURITY MEASURES BE TAKEN WITH THEM.

16 Q DO THEY HAVE ANY KIND OF SPECIAL CLOTHING
17 THAT THEY WEAR IN MAX?

18 A YES. THEY WEAR A RED UNIFORM.

19 Q WHY WOULD THEY WEAR A RED UNIFORM?

20 A EASY TO SPOT.

21 Q EASY TO SPOT. IS THERE A SPECIFIC REASON
22 FOR THAT?

23 A THERE IS A POTENTIAL FOR -- THEY MAY BE AN
24 ESCAPE RISK. IT MIGHT BE WHY THEY'RE IN THE MAXIMUM
25 SECURITY UNIT.

MS. SAFFORD-CROSS-EXAMINATION BY MR. MONCKTON

313

1 Q IS THE MAXIMUM SECURITY UNIT IDENTIFIED ON
2 THE DIAGRAM THE SOLICITOR'S OFFICE PROVIDED YOU?

3 A NO, IT IS NOT.

4 Q OKAY. IF YOU COULD POINT IN WHICH DIRECTION
5 WOULD BE THE MAXIMUM SECURITY UNIT?

6 A IT WOULD BE DOWN OVER IN THIS AREA HERE ONCE
7 YOU WENT DOWN THE HALL AND GO TO THE LEFT. THIS IS A VERY
8 SMALL SCALE. THIS DOESN'T SHOW ANYTHING.

9 Q OKAY. ARE THE MAXIMUM SECURITY INMATES AT
10 J. REUBEN LONG ALLOWED FREE ACCESS TO THE FACILITY?

11 A NO, THEY ARE NOT.

12 Q NOW, WHEN YOU SAY THEY'RE KEPT IN THEIR
13 CELLS FOR 23 HOURS A DAY, DO THEY HAVE ROOMMATES?

14 A SOMETIMES.

15 Q ARE THERE ANY SPECIAL PROCEDURES THAT YOU
16 ALL HAVE TO FOLLOW WHEN MOVING A MAXIMUM SECURITY INMATE
17 AROUND THE FACILITY?

18 A YES. THEY MUST BE SECURED WITH LEG CHAINS
19 AND HANDCUFFS OR A BELLY CHAIN.

20 Q NOW, WITH JOSEPH HOWARD BEING PLACED IN THIS
21 MAXIMUM SECURITY SITUATION, IS THAT HOW HE WOULD BE MOVED
22 AROUND THE FACILITY?

23 A YES, ONCE HE WAS PLACED IN MAXIMUM SECURITY.

24 Q DO YOU KNOW WHY MR. JOSEPH HOWARD WAS PLACED
25 IN THE MAXIMUM SECURITY UNIT AT J. REUBEN LONG?

MS. SAFFORD-CROSS-EXAMINATION BY MR. MONCKTON

314

1 A YES, I DO.

2 Q WHY?

3 A HE HAD PREVIOUSLY ESCAPED FROM OUR FACILITY.

4 Q HE ESCAPED? NOW, THERE'S BEEN SOME

5 TESTIMONY THAT -- THROUGH YOU THAT MR. HOWARD AND MR.

6 HOLLINGSWORTH WOULD HAVE BEEN BOOKED THEN APPROXIMATELY 12

7 MINUTES APART. DO YOUR RECORDS INDICATE WHICH HOLDING CELL

8 MR. HOLLINGSWORTH WOULD HAVE BEEN PLACED IN?

9 A NO, THEY DO NOT.

10 Q DO YOUR RECORDS INDICATE WHICH HOLDING CELL

11 JOSEPH HOWARD WOULD HAVE BEEN PLACED IN?

12 A NO, THEY DO NOT.

13 Q DO YOUR RECORDS INDICATE THEY WERE BOTH

14 PLACED INTO THE SAME HOLDING CELL?

15 A NO, THEY DO NOT.

16 Q NOW, YOU EXPLAINED, I BELIEVE, IN TESTIMONY

17 THAT DERRICK HOLLINGSWORTH WAS PLACED IN SEGREGATION. IS

18 SEGREGATION AND MAXIMUM SECURITY THE SAME CONFINEMENT AREA?

19 A NO, IT IS NOT THE SAME AREA.

20 Q ARE THEY SEPARATED BY NUMEROUS LOCKED DOORS?

21 A YES, BY A LOCKED DOOR.

22 Q AND SOME TERMINOLOGY THAT I'VE HEARD

23 REFERRED TO BEFORE, WHITE SHIRTS. ARE THERE A NUMBER OF

24 DIFFERENT WHITE SHIRTS YOU HAVE TO GET THROUGH TO GO FROM

25 SEGREGATION TO MAXIMUM SECURITY?

MS. STAFFORD-REDIRECT EXAMINATION BY MR. BELLAMY

315

1 A I'M NOT SURE I UNDERSTAND THE QUESTION.

2 Q OKAY. YOU WEAR A WHITE SHIRT. WHAT DOES
3 THAT MEAN?

4 A IT MEANS I'M IN THE SUPERVISOR CAPACITY.

5 Q OKAY. WOULD I HAVE TO GO THROUGH A
6 SUPERVISOR TO GET FROM SEG TO MAXIMUM SECURITY?

7 A THE PAPERWORK WOULD BE INITIALLY COMPLETED
8 BY A HOUSING UNIT OFFICER AND THEN AUTHORIZED BY A
9 SUPERVISOR.

10 Q OKAY. SO THERE'S NO INFORMATION YOU HAVE TO
11 PRESENT TO THIS JURY THAT MR. HOWARD AND MR. HOLLINGSWORTH
12 WERE EVER IN THE SAME HOLDING CELL OR IN THE SAME CELL AT
13 J. REUBEN LONG?

14 A NO, I HAVE NO INFORMATION FOR THAT.

15 MR. MONCKTON: ALL RIGHT. THANK YOU, MS.
16 SAFFORD.

17 THE COURT: REDIRECT, MR. BELLAMY?

18 MR. BELLAMY: YES, SIR, YOUR HONOR.

19 **REDIRECT EXAMINATION**

20 **BY MR. BELLAMY:**

21 Q MS. SAFFORD, WHEN DID JOSEPH HOWARD ESCAPE?

22 A SEPTEMBER 8TH OF 1997.

23 Q MS. SAFFORD, DO YOUR RECORDS INDICATE THAT
24 JOSEPH HOWARD AND DEFENDANT DERRICK HOLLINGSWORTH WERE NOT
25 IN THE SAME HOLDING CELL?

MS. STAFFORD-RECROSS-EXAMINATION BY MR. MONCKTON

316

1 A THEY DON'T SAY WHICH HOLDING CELL THEY WERE
2 IN.

3 Q OR COULD THEY HAVE BEEN IN THE SAME HOLDING
4 CELL?

5 A THEY COULD HAVE BEEN.

6 Q AND LET ME REFER TO THE DIAGRAM RIGHT HERE,
7 WHICH SAYS THE -- IT'S CALLED THE SOUND ISOLATION GROUP
8 CELL. COULD THEY HAVE BEEN IN THIS HOLDING CELL?

9 A YES, THEY COULD HAVE.

10 Q THANK YOU. LET ME CLARIFY A LITTLE BIT.
11 WHEN THEY WERE IN THE PROCESS OF BEING BOOKED, AT WHAT
12 POINT IN TIME WOULD THEY HAVE BEEN POSSIBLY PLACED IN THAT
13 HOLDING CELL?

14 A ONCE THE INMATES ARE SEARCHED THEY'RE THEN
15 PLACED INTO A HOLDING CELL UNTIL THEY ARE ACTUALLY BOOKED.

16 MR. BELLAMY: THANK YOU.

17 THE COURT: ANYTHING FURTHER, MR. MONCKTON?

18 MR. MONCKTON: JUST ONE QUESTION.

19 RECROSS-EXAMINATION

20 BY MR. MONCKTON:

21 Q AFTER MR. HOWARD WOULD HAVE BEEN BOOKED,
22 WHERE WOULD HE HAVE BEEN IMMEDIATELY TAKEN?

23 A MAXIMUM SECURITY.

24 MR. MONCKTON: THANK YOU.

25 THE COURT: ALL RIGHT. THANK YOU, MA'AM, YOU MAY

MS. SAFFORD-RECROSS-EXAMINATION BY MR. MONCKTON

317

1 STEP DOWN.

2 MR. HUMPHRIES: SIDE BAR FOR SCHEDULING, JUDGE?

3 THE COURT: YES, SIR.

4 (WHEREUPON, A SIDE BAR IS HELD OFF THE RECORD IN
5 THE PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE
6 JURY.)

7 THE COURT: LADIES AND GENTLEMEN OF THE JURY,
8 I'VE BEEN ADVISED BY COUNSEL THAT THERE ARE SOME MATTERS
9 THAT WE NEED TO TAKE UP AS FAR AS THE NEXT WITNESS IS
10 CONCERNED BUT RATHER THAN HAVE YOU SITTING IN THE JURY ROOM
11 THE WHOLE TIME I THINK IT WOULD BE A GOOD TIME TO RECESS
12 FOR LUNCH. THE DIFFERENCE TODAY FROM YESTERDAY IS THAT I'M
13 GOING TO HAVE HORRY COUNTY FEED YOU LUNCH TODAY SO WE'RE
14 GOING TO MAKE ARRANGEMENTS TO HAVE YOU TAKEN OUT TO LUNCH
15 TODAY AND WE'RE TAKING CARE OF THAT WITH THE CLERK RIGHT
16 NOW. SO WHAT I WOULD ASK THAT YOU DO IS GO TO YOUR JURY
17 ROOM FOR JUST A FEW MINUTES AND WE'LL SEE THAT WE'VE GOT
18 THESE ARRANGEMENTS MADE AND THEN WE WILL HAVE YOU GO TO
19 LUNCH AT THE EXPENSE OF HORRY COUNTY. I CAN'T PROMISE IT'S
20 GOING TO BE THE MOST GOURMET MEAL YOU EVER ATE BUT AT LEAST
21 IT WILL BE FREE. SO IF YOU WOULD GO TO YOUR JURY ROOM
22 RIGHT NOW, WE WILL -- AS SOON AS WE'VE MADE THOSE
23 ARRANGEMENTS, WE WILL LET YOU GO TO LUNCH.

24 (WHEREUPON, THE JURY LEFT THE COURTROOM AND THE
25 FOLLOWING TOOK PLACE OUTSIDE THEIR PRESENCE.)

RECORD OF MR. HOWARD

318

1 THE COURT: MR. HUMPHRIES, IF YOU WANT TO NOTIFY
2 THE FACILITIES WITH REGARD TO YOUR NEXT WITNESS AND TELL
3 THEM NOT TO BRING HIM UNTIL AFTER LUNCH.

4 MR. HUMPHRIES: WE'LL GO AHEAD AND GET HIM HERE
5 JUST TO MAKE SURE HE'S HERE.

6 THE COURT: OKAY, ALL RIGHT. WELL, LET'S GO
7 AHEAD WITH THE MATTERS THAT YOU HAD CONCERNING THE
8 IMPEACHMENT. YOUR NEXT WITNESS, AS I UNDERSTAND IT, WILL
9 BE MR. JOSEPH HOWARD; IS THAT CORRECT?

10 MR. HUMPHRIES: JOSEPH HOWARD, DATE OF BIRTH
11 NOVEMBER 12, 1958. JUDGE, I'M HANDING YOU A CRIMINAL
12 HISTORY WHICH IS A SYNOPSIS THAT I PREPARED BASED ON HIS
13 NCIC. I PROVIDED A COPY OF THAT TO BOTH DEFENSE COUNSEL.
14 WE JUST NEED TO SETTLE THE RECORD WITH REGARD TO HIS PRIOR
15 RECORD AND IN ADDITION THERE ARE ONE OR TWO OTHER ISSUES
16 WHICH WE NEED TO DISCUSS PRIOR TO MR. HOWARD TAKING THE
17 STAND.

18 THE COURT: ALL RIGHT. MR. CHRISCO AND MR.
19 MONCKTON, HAVE YOU ALL BEEN FURNISHED WITH THE SYNOPSIS OF
20 MR. HOWARD'S CRIMINAL HISTORY WITH -- IT APPARENTLY SHOWS
21 CHARGE 1 AND THEN CHARGES 2A THROUGH H AND CHARGE 3?

22 MR. CHRISCO: YOUR HONOR, I HAVE BUT I THINK I
23 MISPLACED IT. CAN I GET A COPY?

24 MR. BELLAMY: YES, SIR.

25 MR. CHRISCO: THANK YOU.

RECORD OF MR. HOWARD

319

1 THE COURT: ALL RIGHT ---

2 MR. CHRISCO: YOUR HONOR, I WOULD ---

3 THE COURT: WAIT JUST A MINUTE. I JUST WANTED TO
4 KNOW IF YOU HAD GOTTEN A COPY. ALL RIGHT, MR. HUMPHRIES,
5 WHAT'S YOUR POSITION AS TO WHICH ONES OF THESE CAN BE USED
6 FOR IMPEACHMENT? ANY OR ALL OR NONE?

7 MR. HUMPHRIES: YOUR HONOR, EVERY SINGLE ONE OF
8 THEM I'VE GOT ON THIS SHEET. AND LET ME TELL THE COURT
9 WHAT I DID IN TERMS OF REVIEWING THE NCIC. I ELIMINATED
10 ANY OFFENSES WHICH WERE OUTSIDE THE TEN-YEAR PERIOD,
11 INCLUDING THOSE -- BUT I DID INCLUDE THOSE WHICH BY VIRTUE
12 OF THEIR SENTENCE WOULD NOT HAVE ENDED BEFORE THE BEGINNING
13 OF TEN YEARS. THAT'S WHAT I ATTEMPTED TO DO AND I WILL
14 TELL THE COURT THERE ARE PROBABLY 25 or 30 PAGES OF NCIC ON
15 MR. HOWARD. I PLACED ALL OF THE OFFENSES FOR WHICH I COULD
16 FIND DISPOSITION WHICH I BELIEVE QUALIFY UNDER THE RULES OF
17 IMPEACHMENT THAT WERE AVAILABLE TO THE DEFENSE. WE ALSO
18 PROVIDED THE DEFENSE A COPY OF THE NCIC. THEY HAVE
19 REVIEWED IT AND I BELIEVE THERE IS SOME DISPARITY. THERE'S
20 PROBABLY NOT A LOT WE'RE GOING TO FUSS ABOUT. I JUST WANT
21 TO SETTLE THE RECORD, YOUR HONOR.

22 THE COURT: I UNDERSTAND. YOU DON'T CONTEND THAT
23 ANY OF THESE THAT YOU HAVE LISTED ARE NOT ADMISSIBLE? IN
24 YOUR VIEW YOU WOULD AGREE THAT ALL OF THESE THAT YOU HAVE
25 LISTED ARE ADMISSIBLE?

RECORD OF MR. HOWARD

320

1 MR. HUMPHRIES: I DO.

2 THE COURT: OKAY, ALL RIGHT. NOW, MR. CHRISCO,
3 WHAT ELSE? HAVE YOU GOT ANYTHING OTHER THAN THESE?

4 MR. CHRISCO: YES, YOUR HONOR. I FOUND TWO ON
5 THE NCIC. ONE IS A PETTY LARCENY THAT HE PLED TO IN
6 POUGHKEEPSIE, NEW YORK ON MARCH THE 1ST, 1991.

7 MR. HUMPHRIES: IF YOU'LL GIVE ME A MINUTE,
8 JUDGE, I'LL FIND THE POINT AT WHICH IT APPEARS. CAN YOU
9 GIVE ME AN IDEA ABOUT WHAT PAGE IT IS, ED? WE MAY BE ABLE
10 TO AGREE TO IT.

11 THE COURT: ALL RIGHT.

12 MR. CHRISCO: IT'S EASIER TO COUNT BACKWARDS.
13 IT'S THE THIRD PAGE FROM THE BACK.

14 THE COURT: WHAT'S THE DATE?

15 MR. CHRISCO: IT'S GOT ON HERE MARCH THE 1ST,
16 1991.

17 THE COURT: ALL RIGHT, HOLD ON.

18 MR. CHRISCO: THE WARRANT WAS DATED 11/24/89 AND
19 THAT'S WHAT HE PLED ON.

20 MR. HUMPHRIES: I AGREE, YOUR HONOR. PETTY
21 LARCENY AND RECEIVED A SENTENCE OF 30 DAYS. IT IS A ---

22 THE COURT: ALL RIGHT, TAKES CARE OF THAT ONE.
23 THAT ONE CAN BE ADDED TO THE LIST. ALL RIGHT. ANYTHING
24 ELSE, MR. CHRISCO?

25 MR. CHRISCO: YES, YOUR HONOR, THERE'S ONE BUT I

RECORD OF MR. HOWARD

321

1 NEED THE COURT'S INDULGENCE FOR JUST A MINUTE. YOU MIGHT
2 WANT TO PASS ON TO MR. MONCKTON AND THEN COME BACK HERE
3 WHEN I FIND IT.

4 THE COURT: ALL RIGHT, MR. MONCKTON, HAVE YOU GOT
5 ANYTHING ELSE?

6 MR. MONCKTON: YES, SIR, YOUR HONOR. I TOOK MR.
7 HOWARD'S SENTENCING RECORD OUT TO THE JAIL WHEN I
8 INTERVIEWED HIM. IT'S THE ONLY WAY I COULD MAKE HEADS OR
9 TAILS OF IT. NOVEMBER THE 4TH, 1991, HE PLED TO FORGERY,
10 WHICH HE INFORMED ME WAS WELFARE FRAUD AND HE WAS SENTENCED
11 TO 18 TO 36 MONTHS.

12 THE COURT: DOES THAT NOT SHOW ON THE NCIC.?

13 MR. MONCKTON: IT DOES SHOW ON THE NCIC.

14 THE COURT: IT DOES SHOW ON THE NCIC?

15 MR. MONCKTON: YES, SIR, YOUR HONOR.

16 MR. HUMPHRIES: WHERE, BILL?

17 MR. MONCKTON: IT WAS ONE OF HIS NEW YORK
18 CHARGES.

19 MR. MONCKTON: LET ME CORRECT THAT, YOUR HONOR.
20 IT'S NOVEMBER THE 4TH OF 1999. I SEE IT'S LISTED ON MR.--
21 AS NUMBER 3.

22 THE COURT: OKAY.

23 MR. MONCKTON: THAT IS THE WELFARE FRAUD. HE HAD
24 IT LISTED AS GRAND LARCENY.

25 THE COURT: OKAY.

RECORD OF MR. HOWARD

322

1 MR. HUMPHRIES: AND THAT'S WHAT IT SAYS GRAND
2 LARCENY, 18 TO 36 MONTHS. GRAND LARCENY FOURTH. AND I DID
3 INCLUDE THAT ONE.

4 THE COURT: ALL RIGHT, IT SHOWS THAT ONE. ALL
5 RIGHT, MR. MONCKTON - I MEAN, I'M SORRY, MR. CHRISCO, DID
6 YOU FIND ANYTHING ELSE?

7 MR. CHRISCO: YOUR HONOR, I'M NOT ---

8 THE COURT: I'LL LET YOU ALL LOOK OVER LUNCH
9 RECESS IF YOU THINK THERE'S ANYTHING ELSE. I THINK YOU ALL
10 CAN -- EVERYBODY KNOWS THE RULES AS TO WHAT IS ADMISSIBLE
11 AND WHAT CAN BE USED AND GENERALLY THERE'S NOT ANY PROBLEM
12 AGREEING ON THOSE AND IF ANYTHING COMES UP AND YOU DO HAVE
13 ANYTHING THAT YOU CAN'T AGREE ON, I'LL DEAL WITH THAT.

14 MR. HUMPHRIES: YOUR HONOR, THE OTHER ISSUES ARE
15 THESE. WE'LL TAKE IT UP WITH MR. HOWARD BUT JUST FOR THE
16 COURT'S INFORMATION THE WAY MR. HOWARD CAME TO THE STATE'S
17 ATTENTION IS HE MAILED A LETTER TO AN HORRY COUNTY
18 DETECTIVE, DOYLE GIBBS, THAT BASICALLY PROVIDED CERTAIN
19 INFORMATION REGARDING THIS CRIME AND DERRICK MARCEL
20 HOLLINGSWORTH. THAT LETTER WAS FORWARDED TO THE CONWAY
21 POLICE DEPARTMENT. THE SOLICITOR'S OFFICE DIDN'T LEARN OF
22 THAT LETTER UNTIL MR. BELLAMY WENT OVER TO REVIEW THE
23 CONWAY POLICE DEPARTMENT FILE PROBABLY IN DECEMBER AND AT
24 THAT TIME WE CONTACTED MR. HOWARD. WE HAVE THE ORIGINAL
25 LETTER, WHICH WE WILL NOT INTRODUCE IN DIRECT BECAUSE IT

RECORD OF MR. HOWARD

323

1 CONTAINS SOME OTHER INFORMATION, ALTHOUGH I DON'T THINK IT
2 MATTERS ONE WAY OR ANOTHER UNLESS THEY ATTEMPT TO IMPEACH
3 HIM BY IT AND THEN, OBVIOUSLY, WE'LL INTRODUCE ---

4 THE COURT: IMPEACH HIM WITH THE LETTER?

5 MR. HUMPHRIES: CORRECT.

6 THE COURT: DEFENSE WAS GIVEN A COPY OF THIS
7 LETTER?

8 MR. MONCKTON: YES, SIR, YOUR HONOR.

9 MR. CHRISCO: YES, YOUR HONOR.

10 THE COURT: OKAY.

11 MR. HUMPHRIES: AND, YOUR HONOR, THERE WAS A
12 SUBSEQUENT LETTER TO ME FROM MR. HOWARD BASICALLY
13 SUMMARIZING THE FACT THAT HE HAD BEEN INTERVIEWED BY TWO
14 LAWYERS WHOM I HAD TO ASSUME AT THAT POINT TO BE MR.
15 MONCKTON AND MR. CHRISCO. I BELIEVE ---

16 MR. CHRISCO: THAT'S CORRECT, YOUR HONOR.

17 MR. HUMPHRIES: --- BOTH GENTLEMEN INTERVIEWED
18 HIM. EXPRESSING SOME CONCERNS ABOUT THE MANNER OF THE
19 INTERVIEW OF ONE ATTORNEY AS OPPOSED TO ANOTHER. THOSE
20 MATTERS REALLY ARE NOT THAT IMPORTANT. THERE WAS ONE ISSUE
21 WHICH RELATED TO POSSIBLE IMPEACHMENT REGARDING
22 IDENTIFICATION OF MR. HOLLINGSWORTH FROM MR. HOWARD. THAT
23 LETTER ALONG WITH A COVER LETTER FROM ME WAS FORWARDED TO
24 MR. MONCKTON AS RELATED TO HIS CLIENT AND I TOLD MR.
25 MONCKTON AT THAT TIME THAT HE IS FREE TO DISBURSE THAT

RECORD OF MR. HOWARD

324

1 INFORMATION TO THE OTHER COUNSEL IF HE CHOSE TO DO IT BUT I
2 FELT LIKE I HAD MET MY OBLIGATION UNDER THE RULES IN
3 ADVISING HIM. I DON'T KNOW IF HE'S SINCE GIVEN THAT LETTER
4 TO MR. CHRISCO OR NOT.

5 THE COURT: ARE YOU GOING ---

6 MR. HUMPHRIES: I'M NOT GOING TO USE THE LETTER.
7 I JUST WANTED TO LET YOU KNOW THAT THE LETTER IS OUT THERE.
8 I PROVIDED IT TO MR. MONCKTON AS IT RELATED TO HIS CLIENT
9 AND THE IDENTIFICATION OF HIS CLIENT. I WILL TELL THE
10 COURT THIS. MR. HOWARD, JOSEPH HOWARD, NEVER IDENTIFIED A
11 SECOND -- WELL, HE IDENTIFIED A SECOND INDIVIDUAL IN THAT
12 DERRICK HOLLINGSWORTH TOLD HIM, "ME AND MY PARTNER SHOT
13 THIS GUY." HE DIDN'T IDENTIFY HIM AS TO NAME OR
14 DESCRIPTION AND THAT'S WHY I JUST PROVIDED IT TO MR.
15 MONCKTON.

16 THE COURT: I SEE.

17 MR. HUMPHRIES: BUT THAT'S THE OTHER ISSUE WE
18 NEED TO TAKE UP. THAT IS, WHAT DID MR. HOWARD SAY
19 REGARDING THE PARTNER. AND, OBVIOUSLY, THE STATE'S
20 POSITION IS BECAUSE MR. HOWARD HAS NOT IDENTIFIED CORTREAL
21 SWINTON BY NAME OR DESCRIPTION BECAUSE HE WASN'T PROVIDED
22 INFORMATION IN THAT REGARD, THAT HE IS STILL ENTITLED TO
23 SAY THAT MR. HOLLINGSWORTH TOLD HIM, "ME AND MY PARTNER
24 SHOT THIS GUY." AND WE JUST WANT SOME CLARIFICATION. AS I
25 UNDERSTAND JUDGE PEEPLES' RULING, HE RULED THAT IT WAS

RECORD OF MR. HOWARD

325

1 CONDITIONALLY ADMISSIBLE BUT HE WOULD KEEP THE ISSUE OPEN
2 TO SEE HOW THE EVIDENCE DEVELOPED. THE STATE'S POSITION
3 WOULD BE AT THIS TIME THAT THAT STATEMENT HAS BEEN
4 CORROBORATED TO THE EXTENT THAT THERE HAVE BEEN -- THERE
5 HAS BEEN TESTIMONY REGARDING TWO SHOOTERS IN THE CASE, SO
6 IT HAS SOME TRUSTWORTHINESS. IT IS, THEREFORE, ADMISSIBLE
7 AND THE FACT THAT IT DOESN'T IDENTIFY CORTREAL SWINTON BY
8 NAME OR DESCRIPTION FURTHER LENDS SUPPORT TO ITS
9 ADMISSIBILITY.

10 THE COURT: ALL RIGHT, SO MR. HOWARD IS GOING TO
11 TESTIFY THAT MR. HOLLINGSWORTH TOLD HIM THAT "ME AND MY
12 PARTNER SHOT HIM": CORRECT?

13 MR. HUMPHRIES: CORRECT:

14 THE COURT: OKAY. ALL RIGHT, I'LL GIVE YOU --
15 JUST A MINUTE, MR. CHRISCO. BUT LET ME GO TO THE ONE THAT
16 WAS IDENTIFIED HERE FROM MR. MONCKTON'S STANDPOINT AND SEE.
17 WHAT'S YOUR POSITION ON THE PROFFERED TESTIMONY OR THE
18 INDICATED PROFFERED TESTIMONY, MR. MONCKTON?

19 MR. MONCKTON: WELL, YOUR HONOR, I BELIEVE HE CAN
20 TESTIFY. THE ONLY CONCERN I HAVE AS FAR AS MY MOTION IN
21 LIMINE IS TO PREVENT HIM FROM ID'ING MY CLIENT IN THE
22 COURTROOM. I BELIEVE FROM MY DISCUSSIONS WITH MR. PARKER
23 AND I'M SURE HE'S SAID THE SAME ---

24 MR. HUMPHRIES: HOWARD. MR. HOWARD.

25 MR. MONCKTON: MR. HOWARD. THAT HE HAS SAID THE

RECORD OF MR. HOWARD

326

1 SAME TO MR. HUMPHRIES THAT, NUMBER ONE, HE DIDN'T KNOW MY
2 CLIENT; NUMBER TWO, JUST RECENTLY WHEN HE MAY OR MAY NOT
3 HAVE SEEN MY CLIENT AT THE JAIL WHEN HE WAS HERE FOR THE
4 LAST TRIAL, I CAN TELL THE COURT THAT THEY WERE SITTING
5 SIDE BY SIDE AND IN HIS LETTER TO MR. HUMPHRIES HE INFORMED
6 MR. HUMPHRIES THAT HE DIDN'T KNOW IF THAT WAS HIM OR NOT.
7 SO IT CAUSES ME CONCERN THAT HE'S GOING TO BE SITTING UP
8 THERE AND GO, OH YEAH, THAT'S THE GUY.

9 THE COURT: WHAT'S YOUR POSITION ON THE ID
10 QUESTION, MR. HUMPHRIES?

11 MR. HUMPHRIES: HERE'S MY POSITION, YOUR HONOR.
12 THE FIRST LETTER, WHICH WAS SENT TO MR. GIBBS, IDENTIFIED
13 THE AUTHOR OF THE STATEMENTS, IF YOU WILL, AS THE PERSON
14 NAME WHO SHOT THE GUY IS SA. HE ALSO TOLD ME SOMEONE ELSE
15 HELPED HIM. THAT WAS THE FIRST THING HE SAID. THAT WAS IN
16 OCTOBER OF 1998 AFTER HIS RETURN AFTER HAVING BEEN
17 TRANSPORTED BACK FROM GEORGIA. ADDITIONALLY, HE CONTINUES
18 TO REFER TO HIM AS SA. THERE IS SUFFICIENT EVIDENCE ---

19 THE COURT: THE ONLY QUESTION I'VE GOT AND I
20 THINK WHAT MR. MONCKTON IS CONCERNED ABOUT IS IF HE'S GOING
21 TO GET UP HERE AND YOU'RE GOING TO SAY --

22 MR. HUMPHRIES: NO, SIR.

23 THE COURT: "DO YOU SEE THE MAN THAT SAID THIS TO
24 YOU IN THE COURTROOM? POINT HIM OUT."

25 MR. HUMPHRIES: NO, SIR, I'M NOT GOING TO DO

RECORD OF MR. HOWARD

327

1 THAT.

2 THE COURT: THAT'S YOUR CONCERN, ISN'T IT?

3 MR. MONCKTON: IF THERE'S NO IN-COURT
4 IDENTIFICATION GOING TO TAKE PLACE FROM THAT WITNESS, I
5 DON'T HAVE ANY PROBLEM.

6 MR. HUMPHRIES: I AM NOT GOING TO ASK THAT
7 QUESTION.

8 THE COURT: ALL RIGHT, THAT SOLVES THE PROBLEM.

9 MR. MONCKTON: I CAN PROMISE YOU I'M NOT GOING TO
10 ASK THAT.

11 THE COURT: I'M SURE YOU'RE NOT. THAT SOLVES
12 THAT PROBLEM. ALL RIGHT, MR. CHRISCO, LET ME HEAR FROM
13 YOU. WELL, LET ME ASK THE CLERK. I'LL COME BACK TO YOU IN
14 JUST A MINUTE. LET ME GO AHEAD AND LET THE JURY GO TO
15 LUNCH. MR. PAGE, ARE YOU GOING TO TAKE CARE OF THIS OR
16 WHO'S GOING TO HANDLE THE JURY? ALL RIGHT, MADAME CLERK,
17 IF YOU WOULD SWEAR THE BAILIFFS WHO WILL BE IN CHARGE OF
18 THE JURY DURING THE LUNCH BREAK.

19 (WHEREUPON, THE BAILIFF AND DEPUTY WERE SWORN.)

20 THE COURT: ALL RIGHT, BRING THE JURY OUT AND
21 I'LL JUST TELL THEM THAT THEY'RE GOING WITH THESE TWO
22 DEPUTIES AND WE'LL RETURN THEM TO THE COURTROOM. LET'S
23 HAVE THEM GO IN THE JURY BOX FOR JUST A MOMENT BEFORE I LET
24 THEM GO.

25 (WHEREUPON, THE JURY ENTERED THE COURTROOM AND

RECORD OF MR. HOWARD

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1 THE FOLLOWING PROCEEDINGS WERE HAD.)

2 THE COURT: ALL RIGHT, LADIES AND GENTLEMEN, WE
3 HAVE MADE ARRANGEMENTS FOR YOU TO HAVE LUNCH AT THE BISTRO
4 RIGHT UP THE STREET, WHICH IS WITHIN WALKING DISTANCE.
5 THERE WILL BE TWO DEPUTIES WHO WILL ACCOMPANY YOU TO LUNCH.
6 THE ONLY THING THAT I WOULD TELL YOU, OF COURSE, IS THAT
7 YOU SHOULD NOT DISCUSS THE CASE AMONG YOURSELVES WHILE
8 YOU'RE ON THE LUNCH RECESS. IT'S STILL PREMATURE. YOU
9 HAVE NOT HEARD ALL THE TESTIMONY IN THIS CASE AND ANY
10 DISCUSSION OF THE MATTER AMONG YOURSELVES IS STILL
11 PREMATURE SO DON'T DISCUSS THE CASE AMONG YOURSELVES. AS I
12 SAID YESTERDAY, YOU CAN TALK ABOUT THE WEATHER, SPORTS,
13 YOUR GRANDCHILDREN, ANYTHING YOU WANT BUT DON'T TALK ABOUT
14 THIS CASE. TAKE YOUR TIME. WE HAVE PLENTY OF TIME. ORDER
15 ANYTHING THAT YOU WOULD LIKE ON THE MENU AND ENJOY YOUR
16 LUNCH AND THEN WHEN YOU HAVE ALL COMPLETED YOUR LUNCH, THE
17 BAILIFFS WILL RETURN WITH YOU TO THE JURY ROOM AND WE'LL BE
18 READY TO BEGIN. WE'VE GOT A FEW MORE LEGAL MATTERS THAT WE
19 NEED TO TAKE CARE OF AND WE'RE GOING TO DO THAT AT THIS
20 TIME SO HOPEFULLY WE CAN START BACK AS SOON AS YOU GET
21 BACK. SO ENJOY YOUR LUNCH AND GO WITH THE TWO DEPUTIES AND
22 WE'LL SEE YOU AFTER LUNCH. THANK YOU.

23 (WHEREUPON, THE JURY LEFT THE COURTROOM AND THE
24 FOLLOWING TOOK PLACE OUTSIDE THEIR PRESENCE.)

25 THE COURT: ALL RIGHT, MR. CHRISCO, LET ME HEAR

BRUTON ARGUMENTS

329

1 FROM YOU WITH REGARD TO THE PURPORTED OR PROPOSED TESTIMONY
2 THAT THE STATE INTENDS TO ELICIT FROM MR. HOWARD THAT HE --
3 THAT MR. HOLLINGSWORTH AND HIS PARTNER COMMITTED THIS
4 CRIME. WHAT'S YOUR POSITION ON THAT? I DON'T THINK HE
5 USES YOUR MAN'S NAME OR IDENTIFIES HIM IN ANY WAY. HE JUST
6 SAYS HIS PARTNER. ISN'T THAT RIGHT, MR. HUMPHRIES?

7 MR. HUMPHRIES: THAT'S CORRECT.

8 MR. CHRISCO: I DON'T THINK HE SAYS PARTNER. I
9 THINK HE SAYS "HAD HELP," IF I'M NOT WRONG ON THAT ISSUE.

10 MR. HUMPHRIES: HOLD IT JUST A SECOND. I THINK I
11 JUST READ IT. LET ME LOOK AT IT AGAIN. "THE PERSON NAME
12 WHO SHOT THE GUY IS SA. HE ALSO TOLD ME SOMEONE ELSE
13 HELPED HIM." I BELIEVE IT WAS IN MY INTERVIEW OF MR.
14 HOWARD HE REFERRED TO THE HELP AS HIS PARTNER.

15 MR. CHRISCO: I DID NOT GET A COPY OF THAT.

16 MR. HUMPHRIES: WELL, THAT'S MY INTERVIEW AND
17 HE'S NOT ENTITLED TO THAT.

18 THE COURT: NOT ENTITLED TO THAT, SIR. UNDER THE
19 FACTS OF THIS CASE, MR. CHRISCO, IT WOULD SEEM LIKE TO ME
20 THAT WHILE THAT DOES INDICATE THAT THERE'S ONE OTHER PERSON
21 INVOLVED, THERE'S TESTIMONY IN THIS CASE THAT THERE WERE
22 TWO OTHER PEOPLE INVOLVED AND IT DOESN'T HELP OR HURT YOUR
23 CLIENT ONE WAY OR THE OTHER IS THE WAY THAT IT SEEMS TO ME.

24 MR. CHRISCO: YOUR HONOR, I REALIZE IT BUT I'M
25 ARGUING AGAINST IT ANYWAY.

BRUTON ARGUMENTS

330

1 THE COURT: OKAY.

2 MR. CHRISCO: YOUR HONOR, WHEN WE WERE ARGUING
3 THIS MOTION IN FRONT OF JUDGE PEEPLES AND HE MADE THE
4 RULING THAT TENTATIVELY I'LL ALLOW IT. LET'S SEE HOW THE
5 EVIDENCE SHAPES UP. ONE OF THE CASES THAT THE STATE TURNED
6 IN TO --- WELL, THE CASE WAS RICHARDSON VS. MARSH, WHICH IS
7 A UNITED STATES SUPREME COURT CASE, 1987, AND THEY STATED
8 THAT THAT ALLOWED THEM TO DO IT. YOUR HONOR, I'VE BEEN
9 READING IT. NORMALLY THAT WOULD BE A BRUTON VIOLATION. IN
10 OTHER WORDS, THEY CAN'T USE WHAT SOMEONE ELSE SAID ABOUT
11 SOMEONE ELSE WHEN THEY'RE BEING TRIED TOGETHER.

12 THE COURT: BRUTON'S A CO-DEFENDANT.

13 MR. CHRISCO: THAT'S CORRECT, YOUR HONOR, AND
14 WE'VE GOT CO-DEFENDANT SITUATION HERE, RIGHT HERE, RIGHT
15 NOW, YOUR HONOR.

16 THE COURT: ALL RIGHT.

17 MR. CHRISCO: NOW IN MARSH THEY ALLOW IT BUT
18 HERE'S THE REASON THEY ALLOW IT. IT SAID "THERE WAS AN
19 IMPORTANT DISTINCTION BETWEEN THIS CASE AND BRUTON WHICH
20 CAUSES IT TO FALL OUTSIDE THE NARROW EXCEPTION WE HAVE
21 CREATED. IN BRUTON THE CO-DEFENDANT'S CONFESSION EXPRESSLY
22 IMPLICATED THE DEFENDANT AS HIS ACCOMPLICE, THUS AT THE
23 TIME THE CONFESSION WAS INTRODUCED THERE WAS NOT THE
24 SLIGHTEST DOUBT THAT IT WOULD HAVE PROVED POWERFULLY
25 INCRIMINATING. BY CONTRAST IN THIS CASE THE CONFESSION WAS

BRUTON ARGUMENTS

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1 NOT INCRIMINATING ON ITS FACE AND BECAME SO ONLY WHEN
2 LINKED WITH EVIDENCE INTRODUCED LATER AT THE TRIAL." IN
3 PARENTHESES IT SAYS "THE DEFENDANT'S OWN TESTIMONY." IN
4 THIS CASE THE DEFENDANT GOT UP AND TESTIFIED SO IT'S NOT A
5 THIRD PARTY. HERE THEY'RE TRYING TO GET IT IN AS THIRD
6 PARTY. IN OTHER WORDS, THE DEFENDANT OPENED HIMSELF UP TO
7 CROSS-EXAMINATION ON THAT CASE. WE THINK THERE'S A
8 DISTINCTION, YOUR HONOR.

9 THE COURT: OKAY.

10 MR. CHRISCO: WE'D OBJECT TO THE ADMISSION OF THE
11 "HELP, PARTNER" OR WHATEVER HE'S GOING TO TESTIFY TO,
12 IMPLICATING THAT SOMEONE ELSE AND THE JURY CAN ONLY LOOK
13 OVER HERE AND SEE ONE OTHER PERSON SITTING AT THIS TABLE.
14 I THINK IT'S HIGHLY PREJUDICIAL TO MR. SWINTON. THANK YOU,
15 YOUR HONOR.

16 THE COURT: ALL RIGHT. MR. HUMPHRIES?

17 MR. HUMPHRIES: YOUR HONOR, JUST BRIEFLY. MARSH
18 IS EXACTLY THE SITUATION WE'RE DEALING WITH HERE. THERE
19 WAS AN IMPLICATION THAT THERE WAS ANOTHER INDIVIDUAL, NOT
20 NAMED, NOT DESCRIBED, SO IN NO WAY IS THAT ON ITS FACE
21 INCRIMINATING OF, IN THIS CASE, CORTREAL SWINTON. NOW,
22 THERE HAS BEEN SUFFICIENT EVIDENCE AND SUBSTANTIAL EVIDENCE
23 PRESENTED IN THIS TRIAL THAT LATER TIES IN CORTREAL
24 SWINTON. IT IS THE EXACT SAME SITUATION AS IN MARSH AND IT
25 IS PERMISSIBLE UNDER THAT CASE, WHICH IS A LEADING CASE.

BRUTON ARGUMENTS

332

1 THE COURT: IN MY VIEW THIS DOES MEET THAT
2 EXCEPTION FROM THE BRUTON RULE AS OUTLINED IN THE MARSH
3 CASE AND THE REASON FOR THAT, TOO, IS THAT THIS IS EVEN ONE
4 FURTHER STEP REMOVED BY THE FACTS OF THIS CASE. NOT ONLY
5 IN THAT CASE YOU HAD AN IDENTIFICATION OF ANOTHER PERSON
6 BUT NO IDENTIFICATION OF THAT PERSON, JUST ANOTHER PERSON,
7 BUT IN THIS CASE WE'VE EVEN GOT LESS PREJUDICE THAT COULD
8 ARISE TO THE DEFENDANT MR. SWINTON BECAUSE THERE IS
9 EVIDENCE IN THE RECORD OF A THIRD PERSON. SO IT APPEARS TO
10 ME THAT THE PREJUDICE IS JUST SIMPLY NOT THERE AND I WILL
11 ALLOW THE TESTIMONY.

12 MR. HUMPHRIES: THANK YOU, YOUR HONOR. THAT'S
13 ALL THE MATTERS I HAVE REGARDING MR. HOWARD'S TESTIMONY.

14 THE COURT: ALL RIGHT.

15 MR. CHRISCO: YOUR HONOR.

16 THE COURT: YES, SIR.

17 MR. CHRISCO: THE OTHER PETTY LARCENY WAS IN
18 KINGSTON, NEW YORK, ON 8/3/92. THAT'S NINE PAGES FROM THE
19 BACK OF THE NCIC.

20 THE COURT: WHAT'S THE DATE, MR. CHRISCO?

21 MR. HUMPHRIES: POSSESSION OF STOLEN PROPERTY.
22 SO IT'S POSSESSION OF STOLEN PROPERTY NOT PETTY LARCENY.
23 THAT'S THE CHARGE.

24 MR. CHRISCO: WE'LL CONCEDE, YOUR HONOR.

25 THE COURT: ALL RIGHT. OKAY, FINE. ALL RIGHT,

MR. HOWARD-DIRECT EXAMINATION BY MR. HUMPHRIES

333

1 COUNSEL, LET'S TAKE ABOUT -- LET'S PLAN FOR 2:00. I THINK
2 THE JURY OUGHT TO BE BACK THEN AND THAT OUGHT TO GIVE
3 EVERYBODY TIME TO GET LUNCH AND SO LET'S PLAN TO RECESS
4 UNTIL 2:00 AND START BACK AT THAT TIME.

5 (WHEREUPON, COURT WAS RECESSED FOR LUNCH AND THE
6 FOLLOWING TAKES PLACE AT 2:00.)

7 THE COURT: ANYTHING BEFORE WE SEND FOR THE JURY?
8 MR. BELLAMY?

9 MR. BELLAMY: NOTHING FROM THE STATE.

10 THE COURT: FROM THE DEFENSE?

11 MR. CHRISCO: NOTHING FROM DEFENSE, YOUR HONOR.

12 MR. MONCKTON: JUST A MATTER OF HOUSEKEEPING,
13 YOUR HONOR. DURING THE BREAK THE STATE AND THE DEFENSE
14 HAVE STIPULATED TO DEFENSE EXHIBIT NUMBER 2, A PHOTOGRAPH,
15 BEING ENTERED INTO EVIDENCE.

16 THE COURT: ALL RIGHT. IT WILL BE MARKED DEFENSE
17 EXHIBIT NUMBER 2 AND ADMITTED WITHOUT OBJECTION.

18 MR. MONCKTON: THANK YOU, YOUR HONOR.

19 (WHEREUPON, DEFENDANT HOLLINGSWORTH EXHIBIT
20 NUMBER 2 IS MARKED AND FILED.)

21 THE COURT: ALL RIGHT, SIR, BRING THE JURY IN,
22 PLEASE.

23 (WHEREUPON, THE JURY ENTERED THE COURTROOM AND
24 THE FOLLOWING PROCEEDINGS WERE HAD.)

25 THE COURT: ALL RIGHT. THANK YOU VERY MUCH,

MR. HOWARD-DIRECT EXAMINATION BY MR. HOWARD

334

1 LADIES AND GENTLEMEN. I HOPE EVERYONE HAD A PLEASANT
2 LUNCH. I APOLOGIZE THAT THE RESTAURANT WAS NOT READY FOR
3 YOU. WE HAD EARLIER CONTACTED THEM AND HAD INDICATED THAT
4 WE WERE GOING TO HAVE YOU THERE AT 1:15 AND THEN WHEN WE
5 BROKE A LITTLE EARLY, WE CALLED THEM AND THEY SAID THAT
6 THEY HAD ROOM, COME ON DOWN AND SO THAT'S WHY WE SENT YOU
7 UP THERE. THEN WE FOUND OUT THEY DIDN'T QUITE HAVE THE
8 TABLES OPEN FOR YOU SO I HOPE IT WASN'T TOO UNCOMFORTABLE
9 WAITING AND I HOPE THAT YOU HAD A PLEASANT LUNCH. WE ARE
10 READY TO RESUME. ALL RIGHT, MR. HUMPHRIES.

11 MR. HUMPHRIES: THANK YOU, YOUR HONOR. THE STATE
12 CALLS CLARENCE JOSEPH HOWARD.

13 CLARENCE JOSEPH HOWARD,

14 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

15 DIRECT EXAMINATION

16 BY MR. HUMPHRIES:

17 Q MR. HOWARD.

18 A YES, SIR.

19 Q WHERE ARE YOU PRESENTLY INCARCERATED, SIR?

20 A RICHLAND CORRECTIONAL FACILITY.

21 Q IS THAT A STATE INSTITUTION?

22 A YES, IT IS.

23 Q AND YOU WERE INCARCERATED THERE UNDER WHAT
24 SENTENCE, SIR?

25 A THE SENTENCE? A NINE-YEAR SENTENCE.

MR. HOWARD-DIRECT EXAMINATION BY MR. HOWARD

335

1 Q IS THAT A RESULT OF YOUR CONVICTION ON A
2 SERIES OF CHARGES HERE IN HORRY COUNTY?

3 A YES, I PLED GUILTY TO CHARGES.

4 Q AND JUST AS A PRELIMINARY MATTER, MR. HOWARD
5 -- AND, OBVIOUSLY, DEFENSE COUNSEL WILL HAVE AN OPPORTUNITY
6 TO GO THROUGH YOUR PRIOR CRIMINAL HISTORY REGARDING YOUR
7 CONVICTIONS, BUT SUFFICE IT TO SAY IT IS RELATIVELY
8 EXTENSIVE, IS IT NOT, SIR?

9 A YES, IT IS, ABOUT 20 YEARS.

10 Q YES, SIR. NOW, IN THAT CONTEXT DID YOU HAVE
11 AN OCCASION TO BE PREVIOUSLY INCARCERATED IN THE J. REUBEN
12 LONG DETENTION CENTER HERE IN HORRY COUNTY?

13 A YES.

14 Q AND DID YOU ALSO THEN HAVE AN OCCASION TO
15 LEAVE WITHOUT AUTHORIZATION FROM THE J. REUBEN LONG
16 DETENTION CENTER?

17 A YES, I DID.

18 Q COMMONLY CALLED ESCAPE?

19 A THAT'S WHAT THEY CALL IT.

20 Q YES, SIR. AND IN WHAT MONTH AND WHAT YEAR?

21 A I BELIEVE IT WAS SEPTEMBER 3RD, '97.

22 Q 1997?

23 A YES, SIR.

24 Q WHICH, OF COURSE, PREDATES OCTOBER 4TH OF
25 1997, CORRECT?

MR. HOWARD-DIRECT EXAMINATION BY MR. HOWARD

336

1 A YES.

2 Q SIR, WERE YOU THEN A LONGSTANDING RESIDENT
3 OF HORRY COUNTY OR THE CITY OF CONWAY?

4 A I'D BEEN THERE FOR A COUPLE OF YEARS.

5 Q A COUPLE OF YEARS.

6 A YES, SIR.

7 Q AND IN THAT CONNECTION I'M GOING TO ASK YOU
8 -- I'M GOING TO TELL YOU A NUMBER OF NAMES. I'M GOING TO
9 ASK YOU TO TELL ME IF YOU RECOGNIZE THE NAMES.

10 A UH-HUH.

11 Q OKAY? SARAH WEAVER. DO YOU KNOW A SARAH
12 WEAVER?

13 A ME PERSONALLY, NO.

14 Q KIM BROWN.

15 A I DON'T BELIEVE SO. I'M NOT SURE. I'M NOT
16 GOOD WITH NAMES, WHATEVER.

17 Q VICKY CAMPBELL.

18 A IT DOESN'T STRIKE A BELL, NO.

19 Q LAKEISHA SMITH.

20 A NO.

21 Q FREDERICK COX.

22 A NO, I NEVER HEARD OF THAT, NO.

23 Q MR. HOWARD, WHEN YOU LEFT J. REUBEN LONG IN
24 SEPTEMBER OF 1997, WHERE DID YOU GO, SIR?

25 A I WENT TO ATLANTA, GEORGIA.

MR. HOWARD-DIRECT EXAMINATION BY MR. HOWARD

337

1 Q DO YOU HAVE FAMILY THERE?

2 A I DO HAVE A BROTHER THERE, YES, I DO.

3 Q YOU DO?

4 A YES.

5 Q NOW, HOW LONG DID YOU REMAIN IN ATLANTA,
6 GEORGIA, UNTIL YOU WERE LATER ARRESTED BY THE AUTHORITIES?

7 A WHEN THE HORRY COUNTY SHERIFF CAME OR ---

8 Q CORRECT.

9 A THEY SAID ALMOST A YEAR TO THE DATE.

10 Q SO THAT WOULD HAVE BEEN IN SEPTEMBER OF
11 1998?

12 A YEAH, I RETURNED ABOUT SEPTEMBER 3RD ALSO,
13 1998.

14 Q NOW, AFTER HAVING BEEN ARRESTED IN ATLANTA,
15 WHERE WERE YOU HOUSED PRIOR TO COMING BACK TO HORRY COUNTY?

16 A FULTON COUNTY JAIL ON WRIGHT STREET IN
17 ATLANTA, GEORGIA.

18 Q AND WERE YOU SUBSEQUENTLY RETURNED TO THE J.
19 REUBEN LONG DETENTION CENTER?

20 A YES, I WAS.

21 Q AND BY WHAT MEANS WERE YOU RETURNED TO THE
22 J. REUBEN LONG DETENTION CENTER, SIR?

23 A I BELIEVE IT WAS THE HORRY COUNTY POLICE.
24 THEY CAME AND PICKED ME UP.

25 Q AND BY WHAT MEANS OF TRAVEL DID YOU RETURN?

MR. HOWARD-DIRECT EXAMINATION BY MR. HOWARD

338

1 A CAR.

2 Q DID YOU HAVE COMPANY IN THAT VEHICLE
3 RETURNING FROM ATLANTA, SIR?

4 A YES, I DID.

5 Q DID YOU HAVE COMPANY OTHER THAN LAW
6 ENFORCEMENT OFFICERS IN COMING BACK TO J. REUBEN LONG
7 DETENTION CENTER?

8 A YES, SIR. YES.

9 Q DESCRIBE FOR THE JURY, IF YOU WILL, THE
10 FELLOW PRISONER THAT YOU CAME BACK WITH IN TERMS OF HIS
11 PHYSICAL APPEARANCE, SIR.

12 A WELL, HE WAS A LIGHT COMPLEXION, MAYBE MY
13 HEIGHT OR A LITTLE TALLER, AND FIRMER THAN WHAT I WEIGH
14 NOW.

15 Q AND WAS THAT INDIVIDUAL SUBSEQUENTLY
16 IDENTIFIED TO YOU BY A NICKNAME?

17 A YES.

18 Q AND WHAT WAS THAT NAME?

19 A SA.

20 Q SA?

21 A YEAH.

22 Q MR. HOWARD, DURING YOUR TRIP BACK FROM
23 ATLANTA WHAT, IF ANY, CONVERSATION DID YOU HAVE WITH THIS
24 INDIVIDUAL NAMED SA?

25 A WELL, HE WAS TELLING ME ABOUT WHAT HAPPENED

MR. HOWARD-DIRECT EXAMINATION BY MR. HOWARD

339

1 AT THE FULTON COUNTY JAIL. IT'S A BIG JAIL, ABOUT LIKE
2 4,000, 5,000 PEOPLE AND THEY CAN'T EVEN LOCK THE DOORS SO
3 PEOPLE BE RUNNING AROUND AND A LOT OF FIGHTS. SO THE FIRST
4 CONVERSATION STARTED ABOUT HOW HE WAS GLAD THAT HORRY
5 COUNTY CAME AND PICKED HIM UP AND THEN HE ASKED ME DURING
6 THAT TIME WHAT WAS I COMING BACK FOR.

7 Q DID YOU TELL HIM?

8 A UH-HUH. I TOLD HIM ESCAPE.

9 Q DID YOU THEN ASK HIM WHAT HE WAS COMING BACK
10 FOR?

11 A YEAH, I ASKED HIM THAT.

12 Q WHAT DID HE TELL YOU AT THAT TIME?

13 A HE MORE OR LESS PUT IT AS A QUESTION LIKE
14 DIDN'T I HEAR ABOUT THE MURDER THAT HAPPENED ON THE
15 RACEPATH IN CONWAY.

16 Q HE ASKED YOU IF YOU HAD HEARD ABOUT THE
17 MURDER ON RACEPATH?

18 A YEAH. HE HAD ASKED ME FOR THE MURDER AND I
19 BELIEVE MY REACTION WAS THAT I DIDN'T -- NOT SAY I DIDN'T
20 BELIEVE HIM BUT I NEVER HEARD ABOUT A MURDER IN CONWAY SO
21 THAT'S WHEN HE QUESTIONED ME DID ---

22 Q DID YOU TELL HIM YOU HADN'T HEARD ABOUT A
23 MURDER IN CONWAY?

24 A YEAH, I DIDN'T HEAR ABOUT IT.

25 Q AND WHAT, IF ANYTHING, DID HE INDICATE TO

MR. HOWARD-DIRECT EXAMINATION BY MR. HOWARD

340

1 YOU AFTER YOU TOLD HIM THAT?

2 A THAT'S WHEN HE HAD ASKED ME DIDN'T I HEAR
3 ABOUT THE MURDER THAT HAPPENED ON THE RACEPATH AND THAT'S
4 WHEN I STATED NO AND THEN HE HAD ASKED ME WELL, WHEN DID
5 YOU ESCAPE AND I TOLD HIM IT WAS SEPTEMBER AND HE SAID NO,
6 YOU WOULDN'T HAVE BECAUSE IT HAPPENED IN OCTOBER. I WAS
7 GONE WHEN THAT HAPPENED.

8 Q NOW, LET ME ASK YOU SOMETHING ABOUT THAT,
9 MR. HOWARD.

10 A UH-HUH.

11 Q YOU ESCAPED IN SEPTEMBER 1997.

12 A THAT WAS WHAT THEY CALLED IT.

13 Q WHICH IS WHAT THEY CALLED IT.

14 A RIGHT.

15 Q I UNDERSTAND.

16 A OKAY.

17 Q AND YOU RETURNED TO J. REUBEN LONG IN
18 SEPTEMBER 1998.

19 A CORRECT.

20 Q DID YOU AT ANY POINT IN TIME DURING THAT
21 YEAR RETURN TO HORRY COUNTY OR THE CITY OF CONWAY?

22 A NO, SIR, I DID NOT.

23 Q DID YOU TAKE ANY NEWSPAPERS OR WATCH ANY
24 NEWS COVERAGE OF LOCAL NEWS HERE IN CONWAY WHILE IN
25 ATLANTA?

MR. HOWARD-DIRECT EXAMINATION BY MR. HOWARD

341

1 A NO, I DID NOT.

2 Q DID YOU HAVE ANY INDEPENDENT --

3 MR. MONCKTON: OBJECTION, YOUR HONOR, TO THE
4 LEADING.

5 THE COURT: OVERRULED AT THIS POINT. NOT ALL YES
6 OR NO QUESTIONS ARE LEADING. HE HASN'T SUGGESTED AN
7 ANSWER. GO AHEAD.

8 MR. HUMPHRIES: THANK YOU. (CONTINUING)

9 Q DID YOU HAVE ANY INDEPENDENT INFORMATION OR
10 SECONDHAND INFORMATION REGARDING A MURDER ON RACEPATH IN
11 OCTOBER OF 1997 OTHER THAN THAT SUPPLIED TO YOU BY S.A.?

12 A NO, I NEVER TALKED TO ANYONE ABOUT IT.

13 Q THE CONVERSATION THAT YOU TOLD THIS JURY
14 ABOUT.

15 A IN THE CAR?

16 Q ABOUT THE CHARGES.

17 A RIGHT.

18 Q YOURS BEING ---

19 A ESCAPE.

20 Q --- ESCAPE, HIS BEING THE MURDER ON RACEPATH
21 IN OCTOBER.

22 A RIGHT.

23 Q WHAT OTHER CONVERSATION DID YOU ENGAGE IN ON
24 THE WAY BACK FROM ATLANTA?

25 A NOT VERY MUCH. WE HAD PULLED INTO A GAS

MR. HOWARD-DIRECT EXAMINATION BY MR. HOWARD

342

1 STATION AND THERE WAS A CAR AND THE GUYS IN ATLANTA KIND OF
2 FIX UP OLD CARS AND MAKE THEM LOOK NEW AND JUST A LITTLE
3 CONVERSATION ABOUT THAT BUT OTHERWISE WE DIDN'T TALK TOO
4 MUCH. WE MOSTLY SLEPT ON THE WAY BACK AND WE STOPPED ONE
5 TIME TO EAT AND DIDN'T REALLY TALK TOO MUCH.

6 Q OKAY. NOW, WHEN YOU ARRIVED BACK -- AND I
7 ASSUME YOU CAME BACK TO THE J. REUBEN LONG DETENTION
8 CENTER.

9 A YES, I DID.

10 Q YOU ARRIVED TOGETHER?

11 A UH-HUH, RIGHT.

12 Q UPON GOING INTO THE FACILITY, MR. HOWARD,
13 WHERE WERE YOU PLACED AND WHERE WAS THIS SA PLACED?

14 A I BELIEVE, MY RECOLLECTION IS THAT WE WAS
15 PLACED IN THE SAME CELL OR THE SAME HOLDING CELL.

16 Q I'M GOING TO SHOW YOU WHAT'S BEEN INTRODUCED
17 INTO EVIDENCE AS STATE'S NUMBER 9. HAVE YOU HAD AN
18 OPPORTUNITY TO LOOK AT HIS DIAGRAM? THAT IS A SCHEMATIC OF
19 THE CUSTODY AND SECURITY AREA THERE AT J. REUBEN LONG.

20 A THAT'S IT, UH-HUH, YES.

21 Q TELL ME, SIR, BASED ON THIS EXHIBIT, STATE'S
22 NUMBER 9, REFERENCING THE BOOKING DESK, CAN YOU IDENTIFY
23 THE CELL OR THE HOLDING AREA IN WHICH YOU AND SA WERE
24 PLACED UPON ARRIVAL?

25 A THE FAR LEFT WHERE IT SAYS SOUND

MR. HOWARD-DIRECT EXAMINATION BY MR. HOWARD

343

1 INSTALLATION GROUP.

2 Q WHERE I'VE PLACED MY FINGER?

3 A UH-HUH, YES.

4 Q NOW, HOW LONG -- LET ME ASK YOU THIS. DO
5 YOU RECALL ANYBODY ELSE HAVING BEEN IN THAT HOLDING AREA --
6 -

7 A I BELIEVE SO.

8 Q --- WHEN YOU WERE PLACED THERE WITH MR. --
9 WITH SA?

10 A YES. IT'S BEEN OVER A YEAR BUT I BELIEVE
11 THERE WAS. I BELIEVE SOMEONE WAS SLEEPING OR SOMETHING. I
12 BELIEVE SO.

13 Q WHEN IN THAT HOLDING AREA, DID YOU AND SA
14 SPLIT UP OR STAY TOGETHER?

15 A WE HAD SPLIT UP BECAUSE I WENT -- WHEN YOU
16 FIRST COME IN WHEN IT'S KIND OF YOUR TURN, THEY FIRST TAKE
17 THE SHOELACES AND TAKE INFORMATION FROM YOU FROM THE
18 BOOKING DESK SO I WENT OUT. I HAD TO GO OUT THERE AND DO
19 THAT SO, YEAH, WE WERE SPLIT UP.

20 Q WAS THERE A TIME WHEN YOU WERE TOGETHER IN
21 THE HOLDING AREA?

22 A AT THE END.

23 Q AT THE END.

24 A I THINK WHEN WE WERE GETTING READY TO BE
25 PLACED IN OUR UNITS.

MR. HOWARD-DIRECT EXAMINATION BY MR. HOWARD

344

1 Q AND LET'S CLEAR THAT UP. WERE YOU, AFTER
2 BEING BOOKED ---

3 A UH-HUH.

4 Q --- AND TRANSFERRED, WERE YOU BOTH PLACED IN
5 THE SAME UNIT?

6 A NO.

7 Q WHERE WERE YOU PLACED?

8 A I THINK IN THE MAX UNIT BECAUSE OF THE
9 ESCAPE CHARGE THEY CHARGED ME WITH.

10 Q DO YOU KNOW OF YOUR OWN PERSONAL KNOWLEDGE
11 WHERE SA WOULD HAVE BEEN PLACED?

12 A NO, I DON'T KNOW.

13 Q YOU JUST KNOW HE WASN'T PLACED WITH YOU?

14 A RIGHT.

15 Q NOW, PRIOR TO THE TWO OF YOU, YOU AND SA,
16 BEING SEPARATED DID YOU ENGAGE IN ANY OTHER CONVERSATION
17 SPECIFICALLY RELATING TO THE INCIDENT ON RACEPATH IN
18 OCTOBER OF 1997?

19 A YOU MEAN BEFORE WE WERE PUT IN THE UNITS OR
20 WHAT?

21 Q BEFORE YOU WERE TRANSFERRED OUT ---

22 A TO THE UNITS.

23 Q --- YOU IN THE MAX AND HIM GOING TO WHEREVER
24 HE WENT.

25 A TRUE, YES. YES, SIR.

MR. HOWARD-DIRECT EXAMINATION BY MR. HOWARD

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1 Q TELL THE JURY WHAT THE CONVERSATION WAS,
2 PLEASE, SIR.

3 A WELL, I MORE OR LESS ASKED HIM WAS HE
4 WORRIED ABOUT IT AND DID THEY HAVE ANY EVIDENCE AGAINST
5 HIM.

6 Q OKAY, AND WHAT IF ANYTHING DID HE INDICATE
7 TO YOU IN RESPONSE TO THAT QUESTION?

8 A HE SAID THEY DIDN'T. WHEN HIM AND HIS
9 PARTNER OR HIS, YOU KNOW, HOMEBOY HAD SEEN THE GUY ON THE
10 PHONE, THERE WASN'T NOBODY AROUND WHEN THEY SHOT HIM.

11 Q DID HE INDICATE TO YOU WHETHER HE WAS
12 CONCERNED ABOUT THE CHARGES?

13 A WELL, HE SAID THAT HE WAS -- HE WAS TRYING
14 TO GET PHONE CALLS. THAT'S HOW I REALLY FOUND OUT HIS
15 NAME. BUT HE WAS SAYING THAT AS SOON AS HE GET BOND SET
16 THAT HE WAS GOING TO BOUNCE AND PRETTY MUCH HE WASN'T
17 REALLY ---

18 Q AS SOON AS HE GOT BOND HE SAID HE WAS GOING
19 TO BOUNCE?

20 A UH-HUH.

21 Q AND WAS IT CLEAR TO YOU WHAT HE MEANT BY THE
22 TERM "BOUNCE?"

23 A IT COULD MEAN A COUPLE OF THINGS. IT COULD
24 MEAN HE WAS GOING TO LEAVE THE JAIL OR, YOU KNOW, HE COULD
25 LEAVE THE CITY, YOU KNOW. IT COULD MEAN A COUPLE OF

MR. HOWARD-DIRECT EXAMINATION BY MR. HOWARD

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1 THINGS.

2 Q I UNDERSTAND.

3 A YEAH.

4 Q NOW, DID HE INDICATE TO YOU ANY REASON ---

5 MR. MONCKTON: OBJECTION, YOUR HONOR, AS TO THE
6 LEADING.

7 MR. HUMPHRIES: IT CERTAINLY DOESN'T CALL FOR A
8 YES OR NO ANSWER, JUDGE, AND I HAVEN'T EVEN FINISHED THE
9 QUESTION.

10 THE COURT: HE HASN'T FINISHED HIS QUESTION. GO
11 AHEAD AND FINISH THE QUESTION. IF YOU HAVE AN OBJECTION,
12 MAKE IT AT THAT TIME.

13 MR. HUMPHRIES: THANK YOU, YOUR HONOR.

14 Q (CONTINUING) DID HE INDICATE TO YOU A
15 REASON, IF ANY, FOR HAVING SHOT THIS INDIVIDUAL ON RACEPATH
16 IN OCTOBER OF 1997?

17 THE COURT: ALL RIGHT, WAIT JUST A MINUTE. IS
18 THERE AN OBJECTION?

19 MR. MONCKTON: YES, SIR, YOUR HONOR. IT'S
20 LEADING.

21 THE COURT: OVERRULED.

22 MR. HUMPHRIES: THANK YOU, JUDGE.

23 Q (CONTINUING) PLEASE ANSWER THE QUESTION,
24 MR. HOWARD.

25 A YES. HE SAID THAT THE GUY HAD SHOT UP HIS

MR. HOWARD-DIRECT EXAMINATION BY MR. HOWARD

347

1 PEOPLE'S HOUSE.

2 Q AND?

3 A SO HE DESERVED IT.

4 Q HE SAID -- I'M SORRY?

5 A BASICALLY, THAT'S WHAT HE HAD SAID, THAT THE
6 GUY HAD SHOT HIS PEOPLE'S HOUSE UP.

7 Q AND HE SAID?

8 A HE DESERVED IT.

9 Q HE DESERVED IT?

10 A YEAH.

11 Q IN YOUR CONVERSATIONS, MR. HOWARD, WITH SA
12 DID HE INDICATE TO YOU ANY LANDMARK WHICH WOULD HELP YOU
13 UNDERSTAND WHERE ON RACEPATH THIS MURDER OCCURRED?

14 A MORE OR LESS I QUESTIONED HIM BECAUSE I'M
15 NOT REALLY FROM CONWAY.

16 Q YES, SIR.

17 A SO I WAS TRYING TO KIND OF REMEMBER WHERE
18 RACEPATH WAS ACTUALLY AT, SO I HAD MENTIONED THE EXXON
19 BECAUSE THERE'S A VEGETABLE STAND OVER THAT WAY, TOO, AND
20 HE HAD MENTIONED THE BARS AND THE BIG TREE WHERE PEOPLE
21 PARK UNDER AND THAT'S THE RACEPATH.

22 Q I'M GOING TO SHOW YOU WHAT'S IN EVIDENCE AS
23 STATE'S EXHIBIT 2, PLEASE, SIR. TAKE A LOOK AT THIS IF YOU
24 WILL. JUST TO ORIENT YOU, THIS IS THE EXXON EXPRESS.
25 THAT'S CHURCH STREET. THIS IS RACEPATH AVENUE. KENTUCKY

MR. HOWARD-DIRECT EXAMINATION BY MR. HOWARD

348

1 FRIED CHICKEN HERE AND 378 HERE. DID SA GIVE YOU A
2 LANDMARK TO HELP YOU KNOW WHERE THIS MURDER OCCURRED?

3 A WELL, THE BARS AND THAT TREE.

4 THE COURT REPORTER: I'M SORRY, I CAN'T HEAR YOU.

5 THE COURT: SPEAK UP.

6 THE WITNESS: OH, MY FAULT.

7 A (CONTINUING) IT'S WHERE THE BAR IS.

8 THERE'S A BAR. I REMEMBER THERE WAS A BAR THIS SIDE OF THE
9 TREE LIKE WHEN YOU COME AROUND THE EXXON.

10 Q YES, SIR.

11 A AND YOU COME DOWN TOWARD MARTIN BILLY'S
12 CLUB. I REMEMBER THAT THERE'S A BAR RIGHT WHERE THE AVENUE
13 WOULD BE.

14 Q RIGHT HERE?

15 A IT'S FURTHER DOWN.

16 Q OKAY.

17 A AND RIGHT IN THAT AREA BETWEEN THAT PLACE
18 AND WHERE YOU MARKED BILLY'S CLUB THERE WERE TREES. THAT'S
19 WHAT I CAN REMEMBER.

20 Q NOW, MR. HOWARD, HAVING LEARNED THIS
21 INFORMATION DID YOU IMMEDIATELY CONTACT LAW ENFORCEMENT AND
22 TELL THEM THAT YOU HAD RECEIVED INFORMATION REGARDING A
23 MURDER IN CONWAY?

24 A NOT IMMEDIATELY, NO.

25 Q YOU DID NOT?

MR. HOWARD-DIRECT EXAMINATION BY MR. HOWARD

349

1 A NO, SIR.

2 Q MR. HOWARD, I NEED YOU TO TELL THIS JURY
3 YOUR MOTIVATION -- WELL, LET ME ASK YOU THIS. DID YOU AT
4 SOME POINT IN TIME TELL LAW ENFORCEMENT YOU HAD SOME
5 INFORMATION IN REGARD TO THIS MURDER?

6 A I TRIED.

7 Q OKAY. TELL THE JURY WHAT ATTEMPTS YOU MADE
8 IN ORDER TO ADVISE LAW ENFORCEMENT ABOUT THIS INFORMATION
9 YOU HAD.

10 A I WROTE A LETTER.

11 Q DO YOU RECALL TO WHOM YOU WROTE THE LETTER?

12 A NOT PARTICULARLY, NO.

13 Q LET ME SHOW YOU AN ITEM. I JUST WANT YOU TO
14 TAKE A LOOK AT THE ITEM. I DON'T WANT YOU TO TESTIFY FROM
15 IT OR READ ANYTHING ON IT. I WANT YOU TO IDENTIFY IT IF
16 YOU CAN, ALL RIGHT, SIR?

17 A YES, SIR.

18 Q I'M SHOWING YOU STATE'S 13 FOR
19 IDENTIFICATION PURPOSES. IF YOU'LL TAKE A LOOK AT THE
20 ENVELOPE AND BOTH THE ---

21 A LOOK INSIDE OF IT?

22 Q INSIDE, YES, SIR. JUST TELL ME IF YOU CAN
23 IDENTIFY THAT AND TELL ME WHAT IT IS.

24 A IT'S A LETTER I WROTE.

25 Q AND IS THAT THE LETTER WE'RE TALKING ABOUT

MR. HOWARD-DIRECT EXAMINATION BY MR. HOWARD

350

1 TODAY?

2 A YES, IT'S THE LETTER THAT I WROTE, YES.

3 Q THANK YOU. DO YOU RECALL WHEN YOU WROTE
4 THIS LETTER?

5 A I SEEN THE DATE ON IT, OCTOBER THE 29TH.

6 Q OF WHAT YEAR?

7 A '98.

8 Q RETURNED TO THE JAIL SEPTEMBER 3RD OF 1998.

9 A UH-HUH.

10 Q WROTE A LETTER OCTOBER 29TH, 1998?

11 A THAT'S WHAT IT'S MARKED, YES.

12 Q ALMOST TWO MONTHS?

13 A CLOSE.

14 Q MR. HOWARD, DURING THOSE INTERVENING TWO
15 MONTHS ---

16 A UH-HUH.

17 Q WHERE HAD YOU BEEN HOUSED?

18 A IN THE MAX UNIT OF THE DETENTION CENTER.

19 Q MR. HOWARD, DID YOU WRITE THAT LETTER
20 BECAUSE YOU WERE BEING A GOOD SAMARITAN?

21 A NO. I WAS FRUSTRATED BECAUSE I WAS TRYING
22 TO DEAL WITH MY PROBLEMS AND I COULDN'T REALLY GET ANYBODY
23 TO LISTEN. I KNEW EXACTLY WHAT I DID AND I DIDN'T DO AND
24 THERE WAS A LOT OF INDIVIDUALS IN THERE WHO'D FLOOD THEIR
25 CELLS AND THEN THE OFFICERS WOULD CUT OFF THE WATER BUT TO

MR. HOWARD-DIRECT EXAMINATION BY MR. HOWARD

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1 GET THEIR WATER TURNED BACK ON THEY WOULD URINATE AND THROW
2 THEIR, YOU KNOW, FECES OUT SO IT WOULD FORCE THEM BACK TO
3 TURN THE WATER BACK ON BUT A LOT OF TIMES THE OFFICERS
4 WOULD JUST GET FRUSTRATED, I GUESS, THEMSELVES AND SAY WE
5 WOULD HAVE TO -- WE SHOULD BE MAD AT THE GUYS THAT FLOODED
6 THE UNIT AND THEY WOULDN'T REALLY ALLOW US TO CLEAN IT UP
7 SO I WAS KIND OF LIVING IN A BAD SITUATION AND ---

8 Q IT WASN'T A PLEASANT PLACE TO BE?

9 A NO, NO.

10 Q IS IT FAIR TO SAY THAT YOU WANTED SOME
11 ACTION ON YOUR CHARGES?

12 A YEAH. I WAS TRYING TO JUST GO AHEAD AND GO
13 TO STATE PRISON, JUST GO AHEAD AND PLEAD GUILTY TO THE
14 CHARGES THAT I WANTED TO AND TAKE A TRIAL FOR THE ONES I
15 DIDN'T BUT I COULDN'T CONTACT, YOU KNOW -- COULDN'T GET
16 ANYBODY TO REALLY LISTEN TO MY SIDE OF IT THE WAY I WANTED
17 IT.

18 Q SURE.

19 A BECAUSE I FIGURED THAT THE CHARGE WAS GOING
20 BACK OVER A YEAR AGO SO THE SOLICITOR'S OFFICE SHOULD HAVE
21 BEEN READY TO PROCEED BUT -- SO I WAS READY TO GO.

22 Q AND I GUESS THAT'S OUR FAULT.

23 A SIR?

24 Q I GUESS THAT'S OUR FAULT. MR. HOWARD, IN
25 ANY EVENT, AS A RESULT OF THAT LETTER OR ANY OTHER

MR. HOWARD-DIRECT EXAMINATION BY MR. HOWARD

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1 COMMUNICATION TO LAW ENFORCEMENT IN 1998, DID YOU RECEIVE
2 ANY HELP ON YOUR CHARGES?

3 A NO. THAT'S WHY I GOT THE NINE YEARS.

4 Q IN FACT, WHEN WERE YOU CONTACTED BY LAW
5 ENFORCEMENT REGARDING THAT LETTER IN CONNECTION WITH THIS
6 CASE?

7 A AT RICHLAND PROBABLY ABOUT TWO MONTHS AGO, A
8 MONTH AND A HALF AGO.

9 Q NOW, YOU'VE BEEN SENTENCED, CORRECT?

10 A YES, I HAVE.

11 Q WHAT IF ANYTHING HAS THE STATE -- THAT IS
12 THE SOLICITOR'S OFFICE.

13 A UH-HUH.

14 Q WHAT HAVE WE TOLD YOU WE WOULD DO IN RETURN
15 FOR YOUR COOPERATION TODAY?

16 A WELL, LIKE WHEN I FIRST RECEIVED THE CALL, I
17 WAS CALLED TO OPERATIONS AND I SPOKE TO, I BELIEVE, MR.
18 BELLAMY AND IT TOOK ME AWHILE -- I MEAN, HE WAS, YOU KNOW,
19 QUESTIONED ME WOULD I BE WILLING TO ASSIST THE SOLICITOR'S
20 OFFICE AND I REALLY AT THE TIME DIDN'T SEE A REASON TO.

21 Q YOU DIDN'T SEE ANY REASON TO?

22 A NO, BECAUSE I WAS ALREADY SENTENCED. SO WE
23 WERE JUST TALKING FOR AWHILE AND HE HAD ASKED ME WELL, HOW
24 MUCH MORE TIME DO I HAVE TO MAX OUT AND WHEN DO I GO UP TO
25 PAROLE AND SO I MENTIONED MY PAROLE DATE TO HIM AND MY MAX

MR. HOWARD-DIRECT EXAMINATION BY MR. HOWARD

353

1 OUT DATE AND THE ONLY THING THAT HE SAID TO ME WAS THAT A
2 LETTER WOULD BE WRITTEN TO THE PAROLE BOARD IF I DID COME
3 AND ASSIST. SO I THOUGHT ABOUT THAT AND THEN AFTER AWHILE
4 I AGREED TO COME AND TESTIFY.

5 Q NOW, MR. HOWARD, DID THAT PROMISE -- OR THAT
6 REPRESENTATION BY THE SOLICITOR'S OFFICE, WAS IT A PROMISE
7 TO RECOMMEND YOU FOR PAROLE?

8 A WELL, MY UNDERSTANDING OF IT THAT IT'S
9 REALLY UP TO THE PAROLE BOARD ANYWAY. IT REALLY DOESN'T
10 MATTER ANYWAY. I WAS TOLD THAT IT MIGHT EVEN HURT BUT THAT
11 IT WOULD SEEM LIKE I'M TRYING TO GET OUT OF SOMETHING, BUT
12 I COULDN'T TELL YOU. MY TAKE ON IT WOULD BE A
13 RECOMMENDATION BUT I DON'T KNOW IF THAT'S WHAT YOU TAKE ON
14 IT.

15 Q IN FACT, YOU WERE SENT A LETTER FROM THIS
16 OFFICE REGARDING WHAT THE SOLICITOR'S OFFICE WOULD BE
17 WILLING TO DO ON YOUR BEHALF IN RETURN FOR YOUR TRUTHFUL
18 TESTIMONY AND COOPERATION, WERE YOU NOT?

19 A YEAH. YES, SIR.

20 Q THAT WAS NOT A RECOMMENDATION BUT AN
21 ADVISEMENT TO THE PAROLE BOARD ---

22 A FOR WHAT I'D DONE.

23 Q --- THAT YOU HAD COOPERATED.

24 A YEAH. THAT'S WHAT IT STATED, YEAH.

25 Q NOW, MR. HOWARD, WE DO NEED TO GET THIS

MR. HOWARD-CROSS-EXAMINATION BY MR. MONCKTON

354

1 CLEAR, SIR.

2 A UH-HUH.

3 Q DID THE STATE -- THAT IS THE SOLICITOR'S
4 OFFICE -- OR ANY OF ITS AGENTS, ASK YOU TO TESTIFY TO
5 ANYTHING OTHER THAN THE TRUTH HERE TODAY, SIR?

6 A NO.

7 Q HAS THE SOLICITOR'S OFFICE, OR ANY OF ITS
8 AGENTS, PROVIDED YOU WITH ANY INFORMATION REGARDING THIS
9 CASE WHICH WE'VE ASKED YOU TO ADOPT AND THEN TELL THIS
10 JURY?

11 A NO, NO.

12 Q AND HAS ALL THE INFORMATION WHICH YOU'VE
13 RELATED TO THIS JURY COME SOLELY FROM YOU, ANY INFORMATION
14 YOU RECEIVED FROM THIS INDIVIDUAL NAMED SA?

15 A IT WOULD BE, YES.

16 Q PLEASE ANSWER ANY QUESTIONS DEFENSE COUNSEL
17 MAY HAVE OF YOU.

18 THE COURT: CROSS-EXAMINATION, MR. MONCKTON?

19 MR. MONCKTON: YES, SIR, YOUR HONOR, MAY IT
20 PLEASE THE COURT.

21 THE COURT: YES, SIR.

22 CROSS-EXAMINATION

23 BY MR. MONCKTON:

24 Q HOW ARE YOU DOING TODAY, MR. HOWARD?

25 A COULD BE BETTER BUT I'M OKAY.

MR. HOWARD-CROSS-EXAMINATION BY MR. MONCKTON

355

1 Q DO YOU REMEMBER MEETING ME OUT THERE AT J.
2 REUBEN LONG?

3 A YES.

4 Q WITH MY PARALEGAL, MISS SCHULER?

5 A ABOUT A MONTH AGO, SOMETHING LIKE THAT.

6 Q AND WE TAPE-RECORDED OUR INTERVIEW, DIDN'T
7 WE?

8 A UH-HUH.

9 Q WE SURE DID. AND WE WENT THROUGH YOUR
10 EXTENSIVE CRIMINAL RECORD AT THAT TIME TO MAKE SURE WE HAD
11 IT RIGHT, DIDN'T WE?

12 A UH-HUH, YUP, SURE DID.

13 Q LET'S KIND OF GO THROUGH IT HERE IF WE CAN.
14 IT MAY BE A LITTLE CHRONOLOGICALLY OUT OF ORDER BUT IF I
15 MISS ANYTHING, YOU HELP ME FILL IT IN. OKAY?

16 A UH-HUH.

17 Q WHERE ARE YOU ORIGINALLY FROM?

18 A NEW YORK. I WAS RAISED IN NEW YORK.

19 Q WHERE? NEW YORK CITY?

20 A POUGHKEEPSIE, UPSTATE IN THE COUNTRY.

21 Q HOW LONG HAVE YOU BEEN DOWN HERE IN SOUTH
22 CAROLINA?

23 A ABOUT '96; CAME DOWN IN '96.

24 Q '96. LET'S GO THROUGH ---

25 A JANUARY OF '96.

MR. HOWARD-CROSS-EXAMINATION BY MR. MONCKTON

356

1 Q I'M NOT GOING TO GO ALL THE WAY BACK WITH
2 YOUR CRIMINAL RECORD BUT YOU TELL ME IF THIS IS CORRECT.
3 IN MARCH OF '91 YOU WERE CONVICTED OF PETTY LARCENY?

4 A UH-HUH, I BELIEVE SO.

5 Q AND IN AUGUST THE 3RD OF 1992 YOU WERE
6 CONVICTED OF PETTY LARCENY?

7 A I BELIEVE SO.

8 Q ON OCTOBER THE 23RD YOU WERE CONVICTED OF
9 ATTEMPTED BURGLARY, THIRD DEGREE, WHERE YOU RECEIVED 16
10 MONTHS TO FOUR YEARS IN NEWBURGH, NEW YORK?

11 A UH-HUH.

12 Q AND ON DECEMBER THE 18TH OF 1998 YOU WERE
13 SENTENCED TO BURGLARY SECOND DEGREE, NINE YEARS HERE IN
14 CONWAY, SOUTH CAROLINA?

15 A YES, I DID.

16 Q DECEMBER THE 18TH, 1998, YOU WERE SENTENCED
17 FOR GRAND LARCENY, \$1,000 TO \$5,000, AND YOU RECEIVED FIVE
18 YEARS HERE IN CONWAY?

19 A UH-HUH.

20 Q YOU NEED TO SAY YES.

21 A YES, I DID. THAT'S MY FAULT.

22 Q DECEMBER THE 18TH, 1998, YOU PLED GUILTY TO
23 RECEIVING STOLEN GOODS, \$1,000 TO \$5,000, AND RECEIVED FOUR
24 YEARS HERE IN CONWAY?

25 A YES, I DID.

MR. HOWARD-CROSS-EXAMINATION BY MR. MONCKTON

357

1 Q DECEMBER THE 18TH, 1998, YOU PLED GUILTY TO
2 ANOTHER BURGLARY SECOND DEGREE, NONVIOLENT ---

3 A UH-HUH.

4 Q --- AND RECEIVED NINE YEARS HERE IN CONWAY?

5 A YES, I DID.

6 Q AGAIN ON DECEMBER 18, 1998, YOU PLED GUILTY
7 TO ANOTHER GRAND LARCENY AND RECEIVED -- \$1,000 TO \$5,000
8 AND RECEIVED FIVE YEARS CONCURRENT HERE IN CONWAY.

9 A YES, I DID.

10 Q AND ON DECEMBER THE 18TH, 1998, YOU PLED
11 GUILTY TO A BURGLARY THIRD DEGREE AND RECEIVED FOUR YEARS
12 CONCURRENT HERE IN CONWAY?

13 A YES, I DID.

14 Q AND DECEMBER THE 18TH, 1998, YOU PLED GUILTY
15 TO AVOIDING PAYMENT FOR TELECOMMUNICATIONS AND RECEIVED
16 THREE MONTHS HERE IN CONWAY.

17 A YES, I DID.

18 Q NOVEMBER THE 4TH, 1999, YOU PLED GUILTY TO
19 GRAND LARCENY FOURTH DEGREE, WHICH I THINK YOU TOLD ME WAS
20 WELFARE FRAUD.

21 A YEAH, I HAD A HEART ATTACK AND I COLLECTED.
22 THAT WAS BACK IN '91, '92. THEN I STARTED ---

23 Q AND YOU RECEIVED 18 MONTHS TO 36 MONTHS UP
24 IN DUCHESS COUNTY, NEW YORK.

25 A YES, SIR, THAT'S WHAT IT WAS FOR.

MR. HOWARD-CROSS-EXAMINATION BY MR. MONCKTON

358

1 Q OKAY. IS YOUR ESCAPE CHARGE STILL PENDING
2 OR WHAT HAPPENED TO THAT?

3 A THEY DISMISSED IT OR DROPPED IT. PRETTY
4 MUCH IT WAS THEIR FAULT, ANYWAY.

5 Q IT WAS THE STATE'S FAULT YOU ESCAPED?

6 A IT WAS THE COUNTY'S FAULT. WHAT HAPPENED IS
7 THAT THEY HAD CALLED ME DOWN TO GET RELEASED. I WENT TO
8 THE UNIT AND I WENT DOWN BUT IT TURNED OUT IT WAS THE WRONG
9 HOWARD THAT THEY WANTED TO RELEASE.

10 Q DID YOU TELL THEM THEY HAD THE WRONG HOWARD
11 THEY WERE RELEASING?

12 A NOT AT THE TIME WHEN I WAS GOING OUT THE
13 DOOR, NO, I DID NOT.

14 Q OKAY. NOW, IT APPEARS FROM YOUR RECORD THAT
15 YOU PLED GUILTY TO A SLEW OF CHARGES IN DECEMBER OF 1998.
16 WOULD THAT BE CORRECT?

17 A THAT WAS THE ONLY WAY I COULD GET OUT OF J.
18 REUBEN LONG.

19 Q J. REUBEN LONG.

20 A THEY WASN'T MOVING THE PERSON THAT KEPT
21 FLOODING IT AND IT DIDN'T SEEM WHEN I WAS GOING TO GET INTO
22 COURT SO THAT WAS THE ONLY WAY I COULD IN MY MIND TO GET
23 OUT OF THERE.

24 Q OKAY. I MEAN, WE'RE GOING TO GO THROUGH
25 EVERYTHING, I PROMISE YOU.

MR. HOWARD-CROSS-EXAMINATION BY MR. MONCKTON

359

1 A I DONE IT SO I CAN'T HIDE FROM IT.

2 Q SO FOR PLEADING GUILTY TO ALL THESE CHARGES
3 ON DECEMBER THE 18TH OF 1998, YOU RECEIVED A NINE-YEAR
4 SENTENCE. WOULD THAT BE CORRECT?

5 A THEY RAN CONCURRENT.

6 Q BUT ALL TOTALED IT WAS NINE YEARS?

7 A AT MY TIME TO SPEAK I KIND OF EXPLAINED MY
8 LIFE TO JUDGE FLOYD AND HE MUST HAVE SEEN SOMETHING AND RAN
9 EVERYTHING CONCURRENT FOR ME.

10 Q NOW, THIS ALLEGED CONVERSATION YOU HAD WITH
11 SA TOOK PLACE ON SEPTEMBER THE 3RD, 1998. THAT'S YOUR
12 TESTIMONY, ISN'T THAT CORRECT?

13 A IF THAT'S THE DATE THAT WE RETURNED BACK.

14 Q BUT YOUR LETTER TO DETECTIVE GIBBS
15 EXPLAINING THIS CONVERSATION WAS NOT WRITTEN UNTIL OCTOBER
16 THE 29TH, 1998. WOULD THAT BE CORRECT?

17 A UH-HUH.

18 Q AND WOULD YOU AGREE WITH ME THAT THAT'S
19 APPROXIMATELY 60 DAYS?

20 A CLOSE, 50-SOMETHING.

21 Q CLOSE. AND DURING THIS TIME YOU WERE NOT
22 CHARGED WITH BURGLARY SECOND DEGREE, WERE YOU?

23 A YEAH, I WAS.

24 Q ISN'T IT TRUE THAT YOU WERE ALSO CHARGED
25 WITH BURGLARY FIRST DEGREE?

MR. HOWARD-CROSS-EXAMINATION BY MR. MONCKTON

360

1 A AND A BURGLARY SECOND DEGREE.

2 Q THAT'S RIGHT.

3 A RIGHT.

4 Q AND WASN'T IT YOUR UNDERSTANDING THAT
5 BURGLARY FIRST DEGREE IN SOUTH CAROLINA CARRIES 15 YEARS AS
6 A MINIMUM TO LIFE?

7 A I WASN'T AWARE OF THAT.

8 Q YOUR ATTORNEY NEVER DISCUSSED WITH YOU THE
9 FACT THAT YOU WERE CHARGED WITH BURGLARY FIRST DEGREE THAT
10 CARRIES 15 YEARS AS A MINIMUM IN SOUTH CAROLINA?

11 A NOT REALLY. SHE JUST ASKED ME WHAT WOULD I
12 WANT TO PLEAD AND ASKED ME MY THOUGHTS TO IT BUT I
13 QUESTIONED HER HOW MUCH TIME SHE THOUGHT I MIGHT RECEIVE.

14 Q WERE YOU AWARE AT THAT TIME THAT BURGLARY
15 FIRST DEGREE IN SOUTH CAROLINA, NOT ONLY DOES IT CARRY A
16 MINIMUM SENTENCE OF 15 YEARS BUT YOU HAVE TO SERVE 85
17 PERCENT OF THAT SENTENCE BEFORE YOU'RE ELIGIBLE FOR PAROLE?

18 A I AM AWARE OF THAT AND I'M AWARE THAT THEY
19 WOULD HAVE TO PROVE IT ALSO.

20 Q SO I GUESS WHAT WE'RE LOOKING AT, YOU WERE
21 LOOKING AT A BARE MINIMUM WHILE YOU WERE SITTING IN J.
22 REUBEN LONG OF DOING APPROXIMATELY TWELVE AND A HALF YEARS
23 IF YOU GOT THE MINIMUM SENTENCE ON YOUR CHARGES; ISN'T THAT
24 CORRECT?

25 A IF I WAS FOUND GUILTY IF I'D WENT TO TRIAL,

MR. HOWARD-CROSS-EXAMINATION BY MR. MONCKTON

361

1 YEAH.

2 Q OKAY. NOW, LET'S TALK A LITTLE BIT ABOUT
3 THIS CONVERSATION ON SEPTEMBER THE 3RD. HOW MANY PEOPLE
4 WERE IN THE CELL?

5 A I CAN'T SIT HERE TODAY AND TELL YOU THE
6 EXACT AMOUNT, I REALLY COULDN'T, BECAUSE I WAS REALLY
7 WORRIED ABOUT MYSELF, TOO, BUT I DID NOTICE SOMEONE
8 SLEEPING. I COULD TESTIFY TO THAT FOR SURE.

9 Q WORRIED ABOUT YOURSELF. LET'S GO INTO THAT
10 A LITTLE BIT.

11 A UH-HUH.

12 Q WHERE WERE YOU HOUSED AT THE J. REUBEN LONG
13 DETENTION FACILITY?

14 A AFTER I GOT BOOKED AND EVERYTHING I WENT TO
15 THE MAX UNIT.

16 Q HOW DID YOU LIKE MAX?

17 A IT WASN'T THAT BAD EXCEPT FOR THE FLOODING.
18 IT GAVE ME TIME TO THINK ABOUT THINGS.

19 Q DID YOU EVER CONTEMPLATE SUICIDE WHILE YOU
20 WERE IN MAX?

21 A ALL THE LETTERS THAT I WROTE TO THEM, NOBODY
22 WAS DOING ANYTHING. YEAH, I THOUGHT ABOUT IT.

23 Q YOU THOUGHT ABOUT KILLING YOURSELF WHILE YOU
24 WERE IN MAX?

25 A I ALSO THOUGHT I WAS GOING TO HAVE A HEART

MR. HOWARD-CROSS-EXAMINATION BY MR. MONCKTON

362

1 ATTACK, TOO. YEAH, IT CAME ACROSS MY MIND A COUPLE OF
2 TIMES I MIGHT DIE IN THERE.

3 Q WERE YOU REALLY STRESSED OUT WHILE YOU WERE
4 IN MAXIMUM SECURITY?

5 A SURE I WAS.

6 Q AND DIDN'T YOU TELL MYSELF AND MY PARALEGAL
7 THAT THE REASON YOU WROTE THAT LETTER WAS TO TRY AND GET
8 OUT OF MAX?

9 A TO TRY TO GET SOMEONE'S ATTENTION THAT I WAS
10 TRYING. I WROTE TO ROB WALL. I WROTE TO MAJOR JOHNSON. I
11 WROTE TO MY LAWYER AND NO ONE WAS REALLY RESPONDING IN THE
12 WAY THAT I THOUGHT THEY SHOULD. SO I WAS TRYING TO GET THE
13 SOLICITOR'S ATTENTION. THERE'S ONLY THE PROSECUTOR AND THE
14 DEFENSE SO THAT WAS MY ONLY OPTION. I DID WHAT I HAD TO
15 DO.

16 Q LET ME ASK YOU THIS QUESTION. SO THE
17 PURPOSE OF YOU WRITING THAT LETTER SOME 60 DAYS AFTER THIS
18 CONVERSATION TOOK PLACE WAS TO TRY AND GET SOMEBODY'S
19 ATTENTION; ISN'T THAT CORRECT?

20 A YES, IT WAS. I ALSO WROTE TO THE
21 SOLICITOR'S OFFICE ABOUT MY CASES ALSO BUT THEY DIDN'T
22 RESPOND AT THE TIME EITHER, SO.

23 Q WELL, LET'S TALK ABOUT THOSE CASES.

24 A UH-HUH.

25 Q THOSE ARE YOUR BURGLARY CASES, CORRECT?

MR. HOWARD-CROSS-EXAMINATION BY MR. MONCKTON

363

1 A BURGLARY. THEY GOT GRAND LARCENY WITH BOTH
2 THE BURGLARIES.

3 Q RIGHT, AND YOU PLED GUILTY TO THOSE' CHARGES?

4 A YEAH, I DID.

5 Q YOU ADMITTED YOU DID THEM?

6 A THAT'S WHAT I DID.

7 Q NOW, HAVE YOU FILED A POST-CONVICTION RELIEF
8 ACTION AGAINST YOUR FORMER ATTORNEYS?

9 A YES, I DID.

10 Q AND WHAT IS YOUR UNDERSTANDING OF POST-
11 CONVICTION RELIEF?

12 A WHAT IS MY UNDERSTANDING OF IT?

13 Q YEAH. WHAT HAPPENS IF YOU WIN A POST-
14 CONVICTION RELIEF HEARING?

15 A THE CASES COULD BE VACATED OR A NEW TRIAL
16 COULD BE SET.

17 Q WOULD IT BE YOUR UNDERSTANDING THAT YOUR
18 CHARGES WOULD BE REINSTATED AND HANDLED BY THIS EXACT SAME
19 SOLICITOR'S OFFICE?

20 A HORRY COUNTY? IT WOULD HAVE TO BE. THAT'S
21 WHERE I GOT SENTENCED AT, YEAH.

22 Q THAT'S YOUR UNDERSTANDING?

23 A I BELIEVE IT WOULD HAVE TO BE THAT WAY.

24 Q NOW, YOU'VE ALSO FILED -- I BELIEVE YOU TOLD
25 ME THAT YOU'VE ALSO FILED ANOTHER LAWSUIT AGAINST J. REUBEN

MR. HOWARD-CROSS-EXAMINATION BY MR. MONCKTON

364

1 LONG. ISN'T THAT CORRECT?

2 A OF COURSE I DID.

3 Q AND WHERE DID YOU FILE THAT?

4 A IT'S BEING HANDLED OUT OF CHARLESTON --
5 FLORENCE DIVISION, FEDERAL COURT.

6 Q WHO'S HANDLING THAT CASE FOR YOU?

7 A I'M DOING IT MYSELF.

8 Q SO YOU'RE A PRO SE LITIGANT?

9 A I'M TRYING TO DO THE BEST, YEAH.

10 Q NOW, YOU TESTIFIED DURING THIS CONVERSATION
11 WITH SA, HE TOLD YOU HE WAS GOING TO BOUNCE AND AGAIN TELL
12 THE JURY WHAT YOUR UNDERSTANDING OF THE TERM "BOUNCE" WAS.

13 A IT COULD MEAN A COUPLE OF THINGS. BOUNCE
14 OUT OF JAIL. BOUNCE COULD MEAN THAT YOU WOULD WANT TO
15 ABSCONDER. IT COULD MEAN A COUPLE OF THINGS. I MEAN, IT
16 HAS A COUPLE OF MEANINGS.

17 Q DID THE SOLICITOR ---

18 A IN MY MIND IT HAS A COUPLE OF MEANINGS.

19 Q DID THE SOLICITOR'S OFFICE EVER INFORM YOU
20 THAT MR. HOLLINGSWORTH DID MAKE BOND AND DIDN'T BOUNCE?

21 A I NEVER TALKED TO ANYBODY ABOUT THAT.

22 Q NOW, LET'S TALK A LITTLE BIT ABOUT THIS
23 PAROLE ISSUE.

24 A UH-HUH.

25 Q YOU RECEIVED A NINE-YEAR SENTENCE FOR ALL

MR. HOWARD-CROSS-EXAMINATION BY MR. MONCKTON

365

1 THESE CRIMES ON DECEMBER THE 18TH OF 1998.

2 A UH-HUH.

3 Q WHEN ARE YOU UP FOR PAROLE?

4 A WHEN AM I UP FOR PAROLE?

5 Q YES, SIR.

6 A SOMETIME THIS YEAR IT SHOULD BE, MAYBE
7 DURING THE SUMMER.

8 Q DIDN'T YOU TELL ME IN OUR INTERVIEW THAT YOU
9 WERE UP FOR PAROLE IN JUNE OF THIS YEAR?

10 A I BELIEVE IT'S THE SUMMER, YEAH. IT SHOULD
11 BE SOMETIME IN JUNE.

12 MR. HUMPHRIES: YOUR HONOR, AT THIS TIME -- I'M
13 SORRY. AT THIS TIME UNDER RULE 613 IF DEFENSE IS GOING TO
14 IMPEACH HIM WITH A STATEMENT THAT'S PREVIOUSLY TAKEN OF
15 THIS WITNESS, RULE 613 ALLOWS ME TO HAVE THAT STATEMENT AT
16 THIS TIME.

17 THE COURT: YES, SIR. DO YOU INTEND TO IMPEACH
18 HIM?

19 MR. MONCKTON: I'M NOT INTENDING TO IMPEACH HIM,
20 YOUR HONOR. I DON'T THINK HE'S DENIED ANYTHING I'VE ASKED
21 HIM.

22 THE COURT: ALL RIGHT, I THINK HE WOULD HAVE TO
23 DENY IT BEFORE YOU CAN IMPEACH HIM ON ANYTHING. YOU CAN
24 ASK HIM IF HE TOLD YOU THAT. BUT YOU'RE GETTING AWFUL
25 CLOSE TO MAKING YOURSELF A WITNESS, MR. MONCKTON.

MR. HOWARD-CROSS-EXAMINATION BY MR. MONCKTON

366

1 MR. MONCKTON: I UNDERSTAND, YOUR HONOR.

2 THE COURT: ALL RIGHT.

3 MR. MONCKTON: (CONTINUING)

4 Q AND I BELIEVE YOUR TESTIMONY ON DIRECT
5 EXAMINATION -- WHO IN THE SOLICITOR'S OFFICE IS GOING TO
6 WRITE YOUR PAROLE BOARD A LETTER?

7 A THAT I COULDN'T TELL YOU EXACTLY. I NEVER
8 EVEN ASKED.

9 Q YOU NEVER ASKED?

10 A I NEVER SAID WHO WOULD BECAUSE I SPOKE TO
11 TWO PEOPLE SO FAR, MR. BELLAMY AND MR. HUMPHRIES.

12 Q WHAT IS YOUR UNDERSTANDING TODAY WHO WILL
13 WRITE THE LETTER TO THE PAROLE BOARD FOR YOU?

14 A MY UNDERSTANDING? I HOPE IT'S MR.
15 HUMPHRIES.

16 Q MR. HUMPHRIES?

17 A YEAH. YES, SIR.

18 Q MR. HOWARD.

19 A YES.

20 Q YOUR ORIGINAL CHARGE OF BURGLARY FIRST
21 DEGREE WAS REDUCED DOWN TO BURGLARY SECOND ---

22 A UH-HUH.

23 Q --- PRIOR TO YOUR PLEA. IS THAT CORRECT?

24 A YES, IT WAS.

25 Q YOUR CHARGE OF BURGLARY FIRST DEGREE WAS

MR. HOWARD-CROSS-EXAMINATION BY MR. MONCKTON

367

1 REDUCED TO BURGLARY SECOND DEGREE AFTER YOU WROTE THE
2 LETTER TO DETECTIVE GIBBS. IS THAT CORRECT?

3 A NO. WHAT HAPPENED IS I WAS BROUGHT DOWN TO
4 COURT AND I TOLD MY ATTORNEY TO TELL THEM I WANTED TO GO TO
5 TRIAL.

6 Q OKAY, LET ME ASK YOU THIS QUESTION. WERE
7 YOU CHARGED WITH BURGLARY FIRST DEGREE WHEN YOU WROTE THE
8 LETTER?

9 A UH-HUH.

10 Q WHEN YOU PLED GUILTY ON DECEMBER THE 18TH,
11 1998 ---

12 A OKAY, THE DATE WAS ---

13 Q --- WHAT DID YOU PLEAD TO?

14 A THE DATE WAS AFTER THE LETTER.

15 Q THE DATE WAS?

16 A YEAH.

17 Q THESE ALLEGED CONVERSATIONS THAT TOOK PLACE
18 ON THE WAY BACK FROM ATLANTA, YOU TESTIFIED THAT THERE WERE
19 POLICE OFFICERS IN THE CAR THAT DROVE YOU BACK?

20 A IF THAT'S WHAT YOU GOT OUT OF IT. I DON'T
21 THINK I MEANT THAT.

22 Q WHO DROVE YOU BACK?

23 A TWO OFFICERS DROVE US BACK BUT THEY WERE OUT
24 OF THE CAR WHEN WE FIRST WERE PUT IN THE CAR. WE WERE
25 SITTING IN FRONT OF THE FULTON COUNTY JAIL AND I DON'T KNOW

MR. HOWARD-CROSS-EXAMINATION BY MR. CHRISCO

368

1 IF THEY WENT TO DO THEIR PAPERWORK OR RETRIEVE THEIR
2 PISTOLS. I HAVE NO IDEA WHERE THEY WENT BUT THERE WASN'T
3 ANYBODY IN THE CAR WHEN WE FIRST STARTED TALKING.

4 Q AND I BELIEVE YOU TESTIFIED THAT YOU GOT THE
5 NAME SA BECAUSE YOU HEARD SOME POLICE OFFICERS TALKING TO A
6 PERSON AT THE PHONE AND THAT'S WHAT THEY WERE CALLING HIM?

7 A NO. AT THE TIME WE WERE LIKE IN THE HOLDING
8 CELL, HE KEPT TRYING TO GET THE USE OF THE PHONE AND I
9 GUESS HE KNEW PEOPLE AT THE JAIL SO PEOPLE WOULD DIRECT AND
10 CALL HIM HIS NAME. WHEN PEOPLE WOULD WALK BY IT'S NOT LIKE
11 THAT OTHER INMATES DIDN'T HAVE AN OPPORTUNITY TO COME BY
12 AND HE WOULD SAY WHAT'S UP OR, YOU KNOW, SPEAK TO THEM AND
13 THEY WOULD TALK TO HIM OR HE WOULD ASK ONE OF THE OFFICERS
14 COULD HE GO USE THE PHONE AND THEY WOULD SAY NOT RIGHT AT
15 THIS TIME, SA, SO I HEARD -- HE NEVER TOLD ME HIS NAME. I
16 HEARD IT FROM SOMEONE.

17 Q ARE YOU THE ONLY PERSON THAT HEARD THIS
18 CONVERSATION?

19 A I WOULD BELIEVE SO. I DON'T KNOW.

20 Q ARE YOU HOPING TO GET THAT PAROLE LETTER?

21 A YEAH, I'M ABOUT READY TO GO.

22 MR. MONCKTON: GOOD LUCK TO YOU.

23 THE WITNESS: THANK YOU.

24 THE COURT: MR. CHRISCO?

25 CROSS-EXAMINATION

MR. HOWARD-CROSS-EXAMINATION BY MR. CHRISCO

369

1 BY MR. CHRISCO:

2 Q GOOD AFTERNOON, MR. HOWARD.

3 A HOW ARE YOU DOING?

4 Q I WANT YOU TO THINK REAL HARD ---

5 A UH-HUH.

6 Q --- BEFORE YOU ANSWER THE NEXT QUESTION.

7 A RIGHT.

8 Q THE PERSON THAT YOU ALLEGEDLY TALKED TO, DID
9 HE ACTUALLY SAY HE HAD HELP OR A PARTNER OR DID YOU JUST
10 ADD THAT TO KIND OF MAKE THE STORY A LITTLE BIT BETTER?

11 A WHEN YOU HAD CAME AND INTERVIEWED ME THAT
12 DAY AND YOU HAD ASKED ME DO I REMEMBER WHAT THE EXACT WORDS
13 WERE, DID HE SAY "THEY," "WE," "HE," I TOLD YOU THAT I
14 WASN'T -- COULDN'T REALLY BE 100 PERCENT SURE BECAUSE IT
15 WAS OVER A YEAR AND A HALF AGO AND I HAD EXPLAINED TO YOU
16 THAT I WOULDN'T TESTIFY TO SAY THAT I KNEW EXACTLY IF IT
17 WAS "THEY" OR "WE" OR HIMSELF. I COULDN'T TESTIFY THAT HE
18 DID SAY "THEY." I COULDN'T SAY. ALL I COULD REALLY
19 TESTIFY THAT HE SAID SOMEONE WAS WITH HIM. I COULDN'T
20 REALLY -- I WILL NOT TESTIFY TO SAY THAT HE ACTUALLY SAID
21 THAT SOMEONE ELSE OR HE HIMSELF WAS ALONE. I CAN'T
22 REMEMBER THE EXACT WORDS AT THAT TIME. READING THE LETTER
23 IT SAYS "THEY" BUT OVER A YEAR AND A HALF I CAN'T TELL YOU
24 THE EXACT WORDS AT THAT AS WE TALKED ABOUT. I CAN'T DO
25 THAT. I'M NOT GOING TO SAY THAT I CAN.

MR. HOWARD-REDIRECT BY MR. HUMPHRIES

370

1 MR. CHRISCO: I APPRECIATE YOUR CANDOR. THANK
2 YOU, SIR..

3 THE COURT: REDIRECT, MR. HUMPHRIES?

4 MR. HUMPHRIES: JUST BRIEFLY.

5 REDIRECT EXAMINATION

6 BY MR. HUMPHRIES:

7 Q MR. HOWARD, WE JUST NEED TO BE REAL CLEAR
8 ON THIS ONE POINT, ALL RIGHT, SIR?

9 A OKAY, UH-HUH.

10 Q AT THE TIME YOU PLED GUILTY IN -- WAS IT
11 1998, DECEMBER?

12 A DECEMBER 18TH.

13 Q DID YOU RECEIVE A REDUCTION OF YOUR CHARGES
14 BASED ON INFORMATION YOU HAD REGARDING THIS CASE?

15 A NOT AT ALL, NO.

16 Q WHEN WAS THE FIRST TIME LAW ENFORCEMENT OR
17 THE SOLICITOR'S OFFICE CONTACTED YOU REGARDING THIS
18 INFORMATION RELATING TO THIS CASE, THE FIRST TIME?

19 A IT WAS ABOUT A MONTH AND A HALF AGO. I
20 BELIEVE IT WAS ABOUT A MONTH AND A HALF AGO. I RECEIVED A
21 PHONE CALL AND I BELIEVE IT WAS MR. BELLAMY. HE SAID THAT
22 HE DOESN'T KNOW HOW THE LETTER GOT MISPLACED BUT HE JUST
23 CAME ACROSS IT AND THEN HE JUST STARTED TALKING TO ME ABOUT
24 IT AT THAT TIME ABOUT IT.

25 MR. HUMPHRIES: THANK YOU, MR. HOWARD.

MR. HOWARD-REDIRECT BY MR. HUMPHRIES

371

1 MR. HOWARD: YOU'RE WELCOME.

2 THE COURT: RECROSS?

3 MR. MONCKTON: NO, SIR, YOUR HONOR.

4 THE COURT: MR. CHRISCO:

5 MR. CHRISCO: NO, YOUR HONOR.

6 THE COURT: ALL RIGHT. THANK YOU, SIR, MR.

7 HOWARD, YOU MAY STEP DOWN.

8 THE WITNESS: OKAY, YOU'RE WELCOME.

9 MR. BELLAMY: YOUR HONOR, THE STATE RESTS AT THIS
10 TIME.

11 THE COURT: LADIES AND GENTLEMEN, YOU HAVE HEARD
12 THE SOLICITOR ANNOUNCE THAT THE STATE RESTS. THAT MEANS
13 THAT YOU HAVE HEARD ALL THE TESTIMONY THAT THE STATE WILL
14 PRESENT IN THIS CASE AND THERE ARE CERTAIN MATTERS OF LAW
15 WHICH I NOW NEED TO TAKE UP WITH THE LAWYERS AT THIS STAGE
16 OF THE TRIAL AND I HAVE TO DO THIS OUTSIDE OF YOUR PRESENCE
17 AND ON THE RECORD SO I'M GOING TO ASK YOU TO GO TO YOUR
18 JURY ROOM WHILE I DO CONSIDER THESE MATTERS OF LAW AND WE
19 WILL SEND FOR YOU IN JUST A FEW MINUTES. PLEASE DO NOT
20 DISCUSS THE CASE IN THE JURY ROOM AMONG YOURSELVES. IT
21 STILL WOULD BE PREMATURE. YOU HAVE NOT HEARD THE ARGUMENTS
22 OF COUNSEL OR THE CHARGE ON THE LAW BY THE COURT SO IT
23 WOULD STILL BE PREMATURE FOR YOU TO HAVE ANY DISCUSSION
24 ABOUT THE CASE AT THIS TIME BUT IF YOU WOULD PLEASE GO TO
25 YOUR JURY ROOM. THANK YOU.

MOTION FOR DIRECTED VERDICT BY MR. MONCKTON & MR. CHRISCO 72

1 (WHEREUPON, THE JURY LEFT THE COURTROOM AND THE
2 FOLLOWING TOOK PLACE OUTSIDE THE PRESENCE OF THE JURY.)

3 THE COURT: ALL RIGHT. MOTIONS ON BEHALF OF THE
4 DEFENSE. WHO WANTS TO GO FIRST? MR. MONCKTON? MR.
5 CHRISCO?

6 MR. MONCKTON: YOUR HONOR, AT THIS TIME THE
7 DEFENDANT DERRICK HOLLINGSWORTH WOULD MOVE FOR A DIRECTED
8 VERDICT OF ACQUITTAL BASED UPON THE EVIDENCE PRESENTED SO
9 FAR. IT'S NOT SUFFICIENT ENOUGH FOR THE JURY -- A
10 REASONABLE JURY TO COME BACK WITH A VERDICT OF GUILTY. I
11 WOULD ALSO LIKE TO RE-ARGUE THE POINT THAT IN A MURDER CASE
12 AN ELEMENT OF MURDER IS THE CAUSATION, WHICH MUST BE PROVEN
13 STRICTLY, AND BASED UPON PREVIOUS ARGUMENTS WITH REGARDS TO
14 THAT CONCERNING DR. PROCTOR'S DEPOSITION AND THE FACT THE
15 OPINION WAS NOT ELICITED IN THE PROPER MANNER, THAT
16 STANDARD OF PROOF HAS NOT BEEN MET; THEREFORE, ALL THE
17 ELEMENTS OF MURDER HAVE NOT BEEN MET AND THE CASE SHOULD BE
18 ENDED AT THIS TIME BY MEANS OF A DIRECTED VERDICT. THANK
19 YOU, YOUR HONOR.

20 THE COURT: YES, SIR.

21 MR. CHRISCO: YOUR HONOR, I WOULD MAKE A MOTION
22 FOR A DIRECTED VERDICT BASED UPON THE SAME GROUNDS AND
23 INCORPORATED HEREIN BY REFERENCE THAT MR. MONCKTON HAS JUST
24 MADE. I THINK THAT THE TESTIMONY IS VERY INCONSISTENT HERE
25 AND I ASK FOR A DIRECTED VERDICT.

DEFENDANT SWINTON MOTION FOR DIRECTED VERDICT & MISTRIAL 373

1 ALSO AT THIS TIME, YOUR HONOR, I WOULD RENEW MY
2 OBJECTION AND WOULD ASK THE COURT TO REVIEW THIS DEFENSE
3 COUNSEL'S MOVE THIS MORNING TO HAVE THE TESTIMONY OF KIM
4 BROWN AND FREDERICK COX STRICKEN TO TAKE OUT THE EXCITED
5 UTTERANCE THAT VICKY CAMPBELL SAID THAT SHE DID NOT SAY;
6 AND IN THE ALTERNATIVE ASK FOR A MISTRIAL BASED UPON THAT
7 BEING ALLOWED INTO EVIDENCE.

8 THE COURT: TELL ME WHAT YOUR THEORY IS IS THE
9 REASON THAT'S NOT ADMISSIBLE. I'M AT A LOSS. I DIDN'T
10 UNDERSTAND IT THIS MORNING AND I'M NOT SURE I UNDERSTAND IT
11 NOW.

12 MR. CHRISCO: YOUR HONOR, MAYBE THE BEST WAY TO
13 EXPLAIN IT IS JUST TO SAY IT LIKE I THINK. IT JUST SEEMS
14 AWFULLY ODD TO ME THAT YOU WOULD CALL WITNESSES THAT HEARD
15 SOMEONE ELSE BEFORE YOU CALL THE ACTUAL WITNESS THEMSELVES.
16 YOUR HONOR, I BELIEVE THAT THE STATE KNEW THAT VICKY
17 CAMPBELL WAS A RELUCTANT WITNESS AND THAT THEY PUT KIM
18 BROWN AND THEN FREDERICK COX ON THE STAND.

19 THE COURT: WELL, I'LL ASSUME FOR PURPOSES OF
20 THIS THAT WHAT YOU'RE SAYING IS TRUE. LET'S SUPPOSE,
21 THOUGH, THAT THEY HAD PUT -- I THINK IT WAS MS. BROWN OR
22 THE WITNESS ON THE STAND FIRST WHO SAID THAT SHE DIDN'T SAY
23 THAT, OKAY? LET'S ASSUME THEY PUT HER UP FIRST. DIDN'T
24 THEY PUT UP AND SAID THAT SHE -- DIDN'T THEY PUT UP MR.
25 COX, I BELIEVE IT WAS, THE BROTHER, WHO SAID THAT SHE CAME

DEFENDANT SWINTON MOTION FOR DIRECTED VERDICT & MISTRIAL374

1 IN FLUSHED, EXCITED, MADE THIS STATEMENT THAT HIS BROTHER
2 HAD BEEN SHOT AND THAT "X" AND "Y" DID THE SHOOTING?
3 THAT'S STILL ADMISSIBLE. NOW, WHETHER THE JURY BELIEVES
4 THEM OR NOT, IT DOESN'T MATTER ABOUT THE ORDER. ISN'T IT
5 ADMISSIBLE AS AN EXCITED UTTERANCE? I MEAN, THAT -- YOU'RE
6 ASKING ME, I THINK, IT SEEMS TO ME TO JUDGE THE CREDIBILITY
7 OF THE WITNESSES RATHER THAN THE ADMISSIBILITY OF THE
8 TESTIMONY.

9 MR. CHRISCO: WHAT I THINK THEY DID, YOUR HONOR,
10 WAS IT DIDN'T ALLOW THE DEFENSE ATTORNEYS TO ATTACK THAT
11 PORTION OF THEIR TESTIMONY BY THE FACT THAT VICKY CAMPBELL
12 HAD ALREADY TESTIFIED OR WOULD HAVE UNDER YOUR HYPOTHESIS
13 THAT SHE HAD NOT SAID THOSE WORDS.

14 THE COURT: WELL, YOU COULD CERTAINLY CALL HER.

15 MR. CHRISCO: I REALIZE THAT, YOUR HONOR. WHEN I
16 DO, I CAN GET HER DECLARED A HOSTILE WITNESS, VERY HOSTILE,
17 BUT THEN THAT WOULD ALLOW THE STATE TO DO CROSS-
18 EXAMINATION, TOO. SO I'M AT A DISADVANTAGE THERE.

19 THE COURT: WELL, I CAN'T CONTROL -- THE COURT
20 CAN'T CONTROL THE ORDER IN WHICH ANY SIDE CALLS THEIR
21 WITNESSES OR PRESENTS THEIR TESTIMONY. ALL I CAN DO IS
22 RULE ON THE EVIDENCE AS IT IS TESTIFIED TO AT THE TIME AND
23 IT SEEMS LIKE TO ME THAT THE TESTIMONY WAS CLEAR THAT THIS
24 WAS AN EXCITED UTTERANCE AND SO I DON'T THINK THAT THAT IS
25 -- I THINK IT'S PROPERLY ADMISSIBLE. NOW, YOU HAVE THE

DEFENDANT SWINTON MOTION FOR DIRECTED VERDICT & MISTRIAL375

1 RIGHT TO CONTEND AND ARGUE ALL YOU WANT TO TO THE JURY THAT
2 IT'S NOT A BELIEVABLE EXCITED UTTERANCE, WHICH I'M SURE IS
3 WHAT YOU'RE GOING TO DO. BUT I DON'T THINK THAT I CAN
4 EXCLUDE IT OR GRANT A DIRECTED VERDICT OF ACQUITTAL NOR A
5 MISTRIAL ON THOSE GROUNDS. MY REASON WOULD BE THE SAME
6 THAT IT WAS WHEN YOU FIRST MADE THE MOTION THIS MORNING.
7 MR. HUMPHRIES OR MR. BELLAMY, ANYTHING THAT YOU WOULD LIKE
8 TO PUT INTO THE RECORD WITH REGARD TO MR. MONCKTON'S -- THE
9 TWO POINTS THAT THEY HAD. THE FIRST ONE THEY HAD IS THE
10 ONE, I GUESS, WE'RE TALKING ABOUT. I'M NOT WORRIED ABOUT
11 THE EVIDENTIARY QUESTION, JUST MR. MONCKTON'S MOTION FOR A
12 DIRECTED VERDICT OF ACQUITTAL.

13 MR. HUMPHRIES: YOUR HONOR, IN REGARD TO MR.
14 MONCKTON'S ONE SPECIFIC GROUND.

15 THE COURT: YES, SIR.

16 MR. HUMPHRIES: YOUR HONOR HAS RULED THAT THE
17 OPINION OF THE DOCTOR BASED ON THE TOTALITY OF THE
18 CIRCUMSTANCES, THE TOTALITY OF HIS TESTIMONY AND HIS
19 QUALIFICATIONS AS AN EXPERT UNDER THE PREVAILING CASE LAW
20 WAS ADMISSIBLE AND, SECONDLY, THAT THERE WAS NO
21 CONTEMPORANEOUS OBJECTION TO THE ELICITING OF THAT
22 TESTIMONY AND I'LL STAND ON YOUR HONOR'S RULING IN THAT
23 REGARD. BEYOND THAT, YOUR HONOR, THERE IS CLEARLY
24 SUFFICIENT EVIDENCE IN THIS RECORD FROM A NUMBER OF
25 EYEWITNESSES REGARDING THE IDENTIFICATION OF BOTH OF THESE

DEFENDANT SWINTON MOTION FOR DIRECTED VERDICT & MISTRIAL376

1 DEFENDANTS AS THE SHOOTERS OF ISAAC COX. I DO WANT TO
2 RESPOND, YOUR HONOR, TO MR. CHRISCO'S ASSERTIONS, JUST SO
3 THE RECORD IS PERFECTLY CLEAR IN THIS REGARD. I DON'T
4 BELIEVE MR. CHRISCO SUGGESTED THAT THE STATE IS GUILTY OF
5 SUBORNING PERJURY ---

6 THE COURT: NO..

7 MR. HUMPHRIES: --- BY VIRTUE OF PLACING THOSE
8 TWO WITNESSES ON THE STAND PRIOR TO MS. CAMPBELL. SHE WAS
9 A RELUCTANT WITNESS. SHE WAS SUBPOENAED. THIS OFFICE
10 REQUESTED YOUR HONOR TO ISSUE A DIRECTIVE THAT SHE BE
11 PICKED UP FORCIBLY AND BROUGHT TO THE COURTHOUSE, WHICH WAS
12 DONE. THE RECORD WILL REFLECT THAT SHE WAS EXTREMELY
13 RELUCTANT AND HAD TO BE FORCIBLY BROUGHT INTO THE COURTROOM
14 PRIOR TO HER TESTIFYING. THERE'S BEEN TESTIMONY FROM
15 DETECTIVE SESSIONS THAT IN A PRIOR INTERVIEW SHE INDICATED
16 TO THE STATE AND TO DETECTIVE SESSIONS SHE PROVIDED THAT
17 INFORMATION, THAT IS THE IDENTITY OF THE SHOOTERS, TO
18 FREDERICK COX IMMEDIATELY AFTER THE SHOOTING OCCURRED. I
19 JUST WANT THE RECORD TO BE CLEAR IN THAT REGARD.

20 THE COURT: ALL RIGHT.

21 MR. HUMPHRIES: BEYOND THAT, YOUR HONOR, I AGREE
22 WITH YOUR HONOR THAT MR. CHRISCO IS ASKING YOU TO RULE AS A
23 MATTER OF LAW THAT THAT TESTIMONY IS INCOMPETENT. YOU
24 CAN'T DO THAT. IT IS AN ISSUE OF CREDIBILITY AND I AGREE
25 WITH YOUR HONOR TOTALLY IN THAT REGARD.

DEFENDANT SWINTON MOTION FOR DIRECTED VERDICT & MISTRIAL377

1 THE COURT: ALL RIGHT.

2 MR. CHRISCO: YOUR HONOR, IF I COULD. I DIDN'T
3 IMPLY THAT THE STATE WAS SUBORNING PERJURY. THAT STATEMENT
4 WAS A CHEAP PARLOR TRICK. THE OTHER THING, YOUR HONOR, AND
5 I WANT TO PUT IT ON THE RECORD NOW, IS THAT I DIDN'T EVEN
6 KNOW UNTIL RIGHT NOW THAT AN ORDER WAS DONE BY THE COURT TO
7 PICK UP THIS WITNESS IN THIS PARTICULAR CASE.

8 THE COURT: IT WASN'T AN ORDER AS SUCH AS I
9 UNDERSTOOD IT. I THINK I TOLD MR. -- THE SOLICITOR CAME TO
10 ME AND SAID THEY HAD A WITNESS UNDER SUBPOENA AND HADN'T
11 BEEN ABLE TO PICK HER UP AND I SAID WELL, THE SUBPOENA
12 SHOULD BE ENFORCED. I BELIEVE THAT WAS THE WAY ---

13 MR. HUMPHRIES: THAT'S CORRECT AND, YOUR HONOR,
14 FOR THE RECORD, I ADVISED BOTH MR. CHRISCO AND MR. MONCKTON
15 PRIOR TO COMING TO TALK TO YOU THAT I HAD A MATTER EX PARTE
16 I WANTED TAKE UP WITH THE COURT REGARDING A STATE'S
17 SUBPOENA FOR A STATE'S WITNESS, WHICH IS PERMISSIBLE UNDER
18 THE RULES.

19 MR. CHRISCO: AND THAT IS CORRECT, YOUR HONOR.
20 IT JUST DAWNED ON ME.

21 THE COURT: THAT'S WHAT IT WAS.

22 MR. CHRISCO: IT JUST CONNECTED UP.

23 THE COURT: ALL RIGHT. THE RULING OF THE COURT
24 AS FAR AS THESE MOTIONS ARE CONCERNED IS THAT I AM GOING TO
25 DENY THE MOTIONS FOR A DIRECTED VERDICT OF ACQUITTAL AS TO

DEFENDANT SWINTON MOTION FOR DIRECTED VERDICT & MISTRIAL 378

1 BOTH DEFENDANTS. IT APPEARS TO ME THAT THE TEST THAT I
2 HAVE TO APPLY AT THIS POINT IS THE EXISTENCE OF EVIDENCE,
3 NOT THE WEIGHT OR CREDIBILITY TO BE GIVEN TO THE TESTIMONY
4 AND IF THERE IS EVIDENCE BY WHICH THE JURY COULD REACH A
5 CONCLUSION THAT THESE DEFENDANTS WERE GUILTY. I'VE GOT TO
6 VIEW THE EVIDENCE IN A LIGHT MOST FAVORABLE TO THE STATE
7 AND ALLOW THE MATTER TO GO FORWARD.

8 WITH REGARD TO THE DEPOSITION QUESTION, AGAIN I
9 WOULD SAY THAT THE REASON FOR THE RULING ALLOWING THE
10 DEPOSITION OF THE DOCTOR ON THE CAUSATION ISSUE WAS THE
11 TOTALITY OF THE DOCTOR'S TESTIMONY AND I BELIEVE THAT THERE
12 IS LAW THAT SAYS THAT THERE ARE NO MAGIC WORDS BY WHICH YOU
13 EVALUATE AN EXPERT'S OPINION BUT YOU LOOK AT IT AND SEE
14 WHETHER OR NOT IT IS OR DOES MEET THE TEST. AND ALSO THE
15 SECOND REASON BEING NO CONTEMPORANEOUS OBJECTION WAS MADE
16 AT THE TIME. SO I THINK THE DOCTOR'S DEPOSITION AS TO
17 CAUSATION WAS PRESENT. I DON'T THINK THAT THE STATE HAS
18 FAILED TO PROVE THAT POINT AND FOR THAT REASON THE MOTION
19 MUST FAIL AS WELL AS THE OTHER EVIDENCE IN THIS CASE. I
20 THINK THERE IS EVIDENCE IN THE RECORD BY WHICH THE JURY
21 COULD REACH A CONCLUSION AS TO THE GUILT OR INNOCENCE OF
22 THE DEFENDANTS. I THINK THERE ARE A LOT OF CREDIBILITY
23 QUESTIONS AND I'M SURE BOTH SIDES ARE GOING TO ARGUE THEM
24 VERY STRONGLY.

25 MR. MONCKTON: YOUR HONOR, ONE OTHER ISSUE AND I

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1 DON'T THINK THE STATE EVER FULLY ADDRESSED IT. I DON'T
2 THINK THE STATE EVER MOVED TO INTRODUCE THE BULLETS INTO
3 EVIDENCE AFTER THE TESTIMONY OF DR. PROCTOR. I KNOW THEY
4 TALKED ABOUT IT EARLIER. THE DEFENSE WOULD STILL OBJECT TO
5 THOSE BULLETS COMING IN. APPARENTLY, THEY WERE SENT OFF TO
6 SLED. THERE HAS BEEN NO TESTIMONY INTRODUCED IN THE RECORD
7 THAT THEY WEREN'T MANIPULATED, CHANGED, WHY THEY WERE IN
8 THE CUSTODY OF SLED ---

9 THE COURT: STOP RIGHT THERE. WHAT'S YOUR
10 OBJECTION? TIMING OR ---

11 MR. MONCKTON: CHAIN, YOUR HONOR.

12 THE COURT: CHAIN OF CUSTODY. ALL RIGHT, MR.
13 HUMPHRIES.

14 MR. HUMPHRIES: YES, YOUR HONOR. WHAT WE
15 ESTABLISHED WAS THIS, THAT DR. PROCTOR REMOVED THE BULLETS
16 FROM THE BODY OF ISAAC COX. IN HIS TESTIMONY BY VIDEOTAPE
17 DEPOSITION HE TESTIFIED THAT THE BULLETS WERE IN
18 SUBSTANTIALLY THE SAME FORM AS WHEN HE REMOVED THEM, THAT
19 THEY WERE READILY IDENTIFIABLE BY VIRTUE OF THEIR PACKAGING
20 AND THAT HE TRANSMITTED THEM TO BILL TAYLOR. BILL TAYLOR
21 TESTIFIED THAT HE TOOK THEM FROM THE DOCTOR. THEY WERE IN
22 THE PACKAGING JUST AS DR. PROCTOR HAD INDICATED AND THEN
23 SUBSEQUENTLY WE HAD DETECTIVE RICHARDSON INDICATE THAT HE
24 TOOK THEM INTO EVIDENCE. NOW, WE DID NOT OFFER THOSE
25 BULLETS NOR WERE WE INTENDING TO OFFER THOSE BULLETS FOR

DEFENDANT SWINTON MOTION FOR DIRECTED VERDICT & MISTRIAL380

1 FURTHER ANALYSIS. THEIR EVIDENTIARY VALUE STANDS AT THE
2 POINT DR. PROCTOR REMOVED THEM FROM THE BODY AND THEY GO TO
3 THESE TWO ISSUES. TO MALICE; THAT IS, THAT THEY ARE
4 EVIDENCE THAT A FIREARM WAS USED IN THE COMMISSION OF THIS
5 MURDER AND THAT THE STATE IS ENTITLED, IF THE COURT GRANTS

6 ---

7 THE COURT: HE HASN'T OBJECTED TO THEM ON THE
8 RELEVANCE. IT'S ON THE ISSUE OF THE CHAIN.

9 MR. HUMPHRIES: I UNDERSTAND. AND UNDER STATE
10 VS. FLYNN THEY ARE READILY IDENTIFIABLE. THEY ARE RELEVANT
11 AND THE DOCTOR TESTIFIED, EVEN WHEN HE DIDN'T HAVE TO, THAT
12 THEY WERE IN SUBSTANTIALLY THE SAME FORM AS WHEN HE REMOVED
13 THEM FROM THE BODY. HE IDENTIFIED THEM. THEY'RE RELEVANT.
14 THEY'RE ADMISSIBLE.

15 THE COURT: THE OBJECTION WAS MADE ON THE BASIS
16 OF CHAIN OF CUSTODY. I'M SATISFIED THAT THE CUSTODY IS --
17 THE CHAIN OF CUSTODY HAS BEEN ESTABLISHED BY VIRTUE OF THE
18 DOCTOR REMOVING THEM FROM THE BODY OF THE VICTIM AND GIVING
19 THEM TO THE POLICE OFFICER WHO IN TURN GAVE THEM TO THE
20 EVIDENCE CUSTODIAN. I'M SATISFIED THAT THE CHAIN OF
21 CUSTODY IS MET AND SO ANY OBJECTION WITH REGARD TO THEIR
22 ADMISSION ON THE BASIS OF CHAIN OF CUSTODY IS OVERRULED AND
23 I WILL ALLOW THEM TO BE ADMITTED UNLESS THERE'S A FURTHER
24 OBJECTION. ALL RIGHT, THEY'LL BE ADMITTED INTO EVIDENCE.

25 MR. CHRISCO: YOUR HONOR, I WAS NOT HEARD ON

DEFENDANT SWINTON MOTION FOR DIRECTED VERDICT & MISTRIAL381
1 THAT.

2 THE COURT: ALL RIGHT, I'LL BE GLAD TO HEAR FROM
3 YOU. I ASKED. I SAID IS THERE FURTHER OBJECTION AND
4 NOBODY SPOKE UP.

5 MR. CHRISCO: I WOULD MAKE THE SAME OBJECTION FOR
6 THE CHAIN OF CUSTODY.

7 THE COURT: ALL RIGHT. THAT MOTION IS OVERRULED.

8 MR. CHRISCO: WELL, I'D JUST LIKE TO PUT THIS
9 LITTLE BIT OF TIDBIT OF INFORMATION ON THE RECORD IF I
10 COULD.

11 THE COURT: ALL RIGHT, SIR.

12 MR. CHRISCO: THE SLED ANALYSIS REPORT SAYS THAT
13 ITEM ONE CONTAINED FOUR FRAGMENTS AND IN THE DOCTOR'S
14 TESTIMONY THERE WERE TWO FRAGMENTS. I BELIEVE I'M CORRECT
15 ON THAT. I'D JUST LIKE TO PUT THAT ON THE RECORD.

16 THE COURT: THE SLED REPORT IS NOT IN EVIDENCE.
17 I HAD NO WAY OF KNOWING WHAT THE SLED REPORT SAID RULING ON
18 IT BASED ON THE SLED REPORT BECAUSE THERE'S NOTHING IN THE
19 RECORD ABOUT THE SLED REPORT. ALL RIGHT, THOSE WILL BE
20 MARKED INTO EVIDENCE AND ADMITTED AS STATE'S EXHIBIT
21 NUMBERS --- WHAT ARE THEY, MRS. BABB?

22 THE COURT REPORTER: 5A, 5B, 5C AND 5D, AND THEY
23 WERE ALREADY IN, YOUR HONOR. THEY CAME IN UNDER GREG
24 RICHARDSON'S TESTIMONY.

25 THE COURT: ALL RIGHT. I REMEMBER LETTING THEM

DEFENDANT SWINTON MOTION FOR DIRECTED VERDICT & MISTRIAL382

1 IN SUBJECT TO THEM BEING LINKED UP.

2 MR. HUMPHRIES: YES, YOUR HONOR.

3 THE COURT: THAT'S THE WAY I LEFT IT AND THEY
4 HAVE BEEN LINKED UP AT THIS POINT. ALL RIGHT, MR. MONCKTON
5 AND MR. CHRISCO, I GUESS WE NEED TO GO INTO THE FIFTH
6 AMENDMENT SITUATION THAT WE DISCUSSED YESTERDAY AFTERNOON
7 WITH THE CLIENTS. HAVE THEM COME UP, PLEASE.

8 ALL RIGHT. MR. SWINTON AND MR. HOLLINGSWORTH,
9 YESTERDAY AFTERNOON I ADVISED YOU OF YOUR RIGHTS UNDER THE
10 FIFTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES
11 AND TOLD YOU WHAT THEY WERE AND WANTED TO GIVE YOU THE TIME
12 TO THINK ABOUT IT. DO EITHER OF YOU HAVE ANY QUESTIONS
13 THAT YOU WOULD LIKE TO ASK ME ABOUT WHAT I TOLD YOU
14 REGARDING YOUR FIFTH AMENDMENT RIGHTS? MR. SWINTON?

15 DEFENDANT SWINTON: NO, SIR.

16 THE COURT: MR. HOLLINGSWORTH?

17 DEFENDANT HOLLINGSWORTH? NO, SIR.

18 THE COURT: HAVE EACH OF YOU -- HAVE YOU, MR.
19 HOLLINGSWORTH, HAD A CHANCE TO TALK WITH YOUR LAWYER
20 REGARDING YOUR FIFTH AMENDMENT RIGHTS?

21 DEFENDANT HOLLINGSWORTH: YES, SIR.

22 THE COURT: AND HAVE YOU DISCUSSED WITH HIM
23 WHETHER YOU SHOULD OR SHOULD NOT TESTIFY IN THIS CASE?

24 DEFENDANT HOLLINGSWORTH: YES, SIR.

25 THE COURT: HAVE YOU UNDERSTOOD YOUR TALKS WITH

DEFENDANT SWINTON MOTION FOR DIRECTED VERDICT & MISTRIAL383

1 YOUR LAWYER ABOUT YOUR FIFTH AMENDMENT RIGHTS?

2 DEFENDANT HOLLINGSWORTH: YES, SIR.

3 DEFENDANT SWINTON: YES, SIR.

4 THE COURT: I'LL COME BACK TO YOU IN JUST A
5 MINUTE, MR. SWINTON. AND DO YOU HAVE ANY QUESTIONS OF HIM
6 OR ME REGARDING YOUR FIFTH AMENDMENT RIGHTS?

7 DEFENDANT HOLLINGSWORTH: NO, SIR.

8 THE COURT: DO YOU NEED ANY MORE TIME TO TALK
9 WITH YOUR LAWYER ABOUT YOUR FIFTH AMENDMENT RIGHTS?

10 DEFENDANT HOLLINGSWORTH: NO, SIR.

11 THE COURT: DO YOU WISH TO TESTIFY IN THIS MATTER
12 OR DO YOU NOT WISH TO TESTIFY IN THIS MATTER?

13 DEFENDANT HOLLINGSWORTH: YES, SIR, I DO.

14 THE COURT: YOU WISH TO TESTIFY? ALL RIGHT. THE
15 COURT WILL MAKE A FINDING THEN THAT THE DEFENDANT DERRICK
16 HOLLINGSWORTH HAS BEEN FULLY ADVISED OF HIS RIGHTS UNDER
17 THE FIFTH AMENDMENT OF THE CONSTITUTION BY BOTH THE COURT
18 AND HIS ATTORNEY, THAT HE HAS MADE A FREE, VOLUNTARY,
19 INTELLIGENT AND KNOWING DECISION TO WAIVE HIS RIGHTS UNDER
20 THE FIFTH AMENDMENT OF THE CONSTITUTION AND THIS DECISION
21 ON HIS PART IS VOLUNTARY. ALL RIGHT, MR. SWINTON, HAVE YOU
22 HAD ENOUGH TIME TO TALK WITH YOUR LAWYER ABOUT YOUR RIGHTS
23 UNDER THE FIFTH AMENDMENT TO THE CONSTITUTION?

24 DEFENDANT SWINTON: YES, SIR.

25 THE COURT: DO YOU UNDERSTAND THOSE RIGHTS AND DO

DEFENDANT SWINTON MOTION FOR DIRECTED VERDICT & MISTRIAL384

1 YOU UNDERSTAND YOUR DISCUSSIONS WITH HIM?

2 DEFENDANT SWINTON: YES, SIR.

3 THE COURT: AND DO YOU UNDERSTAND WHAT BOTH HE
4 AND I HAVE EXPLAINED TO YOU?

5 DEFENDANT SWINTON: YES, SIR.

6 THE COURT: DO YOU HAVE ANY QUESTIONS ABOUT WHAT
7 HE'S EXPLAINED TO YOU ABOUT THE FIFTH AMENDMENT?

8 DEFENDANT SWINTON: NO, SIR.

9 THE COURT: DO YOU NEED ANY MORE TIME TO TALK
10 WITH HIM ABOUT IT?

11 DEFENDANT SWINTON: NO, SIR.

12 THE COURT: DO YOU WISH TO TESTIFY IN THIS CASE?

13 DEFENDANT SWINTON: NO, SIR.

14 THE COURT: ALL RIGHT. THE COURT FINDS THAT THE
15 DEFENDANT DERRICK -- I MEAN, CORTREAL SWINTON,
16 UNDERSTANDING HIS RIGHTS UNDER THE FIFTH AMENDMENT OF THE
17 CONSTITUTION, HAS MADE THE DECISION IN THIS CASE NOT TO
18 TESTIFY AND THAT THIS DECISION IS FREELY AND VOLUNTARILY
19 MADE AFTER HAVING BEEN FULLY ADVISED OF HIS RIGHT TO
20 TESTIFY OR NOT TESTIFY. ALL RIGHT, THANK YOU.

21 MR. MONCKTON: THANK YOU, YOUR HONOR. COULD WE
22 TAKE A FIVE-MINUTE BREAK?

23 THE COURT: YES, SIR.

24 MR. MONCKTON: THANK YOU, JUDGE.

25 THE COURT: BEFORE WE DO TAKE A BREAK, ONE OTHER

DEFENDANT SWINTON MOTION FOR DIRECTED VERDICT & MISTRIAL 385

1 THING. HOW MANY WITNESSES DO YOU ANTICIPATE, MR. MONCKTON?

2 MR. MONCKTON: THREE TO FOUR, YOUR HONOR.

3 THE COURT: WHAT ABOUT YOU, MR. CHRISCO? ARE YOU
4 GOING TO PUT UP ANY TESTIMONY?

5 MR. CHRISCO: ABOUT THE SAME NUMBER OF WITNESSES.

6 THE COURT: BUT YOU ARE GOING TO PUT UP SOME
7 TESTIMONY?

8 MR. CHRISCO: YES, YOUR HONOR.

9 THE COURT: OKAY. LET'S TAKE ABOUT A TEN-MINUTE
10 RECESS AND THEN WE'LL BE READY TO START BACK.

11 MR. HUMPHRIES: JUDGE, CAN WE DO THIS? I
12 APOLOGIZE.

13 THE COURT: HOLD IT JUST A MOMENT.

14 MR. HUMPHRIES: I'VE BEEN ADVISED, AS HAVE
15 DEFENSE COUNSEL, THAT IF DEFENSE COUNSEL FOR EITHER MR.
16 SWINTON OR MR. HOLLINGSWORTH INTEND TO CALL CURTIS WILSON,
17 JR., WHO IS PRESENT IN THE COURTROOM, I BELIEVE HIS -- IS
18 MR. TRUSLOW PRESENT WITH YOU, MR, WILSON?

19 THE COURT: THAT IS A MATTER THAT WE CAN TAKE UP.
20 SEE IF YOU CAN FIND MR. TRUSLOW. HE DID COME IN DURING THE
21 LUNCH RECESS AND ADVISED ME THAT HIS WITNESS OR THAT HIS
22 CLIENT HAD BEEN SUBPOENAED. I DIDN'T KNOW WHETHER EITHER
23 SIDE IS GOING TO PUT HIM UP OR NOT BUT I WOULD TELL COUNSEL
24 IF YOU LOOK AND WE'LL TAKE IT UP AS SOON AS WE COME BACK
25 FROM THE RECESS AND IF YOU WANT TO PUT HIM UP, LET'S DO IT

DEFENDANT SWINTON MOTION FOR DIRECTED VERDICT & MISTRIAL386

1 WHILE THE JURY IS OUT AND FIND OUT WHAT HIS TESTIMONY IS
2 GOING TO BE BECAUSE UNDER STATE VS. HUGHES IT IS IMPROPER
3 TO PUT A WITNESS UP SOLELY FOR THE PURPOSE OF HIM TAKING
4 THE FIFTH AMENDMENT. SO IF YOU'RE GOING TO CALL HIM AND
5 THAT'S WHAT HE'S GOING TO BE EXPECTED TO SAY, HE'S JUST
6 GOING TO TAKE THE FIFTH AMENDMENT, IT IS NOT PROPER TO PUT
7 UP A WITNESS IN FRONT OF THE JURY SOLELY FOR THE PURPOSE OF
8 HAVING HIM INVOKE HIS FIFTH AMENDMENT PROTECTIONS UNDER
9 STATE VS. HUGHES.

10 MR. MONCKTON: I DON'T INTEND TO CALL HIM, YOUR
11 HONOR.

12 THE COURT: ALL RIGHT.

13 MR. CHRISCO: YOUR HONOR, SPEAKING FOR CORTREAL
14 SWINTON, WE WILL NOT CALL HIM BASED HIM BASED UPON WHAT HAS
15 TRANSPIRED IN COURT OVER THE LAST COUPLE OF DAYS.

16 THE COURT: OKAY. ALL RIGHT, WELL, THEN THAT
17 SEEMS TO SOLVE THAT PROBLEM. WE'LL TAKE A RECESS.

18 MR. HUMPHRIES: VERY GOOD. THANK YOU, JUDGE.

19 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

20 THE COURT: ANYTHING FROM THE STATE, MR.
21 HUMPHRIES?

22 MR. HUMPHRIES: NOTHING FROM THE STATE. I WAS
23 TRYING TO REMEMBER IF WE HAD ANY OUTSTANDING ---

24 THE COURT: I THINK EVERYTHING HAS BEEN RESOLVED.

25 MR. MONCKTON: YOUR HONOR, FOR CLARIFICATION I

MR. MARTIN-DIRECT EXAMINATION BY MR. MONCKTON

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1 BELIEVE THE STATE HAS STIPULATED THAT DEFENSE EXHIBIT
2 NUMBER 1 MARKED FOR ID WILL NOW BE IN EVIDENCE SINCE MR.
3 MARTIN IS GOING TO TESTIFY.

4 MR. HUMPHRIES: YES, AS LONG AS IT'S SUBMITTED
5 THROUGH A WITNESS I'M NOT GOING TO OBJECT TO ITS ADMISSION.

6 THE COURT: ALL RIGHT.

7 MR. MONCKTON: AND HE'LL BE UP RIGHT NOW, JUDGE.

8 THE COURT: GO AHEAD AND MARK IT AS DEFENSE
9 EXHIBIT NUMBER ---

10 MR. MONCKTON: THIS WAS MARKED FOR THE LAST
11 TRIAL.

12 THE COURT REPORTER: IT WILL BE NUMBER 12, YOUR
13 HONOR.

14 THE COURT: ALL RIGHT. DEFENSE EXHIBIT NUMBER 12
15 IS ADMITTED INTO EVIDENCE WITHOUT OBJECTION.

16 MR. MONCKTON: THANK YOU, YOUR HONOR.

17 (WHEREUPON, DEFENDANT HOLLINGSWORTH EXHIBIT
18 NUMBER 12 WAS MARKED AND FILED.)

19 THE COURT: ALL RIGHT, BRING THE JURY IN, PLEASE.

20 (WHEREUPON, THE JURY ENTERED THE COURTROOM AND
21 THE FOLLOWING PROCEEDINGS WERE HAD.)

22 THE COURT: ALL RIGHT. THANK YOU, LADIES AND
23 GENTLEMEN. WE ARE NOW READY TO PROCEED. MR. MONCKTON, YOU
24 CAN CALL YOUR FIRST WITNESS.

25 MR. MONCKTON: MAY IT PLEASE THE COURT, YOUR

MR. MARTIN - DIRECT EXAMINATION BY MR. MONCKTON

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1 HONOR, THE DEFENSE CALLS FOR ITS FIRST WITNESS MR. C. E.
2 MARTIN.

3 C. E. MARTIN,

4 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

5 DIRECT EXAMINATION

6 BY MR. MONCKTON:

7 Q MR. MARTIN, WHERE DO YOU LIVE?

8 A I LIVE IN SURFSIDE BEACH, SOUTH CAROLINA.

9 Q AND IF YOU WOULD, PLEASE TELL THE JURY WHAT
10 YOU DO FOR A LIVING?

11 A I'M A REGISTERED PRIVATE INVESTIGATOR IN THE
12 STATE OF SOUTH CAROLINA.

13 Q AND IF YOU WOULD, JUST EXPLAIN TO THE JURY
14 WHAT YOUR PRIOR WORK HISTORY IS IN INVESTIGATIONS.

15 A I WAS A SPECIAL AGENT WITH THE ARMY CRIMINAL
16 INVESTIGATION COMMAND FOR 21 YEARS. AS SUCH I INVESTIGATED
17 FELONY OFFENSES COMMITTED BY MEMBERS OF THE ARMY OR PEOPLE
18 ON GOVERNMENT RESERVATIONS.

19 Q AND HOW LONG DID YOU DO THAT? TWENTY-ONE
20 YEARS, I BELIEVE?

21 A TWENTY-ONE YEARS, YES, SIR.

22 Q AND WHEN DID YOU RETIRE FROM THE MILITARY?

23 A APRIL OF 1990.

24 Q HAVE YOU LIVED ANYWHERE ELSE OTHER THAN
25 MYRTLE BEACH SINCE YOU RETIRED?

MR. MARTIN - DIRECT EXAMINATION BY MR. MONCKTON

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1 A YES. AFTER RETIREMENT FROM THE ARMY I
2 STAYED IN THE BALTIMORE, MARYLAND AREA FOR SEVEN YEARS AND
3 WE MOVED HERE IN AUGUST OF 1994.

4 Q AND HOW LONG HAVE YOU BEEN A LICENSED
5 PRIVATE INVESTIGATOR WITH THE STATE OF SOUTH CAROLINA?

6 A FIVE AND A HALF YEARS.

7 Q DID THERE COME A TIME AND PLACE WHERE YOU
8 WERE CONTACTED BY MY OFFICE WITH REGARDS TO THE PRESENT
9 CASE HERE TODAY?

10 A YES, SIR. ON AUGUST 5TH I WAS HIRED BY YOU
11 TO CONDUCT SOME INTERVIEWS AND TO EXAMINE THE CRIME SCENE,
12 TAKE PHOTOGRAPHS.

13 Q DID YOU HAVE AN OPPORTUNITY TO EXAMINE THE
14 CRIME SCENE?

15 A YES, I DID.

16 Q APPROXIMATELY HOW MANY TIMES HAVE YOU BEEN
17 OUT TO THIS AREA?

18 A PROBABLY FOUR.

19 Q FOUR TIMES? DID YOU HAVE AN OPPORTUNITY TO
20 PRODUCE WHAT'S ALREADY BEEN MARKED INTO EVIDENCE AS DEFENSE
21 EXHIBIT NUMBER 12? DO YOU RECOGNIZE THAT?

22 A YES, SIR. I PRODUCED THAT FROM A ROUGH
23 SKETCH THAT I MADE ON AUGUST THE 11TH OF 1999.

24 Q OKAY. MR. MARTIN, DID YOU ALSO HAVE AN
25 OPPORTUNITY TO TAKE SOME PICTURES WITH REGARDS TO THIS PLAT

MR. MARTIN - DIRECT EXAMINATION BY MR. MONCKTON

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1 YOU HAVE DRAWN?

2 A YES, SIR, I DID.

3 Q IF YOU WOULD WITH THE COURT'S PERMISSION
4 STEP DOWN, PLEASE.

5 A YES, SIR.

6 THE COURT: MR. MARTIN, YOU MAY STEP DOWN.

7 MR. MONCKTON: (CONTINUING)

8 Q MR. MARTIN, IF YOU WOULD STAND RIGHT HERE.
9 SPEAK EXTREMELY LOUD SO THE COURT REPORTER CAN HEAR YOU. I
10 THINK SHE CAN HEAR ME. WOULD YOU PLEASE EXPLAIN TO THE
11 JURY WHAT YOU HAVE PREPARED HERE FOR US?

12 A YES. THIS IS A CRIME SCENE SKETCH THAT WAS
13 PREPARED BY ME ON AUGUST 11TH. I HAD TAKEN MEASUREMENTS
14 FROM THE RESIDENCE OF MS. SARAH WEAVER, SHOWN ON THE MAP
15 HERE AS [REDACTED], RACEPATH ROAD RUNNING TO THE
16 EAST TO INTERSECT WITH HIGHWAY 378, AND THE CRIME SCENE
17 WOULD BE UNDERNEATH THIS LARGE OAK TREE DEPICTED RIGHT HERE
18 WHERE MY FINGERS ARE POINTING.

19 Q OKAY, AND IF YOU WOULD -- I BELIEVE YOU HAVE
20 NUMEROUS MEASUREMENTS ON THAT SHEET. IF YOU WOULD, JUST GO
21 THROUGH FOR THE JURY IN A CLOCKWISE MOTION STARTING WITH
22 THE OAK TREE AND TELL THEM WHAT THE MEASUREMENTS WERE FOR.

23 A YES, SIR. I TOOK THE MEASUREMENTS BASED
24 UPON THE STOP SIGN THAT IS KIND OF HIDDEN UNDERNEATH THE
25 OAK TREE.

MR. MARTIN - DIRECT EXAMINATION BY MR. MONCKTON

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1 MR. HUMPHRIES: BEG THE COURT'S INDULGENCE. I
2 JUST CAN'T SEE. I'M GOING TO STEP OVER HERE. THANK YOU.

3 THE WITNESS: (CONTINUING)

4 A THE MEASUREMENTS WERE TAKEN FROM THE BASE OF
5 THE STOP SIGN TO THE VARIOUS LOCATIONS AS SHOWN. FROM THE
6 STOP SIGN TO THE STREET LAMP ACROSS HIGHWAY 378 IS 89 FEET.
7 FROM THE STOP SIGN TO SARAH WEAVER'S MAILBOX IS
8 APPROXIMATELY 480 FEET. FROM THE STOP SIGN TO THE STREET
9 LAMP AT MCRAY ALLEY IS APPROXIMATELY 201 FEET AND THEN THE
10 STOP SIGN TO THE STREET LAMP ON WRIGHT BOULEVARD IS
11 APPROXIMATELY 66 FEET.

12 Q WITH REGARDS TO THAT MAP DID YOU ALSO HAVE
13 THE OPPORTUNITY TO TAKE SOME PHOTOGRAPHS?

14 A YES, SIR, I DID.

15 Q MR. MARTIN, I'M GOING TO HAND YOU
16 PHOTOGRAPHS ONE BY ONE AND ASK IF YOU'LL SHOW THE JURY
17 WHERE YOU TOOK THESE PHOTOGRAPHS FROM AND PLEASE MARK -- AS
18 I HAD ALREADY INSTRUCTED YOU EARLIER, FOR EACH EXHIBIT MARK
19 WITH THAT RED MAGIC MARKER WHERE YOU TOOK THE PICTURE FROM.
20 FIRST, MR. MARTIN, I WILL HAND YOU WHAT'S ALREADY BEEN
21 INTRODUCED INTO EVIDENCE AS DEFENSE EXHIBIT NUMBER 2 AND IF
22 YOU WOULD MARK ON THE BOARD D-2 WHERE YOU TOOK THAT PICTURE
23 FROM.

24 A I'M REFERRING TO A SMALLER VERSION OF THIS
25 WHICH I PRE-MARKED ON HERE SO I DON'T HAVE TO TAKE UP THE

MR. MARTIN - DIRECT EXAMINATION BY MR. MONCKTON

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1 COURT'S TIME. D-2 WAS TAKEN FROM THIS INTERSECTION OF
2 RACEPATH AND WRIGHT BOULEVARD IN APPROXIMATELY THIS
3 LOCATION.

4 Q IF YOU WOULD SHOW IT TO THE JURY.

5 A (THE WITNESS COMPLIES.)

6 Q I'M ALSO GOING TO SHOW YOU, MR. MARTIN,
7 ANOTHER DAYTIME PHOTOGRAPH MARKED DEFENSE EXHIBIT NUMBER
8 11. IF YOU WOULD SHOW THE JURY THAT PICTURE AND MARK ON
9 YOUR PLAT WHERE YOU TOOK THAT PICTURE FROM.

10 A YES, SIR. THIS IS A PHOTOGRAPH I TOOK IN
11 THE DAYLIGHT HOURS. IT'S FROM THE CENTER OF THE STREET
12 ADJACENT TO SARAH WEAVER'S MAILBOX AND THIS WOULD BE D-11.

13 Q ALL RIGHT, MR. MARTIN, I'M GOING TO HAND YOU
14 STATE'S EXHIBIT NUMBER 3 AND I BELIEVE YOU TOOK THIS
15 PICTURE AS WELL AND IF YOU WOULD PLEASE MARK ON YOUR PLAT
16 S-3 WHERE THAT PICTURE WAS TAKEN FROM.

17 A YES, SIR. I TOOK THIS PHOTOGRAPH. IT'S
18 TAKEN ACROSS THE STREET FROM THE STOP SIGN AT APPROXIMATELY
19 THIS LOCATION.

20 Q I'M ALSO GOING TO SHOW YOU WHAT'S BEEN
21 MARKED AS DEFENSE EXHIBIT NUMBER 3 ALREADY ENTERED INTO
22 EVIDENCE. IF YOU WOULD PLEASE MARK ON YOUR PLAT WHERE YOU
23 TOOK THAT PICTURE FROM.

24 A YES, SIR. I TOOK THIS PHOTOGRAPH FROM
25 APPROXIMATELY THIS LOCATION ON RACEPATH ROAD.

MR. MARTIN - DIRECT EXAMINATION BY MR. MONCKTON

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1 Q I WILL ALSO HAND YOU WHAT'S ALREADY BEEN
2 MARKED AND ENTERED INTO EVIDENCE AS DEFENSE EXHIBIT NUMBER
3 4. IF YOU WOULD MARK ON YOUR PLAT WHERE YOU TOOK THAT
4 PHOTOGRAPH FROM.

5 A YES, SIR. I TOOK THIS PHOTOGRAPH ON WRIGHT
6 BOULEVARD LOOKING DOWN RACEPATH ROAD TOWARDS SARAH WEAVER'S
7 HOUSE FROM APPROXIMATELY THIS LOCATION.

8 Q AND, MR. MARTIN, I'M GOING TO HAND YOU SOME
9 NIGHTTIME PHOTOS AND I'M GOING TO ASK YOU SOME QUESTIONS.
10 FIRST I'M GOING TO HAND YOU WHAT'S BEEN MARKED AS DEFENSE
11 EXHIBIT NUMBER 9. APPROXIMATELY WHAT TIME OF NIGHT DID YOU
12 TAKE THAT PICTURE?

13 A THIS WAS TAKEN AT APPROXIMATELY TWO A.M. IN
14 THE MORNING.

15 Q OKAY, AND IF YOU WOULD, PLEASE MARK ON YOUR
16 PLAT WHERE YOU TOOK THAT PICTURE FROM.

17 A YES, SIR. THIS WAS TAKEN FROM THE MIDDLE OF
18 THE ROAD ON RACEPATH WHERE IT MEETS WRIGHT BOULEVARD.

19 Q I'M ALSO GOING TO HAND YOU, MR. MARTIN,
20 DEFENSE EXHIBIT NUMBER 10 AND I HAVE A COUPLE OF QUESTIONS
21 FOR YOU ON THAT ONE. APPROXIMATELY WHAT TIME DID YOU TAKE
22 THAT PHOTOGRAPH?

23 A THIS AGAIN WAS TAKEN AT APPROXIMATELY TWO
24 A.M. IN THE MORNING.

25 Q AND, MR. MARTIN, WAS THERE ANYTHING SPECIAL

MR. MARTIN-CROSS-EXAMINATION BY MR. HUMPHRIES

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1 IN THAT PHOTOGRAPH WHY YOU TOOK IT?

2 A YES, SIR. I TOOK THE PHOTOGRAPH TO DEPICT
3 PEOPLE WALKING UNDERNEATH THIS OAK TREE AT RACEPATH AND 378
4 TO SHOW WHAT A PERSON COULD SEE AT TWO A.M. IN THE MORNING.

5 Q WOULD YOU PLEASE MARK ON YOUR PLAT WHERE YOU
6 TOOK THAT PICTURE FROM, MR. MARTIN?

7 A THIS IS BETWEEN THE OAK TREE AND THE CONWAY
8 POLICE COMMUNITY CENTER ON RACEPATH AVENUE DIAGONAL FROM
9 SARAH WEAVER'S HOME.

10 Q MR. MARTIN, IF YOU WOULD PLEASE TAKE THE
11 STAND. MR. MARTIN, DID I ALSO ASK YOU TO CONDUCT SOME
12 INTERVIEWS?

13 A YES, SIR, YOU DID.

14 Q WHO ALL DID YOU TAKE INTERVIEWS FROM?

15 A I INTERVIEWED MS. SARAH WEAVER. I
16 INTERVIEWED MR. PARKER. I INTERVIEWED MS. KIM BROWN AND
17 MS. LAKEISHA SMITH.

18 Q DID YOU TAPE-RECORD THOSE INTERVIEWS?

19 A MS. SARAH WEAVER DECLINED TO HAVE HER
20 INTERVIEW RECORDED ON TAPE. THE OTHERS WERE TAPE-RECORDED.
21 I'M SORRY. AND MS. BROWN DID NOT RECORD HER INTERVIEW
22 EITHER. WE DID THAT INTERVIEW AT HER PLACE OF EMPLOYMENT
23 AND SHE PREFERRED NOT TO.

24 MR. MONCKTON: THANK YOU. I HAVE NO FURTHER
25 QUESTIONS. YOUR HONOR, MAY I PUBLISH TO THE JURY?

MR. MARTIN - CROSS-EXAMINATION BY MR. HUMPHRIES

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1 THE COURT: YES, SIR. MR. HUMPHRIES.

2 MR. HUMPHRIES: THANK YOU, JUDGE. I'VE JUST GOT
3 A COUPLE OF QUESTIONS.

4 CROSS-EXAMINATION

5 BY MR. HUMPHRIES:

6 Q ACCORDING TO -- I'M GOING TO GO AHEAD AND
7 TAKE THE ID -- ASK THE COURT REPORTER TO TAKE THE ID
8 MARKING OFF.

9 THE COURT: YES, THE ID MARKING SHOULD BE
10 REMOVED.

11 Q I SHOW YOU STATE'S 12. HAVE YOU STILL GOT
12 THAT RED PEN WITH YOU?

13 A YES, SIR.

14 Q IF YOU WILL JUST STEP DOWN RIGHT HERE. WE
15 NEED TO MAKE SURE THE JURY CAN SEE YOU BUT I NEED YOU TO
16 SPEAK UP AGAIN SO HOPEFULLY THIS EASEL WON'T ATTACK ME FROM
17 THE BACK HERE.

18 THE COURT: IT MIGHT BE BETTER FOR HIM TO STAND
19 ON THE OTHER SIDE.

20 MR. HUMPHRIES: IT MIGHT, JUDGE, AND WE'LL SWITCH
21 PLACES.

22 MR. HUMPHRIES: (CONTINUING)

23 Q HERE'S WHAT I WANT YOU TO DO. I NOTICED ON
24 THIS SCHEMATIC THAT YOU HAVE REPRESENTED A NUMBER OF
25 LIGHTS.

MR. MARTIN - CROSS-EXAMINATION BY MR. HUMPHRIES

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1 A YES, SIR, THAT'S CORRECT.

2 Q AND POINTING TO THIS FIGURE DRAWN AT THE
3 CONWAY POLICE COMMUNITY RESOURCE CENTER, CAN YOU TELL THE
4 JURY WHAT THAT IS?

5 A YES, SIR. THIS IS A LAMP AFFIXED TO THE
6 REAR DOOR -- ABOVE THE REAR DOOR OF THE CONWAY POLICE
7 COMMUNITY RESOURCE CENTER.

8 Q AND WILL YOU CIRCLE THAT FOR ME PLEASE, SIR?

9 A (THE WITNESS COMPLIES.)

10 Q THANK YOU. AND, AGAIN, WHAT IS THIS FIGURE
11 DRAWN ON YOUR SCHEMATIC, DEFENDANT'S 12?

12 A THIS IS A STREET LAMP ADJACENT TO SARAH
13 WEAVER'S HOME ON RACEPATH ROAD.

14 Q AND WILL YOU CIRCLE THAT FOR ME PLEASE, SIR.

15 A (THE WITNESS COMPLIES.)

16 Q [REDACTED], THAT REPRESENTS WHOSE RESIDENCE?

17 A SARAH WEAVER.

18 Q OKAY, NOW LET ME ASK YOU THIS. YOU CAN HAVE
19 A SEAT. REGARDING [REDACTED], IS THERE A PORCH
20 ON THE FRONT OF THAT RESIDENCE OR DO YOU RECALL?

21 A YES, SIR, AS I RECALL THERE WAS A SCREENED
22 PORCH.

23 Q YES, SIR, AND IS THERE A FRONT YARD
24 IMMEDIATELY IN FRONT OF THAT SCREENED PORCH PRIOR TO
25 REACHING THE STREET?

MR. MARTIN - CROSS-EXAMINATION BY MR. HUMPHRIES

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1 A YES, SIR, ABOUT 20 FEET OF FRONT YARD.

2 Q YES, SIR, AND YOU HAVE CIRCLED BOTH THIS
3 SPOTLIGHT -- TELL THE JURY A LITTLE BIT ABOUT THAT
4 SPOTLIGHT. MY UNDERSTANDING YOU WENT OUT THERE IN -- WHEN
5 WAS THE LAST TIME YOU WENT OUT THERE, MR. MARTIN?

6 A MARCH THE 8TH, 2000.

7 THE COURT: MR. HUMPHRIES, I HATE TO INTERRUPT
8 YOU BUT I'M GOING TO STOP YOU JUST A MINUTE. MAYBE IT
9 WOULD BE BETTER TO LET THE JURY FINISH LOOKING ---

10 MR. HUMPHRIES: I'M SORRY.

11 THE COURT: --- AT THE PICTURES.

12 MR. HUMPHRIES: SURE.

13 THE COURT: LET THEM DO THAT SO THEY WON'T BE
14 TRYING TO WATCH THE WITNESS AND LISTEN ---

15 MR. HUMPHRIES: SURE.

16 THE COURT: --- AND LOOK AT THE PICTURES AT THE
17 SAME TIME. TAKE YOUR TIME.

18 THE COURT: MR. MONCKTON, YOUR EXHIBITS -- IF YOU
19 WOULD COLLECT THOSE EXHIBITS FROM THE JURY AND RETURN THEM
20 TO THE REPORTER, PLEASE.

21 MR. MONCKTON: YES, SIR, YOUR HONOR.

22 THE COURT: ALL RIGHT, THANK YOU, MR. HUMPHRIES.
23 GO AHEAD, PLEASE.

24 MR. HUMPHRIES: THANK YOU.

25 Q (CONTINUING) THE LAST TIME YOU WERE OUT

MR. MARTIN - CROSS-EXAMINATION BY MR. HUMPHRIES

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1 THERE WAS MARCH 8TH?

2 A MARCH THE 8TH.

3 Q OF 2000?

4 A YES, SIR.

5 Q NOW, IT IS FAIR TO SAY THAT YOU WERE NOT OUT
6 THERE IN OCTOBER OF 1997, ISN'T IT?

7 A THAT IS CORRECT. I WAS NOT.

8 Q AND, IN FACT, THE FIRST TIME YOU WENT OUT
9 THERE I BELIEVE YOU TESTIFIED WAS IN AUGUST OF 19 ---

10 A AUGUST 11TH OF 1999.

11 Q --- 99. ALMOST TWO YEARS FROM THE DATE OF
12 THE OFFENSE.

13 A YES.

14 Q BUT HAVING BEEN OUT THERE THE FOUR TIMES
15 THAT YOU HAVE, IT IS FAIR TO SAY, ISN'T IT, MR. MARTIN,
16 THAT THE AREA IMMEDIATELY IN FRONT OF SARAH WEAVER'S
17 RESIDENCE IS PROBABLY, WITH THE EXCEPTION OF THE B&B
18 SUPERETTE WHEN ITS LIGHTS ARE ON, IT'S PROBABLY THE BEST
19 ILLUMINATED AREA IN THAT ENTIRE NEIGHBORHOOD?

20 A THE LIGHT THERE IS -- THE FIRST TIME I WENT
21 OUT THERE THE LIGHT THERE WAS BLINKING OFF AND ON. IT IS A
22 YELLOW TUNGSTEN LIGHT SO THE AREA ILLUMINATED BY THAT LIGHT
23 IS ALL YELLOW UNDERNEATH IT, AS ARE ALL OF THESE OTHER
24 LIGHTS AS DEPICTED ON THE SKETCH, SO EACH OF THEM WERE, IN
25 MY OPINION, OF EQUAL ILLUMINATION. AND THE DISTANCE

MS. SMITH - DIRECT EXAMINATION BY MR. MONCKTON

399

1 BETWEEN THE COMMUNITY POLICE RESOURCE CENTER AND THE LIGHT
2 NEXT TO SARAH WEAVER'S HOUSE IS PROBABLY 80 FEET SO TO
3 ANSWER YOUR QUESTION, I DON'T KNOW IF IT IS THE MOST LIT
4 PLACE OF THE AREAS DEPICTED BUT IT IS VERY WELL LIT ---

5 Q VERY WELL LIT.

6 A --- FOR THAT PARTICULAR LOCATION, YES, SIR.

7 Q SURE. IN FACT -- WELL, I'LL MOVE ON. THANK
8 YOU, MR. MARTIN.

9 THE COURT: ANY QUESTIONS, MR. CHRISCO, OF THIS
10 WITNESS?

11 MR. CHRISCO: NO, YOUR HONOR.

12 THE COURT: ANY REDIRECT?

13 MR. MONCKTON: NO, SIR, YOUR HONOR.

14 THE COURT: ALL RIGHT. THANK YOU, MR. MARTIN.
15 YOU MAY STEP DOWN. ALL RIGHT, MR. MONCKTON.

16 MR. MONCKTON: YES, SIR, YOUR HONOR. LAKEISHA
17 SMITH THE DEFENSE WOULD CALL.

18 THE COURT: ALL RIGHT. LAKEISHA SMITH, IS SHE
19 PRESENT IN THE COURTROOM?

20 MR. MONCKTON: I BELIEVE SHE'S SEQUESTERED, YOUR
21 HONOR.

22 LAKEISHA SMITH,

23 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

24 DIRECT EXAMINATION

25 BY MR. MONCKTON:

MS. SMITH-DIRECT EXAMINATION BY MR. MOMNCKTON

400

1 Q HOW ARE YOU DOING TODAY, MS. SMITH?

2 A FINE.

3 Q YOU DON'T WANT TO BE HERE, DO YOU?

4 A NO, I DO NOT.

5 Q I UNDERSTAND THAT. I JUST HAVE A COUPLE OF
6 QUESTIONS FOR YOU AND WE'LL BE DONE. MS. SMITH, DID YOU
7 HAVE THE OPPORTUNITY TO BE IN THE VEHICLE WITH MS. VICKY
8 CAMPBELL AND KIM BROWN ON THE NIGHT OF OCTOBER THE 4TH,
9 1997?

10 A YES, I DID. I WAS DRIVING.

11 Q WHAT KIND OF CAR WAS THAT?

12 A A HONDA CIVIC DX, WHITE.

13 Q K-E-I-S-H-A?

14 A THAT'S CORRECT.

15 Q I'VE DRAWN WHAT'S GOING TO BE YOUR CAR HERE
16 TODAY, MS. SMITH. IF THIS IS THE FRONT OF THE CAR, YOU
17 WERE SEATED IN THE -- WERE YOU SEATED ---

18 A I WAS DRIVING, YES.

19 Q YOU WERE DRIVING. WHO WAS SEATED IN THE
20 PASSENGER SEAT?

21 A VICKY CAMPBELL.

22 Q VICKY CAMPBELL. WHO WAS SEATED IN THE BACK
23 SEAT?

24 A KIM.

25 Q WHERE WAS KIM SEATED? ON THE LEFT SIDE OR

MS. SMITH-DIRECT EXAMINATION BY MR. MOMNCKTON

401

1 THE RIGHT SIDE?

2 A BEHIND VICKY ON THE RIGHT SIDE.

3 Q ARE YOUR WINDOWS TINTED ON YOUR HONDA CIVIC?

4 A YES, THEY ARE.

5 Q DARK TINT OR LIGHT TINT?

6 A THEY'RE DARK.

7 Q DARK TINT. VERY DARK TINT?

8 A YES, VERY DARK.

9 Q DO YOU HAVE TROUBLE SEEING OUT, THEN, AT
10 NIGHT?

11 A IF IT'S VERY DARK, IT IS HARD TO SEE AT
12 NIGHT.

13 Q OKAY. SO IF IT'S DARK, IT'S HARD TO SEE AT
14 NIGHT. NOW, WE'VE GOT -- CAN YOU TELL THE JURY WHICH
15 DIRECTION WHERE YOU WERE HEADING THAT NIGHT?

16 A I WAS HEADING ON 378 GOING TOWARD THE BEACH.

17 Q OKAY. I'M GOING TO ASK YOU TO STEP DOWN,
18 WITH THE COURT' PERMISSION.

19 THE COURT: YES, SIR. YOU MAY STEP DOWN.

20 Q I'M GOING TO SHOW YOU A DIAGRAM HERE,
21 STATE'S EXHIBIT NUMBER 2, AND IF THIS IS RACEPATH AVENUE
22 AND THIS IS 378, WOULD YOU PLEASE SHOW ME WHERE YOU WERE
23 DRIVING? DRAW A LINE FOR ME WITH YOUR FINGER.

24 A (THE WITNESS COMPLIES.) RIGHT HERE.

25 Q OKAY. TELL YOU WHAT I'M GOING TO DO. JUST

MS. SMITH-DIRECT EXAMINATION BY MR. MOMNCKTON

402

1 WAIT RIGHT THERE JUST A SECOND. WITH MY BLUE PEN I'LL LET
2 YOU DRAW ON MY DIAGRAM SO THE STATE DOESN'T GET MAD. IF
3 THIS IS 378 AND HERE'S RACEPATH, DRAW AN "X" WHERE YOU
4 STARTED ON 378. FROM WHICH DIRECTION WERE YOU COMING?

5 A (THE WITNESS INDICATES.)

6 Q OKAY, JUST PUT AN "X" RIGHT THERE.

7 A (THE WITNESS COMPLIES.)

8 Q OKAY, AND DRAW A LINE FROM THAT "X" WHERE
9 YOU WERE HEADED. START THE LINE RIGHT HERE AND DRAW WHERE
10 YOU WERE HEADED.

11 A (THE WITNESS COMPLIES.)

12 Q OKAY. IF YOU WOULD, YOU CAN HAVE A SEAT
13 BACK, MS. SMITH. MS. SMITH, APPROXIMATELY HOW FAST WERE
14 YOU TRAVELING DOWN 378 THAT NIGHT?

15 A THE SPEED LIMIT.

16 Q WHAT'S THE SPEED LIMIT ON 378?

17 A I BELIEVE IT'S 40.

18 Q FORTY MILES AN HOUR.

19 A YES.

20 Q ALL RIGHT. ARE YOU SURE ABOUT THAT?

21 A I'M NOT SURE, NO.

22 Q COULD YOU HAVE BEEN GOING A LITTLE BIT
23 FASTER?

24 A COULD HAVE BEEN. I'M NOT SURE.

25 Q ALL RIGHT. MS. SMITH, WHEN YOU PASSED -- OR

MS. SMITH-DIRECT EXAMINATION BY MR. MOMNCKTON

403

1 TELL ME WHAT HAPPENED. TELL ME WHAT YOU SAW. I THINK
2 THAT'S A BETTER QUESTION. WHAT DID YOU SEE?

3 A I WAS TRAVELING ON 378. AS I COME UP TO THE
4 -- I WOULD SAY THE TREE, I HEARD GUNSHOTS. WHEN I LOOKED
5 OVER, I SAW WHAT I LATER LEARNED TO BE ISAAC BY THE PHONE.

6 Q NOW, HOLD ON, HOLD ON. JUST TELL ME WHAT
7 YOU SAW.

8 A OKAY. I HEARD GUNSHOTS AND THEN I SAW A
9 BODY FALL AND THEN AS I KEPT ON DRIVING, WHEN I WAS ABLE TO
10 GLANCE OVER AGAIN, I SAW SOMEONE STAND OVER HIM AND SHOOT
11 HIM AGAIN.

12 Q OKAY. WHICH DIRECTION WERE YOU LOOKING OUT
13 OF YOUR CAR WHEN ALL OF THIS OCCURRED? WERE YOU LOOKING TO
14 THE FRONT OR TO THE SIDE?

15 A I WAS LOOKING OVER. I HAD TO HAVE SLOWED
16 DOWN TO HAVE SEEN IT.

17 Q OKAY, SO YOU'RE LOOKING THIS WAY.

18 A YES.

19 Q WAS THIS WINDOW UP OR DOWN?

20 A IT WAS UP.

21 Q WINDOW UP. AND THAT WINDOW IS TINTED, I
22 BELIEVE?

23 A YES, IT IS.

24 Q OKAY. HOW FAST DID THIS OCCUR, MS. SMITH?

25 A HOW FAST DID IT OCCUR?

MS. SMITH-DIRECT EXAMINATION BY MR. MOMNCKTON

404

1 Q YES. HOW FAST DID ALL THIS HAPPEN?

2 A ME SEEING WHAT I SAW?

3 Q YES, MA'AM.

4 A I DON'T KNOW.

5 Q WELL, WAS IT THREE SECONDS OR LESS THAN
6 THREE SECONDS?

7 A PROBABLY LESS.

8 Q LESS THAN TWO SECONDS, LESS THAN ONE SECOND?

9 A I DON'T KNOW.

10 Q OKAY. DO YOU REMEMBER GIVING AN INTERVIEW
11 TO MR. MARTIN?

12 A YES.

13 Q DID YOU EVER GIVE A STATEMENT TO THE
14 SOLICITOR'S OFFICE OR THE CONWAY POLICE DEPARTMENT?

15 A YES, I DID.

16 Q DO YOU REMEMBER WHEN YOU GAVE THAT
17 STATEMENT?

18 A IT WAS FEBRUARY 17TH.

19 Q FEBRUARY THE 17TH. WERE YOU ABLE TO
20 RECOGNIZE WHO WAS THERE?

21 A NO, I WASN'T.

22 Q WHY NOT?

23 A BECAUSE I COULDN'T SEE THEIR FACES. ALL OF
24 THEM WERE WEARING BLACK. THEY HAD THE HOODIES ON.

25 Q OKAY. MS. SMITH, IF YOU WERE SITTING IN

MS. SMITH - CROSS-EXAMINATION BY MR. HUMPHRIES

405

1 VICKY CAMPBELL'S SEAT, WOULD YOU HAVE HAD A BETTER VIEW
2 THAN THE SEAT YOU WERE IN?

3 A I DON'T KNOW. MAYBE.

4 Q HOW MANY PEOPLE DID YOU SEE UNDER THE TREE
5 THAT NIGHT?

6 A ABOUT THREE OR FOUR.

7 Q THREE OR FOUR?

8 A THREE OR FOUR. I'M NOT SURE.

9 Q THAT'S FINE. AND I BELIEVE IT'S YOUR
10 TESTIMONY YOU DIDN'T SEE ANY FACES.

11 A I DIDN'T.

12 Q AND THE REASON FOR THAT WAS IT WAS TOO DARK?

13 A THEY HAD ON ALL BLACK, LIKE I SAID, AND I
14 COULD NOT IDENTIFY THEM.

15 Q ALL RIGHT. THANK YOU, MS. SMITH. NO
16 FURTHER QUESTIONS.

17 THE COURT: WAIT JUST A MINUTE. LET'S SEE IF THE
18 SOLICITOR HAS ANY. ALL RIGHT, MR. HUMPHRIES.

19 CROSS-EXAMINATION

20 BY MR. HUMPHRIES:

21 Q LAKEISHA, WE'VE TALKED BEFORE, HAVEN'T WE?

22 A YES, WE HAVE.

23 Q IS IT FAIR TO SAY, LAKEISHA, TODAY YOU WERE
24 JUST ABOUT SCARED TO DEATH TO BE HERE?

25 A YES.

MS. SMITH-CROSS-EXAMINATION BY MR. HUMPHRIES

406

1 Q DO YOU RECALL A MEETING AT MY OFFICE WHEN AN
2 INTERVIEW WAS CONDUCTED WITH DETECTIVE RODNEY SESSIONS?

3 A THAT'S CORRECT.

4 Q THAT YOU PARTICIPATED IN?

5 A YES.

6 Q DO YOU RECALL HAVING TOLD DETECTIVE SESSIONS
7 AT THAT TIME THAT YOU DID SLOW DOWN?

8 A YES.

9 Q OF COURSE, YOU PREVIOUSLY TESTIFIED THAT YOU
10 DID SEE SOMEONE STANDING OVER ISAAC AND SHOOT HIM WHEN HE
11 WAS ON THE GROUND.

12 A THAT'S CORRECT.

13 Q WE NEED TO CLARIFY SOMETHING, LAKEISHA.
14 THERE IS NO QUESTION THAT ISAAC COX WAS IDENTIFIED AT THAT
15 POINT AT THE TIME HE WAS SHOT; ISN'T THAT TRUE?

16 A THAT'S CORRECT.

17 Q BECAUSE YOU AND VICKY WENT TO THE NORTH
18 CONWAY MOTOR INN TO TELL HIS BROTHER.

19 A THAT'S CORRECT.

20 Q SO, OBVIOUSLY, SOMEBODY HAD TO KNOW OR
21 IDENTIFY AT LEAST ONE OF THE FOUR PEOPLE THAT WERE PRESENT
22 UNDER THE TREE; ISN'T THAT TRUE?

23 A I GUESS.

24 Q NOW, ON THIS NIGHT YOU HADN'T BEEN DRINKING.

25 A NO.

MS. SMITH-CROSS-EXAMINATION BY MR. HUMPHRIES

407

1 Q YOU CERTAINLY HADN'T BEEN USING ANY ILLICIT
2 DRUGS?

3 A NO.

4 Q YOU HEARD THE GUNSHOTS; IS THAT CORRECT?

5 A YES.

6 Q DO YOU RECALL HOW MANY?

7 A NO.

8 Q IN FACT, YOUR RECOLLECTION ABOUT THAT
9 EVENING IS NOT EXTREMELY CLEAR, IS IT, LAKEISHA? I MEAN,
10 IF THAT'S NOT A FAIR STATEMENT, LET ME KNOW, BUT DO YOU
11 UNDERSTAND MY QUESTION?

12 A I KNOW THAT CERTAIN PARTS WERE HAPPENING,
13 YOU KNOW. I MEAN I REMEMBER BECAUSE IT WAS TWO YEARS AGO
14 BUT I KNOW WHAT I SAW.

15 Q RIGHT. YOUR TESTIMONY IS THAT ISAAC COX WAS
16 IDENTIFIED THAT NIGHT UNDER THAT TREE.

17 A AFTER THE FACT, YES.

18 Q WELL ---

19 A I KNOW WHAT I SAID BEFORE BUT I HAD TO THINK
20 ABOUT IT.

21 Q SURE. WELL, LET ME ASK YOU THIS, OKAY? IF
22 HE HADN'T BEEN IDENTIFIED AT THE TIME OF THE SHOOTING,
23 OKAY, WHY THEN WOULD YOU ALL HAVE GONE TO HIS BROTHER TO
24 TELL HIM HE'D BEEN SHOT?

25 A WE DIDN'T GO THERE RIGHT AFTER IT HAPPENED.

MS. SMITH-CROSS-EXAMINATION BY MR. HUMPHRIES

408

1 Q OH, YOU DIDN'T?

2 A WE FOUND OUT FIRST WHO IT WAS BEFORE WE WENT
3 TO THE MOTEL.

4 Q YOUR TESTIMONY THEN IS YOU FOUND OUT LATER
5 AND THEN WENT TO TELL HIS BROTHER?

6 A WELL, WE MADE SURE THAT'S WHO IT WAS, YES.

7 Q WELL, MADE SURE. HAD SOMEBODY INDICATED
8 THAT THEY KNEW IT WAS ISAAC COX WHO HAD BEEN SHOT?

9 A WE HAD SAW HIM EARLIER AND THOSE WERE THE
10 CLOTHING THAT HE WAS WEARING AND WE WENT BACK AND TOLD HIS
11 BROTHER.

12 Q NOW, THERE IS NO QUESTION THAT ISAAC COX WAS
13 IDENTIFIED AT THE TIME OF THE SHOOTING; THAT THAT WAS ISAAC
14 THAT GOT SHOT, IS THERE? THERE'S NO QUESTION ABOUT THAT?

15 A AFTER THE FACT.

16 Q MS. SMITH, WHEN YOU ALL WENT BACK TO THE
17 SCENE -- AND YOU DID GO BACK TO THE SCENE AFTER YOU TOLD
18 HIS BROTHER?

19 A NO. WE WENT TO THE SCENE FIRST.

20 Q WELL, WHEN YOU GOT TO -- WELL, LET ME ASK
21 YOU ABOUT THAT. WHEN YOU WENT BACK TO THE SCENE, WHO WAS
22 THERE WHEN YOU GOT BACK? DO YOU UNDERSTAND MY QUESTION?

23 A YES.

24 Q OKAY. WHO WAS THERE?

25 A THE POLICE. THE POLICE WERE THERE.

MS. SMITH-CROSS-EXAMINATION BY MR. CHRISCO

409

1 Q THE POLICE WERE THERE. NOW, YOU, OF COURSE,
2 WHEN YOU SAW THE POLICE, YOU WENT UP TO THEM AND YOU TOLD
3 THEM, "I SAW THE SHOOTING" ---

4 A NO, I DID NOT.

5 Q YOU DIDN'T?

6 A NO.

7 Q WELL, WHY DIDN'T YOU?

8 A I WAS SCARED TO GET INVOLVED.

9 Q JUST AS YOU ARE TODAY; ISN'T THAT CORRECT?

10 A YES.

11 Q MS. SMITH, DO YOU RECALL VICKY CAMPBELL
12 HAVING SAID IN THE VEHICLE AT THE TIME OF THE SHOOTING OR
13 IMMEDIATELY AFTER THAT THAT'S BEADY WHO JUST GOT SHOT AND
14 SA AND TREAL SHOT HIM? DO YOU RECALL THAT?

15 A THAT COULD HAVE BEEN SAID BUT I DON'T RECALL
16 IT.

17 Q DO YOU KNOW THESE TWO DEFENDANTS, MA'AM?

18 A NO, I DO NOT.

19 Q MS. SMITH, IT'S FAIR TO SAY THAT EVEN IF YOU
20 SAW THOSE FACES CLEARLY THAT NIGHT YOU WOULDN'T TELL THIS
21 JURY TODAY, WOULD YOU, THAT YOU SAW THEIR FACES?

22 A WOULD I TELL?

23 Q YES, MA'AM.

24 A YES, I WOULD.

25 Q YOU WOULD?

MS. SMITH - CROSS-EXAMINATION BY MR. CHRISCO

410

1 MR. HUMPHRIES: NO FURTHER QUESTIONS.

2 THE COURT: MR. CHRISCO?

3 MR. CHRISCO: YES, YOUR HONOR.

4 CROSS-EXAMINATION

5 BY MR. CHRISCO:

6 Q DID YOU KNOW ISAAC COX?

7 A I KNOW OF HIM.

8 Q DID VICKY CAMPBELL KNOW ISAAC COX?

9 A YES.

10 Q DID JIM BROWN KNOW ISAAC COX?

11 A YES.

12 Q DID HE KNOW HIM PRETTY WELL?

13 A TO MY KNOWLEDGE, YES.

14 Q AFTER YOU HEARD THE SHOTS THAT NIGHT WHERE
15 DID YOU GO?

16 A WE DROVE ON DOWN TO THE STOP LIGHT.

17 Q YOU SAID THE STOP LIGHT. WHAT'S AT THAT
18 STOP LIGHT?

19 A THE STOP LIGHT THERE IN FRONT OF THE SUBWAY.

20 Q IT'S NOT DOWN WHERE AT THE KFC IS IT?

21 A YES, IT'S AT THE STOP LIGHT.

22 Q WHERE WOULD BE THE SUBWAY ON THIS MAP? DO
23 YOU KNOW, MA'AM? THIS IS 378.

24 A THE INTERSECTION OF 378 AND 501.

25 Q SO THAT WOULD BE HERE?

MS. SMITH - CROSS-EXAMINATION BY MR. CHRISCO

411

1 A YES.

2 Q SO WHERE DID YOU TURN?

3 A LEFT.

4 Q SO YOU WENT WHICH WAY? THIS WAY?

5 A YES.

6 Q THEN WHAT DID YOU DO?

7 A THEN WE MADE A RIGHT ON RACEPATH -- A RIGHT
8 ON RACEPATH.

9 Q AND THIS WOULD BE RACEPATH?

10 A YES.

11 Q AND YOU WENT THIS WAY?

12 A YES.

13 Q AND WHERE DID YOU GO THEN?

14 A WHERE ---

15 Q IS THIS BACK TO WHERE YOU HEARD THE SHOTS?

16 A WE MUST HAVE TURNED AT THE STORE.

17 Q YOU KNOW WHERE YOU PARKED, MA'AM?

18 A IN THAT PARKING LOT AT THE B & B MART.

19 Q SO THE TESTIMONY IS THAT YOU WENT DOWN TO
20 THE STOP LIGHT AT 378 AND 501; IS THAT CORRECT, MA'AM?

21 A YES.

22 Q YOU MADE A LEFT ON 501?

23 A YES.

24 Q YOU WENT TO THE NEXT LIGHT AND MADE A LEFT?

25 A YES.

MS. SMITH-RECROSS BY MR. HUMPHRIES

412

1 Q AND THEN YOU PARKED IN THE PARKING LOT AND
2 THAT'S WHEN YOU SAW ISAAC COX?

3 A (NODDING AFFIRMATIVELY.)

4 Q HOW LONG DO YOU THINK THAT TOOK YOU?

5 A TWO MINUTES.

6 Q AND WHEN YOU GOT THERE ISAAC COX WAS ON THE
7 GROUND. WHO WAS THERE BESIDES YOU, KIM BROWN, AND VICKY
8 CAMPBELL?

9 A WOULD YOU REPEAT THE QUESTION?

10 Q WHEN YOU PARKED THE VEHICLE AND GOT OUT TO
11 GO OVER THERE ---

12 A WE DIDN'T GET OUT, OR I DIDN'T GET OUT.

13 Q YOU DIDN'T GET OUT?

14 A NO.

15 Q WHAT HAPPENED?

16 A VICKY AND KIM GOT OUT I THINK.

17 Q YOU STAYED BEHIND IN THE CAR?

18 A YES.

19 Q WHO ELSE WAS THERE? WAS THE POLICE THERE?

20 A YES.

21 Q WAS THE EMS THERE?

22 A YES.

23 Q WAS THE FIRE DEPARTMENT THERE?

24 A COULD HAVE BEEN.

25 MR. CHRISCO: THANK YOU, MS. SMITH.

MS. SMITH - RECROSS-EXAMINATION BY MR. HUMPHRIES

413

1 THE COURT: WAIT JUST A MINUTE. REDIRECT, MR.
2 MONCKTON?

3 MR. MONCKTON: YOUR HONOR, I HAVE NOTHING FURTHER
4 OF MS. SMITH.

5 THE COURT: RECROSS?

6 MR. HUMPHRIES: TO MR. CHRISCO'S QUESTIONS.

7 THE COURT: ALL RIGHT.

8 RECROSS-EXAMINATION

9 BY MR. HUMPHRIES:

10 Q REGARDING THAT INTERVIEW THAT TOOK PLACE
11 WITH DETECTIVE SESSIONS, DO YOU RECALL TELLING DETECTIVE
12 SESSIONS THAT YOU SAW SOMEONE STANDING OVER ISAAC AND
13 SHOOTING HIM; THAT YOU HEARD THE GUN SHOT, YOU DROVE TO THE
14 INTERSECTION OF 378 AND 501 WHICH IS AT SUBWAY; DO YOU
15 RECALL THAT?

16 A YES.

17 Q YOU TOOK A LEFT ON 501; DO YOU RECALL THAT?

18 A YES.

19 Q YOU TOOK A LEFT ON RACEPATH AND WENT DOWN
20 TOWARDS THE TREE; YOU CALL THAT?

21 A YES.

22 Q YOU THEN WENT TO THE STORE AT 501 AND
23 RACEPATH WHICH WAS THE EXXON EXPRESS; YOU RECALL THAT?

24 A EXXON ---

25 Q WITH THE INTENT TO CALL LAW ENFORCEMENT; DO

MS. SMITH-RECROSS-EXAMINATION BY MR. CHRISCO

414

1 YOU RECALL THAT?

2 A YES.

3 Q BUT YOU SAW THE LIGHTS OF THE LAW
4 ENFORCEMENT VEHICLES; DO YOU RECALL SAYING THAT?

5 A UH-HUH.

6 Q AND THEN WENT SPRIGHT TO THE NORTH CONWAY
7 MOTOR INN BECAUSE IT WAS VICKY'S IDEA TO GO AND TELL SPIKE
8 COX HIS BROTHER HAD BEEN SHOT. DO YOU RECALL SAYING THAT?

9 A WE HAD TO MAKE SURE IT WAS HIM BEFORE WE
10 WENT THERE.

11 Q WELL, THAT'S WHY I'M ASKING YOU. DO YOU
12 RECALL TELLING DETECTIVE SESSIONS IN THAT INTERVIEW THAT
13 YOU RODE DOWN THAT WAY TOWARD THE TREE BUT YOU DIDN'T STOP?
14 YOU DROVE DOWN TO THE EXXON EXPRESS TO CALL THE POLICE BUT
15 WHEN YOU NOTICED THE POLICE LIGHTS YOU WENT STRAIGHT TO
16 TELL SPIKE COX, AND IT WAS VICKY'S IDEA, THEN ONLY AFTER
17 TELLING FRED "SPIKE" COX HIS BROTHER HAD BEEN SHOT, ONLY
18 THEN DID YOU RETURN TO THE SCENE. ISN'T THAT TRUE?

19 A YEAH.

20 Q YES, MA'AM. DOES THAT SOUND MORE LIKE WHAT
21 YOU SAID, MA'AM?

22 A YEAH.

23 MR. HUMPHRIES: THANK YOU.

24 THE COURT: YES, MR. CHRISCO?

25 (WHEREUPON, DEFENDANT SWINTON'S EXHIBIT NUMBER 1

MS. SMITH - RECROSS-EXAMINATION BY MR. CHRISCO

415

1 IS MARKED FOR IDENTIFICATION.)

2 RECROSS-EXAMINATION

3 BY MR. CHRISCO:

4 Q MS. SMITH, I'LL NOW SHOW YOU WHAT'S BEEN
5 MARKED AS DEFENDANT'S EXHIBIT NUMBER 1.

6 THE COURT: FOR IDENTIFICATION?

7 MR. CHRISCO: YES, SIR.

8 THE COURT: WHAT'S THE NUMBER?

9 THE COURT REPORTER: DEFENDANT SWINTON'S EXHIBIT
10 NUMBER 1 FOR ID.

11 THE COURT: DEFENDANT SWINTON FOR ID, OKAY.

12 MR. CHRISCO: (CONTINUING)

13 Q MS. SMITH, YOU SAY THAT YOU WENT BACK TO
14 WHERE THE BODY WAS AND THEN YOU WENT TO THE CONWAY MOTOR
15 INN?

16 A UH-HUH.

17 THE COURT: ANSWER YES OR NO, PLEASE MA'AM.

18 THE WITNESS: (CONTINUING)

19 A YES.

20 Q IS THIS STATEMENT WRITTEN BY YOU?

21 A YES, IT IS.

22 MR. CHRISCO: NO FURTHER QUESTIONS, YOUR HONOR.

23 MR. HUMPHRIES: JUST ONE.

24 RECROSS-EXAMINATION BY

25 MR. HUMPHRIES:

MS. SMITH - RECROSS BY MR. HUMPHRIES

416

1 Q LOOK AT DEFENDANT SWINTON'S NUMBER 1. DON'T
2 PUBLISH IT TO THE JURY. LOOK AT THAT LAST LINE. WHO WROTE
3 THAT STATEMENT LAKEISHA?

4 A RODNEY SESSIONS.

5 Q RODNEY SESSIONS. THEN YOU DIDN'T WRITE
6 THAT, DID YOU?

7 A NO.

8 MR. HUMPHRIES: THAT'S ALL.

9 THE COURT: ANYTHING FROM THIS WITNESS, MR.
10 CHRISCO?

11 MR. CHRISCO: JUST ONE MORE QUESTION, YOUR HONOR.

12 RECROSS-EXAMINATION

13 BY MR. CHRISCO:

14 Q DID YOU TELL MR. SESSIONS TO WRITE WHAT HE
15 WROTE IN THERE?

16 A YES.

17 MR. CHRISCO: THANK YOU.

18 THE COURT: ALL RIGHT, MS. SMITH, YOU MAY STEP
19 DOWN?

20 MR. HUMPHRIES: AT THIS TIME WE MOVE TO INTRODUCE
21 DEFENDANT SWINTON'S NUMBER 1 UNDER THE REMAINDER OF
22 WRITINGS, RULE 106, IN IT'S ENTIRELY.

23 THE COURT: ALL RIGHT, ANY OBJECTION, MR.
24 CHRISCO?

25 MR. CHRISCO: NO OBJECTION, YOUR HONOR.

MS. SMITH - RECROSS BY MR. HUMPHRIES

417

1 THE COURT: ANY OBJECTION, MR. MONCKTON?

2 MR. MONCKTON: MAY I SEE IT, YOUR HONOR? NO
3 OBJECTION, YOUR HONOR. I THINK IT'S CONCURRING WITH HER
4 TESTIMONY.

5 THE COURT: ALL RIGHT. ADMITTED INTO EVIDENCE AS
6 DEFENDANT SWINTON'S NUMBER 1. SO IF THE COURT REPORTER
7 WILL REMOVE THE IDENTIFICATION NUMBER.

8 (WHEREUPON, DEFENDANT SWINTON EXHIBIT NUMBER 1 IS
9 FILED.)

10 MR. MONCKTON: YOUR HONOR, MAY WE APPROACH?

11 THE COURT: YES. WE NEED TO TALK ABOUT
12 SCHEDULING.

13 (WHEREUPON, A SIDE BAR WAS HELD OFF THE RECORD IN
14 THE PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE
15 JURY.)

16 THE COURT: LADIES AND GENTLEMEN, ACCORDING TO
17 THE INFORMATION THAT I HAVE, COUNSEL, HAVING TALKED WITH
18 THEM ABOUT SCHEDULING, IT LOOKS LIKE THAT WE WERE TO GET
19 TWO ADDITIONAL WITNESSES THIS AFTERNOON IT WOULD RUN US A
20 LITTLE BIT LATE BEYOND THE TIME I NORMALLY LIKE TO BREAK.
21 SO I'M GOING TO GO AHEAD AND ADJOURN AT THIS TIME AND ASK
22 YOU TO PLEASE BACK IN YOUR JURY ROOM AT 9:30 IN THE
23 MORNING. I WILL TELL YOU AGAIN AS I DID YESTERDAY THAT IT
24 WOULD BE IMPROPER FOR YOU TO DISCUSS THIS CASE WITH ANYONE,
25 TO ALLOW ANYONE TO DISCUSS IT WITH YOU AND WHEN YOU COME

MS. SMITH - RECROSS BY MR. HUMPHRIES

418

1 BACK TO YOUR JURY ROOM TOMORROW YOU SHOULD NOT DISCUSS IT
2 AMONG YOURSELVES. YOU HAVE NOT HEARD THE ARGUMENTS OF
3 COUNSEL AND MY INSTRUCTIONS ON THE LAW SO ANY DISCUSSION
4 AMONG YOURSELVES WOULD BE PREMATURE. ALSO, I DO NOT KNOW
5 WHAT MEDIA COVERAGE THERE HAS BEEN BUT I WOULD TELL YOU
6 AGAIN AS I DID YESTERDAY, IF THERE IS ANYTHING IN THE
7 NEWSPAPER ABOUT THIS CASE I WOULD INSTRUCT YOU NOT TO READ
8 THOSE ARTICLES OR IF THERE'S ANYTHING THAT APPEARS ON
9 TELEVISION, PLEASE DO NOT WATCH OR LISTEN TO THOSE MATTERS
10 AS YOU'VE GOT TO DECIDE THE CASE ON WHAT YOU HEAR HERE IN
11 THE COURTROOM AND NOT BASED UPON WHAT YOU MIGHT HEAR ON THE
12 OUTSIDE. WITH THOSE INSTRUCTIONS AND ADMONITIONS I'M GOING
13 TO EXCUSE YOU AND ASK YOU TO PLEASE BE BACK IN YOUR JURY
14 ROOM TOMORROW MORNING AT 9:30. I'LL SEE YOU AT THAT TIME.
15 THANK YOU AND HAVE A PLEASANT EVENING.

16 (WHEREUPON, THE JURY WAS EXCUSED FOR THE
17 EVENING.)

18 THE COURT: ALL RIGHT, IS THERE ANYTHING BEFORE
19 WE ADJOURN FOR THE AFTERNOON? MR. MONCKTON?

20 MR. MONCKTON: NOTHING FURTHER FROM THE DEFENDANT
21 HOLLINGSWORTH, YOUR HONOR.

22 MR. CHRISCO: YOUR HONOR, IF I COULD APPROACH
23 ABOUT A WITNESS?

24 THE COURT: YES, SIR. ALL RIGHT, COME ON UP.

25 (WHEREUPON, A SIDE BAR WAS HELD OFF THE RECORD

EXAMINATION OF MS. HAROLD BY COURT

419

1 AND THE FOLLOWING PROCEEDING WERE HELD ON THE RECORD.)

2 THE COURT: WHAT TIME WAS SHE ORIGINALLY SUBPOENA
3 FOR, 2:30?

4 MR. CHRISCO: YOUR HONOR, SHE WAS ORIGINALLY
5 SUBPOENAED TO BE HERE YESTERDAY MORNING.

6 THE COURT: WELL WHEN DID YOU NOTIFY HER TO BE
7 HERE?

8 MR. CHRISCO: I THINK THAT I TOLD HER 2:30 TODAY
9 BUT THE SUBPOENA SAID YESTERDAY.

10 THE COURT: ALL RIGHT. MS. HAROLD?

11 MS. HAROLD: YES, SIR.

12 THE COURT: YOU'RE UNDER SUBPOENA FOR APPEARANCE
13 IN THIS COURT AND WE'VE BEEN LOOKING FOR YOU ALL AFTERNOON.
14 WHY HAVEN'T YOU BEEN HERE BEFORE NOW?

15 MS. HAROLD: I HAVE FOUR KIDS, YOUR HONOR.

16 THE COURT: OKAY.

17 MS. HAROLD: I HAD TO GET THEM SITUATED BEFORE I
18 CAME. THERE WASN'T ANYBODY HOME EXCEPT ME AND MY KIDS WERE
19 OUT PLAYING. I HAD TO DRESS APPROPRIATELY TO COME HERE.

20 THE COURT: ALL RIGHT. WE'RE DONE FOR THE
21 AFTERNOON, NOT ADJOURNED BUT THE JURY IS GONE FOR THE
22 AFTERNOON. SO WE'RE NOT GOING TO BE ABLE TO GET YOUR
23 TESTIMONY THIS AFTERNOON. IF YOU'D HAD GOTTEN HERE A FEW
24 MINUTES EARLIER WE COULD HAVE HAD YOU TESTIFY BUT I'VE
25 ALREADY EXCUSED THE JURY FOR THE AFTERNOON. THEY'RE COMING

EXAMINATION OF MS. HAROLD BY COURT

420

1 BACK AT 9:30 IN THE MORNING AND YOU MAKE ARRANGEMENTS FOR
2 YOUR CHILDREN AND BE HERE AT 9:30. YOU UNDERSTAND?

3 MS. HAROLD: YES, SIR.

4 THE COURT: OKAY. BE HERE AT 9:30 TOMORROW
5 MORNING.

6 MS. HAROLD: YES, SIR.

7 THE COURT: IS THERE ANYTHING ELSE?

8 MR. CHRISCO: THAT WOULD BE IT.

9 THE COURT: BEFORE WE ADJOURN, MR. PAGE, HAD
10 ADVISED ME THAT THERE WAS A SPECTATOR IN THE COURTROOM.
11 SIR, YOU HAVE A HAT ON. IS THERE A REASON YOU DO NOT TAKE
12 YOUR HAT OFF?

13 SPECTATOR: MY RELIGION.

14 THE COURT: ALL RIGHT. IS THERE A REASON YOU DO
15 NOT STAND UP WHEN COURT IS CALLED TO ORDER?

16 SPECTATOR: I STAND UP FOR NO ONE BUT ALLAH.

17 THE COURT: ALL RIGHT, SIR. I WILL TELL YOU,
18 SIR, THAT IF YOU'RE COMING INTO THIS COURTROOM YOU'VE GOT
19 TO ABIDE BY THE COURT'S RULES. I WILL ALLOW YOU TO, IF YOU
20 HAVE RELIGIOUS REASONS TO KEEP YOUR HAT ON.

21 SPECTATOR: IT'S NOT A HAT. IT'S A COUPE.

22 THE COURT: SIR. SPEAK UP SO I CAN HEAR YOU.

23 SPECTATOR: IT'S A COUPE. IT'S NOT A HAT.

24 THE COURT: YOUR HEAD COVERING. I WILL RESPECT
25 YOUR RELIGIOUS RIGHT TO KEEP THAT ON IN THE COURT ROOM BUT

EXAMINATION OF MS. HAROLD BY COURT

421

1 I DO EXPECT YOU TO OBEY THE RULES OF THE COURT. IT'S NOT
2 FOR ME BUT IT'S THE RULES OF THE COURT OF THIS STATE AND
3 THAT IS THAT YOU STAND UP WHEN THE COURT COMES TO ORDER
4 WHETHER IT'S ME OR ANY OTHER JUDGE. IF YOU DON'T CHOOSE TO
5 DO THAT THEN YOU CANNOT COME INTO THIS COURTROOM. DO YOU
6 UNDERSTAND?

7 SPECTATOR: I CAN STAY OUTSIDE UNTIL YOU COME IN
8 AND THEN I CAN COME IN?

9 THE COURT: YES, SIR. THAT'S CORRECT. ALL
10 RIGHT. ANYTHING ELSE? WE'LL BE ADJOURNED UNTIL 9:00 A.M.
11 IN THE MORNING TO TAKE A PLEA.

12 (WHEREUPON, COURT WAS ADJOURNED FOR THE EVENING,
13 RECONVENED AT 9:30 A.M. ON APRIL 13, 2000, AND THE
14 FOLLOWING TAKES PLACE OUT OF THE PRESENCE OF THE JURY.)

15 MR. MONCKTON: YOUR HONOR, AT THIS TIME DEFENDANT
16 HOLLINGSWORTH WOULD REST.

17 THE COURT: ALL RIGHT.

18 MR. CHRISCO: YOUR HONOR, AT THIS TIME CORTREAL
19 SWINTON RESTS.

20 THE COURT: ALL RIGHT. BEFORE WE GO ANY FURTHER,
21 LET ME MENTION THIS TO YOUR CLIENT, MR. SWINTON. WHEN WE
22 HAD THE HEARING ON THE FIFTH AMENDMENT YOU INDICATED THAT
23 HE DID NOT WISH TO TESTIFY. HOWEVER, MR. MONCKTON, YOUR
24 CLIENT INDICATED HE DID WISH TO TESTIFY. I THINK, AGAIN
25 FOR THE RECORD, WE NEED TO GET ON THE RECORD NOW THAT HE

EXAMINATION OF MS. HAROLD BY COURT

422

1 DOES WISH TO TESTIFY.

2 MR. HOLLINGSWORTH, YESTERDAY YOU RECALL I ADVISED
3 YOU OF YOUR FIFTH AMENDMENT RIGHTS AGAINST SELF
4 INCRIMINATION AND YOU DID NOT HAVE TO TESTIFY IN THIS
5 MATTER BUT YOU HAD THE RIGHT TO TESTIFY. YESTERDAY YOU
6 INDICATED TO ME YOU DID WISH TO TESTIFY. AFTER
7 CONSULTATION WITH YOUR LAWYER HAVE YOU NOW CHANGED YOUR
8 MIND ON THAT AND YOU DO NOT WISH TO TESTIFY?

9 MR. HOLLINGSWORTH: I DO NOT WISH TO TESTIFY,
10 SIR.

11 THE COURT: BUT YOU UNDERSTAND THAT YOU HAVE THE
12 RIGHT IF YOU SHOULD WANT TO?

13 MR. HOLLINGSWORTH: YES, SIR.

14 MR. MONCKTON: FOR THE RECORD, YOUR HONOR, WE'VE
15 BEEN THROUGH THIS IN DETAIL AND WE CHANGED OUR MIND AFTER
16 TESTIMONY YESTERDAY AND WE DO NOT BELIEVE THAT MR.
17 HOLLINGSWORTH NEEDS TO TESTIFY.

18 THE COURT: ALL RIGHT. THE COURT FINDS THAT
19 DEFENDANT HOLLINGSWORTH'S DECISION NOT TO TESTIFY IS FREELY
20 AND VOLUNTARILY MADE AND HE'S BEEN FULLY ADVISED OF HIS
21 RIGHTS BY THE COURT AND HIS COUNSEL AND HE UNDERSTANDS HIS
22 RIGHTS TO TESTIFY AND NOT TO TESTIFY. ALL RIGHT, THANK
23 YOU, SIR. YOU MAY BE SEATED.

24 MR. MONCKTON: THANK, YOUR HONOR.

25 THE COURT: ARE WE READY TO PROCEED, COUNSEL?

EXAMINATION OF MS. HAROLD BY COURT

423

1 MR. HUMPHRIES: YOUR HONOR, I ---

2 THE COURT: I MEAN, WE CAN TAKE A FEW MINUTES
3 BEFORE WE DO THIS.

4 MR. HUMPHRIES: I'M NOT CONCERNED ABOUT THAT.
5 THERE'VE BEEN A NUMBER OF CHARGES SUBMITTED.

6 THE COURT: YEAH.

7 MR. HUMPHRIES: IT WOULD BE HELPFUL ---

8 THE COURT: IF YOU KNEW WHAT WAS GOING TO BE
9 CHARGED?

10 MR. HUMPHRIES: CORRECT.

11 THE COURT: I'LL REVIEW THOSE CHARGES IN JUST A
12 FEW MINUTES. BUT OTHER THAN THAT YOU'D BE READY TO GO ON
13 INTO CLOSING ARGUMENTS?

14 MR. HUMPHRIES: YES, SIR.

15 THE COURT: HOW MUCH TIME DO YOU THINK THE
16 STATE'S GOING TO NEED?

17 MR. BELLAMY: NO MORE THAN 15 MINUTES. 20 MINUTES
18 AT THE MOST.

19 THE COURT: OKAY. WHAT ABOUT YOU, MR. CHRISCO?

20 MR. CHRISCO: THE REMAINDER OF THE DAY, SIR?

21 THE COURT: I DON'T THINK THAT IS GOING TO BE
22 POSSIBLE. THE RULE SAYS TWO HOURS AND I HAVEN'T GIVEN
23 ANYBODY TWO HOURS YET.

24 MR. CHRISCO: YOUR HONOR, I HONESTLY DON'T KNOW.
25 SOMEWHERE FROM 20 TO 45 MINUTES IF I HAD TO PUT SOME

EXAMINATION OF MS. HAROLD BY COURT

424

1 PARAMETERS ON IT..

2 THE COURT: WHAT ABOUT YOU, MR. MONCKTON?

3 MR. MONCKTON: YOUR HONOR, SOMEWHERE IN THAT SAME
4 CATEGORY BUT I WILL NOT BE UP THERE THAT LONG.

5 THE COURT: ALL RIGHT, I'LL TELL YOU WHAT. I'LL
6 GIVE EACH OF YOU 30 MINUTES AND IF YOU DON'T USE THAT,
7 WELL... THE STATE WOULD ALSO NEED TO RESERVE WHATEVER
8 PORTION OF THAT FOR ANYTHING IN REPLY.

9 MR. HUMPHRIES: YOUR HONOR, AS I UNDERSTAND THE
10 ORDER OF ARGUMENTS BASED ON THE SUBMISSION BY BOTH
11 DEFENDANTS OF EVIDENCE IN THIS CASE, THE STATE WOULD HAVE
12 THE LAST ARGUMENT?

13 THE COURT: I DIDN'T KNOW IF THEY WERE GOING TO
14 REQUIRE YOU TO OPEN ON THE LAW.

15 MR. CHRISCO: WE WOULD WAIVE THAT, YOUR HONOR.

16 THE COURT: THEN YOU WOULD HAVE 30 MINUTES ALL OF
17 IT TO BE AT THE END. MR. CHRISCO AND MR. MONCKTON, IN WHAT
18 ORDER ARE Y'ALL GOING TO ARGUE?

19 MR. CHRISCO: YOUR HONOR, I WOULD ARGUE FIRST.

20 THE COURT: AND THEN MR. MONCKTON. ALL RIGHT. I
21 HAVE THE STATE'S REQUEST FOR CHARGE AND THE DEFENDANT
22 HOLLINGSWORTH REQUEST TO CHARGE. DO YOU HAVE ANY REQUESTS
23 TO CHARGE, MR. CHRISCO?

24 MR. CHRISCO: NO, YOUR HONOR, WE WOULD STAND ON
25 THE REQUEST TO CHARGE SUBMITTED BY MR. MONCKTON.

EXAMINATION OF MS. HAROLD BY COURT

425

1 THE COURT: ALL RIGHT. LET ME GO BACK AND REVIEW
2 THESE THEN AND GET MY CHARGES SO THAT I CAN TELL YOU WHAT
3 WE WILL CHARGE AND I'M SURE YOU WILL TAILOR YOUR ARGUMENTS
4 TO WHATEVER CHARGES I MAKE.

5 MR. HUMPHRIES: AND YOU'LL HEAR OUR POSITIONS ON
6 REQUESTS TO CHARGE AT THAT TIME, YOUR HONOR?

7 THE COURT: YES. I'M GOING TO LOOK AT THEM AND
8 IF THERE'S ANY THAT I CAN'T DO WE'LL GO OVER THEM ON THE
9 RECORD IN ABOUT TEN MINUTES. I'M GOING TO GO READ THEM
10 OVER.

11 MR. MONCKTON: THANK YOU, YOUR HONOR.

12 THE COURT: WE'LL BE AT EASE.

13 (WHEREUPON, A BREAK WAS TAKEN AT THIS TIME AND
14 COURT'S EXHIBIT NUMBER 2 IS MARKED.)

15 THE COURT: ALL RIGHT. I UNDERSTAND THAT BOTH
16 SIDES HAVE RESTED IN THIS CASE AND DECIDED ON THE ORDER OF
17 ARGUMENTS. AS I INDICATED I WILL GIVE EACH OF THE THREE
18 SIDES 30 MINUTES. PLEASE KEEP TO THAT SCHEDULE.

19 AS FROM THE STAND POINT OF CHARGES WE'VE
20 DISCUSSED THESE IN CHAMBERS BUT I THINK YOU NEED TO PUT ON
21 THE RECORD EXACTLY WHAT I AM GOING TO CHARGE AND WILL NOT
22 CHARGE. I WILL CHARGE THE STATE'S REQUEST NUMBER 1 AND
23 WILL WORK INTO THAT LANGUAGE RIGHT AT THE END, "OF MERE
24 PRESENCE ALONE IS NOT SUFFICIENT, THERE MUST BE A DESIGN OR
25 INTENT." SOME OF THE LANGUAGE FROM STATE V. GREEN, STATE

EXAMINATION OF MS. HAROLD BY COURT

426

1 V. HIDER, WHICH ARE CONTAINED IN MR. MONCKTON'S REQUEST
2 NUMBER 7. STATE'S NUMBER 2 HAS BEEN WITHDRAWN. STATE'S
3 NUMBER 3 I WILL NOT CHARGE BUT I WILL CHARGE STATE'S
4 REQUEST NUMBER 4. THAT'S FROM THE STATE'S STAND POINT.
5 NOW ON THE DEFENSE, THE REQUEST THAT MR. MONCKTON GAVE ME,
6 I WILL CHARGE RELIABILITY ALTHOUGH I DO NOT USE INDIVIDUAL
7 NAMES BECAUSE I THINK IT GETS CLOSE TO A CHARGE ON THE
8 FACTS. BUT BASICALLY I WILL GIVE THE RELIABILITY CHARGE
9 AND THE ACCURACY FACTORS. THE FIRST PARAGRAPH OF DEFENSE
10 HOLLINGSWORTH'S NUMBER 3 REGARDING PRIOR INCONSISTENT
11 STATEMENTS BUT NOT THE SECOND PARAGRAPH; NUMBER 4 WILL BE
12 CHARGED BUT NUMBER 5 WILL NOT BE CHARGED. AND I UNDERSTAND
13 THAT MR. MONCKTON TAKES EXCEPTION TO THAT AND WE WANT TO
14 MAKE THIS A PART OF THE RECORD. I WILL GIVE THE COURT
15 REPORTER ALL OF YOUR REQUESTS TO CHARGE, MR. MONCKTON, TO
16 MARK THEM AS COURT'S EXHIBIT, AND SHOW NUMBER 5 IS BEING
17 EXCLUDED.

18 MR. MONCKTON: I'VE HAD THEM MARKED THEM AS
19 NUMBER 2, YOUR HONOR.

20 THE COURT: I UNDERSTAND, MR. MONCKTON, YOU'VE
21 WITHDRAWN YOUR REQUEST NUMBER 6. YOU'RE AGREEABLE TO THAT
22 NOT BEING CHARGED, ABOUT THE TESTIMONY OF THE POLICE
23 OFFICE?

24 MR. MONCKTON: THAT'S CORRECT, YOUR HONOR.

25 THE COURT: OKAY. AND AS I SAY, SOME OF THAT

MOTION FOR DIRECTED VERDICT BY DEFENDANT SWINTON

427

1 LANGUAGE WILL BE WORKED IN ALONG WITH STATE'S NUMBER 1.
2 HOLLINGSWORTH'S REQUEST NUMBER 8 IS INCLUDED IN MY GENERAL
3 CHARGE AND, OF COURSE, I WILL CHARGE NUMBER 9 WHICH IS THE
4 DEFENDANT'S RIGHT NOT TO TESTIFY. ANYTHING ANYBODY NEEDS
5 TO PUT ON THE RECORD WITH REGARDS TO REQUESTS TO CHARGE.

6 MR. CHRISCO: YES, YOUR HONOR. I WOULD JOINT
7 INTO THE EXCEPTIONS BY MR. MONCKTON IN REGARDS TO
8 DEFENDANT'S NUMBER 5.

9 THE COURT: ALL RIGHT. MR. CHRISCO, YOUR
10 POSITION WILL BE PROTECTED IN THAT REGARD AS WELL.

11 COUNSEL, HERE'S WHAT I PLAN TO DO. I'M THINKING
12 LOGISTICS. WE'LL GO AHEAD AND ARGUE AND THEN I'M NOT GOING
13 -- I'M GOING TO SEND THE JURY TO LUNCH AND LET THEM GO ON
14 THEIR ON INSTEAD OF MAKING ARRANGEMENT. RIGHT AFTER
15 ARGUMENTS THEY WILL GO EAT LUNCH AND THEN COME BACK HERE
16 AND I'LL CHARGE THEM WITH THE LAW AND IT'LL GO TO THE JURY
17 AT THAT TIME. I THINK WHAT WE'LL DO IS JUST SEND THEM
18 ACROSS THE STREET, PROBABLY AT ABOUT 12:15 SO THAT SHOULD
19 BE WHEN WE'VE CONCLUDED ARGUMENTS. ALL RIGHT. ANYTHING
20 BEFORE WE BRING THE JURY IN?

21 MR. CHRISCO: YES, YOUR HONOR. WE WOULD LIKE TO
22 RENEW OUR MOTION FOR DIRECTED VERDICT AT THIS STAGE BASED
23 UPON THE SAME GROUNDS THAT WE'VE STATED PREVIOUSLY.

24 THE COURT: ALL RIGHT.

25 MR. MONCKTON: YES, SIR, YOUR HONOR. AGAIN, I

MOTION FOR DIRECTED VERDICT BY DEFENDANT HOLLINGSWORTH 428

1 WOULD RENEW MY MOTION FOR DIRECTED VERDICT BASED ON THE
2 SAME GROUNDS AS ALREADY STATED.

3 THE COURT: THOSE MOTIONS ARE MADE AND NOTED. I
4 BELIEVE WE FULLY EXPLORED THOSE GROUNDS YESTERDAY AND THE
5 COURT'S RULING WOULD BE THE SAME IN DENYING THE MOTION FOR
6 DIRECTED VERDICT ON BEHALF OF BOTH DEFENDANTS AT THE
7 CONCLUSION OF ALL THE TESTIMONY EVEN THOUGH AT THIS STAGE.
8 AND I BELIEVE THE RECORD IS COMPLETE ABOUT THAT. ALL
9 RIGHT, ANYTHING ELSE BEFORE THE JURY IN? NOW YOU'RE GOING
10 TO ARGUE FIRST?

11 MR. MONCKTON: YOUR HONOR, I BELIEVE MR. CHRISCO
12 IS GOING FIRST.

13 THE COURT: OKAY. ALL RIGHT. NOW, ANYTHING
14 BEFORE WE BRING THE JURY IN?

15 MR. HUMPHRIES: NOTHING FROM THE STATE.

16 MR. MONCKTON: NO, YOUR HONOR.

17 MR. CHRISCO: NO, SIR.

18 THE COURT: BRING THE JURY IN.

19 (WHEREUPON, THE JURY ENTERED THE COURT ROOM.)

20 THE COURT: GOOD MORNING, LADIES AND GENTLEMEN OF
21 THE JURY. I HOPE EVERYONE HAD A PLEASANT EVENING. I
22 APOLOGIZE FOR BRINGING YOU HERE AT 9:30 AND KEEPING YOU
23 WAITING IN THE JURY ROOM. WE HAD SOME MATTERS WE HAD TO
24 ATTEND TO IN THIS CASE AND ANOTHER MATTER I HAD TO HANDLE.

25 FIRST, I WANT TO ASK YOU IF ANYONE HAS TALKED

MOTION FOR DIRECTED VERDICT BY DEFENDANT HOLLINGSWORTH 429

1 WITH YOU OR ATTEMPTED TO TALK TO YOU ABOUT THIS CASE OVER
2 THE EVENING RECESS I WOULD NEED TO KNOW ABOUT IT NOW.
3 HAVING RECEIVED NO RESPONSE I AM HAPPY TO KNOW THAT NO ONE
4 HAS ATTEMPTED TO CONTACT YOU OR MADE ANY CONTACT TO YOU
5 ABOUT THIS MATTER.

6 I WILL TELL YOU THAT THE DEFENDANTS, BOTH
7 DEFENDANTS, MR. HOLLINGSWORTH AND MR. SWINTON, IN THIS
8 CASE, HAVE ANNOUNCED TO THE COURT THAT THEY HAVE RESTED
9 THEIR CASE WHICH MEANS THAT YOU HAVE NOW HEARD ALL OF THE
10 TESTIMONY THAT YOU WILL HEAR IN CONNECTION WITH IN THIS
11 CASE. THE ONLY TWO MATTERS THAT REMAIN TO BE DONE ARE THE
12 ARGUMENTS OF COUNSEL AND THE INSTRUCTIONS ON THE LAW BY ME
13 TO YOU.

14 I WILL TELL YOU NOW AS I DID AT THE BEGINNING OF
15 THIS CASE THAT THE ARGUMENTS OR STATEMENTS OR SUMMATIONS OF
16 COUNSEL ARE NOT EVIDENCE IN THIS CASE. THEY ARE SIMPLY THE
17 LAWYER'S VIEWS AS TO WHAT THEY THINK THE EVIDENCE SHOWS.
18 BUT THE LAWYERS DO HAVE THE RIGHT TO ADDRESS YOU NOW AND TO
19 SUM UP AND GIVE TO YOU THEIR VIEWS OF WHAT THEY THINK THE
20 EVIDENCE IN THIS CASE SHOWS. AFTER THEY HAVE DONE THAT I
21 WILL THEN INSTRUCT YOU ON THE LAW OF SOUTH CAROLINA AS IT
22 APPLIES TO THE FACTS OF THIS CASE AS YOU MAY FIND THOSE
23 FACTS TO BE. AND THEN YOU WILL BE ALLOWED TO RETIRE TO
24 YOUR JURY ROOM TO DELIBERATE YOUR VERDICT. BUT THE LAWYERS
25 DO HAVE THE RIGHT, NOT ONLY THE RIGHT BUT THE DUTY ON

CLOSING ARGUMENT BY MR. CHRISCO

430

1 BEHALF OF THEIR RESPECTIVE CLIENTS, TO ADDRESS YOU AT THIS
2 TIME AND GIVE YOU THEIR CLOSING ARGUMENTS OR SUMMATIONS.
3 YOU WILL HEAR FIRST FROM MR. CHRISCO AS ATTORNEY FOR MR.
4 SWINTON AND THEN MR. MONCKTON AS ATTORNEY FOR MR.
5 HOLLINGSWORTH AND THEN THE STATE HAS THE RIGHT TO MAKE THE
6 FINAL ARGUMENT. SO WILL GO INTO CLOSING ARGUMENTS AT THIS
7 TIME. MR. CHRISCO?

8 MR. CHRISCO: MAY IT PLEASE THE COURT?

9 THE COURT: YES, SIR.

10 MR. CHRISCO: I DON'T HAVE ANY FANCY CHARTS TO
11 SHOW WHAT THE WITNESSES TESTIFIED AND STUFF LIKE THAT. YOU
12 HEARD THE WITNESSES JUST LIKE I HEARD THE WITNESSES. SO
13 I'M NOT GOING TO INSULT YOUR INTELLIGENCE THAT WAY. MANY
14 YEARS AGO, PEOPLE LIKE ALEXANDER HAMILTON, THOMAS
15 JEFFERSON, AND A WHOLE BUNCH OF OTHERS, SAT AROUND AND THEY
16 DRAFTED THE CONSTITUTION. AND IN THAT CONSTITUTION, ONCE
17 IT WAS RATIFIED BY THE STATES, THEY ADDED SOME AMENDMENTS
18 TO IT. THEY WANT TO PROTECT THE CITIZENS FROM OVER ZEALOUS
19 POLICE DEPARTMENT, OVER ZEALOUS PROSECUTORS. THE JURY
20 SYSTEM WAS DEVELOPED. YOU ARE THE TRIOR OF FACTS. WHAT
21 THAT MEANS IS THAT EACH WITNESS THAT GOT UP HERE AND
22 TESTIFIED, YOU DETERMINE WHAT YOU THINK THE FACTS ARE.
23 IT'S NOT UP TO ME. IT'S UP TO THE JUDGE. IT'S NOT UP TO
24 MR. BELLAMY, NOR MR. MONCKTON, NOR MR. HUMPHRIES. IT'S TO
25 YOU. YOU MAKE THAT DECISION. YOU DECIDE WHICH ONES YOU

CLOSING ARGUMENT BY MR. CHRISCO

431

1 WANT TO BELIEVE, WHICH ONES YOU DON'T WANT TO BELIEVE. YOU
2 MIGHT WANT TO BELIEVE A PART OF THEY SAID, SOME OF WHAT
3 THEY SAID, OR NONE OF WHAT THEY SAID. NOW THE JUDGE, HE'S
4 THE JUDGE OF LAW. HE'S GOING TO INSTRUCT YOU ON WHAT THE
5 LAW IS. IF I SAY SOMETHING OF WHAT THE LAW IS THAT'S
6 DIFFERENT FROM WHAT HIS HONOR SAYS THE LAW IS, YOU TAKE
7 WHAT HE SAYS AND YOU FORGET WHAT I SAID. IF YOU SEE THE
8 FACTS DIFFERENTLY THAN WHAT I'M GOING TO TELL WHAT I THINK
9 THEY ARE, YOU BELIEVE IT YOUR WAY. LIKE HIS HONOR SAYS,
10 YOU DETERMINE WHAT THE FACTS ARE, NOT LAWYERS.

11 LET'S TALK A LITTLE BIT ABOUT EMOTION. EMOTION
12 SHOULD NOT PLAY ANY PART IN YOUR DECISION. LAY ALL THAT
13 OVER TO THE SIDE. AS I CAME TO YOU IN OPENING ARGUMENT, I
14 TOLD YOU THAT WE'LL COME BACK AND VISIT IT AFTER THE
15 WITNESSES TESTIFIED. I'VE BEEN DOING IT LONG ENOUGH TO
16 KNOW YOU NEVER KNOW WHAT SOMEBODY IS GOING TO TESTIFY TO
17 UNTIL THEY TESTIFY. I ASKED YOU ABOUT COMMON SENSE, THAT
18 YOU BROUGHT IT WITH YOU EVERY DAY. AND I HOPE IT'S STILL
19 BROUGHT IT WITH YOU TODAY. LIFE EXPERIENCES AND THE COMMON
20 SENSE THAT YOU HAVE WILL AID YOU IN PUTTING TOGETHER WHAT
21 THESE FACTS ARE.

22 NOW, THERE MANY WITNESSES ON THE STAND. I THINK
23 THE STATE PUT UP 11, MR. MONCKTON PUT UP TWO. SO THAT
24 WOULD BE 13. THESE ARE THE POINTS THAT RANG OUT TO ME.

25 GREG RICHARDSON WAS THE POLICE OFFICER THAT TOOK

CLOSING ARGUMENT BY MR. CHRISCO

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1 THE STAND. HE ARRIVED SEVERAL MINUTES LATER AFTER THE
2 INITIAL CALL, WAS NOT THE FIRST OFFICE ON THE SCENE. I
3 BELIEVE THEY SAID OFFICE HARRIS, WHO WE DIDN'T HEAR FROM,
4 WAS THERE -- GOT THERE. HE ALSO SAID HE WAS THE CUSTODIAN
5 FOR THE EVIDENCE AND HE SHOWED SOME PAPERS AND STUFF THAT
6 HE TOOK INTO CUSTODY, AND ON THAT WERE A 40-OUNCE OLD
7 ENGLISH BOTTLE OF BEER THAT WAS IN A SAV-WAY BAG AND THAT
8 WAS STILL COLD, AND THAT WAS LAYING VERY CLOSE TO MR. COX.
9 HE ALSO TESTIFIED THAT HE TOOK BULLETS FROM BILL TAYLOR WHO
10 TESTIFIED THE SAME; THAT HE TOOK SOME BULLETS FROM HIM AND
11 HE TOOK THOSE OVER TO SLED. THERE WAS NO MENTION BY MR.
12 RICHARDSON OR ANY OTHER EVIDENCE PROVING WHO THE COLT-45
13 BEER BOTTLE, OR PARTIALLY FILLED BOTTLE, OR A FULL BOTTLE
14 OF COLT-45. ASK YOURSELF WHAT DOES THAT MEAN? WHAT DOES
15 THAT MEAN? I THINK SOMEONE EARLIER SAID THAT MR.
16 HOLLINGSWORTH WAS DOWN AT THE STORE AND BOUGHT TWO BOTTLES
17 OF BEER.

18 NOW MR. TAYLOR, HE TESTIFIED THAT HE ARRESTED MY
19 CLIENT, CORTREAL SWINTON, WHO I REPRESENT. THEY GOT THE
20 WARRANT ISSUED ON OCTOBER 5TH. I THINK THEY SAID LATE
21 AFTERNOON. WHEN MR. MONCKTON WAS QUESTIONING HIM HE SAID
22 THAT HE DIDN'T GET A SEARCH WARRANT TO SEARCH HIM. HE
23 ASKED FOR CORTEAL SWINTON. HE ALSO SAID THAT THE GUN WAS
24 NEVER FOUND. HE ALSO SAID THAT THERE WERE THREE PEOPLE
25 THERE AT THE TIME OF THE SHOOTING. HE ALSO SAID, WHEN I

CLOSING ARGUMENT BY MR. CHRISCO

433

1 WAS QUESTIONING HIM, THAT THERE WAS A YELLOW BIKE THERE AND
2 HE SAID ON OF THE REPORTS LISTED IT AS THE SUSPECT'S BIKE.
3 THEN LATER THEY SAID WAS, IN ANOTHER REPORT, THAT IT WAS
4 THE VICTIM'S BIKE.

5 FINGERPRINTS WERE TAKEN FROM THE BODY AND SENT TO
6 SLED. NOT ENOUGH RIDGE DETAIL I BELIEVE IS WHAT I THINK HE
7 SAID. NOW WHEN MR. MONCKTON QUESTIONED HIM HE SAID -- HE
8 WAS ASKED, DID SLED WRITE BACK AND ASK FOR WHAT IS CALLED A
9 MAJOR CASE PRINT? THEY NEVER RESPONDED BACK TO THAT
10 REQUEST. HE ALSO SAID, CONCERNING THAT BICYCLE, YOU MAY
11 REMEMBER, HE ALSO SAID HE HAD WRITTEN STATEMENTS THAT
12 SOMEONE SAID THAT IT WAS CORTEAL SWINTON'S BICYCLE. WHEN
13 ASKED TO SEE IT HE COULD NOT FIND IT AND YOU HEARD HIM SAY
14 THAT THERE WAS NOT A WRITTEN STATEMENT CONCERNING THE
15 BICYCLE. COULDN'T PRODUCE IT. AGAIN THERE WAS NO MENTION
16 FROM HIM, OTHER THAN THE 40-OUNCE OPENED OR UNOPENED BEER
17 BOTTLE. HE ARRIVED ABOUT 20 OR 30 MINUTES AFTER THE
18 INCIDENCE HAPPENED.

19 THEN THE SECOND WITNESS WAS FREDERICK MCDONALD,
20 YOU REMEMBER HIM. HE'S THE ONE THAT SAID HE AND MR. COX
21 AND SOME OTHER FELLOWS CAUGHT A CAB TO A STORE. THEY
22 DIDN'T HAVE THE KIND OF BEER MR. COX WANTED SO THEY WENT TO
23 ANOTHER STORE. HE STATED IT WAS AT THAT TIME THAT HE SAW
24 MR. HOLLINGSWORTH CIRCLE AROUND TWICE. NOW, NEVER EVEN
25 MENTIONED, NEVER EVEN MENTIONED CORTREAL SWINTON BEING AT

CLOSING ARGUMENT BY MR. CHRISCO

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1 THE SCENE. THEY WOULD HAVE YOU BELIEVE THAT HOLLINGSWORTH
2 LEAVES, GOES SOMEPLACE, THEY GET TOGETHER. LOOK AT THE
3 TIME ELEMENT. ONLY JUST A FEW MINUTES HAVE PASSED. ASK
4 YOURSELF, IS IT POSSIBLE, IS IT PROBABLE, COULD IT HAVE
5 HAPPENED THAT THEY GOT TOGETHER THAT QUICK? THEY ALSO SAID
6 THEY HEARD FIVE SHOTS, FIVE SHOTS. I BELIEVE, IF YOU
7 LISTEN TO THESE WITNESSES YOU'LL FIND THAT NO ONE ELSE SAID
8 THAT THEY HEARD FIVE SHOTS EXCEPT DR. PROCTOR WHO SAID
9 THERE WERE FIVE BULLETS. HE ALSO SAID ONE OF THE BULLETS
10 COULD HAVE BEEN IN THERE WEEKS, MONTHS BEFORE. SO WHERE
11 DID FREDERICK MCDONALD GET FIVE SHOTS? DID HE KNOW WHAT
12 THE AUTOPSY REPORT HAD SAID? ASK YOURSELF THAT QUESTION.
13 HE ALSO SAID THAT HE HAD SEEN CORTREAL SWINTON AND CURTIS
14 WILSON SOMETIME AROUND 6, 6:30 IN THE MORNING RUNNING AWAY
15 FROM -- I BELIEVE SOMEWHERE OVER IN THIS SECTION, I BELIEVE
16 THE INCIDENT IS THERE -- SOME TWO AND A HALF, THREE HOURS
17 LATER, SOME THREE, FOUR HOURS LATER, 2:25, 6, 6:30. HE
18 ALSO SAID HE WENT OVER HIS TESTIMONY SEVERAL TIMES WITH MR.
19 BELLAMY.

20 SARAH WEAVER. SARAH WEAVER SAYS IN ONE STATEMENT
21 THAT WAS GIVEN AT 11:30 A.M. ON OCTOBER THE 4TH, WHICH IS
22 SOME EIGHT AND A HALF HOURS, NINE HOURS LATER, SOMEWHERE IN
23 THERE. SHE GAVE A STATEMENT. SHE DIDN'T IMPLICATE
24 CORTREAL SWINTON. BUT SHE WAS STANDING AT HER MAIL BOX, IF
25 YOU'LL REMEMBER. NOW NEXT TIME SHE TALKS IS SOME TIME

CLOSING ARGUMENT BY MR. CHRISCO

435

1 LATER. A LONG TIME LATER. YOU'LL NOTE, THIS CASE HAPPENED
2 ON OCTOBER 4TH, 1997. IT LAID AROUND AND LAID AROUND THEN
3 ALL OF A SUDDEN THERE WAS A FLURRY OF ACTIVITY ON IT. BUT
4 SHE GIVES ANOTHER STATEMENT AND NOW SHE'S GETTING CLOSER TO
5 IT. AND MY GOD, THIS TIME, THIS TIME, SHE MOVES FROM HERE,
6 THE MAIL BOX TO OVER HERE. THAT'S STILL SOME DISTANCE AWAY
7 FROM THE TREE. STILL SOME DISTANCE AWAY FROM THE TREE.
8 BUT SHE MOVES FROM HERE TO HERE. WHAT'S INTERESTING,
9 THOUGH, IS THAT THE NEXT TIME SHE TALKS, SHE NOT ONLY --
10 SHE HEARD, SHE HEARD MR. HOLLINGSWORTH AND MR. SWINTON.
11 RECOGNIZED THEIR VOICES. THIS IS THE SAME LADY WHO
12 TESTIFIED THAT THE CAR WAS GOING ON 378 TOWARDS COLUMBIA,
13 GOING IN THE OPPOSITE DIRECTION. THERE MAY HAVE BEEN A CAR
14 COMING THIS WAY. THERE'S NO CARS COMING OUT OF THE SIDE
15 ROAD ON TO RACEPATH. NOW FROM WHERE SHE'S STANDING I DON'T
16 KNOW HOW MANY FEET THAT IS. SO LET'S ALL LOOK AT THIS
17 THING THAT MR. MONCKTON HAD WITH HIS PERSON AND Y'ALL
18 FIGURE OUT HOW MANY FEET THAT IS. THAT'S NOT THE POINT I'M
19 TRYING TO MAKE. THE POINT I'M TRYING TO MAKE IS HOW IN THE
20 WORLD A CAR COMING FROM THAT STOP LIGHT AT 378 COMING BACK
21 THIS WAY, HOW IN THE WORLD CAN YOU HEAR -- I KNOW IT'S 2,
22 2:30 IN THE MORNING -- HOW CAN YOU HEAR? SHE SAID SHE WAS
23 DRINKING A LITTLE BIT, TOO. SO THAT ADDS INTO YOUR
24 THOUGHTS THERE. NOW, THE NEXT DATE OF THE STATEMENT THAT
25 SHE GAVE WAS FEBRUARY 14TH. LOOK AT THE PICTURES OF THE

CLOSING ARGUMENT BY MR. CHRISCO

436

1 NIGHTTIME. THIS ISN'T SOMETHING I'M JUST GOING TO SHOW YOU
2 RIGHT NOW. YOU'RE GOING TO GET TO TAKE THEM BACK THERE.
3 LOOK AT THIS. I WANT YOU TO LOOK AT EVERYTHING. GO OVER
4 IT WITH A FINE TOOTH COMB. USE YOUR COMMON SENSE. PUT IT
5 ALL TOGETHER. TELL ME, SOMEONE STANDING WHERE SHE DID,
6 WHERE SHE SAID SHE WAS. COULD SHE SEE?

7 AND MR. HUMPHRIES, YESTERDAY I THINK WHEN C. E.
8 MARTIN WAS ON THE STAND, MADE REFERENCE TO SOMETHING ON THE
9 THING, BEHIND THE BUILDING RIGHT IN FRONT OF SARAH WEAVER'S
10 HOUSE AT THE LIGHT. ALSO THERE'S ANOTHER LIGHT OUT THERE
11 IN THE FRONT YARD. MADE SOME REFERENCES THAT IT WAS THE
12 MOST ILLUMINATED AREA AROUND THAT SPOT OF ANY IN THE
13 NEIGHBORHOOD. I THINK MR. MARTIN SAID IT WAS BRIGHT, BUT
14 PROBABLY NOT THE BRIGHTEST BUT ONE OF THE BRIGHTEST IN THE
15 NEIGHBORHOOD. THINK ABOUT THIS. WAS THE STATE CONCEDING
16 THAT MS. WEAVER WAS AT HER MAIL BOX? AND IF NOT -- OR IF
17 THEY WERE, WERE THEY SAYING THAT BECAUSE IT WAS BRIGHT
18 THERE SHE COULD SEE? I DON'T HOW MANY OF Y'ALL LIVE IN THE
19 COUNTRY. YOU'RE ON THAT BACK PORCH TURN THAT LIGHT ON IT'S
20 HARD TO SEE. IF YOU LIVE IN THE CITY IT'S STILL HARD TO
21 SEE. IT'S BETTER TO LEAVE THE LIGHT OFF THEN IT IS ON.
22 JUST BECAUSE YOU'RE STANDING IN A BRIGHT SPOT DON'T MAKE
23 WHAT YOU'RE LOOKING AT FAR AWAY BRIGHT. NOW, AS SHE SAID,
24 SHE SAW MR. SWINTON AND MR. HOLLINGSWORTH WITH GUNS WAY
25 ACROSS THE STREET. THERE WERE FOUR PEOPLE THERE AT THE

CLOSING ARGUMENT BY MR. CHRISCO

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1 TIME OF THE SHOOTING IS WHAT SHE SAID. I THINK MR.
2 MONCKTON ASKED HER THIS QUESTION AND SHE STATED YES, SIR,
3 SHE HAD GONE OVER HER TESTIMONY WITH MR. BELLAMY.
4 SEVERAL DIFFERENT TIMES.

5 NOW HERE'S WHERE WE GET INTO KIM BROWN. SHE IS
6 ONE OF THEM PEOPLE IN THAT HONDA. AND WE LEARNED FROM THE
7 DRIVER AND OWNER OF THE VEHICLE YESTERDAY THAT IT WAS A
8 HONDA CIVIC, SMALL CAR, TWO-DOOR COUPE. SHE SAYS VERY DARK
9 WINDOWS, HARD TO SEE OUT OF. NOW, SHE SAYS THAT SHE SAW
10 THE FLASH. SHE DIDN'T KNOW WHO THEY WERE. BUT VICKY
11 CAMPBELL HAD SAID WHO IT WAS. THINK ABOUT WHAT HAPPENED.
12 THINK ABOUT IT FROM THIS RESPECT. SAID THAT THEY KNEW IT
13 WAS MR. COX, BEADY I THINK IS WHAT THEY CALL HIM. SAID
14 THAT THEY KNEW IT WAS HIM. THINK ABOUT IN THIS RESPECT.
15 WHERE DID THE CAR GO? ACCORDING TO THE TESTIMONY, GOES
16 DOWN AND MAKES A LEFT. KIM BROWN HAS THEM GOING RIGHT ON
17 OVER TO THE MOTEL WHERE FREDERICK COX WAS. VICKY CAMPBELL
18 SAYS THEY WENT OVER AND LAKEISHA, WHO WAS DRIVING THE CAR,
19 SAID THEY WENT UP TO THE STOP LIGHT, WENT UP A BLOCK,
20 TURNED DOWN RACEPATH, COME BACK UP AND STOPPED. ALL THREE
21 SAID, NOT ALL THREE, TWO SAID THEY KNEW IT WAS MR. COX.
22 COMMON SENSE. IF THEY HAD KNOWN IT WAS MR. COX THEY WOULD
23 HAVE STOPPED RIGHT THEN. ASK YOURSELF, DIDN'T THEY GET
24 PROBABLY ALMOST TO THAT STOP LIGHT ON 501 AND IT CLICKED,
25 "THOSE WERE THE SAME CLOTHES THAT BEADY WAS WEARING AT THE

CLOSING ARGUMENT BY MR. CHRISCO

438

1 TIME? WAS THAT BEADY? THAT'S WAS WHEN THEY TURNED AROUND
2 AND CAME BACK. ASK YOURSELF, DOESN'T THAT MAKE SENSE?
3 THINK. THEY SAW A FLASH AND REALIZED WHO IT WAS. DIDN'T
4 KNOW IT AT THE TIME THEY WERE SEEING IT BIT THEN IT DAWNED
5 ON THEM, THOSE CLOTHES LOOK FAMILIAR.

6 NOW, KIM BROWN SAYS THEY WERE GOING OVER TO TELL
7 FREDERICK COX BECAUSE VICKY HAD SAID THAT'S MR.
8 HOLLINGSWORTH, THAT'S MR. SWINTON. THAT'S WHAT KIM SAID.
9 AND THEY WENT OVER AND THEY TOLD MR. COX OVER IN THE MOTEL
10 WHO IT WAS. NOW, VICKY SAID SHE DIDN'T KNOW. SHE'S THE
11 ONE WHO IS SUPPOSED TO HAVE BEEN THE ONE WHO UTTERED THE
12 WORDS. SHE SAID SHE DIDN'T SAY THAT. SHE SAID IN ANOTHER
13 STATEMENT THAT SHE DID. BUT HERE SHE SAID SHE DID. THE
14 GUY STANDING NEAR THE TREE WAS SUPPOSED TO HAVE BEEN MR.
15 SWINTON. SHE DIDN'T RECOGNIZE HIM. WHY? HE HAD A BLACK
16 HOOD ON HIS HEAD. IN FACT, I THINK SHE SAID EVERYBODY DID.

17 NOW, MR. COX SAID THEY COME [SIC] OVER THERE. ON
18 THE STAND HE SAID THEY COME [SIC] OVER THERE AND TOLD HIM
19 HIS BROTHER HAD BEEN SHOT. THEY TOLD HIM WHO DID IT. THE
20 STATEMENT THAT HE MADE HE SAID IT WAS THE NEXT DAY WHEN
21 THEY TOLD HIM WHO IT WAS. THIS IS HIS BROTHER. HE DIDN'T
22 GO TO THE POLICE. HE DIDN'T TELL THEM ABOUT IT. HERE IT
23 IS TWO YEARS, FIVE AND A HALF MONTHS LATER. THIS IS WHEN
24 HE DECIDES THIS IS IMPORTANT. WHAT HAPPENS? HE MAKES THIS
25 STATEMENT. HE COULD HAVE TOLD THEM THE NEXT DAY. I ASKED

CLOSING ARGUMENT BY MR. CHRISCO

439

1 HIM, "ISN'T IT TRUE MR. BELLAMY CALLED YOU AND TOLD YOU
2 WHAT ANOTHER WITNESS SAID AND ASKED YOU TO THINK ABOUT IT
3 AND CALL HIM BACK?" MIGHT HAVE IT CONFUSED, I SAID, "AND
4 THEY CALLED YOU?" HE SAID, "NO, I CALLED THEM." SO THINK
5 ABOUT IT. THINK ABOUT WHAT'S GOING ON.

6 VICKY CAMPBELL SAID IT WAS VERY DIM OUTSIDE. SHE
7 DID SAY CORTREAL SWINTON DID THE SHOOTING. NOW VICKY WOULD
8 HAVE HAD TO LOOK PAST LAKEISHA WHO WAS DRIVING. EVER BEEN
9 IN A CAR ON THE PASSENGER SIDE TRYING TO LOOK OUT THAT SIDE
10 WHEN YOU'VE GOT THE WINDOW POST AHEAD, THE DOOR POST,
11 ANOTHER WINDOW IN A VERY SMALL HONDA CIVIC. THEY WERE VERY
12 DIM WINDOWS, DARK AT NIGHT. YOU BE THE JUDGE.

13 RODNEY SESSIONS, THE DETECTIVE. ONLY READ NINE
14 PAGES. ONLY READ NINE PAGES FROM THE CASE FILE. NEVER
15 READ THE FORENSIC REPORT FROM SLED. NEVER COMPARED THE
16 SLED FORENSIC REPORT WITH THE WITNESS STATEMENTS TO
17 RECONCILE WHAT EVERYBODY WAS SAYING. NEVER READ A
18 FINGERPRINT REPORT FROM SLED. I ASKED HIM WHERE HIS CASE
19 FILE WAS ON IT. HE SAID THERE WERE TWO. ASKED YOURSELF,
20 WAS MR. SESSIONS TESTIMONY KIND OF ARROGANT?

21 DR. PROCTOR. HE'S THE ONE WHERE THEY GOT UP AND
22 READ THE DEAL THERE. HE TESTIFIED THAT THE BULLET WAS THE
23 SAME TYPE, CALIBER, AND SIZE. EXPLAINED THE WOUNDS.
24 HERE'S THE WOUNDS. THE FIFTH BULLET IS LOCATED HERE. HE
25 WAS SHOT HERE. Y'ALL GET TO LOOK AT THIS BACK THERE. THE

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440

1 HEAD. MASSIVE DAMAGE. DEATH PROBABLY, MOST LIKELY, WAS
2 INSTANTEOUS WITH THIS SHOT. HERE ON THIS ONE OVER HERE WAS
3 A LOT OF BLOOD, INTERNAL BLEEDING. 2000 CC'S I THINK HE
4 SAID. MASSIVE DAMAGE WAS DONE. WHAT WOULD IT DO? SHUTS
5 DOWN THE HEART. BLOOD STOPS, QUILTS FLOWING. THERE'S LOTS
6 THERE. I ASKED HIM JUST BASED UPON THAT, I ASKED HIM THE
7 ORDER OF SHOOTING. HE SAID HE WOULDN'T KNOW. AND I
8 BELIEVE THAT'S SOMETHING THAT'S NOT IN CONTROVERSY. DR.
9 PROCTOR. HE DON'T KNOW. THAT'S WHAT HE SAID. THERE'S A
10 PROBABLY THAT SHOT WAS FIRST, ALLOWED THE BLEEDING, THEN
11 THIS SHOT PROBABLY. HE ALSO SAID THERE WAS A GRAZE ON THE
12 ARM HERE IN ASSOCIATION WITH THIS WOUND HERE. SHOT HERE.
13 SHOT THROUGH HERE. THIS IS THE COLLAR BONE ON THE INSIDE.
14 NOW, WHY DID I TELL YOU THIS? I TELL YOU THAT FOR THIS
15 REASON BECAUSE I'VE ONLY GOT JUST A FEW MORE MINUTES SO
16 I'LL TRY TO SPEED IT UP.

17 PERSON STANDING HERE BACK OF THE TREE -- YOU'LL
18 SEE THE PICTURES -- CONFRONTATION IS GOING ON AT THE CURB.
19 TESTIMONY IS THERE WERE A COUPLE OF PEOPLE OUT THERE.
20 THERE WERE SOME THINGS GOING ON THERE. THIS PERSON IS BACK
21 BY THE TREE. YOU SEE FLASHES GOING FROM THE TREE. TWO,
22 THREE, TAKE YOUR PICK. NOW, HOW DOES SOMEONE HAVE A
23 CONFRONTATION ON THE CURB? TWO PEOPLE SHOT HERE, HERE,
24 HERE, HERE, HERE, HERE, AND HERE. THEY MUST HAVE BEEN
25 SPINNING LIKE A TOP. NOW, COULD IT HAVE BEEN ONE GUN?

CLOSING ARGUMENT BY MR. CHRISCO

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1 SOMEONE IS SHOOTING FROM THE STREET. THEY CATCH -- THEY
2 CATCH MR. COX OFF GUARD. HE DOESN'T REALIZE THEY HAVE A
3 GUN. HE STARTS TO RAISE HIS HAND. THE SHOT GRAZES AND
4 GOES IN. HE TRIES TO RECOVER FROM THIS SHOT. HE TURNS
5 RIGHT AT THE CURB. ASK YOURSELF, DID HE FALL OFF THE CURB,
6 DID HE STUMBLE OFF THE CURB? THEN THE OTHER SHOTS, THE
7 LAST ONE BEING TO THE HEAD. ASK YOURSELF THAT QUESTION.
8 NOW, JOSEPH HOWARD GOT ON THE STAND, A DESPERATE MAN
9 SEEKING TO GET PAROLED. I ASK YOU TO BE 100 PERCENT SURE
10 BEFORE YOU I ASK YOU THE QUESTION: DID THE PERSON HE
11 ALLEGEDLY TALKED TO ACTUALLY SAY HEY, HE WAS THE SHOOTER.

12 NOW, LAKEISHA SMITH SAID THEY WERE DRIVING 40
13 MILES AN HOUR, CIRCLE THE BLOCK A COUPLE OF TIMES. TOOK
14 TWO MINUTES TO CIRCLE THE BLOCK. GOT BACK THE POLICE WERE
15 ON THE SCENE. TOO DARK TO RECOGNIZE THE FACES. THOUGHT IT
16 WAS ISAAC COX BECAUSE THEY KNEW WHAT KIND OF CLOTHING HE
17 HAD ON. LEFT TO GO TO THE MOTEL BUT NOT DIRECTLY BECAUSE
18 THAT'S WHEN THEY CAME BACK AND THEN THEY WENT OUT TO THE
19 MOTEL. THEY DIDN'T GO DIRECTLY THERE. ONLY TOLD FREDERICK
20 COX THAT HIS BROTHER HAD BEEN SHOT. VICKY SAID THE SAME
21 THING. THEY ONLY TOLD HIM THAT HE HAD BEEN SHOT. THINK
22 ABOUT WHAT FRED COX SAID, THOUGH.

23 LET ME WRAP THINGS FOR YOU. A LOT OF THINGS TO
24 CONSIDER HERE. REASONABLE DOUBT CAUSES A REASONABLE PERSON
25 TO HESITATE. REASONABLE DOUBT. I THINK THAT IS WHAT THE

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442

1 JUDGE WILL TELL YOU. YOU'RE GOING TO GET THE HAND OF ONE
2 IS THE HAND OF ALL. I DON'T THINK THAT THERE'S ANY
3 EVIDENCE THAT MR. SWINTON WAS OUT THERE. BUT IF THERE WAS
4 AND YOU THINK THERE WAS, DID HE KNOW WHAT WAS GOING DOWN?
5 IT IS FOR Y'ALL 12 PEOPLE. Y'ALL 12 PEOPLE HEARD THE
6 WITNESSES. YOU HAVE COMMON SENSE. YOU DECIPHER WHAT THEY
7 SAY. DON'T LEAVE THAT TO THE ATTORNEYS. Y'ALL HAVE GOT
8 THAT RESPONSIBILITY. THE JURY SYSTEM. 12 PEOPLE WILL GO
9 INTO A ROOM. 12 DIFFERENT MINDS. 12 DIFFERENT HEARTS. 12
10 DIFFERENT WALKS OF LIFE. 12 SETS OF EYES. 12 SETS OF
11 EARS. DIFFERENT SHAPES AND SIZES. THESE 12 PEOPLE ARE
12 ASKED TO JUDGE ANOTHER HUMAN BEING WHO IS AS DIFFERENT FROM
13 THEM AS THEY ARE TO EACH OTHER. NOW THAT'S THE MIRACLE OF
14 MAN'S DISORGANIZED SOUL. THE JURORS ARE ASKED TO DID IT
15 AND THEY DO IT VERY WELL. GOD BLESS JURORS. WHEN YOU GO
16 IN THERE YOU TAKE YOUR TIME. YOU LOOK AT EVERYTHING
17 THOROUGHLY. YOU DISCUSS IT 'TIL YOUR HEARTS CONTENT UNTIL
18 YOU BECOME SATISFIED BECAUSE YOU MUST COME AS ONE. ALL 12
19 MUST BE UNANIMOUS. IF YOU HAVE DOUBT, TALK ABOUT YOUR
20 DOUBT. LOOK AT THE EVIDENCE. THINK OF EXACTLY WHAT
21 EVERYBODY SAID AND PUT IT TOGETHER AND I'M SURE ONCE YOU
22 DO, YOU'LL FIND MY CLIENT, MR. CORTREAL SWINTON, SITTING
23 RIGHT THERE AT THAT TABLE, NOT GUILTY. THANK YOU.

24 MR. MONCKTON: MAY IT PLEASE THE COURT?

25 THE COURT: YES, SIR.

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1 MR. MONCKTON: MR. HUMPHRIES, MR. BELLAMY.
2 LADIES AND GENTLEMEN OF THE JURY, MY NAME IS BILLY MONCKTON
3 AGAIN AND I REPRESENT DERRICK. ON TUESDAY I STOOD BEFORE
4 YOU AND BASICALLY WENT THROUGH THE SAME FOUR POINTS, IF YOU
5 REMEMBER. WE WENT THROUGH THE PRESUMPTION OF INNOCENCE AND
6 WHAT THE PRESUMPTION OF INNOCENCE IS IN OUR COUNTRY AND I
7 THINK YOU REMEMBER WHAT I SAID ABOUT THAT. A REASONABLE
8 PERSON MAY CONSIDER A PRESUMPTION OF INNOCENCE. A
9 REASONABLE PERSON NEEDS TO TAKE A CHILD, HIS SPOUSE,
10 HUSBAND, BROTHER, SISTER, PARENT, WHATEVER, AND THAT
11 REASONABLE PERSON PUTS THEM RIGHT THERE IN THAT CHAIR RIGHT
12 THERE WHERE DERRICK SITS. YOU AFFORD THAT PERSON THAT SAME
13 PRESUMPTION OF INNOCENCE THAT YOU'RE AFFORDING MY CLIENT
14 THAT YOU TOOK UNDER YOUR OATH ON TUESDAY MORNING. SECOND
15 THING THAT I TOLD YOU YOU WERE GOING TO HEAR ABOUT, THAT WE
16 WERE GOING TO TALK ABOUT WAS THE WITNESSES. NOW I TOLD YOU
17 THE WITNESSES IN THIS CASE WERE GOING TO BE VERY UNIQUE,
18 UNLIKE ANY CASE I'VE SEEN EITHER AS A PROSECUTOR OR A
19 DEFENSE ATTORNEY. I TOLD YOU TO WATCH FOR THAT WITNESSES
20 CREDIBILITY WHOEVER IT WAS THAT TOOK THE STAND. I TOLD YOU
21 TO LOOK AT THE WITNESSES BIAS, THE COMPETENCY OF THE
22 WITNESSES AND WHAT I MEAN WHEN I SAY COMPETENCY, WHAT COULD
23 THEY HAVE SEEN WHAT, WHAT THEY COULD HAVE HEARD AND WHAT
24 THEY DID DO AND WHAT THEY DIDN'T DO. I TOLD YOU THE STATE
25 WAS ON TRIAL. NOW THAT'S A UNIQUE EXPRESSION, THE STATE'S

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1 ON TRIAL. WELL THE STATE IS ON TRIAL. THEY HAVE THE
2 BURDEN OF PROOF IN A CRIMINAL PROSECUTION IN THIS COUNTRY
3 TO REMOVE ALL REASONABLE DOUBT FROM ANYBODY THAT SITS ON
4 THAT SIDE OF THE ROOM BEFORE YOU CAN CONVICT HIM OF ANY
5 CRIME. IT CAN BE A SPEEDING TICKET. IT DOESN'T MATTER.
6 BUT HERE, YOU 12 AND TWO ALTERNATES, HAVE BEEN ASKED TO
7 JUDGE SOMEBODY FOR THE MOST HEINOUS CRIME IN THIS COUNTY,
8 THAT'S MURDER. AND WHETHER OR NOT MY CLIENT, DERRICK,
9 COMMITTED THAT MURDER. THAT'S A HIGH BURDEN. THAT'S A BIG
10 RESPONSIBILITY. WE CHOSE THE 12 OF Y'ALL TO HANDLE THAT.
11 YOU WERE THE 12 JURORS SELECTED TO SEE THAT THE STATE MET
12 THEIR BURDEN. YOU'RE NOT HERE, AND I WILL TELL YOU AND THE
13 JUDGE WILL TELL YOU, YOU'RE NOT HERE TO RUBBER STAMP THE
14 PROSECUTION. YOU'RE NOT HERE TO REWARD THE PROSECUTION.
15 YOU'RE NOT HERE TO REWARD ME. YOU'RE HERE TO BASE YOUR
16 DECISION SOLELY ON THE WITNESS TESTIMONY AND EVIDENCE THAT
17 YOU CAN TOUCH, PICTURES. YOU DON'T BASE YOUR DECISION ON
18 ANYTHING ELSE. IF YOU DO YOU VIOLATE THE OATH YOU TOOK
19 TUESDAY MORNING THAT OUR COUNTRY'S FOUNDED ON.

20 SCARY PROSECUTION. THAT WAS THE LAST THING I
21 SAID IN MY OPENING STATEMENT. I SAID, "LADIES AND
22 GENTLEMEN, AFTER YOU HEAR THE EVIDENCE PRESENTED IN THIS
23 CASE" -- AND THAT'S ALL I'M TALKING ABOUT, THIS CASE, "IT'S
24 SCARY" -- THAT THE WITNESSES ACCUMULATED AND PUT ON THAT
25 STAND, THIS STAND, AND TESTIFIED THE WAY THEY DID, THE

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1 MANNER THEY DID, AND THE NUMBER OF TIME THEY TOLD STORIES.
2 AND THAT CAN CONVICT SOMEONE OF THE MOST HEINOUS CRIME IN
3 THIS COUNTRY? LETS'S TALK ABOUT THIS.

4 BILL TAYLOR, THE CONWAY POLICE DEPARTMENT, THE
5 LEAD INVESTIGATOR IN THIS CASE. HOW MANY WITNESS
6 STATEMENTS DID HE TAKE? I THINK HE SAW NONE. THE LEAD
7 INVESTIGATOR IN A MURDER CASE IN 1997 TOOK NO WITNESS
8 STATEMENTS. IT'S A MURDER CASE. THERE'S OBVIOUSLY A GUN
9 THAT'S BEEN IDENTIFIED AS BEING USED. THAT'S OBVIOUS FROM
10 WHAT DR. PROCTOR TESTIFIED TO. THE WITNESSES TESTIFIED
11 THAT THE PEOPLE WERE WEARING DARK-HOODED CLOTHES. "MR.
12 TAYLOR, DID YOU DO A SEARCH WARRANT?" "NO." WOULDN'T YOU
13 THINK A SEARCH WARRANT -- "WELL, GOLLY, WE'VE GOT A MURDER
14 CASE. LET'S GO LOOK FOR A GUN. LET'S GO LOOK FOR THESE
15 CLOTHES." I'VE HEARD TESTIMONY SINCE TUESDAY MORNING ABOUT
16 BICYCLE'S. ANY BICYCLES IN EVIDENCE? ANY GUNS IN
17 EVIDENCE? ANY OF THESE DARK-HOODED CLOTHING IN EVIDENCE.
18 SOUTH CAROLINA LAW ENFORCEMENT DIVISION, SLED. SAID, "MR.
19 TAYLOR, HEY, WE'VE GOT SOME FINGERPRINTS PROBLEMS. WE'VE
20 GOT TO MAKE SOME CASE PRINTS. SEND THEM ON UP HERE SO WE
21 CAN ANALYZE THEM, SO WE CAN FIND OUT WHO WAS AT THE SCENE.
22 HE SAID THEY DIDN'T ASK HIM TO DO THAT SO I SHOWED HIM THE
23 REQUEST. THEN HE SAID "IF I DID THEM I MESSED THEM UP."
24 THEN I SAID "WELL DID YOU EVER TRY TO DO THEM AGAIN?"
25 "NO."

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1 MURDER CASE, LADIES AND GENTLEMEN. FROM OCTOBER
2 4TH, 1997 TO FEBRUARY 16TH, 2000, ALMOST TWO AND A HALF
3 YEARS. WHAT DID OFFICER SESSIONS TESTIFY TO THAT WAS IN
4 THE CASE FILE? NINE PAGES. NINE PAGES IN AN INVESTIGATIVE
5 FILE IN A MURDER CASE.

6 FREDERICK MCDONALD TESTIFIED. FREDERICK
7 TESTIFIED THAT HE WAS A FRIEND OF ISAAC'S. HE ALSO
8 TESTIFIED THAT HE DIDN'T SEE WHAT HAPPENED. HE WAS THE ONE
9 AT THE STORE DOWN THE ROAD. AND HE SAID THAT HE HAD SEEN
10 MY CLIENT, DERRICK, RIDE OFF ON HIS BIKE. HE SAID SOMETIME
11 LATER ISAAC LEFT. NOW YOUR FRIEND IS SHOT AND KILLED.
12 YOUR FRIEND IS SHOT AND KILLED. WHEN IS THE FIRST TIME YOU
13 GO TO THE POLICE AND TALK TO THEM ABOUT IT? FEBRUARY 16TH,
14 2000? AND I BELIEVE OFFICER SESSIONS TESTIFIED THAT HE GOT
15 THESE OTHER WITNESSES NAMES THAT HE LATER INTERVIEWED FROM
16 THE FRIEND OF ISAAC, FRED MCDONALD. TWO AND A HALF YEARS
17 AFTER THIS INCIDENT TOOK PLACE. NOW DOESN'T THAT SEEM A
18 LITTLE ODD?

19 KIM BROWN. KIM BROWN WAS THE LADY, IF YOU'LL
20 REMEMBER, THAT I DID A DIAGRAM AND SHE TESTIFIED. SHE
21 TESTIFIED THAT SHE WAS IN THE BACK SEAT OF THE HONDA CIVIC.
22 SHE TESTIFIED THAT THE WINDOWS HAD A LIGHT TINT. SHE ALSO
23 TESTIFIED THAT SHE WAS A FRIEND OF ISAAC'S. SHE ALSO
24 TESTIFIED THAT THE CAR WAS ONLY GOING FIVE TO SIX MILES AN
25 HOUR WHEN THIS HAPPENED. AND WHAT DIRECTION DID SHE SAY

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1 THEY WERE GOING IN? I BELIEVE WHEN SHE TESTIFIED SHE SAID
2 THEY WERE COMING DOWN RACEPATH, STOPPED AT THE STOP SIGN
3 AND WENT TURNED RIGHT. RIGHT HERE AND WENT RIGHT. I THINK
4 THE MOST IMPORTANT THING SHE TESTIFIED TO, SHE SAID IT WAS
5 TOO DARK TO SEE THE FACES. TOO DARK TO SEE THE FACES.
6 THAT WAS THE STATE'S FIRST EYE WITNESS. TOO DARK TO SEE
7 THE FACES.

8 NEXT ID WITNESS THAT THE STATE PUT UP FOR YOU TO
9 SEE WAS VICKY CAMPBELL. VICKY CAMPBELL, NO DOUBT IN MY
10 MIND, VERY RELUCTANT WITNESS, DID NOT WANT TO BE HERE. SHE
11 WAS SEATED IN THE PASSENGER SEAT OF THE HONDA CIVIC. SHE
12 SAID THE WINDOWS WERE DARK TINTED. SHE AGAIN SAID THE CAR
13 WAS ONLY GOING APPROXIMATELY FIVE TO SIX MILES PER HOUR.
14 WHEN WAS HER FIRST INTERVIEW? FEBRUARY THE 14TH, OF THE
15 YEAR 2000, TWO AND A HALF YEARS AFTER THIS TOOK PLACE.
16 YOU'RE A WITNESS IN A MURDER CASE. YOU SEE SOMETHING
17 HAPPEN AND IT'S YOUR FRIEND AND THE FIRST TIME WE'RE
18 TALKING TO THE POLICE IS TWO AND A HALF YEARS LATER. WHAT
19 DIRECTION DID VICKY SAY THEY WERE GOING? VICKY GAVE
20 BASICALLY THE SAME TESTIMONY AS KIM BROWN. COMES DOWN
21 RACEPATH, STOPS AT THE STOP SIGN, TAKES A RIGHT THEN
22 ON 378. THOSE WERE THE STATE'S WITNESS THAT THEY CALLED
23 THAT WERE IN THE CAR. I HAD TO CALL THE DRIVER OF THE CAR.
24 DID THEY NOT WANT YOU TO HEAR WHAT SHE HAD TO SAY?

25 LET'S TALK ABOUT LAKEISHA SMITH, THE OWNER OF THE

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1 HONDA CIVIC. I THINK THE FIRST THING WE NEED TALK ABOUT IS
2 LAKEISHA WASN'T A FRIEND OF ISAAC'S. MAYBE THAT'S WHY SHE
3 WASN'T CALLED BY THE STATE. SHE TESTIFIED -- I HAD THIS
4 DIAGRAM OF HER, TOO -- THAT THE WINDOWS WERE VERY DARK
5 TINTED. AND I ASKED HER, "HOW DARK IS IT? IS IT HARD TO
6 SEE OUT OF AT NIGHT?" SHE SAID, "YEAH, THEY'RE SO DARK IT
7 IS HARD TO SEE OUT THEM THAT NIGHT." I SAID, "LAKEISHA,
8 DID YOU SEE THEIR FACES?" SHE SAID, "NO, IT WAS TOO DARK."
9 I SAID, "HOW FAST WERE YOU GOING AND WHAT DIRECTION WERE
10 YOU GOING IN?" AND I HAD TO DRAW IT ON THE CHART. SHE
11 DIDN'T TESTIFY THEY CAME UP RACEPATH AND STOPPED AT THE
12 STOP SIGN. SHE SAID THEY WERE SCOOTING ON DOWN 378 ABOUT
13 40 MILES AN HOUR. I SAID, "COULD YOU HAVE BEEN GOING A
14 LITTLE BIT FASTER?" SHE SAID, "MAYBE." DID THE STATE NOT
15 CALL HER BECAUSE, GOSH ALL MIGHTY, THAT DOESN'T SOUND AS
16 GOOD AS STOPPING RIGHT HERE AT THE STOP SIGN. LAKEISHA
17 SAID FROM WHAT SHE COULD SEE YOU HAD TO LOOK OUT THE LEFT
18 WINDOW WHICH WAS UP AND DARKLY TINTED. THAT MEANS WHATEVER
19 VICKY CAMPBELL WOULD HAVE TO SEE, SHE'D BE LOOKING THROUGH
20 OR AROUND A PIECE OF HEAD OUT THE DARK TINTED WINDOW. I
21 WOULD THINK THAT LAKEISHA PROBABLY HAD A BETTER VIEW THAN
22 VICKY JUST BASED ON HER PROXIMITY TO WHAT HAPPENED. WELL
23 WHY DOESN'T THE STATE CALL HER? WHY DOESN'T THE STATE A
24 PERSON WHO APPARENTLY IS NOT A FRIEND OF ISAAC'S.
25 TESTIFIED SHE DOESN'T KNOW DERRICK. SHE DOESN'T KNOW

CLOSING ARGUMENT BY MR. MONCKTON

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1 CORTREAL. WHY DON'T THEY CALL HER? WELL, SHE DOESN'T FIT
2 THEIR CASE. YOU KNOW, JUST DOESN'T FIT SO I HAD TO CALL
3 HER. AND I TOLD YOU IN THE BEGINNING I WAS GOING TO SHOW
4 YOU EVERYTHING.

5 SARAH WEAVER. SARAH WEAVER WAS A UNIQUE PERSON.
6 SHE IDENTIFIED HERSELF AS A STREET PERSON. SAID SHE HAD
7 BEEN STREET PERSON FOR ABOUT NINE OR TEN YEARS. SAID ON
8 THE NIGHT THIS OCCURRED SHE HAD BEEN DRINKING. IN HER OWN
9 WORDS SHE SAID SHE WAS UNDER THE INFLUENCE. IN HER OWN
10 WORDS. THE ORDINAL STATEMENT GIVEN BY SARAH WEAVER WAS ON
11 OCTOBER THE 4TH, 1997. SHE SAID SHE WAS STANDING AT THE
12 MAIL BOX WHICH IS RIGHT HERE. THE YELLOW DOT. THAT'S THE
13 PICTURE RIGHT HERE. SHE SAID SHE DIDN'T SEE ANY CARS
14 COMING UP RACEPATH. AND SHE SAID SHE COULDN'T SEE FROM THE
15 MAIL BOX. WELL, WHAT'S SO IMPORTANT ABOUT THIS PICTURE?
16 AND I THINK MR. MARTIN WENT OVER IT WITH YOU. HE TOOK THIS
17 PICTURE WITH SOMEBODY STANDING UNDER THE TREE. AND YOU'LL
18 HAVE THIS BACK IN THE JURY ROOM. BUT IF YOU LOOK AT THAT,
19 YOU CAN'T MAKE OUT ANYTHING. SARAH WEAVER EVEN THAT
20 ADMITTED IF SHE WAS STANDING AT HER MAIL BOX SHE COULDN'T
21 SEE WHO WAS UNDER THE TREE. THAT'S IN HER TESTIMONY. THEN
22 WE GET THE NEW AND IMPROVED SARAH WEAVER STATEMENT DATED
23 FEBRUARY 14TH OF 2000. SHE'S MOVED THEN. SHE'S MOVED ALL
24 THE WAY OVER TO HERE BY NOW. SHE'S CLOSE TO THE SCENE.
25 SHE COULD SEE AND HEAR EVERYTHING. AND THIS STATEMENT --

CLOSING ARGUMENT BY MR. MONCKTON

450

1 THERE WAS NOTHING BROUGHT OUT IN THE TESTIMONY THAT SHE
2 HEARD ANY ARGUMENT OR ALTERCATION. TWO AND A HALF YEARS
3 LATER I'M HEARING AN ALTERCATION. I'M SEEING EVERYTHING.
4 I SAID, "MS. WEAVER, WHAT DID YOU DO THEN?" "WELL, I'M
5 STANDING HERE. APPARENTLY I SEE SOME SHOOTING OVER HERE.
6 WALKED BACK TO MY HOUSE AND STAND IN THE FRONT YARD." AND
7 MR. MARTIN I HAD DO SOME MEASUREMENTS AND HE MEASURED FROM
8 THAT TREE TO MS. WEAVER'S MAIL BOX WAS 480 FEET. SHE
9 TESTIFIED SHE THEN SAW CORTREAL AND DERRICK COME RUNNING BY
10 HER HOUSE. I SAID, "HOW LONG WAS THAT?" SHE SAID, "TEN
11 MINUTES." LADIES AND GENTLEMEN, USE YOUR COMMON SENSE. IF
12 ANYBODY DID ANYTHING LIKE THIS ARE THEY GOING TO TAKE THAT
13 TIME LIMIT TO COVER 480 FEET? IT DOESN'T MAKE SENSE.

14 ALSO, THE NEXT WITNESS WAS DR. PROCTOR. THERE'S
15 NO DOUBT THAT MR. COX MET A HORRIBLE DEMISE. THERE'S NO
16 DOUBT ABOUT THAT. I FEEL FOR HIS FAMILY, HIS FRIENDS.
17 THERE'S NO DOUBT HE MET A HORRIBLE DEMISE. AND I'M NOT
18 ARGUING ABOUT ANYTHING DR. PROCTOR SAYS. BUT I WAS CURIOUS
19 ABOUT DR. PROCTOR'S DEPOSITION. HE SAID THERE WAS A FIFTH
20 BULLET AND HE COULDN'T FIND AN ENTRANCE WOUND ANYWHERE.
21 THERE HASN'T BEEN ANY TESTIMONY OFFERED UP BY THE STATE
22 WHERE IT CAME FROM. I DON'T THINK ANYBODY HAS TESTIFIED
23 THAT MR. COX HAS NOT BEEN SHOT BEFORE. I DIDN'T HEAR THAT.
24 WHO SHOT ISAAC BEFORE? STATE NEVER ANSWERED THAT QUESTION.

25 DETECTIVE CHARLES SESSIONS. HE WASN'T THE LEAD

CLOSING ARGUMENT BY MR. MONCKTON

451

1 INVESTIGATOR ON THIS CASE. HE DIDN'T GET ASSIGNED UNTIL
2 DECEMBER, I BELIEVE HE TESTIFIED, OF 1999. WHAT CONCERNS
3 ME IS THAT WHEN ALL THESE STATEMENTS STARTED BEING TAKEN IN
4 FEBRUARY AND MARCH, THEY WEREN'T TAPE RECORDED. THAT MAY
5 NOT SEEM LIKE A BIG DEAL BUT WITH TESTIMONY GIVEN AT ONE
6 TIME AND THEN IT'S CHANGED LATER ON, YOU BETTER TAKE THAT
7 STATEMENT AGAIN. YOU KNOW, THIS IS HOW YOU TESTIFIED. WE
8 DON'T HAVE THAT. WE DON'T EVEN HAVE THE WRITTEN STATEMENTS
9 BY THE WITNESSES. THE ONLY WRITTEN STATEMENT IN THIS CASE
10 THAT WAS SUBMITTED INTO EVIDENCE WAS OF LAKEISHA SMITH.
11 AND AT THE END OF THE STATEMENT IT READS, "THIS STATEMENT
12 WAS WRITTEN FOR ME BY SERGEANT SESSIONS." WHAT'S WRONG
13 WITH THAT? "MA'AM, TELL ME WHAT HAPPENED." TURN THE TAPE
14 RECORDER ON. YOU KNOW HOW MUCH THEY COST. THEY'RE NOT
15 EXPENSIVE. OCTOBER THE 4TH, 1997 TO FEBRUARY 14TH, 2000.
16 WE'VE ALREADY TALKED ABOUT IT. NINE PAGES. DETECTIVE
17 SESSIONS SAID WHEN HE REVIEWED THE FILE HE DIDN'T SEE
18 ANYTHING ABOUT ANY FINGERPRINTS. DIDN'T REVIEW THAT.
19 THINK THAT'S SOMETHING YOU KIND OF WANT. NO FOLLOW UP
20 REPORT ON THE SLED BALLISTICS. NO SEARCH WARRANT, GUNS,
21 THE CLOTHING WE HEARD ABOUT, BICYCLES. WE'VE HEARD
22 SOMETHING ABOUT BICYCLES EVERY DAY. I KEPT WAITING.
23 WHERE'S THE BIKES? WHERE'S THIS BIKE THAT YOU TOOK
24 FINGERPRINTS OFF OF? WHERE IS IT? IT'S NOT HERE? NOT IN
25 EVIDENCE. ONE THING THE WAS KIND OF IMPORTANT, THOUGH,

CLOSING ARGUMENT BY MR. MONCKTON

452

1 THAT SERGEANT SESSIONS DID SAY IN HIS TESTIMONY. HE SAID
2 THE WITNESSES THAT HE LATER INTERVIEWED WERE GIVEN TO HIM
3 BY THE FRIEND OF ISAAC COX, MR. FRED MCDONALD. AND THE
4 LAST THING I WANT TO SAY IS THIS WASN'T SERGEANT SESSIONS'
5 CASE. BUT HE TREATED IT LIKE A HOT POTATO. HE DIDN'T WANT
6 TO ADMIT ANYTHING ON IT. HE DIDN'T WANT TO TAKE THE
7 RESPONSIBILITY. I DON'T BLAME HIM.

8 ~ JOSEPH HOWARD. IF YOU'VE GOT ANY DOUBT IN YOUR
9 MIND, JOSEPH HOWARD IS A CAREER CRIMINAL. THERE AIN'T NO
10 DOUBT THAT. THE STATE BROUGHT HIM IN HERE AND PUT HIM ON
11 THE STAND AND ASKED YOU TO TRUST AND BELIEVE JOSEPH HOWARD.
12 DID Y'ALL SEE HOW HE WAS BROUGHT IN THE COURTROOM? THE
13 SHERIFF DIDN'T TRUST HIM. THEY HAD HIM IN BELLY CHAINS,
14 LEG IRONS. HE WASN'T GOING ANYWHERE. BUT THEY WANT Y'ALL
15 TO TAKE HIS TESTIMONY AND AND BELIEVE HIM. THERE WAS
16 SOMETHING KIND OF FUNNY ABOUT HIS TESTIMONY. DID HE EVER
17 ID FOR Y'ALL IN THIS COURTROOM WHO ESSAY WAS? DID HE POINT
18 HIM OUT? THINK ABOUT IT. HE DIDN'T. THEY NEVER ASKED HIM
19 THAT QUESTION. THIS WAS A MAN BACK IN SEPTEMBER THE 3RD,
20 1998 THAT WAS CHARGED WITH BURGLARY FIRST DEGREE. HE KNEW
21 HE WAS LOOKING AT 15 YEARS BARE MINIMUM PENALTY. AND I CAN
22 TELL YOU, LADIES AND GENTLEMEN, THAT 15 YEARS ON BURGLARY
23 FIRST CARRIES UP TO 85 PERCENT PAROLE ELIGIBILITY. WHICH
24 MEANS HE GOING TO HAVE TO SERVE 85 PERCENT OF THAT 15 YEARS
25 SENTENCE BEFORE HE CAN EVEN BECOME ELIGIBLE FOR PAROLE.

CLOSING ARGUMENT BY MR. MONCKTON

453

1 THAT'S IF HE GETS THE MINIMUM. THIS ALLEGED CONVERSATION
2 TAKES PLACE ON SEPTEMBER THE 3RD WHEN THE GOOD SAMARITAN
3 THAT JOSEPH HOWARD IS, WELL HE DOESN'T WRITE A LETTER UNTIL
4 OCTOBER 29TH, 60 DAYS LATER. AND IT'S KIND OF FUNNY, HIS
5 CHARGES, WHEN HE PLEADS ON DECEMBER 18TH, ARE REDUCED TO
6 BURGLARY SECOND WHERE HE GETS A NINE YEAR SENTENCE. HE GOT
7 SENTENCED DECEMBER 18TH, 1998. HE'S UP FOR PAROL THIS
8 SUMMER. HE'S UP FOR PAROL THIS SUMMER. DO YOU THINK HE
9 WANTS THAT LETTER OF RECOMMENDATION FROM THE SOLICITOR'S
10 OFFICE ABOUT PAROL? THE SHERIFF'S OFFICE DOESN'T TRUST
11 HIM. I ASK Y'ALL TO GAGE HIS TRUST. DID YOU REMOVE A
12 PRESUMPTION OF INNOCENCE FROM THE TESTIMONY OF JOSEPH
13 HOWARD? AND IF YOU DON'T THINK HE'S WORKING THE SYSTEM?

14 THE STATES GOT THE BURDEN OF PROOF. THE JUDGE IS
15 GOING TO CHARGE YOU ON THE LAW. I'M NOT GOING TO CONCERN
16 MYSELF WITH THAT. YOU TAKE THE LAW AS HE SAYS IT TO YOU.
17 BUT HE'S GOING TO TELL YOU THE STATES GOT THE BURDEN.
18 THEY'VE GOT TO PROVE EVERY ELEMENT BEYOND A REASONABLE
19 DOUBT: HE'LL GO OVER WHAT THE ELEMENTS ARE.

20 PRESUMPTION OF INNOCENCE. THE JUDGE IS GOING TO
21 CHARGE YOU ON REASONABLE DOUBT. IT'S A SIMPLE DEFINITION.
22 A DOUBT THAT CAUSES A REASONABLE PERSON TO HESITATE TO ACT.
23 THAT'S THE DEFINITION OF REASONABLE DOUBT. HE'S ALSO GOING
24 TO TALK ABOUT PRESUMPTION OF INNOCENCE. I DID THAT IN MY
25 OPENING STATEMENT. THE THINK I'VE DONE THAT IN MY CLOSING.

CLOSING ARGUMENT BY MR. MONCKTON

454

1 I THINK Y'ALL HAVE A PRETTY GOOD IDEA OF WHAT PRESUMPTION
2 OF INNOCENCE IS. CREDIBILITY OF THE WITNESSES. THE JUDGE
3 IS GOING TO TALK Y'ALL A LOT ABOUT THAT. Y'ALL ARE THE
4 JUDGES OF THE FACTS. Y'ALL JUDGE THE WITNESSES
5 CREDIBILITY. THAT IS THE JOB OF THE JURY. YOU CAN
6 DISREGARD EVERYTHING THEY SAY, SAYING THAT'S JUST NOT
7 RELIABLE. I CAN'T BELIEVE. YOU CAN BELIEVE EVERYTHING.
8 THAT IS YOUR -- YOUR DUTY. THE STATE SAYS TRUST US.
9 EVERYTHING IS RIGHT THAT WE PUT UP HERE. LADIES AND
10 GENTLEMEN, I TRIED TO SHOW YOU EVERYTHING. FROM PRIOR
11 STATEMENTS THEY'VE GIVEN. FROM VANTAGE POINTS AT
12 NIGHTTIME. AND ONE THING THAT CONCERNS ME IS THE STATE
13 DIDN'T WANT -- DIDN'T INTRODUCE ANY NIGHTTIME PICTURES.
14 THEY WANT TO SHOW YOU A BUNCH OF LIGHT POLES ON A CHART.
15 BUT THEY DON'T WANT TO SHOW YOU ANY NIGHTTIME PICTURES.
16 YOU KNOW WHY? IT WAS DARK. IT WAS REAL DARK. IT WAS HARD
17 TO SEE. THE WITNESSES ALL TESTIFIED TO THAT. I HAD TO
18 INTRODUCE THE NIGHTTIME PICTURES.
19 COMMON SENSE. MY GOSH, THAT'S THE MOST VALUABLE
20 THING Y'ALL HAVE. Y'ALL KNOW HOW TO JUDGE PEOPLE. YOU'VE
21 DONE IT ALL YOUR LIFE. YOU CAN BASE IT WHETHER SOMEBODY'S
22 TRYING TO WHO-DO YOU OR NOT. THAT'S WHAT WE ASK YOU TO DO
23 WITH THAT JURY -- WITH THE WITNESSES THAT TESTIFIED. MY
24 MOM TOLD ME A LONG TIME AGO THE TRUTH DOESN'T CHANGE. YOU
25 TELL THE TRUTH THE FIRST TIME IT'S REAL EASY TO REMEMBER.

CLOSING ARGUMENT BY MR. MONCKTON

455

1 BUT IF YOU TELL A LIE OR SOMETHING THAT'S NOT TRUE, YOU
2 CAN'T REMEMBER WHAT YOU SAID THE FIRST TIME SO IT KEEPS
3 CHANGING. DID YOU HEAR WHAT TESTIMONY WAS CHANGED?

4 THE STATE DOES CALL SOME PEOPLE. WHY? THEY
5 DIDN'T CALL THE FINGERPRINT PERSON. THEY DIDN'T CALL THE
6 BALLISTICS PEOPLE. THEY DIDN'T INTRODUCE ANY BICYCLES.
7 THERE AREN'T ANY PICTURES OF ANY BICYCLES. THE STATE, BY
8 AND THROUGH THE SOLICITOR'S OFFICE AND THE CONWAY POLICE
9 DEPARTMENT FAILED TO INVESTIGATE THIS CASE. FOR WHATEVER
10 REASON I DON'T KNOW WHY. BUT THEY FAILED TO INVESTIGATE
11 AND THE WITNESSES THEY GOT TO TESTIFY FOR THEM WERE GOTTEN
12 FOR THEM BY FRED MCDONALD, A FRIEND OF ISAAC'S.

13 AGAIN I'LL REMIND YOU, LADIES AND GENTLEMEN, THIS
14 IS THE MOST SERIOUS CRIME THAT A PERSON CAN BE CHARGED
15 WITH. IT IS MURDER AND IT CARRIES HARSH CONSEQUENCES. THE
16 STATE HAS ASKED YOU TO CONVICT DERRICK AND CORTREAL BASED
17 ON THESE WITNESSES AND THE PROOF THEY BROUGHT BEFORE YOU.
18 BASED ON WHAT I'VE TALKED TO YOU ABOUT PRESUMPTION OF
19 INNOCENCE, THAT SCARES ME; THAT SOMEBODY CAN BE CHARGED
20 WITH MURDER, INDICTED FOR MURDER, THEIR CASE GETS THIS FAR
21 BASED ON THE EVIDENCE THE STATE HAS AND BRING IT BEFORE YOU
22 TODAY.

23 NOW DERRICK DIDN'T TESTIFY. HE DIDN'T HAVE TO
24 TESTIFY. IN FACT, COMING INTO THIS COURTROOM HE TOLD YOU,
25 "LADIES AND GENTLEMEN, I'M NOT GUILTY. I DIDN'T DO IT."

CLOSING ARGUMENT BY MR. BELLAMY

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1 BUT THIS IS SCARY THAT A PROSECUTION FOR MURDER CAN COME TO
2 THIS COURTROOM AND GET TO THIS STAGE BASED ON WHAT THEY'VE
3 PUT BEFORE Y'ALL. LADIES AND GENTLEMEN, I ASK YOU TO FIND
4 DERRICK NOT GUILTY. THERE'S A PRESUMPTION OF INNOCENCE
5 THAT IS ON HIM AT THIS TIME. THANK YOU VERY MUCH.

6 THE COURT: ALL RIGHT, MR. BELLAMY.

7 MR. BELLAMY: MAY IT PLEASE THE COURT?

8 THE COURT: YES, SIR.

9 MR. BELLAMY: LADIES AND GENTLEMEN, AS I SAID IN
10 MY OPENING STATEMENT, WITHOUT HESITATION, WITHOUT REGARD
11 FOR ANYBODY WATCHING AND WITHIN PLAIN VIEW OF THE CITY OF
12 CONWAY POLICE DEPARTMENT SUBSTATION, THESE TWO DEFENDANTS,
13 DERRICK HOLLINGSWORTH AND CORTREAL SWINTON, BRUTALLY
14 EXECUTED ISAAC COX. THEY DIDN'T SHOOT HIM ONE TIME. THEY
15 SHOT HIM FOUR TIMES. THE LEAST TO SAY, IT'S OVERKILL. ONE
16 THING I WANT YOU TO DO IS USE YOUR COMMON SENSE AND IMAGING
17 IT'S OCTOBER 4TH, 1997. YOU'RE AT THE INTERSECTION OF 378
18 AND RACEPATH. RIGHT HERE IS A WHITE HONDA CIVIC. VICKY
19 CAMPBELL IS IN THE PASSENGER SEAT. LAKEISHA SMITH IS IN
20 THE DRIVER SEAT AND KIM BROWN IS IN THE BACK PASSENGER SEAT
21 AND YOU'VE GOT SARAH WEAVER RIGHT HERE. WHAT DO THEY SEE.
22 THEY SEE SOMETHING THEY'VE NEVER SEEN. THEY GREW UP IN
23 CONWAY. THEY WERE BORN AND RAISED IN CONWAY. THEY'VE
24 NEVER SEEN ANYBODY GET SHOT AND KILLED BEFORE THEIR EYES.
25 THEY SEE SOMEBODY, A FRIEND OF THEIR'S, ISAAC COX, AND THEY

CLOSING ARGUMENT BY MR. BELLAMY

457

1 DO RECOGNIZE HIM BRUTALLY EXECUTED. THE RACEPATH COMMUNITY
2 IS NOT A GOOD COMMUNITY. SARAH WEAVER TESTIFIED THAT SHE
3 "IS A STREET PERSON. I KNOW CORTREAL SWINTON AND I KNOW
4 DERRICK HOLLINGSWORTH FOR THREE OR FOUR YEARS" BEFORE THE
5 INCIDENT. NOW WHAT DOES THAT TELL YOU? WHAT CAN YOU INFER
6 FROM THAT? THEY'RE ALL SCARED. NO QUESTION THEY DIDN'T
7 WANT TO BE HERE. THEY REALLY DIDN'T WANT TO HAVE TO TAKE
8 THE WITNESS STAND AND HAVE TO POINT THE FINGER AT THESE TWO
9 DEFENDANTS. THEY DID WANT THEY DID. AND WHO REALLY WANTS
10 TO GET UP HERE AFTER SEEING SOMEBODY BRUTALLY EXECUTED, TO
11 HAVE TO COME INTO COURT AND TESTIFY AGAINST THEM. LADIES
12 AND GENTLEMEN, YOU ARE THE FINDERS OF FACTS AND YOU MAY
13 CHOOSE TO FIND GUILTY AND YOU MAY CHOOSE TO FIND INNOCENT.
14 I'LL TELL YOU, WHEN THEY LEAVE THAT COURT HOUSE -- LEAVE
15 THE WITNESS CHAIR AND LEAVE THAT COURT HOUSE, THEY HAVE
16 BULLS EYES ON THEM.

17 MR. MONCKTON: OBJECTION, YOUR HONOR.

18 THE COURT: WHAT'S YOUR OBJECTION.

19 MR. MONCKTON: THAT THE WITNESSES HAVE BEEN
20 THREATENED, YOUR HONOR.

21 THE COURT: HE HAS NOT SAID THAT. OBJECTION
22 OVERRULED.

23 MR. BELLAMY: THEY DON'T HAVE ANYTHING TO GAIN.
24 THEY DON'T HAVE ANYTHING TO LOSE. AND VICKY CAMPBELL. YOU
25 COULD TELL FROM THE WAY SHE TESTIFIED SHE DIDN'T WANT TO BE

CLOSING ARGUMENT BY MR. BELLAMY

458

1 HERE. I THINK WHEN THEY CAME UP AND TESTIFIED THEY
2 TESTIFIED FOR TWO REASONS. THEY TESTIFIED, ONE, THAT THEY
3 WERE SUBPOENAED BY US AND HAD TO PUT THEIR HAND ON THE
4 BIBLE AND TELL THE RUTH. I THINK THE OTHER REASON THEY
5 TESTIFIED IS BECAUSE OF THE ISAAC COX. I THINK THAT ONE OF
6 THE NICEST THING THEY SAID ABOUT ISAAC COX WAS SAID BY
7 SARAH WEAVER. HE'S NOT A STREET PERSON. SHE SPENT LOT A
8 TIME WITH THESE DEFENDANTS. SHE DIDN'T SPENT A LOT OF TIME
9 WITH ISAAC COX. THEY'RE SCARED. THEY DON'T WANT TO BE
10 HERE. LAKEISHA, KIM BROWN, SARAH WEAVER, AND VICKY
11 CAMPBELL. THEY DIDN'T WANT TO COME TO THIS COURTHOUSE.
12 THEY DIDN'T WANT TO TESTIFY. IT'S A SMALL COMMUNITY.
13 ISAAC COX'S FAMILY -- EXCUSE ME -- CORTREAL SWINTON, HIS
14 FAMILY. THEY LIVE ON HEMINGWAY STREET. DERRICK
15 HOLLINGSWORTH. HIS FAMILY LIVES WITHIN THE RACEPATH
16 COMMUNITY. SO THEY'VE GOT TO CONFRONT THE FAMILY MEMBERS
17 OF THESE TWO FAMILIES. THINK ABOUT THAT.

18 LADIES AND GENTLEMEN, WHAT IS THE REAL ISSUE IN
19 THIS CASE? I THINK WE CAN AGREE AND HIS HONOR WILL CHARGE
20 YOU THAT MURDER IS THE KILLING OF A HUMAN BEING WITH MALICE
21 OF FORETHOUGHT, EXPRESS OR IMPLIED. MALICE IS A TECHNICAL
22 TERM, A TERM OF ART, THAT MEANS PURPORTING WICKEDNESS, LACK
23 OF CAUSE, LEGAL EXCUSE. IT'S SOMETHING THAT'S DEVOID OF
24 SOCIAL DUTY. THESE ARE SOME OF THE DESCRIPTIONS THAT HAVE
25 BEEN GIVEN AS FAR AS MALICE. IT'S A POTENTIAL WILLFUL

CLOSING ARGUMENT BY MR. BELLAMY

459

1 DOING OF A WRONGFUL ACT WITHOUT JUSTIFIABLE EXCUSE, CAUSE
2 OR LEGAL EXCUSE, EXCUSE ME. AND YOU CAN SHOW IT BY DIRECT
3 THREATS, BY LAYING IN WAIT, OR YOU CONSPIRACY ESTABLISH IT
4 BY IMPLIED REFERENCE BY USE OF A GUN. THE REAL ISSUE IN
5 THE CASE IS NOT THAT ISAAC COX WAS MURDERED. THE ISSUE IS
6 CREDIBILITY. WHO DO YOU BELIEVE?

7 SARAH WEAVER -- AND I WANT TO TALK ABOUT SARAH
8 WEAVER. THAT SHE RECOGNIZES THEM. IT'S NOT A QUESTION OF
9 ACCURATE IDENTIFICATION, SHE KNOWS THEM. SHE'S KNOWN THEM
10 FOR THREE OR FOUR YEARS. SHE'S FAMILIAR WITH THEIR
11 CHARACTERISTICS. SHE'S FAMILIAR WITH HOW THEY TALK, HOW
12 THEY COMMUNICATE. SHE RECOGNIZED THEM. SO THE ISSUE IS
13 NOW: DO YOU BELIEVE HER?

14 LET'S TALK ABOUT HIS HONOR IS GOING TO CHARGE,
15 JUDGE KING. AS FAR AS CREDIBILITY, YOU, LADIES AND
16 GENTLEMEN, ARE THE JUDGES OF THE FACTS, THE SOLE JUDGES OF
17 THE FACTS. ALSO YOU'RE THE JUDGES OF THE CREDIBILITY OF
18 THE WITNESSES. NOW THERE ARE CERTAIN FACTORS THAT YOU CAN
19 TAKE INTO CONSIDERATION IN WEIGHING THE CREDIBILITY OF THE
20 WITNESS. THE FIRST ONE. THE MANNER AND APPEARANCE OF A
21 WITNESS WHEN THEY'RE ON THE STAND. WHEN SARAH WEAVER WAS
22 TESTIFYING I THINK SHE WAS VERY FORTHRIGHT. SHE WASN'T
23 HESITANT. SHE WAS FORTHRIGHT. LET'S TALK ABOUT SOME OF
24 THE THINGS SHE SAID. SHE'S A STREET PERSON. SHE'S BEEN A
25 STREET PERSON FOR TEN YEARS. I THINK ONE OF THE MOST

CLOSING ARGUMENT BY MR. BELLAMY

460

1 TELLING THINGS THAT I ASKED HER. AND IT'S NOT LIKE WE SIT
2 DOWN AND WE PROGRAM OUR WITNESSES AND LIKE, THIS IS WHAT WE
3 WANT YOU TO SAY. I ASKER HER, "WELL, HOW MUCH DID YOU HAVE
4 TO DRINK THAT NIGHT -- OR WERE YOU DRINKING THAT NIGHT?"
5 SHE SAYS, "I WAS DRINKING." I SAID, "WELL WERE YOU UNDER
6 THE INFLUENCE?" SHE SAID, "I WAS DRINKING." I SAID, "YOU
7 STILL RECOGNIZED -- WERE YOU STILL ABLE TO RECOGNIZE -- YOU
8 STILL WERE ABLE AS FAR AS TO IDENTIFY WHAT YOU SAW?" SHE
9 IDENTIFIED THE DEFENDANTS PRIOR TO ME ASKING HER THAT
10 QUESTION. SHE'S UP HERE ON THE STAND AND SHE'S POINTING AT
11 THOSE TWO INDIVIDUALS. WELL WHAT ARE Y'ALL GOING TO DO?
12 Y'ALL EITHER GOING TO CONVICT THEM OR THEY WALK OUT OF THE
13 COURTHOUSE. BUT HERE'S WHAT THE IMPORTANT THING IS. IF
14 SHE WAS GOING TO COME UP HERE AND POINT THE FINGER AT THEM,
15 WHY WOULD SHE SIT DOWN AND LIE ABOUT A LITTLE THING? IF
16 SHE'S GOING TO GET UP THERE -- THE POINT BEING -- PEOPLE
17 WHO LIE ABOUT THE LITTLE THINGS LIE ABOUT THE BIG THINGS.
18 I THINK SHE WAS FORTHCOMING WITH HER TESTIMONY. I THINK
19 SHE WAS HONEST BECAUSE SHE COULD HAVE SAID, "NO, I WASN'T
20 UNDER THE INFLUENCE." BUT YOU'VE GOT TO UNDERSTAND THIS
21 TOO. SHE'S BEEN ON THE STREET FOR TEN YEARS. SHE STAYS
22 OUT THE EARLY MORNING HOURS. SHE DOESN'T LIVE THE SAME
23 LIFE STYLE THAT MOST PEOPLE LIVE. SHE PROBABLY CAN HANDLE
24 HER LIQUOR AND A LOT OF OTHER THINGS. YOU HAVE TO
25 UNDERSTAND THE ASSOCIATION BETWEEN THE TWO DEFENDANTS AND

CLOSING ARGUMENT BY MR. BELLAMY

461

1 SARAH WEAVER. WELL SHE WAS VERY HONEST ABOUT IT. SHE
2 IDENTIFIED, OR RECOGNIZED, THE DEFENDANTS FROM TWO POINTS,
3 THIS TWO LOCATIONS RIGHT HERE. YOU SEE THE CONWAY POLICE
4 RESOURCE CENTER, NOBODY'S THERE. THEN YOU SEE RACEPATH.
5 HER HOUSE WAS RIGHT THERE. THIS IS WHERE SHE'S AT.
6 ANOTHER IDENTIFICATION OF THE DEFENDANTS. THEY SAY SHE'S
7 TEN MINUTES LATE. WELL, SOMETIMES IF YOU SEE A VERY
8 TRAUMATIC EXPERIENCE IT SEEMS LIKE TEN MINUTES. OR IT
9 COULD SEEMS SHORTER OR LONGER. BUT THE THING IS SHE
10 IDENTIFIED THEM AT TWO SEPARATE LOCATIONS. THE LIGHTING
11 HERE, NO QUESTION SHE SAW WHAT SHE SAW. THE ONE THING YOU
12 HAVE TO FACTOR IN, TOO, IS SHE WAS SITTING RIGHT HERE, WHEN
13 THAT HONDA CIVIC ENTERED THE INTERSECTION IT HAD IT'S
14 HEADLIGHTS ON. NOBODY'S EVER TALKED ABOUT THAT. WHAT
15 ABOUT THE HEADLIGHTS OF THE HONDA CIVIC? WHAT WOULD THEY
16 DO? THEY WOULD ILLUMINATE THE SCENE. THEY NEVER TALKED
17 ABOUT THAT. DON'T YOU THINK IT'S GOING TO ILLUMINATE WHERE
18 THE TREE IS?

19 THE MOST IMPORTANT THING I WANT TO TALK ABOUT
20 WITH RESPECT TO SARAH WEAVER IS ANOTHER THING THAT YOU TAKE
21 INTO CONSIDERATION WHEN YOU TALK ABOUT SOMEBODY AS FAR AS
22 WHEN THEY TESTIFY, IS ARE THEY BIAS OR PREJUDICE. WELL,
23 WHAT BIAS OR PREJUDICE WOULD SHE HAVE AGAINST THE
24 DEFENDANTS? THEIR ATTORNEYS HAVEN'T BROUGHT ANYTHING OUT
25 AS FAR AS WHY SHE WOULD PREJUDICED AGAINST THEM. THERE'S

CLOSING ARGUMENT BY MR. BELLAMY

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1 NO BIAS. BIAS IS IRRATIONAL PREDISPOSITION TO FAVOR
2 SOMETHING. SHE BARELY KNEW ISAAC COX, KNEW OF HIM. SHE
3 REALLY DIDN'T HAVE A DOG IN THE FIGHT.
4 WHAT I WANT TO TALK ABOUT NOW IS THIS
5 COOBERRATING EVIDENCE. YOU'VE GOT SARAH WEAVER AS A
6 EYEWITNESS WHO IDENTIFIED THE DEFENDANTS BY FACE, NAME, AND
7 VOICE AND SAW GUNS IN BOTH THE DEFENDANT'S HANDS. YOU'VE
8 GOT VICKY CAMPBELL WHO IDENTIFIED THE DEFENDANTS BY FACE
9 AND NAME WHO SAW DEFENDANT HOLLINGSWORTH SHOOT ISAAC COX IN
10 THE HEAD AND SAW DEFENDANT SWINTON STANDING BY THE TREE.
11 WELL, VICKY CAMPBELL COOPERATED SARAH WEAVER. LET'S TALK
12 ABOUT WHAT KIM BROWN SAID. AS GUN SHOTS WERE GOING OFF SHE
13 HEARD VICKY SAY, "THAT'S BEADY, ESSAY, AND TREAL." I
14 THOUGHT KIM BROWN WAS VERY FORTHCOMING. I THOUGHT THAT SHE
15 WAS VERY HONEST. YOU JUST CAN'T -- I THOUGHT THE ENERGY
16 THAT WAS COMING OFF THE STAND WHEN SHE WAS DESCRIBING THEIR
17 GOING IN THE INTERSECTION AND VICKY CAMPBELL SAID --
18 RECOGNIZED THEM, SHE SAID, "THAT'S BEADY." THE FIRST THING
19 THAT CAME -- "STOP THE CAR." SHE WANTED TO GET OUT OF THE
20 CAR. LAKEISHA SMITH, AT THIS POINT IN TIME, SHE IS A BALL
21 OF NERVES. SHE'S THE DRIVER AND THEY PULLED RIGHT INTO THE
22 INTERSECTION WHEN THE GUNS WERE GOING OFF. THE CAR SWERVED
23 TO THE RIGHT AND VICKY CAMPBELL, "STOP THE CAR. I WANT TO
24 GET OUT." THEY DIDN'T STOP AT THAT POINT. THEY STOPPED AT
25 A KENTUCKY FRIED CHICKEN. SHE DID OUT. VICKY SAID -- KIM

CLOSING ARGUMENT BY MR. BELLAMY

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1 BROWN SAID THAT VICKY CAMPBELL AND LAKEISHA WENT TO THE
2 NORTH CONWAY MOTOR INN TO TELL FREDERICK COX WHO SHOT HIS
3 BROTHER. NOW, LET ME TALK A BIT MORE ABOUT WHAT KIM BROWN
4 SAID. HAD THE BENEFIT OF HEAD LIGHTS WHICH ALSO VICKY
5 CAMPBELL SAID. IDENTIFIED ONE BLACK MALE ABOUT HER HEIGHT
6 AND IT WAS STIPULATED IN THE RECORD THAT CORTREAL SWINTON
7 IS 5'7" AND KIM BROWN TESTIFIED SHE THOUGHT SO. SHE
8 IDENTIFIED THE SHORT BLACK MALE STANDING BY THE TREE, THE
9 BIG TREE, WHICH ALSO VICKY CAMPBELL DID. AND SHE
10 IDENTIFIED TWO TALL BLACK MALES WEARING DARK CLOTHING
11 STANDING NEAR THE BODY WHERE ISAAC COX IS, STANDING WHERE
12 HE'S LAYING ON THE GROUND. REMEMBER THERE'S TWO BICYCLES.
13 KIM BROWN TALKS ABOUT THREE MUZZLE FLASHES COMING FROM
14 BEHIND THE TREE WHERE VICKY CAMPBELL PUTS THE DEFENDANT
15 CORTREAL SWINTON. AND KIM BROWN PUTS HIM THERE, NOT BY HIS
16 FACE BUT SHE IDENTIFIES HIM AS FAR AS HIS HEIGHT. SHE PUTS
17 HIM THERE, TOO. ONE OF THE THINGS WHEN YOU'RE LOOKING AT
18 THIS, IS NONE OF THESE STATEMENTS ARE PICTURE PERFECT.
19 THEY'RE NOT LIKE -- THEY DON'T REPEAT EACH OTHER. THEY
20 DON'T SAY THE SAME THING. THEY DIFFER IN, I GUESS,
21 SUBTLETIES. BUT BASICALLY THEY ALL COOPERATE EACH OTHER.
22 I THINK THAT GOES TO THEIR CREDIBILITY. THE POINT IS, KIM
23 BROWN NEVER SAID SHE SAW HIS FACE. SHE DOESN'T KNOW HIM.
24 SHE DOESN'T KNOW WHAT THEY LOOKS LIKE. SHE DOESN'T KNOW
25 DEFENDANT DERRICK HOLLINGSWORTH. SHE DOESN'T KNOW CORTREAL

CLOSING ARGUMENT BY MR. BELLAMY

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1 SWINTON. SHE'S NOT FOCUSING ON THE FACES. AND IT'S FUNNY,
2 WHEN A ALTERCATION HAPPENS PEOPLE FOCUS ON DIFFERENT
3 THINGS.

4 THEN YOU'VE GOT FREDERICK MCDONALD. HE HEARD
5 THREE SHOTS AND THEN TWO SHOTS. AND THEY COUNT FIVE
6 BULLETS IN THE BODY OF ISAAC COX. NOW I'M NOT A FORENSIC
7 EXPERT. WHAT YOU'VE GOT IS ONE IN THE NECK RIGHT HERE.
8 THIS IS IN CLOSE PROXIMITY. THERE'S BEEN NO TESTIMONY THAT
9 ISAAC COX WAS SHOT PRIOR TO THIS OCCASION. ONE THING YOU
10 HAVE TO ASK, PEOPLE ARE HUMAN, COULD THE DOCTOR HAVE MADE A
11 MISTAKE? I DON'T KNOW.

12 FREDERICK MCDONALD. HE SAW THE DEFENDANT DERRICK
13 HOLLINGSWORTH AT THE EXXON EXPRESS SHOP THE FIRST TIME. HE
14 CIRCLES AROUND THE EXXON EXPRESS SHOP AND HE RIDES AROUND.
15 HE ALSO TESTIFIED TO SOMETHING THAT AFTER ISAAC COX DIED
16 THAT THEY TOOK MEASURES TO FIND OUT WHO DID THIS AND THEY
17 GOT IN THE CAR WITH HIS BROTHER AND THEY WENT TO HEMINGWAY
18 STREET. THEY TOOK A RIGHT ON HEMINGWAY STREET AND AS THEY
19 WERE GOING DOWN HEMINGWAY STREET THEY SAW TWO INDIVIDUALS,
20 TWO BLACK MALES IN BLACK CLOTHING AND THEY RECOGNIZED WHO
21 THEY WERE, CORTREAL SWINTON AND CURTIS WILSON. CURTIS
22 WILSON PROBABLY DOESN'T MEAN ANYTHING TO YOU UNTIL JUDGE
23 KING PUBLISHED THE INDICTMENT TO YOU BUT HE IS ONE OF THE
24 CO-DEFENDANTS. WHEN WE CHARGED THEM WE CHARGED CORTREAL
25 SWINTON, DERRICK HOLLINGSWORTH, AND CURTIS WILSON. WE

CLOSING ARGUMENT BY MR. BELLAMY

465

1 CHARGED ALL THREE OF THEM. IT'S INTERESTING THAT IN THE
2 EARLY MORNING HOURS HE'S WITH CURTIS WILSON. THAT'S
3 SOMETHING TO THINK ABOUT. CURTIS WILSON COULD HAVE BEEN --
4 WELL, I'M NOT GOING TO COMMENT ON THAT.

5 LET'S TALK ABOUT JOSEPH HOWARD. JOSEPH HOWARD IS
6 A CAREER CRIMINAL. HE'S ARTICULATE. HE'S WELL-SPOKEN. HE
7 KNOWS HOW THE SYSTEM WORKS. AND CAN YOU IMAGINE ON
8 SEPTEMBER 3RD, 1998 WHEN THEY'RE COMING BACK FROM FULTON
9 COUNTY, THE RECORDS INDICATE THAT JOSEPH HOWARD AND DERRICK
10 HOLLINGSWORTH WERE IN THE SAME CAR. AND DERRICK
11 HOLLINGSWORTH, YOU CAN LOOK AT HIM AND WHATEVER HE IS HE'S
12 A KID. YOU CAN SEE HOW SOMEBODY LIKE DERRICK HOLLINGSWORTH
13 CAN DRAW YOU IN AND HOW THEY CAN START HAVING A
14 CONVERSATION. HOW DO YOU TRY LEARN THE ROPES FROM HIM.
15 HOW DO YOU DEAL WITH THIS? JOSEPH HOWARD'S BEEN THERE.
16 YOU CAN KINDA OF SEE HOW THE VIVES DEVELOPED AND JOSEPH
17 HOLLINGSWORTH IS TRYING TO FIGURE OUT HOW TO SURVIVE AND HE
18 OPENS UP TO JOSEPH HOWARD. BUT JOSEPH HOWARD IS ONE OF
19 THOSE GUYS, HE'S AN OPPORTUNIST. HE'S GOT TO SURVIVE, TOO.
20 SO WHEN HE'S IN MAXIMUM SECURITY HE KINDA WRITES DOWN WHAT
21 HE REMEMBERS ABOUT THE INCIDENT. AND LADIES AND GENTLEMEN,
22 HE REMEMBERS A LOT ABOUT THIS, VERY ACCURATE AND VERY
23 CORRECT. HOW DID HE KNOW, SHOT NEAR A BIG TREE AS FAR AS
24 WHEN HE AND HIS PARTNER GOT HIM? WHERE WOULD HE GET THAT
25 INFORMATION FROM?

CLOSING ARGUMENT BY MR. BELLAMY

466

1 LET ME JUST SAY THIS FOR RIGHT NOW. THESE TWO
2 DEFENDANTS RIGHT HERE, CORTREAL SWINTON AND DERRICK
3 HOLLINGSWORTH, THEY MAINTAIN THEIR INNOCENCE. THEY WERE
4 NOT INVOLVED IN THIS. ALL RIGHT. IF THAT'S TRUE WHAT ELSE
5 MUST BE TRUE? YOU'VE GOT JOSEPH HOWARD RIGHT HERE. YOU'VE
6 GOT SARAH WEAVER RIGHT HERE AND YOU'VE GOT VICKY CAMPBELL
7 AND LAKEISHA SMITH AND KIM BROWN. JOSEPH HOWARD DOESN'T
8 KNOW VICKY CAMPBELL. DOESN'T KNOW SARAH WEAVER. DOESN'T
9 KNOW KIM BROWN AND DOESN'T KNOW LAKEISHA SMITH. SARAH
10 WEAVER DOESN'T KNOW JOSEPH HOWARD. SARAH WEAVER DOESN'T
11 KNOW VICKY CAMPBELL, LAKEISHA SMITH AND KIM BROWN. AND KIM
12 BROWN AND LAKEISHA SMITH AND VICKY CAMPBELL DON'T KNOW
13 JOSEPH HOWARD. SO, IF THERE'S SOME TYPE OF COLLUSION ON
14 THE PART OF THESE FIVE PEOPLE, HOW DID THEY GET THE
15 INFORMATION FROM EACH OTHER? THEY DON'T KNOW EACH OTHER.
16 AND THE DEFENSE, I'LL TELL YOU WHAT, THEY COULD HAVE
17 BROUGHT THAT OUT. THEY WOULD HAVE SAID, "WELL, DIDN'T YOU
18 HAVE A CONVERSATION WITH JOSEPH HOWARD? DON'T YOU KNOW
19 JOSEPH HOWARD? DIDN'T YOU TALK ABOUT THIS CASE?" THEY
20 DIDN'T BRING IT OUT. LADIES AND GENTLEMEN, IT COMES DOWN
21 TO THIS. SARAH WEAVER IDENTIFIES THEM AT TWO DIFFERENT
22 LOCATIONS THE SAME NIGHT. THE POINT IS SHE IS A STREET
23 PERSON. SHE KNOWS THESE TWO DEFENDANTS. SHE'S GOT
24 EVERYTHING TO LOSE AND NOTHING TO GAIN. AND WHEN SHE
25 WALKED OUT OF THE COURTHOUSE WHEN SHE TESTIFIED SHE'S GOT A

CLOSING ARGUMENT BY MR. BELLAMY

467

1 TARGET ON THE FRONT OF HER AND SHE'S GOT A TARGET ON THE
2 BACK OF HER. WHEN YOU EVALUATE HER CREDIBILITY YOU NEED TO
3 THINK ABOUT SOMEBODY WHO PUTS THEMSELVES IN A SITUATION
4 LIKE THIS THAT'S NOT ADVANTAGEOUS TO THEM. THEY DON'T HAVE
5 TO. IF SHE COULD HAVE GOTTEN OUT OF TAKING THE STAND SHE
6 WOULD. "I DON'T KNOW ANYTHING." WHEN VICKY CAMPBELL GOT
7 UP ON THE STAND IT WAS LIKE PULLING TEETH. SHE DIDN'T WANT
8 TO TALK. SHE DIDN'T WANT TO HAVE TO LOOK THESE TWO
9 INDIVIDUALS IN THE FACE. BECAUSE, LADIES AND GENTLEMEN, IF
10 YOU DON'T BELIEVE WE HAVEN'T MET OUT BURDEN OF PROOF THEY
11 WALK OUT OF HERE. GUESS WHO THEY GET TO SEE IN THE FACE
12 AGAIN? THAT'S POWERFUL STUFF. WHEN YOU EVALUATE THE
13 CREDIBILITY, LOOK AT -- THINK ABOUT THAT. IT'S NOT ABOUT
14 VANTAGE POINTS. IT'S NOT ABOUT LIFE. IT'S ABOUT WHO YOU
15 BELIEVE. THANK YOU.

16 THE COURT: ALL RIGHT, LADIES AND GENTLEMEN, YOU
17 HAVE NOW HEARD THE ARGUMENTS OF COUNSEL AND THE ONLY THING
18 THAT IS LEFT TO DO IN THIS CASE IS FOR ME TO INSTRUCT YOU
19 ON THE LAW. PRIOR TO DOING THAT I THINK THAT IT IS
20 APPROPRIATE THAT WE RECESS FOR LUNCH AND LET YOU GO TO
21 LUNCH. AGAIN I'M GOING TO HAVE THE DEPUTIES TAKE YOU TO
22 LUNCH. AND WE HAVE ARRANGEMENTS WITH A RESTAURANT LUNCH
23 AND WHEN YOU HAVE COMPLETED YOUR LUNCH WE WILL BRING YOU
24 BACK TO THE COURTHOUSE AND I WILL INSTRUCT YOU ON THE LAW
25 AND THEN AT THAT POINT THE CASE WILL BE TURNED OVER TO YOU

MOTION FOR MISTRIAL BY DEFENDANT HOLLINGSWORTH

468

1 TO DELIBERATE YOUR VERDICT IN THIS CASE. I THINK THE
2 BETTER THING TO DO IS BREAK FOR LUNCH AT THIS TIME AND
3 ALLOW YOU TO GO TO LUNCH AND TO THEN COME BACK AND THEN I
4 WILL INSTRUCT YOU ON THE LAW. AS SOON AS I CAN GET THE
5 CLERK UP TO TAKE CHARGE OF THE DEPUTIES HERE WE WILL DO
6 THAT. WHILE WE'RE WAITING HER LET ME GET YOU TO GO TO YOUR
7 JURY ROOM. DON'T DISCUSS THE CASE AMONG YOURSELVES. OKAY.
8 WE NEED TO SWEAR THE DEPUTIES.

9 (WHEREUPON, THE DEPUTIES WERE SWORN FOR LUNCH.)

10 THE COURT: ALL RIGHT, LADIES AND GENTLEMEN, I
11 DON'T KNOW IF YOU NEED TO GET ANYTHING OUT OF THE JURY ROOM
12 BUT YOU CAN DO THAT AT THIS TIME. THANK YOU.

13 (WHEREUPON THE JURY EXITED THE COURTROOM FOR
14 LUNCH.)

15 THE COURT: I WILL ALSO TELL YOU THAT THE JURY IS
16 GOING TO WAYNE'S FOR LUNCH. ANYONE ASSOCIATED WITH THE
17 CASE SHOULD REFRAIN FROM GOING TO WAYNE'S.

18 MR. MONCKTON: YOUR HONOR, I HAVE A MATTER,
19 PLEASE.

20 THE COURT: YES, SIR.

21 MR. MONCKTON: YOUR HONOR, IN MR. BELLAMY'S
22 CLOSING STATEMENT I OBJECTED WHEN HE REFERRED TO MS. WEAVER
23 HAVING A TARGET ON HER. HE AGAIN MADE REFERENCE LATER,
24 WHICH YOU OVERRULED. HE LATER MADE REFERENCE IN HIS
25 CLOSING ARGUMENT THAT WHEN MS. WEAVER LEFT THIS COURTROOM,

MOTION FOR MISTRIAL BY DEFENDANT HOLLINGSWORTH

469

1 SHE THIS COURTROOM WITH A TARGET ON THE FRONT OF HER AND ON
2 THE BACK OF HER. THERE HAS BEEN NO EVIDENCE IN THIS RECORD
3 IN THIS TRIAL THAT THERE'S BEEN ANY THREAT OR ANYTHING MADE
4 TO THAT WITNESS. I DID NOT OBJECT THE SECOND TIME PURSUANT
5 TO YOUR PREVIOUS RULING BUT THAT INAPPROPRIATE CLOSING
6 ARGUMENT TO SAY THE WITNESS'S LIFE IS IN DANGER WHEN SHE
7 LEAVES THE COURTROOM. THAT'S EXACTLY WHAT HE DID IN HIS
8 CLOSING STATEMENT AND AT THIS TIME I MOVE FOR A MISTRIAL.

9 THE COURT: ALL RIGHT. FIRST OF ALL I WOULD SAY
10 THAT THE OBJECTION WAS NOT MADE ON THE GROUNDS THAT MR.
11 BELLAMY WAS ARGUING OUTSIDE THE RECORD. I BELIEVE WHAT THE
12 THING WAS, THE EXACT CONTEXT OF THE OBJECTION WAS THAT
13 THERE WAS NO EVIDENCE THAT THEY HAD BEEN THREATENED AND I
14 SAID THAT MY RULING WAS BASED ON THE FACT THAT THERE WAS NO
15 EVIDENCE THAT HE HAD NOT SAID THAT SHE HAD BEEN THREATENED.
16 HE WAS TALKING ABOUT THE PROSPECT OF FACING OF POTENTIAL
17 WITNESSES, OR DEFENDANTS IN THIS CASE, AS I UNDERSTOOD IT
18 WOULD BE WHAT MIGHT BE EXPECTED IN THE FUTURE, NOT THAT
19 THERE HAD BEEN ANY THREATS AND THAT WAS REASON THAT I
20 OVERRULED YOUR OBJECTION. THAT IS MY RECOLLECTION OF THE
21 TESTIMONY. I DO THINK THAT HE HAS THE RIGHT TO COMMENT ON
22 THE FACT THAT SHE HAS TO FACE THE WITNESSES OR THE
23 DEFENDANTS IN THE FUTURE. I DON'T THINK THAT THAT IS
24 IMPROPER. PROBABLY -- AND HE DID USE THE LANGUAGE SEVERAL
25 TIMES THAT SHE WOULD HAVE TO, OR SHE OR THEY WOULD HAVE TO

MOTION FOR MISTRIAL BY DEFENDANT HOLLINGSWORTH

470

1 FACE THESE PEOPLE. TARGET MAY NOT HAVE BEEN THE BEST WORD
2 BUT I CAN'T SAY THAT IT IS IMPROPER. HAVE YOU GOT A
3 CURATIVE INSTRUCTION THAT YOU WOULD LIKE GIVEN?

4 MR. MONCKTON: YOUR HONOR, THE EXACT WORDS THAT
5 HE USED WERE, "HE WOULD HAVE A TARGET ON THE FRONT OF HER
6 AND ON THE BACK OF HER."

7 THE COURT: THAT'S CORRECT.

8 MR. MONCKTON: I CANNOT SEE ANY OTHER REASON THAN
9 TO SAY THIS IS A MURDER CASE THAT SHE WOULD HAVE ---

10 THE COURT: THAT'S NOT MY QUESTION. MY QUESTION
11 IS DO YOU HAVE A CURATIVE INSTRUCTION THAT YOU WOULD LIKE
12 GIVEN?

13 MR. MONCKTON: YOUR HONOR, I'D LIKE THROUGH
14 LUNCHTIME TO THINK ABOUT IT OVER LUNCHTIME TO SEE WHAT WE
15 CAN COME UP WITH.

16 THE COURT: ALL RIGHT. I'LL RULE ON THE MOTION
17 THEN AFTER LUNCH. IF YOU HAVE A CURATIVE INSTRUCTION I'LL
18 BE GLAD TO HEAR IT. WE WILL BE IN RECESS. LET'S PLAN TO
19 START BACK AT 1:30. THAT'S AN HOUR AND 15 MINUTES. WE'LL
20 BE AT RECESS UNTIL 1:30.

21 (WHEREUPON, A LUNCH BREAK WAS TAKEN, COURT
22 RECONVENED AT 1:30 P.M., AND THE FOLLOWING PROCEEDINGS WERE
23 HAD.)

24 THE COURT: WHEN WE RETURNED FROM LUNCH MR.
25 MONCKTON HAD MADE THE MOTION FOR MISTRIAL ON THE BASIS OF

MOTION FOR MISTRIAL BY DEFENDANT HOLLINGSWORTH

471

1 THE STATEMENTS THAT THE SOLICITOR HAD MADE IN CLOSING
2 ARGUMENT. I'LL BE GLAD TO HEAR FROM YOU FURTHER, MR.
3 MONCKTON IF YOU LIKE.

4 MR. MONCKTON: YES, SIR, YOUR HONOR. DURING THE
5 BREAK I HAD THE OPPORTUNITY FOR MS. BABB, THE COURT
6 REPORTER, TO FIND ON THE RECORD MY INITIAL OBJECTION. MY
7 INITIAL OBJECTION WAS WHEN MR. BELLAMY WAS REFERRING TO
8 SARAH WEAVER AFTER SHE HAD TESTIFIED AND OTHER STATE'S
9 WITNESSES AND I QUOTE, "WHEN THEY LEAVE THE COURTHOUSE THEY
10 HAVE BULL'S EYES ON THEM." I OBJECTED AT THAT TIME. YOU
11 OVERRULED MY OBJECTION. BASED ON THAT RULING I DID NOT
12 OBJECT ANY FURTHER DURING MR. BELLAMY'S CLOSING ARGUMENTS.
13 LATER ON IN THE CLOSING ARGUMENT MR. BELLAMY MADE REFERENCE
14 TO MS. WEAVER AGAIN SAYING THAT WHEN SHE LEFT THIS
15 COURTROOM SHE WOULD HAVE A TARGET ON THE FRONT OF HER AND A
16 TARGET BACK THE BACK OF HER. HE THEN WENT ON TO SAY "WHEN
17 THEY WALK OUT HERE GUESS WHO THEY GET TO LOOK AT AGAIN?"
18 YOUR HONOR, THERE HAS BEEN NO EVIDENCE IN THE RECORD IN
19 REGARDS TO ANY THREATS AND TO FOLLOW THAT UP WE HAD PRE-
20 TRIAL MOTIONS AND RULINGS ISSUED BY JUDGE PEEPLES THAT ANY
21 THREATS WOULD NOT BE MENTIONED DURING THIS PROCESS. THE
22 DEFENSE HAS BEEN VERY CAREFUL NOT TO GO INTO ANYTHING IF
23 ANY WERE MADE. AND MY UNDERSTANDING THERE HAS BEEN IN
24 ISSUE AND NO EVIDENCE PRESENTED IN THE RECORD, EITHER
25 DIRECT OR CROSS-EXAMINATION TESTIMONY THAT ANYBODY HAD BEEN

MOTION FOR MISTRIAL BY DEFENDANT SWINTON

472

1 THREATENED. WHEN MR. BELLAMY GOES INTO HIS CLOSING
2 STATEMENT AND REFERS TO THE FACT THAT ONE OF THE STATE'S
3 WITNESSES THE IDENTIFIES THE DEFENDANT HAS A BULLS EYE ON
4 THEM IN A MURDER CASE, IT CAN ADD NO OTHER REASONABLE
5 INFERENCE THAN TO IMPLY THAT THAT PERSON IS GOING TO BE
6 SHOT. AND THEN TO FURTHER TO GO ON AND SAY THEY HAVE A
7 TARGET ON THE FRONT AND BACK OF THEM HAS NO OTHER INFERENCE
8 EITHER. IT IS COMPLETELY IMPROPER. IT IS OUTSIDE THE
9 RECORD. I DISCUSSED WITH YOUR HONOR A CURATIVE
10 INSTRUCTION; THAT I WOULD THINK OF ONE OVER LUNCH.
11 I'VE DISCUSSED IT WITH MR. HUMPHRIES. I CANNOT AGREE TO A
12 CURATIVE INSTRUCTION, YOUR HONOR, BASED ON THAT CLOSING
13 ARGUMENT. THE CAT IS OUT OF THE BAG AND I DON'T SEE HOW
14 YOU CAN PUT IT BACK IN. AND AT THIS TIME AGAIN I WOULD
15 RENEW MY MOTION FOR A MISTRIAL.

16 MR. CHRISCO: DEFENDANT SWINTON JOINS IN THAT
17 MOTION FOR A MISTRIAL BASED UPON MR. BELLAMY'S REMARKS
18 DURING HIS CLOSING ARGUMENT, YOUR HONOR.

19 THE COURT: ALL RIGHT. I'M NOT SURE YOUR MOTION
20 IS TIMELY, MR. CHRISCO. BUT THE MOTION WAS MADE AT THE
21 TIME BY MR. MONCKTON AND HE IS THE ONE WHO OBJECTED TO THE
22 REMARKS AT THE TIME AND I DID RULE ON HIS OBJECTION. BUT I
23 -- YOUR POSITION IS NOTED AND IT CAN BE CONSIDERED. SEEMS
24 LIKE TO ME IT MAY BE TIMELY BUT YOU DID NOT OBJECT TO THE
25 ARGUMENT AT THE TIME.

MOTION FOR MISTRIAL BY DEFENDANT SWINTON

473

1 I'VE THOUGHT ABOUT THIS MATTER OVER THE LUNCH
2 RECESS AND I'VE ALSO, WHILE I'VE NOT REVIEWED THE TESTIMONY
3 TAKEN DOWN BY THE COURT REPORTER. I HAVE REVIEWED MY
4 NOTES. MY RECOLLECTION OF THE MATTER IS THAT THERE WAS NO
5 REFERENCE TO ANY PAST THREATS HAVING BEEN MADE AND THAT THE
6 ARGUMENT DID NOT INDICATE THAT THERE HAD BEEN PAST THREATS
7 THAT HAD BEEN MADE. IN MY VIEW, THERE IS TESTIMONY IN THE
8 RECORD ABOUT ALL THESE PEOPLE LIVING IN THE SAME COMMUNITY;
9 THAT THEY WILL HAVE TO FACE THE WITNESSES AND THE DEFENDANT
10 AND ANYBODY ELSE IN THE FUTURE. I WOULD BE WILLING TO GIVE
11 A CURATIVE INSTRUCTION IF THE DEFENSE WANTS A CURATIVE
12 INSTRUCTION TO THE EFFECT THAT THEY SHOULD NOT IN ANY WAY
13 CONSIDER ANY INTIMIDATION OR THREATS THAT MAY OR MAY NOT
14 HAVE BEEN REFERENCED IN THE ARGUMENT, OR WORDS TO THAT
15 EFFECT, IF THE DEFENSE COUNSEL WANTS THAT. BUT I DO NOT
16 VIEW IT AS HAVING BEEN A COMMENT OUTSIDE THE RECORD BUT
17 SIMPLY THAT THESE PEOPLE, TO EXPLAIN THEIR RELUCTANCE TO
18 TESTIFY, THAT THEY WILL HAVE TO FACE THESE PEOPLE IN THE
19 FUTURE. FOR THAT REASON THE MOTION FOR MISTRIAL WILL BE
20 DENIED. AGAIN I WILL TRY TO FRAME A CURATIVE INSTRUCTION
21 IF YOU WANT ONE, MR. MONCKTON.

22 MR. MONCKTON: YOUR HONOR, IF I AGREE TO A
23 CURATIVE INSTRUCTION I'M GOING TO WAIVE MY APPEAL ISSUE ON
24 HIS CLOSING ARGUMENTS AND I'M NOT INCLINED TO DO THAT. I
25 WILL STAND ON MY OBJECTION THAT "THEY LEAVE THE COURTHOUSE,

JURY CHARGE

474

1 THEY HAVE BULLS EYES ON THEM" IS COMPLETELY OUTSIDE THE
2 RECORD ---

3 THE COURT: YOU TOLD ME THAT. YOU TOLD ME THAT,
4 MR. MONCKTON.

5 MR. MONCKTON: AND I STAND ON MY OBJECTION, YOUR
6 HONOR.

7 THE COURT: YOU TOLD ME THAT MR. MONCKTON. MY
8 QUESTION IS: DO YOU OR DO YOU NOT WANT A CURATIVE
9 INSTRUCTION?

10 MR. MONCKTON: NO, SIR, YOUR HONOR.

11 THE COURT: ALL RIGHT. ANYTHING BEFORE WE BRING
12 THE JURY BACK? MR. HUMPHRIES?

13 MR. HUMPHRIES: NOT FROM THE STATE.

14 THE COURT: MR. CHRISCO?

15 MR. MR. CHRISCO: NO, YOUR HONOR.

16 THE COURT: MR. MONCKTON?

17 MR. MONCKTON: NO, SIR, YOUR HONOR.

18 THE COURT: ALL RIGHT. BRING THE JURY IN PLEASE.

19 (WHEREUPON, WHEREUPON THE JURY ENTERED THE
20 COURTROOM AND THE FOLLOWING PROCEEDINGS WERE HAD.)

21 THE COURT: ALL RIGHT, MR. FOREMAN, LADIES AND
22 GENTLEMEN OF THE JURY, THANK YOU FOR YOUR PROMPTNESS AGAIN
23 AND ATTENTION TO THIS MATTER, A VERY SERIOUS MATTER THAT
24 NEEDS TO BE CONCLUDED.

25 YOU HAVE FOLLOWED VERY CAREFULLY AND LISTENED

JURY CHARGE

475

1 VERY ATTENTIVELY TO THE PRESENTATION OF THE EVIDENCE IN
2 THIS CASE AND I THANK YOU FOR THAT. YOU'VE ALSO HEARD THE
3 ARGUMENTS MADE BY THE SOLICITOR, MR. BELLAMY, ON BEHALF OF
4 THE STATE AND THE ARGUMENTS OF THE DEFENSE COUNSEL, MR.
5 CHRISCO AND MR. MONCKTON, ON THE PART OF THE TWO
6 DEFENDANTS. IT NOW BECOMES THE DUTY OF THIS COURT UNDER
7 THE CONSTITUTION OF THIS STATE TO CHARGE YOU AND INSTRUCT
8 YOU ON THE LAW APPLICABLE TO THIS CASE. AND IT IS YOUR
9 DUTY AS JURORS TO ACCEPT AND APPLY THE LAW AS THE COURT NOW
10 STATES IT TO YOU. AND AS JURORS IT IS YOUR EXCLUSIVE DUTY
11 TO DECIDE ALL ISSUES OF FACT IN THIS CASE. AND FOR THAT
12 PURPOSE TO DETERMINE THE EFFECT, THE VALUE, THE WEIGHT, AND
13 THE TRUTH OF THE EVIDENCE PRESENTED DURING THIS TRIAL.
14 BOTH THE STATE OF SOUTH CAROLINA AND THESE DEFENDANTS, MR.
15 DERRICK HOLLINGSWORTH AND MR. CORTREAL SWINTON, HAVE A
16 RIGHT TO EXPECT THAT YOU, INDIVIDUALLY AND COLLECTIVELY,
17 CONSCIENTIOUSLY CONSIDER AND EVALUATE THE EVIDENCE IN THIS
18 CASE AND APPLY THE LAW OF THE CASE TO THE END THAT THE
19 STATE AND THE DEFENDANTS, MR. HOLLINGSWORTH AND MR.
20 SWINTON, WILL RECEIVE AND OBTAIN A FAIR AND IMPARTIAL
21 TRIAL.

22 NOW, I'M GOING TO READ TO YOU IN PART AT THIS
23 TIME THE CHARGES MADE IN THE INDICTMENTS. THE INDICTMENTS
24 IN THIS CASE I WILL TELL YOU ARE NOT EVIDENCE BUT ARE
25 SIMPLY THE CHARGING PAPERS BY WHICH THE CHARGES ARE BROUGHT

JURY CHARGE

476

1 TO COURT. THEY CANNOT BE CONSIDERED BY YOU AS EVIDENCE BUT
2 THIS IS SIMPLY THE CHARGES THAT THE STATE HAS BROUGHT
3 AGAINST THESE TWO DEFENDANTS AND WHICH THE STATE MUST
4 PROVE.

5 THERE ARE TWO INDICTMENTS, ONE AGAINST EACH OF
6 THE TWO DEFENDANTS, CASE NUMBER 99-1651 IS THE INDICTMENT
7 IS AGAINST MR. CORTREAL SWINTON, AND IT ALLEGES THAT MR.
8 SWINTON DID, ALONG WITH DERRICK MARCEL HOLLINGSWORTH AND/OR
9 CURTIS WILSON, JR., IN HORRY COUNTY ON OR ABOUT OCTOBER THE
10 4TH, 1997, WILLFULLY, FELONIOUSLY, AND INTENTIONALLY WITH
11 MALICIOUS OF FORETHOUGHT, KILL THE VICTIM, ISAAC LEE COX,
12 BY MEANS OF SHOOTING THE VICTIM IN THE HEAD AND UPPER TORSO
13 AREA AND THE VICTIM DIED AS A PROXIMATE RESULT THEREOF IN
14 HORRY COUNTY ON OR ABOUT OCTOBER THE 4TH, 1997 IN VIOLATION
15 OF SECTION 16-3-10 OF THE CODE OF LAWS OF SOUTH CAROLINA,
16 1976.

17 IN INDICTMENT 99-1653, WHICH IS THE INDICTMENT
18 AGAINST MR. HOLLINGSWORTH, THE STATE ALLEGES THAT DERRICK
19 MARCEL HOLLINGSWORTH DID, ALONG WITH CORTEAL LAMONT SWINTON
20 AND/OR CURTIS WILSON, JR., IN HORRY COUNTY ON OR ABOUT
21 OCTOBER 4TH, 1997, WILLFULLY, FELONIOUSLY, AND
22 INTENTIONALLY WITH MALICIOUS OF FORETHOUGHT, KILL THE
23 VICTIM, ISAAC LEE COX, BY MEANS OF SHOOTING THE VICTIM IN
24 THE HEAD AND UPPER TORSO AREA AND THE VICTIM DIED AS A
25 PROXIMATE RESULT THEREOF IN HORRY COUNTY ON OR ABOUT

JURY CHARGE

477

1 OCTOBER THE 4TH, 1997 IN VIOLATION OF SECTION 16-3-10 OF
2 THE CODE OF LAWS OF SOUTH CAROLINA, AS AMENDED, AND AS THE
3 COMMON LAW OF SOUTH CAROLINA. INCIDENTALLY, THE OTHER
4 INDICTMENT ALSO SAYS IN VIOLATION OF THE CODE OF LAWS AND
5 THE COMMON LAW OF SOUTH CAROLINA.

6 NOW, WHEN I USE THE WORD IN THESE INSTRUCTIONS
7 DEFENDANT, OR DEFENDANTS, I INSTRUCT YOU THAT I AM
8 REFERRING TO BOTH THE DEFENDANTS AND I AM REFERRING TO
9 DERRICK MARCEL HOLLINGSWORTH AND CORTEAL LAMONT SWINTON.
10 TO THE CHARGES AND TO THESE INDICTMENTS THE DEFENDANTS,
11 BOTH OF THEM, HAD ENTERED PLEAS OF NOT GUILTY. THIS PLEA
12 OF NOT GUILTY BY THE DEFENDANTS PLACES THE BURDEN OF PROOF
13 ON THE STATE TO PROVE THE GUILT OF THE DEFENDANTS BEYOND A
14 REASONABLE DOUBT BEFORE YOU THE JURY CAN FIND THE
15 DEFENDANTS GUILTY. THE DEFENDANTS, MR. HOLLINGSWORTH AND
16 MR. SWINTON, ARE PRESUMED IN LAW INNOCENT OF THE CHARGES
17 MADE IN THESE INDICTMENTS. IT IS A CARDINAL AND
18 FUNDAMENTAL RULE OF LAW UNDER THE LAW OF EVIDENCE IN THIS
19 STATE THAT A DEFENDANT, IRRESPECTIVE OF THE ENORMITY OF THE
20 CHARGES AGAINST HIM WILL ALWAYS BE PRESUMED INNOCENT OF THE
21 CRIME FOR WHICH HE HAS BEEN INDICTED UNLESS AND UNTIL THE
22 GUILT OF DEFENDANT HAS BEEN PROVEN BY EVIDENCE WHICH
23 SATISFIES YOU THE JURY OF THE GUILT OF THE DEFENDANT BEYOND
24 A REASONABLE DOUBT. THIS PRESUMPTION OF INNOCENCE IS NOT A
25 MERE LEGAL THEORY. IT IS NOT JUST A LEGAL PHRASE. THE

JURY CHARGE

478

1 PRESUMPTION OF INNOCENCE IS A SUBSTANTIAL RIGHT TO WHICH
2 EVERY DEFENDANT, INCLUDING THESE DEFENDANTS ARE ENTITLED.
3 THE SUPREME COURT OF OUR STATE HAS DECLARED THAT THE
4 PRESUMPTION OF INNOCENCE IS LIKE A ROBE OF RIGHTEOUSNESS
5 PLACED ABOUT THE SHOULDERS OF A DEFENDANT AND IT REMAINS
6 WITH HIM AND ASSIGNS TO HIM THAT CLASS, THE INNOCENCE,
7 UNTIL THAT PRESUMPTIVE ROBE OF RIGHTEOUSNESS HAS BEEN
8 STRIPPED FROM HIS PERSON BY EVIDENCE SATISFYING YOU THE
9 JURY OF THE GUILT OF THE DEFENDANT BEYOND A REASONABLE
10 DOUBT. THE PRESUMPTION OF INNOCENCE ACCOMPANIES THIS
11 DEFENDANT FROM THE TIME OF HIS ARRAIGNMENT, FROM THE TIME
12 OF HIS APPEARANCE IN THIS COURT, AND THROUGHOUT EVERY STAGE
13 OF THIS TRIAL AND CONTINUES WITH THE DEFENDANT EVEN AFTER
14 YOU RETIRE TO THE JURY ROOM TO CONSIDER YOUR VERDICT. THE
15 PRESUMPTION OF INNOCENCE CONTINUES IN EXISTENCE FOR THE
16 BENEFIT OF THE DEFENDANT UNTIL YOU THE JURY REACH THE
17 CONCLUSION THAT THE STATE HAS PROVEN THE GUILT OF THE
18 DEFENDANT OR DEFENDANTS BEYOND A REASONABLE DOUBT. THE
19 STATE IS NOT REQUIRED TO PROVE THE GUILT OF A DEFENDANT
20 BEYOND ALL DOUBT OR BEYOND EVERY DOUBT, BUT BEYOND A
21 REASONABLE DOUBT. PROOF BEYOND A REASONABLE DOUBT AS USED
22 IN THESE INSTRUCTIONS MEANS THE KIND OF DOUBT THAT WOULD
23 CAUSE A REASONABLE PERSON TO HESITATE TO ACT. I INSTRUCT
24 YOU THAT THIS DEFENDANT IS ENTITLED TO EVERY REASONABLE
25 DOUBT, OR THESE DEFENDANTS, ARE ENTITLED TO EVERY

JURY CHARGE

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1 REASONABLE DOUBT ARISING IN THE WHOLE CASE OR ARISING IN
2 ANY DEFENSES MADE BY THE DEFENDANTS. IF UPON ANY ISSUE OF
3 FACT ESSENTIAL TO CONVICTION AND A VERDICT OF GUILTY, YOU
4 HAVE A REASONABLE DOUBT AS TO HOW THAT ISSUE WOULD BE
5 RESOLVED IT WOULD BE YOUR DUTY TO RESOLVE THAT DOUBT IN
6 FAVOR OF THE DEFENDANT. A DEFENDANT, LADIES AND GENTLEMEN,
7 IS NOT REQUIRED TO PROVE HIS INNOCENCE BUT THE STATE IS
8 REQUIRED IN LAW TO PROVE EVERY ELEMENT OF THE OFFENSE
9 CHARGED AGAINST THE DEFENDANT BY EVIDENCE WHICH SATISFIES
10 YOU THE JURY OF HIS GUILT BEYOND A REASONABLE DOUBT BEFORE
11 YOU CAN CONVICT THE DEFENDANT AND FIND HIM GUILTY. IF
12 THEN, UPON THE WHOLE CASE, YOU HAVE A REASONABLE DOUBT AS
13 TO THE GUILT OF INNOCENCE OF A DEFENDANT HE IS ENTITLED TO
14 THAT REASONABLE DOUBT AND WOULD BE ENTITLED TO AN ACQUITTAL
15 AND A VERDICT OF NOT GUILT. LIKEWISE ---- OR ACTUALLY ON
16 THE OTHER HAND, IF UPON THE WHOLE CASE, YOU FIND THAT THE
17 DEFENDANT [SIC] HAS PROVEN BY EVIDENCE WHICH SATISFIES YOU,
18 THE JURY, OF THE GUILT OF THE DEFENDANT BEYOND A REASONABLE
19 DOUBT, THEN IN SUCH CIRCUMSTANCES IT WOULD EQUALLY BE YOUR
20 DUTY TO CONVICT THE DEFENDANT AND FIND HIM GUILTY.

21 NOW I INSTRUCT YOU, OR I HAVE ALREADY TOLD YOU,
22 THAT THE INDICTMENT IN THIS CASE IS NOT EVIDENCE AND CANNOT
23 BE CONSIDERED BY YOU AS EVIDENCE IN THE CASE. AN
24 INDICTMENT IS SIMPLY THE FORMAL WRITTEN INSTRUMENT WHICH
25 CONTAINS THE CHARGE AGAINST THE DEFENDANT AND SERVES AS THE

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1 FORMAL DOCUMENT BY WHICH THIS MATTER IS BROUGHT TO COURT.

2 NOW DURING THIS TRIAL, YOU AND I, LADIES AND

3 GENTLEMEN, HAVE CERTAIN DUTIES TO PERFORM. AS THE TRIAL

4 JUDGE IT IS MY RESPONSIBILITY TO PRESIDE OVER THE TRIAL OF

5 THIS CASE AND I ALSO HAVE THE DUTY TO RULE UPON AND PASS

6 UPON THE ADMISSIBILITY OF THE EVIDENCE OFFERED DURING THE

7 TRIAL. YOU ARE TO CONSIDER ONLY THE COMPETENT EVIDENCE

8 BEFORE YOU AND YOU ARE TO DISREGARD AND DISABUSE FROM YOUR

9 MIND ANY TESTIMONY ORDERED STRICKEN FROM THE RECORD IN THIS

10 CASE DURING THE PROGRESS OF THE TRIAL, IF THERE BE ANY.

11 AND YOU ARE TO CONSIDER ONLY THE TESTIMONY WHICH HAS BEEN

12 PRESENTED BY THE WITNESSES FROM THE WITNESS STAND TOGETHER

13 WITH ANY EXHIBITS WHICH HAVE BEEN MADE A PART OF THE RECORD

14 AND WHICH YOU WILL BE ABLE TO TAKE TO YOUR JURY ROOM WITH

15 YOU.

16 I HAVE THE ADDITIONAL DUTY TO CHARGE YOU THE LAW

17 APPLICABLE TO THIS CASE. I, AS THE PRESIDING JUDGE, AM THE

18 SOLE JUDGE OF THE LAW IN THIS CASE AND IT IS YOUR DUTY AS

19 JURORS TO ACCEPT AND APPLY THE LAW AS I NOW STATE IT TO

20 YOU. IF YOU HAVE ANY PRECONCEIVED IDEAS ON WHAT THE LAW IS

21 OR WHAT THE LAW OUGHT TO BE YOU ARE OBLIGATED UNDER THE

22 OATH THAT YOU HAVE TAKEN TO ABANDON THIS PRECONCEPTION ON

23 YOUR PART BECAUSE YOU'RE SWORN TO ACCEPT THE LAW AND APPLY

24 THE LAW PRECISELY AS I STATE IT TO YOU. IN EVERY CASE

25 TRIED IN THIS COURT BEFORE A JURY, THE JURY BECOMES THE

JURY CHARGE

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1 SOLE AND EXCLUSIVE JUDGE OF THE FACTS OF THE CASE. YOU,
2 THE JURY ARE THE JUDGES OF THE FACTS IN THIS CASE. THIS
3 COURT IS THE JUDGE OF THE LAW IN THIS CASE. THE
4 CONSTITUTION OF OUR STATE HAS DECLARED THAT A TRIAL JUDGE
5 SHALL NOT INTIMATE, STATE, COMMENT UPON OR MAKE ANY
6 STATEMENT TO A TRIAL JURY ABOUT THE FACTS OF THE CASE.
7 SINCE YOU, THE JURY, ARE THE SOLE JUDGES OF THE FACTS OF
8 THIS CASE, YOU ARE NOT TO INFER FROM ANYTHING THE I HAVE
9 SAID DURING THE PROGRESS OF THIS TRIAL OR ANYTHING I SAY
10 NOW DURING THE COURSE OF THESE INSTRUCTIONS TO YOU THAT I
11 HAVE ANY OPINION ABOUT THE FACTS OF THE CASE. THE LAW DOES
12 NOT PERMIT ME TO HAVE AN OPINION ABOUT THE FACTS. THIS IS
13 A MATTER SOLELY FOR YOU THE JURY TO DETERMINE. AS JURORS,
14 THEN, IT IS YOUR DUTY, AS I HAVE INSTRUCTED YOU, TO
15 DETERMINE THE EFFECT, THE VALUE, THE WEIGHT, AND THE TRUTH
16 OF THE EVIDENCE PRESENTED DURING THE TRIAL. NECESSARILY,
17 YOU MUST ASSESS THE CREDIBILITY OF THE WITNESSES WHO HAVE
18 TESTIFIED IN THIS CASE. CREDIBILITY IS SIMPLY A LEGALISTIC
19 TERM THAT MEANS BELIEVABILITY. IT BECOMES YOUR DUTY AS
20 JURORS TO ANALYZE AND TO EVALUATE THE EVIDENCE AND
21 DETERMINE THE EVIDENCE WHICH CONVINCES YOU OF ITS TRUTH.
22 NOW I INSTRUCT YOU THAT IN DETERMINING THE QUESTION OF
23 CREDIBILITY OR BELIEVABILITY OF THE WITNESSES WHO HAVE
24 TESTIFIED, YOU MAY BELIEVE ONE WITNESS AS AGAINST SEVERAL
25 WITNESSES OR SEVERAL WITNESSES AS AGAINST ONE WITNESS. YOU

JURY CHARGE

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1 MAY BELIEVE PART OF THE TESTIMONY OF A WITNESS AND REJECT
2 THE REMAINING PART OF THE TESTIMONY OF THE SAME WITNESS.
3 YOU MAY BELIEVE THE TESTIMONY OF A WITNESS IN ITS ENTIRETY
4 OR REJECT THE TESTIMONY OF A WITNESS IN ITS ENTIRETY. YOU
5 MAY CONSIDER WHETHER ANY WITNESS HAS ESTABLISHED TO YOU ANY
6 INTEREST, ANY BIAS, OR ANY PREJUDICE IN THE CASE. YOU MAY
7 CONSIDER THE DEMEANOR OF A WITNESS, THAT IS, THE APPEARANCE
8 OF THE WITNESS FROM THE WITNESS STAND. AND YOU MAY, OF
9 COURSE, CONSIDER THE OPPORTUNITY FOR KNOWLEDGE CONCERNING
10 THOSE THINGS ABOUT WHICH A WITNESS TESTIFIED. THESE
11 CONSIDERATIONS YOU DO NOT EXERCISE ARBITRARILY, BUT IF IN
12 YOUR GOOD JUDGMENT THERE IS SOUND REASON IN THE RECORD FOR
13 SO DOING. BECAUSE YOUR OBJECTIVE, MR. FOREMAN AND LADIES
14 AND GENTLEMEN OF THE JURY, IS TO FIND THE TRUTH WHETHER IT
15 COMES FROM A WITNESS OR THE WITNESSES FOR THE STATE OF
16 SOUTH CAROLINA OR A WITNESS OR WITNESSES FOR THE DEFENDANT
17 AND IN DOING SO, IN EXERCISING YOUR MENTAL PROCESSES AND IN
18 DETERMINING WHAT YOU CONSIDER TO BE TRUE. THE LAW SIMPLY
19 REQUIRES THAT YOU EXERCISE YOUR GOOD JUDGMENT, YOUR COMMON
20 SENSE, YOUR SENSE OF LOGIC AND REASON, AND YOUR EXPERIENCES
21 IN LIFE. YOU THEN APPLY THESE ATTRIBUTES OF ABILITY TO THE
22 EVIDENCE AND DETERMINE WHAT YOU THE JURY CONSIDER TO BE THE
23 TRUTHFUL EVIDENCE AND TO THESE TRUE STATE OF FACTS AS
24 DETERMINED BY YOU, YOU WILL APPLY TO THE LAW THAT I WILL
25 GIVE YOU.

JURY CHARGE

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1 NOW, YOU HAVE HEARD TESTIMONY OF EYE WITNESS
2 IDENTIFICATION BY CERTAIN WITNESSES IN THIS CASE. SUCH EYE
3 WITNESS TESTIMONY IS A STATEMENT OF AN IMPRESSION OF THE
4 WITNESS. AS WITH ANY OTHER WITNESS, YOU MUST FIRST DECIDE
5 WHETHER THE EYE WITNESSES OR EYE WITNESS, SINGULAR, OR --
6 OR IS TELLING THE TRUTH AS THEY UNDERSTAND IT. YOU MUST
7 ALSO DECIDE HOW ACCURATE THE IDENTIFICATION WAS. WHETHER
8 THE WITNESS, IN FACT, SAW WHAT HE OR SHE THOUGHT HE SAW
9 GIVEN THE EXTENT OF HOW MUCH OF AN OPPORTUNITY THE WITNESS
10 HAD TO OBSERVE THE DEFENDANT AT THE TIME OF THE CONDUCT AND
11 GIVING THE CIRCUMSTANCES UNDER WHICH THE WITNESS LATER MADE
12 THE IDENTIFICATION. A WITNESS MAY BE MISTAKEN EVEN THOUGH
13 HE IS TRUTHFUL IN THE SENSE THAT HE HONESTLY BELIEVES WHAT
14 HE SAYS IS THE TRUTH. CONSEQUENTLY, IT IS UP TO YOU TO
15 DETERMINE NOT ONLY TRUTHFULNESS BUT ALSO ACCURACY AND
16 RELIABILITY AS YOU ACCESS THE TESTIMONY OF A WITNESS.

17 IN EVALUATING THE RELIABILITY OF THE
18 IDENTIFICATION OF THE DEFENDANT, YOU MUST CONSIDER THE
19 CIRCUMSTANCES UNDER WHICH THE EYE WITNESS MADE THE
20 OBSERVATION. IN THAT REGARD, YOU MAY CONSIDER WHETHER THE
21 WITNESS KNEW THE DEFENDANT BEFORE THE CRIME TOOK PLACE;
22 WHETHER THE WITNESS HAD A GOOD OPPORTUNITY TO SEE THE
23 PERSON; WHETHER THE WITNESS SEEMED AS THOUGH HE WAS PAYING
24 CAREFUL ATTENTION TO WHAT WAS GOING ON; WHETHER THE
25 DESCRIPTION GIVEN BY THE WITNESS WAS CLOSE TO THE WAY THE

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1 DEFENDANT ACTUALLY LOOKED; HOW MUCH TIME HAD PASSED BETWEEN
2 THE CRIME AND THE FIRST IDENTIFICATION BY THE WITNESS;
3 WHETHER AT AN EARLIER TIME THE WITNESS HAD FAILED TO
4 IDENTIFY THE DEFENDANT AND HOW CERTAIN OR CONFIDENT THE
5 WITNESS WAS AS TO THE IDENTIFICATION. LIKE ALL OTHER
6 FACTORS IN THIS CASE, THESE ARE MATTERS FOR THE STATE TO
7 PROVE BEYOND A REASONABLE DOUBT. IF YOU'RE NOT CONVINCED
8 BEYOND A REASONABLE DOUBT AS TO THE ACCURACY OF THE
9 IDENTIFICATION AND THAT IT WAS THE DEFENDANT WHO COMMITTED
10 THE CRIME, YOU MUST FIND THE DEFENDANT NOT GUILTY. ON THE
11 OTHER HAND, IF YOU ARE CONVINCED BEYOND A REASONABLE DOUBT
12 AS TO THE ACCURACY OF THE IDENTIFICATION THEN IT WOULD BE
13 YOUR DUTY TO FIND THE DEFENDANT GUILTY.

14 NOW I WILL ALSO TELL YOU THAT THE TESTIMONY OF A
15 WITNESS MAY BE DISCREDITED OR IMPEACHED BY SHOWING THAT HE
16 PREVIOUSLY MADE STATEMENTS WHICH ARE INCONSISTENT WITH HIS
17 PRESENT TESTIMONY. THE EARLIER CONTRADICTED STATEMENTS ARE
18 ALSO ADMISSIBLE TO ESTABLISH THE TRUTH OF THESE STATEMENTS.
19 IT IS THE PROVINCE OF THE JURY TO DETERMINE THE CREDIBILITY
20 IF ANY TO BE GIVEN THE EARLIER STATEMENTS AND TO BE GIVEN
21 THE TESTIMONY OF THE WITNESS WHO HAS BEEN IMPEACHED. THE
22 TESTIMONY OF A WITNESS MAY BE DISCREDITED OR IMPEACHED BY
23 SHOWING THAT THE WITNESS HAD BEEN CONVICTED OF A CRIME.
24 PRIOR CONVICTION DOES NOT RENDER A WITNESS INCOMPETENT TO
25 TESTIFY OR NECESSARILY INDICATE THAT THE WITNESS IS NOT

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1 RELIABLE. SUCH CONVICTION IS MERELY A CIRCUMSTANCE WHICH
2 YOU MAY CONSIDER IN DETERMINING THE CREDIBILITY OF THE
3 WITNESS. IT IS FOR YOU TO DETERMINE THE WEIGHT, IF ANY, TO
4 BE GIVEN TO ANY PRIOR CONVICTION AS IMPEACHMENT IN
5 DETERMINING CREDIBILITY.

6 I'M NOW GOING TO INSTRUCT ON THE LAW APPLICABLE
7 TO THIS INDICTMENT. I HAVE IDENTIFIED THIS PARTICULAR
8 INDICTMENT FOR YOU. IT IS AGAIN THE STATE VS. DERRICK
9 MARCEL HOLLINGSWORTH, AND THE STATE VS. CORTREAL LAMONT
10 SWINTON. THE CHARGES IN THESE TWO INDICTMENTS ARE FOR
11 MURDER. SECTION 16-3-10 OF THE CODE OF LAWS OF SOUTH
12 CAROLINA PROVIDES THAT, "MURDER IS THE KILLING OF ANY
13 PERSON WITH MALICE OF FORETHOUGHT, EITHER EXPRESS OR
14 IMPLIED." MURDER IS THE UNLAWFUL KILLING OF ANY PERSON
15 WITH MALICE OF FORETHOUGHT, EITHER EXPRESS OR IMPLIED.
16 HENCE, IN ORDER TO CONVICT SOMEONE OF MURDER YOU NEED TO
17 KNOW WHAT THOSE TERMS MEAN. THE STATE MUST, NOT ONLY PROVE
18 THAT THE DEFENDANT KILLED THE DECEASED, BUT THAT HE DID SO
19 WITH MALICE OF FORETHOUGHT. WHEN I REFER AGAIN TO HE, IT
20 COULD BE HE OR THEY. SUCH PROOF MUST BE BEYOND A
21 REASONABLE DOUBT. MALICE OF FORETHOUGHT IS AN ESSENTIAL
22 ELEMENT IN THE CRIME OF MURDER. WHAT IS MALICE? MALICE IS
23 DEFINED IN THE LAW OF HOMICIDE AS A TERM OF ART. THIS IS A
24 TECHNICAL TERM PURPORTING WICKEDNESS EXCLUDING JUST CAUSE
25 AND LEGAL EXCUSE. IT IS SOMETHING WHICH SPRINGS FROM

JURY CHARGE

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1 WICKEDNESS, FROM DEPRAVITY, FROM A DEPRAVED SPIRIT, FROM A
2 HEART OF DEVOID OF SOCIAL DUTY AND FATALLY BENT ON
3 MISCHIEF. THE WORDS EXPRESS OR IMPLIED MALICE DO NOT MEAN
4 DIFFERENT KINDS OF MALICE BUT MERELY THE MANNER OR WAY IN
5 WHICH THE ONLY KIND OF MALICE KNOWN TO THE LAW MAY BE SHOWN
6 TO EXIST. THAT IS TO SAY, EITHER BY DIRECT EVIDENCE OR BY
7 INFERENCE. MALICE MAY EXPRESSED AS WHERE PREVIOUS THREATS
8 OF VENGEANCE OR LYING IN WAIT OR OTHER CIRCUMSTANCES SHOW
9 DIRECTLY THAT AN INTENT TO KILL WAS ENTERTAINED. MALICE
10 MAY INFERRED WHERE, THERE IS NO EXPRESS INTENT TO KILL IS
11 PROVED BY DIRECT EVIDENCE, IT MAY BE INFERRED FROM THE
12 FACTS AND CIRCUMSTANCES WHICH ARE PROVEN. MALICE MAY BE
13 INFERRED FROM THE WILLFUL DELIBERATE AND INTENTIONAL DOING
14 OF A UNLAWFUL ACT WITHOUT JUST CAUSE OR EXCUSE. IN OTHER
15 WORDS, IN ITS GENERAL SIGNIFICATION, MALICE MEANS THE DOING
16 OF A WRONGFUL ACT INTENTIONALLY WITHOUT JUSTIFICATION OR
17 LEGAL EXCUSE. MALICE MAY BE INFERRED FROM THE USE OF A
18 DEADLY WEAPON. BUT EVEN IF FACTS PROVEN ARE PROVEN
19 SUFFICIENT TO GIVE RISE TO AN INFERENCE OF MALICE, THIS
20 INFERENCE WOULD SIMPLY BE AN EVIDENTIARY FACT TO BE TAKEN
21 INTO CONSIDERATION BY YOU THE JURY ALONG WITH ALL OF THE
22 OTHER EVIDENCE IN THIS CASE. AND YOU MAY GIVE IT SUCH
23 WEIGHT AS YOU DETERMINE IT SHOULD RECEIVE AS TO WHETHER OR
24 NOT MALICE HAS BEEN PROVEN BEYOND A REASONABLE DOUBT. AND
25 IT WILL BE OBSERVED, LADIES AND GENTLEMEN, THAT THERE MUST

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1 BE MALICE OF FORETHOUGHT. AND WHILE THE LAW DOES NOT
2 REQUIRE THAT MALICE SHALL EXIST FOR ANY PARTICULAR LENGTH
3 OF TIME BEFORE THE COMMISSION OF THE ACT, IT MUST BE A
4 FORETHOUGHT. THERE MUST BE A COMBINATION OF THE PREVIOUS
5 EVIL INTENT AND THE ACT PRODUCING THE FATAL RESULT. BUT
6 THE STATE IS NOT REQUIRED TO PROVE A MOTIVE FOR HOMICIDE.

7 NOW LADIES AND GENTLEMEN, I WOULD CHARGE YOU THAT
8 THE LAW OF AIDING AND ABETTING WHEN TWO OR MORE PERSONS
9 ACTING WITH A COMMON DESIGN OR INTENT, ARE PRESENT AT THE
10 COMMISSION OF THE CRIME, IT MATTERS NOT BY WHOSE IMMEDIATE
11 HAND OR AGENCY THE CRIME IS COMMITTED. ALL ARE EQUALLY
12 GUILTY. THE HAND OF ONE IS THE HAND OF ALL. BUT THERE
13 MUST HAVE BEEN A COMMON DESIGN OR AN INTENT TO COMMIT THE
14 CRIME AND THE CRIME MUST HAVE BEEN COMMITTED PURSUANT
15 THERETO. MERE PRESENCE ALONE IS NOT SUFFICIENT. THERE
16 MUST BE A DESIGN OR INTENT. MERE PRESENCE CAN ONLY CREATE
17 A SUSPICION AND YOU CANNOT FIND THE DEFENDANT, OR
18 DEFENDANTS, GUILTY BECAUSE OF SUSPICION, NOR DOES MERE
19 PRESENCE SUPPORT AN INFERENCE OF INTENT TO ENGAGE IN OR AID
20 CRIMINAL CONDUCT. SUSPICIOUS CIRCUMSTANCES, LIKE MERE
21 PRESENCE, ARE NOT SUFFICIENT FOR A FINDING OF GUILT AGAINST
22 ANY DEFENDANT. A PERSON MUST PERSONALLY COMMIT THE CRIME
23 OR BE PRESENT AT THE SCENE OF THE CRIME AND INTENTIONALLY
24 OR THROUGH A COMMON DESIGN, AID ABET OR ASSIST IN THE
25 COMMISSION OF THE CRIME THROUGH SOME OVERT ACT.

JURY CHARGE

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1 NOW, LADIES AND GENTLEMEN, I HAVE ABOUT ---- WELL
2 THERE IS ONE OTHER THING I NEED TO TELL YOU. THE LAW NEVER
3 IMPOSES UPON A DEFENDANT IN A CRIMINAL CASE THE BURDEN OR
4 DUTY OF CALLING ANY WITNESSES OR PRODUCING ANY EVIDENCE.
5 AND A DEFENDANT IN A CRIMINAL CASE HAS THE RIGHT UNDER THE
6 UNITED STATES CONSTITUTION AND THE SOUTH CAROLINA
7 CONSTITUTION NOT TO TAKE THE WITNESS STAND AND TESTIFY.
8 THE EXISTENCE OF THE DEFENDANT OF THE RIGHT NOT TO TESTIFY
9 ---- THE EXERCISE OF THE DEFENDANT OF THE RIGHT NOT TO
10 TESTIFY OR PRESENT EVIDENCE SHOULD NOT WEIGH IN THE
11 SLIGHTEST AGAINST THE DEFENDANT AND SHOULD PLAY NO RULE IN
12 YOUR DISCUSSIONS AND DELIBERATIONS. NO INFERENCE OF ANY
13 KIND MAY BE DRAWN FROM THE FAILURE OF A DEFENDANT TO
14 TESTIFY OR TO PRESENT ANY OTHER FORM OF EVIDENCE. IN
15 PARTICULAR, NO PRESUMPTION OF INNOCENCE OR GUILT MAY BE
16 DRAWN FROM THE FAILURE OF THE DEFENDANT TO TESTIFY OR OFFER
17 EVIDENCE.

18 NOW, LADIES AND GENTLEMEN, I'VE ALMOST CONCLUDED
19 MY INSTRUCTIONS TO YOU AND YOU'VE BEEN VERY ATTENTIVE AND I
20 THANK YOU FOR THAT. I DO WANT TO MAKE THESE COMMENTS TO
21 YOU. YOU ARE THE JURY IN THIS CASE AND AS SUCH YOU ARE NOT
22 PARTISANS OR ADVOCATES FOR THE STATE OF SOUTH CAROLINA OR
23 FOR THE DEFENDANT. YOU DO NOT SERVE AS JURORS TO REWARD
24 YOUR FRIENDS OR PUNISH YOUR ENEMIES. OBVIOUSLY SUCH A
25 PERVERTED SYSTEM OF JUSTICE WOULD BE INTOLERABLE. YOU HAVE

JURY CHARGE

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1 AND BEEN SELECTED BY THE STATE OF SOUTH CAROLINA AND THESE
2 TWO DEFENDANTS AS FAIR AND IMPARTIAL JURORS IN THIS CASE.
3 IT IS YOUR DUTY THEN BY YOUR JOINT DELIBERATIONS TO
4 DETERMINE THE TRUTH IN THIS CASE. THEN TO THE FACTS WHICH
5 YOU DETERMINE TO BE TRUE, YOU TAKE AND APPLY THE LAW WHICH
6 THE COURT AS GIVEN IT TO YOU AND THUS ARRIVE AT A VERDICT
7 WHICH DOES SPEAK THE TRUTH. THE WORD VERDICT HAS A LATIN
8 DERIVATIVE. IT COMES FROM THE LATIN PHRASE, *VEREDICTO*,
9 MEANING TO SPEAK THE TRUTH. AND WHEN YOU HAVE ACCOMPLISHED
10 THESE RESPONSIBILITIES YOU WILL HAVE SATISFIED YOUR OATH AS
11 JURORS AND YOU WILL HAVE DISCHARGED YOU DUTY TO THIS COURT.

12 I'M NOW GOING TO INSTRUCT YOU ON THE FORMS OF THE
13 VERDICT IN THIS CASE AND I WOULD INSTRUCT THAT THE VERDICT
14 THAT YOU RENDER IN THIS CASE MUST BE VERDICT OF EACH AND
15 EVERY JUROR. IT MUST BE A YOUR UNANIMOUS VERDICT. ALL 12
16 OF YOU MUST AGREE ON THE VERDICT THAT YOU CHOOSE TO WRITE
17 IN THIS CASE. IN EACH OF THESE TWO CASES THERE ARE ONLY
18 TWO POSSIBLE VERDICTS. YOU MAY FIND ONE DEFENDANT, MR.
19 HOLLINGSWORTH, EITHER NOT GUILTY OR GUILTY. AND YOU MIGHT
20 FIND MR. SWINTON EITHER GUILTY OR NOT GUILTY. I WILL TELL
21 YOU THAT I HAVE TYPED THE POSSIBLE VERDICT FORMS ON THESE
22 TWO SHEETS OF PAPER, ONE FOR EACH CASE. AND I WILL TELL
23 YOU THAT THE ORDER IN WHICH I HAVE LISTED THEM ON HERE HAS
24 NO SIGNIFICANCE WHATSOEVER. YOU SHOULD NOT INFER OR
25 CONCLUDE THAT I HAVE ANY OPINION AS TO WHAT YOUR VERDICT IS

JURY CHARGE

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1 BY THE ORDER OR SEQUENCE IN WHICH THEY ARE WRITTEN ON THESE
2 VERDICT FORMS. OBVIOUSLY I HAD TO PUT SOMETHING FIRST AND
3 I HAD TO PUT SOMETHING SECOND. BUT YOU SHOULD NOT INFER
4 THAT THE WAY THAT I HAVE LISTED THEM ON HERE IN ANYWAY
5 INSINUATES ANYTHING AS TO WHAT I THINK YOUR VERDICT SHOULD
6 BE BECAUSE IT DOES NOT. THAT IS A MATTER THAT IS SOLELY UP
7 TO YOU AND NOT UP TO THE COURT. ONCE AGAIN, WE HAVE THE
8 TWO VERDICT FORMS, SIMPLY THE FORMALITY, THE STATE OF SOUTH
9 CAROLINA, THE TWO DEFENDANTS, "WE THE JURY BY UNANIMOUS
10 CONSENT FIND THE DEFENDANT DERRICK HOLLINGSWORTH EITHER
11 GUILTY OF MURDER" OR "NOT GUILTY" AND YOU WOULD CHECK
12 EITHER ONE OR THE OTHER AND YOU WOULD SIGN YOUR, MR.
13 FOREMAN, WHEN YOU HAVE REACHED A UNANIMOUS VERDICT. AND
14 THE SAME APPLIES TO THE VERDICT FORM ON MR. SWINTON. THE
15 STATE OF SOUTH CAROLINA, THE FORMALITIES, MR. SWINTON, "WE
16 THE JURY BY UNANIMOUS CONSENT FIND THE DEFENDANT CORTREAL
17 SWINTON GUILTY OF MURDER" OR NOT "GUILTY OF MURDER."

18 NOW LADIES AND GENTLEMEN, I'M GOING TO ASK YOU
19 RETIRE TO YOUR JURY ROOM AND ONCE AGAIN I WANT TO THANK YOU
20 FOR YOUR ATTENTION THAT YOU'VE GIVEN TO THIS TRIAL. I AM
21 GOING TO ASK YOU TO GO TO YOUR JURY ROOM BUT NOT BEGIN YOUR
22 DELIBERATIONS JUST YET. THE LAW REQUIRES THAT I TAKE UP
23 CERTAIN MATTERS OF LAW WITH THE ATTORNEYS. IT MAY EVEN BE
24 NECESSARY THAT I BRING YOU BACK INTO THE COURTROOM FOR
25 ADDITIONAL INSTRUCTIONS. IF THAT IS NOT NECESSARY, THEN

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1 THE BAILIFF WILL BRING YOU THE VERDICT FORM, THE TWO
2 VERDICT FORMS, ALONG WITH ALL OF THE EXHIBITS IN THIS CASE
3 AND WILL INSTRUCT YOU TO BEGIN YOUR DELIBERATIONS. THE
4 BAILIFFS WILL BE STATIONED OUTSIDE OF YOUR JURY ROOM DOOR
5 FOR SECURITY DURING YOUR DELIBERATIONS. WHEN YOU HAVE
6 REACHED YOUR VERDICT YOU MAY NOTIFY THEM SIMPLY BY KNOCKING
7 ON THE DOOR AND WE WILL RETURN YOU TO THE COURTROOM AS SOON
8 AS POSSIBLE. IF YOU NEED TO COMMUNICATE WITH ME, SIMPLY
9 GIVE THE BAILIFF A SIGNED NOTE AND HE WILL GIVE IT TO ME
10 AND WE WILL TRY TO RESOLVE YOUR PROBLEM. THANK YOU, YOU
11 MAY GO TO YOUR JURY ROOM. PLEASE DO NOT BEGIN YOUR
12 DELIBERATIONS JUST YET.

13 (WHEREUPON THE JURY EXITED THE COURT ROOM AT 2:07
14 P.M. AND THE FOLLOWING PROCEEDINGS WERE HAD.)

15 THE COURT: ARE THERE ANY ADDITIONS OR EXCEPTIONS
16 ON BEHALF OF THE STATE, MR. BELLAMY, MR. HUMPHRIES?

17 MR. HUMPHRIES: YOUR HONOR, WOULD YOU TAKE THE
18 DEFENDANTS FIRST. WE MAY HAVE TO TAKE UP A MATTER AT SIDE
19 BAR.

20 THE COURT: ALL RIGHT?

21 MR. CHRISCO: YOUR HONOR, DID YOU MENTION
22 ANYTHING ABOUT THE NUMBER OF WITNESSES, ABOUT THE NUMBER OF
23 WITNESSES?

24 THE COURT: I DIDN'T SAY IT IN SO MANY WORDS. I
25 SAID THEY COULD BELIEVE ALL OF A WITNESS OR PART OF A

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1 WITNESS AND IT DIDN'T MATTER FROM WHICH SIDE. LET ME SEE
2 IF I CAN FIND IT.

3 MR. CHRISCO: THE NUMBER OF WITNESS. THE WEIGHT
4 TO BE GAINED FROM THE NUMBER OF WITNESSES FOR ONE SIDE
5 VERSUS THE OTHER SIDE.

6 THE COURT: I DIDN'T SAY THAT YOU DON'T DO IT BY
7 COUNTING WITNESSES, I SAID THAT "THESE CONSIDERATIONS,"
8 TALKING ABOUT THE THINGS THAT THEY CAN CONSIDER, "YOU DO
9 NOT EXERCISE ARBITRARILY BUT IN GOOD REASON ---- THERE'S
10 SOUND REASON FOR SO DOING. YOUR OBJECTIVE IS TO FIND THE
11 TRUTH WHETHER IT COMES FROM A WITNESS OR THE WITNESSES FOR
12 THE STATE OF SOUTH CAROLINA OR A WITNESS OR WITNESSES FOR
13 THE DEFENDANT AND YOU APPLY THOSE TO THE THINGS." NO, I
14 DID NOT ACTUALLY SAY ANYTHING ABOUT ACTUALLY COUNTING THE
15 WITNESSES, DIDN'T USE THAT TERM. DO YOU WANT THAT CHARGED?
16 FIRST, I THINK IT'S SUFFICIENT AS IT BUT I'LL HEAR YOU ON
17 THAT.

18 MR. CHRISCO: NO, YOUR HONOR. I THINK IT'S
19 SUFFICIENT AS IS. I JUST DIDN'T GRASP THE TERMINOLOGY.

20 THE COURT: I DON'T RECALL SAYING IT.

21 MR. CHRISCO: I THINK THAT'S GOOD ENOUGH, YOUR
22 HONOR.

23 THE COURT: YES, SIR, MR. MONCKTON?

24 MR. MONCKTON: NO ADDITIONS YOUR HONOR.

25 MR. HUMPHRIES: QUICK SIDE BAR, YOUR HONOR.

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1 THE COURT: YES, SIR.

2 (WHEREUPON, A SIDE BAR WAS HELD OFF THE RECORD.)

3 (WHEREUPON, THE SIDE BAR HAVING BEEN CONCLUDED
4 THE FOLLOWING TAKES PLACE ON THE RECORD.)

5 THE COURT: MR. CHRISCO, MR. MONCKTON, ANY
6 MOTIONS CONCERNING ----

7 MR. CHRISCO: YES, YOUR HONOR. THIS IS A MOTION
8 TO INSTRUCT THE JURY THAT THESE TWO DEFENDANTS ARE SEPARATE
9 AND APART AND THAT THEIR GUILT OR INNOCENCE SHOULD BE BASED
10 UPON SEPARATE AND NOT TOGETHER.

11 THE COURT: ALL RIGHT. I THINK THAT IS
12 APPROPRIATE. ANY OBJECTIONS TO THAT CHARGE, MR. HUMPHRIES?

13 MR. HUMPHRIES: NO OBJECTION, YOUR HONOR.

14 THE COURT: LET ME JUST WRITE DOWN EXACTLY WHAT
15 I'M GOING TO SAY SO THAT THERE WON'T BE ANY QUESTION. SEE
16 IF THERE'S AN OBJECTION TO THIS LANGUAGE, "YOU SHOULD
17 CONSIDER EACH INDICTMENT SEPARATELY AND SHOULD CONSIDER THE
18 EVIDENCE AGAINST EACH DEFENDANT SEPARATELY. THE STATE MUST
19 PRODUCE EVIDENCE WHICH PROVES TO YOU BEYOND A REASONABLE
20 DOUBT THAT EACH DEFENDANT IS GUILTY OF THE CRIME CHARGED."
21 ANY PROBLEM WITH THAT?

22 MR. HUMPHRIES: YES, SIR.

23 THE COURT: YOU'VE GOT A PROBLEM WITH THAT?

24 MR. HUMPHRIES: OH, NO, SIR. I'M SORRY.

25 THE COURT: MR. CHRISCO?

JURY CHARGE

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1 MR. CHRISCO: NO, SIR.

2 THE COURT: MR. MONCKTON?

3 MR. MONCKTON: NO OBJECTION, YOUR HONOR.

4 THE COURT: ALL RIGHT, BRING THE JURY BACK FOR
5 JUST A MOMENT, PLEASE.

6 (WHEREUPON, THE JURY ENTERED THE COURTROOM AND
7 THE FOLLOWING TAKES PLACE ON THE RECORD.)

8 THE COURT: MR. FOREMAN, LADIES AND GENTLEMEN, I
9 HAVE JUST ONE OTHER BRIEF INSTRUCTION TO YOU THAT I WANT TO
10 GIVE YOU AND THAT IS THAT YOU SHOULD CONSIDER EACH
11 INDICTMENT SEPARATELY AND SHOULD CONSIDER THE EVIDENCE
12 AGAINST EACH DEFENDANT SEPARATELY. THE STATE MUST PRODUCE
13 EVIDENCE WHICH PROVES TO YOU BEYOND A REASONABLE DOUBT THAT
14 EACH DEFENDANT IS GUILTY OF THE CRIME CHARGED. AND WITH
15 THOSE ADDITIONAL INSTRUCTIONS I'M GOING TO ASK YOU TO GO
16 BACK TO YOUR JURY ROOM BUT AGAIN WAIT JUST A MINUTE BEFORE
17 YOU BEGIN YOUR DELIBERATIONS. THANK YOU, YOU MAY GO TO
18 YOUR JURY ROOM. ALTERNATES WAIT OVER THERE, PLEASE. THANK
19 YOU.

20 (WHEREUPON, THE JURY RETIRED TO THE JURY ROOM AT
21 2:18 P.M.)

22 THE COURT: ANY EXCEPTIONS TO THE ADDITIONAL
23 CHARGES ON BEHALF OF THE STATE?

24 MR. HUMPHRIES: NONE ON BEHALF OF THE STATE, YOUR
25 HONOR.

JURY CHARGE

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1 THE COURT: MR. CHRISCO?

2 MR. CHRISCO: NONE ON BEHALF OF DEFENDANT
3 SWINTON, YOU HONOR.

4 THE COURT: MR. MONCKTON?

5 MR. MONCKTON: NO, SIR, YOUR HONOR.

6 THE COURT: COUNSEL, IF Y'ALL WILL CHECK THE
7 EXHIBITS. MAYBE THEY'VE ALREADY BEEN CHECKED. MAY SURE
8 THE MATTERS THAT ARE GOING TO THE JURY ARE THE MATTERS THAT
9 HAVE BEEN ADMITTED INTO EVIDENCE. HERE ARE THE VERDICT
10 FORMS. GIVE THOSE TO THE JURY ALONG WITH THE EVIDENCE AND
11 TELL THEM THAT THEY CAN BEGIN THEIR DELIBERATIONS.

12 (WHEREUPON, THE VERDICT FORMS AND EXHIBITS WERE
13 DELIVERED TO THE JURY ROOM AND DELIBERATIONS BEGAN AT 2:22
14 P.M.)

15 THE COURT: I WANT TO ADDRESS A FEW REMARKS TO
16 THE TWO ALTERNATES. THE PURPOSE OF DRAWING ALTERNATES IN A
17 CASE SUCH AS THIS IS IN CASE ONE OR MORE OF THE JURORS
18 BECOMES ILL AND FOR SOME OTHER REASON CAN'T SERVE THROUGH
19 THE ENTIRE CASE. FORTUNATELY ALL OF 12 PRINCIPAL JURORS IN
20 THE CASE HAVE REMAINED HEALTHY AND THE LAW DOES NOT ALLOW
21 ME TO HAVE MORE THAN 12 JURORS. AS I SAID ALL 12 JURORS
22 HAVE REMAINED HEALTH THROUGHOUT THE TRIAL OF THE CASE. SO
23 I'M GOING TO EXCUSE FROM ANY FURTHER SERVICE ON THIS CASE.
24 YOU'VE HEARD ALL THE EVIDENCE BUT YOU NOT GOING TO BE ABLE
25 TO PARTICIPATE IN THE DECISION BECAUSE I CAN ONLY HAVE THE

JURY CHARGE

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1 12 JURORS. I WOULD TELL YOU THAT NOT ONLY CAN I EXCUSE YOU
2 FROM ANY FURTHER SERVICE ON THIS CASE BUT THERE WILL BE NO
3 OTHER JURIES DRAWN THIS WEEK ON WHICH YOU WILL HAVE TO
4 SERVE. SO THIS WILL CONCLUDE YOUR SERVICES FOR THE HORRY
5 JURY FOR THIS TERM OF COURT.

6 TWO OR THREE POINTS. NUMBER ONE IS WHEN YOU HAVE
7 SERVED ON A JURY IN CIRCUIT COURT YOU HAVE MET YOUR
8 CITIZENSHIP OBLIGATIONS AS A JUROR FOR THE NEXT THREE
9 YEARS. THE FIRST YEAR YOU WILL BE DISQUALIFIED. WE
10 COULDN'T TAKE YOU IF YOU WANTED TO SERVE. THE SECOND AND
11 THIRD YEARS YOU HAVE AN EXEMPTION WHICH MEANS THAT IF YOU
12 WERE TO GET A SUMMONS FROM THE CLERK YOU COULD NOT BE
13 REQUIRED TO SERVE. SO YOU'VE REALLY MET YOUR CITIZENSHIP
14 REQUIREMENTS FOR JURY SERVICE IN THE CIRCUIT COURT, THAT IS
15 UP HERE IN THIS COURTHOUSE, EITHER THE CIVIL SIDE, COMMON
16 PLEASE, OR THE CRIMINAL SIDE, GENERAL SESSIONS FOR THE NEXT
17 THREE YEARS. I CAN'T HELP YOU WITH MAGISTRATE'S COURT. IF
18 YOU'RE SELECTED ON A JURY IN MAGISTRATE'S COURT YOU JUST
19 HAVE TO SERVE THERE AND I CAN'T HELP YOU WITH FEDERAL
20 COURT. BUT AS FAR AS THE CIRCUIT COURT IS CONCERNED YOU'VE
21 MET YOUR CITIZENSHIP OBLIGATIONS FOR THE NEXT THREE YEARS.
22 I'LL ALSO TELL YOU THAT NEXT WEEK SOMETIME YOU WILL GET A
23 SMALL CHECK FROM THE CLERK'S OFFICE THAT WILL IN NO WAY
24 COMPENSATE YOU FOR THE TIME THAT YOU'VE SPENT UP HERE THIS
25 WEEK. BUT IT'S A SMALL TOKEN OF APPRECIATION ON BEHALF THE

JURY CHARGE

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1 COUNTY FOR YOUR SERVICES THIS WEEK. AND FINALLY, IF YOU
2 NEED ANYTHING FROM THE CLERK'S OFFICE TO SHOW THAT YOU WERE
3 SERVING ON THE JURY TO TAKE TO YOUR EMPLOYER YOU CAN STOP
4 BY THE CLERK'S OFFICE ON THE FIRST FLOOR AND THEY WILL
5 FURNISH YOU WITH A LETTER THAT YOU CAN TAKE TO YOUR
6 EMPLOYER.

7 I WOULD ALSO TELL YOU THAT ONCE YOU HAVE BEEN
8 EXCUSED AS A JUROR IN THE CASE THERE IS NOTHING ILLEGAL
9 ABOUT YOUR TALKING TO ANYBODY ABOUT THE CASE OR WITH
10 ANYBODY TALKING TO YOU ABOUT THE CASE. IT IS A PRACTICE OF
11 WHICH I STRONGLY DISCOURAGE AND ONE I STRONGLY DISAPPROVE
12 OF BUT IT'S NOT ILLEGAL. YOU HAVE THE RIGHT TO TALK WITH
13 ANYBODY. YOU ALSO HAVE THE RIGHT NOT TO TALK WITH ANYBODY.
14 IF ANYBODY WANTS TO TALK WITH YOU ABOUT IT AND YOU DON'T TO
15 TALK TO THEM ABOUT AND THEY CONTINUE TO HARASS YOU AND
16 BOTHER YOU AFTER YOU TELL THEM YOU DON'T WANT TO TALK ABOUT
17 IT, YOU NOTIFY THE COURT AND I WILL DEAL WITH THEM. I
18 WOULD ASK IN THIS CASE, HOWEVER, THAT YOU NOT DISCUSS IT
19 WITH ANYBODY UNTIL AT LEAST A VERDICT HAS BEEN RENDERED
20 THIS CASE. YOU WON'T HAVE ANY WAY OF KNOWING THAT EXACTLY
21 BUT IT WILL PROBABLY BE SOMETIME LATER TODAY. SO I WILL
22 REQUEST THAT YOU NOT DISCUSS IT WITH ANYBODY UNTIL TOMORROW
23 WHEN THE VERDICT IN THIS CASE IS IN. BUT OTHER THAN THAT
24 THERE ARE NO RESTRICTIONS UPON YOUR TALKING WITH ANYBODY
25 ABOUT IT. I DO WANT TO THANK YOU FOR YOUR SERVICES AND THE

QUESTION FROM THE JURY

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1 TWO OF YOU ARE FREE TO GO. THANK YOU VERY MUCH. ALL
2 RIGHT. WE'LL BE AT EASE UNTIL HEAR FROM THE JURY.

3 (WHEREUPON, THE JURY KNOCKED WITH A QUESTION AT
4 4:47 P.M.)

5 (WHEREUPON, COURT'S EXHIBIT NUMBER 3 WAS MARKED.)

6 THE COURT: ALL RIGHT. WE HAVE RECEIVED A NOTE
7 FROM THE JURY IN WHICH INDICATED THEY NEEDED TO HEAR THE
8 TESTIMONY OF TWO WITNESSES. I HAVE GIVEN THAT NOTE TO THE
9 COURT REPORTER AND ASKED HER TO MARK IT AS A COURT'S
10 EXHIBIT ASKED HER TO KEY UP THE TESTIMONY. I BELIEVE SHE
11 HAS THAT READY FOR THEM TO HEAR. ANY OBJECTION TO THAT
12 PROCEDURE, MR. HUMPHRIES?

13 MR. HUMPHRIES: NO, SIR.

14 THE COURT: MR. CHRISCO?

15 MR. CHRISCO: NO, YOUR HONOR.

16 THE COURT: MR. MONCKTON?

17 MR. MONCKTON: NO, SIR, YOUR HONOR.

18 THE COURT: ALL RIGHT. BRING THEM IN, PLEASE.

19 (WHEREUPON, THE JURY ENTERED THE COURTROOM AT
20 5:09 P.M. AND THE FOLLOWING PROCEEDINGS WERE HAD.)

21 THE COURT: MR. FOREMAN, I HAVE RECEIVED YOUR
22 COMMUNICATION THAT YOU NEEDED TO HEAR THE TESTIMONY OF MS.
23 BROWN AND MS. CAMPBELL AND I HAVE ASKED THE COURT REPORTER
24 TO FIND THAT TESTIMONY FOR YOU AND SHE IS GOING PLAY IT FOR
25 YOU AT THIS TIME. I BELIEVE THAT IT IS THE TESTIMONY OF

QUESTION FROM THE JURY

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1 MS. BROWN WILL FIRST TESTIMONY THAT YOU WILL HEAR AND THEN
2 MS. CAMPBELL'S WILL BE SECOND. ALL RIGHT, MS. BABB.

3 (WHEREUPON, THE TESTIMONY OF KIM BROWN AND VICKY
4 CAMPBELL WAS PLAYED IN OPEN COURT FOR THE JURY.)

5 THE COURT: ALL RIGHT, LADIES AND GENTLEMEN, YOU
6 HAVE NOW HEARD THE TESTIMONY OF THE TWO WITNESSES THAT YOU
7 ASKED TO HEAR. I KNOW IT'S NOT ALWAYS CLEAR. IN A
8 COURTROOM LIKE THIS IT'S THE BEST THAT WE CAN DO. I HOPE
9 IT HELPS TO ANSWER SOME OF YOUR QUESTIONS AND YOU MAY GO
10 BACK TO YOUR JURY ROOM AND RESUME YOUR DELIBERATIONS.
11 THANK YOU VERY MUCH.

12 (WHEREUPON, AT 5:54 P.M. THE JURY AGAIN RETIRED
13 TO THE JURY ROOM AND RESUMED THEIR DELIBERATIONS.)

14 THE COURT: ANY OBJECTIONS ON THE WAY THE MATTER
15 WAS HANDLED FOR THE STAND POINT OF THE JURY'S QUESTIONS ON
16 BEHALF OF THE STATE?

17 MR. HUMPHRIES: NO, SIR.

18 THE COURT: MR. CHRISCO?

19 MR. CHRISCO: NO, YOUR HONOR.

20 THE COURT: MR. MONCKTON?

21 MR. MONCKTON: NONE, YOUR HONOR.

22 THE COURT: ALL RIGHT, WE'LL BE AT EASE UNTIL WE
23 HEAR FROM THE JURY.

24 (WHEREUPON, THE JURY KNOCKED AT 6:09 P.M. WITH A
25 QUESTION.)

QUESTION FROM THE JURY

500

1 THE COURT: ALL RIGHT, COUNSEL. WE HAVE ANOTHER
2 NOTE FROM THE JURY WHICH INDICATES THAT THEY'RE HAVING
3 DIFFICULTY REACHING A UNANIMOUS VERDICT ON ONE OF THE
4 DEFENDANTS. THEY DIDN'T SAY ANYTHING ABOUT THE VOTE ON THE
5 OTHER DEFENDANT. THE COURT PURPOSES TO, FIRST OF ALL, HAVE
6 THE COURT REPORTER MARK THIS AS A COURT'S EXHIBIT, AND THE
7 COURT PURPOSES TO HAVE THEM COME BACK IN AND THE COURT WILL
8 INQUIRE IF THEY HAVE REACHED A VERDICT ON ONE CASE. IF
9 THEY INDICATE THAT THEY HAVE, THEN HAVE THEM PASS UP THE
10 VERDICT ON THAT CASE WHICH THE COURT WOULD ACCEPT MAKING
11 SURE THAT IT IS A UNANIMOUS VERDICT, AND WOULD NOT PUBLISH
12 THAT VERDICT, AT LEAST NOT NOW IN THE PRESENCE OF THE JURY.
13 AND THEN WOULD GIVE THE JURY THE ALLEN CHARGE ON
14 HOLLINGSWORTH WHOM THEY SAY THEY HAVE NOT BEEN ABLE TO
15 REACH A VERDICT ON. IS THERE ANY OBJECTION TO THAT
16 PROCEDURE ON BEHALF OF THE STATE?

17 MR. HUMPHRIES: NONE.

18 THE COURT: MR. CHRISCO, ON HALF OF THE DEFENDANT
19 HOLLINGSWORTH?

20 MR. CHRISCO: MR. SWINTON?

21 THE COURT: MR. SWINTON, I'M SORRY.

22 MR. CHRISCO: NO, SIR.

23 THE COURT: MR. MONCKTON?

24 MR. MONCKTON: NO, SIR, YOUR HONOR.

25 THE COURT: ALL RIGHT. BRING THE JURY IN PLEASE.