

VOLUME ONE OF TWO VOLUMES

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from York County

J. Ernest Kinard, Jr., Circuit Court Judge

ANTONIO GORDON,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

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STATE OF SOUTH CAROLINA
COUNTY OF YORK

COURT OF GENERAL SESSIONS

STATE OF)
SOUTH CAROLINA)
-V-)
ANTONIO GORDON,)
MONTA GORDON, AND)
TERRANCE MCCREARY,)
DEFENDANTS)

TRANSCRIPT OF RECORD

98-GS-46-2847
98-GS-46-2853
98-GS-46-2860

JULY 12, 14, & 16, 1999
YORK, SOUTH CAROLINA

B E F O R E:
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1 (COURT IS IN SESSION ON JULY 12, 1999.)

2 THE COURT: I'VE BEEN IN THIS CASE SERVED WITH A
3 MOTION BY COUNSEL FOR ANTONIO GORDON MR.
4 D'AGOSTINO MOTION FOR SEPARATE TRIAL. I DO NOT
5 HAVE A MOTION ON BEHALF OF THE OTHERS, BUT I
6 UNDERSTAND THEY ARE ALSO MAKING SUCH MOTIONS.

7 MR. MATLOCK: YES, SIR. IF I MAY APPROACH.

8 (APPROACHES THE BENCH.)

9 MR. THOMPSON: THERE ARE THREE ADDITIONAL
10 INDICTMENTS THAT THE DEFENDANTS HAVE BEEN
11 INDICTED FOR DIRECTLY. ALL OF THEM, EACH ONE
12 CHARGED WITH ONE COUNT OF CARJACKING, ONE AS TO
13 EACH DEFENDANT. THEY WERE ACTUALLY TRUE BILLED
14 BACK IN OCTOBER OF 1998. THE DEFENSE IS I
15 BELIEVE AWARE OF EACH OF THE DEFENDANT'S CASES
16 OF THOSE INDICTMENTS. I'M JUST PLACING ON THE
17 RECORD NOW AND I BELIEVE EACH DEFENDANT IS
18 WAIVING A FORMAL ARRAIGNMENT ON THESE
19 INDICTMENTS AT THIS TIME.

20 THE COURT: IS THAT CORRECT, MR. D'AGOSTINO.

21 MR. D'AGOSTINO: YES, SIR. ANTONIO GORDON IS
22 WAIVING FORMAL ARRAIGNMENT ON THAT. WE
23 UNDERSTAND THE DIRECT INDICTMENT.

24 THE COURT: MR. MATLOCK.

25 MR. MATLOCK: YES, YOUR HONOR.

1 MR. GILLEN: THAT'S CORRECT, YOUR HONOR.

2 MR. THOMPSON: YOUR HONOR, I'M HEREBY GIVING
3 EACH ONE OF THEM A COPY OF THAT INDICTMENT AS TO
4 THEIR CLIENT.

5 THE COURT: MR. D'AGOSTINO, SINCE I RECEIVED
6 YOUR MOTION FIRST I'LL LET YOU PROCEED.

7 MR. D'AGOSTINO: THANK YOU, YOUR HONOR.

8 THE COURT: I PRESUME EACH DEFENDANT IS SEATED
9 IN THE SAME ORDER AS THEIR ATTORNEYS.

10 MR. D'AGOSTINO: NO, SIR. MY CLIENT ANTONIO
11 GORDON IS IN THE MIDDLE RIGHT HERE, YOUR HONOR.

12 THE COURT: WHICH ARE THE OTHER TWO.

13 MR. GILLEN: THIS IS MR. MCCREARY.

14 MR. MATLOCK: THIS IS MR. MONTA GORDON. HE'S MY
15 CLIENT.

16 MR. D'AGOSTINO: YOUR HONOR, AS YOU KNOW I
17 REPRESENT ANTONIO GORDON. HE IS CHARGED WITH
18 MURDER AND SEVERAL OTHER CHARGES ONE OF WHICH IS
19 CARJACKING THAT HE WAS JUST NOW, THE INDICTMENT
20 WHICH WAS NOW HANDED UP TO YOU. HE'S ALSO
21 CHARGED WITH CRIMINAL CONSPIRACY, ATTEMPTED
22 ROBBERY TWO COUNTS, AND POSSESSION OF A FIREARM
23 DURING THE COMMISSION OF A VIOLENT CRIME.

24 YOUR HONOR, WE'RE HERE ASKING THE COURT TO GRANT
25 HIM A SEPARATE TRIAL FROM HIS CO-DEFENDANTS

1 TERRANCE MCCREARY AND MONTA GORDON.

2 YOUR HONOR, AS WILL BE DEVELOPED LATER ON DURING
3 THE TRIAL OF THESE CASES, THERE ARE STATEMENTS,
4 AND THIS IS THE IMPORTANT REASON, THERE ARE
5 STATEMENTS THE STATE INTENDS TO USE AT THE TRIAL
6 OF THIS CASE, THE STATEMENTS FROM EACH ONE OF
7 THE DEFENDANTS. NOW THEY CAN ONLY USE THE
8 STATEMENTS AS TO EACH DEFENDANT, BUT WHAT WE ARE
9 GOING TO DO IS ATTEMPT TO REDACT THOSE
10 STATEMENTS. WE SUBMIT THAT ANY REDACTED
11 STATEMENTS BY THE STATE OF CO-DEFENDANTS WOULD
12 BE PREJUDICIAL, SEVERELY PREJUDICIAL TO MY
13 CLIENT ANTONIO GORDON, AND THAT IS FOR SEVERAL
14 REASONS. NUMBER ONE THE WAY THE PROPOSED
15 REDACTION AND I HAVE JUST GOTTEN A COPY BEFORE
16 WE CAME, WHEN WE CAME INTO THE COURTROOM THIS
17 MORNING, BUT THE PROPOSED REDACTIONS HAVE THE
18 EFFECT OF SEVERAL DIFFERENT THINGS.

19 NUMBER ONE, IT BOLSTERS THE TESTIMONY OF GARY
20 MOFFAT. WHEREAS THE UNREDACTED VERSION OF
21 STATEMENTS OF OTHER CO-DEFENDANTS CONFLICTS WITH
22 GARY MOFFAT'S STATEMENT AND GARY MOFFAT IS GOING
23 TO BE TESTIFYING. REDACTED VERSIONS OF THE
24 STATEMENTS, WHAT THE STATE HAS DONE, IT HAS
25 BOLSTERED MR. MOFFAT'S TESTIMONY THROUGH

7 7
1 REDACTION.

2 THE SECOND THING IS BY PUTTING IN REDACTED
3 STATEMENTS THE STATE'S, I'M SURE, IS GOING TO
4 ARGUE THEY ARE INTERLOCKING TO SOME DEGREE.
5 WELL, THE ISSUE OF INTERLOCKING THAT GOES TO THE
6 COURT'S DETERMINATION PRIOR TO THE COURT'S
7 ACCEPTANCE OR DENIAL OF THE USE, WHEN THE COURT
8 IS WEIGHING THE RELIABILITY OF SUCH STATEMENTS
9 AND I BELIEVE THAT THE RECENT SUPREME COURT
10 CASES OF CRUZ VERSUS NEW YORK AND GRAY DIRECTLY
11 ADDRESS THAT ISSUE. THE INTERLOCKING NATURE OF
12 STATEMENTS MAKES THEM IN THEMSELVES MORE
13 PREJUDICIAL BECAUSE ALL THE JURY HAS TO DO IS
14 JUST SITTING THERE AND GET A REDACTED STATEMENT,
15 WHAT THE JURY IS GOING TO DO IS SIT THERE AND
16 SAY, YOU GOT THIS REDACTED STATEMENT, YOU GOT
17 THIS REDACTED STATEMENT, WHAT THEY ARE GOING TO
18 DO IS START LOOKING AND ALL THEY ARE GOING TO DO
19 IS TURN AROUND AND LOOK. SO THE SUPREME COURT
20 CASES OF GRAY AND CRUZ VERSUS NEW YORK AND ALSO
21 SOUTH CAROLINA SUPREME COURT CASE OF BELLEMEY,
22 AND BELLEMEY THE SUPREME COURT OVERTURNED A
23 CONVICTION OF A DEFENDANT NOT ON THE GROUNDS OF
24 SEVERANCE, BUT THE SUPREME COURT SPECIFICALLY
25 CAUTIONED SOLICITOR'S OFFICES FROM TRYING

1 DEFENDANTS TOGETHER ESPECIALLY ON ISSUES OF
2 STATEMENTS OF CO-DEFENDANTS ARE GOING TO BE
3 RAISED AT THE TRIAL.

4 NOW IN ADDITION TO THE PREJUDICIAL EFFECT OF
5 STATEMENTS OF CO-DEFENDANTS THAT MY CLIENT IS
6 FACED WITH, MY CLIENT ALSO HAS SEVERAL OTHER
7 REASONS THAT TRYING EVERYBODY TOGETHER WOULD BE
8 SPECIFICALLY PREJUDICIAL TO HIM.

9 NUMBER ONE, THERE ARE CONSTITUTIONAL ISSUES THAT
10 DEAL WITH THOSE STATEMENTS AT ISSUE AT THE
11 TRIAL, THAT WILL BE AT ISSUE AT THE TRIAL OF
12 THIS CASE, AND THE COURT IS GOING TO HAVE TO
13 PASS ON THOSE ISSUES AND THE JURY IS GOING TO
14 HAVE TO PASS ON THOSE ISSUES. THE
15 CONSTITUTIONAL ISSUES AS TO THOSE STATEMENTS AS
16 TO OTHER MATTERS SURROUNDING HIS ARREST,
17 INTERROGATION, AND HOLDING.

18 THE SECOND THING IS MY CLIENT HAS THE 68 IQ.
19 HE'S BEEN TESTED BY THAT ON TWO PRIOR OCCASIONS
20 BEFORE THIS CRIME EVER OCCURRED AND THAT WAS AND
21 I'VE GOTTEN THOSE RECORDS SINCE I WAS APPOINTED,
22 SINCE I STARTED REPRESENTING HIM IN LATE
23 FEBRUARY. HE HAS CONSISTENTLY TESTED 68 WHICH
24 AS I UNDERSTAND IT IS IN THE RANGE OF MENTAL
25 RETARDATION.

1 NOW THE REASON WHY I BRING THAT UP IS BECAUSE
2 THROUGHOUT MY REPRESENTATION OF MY CLIENT I HAVE
3 HAD TO SPEND SIGNIFICANT AMOUNT OF EXTRA TIME
4 TRYING TO EXPLAIN TO HIM WHAT'S GOING ON, THE
5 PROCESS, WHAT MIRANDA WAS, WHAT WENT ON WHEN HE
6 WAS ARRESTED, SO HE CAN TELL ME WHAT HAPPENED SO
7 I CAN TRY TO EFFECTIVELY REPRESENT HIM. I'VE
8 HAD TO GO OVER WITH HIM TIME AND TIME AGAIN THE
9 LAW AS IT RELATES TO MURDER, FELONY MURDER,
10 CONSPIRACY, AND HE JUST, BECAUSE OF HIS LIMITED
11 MENTAL CAPACITY, HE'S VERY, HIS ABILITY TO
12 UNDERSTAND, COMPREHEND, APPRECIATE WHAT IS GOING
13 ON IS SUBSTANTIALLY LIMITED.

14 NOW YOU THROW HIS CONVICTION, HIS SITUATION IN
15 THE MIDDLE OF THE TRIAL WITH TWO OTHER
16 CO-DEFENDANTS WITH REDACTED STATEMENTS WITH
17 EVERYTHING GOING ON AT ONCE, YOUR HONOR, IT'S
18 GOING TO BE VERY DIFFICULT FOR ME TO EFFECTIVELY
19 REPRESENT HIM WHILE TRYING TO DEAL WITH
20 EVERYTHING ELSE GOING ON AT THE SAME TIME,
21 TRYING TO EXPLAIN TO HIM WHAT'S GOING ON. I
22 MEAN, I EVEN HAD QUESTIONS THAT WERE ASKED TO
23 HIM DURING A RECENT EXAMINATION HAD TO BE
24 EXPLAINED TO HIM WHEN THEY ARE EVALUATING HIM
25 FOR COMPETENCY TO STAND TRIAL. SO YOU KNOW,

1 THERE IS SIGNIFICANT PROBLEMS WITH THROWING HIM
2 INTO THE MIDDLE OF A TRIAL WITH TWO
3 CO-DEFENDANTS.

4 YOUR HONOR, I WOULD SUBMIT THAT BASED UPON BOTH
5 THE UNITED STATES CONSTITUTION AND THE FEDERAL,
6 THE UNITED STATES CONSTITUTION AND SOUTH
7 CAROLINA'S CONSTITUTION THAT PROTECTS A
8 DEFENDANT'S RIGHT TO A FAIR AND IMPARTIAL TRIAL
9 THAT AND DUE PROCESS OF LAW THAT MY CLIENT
10 ANTONIO GORDON SHOULD BE GRANTED A SEPARATE
11 TRIAL AND I'D LIKE TO HAND UP TO THE COURT THE
12 STATE VERSUS KIRKPATRICK, THE STATE VERSUS
13 BELLEMEX, CRUZ VERSUS NEW YORK, AND GRAY VERSUS
14 MARYLAND. THOSE ARE THE PERTINENT CASES THAT I
15 CITE IN MY BRIEF.

16 THE COURT: FOR THE RECORD I'VE BEEN ALREADY
17 HANDED THE ORIGINAL STATEMENTS AND THE REDACTED
18 STATEMENTS OF ALL FOUR DEFENDANTS INCLUDING MR.
19 MOFFAT.

20 MR. D'AGOSTINO: AND YOUR HONOR, THE OTHER THING
21 IS MY CLIENT GAVE, YOU'VE BEEN GIVEN THE
22 REDACTED STATEMENTS AND THE ORIGINAL STATEMENTS,
23 BUT MY CLIENT GAVE, MY CLIENT GAVE A STATEMENT
24 IN THE MORNING WHERE HE DENIED, THAT WAS A
25 STATEMENT FROM THE STATEMENT YOU'VE BEEN HANDED,

1 AND THE STATE HAS NOT REDACTED THAT STATEMENT
2 AND YOU DO NOT HAVE EITHER ONE OF THOSE
3 STATEMENTS AND I'VE NOT ATTEMPTED TO REDACT THAT
4 STATEMENT BECAUSE I SUBMIT THAT THERE SHOULD BE
5 SEPARATE TRIALS AND THAT STATEMENT AS WELL WOULD
6 BE SUBJECT TO COMING INTO TRIAL AND THERE COULD
7 BE OTHER ISSUES WITH THESE TWO CO-DEFENDANTS
8 DEALING WITH THAT STATEMENT AS WELL, YOUR HONOR.
9 THANK YOU.

10 MR. MATLOCK: MAY IT PLEASE THE COURT, YOUR
11 HONOR. WE WOULD ASK FOR, I REPRESENT MONTA
12 GORDON, AND WE WOULD ASK FOR MANY OF THE SAME
13 REASONS THAT THE TRIAL BE SEVERED WITH RESPECT
14 TO HIM AS WELL. THESE REDACTED STATEMENTS THAT
15 YOUR HONOR HAS BEFORE YOU, WHEN YOU READ THEM
16 THEY ARE ALMOST UNINTELLIGIBLE AND THE ONLY REAL
17 USE THAT THE JURY CAN PUT THEM TO IS TO, AS MR.
18 D'AGOSTINO POINTED OUT, BOLSTER THE ONE LIVE
19 WITNESS THAT WE'RE GOING TO HAVE PRESENT FOR
20 CROSS EXAMINATION AND THAT'S GARY MOFFAT. THE
21 REST OF THE STATEMENTS MERELY LEAVE UP TO
22 SPECULATION WHAT A JURY CAN SURMISE. I MEAN
23 THEY ARE SO REDACTED AND SO, AS I SAID, ALMOST
24 UNINTELLIGIBLE THAT A JURY CAN ONLY LOOK AT THEM
25 AND SAY WHAT'S THIS, YOU KNOW, AND GIVE US SOME

1 MORE EVIDENCE. SO THEN ANY OTHER EVIDENCE THAT
2 THE STATE WOULD PRESENT TO BOLSTER, I MEAN TO
3 FILL IN THOSE GAPS IS GOING TO RECEIVE A
4 CREDIBILITY FAR MORE THAN IS DESERVING BECAUSE
5 THE JURY IS GOING TO BE LOOKING FOR THAT. THEY
6 ARE GOING TO BE LOOKING FOR, WELL, THEY SAID HE
7 WAS HERE, HE WAS THERE, WELL, WHAT HAPPENED IN
8 BETWEEN BECAUSE THE REDACTIONS IT'S NOT THERE,
9 SO THEY ARE GOING TO USE GARY MOFFAT'S STATEMENT
10 AND SOME OF THE OTHER WITNESSES THAT THE STATE
11 MAY PROFFER IN THIS CASE TO FILL IN THOSE BLANKS
12 AND WE CONTEND THAT THE RELIABILITY OF THE
13 CO-DEFENDANT, AND OF COURSE YOUR HONOR IS AWARE
14 OF THE PRESUMPTION UNDERLYING, THE STATE HAS THE
15 VERY STRONG BURDEN OF PROVIDING INDICA OF
16 RELIABILITY. WHAT THEY ARE DOING HERE IS IN
17 EFFECT PIGGYBACKING ON A REDACTED STATEMENT TO
18 LEND CREDIBILITY AND AS AN INDICA CREDIBILITY TO
19 THEIR WITNESS, TO GARY MOFFAT, AND I THINK
20 THAT'S, YOUR HONOR, PATENTLY AND FUNDAMENTALLY
21 UNFAIR TO MY CLIENT AND RESULT IN SEVERE
22 PREJUDICE AND AN UNFAIR TRIAL.

23 YOUR HONOR, OF COURSE, IS AWARE OF BRUTON AND
24 THE LITANY OF CASES AND PRODIGY IN BRUTON THAT
25 REQUIRES ANY TIME THAT A REDACTED STATEMENT OR

1 ANY STATEMENT OF A CO-DEFENDANT WHO DOES NOT
2 INTEND TO TESTIFY IS PRESENTED AT TRIAL THAT IT
3 MUST BE REDACTED TO COMPLETELY ELIMINATE EVEN
4 THE EXISTENCE OF A DEFENDANT IN CONNECTION WITH
5 THIS CRIME. I MEAN CLEARLY THESE REDACTED
6 STATEMENTS, THE CULMINATION OF THEM IS TO PLACE
7 MY CLIENT THERE AND TO SHOW THAT WHAT GARY
8 MOFFAT SAYS, SINCE HE'S GOING TO BE UP THERE ON
9 THE STAND, AND MAKES HIS TESTIMONY THAT MUCH
10 MORE COMPELLING TO THE POINT THAT WE'RE AGAIN AS
11 I SAID PERMITTING THE STATE TO BOLSTER AND TO
12 PRESENT INDICA OF THEIR, OF RELIABILITY TO A
13 WITNESS THAT IS UNJUSTIFIED. AND JUSTIFIED
14 PREDICATED ON A REDACTED STATEMENT. AND FOR
15 THOSE REASONS, YOUR HONOR, AND THE REASONS AS I
16 SAID STATED BY MR. D'AGOSTINO, VERY ELOQUENTLY I
17 MIGHT ADD, WE WOULD LIKEWISE ASK FOR OUR
18 DEFENDANT'S CASE TO BE SEVERED AS WELL. THANK
19 YOU, YOUR HONOR.

20 THE COURT: MR. GILLEN.

21 MR. GILLEN: MR. MCCREARY JOINS IN THE MOTIONS
22 OF THE CO-DEFENDANTS AND MOVES ON HIS OWN BEHALF
23 ON THE SAME GROUNDS AS STATED BY MR. D'AGOSTINO
24 AND MR. MATLOCK.

25 THE COURT: ALL RIGHT. THE STATE.

1 MR. THOMPSON: PLEASE THE COURT, YOUR HONOR.
2 THE FIRST POINT I MAKE, YOUR HONOR, WHEN YOU
3 LOOK AT EACH OF THE DEFENDANTS' STATEMENTS, EACH
4 OF THOSE STATEMENTS, IF YOU WANT JUST GO ON THE
5 PURE LINES, IS PREJUDICIAL AGAINST THE DEFENDANT
6 WHO MADE IT AND THAT'S JUST, THAT'S JUST THE
7 FACTS. A STATEMENT THAT THE DEFENDANT GAVE IS
8 PREJUDICIAL AGAINST THAT INDIVIDUAL DEFENDANT.
9 IN ADDITION TO THAT, WHAT MR. MOFFAT SAYS IN HIS
10 STATEMENT, HE'S THE DEFENDANT WHO WILL TESTIFY
11 FOR THE STATE, THAT IS PREJUDICIAL AS TO EACH
12 DEFENDANT. THOSE THINGS ARE GOING TO COME IN IN
13 EACH TRIAL EVEN IF WE SEPARATED EVERY ONE OF THE
14 DEFENDANTS, THOSE THINGS WILL COME IN THE TRIAL
15 AND THE STATEMENT THAT IS NOT REDACTED WOULD
16 ACTUALLY BE MUCH MORE DAMMING I BELIEVE TO EACH
17 DEFENDANT COMBINED WITH MR. MOFFAT'S TESTIMONY
18 AND THE OTHER TESTIMONY WE WILL HAVE. THE LIVE
19 TESTIMONY OF MR. DIAZ WOULD PUT BOTH THE GORDONS
20 IN THE CAR AT THE TIME OF THE SHOOTING. THE
21 TESTIMONY FROM FORENSICS THAT WILL SHOW ANTONIO
22 GORDON'S PALM PRINT ON THE DOOR OF THE VICTIM'S
23 CAR, THAT SHOWS THE PRINTS OF ANTONIO GORDON,
24 TERRANCE MCCREARY, AND I BELIEVE MONTA GORDON IN
25 THAT CAR IN THE DEFENDANT'S CAR, THAT SHOW, THAT

1 PUT THEM IN THAT CAR, ALL OF THOSE THINGS WOULD
2 BE DAMNING. AS WELL WE HAVE LAY WITNESSES WHO
3 WILL TESTIFY WHAT EACH DEFENDANT TOLD THEM AFTER
4 THE SHOOTING AND HOW EACH BRAGGED ON WHAT HE HAD
5 DONE AS PART OF THAT SHOOTING, THAT EVIDENCE ALL
6 COMBINED, THAT'S COMING IN WHETHER OR NOT THEY
7 ARE SEVERED UNLESS THEY ARE SUPPRESSED IN
8 SOMEWAY IN PRE-TRIAL, BUT IT IS LIKELY THAT THAT
9 EVIDENCE WILL COME IN AND THAT EVIDENCE IS
10 DAMNING WHETHER OR NOT THEY ARE TOGETHER.

11 AND SO ONE OTHER POINT I MAKE ON THAT, IS THE
12 DEFENDANTS AS IT WOULD GO IF IT WAS SEVERED AND
13 SAY WE STARTED THE TRIAL AND TRY ANTONIO GORDON
14 FIRST. WELL, ANTONIO GORDON'S ENTIRE STATEMENT
15 COMES IN AND THAT STATEMENT WHERE HE SAYS, I DID
16 IT. THEN YOU HAVE GARY MOFFAT COMING IN AND
17 TESTIFYING, HE CAN BE CROSS EXAMINED. YES, WE
18 MIGHT NOT BE ABLE TO GET THE OTHER TWO
19 STATEMENTS OF THE GORDON BROTHER IN OR, OF MONTA
20 GORDON OR TERRANCE MCCREARY IN AT THE TIME. BUT
21 THEN IN THE SUBSEQUENT TRIAL, AFTER THE TRIAL IS
22 OVER AS TO ANTONIO GORDON, WE HAVE THE
23 OPPORTUNITY THEN TO CALL ANTONIO GORDON TO THE
24 STAND WHETHER HE WAS COOPERATIVE OR NOT BECAUSE
25 HE'S NOW LOST HIS FIFTH AMENDMENT RIGHT TO

1 REMAIN SILENT BECAUSE HIS TRIAL IS OVER AND AT
2 THAT POINT WE CAN BRING IN THE STATEMENTS OF
3 ANTONIO GORDON AGAINST MONTA GORDON AND AGAINST
4 TERRANCE MCCREARY AND WHOEVER WE TRY NEXT AND
5 THAT WILL IN ADDITION ADD TO WHAT MR. MOFFAT
6 SAYS, AND THEN FINALLY THE LAST DEFENDANT TO BE
7 TRIED HE'LL HAVE ALL THE STATEMENTS COMING IN IN
8 THEIR FULL FORM, NOT REDACTED WHATSOEVER, AND AT
9 THAT POINT, YOU KNOW, HE HAS LOST, YOU KNOW, ANY
10 PREJUDICE THAT WOULD HAPPEN NOW IS MUCH LESS
11 THAN THE PREJUDICE THAT WILL HAPPEN THEN, IF ANY
12 AT ALL.

13 OF COURSE, AS WE KNOW THE STANDARD IS REALLY IN
14 YOUR DISCRETION TO DECIDE WHO WILL BE SEVERED IF
15 ANYONE, AND OF COURSE, THE RULING THAT OUR
16 COURTS HAVE GIVEN ON THAT IS THE ONLY WAY THAT
17 IS OVERTURNED IS IF THERE IS ABUSE OF DISCRETION
18 AND WE WOULD PASS UP THE CASE OF RICHARDSON
19 VERSUS MARSH WHICH I BELIEVE THE SUPREME COURT
20 CASE THAT DEALS WITH THE REDACTION OF STATEMENTS
21 FOR THE COURT TO EXAMINE AS WELL WHEN THEY
22 CONSIDER.

23 IN THAT CASE BASICALLY THERE WERE STATEMENTS
24 THAT WERE REDACTED BY CO-DEFENDANTS AND YOU TAKE
25 OUT ALL MENTION OF THE OTHER DEFENDANTS THAT ARE

1 NOT TESTIFYING, THE OTHER ONES WHO ARE ON TRIAL,
2 THAT'S WHAT WE INTEND TO DO HERE AND THAT'S WHAT
3 OUR PROPOSED REDACTED STATEMENTS WILL DO. OF
4 COURSE, THEY ARE NOT FINALIZED. THERE IS STILL
5 MUCH ARGUMENT CAN MADE OVER WHAT IS ALLOWED IN
6 AND WHAT'S NOT ALLOWED IN ON THOSE STATEMENTS,
7 BUT THAT WILL GIVE THE COURT AN IDEA OF WHAT THE
8 STATE WOULD INTEND TO SHOW IN THE STATEMENT.

9 IN THOSE STATEMENTS, OF COURSE, HE CAN KEEP IN
10 WHAT MR. MOFFAT SAYS BECAUSE MR. MOFFAT WILL BE
11 TESTIFYING. SO WE WILL HAVE EACH DEFENDANT
12 SAYING WHAT THEY DID AND WHAT MR. MOFFAT DID AND
13 WHAT THEY DID IN RELATION TO MR. MOFFAT, SO
14 THROUGHOUT THAT, THAT'S BASICALLY HOW THE
15 STATEMENTS WOULD GO.

16 IN THE PARTICULAR CASE THAT I HANDED IN THE
17 RICHARDSON MARSH CASE, IN THAT CASE THE
18 CO-DEFENDANTS WERE LINKED PROPERLY AND THIS CASE
19 WENT ON TO SAY THAT AS LONG AS THE JURY IS
20 PROPERLY INSTRUCTED THAT EACH DEFENDANT'S
21 STATEMENT APPLIES SIMPLY TO THAT DEFENDANT, THE
22 JURY IS ONLY TO CONSIDER THAT FOR THAT. EVEN
23 THOUGH THERE IS OTHER EVIDENCE THAT'S PROPERLY
24 ADMITTED THAT LINKS THEM ALL TOGETHER THAT THAT
25 WAS PROPER, AND THEY SAID THAT WAS OKAY TO DO IN

1 THAT PARTICULAR CASE, AND I BELIEVE WE HAVE A
2 VERY SIMILAR CASE RIGHT HERE RIGHT NOW. AND I
3 THINK THAT IS PROBABLY ONE OF THE MOST GRUELING
4 THINGS ON THIS BECAUSE FROM WHAT I SEE FROM EACH
5 DEFENDANT AND WHAT THEY COMPLAIN ABOUT IS THEY
6 FEEL LIKE THEY WILL BE PREJUDICED, THAT THEY
7 CAN'T CROSS EXAMINE THE DEFENDANT WHOSE
8 STATEMENT IS BROUGHT IN, AND THEY FEEL SOMEHOW
9 PREJUDICED BY THE REDACTION ITSELF OR BY THE
10 BRUTON ISSUE THAT'S INVOLVED WITH THE
11 REDACTION. YOUR HONOR, I THINK WE'RE GOING TO
12 TAKE OUT ALL THE STATEMENTS AS TO OTHER
13 DEFENDANTS SO THAT'S PRETTY MUCH GOING TO
14 ALLEVIATE THE BRUTON PART OF THE ISSUE AND
15 WHETHER, AS I SAID, WHETHER OR NOT THEY ARE
16 SEVERED BASICALLY THE SAME EVIDENCE IS COMING IN
17 IN EACH TRIAL. AND SO THERE IS NO PREJUDICE
18 THAT COULD FALL AGAINST THE DEFENDANT THAT UNDUE
19 IN ANY OF THOSE THINGS.

20 THERE IS CASE LAW THAT DEALS I THINK IN A LOT OF
21 WAYS WITH THE VARIOUS THINGS CANNOT OR DO NOT
22 CAUSE OR WARRANT THE SEVERANCE. STATE VERSUS
23 CROW MENTIONS LOSS OF FINAL ARGUMENT IS ONE THAT
24 IS NOT A REASON FOR SEVERANCE. THAT BASICALLY
25 THE WAY THE JURORS ARE SEATED IS NOT A REASON

1 FOR SEVERANCE. THAT AN ANTAGONIST DEFENSE IS
2 NOT NECESSARILY REASONS FOR SEVERANCE AND THAT'S
3 IN STATE VERSUS GREEN. RELEVANT EVIDENCE AS TO
4 ONE DEFENDANT THAT WOULD NOT NECESSARILY BE
5 RELEVANT TO ANOTHER THAT IS ADMITTED WHICH MAY
6 HAPPEN IN THIS CASE AS WELL IN STATE VERSUS
7 HOLLAND A SOUTH CAROLINA SAID NOT NECESSARILY
8 REASON FOR SEVERANCE. AND OF COURSE, IN STATE
9 VERSUS HARVEY AS WELL THEY MENTION A DIFFERENCE
10 IN TRIAL STRATEGY IS NOT A REASON FOR
11 SEVERANCE. I THINK IF WE LOOK AT THE PARTICULAR
12 CASES THAT WE HAVE HERE I DON'T THINK THE
13 DEFENSE IS GOING TO ARGUE A DIFFERENCE IN TRIAL
14 STRATEGY. I DON'T THINK THE DEFENSES ARE GOING
15 TO BE ANTAGONISTIC TOWARD EACH OTHER. IF YOU
16 LOOK AT EACH STATEMENT, SOME OF THE THINGS THAT
17 THEY MENTION IN THE STATEMENTS ARE VERY, VERY
18 MUCH THE SAME. ALL THE SUBSTANTIAL ELEMENTS ARE
19 REQUIRED TO MAKE IT INTERLOCKING ARE THE SAME
20 AND I BELIEVE THE CHAPMAN CASE ADDRESSES THAT
21 AND ALL DEFENDANTS SAID THEY CAME UP ON A SILVER
22 BMW, SILVER OR GRAY BMW, THAT THE LIGHTS WERE
23 OUT, THAT THEY AT SOME POINT TRIED TO GET THEM
24 TO TURN THE LIGHTS ON, THAT EACH ONE OF THEM
25 MENTIONS AT SOME POINT ABOUT ROBBING THEM FOR

1 ONE REASON OR ANOTHER. SOME SAY POSSIBLY
2 ROBBING THEM FOR WEED, SOME SAY POSSIBLY FOR
3 MONEY, ROBBING THEM FOR THE CAR, BUT THEY ALL
4 MENTION ROBBING THEM AT SOME POINT IN TIME IN
5 THEIR STATEMENTS. THEY ALL MENTION THAT IT WAS
6 TERRANCE MCCREARY WHO GOT THE PISTOL AND WHOSE
7 PISTOL IT WAS. THEY ALL MENTION THAT IT WAS
8 ANTONIO GORDON WHO EVENTUALLY SHOT THE VICTIM
9 AND KILLED HIM. THOSE THINGS ARE EXTREMELY
10 IMPORTANT I BELIEVE AND I THINK AS YOU MEASURE
11 THE STATEMENTS TOGETHER YOU'LL SEE THAT THEY ARE
12 INTERLOCKING AND THERE IS NO DOUBT ABOUT THAT.
13 THERE IS SUBSTANTIAL ELEMENTS OF THOSE CASES, OF
14 COURSE, THERE ARE SMALL THINGS THAT WILL BE
15 DIFFERENT BUT THEY ARE INTERLOCKING AND THAT
16 CERTAINLY WILL NOT PREJUDICE THE DEFENDANT
17 ANYMORE THAN IT WOULD IN A TRIAL THAT THEY WERE
18 SEVERED FROM EACH OTHER BECAUSE THEY ARE GOING
19 TO BE INTERLOCKING WHETHER OR NOT THEY ARE TRIED
20 TOGETHER AND THEY WILL BE INTERLOCKING WITH MR.
21 MOFFAT'S, THEY WILL BE INTERLOCKING WITH EACH
22 OTHER, AND AS I SAID AS WE GO ALONG, EACH
23 FOLLOWING DEFENDANT IS TRIED MORE AND MORE
24 STATEMENTS WILL BE ALLOWED TO COME IN MOST
25 LIKELY UNDER OUR LAW.

21

1 I THINK WE HAVE TO LOOK AT OTHER CONCERNS. AT
2 THIS POINT WE'VE BEEN LOOKING AT SPECIFIC
3 CONCERNS OF THE DEFENDANTS THEMSELVES. THERE
4 ARE OTHER CONCERNS THAT WE HAVE AND OF COURSE
5 JUDICIAL ECONOMY IS ALWAYS A CONCERN. THAT THE
6 STATE CAN TRY THIS CASE IN A WEEK AND HAVE ALL
7 THREE DEFENDANTS DISPOSED OF AT THAT POINT IN
8 TIME ONE WAY OR ANOTHER, OR WE CAN TAKE THREE
9 SEPARATE WEEKS OVER THE NEXT SIX MONTHS AND TRY
10 EACH ONE, ONE TO ANOTHER AND TO ANOTHER. I
11 THINK THAT IS SOMETHING WE DO HAVE TO CONSIDER
12 JUST IN THE OVERALL CIRCUMSTANCES OF THINGS
13 BECAUSE THAT'S A GREAT COST TO THE STATE. IT
14 COULD ACTUALLY END UP PREJUDICING THE DEFENDANTS
15 MORE BY NOT BEING TRIED TOGETHER BECAUSE THE
16 OTHER STATEMENTS WOULD COME IN IN THE ENTIRETY
17 AND THOSE ARE THINGS WE HAVE TO CONSIDER.

18 I THINK AS WELL WE HAVE TO LOOK AT THE VICTIM'S
19 RIGHTS. MR. KRENN, WHO IS THE FATHER OF THE BOY
20 WHO WAS KILLED, CERTAINLY SHOULDN'T, ONCE THESE
21 INDIVIDUALS HAVE A FAIR TRIAL, AND I BELIEVE WE
22 CAN HAVE THAT FAIR TRIAL WITH ALL THE DEFENDANTS
23 TOGETHER, TO DRAG HIM BACK THROUGH THE MURDER OF
24 HIS SON THREE SEPARATE TIMES I THINK IS VERY
25 UNDULY HARSH TO HIM. THAT CAN BE AVOIDED AND

1 WITHOUT PREJUDICE TO THE DEFENDANT. AND I THINK
2 WE HAVE TO LOOK AT THIS POINT IN TIME AND SAY
3 WHAT IS THE MAIN CONCERN OF THIS ENTIRE
4 HEARING. THE MAIN CONCERN WOULD BE IS THERE
5 GOING TO BE UNDUE PREJUDICE TO ANY DEFENDANT.
6 AND NO, YOUR HONOR, I DON'T BELIEVE THERE WILL.
7 I THINK WHEN YOU LOOK AT THE STATEMENTS
8 TOGETHER, LOOK AT THE POSSIBILITY OF WHAT WOULD
9 BE PRESENTED IN EACH TRIAL HAD THEY BEEN
10 SEVERED, THE SAME THINGS WILL COME IN AND THAT I
11 THINK IS WHAT WE NEED TO LOOK AT AT THIS POINT
12 BECAUSE ULTIMATELY THAT'S GOING TO SHOW THAT
13 THERE IS NO PREJUDICE AS TO THE DEFENDANTS TO BE
14 TRIED ALL AT ONCE AND TOGETHER.

15 THERE IS RECENT SOUTH CAROLINA CASES THAT HAVE
16 RECENTLY BEEN APPROVED BY THE SOUTH CAROLINA
17 SUPREME COURT. I BELIEVE, LET ME GET THE
18 APPROPRIATE ONE HERE, CASE THAT WAS DECIDED IN
19 1998 STATE VERSUS AVERY AND IN THAT CASE OUR
20 SUPREME COURT DETERMINED WHERE THERE WAS
21 CO-DEFENDANTS BEING TRIED, AND THEY WERE YOUNG
22 MEN WHO KILLED ANOTHER YOUNG MAN AT LEAST IN
23 THAT ASPECT SIMILAR TO THIS PARTICULAR CASE,
24 THEIR STATEMENTS WERE ADMITTED AND ACCORDING IN
25 THIS PARTICULAR SITUATION RULED THAT THERE WAS

23

1 NO PROBLEM WITH ENTERING THOSE STATEMENTS, THAT
2 THERE WAS NO REASON THAT THEY SHOULD HAVE BEEN
3 SEVERED AND THAT NONE OF THESE ISSUES EXISTED IN
4 THAT PARTICULAR CASE. I BELIEVE THEY MENTION
5 THIS IN A CAPITAL CASE. IN THIS CASE IT'S NOT A
6 CAPITAL CASE. WE'RE ASKING FOR THE MAXIMUM OF
7 LIFE IN PRISON WHICH IS OF COURSE SEVERE BUT
8 IT'S NOT THE DEATH PENALTY. SO I THINK IN THE
9 CASES THAT WE HAVE, YOUR HONOR, THERE IS
10 EVIDENCE THAT SHOWS IT IS PROPER AND THERE ARE
11 CASES PROPER TO BE TRIED TOGETHER WITH THE
12 DEFENDANTS TOGETHER. I BELIEVE THIS IS ONE OF
13 THOSE CASES. AS I SAID, I FEEL LIKE A BROKEN
14 RECORD AS TO THAT POINT, THEY ARE NOT PREJUDICED
15 ANY MORE TRIED TOGETHER THAN THEY ARE TRIED
16 APART. AND I ASK THE COURT TO CONSIDER THAT.
17 THANK YOU VERY MUCH.

18 THE COURT: TWO THINGS BEFORE YOU SIT DOWN.
19 DEALING WITH THE VICTIM'S RIGHTS ACT, ARE THEY
20 AWARE OF THE HEARING TODAY?

21 MR. THOMPSON: YES, YOUR HONOR.

22 THE COURT: SECOND, IF THE CASES ARE SEVERED,
23 HAVE YOU DETERMINED WHICH WILL GO FORWARD
24 FIRST?

25 MR. THOMPSON: YES, YOUR HONOR, WE HAVE

1 DETERMINED IF THE CASES ARE SEVERED WE WOULD
2 CALL ANTONIO GORDON'S CASE FIRST. HOWEVER, WE
3 WOULD PUT THE OTHER DEFENDANTS ON NOTICE THAT AT
4 THIS POINT IN TIME AS WE'RE ALL PREPARED FOR THE
5 CASE IF SOMETHING WERE TO HAPPEN, IN OTHER
6 WORDS, IF THERE WAS A, WE PLAN ON A COMPETENCY
7 HEARING FRIDAY MORNING I BELIEVE, BUT IF FOR
8 SOME REASON HE COULD NOT BE TRIED WHETHER IT'S
9 COMPETENCY OR ANYTHING ELSE, WE WOULD THEN TURN
10 TO ONE OF THE DEFENDANTS TO TRY THEM ON MONDAY
11 AND WE HAVE NOT NECESSARILY DETERMINED WHICH ONE
12 OF THE OTHER ONES WE WOULD CHOOSE AT THIS POINT
13 IN TIME.

14 THE COURT: FOLLOW UP, MR. D'AGOSTINO.

15 MR. D'AGOSTINO: THANK YOU, YOUR HONOR. TO
16 BEGIN WITH, YOUR HONOR, TO ADDRESS THE
17 SOLICITOR'S OFFICE HAS BROUGHT UP THE ISSUE OF
18 THE VICTIM'S RIGHTS AND I CAN SAY THAT EVERYBODY
19 SAYS AND KNOWS AND IS SORRY FOR THE DEATH OF
20 ERIC KRENN, FOR THE DEATH OF MR. KRENN, AND FOR
21 THE LOSS THAT HIS FATHER HAS SUFFERED. BUT EVEN
22 WITH THAT LOSS AND THAT SORROW, WE DO HAVE TO
23 PROTECT THE RIGHTS OF THE DEFENDANTS AND I KNOW
24 WE HAVE THE VICTIM RIGHTS, I KNOW WE HAVE THE
25 LAWS THAT HAVE RECENTLY BEEN PASSED PROTECTING

1 THOSE RIGHTS, BUT THE JUDICIAL PROCESS HERE IS
2 TO PROTECT THE RIGHTS OF THE DEFENDANTS AND YOU
3 CAN'T TRAMPLE ON HIS RIGHTS EITHER.

4 YOUR HONOR, WITH REGARD TO THE FACTS OF THIS
5 CASE, I DON'T, IF THE STATE IS SO SURE THAT THE
6 CASE FOR THEM GETS BETTER AND BETTER JUST BY
7 TRYING THE DEFENDANTS SUCCESSIVELY, THEN THAT'S
8 WHAT THEY OUGHT TO DO. I DON'T UNDERSTAND THEIR
9 POSITION THAT ONCE THEY TRY MY CLIENT THEY CAN
10 USE HIS STATEMENTS IN TOTO AGAINST THE OTHER
11 DEFENDANTS, BUT THAT'S IRRELEVANT AS IT CONCERNS
12 MY CLIENT. MY CONCERN IS AS TO MY CLIENT WHEN
13 HE COMES TO TRIAL MONDAY MORNING, REDACTED
14 STATEMENTS COME INTO EVIDENCE, WITH FACTS THAT
15 HAVE BEEN OMITTED FROM OTHER INDIVIDUAL'S
16 STATEMENTS THAT BOLSTER MR. MOFFAT'S TESTIMONY,
17 THAT IN EFFECT CREATES WHAT APPEARS TO BE AN
18 INTERLOCKING STATEMENT WITH THE OTHER
19 CO-DEFENDANTS, WITHOUT MY ABILITY TO CROSS
20 EXAMINE THE OTHER TWO CO-DEFENDANTS.

21 FOR EXAMPLE, IN THE REDACTED VERSION THAT THE
22 STATE HAS PRESENTED TO THE COURT AND I DIDN'T
23 WANT TO GO INTO THE FACTS, TOO MUCH ABOUT THE
24 STATEMENTS, BECAUSE I DON'T WANT TO PREJUDICE
25 ANY POTENTIAL JUROR, BUT AS TO THE FACTS

1 THEMSELVES, IN ONE OF THE CO-DEFENDENT'S
2 STATEMENTS THE GUN IS PLACED NOT IN MY CLIENT'S
3 HAND WHEN THEY GET IT, BUT IN HIS BROTHER'S
4 HAND, MONTA GORDON'S HAND. BUT THAT IS REDACTED
5 FROM MR. MCCREARY'S STATEMENT BECAUSE IT TALKS
6 ABOUT A CO-DEFENDANT. THAT IS I SUBMIT
7 PREJUDICIAL.

8 NOW THEY TALK ABOUT MR. DIAZ TESTIFYING AND HE
9 WILL TESTIFY I HOPE. NOW HIS TESTIMONY IS
10 IMPORTANT BECAUSE IT DOESN'T SAY, ALTHOUGH THEY
11 DO SAY THEY HAVE A PALM PRINT IN THE MIDDLE OF
12 THE VICTIM'S CAR DOOR, MR. DIAZ DOES NOT
13 IDENTIFY ANTONIO BUT IDENTIFIES MONTA AS THE
14 SHOOTER DEFINITELY AFTER HE'S SEEN ALL FOUR
15 PEOPLE'S PICTURES IN THE PAPER. NOW THAT IS A
16 PIECE OF EVIDENCE THAT THEY ARE GOING TO, THAT
17 WITH MR. MCCREARY'S STATEMENT THERE WILL BE
18 OTHER INFERENCES THAT THE JURY WILL BE ABLE TO
19 DRAW FROM MR. MCCREARY'S REDACTED STATEMENT,
20 EVIDENCE AND INFORMATION FROM MR. MCCREARY'S
21 STATEMENT IS GOING TO BE TAKEN OUT, IT IS GOING
22 TO LOOK LIKE A CARBON COPY OF WHAT MR. MOFFAT
23 SAID ALTHOUGH IN REALITY IT'S NOT. AND I CAN'T
24 EVER EXAMINE MR. MCCREARY.

25 AND MR. MOFFAT THE SAME THING. YOU GET HIS

1 STATEMENT IN THERE, AND THERE IS GOING TO BE,
2 THE REDACTED VERSION IS GOING TO LOOK LIKE
3 SOMETHING GREAT.

4 NOW I DON'T UNDERSTAND HOW THE STATE CAN ARGUE
5 IT'S NOT PREJUDICIAL AND, YOU KNOW, THEY DON'T
6 KNOW MY TRIAL STRATEGY AT THIS POINT SO I DON'T
7 KNOW HOW THEY CAN SAY WE DON'T HAVE, WE HAVE THE
8 SAME TRIAL STRATEGY. THEY DON'T KNOW WHAT I'M
9 GOING TO DO.

10 YOU'VE ALSO GOT THOSE CONSTITUTIONAL ISSUES THAT
11 THEY DID NOT ADDRESS TALKING ABOUT THE FACTS OF
12 THE CASE. YOU HAVE A 16-YEAR-OLD BOY WITH A 68
13 IQ WHO HAS A VERY LIMITED MENTAL CAPACITY, TAKEN
14 TO A POLICE STATION, AND HELD THERE, WITH AN
15 ATTORNEY OUT IN THE LOBBY BEGGING TO SEE HIM FOR
16 SIX-EIGHT HOURS, AND THEY ARE PROHIBITING HIM
17 FROM DOING SO. THE COURT IS GOING TO HAVE TO
18 ADDRESS THOSE KINDS OF ISSUES. THOSE ARE ISSUES
19 SPECIFIC TO ANTONIO GORDON.

20 YOUR HONOR, I THINK THE PREJUDICE IN THIS CASE
21 WOULD BE SUBSTANTIAL. I KNOW THE LAW IS ABSENT
22 AN ABUSE OF DISCRETION BUT I THINK WHEN THE
23 FACTS OF THIS CASE COME TO LIGHT, IF YOU START
24 ALLOWING THESE REDACTED STATEMENTS IN, IF YOU
25 START TRYING EVERYBODY TOGETHER, ESPECIALLY FROM

1 MY CLIENT WITH HIS LIMITATION THE PREJUDICE WILL
2 BE SUBSTANTIAL AND IT WOULD BE AN ABUSE OF
3 DISCRETION FOR HIM TO GO TO TRIAL WITH HIS
4 CO-DEFENDANTS.

5 WE JUST ASK THAT YOU SEVER THE TRIALS AND
6 ALLOW, AND FOR MR. GORDON, ANTONIO GORDON'S
7 TRIAL TO GO FORWARD SEPARATE AND APART FROM HIS
8 CO-DEFENDANTS.

9 MR. MATLOCK: YOUR HONOR, IF I MAY BE HEARD JUST
10 BRIEFLY. ONCE AGAIN I ECHO THE COMMENTS OF MR.
11 D'AGOSTINO. HOWEVER, I WOULD LIKE TO REFER BACK
12 TO MR. THOMPSON'S ARGUMENT WHERE HE ALLEGES THAT
13 THERE ARE NO ANTAGONISTIC DEFENSES IN THIS
14 PARTICULAR CASE, AND I SAY THESE CASES ARE JUST
15 RIFF WITH ANTAGONISTIC DEFENSES. FOR EXAMPLE,
16 I'LL JUST USE ONE EXAMPLE, WHO GOT OUT OF THE
17 CAR THAT NIGHT? OKAY, GARY MOFFAT IS GOING TO
18 TESTIFY IF I READ HIS STATEMENT CORRECTLY AND IF
19 HE TESTIFIES CONSISTENT WITH THAT STATEMENT THAT
20 ANTONIO WAS AT THE DRIVER'S WINDOW POINTING THE
21 GUN IN THE CAR. MONTA WENT AROUND TO GET THE
22 OTHER BOY, THAT'S GOING TO BE GARY MOFFAT'S
23 STATEMENT. HOWEVER, JUST ON THIS ONE LITTLE
24 PIECE OF EVIDENCE HERE ANTONIO GORDON SAYS THAT
25 MONTA WAS STANDING NEXT TO ME AND GARY GOT OUT

1 OF THE CAR AND WENT AROUND TO THE OTHER SIDE OF
2 THE CAR. TERRANCE MCCREARY SAID, ANTONIO JUMPED
3 OUT OF THE CAR. GARY WAS WITH ANTONIO. MONTA
4 AND I WAS TELLING THEM TO COME ON LET'S GO,
5 IMPLYING, OF COURSE, THAT THEY STAYED IN THE
6 CAR. THE OTHER YOUNG BOY THAT WAS IN THE CAR
7 MR. CHRIS DIAZ AS HE SAID, BOTH OF THE MEN WHO
8 GOT OUT OF THE CAR WENT TO THE DRIVER'S SIDE OF
9 THE CAR. I MEAN, YOU KNOW, IT'S JUST A, THE
10 CASE IS JUST A PLETHORA OF CONTRADICTIONS AND
11 ANTAGONISTIC DEFENSES AND I THINK WOULD
12 ABSOLUTELY BE PREJUDICIAL FROM THE STANDPOINT OF
13 OMISSION. I MEAN I PREFER TO HAVE THESE
14 STATEMENTS COME IN AND AS THE PROSECUTION SAYS
15 HE THINKS THAT WOULD BE PREJUDICIAL TO THE LAST
16 MAN THAT WAS TRIED. I WELCOME THAT BECAUSE OF
17 THE REBUTTAL ASPECT OF THAT BECAUSE THEY
18 CONTRADICT EACH OTHER. WHEN WE DON'T HAVE
19 THOSE STATEMENTS WE HAVE GARY MOFFAT, AND GARY
20 MOFFAT SAYS MY CLIENT WENT AROUND TO GET THE
21 OTHER BOY. WE CONTEND HE DIDN'T DO THAT, YOUR
22 HONOR, SO DO EVERY OTHER ONE OF THOSE WITNESSES
23 THAT ARE THERE.

24 ALSO ONE OTHER BRIEF REFERENCE TO MR. THOMPSON'S
25 ARGUMENT, HE SAYS THAT IN EVERY ONE OF THE

1 STATEMENTS OF THE DEFENDANT YOU WILL FIND SOME
2 STATEMENT TO CORROBORATE THE FACT THAT THERE WAS
3 A CONSPIRACY. THAT IS, THAT THEY GO STEAL SOME
4 MARIJUANA, STEAL THE CAR, HE SAID IN EVERY ONE
5 OF THOSE STATEMENTS THERE IS SOME STATEMENT BY
6 MY DEFENDANT IN PARTICULAR BUT EVERY OTHER
7 DEFENDANT THAT THEY ENCOURAGED OR WERE PART OF
8 THAT CONSPIRACY. I CHALLENGE YOUR HONOR IF YOU
9 WOULD PLEASE WHEN YOU READ MY CLIENT'S STATEMENT
10 YOU FIND IN THERE WHERE HE SAYS THAT. IT'S JUST
11 NOT THERE. AND FOR THAT REASON AND FOR THE
12 REASONS I JUST SAID AND MR. D'AGOSTINO, I JUST
13 CAN'T SEE HOW THIS CASE CAN BE TRIED FAIRLY IN A
14 JOINT TRIAL. I RESPECTFULLY ASK IT BE SEVERED.
15 THANK YOU, YOUR HONOR.

16 MR. GILLEN: JUST BRIEFLY, YOUR HONOR. THE
17 EFFECT OF THIS ENTIRE CASE IF THEY GO FORWARD
18 AND TRY THEM TOGETHER, ENTER THE REDACTED
19 STATEMENT, IT CLEANS THE CASE UP FOR THE STATE
20 AND DENIES ALL THESE DEFENDANTS A RIGHT TO
21 CROSS EXAMINATION. THEY GET IN ALL THE
22 STATEMENTS, CLEANED UP THE FORM THAT BOLSTERS
23 THEIR WITNESS. THOSE ISSUES IN THEMSELVES ARE
24 HIGHLY PREJUDICIAL TO EACH DEFENDANT AND FOR
25 THOSE REASONS WE WOULD ALSO RESPECTFULLY ASK THE

1 COURT TO SEVERE THE TRIALS.

2 THE COURT: LET ME TAKE IT UNDER ADVISEMENT
3 BECAUSE I NEED TO READ THE STATEMENTS, I HAVEN'T
4 READ THOSE, AND ALSO LOOK AT IT IN THE LIGHT OF
5 THE CASE LAW THAT'S BEEN HANDED UP. I'LL
6 OBVIOUSLY TRY TO HAVE SOMETHING TOMORROW OR
7 WEDNESDAY MORNING AT THE LATEST SINCE TIME IS OF
8 THE ESSENCE.

9 (COURT IS IN RECESS.)

10 (COURT RESUMES AT 3:53 ON JULY 14, 1999.)

11 MR. THOMPSON: MAY IT PLEASE THE COURT.

12 THE COURT: YES, SIR.

13 MR. THOMPSON: ANTONIO GORDON AND TERRANCE
14 MCCREARY.

15 (ANTONIO GORDON IS PRESENT. TERRANCE MCCREARY
16 IS NOT PRESENT.)

17 MR. GILLEN: YOUR HONOR, I WOULD LIKE MY CLIENT
18 HERE, BUT I DON'T SEE ANY REASON TO DELAY THE
19 PROCEEDINGS. WE CAN GO AHEAD AND START.

20 THE COURT: WE'LL GO AHEAD AND START AND AS SOON
21 AS MR. MCCREARY IS PRESENT, WE'LL HAVE HIM
22 BROUGHT INTO THE COURTROOM.

23 MR. GILLEN: THANK YOU, YOUR HONOR.

24 THE COURT: MR. THOMPSON, WHY DON'T YOU TELL US
25 WHY WE'RE HERE. MR. GORDON IS PRESENT AND FOR

1 THE RECORD HIS COUNSEL MR. D'AGOSTINO IS HERE.
2 MR. MCCREARY'S COUNSEL IS HERE AND ALSO MR.
3 MONTA GORDON'S COUNSEL MR. MATLOCK IS HERE.

4 MR. THOMPSON: YOUR HONOR, THE REASON FOR OUR
5 HEARING TODAY IS MR. D'AGOSTINO THE ATTORNEY FOR
6 ANTONIO GORDON AS PART OF PRE-TRIAL MOTIONS HAS
7 REQUESTED A JACKSON VERSES DENNO HEARING AND
8 CAPTAIN CABINESS IS A WITNESS THAT HE INTENDS TO
9 CALL. THE STATE HOWEVER DOES NOT INTEND TO CALL
10 HIM, BUT CAPTAIN CABINESS IS NOT AVAILABLE
11 BEGINNING TOMORROW MORNING THROUGH THE END OF
12 NEXT WEEK, SO WE ARE ASKING THE COURT TO HEAR
13 THIS PART OF THE JACKSON VERSUS DENNO HEARING AT
14 THIS TIME AND MR. D'AGOSTINO WOULD CALL I
15 BELIEVE CAPTAIN CABINESS TO THE STAND.

16 MR. D'AGOSTINO: WE WOULD AGREE WE WOULD CALL
17 CAPTAIN CABINESS TO THE STAND, AND YOUR HONOR,
18 FOR THE RECORD, I DON'T ANTICIPATE CALLING HIM
19 AT TRIAL FOR TESTIMONY IN FRONT OF THE JURY, BUT
20 IF IT BECAME NECESSARY I BELIEVE THE STATE AND
21 THE DEFENSE AGREED THAT WE AT LEAST COULD HAVE
22 HIS TRANSCRIPT AND THAT COULD BE READ TO THE
23 JURY IF THE ISSUE RELATING TO CAPTAIN CABINESS
24 BECAME RELEVANT AT THE TRIAL OF THIS CASE.

25 THE COURT: YOU AGREE WITH THAT, MR. THOMPSON?

1 MR. THOMPSON: YES, YOUR HONOR.

2 THE COURT: IT BEING IN THE NATURE OF A
3 DEPOSITION TYPE-PRESENTATION.

4 MR. THOMPSON: AS TO THE OTHER DEFENDANTS, YOUR
5 HONOR, I SPOKE TO THE ATTORNEYS AND THEY
6 INDICATED THEY HAVE NO QUESTIONS OF CAPTAIN
7 CABINESS AND I ASKED THEM IF THEY HAD ANY OTHER
8 PRETRIAL THINGS THEY ASK IT AT THIS TIME.

9 MR. GILLEN: BASED ON WHAT MY INFORMATION
10 REFLECTS AS TO WHO TOOK MY CLIENT'S STATEMENTS I
11 DON'T KNOW WITHOUT ASKING MR. CABINESS IF HE WAS
12 PRESENT OR NOT.

13 THE COURT: ALL RIGHT.

14 CHARLES CABINESS, BEING
15 FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

16 DIRECT EXAMINATION BY MR. D'AGOSTINO:

17 Q PLEASE TELL US YOUR NAME.

18 A CHARLES T. CABINESS.

19 Q WHERE DO YOU WORK?

20 A ROCK HILL POLICE DEPARTMENT.

21 Q WHAT IS YOUR RANK?

22 A CAPTAIN.

23 Q WERE YOU WORKING ON THE DAY OF JULY 23, 1998?

24 A YES, SIR, I WAS.

25 Q WHAT SHIFT WERE YOU WORKING?

1 A I NORMALLY WORK DAY SHIFT BUT ON THAT PARTICULAR
2 DAY I WAS PAGED OUT SHORTLY AFTER MIDNIGHT OR
3 VERY EARLY IN THE MORNING AND CAME IN VERY EARLY
4 IN THE MORNING AND STAYED THROUGHOUT THE DAY.

5 Q ALL RIGHT. WHERE DID YOU GO WHEN YOU WERE
6 PAGED OUT?

7 A TO THE AREA OF SOUTH JONES AND WALNUT.

8 Q WAS THAT WHERE THE?

9 A KRENN BOY HAD BEEN MURDERED.

10 Q KRENN HAD BEEN --

11 A ---THAT'S CORRECT, SHOT.

12 Q FOUND AND TAKEN BY AMBULANCE TO THE HOSPITAL?

13 A THAT'S WHERE THE ACTUAL SHOOTING OCCURRED. HE
14 DROVE SEVERAL BLOCKS AWAY AND WAS DISCOVERED
15 THERE.

16 Q SO YOU WENT TO THE JONES ADDRESS, NOT THE MAIN
17 STREET ADDRESS?

18 A THAT'S CORRECT.

19 Q THAT'S WHAT I WAS TRYING TO FIND OUT.

20 A YES, SIR.

21 Q AFTER THAT ADDRESS, WHERE DID YOU GO TO?

22 A I PROCEEDED TO PATROL THROUGHOUT ROCK HILL,
23 TALKING TO OTHER INVESTIGATORS AND OFFICERS, AND
24 LOOKING FOR A SUSPECT VEHICLE.

25 Q DID YOU SPEAK WITH ANYBODY EITHER, FIRST AT

1 JONES STREET, WHAT DID YOU DO WHILE AT JONES
2 STREET?

3 A YES, I TALKED WITH LIEUTENANT THICKENS,
4 LIEUTENANT TERRY TAYLOR, AND SOME OTHER PATROL
5 OFFICERS THERE.

6 Q AND DID YOU GO TO MAIN STREET AFTER THAT?

7 A NO, SIR, I NEVER DID GO, NO, SIR, I NEVER DID GO
8 TO MAIN STREET.

9 Q WHAT DID YOU FIND OUT FROM OFFICER THICKENS,
10 TAYLOR, AND THE OTHER OFFICERS ON JONES STREET?

11 A THAT WE WERE LOOKING FOR FOUR SUSPECTS AND THEY
12 WERE OCCUPYING A BLUE VEHICLE AND A BRIEF
13 DESCRIPTION AT THAT TIME.

14 Q WHEN DID, WHO DID YOU GET THE INFORMATION THAT
15 YOU WERE LOOKING FOR FOUR SUSPECTS FROM?

16 A I GOT IT FROM LIEUTENANT THICKENS.

17 Q DO YOU KNOW WHERE HE GOT THAT INFORMATION FROM?

18 A TALKING TO THE VICTIM THAT WAS IN THE CAR THAT
19 SURVIVED, CHRIS DIAZ, I BELIEVE.

20 Q CHRISTOPHER DIAZ?

21 A YES, SIR, THAT'S MY UNDERSTANDING, THAT WOULD BE
22 HEARSAY. I BELIEVE THAT'S MY BEST RECOLLECTION.

23 Q SO YOUR RECOLLECTION IS THAT FROM OFFICER
24 THICKENS Y'ALL WERE LOOKING FOR FOUR SUSPECTS
25 AND THAT CAME FROM DIAZ?

1 A THAT'S CORRECT.

2 Q SUBSEQUENT DID YOU RECEIVE ANY OTHER
3 INFORMATION --

4 A THEY ALSO TALKED WITH ANOTHER WITNESS THAT THEY
5 HAD JUST LET OUT OF THE CAR. HE MAY HAVE
6 PROVIDED THAT INFORMATION. I'M NOT SURE.

7 Q THAT WHO JUST LET OUT OF THE CAR?

8 A DIAZ AND KRENN HAD JUST LET A SUSPECT OUT,
9 ANOTHER INDIVIDUAL OUT OF THE CAR --

10 Q --ASHWORTH?

11 A THAT'S CORRECT, ASHWORTH ON JONES.

12 Q OKAY. BUT DID YOU SPEAK WITH ANYBODY ELSE WHILE
13 ON JONES STREET?

14 A DETECTIVE HERRING MAY HAVE BEEN THERE. I'M NOT
15 SURE.

16 Q DID YOU FIND OUT ANYTHING ELSE ABOUT WHO YOU
17 WERE LOOKING FOR OR WHAT YOU WERE LOOKING FOR?

18 A NO.

19 Q SUBSEQUENT TO BEING AT JONES STREET DID YOU, YOU
20 SAID YOU THEN?

21 A PATROLLED.

22 Q BEGAN DRIVING AROUND ROCK HILL?

23 A THAT'S CORRECT.

24 Q WHAT WERE YOU LOOKING FOR?

25 A A BLUE VEHICLE, A DARK BLUE VEHICLE WITH FOUR

1 INDIVIDUALS. AT THAT TIME WE THOUGHT IT WAS
2 POSSIBLY A CUTLASS, OLDSMOBILE CUTLASS.

3 Q DID YOU YOURSELF BECOME, HAVE ANY CONTACT WITH
4 THAT VEHICLE?

5 A SHORTLY AFTER FIVE O'CLOCK IN THE MORNING
6 DETECTIVE JETER, WHO I ALSO CALLED OUT AND SPOKE
7 WITH HIM ABOUT THAT, PROVIDED HIM WITH A
8 DESCRIPTION OF THE VEHICLE, HE GOT IN PURSUIT OF
9 A BLUE VEHICLE OCCUPIED BY FOUR INDIVIDUALS.
10 DURING THE PURSUIT THE VEHICLE PULLED OVER ON
11 BOYD HILL NEAR FARGO STREET ON CONSTITUTION
12 AVENUE WHERE TWO OF THE SUSPECTS IN THE BACK
13 SEAT, TWO SUSPECTS JUMPED OUT OF THE VEHICLE,
14 AND HE CONTINUED THE PURSUIT. THE PURSUIT WENT
15 ALL OVER ROCK HILL. AT ONE POINT CAME UP
16 FINNELLY ROAD TO BLACK STREET, AND I WAS AT THE
17 INTERSECTION OF BLACK STREET AT WHICH TIME THE
18 VEHICLE CAME AND I HAD TO MAKE A VERY FAST
19 EVASIVE MOVE TO KEEP THE VEHICLE FROM HITTING ME
20 HEAD ON. IT RAN UP ON THE CURB TO MISS ME ALSO.

21 Q WHEN DID YOU BECOME INVOLVED IN THAT CHASE?

22 A PROBABLY 5:10 TO 5:15 A.M.

23 Q WERE YOU INVOLVED IN THE CHASE BEFORE OR AFTER
24 THE TWO INDIVIDUALS GOT OUT OF THE CAR AT BOYD
25 HILL?

1 A AFTER.

2 Q SO YOU WERE ACTUALLY BEHIND THE CAR AT THAT
3 POINT?

4 A NO, I WAS MEETING IT HEAD ON.

5 Q HOW MANY INDIVIDUALS WERE IN THE CAR AT THAT
6 TIME?

7 A ONE.

8 Q SO HOW MANY PEOPLE WERE IN THE --

9 A ONE THAT I COULD SEE.

10 Q EXCUSE ME?

11 A ONE THAT I COULD SEE.

12 Q HOW MANY INDIVIDUALS, SO YOU ONLY EVER SAW ONE
13 PERSON IN THE CAR?

14 A THAT'S CORRECT.

15 Q SO --

16 A DETECTIVE JETER RELAYED THE INFORMATION THAT HE,
17 THAT TWO JUMPED OUT AND THEN HE ONLY SAW ONE.

18 Q ALL RIGHT. SO THERE WERE ONLY THREE PEOPLE IN
19 THE CAR THAT HE WAS CHASING?

20 A THAT'S, YES, SIR.

21 Q AND THE ONE THAT WAS IN THERE WHEN YOU SAW HIM
22 AND THEN THE TWO THAT JUMPED OUT?

23 A THAT'S CORRECT.

24 Q THE TWO THAT JUMPED OUT, JUMPED OUT OVER AT BOYD
25 HILL WHICH WAS SOME DISTANCE FROM WHERE YOU

1 WERE?

2 A THAT'S CORRECT.

3 Q AT THE POINT OF TIME THAT YOU TOOK EVASIVE
4 ACTION TO AVOID BEING HIT HEAD ON WITH THAT
5 AUTOMOBILE, DID THAT AUTOMOBILE COME TO A STOP?
6 WHERE WAS THAT AT?

7 A WHEN DID IT COME TO A STOP?

8 Q YEAH.

9 A I TURNED AROUND AND PROCEEDED IN PURSUIT OF THE
10 VEHICLE. A PATROL VEHICLE, I BELIEVE IT WAS
11 MASTER POLICE OFFICER HALL WAS DIRECTLY BEHIND
12 IT AND JETER AND THEN SEVERAL OTHER PATROL CARS
13 INCLUDING MYSELF WERE IN THE VICINITY. WE WERE
14 NOT IN DIRECT PURSUIT BEHIND IT. THE VEHICLE
15 PROCEEDED OUT OF TOWN OUT OF ROCK HILL ONTO
16 VERNSDALE ROAD WHICH IS A DIRT ROAD AND WHEN IT
17 WENT TO PULL INTO A DRIVEWAY APPROXIMATELY A
18 QUARTER OF A MILE SOUTH OF RAMBO ROAD, IT
19 WRECKED AT THAT TIME, RAN OFF THE ROAD.

20 Q ALL RIGHT.

21 A THE DRIVER AT THAT TIME DETECTIVE, THE OFFICERS
22 THAT WERE IN, DIRECTLY BEHIND THE VEHICLE TOLD
23 US THE DRIVER OF THE VEHICLE FLED ON FOOT.

24 Q AND ONE PERSON EXITED THAT AUTOMOBILE?

25 A THAT'S CORRECT.

1 Q AND HOW FAR BEHIND THE CAR WERE YOU WHEN IT, HOW
2 LONG DID IT TAKE YOU TO GET TO THE CAR AFTER IT
3 STOPPED, DO YOU KNOW?

4 A TWO MINUTES.

5 Q TWO MINUTES. AFTER THAT WHAT DID YOU DO NEXT?

6 A CALLED FOR OTHER OFFICERS AND CANINE TO ASSIST
7 US IN THE SEARCH AND PROCEEDED TO LOOK THROUGH
8 THE VEHICLE AND AROUND THE IMMEDIATE AREA.

9 Q WHAT DID YOU FIND?

10 A I FOUND PAPERS IN THE VEHICLE INDICATING
11 OWNERSHIP TO A TOWANDA BURRIS IF MY MEMORY
12 SERVES ME CORRECT AND THAT'S BASICALLY ALL THAT
13 I CAN REMEMBER THAT WE FOUND INSIDE THE VEHICLE.

14 Q WHAT DID YOU DO NEXT?

15 A I STAYED THERE AT THE SCENE, WAITED FOR THE
16 CANINES AND OTHER OFFICERS TO COME. THERE WAS
17 SOME INDIVIDUALS THAT CAME OUT OF THE TWO MOBILE
18 HOMES AND WALKED UP THE DRIVEWAY AND TALKED TO
19 US THERE. WE WENT TO SOME OTHER NEIGHBOR'S
20 HOUSES IN THE AREA LOOKING FOR THE INDIVIDUAL
21 DRIVING THE VEHICLE.

22 Q WHO WAS THAT THAT CAME UP THE DRIVEWAY?

23 A LATER DETERMINED IT TO BE TO MS. DIXON.

24 Q CHYENCA DIXON.

25 A I BELIEVE THAT'S CORRECT. SHE AT THAT TIME

1 GAVE, AT THAT TIME SHE IDENTIFIED HERSELF TO US
2 AS MS. TOWANDA BURRIS.

3 Q ALL RIGHT.

4 A AND ANTONIO GORDON.

5 Q HE ALSO CAME OUT OF THE HOUSE TOO?

6 A THAT'S CORRECT, CAME UP THE DRIVEWAY.

7 Q HE WAS JUST WALKING UP THE DRIVEWAY?

8 A THEY CAME UP TOGETHER TO US.

9 Q WERE THEY IN A CAR OR WALKING?

10 A THEY WERE WALKING.

11 Q WALKING UP THE DRIVEWAY?

12 A YES, SIR.

13 Q DID Y'ALL, WHAT IF ANYTHING DID YOU DO TO MS.
14 BURRIS OR DIXON OR WHATEVER, DIXON IS HER PROPER
15 NAME, AND MR. ANTONIO GORDON, WHAT DID YOU DO TO
16 THEM?

17 A I ASKED THEM WHO WAS DRIVING THE VEHICLE AND WHO
18 HAD BEEN DRIVING IT EARLIER THAT NIGHT.

19 Q AND WHAT DID THEY TELL YOU?

20 A ANTONIO PROVIDED US NO INFORMATION AND HAD A
21 VERY BAD ATTITUDE. HIS CONTACT WITH US WAS VERY
22 BRIEF AND HE WENT BACK TO THE TRAILER.

23 Q ALL RIGHT.

24 A MS. DIXON, WHO WAS STATING SHE WAS THE OWNER OF
25 THE VEHICLE, WE ASKED HER WOULD SHE COME TO THE

1 LAW CENTER AND TALK WITH US WHICH SHE DID. AT
2 THAT TIME SHE TOLD US THAT SHE HAD LOANED THE
3 CAR TO CHRIS LOWRY OR CHRIS GORDON.

4 Q SO DID SHE GO BACK IN THE HOUSE OR DID Y'ALL
5 IMMEDIATELY TAKE HER TO THE ROCK HILL LAW
6 CENTER?

7 A I'M NOT SURE IF SHE WENT BACK IN THE HOUSE TO
8 GET SOME CLOTHES OR A COAT OR ANYTHING, BUT SHE
9 WAS TAKEN SHORTLY TO THE LAW CENTER.

10 Q AT SOME POINT IN TIME DID YOU HAVE CONTACT AGAIN
11 WITH ANTONIO GORDON?

12 A YES, SIR, I DID.

13 Q WHEN WAS THAT?

14 A THE SAME MORNING ABOUT NINE, TEN O'CLOCK IN THE
15 MORNING. AFTER WE DEVELOPED FURTHER INFORMATION
16 THAT HE WAS DIRECTLY INVOLVED IN THIS MURDER,
17 WE WENT BACK TO THE RESIDENCE TO ARREST HIM, AND
18 AS WE ARE SITTING AT THE INTERSECTION OF RAMBO
19 AND VERNSDALE ROAD, ANTONIO AND TWO FEMALES
20 DROVE AWAY FROM THE RESIDENCE TO THE
21 INTERSECTION THERE. ANTONIO WAS SITTING IN THE
22 MIDDLE OF THE FRONT SEAT OF THAT VEHICLE AND HE
23 WAS ARRESTED THERE.

24 Q SO Y'ALL ACTUALLY LEFT THE RESIDENCE, ALL THE
25 POLICE OFFICERS LEFT THE RESIDENCE?

1 A (NODS HEAD.)

2 Q DID Y'ALL LEAVE WITH MONTA?

3 A NO, SIR.

4 Q YOU DIDN'T FIND MONTA WHEN YOU WERE OUT THERE

5 THE FIRST TIME?

6 A WE TALKED TO MONTA. HE GAVE US A FICTITIOUS

7 NAME AND WE DID NOT KNOW THAT WE WERE LOOKING

8 FOR MONTA GORDON AT THAT TIME. HE HAD NOT BEEN

9 DEVELOPED AS A SUSPECT AT THAT TIME.

10 Q SO WHAT HAPPENED NEXT? DID Y'ALL --

11 A WE LEFT THERE AND WENT BACK TO THE STATION.

12 Q ALL RIGHT.

13 A AT THAT TIME WE DEVELOPED INFORMATION THAT MONTA

14 AND ANTONIO ALONG WITH TWO OTHER INDIVIDUALS

15 WERE THE SUSPECTS THAT WE WERE LOOKING FOR IN

16 THIS MURDER.

17 Q WHERE DID YOU GET THAT INFORMATION FROM?

18 A FROM TALKING WITH MS. DIXON.

19 Q WHAT TIME WAS THAT?

20 A 8:30, 9 O'CLOCK. I'M NOT REAL SURE.

21 Q AND THEN WHO ALL WENT BACK OUT TO THE HOUSE?

22 A MYSELF AND SEVERAL OFFICERS.

23 Q WHICH OFFICERS?

24 A SERGEANT WATTS, STEVE THOMPSON, DON DOLSTER,

25 RODNEY PICKEL, DERRICK WILLIAMS.

- 1 Q AND WHO WAS AT THE HOUSE THAT TIME?
- 2 A WE WENT BACK TO BOTH THE MOBILE HOMES, BEFORE WE
- 3 GOT THERE, THERE AGAIN WE ARE SITTING AT RAMBO
- 4 AND VERNSDALE, AND THE TWO GIRLS AND ANTONIO
- 5 CAME UP THE DIRT ROAD AND WE ARRESTED ANTONIO
- 6 THEN.
- 7 Q WHICH TWO GIRLS?
- 8 A MS. DIXON AND I BELIEVE THIS MS. KENNEDY, I'M
- 9 NOT SURE, BUT I BELIEVE MS. KENNEDY.
- 10 Q SO YOU HAD TAKEN MS. DIXON TO THE LAW CENTER
- 11 THEN LET HER GO?
- 12 A THAT'S CORRECT.
- 13 Q AND SHE CAME BACK HOME AND YOU GOT HER AGAIN?
- 14 A THAT'S CORRECT. WE DID NOT GET HER AGAIN. THE
- 15 SECOND TIME.
- 16 Q WELL, I UNDERSTAND BUT SINCE SHE WAS COMING BACK
- 17 OUT WITH ANTONIO?
- 18 A THAT'S CORRECT.
- 19 Q AND YOU PLACED ANTONIO UNDER ARREST THEN?
- 20 A THAT'S CORRECT.
- 21 Q DID YOU HAVE A WARRANT FOR HIM AT THAT TIME?
- 22 A NO, SIR.
- 23 Q HAD Y'ALL BEEN CHASING HIM OR NOT AT THAT TIME?
- 24 A NO, SIR.
- 25 Q SO AFTER YOU PLACED HIM UNDER ARREST, WHAT DID

1 YOU DO NEXT?

2 A HE WAS PLACED IN THE BACK OF THE PATROL VEHICLE
3 AND WE WENT DIRECTLY TO THE TRAILERS AND
4 ARRESTED MONTA.

5 Q AT WHAT TIME WAS THIS?

6 A 9:30, 10 O'CLOCK, 10:30 MAYBE.

7 MR. D'AGOSTINO: ONE MOMENT, YOUR HONOR.

8 Q AND SO AT 9:30 OR 10 O'CLOCK YOU ARRESTED
9 ANTONIO?

10 A IT MAY HAVE BEEN 10:30.

11 Q WHERE DID HE GO FROM THERE?

12 A TO THE LAW CENTER.

13 Q WHAT CONTACT DID YOU HAVE WITH HIM AT THE LAW
14 CENTER?

15 A HE WAS BROUGHT TO THE LAW CENTER THERE AND WE
16 WERE IN THE PROCESS OF TRYING TO TALK TO THOSE
17 TWO INDIVIDUALS AND ALSO TRYING TO OBTAIN A
18 LOCATION ON MR. MCCREARY AND MR. MOFFAT.
19 SHORTLY AFTER WE GOT BACK TO THE LAW CENTER, I
20 SAY SHORTLY, MAYBE 30 OR MINUTES OR AN HOUR, WE
21 DID OBTAIN THE LOCATION WHERE THE OTHER TWO
22 INDIVIDUALS WERE AT. AT WHICH TIME WE WENT TO
23 FARGO STREET AND ARRESTED THEM.

24 Q DO YOU KNOW WHO TOOK ANTONIO FROM HIS HOUSE AND
25 TRANSPORTED HIM TO THE LAW CENTER?

1 A OFFICER DERRICK WILLIAMS.

2 Q AFTER ANTONIO WAS TAKEN TO THE LAW CENTER, DO
3 YOU KNOW WHERE HE WAS PLACED?

4 A I SEEN HIM, I REMEMBER HIM ONE TIME SITTING IN
5 THE CONFERENCE ROOM ON THE BACK HALL DIRECTLY
6 ACROSS FROM THE DETECTIVE DIVISION. I THINK
7 THAT'S WHERE HE WENT PROBABLY ABOUT AS SOON AS
8 HE GOT TO THE LAW CENTER BECAUSE I REMEMBER
9 SEEING HIM THERE FIRST AND THEN HE WAS LATER IN
10 THE DETECTIVE DIVISION AND HE WAS FINALLY IN
11 LIEUTENANT THICKENS' OFFICE.

12 Q WAS HE EVER PLACED IN A JUVENILE HOLDING CELL?

13 A HE MAY HAVE BEEN. I DON'T KNOW.

14 Q WERE YOU INVOLVED IN ANY WAY WITH REGARD TO THE
15 TAKING OF THE FIRST STATEMENT FROM ANTONIO?

16 A NO, SIR.

17 Q WERE YOU PRESENT AT ALL WHEN THAT STATEMENT WAS
18 TAKEN?

19 A NO, SIR.

20 Q DO YOU KNOW WHO TOOK THAT STATEMENT?

21 A DETECTIVE WALDROP.

22 Q DID YOU HAVE ANY CONTACT WITH CHRIS WELLBORN?
23 YOU KNOW WHO CHRIS WELLBORN IS, DO YOU NOT?

24 A YES, I DO.

25 Q DID YOU HAVE ANY CONTACT WITH CHRIS WELLBORN

1 THAT MORNING?

2 A YES, SIR, I DID.

3 Q DO YOU REMEMBER WHEN THAT WAS?

4 A NOT SPECIFICALLY THE TIMES, NO, SIR. IT WAS
5 AFTER ANTONIO HAD GOTTEN TO THE LAW CENTER.

6 Q AND WAS IT AFTER OR BEFORE THE FIRST STATEMENT
7 HE HAD GIVEN?

8 A I'M NOT SURE. IT MAY HAVE BEEN DURING, IT MAY
9 HAVE BEEN AFTER, BUT IT WAS NOT BEFORE.

10 Q ALL RIGHT.

11 A IT MAY HAVE BEEN DURING OR AFTER.

12 Q DURING OR AFTER?

13 A YES, SIR.

14 Q BY THE WAY, DID YOU TAKE ANY NOTES OF ANYTHING
15 THAT WENT ON THAT DAY?

16 A NO, SIR.

17 Q NOW WHEN ANTONIO WAS GIVING OR GAVE THE FIRST
18 STATEMENT, WHERE DID YOU HAVE YOUR CONTACT WITH
19 CHRIS WELLBORN?

20 A IN THE LOBBY OF THE POLICE DEPARTMENT.

21 Q HOW DID THAT COME ABOUT?

22 A EITHER I WENT OUT INTO THE LOBBY OR I WAS CALLED
23 OUT INTO THE LOBBY.

24 Q AND WHEN YOU GOT OUT INTO THE LOBBY, DID YOU
25 SPEAK WITH MR. WELLBORN?

1 A YES, SIR.

2 Q DID HE ASK TO SEE ANTONIO?

3 A HE STATED THAT HE REPRESENTED ANTONIO, YES, SIR.

4 Q AND HE TOLD YOU ON NO UNCERTAIN TERMS HE WAS

5 ANTONIO'S ATTORNEY?

6 A HE TOLD ME HE REPRESENTED ANTONIO.

7 Q DID HE ASK TO SEE ANTONIO?

8 A HE DEMANDED THAT WE STOP TALKING WITH HIM AND

9 THAT HE BE ALLOWED TO SEE HIM.

10 Q AND WHAT WAS YOUR RESPONSE TO HIM?

11 A THAT AS SOON AS WE WERE THROUGH TALKING TO HIM

12 OR AS SOON AS ANTONIO REQUESTED HIS ATTORNEY

13 THAT WE WOULD LET HIM SEE HIM.

14 Q DID YOU EVER TELL ANTONIO THAT HE HAD, DID YOU

15 GO BACK AND TELL ANTONIO THAT CHRIS WELLBORN WAS

16 OUT THERE?

17 A NOT AT THAT TIME, NO, SIR.

18 Q WAS ANTONIO'S MOTHER OUT THERE?

19 A NO, SIR, NOT TO MY KNOWLEDGE.

20 Q WAS ANY OF ANTONIO'S FAMILY OUT THERE?

21 A THERE WAS SOME PEOPLE IN THE LOBBY. I DON'T

22 KNOW IF THEY WERE HIS FAMILY OR NOT.

23 Q HAD Y'ALL ATTEMPTED, SINCE ANTONIO WAS A

24 JUVENILE HAD Y'ALL ATTEMPTED TO CONTACT HIS

25 FAMILY AT ALL?

1 A HIS FAMILY, I TALKED TO HIS GRANDFATHER, WHO I
2 WAS LED TO BELIEVE WAS HIS IMMEDIATE GUARDIAN OR
3 RELATIVE, I TALKED TO HIM AT THE TIME OF HIS
4 ARREST AND EXPLAINED THE SITUATION TO HIM AT
5 THAT TIME. I LATER TALKED TO HIS GRANDFATHER IN
6 THE LOBBY LATER THAT AFTERNOON.

7 Q DO YOU KNOW WHO HIS GRANDFATHER IS, ANYTHING
8 STRIKING ABOUT HIS GRANDFATHER THAT YOU
9 REMEMBER?

10 A HE'S DISABLED.

11 Q AFTER YOU SPOKE WITH CHRIS WELLBORN, DID YOU
12 ALSO SPEAK WITH OR ATTEMPT TO SPEAK WITH CHYENCA
13 DIXON IN THE LOBBY AGAIN?

14 A YES, SIR, I WENT OUT AND ASKED MS. DIXON COULD
15 SHE STEP BACK INTO THE DETECTIVE DIVISION, WE
16 WANTED TO TALK TO HER, AT WHICH TIME CHRIS
17 WELLBORN SAID HE REPRESENTED HER. AND I ASKED
18 HIM WHO, THERE WAS OTHER PEOPLE THERE, OTHER
19 LADIES THERE, I REQUESTED TO TALK TO ONE OF THEM
20 AND MR. WELLBORN TOLD ME HE REPRESENTED HER TOO.
21 I ASKED HIM WHO ELSE HE REPRESENTED. HE SAID HE
22 REPRESENTED THEM ALL. AT THAT TIME I TOLD MS.
23 DIXON SHE'D HAVE TO COME BACK TO THE DETECTIVE
24 DIVISION AND TALK WITH ME AT THAT TIME WHICH SHE
25 DID.

1 Q DIDN'T CHYENCA SAY IF YOU TALKED TO HER SHE
2 WANTED A LAWYER PRESENT AND SHE TOLD YOU THAT
3 CHRIS WAS HER LAWYER?

4 A NO, SIR, SHE DID NOT. CHRIS, EXCUSE ME, MR.
5 WELLBORN TOLD ME HE REPRESENTED EVERYBODY IN THE
6 LOBBY, BUT SHE DID NOT TELL ME THAT HE WAS HER
7 LAWYER, NO, SIR.

8 Q AS A RESULT OF THAT, DID Y'ALL THEN TELL CHYENCA
9 DIXON THAT Y'ALL WERE GOING TO PLACE HER UNDER
10 ARREST FOR ACCESSORY AFTER THE FACT AND TAKE HER
11 IN THE BACK AND SPEAK WITH HER?

12 A I BELIEVE I DID TELL HER THAT I WOULD PLACE HER
13 UNDER ARREST IF SHE DIDN'T COME BACK AND TALK TO
14 ME, THAT'S CORRECT.

15 Q AND AFTER MR. WELLBORN TOLD YOU THAT HE WAS HER
16 ATTORNEY, YOU TOLD HER THAT SHE AND --

17 A THAT SHE WAS UNDER ARREST.

18 Q THAT SHE WANTED HIM PRESENT. YOU THEN TOLD HER
19 YOU WERE PLACING HER UNDER ARREST AND CHARGING
20 HER WITH ACCESSORY AFTER THE FACT AND TOOK HER
21 BACK IN THE DETECTIVE DIVISION TO SPEAK WITH
22 HER?

23 A REPEAT THAT A LITTLE.

24 Q AFTER CHYENCA?

25 A YES, SIR.

1 Q TOLD YOU AND CHRIS TOLD YOU?

2 A NO, SIR, CHYENCA NEVER TOLD ME THAT HE WAS.
3 CHRIS WELLBORN TOLD ME. SHE HAD NEVER.

4 Q CHRIS WELLBORN WAS STANDING THERE WHEN CHYENCA
5 WAS STANDING THERE AS WELL, RIGHT?

6 A THAT'S CORRECT.

7 Q DID SHE DENY THAT HE WAS HER ATTORNEY?

8 A NO, SIR, SHE DID NOT.

9 Q AND AFTER HE ASSERTED, AND HE ASSERTED IN HER
10 PRESENCE, ACCORDING TO YOU, THAT HE WAS HER
11 ATTORNEY?

12 A THAT'S CORRECT.

13 Q AND HE WAS GOING TO BE PRESENT?

14 A HE DID NOT SAY HE WAS GOING TO BE PRESENT. HE
15 JUST SAID HE WAS HER ATTORNEY AND SHE WOULD NOT
16 TALK TO ME. I BELIEVE HE DID SAY THAT.

17 Q ALL RIGHT. AND AFTER THAT, YOU THEN TOLD HER
18 YOU ARE PLACING HER UNDER ARREST AND TOOK HER
19 BACK IN THE DETECTIVE DIVISION, IS THAT CORRECT?

20 A AT THAT TIME I TRIED TO ASK ANOTHER LADY OUT
21 THERE TO COME BACK AND TALK TO ME AND THAT'S
22 WHEN CHRIS TOLD ME HE REPRESENTED HER AND I
23 ASKED HIM WHO ELSE DID HE REPRESENT AND HE SAID
24 HE REPRESENTED EVERYBODY OUT THERE. AT THAT
25 TIME I TOLD HER SHE WAS UNDER ARREST AND SHE'D

1 HAVE TO COME BACK IN THE DETECTIVE DIVISION.

2 Q WHAT DID YOU ARREST HER FOR?

3 A ACCESSORY AFTER THE FACT.

4 Q WHAT DID YOU CHARGE HER WITH?

5 A DID NOT CHARGE HER.

6 Q SO YOU NEVER HAD AN ARREST WARRANT FOR HER AT
7 THAT TIME?

8 A NO, SIR, I DID NOT.

9 Q AND YOU NEVER GOT ONE FOR HER, DID YOU?

10 A NO, SIR, I DID NOT.

11 Q AND AFTER YOU TALKED TO HER AGAIN, OF COURSE,
12 YOU DIDN'T GET ANY STATEMENTS FROM HER OR
13 ANYTHING THAT TIME, DID YOU? DID YOU SPEAK WITH
14 HER WHEN YOU TOOK HER IN THE BACK OR DID
15 CHARLENE BLACKWELDER SPEAK WITH HER?

16 A I BELIEVE, YES, SIR, I BELIEVE I SPOKE WITH HER
17 FOR A BRIEF OF PERIOD OF TIME. I THINK
18 LIEUTENANT THICKENS MAY HAVE TALKED TO HER
19 AGAIN, AND I'M NOT SURE IF CHARLENE DID OR NOT.

20 Q DID YOU TAKE ANY NOTES OF THAT INTERVIEW?

21 A I DID NOT TAKE ANY OFFICIAL STATEMENTS FROM HER,
22 NO. I WAS TRYING TO DETERMINE WHO THE OTHER
23 SUSPECTS WERE INVOLVED AND TO COORDINATE THE
24 ENTIRE INVESTIGATION. I WAS NOT TAKING DETAILED
25 STATEMENTS FROM ANY OF THESE PEOPLE.

1 Q BUT YOU TALKED, THERE WAS NO DOUBT ABOUT IT, YOU
2 TOLD HER SHE WAS UNDER ARREST?

3 A THAT'S CORRECT.

4 Q NOW SUBSEQUENT TO THAT MR. WELLBORN, AFTER YOU
5 TOOK HER IN THE BACK, HE ALSO REQUESTED TO SEE
6 ANTONIO AGAIN, DID HE NOT?

7 A I DON'T KNOW IF WAS SUBSEQUENT OR NOT. I DO
8 KNOW THAT HE MADE SEVERAL REQUESTS.

9 Q WHEN DID YOU TELL HIM THAT ANTONIO WAS ACTUALLY
10 CHARGED WITH MURDER AND THAT HE WOULD NOT BE
11 ABLE TO SEE HIM UNTIL AFTER Y'ALL WERE DONE, WAS
12 THAT THE FIRST TIME, THE SECOND TIME, OR THE
13 THIRD TIME?

14 A I DON'T REMEMBER IF I EVER TOLD HIM WHAT HE WAS
15 CHARGED WITH. I DON'T REMEMBER THAT. I MAY
16 HAVE. I DO NOT REMEMBER THAT. I TOLD HIM THE,
17 I TOLD HIM EVERY TIME I HAD CONTACT WITH HIM
18 THAT HE WOULD NOT BE ABLE TO SEE HIM UNTIL THE
19 BOOKING PROCESS WAS COMPLETED OR UNTIL AT WHICH
20 TIME ANTONIO ASKED TO SEE HIM OR AN ATTORNEY.

21 Q DID YOU EVER GO BACK AND TELL ANTONIO THAT MR.
22 WELLBORN WAS WAITING OUT THERE TRYING TO SEE
23 HIM?

24 A NO, SIR.

25 Q DID YOU EVER TELL ANY OF THE INDIVIDUAL OFFICERS

1 INTERVIEWING ANTONIO THAT MR. WELLBORN WAS OUT
2 THERE WAITING TO SEE HIM?

3 A YES, SIR, I DISCUSSED THAT WITH SEVERAL PEOPLE,
4 ALL THE DETECTIVES, CHIEF OF POLICE, THE
5 SOLICITOR'S OFFICE. I DISCUSSED THAT WITH
6 SEVERAL PEOPLE.

7 Q LET'S START WITH THERE. YOU DISCUSSED IT WITH
8 THE DETECTIVES. WHAT DETECTIVES DID YOU CONTACT
9 OR DISCUSS IT WITH?

10 A LIEUTENANT THICKENS.

11 Q WHO ELSE?

12 A DETECTIVE WALDROP.

13 Q WHO ELSE?

14 A I'M NOT SURE.

15 Q YOU CONTACTED THE CHIEF OF POLICE, CHIEF
16 FORTSON?

17 A CORRECT.

18 Q AND --

19 A CHIEF FORTSON HAD ALREADY CONTACTED ME IN
20 REFERENCE TO IT.

21 Q WHY?

22 A BECAUSE THE ATTORNEY WELLBORN HAD WENT TO TALK
23 TO CHIEF FORTSON.

24 Q ABOUT CONTACTING HIS CLIENT AND HAVING A
25 CONFERENCE WITH HIS CLIENT?

1 A THAT'S CORRECT.

2 Q WHAT DID YOU TELL CHIEF FORTSON?

3 A THAT THE CLIENT HAD NOT ASKED FOR AN ATTORNEY.

4 Q AND YOU SAID YOU ALSO CONTACTED SOMEBODY AT THE
5 SOLICITOR'S OFFICE, WHO DID YOU CONTACT OVER
6 THERE?

7 A SOLICITOR POPE.

8 Q WHO?

9 A TOMMY POPE.

10 Q WHAT WERE YOU ADVISED BY TOMMY POPE?

11 A THAT IF THE DEFENDANT MR. GORDON ASKED TO SEE
12 HIS ATTORNEY HE SHOULD BE AFFORDED THAT RIGHT,
13 BUT THE ATTORNEY COULD NOT ASSERT THE PRIVILEGE.

14 Q DID YOU INFORM HIM THAT ANTONIO WAS A JUVENILE?

15 A I'M NOT SURE.

16 Q DID YOU TELL HIM ABOUT HIS LIMITED, DID YOU --
17 STRIKE THAT. DID YOU EVER LET ANTONIO SEE HIS
18 ATTORNEY THAT DAY?

19 A I WOULD NOT HAVE, I DON'T KNOW IF HE SEEN HIS
20 ATTORNEY THAT DAY OR NOT, BUT I WOULD NOT, I
21 WOULD NEVER LET SOMEONE DO THAT. THE ATTORNEY
22 WOULD SEE HIM THROUGH OTHER CHANNELS OTHER THAN
23 ME. LATER, AS SOON AS HIS GRANDFATHER ARRIVED
24 IN THE LOBBY I WENT OUT AND SPOKE WITH HIS
25 GRANDFATHER AND I ASKED HIS GRANDFATHER IF HE

1 WANTED TO SEE ANTONIO AND THEN I WENT BACK INTO,
2 AT THAT TIME ANTONIO WAS IN LIEUTENANT THICKENS'
3 OFFICE AND I WENT IN THERE AND SPOKE WITH
4 ANTONIO AND ASKED HIM AT THAT TIME DID HE WANT
5 TO SEE HIS GRANDFATHER OR A LAWYER AND ANTONIO
6 TOLD ME NO.

7 Q THAT WAS AT THE END OF HIS SECOND STATEMENT?

8 A IT WAS NOT AT THE END OF IT, NO, SIR. I DON'T
9 KNOW IF IT'S AT THE VERY BEGINNING OR AT THE
10 MIDDLE, BUT IT WAS NOT AT THE VERY END OF IT
11 BECAUSE I LEFT THEM STILL TALKING.

12 Q WELL, DIDN'T Y'ALL ADD TO THE END OF HIS SECOND
13 STATEMENT, I WANT TO ADD THAT I WANT TO MAKE
14 THIS STATEMENT. I'VE BEEN OFFERED, I'VE BEEN
15 OFFERED THE OPPORTUNITY TO HAVE MY GRANDFATHER
16 OR MOTHER WITH ME, BUT I JUST WANT TO TELL THE
17 TRUTH NOW AND GET THIS OVER WITH, SO I DON'T
18 NEED NO ONE WITH ME. CAPTAIN CABINESS ASKED ME
19 IF I WANTED SOMEONE FROM MY FAMILY OR A LAWYER
20 WITH ME, BUT I'M BEING TRUTHFUL ABOUT WHAT
21 HAPPENED AND I'M SORRY FOR IT. I WOULD REALLY
22 LIKE TO JUST GET THIS OVER WITH SO I CAN SEE MY
23 SEVEN-MONTH-OLD BABY. THAT'S WHAT Y'ALL ADDED
24 AT THE END OF THE SECOND STATEMENT?

25 A I DID NOT PRODUCE THAT STATEMENT. LIEUTENANT

1 THICKENS DID AND IT IS AT THE LAST PARAGRAPH ON
2 THE STATEMENT, BUT IF YOU WILL NOTICE IT SAYS
3 CAPTAIN CABINESS ASKED ME AS IN PAST TENSE AND
4 THERE AGAIN I DO NOT KNOW AT WHAT PORTION OF THE
5 STATEMENT OR THE INTERVIEW THAT THEY WERE IN.

6 Q HOW LONG DID YOU STAY IN THERE WHEN YOU WENT IN
7 THERE DURING THAT STATEMENT?

8 A A VERY SHORT PERIOD OF TIME, TWO TO THREE
9 MINUTES MAX.

10 Q DO YOU RECALL TELLING ANTONIO OR LIEUTENANT OR
11 OFFICER THICKENS TELLING ANTONIO THAT ALL HE HAD
12 TO DO IS GIVE A STATEMENT AND HE COULD GO HOME
13 AND SEE HIS SEVEN-MONTH-OLD BABY?

14 A NO, SIR.

15 Q YOU WEREN'T THERE WHEN HE TOLD HIM THAT?

16 A I DIDN'T TELL HIM THAT AND I WAS NOT THERE WHEN
17 LIEUTENANT THICKENS SAID THAT, NO, SIR. IF
18 LIEUTENANT THICKENS SAID THAT.

19 Q ANTONIO DID HAVE A BOND HEARING THAT DAY THOUGH,
20 DIDN'T HE?

21 A I DON'T REMEMBER AT THIS TIME, NO, SIR.

22 Q YOU DON'T REMEMBER?

23 A NO, SIR.

24 Q Y'ALL SENT HIM OVER TO THE YORK COUNTY, OVER
25 HERE TO THE MOSS CENTER, THE SHERIFF'S

1 DEPARTMENT DETENTION CENTER DOWNSTAIRS AT THE
2 END OF THAT DAY, DIDN'T YOU?

3 A I DON'T HAVE PERSONAL KNOWLEDGE OF THAT. THAT
4 SOUNDS LIKE THE LOGICAL PROCEDURE OF THE WAY
5 THINGS SHOULD HAVE PROGRESSED.

6 Q HOW MANY PEOPLE WERE IN THE ROOM WHEN YOU WENT
7 IN THE ROOM THE SECOND TIME DURING THE SECOND
8 STATEMENT AND OFFICER THICKENS WAS TAKING THAT
9 STATEMENT, HOW MANY PEOPLE WERE IN THAT ROOM?

10 A I DIDN'T GO IN THE ROOM BUT ONCE.

11 Q OKAY. I'M TALKING ABOUT THE SECOND STATEMENT,
12 NOT THE SECOND TIME, THE SECOND STATEMENT.

13 A LIEUTENANT THICKENS AND ANTONIO GORDON WERE IN
14 THE ROOM ALONE.

15 Q AND NO ONE ELSE WAS WITH THEM?

16 A THAT'S CORRECT.

17 Q AND THEY WERE IN LIEUTENANT THICKENS' OFFICE
18 WHICH IS ABOUT 11 BY 12 OFFICE?

19 A THE DIMENSIONS I'M NOT SURE OF, BUT THAT SOUNDS
20 ABOUT RIGHT.

21 Q IT'S THAT OFFICE BACK THERE TO THE LEFT AFTER
22 YOU WALK INTO THE DETECTIVE DIVISION?

23 A THAT'S CORRECT, YES, SIR.

24 Q AND AS FAR AS FURNITURE HE HAD IN THERE, WHAT
25 DID HE HAVE IN THERE?

1 A A DESK, A DESK CHAIR, I THINK THERE WAS TWO
2 CHAIRS IN FRONT OF HIS DESK, AND THERE MAY HAVE
3 BEEN COMPUTER WORK STATION OR A TYPEWRITER.

4 Q WHAT WAS HE DOING WHEN YOU WENT IN THERE? WAS
5 HE WRITING DOWN A STATEMENT OR WHAT?

6 A WHEN I KNOCKED ON THE DOOR HE LET ME IN AND HE
7 DIDN'T DO ANYTHING WHILE I WAS IN THERE. AS A
8 MATTER OF FACT, HE LET ME DO THE TALKING. I
9 TOLD HIM ABOUT HIS GRANDFATHER WAS THERE, DID HE
10 WANT TO SEE HIS GRANDFATHER OR A LAWYER, HE SAID
11 NO, AND I LEFT. AND I WENT BACK OUT AND TOLD
12 HIS GRANDFATHER THAT.

13 Q DID HE WRITE DOWN ANY OF THIS?

14 A HE WHO?

15 Q DID LIEUTENANT THICKENS WRITE ANY OF THIS OUT?

16 A HE TYPED IT LATER BUT I DIDN'T SEE HIM WRITING
17 ANYTHING WHILE I WAS THERE.

18 Q SO HE TYPED IT LATER. DID YOU NOTICE HOW HE WAS
19 TAKING THOSE STATEMENTS? HANDWRITING THEM, TAPE
20 RECORDING?

21 A NO, SIR, I DID NOT.

22 Q WHAT IS YOUR PROCEDURE AS FAR AS, YOU'RE CAPTAIN
23 OVER THERE?

24 A THAT'S CORRECT.

25 Q YOU ARE OVER ALL, OVER THE DETECTIVE DIVISION?

1 A THAT'S CORRECT.

2 Q WHAT IS YOUR PROCEDURE AS FAR AS TAKING
3 STATEMENTS FROM DEFENDANTS, RECORD THEM, TAPE
4 RECORD THEM, VIDEO RECORD THEM, WRITE THEM DOWN,
5 TYPE THEM OUT, OR WHAT?

6 A THEY ARE NOT VIDEO TAPED. THEY ARE VERY SELDOM
7 AUDIO TAPED. HOWEVER, IT IS DONE ON OCCASION.
8 MOST OF THE TIME THE DETECTIVE INTERVIEWS, TALKS
9 WITH THE DEFENDANT, AND THEN PUTS THAT
10 CONVERSATION ONTO A STATEMENT, READS, AND HAS
11 THE DEFENDANT WRITE IT AND GIVES THEM THE
12 OPPORTUNITY TO MAKE CHANGES, ADDITIONS,
13 DELETIONS, ET CETERA, AND HAS HIM SIGN IT.

14 Q DO Y'ALL TAKE NOTES AS YOU DO THEM OR DO YOU
15 JUST GO THROUGH THE WHOLE THING AND THEN GO BACK
16 AND TYPE IT UP?

17 A IT'S DONE BOTH WAYS.

18 Q DID YOU HAVE ANY OTHER CONTACT WITH ANTONIO
19 GORDON THAT DAY?

20 A NOT TO MY KNOWLEDGE. NOT THAT I CAN REMEMBER.

21 Q WERE YOU INVOLVED AT ALL IN PREPARING THE ARREST
22 WARRANT FOR HIM?

23 A NO, SIR.

24 Q YOU DON'T EVEN KNOW WHEN THAT WAS DONE?

25 A I FEEL CONFIDENT IT WAS DONE THAT AFTERNOON, BUT

1 NO, SIR, I DON'T KNOW.

2 Q YOU DON'T KNOW SPECIFICALLY YOURSELF WHEN THAT
3 WAS DONE?

4 A NO, SIR, I DO NOT.

5 Q DID YOU YOURSELF EVER READ ANTONIO HIS MIRANDA
6 RIGHTS?

7 A NOT THAT I REMEMBER, NO, SIR.

8 Q AND LET ME GO BACK A SECOND TO THE TIME WHEN
9 Y'ALL WENT OUT TO THE HOUSE. Y'ALL WENT OUT TO
10 THE HOUSE AT THE END OF THE CHASE, AS I
11 UNDERSTAND IT, ASKED CHYENCA DIXON, TOWANDA
12 BURRIS OR WHATEVER YOU WANT TO CALL HER, TO GO
13 BACK TO THE POLICE DEPARTMENT WITH YOU, WHO TOOK
14 HER BACK TO THE POLICE STATION?

15 A LIEUTENANT THICKENS.

16 Q AND DID Y'ALL PHYSICALLY LEAVE THE RESIDENCE OR
17 WAS A CONTINGENCY OF POLICE OFFICERS STILL OUT
18 THERE AND WAITED AT THE END OF THE DIRT ROAD?

19 A UNTIL WHEN?

20 Q UNTIL YOU SUBSEQUENTLY ARRESTED ANTONIO?

21 A WE PHYSICALLY LEFT.

22 Q SO Y'ALL DIDN'T WAIT AT THE END OF THE DIRT
23 ROAD?

24 A NO, SIR.

25 Q DID YOU, DID YOU OR ANYBODY THAT YOU KNOW OF

1 TELL ANTONIO OR MONTA, ANY OF THEM, THAT Y'ALL
2 WOULD BE BACK WHEN YOU LEFT THE FIRST TIME?

3 A NOT TO MY KNOWLEDGE.

4 MR. D'AGOSTINO: ONE MOMENT, YOUR HONOR. THOSE
5 ARE ALL THE QUESTIONS I HAVE. THANK YOU VERY,
6 CAPTAIN.

7 MR. THOMPSON: PLEASE THE COURT, YOUR HONOR.

8 CROSS EXAMINATION BY MR. THOMPSON:

9 Q CAPTAIN, ANTONIO WAS 16 AT THE TIME OF HIS
10 ARREST, IS THAT CORRECT?

11 A TO THE BEST OF MY RECOLLECTION, YES, SIR.

12 Q AND WHEN YOU ACTUALLY WERE PRESENT AT THE ARREST
13 OF ANTONIO AT THE CORNER OF OR INTERSECTION OF
14 RAMBO ROAD AND VERNSDALE, THAT'S ACTUALLY,
15 THAT'S WITHIN THE CITY LIMITS OF ROCK HILL,
16 ISN'T THAT CORRECT?

17 A THAT'S CORRECT.

18 Q AND THAT IS HERE IN YORK COUNTY, RIGHT?

19 A YES, SIR.

20 Q NOW AS FAR AS MS. DIXON GOES, WHEN MS. DIXON
21 WENT TO THE POLICE STATION WITH YOU THE FIRST
22 TIME, SHE WENT WILLINGLY AT THAT TIME, DIDN'T
23 SHE?

24 A THAT'S CORRECT.

25 Q AND SHE DID NOT MENTION ANYTHING ABOUT HAVING AN

1 ATTORNEY AT THAT TIME?

2 A SHE DID NOT.

3 Q AS A MATTER OF FACT, I BELIEVE I HAVE A COPY, I
4 KNOW YOU ALLUDED TO THE FACT THAT SHE HAD
5 MENTIONED HER NAME FIRST BEING TOWANDA BURRIS.
6 DID SHE ACTUALLY GIVE A STATEMENT UNDER THE NAME
7 OF TOWANDA BURRIS?

8 A YES, SIR, SHE DID.

9 Q AFTER THAT DID SHE SUBSEQUENTLY TELL YOU WHAT
10 HER REAL NAME WAS AND GIVE ANOTHER STATEMENT?

11 A YES, SHE DID.

12 Q AND I WOULD ASK YOU TO LOOK AT THAT STATEMENT.
13 I DON'T HAVE A COPY OF THAT I BELIEVE.

14 MR. THOMPSON: YOUR HONOR, BRIEFLY WHILE WE ARE
15 WAITING, IF TERRANCE MCCREARY IS HERE, IF THEY
16 WOULD CHECK AND BRING HIM OUT.

17 (MR. TERRANCE MCCREARY ENTERS THE COURTROOM.)

18 (STATE'S EXHIBIT ONE STATEMENT OF DIXON MARKED
19 FOR IDENTIFICATION.)

20 Q CAPTAIN, IF YOU WOULD LOOK AT STATE'S EXHIBIT
21 NUMBER ONE AND TELL ME WHAT THAT IS?

22 A THIS IS A STATEMENT THAT MS. DIXON GAVE TO
23 LIEUTENANT THICKENS.

24 Q WHAT ARE THE TIMES LISTED ON THAT STATEMENT?

25 A BEGAN AT 7:30 A.M. AND WAS SIGNED AT 8:45 A.M.

1 Q AND WERE YOU IN CONTACT WITH DETECTIVE THICKENS
2 DURING THE PERIOD THAT HE WAS TAKING THAT
3 STATEMENT?

4 A YES, SIR, I WAS.

5 Q WERE YOU THERE ACTUALLY IN THE STATION OR WERE
6 YOU CONTACTED BY RADIO OR OTHER MEANS?

7 A I WAS NOT PHYSICALLY IN THE ROOM BUT I WAS, WE
8 WERE IN RADIO AND PHONE CONTACT.

9 Q OKAY. DID HE CONTACT YOU BY RADIO AS TO THE
10 CONTENT OF THAT STATEMENT?

11 A YES, HE DID.

12 Q AND AS A MATTER OF FACT HE TOLD YOU THE NAMES OF
13 FOUR DEFENDANTS WHO WERE INVOLVED IN THIS
14 PARTICULAR CRIME, DIDN'T HE?

15 A THAT'S CORRECT.

16 Q AND WHAT NAMES DID YOU HAVE AS THE NAMES THAT
17 WERE THE ONES THAT COMMITTED THE CRIME?

18 A ANTONIO GORDON, MONTA GORDON, TERRANCE MCCREARY,
19 AND GARY MOFFAT. WE ALSO PULLED THEIR PHOTOS
20 BEFORE I LEFT THE STATION TO GO BACK AND ARREST
21 THEM.

22 Q ALL RIGHT. AND AS A MATTER OF FACT YOU HAD
23 ALREADY SEEN ANTONIO GORDON DOWN AT THE HOUSE,
24 DOWN AT THE TRAILER Y'ALL HAD BEEN TO?

25 A THAT'S CORRECT.

1 Q AS A MATTER OF FACT I THINK ONE OF THE OFFICERS
2 IDENTIFIED MONTA AS BEING DOWN THERE AS WELL,
3 ISN'T THAT TRUE? I'M SORRY MONTA GORDON AS
4 BEING DOWN THERE AS WELL?

5 A THAT'S CORRECT.

6 Q AND SO YOU AT THAT POINT KNEW THAT BOTH OF THOSE
7 DEFENDANTS WERE PROBABLY BE AT THOSE TRAILERS
8 DOWN THERE?

9 A THAT'S CORRECT.

10 Q AND IS THAT WHEN YOU WENT BACK DOWN TO THE
11 TRAILERS TO EFFECT THEIR ARREST?

12 A YES, SIR. WE WENT THERE AS FAST AS WE COULD.
13 WE WERE HOPING THEY WOULD STILL BE THERE.

14 Q AND HAD YOU LEARNED, ACCORDING TO THE STATEMENT,
15 OF WHAT PARTS OR HOW THEY WERE INVOLVED AT LEAST
16 AS TO THAT STATEMENT ON EACH OF THE DEFENDANTS?

17 A YES, SIR.

18 MR. THOMPSON: AND YOUR HONOR, I WOULD ASK TO
19 MAKE THAT STATEMENT A PART OF THE RECORD FOR THE
20 COURT'S CONSIDERATION SINCE IT IS SOMETHING THAT
21 WAS RELATED TO POLICE OFFICERS AT THE TIME OF
22 THE ARREST.

23 THE COURT: ANY OBJECTION.

24 MR. D'AGOSTINO: YOUR HONOR, THIS OFFICER DID
25 NOT TAKE THAT STATEMENT, LIEUTENANT THICKENS

1 TOOK THAT STATEMENT, SO I BELIEVE IT'S MORE
2 PROPER IF IT'S GOING TO COME IN IT COME IN
3 THROUGH THICKENS, YOUR HONOR. AND I BELIEVE
4 HE'S GOING TO TESTIFY AT THE JACKSON VERSUS
5 DENNO HEARING.

6 MR. THOMPSON: HE WILL TESTIFY, YOUR HONOR.
7 IT'S SIMPLY FOR CAPTAIN CABINESS' KNOWLEDGE AT
8 THE TIME OF ARREST.

9 THE COURT: I'LL ALLOW IT IN.

10 Q NOW CAPTAIN, WHEN YOU WENT BACK DOWN AND
11 ARRESTED ANTONIO, I BELIEVE YOU SAID THERE WERE
12 TWO GIRLS WITH HIM, ONE WAS MS. DIXON AND THE
13 OTHER ONE YOU THOUGHT WAS A KENNEDY. IS IT
14 POSSIBLE THAT THAT OTHER GIRL WAS ACTUALLY
15 ELAINE KENNINGTON WHO YOU---

16 A KENNINGTON, THAT'S CORRECT. YOU ARE CORRECT,
17 I'M SORRY.

18 Q AND --

19 A SHE WAS A WHITE FEMALE.

20 Q OKAY. AND NOW DID EITHER OF THOSE FEMALES OR
21 ANTONIO GORDON AT THE TIME OF THE ARREST, DID
22 ANYONE TELL YOU WHERE MONTA GORDON WAS?

23 A YES, SIR, THEY DID.

24 Q AND WHO TOLD YOU? DO YOU REMEMBER? WAS IT
25 ANTONIO OR WAS IT ONE OF THE GIRLS?

1 A ONE OF THE GIRLS.

2 Q DO YOU REMEMBER WHICH ONE?

3 A NO, SIR, I DON'T.

4 Q AND WHAT INFORMATION DID YOU HAVE AS FAR AS
5 WHERE MONTA WAS AT THAT TIME FROM THE GIRLS?

6 A THAT HE WAS STILL AT THE HOUSE AND AS A MATTER
7 OF FACT, THERE IS TWO TRAILERS SIDE BY SIDE AND
8 WE HAD CONTACT WITH HIM EARLIER THAT DAY, EARLY
9 THAT MORNING. HE WAS IN THE TRAILER ON THE
10 RIGHT, SO I IMMEDIATELY WENT TO THE TRAILER ON
11 THE RIGHT, SOME OTHER OFFICERS WENT TO THE
12 TRAILER ON THE LEFT, HE WAS ACTUALLY LOCATED IN
13 THE TRAILER ON THE LEFT.

14 Q NOW DID YOU CONSIDER IT AN EMERGENCY SITUATION
15 AT THAT TIME THAT YOU NEEDED TO ARREST HIM AT
16 THIS POINT?

17 A YES, SIR, I DID. THE TWO FEMALES WE DID NOT
18 HAVE IN CUSTODY AT THAT TIME AND WE, I FELT VERY
19 STRONGLY THAT THEY WOULD TELL MONTA THAT WE WERE
20 COMING TO ARREST HIM ALSO.

21 Q AND AS A MATTER OF FACT MS. DIXON HAD JUST GIVEN
22 YOU THAT STATEMENT AND SHE ACTUALLY WENT BACK
23 AND WAS WITH ANTONIO?

24 A AND THEY WERE LEAVING THE RESIDENCE VERY
25 HASTILY, YES, SIR.

1 Q AT THE POINT YOU WENT TO THE HOUSE WHERE MONTA
2 IS, DID ANYONE GREET THE SWAT TEAM THERE AT THE
3 DOOR OF THAT PARTICULAR TRAILER?

4 A YES, SIR, THEY DID.

5 Q AND DO YOU RECALL WAS IT HIS GRANDFATHER OR ONE
6 OF HIS BROTHERS AT THAT POINT?

7 A IT WAS EITHER HIS GRANDFATHER OR ONE OF THE
8 FEMALE RELATIVES AT WHICH TIME THEY LET THE
9 OFFICERS IN THE RESIDENCE.

10 Q THEY LET THE OFFICERS IN AT THAT POINT?

11 A THAT'S CORRECT.

12 Q WAS HE ARRESTED THEN IN THAT RESIDENCE AT THAT
13 TIME?

14 A YES, SIR, HE WAS.

15 Q ALL RIGHT. NOW GOING TO MR. WELLBORN, TO YOUR
16 KNOWLEDGE DID ANTONIO GORDON EVER ASK FOR AN
17 ATTORNEY AT ANY POINT DURING HIS QUESTIONING,
18 DURING HIS FIRST OR SECOND STATEMENT OR ANY TIME
19 IN BETWEEN OR AFTER?

20 A I'M SURE HE DID NOT.

21 MR. D'AGOSTINO: YOUR HONOR, I'M GOING TO
22 OBJECT. HE HAS NO BASIS OF KNOWLEDGE. HE SAID
23 HE WASN'T PRESENT.

24 THE COURT: WELL, IT'S ACTUALLY TO THE DEGREE OF
25 HIS KNOWLEDGE.

1 MR. D'AGOSTINO: I UNDERSTAND.

2 A DUE TO THE SITUATION WHERE MR. WELLBORN WAS IN
3 THE LOBBY DEMANDED TO SEE HIS CLIENT I
4 SPECIFICALLY ASKED THE OFFICERS, THE DETECTIVES
5 THAT WERE TALKING WITH ANTONIO HAD HE ASKED FOR
6 A LAWYER AT WHICH TIME THEY TOLD ME HE HAD NOT.
7 I ALSO INSTRUCTED THEM AT THAT TIME THAT IF HE
8 EVER DID MENTION THAT HE WANTED A LAWYER TO LET
9 ME KNOW IMMEDIATELY.

10 Q AS FAR AS YOU KNOW AFTER THAT PARTICULAR DAY DID
11 MR. WELLBORN COME TO YOU AT ANY TIME AND SAY HE
12 REPRESENTED ANY OF THOSE DEFENDANTS AGAIN?

13 A SINCE THEN?

14 Q YES, SIR.

15 A NO, SIR, HE HAS NOT.

16 MR. THOMPSON: THANK YOU. NO FURTHER
17 QUESTIONS.

18 MR. D'AGOSTINO: ONE MOMENT, YOUR HONOR.

19 REDIRECT EXAMINATION BY MR. D'AGOSTINO:

20 Q BACK UP A SECOND. Y'ALL WERE AT THE HOUSE THE
21 FIRST TIME?

22 A YES, SIR.

23 Q YOU ASKED CHYENCA DIXON TO COME TO THE POLICE
24 STATION WITH YOU?

25 A THAT'S CORRECT.

- 1 Q TOWANDA BURRIS OR WHATEVER YOU WANT TO CALL HER?
- 2 A THAT'S CORRECT.
- 3 Q AND Y'ALL DROVE HER THERE?
- 4 A YES, SIR.
- 5 Q WHO DRIVE HER AGAIN?
- 6 A LIEUTENANT JOHN THICKENS.
- 7 Q THICKENS?
- 8 A YES, SIR.
- 9 Q SO HE'S AT THE POLICE STATION, HE TAKES A
- 10 STATEMENT DOWN FROM HER FROM ABOUT, LET ME SEE
- 11 WHERE THAT STATEMENT IS, 7:30 TO 8:45, THAT'S A
- 12 SECOND STATEMENT. THE FIRST ONE WAS FROM LIKE 6
- 13 TO 6:50, RIGHT?
- 14 A SOUNDS CORRECT. I'M NOT SURE OF THE EXACT
- 15 TIMES.
- 16 Q SO HE GETS DONE WITH HER ABOUT 8:45 AND SHE
- 17 SIGNS IT?
- 18 A YES, SIR.
- 19 Q WHO DROVE HER BACK OUT TO THE HOUSE?
- 20 A TO MY RECOLLECTION I BELIEVE LIEUTENANT THICKENS
- 21 DID.
- 22 Q SO LIEUTENANT THICKENS GETS DONE TAKING THE
- 23 STATEMENT --
- 24 A I'M NOT 100 PERCENT SURE, BUT I THINK HE DID.
- 25 Q THIS STATEMENT YOU SAY ESTABLISHES PROBABLE

1 CAUSE TO BELIEVE THAT THESE INDIVIDUALS
2 COMMITTED A CRIME AND YOU'RE WORRIED ABOUT HER
3 TELLING THEM THAT SHE JUST TOLD ON THEM AND
4 Y'ALL TAKE HER BACK OUT TO THE RESIDENCE,
5 ACCORDING TO YOUR TESTIMONY, TO BE WITH HIM, IS
6 THAT YOUR TESTIMONY?

7 A YES, SIR. I'M NOT SURE IF LIEUTENANT THICKENS
8 TOOK HER OR NOT.

9 Q WELL, SOMEBODY FROM YOUR POLICE STATION HAD TO
10 TAKE HER BECAUSE Y'ALL TOOK HER TO THE POLICE
11 STATION?

12 A SHE COULD HAVE GOT A RIDE, BUT I DON'T KNOW
13 THAT.

14 Q WHAT TIME DID Y'ALL GET BACK OUT TO THE HOUSE
15 THAT MORNING THE SECOND TIME?

16 A 9, 9:30.

17 Q ALL RIGHT. NOW Y'ALL PROVIDED ME WITH A COPY OF
18 THE CALL LOGS ASSOCIATED WITH THE CHASE,
19 CONSTITUTION BOULEVARD, AND THAT'S WHERE THE
20 CHASE BEGAN. DOES THAT GO ALL THE WAY THROUGH
21 THE CHASE TO WHERE IT ENDS AT THE HOUSE THERE?
22 AT THE GORDON HOUSE? IN FACT, CAN YOU IDENTIFY
23 WHICH CAR YOU ARE?

24 A I'M 120, UNIT 120.

25 Q ALL RIGHT.

1 A THEY HAVE GOT ME LOGGED OUT ON SCENE AT 5:15.

2 Q THAT'S ON SCENE WHERE?

3 A I BELIEVE INVOLVED IN THE CHASE BECAUSE IT SAYS
4 10-0 WHICH INDICATES THE CHASE. IT'S GOT ME
5 DELETED FROM THE CALL AT 5:11 SO I REALLY DON'T
6 UNDERSTAND THAT. I'M NOT TOTALLY FAMILIAR WITH
7 THIS REPORT.

8 Q WELL, THAT IS A REPORT GENERATED BY THE ROCK
9 HILL POLICE DEPARTMENT, IS IT NOT--

10 A THAT'S CORRECT. I'M STILL NOT TOTALLY FAMILIAR
11 WITH IT.

12 Q HOW ABOUT THE SECOND PAGE OF IT. CAN YOU TELL
13 ME, IT LOOKS TO ME, YOU TELL ME IF I'M WRONG, IT
14 STARTS HERE WITH THE CHASE BEGINNING SOMEWHERE
15 AROUND 5:05 A.M. WITH UNIT 120 AND SEVERAL OTHER
16 UNITS?

17 A RIGHT, SEE I DIDN'T START THE CHASE, SO THAT'S
18 OBVIOUSLY EITHER WE'RE READING IT WRONG OR IT'S
19 INCORRECT, ONE OR THE OTHER.

20 Q Y'ALL'S REPORT IS INCORRECT IS THAT WHAT YOU ARE
21 SAYING?

22 A NO, SIR. IF WE'RE READING IT THE WAY YOU ARE
23 SAYING IT, THERE IS SOMETHING WRONG. I DID NOT
24 INITIATE THE CASE.

25 Q ALL RIGHT. WE KNOW YOU DIDN'T INITIATE AND

1 YOU'RE NOT SHOWN AS INITIATING THE CHASE, ARE
2 YOU?

3 A WELL --

4 Q WHAT'S YOUR NUMBER?

5 A 505, 120, I'M 120.

6 Q ALL RIGHT. BUT IT HAS?

7 A 165 IS VINCE JETER WHO DID INITIATE THE CHASE.
8 IT'S GOT HIM MAKING A TRAFFIC STOP AT 5:11, THIS
9 IS ALL THE SAME CALL, SO THIS WOULD BE ALL THE
10 RADIO TRAFFIC.

11 Q ALL RIGHT.

12 A THERE IS 5:15. IT'S GOT 120 ARRIVED AGAIN. IT
13 MAY HAVE BEEN WHEN THE CASE WAS OVER.

14 Q ALL RIGHT, AND THAT WOULD HAVE BEEN AT THE HOME
15 THERE?

16 A THAT'S CORRECT.

17 Q ALL RIGHT.

18 A AND THEN THAT DOES NOT HAVE ME.

19 Q WELL, CAN YOU TELL ME WHEN THIS SHOWS Y'ALL
20 LEAVING THE RESIDENCE?

21 A NO, SIR, I CAN'T TELL YOU WHEN IT SHOWS THAT.

22 Q WOULDN'T IT SHOW THAT ON THERE WHEN EVERYONE
23 CLEARED THE RESIDENCE?

24 A I DON'T KNOW WHAT THIS REPORT SHOWS, SIR.

25 Q WELL, WHO WOULD I BE ABLE TO ASK TO FIND OUT

1 WHAT THAT REPORT SHOWS AND WHEN Y'ALL LEFT THE
2 RESIDENCE?

3 A THIS REPORT IS GENERATED FROM CAD SO I WOULD
4 SUGGEST SOMEONE IN OUR TELECOMMUNICATIONS
5 DIVISION.

6 Q DO YOU HAVE A NAME OF A PERSON?

7 A LIEUTENANT GLEN ROBINSON IS NOW IN CHARGE OF
8 THAT DIVISION. HOWEVER HE WAS NOT EMPLOYED
9 HERE, HE WAS NOT WORKING THERE IN THAT POSITION
10 WHEN THIS OCCURRED.

11 Q WOULD HE BE ABLE TO DECIPHER THAT DOCUMENT FOR
12 US?

13 A HE OR SUPERVISOR RALPH MERCHANT MAY.

14 Q WELL, HE'S COMING ON FRIDAY SO I'LL JUST ASK HIM
15 ABOUT THAT, BUT WHEN YOU LEAVE A RESIDENCE AND
16 YOU'VE BEEN INVOLVED IN A CHASE AND YOU'RE DONE
17 WITH IT, DON'T YOU CLEAR OUT WITH DISPATCH THAT
18 YOU ARE LEAVING OR THAT CALL IS OVER WITH?

19 A IT'S NOT QUITE AS EASY AS YOU ARE SAYING. I
20 UNDERSTAND WHAT YOU ARE SAYING, BUT IT'S NOT
21 QUITE AS EASY. I MAY NOT HAVE CLEARED UP WHEN I
22 LEFT THERE BECAUSE I WASN'T THROUGH. I WAS
23 STILL LOOKING FOR SUSPECTS.

24 Q OKAY. SO YOU WOULD HAVE COME BACK AND YOU DID
25 COME BACK?

1 A YEAH, I KNOW I DIDN'T GO BACK IN AND OUT ON THE
2 RADIO. I DON'T DO THAT.

3 Q AND DID YOU, IF Y'ALL WENT BACK OUT TO THAT
4 RESIDENCE ON THAT SAME CALL OR RELATED CALL,
5 WOULD, THAT WOULD BE, THAT WOULD BE INDICATED
6 AND BE PART OF THIS CALL IN THIS FAR LEFT HAND
7 CALL NUMBER, WOULD IT NOT?

8 A NO, SIR.

9 Q OR WOULD YOU HAVE A NEW CALL NUMBER FOR THAT?

10 A IT WOULD NOT BE ON HERE AND THE REASON WHY IS
11 BECAUSE WE DID NOT CHECK OUT. THE ONLY WAY THAT
12 THEY WOULD HAVE GOT, THAT ANYTHING WOULD BE
13 GENERATED HERE IS WE WOULD HAVE HAD TO HAVE
14 VOICE TRANSMISSION, RADIO TRANSMISSION WITH THE
15 DISPATCHER AND SHE WOULD HAVE HAD TO HAVE KEYED
16 SOMETHING IN FOR IT TO BE ON THIS TYPE OF
17 REPORT. I DID NOT CHECK OUT ON THE RADIO. I
18 DID NOT TELL THEM I WAS GOING DOWN THERE. I DID
19 NOT CHECK OUT ON THE RADIO.

20 Q WHAT I'M GETTING AT, CAPTAIN CABINESS, IS Y'ALL
21 EVENTUALLY WENT DOWN TO THE GORDON RESIDENCE
22 SOMETIME AFTER YOU LET CHYENCA DIXON GO BECAUSE
23 I UNDERSTAND FROM THE SOLICITOR'S OFFICE Y'ALL
24 WENT DOWN THERE AND SWAT WAS EVEN THERE. YOU
25 YOURSELF TESTIFIED A LITTLE WHILE AGO THAT MORE

1 THAN JUST YOU WENT DOWN THERE?

2 A THAT'S CORRECT.

3 Q NOW --

4 A THERE WAS AT LEAST THREE VEHICLES.

5 Q NOW FOR YOU AND OTHER VEHICLES AND SWAT TO GET
6 DOWN THERE SOME TYPE OF COMMUNICATION HAD TO BE
7 GOING THROUGH THE COMMUNICATION OFFICE. WHAT
8 I'M TRYING --

9 A NO, SIR, IT DIDN'T. NO, SIR, IT DID NOT.

10 Q WHERE WOULD IT GO?

11 A FROM ME TO THEM.

12 Q YOU TO THEM?

13 A THAT'S CORRECT.

14 Q YOU TO ALL THE VARIOUS OFFICERS?

15 A THAT'S CORRECT.

16 Q AND DISPATCH NEVER GOT INFORMED OF WHERE ANYBODY
17 WAS?

18 A YES, SIR, THAT'S CORRECT. THEY WOULD NOT.

19 Q EVEN SWAT?

20 A SWAT WORKS FOR ME, THAT'S WHO I TOOK DOWN THERE.
21 WE TALK ON A SECURED CHANNEL. COMMUNICATION
22 NEVER HEARS IT.

23 Q SO THERE IS NO RECORDS OF YOU GOING DOWN THERE?

24 A NO, THERE'D BE NO CAD RECORDS OF US GOING DOWN
25 THERE.

1 Q ARE THERE ANY RECORDS?

2 A NO, SIR.

3 Q DID YOU KEEP ANY NOTES OF YOU TALKING TO MONTA

4 THAT MORNING DOWN THERE BETWEEN THE TRAILERS,

5 DID YOU KEEP ANY NOTES OF WHAT YOU DID THAT DAY?

6 A NO, SIR.

7 Q YOU GOT ANY NOTES OF ANY OF THAT?

8 A NO, SIR, I DO NOT. WE TALKED TO MONTA THE FIRST

9 TIME DOWN THERE, THEN HE WAS ARRESTED.

10 Q THE SECOND TIME?

11 A THAT'S CORRECT. HE GAVE US THE FICTITIOUS NAME

12 THE FIRST TIME.

13 Q AND THE SECOND TIME YOU WENT DOWN THERE WAS

14 AFTER YOU TALKED CHYENCA DIXON AND SHE HAD GIVEN

15 TWO VERY CONFLICTING STATEMENTS, CORRECT?

16 A THAT'S CORRECT.

17 Q DO YOU KNOW WHO SHE GAVE HER FIRST STATEMENT TO?

18 A LIEUTENANT THICKENS I BELIEVE. TOWANDA BURRIS,

19 YES, SIR.

20 Q LIEUTENANT THICKENS AND SHE HAD GIVEN IT TO HIM

21 UNDER ANOTHER NAME?

22 A THAT'S CORRECT.

23 Q SO YOU HAD TWO VERY CONFLICTING STATEMENTS AT

24 THAT TIME FROM MS. DIXON?

25 A NOT VERY CONFLICTING.

1 Q WELL, YOU HAD TWO CONFLICTING STATEMENTS BY ONE
2 PERSON WHO IDENTIFIED HERSELF AS TWO DIFFERENT
3 PEOPLE?

4 A THAT'S CORRECT. SHE CHANGED SOME OF THE NAMES
5 AND SOME OF THE, INCLUDING HER OWN.

6 Q NOW WHEN YOU DECIDED TO GO DOWN THERE AND ARREST
7 ANTONIO AND MONTA AND YOU DIDN'T HAVE A WARRANT,
8 DID YOU HAVE ANY OTHER INFORMATION THAT ANTONIO
9 WAS INVOLVED IN THIS IN ANY MANNER WHATSOEVER?

10 A OTHER THAN THE FACT THE VEHICLE HAD BEEN
11 POSITIVELY IDENTIFIED BY MR. DIAZ AS BEING THE
12 VEHICLE INVOLVED.

13 Q AND HE IDENTIFIED THREE PEOPLE IN IT NOT FOUR?

14 A DIAZ?

15 Q DIAZ.

16 A I MAYBE WRONG, BUT I THOUGHT HE IDENTIFIED FOUR.

17 Q I MAY BE WRONG TOO. I GUESS WE'LL FIND OUT ON
18 FRIDAY.

19 A I GUESS. I'M SORRY.

20 Q BUT THERE WERE THREE PEOPLE WHO JETER CHASED,
21 RIGHT?

22 A THAT'S CORRECT.

23 Q OTHER THAN MS. DIXON, MS. BURRIS, WHATEVER YOU
24 WANT TO CALL HER, OTHER THAN HER CONFLICTING
25 STATEMENTS, DID YOU HAVE ANYTHING ELSE

1 IDENTIFYING ANTONIO GORDON AS BEING INVOLVED IN
2 THIS?

3 A NOT THAT I CAN RECALL AT THIS TIME.

4 MR. D'AGOSTINO: THOSE ARE ALL THE QUESTIONS I
5 HAVE.

6 THE COURT: MR. GILLEN, DO YOU HAVE ANYTHING YOU
7 WANT TO ASK.

8 MR. GILLEN: BRIEFLY, YOUR HONOR.

9 CROSS EXAMINATION BY MR. GILLEN:

10 Q CAPTAIN CABINESS, WERE YOU INVOLVED IN ANY WAY
11 WITH ANY STATEMENTS GIVEN BY TERRANCE MCCREARY?

12 A NO, SIR, NOT THAT I CAN RECALL.

13 Q WELL, YOUR BASIS FOR ARRESTING TERRANCE MCCREARY
14 THE SAME SOURCE AS ANTONIO GORDON THAT BEING
15 CHYENCA DIXON OR TOWANDA BURRIS?

16 A NO. WHEN WE PICKED UP, WHEN WE ARRESTED THE
17 GORDON BOYS THEY PROVIDED US ALSO, THEY PROVIDED
18 US WITH INFORMATION BEFORE WE ARRESTED MCCREARY.

19 Q I'M SORRY. WOULD YOU REPEAT THAT?

20 A WHEN WE ARRESTED ANTONIO AND MONTA, FROM TALKING
21 WITH THOSE TWO DEFENDANTS AND ALSO SOME OF THE
22 OTHER FEMALES THERE AT AND AROUND THE GORDON
23 RESIDENCE, KENNINGTON AND FEELY AND OTHER LADIES
24 LIKE THAT, WE WERE ABLE TO COME UP WITH NOT ONLY
25 THE NAME OF MR. MCCREARY AND MOFFAT BUT A

1 LOCATION IN BOYD HILL WHERE THEY POSSIBLY RAN
2 TO.

3 Q WERE YOU PRESENT WHEN THEY WERE ARRESTED IN BOYD
4 HILL?

5 A I GOT THERE MOMENTS AFTER THEY WERE ARRESTED.

6 Q WHAT TIME WAS THE ARREST?

7 A SHORTLY BEFORE 12 TO MY, BEST OF MY MEMORY. AND
8 THEY WERE EITHER WALKING THEM OUT OF THE
9 APARTMENT OR HAD THEM, JUST PUT THEM IN THE BACK
10 SEAT WHEN I ARRIVED.

11 Q DO YOU RECALL WHO TRANSPORTED TERRANCE MCCREARY?

12 A TONY BREEDAN.

13 Q DID HE ALSO TRANSPORT GARY MOFFAT?

14 A YES, SIR, THEY WERE TRANSPORTED IN THE SAME
15 VEHICLE.

16 Q ARE YOU AWARE OF ANYTHING THAT WAS PRODUCED OR
17 WRITTEN DOWN OR TAKEN FROM THE POINT THEY WERE
18 PUT IN THAT PATROL CAR?

19 A YOU REFERRING TO THE VIDEO TAPE?

20 Q YEAH.

21 A OFFICER BREEDAN'S VEHICLE IS EQUIPPED WITH AN IN
22 CAR VIDEO SYSTEM AND HE WAS INSTRUCTED TO WHEN
23 THEY WERE IN THE CAR TO MAKE SURE THE CAMERA WAS
24 ROLLING.

25 Q WHO WAS INSTRUCTED TO DO THAT?

1 A TONY BREEDAN.

2 Q WHO INSTRUCTED HIM TO DO THAT?

3 A I PROBABLY DID. I CHECKED AND MADE SURE IT WAS
4 ON. I MEAN I KNEW IT WAS ON RUNNING.

5 Q SO YOU WERE AWARE OF THIS AS WELL?

6 A SURE.

7 Q WHEN WAS THE SOLICITOR'S OFFICE INFORMED OF THE
8 EXISTENCE OF THIS TAPE?

9 A MONDAY TO MY KNOWLEDGE.

10 Q THIS PAST MONDAY?

11 A THAT'S CORRECT, THE DAY BEFORE YESTERDAY.

12 Q DO YOU KNOW WHY IT WAS NOT MADE AVAILABLE TO
13 THEM BEFORE THAT?

14 A OFFICER BREEDAN INFORMED ME SUNDAY, EXCUSE ME
15 SATURDAY 3 P.M. AT A WEDDING THAT VIDEO TAPE WAS
16 RUNNING IN THE CAR AND HE WAS GOING TO GO, HE
17 ASKED ME THE DATE OF THE ARREST. I TOLD HIM THE
18 DATE OF ARREST. HE STATED HE WAS GOING TO GO
19 BACK AND REVIEW THE TAPE AND SEE IF THERE IS
20 ANYTHING ON IT. MONDAY MORNING I ASKED HIM HAD
21 HE REVIEWED THE TAPE. HE SAID HE WAS WORKING ON
22 IT AND SHORTLY BEFORE THREE P.M. MONDAY HE
23 BROUGHT THE VIDEO TAPE TO ME AND TOLD ME WHAT
24 WAS ON IT AND AT FOUR O'CLOCK I GAVE IT TO THE
25 SOLICITOR'S OFFICE.

1 Q BUT YOU WERE AWARE OF IT BEFORE THAT THAT HE HAD
2 THE TAPE BECAUSE YOU INSTRUCTED HIM TO START IT?

3 A I WAS AWARE THAT THEY WERE PLACED IN THE CAR AND
4 THE VIDEO TAPE WAS RUNNING.

5 Q HAVE YOU OR HAVE YOU NOT HAD SEVERAL, AT LEAST
6 TWO MEETINGS WITH THE SOLICITOR'S OFFICE GOING
7 OVER THE EVIDENCE IN THIS CASE?

8 A WE'VE HAD TWO SINCE MONDAY.

9 Q I MEAN PRIOR TO MONDAY?

10 A ONLY ONE I'VE BEEN INVOLVED IN.

11 MR. THOMPSON: YOUR HONOR, AT THIS POINT I
12 OBJECT. I DON'T KNOW WHAT RELEVANCE THIS HAS TO
13 THE HEARING TODAY.

14 THE COURT: I OVERRULE THE OBJECTION.

15 A I'M SURE THE SOLICITOR'S OFFICE HAS HAD SEVERAL
16 MEETINGS WITH THE ROCK HILL POLICE DEPARTMENT
17 SINCE THIS CASE.

18 Q MEETINGS THAT YOU WERE INVOLVED IN?

19 A NOT, SEVERAL MEETINGS THAT I WASN'T INVOLVED IN
20 PROBABLY BUT I DON'T REMEMBER ANY SPECIFICALLY
21 WITH ME AS FAR AS OFFICIAL MEETINGS OTHER THAN
22 THE FIRST ONE BEING MONDAY.

23 Q WHAT ABOUT OFFICER BREEDAN. DO YOU KNOW IF HE
24 WAS INVOLVED IN THESE MEETINGS?

25 A I'M SURE MONDAY WAS HIS FIRST MEETING.

1 Q AND THE SOLICITOR'S OFFICE WAS NOT PROVIDED WITH
2 THE TAPE UNTIL MONDAY?

3 A THAT'S CORRECT.

4 Q SO THEREFORE NONE OF THE DEFENSE WAS PROVIDED
5 WITH IT UNTIL SOMETIME AFTER THE SOLICITOR'S
6 OFFICE?

7 A THE SOLICITOR I BELIEVE STARTED TRYING TO CALL
8 SOMEONE IMMEDIATELY AS SOON AS WE TOLD HIM ABOUT
9 IT.

10 MR. GILLEN: NOTHING FURTHER AT THIS TIME, YOUR
11 HONOR.

12 MR. THOMPSON: JUST VERY BRIEFLY, YOUR HONOR.

13 RE-CROSS EXAMINATION BY MR. THOMPSON:

14 Q CAPTAIN, WHEN YOU MENTIONED THAT DIAZ, THE OTHER
15 WITNESS, THE OTHER VICTIM IN THE CASE HAD SEEN
16 OR HAD IDENTIFIED THE CAR, YOU'RE NOT JUST
17 TALKING ABOUT A DESCRIPTION THAT HE GAVE YOU
18 PREVIOUSLY AT THIS POINT, ARE YOU?

19 A NO, SIR, I AM NOT.

20 Q AS A MATTER OF FACT, I THINK MR. DIXON OR MR.
21 DIAZ I BELIEVE HAD SOMEONE TAKE HIM OUT TO WHERE
22 THE CAR WAS LOCATED?

23 A AFTER THE CHASE, AFTER THE VEHICLE HAD STOPPED,
24 I INSTRUCTED DETECTIVE HERRING TO BRING MR. DIAZ
25 WHO, HE ALREADY LEFT OUR CONTACT, I HAD HIM TO

1 GO BACK AND PICK UP MR. DIAZ AND BRING HIM TO
2 THE LOCATION TO LOOK AT THIS VEHICLE.

3 Q AND HE DID IDENTIFY THAT VEHICLE AS THE ONE THAT
4 HAD BEEN INVOLVED IN THE SHOOTING, DIDN'T HE?

5 A YES, SIR, HE DID. ABSOLUTELY BEYOND A SHADOW OF
6 A DOUBT.

7 Q AND THAT WAS ON THE SCENE THERE?

8 A THAT'S CORRECT.

9 Q AND SO THAT WAS WHERE ANTONIO GORDON AND MONTA
10 GORDON WERE BOTH ARRESTED SUBSEQUENTLY, CORRECT?

11 A IN THEIR DRIVEWAY, THAT'S CORRECT, THAT'S WHERE
12 THEY LIVED.

13 Q SO BEFORE THE ARREST HE ACTUALLY CAME AND MADE
14 THAT IDENTIFICATION OF THE VEHICLE?

15 A YES, SIR.

16 Q AND AS A MATTER OF FACT, ONE OTHER THING YOU
17 LEARNED ABOUT CHYENCA DIXON IS THAT SHE'S THE
18 LONG-TIME GIRLFRIEND OF ANTONIO GORDON, DIDN'T
19 YOU?

20 A YES, SIR.

21 Q AS A MATTER OF FACT HAS A CHILD OF ANTONIO
22 GORDON?

23 A THAT'S CORRECT.

24 MR. THOMPSON: THANK YOU. NO FURTHER QUESTIONS.

25 A SHE ORIGINALLY DURING SOME HER STATEMENTS SHE

1 TRIED TO COVER UP FOR ANTONIO AND SHE GAVE US
2 THE NAME OF ANTONIO COUSAR AND SHE LATER CHANGED
3 IT TO ANTONIO GORDON.

4 MR. D'AGOSTINO: MAY I FOLLOW UP BRIEFLY ON
5 THAT, YOUR HONOR.

6 REDIRECT EXAMINATION BY MR. D'AGOSTINO:

7 Q OFFICER, WITH REGARD TO MR. DIAZ, I'M LEARNING
8 FOR THE FIRST TIME TODAY THAT YOU SAID YOU
9 BROUGHT HIM TO THE SCENE AND YOU SHOWED HIM THE
10 CAR. IS IT NOT YOUR PRACTICE TO PUT DOWN ALL
11 IMPORTANT INFORMATION IN YOUR REPORTS?

12 A IT IS OUR PRACTICE, YES, SIR.

13 Q ISN'T THAT IMPORTANT INFORMATION THAT A VICTIM,
14 AN EYE WITNESS, IDENTIFIES A CAR AT A LOCATION,
15 IS THAT NOT IMPORTANT?

16 A YES, IT IS.

17 Q WHY DON'T YOU HAVE THAT ANYWHERE?

18 A IF THAT'S NOT IN THERE IT'S AN OVERSIGHT ON OUR
19 PART.

20 Q HE NEVER IDENTIFIED, PRIOR TO YOUR ARRESTING
21 ANTONIO, ANTONIO, MONTA, TERRANCE, OR GARY
22 MOFFAT, DID HE?

23 A THAT'S CORRECT.

24 Q AND LET ME SHOW YOU, DO YOU KNOW WHO THE FIRST
25 PERSON ON THE SCENE WAS?

1 A NO, SIR, I DO NOT.

2 Q YOU'VE REVIEWED THESE STATEMENTS OR THIS CASE
3 FILE, HAVEN'T YOU?

4 A BRIEFLY.

5 Q BRIEFLY.

6 A THE FIRST PERSON ON THE SCENE OF THE INCIDENT?

7 Q RIGHT.

8 A I KNEW AT ONE TIME. I CAN'T RECALL IT NOW.

9 Q HAVE YOU EVER REVIEWED MR. DIAZ'S STATEMENT?

10 A I'M SURE I DID THAT NIGHT OR THE NEXT DAY.

11 Q HAVE YOU REVIEWED IT SINCE?

12 A NO, SIR, NOT TO MY KNOWLEDGE.

13 Q ARE YOU NOT AWARE THAT MR. DIAZ'S STATEMENT AND
14 THE VARIOUS OFFICERS THAT TALKED TO MR. DIAZ
15 IMMEDIATELY AFTER THE INCIDENT SAID THERE WERE
16 ONLY THREE PEOPLE, THREE BLACK GUYS, I'M QUOTING
17 FROM MR. DIAZ'S STATEMENT?

18 A NO, SIR, I'M NOT FAMILIAR WITH THAT. I DON'T
19 REMEMBER THAT.

20 Q YOU DON'T REMEMBER THAT?

21 A NO, SIR.

22 MR. D'AGOSTINO: THAT'S ALL I HAVE. THANK YOU.
23 THE COURT: MR. MATLOCK, I DON'T WANT TO LEAVE
24 YOU OUT.

25 MR. MATLOCK: I HAVE NOTHING, YOUR HONOR. I'M

1 JUST SITTING HERE.

2 THE COURT: YOU CAN STEP DOWN. THANK YOU FOR
3 YOUR TIME.

4 CAPTAIN CABINESS: THANK YOU FOR DOING IT
5 TODAY.

6 THE COURT: ALL RIGHT. ANYTHING FURTHER FOR THE
7 DAY?

8 MR. THOMPSON: NOT ON THIS ISSUE, YOUR HONOR.
9 I BELIEVE THERE MAY BE ONE PLEA.

10 THE COURT: SURE. SO WE'RE THROUGH ON MR.
11 GORDON?

12 MR. THOMPSON: ON MR. GORDON.

13 MR. GILLEN: YOUR HONOR, I DON'T KNOW IF THE
14 COURT CARES TO DISCUSS HERE OR IN CHAMBERS WITH
15 THE ATTORNEYS OR YOU WOULD RATHER TAKE IT UP ON
16 FRIDAY, BUT THERE IS A MOTION INVOLVING THE
17 VIDEO TAPE THAT WAS DISCUSSED AND CAPTAIN
18 CABINESS' TESTIMONY.

19 THE COURT: WELL, LET'S DO EVERYTHING THAT WE
20 CAN ON FRIDAY BECAUSE I JUST THINK IT'S SORT OF
21 WHEN WE GOT THE TIME CAPSULE. LET'S DO IT THEN.

22 MR. GILLEN: THANK YOU, YOUR HONOR.

23 (END OF PROCEEDINGS.)

24 (COURT RESUMES ON JULY 16, 1999.)

25 MR. THOMPSON: THE FIRST CASE THAT THE STATE

1 INTENDS TO CALL FOR A HEARING THIS MORNING IS
2 THE STATE OF SOUTH CAROLINA VERSUS TERRANCE
3 MCCREARY. INDICTMENTS NUMBER 98-2860 AND 2865.
4 THE LEAD INDICTMENT IS FOR MURDER. HE IS HERE
5 PRESENT IN THE COURTROOM REPRESENTED BY HIS
6 ATTORNEY MICHAEL GILLEN OF THE YORK COUNTY BAR.

7 AT THIS TIME, YOUR HONOR, WE ARE GOING TO
8 ADDRESS THE ISSUE AS TO COMPETENCY AS TO MR.
9 MCCREARY. THE STATE AND THE DEFENSE IN THIS
10 CASE STIPULATED TO AN EVALUATION BEING DONE BY
11 THE SOUTH CAROLINA DEPARTMENT OF MENTAL HEALTH.
12 WE HAVE A COPY OF THAT AND I HAVE HAD IT MARKED
13 AS STATE'S EXHIBIT ONE AND IT WAS CONDUCTED AND
14 COMPLETED AND IT HAS DETERMINED THAT THE
15 DEFENDANT IS COMPETENT TO STAND TRIAL, HE'S
16 CRIMINALLY RESPONSIBLE, AND HAD THE CAPACITY TO
17 CONFORM HIS CONDUCT AND THERE IS NO QUESTION AS
18 TO HIS MENTAL ABILITY, THAT IS, NOT MENTALLY
19 ILL. I WOULD LIKE TO MAKE THAT PART OF THE
20 COURT RECORD. THERE IS A STIPULATION BETWEEN
21 THE STATE AND THE DEFENSE, THE DEFENSE IS
22 CONSENTING WITH THE STATE THAT THIS IS
23 APPROPRIATE. AS WELL THEY WILL BE PRESENTING A
24 REPORT WHEN IT IS COMPLETELY WRITTEN FROM THEIR
25 DOCTOR THAT WILL ALSO CONFIRM THAT THE DEFENDANT

1 IS COMPETENT AND READY TO STAND TRIAL. WE'D
2 WOULD LIKE TO PUT THIS ON THE RECORD AT THIS
3 TIME.

4 THE COURT: ALL RIGHT. THE COURT IS CONVENED
5 THEN FOR A HEARING ON COMPETENCY WHICH IS
6 REQUIRED SINCE THE STATE, THE COURT HAS ORDERED
7 THE COMPETENCY EVALUATION. I'VE BEEN HANDED AN
8 ITEM WHICH IS MARKED AS EXHIBIT ONE WHICH IS THE
9 REPORT ON FINDING OF MENTAL CAPACITY WITH A
10 THREE PAGE STAFFING REPORT ATTACHED THERETO.
11 THE REPORT IS SIGNED BY PAMELA CRAWFORD AS IS
12 THE ATTACHMENT. IT'S BEEN PRESENTED BY THE
13 STATE. MR. GILLEN, ANY OBJECTION TO ITS
14 INTRODUCTION AND RECEPTION?

15 MR. GILLEN: NO, YOUR HONOR. THE STIPULATION IS
16 UNDER THE AGREEMENT THAT BOTH COURT ORDERED
17 EVALUATIONS WILL BE SUBMITTED TO THE COURT. FOR
18 THE RECORD I'VE SPOKEN EXTENSIVELY TO DR. HAROLD
19 MORGAN IN COLUMBIA WHO PERFORMED THE EVALUATION
20 FOR THE DEFENSE AND BOTH COURT ORDERED
21 EVALUATIONS LEAD TO THE SAME CONCLUSION, YOUR
22 HONOR, AND DR. MORGAN'S INDICATED AS SOON AS HE
23 HAS THAT REPORT IN WRITING HE WILL SEND IT UP
24 HERE AND I BELIEVE THE STATE HAS STIPULATED THAT
25 WE WILL ENTER THAT INTO THE RECORD AS WELL.

1 THE COURT: ALL RIGHT. I HAVE READ THE PART OF
2 THE RECORD A REPORT EXHIBIT ONE PAGE TWO DEALING
3 UNDER THE CAPTION CONCLUSION REGARDING
4 COMPETENCY TO STAND TRIAL AND FINDING THAT IS
5 SETFORTH THEREIN BOTH SUCCINCTLY THAT THE
6 OPINION IS THAT HE IS CURRENTLY COMPETENT TO
7 STAND TRIAL AND ALSO READING THE CONTENT IT
8 APPEARS TO THE COURT THAT MR. MCCREARY IS
9 COMPETENT, THAT HE IS ABLE TO UNDERSTAND THE
10 CHARGES AGAINST HIM, COURTROOM PROCEEDING, THAT
11 HE IS ABLE TO ASSIST COUNSEL IN HIS
12 REPRESENTATION, SO I FIND THAT HE IS COMPETENT.
13 ONE RESERVATION, THAT IS, REVIEWING THE OTHER
14 REPORT BUT I AM TOLD IT WILL BE CONFORMITY TO
15 THIS AND UNLESS THERE IS SOMETHING IN THAT THAT
16 LEADS ME TO FEEL THAT I WOULD HAVE TO RECONVENE
17 THE HEARING, MY FINDING IS THAT MR. MCCREARY IS
18 IN FACT COMPETENT TO STAND TRIAL, TO ASSIST
19 COUNSEL, TO PARTICIPATE, TO UNDERSTAND THE
20 PROCEEDINGS, AND CHARGES AGAINST HIM. ALL
21 RIGHT. WHAT NEXT?

22 (COURT'S EXHIBIT 1 EVALUATION OF TERRANCE
23 MCCREARY RECEIVED IN EVIDENCE.)

24 MR. THOMPSON: THANK YOU, YOUR HONOR. THE NEXT
25 ISSUE IS ALSO THE COMPETENCY IN THE STATE OF

1 SOUTH CAROLINA VERSUS ANTONIO GORDON.
2 INDICTMENT NUMBERS 98-46-2848 THROUGH 2852. I'M
3 SORRY 2847 THROUGH 2852. THE LEAD INDICTMENT
4 BEING FOR MURDER. THAT AS WELL, THERE IS AN
5 ORDER BY THE COURT TO HAVE HIM EVALUATED. THAT
6 EVALUATION IS GOING TO DEAL WITH THE ISSUE OF
7 COMPETENCY. THE DEFENSE HAS MADE IT CLEAR THEY
8 ARE NOT QUESTIONING HIS, WHETHER HE IS MENTALLY
9 ILL. THEY SAID HE IS NOT MENTALLY ILL. THEY
10 SAID HE IS NOT CLAIMING ANY OF THE MENTALLY ILL
11 DEFENSES. THAT HE IS NOT CLAIMING ANYTHING
12 UNDER THE MCNAUGHTON STANDARD. SIMPLY AS TO HIS
13 COMPETENCY TO STAND TRIAL AND SO AS IT RELATES
14 TO THAT THE STATE IS PREPARED TO GO FORWARD AND
15 HAVE DR. SANDLER FROM THE DEPARTMENT OF
16 DISABILITIES AND SPECIAL NEEDS PREPARED TO
17 TESTIFY AT THIS TIME.

18 MR. D'AGOSTINO: THAT'S CORRECT, YOUR HONOR.
19 WE'RE NOT, PURSUANT TO THE RULES WE WOULD HAVE
20 TO SET FORTH GUILTY BUT MENTALLY ILL MCNAUGHTON
21 ISSUE AHEAD OF TIME, WE'RE NOT PRESENTING ANY OF
22 THOSE, THE GUILTY BUT MENTALLY ILL, NOT GUILTY
23 BY REASON OF INSANITY DEFENSES, WE WOULD NOT
24 RAISE ANY OF THOSE ISSUES. THE ONLY PURPOSE FOR
25 EVALUATION WAS TO THE ISSUE OF COMPETENCY AND

1 THE DEFENDANT ANTONIO GORDON IS PREPARED TO GO
2 FORWARD ON THE ISSUE OF COMPETENCY.

3 THE COURT: ALL RIGHT.

4 MR. THOMPSON: MAY IT PLEASE THE COURT, THE
5 STATE WOULD CALL DR. SANDLER TO THE STAND AT
6 THIS TIME.

7 THE COURT: PLEASE COME UP AND BE SWORN. TO
8 MAKE THE RECORD CLEAR, THESE HEARINGS ARE
9 HEARINGS HELD UNDER THE PERIMETERS OF THE STATE
10 VERSUS BLAIR AND AS TO MR. MCCREARY, OF COURSE,
11 I HAVE MADE MY FINDINGS AND DETERMINED THAT HE
12 IS COMPETENT, THAT HE HAS SUFFICIENT PRESENT
13 ABILITY TO CONSULT WITH COUNSEL WITH A
14 REASONABLE DEGREE OF RATIONAL UNDERSTANDING AND
15 THAT HE HAS A RATIONAL AS WELL AS FACTUAL
16 UNDERSTANDING OF THE PROSECUTION AND PROCEEDINGS
17 AGAINST HIM. JUST TO PUT THAT IN SUCCINCT
18 ORDER.

19 MR. THOMPSON: THANK YOU, YOUR HONOR.

20 THE COURT: COME UP AND BE SWORN PLEASE, SIR.

21 LESLIE N. SANDLER, BEING
22 FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

23 THE COURT: AND AGAIN FOR THE RECORD THIS IS A
24 BLAIR HEARING AS IS REQUIRED. GOOD MORNING.

25 A GOOD MORNING, YOUR HONOR.

1 DIRECT EXAMINATION BY MR. THOMPSON:

2 Q DR. SANDLER, WOULD YOU PLEASE GIVE YOUR FULL
3 NAME FOR THE COURT PLEASE?

4 A LESLIE, L-E-S-L-I-E, MIDDLE INITIAL "N" AS IN
5 NEAL, SANDLER, S-A-N-D-L-E-R.

6 Q NOW DR. SANDLER, COULD YOU TELL US WHERE IT IS
7 YOU ARE EMPLOYED?

8 A I AM EMPLOYED WITH THE DEPARTMENT OF
9 DISABILITIES AND SPECIAL NEEDS FOR THE STATE OF
10 SOUTH CAROLINA IN COLUMBIA.

11 Q AND WHAT ARE YOUR DUTIES THERE?

12 A MY DUTIES THERE ARE TO BE THE CHIEF STATE-LEVEL
13 PSYCHOLOGICAL EXAMINER FOR THE DEPARTMENT OF
14 DISABILITIES AND SPECIAL NEEDS, TO SUPERVISE AND
15 OVERSEE ALL OF THE WORK THAT IS DONE BY OTHER
16 PSYCHOLOGISTS, AND TO TRAIN OTHER PSYCHOLOGISTS
17 IN FORENSIC PSYCHOLOGICAL EVALUATIONS.

18 Q AND AS PART OF YOUR EXPERTISE IN THIS AREA,
19 COULD YOU TELL US A LITTLE BIT OF YOUR
20 BACKGROUND TO GET US FAMILIAR WITH YOUR TRAINING
21 AND EXPERIENCE IN THIS AREA?

22 A AFTER GRADUATION FROM TEMPLE UNIVERSITY, I
23 WORKED FOR THE FACULTY AT TUFT UNIVERSITY
24 MEDICAL SCHOOL IN THE DEPARTMENT OF PSYCHIATRY.
25 WAS DIRECTOR OF A SUBSTANCE ABUSE TREATMENT

1 FACILITY FROM 1972 TO 1976.

2 FROM 1976 TO 1996 WAS EMPLOYED FULL TIME IN THE
3 PRACTICE OF FORENSIC PSYCHOLOGY IN PHILADELPHIA
4 AND THE SURROUNDING COUNTIES.

5 1996 TO 1997 I WAS CHIEF PSYCHOLOGIST FOR THE
6 FLORIDA DEPARTMENT OF CORRECTIONS WHERE I WAS
7 DIRECTOR OF INTAKE AND EVALUATION AS WELL AS
8 DIRECTOR OF PSYCHOTHERAPY FOR THE NORTH FLORIDA
9 RECEPTION CENTER IN WHICH WE EVALUATED ALL OF
10 THE IN-COMING OFFENDERS FROM ORLANDO NORTH IN
11 FLORIDA.

12 I HAD THE PRIVILEGE OF COMING TO SOUTH CAROLINA
13 AS CHIEF PSYCHOLOGIST FOR FORENSIC SERVICES
14 APPROXIMATELY A YEAR AND A HALF AGO AND HAVE
15 MAINTAINED THAT POSITION SINCE THEN.

16 MY, I HAVE BEEN LICENSED SINCE 1976 IN THE STATE
17 OF PENNSYLVANIA. I HOLD ADVANCED CERTIFICATIONS
18 IN FORENSIC PSYCHOLOGY SINCE 1982 FROM THE
19 AMERICA COLLEGE OF FORENSIC PSYCHOLOGY. I HOLD
20 CERTIFICATION OF PROFICIENCY IN THE TREATMENT OF
21 ALCOHOL AND OTHER PSYCHO-ACTIVE SUBSTANCE ABUSE
22 DISORDERS FROM THE AMERICAN COLLEGE OF
23 PSYCHOLOGY IN 1996.

24 I AM A FELLOW OF THE PENNSYLVANIA PSYCHOLOGICAL
25 ASSOCIATION, AMERICAN ORTHO-PSYCHIATRIC

1 ASSOCIATION, INTERNATIONAL ACADEMY OF BEHAVIORAL
2 MEDICINE, COUNSELING AND PSYCHO-THERAPY,
3 AMERICAN ASSOCIATION OF MENTAL RETARDATION,
4 NATIONAL ACADEMY OF NEUROPSYCHOLOGY.

5 RECENTLY I HAD THE PRIVILEGE OF PRESENTING FOUR
6 PAPERS IN MAY OF THIS YEAR AT THE AMERICAN
7 ASSOCIATION ON MENTAL RETARDATION IN NEW ORLEANS
8 ON THE FORENSIC PSYCHOLOGICAL ISSUES FOR PERSONS
9 WITH MENTAL RETARDATION IN THE NEW MILLENIUM,
10 NEUROPSYCHOLOGICAL CONTRIBUTIONS TO PERSONS WITH
11 MENTAL RETARDATION, VIOLENT SEXUAL PREDATORS,
12 AND PERSONS WITH MENTAL RETARDATION, AND
13 FORENSIC PSYCHOLOGICAL ISSUES TO PERSONS WITH
14 MENTAL RETARDATION.

15 IN APRIL OF THIS YEAR I WAS SELECTED TO PRESENT
16 A TALK ON THE DETECTION OF MALINGERING IN
17 PRE-TRIAL JUVENILE COMPETENCY HEARINGS FROM THE
18 AMERICAN COLLEGE OF FORENSIC PSYCHOLOGY IN SANTE
19 FE, NEW MEXICO.

20 PRIOR TO THAT, IN APRIL OF 1998 I PRESENTED
21 PAPERS ON THE NEUROPSYCHOLOGICAL LITERATURE AND
22 PSYCHOLOGICAL TESTING OF HIV AND AIDS PRISONERS,
23 CLINICAL, ETHICAL, AND MORAL CONSEQUENCES FOR
24 THE AMERICAN BOARD OF ASSESSMENT PSYCHOLOGY
25 FIRST ANNUAL CONFERENCE.

1 Q HOW LONG HAVE YOU BEEN DOING COMPETENCY
2 EVALUATIONS THEMSELVES, DOCTOR?

3 A COMPETENCY EVALUATIONS, SIR?

4 Q TO STAND TRIAL, YES.

5 A FOR MANY YEARS OFF AND ON. I'VE BEEN DOING THEM
6 EXCLUSIVELY SINCE I'VE BEEN IN SOUTH CAROLINA.

7 Q ALL RIGHT. IF YOU COULD TELL ME, WHAT IS
8 EXACTLY FORENSIC PSYCHOLOGY IF YOU JUST GIVE A
9 BRIEF DESCRIPTION OF THAT FOR US?

10 A FORENSIC PSYCHOLOGY IS THAT AREA OF
11 PSYCHOLOGICAL EXPERTISE WHICH DEALS WITH THE
12 INTERFACE BETWEEN THE STUDY OF BEHAVIOR WHICH IS
13 PSYCHOLOGY AND THE LEGAL COMMUNITY IN TERMS OF
14 DOMESTIC, CRIMINAL, CIVIL MATTERS.

15 (ATTORNEY MATLOCK IS PRESENT NOW.)

16 I'VE BEEN CERTIFIED DIPLOMAT AND FELLOW OF THE
17 AMERICAN COLLEGE OF FORENSIC PSYCHOLOGY AND AS
18 SUCH HAVE BEEN ACCEPTED IN A NUMBER OF
19 JURISDICTIONS IN EACH OF THOSE FIELDS.

20 Q SO AS A FORENSIC PSYCHOLOGIST YOU'VE BEEN
21 CERTIFIED OR QUALIFIED IN COURTROOMS BEFORE AS
22 AN EXPERT?

23 A YES, SIR.

24 Q AND DO YOU KNOW ABOUT HOW MANY TIMES THAT WOULD
25 BE?

1 A OVER 100 I WOULD SAY.

2 Q NOW IF YOU COULD JUST TELL US BRIEFLY WHAT
3 CLINICAL PSYCHOLOGY WOULD BE?

4 A CLINICAL PSYCHOLOGY IS THAT AREA OF PSYCHOLOGY
5 WHICH CONCENTRATES ON NORMAL VERSES ABNORMAL
6 PSYCHOLOGICAL BEHAVIOR. THAT IS, THE CLINICAL
7 ASPECT OF PSYCHOLOGY, YOUR HONOR, I'M SURE YOU
8 REALIZE IS THAT AREA WHERE A PSYCHOLOGIST IS
9 ASKED TO DETERMINE WHAT IS WITHIN NORMAL LIMITS,
10 WHAT MAY BE PATHOLOGIC SIMILAR TO ANY OTHER
11 MEDICAL ORIENTED PROCEDURE IN WHICH ONE IS
12 ATTEMPTING TO SEE WHETHER A PERSON IS WITHIN
13 NORMAL LIMITS AND AVERAGE OR BEYOND OR BELOW
14 NORMAL LIMITS AND PATHOLOGIC. IF ONE IS ILL OR
15 NOT.

16 Q CAN YOU TELL ME, HAVE YOU BEEN QUALIFIED BEFORE
17 IN CLINICAL PSYCHOLOGY?

18 A I HAVE, SIR.

19 Q AND ABOUT HOW MANY TIMES HAS THAT BEEN?

20 A I'D RECKON OVER 100, SIR. I'M SORRY. I DON'T
21 KNOW.

22 Q THAT'S ALL RIGHT. IF YOU COULD TELL US AS WELL
23 A BRIEF DESCRIPTION OF NEUROPSYCHOLOGY?

24 A NEUROPSYCHOLOGY IS THAT AREA OF SPECIALTY IN
25 PSYCHOLOGY WHICH DEALS WITH THE INTERFACE

1 BETWEEN BRAIN RELATED FUNCTIONS. IT STUDIES THE
2 BIOLOGICAL INTEGRITY OF THE BRAIN AND THE WAY
3 THE BRAIN AFFECTS VARIOUS BEHAVIORS BOTH IN
4 TERMS OF CONGENITAL DEFORMITIES, TRAUMATIC OR
5 ACQUIRED DEFORMITIES, OR SUBSTANCE ABUSE
6 DISORDERS. IT IS A FIELD THAT I'VE SPECIALIZED
7 IN FOR MANY YEARS PARTICULARLY IN TERMS OF THE
8 CONSEQUENCES OF HEAD TRAUMA AND THE CONSEQUENCES
9 OF SUBSTANCE ABUSE.

10 Q ALL RIGHT. HAVE YOU BEEN QUALIFIED AS AN EXPERT
11 IN NEUROPSYCHOLOGY?

12 A I HAVE, SIR.

13 Q AND ABOUT HOW MANY TIMES DO YOU GUESS THAT WOULD
14 BE?

15 A MAYBE 25 TIMES.

16 Q ALL RIGHT. NOW YOU HAD MENTIONED AS PART OF
17 NEUROPSYCHOLOGY THE SUBSTANCE ABUSE, IS THAT A
18 SEPARATE AREA IN PSYCHOLOGY OR IS THAT INCLUDED
19 UNDER NEUROPSYCHOLOGY?

20 A ANY AREA, ANY AREA IN PSYCHOLOGY CAN BE INCLUDED
21 WITH THE APPROPRIATE SPECIALIZATION; HOWEVER,
22 THE AMERICAN PSYCHOLOGICAL ASSOCIATION HAS
23 INITIATED A PROFICIENCY CERTIFICATION BASED ON
24 EXPERIENCE, TRAINING, AND A TEST SINCE 1996, AND
25 I HAVE THAT CREDENTIAL WHICH IS A CERTIFICATE OF

1 PROFICIENCY IN THE TREATMENT OF ALCOHOL AND
2 OTHER PSYCHO-ACTIVE SUBSTANCE ABUSE DISORDERS.
3 OF COURSE, SUBSTANCE ABUSE IS A PROBLEM THAT I
4 HAVE TREATED AND BEEN INVOLVED WITH SINCE BEING
5 DIRECTOR OF METHADONE CLINIC IN 1972 TO 1976.

6 Q ALL RIGHT. SO IN YOUR EXPERIENCE AS FAR AS
7 SUBSTANCE ABUSE AND AS IT RELATES TO PSYCHOLOGY
8 HAVE YOU BEEN QUALIFIED AS AN EXPERT IN THAT
9 AREA?

10 A I HAVE, SIR.

11 Q DO YOU KNOW ABOUT HOW MANY TIMES?

12 A APPROXIMATELY 50.

13 Q DOCTOR, DID YOU HAVE AN OPPORTUNITY TO EVALUATE
14 ANTONIO GORDON WHO IS IN THE COURTROOM TODAY?

15 A YES, I HAVE.

16 MR. THOMPSON: AND YOUR HONOR, BEFORE WE GO INTO
17 THAT EVALUATION AT THIS POINT I WOULD ASK HE BE
18 QUALIFIED AS AN EXPERT IN THE FIELDS OF FORENSIC
19 PSYCHOLOGY, NEUROPSYCHOLOGY, CLINICAL
20 PSYCHOLOGY, AND SUBSTANCE ABUSE.

21 THE COURT: ANY VOIR DIRE, MR. D'AGOSTINO?

22 MR. D'AGOSTINO: I DO NOT HAVE ANY VOIR DIRE,
23 YOUR HONOR.

24 THE COURT: I FIND HE'S QUALIFIED IN EACH OF
25 THOSE AREAS FORENSIC PSYCHOLOGY, CLINICAL

1 PSYCHOLOGY, NEUROPSYCHOLOGY, AND THE
2 PSYCHOLOGICAL INTERFACE WITH SUBSTANCE ABUSE. I
3 THINK THAT'S PROBABLY THE BEST WAY TO PUT IT.

4 A THANK YOU, YOUR HONOR.

5 Q DR. SANDLER, COULD YOU TELL ME A LITTLE BIT
6 ABOUT THE DAY OF YOUR INTERVIEW AND WHERE AND
7 WHEN THAT OCCURRED?

8 A YES, SIR.

9 Q WITH ANTONIO GORDON?

10 A YES, SIR. I SAW MR. GORDON ON FRIDAY JULY 9 AT
11 THE MIDLANDS REGIONAL OFFICE OF THE DEPARTMENT
12 OF DISABILITIES AND SPECIAL NEEDS IN, JUST
13 OUTSIDE OF COLUMBIA ON FARROW ROAD.

14 Q WHO WAS THERE WITH YOU DURING THAT EVALUATION?

15 A THE STATUTES REQUIRE TWO EXAMINERS, DESIGNATED
16 EXAMINERS AT ALL TIMES IN THESE EVALUATIONS, AND
17 I WAS THE LEAD EXAMINER AS I AM IN ALL THE
18 EVALUATIONS. THE SECONDARY EXAMINER WAS PHIL
19 CORNELIUS PH.D PSYCHOLOGICAL-FOUR SECONDARY
20 EXAMINER, TWO UNIFORM CORRECTIONAL OFFICERS, AND
21 MR. DANIEL D'AGOSTINO, MR. GORDON'S DEFENSE
22 ATTORNEY, AND OF COURSE, MR. GORDON.

23 Q ALL RIGHT, SIR. IF YOU COULD TELL ME A LITTLE
24 BIT ABOUT WHAT YOU WERE INSTRUCTED TO DO AS FAR
25 AS THE COURT ORDER IN EVALUATING MR. GORDON?

1 A THE ORDER REQUESTED AT MINIMUM THE FOLLOWING: A
2 DIAGNOSIS OF THE DEFENDANT'S MENTAL CONDITION.

3 (B) CLINICAL FINDING BEARING ON THE ISSUE OF (1)

4 (A) WHETHER OR NOT THE DEFENDANT IS CAPABLE OF
5 UNDERSTANDING THE PROCEEDINGS AGAINST HIM, AND
6 ASSISTING WITH HIS OWN DEFENSE; AND (B) IF THERE
7 IS A SUBSTANTIAL PROBABILITY THAT HE WILL ATTAIN
8 SUCH CAPACITY IN THE FORESEEABLE FUTURE TO STAND
9 TRIAL.

10 Q ALL RIGHT. DID YOU CONDUCT THE TESTS ACCORDING
11 TO THAT AT THAT TIME?

12 A I CONDUCTED A INTERVIEW AND EVALUATION, SIR.

13 Q ALL RIGHT. CAN YOU TELL ME WHAT OTHER THINGS
14 DID YOU HAVE AVAILABLE TO YOU TO TELL YOU ABOUT
15 ANTONIO GORDON DURING YOUR EVALUATION?

16 A I HAD A, RECORDS FROM ROCK HILL POLICE BOOKING
17 REPORT, ROCK HILL POLICE INCIDENT REPORT, AND
18 SUPPLEMENTAL INCIDENT REPORT PAGES. ARREST
19 WARRANTS DELIVERED TO MR. GORDON ON 27 JULY
20 1998.

21 SOUTH CAROLINA DEPARTMENT OF JUVENILE JUSTICE
22 RECEPTION AND EVALUATION CENTER SOCIAL WORK
23 REPORT DATED 3 JULY 1995 WHEN HE WAS 13 SIGNED
24 PATTY HARRIS SOCIAL WORKER.

25 SOUTH CAROLINA DEPARTMENT OF JUVENILE JUSTICE

1 PSYCHOLOGICAL EVALUATION REPRESENTING FOUR PAGES
2 DATED 21 JUNE 1995 SIGNED BY JEFFREY VITTICK,
3 PH.D LICENSED CLINICAL PSYCHOLOGIST AND WILLIAM
4 HUXTON, PH.D SUPERVISING PSYCHOLOGIST.

5 SOUTH CAROLINA DEPARTMENT OF DISABILITIES,
6 DEPARTMENT OF JUVENILE JUSTICE RECEPTION AND
7 EVALUATION CENTER SOCIAL WORK REPORT OF THREE
8 PAGES DATED THE 22 OF FEBRUARY 1997 SIGNED BY
9 EDWARD BOYD SOCIAL WORKER.

10 SOUTH CAROLINA DEPARTMENT OF JUVENILE JUSTICE
11 PSYCHOLOGICAL EVALUATION REPRESENTING FIVE PAGES
12 DATED 12 FEBRUARY 1997 SIGNED BY LAURIE DUDLEY
13 M.A. PSYCHOLOGICAL GRADUATE ASSISTANT, AND
14 HELDIE DINKINS, D-I-N-K-I-N-S, SID PSY.D
15 SUPERVISING PSYCHOLOGIST.

16 COURT CASE SUMMARY OF FOUR PAGES, A STATEMENT OF
17 MIRANDA RIGHTS WHICH WERE SIGNED BY MR. GORDON,
18 AS WELL AS HIS SWORN DEPOSITIONS.

19 Q ALL RIGHT. IF YOU COULD TELL ME, DOCTOR, WHAT
20 WAS THE FIRST STEP THAT YOU TOOK IN EVALUATING
21 MR. GORDON?

22 A THE FIRST STEP I TOOK WAS TO ASK MR. GORDON HOW
23 HE WAS FEELING AND TO EXPLAIN TO MR. GORDON THAT
24 THE INTERVIEW WAS NOT CONFIDENTIAL THAT ANYTHING
25 THAT HE SAID WOULD BE USED IN A REPORT THAT I

1 WOULD BE PROVIDING. THE RECIPIENTS WOULD BE HIS
2 DEFENSE LAWYER, HIS HONOR THE JUDGE, AS WELL AS
3 THE SOLICITOR, AND THAT DR. CORNELIUS AND/OR I
4 MAY BE CALLED UPON TO TESTIFY IN COURT REGARDING
5 HIS ANSWERS.

6 Q AND AT THAT TIME DID HE APPEAR TO UNDERSTAND
7 WHAT YOU WERE TELLING HIM?

8 A HE DID, SIR.

9 Q DID HE RESPOND TO YOU?

10 A DID HE RESPOND, YES, SIR.

11 Q ALL RIGHT. IF I COULD, I'M GOING TO SHOW YOU
12 STATE'S EXHIBIT NUMBER TWO. ACTUALLY IT'S
13 COURT'S EXHIBIT NUMBER TWO. IF YOU WOULD LOOK
14 AT THAT AND IDENTIFY THAT FOR ME.

15 A THIS, SIR, IS THE REPORT THAT I COMPOSED
16 REGARDING THE CASE OF MR. GORDON AND MY
17 EVALUATION OF MR. GORDON.

18 Q ALL RIGHT.

19 MR. THOMPSON: WOULD IT PLEASE THE COURT, YOUR
20 HONOR, I WOULD LIKE TO GIVE COURT'S NUMBER TWO
21 TO YOUR HONOR TO EXAMINE WHILE HE'S TESTIFYING.
22 I THINK IT WOULD HELP IN YOUR UNDERSTANDING WHAT
23 HE TESTIFIES TO.

24 (HANDS REPORT TO THE COURT.)

25 THE WITNESS: YOUR HONOR, MAY I BEG YOUR

1 INDULGENCE, SIR. I HAD LESS THAN A WEEK TO GET
2 THIS TOGETHER AND I HAVE NOTES AND THINGS ALL
3 OVER. IF YOU WOULD EXCUSE ME IF I REFER TO THEM
4 FROM TIME TO TIME.

5 THE COURT: CERTAINLY.

6 THE WITNESS: THANK YOU, SIR.

7 Q DR. SANDLER, IF YOU COULD AT THIS POINT TELL US
8 WHAT THE ELEMENTS THAT YOU CONSIDER IN
9 DETERMINING SOMEONE'S COMPETENCY TO STAND TRIAL?

10 A THE ELEMENTS THAT I CONSIDERED MOST
11 SIGNIFICANTLY WERE THOSE INCLUDED IN THE DOSKY
12 STANDARD, D-O-S-K-Y, IN WHICH A INDIVIDUAL IS
13 DETERMINED AS TO WHETHER THEY CAN COOPERATE WITH
14 THEIR DEFENSE COUNSEL, WHETHER THEY HAVE A
15 RATIONAL FACTUAL UNDERSTANDING OF THE CHARGES
16 AGAINST THEM AND THE PROCEEDINGS AGAINST THEM.

17 Q AND IF YOU COULD, DOCTOR, COULD YOU GO DOWN FOR
18 US HOW YOUR EVALUATION PROCEEDED WITH HIM
19 CONCERNING THESE PARTICULAR TOPICS?

20 A I BEG YOUR PARDON, SIR.

21 Q IF YOU COULD GO, JUST DISCUSS WITH US THE
22 EVALUATION HOW YOU PROCEEDED IN QUESTIONING AND
23 EVALUATING THE DEFENDANT ON THOSE TOPICS THAT
24 YOU JUST DISCUSSED, UNDERSTANDING THE
25 PROCEEDINGS AGAINST HIM, HIS PRESENT ABILITY TO

1 ASSIST COUNSEL, AND SO ON?

2 A WELL, AFTER TAKING A HISTORY OF MR. GORDON AND
3 DISCUSSING BASICALLY SOME OF THE ISSUES
4 REGARDING IT, THE HISTORY, I BELIEVE I EXPLAINED
5 THAT I WANTED TO FIND OUT FOR INSTANCE WHY HE
6 WAS IN JAIL AND CARRIED ON A INFORMAL INTERVIEW,
7 A FORENSIC INTERVIEW, PRIOR TO THE FORMALIZED
8 TESTING.

9 I ASKED HIM FOR INSTANCE DO YOU KNOW WHY YOU ARE
10 IN JAIL AND HE SAID THE LAWYER SAID I KILLED
11 SOMEBODY. I EXPLAINED THAT IT WAS EXTREMELY
12 IMPORTANT THAT HE BE HONEST AND FRANK WITH US
13 AND HE THEN EXPLAINED THAT HE KNEW WHERE HE
14 WAS. HE WAS IN COLUMBIA. HE WAS WELL
15 ORIENTED. ASKED HIM IF HE HAD BREAKFAST. HE
16 SAID YEAH I HAD BREAKFAST AND HE HAD EGGS,
17 DOESN'T EAT GRITS. SAW A PSYCHOLOGIST, HAD SOME
18 TREATMENT AT CATAWBA MENTAL HEALTH CENTER, SAW A
19 PSYCHIATRIST DR. ELLEN BIRD ABOUT A MONTH AGO.
20 SAW PSYCHOLOGIST DR. JONATHAN VENN, V-E-N-N, A
21 WEEK AGO. DIDN'T HAVE ANY DISABILITIES OR
22 DIDN'T HAVE ANY FINANCIAL SUPPORT FROM SSI. HE
23 LIVES WITH HIS GRANDPA WILLIE GORDON AND HIS
24 AUNT LAURIE WATSON WHO HE SAID WAS DISABLED
25 BECAUSE SHE WAS HANDICAPPED.

1 ASKED HIM SOME GENERAL QUESTIONS THAT ARE
2 CONTAINED IN THE, IN THE MENTAL STATUS
3 EXAMINATION THAT I GAVE HIM REGARDING THE, WHAT
4 HE WOULD DO IF HE WAS THE FIRST ONE IN A CROWDED
5 MOVIE THEATER AND SAW A SMOKE AND FIRE. HE SAID
6 I'D LEAVE. THE CORRECT ANSWER TO THAT QUESTION
7 IS THAT HE WOULD TELL A RESPONSIBLE INDIVIDUAL
8 TO DO SOMETHING ABOUT IT. THE CHARACTERISTIC
9 ANSWER WHEN AN INDIVIDUAL SAYS THAT THEY'D LEAVE
10 IS ONE WHERE THEY DO NOT RECOGNIZE
11 RESPONSIBILITY TO OTHERS WITHIN THE COMMUNITY.
12 SIMILARLY I ASKED IF HE WAS LOST IN THE FOREST
13 IN THE DAYTIME HOW WOULD FIND HIS WAY OUT. HE
14 SAID HE WOULD RIDE AROUND UNTIL HE FOUND HIS WAY
15 OUT. NOT A VERY SYSTEMATIC WAY OF DOING
16 THINGS.

17 I ASKED HIM TO SPELL HIS NAME BACKWARDS, WHICH
18 IS A WAY TO GET AN IDEA OF THE INDIVIDUAL'S
19 MENTAL STATUS AND WHETHER THEY HAVE THE PRESENT
20 ABILITY TO SPELL THEIR NAME AFTER -- LET ME GO
21 BACK FOR A SECOND, MR. GORDON WAS ABLE TO WRITE
22 HIS NAME AND TWO ADDRESSES, DRAW A STICK FIGURE
23 OF A PERSON, WRITE DOWN THE DATE WITHIN A MONTH.
24 HE THOUGHT IT WAS AUGUST 9, '99 SO HE SAID IT
25 WAS JULY 9, '99. DRAW A CIRCLE, TRIANGLE, AND

1 SQUARE WITHOUT HESITATION.

2 I BELIEVE THAT I MIGHT HAVE STARTED WITH THE
3 TEST OF NON-VERBAL INTELLIGENCE. I DON'T, YOUR
4 HONOR, PLEASE INDULGE ME BUT WE HAD ONLY A
5 COUPLE OF HOURS AND IT WAS A DAY AFTER WE GOT
6 THE ORDER SO I'M NOT, I DON'T HAVE AS MANY
7 SEQUENTIALLY CLEAR DOCUMENTS AS TO WHAT
8 PROCEEDED WHEN, BUT AT ONE POINT I ASKED HIM THE
9 COLOR OF THE AMERICAN FLAG. THE REASON I ASKED
10 THIS THAT IN MY WORK IN THE DETECTION OF THE
11 MALINGERING I FOUND THAT EVEN THOSE WHO ARE
12 PROFOUNDLY RETARDED KNOW THE COLOR OF THE
13 AMERICAN FLAG. I ASKED MR. GORDON THE COLOR OF
14 THE AMERICA FLAG. HE TOLD ME IT WAS RED WITH A
15 BLACK STAR. THIS GAVE ME SOME CONCERN ABOUT
16 WHETHER HE WAS GOING TO ATTEMPT TO MALINGER
17 WHICH IS DEFINED AS THE, AS THE PURPOSEFUL
18 EXAGGERATION AND GROSS DISTORTION OF
19 PSYCHOLOGICAL OR PHYSICAL SYMPTOMS IN THE
20 PURPOSE OF SECONDARY GAIN, IN THIS CASE, TO
21 AVOID CRIMINAL PROSECUTION. AS I MENTIONED I
22 RECENTLY DONE SOME WORK IN THIS FIELD, SPOKE TO
23 THE NATIONAL EXPERTS IN THIS FIELD, AND IT IS
24 VERY UNUSUAL FOR A PERSON NOT TO KNOW THE COLOR
25 OF THE AMERICAN FLAG OR TO GIVE WHAT WE WOULD

1 CALL A BIZARRE RESPONSE SUCH AS THE FLAG IS RED
2 WITH A BLACK STAR ON IT, SO I WASN'T SURE THAT
3 HE WAS GOING TO BE CANDID WITH ME.

4 I THEN ASKED HIM ANOTHER QUESTION WHICH IS VERY
5 ELEMENTAL WHERE DOES THE SUN RISE. THIS IS THE
6 SECOND QUESTION IN THE WECHSLER INTELLIGENCE
7 SCALE FOR AGAIN THE VERY BASIC IDEA OF WHETHER
8 AN INDIVIDUAL KNOWS GENERAL INFORMATION AND HE
9 SAID NO SPECIAL DIRECTION.

10 I ASKED HIM HOW MANY PENNIES WERE IN A DOLLAR.
11 HE SAID ONE HUNDRED. I ASKED HIM IF SOMETHING
12 COST A DOLLAR AND WAS GIVEN A \$10 BILL HOW MUCH
13 CHANGE HE WOULD GET BACK. HE SAID 9, SO I
14 PRELIMINARILY DETERMINED THAT WHILE MR. GORDON
15 MIGHT GIVE SOME ANSWERS THAT WERE
16 SELF-PROTECTIVE IN NATURE HE WAS NOT GROSSLY
17 MALINGERING BUT PERHAPS TRYING TO ANSWER SOME
18 QUESTIONS HERE AND THERE IN A WAY THAT WOULD BE
19 WITHIN REASONABLE LIMITS CONSIDERING HIS
20 CIRCUMSTANCES AND FACING CRIMINAL PROSECUTION
21 FOR MURDER. IF HE CONTINUED TO GIVE ANSWERS
22 THAT WERE GROSSLY BIZARRE AND GROSSLY INACCURATE
23 I WOULD HAVE DISCONTINUED THE EXAMINATION.

24 I THEN ADMINISTERED A INTELLIGENCE TEST WHICH IS
25 CALLED THE TEST OF NON-VERBAL INTELLIGENCE THIRD

1 EDITION OR TONY FOR SHORT IN WHICH I FIND THAT
2 INSTEAD OF TRADITIONAL PSYCHOLOGICAL TESTS WHICH
3 BASICALLY ARE OFTEN USED AS MEASURES OF ACADEMIC
4 ABILITY AND MR. GORDON DISCONTINUED HIS
5 EDUCATION I BELIEVE IN THE NINTH GRADE, THIS
6 USES FORMS AND OBJECTS WITHOUT LANGUAGE TO ALLOW
7 INDIVIDUAL TO POINT TO SIMILARITIES AND
8 DIFFERENCES IN OBJECTS. IT HAS A RELIABILITY,
9 WHICH MEANS IT WILL TELL THE SAME THING OVER
10 TIME, AT APPROXIMATELY 80 PERCENT AND HAS A
11 VALIDITY OF APPROXIMATELY 80 PERCENT IN THAT IT
12 WILL TELL THE SAME FINDING 80 PERCENT OF THE
13 TIME WHICH ARE THE TWO CRITERIA THAT THE DALBERT
14 CASE USES IN TERMS OF SCIENTIFIC EVIDENCE SO
15 THIS TEST MEETS BOTH OF THOSE.

16 IN THIS TEST MR. GORDON'S PERFORMANCE WAS
17 EQUIVALENT TO A DEVIATION QUOTIENT WHICH IS LIKE
18 AN IQ SCORE OF 73 AND THAT IS PLUS OR MINUS FOUR
19 POINTS. IN OTHER WORDS, THE STANDARD ERROR OF
20 MEASUREMENT IN ANY MEASUREMENT HAS PLUS OR MINUS
21 A CERTAIN AMOUNT OF POINTS. IN THIS CASE THERE
22 IS PLUS OR MINUS FOUR POINTS SO A SQUARE OF 73
23 COULD CONCEIVABLY BE AS LOW AS 69 OR AS HIGH AS
24 77. OUR OPINION BASED ON MR. GORDON'S BEHAVIOR
25 WAS THAT HE WAS NOT VERY HIGHLY MOTIVATED FOR

1 THIS AND THAT A 73 IS PROBABLY ON THE LOW SIDE
2 OF HIS INTELLECTUAL ABILITIES.

3 Q DID YOU DO ANY OTHER TESTS WITH HIM AS FAR AS
4 DETERMINING HIS ABILITY TO FUNCTION?

5 A YES, SIR.

6 Q WHAT WERE THOSE?

7 A I DID THE COMPETENCY TO STAND TRIAL EVALUATION
8 WHICH HAS BEEN USED, THE COMPETENCY TO STAND
9 TRIAL TEST WHICH HAS BEEN USED SINCE 1973 IN
10 LEGAL CASES TO DETERMINE FITNESS FOR COMPETENCY,
11 IT CONSISTS OF 22 INCOMPLETE SENTENCES IN WHICH
12 THE DEFENDANT IS ASKED TO COMPLETE SENTENCES
13 THAT RELATE TO LEGALLY ORIENTED MATTERS. THAT
14 TEST, THE COMPETENCY SCREENING TEST HAS BEEN,
15 HAS BEEN IMPROVED UPON BY RUTH LUCKERSON AND THE
16 CURRENT STATE OF THE ART EXAMINATION FOR
17 COMPETENCY IS CALLED THE CAST-MR. IT'S BEEN
18 COPY-RIGHTED SINCE 1992. "CAST" FOR STANDS THE
19 COMPETENCY ASSESSMENT TO STAND TRIAL. "MR"
20 STANDS FOR INDIVIDUALS WITH MENTAL RETARDATION.
21 IT CONSISTS OF THREE SECTIONS.

22 THE FIRST SECTION HAS TO DO WITH BASIC LEGAL
23 CONCEPTS IN WHICH AN INDIVIDUAL IS ASKED WHICH
24 OF THREE ANSWERS IS THE CORRECT ANSWER. THE
25 SECOND SECTION IS CALLED SKILLS TO ASSIST

1 DEFENSE. AGAIN A THREE OPTION FORCE CHOICE
2 MULTIPLE CHOICE QUESTION AND THE THIRD IS
3 UNDERSTANDING CASE EVENTS WHERE AN INDIVIDUAL IS
4 ASKED TO OPEN ENDEDLY ANSWER QUESTIONS RELATED
5 TO THE CASE EVENTS THAT OCCURRED AND EXPLAIN IN
6 HIS OR HER OWN WORDS WHAT OCCURRED. THE CAST-MR
7 WAS ADMINISTERED AND HE SCORED QUITE HIGH IN
8 IT. I HAVE EXAMPLES OF THE RESPONSES. IF YOU'D
9 LIKE, I'D BE HAPPY TO READ THEM, YOUR HONOR.

10 Q IF COULD YOU TELL US THE SCORE INITIALLY AND
11 THEN READ A FEW THINGS THAT YOU FEEL ARE
12 APPROPRIATE AS TO HIS COMPETENCY.

13 A YES, SIR. IN THE CAST-MR HIS SCORES WERE THAT
14 IN BASIC LEGAL CONCEPTS HE GOT 21 OUT OF 25
15 MULTIPLE CHOICE QUESTIONS CORRECT WHICH OF
16 COURSE COMES OUT TO 84 PERCENT CORRECT WHICH IS
17 QUITE HIGH. THE SECOND SECTION SKILLS TO ASSIST
18 THE DEFENSE HE GOT 13 OUT OF 15 CORRECT WHICH IS
19 A SCORE OF 87.

20 EXAMPLES THAT I FELT WERE PARTICULARLY RELEVANT
21 WERE AS FOLLOWS. THE QUESTION, I WILL READ THE
22 BEGINNING OF THE QUESTION, YOUR HONOR, AND THEN
23 COMPLETE IT WITH WHAT MR. GORDON SELECTED AS THE
24 ANSWER. A WITNESS IS SOMEONE WHO QUOTE SAW THE
25 CRIME. NOW THESE ARE NOT VERBATIM. DID HE NOT

1 SAY SAW THE CRIME BUT HE SELECTED THAT OUT OF
2 THE THREE WITNESSES. IF YOU'D LIKE I'D BE HAPPY
3 TO SHOW YOU THE TEST.

4 THE COURT: THAT'S FINE.

5 A OKAY. WHAT DOES THE PROSECUTOR DO. HIS ANSWER
6 WAS TRIES TO PROVE YOU ARE GUILTY. WHEN DO YOU
7 GO TO THE PENITENTIARY. HIS ANSWER WAS WHEN YOU
8 ARE FOUND GUILTY AND THE JUDGE ORDERS A
9 SENTENCE. WHAT IS A FELONY. HIS ANSWER WAS A
10 VERY SERIOUS CRIME. WHAT DOES IT MEAN TO PLEAD
11 GUILTY. THE ANSWER YOU SAY YOU DID IT. WHAT
12 DOES IT MEAN TO PLEA BARGAIN. THE ANSWER WAS TO
13 MAKE A DEAL FOR A LESSER SENTENCE. WHAT DOES
14 THE PROSECUTOR OR IN THIS CASE IS SOLICITOR,
15 YOUR HONOR, THE TEST DOES NOT STATE SOLICITOR
16 AND SO I EXPLAINED THE SOLICITOR IN THIS CASE AS
17 BEING IN SOUTH CAROLINA. WHAT IS THE SOLICITOR
18 PROSECUTING DOING WHEN HE ASKED YOU A QUESTION.
19 MR. GORDON RESPONDED BY ENDORSING THE ANSWER
20 TRYING TO PROVE YOU PROVE DID IT. WHAT DOES
21 TIME SERVED MEAN. HE ANSWERED HOW LONG YOU'VE
22 BEEN IN JAIL. WHAT DOES PROBATION MEAN. HE
23 ANSWERED YOU REPORT TO SOMEONE INSTEAD OF GOING
24 TO JAIL. WHAT IF THE PROSECUTOR ASKED YOU
25 SOMETHING YOU DON'T UNDERSTAND WHAT MIGHT YOU

1 DO. THE ANSWER WAS TELL HIM TO ASK THE QUESTION
2 AGAIN. LET'S PRETEND THE PROSECUTOR OR
3 SOLICITOR ASKED YOU A QUESTION IN COURT, YOUR
4 LAWYER SAYS HE OBJECTS TO THE QUESTION, WHAT
5 WOULD YOU DO. THE ANSWER WAS WAIT FOR THE JUDGE
6 TO TELL YOU WHAT TO DO. LET'S PRETEND YOU'RE IN
7 COURT AND THE PROSECUTOR TELLS A LIE ABOUT YOU
8 AND IT REALLY MAKES YOU MAD WHAT WOULD YOU DO.
9 HIS ANSWER WAS TELL YOUR LAWYER.

10 I THINK THOSE WERE A SELECTION OF THE ONES THAT
11 SHOWED A PARTICULARLY HIGH DEGREE OF SEEMING
12 INSIGHT INTO THE LEGAL PROCESS.

13 Q CAN YOU TELL ME, DOCTOR, HOW IS THAT
14 ADMINISTERED? DO YOU READ THE QUESTIONS TO HIM,
15 DOES SOMEONE READ THE QUESTIONS TO HIM, OR DOES
16 HE READ IT BY HIMSELF?

17 A WE DO IT IN ONE OF TWO WAYS. WE EITHER ASK THE
18 INDIVIDUAL TO DO IT THEMSELVES IF THEIR READING
19 LEVEL IS HIGH OR IF THERE IS ANY QUESTION ABOUT
20 IT OR AS IN THIS CASE WHEN IT WAS, WHAT WE HAD
21 VERY LITTLE TIME TO DO THIS I READ PART OF THE
22 TEST TO HIM AND DR. CORNELIUS READ PART OF THE
23 TEST TO HIM, AND MR. GORDON WAS LOOKING OVER OUR
24 SHOULDERS AS WE READ TO HIM TO MAKE SURE THAT HE
25 UNDERSTOOD EACH AND EVERY ITEM. WE EXPLAINED TO

1 HIM IT WAS MUCH MORE IMPORTANT THAT HE DO HIS
2 BEST AND TELL US THE CORRECT ANSWER RATHER THAN
3 TO DO IT IN A SPEEDY FASHION, SO IT SEEMED TO US
4 THAT HE WAS READING ALONG WITH US IN MANY OF THE
5 ITEMS, BUT IN ANSWER TO YOUR QUESTION, MR.
6 THOMPSON, IT WAS READ TO HIM WHICH IS THE WAY WE
7 GENERALLY DO IT WHEN WE DON'T HAVE ENOUGH TIME
8 FOR MORE THAN ONE EVALUATION SESSION.

9 Q ALL RIGHT. LET ME ASK YOU THIS, AS FAR AS THE
10 PRESENCE OF MENTAL RETARDATION, DID YOU EXAMINE
11 HIM FOR THAT AS WELL?

12 A YES, SIR.

13 Q AND WHAT ARE THE BASIS FOR MENTAL RETARDATION
14 BEFORE WE GET INTO EXACTLY, WHAT ARE THE PRONGS
15 YOU WOULD USE TO DETERMINE MENTAL RETARDATION?

16 A ACCORDING TO THE AMERICAN PSYCHIATRIC
17 ASSOCIATION 1994 DIAGNOSTIC AND STATISTICAL
18 MANUAL OF MENTAL DISORDERS THERE ARE THREE
19 SPECIFIC REQUIREMENTS FOR THE DIAGNOSIS OF
20 MENTAL RETARDATION. NUMBER ONE IS AN
21 INDIVIDUALIZED IQ SCORE WHICH IS INDIVIDUALIZED
22 TESTED IQ SCORE OF 70 OR BELOW AND THAT IS PLUS
23 OR MINUS FIVE POINTS FOR THE STANDARD
24 MEASUREMENT, YOUR HONOR, AS I MENTIONED WITH
25 THE OTHER TESTS, SO THAT'S PLUS OR MINUS FIVE

1 BUT 70 IS THE CUTOFF NUMBER THAT THEY ARE
2 LOOKING FOR.

3 THE SECOND IS AN ONSET OF MENTAL RETARDATION
4 PRIOR TO 18 YEARS OF AGE. IN OTHER WORDS, IF
5 SOMEONE IS, HAS HAD NO EVIDENCE OF MENTAL
6 RETARDATION AND HAS A HEAD TRAUMA OR SOME OTHER
7 DIFFICULTY IN WHICH THEIR IQ IS LOWERED BUT THEY
8 ARE SAY 25 YEARS OF AGE THAT WOULD NOT BE MENTAL
9 RETARDATION THAT WOULD BE DEMENTIA OR THAT WOULD
10 BE ANOTHER INJURY.

11 MENTAL RETARDATION REQUIRES THAT AN INDIVIDUAL
12 MUST SHOW THE ONSET PRIOR TO 18 YEARS OF AGE
13 ACCORDING TO THE AMERICAN PSYCHIATRIC
14 ASSOCIATION AND IN THE STATE OF SOUTH CAROLINA
15 IT IS 22 YEARS OF AGE.

16 THIRD, CONCURRENT DEFICITS OR IMPAIRMENTS IN
17 ADAPTIVE FUNCTIONING. IN OTHER WORDS, HOW
18 EFFECTIVELY AN INDIVIDUAL COPE WITH COMMON LIFE
19 DEMANDS AND HOW WELL THEY MEET THE STANDARDS OF
20 PROFESSIONAL INDEPENDENCE EXPECTED OF SOMEONE IN
21 THEIR PARTICULAR AGE GROUP, SOCIO-CULTURAL
22 BACKGROUND, AND COMMUNITY STANDARDS. THUS AN IQ
23 SCORE IS ONE PRONG, THE AGE OF ONSET IS A SECOND
24 PRONG, AND THE THIRD, YOUR HONOR, IS THAT AN
25 INDIVIDUAL CANNOT LIVE ON THEIR OWN, CANNOT

1 DRIVE A CAR, CANNOT MAKE A SANDWICH FOR
2 THEMSELVES, ADAPTIVE BEHAVIORAL ISSUES. EACH OF
3 THOSE THREE HAS TO BE MET FOR THE DIAGNOSIS OF
4 MENTAL RETARDATION.

5 Q DID YOU EXAMINE THE DEFENDANT AS TO EACH OF
6 THOSE THREE THINGS?

7 A I EXAMINED THE DEFENDANT IN TERMS OF THE IQ,
8 THE ONSET AND SINCE HE IS YOUNGER THAN 18 THAT
9 SEEMED FAIRLY OBVIOUS IN TERMS OF CONCURRENT
10 DEFICITS OF ADAPTIVE FUNCTIONING I ASKED HIM A
11 COUPLE OF QUESTIONS LIKE WHAT YOU WOULD DO TO
12 MAKE A SANDWICH AND DO YOU DRIVE AND HE SAID HE
13 DID BUT HE DIDN'T HAVE A LICENSE. HE TOLD ME
14 THAT HE AND HIS GIRLFRIEND HAVE A YEAR OLD
15 CHILD. IT THEREFORE SEEMED TO ME CONSISTENT
16 WITH THE VINELAND SOCIAL MATURITY SCALE AND THE
17 STREET SURVIVALS QUESTIONNAIRE WHICH WAS
18 ADMINISTERED TO HIM IN PREVIOUS EXAMINATIONS AND
19 THE STREETS SURVIVAL SKILLS QUESTIONNAIRE, YOUR
20 HONOR, IS AGAIN A CULTURE FREE MEASURE AND BY
21 THAT I MEAN IT IS NOT DETERMINED BY ACADEMIC
22 BACKGROUND AS MUCH AS FOR INSTANCE DO YOU KNOW
23 WHICH OF FOUR SIGNS SAYS STOP. DO YOU KNOW
24 WHERE THE ARROW IS POINTING DOWN OR UP. IT'S A
25 SERIES OF NON-LANGUAGE RELATED NON-SOCIO

1 ECONOMICALLY RELATED QUESTIONS TO GET A CULTURE
2 FREE ANSWER AND INDEED HIS STREET SURVIVAL
3 QUOTIENTS SCORE OF 95 FELL INTO THE NORMAL
4 RANGE, SO MR. THOMPSON, I DID NOT EXHAUSTIVELY
5 EXAMINE THE ADAPTIVE BEHAVIOR. IT DID NOT SEEM
6 TO BE OF PRIMARY IMPORTANCE AT THAT POINT GIVEN
7 THE RECORDS AND SUPPORTING DOCUMENTS, HOWEVER,
8 WE DID HAVE SOME IQ SCORES, AND WE DID HAVE
9 ADAPTIVE FUNCTIONING AS WELL.

10 Q WERE YOU ABLE TO --

11 THE COURT: MR. THOMPSON, BEFORE YOU GO FURTHER,
12 LET'S TAKE ABOUT A TEN MINUTE BREAK.

13 MR. THOMPSON: ALL RIGHT.

14 A THANK YOU.

15 (COURT'S IN RECESS AT 11:05.)

16 (COURT RESUMES AT 11:20 AND THE DEFENDANTS ARE
17 IN THE COURTROOM.)

18 THE COURT: YOU MAY PROCEED. INCIDENTALLY, IF
19 ANYBODY DOES NEED A BREAK, JUST LET ME KNOW.
20 JUST RAISE YOUR HAND AND SAY YOU NEED A BREAK
21 AND WE'LL TAKE ONE. I EXERCISE THAT PREROGATIVE
22 SO I AM GOING TO LET EVERYONE ELSE DO IT TOO.

23 DIRECT EXAMINATION CONTINUED BY MR. THOMPSON:

24 Q DR. SANDLER, WE WERE DISCUSSING MENTAL
25 RETARDATION JUST A MOMENT AGO. IF YOU COULD,

1 COULD YOU TELL ME IF YOU CAME TO A CONCLUSION AS
2 TO WHETHER THE DEFENDANT ANTONIO GORDON WAS
3 MENTALLY RETARDED?

4 A YES, SIR, I DID COME TO A CONCLUSION.

5 Q BASED UPON YOUR EXPERIENCE AND YOUR
6 UNDERSTANDING IN YOUR FIELD WHAT WAS YOUR
7 CONCLUSION IN THAT?

8 A BASED ON MY EXPERIENCE AS WELL AS CLINICAL
9 PRESENTATION, CURRENT TESTING, AND PAST TESTING
10 MY IMPRESSION AND MY UNDERSTANDING IS THAT MR.
11 ANTONIO GORDON IS NOT MENTALLY RETARDED.

12 Q ALL RIGHT. IF YOU COULD, DOCTOR, I NOTICED IN
13 THE EVALUATION THAT YOU DID YOU MENTIONED DURING
14 PART OF THAT HE HAD SOME BLOWS TO HIS HEAD, AND
15 I WOULD ASK YOU IN YOUR EXPERTISE IN THE AREA OF
16 CLINICAL PSYCHOLOGY AND NEUROPSYCHOLOGY IF YOU
17 COULD TELL ME WHAT IF ANYTHING RESULT OF THAT IN
18 YOUR QUESTION CONCERNING THOSE AND YOUR IDEAS
19 ABOUT THE BLOWS THAT HE SUFFERED TO HIS AHEAD AT
20 SOME POINT WHEN HE WAS YOUNGER?

21 A HEAD INJURIES ARE PARTICULARLY SIGNIFICANT IN
22 THAT THEY HAVE EITHER THE PRESENCE OR ABSENCE OF
23 A LOSS OF CONSCIOUSNESS AND THERE IS A
24 MEASUREMENT CALLED THE GLASCOW G-L-A-S-C-O-W
25 COMA SCALE IN WHICH AN INDIVIDUAL IS DETERMINED

1 TO HAVE BEEN UNCONSCIOUS FOR A CERTAIN AMOUNT OF
2 TIME OR NOT WHICH IS THE BEST PREDICTOR OF
3 WHETHER THERE HAS BEEN IMPAIRMENT TO THE BRAIN.
4 IN THIS CASE MR. GORDON EXPLAINED TO ME THAT
5 THERE WERE THREE INCIDENTS OF TRAUMATIC INJURIES
6 TO HIS HEAD. ONE HE SAID HE MIGHT HAVE BEEN
7 UNCONSCIOUS FOR A FEW SECONDS AND FOR A FEW
8 MOMENTS AND I DID NOT FEEL THAT ANY REPRESENTED
9 A SIGNIFICANCE IN TERMS OF A NEUROPSYCHOLOGICAL
10 IMPAIRMENT NOR WERE THERE ANY SIGNS OF
11 NEUROPSYCHOLOGICAL IMPAIRMENT PRESENT IN HIS
12 SPEECH OR IN HIS BEARING ON HIS MOVEMENTS.

13 Q CAN YOU TELL ME, SO IN OTHER WORDS, BASICALLY
14 THOSE, ANY TRAUMA TO HIS HEAD DID NOT SEEM TO
15 AFFECT HIM AT THIS POINT IN TIME?

16 A THAT'S CORRECT, SIR.

17 Q NOW I ALSO NOTICED THERE IS A PLACE IN THERE
18 THAT YOU TALKED ABOUT HIS REPEATED USE OF
19 MARIJUANA. IF YOU COULD TELL ME WHAT IF ANY
20 AFFECT THAT MAY HAVE HAD ON HIM AS FAR AS
21 SUBSTANCE ABUSE IS CONCERNED?

22 A OF THE ILLEGAL SUBSTANCES MARIJUANA IS
23 SIGNIFICANT IN TWO PARTICULAR FACTORS. ONE IS
24 THAT IT DOES NOT, TOGETHER WITH HALLUCINOGENS
25 RESULT IN TOLERANCE. THAT IS IN MOST OTHER

1 SUBSTANCES SUCH AS ALCOHOL OR OTHER DRUGS THE
2 MORE THAT YOU TAKE THE MORE YOU WANT AND THE
3 MORE YOU USE IT, THE MORE THAT YOU WANT TO USE
4 IT AND THAT'S THE TOLERANCE OF ALCOHOL AND
5 PSYCHO-ACTIVE SUBSTANCE ABUSE. MARIJUANA DOES
6 NOT SHOW THAT. MARIJUANA DOES NOT REQUIRE MORE
7 AND MORE TO BE USED, SO IT'S IMPOSSIBLE TO
8 OVERDOSE ON IT. I NEVER BEEN AWARE OF ANYBODY
9 WHO IN LITERATURE THAT HAS BEEN ABLE TO DO THAT.
10 THE OTHER ASPECT OF MARIJUANA WHICH IS
11 SIGNIFICANT IS THAT WHERE AS MOST OTHER
12 SUBSTANCES ILLEGAL SUBSTANCES RESULT IN
13 BELLIGERENCY AND AGGRESSIVE BEHAVIOR, MARIJUANA
14 ON THE OTHER HAND CLINICALLY AND IN RESEARCH
15 RESULTS IN LETHARGY AND DISORGANIZED AND
16 FRAGMENTED THINKING.

17 Q CAN YOU TELL ME IN YOUR EVALUATION OF HIM AND
18 HIS USE OF MARIJUANA DID IT SEEM TO AFFECT HIM
19 IN ANY WAY AS FAR AS HIS COMPETENCY?

20 A NO OBSERVABLE WAY WHATSOEVER, SIR.

21 Q ALL RIGHT. WHERE THERE ANY OTHER THINGS IN YOUR
22 EVALUATION THAT STRUCK YOU, THAT WOULD STRIKE
23 YOU AS THINGS WE SHOULD TELL THE COURT AS FAR AS
24 HIS COMPETENCY GOES?

25 A I WOULD SAY THAT THE ONLY OTHER ASSESSMENT OF

1 HIS, THAT WAS AN INDIVIDUALIZED IQ TEST OCCURRED
2 ON 21 JUNE 1995 WHICH WAS THE WECHSLER
3 INTELLIGENCE SCALE FOR CHILDREN THIRD EDITION.
4 THE WECHSLER INTELLIGENCE SCALE FOR CHILDREN
5 THIRD EDITION HAS BEEN, IS A RELATIVELY NEW
6 FORM, IS THE NEWEST FORM OF THE WECHSLER
7 INTELLIGENCE FORM FOR CHILDREN. FIRST IT WAS
8 THE WISC, WECHSLER INTELLIGENCE SCALE FOR
9 CHILDREN. THEN IT WAS THE WISC-R WECHSLER
10 W-E-C-H-S-L-E-R INTELLIGENCE SCALE FOR CHILDREN
11 REVISED. THIS IS THE THIRD VERSION THE WECHSLER
12 INTELLIGENCE SCALE FOR CHILDREN THIRD EDITION.
13 IT HAS SHOWN A VERY POOR LEVEL OF VALIDITY FOR
14 INDIVIDUALS WHO WERE AFRO-AMERICAN YOUTH AND
15 THEREFORE IF ANYTHING THE TEST SCORES WOULD
16 LIKELY TO BE LOWER THAN AVERAGE. THE VERBAL IQ
17 SCORE I BELIEVE WAS REPORTED AS 68. PERFORMANCE
18 IQ SCORE WAS 72. ALTHOUGH I FIND THAT THERE IS
19 SOME DISCREPANCY BECAUSE IN THE TEST, THE ACTUAL
20 TEST REPORT THE VERBAL IQ SCORE WAS 72. THE
21 PERFORMANCE IQ WAS 69. THE FULL SCALE IQ WAS
22 68. YOUR HONOR, THESE THREE SCORES REPRESENT
23 THE FOLLOWING. THERE ARE 11 SUBTESTS IN THE
24 WECHSLER SCALE AND THE VERBAL IQ REPRESENTS
25 THOSE TESTS THAT ARE DEPENDENT ON LANGUAGE AND

1 COMMUNICATION IN THAT HE SCORED A 72 PLUS OR
2 MINUS FIVE POINTS. IN THE PERFORMANCE TEST
3 WHICH HAS VERY LITTLE VERBAL OR COMMUNICATION
4 LANGUAGE ISSUES BUT INSTEAD ASKS PEOPLE TO PUT
5 BLOCKS TOGETHER OR TO PUT PUZZLES TOGETHER,
6 THINGS THAT ARE MORE SPACIAL IN NATURE RELATING
7 TO THE RIGHT HEMISPHERE OF THE BRAIN AS OPPOSED
8 TO THE LEFT HEMISPHERE OF THE BRAIN THE SCORE
9 WAS 69. COMBINED THERE IS A FORMULA THAT THE
10 TEST USES TO RESULT IN THE FULL SCALE OF 68. SO
11 YOUR HONOR, VERBALLY IF WE WERE TO TALK ABOUT
12 HIS UNDERSTANDING AND COMMUNICATION THE SCORE OF
13 72 OF THOSE THREE SCORES WOULD BE THE ONE THAT
14 WE'D LOOK AS OPPOSED TO THE PERFORMANCE SCALE OR
15 FULL SCALE.

16 Q AND HOW WOULD YOU DESCRIBE BASICALLY THE LEVEL
17 OF ANTONIO GORDON AND HIS ABILITY TO COMMUNICATE
18 AND HOW WOULD THAT, BASICALLY IN LAYMAN'S TERMS,
19 HOW WOULD YOU PUT THAT?

20 A THERE ARE TWO WAYS OF ASSESSING LANGUAGE. ONE
21 IS RECEPTIVE AND THE OTHER IS EXPRESSIVE.
22 EXPRESSIVE LANGUAGE THE WAY THAT ONE EXPRESSES
23 THEMSELVES TO OTHERS. RECEPTIVE IS THE WAY THAT
24 ONE IS ABLE TO LISTEN AND UNDERSTAND WHAT OTHERS
25 SAY TO THEM. I SAW NO INDICATION THAT MR.

1 GORDON'S ABILITY TO, FOR EXPRESSIVE OR RECEPTIVE
2 LANGUAGE WAS IMPAIRED IN ANY WAY.

3 Q NOW IN YOUR OPINION THROUGH THE TESTING YOU'VE
4 DONE IN THIS AND THE BACKGROUND YOU'VE HAD ON
5 MR. GORDON, DO YOU HAVE AN EXPERT OPINION AS TO
6 WHETHER THE DEFENDANT HAS THE ABILITY TO
7 UNDERSTAND THE PROCEEDINGS AGAINST HIM TODAY?

8 A I DO, SIR.

9 Q AND WHAT IS THAT OPINION?

10 A HE HAS THE, WITHIN REASONABLE SCIENTIFIC
11 CERTAINTY THAT THE LIKELIHOOD IS THAT HE IS ABLE
12 TO UNDERSTAND THE PROCEEDINGS AGAINST HIM.

13 Q DID YOU ALSO COME TO A OPINION AS TO HIS PRESENT
14 ABILITY TO ASSIST HIS ATTORNEY IN THIS CASE?

15 A I DID, SIR.

16 Q AND WHAT IS THAT?

17 A THAT WITHIN REASONABLE SCIENTIFIC CERTAINTY
18 THERE IS NO REASON THAT I WAS ABLE TO UNCOVER
19 CLINICALLY FROM REVIEWING THE RECORDS, NOR
20 REVIEWING THE HISTORY THAT MR. GORDON WOULD BE
21 UNABLE TO ASSIST HIS ATTORNEY IN HIS DEFENSE.

22 Q AND FINALLY IN YOUR EVALUATION OF THE DEFENDANT
23 ALONG WITH ALL THE OTHER FACTORS, DID YOU
24 FORMULATE A OPINION AS TO WHETHER THE DEFENDANT
25 COULD UNDERSTAND THE CRIME --

1 MR. D'AGOSTINO: YOUR HONOR.

2 Q ---CRIMES AGAINST HIM, THE PENALTY, THE ROLE OF
3 THE JUDGE AND JURY, AND THE SOLICITOR?

4 MR. D'AGOSTINO: I WITHDRAW THAT OBJECTION, YOUR
5 HONOR.

6 A WOULD YOU BE SO KIND AS TO REPEAT THAT, MR.
7 THOMPSON.

8 Q DID YOU COME TO AN OPINION BASICALLY AS TO
9 WHETHER OR NOT THE DEFENDANT COULD UNDERSTAND
10 THE CRIMES AGAINST HIM, THE CRIME ITSELF, THE
11 PENALTY, THE ROLE OF THE JUDGE AND JURY, AND THE
12 SOLICITOR?

13 A IF WE MAY TAKE THEM ONE AT A TIME.

14 Q ALL RIGHT.

15 A THE CRIME, YES. AS FAR AS THE PENALTY THAT HE
16 COULD GO TO JAIL BUT THEN WAS VERY VAGUE ABOUT
17 WHAT ELSE WOULD HAPPEN TO HIM. THE THIRD ITEM,
18 SIR?

19 Q THE THIRD ITEM WAS THE ROLE OF THE JUDGE IN THE
20 CASE.

21 A YES, SIR. HE SEEMED TO HAVE AN UNDERSTANDING OF
22 THE JUDGE AND THE JURY, THE SOLICITOR AND THE
23 DEFENSE ATTORNEY, EVIDENCE AND WITNESSES.

24 Q ALL RIGHT. SO BASICALLY I'LL JUST SUM IT UP I
25 GUESS AND ASK IF THIS IS CORRECT IN YOUR EXPERT

1 OPINION, HE DOES UNDERSTAND THE CRIME AGAINST
2 HIM, CORRECT?

3 A YES, SIR.

4 MR. D'AGOSTINO: YOUR HONOR, I OBJECT TO THE
5 LEADING.

6 THE COURT: THAT'S A LEADING QUESTION. I
7 SUSTAIN THE OBJECTION. REPHRASE THE QUESTION.

8 MR. THOMPSON: YOUR HONOR, I WAS JUST ASKING
9 HIM --

10 THE COURT: WELL, HE'S ALREADY ANSWERED BUT THAT
11 IS A LEADING QUESTION SO I SUSTAIN THE
12 OBJECTION.

13 Q ALL RIGHT. I TELL YOU WHAT I'LL LEAVE THAT AT
14 THIS POINT AND I BELIEVE YOU HAVE ALREADY
15 ANSWERED THOSE. WE HAVE ONE OTHER AREA I CAN
16 COVER WITH YOU, DR. SANDLER, AS IT RELATES TO
17 THIS DEFENDANT, AS IT RELATES TO PSYCHOLOGY IN
18 GENERAL AND IN THIS CASE. IS THERE ANY CERTAIN
19 STUDY OR TEST THAT IS DONE TO DETERMINE WHETHER
20 SOMEONE UNDERSTAND OR CAN PROPERLY UNDERSTAND
21 THE MIRANDA RIGHTS REGARDLESS OF WHETHER THEY
22 ARE COMPETENT OR NOT?

23 MR. D'AGOSTINO: YOUR HONOR, I'M GOING TO
24 OBJECT. THIS IS BEYOND THE SCOPE OF THE COURT
25 ORDERED ORDERING EVALUATION AS TO COMPETENCY.

1 THE COURT: I SUSTAIN THE OBJECTION.

2 Q ALL RIGHT. DOCTOR, THEN I WILL LEAVE THAT
3 QUESTION ALONE AND I HAVE NO OTHER QUESTIONS.
4 IF YOU WOULD PLEASE ALLOW MR. D'AGOSTINO A
5 CHANCE TO ASK YOU ANY QUESTIONS HE HAS.

6 MR. D'AGOSTINO: THANK YOU.

7 CROSS EXAMINATION BY MR. D'AGOSTINO:

8 Q GOOD MORNING, DOCTOR.

9 A GOOD MORNING, MR. D'AGOSTINO.

10 Q NOW WHEN YOU, YOU'VE HAD AN OPPORTUNITY TO
11 REVIEW THE TWO PSYCHOLOGICAL EVALUATIONS THAT
12 WERE PERFORMED ON ANTONIO WHEN HE WAS AT THE
13 DEPARTMENT OF JUVENILE JUSTICE, RIGHT?

14 A YES, SIR.

15 Q AND BOTH OF THOSE, HIS FULL SCALE IQ ON BOTH OF
16 THOSE WERE 68, WERE THEY NOT?

17 A THAT I RESPECTFULLY SUGGEST, SIR, THAT THERE WAS
18 ONLY ONE TEST THAT WAS GIVEN AND THE SECOND I
19 THINK WAS A REPETITION OF THE TEXT, HOWEVER, I
20 WOULD APPRECIATE IT IF I COULD HAVE A MOMENT AND
21 I'LL CHECK WITH THAT.

22 Q OKAY. YOU'RE TALKING ABOUT, YOU ARE RIGHT ON
23 FEBRUARY 12, 1997, IT REFERS TO THE 68 OF THE
24 JUNE 1995 EXAMINATION?

25 A PRECISELY THEREFORE THERE WAS ONLY ONE TEST THAT

1 WAS GIVEN, IT WAS IN 1995, AND THERE WAS NO TEST
2 GIVEN WHICH WOULD, THERE WAS NO TEST GIVEN IN
3 1997 WHICH WOULD SUPPORT THE ISSUE OF
4 RETARDATION.

5 Q NOW AS FAR AS IF HE WERE TO TAKE A SUBSEQUENT
6 TEST AS FAR AS MALINGERING SUBSEQUENT WECHSLER
7 TEST, THE SAME TYPE OF TESTS AS FAR AS
8 MALINGERING OR TRYING TO CHANGE THE RESULTS, HE
9 WOULDN'T BE ABLE TO DUPLICATE THROUGH
10 MALINGERING OR THROUGH HIS INTELLIGENCE LEVEL
11 THE SAME EXACT SCORE, WOULD HE? OR BE HIGHLY
12 UNLIKELY HE WOULD?

13 A BE HIGHLY -- I'M SORRY.

14 Q IT WOULD BE MORE LIKELY, IF SOMEBODY WAS TRYING
15 TO FAKE OR INFLUENCE THE TEST SCORES?

16 A YES, SIR.

17 Q BY NOT DOING THEIR BEST?

18 A YES, SIR.

19 Q WOULD IN YOUR OPINION THEY BE ABLE TO SCORE THE
20 EXACT SAME THING ON TESTS GIVEN FIVE YEARS
21 APART?

22 A WELL, WHEN WE SAY EXACT SAME I GATHER THAT YOU
23 ARE REFERRING TO PLUS OR MINUS FIVE POINTS,
24 WE'RE TALKING ABOUT A SPREAD AS OPPOSED TO 68 OR
25 69.

1 Q I'M TALKING ABOUT 68 ON BOTH TESTS?

2 A WELL --

3 Q I'M NOT SAYING HE GOT A 68 AGAIN IN '97.

4 A UH-HUH.

5 Q I'M JUST SAYING THAT THERE WAS ANOTHER TEST DONE
6 IN 1999.

7 A UH-HUH.

8 Q THE LIKELIHOOD THAT HE HAD FABRICATED OR TRIED
9 TO BEAT THE TEST, DO SOMETHING TO AFFECT THE
10 RESULTS OF THE TESTS, IF HE GOT THE SAME EXACT
11 SCORE THAT WOULD BE HIGHLY UNLIKELY, WOULDN'T
12 IT?

13 A I DON'T THINK SO, MR. D'AGOSTINO, BUT PERHAPS
14 I'M NOT REALLY UNDERSTANDING YOUR QUESTION. IF
15 YOU COULD BE SO KIND AS TO REPHRASE IT. WHAT I
16 THINK YOU ARE SAYING IS THAT IF HE TRIED, THAT
17 IF HE WAS TRYING TO FAKE WORSE THAN HE WAS IT
18 WOULD BE LIKELY THAT HE WOULD GET THE SAME
19 SCORE.

20 Q IS IT LIKELY HE WOULD GET THE SAME SCORE IN '95
21 AND '99 ON THE WECHSLER IF YOU WERE TRYING TO
22 FAKE EITHER TEST. DOES HE HAVE ENOUGH MENTAL
23 ABILITY TO FAKE THESE TESTS AND GET THE EXACT
24 SAME SCORE FOUR YEARS APART?

25 A I DON'T KNOW.

1 Q WHEN YOU WERE GIVING ANTONIO HIS TESTS, IN FACT,
2 WHEN YOU FIRST STARTED YOUR INTERVIEW WITH HIM
3 WHEN YOU WERE GOING OVER WITH HIM, DO YOU
4 UNDERSTAND THIS IS A SECRET, WHEN YOU ASKED HIM
5 THAT BASIC QUESTION HE ASKED YOU TO EXPLAIN TO
6 HIM WHAT SECRET MEANT, DID HE NOT?

7 A I THINK SO.

8 Q AND THEN YOU HAD TO GO OVER THAT TWICE AND
9 EXPLAIN TO HIM WHAT THE TERM SECRET MEANT?

10 A OH, YES. YES, I RECALL THAT.

11 Q THEN WHEN YOU ASKED HIM ANOTHER QUESTION LATER
12 DURING THE EXAMINATION YOU ASKED ONE OF YOUR
13 MULTIPLE CHOICE QUESTIONS YOU USED THE WORD
14 PROCEEDING, AND HE DIDN'T UNDERSTAND WHAT YOU
15 MEANT BY THE WORD?

16 A I THINK IT WAS PRESENTED, WASN'T IT?

17 Q PRESENTED, YOU'RE CORRECT. I APOLOGIZE,
18 PRESENTED?

19 A YES, SIR.

20 Q AND HE DIDN'T UNDERSTAND WHAT THAT WORD MEANT.
21 IN FACT, YOU ASKED ME TO DEFINE IT FOR HIM.

22 A I TRIED AS BEST THAT I COULD AND I ASKED FOR
23 YOUR ASSISTANCE AS WELL, YES.

24 Q THAT'S RIGHT. BETWEEN BOTH OF US WE WERE ABLE
25 TO EXPLAIN TO HIM WHAT THAT TERM, WHAT THAT WORD

1 PRESENTED MEANT.

2 A THAT'S CORRECT, SIR.

3 Q AND THERE WERE OTHER TIMES AND WITH REGARD TO
4 THE MULTIPLE CHOICE TESTS YOU GAVE, IN FACT, IN
5 YOUR REPORT YOU SUMMARIZED A HANDFUL OF THOSE
6 QUESTIONS, WHEN YOU GAVE, WHEN YOU GAVE HIM THE
7 INSTRUCTIONS FOR THAT TEST THE BASIC GROUND RULE
8 WAS THAT HE HAD TO TAKE HIS TIME AS MUCH AS TIME
9 AS POSSIBLE AS HE NEEDED SO THAT HE COULD GET
10 THE ANSWERS RIGHT. IT WAS MORE IMPORTANT TO GET
11 THEM RIGHT THAN IT WAS TO GO THROUGH QUICKLY?

12 A THAT IS CORRECT, SIR.

13 Q AND OF COURSE, ONE OF THE OTHER THINGS IS THAT
14 THOSE QUESTIONS, AS YOU EXPLAINED TO HIM, EACH
15 QUESTION HAD THREE POSSIBLE ANSWERS. THEY
16 WEREN'T OPEN-ENDED QUESTIONS IN THIS PARTICULAR
17 TEST AND AS YOU EXPLAINED TO HIM ONE ANSWER WAS
18 RIDICULOUS AND ONE ANSWER WAS SO-SO AND ONE WAS
19 THE RIGHT ANSWER?

20 A IN THE INTRODUCTION TO THE TEST I EXPLAINED THAT
21 TO HIM, THAT'S CORRECT.

22 Q OKAY.

23 A AS I ALWAYS DO WITH THIS TEST.

24 Q RIGHT, BUT AS FAR AS THE TEST ITSELF THAT'S HOW
25 THE TEST IS SETUP?

1 A YES, SIR.

2 Q IS ONE RIDICULOUS ANSWER THAT IS OBVIOUSLY
3 WRONG?

4 A YES, SIR, THAT'S CORRECT SIR.

5 Q ALL RIGHT. AND SO BASICALLY HE WAS CHOOSING
6 BETWEEN THREE, REALLY TWO CHOICES ON ALL THOSE
7 QUESTIONS?

8 A NO, I CAN'T SAY THAT. THIS TEST HAS BEEN
9 VALIDATED IN A NUMBER OF STUDIES BY LUCKERSON
10 AND EVERINGTON WITH INDIVIDUALS, WITH PERSONS
11 WITH MENTAL RETARDATION AND IF WHAT YOU ARE
12 SAYING WERE TRUE IT WOULD NOT MEET THE 80
13 PERCENT RELIABILITY AND VALIDITY STANDARD AT
14 ALL. IF WE WERE TALKING ABOUT ONE BEING SO
15 PREPOSTEROUS IN EACH OF THE CASES THEN IT WOULD
16 NOT BE PUBLISHED AND IT WOULD BE NOT IN THE
17 FIELD.

18 Q WHEN YOU, WHEN YOU FIRST STARTED OUT WITH HIM
19 BEFORE YOU STARTED ASKING HIM THE MULTIPLE
20 CHOICE QUESTIONS ABOUT THE FUNCTION OF THE
21 JUDGE, THE SOLICITOR, THE JURY, HIS DEFENSE
22 ATTORNEY, HE ALWAYS KNEW TO ASK ME QUESTIONS. I
23 THINK HE WAS CONSISTENT WITH THAT, RIGHT?

24 A HE ALWAYS KNEW TO NOW ASK?

25 Q HE HAD QUESTIONS ABOUT WHAT WAS GOING ON EVEN

1 WHEN YOU ASKED HIM WHAT MY FUNCTION WAS, I WAS
2 THERE TO HELP HIM, HE WAS PRETTY CONSISTENT WITH
3 THAT, WAS HE NOT? KNOWING WHAT MY FUNCTION WAS?

4 A OH, YES, QUITE, SIR.

5 Q NOW EVERY TIME YOU ASKED HIM WHAT THE JUDGE'S
6 FUNCTION IS HIS RESPONSE IS, HE SITS THERE AND
7 LISTENS OR SOMETHING TO THAT DEGREE?

8 A THAT'S WHAT HE SAID THIS MORNING, BUT I'D HAVE
9 TO REFER TO MY NOTES TO WHAT HE SAID THAT DAY
10 AND REFER TO THE TESTS TO TELL YOU WHAT HE SAID
11 AS FAR AS HIS RESPONSES ARE CONCERNED WHICH I'D
12 BE HAPPY TO DO. WHEN I ASKED IN ITEM, YOUR
13 HONOR, MAY I ADDRESS THIS?

14 THE COURT: CERTAINLY.

15 A IN NUMBER THREE IN THE COMPETENCY ASSESSMENT TO
16 STAND TRIAL FOR MENTAL RETARDATION THE QUESTION
17 IS WHAT DOES THE JUDGE DO. AND MR. GORDON SAID
18 DECIDES THE CASE.

19 Q I'M TALKING ABOUT EARLIER ON IN THE TEST WHEN
20 YOU WERE JUST HAVING A DIALOGUE WITH HIM, I
21 BELIEVE YOU HAD ASKED HIM, EXCUSE ME, IT MIGHT
22 BE, WHAT'S THE OTHER DOCTOR THAT WAS WITH YOU?

23 A DR. CORNELIUS.

24 Q DR. CORNELIUS, WHEN YOU ASKED DR. CORNELIUS TO
25 TAKE OVER AFTER YOU ASKED HIM ABOUT ALL THE

1 VARIOUS SHAPES AND HE ASKED, DO YOU KNOW WHAT
2 THE JUDGE'S FUNCTION IS. I DON'T KNOW WHAT THE
3 JUDGE'S JOB IS BUT HE LISTENS. HIS ATTORNEY
4 HELPS HIM, WHEN YOU ASKED HIM ABOUT THE
5 SOLICITOR, DIDN'T HE SAY, DOESN'T KNOW HIS JOB
6 BUT TALKS A LOT AND DOES NOT KNOW IF OR WHAT HIS
7 JOB IS. YOU RECALL HIM SAYING THAT?

8 A I DON'T RECALL THAT BUT DURING THE TIME I KNOW
9 THAT ONE OF US USUALLY WRITES EVERYTHING DOWN
10 AND THE OTHER USUALLY DOES THE TESTING AND IT'S
11 ENTIRELY POSSIBLE THAT THERE MIGHT, I SEEM TO
12 RECALL THAT THERE WAS SOME AMBIGUITY AT THAT
13 TIME IN TERMS OF WHAT THE SOLICITOR DID OR DID
14 NOT DO, MR. D'AGOSTINO. I THINK THAT THERE WAS
15 INDEED SOME AMBIGUITY.

16 Q RIGHT. IT WAS AT THAT TIME AFTER HE GAVE YOU
17 THAT ANSWER THAT WE STOPPED OR Y'ALL STOPPED AND
18 YOU GAVE HIM SOME EXPLANATION TO DISCUSS THE
19 DIFFERENT FUNCTIONS OF THE JUDGE AND MORE
20 IMPORTANTLY THE SOLICITOR AND THEN WE WENT BACK
21 OVER IT. WE WENT BACK OVER THOSE QUESTIONS AND
22 HE WAS ABLE TO AFTER SOME EXPLANATION UNDERSTAND
23 SOME, YOU KNOW, AND TELL US AFTERWARDS AFTER
24 HAVING HAD IT EXPLAINED TO HIM WHAT THE FUNCTION
25 OF THE SOLICITOR WAS, DO YOU RECALL THAT?

1 A I RECALL THAT AND I RECALL THE FACT THAT IN MY
2 LETTER TO THE SOLICITOR AND DEFENSE LAWYER I
3 ASKED THE DEFENSE ATTORNEY TO EXPLAIN WHAT THE
4 PURPOSE OF THE EVALUATION IS, WHAT THE PURPOSE
5 OF THE ASSESSMENT IS AND IN CASES WHERE I HAVE
6 SOME QUESTION SUCH AS IN MR. GORDON'S CASE AS TO
7 WHETHER HE WAS ATTEMPTING TO MALINGER ITEMS OR
8 NOT, I SAID, LOOK, I WANT TO MAKE THIS CLEAR TO
9 YOU, THIS IS SERIOUS AND THESE ARE THE FUNCTIONS
10 SO THERE WAS STILL SOME QUESTION IN MY MIND AS
11 TO WHETHER MR. GORDON WAS ANSWERING CANDIDLY OR
12 SELF-PROTECTIVELY AT THAT TIME.

13 Q BUT AFTERWARDS HE DID ANSWER THE QUESTION AND
14 THE NEXT QUESTIONS DEALT WITH THE ISSUE OF
15 EVIDENCE, WHAT IS EVIDENCE. DO YOU RECALL THE
16 QUESTIONS DEALING WITH EVIDENCE WITH MR. GORDON?

17 A NOT SPECIFICALLY. IF YOU WOULD REFRESH MY
18 MIND. I ASKED HIM THIS MORNING ABOUT EVIDENCE
19 AND WITNESSES. HE KNEW THEM VERY WELL.

20 Q RIGHT. BUT YOU RECALL DURING THE MEETING ONE
21 WEEK AGO FROM TODAY THAT HIS UNDERSTANDING OF
22 EVIDENCE WAS NOT THAT CLEAR AND THAT YOU WENT
23 OVER AND WE WENT OVER, Y'ALL WENT OVER WITH HIM
24 JUST IN GENERAL TERMS WHAT EVIDENCE WAS, GAVE
25 HIM SOME HYPOTHETICALS TO SEE IF HE UNDERSTOOD

1 AFTER EXPLANATION WHAT EVIDENCE WAS?

2 A OH, YES, OF COURSE. THE PURPOSE BEING A
3 REASONABLE DEGREE OF UNDERSTANDING AND THE
4 QUESTION IS WHETHER HE HAS A REASONABLE DEGREE
5 BASED ON HIS AGE AND BACKGROUND AS OPPOSED TO
6 BEING A LAW STUDENT.

7 Q ALL RIGHT. NOW HE COMPLIED, DID HE NOT, WITH
8 ALL OF YOUR VARIOUS REQUESTS?

9 A WELL, HE COMPLIED SELECTIVELY WITH MY VARIOUS
10 REQUESTS. I BELIEVE THAT HE WAS VERY GUARDED
11 AND VERY WARY AND I DON'T BELIEVE THAT HE
12 COMPLIED IN A FULLY CANDID WAY IN MY
13 EXAMINATION --

14 Q WELL --

15 A BUT I DON'T THINK THAT HE WAS CONSISTENCY
16 MALINGERING OR I WOULD HAVE CONCLUDED IT AND
17 REPORTED TO THE JUDGE THAT WE COULDN'T PROCEED.
18 I DO FIND THAT IN CASES OF MALINGERING THAT IT'S
19 VERY HARD FOR AN INDIVIDUAL TO MALINGER AND SO
20 WHAT YOU WILL GET IS SOME ANSWERS THAT ARE
21 SILLY, SOME ANSWERS THAT ARE CORRECT, AND SOME
22 THAT ARE INCORRECT PURPOSELY SO THAT AN
23 INDIVIDUAL WILL LOOK WORSE THAN THEY ARE.

24 Q WITH REGARD TO THE TONY TEST, THE ONE WITH THE
25 VARIOUS OBJECTS?

1 A YES.

2 Q AS THOSE OBJECTS OR AS THAT TEST BECAME MORE
3 DIFFICULT?

4 A YES, SIR.

5 Q AND IT GOT MORE DIFFICULT AS IT WENT ALONG I
6 BELIEVE?

7 A YES, SIR.

8 Q HE TOOK MORE TIME TO BE ABLE TO PICK OUT THE
9 RIGHT FIGURES, HE DID NOT?

10 A I DON'T THINK SO. I THINK HE TOOK ABOUT THE
11 SAME AMOUNT OF TIME. I WAS NOT TIMING HIM, MR.
12 D'AGOSTINO. I WOULDN'T KNOW. HOWEVER, IF THERE
13 IS AN EXCESSIVE AMOUNT OF TIME, WHENEVER A
14 SUBJECT IS ASKED A QUESTION THAT IS RECORDED AND
15 THERE WAS NO EXCESSIVE AMOUNT OF TIME.

16 Q HOW LONG DID YOU, HOW LONG DID YOU SPEND WITH
17 MR. GORDON THAT DAY?

18 A APPROXIMATELY TWO HOURS.

19 Q YOU HAVEN'T SPOKEN WITH ANY BACKGROUND PEOPLE OR
20 ANYBODY ELSE SUCH AS FAMILY MEMBERS TO GET ANY
21 INPUT AS FAR AS ADAPTIVE BEHAVIORS OR HIS
22 ABILITY TO COPE WITH SOCIETY?

23 A THAT IS CORRECT, SIR.

24 Q NOW WHEN YOU WERE TALKING ABOUT A DIAGNOSIS OF
25 MENTAL RETARDATION YOU TALKED ABOUT THE THREE

1 DIFFERENT AREAS AN INDIVIDUAL IQ OF 70 OR
2 BELOW. AND THE SECOND ONE WAS ONSET OF MENTAL
3 RETARDATION BEFORE 18 YEARS OF AGE. DO WE NOT
4 HAVE SOME EVIDENCE OF A IQ OF 70 OR BELOW AND
5 THAT INFORMATION OR THAT LIMITED INTELLECT IS
6 EVIDENT BECAUSE MR. GORDON IS UNDER THE AGE OF
7 18 PRIOR TO HIS 18 BIRTHDAY, SO HE WOULD MEET
8 THE FIRST TWO CATEGORIES, WOULD HE NOT?

9 A HE WOULD NOT.

10 Q HE WOULD NOT?

11 A HE WOULD NOT.

12 Q WHY NOT?

13 A WELL, HE WOULD NOT FOR THE FOLLOWING REASON, MY
14 INDIVIDUALIZED TEST OF CULTURE FREE INTELLIGENCE
15 WHICH I BELIEVE SCIENTIFICALLY IS SUPPORTED AS
16 MUCH MORE ACCURATE THAN THE WECHSLER THAT WAS
17 GIVEN IN 1995 SHOWS A 73. NOW THERE IS ALWAYS A
18 STANDARD OF ERROR THAT I'M REQUIRED TO REPORT IN
19 AN OBJECTIVE FASHION, BUT I'M TELLING THIS 73 IS
20 DIFFERENT FROM A 70. IN ADDITION, SIR, AS FAR
21 AS THE TESTS THEMSELVES, THE TEST THAT WAS GIVEN
22 IN 1995 WAS GIVEN NOT BY A LICENSED PSYCHOLOGIST
23 BUT BY A GRADUATE STUDENT WITH A SUPERVISING
24 PSYCHOLOGIST, THEREFORE, I HAVE SOME QUESTION
25 RESPECTFULLY AS TO WHETHER LAURIE DUDLEY, A

1 MASTER'S CANDIDATE WHO IS A GRADUATE ASSISTANT,
2 WHO ADMINISTERED THAT TEST BEFORE HILDY DINKINS
3 THE SUPERVISING PSYCHOLOGIST HAD THE SKILL AND
4 EXPERIENCE THAT DOCTOR VITTICK OR DR. HUXTON OR
5 DR. CORNELIUS OR MYSELF HAD.

6 Q THAT WAS DONE AT THE DEPARTMENT OF JUVENILE
7 JUSTICE BY AN EMPLOYEE EMPLOYED BY THE
8 DEPARTMENT OF JUVENILE JUSTICE FOR THE PURPOSE
9 OF PSYCHOLOGICAL EVALUATION USED IN TREATMENT OF
10 ANTONIO GORDON WHEN HE WAS COMMITTED DOWN THERE,
11 WASN'T IT?

12 A TO MY UNDERSTANDING, SIR, IT WAS DONE BY A
13 GRADUATE ASSISTANT AT THE DEPARTMENT OF JUVENILE
14 JUSTICE AND I DETEST TO YOUR KNOWLEDGE AS TO
15 WHETHER THAT PERSON LAURIE DUDLEY WAS EMPLOYED
16 BY R AND E OR NOT.

17 Q WITH REGARD TO YOU SAID THE WECHSLER EXAMINE FOR
18 CHILDREN IS NOT OR THERE IS SOME CRITICISM OF
19 IT. IS THERE SOME CRITICISM OF THE WECHSLER FOR
20 ADULTS?

21 A THERE IS CRITICISM, MR. D'AGOSTINO, IN ALL
22 PSYCHOLOGICAL TESTING WHETHER THE CRITICISM
23 REACHES THE POINT WHERE PSYCHOLOGISTS WHO ARE
24 SAMPLED DEFER USING IT IS THE SIGNIFICANT
25 DETAIL. IF I FELT THAT THE WIS-THREE THE

1 WECHSLER INTELLIGENCE SCALE THREE WAS THE
2 SUPERIOR TEST TO USE I WOULD HAVE ADMINISTERED
3 THAT TO MR. GORDON THAT DAY.

4 Q WHICH TEST DID YOU USE FOR THE IQ ASSESSMENT,
5 WHICH ONE IS IT THAT I SAT THROUGH WAS THAT?

6 A TONY THREE.

7 Q THE TONY THREE?

8 A TEST OF NONVERBAL INTELLIGENCE THIRD EDITION.

9 Q THAT WAS THAT ONE WHERE THERE WAS 24, YOU WENT
10 THROUGH NUMBER 24. I DON'T KNOW IF THERE ARE
11 MORE THAN THAT OR NOT, BUT WE WENT THROUGH 24
12 DIFFERENT QUESTIONS AND HE HAD TO PICK OUT THE
13 SHAPES TO MATCH, THAT'S THE TEST YOU ARE TALKING
14 ABOUT?

15 A YES, SIR.

16 Q AND IT WAS ON THAT ONE TEST THAT YOU BASED HIS
17 IQ OF 73?

18 A I NEVER BASED, I NEVER BASE A DETERMINATION ON A
19 TEST ALONE WITHOUT CLINICAL INFORMATION AND
20 CLINICAL DATA OF THE INDIVIDUAL THAT I AM
21 TESTING, SO IT WAS BASED ON THE ANSWERS, IT WAS
22 BASED ON HIS STYLE OF ANSWERS, IT WAS BASED ON
23 THE CONSISTENCY WITH ALL THE OTHER DETAILS.

24 Q BUT IT WAS USING THOSE 24 QUESTIONS?

25 A IT WAS USING AS MANY QUESTIONS AS I HAD

1 ADMINISTERED TO MR. GORDON WHICH IN THIS CASE I
2 BELIEVE WERE 17.

3 Q 17?

4 A YES, SIR.

5 Q HOW MANY ARE IN THE TONY?

6 A 45.

7 Q OKAY. SO YOU USE 17 OUT OF 45 QUESTIONS?

8 A YOUR HONOR, MAY I EXPLAIN, SIR, THAT --

9 THE COURT: YOU CAN ANSWER THE QUESTION AND THEN
10 EXPLAIN IT. ANSWER WHAT HE ASKED THEN YOU CAN
11 EXPLAIN YOUR ANSWER.

12 A I THOUGHT I ANSWERED HIS QUESTION THAT'S WHY I
13 WANTED TO EXPLAIN IT.

14 THE COURT: ALL RIGHT, GO AHEAD.

15 A THE DIRECTIONS, SIR, ARE THAT WHEN THE SUBJECT
16 MAKES THREE ERRORS IN FIVE CONSECUTIVE QUESTIONS
17 THE TEST IS DISCONTINUED. THEREFORE, HE COULD
18 HAVE GONE TO 17, HE COULD HAVE GONE TO 39, HE
19 COULD HAVE GONE TO 40-WHATEVER. IN OTHER WORDS,
20 YOU KEEP GOING UNTIL THE INDIVIDUAL MAKES THREE
21 ERRORS IN FIVE CONSECUTIVE QUESTIONS AND THEN
22 THE TEST IS CONCLUDED.

23 Q WOULD YOU NOT AGREE, DOCTOR, THAT ANTONIO GORDON
24 IS A, HAS SIGNIFICANT LIMITATIONS WITH HIS
25 MENTAL ABILITIES?

1 A I WOULD DISAGREE WITH THAT STATEMENT.

2 Q YOU WOULD DISAGREE WITH THAT?

3 A YES, SIR.

4 Q WOULD YOU NOT AGREE THAT IN A COURT PROCEEDING
5 WHAT IS GOING ON OR HOW COMPLICATED A HEARING IS
6 OR HOW COMPLICATED A TRIAL IS ALSO CAN HAVE AN
7 IMPACT ON A PERSON'S COMPETENCY?

8 A ACCORDING TO MY UNDERSTANDING OF THE DUSKY
9 STANDARD THAT IT IS A REASONABLE DEGREE OF THE
10 FACTUAL UNDERSTANDING OF THE PROCEEDINGS.

11 Q WELL, IF THERE IS A CASE THAT'S GOING TO HAVE
12 MANY LEGAL COMPLICATED ISSUES WITH MULTIPLE
13 DEFENDANTS, WOULD A INDIVIDUAL WHO HAS SOME
14 LIMITATIONS IN THEIR MENTAL ABILITY, WOULD YOU
15 BE ABLE TO FIND THE SAME PERSON COMPETENT FOR A
16 COMPLICATED SITUATION SUCH AS THAT AS YOU WOULD
17 FOR A SIMPLE STRAIGHT FORWARD TRIAL WITH JUST
18 ONE INDIVIDUAL?

19 A THE ISSUE OF DUSKY'S EXPLANTATION OF COMPETENCY
20 AS I UNDERSTAND IT AND HAVE STUDIED IT HAS TO DO
21 WITH A REASONABLE UNDERSTANDING OF THE
22 PROCEEDINGS AGAINST THEM AND AN ABILITY TO
23 COOPERATE WITH HIS ATTORNEY. IN EACH CASE I
24 ASKED HIM IF HE TRUSTED YOU, IF HE FELT
25 COMFORTABLE WITH YOU, IF HE LIKED YOU, IF HE

1 WOULD HOLD ANYTHING BACK FROM YOU. IN EVERY
2 CASE HE LIKED YOU, HE TRUSTED YOU, HE WOULD NOT
3 HOLD ANYTHING BACK FROM YOU.

4 Q AND I APPRECIATE IT FOR HAVING THAT TRUST IN ME
5 AND IT'S TAKEN AWHILE TO DO THAT, BUT WITH
6 REGARD TO THE DUSKY STANDARD THEN IF I
7 UNDERSTAND YOU CORRECTLY, IT DOES NOT TAKE INTO
8 CONSIDERATION ISSUES SUCH AS HOW COMPLICATED A
9 TRIAL MIGHT BE DUE TO NUMEROUS OTHER ISSUES THAT
10 ARE GOING ON IN THE TRIAL SUCH AS MULTIPLE
11 DEFENDANTS OR MULTIPLE CONSTITUTIONAL ISSUES?

12 A MR. D'AGOSTINO, I CERTAINLY AM NOT AN ATTORNEY
13 OR AS WISE AS YOU ARE IN THESE MATTERS. IN MY
14 UNDERSTANDING AS A FORENSIC PSYCHOLOGIST AND ONE
15 WHO HAS WORKED IN THIS AREA AND WORKED IN DUSKY,
16 THERE IS NOT A FACTOR THAT MAKES ONE
17 DETERMINATION FOR MURDER CASES OR FELONIES AND
18 ONE FOR MISDEMEANORS, BUT I MAY STAND CORRECTED
19 ON THAT.

20 Q I DON'T THINK THAT'S THE QUESTION I ASKED AND IF
21 IT WAS, I DIDN'T MEAN TO ASK IT THAT WAY. WHAT
22 I'M TRYING TO GET AT AND I THINK YOUR ANSWER, I
23 THINK THE ANSWER IS NO BUT YOU TELL ME. THE
24 DUSKY TEST DOES NOT HAVE OR DOES NOT CONSIDER
25 THE SPECIFIC TRIAL AND THE COMPLEXITIES THAT A

1 DEFENDANT IS GOING TO HAVE TO FACE WITH A
2 SPECIFIC TRIAL. IT'S A BASIC STANDARD AS TO
3 WHETHER HE UNDERSTANDS THE PROCEEDINGS AND IS
4 ABLE TO ASSIST HIS ATTORNEY?

5 A TO THE BEST OF MY KNOWLEDGE, MR. D'AGOSTINO,
6 THAT IS CORRECT.

7 Q ALL RIGHT. AND FINALLY JUST VERY BRIEFLY,
8 DOCTOR. WOULD YOU AGREE OR DISAGREE WITH THE
9 ASSESSMENT THAT MR. ANTONIO GORDON'S VOCABULARY
10 IS MUCH MORE, IS MUCH MORE, IS VERY LIMITED SUCH
11 THAT AS THE TRIAL PROGRESSES IT MAY BE NECESSARY
12 TO TAKE ADDITIONAL TIME FOR MYSELF OR A PRIVATE
13 INVESTIGATOR FOR THINGS TO BE EXPLAINED TO HIM
14 THAT ARE GOING ON IN THE COURTROOM AND WHAT
15 PEOPLE ARE SAYING?

16 A I WOULD CERTAINLY AGREE THAT IN A MATTER OF THIS
17 GRAVITY THAT ANY DEFENDANT WOULD WANT TO DISCUSS
18 ISSUES AND VOCABULARY WITH THEIR DEFENDANT, WITH
19 THEIR ATTORNEY, THEIR DEFENSE ATTORNEY.

20 Q LET ME MAKE IT A LITTLE MORE SPECIFIC. I'M NOT
21 TALKING ABOUT ANY DEFENDANT, I'M TALKING ABOUT
22 MR. ANTONIO GORDON?

23 A UH-HUH.

24 Q BASED UPON YOUR OBSERVATIONS OF HIM THAT DAY,
25 YOUR ABILITY TO COMMUNICATE AND HIS REQUEST FOR

1 YOU TO EXPLAIN CERTAIN TERMS TO HIM, BASED UPON
2 THAT EXAMINATION AND EVALUATION, WOULD YOU AGREE
3 OR DISAGREE THAT THERE ARE GOING TO BE CONCERNS
4 AND HE IS GOING TO HAVE TO, MORE THAN THE
5 AVERAGE CITIZEN, HAVE THINGS EXPLAINED TO HIM
6 AND WHAT WORDS MEAN WHILE THIS CASE IS
7 PROGRESSING?

8 A BASED ON THE QUESTIONS THAT OCCURRED IN MY
9 INTERVIEW IN WHICH I BEGAN BY TELLING HIM
10 NOTHING WAS A SECRET AND HIS REPEATED QUESTION,
11 WELL, WHAT'S A SECRET, IT IS A SECRET, IT ISN'T
12 A SECRET, I BELIEVE, MR. D'AGOSTINO, THAT MR.
13 GORDON WAS MALINGERING AND HAD EVERY REASON TO
14 KNOW WHAT WE WERE TALKING ABOUT THE SAME WAY HE
15 DID WITH THE COLOR OF THE FLAG OR WHERE THE SUN
16 RISES. I BELIEVE THAT HE WAS ATTEMPTING TO
17 APPEAR LESS WELL INFORMED THAN HE WAS. IN
18 ANSWER TO YOUR QUESTION, THEREFORE, I WOULD NOT
19 AGREE THAT HE WOULD NEED MORE EXPLANATION OF HIS
20 VOCABULARY THAN OTHER INDIVIDUALS OF HIS AGE,
21 HIS PEER GROUP, HIS SOCIO-ECONOMIC, AND
22 COMMUNITY BACKGROUND.

23 Q SO YOU TAKE INTO ACCOUNT SPECIFICALLY HIS
24 SOCIO-ECONOMIC AND COMMUNITY BACKGROUND?

25 A I ATTEMPT TO.

1 Q WELL, WHAT IS THAT BACKGROUND FOR MR. GORDON?

2 A I BELIEVE THAT IT IS BELOW THE NORM, THAT HIS
3 FAMILY HAS SOME HANDICAPS AND THAT HE HAS NOT
4 BEEN WORKING CONSISTENCY AND THEREFORE HE WOULD
5 HAVE SOME LOWER SOCIO-ECONOMIC BACKGROUND THAN
6 OTHERS.

7 Q SO YOU'RE MAKING THAT STATEMENT IN LIGHT OF HIS
8 SOCIO-ECONOMIC AND HIS STANDING AS A INDIVIDUAL
9 OF LIMITED RESOURCES, LIMITED EDUCATION, AFRICAN
10 AMERICAN POPULATION, WHERE HE LIVES, AND NOT
11 MAKING YOUR ASSESSMENT BASED UPON THE AVERAGE
12 CITIZEN IN THE UNITED STATES?

13 A THAT IS WHAT THE AMERICAN PSYCHIATRIC
14 ASSOCIATION CALLS FOR.

15 Q OKAY. THOSE ARE ALL THE QUESTIONS I HAVE. THANK
16 YOU, YOUR HONOR.

17 REDIRECT EXAMINATION BY MR. THOMPSON:

18 Q YOU MENTIONED TO MR. D'AGOSTINO THAT YOU HAD
19 SPOKEN WITH THE DEFENDANT THIS MORNING?

20 A YES, I DID.

21 Q HOW LONG DID YOU SPEAK WITH HIM THIS MORNING?

22 A APPROXIMATELY 10-15 MINUTES.

23 Q AND IN SPEAKING WITH HIM THIS MORNING HAS YOUR
24 OPINION OF HIM ON ANY OF THE AREAS THAT WE
25 DISCUSSED ALREADY CHANGED IN ANY WAY?

1 A IT HAS, IT IS MORE CONVINCING THAN IT WAS BEFORE
2 HE UNDERSTOOD GUILTY, NOT GUILTY. HE UNDERSTOOD
3 ABOUT A NUMBER OF ISSUES THAT HE SEEMED
4 RELATIVELY UNCLEAR ABOUT BEFORE. HE UNDERSTOOD
5 THAT THE SOLICITOR IS TRYING TO FIND YOU GUILTY,
6 THAT WITNESSES IS SOMEONE LIKE HIS COUSIN.
7 EVIDENCE WAS THE STUFF THAT THEY GOT ON YOU SUCH
8 AS A GUN. IF ANYTHING HE ANSWERED MORE
9 CORRECTLY THAN HE DID IN THE EVALUATION, SIR.

10 Q AND IF YOU WOULD, DOCTOR, BASED ON YOUR
11 CONVERSATIONS WITH HIM THIS MORNING AND THE
12 PRIOR EVALUATION OF HIM, WHAT IF ANY OPINION,
13 WHAT IF ANY EXPERT OPINION DO YOU HAVE AS TO HIS
14 COMPETENCY?

15 A I BELIEVE THAT ACCORDING TO HIS HONOR'S ORDER OF
16 WHICH I BELIEVE CONCENTRATES ON BASICALLY THE
17 DUSKY STANDARD AND HIS COMPETENCY THAT HE IS AND
18 WOULD BE COMPETENT AT THIS TIME TO STAND TRIAL,
19 SIR.

20 Q THANK YOU. NO FURTHER QUESTIONS.

21 MR. D'AGOSTINO: NOTHING FURTHER. THANK YOU,
22 YOUR HONOR.

23 THE COURT: YOU CAN STEP DOWN. CAN THIS WITNESS
24 BE EXCUSED.

25 MR. D'AGOSTINO: WITHOUT OBJECTION.

1 MR. THOMPSON: WE WOULD ASK TO SPEAK WITH HIM
2 BEFORE HE LEAVES.

3 THE COURT: AS FAR AS THE COURT IS CONCERNED YOU
4 ARE EXCUSED. WE APPRECIATE YOUR TIME.

5 THE WITNESS: THANK YOU, YOUR HONOR.

6 THE COURT: CALL YOUR NEXT WITNESS.

7 MR. THOMPSON: YOUR HONOR, THE STATE HAS NO
8 OTHER WITNESSES AS TO COMPETENCY.

9 THE COURT: ALL RIGHT.

10 MR. D'AGOSTINO: I WILL NOT PRESENT ANY
11 WITNESSES AS TO COMPETENCY, YOUR HONOR.

12 THE COURT: EITHER TODAY OR LATER?

13 MR. D'AGOSTINO: EITHER TODAY OR LATER AS TO
14 COMPETENCY, YOUR HONOR.

15 THE COURT: ALL RIGHT. THANK YOU. BASED ON THE
16 EVIDENCE PRESENTED AT THE BLAIR HEARING I FIND
17 THAT MR. ANTONIO GORDON IS COMPETENT TO STAND
18 TRIAL. HE HAS SUFFICIENT PRESENT ABILITY TO
19 CONSULT WITH COUNSEL TO A REASONABLE DEGREE OF
20 RATIONAL UNDERSTANDING. HE HAS A RATIONAL
21 UNDERSTANDING AS WELL AS A FACTUAL UNDERSTANDING
22 OF THE PROCEEDINGS AGAINST HIM. I FIND THAT'S
23 BASED ON THE EVIDENCE. I FIND THAT'S BASED ALSO
24 ON THE EVIDENCE FROM THE ORAL TESTIMONY AND I
25 FIND THAT'S BASED ON THE FORENSIC PSYCHOLOGICAL

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1 COMPETENCE EVALUATION EXHIBIT TWO. I FIND THAT
2 HE UNDERSTANDS THE PROCEEDINGS ACCORDING TO THE
3 TESTIMONY WITH A SCIENTIFIC DEGREE OF SCIENTIFIC
4 CERTAINTY. THAT THERE IS NO REASON HE CANNOT
5 ASSIST HIS ATTORNEY. HE UNDERSTANDS THE NATURE
6 OF THE CHARGES AND PROCEEDINGS AGAINST HIM. HE
7 UNDERSTANDS WHAT TESTIMONY CONSISTS. HE
8 UNDERSTANDS THE CRIMES FOR WHICH HE'S CHARGED.
9 HE UNDERSTANDS THE FUNCTIONS OF THE JUDGE. HE
10 UNDERSTANDS THE FUNCTION OF THE SOLICITOR,
11 UNDERSTANDS THE FUNCTION OF THE JURY,
12 UNDERSTANDS THE EVIDENCE, AND HE UNDERSTANDS
13 THAT THE PENALTY INCLUDES POSSIBILITY OF BEING
14 IN JAIL ALTHOUGH THE TESTIMONY WAS THAT HE
15 WASN'T REAL SURE, IF I REMEMBER THE RIGHT WORDS,
16 WHAT HAPPENED AFTER THAT, BUT HE UNDERSTANDS THE
17 PENALTY AND ALL THE THINGS THAT ARE REQUIRED FOR
18 ONE TO BE COMPETENT TO ASSIST IN THE TRIAL AND
19 UNDERSTANDS THAT FOR WHICH HE IS BEING PUT TO
20 TRIAL. ALL RIGHT.

21 MR. D'AGOSTINO: YOUR HONOR, FOR THE RECORD YOU
22 REFERRED TO EXHIBIT TWO, I DO NOT KNOW THE STATE
23 MOVED THAT INTO EVIDENCE PER SE. I DID HAVE AND
24 I DO HAVE AN OBJECTION TO EXHIBIT NUMBER TWO THE
25 LAST PARAGRAPH ON THE LAST PAGE.

1 THE COURT: WELL, I DON'T KNOW WHETHER IT WAS
2 MOVED INTO EVIDENCE OR NOT, BUT THE TESTIMONY --
3 MR. D'AGOSTINO: EVERYTHING EXCEPT FOR THAT
4 FINDING.

5 THE COURT: I FIND THAT I AM DISREGARDING AND
6 GIVING NO CREDENCE TO THE PAGE. I CAN'T SEE
7 WHERE THE NUMBERS ARE BUT THE LAST PAGE, THE
8 PAGE ON WHICH DR. SANDLER HAS SIGNED AND DATED,
9 PAGE SIX, THAT PARAGRAPH I AM GIVING NO CREDENCE
10 OR FACTORING THAT IN NO WAY WHATSOEVER IN MY
11 RULING.

12 MR. D'AGOSTINO: THANK YOU, YOUR HONOR.

13 THE COURT: HE WASN'T QUESTIONED ON THAT
14 EITHER. YOU OBJECTED WHEN IT LOOKED LIKED HE
15 WAS GOING IN THAT DIRECTION AND IT TURNED OUT TO
16 BE A DIFFERENT QUESTION, SO THAT'S NOT
17 CONSIDERED.

18 MR. D'AGOSTINO: THANK YOU, YOUR HONOR.

19 THE COURT: ALL RIGHT.

20 MR. THOMPSON: JUST FOR THE PURPOSES OF THE
21 COMPETENCY HEARING AND FOR POSSIBILITY OF APPEAL
22 I WOULD ASK THAT THAT BE PUT IN THE RECORD. I'M
23 OKAY WITH CROSSING OUT THAT LAST PARAGRAPH.

24 MR. D'AGOSTINO: SUBJECT TO THAT LAST PARAGRAPH
25 THAT'S FINE, YOUR HONOR.

1 THE COURT: IT WILL BE RECEIVED. AND WHETHER IT
2 NEEDS TO BE PHYSICALLY REDACTED OR NOT, YOU
3 MIGHT WANT TO NOT PHYSICALLY REDACT IT EVEN
4 THOUGH EVERYBODY AGREES IT IS OUT JUST FOR THE
5 PURPOSES OF APPEAL, BUT IT HAS BEEN REDACTED IN
6 THE MIND OF THE COURT AND IN THE CONSIDERATION
7 OF THE COURT.

8 (COURT'S EXHIBIT TWO A. GORDON'S EVALUATION
9 RECEIVED.)

10 MR. D'AGOSTINO: THANK YOU, YOUR HONOR.

11 THE COURT: IT'S BEEN PRACTICALLY IF NOT
12 PHYSICALLY REDACTED IF THERE IS SUCH A THING.
13 ALL RIGHT, WHAT NEXT.

14 MR. THOMPSON: MAY IT PLEASE THE COURT, YOUR
15 HONOR. I BELIEVE THE STATE WOULD PROCEED ON THE
16 SUPPRESSION HEARING AS IT RELATES TO TERRANCE
17 MCCREARY AT THIS TIME.

18 THE COURT: ALL RIGHT. CALL YOUR FIRST
19 WITNESS.

20 MR. THOMPSON: THE STATE WOULD CALL WILLIE
21 BURRIS TO THE STAND.

22 WILLIE BURRIS, BEING FIRST DULY
23 SWORN, TESTIFIED AS FOLLOWS:

24 THE COURT: I'VE KNOWN MR. BURRIS FOR QUITE A
25 WHILE AND I HESITATE TO ASK THIS AND BE SOMEWHAT

1 PERSONAL BUT I AM JUST FOR THE RECORD SINCE IT
2 HAS COME UP, I UNDERSTAND MR. BURRIS HAD SOME
3 OPTICAL SURGERY SOMETIME THIS WEEK AND I JUST
4 WANT TO MAKE SURE THAT THERE IS NOTHING
5 CONNECTED WITH THAT SURGERY -- FIRST I AM
6 CORRECT, DID YOU HAVE SOME EYE?

7 A YES, I DID.

8 THE COURT: I JUST WANT TO MAKE SURE THAT YOU
9 ARE NOT ON MEDICATION OR ANYTHING CONNECTED WITH
10 THAT SURGERY SUCH AS LINGERING ANESTHESIA OR
11 ANYTHING LIKE THAT WOULD AFFECT YOUR ABILITY TO
12 TESTIFY COMPETENTLY THIS MORNING?

13 A I AM NOT, SIR.

14 THE COURT: YOU ARE COMPETENT THIS MORNING,
15 NOTHING'S AFFECTING YOU?

16 A NOTHING IS AFFECTING ME.

17 THE COURT: DO YOU HAVE ANY QUESTIONS ON THAT,
18 MR. GILLEN?

19 MR. GILLEN: NO, YOUR HONOR.

20 THE COURT: OKAY. I JUST WANT TO MAKE SURE
21 SINCE THAT HAD COME UP. GO AHEAD.

22 MR. THOMPSON: PLEASE THE COURT, YOUR HONOR.

23 THE COURT: CERTAINLY.

24 DIRECT EXAMINATION BY MR. THOMPSON:

25 Q DETECTIVE BURRIS, YOU COULD TELL US YOUR FULL

1 NAME PLEASE.

2 A WILLIAM BURRIS.

3 Q WHERE DO YOU WORK?

4 A ROCK HILL POLICE DEPARTMENT.

5 Q HOW LONG HAVE YOU BEEN THERE?

6 A ABOUT 30 YEARS.

7 Q AND AS A MEMBER OF THE ROCK HILL POLICE
8 DEPARTMENT WHAT ARE YOUR DUTIES THERE? WHAT IS
9 YOUR POSITION?

10 A I AM A DETECTIVE SERGEANT ASSIGNED TO THE
11 DETECTIVE DIVISION.

12 Q AND CAN YOU TELL ME, DETECTIVE BURRIS, IN THIS
13 PARTICULAR CASE DID YOU BECOME INVOLVED IN THE
14 CASE AGAINST TERRANCE MCCREARY AT ANY PARTICULAR
15 TIME LAST YEAR? I BELIEVE IT WAS JULY 23 OF
16 LAST YEAR.

17 A YES, I DID.

18 Q HOW DID YOU BECOME INVOLVED, DETECTIVE?

19 A I DID A INTERVIEW WITH TERRANCE MCCREARY AND I
20 DID TAKE A SWORN STATEMENT FROM THE SAME PERSON.

21 Q ALL RIGHT. AND WHERE WERE YOU EXACTLY OR I
22 GUESS WHERE WERE YOU EXACTLY WHEN YOU TOOK THAT
23 INTERVIEW, DO YOU REMEMBER?

24 A IN THE DETECTIVE DIVISION IN ONE OF THE
25 INTERVIEW ROOMS.

1 Q OKAY. AT THAT POINT IN TIME HAD YOU SPOKEN TO
2 THE DEFENDANT BEFORE THAT POINT IN TIME BEFORE
3 THE ACTUAL INTERVIEW OCCURRED?

4 A I HAD NOT.

5 Q HAD YOU HAD ANY DEALINGS WITH ANYONE ELSE IN THE
6 CASE PRIOR TO THAT, ANY OTHER DEFENDANTS?

7 A I HAD NOT.

8 Q CAN YOU TELL ME HAD YOU BEEN AT ANY OF THE
9 SCENES, THE PRIOR SCENES OF THE CRIME SCENE OR
10 THE ARREST SCENES OR ANYTHING LIKE THAT?

11 A I DID NOT.

12 Q AND AT WHOSE DIRECTION DID YOU INTERVIEW MR.
13 MCCREARY?

14 A YOU MEAN WHO INSTRUCTED ME TO?

15 Q WHO INSTRUCTED YOU TO TALK TO MR. MCCREARY?

16 A SUPERVISOR I BELIEVE AT THAT TIME IT WAS
17 LIEUTENANT THICKENS.

18 Q ALL RIGHT. AND TO YOUR KNOWLEDGE HAD HE BEEN
19 INTERVIEWED BEFORE THIS PERIOD OF TIME?

20 A NOT MY KNOWLEDGE HE HAD NOT.

21 Q WHEN YOU MET WITH MR. MCCREARY, I'M SORRY, IF
22 YOU COULD TELL ME AGAIN EXACTLY WHERE DID YOU
23 FIRST SEE HIM? DID YOU PICK HIM UP FROM
24 SOMEWHERE AND BRING HIM TO THE ROOM OR HOW DID
25 THAT WORK?

1 A I'M NOT REALLY SURE. I MAY HAVE PICKED HIM UP
2 IN THE HOLDING AREA AND BROUGHT HIM INSIDE THE
3 DETECTIVE DIVISION. SOMEONE ELSE MAY HAVE
4 ESCORTED HIM THERE.

5 Q AND WHERE IN THE DETECTIVE DIVISION WERE YOU
6 WHEN YOU INTERVIEWED HIM?

7 A IN ONE OF THE INTERVIEW ROOMS. WE HAVE TWO
8 INTERVIEW ROOMS IN THE DETECTIVE DIVISION.

9 Q ALL RIGHT. AND WAS ANYONE ELSE WITH YOU DURING
10 THE TIME OF THE INTERVIEW?

11 A NO ONE ELSE WAS WITH ME.

12 Q DID YOU TAKE ANY NOTES DURING THE INTERVIEW?

13 A I DIDN'T TAKE ANY NOTES.

14 Q ALL RIGHT. SO I NOTICE, LET ME GO AHEAD AND
15 MARK THIS FOR A STATE'S EXHIBIT.

16 (STATE'S EXHIBIT NUMBER TWO STATEMENT MARKED FOR
17 IDENTIFICATION.)

18 Q IF YOU CAN EXAMINE THAT STATE'S EXHIBIT NUMBER
19 TWO AND TELL ME WHAT THAT IS PLEASE?

20 THE COURT: I DON'T KNOW HOW WE'RE KEEPING
21 RECORDS ON THIS BUT.

22 MR. THOMPSON: THOSE ARE COURT EXHIBITS, YOUR
23 HONOR.

24 THE COURT: AND THIS IS A STATE'S EXHIBIT.

25 A THIS IS STATEMENT TAKEN. IT'S BEEN TYPED BY ME

1 FROM TERRANCE EUGENE MCCREARY ON THE DATE JULY
2 23, 1998. IT STARTED A 3:35 P.M. ENDED ABOUT
3 5:10 P.M. THE SAME DAY.

4 Q ALL RIGHT. ON THAT PARTICULAR STATEMENT THIS IS
5 THE ONE, THAT IS THE ACTUAL ONE THAT YOU TYPED
6 UP THAT DAY?

7 A IT IS.

8 Q CAN YOU TELL ME HOW DOES IT START OFF?

9 A WHEN I'M INTERVIEWING AN INDIVIDUAL OR DEFENDANT
10 OR WITNESS OR WHATEVER, THIS CASE BEING A
11 DEFENDANT, I ALWAYS INTRODUCE MYSELF, LET HIM
12 KNOW WHO I AM, AND I ADVISE HIM OF HIS RIGHTS
13 WHICH I READ FROM THE, ALWAYS READ IT FROM THE
14 FORM, SO I GET IT RIGHT.

15 Q DID YOU INTERVIEW HIM AND TELL HIM WHO YOU WERE
16 THAT DAY?

17 A YES, I DID.

18 Q DID HE SEEM TO BE ABLE TO UNDERSTAND WHAT YOU
19 WERE TELLING HIM AT THAT POINT IN TIME?

20 A YES.

21 Q AND DID YOU READ THE RIGHTS OFF OF THIS
22 PARTICULAR SHEET THAT YOU HAVE IN FRONT OF YOU?

23 A I DID.

24 Q IF YOU WOULD, WOULD YOU READ THOSE INTO THE
25 RECORD FOR US PLEASE AS YOU READ THEM TO HIM

1 THAT DAY?

2 A BEFORE WE ASK YOU ANY QUESTIONS YOU MUST
3 UNDERSTAND YOUR RIGHTS. YOU HAVE THE RIGHT TO
4 REMAIN SILENT. ANYTHING YOU SAY CAN BE USED
5 AGAINST YOU IN COURT. YOU HAVE THE RIGHT TO
6 TALK TO A LAWYER FOR ADVICE BEFORE WE ASK YOU
7 ANY QUESTIONS AND TO HAVE HIM WITH YOU DURING
8 QUESTIONS. YOU HAVE THIS RIGHT TO THE ADVICE
9 AND PRESENCE OF A LAWYER EVEN IF YOU CANNOT
10 AFFORD TO HIRE ONE. WE HAVE NO WAY OF
11 APPOINTING A LAWYER BUT ONE WILL BE APPOINTED
12 FOR YOU BY THE COURT IF YOU WISH. IF YOU WISH
13 YOU MAY ANSWER QUESTIONS WITHOUT THE PRESENCE OF
14 A LAWYER AND YOU MAY STOP ANSWERING ANY TIME YOU
15 DESIRE UNTIL A LAWYER IS PRESENT.

16 Q DID HE ACKNOWLEDGE THOSE RIGHTS AT THAT TIME?

17 A YES, HE DID.

18 Q AND DID HE DO ANYTHING IN RESPONSE TO
19 ACKNOWLEDGING THOSE RIGHTS?

20 A HE SAID HE UNDERSTAND AND I HAD HIM TO SIGN THAT
21 I DID READ HIM HIS RIGHTS AND I SIGNED AS
22 WITNESS.

23 Q ALL RIGHT. SO THAT IS TERRANCE MCCREARY'S
24 SIGNATURE RIGHT UNDER THAT PARAGRAPH?

25 A IT IS.

1 Q DID YOU GO FURTHER WITH HIM, INTO SOME MORE
2 RIGHTS AFTER THAT PERIOD OF TIME?

3 A AFTER HE SIGNED IT AND AGREED TO TALK TO ME, I
4 READ THIS PART. I HAVE READ OR HAD READ TO ME A
5 STATEMENT OF MY RIGHTS SHOWN ABOVE. I
6 UNDERSTAND WHAT MY RIGHTS ARE AND I'M WILLING TO
7 MAKE A STATEMENT. I DO NOT WANT A LAWYER AT
8 THIS TIME. I UNDERSTAND AND KNOW WHAT I AM
9 DOING. I KNOW THAT THE PERSON TALKING WITH ME
10 IS A POLICE OFFICER AND I UNDERSTAND WHAT HE'S
11 TALKING ABOUT, AND I ALSO ASKED HIM IF HE
12 UNDERSTOOD THAT PART. HE SAID HE DID AND I HAD
13 HIM TO SIGN THAT AND I ALSO SIGNED.

14 Q DID HE SAY HE WANTED TO MAKE A STATEMENT AT THAT
15 PARTICULAR POINT IN TIME?

16 A YES, HE SAID HE'D TALK TO ME ABOUT IT.

17 Q AND AS YOU GO DOWN I BELIEVE THERE IS ANOTHER
18 PART OF THE FORM THAT IS FILLED OUT THERE, IF
19 YOU CAN TELL US WHAT THAT IS?

20 A YOU WANT ME TO READ IT?

21 Q YES, PLEASE.

22 A THE PERSON APPEARS BEFORE ME TERRANCE EUGENE
23 MCCREARY WHO AFTER BEING DULY SWORN DEPOSED AND
24 SAYS MY NAME IS TERRANCE EUGENE MCCREARY. GIVES
25 THE DATE OF BIRTH 7-19-77. SOCIAL SECURITY

1 NUMBER 247-41-0041. SAID ADDRESS 337 STONECREEK
2 LANE IN ROCK HILL, SOUTH CAROLINA. TOLD ME AT
3 THAT TIME HE WAS UNEMPLOYED, GAVE ME HIS HOME
4 PHONE NUMBER, AND HE SAID HE COMPLETED TEN YEARS
5 IN SCHOOL. AND I ASKED HIM IF HE COULD READ AND
6 WRITE AND HE SAID HE COULD AND IT'S CHECKED.

7 Q YOU MARKED THAT ON HERE AND YOU INDICATED HE
8 COULD?

9 A I CHECKED HE CAN, YES.

10 Q NOW AT THAT POINT HOW DID YOU INTERVIEW
11 PROGRESS? WHAT DID YOU DO AT THAT POINT?

12 A I ASKED HIM IF HE WANTED TO TALK TO ME ABOUT THE
13 SHOOTING, AND HE SAID OKAY. I TOLD HIM JUST GO
14 AHEAD AND TELL ME WHAT HAPPENED AND I SAT AND
15 LISTENED FOR AWHILE.

16 Q AND WHAT DID HE TELL YOU AT THAT POINT IN TIME?

17 A READ THIS?

18 Q YEAH, IF YOU CAN JUST TELL US HOW IT HAPPENED.
19 AS FAR AS THIS --

20 A WELL, HE STARTED TALKING ABOUT WHAT HAD OCCURRED
21 AND ABOUT THE OTHERS THAT WAS WITH HIM.

22 Q AND, NOW DID YOU TYPE THIS AT THE END OF THE
23 INTERVIEW WITH HIM OR DID YOU TYPE IT AS YOU
24 WENT ALONG?

25 A FIRST I LISTENED TO WHAT HE TOLD ME THEN WE BACK

1 AND WE STARTED OVER AND HE TALKED FOR A LITTLE
2 WHILE THEN I TYPED AND FROM THERE THAT'S THE WAY
3 IT WENT, HE'D TALK AND I'D TYPE.

4 Q IF YOU COULD GO AHEAD AND READ THE STATEMENT FOR
5 US THAT HE GAVE YOU THAT DAY THAT YOU TYPED FOR
6 US?

7 A HE SAID WEDNESDAY AFTERNOON AROUND THREE O'CLOCK
8 P.M. OR IT COULD HAVE FOUR O'CLOCK P.M. I'M NOT
9 REALLY SURE OF THE TIME, BUT ANTONIO GORDON, HIS
10 BROTHER MONTA GORDON, AND GARY MOFFAT CAME OVER
11 TO MY GRANDMOTHER'S HOUSE AT 1041 SOUTH
12 STONEWALL STREET TO PICK ME UP. ANTONIO HAD
13 PAGED ME EARLIER AND TOLD ME THAT HE WAS COMING
14 BY FOR ME. ANTONIO WAS DRIVING HIS CHEVROLET
15 CAVALIER COLOR BLUE. WE CARRY MY TWO COUSINS TO
16 SOUTHLAND PARK TO THEIR MOTHER'S HOUSE. THEIR
17 MOTHER IS JACKIE BAXTER. WE THEN LEFT THERE AND
18 WENT TO TONY BRICE HOUSE AND HE ALSO LIVED IN
19 SOUTHLAND PARK. I WENT TO HIS HOUSE TO GET A
20 FEW DOLLARS FOR GAS FOR ANTONIO'S CAR, BUT TONY
21 SAID THAT HE DID NOT HAVE ANY MONEY. WE THEN
22 LEFT HIS HOUSE AND DROVE TO OUR GRANDFATHER'S
23 HOUSE ON VERNSDALE ROAD. OUR GRANDFATHER IS
24 WILLIE A. GORDON. WE RODE AROUND FOR A GOOD
25 PART OF THE DAY AND WE SAW ANTHONY LOWERY AND WE

1 ALL ASKED HIM WHERE HIS BROTHER ALBERT KEEPS HIS
2 GUN BECAUSE ALBERT ALWAYS CARRIES THE GUN AROUND
3 BEFORE HE WAS ARRESTED ABOUT A WEEK AGO FOR A
4 DRUG VIOLATION. ANTHONY TOLD US IT WAS IN JAY
5 NEELEY'S BACKYARD IN THE BUSHES NEAR A LIGHT
6 POST BUT SAY THAT JAY DID NOT KNOW IT WAS
7 THERE. JAY ALSO LIVED IN SOUTHLAND PARK. GARY
8 AND MYSELF WENT AND GOT THE GUN. IT WAS A .357
9 MAGNUM AND .38 SPECIAL COMBINED AND HAD FOUR
10 BARRELS. WHEN WE GOT BACK TO THE CAR WE GAVE
11 THE GUN TO MONTA GORDON. WE WENT BACK TO OUR
12 GRANDFATHER'S HOUSE ON VERNSDALE ROAD AND WORKED
13 ON HIS CAR RADIO. CONTINUATION OF THIS
14 STATEMENT. MONTA AND ANTONIO'S GIRLFRIEND
15 WANTED TO SHOOT THE GUN, SO WE ALLOWED THEM TO
16 SHOOT IT ONE TIME. WE LEFT THERE AND RODE
17 AROUND WILLOWBROOK FOR AWHILE. WE ALSO RODE
18 AROUND THE APARTMENT COMPLEX BEHIND TECH LOOKING
19 FOR MY UNCLE BUT WE DID NOT LOCATE HIM. WE LEFT
20 AND WAS RIDING THROUGH WORKMAN STREET AND THEN
21 WE DROVE UP WALNUT STREET TO JONES AVENUE. WE
22 SAW A CAR DRIVING PAST US WITH THE HEADLIGHTS
23 OFF. THIS WAS AFTER MIDNIGHT. THIS WAS A GRAY
24 OR SILVER BMW. I WAS DRIVING AT THE TIME SO I
25 BLINKED MY LIGHTS TO TELL THE DRIVER HIS LIGHTS

1 WERE OFF. THERE WAS TWO WHITE MALES IN THE CAR.
2 I THEN SAID, MAN, IF I HAD THE GUN I WOULD ROB
3 THEM GUYS. THE MEN IN THE BMW PULLED INTO A
4 DRIVEWAY ON JONES AVENUE. I PULLED NEAR THEM
5 AND TOLD THEM AGAIN THAT THEIR LIGHTS WAS OFF.
6 AS I WAS GOING TO DRIVE OFF ANTONIO BEGAN ASKING
7 THEM IF THEY WANTED TO SMOKE SOME WEED. FIRST
8 HE ASKED THEM IF THEY HAD SOME WEED TO SELL,
9 MEANING MARIJUANA. IF THEY HAD ANY WEED WE WAS
10 GOING TO ROB THEM OF IT. I WAS PULLING OFF IN
11 THE CAR AND THE GUYS IN THE BMW BACKED OUT INTO
12 THE STREET, THEN ANTONIO JUMPED OUT OF THE CAR
13 AND RAN UP TO THE DRIVER'S SIDE OF THE BMW AND
14 ASKED THEM IF THE CAR WAS STOLEN AND THEN HE
15 ASKED THEM IF THEY HAD ANY MONEY. THE TWO GUYS
16 SAID NO. GARY WAS WITH ANTONIO. MONTA AND I
17 WAS TELLING THEM TO COME ON AND LET'S GO THEN WE
18 HEARD GUN FIRE. ANTONIO AND GARY THEN RAN AND
19 GOT IN THE CAR. WE BEGAN ASKING ANTONIO WHY DID
20 HE DO THAT AND HE WAS POINTING THE GUN AT ALL OF
21 US. I DROVE DOWN THE STREET AND THEN I LET
22 ANTONIO DRIVE HIS CAR. WE WENT DOWN ON CRAWFORD
23 ROAD NEAR WHERE THE NEW HOUSES HAD BEEN BUILT.
24 GARY AND ANTONIO GOT OUT AND WENT UP THE STREET
25 AND LATER CAME BACK WITH A AMPLIFIER. I DON'T

1 KNOW WHERE IT CAME FROM AND I DID NOT ASK. WE
2 WENT BACK TO MY GRANDFATHER'S ON VERNSDALE ROAD
3 AND WORKED ON THE RADIO UNTIL AROUND 4:30 A.M.
4 THEN EVERYONE SAID THEY WERE READY TO GO HOME.
5 I HAD ASKED MONTA TO TAKE ME TO MY MOTHER'S
6 HOUSE UP NEAR YORK, SOUTH CAROLINA. AS WE WERE
7 DRIVING ON BYRUM AVENUE A UNMARKED POLICE CAR
8 GOT BEHIND US AND CONTINUED TO FOLLOW US SO
9 MONTA TOOK OFF REAL FAST IN THE CAR AND THE BLUE
10 LIGHTS IN THE UNMARKED CAR CAME ON. GARY AND I
11 JUMPED OUT ON CONSTITUTION BOULEVARD NEAR THE
12 PARK. MONTA KEPT GOING. LATER GARY AND I WENT
13 TO THE LEKISHA'S HOUSE AT 290 FARGO STREET AND
14 THAT'S WHERE WE WERE ARRESTED AT. LEKISHA AND
15 TOWANDA WAS ALSO ARRESTED. THE POLICE FOUND A
16 PISTOL IN THE KITCHEN AT LEKISHA'S HOUSE. GARY
17 MUST HAVE PUT THE GUN WHERE THE POLICE FOUND
18 IT. THAT BEING THE END OF THE STATEMENT.
19 Q THAT'S THE END OF THE STATEMENT?
20 A YES.
21 Q DID YOU READ THE STATEMENT TO HIM AFTER YOU
22 FINISHED TYPING IT UP?
23 A I DID.
24 Q DID YOU GIVE HIM AN OPPORTUNITY TO READ IT AS
25 WELL?

- 1 A YES.
- 2 Q AND AT THAT POINT DID HE SIGN THE STATEMENT?
- 3 A YES.
- 4 Q AND I BELIEVE THAT IS WHAT'S INDICATED DOWN AT
- 5 THE BOTTOM?
- 6 A THAT'S RIGHT AND I NOTORIZED IT.
- 7 Q DID HE SIGN IT ANYWHERE ELSE AS FAR AS ON THE
- 8 STATEMENT ITSELF?
- 9 A HE SIGNED THE FRONT PART WHERE I READ HIM HIS
- 10 RIGHTS AND HE AGREED TO TALK TO ME AND HE SIGNED
- 11 ON THE BACK PART AFTER I FINISHED THE STATEMENT
- 12 THEN I NOTORIZED THE STATEMENT MYSELF. AND I
- 13 ALSO PROVIDED HIM WITH A COPY OF EACH ONE OF
- 14 THESE PAGES. BUT HE DID SIGN IT ON THE SECOND
- 15 SHEET WHERE IT SAID CONTINUATION OF STATEMENT
- 16 GIVEN BY TERRANCE MCCREARY I TYPED HIS NAME AND
- 17 HE SIGNED RIGHT OVER THERE.
- 18 Q AND I BELIEVE THAT THE ACTUAL TYPED PORTION, HOW
- 19 MANY PAGES IS THAT?
- 20 A TWO PAGES.
- 21 Q OKAY. AND, BUT IS THERE A THIRD PAGE AS WELL?
- 22 A YES.
- 23 Q AND WHAT EXACTLY IS ON THAT PAGE IF YOU WOULD
- 24 TELL US PLEASE?
- 25 A SAID PERSON APPEARED BEFORE ME TERRANCE EUGENE

1 MCCREARY WHO DEPOSED AND SAID I MAKE THIS
2 STATEMENT FROM MY OWN FREE WILL AND ACCORD
3 WITHOUT REWARD OR HOPE OF REWARD. I HAVE NOT
4 BEEN MISTREATED OR THREATENED IN ANY WAY. ALL
5 OF THE ABOVE IS THE TRUTH, THE WHOLE TRUTH, AND
6 NOTHING BUT THE TRUTH SO HELP ME GOD.

7 Q AND DID HE SIGN THAT AFTER THAT SENTENCE?

8 A YES.

9 Q AND I BELIEVE YOU WITNESSED IT AT THAT POINT?

10 A THAT'S RIGHT.

11 Q AND IS THAT STATEMENT CHANGED IN ANY WAY OR
12 ALTERED IN ANY WAY SINCE THE TIME YOU TOOK IT
13 FROM HIM THAT DAY?

14 A NO, IT HAS NOT BEEN.

15 Q IF YOU CAN TELL ME, DETECTIVE BURRIS, DID YOU AT
16 ANY TIME DURING THE CONVERSATION WITH THE
17 DEFENDANT DID HE EVER ASSERT HIS RIGHT TO AN
18 ATTORNEY?

19 A NO, HE DID NOT.

20 Q DID HE ASK TO REMAIN SILENT AT ANY POINT DURING
21 THAT TIME?

22 A NO, HE DID NOT.

23 Q DID HE EVER INVOKE ANY OF THE RIGHTS THAT WERE
24 READ TO HIM PREVIOUS TO THE STATEMENT BEING
25 DONE?

1 A NO, HE DID NOT.

2 Q DID, TO YOUR KNOWLEDGE, DID HE AT ANY POINT THAT
3 YOU WERE AWARE OF BEFORE THIS ASSERT ANY OF HIS
4 RIGHTS THAT YOU WENT OVER WITH HIM?

5 A NONE THAT I'M AWARE OF.

6 Q HOW WAS HIS DEMEANOR WHEN HE WAS WITH YOU THAT
7 DAY? HOW DID HE ACT WHEN HE WAS SPEAKING WITH
8 YOU?

9 A HE ACTED VERY CALM.

10 Q DID HE ASK FOR A PARENT OR ANYTHING ELSE OF THAT
11 NATURE DURING THAT PERIOD OF TIME?

12 A NO, HE DIDN'T.

13 Q AS FAR AS THE SITUATION IN THE ROOM ITSELF,
14 DETECTIVE, DID YOU USE ANY FORCE OR COERCION OF
15 ANY TYPE DURING THE TIME THAT HE WAS WITH YOU?

16 A NONE WHATSOEVER.

17 Q DID YOU PROMISE HIM ANY HOPE OF REWARD IF HE
18 WOULD GIVE A STATEMENT?

19 A I DID NOT.

20 Q DID YOU PROMISE HIM ANYTHING AT ALL IN RETURN
21 FOR HIM GIVING A STATEMENT.

22 A I DIDN'T PROMISE HIM A THING.

23 MR. THOMPSON: THANK YOU, DETECTIVE. I HAVE NO
24 FURTHER QUESTIONS. YOUR HONOR, BEFORE I SIT
25 DOWN I WOULD ASK THE STATEMENT BE PUT INTO

1 EVIDENCE AT THIS TIME FOR THE PURPOSE OF THIS
2 HEARING. OF COURSE, WE WOULD HAVE TO REDO THAT
3 IN THE TRIAL ITSELF, BUT FOR PURPOSES OF THIS WE
4 WOULD PUT IT IN EVIDENCE FOR THE COURT'S
5 CONSIDERATION.

6 MR. GILLEN: FOR THE LIMITED PURPOSE OF THIS
7 HEARING, YOUR HONOR, THERE WOULD BE NO
8 OBJECTION.

9 THE COURT: BE RECEIVED. HAVE YOU GIVEN THE
10 COURT REPORTER A COPY?

11 MR. THOMPSON: IT WOULD BE THE COPY WE HAVE
12 MARKED THERE.

13 THE COURT: GOOD. MR. GILLEN.

14 CROSS-EXAMINATION BY MR. GILLEN:

15 Q MR. BURRIS, DID YOU READ HIM HIS MIRANDA RIGHTS
16 PRIOR TO TALKING TO HIM?

17 A YES.

18 Q WHERE WAS THIS INTERVIEW CONDUCTED?

19 A IN THE DETECTIVE DIVISION IN THE INTERVIEW ROOM.

20 Q HOW BIG --

21 A THAT ADJOINS THE DETECTIVE DIVISION.

22 Q HOW BIG IS THAT ROOM?

23 A I DON'T KNOW THE EXACT MEASUREMENTS. IT'S A
24 SMALL ROOM.

25 Q 8 BY 8?

- 1 A IT COULD BE.
- 2 Q WHO WAS IN THE ROOM WITH YOU?
- 3 A MYSELF AND MR. MCCREARY.
- 4 Q WERE YOU ARMED?
- 5 A MY GUN WAS IN MY DESK DRAWER.
- 6 Q IN THAT ROOM?
- 7 A A ROOM ADJOINING THAT ROOM.
- 8 Q WAS MR. MCCREARY TOLD HE WAS UNDER ARREST?
- 9 A PARDON ME?
- 10 Q OR DO YOU KNOW?
- 11 A BEFORE I STARTED TALKING TO HIM?
- 12 Q YES.
- 13 A I DON'T KNOW.
- 14 Q WAS HE IN FACT UNDER ARREST?
- 15 A I'M SURE HE WAS. I WASN'T ARRESTING OFFICER
- 16 THOUGH.
- 17 Q SO YOU DON'T KNOW IF HE WAS OR WAS NOT?
- 18 A I'M PRETTY SURE HE WAS.
- 19 Q HAD A WARRANT BEEN ISSUED FOR HIM AT THAT TIME?
- 20 A I DON'T HAVE THAT INFORMATION.
- 21 Q DID YOU TELL HIM WHY HE WAS BEING QUESTIONED?
- 22 A YES.
- 23 Q WHAT DID YOU TELL HIM?
- 24 A I TOLD HIM HE WAS INVOLVED IN THE SHOOTING DOWN
- 25 ON JONES.

1 Q YOU TOLD HIM HE WAS INVOLVED?

2 A YES, BECAUSE HE WAS BROUGHT IN WITH A COUPLE
3 OTHER FELLOWS.

4 Q SO PRIOR TO QUESTIONING HIM YOU TOLD HIM HE WAS
5 INVOLVED IN THE SHOOTING?

6 A DID I TELL HIM HE WAS INVOLVED IN IT, YES.

7 Q WHAT DID YOU SAY TO MR. MCCREARY WHILE YOU WERE
8 CONDUCTING THIS INTERVIEW?

9 A I TOLD HIM, I INTRODUCED MYSELF, TOLD HIM WHO I
10 WAS, AND WHAT I WANTED TO TALK TO HIM ABOUT THAT
11 SHOOTING THEY WAS INVOLVED IN ON JONES AVENUE.
12 AND I SAID BEFORE I ASK YOU ANY QUESTIONS I'M
13 GOING TO ADVISE YOU OF YOUR RIGHTS AND THAT'S
14 WHEN I GOT THE FORM. I ALWAYS LET THEM KNOW
15 WHAT I'M GOING TO TALK TO THEM ABOUT.

16 Q DID YOU SPECIFICALLY ADVISE HIM THAT HE COULD
17 HAVE AN ATTORNEY PRESENT?

18 A I READ FROM THE FORM. I ADVISED HIM THAT HE
19 COULD.

20 Q DID HE ASK YOU IF HE COULD SEE AN ATTORNEY?

21 A NO, HE DID NOT.

22 Q YOU'RE ABSOLUTELY SURE ABOUT THAT?

23 A POSITIVE.

24 Q HOW LONG DO YOU THINK HE WAS IN THE INTERVIEW
25 ROOM WITH YOU?

1 A FROM ABOUT 3:35 UNTIL ABOUT 5:10.

2 Q SO A CONSIDERABLE AMOUNT OF TIME?

3 A A CONSIDERABLE AMOUNT OF TIME, YES.

4 Q WAS HE ALLOWED TO USE THE BATHROOM?

5 A IF HE ASKED ME HE WOULD HAVE BEEN BUT BEING LAST
6 YEAR JULY I DON'T REMEMBER WHETHER HE DID OR
7 NOT, BUT IF HE ASKED HE WOULD HAVE BEEN ALLOWED
8 TO.

9 Q WAS HE ALLOWED TO EAT ANYTHING OR GET A DRINK OF
10 WATER?

11 A AT THAT TIME HE DIDN'T ASK. I DON'T REMEMBER
12 HIM ASKING.

13 Q DID YOU TELL MR. MCCREARY THAT THE OTHER
14 DEFENDANTS WERE POINTING THE BLAME ON HIM?

15 A DID I TELL HIM THAT?

16 Q DID YOU TELL HIM ANYTHING THAT THE OTHER
17 DEFENDANTS OR WHAT THE DEFENDANTS HAD ALLEGEDLY
18 SAID?

19 A NO, I DIDN'T BECAUSE AT THAT TIME I DIDN'T KNOW
20 WHAT THE OTHER DEFENDANTS HAD ALLEGEDLY SAID. I
21 DIDN'T TALK TO THEM.

22 Q WELL, REGARDLESS OF WHETHER YOU TALKED TO THE
23 OTHER DEFENDANTS YOU'RE AWARE THEIR STATEMENTS
24 WERE TAKEN MUCH EARLIER THAT DAY, CORRECT?

25 A I DIDN'T SEE THEM. I NEVER SAW THEM.

1 Q BUT YOU ARE AWARE OF --

2 A ---I DON'T REMEMBER --

3 Q ---WHAT THEY HAD SAID BASICALLY?

4 A I DON'T REMEMBER BEING AWARE OF IT.

5 Q YOU WEREN'T AWARE OF ANYTHING THAT THE OTHER
6 DEFENDANTS HAD SAID?

7 A I WASN'T.

8 Q NONE OF THE OTHER POLICE OFFICERS TOLD YOU
9 ANYTHING OR INDICATED TO YOU WHAT THE OTHER
10 DEFENDANTS HAD SAID?

11 A I WAS JUST INSTRUCTED PER MY SUPERVISOR AT THAT
12 TIME TO TALK WITH MR. MCCREARY AND SEE IF HE
13 WANTED TO GIVE A STATEMENT AS TO WHAT OCCURRED.
14 THAT'S WHAT I DID.

15 Q WOULDN'T IT HAVE BEEN MORE THOROUGH, WOULDN'T IT
16 BE THE PRACTICE OF YOUR DEPARTMENT TO DISCUSS
17 THE CASE BEFORE YOU GO AND INTERVIEW SOMEONE?

18 A IT COULD HAVE BEEN, BUT THAT'S NOT WHAT I DID.

19 Q SO YOUR TESTIMONY IS THAT YOU HAD NO KNOWLEDGE
20 AT ALL OF WHAT THE OTHER DEFENDANTS HAD SAID?

21 A I DID NOT HAVE ANY KNOWLEDGE AT ALL WHAT THE
22 OTHER DEFENDANTS HAD SAID.

23 Q HOW ABOUT WHAT OTHER WITNESSES HAD SAID?

24 A I DIDN'T TALK TO ANY OTHER WITNESS.

25 Q WELL, NOT ASKING YOU WHETHER YOU TALKED TO THEM

1 BUT DID YOU HAVE ANY KNOWLEDGE?

2 A I DIDN'T.

3 Q DIRECT OR INDIRECT?

4 A I DID NOT.

5 Q NOW YOU SAID YOU TALKED TO HIM AND YOU DID NOT
6 TAKE ANY NOTES?

7 A I DIDN'T.

8 Q WHY WOULD YOU NOT TAKE NOTES?

9 A BECAUSE WE WAS GOING TO BE TALKING AND TYPING
10 AND THAT'S WHAT I DID.

11 Q SO YOU TALKED TO HIM AND TYPED AT THE SAME TIME?

12 A HE TALKED AND I STOPPED HIM AND TYPE A LITTLE
13 BIT AND TALK. AFTER HE FIRST GAVE ME THE WHOLE
14 SYNOPSIS OF WHAT HAPPENED, WE GO BACK OVER IT
15 AND I LET HIM TALK AND I TYPE.

16 Q DID YOU ADD ANYTHING TO THE STATEMENT THAT THE
17 DEFENDANT DID NOT SAY?

18 A NO, I DID NOT.

19 MR. GILLEN: I BEG THE COURT'S INDULGENCE ONE
20 MOMENT.

21 Q JUST ONE MORE QUESTION. DETECTIVE, YOU HAVE NO
22 KNOWLEDGE OF WHAT THE CRIME WAS ABOUT OR WHAT
23 THE OTHER WITNESSES HAD SAID HOW COULD YOU
24 INTERVIEW THIS DEFENDANT?

25 A I HAD TALKED TO OTHER POLICE OFFICERS.

1 Q WHAT DID THE OTHER POLICE OFFICERS TELL YOU?

2 A ABOUT WHAT HAD OCCURRED DOWN THERE, SOME
3 OFFICERS HAD BEEN DOWN ON THE SCENE, WAS WORKING
4 THE CASE, THERE HAD BEEN A SHOOTING DOWN ON
5 JONES AVENUE.

6 Q WHAT WAS THEIR KNOWLEDGE BASED ON?

7 A SOME OF THEM HAD BEEN TO THE SCENE.

8 Q BUT JUST BEING AT THE SCENE WOULDN'T HAVE GIVEN
9 THEM INFORMATION THAT LED TO THE DETENTION OF
10 THESE DEFENDANTS?

11 A WELL, APPARENTLY THEY KNEW WHAT HAD OCCURRED. I
12 DON'T REMEMBER VERBATIM WHAT THE OFFICERS SAID,
13 BUT I KNEW ENOUGH TO TALK TO MR. MCCREARY.

14 Q SO IT'S POSSIBLE THAT INDIRECTLY YOU DID HAVE
15 KNOWLEDGE OF WHAT THE OTHER WITNESSES WERE
16 SAYING?

17 A OTHER POLICE OFFICERS.

18 MR. GILLEN: NO FURTHERS QUESTIONS.

19 REDIRECT EXAMINATION BY MR. THOMPSON:

20 Q JUST ONE QUICK FOLLOW UP, DETECTIVE. MR. GILLEN
21 HAD ASKED YOU IF YOU CHANGED ANYTHING ON THE
22 STATEMENT, DID YOU GIVE THE DEFENDANT TERRANCE
23 MCCREARY THE OPPORTUNITY TO CHANGE OR ALTER
24 ANYTHING HE WANTED TO SAY?

25 A YES.

1 Q AND DID HE CHANGE OR ALTER ANYTHING?

2 A DID NOT.

3 Q THANK YOU. NO FURTHER QUESTIONS.

4 THE COURT: ANY RECROSS?

5 MR. GILLEN: NO, YOUR HONOR.

6 THE COURT: YOU MAY STEP DOWN. WE APPRECIATE
7 YOUR TIME. MAY THIS WITNESS BE EXCUSED.

8 MR. THOMPSON: YES, YOUR HONOR.

9 THE COURT: ALL RIGHT. CALL YOUR NEXT WITNESS.

10 MR. THOMPSON: YOUR HONOR, THE STATE WOULD
11 SIMPLY ASK THE COURT TO CONSIDER THE TESTIMONY
12 OF CAPTAIN CABINESS AS TO ANYTHING ELSE THAT
13 WOULD DEAL WITH THIS PARTICULAR HEARING. I
14 DON'T KNOW IF THE DEFENSE IS GOING TO QUESTION
15 ANYTHING AS TO THE VALIDITY OF THE ARREST OR
16 ANYTHING, BUT WE WOULD ASK THAT YOU CONSIDER
17 THAT TESTIMONY IF THAT IS IN QUESTION AND AFTER
18 THAT OTHER THAN THAT WE WOULD HAVE NOTHING ELSE
19 TO PRESENT AS FAR AS TERRANCE MCCREARY.

20 THE COURT: MR. GILLEN, ANYTHING YOU WISH TO
21 PRESENT?

22 MR. GILLEN: NO, YOUR HONOR. I WOULD JUST
23 OBJECT TO THE INTRODUCTION OF THE STATEMENT AT
24 TRIAL.

25 THE COURT: ALL RIGHT. I OVERRULE THAT MOTION.

1 I FIND AFTER CONDUCTING THE HEARING AS REQUIRED
2 UNDER JACKSON VERSUS DENNO, AFTER CONSIDERING
3 ALL THE EVIDENCE OFFERED BY THE STATE, I AM
4 CONVINCED BY NOT ONLY A PREPONDERANCE OF THE
5 EVIDENCE BUT BEYOND A REASONABLE DOUBT THAT
6 BEFORE THE STATEMENT OR CONFESSION BY MR.
7 MCCREARY WAS OBTAINED HE WAS ADVISED OF HIS
8 RIGHTS UNDER THE FIFTH AND SIXTH AMENDMENTS OF
9 THE CONSTITUTION OF THE UNITED STATES AND
10 ADVISED OF HIS CONSTITUTIONAL SAFEGUARDS AS
11 REQUIRED BY MIRANDA CASE, MIRANDA VERSUS
12 ARIZONA. HE WAS ADVISED PRIOR TO INTERROGATION
13 THAT HE HAD THE RIGHT TO REMAIN SILENT, THAT IF
14 HE WAIVED HIS RIGHT TO REMAIN SILENT AND MADE A
15 STATEMENT THAT THAT STATEMENT COULD AND WOULD BE
16 USED AGAINST HIM IN A COURT LAW; THAT HE HAD THE
17 RIGHT TO EMPLOY OR SELECT AN ATTORNEY AND IF HE
18 DID NOT HAVE THE MONEY, ONE WOULD BE APPOINTED
19 BY THE COURT. THAT HE HAD THE RIGHT TO HAVE AN
20 ATTORNEY PRESENT DURING INTERVIEWS AND
21 INTERROGATIONS. HAD A RIGHT TO CONSULT WITH AN
22 ATTORNEY, AND TO STOP ANSWERING QUESTIONS AT ANY
23 TIME DURING THE INVESTIGATION. I FIND THAT MR.
24 MCCREARY KNOWINGLY AND INTELLIGENTLY WAIVED HIS
25 RIGHTS UNDER THE FIFTH AND SIXTH AMENDMENT TO

1 THE CONSTITUTION OF THE UNITED STATES AND THE
2 CONSTITUTIONAL SAFEGUARDS AS OUTLINED IN
3 MIRANDA. I FIND THAT THE ALLEGED STATEMENT OR
4 CONFESSION OBTAINED FROM MR. MCCREARY WAS FREELY
5 AND VOLUNTARILY GIVEN WITHOUT DURESS, WITHOUT
6 COERCION, WITHOUT UNDUE INFLUENCE, WITHOUT
7 REWARD, WITHOUT PROMISE OR HOPE OF REWARD,
8 WITHOUT PROMISE OF LENIENCY, WITHOUT THREAT OF
9 INJURY, AND WITHOUT COMPULSION OR INDUCEMENT OF
10 ANY KIND, AND ALLEGED INCRIMINATING STATEMENT OR
11 CONFESSION IS A VOLUNTARY PRODUCT OF A FREE AND
12 UNRESTRAINED WILL OF MR. MCCREARY SO I WILL
13 ALLOW THE STATEMENT INTO EVIDENCE.

14 AT THE RISK OF, NOT INTENDING TO OFFEND ANYONE
15 BUT I WOULD ASK THAT THE PRESS BE CIRCUMSPECT IN
16 THEIR REPORTING. WE'RE DRAWING THE JURY ON
17 MONDAY. WE WANT TO MAKE SURE THAT WE HAVE A
18 JURY THAT IS UNTAINTED BY ANY EVIDENTIARY MATTER
19 THAT DOES NOT COME IN AT TRIAL. EVEN THOUGH I
20 HAVE RULED THAT THIS STATEMENT IS ADMISSIBLE
21 THERE ARE SOME POSSIBLE OTHER QUESTIONS THAT MAY
22 ARISE AT TRIAL AND AGAIN I CERTAINLY CAN'T TELL
23 THE PRESS WHAT TO DO, I CAN'T EVEN ASK THE PRESS
24 WHAT TO DO, AND I'M NOT INVITING THEM TO DO
25 ANYTHING OTHER THAN IN REPORTING ON THE HEARING

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1 THIS MORNING THAT THE PRESS BE CIRCUMSPECT IN
2 WHAT THEY REPORT IN ORDER THAT WE CAN HAVE A
3 FAIR AND IMPARTIAL JURY FOR THESE DEFENDANTS
4 WHEN WE PROCEED TO TRIAL ON MONDAY.

5 ALL RIGHT, WHAT'S NEXT. IT'S 12:30. SHOULD WE
6 BREAK FOR LUNCH FOR ABOUT AN HOUR.

7 MR. ANTHONY: THE NEXT MATTER THE STATE WOULD BE
8 CALLING WOULD BE THE JACKSON VERSUS DENNO
9 HEARING AS TO ANTONIO GORDON AND I IMAGINE THAT
10 WOULD BE THE MOST LENGTHY THING.

11 THE COURT: IT'S 12:30, WHY DON'T WE BREAK UNTIL
12 QUARTER TO TWO, THAT'S A LITTLE OVER AN HOUR AND
13 YES, SIR.

14 MR. GILLEN: YOUR HONOR, I DIDN'T MEAN TO
15 INTERRUPT BUT WE DISCUSSED EARLIER IN CHAMBERS
16 MAKING ARRANGEMENTS FOR MY CLIENT'S FAMILY TO
17 SPEAK WITH THEM.

18 THE COURT: CERTAINLY. DURING THE LUNCH BREAK
19 AS TO EACH OF THE DEFENDANTS WITH PROPER
20 SAFEGUARDS IMPOSED BY THE SECURITY PERSONNEL
21 PRESENT FROM THE SHERIFF'S OFFICE I WOULD ASK
22 THAT THE DEFENDANTS VIRTUALLY THE EVE OF TRIAL
23 BE GIVEN THE OPPORTUNITY TO TALK WITH THEIR
24 FAMILY MEMBERS IN A SUITABLE SITUATION. CAN WE
25 DO THAT, MR. PRATT.

1 OFFICER PRATT: WE CAN ATTEMPT TO DO THAT, YOUR
2 HONOR, THAT MEANS WE DON'T GET A LUNCH BREAK.

3 THE COURT: I'LL MAKE SURE YOU GET A LUNCH
4 BREAK. I WILL BRING YOU A SANDWICH. THEY WILL
5 ARRANGE IT. ALL RIGHT. WE'LL WORK OUT
6 SOMETHING SO YOU WON'T STARVE.

7 OFFICER PRATT: YES, SIR.

8 THE COURT: ALL RIGHT. WE'LL TAKE A BREAK UNTIL
9 ABOUT QUARTER TO TWO.

10 (COURT'S IN RECESS AT 12:35.)

11 (COURT RESUMES.)

12 MR. THOMPSON: MONTA GORDON. MAY WE APPROACH
13 THE BENCH.

14 THE COURT: CERTAINLY.

15 (BENCH CONFERENCE.)

16 THE COURT: MR. THOMPSON.

17 MR. THOMPSON: YES, YOUR HONOR. THIS IS THE
18 STATE OF SOUTH CAROLINA VERSUS MONTA L. GORDON
19 INDICTMENT 98-GS-46-2853 THE INDICTMENT IS FOR
20 MURDER. HE'S PLEADING GUILTY AS CHARGED. THE
21 SECOND COUNT OF THE INDICTMENT POSSESSION OF
22 CRIMINAL DURING A VIOLENT CRIME IS BEING
23 DISMISSED AS A PART OF THE PLEA.

24 98-GS-46-2855 INDICTMENT FOR ATTEMPTED ARMED
25 ROBBERY, HE'S PLEADING GUILTY AS CHARGED. AS

1 WELL THAT HAS A SECOND COUNT IN THE INDICTMENT
2 OF POSSESSION OF A WEAPON DURING THE COMMISSION
3 OF A VIOLENT CRIME AND THAT IS BEING DISMISSED
4 AS PART OF THE PLEA.

5 98-GS-46-2856 ATTEMPTED ARMED ROBBERY, THE
6 DEFENDANT IS PLEADING GUILTY TO THAT CHARGE AND
7 ONCE AGAIN WE'RE DISMISSING THE SECOND COUNT OF
8 POSSESSION OF A WEAPON DURING THE COMMISSION OF
9 A VIOLENT CRIME.

10 98-GS-46-2857 FOR CRIMINAL CONSPIRACY. HE'S
11 PLEADING GUILTY AS CHARGED ON THAT INDICTMENT,
12 AND 98-46-2858 FOR FAILURE TO STOP FOR A BLUE
13 LIGHT. HE'S PLEADING GUILTY AS CHARGED ON THAT
14 INDICTMENT.

15 ALL INDICTMENTS HAVE BEEN TRUE BILLED BY THE
16 GRAND JURY. HE'S REPRESENTED BY JOE MATLOCK OF
17 THE YORK COUNTY BAR. THERE IS A PLEA
18 RECOMMENDATION IN THIS CASE AND A SIGNED PLEA
19 AGREEMENT. THIS HAS BEEN FILED WITH THE CLERK
20 OF COURT JUST BEFORE THE PLEA. THE PLEA
21 AGREEMENT IS THAT THE DEFENDANT IS PLEADING
22 GUILTY TO THE CHARGES WE JUST READ OUT. AS PART
23 OF THE PLEA WE ARE DISMISSING THE CHARGE OF
24 CARJACKING WHICH WAS DIRECTLY INDICTED AND THAT
25 IS INDICTMENT 98-GS-46-2854 AS WELL WE ARE

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1 DISMISSING THE THREE COUNTS OF POSSESSION OF A
2 WEAPON DURING THE COMMISSION OF A VIOLENT CRIME
3 AS STATED EARLIER WHEN WE WERE READING OFF THE
4 INDICTMENTS, AND WE ARE DISMISSING THE
5 INDICTMENT OF 98-GS-46-2859 FOR DRIVING UNDER
6 SUSPENSION.

7 IN EXCHANGE FOR HIS PLEA HE IS OR THE
8 RECOMMENDATION OF CONCURRENT SENTENCING AND 30
9 YEARS BEING THE SENTENCE HE RECEIVES ON THE LEAD
10 INDICTMENT OF MURDER.

11 THE COURT: I'M SORRY. THE LAST, 30 YEARS?

12 MR. THOMPSON: YES, YOUR HONOR. HE'S ALSO
13 AGREED TO TESTIFY TRUTHFULLY AND HONESTLY IN ANY
14 APPROPRIATE JUDICIAL PROCEEDING IN THIS CASE.
15 WE'RE ASKING THE COURT TO DEFER SENTENCING UNTIL
16 THE TIME THE OTHER DEFENDANTS HAVE BEEN
17 ADJUDICATED. I WOULD PASS UP A COPY OF THAT
18 PLEA AGREEMENT TO THE COURT TO BE MADE PART OF
19 THE RECORD.

20 THE VICTIM IS PRESENT. I WOULD PASS UP A
21 VICTIM'S IMPACT STATEMENT IN THE CASE FOR THE
22 COURT RECORD AS WELL. THE VICTIM WILL NOT
23 ADDRESS THE COURT UNTIL IT IS TIME FOR
24 SENTENCING LATER.

25 THE COURT: ALL RIGHT. IS IT MONTA OR MONTA?

1 MR. GORDON: MONTA, SIR.

2 THE COURT: MR. GORDON, YOU ARE BEFORE ME NOW.
3 YOU HEARD WHAT THE SOLICITOR HAD TO SAY. YOU
4 HAVE YOUR ATTORNEY MR. MATLOCK WITH YOU. YOU
5 SATISFIED WITH HIS SERVICES?

6 MR. GORDON: YES, SIR.

7 THE COURT: HOW OLD ARE YOU?

8 MR. GORDON: 18, SIR.

9 THE COURT: HOW FAR DID YOU GO IN SCHOOL?

10 MR. GORDON: 11TH GRADE.

11 THE COURT: AND WHEN YOU, HAVE YOU EVER HAD A
12 JOB?

13 MR. GORDON: YES, SIR.

14 THE COURT: WHAT WAS THAT?

15 MR. GORDON: MCDONALD'S.

16 THE COURT: AND ARE YOU MARRIED?

17 MR. GORDON: NO, SIR.

18 THE COURT: EVER BEEN?

19 MR. GORDON: NO, SIR.

20 THE COURT: DO YOU HAVE ANY CHILDREN?

21 MR. GORDON: YES, SIR.

22 THE COURT: HOW MANY?

23 MR. GORDON: ONE.

24 THE COURT: THE AGE?

25 MR. GORDON: THREE MONTHS.

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1 THE COURT: ALL RIGHT. YOU ARE CHARGED IN
2 SEVERAL INDICTMENTS. THESE ALL HAVE BEEN BEFORE
3 THE GRAND JURY OF YORK COUNTY WHICH HAS TRUE
4 BILLED THESE INDICTMENTS. THE FIRST ONE I WILL
5 GO OVER IS THAT FOR MURDER. IT'S ALLEGED THAT
6 IN YORK COUNTY ON OR ABOUT JULY 23, 1998, AND
7 ALL OF THESE ARE ALLEGED TO HAVE OCCURRED IN
8 YORK COUNTY ON OR ABOUT JULY 23, 1998. IT'S
9 ALLEGED THAT WITH MALICE AFORETHOUGHT IN THE
10 MURDER INDICTMENT THAT YOU DID KILL ONE ERIC
11 PETER KRENN BY MEANS OF SHOOTING WITH A FIREARM
12 AND THAT HE DIED AS A RESULT THEREOF IN
13 VIOLATION OF STATE LAW.

14 THIS PARTICULAR CHARGE CARRIES UP TO LIFE OR A
15 PENALTY OF 30 YEARS. IT IS WHAT'S CALLED A
16 VIOLENT OFFENSE. THAT MEANS WHEN ONE IS
17 INCARCERATED ON A VIOLENT OFFENSE THERE ARE
18 CERTAIN RESTRICTIONS IN REGARD TO, SOME DON'T
19 APPLY BECAUSE OF SOME OTHER THINGS, BUT THEY
20 ARE, THEY RESTRICT YOUR ABILITY IN REGARD TO
21 CERTAIN ASPECTS OF CREDITS AND THINGS THAT YOU
22 CAN DO WHILE YOU ARE INCARCERATED. THERE ARE
23 SOME OTHERS BUT THEY DON'T REALLY APPLY BECAUSE
24 OF THE NATURE OF THIS CHARGE, BUT THIS IS A
25 VIOLENT OFFENSE, DO YOU UNDERSTAND THAT?

1 MR. GORDON: YES, SIR.

2 THE COURT: AND IT WILL AFFECT TO A DEGREE THE
3 WAY YOUR INCARCERATION IS HANDLED, YOU
4 UNDERSTAND THAT?

5 MR. GORDON: YES, SIR.

6 THE COURT: THIS IS ALSO WHAT'S CALLED A MOST
7 SERIOUS OFFENSE. IF DURING YOUR LIFETIME YOU
8 ARE PAROLED OR NOT PAROLED ON THIS BECAUSE IT'S
9 A PAROLE INELIGIBLE OFFENSE, BUT ONCE YOU ARE
10 RELEASED IF YOU IN YOUR LIFETIME RECEIVE ANOTHER
11 MOST SERIOUS OFFENSE OR A COMBINATION OF THREE
12 SERIOUS AND MOST SERIOUS OFFENSES YOU WOULD BE
13 ELIGIBLE AND COULD BE INCARCERATED FOR LIFE
14 WITHOUT PAROLE, YOU UNDERSTAND THAT?

15 MR. GORDON: YES, SIR.

16 THE COURT: AND DO YOU UNDERSTAND THAT THIS IS
17 WHAT IS KNOWN AS A NO PAROLE OFFENSE?

18 MR. GORDON: YES, SIR.

19 THE COURT: HOW DO YOU PLEAD TO THAT CHARGE OF
20 MURDER?

21 MR. GORDON: GUILTY.

22 THE COURT: ALL RIGHT. YOU ARE CHARGED WITH
23 ATTEMPTED ARMED ROBBERY. ATTEMPTED ARMED
24 ROBBERY CARRIES UP TO 20 YEARS. IT IS ALSO A
25 MOST SERIOUS OFFENSE, AND ALTHOUGH YOU HAVE TWO

1 MOST SERIOUS OFFENSES SINCE YOU'RE ENTERING
2 PLEAS ON ONE DATE THEY REALLY COUNT ONLY AS ONE
3 BECAUSE IT'S ONE EVENT AND YOU ARE ENTERING
4 PLEAS AT ONE TIME, SO EVEN THOUGH YOU PLEAD TO
5 TWO MOST SERIOUS OFFENSES AND I TOLD YOU THAT
6 TWO PUT YOU IN THE POSSIBILITY OF LIFE WITHOUT
7 PAROLE THAT WOULD NOT BE THE CASE HERE BECAUSE
8 YOU ARE ENTERING THE TWO AT THE SAME TIME. DO
9 YOU UNDERSTAND THAT?

10 MR. GORDON: YES, SIR.

11 THE COURT: BUT ATTEMPTED ARMED ROBBERY IS A
12 MOST SERIOUS OFFENSE. IT IS A PAROLE INELIGIBLE
13 OFFENSE, AND IT CARRIES UP TO 20 YEARS IN JAIL.
14 DO YOU UNDERSTAND THAT?

15 MR. GORDON: YES, SIR.

16 THE COURT: HOW DO YOU PLEAD TO THAT CHARGE?

17 MR. GORDON: GUILTY.

18 THE COURT: THE ONE I JUST WENT OVER, LET'S BE
19 SURE, YOU ARE CHARGED WITH TWO ATTEMPTED ARMED
20 ROBBERIES. ONE HAS TO DO WITH THE ATTEMPT TO
21 TAKE FROM ERIC KRENN A 1985 BMW. HOW DO YOU
22 PLEAD TO THAT?

23 MR. GORDON: GUILTY.

24 THE COURT: AND THE OTHER ALLEGES THAT YOU
25 ATTEMPTED ARMED ROBBERY OF CHRISTOPHER DIAZ BY

1 MEANS OF FORCE BY TAKING, AN ATTEMPT TO TAKE
2 CURRENCY FROM HIM. HOW DO YOU PLEAD TO THAT?

3 MR. GORDON: GUILTY.

4 THE COURT: AND OF COURSE, THE PENALTY FOR EACH
5 ARE THE SAME. YOU ARE ALSO CHARGED WITH
6 CRIMINAL CONSPIRACY AND IT'S ALLEGED THAT AT THE
7 TIME THIS OCCURRED YOU DID CONSPIRE, AGREE, OR
8 HAVE TACIT UNDERSTANDING WITH TERRANCE MCCREARY,
9 ANTONIO GORDON, GARY MOFFAT, AND/OR OTHERS FOR
10 THE PURPOSE OF COMMITTING MURDER, ROBBERY,
11 AND/OR CARJACKING IN VIOLATION OF STATE LAW.
12 THIS WOULD CARRY UP TO FIVE YEARS IN JAIL. DO
13 YOU UNDERSTAND THAT?

14 MR. GORDON: YES, SIR.

15 THE COURT: YOU ARE CHARGED ALSO WITH FAILURE TO
16 STOP FOR A BLUE LIGHT. HOW DO YOU PLEAD TO
17 CRIMINAL CONSPIRACY?

18 MR. GORDON: GUILTY.

19 THE COURT: YOU ARE ALSO CHARGED WITH FAILING TO
20 STOP FOR A BLUE LIGHT ON JULY 23, 1998. IT'S
21 ALLEGED THAT THAT OCCURRED WHEN YOU FAILED TO
22 STOP A MOTOR VEHICLE WHEN BEING SIGNED BY A
23 BLUE LIGHT OR SIREN OF A LAW ENFORCEMENT VEHICLE
24 TO DO SO. THIS WOULD CARRY WITH IT SINCE IT'S A
25 FIRST OFFENSE.

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1 MR. THOMPSON: YES, YOUR HONOR.

2 THE COURT: 90 DAYS UP TO THREE YEARS WITH UP TO
3 A \$500 FINE. YOU UNDERSTAND WHAT YOU ARE
4 CHARGED WITH AND THE POTENTIAL PENALTY IN THAT
5 OFFENSE?

6 MR. GORDON: YES, SIR.

7 THE COURT: HOW DO YOU PLEAD TO FAILURE TO STOP
8 FOR A BLUE LIGHT?

9 MR. GORDON: GUILTY.

10 THE COURT: NOW IN THIS CASE YOU HAVE ENTERED A
11 PLEA AGREEMENT. I HAVE IT BEFORE ME. IT'S
12 DATED TODAY AT THE TOP AND IT'S SIGNED BY WILLIE
13 THOMPSON, JOSEPH MATLOCK, AND MONTA GORDON; IS
14 THAT IN FACT YOUR SIGNATURE?

15 MR. GORDON: YES, SIR.

16 THE COURT: AND IT RECITES OR HAS BEEN RECITED
17 BY THE SOLICITOR INTO THE RECORD. OTHER THAN
18 THAT AGREEMENT AND THINGS CONTAINED THEREIN AND
19 THINGS THAT HAVE BEEN PUT ON THE RECORD, HAS
20 ANYONE MADE ANY PROMISE, HELD OUT ANY HOPE OF
21 REWARD OR PROMISED YOU ANYTHING IN EXCHANGE FOR
22 YOUR PLEA OF GUILT?

23 MR. GORDON: NO, SIR.

24 THE COURT: HAS ANYONE MADE ANY KIND OF THREATS
25 OR USED PRESSURE OR COERCION TO CAUSE YOU TO

1 ENTER YOUR PLEA OF GUILT?

2 MR. GORDON: NO.

3 THE COURT: ARE YOU AT THIS TIME UNDER THE
4 INFLUENCE OF ANYTHING THAT WOULD CAUSE YOU TO BE
5 INTOXICATED?

6 MR. GORDON: NO, SIR.

7 THE COURT: HAVE YOU EVER BEEN TREATED FOR ANY
8 MENTAL OR EMOTIONAL DISABILITY?

9 MR. GORDON: NO, SIR.

10 THE COURT: AND I THINK I UNDERSTAND THIS FROM
11 OTHER SOURCES, BUT ANTONIO IS YOUR BOTHER?

12 MR. GORDON: YES, SIR.

13 THE COURT: YOU HAVE A RIGHT TO A TRIAL BY JURY,
14 ARE YOU ENTERING YOUR PLEA FREELY AND
15 VOLUNTARILY TO EACH OF THESE CHARGES?

16 MR. GORDON: YES, SIR.

17 THE COURT: YOU HAVE A RIGHT TO A TRIAL BY A
18 JURY ON EACH OF THESE CHARGES. THEY CAN BE
19 TRIED TOGETHER BECAUSE THEY OCCURRED IN ONE
20 CONTINUING EVENT. YOU'D BE ELIGIBLE TO BE TRIED
21 BY 12 MEMBERS OF THE COMMUNITY, 12 OF YOUR
22 PEERS, AND THAT TRIAL IS SCHEDULED MONDAY. YOU
23 HAVE THE RIGHT TO REMAIN, WELL, AS TO THAT
24 TRIAL, YOU ARE PRESUMED INNOCENT. YOU DO NOT
25 HAVE TO PROVE YOUR INNOCENCE AT THAT TRIAL. THE

1 STATE HOWEVER MUST PROVE YOUR GUILT BEYOND A
2 REASONABLE DOUBT BEFORE THAT JURY COULD CONVICT
3 YOU. DO YOU UNDERSTAND THAT?

4 MR. GORDON: YES, SIR.

5 THE COURT: YOU HAVE THE RIGHT TO REMAIN SILENT;
6 THAT IS, NO ONE CAN MAKE YOU TESTIFY OR GIVE ANY
7 STATEMENT ABOUT THIS TO ANYONE. YOU HAVE THE
8 RIGHT TO CONFRONT THE WITNESSES AGAINST YOU.
9 YOU OR YOUR ATTORNEY HAVE THE RIGHT TO SEE,
10 HEAR, QUESTION, AND CROSS EXAMINE THE
11 WITNESSES. YOU HAVE THE RIGHT TO SEE AND HEAR
12 THEM AND EITHER YOU OR YOUR ATTORNEY CROSS
13 EXAMINE AND YOU HAVE THE RIGHT TO REQUIRE THE
14 STATE TO ISSUE A SUBPOENA TO BRING INTO COURT
15 WITNESSES WHO YOU THINK WILL TESTIFY ON YOUR
16 BEHALF. YOU UNDERSTAND ALL THAT?

17 MR. GORDON: YES, SIR.

18 THE COURT: DO YOU NEED ME TO FURTHER EXPLAIN?

19 MR. GORDON: NO, SIR.

20 THE COURT: DO YOU HAVE ANY QUESTIONS ABOUT
21 THOSE RIGHTS?

22 MR. GORDON: NO, SIR.

23 THE COURT: IF YOU HAVE GIVEN A STATEMENT IN
24 REGARD TO THESE EVENTS, YOU HAVE THE RIGHT AND
25 YOU'VE SAT IN AND I'VE ALREADY DONE THAT THIS

1 MORNING ON ANOTHER STATEMENT, ONE GIVEN BY MR.
2 MCCREARY, YOU HAVE A RIGHT TO HAVE THE STATE
3 PROVE TO ME AND A RULING MADE BY ME THAT THAT
4 STATEMENT WAS GIVEN FREELY, VOLUNTARILY AND
5 UNDERSTANDING YOUR CONSTITUTIONAL RIGHTS, YOU
6 UNDERSTAND THAT?

7 MR. GORDON: YES, SIR.

8 THE COURT: I ADVISE YOU THAT WHEN YOU ENTER A
9 PLEA OF GUILT YOU GIVE UP ALL THESE RIGHTS. YOU
10 GIVE UP YOUR RIGHT TO A JURY TRIAL, YOUR
11 PRESUMPTION OF INNOCENCE, YOUR RIGHT TO REMAIN
12 SILENT, YOUR RIGHT TO CONFRONT THE WITNESSES
13 AGAINST YOU; THE RIGHT TO HAVE YOUR WITNESSES
14 COME TO COURT; YOU GIVE UP ANY DEFENSE THAT YOU
15 MAY HAVE, AND THE RIGHT TO HAVE YOUR STATEMENT
16 REVIEWED BY A COURT. DO YOU UNDERSTAND ALL
17 THAT?

18 MR. GORDON: YES, SIR.

19 THE COURT: KNOWING ALL THOSE THINGS I ASK
20 AGAIN, HOW DO YOU PLEAD TO MURDER INVOLVING THE
21 DEATH OF ERIC PETER KRENN?

22 MR. GORDON: GUILTY.

23 THE COURT: ATTEMPTED ARMED ROBBERY OF ERIC
24 KRENN?

25 MR. GORDON: GUILTY.

1 THE COURT: ATTEMPTED ARMED ROBBERY OF
2 CHRISTOPHER DIAZ?

3 MR. GORDON: GUILTY.

4 THE COURT: CRIMINAL CONSPIRACY ON JULY 23,
5 1998, INVOLVING THE CRIMES OF MURDER AND
6 ATTEMPTED ROBBERY?

7 MR. GORDON: GUILTY.

8 THE COURT: AND FAILURE TO STOP FOR A BLUE
9 LIGHT?

10 MR. GORDON: GUILTY.

11 THE COURT: I'M GOING TO ASK YOU TO LISTEN WHILE
12 I'M GIVEN THE FACTS. I'VE HEARD, OF COURSE, THE
13 STATEMENT OF MR. MCCREARY. I'VE ALSO BEEN
14 PROVIDED DURING EARLIER MOTIONS WITH A STATEMENT
15 GIVEN BY YOU. SO I AM FAMILIAR WITH THE FACTS
16 BUT I'M GOING TO ASK FOR THEM TO BE PUT ON THE
17 RECORD.

18 MR. THOMPSON: YES, YOUR HONOR. YOUR HONOR, IF
19 IT PLEASE THE COURT. THIS OCCURRED JULY 23,
20 1998, HERE IN YORK COUNTY IN THE CITY OF ROCK
21 HILL ON SOUTH JONES STREET. THAT NIGHT,
22 ACTUALLY THE EARLY MORNING HOURS OR THEREAFTER,
23 THE VICTIM IN THIS CASE ERIC KRENN, WHO WAS 16
24 YEARS OLD, WAS DRIVING HIS GRAY BMW WITH A
25 FRIEND CHRISTOPHER DIAZ IN THE PASSENGER SEAT

1 AND THEY WERE DROPPING ANOTHER FRIEND BY THE
2 NAME OF ASHWORTH ON JONES STREET. WHEN THEY
3 DROPPED HIM OFF THEY STARTED TO THEN LEAVE AND
4 THEY HAD TO TURN AROUND AND GO BACK THE WAY THEY
5 HAD COME. BEFORE THEY COULD TURN AROUND, THE
6 DEFENDANT WAS IN THE CAR WITH HIS CO-DEFENDANTS,
7 ALL FOUR OF THEM, THEY OBSERVED THE BMW. AT
8 THAT POINT, YOUR HONOR, MR. MCCREARY SUGGESTED
9 THAT THEY BASICALLY STEAL THE BMW, THAT THEY
10 TAKE IT FROM THE PEOPLE IN THE CAR, HE PULLED IN
11 BEHIND THEM AS THEY PULLED INTO THE DRIVEWAY TO
12 TURN AROUND. INITIALLY HE SAID SOMETHING TO
13 THEM ABOUT THEIR LIGHTS BEING OFF. AT THAT
14 POINT MR. KRENN STARTED A CONVERSATION A VERY
15 BRIEF CONVERSATION WITH I BELIEVE ANTONIO GORDON
16 AND MR. MCCREARY AS FAR AS THE PURPOSES OF BEING
17 THERE AND THEY DISCUSSED A FEW THINGS AS FAR AS
18 IF THEY HAD MARIJUANA AND THE VICTIM SAID NO.
19 THEY THEN ASKED HIM IF HE WANTED SOME AND THEY
20 SAID NO. AT THAT POINT THE CAR WAS MOVED
21 FORWARD JUST A LITTLE BIT AND AS THEY BEGAN TO
22 BACK OUT THE DEFENDANTS DISCUSSED THE
23 OPPORTUNITY AT THAT POINT OF STEALING THE CAR
24 AND TAKING THE MONEY FROM THE VICTIMS. ANTONIO
25 GORDON HOPPED OUT AFTER GETTING THE GUN WHICH

1 TERRANCE MCCREARY HAD ACQUIRED EARLIER THAT
2 NIGHT. HE HOPPED OUT WITH THE GUN AT THAT
3 POINT. SHORTLY AFTERWARDS MR. GORDON GOT OUT OF
4 THE CAR AND STOOD NEXT TO THE CAR OF THE VICTIM.
5 THEY DEMANDED MONEY AND THE TESTIMONY OF MR.
6 DIAZ WILL BE THAT THEY DEMANDED MONEY AND THE
7 CAR FROM, THAT BOTH PEOPLE OUT OF THE CAR
8 DEMANDED THAT AT THAT TIME. THEY REFUSED AND
9 WHEN THEY TRIED TO DRIVE AWAY ANTONIO GORDON WHO
10 WAS AT THE DOOR OF THE CAR SHOT ONE SHOT INTO
11 THE VICTIM'S BACK SHOULDER AND SHOT HIM THROUGH
12 HIS CHEST AND KILLED HIM.

13 AFTER THAT, YOUR HONOR, THE DEFENDANTS HOPPED IN
14 THE CAR AND DROVE AWAY. THEY WENT TO THE
15 RESIDENCE ON VERNSDALE ROAD. AT THAT TIME MET
16 WITH SOME OTHER INDIVIDUALS THERE AND BEGAN
17 BRAGGING ABOUT WHAT HAD HAPPENED AND TELLING
18 THEM WHAT HAD HAPPENED. OF COURSE, YOU KNOW THE
19 STORY AS FAR AS HOW THE POLICE CAME TO ARREST
20 THEM, BUT THOSE ARE THE BASIC FACTS OF THE CASE.
21 THERE IS FORENSIC EVIDENCE TO SHOW THAT MONTA
22 GORDON WAS IN THE CAR. THERE IS FINGERPRINTS
23 THAT PLACE ANTONIO GORDON AT THE DRIVER'S DOOR
24 OF THE VICTIM'S CAR AND THE STATEMENTS OF EACH
25 OF THE DEFENDANTS IMPLICATE EACH DEFENDANT IN

1 THE PARTICULAR CRIME, AND OF COURSE, MR. MONTA
2 GORDON'S STATEMENT ALSO IMPLICATES THE PART THAT
3 HE HAD CLAIMED TO DO AT THE TIME ON HIS
4 STATEMENT WHEN HIS STATEMENT WAS TAKEN, AND ALL
5 OF THAT, YOUR HONOR, DOES AMOUNT TO THE CHARGE
6 THAT WE HAVE TODAY.

7 THE COURT: DO YOU AGREE WITH THOSE FACTS?

8 MR. GORDON: YES, SIR.

9 THE COURT: ALL RIGHT. MR. GORDON, I ACCEPT
10 YOUR PLEAS OF GUILT. I FIND THEY ARE FREELY
11 VOLUNTARILY, KNOWINGLY, AND INTELLIGENTLY
12 ENTERED. THEY ARE ENTERED WITH THE ADVICE OF
13 COMPETENT COUNSEL WITH WHOM YOU TELL ME YOU ARE
14 SATISFIED. I FIND THE FACTS SUPPORT YOUR PLEA,
15 AND I FIND THAT, AS I SAY, IT'S BEING ENTERED
16 FREELY, VOLUNTARILY, KNOWINGLY, AND
17 INTELLIGENTLY.

18 I ALSO FIND THAT YOU HAVE SIGNED PLEAS OF GUILT
19 ON THE INDICTMENTS, AND I WILL NOTE THAT AS TO
20 THE THREE THAT HAVE A SECOND, THAT HAVE TWO
21 COUNTS, YOU HAVE PLEAD GUILTY ONLY TO ONE COUNT
22 ON EACH OF THOSE. THAT IS, TO ATTEMPTED ARMED
23 ROBBERY ON TWO AND TO MURDER ON ONE AND YOU HAVE
24 ENTERED THE PLEA TO COMMISSION OF A VIOLENT
25 CRIME IN ANY OF THESE INDICTMENTS, AND YOU HAVE

1 NOT SIGNED SUCH A PLEA AND THAT THOSE CHARGES
2 HAVE BEEN WITHDRAWN BY THE STATE.

3 NOW IS THERE ANY RESTITUTION?

4 MR. THOMPSON: YOUR HONOR, THERE IS AS LISTED ON
5 THE VICTIM IMPACT STATEMENT AMOUNTS THAT HAVE
6 BEEN PAID BY THE VICTIM WITNESS AND THAT SORT OF
7 THING. ACCORDING TO THE SENTENCE I DON'T KNOW
8 IF THE DEFENDANT WOULD ACTUALLY BE ABLE TO PAY
9 IT OR NOT. I WOULD LEAVE THAT UP TO THE COURT.
10 THAT IS NOT NECESSARILY PART OF ANY PLEA
11 AGREEMENT.

12 THE COURT: WHY DON'T WE, WE'LL SEE WHERE WE ARE
13 WHEN WE GET TO SENTENCING ON THAT.

14 NOW MR. GORDON, I'VE ACCEPTED YOUR PLEA OF
15 GUILT. YOU AND YOUR ATTORNEY ARE HERE. THE
16 TRIAL OF MR. MCCREARY AND YOUR BROTHER ANTONIO
17 ARE SCHEDULED FOR MONDAY. I UNDERSTAND YOU'VE
18 AGREED TO TESTIFY ON THAT, SO I'M GOING TO DELAY
19 IMPOSING ANY SENTENCE ON ANY OF THESE AT THIS
20 TIME AND I UNDERSTAND THAT'S YOUR AGREEMENT. I
21 WILL BE GLAD TO HEAR NOW FROM YOU AND YOUR
22 ATTORNEY OR WE CAN WAIT UNTIL LATER. MR.
23 MATLOCK.

24 MR. MATLOCK: YOUR HONOR, WE PREFER TO WAIT
25 UNTIL THE SENTENCING PORTION TO OFFER ANY

1 FURTHER MATTERS IN EXTENUATION OF MITIGATION.

2 THE COURT: YOU AGREE WITH THAT, MR. GORDON?

3 MR. GORDON: YES, SIR.

4 THE COURT: ALL RIGHT. WELL, I HAVE ACCEPTED
5 YOUR PLEA AND WE WILL TAKE UP WHENEVER IT'S
6 CALLED BEFORE ME THE SENTENCING PROCEEDINGS.
7 THANK YOU.

8 MR. THOMPSON: THANK YOU, YOUR HONOR.

9 (END OF PROCEEDINGS.)

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1 STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS

2 COUNTY OF YORK

3
4 STATE OF)
SOUTH CAROLINA)

5 -V-)

TRANSCRIPT OF RECORD

6)
7 ANTONIO GORDON,)
MONTA GORDON, AND)
8 TERRANCE MCCREARY,)
DEFENDANTS)

98-GS-46-2847

98-GS-46-2853

98-GS-46-2860

9
10 JULY 12, 14, & 16, 1999
YORK, SOUTH CAROLINA

11 B E F O R E:

12 THE HONORABLE JOHN C. HAYES, III

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

14 WILLIE THOMPSON, ASSISTANT SOLICITOR
15 JOHN ANTHONY, ASSISTANT SOLICITOR
16 1675 2-A YORK HIGHWAY
YORK, SC 29745
17 ATTORNEY FOR THE STATE

18 DANIEL D. D'AGOSTINO, ESQUIRE
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24 ATTORNEY FOR MONTA GORDON

25

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1 (COURT RESUMES.)

2 MR. ANTHONY: YOUR HONOR, AS MR. GORDON HAS
3 ENTERED PLEAS NOW THE STATE WOULD EXCUSE
4 LIEUTENANT HERRING AND DETECTIVE JETER. WE
5 APPRECIATE Y'ALL COMING. THEY WERE WITNESSES IN
6 THE HEARING CONCERNING MONTA GORDON. THAT WILL
7 NOT BE NECESSARY GIVEN THE PLEA.

8 MR. ANTHONY: YOUR HONOR, THE NEXT MATTER WE
9 WOULD TAKE UP THIS AFTERNOON IS THE JACKSON
10 VERSUS DENNO HEARING AS THE STATEMENT MADE BY
11 ANTONIO GORDON. I UNDERSTAND MR. D'AGOSTINO IS
12 WANTING TO CALL A WITNESS FIRST IN THIS HEARING
13 BEFORE THE STATE PRESENTED ANY EVIDENCE.

14 MR. D'AGOSTINO: YOUR HONOR, WE HAVE CHRIS
15 WELLBORN BUT HE HAS A CONFLICT LATER ON THIS
16 AFTERNOON.

17 THE COURT: I'VE GOT NO PROBLEM WITH THAT.
18 WE'LL ACCOMMODATE THAT IN ANY WAY WE CAN. GET
19 MR. GORDON ON OUT HERE THOUGH.

20 MR. D'AGOSTINO: THANK YOU, YOUR HONOR.

21 (MR. GORDON ENTERS THE COURTROOM.)

22 (MR. TERRANCE MCCREARY IS PRESENT WITH HIS
23 ATTORNEY MR. GILLEN.)

24 THE COURT: MR. WELLBORN, YOU WANT TO COME UP
25 AND BE SWORN. THIS IS UNDER JACKSON VERSUS

1 DENNO I UNDERSTAND REGARDING ANTONIO GORDON.

2 MR. D'AGOSTINO: YES, SIR.

3 CHRISTOPHER WELLBORN, BEING
4 FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

5 THE COURT: THE COURT WILL TAKE JUDICIAL NOTICE
6 THAT MR. WELLBORN IS A MEMBER OF THE SOUTH
7 CAROLINA BAR AND YORK COUNTY BAR AND PROBABLY
8 SEVERAL OTHER BARS, BUT HE IS IN FACT AN
9 ATTORNEY LICENSED TO PRACTICE IN THE STATE OF
10 SOUTH CAROLINA AND YOU MAY ASK HIM ANY QUESTIONS
11 YOU WANT ABOUT THAT BUT I TAKE JUDICIAL NOTICE.

12 MR. D'AGOSTINO: THANK YOU, YOUR HONOR.

13 DIRECT EXAMINATION BY MR. D'AGOSTINO:

14 Q MR. WELLBORN, JUST FOR THE RECORD GIVE US YOUR
15 NAME AND WHAT AREA OF PRACTICE YOU SPECIALIZE
16 IN?

17 A MY NAME IS CHRISTOPHER WELLBORN, LAST NAME
18 W-E-L-L-B-O-R-N, AND SOUTH CAROLINA DOES NOT
19 RECOGNIZE A SPECIALTY IN CRIMINAL DEFENSE BUT
20 THAT'S, MY PRACTICE IS COMPLETELY DEVOTED TO
21 CRIMINAL DEFENSE WORK.

22 Q NOW DID YOU HAVE AN OCCASION, AND I KNOW YOU'RE
23 HERE AS A WITNESS OF THE STATE VERSUS ANTONIO
24 GORDON, DID YOU HAVE OCCASION ON JULY 23, 1998,
25 TO COME IN CONTACT AND/OR BE RETAINED TO

1 REPRESENT ANTONIO GORDON?

2 A YES. I WAS ASKED TO REPRESENT HIM THAT DAY BY
3 HIS PARENTS. I GOT FIRST PHONE CALLS THEN
4 SUBSEQUENTLY MEET WITH HIS MOTHER AND I BELIEVE
5 HIS STEPFATHER AS I RECALL TO REPRESENT MR.
6 GORDON.

7 Q WHAT DID YOU DO AFTER YOU WERE CONTACTED?

8 A WELL MY, I WAS TOLD THAT HE WAS AT THE ROCK HILL
9 POLICE DEPARTMENT OR BEING DETAINED AT THE ROCK
10 HILL POLICE DEPARTMENT SO I IMMEDIATELY WENT TO
11 THE ROCK HILL POLICE DEPARTMENT TO MEET WITH MY
12 CLIENT.

13 Q WHAT HAPPENED WHEN YOU GOT THERE?

14 A WELL, I GOT THERE APPROXIMATELY 11:30 IN THE
15 MORNING. I WENT UP TO THE DISPATCHER, PERSON AT
16 THE FRONT DESK WHO I WAS, TO MY RECOLLECTION WAS
17 A WOMAN NAMED CHARLENE. I MADE A REQUEST TO SEE
18 MY CLIENT AND I ASSUMED THAT HE WAS IN THE BACK
19 IN THE HOLDING AREA AND MADE BASICALLY A REQUEST
20 TO SEE MY CLIENT.

21 Q WHAT HAPPENED AS A RESULT OF YOUR REQUEST OF
22 CHARLENE TO SEE YOUR CLIENT?

23 A WELL, SOME TIME PAST AND NOTHING WAS HAPPENING
24 SO I MADE A SUBSEQUENT REQUEST TO SEE MY CLIENT,
25 ACTUALLY SEVERAL SUBSEQUENT REQUESTS AND WAS

1 TOLD THAT MY CLIENT WAS IN THE BACK IN THE
2 DETECTIVE AREA, WAS BEING INTERVIEWED BY
3 OFFICERS WHO WERE NOT IDENTIFIED AT THAT TIME,
4 I AGAIN ASSERTED THAT I WAS HIS ATTORNEY HAVING
5 BEEN HIRED BY HIS PARENTS TO REPRESENT HIM,
6 THAT I WISHED TO SEE HIM, AND, YOU KNOW, THAT I
7 WISHED TO SEE HIM, ALL QUESTIONING TO CEASE
8 UNTIL I HAD A CHANCE TO TALK TO MY CLIENT.

9 Q WHO WERE YOU TALKING TO AT THAT TIME?

10 A WELL, I STARTED, INITIALLY IT WAS CHARLENE.
11 ULTIMATELY OTHER PERSON BECAME INVOLVED. AT ONE
12 POINT DURING THIS PROCESS, APPROXIMATELY, I WANT
13 TO SAY ABOUT 11:40 DETECTIVE CABINESS OR CAPTAIN
14 CABINESS CAME OUT INTO THE LOBBY. HE CONFIRMED
15 TO ME THAT MR. GORDON WAS IN THE BACK, THAT HE
16 WAS BEING INTERVIEWED BY ROCK HILL POLICE
17 DEPARTMENT PERSONNEL, AND I ASSERTED MY REQUEST
18 AGAIN DIRECTLY TO HIM THIS TIME, LOOK, I'VE BEEN
19 HIRED TO BE HIS LAWYER. I WOULD LIKE TO TALK TO
20 MY CLIENT AND I'D LIKE QUESTIONING TO CEASE
21 UNTIL I'VE HAD A CHANCE TO TALK TO MY CLIENT.
22 ULTIMATELY MR. CABINESS WENT BACK INTO THE BACK
23 ROOM. HE THEN CAME BACK OUT, THIS TIME
24 ACCOMPANIED BY DETECTIVE BLACKWELDER OF THE ROCK
25 HILL POLICE DEPARTMENT. ONCE AGAIN I ASSERTED

1 THE SAME REQUEST, NOTHING WAS HAPPENING.
2 APPROXIMATELY 11:51 I AT THIS POINT REALIZED
3 THAT SOMETHING WAS SERIOUSLY WRONG IF I MADE
4 MULTIPLE REQUESTS TO SEE A CLIENT AND THEY WERE
5 CONTINUING TO DENY MY REQUEST TO MY CLIENT EVEN
6 THOUGH THEY KNEW I HAD BEEN RETAINED TO
7 REPRESENT HIM. OF COURSE, THIS IS A JUVENILE SO
8 THE ISSUE OF THE FACT THAT THE PARENTS HAD HIRED
9 ME WAS TO MY MIND A SERIOUS ISSUE, SO AT
10 APPROXIMATELY 11:51 I MADE ANOTHER REQUEST.
11 THIS TIME IT WAS TO A DISPATCHER WHOSE LAST NAME
12 WAS COLLINS. I DON'T KNOW WHAT THE DISPATCHER'S
13 FIRST NAME WAS. ONCE AGAIN NOTHING WAS
14 HAPPENING. THEN AT APPROXIMATELY 11:56 THE
15 DISPATCHER COLLINS RELAYED TO ME THAT MY CLIENT
16 WAS STILL IN THE DETECTIVE DIVISION PRESUMABLY
17 STILL BEING INTERVIEWED AND THAT QUOTE I COULD
18 SEE HIM WHEN THEY WERE DONE WITH HIM.
19 AT 12:05 I WENT, AFTER MAKING A REQUEST, I
20 TALKED TO CHIEF FORTSON. AFFIRMED MY
21 REPRESENTATION, REAFFIRMED MY REPRESENTATION,
22 COMPLAINED ABOUT THE FACT THAT I HAD MADE
23 NUMEROUS REQUESTS TO SEE MY CLIENT AND I'VE BEEN
24 GIVEN THIS RESPONSE, WELL, WHEN WE'RE DONE
25 QUESTIONING HIM YOU CAN SEE YOUR CLIENT. ONCE

1 AGAIN REAFFIRMED TO CHIEF FORTSON, PRESUMABLY A
2 MAJOR SUPERVISOR OF THE WHOLE EVENT, THAT ALL
3 QUESTIONING WAS TO CEASE UNTIL I HAD AN
4 OPPORTUNITY TO TALK TO MY CLIENT. HE SAID THAT
5 HE WOULD BE BACK WITH ME. I WENT BACK IN THE
6 MAIN LOBBY. AT APPROXIMATELY 12:18 DETECTIVE
7 CABINESS CAME OUT AGAIN, TOLD ME THAT MY CLIENT
8 HAD BEEN CHARGED WITH MURDER, THAT HE WAS BEING
9 BOOKED, AND I QUOTE, I COULD SEE HIM AFTER
10 THAT. HE THEN ALSO MENTIONED QUOTE THE
11 CO-DEFENDANT SAYS HE'S THE TRIGGER MAN, SO I,
12 WHATEVER.

13 APPROXIMATELY 3:07 P.M. I WAS BACK AT THE ROCK
14 HILL POLICE DEPARTMENT. THIS TIME I TALKED TO A
15 DISPATCHER WHOSE LAST NAME WAS MERCHANT, A
16 GENTLEMAN WHO WORKS AT THE ROCK HILL POLICE
17 DEPARTMENT, AND MADE A REQUEST TO SEE MY
18 CLIENT. I ASSUMED THAT BETWEEN 12:18 AND 3:07
19 THEY WOULD HAVE HAD TIME TO BOOK MY CLIENT. I
20 WAS TOLD THAT THEY WOULD HAVE TO QUOTE NOTIFY
21 THE ARRESTING OFFICER BEFORE I WOULD BE ALLOWED
22 TO SEE MY CLIENT AND THEN I WAS TOLD BY
23 DISPATCHER MERCHANT QUOTE THEY ARE TALKING ABOUT
24 IT AND THEY WILL LET YOU KNOW.

25 AT 3:18 ONCE AGAIN I ASKED TO SPEAK TO CHIEF

1 FORTSON. I WAS TOLD HE WAS ON THE PHONE THAT
2 THEY'D LET ME KNOW AFTER HE WAS OFF THE PHONE.
3 ULTIMATELY I WAS NOT ALLOWED TO SEE MY CLIENT
4 THROUGHOUT THAT WHOLE DAY. I THEN MADE A
5 DECISION BASICALLY BY THE END OF THE DAY THAT I
6 COULD NOT REPRESENT MR. GORDON SIMPLY BECAUSE I
7 REALIZED I WOULD BE A WITNESS ULTIMATELY IN THE
8 CASE.

9 Q ALL RIGHT. NOW LET ME BACK UP FOR ONE SECOND
10 HERE. WHEN YOU FIRST GOT TO THE POLICE STATION
11 WERE THERE OTHER INDIVIDUALS IN THE LOBBY AND
12 MORE SPECIFICALLY CHYENCA DIXON?

13 A YES, SHE WAS THERE. CHYENCA DIXON WAS THERE,
14 MR. GORDON'S, MR. ANTONIO GORDON'S MOTHER WAS
15 THERE. I BELIEVE HIS STEPFATHER WAS THERE AT
16 SOME POINT. WHETHER HE WAS THERE INITIALLY OR
17 WHETHER HE CAME IN SHORTLY AFTER I ARRIVED I
18 HAVE NO SPECIFIC RECOLLECTION, BUT THERE WERE
19 OTHER INDIVIDUALS THERE.

20 Q WAS THERE AN OCCASION WHEN CAPTAIN CABINESS CAME
21 OUT TO THE LOBBY AND ASKED TO SPEAK WITH CHYENCA
22 DIXON?

23 A YES, THERE WAS. AND AT THAT POINT MS. DIXON
24 INDICATED TO ME THAT SHE DID NOT WANT TO SPEAK
25 TO CAPTAIN CABINESS BY HERSELF, THAT SHE WANTED

1 TO HAVE ME WITH HER. I ASKED HER IF SHE WAS
2 ASKING ME TO REPRESENT HER. SHE AFFIRMED THAT
3 SHE WAS THAT SHE WANTED ME TO REPRESENT HER AT
4 LEAST FOR PURPOSES OF BEING QUESTIONED. I
5 VOLUNTEERED TO DO THAT WHICH I TOLD CAPTAIN
6 CABINESS. I SAID, YOU KNOW, LOOK SHE'S ASKED ME
7 AND SHE AFFIRMED THAT IN FRONT OF CAPTAIN
8 CABINESS AND IN FRONT OF ME TOLD HIM THAT SHE
9 WANTED ME PRESENT AS HER LAWYER.

10 Q WHAT HAPPENED NEXT?

11 A CAPTAIN CABINESS WENT BACK INSIDE THE BACK ROOM
12 THEN WHEN HE CAME OUT THE SECOND TIME WITH MS.
13 BLACKWELDER THEY TOLD MS. DIXON SHE WAS UNDER
14 ARREST AS QUOTE AN ACCESSORY AFTER THE FACT TO
15 MURDER. THEY TOOK HER IN THE BACK ROOM AND
16 QUESTIONED HER. I WAS NOT PRESENT.

17 Q DID SHE EVENTUALLY COME OUT AGAIN?

18 A SHE DID. SHE EVENTUALLY CAME BACK. SHE
19 ULTIMATELY WAS NOT BOOKED. SHE ULTIMATELY, TO
20 MY KNOWLEDGE, WAS NEVER CHARGED WITH ACCESSORY
21 AFTER THE FACT AT LEAST WASN'T THAT DAY UNLESS
22 THEY DID IT AT SOME POINT LATER, BUT THEY HAD
23 THE OPPORTUNITY I ASSUME TO QUESTION HER BY
24 CLAIMING THEY WERE CHARGING HER WITH THIS
25 OFFENSE.

1 Q HAVE YOU HAD ANY OTHER INVOLVEMENT WITH THIS
2 CASE OTHER THAN WHAT YOU TOLD US?

3 A OTHER THAN BEING QUESTIONED BY VARIOUS PEOPLE
4 WHO WANTED TO KNOW WHAT HAPPENED AND MY
5 EXPERIENCES IN THE POLICE DEPARTMENT THAT DAY,
6 NO.

7 AGAIN I HAVING BASICALLY BEEN PUT INTO THE
8 POSITION OF BEING A WITNESS AS TO WHAT HAPPENED,
9 I COULD NOT BE COUNSEL FOR ANYBODY INVOLVED. IN
10 FACT, LATER I WAS CONTACTED BY FAMILY MEMBERS OF
11 MR. GORDON'S CO-DEFENDANT ABOUT REPRESENTING
12 THEM AND I EXPLAINED THE SAME THING THAT I WOULD
13 HAVE A CLEAR CONFLICT AND ON TOP OF THAT I WAS
14 ALSO A WITNESS TO WHAT HAPPENED THAT DAY.

15 Q THANK YOU. ANSWER ANY QUESTIONS THAT EITHER ONE
16 OF THE SOLICITORS MIGHT HAVE.

17 A SURE.

18 CROSS EXAMINATION BY MR. ANTHONY:

19 Q MR. WELLBORN, YOU SAID YOU WERE ASKED TO
20 REPRESENT MR. GORDON BY HIS PARENTS?

21 A THAT'S CORRECT.

22 Q AND DID, HOW DID THEY MAKE CONTACT WITH YOU?

23 A INITIALLY BY TELEPHONE.

24 Q TELEPHONE?

25 A UH-HUH.

1 Q AND DID THEY WIND UP COMING TO YOUR OFFICE?

2 A I WOUND UP MEETING THEM AT THE ROCK HILL POLICE
3 DEPARTMENT.

4 Q OKAY. YOU MET THEM AT THE POLICE DEPARTMENT.
5 YOU SAID WHEN YOU TESTIFIED YOU ARRIVED AT ABOUT
6 11:30?

7 A I WAS ON OR ABOUT 11:30 IS WHEN I WAS AT THE
8 POLICE DEPARTMENT. I WASN'T MAKING NOTE OF THE
9 EXACT TIME THAT I ARRIVED BECAUSE I DIDN'T
10 REALIZE UNTIL THEY REFUSED ME THE OPPORTUNITY TO
11 TALK TO MY CLIENT THAT MAKING NOTES OF TIMES
12 WOULD BE IMPORTANT.

13 Q OKAY. AND WHEN YOU MET MR. GORDON'S PARENTS
14 THERE, DID YOU MAKE ARRANGEMENTS AT THAT TIME TO
15 REPRESENT ANTONIO?

16 A I TOLD THEM THAT I WOULD REPRESENT HIM, THAT'S
17 CORRECT.

18 Q DID YOU SECURE A RETAINER FROM THEM AT THAT
19 TIME?

20 MR. D'AGOSTINO: YOUR HONOR, I'M GOING TO OBJECT
21 AS TO RELEVANCY TO THE RETAINER CONTRACT.

22 THE COURT: IT'S CROSS EXAMINATION. I'M GOING
23 TO ALLOW IT.

24 A WELL, FOR PURPOSES UNLESS I'M DIRECTED BY THE
25 COURT AS I KNOW WHATEVER THE RETAINER WOULD BE

1 WOULD BE A MATTER OF ATTORNEY/CLIENT PRIVILEGE.

2 Q I'M NOT ASKING YOU TO TELL HOW MUCH. I'M JUST
3 ASKING DID YOU SECURE A RETAINER THAT DAY?

4 A I WAS RETAINED AT THAT TIME.

5 Q YOU WERE RETAINED, THEY ACTUALLY PAID YOU --

6 A ---I WAS RETAINED AT THAT TIME. THE ACTUAL
7 SUBSTANCE OF THE RETAINER IS ATTORNEY/CLIENT
8 PRIVILEGE AND UNLESS DIRECTED BY THE COURT I
9 CANNOT DISCLOSE THAT ETHICALLY AS YOU WELL KNOW.

10 Q WELL, THE QUESTION IS DID THEY PAY YOU A FEE
11 WITHOUT SAYING WHAT THE FEE WAS?

12 A AND MY RESPONSE IS I WAS RETAINED THAT DAY. I
13 UNDERTOOK REPRESENTATION AT THAT TIME.

14 Q AND YOU NEVER SPOKE TO ANTONIO GORDON THAT DAY?

15 A I WAS NEVER ALLOWED AN OPPORTUNITY TO SPEAK TO
16 ANTONIO GORDON, THAT IS CORRECT.

17 Q AND AT WHAT POINT DID YOU START MAKING THE
18 NOTATIONS OF THE TIMES?

19 A AT THE POINT THAT I HAD MADE REQUESTS AND WAS
20 TOLD THAT MY CLIENT WAS BACK BEING INTERVIEWED
21 BY THE POLICE AND THAT THE INTERVIEWING WAS
22 GOING ON EVEN THOUGH I HAD MADE REQUEST TO SEE
23 MY CLIENT AND REQUESTING THAT THE QUESTIONING
24 CEASE.

25 Q OKAY. AND SO SHORTLY AFTER THE TIME YOU ARRIVED

1 YOU STARTED TAKING THOSE NOTES?

2 A AS TO EXACTLY HOW LONG, I CAN'T TELL YOU. I
3 WOULD BE SURPRISED IF IT TOOK MORE THAN ABOUT 20
4 MINUTES TO HALF AN HOUR AFTER I ARRIVED THAT I
5 BEGAN TAKING NOTES OF TIMES.

6 Q AND YOU'VE USED THOSE NOTES AS PART OF YOUR
7 TESTIMONY TO REFRESH YOUR RECOLLECTION OF YOUR,
8 WHEN YOU TESTIFIED TODAY?

9 A THAT'S WHY I MADE THE NOTES BECAUSE I
10 ANTICIPATED BEING CALLED TO TESTIFY AT SOME
11 POINT.

12 Q OKAY. MAY I SEE THOSE PLEASE?

13 A SURE. IF YOU HAVE TROUBLE WITH MY HANDWRITING
14 PLEASE FEEL FREE TO ASK ME.

15 MR. ANTHONY: IF I COULD JUST HAVE A MOMENT
16 PLEASE, YOUR HONOR.

17 Q AND MR. WELLBORN, WHEN MS. DIXON TOLD YOU THAT
18 SHE WANTED YOU TO REPRESENT HER WHEN CAPTAIN
19 CABINESS ASKED HER TO COME BACK AND QUESTION
20 HER, IS THAT CORRECT?

21 A I'M SORRY. YOUR QUESTION WAS WHEN SHE TOLD ME?

22 Q NO, SHE JUST TOLD YOU THAT SHE WANTED YOU TO
23 HELP HER, IS THAT CORRECT?

24 A THAT IS WHAT SHE TOLD ME, YES.

25 Q AND YOU SAID THAT YOU VOLUNTEERED TO REPRESENT

1 HER?

2 A THAT'S CORRECT.

3 Q OKAY.

4 A SHE ASKED ME TO REPRESENT HER AND I TOLD HER I
5 WOULD.

6 Q SO AT THAT POINT IN TIME DID YOU, I BELIEVE YOU
7 HAD A ATTORNEY/CLIENT RELATIONSHIP WITH MS.
8 DIXON AS WELL?

9 A WELL, AN ATTORNEY/CLIENT, MY UNDERSTANDING OF AN
10 ATTORNEY/CLIENT PRIVILEGE, AT LEAST FROM THE
11 RULES OF PROFESSIONAL RESPONSIBILITY IS THAT IF
12 A CLIENT ASKS YOU TO UNDERTAKE REPRESENTATION
13 AND YOU AGREE TO DO SO, AT THAT POINT IN TIME
14 UNTIL THAT RELATIONSHIP IS SEVERED IN SOME WAY
15 FORMALLY OR INFORMALLY BY YOU AND/OR THE CLIENT,
16 THERE IS AN ATTORNEY/CLIENT RELATIONSHIP, YES.

17 Q OKAY. AND YOU KNEW THAT MS. DIXON WAS ANTONIO
18 GORDON'S GIRLFRIEND AT THAT TIME, IS THAT
19 CORRECT?

20 A AT THE TIME THAT SHE ASKED ME TO REPRESENT HER?

21 Q YES.

22 A NO.

23 Q WHAT DID YOU THINK HER RELATIONSHIP WAS?

24 A I KNEW SHE WAS A FRIEND. I DIDN'T KNOW SHE WAS
25 A GIRLFRIEND.

1 Q YOU KNEW SHE WAS A FRIEND OF ANTONIO GORDON?

2 A I ASSUMED SHE WAS A FRIEND. SHE WAS THERE WITH
3 THE FAMILY SO I ASSUMED SHE MUST BE SOMEBODY WHO
4 IS A FRIEND OR INTERESTED IN SOMEONE. THE
5 SPECIFICS OF THE RELATIONSHIP WERE NEVER
6 DISCLOSED TO ME.

7 Q HAD YOU SPOKEN TO HER ABOUT HER KNOWLEDGE OF THE
8 SITUATION INVOLVING ANTONIO?

9 A WE SPOKE ABOUT VARIOUS LEGAL THINGS AND I GAVE
10 HER SOME LEGAL ADVICE AT THE TIME SHE ASKED ME
11 TO REPRESENT HER, YES.

12 Q OKAY. AND YOU WERE AWARE THEN THAT SHE WAS
13 BASICALLY, THEY WERE BASICALLY WANTING HER FOR
14 QUESTIONING TO TRY AND BUILD EVIDENCE AGAINST
15 ANTONIO GORDON, IS THAT CORRECT?

16 A I WAS AWARE THAT SHE ASKED ME TO REPRESENT HER
17 OR SHE ASKED ME LEGAL ADVICE ON SOME ISSUES. I
18 GAVE HER LEGAL ADVICE AFTER SHE ASKED ME WHICH,
19 OF COURSE, ESTABLISHES AN ATTORNEY/CLIENT
20 PRIVILEGE. AT SOME POINT THEREAFTER CAPTAIN
21 CABINESS CAME OUT INTO THE LOBBY, HE ASKED TO
22 SPEAK WITH HER. SHE ASKED TO HAVE ME PRESENT AS
23 HER LAWYER IN FRONT OF CAPTAIN CABINESS.
24 CAPTAIN CABINESS WENT BACK INTO THE BACK ROOM,
25 HE CAME OUT INTO THE LOBBY A SECOND TIME WITH

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1 MRS. BLACKWELDER, AND TOLD HER SHE WAS BEING
2 CHARGED WITH ACCESSORY AFTER THE FACT TO
3 MURDER.

4 Q WELL, MY QUESTION IS, YOU KNEW THAT SHE WAS
5 WANTED FOR QUESTIONING IN REGARDS TO THE
6 INCIDENT THAT ANTONIO GORDON HAD BEEN INVOLVED
7 IN?

8 A I KNEW THEY WANTED TO QUESTION HER ABOUT THE
9 INCIDENT, THAT'S CORRECT.

10 Q THAT'S RIGHT. AND YOU HAD AN ATTORNEY/CLIENT
11 RELATIONSHIP WITH ANTONIO GORDON AT THAT TIME
12 THAT YOU JUST TESTIFIED?

13 A THAT'S CORRECT.

14 Q AND YOU KNEW THAT HER STATEMENT COULD QUITE
15 POSSIBLY BE DAMAGING TO ANTONIO GORDON WHO YOU
16 ALREADY ESTABLISHED AN ATTORNEY/CLIENT
17 RELATIONSHIP WITH?

18 A I HAD NO SPECIFIC KNOWLEDGE AS TO WHAT HER
19 STATEMENT WOULD BE.

20 Q WELL, I'M NOT ASKING ABOUT SPECIFIC KNOWLEDGE.
21 DIDN'T YOU KNOW THERE WAS A SIGNIFICANT
22 POSSIBILITY THAT THAT STATEMENT COULD BE
23 DAMAGING TO ANTONIO GORDON?

24 A I HAD NO KNOWLEDGE AS TO WHAT HER STATEMENT
25 WOULD BE, SO I CAN'T ANSWER THAT QUESTION.

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1 WELL, ACTUALLY THE ANSWER TO YOUR QUESTION IS,
2 NO, I DIDN'T KNOW THAT BECAUSE I DIDN'T KNOW
3 WHAT HER STATEMENT WOULD BE.

4 Q BUT YOU KNEW THE POLICE WANTED TO QUESTION HER
5 ABOUT --

6 A ---I KNEW THE POLICE WANTED TO QUESTION HER AND
7 I KNEW THAT SHE WANTED SOMEBODY SHE TOLD THE
8 POLICE WAS HER LAWYER PRESENT WHEN SHE WAS BEING
9 QUESTIONED. 64357543862755

10 Q THAT'S RIGHT. AND YOU KNEW THAT THEY INTENDED
11 TO QUESTION HER ABOUT WHAT SHE KNEW ABOUT WHAT
12 ANTONIO GORDON HAD DONE OR HAD ALLEGEDLY DONE?

13 A I KNEW THEY WERE GOING TO QUESTION HER
14 SUPPOSEDLY SOMETHING RELATED TO THIS INCIDENT
15 WHETHER IT WAS SPECIFICALLY ABOUT ANTONIO GORDON
16 OR WHETHER IT WAS ABOUT MR. MCCREARY OR MR.
17 MONTA GORDON WHOSE NAMES I DIDN'T EVEN KNOW AT
18 THAT TIME, OR WHETHER IT WAS ABOUT SOMETHING
19 THAT SHE SUPPOSEDLY HAD DONE, I HAD NO IDEA.

20 Q AND YOU DID NOT WANT HER SPEAKING TO THE POLICE,
21 IS THAT CORRECT?

22 A SHE WANTED ME PRESENT IF SHE WAS GOING TO SPEAK
23 TO THE POLICE. IT'S NOT, WHAT I WANT REALLY IS
24 IRRELEVANT. IT'S WHAT THE CLIENT WANTS BECAUSE
25 THE CLIENT'S THE ONE WHO ASSERTS AND WHO GOVERNS

1 THE ATTORNEY/CLIENT RELATIONSHIP.

2 Q AND YOU SAID WHEN YOU WERE GIVING YOUR
3 DEFINITION OF ATTORNEY/CLIENT RELATIONSHIP THAT
4 YOU FELT LIKE AN ATTORNEY/CLIENT RELATIONSHIP,
5 UNDER YOUR UNDERSTANDING OF THE RULES, THAT IT
6 STAYED IN EFFECT UNTIL THERE WAS SOMETHING THAT
7 FORMALLY RELINQUISHED THAT RELATIONSHIP, IS THAT
8 CORRECT?

9 A UNTIL THE CLIENT, IF A CLIENT ESTABLISHES A
10 RELATIONSHIP WITH ME AS THEIR LAWYER, UNTIL THAT
11 CLIENT TELLS ME THEY DON'T WANT ME AS THEIR
12 LAWYER, IN SOME WAY INDICATES TO ME THEY DON'T
13 WANT ME AS THEIR LAWYER OR IN SOME WAY I TELL
14 THEM I CAN'T BE THEIR LAWYER, WE HAVE THAT
15 RELATIONSHIP.

16 Q OKAY. AND DID YOU FORMALLY RELINQUISH YOUR
17 ATTORNEY/CLIENT RELATIONSHIP WITH ANTONIO
18 GORDON?

19 A DID I FORMALLY, YES, I TALKED TO HIS PARENTS WHO
20 WERE THE ONES WHO RETAINED ME, AND LATER I
21 TALKED TO ANTONIO AND TOLD HIM WHY I COULD NOT
22 REPRESENT HIM BECAUSE I WOULD BE A WITNESS.

23 Q IS THERE ANYTHING DOCUMENTED IN YOUR FILE WHERE
24 YOU RELINQUISHED YOUR RELATIONSHIP WITH ANTONIO
25 GORDON?

1 A THERE IS MY MEMORY. AS FAR AS DOCUMENTING IN MY
2 FILE IN TERMS OF A LETTER, NO, I DID NOT WRITE A
3 LETTER.

4 Q SO YOUR RELATIONSHIP WITH ANTONIO GORDON, IT WAS
5 VERBALLY ESTABLISHED AND VERBALLY RELINQUISHED?

6 A THAT'S CORRECT. THAT'S CORRECT.

7 Q OKAY.

8 MR. ANTHONY: IF I COULD HAVE ONE MOMENT. I
9 WANT TO RETURN MR. WELLBORN'S NOTES TO HIM.
10 APPRECIATE HIM PROVIDING THOSE AND THAT'S ALL
11 THE QUESTIONS THE STATE HAS.

12 THE COURT: ANYTHING ELSE?

13 MR. D'AGOSTINO: BRIEFLY, YOUR HONOR.

14 REDIRECT EXAMINATION BY MR. D'AGOSTINO:

15 Q AT THE TAIL END OF YOUR, THAT AFTERNOON AT THE
16 POLICE STATION, WERE YOU EVER EVENTUALLY TOLD
17 THAT YOU WOULD HAVE TO HAVE SOMETHING IN WRITING
18 ESTABLISHING YOU AS THE ATTORNEY FOR ANTONIO?

19 A NO ONE EVER TOLD ME THAT AT THE POLICE STATION.
20 IN FACT, I HAD NEVER HEARD OF THAT UNTIL
21 SOMETIME LATER AND THAT WAS STRICTLY, THAT WAS
22 THROUGH A THIRD PARTY. NO ONE'S EVER DIRECTLY
23 TOLD ME THAT I HAVE TO HAVE SOMETHING IN WRITING
24 FROM MY CLIENTS SAYING THAT I'M THEIR LAWYER
25 BEFORE I CAN TALK TO THE CLIENT.

1 MR. D'AGOSTINO: THOSE ARE ALL THE QUESTIONS I
2 HAVE. THANK YOU.

3 MR. ANTHONY: JUST BRIEFLY, YOUR HONOR.

4 THE COURT: GO AHEAD.

5 MR. ANTHONY: THANK YOU. MAY I ASK HIM ANOTHER
6 QUESTION?

7 THE COURT: YES.

8 RE CROSS EXAMINATION BY MR. ANTHONY:

9 Q DID YOU ALSO CLAIM TO REPRESENT SOMEBODY ELSE
10 THAT MORNING OTHER THAN MS. DIXON?

11 A DID I CLAIM TO REPRESENT SOMEONE ELSE?

12 Q YEAH.

13 A WELL, I HAVE APPROXIMATELY 300-SOMETHING
14 CLIENTS.

15 Q I'M SORRY. I WILL REPHRASE THAT QUESTION. WAS
16 THERE SOMEONE ELSE WHO WAS ASKED TO COME BACK
17 FOR QUESTIONING THAT YOU SAID YOU REPRESENTED
18 THEM THAT MORNING OTHER THAN MS. DIXON AND MR.
19 GORDON?

20 A I HAVE NO SPECIFIC RECOLLECTION OF THAT.

21 Q OKAY. THANK YOU.

22 THE COURT: MR. GILLEN, I KNOW THIS ISSUE
23 DOESN'T PERTAIN TO YOUR CLIENT BUT JUST OUT OF
24 AN ABUNDANCE OF CAUTION WHILE YOU ARE HERE AND
25 HE'S HERE, ANY QUESTIONS?

1 MR. GILLEN: NO, YOUR HONOR. THANK YOU.

2 THE COURT: YOU CAN BE EXCUSED. WE APPRECIATE
3 YOUR TIME.

4 MR. WELLBORN: THANK YOU.

5 THE COURT: CALL YOUR NEXT WITNESS. WELL, CALL
6 YOUR FIRST WITNESS FOR THE STATE. ACTUALLY I
7 GUESS YOUR FIRST WITNESS HAS BEEN CALLED CAPTAIN
8 CABINESS.

9 MR. ANTHONY: THE STATE WOULD CALL AS ITS FIRST
10 WITNESS IN THE DENNO HEARING LIEUTENANT
11 WALDROP.

12 JERRY WALDROP, BEING FIRST
13 DULY SWORN, TESTIFIED AS FOLLOWS:

14 DIRECT EXAMINATION BY MR. ANTHONY:

15 Q WOULD YOU STATE YOUR NAME PLEASE?

16 A JERRY W. WALDROP.

17 Q AND MR. WALDROP, WHERE DO YOU WORK AT?

18 A ROCK HILL POLICE DEPARTMENT.

19 Q WHAT IS YOUR POSITION AT THE ROCK HILL POLICE
20 DEPARTMENT?

21 A AT THE PRESENT TIME I'M LIEUTENANT IN CHARGE OF
22 PROPERTY CRIME SECTION.

23 Q GOING BACK TO JULY 23 OF LAST YEAR WHAT WAS YOUR
24 POSITION AT THE POLICE DEPARTMENT ON THAT DAY?

25 A DETECTIVE ASSIGNED IN THE DETECTIVE DIVISION.

1 Q AND WERE YOU WORKING ON JULY 23 OF LAST YEAR?

2 A I CAME ON DUTY THAT MORNING ABOUT 8 A.M.

3 Q AND WHEN YOU CAME ON DUTY THAT MORNING DID YOU
4 BECOME AWARE OF THE INVESTIGATION OF THE
5 SHOOTING INCIDENT EARLIER THAT MORNING?

6 A THAT'S CORRECT.

7 Q AND DURING THE COURSE OF THAT INVESTIGATION DID
8 YOU HAVE OCCASION TO SPEAK TO ANTONIO GORDON?

9 A THAT'S CORRECT.

10 Q AND WHERE DID YOU SPEAK TO MR. GORDON AT?

11 A IN THE BACK HALL OF THE POLICE STATION, THERE IS
12 AN AREA THAT WAS AT ONE TIME THAT WAS USED AS A
13 LARGE CONFERENCE ROOM, I MEET WITH HIM THERE,
14 AND WE CARRIED ON A CONVERSATION IN THE
15 CONFERENCE ROOM.

16 Q AND WHERE WAS HE AT WHEN YOU INITIALLY, WELL,
17 WAS THAT WHERE HE WAS AT WHEN YOU INITIALLY WENT
18 TO SPEAK TO HIM AND TALK TO HIM?

19 A THAT'S CORRECT.

20 Q TO YOUR KNOWLEDGE HAD ANYONE TAKEN ANY
21 STATEMENTS FROM HIM BEFORE THIS TIME?

22 A NO, SIR, NOT TO MY KNOWLEDGE.

23 Q OKAY. AND WHEN YOU WENT TO SPEAK TO MR. GORDON
24 WHO WAS THERE WHEN YOU WENT TO TALK TO HIM?

25 A HE WAS SITTING IN THE ROOM BY HIMSELF. THERE

1 WAS A UNIFORM OFFICER THAT WAS WATCHING THE
2 ROOM, BUT I DON'T REMEMBER WHO THE UNIFORM
3 OFFICER WAS. THEY WERE JUST WATCHING THE DOOR.
4 HE WAS IN THE ROOM BY HIMSELF.

5 Q AND WHEN YOU WENT IN THE ROOM WITH MR. GORDON
6 THERE, WHAT DID YOU DO?

7 A I WENT IN. HE WAS SEATED ON THE LEFT HAND SIDE
8 OF THE TABLE. I SAT DOWN ON THE RIGHT HAND SIDE
9 OF THE TABLE. I INTRODUCED MYSELF, TOLD HIM WHO
10 I WAS, AND WHY I WAS THERE.

11 Q AND WHY DID YOU TELL HIM YOU WERE THERE?

12 A I TOLD HIM I WAS THERE TO TALK TO HIM IN
13 REFERENCE TO THE INCIDENT THAT HAD HAPPENED
14 EARLIER IN THE NIGHT.

15 Q AND BEFORE YOU BEGAN TO SPEAK TO HIM ABOUT THE
16 INCIDENT, DID YOU ADVISE HIM OF ANY RIGHTS?

17 A THAT'S CORRECT. AFTER INTRODUCING MYSELF AND
18 ASKING HIM HIS FULL NAME, I IN TURN TOOK THE
19 STATEMENT FORM THAT WE USE WHICH HAS THE RIGHTS
20 STATEMENT AT THE TOP OF IT AND READ HIM HIS
21 RIGHTS AS WRITTEN ON THE STATEMENT FORM.

22 MR. ANTHONY: YOUR HONOR, I AM HANDING UP
23 DETECTIVE WALDROP'S STATEMENT AND ASK IT BE
24 MARKED STATE'S EXHIBIT NUMBER THREE FOR PURPOSES
25 OF THE HEARING.

1 (STATE'S EXHIBIT THREE ANTONIO GORDON'S
2 STATEMENT MARKED FOR IDENTIFICATION.)

3 Q CAN YOU IDENTIFY THE DOCUMENT I'M HANDING TO YOU
4 STATE'S EXHIBIT NUMBER THREE FOR PURPOSES OF THE
5 HEARING, DETECTIVE?

6 A THAT'S CORRECT. THAT'S THE STATEMENT TAKEN BY
7 ME FROM ANTONIO GORDON ON THE 23.

8 Q AND YOU REFERENCED CERTAIN RIGHTS BEING PRINTED
9 AT THE TOP OF THAT FORM?

10 A THAT'S CORRECT.

11 Q WOULD YOU READ WHAT THOSE RIGHTS ARE PLEASE?

12 A IT SAYS BEFORE WE ASK YOU ANY QUESTIONS YOU MUST
13 UNDERSTAND YOUR RIGHTS. YOU HAVE THE RIGHT TO
14 REMAIN SILENT. ANYTHING YOU SAY CAN BE USED
15 AGAINST YOU IN COURT. YOU HAVE THE RIGHT TO
16 TALK TO A LAWYER FOR ADVICE BEFORE WE ASK YOU
17 ANY QUESTIONS AND TO HAVE HIM WITH YOU DURING
18 QUESTIONING. YOU HAVE THIS RIGHT TO THE ADVICE
19 AND PRESENCE OF A LAWYER EVEN IF YOU CANNOT
20 AFFORD TO HIRE ONE. WE HAVE NO WAY OF
21 APPOINTING YOU A LAWYER, BUT ONE WILL BE
22 APPOINTED TO YOU BY THE COURT FOR YOU IF YOU
23 WISH. IF YOU WISH YOU MAY ANSWER QUESTIONS
24 WITHOUT THE PRESENCE OF A LAWYER AND YOU MAY
25 STOP ANSWERING QUESTIONS AT ANY TIME YOU SO

1 DESIRE UNTIL A LAWYER IS PRESENT.

2 Q AND DID YOU ASK MR. GORDON TO DO ANYTHING TO
3 INDICATE THAT HE UNDERSTOOD THESE RIGHTS THAT
4 YOU JUST READ?

5 A FIRST I ASKED HIM IF HE UNDERSTOOD THEM AND HE
6 INDICATED HE DID. AND I ASKED HIM TO SIGN ON
7 THE LINE UNDER THE STATEMENT FORM.

8 Q OKAY. AFTER HE SIGNED IT, DID YOU DO ANYTHING?

9 A I SIGNED IT ALSO.

10 Q OKAY. THEN AFTER YOU ASKED HIM TO SIGN THE
11 ACKNOWLEDGMENT OF HIS RIGHTS, WHAT DID YOU DO
12 NEXT?

13 A AS AN ADDITIONAL PARAGRAPH UNDER THERE WHICH I
14 READ TO HIM AT THAT TIME, IT SAYS I HAVE READ OR
15 HAD READ TO ME THE STATEMENT OF MY RIGHTS SHOWN
16 ABOVE. I UNDERSTAND WHAT MY RIGHTS ARE AND I'M
17 WILLING TO MAKE A STATEMENT. I DO NOT WANT A
18 LAWYER AT THIS TIME. I UNDERSTAND AND KNOW WHAT
19 I AM DOING. I KNOW THE PERSON TALKING WITH ME
20 IS A POLICE OFFICER AND I UNDERSTAND WHAT HE IS
21 TALKING ABOUT.

22 Q AND DID YOU ASK MR. GORDON TO DO ANYTHING TO
23 INDICATE THAT HE UNDERSTOOD THAT SECTION OF THE
24 FORM?

25 A THAT'S CORRECT. I ASKED HIM TO SIGN IT WHICH HE

1 DID.

2 Q AND DID YOU DO ANYTHING AFTER HE SIGNED IT?

3 A I DID. I SIGNED IT AS A WITNESS.

4 Q NOW AT THIS POINT IN TIME AFTER YOU READ HIM
5 THESE RIGHTS AND HE SIGNED THE FORM, DID HE AT
6 ANY TIME TELL YOU EITHER HE WANTED TO REMAIN
7 SILENT OR HE WANTED AN ATTORNEY?

8 A NO, HE DID NOT.

9 Q OKAY. AND AFTER HE INDICATED THAT HE WOULD
10 SPEAK TO YOU, WHAT HAPPENED NEXT?

11 A AFTER THOSE TWO STATEMENTS WERE SIGNED BY HIM,
12 WE CARRIED ON CONVERSATION ABOUT THE EVENTS AS
13 HE WANTED TO RELATE WHAT HAD HAPPENED. AT FIRST
14 IT STARTED OUT THAT HE REALLY DON'T KNOW WHAT
15 HAD HAPPENED, DIDN'T KNOW A LOT ABOUT IT, AND
16 THEN AS WE TALKED IT BECAME APPARENT THAT HE
17 KNEW MORE AND WAS WILLING TO TELL ME MORE.

18 SUBSEQUENTLY HIS FINAL VERSION OF WHAT HAPPENED
19 I TOOK A STATEMENT AS HE TOLD ME. I TYPED WHAT
20 HE SAID. I EVEN HAD HIM SLOW DOWN AND REPEAT
21 IT. AS HE SAID IT I TRIED TO TYPE HIS WORDS.

22 Q OKAY. AND DID YOU TYPE ANY INFORMATION ABOUT
23 MR. GORDON ON THE FORM BEFORE YOU BEGAN TO TYPE
24 OUT HIS STATEMENT?

25 A THAT'S CORRECT.

1 Q AND WHAT INFORMATION DID YOU TYPE OUT ON THE
2 FORM?

3 A I TYPED OUT HIS NAME, HIS DATE OF BIRTH, SOCIAL
4 SECURITY NUMBER, HIS ADDRESS, HIS PLACE OF
5 EMPLOYMENT AS BEING UNEMPLOYED, HIS HOME PHONE
6 NUMBER. THE FACT THAT HE COMPLETED THE NINTH
7 GRADE IN SCHOOL AND HE COULD READ AND WRITE.

8 Q THESE ARE THINGS THAT HE TOLD YOU?

9 A THAT'S CORRECT.

10 Q OKAY. AND DURING THE COURSE AND TIME THAT YOU
11 WERE TALKING TO HIM, DID HE APPEAR TO UNDERSTAND
12 THINGS THAT YOU ARE SPEAKING TO HIM ABOUT?

13 A THAT'S CORRECT.

14 Q DID HE APPEAR TO BE UNDER THE INFLUENCE OF ANY
15 SUBSTANCE IN ANY WAY TO YOU?

16 A NO, SIR.

17 Q OKAY. AND WOULD YOU GO AHEAD AND TELL THE JUDGE
18 WHAT MR. GORDON TOLD YOU WHEN HE FINALLY GAVE
19 YOU THE FINAL STATEMENT DURING YOUR INTERVIEW
20 WITH HIM.

21 A LAST NIGHT THE 22 ABOUT 7 OR 8 P.M. I CALLED
22 JUNE BUG AND HE REFERENCED THAT TO TERRANCE
23 MCCREARY. I PAGED HIM AND ASKED HIM TO COME TO
24 MY HOUSE. I NEEDED MY AMP AND SPEAKERS AND
25 STEREO HOOKED UP IN MY CAR. MY AUNT GLORIA

1 WATSON, CHYENCA DIXON, FONTELLA FEELY, WILLIE
2 GORDON, AND TWO OTHER GUYS I DID NOT KNOW CAME
3 WITH JUNE BUG. THEY DID NOT STAY BUT ABOUT 30
4 MINUTES. JUNE BUG STAYED AND STARTING HOOKING
5 THE STEREO AND WE RAN OUT OF SPEAKER WIRE. ME
6 AND MY BROTHER MONTA GORDON, GARY MOFFAT, AND
7 JUNE BUG, TERRANCE MCCREARY AND ME ALL GOT INTO
8 MY CAR AND WE WENT TO TOWN. WE WENT TO
9 SOUTHLAND FIRST AND I ASKED JUNE BUG WHERE WE
10 WERE GOING TO GET THE WIRE. HE TOLD ME HIS AUNT
11 WAS NOT HOME. WE RODE AROUND IN THE MARSHALL
12 STREET AREA AS JUNE BUG SAW A BMW WITH NO LIGHTS
13 ON. HE SAID SOMETHING ABOUT THE CAR. I DID NOT
14 SEE IT AT FIRST. I WAS SITTING IN THE BACK SEAT
15 DRIVER'S SIDE. JUNE BUG WAS DRIVING. MONTA WAS
16 IN THE FRONT PASSENGER SIDE FRONT AND GARY WAS
17 IN THE BACK WITH ME. JUNE BUG SAID SOMETHING
18 LIKE, GOD DAMN, DID YOU SEE THAT BEEMER THERE.
19 I DID NOT SEE IT, BUT GARY SAID HE DID. THE
20 BEEMER PULLED INTO A DRIVEWAY. JUNE BUG PULLED
21 UP AND BLOCKED THE CAR IN. HE GOT OUT AND I GOT
22 OUT AND MY BROTHER GOT OUT. I WALKED OVER AND
23 LOOKED INTO THE BMW TO SEE WHO WAS IN IT. JUNE
24 BUG WAS ASKING THEM IF THEY HAD ANY MONEY. ALL
25 I HEARD, NO MAN, I DON'T HAVE ANY MONEY. I HAD

1 STARTED AROUND THE BACK OF THE BMW AND THEY
2 STARTED BACKING UP AND JUNE BUG WAS STANDING
3 THERE WITH THE GUN IN HIS HAND. WHEN THEY
4 STARTED BACKING UP JUNE BUG KEPT SAYING, GET OUT
5 OF THE CAR AND HE SAID THIS A BUNCH OF TIMES.
6 THEY KEPT BACKING UP JUST ENOUGH TO WHEEL AROUND
7 TO LEAVE AND THAT WAS WHEN JUNE BUG SHOT AT THE
8 DRIVER. THEY DROVE ON OFF AND I GOT BACK IN MY
9 CAR AND JUNE BUG WAS STILL DRIVING. WE LEFT AND
10 WENT TO MY HOUSE. ASKED JUNE BUG IF HE SHOT
11 THAT GUY. HE SAID, NO, I SHOT INTO THE AIR.
12 THE GUYS IN THE BMW KEPT ON DRIVING AND WE DID
13 NOT SEE WHERE THEY WENT BEFORE WE LEFT.

14 AFTER WE GOT BACK TO MY HOUSE, WENT INSIDE AND
15 THEY HUNG AROUND FOR ABOUT TWO TO THREE HOURS.
16 AND JUNE BUG GOT READY TO LEAVE. JUNE BUG ASKED
17 ME IF MONTA COULD DRIVE MY CAR TO TAKE HIM HOME
18 TO BOYD HILL. I TOLD HIM THAT THEY COULD TAKE
19 MY CAR BUT TO COME RIGHT BACK. THAT WAS WHEN
20 MONTA, JUNE BUG, AND GARY GOT IN MY CAR AND LEFT
21 MY HOUSE.

22 ABOUT 30 MINUTES AFTER THEY LEFT MY HOUSE JUNE
23 BUG CALLED ME AND SAID THE POLICE WAS CHASING
24 YOUR BROTHER INSIDE OF YOUR CAR. ABOUT FIVE
25 MINUTES LATER MONTA CAME FLYING DOWN THE ROAD,

1 JUMPED OUT OF THE CAR, AND STARTED RUNNING. THE
2 POLICE WERE BEHIND HIM AND HE RAN ACROSS THE
3 YARD AND INTO SOME BUSHES. AFTER THAT ONE OF
4 THE OFFICERS ASKED ME WHO WAS DRIVING MY CAR
5 DURING THE SHOOTING. I TOLD HIM NOBODY. LATER
6 I TOLD THEM THAT JUNE BUG HAD BEEN DRIVING IT
7 ALL DAY. HE TOLD ME TO GO BACK INTO THE HOUSE
8 AND THEY WOULD BE BACK TO TALK TO ME LATER.
9 WHEN JUNE BUG CAME TO MY HOUSE HE WAS THERE
10 ABOUT AN HOUR BEFORE, JUNE BUG SHOWED ME A GUN
11 THAT HE HAD. IT WAS A CHROME .357 CALIBER.
12 JUNE BUG GOT OUT OF THE CAR AND AFTER WE BLOCKED
13 THE BMW AND SAYING THAT HE WAS GOING TO GO TAKE
14 THE CAR AND THEIR MONEY, I GOT OUT OF THE CAR TO
15 SEE IF I KNEW THE BOYS AND I WAS JUST LOOKING
16 INSIDE THE CAR AND WHICH HE INITIALED AT THE END
17 AND SIGNED IT AT THE BOTTOM.
18 Q AND DETECTIVE WALDROP, AFTER YOU TOOK THIS
19 STATEMENT FROM MR. GORDON WHAT DID YOU DO NEXT?
20 A THERE IS A FORM WE CALL THE NOTARY PAGE THAT
21 STATES PERSONALLY APPEARS BEFORE ME ANTONIO
22 GORDON WHO DEPOSES AND SAYS THAT I MAKE THIS
23 STATEMENT OF MY OWN FREE WILL AND ACCORD,
24 WITHOUT A REWARD OR A HOPE OF A REWARD. I'VE
25 NOT BEEN MISTREATED OR THREATENED IN ANY WAY.

1 ALL OF THE ABOVE IS THE TRUTH, THE WHOLE TRUTH,
2 AND NOTHING BUT THE TRUTH SO HELP ME GOD. AT
3 THAT TIME I ASKED MR. ANTONIO GORDON, AS A
4 NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA,
5 TO RAISE HIS RIGHT HAND AND I ASKED HIM IF IT'S
6 THE TRUTH, THE WHOLE TRUTH AND NOTHING BUT THE
7 TRUTH THAT THE STATEMENT HE JUST GAVE ME AND HE
8 INDICATED IT WAS. HE SIGNED THE NOTARY PAGE AND
9 I SIGNED IT AND ALSO NOTORIZED IT AS A NOTORIZED
10 STATEMENT.

11 Q AND DETECTIVE WALDROP, WHAT TIME DID YOU START
12 TALKING TO ANTONIO GORDON, IS THAT INDICATED ON
13 THE FORM AS WELL?

14 A I ACTUALLY STARTED TAKING THE WRITTEN STATEMENT
15 AT ABOUT I'D SAY 10:55 ACCORDING TO THE THING,
16 BUT WHAT TIME I ACTUALLY WENT AND STARTED
17 TALKING TO HIM, I'M NOT SURE. SOMETIME BETWEEN
18 10:15 AND 10:30.

19 Q AND IS THE STATEMENT THAT YOU HAVE WITH YOU ON
20 THE STAND UP THERE STATE'S EXHIBIT THREE FOR
21 IDENTIFICATION IS THAT THE STATEMENT YOU TOOK
22 FROM ANTONIO GORDON?

23 A THAT IS CORRECT.

24 Q DOES IT APPEAR THE SAME AS IT DID THE MORNING
25 YOU TOOK IT ON JULY 23 OF LAST YEAR?

1 A THAT'S CORRECT.

2 MR. ANTHONY: YOUR HONOR, I MOVE STATE'S EXHIBIT
3 NUMBER THREE FOR PURPOSES OF THIS HEARING INTO
4 THIS HEARING.

5 MR. D'AGOSTINO: SOLELY FOR THE PURPOSES OF THIS
6 HEARING WE DON'T CONSENT THAT IT'S FREELY AND
7 VOLUNTARILY.

8 THE COURT: IT WILL BE RECEIVED.

9 Q DETECTIVE WALDROP, WHEN YOU INTERVIEWED ANTONIO
10 GORDON, DID YOU MAKE HIM ANY PROMISES OR ANY
11 THREATS BEFORE HE GAVE A STATEMENT?

12 A NO, SIR.

13 Q AND AFTER YOU TOOK THE STATEMENT FROM HIM AND HE
14 HAD SIGNED THE PAGE, THE LAST PAGE, WHAT DID YOU
15 DO THEN?

16 A I LEFT OUT, MADE HIM A COPY OF IT, BROUGHT IT
17 BACK, GAVE HIM A COPY OF IT, AND THEN I WENT ON
18 ABOUT MY DAILY DUTIES ON OTHER STUFF.

19 Q DID YOU HAVE ANY FURTHER DEALINGS WITH ANTONIO
20 GORDON?

21 A NO, SIR.

22 Q ON THIS DAY OR ANY DAYS AFTER THIS ARREST WAS
23 MADE?

24 A NO, SIR.

25 Q OKAY. THANK YOU. THAT'S ALL ON DIRECT.

1 CROSS EXAMINATION BY MR. D'AGOSTINO:

2 Q OFFICER WALDROP, WHO ASSIGNED YOU TO INTERVIEW
3 MR. GORDON, ANTONIO GORDON?

4 A IF I REMEMBER CORRECTLY I THINK IT WAS CAPTAIN
5 CABINESS.

6 Q WERE YOU EVER AT THE CRIME SCENE?

7 A NO, SIR.

8 Q WERE YOU EVER AT THE GORDON HOUSEHOLD?

9 A NO, SIR.

10 Q WAS HE UNDER ARREST WHEN YOU GOT TO HIM AND
11 STARTED TAKING THE STATEMENT?

12 A TO MY KNOWLEDGE I ASSUMED HE WAS.

13 Q ALL RIGHT. HE WAS IN HOLDING, COULDN'T LEAVE
14 THE POLICE STATION; COULD HE?

15 A THAT'S CORRECT.

16 Q THERE WAS SOMEBODY SITTING OUTSIDE THAT DOOR SO
17 HE COULDN'T LEAVE IF HE WANTED TO?

18 A THAT'S CORRECT.

19 Q DID YOU EVER TELL HIM HE COULD LEAVE?

20 A NO, SIR.

21 Q THAT ROOM THAT YOU INTERVIEWED HIM IN IT'S
22 ABOUT, HOW BIG IS IT, DO YOU KNOW?

23 A 12 BY 20.

24 Q OKAY. AND THERE WAS A BIG TABLE IN THE MIDDLE
25 OF IT, WASN'T THERE?

1 A THAT'S CORRECT.

2 Q IT TOOK UP MOST OF THE ROOM.

3 A A GOOD BIT OF IT, YEAH.

4 Q AND THE TABLE IS SO BIG THAT YOU CAN FIT TWO
5 CHAIRS AT EACH END OF IT AND THEN THERE ARE A
6 NUMBER OF CHAIRS DOWN THE SIDES, RIGHT?

7 A THAT'S CORRECT.

8 Q THAT'S JUST YOUR STANDARD CONFERENCE ROOM,
9 RIGHT?

10 A THAT'S CORRECT.

11 Q IS THAT THE ROOM YOU TOOK THE STATEMENT IN?

12 A THAT'S CORRECT.

13 Q NOW DID YOU READ HIM THE MIRANDA RIGHTS ON YOUR
14 STATEMENT LIKE YOU READ IT TO US TODAY SO YOU
15 WOULD BE SURE TO COVER EVERYTHING?

16 A I READ IT JUST LIKE VERBATIM ON THE REPORT.

17 Q OKAY. YOU READ IT TO HIM LIKE YOU READ IT
18 TODAY?

19 A THAT'S CORRECT.

20 Q THEN YOU READ HIM THE SECOND PARAGRAPH LIKE YOU
21 READ IT TO US TODAY?

22 A THAT'S CORRECT.

23 Q AND YOU PHYSICALLY READ THESE OUT LOUD TO HIM OR
24 DID YOU TELL HIM TO READ THEM AND YOU JUST PUT
25 AN "X" THERE AND TELL HIM TO SIGN IT?

1 A NO, I READ THEM TO HIM AND ASKED HIM IF HE
2 UNDERSTOOD THEM.

3 Q OKAY.

4 A LAID IT DOWN IN FRONT OF HIM AND TOLD HIM HE WAS
5 WELCOME TO READ IT OR WHATEVER HE WANTED TO DO.

6 Q OKAY. HAD YOU EVER MET ANTONIO GORDON BEFORE
7 THIS DAY?

8 A ON OCCASION I THINK I HAD, BUT I DID NOT KNOW
9 HIM PERSONALLY.

10 Q THAT WAS WHAT I WAS GETTING AT. YOU DIDN'T KNOW
11 HIM FROM ANYBODY ELSE?

12 A NO, SIR.

13 Q NOW YOU SAID I BELIEVE THAT YOU ACTUALLY TALKED
14 TO HIM FOR AWHILE BEFORE YOU STARTED TAKING THE
15 STATEMENT, IS THAT TRUE?

16 A THAT'S CORRECT.

17 Q WHAT INFORMATION WERE YOU GIVEN BEFORE YOU WENT
18 IN TO SPEAK WITH HIM ABOUT WHAT YOU WERE GOING
19 TO SPEAK WITH HIM ABOUT?

20 A BASICALLY THE CONTENTS OF WHAT WE KNEW AT THAT
21 TIME, THAT WE HAD AN INDIVIDUAL THAT HAD BEEN
22 SHOT AND WAS DEAD.

23 Q AND WHAT INFORMATION, SO WHAT INFORMATION WAS
24 THERE? WHAT DID YOU KNOW AT THAT TIME WHEN YOU
25 WENT IN THERE AND TALKED TO ANTONIO GORDON?

1 A JUST WHAT I SAID, I KNEW THAT WE HAD A
2 INDIVIDUAL THAT HAD BEEN KILLED IN THE NIGHT.

3 Q OKAY.

4 A I DID NOT EVEN KNOW HIS NAME.

5 Q ALL RIGHT.

6 A I KNEW THAT IT HAD SOMETHING TO DO WITH A BMW.
7 THEY HAD REASON TO BELIEVE THAT IT WAS THE
8 TAKING OF THE BMW OR ROBBERY FOR THE BMW. I WAS
9 NOT INVOLVED IN ANY OF THE THINGS PRIOR TO ME
10 COMING TO WORK AT 8 O'CLOCK THAT MORNING.

11 Q DID YOU KNOW ANYTHING ABOUT WHAT MR. ANTONIO
12 GORDON'S INVOLVEMENT IN THE CASE WAS SUPPOSED TO
13 HAVE BEEN?

14 A NO, SIR.

15 Q SO YOU WEREN'T GIVEN ANY OF THAT INFORMATION?

16 A NOT AT THAT TIME, NO, SIR.

17 Q SO DID YOU JUST GO IN THERE BASICALLY COLD AS TO
18 WHAT YOU WERE EXPECTING TO GET FROM HIM?

19 A WELL, NOT REALLY COLD. I HAD THE INFORMATION
20 THAT THREE TO FOUR INDIVIDUALS HAD BEEN
21 INVOLVED, THERE HAD BEEN A HIGH SPEED CHASE,
22 THAT THERE HAD BEEN THE MURDER, SOMEBODY HAD
23 BEEN KILLED, THAT THE INDIVIDUALS THAT WE
24 THOUGHT TO BE RESPONSIBLE FOR IT WERE AT THE
25 POLICE STATION, ONE OF THEM WAS IN THIS ROOM,

1 AND TO FIND OUT WHAT I COULD AS FAR AS HIS
2 STATEMENT.

3 Q OKAY. WHO DID YOU GET THAT INFORMATION FROM?

4 A A NUMBER OF PEOPLE. LIEUTENANT, I MEAN CAPTAIN
5 CABINESS WAS AT THE STATION, DETECTIVE HERRING,
6 LIEUTENANT THICKENS, BUT I DON'T THINK I TALKED
7 TO THICKENS AT THAT TIME. I THINK IT WAS JUST
8 CABINESS AND HERRING.

9 Q WHO WAS IN CHARGE OF THIS INVESTIGATION ANYWAY?

10 A TO SAY I'M NOT SURE. LIEUTENANT THICKENS WAS
11 PART OF IT AND CAPTAIN CABINESS.

12 Q DID YOU EVER TELL, THREATEN ANTONIO TELLING HIM
13 HE WAS GOING TO GO TO THE DEATH CHAIR, ELECTRIC
14 CHAIR?

15 A DID I TELL HIM HE WAS GOING TO GO TO THE
16 ELECTRIC CHAIR?

17 Q RIGHT.

18 A NO, SIR.

19 Q DID YOU EVER TELL HIM HE WAS GOING TO GO TO JAIL
20 FOR LIFE IF HE DIDN'T TELL YOU WHAT YOU NEEDED
21 TO KNOW?

22 A I DID NOT TELL HIM HE WAS GOING TO GO TO JAIL
23 FOR LIFE. I DID TELL HIM THAT THE PENALTY FOR
24 MURDER COULD BE LIFE OR IT COULD BE THE DEATH
25 PENALTY, BUT TO THREATEN HIM WITH IT, NO, SIR, I

- 1 DID NOT.
- 2 Q DID YOU TELL HIM HE WAS LOOKING AT THAT KIND OF
3 TIME?
- 4 A YES, SIR.
- 5 Q AND WOULD BE BETTER OFF IF HE COOPERATED WITH
6 YOU?
- 7 A I TOLD HIM THAT HE'D BE BETTER TO STRAIGHTEN IT
8 OUT AND TELL HIS SIDE OF THE STORY.
- 9 Q DID YOU TELL HIM IT WOULD BE EASIER ON HIM IF HE
10 DID, IF HE TOLD HIS SIDE OF THE STORY?
- 11 A BE EASIER ON HIM OR LOOK BETTER FOR HIM?
- 12 Q YES, SIR.
- 13 A YES, SIR, THAT IT WOULD LOOK BETTER FOR HIM.
- 14 Q WERE YOU EVER INFORMED THAT CHRIS WELLBORN WAS
15 WAITING OUTSIDE TO SPEAK WITH HIM?
- 16 A YES, SIR, I WAS.
- 17 Q DID YOU TELL MR. ANTONIO GORDON THAT?
- 18 A NO, SIR.
- 19 Q AND YOU WERE TOLD THIS WHILE YOU WERE TAKING
20 THIS STATEMENT DOWN?
- 21 A CAPTAIN CABINESS CAME TO THE DOOR, KNOCKED ON
22 THE DOOR, I WENT TO THE DOOR. HE ASKED ME AT
23 ANY POINT HAD ANTONIO ASKED FOR AN ATTORNEY. I
24 SAID NO. HE SAID THANK YOU AND WALKED OFF.
- 25 Q WAS THERE ANYONE ELSE PRESENT WHILE YOU WERE

1 MAKING THIS STATEMENT?

2 A NO, SIR.

3 Q WHILE HE WAS MAKING THE STATEMENT, NOT YOU,
4 WHILE HE WAS MAKING THE STATEMENT?

5 A NO, SIR.

6 Q NOW THESE AREN'T ANTONIO'S EXACT WORDS. Y'ALL,
7 IN FACT, Y'ALL CONVERSED FOR AWHILE BEFORE YOU
8 EVEN GOT THE TYPEWRITER OUT AND START TAKING
9 DOWN THE STATEMENT, IS THAT CORRECT?

10 A THAT'S CORRECT.

11 Q YOU DIDN'T MAKE ANY NOTES OF ANY OF THAT?

12 A NO, SIR.

13 Q THEN AFTERWARDS, IF I UNDERSTAND IT CORRECTLY,
14 Y'ALL WOULD TALK ABOUT A PORTION OF IT THEN
15 YOU'D TYPE OUT WHAT Y'ALL TALKED ABOUT?

16 A THAT'S CORRECT.

17 Q ALL RIGHT. THESE AREN'T HIS EXTRACT WORDS. THIS
18 IS KIND OF WHAT WAS GOING ON AND Y'ALL TALK
19 ABOUT A SMALL PORTION OF IT, YOU TYPE OUT THE
20 SUBSTANCE?

21 A I WOULD --

22 Q --OF WHAT YOU THOUGHT HE SAID?

23 A I WOULD TYPE WORD FOR WORD TO THE BEST I COULD
24 AS HE WAS TALKING AND WHEN I COULD NOT
25 UNDERSTAND WHAT HE WAS SAYING, I'D HAVE HIM SLOW

1 DOWN OR STOP UNTIL I CAUGHT UP WITH HIM. THE
2 BEST OF MY RECOLLECTION AND ABILITY THIS IS WORD
3 FOR WORD WHAT HE WAS TELLING ME AFTER I STARTED
4 TAKING WHAT HE SAID WAS HIS STATEMENT.

5 Q AND WITH REGARD TO THE STATEMENT, THE STATEMENT
6 TAKEN ON JULY 23, AT 10:55 A.M. THE STATEMENT
7 SIGNED ON JULY 23 AT 11:30, DOES THAT MEAN THE
8 STATEMENT WAS COMPLETED, TAKEN AT 10:55 OR YOU
9 ACTUALLY TYPED THIS STATEMENT FROM 10:55 TO
10 11:30?

11 A THAT'S CORRECT.

12 Q YOU TYPED IT FROM 10:55?

13 A 10:55 TO 11:30.

14 Q ALL RIGHT. DID YOU ASK HIM HOW FAR HE HAD GONE
15 SCHOOL?

16 A THAT'S CORRECT.

17 Q YOU DID?

18 A HE INDICATED THE NINTH GRADE AND THE NEXT
19 QUESTION WAS, SO YOU CAN READ AND WRITE, AND HE
20 SAID I CAN.

21 MR. D'AGOSTINO: ONE MOMENT, YOUR HONOR.

22 Q I MIGHT HAVE ALREADY ASKED YOU THIS AND I'M
23 SORRY IF I HAVE, I DON'T MEAN TO BE REDUNDANT,
24 BUT DID ANY OTHER OFFICERS OTHER THAN CAPTAIN
25 CABINESS, HE CAME TO THE DOOR YOU SAID, DID ANY

1 OTHER OFFICERS COME IN THERE DURING THE
2 STATEMENT?

3 A NOT THAT I REMEMBER. I'M NOT SAYING THEY
4 DIDN'T, BUT I DON'T REMEMBER ANYBODY ELSE.

5 Q DID YOU HAVE YOUR WEAPON ON THAT DAY?

6 A I CAN'T ANSWER THAT EITHER BECAUSE I DON'T KNOW
7 IF I DID OR NOT.

8 Q ALL RIGHT.

9 A IN ALL FAIRNESS THAT'S MY ANSWER I DON'T KNOW.

10 Q ALL RIGHT. THANK YOU.

11 MR. D'AGOSTINO: THANK YOU. I DON'T HAVE ANY
12 OTHERS QUESTIONS. THANK YOU, YOUR HONOR.

13 MR. ANTHONY: JUST BRIEFLY.

14 REDIRECT EXAMINATION BY MR. ANTHONY:

15 Q WHEN YOU WERE READING THESE RIGHTS TO ANTONIO
16 GORDON AND ASKING HIM THESE QUESTIONS, DID HE
17 HAVE TO ASK YOU, DID HE ASK YOU QUESTIONS
18 INDICATING HE MIGHT NOT UNDERSTAND SOME OF THE
19 THINGS YOU TOLD HIM?

20 A NO, HE DID NOT.

21 Q THANK YOU. THAT'S ALL.

22 THE COURT: YOU CAN STEP DOWN THANK YOU. WELL,
23 MR. GILLEN, AGAIN.

24 MR. GILLEN: NO, YOUR HONOR. THANK YOU.

25 THE COURT: YOU CAN BE EXCUSED. APPRECIATE YOUR

1 TIME. CALL YOUR NEXT WITNESS.

2 MR. ANTHONY: THE STATE WOULD CALL LIEUTENANT
3 THICKENS AS ITS NEXT WITNESS.

4 JOHN THICKENS, BEING FIRST
5 DULY SWORN, TESTIFIED AS FOLLOWS:

6 DIRECT EXAMINATION BY MR. ANTHONY:

7 Q WOULD YOU STATE YOUR NAME PLEASE?

8 A JOHN THICKENS.

9 Q MR. THICKENS, HOW ARE YOU EMPLOYED?

10 A I'M EMPLOYED WITH THE ROCK HILL POLICE
11 DEPARTMENT.

12 Q WHAT'S YOUR CURRENT POSITION THERE?

13 A CURRENTLY I'M THE LIEUTENANT OVER THE
14 PROFESSIONAL STANDARDS UNIT.

15 Q AND WHAT WAS YOUR POSITION THERE BACK ON JULY 23
16 OF LAST YEAR?

17 A I WAS LIEUTENANT IN THE DETECTIVE DIVISION.

18 Q AND WERE YOU WORKING ON THE 23 OF JULY?

19 A YES, SIR.

20 Q AND DURING THE COURSE OF THAT DAY, DID YOU
21 BECOME INVOLVED IN THE CASE OF THE SHOOTING
22 INVOLVING ANTONIO GORDON?

23 A YES, SIR.

24 Q AND DID YOU, DURING THAT DAY, HAVE OCCASION TO
25 INTERVIEW MR. GORDON?

1 A YES, I DID.

2 Q OKAY. WHERE DID YOU SPEAK TO HIM AT?

3 A IN MY OFFICE.

4 Q OKAY. AND APPROXIMATELY WHAT TIME DID YOU SPEAK

5 TO HIM?

6 A IT WAS IN THE AFTERNOON. IT WAS PROBABLY AROUND

7 THREE O'CLOCK OR SO.

8 Q OKAY. AND YOU JUST HEARD DETECTIVE WALDROP

9 TESTIFY AS TO THE STATEMENT THAT MR. GORDON

10 GAVE?

11 A YES, I DID.

12 Q THE MORNING OF JULY 23?

13 A YES, SIR.

14 Q AND WHY WAS IT THAT YOU DECIDED TO INTERVIEW HIM

15 A SECOND TIME IN THE AFTERNOON OF JULY 23?

16 A I HAD DIFFERENT PEOPLE DOING DIFFERENT THINGS

17 AND DOING INTERVIEWS AND SO ON, AND AS THESE

18 THINGS WOULD GET DONE, I WAS REVIEWING DIFFERENT

19 MATERIAL AND I SAW DISCREPANCIES IN MR. GORDON'S

20 STATEMENT FROM WHAT I ALREADY KNEW HAD HAPPENED

21 SO I DECIDED TO INTERVIEW HIM MYSELF.

22 Q OKAY. AND IF YOU RECALL WHERE WAS MR. GORDON AT

23 WHEN YOU BROUGHT HIM INTO YOUR OFFICE? WHERE

24 DID YOU GET HIM FROM?

25 A I DON'T REMEMBER IF HE WAS BROUGHT OVER OR IF

1 BUT HE CAME OVER FROM ACROSS THE HALL IN THE
2 CONFERENCE ROOM. SOMEBODY MAY HAVE BROUGHT HIM
3 OR I MAY HAVE GONE TO GET HIM, BUT I DON'T
4 REMEMBER.

5 Q OKAY. BUT HE WAS IN THE CONFERENCE ROOM?

6 A YES, SIR.

7 Q AND WAS THERE ANYONE ELSE THERE WHEN YOU BEGAN
8 SPEAKING TO MR. GORDON?

9 A NO.

10 Q OKAY. AND WHEN YOU SET DOWN TO TALK TO HIM IN
11 YOUR OFFICE, WHAT DID YOU SAY TO HIM? WHAT DID
12 YOU TALK TO HIM ABOUT?

13 A I TOLD HIM I WANTED TO INTERVIEW HIM ABOUT THE
14 INCIDENT AND TAKE A STATEMENT FROM HIM.

15 Q AND BEFORE YOU BEGAN TO SPEAK TO HIM, DID YOU
16 ADVISE HIM OF ANY RIGHTS?

17 A YES, SIR, I DID THE SAME THING I ALWAYS DO WHEN
18 I TAKE A STATEMENT.

19 Q DID YOU USE ANY FORM TO ADVISE DEFENDANTS OF
20 THEIR RIGHTS BEFORE YOU BEGAN TO SPEAK TO THEM?

21 A YES, I USE THE DEPARTMENT'S FORM.

22 (STATE'S EXHIBIT FOUR FOR IDENTIFICATION RIGHTS
23 FORM.)

24 Q I JUST HANDED UP AN ITEM MARKED STATE'S EXHIBIT
25 FOUR FOR IDENTIFICATION FOR THE PURPOSES OF THE

1 HEARING, COULD YOU IDENTIFY THAT DOCUMENT?

2 A YES, SIR, THIS WOULD BE THE STATEMENT THAT I
3 TOOK FROM MR. GORDON.

4 Q AND ARE THE RIGHTS THAT YOU ADVISED HIM OF
5 RECORDED ON THAT FORM?

6 A YES, SIR.

7 Q WOULD YOU GO AHEAD AND TELL THE COURT WHAT
8 RIGHTS YOU ADVISED MR. GORDON OF?

9 A WOULD YOU LIKE ME TO READ THEM OFF?

10 Q YES, IF YOU WOULD PLEASE.

11 A BEFORE WE ASK YOU ANY QUESTIONS YOU MUST
12 UNDERSTAND YOUR RIGHTS. YOU HAVE THE RIGHT TO
13 REMAIN SILENT. ANYTHING YOU SAY CAN BE USED
14 AGAINST YOU IN COURT. YOU HAVE THE RIGHT TO
15 TALK TO A LAWYER FOR ADVICE BEFORE WE ASK YOU
16 ANY QUESTIONS AND TO HAVE HIM WITH YOU DURING
17 QUESTIONING. YOU HAVE THE RIGHT TO THIS ADVICE
18 AND PRESENCE OF A LAWYER EVEN IF YOU CANNOT
19 AFFORD TO HIRE ONE. WE HAVE NO WAY OF
20 APPOINTING YOU A LAWYER, BUT ONE WILL BE
21 APPOINTED BY THE COURT FOR YOU IF YOU WISH. IF
22 YOU WISH YOU MAY ANSWER QUESTIONS WITHOUT THE
23 PRESENCE OF A LAWYER AND YOU MAY STOP ANSWERING
24 ANY TIME YOU DESIRE UNTIL A LAWYER IS PRESENT.

25 Q OKAY. AND DID YOU HAVE MR. GORDON DO ANYTHING

1 TO INDICATE THAT HE UNDERSTOOD THOSE RIGHTS?

2 A YES, SIR, I HAVE THE PERSON I'M INTERVIEWING IF
3 THEY UNDERSTAND THEIR RIGHTS I SHOW THEM WHERE
4 THEY CAN SIGN INDICATING THAT, AND THAT'S WHAT
5 HE DID AND THEN I SIGNED TO THE LEFT OF THAT.

6 Q OKAY. AND THEN AFTER HE SIGNED THAT SECTION OF
7 THE FORM, DID YOU READ HIM ANYTHING ELSE?

8 A THE NEXT PARAGRAPH.

9 Q ALL RIGHT. WHAT DOES THE NEXT PARAGRAPH SAY?

10 A I HAVE READ OR HAD READ TO ME THE STATEMENT OF
11 MY RIGHTS SHOWN ABOVE. I UNDERSTAND WHAT MY
12 RIGHTS ARE AND I AM WILLING TO MAKE A STATEMENT.
13 I DO NOT WANT A LAWYER AT THIS TIME. I
14 UNDERSTAND AND KNOW WHAT I AM DOING. I KNOW
15 THAT THE PERSON TALKING WITH ME IS A POLICE
16 OFFICER AND I UNDERSTAND WHAT HE'S TALKING
17 ABOUT.

18 Q AND DID YOU HAVE MR. GORDON DO ANYTHING TO
19 INDICATE THAT HE UNDERSTOOD THAT PART OF THE
20 FORM?

21 A YES, SIR, THE SAME THING. IF HE UNDERSTOOD I
22 HAD HIM SIGN HERE AND THEN I SIGNED TO THE LEFT.

23 Q NOW DURING THE COURSE OF TIME THAT YOU WERE
24 ADVISING MR. GORDON OF THESE RIGHTS, HOW DID HE
25 APPEAR TO YOU?

1 A WELL, NOTHING OUT OF THE ORDINARY AS FAR AS
2 BEING STRAIGHT FORWARD, ACCEPTABLE TO TALKING
3 WITH ME. SAT UP RIGHT IN HIS CHAIR, SEEMED
4 ALERT TO ME.

5 Q DID HE APPEAR TO BE UNDER THE INFLUENCE OF ANY
6 SUBSTANCE?

7 A NO, SIR.

8 Q OKAY. WHEN YOU WERE ADVISING HIM OF THESE
9 RIGHTS, DID HE APPEAR TO UNDERSTAND WHAT YOU
10 WERE TALKING TO HIM ABOUT?

11 A YES, SIR.

12 Q DID HE EVER ASK ANY QUESTIONS CONCERNING THE
13 THINGS YOU WERE TELLING HIM?

14 A NO, SIR.

15 Q DID HE, ONCE YOU ADVISED HIM OF THESE RIGHTS,
16 DID HE INVOKE HIS RIGHT EITHER TO REMAIN SILENT
17 OR HIS RIGHT TO COUNSEL?

18 A NO, HE AGREED TO TALK WITH ME.

19 Q OKAY. AND WHEN YOU BEGAN TO INTERVIEW HIM AFTER
20 HE AGREED TO TALK TO YOU, HOW DID YOUR
21 CONVERSATION WITH HIM PROCEED?

22 A I INFORMED HIM THAT I HAD THE INFORMATION FROM
23 THE OTHER PEOPLE INVOLVED IN THIS INCIDENT AND
24 THAT THERE WAS SOME THINGS THAT DIDN'T ADD UP SO
25 TO SPEAK, SOME DISCREPANCIES I WANTED TO ASK HIM

1 ABOUT. I ASKED HIM IF HE REALLY WANTED SOMEBODY
2 ELSE TO POSSIBLY GO TO JAIL FOR SOMETHING THAT I
3 THOUGHT HE DID BASED ON THE INFORMATION I HAD.

4 Q AND WHAT HAPPENED AFTER YOU TOLD HIM THIS?

5 A HE SAID THAT, HE INDICATED HE DIDN'T WANT
6 ANYBODY ELSE TO BE PENALIZED FOR SOMETHING THAT
7 HE DID. AND I SAID, WELL, I HAVE SOME QUESTIONS
8 FOR YOU THEN AND THEN HE AGREED TO GIVE A
9 STATEMENT. I HAD MY TYPEWRITER THERE, AND SO I
10 BEGAN QUESTIONING HIM AND HE GAVE THE STATEMENT
11 RIGHT HERE.

12 Q OKAY. AND DID YOU TAKE ANY PRELIMINARY
13 INFORMATION FROM MR. GORDON BEFORE YOU BEGAN TO
14 TYPE UP THE STATEMENT?

15 A NO, SIR, HE BASICALLY GAVE ME HIS VERSION OF
16 WHAT HAPPENED.

17 Q IS THERE INFORMATION RECORDED ON THIS FORM
18 CONCERNING MR. GORDON?

19 A ON THE STATEMENT?

20 Q YES, SIR.

21 A YES, WHAT I TYPED ON IT.

22 Q IS THERE ANY INFORMATION CONCERNING WHO HE IS,
23 WHERE HE LIVES, THAT TYPE OF THING?

24 A YEAH, THEY MENTION THE RESIDENCE ON VERNSDALE
25 ROAD AND SO ON.

1 Q DID YOU GATHER THAT INFORMATION FROM MR. GORDON?

2 A WELL, YEAH, HE GAVE THAT INFORMATION, BUT OF
3 COURSE, I ALREADY KNEW THAT TOO.

4 Q OKAY. AND DID MR. GORDON TELL YOU HOW FAR HE
5 HAD GONE IN SCHOOL AND WHETHER HE COULD READ AND
6 WRITE BEFORE YOU BEGAN TO TALK TO HIM?

7 A YES, SIR, HE SAID HE COMPLETED UP TO THE NINTH
8 GRADE AND THAT HE COULD READ AND WRITE.

9 Q OKAY. AND WOULD YOU GO AHEAD AND TELL THE COURT
10 WHAT MR. GORDON SAID WHEN YOU SPOKE TO HIM THAT
11 AFTERNOON JULY 23?

12 A OKAY. HERE'S HIS STATEMENT. A COUPLE OF WEEKS
13 AGO I BOUGHT A BLUE CHEVROLET CELEBRITY FROM A
14 GIRL NAMED TOWANDA BURRIS. I PAID \$150. THEN
15 YESTERDAY ME, TERRANCE MCCREARY AND MY BROTHER
16 MONTA AND GARY MOFFAT WAS RIDING AROUND ALL
17 DAY. WE WENT SWIMMING IN THE AFTERNOON THEN WE
18 WERE ALL DOWN AT MY PLACE ON VERNSDALE. MONTA
19 TOOK THE CAR WITH TERRANCE AND GARY TO RIDE
20 AROUND. I STAYED AT THE TRAILER ON VERNSDALE
21 UNTIL THEY CAME BACK AROUND 10:30 P.M. WHEN
22 THEY GOT BACK I GOT IN THE CAR WITH THE OTHER
23 THREE AND WE WENT RIDING. WE WENT TO NEWPORT TO
24 TERRANCE'S PEOPLE'S PLACE AND TOOK A TAG OFF A
25 HONDA AND PUT IT ON THE CELEBRITY. I ALSO

1 WANTED SOME SPEAKERS FOR MY CAR THAT TERRANCE
2 HAD SO WE GOT THOSE. WHILE WE WAS RIDING AROUND
3 WE JUST HAPPENED TO SEE THAT CAR. IT WAS A
4 SILVER BMW. TERRANCE SAY IT WAS TWO GIRLS IN
5 THE CAR AND THEY WAS RIDING UP THE STREET WITH
6 NO LIGHTS ON. THEN WE FIGURED OUT THAT IT WAS
7 TWO BOYS. WE HEARD SOME MUSIC LIKE AND JUNE BUG
8 HEARD THE MUSIC AND SAID HE HAD TO HAVE THE
9 CAR. JUNE BUG GAVE ME THE GUN AND TOLD ME TO GO
10 GET THE BMW, SO I TOOK THE GUN. THE BMW WAS IN
11 THE DRIVEWAY AND JUNE BUG (TERRANCE) BLOCKED
12 THEM IN. I WENT UP TO THE DRIVER'S WINDOW AND I
13 TOLD THEM I WANTED THEIR MONEY. THEY SAY THEY
14 DIDN'T HAVE NO MONEY. I WAS HOLDING THE GUN
15 POINTING AT THEM SIDEWAYS LIKE. I TOLD THEM GET
16 OUT OF THE CAR BECAUSE MY BOY WANT THE CAR.
17 MONTA WAS STANDING NEXT TO ME AND GARY GOT OUT
18 AND WENT AROUND THE OTHER SIDE OF THE CAR. THEY
19 WOULDN'T GET OUT OF THE CAR. OR THEY WOULDN'T
20 GET OUT THE CAR AND STARTED BACKING UP. I HAD
21 THE GUN POINTED AT THEM AND THEN IT WENT OFF. I
22 HAD ONLY SHOT THAT GUN ONCE BEFORE AND I DON'T
23 REALLY KNOW HOW IT WORKS. I WISH I COULD HAVE
24 GOT THE BULLETS OUT, BUT IT WENT OFF. I THOUGHT
25 THE GUY GOT HIT IN THE LEG. THE BMW WAS DRIVING

1 STRAIGHT. AT FIRST I DIDN'T KNOW WHERE THE
2 BULLET WENT BECAUSE THE CAR KEPT GOING. THEN WE
3 ALL GOT BACK IN THE CAR. TERRANCE WAS SITTING
4 IN THE CAR THE WHOLE TIME BUT HE WAS TRYING TO
5 TALK JUNK TO THEM FROM THE CAR. THEN WE WENT TO
6 THE COUNTRY TO MY HOUSE ON VERNSDALE. THEN
7 MONTA TOOK THE CAR TO TAKE THE OTHER BOYS HOME.
8 THE NEXT THING I KNOW IS THE POLICE CHASING MY
9 BROTHER BECAUSE THE CAR GOT CHASED BACK TO MY
10 HOUSE.

11 THEN THERE IS A SECOND SMALL "P" INITIALED HERE
12 AND THEN THERE IS ANOTHER PARAGRAPH I ADDED. I
13 WANT TO ADD THAT I WANT TO MAKE THIS STATEMENT
14 AND I'VE BEEN OFFERED THE OPPORTUNITY TO HAVE MY
15 GRANDMOTHER OR MOTHER WITH ME, BUT I JUST WANTED
16 TO TELL THE TRUTH NOW AND GET THIS OVER WITH SO
17 I DON'T NEED NO ONE WITH ME. CAPTAIN CABINESS
18 ASKED ME IF I WANTED SOMEONE FROM MY FAMILY OR A
19 LAWYER WITH ME, BUT I'M BEING TRUTHFUL ABOUT
20 WHAT HAPPENED AND I'M SORRY FOR IT. I WOULD
21 REALLY JUST LIKE TO GET THIS OVER WITH SO I CAN
22 SEE MY SEVEN-MONTH-OLD BABY.

23 Q AND THIS STATEMENT THAT HE MADE OR THIS PART OF
24 THE STATEMENT CONCERNING CAPTAIN CABINESS, DID
25 CAPTAIN CABINESS APPEAR OR COME TO YOUR OFFICE

1 AT SOME POINT WHILE YOU WERE TALKING TO ANTONIO
2 GORDON?

3 A RIGHT TOWARD THE END OF THE STATEMENT HE DID,
4 YES. RIGHT ABOUT AT THE END.

5 Q AND DID CAPTAIN CABINESS SAY ANYTHING OTHER THAN
6 WHAT'S RECORDED HERE IN THE STATEMENT THAT MR.
7 GORDON IS SAYING THAT CAPTAIN CABINESS TALKED TO
8 HIM ABOUT?

9 A WHEN HE KNOCKED ON THE DOOR CAPTAIN CABINESS, I
10 OPENED IT, HE ASKED ME TO STEP OUT FOR A MOMENT,
11 AND I WAS RIGHT AT THE END OF THE STATEMENT. I
12 STEPPED OUT, AND HE ASKED ME IF I KNEW ANYTHING
13 ABOUT MR. WELLBORN REPRESENTING MR. GORDON AND I
14 DIDN'T. THAT'S THE FIRST I HAD HEARD OF THAT.
15 AND HE SAID OKAY. AND HE ASKED MR. GORDON
16 SOMETHING TO THE EFFECT OF YOU WANT A LAWYER AND
17 THAT'S WHEN MR. GORDON MADE THAT STATEMENT SO
18 HEARING THAT EXCHANGE I WENT AHEAD AND TYPED IT
19 ON THE BOTTOM OF MY STATEMENT AND THEN ASKED MR.
20 GORDON TO SIGN THAT TOO.

21 Q ALL RIGHT. AND DID YOU MAKE ANY PROMISES TO MR.
22 GORDON BEFORE OR DURING THE COURSE OF THIS
23 INTERVIEW CONCERNING TREATMENT HE MIGHT RECEIVE?

24 A NO, SIR.

25 Q OKAY. AFTER YOU TOOK THIS STATEMENT FROM MR.

1 GORDON, WHAT DID YOU DO?

2 A AFTER I TOOK THE STATEMENT FROM MR. GORDON?

3 Q AFTER HE TOLD YOU WHAT HE HAD TO SAY AND YOU
4 TYPED IT UP, WHAT DID YOU DO?

5 A AFTER IT WAS SIGNED OR -- WELL, WHAT I DO TO
6 CLOSE OUT A STATEMENT IS I ASK HIM TO SIGN ALL
7 THREE PAGES AT THE BOTTOM, SO YOU SEE ON THE
8 FIRST, THE BOTTOM OF THE FIRST PAGE, THE SECOND
9 PAGE, AND THE THIRD PAGE WE GO TO THIS
10 PARAGRAPH, AND I CAN READ YOU THE PARAGRAPH, BUT
11 IT SAYS HE GIVES HIS OWN STATEMENT OF HIS OWN
12 FREE WILL AND ACCORD AND SO ON. IF YOU WANT ME
13 TO READ THAT I CAN.

14 Q GO AHEAD AND READ WHAT YOU HAVE HIM SIGN.

15 A ON PAGE THREE BEFORE HE SIGNS IT SAYS,
16 PERSONALLY APPEARS BEFORE ME ANTONIO GORDON WHO
17 DEPOSES AND SAYS I MAKE THIS STATEMENT OF MY OWN
18 FREE WILL AND ACCORD WITHOUT REWARD OR HOPE OF
19 REWARD. I HAVE NOT BEEN MISTREATED OR
20 THREATENED IN ANY WAY. ALL OF THE ABOVE IS THE
21 TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE
22 TRUTH SO HELP ME GOD. I HAVE READ OR HAD READ
23 TO ME THE ABOVE THE STATEMENT CONSISTING OF
24 THREE PAGES AND RECEIVED A COPY OF THE SAME.

25 Q AND DID MR. GORDON DO ANYTHING TO INDICATE THAT

1 WHAT YOU JUST READ WAS THE CASE? DID HE SIGN
2 ANYTHING?

3 A YES, HE SIGNED THE STATEMENT AND I ASK PEOPLE
4 WHO GIVE STATEMENTS TO INITIAL AT THE END OF
5 THE PARAGRAPH, SO YOU'LL SEE THAT HE DID THAT
6 ALSO ON BOTH THOSE PARAGRAPHS ON THE SECOND PAGE
7 AND SIGNED AT THE BOTTOM OF THE FIRST TWO PAGES
8 AS WELL AS THE THIRD PAGE.

9 Q AND THEN WAS ANYTHING DONE, DID YOU NOTORIZE THE
10 STATEMENT?

11 A YES, I DID. I NOTORIZED SEVERAL OF THE
12 STATEMENTS IN THIS CASE FOLDER. THIS WAS ONE OF
13 THEM.

14 Q AND WHAT TIME DID THIS STATEMENT BEGIN?

15 A AT 3:30 AND IT ENDED AT 4:10.

16 Q AND IS THE 3:30 TIME THE TIME YOU ACTUALLY
17 STARTED TALKING TO MR. GORDON OR IS THAT THE
18 TIME THAT YOU STARTED ACTUALLY TYPING UP THE
19 STATEMENT?

20 A THAT IS WHEN I STARTED TALKING TO MR. GORDON.

21 Q OKAY. AND ONCE THE INTERVIEW WAS CONCLUDED AND
22 MR. GORDON HAD SIGNED THE PAGES, WHAT DID YOU
23 DO?

24 A AFTER CONCLUDING THE INTERVIEW THEN I DON'T
25 REMEMBER EXACTLY WHO TOOK HIM TO THE BOOKING

1 AREA, BUT THAT'S WHAT WOULD HAVE HAPPENED NEXT
2 AND I WENT ON TO SOMETHING ELSE.

3 Q DID MR. GORDON GET A COPY OF THE STATEMENT?

4 A I OFFERED HIM A COPY OF THE STATEMENT AND IT'S
5 VAGUE IF I REMEMBER IT AT ALL, BUT WHAT I DO IS
6 MY STANDARD PROCEDURE IS ANYBODY WHO GIVES A
7 STATEMENT WHETHER THEY ARE A VICTIM, A WITNESS,
8 OR A SUSPECT IS I OFFER THEM A COPY OF THE
9 STATEMENT. IF THEY WANT ONE I XEROX A COPY OF
10 IT FOR THEM AND GIVE IT TO THEM. WHETHER OR NOT
11 HE ASKED FOR IT OR NOT I DON'T REMEMBER.

12 Q THANK YOU.

13 MR. ANTHONY: THAT'S ON ALL ON DIRECT.

14 CROSS EXAMINATION BY MR. D'AGOSTINO:

15 Q GOOD AFTERNOON, OFFICER THICKENS.

16 A GOOD AFTERNOON.

17 Q NOW DID YOU GO TO EITHER THE CRIME SCENE OUT
18 THERE IN DOWNTOWN ROCK HILL?

19 A YES, SIR.

20 Q SO YOU WERE OUT THERE FOR AWHILE?

21 A YES, SIR.

22 Q AND THEN DID YOU GO TO THE, DID YOU JOIN IN THE
23 CHASE THAT STARTED ON CONSTITUTION?

24 A I WASN'T IN THE ACTUAL CHASE, BUT I WAS IN THE
25 CAR WHEN IT BEGAN AND SO THE BEST WAY TO PUT IT

1 I WOULD HAVE PARALLELED IT.

2 Q OKAY. THEN YOU ENDED UP AT THE GORDON
3 HOUSEHOLD?

4 A YES, SIR.

5 Q THE FIRST TIME THAT MORNING?

6 A YES, SIR.

7 Q WERE YOU HERE YESTERDAY WHEN CAPTAIN CABINESS
8 TESTIFIED?

9 A NO, SIR.

10 Q NOT YESTERDAY I'M SORRY. WEDNESDAY?

11 A WHICHEVER DAY I WASN'T HERE, NO.

12 Q YOU WEREN'T HERE. OKAY. ANYWAY HE TALKED ABOUT
13 THE CHASE THAT'S THE ONLY REASON WHY I WAS
14 ASKING.

15 A OKAY.

16 Q SO WHEN YOU TOOK THIS STATEMENT WHERE WAS
17 ANTONIO GORDON WHEN YOU FIRST GOT HIM? WAS HE
18 IN THAT ROOM WE HEARD OFFICER WALDROP TALKING
19 ABOUT?

20 A HE CAME OVER FROM THE CONFERENCE ROOM ACROSS THE
21 HALL, YES, SIR.

22 Q DID HE STAY IN THAT ROOM FROM THE TIME OFFICER
23 WALDROP FINISHED WITH HIM UNTIL YOU GOT HIM OR
24 DID HE GO TO THE JUVENILE LOCK UP SECTION IF YOU
25 KNOW?

1 A TO MY KNOWLEDGE HE WOULD HAVE COME DIRECTLY OVER
2 FROM THE CONFERENCE ROOM. I DON'T THINK, THAT'S
3 TO THE BEST OF MY KNOWLEDGE. I DON'T REMEMBER
4 ESCORTING HIM MYSELF SO I DON'T KNOW.

5 Q WELL, THERE WAS SOME, OFFICER WALDROP FINISHED
6 WITH HIM AT 11:30. YOU STARTED WITH HIM I THINK
7 YOU SAID ABOUT 3 O'CLOCK?

8 A 3:30 I THINK.

9 Q THAT'S WHAT TIME YOUR STATEMENT INDICATES. DID
10 YOU SPEND SOME TIME WITH HIM BEFOREHAND?

11 A I ONLY INTERVIEWED HIM ONCE.

12 Q RIGHT. THIS STATEMENT THAT YOU TOOK FROM HIM,
13 THE ONE THAT'S THE THREE PAGE ONE YOU JUST
14 TESTIFIED ABOUT.

15 A YES, SIR.

16 Q ON THE BACK IT SAYS STATEMENT TAKEN ON 7/23/98
17 AT 3:30.

18 A OKAY.

19 Q AND DOES THAT MEAN YOU STARTED THE STATEMENT AT
20 3:30 AND EVERYTHING ENDED WITH YOU AT 4:10?

21 A YES, SIR, THAT'S WHAT THAT MEANS. I WAS WITH
22 HIM FROM 3:30 TO 4:10.

23 Q AND THAT'S THE PURPOSE OF THOSE TIMES THERE IS
24 TO TELL US THE TIMES YOU WERE WITH HIM.

25 A WELL, THE PURPOSE WOULD BE TO SAY WHEN THE

1 STATEMENT BEGAN AND WHEN IT ENDED.

2 Q OKAY. BUT IN ANY EVENT DID YOU TALK TO HIM ANY
3 ABOUT IT BEFOREHAND OR ANY LENGTH OF TIME MORE
4 THAN FIVE MINUTES BEFORE THE STATEMENT ITSELF
5 BEGAN?

6 A NO, SIR, I DIDN'T SPEND MUCH TIME WITH MR.
7 GORDON.

8 Q OKAY.

9 A I SPENT, WHAT WOULD THAT BE 40 MINUTES OR SO AT
10 THE MOST.

11 Q RIGHT, SO YOU HEARD OFFICER WALDROP TESTIFY HE
12 WENT IN THERE AND TALKED TO HIM MAYBE A HALF
13 HOUR OR WHATEVER HE TESTIFIED TO THEN THE ACTUAL
14 STATEMENT STARTED AND IT LASTED FROM THE TIME HE
15 HAS ON HERE THE BEGINNING TO THE END. YOU
16 DIDN'T DO ANY OF THAT, DID YOU?

17 A IT WAS PROBABLY FIVE MINUTES OR LESS WHILE I WAS
18 GETTING READY TO TAKE A STATEMENT.

19 Q OKAY. AND I HEARD YOU READ WHAT'S ON THIS
20 EXHIBIT IN COURT JUST A FEW MINUTES AGO, IS THAT
21 THE WAY YOU READ THIS TO ANTONIO?

22 A AS FAR AS HIS RIGHTS?

23 Q YES, SIR.

24 A YES, SIR.

25 Q AND THEN THE SECOND PARAGRAPH AS FAR AS THE

1 STATEMENT, THE STATEMENT OF HIS RIGHTS WHERE HE
2 SIGNED IT A SECOND TIME, YOU READ IT TO US A
3 LITTLE WHILE AGO, DID YOU READ IT THE SAME WAY
4 TO HIM?

5 A THE PARAGRAPH UNDER THE ACTUAL MIRANDA?

6 Q YES, SIR.

7 A YES, SIR.

8 Q OKAY. NOW DURING YOUR INTERVIEW WITH HIM DID
9 YOU AT ANY TIME TELL HIM THAT IF YOU GO AHEAD
10 AND GIVE A STATEMENT YOU COULD GET HOME AND SEE
11 HIS SEVEN-MONTH-OLD BABY?

12 A NO, SIR.

13 Q YOU DIDN'T TELL HIM THAT?

14 A NO, SIR.

15 Q DID YOU INDICATE THAT TO HIM THAT HE'D BE ABLE
16 TO GO HOME?

17 A NO, SIR. I DIDN'T EVEN KNOW HE HAD A
18 SEVEN-MONTH-OLD BABY.

19 Q WELL, YOU HAVE IT IN HIS STATEMENT?

20 A BUT I DIDN'T KNOW IT AT THE BEGINNING OF THE
21 STATEMENT.

22 Q NOW YOU'RE SAYING CAPTAIN CABINESS CAME IN
23 TOWARDS THE TAIL END OF THE STATEMENT, IS THAT
24 RIGHT?

25 A YES, SIR.

1 Q YOU DIDN'T KNOW, WERE YOU THE LEAD INVESTIGATOR
2 ON THIS CASE?

3 A YES, SIR.

4 Q AND YOU'RE SAYING YOU DIDN'T KNOW UNTIL CAPTAIN
5 CABINESS CAME IN AT THE END OF THE STATEMENT
6 THAT CHRIS WELLBORN HAD BEEN OUTSIDE ASKING TO
7 SEE HIM?

8 A CORRECT.

9 Q HAD YOU FINISHED ANTONIO'S STATEMENT AT THE TIME
10 THAT CAPTAIN CABINESS CAME TO TALK TO YOU?

11 A NO, WE HADN'T ACTUALLY, I CAN SHOW YOU ABOUT
12 WHERE I WAS.

13 Q TELL ME ABOUT WHERE?

14 A OKAY. IT WAS ABOUT THE LAST SENTENCE.

15 Q OKAY.

16 A OF THE SECOND PARAGRAPH ON THE LAST PAGE HERE.
17 SO IN OTHER WORDS, HE CAME IN RIGHT ABOUT HERE.

18 Q WHEN YOU'RE SAYING RIGHT ABOUT HERE?

19 A WHICH WOULD BE, THE NEXT THING I KNOW THE POLICE
20 CHASING MY BROTHER BECAUSE THE CAR GOT CHASED.
21 I FINISHED TYPING THAT, I LISTENED TO THE
22 EXCHANGE, CAPTAIN CABINESS ASKED ME A QUESTION,
23 AND HEARING THAT THEN I TYPED DOWN WHAT HAD JUST
24 OCCURRED RIGHT THERE TOO.

25 Q ALL RIGHT. AND AT THE TIME CAPTAIN CABINESS HAD

1 COME IN YOU WERE IN THE MIDDLE OF THAT LAST
2 SENTENCE YOU MEAN?

3 A I WAS RIGHT AT THE END OF THE STATEMENT.

4 Q ALL RIGHT. YOU HADN'T HAD ANTONIO SIGN ANYTHING
5 OR DO ANYTHING YET?

6 A NOT YET, NO, SIR.

7 Q WELL, DID YOU THEN IMMEDIATELY TYPE THAT LAST
8 PARAGRAPH ABOUT THE OFFER OF THE OPPORTUNITY TO
9 HAVE THE GRANDMOTHER OR THE MOTHER OR DID YOU
10 COME AND DO THAT LATER?

11 A WELL, I DIDN'T HARDLY LEAVE THE OFFICE. THIS
12 WAS RIGHT AT THE DOOR, SO AFTER CAPTAIN CABINESS
13 ASKED ME ABOUT MR. WELLBORN AND THEN TURNED TO
14 MR. GORDON AND ASKED HIM IF HE WANTED AN
15 ATTORNEY AND AFTER THAT CAPTAIN CABINESS LEFT
16 AND THAT'S ALL THERE WAS TO THAT THEN I SAT BACK
17 DOWN AND I WENT AHEAD AND TYPED THAT LAST
18 PARAGRAPH AND MR. GORDON WAS TALKING AND THAT'S
19 WHEN I LEARNED THAT, YOU KNOW, HE SAID SOMETHING
20 ABOUT HIS SEVEN-MONTH-OLD BABY AND SO ON. I
21 TYPED DOWN WHAT HE SAID.

22 Q SO THESE ARE HIS WORDS ABOUT NOT WANTING TO
23 HAVE, THIS IS HIS WORD "OPPORTUNITY" TO HAVE MY
24 GRANDMOTHER OR MOTHER, THOSE ARE HIS WORDS?

25 A ALL THOSE WORDS ON THE STATEMENT ARE HIS WORDS.

1 Q "OPPORTUNITY" IS HIS WORD, ALL RIGHT.

2 A YOU CAN READ THE SECOND STATEMENT TOO. WOULD
3 YOU WANT ME TO GO AHEAD AND START WITH I WANT TO
4 ADD?

5 Q SURE, GO AHEAD.

6 A OKAY. I WANT TO ADD THAT I WANT TO MAKE THIS
7 STATEMENT AND I'VE BEEN OFFERED THE OPPORTUNITY
8 TO HAVE MY GRANDMOTHER OR MOTHER WITH ME BUT I
9 JUST WANT TO TELL THE TRUTH NOW AND GET THIS
10 OVER WITH SO I DON'T NEED NO ONE WITH ME.

11 CAPTAIN CABINESS ASKED ME IF I WANTED SOMEONE
12 FROM MY FAMILY OR A LAWYER WITH ME BUT I'M BEING
13 TRUTHFUL ABOUT WHAT HAPPENED AND I'M SORRY FOR
14 IT. I WOULD REALLY LIKE TO JUST GET THIS OVER
15 WITH SO I CAN SEE MY SEVEN-MONTH-OLD BABY.

16 Q WHY DID YOU HAVE HIM INITIAL THE PARAGRAPH
17 ABOVE, GO DOWN SOME SPACE, AND SIGN THIS LAST
18 PARAGRAPH?

19 A THAT'S WHAT I DO AT THE END OF PARAGRAPHS IS AS
20 WE'RE GOING THROUGH THE STATEMENT AT THE TIME OF
21 SIGNATURE AND IF THEY UNDERSTAND IT THEN I HAVE
22 THEM INITIAL, AND THAT'S A STANDARD WAY I DO MY
23 STATEMENTS. JUST AN INDICATOR THAT THEY'VE READ
24 AND UNDERSTAND WHAT THEIR STATEMENT IS AND THEY
25 AGREE WITH IT.

1 Q NOW SO YOU WOULD HAVE BEEN, JUST SO I UNDERSTAND
2 IT CORRECTLY, THE ROOM YOU WERE IN IS YOUR
3 OFFICE AS WELL, RIGHT?

4 A IT WAS MY OFFICE, YES, SIR.

5 Q AND THAT'S WHERE YOU TOOK IT DOWN, THE STATEMENT
6 YOU TOOK DOWN RELATING TO THIS CASE WAS IN YOUR
7 OFFICE?

8 A YOU ARE TALKING ABOUT THIS STATEMENT?

9 Q YES.

10 A THIS IS WHERE I TOOK THIS STATEMENT. IT WAS IN
11 MY OFFICE.

12 Q DID YOU TAKE STATEMENTS FROM OTHER WITNESSES,
13 TYPE UP STATEMENTS FROM OTHER WITNESSES IN ANY
14 OTHER OFFICES?

15 A I WROTE SOME OUT. I COULD GO THROUGH THE CASE
16 FOLDER AND SHOW YOU WHICH ONES I DID, BUT AS FAR
17 AS INTERVIEWING ANY OF THE FOUR DEFENDANTS.

18 Q THAT'S WHAT I'M TALKING ABOUT.

19 A RIGHT.

20 Q THAT WAS IN YOUR OFFICE?

21 A THE ONLY OTHER ONE, I'D HAVE TO CHECK ON GARY
22 MOFFAT, BUT I DIDN'T INTERVIEW TERRANCE MCCREARY
23 AND I DIDN'T INTERVIEW MONTA GORDON.

24 Q I THINK YOU DID INTERVIEW GARY MOFFAT. WOULD IT
25 HAVE BEEN IN YOUR OFFICE?

1 A IT WOULD, WELL, IT WOULD HAVE BEEN IN THE
2 DETECTIVE DIVISION.

3 Q UH-HUH.

4 A IT MAY HAVE BEEN IN MY OFFICE.

5 Q NOW WERE YOU WITH ANTONIO THE WHOLE TIME YOU
6 WERE DOING THE INTERVIEW OR WERE THERE OTHER
7 PEOPLE COMING AND GOING OR WERE YOU COMING AND
8 GOING OR DID YOU SIT THERE THE WHOLE TIME?

9 A NO, I SAT THERE THE WHOLE TIME, JUST HE AND I
10 WERE THERE.

11 Q AND HOW LONG DID YOU SPEND WITH GARY MOFFAT
12 BEFORE YOU TOOK HIS STATEMENT?

13 A I DON'T REMEMBER SPENDING ANY TIME AT ALL
14 REALLY.

15 Q YOU PRETTY MUCH KNEW ALL THE FACTS, WHAT YOU
16 BELIEVED TO BE THE FACTS OF THIS CASE BEFORE YOU
17 WENT IN TO TALK TO ANTONIO, RIGHT?

18 A I HAD ALL THE INFORMATION AVAILABLE TO ME THAT
19 HAD BEEN GATHERED THUS FAR.

20 Q YOU HAD INFORMATION FROM GARY MOFFAT AND SOME OF
21 THE OTHER WITNESSES?

22 A I COULD SHOW YOU WHICH INFORMATION I HAD. WHEN
23 YOU SAY SOME OF THE OTHER WITNESSES, I'M NOT
24 SURE WHICH ONES YOU'RE TALKING ABOUT.

25 Q FOR PURPOSES OF, WHAT I'M TRYING TO FIND OUT IS

1 WHAT INFORMATION YOU KNEW WHEN YOU WENT IN TO
2 TALK TO ANTONIO GORDON AS TO HOW THE CRIME
3 OCCURRED. YOU SAID THERE WERE INCONSISTENCIES
4 WITH THE OTHER STATEMENTS?

5 A YES, SIR.

6 Q AND WHAT I UNDERSTOOD IS YOU TOOK THE STATEMENT
7 FROM, THAT THERE HAD BEEN SEVERAL STATEMENTS
8 TAKEN THAT MORNING. IN FACT, WHAT I'VE DONE IS
9 I JUST MADE A LIST OF STATEMENTS AND THE
10 OFFICERS TAKING THOSE STATEMENTS AND THE TIMES.
11 DOES THAT LOOK LIKE ABOUT RIGHT? IF I CAN LOOK
12 AT THAT WITH YOU.

13 A WHICH ONE?

14 Q OFFICER HERRING TALKED TO ASHWORTH, THAT WAS THE
15 FIRST THING IN THE MORNING. HE WAS SOMEONE WHO
16 THE, MR. KRENN AND MR. DIAZ HAD LET OFF, IS THAT
17 CORRECT?

18 A RIGHT.

19 Q THEN YOU HAD TALKED TO TOWANDA BURRIS AND
20 CHYENCA DIXON AND YOU TALKED TO THEM AS
21 INDICATED ON YOUR STATEMENT FROM 6 TO 6:50 AND
22 7:30 TO 8:45?

23 A THESE TWO PEOPLE HERE?

24 Q THE SAME PERSON?

25 A RIGHT.

1 Q SHE JUST GAVE AN ALIAS. THEN OFFICER WALDROP
2 TALKED TO ANTONIO GORDON, DID YOU KNOW WHAT THE
3 RESULT OF THAT TALK WAS? AFTER WALDROP GOT DONE
4 GETTING THAT STATEMENT, DID YOU SEE THAT
5 STATEMENT?

6 A YES.

7 Q ALL RIGHT. AND THEN FONTELLA FEELY, YOU KNEW
8 WHAT SHE HAD SAID THAT WHEN THEY GOT DONE WITH
9 THAT STATEMENT AT 12:30, RIGHT?

10 A I WOULD HAVE HAD IT AVAILABLE TO ME, BUT I DON'T
11 REMEMBER READING THAT SPECIFICALLY BUT MOST
12 LIKELY I WOULD HAVE READ IT.

13 Q MONTA'S STATEMENT, YOU WOULD HAVE READ THAT
14 BECAUSE HIS ENDED AT 12:30?

15 A IS THIS YOUR LIST HERE?

16 Q YES, SIR.

17 A OF COURSE, ALL THESE WOULD BE P.M. SEE THAT'S
18 A.M.

19 Q WELL, I THOUGHT ON YOUR, GO AHEAD AND GET YOUR
20 STATEMENTS OUT. I THINK THAT'S WHAT THE
21 STATEMENTS INDICATED.

22 A WELL, THESE WERE ALL DONE, YOU KNOW, THE
23 INCIDENT HAPPENED AT NIGHT SO WE'RE TALKING
24 ABOUT LUNCH TIME ON YOUR LIST THERE SO THAT
25 SHOULD BE 12:30 P.M.

1 Q WELL, THE INCIDENT HAPPENED AT ONE A.M. IN THE
2 MORNING?

3 A RIGHT.

4 Q AND ON YOUR DOCUMENTS, WELL, LET ME JUST GIVE
5 YOU.

6 A WELL, IF YOU TOOK IT RIGHT OFF THERE BUT I'M
7 JUST TELLING YOU IT SHOULD BE P.M. NO MATTER
8 WHAT THE INFORMATION IS. IN OTHER WORDS, WE'RE
9 DEALING IN THE DAYTIME.

10 Q WELL, AFTER YOU TALKED, Y'ALL TALKED TO TOWANDA
11 OR CHYENCA OR WHICHEVER WAY YOU WANT TO CALL
12 HER, MS. BURRIS DIXON ARE THE SAME PERSON.
13 Y'ALL TALKED TO HER THAT MORNING BEFORE YOU
14 TALKED TO ANTONIO THAT MORNING, DIDN'T YOU?

15 A THAT'S CORRECT. I'M TALKING ABOUT 12:30 ON
16 THERE. ALL THOSE 12:30'S.

17 Q OH, OKAY. I'M SORRY. I THOUGHT YOU WERE SAYING
18 MY WHOLE LIST MEANT P.M. I APOLOGIZE.

19 A WELL, THERE IS A LOT OF 12:30'S ON THERE AND
20 YOURS SAY A.M. BUT IT SHOULD BE P.M.

21 Q I THOUGHT YOU SAID, LET'S JUST CHANGE THAT TO
22 P.M.

23 A THAT'S WHY I WASN'T SURE WHERE YOU GOT THAT
24 INFORMATION.

25 Q SO THAT'S WHAT YOU'RE TALKING ABOUT. SO THAT'S

1 12:30 P.M. 11:15 A.M. TO 12:30 P.M.

2 A AND THE NEXT ONE.

3 Q IS 11:30 A.M. TO 12:30 P.M.

4 A AND THE NEXT ONE.

5 Q WELL, I HAVE THAT ONE RIGHT 2:06, 1:15 P.M. TO
6 2:06 P.M. ONNA JOHNSON. AND THEN GARY MOFFAT
7 FROM 3 TO 4:05 P.M.

8 A OKAY.

9 Q AND TERRANCE FROM 3:35 TO 5:10 AND ANTONIO FROM
10 3:30 TO 4:10 SO YOU WOULD HAVE HAD, PROBABLY
11 WOULDN'T HAVE HAD TERRANCE BECAUSE THEY
12 WEREN'T DONE WITH TERRANCE'S YET AND GARY'S,
13 WELL, LET ME GET OUT GARY'S STATEMENT.

14 A A LOT OF THAT OCCURRED AT ---

15 Q LOOK AT THAT THIRD PAGE OF GARY MOFFAT'S
16 STATEMENT. YOU TOOK THAT STATEMENT, DIDN'T YOU?

17 A RIGHT, SO YOU WANT TO ASK ME THE DIFFERENCE
18 BETWEEN 3 AND 3:30?

19 Q WHAT I WANT TO ASK YOU IS IF YOU WERE WITH, YOU
20 TESTIFIED THAT THE TIMES THAT ARE ON THE THIRD
21 PAGE OF THE STATEMENT ARE THE TIMES THAT ARE
22 RECORDED THERE TO INDICATE THE TIME YOU SPENT
23 WITH THE SUSPECT, ALL RIGHT, AND ON GARY
24 MOFFAT'S STATEMENT YOU HAVE THAT YOU WERE WITH
25 HIM FROM 3 O'CLOCK TO 4:05?

1 A YES, SIR.

2 Q ON ANTONIO GORDON'S STATEMENT THAT YOU WERE WITH
3 HIM FROM 3:30 TO 4:10?

4 A THAT'S RIGHT.

5 Q AND YOU SAID YOU WEREN'T WITH EITHER ONE OF THEM
6 AT THE SAME TIME?

7 A RIGHT.

8 Q HOW ARE YOU TAKING TWO STATEMENTS AT THE SAME
9 TIME?

10 A WELL, I ALREADY NOTICED THIS, BUT I DIDN'T WANT
11 TO GO BACK AND CHANGE THE TIMES ON THE
12 STATEMENTS THAT THEY HAD SIGNED BECAUSE ONCE
13 SOMEBODY SIGNED A STATEMENT I LEAVE IT EXACTLY
14 LIKE IT IS. SO MY TIMES MIGHT BE OFF BY SEVERAL
15 MINUTES 3-3:30 BUT I WASN'T ABOUT TO CHANGE MY
16 STATEMENT.

17 Q SO YOU'RE NOT WRITING DOWN THE TIMES YOU ARE
18 WITH THEM?

19 A WRITING THEM DOWN?

20 Q YOU'RE NOT?

21 A NO, SIR, I TYPE THEM.

22 Q YOU DIDN'T TYPE THEM DOWN ACCURATELY THEN IS
23 WHAT YOU ARE SAYING?

24 A WELL, OBVIOUSLY THAT WOULD HAVE BEEN OFF A
25 LITTLE BIT, BUT IT WAS IN THE AFTERNOON BETWEEN

1 3 AND 3:30.

2 Q WELL, DIDN'T YOU TYPE THIS UP AS YOU WENT ALONG
3 OR DID YOU GO BACK AND TYPE IT UP FROM YOUR
4 NOTES?

5 A YOU'RE TAKING ABOUT THE STATEMENTS?

6 Q THE WHOLE DOCUMENT?

7 A SURE, RIGHT WHEN THE PEOPLE ARE GIVING THE
8 STATEMENT THEN I TYPE IT DOWN.

9 Q ALL RIGHT. AND YOU TYPE THE TIMES IN BEFORE
10 THEY SIGN BECAUSE YOU JUST SAID YOU DON'T WANT
11 TO CHANGE IT AFTER THEY SIGN IT?

12 A RIGHT.

13 Q WELL, YOU HAD A WATCH ON?

14 A AND MY BEST EXPLANATION FOR YOU, OKAY, BETWEEN 3
15 AND 3:30 IS I ALREADY SAW THAT AND I WASN'T
16 ABOUT TO CHANGE THE STATEMENTS AFTER THEY LEFT.
17 I JUST WOULDN'T DO THAT, SIR.

18 Q BUT ACCORDING TO THE STATEMENTS THAT Y'ALL
19 PRODUCED, YOU'RE WITH GARY MOFFAT FROM 3 TO 4:05
20 AND ANTONIO FROM 3:30 TO 4:10?

21 A RIGHT, SO NO MATTER WHAT THE OVERLAP THERE I
22 INTERVIEWED ANTONIO SOON AFTER GARY. BUT GARY
23 DID COME FIRST THAT I CAN TELL YOU.

24 Q SO YOU'RE SAYING YOU HAD ALL GARY'S INFORMATION
25 BEFORE YOU WENT AND TALKED TO ANTONIO?

1 A YES, SIR, AS WELL AS THAT LIST YOU HAD THERE, I
2 WOULD HAVE HAD THAT OTHER INFORMATION TOO
3 AVAILABLE TO ME. THAT'S HOW I KNEW THE
4 DISCREPANCIES YOU ASKED ME ABOUT.

5 Q ISN'T IT IMPORTANT TO ACCURATELY REFLECT
6 EVERYTHING ON A STATEMENT?

7 A IT CERTAINLY IS.

8 Q NOW THERE ARE INCONSISTENCIES BETWEEN GARY'S
9 STATEMENT, MONTA'S STATEMENT, AND TERRANCE'S
10 STATEMENT AS WELL, AREN'T THERE? NUMEROUS
11 INCONSISTENCIES BETWEEN THE OTHER THREE?

12 A I SAW SOME INCONSISTENCIES BETWEEN THE
13 STATEMENTS. NUMEROUS, THAT'S A JUDGMENT.

14 Q YOU DIDN'T GO BACK AND INTERVIEW ANY OF THEM,
15 DID YOU?

16 A WHO?

17 Q GARY, TERRANCE, OR MONTA?

18 A NO, SIR.

19 Q NOW WITH REGARD TO THE ARREST ITSELF, YOU WERE
20 THE LEAD OFFICER, YOU KNOW THAT MR. DIAZ WHEN HE
21 WAS QUESTIONED THAT NIGHT THAT MORNING?

22 A YEAH.

23 Q SAID THERE WERE ONLY THREE PEOPLE INVOLVED IN
24 THIS?

25 A MR. DIAZ SAID THAT, IS THAT IN HIS STATEMENT?

1 Q YES, SIR.

2 A OKAY.

3 Q YOU KNEW THAT THAT NIGHT. Y'ALL WERE LOOKING
4 FOR FOUR PEOPLE THAT NIGHT, Y'ALL WERE LOOKING
5 FOR THREE PEOPLE, ISN'T THAT CORRECT?

6 A WELL, YOU'RE STATING THAT BUT I DON'T KNOW THAT
7 TO BE THE TRUTH, SIR.

8 Q WELL, YOU ARE THE LEAD INVESTIGATOR. YOU'VE
9 REVIEWED THESE FILES. THAT'S WHAT YOU WERE
10 LOOKING FOR IMMEDIATELY AFTER THE SCENE. MR.
11 DIAZ TOLD EVERYBODY THAT IT WAS THREE PEOPLE.

12 A NO, SIR. WELL, MY STATEMENT WOULD BE, I DIDN'T
13 KNOW WHAT WE WERE LOOKING FOR.

14 Q WELL --

15 A OKAY.

16 Q OFFICER SIMMS WAS THE FIRST ONE ON THE SCENE,
17 WAS HE NOT?

18 A HE MAY HAVE BEEN. I'D HAVE TO LOOK AT THE CASE
19 FOLDER FOR ALL THAT.

20 Q LOOK AT HIS STATEMENT AND LOOK AT WHAT I
21 HIGHLIGHTED.

22 A ALL RIGHT.

23 Q WHAT DOES HE SAY Y'ALL ARE LOOKING FOR THAT DIAZ
24 TOLD HIM?

25 A YOU TALKING ABOUT OFFICER SIMMS?

1 Q YES, MASTER PATROL OFFICER SIMMS?

2 A WELL, WHAT PART OF THIS DO YOU WANT ME TO READ?

3 Q THE PART I HAVE HIGHLIGHTED TALKING ABOUT HOW
4 MANY PEOPLE MR. DIAZ SAID THEY WERE LOOKING FOR?

5 A OFFICER SIMMS NOW WOULD HAVE WRITTEN THE THREE
6 BLACK MALES APPROACHED THE BMW, ONE OF THEM TOLD
7 KRENN, DRIVER, GIVE HIM ALL HIS MONEY. KRENN
8 TOLD THE SUSPECT THAT HE DIDN'T HAVE ANY MONEY.
9 THE SUSPECT PULLED OUT A HANDGUN AND SHOT KRENN.
10 KRENN AND DIAZ GOT OUT OF THE VEHICLE AND KRENN
11 COLLAPSED AT THE REAR OF THE VEHICLE.

12 Q SO ACCORDING TO THE STATEMENT, INFORMATION Y'ALL
13 HAD FROM DIAZ IMMEDIATELY AFTERWARDS, Y'ALL WERE
14 LOOKING FOR THREE INDIVIDUALS.

15 A YOU'RE ASSUMING THAT.

16 THE COURT: EXCUSE ME JUST A MINUTE. YOU KEEP
17 ASKING HIM THAT BUT I DON'T INTERPRET THAT AS,
18 HE SAYS HE DOESN'T REMEMBER HOW MANY THEY ARE
19 LOOKING FOR AND THAT DOESN'T SAY IT WAS JUST
20 THREE PEOPLE. HE SAID THREE GOT OUT OF THE CAR.
21 I MEAN, I DON'T WANT TO GET ARGUMENTATIVE WITH
22 YOU BUT OF COURSE HE'S YOUR WITNESS, BUT I JUST
23 WANT YOU TO SEE THAT HIS ANSWERS, THE FACT THAT
24 THAT STATEMENT SAYS THREE PEOPLE GOT OUT OF THE
25 CAR, YOU'RE TRYING TO TRANSLATE THAT INTO THEM

1 LOOKING FOR THREE PEOPLE AND HE'S SAYING HE
2 DOESN'T KNOW, BUT YOU CAN KEEP GOING ON THAT
3 LINE AS LONG AS YOU WANT TO WITH HIM, BUT I JUST
4 WANT TO TELL YOU WHAT I'M HEARING. GO AHEAD.
5 THERE MAY BE SOMETHING ELSE IN THERE, BUT WHAT
6 YOU READ JUST SAID THAT THREE PEOPLE GOT OUT OF
7 THE CAR. DOESN'T MEAN THERE WEREN'T TEN MORE IN
8 THE CAR.

9 A SIR, TO TRY TO ANSWER YOUR QUESTION --
10 THE COURT: JUST LET HIM ASK YOU THE NEXT
11 QUESTION.

12 A OKAY.

13 Q LET ME JUST ASK YOU THIS.

14 A ALL RIGHT.

15 Q PRIOR TO THE CHASE OF ANTONIO, MONTA, AND THOSE
16 OTHER TWO BOYS?

17 A YES, SIR.

18 Q DID Y'ALL HAVE ANY MORE INFORMATION THAT THERE
19 WERE ANY MORE THAN THREE PEOPLE INVOLVED IN
20 THIS?

21 A RIGHT, HERE'S WHAT I CAN TELL YOU. WHEN I WAS
22 OUT AT THE CRIME SCENE AND THERE WERE ACTUALLY
23 TWO NOW WHERE THE CAR ENDED UP, THE BMW.

24 Q RIGHT.

25 A AND WHERE THE SHOOTING OCCURRED.

1 Q RIGHT.

2 A OKAY. PROBABLY WITHIN WHAT A QUARTER MILE OF
3 EACH OTHER.

4 Q CORRECT.

5 A OKAY. WHEN I GOT DONE LOOKING AT BOTH OF THOSE,
6 ALL I KNEW WAS WE WERE LOOKING FOR A BLUE CAR
7 WITH MORE THAN ONE PERSON IN IT AND THAT'S IT.

8 Q NOW YOU INTERVIEWED, YOU WERE THE ONE WHO TOOK
9 TOWANDA BURRIS ALSO KNOWN AS CHYENCA DIXON TO
10 THE POLICE STATION, RIGHT?

11 A YES, SIR.

12 Q DID Y'ALL PLACE HER UNDER ARREST AND TAKE HER TO
13 THE POLICE STATION?

14 A NO, SHE VOLUNTARILY WENT WITH ME.

15 Q SHE VOLUNTARILY WENT WITH YOU?

16 A YES, SIR.

17 Q WAS SHE FREE TO LEAVE THE POLICE STATION AT ANY
18 TIME?

19 A DEFINITELY.

20 Q AND DID YOU GIVE HER, DID SHE EVER ASK FOR AN
21 ATTORNEY WHILE SHE WAS BACK THERE WITH YOU?

22 A NO, SIR.

23 Q DID YOU GIVE HER THE MIRANDA RIGHTS?

24 A NO, SIR.

25 Q NOW WHEN YOU LET HER GO, Y'ALL DROVE HER BACK TO

1 THE HOUSE WHERE YOU SUBSEQUENTLY ARRESTED
2 ANTONIO AND MONTA, DID YOU NOT?

3 A DROVE HER BACK?

4 Q YES, SIR.

5 A I DON'T KNOW HOW SHE GOT BACK THERE. SHE
6 ACTUALLY HAD TO GET BACK THERE TWICE I THINK,
7 RIGHT?

8 Q WELL, I KNOW THE TIME, Y'ALL TOOK HER TO THE
9 POLICE STATION FIRST THING THAT MORNING?

10 A I TOOK HER THERE.

11 Q YOU TOOK HER THERE?

12 A RIGHT.

13 Q AND AFTER YOU GOT DONE QUESTIONING HER YOU LET
14 HER GO, RIGHT?

15 A RIGHT. SO THAT WOULD BE ONCE.

16 Q RIGHT.

17 A RIGHT.

18 Q DO YOU KNOW HOW SHE GOT BACK THAT TIME?

19 A NO, SIR, I DON'T REMEMBER HOW SHE GOT BACK. WE
20 MAY HAVE GIVEN HER A RIDE. I DON'T KNOW. WE
21 MIGHT NOT HAVE.

22 Q WITH REGARD TO THAT SITUATION, Y'ALL
23 SUBSEQUENTLY, IMMEDIATELY AFTER YOU GOT DONE
24 INTERVIEWING HER, Y'ALL WENT OUT TO ARREST
25 ANTONIO AND MONTA, DID YOU NOT?

1 A NOW WHEN YOU SAY Y'ALL WHO DO YOU MEAN?

2 Q THE POLICE DEPARTMENT. YOU, OTHER PEOPLE ON THE
3 SWAT TEAM. YOU WERE THE LEAD INVESTIGATOR,
4 THAT'S WHY I'M ASKING Y'ALL?

5 A OKAY, BUT WHEN YOU SAY Y'ALL I JUST DON'T KNOW
6 WHO YOU MEAN. WHO IT WAS, I STAYED IN THE
7 STATION BECAUSE I WAS DOING OTHER THINGS WITH
8 THIS INVESTIGATION AND CAPTAIN CABINESS CALLED A
9 NUMBER OF OFFICERS TO GO TO TWO LOCATIONS THAT
10 WE KNEW ABOUT THAT WE NEEDED TO LOOK INTO.

11 Q ALL RIGHT.

12 A THAT'S WHAT IT WOULD HAVE BEEN.

13 Q SO WHEN YOU LET CHYENCA DIXON ALSO KNOWN AS
14 TOWANDA BURRIS GO?

15 A YES, SIR.

16 Q DID YOU GO GET AN ARREST WARRANT FOR ANTONIO AND
17 MONTA?

18 A WHAT'S YOUR QUESTION NOW?

19 Q ONCE YOU LET HER GO THAT DAY, THAT MORNING, THAT
20 FIRST TIME, DID YOU GO TO GET AN ARREST WARRANT
21 FOR ANTONIO AND MONTA?

22 A WELL, THE WARRANTS WEREN'T PREPARED YET.

23 Q DID YOU GO AND ATTEMPT TO OBTAIN A WARRANT?

24 A YOU MEAN RIGHT AT THAT VERY MOMENT WHEN SHE
25 LEFT?

1 Q YEAH.

2 A ALL THAT WAS IN THE WORKS, BUT THERE WERE NO
3 WARRANTS BEING TYPED IF THAT'S YOUR QUESTION I'M
4 TRYING TO ANSWER IT. IN OTHER WORDS, WAS
5 SOMEBODY SITTING AT A TERMINAL OR AT A
6 TYPEWRITER TYPING OUT A WARRANT, NO, SIR.

7 Q WERE YOU IN THE PROCESS OF DOING THAT?

8 A THAT'S ONE OF THE THINGS THAT HAD TO GET DONE.

9 Q ALL RIGHT.

10 A BUT TYPICALLY NOW IN A CASE LIKE THIS JUST TO
11 LET YOU KNOW HOW IT GOES, WE WOULDN'T DO THOSE
12 WARRANTS UNTIL A LATER TIME WHEN WE DECIDED
13 EXACTLY WHAT THE CHARGES WERE EVEN THOUGH WE
14 WOULD KNOW THAT WE HAD A MURDER CASE WE THOUGHT,
15 ALL RIGHT, AND WE HAD PROBABLE CAUSE FOR ARREST
16 BUT THAT DOESN'T MEAN WE'RE GOING TO DO ARREST
17 WARRANTS. WE DON'T NEED AN ARREST WARRANT TO
18 MAKE AN ARREST.

19 Q YOU DON'T NEED AN ARREST WARRANT TO MAKE AN
20 ARREST?

21 A WE DON'T NEED TO BE HOLDING IT IN OUR HANDS TO
22 MAKE THAT ARREST, NO, SIR.

23 Q DO YOU NEED IT SIGNED SOMEWHERE?

24 A IT HAS TO BE SIGNED, THAT'S RIGHT.

25 Q HAS TO BE SIGNED. AT THE TIME YOU ARRESTED

1 ANTONIO YOU DIDN'T HAVE A SIGNED ARREST WARRANT?

2 A NO, I THINK YOU NEED TO DISTINGUISH BETWEEN
3 PROBABLE CAUSE FOR THE ARREST AND THE ARREST
4 WARRANT.

5 Q WELL --

6 A IS THAT WHAT YOU ARE ASKING ME?

7 Q I JUST ASKED YOU, AT THE TIME YOU ARRESTED
8 ANTONIO THERE WAS NO SIGNED ARREST WARRANT, WAS
9 THERE?

10 A NO, SIR, THAT'S WHAT I SAID.

11 Q AT THE TIME YOU ARRESTED ANTONIO, YOU HAD
12 SUFFICIENT TIME TO GO TO A MAGISTRATE TO GET A
13 WARRANT BECAUSE DELORES WILLIAMS WAS RIGHT THERE
14 AT THE POLICE STATION; SHE WAS ON DUTY, WASN'T
15 SHE?

16 MR. ANTHONY: YOUR HONOR, I OBJECT AT THIS
17 POINT. I UNDERSTAND THAT THERE IS SOME
18 RELEVANCE TO WHAT THE OFFICER KNEW WHEN HE BEGAN
19 THE INTERVIEW, BUT I THINK HE'S GETTING FAR
20 AFIELD OF THE DENNO HEARING THAT WE'RE SUPPOSED
21 TO BE DOING. I DON'T REALLY SEE HOW IT MATTERS
22 IF SOMEBODY WAS THERE TO TYPE UP THE WARRANT.

23 THE COURT: I OVERRULE THE OBJECTION. GO AHEAD.

24 MR. D'AGOSTINO: THANK YOU, YOUR HONOR.

25 Q DELORES WILLIAMS WAS ON DUTY, SHE'S THE

1 MAGISTRATE AND OFTEN SIGNS WARRANTS, SHE WAS
2 AVAILABLE TO SIGN A WARRANT THAT MORNING?

3 A THAT I DON'T KNOW. I DON'T KNOW DELORES
4 WILLIAMS WAS ON DUTY OR NOT.

5 Q WELL, THERE ARE MAGISTRATES AT THE POLICE
6 STATION?

7 A YES, THERE ARE.

8 Q ALMOST 24 HOURS AND DEFINITELY AT NINE A.M. IN
9 THE MORNING.

10 A THIS WOULD HAVE BEEN AFTER EIGHT O'CLOCK
11 PROBABLY SO, BUT DID I SEE THEM, NO.

12 Q DID YOU OBTAIN AN ARREST WARRANT BEFORE YOU WENT
13 TO ANTONIO'S OR YOU SENT WORD TO ARREST ANTONIO
14 GORDON?

15 A NO, WE WOULD HAVE DONE THOSE WARRANTS OURSELVES
16 TOO.

17 Q AND WHO MADE THE DECISION TO ARREST ANTONIO
18 GORDON?

19 A THAT WOULD HAVE BEEN CAPTAIN CABINESS BASED ON
20 THE INFORMATION I HAD GIVEN HIM FROM THE
21 STATEMENTS I TOOK FROM CHYENCA DIXON.

22 Q ALL RIGHT. WHAT DID YOU DO TO VERIFY ANY OF THE
23 INFORMATION IN THOSE STATEMENTS THAT YOU GOT
24 FROM CHYENCA DIXON CONSIDERING THAT SHE'D GIVEN
25 YOU AN ALIAS AND A TOTALLY DIFFERENT STATEMENT

1 THE FIRST TIME?

2 A VERIFICATION?

3 Q YES.

4 A AFTER SHE GAVE HER SECOND STATEMENT, THAT
5 PROVIDED THE PROBABLE CAUSE WE NEEDED FOR THE
6 ARREST.

7 Q WHAT INFORMATION DID YOU HAVE TO SUBSTANTIATE
8 THAT CHYENCA DIXON WAS A RELIABLE SOURCE OF
9 INFORMATION?

10 A WELL, WE HAD THE SUSPECT VEHICLE FIRST OF ALL,
11 OKAY, SO WE HAD THE CAR. ALL RIGHT. AND WE HAD
12 THE, QUITE A COMPREHENSIVE STATEMENT IN MY
13 ESTIMATION FROM CHYENCA DIXON, ALL RIGHT. NOW
14 IF YOU WANT ME TO EXPLAIN WHY HER STATEMENT WAS
15 RELIABLE I CAN DO THAT.

16 Q WELL, FIRST I WANT TO ASK YOU SOME QUESTIONS.

17 A OKAY.

18 Q YOUR FIRST STATEMENT FROM CHYENCA ISN'T --

19 A ---CHYENCA. IT'S TOWANDA BURRIS.

20 Q IT'S TOWANDA AND IT DOESN'T GIVE YOU ANY
21 INFORMATION. SHE LIED TO YOU ABOUT HER IDENTITY
22 SO THEN YOU TAKE HER BACK THERE AGAIN AND THEN
23 YOU TALKED TO HER AGAIN, RIGHT?

24 A RIGHT.

25 Q AND YOU GET, IN FACT, THAT STATEMENT IS IN THREE

1 DIFFERENT SECTIONS BECAUSE SHE LIED TO YOU
2 THROUGH THE FIRST PART OF IT THEN YOU'RE SAYING
3 SHE WENT BACK IN AS I REMEMBER THE STATEMENT AND
4 CHANGED SOME THINGS.

5 A THE FIRST OR SECOND STATEMENT?

6 Q IN THE SECOND STATEMENT.

7 A I HAVE TO LOOK AT IT AND SEE IT TO SEE WHAT YOU
8 ARE TALKING ABOUT.

9 Q I'M GOING TO GIVE IT TO YOU.

10 A OKAY.

11 Q I DON'T WANT YOU TO GO WITHOUT LOOKING AT IT.

12 A THANK YOU.

13 Q NOW DIDN'T SHE GIVE YOU A SUMMARY AND IT DOESN'T
14 IMPLICATE ANTONIO GORDON. IT IMPLICATES ANTONIO
15 COUSAR OR SOMETHING LIKE THAT?

16 A COUSAR.

17 Q IS THAT HOW THEY SAY THAT, WHATEVER.

18 A THIS IS HER SECOND STATEMENT.

19 Q THIS IS HER SECOND STATEMENT I BELIEVE. IS THAT
20 HER SECOND STATEMENT? I DON'T KNOW.

21 A THIS IS HER SECOND STATEMENT.

22 Q THAT'S WHAT I UNDERSTAND IT TO BE. THEN SHE'S
23 GOES BACK IN AND SAYS IN THE PARAGRAPH I LIED
24 IN MY FIRST STATEMENT BECAUSE I KNEW TERRANCE
25 SHOT THE BOY AND I DIDN'T WANT TO SEE HIM GO TO

1 JAIL AND ALSO BECAUSE THE CAR BELONGS TO MY
2 BOYFRIEND AND I DIDN'T WANT HIM TO GET IN ANY
3 TROUBLE.

4 A RIGHT.

5 Q TERRANCE SOMETHING JUST GOT A GOLD SOMETHING OR
6 OTHER?

7 A A RACK.

8 Q RACK. AND THEN SHE WENT BACK IN AND CHANGED AND
9 ADDED ANOTHER PARAGRAPH, RIGHT?

10 A THAT'S RIGHT.

11 Q DID SHE SIGN EACH ONE OF THOSE PARAGRAPHS?

12 A YES.

13 Q OR DID SHE JUST SIGN?

14 A SHE INITIALED HERE.

15 Q ALL RIGHT.

16 A OKAY. AND THEN SHE SIGNED THERE. OBVIOUSLY SHE
17 SIGNED THERE.

18 Q ALL RIGHT. SO ACTUALLY I WAS WRONG. SHE
19 ACTUALLY CHANGED IT, YEAH, SHE DID CHANGE IT TWO
20 TIMES AFTER THE INITIAL PARAGRAPH.

21 A AND I THINK I CAN ANSWER TWO OF YOUR QUESTIONS
22 AT THE SAME TIME BUT GO AHEAD.

23 Q GO AHEAD AND ANSWER THE QUESTIONS.

24 A WHAT YOU'RE ASKING IS WHY SHE WAS BELIEVABLE
25 WHEN OBVIOUSLY IN HER STATEMENT THERE WOULD BE

1 WHAT WOULD APPEAR TO YOU TO BE INCONSISTENCIES.
2 ONE BEING THAT I CAN POINT OUT COUSAR, ANTONIO
3 COUSAR. FIRST NAME ANTONIO AND THE SECOND NAME
4 COUSAR, OKAY. AND WE ALREADY KNEW ABOUT ANTONIO
5 GORDON. ALL RIGHT.

6 Q WHAT DID YOU KNOW ANTONIO GORDON?

7 A WELL, GO BACK TO THE FIRST STATEMENT. WHAT'S
8 HER FIRST STATEMENT?

9 Q HER FIRST STATEMENT?

10 A YEAH.

11 Q SURE.

12 A LOOK IN THIS STATEMENT HERE SHE MENTIONS MY
13 BOYFRIEND IS ANTONIO GORDON.

14 Q RIGHT.

15 A OKAY. SO I KNOW THAT WHEN I'M INTERVIEWING HER,
16 ALL RIGHT. I ALSO KNOW SHE'S LYING THROUGH THIS
17 STATEMENT HERE.

18 Q HOW DO YOU KNOW THAT?

19 A THAT'S WHY I INTERVIEWED HER A SECOND TIME, SIR.

20 Q HOW DID YOU KNOW SHE WAS LYING TO CAUSE YOU TO
21 INTERVIEW HER A SECOND TIME?

22 A BECAUSE ALL I CAN TELL YOU IS I DIDN'T BELIEVE
23 HER BASED ON MY EXPERIENCE. AND SHE GAVE A VERY
24 SHORT STATEMENT WHEN A LOT MORE WENT ON BUT
25 OBVIOUSLY BY HER FIRST STATEMENT SHE KNEW QUITE

1 A BIT ABOUT THIS. THERE IS TELLTALE SIGNS
2 THERE.

3 Q BUT SHE DIDN'T HAVE ANY DIRECT INFORMATION THAT
4 SHE KNEW?

5 A KNEW WHAT?

6 Q KNEW ANYTHING ELSE JUST IT WAS YOUR HUNCH?

7 A WELL, I THINK WHEN I TOOK THIS STATEMENT FROM
8 HER, I KNEW SHE KNEW.

9 Q AND THEN YOU GOT INTO THE SECOND STATEMENT AND
10 SHE LIED IN THE FIRST PART OF THE SECOND
11 STATEMENT AND THEN STARTED MAKING CHANGES AT THE
12 BOTTOM HALF?

13 A BUT YOU ASKED ME HOW I WOULD HAVE KNOWN ANYTHING
14 ABOUT ANTONIO GORDON AND THAT'S WHY WE BROUGHT
15 OUT THIS FIRST STATEMENT HERE AND THAT'S BECAUSE
16 SHE TOLD ME HER BOYFRIEND WAS ANTONIO GORDON AND
17 THEN IN HER SECOND STATEMENT SHE MENTIONED
18 ANTONIO GORDON AGAIN AND THEN WENT ON TO TRY TO
19 BLAME IT ON ANTONIO COUSAR AND DOWN HERE
20 TERRANCE MCCREARY. EVERYBODY EXCEPT ANTONIO
21 GORDON, OKAY, AND THAT'S HER BOYFRIEND. SO IT
22 WOULD OCCUR TO ME AS AN INVESTIGATOR, COULD SHE
23 TRY TO PROTECT HER BOYFRIEND.

24 Q WHY DIDN'T YOU GO GET AN ARREST WARRANT AS
25 OPPOSED TO IMMEDIATELY GOING OUT THERE AND

1 ARRESTING HIM WITHOUT A WARRANT?

2 A WELL, FIRST OF ALL, SIR, I DIDN'T GO OUT AND
3 ARREST THEM. AS I STATED BEFORE THAT WAS
4 HANDLED BY CAPTAIN CABINESS. SECOND OF ALL, ON
5 A CASE SUCH AS THIS WITH THE SERIOUSNESS OF IT
6 AND SO ON I WOULD SAY TIME IS OF THE ESSENCE.

7 ONCE YOU HAVE PROBABLE CAUSE TO GO TRY AND
8 ARREST THESE PEOPLE AND PUT THEM IN JAIL, THAT'S
9 WHY HE DIDN'T WAIT AROUND FOR AN ARREST WARRANT
10 AND HE DIDN'T HAVE TO LEGALLY EITHER SO.

11 Q I'LL LEAVE THAT FOR THE COURT TO DECIDE.

12 A OKAY.

13 Q NOW ANTONIO HAD A BOND HEARING THAT DAY, DID HE
14 NOT ON THE 23?

15 A NOW WE HAVE TO REFER TO THE PAPERWORK.

16 MR. D'AGOSTINO: I'D LIKE TO HAVE THIS MARKED
17 FOR IDENTIFICATION.

18 (DEFENDANT'S EXHIBIT ONE BOND PAPERS MARKED FOR
19 IDENTIFICATION.)

20 Q I HAND YOU WHAT'S BEEN MARKED AS DEFENDANT'S
21 ONE FOR IDENTIFICATION. THAT'S A COPY OF HIS
22 BOND PAPERS WAIVING HIM ON UP TO GENERAL
23 SESSIONS AND HAVE TO SET HIS BOND, RIGHT?

24 A RIGHT.

25 Q IS THAT RIGHT?

1 A DO THEY HAVE TO SET THE BOND, RIGHT.

2 Q THOSE ARE THE PAPERS RELATING TO BOND JULY 23,
3 1998.

4 A NOTICE OF INITIAL APPEARANCE DIRECTING HIM TO
5 APPEAR ON AUGUST 28.

6 Q RIGHT. AND THAT WAS SIGNED ON JULY 23, 1998,
7 CORRECT?

8 A THAT'S RIGHT.

9 Q AND THIS WOULD HAVE BEEN GIVEN TO HIM AT THE
10 TIME HE HAD HIS BOND HEARING?

11 A BY JUDGE LONG ON JULY 23, 1998.

12 Q RIGHT.

13 MR. D'AGOSTINO: I'D LIKE TO MAKE THIS PART OF
14 THE RECORD, BUT I DON'T WANT TO WAIVE ANY RIGHTS
15 FOR MOTIONS AT THE CLOSE OF THE STATE'S CASE BUT
16 SINCE IT'S JUST A PRE-TRIAL MATTER I SUBMIT I
17 CAN DO THAT WITHOUT.

18 THE COURT: BE ADMITTED. ANY OBJECTION.

19 MR. ANTHONY: NO, THERE IS NO OBJECTION.

20 Q DO YOU KNOW THE WHOLE TIME THAT ANTONIO WAS
21 THERE FROM THE TIME OFFICER WALDROP FINISHED TO
22 THE TIME YOU STARTED WITH HIM, WAS HE GIVEN
23 LUNCH OR WAS HE GIVEN THE OPPORTUNITY TO GO TO
24 THE RESTROOM OR ANYTHING OF THAT NATURE?

25 A I CAN'T ANSWER THAT.

1 Q WHEN YOU WERE TAKING ANTONIO'S STATEMENT, DID
2 YOU HAVE YOUR WEAPON WITH YOU, ON YOU?

3 A I WOULD HAVE, YES, SIR.

4 Q YOU WOULD HAVE?

5 A YUP.

6 Q AND THE ROOM WHERE OFFICER WALDROP TOOK THIS
7 STATEMENT, THAT CONFERENCE ROOM, IS THAT THE
8 SHIFT CHANGE ROOM AS WELL?

9 A NO, SIR.

10 Q IT'S NOT?

11 MR. D'AGOSTINO: THOSE ARE ALL THE QUESTIONS I
12 HAVE. THANK YOU VERY MUCH, OFFICER THICKENS.

13 MR. ANTHONY: JUST BRIEFLY.

14 REDIRECT EXAMINATION BY MR. ANTHONY:

15 Q OFFICER THICKENS, AFTER YOU FINISHED TAKING YOUR
16 STATEMENT FROM MR. GORDON, WHERE DID YOU TAKE
17 HIM?

18 A I BELIEVE HE WAS ESCORTED OUT OF THE DETECTIVE
19 DIVISION, BUT I DIDN'T TAKE HIM ANYWHERE MYSELF.

20 Q WHERE WOULD HE HAVE BEEN TAKEN EVENTUALLY?

21 A HE WOULD HAVE MOST LIKELY BE ESCORTED PROBABLY
22 BACK TO THE HOLDING FACILITY AT THAT POINT.

23 Q AND THAT'S ALL THE QUESTIONS I HAVE. I WOULD
24 MOVE THE STATEMENT INTO EVIDENCE AS STATE'S
25 EXHIBIT NUMBER FOUR FOR THE HEARING. I BELIEVE

1 I NEGLECTED TO DO THAT.

2 THE COURT: ANY OBJECTION?

3 MR. D'AGOSTINO: WITH THE SAME LIMITATION FOR
4 THIS HEARING ONLY.

5 THE COURT: BE RECEIVED. ALL RIGHT. YOU CAN
6 STEP DOWN. THANK YOU FOR YOUR TIME. YOU CAN BE
7 EXCUSED. CALL YOUR NEXT WITNESS.

8 MR. ANTHONY: WE CALL OFFICER TRIPP.

9 THE COURT: LET'S TAKE A BREAK.

10 (THE COURT'S IN RECESS AT 3:42.)

11 (COURT RESUMES AT 3:50.)

12 THE COURT: LET THE RECORD REFLECT MR.
13 D'AGOSTINO AND MR. GILLEN AND THEIR CLIENTS MR.
14 GORDON AND MR. MCCREARY ARE PRESENT.

15 MR. ANTHONY: WE'RE READY TO CALL OUR NEXT
16 HEARING OFFICER TRIPP.

17 KENYATTA TRIPP, BEING
18 FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

19 DIRECT EXAMINATION BY MR. ANTHONY:

20 Q COULD YOU STATE YOUR FULL NAME?

21 A KENYATTA TRIPP.

22 Q AND MR. TRIPP, HOW ARE YOU EMPLOYED?

23 A ROCK HILL CITY STREET POLICE OFFICER.

24 Q HOW LONG HAVE YOU WORKED AT THE POLICE
25 DEPARTMENT IN THAT ROLE?

1 A JUST A LITTLE OVER FIVE YEARS.

2 Q AND WERE YOU WORKING BACK ON JULY 24 OF LAST
3 YEAR?

4 A YES, SIR, I WAS.

5 Q AND TELL THE COURT WHAT YOU HEARD AROUND 4:30 IN
6 THE AFTERNOON OF JULY 24 OF LAST YEAR?

7 A IT WAS ABOUT 4:30 THAT I WAS AT THE POLICE
8 DEPARTMENT TAKING A REPORT FOR SOMEONE IN THE
9 LOBBY IN REFERENCE TO SOMETHING, DIFFERENT THAN
10 THIS CASE HERE, AND I WAS WRITING A REPORT UP
11 AND I HAD OVERHEARD A SMALL PORTION OF A
12 CONVERSATION WHEN LIEUTENANT THICKENS WAS
13 PRESENT AS WELL AS A YOUNG GUY, I DIDN'T KNOW
14 WHO HE WAS AT THAT TIME, WAS TALKING WITH SOME,
15 I DON'T KNOW IF IT WAS FAMILY MEMBERS OR FRIENDS
16 OR EXACTLY WHO ANYBODY WAS THERE. A WOMAN HAD
17 ASKED THE YOUNG MAN, WHY DID YOU SHOOT THAT BOY,
18 PRETTY MUCH IN THOSE SAME WORDS, AND HE HAD
19 RESPONDED BY SAYING THAT HE DIDN'T HAVE THE GUN
20 AT FIRST, BUT THAT IT WAS GIVEN TO HIM AND HE
21 DID IT BECAUSE HE FELT IF HE DIDN'T AND THE
22 PEOPLE, HIS FRIENDS THAT WERE WITH HIM, WERE
23 GOING TO SHOOT HIM IF HE DIDN'T DO WHAT THEY
24 TOLD HIM TO DO WITH IT.

25 Q AND DID YOU COME TO FIND OUT WHO THE YOUNG MAN

1 WHO MADE THE STATEMENT WAS?

2 A YES, SIR, I DID.

3 Q AND WHO MADE THE STATEMENT?

4 A ANTONIO GORDON.

5 Q THIS STATEMENT THAT YOU HEARD WAS IT, DID IT
6 INVOLVE ANY QUESTIONS AT ALL BY YOURSELF?

7 A NO, IT DIDN'T.

8 Q DID IT ANY INVOLVE ANY QUESTIONING BY ANYBODY
9 ELSE AT THE ROCK HILL POLICE DEPARTMENT OR ANY
10 OTHER EMPLOYEES AT THE ROCK HILL POLICE
11 DEPARTMENT?

12 A NOT THAT I'M AWARE OF.

13 Q AND DID YOU DO ANYTHING TO FOLLOW UP WITH THEM?

14 A NO.

15 Q OR SPEAK TO HIM AFTER HE SAID THIS?

16 A NO, SIR, I DIDN'T. AS A MATTER OF FACT, I THINK
17 I LEFT AFTER THAT, WAS TIED UP ON WHAT I WAS
18 THERE FOR.

19 Q OKAY. THANK YOU. THAT'S ALL OF MY QUESTIONS OF
20 OFFICER TRIPP.

21 CROSS EXAMINATION BY MR. D'AGOSTINO:

22 Q OFFICER TRIPP, WHERE WERE YOU WHEN THIS
23 STATEMENT OCCURRED?

24 A THIS WAS IN THE REPORT WRITING AREA RIGHT WHERE
25 WE DO OUR REPORTS WHEN WE LIKE BRING A JUVENILE

1 IN, THIS IS WHERE WE DO OUR JUVENILE PAPERWORK.

2 Q IS THAT BACK HALL BEHIND THE DISPATCHER ROOM?

3 A YES.

4 Q AND HOW DO YOU KNOW IT WAS ANTONIO GORDON WHO
5 SAID THIS?

6 A WELL, I DIDN'T KNOW WHO HE WAS AT THE TIME.

7 Q WELL --

8 A --BUT NOW THAT I SEE, I DID SEE HIM WHEN I WAS
9 THERE.

10 Q ALL RIGHT.

11 A AND NOW THAT I SEE HIM TODAY AND KNOW WHO HE IS
12 I REMEMBERED THAT THAT WAS HIM SITTING UP BEHIND
13 ME.

14 Q WELL, YOU KNEW IT WAS HIM BEFORE YOU SAW HIM
15 TODAY?

16 A SIR?

17 Q YOU KNEW IT WAS HIM BEFORE YOU SAW HIM TODAY.
18 HOW DID YOU KNOW AT THE TIME YOU WROTE UP THE
19 SUMMARY OF WHAT YOU SAY YOU SAW OR HEARD, HOW
20 DID YOU KNOW IT WAS ANTONIO GORDON? HOW DID YOU
21 KNOW HIS NAME?

22 A I DIDN'T KNOW WHO HE WAS AT ALL. I JUST SIMPLY
23 SAID THAT IT WAS A YOUNG MAN THAT WAS BEHIND
24 ME. AT THAT TIME I HAD NEVER SEEN HIM BEFORE
25 THAT I REMEMBERED ANYWAY, DIDN'T KNOW WHAT HIS

1 NAME WAS.

2 Q WHEN DID YOU FIND OUT HIS NAME?

3 A MAYBE LATER ON IN THAT DAY. I'M NOT REALLY
4 SURE.

5 Q WHO TOLD YOU HIS NAME?

6 A I CAN'T RECALL THAT EITHER. JUST HEARING ABOUT
7 THE CASE OVER AND OVER THROUGH THE NEWSPAPERS
8 AND EVERYTHING LIKE EVERYBODY ELSE HAS HEARD
9 ABOUT IT IS HOW I LEARNED ABOUT HIS NAME.

10 Q YOU SUBSEQUENTLY WROTE UP A SHORT PARAGRAPH
11 ABOUT IT, RIGHT?

12 A YES.

13 Q AND IS THAT PARAGRAPH ACCURATE?

14 A YES, IT IS.

15 Q OKAY. LET ME HAND THAT TO YOU. IS THAT WHAT
16 YOU WROTE UP?

17 A YES, SIR, IT IS.

18 Q NOW WHEN YOU DID WRITE THAT UP?

19 A IT MUST HAVE BEEN MAYBE SHORTLY AFTER 5 OR 5:30.
20 IT WAS BEFORE I WENT HOME THAT DAY AND WE WOULD
21 HAVE GONE HOME AT 6 OR 6:15.

22 Q YOU SIGNED IT ON THE 28 THOUGH?

23 A UH-HUH.

24 Q RIGHT?

25 A YES, SIR. THAT'S WHAT IT SAYS HERE.

1 Q YOU WROTE THAT UP AS IF IT OCCURRED ON THE 24?

2 A THE 24 IS WHEN I WAS THERE.

3 Q SO THE 24 IS WHEN YOU WERE THERE?

4 A YES, SIR.

5 Q DID YOU KNOW THAT ANTONIO GORDON WAS OVER HERE
6 AT THE MOSS JUSTICE CENTER ON THE 24? WAS
7 TRANSPORTED ON THE NIGHT OF THE 23 AND WAS NEVER
8 AT THE ROCK HILL CITY DEPARTMENT?

9 A ALL I KNOW IS I HEARD A YOUNG MAN, JUST LIKE I
10 WROTE IN THE STATEMENT, WHO I LATER FOUND OUT TO
11 BE HIM MAKE THIS STATEMENT. I DIDN'T KNOW WHO
12 ANYBODY WAS AT THAT TIME.

13 Q WHAT I'M TRYING TO FIND OUT IS HOW YOU FOUND OUT
14 OR HOW YOU KNOW IT WAS THAT YOUNG MAN AND NOT
15 SOME OTHER YOUNG MAN?

16 A JUST BECAUSE HE WAS THE ONE THAT WAS SAID TO BE
17 THE SHOOTER ANYWAY FROM WHAT I UNDERSTAND.

18 Q WELL, THERE --

19 A SO THIS IS JUST BY HEARING ABOUT IT.

20 Q WELL, THERE WERE THREE OTHER BOYS INVOLVED IN
21 THIS?

22 A YES, SIR.

23 Q THEY DIDN'T COME OVER HERE UNTIL THE 24, THE
24 EVENING OF THE 24?

25 A OKAY.

1 Q COULD IT HAVE BEEN ONE OF THEM?

2 A IF THEY WERE THE SHOOTER. I MEAN, WHAT I'M
3 TELLING, I DON'T KNOW IF I MISUNDERSTAND YOUR
4 QUESTION, I'M JUST SAYING THAT AT THE TIME I SAW
5 A YOUNG MAN THERE, HE MADE THE STATEMENT WHEN HE
6 WAS ASKED BY A FAMILY MEMBER OR A FRIEND WHY DID
7 YOU SHOOT THAT BOY, WHO I LATER ON WAS SAID TO
8 ME THAT THAT WAS THE GUY WHO HAD PULLED THE
9 TRIGGER. I DON'T KNOW WHO I FOUND OUT THAT FROM
10 OR WHEN I FOUND IT OUT OR IF IT WAS JUST MEDIA
11 OR JUST HEARING ABOUT IT OVER AND OVER AGAIN
12 BUT.

13 Q THERE IS NO DOUBT IN YOUR MIND THAT WAS ON THE
14 24?

15 A IT WAS ON THE 24 THAT I WAS AT THE LAW CENTER
16 WRITING A REPORT AND I HEARD A YOUNG PERSON BE
17 QUESTIONED BY ANOTHER PERSON WHY DID YOU SHOOT
18 THAT BOY, YES, SIR.

19 Q ALL RIGHT. THOSE ARE ALL THE QUESTIONS I HAVE.
20 THANK YOU VERY MUCH, OFFICER.

21 REDIRECT EXAMINATION BY MR. ANTHONY:

22 Q AND YOU'VE LOOKED AT ANTONIO GORDON IN COURT
23 TODAY, IS THAT CORRECT?

24 A YES, SIR.

25 Q DO YOU RECOGNIZE HIM AS BEING THE PERSON WHO

1 SAID THAT, IS THAT RIGHT?

2 A YES, SIR.

3 Q AND WHICH PERSON, DO YOU, CAN YOU POINT OUT
4 ANTONIO GORDON HERE?

5 A TO THE BEST OF MY KNOWLEDGE HE'S WEARING THE
6 BLUE SHIRT SITTING CATTY-CORNER TO ME.

7 Q AND WHEN DID YOU WRITE THIS STATEMENT UP?

8 A I THINK I WROTE IT THE DAY, ACTUALLY, I'M NOT
9 SURE IF I WROTE IT THE DAY THAT THIS HAPPENED OR
10 IF I WAS APPROACHED BY LIEUTENANT THICKENS LATER
11 WHO ASKED ME TO WRITE THIS STATEMENT. I KNOW I
12 WAS THERE THE 24, I WAS SITTING AT 4:30 AT THE
13 LAW CENTER DOING THE REPORT LIKE I HAD STATED
14 THE 24. I HAVE IT SIGNED THE 28 SO IT IS VERY
15 MUCH POSSIBLE THAT A FEW DAYS LATER I WAS ASKED
16 TO WRITE A STATEMENT IN REFERENCE TO WHAT I
17 HEARD.

18 Q AND YOU DON'T THINK IT WAS POSSIBLE YOU MIGHT BE
19 MISTAKEN ABOUT THE DATE YOU HEARD THIS ON THE
20 23?

21 MR. D'AGOSTINO: OBJECTION TO THE LEADING, YOUR
22 HONOR.

23 THE COURT: I SUSTAIN THE OBJECTION.

24 Q ARE YOU SURE ABOUT THAT DATE?

25 A I'M SURE ABOUT THE DATE THAT I WAS AT THE LAW

1 CENTER, YES, I AM.

2 Q THANK YOU. THAT'S ALL MY QUESTIONS.

3 MR. D'AGOSTINO: YOUR HONOR, I WOULD JUST MOVE
4 FOR PURPOSES OF THIS HEARING ALONE, I'D LIKE TO
5 HAVE THIS INTRODUCED AND ENTERED INTO EVIDENCE.

6 THE COURT: YOU CAN STEP DOWN AND BE EXCUSED. WE
7 APPRECIATE YOUR TIME ALSO. CALL YOUR NEXT
8 WITNESS.

9 MR. ANTHONY: YOUR HONOR, THE STATE WOULD OFFER
10 NO OTHER WITNESSES EXCEPT WE WOULD ASK
11 PERMISSION TO RECALL LIEUTENANT THICKENS FOR
12 JUST ONE OR TWO BRIEF QUESTIONS.

13 (DEFENDANT'S EXHIBIT NUMBER TWO FOR
14 IDENTIFICATION, STATEMENT.)

15 THE COURT: ALL RIGHT. YOU ARE STILL UNDER
16 OATH.

17 REDIRECT EXAMINATION BY MR. ANTHONY:

18 Q DETECTIVE THICKENS, WHEN YOU WERE SHOWN THE
19 INITIAL APPEARANCE AND BOND HEARING PAPERWORK
20 DURING THE CROSS EXAMINATION, DO YOU RECALL
21 THAT?

22 A I RECALL SEEING THE BOND PAPERWORK AS PART, I
23 THINK IT'S IN THE CASE FOLDER.

24 Q AND YOU WERE ALSO SHOWN BY MR. D'AGOSTINO?

25 A THE INITIAL APPEARANCE PAPER, YES, SIR, RIGHT.

1 Q AND WHEN, IF YOU KNOW, WHEN WOULD ANTONIO
2 GORDON'S BOND HEARING HAVE BEEN HELD ON JULY 23?
3 WHAT PART OF THE DAY WOULD IT HAVE BEEN HELD?

4 A IT WOULD HAVE BEEN IN THE EVENING. AT THE EXACT
5 TIME, I DON'T KNOW, BUT IF YOU WANT ME TO
6 ESTIMATE, I WOULD ESTIMATE --

7 MR. D'AGOSTINO: YOUR HONOR, I --

8 THE COURT: I SUSTAIN THE OBJECTION.

9 MR. D'AGOSTINO: I WAS GOING TO OBJECT TO THIS
10 LINE OF QUESTIONING BECAUSE IT IS SOMETHING
11 CLEARLY HE COULD HAVE GONE INTO WHEN HE WAS UP
12 HERE EARLIER.

13 THE COURT: I'M GOING TO LET HIM BUT I SUSTAIN
14 THE OBJECTION ON THAT POINT.

15 Q YOU KNOW IT WOULD HAVE BEEN HELD IN THE EVENING?

16 MR. D'AGOSTINO: YOUR HONOR---

17 THE COURT: I SUSTAIN THE OBJECTION, THAT'S A
18 LEADING QUESTION. DON'T ANSWER THAT QUESTION.

19 Q DO YOU KNOW WHAT TIME IT WOULD HAVE BEEN HELD,
20 WITHOUT GIVING AN EXACT TIME, DO YOU KNOW WHAT
21 TIME OF DAY IT WOULD HAVE BEEN HELD?

22 MR. D'AGOSTINO: YOUR HONOR, I OBJECT.

23 THE COURT: I OVERRULE THAT OBJECTION.

24 A I WOULD ESTIMATE THAT IT WAS HELD AROUND 5:30 IN
25 THE LATE AFTERNOON.

1 THE COURT: YOU CAN'T GIVE AN ESTIMATED VALUE,
2 I JUST GOT THROUGH SAYING YOU COULDN'T.

3 Q YOU DON'T HAVE TO, WITHOUT GIVING AN EXACT TIME,
4 JUST WOULD YOU PLEASE TELL WHAT PART OF THE DAY
5 IT WOULD HAVE BEEN HELD?

6 A IT WOULD HAVE BEEN HELD IN THE LATE AFTERNOON.

7 Q ALL RIGHT. THANK YOU. THAT'S ALL MY QUESTIONS.

8 THE COURT: DO YOU HAVE ANY QUESTIONS, MR.
9 D'AGOSTINO?

10 MR. D'AGOSTINO: NO, SIR, YOUR HONOR.

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

12 MR. ANTHONY: YOUR HONOR, THAT'S ALL THE
13 EVIDENCE THE STATE WOULD OFFER. WE WILL ASK THE
14 COURT TO TAKE NOTICE OF THE TESTIMONY THAT WAS
15 GIVEN BY CAPTAIN CABINESS ON WEDNESDAY AS PART
16 OF OUR EVIDENCE IN THE DENNO HEARING THIS
17 AFTERNOON.

18 MR. D'AGOSTINO: MAY WE APPROACH THE BENCH, YOUR
19 HONOR.

20 THE COURT: CERTAINLY.

21 (BENCH CONFERENCE.)

22 MR. D'AGOSTINO: YOUR HONOR, AS I HAD SUBPOENAED
23 TO TESTIFY TODAY SEVERAL OFFICERS FROM THE ROCK
24 HILL LAW ENFORCEMENT CENTER, AND BASICALLY THOSE
25 OFFICERS WOULD HAVE, WERE SUBPOENAED TO TESTIFY

1 AS TO WHAT MR. WELLBORN TESTIFIED TO THAT HE DID
2 SPEAK WITH THEM, AND IT'S MY, THE STATE IS GOING
3 TO STIPULATE THAT THE OFFICER OR THAT CHRIS
4 WELLBORN DID SPEAK WITH THE DISPATCHERS AS WAS
5 TESTIFIED BY HIM, CAPTAIN CABINESS, AND CHIEF
6 FORTSON, THEREFORE, ANY CALLING OF THOSE
7 WITNESSES WOULD BE MERELY CUMULATIVE AND IT'S
8 UNNECESSARY SINCE THE STATE IS GOING TO
9 STIPULATE THAT MR. WELLBORN DID SPEAK WITH THEM
10 AND THE CONVERSATION AS HE RELATED TO THE COURT
11 DID IN FACT TAKE PLACE.

12 THE COURT: YOU AGREE WITH THAT?

13 MR. ANTHONY: THAT IS CORRECT. WE'RE NOT GOING
14 TO ARGUE THAT MR. WELLBORN DID COME TO THE LAW
15 CENTER AND DID ASK TO SPEAK TO MR. GORDON.

16 THE COURT: OKAY. I THINK THOSE WITNESSES OUGHT
17 TO BE ABLE TO BE EXCUSED.

18 MR. D'AGOSTINO: THANK YOU, YOUR HONOR. IF WE
19 CAN GO AHEAD AND LET THEM GO. YOUR HONOR, WE
20 WOULD CALL DR. JONATHAN VENN TO THE STAND.

21 JONATHAN VENN, BEING
22 FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

23 DIRECT EXAMINATION BY MR. D'AGOSTINO:

24 Q PLEASE TELL THE COURT YOUR NAME?

25 A MY NAME IS JONATHAN VENN.

1 Q AND WHAT DO YOU DO FOR A LIVING?

2 A I'M A PSYCHOLOGIST.

3 Q WHERE IS YOUR OFFICE?

4 A MY OFFICE IS IN COLUMBIA, SOUTH CAROLINA.

5 Q AND WHAT ARE YOUR FIELDS OF SPECIALIZATION?

6 A I SPECIALIZE IN CLINICAL PSYCHOLOGY AND FORENSIC
7 PSYCHOLOGY.

8 Q DO YOU ALSO TREAT ADULTS AND JUVENILE OFFENDERS?

9 A I EVALUATE THEM. I DON'T THINK I'M INVOLVED IN
10 ANY TREATMENT AT THIS TIME.

11 Q DO YOU HOLD ANY LICENSES?

12 A YES, I DO. I'M LICENSED IN THE STATE OF SOUTH
13 CAROLINA AND I'M ALSO LICENSED IN THE STATE OF
14 MARYLAND.

15 Q AND ARE YOU BOARD CERTIFIED? DO YOU HOLD ANY
16 BOARD CERTIFICATIONS?

17 A YES, I'M CERTIFIED BY THE AMERICAN BOARD OF
18 PROFESSIONAL PSYCHOLOGY AND CLINICAL PSYCHOLOGY
19 AND IN FORENSIC PSYCHOLOGY.

20 Q AND ARE YOU ALSO A DIPLOMAT IN NEUROPSYCHOLOGY
21 AND AMERICAN BOARD OF PSYCHOLOGICAL SPECIALTIES,
22 DID YOU RECEIVE THAT IN 1998?

23 A YES, I DID.

24 Q WHAT OTHER LICENSES OR?

25 A I'M ALSO CERTIFIED BY THAT BOARD IN CHILD

1 PSYCHOLOGY, DISABILITY EVALUATION, TRAUMA, AND
2 POST TRAUMATIC STRESS DISORDER.

3 Q TELL THE COURT A LITTLE BIT ABOUT YOUR EDUCATION
4 AND YOUR TRAINING?

5 A I HAVE A PH.D IN CLINICAL PSYCHOLOGY FROM
6 NORTHWESTERN UNIVERSITY IN CHICAGO, ILLINOIS. I
7 COMPLETED THREE YEARS OF TRAININGSHIPS IN
8 VETERAN HOSPITALS INCLUDING AN INTERNSHIP IN
9 CLINICAL PSYCHOLOGY.

10 Q AND DID YOU, TELL US ABOUT YOUR EMPLOYMENT
11 HISTORY?

12 A WELL, AFTER LEAVING SCHOOL I WAS COMMISSIONED AS
13 AN OFFICER IN THE UNITED STATES NAVAL RESERVE
14 AND I WAS ON ACTIVE DUTY FOR THE NEXT FOUR
15 YEARS. I SPENT MOST OF THAT TIME ON OKINAWA AT
16 A NAVAL HOSPITAL AND THEN AT A MARINE CORPS
17 BASE. UPON RETURNING TO THE STATES, WELL, THEN
18 I TAUGHT FOR THE UNIVERSITY OF MARYLAND FOR A
19 YEAR IN GERMANY. UPON RETURNING TO THE STATES,
20 I TOOK A POSITION WITH THE BALTIMORE GAS AND
21 ELECTRIC COMPANY. I WORKED FOR THEM FOR FOUR
22 YEARS. THEN WE RELOCATED TO SOUTH CAROLINA. I
23 WAS A FORENSIC PSYCHOLOGIST AT THE WILLIAM S.
24 HALL PSYCHIATRIC INSTITUTE FOR A YEAR AND THEN I
25 TRANSFERRED TO THE DEPARTMENT OF JUVENILE

1 JUSTICE WHERE I WORKED FOR THE NEXT EIGHT YEARS.

2 I'VE BEEN IN FULL TIME PRIVATE PRACTICE SINCE
3 1997.

4 Q ARE YOU AN ADJUNCT PROFESSOR ANYWHERE?

5 A YES, I AM. I AM AN ADJUNCT PROFESSOR AT THE
6 UNIVERSITY OF SOUTH CAROLINA.

7 Q AND DO YOU ALSO WORK WITH THE CHRISTIAN
8 COUNSELING OF COLUMBIA, IS THAT WHERE YOU WORK
9 NOW?

10 A YES. I'M THE PRESIDENT OF CHRISTIAN COUNSELING
11 OF COLUMBIA.

12 Q AND HAVE YOU BEEN CERTIFIED AS AN EXPERT OR
13 GIVEN EXPERT TESTIMONY IN OTHER CASES?

14 A YES, I HAVE.

15 Q ALL RIGHT. IN GENERAL SESSIONS HAVE YOU BEEN
16 CERTIFIED AS AN EXPERT IN ADULT CRIMINAL CASES?

17 A YES, I HAVE.

18 Q AND FAMILY COURT, HAVE YOU ALSO BEEN QUALIFIED
19 AS AN EXPERT?

20 A YES, I HAVE.

21 Q IN UNITED STATES FEDERAL COURT IN CIVIL CASES?

22 A YES, I HAVE.

23 Q AND HOW ABOUT COURT OF COMMON PLEAS IN SOUTH
24 CAROLINA?

25 A YES, I'VE ALSO BEEN QUALIFIED AS AN EXPERT IN

1 THE COURT OF COMMON PLEAS.

2 Q YOU ALSO, HAVE YOU ALSO PUBLISHED IN YOUR
3 CAREER, DURING YOUR CAREER?

4 A YES, I HAVE.

5 Q LET ME HAND YOU SO THAT WE DON'T GO THROUGH ALL
6 OF THESE. IS THAT A COPY, CURRENT COPY OF YOUR
7 C.V. RESUME?

8 A THIS IS THE JUNE COPY.

9 Q ALL RIGHT. HAVE THERE BEEN ANY ADDITIONS?

10 A I THINK I'VE TESTIFIED A COUPLE MORE TIMES IN
11 THE PAST MONTH.

12 Q OKAY. AND DO YOU HAVE ANY PUBLICATIONS THAT
13 WOULD STAND OUT OR ANYTHING THAT WOULD BE ON THE
14 ISSUES OF CHILD PSYCHOLOGY, PSYCHOLOGICAL
15 EVALUATION OF JUVENILE OFFENDERS, HAVE YOU DONE
16 ANY WORK IN THAT AREA?

17 A I DON'T THINK I'VE PUBLISHED IN THAT AREA.

18 Q ALL RIGHT. LET ME HAVE THIS MARKED AS
19 DEFENDANT'S NUMBER THREE.

20 (DEFENDANT'S EXHIBIT NUMBER THREE, C.V., MARKED
21 FOR IDENTIFICATION.)

22 MR. D'AGOSTINO: FOR THIS HEARING SO I DON'T
23 HAVE TO GO THROUGH ALL YOUR PUBLICATIONS AND ALL
24 THE OTHER QUALIFICATIONS, I MOVE TO INTRODUCE
25 DEFENDANT'S EXHIBIT NUMBER THREE, YOUR HONOR.

1 THE COURT: OKAY. ANY OBJECTION?

2 MR. THOMPSON: NO, YOUR HONOR..

3 THE COURT: BE RECEIVED.

4 MR. D'AGOSTINO: AT THIS TIME I ASK THE COURT TO
5 QUALIFY DR. VENN AS AN EXPERT IN CLINICAL AND
6 FORENSIC PSYCHOLOGY.

7 THE COURT: ANY VOIR DIRE BY THE STATE?

8 MR. THOMPSON: YES, YOUR HONOR, IF I COULD. I
9 BELIEVE I DON'T HAVE ANY QUESTIONS.

10 THE COURT: I FIND HE'S QUALIFIED IN BOTH
11 FORENSIC AND CLINICAL PSYCHOLOGY.

12 Q DID YOU HAVE OCCASION TO EVALUATE ANTONIO
13 GORDON?

14 A YES, I DID.

15 Q AND WAS THAT IN COLUMBIA AND WAS THAT RECENTLY?

16 A THAT WAS ON JULY 6 AT MY OFFICE IN COLUMBIA.

17 Q WHAT DID YOU DO DURING YOUR EVALUATION? WHAT
18 DID IT CONSIST OF?

19 A I TALKED TO MR. GORDON, I REVIEWED HIS
20 UNDERSTANDING OF MIRANDA RIGHTS. I REVIEWED
21 ISSUES RELEVANT TO HIS COMPETENCY TO STAND
22 TRIAL. I GAVE HIM A IQ TEST AND A MEMORY TEST
23 AND A TEST OF SUGGESTIBILITY.

24 Q NOW WHAT IQ TEST DID YOU USE?

25 A I USED THE WECHSLER ADULT INTELLIGENCE SCALE

1 THIRD EDITION.

2 Q AND WOULD YOU BRIEFLY EXPLAIN OR JUST EXPLAIN
3 WHAT THAT TEST CONSISTS OF FOR THE COURT?
4 EXPLAIN WHAT IT IS AND WHAT IT MEASURES?

5 A THE WECHSLER ADULT INTELLIGENCE SCALE IS THE
6 MOST COMPREHENSIVE TEST OF INDIVIDUAL
7 INTELLIGENCE AVAILABLE. IT'S A BROAD BASED
8 TEST. IT CONSISTS OF 11 SEPARATE TESTS, SOME OF
9 WHICH INVOLVE THE INDIVIDUAL'S ABILITY TO SPEAK
10 WORDS AND SOME OF HIS ABILITY TO USE HIS HANDS
11 AND EYES TO SOLVE VISUAL PROBLEMS AND MOTOR
12 PROBLEMS, SO IT'S A VERY BROAD BASE TEST OF
13 INTELLIGENCE.

14 Q DID YOU GIVE THE, I BELIEVE WE HEARD SOME
15 TESTIMONY THAT THERE IS WECHSLER'S TEST FOR
16 CHILDREN AND ONE FOR THE ADULTS AS WELL, DID YOU
17 GIVE THE ONE FOR CHILDREN OR ADULTS?

18 A I GAVE THE ONE FOR ADULTS. I ALSO GIVE HIM A
19 READING TEST, EXCUSE ME. I ALSO TESTED HIS
20 READING ABILITY.

21 Q NOW AT THE TIME YOU EXAMINED ANTONIO GORDON DID
22 YOU HAVE OR DO YOU HAVE OR HAVE YOU REVIEWED ANY
23 OF THE PSYCHOLOGICAL EVALUATIONS BY THE
24 DEPARTMENT OF JUVENILE JUSTICE.

25 A NO, I HAVE NOT.

1 Q AND YOU WEREN'T PROVIDED WITH ANY OF THOSE SO
2 YOU WERE DOING YOUR TESTS ALL ON YOUR OWN?

3 A YES, SIR, THAT'S CORRECT.

4 Q WHAT DID HE SCORE ON THE IQ TEST?

5 A HE SCORED AN IQ OF 68.

6 Q NOW YOU ALSO PERFORMED A MEMORY TEST, DESCRIBE
7 THAT FOR THE COURT?

8 A I GAVE ANTONIO THE LOGICAL MEMORY SUBTEST OF THE
9 WECHSLER MEMORY SCALE THIRD EDITION. IT
10 INVOLVES READING A COUPLE OF PARAGRAPHS TO THE
11 INDIVIDUAL THEN HAVING HIM RECITE FROM MEMORY
12 WHAT I READ TO HIM. ONE OF THE PARAGRAPHS IS
13 REPEATED ONCE SO IT GIVES TWO EXPOSURES TO THE
14 SAME MATERIAL TO SEE IF MORE WILL BE REMEMBERED
15 AFTER THE SECOND READING, AND THEN AFTER
16 APPROXIMATELY 25 MINUTE DELAY YOU ASK THE PERSON
17 AGAIN WHAT WERE THE STORY I READ TO YOU 25
18 MINUTES AGO, SO THERE IS AN IMMEDIATE MEMORY
19 SCORE AND A DELAYED MEMORY SCORE.

20 Q WHAT WAS HIS SCORE ON THAT?

21 A HIS MEMORY SCORES WERE VERY LOW. HE'S AT THE
22 SECOND PERCENTILE.

23 Q ABOUT HOW ABOUT HIS READING SCORES? I THINK YOU
24 TESTIFIED, I DON'T MEAN TO JUMP BACK BUT YOU
25 TESTIFIED YOU ALSO GAVE HIM A READING SCORE, THE

1 IQ?

2 A YES, I GAVE HIM A READING TEST.

3 Q WHAT DOES IT SHOW AS FAR AS HIS READING LEVEL?

4 A HIS READING LEVEL IS AT THE THIRD GRADE LEVEL.

5 Q NOW GOING BACK TO THE MEMORY TEST, WAS THERE
6 ANYTHING ELSE, WHAT IS THE SIGNIFICANCE OF THE
7 MEMORY TEST?

8 A IT'S A TEST OF A PERSON'S ABILITY TO REMEMBER
9 THINGS THAT ARE SAID TO THEM. IT INDICATES THAT
10 ANTONIO'S ABILITY TO REMEMBER THINGS THAT HE
11 HEARS IS VERY LOW.

12 Q AND YOU ALSO GAVE HIM A SUGGESTIBILITY TEST, I
13 BELIEVE?

14 A YES, I DID.

15 Q WHAT IS THAT FOR AND WHAT DOES IT TELL YOU?

16 A THE SUGGESTIBILITY TEST IS INTENDED TO REFLECT
17 HOW EASILY A PERSON CAN BE SUGGESTED OR
18 MANIPULATED INTO SAYING SOMETHING THAT THEY HAVE
19 NO BASIS FOR SAYING.

20 Q WHAT DID YOU FIND WITH REGARD TO THAT TEST WITH
21 ANTONIO?

22 A HE'S VERY SUGGESTIBLE. HE OBTAINED A VERY HIGH
23 SCORE.

24 Q NOW WITH REGARD TO THE TESTS, ARE THERE ALSO
25 FLAGS OR INDICATORS TO TELL YOU WHETHER ANTONIO

1 IS MALINGERING OR IS TRYING TO INCREASE HIS,
2 MAKING HIM LOOK WORSE OR SOMETHING LIKE THAT?
3 DID YOU SEE ANY OF THAT?

4 A NO, I DID NOT. I THINK I DID GIVE A MALINGERING
5 TEST. IF I CAN BEG THE COURT'S INDULGENCE.
6 YES, I ALSO GAVE A MALINGERING TEST.

7 Q WHAT DID THAT DEMONSTRATE?

8 A HE PASSED IT. HE DID FINE. THERE IS NO
9 INDICATION HE WAS TRYING TO PRETEND TO HAVE
10 MEMORY PROBLEMS.

11 Q COULD YOU DESCRIBE FOR THE COURT ANTONIO'S
12 INTELLECTUAL ABILITIES AS FAR AS, YOU KNOW,
13 OPPOSED TO AN AVERAGE CITIZEN OR AVERAGE
14 INDIVIDUAL IN SOCIETY. WHERE WOULD HE FIT IN?

15 A WELL, HIS INTELLECTUAL ABILITY IS VERY LOW. HIS
16 IQ SCORE IS AT THE SECOND PERCENTILE, SO IF YOU
17 TOOK CROSS SECTION OF 100 CITIZENS HE'D BE THE
18 THIRD FROM THE BOTTOM.

19 Q WITH REGARD TO, DID YOU ALSO LOOK TO SEE, TRY TO
20 ASCERTAIN WHETHER ANTONIO WAS MENTALLY OR IS
21 MENTALLY RETARDED?

22 A I TRIED TO GET SOME INFORMATION ABOUT THAT.

23 Q WHAT VARIOUS FACTORS DO YOU HAVE TO LOOK AT TO
24 ASCERTAIN WHETHER SOMEONE IS MENTALLY RETARDED?

25 A WELL, THE DIAGNOSIS OF MENTAL RETARDATION IN AN

1 INDIVIDUAL HIS AGE IS BASED UPON THE IQ SCORE
2 AND ADAPTIVE BEHAVIOR. THAT IS, HOW ARE THEY
3 FUNCTIONING IN THE WORLD.

4 Q AND DID YOU TRY TO FIND OUT HOW HE FUNCTIONS IN
5 THE WORLD?

6 A YES, I TRIED TO.

7 Q DID YOU TRY TO TALK TO FAMILY MEMBERS ABOUT
8 THAT?

9 A YES, I TALKED TO HIS GRANDFATHER THIS MORNING TO
10 TRY TO GET SOME INFORMATION ABOUT THAT.

11 Q WERE YOU ABLE TO GET ENOUGH INFORMATION TO COME
12 TO AN OPINION AS TO WHETHER HE WAS MENTALLY
13 RETARDED OR NOT.

14 A NO, I WAS NOT ABLE TO COME TO AN OPINION.

15 Q AS FAR AS THERE ARE TWO FACTORS YOU SAID BECAUSE
16 ANTONIO IS UNDER THE AGE OF 18, AS FAR AS THE
17 FIRST FACTOR, DOES HE FALL WITHIN THE
18 CHARACTERIZATION OF MENTALLY RETARDED HIS IQ
19 BEING LOW?

20 A YES, HE DOES.

21 Q NOW YOU SAT THROUGH THE TESTIMONY AND YOU HEARD
22 THE OFFICERS TESTIFY ABOUT HOW THEY READ ANTONIO
23 HIS RIGHTS, DID YOU NOT?

24 A I CAME IN DURING ONE OFFICER'S TESTIMONY, BUT
25 YES, I HEARD THAT HE HAD BEEN READ HIS RIGHTS.

1 Q DO YOU HAVE AN OPINION WITHIN A REASONABLE
2 DEGREE OF CERTAINTY AS TO WHETHER ANTONIO WOULD
3 UNDERSTAND HIS MIRANDA RIGHTS?

4 A YES, I DO.

5 Q WHAT IS YOUR OPINION?

6 A I DO NOT BELIEVE HE UNDERSTANDS HIS MIRANDA
7 RIGHTS.

8 Q IF YOU CAN EXPLAIN THAT FOR THE COURT?

9 A I ASKED ANTONIO A SERIES OF QUESTIONS TO SEE IF
10 HE UNDERSTOOD HIS MIRANDA RIGHTS, AND I WAS NOT
11 SATISFIED THAT DID HE IN FACT UNDERSTAND THEM
12 PARTICULARLY HIS RIGHT TO HAVE AN ATTORNEY. HE
13 DID NOT UNDERSTAND HOW AN ATTORNEY CAN BE
14 HELPFUL TO HIM IN A PRE-INTERROGATION SITUATION.

15 Q AND WITH REGARD TO, YOU SPENT SOME TIME TALKING
16 TO ANTONIO THAT DAY HE CAME DOWN THERE, DID YOU
17 NOT?

18 A YES, I DID.

19 Q WHAT WERE SOME OF THE LARGEST OR MOST COMPLEX
20 WORDS THAT HE USED?

21 A WELL, HE USED THE WORD CONFLICT. HE USED THE
22 WORD DEFEND. HE KNEW THAT THE PUBLIC DEFENDER
23 WAS NOT DEFENDING HIM BECAUSE OF A CONFLICT,
24 AND HE USED THOSE WORDS BUT HE COULD NOT EXPLAIN
25 THEM.

1 Q YOU TRIED TO GET HIM TO EXPLAIN WHAT THAT MEANT?

2 A YES, I ASKED HIM IF HE UNDERSTOOD WHAT THAT
3 MEANT AND HE DIDN'T.

4 Q AS FAR AS ANY COURT PROCEEDING, NOT ASKING YOU
5 WHETHER HE'S COMPETENT OR NOT, BUT AS FAR AS A
6 COURT PROCEEDING IS CONCERNED, IS HE GOING TO
7 NEED SPECIAL CONSIDERATIONS FOR WHAT'S GOING ON
8 TO BE EXPLAINED TO HIM AS THE TRIAL PROCEEDS?

9 A YES, HE WILL. HE'S VERY LIMITED IN HIS ABILITY
10 TO UNDERSTAND WORDS AND TO REMEMBER WORDS THAT
11 ARE SPOKEN. HE WILL NEED A LOT OF ASSISTANCE IN
12 GETTING THROUGH A TRIAL.

13 Q DO YOU HAVE AN OPINION WITHIN A REASONABLE
14 DEGREE OF CERTAINTY IN YOUR FIELD AS TO WHETHER
15 ANTONIO IS EASILY SUGGESTIBLE, IS EASILY LED
16 AROUND?

17 A YES, I DO HAVE AN OPINION.

18 Q WHAT IS YOUR OPINION?

19 A ANTONIO IS VERY SUGGESTIBLE. HE'S EASILY LED OR
20 MANIPULATED INTO SAYING THINGS THAT HAVE NO
21 BASIS IN FACT.

22 Q HOW ABOUT WITH REGARD TO DOING THINGS. IS HE
23 EASILY LED OR DIRECTED TO DO THINGS?

24 A PROBABLY. INDIVIDUALS WITH THAT LOW AN IQ ARE
25 VERY SUGGESTIBLE.

1 MR. D'AGOSTINO: ONE MOMENT, YOUR HONOR.

2 Q WERE THERE ANY OTHER TESTS THAT YOU PERFORMED OR
3 ANY OTHER OBSERVATIONS YOU MADE WITH REGARD TO
4 ANTONIO THAT WOULD BE IMPORTANT FOR THE COURT TO
5 KNOW, DR. VENN?

6 A NO, I BELIEVE WE'VE COVERED IT ALL.

7 Q THANK YOU. ANSWER ANY QUESTIONS THE SOLICITOR
8 MIGHT HAVE.

9 CROSS EXAMINATION BY MR. THOMPSON:

10 Q DR. VENN, DID YOU PRODUCE A REPORT AFTER YOUR
11 EXAMINATION OF THE DEFENDANT ANTONIO?

12 A NO, I DID NOT.

13 Q ISN'T IT UNETHICAL NOT TO DO A REPORT WHEN
14 YOU'RE GOING TO BE TESTIFYING IN COURT ON A
15 SITUATION SUCH AS THIS?

16 A NO, SIR, IT IS NOT UNETHICAL.

17 Q DOES IT NOT VIOLATE THE CANONS OF THE
18 PSYCHOLOGICAL ASSOCIATION TO DO THIS WITHOUT A
19 REPORT?

20 A NO, SIR, IT DOES NOT.

21 Q DON'T THEY SUGGEST YOU SHOULD WRITE A REPORT
22 WHEN YOU ARE GOING TO BE TESTIFYING CONCERNING
23 THIS SOMETHING LIKE THIS?

24 A I'M NOT AWARE OF THAT.

25 Q IF YOU WOULD, DOCTOR, YOU SAID HE SCORED AS FAR

1 AS HIS IQ 68, THAT CAN BE PLUS OR MINUS FIVE
2 POINTS, ISN'T THAT CORRECT?

3 A I DON'T KNOW WHAT THE STANDARD ERROR OF
4 MEASUREMENT AT THAT POINT. IT'S AROUND SEVERAL
5 POINTS.

6 Q AREN'T YOU AWARE OF THE STANDARD OF MEASUREMENTS
7 FOR THAT DEGREE OF ERROR IN THE TESTING YOU
8 PERFORMED?

9 A IT'S SEVERAL POINTS. I DON'T KEEP ALL THOSE
10 NUMBERS IN MY HEAD. NO, I CAN'T TELL YOU
11 PRECISELY WHAT THE STANDARD ERROR OF MEASUREMENT
12 IS.

13 Q BUT IT'S SEVERAL POINTS EITHER WAY?

14 A YES, IT WOULD BE SEVERAL POINTS.

15 Q AND ACTUALLY TO CONSIDER SOMEONE IN THAT AREA OF
16 ACTUALLY MILD MENTAL RETARDATION THAT WOULD BE
17 SOMEONE BETWEEN THE IQ LEVEL OF 50 TO 55 TO
18 APPROXIMATELY 70, ISN'T THAT CORRECT?

19 A APPROXIMATELY 70 WITHIN A FEW POINTS.

20 Q AND THAT'S ONLY ONE PRONG OF THE TEST, ISN'T IT?

21 A YES, IT IS.

22 Q AND IN ACTUALITY -- WELL, LET ME GO BACK JUST A
23 LITTLE BIT. DO YOU FEEL THAT WHEN HE WAS DOING
24 THE IQ TEST FOR YOU THAT HE WAS MOTIVATED IN
25 PERFORMING ON THAT IQ TEST?

1 A YES, I DID.

2 Q AND WHAT FACTORS DO YOU HAVE THAT MADE YOU
3 BELIEVE THAT?

4 A MY OBSERVATIONS OF HIM, I FELT HE WAS DOING HIS
5 BEST.

6 Q BUT THERE IS NOT SOMETHING SPECIFIC THAT WOULD
7 LEAD YOU TO BELIEVE THAT HE WAS NOT DOING HIS
8 BEST?

9 A WELL, I GAVE HIM A MALINGERING SCREENING TEST TO
10 SEE IF HE WOULD FAKE HAVING A MEMORY PROBLEM AND
11 HE DID NOT TRY TO FAKE A MEMORY PROBLEM.

12 Q AND IN THAT SCREENING TEST DID YOU ASK THE
13 QUESTION WHETHER HE KNEW THE COLORS OF THE
14 AMERICAN FLAG?

15 A NOT ON THE SCREENING TEST.

16 Q NOT ON THE SCREENING TEST. WHAT TYPE OF
17 QUESTIONS DID YOU ASK HIM ON THAT PARTICULAR
18 TEST?

19 A I GAVE HIM THE RAY 15 ITEM TEST WHICH IS A
20 STANDARD AND VERY WELL KNOWN, VERY WIDELY USED
21 TEST TO SEE IF PEOPLE WILL TRY TO FAKE HAVING A
22 MEMORY PROBLEM. THEY LOOK AT A PAGE OF LETTERS
23 AND NUMBERS FOR A NUMBER OF SECONDS AND THEN
24 THAT'S CONCEALED AND THEN YOU SEE IF THEY WILL
25 REPRODUCE IT FROM MEMORY.

1 Q AND HE SEEMED TO PERFORM WELL ON THAT?

2 A YES, HE DID FINE. HE DID JUST FINE.

3 Q BUT YOU'RE TELLING ME IN HIS MEMORY TEST THAT HE
4 ACTUALLY WAS ONLY IN THE LOW TWO PERCENTILE?

5 A THAT'S RIGHT.

6 Q BUT HE WAS ABLE TO PERFORM FINE AS FAR AS
7 MALINGERING AND THAT INCLUDED THE PORTION OF
8 MEMORY?

9 A YES, IT DOES.

10 Q NOW YOU'RE NOT SAYING, DOCTOR, THAT HE IS
11 MENTALLY RETARDED, ARE YOU?

12 A I HAVEN'T SAID THAT, NO.

13 Q SO IN YOUR EXPERT OPINION YOU CANNOT SAY THAT HE
14 IS MENTALLY RETARDED, CORRECT?

15 A THAT'S CORRECT, I HAVE NO OPINION ON THAT.

16 Q AND ACTUALLY IN YOUR EXPERT OPINION YOU DO NOT
17 SAY THAT HE IS NOT COMPETENT, CORRECT?

18 A THAT'S CORRECT.

19 Q AND I THINK IN ACTUALITY I THINK YOU WOULD
20 PROBABLY, IF YOU HAD TO RENDER AN OPINION, HAVE
21 TO SAY THAT HE COMPETENT?

22 A I HAVE NO OPINION ON THAT.

23 Q YOU ALSO HAVE NO OPINION AS TO HIS MENTAL
24 RETARDATION STATUS?

25 A I HAVE NO OPINION ON WHETHER HE'S MENTALLY

1 RETARDED.

2 Q DOCTOR, ISN'T WHAT YOU DO TO DETERMINE WHETHER
3 SOMEONE'S MENTALLY RETARDED OR WHETHER THEY ARE
4 COMPETENT TO STAND TRIAL?

5 A YES, IT IS.

6 Q AS A MATTER OF FACT YOU WERE ASKED TO DO THAT BY
7 MR. D'AGOSTINO FOR THIS CASE, RIGHT?

8 A YES, I WAS.

9 Q BUT YOU CAME BACK WITH NO OPINION ON THOSE
10 THINGS?

11 A THAT IS CORRECT.

12 Q IS THERE A FORENSIC PSYCHOLOGICAL TEST WHICH IS
13 USED TO DETERMINE A DEFENDANT'S UNDERSTANDING OF
14 HIS MIRANDA RIGHTS?

15 A YES, THERE IS.

16 Q DID YOU PERFORM THAT?

17 A I PERFORMED A VERSION OF THAT.

18 Q CAN YOU DESCRIBE WHAT THAT IS CALLED?

19 A WELL, THERE ARE SEVERAL TESTS. IT'S A TEST
20 ADAPTED FROM, THE TEST I GAVE IS AN ADDUCTION OF
21 ONE OF THE TESTS. DO I REMEMBER THE EXACT NAME
22 OF THAT TEST? NO, I KNOW IT'S A COMPREHENSION
23 OF MIRANDA RIGHTS INVENTORY OR SOMETHING LIKE
24 THAT.

25 Q WHAT DOES THAT TEST CONSIST OF?

1 A CONSISTS OF ASKING INDIVIDUALS A SERIES OF
2 QUESTIONS.

3 Q LIKE WHAT?

4 A LIKE DO YOU KNOW WHAT IT MEANS WHEN THE POLICE
5 SAYS YOU HAVE THE RIGHT TO REMAIN SILENT.

6 Q AND WHAT WAS HIS ANSWER TO THAT?

7 A EXCUSE ME, LET ME GET OUT. I ASKED HIM, WHAT
8 DOES IT MEAN WHEN WE SAY YOU HAVE THE RIGHT TO
9 REMAIN SILENT. AND HE SAID, BE QUIET AND DON'T
10 TALK TO NOBODY BUT ME. I WOULD CONSIDER THAT A
11 FAILURE, THAT HE FAILED THAT ITEM.

12 Q YOU WOULD CONSIDER IT A FAILURE FOR HIM TO SAY
13 THAT HIS RIGHT TO REMAIN SILENT TO BE QUIET AND
14 NOT TALK TO ANYBODY?

15 A YES, BE QUIET IS ONE OF THE COMMON FAILURES OF
16 THAT ITEM.

17 Q AND WHAT WOULD THE APPROPRIATE ANSWER BE?

18 A IT MEANS THAT I DON'T HAVE TO GIVE A STATEMENT
19 IF I DON'T WANT TO.

20 Q WHAT WERE THE OTHER QUESTIONS YOU ASKED?

21 A I ASKED A NUMBER OF QUESTIONS.

22 Q GO AHEAD PLEASE AND TELL ME HIS ANSWERS.

23 A I ASKED HIM IF THE POLICE ASK YOU A QUESTION
24 THAT YOU DO NOT WANT TO ANSWER, DO YOU HAVE TO
25 ANSWER IT. AND HE SAID NO. I ASKED --

1 Q IS THAT FAILING THAT QUESTION?

2 A NO, THAT'S A PASS. HE PASSED SOME AND FAILED
3 SOME. I ASKED HIM WHAT IS A RIGHT. AND HE SAID
4 I ONLY KNOW RIGHT HAND AND RIGHT. I ASKED HIM,
5 WHAT DOES IT MEAN WHEN WE SAY ANYTHING YOU CAN
6 SAY CAN AND WILL BE USED AGAINST YOU IN A COURT
7 OF LAW. HE SAID THAT MEANS THE COURT'S GOING TO
8 FIND OUT ABOUT IT.

9 I ASKED HIM, THE THINGS YOU TELL THE POLICE,
10 ARE THEY GOING TO KEEP THEM SECRET AND HE SAID
11 YES. I ASKED HIM WHAT DOES THE WORD SECRET
12 MEAN. HE SAID DON'T TELL ME OR DON'T TELL
13 NOBODY. I ASKED HIM WHOM ARE THEY GOING TO
14 TELL. HE SAID EVERYBODY. I ASKED HIM ARE THE
15 THINGS THAT YOU TELL THE POLICE GOING TO BE USED
16 AGAINST YOU AND HE SAID I DON'T KNOW.

17 Q WELL, ISN'T THAT TRUE? THINGS THAT HE TELLS THE
18 POLICE BEING USED AGAINST HIM, AT THIS POINT HE
19 DOESN'T KNOW, DOES HE?

20 A WELL, WE WOULD CONSIDER THAT A FAILURE.

21 Q BECAUSE HE DIDN'T KNOW THAT THOSE WILL BE USED
22 AGAINST HIM?

23 A HE DOESN'T KNOW WHETHER OR NOT THEY ARE GOING TO
24 BE USED AGAINST HIM.

25 Q BUT COULDN'T THAT ALSO RELATE TO THE FACT THAT

1 HE MAY HAVE SPOKEN WITH HIS ATTORNEY AND
2 UNDERSTANDS THERE HAS TO BE A HEARING ON HIS
3 STATEMENT AND SO HE WOULDN'T KNOW UNTIL THE
4 JUDGE RULED WHETHER THOSE STATEMENTS WOULD BE
5 USED AGAINST HIM?

6 A I'M NOT SURE IF IT COULD BE INTERPRETED THAT
7 WAY.

8 Q NOW THE TEST YOU PERFORMED YOU SAID YOU ADAPTED
9 THAT TEST?

10 A YES, I DID.

11 Q SO IN ACTUALITY IT'S NOT THE TEST THAT WAS
12 ACTUALLY PRINTED?

13 A THAT'S CORRECT.

14 Q SO THIS TEST HAS NOT BEEN ONE THAT HAS BEEN
15 ITSELF TESTED FOR ITS ACCURACY, HAS IT?

16 A THAT'S CORRECT.

17 Q SO THIS IS SOMETHING THAT YOU DID FOR YOUR OWN
18 SELF, CORRECT?

19 A WELL, YES, A TEST HAS TO BE MODIFIED TO THE
20 POPULATION YOU ARE WORKING WITH. THE TEST IN
21 PRINT WAS DEVELOPED FOR A POPULATION IN BOSTON
22 WHICH MAY WORK FINE IN BOSTON, BUT I FOUND I'VE
23 HAD TO ADAPT IT TO THIS POPULATION I WORK WITH
24 HERE.

25 Q I WAS INTERESTED TO HEAR, DOCTOR, THAT YOU

1 DIDN'T USE ANYTHING ELSE IN YOUR EVALUATION OF
2 HIM. YOU BASICALLY EVALUATED HIM FROM SCRATCH.
3 ISN'T IT TRUE THAT THINGS SUCH AS THE PRIOR
4 EVALUATION FROM THE DEPARTMENT OF JUVENILE
5 JUSTICE WOULD BE HELPFUL IN YOUR EVALUATION OF
6 THE DEFENDANT?

7 A I HAVE NO OPINION ON THAT.

8 Q DON'T YOU NORMALLY, IN THE COURSE OF EVALUATING
9 SOMEONE, USE THINGS OF PRIOR EVALUATIONS, THINGS
10 LIKE SCHOOL RECORDS OR THINGS LIKE THAT TO
11 DETERMINE IF THEY ARE COMPETENT AND IF THEY CAN
12 DO SOMETHING AS YOU SAY TO WAIVE OR PROPERLY
13 WAIVE THE MIRANDA RIGHTS?

14 A ONLY IF THEY ARE MADE AVAILABLE TO ME. COULD I
15 HAVE SOME MORE WATER PLEASE.

16 Q WERE THEY NOT MADE AVAILABLE TO YOU? WERE
17 THOSE REPORTS MADE AVAILABLE TO YOU, DOCTOR?

18 A WHICH ITEMS ARE YOU REFERRING TO?

19 Q ANY PRIOR REPORTS? DJJ REPORTS, PRIOR SCHOOL
20 RECORDS, ANYTHING OF THAT NATURE?

21 A I DID RECEIVE SCHOOL RECORDS.

22 Q AND WHAT WAS INCLUDED IN YOUR RECORDS?

23 A I HAVE AN IQ SCORE THAT IS A SCHOOL ABILITY
24 INDEX SCORE AND I THINK I HAVE SOME ACADEMIC
25 ACHIEVEMENT SCORES.

1 Q DID YOU CONSIDER THOSE IN YOUR EVALUATION?

2 A YES, I DID.

3 Q DID YOU CONSIDER ANY OTHER PRIOR REPORTS THAT
4 YOU HAD HANDED TO YOU IN YOUR EVALUATION?

5 A I DON'T THINK I HAD ANY OTHER PRIOR REPORTS.

6 Q WOULDN'T IT HAVE BEEN HELPFUL TO HAVE HAD PRIOR
7 REPORTS, PRIOR DJJ REPORTS?

8 A NOT NECESSARILY.

9 Q BUT ISN'T IT TRUE THAT PART OF DETERMINING
10 SOMEONE AS FAR AS THEIR ABILITY TO COMPREHEND
11 THINGS YOU HAVE TO LOOK AT THEIR PAST FORENSIC
12 HISTORY?

13 A NO, PAST FORENSIC HISTORY DOES NOT NECESSARILY
14 CONTRIBUTE TO SAY ABILITY TO UNDERSTAND MIRANDA
15 RIGHTS AND THAT'S BEEN DEMONSTRATED IN THE
16 RESEARCH.

17 Q BUT IT DOES THE COMPETENCE, DOESN'T IT?

18 A I DON'T KNOW.

19 Q YOU DON'T KNOW BUT YOU TEST FOR COMPETENCE ALL
20 THE TIME?

21 A I TEST FOR COMPETENCE. I CAN'T REMEMBER THAT
22 PARTICULAR PIECE OF RESEARCH.

23 Q YOU SAID AS PART OF YOUR REPORTS YOU WERE
24 CONSIDERING SOME OF HIS, I GUESS, SOME OF HIS
25 FUNCTIONING AND YOU SPOKE WITH I BELIEVE HIS

1 GRANDFATHER TODAY CONCERNING THAT?

2 A YES, I DID.

3 Q DID THEY TELL YOU ANYTHING ABOUT THE PARTICULAR
4 FACTS OF THIS CASE OR ANYTHING ABOUT HOW ANTONIO
5 LIVES HIS LIFE?

6 A THEY TOLD ME A LITTLE ABOUT HIM, NOTHING ABOUT
7 THIS CASE.

8 Q AND WHAT DID THEY TELL YOU ABOUT HIM THAT HELPED
9 YOU BASE YOUR OPINION ON?

10 A NOT THEY BUT HE, HIS GRANDFATHER. HIS
11 GRANDFATHER TOLD ME NOTHING TO HELP ME FORM MY
12 OPINION.

13 Q WOULD IT HAVE HELPED YOU TO FORM YOUR OPINION IF
14 YOU HAVE HAD SUCH INFORMATION AS THE FACT THAT
15 ANTONIO WAS ABLE ON HIS OWN TO GO OUT AND
16 PURCHASE A CAR?

17 MR. D'AGOSTINO: YOUR HONOR, I OBJECT. HE
18 HASN'T EXPRESSED AN OPINION AS TO MENTAL
19 RETARDATION.

20 THE COURT: WELL, HE'S TALKING ABOUT HIS ABILITY
21 TO UNDERSTAND MIRANDA RIGHTS. I THINK HE'S GOT
22 A RIGHT. I OVERRULE.

23 Q WOULD IT BE HELPFUL TO KNOW --

24 THE COURT: WELL, ASK YOUR QUESTION.

25 Q WOULDN'T IT BE HELPFUL TO KNOW HE WAS ABLE TO GO

1 OUT ON HIS OWN AND PURCHASE A CAR?

2 A I WOULD WANT TO KNOW MORE DETAILS ABOUT THAT.

3 Q I UNDERSTAND BUT WOULDN'T IT HELP YOU IF YOU
4 KNEW THE DETAILS ABOUT THAT AS TO DETERMINE

5 WHETHER HE'S ABLE TO WAIVE HIS MIRANDA RIGHTS
6 AND DETERMINE HIS COMPETENCY?

7 A NOT NECESSARILY. I CAN'T TELL IF SOMETHING IS
8 GOING TO HELP ME WITH AN OPINION OR NOT UNTIL I
9 KNOW THE INFORMATION.

10 Q DOESN'T THAT GO ALONG WITH HIS ABILITY TO
11 FUNCTION?

12 A I WOULD NEED TO KNOW MORE INFORMATION ABOUT IT.

13 Q HOW ABOUT THE FACT THAT HE IS ABLE TO INSTALL
14 STEREO EQUIPMENT IN THAT CAR, WOULD THAT HELP
15 YOU IN BEING ABLE TO LOOK AND DETERMINE HIS
16 ABILITY TO FUNCTION?

17 A I WOULD NEED TO KNOW MORE ABOUT THAT.

18 Q DID YOU ASK HIM ABOUT THE CHILD HE HAS?

19 A NO, I DID NOT.

20 Q BUT WOULDN'T THAT HELP IN DETERMINING HOW HE
21 FUNCTIONS?

22 A NOT NECESSARILY.

23 Q IF YOU ASK HIM ABOUT THE CARE OF THE CHILD, ARE
24 YOU SAYING IF HE IS ABLE TO CHANGE A DIAPER AND
25 BABYSIT AND DO THINGS LIKE THAT THAT THAT

1 WOULDN'T HELP IN DETERMINATION OF HOW HE
2 FUNCTIONS?

3 A NO, THAT WOULD NOT NECESSARILY HELP. PEOPLE
4 WITH MENTAL RETARDATION ARE DOING THOSE THINGS
5 ALL THE TIME.

6 Q AND PEOPLE WITH, BUT HE'S NOT SOMEONE WITH
7 MENTAL RETARDATION, IS HE?

8 A I HAVE NO OPINION ON THAT.

9 Q SO YOU CAN'T SAY THAT HE IS THOUGH?

10 A THAT IS CORRECT.

11 Q SO YOU CAN'T LUMP HIM IN A GROUP OF PEOPLE WITH
12 MENTAL RETARDATION ARE DOING STUFF LIKE THAT ALL
13 THE TIME?

14 A THAT IS CORRECT.

15 Q AND PART OF FUNCTIONING YOU WOULD WANT TO
16 CONSIDER OTHER THINGS HE CAN DO, CORRECT?

17 A I DON'T KNOW WHAT YOU ARE HEADING FOR.

18 Q AS A PART OF FUNCTIONING SEE, DOCTOR, YOU'RE
19 CONFUSING ME BECAUSE YOU'RE TELLING ME HE'S NOT
20 ABLE TO WAIVE HIS MIRANDA RIGHTS BUT AT THE SAME
21 TIME YOU'RE TELLING ME THAT SUCH THINGS AS BEING
22 ABLE TO DO AND LIVE IN A BASIC DAY-TO-DAY LIFE
23 AND DO VARIOUS CHORES AND THINGS THAT SEEM
24 FAIRLY COMPLICATED TO ME, WOULDN'T IT HELP YOU
25 IN YOUR EVALUATION?

1 A CHANGING A DIAPER DOES NOT MEAN HE HAS THE
2 VERBAL SKILLS TO COMPREHEND MIRANDA RIGHTS.

3 Q BUT WOULDN'T SOME OF HIS LIFE EXPERIENCES HELP
4 IN DETERMINING WHAT HE WAS REALLY ABLE TO
5 UNDERSTAND AND WHAT REALLY HE WAS NOT ABLE TO
6 UNDERSTAND?

7 A THEY MIGHT.

8 Q NOW LET'S GO BACK, YOU SAID THAT YOU WERE
9 TALKING ABOUT SOME PEOPLE WHO WERE MENTALLY
10 RETARDED, PEOPLE WHO ARE MENTALLY RETARDED WELL,
11 LET'S PUT IT THE LOWEST I GUESS, DON'T WANT TO
12 BE CALLED THE LOWEST OR HIGHEST RANGE, BUT THE
13 MILD RANGE OF MENTAL RETARDATION, PEOPLE IN THE
14 MILD RANGE OF MENTAL RETARDATION YOU CANNOT SAY
15 THAT ALL OF THEM CANNOT UNDERSTAND AND WAIVE
16 MIRANDA RIGHTS, CORRECT?

17 A I DON'T KNOW.

18 Q WELL, LET ME PUT IT THIS WAY, THERE ARE SOME
19 PEOPLE WHO YOU WOULD CONSIDER MILD MENTALLY
20 RETARDED THAT YOU EVALUATED IN THE PAST THAT YOU
21 WOULD CONSIDER TO BE ABLE TO WAIVE MIRANDA
22 RIGHTS, IS THAT NOT CORRECT?

23 A THAT'S PROBABLY TRUE.

24 Q AND --

25 A I CAN'T RECALL ANY PARTICULAR CASES TODAY, BUT

1 THAT'S PROBABLY A FAIR STATEMENT.

2 Q AND THAT'S NOT THAT UNUSUAL, IS IT?

3 A I HAVE NO OPINION ON THAT.

4 Q ISN'T IT TRUE THAT LOOKING INTO HIS
5 INTERPERSONAL SKILLS WITH OTHER PEOPLE WOULD
6 HELP IN DETERMINING THE ABILITY HE HAD TO
7 UNDERSTAND HIS MIRANDA RIGHTS?

8 A NOT NECESSARILY.

9 Q BUT THAT WOULD INCLUDE VERBAL SKILLS, WOULDN'T
10 IT?

11 A IT MIGHT, YES.

12 Q BUT YOU DIDN'T GO OVER ANY OF THOSE THINGS WITH
13 ANTONIO, DID YOU?

14 A I DIDN'T SAY THAT.

15 Q WELL, DID YOU GO INTO ANY OF HIS INTERPERSONAL
16 SKILLS TO TRY AND HELP YOUR EVALUATION?

17 A I DON'T REMEMBER EVERYTHING I ASKED HIM.

18 Q NOW DID YOU EVER HAVE EITHER OF THE STATEMENTS
19 THAT HE GAVE TO THE POLICE TO LOOK AT, EITHER OF
20 THOSE STATEMENTS, DID YOU HAVE THOSE AT YOUR
21 DISPOSAL?

22 A YES, I DID.

23 Q DID YOU NOTICE IN THOSE TWO STATEMENTS THAT IN
24 THE INITIAL STATEMENT HE DID SOMETHING THAT WAS
25 BASICALLY IT WOULD BE SELF-PRESERVATION. HE DID

1 NOT SAY HE WAS THE SHOOTER IN THIS STATEMENT,
2 DID HE?

3 A I BELIEVE THAT'S TRUE.

4 Q AND SELF-PRESERVATION IS SOMETHING THAT SHOWS
5 THAT HE UNDERSTANDS WHAT HE'S DOING, DOESN'T IT?

6 A WELL, IT COULD BE SELF-PRESERVATION. IT COULD
7 BE THE TRUTH. I DON'T KNOW WHICH IT IS.

8 Q ARE YOU SUGGESTING, DOCTOR, THAT ANTONIO IS SO
9 SUGGESTIBLE THAT SOMEHOW HE IS NOW AGREEING TO
10 BEING THE SHOOTER WHEN HE IS NOT?

11 A I HAVEN'T SAID THAT.

12 Q BUT DOESN'T IT INDICATE THAT BY GIVING A
13 STATEMENT ON SELF-PRESERVATION THAT THAT SHOWS
14 AT LEAST SOME HIGHER LEVEL OF FUNCTIONING?

15 A WELL, YOU CHARACTERIZE IT AS SELF-PRESERVATION.
16 I DON'T KNOW IF IT'S SELF-PRESERVATION OR IF
17 IT'S JUST A STATEMENT OF THE TRUTH.

18 Q IF IT WAS SELF-PRESERVATION WOULD THAT BE
19 SOMETHING THAT YOU COULD CHARACTERIZE HAS HAVING
20 SOMEONE, THAT SOMEONE HAD TO HAVE A LITTLE BIT
21 OF A HIGHER KNOWLEDGE TO BE ABLE TO DO?

22 A NO, SIR. I'VE SEEN SOME VERY RETARDED PEOPLE
23 MAKE STATEMENTS THAT WERE SELF-PRESERVING.

24 Q YOU WEREN'T THERE AT THE TIME HIS MIRANDA RIGHTS
25 WERE READ AT THE POLICE DEPARTMENT, WERE YOU?

1 A THAT IS CORRECT.

2 Q SO YOU REALLY DON'T KNOW AT THAT TIME WHETHER HE
3 WAS ABLE TO UNDERSTAND AND COMPREHEND WHAT HIS
4 MIRANDA RIGHTS WERE, DO YOU?

5 A ALL I KNOW IS THE TESTIMONY I'VE HEARD ABOUT
6 THAT.

7 Q SO THE ANSWER WOULD BE YES OR NO?

8 A I HAVE AN OPINION THAT HE WAS NOT ABLE TO
9 UNDERSTAND HIS MIRANDA RIGHTS AT THE TIME THAT
10 THEY WERE READ TO HIM.

11 Q AT THE TIME THE POLICE READ THEM TO HIM?

12 A YES, SIR. IF HE DOES NOT UNDERSTAND THEM LATER
13 IN MY OFFICE IT'S NOT LIKELY THAT HE UNDERSTOOD
14 THEM AT THE TIME THEY WERE READ TO HIM.

15 Q WHEN HE WAS IN YOUR OFFICE, WHEN HE HAD
16 QUESTIONS HE WOULD ASK YOU, WOULDN'T HE?

17 A I'M SORRY?

18 Q WHEN HE WAS IN YOUR OFFICE, WHEN HE WOULD HAVE
19 QUESTIONS HE WOULD ASK YOU, WOULDN'T HE? IF HE
20 HAD A QUESTION AS TO WHAT YOU ASKED OR EXPLAIN
21 SOMETHING, HE WOULD ASK?

22 A I DON'T REMEMBER HIM DOING THAT. I REMEMBER HE
23 ASKED ABOUT A TOY THAT I HAD IN THE OFFICE. I
24 REMEMBER HE ASKED ABOUT THAT. I DON'T REMEMBER
25 HIM ASKING ME ABOUT ANY OF MY QUESTIONS.

1 Q BUT YOU BELIEVE THAT IF HE DIDN'T UNDERSTAND
2 SOMETHING THAT HE WOULD HAVE ASKED YOU?

3 A NO. NO. PEOPLE WHO FUNCTION AT A LOW LEVEL OF
4 INTELLIGENCE TYPICALLY DO NOT ASK QUESTIONS.

5 Q ARE YOU AWARE OF HIS PRIOR RUN-IN WITH THE LAW?

6 A JUST, NOT IN ANY SPECIFICS, JUST VAGUELY.

7 Q BUT YOU ARE AWARE THAT HE HAS AT LEAST A NUMBER
8 OF PAST RUN-INS WITH THE LAW, IS THAT CORRECT?
9 AND THERE HE WAS AT LEAST COMMITTED TO DJJ
10 TWICE?

11 A YES.

12 Q AND DID YOU GO INTO ANY OF THAT AS FAR AS THE
13 POLICE WORK OR ANYTHING ON THAT?

14 A NO, I DID NOT.

15 Q WOULDN'T IT BE HELPFUL TO, IN DETERMINING
16 WHETHER HE CAN WAIVE HIS MIRANDA RIGHTS, TO TALK
17 TO HIM ABOUT PRIOR CONTACT WITH THE POLICE AND
18 WHETHER HE'S EVER HAD TO DO THAT BEFORE?

19 A IT MAY BE BUT NOT NECESSARILY.

20 Q BUT YOU'LL NEVER KNOW WITHOUT GOING INTO IT,
21 WILL YOU?

22 A WELL, PREVIOUS EXPOSURE TO THE POLICE DOES NOT
23 CONTRIBUTE TO UNDERSTANDING OF MIRANDA RIGHTS.

24 Q BEING STREET SMART DOES, DOESN'T IT?

25 A NO, SIR, I DON'T BELIEVE IT DOES.

1 Q DID YOU INQUIRE OF HIM WHETHER HE'S EVEN SEEN ON
2 TV WHEN SOMEONE WAS GIVEN THE MIRANDA RIGHTS OR
3 HIS UNDERSTANDING OF WHAT THAT'S DOING?

4 A NO, SIR, I DID NOT.

5 Q THANK YOU. NO FURTHER QUESTIONS.

6 MR. D'AGOSTINO: NO FURTHER QUESTIONS. MAY
7 THIS WITNESS BE EXCUSED?

8 THE COURT: YOU CAN STEP DOWN. YOU ARE
9 EXCUSED. WE APPRECIATE YOUR TIME.

10 MR. D'AGOSTINO: JUST ONE OTHER WITNESS BRIEFLY,
11 YOUR HONOR.

12 THE COURT: ALL RIGHT FINE. CALL YOUR NEXT
13 WITNESS.

14 MR. D'AGOSTINO: OFFICER CORN.

15 SALLY CORN, BEING FIRST DULY
16 SWORN, TESTIFIED AS FOLLOWS:

17 DIRECT EXAMINATION BY MR. D'AGOSTINO:

18 Q OFFICER CORN, WHERE DO YOU WORK?

19 A YORK COUNTY DETENTION CENTER.

20 Q DO YOU HAVE ACCESS TO THE COMPUTERS DOWN THERE?

21 A YES, SIR, I DO.

22 Q LET ME HAND YOU A PRINTOUT WHICH IS MARKED
23 DEFENDANT'S EXHIBIT FOUR FOR ID, IS THAT A
24 PRINTOUT ON ANTONIO GORDON AS TO WHEN HE CAME TO
25 THE MOSS JUSTICE CENTER?

1 A YES, IT IS.

2 Q AND WHEN DID HE COME THERE?

3 A HIS BOOKING DATE WAS 7, LET ME PUT ON MY
4 GLASSES. EXCUSE ME A MOMENT. 7-23-98 AT 19:42
5 HOURS.

6 Q ALL RIGHT. THAT'S WHEN HE ACTUALLY GOT DOWN TO
7 THE MOSS JUSTICE CENTER DOWNSTAIRS?

8 A YES, SIR.

9 Q IS THIS ONE, LET ME HAND YOU WHAT'S BEEN MARKED
10 DEFENDANT'S EXHIBIT NUMBER FIVE, WHO IS THAT ONE
11 OF?

12 A THIS IS MONTA GORDON.

13 Q WHEN DID HE GET DOWN THERE?

14 A HIS ENTER DATE 7-24-98 AT 20 HUNDRED HOURS.

15 Q 8 O'CLOCK IN THE EVENING?

16 A YES, SIR.

17 MR. D'AGOSTINO: YOUR HONOR, I MOVE TO INTRODUCE
18 EXHIBIT NUMBER FOUR AND FIVE.

19 THE COURT: ANY OBJECTION.

20 MR. ANTHONY: NO OBJECTION.

21 (DEFENDANT'S EXHIBITS 4 & 5 PRINTOUTS MARKED FOR
22 IDENTIFICATION.)

23 Q AND DO YOU KNOW IF ANTONIO WOULD HAVE BEEN
24 TAKEN BACK OVER TO THE ROCK HILL POLICE
25 DEPARTMENT THAT DAY OR THE NEXT DAY. WOULD IT

1 BE INDICATED ON THAT REPORT IF HE HAD BEEN TAKEN
2 OUT AND BOOKED BACK IN?

3 A IF HE WOULD HAVE BEEN TAKEN OUT AND BOOKED BACK
4 IN, IT WOULD HAVE BEEN INTO THE COMPUTER.

5 Q ALL RIGHT. THOSE ARE ALL THE QUESTIONS I HAVE.

6 MR. ANTHONY: NO CROSS EXAMINATION. THANK YOU.

7 THE COURT: YOU CAN STEP DOWN AND BE EXCUSED.

8 A THANK YOU, JUDGE.

9 THE COURT: CALL YOUR NEXT WITNESS.

10 MR. D'AGOSTINO: THOSE ARE ALL THE WITNESSES,
11 YOUR HONOR.

12 THE COURT: ANYTHING ELSE FROM THE STATE?

13 MR. THOMPSON: NO, YOUR HONOR. NOTHING ON
14 BEHALF OF THE STATE.

15 THE COURT: MR. D'AGOSTINO, YOU WANT TO ARGUE
16 YOUR POSITION NOW AS TO WHY THE STATEMENT IS NOT
17 ADMISSIBLE.

18 MR. D'AGOSTINO: YES, SIR, YOUR HONOR. LET ME
19 GET MY NOTES ON THAT. LET ME JUST TAKE THESE,
20 EVERYTHING IN ORDER AS BEST I CAN. YOUR HONOR,
21 FIRST WE MOVE TO SUPPRESS THE STATEMENTS AS THE
22 STATE HAS NO PROBABLE CAUSE TO ARREST ANTONIO
23 GORDON WITHOUT A WARRANT. THE ONLY INFORMATION
24 THEY HAD AT THE TIME THEY ARRESTED HIM WAS A
25 STATEMENT FROM CHYENCA DIXON, TOWANDA BURRIS,

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1 WHOEVER YOU WANT TO, WHATEVER YOU WANT TO CALL
2 HER, THE SAME PERSON HAD TWO STATEMENTS BE
3 ENTIRETY INCONSISTENT. ONE HAD INCONSISTENCIES
4 IN ITSELF. NOW THEY SAY THAT THEY SUBSEQUENTLY
5 LET HER GO AND THEN LETTING HER GO CREATED THE
6 EXIGENT CIRCUMSTANCES THEY SAY NECESSITATING HIS
7 ARREST. YOUR HONOR, I WOULD SUBMIT THAT THEY
8 CANNOT --

9 THE COURT: DO THEY HAVE TO HAVE EXIGENT
10 CIRCUMSTANCES? DON'T THEY JUST HAVE TO HAVE
11 PROBABLE CAUSE?

12 MR. D'AGOSTINO: TO ARREST SOMEONE I THINK
13 PROBABLE CAUSE TO BELIEVE, I THINK WHAT YOU NEED
14 IS A CRIME HAS TO BE COMMITTED IN THEIR
15 PRESENCE.

16 THE COURT: NOT FOR A FELONY.

17 MR. D'AGOSTINO: THEY NEED AN ARREST WARRANT TO
18 ARREST SOMEONE.

19 THE COURT: NOT FOR A FELONY, MAYBE, LET ME HEAR
20 FROM THE STATE ON THAT.

21 MR. ANTHONY: I THINK IT'S PRETTY WELL SETTLED
22 LAW THAT YOU CAN ARREST FOR A FELONY WITHOUT A
23 WARRANT.

24 THE COURT: THAT'S BASED ON PROBABLE CAUSE.

25 MR. ANTHONY: IF YOU HAVE PROBABLE CAUSE. YOU

1 OBVIOUSLY CAN'T ARREST ANYONE IF YOU DON'T HAVE
2 PROBABLE CAUSE, BUT YOU CAN ARREST FOR A FELONY
3 WITHOUT A WARRANT.

4 THE COURT: THAT'S MY UNDERSTANDING. YOU CAN
5 ARREST FOR A MISDEMEANOR WITHOUT A WARRANT ONLY
6 IF IT HAPPENS IN YOUR PRESENCE OR IT'S SO FRESH
7 AND SOME OTHER STUFF LIKE THAT BUT NOT FOR A
8 FELONY.

9 MR. D'AGOSTINO: I UNDERSTAND THE COURT'S
10 RULING, YOUR HONOR.

11 THE COURT: I MEAN, I'LL BE GLAD TO HEAR FROM
12 YOU FURTHER, BUT I THINK IT WAS PROBABLE CAUSE
13 AND I, WITHOUT HEARING FROM THE STATE, I
14 LISTENED BECAUSE I KNEW THAT WAS ONE OF THE
15 ISSUES AND VERY INTENT ON THAT, BUT IN FACT I
16 EVEN LOOKED UP A LITTLE LAW, ONE OF MY LITTLE
17 SUMMARY SHEETS TO SEE IF WHAT I REMEMBER WAS
18 CORRECT AND I BELIEVE THAT BASED ON THE
19 INFORMATION THAT THEY HAD AT THAT TIME THEY HAD
20 PROBABLE CAUSE TO ARREST.

21 MR. D'AGOSTINO: THAT'S WHAT I WAS GETTING AT.
22 I DIDN'T BELIEVE THEY HAD PROBABLE CAUSE BASED
23 UPON THE INFORMATION THEY HAD AT THE TIME, YOUR
24 HONOR.

25 THE COURT: WELL, I DENY THAT MOTION TO SUPPRESS

1 ON THAT GROUND.

2 MR. D'AGOSTINO: THANK YOU, YOUR HONOR. THE
3 NEXT GROUNDS AND THEY KIND OF ALL RUN TOGETHER,
4 I MOVE TO SUPPRESS ANTONIO GORDON'S STATEMENTS
5 ON BOTH THE FIFTH AND SIXTH AMENDMENTS, RIGHTS
6 TO COUNSEL, BOTH STATE AND FEDERAL, BOTH THE
7 FEDERAL FIFTH AND SIXTH AMENDMENTS OF RIGHT TO
8 COUNSEL, AND IN SOUTH CAROLINA CONSTITUTION
9 ARTICLE ONE SECTION 11, ARTICLE ONE SECTION 14,
10 AND ALSO I WOULD RELY UPON SOUTH CAROLINA STATE
11 LAW RELATING TO AN ARREST.

12 LET ME GO THROUGH EACH ONE OF THOSE IN MY
13 POSITION WITH REGARD TO THE STATEMENTS. YOUR
14 HONOR, FIRST OF ALL WE HAVE ANTONIO GORDON,
15 HE'S 16 YEARS OF AGE, HE'S TAKEN INTO THE POLICE
16 STATION. AS SOON AFTER, WHILE HE'S GIVING HIS
17 FIRST STATEMENT AN ATTORNEY WHO IS HIRED FOR HIM
18 COMES TO THE POLICE STATION, WHOSE BEEN HIRED BY
19 HIS FAMILY TO REPRESENT HIM. THE STATE
20 CONTINUES TO INTERROGATE HIM, DOES NOT INFORM
21 HIM OF HIS RIGHT TO COUNSEL, OF COUNSEL BEING
22 PRESENT. THERE IS AN ATTORNEY OUTSIDE ASKING TO
23 SEE HIM. YOUR HONOR, I SUBMIT THAT HE SHOULD
24 HAVE BEEN TOLD THAT THE ATTORNEY WAS THERE.

25 THE COURT: ALL RIGHT. YOU NEED TO SHOW SOME

1 CASE LAW ON THAT BECAUSE THAT'S A VERY
2 INTERESTING ISSUE. I HAVE NEVER HAD IT. I
3 DON'T HAVE ANY LAW THAT, THE RIGHT TO COUNSEL
4 LIES WITH THE ONE WHO IS ARRESTED AND.

5 MR. D'AGOSTINO: YES, SIR.

6 THE COURT: SO YOU'VE GOT TO SHOW ME SOME LAW ON
7 A THIRD PARTY, EVEN IF IT'S A JUVENILE, ENGAGES
8 COUNSEL THAT THE POLICE MUST ALLOW THAT PERSON
9 TO SEE THE ACCUSED EVEN IF THE ACCUSED DOES NOT
10 ASK FOR AN ATTORNEY.

11 MR. D'AGOSTINO: YOUR HONOR, THE UNITED STATES
12 SUPREME COURT HAS RULED, I WAS GOING TO GET TO
13 THAT, UNDER THE FEDERAL CONSTITUTION THAT IT'S
14 THE INDIVIDUAL'S RIGHT. HOWEVER, THERE ARE
15 OTHER STATES OR THERE ARE FEDERAL COURTS
16 DECISIONS BEFORE, I MEAN STATE COURT DECISIONS
17 BEFORE THAT CASE WENT UP THAT HELD THAT IT WAS
18 THE INDIVIDUAL'S, I MEAN THAT A STATEMENT TAKEN
19 WHEN THERE IS AN ATTORNEY OUTSIDE ASKING TO SEE
20 THE CLIENT EVEN IF IT CLIENT DOES NOT KNOW, THE
21 POLICE DO NOT INFORM THE CLIENT OF THE PRESENCE
22 OF THAT ATTORNEY, THEN THOSE STATEMENTS TAKEN
23 SHOULD BE SUPPRESSED AS BEING VIOLATIVE OF THOSE
24 STATE'S CONSTITUTIONS AND PRIOR TO THE U.S.
25 SUPREME COURT CASE, THE FEDERAL CONSTITUTIONAL

1 RIGHTS. HOWEVER, SINCE THE SUPREME COURT HAS
2 ADDRESSED THAT WITH REGARD TO THE FEDERAL FIFTH
3 AMENDMENT RIGHT TO COUNSEL AND BEING INFORMED OF
4 IT AND SAID THAT THE POLICE DO NOT HAVE TO
5 INFORM, I WOULD SUBMIT THAT OUR SOUTH CAROLINA
6 STATE CONSTITUTION, OUR SOUTH CAROLINA SUPREME
7 COURT HAS NOT RULED ON THAT RELATING TO OUR
8 STATE CONSTITUTIONAL RIGHT TO COUNSEL AND TO BE
9 INFORMED OF COUNSEL, AND YOUR HONOR, I WOULD
10 SUBMIT THAT ON THAT PARTICULAR ISSUE.

11 THE COURT: LET ME GET OUR CONSTITUTION.

12 MR. D'AGOSTINO: THAT WOULD BE ARTICLE 1
13 SECTION 11, YOUR HONOR, AND I COULD NOT FIND A
14 CASE WHERE OUR SUPREME COURT HAS RULED ON THAT
15 ISSUE AS IT RELATES TO OUR CONSTITUTION.

16 THE COURT: ARTICLE ONE.

17 MR. D'AGOSTINO: ARTICLE ONE SECTION 11 AS I
18 BELIEVE OUR STATE CONSTITUTION THEN CORRELATES
19 TO THE FIFTH AMENDMENT RIGHT TO COUNSEL.

20 THE COURT: AND WHEREIN DOES IT GIVE, I'M SORRY,
21 ARTICLE ONE SECTION WHAT?

22 MR. D'AGOSTINO: SECTION 11, YOUR HONOR.

23 THE COURT: ALL RIGHT.

24 MR. D'AGOSTINO: EXCUSE ME, I MIGHT BE---

25 THE COURT: I THINK YOU MIGHT BE WRONG. THIS IS

1 PRESENTATION ON INDICTMENTS.

2 MR. D'AGOSTINO: I APOLOGIZE FOR HAVING THE
3 WRONG SECTION. ARTICLE ONE SECTION 12 IS VERY
4 SIMILAR TO THE VERY CONSTITUTION, NOR SHALL ANY
5 PERSON BE COMPELLED IN ANY CRIMINAL CASE BE
6 COMPELLED TO WITNESS AGAINST THEMSELF, THAT'S
7 THE UNITED STATES CONSTITUTION ARTICLE.

8 THE COURT: WELL, WE'RE TALKING ABOUT A RIGHT TO
9 COUNSEL. NOT WITNESS AGAINST HIMSELF. YOU
10 STILL HADN'T HONED INTO WHAT WE ARE LOOKING
11 FOR. WE HAVE A WHOLE GROUP OF LAWYERS, WE OUGHT
12 TO KNOW THE SOUTH CAROLINA CONSTITUTION BETTER,
13 SHOULDN'T WE?

14 I BELIEVE IT'S 14. THERE IS NO, UNLESS THIS HAS
15 BEEN CHANGED, THERE IS NO CONSTITUTIONAL
16 STATUTORY REQUIREMENTS FOR SILENT COUNSEL EXCEPT
17 IN A CAPITAL CASE. WE'VE HAD A CHANGE TO THE
18 CONSTITUTION SINCE THEN OBVIOUSLY.

19 THERE IS NO QUESTION HE HAS A RIGHT TO COUNSEL.
20 MY CONCERN IS WHETHER OR NOT, YOU ALLEGE THAT,
21 IN ESSENCE YOU'RE ALLEGING THAT THE SOUTH
22 CAROLINA STANDARD WOULD BE HIGHER THAN THE
23 UNITED STATES CONSTITUTIONAL STANDARD OR
24 OTHERWISE I'D BE BOUND BY THE UNITED STATES
25 SUPREME COURT STANDARD WHICH HAS BEEN SET WHICH

1 WEIGHS AGAINST YOUR CLIENT, SO I WAS REALLY
2 LOOKING FOR ANY ADDITIONAL LANGUAGE IN THE SOUTH
3 CAROLINA CONSTITUTION THAT WOULD GIVE HIM A
4 GREATER RIGHT UNDER THE STATE CONSTITUTION THAN
5 IT HAS ON THE FEDERAL CONSTITUTION WHICH THE
6 UNITED STATES SUPREME COURT HAS ALREADY
7 ADDRESSED HIS RIGHT UNDER THE FEDERAL
8 CONSTITUTION.

9 MR. D'AGOSTINO: WHAT I WAS LOOKING AT, YOUR
10 HONOR, AS I UNDERSTAND THE LAW, YOU HAVE THE
11 FIFTH AMENDMENT RIGHT TO COUNSEL. MIRANDA WAS
12 DESIGNED TO INFORM YOU OF YOUR RIGHT TO, AGAINST
13 SELF INCRIMINATION AND MIRANDA IS BASED UPON THE
14 FIFTH AMENDMENT.

15 THE COURT: RIGHT.

16 MR. D'AGOSTINO: AND THE SUPREME COURT HAS SAID
17 THAT UNDER MIRANDA AND UNDER THE FIFTH AMENDMENT
18 IF AN ATTORNEY IS THERE IT IS THE CLIENT'S RIGHT
19 AND NOT THE ATTORNEY'S ABILITY TO ASSERT THAT
20 RIGHT OR FAMILY MEMBERS ABILITY TO ASSERT THAT
21 RIGHT, I UNDERSTAND THAT, AND I HAVE A DUTY TO
22 INFORM THE COURT OF THE SUPREME COURT FEDERAL
23 LAW AND THAT'S WHAT I WAS DOING. BUT MIRANDA
24 WAS BASED UPON THE FIFTH AMENDMENT AND I BELIEVE
25 THE LANGUAGE IN THE FIFTH AMENDMENT TO THE

1 CONSTITUTION, UNITED STATES CONSTITUTION,
2 SPECIFICALLY SAYS NOR SHALL, AND THIS IS WHERE
3 THEY GET MIRANDA, NOR SHALL BE COMPELLED IN ANY
4 CRIMINAL CASE TO BE A WITNESS AGAINST HIMSELF
5 NOR TO BE DEPRIVED OF LIFE, LIBERTY, PROPERTY
6 WITHOUT DUE PROCESS OF LAW; AND THAT'S WHY I
7 REFER BACK TO ARTICLE 1 SECTION 12, NO PERSON
8 SHALL BE SUBJECT TO SAME OFFENSE TO BE TWICE PUT
9 IN JEOPARDY OF LIFE OR LIBERTY NOR SHALL ANY
10 PERSON BE COMPELLED IN ANY CRIMINAL CASE TO BE A
11 WITNESS AGAINST HIMSELF. THAT'S WHY I
12 ORIGINALLY SAID ARTICLE 1 SECTION 12 BECAUSE I
13 WAS COMPARING THE LANGUAGE OF BOTH FEDERAL AND
14 STATE, THEY ARE VERY SIMILAR LANGUAGE, BUT I
15 WOULD SUBMIT, YOUR HONOR, THAT IN A CASE AND
16 THIS IS WHERE I'M GOING TO MOVE INTO THE STATE
17 LAW AS WELL WHERE YOU'RE DEALING WITH A 16
18 YEAR-OLD YOUNG BOY, THAT WE HAVE STATUTES THAT
19 SPECIFICALLY ALSO PROTECT THE INTERESTS AND THE
20 RIGHTS OF JUVENILES AS WELL. AND 16, I MEAN,
21 20-7-7205 DEALS WITH --

22 THE COURT: 20-7.

23 MR. D'AGOSTINO: 20-7-7205, YOUR HONOR. THAT'S
24 CUSTODY AND DETENTION AND IT'S UNDER THE
25 JUVENILE SECTION.

1 THE COURT: I GOT IT.

2 MR. D'AGOSTINO: WHEN A CHILD FOUND VIOLATING
3 CRIMINAL LAW OR ORDINANCE IS TAKEN INTO CUSTODY,
4 THE CUSTODY IS NOT AN ARREST. JURISDICTION OF
5 THE COURT ATTACHES FROM THE TIME OF THE TAKING
6 INTO CUSTODY. WELL, YOUR HONOR, I WOULD, THEN
7 IT GOES ON TO SAY WHEN A CHILD IS TAKEN INTO
8 CUSTODY, THE OFFICER TAKING THE CHILD INTO
9 CUSTODY SHALL NOTIFY THE PARENT, GUARDIAN, OR
10 CUSTODIAN OF THE CHILD AS SOON AS POSSIBLE.
11 YOUR HONOR, I WOULD SUBMIT THAT IN A SITUATION
12 WHERE YOU'RE DEALING WITH A JUVENILE, WHERE YOU
13 HAVE THE PARENTS WHO ARE LEGALLY CHARGED WITH
14 THE RESPONSIBILITY FOR THE CHILD HAS TO BE
15 PROSECUTED FOR TRUANCY FOR THEIR CHILDREN AND
16 THINGS OF THAT NATURE, WHERE YOU HAVE A JUVENILE
17 AND WHERE THE PARENTS HAVE ASSERTED THAT RIGHT
18 ON BEHALF OF THE JUVENILE, I WOULD SUBMIT THAT
19 EVEN THOUGH THERE IS THAT FEDERAL CASE OUT
20 THERE, THAT WE HAVE A VERY LIMITED SPECIAL
21 CIRCUMSTANCE HERE THAT WITH A JUVENILE, A
22 PARENT, A THIRD PARTY, SHOULD BE ALLOWED TO AND
23 THE COURT SHOULD RECOGNIZE THE ASSERTION OF BOTH
24 THE FEDERAL AND THE STATE CONSTITUTIONAL RIGHT
25 TO COUNSEL AS ASSERTED BY A PARENT OF THE

1 JUVENILE. IT'S CLEAR HE'S 16 YEARS OF AGE.
2 THERE IS NO QUESTION ABOUT THAT.

3 SO, YOUR HONOR, I WOULD SUBMIT THAT ON THAT
4 BASIS THE COURT, SINCE MR. WELLBORN ASSERTED THE
5 RIGHT TO COUNSEL AND STATEMENTS CONTINUING TO BE
6 TAKEN BOTH THE FIRST AND THE SECOND STATEMENT
7 TAKEN WITHOUT AFFORDING ANTONIO GORDON HIS
8 ATTORNEY, THAT THE COURT SHOULD SUPPRESS THOSE
9 STATEMENTS AS VIOLATIVE OF BOTH THE STATE AND
10 THE FEDERAL CONSTITUTION.

11 THE COURT: WELL, THIS IS A NOTICE, A
12 NOTIFICATION STATUTE AND THEY OBVIOUSLY WERE
13 NOTIFIED BY SOMEONE. I DON'T KNOW THAT LAW
14 ENFORCEMENT DID IT, BUT THEY WERE PRESENT
15 APPARENTLY, ACCORDING TO MR. WELLBORN, THEY WERE
16 ON THE PHONE TO HIM AND PRESENT, SO I DON'T
17 THINK THE FACT THAT THEY MAY NOT HAVE NOTIFIED
18 THE PARENTS IS MOOT BECAUSE THE PARENTS WERE
19 THERE.

20 MR. D'AGOSTINO: I DIDN'T SAY THEY DIDN'T NOTIFY
21 THE PARENTS. WHAT I SAID WAS THEY HAVE THE DUTY
22 TO NOTIFY THE PARENTS, READING THAT STATUTE,
23 TAKING INTO CONSIDERATION THAT PARENTS HAVE
24 CERTAIN RIGHTS, DUTIES, AND RESPONSIBILITIES
25 UNDER OUR STATUTES, OF COURSE, THEY ARE

1 CHILDREN. WHAT I'M SAYING IS THAT READING THE
2 STATE STATUTES IN CONJUNCTION WITH THE RIGHTS
3 AND RESPONSIBILITIES OF PARENTS THAT WITH A
4 JUVENILE, A PARENT'S ASSERTION OF THAT
5 JUVENILE'S FIFTH AMENDMENT RIGHT AND OUR
6 CONSTITUTIONAL RIGHT TO COUNSEL AFTER HE'S
7 ADVISED OF MIRANDA, THAT THE PARENTS ASSERTION
8 OF THAT RIGHT TO COUNSEL SHOULD SUFFICE FOR THEM
9 TO AFFORD MR. WELLBORN THE OPPORTUNITY TO
10 CONTACT HIS CLIENT, DISCUSS THE CASE WITH HIS
11 CLIENT, AND IMMEDIATELY CEASE INTERVIEWING HIS
12 CLIENT AT THE TIME HE REQUESTED THEM TO DO SO.

13 THE COURT: WELL, THAT IS AN INTERESTING
14 ARGUMENT, BUT DO YOU HAVE ANY CASE LAW?

15 MR. D'AGOSTINO: I COULD NOT FIND ANY CASE LAW
16 DIRECTLY ON POINT.

17 THE COURT: THANK YOU.

18 MR. D'AGOSTINO: DO YOU WANT ME TO GO INTO MY
19 OTHER ARGUMENTS AND OTHER REASONS WHY?

20 THE COURT: YES, AND I'VE THOUGHT THROUGH A LOT
21 OF THIS. I'M NOT TRYING TO USURP THE STATE'S
22 RIGHT TO BUT I KNEW WHAT THESE ISSUES WERE GOING
23 TO BE, I'VE BEEN THINKING ABOUT THEM, AND I'VE
24 DONE A LITTLE RESEARCH MYSELF AND LISTENING TO
25 THE TESTIMONY ALONG THE LINES OF WHAT WE'RE

1 GOING ON OVER, SO I DON'T WANT YOU OR MR. GORDON
2 TO THINK I'VE TAKEN THE STATE'S SIDE IN MAKING
3 THE ARGUMENTS. I'VE THOUGHT THROUGH THESE AND
4 I'M LOOKING, I'VE LOOKED AT THE RETARDATION
5 ISSUE, I'VE LOOKED AT THE AGE ISSUE. LIKE YOU I
6 COULDN'T FIND ANYTHING THAT REALLY ADDRESSED THE
7 PARENTAL OR THE THIRD PARTY ATTORNEY POSITION,
8 BUT GO AHEAD.

9 MR. D'AGOSTINO: WELL, I'VE GOT CASES FROM OTHER
10 JURISDICTIONS THAT DEAL WITH THIRD PARTY, NOT
11 WITH JUVENILES, I'LL BE GLAD TO HAND THEM UP FOR
12 THE COURT'S CONSIDERATION.

13 MR. ANTHONY: HAVE YOU GOT COPIES OF THOSE.

14 MR. D'AGOSTINO: NO. YOUR HONOR, WITH REGARD TO
15 THE SIXTH AMENDMENT RIGHT TO COUNSEL, IT'S
16 OBVIOUS THAT THERE WAS A BOND HEARING THAT DAY,
17 I WOULD SUBMIT THAT AT THAT POINT JUDICIAL
18 PROCEEDINGS BEGAN AND MR. WELLBORN'S ATTEMPTS TO
19 GET IN TO SEE HIS CLIENT WOULD INCLUDE
20 PREPARATION FOR BOND HEARINGS, AND AS SUCH THE
21 SIXTH AMENDMENT RIGHT TO COUNSEL WAS ALSO
22 PRESENT THAT DAY FOR MR. GORDON AND AS SUCH --

23 THE COURT: WAIT, I'M GETTING A LITTLE CONFUSED.
24 THE THING THAT, OKAY, IS THERE ANY TIME ON IT?

25 MR. D'AGOSTINO: THERE IS NO TIME ON IT AND IT

1 DID OCCUR THAT DAY AND OFFICER THICKENS SAID IT
2 HAPPENED THAT AFTERNOON.

3 THE COURT: WHICH WOULD BE AFTER THE TAKING OF
4 THE STATEMENT.

5 MR. D'AGOSTINO: THE STATEMENT WAS TAKEN IN THE
6 AFTERNOON AS WELL. I COULD NOT PIN DOWN A TIME
7 ON THE STATEMENT WHEN THE BOND HEARING WAS HELD.
8 I'VE CHECKED WITH THE MAGISTRATE.

9 THE COURT: HE SAID LATE AFTERNOON, THE BOND IN
10 THE STATEMENT WAS AROUND FOUR.

11 MR. D'AGOSTINO: THE LAST TIME WAS SOMETIME
12 AROUND FOUR, YES, SIR, YOUR HONOR. I COULD NOT
13 PIN DOWN CHECKING WITH JUDGE LONG'S OFFICE AS TO
14 WHETHER THEY KEEP RECORDS AS TO SPECIFIC TIMES
15 THAT BOND HEARINGS ARE HELD. I WAS INFORMED BY
16 THE SECRETARY THEY DO NOT, SO I COULD NOT
17 PRESENT ANY EVIDENCE AS TO WHAT TIME FROM THE
18 COURT AS TO WHAT TIME THAT BOND HEARING WAS
19 HELD, YOUR HONOR, BUT IN ANY EVENT WITH REGARD
20 TO THAT, THE BOND, IT IS CLEAR THAT ONE OF THE
21 FUNCTIONS OF AN ATTORNEY WOULD BE TO ASSIST HIS
22 CLIENT IN PREPARATION OF A BOND HEARING. I
23 WOULD SUBMIT THAT JUDICIAL PROCEEDINGS HAD BEGUN
24 OR WERE IN THE PROCESS AND AS SUCH MR. GORDON'S
25 RIGHT TO SEE HIS ATTORNEY ATTACHED UNDER THE

1 SIXTH AMENDMENT AS WELL IN WHICH CASE THE STATE
2 WOULD NOT EVEN BE ENTITLED TO INITIATE
3 CONVERSATIONS AND INTERROGATIONS OF MY CLIENT.
4 YOUR HONOR, I WOULD ALSO SUBMIT THAT JUST ON THE
5 FACTS OF THIS CASE ALONE, THE ISSUE OF THE
6 VOLUNTARINESS, THE VOLUNTARINESS WAIVER OF THE
7 STATEMENTS, ALL THE EVIDENCE DEMONSTRATES, I
8 WILL SUBMIT, THAT ANTONIO GORDON COULD NOT
9 VOLUNTARILY WAIVE HIS RIGHTS AND THAT IT WAS A
10 FREELY AND VOLUNTARY WAIVER OF HIS RIGHTS. I
11 WOULD SUBMIT THAT ALTHOUGH HE'S BEEN FOUND
12 COMPETENT TO STAND TRIAL, THE COURT SHOULD TAKE
13 NOTICE AND CAN TAKE INTO CONSIDERATION OF HIS
14 LIMITED MENTAL ABILITY AS WAS TESTIFIED TO
15 TODAY, THE FACT OF HOW THE MIRANDA STATEMENTS
16 WERE GIVEN TO HIM, IN A VERY, YOU KNOW, JUST
17 READ DIRECTLY TO HIM. THERE WASN'T THIS
18 SCENARIO OR THIS SETTING WHERE HE WAS ASKED A
19 QUESTION, ASKED IF HE UNDERSTOOD IT, THINGS OF
20 THAT NATURE, SO I WOULD SUBMIT THAT HIS
21 STATEMENTS SUBSEQUENT TO HIS INTERROGATION COULD
22 NOT BE FREELY AND VOLUNTARILY GIVEN BECAUSE HE
23 COULD NOT FREELY AND VOLUNTARILY WAIVE HIS
24 MIRANDA RIGHTS.

25 YOUR HONOR, I THINK THE COURT SHOULD ALSO

1 CONSIDER, AND I KNOW THE COURT HAS TO CONSIDER
2 ALL THE TESTIMONY WHEN CONSIDERING ALL THESE
3 VARIOUS ISSUES AND WHEN CONSIDERING FREELY, THE
4 FREENESS AND VOLUNTARINESS OF THE STATEMENTS, I
5 THINK YOU ALSO GOT TO CONSIDER AND LOOK AT WHEN
6 YOU LOOK AT THE OFFICER'S ACTIONS, WHAT SOME OF
7 THE TESTIMONY WE'VE HEARD ABOUT THE OFFICERS,
8 THEM COMING OUT INTO THE LOBBY AND YOU HAVE THE
9 INDIVIDUAL WHO THEY WANT TO TALK TO AND SHE
10 ASSERTS THAT SHE DOESN'T WANT TO TALK TO THEM
11 AND ASKS MR. WELLBORN TO REPRESENT HER AND THEN
12 COME BACK OUT INTO THE LOBBY AND PLACE HER UNDER
13 ARREST FOR ACCESSORY AFTER THE FACT AND THEN
14 UNARREST HER. YOU KNOW, YOUR HONOR, I THINK YOU
15 GOT TO CONSIDER ALL THOSE FACTS WHEN YOU ARE
16 CONSIDERING THE WHOLE SCENARIO HERE AND THAT IN
17 AND OF ITSELF I THINK THERE IS STATUTES AGAINST
18 THAT TYPE OF ACTIVITY BY THE POLICE DEPARTMENT.
19 17-13-30 SPECIFICALLY PROHIBITS THAT TYPE OF
20 ACTIVITY BY THE POLICE OFFICERS.

21 THE COURT: WHAT'S THAT CODE SECTION?

22 MR. D'AGOSTINO: 17-13-30 SPECIFICALLY
23 PROHIBITS, YOU HAVE TO FIND THAT IN THE
24 SUPPLEMENT, YOUR HONOR. I DON'T KNOW IF YOU
25 HAVE THE SUPPLEMENT THERE.

1 THE COURT: I HAVE IT.

2 MR. D'AGOSTINO: EXCUSE ME 17-13-50, RIGHT TO BE
3 INFORMED OF GROUNDS OF ARRESTS, CONSEQUENCES OF
4 A REFUSE TO ANSWER.

5 THE COURT: THAT'S HER RIGHT NOT HIS.

6 MR. D'AGOSTINO: I UNDERSTAND THAT. I'M NOT
7 ASSERTING THAT IS HIS RIGHT. WHAT I'M SAYING IS
8 YOU GOT TO CONSIDER ALL THE ACTIVITIES OF
9 EVERYTHING GOING ON THAT DAY WHEN YOU ARE
10 CONSIDERING THE FACTORS OR THE FACTS OF THIS
11 CASE AND WHETHER, AND THE CREDIBILITY AND
12 WHETHER MR. GORDON COULD FREELY AND DID FREELY
13 AND VOLUNTARILY WAIVE HIS RIGHT TO COUNSEL UNDER
14 THE STATE AND FEDERAL CONSTITUTIONS. THANK YOU,
15 YOUR HONOR.

16 AND YOUR HONOR, JUST FOR THE RECORD, YOU SAID,
17 I KNOW YOU CONSIDERED ALL THESE ISSUES BECAUSE
18 PRETRIAL BEFORE WE EVEN STARTED TODAY, JUST SO
19 MY CLIENT UNDERSTANDS, WE INFORMED YOU OF WHAT
20 THE ISSUES WERE GOING TO BE AS TO WHY WE'RE
21 HAVING THIS HEARING AND I UNDERSTAND THE COURT
22 HAS ALREADY THOUGHT AND CONSIDERED MANY OF THESE
23 ISSUES AND THAT'S SOLELY TO INFORM MY CLIENT OF
24 THAT AS WELL, YOUR HONOR.

25 THE COURT: WELL, NOT ONLY DID I THINK OF THEM,

1 BUT FROM THE LINE OF QUESTIONING WE'VE ALL BEEN
2 DOING THIS FOR WHILE AND WE CAN USUALLY SEE
3 WHERE SOMEONE IS AHEAD. ANYTHING FROM THE
4 STATE.

5 MR. ANTHONY: YES, SIR. WE HAVE SOME CASES TO
6 HAND UP. FIRST OFF I WOULD HAND UP MORAN VERSUS
7 BURBINE WHICH IS A UNITED STATES SUPREME COURT
8 CASE. IT'S AT 106 SUPREME COURT 1135. AND ALSO
9 HANDED UP STATE VERSUS DRAYTON WHICH IS ALSO A
10 SOUTH CAROLINA SUPREME COURT CASE AT 361
11 SOUTHEASTERN 2ND 329. YOUR HONOR, BOTH OF THESE
12 CASES POSE SITUATIONS THAT ARE SIMILAR TO THE
13 SITUATION WE'VE HAD HERE TODAY. THEY BOTH
14 INVOLVE CIRCUMSTANCES WHERE PEOPLE ARE TAKEN
15 INTO CUSTODY, THEY WERE INTERROGATED BY THE
16 POLICE, ATTORNEYS SHOWED UP, WANTED TO SPEAK TO
17 THE PERSON BEING INTERROGATED; THEY WERE DENIED
18 THE ABILITY TO SPEAK TO THE PERSON BEING
19 INTERROGATED BY LAW ENFORCEMENT BECAUSE THE
20 PERSON BEING INTERROGATED HAD WAIVED THEIR
21 RIGHTS TO COUNSEL AND WAIVED THEIR RIGHTS TO
22 REMAIN SILENT AND INDICATED THEY WANTED TO GIVE
23 STATEMENTS AND LAW ENFORCEMENT WAS IN THE
24 PROCESS OF TAKING THOSE STATEMENTS, AND THE
25 HOLDINGS OF BOTH THOSE CASES ARE THAT THE

1 RIGHTS, BOTH THE FIFTH AMENDMENT RIGHT TO REMAIN
2 SILENT AND THE FIFTH AMENDMENT RIGHT TO COUNSEL
3 IS A RIGHT THAT'S HELD BY THE DEFENDANT AND IF
4 THE DEFENDANT WANTS TO WAIVE IT TO GIVE A
5 STATEMENT THE DEFENDANT CAN DO THAT, AND IT
6 DOESN'T MATTER THAT SOMEONE IS WANTING TO
7 INFRINGE ON THE DEFENDANT'S RIGHT TO GIVE A
8 STATEMENT, THAT THERE IS AN ATTORNEY THERE
9 TRYING TO ASSERT THE DEFENDANT'S RIGHTS FOR
10 THEM. THERE IS ONLY ONE PERSON WHO CAN ASSERT
11 THOSE RIGHTS AND THAT'S THE DEFENDANT. AND IN
12 THIS CASE IT DIDN'T MATTER THAT MR. WELLBORN
13 CAME TO THE POLICE DEPARTMENT AND TRIED TO
14 ASSERT MR. GORDON'S RIGHTS FOR HIM BECAUSE HE
15 COULDN'T DO THAT. THE ONLY PERSON THAT COULD
16 ASSERT THE RIGHT TO REMAIN SILENT AND THE RIGHT
17 TO COUNSEL WAS MR. GORDON AND HE WAS IN THE
18 POLICE DEPARTMENT WAIVING THOSE RIGHTS AND I
19 REALLY BELIEVE THAT IF THE COURT REVIEWS THOSE
20 CASES YOU'LL FIND THAT THE FACTS OF THOSE CASES
21 ARE VERY ANALOGOUS TO THE CASE THAT YOU JUST
22 HEARD, THE HEARING YOU JUST HEARD, AND THE STATE
23 WOULD ARGUE THAT WE'VE SHOWN THAT THE FACT THAT
24 MR. WELLBORN WAS THERE TRYING TO ASSERT MR.
25 GORDON'S RIGHTS IS NOT RELEVANT TO WHAT THE

1 COURT'S ANALYSIS NEEDS TO BE AS TO WHETHER OR
2 NOT THE RIGHTS WERE VOLUNTARILY AND KNOWINGLY
3 WAIVED. MR. D'AGOSTINO HAS CITED A SECTION OUT
4 OF THE JUVENILE CODE AND HAS ARGUED THAT IN
5 SOMEWAY SHOULD AFFECT --

6 THE COURT: I DON'T FIND THAT HAS ANY AFFECT ON
7 WHAT WE HAVE BEFORE US.

8 MR. ANTHONY: THE ONLY OTHER THING I REALLY
9 WANT TO ARGUE TO THE COURT IS, JUST TO BRIEFLY
10 TOUCH ON THE EXPERT TESTIMONY THAT WAS OFFERED
11 THIS AFTERNOON, MR. D'AGOSTINO'S EXPERT WITNESS
12 WHO APPARENTLY EVALUATED MR. GORDON TRYING TO
13 FIND, AFTER BEING COMMISSIONED TO RENDER AN
14 OPINION AS TO COMPETENCY AND RETARDATION
15 COULDN'T DO THAT. HE RENDERED AN OPINION AS TO
16 THE MIRANDA WARNINGS BUT WHEN HE WAS ASKED THE
17 BASIS FOR HIS OPINION THE STATE WOULD ARGUE THAT
18 MR. GORDON ANSWERS WERE ACTUALLY QUITE ACCURATE
19 AND ACTUALLY SHOWED HE REALLY DID KNOW WHAT WAS
20 GOING ON. MY NOTES INDICATE THAT WHEN HE WAS
21 ASKED THE DEFINITION OF REMAIN SILENT HE SAID
22 THAT MEANS YOU CAN BE QUIET.

23 THE COURT: THAT DIDN'T SATISFY HIM THOUGH, DID
24 IT?

25 MR. ANTHONY: NO, SIR, IT DIDN'T, BUT THE STATE

1 WOULD ARGUE THAT'S A VERY COMMON SENSE
2 INTERPRETATION OF WHAT THE RIGHT TO REMAIN
3 SILENT MEANS.

4 THE COURT: I AGREE WITH YOU ON THAT. I
5 DISAGREE WITH THE PSYCHOLOGIST AND I'M NOT A
6 PSYCHOLOGIST AND HE MIGHT KNOW MORE ABOUT THAT
7 THAN I DO, BUT I THINK THE ANSWER WAS DEAD ON
8 THE MONEY.

9 MR. ANTHONY: HE ALSO WAS ASKED THE MEANING OF
10 THE WORDS THE EVIDENCE OR STATEMENTS CAN BE USED
11 AGAINST HIM AND HE SAID THE COURT WAS GOING FIND
12 OUT WHICH I THINK THE TESTIMONY WAS THAT WAS
13 CONSIDERED, I DON'T REMEMBER IF THAT WAS
14 CONSIDERED A FAIL ANSWER OR A PASS ANSWER TO BE
15 QUITE CANDID WITH THE COURT BUT IT WAS, THAT'S
16 OBVIOUSLY AN ANSWER THAT DEMONSTRATES AN
17 AWARENESS OF WHAT WAS GOING ON AT THE TIME. THE
18 OFFICERS HAD TESTIFIED, DETECTIVE WALDROP AND
19 LIEUTENANT THICKENS BOTH TESTIFIED THAT MR.
20 GORDON ASKED THEM NO QUESTIONS. HE TOLD BOTH OF
21 THEM THAT HE COULD READ. HE SIGNED STATEMENTS
22 THAT HE HAD READ THOSE STATEMENTS THAT ARE IN
23 EVIDENCE, THAT THEY WERE ACCURATE, AND
24 BASICALLY, YOUR HONOR, GIVEN THE TESTIMONY
25 YOU'VE HEARD TODAY THERE IS JUST NO REASON TO

1 BELIEVE BOTH ON THE LAW OF THIS CASE AND ALSO ON
2 THE FACTS OF THIS CASE THAT MR. GORDON DID NOT
3 EXECUTE A VALID WAIVER OF HIS MIRANDA RIGHTS AND
4 HIS STATEMENTS SHOULD NOT, THERE IS NO REASON
5 WHY HIS STATEMENTS SHOULD NOT BE ALLOWED INTO
6 EVIDENCE AT THE TRIAL, YOUR HONOR.

7 THE COURT: ALL RIGHT. LET ME MAKE A FEW
8 PREPARATORY REMARKS BEFORE I RULE. FIRST KEEP
9 IN MIND THE COURT LOOKS AT THE PREPONDERANCE OF
10 THE EVIDENCE. OF COURSE, WHEN THE JURY REVIEWS
11 THE STATEMENT OR EVER DOES, IT HAS TO REVIEW IT
12 WITH THE STANDARD OF BEYOND A REASONABLE DOUBT,
13 SO BE CLEAR I'M LOOKING AT IT FROM THAT
14 PROSPECTIVE.

15 I LISTENED WITH SOME CONCERN TO SOME OF THE
16 OFFICERS' TESTIMONY CONCERNING PERHAPS SOME
17 SUGGESTION THAT OTHERS WOULD GO TO JAIL FOR WHAT
18 HE HAD DONE. THERE IS ONE OTHER ONE THAT GAVE
19 ME A LITTLE CONCERN, BUT I DO NOT FIND THAT
20 EITHER ROSE TO THE LEVEL OF ANY PROMISE OF
21 REWARD OR COERCION, BUT I WANT THE RECORD CLEAR
22 WHEN SOMEBODY REVIEWS THIS LATER THAT I DID
23 HEAR, I CAN'T REMEMBER WHAT THE OTHER ONE WAS
24 BUT THERE WERE TWO, ONE BY OFFICER WALDROP AND
25 ONE BY OFFICER THICKENS, BOTH GAVE ME A LITTLE

1 CONCERN AND A LITTLE PAUSE BUT I DON'T FIND
2 EITHER ROSE TO THE LEVEL OF ANYTHING
3 IMPERMISSIBLE; THAT IS, I DO NOT FIND THEY WERE
4 COERCISIVE, ANY PROMISES, THEY WERE NOT HOLDING
5 OUT ANY HOPES OF REWARD OR ANY REWARD.

6 AS TO THE NOTIFICATION OF AN ATTORNEY, I THINK
7 THE LAW IS CLEAR, THE UNITED STATES SUPREME
8 COURT, ALTHOUGH THESE OTHER CASES FROM LOUISIANA
9 AND OKLAHOMA AND OREGON ARE OTHERWISE ABOUT THE
10 NOTIFICATION OF AN ATTORNEY PRESENT, OUR SUPREME
11 COURT SEEMS TO HAVE ADDRESSED THAT IN THE
12 DRAYTON CASE. JUSTICE FINNEY WROTE A DISSENT
13 AND QUITE CANDIDLY IF I WAS THE LAW-MAKER I
14 MIGHT BE MORE INCLINED TO JUDGE FINNEY'S VIEW
15 THAN THE OTHER, BUT I'M NOT THE LAW MAKER, I'M
16 THE LAW-FOLLOWER.

17 CONCLUDING THIS JACKSON VERSUS DENNO HEARING I
18 HAVE CONSIDERED ALL THE EVIDENCE OFFERED. I
19 LISTEN VERY CAREFULLY I BELIEVE TO ALL THE
20 EVIDENCE, GIVEN THE WEIGHT THAT I FEEL
21 APPROPRIATE TO BOTH DR. SANDLER AND DR. VENN,
22 ALONG WITH THE OTHER TESTIMONY AND I'M CONVINCED
23 BY A PREPONDERANCE OF THE EVIDENCE THAT BEFORE
24 THE INCRIMINATING STATEMENT OR CONFESSION WAS
25 OBTAINED FROM ANTONIO GORDON HE WAS FULLY

1 ADVISED OF HIS RIGHTS UNDER THE FIFTH AND SIXTH
2 AMENDMENT OF THE CONSTITUTION OF THE UNITED
3 STATES AND WAS ADVISED OF THE CONSTITUTIONAL
4 SAFEGUARDS OF MIRANDA. THAT HE WAS ADVISED THAT
5 PRIOR TO ANY SUCH QUESTIONING, INTERROGATION, HE
6 WOULD HAVE THE RIGHT TO REMAIN SILENT. HE WAS
7 ADVISED THAT ANYTHING HE SAID COULD BE USED
8 AGAINST HIM IN COURT. HE WAS ADVISED HE HAD THE
9 RIGHT TO TALK TO A LAWYER FOR ADVICE BEFORE HE
10 WAS ASKED QUESTIONS. I POINT OUT THAT THE WORDS
11 HERE ARE QUESTIONS AS OPPOSED TO INTERROGATION
12 OR INTERROGATORIES WHICH OBVIOUSLY ARE SIMPLE
13 WORDS BUT HE WAS ADVISED BEFORE HE WAS ASKED
14 QUESTIONS HE WOULD HAVE THE RIGHT TO HAVE AN
15 ATTORNEY WITH HIM DURING THE QUESTIONING. HE
16 HAD THE RIGHT TO HAVE THE ADVICE AND PRESENCE OF
17 A LAWYER EVEN IF HE CANNOT AFFORD TO HIRE ONE.
18 ADVISED THAT WHILE THE LAW ENFORCEMENT COULD NOT
19 APPOINT A LAWYER, ONE WOULD BE APPOINTED BY THE
20 COURT IF HE WISHED. THAT HE COULD STOP
21 ANSWERING QUESTIONS WITHOUT THE PRESENCE OF A
22 LAWYER AND MAY STOP ANSWERING ANY TIME HE
23 DESIRES UNTIL A LAWYER'S PRESENT. THEREAFTER,
24 HE SIGNED THAT HE HAD READ OR HAD READ THIS
25 STATEMENT. THAT HE UNDERSTOOD THE RIGHTS AND

1 WAS WILLING TO MAKE A STATEMENT. THAT HE DID
2 NOT WANT A LAWYER AT THIS TIME. UNDERSTOOD WHAT
3 HE WAS DOING, AND KNEW HE WAS TALKING TO A
4 POLICE OFFICER AND UNDERSTOOD WHAT HE WAS
5 TALKING ABOUT. ADDITIONALLY IN THE LAST
6 PARAGRAPH ON PAGE TWO, HE INDICATES AND THIS IS
7 THE STATEMENT THAT WAS TAKEN BETWEEN 3:30 AND 4
8 P.M. THAT HE HAD BEEN OFFERED TO HAVE HIS
9 GRANDMOTHER OR MOTHER WITH HIM AND HE CHOSE NOT
10 TO DO THAT. HE JUST WANTED TO TELL THE TRUTH.
11 AND HE ASKED IF HE WANTED SOMEONE FROM HIS
12 FAMILY OR A LAWYER, BUT AGAIN HE JUST SAID HE
13 WANTED TO GO AHEAD AND TELL THE TRUTH.

14 I FIND THAT HE KNOWINGLY AND INTELLIGENTLY
15 WAIVED HIS RIGHTS UNDER THE FIFTH AND SIXTH
16 AMENDMENTS OF THE CONSTITUTION OF THE UNITED
17 STATES AND THE CONSTITUTIONAL SAFEGUARDS BY
18 MIRANDA. I FIND THAT HE WAS COMPETENT TO DO
19 THAT. I'VE HEARD THE TESTIMONY, THERE IS NO
20 TESTIMONY EVEN FROM DR. VENN OF ANY MENTAL
21 RETARDATION. THE COMBINED TESTIMONY OF THE
22 DOCTORS MAKES IT CLEAR TO ME THAT HE IS
23 COMPETENT TO NOT ONLY STAND TRIAL, BUT TO HAVE
24 UNDERSTOOD THOSE PARTICULAR RIGHTS AS SET FORTH
25 IN THE MIRANDA AND I FIND THAT THE ALLEGED

1 STATEMENT OR THE STATEMENT, ALLEGED
2 INCRIMINATING STATEMENT OR CONFESSION GIVEN BY
3 ANTONIO GORDON WAS FREELY AND VOLUNTARILY GIVEN
4 WITHOUT DURESS, WITHOUT COERCION, WITHOUT UNDUE
5 INFLUENCE, WITHOUT REWARD, WITHOUT PROMISE OR
6 HOPE OF REWARD, WITHOUT PROMISE OF LENIENCY,
7 WITHOUT THREAT OF INJURY, AND WITHOUT COMPULSION
8 OR INDUCEMENT OF ANY KIND, AND THAT SUCH ALLEGED
9 INCRIMINATING STATEMENT WAS A VOLUNTARY PRODUCT
10 OF A FREE AND UNCONSTRAINED WILL OF THE
11 DEFENDANT. AGAIN I FIND THESE BY THE
12 PREPONDERANCE OF THE EVIDENCE. AND AGAIN I
13 SPECIFICALLY FIND THAT, AND I WISH I COULD
14 REMEMBER THE STATEMENT BY OFFICER THICKENS, THE
15 FIRST BEING, ONE HAD TO DO WITH SOMEBODY ELSE
16 WAS GOING TO GO TO JAIL, AND ONE BY MR. WALDROP
17 WAS SOMETHING ALONG THE LINES OF, I CAN'T
18 REMEMBER WHAT IT WAS, WHILE THOSE DO BORDER ON
19 BEING SUGGESTIVE, I DO NOT FIND THAT THEY ARISE
20 TO THE LEVEL OF UNDUE INFLUENCE.

21 ANYTHING FURTHER FROM THE STATE?

22 MR. ANTHONY: NO, SIR, NOTHING FURTHER FROM THE
23 STATE.

24 THE COURT: ANYTHING FROM THE DEFENSE?

25 MR. D'AGOSTINO: NOT AT THIS TIME, YOUR HONOR.

1 THE COURT: ALL RIGHT. WE'LL START MONDAY
2 MORNING ON THE TRIAL.

3 MR. GILLEN: YOUR HONOR, MAY I ASK THE COURT, IT
4 WON'T TAKE VERY LONG.

5 THE COURT: I'VE GOT ALL DAY.

6 MR. GILLEN: IF I COULD ASK ONE OF THE
7 SOLICITORS HERE TO A BRIEF MEETING IN CHAMBERS.

8 THE COURT: CERTAINLY. YOU WANT THE COURT
9 REPORTER TO STAY AROUND.

10 MR. GILLEN: NO, YOUR HONOR, IT'S NOTHING.

11 MR. THOMPSON: I WOULD ASK, I BELIEVE THERE IS
12 SOMETHING THE STATE IF WE COULD, I THINK WE
13 APPROACHED THE BENCH A LITTLE EARLIER.

14 THE COURT: WE'LL TAKE A SHORT BREAK THEN IN
15 CHAMBERS.

16 (COURT'S IN RECESS AT 5:20.)

17 (COURT RESUMES.)

18 MR. THOMPSON: THIS IS THE STATE OF SOUTH
19 CAROLINA VERSUS TERRANCE MCCREARY. INDICTMENTS
20 NUMBER 99-GS-46-2223 FOR ACCESSORY BEFORE THE
21 FACT TO MURDER. HE'S PLEADING GUILTY AS HE'S
22 CHARGED IN THIS INDICTMENT AND HE'S WAIVING HIS
23 RIGHT TO PRESENTMENT TO THE GRAND JURY ON THIS
24 CASE.

25 ALSO NUMBER 99-GS-46-2234 FOR ACCESSORY AFTER

1 THE FACT FOR MURDER WHICH HE'S PLEADING GUILTY
2 AS CHARGED IN THIS INDICTMENT AND WAIVING HIS
3 RIGHT TO THE PRESENTMENT TO THE GRAND JURY ON
4 THIS AS WELL.

5 AS PART OF THE PLEA AGREEMENT IN THIS CASE, YOUR
6 HONOR, WE ARE DISMISSING THE OTHER CHARGES THAT
7 HAVE BEEN CALLED BEFORE THE COURT TODAY. HE HAS
8 AS WELL AGREED TO TESTIFY AGAINST ANY REMAINING
9 CO-DEFENDANT IF THAT BECOMES NECESSARY. IT IS
10 BASICALLY THE SAME AGREEMENT AS MONTA GORDON HAD
11 SIGNED BUT DID NOT HAVE TIME TO CONSENT TO
12 WRITING. HE WILL BE SENTENCED ON MONDAY OF NEXT
13 WEEK OR AS SOON AS THE OTHER DEFENDANTS' CASES
14 ARE HANDLED. THE PLEA HERE WOULD LOCK HIM IN
15 AND WE WILL DISMISS THE OTHER CHARGES AND THERE
16 IS A RECOMMENDATION OF THE 30 YEARS. SO IN
17 OTHER WORDS, CONCURRENT SENTENCING AND THEN THE
18 RECOMMENDATION OF THE 30 YEARS AS ACCESSORY
19 BEFORE THE FACT.

20 THE COURT: AND AFTER THE FACT CARRIES UP TO 15?
21 MR. THOMPSON: YES, YOUR HONOR, THAT'S CORRECT.

22 THE COURT: MR. MCCREARY, HOW OLD ARE YOU?

23 MR. MCCREARY: 21.

24 THE COURT: ARE YOU MARRIED OR SINGLE?

25 MR. MCCREARY: NO, SIR, I'M SINGLE.

1 THE COURT: YOU EVER BEEN MARRIED?

2 MR. MCCREARY: NO, SIR.

3 THE COURT: DO YOU HAVE ANY CHILDREN?

4 MR. MCCREARY: NO, SIR.

5 THE COURT: HOW FAR DID YOU GO IN SCHOOL?

6 MR. MCCREARY: THE TENTH GRADE.

7 THE COURT: AND YOU WERE WORKING, IF YOU HAD,
8 WHAT KIND OF JOB DID YOU HAVE?

9 MR. MCCREARY: I WAS WORKING AT A DETAIL JOB.

10 MR. GILLEN: A CAR WASH, YOUR HONOR.

11 THE COURT: YOU'RE REPRESENTED BY MR. GILLEN?

12 MR. MCCREARY: YES, SIR.

13 THE COURT: YOU SATISFIED WITH HIS SERVICES?

14 MR. MCCREARY: YES, SIR.

15 THE COURT: ALL RIGHT, TAKE A MINUTE AND SIGN
16 THOSE. YOU SATISFIED WITH MR. GILLEN'S
17 REPRESENTATION?

18 MR. MCCREARY: YES, SIR.

19 THE COURT: HAVE YOU EVER BEEN TREATED FOR ANY
20 MENTAL OR EMOTIONAL DISABILITY?

21 MR. MCCREARY: NO, SIR.

22 THE COURT: ARE YOU AT THIS TIME UNDER THE
23 INFLUENCE OF ANYTHING THAT WOULD CAUSE YOU TO BE
24 INTOXICATED?

25 MR. MCCREARY: NO, SIR.

1 THE COURT: YOU'RE CHARGED IN TWO INDICTMENTS.
2 ONE FOR ACCESSORY BEFORE THE FACT AND ONE FOR
3 ACCESSORY AFTER THE FACT. IT IS ALLEGED IN
4 THESE THAT ON OR ABOUT JULY 23 OF 1998 THAT YOU
5 DID UNLAWFULLY AID IN THE COMMISSION OF A FELONY
6 OR AN ACCESSORY BEFORE THE FACT IN COMMISSION OF
7 A FELONY BY COUNSELING OR OTHERWISE PROCURING
8 THE FELONY OF THE COMMISSION OF A MURDER OF ERIC
9 KRENN BY ANTONIO GORDON IN VIOLATION OF STATE
10 LAW. AND IT'S ALLEGED THAT AFTER THE FACT ON
11 THAT DAY AND AFTER THE COMPLETION OF THE MURDER
12 OF MR. KRENN YOU DID AID, HARBOR, ASSIST MR.
13 GORDON TO ESCAPE DETECTION OR OTHERWISE AVOID
14 THE CONSEQUENCES OF HIS CRIME.

15 THE ACCESSORY BEFORE THE FACT WOULD CARRY UP TO
16 30 YEARS IN PRISON WHICH IS THE SAME AS MURDER.

17 MR. THOMPSON: I BELIEVE IT WOULD CARRY 30 YEARS
18 UP TO LIFE.

19 THE COURT: 30 YEARS UP TO LIFE AS WOULD MURDER.
20 AND AS TO ACCESSORY AFTER THE FACT IT WOULD
21 CARRY UP TO 15 YEARS. DO YOU UNDERSTAND THAT?

22 MR. MCCREARY: YES, SIR.

23 THE COURT: NOW NEITHER ONE OF THESE CASES HAVE
24 BEEN REVIEWED BY THE YORK COUNTY GRAND JURY.
25 THE YORK COUNTY GRAND JURY IS A GROUP OF

1 INDIVIDUALS OF UP TO 18 PEOPLE WHO WOULD HEAR
2 THE STATE'S CASE, THE STATE'S EVIDENCE, AND
3 DETERMINE WHETHER OR NOT THAT EVIDENCE WAS
4 SUFFICIENT FOR YOUR CASE TO GO FORWARD. 12
5 WOULD HAVE TO DO SO. 12 MEMBERS AT THAT TIME
6 WOULD HAVE TO FIND THAT THE CASE WAS STRONG
7 ENOUGH TO GO FORWARD. YOU HAVE A RIGHT TO HAVE
8 THESE REVIEWED BY THE GRAND JURY OR YOU COULD
9 GIVE UP THAT RIGHT. YOU UNDERSTAND THAT RIGHT?

10 MR. MCCREARY: YES, SIR.

11 THE COURT: YOU WISH TO HAVE THESE CASES
12 REVIEWED BY THE GRAND JURY OR GIVE UP THAT
13 RIGHT?

14 MR. MCCREARY: I WOULD LIKE THE RIGHT TO GO TO
15 THE GRAND JURY.

16 MR. GILLEN: MAY I HAVE A MOMENT, YOUR HONOR.
17 WE HAD DISCUSSED THIS PREVIOUSLY.

18 THE COURT: SURE.

19 (CONFERRING WITH COUNSEL.)

20 MR. MCCREARY: I'D ALIKE TO WAIVE THAT RIGHT,
21 YOUR HONOR.

22 THE COURT: ALL RIGHT. LET THE RECORD SHOW THAT
23 HE HAS ON EACH INDICTMENT SIGNED A WAIVER OF
24 PRESENTMENT. AND YOU CONFERRED WITH COUNSEL SO
25 YOU UNDERSTAND WHAT YOU ARE DOING?

1 MR. MCCREARY: YES, SIR.

2 THE COURT: AND THAT'S WHAT YOU WANT TO DO?

3 MR. MCCREARY: YES, SIR.

4 THE COURT: ALL RIGHT. AT ANY TIME IF YOU WANT
5 TO TALK TO MR. GILLEN, PLEASE DON'T HESITATE TO
6 TALK TO HIM. HE'S YOUR LAWYER, THAT'S WHAT HE'S
7 HERE FOR. I WOULDN'T BE OFFENDED WHATSOEVER IF
8 YOU SAY, YOUR HONOR, I NEED TO TALK TO MY
9 ATTORNEY, OKAY?

10 MR. MCCREARY: YES, SIR.

11 THE COURT: NOW IN ADDITION TO THE JAIL TIME
12 THAT THESE CARRY SINCE THEY ARE CONNECTED, THE
13 ACCESSORY BEFORE THE FACT IS CONNECTED TO THE
14 CHARGE OF MURDER, THIS IS WHAT'S CALLED A
15 VIOLENT OFFENSE, A MOST SERIOUS OFFENSE, AND A
16 NO PAROLE OFFENSE. YOU UNDERSTAND THAT?

17 MR. MCCREARY: YES, SIR.

18 THE COURT: MOST SERIOUS OFFENSE MEANS THAT IF
19 YOU GET TWO MOST SERIOUS OFFENSES IN YOUR
20 LIFETIME YOU WOULD BE LOOKING AT A POSSIBILITY
21 OF RECEIVING LIFE IN PRISON WITHOUT PAROLE OR IF
22 YOU GOT A MOST SERIOUS AND TWO SERIOUS OFFENSES
23 YOU'D BE LOOKING AT A POSSIBILITY OF LIFE IN
24 PRISON WITHOUT PAROLE. DO YOU UNDERSTAND THAT?

25 MR. MCCREARY: YES, SIR.

1 THE COURT: AND THIS IS A NO PAROLE OFFENSE. DO
2 YOU UNDERSTAND THAT?

3 MR. MCCREARY: YES, SIR.

4 THE COURT: ALL RIGHT. KNOWING THAT, HOW DO YOU
5 PLEAD TO ACCESSORY BEFORE THE FACT?

6 MR. MCCREARY: GUILTY.

7 THE COURT: HOW DO YOU PLEAD TO ACCESSORY AFTER
8 THE FACT?

9 MR. MCCREARY: GUILTY.

10 THE COURT: OTHER THAN THE AGREEMENT THAT YOU
11 ARE ENTERING THESE PLEAS AS OPPOSED TO THOSE
12 WITH WHICH YOU WERE ORIGINALLY CHARGED AND THAT
13 YOU HAVE BEEN PROMISED TO RECEIVE A SENTENCE OF
14 NO MORE THAN 30 YEARS AND TO TESTIFY IF ANY OF
15 THE OTHER CO-DEFENDANTS GO TO TRIAL, OTHER THAN
16 THESE PROMISES, HAS ANYONE MADE ANY PROMISE OR
17 GIVEN YOU ANYTHING OR TOLD YOU YOU'D BE REWARDED
18 IN ANY WAY FOR ENTERING YOUR PLEA OF GUILT?

19 MR. MCCREARY: NO, SIR.

20 THE COURT: HAS ANYONE THREATENED YOU, HAS
21 ANYBODY COERCED YOU, OR USED ANY FORCE
22 WHATSOEVER TO CAUSE YOU TO ENTER PLEAS OF GUILT
23 TO THESE TWO CHARGES?

24 MR. MCCREARY: NO, SIR.

25 THE COURT: ARE YOU ENTERING YOUR PLEAS FREELY

1 AND VOLUNTARILY?

2 MR. MCCREARY: YES, SIR.

3 THE COURT: AND ARE YOU UNDER THE INFLUENCE OF
4 ANYTHING AT THIS TIME?

5 MR. MCCREARY: NO, SIR.

6 THE COURT: YOU HAVE A RIGHT TO A TRIAL BY A
7 JURY ON EACH OF THESE CHARGES, MR. MCCREARY.
8 THEY CAN BE TRIED TOGETHER SINCE THEY ARISE OUT
9 OF A CONTINUING INCIDENT. YOU UNDERSTAND THAT?

10 MR. MCCREARY: YES, SIR.

11 THE COURT: YOU HAVE A RIGHT TO, WELL, YOU ARE
12 PRESUMED INNOCENT OF THESE CHARGES AGAINST YOU
13 AND ARE SO PRESUMED UNTIL SUCH TIME AS THE STATE
14 WOULD BE ABLE TO PROVE TO THAT JURY YOUR GUILT
15 BEYOND A REASONABLE DOUBT. YOU UNDERSTAND THAT?

16 MR. MCCREARY: YES, SIR.

17 THE COURT: YOU HAVE THE RIGHT TO REMAIN
18 SILENT. THAT IS, NO ONE CAN MAKE YOU TESTIFY OR
19 GIVE ANY STATEMENT TO ANYONE CONCERNING THIS.
20 DO YOU UNDERSTAND THAT?

21 MR. MCCREARY: YES, SIR.

22 THE COURT: YOU HAVE THE RIGHT TO HAVE YOUR
23 WITNESSES MADE TO COME TO COURT BY SUBPOENA IF
24 YOU GO TO TRIAL. DO YOU UNDERSTAND THAT?

25 MR. MCCREARY: YES, SIR.

1 THE COURT: YOU HAVE THE RIGHT TO CONFRONT THE
2 WITNESSES AGAINST YOU. THAT IS, YOU AND YOUR
3 ATTORNEY HAVE THE RIGHT TO SEE, HEAR, QUESTION,
4 AND CROSS EXAMINE WITNESSES WHO WOULD TESTIFY
5 FOR THE STATE AGAINST YOU. DO YOU UNDERSTAND
6 THAT?

7 MR. MCCREARY: YES, SIR.

8 THE COURT: AND YOU'VE GIVEN A STATEMENT IN THIS
9 CASE AND IT WOULD BE A QUESTION FOR THE COURT
10 AND FOR THE JURY WHETHER OR NOT THAT STATEMENT
11 WAS, YOU ARE GIVING UP ANY RIGHT TO HAVE THAT
12 STATEMENT REVIEWED ANY FURTHER REGARDING WHETHER
13 OR NOT IT WAS VOLUNTARILY GIVEN OR NOT. DO YOU
14 UNDERSTAND THAT?

15 MR. MCCREARY: YES, SIR.

16 THE COURT: YOU ALSO GIVE UP ANY DEFENSE THAT
17 YOU MAY HAVE TO THESE OFFENSES WHEN YOU ENTER A
18 PLEA OF GUILT. YOU UNDERSTAND THAT?

19 MR. MCCREARY: YES, SIR.

20 THE COURT: KNOWING ALL THOSE THINGS I ASK YOU
21 AGAIN, HOW DO YOU PLEAD TO ACCESSORY BEFORE THE
22 FACT?

23 MR. MCCREARY: GUILTY.

24 THE COURT: HOW DO YOU PLEAD TO ACCESSORY AFTER
25 THE FACT?

1 MR. MCCREARY: GUILTY.

2 THE COURT: ALL RIGHT. I WILL NOW ASK THE
3 SOLICITOR TO, FIRST I UNDERSTAND MR. KRENN IS
4 HERE, THE FATHER, AND IF HE WISHES TO COME
5 FORWARD AND MAKE ANY STATEMENT. THE VICTIM'S
6 RIGHTS ACT HAS BEEN COMPLIED WITH.

7 MR. THOMPSON: IT HAS BEEN COMPLIED WITH. MR.
8 KRENN WOULD LIKE TO ADDRESS THE COURT ON MONDAY
9 WHEN SENTENCING OCCURS, YOUR HONOR.

10 THE COURT: OKAY, THAT'S FINE.

11 MR. THOMPSON: AS FAR AS THE FACTS GO, DO WANT
12 ME TO PRESENT THOSE?

13 THE COURT: I'VE HEARD THE FACTS REPEATEDLY THIS
14 WEEK. I REVIEWED THE STATEMENTS, AND I THINK
15 THOUGH JUST FOR PURPOSES OF GETTING THE
16 AGREEMENT BY THE DEFENDANT AS TO THE FACTS, I
17 THINK YOU NEED TO JUST GO OVER THEM VERY BRIEFLY
18 BECAUSE I NEED TO HAVE CONFIRMATION FROM HIM.

19 MR. THOMPSON: MAY IT PLEASE THE COURT, YOUR
20 HONOR, IT OCCURRED ON JULY 23, 1998, HERE IN
21 YORK COUNTY ON SOUTH JONES STREET. THE
22 DEFENDANT WAS THE DRIVER OF THE CAR THE FOUR
23 DEFENDANTS WERE IN. AT THAT POINT TIME HE WAS
24 THE ONE WHO OBTAINED THE PISTOL THAT WAS USED.
25 HE OBTAINED THE BULLETS THEN FOLLOWING AND

1 LOADED THE GUN. HE WAS THE ONE WHO THEN AT SOME
2 POINT TRANSFERRED THE GUN TO WHERE IT ULTIMATELY
3 ENDED UP IN ANTONIO GORDON HANDS. HIS
4 STATEMENTS, AS WELL AS THE STATEMENTS OF HIS
5 CO-DEFENDANTS, POINTED TO THE FACT THAT HE RAN
6 UP UPON MR. KRENN, THAT HE WAS ONE THAT
7 SUGGESTED AT LEAST AT SOME POINT THAT THEY ROB
8 HIM. HE EVEN IN HIS OWN STATEMENT SUGGESTED
9 THAT THEY ROB HIM, IF HE HAD THE GUN HE WOULD
10 ROB THEM OF MARIJUANA. THE OTHERS SUGGESTED HE
11 PRODDED THEM TO GO AHEAD AND ROB THEM. OF
12 COURSE, AT THAT POINT THE ROBBERY DID OCCUR AND
13 THE KILLING OCCURRED WHEN ANTONIO GORDON SHOT
14 THE VICTIM IN THE CASE. AT THAT POINT HE IS THE
15 DRIVER OF THE CAR WHO THEN DROVE OFF, AND OF
16 COURSE WE WOULD HAVE PRESENTED STATEMENTS FROM
17 OTHER WITNESSES WHO SAID THAT HE HAD BRAGGED
18 ABOUT WHAT THEY HAD DONE AND EVEN AT SOME POINT
19 BRAGGED ABOUT BEING THE SHOOTER HIMSELF ALTHOUGH
20 HE WAS NOT. OF COURSE, HE WAS INVOLVED IN THE
21 CASE AND RAN FROM THE POLICE WHEN IT OCCURRED
22 AND SO THAT WOULD FIT ACCESSORY BEFORE AS WELL
23 AS ACCESSORY AFTER THE FACT.

24 THE COURT: YOU AGREE WITH THOSE FACTS, MR.
25 MCCREARY.

1 MR. MCCREARY: YES, SIR.

2 THE COURT: MR. MCCREARY, I ACCEPT YOUR PLEAS OF
3 GUILT. I FIND THEY ARE FREELY, VOLUNTARILY,
4 KNOWINGLY, AND INTELLIGENTLY ENTERED. THEY ARE
5 ENTERED WITH THE ADVICE OF COMPETENT COUNSEL
6 WITH WHOM YOU ARE SATISFIED. I FIND THAT YOU
7 ARE ENTERING IT FREELY AND VOLUNTARILY AND YOU
8 HAVE SIGNED A PLEA OF GUILT AND THE FACTS
9 SUPPORT YOUR PLEA.

10 NOW I'LL BE GLAD TO HEAR FROM YOU AND YOUR
11 ATTORNEY NOW OR WE CAN WAIT AND DO IT MONDAY
12 WHEN THE SENTENCING PHASE OF THIS PROCESS
13 OCCURS.

14 MR. GILLEN: WE WILL OPT FOR MONDAY AND PRESENT
15 MITIGATION BEFORE THE COURT AT THAT TIME.
16 HOWEVER, I WOULD LIKE TO ADDRESS ONE ISSUE. IT
17 WAS MY UNDERSTANDING IT WAS A NEGOTIATED PLEA.
18 MR. THOMPSON AND I NEVER DISCUSSED THE ACTUAL
19 WORD OR USE OF WORDS, BUT SINCE WE HAD GONE BACK
20 AND FORTH SO MANY TIMES AND, YOU KNOW, WORKED
21 THIS OUT, IT WAS AT LEAST MY UNDERSTANDING IT
22 WAS A NEGOTIATED PLEA. I DON'T KNOW IF THAT HAS
23 ANY DIFFERENCE IN YOUR HONOR'S DEALINGS WITH THE
24 CASE BUT.

25 THE COURT: WELL, I UNDERSTOOD THAT AND I

1 THOUGHT WHEN --

2 MR. THOMPSON: I WOULD CONSIDER IT A NEGOTIATED
3 PLEA.

4 THE COURT: I THOUGHT WHEN I WENT OVER HAD ANY
5 PROMISES BEEN MADE OTHER THAN DOING THIS.

6 MR. GILLEN: I WAS JUST CONCERNED WHEN MR.
7 THOMPSON SAID THAT IT WAS A RECOMMENDATION.

8 THE COURT: I'M TREATING IT AS A NEGOTIATED
9 PLEA, THAT WAS MY UNDERSTANDING.

10 MR. THOMPSON: WE WOULD CALL IT SUCH, YOUR
11 HONOR.

12 MR. GILLEN: THANK YOU, YOUR HONOR.

13 THE COURT: WE'LL SEE Y'ALL MONDAY THEN.

14 MR. THOMPSON: THANK YOU, YOUR HONOR.

15 (COURT'S IN RECESS.)

16 (COURT RESUMES.)

17 MR. THOMPSON: ANTONIO GORDON.

18 MR. THOMPSON: YOUR HONOR, THIS IS THE STATE OF
19 SOUTH CAROLINA VERSUS ANTONIO GORDON.

20 INDICTMENTS NUMBER 98-GS-46-2849 FOR ATTEMPTED
21 ARMED ROBBERY AND POSSESSION OF A FIREARM DURING
22 THE COMMISSION OF A VIOLENT CRIME. THE
23 DEFENDANT IS PLEADING GUILTY AS CHARGED.

24 98-GS-46-2850 ATTEMPTED ROBBERY ARMED AND
25 POSSESSION OF A FIREARM DURING THE COMMISSION OF

1 A VIOLENT CRIME. HE'S PLEADING GUILTY.

2 INDICTMENT NUMBER 98-GS-46-2851 FOR CRIMINAL
3 CONSPIRACY. THE DEFENDANT IS PLEADING GUILTY AS
4 CHARGED.

5 INDICTMENT NUMBER 98-GS-46-2852 INDICTMENTS FOR
6 POSSESSION OF A PISTOL BY A PERSON UNDER 21.
7 THE DEFENDANT IS PLEADING GUILTY AS CHARGED. ON
8 INDICTMENT NUMBER 98-GS-46-2847 FOR MURDER AND
9 POSSESSION OF A FIREARM WHILE IN THE COMMISSION
10 OF A VIOLENT CRIME. THE DEFENDANT IS PLEADING
11 GUILTY AS CHARGED.

12 EACH OF THE INDICTMENTS HAVE BEEN TRUE BILLED BY
13 THE GRAND JURY. THESE ARE THE CASES WE WOULD
14 HAVE CALLED FOR TRIAL. THIS IS A NEGOTIATED
15 PLEA. AS PART OF THE PLEA WE ARE DISMISSING THE
16 CHARGE OF CARJACKING. WE ARE ASKING FOR A
17 NEGOTIATED SENTENCE OF 40 YEARS. WE ARE ASKING
18 THE COURT TO STRUCTURE THAT SENTENCE SO THAT ALL
19 SENTENCES RUN CONCURRENT TO THE MURDER TO THE 30
20 YEARS EXCEPT FOR ONE THE ATTEMPTED ARMED ROBBERY
21 WHICH WILL RUN CONSECUTIVE FOR 10 YEARS.

22 THE COURT: MR. GORDON, YOU ARE 17, RIGHT?

23 MR. GORDON: YES, SIR.

24 THE COURT: HOW FAR DID YOU GO IN SCHOOL?

25 MR. GORDON: NINTH GRADE.

1 THE COURT: YOU'RE REPRESENTED BY MR.
2 D'AGOSTINO?

3 MR. GORDON: YES, SIR.

4 THE COURT: YOU SATISFIED WITH HIS SERVICES?

5 MR. GORDON: YES, SIR.

6 THE COURT: NOW HE IS YOUR ATTORNEY, SO WHILE I
7 GO THROUGH THESE QUESTIONS IF YOU AT ANY TIME,
8 JUST LIKE MR. MCCREARY DID BEFORE YOU, IF YOU
9 NEED TO DISCUSS ANYTHING WITH YOUR LAWYER JUST
10 TELL ME. I WON'T BE OFFENDED AND IT WON'T HURT
11 YOUR CASE AT ALL. HE'S HERE TO HELP YOU AND IF
12 YOU DON'T UNDERSTAND SOMETHING, ASK ME TO REPEAT
13 IT AND IF YOU STILL NEED SOMETHING EXPLAINED TO
14 YOU, STOP AT ANY TIME AND TALK TO MR.
15 D'AGOSTINO. WOULD YOU PROMISE ME YOU'LL DO
16 THAT?

17 MR. GORDON: YES, SIR.

18 THE COURT: ALL RIGHT. YOU ARE CHARGED IN
19 SEVERAL INDICTMENTS. THE FIRST IS THAT OF
20 MURDER. THESE ARE ALLEGED TO HAVE OCCURRED IN
21 YORK COUNTY ON JULY 23 OF 1998. IT'S ALLEGED IN
22 THAT INDICTMENT THAT ON THAT DATE WITH MALICE OF
23 AFORETHOUGHT YOU DID KILL ONE ERIC PETER KRENN
24 BY MEANS OF SHOOTING HIM WITH A FIREARM AND THAT
25 HE DIED AS A RESULT THEREOF.

1 THIS MURDER CARRIES 30 YEARS TO LIFE. IT IS
2 WHAT'S CALLED A VIOLENT OFFENSE AND A MOST
3 SERIOUS OFFENSE AND IT DOES NOT ALLOW FOR ANY
4 PAROLE. THE MOST SERIOUS OFFENSE MEANS THAT
5 SOMEONE, INCLUDING YOU, IF DURING YOUR LIFETIME
6 YOU RECEIVE TWO SERIOUS OFFENSES OR A
7 COMBINATION OF THREE SERIOUS AND MOST SERIOUS
8 OFFENSES, YOU COULD BE IMPRISONED FOR LIFE
9 WITHOUT ANY PAROLE. THE VIOLENT OFFENSE IS ONE
10 THAT RESTRICTS CERTAIN ACTIVITIES THAT OTHER
11 INMATES MIGHT BE ALLOWED WHILE THEY ARE
12 INCARCERATED. YOU UNDERSTAND ALL THAT?

13 MR. GORDON: YES, SIR.

14 THE COURT: HOW DO YOU PLEAD TO THE MURDER
15 CHARGE?

16 MR. GORDON: GUILTY.

17 THE COURT: YOU ARE CHARGED WITH POSSESSION OF A
18 FIREARM DURING THE COMMISSION OF A VIOLENT CRIME
19 IN THREE SEPARATE INDICTMENTS. IT'S ALLEGED
20 THAT YOU POSSESSED A FIREARM AT THE TIME OF THE
21 COMMISSION OF THE MURDER AND AT THE TIME OF THE
22 COMMISSION OF THE TWO ARMED ROBBERIES. THESE
23 EACH WILL CARRY AN ADDITIONAL 30 YEARS IN JAIL.
24 YOU UNDERSTAND THAT?

25 MR. GORDON: YES, SIR.

1 THE COURT: AS TO THE MURDER CHARGE AND THE
2 POSSESSION OF THE FIREARM DURING A VIOLENT
3 CRIME, HOW DO YOU PLEAD?

4 MR. GORDON: GUILTY, SIR.

5 THE COURT: ALL RIGHT. IT'S ALLEGED IN ANOTHER
6 INDICTMENT THAT BEING UNDER 21 YEARS OF AGE AT
7 THAT TIME YOU WERE IN POSSESSION OF A PISTOL AND
8 THAT'S IN VIOLATION OF STATE LAW AND THAT
9 CARRIES UP TO FIVE YEARS AND A FINE. YOU
10 UNDERSTAND THAT?

11 MR. GORDON: YES, SIR.

12 MR. THOMPSON: YOUR HONOR, I DON'T MEAN TO
13 INTERRUPT BUT ON THE ATTEMPTED ROBBERY YOU SAID
14 CARRIES UP TO 30 YEARS. THEY ACTUALLY CARRY UP
15 TO 20.

16 THE COURT: I HADN'T EVEN GOT TO THEM.

17 MR. THOMPSON: I'M SORRY. THERE WAS ONE THAT
18 I---

19 THE COURT: I WENT FROM THE MURDER, THEN I
20 EXPLAINED THE THREE FIREARMS. I HAVEN'T GOTTEN
21 TO THE ATTEMPTED ARMED ROBBERY YET.

22 MR. THOMPSON: OKAY. IT MUST HAVE BEEN THE
23 FIREARM YOU SAID CARRIED UP TO 30.

24 THE COURT: I JUST DIDN'T WANT TO HAVE TO REPEAT
25 IT.

1 MR. THOMPSON: THEY CARRY UP TO FIVE ON THE
2 FIREARMS.

3 THE COURT: THAT'S WHAT I SAID, ISN'T IT?

4 MR. D'AGOSTINO: NO, YOU SAID UP TO 30 ON THE
5 FIREARMS. THEY CARRY UP TO FIVE YEARS ON THE
6 FIREARMS.

7 THE COURT: OKAY. LET ME REPEAT IT. I DID MAKE
8 A GRIEVOUS ERROR. GOING BACK TO THE MURDER
9 CHARGE, IN CONJUNCTION WITH THAT YOU ARE CHARGED
10 WITH A SECOND OFFENSE THAT BEING POSSESSION OF A
11 FIREARM DURING THE COMMISSION OF A VIOLENT
12 CRIME. YOU UNDERSTAND THAT?

13 MR. GORDON: YES, SIR.

14 THE COURT: YOU ARE ALSO CHARGED WITH THAT SAME
15 OFFENSE IN REGARD TO BOTH ATTEMPTED ARMED
16 ROBBERIES. YOU UNDERSTAND THAT?

17 MR. GORDON: YES, SIR.

18 THE COURT: EACH OF THOSE WOULD CARRY AN
19 ADDITIONAL FIVE YEARS. THE FIREARM POSSESSION
20 DURING A VIOLENT CRIME ON THOSE THREE COUNTS.
21 DO YOU UNDERSTAND THAT?

22 MR. GORDON: YES, SIR.

23 THE COURT: HOW DO YOU PLEAD THEN GOING BACK ON
24 THE MURDER INDICTMENT AS TO POSSESSION OF A
25 FIREARM DURING THE COMMISSION OF THE MURDER?

1 MR. GORDON: PLEAD GUILTY, SIR.

2 THE COURT: ALL RIGHT. POSSESSION OF A PISTOL
3 BY A PERSON UNDER 21 ALLEGES THAT YOU AT THAT
4 TIME POSSESSED A PISTOL, THAT YOU WERE UNDER 21,
5 AND THAT THIS WAS IN VIOLATION OF STATE LAW AND
6 THIS WOULD CARRY UP TO FIVE YEARS AND A
7 POSSIBILITY OF A FINE. DO YOU UNDERSTAND
8 THAT --

9 MR. GORDON: YES, SIR.

10 THE COURT: ---CHARGE AND THAT PENALTY?

11 MR. GORDON: YES, SIR.

12 THE COURT: HOW DO YOU PLEAD TO THAT?

13 MR. GORDON: GUILTY, SIR.

14 THE COURT: YOU ARE CHARGED WITH CRIMINAL
15 CONSPIRACY, ALLEGED THAT AT THAT TIME JULY 23,
16 1998, THAT YOU ALONG WITH OTHERS AND TERRANCE
17 MCCREARY, GARY MOFFAT, AND MONTA GORDON DID
18 COMBINE AND CONFEDERATE AND AGREE AND HAVE AN
19 UNDERSTANDING WITH ONE AND THE OTHER TO ENTER
20 INTO THE OFFENSE OF MURDER AND ARMED ROBBERY
21 AND/OR CARJACKING.

22 CRIMINAL CONSPIRACY CARRIES UP TO FIVE YEARS AND
23 \$5,000 FINE. YOU UNDERSTAND THAT?

24 MR. GORDON: YES, SIR.

25 THE COURT: HOW DO YOU PLEAD TO THAT?

1 MR. GORDON: GUILTY, SIR.

2 THE COURT: YOU ARE CHARGED WITH TWO COUNTS OF
3 ATTEMPTED ARMED ROBBERY. IT'S ALLEGED THAT AT
4 THAT TIME ON JULY 23, 1998, WHILE ARMED WITH A
5 DEADLY WEAPON YOU DID ATTEMPT TO TAKE FROM ERIC
6 KRENN AND CHRISTOPHER DIAZ, FROM MR. KRENN A BMW
7 1985, AND CURRENCY FROM MR. DIAZ IN VIOLATION OF
8 STATE LAW.

9 ATTEMPTED ARMED ROBBERY WOULD CARRY UP TO 20
10 YEARS. YOU UNDERSTAND THAT?

11 MR. GORDON: YES, SIR.

12 THE COURT: IT'S ALSO WHAT'S CALLED A MOST
13 SERIOUS OFFENSE. YOU UNDERSTAND THAT?

14 MR. GORDON: YES, SIR.

15 THE COURT: AND IT'S WHAT'S CALLED A PAROLE
16 INELIGIBLE OFFENSE. THAT MEANS AS TO THE
17 ATTEMPTED ARMED ROBBERY CHARGE YOU HAVE TO SERVE
18 UP TO, AT LEAST 85 PERCENT OF THAT CHARGE. YOU
19 UNDERSTAND THAT?

20 MR. GORDON: YES, SIR.

21 THE COURT: ON EACH OF THESE YOU ARE CHARGED
22 WITH POSSESSION OF A WEAPON DURING THE
23 COMMISSION OF A VIOLENT CRIME. HOW DO YOU PLEAD
24 TO ATTEMPTED ARMED ROBBERY INVOLVING CHRISTOPHER
25 DIAZ?

1 MR. GORDON: GUILTY, SIR.

2 THE COURT: AND TO POSSESSION OF A WEAPON AT
3 THAT TIME?

4 MR. GORDON: GUILTY.

5 THE COURT: AND HOW DO YOU PLEAD TO ATTEMPTED
6 ARMED ROBBERY INVOLVING ERIC KRENN ON JULY 23,
7 1998?

8 MR. GORDON: GUILTY.

9 THE COURT: AND TO POSSESSION OF A FIREARM AT
10 THAT TIME?

11 MR. GORDON: GUILTY.

12 THE COURT: NOW I DON'T KNOW THAT YOU'VE EVER
13 BEEN TREATED FOR ANY MENTAL OR EMOTIONAL
14 DISABILITY, THAT IS, TREATED, BUT YOU HAVE BEEN
15 EXAMINED AND EVALUATED AT AN EARLIER TIME
16 THROUGH THE DEPARTMENT OF JUVENILE JUSTICE AND
17 BY TWO PARTICULAR SETS OF PSYCHOLOGISTS, NOT
18 MEDICAL DOCTORS, BUT PSYCHOLOGISTS IN REGARD TO
19 THIS MATTER. IS THAT CORRECT?

20 MR. GORDON: YES, SIR.

21 THE COURT: OTHER THAN THAT, HAVE YOU BEEN
22 TREATED OR RECEIVED ANY KIND OF PSYCHOLOGICAL
23 EVALUATIONS TO YOUR KNOWLEDGE? MR. D'AGOSTINO
24 IS NODDING IN THE AFFIRMATIVE. YOU WANT TO TELL
25 ME ABOUT THAT NOW?

1 MR. D'AGOSTINO: YES, YOUR HONOR. IN
2 CONJUNCTION WITH HIS DJJ SENTENCES HE DID ATTEND
3 AND RECEIVE COUNSELING FROM MENTAL HEALTH,
4 CATAWBA MENTAL HEALTH THAT WAS IN 1997, '98,
5 '97. IT MIGHT HAVE BEEN THE FIRST PART OF '98
6 AS WELL. IN ADDITION TO HAVING HIM EXAMINED BY
7 DR. VENN FOR AN EVALUATION, HE HAS ALSO BEEN
8 EXAMINED BY A PSYCHIATRIST, A DR. ELLEN BERG, A
9 DOCTOR WITH DR. HAROLD MORGAN'S OUTFIT, AND THAT
10 EXAMINATION WAS FOR SEVERAL PURPOSES, MENTAL
11 DEFECT, ISSUES RELATING TO MCNAUGHTON. I WAS
12 CONVINCED THERE WERE NO ISSUES AS FAR AS MENTAL
13 DEFECT AND NO ISSUES ASSOCIATED WITH MCNAUGHTON,
14 NOT GUILTY BY REASON OF INSANITY, SO THERE IS NO
15 MENTAL ILLNESS PROBLEMS. THERE WERE ISSUES AND
16 THAT'S WHY I GOT DR. VENN TO EXAMINE HIM BECAUSE
17 HE DEALT MORE WITH CHILDREN, ISSUES DEALING WITH
18 COMPETENCY, BUT THE COURT HAS ALREADY ADDRESSED
19 THE ISSUE OF COMPETENCY AND I THINK WE'VE HAD
20 TWO PSYCHOLOGISTS DISCUSS THAT, SO THAT'S THE
21 EXTENT OF HIS MENTAL HEALTH EVALUATION AND THE
22 TREATMENT THAT I'M AWARE OF, YOUR HONOR.

23 THE COURT: ALL RIGHT. THANK YOU. MR. GORDON,
24 OTHER THAN THE FACT THAT THEY ARE RECOMMENDING
25 THAT I GIVE YOU A SENTENCE THAT COMBINES TO A

1 TOTAL OF 40 YEARS, HAS ANYONE MADE ANY PROMISE,
2 USED ANY THREATS, OR TOLD YOU YOU'D RECEIVE ANY
3 REWARD OR ANY SPECIAL CONSIDERATION OR HAS
4 ANYBODY USED ANY FORCE OR COERCION TO CAUSE YOU
5 TO ENTER YOUR PLEAS OF GUILT TO THESE OFFENSES?

6 MR. GORDON: NO, SIR.

7 THE COURT: ARE YOU ENTERING THESE PLEAS FREELY
8 AND VOLUNTARILY?

9 MR. GORDON: YES, SIR.

10 THE COURT: ARE YOU AT THIS TIME UNDER THE
11 INFLUENCE OF ANYTHING THAT WOULD CAUSE YOU TO BE
12 INTOXICATED?

13 MR. GORDON: NO, SIR.

14 THE COURT: YOU HAVE A RIGHT TO A TRIAL BY A
15 JURY ON THESE CHARGES. THEY COULD BE TRIED
16 TOGETHER SINCE THEY OCCUR FROM ONE EVENT. YOU'D
17 BE TRIED BY A JURY OF 12 INDIVIDUALS, AND YOU
18 HAVE A RIGHT TO THAT TRIAL. AT THAT TRIAL THE
19 STATE WOULD BE REQUIRED TO PROVE YOUR GUILT
20 BEYOND A REASONABLE DOUBT BEFORE YOU COULD BE
21 CONVICTED OF OFFENSES. YOU DON'T HAVE TO PROVE
22 YOUR INNOCENCE. THE LAW PRESUMES YOU ARE
23 INNOCENT. THE STATE WOULD HAVE TO PROVE YOUR
24 GUILT BEYOND A REASONABLE DOUBT. DO YOU
25 UNDERSTAND THAT?

1 MR. GORDON: YES, SIR.

2 THE COURT: NOW YOU HAVE A RIGHT TO REMAIN
3 SILENT. THAT IS, YOU DO NOT HAVE TO TESTIFY.
4 YOU DO NOT HAVE TO GIVE ANY STATEMENTS. YOU DO
5 NOT HAVE TO SAY ANYTHING ABOUT THIS CASE
6 WHATSOEVER. DO YOU UNDERSTAND THAT?

7 MR. GORDON: YES, SIR.

8 THE COURT: YOU HAVE THE RIGHT TO SEE THE
9 WITNESSES, TO HEAR THE WITNESSES, TO HAVE YOUR
10 ATTORNEY CROSS EXAMINE AND YOU CROSS EXAMINE THE
11 WITNESSES WHO THE STATE WOULD CALL TO TESTIFY
12 AGAINST YOU AT THAT TRIAL IF YOU HAD A TRIAL.
13 DO YOU UNDERSTAND THAT?

14 MR. GORDON: YES, SIR.

15 THE COURT: YOU ALSO HAVE A RIGHT TO HAVE ANY
16 WITNESSES THAT YOU THINK WOULD TESTIFY WITH
17 INFORMATION THAT WOULD BE HELPFUL TO YOU, YOU
18 HAVE THE RIGHT TO HAVE THE STATE MAKE THOSE
19 WITNESSES OR ISSUE SUBPOENAS FOR THOSE WITNESSES
20 TO MAKE THOSE WITNESSES COME TO COURT TO TESTIFY
21 FOR YOU. YOU UNDERSTAND THAT?

22 MR. GORDON: YES, SIR.

23 THE COURT: NOW YOU'VE ALREADY, YOU MADE A
24 CONFESSION OR A STATEMENT IN THIS CASE AND I
25 HAVE ALREADY RULED THAT THEY WERE ADMISSIBLE AT

1 THE TRIAL, BUT IF YOU WENT TO TRIAL THE JURY
2 WOULD HAVE TO DETERMINE WHETHER OR NOT YOU HAD
3 MADE THOSE FREELY AND VOLUNTARILY AND
4 UNDERSTANDING YOUR RIGHTS. YOU UNDERSTAND THAT?

5 MR. GORDON: YES, SIR.

6 THE COURT: NOW BY ENTERING PLEAS OF GUILT TO
7 EACH OF THESE, AS TO EACH OF THOSE OFFENSES, TO
8 EACH AND EVERY ONE OF THEM, YOU ARE GIVING UP
9 THOSE RIGHTS THAT I HAVE JUST GONE OVER. DO YOU
10 UNDERSTAND THAT?

11 MR. GORDON: YES, SIR.

12 THE COURT: KNOWING ALL THESE THINGS THEN I ASK
13 AS TO THE EVENTS ON JULY 23, 1998, HOW DO YOU
14 PLEAD REGARDING THE CHARGE OF MURDER OF ERIC
15 PETER KRENN?

16 MR. GORDON: GUILTY, SIR.

17 THE COURT: AND TO POSSESSION OF A FIREARM AT
18 THAT TIME?

19 MR. GORDON: GUILTY.

20 THE COURT: HOW DO YOU PLEAD TO POSSESSION OF A
21 PISTOL BY A PERSON UNDER 21 AT THAT TIME?

22 MR. GORDON: GUILTY.

23 THE COURT: HOW DO YOU PLEAD TO CRIMINAL
24 CONSPIRACY AT THAT TIME?

25 MR. GORDON: GUILTY.

1 THE COURT: HOW DO YOU PLEAD TO ATTEMPTED ARMED
2 ROBBERY INVOLVING ERIC KRENN AND ONE BMW AT THAT
3 TIME?

4 MR. GORDON: GUILTY.

5 THE COURT: AND TO POSSESSION OF A WEAPON DURING
6 THE COMMISSION OF THAT EVENT.

7 MR. GORDON: GUILTY.

8 THE COURT: HOW DO YOU PLEAD TO ATTEMPTED ARMED
9 ROBBERY REGARDING CHRISTOPHER DIAZ IN CURRENCY
10 OR MONEY AT THAT TIME?

11 MR. GORDON: GUILTY.

12 THE COURT: AND HOW DO YOU PLEAD TO POSSESSION
13 OF A WEAPON DURING THAT?

14 MR. GORDON: GUILTY.

15 THE COURT: ALL RIGHT. NOW I'VE HEARD THE
16 FACTS, I HAVE READ YOUR STATEMENTS, BUT I'M
17 GOING TO ASK JUST FOR THE PURPOSES OF THIS
18 HEARING THAT THE SOLICITOR TO GO OVER AGAIN
19 BRIEFLY THE FACTS.

20 MR. THOMPSON: IF IT PLEASE THE COURT, THIS
21 OCCURRED JULY 23, 1998, HERE IN YORK COUNTY IN
22 ROCK HILL AT SOUTH JONES STREET. THE DEFENDANT
23 IN THIS CASE WAS INVOLVED, AND OF COURSE,
24 SITTING IN THE COURT ARE THE OTHER DEFENDANTS.
25 I HAD DISCUSSED WITH TERRANCE MCCREARY BEFORE

1 GETTING OUT OF THE CAR THAT THEY WOULD ROB MR.
2 KRENN AND TRY TO TAKE THE CAR. AS WELL AS WHEN
3 HE GOT OUT HE TOOK THE PISTOL WITH HIM. HE
4 WITNESSED MR. DIAZ PUTTING HIM AND MONTA GORDON
5 AT THE WINDOW OF THE VICTIM'S CAR TRYING TO
6 STEAL IT. AS A MATTER OF FACT, MR. DIAZ WOULD
7 HAVE TESTIFIED THAT THIS DEFENDANT HAD OR THAT
8 THE DEFENDANT AT THE WINDOW HAD PUT HIS HAND ON
9 THE CAR DOOR TRYING TO OPEN IT WHILE POINTING
10 THE GUN AT MR. KRENN. THE WINDOW OF THE CAR
11 BEING DOWN AT THAT TIME. THIS DEFENDANT'S PALM
12 PRINT WAS LIFTED OFF OF THE DOOR EXACTLY WHERE
13 THE WITNESS STATED HE WOULD HAVE BEEN TOUCHING
14 IT TRYING TO OPEN IT AND IT WAS MATCHED AND WE
15 WOULD HAVE HAD TESTIMONY TO THAT AFFECT.

16 THE SHOT WAS FIRED BY THIS DEFENDANT. HE TOOK
17 THE GUN BACK IN THE CAR AND RAN OFF AT THAT
18 POINT IN TIME. HE'S UNDER 21 YEARS OF AGE. AND
19 EVEN HIS GIRLFRIEND CHYENCA DIXON DID ADMIT TO
20 ME WHEN I INTERVIEWED HER TO PREPARE FOR THIS
21 TRIAL THAT MR. GORDON HAD ADMITTED TO HER THAT
22 NIGHT HE WAS THE ONE WHO FIRED THE SHOT AND SHE
23 SAID IF SHE WAS CALLED WOULD HAVE TESTIFIED TO
24 THAT.

25 THE STATE WOULD HAVE PRODUCED THOSE THINGS AT

1 TRIAL AND THAT IS THE BASIS FOR HIS GUILTY PLEA
2 AT THIS TIME, YOUR HONOR.

3 THE COURT: ALL RIGHT. YOU AGREE WITH THOSE
4 FACTS, MR. GORDON?

5 MR. GORDON: YES, SIR.

6 THE COURT: MR. GORDON, I ACCEPT YOUR PLEAS OF
7 GUILT. I FIND THEY ARE FREELY, VOLUNTARILY,
8 KNOWINGLY, AND INTELLIGENTLY ENTERED AND THEY
9 ARE ENTERED WITH THE ADVICE OF A COMPETENT
10 COUNSEL WITH WHOM YOU TELL ME YOU ARE SATISFIED.
11 I FIND THEY ARE FREELY AND VOLUNTARILY ENTERED.
12 YOU HAVE SIGNED PLEAS OF GUILT ON EACH
13 INDICTMENT AND THE FACTS SUPPORT YOUR PLEA.

14 NOW ANYTHING YOU WANT TO ASK ME AT THIS TIME?

15 MR. GORDON: NO, SIR.

16 THE COURT: ALL RIGHT. YOU HAVE A RIGHT NOW,
17 YOU AND YOUR ATTORNEY, TO MAKE A STATEMENT OR
18 YOU CAN WAIT AND DO THAT MONDAY WHEN WE ENTER
19 SENTENCE.

20 MR. D'AGOSTINO: WE'LL WAIT UNTIL MONDAY UNTIL,
21 DO YOU HAVE ANYTHING YOU WANT TO SAY?

22 MR. GORDON: (NODS HEAD.)

23 THE COURT: NOW AS FAR AS THE VICTIM'S RIGHTS
24 ACT I UNDERSTAND MR. KRENN IS PRESENT ALSO FOR
25 THIS.

1 MR. THOMPSON: YES, SIR.

2 THE COURT: DOES HE WISH TO STATE ANYTHING AT
3 THIS TIME?

4 MR. THOMPSON: HE WILL ADDRESS THE COURT MONDAY.

5 THE COURT: ALL RIGHT. THANK YOU. WE'LL SEE
6 YOU MONDAY.

7 THE COURT: THAT CONCLUDES THE COURT FOR THIS
8 WEEK.

9 (COURT'S IN RECESS AT 6:40 P.M.)

10 (COURT RESUMES ON MONDAY, JULY 19, 1999.)

11 MR. THOMPSON: ANTONIO GORDON, MONTA GORDON, AND
12 TERRANCE MCCREARY. PLEASE THE COURT, YOUR
13 HONOR.

14 MR. GILLEN: YOUR HONOR, MAY WE APPROACH
15 BRIEFLY.

16 THE COURT: YES.

17 (BENCH CONFERENCE.)

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

20 THE COURT: YES, SIR.

21 MR. THOMPSON: WE'RE HERE AT THIS POINT WITH THE
22 STATE OF SOUTH CAROLINA VERSUS ANTONIO
23 GORDON, MONTA GORDON, AND TERRANCE MCCREARY ALL
24 WHICH ENTERED GUILTY PLEAS FRIDAY LAST WEEK.
25 THEY ARE HERE NOW FOR SENTENCING. THE VICTIM

1 MR. KRENN IS PRESENT AS WELL AS WITH CHRIS DIAZ.
2 MR. KRENN WISHES TO ADDRESS THE COURT AT THE
3 APPROPRIATE TIME. THERE ARE REMAINING TWO
4 VICTIM IMPACT STATEMENTS WHICH I PASS UP TO THE
5 COURT. I BELIEVE THEY ARE BASICALLY COPIES OF
6 THE FIRST ONE THAT WAS HANDED UP.

7 TO REMIND THE COURT AS TO ANTONIO GORDON, HE
8 PLEAD GUILTY TO MURDER, ATTEMPTED ARMED ROBBERY
9 TWO COUNTS, CONSPIRACY, AND THREE COUNTS OF
10 POSSESSION OF A FIREARM DURING THE COMMISSION OF
11 A VIOLENT CRIME. AS PART OF THE NEGOTIATIONS ON
12 HIM, WE HAVE NEGOTIATED 40 YEARS AS THE SENTENCE
13 THAT WE ARE REQUESTING. WE WOULD ASK FOR 30
14 YEARS ON THE MURDER CHARGE, THAT EVERYTHING ELSE
15 RUN CONCURRENT WITH THAT CHARGE EXCEPT FOR ONE
16 OF THE ATTEMPTED ARMED ROBBERIES WHICH IS TO RUN
17 TEN YEARS CONSECUTIVE.

18 AS TO MONTA GORDON, HE PLEAD GUILTY TO MURDER,
19 TWO COUNTS OF ATTEMPTED ARMED ROBBERY,
20 CONSPIRACY, AND FAILURE TO STOP FOR A BLUE
21 LIGHT. WE'RE ASKING, YOUR HONOR, FOR A
22 CONCURRENT SENTENCE ON THOSE AND A 30 YEAR
23 SENTENCE.

24 AS TO TERRANCE MCCREARY, HE PLEAD GUILTY TO
25 ACCESSORY BEFORE THE FACT TO MURDER AND

1 ACCESSORY AFTER THE FACT TO MURDER, AND
2 REQUESTING 30 YEARS SENTENCE ON HIM AS WELL.

3 THE STATE DOES HAVE THE RECORDS OF THE
4 DEFENDANTS YOUR HONOR, AT THE APPROPRIATE TIME.

5 THE COURT: ALL RIGHT. LET'S DO MR. ANTONIO
6 GORDON. TELL ME HIS RECORD.

7 MR. THOMPSON: MR. ANTONIO GORDON IS ALL A
8 JUVENILE RECORD. IN 1993 HE WAS CONVICTED OF AN
9 ATTEMPT CHARGE. WE TRIED TO FIND OUT EXACTLY
10 WHAT THAT IS BUT THE RECORDS WEREN'T QUITE
11 CERTAIN. IN 1995 THREE CONVICTIONS OF BURGLARY
12 SECOND AND MALICIOUS INJURY TO PROPERTY AND
13 THREE COUNTS OF PETITE LARCENY AND HE WENT TO R
14 AND E ON THOSE CHARGES.

15 IN 1997 ASSAULT AND BATTERY AND PETITE LARCENY
16 TO WHICH HE WENT TO R AND E AS WELL. AND IT'S
17 MY UNDERSTANDING THAT HE WAS RELEASED FROM R AND
18 E IN JANUARY OF 1998 AND ABOUT THREE OR FOUR
19 MONTHS LATER WAS RELEASED FROM PAROLE OR
20 PROBATION FROM THAT PARTICULAR CHARGE AT THAT
21 TIME.

22 THE COURT: MR. D'AGOSTINO, BE GLAD TO HEAR FROM
23 YOU AND THEN FROM MR. GORDON.

24 MR. D'AGOSTINO: THANK YOU, YOUR HONOR. YOUR
25 HONOR, AS YOU KNOW ANTONIO GORDON, HE WAS 16

1 YEARS OF AGE AT THE TIME THIS OCCURRED. HE'S 17
2 YEARS OLD NOW. TODAY IN THE COURTROOM WITH HIM
3 IS HIS MOTHER LORETTA BROOKS AND HIS STEPFATHER
4 RANDY BROOKS.

5 HE DROPPED OUT OF SCHOOL IN THE 9TH GRADE. HE'S
6 OUT OF SCHOOL. HE DIDN'T EVEN COMPLETE THE 9TH
7 GRADE, YOUR HONOR.

8 THIS WHOLE SITUATION IS A VERY TRAGIC SITUATION.
9 IT'S VERY TRAGIC FOR THE VICTIMS, THE KRENN
10 FAMILY, MR. DIAZ AND HIS FAMILY. IT'S SOMETHING
11 THAT NEVER SHOULD HAVE HAPPENED AND THERE IS
12 ONLY ONE THING THAT I HAVE NOT DONE OR DID NOT
13 DO SINCE MY REPRESENTATION OF ANTONIO BEGAN AND
14 THAT WAS APRIL 21 WHEN I WAS FIRST APPOINTED TO
15 REPRESENT HIM AND SOON AFTER THAT HE ALWAYS, ONE
16 THING HE WANTED TO DO WAS APOLOGIZE TO MR. KRENN
17 AND FOR WHAT HAPPENED, FOR WHAT HE DID, HIS ROLE
18 IN IT AND EVERYTHING THAT WENT ON THAT NIGHT.
19 HE WROTE ME SEVERAL LETTERS AND I, OF COURSE,
20 COULD NOT, FOR OBVIOUS REASONS, COULD NOT ALLOW
21 HIM TO MEET WITH HIM. AND I DIDN'T THINK HE
22 THINK THAT MR. KRENN WOULD WANT TO MEET WITH
23 HIM, BUT ONE THING HE DID SAY AND WANT TO DO IS
24 APOLOGIZE FOR WHAT HE HAD DONE AND HE'S SORRY
25 FOR WHAT HE HAD DONE. AND I WAS ALSO NOTIFIED

1 BY THE SOLICITOR'S OFFICE THAT SOME OF THE FACTS
2 THAT MIGHT HAVE COME OUT AT TRIAL INDICATES THAT
3 HE WAS, IN ANY EVENT HE WAS SORRY, HE IS SORRY
4 FOR WHAT HE DID. HE KNOWS WHAT HE DID WAS WRONG
5 AND THERE IS NO EXCUSE AND HE'S PLEADING GUILTY.
6 WE JUST ASK THE COURT TO GO ALONG WITH THE
7 NEGOTIATED SENTENCE FOR 40 YEARS. IT'S GOING TO
8 BE A VERY LONG TIME FOR HIM. HOPEFULLY HE CAN
9 GET HIS GED WHILE HE'S DOWN THERE. YOU HEARD
10 ABOUT HIS LIMITED MENTAL CAPACITY. ALTHOUGH
11 HE'S NOT RETARDED BECAUSE NOBODY'S HAD THE
12 OPPORTUNITY TO DO A FULL BACKGROUND. DR. VENN
13 DIDN'T GET TO SPEAK WITH HIS FAMILY MEMBERS,
14 THEY DIDN'T KNOW MUCH ABOUT HIM, BUT THE RECORDS
15 FROM DJJ FROM 1998 AND FROM 1995 ALL INDICATE
16 BORDERLINE FUNCTIONAL IQS. 1995 PSYCHOLOGICAL
17 SHOWS AN IQ 68. DR. VENN'S IQ EXAMINATION SHOWS
18 IQ 68. HE IS AN INDIVIDUAL THAT'S EASILY LEAD
19 AROUND, BUT THAT IS NOT AN EXCUSE.

20 WE JUST ASK THE COURT TO GO ALONG WITH THE
21 RECOMMENDATION.

22 ON BEHALF OF MR. ANTONIO GORDON, HE DOES
23 APOLOGIZE. I KNOW IT DOESN'T CHANGE ANYTHING,
24 BUT HE DOES APOLOGIZE TO MR. KRENN, MR. DIAZ,
25 AND WE ASK THE COURT TO ACCEPT THE NEGOTIATED

1 SENTENCE.

2 THE COURT: I THINK WHAT I'M GOING TO DO IS HEAR
3 FROM EACH LAWYER AND THEN FROM ANY OF THE
4 VICTIMS AND THEN FROM THE DEFENDANTS
5 THEMSELVES. ALL RIGHT. MR. MATLOCK, ON BEHALF
6 OF MONTA GORDON.

7 MR. MATLOCK: ON BEHALF OF MONTA GORDON JUST TO
8 ECHO SOME OF THE COMMENTS MR. D'AGOSTINO,
9 CERTAINLY THIS IS A CASE OF HUMAN TRAGEDY OF THE
10 HIGHEST ORDER.

11 I WOULD ALSO LIKE TO POINT OUT THAT MR. MONTA
12 GORDON, ANTONIO'S BROTHER, IS JUST VERY
13 REMORSEFUL AND PRAYS FOR THE FAMILY OF MR. KRENN
14 AND IT JUST ABSOLUTELY AGHAST ABOUT WHAT
15 HAPPENED AND HOW HE GOT INVOLVED IN THE ENTIRE
16 PROCESS. ALTHOUGH WE ARE NOT IN ANY WAY TRYING
17 TO DEFEND AN INDEFENSIBLE CRIME WE WOULD LIKE TO
18 POINT OUT THAT MR. GORDON REALIZES THAT AND
19 UNDERSTANDS THE LEGAL CONCEPTS OF THE HANDS OF
20 ONE IS THE HANDS OF ALL AND IS IN NO WAY TRYING
21 TO MITIGATE OR EXCUSE HIS BEHAVIOR HERE TODAY.
22 BUT HE WAS NEITHER THE ONE WHO ACTUALLY FIRED
23 THE SHOT NOR WAS IT HE WHO ENCOURAGED OR URGED
24 HIS BROTHER TO COMMIT THIS CRIME. HE WAS IN THE
25 BACK SEAT OF THE CAR AND WHEN HE GOT OUT AFTER

1 HIS BROTHER, AT THE URGING OF THE DRIVER, GOT
2 OUT WITH THE GUN AND WENT OVER TO THE DRIVER'S
3 SIDE OF THE CAR.

4 YOUR HONOR, AS I KNOW YOU ARE WELL AWARE A
5 GUILTY PLEA IS THE FIRST STEP ON THE ROAD TO
6 REHABILITATION AND AN ACKNOWLEDGEMENT OF
7 CULPABILITY AND REMORSE OF ITSELF. WE WOULD
8 JUST ASK THAT YOUR HONOR CONSIDER THAT AND
9 CONSIDER THE FACT THAT MR. MONTA GORDON HAD
10 AGREED TO WORK WITH THE PROSECUTION IN THIS CASE
11 AND THAT HE WOULD ASK THAT YOUR HONOR SENTENCE
12 HIM TO NO MORE THAN THE RECOMMENDATION OF THE
13 STATE IN THIS CASE.

14 ALSO I'D LIKE TO POINT OUT AT THE TIME OF THE
15 CRIME HE WAS ONLY 17 YEARS OLD. HE HAS AN
16 ELEVENTH GRADE EDUCATION.

17 THE COURT: MR. GILLEN.

18 MR. GILLEN: JUST BRIEFLY, YOUR HONOR, MY CLIENT
19 HAS ASKED ME OUT OF RESPECT FOR MR. KRENN NOT TO
20 PRESENT ANY MITIGATION. WE WOULD JUST
21 RESPECTFULLY ASK THE COURT TO GO ALONG WITH THE
22 NEGOTIATED PLEA.

23 MRS. CLARK: YOUR HONOR, WE'D LIKE TO POINT OUT
24 MR. MONTA GORDON IS CURRENTLY ON PROBATION.
25 WE'D LIKE TO HANDLE THE PROBATION MATTER AT THE

1 SAME TIME IF THAT WOULD BE OKAY.

2 THE COURT: YOU WANT TO GO AHEAD AND SERVE HIM.

3 MRS. CLARK: YOUR HONOR, HE'S ALREADY BEEN
4 SERVED.

5 THE COURT: ALL RIGHT.

6 MRS. CLARK: THE ONLY THING WE HAVE IS HE IS
7 PLEADING GUILTY TO THIS OFFENSE.

8 THE COURT: YOU GOT THE PAPERWORK TO GIVE ME.

9 MRS. CLARK: YES, SIR.

10 MR. THOMPSON: YOUR HONOR, WE DO HAVE THE RECORD
11 AS TO MONTA GORDON. HE WAS CONVICTED AS A
12 JUVENILE IN 1993 TWO COUNTS OF PETITE LARCENY
13 THEN THE REST OF HIS CONVICTIONS AS A JUVENILE
14 ARE IN 1995 POSSESSION OF CRACK COCAINE,
15 BREAKING AND ENTERING AN AUTOMOBILE, GRAND
16 LARCENY AUTO. POSSESSION OF BURGLARY TOOLS,
17 FAILURE TO STOP FOR A BLUE LIGHT, TWO COUNTS OF
18 SHOPLIFTING. THEN AS AN ADULT HE HAD
19 CONVICTIONS FOR INTIMIDATING A WITNESS. THIS
20 WAS A CONVICTION DATE IN 1998. ACTUALLY IN MAY
21 OF 1998 INTIMIDATING A WITNESS. SIMPLE ASSAULT
22 AND POSSESSION OF CRACK COCAINE, AND THAT'S WHAT
23 I BELIEVE HE WAS ON PROBATION FOR AT THE TIME
24 THIS OCCURRED.

25 AND AS FOR TERRANCE MCCREARY, YOUR HONOR, HIS

1 RECORD IS JUVENILE AND ADULT RECORD. JUVENILE
2 BEGINNING IN 1992 WITH BURGLARY SECOND AND GRAND
3 LARCENY AND MALICIOUS INJURY TO PROPERTY. THEN
4 IN 1993 GRAND LARCENY, SHOPLIFTING, AND DRIVING
5 WITHOUT A LICENSE. THEN AS AN ADULT IN 1994
6 PETITE LARCENY AND B AND E AUTO AND SHOPLIFTING.
7 AND STILL IN 1994 USE OF VEHICLE WITHOUT OWNER'S
8 CONSENT. IN 1995 POSSESSION OF CRACK COCAINE.
9 THEN IN 1996 STRONG ARMED ROBBERY.

10 THE COURT: MR. MONTA GORDON, I ALSO HAVE IN
11 FRONT OF ME A PROBATION MATTER. YOU'VE BEEN
12 SERVED WITH THE CITATION TODAY INDICATING YOU
13 VIOLATED A SENTENCE JUDGE MARTIN IMPOSED OF
14 THREE YEARS FOR POSSESSION OF CRACK COCAINE
15 FIRST OFFENSE BACK IN MAY OF 1998. IS THAT THE
16 CORRECT SENTENCE?

17 MR. GORDON: YES, SIR.

18 THE COURT: AND YOU WERE SERVED WITH THIS
19 CITATION?

20 MR. GORDON: YES, SIR.

21 THE COURT: AND IT'S TRUE THAT THEY ALLEGE THE
22 VIOLATION IS ENTERING THIS PLEA TODAY OR
23 ACTUALLY ON FRIDAY AND THAT, OF COURSE, IS A
24 FACT?

25 MR. GORDON: YES, SIR.

1 THE COURT: I FIND THAT IS A SUBSTANTIAL
2 VIOLATION AND I REVOKE THAT PAROLE SENTENCE.
3 ALL RIGHT. NOW I'LL BE GLAD TO HEAR FROM ANYONE
4 ELSE IN REGARD TO THIS MATTER, MR. THOMPSON.

5 MR. THOMPSON: PLEASE THE COURT, YOUR HONOR.
6 MR. KRENN.

7 THE COURT: GOOD MORNING.

8 MR. KRENN: GOOD MORNING. I'D LIKE TO MAKE A
9 LITTLE STATEMENT IF I COULD.

10 THE COURT: PLEASE.

11 MR. KRENN: OKAY. WHEN THEY ROBBED MY SON'S
12 LIFE, THEY NOT ONLY ROBBED HIM THEY ROBBED HIS
13 87-YEAR-OLD GRANDMOTHER OF HER ONLY GRANDSON
14 WHICH SHE LOST HER ONLY DAUGHTER TO CANCER BACK
15 IN '87. THEY ROBBED HIS FRIENDS OF A GREAT
16 OUTDOOR PERSON, A HANDSOME YOUNG MAN WHO LOVED
17 LIFE, AND HAD A LOT TO GIVE. THEY ROBBED HIS
18 TEACHERS OF A TALENTED ARTIST AND A GOOD
19 STUDENT. THEY ROBBED A COMMUNITY OF AN
20 OUTSTANDING YOUNG MAN WHO HAD BEEN A GREAT ASSET
21 TO THIS COMMUNITY. AND THEY ROBBED ME, HIS
22 FATHER, OF A SON I TAUGHT TO RESPECT PEOPLE, TO
23 LOVE LIFE, AND TO LOVE THIS GREAT COUNTRY WE
24 LIVE IN.
25 WE TRAVELLED ALL OVER THE COUNTRY AND WE LEARNED

1 A LOT ABOUT ITS PEOPLE. ERIC LEARNED WHAT THIS
2 COUNTRY IS ALL ABOUT. HE LEARNED HOW TO RESPECT
3 OTHER PEOPLE AND THEIR PROPERTY.

4 THESE CRIMINALS ALSO ROBBED ME OF EVER HAVING
5 JOY OF GRANDCHILDREN OR WATCHING MY SON GROW UP
6 AND PROSPER. THE GREED THESE PEOPLE SHOW, THEY
7 SAW SOMETHING AND THEY FELT THEY COULD JUST TAKE
8 IT WITH NO REMORSE OR GRIEF, JUST GREED. IN
9 THIS CASE MY 13-YEAR-OLD BMW WHICH I LET MY SON
10 DRIVE. HE WAS PROUD OF THAT CAR. HE WASHED IT
11 ALMOST EVERYDAY. HE CUT GRASS TO MAKE MONEY TO
12 PUT GAS IN IT AND I ADDED A CD PLAYER FOR HIS
13 BIRTHDAY PRESENT. HE FELT CLOSE TO THAT CAR AND
14 PAID FOR PART OF IT WITH INSURANCE MONEY AFTER
15 HIS MOTHER'S DEATH FROM CANCER WHEN HE WAS ONLY
16 FIVE YEARS, SO HE FELT LIKE IT WAS A LINK TO
17 HER. HE MISSED HIS MOM A LOT, BUT I DID THE
18 BEST I COULD AS A SINGLE FATHER. HE NEVER
19 FAILED TO TELL ME HE LOVED ME EVEN IN FRONT OF
20 HIS TEENAGE FRIENDS.

21 THESE PEOPLE NEVER CARED ABOUT ANY OF THAT.
22 THEY HAD A .357 CALIBER CHROME-PLATED GUN AND A
23 LIFE OF TROUBLE WITH THE LAW. BUT THEY WERE OUT
24 AMONG SOCIETY EVEN AFTER MOST HAD PREVIOUS
25 TROUBLE WITH THE LAW. SO THIS IS ONE MORE

1 HOLD-UP, A CARJACKING, OR ROBBERY, WHO CARES.

2 IN THE NIGHTMARE THAT THIS IS, AS ONE CAN
3 IMAGINE THE NIGHTMARE OF BEING CALLED TO THE
4 HOSPITAL AT 3 O'CLOCK IN THE MORNING AND YOU'VE
5 SEEN YOUR CHILD ON A STAINLESS STEEL TABLE, EYES
6 STILL HALF-OPEN, BUT NO LIFE COMING FROM THEM.
7 THE HOPE THAT SOMEHOW THEY HAD MADE A MISTAKE
8 AND HE WASN'T DEAD. THE NIGHTMARES AND THE
9 SENSE OF PAIN AND HURT AND LOSS THAT FOLLOWED.
10 ONE HOPES ONE WOULD NEVER HAVE TO HAVE ANOTHER
11 PARENT GO THROUGH A TRAGEDY LIKE THAT. EVEN
12 LIKE THE COLUMBINE HIGH SCHOOL IN COLORADO, MY
13 HEART GOES OUT TO ALL FRIENDS AND THEIR VICTIMS
14 AND AGAIN SOMEHOW YOU LIVE THE HORROR EVERY TIME
15 YOU SEE THIS.

16 AND IN CLOSING I'D LIKE TO THANK THE COURT, THE
17 SOLICITOR'S OFFICE, AND THE ROCK HILL POLICE
18 DEPARTMENT FOR THEIR ACTIONS THAT HAVE BEEN
19 DEPICTED OF JUSTICE. THANK YOU, YOUR HONOR.

20 THE COURT: THANK YOU, MR. KRENN.

21 MR. THOMPSON: YOUR HONOR, THE STATE WOULD HAVE
22 NOTHING ELSE.

23 THE COURT: MR. DIAZ DID NOT WANT TO.

24 MR. THOMPSON: NO, YOUR HONOR, MR. DIAZ DID NOT
25 WANT TO ADDRESS THE COURT.

1 THE COURT: ALL RIGHT. ANTONIO GORDON, ANYTHING
2 YOU WANT TO SAY?

3 MR. GORDON: I'M SORRY FOR MY ACTIONS THAT I,
4 TOOK PLACE AND THE CRIME. I'M SORRY FOR HIS
5 FAMILY. AND ALL THE PEOPLE THAT I DONE HURT
6 DURING THIS SITUATION.

7 THE COURT: MONTA GORDON, ANYTHING YOU WANT TO
8 SAY?

9 MR. GORDON: I'M SORRY FOR THE KRENN FAMILY FOR
10 THIS ACCIDENT THAT HAPPENED. WE KNOWED THAT IT
11 WAS A BIG MISTAKE IN OUR LIFE BECAUSE AS
12 TEENAGERS WE HAD A LOT TO LIVE FOR, BUT NOW
13 SINCE THE INDICTMENT WE HAVE NOTHING TO LIVE FOR
14 BUT TO SERVE THE TIME FOR THE CRIME THAT WE
15 DID. I WANT TO SAY I'M SORRY FOR MY FAMILY FOR
16 LETTING THEM GO THROUGH THE SITUATION I'M IN AND
17 ALL THAT. HOPEFULLY MR. KRENN WILL FORGIVE US
18 ONE DAY FOR THE SIN WE DID.

19 THE COURT: ALL RIGHT. MR. MCCREARY.

20 MR. MCCREARY: I'M SORRY FOR HURTING ALL THE
21 PEOPLE AND MR. KRENN AND HIS FAMILY FOR TAKING
22 THE LIFE OF HIS SON, HIS ONLY SON. I WISH WE
23 COULD BRING HIM BACK, BUT WE CAN'T. AND I'M
24 JUST SORRY.

25 THE COURT: THANK YOU. ANYTHING FURTHER, MR.

1 D'AGOSTINO.

2 MR. D'AGOSTINO: NO. THANK YOU, YOUR HONOR.

3 THE COURT: MR. MATLOCK.

4 MR. MATLOCK: NOTHING.

5 THE COURT: MR. GILLEN.

6 MR. GILLEN: NO, YOUR HONOR.

7 THE COURT: MR. MCCREARY, THE SENTENCE ON
8 ACCESSORY BEFORE THE FACT OF MURDER THE SENTENCE
9 IS 30 YEARS. ACCESSORY AFTER THE FACT OF MURDER
10 THE SENTENCE IS 15 YEARS TO RUN CONCURRENT. YOU
11 UNDERSTAND THAT?

12 MR. MCCREARY: YES, SIR.

13 THE COURT: IF YOU BELIEVE THERE HAS BEEN ANY
14 ERROR COMMITTED IN THE WAY WE'VE HANDLED YOUR
15 PLEA YOU HAVE TEN DAYS TO FILE AN APPEAL. YOU
16 UNDERSTAND THAT?

17 MR. MCCREARY: YES, SIR.

18 THE COURT: MONTA GORDON, ON MURDER YOUR
19 SENTENCE IS FOR 30 YEARS. ON CRIMINAL
20 CONSPIRACY THE SENTENCE IS FIVE YEARS TO RUN
21 CONCURRENT. THE SENTENCE ON ATTEMPTED ARMED
22 ROBBERY IS FOR 20 YEARS TO RUN CONCURRENT. THE
23 SENTENCE ON FAILURE TO STOP FOR A BLUE LIGHT IS
24 ONE YEAR TO RUN CONCURRENT. ON THE OTHER
25 ATTEMPTED ARMED ROBBERY THE SENTENCE IS FOR 20

1 YEARS TO RUN CONCURRENT. YOU UNDERSTAND THAT?

2 MR. GORDON: YES, SIR.

3 THE COURT: IF YOU BELIEVE THERE HAS BEEN ANY
4 ERROR COMMITTED IN THE WAY YOUR CASE HAS BEEN
5 HANDLED AND THE SENTENCE I'VE IMPOSED YOU HAVE
6 TEN DAYS TO FILE AN APPEAL. YOU UNDERSTAND
7 THAT?

8 MR. GORDON: YES, SIR.

9 THE COURT: MR. ANTONIO GORDON, YOUR SENTENCE ON
10 POSSESSION OF A PISTOL UNDER THE AGE OF 21 IS
11 FOR FIVE YEARS. THAT'S CONCURRENT WITH THE
12 OTHER SENTENCES. YOUR SENTENCE FOR CRIMINAL
13 CONSPIRACY IS FIVE YEARS. THAT'S TO RUN
14 CONCURRENT. YOU HAVE THREE CHARGES OF
15 POSSESSION OF A FIREARM DURING A VIOLENT CRIME.
16 THE SENTENCE ON EACH OF THOSE IS FOR FIVE YEARS
17 AND EACH OF THOSE ARE TO RUN CONCURRENT. ON
18 ATTEMPTED ARMED ROBBERY, ON INDICTMENT
19 98-46-2850 THE SENTENCE IS FOR TEN YEARS, AND
20 THAT'S TO RUN CONCURRENT. THE SENTENCE ON
21 MURDER IS FOR A TERM OF 30 YEARS, AND ON THE
22 OTHER ATTEMPTED ARMED ROBBERY 98-46-2849 THE
23 SENTENCE IS TEN YEARS AND THAT'S CONSECUTIVE TO
24 THE MURDER SENTENCE. YOU UNDERSTAND ALL THAT?

25 MR. GORDON: YES, SIR.

1 THE COURT: ALL RIGHT. IF YOU BELIEVE I'VE
2 COMMITTED ANY ERROR IN THE WAY I'VE HANDLED THE
3 PLEA OR THE SENTENCE I'VE IMPOSED YOU HAVE TEN
4 DAYS TO FILE AN APPEAL. DO YOU UNDERSTAND THAT?

5 MR. GORDON: YES, SIR.

6 THE COURT: THANK YOU.

7 MR. D'AGOSTINO: DID THEY ALL GET CREDIT FOR
8 TIME SERVED.

9 THE COURT: CREDIT FOR TIME SERVED.

10 MR. D'AGOSTINO: THANK YOU, YOUR HONOR.

11 (END OF PROCEEDINGS.)
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25

I, THE UNDERSIGNED JANET M. RICH, OFFICIAL COURT
 REPORTER FOR THE 16TH JUDICIAL CIRCUIT OF THE
 STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT
 THE FOREGOING IS A TRUE, ACCURATE, AND COMPLETE
 TRANSCRIPT OF RECORD OF ALL THE TESTIMONY HAD
 AND EVIDENCE INTRODUCED IN THE TRIAL OF THE
 CAPTIONED CASE, RELATIVE TO APPEAL, IN THE COURT
 OF GENERAL SESSIONS FOR YORK COUNTY, SOUTH
 CAROLINA, ON THE 12, 14, & 16 OF JULY, 1999.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
 COUNSEL NOR INTEREST TO ANY PARTY HERETO.

APRIL 3, 2000

Janet M Rich

JANET M. RICH

STATE OF SOUTH CAROLINA

County of York

In the Court of Common Pleas

Antonio Gonzalez # 254793

Full name and prison number (if any) of Applicant.

vs.

Charles Condon, Atty. General
Name of Respondent.State of South Carolina

2000 CP 46-1414

APPLICATION FOR
POST-CONVICTION RELIEFJUN 20 4 50 PM
CERTIFIED TRUE COPYINSTRUCTIONS — READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken *in forma pauperis*, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which applicant was convicted.

- Place of detention Kershaw Correctional Institution; Magalia East 97
4848 Goldmine Hwy; Kershaw S.C. 29067
- Name and location of Court which imposed sentence York Co Family Court; York S.C. 29730
- The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - Murder, 98-Ju-46-2847, Attempted Armed Robbery, 98-Ju-46-2849, Attempted Armed Robbery 98-Ju-46-28
 - Poss Firearm comm violent crime, 98-Ju-46-2850-A, Poss Firearm comm violent crime, 98-Ju-46-2847
 - Poss Firearm comm violent crime, 98-Ju-46-2847-A, Poss pistol under 21, 98-Ju-46-2852
Criminal Conspiracy, 98-Ju-46-2851
- The date upon which sentence was imposed and the terms of the sentence:
 - July 23, 1998, Waiver of Jurisdiction
 -
 -

5. Check whether a finding of guilty was made

(a) after a plea of guilty Yes

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

6. Did you appeal from the judgment of conviction or the imposition of sentence?

No

7. If you answered "yes" to (6), list

(a) the name of each Court to which you appealed:

i. _____

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. _____

ii. _____

iii. _____

(c) the date of each such result:

i. _____

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. _____

ii. _____

iii. _____

8. If you answered "no" to (6), state your reasons for not so appealing:

(a) _____

(b) _____

(c) _____

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Allegations is being Filed on grounds of ineffective Assistance of Counsel

(b) pursuant to Family court matters.

(c) _____

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

(a) _____

(b) _____

(c) _____

11. Prior to this application have you filed with respect to this conviction

- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? NO
- (d) any other petitions, motions or applications in this or any other Court?

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(b) the name and location of the Court in which each was filed:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

- (a) _____
- (b) _____
- (c) _____

16. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? Yes
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

- i. Harry Dest P.O. Box 691 1675-1E York Hwy, York S.C. 29745-0691
- ii. Roberts D'Agostino Attorneys at law, 300 West Liberty Street, P.O. Box 460 York S.C. 29745
- iii. _____

(b) the proceedings at which each such attorney represented you:

- i. _____
- ii. Sentencing Phase & Trial
- iii. _____

18. State clearly the relief you seek in filing this application.

19. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA

VERIFICATION

County of York

I, Antonio Gordon #259798, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Antonio Gordon

SWORN to and subscribed before me this 12
day of June, 192000

[Signature] (L.S.)
Notary Public

Notary Public, South Carolina, State at Large
My Commission Expires Feb. 6, 2008

My Commission Expires: _____

APPLICATION TO PROCEED WITHOUT PREPAYMENT OF COSTS AND AFFIDAVIT IN SUPPORT THEREOF

I, Antonio Gordon #259798, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security therefor.

Antonio Gordon

Applicant

SWORN or affirmed to and subscribed before me this

12 day of June, 192000
[Signature]
Notary Public

Notary Public, South Carolina, State at Large
My Commission Expires Feb. 6, 2008

My Commission Expires: _____

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CERTIFIED TRUE COPY

Aug 23 10 33 AM '01

STATE OF SOUTH CAROLINA

County of York.

In the Court of Common Pleas

Antonio Gordon #259798

Full name and prison number (if any) of Applicant.

vs.

State of South Carolina

Name of Respondent.

01 CP 46-1866

APPLICATION FOR
POST-CONVICTION RELIEF**INSTRUCTIONS — READ CAREFULLY**

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of page or on an additional page. Applicant shall make it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that answers are true and correct.

If the application is taken *in forma pauperis*, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which applicant was convicted.

1. Place of detention Kershaw Correctional Institution, Sycamore East,
Room #4-B, 4848 Goldmine Highway Kershaw, S.C. 29067
2. Name and location of Court which imposed sentence York County General Session Court
Post Office Box 649, York, South Carolina 29745-0649
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) Murder 98-GS-4647, Attempted Armed robbery 98-GS-46-2849, Poss. Fi
 - (b) comm viol crime, 98-GS-46-2847-A, Criminal conspiracy 98-GS-46-28
 - (c) Firearm comm violent crime 98-GS-46-2849, Poss Firearm Comm viol
98-GS-46-2850-A, Poss of a Handgun under (21) 98-GS-46-2852, Attempted
4. The date upon which sentence was imposed and the terms of the sentence: Robbery 98-GS-46-28
 - (a) July, 19, 1999, 30 years for Murder, to ten (10) Consecutive year for
 - (b) Attempted Armed robbery, to ten (10) Concurrent year on the other
 - (c) robbery, and to five (5) years concurrent one each of the remainin

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5. Check whether a finding of guilty was made

X(a) after a plea of guilty X

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

6. Did you appeal from the judgment of conviction or the imposition of sentence?

Yes I did appeal.

7. If you answered "yes" to (6), list

(a) the name of each Court to which you appealed:

i. State of South Carolina Court of Appeals.

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. Appeal dismissed.

ii. _____

iii. _____

(c) the date of each such result:

i. December 6, 2000

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. _____

ii. _____

iii. _____

8. If you answered "no" to (6), state your reasons for not so appealing:

(a) N/A

(b) _____

(c) _____

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Ineffective assistance of counsel(d)Denial of severance motion

(b) Involuntary guilty plea

(c) Lack of subject matter jurisdiction, ~~and other grounds~~

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

(a) see attached memorandum,

(b) see attached memorandum,

(c) see attached memorandum,

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Involuntary Guilty Plea (ARGUMENT 1)

Entering a guilty plea results in a waiver of several constitutional rights, therefore the Due Process Clause requires that guilty pleas are entered into voluntarily, knowingly, and intelligently by defendants. Boykin v. Alabama, 395 U.S. 238, 89 S.C.T. 1709, 23 L.E.D. 2d 274 (1969). The United States Supreme Court has held that before a court can accept a guilty plea, a defendant must be advised of the constitutional rights, he or she is waiving. Specifically, a defendant must be aware of the privilege against self incrimination, the right to a Jury Trial, and the right to confront one's accusers. The S.C. Supreme Court considered the requirements of a ~~voluntary~~ ^{Voluntary} and knowing guilty plea in State v. Hazel, 275 S.C. 392, 271 S.E2d 602 (1980), and Dover v. State, 304 S.C. 433, 405 S.E2d 391 (1991). In addition to the requirements of Boykin v. Alabama, a defendant entering a guilty plea must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the Constitutional Rights being waived.

When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the P.C.R. hearing. Harres v. Leeke, 282 S.C. 131, 318 S.E2d 360 (1984). However, in this case, the transcript of Gordon's guilty plea on its face provides enough evidence to hold Gordon's plea was not voluntary or knowing. See Pittman v. State, 524 S.E2d 623. In Gordon's case, the trial Judge did not affirmatively ask him for an admission of guilt.

Furthermore, the applicant's guilty plea was involuntary due to limited comprehension, whereas he responded systematically to the Judge's questioning during the plea proceedings even though there had surfaced much confusion between the Judge and counsel as to the sentencing stipulation and/or guidelines yet applicant still responded as "yes" even though the guidelines mentioned were inaccurate or inaccurately stated. Tr. pg. 178-179

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Lack of Subject matter Jurisdiction (Argument 2)

When a juvenile is taken into custody he must immediately be taken before a referee, circuit Judge, or magistrate, and if there is a failure to do so, and it appears that primary purpose of delay was to obtain a confession from juvenile, any confession obtained as a result of that delay will be invalid. Code 49-5-8.

Decision to transfer juvenile to adult status is within sound discretion of district Judge, as district Judge considers and makes specific finding as to following six factors: Juvenile's age and social background; nature of alleged offense; prior record of offender; juvenile's intellect intellectual development and psychological maturity; nature of and response to past treatment; and availability of programs designed to treat juvenile's problems. U.S. v. Greald, 900 F2d 189. See U.S. v. CJTG, 913 F.Supp. 63 (Juvenile would not be transferred to adult status for prosecution and trial, even though he had been involved in carjacking in which victim was kill by gun shot).

Defendant was charged with Armed robbery and sentenced by the family court, Greenville County, James AK. Roper, 3. as a youthful offender, "After a guilty plea to accessory before and after the fact, and defendant appealed". The Supreme court held that where defendant was sixteen (16) years of age at the time of charge offense of Armed robbery, but turned seventeen (17) years of age prior to final disposition of charge in family court, since Jurisdiction had not been relinquished in favor of another court under applicable statute, charge against defendant should have been handled under statute relating to youthful offenders.

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Severance Motion (Argument 3)

The trial Judge must act cautiously in allowing a joint trial; the Judge must carefully consider problems that may arise from a joint trial, such as redacted statements, and must assure protection of each defendant's constitutional right to confront witnesses against him. State v. Singleton, 303 S.C. 313.

Petitioner contends the trial judge, relying in part upon Zafiro v. United States, 506 U.S. 534, 113 S.C.T. 933, 122 L.Ed.2d 317 (1993), erred in denying his pretrial severance motion.

Petitioner's attorney made a motion to sever trial due to the fact that the appellant had, "Been tested on two prior occasions before this crime ever occurred...and he has Consistently tested 68, which as I understand it is in the range of mental retardation". Tr. pg. 8, Lines 18-25; pg. 9, Lines 1-25. Petitioner's attorney informed the court that he would have to explain things to Petitioner and that to introduce two co-defendants, "Would create the definite result that the defendant will surely be lost in the entire trial process. The Court erred in denying this motion.

Ineffective Assistance of Counsel. (Argument 4)

Counsel was ineffective for allowing guilty plea that was not knowingly and intelligently given plea argued in ground (1). Counsel's ineffectiveness was so severe that it prejudiced petitioner's Constitutional Right to a fair trial.

Conclusion

Petition moves to have sentence vacated or in the alternative a new trial. I so move:

SI Antonino Gordon

Antonino Gordon #259798
Kershaw Correctional Institution
Sycamore East, Room #4-B
4848 Goldmine Highway
Kershaw, S.C. 29067

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11. Prior to this application have you filed with respect to this conviction

- (a) any petition in a State Court under South Carolina Law? No
- (b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? No
- (d) any other petitions, motions or applications in this or any other Court?
No

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(b) the name and location of the Court in which each was filed:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

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14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

i. N/A

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. N/A

ii. _____

iii. _____

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth ground, and state concisely the reasons why such ground has not previously been presented:

(a) Petitioner's first attempt at relief

(b) _____

(c) _____

16. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? Yes

(b) your trial, if any? No

(c) your sentencing? Yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? No

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

i. Harry Dest, 1675-3A York Hwy, York S.C. 29745

ii. D. Agostino, "address unknown"

iii. _____

(b) the proceedings at which each such attorney represented you:

i. Harry Dest Got off case.

ii. D. Agostino Plea and Sentencing,

iii. _____

18. State clearly the relief you seek in filing this application.

Vacation of sentence

19. Are you now under sentence from any other court that you have not challenged?

No

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STATE OF SOUTH CAROLINA

County of

York

VERIFICATION

I, Antonio Gordon, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Antonio Gordon

SWORN to and subscribed before me this 13th
day of August, 19 2001
Denny F. West (L.S.)
Notary Public

My Commission Expires: 12-27-10

APPLICATION TO PROCEED WITHOUT PREPAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, _____, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security therefor.

Antonio Gordon
Applicant

SWORN or affirmed to and subscribed before me this

13th day of August, 19 2001
Denny F. West
Notary Public

My Commission Expires 12-27-10

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
YORK COUNTY

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Antonio Gordon
Applicant,

v.

State of South Carolina
Respondent.

MOTION TO AMEND APPLICATION FOR
POST-CONVICTION RELIEF

case# 41-CP-46-1866

Applicant through his undersigned counsel moves the court an order granting him leave to amend his application for post-conviction relief to include the following ground for relief.

1. Should a sixteen year old charged with certain enumerated offences as specified in S.C. Code Ann § 20-7-6605(1) be given a competency hearing to determine whether the sixteen year old is competent to stand trial as an adult before the solicitor is granted with the arbitrary discretion of granting jurisdiction of the offence before making his discretionary decision?

2. Could a juvenile sixteen years of age be rehabilitated in juveniles facilities who commit classes A,B,C,and D felonies?

3. Does the solicitor have to notify the sixteen year old, that he is being charged and tried as a Adult?

4. Under S.C. Ann§ 20-7-7605 (6) Should the applicant be afforded a hearing under that statute?

5. Did trial court lack subject-matter jurisdiction to accept applicants guilty plea to murder, and attempted armed robbery?

[1-2] In determining whether a juvenile is to be transferred to the court of general sessions the following factors must be considered in State v. Avery 509 S.E.2d 476 (S.C.1998), and Kent v. United States. 86 S.Ct.1045(1966). In determining should a juvenile be transferred to general sessions the testimony from the transfer hearing and Pre-waiver [evaluation] report is considered. State v. Avery 509 S.E.2d 476. A major factor in determining a transfer of a juvenile is whether the juvenile can be rehabilitated. Being rehabilitated requires that the juvenile be evaluated by the department of juvenile justice. when the solicitor makes his arbitrary determination whether sixteen year olds is going to be tried as adults or juveniles. The solicitor bases his arbitrary determination and discretion on the juveniles age and charge. Never the less, the solicitor investigate and focus on the juveniles mental history, family background, and or whether the juvenile could be rehabilitated at the age of sixteen. The law where pass to give the solicitor the discretion they have to try juveniles sixteen years of age because (16) year olds were committing adult crimes. Moreover when a juvenile sixteen years of age commit class A,B,C, or D felonies dos not nessarily mean that a sixteen year old is capable of understanding the things that adults would. However, it has not been established that the solicitor should hold an evaluation hearing for individuals juveniles sixteen years of age who commit classes A,B,C, or D. felonies to be competent to stand trial as an adult.

The court held in *Dusky v. United States* 80 S.Ct 788, that defendants competency to stand trial is whether he has the sufficient present ability to consult with his lawyer with a reasonable degree of rational as well as factual understanding of the proceeding against him. Ofcourse Dusky is an adult and Dusky is a test of standing trial. Thus a juvenile sixteen years of age may not be competentant to stand trial as a adult. The only true way to find out is to hold an evaluation hearing. Applicant contends that the evaluation hearing is not a transfer hearing, but more of a hearing for the solicitor to render his arbitrary determination to determine whether sixteen year olds should be tried as an adult or juvenile. Moreover, S.C. Code Ann § 20-7-6605 is a definition statute and are used to prosecute one group of juveniles, which are sixteen. There are no certain or mandatory factors that the solicitor has to go by, "To determine whether juveniles sixteen years of age are to be tried as adult or juveniles. The only mandatory factors the solicitor has to have to try a juvenile sixteen years of age is, The juveniles age which is (16), and if the juvenile commit a class A, B, C, or D felony. The applicant contends that the solicitor should have held an evaluation hearing to make his determination. However, the common law question in the case at bar is whether the solicitor should hold an evaluation hearing for juveniles sixteen years old.

[3] The applicant contends that he was never told that he would be tried as a adult. The applicant was a juvenile and unaware of being charged and tried as a adult. Counsel nor the solicitor notified the defendant about being tried as an adult. However, applicant realize the state will argue that the defendants counsel was aware of the defendant being tried as an adult and should have notified the defendant. This is not the case. The courts have held that these rights are personal to the accused. It is the accused not counsel, who must be informed of the nature and cause of the accusation. see State v. Green 239 S.E.2d 487(1977).

[4-5] A statute is the law passed by a legislative body. In determining the scope of a statute the court must first look to language. The words of a statue are to be given their ordinary meaning. Moskal v. United States 111 S.Ct.461(1990), United States v. Stokley 881 F.2d 114(1989). A child in South Carolina who commits a class A,B,C, or D felony one who is sixteen years of age is not considered as a "CHILD". However it is at the discretion of the solicitor to determine if a child sixteen years of age is considered as a child. When reading the United States Constitution under the child provision it does not mention the word child. The United States Constitution uses the word "Juvenile". However when reading state statute 20-7-6605 it uses the word "Child".

The constitutional law is the body of law deriving from the, United States Constitution and dealing primarily with governmental powers and civil rights and liberties. Constitutional law originated in Marbury v. Madison 5 U.S.(1. Cranch) 137 (1803). Which declares the judiciary's power to construe the constitution. However, if the constitution of the United States does not use the word child within the constitution, then the state should not use the word child. South Carolina has not defined who is a child. But the constitution has defined the word child as juvenile. In construing S.C. Code Ann § 20-7-6605 there are a conflict of definitions in the law when it relates to who is a child. Intention of the legislature is the first rule of construction of statutes and full effect must be given to each section, and words must be given their plain and ordinary meaning. State v. Sawyer 88 S.E.2d 894. Ashley v. Ware Shoals MFG. Co. 42 S.E.2d 390. The original definition of a child in S.C. Code Ann § 20-7-6605, is defined as a person under the age of seventeen. Applicant contends that the division of governmental are divided into three branches of Government....Legislative...Executive...and Judicial. Applicant submits while passing the law giving the solicitor the authorities to deny the family courts jurisdiction. And that by the legislative branch giving the solicitor the power to try "Juveniles" Without first going through family court, or holding some type of evaluation hearing to determine the child or juveniles mental capacity is unconstitutional and that it encroaches on the family court jurisdiction while family court having exclusive jurisdiction over all juveniles until the juvenile has been transferred to the court of general sessions.

More-over, the applicant contends that while the state of South Carolina only treating sixteen year olds as adults, that the fourteen and fifteen year olds are committing the same acts, and are being tried in family court, or either waved up to the court of general sessions. Applicant contends that they are no different in age but one year. However, if a juvenile sixteen years of age commit a crime as a juvenile he will only be incarcerated for five years. When the fifteen year olds will be incarcerated for six years. More-over, when the solicitor determines to try the sixteen year old as an adult or not he the solicitor determine who is left in family court. There-fore, all juveniles sixteen years of age are not being treated equally. Since their are individuals juveniles under the age of sixteen committing the same exact offence sixteen year olds are, and are being waived up to the court of general sessions. then sixteen year olds should be afforded the same rights that those individuals have. Wherefore in light of the athorities and statutes here in before mentioned, and additionally within reasonable reliance upon the constitutional law intent governing inquires of this nature, was denied his Fifth Amendment Right to Due Process of Law, as with his Fourthteenth U.S. Consttutational right to Equal Protection of the law and Due Process.

Finally the general sessions court was with-out Subject-matter Jurisdiction to accept applicants guilty plea to murder and attempted armed robbery, due to the above mentioned matters.

(B)

The trial court lack subject matter jurisdiction to accept applicant guilty plea to murder and attempted armed robbery where family court granting jurisdiction to circuit court was unconstitutional.

To be arbitrarily denied the privilege of juvenile jurisdiction by discriminatory legislative classification is violative of due process and the equal protection of the law. Legislative classification are entitle to a strong presumption of validity an may be set aside only if no grounds can be conceived to justify them, "Bland". It is a salutary principle of judicial decision, long emphasized and followed by this court, that burden of establishing the unconstitutionality of a statute rests on him who assails it, and that courts may not declare a legislative discrimination invalid unless viewed in the light of facts made known originally assumed, it is of such rests upon some rational basis within the knowledge and experience of the legislators. "Bland". However, there is a presumption of reasonableness of classification in state statute, but presumption is only in absence of evidence to the contrary which is clearly admissible. Evidence to the contrary which establishes the unconstitutionality of the statute in question as a denial of the equal protection of the law, lies upon the fact that, S.C. Code Ann § 20-7-6605(1), arbitrarily by age, discriminates against those individuals under the age of

(7)

seventeen (17), sixteen year olds charged with certain enumerated offenses by allowing those individuals to be charged in an adult court, without having to first bring charges in a family court and obtaining transfers, while other individuals under the age of seventeen (17), (14), and (15) year olds charged with the same enumerated offenses, must be charged in the family court first, and then may be transferred under some circumstances. No other age group, other than (16) sixteen year olds are arbitrarily classified as reflected in the fractured nature of statutes and subsections in the family court relating to this particular age group.

To begin S.C. Code Ann § 20-7-6605(1) defines a "child" in it's plain and ordinary meaning. "Child" means a person less than seventeen years of age, S.C. Code Ann § 20-7-6605(1) then proceeds to expand the plain and ordinary meaning of a "child" to arbitrarily exclude only those (16) year olds charged with a class A, B, C, or D felony as defined in section 16-1-20 or a felony which provides for a maximum term of imprisonment of fifteen years or more. (Only sixteen year olds are affected because a seventeen year old is never considered a "child" as the statute defines a "child" as a person less than seventeen years of age. However, these same individuals can be proceeded as juveniles or children at the discretion of the solicitor where the statute states..... However, a person sixteen years of age who is charged with a class A, B, C, or D felony as defined in section 16-1-20 or a felony which provides for a maximum term of fifteen years or more may be remanded to the family court at

for disposition of the charge at the discretion of the solicitor.

S.C. Code Ann § 20-7-7605 then defines a sixteen year old as a child, if charged with an offense which if committed by an adult, would be a misdemeanor, a class E or F felony as defined in section 16-1-20 or a felony which provides for a maximum term of imprisonment of ten years or less. S.C. Code ANN § 20-7-7605(5) then defines a "child" as a fourteen or fifteen year old, charged with an offense which would classify as a class A, B, C, or D felony as defined in section 16-1-20 or a felony which provides for a maximum term of imprisonment of fifteen years or more. In retrospect S.C. Code Ann § 20-7-7605 stipulates that any individual 14 years or older can be tried as an adult under certain circumstances. Anyone under the age 14, may be tried as an adult, only, if the individual has committed the offense of murder or criminal sexual conduct.

As shown § 20-7-6605(1) and § 20-7-7605 are identical in every aspect except that a 14 and 15 year old is given a chance and a 16 year old is out of sight-out of mind. "This arbitrary age discrimination rests upon the fact that there is no justification over a 14 and 15 year old who is arbitrarily classified as an adult, upon initiation of the charges. Here the original justification, "if there was one, is no longer justifiable where there is no longer any real distinction between 14, 15, and 16 year olds. If there was a disparity between 14, 15, and 16 year olds, there is little evidence that these differences exist today where the recidivist rate of 14 and 15 year old offenders, has equate with that of 16 year olds offenders if not surpassed

the number.

In Bland, the court held that in its original justification congress sought to improve the operation of the juvenile justice system by removing from its jurisdiction, individuals between the ages of 16 and 18, in which congress concluded (1) were beyond rehabilitation in juvenile justice system, and (2) whose presence in that system serve as a negative influence on other juveniles.....see Bland at 472 F.2d 1332, today this reason is also applicable to 14 and 15 yr olds. In revealing its rationale for excluding such persons from the jurisdiction of the family division, the house committee on the district of Columbia, gave the following as the basis for its exclusion of those 16 yrs of age or older charged with certain enumerated offenses. Because of the great increase in the number of serious felonies committed by juveniles and because of the substantial difficulties in transferring juvenile offenders charged with serious felonies to the jurisdiction of the adult court under present law, provisions are made in this subchapter for a better mechanism for separation of the violent Youthful Offenders and recidivist from the rest of the juvenile community, is arbitrarily and discriminatory applied in S.C. Code Ann § 20-7-6605(1). If differentiation of individuals is necessary, as it surely is, it should be made on the basis of facts about the individual, and not on the basis of an

assumption about a huge and diverse group.

The uncontroverted evidence is that such basis for the exclusion of only sixteen year olds as children when charged with certain enumerated offense is arbitrary and unreasonably discriminatory. This effect is not hypthetical or theoretical, but is quite real. Individuals, under the age of 17, if charged as an adult with a class A, B, C, or D felony.....will be tried as ,and if convicted be subject to the penalties of adults. If convicted they will be incarcerated in adult institutions upon ascertaining the age of 17, and largely, if not completely, be deprived of the social psychological and psychiatric services, and educational and vocational opportunities afforded juveniles. Further, if convicted as adults, these indiividuals may lose the right to vote; serve in the Armed Forces; to secure many types of government and private employment, and will carry forever the stigma of conviction. The only difference as addressed in the dissenting opinion in Bland is that 16 year old individuals, will be sentence (if convicted in an adult court). Moreover, without any meaningful inquiry into the possibility of rehabilitation through human juvenile disposition."see Bland at 1348, 1349.

Thus, it is evident that a statute which provives that a "child" is an individual, less than seventeen years of age, but that a "child" is not an 16 yr old individual charged with certain enumerated offenses, while an individual, 14 or 15 of age

charged with the same enumerated offense is a "child" where there is no real distinction (psychological or physical) between 14, 15 and 16 year olds, denies equal protection of law to those 16 year olds who are arbitrarily by age, excluded from juvenile court jurisdiction S.C. Code Ann § 20-7-400(A).

Statutory construction must begin with plain language of statute and court should not look beyond the plain language unless there is ambiguity or unless statute as literally read would contravene ambiguously expressed legislative intent gleaned from statute's legislative history; even if results appears to be anomalous or absurd in particular case, court may not disregard unambiguous language. U.S v. Sheek, 990 F.2d 150.

The judicial action of constructing statute to eliminate exclusive original juvenile Jurisdiction in S.C. is an unforeseeable action. Because of the unclear, ambiguous nature of § 20-7-6605(1) where it provides that a "child" is an individual less than seventeen of age, a "child" is not a sixteen year old charged with certain enumerated offenses; a "child" maybe a sixteen year old charged with certain enumerated offense when that person is remanded to the family court, these ambiguities must resolve in favor of lenity for the accused. In Graham, the supreme court ruled that a sixteen year old charged with certain enumerated offenses may be charged in circuit court first without bringing charges in family court and obtaining transfer

based upon S.C. Code Ann § 20-7-6605(1). The court ruled that the family court had no original jurisdiction over the offense of murder. This judicial construction of the statute is an unforeseeable action where S.C. Code Ann § 20-7-400(A)(1)(D) and (3) specifically grants exclusive original jurisdiction of the offense to the jurisdiction of the family court.

S.C. Code Ann § 20-7-400(A) states: Except as otherwise provided herein, the court SHALL have exclusive original jurisdiction and SHALL be the sole court for initiating action:

(1) Concerning any child living or found within the geographical limits of its jurisdiction,

(d) Who is alleged to have violated or attempted to violate any state or local law or municipal ordinance, regardless of where the violation occurred except as provided in § 20-7-410

(3) Concerning any child seventeen years of age or over, living or found within the geographical limits of the court's jurisdiction, alleged to have violated or attempted to violate any state or local law or municipal ordinance prior to having become seventeen years of age and such person SHALL be dealt with under the provision of this chapter relating to children.

The family court is a statutory court created by the legislature and, therefore, its jurisdiction is limited to that expressly or by necessary implication, conferred by statute. See State v. Graham, supra.

State of South Carolina
County of York

Antonio Gordon
Applicant

V.

State of South Carolina
Respondent

427

In the Court of Common Pleas
York County

Motion to amend application for
Post-Conviction Relief

Applicant through his undersigned Counsel move that an order granting him leave to amend his application for Post-Conviction Relief to include the following ground for relief.

1). Where the applicant denied the assistance of Counsel?

To establish a claim of ineffective assistance of Counsel, a Post-Conviction relief applicant has a burden of proving Counsel's representation fell below an objective standard of reasonableness, but for Counsel's errors, there is a reasonable probability the result trial would have been different. *Glover v. State*, 458 S.E.2d 538.

The Court held in *Matter of Crossland* 270 S.C. 243 S.E.2d 198 (1978) that a defendant's motion belongs to him and the attorney. Applicant contends that he wrote letters to his trial Counsel indicating that he were in need of a copy of his statements, and specifically a copy of the whole motion. Also the applicant advised his Counsel that time that it where a lot of things he did not know. Counsel failed to provide the defendant at his request a copy of his motion. Besides Counsel wrote a letter, nor came to visit the defendant and explain the reason the defendant could not have a copy of his motion at his request.

SEE: BACK PAGE:

However, Counsel failed to render a copy of his motion to the defendant. Applicant where under the impression that Counsel were with-holding information.

Moreover, Counsel would explain that Chyneca say hi and the baby are fine however, the applicant contends that Chyneca Dixon where a state witness where go testify on the applicant at his trial. Counsel where well aware that Chyneca were a state witness, but nevertheless, counsel cared to tell the applicant. Applicant contends that he found out about all state witness during Pre-trial through the Prosecutor. Applicant never knows anything about any witnesses. If Counsel would have explain to the applicant who the witness where, the applicant could have help ~~and~~ counsel build a defense to impeach their credibility. The court held in Boria v. Keane 99 92 (2nd Cir 1996), that Counsel where ineffective for failing to discuss Parguin's desirability with the defendant. Even though Boria is dealing with Counsel failing to discuss a Plea bargain "it is very similar to case. It is the Counsel Professional duty to advise his client of all aspects of his case. The case at bar Counsel failed to advise applicant of all witnesses, witnesses statement's, and more possible evidence which lead to a guilty plea of the applicant. Counsel failed to discuss with the applicant that the Prosecutor had a Palm-Print which was never tested by Sleander Rule 6 of South Carolina Rules of Criminal Procedure. "In fact Counsel failed to discuss with the applicant that the Palm-Print on the victim car door was unidentified until the time of Pre-trial. Instead of Counsel investigating these lines of defense, Counsel lead applicant into Pleading guilty stating that he did not have any defense for the Ca

Furthermore, Counsel failed to discuss with the applicant that both vehicle's were recovered and proceeded the same day and that all of the latents were in the same envelope due to the evening time frame. Counsel knew in fact that the Palm-Print the Prosecutor had "had came off of the applicant car.

SEE Back Page:

However, the victim were driving a BMW, and it was where towed to Clinton Family Ford. On the incident report it has a value of value. SEE BACK PAGE. Applicant contends that Counsel knew about car incident reports but nevertheless Counsel cared to discuss them with Applicant, and failed to bring it to the courts attention. Due to Counsel's failure to provide the applicant with a copy of the motion in the Court, and the applicant into pleading guilty.

If there is only one plausible line of defense, the Court concluded, Counsel must conduct a reasonably substantial investigation of that line of defense, since there can be no strategic choice that renders such investigation unnecessary. "The same duty exists if Counsel relies on only one line of defense, although others are available. In such case, the investigation need not be exhaustive. It must include an independent examination of the facts, circumstances, pleading and law involved. The scope of the duty, however, depends on such facts as the likelihood that pursuing certain leads may prove more harmful than helpful. If there is more than one plausible line of defense, the Court held, Counsel should investigate each line substantially before making a strategic choice about which to rely on at trial. Strickland v. Washington 104 S.Ct 2052 (1984).

The case at bar Counsel failed to investigate the fingerprint which lead applicant into pleading guilty. However if Counsel would have put a timely motion in to suppress that line of evidence, "Applicant would not have plead guilty. Though Counsel failed to do his professional duty which rendered the applicant ineffective assistance of Counsel. In violation of the applicant's 6th Amendment constitutional right.

Learn to and Subscribed
before me this 8 DAY of May 2003.

Notary: Bob Anderson

XPS: OCT-13, 2003.

Antonia Gordon

Antonia Gordon

Tara Shorling

Date! _____

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Antonio Gordon,
S.C.D.C. No., 259798

Applicant,

VS.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
C.A. NO. 00-CP-46-1414

RETURN

In response to the post-conviction relief application filed June 15, 2000, the Respondent would show this Court:

I.

The Applicant, Antonio Gordon, is incarcerated with the South Carolina Department of Corrections pursuant to the York County Clerk of Court's orders of commitment. On October 15, 1998, the York County Grand Jury indicted the Applicant for murder, three counts of possession of a firearm during the commission of a violent crime, two counts of attempted armed robbery, possession of a firearm by a person under twenty-one, and criminal conspiracy.

On July 16, 1999, the Applicant pled guilty as charged. On July 19, 1999, the Honorable John C. Hayes, III, sentenced the Applicant to thirty years imprisonment for murder, five years for each count of possession of a weapon during the commission of a violent crime, ten years for each count of attempted armed robbery, five years for criminal conspiracy, and five years for possession of a weapon by a person under twenty-one years of age. Robert D'Agostino, Esquire, represented the Applicant.

For the purpose of this Return, the Respondent attaches and incorporates the Clerk of Court's records by reference. The Respondent will furnish and attach a copy of the plea transcript when it becomes available. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully because he received ineffective assistance of counsel.

III.

In his only allegation the Applicant asserts that he was denied effective assistance of trial counsel. The State submits this allegation has no merit. For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); Judge v. State, 321 S.C. 554, 471 S.E.2d 146 (1996). When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 99 L.Ed.2d 203 (1985); Alexander v. State, 303 S.C. 539, 402 S.E.2d 484 (1991).

The State submits that the extensive guilty plea record speaks for itself as to the competency of counsel and shows counsel demonstrated a normal degree of skill, knowledge, professional judgment, and representation that is expected of an attorney who practices criminal

law in South Carolina. Strickland, *supra*; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985); State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977). In addition, the State submits that the Applicant cannot meet the prejudice requirement. Hill, *supra*; Alexander, *supra*. Furthermore, the State submits that, if this Court finds that the Applicant's plea was voluntary and intelligent, said voluntary and intelligent plea of guilty results in a waiver of any non-jurisdictional defects and defenses, including the alleged defect of ineffective assistance of counsel. Whetsell v. State, 276 S.C. 295, 277 S.E.2d 891 (1981); LoPiano v. State, 270 S.C. 563, 243 S.E.2d 448 (1978).

Nevertheless, the allegation probably raises a question of fact which may not be conclusively refuted by the record and therefore requires that an evidentiary hearing be convened. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The Respondent denies each allegation that is not expressly admitted, qualified or explained.

V.

Applicant must specify any claims he intends to raise at the PCR trial. Any claims not *specifically* laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing. S.C. Code §17-27-10 et seq; SCRCP 71.1. All claims should be made well in advance of the PCR hearing. If Applicant has an attorney appointed, the attorney, and not the inmate, is the only one authorized to file amendments. SCRCP Rule 11. Filings by inmates will not be considered at the PCR hearing.

VI.

Further, should the Applicant make any false claims, commit perjury or abuse the legal

process, the State reserves the right to seek punitive and remedial sanctions. These include, but are not limited to, the forfeiture of all earned work, education and good time credits. See S.C. Code 24-27-200 (Supp. 2000).

VII.

WHEREFORE, having made Return, the Respondent requests that this Court hold an evidentiary hearing.

Respectfully submitted,

CHARLES M. CONDON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

B. ALLEN BULLARD
Assistant Deputy Attorney General

DAVE SPENCER
Assistant Attorney General

P.O. Box 11549
Columbia, SC 29211

By: 

Attorneys for the Respondents

May 2, 2001

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)
IN THE COURT OF COMMON PLEAS

ANTONIO GORDON, 259798,

Applicant,

v.

THE STATE,

Respondent.

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C.C.P. & G.S.
YORK COUNTY, SC

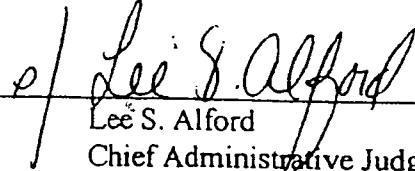
00-CP-46-1414

ORDER
~~ORDER~~ FOR CONSOLIDATION

The Applicant in the above-captioned matter is represented by court-appointed counsel, Tara Dawn Shurling. This Court has now been advised that the Applicant has filed a second Application for Post-Conviction Relief addressing the same charges and sentences. The second Application for Post-Conviction Relief was docketed by the York County Clerk of Court's Office as 01-CP-46-1866. Ernest Harr, Esquire, was court-appointed to represent the Applicant in that action. It now appears that both Applications for Post-Conviction Relief address the same convictions and sentences. Accordingly, Attorney Shurling and Attorney Harr come before this Court requesting that these matters be consolidated for purposes of review. Counsel requests that these two Applications for Post-Conviction Relief be consolidated under the original docketing number, 2000-CP-46-1414 and, further, that Mr. Harr, who was court-appointed on the second filing, be relieved as counsel in this matter. Both Attorney Shurling and Attorney Harr have indicated their consent to this request by their signatures below. The two Applications for Post-Conviction Relief docketed at 2000-CP-46-1414 and 2001-CP-46-1866 appear to, in fact, arise from the same convictions and sentences. Accordingly, the request of counsel to consolidate these matters is hereby granted. Ernest Harr is relieved as counsel of

record. Attorney Shurling will remain court-appointed counsel for the Applicant.

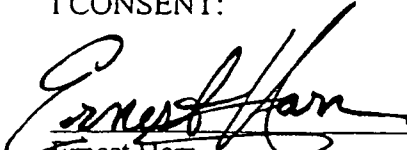
IT IS SO ORDERED.



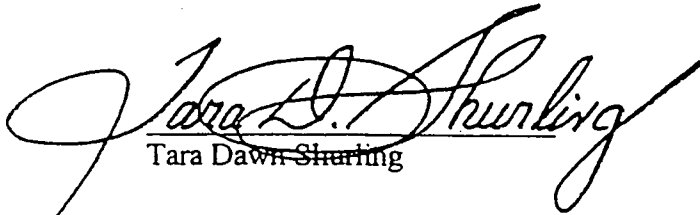
Lee S. Alford
Chief Administrative Judge.
Sixteenth Judicial Circuit

This 8th day of February, 2002
York, South Carolina.

I CONSENT:



Ernest Harr



Tara Dawn Shurling

1 STATE OF SOUTH CAROLINA)

2 COUNTY OF YORK)

COURT OF COMMON PLEAS
00-CP-46-01414

3
4 ANTONIO GORDON,)

5 APPLICANT,)

6 VS.)

TRANSCRIPT OF RECORD

7 STATE OF SOUTH CAROLINA,)

8 RESPONDENT.)

9
10 JULY, 29, 2003
11 COLUMBIA, SOUTH CAROLINA
12
13
14

15 B E F O R E:

16 THE HONORABLE J. ERNEST KINARD, JR., JUDGE.
17

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

19 TARA D. SHURLING, ESQ.
20 ATTORNEY FOR THE APPLICANT

21 JEANETTE C. VANGINHOVEN, ASSISTANT ATTORNEY GENERAL
22 ATTORNEY FOR THE RESPONDENT

23
24 DEBORAH M. McCURDY
25 OFFICIAL COURT REPORTER

I N D E X O F W I T N E S S E S

ANTONIO GORDON

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RICHARD G. D'AGOSTINO

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E X H I B I T S

(WHEREUPON, no exhibits were introduced
during these proceedings.)

JULY 29, 2003

MS. VANGINHOVEN: This is the case of Antonio Gordon versus State. This is a case that has been transferred from York County. We did an order transferring venue. Judge Hayes was the trial judge, ended up the guilty plea judge, and Judge Alford had recused himself. He had done the pretrial motions in this matter.

The case number is 2000-CP-46-1414. And at this time the State would just ask Ms. Shurling to lay out the allegations for post-conviction relief.

THE COURT: All right, now, even though it was transferred here by order of Judge Hayes, you say?

MS. VANGINHOVEN: I believe it is Judge Hayes. It may have been Judge Alford. Judge Hayes.

THE COURT: It really does not matter, and it will only take two seconds, but I am not a resident judge of that circuit, and while a circuit judge can change venue, he can't vest me with jurisdiction, so I just have to call Court Administration, they will do an order giving me concurrent York County jurisdiction today.

MS. VANGINHOVEN: Okay.

MS. SHURLING: Thank you, Your Honor. I wasn't aware that had to be done.

THE COURT: Well,---

1 MS. SHURLING: For the record, if it makes any
2 difference, I will tell you that we consulted---

3 THE COURT: You can't waive jurisdiction.

4 MS. SHURLING: Exactly. But we did consult with
5 the client about it and we have a signed waiver from him
6 if you need to tell Court Administration that.

7 THE COURT: They don't care. The thing is, it
8 occurs frequently, and I'm correct on it, it doesn't
9 matter about that, but they will bring in a plea from
10 Lexington County, you know, while we are doing some for
11 Richland County; I can't do it. I can do one from Kershaw
12 because I am a resident judge of that circuit.

13 MS. SHURLING: That's scary. We do that all the
14 time.

15 THE COURT: I know, and it is not---

16 MS. SHURLING: Kosher.

17 THE COURT: Well, you can set some of them aside.
18 Of course, usually they get concurrent, so it doesn't
19 matter.

20 MS. SHURLING: I was going to say, Judge, thanks
21 for the tip.

22 (The Court steps off the bench to call Court
23 Administration.)

24 THE COURT: Lots of things get taken care of. It
25 is like when they assign me chief judge of the 14th

1 Circuit, I'm still resident judge of the 5th Circuit, so I
2 can hear anything in the 14th Circuit plus anything in the
3 5th Circuit. And every six months they do an order, and
4 for the next six months, I saw it, they gave me
5 jurisdiction in addition to my home circuit for the 6th
6 Circuit, so I can hear anything from the 6th Circuit come
7 January without getting an order.

8 MS. SHURLING: I understand. Thank you, Your
9 Honor.

10 THE COURT: All right.

11 MS. SHURLING: Your Honor, for the record, my
12 client's original application for post-conviction relief
13 alleged that he received ineffective assistance of counsel
14 at trial, prior to and during trial, that his pleas of
15 guilty were not voluntarily and intelligently entered, and
16 that the Court of General Sessions lacked subject matter
17 jurisdiction over his case for a number of reasons.

18 Subsequent meetings with my client have yielded a
19 further refinement of those general allegations, and I
20 will now list for the court in detail his specific
21 allegations in regards to the Sixth Amendment claim.

22 THE COURT: All right.

23 MS. SHURLING: The client alleges that trial
24 counsel was ineffective in preparing this case for trial
25 pretrial and that it was counsel's lack of preparation and

1 failure to pursue certain matters which led to his fear to
2 exercise his right to trial by jury and directly affected
3 his ultimately yielding to Defense counsel's desire that
4 he plead guilty and waive his right to trial by jury.

5 There are a number of issues that he feels if
6 trial counsel had adequately explored and prepared prior
7 to the point in time when the decision had to be made
8 about a plea, that he would not have pleaded guilty and
9 would have exercised his right to trial by jury.

10 Among those are: The fact that a palm print,
11 which the State had announced intentions to use as
12 evidence against the client, was on the victim's car.

13 Pardon me one moment.

14 (Pause.)

15 MS. SHURLING: Okay, I apologize, Your Honor, we
16 withdraw that allegation.

17 THE COURT: Okay.

18 MS. SHURLING: So our new first issue would be the
19 lack of subject matter jurisdiction because the indictment
20 was, among other things, not filed with the Clerk of Court
21 within 90 days of his arrest.

22 It is his position, Your Honor, that court rules
23 have long held that the Solicitor is to prepare an
24 indictment and file it with the Clerk of Court and have a
25 criminal number assigned to it and the Clerk of Court is

1 then to present the indictment to the Grand Jury.

2 It is the policy in this jurisdiction that someone
3 who is in fact an employee of the Solicitor's Office
4 prepares indictments, assigns a General Sessions
5 indictment number, and they are presented directly to the
6 Grand Jury without having them previously filed with the
7 Clerk of Court's Office, nor is the Clerk of Court
8 responsible for presenting them to the Grand Jury.

9 I will note for the record that in previous
10 proceedings I have subpoenaed the woman from the
11 Solicitor's Office who has that job and verified and make
12 a proffer as an Officer of the Court under Cabbagestalk
13 that it is the policy of the Solicitor's Office that they
14 prepare the indictments, they assign it the next General
15 Sessions number, and they present the indictment to the
16 Grand Jury.

17 We have on previous occasions had her come to
18 court and bring with her pages from Court Administration's
19 Policies and Procedure Manual, which include a Policy and
20 Procedure consistent with what the 5th Circuit Solicitor's
21 Office is doing; however, it is the Applicant's position
22 that regardless of whether Court Administration has signed
23 off on that procedure, that it is inconsistent with the
24 South Carolina constitutional requirement that the Clerk
25 of Court present indictments to the Grand Jury.

1 Additionally, Your Honor, it is his position that
2 counsel should have challenged the indictment in this case
3 because it failed to say that he willfully and feloniously
4 and with malice aforethought killed the victim in this
5 case.

6 I would note that while that was one of the issues
7 that my client wanted me to raise, we have now discussed
8 the fact that in a very recent Supreme Court case from
9 2002, Joseph v. State, the Court held that "willfully"
10 would be encompassed in the term "murder" and
11 "feloniously" would be part and parcel of the allegation
12 of "malice aforethought," and therefore that the omission
13 of the terms "willfully" and "feloniously" would not
14 render an indictment insufficient on its face.

15 Your Honor, my client also alleges that his
16 indictment is faulty in that he was indicted by the Court
17 of General Sessions and tried as an adult without trial
18 counsel having -- and this is actually more of a Sixth
19 Amendment argument, although my client has couched it in
20 terms of subject matter jurisdiction -- that trial counsel
21 never made a concerted effort as an advocate to convince
22 the Solicitor's Office to exercise its discretion under
23 Section 20-7-6605 to have his case remanded to the Family
24 Court.

25 Under the provisions of the Family Court Code, the

1 Children's Code, an individual charged with a Class A, B
2 or C felony or one which carries a penalty of 15 years or
3 higher, is automatically tried as an adult in the Court of
4 General Sessions; however, 6605 does vest the Solicitor
5 with the discretion to on a case-by-case basis if he deems
6 fit return the case to the protection of the Family Court
7 environment.

8 It is additionally my client's position that his
9 indictment as an adult is improper in that there is an
10 inherent conflict between Section 20-7-6605 and subsequent
11 provisions of the Code which provide children additional
12 protections when charged with crimes, that being Section
13 20-7-7605, specifically, Your Honor, again, while couched
14 in the---

15 THE COURT: 20 what?

16 MS. SHURLING: 20 -- Pardon me, Your Honor -- 6605
17 is the provision that gives the Solicitor the discretion
18 to waive it back up.

19 THE COURT: Okay.

20 MS. SHURLING: And, pardon, 7605 is the lengthy
21 statutory provision outlining the rights of children
22 charged with crimes in our courts.

23 And it is his position, Your Honor, although he
24 has once again in his amendments that he has asked me to
25 present, he couches this in terms of subject matter

1 jurisdiction, but it is really a Sixth Amendment argument,
2 that trial counsel should have constitutionally challenged
3 the Children's Code in that it provides very strict
4 guidelines for the protection of children charged with
5 crimes in South Carolina and carves out an exception for
6 someone 16 years of age or older charged with serious
7 crimes without any constitutional basis for depriving
8 those children of the inherent protections afforded by the
9 Family Court Judicial System versus the Courts of General
10 Sessions.

11 Additionally, Your Honor, he alleges that trial
12 counsel failed at an appropriate time to actively pursue a
13 remand of his case back to the Family Court.

14 Under, as I have noted, Section 20-7-6605,
15 Subsection (1), the Solicitor does in fact have that
16 discretion.

17 The records before the Court, and I am assuming
18 Your Honor will have copies of the Clerk of Court's file
19 and copies of all the pretrial motion hearings held in
20 this case in addition to the plea, indicate that after
21 indictment as an adult my client was evaluated both by the
22 State and by a mental health expert hired by Defense
23 counsel; however, there is no evidence in this record from
24 which I can glean any effort by Defense counsel to
25 convince the Solicitor's Office prior to the case being

1 indicted as an adult crime to have the case remanded to
2 the care and custody of the Family Court.

3 This was a case involving a 16-year-old with no
4 serious criminal background. He had a very limited IQ.
5 There was dispute at trial as to whether or not he in fact
6 met the criterion for retardation. Those factors combined
7 both his age and his mental age and emotional immaturity
8 were factors which if they had been adequately pursued
9 prior to indictment by the Grand Jury may have convinced
10 the Solicitor's Office to have the case remanded to the
11 Family Court, and yet no effort was made. There was no --
12 apparently no cohesive plan to present to the Solicitor's
13 Office a justification for returning the case to the
14 Family Court.

15 As examples we would cite that Defense counsel
16 could have, as I'm aware in other cases Defense attorneys
17 have gotten statements from guidance counselors, teachers,
18 people who know the child from church, certainly getting
19 mental health experts, those ducks in a row, so to speak,
20 prior to the indictment stage, and having all of that
21 material presented to the Solicitor's Office in a cohesive
22 fashion prior to the indictment process would have
23 heightened the probability that this case could have been
24 returned to the Family Court versus proceeding as an adult
25 crime.

1 Now, truly under 6605 it has to be recognized that
2 the Solicitor would have had the discretion to return this
3 case to the Family Court or to ask the Family Court judge
4 to accept return of jurisdiction to the Family Court even
5 after the indictment stage; however, it would be our
6 position that once a Solicitor's Office has committed its
7 Office to prosecution of a case as a General Sessions
8 matter and has committed publicly to trying an offender as
9 an adult, that it is inherently more difficult to get them
10 to reverse their position and return that individual to
11 the care of the Family Court.

12 Your Honor, he would allege further that trial
13 counsel was ineffective in failing to adequately pursue
14 the question of his competency to stand trial. The record
15 in this case will indicate that he was evaluated just days
16 before the competency proceeding by Leslie N. Sandler on
17 the question of retardation. Her testimony at Page 104
18 indicates that she had less than a week to get this
19 together and further that she spent, on Page 136, she
20 spent approximately two hours with the Applicant.

21 She further acknowledged that she had not spoken
22 with any background people or anyone such as family
23 members to get any input as to how his adaptive behaviors
24 or coping behaviors might have affected her reading with
25 regard to the allegation that he was retarded.

1 For that reason, Your Honor, we would submit that
2 trial counsel did not make an adequate challenge to the
3 State's assertion that he was not competent to proceed to
4 trial. We are not talking about his sanity, we are
5 talking about competency to assist his attorney in the
6 presentation and defense of his case at trial.

7 Additionally, Your Honor, it would appear that
8 while Defense counsel hired an expert in this case to
9 evaluate both the sanity and mental competency of the
10 client in this case, it was not done until after the
11 indictment stage, once again going to our argument that
12 this case was allowed to get way too far down the line
13 before anyone started talking about this young man's base
14 abilities, his base line IQ, his emotional maturity, and
15 other factors that should have been factored in the
16 decision of whether or not he should be tried as an adult.

17 We are aware, Your Honor, that the Solicitor also
18 has a right to consider the severity of the crime, the
19 circumstances of the crime, and other factors, but along
20 with that decision as a public official the Solicitor's
21 Office would have an inherent responsibility to take into
22 account the other Kent factors regarding whether or not a
23 case is one appropriately handled by the Family Court or
24 the Courts of General Sessions, and in this case that
25 information was not given to the Solicitor's Office until

1 the post-indictment stage.

2 Your Honor, he further alleges that trial counsel
3 failed to advise him of a double jeopardy argument that
4 could have and should have been made concerning attempted
5 armed robbery and possession of a weapon during the
6 commission of a violent crime.

7 It is his position that on those particular
8 offenses, since armed robbery requires the use of a
9 weapon, that possession of a weapon during the commission
10 of a violent crime would bring into play a double jeopardy
11 claim which could have been made, and further that this is
12 a claim that could have been made in the context of a
13 guilty plea and still argued on direct appeal inasmuch as
14 under Minner v. New York, which was decided in 1973, as
15 Your Honor knows, double jeopardy is the only issue that
16 one can raise and reserve for appellate review even in a
17 guilty plea context, it is his position that the attempted
18 armed robbery indictment in this case does not
19 sufficiently include -- is insufficient because it does
20 not include the element of asportation of the goods which
21 were attempted to be stolen.

22 Your Honor, he argues as well that his indictments
23 are insufficient in that they are violative of the
24 principles announced by the Supreme Court in The State v.
25 Anderson.

1 As Your Honor knows, way back in State v. David
2 Capps, the Supreme Court announced its displeasure with
3 the policy of having a single agent for the State, be it a
4 Prosecutor or some other single individual representing
5 the State, present a mere summary of the evidence at that
6 time. That is probably as close to an advisory opinion as
7 one will ever get from the Supreme Court, but after nearly
8 a decade of the practice continuing after the Capps
9 decision the Court in State v. Anderson finally held that
10 such indictments would not be sufficient.

11 And if Your Honor reviews the indictments in your
12 packet, it will reveal that a member of the Rock Hill
13 Police Department, an Officer Herring, was the only
14 witness before the Grand Jury on each of these
15 indictments, so he therefore alleges that he has a State
16 v. Anderson violation as well.

17 And lastly, Your Honor, he would allege, well, two
18 more actually, he would allege that his attorney failed to
19 advise him that there would be a supervised release
20 requirement at the end of service of 85 percent of the
21 sentence he received as a result of his plea, that a plea
22 of guilty is not voluntarily and intelligently entered
23 unless it is entered with a full, cognitive understanding
24 of all of the consequences of the plea, and that in this
25 case he was not advised that if released after service of

1 85 percent of his sentence he would be on supervised
2 release for the last 15 percent of his sentence. It is
3 his position that that renders his plea involuntary as
4 well.

5 Lastly, Your Honor, and perhaps most important in
6 this case, there was a serious argument about the
7 admissibility of this young man's statement to the police
8 after he was arrested.

9 The statements were challenged on various grounds,
10 including his mental ability to even make a knowing,
11 voluntarily, intelligent waiver of his right to counsel.

12 It was further alleged that his family had hired
13 an attorney, Chris Wellborn, who had gone to the jail
14 during the time when he was being detained and
15 interrogated by detectives, that he had very forcefully
16 and repeatedly insisted that he be taken to his client,
17 and that he was delayed time and time again until after
18 the Applicant had in fact given an incriminating statement
19 to the authorities.

20 It was the position of Defense counsel at trial
21 that this young man was not competent to enter into a
22 knowing, voluntary and intelligent waiver, both because of
23 his age, being 16, and because of his IQ, and a limited
24 intellectual ability and emotional maturity, also that
25 because of his status as a juvenile in the court system,

1 that coupled with the guardian/parent's exercise of his
2 right to counsel, that the interview should have been
3 interrupted and he should have been provided counsel.

4 Additionally, Your Honor, there was a hearing
5 conducted on the question of whether or not he was
6 competent to proceed to trial.

7 It is the Appellant's position, the Applicant's
8 position that his attorney never advised him that if he
9 proceeded to trial by jury and was convicted he would have
10 the right to appeal those issues as well as the question
11 of whether or not a severance should have been granted in
12 this case because of conflicting defenses, that those
13 issues are issues that if he had been tried and convicted
14 he would have had the right to have an appellate court
15 review and that he did not understand, nor was it
16 adequately explained to him, that if he pleaded guilty he
17 would be waiving all but subject matter jurisdictional
18 defects or any double jeopardy grounds that might have
19 been made and reserved at a plea.

20 It is his position that had he understood that, he
21 would not have waived his right to trial by jury and he
22 would have exercised his right to proceed with that trial
23 hoping to be successful in a subsequent appeal of
24 convicted.

25 Your Honor, those are the issues. I would propose

1 to call the Applicant to the stand. I don't see any need
2 to have him reinvent the wheel and restate everything that
3 I have already said, but I would like to put his testimony
4 on the record to verify that I have accurately and
5 efficiently covered the issues he wanted me to present
6 today.

7 Inasmuch as most of them are legal in nature and
8 supported by the record, I don't believe there will be a
9 need to get into much detail.

10 THE COURT: Okay.

11 (Mr. Gordon approaches the witness stand.)

12 THE COURT: All right, Mr. Gordon?

13 MR. GORDON: Yes, sir.

14 THE COURT: Do you swear or affirm you are about
15 to truthfully testify?

16 MR. GORDON: Yes, sir.

17 THE COURT: Okay.

18 ANTONIO GORDON, after being
19 duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MS. SHURLING:

22 Q Mr. Gordon, state your full name for the record.

23 A Antonio Gordon.

24 Q How old are you now, Antonio?

25 A Twenty-one.

1 Q Twenty-one?

2 A Yes, ma'am.

3 Q And how old were you when you were arrested?

4 A Sixteen.

5 Q Okay. You have heard me for about the last 20
6 minutes going over all the legal arguments that you
7 believe should be made in support of your request for a
8 new trial. Have I accurately set forth for Judge Kinard's
9 consideration all the allegations that you wanted me to
10 raise?

11 A Yes, ma'am.

12 Q Are there any issues that you wanted to raise that I
13 have not covered for Judge Kinard?

14 A No, ma'am.

15 Q Are you sure?

16 A Yes, ma'am.

17 Q Okay. You need to understand that this is in all
18 probability the only post-conviction relief hearing you
19 will ever have on these issues, I mean, pardon me, on
20 these charges, these sentences, so if there is anything
21 that I am leaving out, it is your responsibility to bring
22 it to the Judge's attention, so if you can think of any
23 issues that you really wanted me to present that I
24 haven't, please speak up and tell Judge Kinard.

25 A You got them all.

1 Q I got them all?

2 A Yeah.

3 Q All right. Thank you.

4 One thing that is very important for me to get on the
5 record, Mr. Gordon, is what you would have done if you had
6 had certain advice from your attorney, okay?

7 If you had known -- Let me rephrase that, I'm sorry.
8 Do you remember before your pleas going to court and
9 having these long hearings before the judge on certain
10 pretrial matters?

11 A Uh-huh, yes, ma'am.

12 Q You remember them discussing whether or not you were
13 competent, for example, to proceed to trial?

14 A Yes, ma'am.

15 Q And do you remember them discussing whether or not
16 your statement to the authorities should be admissible?

17 A Yes, ma'am.

18 MS. SHURLING: Your Honor, I just thought of one
19 he may not have, but I thought of another one he raised
20 that I didn't mention.

21 Additionally, he challenges Defense counsel's
22 failure to challenge his statements on the ground that
23 there was no probable cause for his arrest and that his
24 statements were the fruit of the poisonous tree with
25 regard to an illegal arrest.

1 A No, he had raised the issue, but I was talking about
2 the judge discretion on the ruling.

3 Q Okay. So your trial attorney did raise the fact that
4 there was no probable cause for your arrest?

5 A Yes, ma'am.

6 Q And raised the fact that your statement was the fruit
7 of the poisonous tree?

8 A He didn't raise that it was the fruit of the
9 poisonous tree.

10 Q Okay. So that is what you are saying trial counsel
11 was ineffective for failing to say that your statement was
12 part and parcel of your unconstitutional arrest without
13 probable cause?

14 A Yes, ma'am.

15 Q Okay. And did trial counsel ever advise you that if
16 you pleaded guilty you would be waiving your right to
17 appeal those issues?

18 A He didn't advise me of the appeal.

19 Q Okay. Did you understand that if you went to trial
20 and if 12 jurors convicted you of these crimes that you
21 would have a right to raise all of those issues in an
22 appeal to the Court of Appeals and then if necessary to
23 the Supreme Court?

24 A I didn't know at the time, but after I got to doing
25 research I found out about it.

1 Q Okay. And if you had known that if you went to trial
2 by jury and were convicted you could appeal those issues,
3 would you have gone ahead with your jury trial?

4 A Yes, ma'am.

5 Q And you would not have pleaded guilty?

6 A No, ma'am.

7 Q When you were first arrested, did you know anything
8 about the law concerning the differences between Family
9 Court and what we call big court, General Sessions Court?

10 A No, ma'am.

11 Q Did you know anything about the law insofar as that
12 allows for your attorney to try to convince the Solicitor
13 to try you in the Family Court instead of General Sessions
14 Court?

15 A No, ma'am.

16 Q If you had known that the law allowed for the
17 Solicitor to do that if he was given reason to, would you
18 have wanted your attorneys to forcefully seek for the
19 Solicitor to keep you in the Family Court?

20 A Yes, ma'am.

21 MS. SHURLING: A moment's indulgence, Your Honor.

22 THE COURT: Okay.

23 (Pause.)

24 Q When you were discussing the sentence that you would
25 likely receive if you entered these pleas, did your

1 attorney ever discuss with you the fact that after you had
2 served 85 percent of your sentence you would still be on
3 supervised release?

4 A No, ma'am.

5 Q For another 15 percent?

6 A No, no, ma'am.

7 Q And if you had understood that, would it have made a
8 difference in your accepting the plea bargain?

9 A Yes, ma'am.

10 Q Okay. I have no further questions. Please answer
11 any questions that Ms. VanGinhoven has for you.

12 CROSS-EXAMINATION

13 BY MS. VANGINHOVEN:

14 Q Mr. Gordon, you say you didn't know about that if you
15 pled guilty that you would be waiving any attacks on the
16 issues that have been brought up earlier, is that what you
17 are saying?

18 A No, I said that I wasn't aware that I could appeal
19 those issues if I went to trial and been found guilty.

20 Q Did Mr. D'Agostino ever advise you of your right to
21 appeal?

22 A No, ma'am. As a matter of fact, I had told him that
23 I wanted to appeal, and he advised me that I couldn't
24 appeal, but he would put in an appeal in anyway.

25 Q Okay, now you just said he never told you of your

1 right to appeal, is that correct?

2 A He didn't advise me of my right to appeal. I asked
3 him about the appeal and he---

4 Q When did you do that?

5 A That same day I took -- I took the plea.

6 Q As a matter of fact, you did have an appeal from this
7 case?

8 A Yes, ma'am.

9 Q And it was dismissed, is that correct?

10 A Yes, ma'am.

11 Q Do you remember when the judge went over with you
12 that you had a right to a jury trial?

13 A Yes, ma'am.

14 Q Do you remember that?

15 A Yes, ma'am.

16 Q Do you remember when he told you you had a right to
17 remain silent?

18 A Yes, ma'am.

19 Q A right to see the witnesses and hear the witnesses?

20 A Yes, ma'am.

21 Q And do you remember when he -- Do you remember when
22 he explained to you that although you made a statement
23 that he ruled that was admissible, that if you went to
24 trial the jury would have to decide that, do you remember
25 him telling you that?

1 A Yes, ma'am.

2 Q And do you remember when he told you that entering
3 this plea of guilt that you were giving up all those
4 rights? Do you remember that?

5 A Yes, ma'am.

6 Q And then he said knowing all these things how do you
7 want to plead regarding the murder, and what did you say?

8 A I said guilty.

9 Q To the possession of a fire -- and to all the charges
10 that you pled to you wanted to plead guilty, right?

11 A I didn't want to plead guilty. Mr. D'Agostino was
12 talking to me about pleading guilty and he was explaining
13 to me that he didn't have no defense for me to go to trial
14 and for me to plead guilty.

15 Q Right. And this incident involved three other
16 Co-Defendants, is that correct?

17 A Yes, ma'am.

18 Q Gary Moffitt, Terrance McCrary and Monte Gordon, is
19 that correct?

20 A Yes, ma'am.

21 Q And Gary Moffitt pled guilty, is that correct?

22 A Yes, ma'am.

23 Q He was going to testify against you, is that right?

24 A Yes, ma'am.

25 Q All right. Terrance McCrary and Monte Gordon, they

1 both pled guilty and were going to testify against you, is
2 that correct?

3 A I wasn't aware that they were going to testify
4 against me. I didn't know that.

5 Q Mr. D'Agostino never told you that they were going to
6 testify against you?

7 A No, he never told me that.

8 Q And you and Monte weren't in the courtroom on the
9 same day or in the courthouse the same day?

10 A We was in the holding cell together, and inside the
11 courtroom together.

12 Q And you knew that he pled guilty that day, right?

13 A Yeah, yes, ma'am.

14 Q You just thought the Solicitor gave him a deal and he
15 wasn't going to testify against you?

16 A I wasn't aware of no deal.

17 Q So you are saying that you would have gone to trial
18 with an eyewitness along with your three Co-Defendants
19 testifying for the State? Is that what you are testifying
20 to today?

21 A Yes, ma'am.

22 Q And you would have---

23 A I wasn't aware of no three witness. The only witness
24 that he advised me was was Gary Moffitt, my Co-Defendant,
25 I wasn't aware of no other witness coming in.

1 Q You didn't know about the passenger in the car?

2 A I knew that it was a passenger inside the car, but I
3 didn't know that he would come to court to testify. I
4 wasn't aware of that. I never seen his statement, until I
5 received my motion.

6 Q Until you received what motion?

7 A Of disclosure.

8 Q Your discovery motion?

9 A Yes, ma'am.

10 Q Well, you received that before the trial, didn't you?

11 A No, ma'am. I had asked him to send me a copy of my
12 statements and stuff because I didn't know much of what
13 was going on with my case, and he never gave me a copy of
14 it.

15 Q Mr. D'Agostino never went over with you the statement
16 that you made to the police?

17 A He went over my statement with me.

18 Q He never went over what the other people might
19 testify to?

20 A No, ma'am, no one but Gary Moffitt.

21 Q And that would probably -- that would be because
22 Terrance McCrary and Monte -- Monte pled guilty the same
23 day you did, right?

24 A Monte pled guilty before I did.

25 Q But on the same day?

1 A Yes, ma'am.

2 Q And Terrance that same week?

3 A Yes, ma'am.

4 Q And you are saying that if you knew about community
5 supervision that you wouldn't have pled guilty, is that
6 what you're saying?

7 A Yes, ma'am.

8 Q And you were there when your attorney made the
9 argument concerning the fact that there was no probable
10 cause to arrest you, weren't you?

11 A Yes, ma'am.

12 Q And you heard the judge rule that there was probable
13 cause?

14 A Yes, ma'am.

15 Q And you were also there when the judge ruled that
16 your statement was voluntary, correct?

17 A Yes, ma'am.

18 Q This was a negotiated sentence, is that correct?

19 A As I understand, yes, ma'am.

20 Q And they dropped the carjacking and pled you to 40
21 years, is that correct?

22 A Yes, ma'am.

23 Q And that's what you ended up getting, right?

24 A Yes, ma'am.

25 Q So you knew before you pled guilty you were going to

1 get 40 years, and that's what you received?

2 A No. At first Mr. D'Agostino came to me and he said,
3 "Forty years for murder."

4 And at that time I said, "Forty years for murder?
5 You can't get 40 years for murder, you can only get 30 to
6 life for murder."

7 And then at that time he said, "Well, I'll be back."

8 And when he came back he said, "Thirty, consecutive
9 ten."

10 At the time I didn't know what consecutive was. I
11 thought it meant it would run together.

12 Q Well, I guess my question would be when the Solicitor
13 went over what the negotiated sentence was, you understood
14 that, right?

15 A Did I understand it?

16 Q You understood that the Solicitor was saying it was a
17 negotiated sentence, 30 years for murder and 10 years
18 consecutive on attempted armed robbery? Did you
19 understand those words the judge said?

20 A No, ma'am.

21 Q You didn't understand that?

22 A No, ma'am.

23 Q At the guilty plea?

24 A At the time I didn't understand what consecutive and
25 concurrent was.

1 Q You didn't understand that consecutive meant---

2 A At that time my education was real low.

3 Q But, sir, you got -- you didn't understand that you
4 were having a 40 year negotiated sentence? Did you
5 understand that, 40 years?

6 A I thought he was giving me 30 and everything else ran
7 concurrent.

8 Q Let me just show you, just make it a little bit
9 clearer. This is what I'm going to ask you. On Page 175,
10 Line 16 through 17, it says, this is the Solicitor, "We
11 are asking for a negotiated sentence of 40 years." Did
12 you understand that?

13 A I understand it now, but at the time I didn't.

14 Q And do you remember when the judge asked you on 176
15 that if you had any questions to let him know, if you need
16 to discuss anything with your attorney to please let him
17 know? Do you remember when the judge asked -- told you
18 that?

19 A Yes, ma'am.

20 Q And why didn't you ask him then what 40 years meant,
21 or what consecutive meant?

22 A Because, at that time I was still young and I was
23 shook. I didn't know -- what to do.

24 Q You were 17 when you pled, correct?

25 A Yes, ma'am.

1 Q You were 16 when the murder -- when the murder
2 occurred?

3 A Yes, ma'am.

4 Q Okay. And do you remember the Solicitor went over
5 the facts of the case?

6 A Yes, ma'am.

7 Q During the plea?

8 A Yes, ma'am.

9 Q And do you remember agreeing with the Solicitor's
10 facts?

11 A Yes, ma'am.

12 Q So you don't deny that you committed these crimes?

13 A I -- I didn't -- didn't deny that I did commit the
14 crime or none of that.

15 Q Okay. And do you remember when you apologized to the
16 victim's family at the sentencing? Do you remember that?

17 A Yes, ma'am.

18 Q And do you remember when the -- when the judge gave
19 you your sentence and he said, "Do you understand all
20 that?"; and you said, "Yes"?

21 A Yes, ma'am.

22 Q Okay.

23 MS. VANGINHOVEN: I have no further questions.

24 REDIRECT EXAMINATION

25 BY MS. SHURLING:

1 Q During your plea when the judge explained to you that
2 even though he had ruled that your statement was
3 admissible, if you went to trial a jury would have to make
4 a determination about your statement as well, you do
5 remember that part?

6 A Yes, ma'am.

7 Q But he never told you, the judge didn't tell you and
8 neither did your lawyer, that if you went to trial you
9 would also have a right to have an appellate court review
10 that decision, correct?

11 A Yes, ma'am.

12 Q And nobody told you that by entering a plea of guilty
13 you were waiving your right to have an appellate review of
14 that ruling, did they?

15 A Yes, ma'am.

16 Q And so if they had told you -- Wait a minute, let's
17 get this straight, yes, ma'am, they did or they didn't?
18 Did anybody advise you you were waiving your right to an
19 appeal on that issue?

20 A No one did.

21 Q Okay. And if you had known that, you wouldn't have
22 pleaded guilty?

23 A Yes, ma'am, you're right.

24 Q Thank you.

25 MS. SHURLING: No further questions.

Obtained missing pages from
previous case, 2003-028189.

pages 470 - 471

(pages 34 & 35 of PCR
Hearing Transcript)

are missing from the
original appendix.
filed pro se in
this matter.

Re-scanned 7/14/15.

1 MS. SHURLING: No further questions.

2 THE COURT: You can step down, Mr. Gordon.

3 (Mr. Gordon steps down.)

4 MS. SHURLING: Your Honor, I would add to my
5 earlier presentation only by noting that, and I am trying
6 my best to remember the case, I think it is Shirley vs.
7 State, wherein the Supreme Court held that there has been
8 an issue about the admissibility of a statement that
9 someone has a right to know not only that it would be a
10 question for the jury in addition to a question for the
11 judge, but also that they would have a right to appeal
12 that issue if they proceeded to trial.

13 Thank you.

14 THE COURT: Okay.

15 MS. SHURLING: No further witnesses, Your Honor.

16 MS. VANGINHOVEN: The State would call Dan
17 D'Agostino, Daniel D'Agostino.

18 (Mr. D'Agostino approaches the witness stand.)

19 THE COURT: Do you swear or affirm you will
20 truthfully testify?

21 MR. D'AGOSTINO: I do.

22 RICHARD G. D'AGOSTINO, after
23 being duly sworn, testified as follows:

24 THE COURT: All right, I have one question before
25 we go further. I just scanned the transcripts that were

1 handed to me. I just scanned the transcripts that were
2 handed to me, I made no in-depth study of them. The
3 Solicitor indicated that they were going to nol-pros the
4 possession of a weapon by a person committing a violent
5 crime, stated that on the record.

6 The judge did not go over any penalty for
7 possession of a weapon during commission of a violent
8 crime, but then he sentenced him, but he made it
9 concurrent, so it is going to be moot as far as that goes,
10 but that was not done.

11 MS. SHURLING: Your Honor, I am embarrassed to say
12 that I didn't make that observation, but you're correct.

13 THE COURT: I mean, apparently he just signed
14 everything that was up there, then the deal was made, and
15 the Solicitor said, "We are going to nol-pros them," and
16 after he said that the judge didn't advise him---

17 MS. SHURLING: Nobody went back and checked the
18 indictments.

19 THE COURT: Then the indictments were on the stack
20 and the judge was just signing them and he just makes it
21 concurrent because the deal was he just gets 40 years.

22 MS. SHURLING: Well, and further what complicated
23 matters, Your Honor, is that the possession of a firearm
24 during the commission of a violent offense was on the same
25 indictment as the murder, so by signing the line for a

1 guilty plea on this indictment it made it appear that he
2 had pleaded to the possession of weapon during the
3 commission of a violent offense.

4 MR. D'AGOSTINO: Your Honor, may I speak, Your
5 Honor?

6 THE COURT: I'm listening.

7 MS. SHURLING: Well,---

8 MR. D'AGOSTINO: On Page 175, the Solicitor says
9 that, "On indictment for murder and possession of a
10 firearm while in the commission of a violent crime the
11 Defendant is pleading guilty as charged."

12 What they were dropping was the carjacking charge.

13 THE COURT: Well,---

14 MR. D'AGOSTINO: But the charge that on the
15 possession of a firearm during the commission of a violent
16 crime, the only one I recall them saying they were going
17 to drop was the carjacking.

18 THE COURT: Well, I mean, I don't know where it
19 was.

20 MR. D'AGOSTINO: Page 175.

21 THE COURT: I understand what it may say on that
22 page, but at some point in here you broke for lunch and
23 when you came back the plea was made.

24 MR. D'AGOSTINO: That was a different Defendant,
25 Your Honor.

1 MS. VANGINHOVEN: There is three Defendants in
2 this transcript.

3 THE COURT: Okay.

4 MR. D'AGOSTINO: That was probably Terrance --
5 Excuse me, I can tell you who that was. That was---

6 THE COURT: All right.

7 MS. VANGINHOVEN: And I believe as part of their
8 -- Terrance McCrary pled guilty on Page 162, and I believe
9 as part of that they may have dropped that charge because
10 he was going to testify against Antonio Gordon, who ended
11 up then pleading guilty after Terrance McCrary.

12 THE COURT: Okay. All right, well, go ahead with
13 it.

14 DIRECT EXAMINATION

15 BY MS. VANGINHOVEN:

16 Q Mr. D'Agastino, when were you appointed to represent
17 the Applicant?

18 A In March of 1999.

19 Q And by this time an indictment had already been
20 brought by the Solicitor's Office?

21 A Yes. I looked it up while I was sitting back there.
22 I believe the indictments were in October of 1998. I can
23 flip and see. October 19th of 1998.

24 Q Were you concerned about the fact that the Applicant
25 was 16 and was in General Sessions Court?

1 A One of the first things I did, as I recall, and I
2 studied the file last night, was look up the Children's
3 Code as it relates to individuals under the age of 17 --
4 18 years of age. I looked up the statute, and under the
5 statutory scheme, I left my book and Ms. Shurling has my
6 copy of my statute, but under the statutory scheme, under
7 6605, because he was 16 years of age and charged with
8 murder and several other felonies that fall within the A,
9 B, C, D categories, he was not considered a child under
10 the Code, so he was considered an adult and his case
11 automatically went up.

12 I raised this issue as to him being a minor or a
13 child or a young man with the Solicitor's Office, Willie
14 Thompson, I specifically recall speaking with them about
15 it. I did not write them any letters or -- and I did not
16 file any motions. I knew they had -- By the time I got
17 involved in this case it was nine months after it
18 occurred, it was already indicted, it was in General
19 Sessions, but I raised this issue with them, I told them
20 my concerns about it. We had discussions about it because
21 they kept giving intimations that they were going to seek
22 the death penalty. They were saying that they had
23 aggravating circumstances to convert it to a death
24 penalty.

25 Mr. Gordon had a prior juvenile record. I pulled

1 that out last night. They brought that up as well. He
2 had several incidents of burglary seconds on his juvenile
3 record, assault and battery, petit larcenies, he had been
4 in and out of the Department of Juvenile Justice several
5 different times. My file contains numerous records I
6 obtained from the Department of Juvenile Justice.

7 Because of concerns of them converting this to a
8 capital case, I began preparing for it as a capital case.
9 I also obtained and looked at this information because of
10 his mental status. So this was a concern of mine. It is
11 something I brought up with the Solicitor's Office. It is
12 -- I asked them why we weren't in Family Court, if we
13 could not be there, and they did not -- they had made
14 their decision before I had gotten involved in the case,
15 but they weren't going back there from my perspective
16 because of the seriousness of the charges, the fact that
17 they could seek the death penalty, and the fact that Mr.
18 Gordon had a prior record.

19 Q And as to his competency and his mental level, you
20 were concerned about that?

21 A I was very concerned about that. In fact, I tried to
22 be careful any time I spoke with him even during the
23 negotiations, during the long day of pretrial hearings.

24 Q And you hired a psychologist to evaluate him, is that
25 correct?

1 A I did. We hired Dr. Jonathan Venn. I first
2 contacted Dr. Harold Morgan. I talked to Dr. Harold
3 Morgan for a while about the case, a short while, to find
4 someone who was more experienced in dealing with
5 juveniles, young adults, and he referred me to Dr.
6 Jonathan Venn.

7 Q And his conclusion was he just couldn't come to an
8 opinion regarding mental retardation?

9 A He scored a 68 on the mental IQ score. There is a
10 deviation of standard of error in there. Dr. Venn
11 testified at length at the competency hearing about Mr.
12 Gordon's ability to comprehend, remember, understand what
13 is going on. I could not substantiate a competency issue
14 for purposes of presenting a competency to say -- that
15 said that he was incompetent to go to trial. I did not
16 have the evidence to do that. Mr. Venn -- Dr. Venn could
17 not support saying that he was incompetent from my
18 perspective. I mean, Mr. Gordon isn't the brightest
19 fellow, I'm not trying to be ugly or anything else, but he
20 is not, and he has some deficits. It was a concern of Dr.
21 Venn, but after discussing it with Dr. Venn, discussing
22 the results of his evaluations, I did not think we could
23 properly pursue a competency issue, so I had to pursue
24 what I could with Dr. Venn, and we presented him because
25 of the issues dealing with his ability to understand

1 Miranda, ability to understand what was happening to him
2 at the time it was happening.

3 Q And he did -- I mean, he was deemed to be competent
4 to assist you?

5 A He was deemed -- right. In fact, I went to the
6 competency evaluation that the State eventually wanted to
7 have, although I had some questions about how they could
8 make some determinations. He certainly was able to answer
9 the questions from their perspective. And I sat through
10 that evaluation here in Columbia. I thought it was
11 incumbent upon me to.

12 Q And to what Ms. Shurling referred to earlier, Leslie
13 Sandler is the expert hired by the State to evaluate the
14 Applicant?

15 A She was. Dr. Sanders, I think it is a he, but Dr.
16 Sanders was the expert hired by the State to evaluate him.
17 I had forgotten that he actually did that evaluation until
18 we were discussing it right before the hearing started
19 today, but I remembered coming down here to Columbia and
20 sitting through that evaluation with several different
21 people in the room.

22 Q His evaluation was that he was not mentally retarded
23 and was competent to stand trial?

24 A Right. Right.

25 Q Did you ever advise him -- Let's go back to the

1 guilty plea. Did you advise him of the effect of the
2 guilty plea concerning any appellate rights that he may
3 have?

4 A Yes, I did advise him of the appellate rights. And
5 if I can -- That was a very long day. One of these
6 Co-Defendants was related to him, one of them had pled out
7 several months earlier, so he knew -- I think it was
8 Moffitt who pled out first. I ordered that transcript of
9 that plea. It is here somewhere in my stuff, my records.
10 I have the first Defendant who pled's records. That day
11 started out with motions. Then the second Defendant went
12 down. Now, mind you, all four boys were together this
13 night. The second one went down and agreed to testify
14 against Mr. Gordon, Antonio Gordon. I told him what was
15 going on. The third one went down, agreed to testify
16 against Mr. Gordon. I told him what was going on. At the
17 end of the day Mr. Gordon was standing there by himself
18 with one of these individuals, Co-Defendants, being his
19 cousin, the other two being friends or relatives somehow
20 distantly, or maybe even close, but friends, people he
21 knew. You got the other victim in the car, and you had
22 his statements.

23 And I explained to him, "We could go to trial and you
24 could challenge all this. You could go to trial. You
25 don't have much of a defense. All these people are going

1 to testify against you. And even if we win on the issue
2 of the statements being kept out, the fact of the matter
3 is you have got your three Co-Defendants going to testify
4 against you. You can't testify. And you've got this
5 other person out there, the victim."

6 There were questions about the palm prints or
7 fingerprints. I knew that. But the fact of the matter is
8 he had those three Defendants, three Co-Defendants, all
9 testifying against him. And I told him that.

10 I told him if he pled out he could not appeal the
11 judge's decisions on these pretrial motions, that if he
12 did not plead and go to trial he could appeal those
13 decisions and take his chance with the Court of Appeals
14 making a determination that the judge's decision as to the
15 admissibility of his statements was wrong, then he could
16 come back for retrial, or the Court might find it was
17 harmless, I don't know what would happen, but there are
18 many possibilities, but if he pled guilty he was not going
19 to be able to challenge that.

20 I explained to him that it was a negotiated sentence,
21 that everybody else was getting 30 years, but because he
22 was the shooter they wanted 40. Originally they wanted
23 more time. We got them down to 40. I told him that.

24 I will tell you he pled guilty on Friday, sentencing
25 was withheld until Monday so they could get Mr. Crim

1 there, and I guess whoever else they wanted there, but
2 between Friday and Monday I also know that his cousins,
3 everybody who agreed to testify against him told him I
4 sold him out, but they were the ones who were testifying
5 against him. But he didn't change his mind on Monday when
6 sentencing came down.

7 He subsequently wrote me a letter -- I told him he
8 could appeal it. He subsequently wrote me a letter and
9 told me to appeal his decision before the ten days was up.
10 And I believe I filed the appeal in his case.

11 Then he wrote me another letter asking me to file
12 post-conviction relief against myself, and I told him how
13 to do that.

14 So everything was explained to him, except the one
15 thing I did not tell him, that 85 percent, I did not tell
16 him, I do not recall telling him that at the end of
17 serving 85 percent he would have to have supervised
18 release. I do not recall telling him that. I recall
19 telling him he is getting 40 years, he needs to expect 40
20 years. That is what I tell all my clients. If you get
21 40, expect 40. If you get out, it is by the grace of God,
22 or however they do that in Columbia.

23 Q And in fact there was a plea offer from the
24 Solicitor's Office originally, and that was for 45 years,
25 is that correct?

1 A That's correct.

2 Q Now, these issues concerning possession of a weapon
3 during the commission of a violent crime being, and
4 attempted armed robbery, double jeopardy issues, did you
5 see any reason to raise that at the time of the trial?

6 A The issue of -- Did you ask about severance or
7 just---

8 Q Just that---

9 A What was it?

10 Q The double jeopardy issue concerning attempted armed
11 robbery and possession of a weapon during the commission
12 of a violent crime?

13 A I cannot recall raising any issue about the -- I did
14 not make any motion about that, and I off the top of my
15 head, I don't recall making any motions about the double
16 jeopardy issue of attempted armed robbery and possession
17 of a weapon during the commission of a violent crime.

18 Q Okay.

19 A As to the motion to suppress, you will see in the
20 transcript I did make a motion to suppress the statements
21 because the arrest was unlawful. It specifically says
22 that. And the judge denied the motion to suppress. I
23 didn't use the words "fruit of the poisonous tree," but my
24 motion was to suppress those statements.

25 Q Okay. And ultimately there was no need for severance

1 because everyone ended up pleading guilty?

2 A At the end of the day everybody else had pled guilty.
3 I had nothing to sever from.

4 Q Okay.

5 A I was the only one going to go to trial. I was the
6 very last one.

7 Q Okay.

8 MS. VANGINHOVEN: I have no further questions.

9 CROSS-EXAMINATION

10 BY MS. SHURLING:

11 Q I understand that you advised Mr. Gordon that he
12 could file an appeal from his plea, correct?

13 A Yes, I did.

14 Q Are you also, if I understood your testimony
15 correctly, are you certain here today, sir, that you
16 advised him that if he pleaded guilty he would not be able
17 to obtain an appellate review of the Court's findings with
18 regard to the admissibility of the statement and other
19 issues that had been argued pretrial?

20 A Yes, I discussed that with him. After his other
21 Co-Defendant pled guilty, we went in that back holding
22 room at the York County -- the Moss Justice Center, and I
23 told him we could proceed on to trial, his three
24 Co-Defendants were going to testify against him, if we
25 proceeded on to trial and he was convicted he could raise

1 these issues as to the admissibility of these statements.
2 I believe I told him I thought it would be a very
3 interesting decision, but I don't know if I got into that,
4 because I thought it would be a very interesting result.
5 But I also told him that if he pled guilty he could not --
6 the only thing he could appeal was his plea.

7 Q Okay. Did you ever discuss with him the possibility
8 of challenging these indictments based on the nature of
9 the presentation made to the Grand Jury, that being a
10 single witness---

11 A No, I did not.

12 Q Okay. Did you ever ask, specifically ask the
13 Solicitor's Office to reconsider their decision and allow
14 his case to be heard in the Family Court?

15 A I don't think I asked them to reconsider their
16 decision. I addressed it with them when I first got
17 involved in the case. I asked them why it was not there,
18 why we couldn't do it there. I don't think -- I don't
19 recall ever asking them to reconsider. I mean, it was a
20 long time from when it was indicted by the time I got
21 appointed. I got appointed in March. They were
22 originally -- They gave me an offer in May and said if I
23 don't plead in May they are going to trial in June. And I
24 was hustling, but---

25 Q I understand. If I understood your testimony

1 correctly, what you're saying is that when you first got
2 the case it is in General Sessions Court, and in the early
3 discussions with the Solicitor's Office you basically
4 said, "Why aren't we in Family Court on this?"

5 A Why aren't we in Family Court. I believe I asked
6 them why we couldn't be there. And after my initial
7 discussions with them in the very beginning, I didn't
8 bring up remanding it back to Family Court again with
9 them. I mean, the Solicitor's Office had that discretion,
10 and they kept talking about, you know, they might seek the
11 death penalty, they just had to see what the victim was
12 going to do.

13 I told them I didn't think they could get the death
14 penalty on this case because he was so young and they had
15 problems with their case. Their problems with their case
16 gradually went away as everybody agreed to testify, but---

17 Q At the time of these pleas, were you prepared to go
18 to trial?

19 A I was.

20 Q Had the State served you with a death notice?

21 A No, they had decided at that time they were not going
22 to go forward with it because Mr. Crim did not, I don't
23 want to say not believe in the death penalty, but he was
24 fine with not going forward with the death penalty.

25 Q So the threat of the Solicitor's Office seeking the

1 death penalty was not a factor in this decision to plead?

2 A No, it was not because at that time they had not
3 served a death penalty notice, and we were ready to go to
4 trial.

5 Q Okay. And just so the record will be clear, did you
6 ever, once you had your client evaluated and you
7 investigated the case, you never went back to the
8 Solicitor and made any attempt to get them to exercise
9 their discretion and return it to the Family Court?

10 A I did not -- I did not try to get it returned to the
11 Family Court. I tried to get them to come off of what
12 their offers were to be more lenient because of his low IQ
13 and his problems. He had a -- he had a troubled past. I
14 mean, he had been in DJJ for a while.

15 Q And in fact the Solicitor's Office had not allowed
16 any of the Co-Defendants to be handled in Family Court
17 either, had they?

18 A They had not. And, you know, it was all I could do
19 at the day that he pled to get them down to 40 years. I
20 mean, they were up at 45. That is what their letter was.
21 They didn't want to come off that. I mean, they were --
22 they had a tough stance on this case. It was a very
23 tragic set of events.

24 MS. SHURLING: A moment's indulgence, Your Honor.

25 A Sure.

1 (Pause.)

2 Q Just in the interest of the complete record, could
3 you tell us at the time of this trial in 1999 how long you
4 had been practicing law?

5 A I began practicing law in 1992. I began clerking
6 with Melvin Roberts, my partner, in 1989.

7 Q And did you have extensive experience in the area of
8 criminal law at the time you tried this case?

9 A About a third of my practice is devoted to criminal
10 law. I have tried multiple felony cases prior to that
11 time. I had handled another murder case in Family Court
12 with my partner prior to that time. I had handled
13 vehicular homicide, or first they charged him with Felony
14 DWI as a death case. And so I had handled multiple other
15 -- drug cases and violent offenses.

16 Q Had you ever been lead counsel in a murder trial
17 before?

18 A No, I had never been lead counsel in a murder trial.
19 I was co-counsel with Melvin, my partner, in Family Court,
20 and then I handled a good part of the case with the death
21 on that Felony -- I keep saying Felony DWI -- vehicular
22 homicide, whatever they called it. So, no, I have not
23 been lead counsel on a murder case.

24 Q Thank you.

25 MS. SHURLING: One moment, Your Honor.

1 (Pause.)

2 MS. SHURLING: No further questions, Your Honor.

3 REDIRECT EXAMINATION

4 Q You testified you were prepared to go to trial?

5 A I was.

6 Q If you felt that you had needed help on this case,
7 would you have consulted one of your partners?

8 A Oh, yes. In fact, I mean, if I needed help, my
9 partner would have helped me, but I was fine trying it.

10 Q Okay.

11 A I tried my first felony case I think in 1993 on an
12 appointed case.

13 Q Okay.

14 MS. VANGINHOVEN: I have no further questions.

15 THE COURT: You can step down.

16 (Mr. D'Agostino steps down.)

17 MS. VANGINHOVEN: That's it for the State.

18 MS. SHURLING: Your Honor, the Applicant would
19 assert that under the standard announced by the Court in
20 Strickland vs. Washington he has laid out for the Court
21 both errors and omissions which he feels combined together
22 to deprive him of a fair trial.

23 He asserts that he has established that counsel
24 failed to provide him with reasonable professional
25 assistance of counsel, and for that reason, Your Honor, he

1 would assert that his pleas of guilty were the product of
2 ineffective assistance of counsel;

3 That his Sixth Amendment rights were violated
4 prior to and during his plea of guilty;

5 That but for counsel's errors and omissions he
6 would not have waived his right to trial by jury and would
7 have proceeded to trial.

8 Therefore, under Hill vs. Lockhart he has met the
9 standard for showing that his pleas of guilty were not
10 voluntarily and intelligently entered. He asks that his
11 application be granted, that his judgments and sentences
12 be vacated, and that he be granted a new trial.

13 THE COURT: Okay.

14 MS. VANGINHOVEN: Can I just put on the record a
15 couple of things?

16 THE COURT: Anything you would like, Ms.
17 VanGinhoven.

18 MS. VANGINHOVEN: Okay. I juts want to go back.
19 Ms. Shurling went through all the allegations, and I just
20 wanted to speak to a few of them.

21 The allegation concerning lack of subject matter
22 jurisdiction because the indictment was not filed with the
23 Clerk of Court within 90 days I would submit is an
24 administrative procedure and doesn't affect subject matter
25 jurisdiction.

1 THE COURT: Hey, that's right. That's the way all
2 the counties do it, to my knowledge. I don't know of any
3 that send the clerk in.

4 MS. VANGINHOVEN: As to the indictment issue with
5 "willfully" and "feloniously" being omitted, we have the
6 case of Joseph vs. State that says that that does not
7 render the indictment insufficient.

8 The allegation that double jeopardy was violated
9 because of the attempted armed robbery and possession of a
10 weapon during the commission of a violent crime we would
11 submit is not correct.

12 That the armed robbery indictment did not -- or
13 attempted armed robbery didn't contain the element of
14 asportation, it does include the words "attempt to
15 feloniously take from the person." We would submit that
16 that is valid.

17 The issue concerning The State v. Anderson case,
18 the police officer was at the Grand Jury hearing, not the
19 Solicitor. It was a Rock Hill Police Department employee.

20 And anything concerning community supervision, we
21 submit community supervision is a collateral consequence
22 of a guilty plea, that he does not -- the Applicant does
23 not have to be advised of that.

24 THE COURT: He may not get out at all.

25 MS. VANGINHOVEN: That's true. And that is all

1 the State would have except the application should be
2 denied.

3 THE COURT: All right. Well, I have read
4 everything now. The first thing I was talking about about
5 the judge not doing that, I am reading "Mr. Gordon," "Mr.
6 Gordon," "Mr. Gordon." Y'all hand me up all this stuff.
7 Monte Gordon's plea didn't have anything to do with this
8 case. Mr. Gordon just loses. I don't keep people in
9 suspense. I mean, I read the two transcripts, being
10 blessed with being a speed reader. The attorney had three
11 people going to testify against you. I'm sorry. Any
12 other thing, it doesn't really matter. I mean, he is up
13 against the wall. Maybe your friends and your relatives
14 shouldn't have testified against you, but they had all
15 pled and said they were going to do it. The attorney
16 doesn't have much choice at that point, you are going to
17 get convicted. He just has to do the best that he could.

18 He indicated he had asked about the Family Court
19 situation early on. The Solicitor took a hard line, in
20 fact a tougher line against you than the rest. He didn't
21 let anybody go into the Family Court situation. And for
22 better or worse, that is a Solicitor's prerogative. The
23 attorney can just ask; the Solicitor holds that power.
24 Just like the Solicitor can dismiss a claim, as he did
25 against Monte, if that is how you pronounce it, he didn't

1 have to do that, but he has that discretion. He can do
2 that.

3 As far as sending the only one officer in front of
4 the Grand Jury, in olden times they just allowed
5 Solicitors to walk in and summarize. Finally, that being
6 a bad practice, the Supreme Court said, "No, the Solicitor
7 can't summarize, you have to have an active investigator
8 at least to testify." And it would have been better to
9 have had more people, but they had enough on you. All
10 they have to tell the Grand Jury is, "We've got so and so
11 that will testify that you are the shooter." It turns out
12 you were the shooter. You don't even deny that at this
13 point. So nothing wrong with that.

14 On the competency situation, you had full hearings
15 on that. I mean, maybe another person could have examined
16 you, and so forth. A competent person did and testified
17 and the judge was satisfied with that.

18 On the double jeopardy situation on armed robbery,
19 actually there is a case that says that is okay, even
20 though that case is wrong. It has to be included in the
21 charge. How are you going to rob somebody armed if you
22 are not armed with a weapon? But judges recognizing that,
23 they always run it concurrent. Well, some might add it,
24 but, I mean, so it wouldn't impact you one way or another,
25 even if you were correct on that. That sentence was given

1 concurrent to the other time that you had.

2 And as far as having to serve supervised release
3 when you get out, it is almost impossible to get out,
4 unfortunately, Mr. Gordon, even after serving 85 percent
5 because you just have to be a model prisoner the whole
6 time. If you have any violations in there they are not
7 going to let you out after serving 85 percent, and I
8 recognize 40 years is a long time. If you do get out
9 earlier, that is a benefit. It wouldn't have impacted
10 anything. The attorney told you you might have to serve
11 the entire 40. That's true. That's true. You may get
12 out earlier. And of course the legislature can adjust
13 your release time at some point. I wouldn't put any hopes
14 on it, but if prisons get crowded they might back off of
15 some of these.

16 But I don't see anything you have raised that
17 would entitle you to a new trial. Sorry. And I could
18 jerk you around and tell Ms. Shurling to prepare an order
19 and I would study it and read it, which I would have done,
20 but I don't see how you are going to win, so why keep you
21 in suspense?

22 If you would prepare an order, Ms. VanGinhoven, or
23 however you pronounce it.

24 MS. VANGINHOVEN: Yes, sir.

25 THE COURT: VanGinhoven?

1 MS. VANGINHOVEN: There you go.

2 THE COURT: All right, VanGinhoven. Within 30
3 days.

4 And, of course, Mr. Gordon, you have the right to
5 appeal. And it doesn't start running until I sign that
6 order and you are given a copy of it.

7 Okay.

8 (WHEREUPON, the proceedings were concluded.)
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(END OF TRANSCRIPT)

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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA

COUNTY OF YORK

I, Deborah M. McCurdy, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Richland County, South Carolina, on the 29th day of July, 2003.

I do further certify that I am neither of kin,
counsel nor interest to any party hereto.

February 13, 2004

Robert M. McEndy

Deborah M. McCurdy, Court Reporter

My Commission Expires: 5-24-09